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THIS INDEX is based on a consolidation of contents entries appearing in the January-December subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of the Interior, National Business Center, Office of Aircraft Services	OAS Operational Procedures Memorandum No. 02-1, dated Jan. 1, 2002. Subject: Index of Departmental Manual (Aviation Management) and Operational Procedures Memoranda Information.	Office of Aircraft Services P.O. Box 15428 Boise, ID 83715-5428 Or 2350 West Robinson Road Boise, ID 83715-5428.	Office of Aircraft Services FOIA Officer P.O. Box 15428 Boise, ID 83715–5428 Telephone: 208-387-5750 Fax: 208-387-5830 E-mail llaraway@oas.gov
Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Index dated Aug. 31, 1992 1993 BIAM Releases 1993 BIAM Bulletins 1994 BIAM Releases 1994 BIAM Bulletins 1995 BIAM Releases 1995 BIAM Bulletins	Bureau of Indian Affairs Division of Management Support Code 850, MS 351 1951 Constitution Ave., NW. Washington, DC 20245 First copy no charge	Bureau of Indian Affairs Division of Management Support Code 850, MS 351 1951 Constitution Ave., NW. Washington, DC 20245 Telephone 202–208–2977
Department of the Interior, Bureau of Land Management	Instruction Memorandums, FY-98 to FY-2000 Information Bulletins, FY-98 to FY-2000 Director's Office Instruction Memorandums, FY-98 to FY-2000 Director's Office Instruction Bulletins, FY-98 to FY-2000 Manuals Issued Oct. 10, 1996 to Dec. 12, 1999 Handbooks Issued Oct. 10, 1996 to Dec. 12, 1999 Instruction Memorandums are temporary issuances containing new Bureau policy. Information Bulletins are temporary issuances containing informational material. Manuals and Handbooks are permanent issuances containing Bureau policy and procedures.	Available at no cost from the Bureau's Internet site at: www.blm.gov/nhp/efoia/wo/woerr.html Paper copies available at 13 cents per page from: Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Mail Stop 750LS, Washington, DC 20240 Make checks payable to the Bureau of Land Management.	Department of the Interior; Bureau of Land Management; Directives, Records, and Internet Group; 1839 C Street, NW.; Mail Stop 750LS; Washington, DC 20240 Telephone: 202–452–5193 Facsimile: 202–452–0395 E-mail: Directives Washington@blm.gov
Department of the Interior, Bureau of Reclamation	Reclamation Manual Index dated July 21, 2000.	Bureau of Reclamation, Property & Office Services Division, D-7924, P.O. Box 25007, Denver, CO 80225-0007 No charge.	Bureau of Reclamation, Property & Office Services Division, D-7924, P.O. Box 25007, Denver, CO 80225-0007 Telephone 303–445–2048 Internet address: www.usbr.gov/recman/rm-index.htm
Department of the Interior, U.S. Geological Survey	Table of Contents, Checklist, and Subject Index relating to the U.S. Geological Survey Manual.	Directives Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192 No charge	Directives Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192 Telephone 703–648–7313

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Interior, Fish and Wildlife Service	Centralized Library of Servicewide Policies - contains indexes to Fish and Wildlife Service manuals, policy issuances, orders, handbooks, and other documents that guide employees in managing FWS programs, to include: Fish and Wildlife Service Manual National Policy Issuances Director's Orders Federal Register Documents (FWS) Handbooks Memoranda	Available at no cost from the Service's web sites listed below. Paper copies available in accordance with fee schedule in 43 CFR 2, Appendix A. http://policy.fws.gov/index.html http://policy.fws.gov/manual.html http://policy.fws.gov/npi.html http://policy.fws.gov/do.html http://policy.fws.gov/library/frindex.html http://policy.fws.gov/hbindex.html http://policy.fws.gov/library/memindex.html	Division of Policy and Directives Management Fish and Wildlife Service 4401 N. Fairfax Drive Room 222 Arlington, VA 22203 Telephone 703-358-2482 Email Address: Hope_Grey@mail.fws.gov
Department of the Interior, Minerals Management Service	Table of Contents and Checklist to Basic Minerals Management Service Manual. Listed numerically by part, series, chapter, release number, date, and pages.	In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Strategic Direction and Coordination Branch, 381 Elden Street, MS-2200, Herndon, VA 20170-4817 Telephone 703–787–1258
	Index of Director's appeal decisions	In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Appeals Division, Office of Policy and Management Improvement, 1849 C St., NW., MS-4230, Washington, DC 20240, Telephone 202–208–2622
Department of the Interior, National Park Service	Checklist of the NPS Guidelines and Directives Dated Jan. 1, 1993	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division No charge Telephone 202–523–5043	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division
Department of the Interior, National Park Service, Administrative Program Center	Electronic Director Orders/Procedures	No charge	www.nps.gov/refdesk/Refdesk.htm
Department of the Interior, National Park Service, Office of Policy	Listing of Director's orders, handbooks, reference manuals, and other documents that guide employees in managing parks/programs administered by the NPS. List of guidelines, special directives, and staff directives still in effect.	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202–208–7456.	Chief, Office of Policy, MS 2414, Main Interior Building, Washington, DC 20240. Telephone 202–208–7456.
			www.nps.gov/refdesk/policie.html
Department of the Interior, Office of Hearings and Appeals	Index-Digest. Index of synopses for all decisions decided by Office of Hearings and Appeals Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, Office of Hearings & Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791 Price: $495.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch, Office of Hearings and Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Indian Citator. Index of authorities cited in decisions of the Interior Board of Indian Appeals (IBIA). Initial publication covers volumes 1-15 of IBIA decisions. Updated annually.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3799 Price: $40.00 for Citator. Checks made payable to: Department of the Interior.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3799
	Administrative Manual. Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Administrative Division, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to Department of the Interior.	Administrative Division, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703–235–3793
Department of the Interior, Office of Inspector General	Inspector General Manual Index Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	Available at no cost from Office's Internet site at www.oig.doi.gov/ldst.pdf Paper copies available at 13 cents per page from: Department of the Interior, Office of Inspector General, 1849 C Street NW, Mail Stop 5341, Washington, DC 20240	Sandra L. Evans, Acting Information Manager, Department of the Interior, Office of Inspector General, 18th and C Street, Washington, DC 20240 Telephone 202–219–1387
Department of the Interior, Office of Surface Mining	Listing of Directives which are considered in effect with respect to current operations of the Bureau. Historical listing of Directives not currently in effect. Internet address: www.osmre.gov/directiv.htm	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 One copy only, no charge. Telephone 202–208–2593	Office of Surface Mining, Office of Administration, ms-222-SIB ATTN: Directives Coordinator, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone 202–208–2593
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Telephone 202–523–9277
Legal Services Corporation	LSC Index lists decisions, opinions, statements of policy, manuals, and other records of general interest to members of the public in understanding the activities of the Corporation. The index contains records from 1975 to date.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250. No charge.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250.
Department of Transportation, Federal Highway Administration (FHWA)	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Treasury: Departmental Offices	Index of Selected Records, July 1967 to Dec. 31, 1994. Index entry contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202–622–0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Telephone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone 202–245–1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through Nov. 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. Apr. 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. Apr. 21, 1975 to date	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202–254–6314

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Index of Commission administrative manuals and instructions to staff that affect a member of the public. Apr. 21, 1975 to date. (Commission instructions no longer in use are not included in this index)		
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14≥x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

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	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since Apr. 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Policy and Program Analysis Division (NAA), National Archives, College Park, MD 20740-6001 One copy only (free).	Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001. Telephone 301-713-6730
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of Jan. 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	NSF Guide to Programs, A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	
	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Handbook of Publications, Periodicals, and Operating Manuals, OPM-OCAS-PSD-01. As of September 1996. A listing of publications, periodicals, and operating manuals arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to information (no longer published).	Publishing Management Branch, Office of Personnel Management, Room 5H35, 1900 E St. NW., Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since Oct. 27, 1972, to date. The index is updated semi-annually (Mar. and Sept.).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Office of the General Counsel	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005; Charge $0.15 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, Suite 240, 1200 K St., NW., Washington, DC 20005 Telephone 202–326–4040 (202–326–4179 for TTY and TDD)
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp.	
Department of Veterans Affairs	Board of Veterans' Appeals Index I–01–1, an index to appellate decisions. Decisions of the BVA that were written prior to 1977 are available only in a "digest" form that consists oi summaries of decisions, organized by subject. Final decisions are published in redacted form from 1977 through 1993. The text of these decisions are on microfiche and may be retrieved by subject matter through the use of BVA Decisions Index I-01-1 for the following years: 1977 through 1993.	The microfiche index may be purchased for approximately $22.50 per copy from: Promisel & Korn, Inc., 7201 Wisconsin Ave., Suite 620, Bethesda, MD 20814. Make check payable to: Promisel & Korn, Inc.	The index is available for inspection at Department of Veterans Affairs regional offices.
	Board of Veterans' Appeals Decisions CD-ROM are available in CD-ROM format. Decisions from 1992 through 1995 may be searched by subject or by any word that appears in them. Included in this format are BVA Indexes for 1993 and 1994 decisions; and a subject index, identified as "VOCABULARY" that pertains to the following years: 1993, 1994 and 1995.	The Board of Veterans' Appeals Decisions CD-ROM may be purchased for $19.00 from: Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250-7954. Make check payable to: Superintendent of Documents.	The CD-ROM is available for copying and inspection at Department of Veterans' Affairs regional offices or at the Board of Veterans' Appeals Research Center, 811 Vermont Avenue, NW., Washington, DC 20420.
Department of Veterans Affairs	Department of Veterans Affairs Publication I–03–1. All information is current as of April 1991. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the VA Service and Distribution Center, Forms and Publications Services (901P), P.O. Box 7010, Hines, IL 60141.	VA Central Office, IRM Policies and Standards Service (045A3), Room 583, 810 Vermont Ave., NW., Washington, DC 20420. Telephone: 202–273–8129 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Department of Veterans Affairs, or ask your Directory Assistance Operator for the number in your area.

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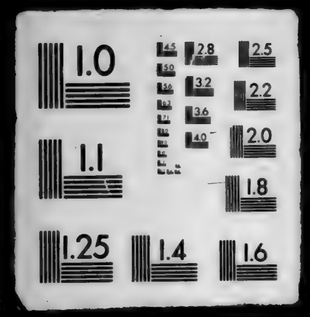

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG44

Collecting Guaranteed Loss Payments From FSA Farm Loan Program Borrowers

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action revises the regulations governing the Farm Service Agency's (FSA) guaranteed farm loan programs by adding a provision clarifying that any amounts paid by FSA on account of the liabilities of the guaranteed loan borrower will constitute a Federal debt owing to FSA by the guaranteed loan borrower. FSA may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower. This action will affect only those guaranteed loan borrowers after a final loss claim is paid by FSA to the lender from whom they received a guaranteed loan.

DATES: This rule is effective on July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Polly M. Anderson, Senior Loan Officer, Farm Service Agency; telephone: 202–720–2558; Facsimile: 202–690–1196; E-mail: *Polly_Anderson@wdc.fsa.usda.gov*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities, because it does not require actions on the part of the borrower or the lenders. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601). This rule does not impact small entities to a greater extent than large entities.

Environmental Impact Statement

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except that Agency servicing under this rule will apply to loans guaranteed prior to the effective date of the rule and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in expenditures of $100 million or more in any 1 year for state, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined by title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

Federal Assistance Program

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Discussion of the Final Rule

This rule clarifies the policy of the Farm Service Agency Farm Loan Programs concerning the statutory mandate imposed on the Agency by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3716) (DCIA). Section 3701 of 31 U.S.C. defines "claim" or "debt" in part to include funds owed on account of loans guaranteed by the government. This rule puts guaranteed borrowers on notice that FSA will attempt to collect from guaranteed borrowers through Treasury Offset and any other available remedies when a final loss claim is paid to a guaranteed lender.

The Federal Claims Collection Act of 1966 (Act), (31 U.S.C. 3711 et seq.) provides for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by Government agencies to collect delinquent Federal debts. Any money that is or may become payable

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from the United States to an individual or entity indebted to FSA may be offset for the collection of a debt owed to FSA. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Current regulations published in 7 CFR part 762, do not discuss whether amounts paid by the Agency on guaranteed final loss claims are considered Federal debts.

This rule is consistent with the Act and clarifies that a Federal debt is established when a guaranteed final loss claim is paid. The Agency will offset all payments available in accordance with 31 U.S.C. 3716 and 7 CFR part 1951, subpart C. Federal Crop Insurance indemnity payments are prohibited from offset under section 509 of the Federal Crop Insurance Act (7 U.S.C. 1509). FSA also will not offset environmental cost-share assistance payments for establishment costs that are made for newly enrolled FSA Conservation Reserve Program acres or in other situations not in the best interests of the Government. FSA's current policy for direct loan debt collections will be used for collection of Federal debt arising from guaranteed loans.

Some borrowers have established corporations, partnerships and other entities to avoid offsets and to circumvent other Agency regulations. Offset will be taken against the borrower's pro rata share of entity payments pursuant to 7 CFR 792.7(l), 1403.7(q), and 1951.106. A Federal debt cannot be established on debts discharged in bankruptcy. In a reorganization bankruptcy, a borrower will not be offset even when a final loss claim is paid provided the borrower successfully completes the confirmed plan. If a borrower's debt is discharged in a Chapter 7 bankruptcy, offset will not be pursued when the final loss claim is paid.

The Agency has revised its guaranteed loan application forms to include the applicant's certification and acknowledgment that any amounts paid by FSA on account of liabilities of the guaranteed loan borrower will constitute a Federal debt to FSA. The forms provide direct notice to interested applicants of FSA's debt collection policy and memorialize their understanding and acknowledgment of FSA's collection policy.

The guaranteed farm loan program has been in existence since 1973. Currently, there are 40,559 guaranteed farm loan borrowers with 67,540 loans. Approximately 1,200 loss claims are paid on guaranteed loans per year. Approximately 100 of the 1,200 loans are discharged in bankruptcy, leaving about 1,100 loans that could be considered for offset and other collection methods. Sixty days after a final loss claim is paid, Agency loan officials will notify the guaranteed borrowers with a Notice of Intent to Collect by Administrative Offset that any FSA payment that they may be scheduled to receive will be offset. The notice will advise such borrowers of their options to either pay the claim off, relinquish some or all of the payment to FSA, or seek administrative review or appeal.

This rule is not published for notice and comment because it implements statutory and regulatory provisions which are binding on the Agency. Since the Agency does not have discretion in this matter, public comment would not be able to affect the provisions of the rule. Therefore the rule is published as final and effective upon publication.

List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—Agriculture.

Accordingly, 7 CFR chapter VII is amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

2. Amend § 762.149 by adding paragraph (m), to read as follows:

§ 762.149 Liquidation.

* * * * *

(m) *Establishment of Federal debt.* Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date the final loss claim is paid.

Signed in Washington, DC, on June 25, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–16474 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–068–1]

Change in Disease Status of Poland Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Poland to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that region. Poland has been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants, meat, meat products, and certain other products of ruminants that have been in Poland. This action is necessary in order to update the disease status of Poland regarding bovine spongiform encephalopathy.

DATES: This interim rule was effective May 5, 2002. We will consider all comments that we receive on or before August 30, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No.02–068–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–068–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–068–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of cattle and is not known to exist in the United States. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, were to be imported into the United States and fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE were imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States.

Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraph (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (*see* § 93.404(a)(3)).

Poland has been among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on May 5, 2002, a case of BSE was confirmed in a native-born animal in Poland. Therefore, in order to update the disease status of Poland regarding BSE, we are amending the regulations by removing Poland from the list in § 94.18(a)(2) of regions that present an undue risk of introducing BSE into the United States and adding Poland to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the importation of ruminants, meat, meat products, and certain other products and byproducts of ruminants that have been in Poland. We are making these amendments effective retroactively to May 5, 2002, which is the date that BSE was confirmed in a native-born animal in Poland.

Emergency Action

This rulemaking is necessary on an emergency basis to update the disease status of Poland regarding BSE. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Poland to the list of regions where BSE exists because the disease has been detected in a native-born animal in that region. Poland has been listed among the regions that present an undue risk of introducing BSE into the United States.

Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Poland regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Poland.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to May 5, 2002; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

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PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding, in alphabetical order, the word "Poland,".

b. In paragraph (a)(2), by removing the word "Poland,".

Done in Washington, DC, this 26th day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–16422 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM213; Special Conditions No. 25–201–SC]

Special Conditions: Airbus, Model A340–500 and –600 Series Airplanes; Interaction of Systems and Structure; Electronic Flight Control System, Longitudinal Stability and Low Energy Awareness; and Use of High Incidence Protection and Alpha-Floor Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A340–500 and –600 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes associated with the systems that affect the structural performance of the airplane; the electronic flight control system (EFCS); and the use of high incidence protection and alpha-floor systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Backman, FAA, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2797; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1996, Airbus Industrie applied for an amendment to U.S. type certificate (TC) A43NM to include the new Models A340–500 and –600. These models are derivatives of the A340–300 airplane that is approved under the same TC.

The Model A340–500 fuselage is a 6-frame stretch of the Model A340–300 and is powered by 4 Rolls Royce Trent 553 engines; each rated at 53,000 pounds of thrust. The airplane has interior seating arrangements for up to 375 passengers, with a maximum takeoff weight (MTOW) of 820,000 pounds. The Model A340–500 is intended for long-range operations and has additional fuel capacity over that of the Model A340–600.

The Model A340–600 fuselage is a 20-frame stretch of the Model A340–300 and is powered by 4 Rolls Royce Trent 556 engines; each rated at 56,000 pounds of thrust. The airplane has interior seating arrangements for up to 440 passengers, with a MTOW of 804,500 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Airbus must show that the Model A340–500 and –600 airplanes meet the applicable provisions of the regulations incorporated by reference in TC A43NM or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC A43NM are 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–63, and Amendments 25–64, 25–65, 25–66, and 25–77, with certain exceptions that are not relevant to these special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model A340–500 and –600 airplanes must be shown to comply with Amendments 25–1 through 25–91, and with certain FAA-allowed reversions for specific part 25 regulations to the part 25 amendment levels of the original type certification basis.

Airbus has also chosen to comply with part 25 as amended by Amendments 25–92, –93, –94, –95, –97, –98, and –104. In addition, Airbus has elected to redefine the reference stall speed as the 1-g stall speed as proposed in Notice No. 95–17 (61 FR 1260, January 18, 1996).

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25 as amended) do not contain adequate or appropriate safety standards for the Airbus Model A340–500 and "600 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A340–500 and –600 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, as amended on the date of type certification.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Airbus Model A340–500 and –600 airplanes will incorporate the following novel or unusual design features.

1. Interaction of Systems and Structure

The Model A340–500 and –600 airplanes will have systems that affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These novel or unusual design features are systems that can serve to alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance. These special conditions provide the criteria to be used in assessing the effects of these systems on structures.

2. Electronic Flight Control System: Longitudinal Stability and Low Energy Awareness

The EFCS of the Model A340–500 and –600, as with its predecessors, will result in the airplanes having neutral static longitudinal stability. This condition, when combined with the automatic trim feature of the EFCS, could result in insufficient feedback cues to the pilot of speed excursions below normal operating speeds. The longitudinal flight control laws provide neutral static stability within the normal flight envelope; therefore, the novel or unusual design features for these new airplane model designs will make them unable to show compliance with the static longitudinal stability requirements of §§ 25.171, 25.173, and 25.175.

The unique features of the Model A340–500 and –600 airplanes could cause an unsafe condition if the airspeed becomes too slow near the ground and results in the airplane stalling. The flightcrew would be unaware of the flight condition and would not be able to intervene and recover before stall. The French Direction Generale De L'Aviation Civile (DGAC) took action for this condition by introducing a special condition for predecessor airplanes with the same design features that required adequate awareness of the flightcrew to unsafe low speed conditions; there was no corresponding special condition developed by the FAA. The French special conditions allowed for awareness to be provided by an appropriate warning in the cockpit to allow for recovery. This special condition provides for an appropriate warning in the cockpit of the A340–500 and –600 airplanes to allow for recovery.

Subsequent to certification of the predecessor Model A330 and A340 airplanes and in establishing the certification requirements for the A340–500 and –600, the French DGAC decided to combine two special conditions from the A330 into a new special condition titled "Static Longitudinal Stability and Low Energy Awareness." Since the FAA did not take action on the introduction of the low energy awareness requirement during the A330 and A340 certification, this special condition for the Model A340–500 and –600 airplane certification harmonizes to the French DGAC special condition for static longitudinal stability and low energy awareness. The purpose of the new low energy awareness special condition item 2(a)(2) is to provide awareness to the pilot of a low speed (or low energy state) of flight when the flight control laws provide neutral static longitudinal stability significantly below the normal operating speeds, and offer no cues to the pilot through the side stick controller. The special condition item 2(a)(1) addresses the fact that the airplane has neutral stability and does not meet regulatory requirements for positive dynamic and static longitudinal stability (§§ 25.171, 25.173, and 25.175, and 25.181(a)).

3. High Incidence Protection and Alpha-floor Systems

The Model A340–500 and –600 airplanes will have a novel or unusual feature to accommodate the unique features of the high incidence protection and the alpha-floor systems. The high incidence protection system replaces the stall warning system during normal operating conditions by prohibiting the airplane from stalling. The high incidence protection system limits the angle of attack at which the airplane can be flown during normal low speed operation, impacts the longitudinal airplane handling characteristics, and can not be over-ridden by the crew. The existing regulations do not provide adequate criteria to address this system.

The function of the alpha-floor system is to automatically increase the thrust on the operating engines under unusual circumstances where the airplane pitches to a predetermined high angle of attack or bank angle. The regulations do not provide adequate criteria to address this system.

Discussion of Comments

Notice of proposed special conditions No. 25–02–05–SC for the Airbus Model A340–500 and –600 airplanes was published in the **Federal Register** on April 8, 2002 (67 FR 16656). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model A340–500 and –600 airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Model A340–500 and –600 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A340–500 and –600 series airplanes.

1. Interaction of System and Structures

The following special conditions are in lieu of compliance with the criteria of previously issued Special Conditions No. 25–ANM–69 (Docket No. NM–75), item 4, "Interaction of Systems and Structure."

(a) *General.* For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of subparts C and D of part 25. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

(1) The criteria defined herein only address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or

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stability requirements when operating in the system degraded or inoperative modes are not provided in these special conditions.

(2) Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required in order to demonstrate the capability of the airplane to meet other realistic conditions; such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(3) The following definitions are applicable to these special conditions.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.*, speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309; however, these special conditions apply only to system failure conditions that affect the structural performance of the airplane (e.g., system failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs such as gusts or pilot actions).

(b) *Effects of Systems on Structures.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(1) System fully operative. With the system fully operative, the following apply:

(i) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(ii) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(iii) The airplane must meet the aeroelastic stability requirements of § 25.629.

(2) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(i) At the time of occurrence. Starting from 1–g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(A) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence

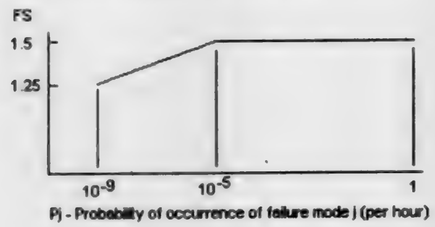

(B) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in these special conditions item 1(b)(1)(ii).

(C) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond Vc/Mc, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(D) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(ii) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(A) The loads derived from the following conditions at speeds up to Vc, or the speed limitation prescribed for the remainder of the flight, must be determined:

(*1*) The limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(*2*) The limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(*3*) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(*4*) The limit yaw maneuvering conditions specified in § 25.351.

(*5*) The limit ground loading conditions specified in § 25.473 and § 25.491.

(B) For static strength substantiation, each part of the structure must be able to withstand the loads defined in special condition item 1(b)(2)(ii)(A), multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight

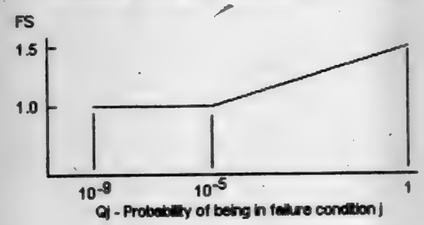

$Q_j = (T_j)(P_j)$ Where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

Note to paragraph (B): If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

(C) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in special condition item 1(b)(2)(ii)(B).

(D) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(E) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V^I and V^{II} may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance speed

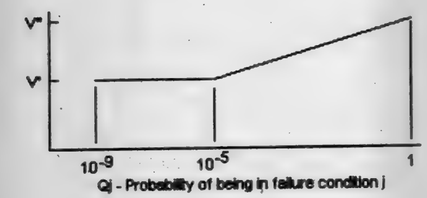

V^I = Clearance speed as defined by § 25.629(b)(2).

V^{II} = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (Tj)(Pj)$ where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

Note to paragraph (E): If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V^{II}.

(F) Freedom from aeroelastic instability must also be shown up to V^I in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(iii) Consideration of certain failure conditions may be required by other sections of part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(3) Warning considerations. For system failure detection and warning, the following apply:

(i) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning

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systems and where service history shows that inspections will provide an adequate level of safety.

(ii) The existence of any failure condition, not shown to be extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V^{II}, must be signaled to the crew during flight.

(4) Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

2. Electronic Flight Control System: Longitudinal Stability and Low Energy Awareness

(a) The following special conditions are in lieu of compliance with the requirements of 14 CFR 25.171, 25.173, 25.175, and 25.181(a), and in lieu of compliance with the previously issued Special Conditions No. 25–ANM–69 (Docket No. NM–75), item 11(b) "Flight Characteristics—Longitudinal Stability."

(1) The airplane must be shown to have suitable dynamic and static longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(2) The airplane must provide adequate awareness to the pilot of a low energy state when flight control laws provide neutral longitudinal stability significantly below the normal operating speeds.

3. High Incidence Protection and Alpha-Floor Systems

(a) The following special conditions are in lieu of compliance with certain 14 CFR sections (listed below), and in lieu of compliance with previously issued Special Conditions No. 25–ANM–69 (Docket No. NM–75) item 12(b), "Flight Envelope Protection, Angle-of-Attack Limiting."

(1) The following definitions are applicable to these special conditions.

High Incidence Protection System. A system that operates directly and automatically on the airplane's flying controls to limit the maximum incidence that can be attained to a value below that at which an aerodynamic stall would occur.

Alpha-floor System. A system that automatically increases thrust on the operating engines when incidence increases through a particular value.

Alpha-limit. The maximum steady incidence at which the airplane stabilizes with the High Incidence Protection System operating and the longitudinal control held on its aft stop.

V_{min}. The minimum steady flight speed, for the airplane configuration under consideration and with the High Incidence Protection System operating, is the final stabilized Calibrated Airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal pilot controller is on its stop.

$V_{min}1g$. V_{min} corrected to 1g conditions. It is the minimum Calibrated Airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{min}.

(2) *Capability and Reliability of the High Incidence Protection System:* In lieu of compliance with the requirements of previously issued Special Conditions No. 25–ANM–69, this special condition requires that acceptable capability and reliability of the High Incidence Protection System must be established by flight test, simulation, and analysis as appropriate. The capability and reliability required are as follows:

(i) It shall not be possible during pilot induced maneuvers to encounter a stall and handling characteristics shall be acceptable, as required by special condition item 3(a)(5) of this special condition.

(ii) The airplane shall be protected against stalling due to the effects of windshears and gusts at low speeds as required by special condition item 3(a)(6) of this special condition.

(iii) The ability of the High Incidence Protection System to accommodate any reduction in stalling incidence resulting from residual ice must be verified.

(iv) The reliability of the system and the effects of failures must be acceptable in accordance with § 25.1309, and the associated policy.

(3) *Minimum Steady Flight Speed and Reference Stall Speed.* In lieu of compliance with the requirements of § 25.103 the following special conditions apply:

(i) V_{min}. The minimum steady flight speed, for the airplane configuration under consideration and with the High Incidence Protection System operating, is the final stabilized Calibrated Airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal control is on its stop.

(ii) The Minimum Steady Flight Speed, V_{min}, must be determined with:

(A) The High Incidence Protection System operating normally.

(B) Idle thrust and Alpha-floor System inhibited.

(C) All combinations of flap settings and landing gear positions.

(D) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(E) The most unfavorable center of gravity allowable, and

(F) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(iii) $V_{min}1g$. V_{min} corrected to 1g conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{min}. $V_{min}1g$ is defined as follows:

$$V_{min}1g = \frac{V_{min}}{\sqrt{n_{zw}}}$$

where n_{ZW} = load factor normal to the flight path at V_{min}

(iv) The Reference Stall Speed, V_{SR}, is a calibrated airspeed defined by the applicant. V_{SR} may not be less than a 1-g stall speed. V_{SR} is expressed as:

$$V_{SR} \geq \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

where:

$V_{CL_{MAX}}$ = Calibrated airspeed obtained when the load factor-corrected lift coefficient

$$\left(\frac{n_{zw}W}{qS}\right)$$

is first a maximum during the maneuver prescribed in paragraph (v)(H) of this section.

n_{ZW} = Load factor normal to the flight path at $V_{CL_{MAX}}$

W = Airplane gross weight;

S = Aerodynamic reference wing area; and

q = Dynamic pressure.

Note: Unless Angle of Attack (AOA) protection system (stall warning and stall identification) production tolerances are acceptably small, so as to produce insignificant changes in performance determinations, the flight test settings for stall warning and stall identification should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations.

(v) V_{SR} must be determined with the following conditions:

(A) Engines idling, or, if that resultant thrust causes an appreciable decrease in stall speed, not more than zero thrust at the stall speed.

(B) The airplane in other respects (such as flaps and landing gear) in the condition existing in the test or performance standard in which V_{SR} is being used.

(C) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(D) The Center of gravity position that results in the highest value of reference stall speed.

(E) The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}.

(F) The Alpha-floor system inhibited.

(G) The High Incidence Protection System adjusted to a high enough incidence to allow full development of the 1g stall.

(H) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

(vi) The flight characteristics at the AOA for $V_{CL_{MAX}}$ must be suitable in the traditional sense at FWD and AFT CG in straight and turning flight at IDLE power. Although for a normal production EFCS and steady full aft stick this AOA for $V_{CL_{MAX}}$ cannot be achieved, the AOA can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

(4) *Stall Warning*

(i) Normal Operation. If the conditions of special conditions item 3(a)(2) are satisfied, equivalent safety to the intent of § 25.207, Stall Warning, shall be considered to have been met without provision of an additional, unique warning device.

(ii) Failure Cases. Following failures of the High Incidence Protection System, not shown to be extremely improbable, such that the capability of the system no longer satisfies special conditions item 3(a)(2)(i), (ii), and (iii), stall warning must be provided in accordance with §§ 25.207(a), (b) and (f).

(5) *Handling Characteristics at High Incidence*

(i) *High Incidence Handling Demonstrations.* In lieu of compliance with the requirements of § 25.201 the following apply:

(A) Maneuvers to the limit of the longitudinal control, in the nose up direction, must be demonstrated in straight flight and in 30 degree banked turns with:

(*1*) The high incidence protection system operating normally.

(*2*) Initial power condition of:

(*i*) Power off

(*ii*) The power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the stall speed with the flaps in the approach position, the landing gear retracted, and the maximum landing weight. The flap position to be used to determine this power setting is that position in which the stall speed, V_{SR1}, does not exceed 110 percent of the stall speed, V_{SR0}, with the flaps in the most extended landing position.

(*3*) Alpha-floor system operating normally unless more severe conditions are achieved with alpha-floor inhibited.

(*4*) Flaps, landing gear and deceleration devices in any likely combination of positions.

(*5*) Representative weights within the range for which certification is requested, and

(*6*) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(B) The following procedures must be used to show compliance with the requirements of special condition item 3(a)(5)(ii).

(*1*) Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed one knot per second until the control reaches the stop.

(*2*) The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques.

(*3*) The requirements for turning flight maneuver demonstrations must also be met with accelerated rates of entry to the incidence limit, up to the maximum rate achievable.

(ii) *Characteristics in High Incidence Maneuvers.* In lieu of compliance with the requirements of § 25.203, the following apply:

(A) Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30 degree banked turns, the airplane's characteristics shall be as follows:

(*1*) There shall not be any abnormal airplane nose-up pitching.

(*2*) There shall not be any uncommanded nose-down pitching, which would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at alpha limit as the longitudinal control reaches the stop would be acceptable. Any reduction of pitch attitude associated with stabilizing the incidence at the alpha limit should be achieved smoothly and at a low pitch rate, such that it is not likely to be mistaken for natural stall identification.

(*3*) There shall not be any uncommanded lateral or directional motion, and the pilot must retain good lateral and directional control, by conventional use of the cockpit controllers, throughout the maneuver.

(*4*) The airplane must not exhibit severe buffeting of a magnitude and severity that would act as a deterrent to completing the maneuver.

(B) In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized Alpha-limit. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal controller on the stop for a period of time appropriate to the maneuvers.

(C) It must always be possible to reduce incidence by conventional use of the controller.

(D) The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds such as V_2 and V_{ref} up to Alpha-limit shall not be unduly damped or significantly slower than can be achieved on conventionally controlled transport airplanes.

(6) *Atmospheric Disturbances.*

Operation of the High Incidence Protection System and the Alpha-floor System must not adversely affect aircraft control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of windshear. Simulator tests and analysis may be used to evaluate such conditions, but must be validated by limited flight testing to confirm handling qualities at critical loading conditions.

(7) *Alpha Floor.*

The Alpha-floor setting must be such that the aircraft can be flown at normal landing operational speed and maneuvered up to bank angles consistent with the flight phase (including the maneuver capabilities specified in § 25.143(g)) of the 1-g stall Equivalent Safety Finding without

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triggering Alpha-floor. In addition, there must be no Alpha-floor triggering unless appropriate when the airplane is flown in usual operational maneuvers and in turbulence.

(8) *In lieu of compliance with the requirements of § 25.145, the following apply:*

(i) It must be possible, at any point between the trim speed prescribed in special condition item 3(a)(ii)(F), and V_{min}, to pitch the nose downward so that the acceleration to this selected trim speed is prompt with:

(ii) The airplane trimmed at the trim speed prescribed in special condition item 3(a)(ii)(F);

(A) The landing gear extended;

(B) The wing flaps retracted and extended; and

(C) Power off and at maximum continuous power on the engines.

(9) *In lieu of compliance with the requirements of § 25.145(b)(6), the following apply:*

With power off, flaps extended and the airplane trimmed at 1.3 V_{SR1}, obtain and maintain airspeeds between V_{min} and either $1.6V_{SR1}$ or V_{FE}, whichever is lower.

(10) *In lieu of compliance with the requirements of § 25.1323(c), the following apply:*

(i) V_{MO} to V_{min} with the flaps retracted; and

(ii) V_{min} to V_{FE} with flaps in the landing position.

Issued in Renton, Washington, on June 17, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16386 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–22–AD; Amendment 39–12789; AD 2002–13–02]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–300, AT–301, AT–302, AT–400, and AT–400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Air Tractor, Inc. (Air Tractor) Models AT–300, AT–301, AT–302, and AT–400A airplanes that have aluminum spar caps; certain Air Tractor Models AT–400 airplanes that have aluminum spar caps; and all Models AT–300 and AT–301 airplanes that have aluminum spar caps and are or have been converted to turbine power. This AD requires you to inspect (one-time) the wing centerline splice joint for cracks and, if any crack is found, replace the affected wing spar lower cap. This AD also requires you to report the results of the inspection to the Federal Aviation Administration (FAA) and replace the wing spar lower caps after a certain amount of usage. This AD is the result of an incident on one of the affected airplanes where the wing separated from the airplane. Preliminary reports indicate that fatigue caused the lower aluminum spar cap to fail across the ⅜-inch bolt hole (6.5 inches outboard of the fuselage centerline in the centersplice connection). The actions specified by this AD are intended to detect and correct cracks in the wing centerline splice joint. If not detected and corrected, these cracks could eventually result in the wing separating from the airplane during flight.

DATES: This AD becomes effective on July 9, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of July 9, 2002.

The FAA must receive any comments on this rule on or before August 23, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–22–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–22–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–22–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Recently, the wing of an Air Tractor Model AT–400A separated from the airplane during flight. Investigation reveals that the right-hand lower spar cap failed due to fatigue at the ⅜-inch outboard bolt, which is located 6.5 inches outboard of the fuselage centerline.

The following airplanes have a similar type design to that of the accident airplane:

—All Models AT–300, AT–301, AT–302, and AT–400A airplanes that have aluminum spar caps;

—Air Tractor Models AT–400 airplanes, serial numbers 400–0244 through 400–0415, that have aluminum spar caps; and

—All Models AT–300 and AT–301 airplanes that have aluminum spar caps and are or have been converted to turbine power.

In addition, some airplanes have had Snow Engineering Co. Service Letter #55 incorporated. When incorporated, the affected area would be (1) the left and right side second outermost 7/16-inch boltholes, which are located 5.38 inches from centerline; and (2) the left and right side outermost ⅜-inch boltholes, which are located 6.5 inches outboard from centerline.

What Are the Consequences if the Condition is Not Corrected?

If not detected and corrected in a timely manner, cracks in the wing centerline splice joint could eventually result in the wing separating from the airplane during flight.

Is There Service Information That Applies to This Subject?

Air Tractor has issued the following:

—Snow Engineering Co. Process Specification 197, dated February 23, 2001; Revised May 1, 2002, and Revised May 3, 2002, which specify procedures for accomplishing an eddy current inspection of the wing centerline splice joint on the affected airplanes; and

—Snow Engineering Co. Service Letter #220, dated May 3, 2002, which specifies the procedures for gaining access to perform the eddy current inspection.

The FAA's Determination and an Explanation of the Provisions of this AD

What Has FAA Decided?

The FAA has reviewed all available information and determined that:

—The unsafe condition referenced in this document exists or could develop on other Air Tractor Models AT–300, AT–301, AT–302, AT–400, and AT–400A airplanes of the same type design;

—A one-time eddy current inspection should be accomplished on these airplanes to detect and correct cracks in the wing centerline splice joint;

—The wing lower spar caps should be replaced at a certain time; and

—Final rule; request for comments (immediately adopted rule) AD action should be taken to address this condition.

What Does This AD Require?

This AD requires you to inspect (one-time) the wing centerline splice joint for cracks and, if any crack is found, replace the affected wing spar lower cap. This AD also requires you to report the results of the inspection to FAA and replace the wing spar lower caps after a certain amount of usage.

You must accomplish these actions in accordance with the previously-referenced service information.

We will evaluate the information received from the reporting requirement of this AD to determine whether additional rulemaking action should be taken. This could include repetitive inspections, parts replacement, modifications, or no further action.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Will I have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in the wing separating from the airplane during flight, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–22–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–13–02 Air Tractor, Inc.: Amendment 39–12789; Docket No. 2002–CE–22–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplanes that are certificated in any category:

(1) Models AT–300, AT–301, AT–302, and AT–400A airplanes, all serial numbers, that have aluminum spar caps;

(2) Models AT–400 airplanes, serial numbers 400–0244 through 400–0415, that have aluminum spar caps; and

(3) Models AT–300 and AT–301 airplanes, all serial numbers that have aluminum spar caps and are or have been converted to turbine power.

(b) *Who must comply with this AD?* Anyone who wishes to operate any airplane identified in paragraph (a)(1), (a)(2), or (a)(3) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the wing centerline splice joint. If not detected and corrected, these cracks could eventually result in the wing separating from the airplane during flight.

(d) *What must I do to address this problem?* To address this problem, yqu must accomplish the following actions:

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Actions	Compliance	Procedures
(1) Inspect, using eddy current inspection methods, the wing centerline splice joint. The particular inspection area depends on whether Snow Engineering Service Letter #55 is incorporated. Specifics are included in the service information. The inspection must be accompanied by one of the following: (i) a Level 2 or Level 3 inspector that is certified for eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or (ii) A person authorized to perform AD work who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.	*For affected airplanes (turbine-powered or piston engine-powered) with at least one wing spar lower cap having 6,990 or more hours time-in-service (TIS) as of the effective date of this AD:* Inspect within the next 10 hours TIS after July 9, 2002 (the effective date of this AD), unless already accomplished after accumulating 6,000 hours TIS; For affected piston engine-powered airplanes with at least one wing spar lower cap having less than 6,990 hours TIS as of the effective date of this AD: Inspect upon the accumulation of 6,000 hours TIS or within the next 50 hours TIS after July 9, 2002 (the effective date of this AD), whichever occurs later, unless already accomplished after accumulating 6,000 hours TIS; or *For affected turbine-powered airplanes with at least one wing spar lower cap having less than 6,999 hours TIS as of the effective day of this AD.* Upon the accumulation of 4,000 hours TIS or within the next 50 hours TIS after July 9, 2002 (the effective date of this AD), whichever occurs later, unless already accomplished after accumulating 4,000 hours TIS.	Inspect in accordance with Snow Engineering Co. Service Letter #220, dated May 3, 2002; and Snow Enigneering Co. Process Specification 197, dated February 23, 2001; Revised May 1, 2002, or Revised May 3, 2002.
(2) If cracks are found during the inspection required by paragraph (d)(1) of this AD, replace the affected wing spar lower cap.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the instructions in the applicable maintenance manual.
(3) Report the results of the inspection in paragraph (d)(1) of this AD to FAA. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	*If the inspection is accomplished after the effective date of this AD:* Within 10 days after the inspection required in paragraph (d)(1) of this AD; or *If the inspection was already accomplished prior to the effective date of this AD:* within the next 10 days after July 9, 2002 (the effective date of this AD).	Submit the form (Figure 1 of paragraph (d)(3) of this AD) to FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.
(4) Replace each wing spar lower cap	Replace each lower cap upon the accumulation of 7,000 hours TIS on each wing spar lower cap or within the next 200 hours TIS after July 9, 2002 (the effective date of this AD), whichever occurs later.	In accordance with instructions in the applicable maintenance manual.

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AD 2002-13-02 INSPECTION REPORT

1. Inspection Performed By:	*2. Phone:*
3. Aircraft Model:	*4. Aircraft Serial Number:*
5. Engine Model Number:	*6. Aircraft Total TIS:*
7. Wing Total TIS:	*8. Lower Spar Cap TIS:*
9. Has the lower spar cap been inspected before? (Eddy-Current, Dye Penetrant, Magnetic Particle, Ultrasound) ☐ *Yes* ☐ *No*	*9a. If yes.* *Date:* _____ *Inspection Method:* _____ *Lower Spar Cap TIS:* _____ *Cracks found?* ☐ *Yes* ☐ *No*
10. Has there been any major repair or alteration performed to the spar cap? ☐ *Yes* ☐ *No*	*10a. If yes, specify (Description and TIS)*
11. Date of AD inspection: _____	
12. Inspection Results: *Were any cracks found?* ☐ *Yes* ☐ *No*	*12a. If yes,* *Crack #1* ☐ *Left Hand* ☐ *Right Hand* *Crack #2* ☐ *Left Hand* ☐ *Right Hand*
12b. Reference Location(s) by Crack Number: *4-Bolt Joint* *5-Bolt Joint* ☐ *Outermost Hole* ☐ *Outermost Hole* ☐ *2nd Outermost Hole*	*12c. Crack Size* *Crack #1 Length/Depth:* _____ *Crack #2 Length/Depth:* _____

Additional Description/Comments:

_____

_____

Return to: Manager, Fort Worth ACO, ASW-150, 2601 Meacham Blvd., Fort Worth, TX 76193-0150; or fax to (817) 222-5960

Figure 1 of paragraph (d)(3) of this AD

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector. The inspector may add comments before sending it to the Manager, Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided that the following is adhered to:

(1) Operate in day visual flight rules (VFR) only.

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

(g) *Are any service bulletins incorporated into this AD by reference?* Replacement and inspection actions required by this AD must be done in accordance with Snow Engineering Co. Service Letter #220, dated May 3, 2002; and Snow Engineering Co. Process Specification 197, dated February 23, 2001, Revised May 1, 2002, or Revised May 3, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) *When does this amendment become effective?* This amendment becomes effective on July 9, 2002.

Issued in Kansas City, Missouri, on June 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15937 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–70–AD; Amendment 39–12796; AD 2002–13–08]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain de Havilland Inc. (de Havilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This AD requires you to modify the elevator tip rib on each elevator; repetitively inspect underneath the mass balance weights at each elevator tip rib for corrosion; and either remove the corrosion or replace a corroded elevator tip rib depending on the corrosion damage. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by this AD are intended to detect and correct corrosion in the mass balance weights at the elevator tip ribs, which could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

DATES: This AD becomes effective on August 13, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 13, 2002.

ADDRESSES: You may get the service information referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–70–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200, telephone: (516) 256–7523, facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports incidents of corrosion found in the area of the elevator tip rib underneath the mass balance weights on several of the above-referenced airplanes.

What Is the Potential Impact if FAA Took no Action?

These conditions, if not detected and corrected, could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 4, 2002 (67 FR 9627). The NPRM proposed to require you to modify the elevator tip rib on each elevator; repetitively inspect underneath the mass balance weights at the elevator rib tip for corrosion; and either remove the corrosion or replace the corroded elevator tip rib depending on the corrosion damage.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 160 airplanes in the U.S. registry.

What is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
13 workhours × $60 = $780	No parts cost required	$780	$780 × 160 = $124,800

These figures only take into account the modification and initial inspection costs and do not take into account the costs of any of the repetitive inspections or the cost to replace any elevator tip rib that would be found corroded past a certain extent. We have no way of determining the number of repetitive inspections each owner/operator will incur over the life of each affected airplane or the number of elevator tip ribs that will need to be replaced.

Compliance Time of This AD

What Will be the Compliance Time of This AD?

The compliance time of this AD is "within the next 6 calendar months after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

We have determined that a calendar time compliance is the most desirable method because the unsafe condition described in this AD is caused by corrosion. Corrosion develops regardless of whether the airplane is in service and is not a result of airplane operation.

Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–13–08 de Havilland Inc.: Amendment 39–12796; Docket No. 97–CE–70–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the mass balance weights at the elevator tip ribs, which could result in loss of balance weight during flight and the elevator control surface separating from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes: cut an access hole and fabricate and install an access cover and ring doubler on the elevator tip rib of each elevator.	Within the next 6 calendar months after August 13, 2002 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(2) For all affected airplanes: inspect underneath the mass balance weights at each elevator tip rib for corrosion.	Within the next 6 calendar months after August 13, 2002 (the effective date of this AD) and thereafter at intervals not to exceed 5 years.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(3) For all affected airplanes: if corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is equal to or less than 0.004 inches depth, remove the corrosion.	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.
(4) For all affected airplanes: If corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is greater than 0.004 inches depth, accomplish one of the following:. (i) use the procedures in the service bulletin to manufacture a new tip rib, part number 2DKC2–TE–77, and replace the affected tip rib with this new tip rib; or (ii) replace any affected elevator tip rib with a part number (P/N) C2–TE–103AND elevator tip rib. You may obtain a P/N C2–TE–103AND elevator tip rib from Viking Air Limited, 9574 Hampden Road, Sidney, BC, Canada VL8 SV5.	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 (for Models DHC–2 Mk. I and DHC–2 Mk. II airplanes); or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997 (for Model DHC–2 Mk. III airplanes), as applicable.

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Actions	Compliance	Procedures
(5) In addition to that required by paragraph (d)(4) of this AD for the affected DHC–2 MK III airplanes: If corrosion is found (during any inspection required by paragraph (d)(2) of this AD) that is greater than 0.004 inches depth on the channel, accomplish one of the following:. (i) use the procedures in the service bulletin to manufacture a new channel replacement, part number 2DKC2TE1020–13, and replace the affected channel with this new channel; or (ii) replace the channel with a part number (P/N) C2–TE–89ND channel. You may obtain a P/N C2–TE–89ND channel from Viking Air Limited, 9574 Hampden Road, Sidney, BC, Canada VL8 SV5.	Prior to further flight after any inspection required in paragraph d(2) of this AD where the applicable corrosion is found..	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997.

Note 1: General maintenance procedures specify that the elevators should be rebalanced any time work is done in that area.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, New York Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200, telephone: (516) 256–7523, facsimile: (516) 568–2716.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with de Havilland Beaver Service Bulletin Number 2/50, dated May 9, 1997 or de Havilland Beaver Service Bulletin Number TB/58, dated May 9, 1997. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian AD No. CF–97–06, dated May 28, 1997.

(i) *When does this amendment become effective?* This amendment becomes effective on August 13, 2002.

Issued in Kansas City, Missouri, on June 21, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16306 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–28–AD; Amendment 39–12795; AD 2002–13–07]

RIN 2120–AA64

Airworthiness Directives; Honeywell, Inc. Part Number HG1075AB05 and HG1075GB05 Inertial Reference Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 inertial reference units (IRU) that are installed on aircraft. This AD requires you to inspect the affected IRU's for proper function and remove the IRU either immediately or at a certain time depending on the result of the inspection. This AD is the result of a report that these IRU's may not function when using backup battery power in certain installations. The actions specified by this AD are intended to ensure the correct transition of the IRU to backup battery power upon the loss of primary power. Failure of an IRU to transition to backup battery power could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

DATES: This AD becomes effective on August 9, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 9, 2002.

ADDRESSES: You may get the service information referenced in this AD from Honeywell, Inc., Customer Response Center at 1–877–436–2005. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wesley Rouse, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7564; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

A ground test for proper inertial reference unit (IRU) function revealed a wiring defect that is attributed to a manufacturing error on certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 IRUs. This wiring defect disables the IRU's capability to detect a loss of primary input power and transition to backup battery input power in some installations.

The affected IRU's incorporate the following:

—P/N HG1075AB05: any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659) that incorporates modification status 3; and

—P/N HG1075GB05: any serial number (last four digits) 0652 or 0659 that incorporates modification status 2.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Honeywell, Inc. part number (P/N) HG1075AB05 and HG1075GB05 inertial reference units (IRU) that are installed on aircraft. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 28, 2002 (67 FR 3844). The NPRM proposed to require you to inspect any affected IRU for proper function and remove the IRU either immediately or at a certain time depending on the result of the inspection.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the List of Aircraft That Could Have an Affected IRU Installed

What Is the Commenter's Concern?

One commenter requests FAA to focus on those aircraft where the affected IRUs would most likely be installed. The commenter acknowledges that this equipment could be installed on other aircraft through the technical standard order (TSO) or supplemental type certificate (STC), but points out that the IRUs are primarily used on Dassault Falcon Jets.

What Is FAA's Response to the Concern?

We concur that these IRUs are primarily used on Dassault Falcon Jets. We will add a note in the AD that states these IRUs are primarily used on early manufactured Dassault Falcon Jets, but could be incorporated on other aircraft through the TSO or an STC.

Comment Issue No. 2: Write the Applicability To Ensure That Certain IRU Units Are Not Affected

What Is the Commenter's Concern?

One commenter requests that FAA change the Applicability so aircraft incorporating the following are not affected by this AD:

—An IRU with a part number of (P/N) HG1075AB05, any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659), that incorporates modification status 7; and

—An IRU with a P/N of HG1075GB05, serial number (last four digits) 0652 or 0659, that incorporates modification status 6.

The commenter points out that this change will make it clear that the AD does not apply to aircraft that already incorporate a modified IRU.

What Is FAA's Response to the Concern?

We concur that those airplanes with either of these configurations are not affected by the AD. The presumption in the AD is that if the units do not incorporate the affected modification status, then they have the corrected modification status. We concur that this can be confusing and we are rewriting the Applicability to clarify this.

Comment Issue No. 3: Add the Toll Free Phone Number of Where to Obtain Service Information

What Is the Commenter's Concern?

One commenter requests that FAA add the toll free telephone number of Honeywell Commercial Aviation Products to aid in the customer obtaining service information.

What Is FAA's Response to the Concern?

We concur and will add this toll free number in the AD.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the additions described above and minor editorial corrections. We have determined that these additions and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 80 airplanes in the U.S. registry.

What Is the Cost Impact of this AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection and modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	Honeywell to provide at no cost	$120	$9,600

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

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under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–13–07 Honeywell, Inc.: Amendment 39–12795; Docket No. 2001–CE–28–AD.

(a) *What aircraft are affected by this AD?* This AD affects any aircraft, certificated in any category, that incorporates one of the following:

(1) Inertial Reference Unit (IRU) part number (P/N) HG1075AB05, any serial number (last four digits) 0644 through 0723 (excluding 0652 and 0659), that incorporates modification status 3. This AD does not apply to these units if they incorporate modification status 7; or

(2) IRU P/N HG1075GB05, any serial number (last four digits) 0652 or 0659, that incorporates modification status 2. This AD does not apply to these units if they incorporate modification status 6.

Note 1: These IRUs are primarily used on early manufactured Dassault Falcon Jets, but could be incorporated on other aircraft through the technical standard order (TSO) or supplemental type certificate (STC).

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft with any of the equipment identified in paragraph (a) of this AD installed must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to ensure the correct transition of the IRU to battery power upon the loss of primary power. Failure of an IRU to transition to backup battery power could result in loss of attitude, heading, and position reference and lead to the pilot making flight decisions that put the aircraft in unsafe flight conditions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect any affected IRU for proper function	Within the next 50 hours time-in-service (TIS) after August 9, 2002 (the effective date of this AD).	In accordance with the instructions in Honeywell Alert Service Bulletin HG1075AB–34–A0013, dated May 21, 2001; or Honeywell Alert Service Bulletin HG1075GB–34–A0005, dated May 21, 2001, as applicable.
(2) Remove any affected IRU from the airplane.	If found to not function properly during the inspection required by paragraph (d)(1) of this AD, remove prior to further flight after the inspection. If found to function properly, remove within 200 hours time-in-service (TIS) after the inspection required by paragraph (d)(1) of this AD..	In accordance with the instructions in Honeywell Alert Service Bulletin HG1075AB–34–A0013, dated May 21, 2001; or Honeywell Alert Service Bulletin HG1075GB–34–A0005, dated May 21, 2001, as applicable.
(3) Do not install, on any aircraft, one of the IRU's identified in paragraphs (a)(1) and (a)(2) of this AD, unless it has been modified at Honeywell, Inc. and updated to one of the following: (i) IRU P/N HG1075AB05 IRU Mod 7; or (ii) IRU P/N HG1075GB05 IRU Mod 6..	As of August 9, 2002 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Chicago Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Wesley Rouse, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–8113; facsimile: (847) 294–7834.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Honeywell Alert Service Bulletin HG1075AB–34-A0013, dated May 21, 2001 or Honeywell Alert Service Bulletin HG1075GB–34-A0005, dated May 21, 2001, as applicable. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Honeywell, Inc., Customer Response Center at 1–877–436–2005. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on August 9, 2002.

Issued in Kansas City, Missouri, on June 20, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16307 Filed 6–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30318; Amdt. No. 436]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airway, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4162.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria for the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on June 28, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 436

[Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
§ 95.1001 Direct Routes—U.S.		
Atlantic Route—A761 is Added to Read		
Downt, OA FIX	Etoca, OA FIX	31000
Etoca, OA FIX	Foggs, OA FIX	31000
Foggs, OA FIX	Galwy, OA FIX	31000
Galwy, OA FIX	Hanri, OA FIX	31000
Hanri, OA FIX	Perie, OA FIX	31000
Perie, OA FIX	Satly, OA FIX	31000
Satly, OA FIX	Torry, FL FIX	31000
Atlantic Route—R511 is Added to Read		
Azezu, OA FIX	Cowri, OA FIX	5500
Cowri, OA FIX	Foggs, OA FIX	5500
Foggs, OA FIX	Eltee, OA FIX	5500
Eltee, OA FIX	Odeal, OA FIX	5500

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REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 436—Continued
[Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
Bahamas Route—G466 is Added to Read		
Oldey, SC FIX	Perie, OA FIX	2500
Perie, OA FIX	Carps, FL FIX	2500
Carps, FL FIX	Scoby, FL FIX	2500
Scoby, FL FIX	Nucar, BS FIX	2500
Nucar, BS FIX	Omaly, OA FIX	5500
Omaly, OA FIX	Lasee, OA FIX	5500
Lasee, OA FIX	Alute, OA FIX	5500
Alute, OA FIX	Rinny, OA FIX	5500
is Amended to Read		
Rinny, OA FIX	Grand Turk, BS VORTAC	5500
§ 95.6001 Victor Routes—U.S.		
§ 95.6013 VOR Federal Airway 13 is Amended to Read in Part		
Ascot, TX FIX *1300–MOCA	Solon, TX FIX	*4000
§ 95.6014 VOR Federal Airway 14 is Amended to Read in Part		
Chisum, NM VORTAC *6000–MOCA	Onsom, NM FIX: E Bnd W Bnd	*7000 *7500
Onsom, NM FIX *6300–MOCA	Winns, TX FIX	*8000
Winns, TX FIX *5200–MOCA	Flatt, TX FIX	*8000
Flatt, TX FIX	Shalo, TX FIX	*5100
§ 95.6020 VOR Federal Airway 20 is Added to Read in Part		
Ascot, TX FIX *1300–MOCA	Solon, TX FIX	*4000
§ 95.6049 VOR Federal Airway 49 is Added to Read in Part		
Vulcan, AL VORTAC *4200–MRA	*Bount, AL FIX	3100
Bount, AL FIX *7000–MRA **2400–MOCA	*Folso, AL FIX	**3100
Folso, AL FIX *2400–MOCA	Decatur, AL VOR/DME	*3000
Elked, AL FIX	Nashville, TN VORTAC	*3500
Bowling Green, KY VORTAC	Mystic, KY VOR	2700
§ 95.6105 VOR Federal Airway 105 is Amended to Read in Part		
Phoenix, AZ VORTAC	Karlo, AZ FIX	10000
Karlo, AZ FIX *10000–MOCA	Drake, AZ VORTAC	*12000
§ 95.6154 VOR Federal Airway 154 is Amended to Read in Part		
Ocone, GA FIX *1700–MOCA	Savannah, GA VORTAC	*3000
§ 95.6157 VOR Federal Airway 157 is Amended to Read in Part		
Alma, GA VORTAC *1700–MOCA	Lotts, GA FIX	*4000
Lotts, GA FIX *1700–MOCA	Allendale, SC VOR	*9000
§ 95.6159 VOR Federal Airway 159 is Amended to Read in Part		
Cross City, FL VORTAC	Greenville, FL VORTAC	2000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 436—Continued
[Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
§ 95.6163 VOR Federal Airway 163 is Amended to Read in Part		
Brownsville, TX VORTAC	Manny, TX FIX	1500
Manny, TX FIX *1300–MOCA	Ascot, TX FIX	*5000
Ascot, TX FIX *1300–MOCA	Solon, TX FIX	*4000
Yenns, TX FIX *2500–MOCA	San Antonio, TX VORTAC	*3000
San Antonio, TX VORTAC *2900–MOCA	Slimm, TX FIX	*3500
Slimm, TX FIX	Lampasas, TX VORTAC	*3500
§ 95.6222 VOR Federal Airway 222 is Amended to Read in Part		
Lake Charles, LA VORTAC	Maxon, LA FIX	2000
LaGrange, GA VORTAC *4000–MRA	*Tiroe, GA FIX	2600

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7056 Jet Route No. 56 is Amended to Read in Part			
Wasatch, UT VORTAC	Hayden, Co VOR/DME	25000	45000
§ 95.7058 Jet Route No. 58 is Amended to Read in Part			
Milford, UT VORTAC	Farmington, NM VORTAC	33000	45000
§ 95.7086 Jet Route No. 86 is Amended to Read in Part			
Peach Springs, AZ VORTAC	Bavpe, AZ Fix	18000	45000
Bavpe, AZ FIX	Winslow, AZ VORTAC	18000	45000
§ 95.7180 Jet Route No. 180 is Amended to Read in Part			
Humble, TX VORTAC	Daisetta, TX VORTAC	18000	45000
Daisetta, TX VORTAC	Cidor, LA FIX	18000	45000
Cidor, LA FIX	Fosin, LA FIX	19000	45000
Fosin, LA FIX	Sawmill, LA VOR/DME	18000	45000
Sawmill, LA VOR/DME	Little Rock, AR VORTAC	18000	45000
§ 95.7614 Jet Route No. 614 is Amended to Read in Part			
Sarasota, FL VORTAC	Lee County, FL VORTAC	18000	45000
Lee County, FL VORTAC	Dolphin, FL VORTAC	18000	45000
§ 95.7616 Jet Route No. 616 is Amended to Read			
Sarasota, FL VORTAC	La Belle, FL VORTAC	18000	45000
La Belle, FL VORTAC	Dolphin, FL VORTAC	18000	45000

§ 95.8005 Jet Routes Changeover Points Airway Segment

From	To	Changeover points	
		Distance	From
J–56 is Amended to Modify Changeover Point			
Wasatch, UT VORTAC	Hayden, Co VOR/DME	66	Wasatch

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[FR Doc. 02–16501 Filed 6–28–02; 8:45 am]
BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Establish a new schedule of fees.

SUMMARY: The Commission charges fees to designated contract markets and the National Futures Association (NFA) to recover the costs incurred by the Commission in the operation of a program which provides a service to these entities. The fees are charged for the Commission's conduct of its program of oversight of self-regulatory rule enforcement programs (17 CFR part 1 Appendix B) (NFA and the contract markets are referred to as SROs). Newly-designated contract markets are not being assessed any fees for Fiscal 2001 because to date they have modest, if any, volume.

The calculation of the fee amounts to be charged for the upcoming year is based on an average of actual program costs incurred in the most recent three full fiscal years, as explained below. The new fee schedule is set forth in the **SUPPLEMENTARY INFORMATION** and information is provided on the effective date of the fees and the due date for payment.

EFFECTIVE DATES: The fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Madge A. Bolinger, Acting Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

SUPPLEMENTARY INFORMATION:

I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission:

Entity	Fee amount
Cantor Financial Futures Exchange	$5,606
Chicago Board of Trade	199,253
Chicago Mercantile Exchange	192,731
Kansas City Board of Trade	9,262
New York Mercantile Exchange/COMEX	158,927
Minneapolis Grain Exchange	6,978
National Futures Association	206,046
New York Board of Trade	92,612
Philadelphia Board of Trade	0
Total	871,415

III. Background Information

A. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 105 percent for fiscal year 1999, and 105 percent for fiscal year 2000, and 117 percent for fiscal year 2001. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993) which appears at 17 CFR part 1 appendix B, the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on a three-year average of the actual cost of performing reviews at each SRO. The cost of operation of the Commission's program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging is intended to smooth out year-to-year variations in cost. Timing of reviews may affect costs—a review may span two fiscal years and reviews are not conducted at each SRO each year. Adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation made is as follows: The fee required to be paid to the Commission by each contract market is equal to the lesser of actual costs based on the three-year historical average of costs for that contract market or one-half of average costs incurred by the Commission for each contract market for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all contract markets for the most recent three years. The formula for calculating the second factor is: 0.5a + 0.5 vt = current fee. In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years, and "t" equals the average annual cost for all exchanges. NFA, the only registered futures association regulated by the Commission, has no contracts traded; hence its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

[1] See Section 237 of the Futures Trading Act of 1982, 7 USC 16a and 31 USC 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

	Three-year average actual costs	Three-year percentage of volume	Average year 2002 fee
Cantor Financial Futures Exchange	$10,990	0.0286	$5,606
Chicago Board of Trade	199,253	39.0619	199,253
Chicago Mercantile Exchange	192,731	40.8601	192,731
NYMEX/COMEX	191,576	16.3441	158,927
New York Board of Trade	161,025	3.1319	92,612
Kansas City Board of Trade	15,398	.4047	9,262
Minneapolis Grain Exchange	12,645	.1696	6,978
Philadelphia Board of Trade	0	.0000	0
Subtotal	772,627	100.0000	665,369
National Futures Association	206,046	N/A	206,046
Total	978,673	100.0000	871,415

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal $12,645.

b. The alternative computation is:

(.5)($12,645) + (.5)(.001696)($772,627) = $6,978.

c. The fee is the lesser of a or b; in this case $6,978.

As noted above, the alternative calculation based on contracts traded, is not applicable to the NFA because it is not a contract market and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 1999 through 2001 was $206,046 (one-third of $618,139). The fee to be paid by the NFA for the current fiscal year is $206,046.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets (also referred to as exchanges) and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman on behalf of the Commission, certifies pursuant to 5 USC 605(b), that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on June 21, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–16201 Filed 6–28–02; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. R–02A]

RIN 1218–AC06

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising the hearing loss recording provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule published January 19, 2001 (66 FR 5916–6135), scheduled to take effect on January 1, 2003 (66 FR 52031–52034). This final rule revises the criteria for recording hearing loss cases in several ways, including requiring the recording of Standard Threshold Shifts (10 dB shifts in hearing acuity) that have resulted in a total 25 dB level of hearing above audiometric zero, averaged over the frequencies at 2000, 3000, and 4000 Hz, beginning in year 2003.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In January, 2001 (66 FR 5916–6135), OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (29 CFR parts 1904 and 1952) to take effect on January 1, 2002. On July 3, 2001, the agency proposed to delay the effective date of §§ 1904.10 *Recording criteria for cases involving occupational hearing loss,* and 1904.12 *Recording criteria for cases involving work-related musculoskeletal disorders,* until January 1, 2003 (66 FR 35113–35115). In that notice, OSHA explained that the Agency was reconsidering the requirement in § 1904.10 to record all cases involving an occupational hearing loss averaging 10 decibels (dB) or more. OSHA found that there were reasons to question the appropriateness of 10 dB as the recording criterion, and asked for comment on other approaches and criteria, including recording losses averaging 15, 20 or 25 dB. OSHA also stated that it was reconsidering the requirement in § 1904.12 that employers check the MSD column on the OSHA Log for a case involving a "musculoskeletal disorder" as defined in that section.

OSHA received a total of 77 written comments on the July 3, 2001 proposal. After considering the views of interested parties, OSHA published a final rule on October 12, 2001 (66 FR 52031—52034) delaying the effective date of §§ 1904.10(a) and 1904.12(a) and (b) until January 1, 2003, adding a new paragraph (c) to § 1904.10 establishing a 25–dB recording criterion for hearing loss cases for calendar year 2002, and modifying the regulatory note to paragraph 1904.29(b)(7)(vi) to delay the language referring to privacy case consideration for MSD cases.

This final rule contains amended hearing loss recording criteria codified at 29 CFR 1904.10(a) and 1904.10(b)(1)–(7). In a separate **Federal Register** document published today, OSHA is proposing to delay the effective date of § 1904.10(b)(7), which requires employers to check the hearing loss column on the Log for hearing loss cases

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meeting the revised recording criteria, as well as the MSD provisions addressed in the October 12 final rule. Additional information about the proposal to delay the effective date of the hearing loss column is contained in the section of this rule titled *Adding a column to the 300 Log*, and in the separate **Federal Register** publication *Proposed Delay of Effective Dates; Request for Comment*, published today.

II. Recording Occupational Hearing Loss Cases

Section 1904.10 of the January 19, 2001 final recordkeeping rule required employers to record, by checking the "hearing loss" column on the OSHA 300 Log, all cases in which an employee's hearing test (audiogram) revealed that a Standard Threshold Shift (STS) in hearing acuity had occurred. An STS was defined as "a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels or more at 2000, 3000 and 4000 Hertz (Hz) in one or both ears." The recordkeeping rule itself does not require the employer to test employee's hearing. However, OSHA's occupational noise standard (29 CFR 1910.95) requires employers in general industry to conduct periodic audiometric testing of employees when employees' noise exposures are equal to, or exceed, an 8-hour time-weighted average of 85dBA. Under the provisions of § 1910.95, if such testing reveals that an employee has sustained a hearing loss equal to an STS, the employer must take protective measures, including requiring the use of hearing protectors, to prevent further hearing loss. Employers in the construction, agriculture, oil and gas drilling and servicing, and shipbuilding industries are not covered by § 1910.95, and therefore are not required by OSHA to provide hearing tests. If employers in these industries voluntarily conduct hearing tests they are required to record hearing loss cases meeting the recording criteria set forth in the final Section 1904.10 rule.

The former recordkeeping rule, which remained in effect until January 1, 2001, contained no specific threshold for recording hearing loss cases. In 1991, OSHA issued an enforcement policy on the criteria for recording hearing loss cases, to remain in effect until new criteria were established by rulemaking. The 1991 policy stated that OSHA would cite employers for failing to record work related shifts in hearing of an average of 25 dB or more at 2000, 3000 and 4000 Hz in either ear. Subsequently, OSHA released interpretations stating that the employer could adjust the audiogram for aging using the tables in Appendix F of the Noise Standard, and that the employer was to use the employee's original baseline audiogram as the baseline reference audiogram for determining a recordable hearing loss.

One of the major issues in the recordkeeping rulemaking was to determine the level of occupational hearing loss that constitutes a health condition serious enough to warrant recording. This was necessary because the final rule no longer requires recording of minor or insignificant health conditions that do not result in one or more of the general recording criteria such as medical treatment, restricted work, or days away from work (*See*, e.g., 66 FR 5931). In its 1996 **Federal Register** notice OSHA proposed a requirement to record hearing loss averaging 15 dB at 2000, 3000 and 4000 Hz in one or both ears (61 FR 4040). OSHA adopted the lower 10–dB threshold in the final rule based in part upon comments that "(a)n age-corrected STS is a large hearing change that can affect communicative competence" (66 FR 6008).

Comments on the Recording of 10-dB Shifts

Most commenters opposed the adoption of the 10-dB threshold for recording hearing loss (Exs. 3–1, 3–13, 3–14, 3–19, 3–20, 3–22, 3–25, 3–26, 3–27, 3–29, 3–34, 3–35, 3–37, 3–43, 3–45, 3–48, 3–49, 3–50, 3–54, 3–57, 3–58, 3–59, 3–61, 3–62, 3–63, 4–3, 4–5, 5–5, 5–7). A number of these commenters challenged the significance of a 10-dB shift, stating that: 10-dB shifts are not significant—only significant health conditions should be captured (Exs. 3–14, 3–26, 3–48); the level selected must amount to a significant alteration in an employee's ability to hear (Exs. 3–50, 3–54, 3–59); a 10-dB shift from audiometric zero is a virtually imperceptible loss in hearing—10-dB shifts at higher levels become more important (Ex. 3–49); the medical community and workers' compensation do not recognize a 10 dB shift as a significant hearing loss (Exs. 3–19, 3–20, 3–25, 3–35, 3–43, 3–63); a 10-dB shift is not a material impairment, so it should not be a recordable illness (Exs. 3–25, 3–26, 3–34, 3–50, 3–54, 3–59, 3–58, 3–61); and, 10 dB is an early warning mechanism that is appropriate for the hearing standard but not for injury and illness recording—the 1904 provisions are intended to collect data on serious injuries and illnesses, not potential precursors (Exs. 3–25, 3–49, 3–50, 3–54, 3–59, 3–62). Organization Resources Counselors (ORC) remarked that:

> [a] 10 dB shift from audiometric zero is a virtually imperceptible loss in hearing * * * ORC understands that the finding of a Standard Threshold Shift (STS) to be a "flag" for the implementation of a series of actions required by the OSHA standard on exposure to noise. It was not intended, of and by itself, to be an indicator of illness, or impairment, but, rather, a sentinel event that triggers a series of actions that will prevent illness or impairment from occurring. As such a tool, it has been an effective indicator of employee hearing, but does not, by itself, rise to the level of recordability (Ex. 3–49).

A number of the commenters objected to recording 10-dB shifts because this recording level would result in the recording of too many "false positive" cases, either because of audiometric testing errors, because the hearing loss was temporary and not persistent, or because the case was insufficiently work-related (Exs. 3–14, 3–19, 3–20, 3–25, 3–26, 3–27, 3–29, 3–35, 3–37, 3–43, 3–45, 3–49, 3–50, 3–54, 3–56, 3–58, 3–59, 3–61, 3–62, 3–63, 4–5). The issues of audiometric error, persistence, and work-relationship are discussed in more detail below. The commenters opposed to the 10-dB shift also remarked that using 10-dB shifts will lead to overrecording (Ex. 3–37), 10 dB will result in a 5 to 10 fold increase in hearing loss recording (Ex. 3–49), too many *non-occupational* (emphasis added) cases are captured by 10 dB (See, e.g., Ex. 4–5), changing to 10 dB would make the past data useless and make it difficult to establish trends (Ex. 3–19), and that if OSHA adopts 10 dB, the states may be influenced to change their workers' compensation standards, resulting in higher workers' compensation costs (Ex. 3–34).

Some of the commenters opposed to the recording of all 10-dB shifts recognized a critical difference between the 25-dB criteria contained in the *American Medical Association [AMA] Guides to the Evaluation of Permanent Impairment* and the 25-dB level OSHA has enforced since 1991 (Exs. 3–25, 3–49, 3–50, 3–54, 3–59, 3–62). The AMA Guides measure hearing loss from a baseline of audiometric zero, which represents the statistical average hearing threshold level of young adults with no history of aural pathology (ANSI S3.6–1969). The 1991 OSHA recording level used the individual employee's original baseline audiogram taken at the time the worker was first placed in a hearing conservation program. If an individual employee has experienced some hearing loss before being hired, a 25-dB shift from the original baseline will be a larger hearing loss than the hearing impairment recognized by the AMA as a disabling condition. In a single comment submitted by both

organizations, the National Association of Manufacturers (NAM) and the Can Manufacturing Institute (CMI) stated that:

> [i]t is generally accepted in the medical community that an average hearing level of more than 25 dB from audiometric zero (the hearing level of healthy young adults never exposed to high noise levels) at certain frequencies constitutes a material impairment. Accordingly, an employee with near-perfect hearing (at or near audiometric zero) might very well suffer a 10 or 15 dB shift in hearing yet continue to function within the normal range of hearing with no impairment whatsoever. Conversely, an employee with hearing on the outer edge of the normal range who experiences a 15 dB shift would likely suffer a material impairment. The NAM and CMI believe that a shift in hearing should not be recorded unless it is confirmed and it results in hearing levels in excess of 25 dB at the shift frequencies (Ex. 3–50).

Industrial Health, Inc, a mobile hearing testing vendor, added that:

> [i]t is almost universally accepted in the profession that hearing impairment starts when hearing levels exceed 25 dB * * *. We believe there should be an "impairment fence" of 25 which must be crossed before a shift in hearing is required to be recorded. We recommend that to be recordable a shift must result in an average hearing level at 2000, 3000, and 4000 Hz in excess of 25 dB. This fence would not be adjusted for aging (however, the shift calculation itself should retain OSHA's allowance for aging) (Ex. 3–62).

A number of commenters urged OSHA to adopt the 10-dB threshold for recording occupational hearing loss, consistent with the January 19, 2001 **Federal Register** notice (Exs. 3–3, 3–4, 3–10, 3–11, 3–15, 3–17, 3–18, 3–21, 3–23–1, 3–24, 3–30, 3–36, 3–40, 3–47, 3–52, 3–53, 4–2, 5–2, 5–3, 5–6). Many of these commenters argued that an age-corrected 10-dB shift is a large change in hearing that can affect communication ability (Exs. 3–3, 3–21, 3–23–1, 3–53), that a persistent 10-dB shift represents a permanent and irreversible loss of hearing acuity (Ex. 3–21), that a 10-dB shift is a material impairment (Exs. 3–17, 3–23–1, 3–53), and that real and debilitating hearing loss may not be detected if a higher threshold is selected (Ex. 3–3). The remarks of the Coalition to Protect Workers Hearing are representative:

> An age-corrected STS represents a significant amount of cumulative hearing change from baseline, enough to affect communicative competence, safety, and job productivity in the workplace. A confirmed, age corrected STS is not a sensitive indicator of early hearing damage; rather it reflects a very substantial permanent hearing change over time. The appropriate sensitive indicator of early hearing damage is a temporary threshold shift (TTS), which recovers quickly as the worker is noise free. This indicator is currently used in hearing conservation programs. (Ex. 2–23–1)

Commenters also stated that use of a 10-db shift reduces recordkeeping and data management burdens for industry (Exs. 3–3, 3–10, 3–23–1, 3–47, 3–53, 5–2), reduces confusion for industrial managers and occupational hearing conservation technicians—"[a] problem that occurred with OSHA's 1991 policy" (Ex. 3–23–1), that current STS rates are not sufficiently high to result in an undue or inappropriate number of recordable events (Ex. 3–3), that many of the states (Michigan, North Carolina, South Carolina, Puerto Rico and Tennessee) require the recording of 10-db shifts with little detrimental effect on industry (Exs. 3–3, 3–4, 3–24), that a 10-db shift is comparable to other permanent injuries that are recorded on the OSHA 300 Form, such as an amputated finger (Ex. 3–23–1) or medical removal under the lead standard (Ex. 3–47), and that the 10-db shift is better for mobile and transient employees because the original baseline may not follow employees when they change jobs (Ex. 3–23–1).

Several of the commenters argued that recording 10-db shifts would be more protective for workers (3–3, 3–10, 3–17, 3–18, 3–21, 3–23–1, 3–24, 3–30, 3–47, 3–53). In a representative comment, the AFL–CIO argued that: "[t]he requirement to record a 10-db hearing loss on the Log would aid in the early detection and prevention of occupational hearing loss." It stated that "(r)ecording a 10-db STS on Form 300 is a practical and reasonable means to assist in the early detection of a loss in hearing so that workplace intervention measures can be implemented to protect workers from the hazards of noise. Having employers continue to record shifts in hearing of an average of 25 dB * * * is too high a threshold of loss in hearing acuity to be sufficiently proactive in preventing worker hearing loss" (Ex. 3–24).

Other commenters added that by recognizing disease earlier, employers may take preventive measures to avoid potential workers' compensation cases that are sometimes triggered at the 25-dB level (Ex. 3–10), that recording triggers action on the part of employers (Ex. 3–23–1), that 10-db shifts provide consistency for construction employers who are not required to test hearing (Ex. 3–10), and that the 10-db recording criterion is more protective and reasonable for employers who are not covered by the OSHA noise standard (Exs. 3–10, 3–17, 3–18, 3–24).

Alternatives Offered

Most of the commenters who objected to the recording of 10-db shifts presented alternative recording thresholds. The American Chemistry Council recommended a 15-db shift (Ex. 5–5), the Rubber Manufacturers Association recommended a 20-dB shift (Ex. 3–27), and Abbott Laboratories recommended recording second and subsequent 10-db shifts (Ex. 3–13). By far, the most common alternative offered was a shift of 25 dB (Exs. 3–1, 3–14, 3–19, 3–20, 3–22, 3–26, 3–29, 3–34, 3–35, 3–37, 3–43, 3–45, 3–48, 3–50, 3–57, 3–58, 3–61, 3–63, 4–3, 4–5). The commenters supporting a 25-dB shift argued that 25 dB was superior because medical and health care professionals recommend using 25 dB (Exs. 3–29, 3–50, 3–54, 3–59), 25 dB is consistent with the American Medical Association (AMA) guidelines (Exs. 3–50, 3–54, 3–59), 25 dB is used for workers' compensation (Ex. 3–13), 25 dB is protective and provides an easily identifiable measurement for determining injuries (Ex. 3–35), and OSHA adopted 25 dB in 1991 because it is widely accepted as a meaningful loss of hearing and is well documented (Exs. 3–37, 3–50, 3–54, 3–59).

The National Association of Manufacturers (Ex. 3–50), the Can Manufacturing Institute (Ex. 3–50), and Industrial Health, Inc. (Ex. 3–62) recommended a system where 15-db shifts would be recorded, but only when the shift crossed the disability boundary of 25 dB from audiometric zero. These commenters argued that the 15-db difference eliminated most shifts caused by audiometric error, and that by requiring them to cross the 25-dB fence, they would also clearly involve a hearing disability.

Organization Resources Counselors (ORC) urged OSHA to adopt a "sliding scale" recording criteria whereby the employer would record the first STS that exceeds 25 dB over audiometric zero, and all subsequent STS cases (Ex. 3–49). ORC argued that "[t]here is no single objective level of hearing loss that is uniformly identifiable for every employee. Different employees enter the workplace with different levels of hearing capability, and noise affects people differently" and that this concept reflects the intent of the OSH Act and the new rule in capturing significant injuries and illnesses.

The American Iron and Steel Institute (Ex. 3–54), the Society for the Plastics Industry (Ex. 3–25) and the American Forest & Paper Association (Ex. 3–59) encouraged the adoption of a similar recording criteria where shifts would be

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averaged over the frequencies of 500, 1000, 2000, and 3000 Hz, and the first shift of 10 dB over the disability fence of 25 dB would be recorded. This approach also set forth thresholds for the recording of subsequent shifts when they crossed boundaries used by various organizations for delineating mild, moderate, and severe hearing disability at the 40, 55 and 70-dB levels from audiometric zero.

OSHA's Decision

Following consideration of the comments received in response to the July 3, 2001 proposal to modify the hearing loss recording criteria, OSHA has decided to require employers to record audiometric results indicating a Standard Threshold Shift (STS) only when such STS cases also reflect a total hearing level of at least 25 dB from audiometric zero. The STS calculation uses audiometric results averaged over the frequencies 2000, 3000 and 4000 Hz, using the original baseline and annual audiograms required by the OSHA noise standard § 1910.95. The rule also allows the employer to adjust the employee's audiogram results used to determine an STS to subtract hearing loss caused by aging, allows the employer to retest the workers' hearing to make sure the hearing loss is persistent, and allows the employer to seek and follow the advice of a physician or licensed health care professional in determining whether or not the hearing loss was work-related.

The approach adopted in the final rule has several advantages. By using the STS definition from the OSHA noise standard § 1910.95, the § 1904.10 regulation uses a sensitive measure of hearing loss that has occurred while the employee is employed by his or her current employer. By requiring all STSs to exceed 25 dB from audiometric zero, the regulation assures that all recorded hearing losses are significant illnesses. OSHA received no comments suggesting that a shift of 25 dB from audiometric zero was anything less than a serious hearing loss case. While there is little consensus among the commenters concerning the appropriate level that should be used to record hearing loss cases, there is widespread agreement that a 25-dB shift from audiometric zero is a serious hearing loss.

The hearing loss recording level is also compatible with the final rule's definition of injury or illness, "an abnormal condition or disorder" (§ 1904.46). Various scales used to rate hearing loss consider hearing levels less than 25 dB to be within the "normal range" (American Medical Association Guidelines to the evaluation of Material Impairment, American Academy of Family Physicians, Audiology Awareness Campaign). The recording level is also compatible with the definition of material impairment used by OSHA and MSHA in the development of standards for occupational noise exposure (64 FR 49548, 48 FR 9738).

The hearing loss recording requirements in § 1904.10 differ from the requirements of the OSHA noise standard (§ 1910.95) because under the noise standard the employer is required to take certain actions (employee notification, providing hearing protectors or refitting of hearing protectors, etc.) for *all* 10-db standard threshold shifts while the part 1904 rule only requires the recording of STSs that also exceed the total 25-db level. OSHA believes that this is an appropriate policy, because 10-db shifts in hearing at higher levels (above 25 dB) are more significant. Several commenters agreed that some shifts are more significant than others. ORC stated that "(a) 10-db shift from audiometric zero is virtually imperceptible, while 10-db shifts at higher levels become more important" (Ex. 3–49). The American Federation of Government Employees (Ex. 3–17) argued that "(h)earing loss is not linear, but is exponential, and changes are incrementally more serious and irreversible" and the American Federation of State, County and Municipal Employees remarked that "(additional shifts are progressively more serious in nature" (Ex. 3–21)).

When audiometric testing is done, test tones are presented at various sound levels, usually increasing or decreasing in 5-dB steps. The employee is asked to respond whenever a tone is heard, with the goal being finding the lowest level at which the employee can consistently hear. The standard measurement for measuring hearing level is decibels, a logarithmic scale. For the first increase in hearing level from 0 to 10 dB, the sound intensity increases 10 fold. The next 10 dB is a 100-fold increase. By the time a person's hearing level changes from 0 to 30 dB hearing level, he or she needs 1,000 times more sound intensity to just barely hear.

Although the part 1904 recordkeeping regulation and the § 1910.95 noise standard treat the STS cases differently, this has no effect on the noise standard's requirements and does not have any effect on the requirement for employers to comply with § 1910.95. When employers detect work-related STS cases, they are required to take all of the follow-up actions required by the noise standard.

Additionally, the STS measure uses existing measurements and calculations employers are already using to comply with the OSHA noise standard, resulting in less paperwork burden for employers covered by both rules. Employers are required to take one additional step to determine if the STS has also resulted in a total hearing level of 25 dB or more, and if so, to record it. The position taken in § 1904.10 provides a reasonable compromise between the commenters' highly polarized views on the proper recording level. The final rule's hearing loss recording provisions provide a reasonable "middle ground" solution to reconcile the differences between a highly sensitive measure of hearing loss (all 10-db shifts) and increasingly insensitive measures (15, 20, or 25-db shifts).

The approach used in this final rule is a newly developed alternative that was not considered in the January 2001 rulemaking because none of the commenters to the 1996 proposed rule suggested it. The approach was first suggested by Organization Resources Counselors in an unsolicited post-promulgation submission following publication of the January 2001 rule (Ex. 1–6). OSHA then solicited comment on the approach in the July 3, 2001 **Federal Register** notice requesting comment on the hearing loss recording issue (66 FR 35113—35115).

OSHA believes that the § 1904.10 requirements will improve the nation's statistics on occupational hearing loss and that more hearing loss cases will be entered on employers' OSHA 300 Logs. However, OSHA recognizes that the new requirements may not result in comprehensive statistics for occupational hearing loss. Employees may experience significant hearing loss in industries where audiometric testing is not required (construction, agriculture, oil and gas drilling and servicing, and shipbuilding industries), and is not provided voluntarily by the employer, and thus never be entered into the records. Likewise, an employee may experience gradual hearing loss while employed by several employers, but never work for the same employer long enough to allow a recordable STS to be captured. As to the effect on trend analysis, caution must be used when comparing § 1904.10 hearing loss data that span the effective date of this rule. The new hearing loss recording rule will result in the recording of additional cases of hearing loss, not as a result of a change in the number of workers who experience hearing loss, but simply because of the recordkeeping change.

OSHA finds that recording only 25–dB shifts from the employee's baseline audiogram is not an appropriate policy. If an employee had significant hearing loss before being hired by the employer, additional hearing loss would not be recorded until well beyond the point of disability. This would not conform to the requirements of section 24 of the Act directing the Secretary to "[c]ompile accurate statistics on work injuries and illnesses which shall include *all* disabling, serious, or significant injuries and illnesses * * *" (emphasis added) (29 U.S.C. 673). The recording of 25-dB shifts in hearing acuity, measured from the employee's original baseline audiogram would clearly understate the true incidence of work-related hearing loss. Likewise, if the part 1904 regulation were to require only the recording of 15 or 20-dB shifts, or categorically exclude the first STS case the rule would exclude many legitimate and serious hearing loss cases that should rightfully be entered into the records and the Nation's injury and illness statistics. This approach would be especially deficient at capturing hearing loss in those employees who change employers several times during their working lives.

The Coalition to Protect Workers Hearing (Ex. 3–23) and the AFL–CIO (Ex. 3–24) specifically opposed the approach used in the final rule, which is often referred to as a "sliding scale" approach because it treats some STS cases as being more serious than others (Exs. 3–23, 3–24). These Commenters argued that a sliding scale approach was rejected in 1981 because it was too complex (Exs. 3–23, 3–24), that sliding scales are difficult to administer and do not provide uniform protection for workers (Ex. 3–24), and that "(c)ategorizing employers on the basis of hearing impairment is discriminatory. * * * Women and African Americans, both of whom tend to have better hearing sensitivity, might be placed in servicing, and shipbuilding industries), noise-hazardous jobs since they could develop more hearing change without crossing the line" (Exs. 3–23–1, 3–53).

OSHA does not believe that these concerns are serious impediments to the Section 1904.10 requirements. The two-part test, an STS combined with a total hearing level in excess of 25 dB from audiometric zero, is not overly complex, and is not nearly as complex as some of the sliding scale approaches that were rejected during the revision of the OSHA noise standard in 1981. In the years since 1981, computer technology has become much more commonplace and is incorporated into most, if not all, audiometric equipment. OSHA expects that most employers and contractors who administer hearing tests under the provisions of the noise standard will use computer software to make the needed calculations, so the requirements will not be difficult to administer. OSHA has received no evidence to show that the policies in the final rule will encourage discriminatory behavior by employers. The suggestion that women or African Americans may be selected for noise exposed jobs in order to avoid a potential recordable hearing loss case is highly speculative. OSHA has seen no evidence that such discrimination has occurred either to avoid the requirements of the OSHA noise standard or to avoid workers' compensation issues.

OSHA does not agree with the commenters who argued that because the function of the OSHA standards and regulations, including the part 1904 regulation, is to protect workers, worker protection would be compromised by any policy other than the recording of all STS cases. OSHA encourages employers and employees to use the OSHA injury and illness records to improve workplace safety and health conditions, and this is one of the functions of the Part 1904 records. However, this is not the only function of the records. They are also used to generate injury and illness statistics for the Nation and for individual workplaces. They are used by OSHA representatives to identify hazards during workplace inspections, and are collected by OSHA to target its intervention efforts to more hazardous worksites (See 66 FR 5916-5917). As stated in the 2001 rulemaking, "[n]o new protections are being provided by the recordkeeping rule". Further, the OSH Act does not require the recording of all injuries and illnesses and specifically excludes certain minor injury and illness cases. This exclusion, which is discussed in the preamble to the January 19, 2001 final rule, applies to both injuries and illnesses, including hearing loss (See 66 FR 5931-5932). It is thus entirely appropriate for the recordkeeping rule to exclude certain minor illness cases while capturing more serious cases.

The hearing loss recording requirements of Section 1904.10 will not deprive employers and employees of information about noise hazards or diminish workers' protection against the hazards of noise in the workplace. The occupational noise exposure standard requires that employees in general industry be tested for hearing loss when noise exposure exceeds an 8-hour time-weighted average of 85dB, and that employees be informed, in writing, if a 10–dB shift has occurred. The audiometric test records must be retained for the duration of the affected employee's employment. (See 29 CFR 1910.95(g), (m)). The noise standard also specifies the protective measures to be taken to prevent further hearing loss for employees who have experienced a 10–dB shift, including the use of hearing protectors and referral for audiological evaluation where appropriate. (*See* 29 CFR 1910.95(g)(8)). These requirements, which apply without regard to the recording criteria in the recordkeeping rule, will protect workers against the hazards of noise. The modified requirements of Section 1904.10 will therefore not deprive employers and workers of the means to detect and prevent hearing loss.

Finally, section 4(b)(4) of the OSH Act provides that "[n]othing in this Act shall be construed to supercede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment." 29 U.S.C. 653(b)(4). Accordingly, the OSHA recordkeeping rule will have no legal effect on state workers' compensation systems. There is no evidence that the states have modified their systems to conform to OSHA's previous hearing loss recording policies; in fact, the states are far from uniform in their treatment of occupational hearing loss (Ex. 3–24–14). Therefore, OSHA does not expect the 1904 regulation to have any effect on state workers' compensation in the future.

Audiometric Error

In its July 3, 2001 proposal, OSHA asked the public to comment on the variability of audiometric testing equipment and how testing variability should be taken into account, if at all, in the recordkeeping rule (66 FR 35115). Many commenters questioned the accuracy of audiograms, and some of them specifically questioned the accuracy of audiograms used to compute 10-dB shifts in hearing acuity (Exs. 3–5, 3–13, 3–14, 3–19, 3–20, 3–25, 3–26, 3–27, 3–29, 3–30, 3–35, 3–37, 3–45, 3–48, 3–49, 3–50, 3–54, 3–56, 3–58, 3–59, 3–63). These commenters argued that 10 dB is the lowest level of detection and is not reliable (Exs. 3–48, 3–63); at 10 dB the precision of the measurement becomes an issue (Ex. 3–49); 5 to 10-dB variability is common, which argues for 25 dB and against 10 dB (Ex. 3–29); 10 dB is not effective because of the testing environment, testing procedures, and error of audiometric equipment (Ex. 3–27); and that at a 10-dB shift, there is significant uncertainty in measurement, rendering

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a typical audiometric reading unreliable (Exs. 3–37, 3–56). Verizon Communications, Inc., while supporting the recording of 10-dB shifts, summarized the potential recording problem as follows:

> The test-retest variability inherent in properly calibrated audiometric equipment is ± 5 dB. * * * if a 10-dB recording threshold is adopted, the following scenario is possible:
>
> Baseline audiogram—the threshold at 200 Hz is measured at 10 dB; however, the equipment is off by −5 dB, so the threshold is really 15 dB
>
> Follow-up audiogram—the threshold at 200 Hz is measured at 20 dB; however, the equipment is off by +5 dB, so the threshold is still 15 dB
>
> This employee would have a recordable 10-dB loss, yet, in reality, his/her hearing would be unchanged. This is the risk that is taken with a 10-dB threshold—too many false positives (Ex. 3–30).

The International Paper Company stated that "[a]pplying the 10-dB STS criterion for recordkeeping purposes would have the effect of recording large numbers of workers whose hearing losses may simply be due to testing variability" (Ex. 3–14). The Society for the Plastics Industry (Ex. 3–25) cited a number of articles in the scientific literature to argue that measurement error in field testing as approximately ± 10 dB and the measurement error under laboratory conditions is ± 5 dB. The Specialty Steel Industry of North America (SSINA) and the Steel Manufacturers Association (SMA), in a combined comment, used information from the National Institute for Occupational Safety and Health (NIOSH) to argue that typical audiometric testing variability is 10 dB, stating that "(e)mployers will be required to record each occurrence of an STS at 10 dB, using a test that has a 10-dB measurement variability. This will generate an overwhelming number of false positives" (Ex. 3–37).

In a single comment, the National Chicken Council and the National Turkey Federation argued that "Lacking standardization in testing methods and in testing equipment, this change will mean that employers will likely be forced to record (or fail to record) STSs that are inaccurately measured" (Ex. 3–19). The Hearing Conservation Team at the Naval Submarine Medical Research Laboratory (Ex. 3–56) reviewed the scientific literature on audiogram reliability and found that methodology used by various researchers varied widely, making study comparisons difficult. The Hearing Conservation Team recommended further research into the test-retest reliability of various threshold levels that could then be used to set an STS criterion that would minimize false positives.

Another group of commenters argued that the accuracy of audiometric testing equipment is not a major factor (Exs. 3–15, 3–22. 3–23–1, 3–24, 3–57, 3–58, 3–61, 5–2, 5–3). In a representative comment, the AFL–CIO remarked that "The issue of audiometric test variability has been a settled matter since the hearing conservation amendment was promulgated nearly 20 years ago and is adequately addressed by the existing provisions contained in 1904.10" (Ex. 3–24). The American Textile Manufacturers Institute commented that: "Variability is a given in audiometric testing as it can never be an exact process as long as it relies on any given individual being tested to sense a signal and respond. However, variability can be minimized if there are tight quality controls on the test equipment, procedures, etc." (Ex. 3–15).

The Coalition to Protect Workers Hearing disagreed with OSHA's suggestion that the 10-dB recordability criterion does not allow for audiometric variability, stating that "The evaluation of work-relatedness takes calibration shifts into account, and such audiometric variability occurs infrequently. When random measurement variability does occur, retesting reduces it", adding that "It is true that audiometric data are vulnerable to calibration differences between different audiometers. Calibration discrepancies may occur if the employer changes service providers (e.g., mobile audiometric testing, testing in an off-site clinic) or if the employer switches audiometers for in-house testing. Such change can easily affect data by 5 dB. However, calibration discrepancies can be minimized through careful procedural controls such as the use of bio-acoustic simulators and proper professional supervision of the audiometric monitoring program" (Ex. 3–23–1).

The Dow Chemical Company, which has voluntarily been using 10-dB shifts for recording loss, stated that "In Dow's experience, following a standardized testing protocol (using 29 CFR 1910.95), and including adjustment for age and the use of a retest in 30 days, has provided accurate, consistent results' (Ex. 5–2). The National Institute for Occupational Safety and Health (NIOSH) argued that the variability of testing should not be taken into account in the recordkeeping rule because audiometric variability issues have been addressed in the OSHA Noise Standard 29 CFR 1910.95. NIOSH stated that they believe that under the OSHA Noise Standard the expected variability due to error will be ±5 dB (Ex. 5–3).

OSHA agrees with NIOSH that the recordkeeping rule should not take any actions to address the issues of audiometric variability, and finds that there is no need to increase the recording loss threshold to 15 or 20 dB to account for variability. The OSHA noise standard includes provisions that standardize audiometric testing protocols. The requirements in § 1910.95 (g) Audiometric Testing Program, § 1910.95 (h) Audiometric Test Requirements, Mandatory Appendix C to § 1910.95 Audiometric Measuring Instruments, Mandatory Appendix D to § 1910.95 Audiometric Test Rooms, and Mandatory Appendix E to § 1910.95 Acoustic Calibration of Audiometers, and the incorporated provisions of American Standard Specification for Audiometers S3.6–1969 provide standardized methodologies for conducting hearing tests designed to assure, as far as possible, that audiograms are accurate. As discussed in the preamble to the January 2001 final rule (66 FR 6009), following these requirements will result in audiometric test results with a variability of ±5 dB. As the Medical Educational Development Institute argued in response to the 1996 proposal, "(t)est/re-test reliability of 5 dB is well established in hearing testing. For example, the Council on Accrediting Occupational Hearing Conservationists maintain this range of reliability in their training guidelines and this is recognized in American National Standard Method for Manual Pure-Tone Threshold Audiometry, S3.21—1978 (R1992)." At the ± 5-dB reliability level, errors of 10 dB will be infrequent. There is a low probability that the audiometer will be incorrect by −5 dB on one test and +5 dB on a subsequent test because many of the variables affecting reliability will remain the same from year to year. The employer is likely to use the same audiometer, in the same room, operated by the same technician from one test to the next. When these variables are not held constant, or a 10-dB shift occurs due to residual random variability, the allowance for retesting should largely eliminate spurious shifts due to audiometric measurement errors. Additionally, the use of an average shift at three frequencies reduces the influence of random audiometric variability; this is one of the reasons that a frequency averaged shift was adopted in the § 1910.95 STS definition.

It should be noted that it is impossible to eliminate audiometric errors in their entirety. Any recording level, no matter how it is set, will be subject to some level of false positive and false negative errors. However, OSHA believes that the audiometric testing requirements of § 1910.95, if followed, will provide reasonably accurate audiometric data for the administration of the OSHA noise standard, and for the recording of occupational hearing loss. As the Dow Chemical Company (Ex. 5–2) commented: "(f)ollowing a standardized testing protocol (using 29 CFR 1910.95), and including adjustments for age and the use of a retest in 30 days, has provided accurate, consistent results." OSHA believes that the provisions allowing the employer to age adjust audiograms, seek advice from a physician or other licensed health care professional for determining work-relationship, retest within 30 days, and remove cases later found not to be persistent provide reasonable checks against false positive results being recorded on the 300 Log.

Age Correction

The final rule carries forward the January 19, 2001 rule's conceptual framework allowing, but not requiring, the employer to age adjust an employee's annual audiogram when determining whether or not a 10-dB shift in hearing acuity has occurred. There were no comments objecting to the age-correction of audiometric results when evaluating Standard Threshold Shifts in hearing. However, the American Iron and Steel Institute (Ex. 3–54), the Society for the Plastics Industry (Ex. 3–25) and the American Forest & Paper Association (Ex. 3–59), in support of a recording criteria similar to that adopted in the final rule, recommended that, "[b]ecause of the recognized contribution of aging to hearing loss, all hearing loss determinations would be age-adjusted in accordance with Appendix F to 29 CFR 1910.95".

While the final rule allows the employer to age-correct the STS portion of the recording criteria, there is no allowance for age correction for determining a 25-dB hearing level. The AMA Guides specifically state that total hearing loss should not be age adjusted, and there is no recognized consensus method for age adjusting a single audiogram. The method used in Appendix F of § 1910.95 is designed to age correct STS, not absolute hearing ability. The 25-dB criteria is used to assure the existence of a serious illness, and reflects the employee's overall health condition, regardless of causation. Age correcting the STS will provide adequate safeguards against recording age corrected hearing loss. Therefore, it would be inappropriate and unnecessary to age correct the 25-dB hearing level.

Persistence

Although OSHA did not specifically ask for comment on the topic, several commenters raised the issue of how to verify that recorded hearing loss cases are persistent. The OSHA noise standard addresses the issue of temporary hearing losses by allowing the employer to retest the employee's hearing within 30 days (1910.95(g)(7)(ii)). The 2001 rule adopted the same 30 day retest option at § 1904.10(b)(4) by allowing the employer to delay recording if a retest was going to be performed in the next 30 days.

A number of commenters stated that OSHA should record only permanent shifts in hearing (Exs. 3–23–1, 3–25, 3–26, 3–37, 3–48, 3–50, 3–58, 3–61, 3–62). In a representative comment, Industrial Health Inc. remarked that "[n]o shift, regardless of the number of dB, should be recorded unless it is found to be persistent in a second audiogram taken at a later time, which we believe should be no less than 60 days and preferably 6 months or more after the initial audiogram which revealed the shift" (Ex. 3–62).

The National Association of Manufacturers and the Can Manufacturing Institute, in a combined comment, argued that 30 days does not allow enough time to resolve transient conditions such as colds or allergies, and the retest period should be extended to one year (Ex. 3–50). The Coalition to Protect Workers Hearing recommended that "(a)t the discretion of the reviewing professional, within 15 months of the initial identification of the STS, any STSs which are not confirmed by subsequent retesting or otherwise found not to be work related, may be lined out on Form 300. Documentation justifying line outs must be provided and should be retained with the employees' records'(Ex. 3–23).

OSHA agrees with these commenters that the goal of the rule is to record only persistent hearing loss cases, and to help accomplish that goal, the Agency has carried forward the 30 day retest provision. However, OSHA has decided not to allow a longer retesting period. A longer retesting period would increase the likelihood that the employer would lose track of the case and therefore inadvertently fail to record the case. These errors would have a detrimental effect on the accuracy of the records and run counter to OSHA's goal of improving the quality of the injury and illness data. The Agency also believes that using different time periods for retesting in the part 1904 and § 1910.95 rules would result in increased confusion for employers.

The Agency has also rejected the suggestion that all hearing loss cases must be confirmed prior to recording them. Waiting for one year or longer to record an occupational hearing loss would move the recording to a year in which the original hearing loss was not initially discovered, would be administratively more complex for employers, and would have a detrimental effect on the hearing loss data. Many legitimate hearing loss cases could go unrecorded simply because the employee did not receive a subsequent audiogram due to job changes or some other circumstance that might occur before the next annual audiogram required by the noise standard.

In order to make it clear to employers that they may remove any cases that are found to be temporary, the final rule has adopted the removal option recommended by the Coalition to Protect Workers Hearing, with three modifications. First, the final rule does not include the 15 month time limit. OSHA does not believe that a time limit is needed because any future audiogram that shows an improvement in hearing and refutes the recorded hearing loss would indicate a temporary hearing loss that should be removed from the records. Second, the regulatory text does not specify that the removal must be at the discretion of the reviewing professional. The OSHA noise standard, at § 1910.95(g)(3), requires that:

> Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other physician, or by a technician who is certified by the Council of Accreditation in Occupational Hearing Conservation, or who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining and checking calibration and proper functioning of the audiometers being used. A technician who operates microprocessor audiometers does not need to be certified. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or physician.

Because the noise standard already requires audiograms to be conducted by, or under the supervision of, a qualified professional, subsequent audiograms that may refute the persistence of a recorded hearing loss will be reviewed by the appropriate professional. The § 1904.10 simply cross-references the need for the audiograms to be obtained pursuant to the requirements of § 1910.95, so there is no need for the § 1904.10 rule to repeat the review requirement. Third, the rule does not

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require the employer to maintain documentation concerning the removal of cases. Section 1910.95(m)(2) of the noise standard requires the employer to keep records of all audiometric tests that are performed, and those records will be available, should they be needed for future reference. As a result, there is no need to add a duplicative paperwork burden in the § 1904.10 rule. Therefore, § 1904.10(b)(4) states that "If subsequent audiometric testing indicates that an STS is not persistent, you may erase or line-out the recorded entry". OSHA has added this additional regulatory language to minimize the recording of temporary hearing loss cases while capturing complete data on the incidence of hearing loss disorders.

Frequencies

Some commenters urged OSHA to measure hearing loss at frequencies other than 2000, 3000 and 4000 Hz (*See*, e.g., Exs. 3–25, 3–54, 3–57, 3–58, 3–59, 3–61). Alabama Power (Ex. 3–61) and the Southern Company (Ex. 3–58) recommended using 500, 1000, and 2000 because "these are the frequencies where most communication occurs". Another group of commenters recommended the use of 500, 1000, 2000 and 3000 Hz because these are the frequencies specified by the American Medical Association and the American Academy of Otolaryngology-Head and Neck Surgery, Inc. (Exs. 3–25, 3–54, 3–57, 3–59).

OSHA has decided to continue to use the frequencies used in the § 1910.95 OSHA noise standard (2000, 3000, and 4000 Hz). While "most" communication occurs at lower frequencies, these are clearly audible frequencies where some speech occurs, and where hearing loss can have a significant impact on workers' lives outside of verbal communication. Using these frequencies reduces the burden on employers that would be created by requiring separate calculations of audiometric results, and, as Industrial Health, Inc. stated "(w)ith regard to the early effects of noise exposure, it seems reasonable to extend the definition across the standard shift frequencies 2000, 3000, and 4000 Hz" (Ex. 3–62).

Baseline Reference and Revision of Baseline

In its July 3, 2001 **Federal Register** notice OSHA asked the public to comment on the appropriate benchmark against which to measure hearing loss, e.g., the employee's baseline audiogram, audiometric zero, or some other measure (66 FR 35115). One commenter, Eric Zaban with the State of Michigan, suggested using audiometric zero as the appropriate benchmark (Ex. 4–1). The vast majority of the commenters who addressed this issue supported using the employee's baseline audiogram (Exs. 3–15, 3–20, 3–21, 3–22, 3–23–1, 3–24, 3–25, 3–27, 3–29, 3–30, 3–37, 3–47, 3–49, 3–50, 3–53, 3–54, 3–57, 3–58, 3–59, 3–61, 3–62, 3–63, 4–2, 4–5, 5–2, 5–3, 5–5). Alabama Power remarked that:

> [T]he appropriate benchmark against which to measure hearing loss is the employee's original baseline. Using the employee's original baseline ensures that employers are not held responsible for any prior hearing loss the employee may have suffered. Comparing an employee's audiogram to audiometric zero would not take into account any previous hearing loss that may have occurred prior to employment (Ex. 3–61).

The AFL–CIO agreed, stating that "Using the original baseline takes into account any hearing loss that a worker may have experienced while employed by a previous employer" and "Using the baseline ideogram (audiogram) will assist in preventing the recording of cases of non-occupational hearing loss' (Ex. 3–24).

The two-part test for recording that is being adopted in the final rule uses the baseline audiogram as the reference point for determining whether or not the employee has had a change in hearing while employed by his or her current employer, and then uses audiometric zero as the reference point for determining the overall hearing ability of the affected employee. OSHA agrees that the employee's baseline audiogram is a superior reference point for measuring a change of hearing, a Standard Threshold Shift. Using the baseline audiogram taken upon employment reduces the effect of any prior hearing loss the employee have experienced, whether it is non-occupational hearing loss or occupational hearing loss caused by previous employment. Therefore, the final rule uses the employee's original baseline audiogram as the reference for the STS component of an initial hearing loss cases, and uses the revised baseline audiogram from that initial case as the reference for future cases.

The 25-dB total hearing level component of an OSHA recordable hearing loss uses a reference of audiometric zero. This portion of the recording criteria is used to assure that the employee's total hearing level is beyond the normal range of hearing, so it does not exclude hearing loss due to non-work causes, prior employment, or any other cause. The measurement simply reflects the employee's current hearing ability as reflected in the most recent audiogram. This comparison to audiometric zero is a simple matter, because audiometers are designed to provide results that are referenced to audiometric zero. The hearing level at each frequency is oftentimes printed by the equipment, so there is rarely a need to perform manual calculations.

Work Relationship

The final rule published on January 19, 2001 included a presumption of work-relatedness when employees are exposed to loud noise at work, relying on the OSHA noise standards criteria of an 8-hour 85 dBA exposure level, or a total noise dose of 50 percent. The preamble discussion of the work-relatedness presumption was that:

> [I]n line with the overall concept of work relationship adopted in this final rule for all conditions, an injury or illness is considered work related if it occurs in the work environment. For workers who are exposed to the noise levels that require medical surveillance under § 1910.95 (an 8-hour time-weighted average of 85 dB(A) or greater, or a total noise dose of 50 percent), it is highly likely that workplace noise is the cause of or, at a minimum, has contributed to the observed STS. It is not necessary for the workplace to be the sole cause, or even the predominant cause, of the hearing loss in order for it to be work-related (66 FR 6012).

Several commenters discussed the difficulties of determining the work-relatedness of hearing losses, and many argued that the 8-hour 85 dBA presumption was invalid (Exs. 3–2, 3–3, 3–13, 3–20, 3–23–1, 3–25, 3–27, 3–29, 3–37, 3–43, 3–48, 3–50, 3–54, 3–63, 4–3). In a representative comment, the Coalition to Protect Workers Hearing (Ex. 3–23–1) remarked that:

> [W]ork relatedness should not be presumed solely on the basis of an exposure to time-weighted averages (TWAs) of 85 dBA or higher; instead it should be evaluated on a case-by-case basis. Presumption of work-relatedness based on equivalent 8-hour exposure alone is unsatisfactory because it presumes that the employer's hearing conservation program is completely ineffective and does not take into account other factors such as hearing protector fit and use compliance. Presumption of work-relatedness is a disincentive for employers to develop successful programs and to implement noise control because they receive no credit for their efforts. The audiologist or physician reviewing the audiometric record should make a determination regarding whether the OSHA STS is work-related and should do so when the 10-dB STS occurs.

Other commenters suggested that if an employer has an active and enforceable hearing conservation program in effect, then the recordkeeping rule should presume that a hearing loss case is non-work-related (Exs. 3–37, 3–50); that the rule needs to take non-work noise exposure into account (Exs. 3–29, 3–37, 3–50); and that the rule should only consider a hearing loss to be work-related if work contributed more than 50% (Ex. 3–63). Several commenters made the same argument as the Coalition to Protect Workers Hearing, arguing that each case should be evaluated on its merits (Exs. 3–29, 3–43, 3–50, 3–63). The American Foundry Society argued that "[w]ork-relatedness should be evaluated by a health care professional with experience in occupational health. Low level occupational noise exposure or documented regular use of hearing protection devices (HPDs) in noisy areas should mitigate against the presumption of work-relatedness' (Ex. 3–63).

OSHA agrees with these commenters that it is not appropriate to include a presumption of work-relatedness for hearing loss cases to employees who are working in noisy work environments. It is possible for a worker who is exposed at or above the 8-hour 85-dBA action levels of the noise standard to experience a non-work-related hearing loss, and it is also possible for a worker to experience a work-related hearing loss and not be exposed above those levels. Therefore, the final rule states that there are no special rules for determining work-relationship and restates the rule's overall approach to determining work-relatedness—that a case is work-related if one or more events or exposures in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss.

The final rule's approach to determining work-relatedness differs from the January 2001 rule for three reasons. First, although it is likely that occupational exposure to noise in excess of 85 dBA will be a causal factor in hearing loss in some cases, a presumption of work-relatedness is not justified in all cases. Further evaluation is needed to make this determination. Second, the policy in the final rule is consistent with the general principle in § 1904.5 that work-relatedness is to be determined on a case-by-case basis. Third, the approach used in the January 2001 rule is not supported by comments to the docket. None of the commenters supported the presumption, while many opposed it.

The final rule also continues the 2001 rule's policy allowing the employer to seek the guidance of a physician or other licensed health care professional when determining the work-relatedness of hearing loss cases. Paragraph (b)(6) of the rule states that if a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, the employer is not required to consider the case work-related, and therefore is not required to record it.

When evaluating the work relatedness of a given hearing loss case, the employer should take several factors into account. The Coalition to Protect Workers Hearing recommended that employers consider prior occupational and non-occupational noise exposure, evaluation of calibration records and the audiometric environment, investigation of related activities and personal medical conditions, and age correction before presuming that hearing loss is work related (Ex. 3–23–1). One important factor to consider is the effectiveness of the hearing protection program. When employees are exposed to high levels of noise in the workplace, and do not wear appropriate hearing protection devices, a case of hearing loss is more likely to be work-related. If an employee's hearing protection devices are not appropriate for the noise conditions, if they do not fit properly, or if they are not used properly and consistently, they may not provide enough protection to prevent workplace noise from contributing to a hearing loss case.

Adding a Column to the 300 Log

Section 1904.10(a) of the January 2001 rule required that employers check a hearing loss column on the Log when recording a hearing loss case. OSHA is issuing a separate **Federal Register** document proposing to delay the effective date of the hearing loss column requirement until January 1, 2004, and asking for comment on issues related to the hearing loss column. The 1996 proposed recordkeeping rule did not contain a hearing loss column requirement, and did not ask for comment on whether a column should be added. In the 2001 final rule, OSHA explained that it was adding a hearing loss column to the 300 Log so that BLS could produce more reliable statistics on occupational hearing loss cases (66 FR 6005). OSHA's July 3, 2001 **Federal Register** notice sought comment on alternative criteria for recording occupational hearing loss, but did not mention the hearing loss column as an issue.

OSHA does not believe that the existing record provides an adequate basis to determine the need for the hearing loss column. OSHA believes that interested parties should be allowed to comment on the issue. Accordingly, OSHA is publishing a separate **Federal Register** document today, proposing to delay the effective date of the hearing loss requirement until January 1, 2004 while the Agency reconsiders the column requirement in light of public comment. To facilitate public comment, OSHA has separated the requirement from § 1904.10(a) and placed it in a separate paragraph at § 1904.10(b)(7), which asks "How do I complete the 300 Log for a hearing loss case?" and answers "When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss illnesses." To further help assure that the public is informed about this additional rulemaking activity, OSHA is adding a regulatory note to § 1904.10(b)(7) explaining that OSHA is delaying the applicability of § 1904.10(b)(7) until further notice while the Agency reconsiders the hearing loss column.

Miscellaneous Hearing Loss Issues

OSHA received one miscellaneous comment that is worthy of discussion. The International Chemical Workers Union Council (Ex. 3–53) remarked that "[i]t is difficult for workers and their representatives to gain access to audiometric exams or summaries of those exams". Several of OSHA's rules provide access rights to audiometric data. Section 1910.95(g)(8) of the noise standard requires employers to inform employees, in writing, that they have experienced a standard threshold shift. OSHA's rule for access to employee exposure and medical records (§ 1910.1020) requires employers to provide access to medical records, exposure records, and analyses of records to employee's and their designated representatives. Finally, the part 1904 regulation requires employers to provide employee access to the OSHA injury and illness data.

Economic Analysis

Costs of the Revisions to the Hearing Loss Recording Provisions

OSHA has determined that the total cost of this action is $1,049,650 per year and, thus, that it is not an economically significant regulatory action within the meaning of Executive Order 12866. The methodology that OSHA has used for computing costs for the new rule is presented in the next two sections.

Changes in Coverage

Under the 2002 rule, employers were required to record all hearing loss cases that involved a work-related Standard Threshold Shift (STS) of an average of 25 dB or more at 2000, 3000 and 4000 hertz (Hz) in either ear, compared to the employee's original baseline audiogram. The new rule requires recording all

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hearing loss cases that involve a work-related STS of an average of 10 dB or more if the accumulated loss of hearing is at least 25 dB above audiometric zero. (The use of the tables in Appendix F of the Noise Standard to adjust for aging remains unchanged.)

OSHA estimates that approximately 40,000 hearing loss cases would have to be recorded under the 2002 rule, as opposed to approximately 145,000 hearing loss cases under the new rule. Thus, the new rule increases the number of recordable hearing loss cases by approximately 105,000. (In the Final Economic Analysis of the 2001 revisions to the rule, OSHA estimated that there would be 275,000 additional hearing loss cases (66 FR 6121), but the new rule has a narrower definition of hearing loss cases than the 2001 rule.)

Estimating the Number of Recordable Hearing Loss Cases

To estimate the number of cases that would be recorded, OSHA used the same estimation methodology as in the January 19, 2001 final rule. First, OSHA estimated the number of employees that would receive audiometric tests. OSHA's noise standard § 1910.95 requires employers to provide baseline and annual audiograms (and take other actions) when employees are exposed to certain noise levels. OSHA believes that approximately 23% of workers in the manufacturing sector are covered by the OSHA noise standard. Therefore, the number of covered manufacturing workers is 4,255,000 (18,500,000 manufacturing workers × .23). OSHA estimates that an additional 10% of workers are covered in other general industry sectors (such as transportation and utilities) or receive audiograms in industries not required to perform audiometric testing under the OSHA noise standard (such as construction and agriculture). Therefore, the total number of covered workers is estimated to be approximately 4,680,500 (4,255,000 × 1.1).

OSHA then reviewed a National Institute for Occupational Safety and Health (NIOSH) database of audiograms to determine the proportion of audiograms meeting the recording criteria. 3.09% of audiograms met the final rule's criteria for recording hearing loss, and 0.83% met the 2002 recording criteria (25 dB). Applying this percentage to the number of employees receiving annual audiograms results in 144,627 (4,680,500 × 0.0309) estimated hearing loss cases under the final rule, and 38,848 (4,680,500 × .0083) estimated hearing loss cases recorded under the 2002 rule.

Therefore, OSHA estimates 105,779 (144,627 − 38,848) additional cases of occupational hearing loss will be captured by the final section 1904.10 regulation, and has rounded this figure to 105,000 for cost estimation purposes.

Annual Costs of Maintaining Records

The additional hearing loss cases will require additional entries on the OSHA Form 300 Log and Summary of Occupational Injuries and Illnesses and the OSHA Form 301 Injury and Illness Incident Report. Access of employees and their representatives to the additional Form 301s will also involve costs.

OSHA estimates that employers will incur for each additional hearing loss case a cost of 15 minutes for the Log entry.

As explained in the 2001 Final Economic Analysis, based on data collected during approximately 400 recordkeeping audit inspections, OSHA estimates that 82 percent of incidents will be recorded on forms other than Form 301, such as workers' compensation forms. The remaining 18% of additional hearing loss cases will take 22 minutes for the filling out the Form 301.

Assuming that an individual with the skill level of a Personnel Training and Labor Relations Specialist will do the recordkeeping required by this rule, an hourly wage of $30.02 is used to compute cost. (The average hourly wage for a Personnel Training and Labor Relations Specialist as reported in the Bureau of Labor Statistics Occupational Employment Statistics Survey for Year 2000 was $21.71; benefits are computed at 38.3 percent of the hourly wage.)

Thus, employers will incur, for each additional hearing loss case, data entry costs of 15 minutes for the Log entry plus, for 18% of the cases, 22 minutes for the Form 301. The total annual cost is estimated to be $996,064 [= (105,000 Cases) × (15 Minutes/Case) × ($30.02/Hour) + (18,900 Cases) × (22 Minutes/Case) × ($30.02/Hour)].

As in the Year 2001 Final Economic Analysis, OSHA assumes that (a) at one-tenth of covered establishments, one employee would request access to his or her own Form 301 (10,500 instances), and (b) at one percent of covered establishments, a union representative would request access to all Form 301s at the establishment. Using the same estimation method as the 2001 Economic Analysis, OSHA estimates union representative access will result in an additional 10,500 forms being provided by employers. OSHA assumes that, for each of the 21,000 forms being provided (10,500 + 10,500), employers would require five minutes to pull, copy (at $0.05), and replace the relevant Form 301.

The estimated total cost of providing access to additional hearing loss records would thus be $47,110 [= (21,000 Forms) × (5 Minutes × ($30.02/Hour) + $.05/Copy)]. Thus, according to the above analysis, the total annual cost of this regulatory action is $1,049,650.

Benefits

Hearing loss cases result in substantial disability and lead to safety accidents as well. OSHA believes that aligning the recording threshold for such cases with the STS criterion in the Agency's Noise Standard will simplify recording for many employers who are already familiar with this criterion and provide more opportunities for employers to intervene to prevent other hearing loss cases.

As explained in the 2001 Final Economic Analysis, possession of information about events and exposures will increase the ability of employers and employees to identify hazardous conditions and to take remedial action to prevent future illnesses. If this enhanced ability to identify (and thus address) hazards translates into a reduction even as small as 0.5 to 1 percent of the estimated number of additional recordable cases, it would mean the prevention of 525 to 1,050 illnesses per year [= (.005 to .01 × 105,000].

The revisions in the rule will also make the injury and illness records more useful to OSHA, as well as to employers and employees. Improvements in the records being kept by employers would enhance OSHA's capacity to focus compliance outreach efforts on the most significant hazards; identify types or patterns of illness whose investigation might lead to regulatory changes or other types of prevention efforts, such as enforcement strategies, information and training, or technology development; and set priorities among establishments for inspection purposes.

Employers and employees both stand to benefit from the more effective use of OSHA's resources. The enhanced ability of compliance officers to identify patterns of illness will enable OSHA to focus on more serious problems. Identification of such patterns will also increase the ability of employers to control these hazards and prevent other similar illnesses. To the extent that employers take advantage of this information, the burden of OSHA inspections should be reduced in the long run. Employees clearly also will benefit from these reductions in illnesses.

Regulatory Flexibility Certification

The 2001 revisions of the recordkeeping rule, which were much more extensive, did not have a significant impact on a substantial number of small entities (66 FR 6121). In the Final Economic Analysis for those revisions, OSHA estimated that over the entire range of SICs affected, the average cost per small firm was only $31.63. The impacts of those revisions on sales and profits did not exceed 1 percent for small firms in any covered industry (66 FR 6108).

Even if all the additional hearing loss cases estimated to result from this year's revisions were distributed among the 541,988 small firms that keep the injury and illness records (as OSHA identified in its Year 2001 Final Economic Analysis) the average cost of the current revisions per small firm would be less than two dollars.

OSHA hereby certifies that the current revision to the hearing loss recording provisions, with an estimated annual cost of just over a million dollars, will not have a significant impact on a substantial number of small entities.

Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any year.

Federalism

This rule has been reviewed in accordance with Executive Order 13132 (52 FR 41685), regarding Federalism. Because this rulemaking action involves a "regulation" issued under section 8 of the OSH Act, and not a "standard" issued under section 6 of the Act, the rule does not preempt State law, see 29 U.S.C. 667(a). The effect of the rule on States is discussed in the State Plans section of this preamble.

Paperwork Reduction Act

OSHA will modify its previously approved information collection requirements prior to the January 1, 2003 effective date.

State Plans

The 26 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable regulation within six months of the publication date of this final regulation. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have OSHA approved State Plans that apply to state and local government employees only.

A few commenters urged OSHA to make sure that the State Plan States have the same recording criteria as federal OSHA (see, e.g., Exs. 3–22, 3–30, 3–49, 3–55). During 2002, the State Plan States were allowed to maintain their policies for the recording of hearing loss to maintain their former requirements, while OSHA reconsidered what the appropriate recording criteria should be. In the **Federal Register** document announcing the one year delay and the interim policy for year 2002, OSHA stated that when it issues a final determination for the recording of occupational hearing loss for calendar years 2003 and beyond, the states would be required to have identical criteria (66 FR 52033). Now that OSHA has issued its final determination, the States are required to promulgate identical criteria.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657).

Signed at Washington, DC, this 25th day of June, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

For the reasons stated in the preamble, 29 CFR part 1904 is amended as follows:

PART 1904—[AMENDED]

1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

2. Revise § 1904.10 to read as follows:

§ 1904.10 Recording criteria for cases involving occupational hearing loss.

(a) Basic requirement. If an employee's hearing test (audiogram) reveals that the employee has experienced a work-related Standard Threshold Shift (STS) in hearing in one or both ears, and the employee's total hearing level is 25 decibels (dB) or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS, you must record the case on the OSHA 300 Log.

(b) *Implementation.*

(1) *What is a Standard Threshold Shift?* A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears.

(2) *How do I evaluate the current audiogram to determine whether an employee has an STS and a 25–dB hearing level?*

(i) *STS.* If the employee has never previously experienced a recordable hearing loss, you must compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, you must compare the employee's current audiogram with the employee's revised baseline audiogram (the audiogram reflecting the employee's previous recordable hearing loss case).

(ii) *25–dB loss.* Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero. Therefore, using the employee's current audiogram, you must use the average hearing level at 2000, 3000, and 4000 Hz to determine whether or not the employee's total hearing level is 25 dB or more.

(3) *May I adjust the current audiogram to reflect the effects of aging on hearing?*

Yes. When you are determining whether an STS has occurred, you may age adjust the employee's current audiogram results by using Tables F–1 or F–2, as appropriate, in Appendix F of 29 CFR 1910.95. You may not use an age adjustment when determining whether the employee's total hearing level is 25 dB or more above audiometric zero.

(4) *Do I have to record the hearing loss if I am going to retest the employee's hearing?*

No, if you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the recordable STS, you are not required to record the hearing loss case on the

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OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss illness within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the § 1910.95 noise standard indicates that an STS is not persistent, you may erase or line-out the recorded entry.

(5) *Are there any special rules for determining whether a hearing loss case is work-related?*

No. You must use the rules in § 1904.5 to determine if the hearing loss is work-related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss, you must consider the case to be work related.

(6) *If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case?*

If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log.

(7) *How do I complete the 300 Log for a hearing loss case?*

When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss.

Note to 1904.10(b)(7): The applicability of paragraph (b)(7) is delayed until further notice.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA21

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement that Brokers or Dealers in Securities Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act ("BSA"). The amendments require brokers or dealers in securities ("broker-dealers") to report suspicious transactions to the Department of the Treasury. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: *Effective Date:* July 31, 2002.

Applicability Date: December 30, 2002. *See* 31 CFR 103.19(h) of the final rule contained in this document.

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SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

The BSA, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[2] to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made."[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." *Id.*, at subsection (g)(4)(B).

Section 356 of the USA Patriot Act required Treasury, after consultation with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, to publish proposed regulations before January 1, 2002, requiring broker-dealers to report suspicious transactions under 31 U.S.C. 5318(g). In accordance with this requirement, Treasury published a Notice of Proposed Rulemaking relating to suspicious transaction reporting by broker-dealers on December 31, 2001. Section 356 requires final regulations to be issued by July 2, 2002.

II. Broker-Dealer Regulation and Money Laundering

The regulation of the securities industry in general and of broker-dealers in particular relies on both the Securities and Exchange Commission (the "SEC") and the registered securities associations and national securities exchanges (so-called self-regulatory organizations or "SROs"). Broker-dealers have long reported securities law violations through existing relationships with law enforcement, the SEC, and the SROs. The SEC and the SROs have taken measures to address money laundering concerns at broker-dealers.[4] The SEC adopted rule 17a–8 in 1981 under the Securities and Exchange Act of 1934 ("Exchange Act"), which enables the SROs, subject to SEC oversight, to examine for BSA compliance. Accordingly, both the SEC and SROs will address broker-dealer compliance with this rule.

Certain broker-dealers have been subject to suspicious transaction reporting since 1996. In particular, broker-dealers that are affiliates or subsidiaries of banks or bank holding companies have been required to report suspicious transactions by virtue of the application to them of rules issued by the federal bank supervisory agencies. In April 1996, banks, thrifts, and other banking organizations became subject to a requirement to report suspicious transactions pursuant to final rules issued by FinCEN,[5] under the authority contained in 31 U.S.C. 5318(g). In collaboration with FinCEN, the federal bank supervisors (the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA")) concurrently issued suspicious transaction reporting rules under their own authority. *See* 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). The bank supervisory agency rules apply to banks, non-depository institution affiliates and subsidiaries of banks and bank holding companies (including broker-dealers), and bank holding companies (including bank holding companies that are themselves broker-dealers).[6] The final rule contained in this document applies to all broker-dealers, without regard to whether they are affiliates or subsidiaries of banks or bank holding companies.[7]

Anti-Money Laundering Compliance Programs

The provisions of 31 U.S.C. 5318(h), added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury "[i]n order to guard against money laundering through financial institutions * * * [to] require financial institutions to carry out anti-money laundering programs." 31 U.S.C. 5318(h)(1). Those programs may include "the development of internal policies, procedures, and controls"; "the designation of a compliance officer"; "an ongoing employee training program"; and "an independent audit function to test programs." 31 U.S.C. 5318(h)(A–D). Section 352 of the USA Patriot Act amended section 5318(h) to require all entities defined as "financial institutions" under the BSA, including broker-dealers, to develop and implement anti-money laundering programs by April 24, 2002.

On April 23, 2002, FinCEN promulgated regulations under section 352 of the USA Patriot Act.[8] Among other things, the rules provide that broker-dealers will be deemed to be in compliance with section 352 of the USA Patriot Act if they establish and maintain anti-money laundering programs as required by the SEC or SROs. The SEC has recently published Orders approving rules proposed by the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), and the Philadelphia Stock Exchange, requiring member organizations to develop and implement anti-money laundering programs.[9] The rules were drafted to provide minimum standards for the mandatory anti-money laundering program requirement contained in section 352 of the USA Patriot Act. In addition, these securities self-regulatory organization rules will also require broker-dealers to have compliance programs for suspicious transaction reporting.[10]

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[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the "Annunzio-Wylie Anti-Money Laundering Act"), Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"). Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law." 31 U.S.C. 5318(g)(4)(C).

[4] For example, in April 2001, the Director of the Office of Compliance inspections and Examinations at the SEC announced that the Commission would undertake compliance sweeps of broker-dealers in the fall of 2001. *See* Money Laundering: It's on the SEC's Radar Screen, Remarks at the Conference on Anti-Money Laundering Compliance for Broker-Dealers Securities Industry Association (May 8, 2001) (transcript available at *www.sec.gov/news/speech/spch486.htm*). BSA compliance with non-suspicious activity reporting related provisions has been included in the SEC's examination and enforcement programs since the 1970s, and in the SROs' programs since 1982. The New York Stock Exchange and the National Association of Securities Dealers have both issued statements dating back to 1989 regarding the importance of suspicious activity reporting to avoid money laundering charges. *See* Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Anti-Money Laundering Efforts in the Securities Industry, GAO–02–111, October 2001, at 22.

[5] *See* 31 CFR 103.18. The suspicious transaction reporting rules under the BSA for banking organizations previously appeared at 31 CFR 103.21 before that section was renumbered as 31 CFR 103.18. *See* 65 FR 13683, 13692 (March 14, 2000).

[6] For example, 12 CFR 225.4(f) subjects non-bank subsidiaries of bank holding companies to the suspicious transaction reporting requirements of Regulation H of the Board of Governors at 12 CFR 208.62. Broker-dealers to which the bank supervisory agency rules for suspicious transaction reporting currently apply represent approximately half of the business of the broker-dealer industry, although in terms of numbers, they are only a small percentage of the approximately 8,300 broker-dealers in the United States.

[7] Money transmitters, issuers, sellers, and redeemers of money orders, and issuers, sellers, and redeemers of traveler's checks are subject to a similar reporting requirement pursuant to a final rule published in the **Federal Register** on March 14, 2000. *See* 31 CFR 103.20. Under that rule, reporting is required for suspicious transactions involving or aggregating at least $2,000 in general or at least $5,000 in the case of issuers of money orders and traveler's checks to the extent the transactions to be reported are identified from a review of clearance records and similar documents. Finally, FinCEN has proposed a rule that would require casinos and card clubs to report suspicious transactions involving or aggregating at least $3,000. *See* 63 FR 27230 (May 18, 1998), and 67 FR 15138 (March 29, 2002).

[8] *See* 67 FR 21110—21127 (April 29, 2002).

[9] *See* 67 FR 20854 (April 26, 2002), and 67 FR 40366 (June 12, 2002).

[10] Existing securities law and self-regulatory organization rules will ensure that broker-dealers have suspicious activity reporting rule compliance programs in place. In particular, section 19(g) of the Exchange Act provides that "[e]very self-regulatory organization shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and * * * absent reasonable justification or excuse enforce compliance." Both the National Association of Securities Dealers and the New York Stock Exchange have promulgated compliance program rules. *See* NASD Rule 3010 and NYSE Rule 342, including Supplemental Material .30. Rule 17a–8 of the Exchange Act requires broker-dealers to comply with applicable

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III. Notice of Proposed Rulemaking

On December 31, 2001, FinCEN published a notice of proposed rulemaking (the "Notice"), 66 FR 67670, that would extend the requirement to report suspicious transactions to broker-dealers. The comment period for the Notice ended on March 1, 2002. FinCEN received 13 comment letters on the Notice. Of these, six were submitted by trade associations, two by financial holding companies, and one each by a mutual fund complex, bank, law firm, government agency, and compliance company.

IV. Summary of Comments and Revisions

A. Introduction

The format of the final rule is generally consistent with the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- The categories of reportable activity have been streamlined and reorganized to clarify that all violations of law, other than those specifically exempted by the rule, are within the scope of required reporting;
- An exception from reporting relating to robbery or burglary has been added to the rule;
- Language has been added to clarify that only one report is required to be filed with respect to a reportable transaction, to avoid double reporting on the same transaction by, for example, an introducing broker and a clearing broker.

B. Comments—General Issues

Comments on the Notice discussed several general matters including: (1) The appropriate degree of similarity between the rule and suspicious transaction reporting rules promulgated by the federal banking supervisory agencies under Title 12; (2) the exceptions from reporting for violations of securities laws and SRO rules; (3) the relationship of introducing and clearing brokers in the context of suspicious transaction reporting; (4) the application of the rule to entities that are dually registered as broker-dealers and futures commission merchants; (5) treatment of sellers of variable annuities under the rule; (6) application of the rule to registered broker-dealers located outside the United States; and (7) application of only one set of suspicious transaction reporting rules to broker-dealer affiliates and subsidiaries of bank holding companies.

1. Similarity of the Rule With Title 12 Rules

The Notice proposed requiring a broker-dealer to report two categories of transactions involving or aggregating at least $5,000. The first category consisted of known or suspected federal criminal violations when the broker-dealer is either an actual or potential victim of a criminal violation, or the broker-dealer is used to facilitate a criminal transaction. This category of transaction appears in the suspicious activity reporting rules currently applicable to depository institutions under Title 12 promulgated by the federal banking supervisory agencies, but does not appear in suspicious transaction reporting regulations promulgated by FinCEN under Title 31 for banks and money services businesses (and proposed for casinos). The second category consisted of transactions that (1) involve illegally derived funds (money laundering), (2) appear designed for the purpose of evading BSA requirements, or (3) are unusual, either because they do not seem to be designed to make economic sense, or they are unusual for the particular customer. This second category of reportable transactions appears in both the Title 12 and Title 31 suspicious transaction reporting rules.

Commenters raised several issues about the degree to which the rule proposed in the Notice should be harmonized with the Title 12 suspicious transaction reporting rules. Several commenters argued that for the first category of reportable transactions, the final rule should adopt the three-tiered reporting threshold that appears in the Title 12 rules. Under the Title 12 rules, where a broker-dealer is either an actual or potential victim of a criminal violation, or the broker-dealer is used to facilitate a criminal transaction, the reporting threshold is zero for transactions involving insider abuse, and $5,000 for other types of transactions (or $25,000 if a suspect cannot be identified).

The final rule does not adopt the three-tiered reporting threshold contained in the Title 12 rules. FinCEN's Title 31 SAR rule for banks does not contain a tiered reporting threshold. Rather, the reporting threshold in FinCEN's bank SAR rule is $5,000, regardless of the nature of the suspicious transaction required to be reported. Moreover, as the reporting of insider abuse largely has been carved out of this rule, FinCEN does not believe that it is necessary to adopt the Title 12 threshold for transactions involving insider abuse. The final rule also does not adopt a $25,000 reporting threshold for transactions in which a broker-dealer cannot identify a suspect. First, broker-dealers operate in such a way that in most cases, the identity of their customers will be known to them. Second, the type of activity likely to be reported by a broker-dealer under circumstances where the broker-dealer cannot identify the customer, such as identity theft or fraud, is the sort of activity that this rule is intended to capture, and its reporting should not be limited. Therefore, the reporting threshold for all categories of suspicious transactions required to be reported under the final rule is $5,000.

One commenter argued that, in including the first category of reporting in the Notice, FinCEN exceeded its authority under Section 5318(g) and the USA Patriot Act, contending that this category is not contained in the suspicious transaction reporting rules promulgated by FinCEN under Title 31 with respect to banks and money services businesses. As noted above, the USA Patriot Act imposes upon Treasury a deadline for publication of a final rule requiring broker-dealers to file suspicious transaction reports; the statutory authority under which Treasury implements suspicious transaction reporting rules is contained in 31 U.S.C. 5318(g)(2), which was enacted in 1992. That section authorizes the Secretary of the Treasury to require a financial institution to "report any suspicious transaction relevant to a possible violation of law or regulation." Thus, it is within Treasury's authority to require the reporting of any suspected criminal activity occurring at a financial institution.

Although the first category of reporting does not appear in other Title 31 suspicious transaction reporting rules, it was included in the Notice to ensure that transactions involving legally-derived funds that the broker-dealer suspects are being used for a criminal purpose (for example, transactions that the broker-dealer suspects are designed to fund terrorist activity) would be reported under the rule. Such transactions should be reported under language that already exists in the Title 31 rules. Each rule requires the reporting of a transaction that "has no business or apparent lawful purpose." FinCEN believes that this broad language should be interpreted to require the reporting of transactions that appear unlawful for virtually any reason. Nevertheless, the Notice added the language in its first reporting category to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule. The intent of including this category of reporting is to ensure reporting of situations in which a broker-dealer is being abused by a customer in furtherance of the customer's criminal activities. Because the comments showed some degree of confusion with the language in the first reporting category in the Notice, this category of reporting has been streamlined and re-organized, at paragraph (a)(2)(iv), to clarify that, subject to the explicit exceptions from reporting contained in paragraph (c) of the final rule (relating to robbery, burglary, lost, missing, counterfeit, or stolen securities, and violations of the federal securities law or rules of an SRO), all criminal violations are required to be reported under the final rule.[11]

The second category of reportable transactions in the Notice requires a broker-dealer to report transactions if the broker-dealer knows, suspects, or has reason to suspect that the transaction (or pattern of transactions of which the transaction is a part) falls within one of the three classes explained above. Some commenters argued that the language referring to the reporting of patterns of transactions should be deleted from the rule, urging that it would be unfair to require broker-dealers to report patterns of suspicious transactions, given that the Title 12 and Title 31 suspicious transaction reporting rules applicable to banks do not contain language relating to patterns of suspicious transactions.

The language in the rule requiring the reporting of patterns of transactions is not intended to impose an additional reporting burden on broker-dealers. Rather, it is intended to recognize the fact that a transaction may not always appear suspicious standing alone. In some cases, a broker-dealer may only be able to determine that a suspicious transaction report must be filed after reviewing its records, either for the purposes of monitoring for suspicious transactions, auditing its compliance systems, or during some other review. The language relating to patterns of transactions is intended to make explicit the requirement that FinCEN believes implicitly exists in the suspicious transaction reporting rules for banks: if a broker-dealer determines that a series of transactions that would not independently trigger the suspicion of the broker-dealer, but that taken together, form a suspicious pattern of activity, the broker-dealer must file a suspicious transaction report.[12] For this reason, the pattern of transactions language has been retained in the final rule.

2. Exceptions From Reporting

Several commenters raised issues relating to the exceptions from reporting contained in the Notice. Although generally supporting the exception from reporting relating to violations of federal securities laws or SRO rules by the broker-dealer or any of its associated persons, commenters argued that the exception should not contain a condition requiring a broker-dealer to report the violation to the SEC or an SRO. Commenters argued that existing SEC regulations and SRO rules do not require that all securities violations be reported to the SEC or an SRO, and that the requirement to report suspicious activity to Treasury should not encompass such violations. In addition, commenters suggested that the exception should be broadened to cover securities law violations by a customer of the broker-dealer.

Because the suspicious activity reporting regime established by the final rule implicates a broad array of law enforcement concerns, the exception from reporting has not been expanded. The SEC and SROs already have established a regulatory structure for reporting and maintaining data about securities law violations by broker-dealers. It is not FinCEN's intent in promulgating the final rule to duplicate these efforts. The exception continues to permit a broker-dealer to handle the reporting of a violation of securities laws or rules by the broker-dealer (or any of its officers, directors, employees, or other registered representatives) under existing industry procedures (whether formal or informal) rather than through a Suspicious Activity Report "Brokers or Dealers in Securities ("SAR–BD"). If a broker-dealer does not in fact report under existing securities industry procedures a violation of securities law or rules by the broker-dealer or any of its associated persons that otherwise would be required to be reported under the terms of the final rule, even in situations in which the rules of the SEC or an SRO would not require a broker-dealer to report such a transaction, the broker-dealer must file a SAR–BD. The final rule continues to provide that the exception from reporting does not apply if the securities law or SRO rule violation is a violation of 17 CFR 240.17a–8 or 17 CFR 405.4 (the regulations that require broker-dealers and government securities broker-dealers, respectively, to comply with the BSA rules). In these situations, the broker-dealer is to report the violation on a SAR–BD.

In response to comments requesting clarification that the language in the exception alters neither the standard for reporting suspicious activity to Treasury, nor any reporting requirements of the SEC or an SRO, the exception to reporting no longer applies to "possible" violations of securities laws or rules. Instead, the exception applies to a "violation otherwise required to be reported" on a SAR–BD that is a violation of securities laws or rules. Thus, the exception applies to a transaction that a broker-dealer knows, suspects, or has reason to suspect involves a violation by a broker-dealer or any of its associated persons of securities laws or rules, or rules of an SRO, so long as the broker-dealer in fact reports the transaction under existing securities industry procedures. Finally, one commenter suggested that the rule should contain an exception for reporting in the case of a robbery or burglary that is reported by the broker-dealer to appropriate authorities, noting that the suspicious activity reporting rules applicable to banks contain such an exception. The final rule adopts this suggestion.

3. Introducing and Clearing Brokers

Securities transactions may be conducted by broker-dealers that clear their own transactions or by introducing brokers that rely on another firm to clear the transactions. Several commenters recommended that the final rule address the requirement to file a suspicious activity report when both an introducing and clearing broker are involved in a transaction. In particular, the commenters requested that the final rule provide that only one suspicious activity report is required to be filed in this situation. The final rule provides that the obligation to identify and report a suspicious transaction rests with each broker-dealer involved in the transaction, but that only one SAR–BD is required to be filed, provided that the report includes all the relevant facts concerning the transaction. It is

BSA rules. Accordingly, broker-dealers will be required under existing rules to develop compliance programs for the broker-dealer SAR rule proposed in this document.

[11] Two commenters requested that the final rule harmonize penalty provisions relating to this category of reportable activity with the penalty provisions applicable to the reporting of such transactions under Title 12. However, the penalties applicable in instances of failure to comply with the requirement contained in this rule are mandated by statute, and cannot be modified by FinCEN. *See* 31 U.S.C. 5321 and 5322.

[12] Indeed, broker-dealers are experienced in reviewing patterns or series of transactions under the federal securities laws for the purpose of identifying securities law violations. *See, e.g.*, 15 U.S.C. 78l(a).

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FinCEN's expectation that introducing and clearing broker-dealers wishing to take advantage of this provision with respect to a particular transaction will communicate with each other about the transaction for purposes of sharing information about the transaction, and determining which broker-dealer will file the SAR. In cases in which such communication is appropriate and results in the filing of a SAR, the broker-dealer that has actually filed that SAR may share with the broker-dealer with which the communication was had under paragraph (a)(3), a copy of the filed SAR. However, the limitations found in 31 U.S.C. 5318(g)(2) on further dissemination of the SAR–BD and disclosure of the fact of its filing apply equally to both broker-dealers. Moreover, in certain instances, communication between two broker-dealers about a suspicious transaction and the fact of filing of a SAR–BD would be inappropriate. For example, a broker-dealer that suspects that it is required to report another broker-dealer or one of its employees as the subject of a SAR would be prohibited from notifying the other broker-dealer that a SAR has been filed, because to do so would reveal, or risk revealing, to the subject of a SAR that a SAR has been filed.

The purpose of including this provision in the rule is to allow two broker-dealers that have participated in the same transaction to file only one SAR–BD. In addition, section 314(b) of the USA Patriot Act permits two or more financial institutions and any association of financial institutions upon notice to Treasury to "share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities." On March 4, 2002, FinCEN promulgated an Interim rule and Notice of Proposed Rulemaking relating to information sharing under section 314(b).[13] Language in section 314(b) protects financial institutions disclosing information in accordance with the statutory provision or regulations promulgated thereunder, from liability for such disclosures or for failure to provide notice of such disclosures to the person who is the subject of the disclosure.

4. Futures Commission Merchants

Several commenters raised issues about the application of the Notice to the futures and options activities of dual registrants—persons registered both with the Commodity Futures Trading Commission ("CFTC") as a futures commission merchant ("FCM") and with the SEC as a broker-dealer. According to the commenters, the Notice creates an ambiguity concerning the extent to which dual registrants are subject to the proposed suspicious transaction reporting rule. The Notice applies to transactions by, at, or through a broker-dealer, and while the terms of the Notice defining "transaction" do not specifically address a contract of sale of a commodity for future delivery or commodity option, the language of that definition, the commenters argued, makes it unclear whether the futures and options activities of dual registrants are covered. The commenters, citing section 356(b) of the USA Patriot Act,[14] recommended that FinCEN proceed with a separate rulemaking specifically for FCMs if it wishes to subject the futures and options activities of dual registrants to suspicious transaction reporting. In response to the comments, FinCEN wishes to clarify that the final rule does not apply to dual registrants to the extent of their activities subject to the exclusive jurisdiction of the CFTC. (The final rule does apply, however, to activities of dual registrants involving securities futures products, and to any other products over which the SEC or another federal agency also has jurisdiction, because such products are not subject to the CFTC's exclusive jurisdiction.)

5. Persons Selling Variable Annuities

As explained in the Notice, persons required to register as broker-dealers solely to permit the sale of variable annuities of life insurance companies will be required to report suspicious transactions. (*See* 66 FR 67672.) In 1972, Treasury granted such persons an exemption from the provisions of 31 CFR part 103 (*See* 37 FR 248986, 248988, November 23, 1972). This exemption will be withdrawn in a separate document published in the **Federal Register**. As a result, a person registered with the SEC as a broker-dealer solely to offer and sell variable annuity contracts issued by life insurance companies will be subject to the suspicious activity reporting rules of 31 CFR 103.19 and all other BSA requirements to the extent they offer and sell such contracts.

6. Broker-Dealers Outside the United States

The Notice relies on the definition of broker-dealer in existing 31 CFR 103.11(f)—any "broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934." As a result, one commenter requested that the final rule clarify that the new suspicious transaction rule does not apply to broker-dealers registered with the SEC but located outside the United States. The final rule makes the requested clarification.

7. Broker-Dealer Affiliates or Subsidiaries of Banks and Bank Holding Companies

As explained above, broker-dealers that are affiliates or subsidiaries of banks or bank holding companies are already required to report suspicious transactions under the Title 12 rules promulgated by the banking supervisory agencies. In order to ensure that broker-dealers are only subject to one suspicious transaction reporting requirement, FinCEN has requested that the federal banking supervisory agencies amend their regulations to exempt broker-dealers from having to report suspicious transactions under Title 12 rules.

One commenter asked that the final rule amend 31 CFR 103.18, which requires banks to report suspicious transactions, to make that rule inapplicable to broker-dealer affiliates of banks. This is unnecessary. The part 103 rules do not look to the status of a parent company in a bank holding company group for the purpose of determining what rules a company owned by the parent must apply. For example, the part 103 rules do not treat non-bank subsidiaries of bank holding companies as falling within the definition of bank for purposes of the part 103 regulations. Thus, a broker-dealer affiliate or subsidiary of a bank or bank holding company is subject to the suspicious transaction reporting rules in 31 CFR 103.19, rather than the rules applicable to depository institutions in 31 CFR 103.18.

V. Section-by-Section Analysis

A. 103.11(ii)—Transaction

The final rule amends the definition of "transaction" in the BSA regulations explicitly to include the term "security," itself defined in new paragraph 103.11(ww) as explained below. Some commenters argued that the definition of "transaction" should be changed to make it identical to the definition of "transaction" that appears in the suspicious transaction reporting rules promulgated by the federal banking supervisory agencies.[15] However, the definition of transaction contained in paragraph 103.11(ii) applies to all the requirements of, and entities subject to, the BSA regulations found in 31 CFR part 103, and FinCEN does not believe that it would be appropriate to make such a far-reaching change in order to reflect the definitional language in a different title that is administered by other agencies. As banks already must comply with the BSA obligations of 31 CFR part 103 pursuant to its definition of "transaction," there will be no discrepancy in the treatment of regulated entities by retaining this definition.

B. 103.11(ww)—Security

The final rule adds a definition of "security" to 31 CFR part 103 that includes any instrument or interest that falls within the definition of "security" in section (3)(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10). The addition of a definition of "security" to the BSA regulations, and the corresponding addition of this term to the definition of "transaction" contained in paragraph 103.11(ii), is necessary to ensure that the reporting requirement conforms to the definition of "broker or dealer in securities" contained in 31 CFR 103.11(f), so as to cover all activity that should be reported under the rule.

C. 103.19(a)—Reports by Broker-Dealers of Suspicious Transactions—General

Paragraph 103.19(a)(1) generally sets forth the requirement that broker-dealers located within the United States report suspicious transactions to the Department of the Treasury. The paragraph also permits, but does not require, a broker-dealer voluntarily to file a suspicious transaction report in situations in which mandatory reporting is not required. In light of the definition of "broker or dealer in securities" in 31 CFR 103.11(f), reporting would be required by any:

Broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

In response to a comment about the scope of this definition, FinCEN wishes to clarify that this definition covers brokers and dealers registered or required to be registered with the SEC, whether under section 15, 15B, or 15C(a)(1)(A) of the Securities and Exchange Act of 1934.[16]

Paragraph (a)(2) provides that a transaction requires reporting under the rule if it is conducted or attempted by, at, or through a broker-dealer, involves or aggregates at least $5,000 in funds or other assets (such as securities), and the broker-dealer knows, suspects, or has reason to suspect that the transaction falls within one of four categories of transactions. It should be noted that transactions require reporting under the final rule whether or not they involve currency.

1. Dollar Threshold for Reporting

The final rule continues to require reporting of suspicious transactions of at least $5,000. As the Notice explained, the rule is not intended to require broker-dealers mechanically to review every transaction that exceeds the reporting threshold. Rather, it is intended that broker-dealers, and indeed every type of financial institution to which the suspicious transaction reporting rules of 31 CFR part 103 apply, will evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular broker-dealer in light of such risks. In other words, it is expected that broker-dealers will follow a risk-based approach in monitoring for suspicious transactions, and will report all detected suspicious transactions that involve $5,000 or more in funds or other assets.

2. Reporting Standard

Paragraph (a)(2) requires reporting if a broker-dealer "knows, suspects, or has reason to suspect" that a transaction requires reporting under the rule. This reporting standard reflects a concept of due diligence in the reporting requirement. One commenter argued that the "has reason to suspect" language should be removed, and that the issue of due diligence should be addressed as a matter of assessing the adequacy of a broker-dealer's anti-money laundering compliance program. The final rule retains the "has reason to suspect" language. FinCEN believes that compliance with the rule cannot be adequately enforced without an objective standard. The reason-to-suspect standard means that, on the facts existing at the time, a reasonable broker-dealer in similar circumstances would have suspected the transaction was subject to SAR reporting. This is a flexible standard that adequately takes into account the differences in operating realities among various types of broker-dealers, and is the standard contained in the existing SAR rules for depository institutions and money services businesses. A regulator's review of the adequacy of a broker-dealer's anti-money laundering compliance program is not a substitute for, although it could be relevant to, an inquiry into the failure of a broker-dealer to report a particular suspicious transaction.

3. Scope of Reporting

Paragraph (a)(2) contains four categories of reportable transactions. The first category, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted to hide or disguise funds or assets derived from illegal activity. The second category, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third category, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose or are not the sort of transactions in which the particular customer would be expected to engage, and for which the broker-dealer knows of no reasonable explanation after examining the available facts. The fourth category, described in paragraph (a)(2)(iv), involves the use of the broker-dealer to facilitate criminal activity. As explained above, the fourth category of reportable transactions is intended to cover transactions intended to further a criminal purpose, but apparently involving legally-derived funds.

One commenter argued that the requirement to report transactions that are unusual for the particular customer should be removed, because it is overly burdensome to require a broker-dealer to report transactions that could not definitively be linked to wrongdoing. However, FinCEN believes that it is appropriate to include transactions that vary so substantially from normal practice that they legitimately can and should raise suspicions of possible

[13] The interim rule appears at 67 FR 9874 (March 4, 2002), and the Notice of Proposed Rulemaking appears at 67 FR 9879 (March 4, 2002).

[14] Section 356(b) provides that the Secretary, in consultation with the CFTC, may prescribe regulations requiring FCMs (and commodity trading advisors and commodity pool operators) registered under the Commodity Exchange Act to submit suspicious transaction reports under 31 U.S.C. 5361(g). Treasury is currently consulting with the CFTC about such regulations.

[15] *See, e.g.*, 12 CFR 208.62(c)(4), defining "transaction" for purposes of reporting potential money laundering, violations of the BSA, or transactions with no business or apparent lawful purpose, as "a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected."

[16] The preamble of the Notice provided specific citations to the definitions of "broker," "dealer," and "security" under the Securities and Exchange Act of 1934 for illustrative purposes only, and not to limit in any way the scope of the definition found at 31 CFR 103.11(f).

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illegality. For a discussion of this category as a "red flag," *see* NASD Notice to Members 02–21, NASD Provides Guidance to Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law (April 2, 2002), available on the NASD Web site, http://www.nasd.com.

Several commenters requested that FinCEN clarify that the rule does not require the reporting of suspected violations of state or foreign law. The final rule does not exclude the reporting of all violations of state law (rather, as explained below, certain state law crimes, such as burglary, have been specifically excepted from the reporting requirement). The final rule also does not explicitly carve out the reporting of suspected violations of foreign law. Particularly with respect to fraud and money laundering, it would be difficult for a broker-dealer to determine whether the suspected illegal activity involved in the transaction related to violations of state or foreign law. Moreover, violation of state law, or even foreign law, can be relevant to federal crimes, especially in money laundering cases brought under 18 U.S.C. 1956, 1957, or 1960, in which violations of state or foreign law may serve as a predicate for a federal offense.

4. Allocation of Responsibility for Reporting

As noted above, paragraph (a)(3) provides that the obligation to identify and report a suspicious transaction rests with each broker-dealer involved in the transaction, but only one SAR–BD is required to be filed, provided that the report includes all the relevant facts concerning the transaction. Guidance issued by the NASD addresses the need for introducing and clearing firms to make information available to one another for purposes of suspicious activity reporting.[17] In addition, it should be noted that the final rule does not require a broker-dealer to alter its relationship with its customers in a way that is inconsistent with industry practice. For example, commenters expressed concern that certain entities covered by the rule (*e.g.*, clearing brokers), which may not have the same level of knowledge with respect to their customers as other entities covered by the rule would normally be expected to have, would be expected to re-structure their relationships with customers in order to comply with the rule. FinCEN recognizes that, based on the nature of the services they provide to their customers, certain types of broker-dealers will have more information available to them in making such determinations than other types of broker-dealers.[18] The rule is intended to adjust to the different operating realities found in different types of financial institutions.

D. 103.19(b)—Filing Procedures

Paragraph (b) continues to set forth the filing procedures to be followed by broker-dealers making reports of suspicious transactions. Within 30 days after a broker-dealer becomes aware of a suspicious transaction, the broker-dealer must report the transaction by completing a SAR–BD and filing it in a central location, to be determined by FinCEN. Some commenters requested that broker-dealers be permitted to use the suspicious transaction reporting form currently used by banks, because many broker-dealers are already familiar with the form, having used it to file SARs either on a voluntary basis, or as required under the federal banking supervisory rules. However, FinCEN believes that a reporting form tailored to the broker-dealer industry will promote better reporting and result in a more useful collection of information.

If a broker-dealer is unable to identify a suspect on the date the suspicious transaction is initially detected, the rule provides the broker-dealer with an additional 30 calendar days to identify the suspect before filing a SAR–BD, but the suspicious transaction must be reported within 60 calendar days after the date of initial detection of the suspicious transaction, whether or not the broker-dealer is able to identify a suspect.

One commenter suggested that it is overly burdensome to require a broker-dealer, in situations involving violations requiring immediate attention, to notify by telephone both an appropriate law enforcement authority and the SEC. To accommodate this concern, the final rule requires a broker-dealer to immediately notify by telephone an appropriate law enforcement authority only in situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes. Broker-dealers may also, but are not required to, contact the SEC in such situations. In addition, the rule reminds broker-dealers of FinCEN's Financial Institutions Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Broker-dealers reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–BD to the extent required by the final rule.

E. 103.19(c)—Exceptions

Paragraph (c) contains exceptions from the reporting requirement. Paragraph (c)(1)(i) provides that a broker-dealer is not required to report under the final rule a robbery or burglary that the broker-dealer reports to an appropriate law enforcement authority, or lost, missing, counterfeit, or stolen securities that the broker-dealers reports in accordance with existing SEC rules. Paragraph (c)(1)(ii) permits the reporting of a violation of federal securities laws or rules of an SRO by a broker-dealer or any of its associated persons under existing industry procedures rather than through a SAR–BD. The exception does not apply, however, if the securities law or SRO rule violation is a violation of 17 CFR 240.17a–8 or 17 CFR 405.4. Such violations must be reported on a SAR–BD.

F. 103.19(d)—Retention of Records

Paragraph (d) continues to provide that broker-dealers must maintain copies of SAR–BDs they file and the original related documentation (or business record equivalent) for a period of five years from the date of filing. Supporting documentation is to be made available to FinCEN, appropriate law enforcement authorities or federal securities regulators, or an SRO registered with the SEC for purposes of examining the broker-dealer for compliance with this rule.

G. 103.19(e)—Confidentiality of Reports

Paragraph (e) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance with the final rule from disclosing, except to FinCEN, the SEC, or another appropriate law enforcement or regulatory agency, or an SRO registered with the SEC conducting an examination of the broker-dealer for compliance with the final rule, that a report has been filed or from providing any information that would disclose that a report has been prepared or filed. This paragraph does not prohibit an introducing broker and a clearing broker from discussing with each other, for purposes of paragraph (a)(3), suspicious activity involving a transaction with respect to which both broker-dealers have been involved, and the determination which broker-dealer will file the SAR in such a case. In addition, as noted above, section 314(b) of the USA Patriot Act permits financial institutions, upon providing notice to Treasury, to share information with one another solely for the purpose of identifying and reporting to the federal government activities that may involve money laundering or terrorist activity.

H. 103.19(f)—Limitation of Liability

Paragraph (f) continues to restate the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained in the statute as amended by the USA Patriot Act. The paragraph reflects amendments to the statutory safe harbor that were made under section 351 of the USA Patriot Act, including specific application of the safe harbor to voluntary reports of suspicious transactions, and availability of the safe harbor in the arbitration of securities industry disputes. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in reports, they are repeated in the rule to remind compliance officers and others of their existence.

I. 103.19(g)—Examination and Enforcement

Paragraph (g) continues to provide that compliance with the rule will be examined by FinCEN or its delegees,[19] and that a broker-dealer must provide copies of a filed SAR–BD to an SRO registered with the SEC that is examining a broker-dealer for compliance with the rule.

J. 103.19(h)—Effective Date

Paragraph (h) continues to provide a 180-day period before which compliance with the final rule will become mandatory. Broker-dealers required to comply with suspicious transaction reporting rules promulgated by the federal banking supervisory agencies should continue complying with such requirements until reporting under the terms of this final rule is required. Two commenters requested that FinCEN create a mechanism for broker-dealers to request an extension of the effective date of the final rule. Given the 180-day period before compliance with the requirement is required under the rule, FinCEN does not believe such a procedure is necessary.

VI. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VII. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. All broker-dealers, regardless of their size, are currently subject to the BSA. Procedures currently in place at broker-dealers to comply with existing BSA rules should help broker-dealers identity suspicious transactions. Finally, certain small broker-dealers may have an established and limited customer base whose transactions are well-known to the broker dealer.

VIII. Paperwork Reduction Act

The collection of information contained in this final regulation has been approved by the Office of Management and Budget ("OMB") in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0019. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.19(d). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is four hours per recordkeeper. Although the estimated average recordkeeping burden contained in the Notice was three hours, the burden has been revised in response to a comment arguing that the estimate should better reflect the amount of time involved in analyzing whether complex transactions require reporting under the rule. This burden relates to the recordkeeping requirement contained in the final rule. The reporting burden of 31 CFR 103.19 will be reflected in the burden of the form, SAR–BD.

FinCEN anticipates that the final rule will result in an annual filing of a total of 2,000 SAR–BD forms. This result is an estimate extrapolated from the number of suspicious activity reports currently being filed by the broker-dealer industry either on a mandatory basis under the bank supervisory agency rules or voluntarily. One commenter suggested that this estimate is too low. FinCEN will monitor the filing of Suspicious Activity Report—BD under the final rule in order to determine whether this number should be revised.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In § 103.11, paragraph (ii)(1) is revised and new paragraph (ww) is added to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by,

[17] See NASD Notice to Members 02–21.

[18] Customer identification and verification requirements will be dealt with in forthcoming rules to be issued under section 326 of the USA Patriot Act.

[19] See 31 CFR 103.56(b)(6) (delegating examination authority for broker-dealers to the SEC).

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through, or to a financial institution, by whatever means effected.

* * * * * *

(ww) *Security.* Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

3. In Subpart B, add new § 103.19 to read as follows:

§ 103.19 Reports by brokers or dealers in securities of suspicious transactions.

(a) *General.* (1) Every broker or dealer in securities within the United States (for purposes of this section, a "broker-dealer") shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization ("SRO") (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report—Brokers or Dealers in Securities ("SAR–BD"), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–BD shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–BD.

(3) *When to file.* A SAR–BD shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR–BD under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR–BD for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–BD. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–BD if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Exceptions.* (1) A broker-dealer is not required to file a SAR–BD to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f–1;

(ii) A violation otherwise required to be reported under this section of any of the federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a–8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE–3, Form U–4, or Form U–5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term "federal securities laws" means the "securities laws," as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) *Retention of records.* A broker-dealer shall maintain a copy of any SAR–BD filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–BD. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR–BD. A broker-dealer shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal or state securities regulators, and for purposes of paragraph (g) of this section, to an SRO registered with the Securities and Exchange Commission, upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR–BD or the information contained in a SAR–BD, except where such disclosure is requested by FinCEN, the Securities and Exchange Commission, or another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, an SRO registered with the Securities and Exchange Commission, shall decline to produce the SAR–BD or to provide any information that would disclose that a SAR–BD has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* A broker-dealer, and any director, officer, employee, or agent of such broker-dealer, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Reports filed under this section shall be made available to an SRO registered with the Securities and Exchange Commission examining a broker-dealer for compliance with the requirements of this section. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) *Effective date.* This section applies to transactions occurring after December 30, 2002.

Dated: June 25, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–16416 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 02–001]

RIN 2115–AA97

Security Zone; Liquefied Natural Gas Tankers, Cook Inlet, AK

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is establishing permanent security zones for Liquefied Natural Gas (LNG) tankers within the Western Alaska Marine Inspection Zone and Captain of the Port Zone. This rule establishes a 1000-yard radius security zone around the LNG tankers while they are moored at Phillips Petroleum LNG Pier and also while they are transiting inbound and outbound in the waters of Cook Inlet, AK between Phillips Petroleum LNG Pier and the Homer Pilot Station. This action is necessary to protect the LNG tankers, Nikiski marine terminals, the community of Nikiski and the maritime community against terrorism, sabotage or other subversive acts and incidents of a similar nature during loading operations and inbound and outbound transits of the LNG tankers. These security zones temporarily close all navigable waters within a 1000-yard radius of the tankers.

DATES: Effective July 6, 2002, except for § 165.1709 (b)(1)(ii) which contains information collection requirements that have not been approved by OMB. We will publish a document in the **Federal Register** announcing the effective date of this paragraph. Comments and related material must reach the Docket Management Facility on or before September 30, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before September 30, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP Western Alaska 02–001) and are available for inspection or copying at the Coast Guard Marine Safety Office at 510 L Street, Suite 100, Anchorage, AK 99501 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mark McManus, USCG Marine Safety Detachment Kenai, at (907) 283–3292 or Lieutenant Commander Chris Woodley, USCG Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 25, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone, Liquefied Natural Gas Tankers, Cook Inlet, AK" in the **Federal Register** (67 FR 20474). We received six letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Threats of terrorist attacks on the maritime infrastructure have heightened security concerns in United States ports. Due to the flammable nature of LNG tankers, it is important to develop this rulemaking and implement security measures without delay to prevent possible sabotage, subversive activity and terrorist attacks to the LNG tankers. The delay encountered, if normal rulemaking procedures were followed, would be contrary to the public interest. We must take immediate action to protect the LNG tankers, Port Nikiski, and persons and property in the maritime community from potential hazards. In addition, a commercial fisheries opening commences on July 8, 2002, in Cook Inlet and set netters fish in the waters underneath and surrounding the LNG pier. This rule must go into effect prior to this opening so that we may collect the necessary information from the fishermen to avoid disruption of their commercial business.

Background and Purpose

The Coast Guard is establishing permanent security zones to safeguard LNG tankers, Nikiski marine terminals, the community of Nikiski, and the maritime community from sabotage or subversive acts and incidents of a similar nature.

This rule establishes a 1000-yard radius security zone around LNG tankers while the vessels are moored at the Phillips Petroleum LNG Pier, Nikiski, AK. It also creates a 1000-yard radius moving security zone around the LNG tankers during their inbound and outbound transits in the navigable waters of the United States; specifically, starting and ending at the Homer Pilot Station in Cook Inlet, AK. The security zones are designed to permit the safe and timely mooring, loading and departure of the vessels and the safe transit through Cook Inlet by minimizing potential waterborne threats to this operation. The limited size of the zone is designed to minimize impact on other mariners transiting through the area while ensuring public safety by preventing interference with the safe and secure loading and transit of the tankers.

This rule also requires a collection of information from fishing vessel operators and owners that conduct fishing operations in the vicinity of the LNG pier. Fishing vessel operators and owners will be required to submit this information only one time, but are required to notify the Marine Safety Detachment Kenai, Alaska if any of the information changes.

Discussion of Comments and Changes

We received 6 letters containing 10 comments in response to our NPRM. The information in this section

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discusses the comments we received, provides the Coast Guard's response, and explains any changes we are making to the regulation.

One comment supported the establishment of a permanent security zone around LNG vessels.

Four comments requested that it be known for the record that the set net fishermen using the area around the Phillips Petroleum LNG pier, and other Nikiski marine terminals, started fishing in these waters and had fishermen's leases with the State of Alaska, before the aforementioned facilities were built.

Four comments stated that they did not expect the security zone, as it stands now, to interfere with their commercial fishing business.

One comment said it was unclear as to whether the security zone in § 165.1709(b)(ii)(C) includes both security zones. The stated section has been moved to § 165.1709(b)(ii)(D) and includes the security zone around the Phillips Petroleum LNG Pier. We have added wording to the new section to clarify this point.

We made two changes to the regulation as proposed in the NPRM. Because these changes were not subject to comment, we are issuing an interim rule with request for comments on these two changes.

We changed § 165.1709(b)(3), concerning broadcasting a Notice to Mariners informing vessel operators of the LNG tankers' exact arrivals and departures. Due to security reasons, the LNG tankers exact arrivals and departures will not be broadcast. Instead, we will issue a Local Notice to Mariners with general information and a bimonthly Broadcast Notice to Mariners to remind vessel operators of the security zones for the LNG tankers.

The second change we made was to § 165.1709(b)(1)(ii)(C). We moved the original sentence to § 165.1709(b)(1)(ii)(D) and added § 165.1709(b)(1)(ii)(E). We then added a new sentence to § 165.1709(b)(1)(ii)(C) to clarify how often and when we need to collect information from fishing vessel operators and owners before allowing them to fish in the security zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the waters of Cook Inlet and dock at other Nikiski marine terminals.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Phillips Petroleum LNG Pier during the time this zone is activated; and the owners or operators of fishing vessels operating their nets in the vicinity of the Phillips Petroleum LNG Pier during the months of July through August.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Marine traffic will still be able to transit through Cook Inlet during the zones' activation. Additionally, vessels with cargo to load or unload from other Nikiski marine terminals in the vicinity of the zone will not be precluded from mooring at or getting underway from the terminals. The owners of fishing vessels that typically fish in the vicinity of the LNG pier during the summer months will not be prohibited from operating if they notify and provide information to the Coast Guard Marine Safety Detachment in Kenai before fishing in the security zone. The Coast Guard will collect information from them that is essential to keeping the pier secure from sabotage or subversive activities.

Collection of Information

This rule modifies an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. We did not receive any comments on Collection of Information.

The Captain of the Port, Western Alaska requires information on fishing vessel owners and operators, and their vessels, desiring to fish in the security zone around the Phillips Petroleum LNG Pier. This information is required to ensure port and vessel safety and security and to ensure uninterrupted fishing industry openings and to control vessel traffic, develop contingency plans, and enforce regulations.

You are not required to respond to a collection of information unless it displays a currently valid control number from OMB.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.1709 to read as follows:

§ 165.1709 Security Zones: Liquefied Natural Gas Tanker Transits and Operations at Phillips Petroleum LNG Pier, Cook Inlet, AK.

(a) *Location.* The following areas are established as security zones during the specified conditions:

(1) All navigable waters within a 1000-yard radius of the Liquefied Natural Gas (LNG) tankers during their inbound and outbound transits through Cook Inlet, Alaska between the Phillips Petroleum LNG Pier, 60°40′43″N and 151°24′10″W, and the Homer Pilot Station at 59°34′86″N and 151°25′74″W. On the inbound transit, this security zone remains in effect until the tanker is alongside the Phillips Petroleum LNG Pier, 60°40′43″N and 151°24′10″W.

(2) All navigable waters within a 1000-yard radius of the Liquefied Natural Gas tankers while they are moored at Phillips Petroleum LNG Pier, 60°40′43″N and 151°24′10″W.

(b) *Special Regulations.* (1) For the purpose of this section, the general regulations contained in 33 CFR 165.33 apply to all but the following vessels in the areas described in paragraph (a):

(i) Vessels scheduled to moor and offload or load cargo at other Nikiski marine terminals that have provided the Coast Guard with an Advance Notice of Arrival.

(ii) Commercial fishing vessels, including drift net and set net vessels, fishing from the waters within the zone, if

(A) The owner of the vessel has previously requested approval from the Captain of the Port representative, Marine Safety Detachment Kenai, Alaska, to fish in the security zone and

(B) Has provided the Captain of the Port representative, Marine Safety Detachment Kenai, Alaska current information about the vessel, including:

(*1*) The name and/or the official number, if documented, or state number, if numbered by a state issuing authority;

(*2*) A brief description of the vessel, including length, color, and type of vessel;

(*3*) The name, Social Security number, current address, and telephone number of the vessel's master, operator or person in charge; and

(*4*) Upon request, information on the vessel's crew.

(C) A vessel owner or operator is required to submit the information one time, but shall provide the Captain of the Port representative updated information when any part of it changes.

(D) The Captain of the Port must approve a vessel's request prior to being allowed into the security zone at the Phillips Petroleum LNG Pier.

(E) The vessel is operated in compliance with any specific orders issued to the vessel by the Captain of the Port or other regulations controlling the operation of vessels within the security zone that may be in effect.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port representative or the designated on-scene patrol personnel. These personnel are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) The Marine Safety Detachment Kenai, Alaska will notify the maritime community of these security zones by publishing a Local Notice to Mariners and via a bimonthly marine Broadcast Notice to Mariners.

Dated: June 12, 2002.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 02–16394 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–041]

RIN 2115–AA97

Security Zone; Georgetown Channel, Potomac River, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone. This action is necessary to provide for safety and security of an anticipated 400,000 visitors during the annual July 4th celebration on the National Mall in Washington, DC. The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via the waterfront seawall, and safeguard spectators and participants.

DATES: This rule is effective from 6 a.m to 11 p.m. local time on July 4, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–041 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791,

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between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Charles A. Roskam II, Port Safety and Security, Coast Guard Activities Baltimore, telephone number (410) 576–2676.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This temporary security zone of short duration is necessary to provide for the security of the United States. The security zone will prevent access to unauthorized persons who may attempt to enter the secure area of this nationally significant event via the waterfront seawall, and safeguard the United States and United States' interests during this event. To delay the effective date would be impracticable and contrary to the public interest.

Background and Purpose

On July 4, 2002, an anticipated 400,000 visitors will attend the annual July 4th celebration on the National Mall in Washington, DC. This security zone is necessary to prevent access to unauthorized persons who may attempt to enter the secure area of this nationally significant event via the waterfront seawall, and to provide for the security of the spectators and participants.

Discussion of Rule

This rule, for security reasons, limits access to the regulated area to those vessels authorized to enter and operate within the security zone. The Captain of the Port or his designated representative may authorize access to the security zone. In addition, the Coast Guard will make notifications via maritime advisories.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

This temporary rule will be in effect for a limited duration. The Captain of the Port or his designated representative may authorize access to the security zone. In addition, the Coast Guard will make notifications via maritime advisories.

Small Entities

Under the regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to operate or anchor in the Georgetown Channel, Potomac River, from the George Mason Memorial Bridge upstream to the Arlington Memorial Bridge from 6 a.m. to 11 p.m. on July 4, 2002.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than twenty four hours. Although the security zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the Coast Guard Captain of the Port or his designated representative. Additionally, the Coast Guard will make notifications via marine advisories so that mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and preliminarily concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This is a security zone less than one week in duration. The environmental analysis and "Categorical Exclusion Determination" will be prepared and submitted after establishment of this temporary security zone. The Categorical Exclusion Determination will be made available in the docket for inspection and copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.TD05–02–041 to read as follows:

§ 165.TD05–02–041 Security zone; Georgetown Channel, Potomac River, Washington, DC.

(a) *Location.* The following area is a security zone: the waters of the Georgetown channel of the Potomac River, within an area 200 feet from the river's Washington, DC shore, from the George Mason Memorial Bridge upstream to the Arlington Memorial Bridge, including the waters of the Georgetown Channel Tidal Basin.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of Coast Guard Activities Baltimore, Baltimore, MD, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels requiring entry into or passage within the security zone must request authorization from the Captain of the Port or his designated representative by telephone at (410) 576–2693 or by radio on VHF–FM channel 16.

(3) The operator of any vessel within or in the immediate vicinity of this security zone shall:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or his designated representative, and

(ii) Proceed as directed by the Captain of the Port or his designated representative.

(d) *Effective period.* This section is effective from 6 a.m. to 11 p.m. local time on July 4, 2002.

Dated: June 19, 2002.

E.Q. Kahler,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 02–16524 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD062–3087a; FRL–7236–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Visible Emissions and Open Fire Amendments; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: This document corrects an error in the rule language of a final rule pertaining to EPA's approval of revisions to the Maryland State Implementation Plan (SIP). These revisions establish the exemption of certain intermittent visible emissions at Federal facilities, amend open burning distance limitations, and establish specific requirements for safety determinations at Federal facilities.

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168 or by e-mail at *harris.betty@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: On June 11, 2002 (67 FR 39856), EPA published a final rulemaking action announcing approval of the revisions Code of Maryland Administrative Regulations (COMAR) governing visible emissions and open burning. In this document, EPA inadvertently included a reference in section 52.1070(c)(173)(i)(B)(*1*) to a revised COMAR provision which is unrelated to the SIP revision action. This document corrects the erroneous language.

In rule document 02–14491 published in the **Federal Register** on June 11, 2002 (67 FR 39856), on page 39858 in the third column, paragraph 52.1070(c)(173)(i)(B)(*1*) is corrected to read "COMAR 26.11.06.02A(1)—introductory text of paragraph (1) [revised], and 26.11.06.02A(1)(j) [added]."

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment

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requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of August 12, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR 52.1070(c)(173)(i)(B)(*1*) for Maryland is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: June 14, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, EPA Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by revising paragraph (c)(173), added on June 11, 2002 (67 FR 39856) and effective on August 12, 2002, to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(173) Revisions to the Maryland State Implementation Plan submitted on February 6, 1998 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) A letter dated February 6, 1998 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, concerning exemption of certain intermittent visible emissions requirements at Federal facilities, establishment of specific requirements for safety determinations at Federal facilities, and amendment to open burning distance limitations under the "open fire" rule.

(B) The following additions and revisions to the Code of Maryland Administrative Regulations (COMAR), effective August 11, 1997:

(*1*) COMAR 26.11.06.02A(1)—introductory text of paragraph (1)[revised], and 26.11.06.02A(1)(j) [added].

(*2*) COMAR 26.11.07.01B(5) [added], 26.11.07.03B(1)(c) [revised], and 26.11.07.06 [added].

(ii) Additional Materials—Remainder of the February 6, 1998 submitted by the Maryland Department of the Environment pertaining to the amendments in paragraph (c)(173)(i) (B) of this section.

[FR Doc. 02–16035 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 243–0357a; FRL–7232–6]

Revisions to the California State Implementation Plan; Bay Area Air Quality Management District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the portions of the California State Implementation Plan (SIP) that are associated with the Bay Area Air Quality Management District (BAAQMD) and South Coast Air Quality Management District (SCAQMD). These revisions concern volatile organic compound emissions from solid waste disposal sites. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 30, 2002, without further notice, unless EPA receives adverse comments by July 31, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7799.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD	8–34	Solid Waste Disposal Sites	10/06/99	12/11/00
SCAQMD	1150.1	Control of Gaseous Emissions from Municipal Solid Waste Landfills.	03/17/00	07/26/00

On February 8, 2001, and October 4, 2000, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of BAAQMD Rule 8–34 into the California SIP on March 22, 1995. The BAAQMD adopted revisions to the SIP-approved version of Rule 8–34 on July 17, 1996, but this version was not submitted for the SIP.

SCAQMD adopted Rule 1150.1, "Control of Gaseous Emissions from Active Landfills," and Rule 1150.2, "Control of Gaseous Emissions from Inactive Landfills," on April 5, 1985 and October 18, 1985, respectively. On May 6, 1997, EPA published a limited approval/limited disapproval of these rules (62 FR 24574). As a result, sanctions clocks were started on July 7, 1997. On April 10, 1998, SCAQMD amended Rule 1150.1 to correct the deficiencies identified in EPA's limited disapproval action. SCAQMD also rescinded Rule 1150.2 and incorporated the requirements of Rule 1150.2 into amended Rule 1150.1, which was retitled: "Control of Gaseous Emissions from Municipal Solid Waste Landfills." On June 23, 1998 CARB submitted the amended Rule 1150.1, "Control of Gaseous Emissions from Municipal Solid Waste Landfills," to replace both Rule 1150.1 and Rule 1150.2. On January 6, 1999, EPA published a proposed approval of amended Rule 1150.1 (64 FR 818). EPA also published an interim final determination that the SCAQMD had corrected the deficiencies for which the sanctions clocks began on July 7, 1997 (64 FR 754). The interim final determination did not stop the sanctions clocks but did defer the imposition of sanctions. EPA never finalized the proposed approval because SCAQMD had begun working on another revision to the rule. SCAQMD amended Rule 1150.1 on March 17, 2000, and CARB submitted this version of the rule on July 26, 2000.

C. What Is the Purpose of the Submitted Rule Revisions?

These rules control landfill gas emissions, which include volatile organic compounds. Each rule has an associated Technical Support Document (TSD) that contains more information about the rule and EPA's evaluation.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The BAAQMD and SCAQMD regulate ozone nonattainment areas (*see* 40 CFR part 81), so BAAQMD Rule 8–34 and SCAQMD Rule 1150.1 must fulfill RACT.

Although there is no Control Technique Guideline document for the source category regulated by these rules, the following guidance and policy documents were used for reference to help evaluate specific enforceability and RACT requirements:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The New Source Performance Standards for Municipal Solid Waste Landfills, as found in 40 CFR part 60, Subpart WWW.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs contain more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule recommendations that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. This action will also stop the sanctions clocks that began on July 7, 1997, for SCAQMD Rules 1150.1 and 1150.2. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same

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submitted rules. If we receive adverse comments by July 31, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 30, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final the provisions of this rule that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

Volatile organic compounds (VOCs) help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 6, 2002.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(280)(i)(A)(*3*) and (c)(285)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(280) * * *

(i) * * *

(A) * * *

(*3*) Rule 1150.1, adopted on April 5, 1985 and amended on March 17, 2000.

* * * * *

(285) * * *

(i) * * *

(C) * * *

(*2*) Regulation 8, Rule 34, adopted on October 6, 1999.

* * * * *

[FR Doc. 02–16361 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0042; FRL–7238–5]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake County—Trading of Emission Budgets for PM_{10} Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of the State of Utah's revision to the Utah State Implementation Plan (SIP) that was submitted by the Governor on May 13, 2002. This SIP revision allows trading from the motor vehicle emissions budget for primary Particulate Matter of 10 microns or less in diameter (PM_{10}) to the motor vehicle emissions budget for Nitrogen Oxides (NO_X) which is a PM_{10} precursor. EPA's approval of this SIP revision allows Salt Lake County to increase their NO_X budget in the Salt Lake County PM_{10} SIP by decreasing their PM_{10} budget in the Salt Lake County PM_{10} SIP by an equivalent amount, and use these adjusted motor vehicle emissions budgets for NO_X and PM_{10} to demonstrate transportation conformity with the Salt Lake County PM_{10} SIP. Trading between emissions budgets for transportation conformity is allowable as long as a trading mechanism is approved into the SIP.

On May 1, 2002, EPA published a notice of proposed rulemaking (NPR) that used EPA's parallel processing procedure to propose approval of this SIP revision (67 FR 21607). EPA's NPR was in response to a letter of March 15, 2002, in which the Governor asked that EPA parallel process a proposed revision to the Salt Lake County PM_{10} SIP consisting of a new rule, R307–310 "Salt Lake County: Trading of Emission Budgets for Transportation Conformity." On May 13, 2002, the Governor submitted the final version of R307–310 for EPA's approval.

EPA's 30-day comment period concluded on May 31, 2002. During this comment period, EPA received one comment letter in response to the May 1, 2002, NPR.

In this final rule action, EPA summarizes all comments and EPA's responses, and approves the Governor's May 13, 2002, final SIP revision, involving Utah's new rule R307–310.

EFFECTIVE DATE: July 31, 2002.

ADDRESSES: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the State documents relevant to this action are available for public inspection at: Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

I. What Is the Purpose of This Action?

In this final rulemaking action, we are addressing comments received regarding our NPR and we are approving R307–310 as a revision to the Utah SIP.

With the publication of our NPR on May 1, 2002, (67 FR 21607), we utilized our parallel processing procedure [1] that allows EPA to propose rulemaking on a SIP revision, and solicit public comment, at the same time the State is processing the SIP revision.

The Utah Air Quality Board (UAQB) proposed the SIP revision for a 30-day State public comment period that began on April 1, 2002, and ended on April 30, 2002. The State conducted a public hearing on April 22, 2002. Final action and approval was taken by the UAQB on May 13, 2002. Rule R307–310 became State-effective on May 13, 2002.

On May 13, 2002, the Governor submitted the final version of rule R307–310 to us for approval into the Utah SIP.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This public process must occur prior to the State submitting its final revisions to us.

At the March 13, 2002, UAQB meeting, the UAQB proposed for public comment the new rule R307–310. The Utah Air Quality Board (UAQB) proposed the SIP revision for a 30-day State public comment period that began on April 1, 2002, and ended on April 30, 2002. The State conducted a public hearing on April 22, 2002. Final action and approval was taken by the UAQB on May 13, 2002. Rule R307–310 became State-effective on May 13, 2002.

On May 13, 2002, the Governor submitted the final rule R307–310 to us for approval into the Utah SIP. In a letter dated June 6, 2002, from Robert E.

[1] For further information regarding parallel processing, please see Title 40 of the Code Of Federal Regulations, part 51, appendix V, section 2.3.1.

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Roberts, EPA Regional Administrator for Region VIII, to Governor Leavitt of Utah, we determined that the Governor's May 13, 2002, SIP submittal met the completeness criteria in 40 CFR part 51, Appendix V, and therefore the submittal was considered administratively and technically complete.

III. Supplementary Information

The Governor's May 13, 2002, final submittal of rule R307–310 and technical justification did not change from the proposed version on which we based our May 1, 2002, NPR. Therefore, our review and discussion of Utah's rule R307–310 and accompanying technical justification will not be restated here. The reader is referred to our May 1, 2002, NPR (see 67 FR 21607) for any further information.

IV. Public Comments and EPA's Responses

In response to our May 1, 2002, NPR (67 FR 21607), we received a comment letter from the Utah Chapter of the Sierra Club. The following discussion summarizes and responds to those comments.

Comment 1: The Sierra Club states there is a need to reduce $PM_{2.5}$ in Salt Lake County. The Sierra Club states that based on Utah air monitoring data, the area exceeded the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) seven times in 2001 and to date, twice in 2002. The Sierra Club asserts that reducing $PM_{2.5}$ and its precursors in Salt Lake County must be taken seriously in order to prevent a violation of the $PM_{2.5}$ NAAQS. Sierra Club further states the area is in danger of violating the current $PM_{2.5}$ NAAQS, which itself could be strengthened after the current review process.

Response to Comment 1: EPA is aware of the $PM_{2.5}$ NAAQS exceedances that have been recorded in Salt Lake County. However, we also note the current levels of emissions have not caused the area to violate the $PM_{2.5}$ NAAQS. In addition, many areas across the nation are like Salt Lake County in that data is still being gathered for future $PM_{2.5}$ NAAQS designations. To date, EPA has not designated areas attainment or nonattainment for the $PM_{2.5}$ NAAQS under section 107 of the Clean Air Act (CAA) and we have also not established an implementation policy for the $PM_{2.5}$ NAAQS. EPA is currently in the process of developing a $PM_{2.5}$ implementation policy. Finally, the PM standards, as correctly noted by Sierra Club, are currently undergoing review by EPA. A target for completion for this review is 2004. At this point in time, prior to the designation of areas for $PM_{2.5}$, no obligations to submit SIPs requiring emission reductions or controls for $PM_{2.5}$ apply to the State or the Salt Lake County area. Consequently, we are not in a position to disapprove this trading mechanism based on potential impacts on $PM_{2.5}$.

Comment 2: The Sierra Club states that the CAA section 176(c)(1)(B) specifies that conformity to an implementation plan means that such activities will not (I) "cause or contribute to any new violation of any standard in any area". Sierra Club asserts it is clear from this section that transportation plans must not cause or contribute to a violation of $PM_{2.5}$ NAAQS, as well as NAAQS for PM_{10}, ozone (eight hour as well as 1 hour), carbon monoxide and other pollutants for which there is a standard.

Response to Comment 2: We disagree with the conclusions that Sierra Club has expressed regarding the intentions of section 176 of the CAA. Section 176(c)(5) of the CAA as well as Title 40 of the Code of Federal Regulations (CFR) 93.102(b) specifically state that conformity only applies to nonattainment and maintenance areas, and only to the specific pollutant for which the area was designated nonattainment. Conformity does not apply with respect to either the new $PM_{2.5}$ or the new 8-hour ozone standard until one year after an area is designated as nonattainment for one of those standards, according to Clean Air Act Section 176(c)(6). As EPA has not yet designated any areas nonattainment for either the $PM_{2.5}$ NAAQS or the 8-hour ozone NAAQS, conformity determinations for the $PM_{2.5}$ and the 8-hour ozone standards are currently not required. Furthermore, section 176 of the CAA contains no requirement that we consider the $PM_{2.5}$ and the 8-hour ozone standards in deciding whether to approve this SIP revision.

Comment 3: Sierra Club stated the following: "All NO_X that becomes PM_{10} is $PM_{2.5}$, whereas not all direct PM_{10} is $PM_{2.5}$. The proposed rule should, but does not, make this distinction. The proposed rule does not compare the portion of direct PM_{10} that is $PM_{2.5}$ with the portion of NO_X that becomes $PM_{2.5}$ when asserting that there is a benefit in moving part of the direct PM_{10} budget to the NO_X budget in the PM_{10} SIP. There is a difference in health effects between breathing $PM_{2.5}$ nitrates and breathing coarse PM_{10} road dust."

Response to Comment 3: As we noted in our response to comment 1 above, EPA has not designated areas attainment or nonattainment for the $PM_{2.5}$ NAAQS under section 107 of the CAA and we have not established an implementation policy for the $PM_{2.5}$ NAAQS. If Salt Lake County is ultimately designated nonattainment for $PM_{2.5}$, the State will then need to submit a SIP revision to address $PM_{2.5}$ pursuant to applicable deadlines. At that time, the State may need to reevaluate the budget trading rule, R307–310, in relation to a $PM_{2.5}$ attainment demonstration. At this time, we are not in a position to require a rigorous analysis of impacts on $PM_{2.5}$ attainment.

However, we have reviewed the ambient air quality data for $PM_{2.5}$ for Salt Lake County that has been archived by the State in our Aerometric Information and Retrieval System (AIRS) national database. Based on the information in AIRS, we have determined that were we to do designations at this point in time, Salt Lake County would be attainment for $PM_{2.5}$. Further, using the maximum concentration monitor for Salt Lake County, the preliminary design value for $PM_{2.5}$ would be 55 micro grams per cubic meter (ug/m^3) and would correlate to only 85% of the $PM_{2.5}$ 24-hour standard of 65 ug/m^3. Therefore, we do not believe that our approval of R307–310, which does not involve trading of PM_{10} or NO_X emissions from any source category other than motor vehicles, will lead to a violation of the $PM_{2.5}$ NAAQS. We also note that motor vehicle NO_X emissions will decline significantly starting in 2004 based on new Federal tailpipe emission standards for vehicles and the local controls (Inspection and Maintenance along with On-Board Diagnostics) as are described further in our response to comment 5 below.

An additional point we would like to make is that not all NO_X forms particles. Of the NO_X that does form particles, initially it may be all PM fines, but over time particles may aggregate to form larger particles. We noted this aspect in our NPR at 67 FR 21609: "After this initial conversion, only a fraction of the gaseous nitric acid will condense as ammonium nitrate PM_{10} depending on the equilibrium considerations. Finally, during the gas-to-particle conversion process, deposition will remove a significant amount of material."

Comment 4: Sierra Club states: "There is a discussion of general NO_X conversion rates to nitric acid and PM_{10} in columns 1 and 2 on p. 21609. Does this general formula relate to NO_X conversion rates during the type of inversions we have during the winter in Salt Lake County? Our high levels of ambient $PM_{2.5}$ occur during these inversions. There is also the statement that "Another concern is that the rate of conversion to PM_{10} may be so long that the precursor may not entirely convert to PM_{10} within the same nonattainment area." Is this statement true of what happens to NO_X conversion to PM_{10} in our inversions? To what extent is it possible for the conversion to occur outside the area of the inversion?"

Response to Comment 4: With respect to the questions regarding conversion rates, we have discussed this with the State. Based on the State's use of our air dispersion model, UAM–AERO, to perform preliminary modeling efforts, we believe that the general formula stated in our NPR would apply to the Salt Lake County area. The general statement in our NPR regarding length of time for conversion may also be applicable to the Salt Lake County area, but we can not specifically quantify the extent to which conversion would occur outside the area of an inversion in the Salt Lake area.

Comment 5: Sierra Club stated there was a lack of consideration of alternatives to reduce NO_X emissions; "The proposed rule appears to be an example of the emphasis of many MPO's, state and some federal agencies on moving numbers around to show conformity of transportation plans with the SIPs, rather than expending effort on developing effective measures to reduce Vehicle Miles Traveled (VMT) and mobile source emissions. This is a major concern for us. To us, the excessive NO_X emissions show that we must seek alternatives that would reduce mobile NO_X."

Response to Comment 5.: We are not required to consider alternatives to reduce NO_X emissions. Our obligation under the CAA is to evaluate submitted SIP revisions against the requirements of the CAA; if a submission meets the CAA's requirements, we are required to approve it, even if there might be other alternatives that would reduce emissions more. As we have noted in our NPR, the transportation conformity rule at 40 CFR 93.124(c) allows for trading between budgets if the SIP established a mechanism for doing so. We have evaluated Utah's trading rule and have concluded it will not cause violations of the NAAQS. This SIP revision meets the requirements of the CAA and we are approving it.

Furthermore, we believe NO_X emissions will continue to decrease in Salt Lake County over time. First, on February 10, 2000, EPA published a final rule in the **Federal Register** (see 65 FR 6698) that set specific Tier II on-road motor vehicle emission specifications for new-manufactured vehicles. Starting in 2004, new vehicles will have to meet more stringent tailpipe emission standards including a standard for NO_X. As these new vehicles enter the fleets of metropolitan areas, such as Salt Lake County, significant reductions in NO_X emissions will be realized. Additional NO_X reductions were realized beginning in 2001 from our National Low Emitting Vehicle (NLEV) agreement with automakers and our Heavy Duty Diesel (HDD) emission requirements (see 65 FR 59895). Second, Salt Lake County continues to operate a motor vehicle emissions inspection and maintenance (I/M) program which identifies vehicles that do not pass required emission specifications and must be repaired. This I/M program includes emission specifications for NO_X. In addition to the County's existing I/M program, the State has also required all four Wasatch Front Counties (Weber, Davis, Salt Lake, and Utah) to implement EPA's On-Board Diagnostics II (OBD II) program. OBD II uses information from the vehicle's on-board computer system to determine if there are faults in the emissions control systems, detect an engine malfunction or deterioration, and provide information that allows for early diagnosis of emission control equipment malfunction. The Governor submitted the State's OBD II rule to EPA for approval into the SIP. We have published a notice proposing to approve the State's OBD II rule (see 67 FR 9425, March 1, 2002) and are currently preparing a final rule for the approval of the OBD II program.

The WFRC's conformity determination for the Long Range Transportation Plan (LRTP), that was approved on January 11, 2002, by the Federal Highway Administration (FHWA), reflects the benefits of the above programs in the projected future year emissions from motor vehicles. WFRC's conformity determination shows that starting with 2012, there would be no need to trade from the PM_{10} emission budget to the NO_X emission budget to show conformity, as the projected 2012 NO_X emissions of 31.56 tons per day would be below the PM_{10} SIP's NO_X budget of 32.30 tons per day. Information from the WFRC's conformity determination, that was approved by the FHWA, is provided below:

Budgets for 2002 (derived from the PM_{10} SIP): NO_X = 38.84 tons per day (tpd), PM_{10} = 39.91 tons per day.

Budgets for 2003 and beyond (derived from the PM_{10} SIP): NO_X = 32.30 tpd, PM_{10} = 40.30 tpd.

Excerpts from the WFRC's LRTP Table 10 are as follows:

Year	Projected NO_X (tpd)	Projected Particulates (tpd)
2002	54.21	18.19
2003	52.99	18.36
2006	43.70	19.53
2012	31.56	22.37
2022	24.30	26.21
2030	28.83	29.71

Comment 6: Sierra Club stated they believe the rule should not have been exempted from review under Executive Order 13045 *Protection of Children from Environmental Health Risks and Safety Risks* (They reference Executive Order 13040). "Complying with the Executive Order would mean that there would have to be an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The Agency did not consider other alternatives. We wish to point out that children are especially susceptible to the dangers of PM2.5 pollution. Children in Salt Lake County were subjected to 24 days of PM2.5 pollution above the 40.5 ug/m3 level at which EPA requires health alerts to be issued to the susceptible population. Those 24 days were within a 62 day time period from December 18, 2001 through February 17, 2002."

Response to Comment 6: We are not permitted to consider health and safety risks or require or engage in an alternatives analysis in acting on SIPs. Under the CAA, we must approve SIPs if they meet the requirements of the CAA. The State's SIP revision meets the CAA's requirements, and thus, we are required to approve it, even though there might be other alternatives the State could have adopted that would have resulted in less risk to children. Furthermore, the Executive Order applies only to rules that are considered economically significant under Executive Order 12866 which this rule is not. Consequently, Executive Order 13045 does not apply to this action.

Comment 7: Sierra Club stated: "It is very important for EPA to be able to perform evaluation analyses of unintended effects of the proposed trading rule at any time deemed appropriate and to be able to issue a SIP call to remedy the adverse effects if the State does not pursue remedy."

Response to Comment 7: We agree with the Sierra Club that, as this is the first use of the provisions of 40 CFR 93.124(c), the State and EPA must be alert to unintended adverse impacts. In addition, we wish to reiterate that if we determine there are adverse air quality effects associated with the implementation of the new rule, R307–310, or if we determine that the State

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has failed to make the necessary SIP revisions to remedy identified adverse effects, EPA may exercise our authority to issue a SIP call consistent with the provisions of section 110(k)(5) of the Clean Air Act (CAA) as amended in 1990.

V. Final Action

In this action, we are approving the Governor's May 13, 2002, submittal of a revision to the Utah State Implementation Plan—namely, new rule R307–310—that would allow the trading of a portion of the PM_{10} motor vehicle emissions budget to the NO_X motor vehicle emissions budget in the Salt Lake County PM_{10} SIP. This trading mechanism will allow a portion of the PM_{10} motor vehicle emissions budget to be applied instead to the NO_X motor vehicle emissions budget on a 1:1 ratio, thus increasing the NO_X motor vehicle emissions budget and decreasing the PM10 motor vehicle emissions budget in the Salt Lake County PM10 SIP by an equivalent amount. These adjusted budgets would then be used for transportation conformity purposes. This final action will become effective on July 31, 2002.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

(b) Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant and EPA does not have the discretion to engage in a risk assessment or alternatives analysis in acting on SIP revisions.

(c) Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(d) Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

(e) Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

(f) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the SIP final approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Therefore, because the final rule does not create any new requirements, I certify that the final rule will not have a significant economic impact on a substantial number of small entities.

(g) Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

(h) Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 31, 2002.

(i) National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

(j) Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the Clean Air Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 20, 2002.

Jack McGraw,

Acting Regional Administrator, Region VIII.

Title 40, chapter I, part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(51) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(51) On May 13, 2002, the Governor of Utah submitted a revision to Utah's SIP involving a new rule R307-310 "Salt Lake County: Trading of Emission Budgets for Transportation Conformity." R307–310 allows trading from the motor vehicle emissions budget for primary Particulate Matter of 10 microns or less in diameter (PM_{10}) in the Salt Lake County PM_{10} SIP to the motor vehicle emissions budget for Nitrogen Oxides (NO_X) in the Salt Lake County PM_{10} SIP. This trading mechanism allows Salt Lake County to increase their NO_X budget in the Salt Lake County PM_{10} SIP by decreasing their PM_{10} budget by an equivalent amount. These adjusted budgets in the Salt Lake County PM_{10} SIP would then be used for transportation conformity purposes.

(i) Incorporation by reference.

(A) Rule R307–310 "Salt Lake County: Trading of Emission Budgets for Transportation Conformity", as adopted on May 13, 2002, by the Utah Air Quality Board, and State effective on May 13, 2002.

[FR Doc. 02–16458 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7239–7]

Idaho: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Idaho applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reached a final determination that these changes to the Idaho hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization. Thus, with respect to these revisions, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: Final authorization for the revisions to the hazardous waste program in Idaho shall be effective at 1 p.m. on July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, WCM–122, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, Washington, 98101, phone (206) 553–0256.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA Section 3009, States are not allowed to impose any requirements which are less stringent

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than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Idaho initially received final authorization on March 26, 1990, effective April 9, 1990 (55 FR 11015), to implement the State's hazardous waste management program. EPA also granted authorization for changes to Idaho's program on April 6, 1992, effective June 5, 1992 (57 FR 11580), June 11, 1992, effective August 10, 1992 (57 FR 24757), April 12, 1995, effective June 11, 1995 (60 FR 18549), and October 21, 1998, effective January 19, 1999 (63 FR 56086).

On May 1, 2001, Idaho submitted a final program revision application to EPA in accordance with 40 CFR 271.21 seeking authorization of changes to the State program. On August 22, 2001, EPA published proposed and immediate final rules announcing its intent to grant Idaho final authorization for revisions to Idaho's hazardous waste program. The proposed rule can be found at 66 FR 44107, August 22, 2001. The immediate final rule appears at 66 FR 44071, August 22, 2001.

B. What Were the Comments to EPA's Proposed and Immediate Final Rule?

Along with its intent to immediately authorize revisions to the Idaho hazardous waste management program, EPA announced the availability of the authorization revision application and rulemaking for public comment. EPA received one adverse comment during the comment period in the form of a "Petition to the United States Environmental Protection Agency to Commence Proceedings for Withdrawal of the Idaho Department of Environmental Quality (IDEQ) as the RCRA Authority for the State of Idaho" (Petition) challenging the administration and enforcement of the hazardous waste program by the State of Idaho and seeking withdrawal of authorization. EPA withdrew its Immediate Final Rule on October 5, 2001, 66 FR 50833, in order to respond to the adverse comment. EPA's proposed rule, 66 FR 44107, was not withdrawn and was retained for later consideration. EPA has taken into consideration comments in the Petition relating to the Idaho hazardous waste management program in taking today's action. The significant issues raised by the Commentors for purposes of this revision authorization and EPA's responses follow below.

Today's action is not a determination on the merits of the Petition to withdraw federal authorization for environmental programs in Idaho. In response to the Petition, EPA initiated an informal investigation of the authorized hazardous waste program in Idaho. Based on the results of that investigation, on March 7, 2002, the Regional Administrator for Region 10 found no basis to commence withdrawal proceedings and denied the Petition. That response is included in the administrative record for this rulemaking. The Petition raised many issues not relevant to the revision authorization. EPA considered those issues fully in its response to the Petition.

This rulemaking considers and responds to the comments relevant to the revision authorization. Commentors raised issues in the following areas: (1) IDEQ's compliance with the permitting requirements for authorized hazardous waste programs; (2) IDEQ's enforcement of the authorized hazardous waste program; (3) IDEQ's compliance with the Memorandum of Agreement (MOA) for the authorized hazardous waste program; and (4) IDEQ's funding and staffing of the authorized program.

Comment area #1: EPA received comment relating to IDEQ's implementation of RCRA permitting. The comments generally asserted that the IDEQ was not issuing permits as required but was allowing facilities to operate under interim status without permits, and was for those permits issued, not issuing permits which conformed to the requirements of 40 CFR part 271. Commentors specifically focused on permitting issues involving the Idaho National Environmental and Engineering Laboratory ("INEEL") facility, a mixed (radioactive and hazardous) waste facility in Idaho. Commentors claimed that IDEQ had not issued permits to units at INEEL and had allowed units to illegally operate without permits. Commentors also claimed that permits issued by IDEQ to the INEEL facility were incomplete and failed to provide for full public participation.

Response: To meet EPA approval standards for authorization, State programs must include requirements for permitting. See 40 CFR 271.1(c). States with authorized hazardous waste programs under 40 CFR part 271 must have legal authority to implement permitting provisions as set forth in 40 CFR 271.13 "Requirements with respect to permits and permit applications." 40 CFR 270.13(a) provides: "State law must require permits for owners and operators of all hazardous waste management facilities required to obtain a permit under 40 CFR part 270 and prohibit the operation of any hazardous waste management facility without such a permit, except that States may, if adequate legal authority exists, authorize owners and operators of any facility which would qualify for interim status under the Federal program to remain in operation until a final decision is made on the permit application, * * * ." Idaho's legal authorities are reviewed with each revision to the authorized program and were reviewed prior to EPA's issuance of the August 22, 2001 immediate final rule. EPA's review of Idaho legal authorities did not disclose any lack of authority in Idaho law to require hazardous waste management facilities to obtain a permit or to operate as an interim status facility.

40 CFR 271.14, "Requirements for permitting," mandates that: "All State programs under this subpart must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements * * * ." The regulation then specifies that 40 CFR 270.1(c)(1), 270.4, 270.5, 270.10 through 33; 270.40, 270.41, 270.43, 270.50, 270.60, 270.61, 270.64 are mandatory. Idaho incorporates the federal regulations by reference and as a consequence of that incorporation, each of these requisite provisions is included in Idaho's hazardous waste regulations. Idaho's authority to compel permitting is established. EPA next turns to Idaho's implementation of that authority.

Idaho's authorized hazardous waste program contains a small universe of facilities subject to the requirement to obtain a final RCRA permit and of this universe the INEEL facility represents the largest and most complex facility subject to RCRA permitting requirements in the State. EPA's database shows that all facilities subject to the hazardous waste permitting requirements of the authorized program in Idaho have been issued final RCRA permits with the exception of the INEEL facility, which has been partially permitted. The federal program allows a facility to receive a partial permit. 40 CFR 270.1(c)(4) provides: "EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility." Idaho's hazardous waste program, which incorporated the federal regulation at 40 CFR 270.1(c)(4) by reference, has been authorized to allow partial permitting, replacing "EPA may issue" with "IDEQ may issue." See IDAPA 16.01.05.012.

The Commentors maintain permitting less than all units at a facility results in an incomplete permit and is consequently non-compliant with the requirement to obtain a RCRA permit for the facility. The regulations clearly allow for the use of partial permitting and such use is in compliance with the RCRA permitting requirements. At a complex federal facility, such as INEEL with 137 hazardous waste management units, partial permitting is an appropriate and compliant approach to permitting the facility. Those units which have not yet been permitted are required to comply with the interim status standards until permitted, thus there is no regulatory gap in managing hazardous wastes at a facility where partial permits have been issued.

The Commentors also generally asserted that the IDEQ did not allow full public participation in permit decision making. Those requirements are found at 40 CFR part 124. Idaho incorporated 40 CFR part 124 subparts A and B by reference and is authorized for those regulations. Public participation requirements are applicable at the time of permitting and are applicable to partial permits. Commentors will have an opportunity to comment on units not addressed in a partial permit when those units are themselves permitted.

EPA does not agree that IDEQ failed to comply with the Expanded Public Participation Rule for certain permitting activities at the INEEL facility. The permitting activities occurred before the State of Idaho enacted the rule as part of its hazardous waste program. Idaho enacted the Expanded Public Participation Rule on July 2, 1997; the Idaho hazardous waste program was authorized for the rule on October 21, 1998. Prior to the 1997 enactment, the rule was not a requirement of the hazardous waste program in Idaho and the State could not require compliance with the federal rule. The rule is applicable to permit applications in Idaho currently and must be complied with. Information provided by Commentors on related matters shows that Commentors have availed themselves of the opportunity to comment on permits issued by the IDEQ as allowed under the Expanded Public Participation Rule.

Comment area #2: EPA received comment relating to the IDEQ's enforcement of the authorized hazardous waste program. The Commentors generally asserted that the IDEQ failed to act on violations of permits or program requirements, failed to seek adequate penalties, failed to inspect and monitor hazardous waste activities and failed to initiate closure for non-complaint facilities. The Commentors enforcement concerns focused on enforcement at the INEEL facility.

Response: IDEQ provided EPA with a statistical summary of enforcement actions taken by IDEQ since 1990 at INEEL. IDEQ issued INEEL Notices of Violation at least eight times and assessed cash penalties of $906,031.89 and Supplemental Environmental Projects valued at $342,606.00. EPA, in two separate program reviews, did not find IDEQ's enforcement of its hazardous waste program at INEEL to be problematic and has not found the State's enforcement of the authorized hazardous waste program at INEEL to be inadequate. The Commentors contention that IDEQ failed to close non-compliant facilities is inaccurate and is based on the Commentors' belief that a full permit for all units is required for a facility to be compliant with RCRA. As has been discussed, partial permitting of certain units, while allowing others to remain subject to the interim status standards, does not result in non-compliance for those units not addressed by the partial permit.

Comment area #3: The Commentors asserted that IDEQ was not in compliance with the MOA, a required element of the authorized hazardous waste program.

Response: States are required, for purposes of administering an authorized hazardous waste program, to execute an MOA with EPA. See 40 CFR 271.8. The MOA includes, among others, mandatory provisions to coordinate enforcement and inspection efforts between the state and EPA, including the sharing of information on facilities and permits. The Commentors did not point to any specific area of the MOA where IDEQ was out of compliance with the agreement but discussed concerns with IDEQ's permitting activities at the INEEL facility.

EPA has not found any failure on the part of IDEQ to comply with the currently authorized MOA. Nor, as discussed above, does EPA have cause to find that IDEQ failed to implement the authorized program at the INEEL facility. Although Commentors may disagree with the issuance of partial permits at INEEL, partial permitting is allowed under the federal regulations and is an authorized part of the Idaho hazardous waste program and is not inconsistent with the MOA.

EPA notes that IDEQ submitted a revised MOA as a part of the application package for this rulemaking. The revised MOA will become part of the authorized program as a result of this final rule.

Comment area #4: The Commentors expressed concern over IDEQ's funding and staffing levels and generally asserted that the IDEQ was underfunded and understaffed to carry out an authorized hazardous waste program.

Response: In response to this concern, EPA looked at OSWER Directive 9540.00–10 "Capability Assessment Guidance," January 30, 1992 for "Resources and Skills Mix" used in assessing overall state capability. The guidance specifies that EPA look at the demonstrated ability of the State to bring sufficient and appropriate resources to the program, regardless of short-term staffing shortages, unpredictable legislative activities regarding appropriations for the state program, and regardless of competing demands for resources available for program priorities. OSWER Directive 9540.00–10. Unacceptable capability would be identified where, for example, a State was significantly understaffed, had a high turnover rate of staff resulting in poor work product and had not made an effort to correct the situation. EPA's review of IDEQ's program description and attachments, which were submitted as part of the authorization package for this revision to the authorized hazardous waste program, did not find the program to be understaffed or to be experiencing a high turnover rate of staff. Rather, the full time equivalent (FTE) personnel devoted to the IDEQ hazardous waste management program adequately meet the staffing component of skills and personnel necessary for an authorized hazardous waste program.

With respect to funding resources available, EPA reviewed funding guidance issued by the Office of Solid Waste (OSW) in 1996. This guidance was issued in the context of providing federal grant money to the states pursuant to Section 3011 of RCRA. The guidance established a minimum funding requirement of $466,666 for maintaining hazardous waste programs in small states , such as Idaho, and with small universes of hazardous waste activities. Idaho's authorization application package for this rulemaking included information indicating that Idaho's contribution to the minimum

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funding requirement was $943,900, well above the minimum level set by EPA's own guidance.

C. What Decisions Have We Made in this Rule?

EPA has made a final determination that Idaho's application for authorization of the revisions to the Idaho authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, with respect to the revisions, we are granting Idaho final authorization to operate its hazardous waste program as described in the revision authorization application. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). Idaho's authorized program does not extend to Indian country. EPA retains jurisdiction and authority to implement and enforce RCRA in Indian country within the State boundaries.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implemented by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirement and prohibitions in Idaho, including issuing permits or portions of permits, until the State is granted authorization to do so.

D. What Will Be the Effect of Today's Action?

The effect of today's action is that a facility in Idaho subject to RCRA must comply with the authorized State program requirements and with any applicable Federally-issued requirement, such as, for example, the federal HSWA provisions for which the State is not authorized, and RCRA requirements that are not supplanted by authorized State-issued requirements, in order to comply with RCRA. Idaho has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

—Do inspections, and require monitoring, tests, analyses or reports;
—Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations, and suspend or revoke permits; and
—Take enforcement actions regardless of whether the State has taken its own actions.

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho's program is being authorized are already effective under State law.

E. What Rules Are We Authorizing With Today's Action?

EPA is granting final authorization for the revisions to Idaho's federally authorized program described in Idaho's final complete program revision application, submitted to EPA on May 1, 2001. We have made a final determination that Idaho's hazardous waste program revisions, as described in this rule, satisfy the requirements necessary for final authorization. Therefore, we grant Idaho final authorization for all delegable hazardous waste regulations promulgated as of July 1, 1998, as incorporated by reference in IDAPA 16.01.05.(002)-(016) and 16.01.05.997.[1] Any subsequent changes to the Federal program or to State law that occurred after July 1, 1998 are not part of Idaho's authorized RCRA program. EPA is not authorizing IDAPA 16.01.05.000; 16.01.05.001; 16.01.05.006(02); 16.01.05.016(02)(a),(b); 16.01.05.017–996; 16.01.05.998; and 16.01.05.999.

F. Who Handles Permits After This Authorization Takes Effect?

Idaho will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits or portions of permits issued by EPA Region 10 prior to final authorization of this revision will continue to be administered by EPA Region 10 until the issuance or re-issuance after modification of a State RCRA permit and until EPA takes action on its permit or portion of permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit or portion of permit. EPA will continue to issue permits or portions of permits for HSWA requirements for which Idaho is not yet authorized.

[1] Sections of the Federal hazardous waste program are not delegable to the states. These sections are 40 CFR part 262 subparts E, F, & H; 40 CFR 268.5; 40 CFR 268.42(b); 40 CFR 268.44(a)-(g); and 40 CFR 268.6. Authority for implementing the provisions contained in these sections remains with EPA.

G. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State's authorized rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart F for codification of Idaho's program at a later date.

H. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) in Idaho?

EPA's decision to authorize the Idaho hazardous waste program does not include any land that is, or becomes after the date of this authorization, "Indian Country," as defined in 18 U.S.C. 1151. This includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho; (2) Any land held in trust by the U.S. for an Indian tribe; and (3) Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over "Indian Country" as defined in 18 U.S.C. 1151.

I. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 20, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–16465 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1060–F2]

RIN –0938–AL40

Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: In the August 7, 2001 issue of the **Federal Register** (66 FR 41316), we published a final rule establishing a prospective payment system (PPS) for Medicare payment of inpatient hospital services provided by a rehabilitation hospital or rehabilitation unit of a hospital. The effective date was January 1, 2002. This correcting amendment corrects a limited number of technical and typographical errors identified in the August 7, 2001 final rule. It also corrects an example related to the Inpatient Rehabilitation Facility Patient Assessment Instrument contained within the final rule.

EFFECTIVE DATE: This correcting amendment is effective July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597.

SUPPLEMENTARY INFORMATION:

Need for Corrections

In our August 7, 2001 final rule (66 FR 41316), referred to as the final rule throughout this correcting amendment, we provided an extensive discussion of the inpatient rehabilitation facility (IRF) patient assessment instrument and its implementation that employed various examples to illustrate essential points of the patient assessment process. A number of those examples contain technical errors. In addition, we are making technical corrections to the regulations text where the regulations text inadvertently fails to reflect the policies set forth in the preamble of the final rule.

Summary of Technical Corrections to the Preamble to the August 7, 2001 Final Rule

In section IV of the final rule, we describe the process of using the IRF patient assessment instrument to collect patient data that are the basis of payments made under the IRF prospective payment system. Beginning on page 41330 of the final rule, we describe the schedule for completing, encoding (computerizing), and transmitting data contained in the IRF patient assessment instrument. The rules associated with the assessment schedule are codified at §§ 412.610 and 412.614.

Interruption of the Stay During the Admission Assessment

After the patient is admitted, the IRF has a time period to observe the patient's functional status/clinical condition that is then recorded on the patient assessment instrument. This time period is referred to in the final rule as the admission assessment time period. Section 412.610(b) states that "The first day that the Medicare Part A fee-for-service inpatient is furnished Medicare-covered services during his or her current inpatient rehabilitation facility hospital stay is counted as day one of the patient assessment schedule." Section 412.610(c)(1)(i) specifies the general rule that the admission assessment time period is a span of time that covers calendar days 1 through 3 of the patient's current Medicare Part A fee-for-service hospitalization. The patient's IRF admission day is the first day of the admission assessment time period. For example, Chart 1 on page 41330 illustrates the assessment schedule for an inpatient stay in an IRF; the admission assessment time period is the first 3 days of the patient's IRF hospitalization, with day 3 being the admission assessment reference date, day 4 being the admission assessment completion date, and day 10 being the encoded by date. Chart 2 on page 41331 illustrates the application of the general rule for a patient who is admitted on July 3, 2002. The admission assessment

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time period would be July 3, 4, and 5, the admission assessment reference date July 5, the admission assessment completion date July 6, and the admission assessment encoded by date July 12, 2002.

The preamble also explains the admission assessment time period, admission assessment reference date, the admission assessment completion date, and the admission assessment encoded by date for the case in which the beneficiary has an interrupted stay during the admission assessment time period. As defined in § 412.602, an interrupted stay means a stay at an inpatient rehabilitation facility during which a Medicare inpatient is discharged from the inpatient rehabilitation facility and returns to the same inpatient rehabilitation facility within three consecutive calendar days. The duration of the interruption of the stay of three consecutive calendar days begins with the day of discharge from the inpatient rehabilitation facility and ends on midnight of the third day. However, the August 7, 2001, final rule contains some technical errors in illustrating the assessment process for a patient who has an interruption in a stay which occurs during the admission assessment time period.

On page 41331 of the preamble of the final rule, we describe the process of shifting the dates associated with the admission assessment schedule when an inpatient rehabilitation stay has been interrupted. In the example on page 41331, the patient's stay begins with an admission to the IRF on July 3, 2002. However, the stay is interrupted on July 4, 2002, and the patient returns to the IRF before midnight of July 6, 2002. The example on page 41331 incorrectly states that, due to this interruption in the hospital stay, the admission assessment time period would be shifted to July 6, 7, and 8. The example is incorrect because the three calendar days to observe the patient during the admission assessment time period must include July 3, because July 3 is the day of admission to the IRF. As stated previously, the day of admission to the IRF is the first day of the admission assessment time period. Because July 3 is day 1 of the admission assessment time period, then July 6, the date when the patient returns to the IRF after the interruption in the stay, is day 2 of the admission assessment time period. Accordingly, July 7 is day 3 of the admission assessment time period.

The admission assessment reference date, completion date, and encoded by date are based upon the admission assessment time period. Because the final rule example regarding the shifting of the admission assessment time period is incorrect, it follows that the admission assessment reference date of July 8, the admission assessment completion date of July 9, and the encoded by date of July 15, 2002 included in the example are also incorrect. The correct admission assessment time period, as a result of an interruption in the stay as described in the final rule example, is July 3, 6, and 7, with July 7 being the assessment reference date, July 8 the completion date, and July 14, 2002, the encoded by date.

If, for example, the patient was admitted to the IRF on July 3, but the stay is interrupted on July 5, 2002, and the patient returns to the IRF before midnight of July 7, 2002, the admission assessment time period dates would be July 3, 4, and 7. In this case, the admission assessment reference date would be July 7, the completion date would be July 8, and the encoded by date would be July 14, 2002.

Discharge Assessment

Section 412.610, "Assessment schedule," specifies the general rules for the admission assessment and the discharge assessment. As stated previously, the admission assessment time period is a span of time that covers calendar days 1 through 3 of the patient's current Medicare Part A fee-for-service hospitalization. The first day of the patient's IRF stay is counted as day 1 of the patient assessment schedule, with day 3 of the hospitalization being the admission assessment reference date. Section 412.610 specifies the general rule that the discharge assessment reference date is the day the first of the following two events occurs: (1) The patient is discharged from the IRF; or (2) the patient stops being furnished Medicare Part A fee-for-service IRF services. The discharge assessment time period includes the discharge assessment reference date and the two calendar days prior to the discharge assessment reference date.

Applying the admission assessment general rule means that a patient admitted on October 1, 2002, and discharged on October 4, 2002, would have an admission assessment time period of October 1, 2, and 3 (the first three days of the current Medicare Part A IRF hospitalization), with October 3 being the admission assessment reference date. Applying the discharge assessment general rule means that October 4, 2002 (the day the patient is discharged from the IRF) is the discharge assessment reference date, with October 2 and 3 (the two calendar days prior to the discharge assessment reference date) being part of the discharge assessment time period.

In this situation, the admission assessment time period and the discharge assessment time period both include October 2 and 3. However, on page 41327, we incorrectly stated that "In addition, for the discharge assessment, in no case will the discharge assessment time period include a calendar day(s) prior to the admission assessment reference calendar date or the admission assessment reference calendar date itself." That statement is incorrect because there will be situations, such as when a patient's IRF stay is only 4 days in length, when it would be impossible to apply the admission assessment and discharge assessment general rules and not include the admission assessment reference date itself, or another day of the admission assessment time period, as part of the discharge assessment time period. Consequently, a patient who has a very short IRF stay may have a discharge assessment time period that includes (that is, overlaps) a calendar day(s) prior to the admission assessment reference calendar date or the admission assessment reference calendar date itself.

In order to correct for this overly broad statement, previously quoted from page 41327, that makes application of both the admission assessment and discharge assessment general rules impossible when a short stay causes the time periods for the admission and discharge assessments to overlap, we are adding, after the word "itself", the phrase, ", unless a patient's IRF length of stay causes these assessment periods to overlap."

Transmission of Assessment Data

Under § 412.610, patient data are collected on the same IRF patient assessment instrument two times. The first time is during the admission assessment time period, and the second time is during the discharge assessment time period. Under § 412.614(c), we require that both the admission and discharge assessment data be transmitted together only one time after the patient is discharged. Because the discharge date is the sole basis for determining when the transmission of the data must occur, an event, such as an interruption of a stay, that occurs before the actual day of discharge will not affect any of the discharge assessment schedule dates, including the date to transmit the data. However, on page 41331 of the preamble and in § 412.618(c) on page 41390, we incorrectly stated that if an interruption of a stay occurred for (that is, during) the admission assessment time period, the patient assessment instrument transmitted by date would be shifted forward. We are correcting the statement on page 41331 by removing the phrase "and patient assessment instrument transmitted by date", because an interruption of the stay, which occurs before the discharge date, has no effect on the "transmitted by date." A corresponding correction to the regulations text at § 412.618(c) will be addressed in the next section of this correcting amendment.

Definition of a Discharge

As stated on page 41331 and § 412.602 of the final rule, a discharge of a Medicare patient occurs when—(1) the patient is formally released; (2) the patient stops receiving Medicare-covered Part A inpatient rehabilitation services; or (3) the patient dies in the inpatient rehabilitation facility. However, in defining a discharge, we inadvertently failed to account for situations where a patient stops receiving Medicare-covered Part A inpatient rehabilitation services, but meets the condition, under § 424.13(b), for continued hospitalization. Specifically, under § 424.13(b), a physician may certify or recertify the need for continued hospitalization if the physician finds that the patient could receive proper treatment in a skilled nursing facility (SNF) but no bed is available in a participating SNF. To account for situations where a patient meets the requirement at § 424.13(b) in our definition of a discharge, on page 41331, we are correcting the condition "(2) the day on which the patient ceases to receive Medicare-covered Part A inpatient rehabilitation services" by adding "unless the patient qualifies for continued hospitalization under § 424.13(b) of the regulations." A corresponding correction to the regulations text at § 412.602 will be addressed in the next section of this correcting amendment.

Example of Computing a Facility's Federal Prospective Payment

The example on page 41367 of the preamble reflects an incorrect amount ($20,033.81) for the Federal Prospective Payment amounts associated with CMG 0111 (without comorbidities). Inserting the correct amount from Table 2 of the final rule ($19,071.89), the corrected adjusted payment for Facility A will be $24,133.91 and the corrected adjusted payment for Facility B will be $24,990.08. In addition, the line after the subtotal is incorrectly labeled as "DSH adjustment" and should be labeled "LIP adjustment" to indicate an adjustment for low-income patients as referred to throughout the final rule.

We also found and corrected other typographical errors.

Correction of Errors in the Preamble of the August 7, 2001 Final Rule

1. On page 41327, third column; third full paragraph, in line 17 from the bottom of the page, after the word "itself" add the following text: ", unless a patient's IRF length of stay causes these assessment periods to overlap."

2. On page 41331, in the first column, in the next to last line add the word "and" before the word "patient".

3. On page 41331 in the first column, in the last line, and continuing in the second column, first and second lines, remove the following text, "and patient assessment instrument transmitted by date".

4. On page 41331, in the second column, line 19, the date "July 6" is corrected to read "July 3".

5. On page 41331, second column, line 20, the date "July 7" is corrected to read "July 6" and the date "July 8" is corrected to read "July 7".

6. On page 41331, second column, line 27, the date "July 8" is corrected to read "July 7".

7. On page 41331, second column, lines 29 to 30, the date "July 9" is corrected to read "July 8".

8. On page 41331, second column, lines 32 to 33, the date "July 15, 2002" is corrected to read "July 14, 2002".

9. On page 41331, third column, line 7, after the phrase "(2) the day on which the patient ceases to receive Medicare-covered Part A inpatient rehabilitation services", add the phrase, "unless the patient qualifies for continued hospitalization under § 424.13(b) of the regulations".

10. On page 41350, third column, line two, remove the number "191".

11. On page 41367, replace the label "DSH Adjustment" with "LIP Adjustment" and replace the values in the table labeled "Examples of Computing a Facility's Federal Prospective Payment" with the following:

	Facility A	Facility B
Federal Prospective Payment	$19,971.89	$19,971.89
Labor Share	× .72395	× .72395
Labor Portion of Federal Payment	$14,458.65	$14,458.65
Wage Index	× 0.987	× 1.234
Wage Adjusted Amount	$14,270.69	$17,841.97
Non-Labor Amount	+ 5,513.24	+ 5,513.24
Wage Adjusted Federal Payment	$19,783.93	$23,355.21
Rural Adjustment	× 1.1914	× 1.0000
Subtotal	$23,570.57	$23,355.21
LIP Adjustment	× 1.0239	× 1.070
Total Adjusted Federal Prospective Payment	$24,133.91	$24,990.08

12. On page 41367, first column, second paragraph from the bottom, the dollar amount of "$24,208.73" is corrected to read "$24,133.91" and the dollar amount of "$25,067.56" is corrected to read "$24,990.08".

Summary of Technical Corrections to the Regulations Text of the August 7, 2001 Final Rule

Definition of a Discharge

As stated in the previous section of this correcting amendment, we inadvertently failed to account for a patient that stops receiving Medicare-covered Part A inpatient rehabilitation services, but meets the condition, under § 424.13(b), for continued hospitalization in defining a discharge in § 412.602 of the final rule.

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Specifically, under § 424.13(b), a physician may certify or recertify the need for continued hospitalization if the physician finds that the patient could receive proper treatment in a skilled nursing facility (SNF) but no bed is available in a participating SNF. To account for a patient who meets the requirement at § 424.13(b), we are correcting the second definition of a discharge on page 41388 under § 412.602 to read as follows: "The patient stops receiving Medicare-covered Part A inpatient rehabilitation services, unless the patient qualifies for continued hospitalization under § 424.13(b) of this chapter". This correction does not affect the criteria, under § 412.610(c)(2)(ii), to determine the discharge assessment reference date.

Criteria To Be Classified as an IRF

Our clearly stated intention in the preambles of both the November 3, 2000 proposed rule (65 FR 66304) and the final rule, was not to change the existing general criteria to be excluded from the acute care hospital prospective payment system (§ 412.22), or the specific criteria to be classified as an excluded rehabilitation hospital or rehabilitation unit (§§ 412.23, 412.25, 412.29, and 412.30) under subpart B of part 412 of the regulation. In § 412.604(b) on page 41388, we inadvertently failed to include reference to the general exclusion criteria under § 412.22 as a condition to be paid under the IRF PPS. In this document, we are correcting § 412.604(b) to state that subject to the special payment provisions of § 412.22(c), an inpatient rehabilitation facility must meet the general criteria of § 412.22 and the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in §§ 412.23(b), 412.25, and 412.29 for exclusion from the inpatient hospital prospective payment systems specified in § 412.1(a)(1).

Assessment Process for Interrupted Stays

We are making several technical corrections to § 412.618(c), on pages 41390 to 41391, which describes the "Revised assessment schedule" when an interruption of a stay occurs. The corrections we are making to § 412.618(c) conform the policies regarding the assessment process for interrupted stays to those stated in the corrected preamble to the regulation text.

Section 412.618(c)(1) of the final rule states that, "If the interruption in the stay occurs before the admission assessment, the assessment reference date, completion dates, encoding dates, and data transmission dates for the admission and discharge assessments are advanced by the same number of calendar days as the length of the patient's interruption in the stay." The phrase "occurs before the admission assessment" is incorrect because an interruption of a stay affects the admission assessment schedule only if the interruption occurs during, not before, the admission assessment time period. Specifically, an interruption of a stay that occurs "during the admission assessment time period" results in a shifting of the relevant assessment schedule dates. We are correcting the phrase "occurs before the admission assessment" to read "occurs during the admission assessment time period" to accurately reflect when an interruption in a stay affects the assessment schedule as indicated in our policy described in the corrected preamble. In addition, the phrase "data transmission dates" in § 412.618(c)(1) of the final rule is incorrect because, as discussed earlier in this correcting amendment, an interruption of a stay does not affect the date of transmitting the assessment data. Specifically, the date to transmit admission and discharge assessment data together is based solely on the day that the patient is discharged. Thus, an interruption of a stay will not impact the data transmission date. We are correcting § 412.618(c)(1) to remove the reference to the "data transmission dates" and, thus, conform the regulations text to the corrected preamble.

Section 412.618(c)(2) of the final rule states that, "If the interruption of the stay occurs after the admission assessment and before the discharge assessment, the completion date, encoding date, and data transmission date for the admission assessment are advanced by the same number of calendar days as the length of the patient's interruption in the stay." Under § 412.610(c)(1), the admission assessment schedule can only be established after the admission assessment time period is known. If an interruption of a stay occurs after the admission assessment time period (and before the discharge assessment), the admission assessment schedule, which has already been established, cannot be revised, contrary to what was incorrectly indicated in § 412.618(c)(2) of the final rule. Since the situation specified in § 412.618(c)(2) would never result in a revised assessment schedule, we are correcting § 412.618 by eliminating § 412.618(c)(2).

In summary, to conform the regulations text to the policy in the corrected preamble, § 412.618(c)(2) is removed, and the regulations text in formerly designated paragraph (c)(1) becomes paragraph (c), "Revised assessment schedule." The corrected text of § 412.618(c) reads, "If the interruption in the stay occurs during the admission assessment time period, the assessment reference date, completion date, and encoding date for the admission assessment are advanced by the same number of calendar days as the length of the patient's interruption in the stay."

Special Payment Provision for Interrupted Stays

On page 41356 of the preamble of the final rule, we responded to a request to clarify how services during an interrupted stay would be paid if a beneficiary is discharged from the IRF to an acute care hospital. In our response to this comment, we stated that, under § 412.624(g), there would be no separate diagnostic related group (DRG) payment to the acute care hospital when the beneficiary is "discharged and returns to the same IRF on the same day". However, § 412.624(g)(1) incorrectly states that this provision applies to a patient with an "interruption of one day or less". Therefore, in order to conform the regulations text to the policy as stated in the preamble, we are correcting § 412.624(g)(1) to apply to a patient who is discharged and returns to the same IRF on the same day. Additionally, in our response to this comment, we correctly stated the policy in the preamble that if a beneficiary receives inpatient acute care hospital services, the acute care hospital can receive a DRG payment if the beneficiary is "discharged from the IRF and does not return to that IRF by the end of that same day". However, § 412.624(g)(2) in the final rule incorrectly states that this provision applies to a patient with an "interruption of more than one day". To conform the regulation text to the correction to § 412.624(g)(1) above and to the policy as stated in the preamble, we are correcting § 412.624(g)(2) to apply to a patient who is discharged and does not return to the same IRF on the same day.

Waiver of Proposed Rulemaking

We ordinarily publish a correcting amendment of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a correcting amendment such as this can take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of finding and its reasons in the correcting amendment issued.

We find for good cause that it is unnecessary to undertake notice and public comment procedures because this correcting amendment does not make any substantive policy changes. This document makes technical corrections and conforming changes to the August 7, 2001 final rule. Therefore, for good cause, we waive notice and public comment procedures under 5 U.S.C. 553(b)(B).

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.602 [Amended]

2. In § 412.602, make the following corrections:

a. In the introductory text of the definition of "Discharge," correct the phrase "a inpatient" to read "an inpatient".

b. In the definition of "Discharge", paragraph (2) is revised to read as follows:

§ 412.602 Definitions.

* * * * *

Discharge. * * *

(2) The patient stops receiving Medicare-covered Part A inpatient rehabilitation services, unless the patient qualifies for continued hospitalization under § 424.13(b) of this chapter; or

* * * * *

§ 412.604 [Amended]

3. In § 412.604, make the following corrections:

a. In paragraph (b), add the phrase "general criteria set forth in § 412.22 and the" before the word "criteria".

b. In paragraph (e)(1)(i), remove the closed parentheses after the word "basis".

c. In paragraph (e)(1)(iii), remove the "s" from "practitioners".

§ 412.610 [Amended]

4. In § 412.610, in paragraph (c)(2)(ii)(A), remove the abbreviation "IRF", and in its place, add the phrase "inpatient rehabilitation facility".

§ 412.618 [Amended]

5. In § 412.618, revise paragraph (c) to read as follows:

§ 412.618 Assessment process for interrupted stays.

* * * * *

(c) If the interruption in the stay occurs during the admission assessment time period, the assessment reference date, completion date, and encoding date for the admission assessment are advanced by the same number of calendar days as the length of the patient's interruption in the stay.

§ 412.624 [Amended]

6. In § 412.624, make the following corrections:

a. In paragraph (a)(1), remove the phrase "under this subchapter" and in its place, add the phrase "of this subchapter".

b. In paragraph (c)(4), remove the phrase "is the product" and in its place, add the phrase "are the product".

c. In paragraph (e)(4), in the first sentence, remove the "s" from the word "exceeds".

d. Revise paragraph (g)(1) and the introductory text of paragraph (g)(2) to read as set forth below:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(g) * * *

(1) *Patient is discharged and returns on the same day.* Payment for a patient who is discharged and returns to the same inpatient rehabilitation facility on the same day will be the adjusted Federal prospective payment under paragraph (e) of this section that is based on the patient assessment data specified in § 412.618(a)(1). Payment for a patient who is discharged and returns to the same inpatient rehabilitation facility on the same day will only be made to the inpatient rehabilitation facility.

(2) *Patient is discharged and does not return by the end of the same day.* Payment for a patient who is discharged and does not return on the same day but does return to the same inpatient rehabilitation facility by or on midnight of the third day, defined as an interrupted stay under § 412.602, will be—

* * * * *

§ 412.626 [Amended]

7. In § 412.626, make the following corrections:

(a) In paragraph (b)(1), remove the acronym "IRF" and in its place, add the phrase "inpatient rehabilitation facility".

(b) In paragraph (b)(2), in the last sentence, remove the word, "or", and in its place, add the phrase, "timely or is otherwise".

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.1 [Amended]

2. In § 413.1, in paragraph (d)(2)(iv), after the word "is", add the word "made".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: June 26, 2002.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 02–16476 Filed 6–28–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7787]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain

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management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq.; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IX				
California:				
LaMesa, City of, San Diego County	060292	July 24, 1974, Emerg.; June 26, 1976, Reg. July 2, 2002.	7/2/02	7/2/02.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Lemon Grove, City of, San Diego County	060723	November 14, 1997, Reg. July 2, 2002	do	Do.
San Diego, City of, San Diego County	060284	January 29, 1971, Emerg.; August 15, 1983, Reg. July 2, 2002.	do	Do.
San Diego County Unincorporated Areas.	060284	March, 5, 1971, Emerg.; June 15, 1984, Reg. July 2, 2002.	do	Do.
Region I				
New Hampshire: Nashua, City of, Hillsborough County.	330097	February 6, 1975, Emerg.; June 15, 1979, Reg. July 3, 2002.	7/3/02	7/3/02.
Region IV				
Florida: Mount Dora, City of, Lake County	120137	February 3, 1975, Emerg.; April 5, 1988, Reg. July 3, 2002.	do	Do.
Region I				
Vermont: Hardwick, Town/Village of, Caledonia County.	500027	August 9, 1973, Emerg.; June 15, 1984, Reg. July 17, 2002.	7/17/02	7/17/02.
Region VII				
Kansas: Winfield, City of, Cowley County	200071	May 30, 1974, Emerg.; March 16, 1981, Reg. July 17, 2002.	do	Do.
Missouri:				
El Dorado, City of, Cedar County	290072	July 3, 1975, Emerg.; April 15, 1986 Reg. July 17, 2002.	do	Do.
Everton, City of, Dade County	290589	August 13, 1976, Emerg.; August 1, 1986, Reg. July 17, 2002.	do	Do.
Marshfield, City of, Webster County	290685	June 13, 1975, Emerg.; September 10, 1984, Reg. July 17, 2002.	do	Do.
Rogersville, City of, Webster County	290658	January 16, 1976, Emerg.; March 30, 1981, Reg. July 17, 2002.	do	Do.
Region VIII				
Utah:				
Lehi, City of, Utah County	490209	October 18, 1974, Emerg.; September 14, 1979, Reg. July 17, 2002.	do	Do.
Sarasota Springs, City of, Utah County	490250	May 10, 1999, Reg. July 17, 2002	do	Do.
Utah County, Unincorporated Areas	495517	November 21, 1971, Emerg.; October 15, 1982, Reg. July 17, 2002.	do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 20, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration, and Mitigation Administration.

[FR Doc. 02–16424 Filed 6–28–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 96–45; FCC 02–171]

Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Petitions for Reconsideration Filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, and National Telephone Cooperative Association

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission address the requests to reconsider portions of the Commission's order modifying the Commission's rules for providing high-cost universal service support to rural telephone companies based on the proposals made by the Rural Task Force by amending its rules to provide that the amount of high-cost loop support available to rural carriers in 2002 should be adjusted to account for mid-2001 implementation of the rules adopted in the Rural Task Force Order.

DATES: Effective July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Webber, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Order on Reconsideration in CC Docket No. 96–45 released on June 13, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center,

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Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order on Reconsideration, we address the requests to reconsider portions of the Commission's order modifying the Commission's rules for providing high-cost universal service support to rural telephone companies based on the proposals made by the Rural Task Force. Specifically, we amend our rules to provide that the amount of high-cost loop support available to rural carriers in 2002 should be adjusted to account for mid-2001 implementation of the rules adopted in the *RTF Order*, 66 FR 30080, June 5, 2001. In addition, we deny requests filed by the Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, and Illinois Commerce Commission to reconsider certain elements of the *RTF Order*. We conclude that these petitioners have failed to present any new arguments that lead us to reconsider these issues.

II. Discussion

2. As discussed in greater detail below, we amend our rules to provide that the amount of high-cost loop support available to rural carriers in 2002 should be adjusted to account for mid-2001 implementation of the rules adopted in the *RTF Order*. In addition, we deny the requests of RTC, CUSC, and Illinois Commission to reconsider other elements of the *RTF Order*. As part of our continuing assessment of support to rural areas, we intend to initiate a proceeding in the future to examine further issues related to the application of the universal service mechanisms to competitive ETCs.

3. *NTCA Petition.* We agree with NTCA that the Commission's rules for calculating a rural incumbent carrier's loop cost expense adjustment should be amended to take into consideration mid-year 2001 implementation of the adopted plan. The Commission based its estimate of the increase in rural carrier universal service funding on data submitted by the Rural Task Force. This data assumed that the adopted plan would be implemented as of January 1, 2001. As NTCA notes, due to July 1, 2001 implementation of the Rural Task Force plan, application of § 36.603(a) would result in 2002 support for rural carriers being calculated by adding the totals for the first half of 2001, during which the plan was not in effect, and the second half of 2001, during which the plan was in effect. We agree with NTCA that mid-year 2001 implementation will result in less support for eligible rural carriers in 2002 than intended by the Commission in adopting the Rural Task Force plan. This result would be compounded over five years.

4. We therefore amend § 36.603(a) of our rules by taking the uncapped support for 2000 and increasing it for 2001 and 2002 by the rural growth factor. Specifically, for the period of January 1, 2002, to December 31, 2002, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the non-capped amount of the total rural incumbent local exchange carrier loop cost expense adjustment for calendar year 2000, multiplied times one plus the rural growth factor for 2001, which then shall be multiplied times one plus the rural growth factor for 2002. We believe this result is consistent with the Commission's intent in adopting the recommendations of the Rural Task Force. We direct USAC to take the administrative steps necessary to implement this rule amendment beginning in the third quarter of 2002, including the provision of retroactive support to any carrier that may qualify for such additional support as of January 1, 2002. Specifically, in addition to any other payments for which carriers qualify in the third quarter 2002, we further direct USAC to provide the additional rural high-cost support retroactively in third quarter 2002 to those carriers that qualify for such additional support pursuant to this rule amendment during first quarter 2002. Similarly, in addition to any other payments for which carriers qualify in the fourth quarter 2002, USAC shall provide the additional rural high-cost support retroactively in fourth quarter 2002 for those carriers that qualify for such additional support during second quarter 2002.

5. We do not address NTCA's request at this time to amend our rules to provide "safety valve" support for the first year of investment in acquired exchanges. The Commission intends to address this request at a later date.

6. *RTC Petition.* We deny the request of RTC to reconsider the Commission's determination to use a wireless mobile customer's billing address as the basis for determining the customer's location for purposes of delivering high-cost universal service support. Because universal service support is portable, competitive ETCs receive the same per-line high-cost support as the incumbent local exchange carrier for the lines that it serves in the high-cost areas of the incumbent local exchange carrier. It is therefore necessary to establish a reasonable means to identify customer locations in order to determine the support amounts for the competitive carrier. We find no new arguments in RTC's petition that persuade us to reconsider the Commission's decision on this issue.

7. We affirm that the use of the customer's billing address as a surrogate for actual service location is reasonable and the most administratively viable solution to this problem at this time. For example, as the Commission noted in the *RTF Order*, this approach eliminates the need to require many wireless mobile carriers to create a new database for purposes of universal service funding. The Commission addressed concerns similar to those raised in RTC's petition in the *RTF Order*, including the potential for arbitrage opportunities of the universal service mechanism. In so doing, the Commission acknowledged that this approach is not a perfect solution. Consistent with the Commission's conclusion in the *RTF Order*, we believe that sufficient safeguards are in place to alleviate those concerns. The Commission has specifically committed to taking enforcement action as appropriate for any such abuses. Moreover, the Commission has indicated that it will continue to monitor the reasonableness of using a customer's billing address as the surrogate for a wireless mobile customer's location for universal service purposes and may revisit this approach in the future.

8. RTC contends that the Commission's universal service rules are generally incompatible for calculating universal service support for wireless carriers. RTC effectively asks the Commission to modify certain of the universal service rules as they apply to wireless carriers and to initiate new proceedings to establish a cost mechanism for wireless carriers. These requests exceed the scope of the *RTF Order*. Many of the rules for which RTC seeks modification were adopted prior to the *RTF Order* and this order is limited to those issues raised on reconsideration of the *RTF Order*. RTC's petition is therefore more appropriately characterized as a request for rulemaking. As part of our continuing assessment of support to rural areas, we intend to initiate a proceeding in the future to examine further issues related to the application of universal service mechanisms to competitive ETCs.

9. *CUSC Petition.* We deny the request of CUSC to reconsider the requirement adopted in the *RTF Order* that state commissions must file annual certifications with the Commission to ensure that carriers use universal service support "only for the provision, maintenance and upgrading of facilities and services for which the support is intended." We therefore deny CUSC's request to permit all competitive ETCs to self-certify their compliance with section 254(e). Specifically, we disagree with CUSC's contention that self-certification should be extended from carriers that are not subject to state jurisdiction pursuant to section 214(e)(6) to all competitive ETCs due to the fact that competitive ETCs may not be subject to state rate regulation. The self-certification process established for carriers not subject to the jurisdiction of a state commission recognized that, in limited instances, there is no state regulatory authority to ensure compliance with section 254(e). This is not the case for the majority of competitive ETCs. The Commission has previously concluded that state commissions have the principal responsibility in designating carriers as ETCs, including those carriers not subject to state rate regulation under section 332(c). We believe that state commissions that conduct ETC designations should also certify that such carriers are in compliance with section 254(e). It would be contrary to the principle of competitive neutrality to require certain classes of carriers subject to state ETC jurisdiction to receive state certification while allowing others to self-certify. Nor do we agree with CUSC's alternative suggestion that all ETCs be allowed to self-certify compliance with section 254(e). As the Commission concluded in adopting this requirement, we believe that the state certification process provides the most reliable means of determining whether carriers are using support in a manner consistent with section 254(e).

10. We also deny the request of CUSC to reconsider the Commission's decisions regarding disaggregation and targeting of universal service support. We disagree with CUSC's suggestion that, whenever a rural incumbent carrier study area is disaggregated for purposes of targeting funding, the study area should automatically be disaggregated for purposes of ETC designation as well. In the case of an area served by a rural telephone company, section 214(e)(5) defines the competitive ETC's designated service area as the rural telephone company's study area unless and until the Commission and states establish a different definition of service area. We believe that granting CUSC's request in this proceeding would be inconsistent with the statute.

11. We also disagree with CUSC's assertion that the disaggregation rules adopted in the *RTF Order* violate the principle of competitive neutrality because they allow only rural incumbent carriers to select from a range of disaggregation options. Specifically, CUSC contends that competitive ETCs should have the same opportunity to initiate study area disaggregation as the rural carrier. We find that the disaggregation and targeting approach adopted in the *RTF Order* achieves a reasonable balance between rural carriers' need for flexibility and the goal of encouraging competitive entry. The Commission recognized in the *RTF Order* that some incumbent carriers may choose a disaggregation path based on anti-competitive reasons. For that reason, the Commission concluded that a state commission may require, on its own motion, upon petition by an interested party, or upon petition by the rural incumbent carrier, modification to the disaggregation and targeting of support under the selected path. We affirm the Commission's conclusion that state commissions have the capability to safeguard against anti-competitive manipulation of the disaggregation and targeting of support that could occur with such requests. Competitive ETCs and other interested parties will have an opportunity to participate in this process. We therefore find no basis to conclude that the disaggregation process is inconsistent with the principle of competitive neutrality.

12. We also decline to adopt CUSC's request that the Commission adopt specific rules governing how the amounts of support in each sub-zone under Path Three (self-certification) are to be calculated in order to ensure support amounts are cost justified. We reaffirm the Commission's prior decision to permit carriers flexibility in how they disaggregate support. We are not persuaded on the record before us that permitting carriers to self-certify to a disaggregation path creates too great an opportunity for the incumbent carrier to manipulate support in an anti-competitive manner. A self-certified disaggregation plan under Path 3 is subject to complaint by interested parties before the appropriate regulatory authority. Moreover, the state or appropriate regulatory authority may require on its own motion at any time the disaggregation of support in a different manner. We believe such regulatory oversight will sufficiently safeguard against the anti-competitive manipulation of the disaggregation and targeting of support.

13. Finally, at this time, we decline to adopt CUSC's request that USAC publish and make available on its website additional information relating to the geographic boundaries of wire centers and study areas and the amount of support available in each geographic location. In the *RTF Order*, the Commission required rural incumbent local exchange carriers to submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified, which USAC will make available for public inspection. In addition, when submitting information in support of self-certification, an incumbent carrier must provide USAC with publicly available information that allows competitors to verify and reproduce the algorithm used to determine zone support levels. We also note that USAC makes publicly available in its quarterly funding report detailed information relating to the high-cost support received by carriers in each study area. We recognize that the availability of such information is important to competitors in assessing potential entry. We believe that sufficient information is available to competitors under our existing rules and policies and will continue to be available following requests for disaggregation of study areas by rural incumbent carriers. The Commission will, however, continue to monitor this situation and take appropriate steps as necessary.

14. *Illinois Commission Petition.* We deny the request of the Illinois Commission to reconsider the plan adopted in the *RTF Order* for providing high-cost universal service support to rural carriers for the next five years due to concerns relating to the sufficiency of the evidentiary record. Specifically, we disagree with the Illinois Commission that the funding increases adopted in the *RTF Order* are excessive and not based upon an adequate record.

15. Based upon the extensive record developed in this proceeding, the Commission used its expertise and informed judgment to formulate an interim plan for providing high-cost universal service support to rural carriers. That plan was based largely on the recommendations of the Rural Task Force. After exhaustive deliberations and considerable effort, including six white papers, the Rural Task Force submitted its Recommendation to the Joint Board on September 29, 2000. After reviewing the Rural Task Force's proposal, the Joint Board submitted its recommendations to the Commission on December 22, 2000. The Commission carefully reviewed these recommendations, including comments filed by the Illinois Commission and others, in adopting the interim plan for rural carriers. In balancing the competing interests presented in this

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proceeding, the Commission considered both the adequacy of support to rural carriers and the burden on contributors. In concluding that the modified embedded mechanism for rural carriers strikes an appropriate balance, the Commission rejected the contention that no increase in the current high-cost support levels was warranted.

16. We affirm the Commission's conclusion that it was reasonable to modify the high-cost loop support levels for rural carriers established in 1997 to account for changes in costs and technology, and to ensure that rural carriers can maintain existing facilities until such time as a long-term plan is adopted. For example, the Commission's decision to increase high-cost loop support to rural carriers by "rebasing" the indexed fund cap and the corporate operations expense limitation as if the indexed cap had not been in effect for the calendar year 2000 was reasonable because more than seven years had passed since the Commission originally implemented the indexed cap on high-cost loop support. The Commission concluded that the indexed cap on the high-cost loop fund increasingly limited the amount of high-cost loop support for rural carriers. In addition, the Commission noted that, even with these changes any increase in the universal service contribution factor as a result of this plan would be modest. In the RTF Order, the Commission concluded that no commenter proffered any specific evidence that the adopted plan would provide support that is excessive. The Illinois Commission petition contains no such empirical evidence to support this contention. We therefore decline to now reconsider the Commission's conclusions.

17. We also decline to reconsider the state certification requirement to ensure that carriers are using support in a manner consistent with section 254(e). As discussed, we do not agree with the Illinois Commission that excessive funding is provided to rural carriers. We therefore are not persuaded by the argument that any such state certification requirement is unworkable due to excessive funding for universal service purposes. Given that states generally have primary authority over carriers' intrastate activities, we reiterate the Commission's determination that the state certification process provides the most reliable means of determining whether carriers are using support for its intended purpose in a manner consistent with section 254(e).

III. Procedural Matters

A. Paperwork Reduction Act

18. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

B. Supplemental Final Regulatory Flexibility Analysis

19. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *RTF Order*, to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by the RFA, the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Further Notice of Proposed Rulemaking, which sought public comment on the proposals in the Further Notice.

1. Need for, and Objective of, the Order

20. Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support. In the *RTF Order*, the Commission adopted interim rules for determining high-cost universal service support for rural telephone companies based upon the modified embedded cost mechanism proposed by the Rural Task Force. The Commission based its estimate of the appropriate funding for rural carriers on data submitted by the Rural Task Force. This data assumed that the adopted plan would be implemented as of January 1, 2001. In this Order, we amend § 36.603(a) of our rules to reflect the fact that July 1, 2001 implementation of the rules, as adopted in the *RTF Order*, would result in less support being provided than intended by the Commission.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

21. No comments were submitted in response to the IRFA or FRFA. On reconsideration, however, NTCA noted that clarification of the § 36.603(a) of the Commission's rules was required to ensure that mid-year 2001 implementation did not result in less support being provided for rural incumbent carriers in 2002 than intended by the Commission in adopting the Rural Task Force plan.

3. Description and Estimate of the Number of Small Entities to Which This Order Will Apply

22. In the FRFA at paragraphs 218–229 of the *RTF Order*, we described and estimated the number of small entities that would be affected by the new universal service rules for rural carriers. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 218–229 of the *RTF Order*.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The rule amendment adopted in this Order contains no new reporting, recordkeeping, or other compliance requirements.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. In the *RTF Order*, we described the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives associated with the adopted plan for providing high-cost support to rural carriers. Because many of the same issues are presented in this Order, we incorporate by reference paragraphs 233–235 of the *RTF Order*. In this Order, we amend § 36.603(a) of our rules consistent with the intent of the Commission in adopting the Rural Task Force plan for providing high-cost universal service support to rural carriers for an interim period of five years. That plan was predicated on funding estimates for rural incumbent carriers based on January 1, 2001 implementation. The adopted rule, however, established July 1, 2001, as the implementation date. The rule amendment adopted herein rectifies this inconsistency, and thereby ensures that appropriate funding is provided to rural incumbent local exchange carriers and competitive ETCs, many of whom may qualify as small entities, over the next five years. As discussed, the alternative option of denying the request for reconsideration on this issue was considered and deemed to be inconsistent with Commission's intent in adopting the Rural Task Force's plan.

6. Report to Congress

25. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Ordering Clauses

26. It is ordered that, pursuant to the authority contained in sections 1–4, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C 151–154, 214, and 254, and § 1.429 of the Commission's rules, the above captioned petitions for reconsideration are denied, to the extent discussed herein.

27. The petition for reconsideration filed by National Telephone Cooperative Association on July 5, 2001 is granted in part, to the extent discussed herein.

28. Part 36 of the Commission's rules, 47 CFR part 36, is amended as set forth, effective July 31, 2002.

29. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 403 and 410, unless otherwise noted.

2. Section 36.603 is amended by revising paragraph (a) to read as follows:

§ 36.603 Calculation of rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment.

(a) Effective July 1, 2001, the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment will be recomputed by the fund administrator as if the indexed cap calculated pursuant to § 36.601(c) and the corporate operations expense limitation calculated pursuant to § 36.621 had not been in effect for the calendar year 2000. For the period July 1, 2001, to December 31, 2001, the annualized amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the non-capped amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the calendar year 2000, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604. For the period January 1, 2002, to December 31, 2002, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the non-capped amount of the total rural incumbent local exchange carrier loop cost expense adjustment for calendar year 2000, multiplied times one plus the Rural Growth Factor for 2001, which then shall be multiplied times one plus the Rural Growth Factor for 2002. Beginning January 1, 2003, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604.

* * * * *

[FR Doc. 02–16444 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

[Docket No. NHTSA 02–12526; Notice 1]

Reorganization and Delegations of Authority

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends NHTSA's organizational structure, delegations of authority, and succession to Administrator. The amendments effectuate organizational changes that will enable NHTSA to achieve its mission more effectively and efficiently.

EFFECTIVE DATES: The amendments are effective July 1, 2002, except for the amendments set forth in amendatory instructions 5, 6, and 7, which are effective October 3, 2002.

FOR FURTHER INFORMATION CONTACT: You may contact John Womack at 202–366–9511.

SUPPLEMENTARY INFORMATION: This final rule amends the regulations on the organization, delegation of powers and duties within the National Highway Traffic Safety Administration (NHTSA), and amends the succession to the Administrator to conform to the new organizational structure. This final rule amends NHTSA's organizational structure to enable NHTSA to achieve its mission more effectively and efficiently.

These amendments relate solely to changes in the organizational structure and the placement of the delegations of authority for various functions within the agency. They have no substantive effect. Notice and the opportunity for comment are therefore not required under the Administrative Procedure Act, and the amendments are effective immediately upon publication in the **Federal Register**. In addition, these amendments are not subject to Executive Order 12866, the Department of Transportation's regulatory policies and procedures, or the provisions for Congressional review of final rules in Chapter 8 of Title 5, United States Code.

List of Subjects in 49 CFR Part 501

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, 49 CFR part 501 is amended as follows:

PART 501—[AMENDED]

1. The authority citation for part 501 continues to read as follows:

Authority: 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

Amendments Effective July 1, 2002

2. Section 501.3 is amended as follows:

a. Revise paragraph (a)(3);

b. Remove paragraphs (a)(4) and (a)(6);

c. Redesignate paragraphs (a)(5) and (a)(7) as new paragraphs (a)(4) and (a)(5), respectively;

d. Add new paragraph (a)(6); and

e. Revise paragraph (c).

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The revisions and additions read as follows:

§ 501.3. Organization and general responsibilities.

* * * * *

(a) * * *

(3) *Executive Director.* As the principal advisor to the Administrator and Deputy Administrator, provides direction on internal management and mission support programs. Provides executive direction over the Senior Associate Administrators.

* * * * *

(6) *Director, Intergovernmental Affairs.* As the principal advisor to the Administrator and Deputy Administrator on all intergovernmental matters, including communications with Congress, communicates agency policy and coordinates with the Chief Counsel on legislative issues affecting the agency.

* * * * *

(c) *Senior Associate Administrators*—(1) *Senior Associate Administrator for Policy and Operations.* As the principal advisor to the Administrator and Deputy Administrator with regard to core administrative and support services, provides direction and internal management and mission support for such activities. Provides executive direction over the Associate Administrator for Advanced Research and Analysis, the Associate Administrator for Administration, the Associate Administrator for Planning, Evaluation and Budget, the Chief Information Officer and the Office of Communications and Consumer Information.

(2) *Senior Associate Administrator for Vehicle Safety.* As the principal advisor to the Administrator and Deputy Administrator with regard to rulemaking, enforcement and applied research, provides direction and internal management and mission support for such activities. Provides executive direction over the Associate Administrator for Rulemaking, the Associate Administrator for Enforcement, and the Associate Administrator for Applied Research.

(3) *Senior Associate Administrator for Traffic Injury Control.* As the principal advisor to the Administrator and Deputy Administrator with regard to programs to reduce traffic injury, provides direction and internal management and mission support for such activities. Provides executive direction over the Associate Administrator for Program Development and Delivery and the Associate Administrator for Injury Control Operations and Resources.

3. Section 501.4, Succession to Administrator, is revised to read as follows:

§ 501.4 Succession to Administrator.

The following officials, in the order indicated, shall act in accordance with the requirements of 5 U.S.C. 3346–3349 as Administrator of the National Highway Traffic Safety Administration, in the case of the absence or disability or in the case of a vacancy in the office of the Administrator, until a successor is appointed:

(a) Deputy Administrator;

(b) Executive Director;

(c) Chief Counsel;

(d) Senior Associate Administrator for Policy and Operations;

(e) Senior Associate Administrator for Vehicle Safety; and

(f) Senior Associate Administrator for Traffic Injury Control.

4. Section 501.8, Delegations, is amended by revising paragraphs (b), (e), (f), and (g), by removing paragraphs (h) through (k), and by redesignating paragraph (l) as new paragraph (h), to read as follows:

§ 501.8 Delegations.

* * * * *

(b) *Executive Director.* The Executive Director is delegated line authority for executive direction over the Senior Associate Administrators.

* * * * *

(e) *Senior Associate Administrator for Policy and Operations.* The Senior Associate Administrator for Policy and operations is delegated authority for executive direction of the Associate Administrator for Advanced Research and Analysis; the Associate Administrator for Administration; the Associate Administrator for Planning, Evaluation, and Budget; the Chief Information Officer; and the Director of Communications and Consumer Information. To carry out this direction, the Senior Associate Administrator for Policy and Operations is delegated authority, except for authority reserved to the Administrator, to direct the NHTSA planning and evaluation system in conjunction with Departmental requirement and planning goals; to coordinate the development of the Administrator's plans, policies, budget, and programs, and analyses of their expected impact, and their evaluation in terms of the degree of goal achievement; and to perform independent analyses of proposed Administration regulatory, grant, legislative, and program activities. Except for authority reserved to the Senior Associate Administrator for Vehicle Safety, the Senior Associate Administrator for Policy and Operations is delegated authority to develop and conduct research and development programs and projects necessary to support the purposes of Chapters 301, 323, 325, 327, 329, and 331 of title 49, United States Code, and Chapter 4 of title 23, United States Code, as amended, in coordination with the Senior Associate Administrator for Vehicle Safety and the Chief Counsel. The Senior Associate Administrator for Policy and Operations is also delegated authority to exercise procurement authority with respect to NHTSA requirements; administer and conduct NHTSA's personnel management activities; administer NHTSA financial management programs, including systems of funds control and accounts of all financial transactions; and conduct administrative management services in support of NHTSA missions and programs.

(f) *Senior Associate Administrator for Vehicle Safety.* The Senior Associate Administrator for Vehicle Safety is delegated authority for executive direction of the Associate Administrator for Rulemaking, the Associate Administrator for Enforcement and the Associate Administrator for Applied Research. The Senior Associate Administrator for Vehicle Safety exercises executive direction with respect to the setting of standards and regulations for motor vehicle safety, fuel economy, theft prevention, consumer information, and odometer fraud. To carry out this direction, the Senior Associate Administrator for Vehicle Safety is delegated authority, except for authority reserved to the Administrator or the Chief Counsel, to exercise the powers and perform the duties of the Administrator with respect to the setting of motor vehicle safety and theft prevention standards, average fuel economy standards, procedural regulations, and the development of consumer information and odometer fraud regulations authorized under Chapters 301, 323, 325, 327, 329, and 331 of title 49, United States Code. Except for authority reserved to the Senior Associate Administrator for Policy and Operations, the Senior Associate Administrator for Vehicle Safety is delegated authority to develop and conduct research and development programs and projects necessary to support the purposes of Chapters 301, 323, 325, 327, 329, and 331 of title 49, United States Code, and Chapter 4 of title 23, United States Code, as amended, in coordination with the appropriate Associate Administrators, and the Chief Counsel. The Senior Associate Administrator for Vehicle Safety is also

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tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

The Anti Car Theft Act also amended 49 U.S.C. 33103 to require NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light duty trucks) in not to exceed one-half of the lines not designated under 49 U.S.C. 33104 as high-theft lines." Section 33103(a) further directed NHTSA to select only lines not designated under § 33104 of this title as high theft lines. NHTSA lists each of these selected lines in Appendix B to Part 541. Since § 33103 did not specify marking of replacement parts for below-median lines, the agency does not require marking of replacement parts for these lines. NHTSA published a final rule amending 49 CFR part 541 to include the definitions of MPV and LDT, and major component parts. *See* 59 FR 64164, [December 13, 1994.]

49 U.S.C. 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under § 33106. Section 33106 provides that a-manufacturer may petition to have a high-theft line exempted from the requirements of § 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning in a given model year. It also identifies those lines that are exempted from the theft prevention standard for a given model year under § 33104. Additionally, this listing identifies those lines (except light-duty trucks) in Appendix B to Part 541 that have theft rates below the 1990/1991 median theft rate but are subject to the requirements of this standard under § 33103.

On August 3, 2001, the final listing of high-theft lines for the MY 2002 vehicle lines was published in the **Federal Register** (66 FR 40622). The final listing identified four vehicle lines that were listed for the first time and became subject to the theft prevention standard beginning with the 2002 model year.

For MY 2003, the agency identified five new vehicle lines that are likely to be high-theft lines, in accordance with the procedures published in 49 CFR part 542. The new lines are the Honda Pilot, the Nissan Infiniti M45, the Subaru Baja, the Toyota Lexus GX 470 and the Toyota Matrix. The agency was also informed by General Motors that its Saturn SC vehicle line has been renamed the Saturn ION vehicle line beginning with the 2003 model year. In addition to these five vehicle lines, the list of high-theft vehicle lines includes all lines previously designated as high-theft and listed for prior model years.

Subsequent to publishing the MY 2002 final rule, the agency was informed by DaimlerChrysler, Inc., (Daimler/Chrysler) that its Jeep Cherokee vehicle line was replaced by the Jeep Liberty vehicle line beginning with the 2002 model year. Accordingly, Appendix A has also been amended to reflect these changes.

The list of lines that have been exempted by the agency from the parts-marking requirements of part 541 includes high-theft lines newly exempted in full beginning with MY 2003. The five vehicle lines newly exempted in full are the BMW (confidential nameplate) vehicle line which replaces its Z3 vehicle line, the General Motors Pontiac Grand Prix, the Isuzu Axiom, the Nissan Infiniti G35 and the Mazda 6 vehicle line. The vehicle lines listed as being subject to the parts-marking standard have previously been designated as high-theft lines in accordance with the procedures set forth in 49 CFR part 542. Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. 33103 or 33104.

The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106.

Similarly, the low-theft lines listed as being subject to the parts-marking standard have previously been designated in accordance with the procedures set forth in 49 U.S.C. 33103.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of 49 U.S.C. 33104, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of 49 CFR part 541 for MY 2003. Further, this listing does not actually exempt lines from the requirements of 49 CFR part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of actions for MY 2003 that the agency has already taken, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are already subject to the requirements of 49 CFR part 541 for MY 2003. The agency believes that the listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule does not have a retroactive effect. In accordance with § 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

2. In Part 541, Appendices A and A–I, are revised to read as follows:

APPENDIX A TO PART 541—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
Alfa Romeo	Milano 161 164
BMW	Z3 Z8 6 Car Line
Consulier	Consulier GTP
Daewoo	Korando Musso (MPV) Nubira
Daimlerchrysler	Chrysler Cirrus Chrysler Fifth Avenue/Newport Chrysler Laser Chrysler LeBaron/Town & Country Chrysler LeBaron GTS Chrysler's TC Chrysler New Yorker Fifth Avenue Chrysler Sebring Chrysler Town & Country Dodge 600 Dodge Aries Dodge Avenger Dodge Colt Dodge Daytona Dodge Diplomat Dodge Lancer Dodge Neon Dodge Shadow Dodge Stratus Dodge Stealth Eagle Summit Eagle Talon Jeep Cherokee (MPV) Jeep Grand Cherokee (MPV) Jeep Liberty (MPV) [1] Jeep Wrangler (MPV) Plymouth Caravelle Plymouth Colt Plymouth Laser Plymouth Gran Fury Plymouth Neon Plymouth Reliant Plymouth Sundance Plymouth Breeze
Ferrari	Mondial B 328

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APPENDIX A TO PART 541—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
Ford	Ford Aspire
	Ford Escort
	Ford Probe
	Ford Thunderbird
	Lincoln Continental
	Lincoln Mark
	Lincoln Town Car
	Mercury Capri
	Mercury Cougar
	Merkur Scorpio
	Merkur XR4Ti
General Motors	Buick Electra
	Buick Reatta
	Buick Skylark
	Chevrolet Malibu
	Chevrolet Nova
	Chevrolet Blazer (MPV)
	Chevrolet Prizm
	Chevrolet S–10 Pickup
	Geo Storm
	Chevrolet Tracker (MPV)
	GMC Jimmy (MPV)
	GMC Sonoma Pickup
	Oldsmobile Achieva (MYs 1997–1998)
	Oldsmobile Bravada
	Oldsmobile Cutlass
	Oldsmobile Cutlass Supreme (MYs 1988–1997)
	Oldsmobile Intrigue
	Pontiac Fiero
	Saturn Sports Coupe[2]
	Saturn ION
Honda	Accord
	CRV (MPV)
	Odyssey (MPV)
	Passport
	Pilot (MPV)[3]
	Prelude
	S2000
	Acura Integra
	Acura MDX (MPV)
	Acura RSX
Hyundai	Accent
	Sonata
	Tiburon
Isuzu	Amigo
	Impulse
	Rodeo
	Rodeo Sport
	Stylus
	Trooper/Trooper II
	VehiCross (MPV)
Jaguar	XJ
Kia Motors	Optima
	Rio
	Sephia (1998–2002)
	Spectra
Lotus	Elan
Maserati	Biturbo
	Quattroporte 228
Mazda	626
	MX–3
	MX–5 Miata
	MX–6

APPENDIX A TO PART 541—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
Mercedes-Benz	190 D–190 E
	260E (1987–1989)
	300 SE (1988–1991)
	300 TD (1987)
	300 SDL (1987)
	300 SEL
	350 SDL (1990–1991)
	420 SEL (1987–1991)
	560 SEL (1987–1991)
	560 SEC (1987–1991)
	560 SL
Mitsubishi	Cordia
	Eclipse
	Lancer
	Mirage
	Montero
	(MPV)
	Montero Sport (MPV)
	Tredia
	3000GT
Nissan	240SX
	Sentra/200SX
	Xterra
	Infiniti M45[3]
Peugeot	405
Porsche	924S
Subaru	XT
	SVX
	Baja[3]
	Forester
	Legacy
Suzuki	Aerio X90 (MPV)
	Sidekick (MYs 1997–1998)
	Vitara/Grand Vitara (MPV)
Toyota	Toyota 4-Runner (MPV)
	Toyota Avalon
	Toyota Camry
	Toyota Celica
	Toyota Corolla/Corolla Sport
	Toyota Echo
	Toyota Highlander (MPV)
	Toyota Matrix (MPV)[3]
	Toyota MR2
	Toyota MR2 Spyder
	Toyota Prius
	Toyota RAV4 (MPV)
	Toyota Sienna (MPV)
	Toyota Tercel
	Lexus GX470 (MPV)[3]
	Lexus IS300
	Lexus RX300 (MPV)
Volkswagen	Audi Quattro
	Volkswagen Scirocco

[1] Replaced the Jeep Cherokee in MY 2002.
[2] Renamed the Saturn ION beginning with MY 2003.
[3] Lines added for MY 2003.

APPENDIX A–I TO PART 541—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Subject lines
Austin Rover	Sterling
BMW	MINI
	X5
	(confidential nameplate)[1]
	3 Car Line
	5 Car Line
	7 Car Line
	8 Car Line

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APPENDIX A–I TO PART 541—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturer	Subject lines
Daimlerchrysler	Chrysler Conquest
	Chrysler Imperial
Ford	Mustang
	Mercury Sable
	Mercury Grand Marquis
	Taurus
General Motors	Buick LeSabre
	Buick Park Avenue
	Buick Regal/Century
	Buick Riviera
	Cadillac Allante
	Cadillac Deville
	Cadillac Seville
	Chevrolet Cavalier
	Chevrolet Corvette
	Chevrolet Impala/Monte Carlo
	Chevrolet Lumina/Monte Carlo (MYs 1996–1999)
	Chevrolet Malibu
	Chevrolet Venture
	Oldsmobile Alero
	Oldsmobile Aurora
	Oldsmobile Toronado
	Pontiac Bonneville
	Pontiac Grand Am
	Pontiac Grand Prix [1]
	Pontiac Sunfire
Honda	Acura CL
	Acura Legend (MYs 1991–1996)
	Acura NSX
	Acura RL
	Acura SLX
	Acura TL
	Acura Vigor (MYs 1992–1995)
Isuzu	Axiom.[1]
	Impulse (MYs 1987–1991)
Jaguar	XK
Mazda [1]	6
	929
	RX–7
	Millenia
Mercedes-BENZ	124 Car Line (the models within this line are):
	260E
	300D
	300E
	300CE
	300TE
	400E
	500E
	129 Car Line (the models within this line are):
	300SL
	500SL
	600SL
	SL320
	SL500
	SL600
	202 Car Line (the models within this line are):
	C220
	C230
	C280
	C36
	C43
Mitsubishi	Galant
	Starion
	Diamante

APPENDIX A–I TO PART 541—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturer	Subject lines
Nissan	Nissan Altima
	Nissan Maxima
	Nissan Pathfinder
	Nissan 300ZX
	Infiniti G35 [1]
	Infiniti I30
	Infiniti J30
	Infiniti M30
	Infiniti QX4
	Infiniti Q45
Porsche	911
	928
	968
	986 Boxster
Saab	9–3
	900 (1994–1998)
	9000 (1989–1998)
Toyota	Toyota Supra
	Toyota Cressida
	Lexus ES
	Lexus GS
	Lexus LS
	Lexus SC
Volkswagen	Audi 5000S
	Audi 100/A6
	Audi 200/S4/S6
	Audi Allroad Quattro (MPV)
	Audi Cabriolet
	Volkswagen Cabrio
	Volkswagen Corrado
	Volkswagen Golf/GTI
	Volkswagen Jetta/Jetta III
	Volkswagen Passat

[1] Lines exempted in full beginning with MY 2003.

Issued on: June 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–16472 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[FTA 2002–11449]

RIN 2132–AA69

Rail Fixed Guideway Systems; State Safety Oversight

ACTION: Withdrawal of direct final rule.

SUMMARY: The Federal Transit Administration (FTA) is withdrawing the direct final rule that revised the definition of "accident" as used in 49 CFR part 659 due to the receipt of adverse comments. FTA noted in the direct final rule published in the **Federal Register** on April 3, 2002 (67 FR 15725) that the rule would be withdrawn and would not take effect if an adverse comment was received on or before June 3, 2002. The Missouri Department of Economic Development, Division of Motor Carrier and Railroad Safety submitted an adverse comment dated May 30, 2002; therefore, the direct final rule will not become effective on July 2, 2002. FTA is reviewing 49 CFR part 659 and plans to publish a notice of proposed rulemaking in November 2002.

DATES: This withdrawal is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, contact Jerry Fisher or Roy Field, Office of Safety and Security, FTA, telephone 202–366–2233, fax 202–366–7951. For questions on viewing or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: On April 3, 2002, FTA published a direct final rule (64 FR 15725) amending 49 CFR Part 659 by removing the term "accident" under this section and adding in its place the definition and term "major incident" to be effective July 2, 2002. This action was taken because FTA's review of the National Transit Database (NTD), as mandated by the Department of Transportation's FY 2000 Appropriations Act, resulted in revisions of the Safety and Security Module of the NTD "Reporting Manual for 2002". FTA solicited input from NTD stakeholders, which include rail transit agencies reporting to State Oversight Agencies as required by the State Safety Oversight regulations.

FTA believes that two accident/incident reporting definitions would cause confusion, generate inconsistent data, and create an additional burden for rail transit reporters. FTA stated in the preamble of the direct final rule it had solicited input from NTD stakeholders, including rail transit agencies reporting to State Oversight Agencies. However, as noted by the Missouri Department of Economic Development, Division of Motor Carrier and Railroad Safety, FTA did not solicit input from it, a state agency directly responsible for safety oversight of transit agencies within the state.

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FTA initially believed the rulemaking would not be controversial. Based on the adverse comment we agree that input from additional stakeholders is warranted. At this time, FTA will not replace the term "accident" with the term "major incident" in 49 CFR 659.5, 659.39, 659.41. FTA plans to publish a notice of proposed rulemaking in November 2002.

List of Subjects in 49 CFR Part 659

Railroads.

Dated: June 26, 2002.

Jennifer L. Dorn,

Administrator, Federal Transit Administration.

[FR Doc. 02–16627 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2158–09 ; I.D. 062502B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions, which include both mandatory and voluntary measures, consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 3,500 square nautical miles (nm^2) (6,486 km^2) in the Great South Channel area, east of Cape Cod, Massachusetts, for 15 days. The purpose of this action is to provide immediate protection to an unexpectedly high aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours July 1, 2002, through 2400 hours July 15, 2002.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–28–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right whales, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing gear in areas north of 40° N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On June 18, 2002, NMFS Aerial Survey Team reported a sighting of 75 right whales, 45 in the proximity of 41° 21′ N lat. and 69° 17′ W long. and 30 in the proximity of 41° 21′ N latitude and 69° 01′ W longitude. These positions lie east of Cape Cod, Massachusetts, in an area called the Great South Channel.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above and additional data regarding current and historic right whale sightings. Through this action, NMFS restricts lobster trap and gillnet gear set in the waters bounded by:

41°48′ N, 69°44′W (NW Corner)
41°48′ N, 68°25′ W
40°54′ N, 68°25′W
40°54′ N, 69°06′ W (SW Corner)

The mandatory restrictions for the portion of the DAM zone east of the western boundary of the Outbound Boston Harbor shipping lanes are as follows: All anchored gillnet and lobster trap gear must be removed from these waters.

In addition, NMFS requests the voluntary removal of all lobster trap and anchored gillnet gear in the waters bounded by:

41°48′ N, 69°51′ W (NW Corner)
41°48′ N, 69°44′ W
40°54′ N, 69°06′ W
40°54′ N, 69°51′ W (SW Corner)

The voluntary restrictions for this portion of the DAM zone west of the western boundary of the Outbound Boston Harbor shipping lanes are as follows: voluntary removal of all lobster trap and gillnet gear from these waters. Furthermore, NMFS asks lobster trap and gillnet fishermen not to set any new gear in this entire area during the 15–day alert period. The restrictions will be in effect beginning at 0001 hours July 1, 2002, through 2400 hours July 15, 2002, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**. The restrictions, both mandatory and voluntary, will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register.**

Classification

In accordance with section 118(f)(9) of the MMPA, the AA has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

Providing prior notice and an opportunity for public comment on this action would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. To meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. The criteria were triggered with respect to this rule on June 18, 2002. If NMFS were to provide notice and an opportunity for public comment prior to the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Nevertheless, NMFS recognizes the need for fishermen to have time to remove their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective beginning at 0001 hours July 1, 2002, through 2400 hours July 15, 2002. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (see **ADDRESSES**).

This rule has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.*and 50 CFR 229.32(g)(3)

Dated: June 26, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16537 Filed 6–27–02; 10:47 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020620154–2154–01; I.D. 052902A]

RIN 0648–AQ10

Fisheries of the Exclusive Economic Zone Off Alaska; Change of the Name of the Salmon Fisheries Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Technical correction.

SUMMARY: NMFS is correcting the title of the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) off Alaska (FMP). This action is necessary to make the name of the FMP in Federal regulations consistent with the actual name of the FMP as approved by the Secretary of Commerce (Secretary). The intended effect of this action is regulatory consistency, and it will have no effect on any person fishing in the EEZ for any species.

DATES: Effective on July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fisheries in the EEZ off Alaska are managed pursuant to the FMP prepared by the North Pacific Fishery Management Council (Council) and approved and implemented by the Secretary under authority of the Magnuson-Stevens Fishery Conservation and Management Act. The original title of the salmon FMP was the "Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude."

Over time, the international regime affecting salmon fisheries changed and the Council revisited its salmon management policies. In 1989, the Council adopted an amendment to the FMP (Amendment 3) which, among other things, changed the title of the FMP to, "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska." The Secretary approved Amendment 3 to the FMP in 1990, and published implementing rules on November 15, 1990 (55 FR 47773).

NMFS has discovered that regulations implementing Amendment 3 did not include the new title of the FMP. This change should have been included in

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the 1990 regulatory changes implementing Amendment 3 but was not due to oversight. No public comment was received on these or any of the other changes made by Amendment 3. Subsequent consolidation of all Federal fishery regulations off Alaska pursuant to President Clinton's Regulatory Reform Initiative did not correct the error (62 FR 19686, April 23, 1997).

This action corrects this error by changing the title of the FMP as it appears in regulations codified at 50 CFR part 679 to be consistent with the FMP as amended and approved by the Secretary. This action will not have any substantive regulatory effect.

Classification

This action changes the title of the salmon FMP, a non-discretionary technical change with no substantive effects. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), as such procedure would be unnecessary. Because prior notice and opportunity for comment is not required for this action by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*are not applicable.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 25, 2002.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554. *et seq.*

2. In § 679.1, the heading of paragraph (i) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(i) *Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP).** * *

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[FR Doc. 02–16382 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–23–S

Proposed Rules

Federal Register
Vol. 67, No. 126
Monday, July 1, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV02–922–1 PR]

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2002–03 and subsequent fiscal periods from $2.00 to $2.50 per ton of apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Authorization to assess apricot handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 31, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and Marketing Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington apricot handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable apricots beginning on April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA'S ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $2.00 to $2.50 per ton of apricots handled.

The Washington apricot marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of Washington apricots. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 15, 2002, and unanimously recommended 2002–03 expenditures of $11,685 and an assessment rate of $2.50 per ton of apricots. In comparison, last year's budgeted expenditures were $11,230. The recommended rate is $.50 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, and an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2002 apricot crop.

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The major expenditures recommended by the Committee for the 2002–03 fiscal period include $5,892 for salaries, $1,000 for travel, $816 for rent and maintenance, and $540 for office equipment and repair. Budgeted expenses for these items in 2001–2002 were $5,731, $1,000, $792, and $264, respectively.

Washington apricot shipments for 2002 are estimated at 3,650 tons which should provide $9,125 in assessment income. This income, along with approximately $2,540 from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $8,257) would be kept within the maximum permitted by the order. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's operational expenses (§ 922.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 200 producers of apricots in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh apricot production of 4,406 tons (Committee records), a three-year average of producer prices of $832 per ton reported by the National Agricultural Statistics Service, and 200 Washington apricot producers, the average annual producer revenue is approximately $18,329. In addition, based on Committee records and 2001 F.O.B. prices ranging from $14.50 to $22.50 per 24-pound container reported by USDA's Market News Service, all of the Washington apricot handlers ship under $5,000,000 worth of apricots. In view of the foregoing, it can be concluded that all of the Washington apricot producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $2.00 to $2.50 per ton of apricots. The Committee unanimously recommended 2002–03 expenditures of $11,685 and an assessment rate of $2.50 per ton. The proposed assessment rate is $.50 higher than the rate currently in effect. The quantity of assessable apricots for the 2002–03 fiscal period is estimated at 3,650 tons. Income derived from handler assessments (approximately $9,125), along with funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $5,892 for salaries, $1,000 for travel, $816 for rent and maintenance, and $540 for office equipment and repair. Budgeted expenses for these items in 2001–02 were $5,731, $1,000, $792, and $264, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, and an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2002 apricot crop. As of March 31, 2002, the Committee's reserve was $8,257. At the rate of $2.00 per ton and an estimated 2002 apricot production of 3,650 tons, the projected reserve on March 31, 2003, would be $3,872. The Committee believed that this reserve would not be adequate should there be another reduced crop. At the rate of $2.50 per ton (assessment income of $9,125) and expenditures of $11,685, the Committee may draw up to $2,540 from its reserve. The projected reserve would be approximately $5,697 on March 31, 2003, which the Committee determined to be acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to $2.50 per ton would be adequate to maintain the reserve at an acceptable level. The Committee decided that an assessment rate between $2.00 per ton and $2.50 per ton would not maintain the reserve at an adequate level. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2002–03 fiscal period could range between $800 and $850 per ton of apricots. Therefore, the estimated assessment revenue for the 2002–03 as a percentage of total producer revenue could range between 0.31 and 0.29 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large production area commodity handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period began on April 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is proposed to be amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $2.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: June 25, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–16478 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 99–012–1]

Standards for Permanent, Privately Owned Horse Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to the importation of horses to establish standards for the approval of permanent, privately owned quarantine facilities for horses. We are taking this action because recent demand for quarantine services for horses has exceeded the space available at existing facilities. We believe that allowing imported horses to be quarantined in permanent, privately owned horse quarantine facilities that meet these criteria would facilitate the importation of horses while continuing to protect against the introduction of communicable diseases of horses.

DATES: We will consider all comments that we receive by August 30, 2002.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 99–012–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–012–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Bischoff, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require that some of these animals be quarantined upon arrival in the United States as a condition of entry. APHIS operates animal quarantine facilities and authorizes the use of privately owned quarantine facilities for certain animal importations. The regulations in part 93 currently contain requirements for the approval of various privately owned quarantine facilities. The regulations at subpart C of part 93 (9 CFR 93.300 through 93.326, referred to below as the regulations) pertain to the importation of horses and include requirements for privately owned quarantine facilities for horses. These requirements are for the approval and establishment of temporary quarantine facilities for the purpose of quarantining imported horses for a specific event.

In addition to operating Federal animal quarantine facilities and authorizing the operation of temporary, privately owned quarantine facilities for horses, APHIS currently authorizes the operation of one permanent, privately owned animal import quarantine facility, located in Los Angeles County, CA.

The demand for import quarantine facilities for horses has risen in recent years as the amount of trade between the United States and other countries has risen. From 1992 to 1999, the number of horses imported annually into the United States increased substantially. In some cases, the demand for quarantine services for horses has exceeded the space available at existing facilities. In addition, in some locations, such as Hawaii and Puerto Rico, no facilities exist for quarantining imported horses. The demand for quarantine services for horses cannot always be filled by temporary, privately owned quarantine facilities because such facilities are established, approved, and operated by importers on a temporary basis to handle only horses imported for a unique importation, race, or show.

As a result of the increasing demand for quarantine space for imported horses and a request from the horse industry to establish standards for permanent, privately owned horse quarantine facilities, we are proposing to establish requirements in the regulations for the approval and operation of such facilities. We have considered the

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possible need for permanent, privately owned quarantine facilities for horses in the past. On September 6, 1989, we published in the **Federal Register** (54 FR 36986–36996, Docket No. 85–061) a proposed rule that would have (1) allowed the operation of permanent, privately owned quarantine facilities for horses; (2) added new requirements for the approval of temporary, privately owned quarantine facilities for horses; and (3) required payment from each privately owned quarantine facility for services provided by APHIS at the facility. These changes would have been made in 9 CFR part 92; however, a 1990 final rule reorganized part 92, and the proposed provisions were no longer consistent with the new format of the part. Because of this inconsistency and for other reasons, we withdrew the proposed rule and reopened the issue for public discussion in a notice of withdrawal and an advance notice of proposed rulemaking published in the **Federal Register** on February 26, 1996 (61 FR 7079, Docket No. 95–084–1). Then, on May 6, 1996, we published a notice (61 FR 20189–20190, Docket No. 95–084–2) that we were reopening and extending the public comment period established by the advance notice of proposed rulemaking and holding a public meeting on May 17, 1996, regarding the issue of permanent, privately owned quarantine facilities for horses.

We received 10 comments during the 2 comment periods and at the public meeting just described. Some commenters supported the concept of permanent, privately owned quarantine facilities for horses, and some commenters were opposed. We have considered the comments and have decided to propose regulations that would allow the establishment of permanent, privately owned horse quarantine facilities that would operate under the strict oversight of an APHIS veterinarian. We believe that these facilities would provide an effective and efficient means of bringing horses into the United States without compromising our ability to protect against the introduction of communicable diseases of horses.

We intend to maintain the current requirements in the regulations for the approval of temporary, privately owned quarantine facilities for horses. We believe that these requirements are sufficient for facilities that are intended to quarantine horses imported only for a particular event. Temporary facilities are generally used to quarantine small numbers of animals in a single group and are in operation only a short period of time before all the animals are removed and the facility is closed.

We are proposing to add requirements to the regulations for the establishment and approval of permanent, privately owned quarantine facilities for horses. These requirements are designed to maintain the same biological security standards that are currently employed in other APHIS-approved permanent quarantine facilities.

We believe that the permanent, privately owned facilities must be designed, equipped, and monitored similarly to APHIS quarantine facilities in order to provide sufficient protection against the introduction of disease. Like an APHIS facility, a permanent, privately owned quarantine facility could be occupied on a continuing basis by a large number of horses in different lots.[1] Therefore, the risk of disease spread within and from permanent facilities would be different than the risk at temporary facilities. These differences dictate that security measures must be tighter, and disease detection and prevention measures must be different, at permanent facilities than at temporary ones. While the requirements for temporary facilities allow for variation in the physical plants, the proposed requirements for permanent facilities would ensure a greater degree of consistency in the physical plants of those facilities. Such consistency should help ensure a greater degree of biosecurity. The full text of the proposed regulations appears in the rule portion of this document. Our discussion of the proposed provisions follows.

Definitions

We are proposing to add to § 93.300 definitions for the terms *permanent, privately owned quarantine facility* and *temporary, privately owned quarantine facility* to make clear the differences between the two types of facilities. A *permanent, privately owned quarantine facility* would be one that offers quarantine services for horses to the general public on a continuing basis and that is owned by an entity other than the Federal Government. A *temporary, privately owned quarantine facility* would be one that offers quarantine services for a special event and that is owned by an entity other than the Federal Government. Throughout the rest of this document, use of the term "permanent facility" means a permanent, privately owned quarantine facility for horses, and use of the term "temporary facility" means a temporary, privately owned quarantine facility for horses.

We are proposing to revise the definition for *operator* contained in § 93.300. *Operator* is currently defined for the purposes of § 93.308 as "any person operating an approved quarantine facility." The revised definition of *operator* would be "a person other than the Federal government who owns or operates a temporary, privately owned quarantine facility or a permanent, privately owned quarantine facility." We are proposing this change because we want to emphasize that, although private entities would own these facilities, they would be subject to APHIS approval and oversight.

We would also add definitions for the terms *lot, lot-holding area, quarantine area,* and *nonquarantine area.* We would define a *lot* of horses as a group of horses that, while held on a conveyance or premises, have had opportunity for physical contact with other horses in the group or with their excrement or discharges at any time during their shipment to the United States. A *lot-holding area* would be an area in a facility in which a single lot of horses is held at one time. The *quarantine area* of a facility would be the area of a facility that comprises all of the lot-holding areas in the facility and any other areas that the horses have access to, including loading docks for receiving and releasing horses. The *quarantine area* would also include any areas in the facility that are used to conduct examinations of horses and take samples or areas where samples are processed and examined. The *nonquarantine* area of a facility would include the area in a permanent, privately owned quarantine facility that includes offices, storage areas, and other areas outside the quarantine area, and that is off limits to horses, samples taken from horses that have not yet been prepared or packaged for shipment to laboratories, and any other objects or substances that have been in the quarantine area during quarantine of horses.

Nonsubstantive Changes

The requirements for temporary facilities are currently located in § 93.308 (b) and (c). Although we are not proposing to make any substantive changes to these requirements, we are proposing to make some nonsubstantive changes to update the language. We are also proposing to combine paragraphs (b) and (c), so that all of the requirements pertaining to the establishment and operation of temporary facilities are located in paragraph (b). We would place the proposed regulations pertaining to permanent facilities in the newly vacated § 93.308(c). Those regulations are described below. In addition, we are proposing to revise the heading for § 93.309 to indicate more clearly that the section pertains to payment information for use of all quarantine facilities, including privately owned temporary and permanent quarantine facilities, and quarantine facilities owned by APHIS. The section heading currently reads "Horse quarantine facilities"; we believe a more helpful heading would be "Horse quarantine facilities; payment information." Therefore, as proposed, § 93.308(a) would contain general information about quarantine requirements for imported horses; § 93.308(b) would contain requirements for temporary facilities; § 93.308(c) would contain requirements for permanent facilities; and § 93.309 would contain information about payment for services provided at all quarantine facilities.

Section 93.303 of the regulations pertains to ports designated for the importation of horses. Paragraph (e) of that section pertains to ports used by persons who quarantine horses at temporary facilities. The paragraph heading in § 93.303(e) currently reads "Ports and quarantine facilities provided by the importer for horses." We are proposing to revise the paragraph heading because the owner of a permanent facility would not necessarily be the importer of the horses quarantined at the facility. The new paragraph heading for § 93.303(e) would read "Ports for horses to be quarantined at privately owned quarantine facilities."

Section 93.304 contains permit requirements for horses imported from certain regions. Paragraphs (a) and (a)(2) contain references to quarantine facilities provided by importers of horses. Since, in all cases, such facilities would be privately-owned facilities, we are proposing to revise those paragraphs to make it clear that they refer to privately-owned quarantine facilities. We are also proposing to clarify that under paragraph (a)(2), applications for permits to import horses from certain regions or horses intended for quarantine at privately-owned quarantine facilities may be denied for the various reasons described in that paragraph.

Proposed Requirements for Permanent Facilities

We are proposing to add to the regulations information about how to apply for approval of a permanent facility and information concerning denial and withdrawal of approval. Owners of any currently approved quarantine facilities, whether temporary or permanent, who wish to convert to, or be recognized as, a permanent facility would need to meet the proposed requirements for permanent facilities described below and apply for approval as a permanent facility. Such facilities would need to be approved to operate by APHIS by the effective date of the final rule for this action, if it is adopted, in order to continue quarantine operations.

Approval of Permanent Facilities

Application Process

The proposed regulations explain how to apply for approval of a permanent facility. Under the proposed regulations, interested persons would be required to write to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231. The application letter would be required to include:

- The full name and mailing address of the applicant.
- The location and street address of the facility for which approval is sought.
- Blueprints for the facility.
- A description of the financial resources available for construction, operation, and maintenance of the facility.
- The anticipated source or origin of horses to be quarantined as well as the expected size and frequency of shipments.
- A contingency plan for the possible disposal of all the horses capable of being housed in the facility.

If APHIS determines that a submitted application is complete and merits further consideration, we would require that the person applying for facility approval enter into a compliance agreement with APHIS wherein the applicant agrees to pay the cost of all APHIS services[2] associated with APHIS's evaluation of the application and facility. This compliance agreement applies only to fees accrued during the application process.[3]

Requests for approval would be required to be submitted to APHIS at least 120 days prior to the date of application for local building permits in order to ensure that APHIS has adequate time to evaluate the plans for the facility, assess potential environmental effects, and determine that adequate APHIS personnel are available to staff the facility.

Requests for approval of a proposed facility would be evaluated on a first-come, first-served basis.

Approval Requirements

The proposed regulations also list the basic criteria that a permanent facility must meet to be approved by APHIS. Under the regulations, a permanent facility would be required to meet all the requirements in § 93.308(c). The facility would also be required to meet any additional requirements that may be imposed by the Administrator to ensure that the quarantine is adequate to enable determination of the horses' health status, as well as to prevent the transmission of diseases into, within, and from the facility. These additional requirements would be specified in the compliance agreement required under § 93.308(c)(2). Also, under the proposed regulations, APHIS would need to find, based on an environmental analysis, that the operation of the facility would not have significant environmental effects.

We are proposing that, to be approved as a permanent facility, the Administrator must determine that sufficient APHIS personnel (including veterinarians and animal health technicians) are available to ensure the biological security of the facility. Therefore, if a facility met all of the other proposed requirements and APHIS personnel were available, then APHIS would approve the facility and assign personnel to it. Because the assignment of APHIS personnel would be handled on a "first-come, first-served" basis, the deployment of APHIS personnel at one permanent facility might result in another facility not being approved for lack of necessary APHIS personnel. The Administrator would have sole discretion in determining the number of APHIS personnel to be assigned to the facility.

The proposed regulations also include procedures for denying or withdrawing approval of permanent facilities if any provision of the regulations is not met. The regulations would also establish due process procedures regarding a denial or withdrawal of approval and an opportunity for a hearing when there is a dispute of material fact regarding the denial or withdrawal. In addition, approval would be withdrawn automatically by the Administrator when the owner notifies, in writing, the veterinarian in charge for the State in

[1] Under this proposed rule, APHIS would also approve permanent, private facilities that are equipped to handle only one lot of horses at a time.

[2] APHIS charges for evaluation services at hourly rates in 9 CFR 130.30.

[3] If the facility is approved by APHIS, facility owners must enter into a new compliance agreement in accordance with § 93.308(c)(2) of the proposed regulations.

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which the facility is located that the facility is no longer in operation.

Under the proposed regulations, the approval of a permanent facility may be denied or withdrawn if:

- Any requirement of this section or the compliance agreement is not complied with.
- The operator fails to pay for APHIS services rendered.
- The operator or a person responsibly connected with the business of the permanent facility is or has been convicted of any crime under any law regarding the importation or quarantine of any animal.
- The operator or a person responsibly connected with the business of the permanent facility is or has been convicted of any crime involving fraud, bribery, or extortion or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals.
- The approved permanent facility has not been in use to quarantine horses for a period of at least 1 year.

The proposed regulations would provide that a person is responsibly connected with the business of the permanent facility if the person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity for the operation of the permanent facility.

Compliance Agreement

We are proposing to prohibit any facility from operating as a permanent facility unless the facility is operated in accordance with a compliance agreement executed by the owner and by the APHIS Administrator that must be renewed on an annual basis. The compliance agreement would provide that the facility is required to meet all applicable requirements of § 93.308 of the regulations and that the facility's quarantine operations are subject to the strict oversight of APHIS representatives. The compliance agreement would also state that the operator of the facility agrees to be responsible for all the costs associated with operating a permanent facility, including:

- All costs associated with its maintenance and operation;
- All costs associated with the hiring of employees and other personnel to attend to the horses as well as to maintain and operate the facility;
- All costs associated with the care of quarantined horses, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; and
- All APHIS charges for the services of APHIS representatives in accordance with 9 CFR part 130.

The compliance agreement would also state that the operator agrees to bar from the facility any employee or other personnel at the facility who fail to comply with the proposed regulations in § 93.308 (c), other regulations of 9 CFR part 93, any terms of the compliance agreement, or related instructions from APHIS representatives.

Physical Plant Requirements

The proposed requirements for the physical plant of permanent facilities are designed to ensure that permanent facilities are capable of operating in accordance with the regulations to prevent the spread of diseases to horses in different lots within a permanent facility or outside a permanent facility.

Location

To minimize the risk of disease introduction from imported horses moving from the port of entry to the permanent facility, we are proposing to require that the facility be located in proximity to a port authorized under § 93.303(e) such that the Administrator is able to determine that the movement of horses from the port to the permanent facility poses no significant risk of transmitting communicable diseases of animals to the domestic animal population. While requiring that a permanent facility be within proximity of the port, we decided for several reasons not to require that the port and the facility be located within a certain distance of one another. Some ports will be in large metropolitan areas with the nearest concentration of livestock many miles away. Other ports may be in towns with rural areas and concentrations of livestock within a very short distance of the port. Considering the diversity of places in which persons may consider locating permanent facilities, it would be difficult to stipulate a maximum distance from the port of entry.

We are further proposing to require that the facility be located at least one-half mile from any premises holding livestock or horses. We believe that this distance would be sufficient to prevent the aerosol transmission of various infectious diseases of horses and other livestock.

The specific routes for the movement of horses from the port to the permanent facility would have to be approved by the Administrator. In evaluating the suitability of a particular site for a permanent facility, the Administrator would consider whether the movement of horses from the port of entry to the proposed facility would pose any significant risk for transmitting communicable livestock diseases.

Construction

We are proposing to require that the facility be of sound construction, in good repair, and properly designed to prevent the escape of horses from quarantine. The facility would be required to have the capacity to receive and house a shipment of horses as a lot on an "all-in, all-out" basis.

In order to ensure the integrity of quarantine operations, we are proposing to require that the facility be enclosed by a security fence that can reasonably be expected to prevent unauthorized persons, horses, and other animals from outside the facility from having contact with horses quarantined in the facility.

We would also require that all entryways into the nonquarantine area of the facility be equipped with a secure and lockable door. Further, while horses are in quarantine, all access to the quarantine area for horses would need to be from within the building, and each such entryway to the quarantine area would be required to be equipped with a series of solid self-closing double doors. Further, entryways to each lot-holding area would have to be equipped with a solid lockable door. Emergency exits would be permitted in the quarantine area but such exits would be required to be constructed so as to permit their opening only from the inside of the facility in order to ensure the security of the horses in quarantine and the integrity of quarantine operations.

We propose to require that the facility be constructed so that any windows or other openings in the quarantine area are double-screened with screening of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of diseases of horses. The screens would need to be easily removable for cleaning, but otherwise secure enough to ensure the biological security of the facility.

The facility would need to have adequate lighting throughout, including in stalls and hallways, for the purpose of examining horses and conducting necropsies.

The facility would need to have two separate loading docks: One that is part of the quarantine area and that is used for receiving and releasing horses, and one that is part of the nonquarantine area and that is used for general receiving and pickup.

We would also require that the facility be constructed so that the floor surfaces with which horses have contact are nonslip and wear-resistant. All floor surfaces with which the horses, their excrement, or discharges have contact would have to provide for adequate drainage, and drains would be required to be at least 8 inches in diameter. All floor and wall surfaces with which the horses, their excrement, or discharges have contact would have to be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Other ceiling and wall surfaces with which the horses, their excrement, or discharges do not have contact would have to be able to withstand cleaning and disinfection between shipments of horses. The cleaning and disinfection of all of these surfaces would help ensure that disease agents would not be spread from one lot of horses to another. We would further require that surfaces with which the horses could have contact must not have any sharp edges that could cause injury to the horses.

The facility would need to be constructed so that different lots of horses held at the facility at the same time would be separated by physical barriers in such a manner that horses in one lot could not have physical contact with horses in another lot or with the excrement or discharges of horses in another lot. In addition, we would require that permanent facilities include stalls capable of isolating any horses exhibiting signs of illness. These provisions would help ensure that horses infected with or exposed to disease do not spread the disease or expose other horses in the facility to the disease.

To prevent dissemination of disease via persons at the facility, we are proposing to require that the facility contain showers for use before entering and after exiting the areas where the horses are maintained. Our requirements concerning showers would depend on the configuration of the quarantine area. In those facilities where it is possible to move from the nonquarantine area into any lot-holding area without passing through another lot-holding area, we would require that a shower be located at the entrance to the quarantine area. In those facilities where it is not possible to move to certain lot-holding area(s) except by passing through another lot-holding area, we would require that a shower be located at the entrance to each lot-holding area. A shower would also be needed at the entrance to the necropsy area (see description of necropsy area below). We would also require that a clothes-storage and clothes-changing area be provided at each end of each shower area, and that there be one or more receptacles near each shower so that clothing that has been worn into a lot-holding area or elsewhere in the quarantine area can be deposited in the receptacle(s) prior to entering the shower.

Because of the need for APHIS representatives assigned to a permanent facility to examine horses and draw samples for testing, we would require that permanent facilities contain adequate space for these purposes, and that the space include equipment to provide for the safe inspection of horses (i.e., restraining stocks). The facility would need to include adequate storage space for the necessary equipment and supplies, work space for preparing and packaging samples for mailing, and storage space for duplicate samples. Moreover, we would require that adequate storage space for supplies and equipment be provided for each lot of horses. A separate storage space for each lot of horses would help ensure that equipment used on a horse in one lot would not come into contact with horses from another lot or with equipment used on those other horses. Such contact could spread disease between lots of horses. We would further require that the facility include a secure, lockable office space with enough room to contain a desk, chair, and filing cabinet for APHIS use.

We would require that the facility contain a necropsy area and that a shower be located at the entrance to the necropsy area. The necropsy area would have to provide sufficient space and light to conduct an adequate necropsy of a horse and would have to be equipped with hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing laboratory specimens, and an autoclave to sterilize veterinary equipment. Providing for necropsies within the facility would reduce the risk of disease spread to horses outside the facility because no carcasses of potentially diseased horses would need to be transported outside the facility prior to performance of a necropsy. The necropsy area would be necessary to perform post mortem inspection of horses that die in the permanent facility and to collect samples for laboratory diagnosis. These actions would be needed to determine if the death of a horse was associated with a disease, or if the death was caused by other factors, such as colic or physical injury.

We are also proposing to require that the facility have sufficient storage space for equipment and supplies used in quarantine operations. Storage space would be required to include separate, secure storage for pesticides and for medical and other biological supplies, as well as a separate feed storage area, that is vermin-proof, for feed and bedding, if feed and bedding are to be stored at the facility. If the facility has multiple lot-holding areas, we would require that the facility also have separate storage space for supplies and equipment for each lot-holding area.

We are proposing that the facility have an area for washing and drying clothes, linens, and towels and an area for cleaning and disinfecting equipment used in the facility. The facility must also include a work area for the repair of equipment. These areas are essential to ensure the continuity of quarantine operations.

The facility would need to have permanent restrooms in both the quarantine and nonquarantine areas of the facility in order to eliminate the need for persons to leave or enter the quarantine area simply to use a restroom. Leaving the quarantine area would necessitate the person showering prior to entering the nonquarantine area, and then again upon reentering the quarantine area.

The facility would also need to have an area within the quarantine area for breaks and meals in order to eliminate the need for workers to leave the quarantine area for breaks.

We would also require that the facility be constructed with a heating, ventilating, and air conditioning (HVAC) system capable of controlling and maintaining the ambient temperature, air quality, moisture, and odor at levels that are not injurious or harmful to the health of horses in quarantine. We would prohibit air supplied to lot-holding areas from being recirculated or reused for other ventilation needs. Further, HVAC systems for lot-holding areas would be required to be separate from air handling systems for other operational and administrative areas of the facility in order to ensure that air from the quarantine areas is not diverted into nonquarantine areas of the facility. In addition, if the facility is approved to handle more than one lot of horses at a time, each lot-holding area would be required to have its own separate HVAC system that must be designed to prevent cross contamination between the separate lot-holding areas.

The facility, including the lot-holding areas, would have to be equipped with a fire alarm voice communication system so that personnel working in those areas can be readily warned of any potential emergency and vice versa.

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The facility would also need to have a television monitoring system or other arrangement sufficient to provide a full view of the quarantine area or areas, excluding the clothes changing area.

The facility would also need to have a communication system between the nonquarantine and quarantine areas of the facility. Such a system would allow persons working in the quarantine area to communicate with persons working in the nonquarantine area and vice versa without moving from one area to the other, and therefore, without showering in or out.

Sanitation

To ensure that proper animal health and biological security measures are observed, we would require that permanent facilities have the equipment and supplies necessary to maintain the facility in clean and sanitary condition, including pest control equipment and supplies and cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment. Facilities would need to maintain separate equipment and supplies for each lot of horses.

We would require facilities to maintain a supply of potable water adequate to meet all watering and cleaning needs at the facility. We would also require that water faucets for hoses be located throughout the facility to ensure that personnel would not need to drag hoses across areas that have already been cleaned and disinfected. We would also require that an emergency supply of water for horses in quarantine be maintained at the facility.

Facilities would also need to maintain a stock of disinfectant authorized in § 71.10(a)(5) of the regulations, or otherwise approved by the Administrator, and that is sufficient to disinfect the entire facility.

We would also require permanent facilities to have the capability to dispose of wastes, including manure, urine, and used bedding, by means of burial, incineration, or public sewer. Facilities would need to handle other waste material in a manner that minimizes spoilage and the attraction of pests and would need to dispose of the waste material by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Disposal of wastes would need to be carried out under the direct oversight of APHIS representatives.

We would further require permanent facilities to have the capability to dispose of horse carcasses in a manner approved by the Administrator and under conditions that minimize the risk of disease spread from carcasses. This requirement is necessary to ensure that facilities can destroy any disease agents that might be present in a horse carcass.

Further, we would require that incineration that is carried out at the facility be done in incinerators that are detached from other facility structures and that are capable of burning animal waste and refuse as required. We would require the incineration site to include an area sufficient for solid waste holding. Incineration could also take place at a local site away from the facility premises. Furthermore, we would require all incineration activities to be carried out under the direct oversight of APHIS representatives.

We would require the facility to have the capability to control surface drainage and effluent into, within, and from the facility in a manner that prevents the spread of disease into, within, or from the facility. If the facility is approved to handle more than one lot of horses at the same time, we would require that the facility have separate drainage systems for each lot-holding area in order to prevent cross contamination.

Security

We would require that the facility and premises be kept locked and secure at all times to ensure the integrity of quarantine operations. We would also require the facility and premises to have signs indicating that the facility is a quarantine area and no visitors are allowed.

The facility and premises would also need to be guarded at all times by one or more representatives of a bonded security company or, alternatively, would need to have an electronic security system that would indicate the entry of unauthorized persons into the facility. We would require that such an electronic security system be coordinated either through or with the local police so that the quarantine facility is monitored whenever APHIS representatives are not at the facility. We would also require that such an electronic security system be of the "silent type" triggered to ring at the monitoring site and not at the facility. The electronic security system would need to be approved by Underwriter's Laboratories. We would also require that the operator provide written instructions to the monitoring agency stating that the police and a representative of APHIS designated by APHIS must be notified by the monitoring agency if the alarm is triggered. The operator would be required to submit a copy of those instructions to the Administrator. The operator of the facility would be required to notify the designated APHIS representative whenever a breach of security occurs or is suspected of occurring. Further, in the event that disease is diagnosed in quarantined horses, the Administrator could require that the operator have the facility guarded by a bonded security company in a manner that the Administrator deems necessary to ensure the biological security of the facility.

We would require that the operator of the facility furnish a telephone number or numbers to APHIS at which the operator or his or her agent can be reached at all times while horses are in quarantine.

We would also provide that APHIS may place APHIS seals on any or all entrances and exits of the facility when determined necessary by APHIS and take all necessary steps to ensure that such seals are broken only in the presence of an APHIS representative. In the event that someone other than an APHIS representative breaks such seals, we would consider the act a breach in security and APHIS representatives would make an immediate accounting of all horses in the facility. If we determine that a breach in security has occurred, we may extend the quarantine period for horses as long as necessary to ensure that the horses are free of communicable diseases.

Operating Procedures

APHIS Oversight

The quarantine of horses at the facility would be subject to the strict oversight of APHIS representatives, who could include one or more veterinarians and other professional, technical, and support personnel employed by APHIS and authorized to perform the services required by the regulations and the compliance agreement. Unlike temporary facilities, which are inspected on a regular basis by an APHIS veterinarian, a permanent facility would have at least one APHIS representative overseeing the care of all horses in quarantine during normal working hours. Depending on the size of the facility and the number of horses present, additional APHIS veterinarians and animal health technicians could be necessary to ensure adequate oversight of the horses in quarantine. The deployment of APHIS representatives to oversee and provide other professional, technical, and support services at a quarantine facility would be determined solely by the Administrator.

If for any reason, the operator fails to properly care for, feed, or handle the quarantined horses as required under the regulations, or fails to maintain and operate the facility as provided in this section, APHIS representatives would be authorized by the compliance agreement to furnish such neglected services or make arrangements for the sale or disposal of quarantined horses at the quarantine facility owner's expense.

Personnel

We propose to require the operator of the facility to provide adequate personnel to maintain the facility and care for the horses in quarantine, including attendants to care for and feed the horses, and other personnel to maintain, operate, and administer the facility.

We are also proposing to require that the operator provide APHIS with a list of employees and other personnel assigned to work at the facility. The list would need to include the names, current residential addresses, and identification numbers of employees and other personnel, and would need to be updated with any changes or additions in advance of such employee or other personnel working at the quarantine facility. These requirements are necessary to ensure that APHIS has knowledge of, and can identify, all persons working at the facility.

In conjunction with the above requirements, we would require the operator to provide APHIS with signed statements from each employee and other personnel hired by the operator and working at the facility in which the person agrees to comply with § 93.308(c) of the regulations, other applicable provisions of 9 CFR part 93, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility.

Authorized Access

We are also proposing to grant access to the quarantine facility premises as well as inside the quarantine facility only to APHIS representatives and authorized employees and other personnel of the operator assigned to work at the facility. All other persons would be prohibited from the premises unless specifically granted access by the overseeing APHIS representative. Any visitors granted access would be required to be accompanied at all times by an APHIS representative while on the premises or in the quarantine area of the facility.

Sanitary Requirements

Under the proposed regulations, all facility employees and other personnel, as well as any other person granted access to the quarantine area, must:

- Shower when entering and leaving the quarantine area;
- Shower before entering a lot-holding area, if previously exposed from access to another lot-holding area;
- Shower when leaving the necropsy area if a necropsy is in the process of being performed or has just been completed, or if all or portions of the examined animal remain exposed;
- Wear clean protective work clothing and footwear upon entering the quarantine area;
- Wear disposable gloves when handling sick horses, and then wash hands after removing gloves;
- Change protective clothing, footwear, and gloves when they become soiled or contaminated;
- *Not* have contact with any horses in the facility other than the lot or lots of horses to which the person is assigned or is granted access; and
- *Not* have had contact with any horses outside the quarantine facility for at least 7 days after the last contact with the horses in quarantine, or for a period of time determined by the overseeing APHIS representative as necessary to prevent the transmission of communicable diseases of horses.

The above requirements are necessary to ensure the integrity of quarantine operations at facilities.

Further, the operator would be responsible for providing a sufficient supply of clothing and footwear to ensure that workers and others provided access to the quarantine area at the facility have clean, protective clothing and footwear at the start of the workday and when they move from one lot of horses to another lot of horses.

The operator or the operator's designated representative would also be responsible for the proper handling, washing, and disposal of soiled and contaminated clothing worn within the quarantine facility in a manner approved by the overseeing APHIS representative as adequate to preclude transmission of any animal disease agent from the facility. At the end of each workday, work clothing worn into each lot-holding area would need to be collected and kept in a bag until the clothing is washed. Used footwear would either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

We would require that all equipment (including tractors) be cleaned and disinfected prior to being used in a quarantine area of the facility with a disinfectant authorized in § 71.10(a)(5) of the regulations or otherwise approved by the Administrator. The equipment would have to remain dedicated to the facility for the entire quarantine period in order to preclude the spread of disease agents outside the facility. Any equipment used with quarantined horses (*e.g.*, halters, floats) would have to remain dedicated to that particular lot of quarantined horses for the duration of the quarantine period or be cleaned and disinfected before coming in contact with horses from another lot to ensure that no cross contamination occurs. Prior to its use on another lot of horses or its removal from the quarantine premises, any equipment would have to be cleaned and disinfected to the satisfaction of an APHIS representative.

The proposed regulations would also require that any vehicle, upon entering or leaving the quarantine area of the facility, be immediately cleaned and disinfected under the oversight of an APHIS representative with a disinfectant authorized in § 71.10(a)(5) of the regulations.

Further, we would require that the area of the facility in which a lot of horses has been held must be thoroughly cleaned and disinfected under the oversight of an APHIS representative upon release of the horses, with a disinfectant authorized in § 71.10(a)(5) before a new lot of horses is placed in that area of the facility. This requirement is necessary to ensure that horses entering quarantine are not exposed to disease agents present in the previous lot of horses.

Handling of the Horses in Quarantine

Under the proposed regulations, horses that are quarantined in private facilities would have to undergo the appropriate quarantine specified in § 93.308(a) and would be subject to any other applicable regulations in title 9 of the Code of Federal Regulations. For the purposes of quarantine operations, private facilities would operate no differently than Federal horse quarantine facilities.

Each lot of horses to be quarantined would be required to be placed in the facility on an "all-in, all-out" basis. Under this requirement, no horse could be taken out of the lot while it is in quarantine, except for diagnostic purposes, and no horse could be added to the lot while the lot is in quarantine.

The regulations would require that the facility provide sufficient feed and bedding that is free of vermin and that is not spoiled for the horses in quarantine. Feed and bedding would be required to originate from an area that

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is not listed in 9 CFR 72.2 as an area quarantined for splenetic or tick fever.

We would prohibit the breeding of horses or the collection of germplasm from horses during the quarantine period unless necessary for a required import testing procedure. This prohibition is necessary because horses under quarantine will not have passed all entry tests or requirements and could be diseased and refused entry. Breeding and collection of germplasm should only take place after horses have fulfilled all entry requirements.

We propose to require that horses in quarantine be subjected to such tests and procedures as directed by the overseeing APHIS representative to determine whether they are free from communicable diseases of horses. We would allow horses in quarantine to be vaccinated only with vaccines that have been approved by APHIS and that are administered by an APHIS veterinarian or an accredited veterinarian under the direct oversight of an APHIS representative. APHIS will only approve use of vaccines that are licensed by APHIS in accordance with § 102.5 of this chapter.[4]

We would require that any death or suspected illness of horses in quarantine be reported immediately to the overseeing APHIS representative so that appropriate measures are taken to ensure the health of the other horses in quarantine. The affected horses would be required to be disposed of as the Administrator may direct or, depending on the nature of the disease, would be required to be cared for as directed by the overseeing APHIS representative.

The regulations would provide that quarantined horses requiring specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by the overseeing APHIS representative. In such situations, a second quarantine site would have to be established to house the horses at the facility of destination (e.g., veterinary college hospital) and the overseeing APHIS representative could extend the quarantine period until the results of any outstanding tests or postmortems are received.

Further, if we determine that a lot of horses is infected with or exposed to a communicable disease of horses, we would require that arrangements for the final disposition of the infected or exposed lot be accomplished within 10 work days following disease confirmation. We would require the horses to be disposed of under the direct oversight of APHIS representatives. We would require the operator to have a preapproved contingency plan for the possible disposal of all horses housed in the facility prior to issuance of an import permit. This requirement is essential to ensure that diseased horses can be disposed of without posing a risk of disseminating diseases outside the quarantine facility.

[4] A list of approved vaccines is available from National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit, Riverdale, Maryland 20737–1231.

Records

It would be the facility operator's responsibility to maintain a current daily log to record the entry and exit of all persons entering and leaving the quarantine facility. We would require the operator or the operator's designated representative to hold the log, along with any logs kept by APHIS and deposited with the operator, for at least 2 years following the date of release of the horses from quarantine and to make such logs available to APHIS representatives upon request.

Environmental Requirements

We propose to provide that, if APHIS determines that a privately operated quarantine facility does not meet all applicable local, State, and Federal environmental regulations, APHIS reserves the right to deny or suspend approval of the facility until appropriate remedial measures have been applied. This requirement is necessary to ensure that APHIS-approved facilities meet all applicable waste disposal and other environmental quality standards.

Variances

The Administrator may grant variances to the proposed requirements relating to location, construction, and other design features of the physical facility as well as sanitation, security, operating procedures, recordkeeping, and other provisions of the regulations, but only if the Administrator determines that the variance causes no detrimental impact to the overall biological security of the quarantine operation. The operator of a permanent facility would have to submit a request for a variance to the Administrator in writing at least 30 days in advance of the arrival of horses to the facility. Any variance would also have to be expressly provided for in the compliance agreement.

In conjunction with these changes, we would also make editorial changes to § 93.310 of the regulations to update the regulations and make them easier to understand.

We believe that these proposed regulations would ensure that permanent facilities could operate without posing a risk of foreign disease introduction and allow U.S. horse importers another option for quarantining imported horses. We welcome public comment on the proposed regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects.

This proposed rule would allow the establishment and operation, under strict APHIS oversight, of permanent, privately owned quarantine facilities for horses imported into the United States. Currently, APHIS allows the establishment of privately owned quarantine facilities for horses on a temporary basis. Such temporary facilities are used to quarantine horses imported for a particular event or purpose. APHIS has also authorized the operation of one permanent, privately owned and operated animal quarantine facility in Los Angeles County, CA.

In accordance with 21 U.S.C. 111, the Secretary is authorized to promulgate regulations and take such measures as he may deem proper to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals from a foreign country into the United States.

The horse industry in the United States accounts for approximately $25.3 billion of the U.S. gross national product. Of this amount, 98 percent comes from 22 States; in 7 of these States (California, Florida, Kentucky, New York, Pennsylvania, Texas, and Virginia), the horse industry grosses more than $500 million annually. In 2000, economic activities related to horses generated approximately $1.9 billion in tax revenues, most of which were generated in States where parimutuel betting was allowed.

Trade in live horses between the United States and other countries has increased considerably over the last several years. Even though the United States is a net exporter of live horses, imports of live horses have increased dramatically. Specifically, from 1992 to 1999, U.S. imports of live horses increased by 345 percent in terms of value (from $76.2 million to $339.2 million) and by 80 percent in number (from 16,962 horses to 30,396 horses).

The increased demand for importing horses in the United States has resulted in an increased demand for import quarantine services. The demand for these services exceeds what can be provided at current Federal facilities. As can be seen from the data above, horses play an important role in the international trade of the United States.

Effects on Small Entities

We have identified two types of entities that could be affected by implementation of this rule; an existing permanent, privately owned quarantine facility and horse importers or farmers.

Quarantine Facilities

According to Small Business Administration (SBA) criteria, the existing permanent, privately owned quarantine facility that operates in Los Angeles County, CA, is considered a small entity.

If this proposed rule is implemented, that quarantine facility may need to upgrade its facilities to be in compliance with the proposed requirements. If and when the facility is approved for operation under the proposed regulations, the cost of any needed renovations to the facility, as well as the costs associated with being in compliance with the proposed regulations, would likely be passed on to importers of horses who elect to use the facility to quarantine imported horses.

However, given the increased demand for quarantine services in the United States, the small number of Federal horse quarantine facilities currently in operation, and the fact that there are no other permanent, privately owned quarantine facilities operating at this time, it is not likely that this action would have a significant effect on the facility in the long run. Nevertheless, at this time, we are unable to determine the effect that implementation of this rule would have on the facility's business volume and revenue.

Importers of Horses and Horse Farms

According to SBA criteria, a farm that keeps horses for breeding and has annual revenues less than $500,000 is considered a small entity. According to the 1997 Census of Agriculture, more than 98 percent of these farms had an annual revenue of less than $500,000, placing them in the SBA's category of a small entity.

The establishment of permanent, privately owned quarantine facilities for horses would clearly benefit the horse industry if the volume and worth of live horse imports continues to increase. These facilities would save time and money for U.S. importers of horses and may also have positive economic effects for horse transporters and for horse owners who use imported horses. While it is not possible for us to predict the amount of the expected positive financial effects on horse importers, savings to U.S. importers could come from a reduction in time spent waiting for available space in Federal quarantine facilities.

The additional number of horses that might be imported into the United States as a result of this proposed rule is not known. However, because the proposed rule is expected to result in the opening of only one or two additional quarantine facilities in the next several years, the effect upon the price of an imported horse is likely to be small but positive (in terms of a lower price to the buyer).

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (*see* "Paperwork Reduction Act" below).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has not been prepared for this proposed rule. Because the environmental impacts that could result from implementation of this proposal would vary according to the location and design of the facility being approved, APHIS has determined site-specific environmental assessments must be conducted for each permanent, privately owned horse quarantine facility prior to approval of the facility. APHIS will publish a notice in the **Federal Register** for each environmental assessment we conduct in this regard if this proposed rule is finalized, and we would invite public comment on each site-specific environmental assessment.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comment refers to Docket No. 99–012–1. Please send a copy of your comment to: (1) Docket No. 99–012–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Because recent demand for quarantine services for horses has exceeded the space available at existing facilities, we are proposing to allow the establishment of permanent, privately owned horse quarantine facilities if they meet requirements proposed in this document. Accomplishing this will necessitate the use of several information collection activities, including an application for facility approval, a compliance agreement explaining the conditions under which the facility must be operated, and a certification that the facility meets all applicable environmental regulations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .78571 hours per response.

Respondents: Owners of approved permanent, privately owned horse quarantine facilities and applicants for approval.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 4.666.

Estimated annual number of responses: 14.

Estimated total annual burden on respondents: 11 hours.

Copies of this information collection can be obtained from: Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Subart C—[Amended]

2. In part 93, subpart C, footnotes 16, 17, 18, and 19 and their references would be redesignated as footnotes 18, 19, 20, and 21, respectively.

3. Section 93.300 would be amended by revising the definition for "operator" and by adding, in alphabetical order, new definitions to read as follows:

§ 93.300 Definitions.

* * * * *

Lot. A group of horses that, while held on a premises or conveyance, have had opportunity for physical contact with other horses in the group or with their excrement or discharges at any time during their shipment to the United States.

Lot-holding area. That area in a permanent, privately owned quarantine facility in which a single lot of horses is held at one time.

Nonquarantine area. That area in a permanent, privately owned quarantine facility that includes offices, storage areas, and other areas outside the quarantine area, and that is off limits to horses, samples taken from horses, and any other objects or substances that have been in the quarantine area during quarantine of horses.

Operator. A person other than the Federal Government who owns or operates a temporary, privately owned quarantine facility or a permanent, privately owned quarantine facility.

Quarantine area. That area in a permanent, privately owned quarantine facility that comprises all of the lot-holding areas in the facility and any other areas in the facility that horses have access to, including loading docks for receiving and releasing horses, and any areas used to conduct examinations of horses and take samples and any areas where samples are processed or examined.

Permanent, privately owned quarantine facility. A facility that offers quarantine services for horses to the general public on a continuing basis and that is owned by an entity other than the Federal Government (also permanent facility).

* * * * *

Temporary, privately owned quarantine facility. A facility that offers quarantine services for horses imported for a special event and that is owned by an entity other than the Federal Government (also temporary facility).

* * * * *

4. In § 93.303, paragraph (e), the paragraph heading would be revised to read as follows:

§ 93.303 Ports designated for the importation of horses.

* * * * *

(e) *Ports for horses to be quarantined at privately owned quarantine facilities.*

* * *

* * * * *

§ 93.304 [Amended]

5. In § 93.304, paragraph (a), the introductory text, the words "quarantine facility provided by the importer" would be removed, and the words "privately-owned quarantine facility" would be added in their place.

6. In § 93.304, paragraph (a)(2), the words "regulations, horses intended for quarantine at a quarantine facility provided by the importer," would be removed, and the words "regulations or horses intended for quarantine at a privately-owned quarantine facility" would be added in their place.

7. In § 93.308, paragraphs (b) and (c) would be revised to read as follows:

§ 93.308 Quarantine requirements.

* * * * *

(b) *Temporary, privately owned quarantine facilities.* Horses presented for entry into the United States as provided in § 93.303(e) of this part may be quarantined in temporary, privately owned quarantine facilities that meet the requirements of paragraphs (b)(1) and (2) of this section and that have been approved by the Administrator for a specific importation.

(1) *Approval.* Requests for approval and plans for proposed temporary facilities must be submitted no less than 15 days before the proposed date of entry of horses into the facility to APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road, Unit 39, Riverdale, MD 20737–1231. Before facility approval can be granted, a veterinary medical officer of APHIS must inspect the facility to determine whether it complies with the standards set forth in this section: *Provided, however,* that approval of any temporary facility and use of such facility will be contingent upon a determination made by the Administrator that adequate personnel are available to provide required services at the facility. Approval of any facility may be refused and approval of any quarantine facility may be withdrawn at any time by the Administrator, upon his or her determination that any requirements of this section are not being met. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action by the Administrator and afforded an opportunity to present his or her views. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. The cost of the facility and all maintenance and operational costs of the facility will be borne by the operator.

(2) *Standards and handling procedures.* The facility must be maintained and operated in accordance with the following standards:

(i) *Inspection.* Inspection and quarantine services will be arranged by the operator or his or her agent with the APHIS veterinarian in charge for the State in which the approved facility is located [15] no less than 7 days before the proposed date of entry of the horses into the quarantine facility.

(ii) *Physical plant requirements.*

(A) The facility must be located and constructed to prevent horses from having physical contact with animals outside the facility.

(B) The facility must be constructed only with materials that can withstand repeated cleaning and disinfection. (All walls, floors, and ceilings must be constructed of solid material that is impervious to moisture.) Doors, windows, and other openings of the facility must be provided with double screens that will prevent insects from entering the facility.

(iii) *Sanitation and security.* (A) The operator must arrange for a supply of water adequate to clean and disinfect the facility.

(B) All feed and bedding must originate from an area not under quarantine because of splenetic or tick fever (see part 72 of this chapter) and must be stored within the facility.

(C) Upon the death or destruction of any horse, the operator must arrange for the disposal of the horse's carcass by incineration. Disposal of all other waste removed from the facility during the time the horses are in quarantine or from horses that are refused entry into the United States must be either by incineration or in a public sewer system that meets all applicable environmental quality control standards. Following completion of the quarantine period and the release of the horses into the United States, all waste may be removed from the quarantine facility without further restriction.

(D) The facility will be maintained and operated in accordance with any additional requirements the Administrator deems appropriate to prevent the dissemination of any communicable disease.

(E) The facility must comply with all applicable local, State, and Federal requirements for environmental quality.

(iv) *Personnel.* (A) Access to the facility will be granted only to persons working at the facility or to persons specifically granted such access by an APHIS representative.

(B) The operator must provide attendants for the care and feeding of horses while in the quarantine facility.

(C) Persons working in the quarantine facility may not come in contact with any horses outside the quarantine facility during the quarantine period for any horses in the facility.

(v) *Handling of horses in quarantine.* Horses offered for importation into the United States that are quarantined in an approved temporary facility must be handled in accordance with paragraph (a) of this section while in quarantine.

(c) *Permanent, privately owned quarantine facilities.* Horses presented for entry into the United States as provided in § 93.303(e) of this part may be quarantined in permanent, privately owned quarantine facilities approved by the Administrator as meeting the requirements of paragraphs (c)(1) through (7) of this section.

(1) *APHIS approval.*

(i) *Approval procedures.* Persons seeking APHIS approval of a permanent, privately-owned quarantine facility must write to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231. The application letter must include the full name and mailing address of the applicant; the location and street address of the facility for which approval is sought; blueprints of the facility; a description of the financial resources available for construction, operation, and maintenance of the facility; the anticipated source or origin of horses to be quarantined, as well as the expected size and frequency of shipments; and a contingency plan for the possible disposal of all the horses capable of being housed in the facility.

(A) If APHIS determines that an application is complete and merits further consideration, the person applying for facility approval must enter into a compliance agreement with APHIS wherein the applicant agrees to pay the cost of all APHIS services associated with APHIS's evaluation of the application and facility. APHIS charges for evaluation services at hourly rates listed in § 130.30 of this title. This compliance agreement applies only to fees accrued during the application process. If the facility is approved by APHIS, facility owners must enter into a new compliance agreement in accordance with paragraph (c)(2) of this section.

(B) Requests for approval must be submitted to APHIS at least 120 days prior to the date of application for local building permits. Requests for approval will be evaluated on a first-come, first-served basis.

(ii) *Criteria for approval.* Before a facility may operate as a permanent, privately owned quarantine facility for horses, it must be approved by APHIS. To be approved:

(A) APHIS must find, based on an environmental analysis, that the operation of the facility will not have significant environmental effects;

(B) The facility must meet all of the requirements of this section;

(C) The facility must meet any additional requirements that may be imposed by the Administrator in each specific case, as specified in the compliance agreement required under paragraph (c)(2) of this section, to ensure that the quarantine of horses in the facility will be adequate to enable determination of their health status, as well as to prevent the transmission of diseases into, within, and from the facility; and

(D) The Administrator must determine that sufficient personnel, including one or more APHIS veterinarians and other professional, technical, and support personnel, are available to serve as APHIS representatives at the facility and provide continuous oversight and other technical services to ensure the biological security of the facility, if approved. APHIS will assign personnel to facilities requesting approval in the order that the facilities are approved. The Administrator has sole discretion on the number of APHIS personnel to be assigned to the facility.

(iii) *Maintaining approval.* To maintain APHIS approval, the operator must continue to comply with all the requirements of paragraph (c) of this section and the terms of the compliance agreement executed in accordance with paragraph (c)(2) of this section.

(iv) *Withdrawal or denial of approval.* Approval for a proposed privately owned quarantine facility may be denied or approval for a facility already in operation may be withdrawn at any time by the Administrator, for any of the reasons provided in paragraph (c)(1)(iv)(C) of this section.

(A) Before facility approval is denied or withdrawn, APHIS will inform the operator of the proposed or existing quarantine facility and include the reasons for the proposed action. If there is a conflict as to any material fact, APHIS will afford the operator, upon request, the opportunity for a hearing with respect to the merits or validity of such action in accordance with the rules of practice that APHIS adopts for the proceeding.

(B) Withdrawal of approval of an existing facility will become effective prior to final determination in the proceeding when the Administrator determines that such action is necessary to protect animal health or the public health, interest, or safety. Such withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, APHIS will give written confirmation to the

[15] The name and address of the veterinarian in charge in any State is available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road, Unit 39, Riverdale, MD 20737–1231.

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operator of the facility as promptly as circumstances allow. This withdrawal will continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal of approval for the reasons provided in paragraph (c)(1)(iv)(C) of this section, the Administrator will also automatically withdraw approval when the operator of any approved facility notifies the APHIS veterinarian in charge for the State in which the facility is located, in writing, that the facility is no longer in operation.[16]

(C) Except as provided in paragraph (c)(1)(iv)(E) of this section, the Administrator may deny or withdraw approval of a permanent privately owned quarantine facility if:

(*1*) Any requirement of this section or the compliance agreement is not complied with; or

(*2*) The operator fails to remit any charges for APHIS services rendered; or

(*3*) The operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime under any law regarding the importation or quarantine of any animal; or

(*4*) The operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime involving fraud, bribery, or extortion or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or

(*5*) The approved quarantine facility has not been in use to quarantine horses for a period of at least 1 year.

(D) For the purposes of this section, a person is deemed to be responsibly connected with the business of the quarantine facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder or owner of 10 percent or more of its voting stock, or is an employee in a managerial or executive capacity.

(2) *Compliance agreement.* (i) All permanent, privately owned quarantine facilities for horses must operate in accordance with a compliance agreement executed by the operator or his or her agent and the Administrator, and that must be renewed on an annual basis.

(ii) The compliance agreement must provide that:

(A) The facility must meet all applicable requirements of this section;

(B) The facility's quarantine operations are subject to the strict oversight of APHIS representatives;

(C) The operator agrees to be responsible for the cost of the facility; all costs associated with its maintenance and operation; all costs associated with the hiring of employees and other personnel to attend to the horses as well as to maintain and operate the facility; all costs associated with the care of quarantined horses, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; and all APHIS charges for the services of APHIS representatives in accordance with this section and part 130 of this chapter; and

(D) The operator agrees to bar from the facility any employee or other personnel at the facility who fails to comply with paragraph (c) of this section or other provisions of this part, any terms of the compliance agreement, or related instructions from APHIS representatives;

(3) *Physical plant requirements.* The facility must meet the following requirements as determined by an APHIS inspection before horses may be admitted to it:

(i) *Location.* The quarantine facility must be located:

(A) In proximity to a port authorized under § 93.303(e) of this part of this part such that the movement of the imported horses along preapproved routes from the port to the quarantine facility poses no significant risk, as determined by the Administrator, of transmitting communicable diseases of horses.

(B) At least one-half mile from any premises holding livestock or horses.

(ii) *Construction.* The facility must be of sound construction, in good repair, and properly designed to prevent the escape of quarantined horses. It must have adequate capacity to receive and house a shipment of horses as a lot on an "all-in, all-out" basis and must include the following:

(A) *Perimeter fencing.* The facility must be surrounded by a security fence of sufficient height and design to prevent the entry of unauthorized people and animals from outside the facility and to prevent the escape of the horses in quarantine.

(B) *Entrances and exits.* All entryways into the nonquarantine area of the facility must be equipped with a secure and lockable door. While horses are in quarantine, all access to the quarantine area for horses must be from within the building, and each such entryway to the quarantine area must be equipped with a series of solid self-closing double doors. Entryways to each lot-holding area must be equipped with a solid lockable door. Emergency exits to the outside may exist in the quarantine area. Such emergency exits must be constructed so as to permit their opening from the inside of the facility only.

(C) *Windows and other openings.* The facility must be constructed so that any windows or other openings in the quarantine area are double-screened with screening of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of diseases of horses. The interior and exterior screens must be separated by at least 3 inches (7.62 cm). All screening of windows or other openings must be easily removable for cleaning, yet otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives in order to ensure the biological security of the facility.

(D) *Lighting.* The facility must have adequate lighting throughout, including in stalls and hallways, for the purpose of examining the horses and conducting necropsies.

(E) *Loading docks.* The facility must include separate docks for animal receiving and releasing and for general receiving and pickup.

(F) *Surfaces.* The facility must be constructed so that the floor surfaces with which horses have contact are nonslip and wear-resistant. All floor surfaces with which the horses, their excrement, or discharges have contact must provide for adequate drainage, and drains must be at least 8 inches in diameter. All floor and wall surfaces with which the horses, their excrement, or discharges have contact must be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Other ceiling and wall surfaces with which the horses, their excrement, or discharges do not have contact must be able to withstand cleaning and disinfection between shipments of horses. All floor and wall surfaces must be free of sharp edges that could cause injury to horses.

(G) *Means of isolation.* Physical barriers must separate different lots of horses in the facility so that horses in one lot cannot have physical contact with horses in another lot or with their excrement or discharges. Stalls must be available that are capable of isolating any horses exhibiting signs of illness.

(H) *Showers.* In a facility where it is possible to move from the nonquarantine area into any lot-holding area without passing through another lot-holding area, the facility must have a shower at the entrance to the quarantine area. In a facility where it is not possible to move to any lot-holding area except by first passing through another lot-holding area, the facility must have a shower at the entrance to each lot-holding area. A shower must be located at the entrance to the necropsy area. A clothes-storage and clothes-changing area must be provided at each end of each shower area. There must also be one or more receptacles near each shower so that clothing that has been worn into a lot-holding area or elsewhere in the quarantine area can be deposited in the receptacle(s) prior to entering the shower.

(I) *APHIS space.* The facility must have adequate space for APHIS representatives to conduct examinations and testing of the horses in quarantine, prepare and package samples for mailing, and store the necessary equipment and supplies for each lot of horses and duplicate samples. The examination space must include equipment to provide for the safe inspection of horses (i.e., restraining stocks). The facility must also include a secure, lockable office for APHIS use with enough room for a desk, chair, and filing cabinet.

(J) *Necropsy area.* The facility must have an area that is of sufficient size to perform necropsies on horses and that is equipped with adequate lighting, hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment.

(K) *Storage.* The facility must have sufficient storage space for equipment and supplies used in quarantine operations. Storage space must include separate, secure storage for pesticides and for medical and other biological supplies, as well as a separate feed storage area that is vermin-proof for feed and bedding, if feed and bedding are stored at the facility. If the facility has multiple lot-holding areas, then separate storage space for supplies and equipment must be provided for each lot-holding area.

(L) *Additional space needs.* The facility must have an area for washing and drying clothes, linens, and towels and an area for cleaning and disinfecting equipment used in the facility. The facility must also include a work area for the repair of equipment.

(M) *Restrooms.* The facility must have permanent restrooms in both the quarantine and nonquarantine areas of the facility.

(N) *Breakroom.* The facility must have an area within the quarantine area for breaks and meals.

(O) *Ventilation and climate control.* The facility must be constructed with a heating, ventilating and air conditioning (HVAC) system capable of controlling and maintaining the ambient temperature, air quality, moisture, and odor at levels that are not injurious or harmful to the health of horses in quarantine. Air supplied to lot-holding areas must not be recirculated or reused for other ventilation needs. HVAC systems for lot-holding areas must be separate from air handling systems for other operational and administrative areas of the facility. In addition, if the facility is approved to handle more than one lot of horses at a time, each lot-holding area must have its own separate HVAC system that is designed to prevent cross-contamination between the separate lot-holding areas.

(P) *Fire protection.* The facility, including the lot holding areas, must have a fire alarm voice communication system.

(Q) *Monitoring system.* The facility must have a television monitoring system or other arrangement sufficient to provide a full view of the quarantine area or areas, excluding the clothes changing area.

(R) *Communication system.* The facility must have a communication system between the nonquarantine and quarantine areas of the facility.

(iii) *Sanitation.* To ensure that proper animal health and biological security measures are observed, the facility must have the following:

(A) Equipment and supplies necessary to maintain the facility in clean and sanitary condition, including pest control equipment and supplies and cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment.

(B) Separately maintained equipment and supplies for each lot of horses.

(C) A supply of potable water adequate to meet all watering and cleaning needs, with water faucets for hoses located throughout the facility. An emergency supply of water for horses in quarantine must also be maintained.

(D) A stock of disinfectant authorized in § 71.10(a)(5) of this chapter or otherwise approved by the Administrator that is sufficient to disinfect the entire facility.

(E) The capability to dispose of wastes, including manure, urine, and used bedding, by means of burial, incineration, or public sewer. Other waste material must be handled in such a manner that minimizes spoilage and the attraction of pests and must be disposed of by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Disposal of wastes must be carried out under the direct oversight of APHIS representatives.

(F) The capability to dispose of horse carcasses in a manner approved by the Administrator and under conditions that minimize the risk of disease spread from carcasses.

(G) For incineration to be carried out at the facility, incineration equipment that is detached from other facility structures and is capable of burning animal waste and refuse as required. The incineration site must also include an area sufficient for solid waste holding. Incineration may also take place at a local site away from the facility premises. All incineration activities must be carried out under the direct oversight of APHIS representatives.

(H) The capability to control surface drainage and effluent into, within, and from the facility in a manner that prevents the spread of disease into, within, or from the facility. If the facility is approved to handle more than one lot of horses at the same time, there must be separate drainage systems for each lot-holding area in order to prevent cross contamination.

(iv) *Security.* Facilities must provide the following security measures:

(A) The facility and premises must be kept locked and secure at all times while horses are in quarantine.

(B) The facility and premises must have signs indicating that the facility is a quarantine area and no visitors are allowed.

(C) The facility and premises must be guarded at all times by one or more representatives of a bonded security company or, alternatively, the facility must have an electronic security system that indicates the entry of unauthorized persons into the facility. Electronic security systems must be coordinated through or with the local police so that monitoring of the quarantine facility is maintained whenever APHIS representatives are not at the facility. The electronic security system must be of the "silent type" and must be triggered to ring at the monitoring site and not at the facility. The electronic security system must be approved by Underwriter's Laboratories. The operator must provide written instructions to the monitoring agency stating that the police and a representative of APHIS designated by APHIS must be notified by the monitoring agency if the alarm is triggered. The operator must also submit a copy of those instructions to the Administrator. The operator must notify the designated APHIS representative

[16] The name and address of the veterinarian in charge in any State is available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road, Unit 39, Riverdale, MD 20737–1231.

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whenever a breach of security occurs or is suspected of occurring. In the event that disease is diagnosed in quarantined horses, the Administrator may require that the operator have the facility guarded by a bonded security company in a manner that the Administrator deems necessary to ensure the biological security of the facility.

(D) The operator must furnish a telephone number or numbers to APHIS at which the operator or his or her agent can be reached at all times.

(E) APHIS is authorized to place APHIS seals on any or all entrances and exits of the facility when determined necessary by APHIS and to take all necessary steps to ensure that such seals are broken only in the presence of an APHIS representative. If someone other than an APHIS representative breaks such seals, APHIS will consider the act a breach in security and APHIS representatives will make an immediate accounting of all horses in the facility. If a breach in security occurs, APHIS may extend the quarantine period as long as necessary to determine that the horses are free of communicable diseases.

(4) *Operating procedures.* The following procedures must be observed at the facility at all times:

(i) *APHIS oversight.*

(A) The quarantine of horses at a privately owned quarantine facility is subject to the strict oversight of APHIS representatives authorized to perform the services required by this section.

(B) If, for any reason, the operator fails to properly care for, feed, or handle the quarantined horses as required in paragraph (c) of this section, or fails to maintain and operate the facility as provided in paragraph (c) of this section, APHIS representatives are authorized by the compliance agreement to furnish such neglected services or make arrangements for the sale or disposal of quarantined horses at the quarantine facility owner's expense.

(ii) *Personnel.*

(A) The operator must provide adequate personnel to maintain the facility and care for the horses in quarantine, including attendants to care for and feed horses, and other personnel as needed to maintain, operate, and administer the facility.

(B) The operator must provide APHIS with an updated list of all personnel who have access to the facility. The list must include the names, current residential addresses, and identification numbers of each person, and must be updated with any changes or additions in advance of such person having access to the quarantine facility.

(C) The operator must provide APHIS with signed statements from each person having access to the facility in which the person agrees to comply with paragraph (c) of this section and applicable provisions of this part, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility.

(iii) *Authorized access.* Access to the facility premises as well as inside the quarantine area will be granted only to APHIS representatives, authorized employees, and other personnel of the operator assigned to work at the facility. All other persons are prohibited from the premises unless specifically granted access by an APHIS representative. Any visitors granted access must be accompanied at all times by an APHIS representative while on the premises or in the quarantine area of the facility.

(iv) *Sanitary requirements.*

(A) All persons granted access to the quarantine area must:

(*1*) Shower when entering and leaving the quarantine area.

(*2*) Shower before entering a lot-holding area if previously exposed from access to another lot-holding area.

(*3*) Shower when leaving the necropsy area if a necropsy is in the process of being performed or has just been completed, or if all or portions of the examined animal remain exposed.

(*4*) Wear clean protective work clothing and footwear upon entering the quarantine area.

(*5*) Wear disposable gloves when handling sick horses and then wash hands after removing gloves.

(*6*) Change protective clothing, footwear, and gloves when they become soiled or contaminated.

(*7*) Not have contact with any horses in the facility other than the lot or lots of horses to which the person is assigned or is granted access.

(*8*) Not have contact with any horses outside the quarantine facility for at least 7 days after the last contact with the horses in quarantine, or for a period of time determined by the overseeing APHIS representative as necessary to prevent the transmission of communicable diseases of horses.

(B) The operator is responsible for providing a sufficient supply of clothing and footwear to ensure that all persons provided access to the quarantine area at the facility have clean, protective clothing and footwear upon their initial entry and when they move from one lot of horses to another lot of horses.

(C) The operator is responsible for the proper handling, washing, and disposal of soiled and contaminated clothing worn within the quarantine facility in a manner approved by APHIS as adequate to preclude transmission of any animal disease agent from the facility. At the end of each workday, work clothing worn into each lot-holding area must be collected and kept in a bag until the clothing is washed. Used footwear must either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

(D) All equipment (including tractors) must be cleaned and disinfected prior to being used in the quarantine area of the facility with a disinfectant authorized in § 71.10(a)(5) of this chapter or otherwise approved by the Administrator. The equipment must remain dedicated to the facility for the entire quarantine period. Any equipment used with quarantined horses (e.g., halters, floats) must remain dedicated to that particular lot of quarantined horses for the duration of the quarantine period or be cleaned and disinfected before coming in contact with horses from another lot. Prior to its use on another lot of horses or its removal from the quarantine premises, any equipment must be cleaned and disinfected to the satisfaction of an APHIS representative.

(E) Any vehicle, upon entering or leaving the quarantine area of the facility, must be immediately cleaned and disinfected under the oversight of an APHIS representative with a disinfectant authorized in § 71.10(a)(5) of this chapter or otherwise approved by the Administrator.

(F) That area of the facility in which a lot of horses has been held or has had access to must be thoroughly cleaned and disinfected under the oversight of an APHIS representative upon release of the horses with a disinfectant authorized in § 71.10(a)(5) of this chapter or otherwise approved by the Administrator before a new lot of horses is placed in that area of the facility.

(v) *Handling of the horses in quarantine.*

(A) All horses must be handled in accordance with paragraph (a) of this section.

(B) Each lot of horses to be quarantined must be placed in the facility on an "all-in, all-out" basis. No horse may be taken out of the lot while it is in quarantine, except for diagnostic purposes, and no horse may be added to the lot while the lot is in quarantine.

(C) The facility must provide sufficient feed and bedding for the horses in quarantine, and it must be free of vermin and not spoiled. Feed and bedding must originate from an area that is not listed in 9 CFR 72.2 as an area quarantined for splenetic or tick fever.

(D) Breeding of horses or collection of germplasm from horses is prohibited during the quarantine period unless necessary for a required import testing procedure.

(E) Horses in quarantine will be subjected to such tests and procedures as directed by an APHIS representative to determine whether they are free from communicable diseases of horses. While in quarantine, horses may be vaccinated only with vaccines that have been approved by APHIS and that are administered by an APHIS veterinarian or an accredited veterinarian under the direct oversight of an APHIS representative. APHIS will approve a vaccine only if the vaccine is licensed by APHIS in accordance with § 102.5 of this chapter.[17]

(F) Any death or suspected illness of horses in quarantine must be reported immediately to APHIS. The affected horses must be disposed of as the Administrator may direct or, depending on the nature of the disease, must be cared for as directed by APHIS to prevent the spread of disease.

(G) Quarantined horses requiring specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by APHIS. A second quarantine site must be established to house the horses at the facility of destination (e.g., veterinary college hospital). In such cases, APHIS may extend the quarantine period until the results of any outstanding tests or postmortems are received.

(H) Should the lot of horses become infected with or exposed to a communicable disease of horses, arrangements for the final disposition of the infected or exposed lot must be accomplished within 4 work days following disease confirmation. Subsequent disposition of the horses must occur under the direct oversight of APHIS representatives. The operator must have a preapproved contingency plan for the possible disposal of all horses housed in the facility prior to issuance of the import permit.

(vi) *Records.*

(A) The facility operator must maintain a current daily log to record the entry and exit of all persons entering and leaving the quarantine facility.

(B) The operator must maintain the daily log, along with any logs kept by APHIS and deposited with the operator, for at least 2 years following the date of release of the horses from quarantine and must make such logs available to APHIS representatives upon request.

(5) *Environmental quality.* If APHIS determines that a privately operated quarantine facility does not meet applicable local, State, or Federal environmental regulations, APHIS may deny or suspend approval of the facility until appropriate remedial measures have been applied.

(6) *Variances.* The Administrator may grant variances to existing requirements relating to location, construction and other design features of the physical facility, as well as to sanitation, security, operating procedures, recordkeeping, and other provisions of paragraph (c) of this section, but only if the Administrator determines that the variance causes no detrimental impact to the overall biological security of the quarantine operations. The operator must submit a request for a variance to the Administrator in writing at least 30 days in advance of the arrival of horses to the facility. Any variance must also be expressly provided for in the compliance agreement.

8. In § 93.309, the section heading would be revised to read as follows:

§ 93.309 Horse quarantine facilities; payment information.

* * * * *

9. Section 93.310 would be revised to read as follows:

§ 93.310 Quarantine stations, visiting restricted; sales prohibited.

Visitors are not permitted in the quarantine enclosure during any time that horses are in quarantine unless an APHIS representative specifically grants access under such conditions and restrictions as may be imposed by APHIS. An importer (or his or her agent or accredited veterinarian) may be admitted to the lot-holding area(s) containing his or her quarantined horses at such intervals as may be deemed necessary, and under such conditions and restrictions as may be imposed, by an APHIS representative. On the last day of the quarantine period, owners, officers or registry societies, and others having official business or whose services may be necessary in the removal of the horses may be admitted upon written permission from an APHIS representative. No exhibition or sale shall be allowed within the quarantine grounds.

[17] A list of approved vaccines is available from National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231.

Done in Washington, DC, this 24th day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–16337 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM217; Notice No. 25–02–07–SC]

Special Conditions: Boeing Commercial Airplane Group, Boeing Model 747–400 Series Airplane; Forward Lower Lobe (Service/Cargo) Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747–400 series airplane. This airplane, as modified by the Boeing Commercial Airplane Group, Wichita, Kansas, will have novel or unusual design features associated with the installation of a forward lower lobe compartment that will have two functions: that of a service compartment and that of a class C cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before July 31, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM217, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM217. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW.,

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Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On January 3, 2001, Boeing Commercial Airplane Group (BCAG)—Wichita Division Designated Alteration Station (DAS) applied for a Supplemental Type Certificate (STC) for the installation, in a Boeing Model 747–400 series airplane, of a forward lower lobe compartment that combines two functions: that of a service compartment and that of a class C cargo compartment. The Boeing Model 747–400 series airplane, currently approved under Type Certificate A20WE, is a large transport category airplane with upper and main passenger decks. The main deck is limited to 550 passengers or less and the upper deck is limited to 110 passengers or less, depending on the interior configuration. Cargo compartments are installed below the main deck. The airplane is driven by four high-bypass turbojet engines capable of a static thrust in excess of 43,000 pounds.

The 747–400 configuration proposed for certification is an interim, but certifiable, configuration. The final interior will be installed by another modifier at a later date. Boeing proposes to certificate the model with the forward half of the main deck open and the aft half of the main deck configured for passengers. However, the main deck and upper deck will be certificated with limitations specifying zero occupancy and zero cargo.

Boeing proposes to modify the configuration defined above by installing a stair from the main deck to the forward lower lobe cargo compartment and proposes to use the forward cargo compartment as a service area and as a class C cargo compartment. Further, an air-stair would be installed to allow walk-in access from the ground to the forward lower lobe (service/cargo) compartment. The forward lower lobe (service/cargo) compartment design would have provisions for flammability and smoke protection. Access would be limited to one trained crewmember and access would be allowed during flight but not during taxi, takeoff and landing, or during a fire.

To accommodate access into the forward lower lobe (service/cargo) compartment by a crewmember, Boeing proposes appropriate warning and emergency equipment will be installed as defined for a lower lobe service compartment in § 25.819. A flight attendant seat will be installed in the forward lower lobe (service/cargo) compartment for in-flight emergency use only. The seat will be located so that it meets all certification requirements for attendant seating. Speakers, warning lights, and buzzers will be installed in the forward lower lobe (service/cargo) compartment to warn the crewmember occupant of turbulent conditions, smoke detection, or the need to leave the area. A crew interphone will be provided for communications with the flight deck. In addition, emergency oxygen equipment will be provided as appropriate.

Boeing proposes the forward lower lobe (service/cargo) compartment will meet the class C requirements of § 25.857(c) and will include an approved built-in fire extinguisher or suppression system controllable from the cockpit. In the event of a fire, the forward lower lobe (service/cargo) compartment will be evacuated, and the pilot will initiate a Halon suppression system. A means will be provided to prevent inadvertent access to the compartment when the fire suppression system has been activated. The intention of the fire suppression system is to eliminate the necessity for sending someone into the compartment to fight a fire.

The existing regulations address a service area and a class C cargo compartment as independent compartments, but do not address one compartment that has two uses. The service compartment can be occupied and the Class C cargo compartment cannot. Further, fire fighting is dealt with differently in each compartment. The crew fights a fire in a service compartment and a flooding extinguisher system is used to fight a fire in a class C cargo compartment. The concept Boeing proposes may be acceptable if it can be assured that when the compartment is used for either function, a level of safety would be achieved that would be equivalent to compartment installations that are independent. Therefore, special conditions requiring warnings, limitations, and equipment installations are being proposed to achieve a level of safety that would allow a lower lobe compartment to be used as a service compartment or a class C cargo compartment when the aircraft is to be certificated in a similar configuration to that which Boeing proposes (*i.e.* forward lower lobe compartment with stair access, emergency escape routes, *etc.*).

Type Certification Basis

Under the provisions of § 21.101, the Boeing Commercial Airplane Group must show that the Model 747–400 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A20WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate A20WE for the Boeing Model 747–400 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–70, with certain exceptions listed in the type data sheet. The U.S. type certification basis for the Boeing Model 747–400 series airplane is established in accordance with 14 CFR 21.17 and 21.21 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. A20WE.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–400 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–400 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747–400 series airplane will incorporate the following novel or unusual design features: the forward lower lobe compartment will be used as a service area or a class C cargo compartment with certain combined features.

Discussion

The requirements listed in these proposed special conditions are developed to allow the use of the forward lower lobe as a service compartment and as a class C cargo compartment during flight conditions. To make this concept work, these proposed special conditions establish communication, warning, and personal safety requirements, because the existing requirements, §§ 25.819 versus 25.855, 25.857, and 25.858, are exclusive. As an example, to use the fire control system of a class C cargo compartment, the compartment must not be occupied, because the means of fire control is to flood the compartment with fire suppressant.

No provisions for satisfying regulatory requirements for occupancy of the forward lower lobe (service/cargo) compartment during taxi, takeoff, and landing are being proposed. Therefore, limitations for taxi, takeoff, and landing are being applied.

The approach to establishing requirements for a common compartment with two uses is to apply the existing requirements for a service compartment when used as a service compartment and for cargo compartments when used as a class C compartment, and to propose special conditions where the rules are inadequate to address the functionality of both.

Proposed Special Condition 1

Currently, § 25.819 addresses a service compartment, which can be occupied, but does not need to be evacuated under certain normal conditions or under certain unsafe conditions (e.g., in the case of fire, the occupant could function as a firefighter). The class C cargo compartment requirements address a stand-alone cargo compartment that is not occupied; fire detection is automatic and suppression relies on a total flood system. To maintain the advantages of both a service compartment and a class C cargo compartment, certain warnings need to be addressed.

Proposed Special Condition 1(a)

Special Conditon 1(a) would require a visual means in the cockpit to advise the flightcrew when the forward lower lobe (service/cargo) compartment is occupied. The potential exists that the forward lower lobe (service/cargo) compartment may inadvertently be occupied when it is not supposed to be, such as during taxi, takeoff and landing, or during certain emergency events. This requirement is proposed to ensure the flightcrew is aware of that situation and can take appropriate action to evacuate the forward lower lobe before flooding the compartment with fire suppressant agent. The advisory should be clear as to its intent, either by light with placard or lighted advisory message or equivalent.

Proposed Special Condition 1(b)

Special Condition 1(b) would require an "on/off" visual advisory/warning stating "Do Not Enter" (or similar words) to be located outside and on or near the entrance door from the main deck to the forward lower lobe (service/cargo) compartment. The advisory/warning is to be controlled from the flight deck. This is to prevent someone entering the forward lower lobe (service/cargo) compartment when it is not supposed to be occupied. Those conditions exist during taxi, takeoff and landing, and if smoke or fire is detected. Opening the door during a fire would, among other things, degrade the effectiveness of the fire suppressant and allow smoke, flame, and/or suppressant into the cabin.

Proposed Special Condition 1(c)

Special Condition 1(c) would require a visible and audible advisory/warning means in the forward lower lobe (service/cargo) compartment to notify the occupant that the occupant must exit the forward lower lobe (service/cargo) compartment. To be effective, the visible and audible advisory/warning must be able to be seen and heard from any part of the compartment. The visible and audible advisory/warning is to be controlled from the flight deck. As the forward lower lobe (service/cargo) compartment may be occupied on the ground or in the air, a means must be provided to notify the occupant to exit the compartment prior to taxi, takeoff and landing, or during certain emergency conditions (other than fire, which is dealt with under Special Condition 1(e)). A visual advisory/warning is included in case the audible warning were to become masked or distorted by engine, equipment, or ground noises.

Proposed Special Condition 1(d)

Special condition 1(d) would require a means (visible and audible) to notify the occupant of the forward lower lobe (service/cargo) compartment of the need to put on supplemental oxygen equipment in the event of a decompression. As the occupant could be anywhere in the forward lower lobe (service/cargo) compartment, the means should be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment. Further, the warning should be distinct from other warnings in the forward lower lobe (service/cargo) compartment to prevent confusion and inappropriate action. An automatic decompression warning is proposed (*i.e.*, not requiring a separate crew action) to ensure that the forward lower lobe (service/cargo) compartment occupant does not delay putting on the oxygen equipment. This section of the special conditions is partially in lieu of the visual effect provided by the automatic presentation feature required by § 25.1447.

Proposed Special Condition 1(e)

Special Condition 1(e) would require a visible and audible means to warn the occupant of the forward lower lobe (service/cargo) compartment of the need to evacuate the forward lower lobe (service/cargo) compartment if a fire is detected. The means must be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment and must be distinct from other warnings in the forward lower lobe (service/cargo) compartment in order to prevent confusion and to elicit correct action. The fire/smoke detection warning in the forward lower lobe (service/cargo) compartment must be automatic (i.e., not requiring or depending on a separate crew action), to

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ensure that the occupant exits the forward lower lobe (service/cargo) compartment prior to the flight deck crew releasing the fire suppressant agent.

Proposed Special Condition 2

The lower lobe (service/cargo) compartment must be evacuated if a fire occurs. Further, a means must be provided to prevent access into the compartment during taxi, takeoff or landing, and in the event of a fire. Placards and limitations are proposed to assist in these situations.

Proposed Special Condition 2(a)

Special Condition 2(a) would require a placard to be located outside the forward lower lobe (service/cargo) compartment door to limit access to the forward lower lobe (service/cargo) compartment to one crewmember trained in evacuation means. The accommodations and emergency support equipment provided necessitate limiting access (*i.e.*, one seat, one oxygen bottle, one protective breathing device, one fire extinguisher, etc.).

Proposed Special Condition 2(b)

Special Condition 2(b) would require placards, located inside and outside the forward lower lobe (service/cargo) compartment door, stating that the compartment door must remain closed except when entering and leaving the compartment. The smoke/fire detection and suppression systems are certified with the door closed, and the door needs to remain closed to retain their certified characteristics and to be effective. In the event the single occupant falls asleep in the chair provided, the smoke alarm will still function and a warning will be provided to warn the occupant to exit the compartment.

Proposed Special Condition 2(c)

Special Condition 2(c) would require a limitation be placed in the airplane flight manual (AFM) and placards be posted inside and outside the forward lower lobe (service/cargo) compartment door, all stating that the forward lower lobe (service/cargo) compartment may not be occupied during taxi, takeoff, landing, or during a fire emergency. These placards are being specified because the compartment is not being certified as occupied during taxi, takeoff, and landing and because the cargo compartment must not be occupied during a fire so that the occupant is not exposed to the fire and suppressant. These placards are somewhat redundant to the advisory required under 1(b) and 1(c), but have the benefit of the information being available to the occupant in the event the flightcrew fails to activate the advisory/warnings of 1(b) and 1(c).

Proposed Special Condition 2(d)

Special Condition 2(d), with respect to the forward lower lobe (service/cargo) compartment, would require the AFM supplement include flight deck crew instructions for: allowing access; procedures for fire/smoke/detection/fire fighting; procedures for decompression; and limitations prohibiting occupancy during taxi, takeoff, and landing. Further, this special condition would require that the weight and balance manual include cargo loading restrictions requiring cargo to be loaded and restrained in a manner so that escape paths are maintained. These proposals are to insure the single flight crewmember can safely access the cargo compartment during flight and exit safely during failure conditions.

Proposed Special Condition 2(e)

Because access is being provided to the forward lower lobe (service/cargo) compartment, there is a concern that, during flight, passengers may retrieve hazardous materials and weapons stored in luggage. Ideally, access could be prevented by locking the forward lower lobe (service/cargo) compartment and that is being proposed as one solution (proposed Special Condition 2(e)(1)). However, this airplane is being designed for private use, will have limited access, and will have placards limiting access. Further, there is notification to the flightcrew if the forward lower lobe (service/cargo) compartment is occupied (proposed Special Condition 1(a)). Therefore, as an alternative to locking the lower lobe (service/cargo) compartment, in addition to limiting access under proposed Special Conditions 2(a) and 2(d), prohibiting the airplane from being operated for hire, or offered for common carriage, is proposed (proposed Special Condition 2(e)(2)).

Proposed Special Condition 3

Special Condition 3 would require equipment in addition to that required by § 25.819.

Proposed Special Condition 3(a)

Special Condition 3(a) would require availability at all times of portable oxygen equipment sufficient to supply a crewmember who is allowed to occupy (except during taxi, takeoff and landing, and a fire) the forward lower lobe (service/cargo) compartment. It was first proposed that the oxygen bottle be stored inside the cargo compartment near the seat, along with a portable extinguisher and a protective breathing device. Because the portable oxygen bottle would not be immediately available (a requirement of § 25.1447(c)(1)) in the event of rapid decompression, and it would not be advisable to provide drop-down masks in a cargo compartment or store a portable oxygen bottle in the compartment (even though the bottle would be afforded some protection), the FAA elected to propose that a portable oxygen bottle be mounted at the outside of the main deck entrance of the forward lower lobe (service/cargo) compartment, along with a placard that specifies that anyone entering the forward lower lobe (service/cargo) compartment during flight must carry portable oxygen equipment on their person for the entire time that they are in the compartment.

Proposed Special Condition 3(b)

Special Condition 3(b) would require at least one readily accessible hand-held fire extinguisher and one 15-minute protective breathing equipment device be located within the forward lower lobe (service/cargo) compartment adjacent to the seat. This proposal is to ensure the occupant has the means to exit the compartment if a fire occurs between the occupant and the exit.

Proposed Special Condition 3(c)

Special Condition 3(c) would require, in addition to the two evacuation route (including exit) requirements of § 25.819(a), a means to keep the evacuation routes clear. The cargo in the compartment should be restrained to ensure that the crewmember's paths to the exits are clear. Further, all entrances and exits from the forward lower lobe (service/cargo) compartment must be capable of being closed after exiting. In addition to the concern for cargo blocking the escape paths, there is the concern about hazardous quantities of smoke, flames, or fire suppressant agent entering any compartments occupied by passengers or crew and the concern about the loss of fire suppressant agent from the compartment during a fire. The forward lower lobe (service/cargo) compartment must be capable of being closed off because, after evacuation, it must comply with the requirements applicable to the class C cargo compartment, including §§ 25.855, 25.857, and 25.858.

Proposed Special Condition 3(d)

Special Condition 3(d) would require supplemental handheld lighting (with locator light) in the event the occupant is in the forward lower lobe (service/cargo) compartment and power to the compartment or the emergency escape path lighting is off, or lost, or visibility is poor. At least two flashlights would be required. One flashlight would be located adjacent to the secondary emergency exit in the forward lower lobe (service/cargo) compartment at the foot of the stairs in the compartment. The other would be located adjacent to the seat in the forward lower lobe (service/cargo) compartment. Note that this proposal is in addition to the requirement for an automatic emergency lighting system required by § 25.819(a).

Proposed Special Condition 4

Special Condition 4 addresses training manuals and the training associated with the proposed special conditions above for:

(a) Use and actions associated with the warnings and placards of these proposed special conditions.

(b) Accessing and exiting the cargo forward lower lobe (service/cargo) compartment, including emergency exiting (includes those special conditions associated with Special Conditions 1(b), 1(c), 1(d), 1(e), 2(a), 2(b), 2(c), 2(d), and 3(b)).

(c) Checking the oxygen bottle's pressure for adequacy prior to entering the cargo compartment (associated with Special Condition 3(a)).

(d) Carrying the oxygen bottle when entering the forward lower lobe (service/cargo) compartment (associated with Special Condition 3(a)).

(e) Maintaining an exit path aisle and access to the evacuation routes (associated with Special Condition 3(c)).

Proposed Special Condition 5

Special Conditions 25–71–NW–3, which included criteria applicable to the stairs between the main deck and upper deck, were incorporated in the Model 747 series airplane certification basis on August 27, 1976. These special conditions have been reviewed, and sections 3(a)(1), 3(a)(2) and 3(a)(7) are proposed as applicable to the stair between the forward lower lobe (service/cargo) compartment and the main deck. These special conditions are renumbered and repeated as 5(a), 5(b), and 5(c).

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–400 series airplane. Should Boeing Commercial Airplane Group apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A20WE to incorporate the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Certification of the Boeing Model 747–400 series airplanes modified by Boeing Commercial Airplane Group, Wichita Division Designated Alternation Station, is currently scheduled for mid-June 2002. For this reason, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, the public comment period is being shortened to 30 days.

Conclusion

This action affects only certain novel or unusual design features on one Boeing Model 747–400 series airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 747–400 airplanes modified by Boeing Commercial Airplane Group, Wichita Division Designated Alteration Station, with a forward lower lobe configured for use as a service compartment and a class C cargo compartment.

1. *Required Warnings* (in addition to fire/smoke detection and decompression aural warnings required in § 25.819(c)):

(a) There must be a visual means in the cockpit to advise the flightcrew when the forward lower lobe (service/cargo) compartment is occupied. The advisory light should be accompanied by a placard or message indicating someone is in the forward lower lobe (service/cargo) compartment.

(b) There must be an "on/off" visual advisory/warning stating "Do Not Enter" (or similar words) to be located outside and on or near the entrance door to the forward lower lobe (service/cargo) compartment. The advisory/warning is to be controlled from the flight deck.

(c) There must be a visible and audible advisory/warning means in the forward lower lobe (service/cargo) compartment to notify the occupant that the occupant must exit the forward lower lobe (service/cargo) compartment. The visible and audible warning must be seen and heard from any part of the forward lower lobe (service/cargo) compartment. The visible and audible advisory/warning is to be controlled from the flight deck.

(d) A means (visible and audible) must be provided to notify the occupant of the forward lower lobe (service/cargo) compartment of the need to put on supplemental oxygen equipment in the event of a decompression. The means must be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment and be distinct from other warnings in the forward lower lobe (service/cargo) compartment. This decompression warning should be automatic (i.e., not requiring a separate crew action), to ensure that the forward lower lobe (service/cargo) compartment occupant does not delay putting on the oxygen equipment. This section of the special conditions is partially in lieu of the visual effect provided by the automatic presentation feature required by § 25.1447.

(e) A means (visible and audible) must be provided to warn the occupant of the forward lower lobe (service/cargo) compartment of the need to evacuate the forward lower lobe (service/cargo) compartment at fire detection. The means must be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment and be distinct from other warnings in the forward lower lobe (service/cargo) compartment. The fire/smoke detection warning in the forward lower lobe (service/cargo) compartment must be automatic (i.e., not requiring a separate crew action), to ensure that the occupant exits the forward lower lobe (service/cargo) compartment prior to the flight deck crew releasing fire suppressant agent.

2. *Required Placards and Limitations* (beyond those required in Part 25):

(a) There must be a placard located outside the forward lower lobe (service/cargo) compartment door limiting access to the forward lower lobe (service/cargo) compartment to one crewmember trained in evacuation means.

(b) There must be placards located inside and outside the forward lower lobe (service/cargo) compartment door stating that the forward lower lobe (service/cargo) compartment door must remain closed except when entering and leaving the compartment.

(c) A limitation must be placed in the airplane flight manual (AFM) supplement and placards must be posted inside and outside the forward lower lobe (service/cargo) compartment door, all stating that the forward lower lobe (service/cargo) compartment may

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not be occupied during taxi, takeoff, landing, or during a fire emergency.

(d) With respect to the forward lower lobe (service/cargo) compartment, the AFM supplement must include flight deck crew instructions for: allowing access; procedures for fire/smoke/detection/fire fighting; procedures for decompression; limitations prohibiting occupancy during taxi, takeoff, and landing. The weight and balance manual must include cargo loading restrictions to maintain escape paths.

(e) A limitation must be placed in the AFM Supplement stating: "Carriage of hazardous material and/or weapons in the forward lower lobe (service/cargo) compartment is prohibited" unless:

(1) Access to the compartment is locked during flight and the key to the lock remains with the flight deck crew only; or

(2) The airplane is not operated for hire, or offered for common carriage. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR part 125, 14 CFR part 91, and subpart F, as applicable.

3. *Required Equipment* (in addition to that required by § 25.819):

(a) There must be portable oxygen equipment available at all times sufficient to supply a crewmember who is allowed to occupy the forward lower lobe (service/cargo) compartment (except during taxi, takeoff and landing, and a fire). The equipment is to be mounted at the outside of the main deck entrance to the forward lower lobe (service/cargo) compartment along with a placard specifying that anyone entering the forward lower lobe (service/cargo) compartment during flight must carry portable oxygen equipment on his/her person for the entire time that he/she is in the forward lower lobe (service/cargo) compartment.

(b) At least one readily accessible hand-held fire extinguisher and one 15-minute protective breathing equipment (PBE) device must be located within the forward lower lobe (service/cargo) compartment adjacent to the seat.

(c) In addition to the two evacuation route (including exit) requirements of § 25.819(a), a means must be provided to keep the evacuation routes clear; *i.e.*, cargo in the compartment should be restrained to ensure that the crewmember's paths to the exits are clear. All entrances and exits from the forward lower lobe (service/cargo) compartment must be capable of being closed after entering and exiting and, after closing, must prevent hazardous quantities of smoke, flames, or fire suppressant agent from entering any compartments occupied by passengers or crew and must prevent loss of fire suppressant agent during a fire.

(d) In addition to the emergency illumination required by § 25.829(a), there must be supplemental handheld lighting (with locator light) located within the forward lower lobe (service/cargo) compartment. At least two flashlights will be required. One flashlight must be located adjacent to the secondary emergency exit of the forward lower lobe (service/cargo) compartment. The other must be adjacent to the seat in the forward lower lobe (service/cargo) compartment.

4. *Training manuals and training must include:*

(a) Use and actions associated with warnings and placards specified herein.

(b) Accessing and exiting the cargo forward lower lobe (service/cargo) compartment, including emergency exiting.

(c) Checking the oxygen bottle's pressure for adequacy prior to entering the forward lower lobe (service/cargo) compartment.

(d) Carrying the oxygen bottle when entering the forward lower lobe (service/cargo) compartment.

(e) Maintaining exit path aisle and access for the evacuation routes.

5. *The stairway between the forward lower lobe (service/cargo) compartment and the main deck* (applicable portions excerpted from Special Conditions 25–71–NM–3 issued August 27, 1976) *must meet the following requirements:*

(a) The stairway must have essentially straight route segments with a landing at each significant change in segment direction.

(b) The stairs must have essentially rectangular treads.

(c) General illumination must be provided so that, when measured along the centerlines of each tread and landing, the illumination is not less than .05 foot-candle.

Issued in Renton, Washington, on June 17, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16500 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–24–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspection of the flap tracks of the wing trailing edge flaps for adequate cadmium plating and for corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. This new action would require post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps for discrepancies, and corrective actions, if necessary. This proposal is prompted by reports of corrosion and cracks found in certain bolt holes reworked according to the existing AD. The actions specified by the proposed AD are intended to find and fix discrepancies of the bolt holes, which could result in fracture of the flap track, separation of the flap, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–24–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–24–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 24, 1991, the FAA issued AD 91–03–17, amendment 39–6884 (56 FR 4534, February 5, 1991), applicable to certain Boeing Model 747 series airplanes, to require inspection of the flap tracks of the trailing edge for adequate cadmium plating and to find corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. That action was prompted by reports of missing cadmium plating and corrosion in certain flap track fail-safe bar bolt holes. The requirements of that AD are intended to prevent fracture of the trailing edge flap track, separation of the flap supported by the track, and resultant reduction of the controllability of the airplane and/or damage to other structure from impact with the departing debris.

Actions Since Issuance of Previous Rule

Since the issuance of AD 91–03–17, there have been reports of additional corrosion and cracks found in certain forward bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps on certain Boeing Model 747 series airplanes. The corrosion and cracks were found AFTER the bolt holes were reworked or replated with cadmium, as required by that AD. Boeing Service Bulletins 747–57–2256, dated March 8, 1990, and Revision 1, dated November 15, 1990, were the sources of service information specified in that AD for accomplishment of those actions. Boeing Service Bulletin 747–57–2256, Revision 2, dated March 5, 1992, was approved by the FAA after that AD was issued and has since been revised. In light of these findings, the terminating actions (replating with cadmium and rework of the bolt holes), and the option to defer bolt rework if corrosion is found, as specified in that AD, are no longer valid and have not been included in this proposed AD. In addition, although the effectivity specified in the most recently revised service bulletin (below) has not changed from the applicability of the existing AD, the applicability section in this proposed AD has been changed to specify Revision 3 of the service bulletin instead of the original issue.

Explanation of Revised Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001, which describes procedures for post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the trailing edge for discrepancies (corrosion, cracks, damaged cadmium plating), and corrective actions (rework, repair, or replate with cadmium the affected bolt holes), if necessary. The service bulletin revises the procedures specified in the original issue, Revision 1, and Revision 2 of the service bulletin as follows: changes the post-modification inspection; adds separate post-modification and rework instructions in Part 2; changes the type of bolts in Figure 4, Table II, to "K" material-type bolts (corrosion-resistant); and eliminates the option to defer bolt hole rework if corrosion is found. The service bulletin specifies that no more work is necessary on airplanes that had cadmium plating installed during production and on which no corrosion was found after doing the initial inspection specified in the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–03–17 to continue to require inspection of the flap tracks of the trailing edge for adequate cadmium plating of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. This new action would require post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the trailing edge for discrepancies, and corrective action, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and Proposed AD

The service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions. This proposed AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

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Cost Impact

There are approximately 553 airplanes of the affected design in the worldwide fleet. The FAA estimates that 169 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 91–03–17 take approximately 50 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to $3,000 per airplane.

The borescope inspection proposed in this AD action would take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $324,480, or $1,920 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the eddy current inspection, it would take approximately 40 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection is estimated to be $2,400 per airplane.

Should an operator be required to accomplish the modification of the bolt holes, it would take approximately 256 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification is estimated to be $15,360 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6884 (56 FR 4534, February 5, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–24–AD. Supersedes AD 91–03–17, Amendment 39–6884.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps, which could result in separation of the flap and consequent loss of control of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 91–03–17

Inspections

(a) Prior to the accumulation of 30,000 total flight hours, or 8 years time-in-service on current production flap tracks, whichever is first; or within 2,000 flight cycles after March 11, 1991 (the effective date of AD 91–03–17, amendment 39–6884); whichever is later: Perform a borescope inspection of the forward four bolt holes on each side of the affected trailing edge flap tracks for corrosion and adequate cadmium plating, in accordance with the procedures specified in Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Revision 1, dated November 15, 1990; Revision 2, dated March 5, 1992; or Revision 3, dated June 21, 2001. If the cadmium plating is adequate, as specified in the service bulletin, and no corrosion or cracks are found, no further action is required for this paragraph. If the cadmium plating is not adequate, or if corrosion exists in any bolt hole, prior to further flight, conduct an eddy current inspection of the bolt hole for cracks, in accordance with the service bulletin. After the effective date of this AD only Revision 3 of the service bulletin may be used.

Corrective Actions

(b) If the cadmium plating is not adequate and no corrosion or cracks are found during the inspection required by paragraph (a) of this AD: Within 1,000 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD, cadmium plate the affected bolt holes in accordance with Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Revision 1, dated November 15, 1990; Revision 2, dated March 5, 1992; or Revision 3, dated June 21, 2001; and conduct the inspections of the affected track as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, in accordance with the service bulletin. Restoration of the cadmium plating terminates the inspections required by this paragraph.

Inspections

(1) Within 50 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD: Perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes, and repeat the inspection thereafter at intervals not to exceed 50 flight cycles.

(2) Within 250 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD: Perform an eddy current inspection for cracks of the bolt holes, and repeat the inspection thereafter at intervals not to exceed 250 flight cycles.

(3) Prior to each flight on which a fifth engine is to be carried, perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes.

New Requirements of This AD

Cadmium Plating Applied During Production

(c) For airplanes on which cadmium plating of the forward four bolt holes was applied during production: No further action is required by this AD. If operator records indicate that during the inspection required by paragraph (a) of this AD cadmium plating was applied during production (not during rework or replating), no further action is required by this AD. (Indications of rework include oversized fasteners and/or fasteners with repair sleeves, and/or flap track dash numbers that have been changed per the service bulletin.)

Compliance Time for Borescope Inspection

(d) For airplanes on which cadmium plating of the forward four bolt holes was NOT applied during production: Do the action required by paragraph (e) of this AD at the later of the times given in paragraphs (d)(1) and (d)(2) of this AD.

(1) Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever is first; or

(2) Within 6 years after doing the initial bolt hole rework per AD 91–03–17.

Borescope Inspection

(e) Do a borescope inspection of the forward four bolt holes on each side of the fail-safe bar of the flap tracks of the trailing edge flaps for discrepancies (corrosion, cracks, damaged cadmium plating), per Part 2 of the Work Instructions of Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001. Then, do the actions specified in paragraph (e)(1), (e)(2), or (e)(3) of this AD, as applicable, and repeat the borescope inspection every 8 years or 8,000 flight cycles, whichever is first. Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (a) of this AD.

Corrective Actions

(1) If the cadmium plating is damaged, but no corrosion or cracking is found: Before further flight, do the eddy current inspection specified in and per Part 2.F. of the Work Instructions of the service bulletin. If no cracking is found, before further flight, cadmium plate the affected bolt holes per Part 2.F. of the Work Instructions of the service bulletin.

(2) If any corrosion is found, before further flight, rework the affected bolt holes as specified in and per Part 2.G. of the Work Instructions of the service bulletin.

(3) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–03–17, amendment 39–6884, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 24, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16406 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 airplanes and Model MD–88 airplanes, that would have required replacement of certain power relays, and subsequent repetitive overhauls of the replaced power relays. That proposal was prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. This new action revises the proposed rule by revising the requirements and referencing new service information. The actions specified by this new proposed AD are intended to prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin.

DATES: Comments must be received by July 26, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 99–NM–90–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be

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considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–90–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 airplanes and Model MD–88 airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 14, 2001 (66 FR 32276). That original supplemental NPRM (hereafter referred to as "the first supplemental NPRM") would have required replacement of certain power relays, and subsequent repetitive overhauls of the replaced power relays. The first supplemental NPRM was prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. That condition, if not corrected, may result in in-flight electrical fires.

Actions Since Issuance of Previous Proposal

1. Issuance of AD 2001–20–15

Since the issuance of the first supplemental NPRM, the FAA has issued AD 2001–20–15, amendment 39–12463 (66 FR 51857, October 11, 2001), which is applicable to certain McDonnell Douglas Model DC–9 airplanes and MD–88 airplanes. That AD requires an inspection to determine if a certain AC cross-tie relay is installed; replacement of a certain AC cross-tie relay with a new AC cross-tie relay; and repetitive cleaning, inspection, repair, and testing of a certain AC cross-tie relay. As discussed in the preamble of that AD, we determined that AC cross-tie relays having part number (P/N) 914F567–3 or –4 pose a more serious safety condition than previously determined in the first supplemental NPRM. As a result, actions required for the AC cross-tie relays, P/Ns 914F567–3 and –4, that were specified in the first supplemental NPRM have been specified in AD 2001–20–15. Therefore, we have revised this second supplemental NPRM by removing the actions that would have been required for the AC cross-tie relays, P/Ns 914F567–3 and –4.

2. Issuance of AD 2002–08–09

The FAA also has issued AD 2002–08–09, amendment 39–12717 (67 FR 19637, April 23, 2002), which is applicable to one McDonnell Douglas Model DC–9–31 airplane, fuselage number 0705. The requirements of that AD for the DC–9–31 airplane are identical to those described above for the airplanes affected by AD 2001–20–15.

3. Explanation of New Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002. The service bulletin describes procedures for a one-time inspection of the generator power relays, auxiliary power relays, and external power relays to determine if a certain Sundstrand (Westinghouse) P/N is installed; and corrective actions, if necessary. The corrective actions include modifying and reidentifying the power relay assemblies; installing certain power relay assemblies within service interval limits; replacing the existing power relay assemblies with power relay assemblies that are within service interval limits; and cleaning, inspecting, repairing, and testing of relay assemblies; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

4. Differences Between the Second Supplemental NPRM and the Referenced Service Bulletin

Operators should note that, although the procedures described in Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 8, 2002, specify maintenance (i.e., clean, inspect, repair, and test) of power relays, Sundstrand (Westinghouse) P/N 9008D09 series, when they are beyond service interval limits, the second supplemental NPRM does not require those procedures. For further explanation, see heading "Request to Delete Certain Requirements" in the preamble of the second supplemental NPRM.

Operators should also note that the second supplemental NPRM would not require installation of certain power relays or replacement of the existing power relays with power relays that are "within service interval limits" (*i.e.*, 7,000 flight hours) as described in the service bulletin. The FAA has determined that any generator power relay, auxiliary power relay, or external power relay having Sundstrand (Westinghouse) P/N 914F567–4 that is removed from the airplane must go through maintenance and be made serviceable before the power relay can be reinstalled on an airplane. Therefore, the second supplemental NPRM would require cleaning, inspecting, repairing, and testing of power relays having Sundstrand (Westinghouse) P/N 914F567–4, or replacing those power relays with serviceable power relays having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4. The second supplemental NPRM also would require subsequent repetitive cleaning, inspecting, repairing, and testing of power relays having Sundstrand (Westinghouse) P/N 914F567–4.

Comments Received to First Supplemental NPRM

Due consideration has been given to the comments received in response to the first supplemental NPRM.

Request To Delete Certain Requirements

Several commenters request that the repetitive overhauls for power relay, Sundstrand (Westinghouse) P/N 9008D09 series, specified in paragraph (c) of the first supplemental NPRM, be deleted. The commenters state that there

are no failure modes for that relay that result in the identified unsafe condition specified in the first supplemental NPRM. One commenter states that the design of the main contact arc box for this relay is entirely different than that of power relays, Sundstrand (Westinghouse) P/Ns 914F567–3 and –4, and is not susceptible to the same type of failure in the AC cross-tie position.

The FAA agrees that power relays having Sundstrand (Westinghouse) P/N 9008D09 series are not subject to the identified unsafe condition of the second supplemental NPRM. Therefore, we have deleted the repetitive overhaul requirements for P/N 9008D09 from the second supplemental NPRM.

Requests for Clarification of Applicability

Several commenters request clarification of the applicability to ensure that operators are cognizant of the repetitive overhaul requirements in paragraphs (b), (c), and (d) of the first supplemental NPRM. The commenters note that the applicability of the first supplemental NPRM affects "Model DC–9 series airplanes and Model MD–88 airplanes, equipped with Westinghouse alternating current (AC) power relays, part number (P/N) 914F567–3." However, the proposed repetitive overhauls specified in paragraphs (b), (c), and (d) of the first supplemental NPRM are for airplanes equipped with power relays, Sundstrand (Westinghouse) P/Ns 914F567–4 and 9008D09 series, and for airplanes on which the flight hours since modification or installation of the AC power relay cannot be determined.

The FAA agrees that the applicability needs to be clarified. Because the proposed actions for AC cross-tie relays having Sundstrand (Westinghouse) P/N 914F567–3, and power relays having Sundstrand (Westinghouse) P/N 9008D09 series, have been deleted from the second supplemental NPRM, only the left and right generator power relays, auxiliary power relays, and external power relays, Sundstrand (Westinghouse) P/Ns 914F567–3 and –4, are subject to the requirements of the second supplemental NPRM. We have determined that a one-time inspection of the left and right generator power relays, auxiliary power relays, and external power relays to determine if Sundstrand (Westinghouse) P/N 914F567–3 or –4 is installed, is necessary (see heading "3. Explanation of New Service Information"). Therefore, we have deleted the phrase "equipped with Westinghouse alternating current (AC) power relays, part number (P/N) 914F567–3" from the applicability of the second supplemental NPRM.

Further, we have revised model designations in the applicability of the second supplemental NPRM to reflect the model designations as published in the most recent type certificate data sheet for the affected airplanes. These model designations are also identified in the effectivity of the referenced service bulletin. Because of these changes, we have also updated the number of affected airplanes in the Cost Impact Section of the second supplemental NPRM.

Requests To Revise Certain Compliance Times

Several commenters request that the 30-day compliance time for overhauling the power relays on the airplanes on which the flight hours since modification or installation of the AC power relay cannot be determined, as specified in paragraph (d) of the first supplemental NPRM, be extended.

Several commenters suggest a compliance time of 12 months. Two of these commenters request the extension for AC power relays, Sundstrand (Westinghouse) P/Ns 914F567–3 and –4, and power relays, Sundstrand (Westinghouse) P/N 9008D09 series, of an undetermined service life for all positions. One of the commenters requests the extension for AC power relays, Sundstrand (Westinghouse) P/Ns 914F567–3 and –4, of an undetermined service life in the cross-tie position only. The commenters note that paragraph (a) of the first supplemental NPRM allows AC power relays, Sundstrand (Westinghouse) P/N 914F567–3, for all positions, to remain in service for 12 months before replacement. Since the primary safety concern of the first supplemental NPRM is related to power relays, Sundstrand (Westinghouse) P/N 914F567–3, the commenters state that the compliance time for the power relays, Sundstrand (Westinghouse) P/N 914F567–4, of an undetermined service life should be the same as that of power relays, Sundstrand (Westinghouse) P/N 914F567–3 (*i.e.*, 12 months). One of these commenters and another commenter state that 30 days is not enough time to obtain parts. One commenter also states that the lead-time for obtaining parts is 245 days.

One commenter suggests a compliance time of two years or at the next heavy maintenance check, whichever occurs first, and another commenter suggests 90 or 120 days. The two commenters support the 30-day compliance time for power relays at the cross-tie position only, but request the extensions for all relays at the generator power, auxiliary power, and external power positions. A third commenter also supports the 30-day compliance time for power relays at the cross-tie position only, but does not request an extension for the power relays in the other positions. One commenter states that relays at the generator power, auxiliary power, and external power positions are not as susceptible to the identified unsafe condition and should be allowed to remain on the airplane until the next heavy maintenance check. The commenters also state that such an extension for those power relays will not compromise safety and will allow the proposed overhaul to be accomplished during normal maintenance schedules.

One commenter requests that the 30-day grace period specified in paragraphs (b)(2) and (c)(2) of the first supplemental NPRM be extended for relays at the generator power, auxiliary power, and external power positions only. The commenter provides similar justification as identified above for extending the compliance time of paragraph (d) of the first supplemental NPRM.

The FAA partially agrees. As discussed previously, certain actions required for the AC cross-tie relay having Sundstrand (Westinghouse) P/Ns 914F567–3 and –4, and Sundstrand (Westinghouse) power relays having P/N 9008D09 series, that were specified in the first supplemental NPRM have been deleted from the second supplemental NPRM. Therefore, the commenters' requested changes for those power relays in the second supplemental NPRM are unnecessary.

However, we agree that, for airplanes on which the flight hours since installation of any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, cannot be determined, the compliance time specified in paragraph (d) of the first supplemental NPRM (redesignated as paragraph (c)(2) in the second supplemental NPRM) should be extended from 30 days to 24 months. We also agree that the 30-day grace period specified in paragraph (b)(2) of the first supplemental NPRM (redesignated as paragraph (c)(1) in the second supplemental NPRM) for relays at the generator power, auxiliary power, and external power positions should be extended to 24 months.

We have reviewed the service bulletin (discussed previously) submitted by the manufacturer as to recommended maintenance (*i.e.*, cleaning, inspecting, repairing, and testing) period (i.e., 24

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months). We have determined that extending the proposed compliance time of 30 days specified in paragraph (d) of the first supplemental NPRM (redesignated as paragraph (c)(2) in the second supplemental NPRM) and the proposed grace period of 30 days specified in paragraph (b)(2) of the first supplemental NPRM (now specified in paragraph (c)(1) in the second supplemental NPRM) to 24 months will provide an acceptable level of safety. Therefore, we have revised the compliance time for maintenance of generator power relays, auxiliary power relays, and external power relays, Sundstrand (Westinghouse) P/N 914F567–4, specified in the second supplemental NPRM accordingly.

Request To Reconsider Use of Term "Overhaul"

Several commenters request that the FAA reconsider the use of the term "overhaul" in the first supplemental NPRM. One commenter suggests using the phrase "between removals" instead to avoid misinterpretation. Another commenter suggests the use of the term "maintenance." One commenter notes that power relays, Sundstrand (Westinghouse) P/Ns 914F567–3 and –4, are maintained with an overhaul manual, while power relays, Sundstrand (Westinghouse) P/N 9008D09 series, are maintained with a component maintenance manual (CMM). This commenter states that the Common Support Data Dictionary (CSDD) defines overhaul as "The work necessary to return an item to the highest standard specified in the relevant manual." Therefore, the commenter concludes that an "overhaul" should not be mandated for power relay, Sundstrand (Westinghouse) P/N 9008D09 series, because it is beyond the level of maintenance required to address the accumulation of contamination. Based on industry history, the commenter also states that maintenance (*i.e.*, cleaning of the contacts and a check and repair) for power relay, Sundstrand (Westinghouse) P/N 9008D09 series, per the CMM, is sufficient.

The FAA agrees with the commenters that the use of the term "overhaul" in the first supplemental NPRM is not correct. Our intent was that the repetitive overhauls remove the metallic dust from electrical contact wear that accumulates in the power relays. We find that such removal can be accomplished by cleaning, inspecting, repairing, and testing of the generator power relays, auxiliary power relays, and external power relays (*i.e.*, maintenance), per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002 (described previously). Boeing Alert Service Bulletin DC9–24A191 references Westinghouse Overhaul Manual 24–20–46 (for relays, P/N 914F567–4) and Hamilton Sundstrand CMM 24–20–87 (for relays, P/N 9008D08 series) as additional sources of service information for accomplishing the proposed repetitive maintenance actions. However, as discussed previously, we have deleted the repetitive overhaul requirements for power relays, Sundstrand (Westinghouse) P/N 9008D09 series, from the second supplemental NPRM. Therefore, we have revised the second supplemental NPRM to require repetitive cleaning, inspecting, repairing, and testing of generator power relays, auxiliary power relays, and external power relays, Sundstrand (Westinghouse) P/N 914F567–4, only.

Request To Limit Actions to Cross-Tie Position

Two commenters request that the actions required by the first supplemental NPRM be limited to power relays in the cross-tie position only, which is identified as the unsafe condition in the first supplemental NPRM. One commenter states that there are no data to support the proposed actions for AC power relays at the generator power, auxiliary power, or external power positions. The commenters understand the FAA's concern that if all relays are the same P/N, there may be a risk of putting the wrong part in the cross-tie position. However, the commenters contend that operators have demonstrated their capability to deal with position-related restrictions for parts on airplanes, and that they can ensure that no relay, Sundstrand (Westinghouse) P/N 914F567–3, is installed in the cross-tie position.

One commenter states that it does not support the need for replacement of Westinghouse AC power relays, P/N 914F567–3, or the establishment of time between overhaul (TBO) limits for any of the AC power relays. The commenter uses relays, P/Ns 914F567–3, 914F567–4, 9008D09–1, and 9008D09–2, interchangeably in all seven positions, including the cross-tie position. The commenter states that its service experience indicates that each of these relays operate reliably well beyond the proposed TBO limits.

The FAA does not agree. Although there have been no reported cases of the power relays at the generator power, auxiliary power, or external power positions shorting out internally, the potential for an electrical short still exists when a power relay, Sundstrand (Westinghouse) P/N 914F567–3, is installed in those positions. The accumulation of conductive particle material on any power relays, Sundstrand (Westinghouse) P/N 914F567–3, can build an electrical path to its adjacent terminal and cause a phase-to-phase short circuit. Such a short circuit will result in internal arcing of the power relays and consequent smoke and/or fire in the cockpit and cabin. The second supplemental NPRM addresses that potential unsafe condition by removing generator power relays, auxiliary power relays, and external power relays, Sundstrand (Westinghouse) P/N 914F567–3, and periodically removing the build-up of conductive particle material from the generator power relays, auxiliary power relays, and external power relays, Sundstrand (Westinghouse) P/N 914F567–4.

However, we find that clarification of the wording of the unsafe condition of the second supplemental NPRM is necessary, because the identified unsafe condition for AC cross-tie relays, Sundstrand (Westinghouse) P/N 914F567–3 and –4, is now being addressed in AD 2001–20–15. Therefore, we have revised the unsafe condition specified throughout the second supplemental NPRM to read "to prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin."

Request To Include a New Paragraph for Spares

One commenter requests that a new paragraph be added to the first supplemental NPRM to state, "As of the effective date of this AD, no person shall install an AC power relay P/N 914F567–3 at the cross-tie relay position on any airplane." The commenter states that this paragraph would prevent operators from putting an unmodified relay in the cross-tie position during the time period that unmodified relays will be available.

The FAA does not agree. As discussed previously, we have revised the second supplemental NPRM by removing the actions that would have been required for the AC cross-tie relays, Sundstrand (Westinghouse) P/N 914F567–3. Therefore, no change to the second supplemental NPRM is necessary in this regard.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 1,991 Model DC–9 airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,219 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $146,288, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–90–AD.

Applicability: This AD applies to the following airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002:

McDonnell Douglas Model
DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes
DC–9–21 airplanes
DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, and DC–9–34F airplanes
DC–9–41 airplanes
DC–9–51 airplanes
DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes
MD–88 airplanes

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin, accomplish the following:

Inspection

(a) Within 24 months after the effective date of this AD, perform a one-time inspection of the left and right generator power relays, auxiliary power relays, and external power relays, to determine if Sundstrand (Westinghouse) part number (P/N) 914F567–3 or –4, is installed, per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002.

Replacement or Modification/Reidentification of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–3

(b) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–3, is found installed during the inspection required by paragraph (a) of this AD, within 24 months after the effective date of this AD, do either action(s) specified in paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002.

(1) Replace power relay having Sundstrand (Westinghouse) P/N 914F567–3 with either a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4.

(2) Modify the power relay, Sundstrand (Westinghouse) P/N 914F567–3, to a –4 configuration.

Maintenance or Replacement of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–4

(c) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, is found installed during the inspection required by paragraph (a) of this AD, clean, inspect, repair, and test the relay, or replace the power relay with a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4; per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002; at the time specified in paragraph (c)(1) of this AD, except as provided by paragraph (c)(2) of this AD.

(1) Within 7,000 flight hours after installation of the generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, or within 24 months after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the flight hours since installation of any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, cannot be determined: Within 24 months after the effective date of this AD.

Repetitive Maintenance of Generator Power Relay, Auxiliary Power Relay, or External Power Relay, Sundstrand (Westinghouse) P/N 914F567–4

(d) Before or upon the accumulation of 7,000 flight hours on any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4 since accomplishing the action(s) required by either paragraph (b) or (c) of this AD, as applicable, clean, inspect, repair, and test; per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002. Thereafter, repeat these actions at intervals not to exceed the accumulation of 7,000 flight hours on the power relay.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that

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provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 24, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16407 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. R–02B]

RIN 1218–AC06

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed delay of effective dates; request for comment.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to delay the effective dates of three provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule that are presently scheduled to take effect on January 1, 2003 until January 1, 2004. The first defines "musculoskeletal disorder (MSD)" and requires employers to check the MSD column on the OSHA Log if an employee experiences a recordable musculoskeletal disorder. The second provision states that musculoskeleletal disorders (MSDs) are not considered "privacy concern cases." The third provision requires employers to enter a check mark in the hearing loss column on the 300 Log for cases involving occupational hearing loss. OSHA is requesting comment on these proposed delays.

DATES: Written comments must be received by August 30, 2002.

ADDRESSES: Because of security-related problems in receiving regular mail service in a timely manner, OSHA is requiring that comments be submitted by one of the following means: (1) Hard copy hand-delivered to the Docket Office; (2) hard copy delivered by Express Mail or other overnight delivery service; (3) electronic mail through OSHA's website; or (4) facsimile (fax) transmission. If you are submitting comments, please do not send them by more than one of these media (except as noted under "submitting comments electronically"). The following requirements apply to submission of comments on this proposal:

Submitting comments in hard copy: Written comments are to be submitted in triplicate. Comments may be hand-delivered, or sent by U.S. Postal Service Express Mail or other overnight delivery service, to: Docket Officer, Docket No. R–02B, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627).

Submitting comments electronically: Comments may be sent electronically from the OSHA website at *http://ecomments.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic statement. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic statement by name, date, and subject, so that we can attach the materials to your electronically-submitted statement.

Submitting comments by fax: Comments of 10 pages or less may be faxed to the OSHA Docket Office at (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. The MSD Provisions

In January, 2001 OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (66 FR 5916–6135) to take effect on January 1, 2002. On July 3, 2001, OSHA proposed to delay the effective date of 29 CFR 1904.12 *Recording criteria for cases involving work-related musculoskeletal disorders* until January 1, 2003. OSHA explained that it was reconsidering the requirement in 29 CFR 1904.12 that employers check the MSD column on the OSHA Log for a case involving a "musculoskeletal disorder" as defined in that section. This action was taken in light of the Secretary of Labor's decision to develop a comprehensive plan to address ergonomic hazards, and to schedule a series of forums to consider key issues relating to the plan, including the approach to defining ergonomic injuries.

After considering the views of interested parties, OSHA published a final rule on October 12, 2001 delaying the effective date of 29 CFR 1904.12 until January 1, 2003. OSHA also added a note to 29 CFR 1904.29(b)(7)(vi) explaining that the second sentence of that section, which provides that MSDs are not "privacy concern cases," would not become effective until January 1, 2003.

OSHA concluded that delaying the effective date of the MSD definition in Section 1904.12 was appropriate because the Secretary was considering a related definitional question in the context of her comprehensive ergonomics plan. The Agency found that it would be premature to implement § 1904.12 before considering the views of business, labor and the public health community on the problem of ergonomic hazards. It also found that it would create confusion and uncertainty to require employers to implement the new definition of MSD contained in § 1904.12 while the Secretary was considering how to define an ergonomic injury under the comprehensive plan.

On April 5, 2002, OSHA announced a comprehensive plan to address ergonomic injuries through a combination of industry-targeted guidelines, enforcement measures, workplace outreach, research, and dedicated efforts to protect Hispanic and other immigrant workers. OSHA found that no single definition of "ergonomic injury" was appropriate for all contexts. The Agency stated that it would work closely with stakeholders to develop definitions for MSDs as part of its overall effort to develop industry-or-task specific guidance materials.

Reasons for Delay

OSHA must now determine whether a single definition of MSD is appropriate and useful for recordkeeping purposes, and if so, whether the new definition in § 1904.12 is the appropriate one. OSHA has preliminarily concluded that delaying the effective date of § 1910.12 until January 1, 2004 will give the Agency the time necessary to resolve whether and how MSDs should be defined for recordkeeping purposes and will cause the least disruption to employers, employees and the Bureau of Labor Statistics (BLS)—the federal agency responsible for compiling and publishing occupational injury and illness statistics.

In these circumstances, OSHA believes that delaying the effective date of § 1910.12 for an additional year is preferable to allowing the section to take effect on January 1, 2003 as scheduled. To implement the section beginning in 2003, OSHA would have to issue new forms containing the MSD column and definition, and employers would have to train their personnel to apply the new requirements. If OSHA finally decides to revoke or modify the definition of MSD beginning in calendar year 2004, these efforts by employers and others to implement the definition during calendar year 2003 would be wasted and employees would have to be retrained. MSD statistics produced for 2003 would have little value because they would not be comparable to data for prior years, or to data for 2004 and subsequent years. OSHA therefore believes that the one-year proposed delay in implementation of § 1910.12 is appropriate while the Agency continues to consider the issue of whether and how to define MSDs for recordkeeping purposes.

If the effective date of § 1904.12 is finally delayed, and OSHA then decides that the definition in that section is the appropriate one, the definition will automatically take effect on January 1, 2004 without the need for further action by the Agency. If, on the other hand, OSHA decides that no definition, or a different definition, is warranted, the Agency would complete the necessary rulemaking procedures to revoke or modify § 1901.12 as of January 1, 2004.

Effect of the Proposed Delay of the Effective Date of § 1904.12 on Employers' Recordkeeping Obligations in Calendar Year 2003

This proposal to delay the effective date of § 1904.12 does not affect the employer's obligation to record all injuries and illnesses that meet the criteria set out in §§ 1904.4–1904.7. Employers must continue to record soft-tissue disorders, including those involving subjective symptoms such as pain, as injuries or illnesses if they meet the general recording criteria that apply to all injuries and illnesses. The proposed delay simply means that employers will not have to determine which injuries and illnesses should be classified under the category of "MSDs" or "ergonomic injuries" during the calendar year 2003.

During 2003, employers would record disorders affecting the muscles, nerves, tendons, ligaments and other soft tissue areas of the body in accordance with the general criteria in §§ 1904.4–1904.7 applicable to any injury or illness. Employers would also treat the symptoms of soft-tissue disorders the same as symptoms of any other injury or illness. Soft-tissue cases would be recordable only if they are work-related (§ 1904.5), are a new case (§ 1904.6), and meet one or more of the general recording criteria (§ 1904.7). Employers would continue to check either the "injury" or the "all other illness" column, as appropriate.

The MSD Definition and 300 Form Column

The definition of MSD was a topic in the forums held in 2001 to elicit information about how to deal with ergonomics problems. Information received during the forums relative to the definition of an ergonomics injury has been included in this rulemaking record (Exhibit 2) and may be used to develop and support a final rule.

Some of the forum participants supported the MSD definition published in the 2001 rule. These participants contended generally that the definition is similar to definitions used by other government agencies, consensus standards committees, the National Academy of Sciences, and other countries; that the definition has a sound scientific basis; and that the definition is easily understood by employers, unions, workers and the government.

Other participants argued that to define MSD, as § 1904.12 does, to include all soft-tissue disorders except those resulting from slips trips or falls, lumps together a broad range of ill-defined and unrelated health conditions. They contended that this approach serves no useful purpose and could be counter-productive. Some holding this view pointed out that the § 1904.12 definition includes at least two distinct categories of disorders which should be addressed separately. One class of disorders are those caused by a single event, such as a heavy lift, a particularly awkward motion, or some other one-time event. The other class includes disorders caused by repetitive or cumulative events, such as repetitive lifting, typing, or assembly line work. Some types of disorders may be caused by either type of event.

By narrowing the definition of MSD in § 1904.12 to focus on a group of similar or related health conditions, some forum participants maintained, OSHA would produce more useful statistics. For example, it was argued that data on disorders caused by repetitive or cumulative activity would be more relevant for purposes of developing ergonomics programs than would data that included disorders caused by one-time events. Alternatively, more relevant data might be produced if the MSD definition were limited in its application to employment conditions involving regular or routine exposure to the activity that resulted in the injury.

On the other hand, some forum participants urged that the § 1904.12 definition is widely recognized as appropriate for scientific and statistical purposes, and that limiting the definition might lead to a loss of useful data. Some holding this view argued that the existing definition is also the most relevant one for purposes of developing ergonomics programs because, among other things, it is often difficult to determine if an MSD was caused by a single event or if a single event was merely the last in a series of events that led to the injury. Some even argued that the existing definition should be expanded to include additional disorders.

In 2002, OSHA announced a comprehensive four-part strategy for dealing with the ergonomics issue. The strategy did not include a single definition of MSD, recognizing that MSD is a term of art in scientific literature that refers collectively to a group of injuries and illnesses that affect the musculoskeletal system and that there is no single diagnosis for MSDs. The frequently asked questions (FAQs) issued with the comprehensive approach noted that, as OSHA develops guidance material for specific industries, the agency may narrow the definition as appropriate to address the specific workplace hazards covered, and that OSHA will work closely with stakeholders to develop definitions for MSDs as part of its overall effort to develop guidance materials.

OSHA believes that additional study is needed to determine whether the MSD definition in Section 1904.12 captures an overly diverse group of health outcomes. Some evidence submitted during the ergonomics forums suggests that the definition would be more useful for occupational safety and health purposes if it addressed only soft-tissue disorders having certain key factors in common. This approach argues against

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combining, for example, back pain and tendinitis in a single definition, because the causes and treatment of these disorders are often very different. At the same time, OSHA recognizes that much needs to be learned about soft tissue disorders and that the § 1904.12 definition, or one similar to it, may be the most appropriate one for some purposes.

At this time there appear to be three approaches to defining MSDs for recordkeeping purposes. OSHA could allow the existing definition in § 1904.12 to take effect, which, in turn, could result in the production of corresponding statistical data by the BLS. OSHA could decide that the existing definition is too broad to be useful, and delete it from the rule. Finally, OSHA could develop a new definition for the recordkeeping rule, which BLS could also adopt for statistical purposes. For example, the definition could focus on repetitive or cumulative hazards by defining MSDs as "musculoskeletal disorders associated with repetitive motion and/or stress." Alternatively, OSHA might link the definition to exposure to hazards by defining MSDs to include only cases in which there was regular or routine exposure to the activity that resulted in the injury.

II. The Hearing Loss Column

Section 1904.10 of the January 2001 final rule required employers to check the "hearing loss" column on the 300 Log for each case in which an audiogram revealed that a Standard Threshold Shift (STS) had occurred. On July 3, 2001, OSHA proposed to delay the effective date of Section 1904.10 for one year so that it could reconsider whether the occurrence of an STS is the appropriate criteria for recording hearing loss cases (66 FR 35114). OSHA asked for comment on the proposed decision to delay the effective date and on alternative criteria for recording occupational hearing loss (*id.* at 35115).

On October 12, 2001, OSHA issued a final rule delaying the effective date of Section 1904.10 until January 1, 2003 and establishing criteria for recording hearing loss cases to be used in calendar year 2002 (66 FR 52031–52034). The October 12 final rule also stated that new OSHA 300 Log forms would be issued for use in 2002 that did not contain the MSD or hearing loss columns (*id.* at 52034).

After considering the comments submitted pursuant to the July 2001 notice, OSHA decided to revise the criteria for recording occupational hearing loss. The amended hearing loss criteria, now designated 29 CFR 1904.10(a) and 1904.10(b)(1)–(7), are contained in a separate **Federal Register** document published today. The amended rule revises in part the criterion for determining which shifts in hearing are recordable, eliminates the presumption of work-relationship, and retains other elements of the January 2001 rule. Section 1904.10(b)(7) contains the requirement stated in the January 2001 rule to check the hearing loss column on the Log for cases that meet the criteria for recording occupational hearing loss.

Reasons for Delay

OSHA stated that it included a separate hearing loss column in the January 2001 rule to improve the national statistics on the subject of occupational hearing loss. OSHA noted in the preamble that the Bureau of Labor Statistics (BLS) collects only the relatively small fraction of recorded hearing loss cases that result in days away from work (66 FR 6004, 6005). Adding a hearing loss column to the 300 Log would improve the national statistics, OSHA concluded, "[b]ecause BLS will collect hearing loss data in future years both for cases with and without days away from work, which will allow for more reliable published statistics concerning this widespread occupational disorder" (66 FR 6005).

OSHA believes that this rationale for requiring a hearing loss column on the Log should be reconsidered, and that public comment on the advantages and disadvantages of the column should be weighed, before the requirement becomes effective. OSHA did not include a hearing loss column in the 1996 proposed recordkeeping rule, and did not ask for comment on whether a column should be required in the final rule. The July 3, 2001 proposal to reconsider the § 1904.10 criteria for recording hearing loss cases also did not give clear notice that the column requirement was under review. Therefore, OSHA's decision to require a hearing loss column in the January 2001 final rule, and subsequently to include the column requirement in the amendment to § 1904.10, was made without considering the views of all interested parties. OSHA believes that it should have the benefit of all viewpoints, including those of employers who would be subject to the requirement, and those of scientists, statisticians and others who would gather and interpret the data, before finally resolving this matter.

In addition, the agency itself has concerns about whether requiring a hearing loss column is necessary, or is the best way, to produce more reliable national statistics on occupational hearing loss. OSHA is working with the BLS, the agency primarily responsible for producing national occupational injury and illness statistics, to investigate alternative survey methods that could be used to produce more reliable hearing loss statistics without the need for a column. Both government and employer resources could be conserved by delaying implementation of § 1904.10(b)(7) for a year while alternative approaches for improving hearing loss statistics are explored.

Finally, OSHA notes that it is reconsidering the need for an MSD column, and that resolution of that question may require a change in the OSHA 300 Log form beginning in 2004. If 29 CFR 1904.10(b)(7) is to take effect on January 1, 2003, as scheduled, OSHA will have to issue revised forms for 2003 containing a hearing loss column. It would be beneficial to delay making changes in the forms until the MSD column issue is decided, so that only one further round of revisions will be required. It would be confusing and burdensome for the regulated community if OSHA were to issue revised forms for 2003 containing a hearing loss column, and then to issue further revised forms for 2004 reflecting a final decision on the MSD column. For these reasons, OSHA is proposing to delay the effective date of 29 CFR 1904.10(b)(7) for one year while the agency reconsiders the need for a separate hearing loss column on the 300 Log.

III. Issues for Public Comment

OSHA invites comment on the following issues:

Hearing Loss Column

Issue 1. OSHA requests comment on the proposed delay of the effective date of 29 CFR 1904.10(b)(7) until January 1, 2004, including any reasons for supporting or opposing the delayed effective date.

Issue 2. Is a hearing loss column needed on the OSHA 300 Log? Would the statistics generated by an additional column be superior to the statistics now generated by the BLS? For what purposes would the statistics be used? Are there other ways to produce occupational hearing loss statistics that do not require revision of the forms? Would there be additional costs or burdens associated with adding a hearing loss column to the 300 Log? Additional benefits?

MSD

Issue 1. OSHA requests comment on the proposed delay of the Section 1904.12 effective dates until January 1, 2004, including any reasons for supporting or opposing the delayed effective dates.

Issue 2. Is an MSD column needed on the OSHA 300 Log? Should the column be reinstated in § 1904.12 or should § 1904.12 be deleted? Would the statistics generated by an additional column be superior to the statistics now generated by the BLS? Are there other ways to produce statistics on MSDs that do not require revision of the forms? If the column is retained, should it include both injuries and illnesses, or should it be limited to MSD illnesses? Are there other problems associated with an MSD column on the 300 Log? Are there other advantages to the column?

Issue 3. If OSHA decides to include a separate column for MSD injuries and illnesses, what definition of MSD should be used? Should the definition include a broad class of disorders, or be limited by the type of injury (such as by excluding back cases)? Should the definition exclude injuries caused by one-time events? Should the definition exclude disorders caused by infrequently performed activities? In particular, what are the relative merits of the current § 1904.12 definition and an MSD definition that would focus on disorders associated with work-related repetitive motion and/or stress.

State Plans

26 States and territories operate their own OSHA-approved occupational safety and health plans. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have OSHA approved State Plans that apply to state and local government employees only. For requirements that determine which occupational injuries and illnesses are recorded and how they are recorded, the States must have the same requirements as Federal OSHA to ensure the uniformity of the collected information (See § 1904.37 and § 1952.4). Therefore, these States and territories will be required to adopt a regulation that is substantially identical to any final federal regulation issued pursuant to this proposal. A final regulation could include a delay of effective dates for specific provisions of §§ 1904.10 and 1904.12, the adoption of substantive requirements within §§ 1904.10 and 1904.12, or both.

Paperwork Reduction Act

The proposed rule will continue OSHA's current policies regarding the recording of soft tissue disorders and will not impose any new paperwork requirements.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Assistant Secretary certifies that the proposed rule will not have a significant adverse impact on a substantial number of small entities. The rule does not add any new requirements, but merely delays the effective date of Section 1904.12. The delay will not impose any additional costs on the regulated public.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657).

Signed at Washington, DC, this 25th day of June, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

For the reasons stated in the preamble, OSHA proposes to amend 29 CFR part 1904 as set forth below:

PART 1904—[AMENDED]

1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

2. Revise § 1904.10(b)(7) to read as follows:

§ 1904.10 Recording criteria for cases involving occupational hearing loss.

* * * * *

(b) * * *

(7) *How do I complete the 300 Log for a hearing loss case?* When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss.

Note: § 1904.10(b)(7) is effective beginning January 1, 2004.

3. Revise the note to § 1904.12 to read as follows:

§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.

This section is effective January 1, 2004. From January 1, 2002 until December 31, 2003, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under §§ 1904.5, 1904.6, 1904.7, and 1904.29. For entry (M) on the OSHA 300 Log, you must check either the entry for "injury" or "all other illnesses."

4. Revise § 1904.29(b)(7)(vi) to read as follows:

§ 1904.29 Forms.

* * * * *

(b) * * *

(7) * * *

(vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases.

Note: The first sentence of this § 1904.29(b)(7)(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2004.

* * * * *

[FR Doc. 02–16393 Filed 6–28–02; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 243–0357b; FRL–7232–7]

Revisions to the California State Implementation Plan; Bay Area Air Quality Management District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the portions of the California State Implementation Plan (SIP) that are associated with the Bay Area Air Quality Management District (BAAQMD) and South Coast Air Quality Management District (SCAQMD). These revisions concern volatile organic compound emissions from solid waste disposal sites. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 31, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–

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4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7799.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: BAAQMD Rule 8–34 and SCAQMD Rule 1150.1. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 6, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 02–16362 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 268–0360; FRL–7239–9]

Approval and Promulgation of Implementation Plans and Determination of Attainment of the 1-Hour Ozone Standard for the Santa Barbara County Area, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Santa Barbara County area has attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. EPA is also proposing to approve 1-hour ozone contingency measures as revisions to the Santa Barbara portion of the California State Implementation Plan (SIP).

DATES: Comments on this proposal must be received by July 31, 2002.

ADDRESSES: Please address your comments to: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are available for public inspection during normal business hours at EPA's Region 9 office and at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117

The SIP materials are also electronically available at: *http://www.sbcapcd.org/capes.htm*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, US EPA Region 9, at(415) 972–3957, or Jesson.David@epa.gov

SUPPLEMENTARY INFORMATION:

I. Attainment Finding

A. Santa Barbara's Current Ozone Classification

The Santa Barbara County nonattainment area ("Santa Barbara area") is currently classified as serious for the 1-hour ozone national ambient air quality standard (NAAQS).[1]

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the country that was designated nonattainment for the 1-hour ozone standard, including the Santa Barbara area, was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). The Santa Barbara area was initially classified as moderate. *See* 40 CFR 81.305 and 56 FR 56694 (November 6, 1991).

Upon the Santa Barbara area's classification as moderate, the CAA required submittal of a state implementation plan (SIP) demonstrating attainment of the 1-hour ozone standard as expeditiously as practicable but no later than November 15, 1996. CAA sections 181(a)(1) and 182(b)(1)(A)(i). The SIP had to meet several other CAA requirements for moderate areas. See generally CAA section 182(b). The Santa Barbara County Air Pollution Control District (SBCAPCD) prepared a moderate area plan, which was timely submitted by the California Air Resources Board (CARB). CARB later withdrew the attainment demonstration, since the area continued to violate the 1-hour standard in 1996. We approved the remaining portions of the SIP on January 8, 1997 (62 FR 1187).

On December 10, 1997 (62 FR 65025), we determined that the area had not attained the 1-hour ozone standard by the November 15, 1996 attainment date. As a result of that finding, the Santa Barbara area was reclassified to serious, by operation of law under CAA section 181(b)(1)(A).

Upon the area's reclassification to serious, the CAA required California to submit a revised SIP demonstrating attainment of the 1-hour ozone standard in the Santa Barbara area as expeditiously as practicable but no later than November 15, 1999. CAA sections 181(a)(1)and 182(c)(2)(A). In response, SBCAPCD adopted and CARB submitted a plan addressing the serious area requirements. EPA fully approved this plan on August 14, 2000 (65 FR 49499).

B. Clean Air Act Provisions for Attainment Findings

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[2] Under CAA section 181(b)(2)(A), we must base our determination of attainment or failure to attain on the area's design value as of its applicable attainment date, which for the Santa Barbara area was November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than 1 day per year over any 3-year period. 40 CFR 50.9 and appendix H. Under our policies, we determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding 3-year period.[3] For this proposal, we have based our determination of attainment on both the design value and the average number of exceedance days per year as of November 15, 1999.

The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's design value is the highest of the design values from the area's monitors.[4]

We make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data for the 3-year period up to and including the attainment date.[5] Consequently, we used all of the 1997, 1998, and 1999 quality-assured data available to determine whether the Santa Barbara area attained the 1-hour ozone standard by November 15, 1999. From the available air quality data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the Santa Barbara nonattainment area.

C. Attainment Finding for the Santa Barbara Area

1. Adequacy of the Santa Barbara Area Ozone Monitoring Network

Determining whether or not an area has attained under CAA section 181(b)(1)(A) is based on monitored air quality data. Thus, the validity of a determination of attainment depends on whether the monitoring network adequately measures ambient ozone levels in the area.

We evaluate 4 basic elements in determining the adequacy of an area's ozone monitoring network. The network needs to meet the design requirements of 40 CFR part 58, appendix D; the network needs to utilize monitoring equipment designated as reference or equivalent methods under 40 CFR part 53; and the agency or agencies operating the equipment need to have a quality assurance plan in place that meets the requirements of 40 CFR part 58, appendix A. The ozone network in the Santa Barbara area meets or exceeds these requirements and is therefore adequate for use in determining the ozone attainment status of the area.

2. The Santa Barbara Area's Ozone Design Value for the 1997–1999 Period

We have listed in Table 1 the design values and the average number of exceedance days per year for the 1997 to 1999 period for each monitoring site in the Santa Barbara area. We calculated the design values following the procedures in the Laxton memo.[6]

TABLE 1.—AVERAGE NUMBER OF OZONE EXCEEDANCE DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN THE SANTA BARBARA AREA, 1997–1999

Site	Average number of exceedance days per year	Site design value (ppm)
El Capitan St (SLAMS)	0	0.08
Goleta (SLAMS)	0	0.09
Lompoc H Street (SLAMS)	0	0.08
Santa Barbara (SLAMS)	0	0.09
Santa Maria (SLAMS)	0	0.07
Santa Ynez (SLAMS)	0	0.09
Santa Rosa Island (Nat. Park)	0	0.08
Carpinteria (SPM)	0	0.11
GTC B (SPM)	0	0.09
Lompoc HS&P (SPM)	0	0.09
Paradise Road (SPM)	0.3	0.11
Las Flores Canyon (Site 1) (SPM)	1.0	0.11
Vandenburg AFB STS (SPM)	0	0.09

Note: State or Local Air Monitoring Stations (SLAMS) are operated by SBCAPCD or CARB, while special purpose monitors (SPMs) are operated independently by certain permitted stationary sources in the county under the oversight of the SBCAPCD. All data produced by these SPMs are submitted to EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

[1] The 1-hour ozone nonattainment area is the "Santa Barbara-Santa Maria-Lompoc Area," which comprises the entire County of Santa Barbara. *See* 40 CFR 81.305.

[2] If a states does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and has fully implemented its applicable SIP, it may apply to EPA, under CAA

[3] See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

[4] The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3-year period and still show attainment, since 3 exceedances over 3 years would average 1 day per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a State can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it can demonstrate attainment.

[5] All quality-assured available data include all data available from the state and local/national air monitoring (SLAMS/NAMS) network as submitted to EPA's AIRS system and all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 58.13. See Memorandum John Seitz, Director, OAQPS, to Regional Air Directors: "Agency Policy on the Use of Ozone Special Purpose Monitoring Data," August 22, 1997.

[6] See memorandum, William G. Laxton, Director, Technical Support Division, Office of Air Quality Planning and Standards to Regional Air Directors, "Ozone and Carbon Monoxide Design Value Calculations," June 18, 1990.

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From Table 1, the highest design value at any monitor, and thus the design value for the Santa Barbara area is 0.11 ppm at the Carpinteria, Paradise Road, and Las Flores Canyon sites. No monitor in the Santa Barbara area recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 1997 to 1999 period.

Because the area's design value is below the 0.12 ppm 1-hour ozone standard and the area has averaged less than 1 exceedance per year at each monitor for the 1997 to 1999 period, we propose to find that the Santa Barbara area has attained the 1-hour ozone standard by its Clean Air Act mandated attainment date of November 15, 1999.

Although the attainment determination is based on the 1997 to 1999 period, we have also looked at data for 2000 and 2001. During that period, we found that the area's 1-hour ozone design values were below 0.12 ppm and that the area continued to record less than 1 exceedance per year on average at each monitoring location.

D. Attainment Findings and Redesignations to Attainment

A finding that an area has attained the 1-hour ozone standard under CAA section 181(b)(1)(A) does not redesignate the area to attainment for the 1-hour standard nor does it guarantee a future redesignation to attainment.

The redesignation of an area to attainment under CAA section 107(d)(3)(E) is a separate process from a finding of attainment under CAA section 181(b)(1)(A). Unlike an attainment finding where we need only determine that the area has had the pre-requisite number of clean years, a redesignation requires multiple determinations. Under section 107(d)(3)(E), these determinations are:

1. We must determine, at the time of the redesignation, that the area has attained the relevant NAAQS.

2. The State must have a fully approved SIP for the area.

3. We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.

4. We must have fully approved a maintenance plan for the area under CAA section 175(A).

5. The State must have met all the nonattainment area requirements applicable to the area.

To address the provisions of CAA section 175(A), Santa Barbara adopted its 2001 Clean Air Plan (including a maintenance plan) on November 15, 2001. Although the SBCAPCD is already implementing the plan, the State does not expect to submit the plan as a SIP revision until early 2003. CARB has submitted for federal approval at this time, however, the contingency measures in the maintenance plan. The State and the SBCAPCD do not intend the delay in submitting the full maintenance plan to impact the contingency rule adoption schedule identified in the maintenance plan. See discussion below in Section II.

It is possible, although not expected, that the Santa Barbara area violate the 1-hour ozone NAAQS before the maintenance plan is approved and the area is redesignated to attainment. If such a violation were to occur after EPA's finding of attainment under CAA section 181(b)(2)(A), and if expedited implementation of contingency measures were to prove insufficient to eliminate future violations, EPA believes that issuance of a SIP call under CAA section 110(k)(5) would be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements of Subpart 2 applicable to the area at the time of this finding.

II. Contingency Measures

On May 29, 2002, California formally requested that we make a finding of attainment for the Santa Barbara area and begin evaluating redesignation of the Santa Barbara area to attainment and the adequacy of the area's maintenance plan (letter from Michael P. Kenny, CARB Executive Officer, to Wayne Nastri, Regional Administrator, EPA Region 9). The State's letter attached the 2001 Clean Air Plan, which SBCAPCD adopted on November 15, 2001, to address the CAA provisions relating to maintenance plans for the 1-hour ozone NAAQS.[7] CARB indicated that the State will submit a request that we act on the maintenance plan and redesignate the area to attainment in early 2003, at the time the State requests our approval of an updated vehicle emission factor model for use statewide in SIPs and transportation conformity analyses.

The State did request that we act expeditiously to approve the specific enforceable contingency measures in the maintenance plan, in order to strengthen the SIP and ensure that a remedy will be in place if future violations occur. Should the area record a violation of the 1-hour ozone NAAQS before the area is redesignated to attainment, these measures would be expected to provide the remedy.

The maintenance plan includes a commitment to adopt a group of control measures by specific dates from 2001 through 2009, and a commitment to evaluate and expedite the adoption process in coordination with EPA if Santa Barbara violates the 1-hour ozone NAAQS prior to 2015. While the control measures are intended to be contingency measures for purposes of the federal 1-hour ozone standard, the measures are also proposed to be adopted for the purpose of attaining the California State 1-hour ozone standard.

The measures, their adoption schedule, and associated emission reductions are summarized in Table 2, Contingency Measures. The measures are described at length in the 2001 Clean Air Plan, Appendix B.3, Proposed Emission Control Measures.

TABLE 2.—CONTINGENCY MEASURES SOURCE: 2001 CLEAN AIR PLAN, TABLE 4–3

Rule No.	CAP control measure ID	Description	Adoption schedule	Emission reductions in tons per day (with full implementation)	
				VPC	NO_x
323	R–SC–1	Architectural Coatings (Revision)	2001–2003	0.0998	0
333	N–IC–1, N–IC–3	Stationary IC Engines	2002–2003	0.0008	0.0128
360	N–XC–2	Large Water Heaters & Small Boilers, Steam Generators, Process Heaters (75,000 Btu/hr to <2 MMBtu/hr).	2001–2003	0	[1]0.0133

[7] On June 13, 2002, we found that this submittal met the completeness criteria in 40 CFR 51 appendix V, including the requirement for proper public notice and adoption.

TABLE 2.—CONTINGENCY MEASURES SOURCE: 2001 CLEAN AIR PLAN, TABLE 4–3—Continued

Rule No.	CAP control measure ID	Description	Adoption schedule	Emission reductions in tons per day (with full implementation)	
				VPC	NO_x
321	R–SL–1	Solvent Degreasers (Revision)	2004–2006	0.0562	0
362	R–SL–2	Solvent Cleaning Operations	2004–2006	1.0103	0
363	N–IC–2	Gas Turbines	2004–2006	0	0
358	R–SL–4	Electronic Industry—Semiconductor Manufacturing	2007–2009	[2]0.0026	0
361	N–XC–4	Small Industrial and Commercial Boilers, Steam Generators, and Process Heaters (2 MMBtu/hr to <5 MMBtu/hr).	2007–2009	0	[3]0.0028

[1] This is with 15% implementation, the highest implementation figure available from the District's analysis.
[2] The data shown are for source classification code (SCC) number 3–13–065–06 only. The emission data for the SCC numbers and the category of emission source (CES) numbers subject to Rule 358 are included in the Rule 321 or Rule 361 emission reduction summaries.
[3] The emission reductions shown are based on Rule 361 being a point-of-sale type rule.

The State requested that we approve these measures at this time under CAA section 110(k), and did not request that we approve them under the CAA section 175A provisions relating to maintenance plans. We have therefore reviewed the control measures to determine whether they meet basic SIP approval requirements and whether the measures would strengthen the existing SIP. We conclude that the measures are adequately defined, the implementation of the measures is sufficiently specific, the associated emission reductions are properly quantified, and the SBCAPCD has authority to adopt and enforce the measures. Therefore, we propose to approve the control measures under CAA section 110(k)(3) as strengthening the SIP.

When the State resubmits the 2001 Clean Air Plan and requests that we approve it as meeting the CAA section 175A requirements for maintenance plans, we will review the contingency elements in the Santa Barbara plan and will determine whether or not these elements fully satisfy the specific CAA section 175A(d) requirement for contingency provisions in maintenance plans.

If we finalize approval of the contingency measures under CAA section 110(k)(3), we expect to work closely with CARB and the SBCAPCD to evaluate and expedite the rule adoption schedule in the event that violations are recorded.

III. Summary of EPA Actions

We are proposing to find that the Santa Barbara area attained the 1-hour ozone NAAQS by the CAA deadline. We are proposing to approve contingency measures in the 2001 Clean Air Plan, as shown in Table 2 above, under CAA section 110(k)(3).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and proposes to find that the Santa Barbara area has attained a previously-established national ambient air quality standard based on an objective review of measures air quality data. As such, the action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard and proposes to find that an area has attained applicable air quality standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or the attainment status of an area, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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Environmental protection, Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–16463 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 020603140–2140–01;I.D. 050102G]

RIN 0648–AQ00

Regulations Governing the Taking and Importing of Marine Mammals; Eastern North Pacific Southern Resident Killer Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for information.

SUMMARY: NMFS anticipates proposing regulations to designate the eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) as a depleted stock under the Marine Mammal Protection Act (MMPA). NMFS recently reviewed the status of these whales under the Endangered Species Act (ESA) and determined that the eastern North Pacific Southern Resident stock does not qualify as a "species" as defined in the ESA. However, this stock of whales has declined by 20 percent in the past 5 years, and evidence suggests that designation as a depleted stock may be warranted. NMFS is requesting that interested parties submit pertinent information and comments regarding the status of this killer whale stock and potential conservation measures that may benefit these whales.

DATES: Information must be received by August 30, 2002.

ADDRESSES: Information should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Comments may also be sent via facsimile (fax) to (503) 230–5435, but will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle, Office of Protected Resources, Silver Spring, MD (301) 713–2322, ext. 105, or Mr. Garth Griffin, Northwest Regional Office, Portland, OR (503) 231–2005.

SUPPLEMENTARY INFORMATION:

Electronic Access

A list of the references used in this notice and other information related to the status of this stock of killer whales is available on the Internet at *http://www.nwr.noaa.gov.*

Background

Depleted Stocks Under the MMPA

Section 3(1)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1362(1)(A)) defines the term, "depletion≥ or "depleted", as any case in which "the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals ... determines that a species or population stock is below its optimum sustainable population." Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)]...with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity (K) of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (i.e., K) to its maximum net productivity level (MNPL). MNPL is the abundance or population level that results in the greatest net annual increment in population numbers or biomass resulting from additions to the population from reproduction, less losses due to natural mortality.

Section 2 of the MMPA (16 U.S.C. 1361) states that marine mammal species, populations and/or stocks should not be permitted to fall below their OSP level. Historically, MNPL has been expressed as a range of values determined theoretically by estimating the stock size, in relation to K, that will produce the maximum net increase in population abundance. The estimated MNPL has been expressed as a range of values, generally 50 to 70 percent of K (42 FR 12010, March 1, 1977). In 1977, the midpoint of this range (60 percent of K) was used to determine whether dolphin stocks in the eastern tropical Pacific Ocean were depleted under the MMPA (42 FR 64548, December 27, 1977). The 60-percent-of-K value was used in the final rule governing the taking of marine mammals incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (45 FR 72178, October 31, 1980) and has been used since that time for other status reviews under the MMPA. For stocks of marine mammals, however, K is generally unknown. NMFS, therefore, has used the best estimate of maximum historical abundance as a proxy for K.

Section 115(a)(2) of the MMPA (16 U.S.C. 1383b(a)(2)) requires NMFS to publish a notice in the **Federal Register** prior to proposing regulations to designate a population stock of marine mammals as depleted. The purpose of the notice is to assist NMFS in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in industry which might be affected by the determination, and from academic institutions. In addition, NMFS is required to use, to the extent it determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

The MMPA provides protection against the take, the definition of which includes harassment, of marine mammals [MMPA section 102, 16 U.S.C 1372). The MMPA provides that a conservation plan shall be prepared as soon as possible for a stock that is designated as depleted, unless such a plan will not promote the conservation of the stock (MMPA section 115(b)(1), 16 U.S.C 1383b(b)(1)). Furthermore, for a stock designated as depleted under the MMPA, NMFS may develop and implement conservation or management measures to alleviate any impacts that are on areas of ecological significance to the depleted stock and that may be causing the decline or impeding the recovery of the stock (MMPA section 112(e); 16 U.S.C 1382(e)). Such measures shall be developed and implemented after consultation with the Marine Mammal Commission and the appropriate Federal agencies and after notice and opportunity for public comment.

Eastern North Pacific Southern Resident Killer Whales

The killer whale is the largest member of the dolphin family (Delphinidae), and the species is the most wide-ranging of all marine mammals. Along the west coast of North America, killer whales occur along the entire Alaskan coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California. North Pacific killer whales have been classified into three forms

termed Residents, Transients, and Offshore whales. All three of these forms are currently classified as the same biological species, *O. orca*. The three forms vary in morphology, ecology, behavior, group size, social organization, acoustic repertoire, and genetic characteristics. Behavioral evidence suggests that Offshore and Transient pods ("pods" are close-knit family groups ranging from 10 to 70 whales) rarely interact with the Resident pods. Although the Transient form overlaps extensively in range with the Resident form, genetic evidence suggests that the two forms do not interbreed. Furthermore, distinct feeding habits exist, with Transient killer whales primarily preying on other marine mammals and Residents primarily subsisting on fishes (little is known, however, about the habits of the Offshore form).

Resident whales in the North Pacific consist of the following groups: western North Pacific Residents; western Alaska Residents; southern Alaska Residents; eastern North Pacific Northern Residents; and eastern North Pacific Southern Residents. Eastern North Pacific Southern Residents occur in the inland waterways of southern British Columbia and Washington, including the Georgia Strait, the Strait of Juan de Fuca, and Puget Sound.

The abundance of the eastern North Pacific Southern Resident stock has declined 20 percent in the past 5 years (1996–2001), and the decline has been accompanied by changes in survival rates between age and sex categories. NMFS recently reviewed the status of these whales under the ESA and determined that the eastern North Pacific Southern Resident stock does not qualify as a "species" as defined in the ESA (NMFS, 2002). However, information gathered during the ESA status review, including population viability analyses, suggests that designating eastern North Pacific Southern Resident killer whales as a depleted stock under the MMPA may be warranted.

Estimates of Historical Stock Size

The true K and MNPL are unknown for eastern North Pacific Southern Resident killer whales. Furthermore, an empirical estimate of maximum historical abundance is not available. When the annual census of the population began in 1974, there were 71 whales in the population. This count, however, followed the period in the 1960s and early 1970s when at least 68 whales were removed or killed during capture operations for public display. Thus, a minimum historical abundance could be estimated to be approximately 140 killer whales if total removals were limited to the 68 animals that were known to be killed or captured. Although reasonably accurate numbers of animals removed by live capture exist, the number killed by shooting or other human activity is unknown. Therefore, the historical abundance may have been much greater than 140 whales.

Lacking sufficient information to support a direct estimate of historical abundance, NMFS has examined indirect evidence for historical stock size. An initial inspection of genetic diversity seen in DNA data (Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001) indicates that eastern North Pacific Southern Resident killer whales have nearly the same number of alleles as Northern Residents (28 versus 35), despite a much smaller sample size (8 versus 126). This is consistent with a hypothesis that Southern Residents may have recently been a much larger population. In other words, if Northern Residents can be viewed as representing the expected genetic diversity of populations of their size (214), then Southern Residents may have been a similar stock size in the recent past (NMFS, 2002).

Although there are no empirical estimates of the historical stock size for eastern North Pacific Southern Resident killer whales, the best available scientific information suggests a historical abundance of approximately 140-200 whales. Under the MMPA, a stock is depleted if its abundance is below MNPL, the lower bound of OSP. Using the inferred historical stock size of 140-200 eastern North Pacific Southern Resident killer whales as a proxy for K, the estimated MNPL for the stock would be 84-120 whales (60 percent of K). The 2001 abundance of 78 killer whales is below even the most conservative (lowest) estimate of MNPL for the stock.

NMFS completed a comprehensive status review under the ESA for this stock of killer whales. To supplement that status review, NMFS is now initiating a review of the status of the eastern North Pacific Southern Resident stock of killer whales under the MMPA. NMFS will augment the information obtained during its recent ESA status review with any other available information regarding the stock's abundance relative to its OSP to determine whether it warrants a depleted designation under the MMPA.

Information Solicited

To ensure that the review is comprehensive and is based on the best available data, NMFS is soliciting information and comments from any interested person concerning the status of the eastern North Pacific Southern Resident stock. It is requested that data, information, and comments be accompanied by (1) supporting documentation such as maps, logbooks, bibliographic references, personal notes, or reprints of pertinent publications; and (2) the name of the person submitting the data, his/her address, and any association, institution, or business that the person represents. NMFS also seeks information on impacts on areas of significance to the eastern North Pacific Southern Resident stock that may be causing the decline or impeding the recovery of the stock; on potential conservation measures that may be useful in alleviating those impacts and rebuilding the stock; and on the potential economic impacts and the potential biological benefits of alternative conservation measures. This would include information on potential effects of whale watching on resident killer whales in Washington waters and measures that might be proposed to reduce or mitigate such effects.

References

A complete list of all cited references is available via the Internet (see Electronic Access) or upon request (see **ADDRESSES**).

Dated: June 7, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16528 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 020603138–2138–01; I.D. 042502B]

RIN 0648–ZB22

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List Southern Resident Killer Whales as Threatened or Endangered Under the Endangered Species Act (ESA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Status review; notice of determination.

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SUMMARY: NMFS announces a 12–month finding for a petition to list Southern Resident killer whales (*Orcinus orca*) as threatened or endangered under the Endangered Species Act (ESA). After a review of the best available scientific and commercial information, the agency finds that listing the Southern Resident killer whales is not warranted at this time because these killer whales do not constitute a species, subspecies, or distinct population segment (DPS) under the ESA. NMFS will continue to seek new information on the taxonomy, biology, and ecology of these whales, as well as potential threats to their continued existence, and within 4 years will reassess the status of these whales under the ESA. NMFS is issuing an advance notice of proposed rulemaking to designate this stock of killer whales as depleted under the Marine Mammal Protection Act (MMPA).

DATES: The finding announced in this document was made on May 31, 2002.

ADDRESSES: The complete file for this finding, including comments and information submitted, is available for public inspection by appointment during normal business hours at the NMFS Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, OR, 97232–2737.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle, Office of Protected Resources, Silver Spring, MD (301) 713–2322, ext. 105, or Mr. Garth Griffin, Northwest Regional Office, Portland, OR (503) 231–2005.

SUPPLEMENTARY INFORMATION:

Electronic Access

A list of references cited in this notice is available via the Internet at *http://www.nwr.noaa.gov*. Additional information, including the report of the NMFS Biological Review Team (BRT) and written comments from the Marine Mammal Commission and other co-managers, is also available at this Internet address.

Background

Section 4(b)(3)(B) of the ESA requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, NMFS must make a finding within 12 months of the date of receipt of the petition about whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Upon making a 12–month finding, the agency must promptly publish notice of such finding in the **Federal Register**.

On May 2, 2001, NMFS received a petition from the Center for Biological Diversity (CBD) and 11 co-petitioners (CBD, 2001a) to list Southern Resident killer whales as threatened or endangered and to designate critical habitat for them under the ESA. The petitioned whales consist of three pods (J, K, and L) whose range during the spring, summer, and fall includes the inland waterways of Puget Sound, Strait of Juan de Fuca, and Georgia Strait. The primary impetus behind the petition is a recent decline in these pods from 97 animals in 1996 to 78 animals in 2001. The petition highlighted key issues for NMFS' consideration, including: (1) Genetic, behavioral, and ecological evidence indicating that Southern Resident killer whales may be a DPS under the ESA; (2) population data documenting a recent decline in Southern Resident killer whales and analyses indicating that these whales may be at risk of extinction; and (3) an array of threats that may account for the decline in Southern Resident killer whales. On July 26, 2001, NMFS received additional information from the lead petitioner, including an updated population viability analysis and a report on the July 2001 census of Southern Resident killer whales returning to the inland waters of Washington and southern British Columbia (CBD, 2001b).

On August 13, 2001 (66 FR 42499), NMFS provided notice of its determination that the petition presents substantial information indicating that a listing may be warranted and that it would initiate a status review to determine if Southern Resident killer whales warrant listing under the ESA. To conduct the status review, NMFS formed a BRT comprising scientists from the agency's Alaska, Northwest, and Southwest Fisheries Science Centers. Because the ESA requires that NMFS make a listing determination based upon the best available scientific and commercial information, the agency solicited pertinent information on killer whales (66 FR 42499, August 13, 2001) and convened a meeting on September 26, 2001, to gather technical information from co-managers, scientists, and individuals having research or management expertise pertaining to killer whale stocks in the north Pacific Ocean. In addition, in March 2002, the BRT received comments from the Marine Mammal Commission and Washington, Tribal, and Canadian co-managers on a preliminary draft of the BRT's status review findings. These comments were evaluated by the BRT, who then prepared a final status review document for Southern Resident killer whales (NMFS, 2002). The status review and other documents forming the administrative record for this finding are available on the Internet (see Electronic Access) or from NMFS (see **ADDRESSES**).

Biological Background

Killer whales are one of the most strikingly pigmented of all cetaceans, making field identification easy. Killer whales are black dorsally and white ventrally, with a conspicuous white oval patch located slightly above and behind the eye. A highly variable gray or white saddle is usually present behind the dorsal fin. Saddle shape varies among individuals, pods, and from one side to the other on a single animal. Sexual dimorphism occurs in body size, flipper size, and height of the dorsal fin. More detailed information regarding this species' distribution, behavior, genetics, morphology, and physiology is contained in the BRT's status review (NMFS, 2002).

Killer whales are classified as top predators in the food chain and the world's most widely distributed marine mammal (Leatherwood and Dahlheim, 1978; Heyning and Dahlheim, 1988). Although observed in tropical waters and the open sea, they are most abundant in coastal habitats and high latitudes. In the northeastern Pacific Ocean, killer whales occur in the eastern Bering Sea (Braham and Dahlheim, 1982) and are frequently observed near the Aleutian Islands (Scammon, 1874; Murie, 1959; Waite et al., 2001). They reportedly occur year-round in the waters of southeastern Alaska (Scheffer, 1967) and in the intracoastal waterways of British Columbia and Washington State (Balcomb and Goebel, 1976; Bigg *et al.*, 1987; Osborne *et al.*, 1988). There are occasional reports of killer whales along the coasts of Washington, Oregon, and California (Norris and Prescott, 1961; Fiscus and Niggol, 1965; Rice, 1968; Gilmore, 1976; Black *et al.*, 1997), both coasts of Baja California (Dahlheim *et al.*, 1982), the offshore tropical Pacific (Dahlheim *et al.*, 1982), the Gulf of Panama, and the Galapagos Islands. In the western North Pacific, killer whales occur frequently along the Soviet coast in the Bering Sea, the Sea of Okhotsk, the Sea of Japan, and along the eastern side of Sakhalin and the Kuril Islands (Tomilin, 1957). There are numerous accounts of their occurrence off China (Wang, 1985) and Japan (Nishiwaki and Handa, 1958; Kasuya, 1971; Ohsumi, 1975). Data from the central Pacific are scarce. They have been reported off Hawaii, but do not appear to be abundant in these waters (Tomich, 1986; Caretta *et al.*, 2001).

The killer whale is the largest species within the family Delphinidae. Various scientific names have been assigned to the killer whale (Hershkovitz, 1966; Heyning and Dahlheim, 1988). These various names can be explained by sexual and age differences in the size of the dorsal fin, individual variations in color patterns, and the cosmopolitan distribution of the animals. The genus Orcinus is currently considered monotypic with geographical variation noted in size and pigmentation patterns. Two proposed Antarctic species, *O. nanus* (Mikhalev *et al.*, 1981) and *O. glacialis* (Berzin and Vladimirov, 1982; Berzin and Vladimirov, 1983), both appear to refer to the same type of smaller individuals. However, due to significant uncertainties regarding the limited specimen data, these new taxa have not yet been widely accepted by the scientific community. Recent genetic investigations note marked differences between some forms of killer whale (Hoelzel and Dover, 1991; Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001). A worldwide review of specimens is needed to document geographical variation in morphology.

Killer whales in the Eastern North Pacific region (which includes the petitioned whale pods) have been classified into three forms termed Residents, Transients, and Offshore whales. The three forms vary in morphology, ecology, behavior, and genetic characteristics, all of which play an important role in determining whether the monotypic species O. orca can be subdivided under the ESA.

Resident Killer Whales

Resident killer whales in the Eastern North Pacific are noticeably different from both the Transient and Offshore forms. The dorsal fin of Resident whales is rounded at the tip and falcate (curved and tapering). Resident whales have a variety of saddle patch pigmentations, with five different patterns recognized (Baird and Stacey, 1988a). Resident whales occur in large, stable pods with membership ranging from 10 to approximately 60 whales. Their presence has been noted in the waters from California to Alaska. The primary prey of Resident whales is fish. A recent summary of the differences between Resident and Transient forms is found in Baird (2000).

Resident killer whales in the North Pacific consist of the following groups: Southern, Northern, Southern Alaska, western Alaska and western North Pacific Residents. Under the Marine Mammal Protection Act (MMPA), Residents are separated into two stocks: (1) The eastern North Pacific southern resident stock, which is the petitioned unit and (2) the eastern North Pacific northern resident stock, which includes the Northern (British Columbia) Residents, the Southern Alaska Residents, and the western Alaska Residents. The descriptions of the various units follows.

Southern Residents: The Southern Resident killer whale assemblage contains three pods, J pod, K pod, and L pod, and is considered a stock under the MMPA. Their range during the spring, summer, and fall includes the inland waterways of Puget Sound, Strait of Juan de Fuca, and Georgia Strait. Their occurrence in the coastal waters off Washington, Vancouver Island, and more recently off the coast of central California has been documented. Little is known about the winter movements and range of the Southern Resident stock. Southern Residents have not been seen to associate with other Resident whales. Genetic data indicate that females from the Southern and Northern Resident populations have not been migrating between populations within at least the recent evolutionary history of these populations, suggesting reproductive isolation between Southern and Northern Resident killer whale stocks (Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Northern Residents: The Northern Resident killer whale assemblage contains approximately 16 pods. They range from Georgia Strait (British Columbia) to Southeast Alaska (Ford *et al.*, 1994; Dahlheim, 1997). On occasion they have been known to occur in Haro Strait (west of San Juan Island, Washington). Although some overlap in range occurs between the Northern and Southern Residents, no intermixing of pods has been noted. However, in Southeast Alaska, Northern Resident whales are known to associate with Southern Alaska Residents (Dahlheim *et al.*, 1997), and there may be some gene flow between the two populations (Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Alaska Residents: There are two groups of Alaska Resident animals, Southern Alaska Residents and western Alaska Residents. The Resident whales of Southeast Alaska and Prince William Sound comprise the Southern Alaska Resident killer whale assemblage. At least 15 pods have been identified in these two regions. Resident killer whales photographed in Southeast Alaska travel frequently to Prince William Sound and intermix with all Resident groups from this area (Dahlheim *et al.*, 1997; Matkin and Saulitis, 1997). Prince William Sound Resident whales have not been seen in Southeast Alaska, but have been noted off Kodiak Island intermixing with other, yet unnamed, Resident pods (Dahlheim, 1997; National Marine Mammal Laboratory, 2001). There are 241 animals photographed in western Alaska that have been provisionally identified as "Western Alaska Residents," but the number of pods represented is unknown (National Marine Mammal Laboratory, 2001). Recent vessel surveys in the southeastern Bering Sea have provided preliminary estimates of approximately 400 killer whales (Waite *et al.*, 2001). Although it is not yet known how many of these animals were Residents, killer whales occur both nearshore and offshore in the Bering Sea.

Western North Pacific Residents: Resident killer whales co-occur with salmon along the coasts of Washington, British Columbia, and Alaska. If this pattern continues (or historically continued) further to the west, then Resident killer whales may be expected to occur along the coastline of Russia and Japan. Although there is documentation of killer whales in these areas, little is known about whether they are more similar to Resident, Transient, or Offshore types.

Transient Killer Whales

There are several differences between Transient and Resident killer whales; these have most recently been summarized in Baird (2000). The dorsal fin of Transient whales tends to be more erect (i.e., straighter at the tip) than those of Resident and Offshore whales. Saddle patch pigmentation of Transient killer whales is restricted to three patterns (Baird and Stacey, 1988a). Pod structure is small (e.g., fewer than 10 whales) and dynamic in nature. Transient whales occur throughout the Eastern North Pacific with a preference toward coastal waters. Their geographical range overlaps that of the Resident and Offshore whales. Individual Transient killer whales have been documented to move great distances reflecting a large home range (Goley and Straley, 1994; National Marine Mammal Laboratory, 2001). The primary prey of Transient killer whales is other marine mammals. Transient whales are not known to intermingle with Resident or Offshore whales. Significant genetic differences occur among Resident, Transient, and Offshore killer whales (Stevens *et al.*, 1989; Hoelzel and Dover, 1991; Hoelzel

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et al., 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001). At this time, only one stock of Transient killer whales is recognized in eastern North Pacific waters, although recent genetic investigations indicate that up to three genetically different groups of Transient killer whales exist in the eastern North Pacific (the "west coast" Transients, the "Gulf of Alaska Transients" and AT1 pod) (Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Offshore Killer Whales

Offshore killer whales are similar to Resident whales (i.e., their fins appear to be more rounded at the tip). Most saddle patches appear to be closed (National Marine Mammal Laboratory, 2001). Offshore whales have been seen in groups ranging from 10 to 70 whales. They are known to range from central coastal Mexico to Alaska and occur in both coastal and offshore waters (300 miles off Washington State). While foraging, it is assumed that the main target is fish, but observational data on feeding events are extremely limited. Offshore whales are not known to intermingle with Resident or Transient whales. Genetic analysis suggests that Offshores may be reproductively isolated, but they appear to be more closely related to Southern Residents than to Northern Residents (Hoelzel *et al.*, 1998).

Consideration as a "Species" Under the ESA

The ESA defines a species to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Guidance on what constitutes a DPS is provided by the joint NMFS-U.S. Fish and Wildlife Service interagency policy on vertebrate populations (61 FR 4722, February 7, 1996). To be considered a DPS, a population, or group of populations, must be "discrete" from other populations and "significant" to the taxon (species or subspecies) to which it belongs. A population segment of a vertebrate species may be considered discrete if:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological or behavioral factors. Quantitative measures of genetic or morphological discontinuity may also provide evidence of this separation; or

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant under section 4(a)(1)(D) of the ESA.

If a population segment is considered discrete, NMFS must then consider whether the discrete segment is "significant" to the taxon to which it belongs. Criteria that can be used to determine whether the discrete segment is significant include:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used, as appropriate. As noted in the DPS policy, Congress has instructed NMFS and the U.S. Fish and Wildlife Service to use the authority to list a DPS "sparingly and only when the biological evidence indicates such action is warranted" (Senate Report 151, 96th Congress, 1st Session (1979)).

Defining a DPS Under Existing Killer Whale Taxonomy

Two types of genetic data that have been collected for killer whales have proven useful for identifying DPS boundaries in other species: microsatellite (nuclear) DNA and mitochondrial DNA (mtDNA). Each type of genetic data offers a unique and valuable perspective on the ecology and evolutionary history of killer whales. Microsatellite data are available for killer whales from seven populations: Southern Residents, Northern Residents, Southern Alaskan Residents, Gulf of Alaska Transients, west coast Transients, and AT1 Transients from Prince William Sound in Alaska. The magnitude of the genetic differences between Southern and Northern Residents was about half that found between Residents and Transients and about twice that found between Northern Residents and Southern Alaska Residents. These differences indicate that the Southern Resident, Northern Resident, and Alaska Resident populations are reproductively isolated populations and that the isolation of Southern and Northern Residents from each other is greater than the isolation between Northern and Southern Alaska Residents. There may be some gene flow between the Northern Residents and Southern Alaska Residents (Hoelzel *et al.*, 1998; Barrett-Lennard, 2000; Barrett-Lennard and Ellis, 2001).

Two mtDNA sequences have been found in North Pacific Resident killer whales. The Southern Residents have one sequence and the Northern Residents have another that differs by one DNA nucleotide. Southern Alaska Residents have both sequences. Both males and females inherit the mtDNA of their mother, so these data indicate that females from the Southern and Northern Resident populations have not been migrating between populations within at least the recent evolutionary history of these populations.

The BRT recommended that Southern Residents meet the criterion for "discreteness" under the DPS policy based on genetics and other information. However, the consideration of "significance" was far more difficult, largely due to uncertainties surrounding killer whale taxonomy. Correctly identifying the killer whale taxon is critical because the criteria used to evaluate "significance" of a DPS are defined relative to other populations within that taxon. The BRT concluded that the current designation of one global species for killer whales is likely inaccurate because available data suggest that additional species/subspecies of killer whales probably exist.

In its consideration of "significance," the BRT evaluated the importance of Southern Residents to the taxon represented by the currently recognized global species, O. orca. Based upon the following arguments, the BRT concluded that Southern Resident killer whales are not a DPS of the global species.

Persistence in an ecological setting that is unusual or unique for the taxon. The habitat used by Southern Resident killer whales is very similar to that of the neighboring Northern Resident population segment (coastal fjord system, significant freshwater input, seasonal availability of concentrations of salmon) though different from habitats that other populations of killer whales occupy globally. In addition, although Southern and Northern/Alaska Residents consume salmon from different oceanographic systems, this difference is quite minor when comparing Southern Resident killer whales foraging strategies with other killer whale foraging strategies on a global scale.

The petitioners suggested that Southern Resident killer whales occupy a unique setting because the Puget Sound region is highly urbanized. Based upon the recommendation of the BRT, NMFS finds that this habitat difference is irrelevant to the ESA discussion because there is no evidence that Southern Residents have adapted in an evolutionary sense to urbanization in Puget Sound.

Loss would represent a significant gap in the range of the taxon. Because Transient killer whales are known to occupy the same range as Southern Resident killer whales and because Offshore killer whales may occupy a portion of the same range as Southern Resident killer whales, extinction of Southern Resident killer whales might not result in a gap in the range of the taxon. In addition, other Resident or Offshore animals could re-colonize the current range of Southern Residents should that population be extirpated.

Although it is plausible that the loss of Southern Resident killer whales could result in few, if any, killer whales in parts of Puget Sound for an extended period, killer whales would occupy their existing range from the Bering Sea through British Columbia. Furthermore, Transient and Offshore pods would continue to occupy other areas within the Pacific Ocean. NMFS, therefore, concluded that the potential gap that could result in the loss of Southern Residents would not be considered "significant" to the species.

The only surviving natural occurrence of a taxon. Because Southern Resident killer whales are clearly not a "discrete population segment representing the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range," the BRT did not consider this criterion from the DPS policy.

Evidence that the Southern Residents differ markedly from other populations in genetic characteristics. The BRT evaluated the genetic discreteness of Southern Resident killer whales in the context of genetic differences among all aggregations of killer whales globally. It found that the differences between Southern Residents and Resident pods in Canada and Alaska were small compared to genetic differences between Resident and Transient killer whale stocks. Consequently, the Southern Resident killer whale stock does not have markedly different genetic characteristics.

Southern Residents as a DPS Under Alternative Killer Whale Taxa

Although the BRT concluded that current killer whale taxonomy was outdated, the scientists acknowledged that alternative taxa were not easily identified and noted that formal taxonomic changes would be slow to occur. In light of this, the BRT assessed which of several population units of killer whales might be designated as a putative taxon that would include Southern Resident killer whales if the global species were to be subdivided into two or more taxa.

The BRT supported about equally four different scenarios for alternative taxa: (1) North Pacific Resident killer whales; (2) North Pacific Resident and Offshore killer whales; (3) fish-eating killer whales worldwide; and (4) the entire mtDNA lineage that includes Resident and Offshore type killer whales. Despite the broad range of possible alternative taxa, the BRT did attempt to discern whether the Southern Resident population would qualify as a DPS with respect to each of these alternative taxonomic scenarios. Such information would be deemed useful if future changes in this species' taxonomy warranted reconsidering the ESA/DPS status of Southern Resident killer whales.

Within these four scenarios, the BRT expressed the strongest support for the proposition that Southern Residents would be a DPS of the Northern Pacific Residents (which included Southern, Northern, Alaska, and western North Pacific Resident killer whales). Support for Southern Residents as their own DPS diminished as the hypothesized taxon grew larger.

Risk Assessment Under Alternative Taxa

Upon concluding that the petitioned entity–Southern Resident killer whale–is not a DPS of the smallest taxon identified by the scientific community (i.e., the global species), the BRT could have ended its investigation. However, because the team members believed that current killer whale taxonomy is outdated, they continued their assessment beyond the narrow focus of the petition. Therefore, the BRT also investigated Southern Residents as a component of several potential DPS, and they examined various putative taxa of which Southern Residents would be a DPS. Then, the BRT conducted Population Viability Analyses (PVA) to estimate the probability of extinction for two of the smallest possible population units.

The first scenario analyzed was one for Southern Resident killer whales alone. As a continuation of the BRT's alternative taxa deliberations, this information would be considered useful if future changes in this species' taxonomy warranted reconsidering the ESA/DPS status of Southern Resident killer whales. According to the PVA model results, Southern Residents would have a ≤10 percent probability of extinction in 100 years under the assumption that population declines seen from 1992 to 2001 continue into the future. Under the assumption that growth rates in the future would more accurately be predicted by the full (27–year) time series of data available, the model predicts that extinction probability is 1 to 5 percent in 100 years, with the higher values associated with higher probability and magnitude of catastrophic mortality events (e.g., oil spill). Again, these results pertain only to the smallest population assemblage containing Southern Residents, not to a recognized DPS. As such, they represent "worst case" estimates that are intended for comparison with other, larger aggregations.

The second scenario evaluated the extinction risk of a combination of Southern Residents and the closest population stock (identified under the MMPA), which is the eastern North Pacific Northern Resident stock (resident killer whales in British Columbia and Alaska). According to the model, the extinction risk over 100 years for this larger assemblage is negligible, and even larger aggregations are expected to yield similarly negligible extinction risks. Therefore, additional simulations were not conducted.

Conclusions of the BRT

Correctly identifying the killer whale taxon is critical because at least two of the criteria used to evaluate "significance" of a DPS are defined relative to other populations within that taxon. A population segment will qualify as a DPS if it occupies an "ecological setting unusual or unique for the taxon" or if "loss of the discrete population segment would result in a significant gap in the range of the taxon." The BRT concluded that the current designation of one global species for killer whales is likely inaccurate because available data suggest that present taxonomy does not reflect current knowledge and additional species/subspecies of killer whales should be "officially" recognized.

The BRT attempted to identify alternative taxa, but gave roughly equal support to four different scenarios. The taxon to which Southern Residents might belong if the global species were to be subdivided could be as small as North Pacific Resident killer whales or as large as the mtDNA lineage consistent with fish eating whales. The BRT

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conducted PVA modeling on two population units of killer whales, Southern Residents along and in combination with Northern and Alaska Residents for comparative purposes. Although Southern Residents are not considered a DPS of the global species, they face a relatively high risk of extinction. The combination of Southern, Northern, and Alaska Residents, however, was at a very low risk of extinction. Thus, the manner by which killer whale taxonomy is resolved in the future will play a key role in determining whether there is a DPS to which Southern Resident killer whales belong and in evaluating the status of that DPS under the ESA.

As described previously in this notice, NMFS received comments on a preliminary draft of the BRT's status review findings from the Marine Mammal Commission and from Washington, Tribal, and Canadian co-managers. These comments included technical questions and data (e.g., recent census data for Northern Resident whales), discussions of DPS and listing policy issues, and information describing the cultural and spiritual importance of killer whales to Native American Tribes.

Some co-managers requested that NMFS use other DPS criteria for significance, such as the ecological role of Southern Resident killer whales in Puget Sound and Georgia Straits. The BRT discussed an array of criteria that may be useful for determining significance, including some not contained in the DPS policy but raised by the petitioners or co-managers. However, only the criteria described in the DPS policy were deemed applicable to assessing the significance of Southern Residents. Based on these criteria, the BRT concluded that Southern Resident killer whales are *not* a DPS of the global species. The criteria before the BRT for considering "significance" were sufficient to evaluate whether or not Southern Residents represented a DPS of killer whales. In the notice of joint policy regarding DPS determinations (61 FR 4722, February 7, 1996), NMFS and the U.S. Fish and Wildlife Service discussed the criteria for evaluating a portion of a species as a DPS. The Services noted that the ESA is not intended to establish a comprehensive biodiversity conservation program; rather, the ESA is focused on the protection and recovery of threatened and endangered species or population segments that are discrete and significant to the species and on the ecosystems upon which these particular species depend. In the 1996 policy notice, the Services responded to a comment suggesting that the "significance" criteria include a consideration of the affected population's importance to the ecosystem it occupies. The Services noted that most, if not all, populations play a significant role in their ecosystems. The Services also stated, "On the other hand, populations commonly differ in their importance to the overall welfare of the species they represent, and it is this importance that the (DPS) policy attempts to reflect in the consideration of significance." NMFS concurs with other co-manager comments that the issue of classifying Southern Resident killer whales into a particular DPS cannot be resolved until the taxonomic structure of *O. orca* is clarified.

Finding

NMFS has reviewed the petition, the report of the BRT (NMFS, 2002), co-manager comments, and other available information, and has consulted with species experts and other individuals familiar with killer whales. On the basis of the best available scientific and commercial information, the agency finds that the petitioned action is not warranted at this time because the petitioned group of killer whales does not constitute a DPS of the currently recognized species *O. orca*.

The status review revealed uncertainties regarding the taxonomic status of killer whales worldwide. The taxonomy of killer whales that is currently published in the scientific literature includes a single species that includes all killer whales globally. The BRT discussed more recent, but inconclusive, evidence that *O. orca* could be separated from a single, global species into additional species or subspecies. In this case, NMFS recognized that taxonomists may be conservative or liberal in assigning new species and that the relevance of new information may be debated widely before it is generally accepted by the scientific community. Because the recent information related to the taxonomy of killer whales has not been subjected to that scientific debate, NMFS considers the published standard of a single, global species as the best available scientific information. In accordance with the report of the BRT, NMFS finds that Southern Resident killer whales are not a "species" under the ESA. Consequently, NMFS finds that listing Southern Resident killer whales as threatened or endangered is not warranted at this time.

As noted in the report of the BRT, NMFS also investigated alternatives to identify whether there is a DPS to which Southern Residents may belong. Although a DPS could not be identified clearly, the BRT evaluated the risk of extinction of other larger potential DPSs by aggregating logical units. For a first logical step in aggregating units of killer whales, the BRT combined the Southern, Northern, and Alaska Residents and simulated the risk of extinction for this aggregation. Simulation results predicted that the extinction risk of that initial aggregation was negligible. Therefore, NMFS cannot identify a DPS to which Southern Residents may belong that is in danger of extinction throughout all or a significant portion of its range or likely to become endangered in the foreseeable future.

NMFS is, however, concerned about the recent decline in the Southern Resident assemblage, and will continue to seek new information on the taxonomy, biology, and ecology of these whales, as well as potential threats to their continued existence. Within 4 years, NMFS will reconsider the taxonomy of killer whales. If the species *O. orca* has been subdivided in a manner that may allow Southern Resident killer whales to be identified as a DPS, NMFS will reconvene a BRT to reassess the status of these whales under the ESA. Also, in light of new information presented in the recently completed status review and in response to some co-manager recommendations, the agency will review the status of Southern Resident killer whales to determine whether they warrant reclassification as a depleted stock under the MMPA. A request for information relevant to making this latter determination is being made via a concurrent notice in the **Federal Register**.

References

A complete list of all cited references is available on the Internet (see Electronic Access) or from NMFS upon request (see **FOR FURTHER INFORMATION CONTACT**).

Dated: June 7, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16526 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2155–04; I.D. 061402D]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed interim rule; request for comments.

SUMMARY: NMFS proposes an interim rule under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement additional interim measures intended to reduce overfishing on species managed under the Northeast Multispecies Fishery Management Plan (FMP). This rule proposes additional restrictions specified in the Settlement Agreement Among Certain Parties ("Settlement Agreement"), which was ordered to be implemented by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002. The additional measures include the following: A freeze on days-at-sea (DAS) at the highest annual level used from fishing years 1996–2000 (beginning May 1, 1996 through April 30, 2001) and a 20-percent cut from that level; a freeze on the issuance of new open access Hand-gear permits, and a decreased cod, haddock, and yellowtail flounder possession limit for that category; increased gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; restrictions on yellowtail flounder catch; and mandated observer coverage levels for all gear sectors in the Northeast (NE) multispecies fishery. This rule also proposes to continue many of the measures contained in an earlier interim final rule that was published on April 29, 2002, for this fishery. This action is necessary to bring the regulations governing the (NE) multispecies (groundfish) fishery into compliance with the Settlement Agreement Among Certain Parties (Settlement Agreement) and the Court's Remedial Order.

DATES: Comments on this proposed interim rule must be received no later than 5 p.m., local time, on July 16, 2002.

ADDRESSES: Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the August Proposed Interim Rule for Groundfish." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Written comments regarding the approved collection-of-information requirements should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Copes of the rule, including the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available upon request from the Regional Administrator. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; e-mail: *thomas.warren@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2001, a decision was rendered by the Court on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al.*, v. *Evans*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA). The Court granted Plaintiffs' Motion for Summary Judgment on all counts, but did not impose a remedy. Instead, the Court asked the parties to the lawsuit to propose remedies consistent with the Court's findings. Shortly thereafter, several additional parties were allowed to intervene in the lawsuit for purposes of proposing the appropriate remedy. These parties ("Intervenors") included the States of Maine, New Hampshire, Massachusetts, and Rhode Island, and three industry groups. Additional background on the lawsuit is contained in the preamble to the interim rules published by NMFS on April 29, 2002 (67 FR 21140), May 6, 2002 (67 FR 30331), and June 5, 2002 (67 FR 38608), and is not repeated here.

From April 5–9, 2002, Plaintiffs, Defendants and Intervenors engaged in Court-sponsored mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as an appropriate remedy. Although these discussions ended with no agreement, several of the parties continued mediation and filed a Settlement Agreement with the Court on April 16, 2002. In addition to NMFS, the parties signing the agreement include CLF, which is one of the Plaintiff conservation groups, all four state Intervenors, and two of three industry Intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NMFS, notwithstanding that the Court had not yet issued its Remedial Order, filed an interim final rule with the Office of the Federal Register on April 25, 2002, for publication on April 29, 2002. The interim final rule that was published on April 29, 2002, implemented measures identical to the short-term measures contained in the Settlement Agreement filed with the Court.

On April 26, 2002, the Court issued a Remedial Order that ordered the promulgation of two specific sets of management measures—one to be effective from May 1, 2002, to July 31, 2002, and the other from August 1, 2002, until promulgation of Amendment 13 to the FMP. The Court-ordered measures for the first set of measures were, in the majority, identical with those contained in the Settlement Agreement and the measures contained in NMFS' April 29, 2002, interim final rule. However, the Court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the Settlement Agreement or the April 29, 2002, interim final rule. According to the Court, these additional provisions were included to strengthen the Settlement Agreement provisions "in terms of reducing overfishing and minimizing bycatch without risking the lives of fishermen or endangering the future of their communities and their way of life." Remedial Order, p.13. Further, the Court ordered that NMFS publish in the **Federal Register**, as quickly as possible, an "amended interim rule and an amended second interim rule" that would "include the departures from the Settlement

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Agreement incorporated in the Remedial Order." To comply with the Court Order, NMFS published a second interim final rule ("amended interim rule") to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions, as required by the Remedial Order. Because the Court's Remedial Order was not entirely consistent with the terms of the Settlement Agreement, NMFS, CLF, and the Intervenors filed motions for reconsideration with the Court, requesting that the Court implement the terms of the Settlement Agreement without change.

On May 23, 2002, the Court issued an Order, in the case of *Conservation Law Foundation, et al.*, v. *Evans et al* (Case No. 001134 GK)(D.D.C. May 23, 2002) granting the motions for reconsideration on the basis that "the important changes made by the Court in the complex and carefully crafted Settlement Agreement Among Certain Parties * * * would produce unintended consequences." The Court ordered that the Settlement Agreement be implemented according to its terms; that the Secretary of Commerce (Secretary) publish an interim rule, effective no later than June 1, 2002, to reduce overfishing in the first quarter of the 2002–2003 fishing year; that the Secretary publish another interim rule to be effective no later than August 1, 2002, to reduce overfishing beginning with the second quarter of the 2002–2003 fishing year, and continuing until implementation of Amendment 13 to the FMP, which complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and that, no later than August 22, 2003, the Secretary promulgate such an amendment to the FMP.

In response to the May 23, 2002, Court Order, on May 31, 2002, NMFS filed an interim rule with the **Federal Register** (67 FR 38608, June 5, 2002) that implemented regulations for the June 1 through July 31, 2002, period, consistent with the Settlement Agreement. This proposed interim rule would implement management measures for the period August 1, 2002, through the implementation of Amendment 13, in accordance with the Settlement Agreement and the Remedial Order. Amendment 13, which will bring the FMP into full compliance with the SFA, is under development by NMFS and the New England Fishery Management Council (Council) and is intended to be implemented by August 22, 2003. This proposed rule is being proposed as an interim action necessary to reduce overfishing consistent with and pursuant to section 305(c) of the Magnuson-Stevens Act, while Amendment 13 is being developed.

Management Measures

All measures that were in effect prior to May 1, 2002, and not amended by this proposed interim rule, remain in effect as of August 1, 2002. These measures, therefore, are not discussed specifically in the description that follows. The following management measures are proposed to be implemented on August 1, 2002. These measures are designed to reduce overfishing on all "regulated species" managed under the FMP.

New Regulated Mesh Areas

This interim action would redefine and divide the Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area (RMA) into two areas: The GOM RMA, which is the area north of the GOM cod exemption line currently used to define the areas where the GOM cod and GB cod trip limits apply; and the GB RMA, which is that part of the current GOM/GB RMA that lies south of the GOM cod exemption line and continues south to the EEZ for the areas lying east of 69°00′ W. long. The Southern New England (SNE) and Mid-Atlantic (MA) RMAs would also be redefined. The SNE RMA would be defined as the area that lies west of the GB RMA and east of a line beginning at the intersection of 74°00′ W. long. and the south-facing shoreline of Long island, NY, and running southward along the 74°00′ W. long. line. The MA RMA would be defined as the area west of the SNE RMA. Specific management measures would apply, depending on the area fished. For the purposes of the exempted fishery programs already implemented under the FMP, the GOM/GB and SNE RMAs, as defined under Amendment 7, would remain in effect and would be referred to as Exemption Areas.

DAS Freeze

This measure proposes to establish a new DAS baseline, or "used DAS baseline," for each vessel, based on the permit history of that vessel. The used DAS baseline for a limited access permit would be calculated based on the highest number of DAS that a vessel(s) fished during a single fishing year using the 1996 through 2000 fishing years, beginning May 1, 1996, through April 30, 2001, not to exceed the vessel's current DAS allocation in any given year. For vessels where the calculation of the baseline DAS would result in a net amount of DAS less than 10, the vessel would be allocated a used DAS baseline of 10 DAS. For the majority of limited access vessels, the used DAS baseline would be determined by the number of DAS called-in to the NE multispecies DAS program during the May 1, 1996, through April 30, 2001, period. For vessels fishing with a NMFS-approved Vessel Monitoring System (VMS), NE multispecies DAS for each trip would be determined based on when the first hourly location signal was received showing that the vessel crossed the VMS Demarcation Line leaving port, until the first hourly location signal was received showing that the vessel crossed the VMS Demarcation Line upon its return to port, unless the vessel's authorized representative declared the vessel out of the NE multispecies fishery for a specific time period by notifying the Regional Administrator, Northeast Regional Office, NMFS (RA) through the VMS prior to the vessel leaving port. Because some NE multispecies limited access vessels that are currently required to fish under the NE multispecies DAS program were exempt from the DAS requirements prior to July 1, 1996, the implementation date of Amendment 7 (61 FR 2270, May 31, 1996); *i.e.*, vessels in the 45-ft (13.7-m)-and-less, Hook-Gear and Gillnet permit categories; NE multispecies DAS for these vessels during the period May 1, 1996, through June 30, 1996, would be determined based on information derived from the Vessel Trip Reports (VTRs), provided that the VTRs were submitted to NMFS prior to April 9, 2002. The procedure for determining a vessel's used DAS baseline would be the same for vessels that currently possess a Confirmation of Permit History. Vessels that have a valid NE multispecies limited access Small Vessel category permit (vessels 30 ft (9.1 m) or less in length overall) would remain exempt from the NE multispecies DAS restrictions.

As noted above, the used DAS baseline would be calculated based upon historic DAS use associated with the currently valid limited access permit. The DAS associated with a particular permit history may not equal the DAS associated with a particular vessel because vessels may be replaced and the permits transferred from one vessel to another. NMFS will notify vessel owners in writing of their NE multispecies used DAS baselines. A vessel's used DAS baseline may be appealed to the Regional Administrator by August 31, 2002. The request to appeal must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's used DAS baseline was based on mistaken or incorrect data. The decision on appeal shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on appeal is the final decision of the Department of Commerce.

DAS Effort Reduction

This measure would reduce the vessel's baseline level of used DAS, calculated as described above, by 20 percent. This measure would be specific to the 2002 fishing year, beginning May 1, 2002, through April 30, 2003, and for the 2003 fishing year, beginning May 1, 2003, until implementation of Amendment 13 to the FMP. For the 2002 fishing year, NE multispecies DAS that were fished by a vessel during the period May 1 through July 31, 2002, would be deducted from that vessel's total allocated DAS. That is, each vessel's DAS allocation for August 1, 2002, through April 30, 2003, would be equal to that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline, minus the DAS that vessel fished during May through July, 2002. During the period May 1 through July 31, 2002, all NE multispecies DAS vessels are subject to a minimum of 15 hours for each NE multispecies DAS trip that exceeded 3 hours. For the purposes of determining NE multispecies DAS used during the period May through July, 2002, DAS would be counted based on the 15-hour minimum restriction for day gillnet vessels only. DAS for all other vessels fishing under a NE multispecies DAS during May through July, 2002, would be counted as actual time.

Vessels for which the amount of NE multispecies DAS available for use as of August 1, 2002, would be less than or equal to the DAS fished during the May through July 2002, period, the vessel would be left with zero NE multispecies DAS for the remainder of the fishing year, unless the vessel had carry-over DAS from the previous fishing year (see description below of how carry-over DAS would apply).

Vessels that have a monkfish Category C or D permit (i.e., vessels that possess both a monkfish and a limited access NE multispecies DAS permit) must run both their monkfish DAS clock and the NE multispecies DAS clock concurrently when fishing under a monkfish DAS. Limited access monkfish permit holders are allocated 40 monkfish DAS (under the monkfish FMP). Under the proposed measure, vessels for which the NE multispecies DAS reduction would result in the vessel having more monkfish DAS allocated than NE multispecies DAS, such vessels could still fish under a monkfish DAS when NE multispecies DAS are no longer available, but would then be required to fish under the provisions of a monkfish Category A or B vessel, i.e., limited access monkfish vessels that do not possess a limited access NE multispecies permit. For example, if a monkfish category D vessel's NE multispecies DAS allocation were 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS were used, the vessel could utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a category B vessel and does not retain any regulated multispecies.

DAS Carry-Over From Fishing Year 2001

Under measures promulgated through a previous NE multispecies interim final rule (67 FR 21140, April 29, 2002), effective May 1, 2002, through July 31, 2002, a vessel is allowed to use no more than 25 percent of its annual NE multispecies DAS allocation during May-July, 2002. However, because carry-over DAS are not considered part of a vessel's allocated DAS, carry-over DAS from the previous fishing year are not allowed to be used when determining the 25-percent of DAS that can be used during the May-July, 2002, period; consequently, carry-over DAS are not allowed to be fished during that period. Under this proposed interim rule, vessels would be allowed to fish any carry-over DAS from the 2001 fishing year beginning August 1, 2002, through April 30, 2003. These carry-over DAS would be in addition to the vessel's 2002 NE multispecies DAS allocation and would, therefore, be factored into that vessel's total NE multispecies DAS available for the 2002 fishing year, after the 20-percent DAS reduction and after the DAS fished during the May-July period are deducted from that vessel's used DAS baseline. For example, if a vessel's used DAS baseline is 50 DAS and it has carry-over DAS from fishing year 2001, its total DAS for the fishing year would equal: 50 DAS − 20 percent of used DAS baseline (10 DAS)—DAS fished during May-July 2002 + carry-over DAS from fishing year 2001. If the vessel fished 22 DAS during May-July and had 10 carry-over DAS from fishing year 2001, under this example the vessel would be allowed to fish up to 28 DAS during the period August 1, 2002, through April 30, 2003 (50 DAS − 10 DAS − 22 DAS + 10 DAS = 28 DAS).

Freeze on Issuance of New Handgear Permits

Under this proposed interim rule, vessels that have never been issued an open access NE multispecies Handgear permit, or that have not applied for an open access Handgear permit by August 1, 2002, would be prohibited from obtaining a Handgear permit for the duration of this action.

Prohibition on Front-Loading the DAS Clock

NE multispecies regulations prior to May 1, 2002, require that, at the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call NMFS to notify NMFS that the trip has ended, thus ending a DAS. However, there is no restriction on when a vessel can start its DAS clock. Consequently, some vessel owners start their DAS clock well in advance of the actual departure of the vessel, a practice known as "front-loading." Front-loading is prohibited through July 31, 2002, as a result of the interim rule published April 29, 2002; this proposed interim rule would continue that prohibition for the duration of this action.

Under this proposed measure, a vessel owner or authorized representative would be required to notify NMFS no earlier than 1 hour prior to the vessel leaving port to fish under the NE multispecies DAS program. A DAS would begin once the call has been received and a confirmation number is given. This measure would apply in all management areas.

Closed Area Additions/Modifications

This measure would implement additional seasonal and year-round area closures. Specifically, this action proposes to continue, in its current configuration, the closure of the Western Gulf of Maine (WGOM) Area Closure. This action would also expand Rolling Closure Area III by closing area blocks 124 and 125 for the month of May, 2003, and expand Rolling Closure Area IV by closing area blocks 132 and 133 for the month of June, 2003. This action would further expand the Bank Seasonal Closure Area by closing blocks 80 and 81 and the portion of blocks 118–120 that are south of 42°20′ N. lat. during the month of May, 2003.

Additionally, the Cashes Ledge Closure Area, in its original configuration, would be closed for the duration of the interim final rule.

Exemptions to the current GOM rolling closure areas would remain the

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same for the expanded rolling closures and the expanded GB Seasonal Closure Area that would be implemented by this proposed interim rule. All of the current exemptions are proposed to apply to the WGOM and Cashes Ledge Closure Areas, with the following exceptions: Vessels are prohibited from fishing with scallop dredge gear or fishing in the Raised Footrope Trawl Exempted Whiting Fishery.

Finally, this interim action would open an inshore area from January through March, which corresponds to area blocks 124 and 125, by eliminating the groundfish January Massachusetts Bay-Stellwagen Bank Conditional Closure Area and the February Rolling Closure Area VI, and by eliminating blocks 124 and 125 from the March Rolling Closure Area I. All other closure areas would remain unchanged. Charts of the proposed closure areas are available from the Regional Administrator upon request (see **ADDRESSES**).

Gear Restrictions

Trawl Vessels When Fishing in the GOM, GB, and Mid-Atlantic RMAs

Under this proposed interim rule, vessels fishing with otter trawl gear, and fishing any part of a NE multispecies DAS in the GOM, GB, or Mid-Atlantic RMAs, would be required to fish with a minimum 6.5-inch (16.5-cm) diamond or square mesh codend. This requirement applies only to the codend of the net; the minimum mesh-size for the remaining portion of the net would remain unchanged, i.e., 6.0-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof, throughout the remaining portion of the net. Trawl vessels that currently fish with 6.5-inch (16.5-cm) square mesh throughout the entire net would not be subject to mesh changes under the proposed interim rule. For vessels fishing with a 6.5-inch (16.5-cm) diamond mesh codend, or for vessels fishing with a 6.5-inch (16.5-cm) square mesh codend and a combination of square mesh and diamond mesh throughout the remaining portions of the net, the codend would be defined as follows: 25 meshes for diamond mesh, or 50 bars in the case of square mesh, from the terminus of the net for vessels 45 ft (13.7 m) in length and less; and 50 meshes for diamond mesh, or 100 bars in the case of square mesh, from the terminus of the net for vessels greater than 45 ft (13.7 m) in length.

Trawl Vessels When Fishing in the SNE RMA

Under this proposed interim rule, when fishing any part of a NE multispecies DAS in the SNE RMA, otter trawl vessels would be required to fish with a minimum 7.0-inch (17.8-cm) diamond or 6.5-inch (16.5-cm) square mesh codend. This requirement would apply only to the codend of the net; the minimum mesh-size for the remaining portion of the net would remain unchanged, *i.e.*, 6.0-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof, throughout the remaining portion of the net. As in the GOM and GB RMAs, trawl vessels that currently fish with 6.5-inch (16.5-cm) square mesh throughout the entire net would not be subject to mesh changes under this rule. For vessels fishing with a 7.0-inch (17.8-cm) diamond mesh codend, or for vessels fishing with a 6.5-inch (16.5-cm) square mesh codend and a combination of square mesh and diamond mesh throughout the remaining portions of the net, the codend would be defined as described above under the GOM and GB trawl mesh restrictions.

Gillnet Vessels When Fishing in the GOM RMA

Under this proposed interim rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the GOM RMA at any time throughout the fishing year would be required to declare into the Day or Trip gillnet category. Vessels that obtain an annual designation as a Trip gillnet vessel, when fishing in the GOM RMA during any part of a trip under a NE multispecies DAS, would be required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh and would be restricted to 150 nets, with one tag fixed to each net. Multispecies vessels that obtain an annual designation as a Day gillnet vessel would be allowed to fish up to 100 nets, provided that, when fishing any part of a trip under a NE multispecies DAS in the GOM RMA, the vessel complies with the following specifications: When fishing with flatfish nets, vessels could fish no more than 100 nets, with a minimum mesh size of 7 inches (17.8 cm), with one tag affixed to each net; and when fishing with roundfish nets, vessels would be restricted to fishing during July through February of each fishing year only, and would be allowed to fish no more than 50 nets with a minimum mesh size of 6.5 inches (16.5 cm) and with two tags affixed to each net. Any tag not affixed to a net would have to be retained on the vessel and be immediately available for inspection.

Gillnet Vessels When Fishing in the GB RMA

Under this proposed interim rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the GB RMA at any time throughout the fishing year would be required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the GB RMA during any part of a trip under a NE multispecies DAS, would be required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh and would be restricted from fishing more than 50 nets, with two tags fixed to each net.

Gillnet Vessels When Fishing in the SNE RMA

Under this proposed interim rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the SNE RMA at any time throughout the fishing year would be required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the SNE RMA during any part of a trip under a NE multispecies DAS, would be required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh and would be restricted from fishing more than 75 nets, with two tags fixed to each net.

Gillnet Vessels When Fishing in the Mid-Atlantic RMA

The minimum mesh size restrictions and number of nets required for gillnet vessels when fishing in the Mid-Atlantic RMA under a NE multispecies DAS would remain unchanged. That is, vessels would be allowed to continue to fish up to 160 nets. This net restriction is different than the net restriction of 150 nets, as in the Settlement Agreement and Court order, for vessels fishing under the monkfish DAS program.

Gillnet Vessels When Fishing Under a Monkfish DAS

Under this proposed interim rule, monkfish vessels that have a monkfish limited access Category C or D permit (i.e., vessels that possess both a monkfish and NE multispecies limited access permit) and that are fishing under a monkfish DAS in all areas would be restricted from fishing more than 150 nets, provided the vessel fishes with nets with a minimum mesh size of 10 inches (25.4 cm). Vessels would be required to affix one tag to each net.

Category A and B monkfish vessels would be unaffected by the proposed measures.

Large-Mesh Vessel Permit Categories

Under this proposed interim rule, vessels that have a valid limited access NE multispecies Large Mesh Individual DAS category or a Large Mesh Fleet DAS category permit would be required to fish with nets with mesh that is 2.0 inches (5.1-cm) larger than the current regulated mesh size when fishing under the NE multispecies DAS program. That is, when fishing in the GOM, GB, and SNE RMAs, vessels fishing with trawl nets or sink gillnets would be required to fish with nets with a minimum mesh size of 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. Vessels fishing with trawl nets or sink gillnets when fishing in the Mid-Atlantic RMA would be required to fish with nets with a minimum mesh size of 7.5-inch (19.0-cm) diamond or 8.0-inch (20.3-cm) square mesh throughout the entire net.

Hook-Gear Vessels

Under this proposed interim rule, vessels that have a valid NE multispecies limited access Hook-Gear permit would be prohibited from using de-hookers (crucifiers) with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Hook-Gear permitted vessels that are fishing any part of a NE multispecies DAS trip in the GOM, GB or SNE RMAs would be required to use 12/0 or larger circle hooks. In addition, Hook-Gear vessels that are fishing any part of a DAS trip in the GOM, GB and SNE RMAs would be subject to a maximum number of rigged hooks on board the vessel. Specifically, vessels fishing in the GOM or SNE RMAs would be restricted from possessing more than 2,000 rigged hooks, and vessels fishing in the GB RMA would be restricted from possessing more than 3,600 rigged hooks.

Table 1 summarizes the gear restriction measures for each gear sector when fishing in the various RMAs.

BILLING CODE 3510-22-P

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Table 1. - Gear Restrictions by Regulated Mesh Areas

	GOM	GB	SNE	Mid-Atl
MINIMUM MESH SIZE RESTRICTIONS FOR GILLNET GEAR				
NE Multispecies Day Gillnet Category*	July-February only: Roundfish nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	Roundfish nets 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 80-net allowance; 2 tags/net
	Year-round: Flatfish nets 7.0" (17.8 cm) mesh; 100-net allowance; 1 tag/net			Flatfish nets 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 160-net allowance 1 tag/net;
NE Multispecies Trip Gillnet Category*	All nets 6.5" (16.5 cm) mesh; 150-net allowance; 1 tag/net	All nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	All gillnet gear 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; No net limit;no tag requirement
Monkfish Vessels**	10" (25.4 cm) mesh/150-net allowance			
	1 tag/net			
MINIMUM MESH SIZE RESTRICTIONS FOR TRAWL GEAR				
Codend only mesh size*	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square	6.5" (16.5 cm) diamond or square
Large Mesh Category - entire net	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm)
MINIMUM NUMBER OF HOOKS AND SIZE RESTRICTIONS FOR HOOK-GEAR				
Hook-Gear Category	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (no change)
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required			N/A

* When fishing under a NE multispecies DAS
** Monkfish category C and D vessels when fishing under a monkfish DAS

BILLING CODE 3510-22-C

Cod Minimum Fish Size (Commercial Vessels)

Under this proposed interim rule, the minimum size for cod that may be lawfully sold would be 22 inches (55.9 cm)(total length).

NE Multispecies Possession Restrictions

Yellowtail Flounder

This proposed interim rule would require enrollment in one of two exemption programs for any possession of yellowtail flounder and implement restrictions on the harvest of yellowtail flounder when fishing west or south of the GB RMA. During the period March 1 through May 31, all vessels would be subject to a possession and landing limit of 250 lb (113.4 kg) of yellowtail flounder per trip when fishing any part of a trip in the SNE RMA north of 40°00′ N. lat. In addition, during the period June 1 through February 28, all vessels would be subject to a possession and landing limit of 750 lb (340.3 kg) of yellowtail flounder per day, and a maximum trip limit of 3,000 lb (1,361.2 kg) per trip when fishing any part of trip in the SNE RMA north of 40°00′ N. lat. Vessels fishing for yellowtail flounder in the SNE RMA north of 40°00′ N. lat. would be allowed to possess and land up to the seasonal yellowtail allowable limits, provided the vessel does not fish south of 40°00′ N. lat. and has on board a SNE yellowtail flounder exemption certificate issued by the RA. Under this proposed interim rule, all vessels would be prohibited from possessing yellowtail flounder in the MA or SNE RMAs unless fishing north of 40°00′ N. lat., or unless the vessel is transiting areas south of 40°00′ N. lat. and all fishing gear on board the vessel is properly stowed according to the regulations. Vessels fishing east or north of the SNE RMA would not be subject to the yellowtail flounder possession limit restrictions, provided that the vessel does not fish west of the GB RMA, and posseses on board a GOM/GB yellowtail flounder exemption certificate issued by the RA. Vessels exempt from the yellowtail possession limit requirements could transit areas outside of the specific exempted area that they are fishing, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

Handgear Permitted Vessels

Under this proposed interim action, the cod, haddock and yellowtail flounder possession limit for vessels that have been issued a valid open access Handgear permit would be reduced to 200 lb (90.7 kg), combined, per trip.

GB Cod Trip Limit Modification

This action would modify how the DAS clock would accrue for those vessels fishing in the GB RMA and harvesting GB cod. The GB cod trip limit would be maintained at 2,000 lb (907.2 kg) per DAS, up to a maximum possession limit of 20,000 lb (9,071.8 kg) per trip. A vessel subject to this landing limit restriction would come into port with, and offload, cod in excess of the landing limit, as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that the vessel operator does not call out of the DAS program and does not depart from a dock or mooring in port until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded. For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 4,000 lb (1,814.8 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip. This modification is consistent with the GOM cod trip limit provisions in the NE multispecies regulations. A vessel that would be required to remain in port for the time that it must run its DAS clock could transit to another port during that time, provided the operator notifies the Regional Administrator according to provisions specified in § 648.86(b)(3).

GOM Cod

This action would increase the daily possession limit for GOM cod from 400 lb (181.8 kg) per DAS to 500 lb (227.3 kg) per DAS. The maximum possession limit would remain at 4,000 lb (1,818.2 kg) per trip.

Recreational and Charter/Party Vessel Restrictions

Under this action, the minimum size for cod and haddock that may be retained by a federally permitted charter/party vessel not on a DAS, or a private recreational vessel not holding a Federal permit and fishing in the EEZ, would be 23 inches (58.4 cm) total length.

This action would implement a cod and haddock bag (possession) limit for the charter/party recreational fishing sector when a vessel is fishing in the GOM RMA and not under a DAS. During the period April through November, each person on a charter/party vessel not under a DAS would be allowed to possess no more than 10 cod or haddock, combined, per trip. For each trip during the period December through March, each person on a charter/party vessel not under a DAS would be allowed to possess no more than 10 cod or haddock combined, no more than 5 of which could be cod. This action would further restrict the cod possession limit for private recreational vessels by requiring that, when fishing in the GOM RMA during the period December through March, each person on a recreational vessel would be allowed to possess no more than 10 cod or haddock combined, no more than 5 of which could be cod. Cod and haddock harvested by recreational vessels with more than one person aboard could be pooled in one or more containers. Compliance with the possession limit would be determined by dividing the number of fish on board by the number of persons on board.

For a vessel that intends to charter/party fish in the GOM closed areas, this proposed interim rule would require that the vessel possess on board a letter of authorization (LOA) issued by the RA. This LOA would be required for the entire fishing year if the vessel intends to fish in the year-round GOM closure areas, and for a minimum of 3 months if the vessel intends to fish in the seasonal GOM closure areas. Vessels could obtain an LOA by calling the NMFS Permit Office at 978–281–9370.

All other existing recreational measures remain unchanged, including the no-sale provision for all fish caught for both the party/charter and private recreational sectors when not fishing under a NE multispecies DAS. Table 2 summarizes the party/charter and private recreational sector measures.

TABLE 2.—CHARTER/PARTY AND PRIVATE RECREATIONAL FISHING MEASURES

	Minimum fish size, inches cod & haddock[1]	Bag limit (combined)	GOM closure exemption authorization
Charter/party not on a DAS	23	*April–November:* 10 cod/haddock[2]	A minimum of 3 months, or duration of closure.
		December–March: 10 cod/haddock, no more than 5 which can be cod[2]	
Private Recreational	23	*Areas outside of GOM RMA:* 10 cod/haddock	N/A
		GOM RMA: 10 cod/haddock, no more than 5 which can be cod, Dec.–Mar.	

[1] All other minimum fish sizes remain unchanged.
[2] When fishing in the GOM RMA.

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Observer Coverage

NMFS has been ordered by the Court, by August 1, 2002, to expand its observer coverage in the NE multispecies fishery by providing a minimum of 5-percent coverage, to monitor and collect information on bycatch, as well as other biological and fishery-related information. Additionally, NMFS has been ordered, by May 1, 2003, to expand further its observer coverage, if appropriate.

Classification

By the terms of the Court order which implemented the Settlement Agreement final rulemaking of this action is required to be made effective no later than August 1, 2002. This rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble and in the IRFA. A summary of the analysis follows.

The analysis considered three alternatives: The Preferred Alternative, the No Action Alternative, and a Hard TAC Alternative. Analysis of the Preferred Alternative examined the impacts on industry that would result from the Settlement Agreement. Analysis of the No Action alternative examined the impacts on industry that would result from leaving all current management measures in place and allowing fishing inside the WGOM Area Closure. Analysis of the hard TAC alternative examined the impacts to the industry under two different options for how TACs would be implemented: Option 1 was based on achieving a zero fishing mortality rate for all stocks that would have a zero management TAC under Amendment 9 to the FMP; Option 2 assumed that, rather than reducing fishing mortality to absolute zero for those stocks with a management TAC of zero under Amendment 9, management measures would reduce the fishing mortality on those stocks to as close to zero as possible. The economic impacts of the first two alternatives were analyzed and described according to the type of management measure as follows: (a) Commercial measures that were modeled (DAS restrictions, area closures, and trip limits); (b) commercial measures that were not modeled (changes to the open access hand gear category, prohibition on frontloading, prohibition on de-hooker use, mesh size restrictions, and limitations on the number of gillnets and hooks); and (c) recreational measures (private recreational vessel and party/charter). The hard TAC alternative is a fundamentally different type of management scheme and was examined in terms of the economic impacts that would result under the two TAC options that were considered. Option 1 would result in a total closure of GB, a significant portion of southern New England, and Long Island Sound to all gear that is capable of catching groundfish in any significant numbers. Option 2 would result in approximately a 35-percent reduction in the total number of DAS used by all vessels in 1999—a significant reduction in effective effort across the entire commercial fishery.

The proposed action (Preferred Alternative) would have a nominal effect on all NE multispecies permit holders (1,442 limited access, 1,812 open access hand gear, and 610 open access party/charter), all of which may be considered small entities according to the Small Business Administration standards for commercial fishing vessels. The number of actual participants in the NE multispecies fishery is less than the total number of those eligible to participate in the fishery (*i.e.*, not every vessel holding a permit for the fishery actually fishes in a given year); the number of participating vessels that may actually be affected by any one or more of the regulatory measures is estimated to be 37 percent of the permit holders.

The Preferred Alternative measures would result in an aggregate reduction in total groundfish income of 4.2 percent. On an individual vessel basis, about 25 percent (approximately 250) of the participating limited access vessels would experience at least a 5-percent loss in gross annual fishing revenues (relative to the No Action Alternative). Ten percent of the participating limited access vessels would experience at least a 16-percent loss in gross annual fishing revenues. In contrast, fishing revenues would increase for approximately 25 percent of the vessels due to modifications in the area closures and an increase in the GOM cod trip limit. Among those adversely impacted, small otter trawl vessels would be most affected. Vessels positively affected would be gillnet or hook vessels, due to the proposed increase in the GOM cod trip limit and the fact that, for these vessels, cod constitutes a much higher proportion of their total fishing income than it does for other vessels. Detailed cost data, and the analytical tools necessary for calculation of profitability changes that could result from the proposed measures were not available. While profitability of small entities could be affected, it was not possible to estimate such changes. Similarly, it was not possible to estimate the impacts of the proposed action on solvency of small entities. Furthermore, because this is only an interim action, analysis of impacts on long-term profitability or solvency of small entities, even if the necessary data were available, would not be appropriate. NMFS does not have the data to make a determination regarding long-term profitability or solvency at this time. Therefore, NMFS is requesting comments on this issue during the comment period on this proposed interim rule. Long-term impacts will be analyzed in association with Amendment 13 to the FMP, which will replace this interim action.

For some vessel owners, the new DAS restrictions will not allow them to fish the number of days that they would need to cover their fixed costs. Based on a break-even analysis, the number of such vessels could be as high as 213 vessels (22 percent). This estimate, however, is probably an overestimation, due to limitations in the data. It is likely that the number of vessels that could not break even is substantially less than 213.

The proposed reduction in the trip limit for the open access hand gear permit category would affect about one half of the 172 permit holders that reported fishing activity. The average loss was estimated to be $33,700 per vessel. The impact of the front-loading prohibition was estimated based on landings associated with front-loading trips. The prohibition would decrease income by approximately $911 to $1,450 per trip. The following table summarizes the estimated cost to replace trawl codends and gillnet gear that would result from the proposed changes in mesh size requirements.

TABLE 3.—ECONOMIC IMPACT OF MESH SIZE INCREASE—(GEAR REPLACEMENT)

Gear	Number of Vessels analyzed	Average vessel cost
Trawl (replace cod end)	424 (GOM or GB) 211 SNE	$1,250
Day Gillnet in GOM (tie-down nets)	18	7,794
Day Gillnet in GOM (stand-up nets)	31	9,300
Trip Gillnet in GOM	25	18,352
Gillnets in GB or SNA	32	8,800

The proposed measures (for GOM cod) affecting charter/party vessels may result in a loss of revenue due to decreased passenger demand. Based on historic cod landings, the majority of economic impacts will likely be borne by the 20–25 charter/party operators that catch 80 percent of the recreationally harvested GOM cod.

Although there may be alternative sets of management measures to those contained in this proposed rule that would accomplish the objectives, this proposed rule represents the measures agreed to in the Settlement Agreement that was negotiated by numerous interested parties.

Relative to the Preferred Alternative, the No Action Alternative would mitigate most of the adverse economic impacts associated with the Preferred Alternative. In general, gross fishing incomes would increase, particularly for vessels operating in the GOM and would have particularly beneficial impacts on small vessels and gillnet vessels in general. However, the No Action alternative also would result in unacceptably high increases in fishing mortality rates that could compromise the rebuilding of several GOM stocks, GOM cod in particular. For this reason, the No Action alternative would not meet the regulatory objectives of this action.

Relative to the Preferred Alternative, the Hard TAC Alternative would impact more significantly the NE multispecies fishery because of the severe consequences of closing down fisheries when a TAC is reached. The economic and social impacts of either option considered under this alternative would be very severe, if not irreparable. Option 1 would severely impact (essentially do away with) the NE multispecies fishery on GB and southern New England in the near term, and would largely prohibit the monkfish, sea scallop, and spiny dogfish fisheries from operating in that area, as well. Option 2 would prohibit hook and roundfish gillnet gear from GB and allow some low level of trawl fishing, but with a bycatch trigger for GB cod that would likely close the fishery at sometime during the fishing year. Many small entities might either go out of business or would have to relocate. To the extent that participants in the industry could do so, many would be expected to shift effort into other fisheries for which they have permits or could acquire permits for, or that are open access, and/or would shift fishing effort northward, to the GOM, or to south of GB. Fisheries that do not use gear capable of catching groundfish, such as purse seines, traps, and mid-water trawls, would be unaffected by the restrictions, but could experience increases in effort displaced from the groundfish, monkfish, scallop, and other fisheries that would be restricted under Option 1. The primary impact on the recreational fishery would be the prohibition on retention of GB cod. In any event, neither the No Action Alternative nor the Hard TAC Alternative could be implemented because they were not agreed to in the Settlement Agreement ordered to be implemented by the Court.

The compliance requirements associated with the proposed measures are the two yellowtail exemption programs described previously in this document, and the used DAS baseline appeal procedure, if applicable.

This proposed action does not duplicate other Federal rules and takes into consideration the monkfish regulations under § 648.92 in order to be consistent with the objectives of the Monkfish Fishery Management Plan.

Because the terms of the Settlement Agreement accepted by the Court require a final rule to be made effective no later than August 1, 2002, the opportunity for public comment on this proposed rule is abbreviated to 15 days. A longer comment period would likely prevent NMFS from meeting the August 1, 2002, deadline. In addition, the proposed measures were developed in cooperation with and after input from one of the conservation group plaintiffs and all of the intervenors who represent four New England States and a sizable portion of the fishing industry.

This proposed interim rule includes new collection-of-information requirements and references to previously-approved requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements have been previously approved by OMB under control number 0649–0202. The estimated times per response for these collections are as follows: 30 minutes for a new vessel permit application; 15 minutes for a renewal application for a vessel permit; 5 minutes for a gillnet annual declaration and request for tags; 1 minute for attaching a gillnet tag; 2 minutes to report lost and/or ask for replacement of lost gillnet tags; 2 minutes for a DAS notification; 2 minutes for a transit report for a vessel that has exceeded the cod landing limit; and 5 minutes to request an LOA for either the Cultivator shoals, Nantucket shoals dogfish, Nantucket lightship, SNE little tunny gillnet, small-mesh northern shrimp fishery, mid-Atlantic, Rolling Closure Area charter/party boat, and GOM charter/party boat exemption programs. Requests for an LOA for the whiting raised footrope trawl exempted fishery have been approved under OMB control number 0648–0422, with an estimated response time of 2 minutes.

This action contains two new collection-of-information requirements that have been submitted to OMB for approval. A response time of 2 minutes has been estimated for requests for entry onto one of two exemption programs for vessel owners choosing to fish for yellowtail flounder in the SNE, GB/GOM RMAs. A response time of 2 hours has been estimated for appeals of used baseline DAS determinations.

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the

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burden, to NMFS and OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS prepared a draft Environmental Assessment (EA) for this interim action. A copy of the EA is available from NMFS (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 24, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows: [1]

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definitions of "Non-exempt species", and "Prior to leaving port" are revised, and new definitions for "De-hooker", "Private recreational fishing vessel", and "Used DAS baseline" are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

De-hooker, with respect to the NE multispecies hook gear fishery, means the fairlead rollers when used in a manner that extracts fish hooks from caught fish, also known as "crucifiers."

* * * * *

Non-exempt species means species of fish not included under the GOM, GB and SNE Regulated Mesh Area exempted fisheries, as specified in § 648.80(a)(5); (a)(6); (a)(9) through (14); (b)(3)(i) and (ii); (b)(5) through (8); and (d), (e), (h), and (i).

* * * * *

Prior to leaving port, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C or D permit provisions, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Private recreational fishing vessel, with respect to the NE multispecies fishery, means a vessel engaged in recreational fishing that has not been issued a Federal NE multispecies permit, does not sell fish, and does not take passengers for hire.

* * * * *

Used DAS baseline, with respect to the NE multispecies fishery, means the number of DAS that represent the historic level of DAS use associated with a particular limited access permit, as described in § 648.82(l).

* * * * *

3. In § 648.4, paragraphs (a)(1)(i)(I)(*2*) and (c)(2)(iii) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(I) * * *

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit, unless otherwise allowed under § 648.82(b). If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year, unless otherwise allowed under § 648.82(b).

* * * * *

(c) * * *

(2) * * *

(iii) An application for a limited access multispecies permit must also contain the following information: For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel informing him/her of the costs associated with this tagging requirement and directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year, unless otherwise allowed in this paragraph. For the 2002 fishing year, vessels electing a Day or Trip gillnet designation will be allowed to change their designation prior to September 1, 2002, and will be allowed to fish under this new designation during the period September 1, 2002, through April 30, 2003. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

4. In § 648.10, paragraph (c)(1) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(c) * * *

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies permit or, for vessels issued a limited access NE multispecies permit and a limited access monkfish Category C or D permit, and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first.

* * * * *

[1] The amendments to 50 CFR part 648 published at 67 FR 21140 (April 29, 2002) are effective through July 31, 2002.

5. In § 648.14, paragraphs (a)(35), (a)(42), (a)(43), (a)(45), (a)(47), (a)(52), (a)(102), (a)(112), (a)(116), (b)(2), (c)(7), (c)(8), (c)(13) through (15), (c)(23), (c)(26), (c)(29), (c)(31), and (z)(2)(i) are revised, paragraphs (a)(123) through (126), (b)(3) through (5), and (c)(32), (c)(33) and (c)(34) are added, and paragraph (c)(20) is removed and reserved, to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(42) Fish within the areas described in § 648.80(a)(6) with nets of mesh smaller than the minimum size specified in § 648.80(a)(3) or (4).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5).

* * * * *

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(2) or (3), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from, the EEZ portion of the areas described in § 648.81(g)(1) through (i)(1), and (n)(1), except as provided in § 648.81(d), (g)(2), (h)(2), (i)(2), and (n)(2).

* * * * *

(102) Enter or fish in the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Areas, except as provided in §§ 648.80(a)(3)(vi) and (b)(2)(vi), and for purposes of transiting, provided that all gear (other than exempted gear) is stowed in accordance with § 648.23(b).

* * * * *

(112) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5)(ii) or (a)(9)(ii).

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(v) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

* * * * *

(123) Fish for, land, or possess NE multispecies harvested with the use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(124) Possess or use de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(125) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish Category C or D permit, call into the DAS program prior to 1 hour before leaving port.

(126) Call in DAS in excess of that allocated under the methods described in § 648.82(l).

(b) * * *

(2) If the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(g)(2)(iii) when fishing in the areas described in § 648.81(g)(1) through (i)(1), during the time periods specified in those sections.

(3) Possess in, or harvest from the EEZ southward of 40°00′ N. lat., any yellowtail flounder unless fishing under recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) Possess in, or harvest from the EEZ in the Southern New England Regulated Mesh Area northward of 40°00′ yellowtail flounder in excess of the seasonal possession or trip limits under § 648.86(h)(2).

(5) Fail to comply with the restrictions described in § 648.86(h)(1), if fishing for, possessing or landing yellowtail flounder in the SNE Regulated Mesh Area north of 40°0′ N. lat.

(c) * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), (e), and (h), and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), and (b)(2)(v), if the vessel has been issued a limited access multispecies hook-gear permit and fishes in areas specified under § 648.80(a), and (b).

* * * * *

(13) If the vessel has been issued a Day gillnet category designation, fail to remove gillnet gear from the water as described in § 648.82(g) and § 648.82(k)(1)(iv) and (5).

(14) Fail to comply with the tagging requirements for a day gillnet vessel as described in § 648.82(k)(1)(ii), or fail to produce or, cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.82(k)(1) or (2), without the written confirmation from the Regional Administrator described in § 648.82(k)(1)(ii) or (2)(ii).

* * * * *

(23) Fail to enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip (i.e., the time a vessel leaves port or when the vessel received a DAS authorization number, whichever comes first), as specified in § 648.10(f)(3), unless otherwise specified in § 648.86(b)(1)(ii) or (2)(ii).

* * * * *

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(26) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2)(ii). Under no circumstances may such trip exceed 14 days in length.

* * * * *

(29) Enter, be on a fishing vessel in, or fail to remove gear from, the areas described in § 648.81(g)(1) through (i)(1), during the time periods specified, except as provided in § 648.81(d), (g)(2), (h)(2) and (i)(2).

* * * * *

(31) If the vessel has been issued a Charter/Party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(g)(2)(iii) when fishing in the areas described in § 648.81(g)(1) through (i)(1) during the time periods specified in those sections.

(32) In the vessel has been fishing with gillnets under either the day or trip category, fail to remove the nets from the water as described under § 648.82(k)(3).

(33) If the vessel has been issued a Hook-gear Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(k)(2).

(34) Fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(z) * * *

(2) * * *

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b), and (c), nets of mesh size smaller than 3-in (7.62-cm), unless otherwise exempted pursuant to § 648.80(a)(8).

* * * * *

6. In § 648.80, paragraphs (a), (b), (c)(1), (c)(2)(ii), (d)(2), (e)(2), (h)(1), and (i)(8) are revised, and paragraphs (c)(2)(iv) and (c)(5) are added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) *Gulf of Maine (GOM) and Georges Bank (GB) Regulated Mesh Areas*—(1) *GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary defined by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
CII3	42°22′	2 67°20′

1 The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
2 The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
CII3	42°22′	2 67°20′
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(1)

1 The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.
2 The U.S.-Canada Maritime Boundary.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section;

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
CII3	42°22′	67°20′	(The U.S.-Canada Maritime Boundary)
SNE1	40°24′	65°43′	(The U.S.-Canada Maritime Boundary as it intersects with the EEZ).

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G12	(1)	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°00′
NL3	40°22.7′	69°00′
	(2)	69°00′

1 South facing shoreline of Cape Cod.
2 Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(B) *Day gillnet vessels.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any roundfish gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net, and the minimum mesh size for any flatfish (tie-down) gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 7.0 inches (17.8 cm) throughout the entire net. No roundfish nets may be fished or on board a vessel during the period March through June in the GOM Regulated Mesh Area. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(v) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a NE multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(16) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (a)(7), (a)(9) through (a)(14), (d), (e), (f), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the small vessel exemption specified in § 648.82(b)(3); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.48 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°00′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 Maine shoreline.

(4) *GB Regulated Mesh Area gear restrictions.*—(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(vi) and (a)(4)(i) of this section, and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph 648.80(a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(vi) and (a)(4)(ii) of this section, and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit

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and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraphs (a)(3)(vi) and (a)(4)(iv) of this section, the minimum mesh size for any roundfish or flatfish gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(v) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a NE multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited.

(5) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°56′	67°22′
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Through April 30, 2003, an owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for; possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2003, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.4 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
C1	42°10′	68°10′
C2	41°30′	68°41′

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA—Continued

Point	N. Lat.	W. Long.
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) Through April 30, 2003, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2003, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(6)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(6)(i)(B) of this section.

(D) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length applied to and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(G) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in this paragraph (a)(6)(i) for the entire trip.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery or the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraphs (a)(5) and (9) of this section, may transit through the Small Mesh Northern Shrimp Fishery Exemption Area as specified in paragraph (a)(5) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (a)(5) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Species*-(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(B) *Small-mesh multispecies.* Beginning May 1, 2003, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In

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determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small-mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications are made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species or small-mesh multispecies.

(iii) The Regional Administrator may, using the process described in either paragraph (a)(8)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Bycatch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(iii) of this section, a prohibition on the possession of regulated species.

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (c)(4), (c)(5) or (c)(6), as applicable, whichever is less.

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, through April 30, 2003, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1, and from January 1 through June 30, when fishing in Small Mesh Area 2. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(9)(i)(A) of this section, nets may not have a mesh size of less than 3-inch (7.6-cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch, as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

SMALL MESH AREA I

Point	N. Lat.	W. Long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL-MESH AREA II

Point	N. Lat.	W. Long.
SM13	43°05.6′	69°55.0′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40.0′
SM16	42°41.5′	69°40.0′
SM17	42°36.6′	69°55.0′
SM13	43°05.6′	69°55.0′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (j)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CI1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* (*1*) Through April 30, 2003, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2003, all nets must comply with a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh, counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length. Vessels may retain the allowable incidental species listed in paragraph (j)(10)(i)(D)(*1*) of this section.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *Scallop Dredge Fishery Exemption within the GOM Small Mesh Northern Shrimp Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a general scallop permit, may fish in the GOM Small Mesh Northern Shrimp Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is the same as the area defined in paragraph (a)(5) of this section and designated as the Small Mesh Northern Shrimp Fishery Exemption Area.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in paragraph (a)(11) of this section may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the GOM Scallop Dredge Fishery Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery

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Exemption Area specified under paragraph (a)(10) of this section.

(13) *GOM/GB Monkfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. Lat.	W. Long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. The exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION

Point	N. Lat.	W. Long.
RF 1	42°01.9′	70°14.7′
RF 2	41°59.45′	70°23.65′
RF 3	42°07.85′	70°30.1′
RF 4	42°15.05′	70°08.8′
RF 5	42°08.35′	70°04.05′
RF 6	42°04.75′	70° 16.95′
RF 1	42°01.9′	70°14.7′

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) Through April 30, 2003, all nets must comply with a minimum mesh size of 2.5-inch (6.4-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(C) Beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(15)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of any vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) and (C) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area, the use of the raised footrope trawl, and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for red hake, which is restricted to 10 percent of the total catch under the Cultivator Shoal Whiting Fishery.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Gulf of Maine/Georges Bank Exemption Area

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

Point	N. lat.	W. long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		[1]70°00′	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

(b) *Southern New England (SNE) Regulated Mesh Area—(1) Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the Georges Bank Regulated Mesh Area described under § 648.80(a)(2)(iii); and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions—(i) Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with section § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 7-inch (17.8-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied to the codend of the net, as defined under paragraph § 648.80(a)(3)(i). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 8.5-inch (21.6) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Vessels using sink gillnets.* The minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(v) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel exemption specified in § 648.82(b)(3), or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a

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charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions*—(i) *Species exemptions.* (A) Through April 30, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 inches (7.6 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. Nets may not have a mesh size of less than 3-inch (7.6-cm) square or diamond mesh, counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length, and counting the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as under paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the incidentally caught species and amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section and the monkfish regulations, as applicable under § 648.91 through 94. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under sub-part (L). The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long. south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m) measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71° 51.5′ W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeast through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI–MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) reserved

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. Lat.	W. Long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		70°00′[1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to the intersection of the 3-nautical mile line east of Montauk Point;
southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long., and south along that line to the intersection of the outer boundary of the EEZ.

(c) * * *

(1) *Area definition.* The Mid-Atlantic Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under § 648.80(b)(1)(ii).

(2) * * *

(ii) *Large-mesh vessels.* When fishing in the Mid-Atlantic Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(6) and (7), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(iv) *Hook-gear restrictions.* Vessels fishing with a valid NE multispecies limited access Hook-gear permit and fishing under a NE multispecies DAS in the Mid-Atlantic Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited.

* * * * *

(5) *Mid-Atlantic Exemption Area.* The Mid-Atlantic Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

* * * * *

(e) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

* * * * *

(h) * * *

(1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also

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possess and retain skate as incidental take in this fishery.

* * * * *

7. In § 648.81, paragraphs (d), (g)(1), (g)(2)(iii) through (v), (h), (i) and (n) are revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(d) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, the Western GOM Area Closure, and the GB Seasonal Area Closure, as defined in paragraphs (a)(1), (c)(1), (g)(1), (h)(1), (i)(1) and (n)(1), respectively, of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(g) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (g)(1)(i) through (v) of this section, for the times specified in paragraphs (g)(1)(i) through (v) of this section, except as specified in paragraphs (d) and (g)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I
[March 1–March 31]

Point	N. Lat.	W. Long.
GM3	42°00′	(1)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM23	42°30′	70°00′

[1] Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II
[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM9	42°30′	(1)

[1] 1 Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III
[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°00′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM10	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV
[June 1–June 30]

Point	N. Lat.	W. Long.
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32′ or (2)
GM20	44°00′	67°21′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

[1] Massachusetts shoreline.
[2] U.S.-Canada maritime boundary.
[3] Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V
[October 1–November 30]

Point	N. Lat.	W. Long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(2) * * *

(iii) * * *

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under § 648.81(g)(1), it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; For vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western Gulf of Maine Area Closure, as described under § 648.81(h) and (i), respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year.

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid.

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip.

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (g)(1)(v) of this section.

(h) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA[1]

Point	N. Lat.	W. Long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

[1] A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (g)(2)(ii) and (iii) of this section.

(i) *Western GOM Area Closure.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (i)(2) of this section:

WESTERN GOM AREA CLOSURE[1]

Point	N. Lat.	W. Long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

[1] A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (g)(2)(ii) and (iii) of this section.

* * * * *

(n) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by the straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (n)(2) of this section:

GEORGES BANK SEASONAL CLOSURE AREAS
[May 1—May 31]

Point	N. Lat.	W. Long.
GB1	42°00′	(1)
GB2	42°00′	68°30′
GB3	42°20′	68°30′
GB4	42°20′	67°20′
GB5	41°30′	67°20′
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
GB6	40°30′	68°30′
GB7	40°30′	69°00′
G10	40°50′	69°00′
GB8	40°50′	69°30′
GB9	41°00′	69°30′
GB10	41°00′	70°00′
G12	(1)	70°00′

[1] Northward to its intersection with the shoreline of Mainland Massachusetts.

(2) Paragraph (n)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

(i) That meet the criteria in paragraphs (g)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel uses an 8-inch (20.3–cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

8. In § 648.82, paragraph (b); introductory text of paragraphs (k) and (k)(1), paragraphs (k)(1)(i), (k)(1)(ii), and (k)(2) are revised; paragraphs (k)(1)(vi) and (vii) are removed; and paragraphs (k)(3) through (5), and paragraph (l) are added to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

* * * * *

(b) *DAS program—permit categories and allocations.* All limited access NE multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. For the fishing year 2002 only, permit holders that may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*), and that were issued a limited access permit prior to August 1, 2002, may request a change in permit category one time prior to either August 31, or within 45 days of permit issuance, whichever date is later. For the fishing year 2003 permit holders may request a change in permit category as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning August 1, 2002, with the exception of the Small Vessel category described in paragraph (b)(3) of this section, NE multispecies DAS available for use will be calculated as described below.

(1) *Individual DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Individual DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section.

(2) *Fleet DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Fleet DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section.

(3) *Small Vessel category—*(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(h). Such a vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if such vessel meets or complies with the following:

(ii) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(iii) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the overall length divided by the beam is not less than 2.5.

(iv) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means

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determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(v) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(4) *Hook-Gear category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Hook-gear category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(vii), (a)(4)(ii), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(5) *Combination vessel category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Combination Vessel category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section.

(6) *Large Mesh Individual DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Large Mesh Individual DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year, will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section, and then increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii) and (c)(2)(ii) of this section.

(7) *Large Mesh Fleet DAS category—DAS allocation.* Beginning August 1, 2002, for a vessel fishing under the Large Mesh Fleet DAS category, NE multispecies DAS available for use for the May 1, 2002, through April 30, 2003, fishing year, and for the next fishing year , will be calculated based upon the fishing history associated with the vessel's permit, as described in paragraph (l)(1) of this section, as reduced as specified in paragraph (l)(2) of this section, and then increased by 36 percent. To be eligible to fish under the Large Mesh Fleet DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii) and (c)(2)(ii) of this section.

* * * * *

(k) *Gillnet restrictions.* Beginning August 1, 2002, vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS with gillnet gear must obtain an annual designation as either a Day or Trip gillnet vessel as described in § 648.4(c)(2)(iii).

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a multispecies DAS is not required to remove gear from the water upon returning to the dock and calling-out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (k)(1)(i) through (v) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Number and size of nets.* Vessels may not fish with, haul, possess, or deploy more than the number of nets specified in paragraphs (k)(1)(i)(A) through (D) of this section, when fishing in the respective regulated mesh areas, provided the nets are tagged in accordance with paragraph (k)(1)(ii) of this section, unless otherwise specified in this paragraph. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(A) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area, as described in § 648.80(a)(1), may not fish with, haul, possess, or deploy more than 50 roundfish gillnets or 100 flatfish gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, provided that the number of roundfish and flatfish gillnets does not exceed the limitations specified in this paragraph (k)(1)(i)(A).

(B) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area as described in § 648.80(a)(2), may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets.

(C) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area as described in § 648.80(b)(1), may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 75 nets.

(D) A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the Mid-Atlantic Regulated Mesh Area, as described in § 648.80(c)(1), may not fish with, haul, possess, or deploy more than 80 roundfish gillnets or 160 flatfish gillnets. Vessels may fish any combination of roundfish and flatfish gillnets, up to 160 nets, provided that the number of roundfish and flatfish gillnets does not exceed the limitations specified in this paragraph (k)(1)(i)(D).

(ii) *Tagging requirements.* When fishing under a NE multispecies DAS, all gillnets fished, hauled, possessed, or deployed by a vessel in the Day gillnet category, must be tagged according to the provisions specified in paragraphs (k)(1)(ii)(A) through (D) of this section, when fishing in the respective regulated mesh areas, or as otherwise specified under § 648.92(b)(8)(ii). Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(A) When fishing in the GOM Regulated Mesh Area, roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets.

(B) When fishing in the Mid-Atlantic Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net within a string of nets secured to every other bridle of every net within a string of nets.

(C) When fishing in the GB Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net, within a string of nets.

(D) When fishing in the SNE Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net within a string of nets secured to every other bridle of every net within a string of nets.

* * * * *

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3), and must comply with the restrictions specified in paragraphs (k)(2)(i) and (ii) of this section. When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear as authorized under the exemptions described in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator, that the vessel is a Trip gillnet vessel.

(i) *Number and size of nets.* Vessels may not fish with, haul, possess, or deploy more than the number of nets specified in paragraphs (k)(2)(i)(A) through (D) of this section, when fishing in the respective regulated mesh areas, provided the nets are tagged in accordance with paragraph (k)(1)(ii) of this section, unless otherwise specified in this paragraph. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(A) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area, as described in § 648.80(a)(1), may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets.

(B) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area as described in § 648.80(a)(2), may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets.

(C) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area as described in § 648.80(b)(1), may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 75 nets.

(D) A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the Mid-Atlantic Regulated Mesh Area is not subject to a restrictions on number of allowable nets.

(ii) *Tagging requirements.* When fishing under a NE multispecies DAS, all gillnets fished, hauled, possessed, or deployed by a vessel in the Trip gillnet category, must be tagged according to the provisions specified in paragraphs (k)(2)(ii)(A) through (C) of this section, when fishing in the respective regulated mesh areas, or as otherwise specified under § 648.92(b)(8)(ii) or under paragraph (k)(2)(ii)(D) of this section. Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are on board the vessel and can be made available for inspection.

(A) When fishing in the GOM Regulated Mesh Area, roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) When fishing in the GB Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net, within a string of nets.

(C) When fishing in the SNE Regulated Mesh Area, roundfish or flatfish gillnets must be tagged with 2 tags per net, with one tag secured to each bridle of every net within a string of nets secured to every other bridle of every net within a string of nets.

(D) When fishing in the Mid-Atlantic Regulated Mesh Area, gillnets are not required to be tagged.

(3) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(4) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before tags will be re-issued.

(5) *Removal of nets from the water.* Gillnets must be removed from the water when the vessel's annual NE multispecies-DAS allocation has been used.

(l) *Used DAS baseline and DAS reduction*—(1) *Used DAS baseline.* For all valid limited access NE multispecies permits and NE multispecies confirmation of permit histories (CPH), beginning with the 2002 fishing year, a vessel's used DAS baseline will be based on the fishing history associated with its permit and will be determined by the highest number of DAS fished during a single fishing year, as specified in paragraphs (l)(1)(i) through (iv) of this section, during the 5-year period from May 1, 1996, through April 30, 2001, not to exceed the vessel's annual allocation prior to August 1, 2002. If the highest number of DAS fished under such permit during a single fishing year is less than 10 DAS, the used DAS baseline will be 10 DAS. If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in section § 648.4(a), then the used DAS baseline will be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the 5-year period specified above.

(i) Except as provided in paragraphs (l)(1)(ii) through (iv) of this section, historic DAS use will be determined as specified under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from or not subject to the DAS notification system, specified in § 648.10, during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be defined based on the vessel's DAS use, calculated from vessel trip reports submitted to NMFS prior to April 9, 2002.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in § 648.82(b)(6) and (7), calculation of the used DAS baseline will be determined based on the highest number of DAS fished during a single fishing year during the 1996 through 2000 fishing years, from May 1, 1996, through April 30, 2001, not to exceed the vessel's allocation in any given year. That is, the used DAS baseline shall not be based on additional DAS the vessel fished under the Large Mesh DAS category.

(iv) For vessels fishing under the Day gillnet designation, as specified under § 648.82(k)(1), used DAS, beginning on May 1, 1997 (implementation of differential DAS accounting for gillnet vessels, i.e., Framework Adjustment 20), for trips greater than 3 hours but less

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than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or greater than 15 hours, will be counted as actual time.

(2) *DAS reduction.* For fishing years beginning May 1, 2002, and May 1, 2003, a NE multispecies DAS vessel, unless otherwise specified in paragraph (l)(2) of this section, shall be allocated 80 percent of its DAS baseline specified under paragraph (l)(1) of this section. An additional 36 percent will be subsequently added and available for use for participants in the Large Mesh DAS categories, as described at § 648.80(b)(6) and (7), provided the participants comply with the applicable gear restrictions.

(i) NE multispecies DAS fished by a vessel during the period May 1, 2002, through July 31, 2002, will be deducted from the DAS available for use for the 2002 fishing year, as calculated under § 648.80(l)(2).

(ii) For vessels fishing under the Day gillnet designation, as specified in § 648.82(k)(1), NE multispecies DAS for the period May 1, 2002, through July 31, 2002, for trips greater than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or greater than 15 hours, will be counted as actual time.

(iii) For vessels fishing with gear other than gillnet gear, NE multispecies DAS used for the period May 1, 2002, through July 31, 2002, will be counted as actual time.

(iv) Beginning on August 1, 2002, if the number of DAS used by a vessel during the May 1 through July 31, 2002, period equals or exceeds the number of DAS available for use calculated by NMFS as described in this section, the number of DAS available for use for the remainder of the 2002 fishing year will be zero, unless the vessel has available carry-over days from the previous fishing year, as specified under paragraph (a)(1) of this section.

(3) *Appeal of used DAS baseline.* (i) A vessel's used DAS baseline as determined under paragraph (*l*)(1) of this section, may be appealed to the Regional Administrator, by submitting a written request to appeal. The request to appeal must be received by the Regional Administrator no later than August 31, 2002. The request to appeal must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on mistaken or incorrect data. The decision on appeal shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on appeal is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending appeal of used DAS baseline.* While a vessel's used DAS baseline is under appeal, the vessel is limited to fishing with the number of DAS in accordance with § 648.80(l).

9. In § 648.83, paragraph (a)(1) is revised to read as follows: *§ 648.83 Multispecies minimum fish sizes.*

(a) * * *

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

10. In § 648.86, paragraphs (b)(1)(i), (b)(1)(ii)(A), (b)(2) and (b)(3) are revised and paragraph (h) is added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(b) * * *

(1) * * *

(i) Except as provided in paragraph (b)(1)(ii) and (b)(4) of this section, and subject to the call-in provision specified in § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land only up to 500 lb (272.3 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call our of the DAS program at 11 a.m. and land up to 500 lb (272.3 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 500 lb (272.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than 1,000 lb (454.5 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (*e.g.* a vessel that has been called into the DAS program for more than 24 hr but less than 48 hr) may land up to an additional 500 lb (272.2 kg) of cod for that trip provided the vessel complies with § 648.86(b)(1)(ii). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) * * *

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1000 lb (454.5 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *Georges Bank Cod Landing and Maximum Possession Limits.* (i) For each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section and fishing under a NE multispecies DAS may land up to 2,000 lb (907.2 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 2,000 lb (907.2 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 2,000 lb (907.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 20,000 lb (9,071.8 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 4,000 lb (1,814.4 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 2,000 lb (907.2 kg) of cod for that trip of cod for that trip provided the vessel complies with 648.86(b)(2)(ii). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in paragraph

(b)(1)(i) of this section may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 4,000 lb (1,814.4 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(B) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

* * * * *

(h) *Yellowtail Flounder*—(1) *Yellowtail flounder possession limit north of 40°00′ N. lat. in the Georges Bank or Gulf of Maine Regulated Mesh Area.* Beginning August 1, 2002, except when fishing under the recreational and charter/party restrictions specified under § 648.89, there is no possession limit for yellowtail flounder for a vessel issued a NE multispecies permit and fishing under a NE multispecies DAS north of 40°00′ N. lat. in either the GB or GOM Regulated Mesh Area, provided the vessel complies with the following requirements in order to fish for possess, or land yellowtail flounder:

(i) The vessel possess on board a yellowtail exemption letter issued by the Regional Administrator.

(ii) The vessel does not fish in the SNE Regulated Mesh Area, or south of 40°00′ N. lat. for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program). Vessels subject to these restrictions may transit the SNE Regulated Mesh Area and south of 40°00′ N. lat. with yellowtail flounder on board the vessel, provided that the gear is stowed in accordance with one of the provisions of § 648.23(b).

(2) *Yellowtail flounder possession limit north of 40°00′ N. lat in the Southern New England Regulated Mesh Area.* Beginning August 1, 2002, except when fishing under the recreational and charter/party restrictions specified under § 648.89, a vessel issued a NE multispecies permit and fishing any portion of a trip under a NE multispecies DAS north of 40°00′ N. lat. in the SNE Regulated Mesh Area is subject to the following requirements and trip limits in order to fish for, possess, or land yellowtail flounder:

(i) The vessel possesses on board a yellowtail authorization letter issued by the Regional Administrator.

(ii) The vessel does not fish south of 40°00′ N. lat. for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program). Vessels subject to these restrictions may transit the area south of 40°00′ N. lat. provided that the gear is stowed in accordance with one of the provisions of § 648.23(b).

(iii) During the period March through May, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip; and

(iv) During the period June through February, vessels may land only up to 750 lb (340.9 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) *Yellowtail flounder prohibition south of 40°00′ N. lat.* Beginning August 1, 2002, unless fishing under the recreational and charter/party restrictions specified under § 648.89, or transiting as provided for under § 648.86(h)(1) or (2), a vessel not in possession of a valid exemption letter or a vessel fishing any portion of a trip south of 40°00′ N. lat is prohibited from possessing or landing yellowtail flounder.

11. In § 648.88, the introductory text for paragraph (a), and paragraph (a)(1) are revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* Beginning August 1, 2002, NE multispecies open access Handgear permits shall not be issued to any vessel that has never been issued such permit, or has not submitted a complete application for such permit as of August 1, 2002. A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 200 lb (90.9 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, per trip, and unlimited amounts of the other NE multispecies, provided that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

12. In § 648.89, paragraphs (b)(1), (c), and (e)(1) are revised to read as follows: *§ 648.89 Recreational and charter/party restrictions.*

* * * * *

(b) * * *

(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and private recreational fishing vessels in the EEZ, may not retain fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes (inches)
Cod	23 (58.4 cm)
Haddock	23 (58.4 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

(c) *Cod and haddock possession restrictions*—(1) *Private recreational vessels.* (i) Each person on a private recreational vessel may possess per trip no more than 10 cod and/or haddock, combined, in, or harvested from the EEZ, unless further restricted under paragraph (c)(1)(ii) of this section.

(ii) During the period December 1 through March 31, each person on a private recreational vessel fishing any part of a trip in the GOM Regulated Mesh Area as defined in § 648.80(a)(1), may possess no more than 10 cod and/or haddock combined, no more than 5 of which may be cod, in, or harvested from the EEZ.

(iii) For purposes of counting fish, fillets will be converted to whole fish at

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the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iv) Cod and haddock harvested by private recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(v) Cod and haddock must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) During the period April 1 through November 30, each person on the vessel may possess no more than 10 cod and/or haddock combined.

(ii) During the period December 1 through March 31, each person on the vessel may possess no more than 10 cod and/or haddock combined, no more than 5 of which may be cod.

(iii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iv) Cod and haddock harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(v) Cod and haddock must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

* * * * *

(e) * * *

(1) *Gulf of Maine Closed Areas.* A vessel fishing under charter/party regulations may not fish in the Gulf of Maine closed areas specified in § 648.81(g)(1) through (i)(1), during the time periods specified in those sections, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to §§ 648.81(g)(2)(iii) and 648.89(e)(3). The letter of authorization is required for a minimum of 3 months if the vessel intends to fish in the seasonal GOM closure areas, or required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

* * * * *

13. In § 648.91, paragraphs (c)(1)(i) and (ii) are revised to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(i) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the NE multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and NE multispecies DAS.* For vessels issued a Category C or D limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

* * * * *

14. In § 648.92, paragraphs (b)(2) and (b)(8)(i) are revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) *Category C and D limited access monkfish permit holders.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, except where, beginning August 1, 2002, a Category C or D vessel that has an allocation of multispecies DAS under § 648.82(l) that is less than 40 (the number of monkfish DAS) may fish under Category A or B provisions, as applicable, for the number of DAS that equal the difference between 40 and the number of allocated multispecies DAS. For such vessels, when the total allocation of multispecies DAS have been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel's multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 multispecies DAS would also be used. However, after all 30 multispecies DAS are used the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated multispecies.)

* * * * *

(8) * * *

(i) *Number and size of nets.* A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, or fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

* * * * *

[FR Doc. 02–16266 Filed 6–26–02; 3:53 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 67, No. 126

Monday, July 1, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Judith Restoration EIS—Lewis and Clark National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to treat dry forest types, whitebark pine, limber pine and aspen, the need to reduce fuels near the urban interface, the need to improve water quality combined with the timing of a State facilitated sub-basin review, and opportunities for westslope cutthroat trout habitat enhancement. The analysis area encompasses approximately 214,000 acres of the Judith Ranger District, Lewis and Clark National Forest, Judith Basin County, Montana.

DATES: It is anticipated that the draft EIS will be released for review and comment in the winter 2002/2003.

ADDRESSES: Send written comments to Betty Holder, Judith District Ranger, Lewis and Clark National Forest, Box 484, Stanford, MT 59479. Electronic mail may be sent to *comment/rl_lewisclark@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jennifer Johnsten, EIS Co-team Leader, (406) 791–7700 or Betty Holder, EIS Co-team Leader (406) 566–2292.

SUPPLEMENTARY INFORMATION: The Forest Service proposes vegetation treatment and road and trail closures/modifications on the Judith Ranger District within the Little Belt Mountains, which includes the Middle Fork and South Fork of the Judith River. A preliminary assessment determined this area to have a high percentage of dry forest types, such as Douglas-fir, which are currently overstocked, largely due to fire suppression. This has also led to high fuel loading, which is problematic near private inholdings and urban interfaces. In addition, water quality in the South Fork and tributaries has been affected by past management actions. Several populations of genetically pure westslope cutthroat trout are found in the South Fork. Improved habitat for these species is key to their survival. The enclosed map shows where, within the analysis area, there are opportunities to take action to address these objectives and meet the goals outlined below. This EIS will review six alternatives.

Decisions To Be Made

The Forest Supervisor will decide whether and where vegetative treatment and road/trail activities would take place in the project area. He will decide the number of acres and miles of road/trail, if any, on which activity would take place and the types of treatment methods to be used. He will decide when any management activities would take place, what mitigation measures would be implemented to address concerns, and whether the action requires amendment(s) to the Lewis and Clark Forest Plan.

Responsible Official

Rick Prausa, Forest Supervisor, is the Responsible Official for making the decision to implement any of the alternatives evaluated. He will document his decision and rationale in a Record of Decision.

Preliminary Issues

Issues associated with this analysis that have been submitted from initial scoping efforts include impacts of proposed activities on wildlife and fish species and their habitat, soil resources, Wilderness Study Area, Inventoried Roadless Areas, water quality and water yield, and forest health.

Public Involvement, Rationale, and Public Meetings

Initial scoping for this project began in April 2001. A letter was sent to 120 individuals requesting comment on the proposed action. A 45-day review period for comments on the Draft EIS will be provided. Comments received will be considered and included in documentation of the Final EIS. The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service has sought and will continue to seek information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action.

Electronic Access and Filing Addresses

Comments may be sent by electronic mail (e-mail) to *mailroom_r1_lewis_and_clark@fs.fed.us*. Please reference the Judith Restoration EIS on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by winter, 2002/2003. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by July, 2003. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences of the action, as well as those pertaining to applicable laws, regulations, and policies. These will be considered in making a decision regarding the proposal.

The Reviewers Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be

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waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: June 24, 2002.

Lynn Johnson,

Acting Lewis and Clark Forest Supervisor.

[FR Doc. 02–16420 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice and Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection from the Food Safety Research Information Office to obtain research and funding activity in food safety.

DATES: Comments on this notice must be received by September 4, 2002 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Yvette Alonso, Food Safety Research Information Office Coordinator, 10301 Baltimore Ave., Room 113; Beltsville, MD 20705; Fax: 301–504–6409. Submit electronic comments to *yalonso@nal.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Yvette Alonso, 301–504–3774.

SUPPLEMENTARY INFORMATION:

Title: Food Safety Research Activity.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection.

Abstract: The collection of food safety research activity using the Food Safety Research Activity form will provide Web site users with the ability to submit project information and funding opportunities to add to the food safety research searchable database. We will review the data for accuracy and validity before posting the information in the database. This form will provide the Food Safety Research Information Office (FSRIO) with an online resource to acquire data from organizations or researchers who conduct research, including foreign research organizations, private research companies, government, educational environments and researchers themselves. These organizations or researchers maybe unknown to the Food Safety Research Information Office. The Food Safety Research Activity form is a document comprised of 14 inquiry components where users submit research or funding activity. Information to be submitted includes, user contact information (name, organization, email), whether the activity being submitted is a funding opportunity or current research project, if the research activity is funded by government, educational institutions or private organizations and the name of this organization or agency and URL if available. The user enters information on the specific research activity, including the project/funding title, date of research, project number if available, location where research is conducted, funding amount, contact information for the project such as the researcher who works on the project, the type of funding (grant, appropriated funds, private), and a research abstract providing a description of the activity.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Food safety research community, including food safety researchers in the private and public sector and research grant administrators or personnel.

Estimated Number of Respondents: 100 per year.

Estimated Total Annual Burden on Respondents: 25 hours.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: June 13, 2002.

Caird E. Rexroad,

Associate Deputy Administrator.

[FR Doc. 02–16418 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Request for Applications (RFA): Research Partnerships for Risk Management Development and Implementation

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Announcement of availability of funds and request for application.

SUMMARY: In accordance with section 522 of the Federal Crop Insurance Act (Act) the Federal Crop Insurance Corporation (FCIC) announces the availability of approximately $2 million for partnership agreements that will fund risk management research and development activities. Priority will be given to those activities addressing the need for risk management tools for producers of Noninsured Crop Disaster Assistance Program (NAP) crops, specialty crops, and underserved commodities. Awards, on a competitive basis, may be for a period of up to two years. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to substantial involvement of RMA in the project. This announcement lists the information needed to submit an application for these funds.

Closing Date: The deadline for submission for all applications is 5 p.m. CST on August 15, 2002. The agency will not consider applications received after the deadline.

FOR FURTHER INFORMATION: Applicants may download an application package from the Risk Management Agency Website at: *http:\\www.rma.usda.gov*. Applicants may also request an application package from: David W. Fulk, Risk Management Agency, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, phone: (816) 926–6343, fax: (816) 926–7343, e-mail: *RMARED.Application@rm.fcic.usda.gov*.

Applicants are strongly encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt by the USDA. The applicable address for such submissions is: RMA/RED Partnership Agreement Program, Risk Management Agency, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, e-mail: *RMARED.Application@rm.fcic.usda.gov*.

Completed and signed application packages sent via the U.S. Postal Service must be sent to the following address: RMA/RED Partnership Agreement Program, c/o David W. Fulk, USDA, Risk Management Agency, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 25), the collection of information requirements contained in this announcement have been approved under OMB Document Nos. 0348–0043, 0348–0044, and 0348–0046.

The Catalog of Federal Domestic Assistance Number for this program is 10.450.

SUPPLEMENTARY INFORMATION: This announcement consists of six parts:

Part I—General Information
- A. Legislative Authority
- B. Background
- C. Project Objectives
- D. Purpose

Part II—Eligibility/Funding
- A. Eligible Applicants
- B. Project Period
- C. Availability of Funds

Part III—Research Program Description
- A. Recipient Activities
- B. RMA Activities

Part IV—Preparation of an Application
- A. Program Application Materials
- B. Content of Applications
- C. Submission of Applications
- D. Acknowledgement of Applications

Part V—Review Process
- A. General
- B. Evaluation Criteria and Weights
- C. Confidentiality

Part VI—Additional Information
- A. Access to Panel Review Information
- B. Partnership Agreement Awards
- C. Confidential Aspects of Proposals and Awards
- D. Reporting Document
- E. Audit Requirements
- F. Prohibitions and Requirements with Regard to Lobbying

Part I—General Information

A. Legislative Authority

This program is authorized under section 522(d) and Section 506(h) of the Federal Crop Insurance Act (Act), as amended.

B. Background

RMA is committed to meeting the risk management needs and improving or developing risk management tools for the nation's farmers and ranchers. It does this by offering Federal crop insurance and other risk management products through a network of private-sector entities, by overseeing the creation of new products, by seeking enhancements in existing products and by ensuring the integrity of crop insurance programs.

RMA's research and contracting mission was strengthened significantly when the Act was amended in June of 2000. Section 522(d) of the Act authorizes RMA to enter into partnerships with public and private organizations for the purpose of increasing the availability of loss mitigation, financial, and other risk management tools for producers with a priority given to risk management tools for producers of NAP crops, specialty crops, and underserved agricultural commodities.

C. Project Objectives

The objectives of the partnerships as defined in section 522(d)(3)(A) through (E) and (G) of the Act are:

- To enhance the notice and timeliness of notice of weather conditions that could negatively affect crop yields, quality, and final product use in order to allow producers to take preventive actions to increase product profitability and marketability and to reduce the possibility of crop insurance claims;
- To develop a multifaceted approach to pest management and fertilization to decrease inputs, decrease environmental exposure, and to increase application efficiency;
- To develop or improve techniques for planning, breeding, planting, growing, maintaining, harvesting, storing, shipping, and marketing that will address quality and quantity production challenges associated with year-to-year and regional variations;
- To clarify labor requirements and assist producers in complying with requirements to better meet the physically intense and time-compressed planting, tending, and harvesting requirements associated with the production of specialty crops and underserved agricultural commodities;
- To provide assistance to State foresters, or equivalent officials, for the prescribed use of burning on private forest land for the prevention, control, and suppression of fire;
- To develop other risk management tools to further increase economic and production stability; and

D. Purpose

The purpose of this program is to fund partnership agreements that assist producers, minimize their production risks, maximize their potential income, and improve and/or develop risk management tools for the nation's producers. To aid in meeting these goals each partnership agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out these risk management initiatives.

Part II—Eligibility/Funding

A. Eligible Applicants

Proposals are invited from qualified public and private entities. Eligible applicants include all colleges and universities, Federal, State, and local agencies, nonprofit and for-profit private organizations or corporations, and other entities. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g. debarment and suspension, a determination of non-performance based on the information submitted). Applicants must be able to demonstrate they will receive non-financial benefits as a result of the partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational programs).

B. Project Period

Each project will be funded for a period of up to two years for the activities described in this announcement. Projects can also be in two parts with the first part including the research and feasibility studies and the second part including the development of the risk management tool. If the development of the tool is determined not to be feasible, the partnership may be cancelled after completion of the first part.

C. Availability of Funds

Approximately $2,000,000 is available in FY2002 to fund partnership agreements. It is expected that the awards will be made on or about September 1, 2002 [30 days after application deadline].

Part III—Research Program Description

In conducting activities to achieve the purpose of this proposed research and development of risk management tools, the recipient will be responsible for the activities listed under paragraph A of this part. RMA will be responsible for the activities listed under paragraph B.

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A. Recipient Activities

The applicant will be required to perform the following activities:

1. Develop a clear, concise research and development project plan. The background, purpose, key project personnel, statement of work, deliverables and proposed funding must be thoroughly defined and described. The project plan must clearly address one or more of the project objectives detailed in Part I section C. Project Objectives. The project plan must demonstrate the non-financial benefits of the recipient and RMA and define the substantial involvement of the RMA.

2. Coordinate and manage the timely completion of the approved research and development activities.

3. Prepare a monthly summary report of project activities.

4. Prepare a final written research report if applicable, and present the report to RMA.

5. Prepare the proposed risk management tool and present the tool to RMA. If acceptable to RMA, the recipient may be required to make a presentation to the Board of Directors.

6. Prepare educational curriculum and material for producers to enable them to utilize the risk management tools developed under the partnership agreement and be included in the delivery of the education to required producers.

B. RMA Activities

1. Collaborate on the research plan;

2. RMA will advise the recipient on the materials available over the internet and through the RMA website (*http://www.rma.usda.gov*) and be involved in the gathering of any additional information that may be required;.

3. RMA will work with the recipient in all phases of the research and development of the risk management tool, and the educational efforts to enable producers to utilize the risk management tool; and

4. Collaborate with the recipient by developing all materials associated with the research and development program as it relates to publication or presentation of the results and the risk management tools to the public, any producer groups, RMA, and the Board of Directors.

C. Other Activities

In addition to the specific activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify specific ways in which RMA could or should have substantial involvement in that activity.

Part IV—Preparation of an Application

A. Program Application Materials

Applicants may download an application package from the Risk Management Agency website at: *http://www.rma.usda.gov*. Applicants may also request an application package from: David W. Fulk, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, phone: (816) 926–6343, fax: (816) 926–7343, e-mail: *MARED_Application@rm.fcic.usda.gov*.

B. Content of Applications

A complete and valid application package must include the following:

1. A completed and signed OMB Standard Form 424, "Application for Federal Assistance".

2. A completed and signed OMB Standard Form 424–A, "Budget Information—Non-construction Programs." Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of the total direct cost of the agreement. Separate funding should be proposed for research and development of the risk management tools.

3. A written narrative (limited to 10 single-sided pages) that describes the proposed project and its applicability to the program objectives in Part I. C. of this RFA. The submission should include both the research and development aspects of the risk management tools, including the ability to separate research and development aspects, if applicable, to permit separate funding. The submission should also provide reviewers with sufficient information to effectively evaluate the application under the criteria contained in Part V.

4. An appendix containing any attachments that may support information in the narrative (Optional)

5. A statement of the non-financial benefits of any partnership agreement to the recipient and RMA.

6. A completed and signed OMB standard Form LLL, "Disclosure of Lobbying Activities."

C. Submission of Applications

1. An original and two copies of the completed and signed application must be submitted in one package at the time of initial submission.

2. All applications must be submitted by the deadline. Applications that do not meet all of the requirements in this announcement are considered as incomplete applications. Late or incomplete applications will not be considered in this competition and will be returned to the applicant.

3. Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated above for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. The address must appear on the envelope or package containing the application with the note "Attention: RMA/RED Partnership Application".

Mailed applications will be considered meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated above for mailed applications. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants using the U.S. Postal Service should allow for sufficient time for delivery. RMA cannot accommodate transmissions of applications by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

D. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact David Fulk at (816) 926–6343.

Part V—Review Process

A. General

Each application will be evaluated using a three-part process. First, each application will be screened by RMA personnel to ensure that it meets the administrative requirements, set forth in this announcement.

Second, each application will be evaluated by RMA and/or USDA personnel to determine if the proposal meets the objectives established in Part I. C. of this RFA. Section 522(d) requires that partnership agreement priority be given for projects that reach producers of (a) NAP crops; (b) specialty crops, and (c) underserved agricultural commodities. Third, a review panel will consider the merits of all applications that pass the final two parts of the review process. The panel will be comprised of at least three representatives from USDA, other federal agencies, and others representing public and private organizations, as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the proposed research and development project. The panel will examine and rank all applications and award merit evaluation points based on the "Evaluation Criteria and Weights" contained in this RFA.

B. Evaluation Criteria and Weights

Applications will be evaluated according to the following criteria:

1. Research and Development Objectives—Maximum 30 points

The proposal must clearly define a research and development program designed to meet the objectives defined in Part I. C. of this RFA. The proposal that addresses the needs of producers of; (a) NAP crops; (b) specialty crops; or (c) underserved commodities will receive higher rankings.

The application ranking and scoring for this criterion are:

Numbering and Scoring

Highest—30 points
2nd Highest—24 points
3rd Highest—18 points

4th Highest—12 points
5th Highest—6 points

2. Indication of RMA Involvement and Non-financial Benefits—Maximum 10 points

The proposal clearly indicates areas of substantial involvement by RMA in both the research and development of the risk management tool, and the educational efforts to encourage producers to utilize the risk management tool and the proposal clearly indicates benefits derived from the partnership that extend beyond the financial benefits or funding of the proposal. Examples of non-financial benefits would be the benefits derived by an educational institution by providing research and development opportunities to students and enhancing the community involvement of the institution.

Proposals that provide a more balanced involvement of both the recipient and RMA will receive higher rankings.

The application ranking and scoring for this criterion are:

Numbering and Scoring

Highest—10 points
2nd Highest—8 points
3rd Highest—6 points
4th Highest—4 points
5th Highest—2 points

3. Research and Development Approach and Methodology—Maximum 40 points

The proposal must clearly demonstrate a sound methodology and an innovative approach to the development project. The proposal must clearly and concisely detail the research to be done, the risk management tool that will develop, the educational curriculum, materials, and delivery system to enable producers to utilize the risk management tool. Proposals that are to the most clear, concise, and complete will receive the higher rankings.

The application ranking and scoring for this criterion are:

Numbering and Scoring

Highest—40 points
2nd Highest—32 points
3rd Highest—24 points
4th Highest—16 points
5th Highest—8 points

4. Management—Maximum 20 points

The proposal clearly demonstrates the applicants" ability and resources to coordinate and manage the proposed research and development project. The proposal demonstrates the research approach is cost effective and maximizes the use of the funding. If the applicant has been the recipient of other Federal or other government grants, cooperative agreements, contracts or partnerships, the applicant must also detail that they have consistently complied with financial and program reporting and audit requirements. Applicants that will employ, or have access to, personnel who have experience in risk management and the development of risk management tools will receive higher rankings.

The application ranking and scoring for this criterion are:

Numbering and Scoring

Highest—20 points
2nd Highest—16 points
3rd Highest—12 points
4th Highest—8 points
5th Highest—4 points

C. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

Part VI—Additional Information

A. Access to Panel Review Information

Upon written request, a copy of rating forms, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

B. Notification of Partnership Agreement Awards

Following approval of the applications selected for funding, notice of project approval and authority to draw down funds will be made to the selected applicants in writing. Within the limit of funds available for such purpose, the awarding official of RMA shall enter into partnership agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The partnership agreement will provide the amount of Federal funds for use in the project period, the responsibilities and benefits of the recipient and RMA, the terms and conditions of the award, and the time period for the project.

The effective date of the partnership agreement shall be the date the agreement is executed by both parties. All funds provided to the applicant by FCIC must be expended solely for the purpose for which funds are obligated in accordance with the approved application and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied, as a result of any award made pursuant to this announcement.

C. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

D. Reporting Document

Applicants awarded the partnership agreements will be required to submit semi-annual progress and financial reports (SF–269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

E. Audit Requirements

Applicants awarded the partnership agreements are subject to audit.

F. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective recipients, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires recipients and any subcontractors (1) to certify that they have neither used nor will use any appropriated funds for payments of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients of their subcontractors will pay with profit or other nonappropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available from David Fulk at the above stated address and telephone number.

Signed in Washington, DC, on June 26, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–16502 Filed 6–28–02; 8:45 am]

BILLING CODE 3410–08–P

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2001]

Foreign-Trade Zone 146—Lawrence County, IL; Application for Subzone Expansion-Subzone 146A, North American Lighting, Inc., Facilities, Flora and Salem, IL, (Automotive Lighting Products); Technical Correction of Application

Notice is hereby given that the application of Board (the Board) by the Bi-State Authority, grantee of FTZ 146, requesting authority on behalf of North American Lighting, Inc. (NAL), operator of FTZ 146A, at the NAL automotive lighting products manufacturing facilities in Flora and Salem, Illinois, to expand FTZ Subzone 146A to include a new site in Paris, Illinois, and requesting authority to expand the scope of FTZ authority to include new manufacturing capacity under FTZ procedures (66 FR 56271, 11–7–01), has been corrected to include an expansion of the boundary of Site 1 at No. 20 Industrial Park in Flora, Illinois. The southern end of Site 1 would be enlarged to include the Columbus Container Illinois, Inc., warehouse parcel (19 acres). (The application initially appeared to list this parcel within the existing Site 1 boundary.) The application remains otherwise unchanged.

The comment period is reopened until July 22, 2002. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

A copy of the application is available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 2440, 55 West Monroe Street, Chicago, IL 60603.

Dated: June 25, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–16511 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–2002]

Foreign-Trade Zone 84, Houston, TX Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting authority to expand its zone to include a site at the Williams Terminals Holdings, L.P. (Williams) petroleum products storage terminal located near Galena Park, Harris County, Texas, within the Houston-Galveston Customs Port of Entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 25, 2002.

FTZ 84 was approved on July 15, 1983. The zone project currently consists of 14 sites in Harris County, Texas.

The applicant is now requesting authority to expand the general-purpose zone to include *Proposed Site 15* (196 acres)—at the Williams Terminals Holdings, L.P. (Williams) petroleum terminal located in Harris County, Texas, near Galena Park. The site includes all of the facilities of the Williams Galena Park Terminal, including the buildings, dock facilities, storage tanks, pipelines, manifolds, pumps, valves, filters, meters, etc. The terminal includes 138 storage tanks for intermediate and finished petroleum products with a total capacity of 9,077,800 barrels. The facilities (50 employees) will primarily be used to store and distribute intermediates and finished petroleum products for oil refineries and petrochemical plants. Some of the products are or will be sourced from abroad or from U.S. subzone refineries under zone procedures. Williams will be the operator of the site.

Zone procedures would exempt Williams' customers from Customs duties and federal excise taxes on foreign status jet fuel used for international flights and from Customs duties on petroleum product exports. On domestic sales, customers would be able to defer Customs duty payments on foreign status products until they leave the facility. The application indicates that the savings from zone procedures for its customers would help them improve their international competitiveness.

No specific manufacturing requests are being made at this time. Such requests would be made on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

The closing period for their receipt is August 30, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period until September 16, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 500 Dallas, Suite 1160, Houston, Texas 77002.

Dated: June 25, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–16510 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review: Not later than the last day of July 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings	
BELARUS: Solid Urea, A–822–801	7/1/01–6/30/02
BRAZIL: Industrial Nitrocellulose, A–351–804	7/1/01–6/30/02
BRAZIL: Silicon Metal, A–351–806	7/1/01–6/30/02
CHILE: Fresh Atlantic Salmon, A–337–803	7/1/01–6/30/02
ESTONIA: Solid Urea, A–447–801	7/1/01–6/30/02
FRANCE: Stainless Steel Sheet and Strip in Coils, A–427–814	7/1/01–6/30/02
GERMANY: Industrial Nitrocellulose, A–428–803	7/1/01–6/30/02
GERMANY: Stainless Steel Sheet and Strip in Coils, A–428–825	7/1/01–6/30/02
IRAN: In-Shell Pistachio Nuts, A–507–502	7/1/01–6/30/02
ITALY: Certain Pasta, A–475–818	7/1/01–6/30/02
ITALY: Stainless Steel Sheet and Strip in Coils, A–475–824	7/1/01–6/30/02
JAPAN: Cast Iron Pipe Fittings, A–588–605	7/1/01–6/30/02
JAPAN: Clad Steel Plate, A–588–838	7/1/01–6/30/02
JAPAN: Industrial Nitrocellulose, A–588–812	7/1/01–6/30/02
JAPAN: Stainless Steel Sheet and Strip in Coils, A–588–845	7/1/01–6/30/02
LITHUANIA:Solid Urea, A–451–801	7/1/01–6/30/02
MEXICO: Stainless Steel Sheet and Strip in Coils, A–201–822	7/1/01–6/30/02
REPUBLIC OF KOREA: Industrial Nitrocellulose, A–580–805	7/1/01–6/30/02
REPUBLIC OF KOREA: Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/01–6/30/02
ROMANIA: Solid Urea, A–485–601	7/1/01–6/30/02
RUSSIA: Ferrovanadium and Nitrided Vanadium, A–821–807	7/1/01–6/30/02
RUSSIA: Solid Urea, A–821–801	7/1/01–6/30/02
TAJIKISTAN: Solid Urea, A–842–801	7/1/01–6/30/02
TAIWAN: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/01–6/30/02
THAILAND: Butt-Weld Pipe Fittings, A–549–807	7/1/01–6/30/02
THAILAND: Canned Pineapple, A–549–813	7/1/01–6/30/02
THAILAND: Furfuryl Alcohol, A–549–812	7/1/01–6/30/02
THE PEOPLE'S REPUBLIC OF CHINA: Bulk Aspirin, A–570–853	7/1/01–6/30/02
THE PEOPLE'S REPUBLIC OF CHINA: Butt-Weld Pipe Fittings, A–570–814	7/1/01–6/30/02
THE PEOPLE'S REPUBLIC OF CHINA: Industrial Nitrocellulose, A–570–802	7/1/01–6/30/02
THE PEOPLE'S REPUBLIC OF CHINA: Persulfates, A–570–847	7/1/01–6/30/02
THE PEOPLE'S REPUBLIC OF CHINA: Sebacic Acid, A–570–825	7/1/01–6/30/02
THE UNITED KINGDOM: Industrial Nitrocellulose, A–412–803	7/1/01–6/30/02
THE UNITED KINGDOM: Stainless Steel Sheet and Strip in Coils, A–412–818	7/1/01–6/30/02
TURKMENISTAN: Solid Urea, A–843–801	7/1/01–6/30/02
TURKEY: Certain Pasta, A–489–805	7/1/01–6/30/02
UKRAINE: Solid Urea, A–823–801	7/1/01–6/30/02
UZBEKISTAN: Solid Urea, A–844–801	7/1/01–6/30/02
Countervailing Duty Proceedings	
BRAZIL: Certain Hot-Rolled Carbon Steel Flat Products, C–351–829	1/1/01–12/31/01
EUROPEAN ECONOMIC COMMUNITY: Sugar, C–408–046	1/1/01–12/31/01
ITALY: Certain Pasta, C–475–819	1/1/01–12/31/01
TURKEY: Certain Pasta, C–489–806	1/1/01–12/31/01
Suspension Agreements	
BRAZIL: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, C–351–829	1/1/01–12/31/01
RUSSIA: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products, A–821–809	1/1/01–12/31/01

In accordance with § 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/

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Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of July 2002. If the Department does not receive, by the last day of July 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 26, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–16512 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Notice of Extension of Time Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from Ukraine.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the administrative review on the suspension agreement on cut-to-length carbon steel plate from Ukraine.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

EXTENSION OF PRELIMINARY RESULTS:

The Department published its notice of initiation of this review in the **Federal Register** on December 19, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 65470. Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are August 2, 2002 for the preliminary results and November 30, 2002 for the final results. Because the Department must collect additional information regarding the suspension agreement and entry requirements of the subject merchandise into the United States, it is not practicable to complete this review within the normal statutory time limit. Therefore, the Department is extending the time limits for completion of the preliminary results until December 2, 2002 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: June 24, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–16506 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-824]

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We are amending our final determination (*see Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 35474 (May 20, 2002) (*Final Determination*)), to reflect the correction of a ministerial error made in the final determination. This correction is in accordance with section 735(e) of the Tariff Act of 1930, as amended (the Act) and section 351.224 of the Department of Commerce's (the Department's) regulations. The period of investigation (POI) covered by this amended final determination is April 1, 2000, through March 31, 2001. This notice also constitutes the antidumping duty order with respect to polyethylene terephthalate film, sheet, and strip (PET film) from Taiwan.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner at (202) 482-6320 or (202) 482-3814, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2001).

Scope of The Order

For purposes of this order, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Amended Final Determination

On May 20, 2002, in accordance with sections 735(d) and 777(i)(1) of the Act, the Department published its final determination in this proceeding. *See Final Determination*, 67 FR 35474. Pursuant to 19 CFR 351.224(c), on May 20, 2002, we received a timely filed submission from Nan Ya alleging that, in the final determination, the Department made two ministerial errors in calculating its margin. On May 28, 2002, we received rebuttal comments from the petitioners.[1]

Nan Ya claims that the figure the Department chose to apply as adverse facts available (AFA) is inconsistent with the Department's underlying rational for its decision to apply AFA. According to Nan Ya, the Department's methodology for deriving the AFA figure fails to calculate this figure on the basis of different products with different product thicknesses.

In rebuttal the petitioners contend that Nan Ya's allegation must be rejected because it is outside the scope of a ministerial error. The petitioners argue that Nan Ya challenges the Department's chosen "methodology for deriving the adverse facts available figure...." According to the petitioners, taking issue with the Department's substantial findings or methodological decisions are not valid claims of ministerial error.

We disagree with Nan Ya's allegation that our cost adjustment ratio is a ministerial error and, thus, have not recalculated our AFA cost adjustment ratio.

Further, Nan Ya claims that the Department has erroneously excluded the material adjustment offset field in the calculation of its revised total cost of manufacture (COM). In rebuttal, the petitioners agree that the Department's method of calculating conversion costs failed to properly account for Nan Ya's adjustment to material costs. The petitioners argue, however, that if the Department revises its calculation of COM, it should calculate the conversion cost by summing the labor, variable and fixed overhead costs incurred in the stretching and slitting stages.

In accordance with section 735(e) of the Act, we have determined that with respect to the calculation revising total COM, we agree with Nan Ya that a ministerial error was made in our final margin calculations. Thus, we are amending our final determination in order to correct this ministerial error and consequently to revise the antidumping duty rate for Nan Ya. The revised weighed-average dumping margins for Nan Ya and for All Others are listed below. We did not adopt petitioners' recommended solution because it would require a change to the Department's chosen methodology for calculating NanYa's COM and is outside the scope of a ministerial error.

For a detailed analysis of the ministerial errors that we addressed, and the Department's position on each, see the Memorandum to Bernard T. Carreau from Holly A. Kuga and Neal M. Halper, dated concurrently with this notice; regarding Ministerial Error Allegations on file in room B-099 of the Main Commerce building.

Antidumping Duty Order

On June 24, 2002, in accordance with section 735(d) of the Act, the International Trade Commission (the Commission) notified the Department of its final determination that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Taiwan, pursuant to section 735(b)(1)(A) of the Act. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of PET film from Taiwan. These antidumping duties will be assessed on all unliquidated entries of subject merchandise from Nan Ya entered, or withdrawn from warehouse, for consumption on or after May 20, 2002, the date of publication of the final determination in the **Federal Register**. For Shinkong Synthetic Fibers Corporation and all other companies, antidumping duties will be assessed on all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 21, 2001, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan*, 66 FR 65889 (December 21, 2001).

On or after the date of publication of this notice in the Federal Register, U.S. Customs must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins listed below. The "All Others" rate applies to all exporters of subject merchandise not specifically listed below.

Manufacturer/exporter	Margin (percent)	Revised Margin (percent)
Nan Ya Plastics Corporation, Ltd.	2.70	2.49
Shinkong Synthetic Fibers Corporation	2.05	2.05
All Others	2.56	2.40

This notice constitutes the antidumping duty order with respect to PET film from Taiwan. Interested parties may contact the Department's Central Records Unit, Room B-099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and

19 CFR 351.211.

Dated: June 25, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–16508 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

[1] The petitioners in this investigation are Dupont Teijin Films, Mitsubishi Polyester Film of America and Toray Plastics (America) Inc. (collectively the petitioners).

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SUMMARY: We are amending our final determination (see *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34899 (May 16, 2002) (*Final Determination*)) to reflect the correction of a ministerial error made in the final determination. This correction is in accordance with section 735(e) of the Tariff Act of 1930, as amended (the Act) and section 351.224 of the Department of Commerce's (the Department's) regulations. The period of investigation (POI) covered by this amended final determination is April 1, 2000, through March 31, 2001. This notice also constitutes the antidumping duty order with respect to polyethylene terephthalate film, sheet, and strip (PET film) from India.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Finn, Zev Primor, or Howard Smith at (202) 482–0065, (202) 482–4114, and (202) 482–5193, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2001).

Scope of The Order

For purposes of this order, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order is dispositive.

Amended Final Determination

On May 16, 2002, in accordance with sections 735(d) and 777(i)(1) of the Act, the Department published its final determination in this proceeding. See *Final Determination*, 67 FR 34899. Pursuant to 19 CFR 351.224(c), on May 15, 2002, we received a timely filed submission from the petitioners[1] alleging that, in the final determination, the Department made two ministerial errors in calculating the margin for one of the respondents, Ester Industries Limited (Ester). Specifically, the petitioners allege that (1) the Department should use the date of the final determination rather than the date of the preliminary determination as the payment date in calculating U.S. imputed credit expenses for transactions without payment dates, and (2) the Department failed to deduct from the export price (EP) certain bank charges associated with EP sales.

On May 20, 2002, we received rebuttal comments from Ester regarding the petitioners' allegation of ministerial errors. Ester contends that the alleged errors which the petitioners' claim to be ministerial fall outside the definition of a "ministerial error" and, as such, they should not be considered by the Department.

In accordance with section 735(e) of the Act, we have determined that the Department made a ministerial error only with respect to the payment dates used to calculate U.S. imputed credit expenses for transactions without payment dates. We have adjusted our final margin calculations to reflect this correction. This correction changed Ester's final antidumping duty margin from 24.11 percent to 24.14 percent. For a detailed analysis of the alleged ministerial errors, and the Department's position on each, see the Memorandum to Bernard T. Carreau from Holly A. Kuga, dated concurrently with this notice, regarding the subject *Ministerial Error Allegation* on file in room B–099 of the Main Commerce building.

Antidumping Duty Order

On June 24, 2002, in accordance with section 735(d) of the Act, the International Trade Commission (the Commission) notified the Department of its final determination that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from India, pursuant to section 735(b)(1)(A) of the Act. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise (after adjusting for the export subsidy rate in the companion countervailing duty order) for all relevant entries of polyethylene terephthalate film, sheet, and strip from India. These antidumping duties will be assessed on all unliquidated entries of subject merchandise from India (except for imports of subject merchandise produced and exported by Polyplex Corporation Limited) entered, or withdrawn from warehouse, for consumption on or after December 21, 2001, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Terephthalate Film, Sheet, and Strip From India*, (66 FR 65893).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins listed below, adjusted for the export subsidy rate in the companion countervailing duty order. The "All Others" rate applies to all exporters of subject merchandise not specifically listed below.

Manufacturer/exporter	Margin (%)
Ester Industries Limited ..	24.14
Polyplex Corporation Limited	*****[2]
All Others	24.14

[2] The Department calculated a weighted-average dumping margin of 10.34 percent for Polyplex before adjusting the margin for export subsidies for which the Department determined to impose countervailing duties. However, because the rate for Polyplex is zero after adjusting the dumping margin for the export subsidies in the companion countervailing duty order, Polyplex is excluded from the antidumping duty order.

This notice constitutes the antidumping duty order with respect to polyethylene terephthalate film, sheet, and strip from India. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

[1] The petitioners in this investigation are Dupont Teijin Films, Mitsubishi Polyester Film of America and Toray Plastics (America) Inc. (collectively the petitioners).

Dated: June 25, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–16513 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final results of changed circumstances review.

EFFECTIVE DATE: July 1, 2002.

SUMMARY: On January 25, 2002, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain tin mill products from Japan with respect to certain tin-free steel as described below. *See Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order*, 67 FR 3686 (January 25, 2002) ("*Initiation Notice*"). On March 8, 2002, the Department published the preliminary results of the changed circumstances review and preliminarily revoked this order, in part, with respect to future entries of tin-free steel described below, based on the fact that domestic parties have expressed no interest in continuation of the order with respect to these particular tin-free steel products. *See Certain Tin Mill Products from Japan: Preliminary Results of Changed Circumstances Review*, 67 FR 10667 (March 8, 2002) ("*Preliminary Results*"). In our *Initiation Notice*, and our *Preliminary Results*, we gave interested parties an opportunity to comment; however, we did not receive any comments from domestic parties opposing the partial revocation of the order. On May 7, 2002, Weirton Steel, the only petitioner producer in the underlying investigation, stated that they do not produce the merchandise in question. Weirton did not object to partial revocation. Therefore, in our final results of the changed circumstances review the Department hereby revokes this order with respect to all unliquidated entries for consumption of tin-free steel, as described below, effective August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1394.

The Applicable Statute and Regulations. Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin mill products from Japan. *See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan* 65 FR 52067 (August 28, 2000) (*TMP Order*). On December 3, 2001, Okaya (U.S.A.), Inc. ("Okaya"), a U.S. importer requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. Okaya also requested that the partial revocation apply retroactively for all unliquidated entries. Specifically, the U.S. importer requested that the Department revoke the order with respect to imports meeting the following specifications: Steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density ("Br") of 10 kg minimum and a coercive force ("Hc") of 3.8 Oe minimum. The U.S. importer indicated that, based on its consultations with domestic producers, the domestic producers lack interest in producing this specialized product.

On January 16, 2002, Weirton Steel, the only petitioner producer in the underlying investigation filed a letter stating that they did not object to the exclusion of this product from the order. Weirton Steel, a domestic producer of tin mill products, together with the Independent Steelworkers Union and the United Steelworkers of America, AFL-CIO, were the petitioners in the underlying sales at less-than-fair-value investigation (*see Notice of Final Determination of Sales at Less Than Fair Value; Certain Tin Mill Products From Japan*, 65 FR 39364 (June 26, 2000) (*Final LTFV Investigation*). On January 25, 2002, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on certain tin mill products from Japan with respect to certain tin-free steel. *See Initiation Notice*. On March 8, 2002, the Department published the preliminary results of the changed circumstances review. *See Preliminary Results*. In the *Initiation Notice* and *Preliminary Results*, we indicated that interested parties could submit comments for consideration in the Department's preliminary and final results. We did not receive any comments. On May 7, 2002, Weirton Steel, the only petitioner producer in the underlying investigation, stated that they do not produce the merchandise in question. Weirton did not oppose the partial revocation. *See* Memorandum to File From Michael Ferrier, May 7, 2002.

Scope of Review

The products covered by this antidumping order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single-or double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (#10%) or 0.251 mm (90 pound base box) (#10%) or 0.255 mm (#10%) with 770 mm (minimum width) (#1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (# 1/16 inch) and 35.4 inches (maximum

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length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m²; with a chrome oxide coating restricted to 6 to 25 mg/m² with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m² as type DOS, or 3.5 to 6.5 mg/m² as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium-or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m\2\, with a chromium oxide layer of 5–30 mg/m\2\ , with a tensile strength of 260–440 N/mm\2\ , with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m\2\ and chromium oxide of 10 mg/m\2\, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of # 1/8 inch, with a thickness tolerance of #0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch × 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch × 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch × 34.125 inch scroll cut dimension.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS"), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Final Results of Changed Circumstances Review

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and § 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if "{p}roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * pertains have expressed a lack of interest in the order, in whole or in part. * * *" In this context, the Department has interpreted "substantially all" production normally to mean at least 85 percent of domestic production of the like product (*see Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 14213, 14214 (March 24, 1999)).

No domestic producers of tin mill products have expressed opposition to the partial revocation of the tin mill products order following the *Initiation Notice* and the *Preliminary Results*. For these reasons the Department is partially revoking the order on tin mill products from Japan, effective August 1, 2001, with respect to all unliquidated entries for consumption of tin-free steel which meets the specifications detailed above in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216. We will instruct the U.S. Customs Service ("Customs") to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain tin mill products (*i.e.*, certain tin-free steel) meeting the specifications indicated above.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: June 14, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–16505 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges from India; Extension of Time Limit For Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the final results of the administrative review of the antidumping duty order on certain stainless steel flanges from India.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5222, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department published in the Federal Register the preliminary results of administrative review of the antidumping duty order on certain stainless steel flanges from India, covering the period February 1, 2000 through January 31, 2001 (*Certain Forged Stainless Steel Flanges From India; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 10358). The final results are currently due no later than July 5, 2002. The respondents are: Isibars, Ltd., Panchmahal Steel Ltd., Patheja Forgings & Auto Parts, Ltd., and Viraj Forgings, Ltd.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act) requires the Department of Commerce (the Department) to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Tariff Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Extension of Final Results Deadline

The Department has determined that because this review involves complex issues, including affiliation allegations in regards to a U.S. customer, disputed duty drawback adjustments, and the correctness of major input pricing on raw materials purchased from affiliated suppliers, it is not practicable to complete the final results of review within the original 120 day time limit mandated by section 751(a)(3)(A) of the Tariff Act and section 351.213(h)(1) of the Department's regulations. Therefore, the Department is extending the time limit for completion of the final results until September 3, 2002, in accordance with 19 CFR 351.213(h)(2).

Dated: June 24, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary For Import Administration, Group III.

[FR Doc. 02–16507 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Howard Smith at

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(202) 482-5253 or (202) 482-5193, respectively, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended, (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Scope of Order

For purposes of this order, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order is dispositive.

Countervailing Duty Order

In accordance with section 705(d) of the Act, on May 16, 2002, the Department published in the **Federal Register** its final affirmative determination in the countervailing duty investigation of PET film from India (67 FR 34905). On June 24, 2002, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of PET film from India.

Therefore, countervailing duties will be assessed on all unliquidated entries of PET film from India entered, or withdrawn from warehouse, for consumption on or after October 22, 2001, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, but before February 19, 2002, the date the Department instructed the U.S. Customs Service to discontinue the suspension of liquidation in accordance with section 703(d) of the Act, and on all PET film from India entered or withdrawn from warehouse for consumption on or after the date of publication of this countervailing duty order in the **Federal Register**. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary countervailing duty determination may not remain in effect for longer than four months. Thus, entries of PET film made on or after February 19, 2002, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective February 19, 2002, of suspension of liquidation, pursuant to section 703(d) of the Act.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstate the suspension of liquidation effective the date of publication of this notice in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The "All Others" rate applies to all producers and exporters of PET film from India not specifically listed below. The cash deposit rates are as follows: BOXHD5

Producer/Exporter	Cash Deposit Rate
Ester Industries Ltd.	18.43% *ad valorem*
Garware Polyester Ltd. ...	24.48% *ad valorem*
Polyplex Corporation Ltd.	18.66% *ad valorem*
All Others	20.40% *ad valorem*

This notice constitutes the countervailing duty order with respect to PET film from India, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is published in accordance with section 706(a) of the Act and 19 CFR 351.211.

Dated: June 25, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–16509 Filed 6–28–02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052802E]

Small Takes of Marine Mammals Incidental to Specified Activities; Missile Launch Operations From San Nicolas Island, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy, Naval Air Weapons Station, China Lake, CA (NAWS) for an incidental harassment authorization (IHA) to take small numbers of marine mammals by harassment incidental to missile launch operations by Naval Air Warfare Center Weapons Division, Point Mugu (NAWCWD) from the western end of San Nicolas Island, CA (SNI). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize NAWS to incidentally take, by harassment, small numbers of pinnipeds on SNI during 15 launches of Vandal (or similar) vehicles and 5 launches of smaller subsonic missiles and targets for 1 year commencing in August 2002.

DATES: Comments and information must be received no later than July 31, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the NAWS application is available upon request from the same address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, (301) 713–2322, ext. 128 or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow,

upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> * * * any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 9, 2002, NMFS received an application from NAWS requesting an authorization for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by NAWCWD on SNI, one of the Channel Islands in the Southern California Bight. These operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. In 2001, NAWCWD conducted 9 launches of Vandal and similar sized targets and 3 launches of subsonic targets from SNI. NAWS' request for an authorization to incidentally harass small numbers of marine mammals on SNI in 2002 and 2003 anticipates 15 launches of Vandal (or similar sized) vehicles from the Alpha Launch Complex on SNI and 5 launches of smaller subsonic missiles and targets for one year from either the Alpha Launch Complex or Building 807 commencing in August 2002. A detailed description of the operations is contained in the application (NAWS, 2002) which is available upon request (see **ADDRESSES**).

Measurement of Airborne Sound Levels

The types of sounds discussed in NAWS' IHA application are airborne and impulsive. For this reason, the applicant has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa^2 -second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved than this (Buck, 1995) and beyond the scope of this document. Also, airborne sounds are often expressed as broadband A-weighted sound levels (dBA). A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. While it is unknown whether the pinniped ear responds similarly to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, A-weighting is better than unweighted pressure levels because the pinniped's highest hearing sensitivity is at higher frequencies than that of humans. As a result, whenever possible, NMFS provides both A-weighted and unweighted sound pressure levels; where not specified for in-air sounds, A-weighting is implied (ANSI, 1994). In this document, all sound levels have been provided with A-weighting.

Description of the Specified Activity

Target missile launches from SNI are used to support test and training activities associated with operations on the Sea Range off Point Mugu, CA. SNI is under the land management responsibility of NAWS; however, planned missile and other target launches are conducted by NAWCWD. In general, two types of launch vehicles are used, the Vandal and the smaller subsonic missiles and targets. Other vehicles used would be similar in size and weight or slightly smaller and would have characteristics generally similar to the Vandal.

Vandal Target Missiles

The Vandal target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 meters (m) (25.2 feet (ft)) in length with a mass at launch of 3,674 kilograms (kg) (8,100 lbs) including the solid propellant booster. There are variants of the Vandal; they all have the same dimensions, but differ in their operational range. The Vandals are remotely controlled, non-recoverable missiles. These and most other targets are launched from a land-based launch site (hereafter referred to as Alpha Launch Complex) on the west-central part of SNI. The Alpha Launch Complex is 192 m (630 ft) above sea level and is approximately 2 kilometers (km)(1.25 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from Alpha Launch Complex vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft).

Vandal launches produce the strongest noise source originating from aircraft or missiles in flight over SNI beaches. Sound measurements were collected during two Vandal launches in 1997 and 1999 and are reported in Burgess and Greene (1998) and Greene (1999). Greene (1999) reported that received A-weighted SPL were found to range from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa^2 -sec) at 945 m (3,100 ft) to 136 dB (re 20 µPa) (SEL of 131 dB re 20 micro-Pa2 -sec) at 370 m (1,215 ft). The most intense sound exposure occurred during the first 0.3 to 1.9 seconds after launch.

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Subsonic Targets and Other Missiles

The subsonic targets and other missiles are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM–34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM–74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Other types of small missiles that may be launched include the Exocet, Tomahawk, and Rolling Airframe Missile (RAM). All of these smaller targets are launched from either the Alpha Launch Complex or from Building 807, a second launch site on the west end of SNI. Building 807 is approximately 10 m (30 ft) above sea level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. For these smaller missiles, launch trajectories from Building 807 range from 6 to 45 degrees and cross over the nearest beach at altitudes from 9 to 183 m (30 to 600 ft).

Sound measurements were collected from the launch of a BQM–34S at Naval Air Station (NAS) Point Mugu in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa^2 -sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa2 -sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999).

General Launch Operations

Aircraft and helicopter flights between NAS, Point Mugu on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites 2 hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal launches, and various environmental protection restrictions exist near the island's beaches during other times of the year.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Marine Mammals

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and others in the region can be found in Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Barlow *et al.* (1993), Lowry *et al.*(1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). Please refer to those documents and the application for further information on these species.

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

Sounds generated by the launches of Vandal target missiles and smaller subsonic targets and missiles (BQM–34 or BQM–74 type) as they depart sites on SNI towards operational areas in the Point Mugu Sea Range have the potential to take marine mammals by harassment. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. Extremely rapid departure of the Vandal and smaller targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of marine mammal harassment. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites 2 hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on studies of other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart *et al.*, 1993), anticipated impacts can be predicted. In general, other studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM–34 targets from NAS Point Mugu have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches. Given the variability in pinniped response to acoustic disturbance, the Navy conservatively assumes that biologically significant disturbance (i.e. takes by harassment) will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa^2 -sec) or higher.

From Lawson *et al.*(1998), the Navy determined a conservative estimate of the SEL at which temporary threshold shift (TTS) (Level B harassment) may be elicited in harbor seals and California sea lions (SEL of 145 dB re 20 micro-Pa2 -sec) and northern elephant seals (SEL of 165 dB re 20 micro-Pa^2 -sec). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by missiles launched from SNI (described later in this document), suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100–dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria out to a distance of 4,263 m (13,986 ft) from the Alpha Launch Complex. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100-dBA contour for Vandal launches. For BQM–34 launches from Alpha Launch Complex, the Navy assumes that the 100 dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA, unpublished data). Along the launch track and ahead of the BQM–34, the 100 dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM–74 and Exocet missiles, the Navy predicts that the 100 dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100 dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Since preliminary observations of the responses of pinnipeds to Vandal launches at SNI have not shown injury, mortality, or extended biological disturbance, the Navy anticipates that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Given that this activity will happen infrequently, and will produce only brief, rapid-onset sounds, it is unlikely that pinnipeds hauled out on beaches at the western end of SNI will exhibit much, if any, habituation to target missile launch activities. In addition, the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. Therefore, the Navy assumes that these occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

Numbers of Marine Mammals Expected to Be Taken by Harassment

NAWS estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species by MMPA Stock Designation	Minimum Abundance Estimate of Stock[1]	Harassment Takes in 2001
Northern Elephant Seal (California Stock)	51,625	<2,390
Harbor Seal (California Stock)	27,962	<457
California Sea Lion (U.S. Stock)	109,854	10,086
Northern Fur Seal (San Miguel Stock)	2,336	3

1. From 1999–2000 NMFS Marine Mammal Stock Assessment Reports.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on San Nicolas Island

During the period of proposed activity, harbor seals, California sea lions, and northern elephant seals will use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Beach) and rocky cobble (e.g., Vizcaino Beach). The pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will not persist in the water near the island for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

Proposed Mitigation

To avoid additional harassment to the pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within two hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will not launch target missiles at low elevation (under 305 m, 1,000 ft) on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; and, (4) the Navy will limit launch activities during the night.

Proposed Monitoring

As part of its application, NAWS provided a proposed monitoring plan, similar to that adopted for the 2001–2002 IHA (see 66 FR 41834, August 9,

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2001), for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in their application (NAWS, 2002).

The Navy proposes to conduct the following monitoring during 2002-2003:

Land-Based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring would occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring would be via digital video cameras.

During the day of each missile launch, the observer would place three digital video cameras overlooking chosen haul out sites. Each camera would be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates et al. (LGL, 2002).

Acoustical Measurements

During each launch, the Navy would obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data would be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 hours. Insofar as possible, acoustic recording locations would correspond with the sites where video monitoring is taking place. The collection of acoustic data would provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be transferred onto CDs and sent to the acoustical contractor for sound analysis.

For further details regarding the installation and calibration of the acoustic instruments and analysis methods refer to LGL (2002).

Reporting Requirements

If the IHA is granted, NAWS will provide an initial report on activities to NMFS after the first 90 days of the authorization period. This report will summarize the timing and nature of the launch operation(s), summarize pinniped behavioral obsérvations, and estimate the amount and nature of all takes by harassment or in other ways. In the event that any cases of pinniped mortality are determined by trained biologists to result from launch activities, this information will be reported to NMFS immediately.

A draft final technical report will be submitted to NMFS 120 days prior to the expiration of the IHA. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first 6 months of the IHA period, plus preliminary information for launches during months 7 and 8. At the time of the 120–day report, the Navy and NMFS will discuss the scope of additional launch monitoring work on SNI during the 2002–2003 IHA period.

The revised final technical report, including all monitoring results during the authorization, will be due 90 days after the end of the 1–year IHA period.

Endangered Species Act (ESA)

NAWS has not requested the take of any listed species nor is any listed species under NMFS jurisdiction expected to be impacted by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required at this time.

National Environmental Policy Act (NEPA)

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act , May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); the content and analysis of NAWS's request for an IHA; and the NAWCWD's March, 2002 Final Environmental Impact Statement to assess the effects of its ongoing and proposed operations in the Sea Range of Point Mugu, that the proposed issuance of this IHA to NAWS by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an IHA for these activities meets the definition of a "Categorical Exclusion" as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting missile launch operations from SNI in the Channel Islands off southern California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species as a result of launch activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of launch operations, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

Proposed Authorization

NMFS proposes to issue an IHA for 15 launches of Vandal (or similar) missiles and 5 launches of smaller subsonic targets from San Nicolas Island, CA westward towards the Pt Mugu Sea Range for a 1–year period, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of northern elephant seals, harbor seals, California sea lions, and northern fur seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: June 21, 2002.

Donna Wieting,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 02–16527 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062602D]

North Pacific Fishery Management Council; Notice of Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Committee meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) has scheduled two committee meetings.

DATES: The meeting dates are:
July 15, 2002, Anchorage, AK
July 18–29, 2002, Seattle, WA

ADDRESSES: The meeting locations are:
1. Anchorage—RuralCap Board Room, 731 Gambell Street, Anchorage AK.
2. Seattle—Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff: 907–271–2809.

SUPPLEMENTARY INFORMATION: *July 15, 2002*—The Halibut Subsistence Committee will meet in Anchorage, Alaska. The Committee will meet between 9 a.m.–4:30 p.m. at the RuralCap Board Room, 731 Gambell Street, Anchorage AK, to develop criteria for harvest limitations to be placed on community harvest permits to federally recognized tribes and other local governments of eligible communities.

July 18–29, 2002—The Council's Observer Advisory Committee will meet at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, to discuss long-term structural changes to the North Pacific Council's observer program. For specific starting times and meeting room, please see the Council's website: *www.fakr.noaa.gov/npfmc*.

Although other issues not contained in this notice may come before the Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: June 26, 2002.

Theophilus E. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16529 Filed 6–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 22, 2002, 8 a.m. to 5 p.m., and Tuesday, July 23, 2002, 8 a.m. to 12 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Monday, July 22, 2002
- Welcome and Introduction
- Status of FY 2003 Budget
- Basic Energy Sciences Highlights
- Summary of BESAC-Sponsored Workshop on Theory and Modeling in Nanoscience
- Summary of BESAC-Sponsored Catalysis Planning Workshop
- Summary of the BES Workshop on Basic Research Needs for Countering Terrorism and Related SC-wide Activites
- Discussion of October 2002 BESAC-Sponsored Workshop on the Basic Research Needs to Assure a Secure Energy Future
- Linac Coherent Light Source Update
- Spallation Neutron Source Update
- High Flux Isotope Reactor Update

Tuesday, July 23, 2002
Update on the Nanoscale Science Research Centers
Summary of Transmission Electron Achromatic Microscope Workshop

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on June 25, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee, Management Officer.

[FR Doc. 02–16446 Filed 6–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that

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public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 22, 2002, 3 p.m.–9 p.m.; Tuesday, July 23, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Adam's Mark Hotel, 1200 Hampton Street, Columbia, SC 29201.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803)725–5374.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, July 22, 2002

3:00 p.m.—Long-Term Stewardship Committee.
4:30 p.m.—Executive Committee.
6:30 p.m.—Public Comment Session.
7:00 p.m.—Committee Meetings.
7:00–9:00 p.m.—Issues-Based Committee Meetings.
9:00 p.m.—Adjourn.

Tuesday, July 23, 2002

8:30–9:15 a.m.—Approval of Minutes; Agency Updates; Public Comment Session; Facilitator Update.
9:15–10:00 a.m.—Environmental Restoration Committee.
10:00–11:45 a.m.—Waste Management Committee Report.
11:45–12:00 a.m.—Public Comments.
12:00 noon—Lunch Break.
1:00–2:00 p.m.—Nuclear Materials Committee Report.
2:00–3:00 p.m.—Strategic & Long-Term Issue Committee.
3:00–3:30 p.m.—Long-Term Stewardship Committee.
3:30–3:45 p.m.—Administrative Committee Report.
3:45–4:00 p.m.—Public Comments.
4:00 p.m.—Adjourn.

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, July 22, 2002.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Fleming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC, 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on June 25, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–16447 Filed 6–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC02–600–000, FERC–600]

Commission Collection Activities, Proposed Collection; Comment Request; Extension

June 24, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by August 27, 2002.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC02–600–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–600 "Rules of Practice and Procedures: Complaint Procedures" (OMB No. 1902–0180) is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 791a–825r; the Natural Gas Act (NGA), 15 U.S.C. 717–717w; the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432; the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601–2645; the Interstate Commerce Act, 49 U.S.C. App. § 1 *et seq.* and the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356.

With respect to the natural gas industry, Section 14(a) of the NGA provides: The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

For public utilities, Section 205(e) of the FPA provides: Whenever any such new schedule is filed the Commission shall have the authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon hearing concerning the lawfulness of such rate, charge, classification, or service; and

pending such hearing and the decision of the Commission * * *

Concerning hydroelectric projects, Section 19 of the FPA provides: * * * it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control * * *

For qualifying facilities, Section 210(h)(2)(B) of PURPA provides: Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph.

Likewise for oil pipelines, Part 1 of the Interstate Commerce Act (ICA), Sections 1, 6 and 15 (recodified by P.L. 95–473 and found as an appendix to Title 49 U.S.C.) the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If a proposed oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA provided that: Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to the Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission * * *

In Order No. 602, 64 FR 17087 (April 8, 1999), the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve the latter, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR 385.206) to require that a complaint satisfy certain informational requirements, that answers be filed in a shorter, 20-day time frame, and that parties may employ various types of alternative dispute resolution procedures to resolve complaints.

On August 31, 1999, the Office of Management and Budget (OMB) approved the reporting requirements in Order No. 602 for a term of three years, the maximum period permissible under the Paperwork Reduction Act before an information collection must be resubmitted for approval. As noted above, this notice seeks public comments in order to recertify the FERC–600 reporting requirements in Order No. 602. The data in complaints filed by interested/affected parties regarding oil and natural gas pipeline operations, electric and hydropower facilities in their applications for rate changes, service, and/or licensing are used by the Commission in establishing a basis for various investigations and to make an initial determination regarding the merits of the complaint. Investigations may range from whether there is undue discrimination in rates or service to questions regarding market power of regulated entities to environmental concerns. In order to make a better determination, it is important to know the specifics of any oil, gas, electric, hydropower complaint "up front" in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data will help the Commission and interested parties to monitor the market for exercises of market power or undue discrimination. The information filed with the Commission is voluntary but submitted with prescribed information. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 385, Sections 385.206 and 385.213.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
76*	1	14	1,064

*Represents three year averages (1999–2001).

Estimated cost burden to respondents: 1,064 hours/2,080 hours per year × $117,041 per year = $59,870. The cost per respondent is equal to $787.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the

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burden of the collection of information on those who are to respond.

Magalie R. Salas,

Secretary.

[FR Doc. 02–16486 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL02–65–007 and RT01–88–021]

Ameren Services Company, Firstenergy Corp., Northern Indiana Public Service Company, National Grid Usa, Midwest Independent System Operator, Inc.; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, Ameren Services Company (Ameren), acting as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a/ AmerenCIPS, FirstEnergy Corp. (FirstEnergy), on behalf of its subsidiary American Transmission Systems, Inc., Northern Indiana Public Service Company (NIPSCO), and the Midwest Independent System Operator, Inc. (MISO) tendered for filing a compliance filing in the above-referenced dockets. National Grid USA (National Grid) joined the filing to support it in full.

The compliance filing contains a letter of intent and a term sheet between Ameren, FirstEnergy, NIPSCO, and National Grid setting forth the terms to govern the negotiation of agreements providing for the formation of an independent transmission company (ITC), to be called GridAmerica LLC, under the provisions of Appendix I MISO's Open Access Transmission Tariff. GridAmerica will be formed as an LLC with National Grid as the managing member. Ameren, FirstEnergy, and NIPSCO will turn over functional control of their transmission facilities to GridAmerica pursuant to Operation Agreements.

The compliance filing also contains a letter of intent and a term sheet between Ameren, FirstEnergy, NIPSCO, National Grid, and MISO setting forth the terms to govern negotiation of the Appendix I service agreement pursuant to which GridAmerica LLC will join the MISO. The Appendix I service agreement will delineate those functions to be performed by GridAmerica and those to be performed by MISO. This filing was made to comply in full with the terms of the Commission's April 25, 2002 order in this proceeding and with Order No. 2000.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16484 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1633–000]

Auburndale Peaker Energy Center, L.L.C.; Notice of Issuance of Order

June 25, 2002.

Auburndale Peaker Energy Center, L.L.C. (Auburndale) filed an application requesting authority to engage in the sale of wholesale energy, capacity replacement reserves and ancillary services at market-based rates. Auburndale also requested waiver of various Commission regulations. In particular, Auburndale requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Auburndale.

On June 19, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Auburndale should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Auburndale is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Auburndale, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Auburndale's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 19, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16485 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX96–2–004]

City of College Station, TX; Notice of Filing

June 25, 2002.

Take notice that on June 14, 2002, the Texas Municipal Power Agency (TMPA) tendered for filing with the with the Federal Energy Regulatory Commission (Commission), its compliance filing required by the Commission's February 16, 1999, Final Order Establishing Rates, Terms and Conditions of Transmission Services in City of College Station, Texas, 86 with the FERC ¶ 61,165 (1999)

TMPA states that it will provide transmission service to the City of College Station (College Station) under the terms and conditions of TMPA's currently effective Public Utility Commission of Texas (Texas Commission) tariff for wholesale transmission services.

TMPA also states that, since January 1, 2000, it has been providing transmission service to College Station for the postage stamp rates contained in its currently effective Texas Commission tariff. TMPA states that it will continue to charge College Station those rates, subject to an adjustment for regulatory expenses associated with the proceeding in Docket No. TX96–2–000. TMPA attaches a pro forma tariff sheet, which provides College Station the option of reimbursing TMPA for those regulatory expenses through either a lump sum payment payable 30 days after the tariff sheet's effectiveness, or through thirty-six (36) equal monthly payments to be made over the three-year period following the effectiveness of the tariff sheet.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16496 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX96–2–006]

City of College Station, TX; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, the Texas Municipal Power Agency (TMPA) and the City of Bryan Texas (Bryan) tendered for filing a Joint Application to Recover Regulatory Expenses from the City of College Station, Texas (College Station).

TMPA and Bryan (hereinafter the Applicants) state that they incurred regulatory expenses as a direct result of College Station's application dated December 15, 1995, for an order under Section 211 of the Federal Power Act (FPA) directing transmission services. The Applicants state that they are submitting this filing pursuant to Section 205 of the FPA and in accordance with the Commission's Final Order Establishing Rates, Terms and Conditions for Transmission Services, issued February 16,1999, in City of College Station, Texas, 86 FERC ¶ 61,165 (1999). The Applicants state that the Final Order makes clear that TMPA and Bryan can seek to recover from College Station reasonable regulatory expenses, including interest, associated with this proceeding.

TMPA and Bryan each attach a tariff sheet, which provides College Station the option of reimbursing the Applicants for the regulatory expenses through either a lump sum payment payable 30 days after the tariff sheets' effectiveness, or through thirty-six (36) equal monthly payments to be made over the three-year period following the effectiveness of the tariff sheets.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16497 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–318–001 and RP01–6–002]

Enbridge Pipelines (KPC); Notice of Compliance Filing

June 25, 2002.

Take notice that on June 20, 2002, Enbridge Pipelines (KPC), formerly Kansas Pipeline Company, (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing. An August 1, 2002 effective date is proposed for the revised tariff sheets.

KPC states the filing is being made in compliance with the Commission's May 21, 2002, order on KPC's Order Nos. 587–G, 587L, 637 and 637–A.

KPC states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

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Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16489 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–366–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 25, 2002.

Take notice that on June 19, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective July 1, 2002:

Fifty-Third Revised Sheet No. 8A
Forty-Fifth Revised Sheet No. 8A.01
Forty-Fifth Revised Sheet No. 8A.02
Third Revised Sheet No. 8A.04
Forty-Eighth Revised Sheet No. 8B
Forty-First Revised Sheet No. 8B.01

FGT states that in Docket No. RP02–163–000 filed on February 25, 2002, it filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.06 % to become effective for the six-month Summer Period beginning April 1, 2002. FGT states in the instant filing, it is filing a flex adjustment of 0.25% to be effective July 1, 2002, which, when combined with the Base FRCP of 3.06% results in an Effective Fuel Reimbursement Charge Percentage of 3.31%. This filing is necessary because FGT is currently experiencing higher fuel usage than is being recovered in the currently effective FRCP of 3.06%. Increasing the Effective FRCP will reduce FGT's underrecovery of fuel and reduce the Unit Fuel Surcharge in the next Summer Period.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16495 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–248–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

June 25, 2002.

Take notice that on June 20, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Third Revised Sheet No. 96, Third Revised Sheet No. 97, Substitute Third Revised Sheet No. 98, Second Revised Sheet No. 98–A, Substitute First Revised Sheet No. 205, and Substitute Original Sheet Nos. 206–212, to be effective June 1, 2002.

Kern River states that the purpose of this filing is to comply with the Order Accepting Tariff Sheets Subject to Conditions, issued by the Commission on May 31, 2002, by submitting revised tariff sheets that modify certain of Kern River's proposed procedures for posting, bidding on, and awarding available capacity.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16493 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–392–001 and RP00–576–001]

Nautilus Pipeline Company, L.L.C.; Notice of Compliance Filing

June 25, 2002.

Take notice that on June 20, 2002 Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Attachment A to the filing.

Nautilus states that the purpose of this filing is to comply with the Commission's May 21, 2002 order on Nautilus' Order No. 637 pro forma compliance filing. Pursuant to Ordering Paragraph (B) of that order, Nautilus is not proposing an effective date for the revised tariff sheets at this time.

Nautilus states that a copy of this filing has been served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16490 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–490–001]

Transwestern Pipeline Company; Notice of Compliance Filing

June 25, 2002.

Take notice that on June 21, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, pro forma Second Revised Volume No. 1, the following pro forma tariff sheets:

Tenth Revised Sheet No. 20
Twenty-Third Revised Sheet No. 37
Eleventh Revised Sheet No. 38
Sixth Revised Sheet Nos. 39–40
Seventh Revised Sheet No. 51B
Second Revised Sheet No. 81D
Fourth Revised Sheet No. 84
Fifth Revised Sheet No. 92C
Third Revised Sheet No. 92E
First Revised Sheet No. 98
Ninth Revised Sheet No. 147
Fourth Revised Sheet No. 149
First Revised Sheet No. 154
Original Sheet No. 157
Original Sheet No. 159
Original Sheet No. 161
Fourth Revised Sheet No. 27
Third Revised Sheet No. 37A
Original Sheet No. 38A
Nineteenth Revised Sheet No. 48
Eighth Revised Sheet No. 80B
Fourth Revised Sheet No. 83
Second Revised Sheet No. 85
Fifth Revised Sheet No. 92D
Fourth Revised Sheet No. 92F
First Revised Sheet No. 99
Third Revised Sheet No. 148
First Revised Sheet No. 151
First Revised Sheet No. 155
Original Sheet No. 158
Original Sheet No. 160
Original Sheet No. 162

Transwestern states that on August 15, 2000, it submitted pro forma tariff sheets in compliance with the Commission's Order Nos. 637, 637–A, and 637–B issued in Docket Nos. RM98–10 and RM98–12 (Commission Orders). Transwestern states that it has recently held discussions with its customers on how to resolve the remaining issues in this proceeding. The enclosed tariff sheets represent Transwestern's proposal to address issues raised in protests in this proceeding and to incorporate suggestions made by customers. Transwestern states that in several instances, these tariff proposals exceed the requirements set forth in the Commission Orders, but represent matters of importance to Transwestern and its customers that are intertwined with the resolution of issues in this proceeding.

Transwestern states that its discussions with its customers regarding the August 15, 2000 compliance filing in this docket addressed the expressed concerns of those customers filing protests to specific aspects of Transwestern's filing. In addition, Transwestern states that certain provisions contained in the August 15, 2002 filing have been overtaken by subsequent events and are no longer required to comply with Order No. 637, *et seq*, (*e.g.*, netting and trading provisions which were filed by Transwestern and accepted by the Commission in compliance with Order No. 587–L).

In the instant filing, Transwestern is withdrawing all of the pro forma tariff sheets filed on August 15, 2000 and is filing new pro forma tariff sheets which address the issues raised by those parties protesting Transwestern's August 15 filing and update Transwestern's filing to recognize the subsequent events which have occurred.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–334–002]

Northern Natural Gas Company; Notice of Compliance Filing

June 25, 2002.

Take notice that on June 20, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheet in compliance with the Commission's Order issued on May 31, 2002, in Docket No. RP02–334–000:

Substitute Third Revised Sheet No. 54A

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section

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www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16491 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–545–001 and RP01–55–003]

WestGas InterState, Inc.; Notice of Compliance Filing

June 25, 2002.

Take notice that on June 20, 2002, WestGas Interstate, Inc. (WGI) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 45A, Third Revised Sheet No. 47, First Revised Sheet No. 47B, Third Revised Sheet No. 69, Second Revised Sheet No. 69A, Original Sheet No. 69B, First Revised Sheet No. 87, First Revised Sheet No. 88, and Second Revised Sheet No. 89, to become effective September 1, 2002.

WGI states that the purpose of this filing is to comply with the Commission's Order on Compliance with Order Nos. 637, 587G, and 587L, issued in Docket Nos. RP00–545–000, RP01–55–001, and RP01–55–002 on May 21, 2002.

WGI further states that copies of this filing have been served on WGI's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16492 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–381–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed M–1 Expansion Project and Request for Comments on Environmental Issues

June 25, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the M–1 Expansion Project involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Monroe, Hinds, Copiah, Amite, Franklin, and Madison Counties, Mississippi, Colbert County, Alabama, and Giles and Wilson Counties, Tennessee.[1] These facilities would consist of about 33 miles of 36-inch diameter pipeline and 28,000 horsepower (hp) of additional compression. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Texas Eastern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

[1] Texas Eastern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

Texas Eastern wants to expand the capacity of its facilities in Mississippi, Alabama, and Tennessee to transport an additional 197,147 dekatherm units per day of natural gas to two distribution companies and one electric generation plant. Texas Eastern seeks authority to construct and operate facilities in three Phases, as described below:

Phase I Facilities (November 1,2003)

1. Construct part of the Union Church Discharge Loop, about 8.0 miles of 36–inch diameter pipeline and appurtenant facilities in Hinds and Copiah Counties, Mississippi.

2. Modify the Egypt Compressor Station in Monroe County, Mississippi by installing a mechanical variable-speed drive (VSD) in place of the existing conventional gearbox on each of the two existing 15,000 hp electric motor-driven compressor units. The uprate would result in a 20,000 hp rating for each compressor unit.

3. Modify the Barton Compressor Station in Colbert County, Alabama by installing a mechanical VSD in place of the existing conventional gearbox on the existing 15,000 hp electric motor driven compressor unit. The uprate would result in a 20,000 hp rating for the compressor unit.

4. Modify the Gladeville Compressor Station in Wilson County, Tennessee by uprating the existing 15,000 hp motor to 20,000 hp. Various appurtant facilities would be replaced for more efficient and quieter options.

5. Provide service to City of Cartersville and winter service to Carolina Power & Light Company.

Phase II Facilities (April 1, 2004)

6. Construct remaining Union Church Discharge Loop, about 6.7 miles of 36-inch diameter pipeline and appurtenant facilities in Copiah County, Mississippi.

7. Construct the St. Francisville Discharge Loop, which consists of 4.5 miles of 36-inch diameter pipeline and appurtenant facilities in Amite and Franklin Counties, Mississippi.

8. Uprate six existing 2,500 hp electric motor driven compressor units to 3,000 hp at the Barton Compressor Station. Various appurtenant facilities would be replaced for more efficient and quieter options.

9. Modify the Mount Pleasant Compressor Station in Giles County, Tennessee by installing a mechanical VSD in place of the existing conventional gearbox on the existing 15,000 hp electric motor driven compressor unit. The uprate would result in a 20,000 hp rating for the compressor unit.

10. Provide summer service to Carolina Power & Light Company.

Phase III Facilities (November 1, 2004)

11. Construct the Clinton Discharge Loop, which consists of 12.8 miles of 36-inch-wide diameter pipeline and appurtenant facilities in Madison County, Mississippi.

12. Provide service to Choctaw Gas Generation, LLC

Choctaw Gas Generation, LLC (Choctaw) has been identified as a nonjurisdictional facility associated with the M–1 Expansion Project. The Choctaw facility would be comprised of one steam-driven, and two gas-fired electric generating turbines.

The general location of the project facilities is shown in Appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 3.

Land Requirements for Construction

Construction of the proposed facilities would require about 536.4 acres of land. Following construction, about 93.5 acres would be required as new permanent right-of-way in Mississippi. No new permanent right-of-way would be required in Alabama or Tennessee. The remaining 442.9 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

a. Geology and soils
b. Water resources, fisheries, and wetlands
c. Vegetation and wildlife
d. Endangered and threatened species
e. Cultural resources
f. Land use
g. Air quality and noise
h. Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

a. 11 federally listed endangered or threatened species may occur in the proposed project area.

b. 14 perennial streams would be crossed, one of which is considered impaired by EPA classification standards.

c. About 4 miles of the 4.5 mile St. Francisville Discharge Loop would traverse through the Homochitto National Forest.

d. Eight residences are within 50-feet of the proposed construction right-of-way.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas/Hydro Branch.
- Reference Docket No. CP02–381–000.
- Mail your comments so that they will be received in Washington, DC on or before July 26, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request in Appendix 4. If you do not return the Information Request, you will be taken off the mailing list.

On July 8–9, 2002, the staff of the Office of Energy Projects (OEP) will conduct a pre-certification site visit of Texas Eastern's M–1 Expansion Project

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

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in Amite, Franklin, Hinds, Copiah, and Madison Counties, Mississippi. The project area will be inspected by automobile and on foot, as appropriate. Representatives of Texas Eastern will accompany the OEP staff. All interested parties may attend. Those planning to attend must provide their own transportation. Contact the Commission's Office of External Affairs at 1–866–208–FERC if you are interested in attending the visit.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website (*http://www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.[4]

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16483 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

June 25, 2002.

a. *Type of Application*: Original Major License.

b. *Project No.*: P–12187–000.

c. *Date Filed*: June 3, 2002.

d. *Applicant*: Price Dam Partnership, Limited.

e. *Name of Project*: Price Dam Hydroelectric Project.

f. *Location*: On the Mississippi River, in the city of Alton, Wood River Township, Madison County, Illinois. The project would be constructed on the U.S. Corps of Engineers (Corps) Melvin Price Locks & Dam and the nearby Illinois shoreline of the Mississippi River and would affect 7.8 acres of federal lands (including Federal Corps property between Piers 1 to 11 at the dam and a portion of the Illinois shoreline for the transmission line).

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, TN 37738, (865) 436–0402, or jimprice@atlantic.net.

i. *FERC Contact*: Lee Emery (202) 219–2778 or lee.emery@FERC.fed.us.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing additional study requests and requests for cooperating agency status*: July 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. *Description of Project*: The proposed Price Dam Project would use the Melvin Price Locks & Dam and reservoir, and would consist of the following facilities: (1) 192 portable, turbine/generator units grouped in six steel modules 108.9 feet long by 26.2 feet wide by 44.0 feet high, (a) each module contains 32 turbine/generator sets (two horizontal rows of 16 units each) installed in six stoplog slots on adjacent piers upstream from the nine existing Taintor gate bays in the dam, and (b) each turbine/generator unit includes a 550 kilowatt bulb-type generator, a fixed-blade propeller turbine, and a single draft tube for each two turbine/generating units; (2) six flexible power cables, each connecting the six, 32 turbine/generator sets to six 7.2 kilovolt (kV) transformer and breaker sets on an adjacent pier; (3) lifting access columns at the end of each module; (4) six air-operated spillway gates, 7 feet high by 96 feet long, installed on top of each module with each gate containing an inflatable rubber bladder; (5) a hallway housing the station service transformer, motor control center, and control system; (6) a slave terminal at the lockmaster's office and a control station located on the dam superstructure; (9) a 6.9-kV/138-kV step-up transformer located on a platform on the dam axis at elevation 479 feet National Geodetic Vertical Datum; (10) a mobile, 1,000 metric ton crane with an auxiliary crane riding on top of the module crane; these cranes would lower and raise the power modules and operate the trash rake; (11) a fish bypass on each module; (12) a trashrack assembly with a two-inch clear spacing between the bars, and a crane-operated trash rake; (13) a 500-kilowatt generator; (14) a 0.9-mile-long, 138-kV transmission line connecting the project power to the Mississippi Substation of Ameren, Incorporated; (15) an auxiliary building; and (16) appurtenant facilities. The average annual generation is estimated to be 319,000 megawatt-hours. All generated power would be sold to a local utility connected to the grid.

n. With this notice, we are initiating consultation with the *ILLINOIS HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

p. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later July 30, 2002, and serve a copy of the request on the applicant.

q. *Procedural schedule*: The application will be processed according to the following milestones, some of which may be combined to expedite processing.

Notice of application has been accepted for filing
Notice of NEPA Scoping (unless scoping has already occurred)
Notice of application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16488 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–90–000, CP02–91–000, CP02–92–000, and CP02–93–000]

AES Ocean Express, LLC; Notice of Technical Conference

June 25, 2002.

AES Ocean Express, LLC (Ocean Express) seeks authorization, pursuant to Sections 3 and 7(c) of the Natural Gas Act (NGA), to construct and operate a new pipeline to import gas from the Bahamas into Florida. The proposed route for the new pipeline traverses the Naval Surface Warfare Center's South Florida Testing Facility, located in waters off the coast of Broward County, Florida. The Navy has objected to this proposed routing, contending the pipeline as planned would interfere with the operational capabilities of the area's existing in-water laboratory and measurement facilities. Ocean Express has yet to present mitigation measures or route alternatives acceptable to the Navy.

Take notice that a technical conference to discuss issues raised by proposed pipeline's routing will be held on Tuesday, July 23, 2002, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. Parties to this proceeding and interested local, state, and federal agencies that are not parties, but that share jurisdiction or regulatory responsibilities over matters that may pertain to the proposed pipeline routing, will be permitted to attend. In view of the nature of national security issues expected to be discussed, the conference will not be open to the public.

Any party or authorized agency representative who is planning to attend the conference must notify the Commission Staff before 5 p.m. EST, Thursday, July 18, 2002. Please notify Mr. Richard Foley, Office of Energy Projects, Room 6N–07, in writing, or by calling (leave a message) at (202) 208–2245, or by e-mail to Richard.Foley@ferc.gov. If any local, state, or federal authorized agency representative is unable to attend, but wishes to participate via teleconferencing, please so indicate. Teleconferencing details will be provided later, when secure communications are assured.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16481 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Management Properties Included in or Eligible for Inclusion in the National Register of Historical Places

June 25, 2002.

On April 14, 2000, the Federal Energy Regulatory Commission (Commission) issued a notice for the St. Lawrence-FDR Power Project proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On June 5, 2000, the restricted service list was modified to include the Department of the Interior (Interior). On August 2, 2001, the restricted service list was modified to: (1) Change the address for Mr. Thomas Tatham; (2) change the contact for the Saint Regis Mohawk Tribe; (3) change the contact for Interior; and (4) delete Mr. Robert Dean. The St. Lawrence-FDR Power Project is located on the St. Lawrence River, in St. Lawrence County, New York. The New York Power Authority is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

[1] 18 CFR 385.2010

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list is established. The following changes to the existing restricted service list are noted.

The contact for the Bureau of Indian Affairs has changed. Delete "Ms. Malka Pattison" and replace with "Dr. James Kardatzke".

As a result of these changes, the revised final restricted service list, for the purpose of commenting on the PA for the St. Lawrence-FDR Power Project, is as follows:

Dr. Robert Kuhn, NY Office of Parks, Recreation, and Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY 12188–0189.

William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601.

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109.

Dr. James Kardatzke, Eastern Region Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214.

Salli Benedict, Henry Lickers, Mohawk Council of Akwesasne, P.O. Box 579, Cornwall, Ontario K6H 5T3.

David Blaha, Environmental Resources Management, 2666 Riva Road, Suite 200, Annapolis, MD 21401.

Brian Skidders, Mohawk Nation Council of Chiefs, Box 366, Rooseveltown, NY 13683.

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Thomas Tatham, New York Power Authority, 123 Main Street, White Plains, NY 10601.

Judith M. Stolfo, Department of the Interior, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, MA 02458–2802.

Francis Boots, THPO, Saint Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655.

Maxine Cole, Akwesasne Task Force on the Environment, P.O. Box 992, Hogansburg, NY 13655.

James Teitt, Environmental Resources Management, 355 East Campus View Blvd, Suite 250, Columbus, OH 43235.

Kimberly Owens, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16487 Filed 6–28–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7239–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Notification of Regulated Waste Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notification of Regulated Waste Activity, EPA ICR #261.14, OMB No. 2050–0028, expires on October 31, 2002. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 30, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number RCRA–2002–0021 to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically to: *rcra-docket@epamail.epa.gov*. Comments in electronic format should also be identified by the docket number RCRA–2002–0021. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. This document and the supporting documents that detail the Notification of Regulated Waste Activity ICR are also electronically available. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline

For general information, contact the RCRA Hotline at (8000 424–9346, or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810, or TDD (703) 412–3233.

Notification ICR Details

For more detailed information on specific aspects of the Notification information collection request, contact David Eberly by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by phone at (703) 308–8645, or by e-mail at: *eberly.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

Internet Availability

Today's document and the supporting documents that detail the Notification of Regulated Waste Activity ICR are available on the Internet at: *http://www.epa.gov/epaoswer/hazwaste/notify/index.htm*.

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Affected Entities: Entities potentially affected by this action are generators, transporters and owners and operators of hazardous waste management facilities.

Title: Notification of Regulated Waste Activity, EPA ICR #261.14, OMB No. 2050–0028, expires on October 31, 2002.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. The facility is then issued an EPA Identification number. The facilites are required to use the Notification Form (EPA Form 8700–12) to notify EPA of their hazardous waste activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The Agency today begins an effort to examine the notification forms and consider options for reducing their burden and increasing the usefulness of the information these forms collect. The Agency would appreciate any information on the users of this information, how they use this information, how the information could be improved, and how the burden for these forms can be reduced.

Therefore, the EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated average burden for renewing the existing notification ICR is 4.25 hours per respondent for initial notifications and 1.84 hours per respondent for subsequent notifications. This estimates for the notification ICR includes all aspects of the information collection including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the form.

EPA estimates that the number of respondents per year for notifications is 31,125 (16,174 initial notifications and 14,951 subsequent notifications). For this ICR, collection occurs one time per respondent, unless regulations are revised and promulgated. Timing of the submission of the notification is variable depending on the status of the respondent and the timing of the promulgation of the regulations. The estimated total annual burden on respondents for initial and subsequent notifications is 96,250 hours. These estimates of total annual burden reflect a decrease in burden of 3.9% for all notifications when compared with the previously approved ICR (1999).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 7, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–16464 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10016; FRL–6723–9]

Toxic Chemical Release Reporting; Alternate Threshold for Low Annual Reportable Amounts; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting (EPA ICR No. 1704.06, OMB No. 2070–0143). This ICR covers the reporting and recordkeeping requirements associated with reporting under the alternate threshold for reporting to the Toxics Release Inventory (TRI), which appear in 40 CFR part 372. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments, identified by the docket control number OEI–10016, must be submitted on or before August 30, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION: For general information, contact The Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800)553–7672, *http://www.epa.gov/epaoswer/hotline/*. For technical information about this ICR renewal, contact: Judith Kendall, Toxics Release Inventory Program Division, OEI (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Telephone: 202–566–0750; Fax: 202–566–0727; email: *kendall.judith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

A. Affected Entities: Entities that will be affected by this action are those facilities that manufacture, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), to report annually to EPA their environmental releases of such chemicals.

Currently, those industries with the following SIC code designations (that meet all other threshold criteria for TRI reporting) must report toxic chemical releases and other waste management activities:

- 20–39, manufacturing sector
- 10, metal mining (except for SIC codes 1011, 1081, and 1094)
- 12, coal mining (except for SIC code 1241 and extraction activities)
- 4911, 4931 and 4939, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
- 4953, RCRA Subtitle C hazardous waste treatment and disposal facilities
- 5169, chemicals and allied products wholesale distributors
- 5171, petroleum bulk plants and terminals
- 7389, solvent recovery services, and
- federal facilities in any SIC code

To determine whether you or your business is affected by this action, you should carefully examine the

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applicability provisions at 40 CFR part 372 and section 4(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Additional Information or Copies of This Document and Other Support Documents:

A. Electronic Availability

Internet

Electronic copies of the ICR are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (*http://www.epa.gov/fedrgstr/*). An electronic copy of the collection instrument referenced in this ICR and instructions for its completion are available at *http://www.epa.gov/triinter/#forms*.

In Person

The Agency has established an official record for this action under docket control number OEI–10016. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OEI–10016") in your correspondence.

1. By mail. All comments should be sent in triplicate to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Ariel Rios Building, Washington, DC 20460.

2. In person or by courier. Comments may be delivered in person or by courier to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. Electronically. Submit your comments electronically by e-mail to: "*oppt.ncic@epa.gov*." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI–10016. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

C. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In addition, EPA is requesting comment on a minor change to Certification Form A in this ICR. Facilities will be required to supply an e-mail address on the Form A that will help to facilitate better lines of communication between EPA and facilities reporting to TRI.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on January 31, 2003.

Title: Alternate Threshold for Low Annual Reportable Amounts.

ICR numbers: EPA ICR No. 1704.06, OMB No. 2070–0143.

Abstract: EPCRA section 313 requires certain facilities manufacturing, processing, or otherwise using certain toxic chemicals in excess of specified threshold quantities to report their environmental releases of such chemicals annually. Each such facility must file a separate report for each such chemical.

In accordance with the authority in EPCRA, EPA has established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that otherwise meets the current reporting thresholds, but estimates that the total amount of the chemical in waste does not exceed 500 pounds per year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year, can take advantage of reporting under the alternate threshold option for that chemical for that reporting year.

Each qualifying facility that chooses to apply the revised threshold must file the Form A Certification Statement (EPA Form 9350–2) in lieu of a complete TRI reporting Form R (EPA Form 9350–1). In submitting the Form A certification statement, the facility certifies that the sum of the amount of the EPCRA section 313 chemical in wastes did not exceed 500 pounds for the reporting year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year. Use of the Form A certification represents a substantial savings to respondents, both in burden hours and in labor costs.

The Form A certification statement provides communities with information that the chemical is being manufactured, processed or otherwise used at facilities. Additionally, the Form A certification provides compliance monitoring and enforcement programs and other interested parties with a means to track chemical management activities and verify overall compliance with the rule. Responses to this collection of information are mandatory (see 40 CFR part 372) and facilities subject to reporting must submit either a Form A certification or a Form R.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public burden for this collection of information, which is approved under OMB Control No. 2070–0143, is estimated to average 13.7 hours for facilities submitting a Form A certification statement for a single listed chemical. By comparison, the average time required for calculations, form completion and record keeping/mailing for Form R is estimated to average 19.5 hours per form. Thus, for a facility filing a Form A certification for a single chemical, the alternate threshold yields an average savings of 5.8 hours.

The ICR supporting statement provides a detailed explanation of the burden estimates that are summarized in this notice. The following is a summary of the estimates taken from the ICR supporting statement:

Estimated No. of Respondents: 5,451 respondents.

Frequency of Responses: Annual.

Estimated Total Annual Burden Hours: 145,534 burden hours.

Estimated Total Annual Burden Costs: $6.35 million.

VI. Are There Changes in the Estimates From the Last Approval?

The estimated burden described above differs from what is currently in OMB's inventory for alternate threshold reporting: 14,793 responses (chemicals) and 644,761 burden hours. The burden estimated in this supporting statement differs from OMB's inventory as a result of adjustments to estimates of the number of responses (from 14,793 responses (chemicals) to 5,121 responses (Form As)), changes to unit reporting burden estimates (from 30.2 to 9.2 burden hours per chemical certified on a Form A), and an adjustment for use of TRI–ME, EPA's intelligent report software (an additional burden reduction of 3.1 hours per chemical certified on a Form A) for those forms completed using TRI–ME. These changes are described in greater detail in the supporting statement for this ICR, available in the public version of the official record.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 40 CFR Part 372

Environmental protection, Information collection requests, Reporting and record keeping requirements.

Dated: June 24, 2002.

Ramona Trovato,

Acting Assistant Administrator and Chief Information Officer, Office of Environmental Information.

[FR Doc. 02–16479 Filed 6–28–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7239–6]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, P.L. 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy and management issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

NACEPT will discuss a number of issues, including emerging trends facing the agency, environmental technology, and other program office initiatives. In addition, NACEPT will report on the work and status of subcommittees and workgroups.

DATES: NACEPT will hold a two-day public meeting on Thursday, July 18, 2002, from 8:30 a.m to 5 p.m., and Friday, July 19, 2002, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Hotel Washington at 515 15th Street NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 564–9802.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Mark Joyce at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 21, 2002.

Mark Joyce,

Designated Federal Officer.

[FR Doc. 02–16462 Filed 6–28–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7239–5]

Notice of Scientific and Technological Achievement Awards Subcommittee—Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An ad hoc Subcommittee of the EPA Science Advisory Board will meet at the U.S. Environmental Protection Agency (EPA), Washington, DC, on July 10–12, 2002. Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, and section (c)(6) of the Government in the Sunshine Act; 5 U.S.C. 552b(c)(6) EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend to the Assistant Administrator of the Office of Research and Development (ORD) the recipients of the Agency's 2000 Scientific and Technological Achievement Cash Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In making these recommendations, including the actual cash amount of each award, the Agency requires full and frank advice from the EPA Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel issues, where disclosure of information of a personal nature would constitute an unwarranted invasion of personal privacy, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Flaak, Acting Deputy Staff Director, US EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460, telephone: (202) 564–4546 or e-mail at: *flaak.robert@epa.gov*.

Dated: June 25, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–16459 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7240–2]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of fifteenth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this fifteenth update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 66 FR 50185, October 2, 2001, which was current as of May 1, 2001. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains thirty additions and thirteen deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,231.

DATES: This list is current as of January 31, 2002.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket may be obtained at *http://www.epa.gov/oeca/fedfac/oversight/oversight.html*.

SUPPLEMENTARY INFORMATION:

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1.0 Introduction
2.0 Revisions of the Previous Docket
3.0 Process for Compiling the Updated Docket
4.0 Facilities Not Included
5.0 Facility Status Reporting
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1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222), and October 2, 2001 (66 FR 50185). This notice constitutes the fifteenth update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 (February 12, 1988)) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerardo Mill(á)n-Ramos (HBS), US EPA Region 1 #1 Congress St., Suite 1100, Boston, MA 02114–2023 (617) 918–1377.

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260.

D. Karla Asberry (FFSC), US EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7595.

Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276.

Stan Zawistowski (EPR–F), US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6255.

Cesar Lee (3HS50), US EPA Region 3, 841 Chestnut Bg., Philadelphia, PA 19107 (215) 814–3205.

Philip Armstrong (SFD–9–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–3520.

Gena Townsend (4WD–FFB), US EPA Region 4, 61 Forsyth St., SW, Atlanta, GA 30303, (404) 562–8538.

Deborah Leblang (ECL–115), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–0115.

Laura Ripley (SE–5J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–6040.

Monica Lindeman (ECL, SACU2), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–5113.

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, thirty facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the thirty facilities being added to the docket, none are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs and have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an

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agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having "jurisdiction, custody, or control" over a facility.

2.2 Deletions

Today, thirteen facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 CFR 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an "O"), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a "C") for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Augusta K. Wills, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20004.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Facility Status Reporting

EPA has expanded the docket database to include information on the NFRAP status of listed facilities. Indicating NFRAP status allows easy identification of facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time of the status change. Accordingly, the docket database includes the following facility status codes:

U=Undetermined
N=No further remedial action planned (NFRAP)

NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has NFRAP status. The status information contained in the docket database is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional docket coordinators for review. The results of those reviews were incorporated into the status field in the docket database. Subsequently, an updated list of facilities having NFRAP status (those for which an "N" appears in the status field) was generated; the list of updates since the previous publication of the docket is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of January 31, 2002. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the list of facilities that have NFRAP status is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed and a new list of facilities classified as NFRAP will be published at each docket update.

6.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this fifteenth docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled "Reporting Mechanism." Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the complete list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained at *http://www.epa.gov/oeca/fedfac/oversight/oversight.html* or by calling the HQ Docket Coordinator at (202) 564–2468. As of today, the total number of Federal facilities that appear on the docket is 2,231.

Dated: June 24, 2002.

Elliott J. Gilberg,

Associate Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Federal Agency (New Responsible Federal Agency Must Submit proof of previously performed PA, which is subject to approval by EPA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Must Submit proof of previously performed PA, which is subject to approval by EPA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling Augusta K. Wills, the HQ Docket Coordinator at (202) 564–2468.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 ADDITIONS

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
FS–TONGASS NF: EAST 12 MILE SITE.	W SIDE OF FS RD 1220, 35 MI SE OF CRAIG, T75S R83E S13, COPPER RIVER MERIDIAN.	CRAIG	AK	99927	AGRICULTURE	103C	19A
US ARMY AVIATION CENTER CAIRNS.	ALABAMA HIGHWAY 85	DALEVILLE	AL	36322–5000	ARMY	3010	19A
USPS HILLCREST STATION.	300 E HILLCREST BLVD	INGLEWOOD.	CA	90301–9998	POSTAL SERVICE	3010	19A
NATIONAL WIND TECHNOLOGY CENTER.	16200 STATE HIGHWAY 128.	GOLDEN	CO	80403	ENERGY	3016	19A
US NATIONAL PHOTO INTERPRETATION CENTER.	1ST & M STREET, SE	WASHINGTON.	DC	20374	NATIONAL IMAGERY AND MAPPING AGENCY.	3010	19A

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FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 ADDITIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
AMES LAB #1	1915 N. SCHOLL ROAD, IOWA STATE UNIVERSITY.	AMES	IA	50011–3020	ENERGY	3016	19A
LEWIS UNIVERSITY CORRECTIONAL CENTER.	1125 N COLLINS	JOLIET	IL	60436	JUSTICE	3010	19A
US GOVERNMENT DEA	1716 W PERISHING RD	CHICAGO	IL	60609	JUSTICE	3010	19A
FORT SHERIDAN NAVAL PROPERTY.	FORT SHERIDAN NAVAL PROPERTY.	FORT SHERIDAN.	IL	60037	NAVY	3010	19A
ARMED FORCES INSTITUTE OF PATHOLOGY.	16050 INDUSTRIAL DRIVE, STE 100.	GAITHERSBURG.	MD	20877	ARMY	3010	19A
GASCONADE (EX) BOAT YARD.	CONFLUENCE OF GASCONADE AND MISSOURI RIVER.	GASCONADE.	MO	65036	CORPS OF ENGINEERS, CIVIL.	103c	19A
US MEDICAL CENTER FEDERAL PRISON SPRINGFIELD.	1900 W SUNSHINE	SPRINGFIELD.	MO	65801	JUSTICE	103c	19A
KIRKSVILLE (EX) AFS P–64.	6 MILES NORTH OF KIRKSVILLE, WEST.	KIRKSVILLE	MO	63501	TRANSPORTATION	103c	19A
STANLEY R MICKELSEN SAFEGUARD COMPLEX–(RSL–4) REMOTE SPRINT LA.	1 MILE SOUTHWEST OF FAIRDALE.	FAIRDALE	ND	58205	AIR FORCE	103c	19A
STANLEY R MICKELSEN SAFEGUARD COMPLEX—(RSL–1) REMOTE SPRING LA.	3 MILES EAST OF HAMPDEN.	HAMPDEN	ND	58338	AIR FORCE	103c	19A
STANLEY R MICKELSEN SAFEGUARD COMPLEX—(RSL–2) REMOTE SPRINT LA.	6 MILES NORTH OF LANGDON.	LANGDON	ND	58249	AIR FORCE	103c	19A
STANLEY R MICKELSEN SAFEGUARD COMPLEX—(RSL–3) REMOTE SPRINT LA.	19 MILES EAST OF LANGDON.	LANGDON	ND	58249	AIR FORCE	103c	19A
HALLAM NUCLEAR POWER FACILITY.	NE ¼ SEC 19 T7N R6E	HALLAM	NE	68368	ENERGY	103c	19A
NEW JERSEY AIR NATIONAL GUARD 177FW.	400 LANGLEY RD	EGG HARBOR TWP.	NJ	08234–9500	AIR FORCE	3010	19A
MAJ J O'DONOVAN AFR CENTER.	90 N MAIN AVE	ALBANY	NY	12203	ARMY	3010	19A
USCG—STATION JONES BEACH.	WESTEND BOAT BASIN OFF OCEAN.	FREEPORT	NY	11520–5001	TRANSPORTATION	3010	19A
BLM-BALM CREEK—POORMAN MINE COMPLEX.	E SIDE OF MOTHERLOAD RD, 6 MI NE OF KEATING, T7S R43E S32, W.M., +44°55'01" N, −117° 29'25" W.	BAKER CITY	OR	97814	INTERIOR	103c	19A
FORT DIX TACONY WAREHOUSE.	1500 PRINCETON AVE	PHILADELPHIA.	PA	19124	ARMY	103c	19A
NATIONAL ENERGY TECHNOLOGY LABORATORY—PITTSBURGH.	POB 10940	PITTSBURGH.	PA	15236	ENERGY	3016	19A
APPALACHIAN SMELTING AND REFINERY.	SOUTH HOLSTON LAKE	BRISTOL	TN	37620	TENNESSEE VALLEY AUTHORITY.	103c	19A
TENNESSEE VALLEY AUTHORITY.	HIGHWAY 69A	BIG SANDY	TN	38221	TENNESSEE VALLEY AUTHORITY.	3010	19A
TVA WILSON 500 KV SUBSTATION.	2280 BECKWITH ROAD	MOUNT JULIET.	TN	37122	TENNESSEE VALLEY AUTHORITY.	3010	19A
US COAST GUARD (OUACHITA) SHORESIDE.	3551 OLD HARRISON PIKE.	CHATTANOOGA.	TN	37416–2825	TRANSPORTATION	3010	19A
TOOELE ARMY DEPOT (NORTH AREA).	3 MI S OF TOOELE ON HWY 36.	TOOELE	UT	84074	ARMY	103c	16

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 ADDITIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
NAVAL SECURITY GROUP ACTIVITY SUGAR GROVE—OPERATIONAL AREA.	RANDALL ROAD, OFF STATE ROAD 21.	SUGAR GROVE.	WV	26815	NAVY	103c	16

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 DELETIONS

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
BRUNSWICK FACILITY.	ROUTE 11	BRUNSWICK	GA	30365	EPA	103a	2
CHICAGO SITE	CALUMET HARBOR	CHICAGO	IL	60606	CORPS OF ENGINEERS, CIVIL.	3010	4
FS-ROBINS DISPOSAL AREA.		WATERSMEET	MI		AGRICULTURE	103a	8
FAA-PECK VOR	2250 E PECK RD	CROSWELL	MI	48422	TRANSPORTATION	3010	4
USEDA CO USACE	812 FIRST AVE	TWO HARBORS	MN	55616	ARMY	3010	3
BRAINERD FOUNDRY	801 SOUTH 10TH STREET.	BRAINERD	MN	56401	COMMERCE	3010 3016 103c	3
OTTATI & GOSS SUPERFUND SITE.	ROUTE 125	KINGSTON	NH	03848	EPA	3010	2
7TH BATTALION HAWK.	204 FRONTAGE RD	RIO RANCHO	NM	87124	ARMY	3010	3
FORMER LORDSTOWN ORDNANCE DEPOT.	5232 TOD WS NO 11	WARREN	OH	44481	GENERAL SERVICES ADMINISTRATION.	3010	3
NPS-CUYAHOGA VALLEY NATIONAL RECREATION AREA.	15610 VAUGHN ROAD.	BRECKSVILLE	OH	44141	INTERIOR	3010 3016 103c	7
AEROQUIP INOAC	1410 MOTOR DR	FREMONT	OH	43420		3010	2
ADMIRAL OLIN E TEAGUE CENTER.	1901 S 1ST ST	TEMPLE	TX	76504	VETERANS AFFAIRS	3010	1
RUSK COUNTY VETERANS MEMORIAL ARMY RESERVE CENTER.	819 W SUMMIT AVENUE.	LADY SMITH	WI	54848	ARMY	3010	1

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 CORRECTIONS

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
c ALASKA TOK FUEL TERMINAL.	7 MI W OF TOK, ALASKA HWY 2.	TOK	AK	99780	ARMY	3010	20A
o ALASKA TOK FUEL TERMINAL.	7 MI W OF TAK ALASKA HWY 2 5TH ST BLDG. 790.	TOK	AK	99780	ARMY	3010	
c BLM–BOSTIK INC HOOSIER CREEK.	80 MI NW OF FAIRBANKS, 65°26'54" N, 150°04'31" W.	RAMPART	AK	99767	INTERIOR	3010 103c	20A, 23
o BLM–BOSTIK INC HOOSIER CREEK.	65D26M54SN, 150D04M31SW.	RAMPART	AK	99767	INTERIOR	3010	
c BLM–ICY CAPE DEW LINE SITE.	50 MI SW OF WAINWRIGHT 70°18'00" N, 161°55'00" W.	WAINWRIGHT.	AK	99782	INTERIOR	103c 3010	20A
o BLM–ICY CAPE DEW LINE SITE.	50 MI SW OF WAINWRIGHT.	WAINWRIGHT.	AK	99782	INTERIOR	103c 3010	
c BLM–SOURDOUGH LITTLE BEAR CAMP AKA SOURDOUGH ARMY CAMP.	35 MI N OF GLENNALLEN, W OF RICHARDSON HWY.	GLENNALLEN.	AK	99588	INTERIOR	103c	20A
o BLM–SOURDOUGH LITTLE BEAR CAMP.	RICHARDSON HWY 35 MI N OF GLENNALLEN.	GLENALLEN.	AK	99588	INTERIOR	103c	

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FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 CORRECTIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
c FWS–ALASKA MARITIME NWR: TIGALDA ISLAND AWS.	30 MI E OF AKUTAN, 54°04'48" N, 165° 03'27" W.	AKUTAN	AK	99553	INTERIOR	103c	20A
o FWS–ALASKA MARITIME NWR: TIGALDA ISLAND AWS.	30 MI E OF AKUTAN, 54°04'48" N, 165°03'27" W.	AKUTAN	AK	99553	INTERIOR	103c	
c NPS–KATMAI NP: BROOKS CAMP.	32 MI E OF KING SALMON, NAKNEK LAKE, 55°33'17" N, 155°46'38" W.	KING SALMON.	AK	99613	INTERIOR	103c 3016	20A
o NPS–KATMAI NP: BROOKS CAMP.	30 MI W OF CY, NAKNEK LAKE.	KING SALMON.	AK		INTERIOR	103c 3016	
c NPS–WRANGELL ST ELIAS NP&P: MALASPINA DRILLING MUD SITE.	T24S R32E S31, 59°42'30" N, 140°37'30" W.	GLENNALLEN.	AK	99588	INTERIOR	103c 3016	20A
o NPS–WRANGELL ST ELIAS NP&P: MALASPINA DRILLING MUD SITE.	T24S R32E S31	GLENALLEN.	AK	99588	INTERIOR	103c 3016	
c FAA–BIG DELTA STATION.	FORT GREELY AIRPORT, 63°59'40" N, 145°43'17" W.	DELTA JUNCTION.	AK	99737	TRANSPORTATION	103c 3016	20A
o FAA–BIG DELTA STATION.	FORT GREELY AIRPORT.	DELTA JUNCTION.	AK	99737	TRANSPORTATION	103c 3016	
c U.S. ARMY AVIATION CENTER.	114 NOVOSEL STREET BETWEEN HIGHWAYS 134 AND 51.	FORT RUCKER.	AL	36362–5000	ARMY	3005 3010 3016 103c.	20A
o AVIATION CENTER AND FORT RUCKER.	BLDG 1404	FORT RUCKER.	AL	36362–5000	ARMY	3005 3010 3016 103c.	
c LITTLE ROCK AIR FORCE BASE.	4001 THOMAS AVE	LITTLE ROCK AFB.	AR	72099–5005	AIR FORCE	3005 3010 3016 103c 103a.	20A
o LITTLE ROCK AIR FORCE BASE.	314 CSG/CC	LITTLE ROCK AFB AR.	AR	72099	AIR FORCE	3005 3010 3016 103c 103a.	
c ARIZONA ARMY NATIONAL GUARD FLORENCE RANGE.	1001 N FLORENCE BLVD.	FLORENCE	AZ	85232	ARMY	103c	20A
o FLORENCE RANGE		FLORENCE	AZ		ARMY	103c	
c LAAFB-FORT MACARTHUR ANNEX.	2400 PACIFIC AVENUE	SAN PEDRO.	CA	90731	AIR FORCE	3016 103c	23
o LAAFB-FORT MACARTHUR ANNEX.	2400 PACIFIC AVENUE	SAN PEDRO.	CA	90731		3016	
c SAN PEDRO DEFENSE FUEL SUPPLY CENTER.	3171 N. GAFFEY STREET.	SAN PEDRO.	CA	90731	DEFENSE LOGISTICS AGENCY.	3010 3016 103c 103a.	23
o SAN PEDRO DEFENSE FUEL SUPPLY CENTER.	3171 N. GAFFEY STREET.	SAN PEDRO.	CA	90731	DEFENSE LOGISTICS AGENCY.	3010 3016 103c.	
c LAWRENCE LIVERMORE NATIONAL LABORATORY-SITE 300.	CORRAL HOLLOW ROAD.	TRACY	CA	95376	ENERGY	3005 3010 3016 103c.	20A
o LAWRENCE LIVERMORE NATIONAL LABORATORY-SITE 300.	CORRAL HOLLOW ROAD.	TRACY	CA	94550	ENERGY	3005 3010 3016 103c.	
c STANFORD LINEAR ACCELERATOR CENTER.	2575 SAND HILL ROAD	MENLO PARK.	CA	94025	ENERGY	3010 3016 103c 103a.	20A
o STANFORD LINEAR ACCELERATOR CENTER.	2575 SANDHILL ROAD.	MENLO PARK.	CA	94305	ENERGY	3010 3016 103c 103a.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 CORRECTIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
c FORMER LOWRY AFB TITAN MISSILE SITE 1 COMPLEX 2A.	5 MILES SOUTH OF EAST QUINCY AV AND BRICK CENTER ROAD.	AURORA	CO	80137	AIR FORCE	103c	20A
o FORMER LOWRY AFB TITAN MISSILE SITE 1 COMPLEX 2A.	5 MILES SOUTH OF EAST QUINCY AV AND BRICK CENTER ROAD.	AURORA	CO	80137	AIR FORCE	103c	
c NATIONAL RENEWABLE ENERGY LABORATORY.	1617 COLE BLVD.	GOLDEN	CO	80401	ENERGY	3005 3010 3016 103c.	20A
o SOLAR ENERGY RESEARCH INSTITUTE.	1617 COLE BLVD.	GOLDEN	CO	80401	ENERGY	3005 3010 3016 103c.	
c ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE.	1808 HIGHWAY 93, UNIT A.	GOLDEN	CO	80403	ENERGY	3005 3010 3016 103c 103a.	20A
o ROCKY FLATS PLANT.	HWY. 93 BETWEEN GOLDEN & BOULDER.	GOLDEN	CO	80402	ENERGY	3005 3010 3016 103c 103a.	
c WAPA-MONTROSE POWER OPERATIONS CENTER.	1800 S. RIO GRANDE AVE..	MONTROSE.	CO	81401	ENERGY	103c 3010 3016.	20A, 23
o WAPA-POWER OPERATIONS.	1800 S. RIO GRANDE AVE.	MONTROSE.	CO	81401	ENERGY	103c 3010	
c HUBERT H. HUMPHREY BUILDING.	200 INDEPENDENCE AVENUE, SW.	WASHINGTON.	DC	20201	GENERAL SERVICES ADMINISTRATION.	3016 103c	20A, 21
o HUBERT HUMPHREY BUILDING.	200 INDEPENDENCE AVENUE, S.W..	WASHINGTON.	DC	20024	HEALTH AND HUMAN SERVICES.	3016 103c	
c ANACOSTIA NAVAL STATION.	2701 SOUTH CAPITOL STREET SW.	WASHINGTON.	DC	20374	NAVY	3010 103c 3016.	20A
o ANACOSTIA NAVAL STATION.	SOUTH CAPITAL ST/ ANACOSTIA DR.	WASHINGTON.	DC	20374	NAVY	3010 103c 3016.	
c FORT GILLEM	4653 N SECOND ST	FOREST PARK.	GA	30297–5000	ARMY	3005 3010 3016 103c.	20A
o FORT GILLEM	ATTN AFZK–EH–C	FOREST PARK.	GA	30330	ARMY	3005 3010 3016 103c.	
c FORT STEWART	24TH INFANTRY DIV AFZP–DEN–E.	FORT STEWART.	GA	31314	ARMY	3005 3010 3016 103c 103a.	23
o FORT STEWART	24TH INFANTRY DIV AFZP–DEN–E.	FORT STEWART.	GA	31314	ARMY	3005 3010 3016 103c.	
c NAVACTS ORDNANCE ANNEX GUAM.	APRA HBR HTS AREA BY FENA RESV.	APRA HARBOR.	GU	96910	NAVY	103c	20A
o GUAM NAVAL MAGAZINE.	APRA HBR HTS AREA BY FENA RESV.	APRA HARBOR.	AQ	96910	NAVY	103c	
o AMES LAB #2	SPEDDING HALL, METALS DEVELOPMENT, WILHELM HALL & TASF.	AMES	IA	50011–3400	ENERGY	103c 3016 3005 3010.	20A
o AMES LABORATORY-APPLIED SCIENCE CENTER.	109 OFFICE & LAB, ISU	AMES	IA	50011	ENERGY	103c 3016 3005 3010.	
c IDAHO NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY (INEEL).	US HWY 20/26, 40 MI WEST OF IDAHO FALLS.	IDAHO FALLS.	ID	83401	ENERGY	3005 3010 3016 103c 103a.	20a
o IDAHO NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY.	US HWY 20/26, 40 MI WEST OF IDAHO FALLS.	SCOVILLE	ID	83401	ENERGY	3005 3010 3016 103c 103a.	

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FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 CORRECTIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
c CHANUTE AIR FORCE BASE.	3345 CES AFB	RANTOUL	IL	61868	AIR FORCE	3005 3010 3016 103c.	20A
o CHANUTE AIR FORCE BASE.	OL–B AFBCA 1 AVIATION CENTER DRIVE, SUTE 101.	RANTOUL	IL	61868	AIR FORCE	3005 3010 3016 103c.	
c ROCK ISLAND ARSENAL.	RODMAN AVE	ROCK ISLAND.	IL	61299–5000	ARMY	3005 1010 3016 103c.	20A
o ROCK ISLAND ARSENAL.	ARSENAL ISLAND ROCK ISLAND COUNTY.	ROCK ISLAND.	IL	61201	ARMY	3005 3010 3016 103c.	
c NAVAL TRAINING CENTER GREAT LAKES.	PUBLIC WORKS CENTER BUILDING 1A.	GREAT LAKES.	IL	60088–5600	NAVY	3005 3010 3016 103c 103a.	20A, 23
o NAVAL TRAINING CENTER GREAT LAKES.	2601 PAUL JONES STREET.	GREAT LAKES.	IL	60006	NAVY	3005 3010 3016 103c.	
c MCCONNELL AIR FORCE BASE.	53000 HUTCHINSON STE 109.	WICHITA	KS	67221–3617	AIR FORCE	3005 3010 3016 103c.	20A
o MCCONNELL AIR FORCE BASE.	2801 S ROCK RD	WICHITA	KS	67210	AIR FORCE	3005 3010 3016 103c.	
c PADUCAH GASEOUS DIFFUSION PLANT.	5600 HOBBS ROAD	WEST PADUCAH.	KY	42086	ENERGY	3005 3010 3016 103a 103c.	20A
o PADUCAH GASEOUS DIFFUSION PLANT.	PO BOX 1410 HOBBS ROAD.	PADUCAH	KY	42001	ENERGY	3005 3010 3016 103a 103c.	
c FORT HOLABIRD CRIME RECORDS CENTER.	CORNER OF OAKLAND AND DETROIT AVENUE.	BALTIMORE.	MD	21222	ARMY	103c	20A
o FORT HOLABIRD CRIME RECORDS CENTER.	CORNER OF OAKLAND AND DETROIT AVENUE.	BALTIMORE.	MD	21222		103c	
c FORT LEONARD WOOD, U.S. ARMY MANEUVER SUPPORT CENTER.	DIRECTORATE OF PUBLIC WORKS, 1334 FIRST STREET.	FORT LEONARD WOOD.	MO	65473–8944	ARMY	3005 3010 3016 103c.	20A
o AIR TRAINING COMMAND-ENGINEER & FORT LEONARD WOOD.	T44, PULASKI COUNTY	FORT LEONARD WOOD.	MO	65473	ARMY	3005 3010 3016 103c.	
c NIKE BATTERY KANSAS CITY–30 INACTIVE.	ROUTE KK	LONE JACK	MO	64070	ARMY	103c 3016	20A, 21, 23
o NIKE BATTERY KANSAS CITY–30 INACTIVE.	2.5 MI S OF LONE JACK.	PLEASANT HILL.	MO	64080	DEFENSE	103c	
c NAVAL AIR STATION MERIDIAN.	1155 ROSENBAUM AVENUE, STE 13.	MERIDIAN	MS	39309–5003	NAVY	3010 103c	20A
o MERIDIAN NAVAL AIR STATION.	PUBLIC WORKS DEPARTMENT.	MERIDIAN	MS	39309	NAVY	3010 103c	
c FWS-GREAT SWAMP NATIONAL WILDLIFE REFUGE.	152 PLEASANT PLAINS ROAD.	BASKING RIDGE.	NJ	07920–9615	INTERIOR	3016 103c 3010.	20A
o FWS-GREAT SWAMP NATIONAL WILDLIFE REFUGE.	RD 1, BOX 152	BASKING RIDGE.	NJ	07920	INTERIOR	3016 103c 3010.	
c PLUM ISLAND ANIMAL DISEASE CENTER.	ROUTE 25	ORIENT POINT.	NY	11957	AGRICULTURE	3016 103c 3010.	20A
o PLUM ISLAND ANIMAL DISEASE CENTER.	PLUM ISLAND	ORIENT POINT.	NY	11957	AGRICULTURE	3016 103c 3010.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 CORRECTIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
c PORTSMOUTH GASEOUS DIFFUSION PLANT.	3930 U.S. ROUTE 23 SOUTH.	PIKETON	OH	45661	ENERGY	3005 3010 3016 103c 103a.	20A
o PORTSMOUTH GASEOUS DIFFUSION PLANT.	US RTE 235	PIKETON	OH	45661	ENERGY	3005 3010 3016 103c 103a.	
c KREJCI DUMP SITE	814 W HINES HILL RD	BOSTON HEIGHTS.	OH	44264	INTERIOR	3010 3016 103c.	20, 20A
o KREJCI DUMP SITE	814 HINES HILL RD	BOSTON HEIGHTS.	OH	44236		3010	
c JOHN GLENN RESEARCH CENTER.	21000 BROOKPARK ROAD.	CLEVELAND.	OH	44135	NASA	3010 3016 103a 103c.	20A
o GLENN RESEARCH CENTER AT LEWIS FIELD.	6100 BROOKPARK ROAD.	CLEVELAND.	OH	44135	NASA	3010 3016 103a 103c.	
c MCALESTER ARMY AMMUNITION PLANT.	1 C TREE ROAD	MCALESTER.	OK	74501–9002	ARMY	3005 3010 3016 103c 103a.	23
o MCALESTER ARMY AMMUNITION PLANT.	1 C TREE ROAD	MCALESTER.	OK	74501–9002	ARMY	3005 3010 3016 103c.	
c THE DALLES DAM	RIVER MI 192, EXIT 88, I–84 4 MI E OF THE DALLES.	THE DALLES.	OR	97058	CORPS OF ENGINEERS, CIVIL.	3010 103c	20A
o THE DALLES DAM	EXIT 88	THE DALLES.	OR	97058	CORPS OF ENGINEERS, CIVIL.	3010 103c	
c EASTERN REGIONAL RESEARCH CENTER.	600 EAST MERMAID LANE.	WYNDMOOR.	PA	19038	AGRICULTURE	3010 103c 3016.	20A
o WYNDMOOR	600 E MERMAID LN	WYNDMOOR.	PA	19118	AGRICULTURE	3010 103c 3016.	
c CARLISLE ARMY BARRACKS.	U.S. HIGHWAY 11 AND ASHBURN DRIVE.	CARLISLE	PA	17013	ARMY	103c 103a 3016.	20A, 23
o CARLISLE ARMY BARRACKS.	CARLISLE BARRACKS	CARLISLE	PA	17013	ARMY	103c 103a	
c BETTIS ATOMIC POWER LABORATORY.	814 PITTSBURGH MCKEESPORT BLVD.	WEST MIFFLIN.	PA	15122–0109	ENERGY	3005 3010 3016 103c.	20A
o BETTIS ATOMIC POWER LABORATORY.	PO BOX 109 BETTIS RD.	WEST MIFFLIN BOROUGH.	PA	15122–0109	ENERGY	3005 3010 3016 103c.	
c PUERTO RICO ARMY NATIONAL GUARD—CAMP SANTIAGO.	RD 1 KM 3.6—TRAINING SITE.	SALINAS	PR	00751	ARMY	103c 3010 3016.	20A
o CAMP SANTIAGO	ROUTE 1	SALINAS	PR	00751	ARMY	103c 3010 3016.	
c SHAW AFB POINSETT RANGE.	SC HWY 261 4 MILES OF.	WEDGEFIELD.	SC	29168	AIR FORCE	3016 103c	20A, 23
o POINSETT WEAPONS RANGE.	4 MILES S OF WEDGEFIELD SC.	WEDGEFIELD.	SC	29152	AIR FORCE	3016	
c WAPA-WATERTOWN SUBSTATION.	1 MI. E. OF I–29	WATERTOWN.	SD	57201	ENERGY	3010 103c 3016.	23
o WAPA-WATERTOWN SUBSTATION.	1 MI. E. OF I–29	WATERTOWN.	SD	57201	ENERGY	3010 103c	
c MOORE AIR BASE	6 MILES NORTH OF ALTON TEXAS, ROUTE 6017.	EDINBURG	TX	78539	AGRICULTURE	103c 3016	20A, 23
o MOORE AIR BASE	RTE 3, BOX 1004, RM 55.	MCALLEN	TX	78539	AGRICULTURE	103c	
c TOOELE ARMY DEPOT (SOUTH AREA).	HIGHWAY 36, 12 MI S OF TEAD-N.	TOOELE	UT	84074	ARMY	3005 3010 3016 103c 103a.	20A

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FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 CORRECTIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
o TOOELE ARMY DEPOT.	STATE HWY. 36	TOOELE	UT	84074	ARMY	3005 3010 3016 103c 103a.	
c FORT MONROE	318 CORNOG LANE	FORT MONROE.	VA	23651–1110	ARMY	3010 3016 103c 103a.	20A, 23
o FORT MONROE	1 POINT COMFORT	HAMPTON	VA	23364	ARMY	3010 3016 103c.	
c FORT MYER	204 LEE AVE	FORT MYER.	VA	22211–1199	ARMY	3010 103c 3016.	20A
o FORT MYER	US ARMY FT MYER	FORT MYER.	VA	22211	ARMY	3010 103c 3016.	
c U.S. ARMY COMBINED ARMS SUPPORT COMMAND AND FORT LEE.	1816 SHOP ROAD	FORT LEE	VA	23801	ARMY	3005 3010 3016 103c.	20A
o FORT LEE	BLDG 6205 SHOP RD	FORT LEE	VA	23875	ARMY	3005 3010 3016 103c.	
c FS-OKANOGAN-WENATCHEE NF: LOWER WINTHROP COMPOUND.	19284 HWY 20, 300 W OF DOWNTOWN CY, +48.481111° N, -120.186668° W.	WINTHROP	WA	98862	AGRICULTURE	103c	20A
o FS-OKANOGAN-WENATCHEE NF: WINTHROP LOWER COMPOUND.	19284 HWY 20, 300 FT W OF DOWNTOWN WINTHROP.	WINTHROP	WA	98862	AGRICULTURE	103c	
c FS-OKANOGAN-WENATCHEE NF: NORTH CASCADES SMOKE JUMPER BASE.	23 INTERCITY AIRPORT RD, 3 MI SE OF CY, +48.4206667° N,—120.1470000° W.	WINTHROP	WA	98862	AGRICULTURE	103c	20A
o FS-OKANOGAN-WENATCHEE NF: NORTH CASCADES SMOKE JUMPER BASE.	23 INTERCITY AIRPORT RD, 3 MI SE OF WINTHROP.	WINTHROP	WA	98862	AGRICULTURE	103c	
c HANFORD SITE	HANFORD SITE	RICHLAND	WA	99352	ENERGY	3005 3010 3016 103c 103a.	23
o HANFORD SITE	HANFORD SITE	RICHLAND	WA	99352	ENERGY	3005 3010 3016 103c.	
c VOLK FIELD	HWY 94 JUNEAU COUNTY.	CAMP DOUGLAS.	WI	54618	AIR FORCE	3016 3010 103c.	20A
o CAMP DOUGLASS AIR NATIONAL GUARD BASE–OMS1.	HWY 94 JUNEAU COUNTY.	CAMP DOUGLAS.	WI	54618	AIR FORCE	3016 3010 103c.	
c NATIONAL ENERGY TECHNOLOGY LABORATORY—MORGANTOWN.	3610 COLLINS FERRY ROAD.	MORGANTOWN.	WV	26507	ENERGY	3010 103c 3016.	20A, 23
o MORGANTOWN ENERGY TECHNOLOGY CENTER.	3610 COLLINS FERRY RD.	MORGANTOWN.	WV	26505	ENERGY	3010 103c	
c NAVAL SECURITY GROUP ACTIVITY SUGAR GROVE—MAIN BASE.	63 HEDRICK DR	SUGAR GROVE.	WV	26815–5000	NAVY	3010 3016 103c.	20A
o SUGAR GROVE NAVAL SECURITY GROUP ACTIVITY, LF #1.	10 MI OFF RTE 33	SUGAR GROVE.	WV	26815–0001	NAVY	3010 3016 103c.	
c HIGH PLAINS GRASSLANDS RESEARCH STATION.	8404 HILDRETH ROAD	CHEYENNE	WY	82009–8899	AGRICULTURE	3016 103c	20A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #15 CORRECTIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
o HIGH PLAINS GRASSLANDS RESEARCH STATION.	8408 HILDRETH ROAD	CHEYENNE	WY	82009	AGRICULTURE	3016 103c	
c HOE CREEK UNDERGROUND COAL GASIFICATION PROJECT.	531 HOE CREEK ROAD	GILLETTE	WY	82717	ENERGY	103c 3016	20A, 23
o HOE CREEK		GILLETTE	WY		ENERGY	103c	
c ROCK SPRINGS OIL SHALE RETORT PROJECT.	392 PURPLE SAGE ROAD.	ROCK SPRINGS.	WY	82901	ENERGY	103c 3016	20A, 23
o ROCK SPRINGS OIL SHALE RETORT PROJECT.	7 MI W OF ROCK SPRINGS.	ROCK SPRINGS.	WY	82902	ENERGY	103c	
c WAPA–CASPER FIELD BRANCH.	5600 W. POISON SPIDER ROAD.	MILLS	WY	82644	ENERGY	103c 3016	20A, 23
o WAPA–CASPER FIELD BR.	W OF MT VIEW ON SPIDER RD.	MILLS	WY	82644	ENERGY	103c	
c BLM–RAWLINS LANDFILL.	P.O. BOX 953	RAWLINS	WY	82301	INTERIOR	103c	20A
o BLM–RAWLINGS LANDFILL.	P.O. BOX 953	RAWLINS	WY	82301	INTERIOR	103c	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES UPDATE

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism
BLM-BOSTIK INC HOOSIER CREEK.	80 MI NW OF FAIRBANKS, 65° 26′ 54″ N, 150° 04′ 31″ W.	RAMPART	AK	99767	INTERIOR	3010 103c
BLM-ICY CAPE DEW LINE SITE.	50 MI SW OF WAINWRIGHT, 70° 18′ 00″ N, 161° 55′ 00″ W.	WAINWRIGHT.	AK	99782	INTERIOR	103c 3010
BLM-SOURDOUGH LITTLE BEAR CAMP AKA SOURDOUGH ARMY CAMP SITE.	35 MI N OF GLENNALLEN, W OF RICHARDSON HWY.	GLENNALLEN.	AK	99588	INTERIOR	103c
FWS-ALASKA MARITIME NWR: TIGALDA ISLAND AWS.	30 MI E OF AKUTAN, 54° 04′ 48″ N, 165° 03′ 27″ W.	AKUTAN	AK	99553	INTERIOR	103c
NPS-KATMAI NP: BROOKS CAMP.	32 MI E OF KING SALMON, NAKNEK LAKE, 55° 33′ 17″ N, 155° 46′ 38″ W.	KING SALMON.	AK	99613	INTERIOR	103c 3016
NPS-WRANGELL ST ELIAS NP&P: MALASPINA DRILLING MUD SITE.	T24S R32E S31, 59° 42′ 30″ N, 140° 37′ 30″ W.	GLENNALLEN.	AK	99588	INTERIOR	3016 103c
FAA-BIG DELTA STATION	FORT GREELY AIRPORT, 63° 59′ 40″ N, 145° 43′ 17″ W.	DELTA JUNCTION.	AK	99737	TRANSPORTATION	3016 103c
MARTIN-GADSDEN AIR NATIONAL GUARD STATION.	GADSDEN MUNICIPAL AIRPORT.	GADSDEN	AL		AIR FORCE	103c 3010
SHAVER LAKE LANDFILL	DINKEY CREEK ROAD	SHAVER LAKE.	CA	93664	AGRICULTURE	103c
BP-LITTLETON FEDERAL CORRECTION INSTITUTE.	9595 WEST QUINCY AVENUE.	LITTLETON	CO	80123	JUSTICE	103c
LONG ISLAND SOUND COAST GUARD GROUP.	120 WOODWARD AVE	NEW HAVEN	CT	06512	TRANSPORTATION	3010 103c
OSCEOLA NATIONAL FOREST SITE 1.	HIGHWAY 100	LAKE CITY	FL	32055	AGRICULTURE	3016 103c
RUSSELL RESEARCH CENTER.	950 COLLEGE STATION ROAD.	ATHENS	GA	30613	AGRICULTURE	3016 3010
ARMY RESERVE PERSONNEL COMMAND WAREHOUSE.	RTE 3 & NEIDRINGHAUS	GRANITE CITY.	IL	62040	ARMY	3010
WATERTOWN DAIRY	6 MOORE RD	WAYLAND	MA	01778	AGRICULTURE	3016 103c

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FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES UPDATE—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism
WESTOVER AIR FORCE BASE.	439 CSG/DE	CHICOPEE	MA	01022	AIR FORCE	3005 3010 3016 103c
NPS-PROVINCETOWN SANITARY LANDFILL.	W OFF OF RACE POINT RD.	PROVINCETOWN.	MA	02657	INTERIOR	103c
NPS-SEPTAGE TREATMENT FACILITY/OLD CAMP WELLFLEET.	EAST OFF ROUTE 6	WELLFLEET	MA	02667	INTERIOR	3016 103c
SOUTH PORTLAND COAST GUARD BASE.	259 HIGH ST	SOUTH PORTLAND.	ME	04106	TRANSPORTATION	3010 103c
KEWEENAW FIELD STATION.	KEWEENAW FIELD	KEWEENAW BAY.	MI		ARMY	103c
PONTIAC STORAGE FACILITY.	871 SOUTH BOULEVARD	PONTIAC	MI	48503	ARMY	103c
ESCANABA DEFENSE FUEL SUPPORT POINT.	US HIGHWAY 41 DELTA COUNTY.	GLADSTONE	MI	49387	DEFENSE LOGISTICS AGENCY.	3010 3016 103c
ATKINS FARM	1.5 MI W ON HWY 16 THEN S 3/4 MI.	CANTON	MO	63435	AGRICULTURE	103c 3016
MARK TWAIN NATIONAL FOREST.	401 FAIRGROUNDS ROAD	ROLLA	MO	65401	AGRICULTURE	103c 3010
STANLEY R MICKELSEN SAFEGUARD COMPLES-(RSL-4) REMOTE SPRINT LA.	1 MILE SOUTHWEST OF FAIRDALE.	FAIRDALE	ND	58205	AIR FORCE	103c
STANLEY R MICKELSEN SAFEGUARD COMPLEX-(RSL-1) REMOTE SPRINT LA.	3 MILES EAST OF HAMPDEN.	HAMPDEN	ND	58338	AIR FORCE	103c
STANLEY R MICKELSEN SAFEGUARD COMPLEX-(RSL-2) REMOTE SPRINT LA.	6 MILES NORTH OF LANGDON.	LANGDON	ND	58249	AIR FORCE	103c
STANLEY R MICKELSEN SAFEGUARD COMPLEX-(RSL-3) REMOTE SPRINT LA.	19 MILES EAST OF LANGDON.	LANGDON	ND	58249	AIR FORCE	103c
STANLEY R. MICKELSON SAFEGUARD COMPLEX.		NEKOMA	ND		AIR FORCE	103c
NEWINGTON DEFENSE FUEL SUPPORT POINT.	PATTERSON LANE	NEWINGTON	NH	03801	DEFENSE LOGISTICS AGENCY.	3010 3016 103c
BOMARC/MCGUIRE MSL	RT 539	NEW EGYPT	NJ	08533	AIR FORCE	103c
GNOME-COACH	T23S,R30E, SECC 34; 31 MI SE OF CARLSBAD.	CARLSBAD	NM		ENERGY	103c
GUS KEFURT ARMY RESERVE CENTER.	399 MILLER STREET	YOUNGSTOWN.	OH	44507	ARMY	3010
KREJCI DUMP SITE	814 HINES HILL RD	BOSTON HEIGHTS.	OH	44236	INTERIOR	3010
NORTH SMITHFIELD NIKE LAUNCHER AREA.	POUNDHILL ROAD	NORTH SMITHFIELD.	RI	02857	ARMY	103c
POINSETT WEAPONS RANGE.	4 MILES S OF WEDGEFIELD, SC.	WEDGEFIELD.	SC	29152	AIR FORCE	3016
CHARLESTON COAST GUARD GROUP.	196 TRADD ST	CHARLESTON.	SC	29401	TRANSPORTATION	3010
NPS-GREAT SMOKEY MOUNTAINS NATIONAL PARK.	USNPS RT 2	GATLINBURG	TN	37738	INTERIOR	3005 3010 103c
APPALACHIAN SMELTING AND REFINERY.	SOUTH HOLSTON LAKE	BRISTOL	TN	37620	TENNESSEE VALLEY AUTHORITY.	103c
JOHNSONVILLE FOSSIL PLANT.	US HWY 70 E	NEW JOHNSONVILLE.	TN	37134	TENNESSEE VALLEY AUTHORITY.	103c 3010 103a 3005
TENNESSEE VALLEY AUTHORITY.	HIGHWAY 69A	BIG SANDY	TN	38221	TENNESSEE VALLEY AUTHORITY.	3010
TVA WILSON 500 KV SUBSTATION.	2280 BECKWITH ROAD	MOUNT JULIET.	TN	37122	TENNESSEE VALLEY AUTHORITY.	3010
VERMONT AIR NATIONAL GUARD.	10 FALCON STREET, SUITE A.	SOUTH BURLINGTON.	VT	05403-5873	AIR FORCE	3010 103c 3016
ETHAN ALLEN FIRING RANGE.	LEE RIVER ROAD	JERICHO	VT	05465	ARMY	3010 103c

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET NFRAP STATUS FACILITIES UPDATE—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism
FS-OKANOGAN-WENATCHEE NF: LOWER WINTHROP COMPOUND.	19284 HWY 20, 300 FT W OF DOWNTOWN CY, +48.481111° N, −120.186668° W.	WINTHROP	WA	98862	AGRICULTURE	103c
FS-OKANOGAN-WENATCHEE NF: NORTH CASCADES SMOKEJUMPER BASE.	23 INTERCITY AIRPORT RD, 3 MI SE OF CY, +48.4206667° N, −120.1470000° W.	WINTHROP	WA	98862	AGRICULTURE	103c
FS-NORTH CENTRAL FOREST EXPERIMENTS STATION.	5985 COUNTY HIGHWAY K	RHINELANDER.	WI	54501	AGRICULTURE	103a 3010
VOLK FIELD	HWY 94 JUNEAU COUNTY	CAMP DOUGLAS.	WI	54618	AIR FORCE	3016 3010 103c
BLM-RAWLINS LANDFILL	P.O. BOX 953	RAWLINS	WY	82301	INTERIOR	103c

[FR Doc. 02–16460 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10015; FRL–6723–8]

Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to procedures described in 5 CFR 1320.12: Toxic Chemical Release Reporting (EPA ICR No. 1363.12, OMB No. 2070–0093). This ICR involves a collection activity that is currently approved and scheduled to expire on January 31, 2003. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments, identified by the docket control number OEI–10015, must be submitted on or before August 30, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: The Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*.

For technical information about this ICR renewal contact: Judith Kendall, Toxics Release Inventory Program Division, OEI, Environmental Protection Agency (2844T), 1200 Pennsylvania Ave. NW., Washington, DC 20460, Telephone: 202–566–0750; Fax: 202–566–0727; e-mail: *kendall.judith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

A. Affected Entities: Entities that will be affected by this action are those facilities that manufacture, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) to report annually to EPA their environmental releases and other waste management activities involving such chemicals.

Currently, those industries with the following SIC code designations (that meet all other threshold criteria for TRI reporting) must report toxic chemical releases and other waste management activities:

- 20–39, manufacturing
- 10, metal mining (except for SIC codes 1011, 1081, and 1094)
- 12, coal mining (except for SIC code 1241 and extraction activities)
- 4911, 4931 and 4939, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
- 4953, RCRA Subtitle C hazardous waste treatment and disposal facilities
- 5169, chemicals and allied products wholesale distributors
- 5171, petroleum bulk plants and terminals
- 7389, solvent recovery services, and
- federal facilities in any SIC code

To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 372 and section 3(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Internet

Electronic copies of the ICR are available from the EPA home page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (*http://www.epa.gov/fedrgstr/*). An electronic copy of the collection instrument referenced in this ICR and instructions for its completion are available at *http://www.epa.gov/triinter/#forms*.

In Person

The Agency has established an official record for this action under docket control number OEI–10015. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI).

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This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (*i.e.*, "OEI–10015") in your correspondence.

1. By mail

All comments should be sent in triplicate to : Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Ariel Rios Building, Washington, DC 20460.

2. In person or by courier

Comments may be delivered in person or by courier to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. Electronically

Submit your comments electronically by e-mail to: "*oppt.ncic@epa.gov.*" Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI–10015. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2,203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

C. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In addition, EPA is requesting comment on a minor change to Reporting Form R in this ICR. Facilities will be required to supply an e-mail address on the Form R that will help to facilitate better lines of communication between EPA and facilities reporting to TRI.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on January 31, 2003.

Title: Toxic Chemical Release Reporting.

ICR numbers: EPA ICR No. 1363.12, OMB No. 2070–0093.

Abstract: EPCRA section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of over 650 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and other waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industries' attention on pollution prevention and source reduction opportunities. EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding the disposition of toxic chemicals and other waste management information of toxic chemicals from manufacturing facilities in their areas.

EPA collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI, and the real gains in understanding it has produced, communities and governments know what toxic chemicals industrial facilities in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR supporting statement provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 19.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are owners or operators of certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required to report annually on the environmental releases and transfers of waste management activities for such chemicals.

Estimated total number of potential responses: 88,117.

Frequency of response: Annual.

Estimated total annual burden hours: 2,356,900.

Estimated total annual burden costs: $101.9 million.

VI. Are There Changes in the Estimates from the Last Approval?

As a result of OMB's March 7, 2002 approval of an information correction worksheet, OMB's inventory reflects 145,972 responses and 9,612,104 hours for this information collection. This ICR is for 88,117 responses and 2,356,900 hours. The reduction in burden of 7.26 million hours is the result of five adjustments.

The first adjustment is to the number of responses. The estimate of 145,972 responses in the existing OMB approval incorporated predicted reporting increases from economic analyses for several final rules. In all cases, these predictions overestimated actual reporting levels, resulting in a cumulative overestimate of the number of responses. For example, the 1997 program change for industry expansion estimated 39,033 responses would be submitted, but only 12,567 responses were actually submitted. Likewise, the 1999 program change for PBT chemical thresholds estimated 19,990 responses would be submitted, but only about 7,000 responses were actually submitted. The number of responses in this ICR have been adjusted to accurately reflect actual reporting levels, with the exception of predicted additional responses from the rule lowering reporting thresholds for lead and lead compounds. The prediction of 9,813 additional reports for lead and lead compounds may prove to be an overestimate, as with EPA predictions for past rules. This adjustment results in a decrease of 57,855 responses and approximately 3 million burden hours (at 52.1 hours per response).

The second adjustment is to the unit burden hours. EPA has revised the estimate of unit burden hours for Form R completion from 47.1 hours to 14.5 hours based on feedback from TRI reporting facilities. This reduction in the burden estimate accounts for increased familiarity with the program, improved guidance, and computerization/automation at reporting facilities. The adjustment to unit burden hours does not affect the number of responses, but reduces total burden by approximately 2.9 million burden hours (using the number of responses for this ICR).

The third adjustment relates to first-year reporting burden. In previous ICRs, the renewal period has coincided with programmatic changes in one or more years. Previous ICRs have been based on annualized estimates of burden (including time for rule familiarization and higher first year reporting burdens). Since there are no final rules pending at this time, this ICR renewal does not require annualized burden estimates that account for first-year reporting burden. This accounts for a reduction of about 1.1 million burden hours.

The fourth adjustment relates to the adoption of TRI–ME, an automated reporting software package. EPA has reduced the burden estimates related to Form R completion and record keeping/mailing by an additional 25 percent for the reports filed using TRI–ME based on respondent experience. On an annualized basis, an estimated 60 percent of reports are expected to be filed using TRI–ME over the three years of the ICR. This results in a reduction of approximately 260,000 hours.

The fifth adjustment relates to the number of petitions. In previous ICRs, EPA has estimated 11 petitions per year. Since the actual number has been 1 to 2 per year, this ICR has reduced the expected number of petitions to 5. This adjustment has a very minor impact on total burden.

These adjustments are described in further detail in the supporting statement for this ICR, available in the public version of the official record. The sum of these adjustments is a decrease of 57,855 responses and 7,255,204 burden hours from the current approved total.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

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List of Subjects in 40 CFR Part 372

Environmental protection information collection requests, Reporting and record keeping requirements.

Dated: June 24, 2002.

Ramona Trovato,

Acting Assistant Administrator and Chief Information Officer, Office of Environmental Information.

[FR Doc. 02–16466 Filed 6–28–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 31, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0556.

Title: Section 80.1061, Special Requirements for 406.025 MHz EPIRB's.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other-for-profit.

Number of Respondents: 9,500.

Estimated Time Per Response: .084 hours (5 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 798 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 80.1061 requires owners of 406.025 MHz Emergency Position Indicating Radio Beacons (EPIRBs) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). Additionally, the radio beacon must be certified by a test facility recognized by the U.S. Coast Guard to certify that the equipment complies with the U.S. Coast Guard environmental and operational requirements associated with the test procedures described in Appendix A of the RTCM Recommended Standards. If the collection of information were not conducted, NOAA would not have access to this information, which would increase the time needed to complete a search and rescue operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–16445 Filed 6–28–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:33 p.m. on Wednesday, June 26, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by James E. Gilleran (Director, Office of Thrift Supervision), and concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 55sb(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: June 27, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–16672 Filed 6–27–02; 3:52 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Cerro Grande Fire Assistance

AGENCY: Office of Cerro Grande Fire Claims (OCGFC), Federal Emergency Management Agency (FEMA).

ACTION: Notice of deadline for reopening a claim.

SUMMARY: This notice establishes the deadline by which claimants must submit requests to reopen closed claims under the Cerro Grande Fire Assistance Act.

Dates for Reopening Claims: The deadline to request that FEMA reopen a claim is August 28, 2002, except for requests to reopen a claim for mitigation assistance. The deadline to request that a claim be reopened for mitigation assistance is August 28, 2003.

All requests to reopen a claim for any reason other than to request mitigation assistance must meet the requirements of 44 CFR 295.34 and be received by OCGFC on or before August 28, 2002. A claim that has been approved for reopening after August 28, 2002 to receive mitigation assistance will not be reopened again.

Requests to reopen claims that have been administratively closed under 44 CFR 295.30(b) for failure to submit a proof of loss or under 44 CFR 295.32(b) for failure to timely submit a release and certification form must include a proof of loss or release and certification form, whichever is applicable, signed by all adult claimants who signed the notice of loss form, and OCGFC must receive the requests within the deadlines specified above. We expect a claimant to act in a timely fashion to provide all documentation required for OCGFC to evaluate a request for additional compensation or mitigation assistance. A claimant will have 30 days from the date the claim is reopened to submit all additional documentation required for OCGFC to evaluate the claim for additional compensation or mitigation assistance.

FOR FURTHER INFORMATION CONTACT: Robert Diaz, Staff Attorney, Office of Cerro Grande Fire Claims, P.O. Box 1480, Los Alamos, NM 87544, (505) 424–5900.

SUPPLEMENTARY INFORMATION: FEMA published final regulations in the **Federal Register** implementing the Cerro Grande Fire Assistance Act (Pub. L. 106–246) on March 21, 2001 as 44 CFR part 295. The rule sets out in 44 CFR 295.34(b) criteria for reopening a closed claim, authorizes the Director, Office of Cerro Grande Fire Claims to establish a deadline by which a claimant must submit a request to reopen, and provides that once FEMA establishes the deadline is established, FEMA must publish a notice in the **Federal Register.** This constitutes the **Federal Register** publication of that notice.

Under 44 CFR 295.34, "Reopening a Claim," and implementing OCGFC policy, the Director may reopen a claim upon written request from the claimant if:

1. Claimant is eligible for mitigation under section 295.21(d)(3) or (h); or
2. Claimant has closed on the sale of real property not later than August 28, 2002 and desires to file a diminution claim under 44 CFR 295.21(e); or
3. Claimant's actual replacement costs for the destroyed home exceed those awarded under Option I "Other Costs" or Option II of the Home Replacement Policy; or
4. The Director determines that claimant has demonstrated good cause; or
5. Claimant has begun rebuilding a replacement home and has incurred additional, unforeseen alternative living expenses (ALE) (also known as loss of use compensation) beyond those for which advance ALE was paid; or
6. Claimant has discovered additional items of personal property that were not included in the original Proof of Loss.
7. Claimant has incurred or will incur costs associated with additional and/or specific site work under the Home Replacement Policy.

Requests to reopen claims that have been administratively closed under 44 CFR 295.30(b) for failure to submit a proof of loss or under 44 CFR 295.32(b) for failure to timely submit a release and certification form must include a proof of loss or release and certification form, whichever is applicable, signed by all adult claimants who signed the notice of loss form. OCGFC must receive the requests within the deadlines specified above.

We expect a claimant to act in a timely fashion to provide all documentation required for OCGFC to evaluate a request for additional compensation or mitigation assistance. A claimant will have 30 days from the date the claim is reopened to submit all additional documentation required for OCGFC to evaluate the claim for additional compensation or mitigation assistance.

Claimants who seek to reopen a claim for good cause must provide sufficiently detailed written information to permit OCGFC to evaluate whether good cause exists to reopen the claim. OCGFC has published and made available to the public policy guidelines explaining the criteria used to evaluate requests for reopen for good cause.

Such requests are determined on a case-by-case basis through application of the policy criteria.

Dated: June 21, 2002.

Mark D. Wallace,

Deputy General Counsel.

[FR Doc. 02–16423 Filed 6–28–02; 8:45 am]

BILLING CODE 5718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA)

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will meet on July 30, 2002 in Washington, DC.

DATES: The meeting will be held on July 30, 2002, at 9 a.m.

ADDRESSES: The meeting will be held at FEMA's Lobby Conference Center, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–4321; or e-mail *pat.tenorio@fema.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) Introductions, (2) reports from FRPCC subcommittees, (3) old and new business, and (4) business from the floor.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the July 30, 2002, FRPCC meeting should request time, in writing, from W. Craig Conklin, FRPCC Chair, FEMA, 500 C Street, SW, Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, FEMA, 500 C Street, SW, Washington, DC 20472.

Dated: June 21, 2002.

W. Craig Conklin,

Director, Technological Services Division, Office of National Preparedness, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 02–16425 Filed 6–28–02; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

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proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Randolph Bancorp, Stoughton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Randolph Savings Bank, Randolph, Massachusetts.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. Southwest Florida Community Bancorp, Inc., Fort Myers, Florida; to acquire 50 percent of the voting shares of Sanibel Captiva Community Bank, Sanibel, Florida (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. FCB Financial Services, Inc., Marion, Arkansas; to become a bank holding company by acquiring 100 percent of First Community Bank of Eastern Arkansas, Marion, Arkansas.

Board of Governors of the Federal Reserve System, June 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-16415 Filed 6-28-02; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Planning, Research and Evaluation

Grants to the University of Louisville

AGENCY: Office of Planning, Research and Evaluation, Administration of Children and Families, Department of Health and Human Services.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the University of Louisville to establish a National Resource Center on Child Welfare Training and Evaluation to provide technical assistance to any State, tribe or agency needing help in the development of a comprehensive training evaluation system.

As a Congressional set-aside, this one-year project is being funded noncompetitively. The University of Louisville has qualified staff and multi-disciplinary resources to establish a national resource center. The cost of this one-year project is $250,000.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW, Washington, DC 20447, Phone: 202-205-4829.

Dated: June 18, 2002.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 02-16419 Filed 6-28-02; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on July 11-12, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its fifth meeting, at which it will discuss human cloning, stem cell research, the patentability of human organisms, and other issues.

DATES: The meeting will take place Thursday, July 11, 2002, from 8:30 a.m. to 4:45 p.m. ET, and Friday, July 12, 2002, from 8:30 a.m. to 12:15 p.m. ET.

ADDRESSES: Ritz-Carlton Washington, DC, 1150 22nd Street, NW, Washington, DC 20037.

PUBLIC COMMENTS: The meeting agenda will be posted at *http://www.bioethics.gov*. Written statements may be submitted by members of the public for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications, (tel. 202/296-4669 or E-mail *info@bioethics.gov*). Persons wishing to comment in person may do so during the hour set aside for this purpose beginning at 3:00 p.m. ET, on Thursday, July 11, 2002. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296-4669, or visit *http://www.bioethics.gov*.

Dated: June 19, 2002.

Dean Clancy,

Executive Director, the President's Council on Bioethics.

[FR Doc. 02-16480 Filed 6-28-02; 8:45 am]

BILLING CODE 4110-60-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D-0519]

Medical Devices; Cardiac Ablation Catheters Generic Arrhythmia Indications for Use; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Cardiac Ablation Catheters Generic Arrhythmia Indications for Use; Guidance for Industry." This document encourages manufacturers of approved conventional cardiac ablation catheters to submit supplements to broaden their labeling from arrhythmia-specific indications to a generic arrhythmic treatment indication. The Center for Devices and Radiological Health (CDRH) is issuing this guidance document to allow companies to label these products for a broader indication without submitting additional clinical information. This recommendation is based on a comprehensive search of the medical literature.

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance entitled "Cardiac Ablation Catheters Generic Arrhythmia Indications for Use; Guidance for Industry" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Lesley L. Ewing, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8320.

SUPPLEMENTARY INFORMATION:

I. Background

This final guidance entitled "Cardiac Ablation Catheters Generic Arrhythmia Indications for Use; Guidance for Industry" recommends that manufacturers of approved conventional cardiac radiofrequency ablation catheters submit a premarket approval supplement to obtain a generic indication for creating endocardial lesions to treat arrhythmias. The guidance document provides evidence from the medical literature to support this broadening of indications from arrhythmia-specific indications to a generic arrhythmia treating indication.

The guidance was made available as a draft for comment on December 7, 2001 (66 FR 63546). The comment period closed March 7, 2002. FDA received two comments, both agreeing with FDA's recommendation. One of these comments also asked that FDA expand the definition of conventional cardiac catheter. FDA disagrees and is issuing the guidance with no changes.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on generic indications for cardiac ablation catheters. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute and regulations.

III. Electronic Access

In order to receive the guidance entitled "Cardiac Ablation Catheters Generic Arrhythmia Indications for Use; Guidance for Industry" via your fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1382) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collection of information in the section on Generic Arrhythmia Indications in the guidance was approved under OMB control number 0910-0231.

V. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02-16449 Filed 6-28-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding is Sought and Responsible Prospective Contractors—42 CFR Part 50, Subpart F

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director (OD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 9, 2001, pages 51440-51441 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding is Sought and Responsible Prospective Contractors—42 CFR part 50, subpart F, *Type of Information Collection Request:* Revision of OMB No. 0925-0417, expiration date 4/30/02. *Need and Use of Information Collections:* This is a request for OMB approval for the information collection and recordkeeping requirements contained in the final rule 42 CFR part 50 subpart F and Responsible Prospective Contractors: 45 CFR part 94. The purpose of the regulations is to promote objectivity in research by requiring institutions to establish standards which ensure that there is no reasonable expection that the design, conduct, or reporting of research will be biased by a conflicting financial interest of an investigator. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government. *Type of Respondent:* Any public or private entity or organization. The annual reporting burden is as follows;

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Estimated Number of Respondents: 42,800; *Estimated Number of Responses per Respondent:* 1.60; *Average Burden Hours per Response:* 3.40; and *Estimated Total Annual Burden Hours Requested:* 232, 080. The annualized costs to respondents is estimated at: $8,120,000. Operating costs and/or Maintenance Costs are $4,633.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Charles MacKay, Ph.D., Chief, Project Clearance Branch, Office of Extramural Research (OER), Office of Policy for Extramural Research Administration (OPERA), 6705 Rockledge Drive, Room 3509, Bethesda, MD 20892–7974 or call non-toll-free number (301) 435–0978 or E-mail your request including your address to: *MACKAY@OD.NIH.GOV*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 20, 2002.

Regina H. White,

Director, Office of Policy for Extramural Research Administration, OER, NIH.

[FR Doc. 02–16429 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 2—Basic Sciences.

Date: July 22, 2002.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, Building 31, C Wing, 6th Floor, Conference Rooms 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Florence E. Farber, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Rockville, MD 20852. (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer control, National Institutes of Health, HHS)

Dated: June 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16430 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on a meeting of the Board of Scientific Counselors, National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualification and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

Date: July 22–23, 2002.

Time: 6 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Abby B Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16431 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(40 and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: July 11–12, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20878.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

Name of Committee: National Cancer Institute Special Emphasis Panel, Disseminating Evidence Based Intervention Resource Products.

Date: July 18, 2002.

Time: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, 6130 Executive Boulevard, Conference Room E, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, 301/594–1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16432 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Human Haplotype Review Committee.

Date: August 6, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814. (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892. 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16426 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Database Review Panel.

Date: July 22, 2002.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 31 Center Drive, Conference Rm. B2B32, NHGRI, MD 20892.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892. 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16427 Filed 6–28–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Sample Collection Review Panel.

Date: July 19, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 31 Center Drive, Conference Rm. B2B32, NHGRI, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16428 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Spinal Cord Injury.

Date: July 18, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Marina-San Diego, 333 West Harbor Drive, San Diego, CA 92101–7700.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16433 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Research Statistical Methods.

Date: July 9, 2002.

Time: 8:30 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02– 16434 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research in Austism Multisite.

Date: July 11, 2002.

Time: 11:30 a.m. to 12:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16435 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Extramural Associates Research Development Award.

Date: July 25, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5e03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16436 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Child Development Review.

Date: July 29–30, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892. (301) 435–6911. *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16440 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

Date: July 309, 2002.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Training Programs in Diabetes Research For Pediatric Endocrinologist.

Date: July 31, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

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Dated: June 24, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16441 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VISA (01).

Date: June 28, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892. (301) 435–1164. *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research , 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16437 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 27, 2002, 8:30 a.m. to June 28, 2002, 5 p.m., Radisson Barcelo, 2121 P Street, NW, Washington, DC, 20037 which was published in the **Federal Register** on June 12, 2002, 67 FR 40326–40329.

The starting time of the meeting has been changed to 1 p.m. on June 27, 2002. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16438 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1–DMG (04) Member Conflict.

Date: July 3, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee Rosen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116k, MSC 7854, Bethesda, MD 20892. (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16439 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ELSI–2 (01) Research Review Panel.

Date: July 10–11, 2002.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B37, Bethesda, MD 20892–2032, 301 402–0838, *pozzattr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EDC–1 (02).

Date: July 10, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Scott Osborne, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–4 (04) Neurosciences-.

Date: July 10, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ET–2 (01) Bioengineering Computational Modeling.

Date: July 11, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marchia Litwack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ELSI–2 (02) Conflict of Interest SEP.

Date: July 11, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B37, Bethesda, MD 20892–2032, 301 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–F (03).

Date: July 15, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.

Date: July 16–17, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, PhD., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC (10).

Date: July 16, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F08 (20).

Date: July 16–17, 2002.

Time: 9 a.m. 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary P. McCormick, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 El (04).

Date: July 16, 2002.

Time: 11 a.m. to 12 p.m..

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CPA (02) Myeloid Diseases.

Date: July 16, 2002.

Time: 1 p.m. to 3 p.m..

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor A. Fung, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB (02) Chemoprevention.

Date: July 16, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (03).

Date: July 16, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC (02).

Date: July 17, 2002.

Time: 8:30 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 AARR–8 (10) HIV/AIDS & Contraceptive Development SBIR Proposals.

Date: July 17, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Angela M. Pattatucci-Aragon, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (29) Minority/Disability Predoctoral Fellowship Reviews–DCPS,

Date: July 17–18, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of

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Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC (01).

Date: July 17–18, 2002.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB–1 (02).

Date: July 17, 2002.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PC (02).

Date: July 17, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 01 M (Genetic Instability).

Date: July 17, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 AARR–8 (03) HIV/AIDS Psychoimmunology Studies.

Date: July 17, 2002.

Time: 2:30 p.m. to 3:10 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Angela M. Pattatucci-Aragon, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AARR–8 Member Conflicts.

Date: July 17, 2002.

Time: 3:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Angela M. Pattatucci-Aragon, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 2.

Date: July 18–19, 2002.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AARR–8 (01) HIV/AIDS Intervention Research.

Date: July 18–19, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Angela M. Pattatucci-Aragon, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MDCN–3 (10) Neuro SBIR.

Date: July 18, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Michael A. Lang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN–2 (10) SBIR Study Section.

Date: July 18–19, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: William C. Benzing, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SRG1 SSS–N (01).

Date: July 18–19, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday In—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3554, *shirelym@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, International and Cooperative Projects Study Section.

Date: July 18–29, 2002.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–1 (10) Psychopathology and Adult Disorders.

Date: July 18, 2002.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Renaissance Hotel, 1127 Connecticut Ave. NW., Washington, DC 20036.

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for the Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

Name of Committee: Center for Scientific Review Special Emphasis panel, ZRG1 SSS–5 (15) SBIR/STTR Orthopedic Medicine.

Date: July 18–19, 2002.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173. *shinowan@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CPA (03) Tumor Metastasis.

Date: July 18, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–2 (02).

Date: July 18, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REB (29).

Date: July 19, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC (03).

Date: July 19, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16442 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS O (11).

Date: July 22, 2002.

Time: 8 a.m. to 11 a.m.

Agenda: to review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, D.C., 2007.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS F (02) Sensor Development and Validation (RFA EB–02–002)

Date: July 22–23, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, N.W., Washington, DC 20037.

Contact Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7812, Bethesda, MD 20892, 610–825–0349, *mgbehar@aol.com.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ARG1 SSS X (30) Bioengineering

Date: July 22–23, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: to review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: AIDS and Related Research Integrated Review Group AIDS and Related Research 6

Date: July 22–23, 2002.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review, Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel AARR–7 (02) Member Conflict Applications

Date: July 22, 2002.

Time: 8:30 a.m. to 9:59 a.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Bal Harbour Hotel, 9701 Collins Avenue, Bal Harbour, FL 33154.

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–4 (01) Shared Instrumentation Grants-Surface Plasmon Resonance Instruments

Date: July 22, 2002.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th St N.W., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 AARR–7 (03) Sexual Risk Assessment

Date: July 22, 2002.

Time: 10 a.m. to 10:29 a.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Bal Harbour Hotel, 9701 Collins Avenue, Bal Harbour, FL 33514.

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG! AARR–& (01)

Date: July 22–24, 2002.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Bal Harbour Hotel, 9701 Collins Avenue, Bal Harbour, FL 33154.

Contact Person: Angela M Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

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Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS 0 (10)
Date: July 22, 2002.
Time: 11 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.
Contact Persons: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 PTHB 04 M
Date: July 22, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CAMP (04) Colon and Liver Carcinogenesis
Date: July 22, 2002.
Time: 1:30 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BBBP–2, (10) Developmental Disabilities, Communications, and Science Education
Date: July 22–23, 2002.
Time: 9 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Thomas A. Tatham, PhD, Scientific review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS O (12)
Date: July 23, 2002.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, DC, 20007.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov*.

Name of Committee: Center for Scientific Review and Special Emphasis Panel BBBP–2 SBIR member conflict reviews in Developmental Disabilities
Date: July 23, 2002.
Time: 9 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–1 (01) M: Member Conflict: Cellular Proliferation and Repair
Date: July 23, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel CAMP (03) DNA Damage and Repair in Oncogenesis
Date: July 23, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverse@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 AARR–6 (51) SEP to review RFA DK–02–006
Date: July 23–24, 2002.
Time: 12:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BBBP–4 (03) Member Conflict: Attention Deficit Hyperactivity Disorder
Date: July 24, 2002.
Time: 10:30 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CVA (01) BRP: 3D Imaging
Date: July 24, 2002.
Time: 11 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–6(11)
Date: July 24, 2002.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–IFCN–5–03: Member Conflict Panel: Visual and Vestibular Systems
Date: July 24, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 IFCN1 (04) Behavioral Neuroendocrinology
Date: July 24, 2002.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *eskayr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–CDF–5–01: Nitric Oxide/apoptosis
Date: July 24, 2002.
Time: 3:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16443 Filed 6–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR4739N19]

Notice of Proposed Information Collection: Comment Request; Master Appraisal Reports

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Master Appraisal Reports.

OMB Control Number, if applicable: 2502–0493.

Description of the need for the information and proposed use: HUD's collection of this information permits the listing of models covering types of individual homes proposed for construction. It also sets forth the general and specific conditions, which must be met before a property can be endorsed. This information collection is prepared by participating lenders working with developers.

Agency form numbers, if applicable: HUD–91322, HUD–91322.1, HUD–91322.2, & HUD–91322.3.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 3,500 generating 14,000 annual responses, frequency of responses is on occasion, the estimated time per response varies from 30 minutes to 45 minutes, and the estimated annual burden hours requested is 7,875.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 25, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–16517 Filed 6–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–20]

Notice of Proposed Information Collection: Comment Request; Multifamily Financial Management Template

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commission, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

DATES: *Comments Due Date:* August 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of

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information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Financial Management Template.

OMB Control Number, if applicable: 2502-New (formerly 2535–0107).

Description of the need for the information and proposed use: The Uniform Financial Reporting Standards (UFRS) for HUD Housing Programs requires HUD multifamily housing program participants to submit financial data electronically, using General Accepted Accounting Principles (GAAP), in a prescribed format. Electronic submission of this data requires the use of a template. The Multifamily Financial Management template includes updates that increase the efficiency of the data collection and reduces the burden hours for the respondents. HUD will continue to use the financial information collected from multifamily property owners to evaluate their financial condition. Requiring multifamily property owners to report electronically has enabled HUD to provide a more comprehensive financial assessment of the multifamily property owners receiving Federal funds.

Agency form numbers, if applicable: None.

Estimated of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours off response: The estimated total number of annual hours needed to prepare the information collection is 53,784; the number of respondents is 20,774 generating 20,774 annual responses; the frequency of response is annually; and the number of hours per response is approximately 2.50 hours.

Status of the proposed information collection: Revision of a currently approved collection. (This collection was transferred from the Real Estate Assessment Center to the Assistant Secretary for Housing-Federal Housing Commission.)

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 25, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–16518 Filed 6–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–21]

Notice of Proposed Information Collection: Comment Request; Subterranean Termite Treatment Builder's Certification and Guarantee, and the New Construction Subterranean Termite Soil Treatment Record

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due: August 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Subterranean Termite Treatment Builder's Certification and Guarantee, and the New Construction Subterranean Termite Soil Treatment Record.

OMB Control Number, if applicable: 2502–02525.

Description of the need for the information and proposed use: HUD's collection of this information permits the NPCA–99a to establish the builder's warranty against termites for a period o one year bringing it into conformance with other builder warranties HUD requires for newly constructed housing. The NPCA–99b is submitted to the builder of new homes when the soil treatment method is used for termite prevention.

Agencies form numbers, if applicable: NPCA–99a and NPCA–99b.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 54,000 generating 54,000 annual response, frequency of response is on occasion, the estimated time per response varies from approximately 5 minutes to 15 minutes, and the estimated annual burden hours requested is 8,964.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 25, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–16519 Filed 6–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–28]

Notice of Submission of Proposed Information Collection to OMB Section 8 Fair Market Rent Random Digit Dialing Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 31, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0142) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

This Notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Market Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Information collected through the survey will augment the Consumer Price Index (CPI) data and the American Housing Survey (AHS) data in determining Section 8 Fair Market Rents (FMRs) for the Certificate and Voucher programs.

Respondents: Individuals or households.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
46,000	1		0.249		11,454

Total Estimated Burden Hours: 11,454.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 25, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–16520 Filed 6–28–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4556–N–10]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, this document provides notice of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Room B–133–3214 L'Enfant Plaza, 451 Seventh Street, SW, Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number.) A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989) requires that HUD publish a description of and the cause for administrative actions against a HUD-approved mortgagee by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), this document gives notice of administrative actions that have been taken by the Mortgagee Review Board from October 1, 2001 through March 31, 2002, for failure to submit the required annual audit statement, an acceptable annual audited financial statement, and/or the required annual recertification fee.

Title I Lenders and Title II Mortgagees That Failed To Comply With HUD/FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

Action: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

Cause: Failure to submit to the Department the required annual audited financial statement, an acceptable annual audited financial statement, and/or remit the required annual recertification fee.

66 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN OCTOBER 1, 2001 AND MARCH 31, 2002

Lender name	City	State
A S H ELITE FUNDING CORP	LOS ANGELES	CA
AEGIS SECURITIZED ASSETS INC	MARIETTA	GA

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66 TITLE I LENDERS AND LOAN CORRESPONDENTS TERMINATED BETWEEN OCTOBER 1, 2001 AND MARCH 31, 2002—Continued

Lender name	City	State
ALAMOGORDO FEDERAL S–L ASSN	ALAMOGORDO	NM
ALL PACIFIC FINANCIAL INC	ENCINO	CA
ALLIED LENDING CORPORATION	TUSTIN	CA
ANCHORBANC MORTGAGE CORPORATION WEST	CONVINA	CA
APEX MORTGAGE CORPORATION	STANTON	CA
ARBOR LENDING CORP	MIAMI	FL
BANKERS MORTGAGE GROUP	WOODLAND HILLS	CA
CALIF CHARTERED GROUP FINANCIAL CORP	DIAMOND BAR	CA
CAPITAL ACCEPTANCE CORPORATION	INDIANAPOLIS	IN
CITYWIDE BANKS	AURORA	CO
CONSORCIO LENDING INC	FONTANA	CA
COOP AHY CR EMPL PUEBLO INC	CAROLINA	PR
CRUSADER BANK	PHILADELPHIA	PA
DARWAL CORPORATION	OXNARD	CA
EAGLE FUNDING CORPORATION RANCHO	CORDOVA	CA
EAST WEST FINANCIAL CORP	MARGATE	FL
EXPRESS FINANCIAL CORP BOCA	RATON	FL
F AND M BANK	WATERTOWN	SD
FIRST CALIFORNIA LENDING SERV	COVINA	CA
FIRST CHOICE LOANS INC	COVINA	CA
FIRST FREEDOM FINANCIAL INC RANCHO	CUCAMONGA	CA
FIRST NATIONAL BANK	TONKAWA	OK
FIRST SECURITY STATE BANK	DETROIT LAKES	MN
FIRST SUBURBAN CORP MTG BANKERS	SANTA ANA HEIGHTS	CA
FUNDING CENTRE INC	FAIR OAKS	CA
GIBRALTAR SAVINGS BANK SLA	NEWARK	NJ
HEARTLAND COMMUNITY BANK	CAMDEN	AR
HERITAGE PLAZA MORTGAGE INC	STOCKTON	CA
HILTON FINANCIAL GROUP	VICTORVILLE	CA
INTERBANK FUNDING GROUP	SAN DIEGO	CA
INTERSTATE MORTGAGE ALLIANCE CORP	RANCHO CUCAMONGA	CA
LAMAS LOANS INC	PLEASANTON	CA
LEGEND FINANCIAL GROUP INC	POWAY	CA
LENDERS SPECTRUM MORTGAGE CORP	LAKE ELSINORE	CA
M AND I LAKEVIEW BANK	SHEBOYGAN	WI
MAINSTREET MORTGAGE MAKERS INC	ROSWELL	GA
MERIT MORTGAGE INC	PLANO	TX
MORTGAGE MAX INC	POWAY	CA
MORTGAGE ONE CORPORATION	HESPERIA	CA
N I PACIFICA INC	COSTA MESA	CA
NATIONAL EXPRESS MORTGAGE CORP	LA PALMA	CA
NATIONS MORTGAGE CORPORATION	WINTER SPRINGS	FL
NEWWEST MORTGAGE CO	DOWNEY	CA
NTM INC	TURLOCK	CA
OLYMPIAN MORTGAGE CORP	TAMPA	FL
PAVON FINANCIAL CORPORATION	DOWNEY	CA
PENINSULA COMMUNITY FED CU	SHELTON	WA
PEOPLES BANK	MARION	KY
POWER FUNDING GROUP INC	WILLIAMSVILLE	NY
QUEST HOME LOANS INC	OXNARD	CA
RAVENNA SAVINGS BANK	RAVENNA	OH
SALIDA BUILDING AND LOAN ASSOCIATION	SALIDA	CO
SEASONS MORTGAGE GROUP INC	RICHMOND	VA
SECURITY SAVINGS ASSN	HAZELTON	PA
SMC LENDING INC	TEMECULA	CA
SOUTHERN CAPITAL RESOURCES	BIRMINGHAM	AL
SOUTHERN MORTGAGE INVESTMENT CORP	MARIETTA	GA
SUPERIOR BANK FSB OAKBROOK	TERRACE	IL
TUCKER FEDERAL BANK	AUGUSTA	GA
U S MORTGAGE AND ACCEPTANCE CORP	TUSTIN	CA
ULTIMATE FUNDING CORP	TUSTIN	CA
VPM FUNDING COMPANY	DENVER	CO
WESTLEND FINANCING INC	LOS ANGELES	CA

94 TITLE II MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN OCTOBER 1, 2001 AND MARCH 31, 2002

Mortgagee name	City	State
ACCESS FINANCIAL GROUP	FOUNTAIN VALLEY	CA
ALAMOGORDO FEDERAL SAVINGS AND LN ASSN	ALAMOGORDO	NM

94 TITLE II MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN OCTOBER 1, 2001 AND MARCH 31, 2002—Continued

Mortgagee name	City	State
AMERICAN CHARTER MORTGAGE	DOWNEY	CA
AMERICAN HOMEBUYING CENTER INC	LA PALMA	CA
AMERIPRIDE MORTGAGE INC	CORAL SPRINGS	FL
ARBOR LENDING CORP	MIAMI	FL
BAYPORT MORTGAGE LP	LAKEWOOD	WA
BELL MORTGAGE CORP	CHINO	CA
BINH DINH TRAN	HUNTINGTON BEACH	CA
BLAIR MORTGAGE COMPANY INCORP	DANVILLE	CA
BUILDERS MORTGAGE SERVICES LP	ALTAMONTE SPRINGS	FL
CALIFORNIA CHARTERED GROUP FIN	DIAMOND BAR	CA
CALIFORNIA WHOLESALE LENDERS INC	NEW HALL	CA
COMMERCE BANK OF AURORA	AURORA	CO
COMMUNITY MORTGAGE CORP	HAGATNA	GU
COUNTY BANK	FOREST LAKE	MN
CRB TRUST MORTGAGE LTD	MIAMI	FL
DACKO FINANCIAL INC	PAHRUMP	NV
DICKINSON LOGAN TODD BARBER	RALEIGH	NC
EAGLE FUNDING CORPORATION	RANCHO CORDOVA	CA
EDGR FINANCIAL INC	OFALLON	MO
FAMILY HOME MORTGAGE CO INC	DANBURY	CT
FEDERAL MORTGAGE FUNDING INC	LEMON GROVE	CA
FIDELITY FINANCIAL MORTGAGE CORP	NORCROSS	GA
FINANCE PLUS REAL ESTATE	CHULA VISTA	CA
FIRESIDE MORTGAGE CO	ENGLEWOOD	CO
FIRST AMERICANS MORTGAGE CORP	OVERLAND PARK	KS
FIRST CHOICE LOANS INC	COVINA	CA
FIRST FEDERAL SAVINGS AND LOAN	GALION	OH
FIRSTLINE MORTGAGE INC	LONG BEACH	CA
FREESTATE MORTGAGE COMPANY INC	TOWSON	MD
GENESIS MORTGAGE CORPORATION	EVANSTON	IL
GLOBAL HOLDINGS II LLC	KIRKLAND	WA
GRAFTON SUBURBAN CREDIT UNION	NORTH GRAFTON	MA
GUARDIAN SAVINGS AND LOAN ASSOCIATION	HOUSTON	TX
HARRIS-CHAMBERLAIN COMPANY	FORT WORTH	TX
HILTON FINANCIAL GROUP	VICTORVILLE	CA
HOME FUNDING GROUP INC	WALNUT	CA
HOMEQUEST MORTGAGE CORPORATION	NEWPORT BEACH	CA
HOMESTEAD SAVINGS BANK FSB	ALBION	MI
HUDSON RIVER MORTGAGE CORPORATION	ALBANY	NY
IAG MORTGAGE SERVICES	TEMPLE	TX
INDEPENDENT ADVISORS MTG CORP	BLOOMINGDALE	IL
INTERBANK FUNDING GROUP	SAN DIEGO	CA
INTERNATIONAL BROTHERHOOD WKRS	WASHINGTON	DC
IROQUOIS FEDERAL SAVINGS AND LOAN ASSN	WATSEKA	IL
K AND R FINANCIAL INC	LARGO	FL
KATY FINANCIAL SERVICES LP	KATY	TX
KINGWAY CAPITAL INC	WESTLAKE VILLAGE	CA
LAMAS LOANS INC	PLEASANTON	CA
LAUREL SAVINGS BANK	ALLISON PARK	PA
LENDERS SPECTRUM MORTGAGE	LAKE ELSINORE	CA
LIBERTY FEDERAL BANK S B	EUGENE	OR
LILAC CITY MORTGAGE INC	SPOKANE	WA
LOANCOR INC	CARLSBAD	CA
LOANGENIE-COM INC	IRVINE	CA
MCA MORTGAGE CORPORATION	SOUTHFIELD	MI
MEMBERS LOAN SERVICES	SAN DIEGO	CA
MERIT FINANCIAL CORPORATION	PARSIPPANY	NJ
MIDWEST MORTGAGE CONNECTION INC	LAKE IN THE HILLS	IL
MILE HIGH MORTGAGE SERVICES LLLP	DENVER	CO
MORNING STAR REAL EST AND MTG FIN CORP	MASSAPEQUA	NY
MORTGAGE CLIK INC	ALBUQUERQUE	NM
OLYMPIAN MORTGAGE CORPORATION	TAMPA	FL
PAVON FINANCIAL CORPORATION	DOWNEY	CA
PEOPLES MORTGAGE COMPANY LP	LAREDO	TX
PERMANENT FEDERAL SAVINGS BANK	EVANSVILLE	IN
PLUM CREEK FINANCIAL CORP	CASTLE ROCK	CO
PONCE DE LEON FEDERAL SAVINGS AND LOAN	CORAL GABLES	FL
PRESTAR FINANCIAL CORPORATION	SANTA ANA	CA
PRIME TIME LENDING INC	CARLSBAD	CA
PROGRESSIVE MORTGAGE CORP	ELK GROVE	CA
ROYAL MORTGAGE PARTNERS LP	ORANGE	CA

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94 TITLE II MORTGAGEES AND LOAN CORRESPONDENTS TERMINATED BETWEEN OCTOBER 1, 2001 AND MARCH 31, 2002—Continued

Mortgagee name	City	State
SALCORP MORTGAGAE	LAGUNA HILLS	CA
SALIDA BUILDING AND LOAN ASSOCIATION	SALIDA	CO
SAMMELMAN MORTGAGE INC	WES COVINA	CA
SIMPLIFIED MORTGAGE GROUP INC	TROY	MI
SMC LENDING INC	TEMECULA	CA
SOMMERS FINANCIAL INC	LONG BEACH	CA
SOUTHERN FIRST MORTGAGE CORP	DURHAM	NC
STARNET MORTGAGE	DALLAS	TX
SUGAR BEACH LLC	MEMPHIS	TN
SUPERIOR BANK FSB	OAKBROOK TERRACE	IL
TAYLOR COUNTY BANK	CAMPBELLSVILLE	KY
TDC MORTGAGE CORP	LAS VEGAS	NV
TRINITY MORTGAGE CO OF DALLAS	LAFAYETTE	IN
ULTIMATE FUNDING CORP	TUSTIN	CA
UNI-STATE FUNDING INC	BIG BEAR LAKE	CA
US MORTGAGE CAPITAL INC	ROCKVILLE	MD
WALDOBORO BANK FSB	WALDOBORO	ME
WASHINGTON MORTGAGE INVESTMENT CORP	ROCKVILLE	MD
WASHINGTON SAVINGS ASSOCIATION	PHILADELPHIA	PA
WENTWORTH ENTERPRISES INC	FREMONT	CA
WESTERN HILLS MORTGAGE CORP	GARDEN GROVE	CA

Dated: June 26, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 02–16515 Filed 6–28–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4752–D–01]

Redelegation of Fair Housing Act Authority from the General Counsel of Housing and Urban Development

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of redelegation of Fair Housing Act Authority.

SUMMARY: The General Counsel of the Department of Housing and Urban Development revokes all redelegations of his authority from the Secretary under the Fair Housing Act and redelegates his authority for Fair Housing Act case processing to his field and headquarters staff.

EFFECTIVE DATE: June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Associate General Counsel for Fair Housing, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0570. This is not a toll-free number. This number may be accessed via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 30, 1989, the Secretary of Housing and Urban Development delegated his authority to enforce the Fair Housing Act to the General Counsel and the Deputy General Counsel (54 FR 13121). The General Counsel redelegated his authority to his field and headquarters staff on January 12, 1990 (55 FR 1286) and to the Assistant Secretary for Fair Housing and Equal Opportunity on October 24, 1994 (59 FR 53552). In 1994, HUD amended its Fair Housing Act case processing regulations, 24 CFR 103.400, and, in 1996; promulgated Consolidated HUD Hearing Procedures for Civil Rights matters, 24 CFR part 180. The General Counsel hereby revokes the January 12, 1990, the October 24, 1994, and any other redelegations of his authority under the Fair Housing Act. Accordingly, the General Counsel redelegates his authority as set forth in this notice.

Section A. Authority Redelegated

The General Counsel redelegates the authority under the Fair Housing Act for case processing as set forth in 24 CFR part 103 and 24 CFR part 180, with the exception of 24 CFR 180.675 (Petitions for Review), to the Associate General Counsel for Fair Housing and to the Regional Counsel. The Associate General Counsel for Fair Housing retains this authority and further redelegates it to the Assistant General Counsel for Fair Housing Enforcement and the Assistant General Counsel for Fair Housing Compliance.

The General Counsel redelegates his authority under 24 CFR 180.675 (Petitions for Review) to the Associate General Counsel for Fair Housing who retains this authority and further redelegates it to the Assistant General Counsel for Fair Housing Enforcement.

Section B. Further Redelegation of Authority

The Regional Counsel, the Associate General Counsel for Fair Housing, the Assistant General Counsel for Fair Housing Enforcement and the Assistant General Counsel for Fair Housing Compliance may not redelegate the authority set forth in Section A.

Section C. Delegations of Authority Superseded and Revoked

This Delegation of Authority supersedes and revokes all redelegations of the General Counsel's authority for Fair Housing Act case processing.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 3, 2002.

Richard A. Hauser,

General Counsel.

[FR Doc. 02–16516 Filed 6–28–02; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination To Acknowledge the Historical Eastern Pequot Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Assistant Secretary acknowledges that the historical Eastern Pequot tribe, represented by two petitioners, the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut, satisfies all seven criteria for acknowledgment as a tribe in 25 CFR 83.7. This notice covers the final determination concerning both petitioners.

DATES: This determination is final and is effective 90 days from the date of publication of this notice, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

This notice is based on a determination that the historical Eastern Pequot tribe, represented by two petitioners, the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut, satisfies the seven criteria for acknowledgment in 25 CFR 83.7.

A notice of the proposed finding to acknowledge the Eastern Pequot Indians of Connecticut (EP) was published in the **Federal Register** on March 31, 2000, simultaneously with a notice of the proposed finding to acknowledge the Paucatuck Eastern Pequot of Connecticut (PEP) (65 FR 17294–17304). The original 180 day comment period on these proposed findings, which would have ended September 27, 2000, was extended at the request of the State of Connecticut to March 26, 2001, and a second extension was made at the request of the State until June 1, 2001. The actual closing of the comment period, August 2, 2001, was established as part of a scheduling order entered by the Federal District Court for Connecticut in *Connecticut* v. *Dept. of the Interior*, (D. Conn. 2001) (No. 3:01–CV–88–AVC).

The proposed findings to acknowledge both petitioners concluded that both of the petitioners before the Department, the EP (petitioner #35) and the PEP (petitioner #113), had derived in recent times from the historical Eastern Pequot tribe which had existed continuously since first sustained contact with Europeans. However, for the period from 1973 to the present, with regard to criteria 83.7(b) and 83.7(c), the Department found that the petitioners and third parties had not provided sufficient information and analysis to enable the Department to determine whether there was only one tribe with political factions or two tribes and provided that this question would be resolved after receipt of comment on the proposed findings. The proposed finding stated that a specific finding concerning whether one tribe or two tribes, as successors to the historical Eastern Pequot tribe, have occupied the reservation since 1973 would be made as part of the final determination, after receipt of comment on the proposed findings.

This determination is made following a review of the responses to the proposed findings on both petitioners, the public comments on the proposed findings and the EP and PEP responses to the public comments. This final determination has reviewed the evidence considered for the proposed findings, and evaluated that evidence in the light of the new documentation and argument received from third parties and the petitioners.

This final determination concludes that the evidence shows the existence of only a single tribe, the historical Eastern Pequot tribe, including the ancestors of both petitioners. This tribe was continuously recognized as a single tribe by the State of Connecticut since early colonial times and occupied a single state reservation. Although there are internal conflicts, and divisions which date from as early as the beginning of the 20th century, there is only one tribe within the meaning of the regulations. This final determination rejects the arguments presented by the PEP petitioner that it was not and had never historically been part of the same tribe as the families included in the present EP petitioner.

The evidence in the record for the final determinations demonstrates that the two petitioners comprise a single tribe and together meet the requirements for Federal acknowledgment as the historical Eastern Pequot tribe from first sustained contact with Europeans until the present. This final determination therefore acknowledges that the historical Eastern Pequot tribe comprising the membership of the two petitioners, the EP (petitioner #35) and the PEP (petitioner #113), exists as a tribe entitled to a government-to-government relationship with the United States.

Although the two petitioners represent portions of the historical tribe which have grown somewhat separate socially in recent decades, this partial separation resulted from political conflicts which provided some of the strongest evidence in much of the 20th century that the group as a whole continued to have significant political processes which concerned issues of great importance to the entire body of Eastern Pequots.

This determination acknowledges the Eastern Pequot tribe, which has existed continuously since first sustained contact with non-Indians. The Department takes this action of acknowledging two petitioners as a single tribe because that is what the evidence demonstrates concerning the circumstances of these petitioners. This determination does not merge two tribes, but determines that only a single tribe exists which is represented by two petitioners.

The petitioners are two organizations which were established in recent times from the membership of a single historically and continuously existing state recognized tribe resident on a state reservation which it has occupied since 1683. Although the regulations call for the presentation of petitions from groups seeking acknowledgment as a tribe, and for the Department to evaluate those petitions, the fundamental purpose of the regulations is to acknowledge the existence of tribes. The Secretary does not have the authority to acknowledge portions of tribes, where that portion does not substantially encompass the body of the tribe. The Secretary does have the authority to recognize a single tribe in the circumstance where the tribe is represented by more than one petitioner.

The State of Connecticut has since early colonial times continuously recognized the Eastern Pequot as a distinct tribe with a separate land base provided by and maintained by the State. The continuous State relationship manifested itself in the distinct, non-citizen status of the tribe's members until 1973. There is implicit in the relationship between the State and the historical Eastern Pequot a recognition of a distinct political body, in part because the relationship originates with and derives from the Colony's relationship with a distinct political body at the time the relationship was first established. Colony and State laws and policies directly reflected this political relationship until the early 1800's. The distinct political underpinning of the laws is less explicit from the early 1800's until the 1970's, but the Eastern Pequot remained non-citizens of the State until 1973. The State continued the main elements of the earlier relationship (legislation that determined oversight, established and protected land holdings, and exempted

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tribal lands from taxation) essentially without change or substantial questioning throughout this time period.

The historically continuous State relationship provides additional evidence which exists throughout the time span but is most important during specific periods where the other evidence in the record concerning community and political influence would be insufficient by itself. The continuous State relationship, although its nature varied from time to time, provides additional evidence in part because of its continuity throughout the entire history of the Eastern Pequot tribe. The continuous State relationship with a reservation is not evidence sufficient in itself to meet the criteria and is not a substitute for direct evidence at a given point in time or over a period of time. Instead this longstanding State relationship and reservation are additional evidence which, when added to the existing evidence, demonstrates that the criteria are met at specific periods in time.

Criterion 83.7(a): External identifications by the State of Connecticut and others have identified a single Eastern Pequot tribe from 1900 until the present. There are no identifications of a separate EP or PEP entity until the creation of the now-existing organizations during the 1970's. Before 1973, the antecedents of the current petitioners were mentioned, if they were distinguished at all, as subgroups, with conflicts, within the Eastern Pequot tribe. Since the 1973–1976 period, the majority of external identifications, particularly by the State of Connecticut, have continued to be identifications of a single Eastern Pequot tribe, with internal conflicts. Therefore the historical Eastern Pequot tribe, comprising both petitioners, meets the requirements of criterion 83.7(a).

Criterion 83.7(b): The proposed finding concluded that the historical Eastern Pequot tribe met criterion 83.7(b) from the colonial period through 1873. No significant new evidence or arguments were submitted in regard to the nature of the historical Eastern Pequot community in the colonial period or from the era of the American revolution into the third quarter of the 19th century. Throughout this time period there remained a reservation community with a majority of the tribal members resident in it, if not continuously, at least regularly, with the remainder of the group maintaining contact. Such evidence is sufficient under § 83.7(b)(2)(i). There is additional evidence, specifically petitions and overseers' reports, that the direct antecedents of both petitioners were a part of that single historical community in the 19th century. The proposed finding for this period is affirmed.

From the assignment of Harmon Garrett in 1654 as governor of the Pequots who were removed from Ninigret's responsibility to the present, the Eastern Pequot tribe as a whole has maintained a named, collective Indian identity continuously over periods of more than 50 years, notwithstanding changes in name (83.7(b)(1)(viii)). This form of evidence is used throughout the evaluation under criterion 83.7(b) in combination with the evidence of community analyzed for each period from colonial times until the present.

The proposed findings concluded that evidence demonstrated that the Eastern Pequot existed as a tribe for the period between 1873 and 1920 and had demonstrated community for that period. Significant new evidence was submitted for the final determination to affirm this conclusion. The new data included a better copy of a June 26, 1873, petition in which the "members of the Pequot tribe of Indians of North Stonington" remonstrated against sale of lands and requested removal of Leonard C. Williams as overseer. The list of signers shows a connection between Tamar (Brushell) Sebastian and her children and other members of the historical Eastern Pequot tribe. Additional overseers' reports were submitted which further filled in the time span from the 1880's through the early 20th century with evidence that there was a distinct Eastern Pequot community and that this included the antecedent families of both petitioners.

This final determination affirms the conclusions of the proposed finding that there was a high degree of marriage among the Eastern Pequot and in culturally patterned marriages of Eastern Pequots with Narragansetts, Western Pequots, and other local Indians during this time period, which provided substantial evidence of community. The resulting kinship ties linked all of the component family lines which are represented in the current membership today. Additional data submitted in response to the proposed finding confirmed the conclusion that the geographical concentration of the membership during this time period was close enough to facilitate social interaction.

Substantial evidence showing patterns of social association within the Eastern Pequot was presented in new analyses submitted in response to the proposed finding. New evidence in the form of data from personal journals was submitted which provided contemporary data concerning social interactions which supported and was consistent with data from interviews. The evidence submitted in response to the proposed findings confirmed that the social alignment of the various families antecedent to the formation of the current petitioners was not strictly divided in the pattern that the current petitions indicate.

In the following period, from 1920 to 1940, there continued to be strong evidence of community, with additional evidence submitted. The high degree of marriage among the Eastern Pequot and in culturally patterned marriages between other Indians in the region provided strong evidence of community in this period. Additional evidence was submitted to demonstrate visiting patterns among the Sebastians during this time period, which confirms the existence of social cohesion among that portion of the Eastern Pequot tribe. A review of documentary and interview evidence also clearly indicates social ties between the Sebastians and other major family lines, the Jacksons and the Fagins/Randall lines, during this period.

Substantial additional evidence concerning Fourth Sunday meetings, prayer and social gatherings, was submitted in response to the proposed findings. This evidence demonstrated that the meetings occurred regularly and involved a cross section of the Eastern Pequot tribe. The Fourth Sunday meetings were held from the mid 1910's through at least the later 1930's. They are probably a continuance of religious meetings of a similar character which had been held for some time previously, organized by leader Calvin Williams who died in 1913. Although these meetings were not strictly limited to Eastern Pequot tribal members, they were essentially meetings of Eastern Pequot, and Western Pequot and Narragansett to whom they were related or otherwise socially affiliated. The Eastern Pequots who attended included Sebastians, Randalls, and to some extent Jacksons, though by all evidence not the other major family line, the Gardners. Thus, the proposed finding's conclusion that Fourth Sunday meetings were evidence of community is affirmed.

Community from 1940 to 1973 is demonstrated more strongly than for the proposed findings because of the submission of new evidence. There was a strong demonstration of social cohesion among the families antecedent to the EP petitioner because substantial new data was presented which demonstrates visiting patterns and small scale gatherings which crossed family sublines. Interview and documentary data demonstrate that social interaction occurred between the 1920's and on into the 1960's which drew in and occurred between residents of the reservation and those within the orbit defined by New London, Norwich, Mystic and Westerly around the Lantern Hill reservation, with substantial long term connections with Hartford and Providence.

The main antecedent family of the PEP petitioner, the Gardners, was a very small social unit during this time period, and closely related enough to assume social cohesion among them. In addition, gatherings among the Gardners, organized by Atwood I. Williams, Sr., and Helen LeGault, were also shown for this small kinship group.

In the 1970's, because there was still a body of adult Jacksons in the tribe, there was not the same separation within the Eastern Pequot tribe that the present division into two petitioners suggests. The Jackson line, as it had since at least the early 1900's, played the role of bridge or connector between the two lines that today are numerically predominant in the two petitioners, the Sebastians (for EP) and Gardners (for PEP). The evidence reviewed for this final determination demonstrated substantial social links between the Sebastians and the Jacksons, and for the Jacksons with the Gardners continuing from the beginning of the 20th century into the 1970's, indicating one community.

Better and more detailed geographical data on residence patterns confirmed the patterns identified in the proposed finding as providing supporting evidence for community among the EP and PEP memberships individually and thus for the Eastern Pequot as a whole. Additional evidence for community before 1973 is found in the political events of the subsequent decade. These events, in reaction to the formation of the Connecticut Indian Affairs Commission (CIAC) and changes in Connecticut policies beginning in 1973, provide substantial evidence that community existed before that time. The social connections, social distinctions, and political issues, shown by events from 1973 through 1983, are of a strength and character that indicate they were already in existence before that time.

From 1973 to the present, the evidence as presented to the Department by the two petitioners reflects increasing polarization of social ties. However, the overall picture demonstrated by the evidence is that there continues to be one tribe, albeit now with two demarcated subgroups.

The geographic pattern of residence past and present among the EP petitioner's portion of the tribe is sufficiently close to be supporting evidence of more direct evidence of social connections. This determination also concludes that the evidence of control and allocation of the Lantern Hill reservation resources by the EP and the PEP organizations among their respective memberships is evidence for the existence of political processes and therefore strong supporting evidence for the existence of community. The PEP membership is small and fairly closely related, with 90 percent drawn from the two Gardner family sublines. There is direct evidence that kinship relations are recognized within and between its two main subdivisions, the Gardner/Edwards and the Gardner/Williams. The present geographic pattern of residence of the PEP portion of the Eastern Pequot, the Gardner family lines, is close enough that significant social interaction is feasible but is not so concentrated as to provide supporting evidence of community in itself. The interview evidence for the proposed finding indicated that there were social contacts maintained between the most socially connected portion of the PEP membership and those living at a distance. PEP also presented an analysis of relationships within the overall Gardner line, based on defining a core social group with which approximately 90 percent had demonstrable close kinship ties and/or social contacts. This analysis was generally consistent with available interview information about social contacts.

Because the political processes of the entire Eastern Pequot bridge the two petitioning groups in that their crucial focus is on controlling and maintaining access rights to a single historical reservation established for a single historical tribe, this final determination concludes that there is one group encompassing both current petitioners. The evidence presented is sufficient to meet the requirements for demonstrating social community from 1973 to the present, even though, from 1973 to the present, the petitioners have developed into increasingly separate social segments. Each of the major segments, EP and PEP, has significant internal social cohesion. The segments are united by the overall political processes, even when these are illustrated primarily by political disagreements over the Lantern Hill reservation. There is no requirement in the regulations that social relationships be distributed uniformly throughout a community nor that they be amicable. Rather, community is to be interpreted in accord with the history and culture of a particular group (25 CFR 83.1).

The evidence demonstrates that the historical Eastern Pequot tribe maintained a distinct social community within which significant social ties existed historically since first sustained contact with non-Indians and which has continued through the present. These ties within the membership encompass the members of both petitioning groups, even after the development of their separate formal organizations. The historical Eastern Pequot tribe, comprising both current petitioners, meets the requirements of criterion 83.7(b).

Criterion 83.7(c): The proposed findings' conclusion that the historical Eastern Pequot tribe, which included the antecedents of both current petitioners, met criterion 83.7(c) from the colonial period through 1873 is affirmed. No significant new evidence or arguments in regard to this early period was presented for the final determination by either petitioner or by the third parties.

Political influence from 1873 to 1920 was shown in part by a sequence of Eastern Pequot petitions from June 1873 through 1883 which were presented to the Superior Court by the "members of the Pequot tribe of Indians of North Stonington." In petitions in 1874 and 1883, the Gardner and Jackson families (antecedent to PEP) appear in common with Calvin Williams and the members of the Fagins/Randall and Fagins/Watson families (antecedent to EP), signing the same document for the same purpose. The Sebastians appear in another petition in this decade, together with the Jacksons and Fagins/Randalls and Fagins/Watsons.

The proposed finding noted that there was no clear evidence of political processes or leadership between 1880 and 1920, although the evidence of community was strong enough to be good supporting evidence. New evidence submitted for the final determination shows that during the first decade of the 20th century Calvin Williams functioned as a leader who was dealt with by the overseer, represented the Eastern Pequots to the overseer, and consulted with the membership on decisions. Supporting evidence of his leadership came from an analysis of kinship patterns which showed that Williams was related by marriage and through collateral links to many of the Eastern Pequot families.

The strong character of the community, especially based on intermarriage ties, provides strong supporting evidence for the existence of significant political processes during the period from 1913 to 1940.

Atwood I. Williams, Sr. was the state-recognized leader for all of the Eastern Pequots from 1933 until his death in

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1955. There is limited evidence, from documents and interviews, that he was elected, by a portion of the membership at least, and that the State took notice of this election. Even though Williams took a stance against the membership of the Brushell/Sebastian portion of the Eastern Pequots, he was recognized by and dealt with by the State as leader of the entire group. He continued to be consulted by State representatives of the Park and Forest Commission, which at that point had responsibility for dealing with the Connecticut tribes, on matters concerning the tribe and its reservation through the late 1930's.

For the time period between 1913 and 1940, particularly from 1913 to 1929, between the death of Calvin Williams and the appearance of Atwood I. Williams, Sr., as an influential leader, the continuous State relationship with the Eastern Pequot as an Indian tribe provides additional evidence which, in combination with the limited direct evidence, demonstrates continuity of political processes throughout periods in which there is not sufficient positive evidence by itself, but in which positive evidence exists. That evidence includes the role of Tamar Emeline (Sebastian) Swan Williams, the widow of Calvin Williams. Although this final determination does not affirm the proposed finding's conclusion that she was an informal political leader for the EP antecedent families, the evidence supports a conclusion that she was a social leader whose religious activities were well-known and that these activities, especially hosting the Fourth Sunday meetings, provided a focal point for the tribe's members to interact with one another (see criterion 83.7(b)). The few pieces of evidence that might directly indicate the exercise of political influence on her part are not present in sufficient numbers to show that this was the case.

The evidence for political influence between 1940 and 1973 includes the continuance of Atwood Williams, Sr., as the state-recognized leader for all of the Eastern Pequots until his death in 1955, although there was no documentation of his activity between 1941 and 1947. Even though Williams took a position against a portion of the Eastern Pequots, he was recognized by and dealt with by the State as leader of the entire tribe. Although State implementation of his status was inconsistent and varied, it existed throughout the time span from 1933 to 1955.

Additional evidence of political processes in this period is provided by a 1953 expedition of Eastern Pequots, mainly Lantern Hill reservation residents, to Hartford to oppose a bill to "detribalize" Connecticut's Indians. This group was led by Catherine (Sebastian) Carpenter Harris and included Jacksons as well as Sebastians.

The evidence is not entirely clear whether the frequent actions by Helen LeGault (a Gardner) in complaining to the State authorities about the presence and activities of the Sebastians on the reservation during the 1950's and 1960's, and her appearance as a witness in 1961 State legislative hearings to seek amendments which would have limited their residence, represented only her opinions or also those of a body of public opinion among a portion of the Eastern Pequots. There is good evidence that she had the support of the Gardner/Edwards portion of the Gardners and there is some interview evidence to indicate that her opinions exerted influence on the other portion of the Gardners, among the children of the late Atwood I. Williams (the Gardner/Jackson subline). There is also some evidence of opposition to her by both Jacksons and Sebastians, evidence which shows political processes.

This final determination does not find sufficient evidence to support the EP and PEP proposed findings' conclusion that Alden Wilson, Roy Sebastian, Sr., Arthur Sebastian, Jr., Catherine Harris, and Atwood Williams, Jr., taken singly, were informal leaders of various portions of the Eastern Pequot tribe between 1940 and 1973. Neither is there clear indication that during this period Paul Spellman of the Hoxie/Jackson line served as an informal leader as asserted by PEP, although he was well known to outsiders and there is documentation of some limited communication between him and the State in regard to the management of the Lantern Hill reservation.

The political events of the subsequent era, from 1973 through the early 1980's, provide substantial evidence that political processes and community existed before that time. The form the political processes took in response to the State's legal and policy changes and the intensity of actions in response to these changes indicate preexisting political issues and opinions as well as preexisting social connections, distinctions, and alignments. Rather than being newly created, they indicate preexisting community and political processes.

For this time period, and particularly from 1955 to the early 1970's, compiled together, the whole complex of individual leaders' activities, sometimes formal, sometimes informal, coming from the antecedent family lines of both petitioners, with fluctuating alliances of the different family lines supporting them, provides some evidence to demonstrate political influence. The activities of Helen LeGault provide part of the thread connecting the 1970's and the immediately preceding period. There is no question that social community, in part defined by significant social divisions based on family lines and disputes with considerable historical depth, existed throughout the period from 1940 to 1973.

The continuous state relationship with the Eastern Pequot as an Indian tribe and continuing existence of the Lantern Hill reservation with tribal members resident on it under state supervision is additional evidence which, in combination with the other evidence, demonstrates continuity of political processes throughout the period, from 1940 to 1973, in which there is not otherwise sufficient positive evidence, but in which positive evidence does exist.

The political events of the 1970's clearly demonstrate that a single Eastern Pequot tribe with political processes existed. In the conflict from 1973 onward, three different subgroups sought to obtain official approval as representing the Eastern Pequot tribe, or as being the Eastern Pequot tribe. However, the alignments were not strictly along family lines, since the Jacksons had the support of Alton Smith, a leading Sebastian. At the same time, the conflicts of this period were a continuation of the distinctions and political issues that structured the tribe before 1973.

Because there was still a body of adult Jacksons in the tribe in the 1970's, there was not then the same separation that appears today. Instead, since this line played a bridge or connecting role between the two lines that today are numerically predominant in the two petitioners (Sebastian for EP and Gardner for PEP), and had done so since at least the early 1900's, their presence demonstrates that there was a single political field in the 1970's within which the conflict was played out, rather than a conflict between two completely separate groups. It was not until 1989 that PEP asked the Jacksons to join them. The recentness of this request indicates that the alignments among the Eastern Pequot subgroups were still being adjusted in 1989. At the same time, the Sebastians initially presented themselves as representing the interests of part of a tribe, the descendants of Tamar (Brushell) Sebastian, which was being threatened by the activities of Helen LeGault's Authentic Eastern Pequots organization in regard to CIAC representation, rather than as a separate tribe. In the late 1970's, the antecedents of the two current organizations were in fact organizations of two of the family lines of the Eastern Pequot tribe (Gardner and Sebastian)—neither the Hoxie/Jacksons who were not also Gardner descendants nor the Fagins descendants were initially included in either one. The Sebastians in particular viewed the initial conflict as one in which they needed to have their own family's interests represented—demonstrating that the conflict was one of interest groups within a particular political system.

The events of the 1970's which led to the formation of the two organizations demonstrate a high level of political processes within the tribe which involved the main kinship segments, the Sebastians, Jacksons and Gardner/Edwards. The events reflect the on-going political issues of access to and control of the reservation lands and the internal dispute over the legitimacy of the Sebastians as members. The formation of the CIAC and the beginnings of transfer of power over the reservation to the Eastern Pequot tribe triggered this high level of political conflict because it provided an opportunity, not previously existent, for one of the contending Eastern Pequot subgroups to seek to obtain designation as the Eastern Pequot tribe or status as the Eastern Pequot tribe's sole representative. These events mobilized large portions of the relatively small number of adult individuals then alive. The events were clearly a contest for power, resting on the preexisting social context and conflicts, and by definition show political process.

Both EP and PEP, in the modern period since 1973, demonstrate substantial political processes within their own membership. Each deals with the same issues—control over portions of the reservation and whether the Sebastians are part of the tribe. These issues have existed as an unbroken continuity from at least as early as the 1920's, a point in time for which there is strong evidence for the existence of a single community. The division into two political organizations is a recent development, and the evidence demonstrates a single political entity with strong internal divisions. The alignment in its present form, which did not exist in the 1970's, represents the results of a historical political process which is not now complete.

The EP as a separate organization and PEP as a separate organization each demonstrates substantial political processes through dealing with political issues of importance to its own membership. Each petitioner has shown political involvement, beyond mere attendance at meetings, by a substantial portion of its adult membership, both by percentage and by distribution across family sublines, throughout the entire time period from 1973 to the present.

The importance of reservation access and residency rights to the membership of both EP and PEP is supported by the history of visiting with reservation residents and association with the reservation which was widespread among the non-resident Eastern Pequots (both EP and PEP) past and present and is not limited to a small group of reservation residents. These are issues of importance because they involve the loss or potential loss of significant resources, membership, and access to the reservation, which are current for the membership. There is more than sufficient evidence of visiting the reservation, residence there by close relatives, hunting, and social gatherings on the reservation in the lifetimes of the present membership to conclude these are political issues of importance.

In addition, the EP council has exercised effective control over much of the reservation, regulating residence and land use, from the early 1980's to the present. This function was exercised regularly and consistently, and was followed by the membership. There was evidence of political communication because of regular membership meetings which voted on key issues, rather such issues being simply voted on by the council group itself, although there was not strong evidence about communication from membership to the leadership except for the past several years. This is supporting evidence for political influence.

In the PEP, political processes were shown by dealing with the issues of importance to the membership—the same issues as in EP to a considerable extent, and also the issue of whether the two organizations should merge. There were also internal conflicts over other issues, specifically the method of governance, which mobilized political support and opposition along the lines of family subdivisions. The PEP organization also controls and allocates a portion of the reservation land, on a more limited basis than EP, among its membership.

Each petitioner has controlled allocation of reservation resources, among their respective memberships. This allocation is not sufficient evidence of political processes in itself under § 83.7(c)(2)(i), because the processes are parallel rather than a single process, but is strong evidence of political processes.

The Eastern Pequot tribe, comprising both petitioners, demonstrates political processes in which the same political issues and conflicts that occurred earlier continue today. In this context, the evidence for each petitioner, in combination, demonstrates that only a single tribe, a tribe with significant political processes, exists today, notwithstanding the present organization of those processes into two distinct segments. One petitioner, the EP, has supported the creation of a single tribal organization encompassing the membership of both. The PEP from time to time has negotiated with the EP on this issue, manifesting an internal division of political opinion within its own membership as to whether PEP should organize together with the EP as a single tribe.

The continuous historical State recognition and relationship are based on the existence of a single Eastern Pequot tribe, resident on a single land base which the tribe has occupied since colonial times and continues to occupy jointly. These facts provide added evidence that the petitioners meet the regulations as a single political body, notwithstanding current divisions and organization.

The Eastern Pequot have existed as a distinct community within which political influence has been exercised since first sustained contact with Europeans. The historical Eastern Pequot tribe, comprising both current petitioners, meets the requirements of criterion 83.7(c).

Criterion 83.7(d): Each petitioner met the requirements for criterion 83.7(d) separately by submitting a governing document which described its membership eligibility provisions. Given the present division into two organizations, the historical Eastern Pequot tribe does not presently have an overarching governing document, although all members are covered by the two documents presented. The presentation of two governing documents is sufficient to meet the requirements of this section of the regulations to submit copies of the governing documents of the group. The historical Eastern Pequot tribe meets the requirements of criterion 83.7(d).

Criterion 83.7(e): The proposed findings examined the evidence and concluded, on the basis of evidence acceptable to the Secretary, that the Brushell/Sebastian, Fagins/Watson, Hoxie/Jackson, and Gardner lines descend from the historical Eastern Pequot tribe within the meaning of the regulations. The EP proposed finding did not examine the evidence in regard to the Fagins/Randall line. The EP

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identified such descendants on its revised membership list submitted for the final determination. Examination of the evidence in regard to Abby (Fagins) Randall and her sons leads to the conclusion that on the basis of evidence acceptable to the Secretary, the members of this family line descend from the historical Eastern Pequot tribe within the meaning of the regulations.

Therefore, this final determination concludes that all the current members of both petitioners descend from the historical Eastern Pequot tribe. The historical Eastern Pequot tribe, comprising the membership of both petitioners, meets criterion 83.7(e).

Criterion 83.7(f): The final determination affirms the proposed findings' conclusions that a predominant portion of neither petitioner's members were enrolled with any federally acknowledged tribe. The same conclusion is applicable to the Eastern Pequot tribe as a whole. Therefore, the historical Eastern Pequot tribe meets criterion 83.7(f).

Criterion 83.7(g): This final determination affirms the proposed findings' conclusion that neither petitioner had been the subject of legislation terminating a Federal relationship. The same conclusion is applicable to the Eastern Pequot tribe as a whole. Therefore, the historical Eastern Pequot tribe meets criterion 83.7(g).

The historical Eastern Pequot tribe, represented by two petitioners, EP and PEP, meets all of the criteria for Federal acknowledgment as a tribe stated in 25 CFR § 83.7 and therefore meets the requirements to be acknowledged as tribe with a government-to-government relationship with the United States.

Because this final determination recognizes a single historical tribe represented by two petitioners, the Assistant Secretary will deal with both petitioners in the process of developing a governing document for the historical Eastern Pequot tribe. Pursuant to 25 CFR 83.12(b), the base roll for determining future membership of the tribe shall consist of the combined membership lists of the two petitioners submitted for these final determinations.

This determination is final and will become effective 90 days from the date of publication, unless a request for reconsideration is filed pursuant to 25 CFR 83.11. The petitioners or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (83.11(a)(1)). A petitioner's or interested party's request must be received no later than 90 days after publication of this notice of the Assistant Secretary's determination in the **Federal Register** (83.11(a)(2)).

Dated: June 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–16625 Filed 6–28–02; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Status of Outer Continental Shelf Official Protraction Diagrams (OPDs).

SUMMARY: Notice is hereby given that effective with this publication, the following North American Datum of 1983 (NAD 83)-based Outer Continental Shelf OPDs last revised on the date indicated, are on file and available for information only in the Pacific OCS Regional Office, Camarillo, California. In accordance with Title 43, Code of Federal Regulations, these diagrams are the basic record for the description of mineral and oil and gas leases in the geographic areas they represent.

FOR FURTHER INFORMATION CONTACT: Copies of these OPDs may be purchased for $2.00 each from the Public Information Unit, Information Services Section, Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010, Telephone (800) 672–2627.

SUPPLEMENTARY INFORMATION: In addition, OPDs may be obtained in two digital formats: .gra files for use in ARC/INFO and .pdf files for viewing and printing in Acrobat. Copies are also available for download at: *http://www.mms.gov/ld/leasing.htm.*

Description	Date
NH10–02 (Unnamed)	13–MAR–1997
NH10–03 Velero Basin	13–MAR–1997
NH10–05 Jasper Seamount.	31–JUL–1998
NH10–06 Westfall Seamount.	31–JUL–1998
NH11–01 Bushnell Knoll	01–JUN–2001
NH11–04 The Rampart	01–JUN–2001
NI09–03 (Unnamed)	13–MAR–1997
NI10–01 Monterey Fan	13–MAR–1997
NI10–02 Sur Canyon	13–MAR–1997
NI10–03 San Luis Obispo.	01–JUN–2001
NI10–04 (Unnamed)	13–MAR–1997
NI10–05 Arguello Fan	13–MAR–1997
NI10–06 Santa Maria	01–JUN–2001
NI10–07 (Unnamed)	13–MAR–1997
NI10–08 (Unnamed)	13–MAR–1997
NI10–09 Santa Rosa Island.	01–JUN–2001
NI10–10 (Unnamed)	13–MAR–1997
NI10–11 (Unnamed)	13–MAR–1997
NI10–12 Patton Ridge	13–MAR–1997
NI11–04 Los Angeles	01–JUN–2001
NI11–07 Long Beach	01–JUN–2001
NI11–08 Santa Ana	01–JUN–2001
NI11–10 San Clemente Island.	01–JUN–2001
NI11–11 San Diego	01–JUN–2001
NJ09–02 (Unnamed)	13–MAR–1997
NJ09–03 Delgada Fan	13–MAR–1997
NJ09–05 Pioneer Escarpment.	13–MAR–1997
NJ09–06 Pioneer Ridge	13–MAR–1997
NJ09–09 (Unnamed)	13–MAR–1997
NJ09–12 (Unnamed)	13–AUG–1997
NJ10–01 Noyo Canyon	01–JUN–2001
NJ10–02 Ukiah	01–JUN–2001
NJ10–04 Arena Canyon	13–MAR–1997
NJ10–05 Santa Rosa	01–JUN–2001
NJ10–07 Bodega Canyon.	13–MAR–1997
NJ10–08 San Francisco	01–JUN–2001
NJ10–10 Taney Seamount.	13–MAR–1997
NJ10–11 Santa Cruz	01–JUN–2001
NJ10–12 Monterey	01–JUN–2001
NK09–02 Cascadia Gap	13–MAR–1997
NK09–03 Heceta Bank	13–MAR–1997
NK09–05 President Jackson Seamount.	13–MAR–1997
NK09–06 Blanco Saddle	13–MAR–1997
NK09–08 Klamath Ridge	13–MAR–1997
NK09–09 Escanaba Ridge.	13–MAR–1997
NK09–11 Steel Vendor Seamount.	13–MAR–1997
NK09–12 Escanaba Trough.	13–MAR–1997
NK10–01 Coos Bay	31–JUL–1998
NK10–02 Roseburg	31–JUL–1998
NK10–04 Cape Blanco	01–JUN–2001
NK10–07 Crescent City	01–JUN–2001
NK10–08 Weed	01–JUN–2001
NK10–10 Eureka	01–JUN–2001
NK10–11 Redding	01–JUN–2001
NL09–02 Nitinat Fan	31–JUL–1998
NL09–03 Cascadia Basin.	31–JUL–1998
NL09–05 Thompson Seamount.	31–JUL–1998
NL09–06 Astoria Canyon	13–MAR–1997
NL09–08 Vance Seamount.	13–MAR–1997
NL09–09 Astoria Fan	13–MAR–1997
NL09–11 Parks Seamount.	13–MAR–1997
NL09–12 Daisy Bank	13–MAR–1997
NL10–01 Copalis Beach West.	31–JUL–1998
NL10–02 Seattle	31–JUL–1998
NL10–04 Cape Disappointment West.	31–JUL–1998
NL10–05 Hoquiam	31–JUL–1998
NL10–07 Tillamook Seachannel.	13–MAR–1997
NL10–08 Vancouver	31–JUL–1998
NL10–10 Newport Valley	31–JUL–1998
NL10–11 Salem	31–JUL–1998
NM09–08 Barkley Canyon.	31–JUL–1998
NM10–07 Cape Flattery	31–JUL–1998

Dated: June 11, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 02–16448 Filed 6–28–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–459]

In the Matter of Certain Garage Door Operators Including Components Thereof; Notice of Commission Determination not to Review an Initial Determination Terminating the Investigation as to the Last Three Respondents on the Basis of Withdrawal of the Complaint; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 18) issued by the presiding administrative law judge ("ALJ") terminating the above-captioned investigation as to respondents Lynx Industries, Inc., Napoleon Spring Works, Inc., and Guardian Access Corp. on the basis of withdrawal of the complaint. Since these three respondents are the only respondents remaining in the investigation, their termination terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3096. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) In the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 19, 2001, based on a complaint filed by the Chamberlain Group, Inc. of Elmhurst, Illinois ("Chamberlain") against six respondents, 66 FR 37704 (July 19, 2001). Two respondents and an intervenor were subsequently added to the investigation. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain garage door operators including components thereof by reason of infringement of claims 1–8 of U.S. Letters Patent Re. 35,364 and claims 5–30 of U.S. Letters Patent Re. 36,703. On February 6, 2002, complainant Chamberlain filed a motion to terminate the investigation as to respondents Lynx Industries, Inc., Napoleon Spring Works, Inc., and Guardian Access Corp. on the basis of withdrawal of the complaint. The Commission investigative attorney supported the joint motion and the three respondents opposed it. On June 5, 2002, the ALJ issued an ID (Order No. 18) granting the motion.

No petitions for review of the ID were filed. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42.

By order of the Commission.

Issued: June 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–16475 Filed 6–28–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0221 (2002)]

Crawler, Locomotive, and Truck Cranes Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comment concerning its proposal to extend OMB approval of the information-collection requirements specified by its Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180). The paperwork provisions of this Standard specify requirements for developing, maintaining, and disclosing inspection records for cranes and ropes, as well as disclosing written reports of rated load tests. The purpose of each of these requirements is to prevent employees from using unsafe cranes and ropes, thereby reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

DATES: Submit written comments on or before August 30, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0221 (2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments on 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2044. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Crawler, Locomotive, and Truck Cranes Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owens at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html,* and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Crawler, Locomotive, and Truck Cranes Standard (*i.e.,* "the Standard") specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it.

• *Inspection Records (paragraph (d)(6)).* This paragraph specifies that employers must prepare a written

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record to certify that the monthly inspection of critical items in use on cranes (such as brakes, crane hooks, and ropes) was performed. The certification record must include the inspection date, the signature of the person who conducted the inspection, and the serial number (or other identifier) of the inspected crane. Employers must keep the certificate readily available. The certification record provides employers, employees, and OSHA compliance officers with assurance that critical items on cranes regulated by the Standard have been inspected, given some assurance that the equipment is in good operating condition, thereby preventing crane or rope failure during material handling. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

• *Rated Load Tests (paragraph (e)(2)).* This provision requires employers to make available written reports of load-rating tests showing test procedures and confirming the adequacy of repairs or alterations, and to make readily available any rerating-test reports. These reports inform the employer, employees, and OSHA compliance officers of a crane's lifting limitations, and provide information to crane operators to prevent them from exceeding these limits and causing crane failure.

• *Rope Inspections (paragraph (g)).* Paragraph (g)(1) requires employers to thoroughly inspect any rope in use, and do so at least once a month. The authorized person conducting the inspection must observe any deterioration resulting in appreciable loss of original strength and determine whether or not the condition is hazardous. Before reusing a rope not in use for at least a month because the crane housing the rope is shutdown or in storage, paragraph (g)(2)(ii) specifies that employers must have an appointed or authorized person inspect the rope for all types of deterioration. Employers are to prepare a certification record for the inspections required by paragraph (g)(1) and (g)(2)(ii). These certification records are to include the inspection date, the signature of the person conducting the inspection, and the identifier for the inspected rope; paragraph (g)(1) states that employers must keep the certificates "on file where readily available," while paragraph (g)(2)(ii) requires that certificates "be * * * kept readily available." The certification records provide employers, employees, and OSHA compliance officers with assurance that the inspected ropes are in good condition.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

• Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarify of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by its Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180).

OMB Number: 1218–0221.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 20,000 cranes.

Frequency of Recordkeeping: On occasion; monthly; annually.

Average Time per Response: Varies from 15 minutes (.25 hour) to perform a crane inspection and to prepare, maintain, and disclose a written certificate for the inspection, to 30 minutes (.50 hour) to inspect a rope and to develop, maintain, and disclose a written certificate for the inspection to 1 hour to rate the capacity of a crane and make the appropriate record.

Total Annual Hours Requested: 174,040.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on June 25, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–16469 Filed 6–28–02; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–7001, Certificates of Compliance, Paducah–GDP–1, EA–02–108]

In the Matter of United States Enrichment Corp., Paducah Gaseous Diffusion Plant, Paducah, KY, Order Modifying Certificate of Compliance (Effective Immediately)

I

United States Enrichment Corporation (USEC) holds Certificate of Compliance GDP–1, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing USEC to receive, possess and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 76.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its certificate and license holders in order to strengthen certificate and license holders' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at regulated facilities. In addition, the Commission has commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by USEC as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1[1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

The Commission recognizes that some of the requirements set forth in Attachment 1[2] to this Order may already have been initiated by USEC in response to previously issued advisories, or on its own. It is also recognized that some measures may need to be tailored specifically to accommodate the specific circumstances and characteristics existing at USEC's facilities to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although USEC's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the response must be supplemented because of the current threat environment. As a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that USEC is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Certificates of Compliance GDP–1 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 76.70, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

[1] Attachment 1 contains classified information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to the USEC's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

III

Accordingly, pursuant to sections 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 76, *it is hereby ordered,* effective immediately, *that* Certificate of Compliance GDP–1 is *modified as follows:*

A. USEC shall, notwithstanding the provisions of any Commission regulation or certificate to the contrary, comply with the requirements described in Attachment 1 to this Order. USEC shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, no later than November 29, 2002.

B. 1. USEC shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause USEC to be in violation of the provisions of any Commission regulation or its facility certificates. The notification shall provide USEC's justification for seeking relief from or variation of any specific requirement.

2. If USEC considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facilities, USEC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, USEC must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. USEC shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. USEC shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

USEC's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 76.5. In addition, USEC's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, modify, relax or rescind any of the above conditions upon demonstration by USEC of good cause.

IV

In accordance with 10 CFR 2.202 and 76.70, USEC must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which USEC or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to USEC if the answer or hearing request is by a person other than USEC. If a person other than USEC requests a hearing, that person

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shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by USEC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i) and 76.70(c)(3), USEC, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 17th day of June, 2002.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–16452 Filed 6–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–7002, Certificates of Compliance, Portsmouth—GDP–2, EA–02–108]

Order Modifying Certificate of Compliance (Effective Immediately)

In the Matter of United States Enrichment Corp., Portsmouth Gaseous Diffusion Plant, Portsmouth Ohio.

I

United States Enrichment Corporation (USEC) holds Certificate of Compliance GDP–2, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing USEC to receive, possess and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 76.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its certificate and license holders in order to strengthen certificate and license holders' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at regulated facilities. In addition, the Commission has commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by USEC as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1[1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

The Commission recognizes that some of the requirements set forth in Attachment 1[2] to this Order may already have been initiated by USEC in response to previously issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at USEC's facilities to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although USEC's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the response must be supplemented because of the current threat environment. As a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that USEC is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Certificates of Compliance GDP–2 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 76.70, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to sections 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 76, *it is hereby ordered*, effective immediately, *that* Certificate of Compliance GDP 2 is *modified as follows:*

A. USEC shall, notwithstanding the provisions of any Commission regulation or certificate to the contrary, comply with the requirements described in Attachment 1 to this Order. USEC shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, no later than November 29, 2002.

B. 1. USEC shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause USEC to be in violation of the provisions of any Commission regulation or its facility certificates. The notification shall provide USEC's justification for seeking relief from or variation of any specific requirement.

2. If USEC considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facilities, USEC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, USEC must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. USEC shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. USEC shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

USEC's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 76.5. In addition, USEC's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, modify, relax or rescind any of the above conditions upon demonstration by USEC of good cause.

IV

In accordance with 10 CFR 2.202 and 76.70, USEC must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which USEC or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to USEC if the answer or hearing request is by a person other than USEC. If a person other than USEC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by USEC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i) and 76.70(c)(3), USEC, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 17th day of June, 2002.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–16453 Filed 6–28–02; 8:45 am]

BILLING CODE 7590–01–P

[1] Attachment 1 contains classified information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to the USEC's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 AND 50–278]

Exelon Generation Company, LLC; PSEG Nuclear, LLC; Notice of Availability of the Draft Supplement 10 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Peach Bottom Atomic Power Station, Units 2 and 3

Notice is hereby given that the U. S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DRP–44 and DRP–56 for an additional 20 years of operation at Peach Bottom Atomic Power Station, Units 2 and 3. Peach Bottom Atomic Power Station is located primarily in Peach Bottom Township, York County, Pennsylvania. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm.html (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Collinsville Community Library in Brogue, Pennsylvania, the Quarryville Library in Quarryville, Pennsylvania and the Whiteford Branch Library in Whiteford, Maryland, have agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to

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the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by September 18, 2002. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by the Internet at *Peach_Bottom_EIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland and from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held at the Peach Bottom Inn, 6085 Delta Road, Delta, Pennsylvania, on July 31, 2002. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the Peach Bottom Inn. No comments on the proposed draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings, or in writing as discussed above. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Duke Wheeler by telephone at 1–800–368–5642, extension 1444, or by Internet to the NRC at *Peach_Bottom_EIS@nrc.gov* no later than July 24, 2002. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wheeler's attention no later than July 24, 2002, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION, CONTACT: Mr. Duke Wheeler, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wheeler may also be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 24th day of June 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–16451 Filed 6–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of July 1, 8, 15, 22, 29, and August 5, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED: Week of July 1, 2002

Monday, July 1, 2002

2:00 p.m. Discussion of International Safeguards Issues (Closed—Ex. 9)

Week of July 8, 2002—Tentative

Wednesday, July 10, 2002

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on License Renewal Program and Power Uprate Review Activities (Public Meeting) (Contacts: Noel Dudley, 301–415–1154, for license renewal program; Mohammed Shuaibi, 301–415–2859, for power uprate review activities)

This meeting will be webcast live at the Web address—

http://www.nrc.gov

2:00 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address–

http://www.nrc.gov

Week of July 15, 2002—Tentative

Thursday, July 18, 2002

1:55 p.m. Affirmation Session (Public Meeting) (If needed)

Week of July 22, 2002—Tentative

Week of July 29, 2002—Tentative

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on June 20 and 21, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Pacific Gas and Electric Co. (Diablo Canyon Power Plant, Units 1 and 2) Multiple Petitions to Intervene" be held on June 25, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/what-we-do/policy-making/schedule.html

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: June 27, 2002.

Sandra M. Joosten,

Executive Assistant, Office of the Secretary.

[FR Doc. 02–16626 Filed 6–27–02; 12:45 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State	Part 71	Part 73
Alabama	Col. James H. Alexander, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511, (334) 242–4394.	Same.
Alaska	Douglas Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643, (907) 451–2172.	Same.
Arizona	Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, 24 hours: (602) 223–2212.	Same.
Arkansas	Bernard Bevill, Division of Radiation Control and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136.	Same.
California	Captain Andrew R. Jones, California Highway Patrol, Enforcement Services Division, P.O. Box 942898, Sacramento, CA 94298–0001, (916) 445–1865, 24 hours: 1–(916) 861–1300.	Same.
Colorado	Captain Tommy Wilcoxen, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5885, (303) 239–4546, 24 hours: (303) 239–4501.	Same.
Connecticut	Dr. Edward L. Wilds, Jr., Director, Division of Radiation, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127, (860) 424–3029, 24 hours: (860) 424–3333.	Same.
Delaware	James L. Ford, Jr., Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 744–2680, 24 hours: pager (302) 474–1030.	Same.
Florida	Harlan W. Keaton, Administrator, Bureau of Radiation Control, Environmental Radiation Program, Department of Health, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2095.	Same.
Georgia	Captain Bruce Bugg, Special Projects Coordinator, Law Enforcement Division, Georgia Department of Motor Vehicle Safety, P.O. Box 80447, 2206 East View Parkway, Conyers, Georgia 30013, (678) 413–8825.	Same.
Hawaii	Mr. Gary Gill, Deputy Director for Environmental Health, State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 586–4424.	Same.
Idaho	Lieutenant Duane Sammons, Deputy Commander, Commercial Vehicle Safety, Idaho State Police, P.O. Box 700, Meridian, ID 83680–0700, (208) 884–7220, 24 hours: (208) 846–7500.	Same.
Illinois	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 Hours: (217) 785–9900.	Same.
Indiana	Melvin J. Carraway, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248.	Same.
Iowa	Ellen M. Gordon, Administrator, Homeland Security Advisor, Iowa Emergency Management Division, Des Moines, IA 50319, (515) 281–3231.	Same.

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INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Kansas	Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW. Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1409, 24 hours: (785) 296–3176.	Same.
Kentucky	John A. Volpe, Ph.D., Manager, Radiation Health and Toxic Agents Branch, Cabinet for Health Services, 275 East Main Street, Frankfort, KY 40621–0001, (502) 564–7818 ext. 3692.	Same.
Louisiana	Major Joseph T. Booth, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21), Baton Rouge, LA 70896–6614, (225) 925–6113 ext. 270, 24 hours: (877) 925–6252.	Same.
Maine	Colonel Michael R. Sperry, Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624–7000.	Same.
Maryland	First Sgt. Sylvia L. Wright, Maryland State Police, Electronic Systems Division, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4208, 24 hours: (410) 653–4200.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 174 Portland Street, 5th Floor, Boston, MA 02114, (617) 727–6214.	Same.
Michigan	Captain Dan Smith, Commander, Special Operations Division, Michigan State Police ,714 South Harrison Road, East Lansing, MI 48823, (517) 336–6187, 24 hours: (517) 336–6100.	Same.
Minnesota	John R. Kerr, Assistant Director, Administration and Preparedness Branch, Department of Public Safety, Division of Emergency Management, 444 Cedar St., Suite 223, St. Paul, MN 55101–6223, (651) 296–0481, 24 hours: (651) 649–5451.	Same.
Mississippi	Robert R. Latham, Jr. Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501, (601) 960–9020.	Same.
Missouri	Jerry B. Uhlmann, Director, Emergency Management Agency, P.O. Box 116, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748.	Same.
Montana	Jim Greene, Administrator, Disaster & Emergency Service, P.O. Box 4789, Helena, MT 59604, (406) 841–3911.	Same.
Nebraska	Major Bryan J. Tuma, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907, (402) 479–4950, 24 hours: (402) 471–4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Health Division, Department of Human Resources, 1179 Fairview Drive, Suite 102, Carson City, NV 89701–5405, (775) 687–5394 x276, 24 hours: (775) 688–2830.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Department of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305, (603) 271–2791, (603) 271–3636 (24 hours).	Same.
New Jersey	Kent Tosch, Chief, Bureau of Nuclear Engineering, Department of Environmental Protection, P.O. Box 415, Trenton, NJ 08625–0415, (609) 984–7701.	Same.
New Mexico	Ernesto Rodriguez, Section Chief, Emergency Management Section, DPS/OESS, P.O. Box 1628, Santa Fe, NM 87504–1628, (505) 479–9606, 24 hours: (505) 476–9680.	Same.
New York	Edward F. Jacoby, Jr., Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251, (518) 457–2222.	Same.
North Carolina	Line Sgt. Mark Dalton, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 4702 Mail Service Center, Raleigh, NC 27699–4702, (919) 733–5282, After hours: (919) 733–3861.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
North Dakota	Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506–5520, (701) 328–5188, After hours: (701) 328–9921.	Same.
Ohio	Carol A. O'Claire, Supervisor, Ohio Emergency Management Agency, 2855 West Dublin Granville Road, Columbus, OH 43235–2206, (614) 799–3915, 24 hours: (614) 889–7150.	Same.
Oklahoma	Bob A. Ricks, Commissioner, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–2001, 24 hours: (405) 425–2424.	Same.
Oregon	David Stewart-Smith, Energy Resources Division, Oregon Office of Energy, 625 Marion Street, NE, Suite 1, Salem, OR 97301–3742, (503) 378–6469.	Same.
Pennsylvania	John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110–9364, (717) 651–2001.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 89 Jefferson Blvd., Warwick, RI 02888, (401) 941–4500; ext. 150.	Same.
South Carolina	Henry J. Porter, Assistant Director, Division of Waste Management, Bureau of Land and Waste Management, Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4245, Emergency: (803) 253–6488.	Same.
South Dakota	John A. Berheim, Director, Division of Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501–5070, (605) 773–3231.	Same.
Tennessee	John D. White, Jr. Director, Emergency Management Agency, 3041 Sidco Drive, Nashville,TN 37204–1504, (615) 741–0001, After hours: (Inside TN) 1–800–262–3400, (Outside TN) 1–800–258–3300.	Same.
Texas	Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 834–6679.	Col. Thomas A. Davis, Director, Texas Department of Public Safety. Attn: EMS Preparedness Sec., P.O. Box 4087, Austin, TX 78773–0223, (512) 424–2589, (512) 424–2277 (24 hrs).
Utah	William J. Sinclair, Director, Division of Radiation Control, Department of Environmental Quality, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4250, After hours: (801) 536–4123.	Same.
Vermont	Lieutenant Col. Thomas A. Powlovich, Director, Division of State Police, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671–2101, (802) 244–7345.	Same.
Virginia	Brett A. Burdick, Director, Technological Hazards Division, Department of Emergency Management, Commonwealth of Virginia, 10501 Trade Court, Richmond, VA 23236, (804) 897–6500, ext. 6569, 24 hrs. (804) 674–2400.	Same.
Washington	Lieutenant Steven L. Kalmbach, Washington State Patrol, P.O. Box 42600, Olympia,WA 98504–2600, (360) 753–0565.	Same.
West Virginia	Colonel H. E. Hill, Jr., Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111.	Same.
Wisconsin	Edward J. Gleason, Administrator, Wisconsin Division of Emergency Management, P.O. Box 7865, Madison, WI 53707–7865, (608) 242–3232.	Same.
Wyoming	Captain L. S. Gerard, Support Services Officer, Commercial Carrier, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82009–3340, (307) 777–4317, 24 hours: (307) 777–4321.	Same.
District of Columbia	Gregory B. Talley, Program Manager, Radiation Protection Division, Bureau of Food, Drug and Radiation Protection, Department of Health, 51 N Street, NE., Room 6006, Washington, DC 20002, (202) 535–2320, 24 hours: (202) 666–8001.	Same.

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INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Puerto Rico	Esteban Mujica, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (787) 767–8056 or (787) 767–8181.	Same.
Guam	Jesus T. Salas, Administrator, Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921, (671) 475–1658.	Same.
Virgin Islands	Dean C. Plaskett, Esq., Commissioner, Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building—Second Floor, St. Thomas, Virgin Islands 00802, (340) 774–3320.	Same.
American Samoa	Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304.	Same.
Commonwealth of the Northern Mariana Islands.	Thomas B. Pangelinan, Secretary, Department of Lands and Natural Resources, Commonwealth of Northern Mariana Islands Government, Caller Box 10007, Saipan, MP 96950, (670) 322–9830 or (670) 322–9834.	Same.

Questions regarding this matter should be directed to Spiros Droggitis, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (Internet Address: scd@nrc.gov) or at (301) 415–2367.

Dated at Rockville, Maryland, this 21st day of June, 2002.

For the Nuclear Regulatory Commission.

Paul H. Lohaus, Director,

Office of State and Tribal Programs.

[FR Doc. 02–16450 Filed 6–28–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment to this demonstration in order to list all organizations that are eligible to participate in the project and make the resulting adjustments to the table that describes the project's workforce demographics and union representation.

SUMMARY: The Department of Defense (DoD), with the approval of the Office of Personnel Management (OPM), may conduct a personnel demonstration project within DoD's civilian acquisition workforce and those supporting personnel assigned to work directly with it. (*See* Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. § 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85)). This notice amends the project plan for this demonstration to list as eligible to participate (1) all organizations composed of civilian acquisition workforce members, that is, personnel in acquisition positions designated pursuant to 10 U.S.C. 1721 and (2) all organizations with teams of personnel in which more than half the team consists of members of the acquisition workforce and the remainder consists of supporting personnel assigned to work directly with the acquisition workforce. The notice also makes the resulting adjustments to the table that describes the project's demographics and union representation.

DATES: This amendment is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: *DoD:* Anthony D. Echols, Civilian Acquisition Workforce Personnel Demonstration Project, 2001 North Beauregard Street, Suite 750, Alexandria, VA 22311, 703–681–3553. *OPM:* Mary Lamary, U.S. Office of Personnel Management, 1900 E Street NW., Room 7460, Washington, DC 20415, 202–606–2820.

SUPPLEMENTARY INFORMATION:

1. Background

OPM approved and published the project plan for the Civilian Acquisition Workforce Personnel Demonstration Project in the **Federal Register** on January 8, 1999 (Volume 64, Number 5, part VII). An amendment was published in the May 21, 2001, **Federal Register**, Volume 66, Number 98, to (1) correct discrepancies in the list of occupational series included in the project and (2) authorize managers to offer a buy-in to Federal employees entering the project after initial implementation. A second amendment was published in the April 24, 2002, **Federal Register**, Volume 67, Number 79 to (1) make employees in the top broadband level of their career path eligible to receive a "very high" overall contribution score (OCS) and (2) reduce the minimum rating period under the Contribution-based Compensation and Appraisal System (CCAS) to 90 consecutive calendar days. This demonstration project involves hiring and appointment authorities; broadbanding; simplified classification; a contribution-based compensation and appraisal system; revised reduction-in-force procedures; academic degree and certificate training; and sabbaticals.

2. Overview

This amendment will reduce the need for future **Federal Register** amendments regarding project coverage by listing all organizations that are eligible to participate in this demonstration. Further, this amendment makes the resulting adjustments to the project's demographics and union representation.

Dated: June 26, 2002.

Office of Personnel Management.

Kay Coles James,

Director.

I. Executive Summary

The project was designed by a Process Action Team (PAT) under the authority of the Under Secretary of Defense for Acquisition and Technology, with the participation of and review by DoD and OPM. The purpose of the project is to enhance the quality, professionalism, and management of the DoD acquisition workforce through improvements in the human resources management system.

II. Introduction

This demonstration project provides managers, at the lowest practical level, the authority, control, and flexibility they need to achieve quality acquisition processes and quality products. This project not only provides a system that retains, recognizes, and rewards employees for their contribution, but also supports their personal and professional growth.

A. Purpose

The purpose of this notice is to list all organizations that are eligible to participate in the Civilian Acquisition Workforce Personnel Demonstration Project. A comprehensive table will reduce the need for future **Federal Register** amendments. Other provisions of the approved plan are unchanged.

Pursuant to 5 CFR 470.315, changes are hereby made to the **Federal Register**, Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense; Notice, Friday, January 8, 1999, Volume 64, Number 5, Part VII, pages 1432–7 and 1447.

B. Employee Notification and Collective Bargaining Requirements

The demonstration project program office shall notify employees of this amendment by posting it on demonstration's web site (http://*www.acq.osd.mil/acqdemo*/new_site). As stated in the existing demonstration project plan, "Employees within a unit to which a labor organization is accorded exclusive recognition under Chapter 71 of title 5, United States Code, shall not be included as part of the demonstration project unless the exclusive representative and the agency have entered into a written agreement covering participation in and implementation of the project" (Ibid., p. 1432, section II. D., first paragraph).

III. Personnel System Changes

1. Section II. E. Delete all of Section II. E. and replace it with the following:

E. Eligible Organizations

The DoD Civilian Acquisition Workforce Personnel Demonstration Project may include various organizational elements of the Departments of the Army, Navy, and Air Force, and the Office of the Secretary of Defense (Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics). Eligible organizations are shown in Table 1.

TABLE 1.—ELIGIBLE ORGANIZATIONS

DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
DEPARTMENT OF THE AIR FORCE		
Air Force Materiel Command (AFMC)	Aeronautical System Center (ASC)	Wright-Patterson AFB, OH and all other locations.
AFMC	Air Armament Center (AAC)(except comparison group at Eglin AFB, FL).	Eglin AFB, FL and all other locations.
AFMC	Air Force Flight Test Center (AFFTC)	Edwards AFB, CA and all other locations.
AFMC	Arnold Engineering Development Center (AEDC).	Arnold AFB, TN and all other locations.
AFMC	Electronic Systems Center (ESC)	Hanscom AFB, MA and all other locations.
AFMC	HQ AFMC	Wright-Patterson AFB, OH and all other locations.
AFMC	Ogden Air Logistics Center (OO–ALC)	Hill AFB, UT and all other locations.
AFMC	Oklahoma City Air Logistics Center (OC–ALC)	Tinker AFB, OK and all other locations.
AFMC	Warner Robins Air Logistics Center (WR–ALC).	Warner Robins AFB, GA and all other locations.
Air Force Space Command (AFSPC)	HQ AFSPC	Peterson AFB, CO and all other locations.
AFSPC	Space and Missile Center (SMC)	Los Angeles, CA and all other locations.
Miscellaneous Air Force	Contracting Organizations	All locations in the National Capital Region.
Secretary of the Air Force	Assistant Secretary of the Air Force (Acquisition) (SAF/AQ) and Space Acquisition Organization.	Pentagon, Arlington, VA and all other locations.
DEPARTMENT OF THE ARMY		
Army Acquisition Executive Support Agency (AAESA).	Headquarters, Research, Development, and Acquisition Information Systems Activity (RDAISA); Army Digitization Office (ADO); Acquisition Career Management Office; Contract Support Agency (CSA); Joint Simulations (JSIMS); Leavenworth Support; Management Support Pentagon Support; Training Group.	Orlando, FL; Alexandria, VA; Ft. Belvoir, VA; Falls Church, VA; Pentagon, Arlington, VA; Radford, VA; and all other locations.
AAESA	Program Executive Office (PEO) Air and Missile Defense (*See* Note 1).	Huntsville, AL; Pentagon, Arlington, VA; and all other locations.
AAESA	Program Executive Office Ammo (*See* Note 1)	All locations.
AAESA	Program Executive Office Aviation (AVN) (*See* Note 1).	Huntsville, AL; Pentagon, Arlington, VA; and all other locations.
AAESA	Program Executive Office Chemical/Biological Defense (*See* Note 1).	All locations.

TABLE 1.—ELIGIBLE ORGANIZATIONS—Continued

DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
AAESA	Program Executive Office Command, Control, and Communication Systems (C3S).	Huntsville, AL; El Segundo, CA; Tallahassee, FL; Ft. Wayne, IN; Ft. Leavenworth, KS; Seoul, Korea; Yong San, Korea; Ft. Monmouth, NJ; White Sands Missile Range, NM; Ft. Sill, OK; Ft. Hood, TX; Ft. Bliss, TX; Ft. Belvoir, VA; McLean, VA; Pentagon, Arlington, VA; and all other locations.
AAESA	Program Executive Office CS/CSS (*See* Note 1).	All locations.
AAESA	Program Executive Office Ground Combat Support Systems (GCSS) (*See* Note 1).	Picatinny Arsenal, NJ; Warren, MI; Pentagon, Arlington, VA; Washington, DC; and all other locations.
AAESA	Program Executive Officer Intelligence, Electronic Warfare, and Sensors (IEW&S) (*See* Notes 1 and 2).	Ft. Monmouth, NJ; Ft. Belvoir, VA; and all other locations.
AAESA	Program Executive Office/Program Management (PM) Joint Simulation System (*See* Note 1).	Orlando, FL; and all other locations.
AAESA	Program Executive Office National Missile Defense Joint Program Office (*See* Note 1).	All locations.
AAESA	Program Executive Office Soldier (*See* Note 1).	All locations.
AAESA	Program Executive Office Standard Army Management Information Systems (STAMIS) (*See* Note 1).	Ft. Knox, KY; Ft. Monmouth, NJ; Ft. Belvoir, VA; Ft. Lee, VA; Ft. Monroe, VA; and all other locations.
AAESA	Program Executive Officer Tactical Missiles (*See* Note 1).	Huntsville, AL; Pentagon, Arlington, VA; Washington, DC; and all other locations.
AAESA	Program Management (PM) Chemical Demilitarization.	Aberdeen Proving Ground, MD; Pentagon, Arlington, VA; Washington, DC; and all locations.
AAESA	Program Management (PM) Joint Program for Biological Defense.	Aberdeen Proving Ground, MD; Ft. Detrick, MD; Ft. Ritchie, MD; Falls Church, VA; and all locations.
Army Materiel Command (AMC)	Headquarters—Acquisition	Alexandra, VA and all locations.
AMC	AMC Headquarters Staff Support Activities	Nahbohnch, Germany; Rock Island, IL; Yong San, Korea; Aberdeen Proving Ground, MD; Alexandria, VA; and all other locations.
AMC	Installations and Services Activity; Intelligence and Technology Security Activity; International Cooperative Program Activity; Logistics Support Activity; Schools of Engineering and Logistics; Separate Reporting Activities: Field Assistance in Science and Technology; Surety Field Activity; Systems Analysis Activity (*See* Note 2).	All locations.
AMC	Aviation and Missile Command (AMCOM) (*See* Note 3).	All locations.
AMC	Communications-Electronics Command (CECOM) (*See* Note 3).	All locations.
AMC	Operations Support Command (*See* Note 3) ..	All locations.
AMC	Security Assistance Command (*See* Note 2) ..	All locations
AMC	Simulation, Training, and Instrumentation Command (STRICOM) (*See* Note 3).	All locations.
AMC	Soldier and Biological Chemical Command (SBCCOM) (*See* Note 3) All locations..	
AMC	Tank-Automotive and Armaments Command (TACOM) (*See* Note 3).	All locations.
Headquarters, Department of the Army (HQDA)	Office of the Auditor General; Office Surgeon General; G1; G2; G3; G4; G6; G8.	Pentagon, Arlington, VA.
HQDA	Army Contracting Agency	All locations.
Office of the Assistant Secretary of the Army (Financial Management and Comptroller).	Cost and Economic Analysis Center; SAFM–BUI.	Falls Church, VA; Pentagon, Arlington, VA; and all other locations.

TABLE 1.—ELIGIBLE ORGANIZATIONS—Continued

DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology).	Director of Assessment and Evaluation (SARD–ZD); Deputy Assistant Secretary of the Army for Logistics (SARD–ZL); Deputy Assistant Secretary for Plans/Programs/Policy (SARD–ZR); Deputy Assistant Secretary of the Army for Procurement (SARD–ZP); Deputy Assistant Secretary for Research and Technology (SARD–ZT); Deputy for Systems Management (SARD–ZS); Management Support; SACO and associated offices.	Ft. Belvoir, VA; Falls Church, VA; Pentagon, Arlington, VA; Radford, VA; and all other locations.
Medical Command (MEDCOM)	Healthcare Acquisition Activity, MEDCOM Acquisition Activity.	Augusta, GA; Honolulu, HI; El Paso, TX; San Antonio, TX; Seattle, WA; Walter Reed Army Medical Center, Washington, DC; Landstuhl, Germany.
MEDCOM	Medical Research and Matehel Command (MRMC) (*See* Note 3).	Ft. Rucker, AL; Natick, MA; Aberdeen Proving Ground, MD; Ft. Detrick, MD; Washington, DC.
MEDCOM	Medical Department Activity	Ft. Greeley, AK; Ft. Richardson, AK; Ft. Wainwright, AK; Ft. Huachuca, AZ; Ft. Carson, CO; Heidelberg, Germany; Ft. Campbell, KY; West Point, NY; Ft. Jackson, SC; Ft. Hood, TX.
MEDCOM	Army Medical Centers	Honolulu, HI; Ft. Bragg, NC; San Antonio, TX; Tacoma, WA; Washington, DC.
MEDCOM	Center for Health Promotion and Preventive Medicine.	Aberdeen Proving Ground, MD.
US Army Eighth Army (EUSA)	Contracting Command Korea/EAKC	Seoul, Korea and all other locations.
EUSA	Troop Command	Seoul, Korea and all other locations.
US Army Test and Evaluation Command (ATEC).	HQ, ATEC	Alexandria, VA.
ATEC	Operational Test Command (OTC)	Ft. Hood, TX and all other locations.
ATEC	Army Evaluation Center (AEC)	Alexandria, VA and all other locations.
ATEC	Developmental Test Command (DTC)	Aberdeen Proving Ground, MD and all other locations.
Headquarters, Department of the Army (HQDA)	Defense Supply Services Washington (DSSW)/Joint-DSSW.	Alexandria, VA; Ft. Belvoir, VA; Falls Church, VA; Washington, DC.
National Guard Bureau (NGB) (*See* Note 4)	Program Executive Office/Program Management RCAS, NGB–RCS–RA.	Arlington, VA.
Joint Activities	Information Management Support Center	Pentagon, Arlington, VA and all other locations.
Military Traffic Management Command (MTMC)	HQ, MTMC	Alexandria, VA.
MTMC	MTAQ	Falls Church, VA and all other locations.
MTMC	PM Global Freight Management System	Alexandria, VA.
MTMC	598th Transportation Terminal Group; 599th Transportation Terminal Group; 836th Transportation Terminal Group Deployment Support Command.	Yokohama, Japan; Rotterdam, Netherlands; Oahu, HI; Fort Eustis, VA; and all other locations.
Space and Missile Defense Command (SMDC)	SMDC (See Note 1)	Huntsville, AL; Kwajalein Atoll, Marshall Islands; Colorado Springs, CO; White Sands Missile Range, NM; Arlington, VA; Fairfax, VA; all other locations.
Training and Doctrine Command (TRADOC)	Headquarters, TRADOC Acquisition Directorate and Small and Disadvantaged Business Utilization Office.	Ft. Monroe, VA.
TRADOC	Directorate of Contracting and TRADOC Contracting Activity.	Ft. Eustis, VA.
TRADOC	Directorate of Contracting and Mission Contracting Activity.	Ft. Leavenworth, KS.
TRADOC	Directorate of Contracting and Mission Contracting Activity.	Ft. Lee, VA.
TRADOC	Directorates of Contracting	McClellan, AL; Rucker, AL; Ft. Huachuca, AZ; Presidio at Monterey, CA; Ft. Benning, GA; Ft. Gordon, GA; Ft. Knox, KY; Ft. Leonard Wood, MO; Ft. Sill, OK; Carlisle Barracks, PA; Ft. Jackson, SC; Ft. Bliss, TX; Ft. Lee, VA.
Corps of Engineers (COE)	Headquarters	Washington, DC.
COE	Regional Headquarters	All locations.
COE	Division, Directorates of Contracting	All locations.
COE	District Contracting Offices	All locations.

TABLE 1.—ELIGIBLE ORGANIZATIONS—Continued

DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
COE	Transatlantic Programs Center, Directorate of Contracting.	All locations.
COE	Humphreys Engineering Center Support Activity, Contracting Office.	All locations.
COE	Marine Design Center	All locations.
Intelligence and Security Command	704 Military Brigade, Headquarters and Head-	All locations.

TABLE 1.—ELIGIBLE ORGANIZATIONS—Continued

DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
Field Operating Offices, Office of the Secretary of the Army.	Communication Electronic Service Office	Alexandria, VA and all other locations.
Special Operations Command	Office of the Acquisition Executive and all associated PEOs and PMs.	All locations.
Joint Activities	Army Visual Information Center	Pentagon, Arlington, VA and all other locations.
Joint Activities	Defense Acquisition University (DUA) (See	Ft. Belvoir, VA.

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TABLE 1.—ELIGIBLE ORGANIZATIONS—Continued

DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
COE	Transatlantic Programs Center, Directorate of Contracting.	All locations.
COE	Humphreys Engineering Center Support Activity, Contracting Office.	All locations.
COE	Marine Design Center	All locations.
Intelligence and Security Command	704 Military Brigade, Headquarters and Headquarters Company; 718th Military Group; HQ, U.S. Army (USA) Intelligence Security Command; USA Element National Security Agency (NSA); USA Foreign Counter Intelligence (CI) Activity; USA Land Information Warfare; USA National Ground Intelligence Center (*See* Note 2).	All locations.
Criminal Investigation Command	Headquarters	Ft. Belvoir, VA and all other locations.
U.S. Army Europe and 7th Army (USAREUR)	Wiesbaden Contracting Center	Wiesbaden, Germany.
USAREUR	USA Contracting Command Europe	Brussels, Belgium; Bad Kreuznach, Germany; Grafenwohr, Germany; Seckenheim, Germany; Wiesbaden, Germany; Wuerzburg, Germany; Vicenza, Italy; and all other locations.
USAREUR	USA Transportation Management Center	Grafenwoehr, Germany.
USAREUR	Southern European Task Force	Vicenza, Italy.
USAREUR	21st Theater Army Area Command	Kaiserslautern, Germany.
USAREUR	V Corps	Heidelberg, Germany.
USAREUR	7th Army Training Command	Grafenwoehr, Germany.
USAREUR	26th Support Group	Heidelberg, Germany.
Forces Command (FORSCOM)	U.S. Army Garrisons (USAGs)	Ft. Carson, CO; Ft. McPherson, GA; Ft. Stewart, GA; Ft. Riley, KS; Ft. Campbell, KY; Ft. Polk, LA; Ft. Bragg, NC; Ft. Hood, TX; Ft. Dix, NJ; Ft. Drum, NY; Ft. Lewis, WA; Ft. McCoy, WI.
FORSCOM	Reserve Command	All locations.
FORSCOM	Signal Command	Ft. Huachuca, Arizona and all other locations.
FORSCOM	First Army; Third Army; Fifth Army	All locations.
US Military Academy	West Point (See Note 5)	West Point, NY.
Military District of Washington	3rd U.S. Infantry; 12th Aviation Battalion; Army Signal Activity; Arlington National Cemetery; Joint Personal Property Shipping Office; U.S. Army Band; White House Transportation Agency.	All locations.
U.S. Army National Guard Bureau (ANGB)	USPFO Activity (*See* Note 3)	All locations.
ANGB	State Area Command (*See* Note 3)	All locations.
Southern Command	U.S. Army Element, Headquarters Southern Command.	Miami, FL and all other locations.
Recruiting Command	USA Recruiting Support Battalions	Fort Knox, KY and all other locations.
Military Entrance Processing Command (MEPCOM).	Headquarters, USA, MEPCOM	North Chicago, IL.
Total Army Personnel Command	Information System Agency, Army Reserve Personnel Center.	St. Louis, MO.
U.S. Army Pacific (USARPAC)	HQ, USARPAC; and subordinate command/installations.	All locations.
Office of the Secretary of the Army	Immediate Office of the Secretary of the Army	Pentagon, Arlington, VA and all other locations.
Office of the Secretary of the Army	Office of the Administrative Assistant to the Secretary of the Army.	Pentagon, Arlington, VA and all other locations.
Office of the Secretary of the Army	Office of the Chief of Legislative Liaison	Pentagon, Arlington, VA and all other locations.
Office of the Secretary of the Army	Office of Small and Disadvantaged Business Utilization.	Pentagon, Arlington, VA and all other locations.
Office of the Secretary of the Army	Office of Director, Information Systems for Command Control, Communications, and Computers.	Pentagon, Arlington, VA and all other locations.
Field Operating Offices of the Office of the Secretary of the Army.	Army Broadcasting Service	Alexandria, VA.
Field Operating Offices, Office of the Secretary of the Army.	Cost and Economic Analysis Agency	Arlington, VA and all other locations.
Field Operating Offices, Office of the Secretary of the Army.	Army Safety Center	Ft. Rucker, AL and all other locations.
Field Operating Offices, Office of the Secretary of the Army.	USA War College (See Note 5)	Carlisle Barracks, PA and all other locations.

TABLE 1.—ELIGIBLE ORGANIZATIONS—Continued

DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
Field Operating Offices, Office of the Secretary of the Army.	Communication Electronic Service Office	Alexandria, VA and all other locations.
Special Operations Command	Office of the Acquisition Executive and all associated PEOs and PMs.	All locations.
Joint Activities	Army Visual Information Center	Pentagon, Arlington, VA and all other locations.
Joint Activities	Defense Acquisition University (DUA) (See Note 5).	Ft. Belvoir, VA.
DEPARTMENT OF THE NAVY		
Navy		
Assistant Secretary of the Navy (Research, Development, and Acquisition).	(ASN(RD&A))	Arlington, VA.
Navy International Program Office (NIPO)	NIPO	Arlington, VA.
Naval Supply Systems Command (NAVSUP)	Fleet and Industrial Supply Center, Puget Sound.	Bremerton, WA.
NAVSUP	Fleet and Industrial Supply Center	San Diego, CA.
Naval Seal Systems Command (NAVSEA)	TEAM CX (Surface Ship Directorate (SEA 91), Program Executive Office Aircraft Carriers, and Program Executive Office Expeditionary Warfare).	Arlington, VA.
Marine Corps		
Marine Corps Systems Command (MARCORSYSCOM).	Amphibious Vehicle Test Bed (AVTB); Marine Corps Tactical Systems Support Activity (MCTSSA).	Camp Pendleton, CA.
MARCORSYSCOM	Headquarters, Marine Corps Systems Command (MARCORSYSCOM); CSLE; Program Support Section.	Albany, GA; Rock Island, IL; Picatinny Arsenal, NJ; Warren, MI; Quantico, VA.
DEPARTMENT OF DEFENSE		
Office of the Secretary of Defense Office of the Under Secretary of Defense for Acquisition, Logistics, and Technology (USD(AT&L)).	ATSD (NCB); DIR, Admin; DIR, API; DDR&E; DIR, DP; DSB; DUSD (ES); DUSD (AR); DUSD (AT); DUSD (IA&I); DUSD (I&CP); DUSD (L); DIR, S&TS; DIR, TSE&E; Spec Prog; SADBU.	Pentagon, Arlington, VA.
Defense Advanced Research Projects Agency (DARPA).	All (See Note 5)	Arlington, VA.
Defense Logistics Agency	All	All locations.
Missile Defense Agency	All	Arlington, VA.
Defense Contract Management Agency (DCMA).	All	All locations.
Defense Threat Reduction Agency (DTRA)	All	Arlington, VA; Ft. Belvoir, VA.
Defense Information Systems Agency	PM DISN System Integration Project	Falls Church, VA.

Note 1: Includes all associated PMs and liaison representatives.
Note 2: Excludes Defense Civilian Intelligence Personnel System positions.
Note 3: Excludes positions covered by another demonstration project that is operating or under development within DoD.
Note 4: Only title 5 National Guard Bureau positions are eligible to be included in this demonstration.
Note 5: Excludes Administratively Determined pay plan employees.

2. *Section II F.:* Delete the entire first paragraph of Section II. F. and replace it with the following two paragraphs:

In determining the scope of the demonstration project, primary consideration was given to the number and diversity of occupations within (1) the DoD acquisition workforce and (2) the teams of personnel, more than half of which consist of members of the acquisition workforce and the remainder of supporting personnel assigned to work directly with the acquisition workforce. This can include positions in the following fields, as well as any other position or group of positions in acquisition-related fields or that perform acquisition-related duties: program management; systems planning, research, development, engineering, and testing; procurement, including contracting; industrial property management; logistics; quality control and assurance; manufacturing and production; business, cost estimating, financial management, and auditing; education, training, and career development; construction; and joint development and production with other Government agencies and foreign governments.

Additionally, in determining the scope of the demonstration project, current DoD human resources management design goals and priorities for the entire civilian workforce were

considered. While the intent of this project is to provide DoD activities with increased control and accountability for their covered workforce, the decision was made to restrict development efforts initially to covered General Schedule (GS) positions. Employees covered under the Performance Management and Recognition System Termination Act

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Magnum Hunter Resources, Inc.) File No. 1–12508

June 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,
Secretary.

[FR Doc. 02–16457 Filed 6–28–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE

for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

	Percent
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

Dated: June 25, 2002.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. 02–16521 Filed 6–28–02; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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considered. While the intent of this project is to provide DoD activities with increased control and accountability for their covered workforce, the decision was made to restrict development efforts initially to covered General Schedule (GS) positions. Employees covered under the Performance Management and Recognition System Termination Act (pay plan code GM) are General Schedule employees and are covered under the demonstration project.

3. Replace current Table 3 and the first sentence of the final paragraph of Section II. F. with the following:

TABLE 3.—DOD ACQUISITION WORKFORCE DEMOGRAPHICS AND UNION REPRESENTATION

Career Paths:	
Business Management & Technical Management Professional	95,821
Technical Management Support	1,084
Administrative Support	3,389
Total	*100,294
DoD Components:	
DoD Agencies	23,574
Air Force	16,969
Army	33,180
Navy	25,823
Marine Corps	748
Total	*100,294
Occupational Families 22.	
Percentage of Veterans 26.9%.	
Union Affiliation 54,944.	

*These figures are as of February 25, 2002.

Although more than 100,000 employees have been identified for eligibility to participate in this demonstration project, the project is limited by statute to a maximum of 95,000 participants at any given time. Of the approximately 100,000 personnel currently eligible to participate in the project, 55 percent are represented by labor unions. The American Federation of Government Employees (AFGE), the National Federation of Federal Employees (NFFE), and the National Association of Government Employees (NAGE) represent the vast majority of bargaining unit employees.

[FR Doc. 02–16603 Filed 6–27–02; 12:18 pm]

BILLING CODE 8225–43–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Magnum Hunter Resources, Inc.) File No. 1–12508

June 25, 2002.

Magnum Hunter Resources, Inc., an Nevada corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.002 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Nevada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On June 7, 2002, the Board of Trustees ("Board") of the Issuer approved a resolution to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board considered the direct and indirect costs and the division of the market resulting from dual listing on AMEX and New York Stock Exchange, Inc. ("NYSE"). The Issuer stated in its application that trading in the Security began on the NYSE on June 25, 2002.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and shall have no affect upon the Security's continued listing on the NYSE and registration under Section 12(b) of the Act.[3]

Any interested person may, on or before July 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78l(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78l(e).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,
Secretary.

[FR Doc. 02–16457 Filed 6–28–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Computer Sciences Corporation, Common Stock, $1.00 Par Value, and Attached Preferred Stock Purchase Rights) File No. 1–4850

June 25, 2002.

Computer Sciences Corporation, a Nevada corporation, ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.00 par value, and Attached Preferred Stock Purchase Rights (expiring February 18, 2008) ("Securities"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on April 16, 2002 to withdraw its Securities from listing on the Exchange. In making the decision to withdraw the Security from listing and registration on the PCX, the Issuer states that it does not perceive any benefit of continued listing of the Securities on the PCX and that less than 1% of the Common Stock sold in open market transactions are traded on the PCX. The Issuer will continue to list its Securities on the New York Stock Exchange, Inc. ("NYSE").

The Issuer's application relates solely to the withdrawal of the Securities from listing on the PCX and shall have no affect upon the Securities' continued listing on the NYSE and registration under section 12(b) of the Act.[3]

Any interested person may, on or before July 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission

[4] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78l(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78l(b).

for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 02–16454 Filed 6–28–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3426]

State of Arizona

As a result of the President's major disaster declaration on June 25, 2002, I find that Apache and Navajo Counties and the Fort Apache Indian Reservation in the State of Arizona constitute a disaster area due to damages caused by wildfires occurring on June 18, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 24, 2002 and for economic injury until the close of business on March 25, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Coconino, Gila, Graham and Greenlee Counties in the State of Arizona; Montezuma County in the State of Colorado; Catron, Cibola, McKinley and San Juan Counties in the State of New Mexico; and San Juan County in the State of Utah.

The interest rates are:

	Percent
For Physical Damage:	*Percent*
Homeowners With Credit Available Elsewhere	*6.750*
Homeowners Without Credit Available Elsewhere	*3.375*
Businesses With Credit Available Elsewhere	*7.000*
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	*3.500*
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	*6.375*
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	*3.500*

The number assigned to this disaster for physical damage is 342605. For economic injury the number is 9Q3200 for Arizona; 9Q3300 for Colorado; 9Q3400 for New Mexico; and 9Q3500 for Utah.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 25, 2002.

Herbert L. Mitchell,
Associate Administrator, for Disaster Assistance.

[FR Doc. 02–16522 Filed 6–28–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3423]

State of Minnesota; Amendment # 1

In accordance with a notice received from the Federal Emergency Management Agency, dated June 24, 2002, the above-numbered Declaration is hereby amended to include Kittson, Koochiching, Lake of the Woods, Mahnomen, Marshall, Norman and Red Lake Counties in the State of Minnesota as a disaster area due to damages caused by severe storms, flooding and tornadoes occurring on June 9, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Becker, Clay, Clearwater, Itasca, Pennington, Polk and St. Louis Counties in Minnesota; and Cass, Grand Forks, Pembina, Traill and Walsh Counties in North Dakota. All other counties contiguous to the above-names primary counties have been previously declared.

The economic injury number assigned to North Dakota is 9Q3100.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 13, 2002 and for economic injury the deadline is March 14, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 25, 2002.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. 02–16521 Filed 6–28–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 22, 2002 (67 FR 19614)

DATES: Comments must be submitted on or before July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 22, 2002, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 67 FR 19614. FRA received no

comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. Preclearance of these information collections is required by 44 U.S.C. 3507(b); 5 CFR 1320.12(c). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)(1)(B); 5 CFR 1320.12(c); 5 CFR 1320.5(a)(1)(iv). OMB may approve or disapprove any time after the end of the 30-day comment period, and the Department of Transportation and FRA must comply with OMB's decision. 5 CFR 1320.12(d); 5 CFR 1320.5(a)(1)(iv).

The following information collection activities will be submitted to OMB for review and approval:

Title: Railroad Operating Rules.

OMB Control Number: 2130–0008.

Abstract: The collection of information is necessary to ensure railroad employees are familiar with railroad operating rules and procedures. The information is used by railroads to ensure that employees are familiar with railroad operating rules and procedures.

Annual Estimated Burden Hours: 1,000,000 hours.

Status: Regular review.

Title: Railroad Accident/Incident Reporting.

OMB Control Number: 2130–0500.

Abstract: The collection of information is necessary to ensure railroads report accidents/incidents and casualties arising from railroad operations. The information is used by railroads to report accidents/incidents and casualties arising from railroad operations.

Annual Estimated Burden Hours: 1,000,000 hours.

Status: Regular review.

Title: Railroad Operating Practices.

OMB Control Number: 2130–0505

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comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The updated requirements are being submitted for clearance by OMB as required by the PRA.

Title: Supplemental Qualifications Statement for Railroad Safety Inspector Applicants.

OMB Control Number: 2130–0517.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Form(s): FRA–F–120.

Abstract: The Supplemental Qualifications Statement for Railroad Safety Inspector Applicants is an information collection instrument used by FRA to gather additional background data so that FRA can evaluate the qualifications of applicants for the position of Railroad Safety Inspector. The questions cover a wide range of general and specialized skills, abilities, and knowledge of the five types of railroad safety inspector positions.

Annual Estimated Burden Hours: 6,000 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 25, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–16473 Filed 6–28–02; 8:45 am]

BILLING CODE 4915–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 21, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12532.

Date Filed: June 19, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC31 SOUTH 0125 dated May 28, 2002, South Pacific (except between New Zealand and USA), Resolutions r1–r34. PTC31 SOUTH 0126 dated May 28, 2002, South Pacific between New Zealand and USA Resolutions, r35–r47. Minutes—PTC31 SOUTH 0127 dated June 4, 2002. Tables—PTC31 SOUTH Fares 0029 dated June 11, 2002. Intended effective date: October 1, 2002.

Docket Number: OST–2002–12546.

Date Filed: June 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR 0137 dated June 18, 2002, North Atlantic–USA–Europe Resolution 002ab, (except between USA and Austria, Belgium, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland). Intended effective date: August 1, 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–16503 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 21, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–12543.

Date Filed: June 20, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 11, 2002.

Description: Application of Hageland Aviation Services, Inc., pursuant to section 401(d) and subpart B, requesting a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail between any point in any State in the United States or District of Columbia, or any Territory or Possession of the United States, and any other point in any State of the United States or District of Columbia, or any Territory or Possession of the United States.

Docket Number: OST–2002–12551.

Date Filed: June 21, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 12, 2002.

Description: Application of Air Memphis, pursuant to 49 U.S.C. section 41302, part 211 and subpart B, requesting a foreign air carrier permit to engage in charter air transportation of property and mail between a point or points in the Arab Republic of Egypt, and a point or points in the United States, including service via intermediate stops, beginning on or about July 12, 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–16514 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 6, 2002. No comments were received.

DATES: Comments must be submitted on or before July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Evie Chitwood, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone: 202–366–5127; FAX: 202–366–6988, or e-mail: *evie.chitwood@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Intermodal Access to Shallow Draft Ports and Terminals Survey.

OMB Control Number: 2133–NEW.

Type of Request: Approval of a new request.

Affected Public: Officials at the Nation's key shallow draft marine ports and terminals.

Form(s): MA–1024B.

Abstract: The Maritime Administration (MARAD) has primary responsibility for ensuring the availability of efficient water transportation service to shippers and consumers. This information collection is designed to be a survey of critical infrastructure issues that impact the Nation's shallow draft marine ports and terminals. The survey will provide MARAD with key road, rail, and waterside access data as well as security information and highlight the issues that affect the flow of cargo through U.S. shallow draft marine ports and terminals.

Annual Estimated Burden Hours: 22.5 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on June 25, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–16470 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Federal Motor Vehicle Motor Theft Prevention Standard; Isuzu

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT)

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Isuzu Motors America, Inc. (Isuzu) for an exemption of a high-theft line, the Isuzu Axiom, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated January 24, 2002, Isuzu Motors America, Inc. (Isuzu), on behalf of Isuzu Motors Limited, Tokyo, Japan requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Isuzu Axiom vehicle line, beginning with MY 2003. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts-marking requirements for not more than one additional line of a manufacturer for MYs 1997—2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. § 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts-marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to Section 330103(d)(3).

Isuzu's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and

the specific content requirements of § 543.6.

In its petition, Isuzu provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. Isuzu will install its antitheft device as standard equipment on the MY 2003 Isuzu Axiom carline. The antitheft device [illegible] Axiom includes engine using the properly coded ignition key. When the ignition key is turned to the start position, the transponder (located in the head of the key) transmits a code to the powertrain's electronic control module. The vehicle's engine can only be started if the transponder code matches the code previously programmed into the powertrain's electronic control module. If the code does not match, the engine Cadillac Seville are 1.6998 and 2.4141, respectively, in MYs 1998 and 1999. Isuzu contends that two lines have very low theft rates in spite of the fact that they are not equipped with audible or visible indicators to protect the vehicle against unauthorized entry. In further support of its request for petition for exemption, Isuzu also identified five other vehicle lines (Cadillac Deville, Pontiac Bonneville, Buick LeSabre,

states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions Ato modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority

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the specific content requirements of § 543.6.

In its petition, Isuzu provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. Isuzu will install its antitheft device as standard equipment on the MY 2003 Isuzu Axiom carline. The antitheft device installed on the Isuzu Axiom includes both an audible and visual alarm and an engine immobilizer system.

The alarm system consists of the conventional ignition switch, alarm controller, door key switches, door lock switches, door switches, engine hood switch and horn. The normal locking of the vehicle door automatically activates the alarm system. In order to arm the device, the key must be removed from the ignition switch, all of the doors and engine hood must be closed and the driver's door must be locked with the ignition key. An indicator light within the vehicle informs the vehicle operator whether the device is armed, disarmed or alarmed.

Once armed, switches in the vehicle's doors, key cylinders and hood monitor the vehicle for unauthorized entry. Isuzu stated that all system components have been placed in inaccessible locations. If the device is armed and unauthorized entry is attempted by opening any of the doors or the engine hood, releasing the inside door lock knob, operating the inside engine hood release handle or the power door lock button, the antitheft device will be triggered. The alarm system will operate to sound the horn installed exclusively for this system and flash the headlights. The alarm will cycle for approximately three minutes and then shut down in order to prevent the battery from becoming discharged. Even if the alarm shuts down, the system will remain armed.

Unlocking either the driver's door or the tailgate door with the ignition key deactivates the antitheft device. Inserting the key in the ignition switch and rotating the key to the "ACC" position will also disarm the device. The remote control is used like the key to lock or unlock the vehicle door. The remote control will not take the place of the key. However, it can be used to lock and unlock the vehicle door, arm and disarm the alarm system, and deactivate the alarm.

The engine immobilizer system consists of an immobilizer electronic control unit (ECU), antenna coil, transponder, powertrain control module (PCM) and immobilizer security card.

Isuzu's antitheft device is activated when the driver/operator turns off the engine using the properly coded ignition key. When the ignition key is turned to the start position, the transponder (located in the head of the key) transmits a code to the powertrain's electronic control module. The vehicle's engine can only be started if the transponder code matches the code previously programmed into the powertrain's electronic control module. If the code does not match, the engine will be disabled. If the correct code is not transmitted to the electronic control module (accomplished only by having the correct key), there is no way to mechanically override the system and start the vehicle.

Isuzu stated that there are approximately seven quadrillion unique electrical key codes. The security code is a four-digit unique electronic number, which is written at the end of the Axiom production line on a "CAR PASS" card, which is handed over to the owner of the vehicle only. The security code should prevent the immobilizer ECU from being changed without the approval of the vehicle owner. Without this security code, a diagnostic tool has no access to important immobilizer functions or the transponder.

In order to ensure the reliability and durability of the device, Isuzu conducted tests based on its own specified standards conducted and stated its belief that the device is reliable and durable since it has complied with Isuzu's specified requirements for each test. Isuzu provided a detailed list of the component and on-line tests that were conducted: general performance, temperature and voltage combination tests, vibration tests, thermal shock, field decay, electromagnetic compatibility, corrosion resistance and high speed durability.

Isuzu reported that the proposed alarm system is identical to the system installed on the Acura SLX as standard equipment. The Acura SLX was granted an exemption from the parts marking requirements of the Federal Motor Vehicle Theft Prevention Standard beginning with the 1997 model year (96 FR 24852).

Additionally, Isuzu states the Axiom immobilizer is a system similar to the General Motors' "PASS-Key III" device installed on the MY 1997 Buick Park Avenue and MY 1998 Cadillac Seville vehicle lines. The agency granted the MY 1997 Buick Park Avenue and the MY 1998 Cadillac Seville a full exemption from the parts-marking requirements. The theft rates for the Buick Park Avenue are 0.4702, 1.2900 and 1.3021, respectively, in MYs 1997, 1998 and 1999. The theft rates for the Cadillac Seville are 1.6998 and 2.4141, respectively, in MYs 1998 and 1999. Isuzu contends that two lines have very low theft rates in spite of the fact that they are not equipped with audible or visible indicators to protect the vehicle against unauthorized entry. In further support of its request for petition for exemption, Isuzu also identified five other vehicle lines (Cadillac Deville, Pontiac Bonneville, Buick LeSabre, Oldsmobile Aurora, and Chevrolet Venture) that are all equipped with the PASS-Key III device and have been granted full exemptions from the parts-marking requirements.

On the basis of this comparison, Isuzu has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Isuzu, the agency believes that the antitheft device for the Isuzu Axiom vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

The agency concludes that the device will provide the types of performance listed in "543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that Isuzu has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Isuzu provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full Isuzu's petition for an exemption for the MY 2003 Isuzu Axiom vehicle line from the parts-marking requirements of 49 CFR part 541. If Isuzu decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Isuzu wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions Ato modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: June 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–16471 Filed 6–28–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 394X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Burke and Williams Counties, ND

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon and discontinue service over a 60.51-mile line of railroad between milepost 26.59 in Powers Lake, and milepost 87.10 in Grenora, in Burke and Williams Counties, ND. The line traverses United States Postal Service Zip Codes 58845, 58856, 58830, 58795, 58755, and 58773.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 31, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 11, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 22, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 5, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by July 1, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV*.

Decided: June 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16456 Filed 6–28–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which as of April 8, 2002, is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

[Treasury Order Number 101–05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, and Delegation of Certain Authority in the Department of the Treasury

By virtue of the authority vested in the Secretary of the Treasury, *it is ordered that:*

1. The Deputy Secretary shall report directly to the Secretary.

2. The Chief of Staff shall report directly to the Secretary and shall exercise supervision over the Director, Secretary's Scheduling Office, and the Executive Secretary.

3. The Executive Secretary shall report directly to the Chief of Staff and shall exercise supervision over the functions of the Executive Secretariat Correspondence Unit; the Office of Public Correspondence; and, for purposes of administrative and managerial control, over the Special Assistant to the Secretary (National Security). The Special Assistant to the Secretary (National Security) shall report to the Secretary and the Deputy Secretary.

4. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Domestic Finance)
Under Secretary (Enforcement)
General Counsel
Treasurer of the United States
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Public Affairs)
Assistant Secretary (Economic Policy)
Assistant Secretary (Tax Policy)
Assistant Secretary (Management) and

13011, dated July 16, 1996, and shall have direct access to the Secretary to the extent required by that Act and related statutes.

8. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on

10. The Deputy Secretary shall carry out the duties and powers of the Secretary when the Secretary is absent or unable to serve, or when the office of the Secretary is vacant.

11. During any period when both the Secretary and the Deputy Secretary have died, resigned, or are otherwise unable to perform the functions and duties of the office of the Secretary of the

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Under Secretary (International Affairs)
Under Secretary (Domestic Finance)
Under Secretary (Enforcement)
General Counsel
Treasurer of the United States
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Public Affairs)
Assistant Secretary (Economic Policy)
Assistant Secretary (Tax Policy)
Assistant Secretary (Management) and Chief Financial Officer
Commissioner of Internal Revenue
Comptroller of the Currency
Director, Office of Thrift Supervision
Director, Bureau of Engraving and Printing
Director, United States Mint

5. The Inspector General and the Treasury Inspector General for Tax Administration shall report to and be under the general supervision of the Secretary and the Deputy Secretary.

6. The Assistant Secretary (Management) also holds the office of the Department's Chief Financial Officer established pursuant to Chapter 9, Title 31, U.S.C., and serves as the Department's Chief Operating Officer for purposes of the Presidential Memorandum, "Implementing Government Reform", dated July 11, 2001.

7. The Deputy Assistant Secretary (Information Systems), reporting to the Assistant Secretary for Management and Chief Financial Officer, is designated as the Department's Chief Information Officer pursuant to Division E of the Clinger-Cohen Act of 1996, and E.O. 13011, dated July 16, 1996, and shall have direct access to the Secretary to the extent required by that Act and related statutes.

8. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary in that official's own title is hereby affirmed and ratified as the action of the Secretary.

9. The Under Secretaries, the General Counsel, the Assistant Secretaries, and the Treasurer of the United States are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only those functions that arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by any of these officials in that official's own title is hereby affirmed and ratified as the action of the Secretary.

10. The Deputy Secretary shall carry out the duties and powers of the Secretary when the Secretary is absent or unable to serve, or when the office of the Secretary is vacant.

11. During any period when both the Secretary and the Deputy Secretary have died, resigned, or are otherwise unable to perform the functions and duties of the office of the Secretary of the Treasury, those officials designated by the President pursuant to Executive Order 13246, dated December 18, 2001, as amended by Executive Order 13261, dated March 19, 2002, or otherwise designated pursuant to law, shall act as and perform the functions and duties of the office of the Secretary.

12. *Authorities.*

a. 31 U.S.C. 301 and 321(b); and

b. Executive Order 13246, dated December 18, 2001, as amended by Executive Order 13261, dated March 19, 2002.

13. *Cancellation.* Treasury Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated January 7, 1999, is superseded.

14. *Office of Primary Interest.* Deputy Assistant Secretary (Human Resources).

Paul H. O'Neill,
Secretary of the Treasury.

BILLING CODE 4810-25-P

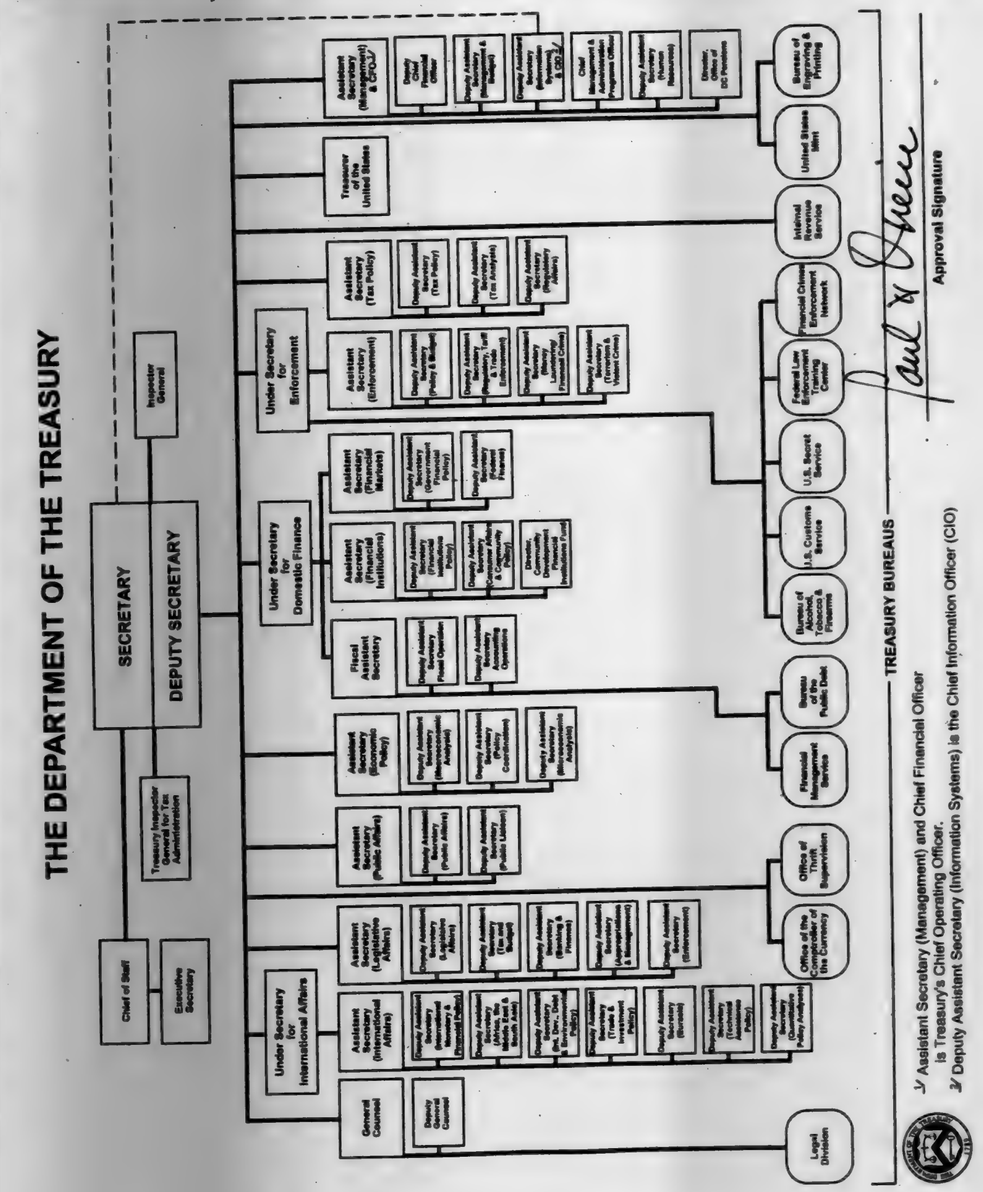

[FR Doc. 02–16405 Filed 6–28–02; 8:45 am]
BILLING CODE 4810–25–C

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 26106–1328. A copy of this Notice will be available to download from *http://www.publicdebt.treas.gov.*

DATES: This notice announces the applicable interest rate for the July 1, 2002 to December 31, 2002 period.

FOR FURTHER INFORMATION CONTACT: Rank Dunn, Manager, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt

Corrections

Federal Register
Vol. 67, No. 126
Monday, July 1, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are

Tuesday, June 18, 2002, the subject heading is corrected to read as set forth above.

[FR Doc. C2–15343 Filed 6–28–02; 8:45 am]
BILLING CODE 1505–01–D

May 17, 2002, make the following corrections:

§250.1704 [Corrected]

On page 35407, the table should read as set forth below:

[FR Doc. 02–16405 Filed 6–28–02; 8:45 am]
BILLING CODE 4810–25–C

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Owner's Affidavit of Partial Destruction of Mutilated Currency.

SUPPLEMENTARY INFORMATION:

Title: Owner's Affidavit of Partial Destruction of Mutilated Currency.

OMB Number: 1520–0001.

Form Number: BEP 5283.

Abstract: This is a request for an extension.

Current Action: The Office of Currency Standards, Mutilated Currency Division, Bureau of Engraving and Printing request owners of partially destroyed U.S. currency to complete a notarized affidavit (BEP 5283) for each claim submitted when substantial portions of notes are missing.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: The estimated number of respondents for the next three years is 180, with a total estimated number of burden hours of 90.

Estimated Total Annual Burden Hours: The estimated number of annual burden hours is 270.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 3, 2002.

Pamela Grayson,

Management Analyst, Office of Budget and Strategic Planning, Bureau of Engraving and Printing.

[FR Doc. 02–16414 Filed 6–28–02; 8:45 am]
BILLING CODE 4840–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2002 and ending on December 31, 2002 the prompt payment interest rate and the contract dispute interest rate are each 5.250 per centum per annum.

DATES: Comments or inquiries may be mailed to Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from *http://www.publicdebt.treas.gov.*

DATES: This notice announces the applicable interest rate for the July 1, 2002 to December 31, 2002 period.

FOR FURTHER INFORMATION CONTACT: Rank Dunn, Manager, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5170; Eleanor Farrar, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5166; Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8692; or Mary C. Schaffer, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8692.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub. L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Pub. L. 95–563, 92 Stat. 2389 and indirectly, the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury for the Renegotiation Board under Pub. L. 92–41.

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning July 1, 2002 and ending on December 31, 2002, is 5.250 per centum per annum. This rate is determined pursuant to the above-mentioned sections for the purpose of said sections.

Dated: June 26, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–16602 Filed 6–28–02; 8:45 am]
BILLING CODE 4810–39–M

Corrections

Federal Register
Vol. 67, No. 126
Monday, July 1, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1231]

Expansion of Foreign-Trade Zone 8, Toledo, Ohio, Area

Correction

In notice document 02–15343 appearing on page 41393 in the issue of Tuesday, June 18, 2002, the subject heading is corrected to read as set forth above.

[FR Doc. C2–15343 Filed 6–28–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC65

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Decommissioning Activities

Correction

In rule document 02–11640 beginning on page 35398 in the issue of Friday, May 17, 2002, make the following corrections:

§250.1704 [Corrected]

On page 35407, the table should read as set forth below:

* * * * *

DECOMMISSIONING APPLICATIONS AND REPORTS TABLE

Decommissioning applications	When to submit	Instructions
(a) Initial platform removal application [not required in the Gulf of Mexico OCS Region].	In the Pacific OCS Region or Alaska OCS Region, submit the application to the Regional Supervisor at least 2 years before production is projected to cease.	Include information required under §250.1726.
(b) Final removal application for a platform or other facility.	Before removing a platform or other facility in the Gulf of Mexico OCS Region, or not more than 2 years after the submittal of an initial platform removal application to the Pacific OCS Region and the Alaska OCS Region.	Include information required under §250.1727.
(c) Post-removal report for a platform or other facility.	Within 30 days after you remove a platform or other facility	Include information required under §250.1729.
(d) Pipeline decommissioning application.	Before you decommission a pipeline	Include information required under §250.1751(a) or §250.1752(a), as applicable.
(e) Post-pipeline decommissioning report.	Within 30 days after you decommission a pipeline	Include information required under §250.1753.
(f) Form MMS–124, Sundry Notices and Reports on Wells.	(1) Before you plug a well	Include information required under §250.1712.
	(2) Within 30 days after you plug a well	Include information required under §250.1717.
	(3) Within 30 days after you complete siteclearance activities	Include information required under §250.1743(b).

§250.1715 [Corrected] (a)***

On page 35408, the table should read as set forth below:

PERMANENT WELL PLUGGING REQUIREMENTS

If you have—	Then you must use—
(1) Zones in open hole	Cement plug(s) from at least 100 feet below the bottom to 100 feet above the top of oil, gas, and fresh-water zones to isolate fluids in the strata.

PERMANENT WELL PLUGGING REQUIREMENTS—Continued

If you have—	Then you must use—
(2) Open hole below casing	(i) A cement plug set by the displacement method, at least 100 feet above and below deepest casing shoe; (ii) A cement retainer with effective back-pressure control set 50 to 100 feet above the casing shoe, and a cement plug that extends at least 100 feet below the casing shoe and at least 50 feet above the retainer; or (iii) A bridge plug 50 feet to 100 feet above the shoe with 50 feet of cement on top of the bridge plug, for expected or known lost circulation conditions.
(3) A perforated zone that is currently	(i) A method to squeeze cement to all perforations;

If you use—	You must—	And you must—
(b) A diver	ensure that the diver visually inspects 100 percent of the appropriate grid area listed in §250.1741(a).	Ensure that the diver uses a search pattern of concentric circles or parallel lines spaced no more than 10 feet apart.
(c) An ROV (remotely operated vehicle).	ensure that the ROV camera records videotape over 100 percent of the appropriate grid area listed in §250.1741(a).	Ensure that the ROV uses a pattern of concentic circles or parallel lines spaced no more than 10 feet apart.

[FR Doc. C2–11640 Filed 6–28–02; 8:45 am]

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PERMANENT WELL PLUGGING REQUIREMENTS—Continued

If you have—	Then you must use—
(2) Open hole below casing	(i) A cement plug set by the displacement method, at least 100 feet above and below deepest casing shoe; (ii) A cement retainer with effective back-pressure control set 50 to 100 feet above the casing shoe, and a cement plug that extends at least 100 feet below the casing shoe and at least 50 feet above the retainer; or (iii) A bridge plug 50 feet to 100 feet above the shoe with 50 feet of cement on top of the bridge plug, for expected or known lost circulation conditions.
(3) A perforated zone that is currently open and not previously squeezed or isolated.	(i) A method to squeeze cement to all perforations; (ii) A cement plug set by the displacement method, at least 100 feet above to 100 feet below the perforated interval, or down to a casing plug, whichever is less; or (iii) If the perforated zones are isolated from the hole below, you may use any of the plugs specified in paragraphs (A) through (E) of this paragraph instead of those specified in paragraphs (3)(i) and (3)(ii) of this section: (A) A cement retainer with effective back-pressure control 50 to 100 feet above the top of the perforated interval, and a cement plug that extends at least 100 feet below the bottom of the perforated interval with at least 50 feet of cement above the retainer; (B) A bridge plug set 50 to 100 feet above the top of the perforated interval and at least 50 feet of cement on top of the bridge plug; (C) A cement plug at least 200 feet in length, set by the displacement method, with the bottom of the plug no more than 100 feet above the perforated interval; (D) A through-tubing basket plug set no more than 100 feet above the perforated interval with at least 50 feet of cement on top of the basket plug; or (E) A tubing plug set no more than 100 feet above the perforated interval topped with a sufficient volume of cement so as to extend at least 100 feet above the uppermost packer in the wellbore and at least 300 feet of cement in the casing annulus immediately above the packer.
(4) A casing stub where the stub end is within the casing.	(i) A cement plug at least 100 feet above and below the stub end; (ii) A cement retainer or bridge plug set at least 50 to 100 feet above the stub end with at least 50 feet of cement on top of the retainer or bridge plug; or (iii) A cement plug at least 200 feet long with the bottom of the plug set no more than 100 feet above the stub end.
(5) A casing stub where the stub end is below the casing.	A plug as specified in paragraph (a)(1) or (a)(2) of this section, as applicable.
(6) An annular space that communicates with open hole and extends to the mud line.	A cement plug at least 200 feet long set in the annular space. For a well completed above the ocean surface, you must pressure test each casing annulus to verify isolation.
(7) A subsea well with unsealed annulus	A cutter to sever the casing, and you must set a stub plug as specified in paragraphs (a)(4) and (a)(5) of this section.
(8) A well with casing	A cement surface plug at least 150 feet long set in the smallest casing that extends to the mud line with the top of the plug no more than 150 feet below the mud line.
(9) Fluid left in the hole	A fluid in the intervals between the plugs that is dense enough to exert a hydrostatic pressure that is greater than the formation pressures in the intervals.

§ 250.1741 [Corrected]

On page 35411, the table should read as set forth below:

(g)***

For—	You must trawl—	And you must—
(1) Buried active pipelines		First contact the pipeline owner or operator to determine the condition of the pipeline before trawling over the buried pipeline.
(2) Unburied active pipelines that are 8 inches in diameter or larger.	no closer than 100 feet to the either side of the pipeline.	Trawl parallel to the pipeline Do not trawl across the pipeline.
(3) Unburied smaller diameter pipelines in the trawl area that have obstructions (e.g., pipeline valves) present.	no closer than 100 feet to either side of the pipeline.	Trawl parallel to the pipeline. Do not trawl across the pipeline.
(4) Unburied active pipelines in the trawl area that are smaller than 8 inches in diameter and have no obstructions present.	parallel to the pipeline.	

* * * * *

§ 250.1742 [Corrected]

* * * * *

On page 35412, the table should read as set forth below:

If you use—	You must—	And you must—
(a) Soner	cover 100 percent of the appropriate grid area listed in § 250.1741(a).	Use a sonar signal with a frequency of at least 500 kHz.

If you use—	You must—	And you must—
(b) A diver	ensure that the diver visually inspects 100 percent of the appropriate grid area listed in § 250.1741(a).	Ensure that the diver uses a search pattern of concentric circles or parallel lines spaced no more than 10 feet apart.
(c) An ROV (remotely operated vehicle).	ensure that the ROV camera records videotape over 100 percent of the appropriate grid area listed in § 250.1741(a).	Ensure that the ROV uses a pattern of concentic circles or parallel lines spaced no more than 10 feet apart.

[FR Doc. C2–11640 Filed 6–28–02; 8:45 am]
BILLING CODE 1505–01–D

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Part II

National Credit Union Administration

12 CFR Parts 703 and 704
Investment and Deposit Activities; Corporate Credit Unions; Proposed Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 704

Investment and Deposit Activities; Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

responsiveness to the comments on the ANPRs and the continuous dialogue NCUA has engaged in with the corporate community.

In response to the comments received, particularly in the area of capital, the Board is issuing a revised proposed rule for another round of public comment. The comments to the initial proposed rule have greatly assisted the Board in

the Board has made some minor wording revisions. The term "aggregate purchase" in the proposal has been revised to "aggregate amount" and the term "time of purchase" in the proposal has been revised to "time of investment or adjustment."

Definitions Section 704.2

Daily Average Net Assets (DANA)

approach, the revised proposal does not exclude these items from the definition of DANA. Each corporate should continue to prepare its other internal and external financial statements based on the advice of its CPA.

Capital Section 704.3

Requirements for Membership Capital, Section 704.3(b)(3)

accounts with no maturity. Several commenters suggested adding "less than" before "three years" to avoid the mistaken impression that a three-year notice account could arguably be deemed to require amortization before being placed on notice.

The Board remains convinced that MC placed on notice should be fully amortized one year before maturity or the end of the notice period. The Board

one year before the date of maturity. Twelve commenters opposed the proposed amortization for PIC. The commenters reiterated the arguments raised in opposition to the proposed amortization of MC. One commenter supported the proposed change to the amortization schedule. The revised proposal retains the amortization requirement for grandfathered PIC. This position is consistent with that taken for

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 704

Investment and Deposit Activities; Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is issuing proposed revisions to the rule governing corporate credit unions (corporates). The major revisions to the rule are in the areas of capital, credit concentration limits and services. The proposed amendments enable corporates to remain competitive in the marketplace while retaining NCUA's historic focus on the safety and soundness of the corporate credit union system. The major changes to these areas necessitate some substantive changes to other provisions of the rule. Several other minor revisions are generally either a clarification or a modernization of the existing rule.

DATES: Comments must be received on or before August 30, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Kent Buckham, Director, Office of Corporate Credit Unions, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6640; or Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On July 28, 1999, and November 22, 2000, NCUA issued advance notices of proposed rulemaking (ANPRs). 64 FR 40787, July 28, 1999; 65 FR 70319, November 22, 2000. Based on the comments received in response to the ANPRs, the Board issued a proposed rule. 66 FR 48742, September 21, 2001. The Board received 51 comments on the proposal, 28 from corporate credit unions, nine from natural person credit unions, four from credit union trade associations, one from a bank trade association, ten from state credit union leagues and three from miscellaneous sources. The majority of the commenters commended NCUA on the process leading up to the proposed rule. They expressed appreciation for NCUA's responsiveness to the comments on the ANPRs and the continuous dialogue NCUA has engaged in with the corporate community.

In response to the comments received, particularly in the area of capital, the Board is issuing a revised proposed rule for another round of public comment. The comments to the initial proposed rule have greatly assisted the Board in drafting the revised proposed rule and will be discussed in the relevant section of the section-by-section analysis.

B. Section-by-Section Analysis

Natural Person Credit Union Investments Section 703.100

The Board proposed increasing the limit on a natural person credit union's aggregate purchase of paid-in capital (PIC) and membership capital (MC) in one corporate to 2 percent of the credit union's assets measured at the time of purchase. The Board also proposed limiting a credit union's aggregate purchase of PIC and MC in all corporates to 4 percent.

Twenty-five commenters supported the proposal. Two commenters opposed the proposal. Those who supported the proposal indicated the ability of a natural person credit union to acquire a higher level of capital in a corporate will bring about the positive result of further capital redistribution in the credit union system. They indicated it would introduce a degree of moderation in the amount of capital a credit union could potentially invest in the corporate network. One commenter, a natural person credit union, opposed the proposal as being too restrictive because it limits credit unions' options. One commenter, a bank trade association, opposed the proposal as too permissive, contending it doubles the risk exposure a natural person credit union could have in a single corporate credit union.

Additionally, fifteen commenters suggested a revision to the proposed wording. The proposal stated the percentage is based on "the credit union's assets measured at the time of purchase." *Id.* at 48755. The commenters recommended changing "at the time of purchase" to "at the time of investment or adjustment." This would take into account the adjusted balance feature of most existing MC accounts. One commenter suggested the limit in one corporate and the aggregate limit in all corporates be set at 25 percent and 50 percent respectively of a credit union's net worth, rather than as a percentage of assets.

The revised proposed rule retains the increased investment limits in the proposed rule. Based on the comments, the Board has made some minor wording revisions. The term "aggregate purchase" in the proposal has been revised to "aggregate amount" and the term "time of purchase" in the proposal has been revised to "time of investment or adjustment."

Definitions Section 704.2

Daily Average Net Assets (DANA)

Although not specifically addressed in the proposed rule, seventeen commenters requested that the Board exclude future dated ACH items and uncollected cash letters that are perfectly matched on both the asset and liability sides of the balance sheet from the definition of DANA. The issue is whether such transactions should be recorded on their settlement date (the date the funds are posted) or on the advice date (the date the corporate receives an advice indicating the funds will be posted on a specific future date).

The Office of Corporate Credit Unions (OCCU) issued guidance in 2000 to all corporates stating, "[i]n order to provide for a consistent approach to reporting corporate financial information, we expect all corporates to record future-dated ACH transactions as assets and liabilities on their financial statements for both regulatory and 5310 (Corporate Credit Union Call Report) reporting purposes. However, other external and internal financial statements can continue to be prepared based on the advice of your CPA." Corporate Credit Union Guidance Letter No. 2000–03, August 30, 2000. This guidance was provided because corporates were using different reporting practices and there was a lack of definitive guidance on the issue under Generally Accepted Accounting Principles (GAAP).

The commenters stated that several corporates have obtained opinions from accounting firms indicating that accounting for such transactions as of the advice date is not in accordance with GAAP. Rather, these transactions (as well as uncollected cash letters) should be accounted for on a settlement date basis. The concern is that DANA is overstated by inclusion of these items and capital ratios are understated. Several commenters also noted that the definition of "the fair value of assets" should exclude these transactions from the Net Economic Value (NEV) definition.

The Board does not agree with the commenters that accounting for such transactions as of the advice date is inconsistent with GAAP. Rather, there is a divergence of opinion in the accounting community on this issue. In order to ensure a consistent regulatory

approach, the revised proposal does not exclude these items from the definition of DANA. Each corporate should continue to prepare its other internal and external financial statements based on the advice of its CPA.

Capital Section 704.3

Requirements for Membership Capital, Section 704.3(b)(3)

The Board proposed revising the existing amortization of MC. Currently, the regulation requires a constant monthly amortization of MC placed on notice so that the full balance is amortized by the end of the notice period. The proposal required the full amortization of MC one year before the date of maturity or one year before the end of the notice period. The proposal also revised the requirements for adjusted balance MC accounts. These revisions included limiting the frequency of adjustments to no more than once every six months and, if the adjustment measure is anything other than assets, the corporate must address the measure's permanency characteristics in the capital plan.

Fifteen commenters opposed the proposed change in the amortization of MC and one commenter supported the proposal. Those opposed stated that it fails to recognize any portion of the MC that is still available to cover losses during the last year. Further, several commenters suggested amortizing MC before the end of the notice period is contrary to GAAP. One commenter opposed the entire premise of amortizing MC stating MC that has been placed on notice should count in full as long as the full balance is available to cover losses.

A few commenters commented on changes to adjusted balance MC accounts. One commenter suggested allowing MC to flow in and out of the corporate, with the corporate setting its own minimum limit based on its capital needs. One commenter suggested allowing a corporate to base the adjustment on a member's deposits in the corporate rather than on its assets. Another commenter did not object to the proposed changes in the adjusted balance MC accounts, but suggested grandfathering existing adjusted balance MC accounts.

Several commenters took exception to the proposed wording in § 704.3(b)(3) that states, "[w]hen an MC account has been place on notice *or* has a remaining maturity of three years * * *" (emphasis added). The commenters suggested replacing "or" with "and." The commenters stated that the corporates issue adjusted balance accounts with no maturity. Several commenters suggested adding "less than" before "three years" to avoid the mistaken impression that a three-year notice account could arguably be deemed to require amortization before being placed on notice.

The Board remains convinced that MC placed on notice should be fully amortized one year before maturity or the end of the notice period. The Board does not believe a corporate should include capital that will be paid out in less than a year in risk capital measures. The Board is also cognizant that five-year subordinated debt allowed by other financial regulators is not counted in the last year. 12 CFR part 3, App. A, § 2(b). The Board views the change in amortization as a measure of consistency with other financial regulators.

The revised proposal retains the limitation on the frequency of adjustment for adjusted balance MC accounts to no more than once every six months. The Board desires a greater degree of permanence for MC. The Board agrees with the commenter that existing MCs should be grandfathered from the change in the frequency of adjustment since corporates have already issued disclosures to their members, which should be adhered to. However, corporates that have tied their adjustments to a measure other than assets are not grandfathered from addressing the measure's permanency in their capital plans.

The revised proposal adds the words "less than" in front of "three years" to clarify that a three-year notice account is not subject to amortization if notice has not been given. The revised proposal retains the word "or," rather than substituting the word "and" as some commenters recommended, because the regulation does allow term MC accounts.

Requirements for Paid-in Capital, Section 704.3(c)(2).

Although not proposed, based on the comments and the Board's desire to eliminate the proposed minimum RUDE ratio, the Board has revised the definition of PIC, so it is a perpetual, non-cumulative dividend account. This revision brings PIC in line with the GAAP definition of equity accounts. Existing PIC is grandfathered from this requirement but is subject to the proposed amortization schedule. Because new PIC must be perpetual, the amortization requirement only applies to grandfathered PIC.

The proposal required an amortization schedule for PIC similar to that proposed for MC, full amortization one year before the date of maturity. Twelve commenters opposed the proposed amortization for PIC. The commenters reiterated the arguments raised in opposition to the proposed amortization of MC. One commenter supported the proposed change to the amortization schedule. The revised proposal retains the amortization requirement for grandfathered PIC. This position is consistent with that taken for MC.

Additionally, the proposal eliminated the existing limitation on PIC, which limits PIC to 100 percent of RUDE. 12 CFR 704.2. Eight commenters supported removing the limitation on PIC, and three commenters opposed it. Of those in support, one suggested that only PIC up to 150 percent of RUDE should count towards any minimum regulatory capital ratio, but that all PIC should count towards a total capital ratio. One commenter opposed to eliminating the PIC limitation suggested limiting the aggregate amount of MC and PIC that counts towards a total capital requirement to100 percent of RUDE. The Board agrees with the majority of commenters and has retained the deletion in the revised proposed rule.

Finally, the Board proposed eliminating the requirement in the current regulation that nonmember PIC requires NCUA Board approval. The proposal required Board approval if the terms and conditions of the nonmember PIC differed from member PIC. Because the revised proposed rule requires all PIC to be GAAP qualifying, the requirement for Board approval if the terms and conditions are different for nonmember PIC is deleted in the revised proposed rule.

Minimum RUDE Ratio Requirement, Section 704.3(e)

The Board proposed a minimum RUDE to moving DANA ratio of 2 percent. In addition, the proposal eliminated the reserve transfer requirements because it is unnecessary if all corporates must maintain a minimum RUDE ratio of 2 percent.

Forty-six commenters objected to a minimum RUDE ratio. Two commenters, a bank trade association and an individual, supported the proposal. Many commenters indicated this requirement was the one they most vehemently opposed.

Twenty commenters recommended the adoption of a credit-risk weighted capital requirement in lieu of a minimum RUDE ratio. Three commenters included with their comments draft credit-risk weighted guidelines for corporates. Twenty-five commenters recommended the adoption

of a "core capital ratio" requirement alone or in conjunction with a credit-risk weighted capital requirement. The core capital ratio would include RUDE and PIC, with a few commenters indicating only a portion of PIC should qualify. Several commenters suggested there is no need for a minimum RUDE ratio since NCUA has the authority to supervise and ensure adequate capital

arbitrary and NCUA has offered no findings to support that it is an appropriate level.

Many commenters noted that, while the proposed preamble indicates a goal of instituting a RUDE ratio is to reach a level of capital comparability with other financial intuitions, the proposal is inconsistent with the capital structure of other financial depository

others suggested a percentage limitation. Others suggested that only PIC that qualifies under GAAP should be included in core capital.

Several commenters noted that PIC was introduced during the last regulatory revision. Many corporates solicited their members and were able to raise significant amounts of PIC. These commenters noted their concern for the

incorporating existing requirements in § 704.3.

Rather than the proposed minimum 2 percent RUDE ratio requirement, the revised proposal provides a mechanism for increasing retained earnings to 2 percent on an ongoing basis. The earnings retention requirement in § 704.3(i) includes features of the existing reserve transfer requirement, in addition to a core capital measurement.

A number of commenters noted that PIC, a long-term capital account, is available to absorb losses. The Board agrees with the need to recognize the value of PIC in the capital structure of corporates; however, the Board also notes that the major disadvantage of using PIC rather than retained earnings to absorb losses is the potential for erosion of member confidence in the viability of the corporate. The Board is

The Board is steadfast in its contention that a credit-risk weighted capital approach is not the best measure for risk in corporates. Further, there exists a divergence of opinion in the financial community as to the validity of some of the risk weights assigned to the various risk categories.

Several outside studies of the corporate credit union system have been critical of using credit risk as a primary means of measuring overall risk in

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of a "core capital ratio" requirement alone or in conjunction with a credit-risk weighted capital requirement. The core capital ratio would include RUDE and PIC, with a few commenters indicating only a portion of PIC should qualify. Several commenters suggested there is no need for a minimum RUDE ratio since NCUA has the authority to supervise and ensure adequate capital in corporates through the requirement that corporates prepare a capital plan.

Nearly all of those who objected to the minimum RUDE ratio indicated concern that the requirement would threaten the very purpose for which corporates exist. Commenters noted that, in their roles as the provider and absorber of credit union liquidity, corporates must be able to grow and contract in a prompt and fluid manner. The imposition of a mandatory RUDE ratio would force corporates to turn away credit union deposits. They noted that, not only would this affect the role of corporates in the credit union system, but it may increase risk to credit unions that seek other means for depositing or investing their excess liquidity. Commenters noted that corporates in 2000 and 2001 successfully handled a period of unprecedented liquidity demand followed by a period of unprecedented excess liquidity in the credit union system. Many commenters expressed concern that the proposed capital requirements will introduce a new factor, which will negatively affect what risk managers may allow on their balance sheets.

Commenters noted that corporates have consistently increased RUDE over the years. In fact, RUDE has grown at a higher rate than the minimum requirements under the regulation. Commenters suggested the proposal would force corporates to focus on the goal of building RUDE to the detriment of the products and services the corporates offer the credit union system. Further, commenters asserted that lessening the regulatory value of PIC may lead to an outflow of capital from the corporate system. Corporates trying to maximize earnings to build RUDE may call their PIC to reduce expenses. Commenters suggested it would take years to build the RUDE just to replace the called PIC. The commenters stated that NCUA's concern that corporates would not continue to strive to build RUDE, or would arbitrarily decide to return PIC to members, is baseless and not supported by past performance. Further, several commenters stated that RUDE levels in corporate credit unions are already adequate, based on the risks corporates take. Several commenters noted the 2 percent requirement appears arbitrary and NCUA has offered no findings to support that it is an appropriate level.

Many commenters noted that, while the proposed preamble indicates a goal of instituting a RUDE ratio is to reach a level of capital comparability with other financial intuitions, the proposal is inconsistent with the capital structure of other financial depository institutions. The commenters noted some of the other financial regulators include common stock and noncumulative perpetual preferred stock in the determination of their core capital requirements. As such, the commenters noted that NCUA's core capital requirements for corporates should recognize PIC.

In keeping with the concept of comparable capital measures with other federally-insured financial institutions, a number of commenters recommended the adoption of a credit-risk weighted capital structure. Many commenters suggested that the new Basel Capital Accord Proposal establishes a framework intended to more closely align regulatory capital requirements with underlying risk. The proposal noted that the Board was not considering a credit-risk weighted requirement due to the added burden on corporate credit unions. Several commenters suggested the proposed RUDE ratio was more burdensome to corporates than the adoption of a credit-risk weighted capital structure. Finally, several commenters suggested that, if the Board does not establish a credit-risk weighted structure at this time, it should create a working group to study the issue and make a recommendation to the Board within the next two years.

In addition to the suggestion of a credit-risk weighted approach to capital, several commenters suggested the use of a core capital requirement. Some commenters suggested the use of core capital as a single measure while others recommended its use in conjunction with a credit-risk weighted capital measure. As noted above, several commenters made reference to the recognition of common stock and noncumulative perpetual preferred stock in the determination of core capital in other financial institutions. The commenters noted that MC and PIC are available to absorb losses before any impact on the National Credit Union Share Insurance Fund (NCUSIF). They contend PIC is a long-term, stable component of capital because of its regulatory requirements. As such, commenters believe NCUA's core capital calculation should include PIC. Some commenters recommended that all PIC be counted as core capital, while others suggested a percentage limitation. Others suggested that only PIC that qualifies under GAAP should be included in core capital.

Several commenters noted that PIC was introduced during the last regulatory revision. Many corporates solicited their members and were able to raise significant amounts of PIC. These commenters noted their concern for the reputation of the individual corporates, and the corporate system as a whole, if member credit unions are now told the PIC they committed to the corporate is not considered "real" capital. Further, many noted that the influx of funds into a corporate might not necessarily translate into an increase in risk. Under the proposal, the mere inflow of excess liquidity could trigger the need for a capital restoration plan. It is possible that a regulatory requirement could affect the opinion of the corporate's auditors or the rating issued by a nationally recognized statistical rating organization. The commenters noted the ripple effect of these occurrences on the reputation, as well as the safety and soundness, of the corporate could be severe, while no significant increase in risk has actually occurred.

As noted above, some commenters stated the existing regulations provide NCUA with adequate authority to ensure the capital strength in the corporate system. Section 704.3(a) requires corporates to develop a written capital plan. The regulation requires the corporate to develop and implement short and long term capital goals, objectives, and strategies that provide for building capital consistent with regulatory requirements, and capital sufficient to support a corporate's current and projected business risks. The plans are subject to review by NCUA through the supervision process. The commenters believe this requirement provides NCUA the ongoing opportunity to monitor and exert regulatory oversight over a corporate's capital intentions.

Only one commenter, a bank trade association, objected to the elimination of the reserve transfer requirement.

The Board believes that a minimum RUDE ratio may have the unintended consequence of limiting the traditional role of corporates as depositors of excess liquidity for natural person credit unions. As such, the minimum RUDE ratio requirement has been eliminated from the revised proposal.

The Board remains convinced of the need for corporates to continue to maintain an adequate level of retained earnings. To that end, the revised proposal adopts several of the commenters' suggestions, in addition to incorporating existing requirements in § 704.3.

Rather than the proposed minimum 2 percent RUDE ratio requirement, the revised proposal provides a mechanism for increasing retained earnings to 2 percent on an ongoing basis. The earnings retention requirement in § 704.3(i) includes features of the existing reserve transfer requirement, in addition to a core capital measurement.

As the current regulation does not define retained earnings, the revise proposal adds a definition. The definition specifically excludes GAAP recognized "other comprehensive income accounts" such as unrealized gains and losses on available for sale securities. These accounts may distort a corporate's capital position; so the Board is excluding these accounts from the definition. Additionally, the definition excludes the allowance for loan and lease losses. Although the allowance for loan and lease losses is nonexistent in most corporate credit unions, it may become more common in corporates that engage in loan participations with their members under the proposed Part V expanded authority. Since the allowance for loan and lease losses is funded to the amount of anticipated losses, the Board contends that amount should not be recognized for the purpose of determining retained earnings.

Numerous commenters recommended, in lieu of a minimum RUDE ratio, retaining the reserve transfer requirement in the current regulation as a means of building capital. The Board agrees with the need to increase capital but believes the existing reserve transfer requirement may not result in the accumulation of retained earnings. Under the current regulation, a corporate can meet its reserve transfer requirement without an overall increase to retained earnings. Therefore, the revised proposal establishes an earnings retention requirement of 10 or 15 basis points per annum based upon the corporate's retained earnings and core capital ratio. The earnings retention requirement is established at 10 and 15 basis points to provide for the building of retained earnings while also recognizing the value of PIC.

Several commenters also recommended adopting a core capital measurement to recognize the value of PIC. In response, the Board has re-titled the existing definition of "reserve ratio," which includes retained earnings and PIC, as "core capital ratio." The core capital ratio, in conjunction with the retained earnings ratio, is used to determine the earnings retention factor.

A number of commenters noted that PIC, a long-term capital account, is available to absorb losses. The Board agrees with the need to recognize the value of PIC in the capital structure of corporates; however, the Board also notes that the major disadvantage of using PIC rather than retained earnings to absorb losses is the potential for erosion of member confidence in the viability of the corporate. The Board is establishing an earnings retention factor to serve the dual purpose of building retained earnings while also providing value to PIC. As such, a corporate with a core capital ratio greater than 3 percent will have a lower earnings retention factor than a corporate with a core capital ratio less than 3 percent.

The Board notes the earnings retention requirement eases the regulatory burden on corporates from that in the proposal. Under the proposed regulation, a RUDE restoration plan was required if the RUDE ratio fell below 2 percent. Rather than requiring a corporate to submit a RUDE restoration plan if the retained earnings ratio falls below 2 percent, the revised proposed rule establishes a specific restoration plan for retained earnings.

The Board is cognizant that circumstances may arise where corporate management will have to make operational decisions that are in the best interest of the corporate, but may also result in an inability to meet the earnings retention requirement. To provide flexibility, the Board permits corporates to meet earnings retention requirements on a rolling three-month average. The regulation also allows a corporate to pay dividends without prior approval if its retained earnings ratio falls below 2 percent, if the retained earnings ratio was already below 2 percent but the corporate has an increase in retained earnings for the current measurement period, or if the corporate experiences a loss on the sale of investments. In addition, the regulation provides the OCCU Director the authority to approve a lower earnings retention amount to avoid a significant adverse impact on the corporate.

The Board believes it is imperative to the long-term safety and soundness of the corporate credit union system that a regulatory framework exist to facilitate the ongoing accumulation of retained earnings. An earnings retention requirement will provide certainty to corporates as to regulatory requirements, while permitting corporates the flexibility to continue the vital role they play in assisting natural person credit unions in serving their members.

The Board is steadfast in its contention that a credit-risk weighted capital approach is not the best measure for risk in corporates. Further, there exists a divergence of opinion in the financial community as to the validity of some of the risk weights assigned to the various risk categories.

Several outside studies of the corporate credit union system have been critical of using credit risk as a primary means of measuring overall risk in corporates. The report entitled "Corporate Credit Union Network Investments: Risks and Risk Management," issued in 1994 by a committee headed by Dr. Harold Black, indicated many corporates traditionally take very little credit risk, but instead assume a higher level of interest rate risk. The General Accounting Office (GAO) reports of 1991 and 1994 both noted that an over reliance on credit-risk weighted capital failed to fully capture other risks (market, liquidity, and operational) in corporate credit unions. A December 1997 study by the Department of the Treasury specifically stated that a credit-risk weighted capital approach "is inappropriate given that corporate credit unions generally have little credit risk."

Capital Directive, Section 704.3(h)(i)

The proposal made the capital restoration requirement in current § 704.3(f) applicable to a corporate failing to meet the minimum RUDE ratio. Since the revised proposal eliminates a RUDE ratio requirement, this issue is moot and there are no changes to the current rule.

Eight commenters indicated there should be an appeal process in this section, similar to the procedures for prompt corrective action (PCA). 12 CFR part 702. Several commenters suggested that the public disclosure of the existence of a capital directive or capital restoration plan in a corporate credit union could be disastrous to the reputation of the institution. One commenter opposed the current inclusion of any kind of capital restoration plan in the regulation.

Although the revised proposal does not add a specific appeal process to this section, the regulation continues to require NCUA Board approval of capital directives.

Board Responsibilities, Section 704.4

The proposed rule changed the term "operating policies" to "policies" throughout this section and changed the title of subsection (c) to "Other requirements." The commenters supported this change and it has been retained as proposed.

Investments, Section 704.5

The proposed rule deleted several investment-related definitions no longer used in the regulation and amended the definitions of: Asset-backed security (ABS), Collateralized mortgage obligation (CMO), Forward settlement, Quoted market price, Mortgage related security, Regular-way settlement, Repurchase transaction, and Residual interest. The few comments received on

concentration limits should be economically reasonable. By supportable, the Board means the investment policy should address the prepurchase analysis a corporate should undertake before making a limited liquidity investment. For example, the investment policy may require a prepurchase analysis to include estimates of bid-asked spreads and, also, an estimate of the time necessary to sell a limited liquidity investment.

Securities Lending, Section 704.5(e)

The proposed rule made several nonsubstantive changes to the requirements for securities lending transactions to clarify the rule and conform it more closely to current market practices. There were no comments on the proposed changes; however, ten commenters viewed the existing requirement for a perfected first priority security interest as inconsistent

Credit Risk Management, Section 704.6

The proposed rule defined "obligor" to mean the primary party obligated to repay an investment and excluded from the definition the originator of receivables underlying an asset-backed security, the servicer of such receivables, or an insurer of an investment. A few commenters supported this definition, and it is retained as proposed. One commenter

Concentration Limits, Section 704.6(c)

The proposed rule set concentration limits in relation to capital. Likewise, the revised proposal establishes a general credit concentration limit of 50 percent of capital or a *de minimis* limit of $5 million for the aggregate of all investments in any single obligor, whichever is greater.

A bank trade group that commented asserted these changes would permit

requirement would provide limited regulatory value where corporates are concerned. 62 FR 12929, 12931, March 19, 1997. The Board again suggests to corporates choosing voluntarily to calculate a credit-risk weighted capital ratio that they adopt the same standards used by other financial institutions.

The Board notes a credit-risk weighted capital requirement would impose a macro level restriction on aggregate credit exposure to the entire

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Investments, Section 704.5

The proposed rule deleted several investment-related definitions no longer used in the regulation and amended the definitions of: Asset-backed security (ABS), Collateralized mortgage obligation (CMO), Forward settlement, Quoted market price, Mortgage related security, Regular-way settlement, Repurchase transaction, and Residual interest. The few comments received on these definitions supported the proposal, and they have been deleted or amended as proposed. As discussed below, the revised proposed rule includes a new definition of a limited liquidity investment.

Policies, Section 704.5(a).

The proposed rule combined the policy requirements in this section and deleted "if any" from § 704.5(a)(1) to clarify a corporate must have "appropriate tests and criteria" to evaluate investments it makes on an ongoing basis, as well as new investments. No comments were received on these provisions, and they have been retained as proposed.

Section 704.5(a)(2). The proposed rule deleted the requirement that the investment policy address the marketing of liabilities to its members. No comments were received on this provision, and it is deleted in the revised proposed rule.

The proposed rule added a requirement for a corporate to establish appropriate aggregate limits on limited liquidity investments, including private placements and funding agreements. A number of commenters observed many privately placed securities have active quoted markets or readily obtainable market quotes, with liquidity comparable to publicly registered securities. In response to those comments, the Board notes other private placements do not have readily obtainable market quotes. A corporate would have difficulty selling such investments with reasonable promptness at a price that corresponds reasonably to fair value. The Board also is concerned if there is only one active market purchaser for a private placement or a funding agreement. The revised proposed rule omits the examples of limited liquidity investments, defines a limited liquidity investment to mean a private placement or a funding agreement, requires a corporate to specify concentration limits in relation to capital and requires the investment policy to address reasonable and supportable concentration limits for limited liquidity investments. By reasonable, the Board means concentration limits should be economically reasonable. By supportable, the Board means the investment policy should address the prepurchase analysis a corporate should undertake before making a limited liquidity investment. For example, the investment policy may require a prepurchase analysis to include estimates of bid-asked spreads and, also, an estimate of the time necessary to sell a limited liquidity investment.

Several commenters suggested addressing concentration limits for limited liquidity investments in the contingency funding plan required in § 704.9. The Board notes the concentration limit requirement emphasizes the need to address risk tolerances for portfolios of limited liquidity investments. Articulated risk tolerances for portfolios with limited liquidity investments are separate and distinct from contingency funding plans. Contingency funding plans address successively deteriorating liquidity scenarios and focus on the most liquid sources of funds. Concentration limits for limited liquidity investments focus on investments with relatively lower levels of liquidity.

Authorized Activities, Section 704.5(c)(5)

The proposed rule clarified an ABS must be domestically issued. Several commenters supported the proposal, agreeing that foreign exposure in a domestically-issued ABS should be handled as a supervisory matter. This section is retained as proposed.

Section 704.5(c)(6). The proposal deleted this section, which provided specific authorization for CMOs. Two commenters supported the deletion, since these investments are still authorized under § 704.5(c)(1) and (5). This provision is deleted in the revised proposal.

Repurchase Agreements, Section 704.5(d)

The proposed rule made several changes to the requirements for repurchase agreements, generally to conform to current market practices. Many commenters objected to the change requiring a corporate to obtain a perfected first priority security interest in repurchase securities. The commenters noted a perfected first priority security interest is inconsistent with standard market practices for repurchase transactions. The Board agrees and that portion of the proposed rule is deleted. The commenters did not object to the other changes, and they are retained in the revised proposed rule.

Securities Lending, Section 704.5(e)

The proposed rule made several nonsubstantive changes to the requirements for securities lending transactions to clarify the rule and conform it more closely to current market practices. There were no comments on the proposed changes; however, ten commenters viewed the existing requirement for a perfected first priority security interest as inconsistent with standard market practice for securities lending agreements. The Board agrees with the commenters and has removed the word "perfected" but will continue to require a first priority security interest through possession or control of the collateral. Often, under state law, possession or control constitutes a "perfected" security interest. In addition, the Board has clarified in the revised proposal that ownership is an appropriate substitute for possession and control.

Investment Companies, Section 704.5(f)

The proposed rule clarified the prospectus is the document restricting the portfolio of an investment company. A few commenters supported this clarification, and it has been retained as proposed.

Prohibitions, Section 704.5(h)

The proposed rule prohibited trading securities. One commenter supported this prohibition. A few commenters opposed the prohibition, but supported the existing prohibitions on pair-off transactions, when-issued trading, adjusted trading, and short sales. The revised proposal, like the current rule, permits trading securities but requires transactions to be accounted for on a trade date basis and, in addition, no longer prohibits engaging in pair-off transactions and when-issued trading. The Board agrees with the commenters that concerns with these investments should be handled as a supervisory matter. The Board notes corporates engaging in trading securities must have sufficient resources, knowledge, systems and procedures to handle the risks. The revised proposed rule retains the prohibitions on engaging in adjusted trading and short sales.

The proposed rule prohibited investments in residual interests in ABS, deleted the prohibition on commercial mortgage related securities, and moved the prohibition on the purchase of mortgage servicing rights from the investments section to the permissible services section. A few commenters supported these proposed changes, and these provisions are unchanged in the revised proposed rule.

Credit Risk Management, Section 704.6

The proposed rule defined "obligor" to mean the primary party obligated to repay an investment and excluded from the definition the originator of receivables underlying an asset-backed security, the servicer of such receivables, or an insurer of an investment. A few commenters supported this definition, and it is retained as proposed. One commenter proposed including any party obligated to make repayment, including secondary parties such as an insurer, in the definition of obligor and, therefore, within the rule's credit concentration limit. The Board declines to impose regulatory credit risk concentration limits on insurers of investments, but notes § 704.6(a)(4) requires a corporate's credit risk management policy to address concentrations of credit risk exposure, which would include an insurer of an investment.

Although not previously proposed, the revised proposal deletes the definitions of "short-term investment" and "long-term investment" since they are no longer used, as explained below. The revised proposed rule also deletes the definition of "expected maturity," since that term was only used in the definitions of these deleted terms.

Policies, Section 704.6(a)

The proposed rule amended the policy requirements to base credit limits on capital, rather than RUDE and PIC. The proposed rule deleted the requirement that the credit risk management policy address loan credit limits. The proposed rule added to the examples of concentrations of credit risk an "originator of receivables" and an "insurer." A few commenters supported the proposal to base credit limits on capital. While one commenter opposed adding examples of credit concentration risk, the commenter suggested all types of such risk should be adequately addressed in the policy. In response, the Board notes the revised proposal's examples of credit concentration are illustrative only. A corporate's credit risk management policy should address all material types of concentrations of credit risk, regardless of whether included in the examples. This section is retained as proposed.

Exemption, Section 704.6(b)

The proposed rule required subordinated debt of government sponsored enterprises to meet the rule's credit risk management requirements. The few comments received supported the proposed rule, and it is unchanged in the revised proposed rule.

Concentration Limits, Section 704.6(c)

The proposed rule set concentration limits in relation to capital. Likewise, the revised proposal establishes a general credit concentration limit of 50 percent of capital or a *de minimis* limit of $5 million for the aggregate of all investments in any single obligor, whichever is greater.

A bank trade group that commented asserted these changes would permit larger investments by corporates. The Board notes that, based on current levels of capital, these changes have the overall effect of reducing credit concentration limits from the prior limits.

Many commenters opposed the proposed general credit concentration limit as too restrictive. Some commenters noted the proposed limit would substantially restrict investments in certain AAA rated instruments from prior levels (*e.g.*, the prior limit of 200 percent of RUDE and PIC on mortgage-backed and asset-backed securities). While observing that diversification is normally a desirable goal, a number of commenters noted the proposed limits could force increased aggregate exposure to lower quality credits. A number of these commenters suggested a general credit concentration limit of 100 percent of capital on investments rated no lower than AA–(or equivalent) or A–1 (or equivalent). A few advocated increasing the proposed general credit concentration limit to 100 percent of capital, regardless of credit rating. A number of commenters advocated a risk-based capital framework to require higher levels of capital for lower rated investments in lieu of credit concentration limits.

As the Board noted in the proposal, the 50 percent limit provides corporates with substantial flexibility compared to other depository institutions. *Id.* at 48746. The Board believes this limit is the most credit exposure a corporate should prudently take in investment-grade quality investments. The Board recognizes the corporate network has increased its due diligence capabilities. However, if the corporate network is to maintain and enhance its ability to withstand financial crises, it must exercise caution in placing membership capital at risk. Placing all capital at risk would substantially increase the likelihood of a crisis and decrease membership confidence if losses occurred.

The Board also noted in the proposed rule that adoption of a credit-risk weighted capital requirement is not warranted. *Id.* at 48743. The Board's long-standing opinion is that such a requirement would provide limited regulatory value where corporates are concerned. 62 FR 12929, 12931, March 19, 1997. The Board again suggests to corporates choosing voluntarily to calculate a credit-risk weighted capital ratio that they adopt the same standards used by other financial institutions.

The Board notes a credit-risk weighted capital requirement would impose a macro level restriction on aggregate credit exposure to the entire balance sheet. In contrast, the credit concentration limit in the revised proposed rule is a micro level restriction on credit exposure to a single obligor.

Section 704.6(c)(2) of the proposed rule provides exceptions to the general credit concentration rule. For repurchase and securities lending transactions, the proposed limit was 200 percent of capital. Investments in corporate CUSOs are subject to the limitations in § 704.11. Investments in wholesale corporates and aggregate investments in other corporates are exempt.

A number of commenters requested that the proposed credit concentration limit of 200 percent of capital on repurchase transactions be increased to 250 percent of capital. The commenters contended 200 percent is too restrictive in periods of large liquidity inflows. One commenter expressed general support for excepting repurchase transactions from the general credit concentration limit. In response to comments, the Board notes greater concentration limits in repurchase transactions are available to corporates meeting the infrastructure requirements of Part I or Part II expanded authorities.

One commenter supported the exception for CUSO investments. This provision is unchanged in the revised proposed rule.

A few comments supported the proposal to exempt investments in corporates from concentration limits. Two commenters thought the exemption should be limited to wholesale corporates: one noted the proposal appeared to increase systemic risk, while the other suggested adding a requirement for a corporate to obtain at least one credit rating for other corporate investments. The Board continues to believe the capital requirements for the receiving corporate will serve to limit the amount of investment any corporate may place in another corporate. In addition, the Board weighed the potential for increased systemic risk against the potential benefits of allowing additional alternatives to moving liquidity within the corporate system. Therefore, the Board believes it is appropriate to

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expand the exemption to include all corporates. The Board reiterates that a corporate's credit risk management policy must address investments in corporates that are not fully insured by the NCUSIF.

Proposed § 704.6(c)(3) applied the requirements for an investment action plan in § 704.10 when a reduction in capital after the purchase of an investment resulted in a credit concentration that was higher than permitted by regulation. One commenter believes that noncompliance caused by a reduction in capital should not trigger the 30-day notification period in § 704.10. Rather, the commenter suggests calling the investment "nonconfoming" rather than "failed" and allowing a 90-day period to permit a corporate to bring the investment into compliance before triggering the requirements of § 704.10. This is similar to the approach used by the Office of the Comptroller of the Currency. 23 CFR 1.8.

The Board agrees with the commenter's suggestion, and the revised proposed rule deems an investment as "nonconforming" if it fails a requirement because of a reduction in capital. A corporate credit union is required to exercise reasonable efforts to bring nonconforming investments into conformity within 90 days. Investments that remain nonconforming for 90 days are deemed to "fail" a requirement and will require compliance with the requirements in § 704.10. The Board cautions corporates to consider the permanence of capital before committing investment funds. Because corporate concentration limits provide for substantial flexibility in comparison to other depository institutions, the Board is adopting the specific time frame suggested by the commenter, rather than an open-ended time frame for nonconforming investments.

Credit Ratings, Section 704.6(d)

This section reduced the applicable credit rating to AA–(or equivalent) for a long-term investment and A–1 (or equivalent) for a short-term investment. The proposed rule applied the investment action plan requirements of § 704.10 if at least two ratings were downgraded and a corporate had relied on more than one rating to meet the minimum credit rating requirements at the time of purchase.

A number of commenters generally supported the credit rating requirements. However, most of the commenters noted the regulation's definitions of "short-term investment" and "long-term investment" can be inconsistent with the market. For consistency, they suggested the rule reference investments with short-term or long-term ratings. The Board agrees and adopts the suggestion in the revised proposed rule.

One commenter advocated permitting investment in any investment grade instrument, particularly for repurchase transactions. The commenter noted the typical cash market practice for repurchase transactions is to require investment grade securities. In contrast, another commenter expressed caution that prudent risk management skills and infrastructure should be required to take on more credit risk. In light of the substantial flexibility already provided to corporates, the Board remains convinced a base level corporate should not be permitted to acquire more than limited credit risk exposure. Expanded authority provisions allow for a broader spectrum of credit risk, and require increased due diligence by corporates that obtain such authority.

Another commenter questioned whether "or equivalent" when referring to acceptable ratings such as "A–1 (or equivalent)" meant a rating of another NRSRO or an evaluation by credit staff at a corporate. The Board notes this continues to refer to a rating of another NRSRO, and not an evaluation by credit staff at a corporate. Because of the substantial flexibility provided to corporates in concentration limits, the Board declines to permit internal credit analysis of investments in lieu of a rating by an NRSRO. While an NRSRO rating is no substitute for due diligence, it is a useful tool for investors to evaluate credit risk. The Board also notes "or equivalent" does not refer to a rating of an issuer that is not directly applicable to the investment. For example, a corporate may not rely on a short-term issuer rating to comply with the minimum rating requirement for an investment with a long-term rating.

To avoid confusion regarding the investment watch list requirements of § 704.6(e)(1), the revised proposed rule clarifies in § 704.6(d)(4) that it is applicable only when the corporate relied upon more than one rating to meet the minimum credit rating requirements at the time of purchase. If there is a subsequent downgrade below the minimum requirement, then the investment must be placed on the investment watch list. The revised proposed rule permits a board to decide under § 704.6(e)(1) to what extent it will require management to report to the board its review of a downgrade that does not result in a rating lower than the minimum requirements of part 704. The Board notes it remains a sound business practice for a corporate to monitor the credit quality of all investments, including reviewing any downgrades of credit ratings.

Reporting and Documentation, Section 704.6(e)

The proposed rule clarified that requirements for annual approval apply to each credit limit with each obligor or transaction counterparty. Those commenters who addressed this change supported the proposed clarification, and it is retained as proposed.

Lending, Section 704.7

Section 704.7(c)(1) and (2). Currently, the aggregate secured and unsecured loan and line of credit limits to any one member credit union are based on the higher of a percentage of capital or a percentage of RUDE and PIC. The Board proposed basing the loan limits on a percentage of capital and eliminating the option of basing them on a percentage of RUDE and PIC. Several commenters objected to eliminating this option. These commenters indicated the proposed limits were too restrictive and would not provide corporates adequate flexibility to meet member liquidity needs. The Board considered the comments and concluded that the percentages of capital in the proposed rule provide sufficient flexibility when balanced against safety and soundness concerns associated with a higher loan to one borrower ratio.

Section 704.7(c)(3). This section of the proposed rule stated the maximum aggregate amount of loans and lines of credit is limited to 15 percent of the corporate's capital plus pledged shares for members that are not credit unions. This is identical to current § 704.7(d). Several commenters indicated proposed § 704.7(c)(3) conflicts with proposed § 704.7(e)(3), which requires compliance with the aggregate limits in § 723.16 of the member business loan rule.

The Board notes that these two provisions do not conflict because § 704.7(c)(3) is the individual limit and § 704.7(e)(3) is the aggregate limit. To clarify this, the Board has placed the word "one" in front of "member" in revised proposed § 704.7(c)(3).

Currently, § 704.7(c) and (d) reference "irrevocable" loans and lines of credit. The Board proposed clarifying its intent that these sections apply to both "irrevocable" and "revocable" loans and lines of credit. No commenter objected to the proposed clarification; therefore, the Board is deleting the modifier "irrevocable" from these sections of the revised proposed rule.

Proposed § 704.7(e) attempted to clarify the applicability of the member business loan rule in part 723 to loans

granted by a corporate. Based on the comments, the Board realizes there is still some confusion and is amending the revised proposed rule to state that all loans exempt under § 723.1 are exempt from compliance with the member business loan rule.

Proposed § 704.7(e)(3) expanded the partial exemption from the member business loan rule in current § 704.7(d). The partial exemption requires compliance with the aggregate limits in § 723.16 but exempts a corporate from the other requirements in part 723. The Board proposed adding to the current, partial exemption for guaranteed loans, loans that are fully secured by U.S. Treasury or agency securities. No commenter objected and this change is retained in the revised proposed rule. The revised proposed rule also clarifies that the aggregate limits of § 723.16 are statutory, and a corporate is not exempt from these limits unless the loan is not a business loan as defined in § 723.1(b).

Section 704.7(g). The Board proposed revising the provision governing loan participations between corporates to include a requirement that a corporate execute a master participation loan agreement before the purchase or the sale of a participation loan. In conjunction with this requirement, the Board deleted the language that a participation loan agreement may be executed at any time before, during, or after the disbursement. No comments were received on this section, and this requirement is retained in the revised proposed rule.

Currently, a corporate is not permitted to participate in loans with natural person credit unions, although some corporates have obtained an NCUA Board waiver to do so. The Board proposed adding this authority as an expanded authority in Appendix B, Part V. No comments were received on the proposal to make it an expanded authority, and the Board is retaining it in the revised proposed rule.

Finally, the Board proposed reorganizing the lending section to make it easier to read. No commenter objected to the reorganization; therefore, the revised proposal incorporates the proposed changes.

Asset and Liability Management, Section 704.8

The proposed rule deleted the term "net interest income" because it is no longer used in the regulation and amended the definitions of "net economic value (NEV)" and "fair value." NEV means the fair value of assets minus the fair value of liabilities. The amended definition excluded from liabilities both PIC and MC, rather than excluding only PIC.

Two commenters supported the amended definition of NEV, but one noted the exclusion of MC from liabilities may be contrary to market practice because others may not recognize three-year notice accounts as capital. The Board notes debt instruments with shorter maturities are recognized for certain regulatory capital purposes in other depository institutions. 12 CFR part 3, App. B.

One commenter suggested including all off balance sheet financial derivatives in the definition of NEV. The Board does not agree and notes for purposes of NEV measurement, fair values are to be determined for all assets and liabilities that are balance sheet items under GAAP. NCUA acknowledges that GAAP does not require accounting for immaterial positions in financial derivatives on balance sheet. The Board notes corporates must have Part IV Expanded Authorities to engage in derivative transactions.

Policies, Section 704.8(a)(2)

The proposed rule eliminated the redundancies with § 704.5(a) and changed the term "current NEV" to "base case NEV" to provide uniform usage throughout the regulation. All commenters addressing this section were supportive, and the revised proposal adopts the proposed changes.

Section 704.8(a)(5). The proposed rule deleted the requirement for a policy limit on decline in net income. The few commenters on this section supported this deletion, and the revised proposed rule retains the deletion.

Section 704.8(a)(6). This section added a requirement for the asset and liability management policy to address the tests used to evaluate the impact of investments on the percentage decline in NEV, compared to the base case NEV. Many commenters opposed this requirement. Commenters noted tests are not appropriate for investments such as cash instruments, short-term investments, and pure floating-rate investments. Some noted it was impractical and untimely to run a complete NEV analysis to establish a base case at the time of each investment transaction. Others suggested reflecting the tests in operating procedures, rather than policies, and reviewing as a supervisory issue.

NCUA does not intend to require corporate policies to specify tests for investments with minimal investment rate risk. In addition, the Board would not expect tests to evaluate the impact of an investment in a wholesale corporate credit union that is funded by a share certificate with identical characteristics. Rather, the rule requires the board to address tests, as appropriate, for investments expected to impact the percentage decline in NEV, compared to the base case NEV as most recently determined for the balance sheet. The revised proposal clarifies NCUA does not expect a corporate to run a complete NEV analysis to establish a base case at the time of each investment transaction. Indeed, NCUA notes that measuring risk is an imprecise business because of the multitude of assumptions that are required to evaluate potential outcomes. However, the revised proposed rule is intended to require each corporate to establish an ongoing process to identify, estimate, monitor and control interest rate risk between the periodic complete NEV analysis.

Penalty for Early Withdrawals, Section 704.8(c)

The proposed rule required a corporate to impose a market-based penalty for early withdrawal, if early withdrawal is permitted. The proposed rule also required the penalty to equal the estimated replacement cost of the certificate or share redeemed. This change would have prohibited a corporate from imposing a penalty in excess of the replacement cost and would have required a penalty to be reasonably related to current offering rates of that corporate.

Many commenters objected to the proposed provision, asserting that penalties should be market based, and not based on rates currently offered by a corporate. Some of these commenters observed rates offered by a corporate may reflect limited quantity "specials" or other certificate marketing programs and, therefore, not reflect market rates. One commenter suggested early withdrawal should be subject to a market gain or loss. Another commenter stated that a corporate is exposed to the asset side of the balance sheet when redeeming a liability. A commenter noted an early withdrawal penalty should be assessed using all liquidity factors including size, bid or offer spreads, certificate features, and market conditions. A number of commenters suggested that no changes to the current regulation are needed.

The Board is persuaded that no substantive change is needed to this section and has withdrawn the proposed amendments. The Board notes the current rule requires a market based penalty sufficient to cover the estimated replacement cost of the liability redeemed. The Board proposes to clarify

that this means the minimum penalty must be reasonably related to the rate that the corporate would be required to offer to attract funds for a similar term with similar characteristics. NCUA agrees the minimum penalty was not intended to cover limited offerings of liabilities with above market rates. The minimum penalty also does not reflect the value of any specific asset of the corporate. A gain does not appear

from the specified parallel shock tests, or a base case NEV ratio, of less than two percent, rather than one percent. Some commenters supported the two percent minimum NEV ratio. One commenter advocated establishing the minimum NEV limit under the shock scenarios at one percent, rather than two percent. The Board notes the proposed definition of NEV is intended to estimate the reserve of capital available

comments were received on these sections. The proposed changes were non-substantive grammatical amendments. The revised proposal incorporates the proposed amendments and also designates the OCCU Director to respond to regulatory violations. There has been some confusion regarding when reports of violations must be made. The Board notes the 10-day time period runs from the date the

investments to 30 percent of capital, and retains the additional 15 percent for loans that are fully secured.

Six commenters requested that the current audit requirements in § 704.11(d)(3) be modified to permit a consolidated CPA audit for wholly owned CUSOs. This modification would mirror the practice that is currently permissible for natural person CUSOs. 63 Fed. Reg. 10743, 10747 (March 5,

those currently offered by corporates inhibits the possibility of future development and could force credit unions to go to competitor banks for services; and securities safekeeping, custodial and brokerage services should be added to the list of permissible services. Several commenters objected to changing the name from "services" to "permissible services." One commenter objected to limiting services of

not specifically listed as an example under a broad category. An opinion from OGC is recommended if there is doubt as to whether a specific service falls within one of the broad categories. In those situations, a corporate that does not consult with OGC runs the risk of engaging in an impermissible activity and being subject to supervisory action.

The proposal deleted the requirement that services to nonmember natural person credit unions through a

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that this means the minimum penalty must be reasonably related to the rate that the corporate would be required to offer to attract funds for a similar term with similar characteristics. NCUA agrees the minimum penalty was not intended to cover limited offerings of liabilities with above market rates. The minimum penalty also does not reflect the value of any specific asset of the corporate. A gain does not appear consistent with the notion of a penalty for early withdrawal. In the event a member needs liquidity in advance of maturity of a share certificate bearing an above market rate, the Board suggests the corporate offer a share secured loan, as appropriate. As the commenters suggest, the Board will leave to the marketplace the determination of penalties above the minimum penalty specified in the rule.

Interest Rate Sensitivity Analysis, Section 704.8(d)

The proposal deleted the requirement to conduct net interest income simulations. Many commenters supported this elimination, and it is deleted in the revised proposed rule.

The existing rule requires a corporate to evaluate the impact of shocks in the Treasury yield curve on its NEV and NEV ratio. One commenter suggested deleting the word "Treasury," since the market has moved away from the Treasury yield curve as a benchmark. In response, the revised proposed rule omits the word "Treasury." NCUA recognizes risk management practitioners often use a yield curve based on London Interbank Offered Rates (LIBOR).

Section 704.8(d)(1)(i). The proposed rule increased from two to three percent the minimum base case NEV ratio that triggers monthly interest rate sensitivity analysis testing. A number of commenters supported this increased NEV ratio. One commenter observed it was a sound business practice to assess monthly the impact of interest rate shocks on NEV, NEV ratio, and net interest income. Another commenter suggested setting the trigger at four percent, rather than three percent, since the base case NEV ratio for most corporates will increase significantly because of the new definition of NEV. The Board believes it is a sound business practice to assess interest rate risk periodically, as appropriate, and continues to believe at least quarterly analysis is appropriate for base level corporates. The revised proposed rule is retained as proposed.

Proposed § 704.8(d)(1)(ii) limited a corporate's risk exposure to levels that do not result in any NEV ratio resulting from the specified parallel shock tests, or a base case NEV ratio, of less than two percent, rather than one percent. Some commenters supported the two percent minimum NEV ratio. One commenter advocated establishing the minimum NEV limit under the shock scenarios at one percent, rather than two percent. The Board notes the proposed definition of NEV is intended to estimate the reserve of capital available to manage all other risks of the corporate other than the risks associated with changes in interest rates. The section is retained as proposed.

Section 704.8(d)(1)(iii). The proposal reduced the NEV decline limit for a base corporate from 18 to 10 percent. Numerous commenters opposed the proposed limit of 10 percent, since it may reduce the currently permissible amount of interest rate risk for some corporates. Many commenters requested the Board re-evaluate the limits to avoid diminishing the permitted amount of interest rate risk exposure. In contrast, one commenter suggested reducing the NEV decline limit further, to 8 percent, to maintain parity on average with the current rule, and one commenter supported the change. One commenter noted the reduction may have the unintended consequence of encouraging issuance of additional MC as a way of maintaining the dollar value of permissible at risk NEV.

Based on the comments, the Board has re-evaluated the NEV decline limit for a base corporate. The revised proposed rule establishes a limit of 15 percent. This increases the amount of interest rate risk most base corporates may undertake compared to the existing regulation. The Board is comfortable with the increased risk because the corporate system has improved its ability to measure interest rate risk since the existing regulation was adopted. NCUA recognizes that taking prudently controlled risk is necessary to obtain reasonable returns. The Board declines to impose a limit that may reduce substantially the amount of interest rate risk a base corporate may undertake. However, the Board cautions against over reliance on MC as a way of increasing the amount of interest rate risk permitted.

Section 704.8(d)(2). The proposed rule required all corporates to assess annually whether it is appropriate to conduct periodic, additional, interest rate risk tests. These additional tests formerly were triggered based on the level of unmatched embedded options. A number of commenters supported this change, and it is retained as proposed.

Regulatory Violations, and Policy Violations, section 704.8(e) and (f). No comments were received on these sections. The proposed changes were non-substantive grammatical amendments. The revised proposal incorporates the proposed amendments and also designates the OCCU Director to respond to regulatory violations. There has been some confusion regarding when reports of violations must be made. The Board notes the 10-day time period runs from the date the corporate first produces or receives reports of its NEV. Revisions or reruns of reports do not delay the reporting requirement.

Divestiture, Section 704.10

The Board did not propose any changes to this provision, however, because of confusion concerning this provision, the Board proposes retitling it "Investment Action Plan." This change clarifies that divestiture is not the only remedy available under this section.

Corporate CUSOs, Section 704.11

The proposed rule added new due diligence requirements for corporates' loans to corporate CUSOs. These requirements were taken from the member business loan rule. All six of the commenters that commented on this issue opposed the additional requirements. Commenters suggested underwriting is a supervision issue and should be addressed as part of the examination process and not in a regulation. One of the commenters noted that this requirement may limit a corporate's desire to provide necessary liquidity to key service providers.

The Board believes these due diligence requirements are the minimum requirements necessary to insure the corporate is engaging in safe and sound lending practices. The requirements should not place a new burden on corporates because any corporate that makes a loan to a corporate CUSO should already be following these requirements.

Six commenters requested that the current 15 percent aggregate limit for investments in and loans to corporate CUSOs be increased to 30 percent and the additional 15 percent for loans that are fully secured be retained.

The Board agrees that with respect to loans to corporate CUSOs. Because of the mandatory due diligence requirements, a corporate' lending limits should be increased to 30 percent. The Board has safety and soundness concerns with increasing the investment limits to 30 percent. Therefore, the revised proposed rule maintains a limit of 15 percent of capital for investments in corporate CUSOs, increases the aggregate limit for loans and investments to 30 percent of capital, and retains the additional 15 percent for loans that are fully secured.

Six commenters requested that the current audit requirements in § 704.11(d)(3) be modified to permit a consolidated CPA audit for wholly owned CUSOs. This modification would mirror the practice that is currently permissible for natural person CUSOs. 63 Fed. Reg. 10743, 10747 (March 5, 1998). The Board agrees but does not believe it is necessary to state it in the regulations since this is a requirement under GAAP for wholly owned CUSOs.

Six commenters supported revising § 704.11(b) so that it mirrors § 712.6 of the natural person CUSO rule. Section 704.11(b) prohibits a corporate from acquiring control directly or indirectly of another "financial institution" and § 712.6 prohibits a natural person credit union from acquiring control directly or indirectly of anther "depository financial institution." The Board agrees and has placed the modifier "depository" before "financial institution."

The commenters generally supported clarifying in the CUSO rule that the aggregate limit of § 723.16, the member business loan rule applies to loans to CUSOs. The commenters objected to the other provisions of part 723 applying to those loans and cited a Guidance letter issued by the OCCU as support for their position. The intent of the proposal, as well as the revised proposal, is not to have any additional requirements in part 723 apply except those listed as due diligence requirements.

Permissible Services, Section 704.12

The Board proposed listing six broad categories of permissible financial services for corporate credit unions. They are: Credit and investment services; liquidity and asset liability management; payment systems; electronic financial services; sale or lease of excess physical or information system capacity; and operational services associated with administering or providing financial products or services. Currently, permissible services are not defined but are limited in the preamble to the final rule to "traditional loan, deposit and payment services." 61 FR 28085, 28096 (June 4, 1996).

Twenty of the 21 commenters that commented on this provision objected to the proposed list of services. Some of the reasons given in opposition were that: services should be the same as those listed in part 721; a corporate should be able to seek approval for additional services, as in parts 712 and 721; the services should be listed as broad categories; limiting services to those currently offered by corporates inhibits the possibility of future development and could force credit unions to go to competitor banks for services; and securities safekeeping, custodial and brokerage services should be added to the list of permissible services. Several commenters objected to changing the name from "services" to "permissible services." One commenter objected to limiting services of federally-insured, state-chartered credit unions (FISCUs). The commenter noted that prior to 1998, this provision did not apply to FISCUs.

The commenter that supported this provision commended NCUA for interpreting permissible services more broadly than the current interpretation. The commenter suggested listing the services as an appendix to the rule.

The Board believes some commenters may have been confused even though the proposal specifically stated that the services listed were broad categories. To eliminate confusion, the Board is listing the permissible services in categories in the same manner they are listed in parts 712 and 721. In addition, like parts 712 and 721, examples of the service are set out under each category. The Board does not agree that the permissible services for a corporate credit union should be the same as for a natural person credit union. The mission of a corporate credit union is serving its natural person credit union members, whereas, the mission of a natural person credit union is serving natural persons. These two distinct missions lead to very different services for members. The Board is retaining the six broad categories in the proposed, adding the category of trustee or custodial services, and including examples under each category. The Board notes that trustee services are limited to those permitted in part 724. Custodial services include acting as custodian or safekeeper of securities or other investments for your members. When performing these services, you must comply with applicable laws, including securities laws.

At the commenters' suggestion, the Board is adding a provision similar to the provisions in parts 712 and 721 concerning adding new permissible services. The new section permits corporates to petition the Board to add a new service to § 704.12 and encourages them to seek an advisory opinion from the Office of General Counsel (OGC) on whether a proposed service is already covered by one of the authorized categories before filing a petition. The rule does not require a corporate to come to OGC for an opinion every time it wants to provide a service not specifically listed as an example under a broad category. An opinion from OGC is recommended if there is doubt as to whether a specific service falls within one of the broad categories. In those situations, a corporate that does not consult with OGC runs the risk of engaging in an impermissible activity and being subject to supervisory action.

The proposal deleted the requirement that services to nonmember natural person credit unions through a correspondent services agreements could only be provided to those natural person credit unions' branch offices in the corporate's geographic field of membership. In addition, the proposal clarified that a correspondent services agreement is an agreement between two corporates for one of the corporates to provide services to the members of the other. Eleven of the 13 commenters that commented on this issue objected to the clarification.

The negative commenters stated that the requirement: Ignores the reality that a credit union can join almost any corporate; is an antitrust violation and is in restraint of trade; Ignores the existing practice; creates a competitive edge for noncredit union competitors; and will hinder the process of establishing relationships that will lead to membership. Several commenters noted that, with national fields of membership, any credit union can join a corporate and NCUA needs to define member.

The two commenters that supported this provision noted that corporates are still financial cooperatives formed to benefit members and that a national field of membership does not change that basic principle.

The Board agrees with the two positive commenters that corporates, like natural person credit unions, are formed to serve their members. Natural person credit unions are permitted as part of correspondent services to provide services to other natural person credit unions, but are only permitted to serve, nonmember natural persons through an agreement with the nonmember's natural person credit union. 12 CFR 721.3(b). The revised proposed rule for corporates, like that for natural person credit unions, requires an agreement between two corporates for one corporate to provide services to the members of the other. In addition, although not in the initial proposal, the revised proposal permits corporates to provide services to other nonmember corporates through a correspondent services agreement, just as natural person credit unions are permitted to provide services to other natural person credit unions through an

agreement. Finally, correspondent services are now listed under permissible services.

The proposal also moved the current prohibition on the purchase of "mortgage servicing rights" from the investment section to this section and renames it "loan servicing rights." Three commenters objected to this current prohibition stating that it is

and the credit union trade association affiliate. Therefore, the revised proposal retains the definition of "credit union trade association" in the initial proposal.

The proposal amends the requirement in § 704.14(a) that both federal and state-chartered corporates comply with federal corporate bylaws governing election procedures to require all

threshold before the earnings retention requirement is in effect. For reasons previously cited, the Board remains unconvinced that a credit-risk weighted capital system for corporate credit unions is a preferred method for determining capital adequacy.

Several comments were received regarding eliminating § 704.19(c)(1). This section addressed separate rules for

corporate's officials may develop features in their MC or PIC offerings that the Board did not consider in adopting the model forms. The Board wants corporates to have the freedom to develop unique MC and PIC accounts, while ensuring member credit unions receive appropriate disclosure on these accounts. Therefore, in the revised proposed regulation, the Board has

In addition, the proposed rule included minimum standards for any corporate credit union participating in expanded authorities. The minimum standards included requirements for monthly NEV modeling and annual updating of a corporate's self-assessment. No commenters objected to the NEV modeling requirement; however, twelve commenters opposed the establishment of a requirement to

For Part I, the Board proposed to limit volatility to a maximum of 15 and 20 percent when the corporate credit union had committed to a minimum capital requirement of four and five percent, respectively. For Part II the board proposed to limit volatility to 15, 20, and 30 percent when a corporate credit union had committed to a minimum capital requirement of four, five, or six

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agreement. Finally, correspondent services are now listed under permissible services.

The proposal also moved the current prohibition on the purchase of "mortgage servicing rights" from the investment section to this section and renames it "loan servicing rights." Three commenters objected to this current prohibition stating that it is arbitrary and contrary to the concept of business aggregation. The Board is not persuaded by these three commenters based on its safety and soundness concerns with corporates engaging in this type of activity. The Board will maintain the current prohibition in the revised proposed rule.

Fixed Assets, Section 704.13

The proposal eliminated the existing regulatory limit on fixed assets of 15 percent of capital. The proposal noted the monitoring of fixed assets is best accomplished through ongoing supervision rather than through regulation.

The few commenters that commented on this change supported the elimination. Therefore, the revised proposal reflects this change.

Representation, Section 704.14

The proposal clarified that the term "credit union trade association" in § 704.14(a) includes the term affiliates by adding to the regulation the definition of "credit union trade association" in the preamble to the prior final rule. 59 Fed. Reg. 59357, 59358, November 17, 1994. Thirteen of the 14 commenters that commented on this clarification objected to adding a definition of "credit union trade association." The commenters erroneously perceived this as a change, stated that it unnecessarily limits the pool of qualified applicants, and it is not needed in light of the recusal provisions in § 704.14(d). The one positive commenter supported the change because it clarifies the use of the terms "affiliates" and "trade association."

The Board continues to believe that the chairman of the board of a corporate should not serve simultaneously as an officer, director or chair of a national credit union trade association or its affiliates. As the Board stated when this provision was originally drafted, "the chair should be an individual whose loyalty is in no way divided between the corporate credit union and a trade association." 59 FR 59357, 59358, November 17, 1994. (Emphasis added). If the Board were to exclude affiliates from the definition, the chair's loyalty could be divided between the corporate and the credit union trade association affiliate. Therefore, the revised proposal retains the definition of "credit union trade association" in the initial proposal.

The proposal amends the requirement in § 704.14(a) that both federal and state-chartered corporates comply with federal corporate bylaws governing election procedures to require all corporates comply with § 704.14(a) governing election procedures. All four commenters that commented on this amendment agreed with the proposed change. The Board is retaining these changes in the revised proposal.

Wholesale Corporate Credit Unions, Section 704.19

The proposed rule eliminated separate wholesale corporate rules for minimum capital ratio, minimum NEV ratio, and maximum NEV volatility. In addition, it eliminated reserve transfer and annual validation of the asset and liability management modeling system requirements. A new provision was added that decreased the minimum RUDE ratio requirement for a wholesale corporate to 1 percent, as opposed to the 2 percent requirement for other corporates.

Four commenters addressed capital. None of the commenters addressed the minimum capital ratio, but all four opposed establishing a 1 percent minimum RUDE ratio requirement citing the same reasons they opposed the 2 percent minimum RUDE ratio for other corporates. Two commenters recommended adopting a credit-risk weighted capital approach for a wholesale corporate. Both commenters stated a credit-risk weighted capital system is a more appropriate measurement of capital adequacy than a RUDE ratio.

As discussed in the section addressing capital, the Board is persuaded to eliminate a minimum RUDE ratio requirement but remains convinced retained earnings are a critical component of capital. Therefore, the Board is establishing an earnings retention requirement when the retained earnings ratio is below 1 percent. The Board believes implementing an earnings retention requirement, in lieu of a minimum RUDE ratio requirement, addresses both the need to maintain an appropriate level of retained earnings and eliminates concerns expressed about restricting a wholesale corporate credit union's ability to accept deposits. Recognizing the unique position of a wholesale corporate credit union in the two-tier corporate system, the Board is establishing a 1 percent, rather than a 2 percent, retained earnings ratio threshold before the earnings retention requirement is in effect. For reasons previously cited, the Board remains unconvinced that a credit-risk weighted capital system for corporate credit unions is a preferred method for determining capital adequacy.

Several comments were received regarding eliminating § 704.19(c)(1). This section addressed separate rules for minimum NEV ratio and maximum NEV volatility. Several commenters objected to eliminating this provision citing a wholesale corporate's need for greater flexibility in managing liquidity. One commenter supported the proposed rule stating there is no basis for maintaining different regulatory requirement for a wholesale corporate. The Board continues to believe exposures associated with interest rate risk are the same regardless of the type of corporate. Therefore, the Board has eliminated this section in the revised proposal.

Two commenters supported the proposed elimination of § 704.19(c)(2) that requires a wholesale corporate to obtain an annual third-party review of its asset and liability management modeling system. This section is eliminated in the revised proposed rule.

Appendix A to Part 704—Model Forms

The proposal added language to the model forms to clarify the treatment of MC and PIC in the event of the merger, liquidation, or charter conversion of a member credit union or the corporate credit union. The proposal also noted that the model forms only set forth the minimum disclosure requirements and that there may be additional disclosures required that the Board has not considered. The Board proposed eliminating the wording that states corporates using the model forms are in compliance with all disclosure requirements.

One commenter indicated full support for all the proposed changes in this section. Several commenters suggested a revision to allow either the corporate's chair or the CEO to sign the annual disclosure. Eight commenters objected only to the removal of the wording that indicates a corporate using the model forms will be in compliance with the disclosure requirements. They suggested the value of providing model forms is to assist the industry in complying with regulatory requirements and expressed concern with having compliance with the terms and conditions of MC and PIC accounts left to an examiner's discretion.

The Board wants each corporate to have the ability to utilize MC and PIC to achieve the best results for its institution and its members. As such, a corporate's officials may develop features in their MC or PIC offerings that the Board did not consider in adopting the model forms. The Board wants corporates to have the freedom to develop unique MC and PIC accounts, while ensuring member credit unions receive appropriate disclosure on these accounts. Therefore, in the revised proposed regulation, the Board has eliminated the wording that states corporate credit unions using the model forms are in compliance with all disclosure requirements.

The revised proposal also places the signature requirements for the disclosures that are currently only found in the disclosures in the regulation in § 704.3(b)(2) and (c)(1).

Appendix B to Part 704—Expanded Authorities and Requirements

Appendix B provides corporates with incrementally greater authorities provided additional infrastructure and capital requirements are met. The proposed rule introduced a more flexible approach to expanded authorities. The Board proposed changes to this section to: incorporate base plus expanded authorities under this appendix; expand permissible credit ratings on investments; permit corporates that precommit to a higher level of capital the option of a higher level of interest rate risk; ease the requirements for corporates to participate in risk reducing derivative activities; and permit corporates to participate in loan participations with natural person credit unions.

In addition, the proposed rule included minimum standards for any corporate credit union participating in expanded authorities. The minimum standards included requirements for monthly NEV modeling and annual updating of a corporate's self-assessment. No commenters objected to the NEV modeling requirement; however, twelve commenters opposed the establishment of a requirement to update the self-assessment plan originally submitted in a request for expanded authority. The Board is persuaded that updating the self-assessment would be overly burdensome. Therefore, the Board has deleted that requirement from the revised proposed rule.

The Board proposed allowing corporates to select the level of NEV volatility they choose given their level of capital. Recognizing that all corporates do not operate at or seek the same levels of risk, the Board proposed to reduce mandatory capital levels if NEV volatility is maintained at lower levels and to increase it as volatility increases. The Board believed this menu-driven approach would reduce burden on corporate credit unions, allowing them to better manage their risk taking activities in coordination with capital levels. No commenters opposed the approach; however, several commenters opposed the limits established in the proposed rule.

In the proposed rule, the Board limited volatility for a base plus corporate to a maximum of 15 percent.

TABLE 1.—NEV DECLINE LIMITS

[in percent]

Level of expanded authorities	Minimum capital requirement	Proposed rule NEV decline limit	Revised proposed rule NEV decline limit
Base plus	4	15	20
Part I	4	15	20
	5	20	28
	6	(1)	35
Part II	4	15	20
	5	20	28
	6	30	35

[1] Not proposed.

For Part I, the Board proposed to limit volatility to a maximum of 15 and 20 percent when the corporate credit union had committed to a minimum capital requirement of four and five percent, respectively. For Part II the board proposed to limit volatility to 15, 20, and 30 percent when a corporate credit union had committed to a minimum capital requirement of four, five, or six percent, respectively. Several commenters objected to these volatility levels recommending that volatility levels remain at existing levels. One commenter recommended lowering the volatility levels even further.

After reviewing the comments, the Board is persuaded to increase the proposed volatility levels as noted in Table 1. The Board is establishing NEV decline limits for a base-plus corporate credit union of 20 percent, as illustrated in Table 1. The Board is adopting the menu-driven approach proposed for only Part II expanded authority for corporates requesting both Part I and Part II expanded authorities. The NEV limits in Table 1 reflect reasonable levels of volatility given the infrastructure requirements imposed by this rule. A corporate can obtain greater levels of NEV volatility with Part I authority without incurring the infrastructure costs associated with the ability to assume the additional credit risk permitted in Part II. This flexibility is being provided to enable corporates to manage their balance sheets better.

The Board's estimates of the effect of the NEV decline limits on corporates with expanded authorities are summarized in Table 2. Although the estimated permitted NEV declines are smaller for some corporates with expanded authorities, no corporates reported NEV declines under adverse rate shocks will violate the new NEV decline limits.

TABLE 2.—ESTIMATES OF PERMITTED DECLINES IN NEV FOR BASE-PLUS, PART I, AND PART II CORPORATE CREDIT UNIONS SIMPLE AVERAGES FOR THE QUARTERS ENDING JUNE 2000 THROUGH MARCH 2001

	NEV ratio	NEV decline limit	Permitted decline as % of FV of assets
Base plus			
Current Rule	4.33	25	1.06
Proposed Rule	9.24	20	1.85

(flat). One commenter believed even lower rated instruments should be permitted. Given the additional credit risk analysis infrastructure requirements of a Part II corporate, the Board believes the proposed rating is appropriate and has adopted it in the revised proposed rule. The revised proposed rule clarifies that an asset-backed security with a short-term rating of A–2 is permissible.

Currently, corporates with Part II authority may invest in foreign issuers with a long-term rating of AA– or higher. The proposed rule would have required a rating of AA– or higher for all foreign issuers. Several commenters objected to this change stating that it is unnecessarily restrictive. The Board is persuaded by these commenters and has retained the current rating requirement in the revised proposed rule.

The current rule limits non-secured obligations of any single foreign issuer to 150 percent of RUDE and PIC. The Board proposed to limit all obligations of any single foreign issuer or guarantor to 50 percent of capital. The Board believes the limits for foreign issuers or guarantors should be parallel to those of domestic obligors and based on capital rather than RUDE and PIC. The current rule limits non-secured obligations of

adopting this provision as proposed in the revised proposed rule.

The current rule is silent as to counterparty ratings for derivative transactions with foreign and domestic counterparties. The Board proposed to clarify its intent by adding language in Part IV making the rating requirements parallel with the corporates other permissible activities. Several commenters noted that requiring the

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TABLE 2.—ESTIMATES OF PERMITTED DECLINES IN NEV FOR BASE-PLUS, PART I, AND PART II CORPORATE CREDIT UNIONS SIMPLE AVERAGES FOR THE QUARTERS ENDING JUNE 2000 THROUGH MARCH 2001

	NEV ratio	NEV decline limit	Permitted decline as % of FV of assets
Base plus			
Current Rule	4.33	25	1.06
Proposed Rule	9.24	20	1.85
Part I			
Current Rule	3.62	35	1.27
Proposed Rule 20	8.44	20	1.69
Proposed Rule 28	8.44	28	2.36
Proposed Rule 35	8.44	35	2.95
Part II			
Current Rule	3.53	50	1.76
Proposed Rule 20	6.51	20	1.30
Proposed Rule 28	6.51	28	1.82
Proposed Rule 35	6.51	35	2.28

The Board will permit any corporate currently approved for Part I or Part II Expanded Authorities to request to lower its NEV decline limit in conjunction with a request to lower its minimum capital requirement from 5 or 6 percent, respectively.

As discussed in § 704.8, asset and liability management, the Board proposed to establish limits for the aggregate credit exposure to a single obligor at 50 percent of capital. This limit provides corporates with substantial flexibility in comparison to other depository institutions. The Board believes this limit is the most credit exposure a corporate credit union should prudently take in investment quality investments. This 50 percent limit will apply to all corporates.

The Board proposed expanding the exception from the general credit concentration rule for repurchase and securities lending transactions for corporate credit unions with Part I or II authority. Due to the increased infrastructure requirements for Part I and II, the Board proposed to establish a 300 percent limit for Part I, and 400 percent limit for Part II. Several commenters objected to the limits stating that the lower levels will significantly reduce their existing limits. The Board believes the proposed levels of risk are appropriate because of the increased requirements for credit analysis for Part I and II corporates; however, the Board believes increasing the limits beyond those proposed would not be prudent.

Part I

Currently, corporates with Part I authority can purchase long-term investments rated no lower than AA−. The Board proposed lowering the minimum rating requirement for a long-term investment (including asset-backed securities) to A−. One commenter objected to the lowering of the credit standards, since it believes that corporates should only invest in the highest rated instruments. The Board believes these proposed levels of risk are appropriate because of the credit risk analysis infrastructure requirements for Part I and has retained them in the revised proposed rule.

Currently, corporates cannot purchase a short-term investment rated lower than A−1. For Part I corporates, the Board proposed lowering the minimum rating requirement for a short-term investment (including asset-backed securities) to A−2, provided the issuer had a long-term rating no lower than A−. Again, one commenter objected to the lowering of the credit standards, since it believes that corporates should only invest in the highest rated instruments. As stated above, the Board believes these proposed levels of risk are appropriate because of the credit risk analysis infrastructure requirements for Part I and has adopted them in the revised proposed rule. The revised proposed rule clarifies that an asset-backed security with a short-term rating of A−2 is permissible.

The Board proposed to delete authority for Part I corporates to enter into a repurchase transaction where the collateral securities are rated no lower than A (or equivalent). This authority is no longer necessary because the revised proposed rule permits Part I corporates to purchase long-term investments rated no lower than A− (or equivalent). No comments we received on this change and the Board has adopted it in the revised proposed rule.

The current rule generally prohibits when-issued trading, but allows corporates with Part I and II authorities to engage in when-issued trading when accounted for on a trade date basis. The revised proposed § 704.5(h) would permit all corporates, including those with expanded authorities, to engage in when-issued trading when accounted for on a trade date basis. The reference to when-issued trading in Parts I and II is no longer necessary and is deleted in the revised proposal.

In both Part I and II, the Board proposed clarifying that the aggregate loan limits apply to both revocable and irrevocable lines of credit. Currently, the rule only states "irrevocable lines of credit." The Board deleted the modifier "irrevocable" to clarify this. No comments were received on this proposed change and it is adopted in the revised proposed rule.

Part II

Currently, corporates with Part II authority can purchase long-term investments rated no lower than A− (or equivalent). The Board proposed lowering the minimum rating requirement for a long-term investment (including asset-backed securities) to BBB (flat). Several positive comments were received on this change. One commenter believed even lower rated instruments should be permitted. Given the additional credit risk analysis infrastructure requirements of a Part II corporate, the Board believes the proposed rating is appropriate and has adopted it in the revised proposed rule.

Currently, corporates cannot purchase a short-term investment rated lower than A−1 (or equivalent). For Part II corporates, the Board proposed lowering the minimum rating requirement for a short-term investment (including asset-backed securities) to A−2 (or equivalent), provided the issuer has a long-term rating no lower than BBB (flat). One commenter believed even lower rated instruments should be permitted. Given the additional credit risk analysis infrastructure requirements of a Part II corporate, the Board believes the proposed rating is appropriate and has adopted it in the revised proposed rule. The revised proposed rule clarifies that an asset-backed security with a short-term rating of A−2 is permissible.

Currently, corporates with Part II authority must establish limits for secured and unsecured loans as a percentage of the corporate's capital plus pledged shares. The Board proposed to limit unsecured loans to 100 percent of capital. This proposed unsecured loan limit is the same as that for a Part I corporate. One commenter noted that corporates operating at this level of expanded authority are capable of making a credit decision and establishing limits utilizing their own expertise. The Board does not believe it is appropriate for any corporate to risk more than 100 percent of its capital to any one member credit union on an unsecured basis. The Board has adopted the proposed limit in the revised proposed rule.

Part III

Corporates with Part III authority may purchase certain foreign investments. The current rule requires the foreign country to be rated no lower than AA (or equivalent) for political and economic stability. The Board proposed to replace this requirement with a requirement for a long-term foreign currency (non-local currency) debt rating no lower than AA− (or equivalent). No negative comments were received so the Board has adopted this change in the revised proposed rule

The Board proposed to relax the bank issuer or guarantor rating from AA (or equivalent) to AA− (equivalent). This change represented only a minor increase in risk, and provided Part III corporates with additional investment alternatives. Five commenters noted that corporates should be allowed to take credit risk on foreign investments at the same level as permitted for domestic issuers. The Board was persuaded that a credit rating by an NRSRO is consistent between foreign and domestic issuers, so the revised proposed rule is modified to allow corporates the same credit rating levels for foreign and domestic issuers at their level of authority. In addition, several commenters noted that the rule favored banks over other foreign counterparties. The Board agrees this wording favored foreign banks and has modified the revised proposed rule to allow foreign counterparties, not just banks.

The current rule limits non-secured obligations of any single foreign issuer to 150 percent of RUDE and PIC. The Board proposed to limit all obligations of any single foreign issuer or guarantor to 50 percent of capital. The Board believes the limits for foreign issuers or guarantors should be parallel to those of domestic obligors and based on capital rather than RUDE and PIC. The current rule limits non-secured obligations of any single foreign country to 500 percent of RUDE and PIC. The Board proposed to limit all obligations of any single foreign country to 250 percent of capital. This change equates the existing limit based on RUDE and PIC to a limit using the new definition of capital. The Board noted that sovereign risk is present in foreign debt obligation, whether secured or unsecured. No negative comments were received on these changes, and the Board is adopting them in the revised proposed rule.

Part IV

Part IV expanded authorities have been restructured to provide more flexibility among corporates seeking to use derivatives to reduce risk.

The current rule requires corporates to have either Part I or II expanded authorities to qualify for Part IV. The proposal removed this requirement. The Board believes that all corporates demonstrating and possessing the resources, knowledge, systems, and procedures necessary to measure, monitor, and control the risks associated with derivative transactions should be permitted to use these powers. As with all expanded authorities, the corporate in its application must detail the specific types of derivatives they may utilize. The Board believes that derivative transactions, used properly, reduce risk to the institution and its members.

The current rule provides that a corporate may use such derivatives only for creating structured instruments and hedging its own balance sheet and the balance sheet of its members. The proposed rule delineated between the various permissible activities and clarified the Board's original intent, as it relates to hedging "its own balance sheet and the balance sheet of its members." The Board believes corporates should be allowed to manage their own balance sheets, which may at times add risk. The Board's intent as it relates to "its members" is that the activities only be related to risk reduction. An example of this is to reduce a member's exposure to fixed rate mortgage loans by swapping a fixed rate for a floating rate. The Board is adopting this provision as proposed in the revised proposed rule.

The current rule is silent as to counterparty ratings for derivative transactions with foreign and domestic counterparties. The Board proposed to clarify its intent by adding language in Part IV making the rating requirements parallel with the corporates other permissible activities. Several commenters noted that requiring the counterparty to be rated unintentionally limited a corporate's ability to enter into transactions with government sponsored enterprises, member credit unions, and special purpose entities fully guaranteed by an entity with a minimum rating for comparable term permissible investments. Based on these comments, the Board is adding clarifying language to the revised proposed rule excluding those specific entities from the Part IV rating requirements.

Part V

As discussed in the lending section, new Part V gives corporates the authority to enter into loan participations with their member credit unions. Several commenters objected to the proposed individual and aggregate participation loan limits of 25 and 100 percent of capital, respectively. These commenters recommended the Board establish individual and aggregate participation loan limits on a case-by-case basis. The Board believes safety and soundness factors require retention of the 25 percent individual member credit union limit. A greater concentration of capital for an individual member credit union, particularly, for non-recourse participation loans, could jeopardize the future viability of a corporate because recovery on those loans is limited to the natural person borrower.

The Board agrees with the commenters on the issue of establishing aggregate participation loan limits on a case-by-case basis. The revised proposed rule permits this; however, the Board only intends to permit aggregate participation loan limits above 100 percent of capital after a corporate demonstrates its ability to manage this activity soundly. Once a corporate has demonstrated its ability to soundly manage this activity, the OCCU Director may authorize greater aggregate participation loan limits.

Delegations of Authority

Although not in the initial proposed rule, the Board, in an effort to streamline the regulatory approval process, has delegated to the OCCU Director in the revised proposal, the authority to act on its behalf in

§§ 704.3(e), (g) and (i); 704.8(e); 704.10; 704.15; and 704.19(b).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small

effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, the potential risk to the NCUSIF without the proposed changes justifies them.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on

the time of investment or adjustment. Paid-in capital and membership capital are defined in part 704 of this chapter.

* * * * *

PART 704—CORPORATE CREDIT UNIONS

3. The authority citation for part 704 will continue to read as follows:

between willing parties, other than in a forced or liquidation sale. Quoted market prices in active markets are the best evidence of fair value. If a quoted market price in an active market is not available, fair value may be estimated using a valuation technique that is reasonable and supportable, a quoted market price in an active market for a similar instrument, or a current

underlying an asset-backed security, the servicer of such receivables, or an insurer of an investment.

* * * * *

Paid-in capital means accounts or other interests of a corporate credit union that: are perpetual, non-cumulative dividend accounts; are available to cover losses that exceed retained earnings; are not insured by the

e. Revise redesignated paragraphs (e) heading, (e)(1) introductory text, (e)(2) and (e)(3)(iii) and (f).

§ 704.3 Corporate credit union capital.

(a) Capital plan. * * *

(b) *Requirements for membership capital*—(1) *Form.* Membership capital funds may be in the form of a term certificate or an adjusted balance account.

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§§ 704.3(e), (g) and (i); 704.8(e); 704.10; 704.15; and 704.19(b).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $1 million in assets). The rule only applies to corporates, all of which have assets well in excess of $1 million. The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). NCUA currently has OMB clearance for part 704's collection requirements (OMB No. 3133–0129).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The executive order states that: "National action limiting the policymaking discretion of the states shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance." The risk of loss to federally-insured credit unions and the NCUSIF caused by actions of corporates are concerns of national scope. The proposed rule, if adopted, will help assure that proper safeguards are in place to ensure the safety and soundness of corporates.

The proposed rule, if adopted, applies to all corporates that accept funds from federally-insured credit unions. NCUA believes that the protection of such credit unions, and ultimately the NCUSIF, warrants application of the proposed rule to all corporates, including nonfederally insured. The proposed rule does not impose additional costs or burdens on the states or affect the states' ability to discharge traditional state government functions. NCUA has determined that this proposal may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, the potential risk to the NCUSIF without the proposed changes justifies them.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 704

Credit unions, Reporting and record keeping requirements, Surety bonds.

By the National Credit Union Administration Board on June 20, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR parts 703 and 704 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 will continue to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), and 1757(15).

2. Amend § 703.100 paragraph (c) by revising the second and third sentences and adding a fourth sentence to read as follows:

§ 703.100 What investments and investment activities are permissible for me?

* * * * *

(c) * * * Your aggregate amount of paid-in capital and membership capital in one corporate credit union is limited to two percent of your assets measured at the time of investment or adjustment. Your aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to four percent of your assets measured at the time of investment or adjustment. Paid-in capital and membership capital are defined in part 704 of this chapter.

* * * * *

PART 704—CORPORATE CREDIT UNIONS

3. The authority citation for part 704 will continue to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

4. Amend § 704.2 as follows:

a. Remove the definition of "*commercial mortgage related security*", "*correspondent services*", "*expected maturity*", "*long term investment*", "*market price*", "*member paid-in capital*", "*mortgage servicing*", "*net interest income*", "*non member paid-in capital*", "*non secured obligation*", "*prepayment model*", "*real estate mortgage investment conduit (REMIC)*", "*reserve ratio*", "*reserves and undivided earnings*", "*short-term investment*", and "*trade association*";

b. Revise the definitions of "*capital*", "*collateralized mortgage obligation (CMO)*", "*fair value*", "*forward settlement*", "*membership capital*", "*mortgage related security*", "*paid-in capital*", "*regular-way settlement*", "*repurchase transaction*", and "*residual interest*";

c. Amend the definitions of "*asset-backed security*" by revising the last sentence, and "*net economic value (NEV)*" by revising the second and third sentences; and

d. Add new definitions for "*core capital*", "*core capital ratio*", "*limited liquidity investment*", "*obligor*", "*quoted market price*", "*retained earnings*", and "*retained earnings ratio*".

§ 704.2 Definitions.

* * * * *

Asset-backed security * * * This definition excludes mortgage related securities.

Capital means the sum of a corporate credit union's retained earnings, paid-in capital, and membership capital.

* * * * *

Collateralized mortgage obligation (CMO) means a multi-class mortgage related security.

Core capital means the corporate credit union's retained earnings and paid-in capital.

Core capital ratio means the corporate credit union's core capital divided by its moving daily average net assets.

* * * * *

Fair value means the amount at which an instrument could be exchanged in a current, arms-length transaction between willing parties, other than in a forced or liquidation sale. Quoted market prices in active markets are the best evidence of fair value. If a quoted market price in an active market is not available, fair value may be estimated using a valuation technique that is reasonable and supportable, a quoted market price in an active market for a similar instrument, or a current appraised value. Examples of valuation techniques include the present value of estimated future cash flows, option-pricing models, and option-adjusted spread models. Valuation techniques should incorporate assumptions that market participants would use in their estimates of values, future revenues, and future expenses, including assumptions about interest rates, default, prepayment, and volatility.

* * * * *

Forward settlement of a transaction means settlement on a date later than regular-way settlement.

* * * * *

Limited liquidity investment means an investment without a quoted market price.

* * * * *

Membership capital means funds contributed by members that: are adjustable balance with a minimum withdrawal notice of 3 years or are term certificates with a minimum term of 3 years; are available to cover losses that exceed retained earnings and paid-in capital; are not insured by the NCUSIF or other share or deposit insurers; and cannot be pledged against borrowings.

Mortgage related security means a security as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), *e.g.*, a privately-issued security backed by mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

* * * * *

Net economic value (NEV) * * * All fair value calculations must include the value of forward settlements and embedded options. The amortized portion of membership capital and paid-in capital, which do not qualify as capital, are treated as liabilities for purposes of this calculation. * * *

Obligor means the primary party obligated to repay an investment, *e.g.*, the issuer of a security, the taker of a deposit, or the borrower of funds in a federal funds transaction. Obligor does not include an originator of receivables underlying an asset-backed security, the servicer of such receivables, or an insurer of an investment.

* * * * *

Paid-in capital means accounts or other interests of a corporate credit union that: are perpetual, non-cumulative dividend accounts; are available to cover losses that exceed retained earnings; are not insured by the NCUSIF or other share or deposit insurers; and cannot be pledged against borrowings.

* * * * *

Quoted market price means a recent sales price or a price based on current bid and asked quotations.

Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular-way settlement of a Treasury security includes settlement on the trade date ("cash"), the business day following the trade date ("regular way"), and the second business day following the trade date ("skip day").

Repurchase transaction means a transaction in which a corporate credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a specified future date and at a specified price.

* * * * *

Residual interest means the remainder cash flows from a CMO or ABS transaction after payments due bondholders and trust administrative expenses have been satisfied.

Retained earnings means the total of the corporate credit union's undivided earnings, reserves, and any other appropriations designated by management or regulatory authorities. For purposes of this regulation, retained earnings does not include the allowance for loan and lease losses account, accumulated unrealized gains and losses on available for sale securities, accumulated FASB adjustments, or other comprehensive income items.

Retained earnings ratio means the corporate credit union's retained earnings divided by its moving daily average net assets.

* * * * *

5. Amend § 704.3 as follows:

a. Amend paragraph (a) by revising the paragraph heading;

b. Redesignate paragraphs (d) through (g) as paragraphs (e) through (h) and paragraph (b) as paragraph (d);

c. Remove paragraph (c);

d. Add paragraphs (b), (c), and (i); and

e. Revise redesignated paragraphs (e) heading, (e)(1) introductory text, (e)(2) and (e)(3)(iii) and (f).

§ 704.3 Corporate credit union capital.

(a) Capital plan. * * *

(b) *Requirements for membership capital*—(1) *Form.* Membership capital funds may be in the form of a term certificate or an adjusted balance account.

(2) *Disclosure.* The terms and conditions of a membership capital account must be disclosed to the recorded owner of the account at the time the account is opened and at least annually thereafter.

(i) The initial must be signed by either all of the directors of the member credit union or, if authorized by board resolution, the chair and secretary of the board; and

(ii) The annual disclosure notice must be signed by the chair of the corporate credit union. The chair must sign a statement that certifies that the notice has been sent to member credit unions with membership capital accounts. The certification must be maintained in the corporate credit union's files and be available for examiner review.

(3) *Three-year remaining maturity.* When a membership capital account has been placed on notice or has a remaining maturity of less than three years, the amount of the account that can be considered membership capital is reduced by a constant monthly amortization that ensures membership capital is fully amortized one year before the date of maturity or one year before the end of the notice period. The full balance of a membership capital account being amortized, not just the remaining non-amortized portion, is available to absorb losses in excess of the sum of retained earnings and paid-in capital until the funds are released by the corporate credit union at the time of maturity or the conclusion of the notice period.

(4) *Release.* Membership capital may not be released due solely to the merger, charter conversion or liquidation of a member credit union. In the event of a merger, the membership capital transfers to the continuing credit union. In the event of a charter conversion, the membership capital transfers to the new institution. In the event of liquidation, the membership capital may be released to facilitate the payout of shares with the prior written approval of the OCCU Director.

(5) *Sale.* A member may sell its membership capital to a credit union in the corporate credit union's field of membership, subject to the corporate credit union's approval.

(6) *Liquidation.* In the event of liquidation of a corporate credit union, membership capital is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to shareholders and the National Credit Union Share Insurance Fund (NCUSIF), but excluding paid-in capital.

(7) *Merger.* In the event of a merger of a corporate credit union, paid-in capital

(4) *Liquidation.* In the event of liquidation of the corporate credit union, paid-in capital is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to shareholders, the NCUSIF, and membership capital holders.

(5) *Merger.* In the event of a merger of a corporate credit union, paid-in capital

necessary or appropriate for the corporate credit union.

(3) * * *

(iii) After the close of the corporate credit union's response period, the OCCU Director will decide, based on a review of the corporate credit union's response and other information concerning the corporate credit union, whether a different minimum capital

greater than 3 percent, the earnings retention factor is .10 percent per annum.

(4) The OCCU Director may approve a decrease to the earnings retention amount if it is determined a lesser amount is necessary to avoid a significant adverse impact upon a corporate credit union.

(5) A corporate credit union may authorize the payment of dividends

securities through the Federal Reserve Book-Entry Securities Transfer System;

* * * * *

(3) The corporate credit union, directly or through its agent, receives daily assessment of the market value of the repurchase securities and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction; and

§ 704.6 Credit risk management.

(a) Policies. A corporate credit union must operate according to a credit risk management policy that is commensurate with the investment risks and activities it undertakes. The policy must address at a minimum:

* * * * *

(3) Maximum credit limits with each obligor and transaction counterparty, set as a percentage of capital. In addition to

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(6) *Liquidation.* In the event of liquidation of a corporate credit union, membership capital is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to shareholders and the National Credit Union Share Insurance Fund (NCUSIF), but excluding paid-in capital.

(7) *Merger.* In the event of a merger of a corporate credit union, membership capital transfers to the continuing corporate credit union. The minimum three-year notice period for withdrawal of membership capital remains in effect.

(8) *Adjusted balance accounts:* (i) May be adjusted no more frequently than once every six months; and

(ii) Must be adjusted in relation to a measure (*e.g.*, one percent of a member credit union's assets) established and disclosed at the time the account is opened without regard to any minimum withdrawal period. If the measure is other than assets, the corporate credit union must address the measure's permanency characteristics in its capital plan.

(iii) *Notice of withdrawal.* Upon written notice of intent to withdraw membership capital, the balance of the account will be frozen (no further adjustments) until the conclusion of the notice period.

(9) *Grandfathering.* Membership capital issued before the effective date of this regulation is exempt from the limitation of § 704.3(b)(8)(i).

(c) *Requirements for paid-in capital*—(1) Disclosure. The terms and conditions of any paid-in capital instrument must be disclosed to the recorded owner of the instrument at the time the instrument is created and must be signed by either all of the directors of the member credit union or, if authorized by board resolution, the chair and secretary of the board.

(2) *Release.* Paid-in capital may not be released due solely to the merger, charter conversion or liquidation of a member credit union. In the event of a merger, the paid-in capital transfers to the continuing credit union. In the event of a charter conversion, the paid-in capital transfers to the new institution. In the event of liquidation, the paid-in capital may be released to facilitate the payout of shares with the prior written approval of the OCCU Director.

(3) *Callability.* Paid-in capital accounts are callable on a pro-rata basis across an issuance class only at the option of the corporate credit union and only if the corporate credit union meets its minimum level of required capital and NEV ratios after the funds are called.

(4) *Liquidation.* In the event of liquidation of the corporate credit union, paid-in capital is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to shareholders, the NCUSIF, and membership capital holders.

(5) *Merger.* In the event of a merger of a corporate credit union, paid-in capital shall transfer to the continuing corporate credit union.

(6) Paid-in capital includes both member and nonmember paid-in capital.

(i) Member paid-in capital means paid-in capital that is held by the corporate credit union's members. A corporate credit union may not condition membership, services, or prices for services on a credit union's ownership of paid-in capital.

(ii) Nonmember paid-in capital means paid-in capital that is not held by the corporate credit union's members.

(7) *Grandfathering.* A corporate credit union's authority to include paid-in capital as a component of capital is governed by the regulation in effect at the time the paid-in capital was issued. When a grandfathered paid-in capital instrument has a remaining maturity of less than 3 years, the amount that may be considered paid-in capital is reduced by a constant monthly amortization that ensures the paid-in capital is fully amortized 1 year before the date of maturity. The full balance of grandfathered paid-in capital being amortized, not just the remaining non-amortized portion, is available to absorb losses in excess of retained earnings until the funds are released by the corporate credit union at maturity.

* * * * *

(e) *Individual capital ratio requirement*—(1) When significant circumstances or events warrant, the OCCU Director may require a different minimum capital ratio for an individual corporate credit union based on its circumstances. Factors that may warrant a different minimum capital ratio include, but are not limited to, for example:

* * * * *

(2) When the OCCU Director determines that a different minimum capital ratio is necessary or appropriate for a particular corporate credit union, he or she will notify the corporate credit union in writing of the proposed capital ratio and, if applicable, the date by which the capital ratio should be reached. The OCCU Director also will provide an explanation of why the proposed capital ratio is considered necessary or appropriate for the corporate credit union.

(3) * * *

(iii) After the close of the corporate credit union's response period, the OCCU Director will decide, based on a review of the corporate credit union's response and other information concerning the corporate credit union, whether a different minimum capital ratio should be established for the corporate credit union and, if so, the capital ratio and the date the requirement will become effective. The corporate credit union will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish a different minimum capital ratio for the corporate credit union.

(f) *Failure to maintain minimum capital ratio requirement.* When a corporate credit union's capital ratio falls below the minimum required by paragraphs (d) or (e) of this section, or appendix B to this part, as applicable, operating management of the corporate credit union must notify its board of directors, supervisory committee, and the OCCU Director within 10 calendar days.

* * * * *

(i) *Earnings retention requirement.* A corporate credit union must increase retained earnings if the prior month-end retained earnings ratio is less than 2 percent.

(1) Its retained earnings must increase:

(i) During the current month, by an amount equal to or greater than the monthly earnings retention amount; or

(ii) During the current and prior two months, by an amount equal to or greater than the quarterly earnings retention amount.

(2) Earnings retention amounts are calculated as follows:

(i) The monthly earnings retention amount is determined by multiplying the earnings retention factor by the prior month-end moving daily average net assets; and

(ii) The quarterly earnings retention amount is determined by multiplying the earnings retention factor by moving daily average net assets for each of the prior three month-ends.

(3) The earnings retention factor is determined as follows:

(i) If the prior month-end retained earnings ratio is less than 2 percent and the core capital ratio is less than 3 percent, the earnings retention factor is .15 percent per annum; or

(ii) If the prior month-end retained earnings ratio is less than 2 percent and the core capital ratio is equal to or greater than 3 percent, the earnings retention factor is .10 percent per annum.

(4) The OCCU Director may approve a decrease to the earnings retention amount if it is determined a lesser amount is necessary to avoid a significant adverse impact upon a corporate credit union.

(5) A corporate credit union may authorize the payment of dividends provided:

(i) The payment will not cause the retained earnings ratio to fall below 2 percent;

(ii) The payment will not cause the amount of retained earnings to decrease from the prior month-end, unless the decrease results from losses on the sale of investments; or

(iii) The OCCU Director and, if applicable, state regulator have given prior written approval for the payment.

6. Amend § 704.4 by removing the word "operating" wherever it appears in paragraphs (a) and (b) and revising paragraph (c) introductory text to read as follows:

§ 704.4 Board responsibilities.

* * * * *

(c) *Other requirements.* The board of directors of a corporate credit union must ensure:

* * * * *

7. Amend § 704.5 as follows:

a. Revise paragraphs (a)(1) and (2), (c)(5), (d)(1), (e)(1), (3) and (4), (f), and (h)(2) and(3);

b. Remove paragraphs (c)(6), (d)(3) and (d)(6);

c. Redesignate paragraphs (d)(4) and (d)(5) as paragraphs (d)(3) and (d)(4);

d. Revise redesignated paragraphs (d)(3) and the first sentence of (d)(4);

e. Add paragraph (h)(4); and

f. Add at the end of paragraph (c)(4) after the ";" an "and."

§ 704.5 Investments.

(a) * * *

(1) Appropriate tests and criteria for evaluating investments and investment transactions prior to purchase; and

(2) Reasonable and supportable concentration limits for limited liquidity investments in relation to capital.

* * * * *

(c) * * *

(5) Domestically-issued asset-backed securities.

(d) * * *

(1) The corporate credit union, directly or through its agent, receives written confirmation of the transaction, and either takes physical possession or control of the repurchase securities or is recorded as owner of the repurchase securities through the Federal Reserve Book-Entry Securities Transfer System;

* * * * *

(3) The corporate credit union, directly or through its agent, receives daily assessment of the market value of the repurchase securities and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction; and

(4) The corporate credit union has entered into signed contracts with all approved counterparties and agents, and ensures compliance with the contracts.

* * *

(e) * * *

(1) The corporate credit union, directly or through its agent, receives written confirmation of the loan, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book-Entry Securities Transfer System;

* * * * *

(3) The corporate credit union, directly or through its agent, receives daily assessment of the market value of collateral and maintains adequate margin that reflects a risk assessment of the collateral and terms of the loan; and

(4) The corporate credit union has entered into signed contracts with all agents and, directly or through its agent, has executed a written loan and security agreement with the borrower. The corporate or its agent ensures compliance with the agreements.

(f) *Investment companies.* A corporate credit union may invest in an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a), provided that the prospectus of the company restricts the investment portfolio to investments and investment transactions that are permissible for that corporate credit union.

* * * * *

(h) * * *

(2) Engaging in trading securities unless accounted for on a trade date basis;

(3) Engaging in adjusted trading or short sales; and

(4) Purchasing stripped mortgage-backed securities, small business related securities, or residual interests in CMOs or asset-backed securities.

* * * * *

8. Amend § 704.6 by revising paragraphs (a) introductory text and paragraphs (a)(3), (a)(4) and (b) through (e) to read as follows:

§ 704.6 Credit risk management.

(a) Policies. A corporate credit union must operate according to a credit risk management policy that is commensurate with the investment risks and activities it undertakes. The policy must address at a minimum:

* * * * *

(3) Maximum credit limits with each obligor and transaction counterparty, set as a percentage of capital. In addition to addressing deposits and securities, limits with transaction counterparties must address aggregate exposures of all transactions, including, but not necessarily limited to, repurchase agreements, securities lending, and forward settlement of purchases or sales of investments; and

(4) Concentrations of credit risk (*e.g.*, originator of receivables, insurer, industry type, sector type, and geographic).

(b) *Exemption.* The requirements of this section do not apply to investments that are issued or fully guaranteed as to principal and interest by the U.S. government or its agencies or enterprises (excluding subordinated debt) or are fully insured (including accumulated interest) by the National Credit Union Share Insurance Fund or Federal Deposit Insurance Corporation.

(c) *Concentration limits*—(1) *General rule.* The aggregate of all investments in any single obligor is limited to 50 percent of capital or $5 million, whichever is greater.

(2) *Exceptions.* Exceptions to the general rule are:

(i) Aggregate investments in repurchase and securities lending agreements with any one counterparty are limited to 200 percent of capital;

(ii) Investments in corporate CUSOs are subject to the limitations of § 704.11; and

(iii) Aggregate investments in corporate credit unions are not subject to the limitations of paragraph (c)(1) of this section.

(3) For purposes of measurement, each new credit transaction must be evaluated in terms of the corporate credit union's capital at the time of the transaction. An investment that fails a requirement of this section because of a subsequent reduction in capital will be deemed nonconforming. A corporate credit union is required to exercise reasonable efforts to bring nonconforming investments into conformity within 90 days. Investments that remain nonconforming for 90 days will be deemed to fail a requirement of this section and will require compliance with § 704.10.

(d) *Credit ratings*—(1) All investments, other than in a corporate credit union or CUSO, must have an applicable credit rating from at least one nationally recognized statistical rating organization (NRSRO).

(2) At the time of purchase, investments with long-term ratings must be rated no lower than AA– (or equivalent) and investments with short-term ratings must be rated no lower than A–1 (or equivalent).

§ 704.7 Lending.

* * * * *

(c) *Loans to members*—(1) *Credit unions.* (i) The maximum aggregate amount in unsecured loans and lines of credit to any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, must not exceed 50 percent of capital.

(ii) The maximum aggregate amount

10. Amend § 704.8 as follows:

a. Remove paragraphs (a)(2), (a)(5) and (e);

b. Redesignate paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), (a)(6) and (a)(7) as (a)(4) and (a)(5), and (f) and (g) as (e) and (f);

c. Add paragraph (a)(6) and "; and" at the end of redesignated paragraph (a)(5) in place of the period;

(e) *Regulatory violations.* If a corporate credit union's decline in NEV, base case NEV ratio or any NEV ratio resulting from the tests set forth in paragraph (d)(1)(i) of this section violates the limits established by this rule and is not brought into compliance within 10 calendar days, operating management of the corporate credit union must immediately report the information to the board of directors.

profitability of the CUSO and the related GAAP valuation of the investment under the equity method without an additional cash outlay by the corporate, divestiture is not required. A corporate credit union may continue to invest up to the regulatory limit without regard to the increase in the GAAP valuation resulting from the corporate CUSO's profitability.

(4) The aggregate of all loans to nonmembers through a correspondent services agreement. A correspondent services agreement is an agreement between two corporate credit unions, whereby one of the corporate credit unions agrees to provide services to the other corporate credit union or its members.

(2) *Credit and investment services.* Credit and investment services are advisory and consulting activities that

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credit union or CUSO, must have an applicable credit rating from at least one nationally recognized statistical rating organization (NRSRO).

(2) At the time of purchase, investments with long-term ratings must be rated no lower than AA– (or equivalent) and investments with short-term ratings must be rated no lower than A–1 (or equivalent).

(3) Any rating(s) relied upon to meet the requirements of this part must be identified at the time of purchase and must be monitored for as long as the corporate owns the investment.

(4) When two or more ratings are relied upon to meet the requirements of this part at the time of purchase, the board or an appropriate committee must place on the § 704.6(e)(1) investment watch list any rating that is downgraded below the minimum rating requirements of this part.

(5) Investments are subject to the requirements of § 704.10 if:

(i) One rating was relied upon to meet the requirements of this part and that rating is downgraded below the minimum rating requirements of this part; or

(ii) Two or more ratings were relied upon to meet the requirements of this part and at least two of those ratings are downgraded below the minimum rating requirements of this part.

(e) *Reporting and documentation.* (1) A written evaluation of each credit limit with each obligor or transaction counterparty must be prepared at least annually and formally approved by the board or an appropriate committee. At least monthly, the board or an appropriate committee must receive an investment watch list of existing and/or potential credit problems and summary credit exposure reports, which demonstrate compliance with the corporate credit union's risk management policies.

(2) At a minimum, the corporate credit union must maintain:

(i) A justification for each approved credit limit;

(ii) Disclosure documents, if any, for all instruments held in portfolio. Documents for an instrument that has been sold must be retained until completion of the next NCUA examination; and

(iii) The latest available financial reports, industry analyses, internal and external analyst evaluations, and rating agency information sufficient to support each approved credit limit.

9. Amend § 704.7 by removing paragraphs (c) through (g), adding paragraphs (c) through (f) and redesignating paragraph (h) as paragraph (g) to read as follows:

§ 704.7 Lending.

* * * * *

(c) *Loans to members*—(1) *Credit unions.* (i) The maximum aggregate amount in unsecured loans and lines of credit to any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, must not exceed 50 percent of capital.

(ii) The maximum aggregate amount in secured loans and lines of credit to any one member credit union, excluding those secured by shares or marketable securities and member reverse repurchase transactions, must not exceed 100 percent of capital.

(2) *Corporate CUSOs.* Any loan or line of credit must comply with § 704.11.

(3) *Other members.* The maximum aggregate amount of loans and lines of credit to any other one member must not exceed 15 percent of the corporate credit union's capital plus pledged shares.

(d) *Loans to nonmembers*—(1) Credit unions. A loan to a nonmember credit union, other than through a loan participation with another corporate credit union, is only permissible if the loan is for an overdraft related to the providing of correspondent services pursuant to § 704.12. Generally, such a loan will have a maturity of one business day.

(2) *Corporate CUSOs.* Any loan or line of credit must comply with § 704.11.

(e) *Member business loan rule*—Loans, lines of credit and letters of credit to:

(1) Member credit unions are exempt from part 723 of this chapter;

(2) Corporate CUSOs must comply with § 704.11; and

(3) Other members not excluded under § 723.1(b) of this chapter must comply with part 723 of this chapter unless the loan or line of credit is fully guaranteed by a credit union or fully secured by US Treasury or agency securities. Those guaranteed and secured loans must comply with the aggregate limits of § 723.16 but are exempt from the other requirements of part 723.

(f) *Participation loans with other corporate credit unions.* A corporate credit union is permitted to participate in a loan with another corporate credit union provided the corporate retains an interest of at least 5 percent of the face amount of the loan and a master participation loan agreement is in place before the purchase or the sale of a participation. A participating corporate credit union must exercise the same due diligence as if it were the originating corporate credit union.

* * * * *

10. Amend § 704.8 as follows:

a. Remove paragraphs (a)(2), (a)(5) and (e);

b. Redesignate paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), (a)(6) and (a)(7) as (a)(4) and (a)(5), and (f) and (g) as (e) and (f);

c. Add paragraph (a)(6) and "; and" at the end of redesignated paragraph (a)(5) in place of the period;

d. Revise redesignated paragraphs (a)(2), (e) and (f);

e. Add a sentence to the end of the end of paragraph (c); and

f. Revise paragraphs (d)(1)(i) through (iii) and (d)(2) introductory text.

§ 704.8 Asset and liability management.

(a) * * *

(2) The maximum allowable percentage decline in net economic value (NEV), compared to base case NEV;

* * * * *

(6) The tests that will be used, prior to purchase, to estimate the impact of investments on the percentage decline in NEV, compared to base case NEV. The most recent NEV analysis, as determined under paragraph (d)(1)(i) of this section may be used as a basis of estimation.

* * * * *

(c) * * * This means the minimum penalty must be reasonably related to the rate that the corporate credit union would be required to offer to attract funds for a similar term with similar characteristics.

(d) * * *

(1) * * *

(i) Evaluate the risk in its balance sheet by measuring, at least quarterly, the impact of an instantaneous, permanent, and parallel shock in the yield curve of plus and minus 100, 200, and 300 basis points on its NEV and NEV ratio. If the base case NEV ratio falls below 3 percent at the last testing date, these tests must be calculated at least monthly until the base case NEV ratio again exceeds 3 percent;

(ii) Limit its risk exposure to levels that do not result in a base case NEV ratio or any NEV ratio resulting from the tests set forth in paragraph (d)(1)(i) of this section below 2 percent; and

(iii) Limit its risk exposures to levels that do not result in a decline in NEV of more than 15 percent.

(2) A corporate credit union must assess annually if it should conduct periodic additional tests to address market factors that may materially impact that corporate credit union's NEV. These factors should include, but are not limited to, the following:

* * * * *

(e) *Regulatory violations.* If a corporate credit union's decline in NEV, base case NEV ratio or any NEV ratio resulting from the tests set forth in paragraph (d)(1)(i) of this section violates the limits established by this rule and is not brought into compliance within 10 calendar days, operating management of the corporate credit union must immediately report the information to the board of directors, supervisory committee, and the OCCU Director. If any violation persists for 30 calendar days, the corporate credit union must submit a detailed, written action plan to the OCCU Director that sets forth the time needed and means by which it intends to correct the violation. If the OCCU Director determines that the plan is unacceptable, the corporate credit union must immediately restructure the balance sheet to bring the exposures back within compliance or adhere to an alternative course of action determined by the OCCU Director.

(f) *Policy violations.* If a corporate credit union's decline in NEV, base case NEV ratio, or any NEV ratio resulting from the tests set forth in paragraph (d)(1)(i) of this section violates the limits established by its board, it must determine how it will bring the exposure within policy limits. The disclosure to the board of the violation must occur no later than its next regularly scheduled board meeting.

10a. Amend § 704.10 by revising the heading to read as follows:

§ 704.10 Investment action plan.

11. Amend § 704.11 by revising paragraph (b), redesignating paragraphs (c) through (e) as paragraphs (f) through (h) and adding paragraphs (c), (d) and (e) to read as follows:

§ 704.11 Corporate Credit Union Service Organizations (Corporate CUSOs).

* * * * *

(b) *Investment and loan limitations.* (1) The aggregate of all investments in member and nonmember corporate CUSOs must not exceed 15 percent of a corporate credit union's capital. (2) The aggregate of all investments in and loans to member and nonmember corporate CUSOs must not exceed 30 percent of a corporate credit union's capital. A corporate credit union may lend to member and nonmember corporate CUSOs an additional 15 percent of capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law.

(3) If the limitations in paragraphs (b)(1) and (b)(2) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method without an additional cash outlay by the corporate, divestiture is not required. A corporate credit union may continue to invest up to the regulatory limit without regard to the increase in the GAAP valuation resulting from the corporate CUSO's profitability.

(4) The aggregate of all loans to corporate CUSOs must comply with the aggregate limit of § 723.16 of this chapter. This requirement does not apply to loans excluded under § 723.1(b).

(c) *Due diligence.* A corporate credit union must comply with the due diligence requirements of §§ 723.5 and 723.6(f) through (l) of this chapter for all loans to corporate CUSOs. This requirement does not apply to loans excluded under § 723.1(b).

(d) *Separate entity.* (1) A corporate CUSO must be operated as an entity separate from a corporate credit union.

(2) The corporate credit union investing in or lending to a corporate CUSO must obtain a written legal opinion that the corporate CUSO is organized and operated in a manner that the corporate credit union will not reasonably be held liable for the obligations of the corporate CUSO. This opinion must address factors that have led courts to "pierce the corporate veil" such as inadequate capitalization, lack of corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records.

(e) *Prohibited activities.* A corporate credit union may not use this authority to acquire control, directly or indirectly, of another depository financial institution, or to invest in shares, stocks, or obligations of another depository financial institution, insurance company, trade association, liquidity facility, or similar organization.

* * * * *

12. Revise § 704.12 to read as follows:

§ 704.12 Permissible services.

(a) *Preapproved services.* NCUA may at any time, based upon supervisory, legal, or safety and soundness reasons, limit or prohibit any preapproved service. The specific activities listed within each preapproved category are provided as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list. A corporate credit union may provide the following services to its members:

(1) *Correspondent services agreement.* A corporate credit union may only provide financial services to nonmembers through a correspondent services agreement. A correspondent services agreement is an agreement between two corporate credit unions, whereby one of the corporate credit unions agrees to provide services to the other corporate credit union or its members.

(2) *Credit and investment services.* Credit and investment services are advisory and consulting activities that assist the member in lending or investment management. These services may include loan reviews, investment portfolio reviews and investment advisory services.

(3) *Electronic financial services.* Electronic financial services are any services, products, functions, or activities that a corporate credit union is otherwise authorized to perform, provide or deliver to its members but performed through electronic means. Electronic services may include automated teller machines, online transaction processing through a website, website hosting services, account aggregation services, and internet access services to perform or deliver products or services to members.

(4) *Excess capacity.* Excess capacity is the excess use or capacity remaining in facilities, equipment or services that: a corporate credit union properly invested in or established, in good faith, with the intent of serving its members; and it reasonably anticipates will be taken up by the future expansion of services to its members. A corporate credit union may sell or lease the excess capacity in facilities, equipment or services, such as office space, employees and data processing.

(5) *Liquidity and asset and liability management.* Liquidity and asset and liability management services are any services, functions or activities that assist the member in liquidity and balance sheet management. These services may include liquidity planning and balance sheet modeling and analysis.

(6) *Operational services.* Operational services are services established to deliver financial products and services that enhance member service and promote safe and sound operations. Operational services may include tax payment, electronic fund transfers and providing coin and currency service.

(7) *Payment systems.* Payment systems are any methods used to facilitate the movement of funds for transactional purposes. Payment systems may include Automated Clearing House, wire transfer, item processing and settlement services.

(8) *Trustee or custodial services.* Trustee services are services in which

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the corporate credit union is authorized to act under a written trust agreement to the extent permitted under part 724 of this chapter. Custodial and safekeeping services are services a corporate credit union performs on behalf of its member to act as custodian or safekeeper of investments.

(b) *Procedure for adding services that are not preapproved.* To provide a

(b) *Earnings retention requirement.* A wholesale corporate credit union must increase retained earnings if the prior month-end retained earnings ratio is less than 1 percent.

(1) Its retained earnings must increase:

(i) During the current month, by an amount equal to or greater than the monthly earnings retention amount; or

(ii) During the current and prior two

Sample Form 1

Terms and Conditions of Membership Capital Account

(1) A membership capital account is not subject to share insurance coverage by the NCUSIF or other deposit insurer.

(2) A membership capital account is not releasable due solely to the merger, charter conversion or liquidation of the member credit union. In the event of a

accounts. The certification must be maintained in the corporate credit union's files and be available for examiner review.

Sample Form 2

Terms and Conditions of Paid-In Capital

(1) A paid-in capital account is not subject to share insurance coverage by the NCUSIF or other deposit insurer.

(2) A paid-in capital account is not

management, infrastructure, and asset and liability requirements, and receives NCUA's written approval. The additional requirements are set forth in the NCUA publication Guidelines for Submission of Requests for Expanded Authority.

A corporate credit union seeking expanded authorities must submit to NCUA a self-assessment plan supporting its request. A corporate

agreements with any one counterparty are limited to 300 percent of capital.

(c) In performing the rate stress tests set forth in § 704.8(d)(1)(i), the NEV of a corporate credit union which has met the requirements of this Part I may decline as much as:

(1) 20 percent;

(2) 28 percent if the corporate credit union has a 5 percent minimum capital ratio and is specifically approved by

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the corporate credit union is authorized to act under a written trust agreement to the extent permitted under part 724 of this chapter. Custodial and safekeeping services are services a corporate credit union performs on behalf of its member to act as custodian or safekeeper of investments.

(b) *Procedure for adding services that are not preapproved.* To provide a service to its members that is not preapproved by NCUA, a corporate credit union must request approval from NCUA. The request must include a full explanation and complete documentation of the service and how the service relates to a corporate credit union's authority to provide services to its members. The request must be submitted jointly to the OCCU Director and the Secretary of the Board. The request will be treated as a petition to amend § 704.12 and NCUA will request public comment or otherwise act on the petition within a reasonable period of time. Before engaging in the formal approval process, a corporate credit union should seek an advisory opinion from NCUA's Office of General Counsel as to whether a proposed service is already covered by one of the authorized categories without filing a petition to amend the regulation.

(c) *Prohibition.* A corporate credit union is prohibited from purchasing loan servicing rights.

§ 704.13 [Removed and Reserved]

13. Remove and reserve § 704.13.

14. Amend § 704.14 by revising paragraph (a) introductory text, redesignating paragraphs (b) through (d) as (c) through (e) , and adding a new paragraph (b) to read as follows:

§ 704.14 Representation.

(a) *Board representation.* The board will be determined as stipulated in its bylaws governing election procedures, provided that:

* * * * *

(b) *Credit union trade association.* As used in this section, it includes but is not limited to, state credit union leagues and league service corporations, national credit union trade associations and their affiliates and service organizations, and local, state, and national special interest credit union associations and organizations.

* * * * *

15. Amend § 704.19 by revising paragraph (b) and removing paragraph (c) as follows:

§ 704.19 Wholesale corporate credit unions.

* * * * *

(b) *Earnings retention requirement.* A wholesale corporate credit union must increase retained earnings if the prior month-end retained earnings ratio is less than 1 percent.

(1) Its retained earnings must increase:

(i) During the current month, by an amount equal to or greater than the monthly earnings retention amount; or

(ii) During the current and prior two months, by an amount equal to or greater than the quarterly earnings retention amount.

(2) Earnings retention amounts are calculated as follows:

(i) The monthly earnings retention amount is determined by multiplying the earnings retention factor by the prior month-end moving daily average net assets; and

(ii) The quarterly earnings retention amount is determined by multiplying the earnings retention factor by moving daily average net assets for each of the prior three month-ends.

(3) The earnings retention factor is determined as follows:

(i) If the prior month-end retained earnings ratio is less than 1 percent and the core capital ratio is less than 3 percent, the earnings retention factor is .15 percent per annum; or

(ii) If the prior month-end retained earnings ratio is less than 1 percent and the core capital ratio is equal to or greater than 3 percent, the earnings retention factor is .075 percent per annum.

(4) The OCCU Director may approve a decrease to the earnings retention amount set forth in this section if it is determined a lesser amount is necessary to avoid a significant adverse impact upon a wholesale corporate credit union.

(5) A corporate credit union may authorize the payment of dividends provided either:

(i) The payment will not cause the retained earnings ratio to fall below 1 percent;

(ii) The payment will not cause the amount of retained earnings to decrease from the prior month-end, unless the decrease results from losses on the sale of investments; or

(iii) The OCCU Director and, if applicable, state regulator have given prior written approval for the payment.

16. Revise appendix A to part 704 as follows:

Appendix A to Part 704—Model Forms

This appendix contains sample forms intended for use by corporate credit unions to aid in compliance with the membership capital account and paid-in capital disclosure requirements of § 704.3.

Sample Form 1

Terms and Conditions of Membership Capital Account

(1) A membership capital account is not subject to share insurance coverage by the NCUSIF or other deposit insurer.

(2) A membership capital account is not releasable due solely to the merger, charter conversion or liquidation of the member credit union. In the event of a merger, the membership capital account transfers to the continuing credit union. In the event of a charter conversion, the membership capital account transfers to the new institution. In the event of liquidation, the membership capital account may be released to facilitate the payout of shares with the prior written approval of NCUA.

(3) A member credit union may withdraw membership capital with three years' notice.

(4) Membership capital cannot be used to pledge borrowings.

(5) Membership capital is available to cover losses that exceed retained earnings and paid-in capital.

(6) Where the corporate credit union is liquidated, membership capital accounts are payable only after satisfaction of all liabilities of the liquidation estate including uninsured obligations to shareholders and the NCUSIF.

(7) Where the corporate credit union is merged into another corporate credit union the membership capital account shall transfer to the continuing corporate credit union. The three-year notice period for withdrawal of the membership capital account will remain in effect.

(8) {If an adjusted balance account}: The membership capital balance will be adjusted ____(1 or 2)____ time(s) annually in relation to the member credit union's ____(assets or other measure)____ as of ____(date(s))____. {If a term certificate}: The membership capital account is a term certificate that will mature on ____(date)____.

I have read the above terms and conditions and I understand them. I further agree to maintain in the credit union's files the annual notice of terms and conditions of the membership capital account.

The notice form must be signed by either all of the directors of the member credit union or, if authorized by board resolution, the chair and secretary of the board of the credit union.

The annual disclosure notice form must be signed by the chair of the corporate credit union. The chair must then sign a statement that certifies that the notice has been sent to member credit unions with membership capital accounts. The certification must be maintained in the corporate credit union's files and be available for examiner review.

Sample Form 2

Terms and Conditions of Paid-In Capital

(1) A paid-in capital account is not subject to share insurance coverage by the NCUSIF or other deposit insurer.

(2) A paid-in capital account is not releasable due solely to the merger, charter conversion or liquidation of the member credit union. In the event of a merger, the paid-in capital account transfers to the continuing credit union. In the event of a charter conversion, the paid-in capital account transfers to the new institution. In the event of liquidation, the paid-in capital account may be released to facilitate the payout of shares with the prior written approval of NCUA.

(3) The funds are callable only at the option of the corporate credit union and only if the corporate credit union meets its minimum required capital and NEV ratios after the funds are called.

(4) Paid-in capital cannot be used to pledge borrowings.

(5) Paid-in capital is available to cover losses that exceed retained earnings.

(6) Where the corporate credit union is liquidated, paid-in capital accounts are payable only after satisfaction of all liabilities of the liquidation estate including uninsured obligations to shareholders and the NCUSIF, and membership capital holders.

(7) Where the corporate credit union is merged into another corporate credit union the paid-in capital account shall transfer to the continuing corporate credit union.

(8) Paid-in capital is perpetual maturity and noncumulative dividend.

I have read the above terms and conditions and I understand them. I further agree to maintain in the credit union's files the annual notice of terms and conditions of the paid-in capital instrument.

The notice form must be signed by either all of the directors of the credit union or, if authorized by board resolution, the chair and secretary of the board of the credit union.

17. Revise appendix B to part 704 as follows:

Appendix B to Part 704—Expanded Authorities and Requirements

A corporate credit union may obtain all or part of the expanded authorities contained in this appendix if it meets all of the requirements of this part 704 and the minimum requirement of this appendix, fulfills additional management, infrastructure, and asset and liability requirements, and receives NCUA's written approval. The additional requirements are set forth in the NCUA publication Guidelines for Submission of Requests for Expanded Authority.

A corporate credit union seeking expanded authorities must submit to NCUA a self-assessment plan supporting its request. A corporate credit union may adopt expanded authorities when NCUA has provided final approval. If NCUA denies a request for expanded authorities, it will advise the corporate of the reason(s) for the denial and what it must do to resubmit its request. NCUA may revoke these expanded authorities at any time if an analysis indicates a significant deficiency. NCUA will notify the corporate credit union in writing of the identified deficiency. A corporate credit union may request, in writing, reinstatement of the revoked authorities by providing a self-assessment plan detailing how it has corrected the deficiency.

Minimum Requirement

In order to participate in any of the authorities set forth in Base-Plus, Part I, Part II, Part III, Part IV, and Part V of this appendix, a corporate credit union must evaluate monthly the changes in NEV and the NEV ratio for the tests set forth in § 704.8(d)(1)(i).

Base-Plus

A corporate which has met the requirements for this Base-plus authority may, in performing the rate stress tests set forth in § 704.8(d)(1)(i), allow its NEV to decline as much as 20 percent.

Part I

(a) A corporate credit union which has met the requirements for this Part I may:

(1) Purchase investments with long-term ratings no lower than A− (or equivalent);

(2) Purchase investments with short-term ratings no lower than A−2 (or equivalent), provided that the issuer has a long-term rating no lower than A− (or equivalent) or the investment is a domestically-issued asset-backed security;

(3) Engage in short sales of permissible investments to reduce interest rate risk;

(4) Purchase principal only (PO) stripped mortgage-backed securities to reduce interest rate risk; and

(5) Enter into a dollar roll transaction.

(b) Aggregate investments in repurchase and securities lending agreements with any one counterparty are limited to 300 percent of capital.

(c) In performing the rate stress tests set forth in § 704.8(d)(1)(i), the NEV of a corporate credit union which has met the requirements of this Part I may decline as much as:

(1) 20 percent;

(2) 28 percent if the corporate credit union has a 5 percent minimum capital ratio and is specifically approved by NCUA; or

(3) 35 percent if the corporate credit union has a 6 percent minimum capital ratio and is specifically approved by NCUA.

(d) The maximum aggregate amount in unsecured loans and lines of credit to any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, shall not exceed 100 percent of the corporate credit union's capital. The board of directors will establish the limit, as a percent of the corporate credit union's capital plus pledged shares, for secured loans and lines of credit.

Part II

(a) A corporate credit union which has met the requirements for this Part II may:

(1) Purchase investments with long-term ratings no lower than BBB (flat) (or equivalent);

(2) Purchase investments with short-term ratings no lower than A–2 (or equivalent), provided that the issuer has a long-term rating no lower than BBB (flat) (or equivalent) or the investment is a domestically issued asset-backed security;

(3) Engage in short sales of permissible investments to reduce interest rate risk;

(4) Purchase principal only (PO) stripped mortgage-backed securities to reduce interest rate risk; and

(5) Enter into a dollar roll transaction.

(b) Aggregate investments in repurchase and securities lending agreements with any one counterparty are limited to 400 percent of capital.

(c) In performing the rate stress tests set forth in § 704.8(d)(1)(i), the NEV of a corporate credit union which has met the requirements of this Part II may decline as much as:

(1) 20 percent;

(2) 28 percent if the corporate credit union has a 5 percent minimum capital ratio and is specifically approved by NCUA; or

(3) 35 percent if the corporate credit union has a 6 percent minimum capital ratio and is specifically approved by NCUA.

(d) The maximum aggregate amount in unsecured loans and lines of credit to

any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, shall not exceed 100 percent of the corporate credit union's capital. The board of directors will establish the limit, as a percent of the corporate credit union's capital plus pledged shares, for secured loans and lines of credit.

Part III

debt rating no lower than AA–(or equivalent);

(3) For each approved foreign bank line, the corporate credit union must identify the specific banking centers and branches to which it will lend funds;

(4) Obligations of any single foreign obligor may not exceed 50 percent of capital; and

(5) Obligations in any single foreign country may not exceed 250 percent of

(ii) U.S. Government sponsored enterprises; or

(iii) Counterparties if the transaction is fully guaranteed by an entity with a minimum permissible rating for comparable term investments.

Part V

A corporate credit union, which has met the requirements for this Part V,

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any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, shall not exceed 100 percent of the corporate credit union's capital. The board of directors will establish the limit, as a percent of the corporate credit union's capital plus pledged shares, for secured loans and lines of credit.

Part III

(a) A corporate credit union which has mot the requirements of either Part I or Part II of this Appendix and the additional requirements for Part III may invest in:

(1) Debt obligations of a foreign country;

(2) Deposits and debt obligations of foreign banks or obligations guaranteed by these banks;

(3) Marketable debt obligations of foreign corporations. This authority does not apply to debt obligations that are convertible into the stock of the corporation; and

(4) Foreign issued asset-backed securities.

(b) All foreign investments are subject to the following requirements:

(1) Investments must be rated no lower than the minimum permissible domestic rating under the corporate credit union's Part I or Part II authority;

(2) A sovereign issuer, and/or the country in which an obligor is organized, must have a long-term foreign currency (non-local currency) debt rating no lower than AA–(or equivalent);

(3) For each approved foreign bank line, the corporate credit union must identify the specific banking centers and branches to which it will lend funds;

(4) Obligations of any single foreign obligor may not exceed 50 percent of capital; and

(5) Obligations in any single foreign country may not exceed 250 percent of capital.

Part IV

(a) A corporate credit union which has met the requirements for this Part IV may enter into derivative transactions specifically approved by NCUA to:

(1) Create structured products;

(2) Manage its own balance sheet; and

(3) Hedge the balance sheet of its members.

(b) Credit Ratings:

(1) All derivative transactions are subject to the following requirements:

(i) If the counterparty is domestic, the counterparty rating can be no lower than the minimum permissible rating for comparable term permissible investments; and

(ii) If the counterparty is foreign, the counterparty rating can be no lower that the minimum permissible rating for a comparable term investment under Part III Authority.

(2) Exceptions. Credit ratings are not required for derivative transactions with:

(i) Domestically chartered credit unions;

(ii) U.S. Government sponsored enterprises; or

(iii) Counterparties if the transaction is fully guaranteed by an entity with a minimum permissible rating for comparable term investments.

Part V

A corporate credit union, which has met the requirements for this Part V, may participate in loans with member natural person credit unions as approved by the OCCU Director and subject to the following limitations:

(a) The maximum aggregate amount of participation loans with any one member credit union shall not exceed 25 percent of capital; and

(b) The maximum aggregate amount of participation loans with all member credit unions shall be determined on a case-by-case basis by the OCCU Director.

§§ 704.3, 704.10, 704.15 [Amended]

19. In addition to the amendments set forth above, in 12 CFR part 704 remove the acronym "NCUA" wherever it appears and add in its place, the words "the OCCU Director" in the following places:

a. Redesignated § 704.3(e)(3)(i) and (ii), (g)(2)(v) and (g)(3).

b. Section 704.10(a) introductory text, (b) and (c).

c. Section 704.15(a) and (b).

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July 1, 2002

Part III

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

4810-35

Acadia Insurance Company
BUSINESS ADDRESS: P.O. BOX 9010, WESTBROOK, ME 04098-5010.
PHONE: (207) 772-4300. UNDERWRITING LIMITATION b/: $1,940,000.
SURETY LICENSES c,f/: CT, DE, ME, MD, MA, NH, NY, PA, RI, VT.
INCORPORATED IN: Maine.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.
BUSINESS ADDRESS: 400 S. PARK AVENUE, SUITE 320, WINTER PARK, FL

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DEPARTMENT OF THE TREASURY

FISCAL SERVICE
(Dept. Circular 570; 2002 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 2002

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the internet or from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER and on the internet as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F07, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

The most current list of Treasury authorized companies is always available through the Internet at http://www.fms.treas.gov/c570/index.html. In addition, applicable laws, regulations, and application information are also available at the same site.

Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write. Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

Wanda J. Rogers
Acting Assistant Commissioner
Financial Operations
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company
BUSINESS ADDRESS: P.O. BOX 9010, WESTBROOK, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION b/: $1,940,000. SURETY LICENSES c,f/: CT, DE, ME, MD, MA, NH, NY, PA, RI, VT. INCORPORATED IN: Maine.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.
BUSINESS ADDRESS: 400 S. PARK AVENUE, SUITE 320, WINTER PARK, FL 32789. PHONE: (407) 629-2131. UNDERWRITING LIMITATION b/: $1,044,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY
BUSINESS ADDRESS: P.O. BOX 2350, NEW BRITAIN, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION b/: $2,065,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company
BUSINESS ADDRESS: P.O. BOX 3153, HARRISBURG, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION b/: $2,567,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Affiliated FM Insurance Company
BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $7,170,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

ALL AMERICA INSURANCE COMPANY
BUSINESS ADDRESS: 800 SOUTH WASHINGTON STREET, VAN WERT, OH 45891. PHONE: (419) 238-5551 x-2295. UNDERWRITING LIMITATION b/: $4,412,000. SURETY LICENSES c,f/: AZ, CA, CT, GA, IL, IN, IA, KY, MA, MI, NV, NJ, NY, NC, OH, OK, TN, TX, VA. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

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Allegheny Casualty Company
BUSINESS ADDRESS: P.O. BOX 1116, MEADVILLE, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION b/: $1,320,000. SURETY LICENSES c,f/: AL, CA, DC, FL, ID, IL, IN, KS, LA, MD, MI, MS, MO, NV, NJ, NM, NY, NC, OH, OK, PA, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY1
BUSINESS ADDRESS: 9841 Airport Blvd., 9th Floor, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION b/: $1,812,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, GU, HI, ID, IN, IA, KS, KY, LA, ME, MD, MN, MS, MT, NE, NV, NM, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WY. INCORPORATED IN: California.

American Economy Insurance Company

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Allegheny Casualty Company
BUSINESS ADDRESS: P.O. BOX 1116, MEADVILLE, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION b/: $1,320,000. SURETY LICENSES c,f/: AL, CA, DC, FL, ID, IL, IN, KS, LA, MD, MI, MS, MO, NV, NJ, NM, NY, NC, OH, OK, PA, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMCO Insurance Company
BUSINESS ADDRESS: 701 FIFTH AVENUE, DES MOINES, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION b/: $36,169,000. SURETY LICENSES c,f/: AZ, CA, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH, OR, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

AMERICAN ALTERNATIVE INSURANCE CORPORATION
BUSINESS ADDRESS: 555 COLLEGE ROAD EAST - P.O. BOX 5241, PRINCETON, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $4,452,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Automobile Insurance Company
BUSINESS ADDRESS: 777 SAN MARIN DRIVE, NOVATO, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $6,825,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA
BUSINESS ADDRESS: 11222 QUAIL ROOST DRIVE, MIAMI, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION b/: $10,992,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $35,962,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes and Notes at the end of this Circular.

AMERICAN CONTRACTORS INDEMNITY COMPANY1
BUSINESS ADDRESS: 9841 Airport Blvd., 9th Floor, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION b/: $1,812,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, GU, HI, ID, IN, IA, KS, KY, LA, ME, MD, MN, MS, MT, NE, NV, NM, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WY. INCORPORATED IN: California.

American Economy Insurance Company
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $33,110,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Fire and Casualty Company
BUSINESS ADDRESS: 9450 SEWARD ROAD, FAIRFIELD, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION b/: $8,538,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company
BUSINESS ADDRESS: 1400 AMERICAN LANE, TOWER I, 19TH FLOOR, SCHAUMBURG, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: $7,759,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Hardware Mutual Insurance Company
BUSINESS ADDRESS: 471 EAST BROAD STREET, COLUMBUS, OH 43215. PHONE: (614) 225-8211. UNDERWRITING LIMITATION b/: $6,893,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

American Home Assurance Company
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $161,640,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company
BUSINESS ADDRESS: 555 COLLEGE ROAD EAST - P.O. BOX 5241, PRINCETON, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $264,309,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

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American Home Assurance Company
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $161,640,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)
BUSINESS ADDRESS: 777 SAN MARIN DRIVE, NOVATO, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $20,252,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO
BUSINESS ADDRESS: P O BOX 10181, SAN JUAN, PR 00908. PHONE: (787) 767-6400. UNDERWRITING LIMITATION b/: $7,531,000. SURETY LICENSES c,f/: PR, VI. INCORPORATED IN: Puerto Rico.

American International Pacific Insurance Company
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $2,596,000. SURETY LICENSES c,f/: AK, CO, CT, DC, IA, ME, MD, MA, MS, MT, NE, NH, ND, RI, SD, UT, VT, WV, WY. INCORPORATED IN: Colorado.

American Manufacturers Mutual Insurance Company
BUSINESS ADDRESS: 1 KEMPER DRIVE, LONG GROVE, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION b/: $23,948,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company
BUSINESS ADDRESS: 1 KEMPER DRIVE, LONG GROVE, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION b/: $42,435,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes and Notes at the end of this Circular.

American Re-Insurance Company
BUSINESS ADDRESS: 555 COLLEGE ROAD EAST - P.O. BOX 5241, PRINCETON, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $264,309,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN RELIABLE INSURANCE COMPANY
BUSINESS ADDRESS: 8655 EAST VIA DE VENTURA, SCOTTSDALE, AZ 85258. PHONE: (480) 483-8666. UNDERWRITING LIMITATION b/: $2,374,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company
BUSINESS ADDRESS: 1845 THE EXCHANGE, SUITE 200, ATLANTA, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION b/: $1,525,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American States Insurance Company
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $21,819,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety Company
BUSINESS ADDRESS: 3905 Vincennes Road, Suite 200, Indianapolis, IN 46268. PHONE: (317) 875-8700. UNDERWRITING LIMITATION b/: $450,000. SURETY LICENSES c,f/: AL, CA, CT, DE, FL, HI, ID, IN, IA, KS, LA, ME, MD, MN, MS, MO, NE, NV, ND, OH, PA, SC, SD, TN, TX, UT, VT, VA, WA, WY. INCORPORATED IN: California.

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Amerisure Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 2060, Farmington Hills, MI 48333-2060. PHONE: (248) 615-9000. UNDERWRITING LIMITATION b/: $9,989,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Auto-Owners Insurance Company
BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION b/: $279,783,000. SURETY LICENSES c,f/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NV, NM, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

Berkley Insurance Company

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Amerisure Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 2060, Farmington Hills, MI 48333-2060. PHONE: (248) 615-9000. UNDERWRITING LIMITATION b/: $9,989,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Antilles Insurance Company
BUSINESS ADDRESS: P.O. Box 9023507, San Juan, PR 00902-3507. PHONE: (787) 721-4900. UNDERWRITING LIMITATION b/: $3,814,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

Associated Indemnity Corporation
BUSINESS ADDRESS: 777 SAN MARIN DRIVE, NOVATO, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $3,887,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Atlantic Bonding Company, Inc.
BUSINESS ADDRESS: SUITE 212, HILTON PLAZA, PIKESVILLE, MD 21208. PHONE: (410) 484-3100. UNDERWRITING LIMITATION b/: $340,000. SURETY LICENSES c,f/: MD. INCORPORATED IN: Maryland.

Atlantic Mutual Insurance Company
BUSINESS ADDRESS: 140 BROADWAY, NEW YORK, NY 10005-1101. PHONE: (212) 943-1800. UNDERWRITING LIMITATION b/: $42,039,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

ATLAS ASSURANCE COMPANY OF AMERICA
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (315) 431-6100. UNDERWRITING LIMITATION b/: $37,094,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

Auto-Owners Insurance Company
BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION b/: $279,783,000. SURETY LICENSES c,f/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NV, NM, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

Berkley Insurance Company
BUSINESS ADDRESS: 100 CAMPUS DRIVE, P.O. BOX 853, FLORHAM PARK, NJ 07932-0853. PHONE: (973) 301-8000. UNDERWRITING LIMITATION b/: $41,978,000. SURETY LICENSES c,f/: AL, AK, AR, CA, CO, DE, DC, FL, ID, IL, IN, IA, KY, LA, MD, MI, MN, MS, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WI. INCORPORATED IN: Delaware.

BITUMINOUS CASUALTY CORPORATION
BUSINESS ADDRESS: 320 - 18TH STREET, ROCK ISLAND, IL 61201-8744. PHONE: (309) 786-5401. UNDERWRITING LIMITATION b/: $19,703,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY
BUSINESS ADDRESS: 1919 S. Highland, Bldg. A, Suite 300, Lombard, IL 60148. PHONE: (630) 495-9380. UNDERWRITING LIMITATION b/: $480,000. SURETY LICENSES c,f/: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

BRITISH AMERICAN INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 1590, Dallas, TX 75221-1590. PHONE: (214) 443-5613 x-613. UNDERWRITING LIMITATION b/: $2,431,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

Buckeye Union Insurance Company (The)
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $15,385,000. SURETY LICENSES c,f/: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capital City Insurance Company, Inc.
BUSINESS ADDRESS: P. O. BOX 212157, COLUMBIA, SC 29221-2157. PHONE: (803) 731-7728. UNDERWRITING LIMITATION b/: $1,844,000. SURETY LICENSES c,f/: AL, AR, GA, IL, LA, MS, NC, OK, PA, SC, TN, TX, VA, WV. INCORPORATED IN: S. Carolina.

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Capitol Indemnity Corporation
BUSINESS ADDRESS: PO BOX 5900, MADISON, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION b/: $9,298,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company

CHUBB INDEMNITY INSURANCE COMPANY
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (212) 612-4000. UNDERWRITING LIMITATION b/: $1,459,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

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Capitol Indemnity Corporation
BUSINESS ADDRESS: PO BOX 5900, MADISON, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION b/: $9,298,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company
BUSINESS ADDRESS: P.O. BOX 2575, JACKSONVILLE, FL 32203. PHONE: (904) 363-0900. UNDERWRITING LIMITATION b/: $6,123,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company
BUSINESS ADDRESS: 140 BROADWAY, NEW YORK, NY 10005-1101. PHONE: (212) 943-1800. UNDERWRITING LIMITATION b/: $13,759,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTRAL MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 800 SOUTH WASHINGTON STREET, VAN WERT, OH 45891. PHONE: (419) 238-5551 x-2295. UNDERWRITING LIMITATION b/: $19,742,000. SURETY LICENSES c,f/: AZ, CA, CT, DE, GA, IL, IN, IA, KY, MA, MI, NV, NH, NJ, NM, NY, NC, OH, OK, PA, TN, TX, VA, WV. INCORPORATED IN: Ohio.

CENTURY SURETY COMPANY
BUSINESS ADDRESS: P.O. BOX 163340, COLUMBUS, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: $1,760,000. SURETY LICENSES c,f/: AZ, IN, ME, OH, VT, WV, WI. INCORPORATED IN: Ohio.

Cherokee Insurance Company
BUSINESS ADDRESS: 34200 Mound Road, Sterling Heights, MI 48310. PHONE: (800) 201-0450. UNDERWRITING LIMITATION b/: $1,387,000. SURETY LICENSES c,f/: AR, CA, GA, ID, IN, IA, LA, MI, MN, MO, ND, OH, OR, TN, WV. INCORPORATED IN: Michigan.

See Footnotes and Notes at the end of this Circular.

CHUBB INDEMNITY INSURANCE COMPANY
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (212) 612-4000. UNDERWRITING LIMITATION b/: $1,459,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Cincinnati Casualty Company (The)
BUSINESS ADDRESS: P.O. BOX 145496, CINCINNATI, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $19,741,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)
BUSINESS ADDRESS: P.O. BOX 145496, CINCINNATI, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $229,368,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
BUSINESS ADDRESS: 1400 AMERICAN LANE, TOWER I, 19TH FLOOR, SCHAUMBURG, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: $1,855,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY
BUSINESS ADDRESS: 50 CHESTNUT RIDGE ROAD, MONTVALE, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION b/: $389,000. SURETY LICENSES c,f/: AL, AK, AR, CA, CT, DE, DC, FL, IN, KS, MD, MA, MT, NE, NV, NJ, NM, NY, NC, ND, OK, OR, PA, SD, TN, TX, UT, WV, WY. INCORPORATED IN: Pennsylvania.

Commercial Casualty Insurance Company of North Carolina
BUSINESS ADDRESS: P.O. Box 926270, Norcross, GA 30010-6270. PHONE: (770) 729-8101. UNDERWRITING LIMITATION b/: $1,016,000. SURETY LICENSES c,f/: CA, FL, GA, IN, LA, NV, NC, PA, SC, WA. INCORPORATED IN: N. Carolina.

See Footnotes and Notes at the end of this Circular.

Consolidated Insurance Company
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION b/: $4,590,000. SURETY LICENSES c,f/: IL, IN, IA, KY, MI, MN, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-

CUMIS INSURANCE SOCIETY, INC.
BUSINESS ADDRESS: P. O. Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION b/: $27,835,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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Consolidated Insurance Company
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION b/: $4,590,000. SURETY LICENSES c,f/: IL, IN, IA, KY, MI, MN, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $180,888,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The)
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $48,527,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTRACTORS BONDING AND INSURANCE COMPANY
BUSINESS ADDRESS: P.O. BOX 9271, SEATTLE, WA 98109-0271. PHONE: (206) 628-7200. UNDERWRITING LIMITATION b/: $2,551,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico
BUSINESS ADDRESS: P.O. BOX 363846, SAN JUAN, PR 00936-3846. PHONE: (787) 758-8585. UNDERWRITING LIMITATION b/: $17,797,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

CUMBERLAND CASUALTY & SURETY COMPANY
BUSINESS ADDRESS: 4311 West Waters Avenue, Suite 401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION b/: $650,000. SURETY LICENSES c,f/: AL, AR, DE, DC, FL, GA, GU, ID, IN, KS, KY, LA, MD, MA, MO, MT, NE, NV, ND, OK, OR, PA, SC, SD, TN, TX, WA, WV, WY. INCORPORATED IN: Florida.

See Footnotes and Notes at the end of this Circular.

CUMIS INSURANCE SOCIETY, INC.
BUSINESS ADDRESS: P. O. Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION b/: $27,835,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DaimlerChrysler Insurance Company
BUSINESS ADDRESS: CIMS:465-20-85, P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (248) 948-3443. UNDERWRITING LIMITATION b/: $11,932,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Developers Surety and Indemnity Company
BUSINESS ADDRESS: P.O. BOX 19725, IRVINE, CA 92623. PHONE: (949) 263-3300. UNDERWRITING LIMITATION b/: $1,533,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY
BUSINESS ADDRESS: THREE BALA PLAZA, EAST, SUITE 300, BALA CYNWYD, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION b/: $5,908,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Employers Insurance Company of Wausau
BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION b/: $26,403,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

See Footnotes and Notes at the end of this Circular.

Employers Mutual Casualty Company
BUSINESS ADDRESS: P. O. BOX 712, DES MOINES, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION b/: $46,168,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Executive Risk Indemnity Inc.
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $25,460,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Delaware.

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Employers Mutual Casualty Company
BUSINESS ADDRESS: P. O. BOX 712, DES MOINES, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION b/: $46,168,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation
BUSINESS ADDRESS: P.O. BOX 2991, OVERLAND PARK, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION b/: $406,647,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company
BUSINESS ADDRESS: 100 ERIE INSURANCE PLACE, ERIE, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION b/: $8,453,000. SURETY LICENSES c,f/: DC, IL, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company
BUSINESS ADDRESS: P.O. BOX 830, LIBERTY CORNER, NJ 07938-0830. PHONE: (908) 604-3000. UNDERWRITING LIMITATION b/: $100,162,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company
BUSINESS ADDRESS: P.O. BOX 163340, COLUMBUS, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: $1,463,000. SURETY LICENSES c,f/: AL, AK, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Ohio.

Excelsior Insurance Company
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $4,947,000. SURETY LICENSES c,f/: CT, DE, DC, FL, GA, IN, KY, MD, MA, NH, NJ, NY, NC, PA, VT, VA. INCORPORATED IN: New Hampshire.

See Footnotes and Notes at the end of this Circular.

Executive Risk Indemnity Inc.
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $25,460,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Delaware.

EXPLORER INSURANCE COMPANY (THE)
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400 x-2550. UNDERWRITING LIMITATION b/: $2,000,000. SURETY LICENSES c,f/: AZ, CA, CO, FL, HI, ID, IL, IN, IA, MT, NV, NM, OR, PA, TX, UT, WA. INCORPORATED IN: Arizona.

Factory Mutual Insurance Company
BUSINESS ADDRESS: P.O. BOX 7500, JOHNSTON, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $137,611,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Farmers Alliance Mutual Insurance Company
BUSINESS ADDRESS: P.O. BOX 1401, MCPHERSON, KS 67460. PHONE: (620) 241-2200. UNDERWRITING LIMITATION b/: $6,981,000. SURETY LICENSES c,f/: AZ, CO, ID, IN, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX. INCORPORATED IN: Kansas.

Farmington Casualty Company
BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $16,645,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Farmland Mutual Insurance Company
BUSINESS ADDRESS: 1963 BELL AVENUE, DES MOINES, IA 50315-1030. PHONE: (515) 245-8800. UNDERWRITING LIMITATION b/: $7,663,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

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Federal Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $260,902,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Fidelity and Guaranty Insurance Underwriters, Inc.
BUSINESS ADDRESS: 385 WASHINGTON STREET, ST. PAUL, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $2,926,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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Federal Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $260,902,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 121 EAST PARK SQUARE, OWATONNA, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION b/: $107,966,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $5,816,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland
BUSINESS ADDRESS: 1400 AMERICAN LANE, TOWER I, 19TH FLOOR, SCHAUMBURG, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: $5,748,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY
BUSINESS ADDRESS: 385 WASHINGTON STREET, ST. PAUL, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $1,216,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

See Footnotes and Notes at the end of this Circular.

Fidelity and Guaranty Insurance Underwriters, Inc.
BUSINESS ADDRESS: 385 WASHINGTON STREET, ST. PAUL, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $2,926,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Financial Pacific Insurance Company
BUSINESS ADDRESS: P.O. BOX 292220, SACRAMENTO, CA 95829-2220. PHONE: (916) 630-5000. UNDERWRITING LIMITATION b/: $1,950,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, ID, KS, MO, MT, NE, NV, NM, ND, OK, OR, SD, UT, WA, WI. INCORPORATED IN: California.

Fireman's Fund Insurance Company
BUSINESS ADDRESS: 777 SAN MARIN DRIVE, NOVATO, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $105,536,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $29,293,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company
BUSINESS ADDRESS: 360 CENTRAL AVENUE, ST. PETERSBURG, FL 33701. PHONE: (727) 823-4000. UNDERWRITING LIMITATION b/: $781,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Insurance Company of Hawaii, Ltd.
BUSINESS ADDRESS: P.O. BOX 2866, HONOLULU, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION b/: $10,750,000. SURETY LICENSES c,f/: GU, HI. INCORPORATED IN: Hawaii.

See Footnotes and Notes at the end of this Circular.

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First Liberty Insurance Corporation (The)
BUSINESS ADDRESS: 175 BERKELEY STREET, BOSTON, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $1,766,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

GRANITE RE, INC.
BUSINESS ADDRESS: P.O. BOX 20683, OKLAHOMA CITY, OK 73156. PHONE: (405) 752-2600. UNDERWRITING LIMITATION b/: $357,000. SURETY LICENSES c,f/: AZ, AR, CO, KS, MN, MT, ND, OK, SD, WI. INCORPORATED IN: Oklahoma.

Granite State Insurance Company
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE:

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First Liberty Insurance Corporation (The)
BUSINESS ADDRESS: 175 BERKELEY STREET, BOSTON, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $1,766,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $4,875,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FOLKSAMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: ONE LIBERTY PLAZA, NEW YORK, NY 10006-1404. PHONE: (212) 312-2500. UNDERWRITING LIMITATION b/: $80,478,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DC, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, TX, UT, VA, WA, WI. INCORPORATED IN: New York.

General Insurance Company of America
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $51,439,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation
BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: $237,781,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.
BUSINESS ADDRESS: 3555 FARNAM STREET, OMAHA, NE 68131. PHONE: (402) 271-2840. UNDERWRITING LIMITATION b/: $3,298,000. SURETY LICENSES c,f/: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

See Footnotes and Notes at the end of this Circular.

GRANITE RE, INC.
BUSINESS ADDRESS: P.O. BOX 20683, OKLAHOMA CITY, OK 73156. PHONE: (405) 752-2600. UNDERWRITING LIMITATION b/: $357,000. SURETY LICENSES c,f/: AZ, AR, CO, KS, MN, MT, ND, OK, SD, WI. INCORPORATED IN: Oklahoma.

Granite State Insurance Company
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $2,603,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Alliance Insurance Company
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $1,343,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great American Insurance Company
BUSINESS ADDRESS: 580 WALNUT STREET, CINCINNATI, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $94,967,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $2,908,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Great Northern Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $10,272,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

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GREAT RIVER INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 152180, Irving, TX 75015-2180. PHONE: (972) 719-2400. UNDERWRITING LIMITATION b/: $1,048,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, GA, KY, LA, MS, NV, NM, OK, SC, TN, TX, UT. INCORPORATED IN: Mississippi.

Greenwich Insurance Company

Harleysville Mutual Insurance Company
BUSINESS ADDRESS: 355 MAPLE AVENUE, HARLEYSVILLE, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION b/: $49,239,000. SURETY LICENSES c,f/: AL, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

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GREAT RIVER INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 152180, Irving, TX 75015-2180. PHONE: (972) 719-2400. UNDERWRITING LIMITATION b/: $1,048,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, GA, KY, LA, MS, NV, NM, OK, SC, TN, TX, UT. INCORPORATED IN: Mississippi.

Greenwich Insurance Company
BUSINESS ADDRESS: SEAVIEW HOUSE, 70 SEAVIEW AVENUE, STAMFORD, CT 06902-6040. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: $2,507,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Guarantee Company of North America USA (The)
BUSINESS ADDRESS: 8000 MIDLANTIC DRIVE, MT. LAUREL, NJ 08054. PHONE: (856) 439-0066. UNDERWRITING LIMITATION b/: $563,000. SURETY LICENSES c,f/: AL, CT, DE, DC, FL, GA, IL, IN, KS, KY, MD, MA, MN, MO, NJ, NY, NC, OK, PA, TN, TX. INCORPORATED IN: New Jersey.

Gulf Insurance Company
BUSINESS ADDRESS: P.O. BOX 131771, DALLAS, TX 75313-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION b/: $42,533,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hanover Insurance Company (The)
BUSINESS ADDRESS: 100 NORTH PARKWAY, WORCESTER, MA 01605. PHONE: (508) 855-4476. UNDERWRITING LIMITATION b/: $92,250,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: P.O. BOX 68309, SCHAUMBURG, IL 60168-0309. PHONE: (847) 734-4100. UNDERWRITING LIMITATION b/: $10,564,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes and Notes at the end of this Circular.

Harleysville Mutual Insurance Company
BUSINESS ADDRESS: 355 MAPLE AVENUE, HARLEYSVILLE, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION b/: $49,239,000. SURETY LICENSES c,f/: AL, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Harleysville Worcester Insurance Company
BUSINESS ADDRESS: 120 Front Street, Ste 500, Worcester, MA 01608-1408. PHONE: (508) 751-8100. UNDERWRITING LIMITATION b/: $10,133,000. SURETY LICENSES c,f/: CT, ME, MA, MI, NH, NY, RI, VT. INCORPORATED IN: Massachusetts.

Hartford Accident and Indemnity Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $89,012,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $52,878,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $490,148,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $49,277,000. SURETY LICENSES c,f/: IL, PA. INCORPORATED IN: Illinois.

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Hartford Insurance Company of the Midwest
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $9,708,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company
BUSINESS ADDRESS: P.O. BOX 80468, LINCOLN, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $5,626,000. SURETY LICENSES c,f/: AZ, CO, IA, KS, MN, MO, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of the State of Pennsylvania (The)
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE:

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Hartford Insurance Company of the Midwest
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $9,708,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $3,512,000. SURETY LICENSES c,f/: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

ICI MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 40 MAIN STREET, SUITE 500, P.O. BOX 730, BURLINGTON, VT 05402-0730. PHONE: (802) 863-0096. UNDERWRITING LIMITATION b/: $11,439,000. SURETY LICENSES c,f/: VT. INCORPORATED IN: Vermont.

Indemnity Company of California
BUSINESS ADDRESS: P.O. BOX 19725, IRVINE, CA 92623. PHONE: (949) 263-3300. UNDERWRITING LIMITATION b/: $543,000. SURETY LICENSES c,f/: AK, AZ, CA, HI, ID, IN, NV, OR, SC, UT, VA, WA. INCORPORATED IN: California.

Independence Casualty and Surety Company
BUSINESS ADDRESS: P.O. BOX 85563, SAN DIEGO, CA 92186-5563. PHONE: (858) 350-2400 x-2550. UNDERWRITING LIMITATION b/: $1,770,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

Indiana Insurance Company
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION b/: $18,198,000. SURETY LICENSES c,f/: FL, IL, IN, IA, KY, MI, MN, NJ, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company
BUSINESS ADDRESS: 3600 WOODVIEW TRACE, INDIANAPOLIS, IN 46268-0600. PHONE: (800) 428-1441. UNDERWRITING LIMITATION b/: $3,888,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

See Footnotes and Notes at the end of this Circular.

Inland Insurance Company
BUSINESS ADDRESS: P.O. BOX 80468, LINCOLN, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $5,626,000. SURETY LICENSES c,f/: AZ, CO, IA, KS, MN, MO, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of the State of Pennsylvania (The)
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $58,196,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West
BUSINESS ADDRESS: P.O. BOX 85563, SAN DIEGO, CA 92186-5563. PHONE: (858) 350-2400 x-2550. UNDERWRITING LIMITATION b/: $13,972,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Insurors Indemnity Company
BUSINESS ADDRESS: P.O. Box 2683, Waco, TX 76702-2683. PHONE: (254) 759-3703. UNDERWRITING LIMITATION b/: $270,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707. UNDERWRITING LIMITATION b/: $4,078,000. SURETY LICENSES c,f/: PR, VI. INCORPORATED IN: Puerto Rico.

International Business & Mercantile REassurance Company
BUSINESS ADDRESS: 307 NORTH MICHIGAN AVENUE, CHICAGO, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION b/: $8,997,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA; MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes and Notes at the end of this Circular.

International Fidelity Insurance Company2
BUSINESS ADDRESS: ONE NEWARK CENTER, 20TH FLOOR, NEWARK, NJ 07102-5207. PHONE: (973) 624-7200 x-205. UNDERWRITING LIMITATION b/: $3,361,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Liberty Mutual Insurance Company
BUSINESS ADDRESS: 175 BERKELEY STREET, BOSTON, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $177,241,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

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International Fidelity Insurance Company2
BUSINESS ADDRESS: ONE NEWARK CENTER, 20TH FLOOR, NEWARK, NJ 07102-5207. PHONE: (973) 624-7200 x-205. UNDERWRITING LIMITATION b/: $3,361,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED
BUSINESS ADDRESS: P.O. BOX 1520, HONOLULU, HI 96806-1520. PHONE: (808) 564-8200. UNDERWRITING LIMITATION b/: $10,136,000. SURETY LICENSES c,f/: HI. INCORPORATED IN: Hawaii.

Kansas Bankers Surety Company (The)
BUSINESS ADDRESS: P. O. BOX 1654, TOPEKA, KS 66601-1654. PHONE: (785) 228-0000. UNDERWRITING LIMITATION b/: $8,770,000. SURETY LICENSES c,f/: AZ, AR, CO, DE, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, SD, TN, TX, WI, WY. INCORPORATED IN: Kansas.

LEXINGTON NATIONAL INSURANCE CORPORATION
BUSINESS ADDRESS: 214 EAST LEXINGTON STREET, BALTIMORE, MD 21202. PHONE: (410) 625-0800. UNDERWRITING LIMITATION b/: $556,000. SURETY LICENSES c,f/: CA, CO, DE, FL, IN, MD, MS, NJ, PA. INCORPORATED IN: Maryland.

Liberty Insurance Corporation
BUSINESS ADDRESS: 175 BERKELEY STREET, BOSTON, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $20,388,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Vermont.

LIBERTY MUTUAL FIRE INSURANCE COMPANY
BUSINESS ADDRESS: 175 BERKELEY STREET, BOSTON, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $66,682,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

See Footnotes and Notes at the end of this Circular.

Liberty Mutual Insurance Company
BUSINESS ADDRESS: 175 BERKELEY STREET, BOSTON, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $177,241,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company
BUSINESS ADDRESS: 3350 Whiteford Road, P.O. Box 3709, York, PA 17402-0136. PHONE: (717) 757-0000. UNDERWRITING LIMITATION b/: $3,246,000. SURETY LICENSES c,f/: AL, CA, DE, GA, ID, IL, IN, IA, KS, MD, MI, MS, MO, NE, NV, NJ, OK, PA, SD, TN. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation
BUSINESS ADDRESS: 175 BERKELEY STREET, BOSTON, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $1,567,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Lumbermens Mutual Casualty Company
BUSINESS ADDRESS: 1 KEMPER DRIVE, LONG GROVE, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION b/: $73,779,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Lyndon Property Insurance Company
BUSINESS ADDRESS: 520 Maryville Centre Drive, Ste 500, St. Louis, MO 63141. PHONE: (314) 275-5200. UNDERWRITING LIMITATION b/: $9,394,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

MARKEL INSURANCE COMPANY
BUSINESS ADDRESS: 4600 COX ROAD, GLEN ALLEN, VA 23060. PHONE: (800) 431-1270. UNDERWRITING LIMITATION b/: $7,544,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

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Massachusetts Bay Insurance Company
BUSINESS ADDRESS: 100 NORTH PARKWAY, WORCESTER, MA 01605. PHONE: (508) 855-4476 x-4373. UNDERWRITING LIMITATION b/: $2,031,000. SURETY LICENSES c,f/: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

MIDWESTERN INDEMNITY COMPANY (THE)3
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (513) 576-3200. UNDERWRITING LIMITATION b/: $2,348,000. SURETY LICENSES c,f/: AL, AK, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NJ, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Minnesota Surety and Trust Company
BUSINESS ADDRESS: PO BOX 463, AUSTIN, MN 55912-0463. PHONE: (507)

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Massachusetts Bay Insurance Company
BUSINESS ADDRESS: 100 NORTH PARKWAY, WORCESTER, MA 01605. PHONE: (508) 855-4476 x-4373. UNDERWRITING LIMITATION b/: $2,031,000. SURETY LICENSES c,f/: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)
BUSINESS ADDRESS: 2100 FLEUR DRIVE, DES MOINES, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION b/: $3,016,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company
BUSINESS ADDRESS: P. O. BOX 30060, LANSING, MI 48909-7560. PHONE: (517) 482-6211 x-765. UNDERWRITING LIMITATION b/: $7,234,000. SURETY LICENSES c,f/: AZ, AR, CA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company
BUSINESS ADDRESS: P.O. BOX 2478 TERMINAL ANNEX, LOS ANGELES, CA 90051. PHONE: (323) 932-3200. UNDERWRITING LIMITATION b/: $24,095,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY
BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $8,611,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NM, NC, ND, OH, OK, SC, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation
BUSINESS ADDRESS: 102 KERCHEVAL, GROSSE POINTE FARMS, MI 48236. PHONE: (313) 886-2200. UNDERWRITING LIMITATION b/: $1,186,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NV, NH, NJ, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Michigan.

See Footnotes and Notes at the end of this Circular.

MIDWESTERN INDEMNITY COMPANY (THE)3
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (513) 576-3200. UNDERWRITING LIMITATION b/: $2,348,000. SURETY LICENSES c,f/: AL, AK, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NJ, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Minnesota Surety and Trust Company
BUSINESS ADDRESS: PO BOX 463, AUSTIN, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION b/: $154,000. SURETY LICENSES c,f/: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

Motorists Mutual Insurance Company
BUSINESS ADDRESS: 471 EAST BROAD STREET, COLUMBUS, OH 43215. PHONE: (614) 225-8211. UNDERWRITING LIMITATION b/: $32,965,000. SURETY LICENSES c,f/: IN, KY, MI, OH, PA, WV. INCORPORATED IN: Ohio.

Motors Insurance Corporation
BUSINESS ADDRESS: 300 GALLERIA OFFICENTRE, SOUTHFIELD, MI 48034. PHONE: (248) 263-6900. UNDERWRITING LIMITATION b/: $82,496,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Mountbatten Surety Company, Inc. (The)
BUSINESS ADDRESS: 33 ROCK HILL ROAD, BALA CYNWYD, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION b/: $1,021,000. SURETY LICENSES c,f/: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, MD, MI, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI. INCORPORATED IN: Pennsylvania.

National American Insurance Company
BUSINESS ADDRESS: 1010 MANVEL AVENUE, CHANDLER, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION b/: $3,395,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Oklahoma.

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National Fire Insurance Company of Hartford
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $66,997,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Netherlands Insurance Company (The)
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $3,379,000. SURETY LICENSES c,f/: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, NV, NH, NJ, NY, NC, OH, PA, RI, SC, TN, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company

National Fire Insurance Company of Hartford
BUSINESS ADDRESS: CNA PLAZA, CHICAGO, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $66,997,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company
BUSINESS ADDRESS: 55 WEST STREET, KEENE, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION b/: $26,770,000. SURETY LICENSES c,f/: CT, DE, DC, GA, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company
BUSINESS ADDRESS: 3024 HARNEY STREET, OMAHA, NE 68131-3580. PHONE: (402) 536-3000. UNDERWRITING LIMITATION b/: $368,906,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Surety Corporation
BUSINESS ADDRESS: 233 SOUTH WACKER DRIVE, SUITE 2000, CHICAGO, IL 60606-6308. PHONE: (312) 441-5400. UNDERWRITING LIMITATION b/: $5,952,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA
BUSINESS ADDRESS: 70 PINE STREET, NEW YORK, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $280,997,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nationwide Mutual Insurance Company
BUSINESS ADDRESS: ONE NATIONWIDE PLAZA, COLUMBUS, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION b/: $397,136,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

Netherlands Insurance Company (The)
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $3,379,000. SURETY LICENSES c,f/: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, NV, NH, NJ, NY, NC, OH, PA, RI, SC, TN, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $31,396,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
BUSINESS ADDRESS: 650 ELM STREET, MANCHESTER, NH 03101. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: $11,783,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

NORTHWESTERN PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (503) 221-4240. UNDERWRITING LIMITATION b/: $3,398,000. SURETY LICENSES c,f/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

NOVA Casualty Company
BUSINESS ADDRESS: 180 OAK STREET, BUFFALO, NY 14203-1610. PHONE: (716) 856-3722. UNDERWRITING LIMITATION b/: $1,052,000. SURETY LICENSES c,f/: AZ, FL, GA, IN, IA, MS, NV, NY, ND, OH, PA, SC, TN, VA. INCORPORATED IN: New York.

Ohio Casualty Insurance Company (The)
BUSINESS ADDRESS: 9450 SEWARD ROAD, FAIRFIELD, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION b/: $62,785,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

Ohio Farmers Insurance Company
BUSINESS ADDRESS: P. O. BOX 5001, WESTFIELD CENTER, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: $61,200,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

OneBeacon Insurance Company
BUSINESS ADDRESS: ONE BEACON STREET, BOSTON, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $64,764,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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Ohio Farmers Insurance Company
BUSINESS ADDRESS: P. O. BOX 5001, WESTFIELD CENTER, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: $61,200,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company
BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $597,000. SURETY LICENSES c,f/: AR, KS, LA, OK, TX, VA. INCORPORATED IN: Oklahoma.

OLD DOMINION INSURANCE COMPANY
BUSINESS ADDRESS: 55 WEST STREET, KEENE, NH 03431. PHONE: (904) 739-0873. UNDERWRITING LIMITATION b/: $1,405,000. SURETY LICENSES c,f/: DE, FL, GA, MD, SC, VA. INCORPORATED IN: Florida.

Old Republic Insurance Company
BUSINESS ADDRESS: PO BOX 789, GREENSBURG, PA 15601-0789. PHONE: (724) 834-5000. UNDERWRITING LIMITATION b/: $38,050,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company
BUSINESS ADDRESS: P.O. BOX 1635, MILWAUKEE, WI 53201. PHONE: (262) 797-2640. UNDERWRITING LIMITATION b/: $3,242,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

OneBeacon America Insurance Company
BUSINESS ADDRESS: ONE BEACON STREET, BOSTON, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $22,128,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

See Footnotes and Notes at the end of this Circular.

OneBeacon Insurance Company
BUSINESS ADDRESS: ONE BEACON STREET, BOSTON, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $64,764,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

ORISKA INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 855, Oriskany, NY 13424. PHONE: (315) 768-2726. UNDERWRITING LIMITATION b/: $352,000. SURETY LICENSES c,f/: DC, GA, NY, NC, PA, TN, WV. INCORPORATED IN: New York.

Pacific Indemnity Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $38,892,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

PACIFIC INDEMNITY INSURANCE COMPANY
BUSINESS ADDRESS: 378 W. O'BRIEN DRIVE, AGANA, GU 96932. PHONE: (671) 477-8801. UNDERWRITING LIMITATION b/: $302,000. SURETY LICENSES c,f/: GU. INCORPORATED IN: Guam.

PARTNER REINSURANCE COMPANY OF THE U.S.
BUSINESS ADDRESS: ONE GREENWICH PLAZA, GREENWICH, CT 06830-6352. PHONE: (203) 485-4200. UNDERWRITING LIMITATION b/: $27,407,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, DC, GA, IL, IA, MS, NE, NV, NY, OH, SD, TX, WA. INCORPORATED IN: New York.

PARTNERRE INSURANCE COMPANY OF NEW YORK
BUSINESS ADDRESS: ONE GREENWICH PLAZA, GREENWICH, CT 06830-6352. PHONE: (203) 485-4200. UNDERWRITING LIMITATION b/: $9,940,000. SURETY LICENSES c,f/: AL, AZ, CA, CO, DE, DC, IL, IN, IA, KS, KY, MD, MI, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

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Peerless Insurance Company
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $23,057,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

PLANET INDEMNITY COMPANY
BUSINESS ADDRESS: 9025 N. LINDBERGH DR., PEORIA, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $1,317,000. SURETY LICENSES c,f/: AZ, AR, CO, DE, DC, FL, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MT, NE, NV, NH, NJ, NM, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Illinois.

Progressive Casualty Insurance Company

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Peerless Insurance Company
BUSINESS ADDRESS: 62 MAPLE AVENUE, KEENE, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $23,057,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company
BUSINESS ADDRESS: 2505 COURT STREET, PEKIN, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION b/: $4,051,000. SURETY LICENSES c,f/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Penn Millers Insurance Company
BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (570) 822-8111. UNDERWRITING LIMITATION b/: $4,589,000. SURETY LICENSES c,f/: AL, AR, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania General Insurance Company
BUSINESS ADDRESS: ONE BEACON STREET, BOSTON, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $10,437,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company
BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION b/: $20,287,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pioneer General Insurance Company
BUSINESS ADDRESS: 6780 EAST HAMPDEN AVENUE, DENVER, CO 80224. PHONE: (303) 758-8122. UNDERWRITING LIMITATION b/: $340,000. SURETY LICENSES c,f/: CO, MT, NM. INCORPORATED IN: Colorado.

See Footnotes and Notes at the end of this Circular.

PLANET INDEMNITY COMPANY
BUSINESS ADDRESS: 9025 N. LINDBERGH DR., PEORIA, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $1,317,000. SURETY LICENSES c,f/: AZ, AR, CO, DE, DC, FL, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MT, NE, NV, NH, NJ, NM, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Illinois.

Progressive Casualty Insurance Company
BUSINESS ADDRESS: 6300 WILSON MILLS ROAD, W33, MAYFIELD VILLAGE, OH 44143-2182. PHONE: (440) 461-5000. UNDERWRITING LIMITATION b/: $81,365,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Protective Insurance Company
BUSINESS ADDRESS: 1099 NORTH MERIDIAN STREET, INDIANAPOLIS, IN 46204. PHONE: (317) 636-9800 x-356. UNDERWRITING LIMITATION b/: $27,179,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Providence Washington Insurance Company
BUSINESS ADDRESS: P.O. BOX 518, PROVIDENCE, RI 02901-0518. PHONE: (401) 453-7000. UNDERWRITING LIMITATION b/: $6,251,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Ranger Insurance Company
BUSINESS ADDRESS: P.O. BOX 2807, HOUSTON, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION b/: $3,389,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic - Franklin Insurance Company
BUSINESS ADDRESS: P. O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $2,236,000. SURETY LICENSES c,f/: CT, DE, DC, GA, IL, IN, KS, MD, MA, MI, NJ, NY, NC, OH, PA, RI, TN, TX, VA, WI. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

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RLI Insurance Company
BUSINESS ADDRESS: 9025 N. LINDBERGH DRIVE, PEORIA, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $24,182,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Selective Insurance Company of America
BUSINESS ADDRESS: 40 WANTAGE AVENUE, BRANCHVILLE, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION b/: $27,620,000. SURETY LICENSES c,f/: AL, CT, DE, DC, GA, IL, IN, IA, KY, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, SD, TN, VA, WV, WI. INCORPORATED IN: New Jersey.

Seneca Insurance Company, Inc.
BUSINESS ADDRESS: 160 WATER STREET, NEW YORK, NY 10038-4922.

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RLI Insurance Company
BUSINESS ADDRESS: 9025 N. LINDBERGH DRIVE, PEORIA, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $24,182,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $32,335,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Safety National Casualty Corporation
BUSINESS ADDRESS: 2043 Woodland Parkway, Suite 200, St. Louis, MO 63146. PHONE: (314) 995-5300. UNDERWRITING LIMITATION b/: $4,615,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Seaboard Surety Company
BUSINESS ADDRESS: 5801 SMITH AVENUE, BALTIMORE, MD 21209-3653. PHONE: (410) 205-3000. UNDERWRITING LIMITATION b/: $13,038,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURA INSURANCE, A Mutual Company
BUSINESS ADDRESS: P.O. BOX 819, APPLETON, WI 54912-0819. PHONE: (920) 739-3161. UNDERWRITING LIMITATION b/: $9,946,000. SURETY LICENSES c,f/: IL, IN, IA, KS, MI, MN, MO, ND, WI. INCORPORATED IN: Wisconsin.

Select Insurance Company
BUSINESS ADDRESS: P.O. BOX 131771, DALLAS, TX 75313-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION b/: $3,953,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

See Footnotes and Notes at the end of this Circular.

Selective Insurance Company of America
BUSINESS ADDRESS: 40 WANTAGE AVENUE, BRANCHVILLE, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION b/: $27,620,000. SURETY LICENSES c,f/: AL, CT, DE, DC, GA, IL, IN, IA, KY, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, SD, TN, VA, WV, WI. INCORPORATED IN: New Jersey.

Seneca Insurance Company, Inc.
BUSINESS ADDRESS: 160 WATER STREET, NEW YORK, NY 10038-4922. PHONE: (212) 344-3000. UNDERWRITING LIMITATION b/: $5,262,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Sentry Insurance A Mutual Company
BUSINESS ADDRESS: 1800 NORTH POINT DRIVE, STEVENS POINT, WI 54481-8020. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $176,813,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Sentry Select Insurance Company
BUSINESS ADDRESS: 1800 NORTH POINT DRIVE, STEVENS POINT, WI 54481-8020. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $13,022,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

SERVICE INSURANCE COMPANY
BUSINESS ADDRESS: P.O. BOX 9729, BRADENTON, FL 34206-9729. PHONE: (800) 780-8423. UNDERWRITING LIMITATION b/: $696,000. SURETY LICENSES c,f/: AL, CO, DE, DC, FL, GA, IN, IA, KS, MI, MS, MO, NE, NC, ND, OK, OR, PA, SC, TN, TX, UT, VA. INCORPORATED IN: Florida.

SERVICE INSURANCE COMPANY INC. (THE)
BUSINESS ADDRESS: 80 Main Street, West Orange, NJ 07052. PHONE: (973) 731-7650. UNDERWRITING LIMITATION b/: $201,000. SURETY LICENSES c,f/: DE, NJ, NY, PA. INCORPORATED IN: New Jersey.

See Footnotes and Notes at the end of this Circular.

St. Paul Fire and Marine Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $36,956,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

State Farm Fire and Casualty Company
BUSINESS ADDRESS: ONE STATE FARM PLAZA, BLOOMINGTON, IL 61710. PHONE: (309) 766-2311. UNDERWRITING LIMITATION b/: $299,826,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

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St. Paul Fire and Marine Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $36,956,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $3,541,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $6,785,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The)
BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $65,857,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

State Auto Property and Casualty Insurance Company
BUSINESS ADDRESS: 518 EAST BROAD STREET, COLUMBUS, OH 43215. PHONE: (864) 877-3311. UNDERWRITING LIMITATION b/: $17,023,000. SURETY LICENSES c,f/: AL, AZ, AR, DC, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, UT, VA, WV, WI, WY. INCORPORATED IN: S. Carolina.

State Automobile Mutual Insurance Company
BUSINESS ADDRESS: 518 EAST BROAD STREET, COLUMBUS, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION b/: $66,209,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DC, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes and Notes at the end of this Circular.

State Farm Fire and Casualty Company
BUSINESS ADDRESS: ONE STATE FARM PLAZA, BLOOMINGTON, IL 61710. PHONE: (309) 766-2311. UNDERWRITING LIMITATION b/: $299,826,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Suretec Insurance Company
BUSINESS ADDRESS: 10000 Memorial Dr. Suite 330, Houston, TX 77024. PHONE: (713) 812-0800. UNDERWRITING LIMITATION b/: $449,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

SURETY BONDING COMPANY OF AMERICA
BUSINESS ADDRESS: P.O. BOX 5111, SIOUX FALLS, SD 57117-5111. PHONE: (605) 336-0850. UNDERWRITING LIMITATION b/: $467,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, KS, MN, MO, MT, NE, NV, NM, NY, ND, OK, OR, SC, SD, TN, TX, UT, WV, WY. INCORPORATED IN: South Dakota.

Surety Company of the Pacific
BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION b/: $541,000. SURETY LICENSES c,f/: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation
BUSINESS ADDRESS: 175 KING STREET, ARMONK, NY 10504. PHONE: (914) 828-8000. UNDERWRITING LIMITATION b/: $180,398,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

TEXAS PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (214) 754-0777. UNDERWRITING LIMITATION b/: $1,013,000. SURETY LICENSES c,f/: AR, TX. INCORPORATED IN: Texas.

TRANSATLANTIC REINSURANCE COMPANY
BUSINESS ADDRESS: 80 PINE STREET, NEW YORK, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION b/: $101,985,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, NY, OH, OK, PA, SD, UT, WA, WI. INCORPORATED IN: New York.

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Travelers Casualty and Surety Company
BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $184,013,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Underwriters Indemnity Company
BUSINESS ADDRESS: 9025 N. Lindbergh Dr., Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $1,434,000. SURETY LICENSES c,f/: AL, AR, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Union Insurance Company

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Travelers Casualty and Surety Company
BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $184,013,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of America
BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $64,120,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of Illinois
BUSINESS ADDRESS: 215 SHUMAN BOULEVARD, NAPERVILLE, IL 60563. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $36,877,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)
BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $146,522,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Trinity Universal Insurance Company
BUSINESS ADDRESS: P.O. BOX 655028, DALLAS, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $40,879,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

See Footnotes and Notes at the end of this Circular.

Underwriters Indemnity Company
BUSINESS ADDRESS: 9025 N. Lindbergh Dr., Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $1,434,000. SURETY LICENSES c,f/: AL, AR, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Union Insurance Company
BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION b/: $1,462,000. SURETY LICENSES c,f/: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, NC, ND, OK, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

UNITED CASUALTY AND SURETY INSURANCE COMPANY
BUSINESS ADDRESS: 170 MILK STREET, BOSTON, MA 02109. PHONE: (617) 542-3232 x-109. UNDERWRITING LIMITATION b/: $257,000. SURETY LICENSES c,f/: DC, MA, NY, ND, PA. INCORPORATED IN: Massachusetts.

United Coastal Insurance Company4
BUSINESS ADDRESS: 233 Main Street P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION b/: $2,245,000. SURETY LICENSES c,f/: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company
BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: $19,499,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION b/: $14,365,000. SURETY LICENSES c,f/: PA. INCORPORATED IN: Pennsylvania.

United States Fidelity and Guaranty Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $104,787,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

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UNITED STATES FIRE INSURANCE COMPANY
BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07960. PHONE: (973) 490-6600. UNDERWRITING LIMITATION b/: $23,418,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Utica Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $18,796,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

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UNITED STATES FIRE INSURANCE COMPANY
BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07960. PHONE: (973) 490-6600. UNDERWRITING LIMITATION b/: $23,418,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

United States Surety Company
BUSINESS ADDRESS: P. O. BOX 5605, TIMONIUM, MD 21094-5605. PHONE: (410) 453-9522. UNDERWRITING LIMITATION b/: $289,000. SURETY LICENSES c,f/: DE, DC, MD, PA, WV. INCORPORATED IN: Maryland.

UNITED SURETY AND INDEMNITY COMPANY
BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (787) 273-1818 x-2090. UNDERWRITING LIMITATION b/: $3,446,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL INSURANCE COMPANY
BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (787) 706-7150. UNDERWRITING LIMITATION b/: $8,086,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company
BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $3,706,000. SURETY LICENSES c,f/: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America
BUSINESS ADDRESS: P.O. BOX 1068, HOUSTON, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION b/: $1,317,000. SURETY LICENSES c,f/: AL, AK, AR, CA, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
BUSINESS ADDRESS: 7045 COLLEGE BOULEVARD, OVERLAND PARK, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION b/: $23,254,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Kansas.

See Footnotes and Notes at the end of this Circular.

Utica Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $18,796,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

VAN TOL SURETY COMPANY, INCORPORATED
BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION b/: $290,000. SURETY LICENSES c,f/: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company
BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (212) 612-4000. UNDERWRITING LIMITATION b/: $5,108,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company
BUSINESS ADDRESS: 1200 ARLINGTON HEIGHTS ROAD, SUITE 400, ITASCA, IL 60143-2625. PHONE: (630) 227-4700. UNDERWRITING LIMITATION b/: $3,204,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company
BUSINESS ADDRESS: 9450 SEWARD ROAD, FAIRFIELD, OH 45014. PHONE: (513) 603-2400. UNDERWRITING LIMITATION b/: $34,117,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

WEST BEND MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 1900 SOUTH 18TH AVENUE, WEST BEND, WI 53095. PHONE: (262) 334-5571 x-6523. UNDERWRITING LIMITATION b/: $20,137,000. SURETY LICENSES c,f/: IL, IN, IA, MI, MN, OH, WI. INCORPORATED IN: Wisconsin.

See Footnotes and Notes at the end of this Circular.

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Westchester Fire Insurance Company
BUSINESS ADDRESS: 1601 Chestnut Street, P. O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 640-1000. UNDERWRITING LIMITATION b/: $21,300,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

XL Reinsurance America Inc.
BUSINESS ADDRESS: SEAVIEW HOUSE, 70 SEAVIEW AVENUE, STAMFORD, CT 06902-6040. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: $41,987,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

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Westchester Fire Insurance Company
BUSINESS ADDRESS: 1601 Chestnut Street, P. O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 640-1000. UNDERWRITING LIMITATION b/: $21,300,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Insurance Company
BUSINESS ADDRESS: P.O. BOX 21030, RENO, NV 89515. PHONE: (775) 829-6650. UNDERWRITING LIMITATION b/: $511,000. SURETY LICENSES c,f/: NV, UT. INCORPORATED IN: Nevada.

Western Surety Company
BUSINESS ADDRESS: P.O. BOX 5077, SIOUX FALLS, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION b/: $20,735,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company
BUSINESS ADDRESS: P. O. BOX 5001, WESTFIELD CENTER, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: $31,305,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company
BUSINESS ADDRESS: P. O. BOX 5001, WESTFIELD CENTER, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: $7,965,000. SURETY LICENSES c,f/: CA, IA, KY, ND, OH. INCORPORATED IN: Ohio.

Westport Insurance Corporation
BUSINESS ADDRESS: P.O. BOX 2979, OVERLAND PARK, KS 66201-1379. PHONE: (913) 676-5270. UNDERWRITING LIMITATION b/: $19,762,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes and Notes at the end of this Circular.

XL Reinsurance America Inc.
BUSINESS ADDRESS: SEAVIEW HOUSE, 70 SEAVIEW AVENUE, STAMFORD, CT 06902-6040. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: $41,987,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

XL Specialty Insurance Company
BUSINESS ADDRESS: SEAVIEW HOUSE, 70 SEAVIEW AVENUE, STAMFORD, CT 06902-6040. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: $6,806,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Zurich American Insurance Company
BUSINESS ADDRESS: 1400 American Lane, Tower 1, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: $173,783,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes and Notes at the end of this Circular.

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COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

SAFECO Insurance Company of Illinois
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $13,091,000.

SAFECO National Insurance Company
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $4,916,000.

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COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

GE Reinsurance Corporation
BUSINESS ADDRESS: 540 W. Northwest Highway, Barrington, IL 60010. PHONE: (847) 277-5300. UNDERWRITING LIMITATION b/: $60,953,000.

Generali - U.S. Branch
BUSINESS ADDRESS: ONE LIBERTY PLAZA, NEW YORK, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION b/: $2,888,000.

GERLING GLOBAL REINSURANCE CORPORATION OF AMERICA
BUSINESS ADDRESS: 717 FIFTH AVENUE, NEW YORK, NY 10022. PHONE: (212) 754-7500. UNDERWRITING LIMITATION b/: $30,821,000.

NATIONAL REINSURANCE CORPORATION
BUSINESS ADDRESS: 695 EAST MAIN STREET, P. O. BOX 10350, STAMFORD, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: $61,355,000.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY
BUSINESS ADDRESS: 385 WASHINGTON STREET, ST. PAUL, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $21,122,000.

Odyssey America Reinsurance Corporation
BUSINESS ADDRESS: 300 FIRST STAMFORD PLACE, STAMFORD, CT 06902. PHONE: (203) 977-8000. UNDERWRITING LIMITATION b/: $39,413,000.

Odyssey Reinsurance Corporation
BUSINESS ADDRESS: 300 FIRST STAMFORD PLACE, STAMFORD, CT 06902. PHONE: (203) 977-8000. UNDERWRITING LIMITATION b/: $35,404,000.

Phoenix Insurance Company (The)
BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $53,191,000.

See Footnotes and Notes at the end of this Circular.

SAFECO Insurance Company of Illinois
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $13,091,000.

SAFECO National Insurance Company
BUSINESS ADDRESS: SAFECO PLAZA, SEATTLE, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $4,916,000.

SCOR REINSURANCE COMPANY
BUSINESS ADDRESS: 199 Water Street, 21st Floor, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION b/: $31,285,000.

ZENITH INSURANCE COMPANY5
BUSINESS ADDRESS: 21255 CALIFA STREET, WOODLAND HILLS, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION b/: $6,226,000.

See Footnotes and Notes at the end of this Circular.

FOOTNOTES

1 AMERICAN CONTRACTORS INDEMNITY COMPANY is required by state law to conduct business in the state of Texas as TEXAS BONDING COMPANY, assumed name of AMERICAN CONTRACTORS INDEMNITY COMPANY.

2 This Company's name is very similar to another company that is NOT certified by this Department.

(c) A surety company *must be licensed in the State or other area in which it provides a bond*, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec.24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. *For updated license information, you may contact the company directly or the applicable State Insurance Department.* Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

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FOOTNOTES

1 AMERICAN CONTRACTORS INDEMNITY COMPANY is required by state law to conduct business in the state of Texas as TEXAS BONDING COMPANY, assumed name of AMERICAN CONTRACTORS INDEMNITY COMPANY.

2 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

3 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

4 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

5 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a *per bond basis*. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, *when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected* by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a *bond of this type as an Excess Risk*. When Excess Risks on *bonds in favor of the United States are protected by reinsurance*, such reinsurance is to be effected by use of a *Federal reinsurance form* to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

See Footnotes and Notes at the end of this Circular.

(c) A surety company *must be licensed in the State or other area in which it provides a bond*, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec.24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. *For updated license information, you may contact the company directly or the applicable State Insurance Department.* Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(d) FEDERAL PROCESS AGENTS: Treasury Approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the *principal resides*; where the *obligation is to be performed;* and in the *District of Columbia* where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.)
(NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be Approved *surplus lines carriers* in various states. Such approval may indicate that the company is *authorized to write surety in a particular state, even though the company is not licensed in the state*. Questions related to this may be directed to the appropriate State Insurance Department. Refer to the list of state insurance departments at the end of this publication.

See Footnotes and Notes at the end of this Circular.

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STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36104	(334) 269-3550
Alaska, Anchorage 99503-5948	(907) 269-7900
Arizona, Phoenix 85018-7256	(602) 912-8400
Arkansas, Little Rock 72201-1904	(501) 371-2600

New York, New York 10004-2319	(212) 480-2292
North Carolina, Raleigh 27611	(919) 733-3058
North Dakota, Bismarck 58505-0320	(701) 328-2440
Ohio, Columbus 43215-1067	(614) 644-2658
Oklahoma, Oklahoma City 73107	(405) 521-2828
Oregon, Salem 97310-3883	(503) 947-7980

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STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36104	(334) 269-3550
Alaska, Anchorage 99503-5948	(907) 269-7900
Arizona, Phoenix 85018-7256	(602) 912-8400
Arkansas, Little Rock 72201-1904	(501) 371-2600
California, Sacremento 95814	(916) 492-3500
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(860) 297-3800
D. C., Washington 20002	(202) 727-8000
Delaware, Dover 19904	(302) 739-4251
Florida, Tallahasse 32399-0300	(850) 413-2804
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96813	(808) 586-2790
Idaho, Boise 83720-0043	(208) 334-4250
Illinois, Springfield 62767-0001	(217) 782-4515
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612-1678	(785) 296-7801
Kentucky, Frankfort 40602-0517	(502) 564-6027
Louisiana, Baton Rouge 70802	(225) 342-5423
Maine, Augusta 04333-0034	(207) 624-8475
Maryland, Baltimore 21202-2272	(410) 468-2090
Massachusetts, Boston 02110	(617) 521-7301
Michigan, Lansing 48933-1020	(517) 335-3167
Minnesota, St. Paul 55101-2198	(612) 296-6025
Mississippi, Jackson 39201	(601) 359-3569
Missouri, Jefferson City 65101	(573) 751-4126
Montana, Helena 59601	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89706-0661	(775) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5360
New Mexico, Sante Fe 87504-1269	(505) 827-4601

See Footnotes and Notes at the end of this Circular.

New York, New York 10004-2319	(212) 480-2292
North Carolina, Raleigh 27611	(919) 733-3058
North Dakota, Bismarck 58505-0320	(701) 328-2440
Ohio, Columbus 43215-1067	(614) 644-2658
Oklahoma, Oklahoma City 73107	(405) 521-2828
Oregon, Salem 97310-3883	(503) 947-7980
Pennsylvania, Harrisburg 17120	(717) 783-0442
Puerto Rico, Santurce 00909	(787) 722-8686
Rhode Island, Providence 02903-4233	(401) 222-2223
South Carolina, Columbia 29201	(803) 737-6160
South Dakota, Pierre 57501-2000	(605) 773-3563
Tennessee, Nashville 37243-0565	(615) 741-2241
Texas, Austin 78701	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virgin Islands, St. Thomas 00802	(340) 774-7166
Virginia, Richmond 23218	(804) 371-9694
Washington, Olympia 98504-0255	(360) 664-8137
West Virginia, Charleston 25305-0540	(304) 558-3354
Wisconsin, Madison 53707	(608) 267-1233
Wyoming, Cheyenne 82002-0440	(307) 777-7401

See Footnotes and Notes at the end of this Circular.

[FR Doc. 02–16395 Filed 6–28–02; 8:45 am]
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Federal Register

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Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Part 214

Allowing Eligible Schools To Apply for Preliminary Enrollment in the Student and Exchange Visitor Information System (SEVIS); Interim Final Rule

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 2211–02]

RIN 1115–AG55

Allowing Eligible Schools To Apply for Preliminary Enrollment in the Student and Exchange Visitor Information System (SEVIS); Interim Final Rule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim final rule.

SUMMARY: This interim rule allows schools that are approved for attendance by nonimmigrant students to apply for preliminary enrollment in the Student and Exchange Visitor Information System (SEVIS). Schools that are approved for preliminary enrollment will be able to issue Forms I–20 to new students, and to issue new Forms I–20 to currently-enrolled students who must obtain a new Form I–20 for any reason. Schools that are approved for preliminary enrollment will be required to pay the certification fee established by the Interim Certification Rule. Schools that are approved for preliminary enrollment will be required to use SEVIS to issue Forms I–20 to new students, and to issue new Forms I–20 to currently-enrolled students who must obtain a new Form I–20 for any reason.

DATES: This interim rule is effective July 1, 2002. Written comments must be submitted on or before August 30, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2211–02 on your correspondence. You may also submit comments electronically to insregs@usdoj.gov. When submitting comments electronically, you must include INS No. 2211–02 in the subject box.

FOR FURTHER INFORMATION CONTACT: Maura Deadrick, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: On May 16, 2002, at 67 FR 34862, the Service published a proposed rule in the Federal Register to allow schools that are approved for attendance by nonimmigrant students to apply for preliminary enrollment in the Student and Exchange Visitor Information System (SEVIS). Schools that are approved for preliminary enrollment will be able to issue Forms I–20 to new students, and to issue new Forms I–20 to currently-enrolled students who must obtain a new Form I–20 for any reason. Schools that are approved for preliminary enrollment will be required to pay the certification fee established by the Interim Certification Rule. Schools that are approved for preliminary enrollment will be required to use SEVIS to issue Forms I–20 to new students, and to issue new Forms I–20 to currently-enrolled students who must obtain a new Form I–20 for any reason.

Any school that is ineligible for preliminary enrollment, or that applies after the close of the preliminary enrollment period, will be required to pay the certification fee in accordance with the Interim Certification Rule before it can be enrolled in SEVIS.

What if a School Is Not Eligible for Preliminary Enrollment?

If a school falls under one of the

compliance with the Service Form I–20 issuance and reporting requirements.

How Does a School Apply for Preliminary Enrollment?

Eligible institutions must request preliminary enrollment by accessing the Internet site, *http://www.ins.usdoj.gov/sevis*. Upon accessing the site, the president, owner, head of the school or designated school official will be asked to enter the following information: The

Must Schools Use SEVIS Once They Have Been Approved for Preliminary Enrollment?

Once a school is approved for preliminary enrollment in SEVIS, the school will be required to utilize SEVIS to generate any new Forms I–20 for new students, as well as in any circumstance where a currently-enrolled student must be issued a new Form I–20 (for example, for an extension of the student's

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 2211–02]

RIN 1115–AG55

Allowing Eligible Schools To Apply for Preliminary Enrollment in the Student and Exchange Visitor Information System (SEVIS)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Immigration and Naturalization Service (Service), consistent with its statutory authority to regulate foreign students under sections 101(a)(15)(F) and (M) of the Immigration and Nationality Act (Act), will be conducting a review of all Service-approved schools, as a prerequisite for enrollment in the Student and Exchange Visitor Information System (SEVIS). This interim rule will allow eligible schools to preliminarily enroll in SEVIS, beginning on July 1, 2002, provided they meet the established criteria. Eligibility for preliminary enrollment in SEVIS will continue through August 16, 2002. By that date, the Service anticipates publishing a new interim certification rule. When the forthcoming interim certification rule takes effect, the preliminary enrollment period will end and all schools will be required to apply for certification prior to enrollment in SEVIS in accordance with the requirements of that rule.

DATES: *Effective date.* This interim rule is effective July 1, 2002.

Comment date. Written comments must be submitted on or before July 31, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2211–02 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, you must include INS No. 2211–02, in the subject heading, and any attachments must be typed in MS Word format so that the comments can be electronically routed to the appropriate program office. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Maura Deadrick, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: On May 16, 2002, at 67 FR 34862, the Service published a proposed rule in the **Federal Register** to implement the new SEVIS requirements and establish a process for electronic reporting by designated school officials (DSOs). That proposed rule, which would be codified at 8 CFR 214.2(f), (j), and (m), indicated that the SEVIS system would begin operation on July 1, 2002, and proposed a mandatory compliance date of January 30, 2003, by which all schools must be using SEVIS in order to issue Form I–20, Certificate of Eligibility for Nonimmigrant Student. Schools will only be granted access to SEVIS by the Service after a review of the bona fides of the school.

The Service will allow schools that meet the criteria in 8 CFR 214.12, as promulgated in the present interim rule, to preliminarily enroll in SEVIS after the Service verifies that they meet the established criteria. This preliminary enrollment period will close the later of August 16, 2002, or until the date the service begins the SEVIS full scale certification process, which will be the effective date of a forthcoming interim rule (Interim Certification Rule) implementing section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173) (Border Security Act).

In general, 8 CFR 214.12(a) will permit private elementary and private secondary schools, post-secondary schools, and language and vocational schools, to apply for preliminary enrollment in SEVIS, if the school is accredited, and the school has been continuously approved by the Service for the last three years for the enrollment of F or M nonimmigrant students. Private elementary and private secondary schools must be accredited by an organization holding membership in the Council for the American Private Education (CAPE) or the American Association of Christian Schools (AACS). Postsecondary, language and vocational schools must be accredited by an accrediting agency recognized by the United States Department of Education. Proof that a school has been determined to be eligible under Title IV of the Higher Education Act of 1965 is sufficient to establish that a school is properly accredited, since such accreditation is a prerequisite for recognition under Title IV of the latter Act. The specific requirements for Title IV eligibility are specified at 34 CFR part 600.

In addition, public high schools may also be permitted to enroll under 8 CFR 214.12(a) if the school provides certification from the appropriate public official that the school meets the requirements of the state or local public educational system and the school has been continuously approved by the Service for the last three years for enrollment of F or M nonimmigrant students.

8 CFR 214.12(b) and (c), as added by this interim rule, describes the preliminary enrollment process for eligible schools, which will be conducted through the Internet.

The Interim Certification Rule will establish a review process for all of the currently approved schools, including a new SEVIS certification fee associated with this review. The Interim Certification Rule will govern all schools not eligible for preliminary enrollment under 8 CFR 214.12, and all schools that were eligible but chose not to participate during the preliminary enrollment period. After the close of the preliminary enrollment period, schools previously eligible for preliminary enrollment will be required to apply for a certification review in accordance with the Interim Certification Rule prior to being granted approval to enroll in SEVIS.

Why Is the Service Allowing Preliminary Enrollment?

In the interest of implementing use of SEVIS by schools in a timely manner, the Service has developed a process whereby schools may enroll in SEVIS beginning on July 1, 2002, in advance of the new certification review process. This process necessitates that the Service have some means of assuring that schools allowed preliminary enrollment are in fact bona fide institutions. To be accredited by an agency recognized by the Department of Education, CAPE, or AACS, a school must establish and maintain compliance with rigorous standards of operation. Therefore, accreditation by such an agency is considered to be preliminary establishment of evidence that the school meets the Service requirements for a bona fide institution outlined at 8 CFR 214.3(e). Maintenance of three consecutive years of Service approval to admit nonimmigrant students, evidenced by a valid school code, provides at least a preliminary assurance of the school's familiarity and compliance with the Service Form I–20 issuance and reporting requirements.

How Does a School Apply for Preliminary Enrollment?

Eligible institutions must request preliminary enrollment by accessing the Internet site, *http://www.ins.usdoj.gov/sevis*. Upon accessing the site, the president, owner, head of the school or designated school official will be asked to enter the following information: The school's name; the first, middle, and last name of the contact person for the school; and the email address and phone number of the contact person. Once this information has been submitted, the Service will issue the school a temporary ID and password, which will be forwarded to the email address listed. When the contact person receives this temporary ID and password, the school will again access the Internet site and will electronically enter the school's information for its Form I–17.

Once a school has electronically submitted the Form I–17 information, a Service officer will review the school's eligibility to verify that the school meets the preliminary enrollment eligibility requirements. If the officer determines that the school is eligible for preliminary enrollment, the officer will update SEVIS and enroll the school. Once SEVIS has been updated by the officer, permanent user IDs and passwords will be automatically generated and issued via email to the DSOs listed on the Form I–17. Schools that are not approved by the Service for preliminary enrollment must apply for certification in accordance with the Interim Certification Rule.

Will There Be a Fee for Preliminary Enrollment?

A school that applies for preliminary enrollment will not have to pay a fee at this time. The Service, however, plans to impose a certification fee on all schools, including those granted preliminary enrollment, in the Interim Certification Rule. Section 502 of the Border Security Act requires the Service to conduct a periodic review of compliance of all Service-approved schools by May 14, 2004. This periodic review will require an on-site visit to help determine whether a school is in compliance with various recordkeeping and reporting requirements. As a result, all schools that are granted preliminary enrollment in SEVIS under the terms of 8 CFR 214.12, will be required to apply for a certification review under the Interim Certification Rule, and pay a certification fee, prior to May 14, 2004.

Any school that is ineligible for preliminary enrollment, or that applies after the close of the preliminary enrollment period, will be required to pay the certification fee in accordance with the Interim Certification Rule before it can be enrolled in SEVIS.

What if a School Is Not Eligible for Preliminary Enrollment?

If a school falls under one of the following categories, it is not eligible for preliminary enrollment: (1) Schools that are not accredited by CAPE, AACS, or an agency recognized by the Department of Education; (2) schools that have not been participating as a Service approved school for three years; and (3) flight schools even if they have been accredited by an agency recognized by the Department of Education and have been participating as a Service approved school for three years. Schools that do not meet the criteria for preliminary enrollment will not be eligible to apply for access to SEVIS until they apply for certification under the Interim Certification Rule and undergo a full-scale review by the Service. Prior to this review, such schools must continue to comply with the recordkeeping and reporting requirements as provided in 8 CFR 214.2(f) and (m) and 8 CFR 214.3.

What if a School That Is Eligible for Preliminary Enrollment Chooses Not To Enroll During the Preliminary Enrollment Period?

Schools that are eligible for preliminary enrollment in SEVIS, under 8 CFR 214.12(a), but do not apply for such enrollment before the close of the preliminary enrollment period will be required to apply for certification and pay the certification fee, just as for schools not eligible for preliminary enrollment. The fee for certification is the same for all schools whether eligible for preliminary enrollment or not. However, in recognition of the status of schools that are properly accredited and have been recognized by the Service for the last three years, the Service, after a review of the application, will be authorized to approve the enrollment of such a school in SEVIS prior to completion of the required on-site visit. If such schools are granted enrollment in SEVIS without undergoing on-site review, they will be required to complete the on-site visit prior to May 2004, in accordance with the mandate for school review set forth in the Border Security Act.

Must Schools Use SEVIS Once They Have Been Approved for Preliminary Enrollment?

Once a school is approved for preliminary enrollment in SEVIS, the school will be required to utilize SEVIS to generate any new Forms I–20 for new students, as well as in any circumstance where a currently-enrolled student must be issued a new Form I–20 (for example, for an extension of the student's approved program of study). Schools enrolling in SEVIS should refer to the provisions of the proposed rule published by the Service at 67 FR 34862 (May 16, 2002), for information on the requirements that will be applicable to SEVIS, once that rule is adopted in final form.

Schools that preliminarily enroll in SEVIS prior to the final SEVIS compliance date are not required to enter all data for their current students into SEVIS at that time, but may do so until the use of SEVIS is mandatory. However, any action taken on the part of a current or a new student that involves a change or update to the information on the Form I–20 must be done using SEVIS.

Good Cause Exception

This rule is effective on publication in the **Federal Register**. The Service finds that good cause exists both for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553, and for making this rule immediately effective, rather than having it enter into force 30 days after publication. The USA Patriot Act, Public Law 107–56, mandates that the SEVIS be fully implemented and expanded prior to January 1, 2003. Further, the Border Security Act requires the Service to review all schools within 2 years of its enactment. In order to meet the mandate for complete functionality of SEVIS while maintaining the integrity of data in SEVIS, a timely review of all schools is necessary prior to allowing a school to access SEVIS. To accomplish this action, the Service must allow a portion of eligible schools to preliminarily enroll in SEVIS. The provision for review of all approved schools is an important part of helping to safeguard against the abuse of the traditional American openness to foreign students by foreign terrorists. Because of the vital national security concerns that underpin the USA Patriot Act, and the Border Security Act, it would be contrary to the public interest to observe the requirements of 5 U.S.C. 533(b) and (d).

Regulatory Flexibility Act

The Commissioner, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. Preliminary enrollment is voluntary and applies to those schools that have the capability to electronically enroll in SEVIS. The rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Title IV of the Higher Education Act of 1965.

(b) Preliminary enrollment in SEVIS is optional for eligible schools. The preliminary enrollment period will be open from July 1, 2002, through August 16, 2002, or, if later, until the Service begins the SEVIS full scale certification process. The process for eligible schools to apply for preliminary enrollment through the Internet is as follows:

Certification Rule and pay the certification fee before enrolling in SEVIS. However, once a school meeting the standards of paragraph (a) of this section applies for certification review, the Service will have the discretion, after a review of the school's application, to allow the school to enroll in SEVIS without requiring an on-site visit prior to enrollment. If the Service permits such a school to enroll in SEVIS prior to completion of the on-site visit, the on-site visit must be completed prior to May 14, 2004.

(f) Schools that are not eligible to apply for preliminary enrollment in SEVIS under this section—including flight schools—will have to apply for certification under the Interim Certification Rule, pay the certification fee, and undergo a full certification review including an on-site visit, prior to being allowed to enroll in SEVIS.

Dated: June 27, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–16676 Filed 6–27–02; 4:23 pm]

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Regulatory Flexibility Act

The Commissioner, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. Preliminary enrollment is voluntary and applies to those schools that have the capability to electronically enroll in SEVIS. The information a school must submit is information that should be readily available to the school. In addition, any expenditure required by the school can easily be recouped by the school in student fees. Accordingly, any economic impact will not be "significant."

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3)(B)–(D), this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement to electronically enroll in SEVIS has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The OMB Control number for this collection is 1115–0252.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment.

Accordingly, part 214 of chapter I of title 8, Code of Federal Regulations, is amended as follows:

PART 214—[AMENDED]

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note and 1931 note, respectively; 8 CFR part 2.

2. Section 214.12 is added, to read as follows:

§ 214.12 Preliminary enrollment of schools in the Student and Exchange Visitor Information System (SEVIS).

(a) Private elementary and private secondary schools, public high schools, post-secondary schools, language schools, and vocational schools are eligible for preliminary enrollment in Student and Exchange Visitor Information System (SEVIS), beginning on or after July 1, 2002, but only if the school is accredited by an accrediting agency recognized by the United States Department of Education, CAPE, or AACS, or in the case of a public high school, the school provides certification from the appropriate public official that the school meets the requirements of the state or local public educational system and has been continuously approved by the Service for a minimum of three years, as of July 1, 2002, for the admission of F or M nonimmigrant students. A school may establish that it is accredited by showing that it has been designated as an eligible school under Title IV of the Higher Education Act of 1965.

(b) Preliminary enrollment in SEVIS is optional for eligible schools. The preliminary enrollment period will be open from July 1, 2002, through August 16, 2002, or, if later, until the Service begins the SEVIS full scale certification process. The process for eligible schools to apply for preliminary enrollment through the Internet is as follows:

(1) Eligible institutions must access the Internet site, *http://www.ins.usdoj.gov/sevis*. Upon accessing the site, the president, owner, head of the school or designated school official will be asked to enter the following information: the school's name; the first, middle, and last name of the contact person for the school; and the e-mail address and phone number of the contact person.

(2) Once this information has been submitted, the Service will issue the school a temporary ID and password, which will be forwarded to the e-mail address listed. When the contact person receives this temporary ID and password, the school will again access the Internet site and will electronically enter the school's information for its Form I–17.

(c) The Service will review the information by a school submitted as provided in paragraph (b) of this section, and will preliminarily enroll a school in SEVIS, if it is determined to be eligible under the standards of paragraph (a) of this section. If the officer determines that the school is eligible for preliminary enrollment, the officer will update SEVIS and enroll the school and permanent user IDs and passwords will be automatically generated via e-mail to the DSOs listed on the Form I–17. Schools that are not approved by the Service for preliminary enrollment will be notified that they must apply for certification in accordance with the Interim Certification Rule. A school that is granted preliminary enrollment will have to use SEVIS for the issuance of any new Form I–20 to a new or continuing student.

(d) Schools granted preliminary enrollment in SEVIS will not have to apply for certification at this time. However, all such schools will be required to apply for certification, and pay the certification fee, prior to May 14, 2004.

(e) Eligible schools that meet the standards of paragraph (a) of this section, but do not apply for preliminary enrollment in SEVIS prior to the close of the preliminary enrollment period will have to apply for certification review under the Interim Certification Rule and pay the certification fee before enrolling in SEVIS. However, once a school meeting the standards of paragraph (a) of this section applies for certification review, the Service will have the discretion, after a review of the school's application, to allow the school to enroll in SEVIS without requiring an on-site visit prior to enrollment. If the Service permits such a school to enroll in SEVIS prior to completion of the on-site visit, the on-site visit must be completed prior to May 14, 2004.

(f) Schools that are not eligible to apply for preliminary enrollment in SEVIS under this section—including flight schools—will have to apply for certification under the Interim Certification Rule, pay the certification fee, and undergo a full certification review including an on-site visit, prior to being allowed to enroll in SEVIS.

Dated: June 27, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–16676 Filed 6–27–02; 4:23 pm]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 3275/P.L. 107–197
To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the

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S. 2431/P.L. 107–196
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To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes. (June 25, 2002; 116 Stat. 721)
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700–789	(869-044-00156-0)	55.00	July 1, 2001
790–End	(869-044-00157-8)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10	(869-044-00158-6)	13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	(869-044-00159-4)	13.00	[3] July 1, 1984
3–6	(869-044-00160-8)	14.00	[3] July 1, 1984
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400–429	(869-044-00173-0)	61.00	Oct. 1, 2001
430–End	(869-044-00174-8)	58.00	Oct. 1, 2001
43 Parts:			
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45 Parts:			
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200–499	(869-044-00180-2)	34.00	Oct. 1, 2001
500–1199	(869-044-00181-1)	46.00	Oct. 1, 2001
1200–End	(869-044-00182-9)	61.00	Oct. 1, 2001
46 Parts:			
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41–69	(869-044-00184-5)	39.00	Oct. 1, 2001
70–89	(869-044-00185-3)	14.00	Oct. 1, 2001
90–139	(869-044-00186-1)	44.00	Oct. 1, 2001
140–155	(869-044-00187-0)	25.00	Oct. 1, 2001
156–165	(869-044-00188-8)	34.00	Oct. 1, 2001
166–199	(869-044-00189-6)	46.00	Oct. 1, 2001
200–499	(869-044-00190-0)	39.00	Oct. 1, 2001
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80–End	(869-044-00196-9)	61.00	Oct. 1, 2001
48 Chapters:			
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2 (Parts 252–299)	(869-044-00200-1)	34.00	Oct. 1, 2001
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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001 through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2001 through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

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42 Parts:			
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430-End	(869-044-00168-3)	58.00	Oct. 1, 2001
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44	(869-044-00171-3)	45.00	Oct. 1, 2001
45 Parts:			
1-199	(869-044-00172-1)	53.00	Oct. 1, 2001
200-499	(869-044-00173-0)	31.00	Oct. 1, 2001
500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
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46 Parts:			
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41-69	(869-044-00177-2)	35.00	Oct. 1, 2001
70-89	(869-044-00178-1)	13.00	Oct. 1, 2001
90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
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1200-End	(869-044-00203-5)	21.00	Oct. 1, 2001
50 Parts:			
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[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

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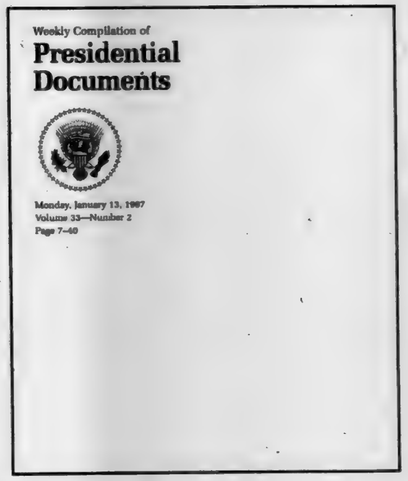

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Order 12866 and, therefore, has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will

The list of applicable statutes in the rules of practice for petition proceedings also needs to be revised to add three statutes that were enacted after 1995. These statutes were inadvertently omitted from the March 2002 final rule. The statutes are the Commodity

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1200

[FV–02–709]

Rules of Practice and Procedure Governing Proceedings Under Research, Promotion, and Education Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) is amending the Rules of Practice and Procedure Governing Proceedings under Research, Promotion, and Education Programs to make the headings for Part 1200 and its subparts more reflective of the programs covered by them; to delete inapplicable statutes from one subpart and to add three statutes to the other subpart; to redesignate subpart headings; to arrange the definitions in each subpart in alphabetical order; and to remove an incorrect citation. This rule also makes several minor and non-substantive changes for clarity and uniformity of style. These changes will make the rules of practice more accurate and easier to follow.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Martha Ransom, Chief, Research and Promotion Branch, F&V, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–9915, fax (202) 205–2800, e-mail *martha.ransom@usda.gov*.

SUPPLEMENTARY INFORMATION:

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This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Background

Prior to 1995, 7 CFR part 1200 contained generic rules of practice and procedure governing promulgation proceedings under various research, promotion, and information programs. Each individual program contained its own separate subpart containing rules of practice governing petition proceedings. On July 20, 1995 [60 FR 37326], the duplicative, program-specific rules of practice for petition proceedings were consolidated into a subpart of Part 1200, and the subpart was entitled Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research, Promotion, and Education Programs.

Subsequently, on March 11, 2002 [67 FR 10827], the rules of practice on promulgation and petition proceedings were amended by a final rule to make a number of changes to expedite proceedings and save the United States and those who participate in the proceedings time and money.

The rules of practice for promulgation proceedings apply to programs issued under the Cotton Research and Promotion Act, as amended [7 U.S.C. 1201–2118], the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718], the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627], and the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]. However, several other statutes were inadvertently listed in these rules of practice. Therefore, this rule deletes the inapplicable statutes.

The list of applicable statutes in the rules of practice for petition proceedings also needs to be revised to add three statutes that were enacted after 1995. These statutes were inadvertently omitted from the March 2002 final rule. The statutes are the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425], the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813], and the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]. Therefore, this rule adds these statutes to the list of statutes to which the rules of practice for petition proceedings apply.

In addition, part 1200 and the subpart covering the rules of practice governing petition proceedings have used the term "research, promotion, and education programs" whereas a more accurate description of the nature and purpose of the programs is research, promotion, and information. Therefore, this rule changes "education" to "information" in the titles of Part 1200 and the petition proceedings.

It has been determined that the subparts in part 1200 should be designated Subpart A and Subpart B and that the definitions in each subpart should be arranged in alphabetical order. These changes will make Part 1200 and the rules of practice easier to identify and follow. Therefore, this rule also makes these changes.

Further, this rule removes an incorrect citation in § 1200.51(h) and makes a number of minor and non-substantive changes for clarity and uniformity of style.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking [5 U.S.C. 553] do not apply to the promulgation of agency rules of practice. Accordingly, this action is made effective one day after publication in the **Federal Register**. Furthermore, no substantive rule change is involved.

List of Subjects in 7 CFR Part 1200

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Cotton, Dairy, Eggs, Fluid Milk, Honey, Marketing agreements, Mushrooms, Peanuts, Popcorn, Pork, Potatoes, Promotion, Reporting and recordkeeping requirements, Soybeans, Watermelons.

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

1. The heading for part 1200 is revised to read as follows:

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND INFORMATION

(h) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(i) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(j) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(k) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, United States Department of Agriculture, or any officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Administrator's stead.

Dated: June 25, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–16477 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Agency Reorganization; Nomenclature Changes

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its regulations to reflect changes in the nomenclature of certain divisions of the FDIC. The FDIC has undertaken a reorganization of its operations. As a result of this reorganization, the FDIC has changed the names of the "Division of Supervision" and the "Division of Compliance and Consumer Affairs" to the "Division of Supervision and Consumer Protection" (DSC) and the name of the "Division of Insurance" to the "Division of Insurance and Research" (DIR). These new names more accurately reflect the breadth of the Divisions' activities as a result of the FDIC reorganization. Consistent with the reorganization, the FDIC has also changed the name of the "Office of Corporate Audits and Internal Investigations" to the "Office of Internal Control Management" (OICM). These new names more accurately reflect the breadth of the Office's activities as a result of the FDIC reorganization. Consistent with the reorganization, the FDIC has also changed the name of the "Office of Corporate Audits and Internal Investigations" to the "Office of Internal Control Management" (OICM). These new names more accurately reflect the breadth of the Office's activities as a result of the FDIC reorganization.

EFFECTIVE DATE: July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Executive Secretary, 202–898–3815, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The FDIC has undertaken a reorganization of its operations. As a result of this reorganization, the FDIC has changed the names of the "Division of Supervision" and the "Division of Compliance and Consumer Affairs" to the "Division of Supervision and Consumer Protection" (DSC) and the name of the "Division of Insurance" to the "Division of Insurance and Research" (DIR). These new names more accurately reflect the breadth of the Divisions' activities as a result of the FDIC reorganization. Consistent with the reorganization, the FDIC has also changed the name of the "Office of Corporate Audits and Internal Investigations" to the "Office of Internal Control Management" (OICM). These new names more accurately reflect the breadth of the Office's activities as a result of the FDIC reorganization. Consistent with the reorganization, the FDIC has also changed the name of the "Office of Corporate Audits and Internal Investigations" to the "Office of Internal Control Management" (OICM). These new names more accurately reflect the breadth of the Office's activities as a result of the FDIC reorganization.

Procedural Requirements

2. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(B). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and

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PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

1. The heading for part 1200 is revised to read as follows:

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND INFORMATION PROGRAMS

2. Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order is redesignated as subpart A:

Subpart A—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order.

3. The authority citation for redesignated Subpart A is added to read as follows:

Authority: 7 U.S.C. 2103, 2614, 2704, and 4804.

4. Section 1200.2 is revised to read as follows:

§ 1200.2 Definitions.

(a) The term *Act* means the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; and the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(b) *Board* means the board or council established by the order to administer the program.

(c) *Department* means the U.S. Department of Agriculture.

(d) **Federal Register** means the publication provided for by the **Federal Register** Act, approved July 26, 1935 [44 U.S.C. 1501–1511], and acts supplementing and amending it.

(e) *Hearing* means that part of the proceeding which involves the submission of evidence.

(f) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(g) *Hearing* means that part of the proceeding that involves the submission of evidence.

(h) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(i) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(j) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(k) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

5. Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research, Promotion, and Education Programs is redesignated as Subpart B:

Subpart B—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Research, Promotion, and Information Programs

6. The authority citation for redesignated subpart B is added to read as follows:

Authority: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6008, 6106, 6306, 6410, 6807, 7106, 7418, 7486, and 7806.

7. Section 1200.51 is revised to read as follows:

§ 1200.51 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means the Commodity Research, Promotion, and Information Act of 1996 [7 U.S.C. 7401–7425]; the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; and the Watermelon Research and Promotion Act, as amended, [7 U.S.C. 4901–4916].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(c) *Decision* means the judge's initial decision and includes the judge's:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;

(2) Order; and

(3) Rulings on findings, conclusions and orders submitted by the parties.

(d) *Department* means the U.S. Department of Agriculture.

(e) Hearing means that part of the proceedings which involves the submission of evidence.

(f) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(g) *Judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(h) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term order shall include plans issued under the Acts listed in paragraph (a) of this section.

(i) *Party* includes the Department.

(j) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(k) *Petition* includes an amended petition.

(l) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

Dated: June 25, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–16477 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Agency Reorganization; Nomenclature Changes

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: On June 30, 2002, the FDIC, through an internal organizational order, merged the Division of Supervision and the Division of Compliance and Consumer Affairs and as a result of the merger, changed the name of the "Division of Supervision" and "Division of Compliance and Consumer Affairs" to the "Division of Supervision and Consumer Protection" (DSC). In addition, the internal reorganizational order merged the Division of Insurance and the Division of Research and Statistics and changed the name of the "Division of Insurance" to the "Division of Insurance and Research." Consistent with this action, this rule makes appropriate conforming changes in chapter III of title 12 of the Code of Federal Regulations. The rule also sets forth a Savings Provision in **SUPPLEMENTARY INFORMATION** that preserves, under the new names, all actions taken under the name of the "Division of Supervision," "Division of Compliance and Consumer Affairs" and the "Division of Insurance" and provides that any references to the Division of Supervision and Division of Compliance and Consumer Affairs or the Division of Insurance respectively in any document or other communication shall be deemed to be references to the Division of Supervision and Consumer Protection or the Division of Insurance and Research respectively.

DATES: This rule is effective June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Legal Division: Robert E. Feldman, Executive Secretary (202) 898–3811, Susan van den Toorn, Counsel, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

This rule implements the decision by the FDIC, through an internal reorganization order dated June 30, 2002 to merge certain divisions of the FDIC and, as a result, to change the names of the "Division of Supervision" and the "Division of Compliance and Consumer Affairs" to the "Division of Supervision and Consumer Protection (DSC) and the name of the "Division of Insurance" to the "Division of Insurance and Research (DIR)". These new names more accurately reflect the breadth of the Divisions' activities as a result of the FDIC reorganization. Consistent with these name changes, this rule makes a number of changes in chapter III of title 12 of the Code of Federal Regulations. Specifically, this rule changes all references to "Division of Supervision", and "DOS", "Division of Compliance and Consumer Affairs", and "DCA" wherever they appear in chapter III to the "Division of Supervision and Consumer Protection" and "DSC" respectively. In addition, the rule changes all references to "Division of Insurance" and "DOI" to the "Division of Insurance and Research" and "DIR" wherever they appear in chapter III. At a later date, the FDIC intends to make further revisions to 12 CFR chapter III to reflect other changes as a result of the reorganization and recent statutory changes.

Savings Provision

This rule shall constitute notice that all references to the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA) or the Division of Insurance (DOI) in any documents, statements, or other communications, in any form or media, and whether made before, on or after the effective date of this rule, shall be deemed to be references to the Division of Supervision and Consumer Protection (DSC) or the Division of Insurance and Research (DIR). Any actions undertaken in the name of or on behalf of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA) or Division of Insurance (DOI) whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Division of Supervision and Consumer Protection (DSC) or Division of Insurance and Research (DIR) respectively.

Rulemaking Requirements

1. This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

2. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(B). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable. Accordingly, this rule is issued in final form. Although there is no formal comment period, public comments on this rule are welcome on a continuing basis. Comments should be submitted to Thomas E. Nixon, FDIC Clearance Officer, Legal Division, 550 17th Street, NW, Washington, DC 20429, (202) 898–8766. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. [Fax number (202) 898–3838; Internet address *COMMENTS@FDIC.GOV*].

For the reasons set forth in the preamble, under the authority of 12 U.S.C. 1819(a)(tenth), 12 CFR chapter III is amended as set forth below:

CHAPTER III—[AMENDED]

In 12 CFR chapter III revise all references to "Division of Supervision" and "Division of Compliance and Consumer Affairs" to read the "Division of Supervision and Consumer Protection (DSC)", revise all references to "DOS" to read "DSC", all references to "DCA" to read "DSC", all references to "DOS and DCA" to read "DSC", all references to "DOS or DCA" to read "DSC", all references to "Division of Supervision's" to read "Division of Supervision and Consumer Protection's", all references to Division of Compliance and Consumer Affairs'" to read "Division of Supervision and Consumer Protection's". Also in 12 CFR chapter III revise all references to the "Division of Insurance" to read the "Division of Insurance and Research", all references to "DOI" to read "DIR" and all references to "Division of Insurance's" to read "Division of Insurance and Research's".

Dated: June 26, 2002.

Federal Deposit Insurance Corporaiton.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–16604 Filed 7–1–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 4057]

policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for the Government of Afghanistan and ISAF involving items covered by the U.S. Munitions List (22 CFR Part 121) will be reviewed on a case-by-case basis.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE33

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule and request for

establish a tribal court or otherwise request a CFR Court to exercise criminal jurisdiction. The SFIS property is held in trust by the Federal Government for the benefit of the nineteen Pueblos and a consensus is required to establish a tribal court that will represent all the Pueblos. The nineteen Pueblos could not reach a consensus within this initial time frame even though meetings were held with the Pueblos in an attempt to identify a sponsoring Pueblo to assume

a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this Court of Indian Offenses is estimated to cost less than $200,000 annually to

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Federal Deposit Insurance Corporaiton.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 02–16604 Filed 7–1–02; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 4057]

Bureau of Political-Military Affairs: Amendment to the List of Proscribed Destinations in the International Traffic in Arms Regulations

AGENCY: Department of State.
ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by modifying the policy regarding Afghanistan on the list of proscribed destinations for exports and sales. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act.

EFFECTIVE DATE: July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Afghanistan was added to the list of proscribed destinations at § 126.1(a) of the ITAR in the **Federal Register** publication of June 27, 1996 (61 FR 33313). In the **Federal Register** publication of May 8, 2001 (66 FR 23310) a denial policy notice was published regarding the territories of Afghanistan under Taliban control in implementation of UN Security Council Resolution 1333 (2000). UN Security Council Resolution 1390 (2002) replaced Resolution 1333 (2000), which had expired.

The Department of State is amending the ITAR to modify the denial policy regarding Afghanistan. It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Afghanistan except for the Government of Afghanistan (currently the Afghan Interim Authority or AIA) and the International Security Assistance Force (ISAF). Further, lists of persons subject to an arms embargo due to their affiliation with the Taliban, Usama bin Laden, Al-Qaida and their associates will continue to be published in a separate notice or notices. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for the Government of Afghanistan and ISAF involving items covered by the U.S. Munitions List (22 CFR Part 121) will be reviewed on a case-by-case basis.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Afghanistan, 2401 E. Street, NW., 12th Floor, H1200, Washington, DC 20522–0112. Such persons must be so registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126, is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.1 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.* Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this § 126.1.

* * * * *

(g) *Afghanistan.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Afghanistan except for the Government of Afghanistan (currently the Afghan Interim Authority) and the International Security Assistance Force, which will be reviewed on a case-by-case basis. In addition, lists of persons subject to a broad prohibition, including an arms embargo, due to their affiliation with the Taliban, Usama bin Laden, Al-Qaida or those associated with them will continue to be published from time to time.

Dated: June 3, 2002.
John R. Bolton,
Under Secretary, Arms Control and International Security, Department of State.
[FR Doc. 02–16504 Filed 7–1–02; 8:45 am]
BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE33

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Final rule and request for comments.

SUMMARY: This document adds the Santa Fe Indian School Property (Southwest Region, New Mexico) to the listing of Courts of Indian Offenses to establish a judicial forum for the administration of justice within the property.

DATES: This rule is effective on July 8, 2002. Submit comments by September 3, 2002.

ADDRESSES: Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS Room 4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 615 First Street, NW., Albuquerque, New Mexico 87125–6467, at (505) 346–7592; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4660 Washington, DC 20240, at (202) 208–4401.

SUPPLEMENTARY INFORMATION: The authority to issue this rule is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." *See Tillett* v. *Hodel*, 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991 *United States* v. *Clapox*, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). This rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

On May 3, 2001, the Bureau of Indian Affairs published a temporary rule (66 FR 22118) amending its regulations contained in 25 CFR part 11 to add the Santa Fe Indian School (SFIS) Property (Southwest Region New Mexico) to the list of Courts of Indian Offenses. This amendment established a Court of Indian Offenses for a period not to exceed one year. The purpose of establishing a Court of Indian Offenses at SFIS was to protect the lives, persons, and property of people residing at and attending or visiting the school and hospital, until the nineteen Pueblos establish a tribal court or otherwise request a CFR Court to exercise criminal jurisdiction. The SFIS property is held in trust by the Federal Government for the benefit of the nineteen Pueblos and a consensus is required to establish a tribal court that will represent all the Pueblos. The nineteen Pueblos could not reach a consensus within this initial time frame even though meetings were held with the Pueblos in an attempt to identify a sponsoring Pueblo to assume the lead in establishing a tribal court at SFIS and develop appropriate criminal codes. It does not appear likely that in the immediate future the nineteen Pueblos will reach this consensus; therefore, it is necessary for the amendment to part 11 that places the SFIS on the list of CFR Courts to become a permanent listing. The jurisdiction of this CFR Court will remain the same as published in the **Federal Register** on May 3, 2001 at 66 FR 22118. The Pueblos, however, will work in conjunction with the Southwest Regional Office to establish a tribal court to exercise jurisdiction at SFIS at which time the Pueblos may request the Secretary to remove the SFIS as a CFR Court.

Determination To Publish a Direct Final Rule Effective Immediately

In accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 553(B)), we have determined that publishing a proposed rule would be impractical because of the potential harm that could result from the lack of a court with jurisdiction over the Santa Fe Indian School and Hospital. We are therefore publishing this change as a final rule with request for comments.

BIA has determined it appropriate to make the rule effective immediately by waiving the requirement of publication 30 days in advance of the effective date found at 5 U.S.C. 553(d). This is because of the critical need to expedite establishment of this court to fill the void in law enforcement at the Santa Fe Indian School and Indian Hospital, and the imminent increase in visitors to the grounds in question. It is in the public interest and in the interest of the Pueblos not to delay implementation of this amendment. Accordingly, this final rule is effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this Court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and the Indian Health Service.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of this Court of Indian Offenses will not affect any program rights of the nineteen Pueblos. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. The court's jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D.Ore. 1888).

Regulatory Flexibility Act

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required.

Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR part 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no impact on any small entities in New Mexico.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and have determined that it does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, as amended.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0141. The approval will expire on January 31, 2003. The information collection requirements will be used to maintain records of Court proceedings. The information will be collected from individuals who appear before the Court. The collection of information is mandatory for those who appear before the Court. The estimated burden is 1 hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Information Collection Clearance Officer, Bureau of Indian Affairs, 1849 C Street, NW., MS 4660–MIB, Washington, DC 20240.

Federalism Assessment

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. The rule will not substantially and directly affect the relationship between the Federal and State governments. The rule will not impose costs on States or their political subdivisions. The rule will not preempt State law.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The rule will not preempt State law. The rule will not affect the jurisdiction of any State court.

Consultation With Indian Tribes (Executive Order 13175)

In accordance with Executive Order 13175, we have determined that there are no potential effects on Indian tribes. The rule will not affect any program that is administered by Indian tribes pursuant to a compact or grant agreement with the Federal Government. The rule will not affect sacred sites, or the ability to access them, or any other tribal rights.

Energy Effects (Executive Order 13211)

In accordance with Executive Order 13211, this rule is not a significant energy action. The rule will not have an adverse effect on energy supplies, production, or consumption. The rule will not have a significant adverse effect on the economy or increase dependence on foreign supplies.

Authority: R.S. 463; 25 U.S.C. 2 , 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.100 is amended by adding new paragraph (a)(14) to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) * * *

(14) Sante Fe Indian School Property, including the Santa Fe Indian Health Hospital (land in trust for the 19

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, published as required by Section 1115 of TEA–21.

Does This Rule Include the Reserved Funds for Administrative Capacity Building?

Yes. The remaining 25 percent of fiscal year IRR program funds distributed under this rule includes the $19.53 million reserved for administrative capacity building and other eligible transportation activities. These funds will be distributed until

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area at Santa Fe, New Mexico. Accordingly, there will be no impact on any small entities in New Mexico.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The establishment of this Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this Court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and the Indian Health Service.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a Court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico and will not have any cost or price impact on any other entities in the geographical region.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is a Court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The establishment of this Court of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. Its jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no jurisdictional basis for to adversely affect any property interest because the court's jurisdiction is solely personal jurisdiction over Indians.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D.Ore. 1888).

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D.Ore. 1888). Part 11 also requires the establishment of an appeals court; hence the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this Court exercising its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Santa Fe Indian School, New Mexico.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of this Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of the Santa Fe Indian School and does not have any impact of the environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The amendment to 25 CFR 11.100(a) does not apply to any of the 562 federally recognized tribes, except the nineteen Pueblos in New Mexico that have requested the establishment of the provisional Court of Indian Offenses until such time as they establish a tribal court to provide for a law and order code and judicial system to deal with law and order on the trust land at Santa Fe Indian School. The Department of the Interior, in establishing this provisional court, is fulfilling its trust responsibility and complying with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

List of Subjects in 25 CFR Part 11

Courts, Indians-Law, Law enforcement, Penalties.

For the reasons stated in the preamble, we are amending part 11, chapter I of title 25 of the Code of Federal Regulations, as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2 , 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.100 is amended by adding new paragraph (a)(14) to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) * * *

(14) Sante Fe Indian School Property, including the Santa Fe Indian Health Hospital (land in trust for the 19 Pueblos of New Mexico).

* * * * *

Dated: June 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–16635 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE28

Distribution of Fiscal Year 2002 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a final rule requiring that we distribute the remaining 25 percent of fiscal year 2002 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting states. Up to $35,000 per tribe is available under this distribution until August 15, 2002, for administrative capacity building and other eligible transportation activities upon receipt, review, and approval of self-determination contracts and self-governance agreements, where applicable, and receipt of tribal requests by direct services tribes for BIA regions to perform these functions for them.

EFFECTIVE DATE: July 8, 2002 through September 30, 2002.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202–208–4359 (phone) or 202–208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Final Rule?

We are publishing this final rule only for the distribution of the remaining 25 percent of fiscal year 2002 IRR funds. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA–21. On January 10, 2002, we published a temporary rule distributing 75 percent of fiscal year 2002 IRR funds (67 FR 1290).

Where Can I Find Information on the Distribution of 75 Percent of Fiscal Year 2002 IRR Funds?

You can find this information in the **Federal Register** notice dated January 10, 2002 (67 FR 1290).

What Comments Did You Receive on the Temporary Rule for Distribution of 25 Percent of Fiscal Year 2002 IRR Program Funds?

In the 30-day comment period after publication of the temporary rule distributing 75 percent of fiscal year 2002 IRR program funds, we received comments from 2 commenters.

Comment: Two commenters disagreed with reserving $19.53 million for administrative capacity building. The commenters stated that providing such funds decreased the amount of IRR Program funds they would receive and that 2 percent planning funds already available were adequate for administrative capacity building.

Response: The tribal caucus recommendation was to reserve funds for administrative capacity building for fiscal year 2002 in the same manner as fiscal year 2001. The Assistant Secretary—Indian Affairs considered this tribal caucus recommendation to allow all tribes to participate in the IRR program, as an acceptable funding method for fiscal year 2001 and again proposed it only for fiscal year 2002 in the temporary rule. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA–21.

Does This Rule Include the Reserved Funds for Administrative Capacity Building?

Yes. The remaining 25 percent of fiscal year IRR program funds distributed under this rule includes the $19.53 million reserved for administrative capacity building and other eligible transportation activities. These funds will be distributed until August 15, 2002, based on approved self-determination contracts or applicable self-governance agreements or requests by direct services tribes to the appropriate BIA region for BIA to perform administrative capacity building for them. After August 15, 2002, any undistributed funds reserved for administrative capacity building will be distributed to the appropriate BIA regions using the relative need formula.

How Will the Secretary Distribute the Remaining 25 Percent of Fiscal Year 2002 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute the remaining 25 percent (approximately $61.9 million) of fiscal year 2002 IRR program funds based on the current relative need formula used in fiscal years 2000, 2001 and in the first distribution in fiscal year 2002. From this 25 percent the Secretary is reserving $19.53 million to distribute for administrative capacity building by the process described in the January 10, 2002, temporary rule. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not an economically significant regulatory action because it will not have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2002 IRR program funds is approximately $226 million and we are distributing approximately $61.9 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2002 IRR program funds does not require tribal governments and tribal

organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal

approximately $61.9 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to

effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity

committee's tribal caucus presented a consensus recommendation to the Assistant Secretary for distribution of fiscal year 2002 IRR program funds. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR funds. We

modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process. Of this remaining 25 percent of fiscal year 2002 IRR program funds, $19.53 million is available for immediate distribution to provide for up to $35,000 for each tribe for administrative capacity building and other eligible transportation activities based on approved contracts, agreements, or requests for such funds

primary term, the lease can continue in force only by production, suspension, drilling, or well reworking operations as approved by the Secretary of the Interior. MMS regulations at 30 CFR 250.168–177 authorize suspensions before discovery of oil or gas in paying quantities only in limited circumstances. Generally, when a lease reaches the end of the primary term, the lessee must conduct drilling operations until it has made a discovery of oil or

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organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the second partial distribution of fiscal years 2000 and 2001 IRR program funds and the first partial distribution of fiscal year 2002 IRR funds.

Approximately 1400 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not state and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing approximately $61.9 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this rule is to immediately provide the remaining 25 percent of fiscal year 2002 IRR program funds to tribal governments for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA–21 mandated negotiated rulemaking process. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to the remaining 25 percent of fiscal year 2002 IRR program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to the President's Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have consulted with tribal representatives throughout the negotiated rulemaking process and in developing this rule. The TEA–21 Negotiated rulemaking committee's tribal caucus presented a consensus recommendation to the Assistant Secretary for distribution of fiscal year 2002 IRR program funds. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, and the first part of fiscal year 2002 IRR program funds (see **Federal Register** notices at 65 FR 37697 and 66 FR 17073)) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. As in fiscal year 2001, this rule will provide for up to $35,000 per tribe for administrative capacity building and other eligible transportation activities by reserving $19.53 million from this distribution. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process and this distribution uses the TEA–21 Negotiated Rulemaking Committee's tribal caucus recommendation.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute the remaining 25 percent of fiscal year 2002 Indian Reservation Roads program funds?

On July 8, 2002 we will distribute the remaining 25 percent of fiscal year 2002 IRR Program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process. Of this remaining 25 percent of fiscal year 2002 IRR program funds, $19.53 million is available for immediate distribution to provide for up to $35,000 for each tribe for administrative capacity building and other eligible transportation activities based on approved contracts, agreements, or requests for such funds by the deadline of August 15, 2002.

Dated: May 9, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

[FR Doc. 02–16636 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC92

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Suspension of Operations for Exploration Under Salt Sheets

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is modifying regulations that govern suspensions of operations for oil and gas leases on the Outer Continental Shelf (OCS). The amendment covers instances where oil and gas lessees begin timely interpretation of geophysical data early in the lease term, but the analysis proves inconclusive because of problems caused by the existence of salt sheets underlying the seabed and overlying possible hydrocarbon deposits. In such cases, the rule allows lessees to apply for a suspension of operations to complete the necessary geophysical interpretation before drilling a well. To qualify for a suspension of operations, the lessee must show it has made and will continue to make substantial efforts and financial commitment to process and reprocess its geophysical data.

DATES: This rule is effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, (703) 787–1598.

SUPPLEMENTARY INFORMATION: When a lessee obtains an oil and gas lease on the OCS, MMS regulations allow the lessee flexibility to schedule activities during the primary term. At the end of the primary term, the lease can continue in force only by production, suspension, drilling, or well reworking operations as approved by the Secretary of the Interior. MMS regulations at 30 CFR 250.168–177 authorize suspensions before discovery of oil or gas in paying quantities only in limited circumstances. Generally, when a lease reaches the end of the primary term, the lessee must conduct drilling operations until it has made a discovery of oil or gas and a commitment to proceed to development and production.

Although lessees have made great progress in imaging potential objectives in areas under salt sheets, processing, analyzing, and interpreting geophysical, geological, and other relevant data and information is complex and time-consuming. As a result, lessees have been faced with the end-of-lease-term decisions to either allow the lease to expire or drill a well without sufficient geophysical information.

On December 21, 2000, MMS issued a Notice to Lessees (NTL) 2000–G22, Subsalt Lease Term Extension. That NTL provides for an extension of lease terms for subsalt exploration in cases where the lessee has drilled a well on the lease during the primary term but needs additional time to process geophysical data before drilling another well. The NTL did not provide additional time to process geophysical data in cases where a well had not been drilled. This rule authorizes MMS to grant a suspension for a lease when the operator has conducted timely analysis and interpretation of the geophysical data that may ultimately lead to a drilling objective but, due to the complexity of the salt sheet, needs additional time to complete the geophysical analysis before drilling.

MMS published a proposed rule on January 9, 2002 (67 FR 1171). The public comment period ended on February 8, 2002. Seven interested parties responded with comments and recommendations during the comment period. Commenters agreed with the need to encourage drilling in areas under salt sheets and supported the change, although they made specific recommendations about the rule and its implementation.

Comments: One commenter noted that the effect of the regulation will delay the commencement of drilling on the lease. He asked that MMS closely scrutinize requests made under the rule to ensure that lessees are diligently working toward drilling activities.

Response: We agree with the commenter that this rule should be

applied only to the limited set of circumstances detailed in the rule, with the ultimate goal being development of the lease. It is for this reason that the provision includes specific details with regard to eligibility and diligence.

Comments: One commenter encouraged MMS to establish a 10-year lease term for all leases in the Gulf of Mexico (GOM). The rationale given was that capital commitment and technical

obtained multiple times when warranted.

Comment: One commenter recommended that the rule apply to a variety of salt structures other than salt sheets.

Response: We did not make this change. Companies have historically operated near salt structures, and it is not our intention to provide more time for all companies who find potential

full 3-D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year. The commenters stated that either (1) 3-D "time" migration, rather than depth migration, be acceptable as the seismic activity reasonably expected to have been concluded with the first 3 years of the lease term; or (2) the lessee commit financially (by contract) to perform a depth migration before the end of the

objective may not be entirely under the salt sheet.

Response: We revised the final rule to reflect these recommendations, which are found in § 250.175(b)(2).

Comments: In § 250.175(b)(4), commenters recommended changing "completing" to "completing or nearing the completion of" to not penalize a company who is diligent but has not completed a specific interpretation, and adding "covering all or a portion of the

impact and produce approximately $30 million in private sector savings.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere

activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement

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applied only to the limited set of circumstances detailed in the rule, with the ultimate goal being development of the lease. It is for this reason that the provision includes specific details with regard to eligibility and diligence.

Comments: One commenter encouraged MMS to establish a 10-year lease term for all leases in the Gulf of Mexico (GOM). The rationale given was that capital commitment and technical complexities warrant a 10-year lease. Another commenter requested consideration of broader changes in leasehold management, lease term extension, and unit formation. The rationale was that the changes are needed to tap the vast potential in the GOM.

Response: The MMS appreciates the concerns expressed by all commenters. However, these comments are outside the scope of this rulemaking and were not adopted.

Comments: Several commenters were uncertain of the definition of the western GOM and others recommended that the rule apply to the entire OCS, not just to the western GOM. Since granting of a suspension of operations is discretionary, the commenter thought that limiting the rule to one geographical area was unnecessary.

Response: To avoid confusion and to provide the discretion needed to avoid premature drilling of wells if these conditions were found to exist in other areas, we have removed the clause limiting the rule to the western GOM.

Comments: One commenter recommended that the suspension not be limited to 3 years. Another commenter recommended that the provision clarify that a lessee can receive more than one suspension on a lease.

Response: Lessees who apply for a suspension will be required to specify the activities leading to the drilling of a subsalt well and, if the suspension is granted, it will be for a length of time warranted to complete specified activities. If in the course of completing the specified work, the lessee encounters further complications and needs additional time, the lessee may apply for additional suspensions under the provision. MMS expects that a suspension of even 3 years will be very unusual. However, since we will only be giving the time necessary to complete the proposed activity, we have eliminated the 3-year maximum and will determine the appropriate length of suspensions on a case-by-case basis. When not otherwise specified, suspensions under MMS regulations are for a maximum of 5 years as specified in 30 CFR 250.170(a) and can be obtained multiple times when warranted.

Comment: One commenter recommended that the rule apply to a variety of salt structures other than salt sheets.

Response: We did not make this change. Companies have historically operated near salt structures, and it is not our intention to provide more time for all companies who find potential discoveries near a salt structure. This provision is intended to specifically address the needs of companies who are exploring in deep areas under or near a salt sheet.

Comments: Several commenters made recommendations concerning the specific wording of the proposed rule. In § 250.175(b)(2), one commenter recommended that "collected" be changed to "acquired" to recognize that some lessees will be purchasing or licensing rather than collecting data and that "analyzed" be changed to "interpreted" to be more representative of the work. Another commenter recommended that the rule be modified to clarify that the provision applies to leases already beyond the third year. The commenter read the rule to imply that leases beyond their third year when the rule becomes effective will not be eligible for a suspension under the new provision.

Response: Any lessee will be eligible to apply for a suspension under the new provision. We revised the wording from "collected" to " acquired" and replaced "analyzed" with "interpreted." All lessees who hold leases that meet the requirements of the provision and are active at the time this rule becomes effective, or are issued after that date, will be eligible to apply for the suspension.

Comment: One commenter recommended that the 3-year period in § 250.175(b)(2), during which lessees must complete specified geophysical work, be lengthened by the length of any suspensions of operations received during the 3 years.

Response: In rare cases where a suspension is directed within the first 3 years of a primary term, the suspension would not be expected to require the lessee to delay geophysical work. We therefore have not adopted the commenter's suggestion.

Comments: Several commenters made recommendations concerning the discussion of § 250.175(b)(3) in the preamble to the proposed rule which stated that as a measure of whether the lessee has conducted timely analysis of geophysical information, MMS will require the lessee to have collected and analyzed geophysical information (i.e., full 3-D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year. The commenters stated that either (1) 3-D "time" migration, rather than depth migration, be acceptable as the seismic activity reasonably expected to have been concluded with the first 3 years of the lease term; or (2) the lessee commit financially (by contract) to perform a depth migration before the end of the third year. The preamble also stated that the lessee must have completed additional data reprocessing before MMS will grant a suspension. The commenters wanted more time to complete the pre-stack depth migration because conducting the interpretations prematurely would limit the information that would be gained from the depth migration.

Response: We did not accept this suggested change. Prior to encountering complications due to the salt sheet, the lessee should be on a schedule to drill in the primary term. The complications being addressed by this rule would not be apparent until after the lessee has completed the depth migration. If the lessee is not on a schedule to complete the depth migration by the end of the third year, then our experience has shown that the schedule would not provide for drilling during a 5-year primary term. In considering whether the interpretation of geophysical information is timely, MMS will require the lessee to have acquired and interpreted geophysical information (i.e., full 3-D depth migration beneath the salt sheet and over the entire lease area) before the end of the third lease year. This is consistent with the criteria included in the preamble to the proposed rule, and this criterion has been included in the final rule at § 250.175(b)(3).

Comment: A commenter recommended that because of the uncertainty of contractor availability, the criteria for timely analysis be that the lessee had issued a contract for depth migration rather than to have completed the depth migration by the end of the third year.

Response: MMS did not make this change. Contractors conduct a significant portion of OCS operations. Whether the work is drilling a well or conducting geophysical exploration, the lessee is ultimately responsible for the timeliness of the contractor's activities.

Comment: In § 250.175(b)(3), commenters recommended that the word "confirms" be changed to "indicates" to better reflect the geophysical phase of exploration and the term "beneath the salt sheet" be modified to recognize that a drillable objective may not be entirely under the salt sheet.

Response: We revised the final rule to reflect these recommendations, which are found in § 250.175(b)(2).

Comments: In § 250.175(b)(4), commenters recommended changing "completing" to "completing or nearing the completion of" to not penalize a company who is diligent but has not completed a specific interpretation, and adding "covering all or a portion of the applicable geophysical area" to allow the lessee to concentrate on special areas of interest.

Response: We revised the final rule to address these recommendations and to place the emphasis on the information that justifies the application.

Comment: One commenter recommended that § 250.175(b)(5) be changed to allow time to determine the best location to drill and to plan the well.

Response: MMS recognizes that determining the best location to drill and planning the well are necessary steps to be taken prior to drilling. If a lessee meets the conditions necessary to receive a suspension of operations, the lessee, in accordance with § 250.171(b), will submit a request that includes a schedule of activities leading up to commencement or restoration of the suspended activity. In this case, the lessee would include a schedule leading up to the commencement of drilling. If that schedule includes a reasonable length of time for determining a location to drill and planning the well, then the length of the suspension will, if granted, include time for those activities.

In § 250.175(b)(5), the text was revised to reflect changes made in other paragraphs.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under Executive Order 12866.

Over the next 5 years, MMS anticipates that companies would make three to five requests each year under the rule. We estimate that in three of the cases each year, this new rule will prevent unnecessary drilling of wells that may not otherwise have been drilled had the geophysical interpretation been sufficient. Depending on the water depth and the well depth, we estimate that drilling each well, on average, would have cost $10 million. Selective suspensions will help reduce potential environmental impact and produce approximately $30 million in private sector savings.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a suspension for a lease does not interfere with the ability of other agencies to exercise their authority.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department of the Interior (DOI) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule may directly or indirectly affect lessees and operators of leases on the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 70 percent of these companies are considered small. We expect few, if any, of the small companies to apply for a suspension under this rule. This is because the wells that will be drilled into the subsalt areas are expected to be drilled to depths sometimes in excess of 30,000 feet. These wells will be substantially more expensive than the average well on the OCS. As stated earlier, the costs of the wells are expected to average $10 million. Some small companies may benefit by being included in partnerships with larger companies that are exploring in the subsalt areas.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

We do not expect this rule to have a significant effect because, as discussed above, this rule will have a positive effect on the private sector of approximately $30 million per year in avoided costs.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions to 30 CFR 250, subpart A, refer to, but do not change the information collection requirements in the current regulations. OMB has approved the referenced information collection requirements under OMB control number 1010–0114, current expiration date of September 30, 2002. The rule includes no new reporting or recordkeeping requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule does not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 20, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

conducted in paragraphs (b)(2), (b)(4), and (b)(5) of this section.

[FR Doc. 02–16633 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the

of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

Under the Regulatory Flexibility Act

compliance, please contact Marine Safety Office Detroit (see **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

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Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule may have a small positive effect on energy supplies.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The DOI has established that "issuance and/or modification of regulations" is considered a categorically excluded action, as it results only in administrative effects causing no significant impacts on the environment. Therefore, this action will not require preparation of an environmental assessment or impact statement. MMS has determined that this action does not represent an exception to the categorical exclusion. A detailed statement under NEPA is not required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 20, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.175, redesignate the existing text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 250.175 When may the Regional Supervisor grant an SOO?

* * * * *

(b) The Regional Supervisor may grant an SOO when all of the following conditions are met:

(1) The lease was issued with a primary lease term of 5 years, or with a primary term of 8 years with a requirement to drill within 5 years;

(2) Before the end of the third year of the primary term, you or your predecessor in interest must have acquired and interpreted geophysical information that indicates:

(i) The presence of a salt sheet;

(ii) That all or a portion of a potential hydrocarbon-bearing formation may lie beneath or adjacent to the salt sheet; and

(iii) The salt sheet interferes with identification of the potential hydrocarbon-bearing formation.

(3) The geologic information required under paragraph (b)(2) of this section must include full 3-D depth migration beneath the salt sheet and over the entire lease area.

(4) Before requesting the suspension, you have conducted or are conducting additional data processing or interpretation of the geophysical information with the objective of identifying a potential hydrocarbon-bearing formation.

(5) You demonstrate that additional time is necessary to:

(i) complete current processing or interpretation of existing geophysical data or information;

(ii) acquire, process, or interpret new geophysical data or information; or

(iii) drill into the potential hydrocarbon-bearing formation identified as a result of the activities conducted in paragraphs (b)(2), (b)(4), and (b)(5) of this section.

[FR Doc. 02–16633 Filed 7–1–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–036]

RIN 2115–AA97

Safety Zone; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Bay City Fireworks Festival in Bay City, MI. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Saginaw River.

DATES: This temporary final rule is effective from 10 p.m. on July 4, 2002 until 11 p.m. on July 6, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–036] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U. S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

The safety zone will encompass all waters of the Saginaw River surrounding two fireworks launch platforms bounded by the arc of a circle with a 300-yard radius with each center in approximate positions 43°35′55″ N, 083°53′40″ W (off Veterans Park) and 43°35′55″ N, 083°53′30″ W (off Wenonah Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 10 p.m. until 11 p.m. on the days of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Saginaw River by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (see **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to

safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T09–035 to read as follows:

§ 165.T09–035 Safety Zone; Saginaw River, Bay City, MI.

(a) *Location.* The safety zone will encompass all waters of the Saginaw River surrounding two fireworks launch platforms bounded by the arc of a circle with a 300-yard radius with each center in approximate position 43°35′55″ N, 083°53′40″ W (off Veteran's Park) and

docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Naval Submarine Base Bangor, WA. The Coast Guard determined it was necessary to prevent access to this area in order to safeguard this U.S. Naval base from sabotage, other subversive acts, or accidents, and otherwise protect this U.S. Naval asset vital to national security. Events such as the bombing of the *USS Cole* highlight the fact that there were hostile entities operating with the intent to harm U.S. national security by attacking or sabotaging Naval assets including those in Puget

under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you believe

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary

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safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 10 p.m. on July 4, 2002 until 11 p.m. on July 6, 2002, add a new temporary § 165.T09–035 to read as follows:

§ 165.T09–035 Safety Zone; Saginaw River, Bay City, MI.

(a) *Location.* The safety zone will encompass all waters of the Saginaw River surrounding two fireworks launch platforms bounded by the arc of a circle with a 300-yard radius with each center in approximate position 43°35′55″ N, 083°53′40″ W (off Veteran's Park) and 43°35′55″ N, 083°53′30″ W (off Wenonah Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Enforcement periods.* This section will be enforced from 10 p.m. until 11 p.m. daily on July 4, 5, and 6, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other applicable requirements.

Dated: June 24, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–16628 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–010]

RIN 2115–AA97

Security Zone; Naval Submarine Base Bangor, Puget Sound

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone on the waters surrounding Naval Submarine Base Bangor. The Commander, Thirteenth Coast Guard District is taking this action to safeguard U.S. Naval Submarine Base Bangor and U.S. Naval submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security.

DATES: This rule is effective from 12 p.m. (midnight) PDT on June 21, 2002 to 12 p.m. (midnight) PDT on July 5, 2002.

ADDRESSES: Coast Guard Marine Safety Office Puget Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT A. L. Praskovich, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule, effective June 21, 2002, to provide for the security of Naval Submarine Base Bangor.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exist for making this rule effective less than 30 days after publication in the **Federal Register.**

On May 30, 2002, we issued a final rule canceling the fixed security zone around U.S. Naval Submarine Base Bangor and moving security zones around U.S. Naval submarines while underway on Puget Sound, and the Strait of Juan De Fuca, WA and adjoining waters. (67 FR 37687). This fixed security zone was canceled because regulations issued by another Federal agency would become effective at that time to provide adequate security to safeguard U.S. Naval Submarine Base Bangor and U.S. Naval submarines from sabotage, other subversive acts, or accidents, and otherwise protect Naval assets vital to national security. It has come to light that the new regulations that were to go into effect on June 20, 2002, to provide for the security of Naval Submarine Base Bangor will not be in effect until some time after 20 June 2002. Because of this, we are establishing a temporary final rule that will provide for the continued security of Naval Submarine Base Bangor. Publishing an NPRM would be contrary to public interest since immediate action is necessary to ensure the security of Naval assets.

Background and Purpose

The Coast Guard will establish a temporary fixed security zone around

Naval Submarine Base Bangor, WA. The Coast Guard determined it was necessary to prevent access to this area in order to safeguard this U.S. Naval base from sabotage, other subversive acts, or accidents, and otherwise protect this U.S. Naval asset vital to national security. Events such as the bombing of the *USS Cole* highlight the fact that there were hostile entities operating with the intent to harm U.S. national security by attacking or sabotaging Naval assets including those in Puget Sound. The events of September 11, 2001, demonstrated that there were real, credible, and immediate threats to U.S. national security.

The Coast Guard, through this temporary final rule, will assist the U.S. Navy in protecting vital national security assets by establishing a security zone to exclude persons and vessels from the immediate vicinity of U.S. Naval Submarine Base Bangor. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. This security zone is patrolled and enforced by Coast Guard and Navy personnel.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by this temporary final rule is of such a small area as to be of no significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This temporary final rule will not affect any small entities. Because the impacts of this temporary final rule are expected to be minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you believe it qualifies and how and to what degree this temporary final rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the temporary final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary final rule would not impose an unfunded mandate.

Taking of Private Property

This temporary final rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary final rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this temporary final rule is categorically excluded from further environmental documentation.

A Categorical Exclusion is provided for security zones. A Categorical Exclusion Determination and an Environmental Analysis Checklist were prepared for the identical, previous security zone issued as regulation [CGD13–01–015]. We have determined that nothing has changed since the preparation of this Categorical Exclusion Determination and Environmental Analysis Checklist. Therefore, both remain in effect and valid for this rule. A Categorical Exclusion Determination and an Environmental Analysis Checklist are available in the docket at the location specified under the **ADDRESSES** portion of this rulemaking.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Effective June 21, 2002 to July 5, 2002, temporary § 165.T13–007 is added to read as follows:

authorization to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. The U.S. Navy and other federal, state, or local agencies may assist the Captain of the Port in the patrol and enforcement of this zone.

Dated: June 20, 2002.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, Commander,

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the date the Applications for Approval of Marine Event were received, there was insufficient time to draft and publish an NPRM. The Staten Island Yankees safety zone will have minimal impact on the

western 45 yards of the 625-yard wide Arthur Kill during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterways and protect the maritime

on the waters of Lower New York Bay. This rule establishes a safety zone in all waters of Lower New York Bay within a 300-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W (NAD 1983), about 800 yards southeast of Midland Beach. The safety zone will be enforced from 8:30 p.m. until 10 p.m. on Saturday, June 29, 2002. If the event is cancelled due to inclement weather, then this safety zone will be enforced from 8:30 p.m. until 10

event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of these safety zones was determined using National Fire Protection Association and New York City Fire Department standards for 6

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PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Effective June 21, 2002 to July 5, 2002, temporary § 165.T13–007 is added to read as follows:

§ 165.T13–007 Security Zone, Naval Submarine Base Bangor, Puget Sound, Washington.

(a) *Naval Submarine Base, Bangor, WA:* The following area is a security zone: All waters of Puget Sound, Washington State, enclosed by the following: A line beginning at 47°46′18″ N, 122°42′18″ W; thence to 47°46′32″ N, 122°42′20″ W; thence to 47°46′38″ N, 122°42′52″ W; thence to 47°44′15″ N, 122°44′50″ W; thence to 47°43′53″ N, 122°44′58″ W; thence to 47°43′17″ N, 122°44′49″ W [Datum: NAD 1983].

(b) *Exemptions.* Vessels that desire access to this zone and are not otherwise exempted as listed below, shall secure permission from the Captain of the Port or his on-scene designated representative(s). Section 165.33 paragraphs (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(i) Public vessels of the United States, including United States Naval vessels.

(ii) Vessels that are performing work pursuant to a contract with the United States Navy that requires their presence in the security zone(s).

(iii) Any other vessels or class of vessels mutually agreed upon in advance by the Captain of the Port and the cognizant Naval Commander. Vessels operating in the security zone(s) under this exemption must have previously obtained a copy of a certificate of exemption permitting their operation in the security zone from the security offices established by the cognizant Naval Base Commander. This written exemption shall state the date(s) on which it is effective and may contain further restrictions on vessel operations within the security zone as have been previously agreed upon by the Captain of the Port and the cognizant Naval Commander. The certificate of exemption shall be maintained on board the exempted vessel so long as such vessel is operating in the security zone.

(c) *Regulations.* In accordance with the general regulations in §§ 165.30 and 165.33 of this part, no person or vessel may enter the above security zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. The U.S. Navy and other federal, state, or local agencies may assist the Captain of the Port in the patrol and enforcement of this zone.

Dated: June 20, 2002.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 02–16629 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–062]

RIN 2115–AA97

Safety Zones; Port of New York and New Jersey.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing five temporary safety zones for the Staten Island Yankees, Midland Beach, Museum of Modern Art, and Conference House Park fireworks displays located on the New Jersey Pierhead Channel, Lower New York Bay, the East River, and the Arthur Kill. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in the affected waterways.

DATES: This rule is effective from 8 p.m. on Saturday, June 22, to 10 p.m. on Sunday, July 7, 2002.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–062 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander M. Day, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the date the Applications for Approval of Marine Event were received, there was insufficient time to draft and publish an NPRM. The Staten Island Yankees safety zone will have minimal impact on the waterway. Vessels may still transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull during the events. The zone will only be enforced for 1 and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

The Midland Beach safety zone will have minimal impact on Lower New York Bay. Vessels may still transit around the zone during the event. The zone will only be enforced for 1 and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

The Museum of Modern Art safety zone will have minimal impact on the East River. Vessels may still transit through the eastern 350 feet, and the 350 feet between the western boundary of these safety zones and the eastern boundary of the United Nations security zone, of the 780-yard wide East River during the event. The zone will only be enforced for 1and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

An annual safety zone has been published for the Conference House Park fireworks on the Arthur Kill in 33 CFR 165.161 effective on July 3, 4, and 5. The date for this year's event has been moved to July 6, 2002. The zone will only be enforced for 1 and a half hours; vessels can be given permission to transit the zone for all but about 20 minutes during this time. Further, it is an annual, local event, and recreational vessels may still transit through the western 45 yards of the 625-yard wide Arthur Kill during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterways and protect the maritime public from the hazards associated with fireworks launched from a barge in the area.

Background and Purpose

Staten Island Yankees Fireworks Displays, New Jersey Pierhead Channel, NJ

The Coast Guard has received an application to hold a fireworks program on the waters of the New Jersey Pierhead Channel and Kill Van Kull. This rule establishes a safety zone in all waters of the New Jersey Pierhead Channel and Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°39′13.5″ N 074°04′39.1″ W (NAD 1983), about 125 yards southeast of the New Jersey Pierhead South Entrance Lighted Gong Buoy 1 (LLNR 37010). The safety zone will be enforced from 8 p.m. until 9:30 p.m. on Saturday, June 22, and Thursday, July 4, 2002. The safety zone prevents vessels from transiting a portion of the New Jersey Pierhead Channel and Kill Van Kull and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 260 yards of the 600-yard wide New Jersey Pierhead Channel and through the southern 360 yards of the 400-yard wide Kill Van Kull during these events. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for six inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Midland Beach Fireworks Display, Lower New York Bay

The Coast Guard has received an application to hold a fireworks program on the waters of Lower New York Bay. This rule establishes a safety zone in all waters of Lower New York Bay within a 300-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W (NAD 1983), about 800 yards southeast of Midland Beach. The safety zone will be enforced from 8:30 p.m. until 10 p.m. on Saturday, June 29, 2002. If the event is cancelled due to inclement weather, then this safety zone will be enforced from 8:30 p.m. until 10 p.m. on Sunday, June 30, 2002. The safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit around the zone during this event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 10 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Museum of Modern Art Fireworks Display, East River, NY

The Coast Guard has received an application to hold a fireworks program on the waters of the East River. This rule establishes two safety zones in all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°44′51.4″ N 073°57′42.9″ W (NAD 1983), about 215 yards southeast of Roosevelt Island and all waters bound by the following points: 40°44′53.7″ N 073°57′49.3″ W; thence to 40°45′06.8″ N 073°57′39.1″ W; thence to 40°45′00.7″ N 073°57′27.0″ W; thence to 40°44′48.1″ N 073°57′37.3″ W; (NAD 1983), thence to the point of origin, between the fireworks barge and the southern 295 yards of Roosevelt Island. These safety zones will be enforced from 8 p.m. until 10 p.m. on Saturday, June 29. The safety zones prevent vessels from transiting a portion of the East River and are needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 350 feet, and the 350 feet between the western boundary of these safety zones and the eastern boundary of the United Nations security zone, of the 780-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of these safety zones was determined using National Fire Protection Association and New York City Fire Department standards for 6 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Conference House Fireworks Display, Arthur Kill, NJ/NY

The Coast Guard has received an application to hold a fireworks program on the waters of the Arthur Kill. This rule establishes a safety zone in all waters of the Arthur Kill within a 300-yard radius of the fireworks barge in approximate position 40°30′16″ N 074°15′30″ W (NAD 1983), about 300 yards west of Conference House Park, Staten Island. The safety zone will be enforced from 8:30 p.m. until 10 p.m. on Saturday, July 6, 2002. If the event is cancelled due to inclement weather, then this safety zone will be enforced from 8:30 p.m. until 10 p.m. on Sunday, July 7, 2002. The safety zone prevents vessels from transiting a portion of the Arthur Kill and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational vessels will still be able to transit through the western 45 yards of the 625-yard wide Arthur Kill during this event. Additionally, recreational vessels would not be precluded from mooring at or getting underway from piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 10 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the

regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on: The minimal time that vessels will be restricted from the zones; the Conference House Fireworks is an annual, local event; and recreational vessels may still transit through the zones during the events.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

Taking of Private Property

Civil Justice Reform

Protection of Children

Environment

Indian Tribal Governments

We have analyzed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under

(1) *New Jersey Pierhead Channel Safety Zone.* (i) *Location.* All waters of the New Jersey Pierhead Channel and Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°39′13.5″ N 074°04′39.1″ W, (NAD 1983) about 125 yards southeast of the New Jersey Pierhead South Entrance Lighted Gong Buoy 1 (LLNR 37010).

(ii) *Enforcement period.* Paragraph (a)(1)(i) will be enforced from 8 p.m. to

Dated: June 24, 2002.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 02–16630 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on

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regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on: The minimal time that vessels will be restricted from the zones; the Conference House Fireworks is an annual, local event; recreational vessels may still transit around the zones during the events; the zones are only in effect for 1 and a half hours; and vessels can be given permission to transit the zone for all but about 20 minutes during this time. Advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the New Jersey Pierhead Channel, Lower New York Bay, East River, and the Arthur Kill during the times these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The Conference House Fireworks is an annual, local event; recreational vessels may still transit around the zones during these events; commercial vessels may still transit around all the zones except in the Arthur Kill; the zones are only in effect for 1 and half hours; and vessels can be given permission to transit the zone for all but about 20 minutes during this time. We will ensure wide dissemination of maritime advisories to users of the New Jersey Pierhead Channel, Lower New York Bay, East River, and the Arthur Kill via Local Notice to Mariners and marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes five safety zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 8 p.m. June 22, 2002, to 10 p.m. July 7, 2002, add temporary § 165.T01–062 to read as follows:

§ 165.T01–062 Safety Zones; Port of New York and New Jersey.

(a) The following areas are established as safety zones:

(1) *New Jersey Pierhead Channel Safety Zone.* (i) *Location.* All waters of the New Jersey Pierhead Channel and Kill Van Kull within a 180-yard radius of the fireworks barge in approximate position 40°39′13.5″ N 074°04′39.1″ W, (NAD 1983) about 125 yards southeast of the New Jersey Pierhead South Entrance Lighted Gong Buoy 1 (LLNR 37010).

(ii) *Enforcement period.* Paragraph (a)(1)(i) will be enforced from 8 p.m. to 9:30 p.m. on Saturday, June 22, and Thursday, July 4, 2002.

(2) *Lower New York Bay Safety Zone.* (i) *Location.* All waters of Lower New York Bay within a 300-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W, (NAD 1983) about 800 yards southeast of Midland Beach.

(ii) *Enforcement period.* Paragraph (a)(2)(i) will be enforced from 8:30 p.m. to 10 p.m. on Saturday, June 29, and Sunday, June 30, 2002.

(3) *East River Safety Zone*—(i) *Location.* All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°44′51.4″ N 073°57′42.9″ W (NAD 1983), about 215 yards southeast of Roosevelt Island and all waters bound by the following points: 40°44′53.7″ N 073°57′49.3″ W; thence to 40°45′06.8″ N 073°57′39.1″ W; thence to 40°45′00.7″ N 073°57′27.0″ W; thence to 40°44′48.1″ N 073°57′37.3″ W; (NAD 1983), thence to the point of origin, between the fireworks barge and the southern 295 yards of Roosevelt Island.

(ii) *Enforcement period.* Paragraph (a)(3)(i) will be enforced from 8 p.m. to 10 p.m. on Saturday, June 29, 2002.

(4) *Arthur Kill Safety Zone*—(i) Location. All waters of the Arthur Kill within a 300-yard radius of the fireworks barge in approximate position 40°30′18.0″ N 074°15′30″ W, (NAD 1983) about 300 yards west of Conference House Park, Staten Island.

(ii) *Enforcement period.* Paragraph (a)(4)(i) will be enforced from 8:30 p.m. to 10 p.m. on Saturday, July 6, and Sunday, July 7, 2002.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 24, 2002.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 02–16630 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD09–02–037

RIN 2115–AA97

Safety Zone; Detroit River, Grosse Ile, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 4th of July Celebration fireworks on July 6, 2002. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Detroit River.

DATES: This temporary final rule is effective from 9 p.m. until 10:30 p.m. on July 6, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–037] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters of the Detroit River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°10′4″ N, 083°09′3″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation

(DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination"

§ 165.T09–036 Safety Zone; Detroit River, Grosse Ile, MI.

(a) *Location.* The safety zone will encompass all waters of the Detroit River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°(10′4″ N, 083°(09′3″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This

area are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4155. Email: *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION:

Note: In this document, "we", "us" and

41856. Since the microscale plan, Arizona has made no other submittals that address the 24-hour exceedances at the Salt River site.

According to its approved attainment demonstration, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. *See* 62 FR 31026, 31035. The site, however, continues to violate the standard.[1] Based on data recorded in EPA's Aerometric Information Retrieval System (AIRS), the Salt River monitor

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(DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9 p.m. until 10:30 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Detroit River by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–036 is added to read as follows:

§ 165.T09–036 Safety Zone; Detroit River, Grosse Ile, MI.

(a) *Location.* The safety zone will encompass all waters of the Detroit River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°(10′4″ N, 083°(09′3″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 9 p.m. until 10:30 p.m. on July 6, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other applicable requirements.

Dated: June 24, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–16631 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–076–SIP; FRL–7238–8]

Finding of State Implementation Plan Inadequacy; Arizona—Salt River Monitoring Site; Metropolitan Phoenix PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA finds that the state implementation plan (SIP) for the Metropolitan Phoenix (Maricopa County), Arizona PM–10 nonattainment area is substantially inadequate to attain the 24-hour particulate (PM–10) air quality standard at the Salt River monitoring site, a small subarea of the nonattainment area. As required by the Clean Air Act upon a finding of SIP inadequacy, EPA is requiring that the State of Arizona submit a SIP revision to correct the inadequacy.

EFFECTIVE DATE: August 1, 2002.

ADDRESSES: You can inspect a copy of the administrative record for this action at EPA's Region IX office during normal business hours. See address below.

This document, the proposal for this final rule, and information on the PM–10 plans for the metropolitan Phoenix area are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4155. Email: *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION:

Note: In this document, "we", "us" and "our" refer to EPA. "CAA or the Act" refers to the Clean Air Act as amended in 1990 and subsequently. "PM–10" refers to particulate matter with a diameter of 10 microns or less. "24-hour standard" refers to the 24-hour National Ambient Air Quality Standard for PM–10 established at 40 CFR 50.6(a). "SIP" or "plan" refers to a state implementation plan. "ADEQ" is the Arizona Department of Environmental Quality. "BACM" and "RFP" are acronyms, respectively, for best available control measure and reasonable further progress.

I. Background to Today's Action

The Phoenix area is classified as a "serious" PM–10 nonattainment area and violates both the annual PM–10 standard of 50 μg/m³ and the 24-hour standard of 150 μg/m³. 40 CFR 50.6. Between 1997 and 2001, Arizona has made several SIP submittals that collectively address the CAA's planning requirements for serious PM–10 nonattainment areas for both PM–10 standards. We have acted on these submittals in several rulemakings. For more background on the Phoenix PM–10 SIP and our actions on it, please see 65 FR 19964, 19965 (April 13, 2000) and 66 FR 50252, 50253 (October 2, 2001) and the Technical Support Documents for those actions.

In today's action, we are concerned with the Phoenix PM–10 SIP's provisions for attaining the 24-hour standard. In May, 1997, ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area*, as a SIP revision. This plan, known as the microscale plan, included attainment and RFP demonstrations for the 24-hour PM–10 standard at the Salt River air quality monitoring site as well as three other "microscale" monitoring sites in the Phoenix area (Maryvale, Gilbert, and West Chandler). The demonstration for the Salt River site showed that, with additional controls adopted by the local air quality agency, the Maricopa County Environmental Services Department, attainment at the site would occur by May 1998. We approved the attainment and RFP demonstrations for the Salt River site and Maricopa County's controls on August 4, 1997. See 62 FR 41856. Since the microscale plan, Arizona has made no other submittals that address the 24-hour exceedances at the Salt River site.

According to its approved attainment demonstration, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. *See* 62 FR 31026, 31035. The site, however, continues to violate the standard.[1] Based on data recorded in EPA's Aerometric Information Retrieval System (AIRS), the Salt River monitor had 51 expected exceedances in 1999, 43 expected exceedances in 2000, and 19 expected exceedances through 3 quarters in 2001 or an average of at least 37 expected exceedances per year over the past three years. The 24-hour PM–10 standard is violated when the expected number of exceedances averages more than 1 per year over a three year period. See 40 CFR 50.6(a). Thus the continuing violations at the Salt River monitor clearly show that the existing attainment demonstration for the site is faulty.

To assure that SIPs provide for timely attainment, section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet an CAA requirement, and to require ("call for") the State to submit, within a specified period not to exceed 18 months, a SIP revision to correct the inadequacy. This requirement for a SIP revision is known as a "SIP call."

On April 18, 2002 at 67 FR 19148, we published our proposed finding that the Arizona SIP is inadequate to assure attainment of the 24-hour PM–10 standard at the Salt River Site. Based on this proposed finding, we also proposed a SIP call that would require Arizona to revise its SIP to correct the deficiency and submit the corrections no later than 18 months after the publication of the final rule. We requested comments on our proposals and provided a 30-day comment period, which closed on May 20, 2002. We received no comments.

II. The Inadequacy Finding and Call for a SIP Revision

A. Inadequacy Finding and SIP Call

Because the attainment demonstration approved into the Phoenix area PM–10 SIP in 1997 is faulty and there has been no substitute attainment demonstration submitted to date, we find that the

[1] The Salt River site, approximately 32 square miles in area or about 1 percent of the 2880 square mile Phoenix nonattainment area, is located in an industrial area and its 24-hour violations are most likely due in large part to the industrial sources that surround it. This is in marked contrast to other monitoring sites in the rest of the Phoenix nonattainment area where 24-hour exceedances are almost exclusively due to windblown fugitive dust.

Phoenix area PM–10 SIP is substantially inadequate to attain the 24-hour PM–10 standard at the Salt River site. Therefore, pursuant to CAA section 110(k)(5), we require the State of Arizona to submit a revision to the Phoenix area SIP that corrects this deficiency and complies with all other applicable CAA requirements as described below.

B. Submittal Schedule

the milestone dates should be December 31, 2003 and December 31, 2006.

The SIP revision must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280 to carry out the SIP; and the description of enforcement methods for

distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs on the States, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with

comment rulemaking requirements unless the agency certifies that the rule, if finalized, will not have a significant economic impact on a substantial number of small entities. For the reasons described in the proposal, EPA certified that this action does not have a significant impact on a substantial number of small entities. See 67 FR 19148, 19151.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), EPA must

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

amendments. Because adverse comments were received on some of the provisions in the direct final rule, we are withdrawing the corresponding parts of that direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on April 5, 2002.

DATES: As of July 2, 2002, EPA withdraws amendments to §§ 63.1340(c), 63.1344(a)(3), 63.1349(e)(3), and 63.1350(a)(4),

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Phoenix area PM–10 SIP is substantially inadequate to attain the 24-hour PM–10 standard at the Salt River site. Therefore, pursuant to CAA section 110(k)(5), we require the State of Arizona to submit a revision to the Phoenix area SIP that corrects this deficiency and complies with all other applicable CAA requirements as described below.

B. Submittal Schedule

We set the date for submitting the revisions to the Salt River attainment demonstration and related provisions described below as 18 months after the effective date of the final rule, or February 2, 2004.

C. SIP Requirements

To fully respond to this SIP call for the Salt River attainment demonstration, Arizona will need to submit the following:

(a) A demonstration based on air quality modeling that the plan will provide for attainment no later than December 31, 2006 at the Salt River site. CAA sections 189(b)(1)(A) and 188(e).

(b) Provisions for implementing BACM as expeditiously as practicable for all sources or source categories that contribute significantly to exceedances of the 24-hour PM–10 standard in the Salt River area. CAA section 189(b)(1)(B).[2] In the SIP revision, Arizona need only provide for the implementation of BACM for those significant sources or source categories for which we have not already approved BACM.

(c) A demonstration that the revised SIP includes, and provides for expeditious implementation of, the most stringent measures (MSM) found in the implementation plan or achieved in practice that are feasible for the Phoenix nonattainment area for each significant source or source category for which we have not already approved a MSM showing.

(d) A demonstration that the revised SIP provides for reasonable further progress in the Salt River area. The SIP revision must also provide for quantitative milestones for the Salt River area which are to be achieved every 3 years and which are consistent with the RFP demonstration. To be consistent with the serious area plan, the milestone dates should be December 31, 2003 and December 31, 2006.

The SIP revision must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280 to carry out the SIP; and the description of enforcement methods for the adopted controls as required by 40 CFR 51.111.

Finally, any controls adopted to demonstrate attainment at the Salt River site or to meet the BACM or MSM requirements must be applied to all similar sources in the Phoenix nonattainment area.

If Arizona fails to submit the required SIP revisions in response to a final SIP call, we are required to issue a finding that the State failed to make a required SIP submittal under section 179(a), a finding which starts an 18 month clock for the implementation of sanctions under the CAA and a two year clock for a federal implementation plan. See 40 CFR 52.31.

VI. Administrative Requirements

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under 12866.

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action under Executive Order 12866.

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs on the States, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. This SIP call is required by the Clean Air Act because the current SIP is substantially inadequate to attain the 24-hour PM–10 standard. Arizona's direct compliance costs will not be substantial because the SIP call requires Arizona to submit only those revisions necessary to address the SIP deficiency and applicable Clean Air Act requirements. Finally, EPA has consulted with the State and local agencies prior to making this SIP call.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it is in keeping with the relationship and the distribution of power and responsibilities between EPA and the States as established by the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Executive Order 13175 does not apply to this rule because this rule will not effect any tribal government or any tribal lands and thus will have no tribal implications.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule, if finalized, will not have a significant economic impact on a substantial number of small entities. For the reasons described in the proposal, EPA certified that this action does not have a significant impact on a substantial number of small entities. See 67 FR 19148, 19151.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements for any rule requiring a budgetary impact statement. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more in any one year to either State, local, or tribal governments in the aggregate, or to the private sector and has therefore not prepared a budgetary impact statement. This proposed rule, if finalized, will not significantly or uniquely impact any small governments.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In making a finding of SIP deficiency, EPA's role is to review existing information against previously established standards (in this case, what constitutes a violation of the 24-hour PM–10 standard). In this context, there is no opportunity to use VCS. Thus, the requirements of NTTAA section 12(d) (15 U.S.C. 272 note) do not apply to this rule.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, particulate matter.

Dated: June 19, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–16271 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

[2] Under CAA section 189(b)(1)(B), BACM is to be implemented no more than 4 years after an area is reclassified from moderate to serious for PM–10, or June 10, 2000 for the Phoenix area. Because this deadline has now passed, the applicable deadline is "as expeditiously as practicable" under *Delaney v. EPA*, 898 F.2d 687 (1990).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7240–4]

RIN 2060–AJ57

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On April 5, 2002, the EPA promulgated amendments to the national emission standards for the portland cement manufacturing industry as a direct final rule with a parallel proposal if we received any adverse comments on the direct final amendments. Because adverse comments were received on some of the provisions in the direct final rule, we are withdrawing the corresponding parts of that direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on April 5, 2002.

DATES: As of July 2, 2002, EPA withdraws amendments to §§ 63.1340(c), 63.1344(a)(3), 63.1349(e)(3), and 63.1350(a)(4), (c)(2)(i), (d)(2)(i), and (e) published at 67 FR 16614 on April 5, 2002. The remaining provisions published on April 5, 2002, will be effective July 5, 2002.

ADDRESSES: Docket number A–92–53, containing supporting information used in the development of this notice is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2002, we published a direct final rule (67 FR 16614) and a parallel proposal (67 FR 16625) amending the national emission standards for the portland cement manufacturing industry (40 CFR part 63, subpart LLL). The amendments made improvements for implementation of the standards, primarily in the areas of applicability, testing, and monitoring, to resolve issues and questions raised since promulgation of the rule on June 14, 1999.

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment by May 6, 2002, on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**. We subsequently received adverse comments on seven of the amendments:

- § 63.1340(c), related to applicability of the rule to crushers at portland cement plants with on-site nonmetallic mineral processing facilities;

- § 63.1344(a)(3), related to the temperature operating limit for an in-line kiln/raw mill equipped with an alkali bypass;
- § 63.1349(e)(3), related to requirements associated with preparation for, and conduct of, a new performance test if a source anticipates making an operational change that may adversely affect compliance with an applicable dioxin/furan (D/F) emission standard;

(San Diego ambrosia) pursuant to the Endangered Species Act of 1973, as amended (Act). This plant species is restricted to 15 known occurrences in San Diego and Riverside Counties, CA, and also occurs in Estado de Baja California, Mexico. *Ambrosia pumila* primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub habitat, and occasionally in areas adjacent to vernal pools. This species is

collected near San Diego, California, in 1836. Asa Gray (Gray 1882), after seeing specimens of the plant with fruits, decided it was closely related to members of the genus *Ambrosia* and published the currently accepted combination, *Ambrosia pumila* (Nutt.) A. Gray. This classification has been recognized by current systematic and floristic treatments (Payne 1964, Munz 1935, Keck 1959, Ferris 1960, Munz 1974, Beauchamp 1986, and Payne

not provided evidence of production of significant numbers of viable seeds. None of the 22 seeds collected from three sites at Mission Trails Regional Park germinated in a test performed by Ransom Seed Laboratory (City of San Diego 2000). Although plants may flower, the annual reproductive output of fruits may be low. The lifespan of an individual plant, as well as the number and distribution of seedlings, are unknown. *A. pumila* may be

each of the separate occurrences to preserve the genetic variability represented in each of the occurrences.

Ambrosia pumila primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub, and occasionally in areas adjacent to vernal pools. The species may also be found in disturbed sites such as fire fuel breaks and edges of dirt roadways. Associated native plants include *Distichlis spicata* (saltgrass), *Baccharis salicifolia* (mule-

1936 (CNDDB 1999), including the recently reported historical occurrence in the City of Riverside (Provance *et al.* 2001) which no longer exists. One occurrence, near a city sidewalk, reduced to a single stem in 1996 (CNDDB 1999), is considered non-viable and therefore is not considered as an extant occurrence. Subtracting these 4 occurrences, we now believe that there are 15 extant native occurrences of this species, 12 are in San Diego County and 3 are in western Riverside County.

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- § 63.1344(a)(3), related to the temperature operating limit for an in-line kiln/raw mill equipped with an alkali bypass;
- § 63.1349(e)(3), related to requirements associated with preparation for, and conduct of, a new performance test if a source anticipates making an operational change that may adversely affect compliance with an applicable dioxin/furan (D/F) emission standard;
- § 63.1350(a)(4)(v) through (vii), related to visible emission monitoring of a totally enclosed conveying system transfer point; and
- § 63.1350(c)(2)(i), (d)(2)(i), and (e), related to operating conditions during daily visual opacity observations by Method 9 (40 CFR part 60, appendix A) and daily visual emissions observations by Method 22 (40 CFR part 60, appendix A).

Accordingly, these seven amendments are withdrawn as of July 2, 2002. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The seventeen provisions for which we did not receive adverse comment will become effective on July 5, 2002, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–16642 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF86

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Ambrosia pumila* (San Diego Ambrosia) From Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for *Ambrosia pumila* (San Diego ambrosia) pursuant to the Endangered Species Act of 1973, as amended (Act). This plant species is restricted to 15 known occurrences in San Diego and Riverside Counties, CA, and also occurs in Estado de Baja California, Mexico. *Ambrosia pumila* primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub habitat, and occasionally in areas adjacent to vernal pools. This species is threatened by the following: present or threatened destruction, fragmentation, and degradation of habitat primarily by construction and maintenance of highways, maintenance of utility easements, development of recreational facilities, and residential and commercial development; inadequate regulatory mechanisms; potential competition, encroachment, and other negative impacts from non-native plants; mowing and discing for fuel modification; and trampling, as well as soil compaction by horses, humans, and vehicles. This rule implements the Federal protection and recovery provisions of the Act for *Ambrosia pumila*.

DATES: This rule is effective August 1, 2002.

ADDRESSES: The supporting record for this rule is available for inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address; telephone 760/431–9440; facsimile 760/918–0638.

SUPPLEMENTARY INFORMATION:

Background

Ambrosia is a genus comprising 35 to 50 wind-pollinated annual and perennial plant species in the Asteraceae (sunflower) family. The perennial taxa range from woody shrubs to herbaceous plants with rhizome-like roots. Rhizomes are underground stems that produce leafy shoots. Self-pollination and self-fertility contribute to strong inbreeding among species of *Ambrosia* (Payne 1976). Members of the genus occur predominantly in the Western Hemisphere, especially North America. Species are generally found in arid or semiarid areas and some are weeds of cultivated fields or strand species of Pacific and Caribbean beaches.

Ambrosia pumila (San Diego ambrosia) was originally described as Franseria pumila by Thomas Nuttall (Nuttall 1840) based on a specimen he collected near San Diego, California, in 1836. Asa Gray (Gray 1882), after seeing specimens of the plant with fruits, decided it was closely related to members of the genus *Ambrosia* and published the currently accepted combination, *Ambrosia pumila* (Nutt.) A. Gray. This classification has been recognized by current systematic and floristic treatments (Payne 1964, Munz 1935, Keck 1959, Ferris 1960, Munz 1974, Beauchamp 1986, and Payne 1993).

Ambrosia pumila is an herbaceous perennial plant species that spreads vegetatively by means of slender, branched, underground rhizome-like roots from which the aerial (above-ground) stems arise. Plants that spread in this way are referred to as clonal species. This clonal growth pattern results in groupings of aerial stems interconnected by their underground rhizome-like roots that represent genetically identical individuals. When these underground interconnections disintegrate, aerial stems that are genetically identical are physically separate. The aerial stems sprout in early spring after the winter rains. Dead aerial stems may persist or deteriorate after their growing season. Therefore, the plant may not be in evidence at some times of the year. The aerial stems sprout in early spring after the winter rains and deteriorate in late summer. Therefore, the plant may not be in evidence from late summer to early spring. The aerial stems are 5 to 30 centimeters (cm) (2 to 12 inches (in)) tall, but may grow to 50 cm (20 in), and are densely covered with short hairs. The leaves are two to four times pinnately divided into many small segments and are covered with short, soft, gray-white, appressed (lying flat on surface) hairs. This wind-pollinated species flowers from May through October with separate male and female flower clusters (heads) on the same plant. The male flowers are yellow to translucent and are borne in clusters on terminal racemes (flower stalks). The female flowers have no petals and are yellowish-white. Female flowers are in clusters in the axils of the leaves below the male flower clusters.

Although some species of *Ambrosia* have breeding systems that contribute to strong inbreeding (Payne 1976), the breeding system of *A. pumila* has not been studied. The fruiting heads are enclosed by involucres (composed of modified leaf-like structures fused together) to form cup-like structures that have no spines, although some reports note a few vestigial (remnant) spines. Few preserved museum specimens have fertile fruits, and field collections have

not provided evidence of production of significant numbers of viable seeds. None of the 22 seeds collected from three sites at Mission Trails Regional Park germinated in a test performed by Ransom Seed Laboratory (City of San Diego 2000). Although plants may flower, the annual reproductive output of fruits may be low. The lifespan of an individual plant, as well as the number and distribution of seedlings, are unknown. *A. pumila* may be distinguished from other species of *Ambrosia* in the area by its herbaceous perennial growth form, leaves which are two to four times pinnately divided, cup-like involucres lacking hooked spines, and lack of longer, stiff hairs on the stems and leaves.

Because *Ambrosia pumila* is a clonal species, it is difficult to determine the extent of an individual plant. Individual plants persist as a herbaceous rhizome-like root systems. These underground systems are likely intermingled at any given site. Each year a plant produces a variable number of aerial stems along its rhizome-like root system. The underground interconnections may deteriorate over time leaving genetically identical separate plants that represent clones. Thus, survey reports that record the number of "plants" at a site are in fact reporting the numbers of aerial stems that represent an unknown number of genetically distinct plants. Because this species is a clonal plant, the number of genetically different individuals in any given occurrence, especially small occurrences, may be very low. Small occurrences of *A. pumila* may be more susceptible to harmful effects from inbreeding, especially if only a portion of the population flowers in any given year (Barrett and Kohn 1991). Seven of the 15 extant occurrences that support 1,000 or fewer aerial stems may potentially be susceptible to extirpation (localized extinction) because of low number of aerial stems or low genetic diversity within the occurrences. There are, as yet, no data to determine a correlation between the genetic diversity and extirpations of occurrences of this species in the past that were not attributed to habitat loss. Preliminary results comparing greenhouse-grown specimens from two native populations of *A. pumila* indicated that there were fixed differences between specimens from the two populations represented in this study (H. Truesdale, San Diego State University Biology Department (SDSU), *in litt.* 2000). While the clonal structure of the populations is not known, these preliminary results indicate the importance of maintaining each of the separate occurrences to preserve the genetic variability represented in each of the occurrences.

Ambrosia pumila primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub, and occasionally in areas adjacent to vernal pools. The species may also be found in disturbed sites such as fire fuel breaks and edges of dirt roadways. Associated native plants include *Distichlis spicata* (saltgrass), *Baccharis salicifolia* (mule-fat), *Baccharis sarathroides* (broom baccharis), *Eriogonum fasciculatum* (California buckwheat), and *Eremocarpus setigerus* (turkey-mullein). In the United States, populations of *A. pumila* occur on Federal, State, local jurisdictional, and private lands in western San Diego and Riverside Counties.

This species has been previously reported from 49 occurrences in the United States (California Natural Diversity Database (CNDDB) 1999). The California Department of Fish and Game (CDFG) defines the term occurrence for plants as single plants, a population, or group of nearby populations found within 0.25 miles (mi) (0.4 kilometer (km)) of each other (R. Bittman, CDFG, *in litt.* 2002). Since publication of the proposed rule, additional information concerning an additional historical occurrence in the Arlington area of the City of Riverside in Riverside County, has become available (Provance *et al.* 2001). Also, an extant occurrence that supports six concentrations of aerial stems was found in the Alberhill area of Riverside County (Hewitt and McGuire 2000). Two occurrences, one northwest of Sweetwater Dam and another near Gillespie Field, were combined with other adjacent occurrences because of their close proximity. Six occurrences were based on misidentified specimens. Three occurrences consist of plants transplanted from other locations that were subsequently partially or totally eliminated (CNDDB 1999).

Based on the analysis of this current information, we believe that there are 40 verifiable native reported occurrences of this species. However, 21 of these 40 occurrences have been extirpated, most since the 1930s and nearly all by urban development and highway construction. One of these 21 occurrences, an occurrence near Graves Avenue in the City of El Cajon, San Diego County, that was included as extant in the listing proposal, has been extirpated by commercial and housing development (C. Burrascano, *in litt.* 2001). Of the remaining 19 extant occurrences, 2 were based on old collections where the species has not been documented since 1936 (CNDDB 1999), including the recently reported historical occurrence in the City of Riverside (Provance *et al.* 2001) which no longer exists. One occurrence, near a city sidewalk, reduced to a single stem in 1996 (CNDDB 1999), is considered non-viable and therefore is not considered as an extant occurrence. Subtracting these 4 occurrences, we now believe that there are 15 extant native occurrences of this species, 12 are in San Diego County and 3 are in western Riverside County. Knowledge of the full extent of the historical range of any organism is limited by the surviving records. In the case of *Ambrosia pumila* in San Diego County, the pattern of extirpated occurrences reflects a significant loss of occurrences from each of the watersheds in which the species occurs rather than a complete loss from those watersheds. The pattern in Riverside County is different in that the recently discovered record of a historical occurrence reflects a significant loss to the geographical extent of the range in that county.

San Diego County

Five of the 12 remaining occurrences of *Ambrosia pumila* in San Diego County are within the Sweetwater River watershed; a sixth near El Cajon was apparently extirpated in 1999 or 2000. Two of the five occurrences are in the San Diego National Wildlife Refuge (SDNWR). The largest occurrence, in the northern portion of the SDNWR, was reported to cover 5.6 hectares (ha) (13.8 acres (ac)) and supported tens of thousands of aerial stems in 1998 (CNDDB 1999). Recent surveys by Service biologists reported this occurrence to be 1.4 ha (3.5 ac) in 1999 and 1.3 ha (3.2 ac) in 2000 (GIS database Carlsbad Fish and Wildlife Office). Differences in the acreage may be due to different survey methods or the scope of the surveys. Numbers of aerial stems present were not recorded. The second occurrence on the SDNWR was reported to support aerial stems in 1996. A survey of the second occurrence in 1998 (J. Vanderwier, USFWS, *in litt.* 1998) reported that this site covered less than 0.1 ha (less than 0.1 ac) and supported hundreds of aerial stems (CNDDB 1999). Another occurrence on private land near the junction of Jamul Road and Steele Canyon Road was reported to be 0.1 ha (0.3 ac) in size in 1996, and less than 0.1 ha (less than 0.1 ac) in 1998 (CNDDB 1999; J. Vanderwier, *in litt.* 1998). Numbers of aerial stems have not been reported in the various surveys of this site. The 1998 survey indicated an unknown number of stems at this site and the extension of this occurrence to accommodate a few plants nearby to the

northeast. This extension was recognized as a separate occurrence that supported about 100 stems in 1998 (CNDDB 1999). The remaining occurrence in the Sweetwater River watershed in El Cajon is on adjacent vacant lots totaling less than 0.1 ha (0.1 ac) owned by California Department of Transportation (Caltrans) and supported an estimated 10,000 stems in 1997 (J. Vanderwier, *in litt.* 1997). *A. pumila* is still present on these Caltrans owned

Diego's Subarea Plan area of the MSCP on a privately owned site. In 1997, 2,000 stems were reportedly found in a less than 0.1 ha (0.1 ac) area (CNDDB 1999). During a site visit in 1999 fewer than 100 stems were found in an area estimated to be less than 0.1 ha (less than 0.1 ac) (G. Wallace, USFWS, *in litt.* 1999). The uphill slope immediately adjacent to the site was graded in conjunction with a residential development (G. Wallace, *in litt.* 1999).

Riverside, Riverside County has been reported (Provance *et al.* 2001).

Estado de Baja California, Mexico

The current documented range of *Ambrosia pumila* in Mexico extends from Colonet south to Lake Chapala in north-central Baja California. Two of the three documented sites were confirmed by D. Hogan, Southwest Center for Biological Diversity (now Center for Biological Diversity) and C. Burrascano,

published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. On November 28, 1983, we published a supplement (48 FR 53639) to the December 15, 1980, NOR of plant taxa for listing. In this NOR, the status of *A. pumila* was changed to a category 2 candidate species. Category 2 candidate species were taxa for which information then in

immediate proposal by other pending proposals of higher priority. However, because of budgetary restraints, we processed petitions in accordance with the 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance identified four tiers of listing activities to be conducted by us with appropriate funds. Tier 1, the highest priority, covered emergency listings of species facing an imminent risk of

and 12-month findings for *Ambrosia pumila*.

On May 8, 1998, new listing priority guidance for Fiscal Years 1998 and 1999 was published in the **Federal Register** (63 FR 25502). This new guidance changed the four-tier priority system to a three-tier priority system. Highest priority, Tier 1, was assigned to processing emergency listing rules for any species determined to face a significant and imminent risk to its

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northeast. This extension was recognized as a separate occurrence that supported about 100 stems in 1998 (CNDDB 1999). The remaining occurrence in the Sweetwater River watershed in El Cajon is on adjacent vacant lots totaling less than 0.1 ha (0.1 ac) owned by California Department of Transportation (Caltrans) and supported an estimated 10,000 stems in 1997 (J. Vanderwier, *in litt.* 1997). *A. pumila* is still present on these Caltrans owned lots (B. April, Caltrans, pers. comm., 2002). Caltrans purchased these lots in the 1960s as right-of-way for the proposed connector between I–5 and I–8. This proposal, although still part of the Regional Transportation Plan, is not funded and at some point in the future Caltrans may auction off the parcels (B. April, pers. comm., 2002). In the proposed listing rule we included an additional occurrence in El Cajon on a group of vacant lots 1.9 ha (4.8 ac) in size that supported 6,500 plants (aerial stems) in 1998 (CNDDB 1999). This occurrence was apparently extirpated by development (C. Burrascano, *in litt.* 2001).

Three of the 12 occurrences in San Diego County are within the San Diego River watershed. The largest of these occurrences is in Mission Trails Regional Park (MTRP), managed by the City of San Diego, and extends to adjacent private land. The portion of the occurrence on MTRP occupied 13.6 ha (34 ac) and supported 1,500 stems in 1994 (CNDDB 1999). One of the areas in MTRP identified as Patch C encompasses 1.0 ha (2.5 ac) (City of San Diego 2000). A portion of that patch, identified as C6 and calculated to be 0.7 ha (1.7 ac), supported approximately 178,824 aerial stems in 2001 (City of San Diego 2001). The adjacent privately owned portion of this occurrence is afforded protections under the City of San Diego's Subarea Plan of the Multiple Species Conservation Program (MSCP) (City of San Diego 1997). The second occurrence within the San Diego River watershed and also in MTRP supports an unknown number of individuals (CNDDB 1999). Both occurrences in MTRP are afforded protection under provisions of City of San Diego's Subarea Plan (City of San Diego 1997). The third occurrence within the San Diego River watershed occurs at Gillespie Field, a small general aviation airport, where there are small remnants of the native occurrence scattered near the south side of the airfield. The current status of these remnants is unknown.

One of the 12 occurrences in San Diego County is within the San Dieguito River watershed in the County of San Diego's Subarea Plan area of the MSCP on a privately owned site. In 1997, 2,000 stems were reportedly found in a less than 0.1 ha (0.1 ac) area (CNDDB 1999). During a site visit in 1999 fewer than 100 stems were found in an area estimated to be less than 0.1 ha (less than 0.1 ac) (G. Wallace, USFWS, *in litt.* 1999). The uphill slope immediately adjacent to the site was graded in conjunction with a residential development (G. Wallace, *in litt.* 1999).

The three remaining occurrences in San Diego County are within the San Luis Rey River watershed near Bonsall. Two occur within the planning boundary of the North County MSCP Subarea Plan. These may receive protection if this plan is approved. At one occurrence, some plants are presumed extant in a fenced area on Caltrans lands adjacent to State Route 76, and some are on private land. However, the current number of aerial stems or the areal extent of this occurrence is not known. The second occurrence in the area is estimated to be 2.6 ha (6.6 ac) in size and reportedly supported about 700 aerial stems in 1996. The third occurrence is within the planning area for the Multiple Habitat Conservation Plan (MHCP) on private and Caltrans lands near Bonsall and reportedly supported 2,000 to 3,000 aerial stems in 1997 (CNDDB 1999). The areal coverage of the eight patches at this occurrence was calculated to be less than 0.1 ha (0.2 ac) in 2000 (American Realty Trust, Inc. 2002).

Riverside County

The three extant occurrences known from Riverside County are on privately owned lands. One occurrence, along Nichols Road in the City of Lake Elsinore, supported an estimated 3,400 stems in 1997; a westward extension of the Nichols Road occurrence was documented by a specimen collected in 2001 and deposited in the Herbarium at Rancho Santa Ana Botanic Garden (RSA), Claremont, CA. Another occurrence at a biological preserve at Skunk Hollow supported about 100 to 300 stems in 1998 (B. McMillan, USFWS, in *litt.* 1999). Since publication of the proposed rule to list *Ambrosia pumila*, an additional occurrence has been located near Alberhill (Hewitt and McGuire 2000). This occurrence is about 3.5 km (2.1 mi) to the northwest of the Nichols Road site and reportedly consists of about 12,800 aerial stems in six concentrations, with most of the stems in a single concentration (Hewitt and McGuire 2000). Also, since the listing proposal, a specimen documenting a historical occurrence in the Arlington area of the City of Riverside, Riverside County has been reported (Provance *et al.* 2001).

Estado de Baja California, Mexico

The current documented range of *Ambrosia pumila* in Mexico extends from Colonet south to Lake Chapala in north-central Baja California. Two of the three documented sites were confirmed by D. Hogan, Southwest Center for Biological Diversity (now Center for Biological Diversity) and C. Burrascano, San Diego Chapter, California Native Plant Society (CNPS) (1996). Although additional occurrences may exist in Baja California Mexico, the species is not considered to be widespread because of the lack of appropriate habitat and impacts from agriculture and urban development, especially near the coast.

Previous Federal Action

Federal Government action on this species began pursuant to section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. *Ambrosia pumila* was not included in this document. A revision of the Smithsonian report (Ayensu and DeFilipps 1978) provided new lists based on additional data on taxonomy, geographic range, and endangered status of taxa, as well as suggestions of taxa to be included or deleted from the earlier listing. *A. pumila*, not included in the first Smithsonian report, was recommended for threatened status in the Ayensu and DeFilipps (1978) report. We published an updated Notice of Review (NOR), on December 15, 1980 (45 FR 82479). This notice included *A. pumila* as a category 1 candidate species. Category 1 candidate species were taxa for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals.

The 1978 Smithsonian report (Ayensu and DeFilipps 1978), which included *Ambrosia pumila*, was accepted as a petition. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Section 4(b)(3)(B) of the Act further requires the Secretary to make findings on petitions within 12 months of their receipt. Consequently, on October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was

published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. On November 28, 1983, we published a supplement (48 FR 53639) to the December 15, 1980, NOR of plant taxa for listing. In this NOR, the status of *A. pumila* was changed to a category 2 candidate species. Category 2 candidate species were taxa for which information then in our possession indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. The status of *A. pumila* remained unchanged through, and including, the September 30, 1993 NOR (58 FR 51143). On February 28, 1996, we published an NOR (61 FR 7595). In that notice we announced changes to the way we identify species that are candidates for listing under the Act that included our discontinuance of the maintenance of a list of species that were previously identified as category 2 candidates. Thus, as a category 2 candidate, *A. pumila* was not included in the February 28, 1996, NOR.

On January 9, 1997, we received a petition dated November 12, 1996, from the Southwest Center for Biological Diversity and the San Diego Chapter of the California Native Plant Society, requesting that *Ambrosia pumila* be listed as endangered pursuant to section 4 of the Act. Additionally, the petition appealed for emergency listing pursuant to section 4(b)(7) of the Act. The petitioners further requested that critical habitat be designated for *A. pumila* concurrent with the listing pursuant to 50 CFR 424.12 and the Administrative Procedure Act (5 U.S.C. 553). On January 23, 1997, we notified the petitioners that we received their petition and that it would be processed based on the listing priority guidance then in effect.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition presents substantial information indicating that the action may be warranted. To the maximum extent practicable, this finding should be made within 90 days of the receipt of the petition and it should be published promptly in the **Federal Register**. If we determine that listing the species may be warranted, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. However, because of budgetary restraints, we processed petitions in accordance with the 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance identified four tiers of listing activities to be conducted by us with appropriate funds. Tier 1, the highest priority, covered emergency listings of species facing an imminent risk of extinction as defined under the emergency listing provisions of section (4)(b)(7) of the Act. Tier 2, the second priority, included processing of final determinations for species currently proposed for listing. Tier 3, the third priority, addressed efforts under the Act to resolve the conservation status of candidate species and process administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. Tier 4, the lowest priority, covered the processing of critical habitat determinations, delisting actions, and reclassification of endangered species to threatened status. Under the priority system and because of the backlog of species proposed for listing and awaiting final listing determinations at that time, we deferred action on listing petitions except where an emergency existed and where the immediacy of the threat was so great to a significant portion of the population that the routine listing process would not be sufficient to prevent large losses that might result in extinction.

We reviewed the petition and supporting documentation to determine whether *Ambrosia pumila* warranted emergency listing pursuant to section 4(b)(7) of the Act. On July 15, 1997, we concluded that emergency listing and the designation of critical habitat were not warranted, and that the petition should be processed as a Tier 3 priority task pursuant to the listing priority guidance for fiscal year 1997 (61 FR 64475). On October 23, 1997, a notice published in the **Federal Register** (62 FR 55268), announced the extension of the fiscal year 1997 listing priority guidance until such time as the fiscal year 1998 appropriation bill for the Department of the Interior became law and new final guidance was published in the **Federal Register**. In this notice there were no changes made in the tier system.

On October 1, 1998, Southwest Center for Biological Diversity and the California Native Plant Society filed a lawsuit in the United States District Court for the Southern District of California, challenging our failure to produce timely administrative 90-day and 12-month findings for *Ambrosia pumila*.

On May 8, 1998, new listing priority guidance for Fiscal Years 1998 and 1999 was published in the **Federal Register** (63 FR 25502). This new guidance changed the four-tier priority system to a three-tier priority system. Highest priority, Tier 1, was assigned to processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority, Tier 2, was processing final decisions on proposed listings; resolving the conservation status of candidate species; the processing of administrative findings on petitions to add species to the lists, and petitions to delist species, or reclassify species; and delisting and reclassifying actions. Lowest priority, Tier 3, was the processing of proposed or final critical habitat designations. Under that guidance, the administrative review process for this petition fell under Tier 2. We published a 90-day finding on the petition to list *Ambrosia pumila* as endangered in the **Federal Register** (64 FR 19108) on April 19, 1999. We found that substantial information existed indicating listing may be warranted and solicited comments and information regarding the finding. However, we did not receive any comments by May 19, 1999, the close of the comment period. On October 28, 1999, the District Court (Case No. 98–CV–1785 J(RBB)) ordered us to complete a 12-month finding for *A. pumila* on or before December 10, 1999.

On December 9, 1999, we sent the proposed rule to list *Ambrosia pumila* as endangered to the **Federal Register**. On December 29, 1999, it was published (64 FR 72993). This proposed rule constituted the 12-month finding on the petition. In the proposed rule we indicated that designation of critical habitat was prudent for *A. pumila*, but we did not propose critical habitat at that time because of budgetary constraints and our current listing priority guidance. Due to limited resources and the need to undertake other, higher-priority listing actions, the Service was unable to make a final determination for this species within the 12-month statutory timeframe provided pursuant to the Act. In August 2001, the Department of the Interior reached an agreement in principle with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society on a timeframe to make final listing determinations for 14 species, including *A. pumila*. The agreement was formalized in October 2001 (*Center for Biological Diversity, et al.* v. *Norton*,

Civ. No. 01–2063 (JR) (D.D.C.). The publication of the final rule to list *A. pumila* complies with the terms of that court-approved settlement agreement.

Summary of Comments and Recommendations

In our December 29, 1999, proposal to list *Ambrosia pumila* as endangered (64 FR 72993), we requested that all interested parties provide information concerning the status and distribution of responses to our requests for peer review of this listing action.

Where applicable, we have incorporated factual information provided by the commenters in this final rule. Other statements or comments are addressed below.

Comment 1: The commenter stated that two additional populations have been reported for Riverside County, bringing the total to four known occurrences in Riverside County.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Twenty-one of the 40 documented native occurrences of this species are and threatened species. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Ambrosia pumila* are as follows.

Sweetwater River watershed, near El Cajon, reportedly supports more that 1,000 stems, and is potentially threatened by highway construction (CNDDB 1999) although no project is currently funded for the site (B. April, pers. comm., 2002). In Riverside County, highway expansion or highway and utility rights-of-way maintenance threaten a large occurrence (500 to 1,000 stems reported in 1998) along Nichols Road near Lake Elsinore (CNDDB 1999).

C. *Disease or predation.* Disease and predation are not known to be factors affecting this plant species.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could currently provide some protection for this species include (1) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat terraces of streams where *A. pumila* is found. Through the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from a water development project authorized by the Corps. Section 404 regulations require that applicants obtain a nationwide, regional, or individual permit for projects that discharge fill material into waters of the

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Civ. No. 01–2063 (JR) (D.D.C.). The publication of the final rule to list *A. pumila* complies with the terms of that court-approved settlement agreement.

Summary of Comments and Recommendations

In our December 29, 1999, proposal to list *Ambrosia pumila* as endangered (64 FR 72993), we requested that all interested parties provide information concerning the status and distribution of the species and threats to the species and its habitat. During the 60-day comment period that closed on February 28, 2000, we contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties and requested comments on the proposal. In addition, legal notices announcing the publication of the proposed rule and opening of the public comment period were published in the North County Times and The San Diego Union-Tribune on January 6, 2000, and in the Riverside Press Enterprise, on January 7, 2000. We received no requests for a public hearing during the public comment period. We received two letters during the comment period, one from the petitioner and one from a peer reviewer. The comments provided information regarding the condition of several of the occurrences of the species and are incorporated in this final rule. On March 30, 2000, in response to a request, we reopened the comment period (65 FR 16869) for this proposed action for an additional 60 days, until May 30, 2000. No further comments were received during the reopened comment period.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Ambrosia pumila* presented in the proposed rule. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts. We received peer review comments from one of the persons contacted. The peer reviewer stated that the proposed action to list *A. pumila* as endangered was clear and complete. The peer reviewer also included some statements about translocations carried out for the species. Those comments are incorporated in this final rule where appropriate. There were no other responses to our requests for peer review of this listing action.

Where applicable, we have incorporated factual information provided by the commenters in this final rule. Other statements or comments are addressed below.

Comment 1: The commenter stated that two additional populations have been reported for Riverside County, bringing the total to four known occurrences in Riverside County.

Our Response: Two new occurrences have been reported since the publication of the proposed rule in December 1999. A new historical occurrence of the species is based on a voucher specimen from the Herbarium of Riverside Community College. The specimen, which was verified by Andrew Sanders, Curator of the Herbarium at UCR, was collected in 1940 in the Arlington area of the City of Riverside (Provance *et al.* 2001). The other occurrence is near Alberhill where a series of six subpopulations supporting over 12,000 aerial stems was reported in 2000 (Hewitt and McGuire 2000). Currently, we are aware of three extant occurrences in Riverside County.

Comment 2: The commenter did not think transplantation of *Ambrosia pumila* plants from a Caltrans site in the Sweetwater River drainage to a site in Penasquitos Canyon, a different watershed, or to multiple sites, was an appropriate use of those plants.

Our Response: Transplantation has been used to salvage plants where the occurrence was to be totally or partially extirpated. The above-mentioned activities were carried out by Caltrans in the summer of 1996, as a mitigation measure for the unavoidable extirpation of *Ambrosia pumila* associated with construction of State Route 125/54. This was done prior to publication of the proposed rule to list the species. As part of the recovery planning process, protocols for the collection and use of salvaged materials will be developed, taking into account the reproductive biology and clonal structure of *A. pumila*. In collecting material for propagation, consideration must be given to maximize genetic variation and equal numbers of progeny should be obtained from each line (Given 1994). Caution will be used in employing translocation, relocation, and reintroduction as mitigation for project impacts (CDFG 1991).

Summary of Factors Affecting the Species

Section 4 of the Act and implementing regulations (50 CFR Part 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Ambrosia pumila* are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Twenty-one of the 40 documented native occurrences of this species are believed to have been extirpated by human activities, including, but not limited to, urban development as well as highway and utility corridor construction and maintenance (CNDDB 1999). Of the remaining 19 occurrences, the occurrence adjacent to a sidewalk in National City (CNDDB 1999) was not considered viable because of the small size of the population, and three additional occurrences have not been verified in many years. Five of the remaining 15 extant native occurrences, including 3 of the larger occurrences, are threatened with habitat destruction associated with highway expansion or highway rights-of-way maintenance activities including mowing (CNDDB 1999). Three known extant occurrences are within the San Luis Rey River watershed and are potentially threatened by highway maintenance and expansion of State Route 76 (CNDDB, 1999). Since issuance of a Notice of Preparation (NOP) in 1999 regarding widening of State Route 76, the scope of the project has been reduced and Caltrans has recently had internal scoping meetings to discuss alternatives (J. D'Elia, USFWS, *in litt.* 2002). One of these occurrences is west of the Bonsall Bridge and reportedly supported 2,000 to 3,000 stems in 1997 (CNDDB). While this occurrence is within the boundary of a proposed project on Jeffries Ranch, (along the south side of State Route 76), current project design avoids all of this occurrence (American Realty Trust, Inc. 2002). However, the occurrence is still threatened by highway expansion along the northern boundary of the property. A portion of this same occurrence was inadvertently impacted in 1996 by a San Diego Gas and Electric (SDG&E) utility project. The species was found on the site during the latter stages of planning for the project. Some of the aerial stems were salvaged by Pacific Southwest Biological Services, Inc. and have been maintained for future translocation. *Ambrosia pumila* still occurs at this locality. We have recently received a request from SDG&E for assistance in replanting the *A. pumila* at this site (Sempra Energy *in litt.* 2001). One of the five remaining occurrences within the Sweetwater River watershed, near El Cajon, reportedly supports more that 1,000 stems, and is potentially threatened by highway construction (CNDDB 1999) although no project is currently funded for the site (B. April, pers. comm., 2002). In Riverside County, highway expansion or highway and utility rights-of-way maintenance threaten a large occurrence (500 to 1,000 stems reported in 1998) along Nichols Road near Lake Elsinore (CNDDB 1999).

Development of recreational facilities has also affected *Ambrosia pumila* (CNDDB 1999). One occurrence that reportedly supported 2,000 aerial stems in 1997 was apparently significantly degraded by the construction of a golf course near Del Dios Highway in the San Dieguito River watershed, San Diego County (G. Wallace, *in litt.* 1999). Fewer than 100 aerial stems were found on the site which was less than 0.1 ha (less than 0.1 ac) in size (G. Wallace, *in litt.* 1999). Construction of a campground facility in MTRP by the City of San Diego resulted in the loss of less than 0.1 ha (0.1 ac) or 10 percent of this major population. This impact was the anticipated loss allowable under provisions of the City of San Diego's MSCP Subarea Plan (City of San Diego 1997). Biological monitoring, a requirement of MSCP, is in place and biologists periodically evaluate the status of this species and make management recommendations.

Urban development continues to threaten this species. A large occurrence in the City of El Cajon that reportedly supported 6,500 stems of *Ambrosia pumila* in 1998 (CNDDB 1999) was apparently extirpated by commercial and residential development (C. Burrascano, *in litt.* 2001). In Riverside County, the recently reported occurrence near Alberhill (reportedly supporting about 13,000 aerial stems in 2000) is threatened by development associated with the Alberhill Sports and Entertainment project (Hewitt & McGuire 2000).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting *Ambrosia pumila* at this time. The potential threat to this species from over-collection may increase upon publication of this rule, although we are not aware of any incidents of collection of this species resulting from the proposal to list *A. pumila* as an endangered species. This species has been offered for sale locally, however, the source of the material is unknown (J. Bartel and B. McMillan, USFWS, pers. comm., 1999; CNPS, *in litt.* 2000).

C. *Disease or predation.* Disease and predation are not known to be factors affecting this plant species.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could currently provide some protection for this species include (1) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, the Fish and Wildlife Coordination Act, and section 404 of the Federal Clean Water Act; (2) State laws, including the Native Plant Protection Act (NPPA), California Endangered Species Act (CESA), California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (3) local land use processes and ordinances; and (4) protection under Mexican laws.

Federal Laws and Regulations

NEPA (42 U.S.C. 4321 to 4347) requires disclosure of the environmental effects of projects within Federal jurisdiction. NEPA requires that the project alternatives include recommendations for protecting, restoring, and enhancing the environment. NEPA does not, however, require that the lead agency select an alternative with the least significant impact to the environment, nor does it prohibit implementing a proposed action in an environmentally sensitive area (40 CFR 1500 *et seq.*).

The Endangered Species Act (Act) may afford protection to *Ambrosia pumila* if it co-occurs with species already listed as threatened or endangered. A number of federally listed species are known to or are likely to co-occur within the range of *A. pumila*. Protection afforded by these species through sections 7 and 10 of the Act, however, is minimal due to the lack of significantly overlapping habitat requirements. These species include the endangered least Bell's vireo (*Vireo bellii pusillus*) and the threatened coastal California gnatcatcher (*Polioptila californica californica*). These species are not known to consistently co-occur in the same vegetation communities with *A. pumila* although they may occur in nearby associated communities.

The Fish and Wildlife Coordination Act and section 404 of the Clean Water Act may afford some protection to *Ambrosia pumila* where it occurs in waters of the United States that require a permit from the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which may include terraces of streams where *A. pumila* is found. Through the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from a water development project authorized by the Corps. Section 404 regulations require that applicants obtain a nationwide, regional, or individual permit for projects that discharge fill material into waters of the United States. However, because the distribution of this species occurs mainly in non-wetland habitats and may not co-occur with other listed species, the Fish and Wildlife Coordination Act and section 404 of the Clean Water Act provide only limited opportunities to protect *A. pumila*.

State Laws and Regulation

Although State laws, including CEQA, CESA, and NPPA at times may provide a measure of protection to species, these laws are not adequate to protect species in all cases or may not be applicable to a particular species.

Ambrosia pumila is not listed under the CESA although it may be eligible for State listing under section 1901, chapter 10 of the California Department of Fish and Game Code. Its inclusion in List 1B of the California Native Plant Society Inventory (CNPS 2001) may satisfy the threat requirement of that section. The State was petitioned to list this species as endangered, under CESA, in June 1997. This petition was rejected by the State because it was not accurate. The same petitioner submitted another petition in February 1998 to list the species as threatened but subsequently withdrew the petition in March 1998. The State did not comment on our proposal to list this species.

CEQA (Public Resources Code, section 21000 *et seq.*) pertains to projects on non-Federal lands or activities and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency. The lead agency is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal" including those that are eligible for listing under the NPPA or CESA. However, under CEQA, where overriding social and economic considerations can be demonstrated, a

project may go forward even where adverse impacts to a species are significant.

Mexican Law

We are not aware of any existing regulatory mechanisms in Mexico that would protect *Ambrosia pumila* or its habitat. If *A. pumila* was specifically protected in Mexico, the portion of the range in Mexico alone would not be adequate to ensure long-term

discing for fire breaks to avoid this species (A. Davenport, *in litt.* 2002). The extant occurrence in El Cajon, owned by Caltrans, is also impacted by periodic mowing by an adjacent landowner (CNDDB 1999; B. April, pers. comm., 2002).

In one documented instance in 1999, the occurrence of *Ambrosia pumila* at a fenced biological preserve at Skunk Hollow in Riverside County, was grazed by sheep (C. Moen, USFWS, *in litt.*

Social trails that disperse foot traffic from main trails have been closed by fencing or signage noting sensitive habitat and an interpretive sign is posted in the area (P. Kilburg, Senior Ranger, MTRP, pers. comm., 2002). The management plan (City of San Diego 2000) states that 26 percent of all mapped patches and 24 percent of the total area supporting this species are impacted by trails. The document also notes that *Ambrosia pumila* cannot

eliminate the reproductive output at an occurrence, kill all of the plants, or severely reduce the vegetative capacity of the plants to sustain reproductive structures for some period of time.

We have carefully assessed the best scientific and commercial information available regarding the threats faced by this species in developing this rule. Based on this evaluation, listing *Ambrosia pumila* as endangered is warranted. The species is threatened

it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal

habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become

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project may go forward even where adverse impacts to a species are significant.

Mexican Law

We are not aware of any existing regulatory mechanisms in Mexico that would protect *Ambrosia pumila* or its habitat. If *A. pumila* was specifically protected in Mexico, the portion of the range in Mexico alone would not be adequate to ensure long-term conservation of this species.

E. *Other natural or manmade factors affecting their continued existence.* Non-native plants are considered a threat to virtually all of the extant occurrences of *Ambrosia pumila* (CNDDB 1999; J. Vanderwier, *in litt.* 1998). Non-native species of grasses and forbs have invaded many of southern California's plant communities. Their presence and abundance are often an indirect result of persistent and repeated habitat disturbance from development, discing, mowing, alteration of local hydrology, and the presence and maintenance of highways and trails. Overgrowth and competition by non-native plants likely affect the reproductive potential of this low growing, wind-pollinated species (CNDDB 1999). Non-native plants found with *A. pumila* include *Brassica* spp. (mustard), *Vulpia* spp. (annual fescue), *Erodium* spp. (crane's-bill), *Bromus* spp. (brome grass), and *Foeniculum vulgare* (sweet fennel). While scientific studies on the effects of non-native plants on *A. pumila* have not been undertaken, the presence of these and other non-native plants is likely to affect (1) pollen and fruit dispersal by impeding flow of wind-blown pollen and local dispersal of seeds; (2) fire patterns by increasing the fuel loads due to the influx of non-native plants; (3) hydrological conditions by decreasing the amount of water available for *A. pumila;* and (4) the cumulative effects by reducing the vegetative productivity and the apparently low seed production for this species.

Several occurrences of *Ambrosia pumila* are threatened by periodic mowing or discing which can reduce the vegetative vigor of the plants and may greatly reduce or eliminate the chances of reproductive output for the year. If the plants were mowed in mid summer to early fall, it is likely that the flowering portions of the aerial stems would be removed. Vegetation in a fuel modification zone in a portion of one of the occurrences in the SDNWR is periodically mowed or disced (J. Vanderwier, *in litt.* 1998; A. Davenport, *in litt.* 2002). In the future, populations on the SDNWR will be flagged prior to discing for fire breaks to avoid this species (A. Davenport, *in litt.* 2002). The extant occurrence in El Cajon, owned by Caltrans, is also impacted by periodic mowing by an adjacent landowner (CNDDB 1999; B. April, pers. comm., 2002).

In one documented instance in 1999, the occurrence of *Ambrosia pumila* at a fenced biological preserve at Skunk Hollow in Riverside County, was grazed by sheep (C. Moen, USFWS, *in litt.* 1999). Grazing would likely eliminate or severely reduce the annual reproductive output of *A. pumila* and could also reduce the vegetative portions of the plants to a degree that would threaten their capacity to persist. Grazing was not a covered activity in the Rancho Bella Vista Habitat Conservation Plan that encompasses this area (USFWS 2000).

Trampling by hikers, horses, and vehicles is likely a threat to any of the occurrences that are found along trails, access roads, rights-of-way, and utility easements. At least four of the larger occurrences of *Ambrosia pumila* are known to be threatened by trampling, including the occurrences at the SDNWR (J. Vanderwier, *in litt.* 1998; T. Roster, SDNWR, pers. comm., 1999; A. Davenport, *in litt.* 2002). While the effects on the rhizome-like roots by soil compaction from vehicle traffic has not been quantified, no aerial stems occur in a wide trail used by hikers and horseback riders that traverses an occurrence in the SDNWR (A. Davenport, *in litt.* 2002). As an avoidance measure, some of the trails that cross and fragment occurrences of the species at the SDNWR will be abandoned, while those that remain will have increased signage to direct hikers and equestrian users away from the *A. pumila* populations (T. Roster, pers. comm., 1999). In addition, SDNWR will consult under section 7 of the Act for any proposed actions that may affect *A. pumila.*

The occurrence at Skunk Hollow in Riverside County is reportedly threatened by indirect impacts from urbanization, including a park, surrounding the occurrence (CNDDB 1999). These activities could include increased impacts from trail use by mountain bikes, horses, or hikers.

Two occurrences are in MTRP. Coincident with their subarea plan (City of San Diego 1997), the San Diego Ambrosia Management Plan (City of San Diego 2000) includes several conservation measures already in place at MTRP. These include fencing at area C which supports the highest concentration of stems of San Diego ambrosia (City of San Diego 2000). Social trails that disperse foot traffic from main trails have been closed by fencing or signage noting sensitive habitat and an interpretive sign is posted in the area (P. Kilburg, Senior Ranger, MTRP, pers. comm., 2002). The management plan (City of San Diego 2000) states that 26 percent of all mapped patches and 24 percent of the total area supporting this species are impacted by trails. The document also notes that *Ambrosia pumila* cannot withstand trampling from routine foot traffic and that trampling compacts the soil. Compacted soil may reduce the percolation of water into the soil and small patches may be in greater jeopardy than larger patches from this type of altered hydrological condition (City of San Diego 2000). Therefore, the plan recommends enhancement of the population of *A. pumila.* The plan cautions that strategies should be carefully tested prior to large-scale implementation or acceptance as a reliable enhancement method (City of San Diego 2000). Two strategies were proposed, one to increase the areal extent and absolute numbers of rhizome-like roots in a given patch. The other strategy involves increasing the range of the species in MTRP. Removal of exotic non-native species and planting of native grassland species should be included as funding permits (City of San Diego 2000). Enhancement protocols would likely require inclusion of sampling methodologies to identify specific genetic composition of occurrences and obtain material of the desired genotypes. Success criteria will be determined based in part on genetic composition and dynamics of natural populations.

Two extant occurrences (CNDDB 1999) are within the Metro/Lakeside/Jamul segment of the San Diego County Subarea Plan of the MSCP (County of San Diego 1997). At least one of these occurrences is threatened by the parking of cars on the site and discing of the site (CNDDB 1999). This same occurrence is affected by trampling during maintenance activities on SDG&E utility towers (J. Vanderwier, *in litt.* 1998) and trampling associated with children using the area as a playground for walking and riding bicycles (A. Davenport, *in litt.* 2002). The area where the plants occur appears to be mowed periodically (A. Davenport, *in litt.* 2002).

As described above in the background section, small occurrences composed of a low number of aerial stems or those consisting of few genetically distinct genotypes are likely at a greater risk of negative impacts from random events. This could include fire, which could eliminate the reproductive output at an occurrence, kill all of the plants, or severely reduce the vegetative capacity of the plants to sustain reproductive structures for some period of time.

We have carefully assessed the best scientific and commercial information available regarding the threats faced by this species in developing this rule. Based on this evaluation, listing *Ambrosia pumila* as endangered is warranted. The species is threatened with extinction due to present or threatened destruction, fragmentation, and degradation of habitat primarily by construction and maintenance of highways, maintenance of utility easements, development of recreational facilities, and residential and commercial development; inadequate regulatory mechanisms; potential competition, encroachment, and other negative impacts from non-native plants; mowing and discing for fuel modification; and trampling as well as soil compaction by horses, humans, and vehicles. These threats are compounded by the fact that this species is a clonal perennial plant that has wind-pollinated flowers and may rarely produce viable seeds. The number of genetically different plants at any given site is unknown, but there are likely multiple aerial stems per plant. This means that some of the smaller occurrences could represent a single plant. Seven of the 15 occurrences are on private lands, some of these with rights-of-way access where regular maintenance activities may impact the plants. Conservation measures, provided by MSCP, are in place for 5 of the 15 occurrences. Even with full protection, this represents only one-third of the known occurrences and will likely not protect sufficient numbers of genetically different plants. Other occurrences may be conserved in future habitat conservation plans. Also, there are no known examples of transplanted or reintroduced occurrences of this species in which sexual reproduction has occurred to sustain either a viable population or exhibit the genetic diversity found in a naturally occurring population.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as-(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designates critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Ambrosia pumila is potentially vulnerable to unrestricted over-collection or vandalism. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence of over-collection or vandalism of *A. pumila.* This species has been offered for sale locally, but the origin of the material is unknown. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species from over-collection or vandalism.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 of the Act requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we determine that designation of critical habitat for *Ambrosia pumila* is prudent.

However, the deferral of the critical habitat designation for *Ambrosia pumila* will allow us to concentrate our limited resources on higher priority listing actions, while allowing us to put in place protections needed for the conservation of *A. pumila* without delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is essential to the conservation of the species that such determinations be promptly published. We will prepare a critical habitat designation for this species in the future at such time when our available resources allow it.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, local agencies, private groups, and organizations and requires that recovery actions be carried out for all listed species. We discuss the protection required by Federal agencies and the prohibitions against taking and harm, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally

with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its

1996, the City of San Diego in July 1997, the County of San Diego in March 1998 and the City of La Mesa in January 2000.

All of the 12 extant occurrences in San Diego County are in approved or proposed regional habitat conservation planning areas. Eleven of the 12 extant occurrences in San Diego County are in the MSCP planning area. Two of these occurrences are in the SDNWR. Five of the nine known occurrences in the Diego's Subarea Plan (County of San Diego 1997).

Two existing occurrences remain within the City of El Cajon. The City of El Cajon submitted a draft MSCP Subarea Plan dated January 2, 1997 (City of El Cajon 1997). Neither of the two occurrences is included within the 100 percent habitat preserve areas. The draft plan notes that the plant is considered a narrow endemic species by

While four of the 12 extant occurrences of *Ambrosia pumila* in San Diego County are in areas where regional habitat conservation planning is ongoing, the plans have not yet been approved. These regional planning efforts include MHCP, the North County MSCP Subarea Plan, and the City of El Cajon Subarea Plan. The details of protections for each of the occurrences of *Ambrosia pumila* under each of these plans are being developed and thus are

Federal jurisdiction any endangered plant species. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the

defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

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with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Several Federal agencies are expected to potentially have involvement with section 7 of the Act regarding this species. The association of *Ambrosia pumila* with terraces of streams may result in the Corps becoming involved through its permitting authority under section 404 of the Clean Water Act and the issuance of permits related to the discharge of fill material into waters of the United States. The Federal Highway Administration may be affected through potential funding of future highway construction affecting this species. The Federal Energy Regulatory Commission may be involved through its permitting authority for utility projects that may potentially affect this species. The two occurrences of *A. pumila* on the SDNWR receive the protection afforded biological resources on the refuge. In addition, SDNWR is managed in accordance with San Diego MSCP. In the long-term, the SDNWR will develop a comprehensive conservation plan that addresses this species and other biological resources.

In 1991, the State of California established the Natural Community Conservation Planning (NCCP) program to address conservation needs of natural ecosystems throughout the State. The initial focus of the NCCP program is the coastal sage scrub community in southern California. Regional habitat conservation plans have been approved, are in development, or are being planned in San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties pursuant to the State of California Natural Community Conservation Planning Act of 1991 and section 10(a)(1)(B) of the Act.

The San Diego MSCP establishes a 68,800-ha (172,000-ac) preserve and provides for monitoring and management for the 85 covered species addressed in the permit, including *Ambrosia pumila*. Additionally, *A. pumila* is defined in the MSCP as a narrow endemic species. The Service approved subarea plans under the MSCP for the City of Poway in July 1996, the City of San Diego in July 1997, the County of San Diego in March 1998 and the City of La Mesa in January 2000.

All of the 12 extant occurrences in San Diego County are in approved or proposed regional habitat conservation planning areas. Eleven of the 12 extant occurrences in San Diego County are in the MSCP planning area. Two of these occurrences are in the SDNWR. Five of the nine known occurrences in the MSCP planning area are provided protection within approved permitted Subarea Plans. Two of the occurrences, both at MTRP, are addressed under the approved City of San Diego's Subarea Plan (City of San Diego 1997) and in the San Diego Ambrosia Management Plan (City of San Diego 2000). Several conservation measures are in place at MTRP. These include fencing of the largest concentration of *Ambrosia pumila*, closure of several trails that impact the species, and interpretive signage in the area (City of San Diego 2000, P. Kilburg pers. comm., 2002). According to the City of San Diego's Subarea Plan (City of San Diego 1997), 90 percent of the only major population will be conserved and 100 percent of the adjacent portion of the occurrence on private lands near the radio tower will be preserved. The site-specific monitoring plan, with management plan and directives, include measures to protect against detrimental edge effects (City of San Diego 1997). This Subarea Plan also treats this plant as a narrow endemic species requiring impacts within the preserve to be avoided. Outside the preserve, narrow endemic species will be protected through one of the following measures: (1) Avoidance; (2) management; (3) enhancement; and (4) transplantation to areas identified for preservation. Unavoidable impacts associated with reasonable use or essential public facilities would need to be minimized and mitigated (City of San Diego 1997).

Under the County of San Diego's Subarea Plan, *Ambrosia pumila* is a narrow endemic species requiring avoidance to the maximum extent possible. Where avoidance is infeasible, a maximum encroachment may be authorized of up to 20 percent of the population on site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending upon the sensitivity of the species and population size, as determined in a biological analysis approved by the Service and the CDFG. The occurrences near Del Dios Highway in the San Dieguito River watershed, as well as two occurrences near Steele Canyon Road are within the approved County of San Diego's Subarea Plan (County of San Diego 1997).

Two existing occurrences remain within the City of El Cajon. The City of El Cajon submitted a draft MSCP Subarea Plan dated January 2, 1997 (City of El Cajon 1997). Neither of the two occurrences is included within the 100 percent habitat preserve areas. The draft plan notes that the plant is considered a narrow endemic species by MSCP and the intention of the City of El Cajon to address species and habitat protection through the CEQA process. The City of El Cajon has not yet completed their MSCP subarea plan. The last time this plan was an agenda item at a meeting with the City of El Cajon was on May 20, 1999.

The draft Environmental Impact Statement/Environmental Impact Report for the MHCP in northwestern San Diego County was released for review by the San Diego Association of Governments (SANDAG) and the Service in December 2001. The only known occurrence of this species within the planning area is proposed to be conserved. Under the draft MHCP, the plant would be treated as a narrow endemic species requiring surveys of suitable habitat and onsite conservation of 80–100 percent of each occurrence discovered in the area. Two occurrences of *Ambrosia pumila* in San Diego County are within the North County MSCP Subarea Plan, which is also in the planning phase. This plan is projected to be completed in 2004.

The County of Riverside anticipates completion of the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) by December 2002. *Ambrosia pumila* has been proposed for coverage under this plan and will be treated as a narrow endemic species. The three known extant occurrences of this species in Riverside County are within the planning boundaries of the MSHCP. One of these is within an area already managed for conservation. The other two occurrences are within the criteria area where conservation is proposed. The narrow endemic species policy will require pre-project surveys and onsite conservation of a portion of any new populations identified (County of Riverside 2002).

SDG&E prepared a subregional Natural Communities Conservation Plan. The Service, CDFG, and SDG&E signed an implementation agreement and memorandum of understanding in December 1995. Under the provisions of this plan, *Ambrosia pumila* is a covered species and a narrow endemic species. The plan prohibits impacts to occupied habitat except in emergency situations.

While four of the 12 extant occurrences of *Ambrosia pumila* in San Diego County are in areas where regional habitat conservation planning is ongoing, the plans have not yet been approved. These regional planning efforts include MHCP, the North County MSCP Subarea Plan, and the City of El Cajon Subarea Plan. The details of protections for each of the occurrences of *Ambrosia pumila* under each of these plans are being developed and thus are not currently in place. Protections for the eight remaining occurrences in San Diego County are discussed above. All three of the only known extant occurrences in Riverside County are in the planning area for the Western Riverside Multiple Species Habitat Conservation Plan. Because this plan is not yet approved, two of these occurrences, including one of the largest, are not currently afforded any protections under the MSHCP.

Listing *Ambrosia pumila* provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and local agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site-specific management actions necessary to achieve conservation and recovery of the species. Based on the biology of this species and preliminary data regarding the clonal structure of the species, attention should be given to preservation of as many genotypes as possible. This is most easily accomplished by preserving as many different occurrences as possible, determining their clonal structure, and protecting the occurrences from direct effects of habitat destruction or degradation and the indirect effects of encroachment by invasive non-native species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction any endangered plant species. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California criminal trespass law. Otherwise, such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9 should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned control number 1018–0094, which expires on July 31, 2004. For additional information concerning these permits and associated requirements, see 50 CFR § 17.62.

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Gary D. Wallace, Ph.D., U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

PART 17— [AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following entry in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Ambrosia pumila	San Diego ambrosia	U.S.A. (CA) Mexico	Asteraceae	E	727	NA	NA
.	.	.	.	.	.	.	.

yellow-legged frogs, allowing for shelter from predators along shores or in deeper waters, and habitat for breeding, foraging, egg-laying, thermoregulation (to regulate the body temperature through behavior), and overwintering (Jennings and Hayes 1994).

Juvenile and adult mountain yellow-legged frogs feed primarily on small, streamside insects such as beetles, flies, ants, bees, and similar small insects (Jennings and Hayes 1994). The coldest months are spent in hibernation, underwater in streams or lakes, or in upland habitats (Zeiner *et al.* 1988). Mountain yellow-legged frogs are active diurnally (during the day) and nocturnally (during the night) (Zeiner *et al.* 1988).

Mountain yellow-legged frogs are found in the Sierra Nevada, Cascade, and Coast Ranges of California and Oregon, and in the Warner Mountains of California (Stebbins 1985). Mountain yellow-legged frogs are found in the Sierra Nevada, Cascade, and Coast Ranges of California and Oregon, and in the Warner Mountains of California (Stebbins 1985). Mountain yellow-legged frogs are found in the Sierra Nevada, Cascade, and Coast Ranges of California and Oregon, and in the Warner Mountains of California (Stebbins 1985). Mountain yellow-legged frogs are found in the Sierra Nevada, Cascade, and Coast Ranges of California and Oregon, and in the Warner Mountains of California (Stebbins 1985

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FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Ambrosia pumila	San Diego ambrosia	U.S.A. (CA) Mexico	Asteraceae	E	727	NA	NA
.	.	.	.	.	.	.	.

Dated: June 14, 2002.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–16370 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine endangered status for the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Endangered Species Act of 1973, as amended (Act). This rule implements the Federal protection and recovery provisions afforded by the Act for this DPS.

DATES: This rule is effective August 1, 2002.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address (telephone 760/431–9440 and facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The mountain yellow-legged frog is in the family of true frogs, Ranidae, which consists of frogs that are more closely tied to water bodies for breeding and foraging than other frog or toad species. Mountain yellow-legged frogs were originally described by Camp (1917) as a subspecies of *Rana boylii*. Zweifel (1955) demonstrated that frogs from the high Sierra Nevada and the mountains of southern California were somewhat similar to each other, yet were distinct from the rest of the *R. boylii* (= *boylei*) group. Since that time, most authors have treated the mountain yellow-legged frog as a full species, *Rana muscosa*, following Zweifel's treatment.

Mountain yellow-legged frogs are moderately sized, about 40 to 80 millimeters (mm) (1.5 to 3 inches (in)) from snout to urostyle (the pointed bone at the base of the backbone) (Zweifel 1955, Jennings and Hayes 1994). The skin pattern of the mountain yellow-legged frog is variable, ranging from discrete dark spots that can be few and large, to smaller and more numerous with a mixture of sizes and shapes, to irregular patches or a poorly defined network (Zweifel 1955). The body color is also variable, usually a mix of brown and yellow, but often with gray, red, or green-brown. Some individuals may be dark brown with little pattern (Jennings and Hayes 1994). Folds are present on each side of the back (dorsolateral folds), but usually are not prominent (Stebbins 1985). The throat is white or yellow, sometimes mottled with dark pigment (Zweifel 1955). The belly and undersurface of the hind limbs are yellow, which ranges in hue from pale lemon yellow to an intense sun yellow. Eye coloration consists of a gold-colored iris with a horizontal, black counter shading stripe (Jennings and Hayes 1994).

The mountain yellow-legged frog is a near-endemic species to California (primarily restricted to California and a small area of Nevada), historically ranging in distribution from southern Plumas County in northern California to northern San Diego County in southern California. Within the range of the species, there are two major clades (a group of organisms that includes all descendants of one common ancestor) separated by a biogeographic break between the central and southern portions of the Sierra Nevada. These two clades can be further divided into four subgroups, the northern Sierra Nevada, central Sierra Nevada, southern Sierra Nevada, and southern California (Macey *et al.* 2001). In the Sierra Nevada of California, the mountain yellow-legged frog ranges from northern Plumas County (G. Fellers *in litt.* 2000) to southern Tulare County (Jennings and Hayes 1994), at elevations mostly above 1,820 meters (m) (6,000 feet (ft)). The frogs of the southern Sierra Nevada are isolated from the frogs in the mountains of southern California by the Tehachapi Mountains and a distance of about 225 kilometers (km) (140 miles (mi)).

Mountain yellow-legged frogs were historically documented from approximately 166 localities in creeks and drainages in the mountains of southern California (Jennings and Hayes 1994). Of these, an estimated 164 localities were from creeks and drainages in the San Gabriel, Big Bear, and San Jacinto Mountains of Los Angeles, San Bernardino, and Riverside Counties. The two remaining occurrences were documented on Palomar Mountain in San Diego County and were considered to represent an isolated population (Zweifel 1955). Currently the mountain yellow-legged frog is known from only seven locations in southern California in portions of the San Gabriel, San Bernardino, and San Jacinto Mountains (Backlin *et al.* 2002).

Localities of extant populations of mountain yellow-legged frogs in southern California are reported to range in elevation from approximately 370 m (1,200 ft) to 2,290 m (7,500 ft) (Stebbins 1985). Historical localities demonstrating the wide elevation range that mountain yellow-legged frogs inhabited in southern California include Eaton Canyon, Los Angeles County (370 m (1,220 ft)), and Bluff Lake, San Bernardino County (2,290 m (7,560 ft)).

Southern California mountain yellow-legged frogs are diurnal (active during the daylight hours), highly aquatic frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. Water depth, persistence, and configuration (*i.e.*, gently sloping shorelines and margins) appear to be important for mountain yellow-legged frogs, allowing for shelter from predators along shores or in deeper waters, and habitat for breeding, foraging, egg-laying, thermoregulation (to regulate the body temperature through behavior), and overwintering (Jennings and Hayes 1994).

Juvenile and adult mountain yellow-legged frogs feed primarily on small, streamside insects such as beetles, flies, ants, bees, and similar small insects (Jennings and Hayes 1994). The coldest winter months are spent in hibernation, probably underwater or in crevices in the streambanks. Mountain yellow-legged frogs emerge from overwintering sites in early spring and breeding soon follows. Breeding activity typically begins in April at lower elevations, to June or July at upper elevations and continues for approximately a month (Zweifel 1955). Egg masses vary in size from as few as 15 eggs to 350 eggs per mass (Vredenburg *et al.*, in press), which is considered low, relative to a range of several hundred to several thousand for other true frogs such as the California red-legged frog (*Rana aurora draytonii*) (61 FR 25813, 66 FR 14626). Egg masses are normally deposited in shallow waters where they may be attached to rocks, gravel, vegetation, or similar substrates (U. S. Forest Service (USFS) 2002). As larvae develop, they tend to gravitate towards warmer waters to elevate body temperatures (Bradford 1984) which may facilitate larval and metamorphic development by allowing for a higher metabolic rate. Even with this behavior, "larvae apparently must overwinter at least two times for 6 to 9 month intervals before attaining metamorphosis because the active season is short and the aquatic habitat maintains warm temperatures for only brief intervals" (USFS 2002). Time to develop from fertilization to metamorphosis appears to be variable, ranging up to 3.5 years (Vredenburg *et al.*, in press; Zweifel 1955), with reproductive maturity reached from 3 to 4 years following metamorphosis (Zweifel 1955). Little is known about adult longevity, but the species is presumed to be long-lived due to adult survivorship (*i.e.*, observed survival of adults from year to year) (Mathews and Pope 1999, Pope 1999a in USFS 2002). Further, Pope (1999a in USFS 2002) suggests that mountain yellow-legged frogs may have strong site fidelity for wintering and summer habitats.

The decline of mountain yellow-legged frogs from more than 99 percent of their previously documented range in southern California (Jennings and Hayes 1994) may be part of a well-known larger pattern of native ranid frog extirpations in the western United States (Hayes and Jennings 1986, Drost and Fellers 1996). Some of the western ranid frog species experiencing noticeable declines are the threatened California red-legged frog (61 FR 25813), the spotted frog (*R. pretiosa* and *R. luteventris*), the Cascades frog (*R. cascadae*), and the threatened Chiricahua leopard frog (*R. chiricauhensis*) (67 FR 40789). Nowhere have the declines been more pronounced than in southern California, where, in addition to declines in mountain yellow-legged frogs, the California red-legged frog has been reduced to a few small remnant populations (61 FR 25813, 66 FR 14626) and the foothill yellow-legged frog (*R. boylii*) may be extirpated (Jennings and Hayes 1994).

The mechanisms causing the declines of western ranid frogs are not well understood and are certain to vary somewhat among species. The two most common and well-supported hypotheses for widespread extirpation of western ranid frogs are: (1) Past habitat destruction related to activities such as logging, mining, and habitat conversions for water development, irrigated agriculture, and commercial development (Hayes and Jennings 1986, 61 FR 25813); and (2) non-native predators and competitors such as introduced trout and bullfrogs (Hayes and Jennings 1986, Bradford 1989, Knapp 1996, Kupferberg 1997). However, in the case of the southern populations of mountain yellow-legged frogs, habitat destruction related to activities such as logging and commercial development does not appear to have been a significant factor in their precipitous decline because these activities are not prominent within mountain yellow-legged frog habitat in southern California. Overall, all of these factors, operating alone or in combination, may result in the direct extirpation of local populations of mountain yellow-legged frogs. Further, these factors may disrupt the natural cyclical population dynamics on the local and regional levels such that it may be difficult for populations to recover from localized impacts or extirpations.

Other environmental factors that may adversely affect mountain yellow-legged frogs and other amphibian populations over a wide geographic range include pesticides (Sparling *et al.* 2001), certain pathogens (Blaustein *et al.* 1994, Fellers *et al.* 2001), ultraviolet-B (beyond the visible spectrum) radiation (Blaustein *et al.* 2001, Belden and Blaustein 2002), or a combination of the above factors (Kiesecker and Blaustein 1995, Blaustein *et al.* 2001, Kiesecker *et al.* 2001). However, these factors, their interactions, and their effects on the decline of amphibian populations are not well understood (Wake 1998, Fellers *et al.* 2001). We believe that these environmental factors are still operating, and unless moderated or reversed, a high probability exists that mountain yellow-legged frogs may become extirpated in southern California in the foreseeable future. Consequently, additional research on the effects of the factors on amphibian populations is necessary. To that end, the Department of the Interior (DOI) has supported an initiative to fund research on the causes of amphibian declines (USFWS 2000).

Mountain yellow-legged frogs in southern California are found primarily on public land within the Angeles and San Bernardino National Forests. Therefore, the majority of mountain yellow-legged frog habitat is now protected or managed through management plans established for the Forests and sensitive species and habitat contained therein (refer to the Available Conservation Measures section for a further discussion of these measures). However, prior to the development of these management plans, dams or diversions were placed in many of the major streams flowing through the southern California mountains historically inhabited by mountain yellow-legged frogs. These dams and diversions alter natural hydrologic flow and may negatively impact mountain yellow-legged frog breeding and foraging habitat and further exacerbate the decline of populations in southern California.

Current Range and Status

Surveys in 2000 and 2001 by the U.S. Geological Survey (USGS) found mountain yellow-legged frogs in five small streams in the San Gabriel Mountains, one stream, City Creek, a tributary of the Santa Ana River, in the San Bernardino Mountains, and one stream in the upper reaches of the San Jacinto River system in the San Jacinto Mountains (Backlin *et al.* 2002, USFS 2002). The results from the USGS surveys differ somewhat from the distribution of mountain yellow-legged frogs described in the proposed listing rule (64 FR 71714). Areas where mountain yellow-legged frogs were found during the surveys and adult population estimates for each area are described below. Areas where frog populations were reported in the proposed rule, but were not found during recent surveys, are also noted.

San Gabriel Mountains, Angeles National Forest, San Bernardino County: Mountain yellow-legged frogs

were detected at 5 of 17 San Gabriel Mountains sites surveyed in 2001: Bear Gulch, Devil's Canyon, Little Rock Creek, South Fork of Big Rock Creek, and Vincent Gulch. No frogs were detected at Alder Gulch during a summer 2001 survey, but they were reported at this site in 1995 (Jennings 1995). Adult population estimates and 95 percent confidence intervals (CI) for the five sites were: 47 (95 percent CI = 22–108) for Bear Gulch, five (95 percent

from the southern Sierra Nevada for comparison, it was not clear whether the difference reflected two ends of a cline (a character gradient), or distinct populations. Thus, due to the small sample sizes, the results were interpreted cautiously. More recently, a phylogenetic analysis of mitochondrial DNA sequences was performed on *Rana muscosa* throughout its distribution (Macey *et al.* 2001). Mitochondrial DNA sequences provide a more robust

they each occupy. Zweifel (1955) observed that the frogs in southern California are typically found in steep gradient streams in the chaparral belt, even though they may range into small meadow streams at higher elevations. In contrast, Sierran frogs are most abundant in high elevation lakes and slow-moving portions of streams. Bradford's (1989) southern Sierra Nevada Mountain study site, for example, was in Sequoia and Kings

make a determination relative to the Act's standards for listing as endangered or threatened. Please refer to the Summary of Factors Affecting the Species for our discussion of the status of the species.

Previous Federal Action

On July 13, 1995, we received a petition dated July 10, 1995, from D.C. Jasper Carlton of the Biodiversity Legal Foundation, Bonnie M. Dombrowski,

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were detected at 5 of 17 San Gabriel Mountains sites surveyed in 2001: Bear Gulch, Devil's Canyon, Little Rock Creek, South Fork of Big Rock Creek, and Vincent Gulch. No frogs were detected at Alder Gulch during a summer 2001 survey, but they were reported at this site in 1995 (Jennings 1995). Adult population estimates and 95 percent confidence intervals (CI) for the five sites were: 47 (95 percent CI = 22–108) for Bear Gulch, five (95 percent CI = 2–20) for Little Rock Creek, seven (95 percent CI = 1–7) for South Fork of Big Rock Creek, and 7 (95 percent CI = 1–7) for Vincent Gulch (Backlin *et al.* 2002). No population estimate was made for Devil's Canyon, but four adults were found (Backlin *et al.* 2002).

San Jacinto Mountains, San Bernardino National Forest, Riverside County: Only one site out of five surveyed in the San Jacinto Mountains in 2000 and 2001 was reported to be occupied (Backlin *et al.* 2002). One adult was found on Fuller Mill Creek during the five surveys conducted. No frogs were detected on the North Fork of the San Jacinto River from four surveys conducted in 2001, or in Dark Canyon during three surveys conducted in 2000 (Backlin *et al.* 2001). Mountain yellow-legged frogs were documented in Dark Canyon as recently as 1998 (Jennings 1999). Hall Canyon was not surveyed in 2000 and 2001. While frogs were not documented in this canyon during surveys in 1998 (Jennings 1999), eight adult mountain yellow-legged frogs and larvae were documented in 1995 (Jennings 1995).

San Bernardino Mountains, San Bernardino National Forest, Riverside County: Only one of 21 San Bernardino Mountains locations surveyed in 2001 had mountain yellow-legged frogs (Backlin *et al.* 2002). This site, the East Fork of City Creek, has an estimated adult population size of 13 (95 percent CI = 5–74) (Backlin *et al.* 2002). Similarly, the East Fork of City Creek was the only creek of the 15 locations surveyed in 2000 that was documented as supporting mountain yellow-legged frogs (Backlin *et al.* 2002).

Based on available recent information, it appears that mountain yellow-legged frogs have only been currently documented in seven creeks and drainages in the San Gabriel, San Jacinto, and San Bernardino Mountains of southern California, in contrast to the 166 documented historic localities. In 1994, Jennings and Hayes (1994) suggested that mountain yellow-legged frogs in the San Gabriel and San Jacinto Mountains (an estimated eight isolated localities) numbered fewer than 100 adult frogs. Their estimate was based on a compilation of the results of visual surveys generally conducted on a single day, not on standard abundance estimation techniques. The current estimate of mountain yellow-legged frogs in southern California based on extrapolation from a mathematical formula is estimated to be approximately 79 adult frogs, not including direct observations in Devil's Canyon (4 adults in 2001) and Fuller Mill Creek (1 adult in 2001), in which estimates were not calculated (Backlin *et al.* 2002). We acknowledge, however, that some creeks may have small populations that were not detected by recent 2000 and 2001 surveys efforts by Backlin *et al.* (2001; 2002).

Distinct Vertebrate Population Segment

We evaluated populations of mountain yellow-legged frog according to the February 7, 1996, joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). Three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for addition to the lists of endangered and threatened wildlife and plants, reclassification, and removal from the lists and include: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries.

We determine significance either by the importance or contribution, or both, of a discrete population to the species throughout its range. Our policy lists four examples of factors that may be used to determine significance: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Discreteness: The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which geographically isolates frogs in the southern Sierra Nevada from those in the mountains of southern California. The distance of the geographic separation is about 225 km (140 mi). The geographic separation of the Sierra Nevada and southern California frogs was recognized in the earliest description of the species by Camp (1917), who treated frogs from the two localities as separate subspecies within the *R. boylii* group. He designated the Sierra Nevada frogs *R. b. sierrae* and the southern California frogs *R. b. muscosa*, based on geography and subtle morphological (outward appearance; structure and form) differences. Zweifel (1955) reevaluated the morphological evidence used by Camp and found it insufficient to warrant recognition of two subspecies.

Using a limited sample size, Ziesmer (1997) analyzed the calls of Sierra Nevada (Alpine and Mariposa Counties) (n = 86 utterances) and southern California (San Jacinto Mountains, Riverside County) mountain yellow-legged frogs (n = 23 utterances). The calls of Sierra Nevada frogs differed from southern California frogs in pulse rate, harmonic structure, and dominant frequency (Ziesmer 1997). Ziesmer (1997) concluded that the differences in calls supported the hypothesis that mountain yellow-legged frogs from the Sierra Nevada and southern California are separate species.

In addition, two different genetic analyses have been conducted that support the concept that mountain yellow-legged frog populations in southern California are different from those in the Sierra Nevada. As noted in the proposed listing rule (64 FR 71714), a previously unpublished allozyme study was used to compare mountain yellow-legged frogs for the central Sierra Nevada and southern California (Green in litt., 1993). He found a fairly significant genetic difference between the two populations, but without frogs from the southern Sierra Nevada for comparison, it was not clear whether the difference reflected two ends of a cline (a character gradient), or distinct populations. Thus, due to the small sample sizes, the results were interpreted cautiously. More recently, a phylogenetic analysis of mitochondrial DNA sequences was performed on *Rana muscosa* throughout its distribution (Macey *et al.* 2001). Mitochondrial DNA sequences provide a more robust analysis of relationships than the allozymic data (Macey *et al.* 2001). Macey *et al.* (2001) found that eight populations of mountain yellow-legged frogs form two major clades separated by a biogeographic break in the Sierra Nevada. The break occurs between Kings Canyon National Park and a region slightly north of Yosemite National Park (Macey *et al.* 2001). The northern clade consists of populations from the northern and central Sierra Nevada, while the southern clade contains populations from the southern Sierra Nevada and the San Gabriel, San Jacinto, and San Bernardino Mountains in southern California. The two major clades, or groups, within *R. muscosa* are estimated to have diverged about 2.2 million years ago (Macey *et al.* 2001).

The two major clades each contained two subgroups, suggesting at least four evolutionarily distinct units within this taxon (Macey *et al.* 2001). Macey *et al.* (2001) found statistical support for evolutionarily distinct populations from the northern Sierra Nevada, central Sierra Nevada, southern Sierra Nevada, and southern California mountains (San Bernardino, Los Angeles, and Riverside counties). The southern Sierra Nevada and southern California subgroups are estimated to have diverged about 1.4 million years ago (Macey *et al.* 2001).

The vocalization differences found by Ziesmer (1997) support the discreteness of southern California mountain yellow-legged frogs from the Sierra Nevada populations. The genetic study conducted by Macey *et al.* (2001) also strongly supports the conclusion that the population of mountain yellow-legged frogs in southern California is discrete. The results from these studies together with the geographic separation of the southern population from the rest of the populations in the Sierra Nevada satisfy the criterion of "marked separation from other populations of the same taxon" and qualify as discrete according to the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

Significance: One of the most striking differences between Sierran and southern California mountain yellow-legged frogs is the ecological setting they each occupy. Zweifel (1955) observed that the frogs in southern California are typically found in steep gradient streams in the chaparral belt, even though they may range into small meadow streams at higher elevations. In contrast, Sierran frogs are most abundant in high elevation lakes and slow-moving portions of streams. Bradford's (1989) southern Sierra Nevada Mountain study site, for example, was in Sequoia and Kings Canyon National Parks, at high elevations between 2,910 to 3,430 m (9,600 to 11,319 ft). The rugged canyons of the arid mountain ranges of southern California bear little resemblance to the alpine lakes and streams of the Sierra Nevada. The different ecological settings between mountain yellow-legged frogs in southern California and those in the Sierra Nevada distinguish these populations from each other.

The extinction of this southern group would be significant because it would substantially reduce the overall range to only the Sierra Nevada. The mountain yellow-legged frogs of southern California comprise the southern limit of the species' range, and the loss of the southern California frogs on the periphery of the species' range could have significant conservation implications. Peripheral populations may be genetically and morphologically divergent from central populations. As such, distinct traits found in peripheral populations may be crucial to the species, allowing adaptation to environmental change. Peripheral populations often are important for the survival and evolution of species and will often have high value for conservation (Lesica and Allendorf 1995).

Based on the differences between the ecological settings for the mountain yellow-legged frog in southern California (steep gradient streams) and the Sierra Nevada (high elevation lakes and slow moving portions of streams), elevation, and the importance of the southern California population to the entire range of this species, the mountain yellow-legged frogs inhabiting the mountains of southern California meet the significance criteria under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

Conservation Status

Based on our determination that the southern California population of mountain yellow-legged frogs meets the first two criteria for a distinct vertebrate population segment per our policy, discreteness and significance, we must evaluate its conservation status and make a determination relative to the Act's standards for listing as endangered or threatened. Please refer to the Summary of Factors Affecting the Species for our discussion of the status of the species.

Previous Federal Action

On July 13, 1995, we received a petition dated July 10, 1995, from D.C. Jasper Carlton of the Biodiversity Legal Foundation, Bonnie M. Dombrowski, and Michael C. Long to list as threatened or endangered the southern California population of the mountain yellow-legged frog pursuant to the Act. Accompanying the petition was supporting information related to the taxonomy, ecology, and past and present distribution of the species. We reviewed the petition, supporting documentation, and other information to determine if substantial information was available to indicate that the requested action may be warranted. On July 8, 1997, we published a 90-day administrative finding on the petition to list the southern California population of the mountain yellow-legged frog (62 FR 36481). In our finding, we discussed our determination that the petition presented substantial information indicating that listing of the species may be warranted and that we believed the southern California population to be a distinct vertebrate population segment.

Once we determined that the petition presented substantial information, we commenced a status review pursuant to section 4(b)(3)(A) of the Act. However, consistent with the applicable Listing Priority Guidances (62 FR 55268, 63 FR 25502), we worked on higher priority listing actions before completing the 12-month administrative finding and proposed listing rule on December 22, 1999, to list this DPS of the mountain yellow-legged frog as endangered (64 FR 71714). The processing of the 12-month administrative finding and the proposed listing rule conformed with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114).

On May 19, 2000, we published a notice of reopening of the comment period in response to a request from the California Department of Fish and Game (CDFG) for additional time to obtain biological information regarding the mountain yellow-legged frog and to comment on the proposed rule (65 FR 31870). Due to limited resources and the need to undertake other, higher-priority listing actions, the Service was unable to make a final determination for this species within the 12-month statutory timeframe provided by the Act. In August 2001, the Department of the

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Interior reached an agreement in principal with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society on a timeframe to make final listing determinations for 14 species, including the mountain yellow-legged frog (southern California DPS). The agreement was formalized in October 2001 (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)). The publication of the final rule to list the southern California distinct vertebrate population segment of the mountain yellow-legged frog complies with the terms of that court-approved settlement agreement.

Additionally, on February 10, 2000, we received a petition dated February 8, 2000, to list as endangered the Sierra Nevada population of the mountain yellow-legged frog as a distinct vertebrate population. The petition addresses the remainder of the entire species' range, in the Sierra Nevada from Tulare County, CA, in the south to Plumas County, CA, in the north. On October 12, 2000, we published an administrative 90-day finding indicating that the petition presented substantial information and that the petitioned action may be warranted (65 FR 60603), and we initiated a status review for the mountain yellow-legged frog. The results of this review will be addressed in our 12-month administrative finding on the petitioned action.

Summary of Comments and Recommendations

In the December 22, 1999, proposed rule (64 FR 71714), we requested all interested parties to submit factual reports or information that might contribute to development of this final rule during the 60-day public comment period which closed on February 22, 2000. We requested comments from appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties. We published public notices of the proposed rule in the Los Angeles Times in Los Angeles County on December 27, 1999, The Press-Enterprise in Riverside County on December 29, 1999, and The Sun in San Bernardino County on December 30, 1999, inviting the general public to comment. On February 7, 2000, we received a request for a public hearing; however, at a later date the same individual provided comments on the proposed rule and retracted the request for a public hearing. On May 19, 2000, we reopened the public comment period for an additional 30 days (65 FR 31870) to obtain biological information and to receive further comments on the proposed rule.

During the two public comment periods, we received written comments from a total of 18 individuals or agencies. All commenters supported the listing of the mountain yellow-legged frog DPS in southern California, but several expressed concern over our discussion and analysis of the potential factors affecting the species.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited the expert opinions of six independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supporting biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. All six peer reviewers responded and supported the listing of this taxon. Information and suggestions provided by the reviewers were incorporated or addressed as applicable.

Comments on the proposed listing rule and our responses are either summarized below or directly incorporated into this final rule:

Comment 1: A peer reviewer requested additional discussion of the potential effects of water projects in drainages where mountain yellow-legged frogs occur.

Our Response: Currently, we lack specific information to address adequately the effects of water projects in drainages on the mountain yellow-legged frog in this final rule. However, we recognize that these projects may affect the mountain yellow-legged frog and its habitat. We will continue to gather information and attempt to address this issue in the future.

Comment 2: One peer reviewer noted our statement that all nine known populations of southern California mountain yellow-legged frog occur on USFS lands may not be true because Fuller Mill Creek flows through private property in the community of Pinewood.

Our Response: We have made that correction in this final rule. As one of the conservation measures for the mountain yellow-legged frog, the USFS identified a portion of the private land along Fuller Mill Creek (approximately 24 hectares (ha) (60 acres (ac)) for acquisition (USFWS 2001). In January 2001, the USFS acquired 97 ha (240 ac) of private land along Fuller Mill Creek in Pinewood (Regelbrugge *in litt.* 2002). While this land acquisition included the original 24 ha (60 ac) targeted, along with additional mountain yellow-legged frog habitat, portions of the creek that contain suitable, occupied habitat remain under private ownership.

Comment 3: One commenter requested that future proposals of critical habitat undergo a public comment period similar to the proposed listing.

Our Response: Pursuant to the Act and implementing regulations, we are required to solicit public comments on proposed rulemakings, including proposed critical habitat designations.

Comment 4: One commenter responded that there is relatively little information on the life history of stream-dwelling mountain yellow-legged frog populations, and our conclusion in the proposed listing rule that wherever rainbow trout (*Oncorhynchus mykiss*) and mountain yellow-legged frogs co-occur, trout are likely to eliminate mountain yellow-legged frogs was unsubstantiated, because the data was collected from high elevation lakes in the Sierra Nevada.

Our Response: In our proposed listing rule, we stated that trout may keep populations of mountain yellow-legged frogs low and limit dispersal. Although all studies that have concluded trout negatively affect the distribution of mountain yellow-legged frogs were conducted on lakes and ponds in the Sierra Nevada (Bradford 1989, Knapp 1996, Knapp and Matthews 2000), the inference that trout in southern California streams would have the same or similar adverse effects on mountain yellow-legged frog populations is strong and should not be overlooked. In these studies, it was documented that nonnative trout may be the most severe threat affecting mountain yellow-legged frogs (Backlin *et al.* 2001) by predating larvae and metamorphs (Hays and Jennings 1986, Bradford 1989). Furthermore, research has shown adverse effects of trout on frog tadpoles in a stream-setting (Rattlesnake Creek) within the Santa Ynez Mountains (Cooper *et al.* 1986). Cooper *et al.* (1986) stated that their experiments showed that trout eliminated treefrog (*Hyla* spp.) tadpoles.

We are currently funding a study through section 6 of the Act, to examine the natural history of the southern California DPS and interactions with trout.

Comment 5: One commenter stated the proposed rule unnecessarily focused

on potential public impacts, and was worried that as a result, the USFS would respond to the final listing with forest closures that are not warranted. The commenter noted human activities such as day use, hiking and camping were being singled out in the proposed rule.

Our Response: Although we did not specifically identify recreational activities as a significant factor in the precipitous decline of the southern California DPS of mountain yellow-legged frog, the few remaining occurrences of this species in southern California are now at risk of extinction. Any activity that results in disturbance to the species or which may harm eggs, tadpoles or adult frogs could negatively affect the continued survival of this DPS. We have conferred with the USFS on their activities which may affect the mountain yellow-legged frog and have identified actions to prevent impacts to the species (USFWS 2001). The small number of mountain yellow-legged frogs in southern California occur in a few stream reaches within the Angeles National Forest (ANF) and San Bernardino National Forest (SBNF). We believe that actions undertaken by the USFS to reduce impacts to this species on USFS lands in southern California will have a limited effect on current recreational activities within the Angeles and San Bernardino National Forests.

Comment 6: One peer reviewer indicated that the recent genetic research conducted by Macey *et al.* (2001) suggested that the southern DPS of the mountain yellow-legged frog is in fact a separate species instead of a DPS, and that he had submitted a paper for review concerning this proposed taxonomic change.

Our Response: In this final rule, we rely on the results of the recent genetic study by Macey *et al.* (2001) as further evidence that the southern populations of the mountain yellow-legged frog meet the policy definition of a distinct vertebrate population segment. While the results of this study provide substantial information concerning the taxonomy and evolutionary history of the mountain yellow-legged frog, Macey *et al.* (2001) do not suggest the four subgroups constitute separate species. We appreciate the information concerning the proposed taxonomic changes; and look forward to reviewing this new information following publication in a peer-reviewed journal.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the southern California DPS of mountain yellow-legged frogs are discussed below:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The seven remaining occurrences of the southern California DPS of mountain yellow-legged frog occur within three drainages; five are within a drainage in the San Gabriel Mountains, one population inhabits a drainage in the San Bernardino Mountains, and one is in the San Jacinto Mountains. Most of the known locations of this DPS occur on lands administered by the USFS. The extremely limited number and small size of the remaining populations makes this DPS of mountain yellow-legged frog particularly vulnerable to extirpation resulting from localized habitat alteration or degradation, and stochastic (random, naturally occurring) events such as fire or drought (Backlin *et al.* 2002).

Alteration or degradation of habitat for this DPS within ANF and SBNF could result from recreational activities including hiking, mountain climbing, camping, swimming, stocking of trout for fishing, and suction dredge mining for gold; or other human-related impacts including release of toxic or hazardous materials into stream reaches inhabited by the DPS (Jennings 1995, Backlin *et al.* 2002, USFS 2002). In areas occupied by this DPS, human use in and along streams can disrupt the development, survivorship, and recruitment of eggs, larvae, and adult frogs (Jennings 1995; Stewart *in litt.* 1995), and can change the character of a stream and its bank and associated vegetation in ways that make whole sections of a stream less suitable for the species.

The following table identifies known recreational activities or other factors that may affect one or more of the remaining populations of the southern California DPS of mountain yellow-legged frog.

National Forest	Location of population	Activity
ANF	South Fork, Big Rock Creek—Mojave	Trout stocking.
ANF	Little Rock Creek—Mojave	Trail use; mountain climbing; vehicle travel on Highway 2.
ANF	Bear Gulch—East Fork, San Gabriel	Suction dredge mining for gold; recreation (*e.g.*, hiking).
ANF	Devil's Canyon—West Fork, San Gabriel	Recreation; trout stocking.
ANF	Vincent Gulch—East Fork, San Gabriel	None.
SBNF	East Fork City Creek—City Creek	Vehicle travel on highway 330; wildfire due to buildup of fuels; introduction of non-resident trout.
SBNF	Fuller Mill Creek—Mill Creek	Picnicking; trout stocking; wildfire concern.

Suction dredge mining for gold has occurred in a portion of the East Fork, San Gabriel River within the Sheep Mountain Wilderness Area. The dumping of trash and toxic materials (soap, motor oil, mercury) has also occurred in this area. (Jennings 1995). Some of the habitat effects of suction dredging on streams are described by Harvey (1986), who found that dredging may locally alter substrates and change habitat for fish and invertebrates. Consequently, disturbance to streambed substrates and water quality resulting from extensive suction dredging activity at or near a mountain yellow-legged frog breeding site could have harmful effects on eggs and developing larvae. Dumping of trash and toxic materials can degrade water quality, also with adverse effects on eggs and developing larvae.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Numerous museum specimens from many localities document that mountain yellow-legged frogs from the southern DPS have been collected for scientific

purposes for decades (Jennings and Hayes 1994). Because the DPS has declined precipitously, resulting in a limited number of small populations, little scientific collecting of the southern DPS would likely be authorized. Collecting for scientific or recreational purposes, if it did occur, could seriously increase the probability of extirpation of any of the remaining populations, potentially reducing the ability of the

Wherever the two species co-occur, trout are likely to heavily impact mountain yellow-legged frog populations by eliminating or keeping populations low and limiting dispersal (Bradford 1989, Bradford *et al.* 1993). Knapp and Matthews (2000) suggested that mountain yellow-legged frog populations co-occurring with trout generally represent "sink" populations (a population in which the mortality

recently metamorphosed mountain yellow-legged frogs in the Sierra Nevada (Fellers *et al.* 2001). Because of the small and isolated nature of the remaining occurrences in southern California, disease could be significantly detrimental.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms have not stopped the decline of mountain

identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as elimination of endangered species or their habitats. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. CEQA

above, the presence of introduced trout on USFS lands is believed to be a serious threat to the mountain yellow-legged frog. Additionally, because the DPS has been reduced to small isolated remnant populations, recreational activities (*e.g.*, bathing, camping, hiking, *etc.*) occurring on USFS lands may threaten the remaining frogs. The perilous status of the mountain yellow-legged frog reflects the overall inability of existing CEQA, National

DPS are also at risk from floods and drought. Unlike the lake environments utilized by the Sierra Nevada populations of the species, the streams inhabited by the southern California DPS flow through narrow canyons that provide little opportunity for off-channel refuge for the species during flood events (USFS 2002). Stewart (*in litt.* 1995) believed that flooding during the winter of 1969 was a major factor in the disappearance of mountain yellow-

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purposes for decades (Jennings and Hayes 1994). Because the DPS has declined precipitously, resulting in a limited number of small populations, little scientific collecting of the southern DPS would likely be authorized. Collecting for scientific or recreational purposes, if it did occur, could seriously increase the probability of extirpation of any of the remaining populations, potentially reducing the ability of the DPS to survive and recover.

C. Disease or Predation

Predation by introduced fish, primarily rainbow trout, is one of the best-documented causes of the decline of Sierran mountain yellow-legged frogs. Careful study of the distributions of introduced trout and mountain yellow-legged frogs over several years has shown conclusively that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada due to predation of tadpoles and other life stages (Bradford 1989, Knapp 1996, Knapp and Matthews 2000). Bradford (1989) and Bradford *et al.* (1993) concluded that introduced trout eliminate many populations of mountain yellow-legged frogs and the presence of trout in intervening streams sufficiently isolates other frog populations so that recolonization after stochastic local extirpations is essentially impossible. This mechanism is sufficient to explain the extirpation of Sierra Nevada mountain yellow-legged frogs from the majority of sites they once inhabited. Alone or in combination with other factors, introduced trout may have contributed to the widespread decline of the southern DPS as well.

Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and until recently, trout were routinely released by California Department of Fish and Game in Dark Canyon and Fuller Mill Creek in the San Jacinto Mountains, and City Creek in the San Bernardino Mountains. Most of the other streams still occupied by mountain yellow-legged frogs have histories of trout introductions. However, the remaining frog occurrences in these streams are almost all in the small headwater sections where barriers restrict upstream movement of trout. While there have been no studies that specifically looked at the interaction between trout and stream-dwelling mountain yellow-legged frogs in southern California, Cooper *et al.* (1986) found trout eliminated stream-dwelling treefrog (*Hyla* spp.) tadpoles in Rattlesnake Creek within the Santa Ynez Mountains. Wherever the two species co-occur, trout are likely to heavily impact mountain yellow-legged frog populations by eliminating or keeping populations low and limiting dispersal (Bradford 1989, Bradford *et al.* 1993). Knapp and Matthews (2000) suggested that mountain yellow-legged frog populations co-occurring with trout generally represent "sink" populations (a population in which the mortality rate exceeds the birth rate). Consequently, co-occurrence of mountain yellow-legged frogs and trout is insufficient evidence that trout have had relatively minor effects on frogs, because the persistence of these frog occurrences is likely dependent on immigration from source populations (Knapp and Matthews 2000). The widespread occurrence of introduced trout and continued releases in the mountains of southern California may make it very difficult to recover the DPS.

Another introduced predator that could have effects on the DPS similar to those of the trout, but on a more limited scale, is the bullfrog (*Rana catesbeiana*). Bullfrogs have been listed among the threats to other western frogs (61 FR 25813, Kiesecker and Blaustein 1998) and arroyo toads (59 FR 64859). Bullfrogs are now widespread in southern California and occur in many drainages formerly occupied by mountain yellow-legged frogs. The negative effects of bullfrogs on mountain yellow-legged frogs in the mountains of southern California are probably less widespread than those of introduced trout because there is less overlap in their occurrence. Any habitat alterations that are favorable to bullfrogs, however, will likely cause them to become locally abundant. In areas where mountain yellow-legged frogs occur, an increase of bullfrogs could further isolate the remaining populations; thereby potentially reducing the ability of the DPS to survive and recover.

Bradford (1991) documented the loss of a Sierra Nevada population of mountain yellow-legged frogs due to the combined effect of "red-leg" disease (caused by the freshwater bacterium *Aeromonas hydrophila*) and predation by Brewer's blackbirds (*Euphagus cyanocephalus*). Another pathogen that is generating concern among those who study amphibian declines is the chytrid fungus *Batrachochytrium dendrobatidis*. Chytrid fungus may be seriously affecting amphibians by attacking the mouthparts of tadpoles affecting their ability to feed. Chytrid fungus occurs in many places around the world, and has recently been discovered on larval and recently metamorphosed mountain yellow-legged frogs in the Sierra Nevada (Fellers *et al.* 2001). Because of the small and isolated nature of the remaining occurrences in southern California, disease could be significantly detrimental.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms have not stopped the decline of mountain yellow-legged frogs in southern California. Existing regulatory mechanisms that could provide some protection for the mountain yellow-legged frog include: (1) State laws, including the California Endangered Species Act (CESA), California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (2) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, Fish and Wildlife Coordination Act, and section 404 of the Federal Clean Water Act; and (3) local land use processes and ordinances.

The State of California considers the mountain yellow-legged frog a species of special concern, but it is not listed as a threatened or endangered species under the CESA. Consequently, the species receives no protection under CESA. California Sport Fishing Regulations include the mountain yellow-legged frog as a protected species that may not be taken or possessed at any time except under special permit from the CDFG, however, the protection afforded by this regulation does not address the significant threats to the DPS presented by such factors as habitat alteration or predation by nonnative species.

CEQA requires a full public disclosure of the potential environmental impact of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of CEQA guidelines require a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as elimination of endangered species or their habitats. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. CEQA provides that, when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be threatened, or where adverse impacts are not mitigated to the point of insignificance.

The arroyo toad (*Bufo californicus*), a federally listed endangered species, is present in the San Gabriel Mountains. Because the two species occupy different areas and habitats in the San Gabriel Mountains and the arroyo toads are not known to occur elsewhere in the limited range of the mountain yellow-legged frog, we believe there is limited benefit to the mountain yellow-legged frog from the presence of the arroyo toad.

The Fish and Wildlife Coordination Act and section 404 of the Clean Water Act will afford some protection to mountain yellow-legged frogs where they occur in waters of the United States that require a permit from the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States. Through the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from a water development project authorized by the Corps. Section 404 regulations require that applicants obtain a nationwide, regional, or individual permit for projects that discharge fill material into waters of the United States.

The U.S. Forest Service's Angeles and San Bernardino National Forests manage lands containing all known locations of mountain yellow-legged frogs in southern California. The USFS has included mountain yellow-legged frogs on its Region 5 list of sensitive species as of June 8, 1998. The USFS has been formulating a conservation assessment and strategy for the mountain yellow-legged frog in southern California in a cooperative effort with other agencies, but this effort is still in progress (USFS 2002). As noted in the discussion of the factors above, the presence of introduced trout on USFS lands is believed to be a serious threat to the mountain yellow-legged frog. Additionally, because the DPS has been reduced to small isolated remnant populations, recreational activities (*e.g.*, bathing, camping, hiking, *etc.*) occurring on USFS lands may threaten the remaining frogs. The perilous status of the mountain yellow-legged frog reflects the overall inability of existing CEQA, National Environmental Policy Act, and other Federal, State, and local ordinances and statutes to protect and provide for the conservation of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The southern California DPS of mountain yellow-legged frog is considered at high risk of extirpation because very few locations remain, the locations are isolated from one another, and each location likely contains only a small number of frogs. Few populations and restricted habitat make the southern California DPS of mountain yellow-legged frog susceptible to extinction or extirpation from all or a portion of its range due to random events such as fire, flood or drought. In addition, small population size may increase the susceptibility of the remaining mountain yellow-legged frog populations in southern California to extirpation from random demographic, environmental and/or genetic events (Shaffer 1981, 1987; Lande 1988; Noss and Cooperrider 1994; Meffe and Carroll 1997, Primack 1998). Finally, disruption of source population and dispersal dynamics (*e.g.*, source populations that provide individuals that can disperse to other populations or colonize new areas which assists in the stability and recovery of the species) may increase the risk of extinction of the southern California populations of the frog (Noss and Cooperrider 1994). These effects are discussed briefly below.

Unpredictable events such as fire could potentially eliminate entire populations of this DPS (Stewart *in litt.* 1995, Jennings 1995). Several of the remaining populations of mountain yellow-legged frog in southern California occur within areas where vegetation and fuel levels have increased. The increased fuel levels could lead to fires that burn more intensely, removing most of the vegetation which would affect the amount of available stream shade and could increase sedimentation within a stream channel due to exposed soils (USFS 2002).

Mountain yellow-legged frog populations in the southern California DPS are also at risk from floods and drought. Unlike the lake environments utilized by the Sierra Nevada populations of the species, the streams inhabited by the southern California DPS flow through narrow canyons that provide little opportunity for off-channel refuge for the species during flood events (USFS 2002). Stewart (*in litt.* 1995) believed that flooding during the winter of 1969 was a major factor in the disappearance of mountain yellow-legged frogs from Evey Canyon in the San Gabriel Mountains.

Mountain yellow-legged frogs are almost always found in or immediately adjacent to water (USFS 2002). Periods of prolonged drought could have a significant effect on one or more of the remaining populations of this DPS as a result of reduced reproduction and reproductive success (i.e., mortality of eggs and tadpoles) (USFS 2002).

Demographic events that may put small populations at risk involve chance variation in age, sex ratios, and other population characteristics, which can change birth and death rates (Shaffer 1981, 1987; Lande 1988; Noss and Cooperrider 1994; Meffe and Carroll 1997). A limited survey conducted by Jennings (1995) found skewed sex ratios in the populations of mountain yellow-legged frogs in the San Gabriel Mountains.

Small, isolated populations are also vulnerable to genetic drift (random changes in gene frequencies) and inbreeding (mating among close relatives). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (*i.e.*, reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Shaffer 1981, 1987; Noss and Cooperrider 1994, Primack 1998).

Finally, we believe that the connectivity of populations within this DPS has been substantially reduced compared to the recent past. Loss of one or more of the remaining populations within the southern California DPS would cause the remaining populations to become even more isolated from one another, thereby reducing the likelihood of its long-term survival and recovery.

We have evaluated the best available scientific and commercial information regarding the status of, and threats to, the southern California DPS of mountain yellow-legged frog in determining its eligibility for listing pursuant to the Act. Based on our evaluation, we determine that listing of the southern California DPS of

mountain yellow-legged frog as endangered, under the Act, is warranted and appropriate.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found

applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then designating critical habitat is prudent.

and cooperation with the States. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below. Listing of the southern California DPS of the mountain yellow-legged frog as endangered will provide for recovery planning including the development of a recovery plan if it will promote the conservation of the DPS. Such a plan

Angeles and San Bernardino National Forests. The southern California DPS of mountain yellow-legged frog, proposed for listing as endangered, was included in a conference opinion. Measures contained in a conference opinion are advisory in nature.

Conservation recommendations for the southern California DPS of mountain yellow-legged frog included: (1) Installation of signage along trails adjacent to areas occupied by the DPS

listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a

temperature, and habitat used by the species for foraging, cover, migration, and breeding.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological

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mountain yellow-legged frog as endangered, under the Act, is warranted and appropriate.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)). "Conservation" means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which protection under the Act is no longer necessary.

Critical habitat designation directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Due to the small number and sizes of populations, the mountain yellow-legged frog is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of location information. However, we have examined the evidence available for the mountain yellow-legged frog and have not found significant specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then designating critical habitat is prudent. In the case of the southern California DPS of mountain yellow-legged frog, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for the southern California DPS of the mountain yellow-legged frog.

However, the deferral of the critical habitat designation for this DPS of the mountain yellow-legged frog will allow us to concentrate our limited resources on higher priority critical habitat designations and other listing actions, while allowing us to put in place protections needed for the conservation of the southern California DPS of mountain yellow-legged frog without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is essential to the conservation of the species that such determinations be promptly published. We will prepare a critical habitat designation for this species in the future at such time when our available resources allow it.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include requirements for Federal protection, prohibitions against certain practices, and recovery actions. The Act provides for possible land acquisition/exchange and cooperation with the States. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below. Listing of the southern California DPS of the mountain yellow-legged frog as endangered will provide for recovery planning including the development of a recovery plan if it will promote the conservation of the DPS. Such a plan will bring together both State and Federal efforts for the mountain yellow-legged frog's conservation. The plan will establish a framework for cooperation and coordination among agencies in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It will also describe site-specific management actions necessary to achieve conservation and survival of the southern California DPS of the mountain yellow-legged frog.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, permit, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its designated critical habitat. If a Federal action may affect a listed species or its designated critical habitat, the responsible Federal agency must enter into consultation with us.

Federal agencies expected to have involvement with consultations under section 7 of the Act regarding the southern California DPS of mountain yellow-legged frog include the USFS through its management activities and the Corps through its permit authority under section 404 of the Clean Water Act. These agencies either manage lands containing the DPS or authorize, fund, or otherwise conduct activities that may affect the DPS.

In 2001, the Service issued its biological and conference opinions on the Land and Resource Management Plans (LRMP) for the four southern California National Forests (USFWS 2001) addressing activities on the

Angeles and San Bernardino National Forests. The southern California DPS of mountain yellow-legged frog, proposed for listing as endangered, was included in a conference opinion. Measures contained in a conference opinion are advisory in nature.

Conservation recommendations for the southern California DPS of mountain yellow-legged frog included: (1) Installation of signage along trails adjacent to areas occupied by the DPS to encourage the public to remain on designated trails; (2) removal of picnic equipment or campsites (barbeque pits, picnic tables) adjacent to areas occupied by the DPS; (3) organization of workshops to educate campground permittees about this DPS of mountain yellow-legged frog; (4) acquisition of habitat for the DPS within private inholdings; (5) assignment of additional patrols to prevent illegal suction dredge mining within the Sheep Mountain Wilderness Area of Angeles National Forest; and (6) relocation of a trail adjacent to an area occupied by the DPS within Little Rock Canyon.

The conference opinion addressing the southern DPS of mountain yellow-legged frog may be adopted as a biological opinion following the listing of this DPS under the Act, if we review the proposed action and determine there have been no significant changes in the action as planned or in the information used during the conference. If we determine the conference opinion may be adopted as the biological opinion, no further consultation pursuant to section 7 will be necessary, unless: (1) The amount of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect the species or critical habitat in a manner and to an extent not considered in the conference opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the species or critical habitat that was not considered in the conference opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions under section 9 of the Act, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing a species pursuant to the Act on proposed and ongoing activities within the species' range. We believe the following actions would not likely result in a violation of section 9:

Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxon to the list of endangered species.

Activities we believe will result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of southern California mountain yellow-legged frogs without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken mountain yellow-legged frogs;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section);

(4) Introduction of non-native species that compete or hybridize with, or prey on, mountain yellow-legged frogs;

(5) Destruction or alteration of mountain yellow-legged frog habitat by suction dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding; and

(6) Discharging or dumping toxic chemicals, silt, or other pollutants into waters supporting mountain yellow-legged frogs by mining, or other developmental or land management activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, OR 97232–4181 (Telephone 503/231–6241; FAX 503/231–6243).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing these permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned control number 1018–0094, which expires July 31, 2004. This rule does not alter that information collection requirement. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

References Cited

A complete list of all references cited herein are available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary author of this final rule is the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements,

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

This action also authorizes the roll-over of the annual specifications for the Atlantic mackerel, squid, and butterfish fisheries. In recent years, publication of the annual specifications for those fisheries has occurred after the start of the fishing year on January 1, resulting in inefficient management and industry uncertainty. This action allows the annual Atlantic mackerel, squid, and butterfish specifications from the previous fishing year to roll-over into proposed overfishing definition did not comply with the 50 CFR part 600 guidelines because it has insufficient scientific merit and is not likely to result in effective management. Therefore, NMFS has disapproved the proposed modification to the control rules because they are not consistent with the best scientific information available and do not comply with National Standard 2 of the Magnuson-Stevens Conservation and Management commenter advocated that the Council maintain the target F of 75 percent of F_{msy}, pending the results of such an analysis.

Response: NMFS agrees and has disapproved the proposed framework measure to modify the *Loligo* squid overfishing definition and control rule.

Comment 2: One commenter opposed the provision to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or

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Authors

The primary author of this final rule is the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
AMPHIBIANS							
.	.	.	.	.	.	.	.
Frog, mountain yellow-legged (southern California DPS).	*Rana muscosa*	U.S.A. (California, Nevada).	U.S.A., southern California.	E	728	NA	NA
.	.	.	.	.	.	.	.

Dated: June 20, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–16371 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020508113–2151–02; I.D. 090501D]

RIN 0648–AP12

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 2 (Framework 2) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This action extends the limited entry program for the *Illex* squid fishery for an additional year; allows for the roll-over of the annual specifications for these fisheries (with the exception of total allowable landings of foreign fishing (TALFF)) in the event annual specifications are not published prior to the start of the fishing year; and allows *Loligo* squid specifications to be set for up to 3 years, subject to annual review. NMFS has disapproved the proposed framework measures to modify the *Loligo* squid overfishing definition and control rule; and to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. This action is necessary and is intended to further the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective August 1, 2002, except that the amendment to § 648.4 is effective on June 27, 2002.

ADDRESSES: Copies of Framework 2, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA), are available on request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *Paul.H.Jones@noaa.gov*.

SUPPLEMENTARY INFORMATION: In 1997, Amendment 5 to the FMP established a limited entry program for the *Illex* squid fishery in response to a concern that fishing capacity could otherwise expand to overexploit the stock. At the time the program was established, there were concerns that the capacity of the limited entry vessels might prove, over time, to be insufficient to fully exploit the annual quota. In response to this concern, a 5–year sunset provision was placed on the *Illex* squid limited entry program, and it was scheduled to end July 1, 2002. However, in recent years the limited entry fleet has demonstrated that it has sufficient capacity to harvest the long-term potential yield from this fishery. The Mid-Atlantic Fishery Management Council (Council) must prepare an amendment to the FMP to evaluate whether or not the limited entry program should be extended permanently. In the meantime, this action extends the *Illex* squid moratorium through July 1, 2003, to prevent overcapitalization while the amendment is being prepared and considered by the Council. This extension complies with the criteria in section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act. The extension will allow the Council additional time to consider long-term management for the *Illex* squid fishery, including the limited entry program. Vessels that took small quantities of *Illex* squid in the past may continue to do so under the incidental catch provision of the FMP.

This action also authorizes the roll-over of the annual specifications for the Atlantic mackerel, squid, and butterfish fisheries. In recent years, publication of the annual specifications for those fisheries has occurred after the start of the fishing year on January 1, resulting in inefficient management and industry uncertainty. This action allows the annual Atlantic mackerel, squid, and butterfish specifications from the previous fishing year to roll-over into the next fishing year (excluding TALFF), in the event that annual specifications for that year have not been published. The rolled-over specifications will be superceded by the publication of the current year's annual specifications.

This action also allows maximum optimum yield (Max OY), allowable biological catch (ABC), optimum yield (OY) and domestic annual harvest (DAH) for *Loligo* squid to be specified for up to 3 years. If the annual review conducted by the Council through its Monitoring Committee indicates that it is necessary, such a multi-year specification will be revised in the annual specification process.

This action also outlines a timeframe to be followed for in-season adjustments to the annual specifications for *Loligo* squid. The Council's Monitoring Committee will meet in late spring each year to review available Northeast Fisheries Science Center (NEFSC) survey data and to develop recommendations for the annual harvest for the following year. In addition, at that meeting, the Monitoring Committee will make recommendations regarding inseason adjustments to the annual *Loligo* squid specifications for consideration by the Atlantic Mackerel, Squid, and Butterfish Committee and the Council. Upon review of the recommendations from the Council, the Administrator, Northeast Region, NMFS (Regional Administrator) may make inseason adjustments through the process specified in the regulations.

Disapproved Measures

While the primary components of the overfishing definition for *Loligo* squid (the maximum fishing mortality rate threshold and the minimum biomass threshold) remained unchanged, Framework 2 proposed to modify the control rules that guide the Council in making harvest recommendations based upon those definitions. However, in December 2001, subsequent to the Council's adoption of Framework 2, *Loligo* squid was reassessed by the 34th Stock Assessment Workshop (SAW 34). Based on the results of that stock assessment, NEFSC found that the proposed overfishing definition did not comply with the 50 CFR part 600 guidelines because it has insufficient scientific merit and is not likely to result in effective management. Therefore, NMFS has disapproved the proposed modification to the control rules because they are not consistent with the best scientific information available and do not comply with National Standard 2 of the Magnuson-Stevens Conservation and Management Act.

SAW 34 noted that the apparent resilience of the stock of the last two decades suggested reexamination of the fundamental approach to determining Fishing Mortality (F) reference points. SAW 34 suggested that a threshold F could be set at the 75th percentile of the observed F over the time series and that a reasonable target F might be the mean value of the series. Amending the reference points along the lines suggested by SAW 34 will require further Council action.

NMFS noted in the proposed rule that it had disapproved the proposed measure to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. The reasons for the disapproval of the measure were discussed fully in the preamble to the proposed rule and are not repeated here.

Changes From the Proposed Rule

As a result of the disapproval of the proposed change to the control rule for *Loligo* squid, the regulatory text at § 648.4 is not modified as was indicated in the proposed rule.

Comments and Responses

The Council developed Framework 2 under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart B. This procedure provided the public with the opportunity to comment on the proposed actions at Council meetings held February, March, and May 2001. In addition, the proposed rule provided an opportunity for public comment. No comments were received in response to the proposed rule, but two written comments were received during the Council process and are responded to here.

Comment 1: One commenter opposed allowing an increase of the *Loligo* squid target F from 75 percent of F_{msy} up to 90 percent of F_{msy} until the Council has had an opportunity to evaluate the ecological relationships between squid and its major predators, and how these relationships might change as rebuilding plans are implemented. The commenter advocated that the Council maintain the target F of 75 percent of F_{msy}, pending the results of such an analysis.

Response: NMFS agrees and has disapproved the proposed framework measure to modify the *Loligo* squid overfishing definition and control rule.

Comment 2: One commenter opposed the provision to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. The commenter believed that the Council's analysis underestimated the total amount of *Loligo* squid bycatch that may be landed under this exemption.

Response: NMFS agrees and has disapproved the provision that would have allowed vessels fishing in the directed *Illex* squid fishery during a closure of the *Loligo* fishery to land *Loligo* squid taken seaward of the 50–fathom (91–m) curve in an amount not to exceed 10 percent of the total weight of *Illex* squid on board the vessel.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The need to implement these measures in a timely manner in order to have management measures for the *Illex* squid moratorium in place and to reduce overfishing at the start of the 2002 mackerel, squid, butterfish fishing year, beginning July 1, 2002, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30–day delay in effective date. This action extends the current *Illex* squid moratorium through July 1, 2003, to prevent overcapitalization while the Council prepares an amendment to the FMP to extend the moratorium indefinitely.

The current fleet has the capacity to harvest the long term yield from this fishery. If the moratorium lapses for 30 days as the result of delayed effectiveness, it will create confusion among industry participants about their current and future eligibility to fish for *Illex* squid. Those fishermen with incidental catch permits may view the lapse of the moratorium as a dissolution of the distinction between a moratorium and incidental catch permit and begin harvesting amounts of *Illex* above the incidental catch permit. This would put additional pressure on the stock and could result in overfishing.

Similarly, those without either a moratorium or incidental catch permit may view a lapse of the moratorium as the absence of any permit requirement and begin fishing for *Illex* in order to

qualify for a moratorium permit under Amendment 9 to the FMP. It is critical for the moratorium to continue without lapse so that the Council can consider whether or not to extend the limited entry program permanently through the amendment process without jeopardizing the *Illex* stock. Furthermore, this final rule will result in a continuation of the status quo, and imposes no new obligations on persons

were also 352 Federal dealer permits allowing the purchase of these species. All of these entities are potentially affected by this action.

Not all vessels issued permits participate in the fishery, so 1999 landings data was used to estimate the number of vessels that actively participate in the fishery. These vessels will likely be more directly impacted by this action. Atlantic mackerel was

In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

William T. Hogarth,

specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as

recommendations and, on or about November 1 of each year, will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria

comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

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qualify for a moratorium permit under Amendment 9 to the FMP. It is critical for the moratorium to continue without lapse so that the Council can consider whether or not to extend the limited entry program permanently through the amendment process without jeopardizing the *Illex* stock. Furthermore, this final rule will result in a continuation of the status quo, and imposes no now obligations on persons already fishing for *Illex* squid, or upon those who may wish to fish for *Illex* squid in the future. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for the *Illex* moratorium.

This final rule does not contain policies with federalism implications, as that term is defined in Executive Order 13132.

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. No comments were submitted that pertain to the IRFA, so none of the comments and responses in this final rule are considered to be part of the FRFA. The FRFA consists of the IRFA and a summary of the analyses done in support of this action. A copy of the analyses is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

The reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Public Comments

Two comments were received on the measures contained in Framework 2. The comments were unrelated to the IRFA.

Number of Small Entities

As of January 2001, there were 2,700 distinct vessels with a Federal vessel permit for Atlantic mackerel, *Illex* squid, *Loligo* squid, and/or butterfish. Of these vessels, 2,007 were issued commercial Atlantic mackerel permits, 400 were issued *Loligo*/butterfish moratorium permits, 77 were issued *Illex* moratorium permits, 1,598 were issued incidental catch permits for *Illex*, *Loligo* and butterfish, and 522 were issued party/charter permits. There were also 352 Federal dealer permits allowing the purchase of these species. All of these entities are potentially affected by this action.

Not all vessels issued permits participate in the fishery, so 1999 landings data was used to estimate the number of vessels that actively participate in the fishery. These vessels will likely be more directly impacted by this action. Atlantic mackerel was landed by a total of 559 vessels, *Loligo* was landed by a total of 523 vessels, *Illex* was landed by a total of 86 vessels, and butterfish was landed by 522 vessels. Many vessels landed more than one of the four species, so are reflected in more than one of the categories.

Minimizing Significant Economic Impact on Small Entities

The IRFA analyzed a range of alternatives for each of the management measures considered in Framework 2. The preamble to the proposed rule described the impacts associated with the proposed change to the *Loligo* overfishing definition control rules. That proposed measure was disapproved in this final rule and is not discussed in the FRFA. The IRFA analysis demonstrates that the economic impacts of the measures being enacted by this final rule are being minimized to the extent practicable. The three measures enacted by this rule (the extension of the *Illex* moratorium for one year, the roll-over of annual specifications, and the provision to allow *Loligo* squid specifications to be set for up to 3 years) the measures are expected to have no direct impact on participants in and of themselves as theyare primarily administrative in nature. Any direct impacts, such as those associated with setting annual harvest levels, will be evaluated in the annual specifications submissions themselves.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic mackerel, squid and butterfish fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries,National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (a)(5)(i), the heading is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits (Illex squid moratorium is applicable from July 1, 1997, until July 1, 2003).* * * *

* * * * *

3. In § 648.21, paragraphs (a)(1) and (d)(1) are revised and paragraphs (a)(4) and (a)(5) are added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(a) * * *

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid;

* * * * *

(4) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid as specified in paragraph (e) of this section.

* * * * *

(d) * * *

(1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and, on or about November 1 of each year, will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

* * * * *

[FR Doc. 02–16584 Filed 6–27–02; 11:10 am]

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Proposed Rules

Federal Register
Vol. 67, No. 127
Tuesday, July 2, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the

Washington, DC 20250–1569. Telephone: (202) 720–1398. FAX: (202) 720–7491. E-mail: *fgatchel@rus.usda.gov*. The proposed contract forms are available on the RUS

borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and

Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

For further information contact Mr. Fred Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–1398. Fax: (202)

202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The standard loan agreement between RUS and its electric borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural

10. RUS Form 830, Rev. 2–95, Electric System Construction Contract (Labor and Materials). This form is used for distribution and transmission line project construction.

11. RUS Form 831, Rev. 2–95, Electric Transmission Construction Contract (Labor and Materials). This form is used for transmission line project construction.

Secondary Contract Forms

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Proposed Rules

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724, 1726, and 1755

RIN 0572–AB67

Revision of Electric Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to revise its standard forms of contracts that borrowers are required to use when contracting for construction and procurement, that are or will be financed by loans made or guaranteed by RUS, in accordance with applicable RUS regulations. RUS proposes to update, consolidate, and streamline these standard forms of contracts. These changes are needed to improve the usefulness of the standard forms of contract and to make it easier for RUS borrowers to utilize these standard forms of contract.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than October 30, 2002. Please note that comments concerning the information collection and recordkeeping requirements must be received by September 3, 2002.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: (202) 720–9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone: (202) 720–1398. FAX: (202) 720–7491. E-mail: *fgatchel@rus.usda.gov*. The proposed contract forms are available on the RUS website at: *http://www.usda.gov/rus/electric/regs.htm*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and in accordance with sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. sec. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric program provides loans and loan guarantees to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements which are not applied equally to large entities. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), RUS invites comments on this information collection. RUS will request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by September 3, 2002.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

For further information contact Mr. Fred Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–1398. Fax: (202) 720–7491. E-mail: *fgatchel@rus.usda.gov.*°

Title: 7 CFR 1726, "Electric System Construction Policies and Procedures—Electric."

OMB Control Number: 0572–0107.

Type of Request: Revision of a currently approved collection.

Abstract: In order to facilitate the programmatic interest of the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (RE Act), and, in order to assure that loans made or guaranteed by RUS are adequately secured, RUS , as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards forms, construction contracts, and procurement procedures helps assure RUS that appropriate standards and specifications are maintained; RUS" loan security is not adversely affected; and the loan and loan guarantee funds are used effectively and for the intended purposes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 minutes per response.

Respondents: Not-for-profit institutions, business or other for-profit.

Estimated Number of Respondents: 697.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 71 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The standard loan agreement between RUS and its electric borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. RUS also provides forms of contracts which serve as guidance to borrowers and which borrowers may use at their discretion. RUS proposes to update, consolidate, and streamline the standard forms of contracts used for construction and procurement. The forms affected are:

Primary Contract Forms

1. RUS Form 198, Rev. 2–95, Equipment Contract. This form is used for equipment purchases.
2. RUS Form 200, Rev. 2–95, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment.
3. RUS Form 201, Rev. 2–95, Right-of-Way Clearing Contract. This form is used for distribution line right-of-way clearing work which is to be performed separate from line construction.
4. RUS Form 203, Rev. 2–95, Transmission System Right-of-Way Clearing Contract. This form is used for transmission right-of-way clearing work which is to be performed separate from line construction.
5. RUS Form 257, Rev. 2–95, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction.
6. RUS Form 764, Rev. 2–95, Substation and Switching Station Erection Contract. This form is used to construct substations and switching stations.
7. RUS Form 786, Rev. 2–95, Electric System Communications and Control Equipment Contract. This form is used for delivery and installation of equipment for system communications.
8. RUS Form 790, Rev. 2–95, Distribution Line Extension Construction Contract (Labor and Materials). This form is used for limited distribution construction accounted for under work order procedure.
9. RUS Form 792, Rev. 2–95, Distribution Line Extension Construction Contract (Labor Only). This form is used for limited distribution construction accounted for under work order procedure.
10. RUS Form 830, Rev. 2–95, Electric System Construction Contract (Labor and Materials). This form is used for distribution and transmission line project construction.
11. RUS Form 831, Rev. 2–95, Electric Transmission Construction Contract (Labor and Materials). This form is used for transmission line project construction.

Secondary Contract Forms

1. RUS Form 168b, Rev. 2–95, Contractor's Bond. This form is used to obtain a surety bond and is included in RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, and 831.
2. RUS Form 168c, Rev. 2–95, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee.
3. RUS Form 180, Rev. 2–95, Construction Contract Amendment. This form is used to amend distribution line construction contracts.
4. RUS Form 181, Rev. 2–95, Certificate of Completion, Contract Construction for Buildings. This form is used for the closeout of RUS Form 257.
5. RUS Form 187, Rev. 2–95, Certificate of Completion, Contract Construction. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.
6. RUS Form 213, Rev. 11–99, Certificate ("Buy American"). This form is used to document compliance with the "Buy American" requirement.
7. RUS Form 224, Rev. 2–95, Waiver and Release of Lien. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.
8. RUS Form 231, Rev. 2–95, Certificate of Contractor. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.
9. RUS Form 238, Rev. 2–95, Construction or Equipment Contract Amendment. This form is used to amend contracts except distribution line construction contracts.
10. RUS Form 251, Rev. 2–95, Material Receipt. This form is used to document receipt of owner furnished materials and is included in RUS Forms 764, 830, and 831.
11. RUS Form 254, Rev. 2–95, Construction Inventory. This form is used for the closeout of RUS Forms 203, 764, 830, and 831.
12. RUS Form 307, Rev. 2–95, Bid Bond. This form is used to obtain a bid bond and is included in RUS Forms 200, 203, 257, 764, 830, and 831.

13. RUS Form 792b, Rev. 2–95, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of and is included in RUS Forms 201, 790, 792.
14. RUS Form 792c, Rev. 2–95, Supplemental Contract for Additional Project. This form is used to amend and is included in RUS Forms 201, 790, 792.

Guidance Forms

Form 198, Equipment Contract, to a "proposal" and "acceptance" format (like the other forms), and adding certain provisions, such as insurance and protection to persons and property, applicable to work performed at the project site, such as technical assistance during installation.

6. Add a provision regarding assignment of the contract to RUS for security purposes.

a lobbying form is not needed in the contract forms.

• Eliminate the requirement to include owner furnished materials under the contractor's bond for certain contracts. RUS has determined that it will not make this suggested change. RUS believes that the existing bonding requirements are necessary for protection of the borrower's and the government's financial interests.

For reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

1. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et*

(1) *Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

* * * * *

6. Revise § 1726.25 to read as follows:

§ 1726.25 Subcontracts.

Subcontracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by

contracts, up to a cumulative total of $250,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use RUS Form 830, Electric System Construction Contract—Lump Sum, for all other distribution line construction.

* * * * *

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13. RUS Form 792b, Rev. 2–95, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of and is included in RUS Forms 201, 790, 792.

14. RUS Form 792c, Rev. 2–95, Supplemental Contract for Additional Project. This form is used to amend and is included in RUS Forms 201, 790, 792.

Guidance Forms

1. RUS Form 172, Rev. 9–58, Certificate of Inspection, Contract Construction. This form is used to notify RUS that construction is ready for inspection.

2. RUS Form 173, Rev. 3–55, Materials Contract. This form is used for distribution, transmission, and general plant material purchases.

3. RUS Form 274, Rev. 6–81, Bidder's Qualifications. This form is used to document bidder's qualifications.

4. RUS Form 282, Rev. 11–53, Subcontract. This form is used for subcontracting.

5. RUS Form 458, Rev. 3–55, Materials Contract. This form is used to obtain generation plant material and equipment purchases not requiring acceptance tests at the project site.

Proposed Changes

The proposed revisions to the listed contract forms include:

1. Eliminate unneeded forms. This includes merging the Form 181 into the Form 187, merging the Form 180 and 792c into the Form 238, merging the Form 201, 203, and 764 into the Form 830, and eliminating Forms 180, 181, 201, 203, 764 and 792c. We are also proposing to eliminate infrequently used guidance forms (Forms 172, 173, 274, 282, and 458.)

2. Make forms suitable for "subject to" or "not subject to" RUS approval. This includes merging the Form 831 into the Form 830 and eliminating Form 831.

3. Make construction contract forms suitable for "labor only" or "labor and material." This includes merging the Form 792 into the Form 790 and eliminating Form 792.

4. Standardize tables and information pages and incorporate them as separate attachments. RUS is planning to publish the "Construction Units" pages as a separate bulletin. This would allow the borrower to include in its bid package only those construction unit pages that are relevant to a particular project.

5. Maximize consistency among forms. This includes standardizing common provisions and terminology, and adding a "Notice and Instructions to Bidders" to forms not having one. This also includes restructuring the Form 198, Equipment Contract, to a "proposal" and "acceptance" format (like the other forms), and adding certain provisions, such as insurance and protection to persons and property, applicable to work performed at the project site, such as technical assistance during installation.

6. Add a provision regarding assignment of the contract to RUS for security purposes.

7. Update and clarify certain contract provisions in the forms. This includes:

a. Clarify that the contractor (not the owner or engineer) is solely responsible for the means and methods of construction and for the supervision of the contractor's employees.

b. Delete the reference to a "Supervisor" appointed by RUS.

c. Delete the reference to the loan contract and owner's access to funding.

d. Delete the option for eliminating retainage after the contract is 50 percent complete.

e. Update the "Buy American" and "Civil Rights" requirements.

f. Eliminating gender specific terms such as him, his, and materialmen.

Comments

RUS published an Advanced Notice of Proposed Rulemaking in the **Federal Register** on September 16, 1998, at 63 FR 49503. Comments were received from two distribution borrowers and two power supply borrowers. RUS reviewed and considered all comments. Several of the comments are addressed herein.

Commenters requested that RUS:

• Add a liquidated damages clause to the Forms 198 and 200. This comment has been incorporated.

• Allow electronic reproduction for all or part of the forms. In this proposal, RUS is proposing to remove many of the tables contained in the forms and to make them optional attachments which may be modified (electronically or otherwise) as needed. RUS is also proposing to allow exact electronic reproduction of the contract forms. This change will also be made to 7 CFR 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.

• Modify the closeout and accounting requirements for certain types of contract forms. RUS has determined that it will not make this suggested change. RUS believes that the existing requirements are a reasonable balance between ease of use and accountability.

• Include certification forms concerning lobbying and debarment. RUS has included a certification form for debarment. RUS has determined that a lobbying form is not needed in the contract forms.

• Eliminate the requirement to include owner furnished materials under the contractor's bond for certain contracts. RUS has determined that it will not make this suggested change. RUS believes that the existing bonding requirements are necessary for protection of the borrower's and the government's financial interests.

• Add or modify a number of contract provisions to define or clarify the contractor's obligations. RUS proposes to modify the contract provisions as appropriate to clarify the contractor's obligations.

One commenter suggested that by eliminating Form 274, Bidder's Qualifications, RUS is not encouraging prequalification of bidders. On the contrary, RUS requires prequalification of bidders (see 7 CFR 1726.23) for all contracts. RUS is proposing to eliminate the Form 274 because RUS believes that the substance of the bidder's qualification is more important than the form used. Borrowers and engineers may use whatever form or format they feel is appropriate for obtaining bidder's qualifications.

Other Changes

In addition to the modifications of the contract forms and the associated changes in 7 CFR 1726, RUS is making several other minor changes and corrections to 7 CFR 1726. For example, § 1726.125(b), which covers approval by RUS of plans and specifications for generating facilities, is being removed because this topic is now covered in 7 CFR 1724, Electric Engineering, Architectural Services and Design Policies and Procedures. Since some of the electric program contract forms are also used in the RUS telecommunications program, RUS is proposing to change the list of forms in 7 CFR 1755. RUS is proposing to remove the reference to year 2000 compliance since this is no longer relevant.

List of Subjects

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

1. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart F—RUS Contract Forms

2. Amend § 1724.71 by revising paragraph (b) to read as follows:

§ 1724.71 Borrower contractual obligations.

* * * * *

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

* * * * *

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

3. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

4. Revise § 1726.20 to read as follows:

§ 1726.20 Standards and specifications.

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

5. Amend § 1726.24 by revising paragraph (b)(1) to read as follows:

§ 1726.24 Standard forms of contracts for borrowers.

* * * * *

(b) * * *

(1) *Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

* * * * *

6. Revise § 1726.25 to read as follows:

§ 1726.25 Subcontracts.

Subcontracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

7. Amend § 1726.27 by revising paragraphs (a) and (b) to read as follows:

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

* * * * *

Subpart B—Distribution Facilities

8. Amend § 1726.50 by revising paragraph (a)(2) to read as follows:

§ 1726.50 Distribution line materials and equipment.

(a) * * *

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

* * * * *

9. Amend § 1726.51 by revising paragraph (a) to read as follows

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use RUS Form 790, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Unit Price, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of $250,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use RUS Form 830, Electric System Construction Contract—Lump Sum, for all other distribution line construction.

* * * * *

Subpart C—Substation and Transmission Facilities

10. Amend § 1726.76 by revising paragraph (a)(2) to read as follows:

§ 1726.76 Substation and transmission line materials and equipment.

(a) * * *

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

* * * * *

11. Amend § 1726.77 by revising paragraph (a) to read as follows:

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* The borrower must use RUS Form 830, Electric System Construction Contract—Lump Sum, for construction of substations, except for minor modifications or improvements.

* * * * *

Subpart D—Generation Facilities

§ 1726.125 [Amended]

12. Amend § 1726.125 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subpart F—General Plant

13. Amend § 1726.175 by revising paragraph (a) to read as follows:

§ 1726.175 General plant materials.

* * * * *

(a) *Contract forms.* The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order.

* * * * *

Subpart H—Modifications to RUS Standard Contract Forms

14. Amend § 1726.250 by revising it to read as follows:

§ 1726.250 General.

RUS provides standard forms of contract for the procurement of

materials, equipment, and construction and for contract amendments and various related forms for use by RUS borrowers. See § 1726.304 for a listing of these forms and how to obtain them. The standard forms of contract shall be used by the borrowers in accordance with the provisions of this part. RUS will give prior approval to certain modifications to these forms without changing the applicable requirements

(1) RUS Form 198, Equipment Contract, article IV, section 1(d).

(2) RUS Form 200, Construction Contract " Generating, article IV, section 1(d).

(3) RUS Form 257, Contract to Construct Buildings, article IV, section 1(d).

(4) RUS Form 786, Electric System Communications and Control Equipment Contract, article IV, section

§ 1726.304 List of electric program standard contract forms.

* * * * *

(c) List of required contract forms.

(1) RUS Form 168b, Rev. 11–01, Contractor's Bond. This form is used to obtain a surety bond and is used with RUS Forms 200, 257, 786, 790, and 830.

(2) RUS Form 168c, Rev. 11–01, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when

Indemnity Agreement. This form is used for the closeout of RUS Form 790.

(16) RUS Form 830, Rev. 11–01, Electric System Construction Contract—Lump Sum. This form is used for distribution and transmission line project construction.

(d) List of guidance contract forms. RUS does not currently publish any guidance forms for electric borrowers.

Subpart J—Contract Closeout

(B) RUS Form 231, Certificate of Contractor.

(C) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a–c and construction change orders, for contracts executed on RUS Form 830.

(iii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval. The borrower will send one copy of RUS Form 187 to RUS for information prior to or in conjunction with the applicable RUS Form 219.

(24) RUS Form 307, issued 11–01, Bid Bond.

* * * * *

Hilda Gay Legg,

Administrator, Rural Utilities Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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materials, equipment, and construction and for contract amendments and various related forms for use by RUS borrowers. See § 1726.304 for a listing of these forms and how to obtain them. The standard forms of contract shall be used by the borrowers in accordance with the provisions of this part. RUS will give prior approval to certain modifications to these forms without changing the applicable requirements for RUS approval. Such approved modifications are set forth in this subpart. These are the only modifications given prior RUS approval.

15. Amend § 1726.252 by revising paragraph (a) and removing paragraph (d) to read as follows:

§ 1726.252 Prior approved contract modification related to liability for special and consequential damages.

* * * * *

(a) Insert new paragraphs in the "Notice and Instructions to Bidders" as follows:

"Proposals are invited on the basis of alternative Liability Clause Numbers 1 and 2. The Owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

Liability Clause Number 1. This will include unmodified all of the standard terms and conditions of the form of contract furnished by the Owner and attached hereto.

Liability Clause Number 2. This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the Owner and attached hereto:

'Except for Bidder's willful delay or refusal to perform the contract in accordance with its terms, the Bidder's liability to the Owner for special or consequential damages on account of breach of this contract shall not exceed in total an amount equal to____ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive] of the contract price.'"

* * * * *

§ 1726.254 [Removed and Reserved]

16. Remove and reserve § 1726.254.

17. Amend § 1726.255 by revising paragraph (c) and removing paragraphs (d) and (e) to read as follows:

§ 1726.255 Prior approved contract modification related to indemnification.

* * * * *

(c) If the alternative indemnification provision in paragraph (a) or (b) of this section is chosen by the borrower, the language of paragraph (a) or (b) of this section would be inserted in lieu of subsection (i) of the section indicated in the RUS standard construction contract forms as follows:

(1) RUS Form 198, Equipment Contract, article IV, section 1(d).

(2) RUS Form 200, Construction Contract " Generating, article IV, section 1(d).

(3) RUS Form 257, Contract to Construct Buildings, article IV, section 1(d).

(4) RUS Form 786, Electric System Communications and Control Equipment Contract, article IV, section 1(d).

(5) RUS Form 790, Electric System Construction Contract—Unit Price, article IV, section 1(g).

(6) RUS Form 830, Electric System Construction Contract—Lump Sum, article IV, section 1(g).

Subpart I—RUS Standard Forms

18. Amend § 1726.301 by revising paragraph (b) to read as follows:

§ 1726.301 Borrower contractual obligations.

* * * * *

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

* * * * *

19. Amend § 1726.302 by revising paragraph (b) to read as follows:

§ 1726.302 Notice and publication of listed contract forms.

* * * * *

(b) *Availability.* Listed standard forms of contract are available from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington DC 20250–1522, telephone number (202) 720–8674. The listed standard forms of contract are also available on the RUS website at: *http://www.usda.gov/rus/electric/forms.htm.* The listed standard forms of contract can be found in § 1724.304(c), List of Required Contract Forms.

20. Amend § 1726.304 by revising paragraph (c) and (d) to read as follows:

§ 1726.304 List of electric program standard contract forms.

* * * * *

(c) List of required contract forms.

(1) RUS Form 168b, Rev. 11–01, Contractor's Bond. This form is used to obtain a surety bond and is used with RUS Forms 200, 257, 786, 790, and 830.

(2) RUS Form 168c, Rev. 11–01, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee.

(3) RUS Form 187, Rev. 11–01, Certificate of Completion, Contract Construction. This form is used for the closeout of RUS Forms 200, 257, 786, and 830.

(4) RUS Form 198, Rev. 11–01, Equipment Contract. This form is used for equipment purchases.

(5) RUS Form 200, Rev. 11–01, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment.

(6) RUS Form 213, Rev. 11–01, Certificate ("Buy American"). This form is used to document compliance with the "Buy American" requirement.

(7) RUS Form 224, Rev. 11–01, Waiver and Release of Lien. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(8) RUS Form 231, Rev. 11–01, Certificate of Contractor. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(9) RUS Form 238, Rev. 11–01, Construction or Equipment Contract Amendment. This form is used for amendments.

(10) RUS Form 254, Rev. 11–01, Construction Inventory. This form is used for the closeout of RUS Form 830. Minor electronic modifications are acceptable for RUS Form 254.

(11) RUS Form 257, Rev. 11–01, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction.

(12) RUS Form 307, Rev. 11–01, Bid Bond. This form is used to obtain a bid bond.

(13) RUS Form 786, Rev. 11–01, Electric System Communications and Control Equipment Contract (including installation). This form is used for delivery and installation of equipment for system communications.

(14) RUS Form 790, Rev. 11–01, Electric System Construction Contract—Unit Price. This form is used for limited distribution construction accounted for under work order procedure.

(15) RUS Form 792b, Rev. 11–01, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of RUS Form 790.

(16) RUS Form 830, Rev. 11–01, Electric System Construction Contract—Lump Sum. This form is used for distribution and transmission line project construction.

(d) List of guidance contract forms. RUS does not currently publish any guidance forms for electric borrowers.

Subpart J—Contract Closeout

§ 1726.401 [Amended]

21. Amend § 1726.401 by removing the introductory text.

22. Amend § 1726.403 by revising the introductory text and paragraph (c) to read as follows:

§ 1726.403 Project construction contract closeout.

This section is applicable to contracts executed on RUS Forms 200, 257, 786, and 830.

* * * * *

(c) *Closeout documents.* (1) Upon satisfactory completion of construction (including all changes and corrections by the contractor), the borrower (acting through its architect or engineer, if applicable) will obtain executed copies of the following documents:

(i) RUS Form 187, Certificate of Completion, Contract Construction.

(ii) RUS Form 213, "Buy American" certificate.

(iii) RUS Form 224, Waiver and Release of Lien, from each manufacturer, supplier, and contractor which has furnished material or services or both in connection with the construction.

(iv) RUS Form 231, Certificate of Contractor.

(v) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c, construction change orders, and amendments for contracts executed on RUS Form 830.

(vi) Certification by the project architect or engineer in accordance with § 1726.403(a), if applicable.

(vii) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable RUS requirements regarding retention of records.

(ii) For contracts subject to RUS approval, the borrower will submit the following closeout documents for RUS approval (through the GFR except for generation projects):

(A) RUS Form 187, Certificate of Completion, Contract Construction.

(B) RUS Form 231, Certificate of Contractor.

(C) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a–c and construction change orders, for contracts executed on RUS Form 830.

(iii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval. The borrower will send one copy of RUS Form 187 to RUS for information prior to or in conjunction with the applicable RUS Form 219, Inventory of Work Orders. The remaining closeout documents need not be sent to RUS unless specifically requested by RUS.

* * * * *

23. Amend § 1726.404 by revising the introductory text to read as follows:

§ 1726.404 Non-site specific construction contract closeout.

This section is applicable to contracts executed on RUS Form 790.

* * * * *

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

24. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

25. Amend § 1755.30 by revising paragraphs (c)(4) through (c)(8), (c)(12) through (c)(14), (c)(17), and (c)(24) to read as follows:

§ 1755.30 List of telecommunications standard contract forms.

* * * * *

(c) * * *

(4) RUS Form 168b, issued 11–01, Contractor's Bond.

(5) RUS Form 168c, issued 11–01, Contractor's Bond.

(6) RUS Form 181a, issued 3–66, Certificate of Completion (Force Account Construction).

(7) RUS Form 187, issued 11–01, Certificate of Completion, Contract Construction.

(8) RUS Form 213, issued 11–01, Certificate (Buy American).

* * * * *

(12) RUS Form 224, issued 11–01, Waiver and Release of Lien.

(13) RUS Form 231, issued 11–01, Certificate of Contractor.

(14) RUS Form 238, issued 11–01, Construction or Equipment Contract Amendment.

* * * * *

(17) RUS Form 257, issued 11–01, Contract to Construct Buildings.

* * * * *

(24) RUS Form 307, issued 11–01, Bid Bond.

* * * * *

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–16278 Filed 7–1–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–16–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TB 21 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TB 21 airplanes. This proposed AD would require you to modify the exhaust system. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this proposed AD are intended to prevent high levels of carbon monoxide from entering the cockpit during certain flight configurations, which could result in the pilot becoming incapacitated or impairing his/her judgement. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 1, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–16–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002–CE–16–AD" in the subject line. If you send comments electronically as attached electronic

files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, [illegible]

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–16–AD." We will date stamp and mail the postcard back to you.

Discussion

What Action Did the DGAC Take?

The DGAC classified this service bulletin as mandatory and issued French AD 2001–610(A), dated December 12, 2001, in order to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured [illegible]

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe AEROSPATIALE: Docket No. 2002–CE–16–AD

(a) *What airplanes are affected by this AD?* This AD affects Model TB 21 airplanes, serial numbers 500 through 2080, 2091, and 2101, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the

files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–16–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on certain Socata Model TB 21 airplanes. The DGAC reports three occurrences in which carbon monoxide levels in the cockpit have been found to be above specified tolerance levels during certain flight configurations. Carbon monoxide is entering the cockpit from the rear part of the fuselage.

This condition resulted from a design problem and all three occurrences were discovered prior to delivery of any of the affected airplanes. The modification required in this proposed AD is being applied at the factory for all other Model TB 21 airplanes.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in high levels of carbon monoxide entering the cockpit during certain flight configurations. High levels of carbon monoxide in the cockpit could result in the pilot becoming incapacitated or impairing his/her judgement. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Socata has issued TB Aircraft Mandatory Service Bulletin SB 10–126 78, dated November 2001.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for modifying the exhaust pipe.

What Action Did the DGAC Take?

The DGAC classified this service bulletin as mandatory and issued French AD 2001–610(A), dated December 12, 2001, in order to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Socata Model TB 21 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 13 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180.	$260	$440	$440 × 13 = $5,720.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe AEROSPATIALE: Docket No. 2002–CE–16–AD

(a) *What airplanes are affected by this AD?* This AD affects Model TB 21 airplanes, serial numbers 500 through 2080, 2091, and 2101, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent high levels of carbon monoxide from entering the cockpit during certain flight configurations, which could result in the pilot becoming incapacitated or impairing his/her judgement. Such a condition could lead to the pilot not being able to make critical flight safety decisions and result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Install a part number (P/N) TB 21 9600200000 exhaust extension to the exhaust pipe. This installation is Modification No. MOD.178.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Socata TB Aircraft Mandatory Service Bulletin SB 10–126 78, dated November 2001, and the applicable maintenance manual.
(2) Do not install, on any affected airplane, any of the following components without incorporating Modification No. MOD.178 as required by paragraph (d)(1) of this AD: (i) Exhaust installation assemblies P/N TB21 56001000, P/N TB21 56001005, or P/N TB21 5600100501; or (ii) Turbo exhaust tubes P/N TB21 56001001, P/N TB21 56001006, or P/N TB21 5600100601.	As of the effective date of this AD	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD. No passengers are allowed for this flight.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in French AD 2001–610(A), dated December 12, 2001.

Issued in Kansas City, Missouri, on June 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16532 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Mudry et Cie Model CAP 10 B

may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002-CE-04-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in

postcard. On the postcard, write "Comments to Docket No. 2002–CE–04-AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France,

What Has Happened Since AD 98–12–10 and AD 99–21–23 To Initiate This Action?

The DGAC notified the FAA that an unsafe condition may still exist on all Avions Mudry Model CAP 10 B airplanes, which creates the need to change AD 98–12–10 and AD 99–21–23. The DGAC reports that additional fractures in the wing spar are being found that were not detected using the

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has

—Temporarily reducing the load factor limits until completion of the initial inspection of the upper and lower surfaces of the wing spar and landing gear attachment blocks and are found free of cracks;

—Repetitively inspecting the upper and lower surfaces of the wing spar and the landing gear attachment blocks for cracks;

—Reducing the flick maneuver speed;

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-CE-04-AD]

RIN 2120-AA64

Airworthiness Directives; Avions Mudry et Cie Model CAP 10 B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–12–10 and AD 99–21–23, which currently apply to Avions Mudry et Cie (Avions Mudry) Model CAP 10 B airplanes. AD 98–12–10 requires installing an inspection opening in the wing, repetitively inspecting the upper and lower wing spars for structural cracking, and, if any cracks are found, repairing the cracks in accordance with a repair method. AD 99–21–23 requires restricting the entry speed for performing flick maneuvers to 97 knots, inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual, and fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. This proposed AD would retain the wing modification and repair requirements from AD 98–12–10. This proposed AD would also incorporate new repetitive inspection procedures, further reduce the flick maneuver speed specified in AD 99–21–23, and temporarily reduce the load factor limits prior to the initial inspection. The actions specified by this proposed AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before August 1, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–04–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002-CE-04-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from APEX Aircraft, 1 Route de Troyes, F21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–04–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified FAA that it was receiving reports of cracks on the upper and lower surfaces of the wing spar. The DGAC reported that the cracking was occurring as a result of exceeding the load limit determined for the airplane, executing snap roll maneuvers outside the envelope for which the airplane is certificated, and experiencing repetitive hard landings. This condition caused us to issue AD 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988). AD 98–12–10 requires the following on Model CAP 10 B airplanes, all serial numbers through 263:

—Installing an inspection opening in the wing;

—Repetitively inspecting the upper and lower wing spars for structural cracking; and

—If any cracks are found, repairing the cracks.

Accomplishment of these actions is required in accordance with Avions Mudry Service Bulletin No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996, and Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992.

The DGAC also reported that there was no airspeed limitation for performing flick maneuvers during aerobatic flight. The speeds listed in sections 4 and 7 of the CAP 10B flight manual are only recommendations instead of required speeds.

Without required entry speeds for flick maneuvers when performing aerobatic flight, the pilot could use excessive speed and cause the wing to separate from the airplane. This situation caused us to issue AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999). AD 99–21–23 requires the following on Model CAP 10 B airplanes, all serial numbers:

—Restricting the entry speed for performing flick maneuvers to 97 knots;

—Inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual; and

—Fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view).

What Has Happened Since AD 98–12–10 and AD 99–21–23 To Initiate This Action?

The DGAC notified the FAA that an unsafe condition may still exist on all Avions Mudry Model CAP 10 B airplanes, which creates the need to change AD 98–12–10 and AD 99–21–23. The DGAC reports that additional fractures in the wing spar are being found that were not detected using the inspection procedures specified in AD 98–12–10.

Is There Service Information That Applies to This Subject?

APEX Aircraft has issued the following service information:

—CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated April 2, 2002;

—CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated April 2, 2002; and

—CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated April 2, 2002.

What Are the Provisions of These Service Documents?

These service documents include procedures for inspecting specified sections of the wing spar for cracks.

What Action Did the DGAC Take?

The DGAC classified these service documents as mandatory and issued French AD Number 2001–616(A) R1, dated May 29, 2002, in order to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on all Avions Mudry Model CAP 10 B airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would the Proposed AD Require? This proposed AD Would Supersede AD 98–12–10 and AD 99–21–23 with a new AD that would require the following:

—Installing an inspecting opening in each wing;

—Temporarily reducing the load factor limits until completion of the initial inspection of the upper and lower surfaces of the wing spar and landing gear attachment blocks and are found free of cracks;

—Repetitively inspecting the upper and lower surfaces of the wing spar and the landing gear attachment blocks for cracks;

—Reducing the flick maneuver speed;

—Inserting a copy of the AD into the Limitation Section of the CAP 10B flight manual; and

—Fabricating and installing a placard that indicates the flick maneuver speed in the cockpit in the pilot's clear view. The placard will incorporate the following language:

"The Never-Exceed Airspeed for Positive or Negative Flick Maneuvers Is 160 KM/H (86 KTS)"

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 36 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed installation of the inspection opening:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
18 work hours × $60 per hour = $1,080	No parts required to make the inspection	$1,080	$1,080 × 36 = $38,880

We estimate the following costs to accomplish the proposed inspection(s):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60 per hour = $300	No parts required to perform the inspection	$300	$300 × 36 = $10,800

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Accomplishing the proposed flight manual and placard requirements of this proposed AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this proposed action is the time it would take each owner/operator of the affected airplanes to insert the information into the flight manual and fabricate and install the placard.

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impacts of AD 98–12–10 and AD 99–21–23?

The only difference between this proposed AD and AD 98–12–10 and AD 99–21–23 is the change of inspection procedures. The FAA has determined that the costs of these proposed changes are minimal and does not increase the cost impact over that already required

"significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988), and AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999), and by adding a new AD to read as follows:

Avions Mudry et Cie: Docket No. 2002–CE–04–AD; Supersedes AD 98–12–10,

Actions	Compliance	Procedures
(4) If cracks are found during any inspection required in paragraph (d)(3) of this AD, accomplish the following:. (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD;. (ii) Incorporate this repair scheme; and ..... (iii) The repair scheme will indicate whether or not you may raise the load factor limits.	Obtain and incorporate the repair scheme prior to further flight after the inspection in which the cracks are found. Continue to inspect as specified in paragraph (d)(3) of this AD.	In accordance with the repair scheme obtained from APEX Aircraft, Direction Technique, 1b Route de Troyes, F21121, Darois, France. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) If no cracks are found during the initial in-	Prior to further flight after the initial inspection	Not applicable.

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impacts of AD 98–12–10 and AD 99–21–23?

The only difference between this proposed AD and AD 98–12–10 and AD 99–21–23 is the change of inspection procedures. The FAA has determined that the costs of these proposed changes are minimal and does not increase the cost impact over that already required by the previous ADs.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988), and AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999), and by adding a new AD to read as follows:

Avions Mudry et Cie: Docket No. 2002–CE–04–AD; Supersedes AD 98–12–10, Amendment 39–10566, and AD 99–21–23, Amendment 39–11368.

(a) *What airplanes are affected by this AD?* This AD affects Model CAP 10B airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For CAP 10 B airplanes, all serial numbers through 263, install a permanent inspection opening in the No. 1 wing rib. Inspection openings are incorporated during production for airplanes having a serial number of 264 or higher.	Within the next 100 hours time-in-service (TIS) after July 23, 1993 (the effective date of AD 93–10–11, which was superseded by AD 98–12–10), unless already accomplished.	In accordance with Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992.
(2) For all airplanes, accomplish the following: (i) Restrict the load factors limitation to +5 & −3 G's. (ii) Restrict the entry speed for performing flick maneuvers to 86 knots through the incorporation of the following information into the CAP 10B flight manual: "The never-exceed airspeed for positive or negative flick maneuvers is 160 km/h (86 knots).". (iii) Fabricate a placard that incorporates the following words (using at least ⅛-inch letters) and install this placard on the instrument panel within the pilots clear view: THE NEVER EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK MANEUVERS IS 160 KM/H (86 KNOTS)".	Within the next 25 hours TIS after the effective date of this AD.	Accomplish the limitations of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD by inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regualtions (14 CFR 43.7) may accomplish this flight manual insertion and the placard requirements of paragraph (d)(2)(iii) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) Inspect the upper wing spar cap, the main wing spar undersurface, and the landing gear attachment blocks for cracks.	Within the next 50 hours TIS after the effective date of this AD and thereafter at repetitive intervals not-to-exceed 50 hours TIS.	In accordance with APEX Aircraft CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated April 2, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated April 2, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated April 2, 2002.

Actions	Compliance	Procedures
(4) If cracks are found during any inspection required in paragraph (d)(3) of this AD, accomplish the following:. (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD;. (ii) Incorporate this repair scheme; and ..... (iii) The repair scheme will indicate whether or not you may raise the load factor limits.	Obtain and incorporate the repair scheme prior to further flight after the inspection in which the cracks are found. Continue to inspect as specified in paragraph (d)(3) of this AD.	In accordance with the repair scheme obtained from APEX Aircraft, Direction Technique, 1b Route de Troyes, F21121, Darois, France. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) If no cracks are found during the initial inspection required in paragraph (d)(3) of this AD, you may raise load factor limits back to +6 & −4.5 G's.	Prior to further flight after the initial inspection required in paragraph (d)(3) of this AD in which no cracks were found.	Not applicable.

Note 1: The service information specified in paragraph (d)(3) of this AD is available on CD-ROM from the manufacturer. You may contact them at the address and phone number in paragraph (h) of this AD.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

(2) Alternative methods of compliance approved in accordance with AD 98–12–10 and AD 99–21–23, which are superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from APEX AIRCRAFT, 1 Route de Troyes, 21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–12–10, Amendment 39–10566 and AD 99–21–23, Amendment 39–11368.

Note 3: The subject of this AD is addressed in French AD Number 2001–616(A) R1, dated May 29, 2002.

Issued in Kansas City, Missouri, on June 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16533 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

15 CFR Part 930

[Docket No. 020422093–2093]

RIN 0648–AP98

Procedural Changes to the Federal Consistency Process

AGENCY: Office of Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NOAA is evaluating whether limited and specific procedural changes or guidance to the existing Federal consistency regulations are needed to improve efficiencies in the Federal consistency procedures and Secretarial appeals process, particularly for energy development on the Outer Continental Shelf (OCS). This advance notice of proposed rulemaking requests public comment on the need for limited and specific changes or guidance on what such changes or guidance should be.

DATES: Comments on this advance notice of proposed rulemaking must be received by September 3, 2002.

ADDRESSES: Address all comments regarding this advance notice of proposed rulemaking to David Kaiser, Federal Consistency Coordinator, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Attention: Federal Consistency Energy Review Comments.

FOR FURTHER INFORMATION CONTACT: David Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management, NOAA, 301–713–3155 ext. 144.

SUPPLEMENTARY INFORMATION:

I. Background

For nearly 30 years the Coastal Zone Management Act (CZMA) has met the needs of coastal States and Territories (referred to as States), Federal agencies, industry and the public to balance the protection of coastal resources with coastal development, including energy development. The CZMA requires States to adequately consider the national interest in the siting of energy facilities in the coastal zone through the development and implementation of their federally approved State Coastal Management Programs (CMPs). States have collaborated with industry on a variety of energy facilities, including oil and gas pipelines, nuclear power plants, hydroelectric facilities, and alternative energy development. States have reviewed and approved thousands of offshore oil and gas facilities and related onshore support facilities. On December 8, 2000, NOAA issued a comprehensive revision to the Federal Consistency regulations, which reflected substantial effort and participation by Federal agencies, States, industry, and the

public, over a five year period. Given this recent broad-based review, NOAA is not re-evaluating the 2000 final rule, rather it is considering whether limited modifications are needed to address the specific concerns discussed in this advance notice.

II. History of the CZMA and NOAA's Federal Consistency Regulations.

The CZMA was enacted in 1972 to encourage States to be proactive in [illegible] operated well for the Federal and State agencies and permit applicants and provided a reasonable interpretation of the CZMA's broad requirements. When Congress amended the CZMA in 1990, it specifically endorsed NOAA's consistency regulations and interpretation of the CZMA. However, changes to the CZMA in 1990 and 1996 made clear that revisions to the regulations were needed.

In late 1996, OCRM began a process Management Service (MMS) within the Department of the Interior (DOI), are specifically mentioned. Energy Report at 5–7.

This advance notice is part of NOAA's evaluation of the Energy Report and NOAA's ongoing responsibility to address the national interest in effective coastal management. When States develop and amend their CMPs, and when making coastal management

fully consistent or consistent to the maximum extent practicable.

There are several safeguards within the CZMA and NOAA's regulations to ensure that Federal requirements are met and that the national interest in the CZMA objectives is furthered. These safeguards are discussed below using OCS oil and gas activities to illustrate.

The "Effects Test." As discussed above, Federal Consistency review is triggered only when a federal action has a result of an activity in the described geographic location.

NOAA Approval of State CMPs. NOAA, with substantial input from Federal agencies, local governments, industry, non-governmental organizations and the public, must approve State CMPs and their enforceable policies, including later changes to a State's CMP. For example, NOAA has denied State requests to include policies in its federally

the State, and 1 decision pending. The record shows that energy development continues to occur, while reasonable State review ensures that the CZMA objectives have been met.

Since 1990, when the CZMA Federal Consistency provision was amended, there have been several OCS oil and gas lease sales by MMS and only one State objection. However, in that one case OCRM determined that the State's objection was not based on enforceable

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public, over a five year period. Given this recent broad-based review, NOAA is not re-evaluating the 2000 final rule, rather it is considering whether limited modifications are needed to address the specific concerns discussed in this advance notice.

II. History of the CZMA and NOAA's Federal Consistency Regulations.

The CZMA was enacted in 1972 to encourage States to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the balancing of competing uses of those resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a CMP pursuant to federal guidelines. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and other State coastal management concerns. The State CMPs are developed with the participation of Federal agencies, industry, other interested groups and the public. Once the Secretary of Commerce approves a State's CMP, then the CZMA Federal Consistency provision applies. Federal Consistency is a limited waiver of federal supremacy and authority. Federal agency activities that have coastal effects must be consistent to the maximum extent practicable with the federally approved enforceable policies of the State's CMP. In addition, non-Federal applicants for federal approvals and funding must be fully consistent with the enforceable policies of State CMPs. The Federal Consistency provision is a cornerstone of the CZMA program and a primary incentive for States to participate. While States have negotiated changes to thousands of federal actions over the years, States have concurred with approximately 93% of all federal actions reviewed. Thirty-five States, Great Lake States and United States Trust Territories and Commonwealths (collectively referred to as "coastal States" or "States") are eligible to participate. Thirty-three of the eligible coastal States have federally approved CMPs. Indiana is developing a program and Illinois is not currently participating.

NOAA's Federal Consistency regulations, first promulgated in 1979, provide reliable procedures and predictability to the implementation of Federal Consistency. The regulations operated well for the Federal and State agencies and permit applicants and provided a reasonable interpretation of the CZMA's broad requirements. When Congress amended the CZMA in 1990, it specifically endorsed NOAA's consistency regulations and interpretation of the CZMA. However, changes to the CZMA in 1990 and 1996 made clear that revisions to the regulations were needed.

In late 1996, OCRM began a process to revise the regulations by informally consulting and collaborating with Federal agencies, States, industry, Congress, and other interested parties. NOAA submitted two sets of draft rules to States, Federal agencies and others for comments and produced written responses to comments to each draft, before proposing a rule in April 2000. NOAA evaluated comments on the proposed rule and published a final rule on December 8, 2000, which became effective on January 8, 2001.

Most of the changes in the revised regulations were dictated by changes in the CZMA or by specific statements in the accompanying legislative history. For instance, the new regulations added language concerning the scope of the Federal Consistency "effects test." Prior to the 1990 amendments, Federal agency activities "directly affecting" the coastal zone were subject to Federal Consistency. The amendments broadened this language by dropping the word "directly" to include projects with "effects" on any land or water use or natural resource of the coastal zone. Other changes in the 2000 final rule improved and clarified procedural efficiencies and processes and made changes based on long-standing interpretive practice by NOAA.

III. The Role of the CZMA in OCS Energy Development

In February 2001, the Administration established the National Energy Policy Development Group to bring together business, government, local communities and citizens to promote a dependable, affordable, and environmentally sound National Energy Policy. Vice-President Cheney submitted the Group's Report (Energy Report) to President Bush on May 16, 2001.

The Energy Report contains numerous recommendations for obtaining a long-term, comprehensive energy strategy to advance new, environmentally beneficial technologies to increase energy supplies and encourage less polluting, more efficient energy use. The CZMA and the Outer Continental Shelf Lands Act (OCSLA), a statute administered by the Minerals Management Service (MMS) within the Department of the Interior (DOI), are specifically mentioned. Energy Report at 5–7.

This advance notice is part of NOAA's evaluation of the Energy Report and NOAA's ongoing responsibility to address the national interest in effective coastal management. When States develop and amend their CMPs, and when making coastal management decisions, the CZMA requires State CMPs to adequately consider the national interest in the CZMA objectives and to give priority consideration to coastal dependant uses and processes for facilities related to national defense, energy, fisheries, recreation, ports and transportation.

The CZMA and the OCSLA interact both by explicit cross-reference in the statutes and through their regulatory implementation. Both statutes mandate State review of OCS oil and gas Exploration Plans (EPs) and Development and Production Plans (DPPs). Both statutes and their corresponding regulations provide a compatible and interrelated process for States to review EPs and DPPs. The Energy Report identifies potential lack of effectiveness in the CZMA–OCSLA interaction resulting from a lack of clearly defined requirements and information needs from Federal and State entities, as well as uncertain deadlines for completing the procedures of both statutes. Energy Report at 5–7.

The CZMA requires that when a lessee seeks MMS approval for its EP or DPP, the lessee must certify to the affected State(s) that activities covered in the plans are fully consistent with the enforceable policies of the State's CMP. If the State objects to the consistency certification, then MMS is prohibited from approving the activities described in detail in the EP or DPP. The lessee may appeal to the Secretary of Commerce to override the State objection and allow MMS to issue the approval. When deciding an appeal, the Secretary balances the national interest of the energy development against adverse effects on coastal resources and coastal uses. When MMS offers an OCS lease sale, it is considered a federal agency activity. If MMS determines that the lease sale will have reasonably foreseeable coastal effects, then MMS must provide a CZMA consistency determination to the affected State(s) stating whether the lease sale is "consistent to the maximum extent practicable" with the enforceable policies of the State's CMP. If the State objects, MMS may still proceed with the lease sale if MMS can show that it is

fully consistent or consistent to the maximum extent practicable.

There are several safeguards within the CZMA and NOAA's regulations to ensure that Federal requirements are met and that the national interest in the CZMA objectives is furthered. These safeguards are discussed below using OCS oil and gas activities to illustrate.

The "Effects Test." As discussed above, Federal Consistency review is triggered only when a federal action has reasonably foreseeable coastal effects, referred to as the "effects test." Consistency does NOT apply to everything a Federal agency, or a non-federal applicant for federal approvals, does in or near a coastal State.

For OCS oil and gas lease sales, MMS determines which States will be affected and provides only those States with a Consistency Determination. For example, in the Gulf of Mexico, MMS has established the Eastern Planning, Central Planning and Western Planning Areas. MMS usually finds that lease sales in the Central and Western Planning Areas will not have reasonably foreseeable effects on Florida coastal uses or resources (within the Eastern Planning Area) and does not provide Florida with a Consistency Determination.

For OCS EPs and DPPs the CZMA mandates, as a general matter, State consistency review. However, as with Federal agency activities, a coastal State's ability to review the Plans stops where coastal effects are not reasonably foreseeable. For example, in the Gulf of Mexico, Florida reviews OCS Plans in the Eastern Planning Area, and only reviews an OCS Plan in the Central Planning Area if effects to Florida's coastal uses or resources are reasonably foreseeable. Usually, an OCS oil and gas activity in the Central Planning Area will be beyond the point where the activity will affect Florida. The State of Texas (in the Western Planning Area) does not usually review an OCS oil and gas activity proposed for the Eastern Planning Area because coastal effects in Texas are not reasonably foreseeable.

Under the CZMA and NOAA's regulations, if Florida wanted to review OCS plans in the Central Planning Area, or if Texas wanted to review OCS plans in the Eastern Planning Area, they could, if NOAA approved, amend their CMP to describe an area within the particular Planning Area as a geographic location where the plans are subject to State review. Or, the States could request approval from NOAA on a case by case basis. In both cases, NOAA would approve only if the States could show that effects on their coastal uses or resources are reasonably foreseeable as a result of an activity in the described geographic location.

NOAA Approval of State CMPs. NOAA, with substantial input from Federal agencies, local governments, industry, non-governmental organizations and the public, must approve State CMPs and their enforceable policies, including later changes to a State's CMP. For example, NOAA has denied State requests to include policies in its federally approved CMP that would prohibit all oil and gas development or facilities off its coast. NOAA has found that such policies conflict with the CZMA requirement that States consider the national interest in energy development and balance resource protection with coastal uses.

Federal Agency Activities—"Consistent to the Maximum Extent Practicable and Fully Consistent." For Federal agency activities under CZMA section 307(c)(1), such as the OCS Lease Sales, the Federal agency may proceed with the activity over a State's objection if the Federal agency is Consistent to the Maximum Extent Practicable with the enforceable policies of the State's CMP. This means that even if a State objects, MMS may proceed with an OCS lease sale if MMS provides to the State the reasons why the OCSLA requires MMS to proceed, despite inconsistency with the State. MMS could also proceed if it determined it was fully consistent. Under NOAA's regulations, the consistent to the maximum extent practicable standard also allows Federal agencies to deviate from State enforceable policies and CZMA procedures due to unforeseen circumstances and emergencies.

Appeal to the Secretary of Commerce. For non-federal applicants for federal approvals, such as OCS lessees, the applicant may appeal a State's objection to the Secretary of Commerce pursuant to CZMA sections 307(c)(3) and (d). The State's objection is overridden if the Secretary finds that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. If the Secretary overrides the State's objection, then the Federal agency may issue its approval.

Since 1978, MMS has approved over 10,600 EPs and over 6,000 DPPs. States have concurred with nearly all of these plans. In the history of the CZMA, there have been only 15 instances where the oil and gas industry appealed a State's Federal Consistency objection to the Secretary of Commerce. Of those 15 cases (2 DPPs and 13 EPs), there were 7 decisions to override the State's objection, 7 decisions not to override the State, and 1 decision pending. The record shows that energy development continues to occur, while reasonable State review ensures that the CZMA objectives have been met.

Since 1990, when the CZMA Federal Consistency provision was amended, there have been several OCS oil and gas lease sales by MMS and only one State objection. However, in that one case OCRM determined that the State's objection was not based on enforceable policies. Thus, all lease sales offered by MMS since 1990 have proceeded under the CZMA. In addition, since 1990, there have been six State objections to Exploration Plans. In three of those cases, the Secretary did not override the State's objection. In two of the cases the Secretary did override the State, and one case is still pending before the Secretary.

Mediation. While mediation is not technically a safeguard as those described above, it has been used to resolve Federal Consistency disputes and allowed Federal actions to proceed. In the event of a serious disagreement between a Federal agency and a State, either party may request that the Secretary of Commerce mediate the dispute. NOAA's regulations also provide for OCRM mediation to resolve disputes between States, Federal agencies, and others.

IV. Action Requested From the Public

Because of the thoroughness of NOAA's efforts during the recent revision of the Federal Consistency regulations, and the importance of the CZMA Federal Consistency provision to the State-Federal partnership, NOAA is not considering significant changes to the Federal Consistency regulations. However, the Energy Report and recent public interest in the energy industry has highlighted the need to evaluate whether NOAA should make procedural adjustments to improve efficiency in the administration of the Federal Consistency provision. Therefore, NOAA is considering limited regulatory changes or additional policy guidance that will further improve the operation of Federal Consistency.

NOAA is primarily addressing issues raised by the Energy Report which are related to the scope of information needed by the States and the Secretary in their respective reviews of OCS oil and gas activities on the OCS. NOAA is particularly concerned that the various timing requirements of the OCSLA, CZMA and their applicable regulations can result in procedural delays or delayed information requests. Under the existing regulations, the Federal Consistency review period starts when

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the State agency receives the applicant's consistency certification, the OCS plan, and the necessary data and information described in 15 CFR 930.58. The necessary data and information includes a detailed description of the activity, coastal effects, etc., and an evaluation relating the coastal effects to the enforceable policies of a State's CMP. This information is usually contained in the OCS plan and accompanying Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.

- Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–49–1–7400; FRL–7240–1]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Motor Vehicle Inspection and Maintenance (I/M) Program

Progress (ROP) Plan or the 9% ROP plan. However, SIP credits are taken for the I/M plan in the pending attainment demonstration. Additional information on these actions can be found in EPA's proposed approval of the Reasonable-Further-Progress Plan for the 1996–1999 Period in 63 FR 44192 dated August 18, 1998.

What Events Led Up to This Action?

Federal requirements and how the State intends to fulfill the requirements of the Act and the Federal I/M rules follows.

Section 51.350 Applicability

The SIP needs to describe the applicable areas in detail and, consistent with § 51.372 of the Federal I/M rule, shall include the legal authority or rules necessary to establish program boundaries.

enhanced program to demonstrate timely attainment. In order to meet the low enhanced standard, the State needed to show a reduction of 11 percent VOCs with the I/M program. Projections of oxides of nitrogen (NO_X) emissions were not included at the time EPA approved the 15% plan because EPA had approved a NO_X waiver for Baton Rouge on January 16, 1996, which was published on January 26, 1996 at 61

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the State agency receives the applicant's consistency certification, the OCS plan, and the necessary data and information described in 15 CFR 930.58. The necessary data and information includes a detailed description of the activity, coastal effects, etc., and an evaluation relating the coastal effects to the enforceable policies of a State's CMP. This information is usually contained in the OCS plan and accompanying information. In addition, the necessary data and information can include information that is specifically identified in the State's CMP. NOAA's Federal Consistency regulations, 15 CFR 930.77(a)(2), specify the information available for the State's review of OCS oil and gas plans:

> The State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program (*see* 30 CFR part 252) regulations and necessary data and information (*see* 15 CFR 930.58).

Despite this direction for information requirements, issues continue to arise as to the adequacy and types of information requested by and/or provided to the States. There are also instances where the State asks for additional information late in the CZMA review period. Frequently there is a time delay between the time a Federal agency or applicant for federal license or permit provides a coastal State with a consistency certification and the subsequent availability of routine environmental review documents such as National Environmental Policy Act (NEPA) compliance documents, reviews required under the Endangered Species Act (ESA) and related Clean Water Act (CWA) and/or Clean Air Act (CAA) reviews.

To address these and other procedural issues, NOAA seeks comments from the public concerning the following:

- Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.
- Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.
- Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.
- Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.
- Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the "listing" and "geographic location" descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.
- Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EPs and DPPs, whether other associated approvals, air and water permits not "described in detail" in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

Comments received by NOAA will help to determine its next steps, i.e., whether the Federal Consistency regulations should be amended to clarify data and information requirements in the State consistency review process or during the Secretarial appeal process or whether additional policy guidance on these and related issues is more appropriate. Any proposed changes to the Federal Consistency regulations would be published in the **Federal Register** following compliance with the Administrative Procedures Act and other relevant statutes and executive orders. Any proposed policy statement would be published in the **Federal Register**.

Dated: June 25, 2002.

Jamison Hawkins,

Deputy, Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 02–16417 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–49–1–7400; FRL–7240–1]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of a Vehicle Inspection and Maintenance (I/M) Program adopted by the State of Louisiana as part of the Louisiana SIP. This proposed action is taken under section 110 of the Clean Air Act as amended in 1990 (the Act).

DATES: Comments must be received on or before August 1, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733

Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana

Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

What Action Is EPA Taking Today?

We, the EPA, are proposing approval of Louisiana's I/M program.

What Are the Clean Air Act Requirements?

An I/M program is required in the Baton Rouge area because of its classification as a nonattainment area for ozone and the population exceeds 200,000. The SIP credits are not taken for the I/M plan in the 15% Rate-of-Progress (ROP) Plan or the 9% ROP plan. However, SIP credits are taken for the I/M plan in the pending attainment demonstration. Additional information on these actions can be found in EPA's proposed approval of the Reasonable-Further-Progress Plan for the 1996–1999 Period in 63 FR 44192 dated August 18, 1998.

What Events Led Up to This Action?

EPA disapproved the Louisiana 1996 I/M SIP revision effective February 13, 1998. Discussion of background leading up to that final disapproval can be found in the rulemakings on that SIP, 62 FR 31388 (June 9, 1997), 62 FR 41002 (July 31, 1997), and 62 FR 61633 (November 19, 1997). An 18-month sanction clock was started under section 179 of the Act on the effective date of the final disapproval. In July 1998, Louisiana sought greater flexibility from EPA for designing an I/M program tailored to meet the State's air quality needs. We parallel processed a proposed conditional approval, which was published on December 30, 1998, at 63 FR 71807.

Because the proposal did not stop the sanction clock due to expire on August 13, 1999, on August 10, 1999, EPA made an interim final determination that the State had more likely than not cured the deficiencies prompting the original disapproval (64 FR 45454, August 20, 1999). The reader is referred to this notice for details of EPA's basis for this determination. This action deferred the future application of the offset sanction and the highway sanction.

Why Is EPA Taking This Action?

We are taking this action today because the State submitted a revised I/M SIP on December 28, 2001, as part of the Baton Rouge SIP. EPA has concluded that the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for approval.

What Did the State Submit for an I/M Program?

The State adopted I/M SIP revision was submitted on December 28, 2001. The SIP contains a SIP narrative, I/M Rules, and several appendices including the Department of Public Safety (DPS) Manual addressing the requirements of the I/M program. The submittal is intended to fulfill the requirements of the Act for the ozone nonattainment area of Louisiana that is required to implement an I/M program.

We reviewed the State's submittal against the requirements contained in the Act and Federal I/M rules (40 CFR part 51, subpart S). An analysis of the Federal requirements and how the State intends to fulfill the requirements of the Act and the Federal I/M rules follows.

Section 51.350 Applicability

The SIP needs to describe the applicable areas in detail and, consistent with § 51.372 of the Federal I/M rule, shall include the legal authority or rules necessary to establish program boundaries.

The Louisiana regulations specify that an I/M program will be implemented in the Baton Rouge ozone nonattainment area. The low enhanced I/M program will be implemented in the urbanized area that includes East Baton Rouge Parish. In addition, the program will cover Ascension, Iberville, Livingston, and West Baton Rouge parishes in the nonattainment area. The authority to establish program boundaries in this area is found in LA R.S. 32:1304(3).

Section 51.351–2 Low Enhanced I/M Performance Standard

The I/M program provided for in the SIP must be designed to meet a performance standard, either basic or enhanced as applicable. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. Equivalency of emission levels needed to achieve the I/M program design in the SIP to those of the model program described in this section must be demonstrated using the most current version of EPA's mobile source emission model, or an alternative approved by the Administrator.

The State submitted a modeling demonstration using the EPA computer model MOBILE5b and localized parameters showing that the low enhanced performance standard can be met in the Baton Rouge area with the program proposed by the State.

The low enhanced performance standard is established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for Reasonable Further Progress (RFP) in 1996, commonly known as a 15% Rate-of-Progress (ROP) Plan, do not have any other disapproved ROP plans, and are not needing the high enhanced program to demonstrate attainment. Louisiana's 15% Plan for Baton Rouge was approved on October 22, 1998 (61 FR 54737). There are no disapproved ROP plans for Baton Rouge and the area does not need a high enhanced program to demonstrate timely attainment. In order to meet the low enhanced standard, the State needed to show a reduction of 11 percent VOCs with the I/M program. Projections of oxides of nitrogen (NO_X) emissions were not included at the time EPA approved the 15% plan because EPA had approved a NO_X waiver for Baton Rouge on January 16, 1996, which was published on January 26, 1996 at 61 FR 2438.

In a revised attainment demonstration SIP analysis now pending before EPA for action, it was determined that NO_X reductions from I/M would now be necessary. A recission of the NO_X waiver was proposed for approval by the Administrator on May 1, 2002, and published on May 7, 2002. Credits from I/M NO_X reductions are part of the attainment demonstration currently under EPA review.

Light and heavy duty vehicles up to 10,000 lb. from 1980 and newer will be required to participate in the I/M program. No covered model years are exempted. The State is modeling with a test and repair program which assumes 75 percent credit for network credits. This amount of credit was chosen by the State to complete the modeling necessary to demonstrate compliance with the performance standard. Modeling with MOBILE5b, the State showed that the proposed program with 75 percent network credits is projected to meet the performance standard of 2.18 grams per mile (gpm) of VOCs and 2.19 gpm of NO_X. Compliance with the performance in operation is discussed below in the following section on program evaluation.

The State meets the performance standard requirements of the Federal I/M rule for approval.

Section 51.353 Network Type and Program Evaluation

The SIP needs to include a description of the network to be employed, and the required legal authority. Also, for enhanced areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

The State is implementing a decentralized test and repair program. The program includes an on-going evaluation process with results reported to EPA on a biennial basis, in July, starting two years after the initial start of mandatory testing. Surveys assessing effectiveness, measured rates of

tampering, and results of covert audits will be reported. In addition, the SIP commits to meet the ongoing program evaluation using testing of sound methodology of at least 0.1 percent of subject vehicles and reporting the results of such evaluation on a biennial basis. Resources and personnel for the program evaluation are described in the SIP. Legal authority, which is contained in R.S. 32:1305–1306, authorizes the

4. Enforcement actions taken; and
5. Training and certification of inspectors.

Using these five criteria on the partially implemented program, the State was able to show that the T&R stations were at least 75 percent as effective as TO/SFTO stations in the network. In fact, T&R stations were at least 95 percent as effective as TO/SFTO. With four out of the five criteria intends to begin on-board diagnostic testing in July 2002.

Section 51.355 Test Frequency and Convenience

The SIP needs to describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test

inspection. Legal authority for vehicle coverage is contained in LA R.S. 32:1304.A(2), and LA R.S. 47:501 and 503.

The state revised the Louisiana DPS Manual to increase the weight of light- and heavy-duty vehicles included in their program in order to meet the performance standard. The weight of light- and heavy-duty vehicles covered by the program in the nonattainment area was changed from 8,500 lb. to

specifications will be consistent with that described in the IM240 and Evap Technical Guidance (August 1998). In addition, the OBD equipment will meet the specifications in Performing Onboard Diagnostics System Checks as Part of a Vehicle Inspection and Maintenance Program (June 2001, EPA420–R–01–015). Data on OBD testing will be collected on a real-time basis via wireless/modem that communicates with a central database

percent of initially failed vehicles. This waiver rate is used in the modeling demonstration.

This means the State does not intend to allow any waiver from the program. The State need not provide for waiver program administration or future corrective action because it does not have a waiver program at all. Therefore, the State submittal meets the waivers and compliance via diagnostic inspection requirement of the Federal I/M regulation for approval.

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tampering, and results of covert audits will be reported. In addition, the SIP commits to meet the ongoing program evaluation using testing of sound methodology of at least 0.1 percent of subject vehicles and reporting the results of such evaluation on a biennial basis. Resources and personnel for the program evaluation are described in the SIP. Legal authority, which is contained in R.S. 32:1305–1306, authorizes the Department of Public Safety (DPS) to implement the program and conduct the program evaluation.

For the purposes of this SIP revision, the State must demonstrate and have EPA approve after public comment that the network effectiveness credit claimed in that attainment demonstration for the I/M program is in fact being met, or adjust the credit accordingly in the attainment demonstration to reflect the actual effectiveness of the test network. In December 2001, the State submitted a program network effectiveness demonstration based on partial program implementation. The State also submitted a supplement to the 2001 effectiveness demonstration on May 6, 2002, which focuses on the future growth and benefits of the State's I/M program after full implementation employing the newly added OBD requirements.

In the SIP, the program effectiveness claim was 75 percent. To demonstrate program effectiveness, the State utilized criteria set forth in guidance [1] for performing I/M program effectiveness demonstrations under the National Highway System Designation Act of 1995. Although Louisiana did not start up their program under the NHSDA, the Federal I/M rules also require an effectiveness demonstration.

In the analysis, the State is able to compare the performance of the Test and Repair (T&R) stations with Test Only stations by dividing the network into two subsets. The T&R subset is 79% of the stations, and the Test Only/Surrogate for Test Only (TO/SFTO) subset is 21% of the stations. The network had a total of 192 stations operating during the period of data collection.

Criteria that were compared between T&R and TO/SFTO stations are:

1. Unannounced audits of I/M equipment;
2. Success rates for first retest after repairs;
3. Overt site audits;
4. Enforcement actions taken; and
5. Training and certification of inspectors.

Using these five criteria on the partially implemented program, the State was able to show that the T&R stations were at least 75 percent as effective as TO/SFTO stations in the network. In fact, T&R stations were at least 95 percent as effective as TO/SFTO. With four out of the five criteria, the T&R stations were actually demonstrated to be more effective than the TO/SFTO stations.

Program enhancements resulting from adding OBD testing improve the program effectiveness. OBD testing will include realtime on-line data collection that the partial program did not have. The benefits from this enhancement are to collect more accurate I/M data in a timely manner, resulting in an even more effective I/M program.

The State meets the network type and program evaluation requirements of the Federal I/M rule for approval.

Section 51.354 Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation and discuss how the performance standard will be met which includes (1) a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, and (2) a description of personnel resources. The plan shall include the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

Louisiana R.S. 32:1306.C(2) authorizes the program to charge an emission inspection fee and a safety/anti-tampering inspection fee to support program operations. The SIP also describes the budget, staffing support, and equipment needed to implement the program in the narrative and in detailed budgets for LDEQ and the DPS in Appendix E of the SIP.

The State submittal meets the adequate tools and resources requirements of the Federal I/M rule for approval. The State committed to implementing on-board diagnostic testing on all 1996 and newer vehicles beginning January 1, 2002. Acting as expeditiously as possible, the State intends to begin on-board diagnostic testing in July 2002.

Section 51.355 Test Frequency and Convenience

The SIP needs to describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement. In addition, in enhanced I/M programs, test systems shall be designed in such a way as to provide convenient service to motorists who are required to get their vehicles tested. The SIP needs to demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances.

The revised Louisiana I/M SIP commits to testing all designated vehicles 1980 and newer annually. The program is decentralized and stations will adhere to regular inspection hours. The network of stations will consist of familiar locations where motorists regularly receive the currently required annual safety/antitampering inspections and other vehicle services. Louisiana R.S. 1301–1310 provides the legal authority for implementation and enforcement of the test frequency. In addition, at least 0.5 percent of the vehicle population will be subject to on-road testing.

The State submittal meets the test frequency and convenience requirements of the Federal I/M regulations for approval.

Section 51.356 Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The revised Louisiana I/M SIP includes coverage of light and heavy-duty cars and trucks up to 10,000 lb. GVWR registered or required to be registered in the I/M program area, including fleets. Subject vehicles will be identified through the Department of Motor Vehicle database. No covered vehicles are exempt. Approximately 400,000 vehicles will be subject to

[1] 1996 draft guidance prepared by a work group (the ECOS Group) made up of EPA, the Environmental Council of States, the State and Territorial Air Pollution Program Administrators, and the Association of Local Air Pollution Control Officers.

inspection. Legal authority for vehicle coverage is contained in LA R.S. 32:1304.A(2), and LA R.S. 47:501 and 503.

The state revised the Louisiana DPS Manual to increase the weight of light- and heavy-duty vehicles included in their program in order to meet the performance standard. The weight of light- and heavy-duty vehicles covered by the program in the nonattainment area was changed from 8,500 lb. to 10,000 lb. GVWR. The updated DPS Manual for 2000 reflects these changes and is included in the SIP in Appendix D.

The State submittal meets the requirements for vehicle coverage of the Federal I/M regulation.

Section 51.357 Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

Vehicles tested in the program shall be subject to an antitampering check, a gas cap pressure test, and On-Board Diagnostic Testing (OBDII). OBD testing will be performed on all 1996 and newer vehicles. Pressure testing procedures shall meet requirements in EPA IM240 and Evaporative Test Guidance (1998 Revised Technical Guidance). OBD testing will be according to 40 CFR 85, subpart W, § 85.2207. Authority to conduct tests on vehicles is established in LA R.S. 1304.

The State submitted a revision to the Louisiana DPS Manual that includes the gas cap pressure test and the final DPS rule (Appendix K) that also requires OBD II testing effective January 1, 2002, to meet the test procedures requirements of the Federal I/M regulations for approval. Acting as expeditiously as possible, the State intends to begin on-board diagnostic testing in July 2002.

The State submittal meets the requirements for test procedures and standards of the Federal I/M regulation.

Section 51.358 Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and needs to address each of the requirements contained in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The revised Louisiana I/M SIP states that gas cap integrity test equipment specifications will be consistent with that described in the IM240 and Evap Technical Guidance (August 1998). In addition, the OBD equipment will meet the specifications in Performing Onboard Diagnostics System Checks as Part of a Vehicle Inspection and Maintenance Program (June 2001, EPA420–R–01–015). Data on OBD testing will be collected on a real-time basis via wireless/modem that communicates with a central database in accordance with 40 CFR 51.258.

The State submittal meets the requirements for test equipment of the Federal I/M regulation.

Section 51.359 Quality Control

The SIP needs to include a description of quality control and record keeping procedures. The SIP needs to include the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements.

The revised Louisiana I/M SIP states that the quality control procedures will be conducted in accordance with 40 CFR 51.359. These requirements under LA R.S. 32:1305 and 1306 will help ensure that equipment calibrations are properly performed and recorded while maintaining compliance document security. Equipment manufacturers' quality control procedures, periodic maintenance schedules, and calibration procedures will be performed to ensure proper operation of the test equipment.

The State submittal meets the requirements for quality control of the Federal I/M regulations.

Section 51.360 Waivers and Compliance Via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that committed to in the SIP, or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP needs to include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

The State does not have a minimum waiver amount. The revised Louisiana I/M program includes a waiver rate of 0 percent of initially failed vehicles. This waiver rate is used in the modeling demonstration.

This means the State does not intend to allow any waiver from the program. The State need not provide for waiver program administration or future corrective action because it does not have a waiver program at all. Therefore, the State submittal meets the waivers and compliance via diagnostic inspection requirement of the Federal I/M regulation for approval.

Section 51.361 Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process, including (1) A description of the existing pre-1990 compliance mechanism if it is to be used in the future and the demonstration that it is more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program.

The State has chosen to enforce the I/M program with sticker-based enforcement. The current pre-1990 safety/antitampering and I/M program relies on sticker-based enforcement. Penalties for missing or non-issued stickers include a fine, as well as possible criminal charges, or revocation of the inspector from the program.

The motorist compliance enforcement program is handled cooperatively by the DPS, local law enforcement agencies, and the LDEQ. The State submitted an acceptable demonstration of sticker-based enforcement effectiveness on March 13, 2001, to show this method of enforcement is more effective than registration denial, as required by the Act. The statute also provides for enforcement by registration suspension.

There are no classes of on-road exempt vehicles. Fleet vehicles are allowed to conduct self-testing provided that they meet the required equipment standards, are certified by the

administrative authority, and tests are performed in accordance with established inspection procedures. Motorists operating vehicles in the I/M areas with an expired or invalid registration are subject to penalties and/or citations by local and state law enforcement officials, or registration suspension. The SIP anticipates a compliance rate of 96 percent through cooperation with the DPS. The legal

Section 51.364 Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General needs to furnish an official opinion for the SIP

and inspectors of the Federal I/M regulations.

Section 51.365–6 Data Collection, Analysis and Reporting

The SIP needs to describe the types of data to be collected and reported.

The revised Louisiana I/M SIP provides for collection of test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the

program, the ways to maintain a vehicle in low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. The SIP states under the Improving Repair Effectiveness section that motorists will be offered general repair information including a list of repair facilities, information on the results of the repairs by repair facilities in the area, diagnostic information and warranty information. The SIP also describes

The revised Louisiana I/M SIP commits to ensuring compliance with EPA I/M recall rules when they are finalized. Additional rulemaking by EPA is needed before the State will be able to implement this provision. Inspections failure will be used to enforce the recall requirements.

The State submittal meets the compliance with recall notices requirement of the Federal I/M

Section 51.372 State Implementation Plan Submissions

Under the Federal I/M rule, the SIP submittal should include legal authority for I/M program operation until such time as it is no longer necessary. The State is operating the I/M program under the continuous legal authority of the established antitampering and safety inspection program. Due to the nature of the I/M program, no other legal authority is required.

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administrative authority, and tests are performed in accordance with established inspection procedures. Motorists operating vehicles in the I/M areas with an expired or invalid registration are subject to penalties and/or citations by local and state law enforcement officials, or registration suspension. The SIP anticipates a compliance rate of 96 percent through cooperation with the DPS. The legal authority to implement and enforce the program is included in the Louisiana statutes cited in the SIP.

The State submittal meets the requirements for motorist compliance enforcement of the Federal I/M regulations for approval.

Section 51.362 Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

The Louisiana I/M SIP provides for regular auditing of its enforcement efforts and for following effective management practices, including adjustments to improve the program when necessary. The program oversight and information management activities listed in the SIP narrative include procedures for I/M document handling and processing, audit procedures, procedures for dealing with motorists and inspection facilities suspected of violating program rules.

The State submittal meets the motorist compliance enforcement program oversight requirements of the I/M regulations for approval.

Section 51.363 Quality Assurance

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The revised Louisiana I/M SIP includes a description of its quality assurance program. The program includes both covert and overt audits which will be conducted on a regular basis. The SIP describes regular performance audits which include the inspection of records and equipment. Procedures for program oversight are based upon written instructions and will be updated as necessary.

The State submittal meets the quality assurance requirement of the Federal I/M regulations for approval.

Section 51.364 Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General needs to furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In States without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

The revised Louisiana I/M SIP states that the State may assess penalties in its enforcement against stations and inspectors. The penalty schedule is discussed in the SIP narrative under Motorist Compliance Enforcement. The SIP describes the enforcement process, including administrative procedures and resources. The legal authority for Louisiana to assess penalties is located in LA R.S. 32:1312. The authority for DPS to deny application for license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles is found in LA R.S. 32:1305(C). Louisiana indicated that the State Constitution does not preclude immediate suspension of licenses to inspect. Even though Louisiana is a due process state, immediate suspension authority is currently available. The State submitted a statement from James H. Brent, Assistant Secretary of the LDEQ, on August 21, 2001, enclosing a letter from the LDEQ Deputy General Counsel, Ann Coco (August 20, 2001), outlining the Constitutional prohibition and outlining the process by which State can suspend or revoke a license within three business days of discovery of the violation, as required, and not violate the State Constitution. This statement is necessary for approval of this SIP revision.

The State submittal meets the requirements for approval of enforcement against inspection stations and inspectors of the Federal I/M regulations.

Section 51.365–6 Data Collection, Analysis and Reporting

The SIP needs to describe the types of data to be collected and reported.

The revised Louisiana I/M SIP provides for collection of test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected to evaluate program effectiveness. The data collected will be consistent with that required in the Federal I/M rule. The data will be used to generate reports in the areas of test data, quality assurance, quality control, and enforcement.

The State submittal meets the data collection, analysis and reporting requirements of the Federal I/M regulations for approval.

Section 51.367 Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The revised Louisiana I/M SIP provides for the implementation of training, licensing, and refresher programs for emission inspectors. The SIP describes this program including written and hands-on testing. Inspector licenses will expire two years after issuance. All inspectors must be licensed to inspect vehicles in the Louisiana I/M program.

The State submittal meets the requirements for inspector training and licensing or certification of the Federal I/M regulations.

Section 51.368 Public Information and Consumer Protection

The SIP needs to include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Also, the SIP shall include a detailed consumer protection plan.

The revised Louisiana I/M SIP commits to the establishment of an ongoing public awareness plan addressing the significance of the air quality problem, the requirements of Federal and state law, the role of motor vehicles in the air quality problem, the needs for and benefits of an inspection program, the ways to maintain a vehicle in low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. The SIP states under the Improving Repair Effectiveness section that motorists will be offered general repair information including a list of repair facilities, information on the results of the repairs by repair facilities in the area, diagnostic information and warranty information. The SIP also describes consumer protection provisions which include a challenge mechanism, oversight of the program through the use of audits, and whistle blower protection.

The State submittal meets the public information and consumer protection requirements of the Federal I/M regulations for approval.

Section 51.369 Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of the Federal I/M rule, and a description of the repair technician training resources available in the community.

The revised Louisiana I/M SIP includes a description of the technical assistance plan, repair industry performance monitoring plan, repair technician training assessment, and recognized repair technician requirements. The State will regularly inform repair facilities through the use of a newsletter regarding changes to the inspection program, training course schedules, common problems and potential solutions for particular engine families, diagnostic tips, repair, and other technical assistance issues. Repair facility performance monitoring statistics will be available to motorists whose vehicles fail the I/M test. The State will also ensure that adequate repair technician training resources are available to the repair community.

The state submittal meets the improving repair effectiveness requirements of the Federal I/M regulations for approval.

Section 51.370 Compliance With Recall Notices

The SIP needs to describe the procedures used to incorporate the lists of vehicles with recall notices provided by EPA into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Louisiana I/M SIP commits to ensuring compliance with EPA I/M recall rules when they are finalized. Additional rulemaking by EPA is needed before the State will be able to implement this provision. Inspections failure will be used to enforce the recall requirements.

The State submittal meets the compliance with recall notices requirement of the Federal I/M regulations for approval.

Section 51.371 On-Road Testing

The SIP needs to include a detailed description of the on-road testing program, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP needs to include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

The revised Louisiana I/M SIP includes a description of its on-road testing program, including test limits, criteria, data collection and reporting methods. The State is planning roadside antitampering checks and evaporative emission testing. The State has committed to cover 0.5 percent of the EPA required subject vehicles. The legal authority to conduct on-road testing is in LA R.S.32:1302–1303. The SIP describes adequate funding, resources and personnel to implement the on-road testing program. The State does not claim any additional reductions from on-road testing.

Louisiana's on-road testing program will check for hydrocarbon emissions as a complement to the required evaporative emissions testing program and will do an antitampering inspection.

The State submittal meets the requirements for on-road testing of the Federal I/M regulations for approval.

Section 51.372 State Implementation Plan Submissions

Under the Federal I/M rule, the SIP submittal should include legal authority for I/M program operation until such time as it is no longer necessary. The State is operating the I/M program under the continuous legal authority of the established antitampering and safety inspection program. Due to the nature of the I/M program, no other legal authority is required.

The revised Louisiana I/M SIP commits to revising the I/M SIP as new regulations are promulgated. The SIP contains the current interagency agreement between LDEQ and the DPS. This agreement is renewed annually with an effective date of July 1, and will be modified as needed to include future program requirements.

The State submittal meets the requirements for state implementation plan submissions of the Federal I/M regulations for approval.

Section 51.373 Implementation Deadlines

The original Federal I/M rule had a January 1995 start date requirement as well as subsequent start dates for special circumstances. In response to states' requests for greater flexibility in implementing I/M program SIPs processed under the NHSDA, EPA SIP approvals allowed programs to start as soon as possible, and specified start dates of November 15, 1997. Then in a narrower application, a January 1, 1999, start date was designated as a result of providing greater flexibility in Ozone Transport Regions (OTR) (FRN, Vol. 61, No. 144, July 25, 1996, p. 39034). OTRs would normally be exempt from I/M program requirements except for their location within the OTR. The January 1, 1999, start date allowed the affected areas to meet the performance standard by the Act's attainment and reasonable further progress deadlines, including the end of 1999 for serious ozone nonattainment areas. The EPA received no public comment regarding the 1999 start date in this notice. Finally, at this late date, starting the program in the Baton Rouge nonattainment area initially by January 1,2000, is "as soon as possible" for Louisiana.

The Louisiana I/M program started on January 1, 2000, with implementation of the gas cap pressure test. The State intends to implement OBD II testing in July 2002, which is as expeditious as possible following the January 2002 OBD start date requirement.

The State submittal meets the implementation deadlines requirement of the Federal I/M regulations for approval.

What Is EPA's Concluding Statement of Approval?

Our review of this material indicates that the SIP revision meets the minimum requirements of the Act and Federal I/M rules. Based upon the discussion contained in the analysis section of the proposal, the technical support document, and review of the DPS final I/M rules and updated MOU, we conclude that the State's submittal

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–11707]

RIN 2127–AI34

Federal Motor Vehicle Safety Standards; Child Restraint Systems

"initiate a rulemaking for the purposes of improving the safety of child restraints, including minimizing head injuries from side impact collisions." Section 14(b) identifies specific elements that the agency must consider in its rulemaking. The Act directed the agency to complete the rulemaking by November 1, 2002. Pursuant to the TREAD Act, the agency published a notice of proposed rulemaking (NPRM) on Wednesday, May 1, 2002 (67 FR

any, result from dynamically testing child restraints on a test seat assembly that incorporates the changes proposed in the NPRM, as compared to tests on the current seat assembly.

ARCCA petitioned for an extension of time to comment on the NPRM to fully evaluate a technical report on a test program performed for NHTSA by the U.S. Naval Air Warfare Center Aircraft Division at Patuxent River, Maryland. This report assesses the seat geometry

period for a month will provide the time needed for the petitioners to obtain test data and other analyses that could help NHTSA decide whether and how to proceed with the rulemaking. Accordingly, the comment closing date is extended to July 31, 2002. However, given the statutory deadline of the TREAD Act, NHTSA does not anticipate granting any further extensions of the comment period in this proceeding. The agency will consider comments

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What Is EPA's Concluding Statement of Approval?

Our review of this material indicates that the SIP revision meets the minimum requirements of the Act and Federal I/M rules. Based upon the discussion contained in the analysis section of the proposal, the technical support document, and review of the DPS final I/M rules and updated MOU, we conclude that the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for approval. Therefore, EPA is proposing approval of the Louisiana I/M SIP revision.

EPA's Rulemaking Action

. The EPA is proposing approval of the State's I/M SIP revision.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 13, 2002.

Sam Becker,

Acting Regional Administrator, Region 6.

[FR Doc. 02–16461 Filed 7–01–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–11707]

RIN 2127–AI34

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: NHTSA has received two petitions asking the agency to extend the comment period for a proposal to amend the Federal safety standard for child restraint systems pursuant to the Transportation Recall Enhancement, Accountability and Documentation Act of 2000. Under the proposal, the standard would be revised to incorporate improved test dummies and updated procedures used to test child restraints, new or revised injury criteria to assess the dynamic performance of child restraints, and extended to apply to child restraints recommended for use by children up to 65 pounds. The comment period for the proposal closes July 1, 2002. To provide parties more time to assess various aspects of the proposal, the agency is extending the deadline by one month.

DATES: Written comments must be received by July 31, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at (202) 366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel, at (202) 366–2992.

SUPPLEMENTARY INFORMATION: Section 14(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414 mandated that the agency

"initiate a rulemaking for the purposes of improving the safety of child restraints, including minimizing head injuries from side impact collisions." Section 14(b) identifies specific elements that the agency must consider in its rulemaking. The Act directed the agency to complete the rulemaking by November 1, 2002. Pursuant to the TREAD Act, the agency published a notice of proposed rulemaking (NPRM) on Wednesday, May 1, 2002 (67 FR 21806). A 60-day comment period was provided.

The Juvenile Products Manufacturers Association (JPMA), representing manufacturers of child restraint systems, and ARRCA, Incorporated, petitioned for an extension of the comment period on the NPRM (*see* Docket No. NHTSA–02–11707). JPMA said that it was requesting an extension so that it can complete testing designed to generate data that will enable it to better analyze the NPRM. JPMA's testing is intended to assess what differences, if any, result from dynamically testing child restraints on a test seat assembly that incorporates the changes proposed in the NPRM, as compared to tests on the current seat assembly.

ARCCA petitioned for an extension of time to comment on the NPRM to fully evaluate a technical report on a test program performed for NHTSA by the U.S. Naval Air Warfare Center Aircraft Division at Patuxent River, Maryland. This report assesses the seat geometry and crash pulses of vehicles. The report was placed in the docket on June 19, 2002. ARCCA wanted more time to review and comment on the report and the proposals to which the report pertained.

In considering the petitions, NHTSA weighed the statutory deadline, the complexity and importance of this rulemaking, and the basis for the requests. The agency supports efforts to develop useful technical information on the proposal that do not unduly delay the rulemaking. Extending the comment period for a month will provide the time needed for the petitioners to obtain test data and other analyses that could help NHTSA decide whether and how to proceed with the rulemaking. Accordingly, the comment closing date is extended to July 31, 2002. However, given the statutory deadline of the TREAD Act, NHTSA does not anticipate granting any further extensions of the comment period in this proceeding. The agency will consider comments submitted after July 31, 2002, but only to the extent that it is possible to do so without causing additional delay.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–16632 Filed 6–27–02; 2:48 pm]

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Tuesday, July 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

voluntary agencies (PVOs) registered with and approved by the USAID in furnishing food commodities to needy persons outside the United States. The USAID Form 1550–4 is an instrument

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB

functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 102–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, June 25, 2002 in Elk City, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on June 25, begins at

environmental impact statement is not needed for this project.

The project purposes are watershed protection and improvement of water quality. The planned works of improvement include accelerated cropland and pasture treatment, and animal waste management systems.

The Notice of a Finding of No Significant Impact [FONSI] has been forwarded to the U.S. Environmental Protection Agency and to various

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Notices

Federal Register
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Tuesday, July 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412–0545.
Form No.: AID 1550–4.
Title: Commodity Request for Foreign Distribution (Voluntary Agency).
Type of Review: Renewal of Information Collection.
Purpose: Public Law 480 states that the President may utilize nonprofit voluntary agencies (PVOs) registered with and approved by the USAID in furnishing food commodities to needy persons outside the United States. The USAID Form 1550–4 is an instrument by which the PVOs communicate their specific needs in this regard to the U.S. Government. This form is used by eligible PVOs to request food commodities for approved country programs overseas and to furnish delivery instructions and other information necessary to ship these commodities to destination ports.

Annual Reporting Burden

Respondents: 70.
Total annual responses: 1,311.
Total annual hours requested: 120 hours.

Dated: June 20, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–16589 Filed 7–01–02; 8:45 am]

BILLING CODE 8116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB No.: 0412–0546.
Form No.: AID 1550–12.
Title: Request for Shipment of Commodities for Foreign Distribution (Foreign Government).
Type of Review: Renewal of Information Collection.
Purpose: A USAID Title III form is needed by which the specific needs of the recipient country can be communicated to U.S. Department of Agriculture by USAID. The form will be used to request food commodities for approved P.L. 480 Titlte III country programs overseas and to furnish procurement instruction and other pertinent information necessary to ship these commodities to destination ports.

Annual Reporting Burden

Respondents: 13.
Total annual responses: 55.
Total annual hours requested: 60 hours.

Dated: June 20, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–16590 Filed 7–1–02; 8:45 am]

BILLING CODE 8116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the

functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412–0003.
Form No.: AID 1550–3.
Title: Annual Estimate of Requirements—Fiscal Year (AER) P.L. 480, Title II Commodities.
Type of Review: Renewal of Information Collection.
Purpose: The Annual Estimate of Requirements (AER) is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of the P.L. Title II Program. The AERs include planned recipient and ration levels, number of distributions, operating reserves that are needed and inventories on hand.

Annual Reporting Burden

Respondents: 70.
Total annual responses: 56.
Total annual hours requested: 1,344 hours.

Dated: June 20, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–16664 Filed 7–1–02; 8:45 am]

BILLING CODE 8116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 102–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, June 25, 2002 in Elk City, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on June 25, begins at 2 p.m., at the Elk City Forest Service Ranger Station, Elk City Idaho. Agenda topics will include review FY03 work plans. A public forum will begin at 3 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: June 24, 2002.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 02–16548 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Tobesofkee Creek Watershed: Lamar and Monroe Counties, GA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102[2][c] of the National Environmental Policy Act of 1969, the Council on environmental Quality Regulations [40 CFR Part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR Part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tobesofkee Creek Watershed, Lamar and Monroe Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Leonard Jordan, State Conservationist, Natural Resources Conservation Service, Federal Building STOP 200, 355 East Hancock Avenue, Athens, Georgia 30601, telephone [706] 546–2272.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Leonard Jordan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and improvement of water quality. The planned works of improvement include accelerated cropland and pasture treatment, and animal waste management systems.

The Notice of a Finding of No Significant Impact [FONSI] has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jimmy Bramblett at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Leonard Jordan,

State Conservationist.

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernment consultation with State and local officials].

[FR Doc. 02–16412 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Finding of No Significant Impact for Tobesofkee Creek Watershed; Lamar and Monroe Counties, GA, June 2002

Introduction

The Tobesofkee Creek Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for watershed protection, and improvement

of water quality, and includes measures for the control of agricultural animal waste related pollution, and reduction of sediment from pasture and cropland. The plan reduces excessive animal waste, and associated nutrients and bacteria entering waterways from about 20 beef, 13 dairy, 4 poultry, and 1 swine operation. The plan also provides measures to reduce nutrient runoff and erosion on 3,450 acres of cropland.

Tobosofkee. The project will also minimize the impact on surface and ground water quality by:

- Reducing the 61,115 tons of sediment from agricultural lands and stream banks by 45%.
- Providing a significant reduction in the amount of nitrates, ammonia, and bacteria delivered annually to area waterways, thus improving biological habitats, recreational opportunities, and

concerns but were limited by program policy and budget constraints. Meetings were held to evaluate the problem and determine if the issues warranted application for additional federal assistance through the PL–566, Small Watershed Program. Based on data obtained and interest within the watershed the Districts (Sponsors) and NRCS agreed that this watershed should be targeted for special water quality

officials, and other technical experts to inventory resources, identify cause-effect relationships, and develop—and evaluate—alternative plans of action to address resource concerns.

Another public meetings was held in Redbone, Georgia on May 23, 2002. Local operators, landowners, and citizens attended the meeting. The results of surveys, studies, field

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Logan/Scott Counties Water Supply Project; Logan and Scott Counties, AR

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an

determine the scope of the environmental impact statement on August 13, 2002 from 7 p.m. to 9 p.m. at the Scott County Courthouse in Waldron, Arkansas.

Submit written comments and suggestions on the proposal, or requests to be placed on the EIS mailing list, to Jim Ellis, Biologist, Natural Resources Conservation Service, Natural Resources Planning Staff, Room 3416, Federal

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of water quality, and includes measures for the control of agricultural animal waste related pollution, and reduction of sediment from pasture and cropland. The plan reduces excessive animal waste, and associated nutrients and bacteria entering waterways from about 20 beef, 13 dairy, 4 poultry, and 1 swine operation. The plan also provides measures to reduce nutrient runoff and erosion on 3,450 acres of cropland, sedimentation from stream banks and animal walkways will be substantially reduces and forage quality will be improves on 10,347 acres of pasture. These measures will be accomplished by providing financial and technical assistance through a local sponsor.

The principal project measures are to:

1. Develop and install approximately 38 animal waste management systems and provide enhanced cover to 13,797 acres of cropland, pasture, and adjoining stream banks to reduce sedimentation, improve water quality improve fish and wildlife habitats, enhance crop productivity, and enhance forage production. These practices will include all or parts of the following: fencing, cross fencing with gates, alternative livestock water supply with piping and troughs, stream crossings, riparian buffers, animal waste, flush down and hose down systems, solid waste separators, heavy use protection areas, solid waste stack facilities and dead bird composters on 20 beef, 13 dairy, 4 poultry and 1 swine operation. Conservation management, with nutrient and grazing land management practices, will be used when applying animal waste.

2. The measures will be planned and installed by developing long-term contracts will landowners.

Effects of Recommended Action

Installation of animal waste management measures and grazing land practices will reduce offsite nutrient, bacteria, sediment and chemical damages, and increase utilization of nutrients onsite. The results will be a significant reduction in current impairments to the area's water quality, biological habitats, recreational opportunities, land values and improvement of long-term productivity and quality of pastureland in the watershed. Installation of the selected plan will also provide local and regional employment, promote rural economic development in the drainage area, and provide long term natural resource protection in the watershed.

The project measures will reduce agricultural related nutrients, bacteria and sediment entering watershed streams, the Tobosofkee Creek and Lake Tobosofkee. The project will also minimize the impact on surface and ground water quality by:

- Reducing the 61,115 tons of sediment from agricultural lands and stream banks by 45%.
- Providing a significant reduction in the amount of nitrates, ammonia, and bacteria delivered annually to area waterways, thus improving biological habitats, recreational opportunities, and real estate values.
- Improving cropland and paster productivity in the watershed by an average of 28%.

Grazing land practices will increase forage productivity through improved management and utilizing waste more efficiently. This will reduced stream enrichment and conserve the nutrients for plant production. The proposed plan will also encourage and promote the agricultural enterprises in the watershed through improved efficiency.

Wildlife habitat will not be disturbed during installation of animal waste systems and grazing land practices. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 2,316 acres of wetland and wetland type wildlife habitat will be improved. Conversions to permanent vegetation will provide a more diverse upland game habitat. The value of woodland habitat will not decline. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be completed with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Four alternative plans, that included 27 combinations of systems and practices, was considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete and acceptable means of protecting the watershed by managing animal waste and stabilizing pasture and cropland.

Consultation—Public Participation

Since the 1980's citizens within the Tobesofkee Watershed have recognized increasing water quality issues and potential problems related to agriculture. Land-owners utilized assistance through EQIP to address their concerns but were limited by program policy and budget constraints. Meetings were held to evaluate the problem and determine if the issues warranted application for additional federal assistance through the PL–566, Small Watershed Program. Based on data obtained and interest within the watershed the Districts (Sponsors) and NRCS agreed that this watershed should be targeted for special water quality improvement efforts. The Sponsor(s) submitted an application on September 27, 2001 to the Georgia Soil and Water Conservation Commission for NRCS planning assistance under the PL–566 authority. The Commission approved the application and gave it high priority.

To facilitate consultation and public involvement in the Tobesofkee Creek Watershed Project, a project organizational structure was developed. It considered of the Project Sponsors, who were supported by an Interdisciplinary Planning Team, a Technical Advisory Group, and Stakeholder Involvement.

NRCS developed an interdisciplinary, interagency planning team to work with the Sponsor, landowners, and other interested groups. The Technical Advisory Group was compiled of specialists from the Lamar County Soil and Water Conservation District; Towaliga Soil and Water Conservation District (SWCD); Georgia Cooperative Extension Service (CES), Georgia Department of Natural Resources, Environmental Protection Division (EPD), Water Protection Branch Georgia Department of Natural Resources, Wildlife Resources Division (WRD), Game and Fisheries Section; Georgia Forestry Commission; USDA, Farm Services Agency (FSA); USDA, Natural Resources Conservation Service (NRCS); USDA, US Forest Service (FS); USDI, Fish and Wildlife Service (F&WS) to again insight to the magnitude of the problems and possible solutions.

At the initiation of the planning process, meetings were held with key farmers and District representatives from the watershed area to discuss problem identification, conservation systems and PL–566 requirements. A public meeting was held on January 24, 2002 to scope the problems and concerns and to explain impacts of the PL–566 program initiatives relative to a watershed project and discuss possible solutions. Notice of the meeting appeared in the local newspaper and on radio for several weeks prior to the date. Seventy-five landowners, operators, and interested citizens attended the meeting.

Several meetings, group discussions, and interviews were held with local planners, individuals, government officials, and other technical experts to inventory resources, identify cause-effect relationships, and develop—and evaluate—alternative plans of action to address resource concerns.

Another public meetings was held in Redbone, Georgia on May 23, 2002. Local operators, landowners, and citizens attended the meeting. The results of surveys, studies, field investigations, and alternative plans of actions were presented. Those attending agreed upon a Recommended Plan, developed by the Planning Team.

From January 2002 to May 2002, representatives of the SWCD, NRCS, EPD, WRD, CES, and other officials evaluated data to determine the quality and quantity of resources that would be impacted by selected practices and to consider possible mitigation measures. It was the consensus of the group that an Environmental Impact Statement (EIS) was not needed for this project. This agreement was based on the type of practices and systems planned and that each would be installed on previously disturbed land. With this consensus, and Environmental Assessment (EA) was prepared accordingly.

Upon review of the EA, this Finding of No Significant Impact (FONSI) was prepared. These documents are being distributed to all concerned agencies, groups, and interested individuals. A Notice of Availability of the FONSI is being published in the **Federal Register**.

Agency consolations and public participation to date has shown no conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended Tobosofkee Creek Watershed Plan is not required.

Dated: June 18, 2002.

Leonard Jordan,

State Conservationist.

[FR Doc. 02–16413 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Logan/Scott Counties Water Supply Project; Logan and Scott Counties, AR

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the creation of a municipal and industrial water supply for the cities of Booneville and Waldron, Arkansas in Logan and Scott Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone (501) 301–3100.

SUPPLEMENTARY INFORMATION: The cities of Booneville and Waldron, Arkansas are in need of additional water to ensure an adequate supply of municipal and industrial water due to current and expected growth in the future. Since federal funds will be expened in this study and due to potential public concern, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

Alternatives currently being considered for inclusion in the EIS include the "No Action" alternative; the construction of a flood control/water supply lake located oin the Upper Petit Jean River near Elm Springs, Arkansas; expansion of the existing Boonville and Waldron water supply reservoirs; and pumping water from Blue Mountain Lake, a Corps of Engineers flood control and water supply lake.

A draft environmental impact statement (DEIS) will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A public scoping meeting will be held to solicit input from the public and to determine the scope of the environmental impact statement on August 13, 2002 from 7 p.m. to 9 p.m. at the Scott County Courthouse in Waldron, Arkansas.

Submit written comments and suggestions on the proposal, or requests to be placed on the EIS mailing list, to Jim Ellis, Biologist, Natural Resources Conservation Service, Natural Resources Planning Staff, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, or email to *Jim.Ellis@ar.usda.gov*.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: June 25, 2002.

David A. Weeks,

Assistant State Conservationist, Natural Resources Planning.

[FR Doc. 02–16577 Filed 7–1–02; 8:45 am]

BILLING CODE 3210–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to continue discussions on critical air quality issues relating to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public.

DATES: The meeting will convene Wednesday, July 17, 2002, at 9 a.m., and continue until 4 p.m. The meeting will resume Thursday, July 18, 2002, from 9 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service, at the address below, on or before July 3, 2002.

ADDRESSES: On both days, July 17–18, the meeting will be held at the Radisson Quad City Plaza at 111 East Second Street, Davenport, Iowa 52801; telephone: (563) 322–2200. Written material and requests to make oral presentations should be sent to Beth Sauerhaft, USDA–NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the

would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than July 3, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the

Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; FAX (202) 482–5650; E-Mail: *rmeyers@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S.

enhance the ability of the National Defense Stockpile Manager to dispose of the entire stockpile inventory of these materials by the end of FY 2003, thereby avoiding significant and continuing storage costs. These levels are also being proposed to take advantage of a possible long term sales contract for Celestite and to dispose of Quinidine that has passed its maximum shelf life. The Committee is seeking public comments on the potential market impact of these

Dated: June 25, 2002.

Matthew S. Borman,

Deputy Assistant Secretary, Bureau of Industry and Security.

[FR Doc. 02–16641 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Thomas Jefferson University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub.

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FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the July 17 and 18, 2002, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at *http:\\www.nhq.nrcs.usda.gov/faca/aaqtf.html.*

Draft Agenda of the July 17 and 18, 2002, Meeting

A. Welcome to the Quad Cities

1. Local Officials

B. Approve Minutes of the Washington, DC, May 1–2, 2002, AAQTF Meeting

C. EPA Update

- EPA Official
- National Academy of Sciences Scientific Assessment update
- RPO Update—potential impacts to agriculture
- Title V Update

D. Subcommittee Business

- Research Priorities and Oversight Subcommittee
- Emissions Factors Subcommittee
- Concentrated Animal Feeding Operation Subcommittee
- Voluntary/Incentive Based Program Subcommittee
- Follow-up Subcommittee
- Agricultural Burning Subcommittee
- Title V Subcommittee
- Monitoring Subcommittee
- Implementation Subcommittee

E. New Topics

- Iowa CAFO Study
- Engine Emissions

F. Discussion of Final Report

G. Public Input

(Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than July 3, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than July 3, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, D.C., on June 27, 2002.

P. Dwight Holman,

Deputy Chief for Management, Natural Resources Conservation Service.

[FR Doc. 02–16634 Filed 7–1–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 020621156–2156–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals of Celestite and Quinidine.

AGENCY: Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comments on the potential market impact of a proposed increase in the disposal levels of Celestite and Quinidine from the National Defense Stockpile under the proposed Fiscal Year 2003 Annual Materials Plan.

DATES: Comments must be received by August 1, 2002.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; FAX (202) 482–5650; E-Mail: *rmeyers@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–3634; or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense ("DOD"), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year ("FY") 1993 National Defense Authorization Act ("NDAA") (50 U.S.C. 98h–1) formally established a Market Impact Committee ("Committee") to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *" The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The National Defense Stockpile Administrator has proposed revising the proposed FY 2003 Annual Materials Plan ("AMP") to increase the disposal quantity levels of Celestite, from 3,600 ST to 12,794 ST, and Quinidine, from 750,000 Av. Oz. to 2,211,122 Av. Oz. These increased quantity levels are equivalent to the remaining stockpile inventory of these materials. Because these materials have limited commercial value, making the remaining stockpile inventory of these materials available for disposal during FY 2003 will enhance the ability of the National Defense Stockpile Manager to dispose of the entire stockpile inventory of these materials by the end of FY 2003, thereby avoiding significant and continuing storage costs. These levels are also being proposed to take advantage of a possible long term sales contract for Celestite and to dispose of Quinidine that has passed its maximum shelf life. The Committee is seeking public comments on the potential market impact of these proposed increases.

The quantities of Celestite and Quinidine listed in the proposed FY 2003 AMP are not targets for either sale or disposal. They are only a statement of the proposed maximum disposal quantity of the materials that may be sold in a particular fiscal year. The quantity of the materials that would actually be offered for sale or disposal will depend on the market for the material at the time of the offering as well as on the quantity of the materials approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the proposed increased disposal levels of Celestite and Quinidine. Although comments in response to this Notice must be received by August 1, 2002 to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of the materials. Public comments are an important element of the Committee's market impact review process.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in part 4 of Title 15 of the Code of Federal Regulations (15 CFR § 4.1 *et seq.*). Specifically, the Bureau of Industry and Security's FOIA reading room is located on its web page, which can be found at *http://www.bis.doc.gov.*, and copies of the public comments received will be maintained at that location (*see* Freedom of Information Act (FOIA) heading). If requesters cannot access the web, they may call (202) 482–2165 for assistance.

Dated: June 25, 2002.

Matthew S. Borman,

Deputy Assistant Secretary, Bureau of Industry and Security.

[FR Doc. 02–16641 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Renewable Energy Laboratory, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–014. *Applicant:* National Renewable Energy Laboratory, Golden, CO 80401. *Instrument:* Electron Microscope, Model Tecnai G2 F20 U–TWIN STEM. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 67 FR 35960, May 22, 2002. *Order Date:* December 11, 2001.

Docket Number: 02–015. *Applicant:* University of California, Riverside, Riverside, CA 92521–0411. Instrument: Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 67 FR 35961, May 22, 2002. *Order Date:* December 20, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16657 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Thomas Jefferson University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–018. Applicant: Thomas Jefferson University, Philadelphia, PA 19107–5587. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 67 FR 38643, June 5, 2002. *Order Date:* March 25, 2002.

Docket Number: 02–019. *Applicant:* Vanderbilt University, Nashville, TN 37232. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 38643, June 5, 2002. Order *Date:* January 28, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16658 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Saskatchewan, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–020. *Applicant:* University of Saskatchewan, Saskatoon, Saskatchewan S7N 5A8 Canada. *Instrument:* Electron Microscope, Model Tecnai G2 F20 U–TWIN STEM. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 67 FR 35960, May 22, 2002. *Order Date:* December 11, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to any of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16656 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Regents of the University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–021. *Applicant:* The Regents of the University of California, Material Management, 301 Watkins Drive, Riverside, CA 92521. *Instrument:* Two (2) Confocal Microscopes. Models TCS SP2/UV and TCS SPS RS–2P. *Manufacturer:* Leica Microsystems, Germany. *Intended Use:* The instrument is intended to be used

processed to determine the three-dimensional structure of the supramolecular assemblies.

(e) To determine the masses of the macromolecules, a finely focused nanometer-diameter probe of electrons will be digitally scanned across a thin specimen on which macromolecules are adsorbed: high-angle elastic scattering will be measured. Application accepted by Commissioner of Customs: June 6, 2002.

ACTION: Reopening of nomination period for expert panels.

SUMMARY: The Secretary of Commerce is required by the Dolphin Protection Consumer Information Act to conduct specified scientific research under of the Marine Mammal Protection Act and, by December 31, 2002, to make a finding based on the results of that research, on information obtained under the International Dolphin Conservation

provide scientific advice to address specific issues the Secretary will be considering in making the final finding.

Deadline for Submission of Nominations

NMFS is soliciting nominations by July 10, 2002. See **ADDRESSES** above.

Dated: June 26, 2002.

Phil Williams

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

International Trade Administration

University of Saskatchewan, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 02–013. *Applicant:* University of Saskatchewan. Saskatoon, SK, Canada S7N 5C9. *Instrument:* Photoelectron Emission Microscope, Model PEEM III. *Manufacturer:* ELMITEC GmbH, Germany. *Intended Use:* See notice at 67 FR 35960, May 22, 2002. *Reasons:* The foreign instrument provides: (1) A lateral spatial resolution of 7 nm and (2) upgradeability for aberration corrected imaging. *Advice received from:* National Institutes of Health, June 5, 2002.

Docket Number: 02–017. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* Micromanipulator Assembly for Slice Physiology Setup. *Manufacturer:* Luigs & Neumann, Germany. *Intended Use:* See notice at 67 FR 3776, May 30, 2002. *Reasons:* The foreign instrument provides: (1) Customized design for the type of electrophysiological experiments being performed and (2) computer control of microscope and manipulator positioning. Advice received from: National Institutes of Health, June 5, 2002.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16656 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–020. *Applicant:* Vanderbilt University. 1161 21st Avenue South, Nashville, TN 37232. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN Helium. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study the three-dimensional structures of biological macromolecules and assemblies, such as viruses and protein complexes. The materials to be studied include adenovirus, a common human respiratory virus; the ribonucleoprotein vault, a cytoplasmic particle implicated in multi-drug resistance in certain cancer cell lines; the DNA–PK protein/DNA complex, which is involved in repair of DNA double-stranded breaks after exposure to ionizing radiation; the family of small heat-shock proteins, which help the cell to resist heat-induced protein aggregation; CAM kinase complexes, which are involved in regulation of synaptic function in the brain; monoamine transporters (serotonin, norepinephrine, and dopamine), which are targets for antidepressants and psychostimulants; transcription complexes isolated from yeast; and other macromolecular protein assemblies involved in DNA transactions. Application accepted by Commissioner of Customs: June 6, 2002.

Docket Number: 02–021. *Applicant:* The Regents of the University of California, Material Management, 301 Watkins Drive, Riverside, CA 92521. *Instrument:* Two (2) Confocal Microscopes. Models TCS SP2/UV and TCS SPS RS–2P. *Manufacturer:* Leica Microsystems, Germany. *Intended Use:* The instrument is intended to be used to study different kinds of experimental plants, animals and microorganisms, e.g., Arabidopsis leaf cells, mammalian cell lines, and budding yeast. Various fundamental cellular processes, e.g., protein trafficking, organelle dynamics, protein complex formation, signal transduction, gene expression, will be investigated. In addition, the instrument will be used for educational purposes in the following courses: BPSC132, Plant Anatomy; BPSC135, Plant Cell Biology; BPSC237, Plant Cell Biology; BPSC230L, Cytogenetics Laboratory; BPSC232, Plant Development; Biol200A, Cell Biology. Application accepted by Commissioner of Customs: June 6, 2002.

Docket Number: 02–022. *Applicant:* National Institutes of Health, Office of the Director, Office of Research Services, Division of Bioengineering and Physical Science, 13 South Drive, Room 3N17, Bethesda, MD 20892–5766. *Instrument:* Electron Microscope, Model Tecnai TF30T. *Manufacturer:* FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to study proteins, nucleic acids, viruses, bacteria, and eukaryotic cells. The following experiments will be conducted:

(a) Tilt series will be automatically recorded from sections of plastic embedded cells in order to perform three-dimensional tomographic reconstructions of cellular architecture at high-spatial resolution. These measurements will be performed at an accelerating voltage of 300 kV to facilitate analysis of sections that are tilted to high angle.

(b) Tomographic reconstructions will be performed on cryosectioned frozen-hydrated cells to study cellular structure in close to the living state.

(c) Suspensions of supramolecular assemblies will be rapidly frozen, cryotransferred into the electron microscope, and imaged at low electron dose either on film or directly on a cooled CCD camera.

(d) Images will be recorded under well defined electron optical conditions with highly coherent illumination facilitated by the instrument's field-emission source. Images will be processed to determine the three-dimensional structure of the supramolecular assemblies.

(e) To determine the masses of the macromolecules, a finely focused nanometer-diameter probe of electrons will be digitally scanned across a thin specimen on which macromolecules are adsorbed: high-angle elastic scattering will be measured. Application accepted by Commissioner of Customs: June 6, 2002.

Docket Number: 02–023. *Applicant:* University of California, Los Alamos National Laboratory, BUS–6 Customs Office, P.O. Box 1663, MS C308, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to investigate biological tissue samples, polymeric materials (including high explosives), polymeric films containing semiconductor quantum dots, steels and other metals (especially Be and U alloys), superconducting tapes on metal substrates, other superconducting materials, ceramic oxides and nitrides, ion beam damaged ceramics, and other materials. Some typical experiments are: (a) To determine which phases are present in a material and their morphology, distribution, and relative fractions; (b) determining material deformation behavior by studying the dislocation, stacking fault, and twin types, densities, and distributions; (c) determining interfacial structures, misfits, chemical reactions (cross-diffusion and new phase formation) at near-atomic resolution; (d) examining ion beam damage to materials through imaging, mapping for chemistry, and diffraction analysis for crystallinity. Application accepted by Commissioner of Customs: June 6, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–16654 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062602F]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of nomination period for expert panels.

SUMMARY: The Secretary of Commerce is required by the Dolphin Protection Consumer Information Act to conduct specified scientific research under of the Marine Mammal Protection Act and, by December 31, 2002, to make a finding based on the results of that research, on information obtained under the International Dolphin Conservation Program, and on any other relevant information as to whether the intentional deployment on or the encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the eastern tropical Pacific Ocean.

This notice reopens the nomination period for scientists to serve on two expert panels referenced in the proposed organized decision process published in the **Federal Register** on Feb. 15, 2002: the Ecosystem Expert Panel and the Indirect Effects Expert Panel. Each expert panel will assess peer-reviewed scientific studies and other information and individually provide scientific advice to address specific issues the Secretary will be considering in making the final finding. The expert panels are scheduled to meet September 4–6, 2002, in La Jolla, CA.

DATES: The nomination period will be open from June 25, 2002, to July 10, 2002.

ADDRESSES: Nominations should be sent to the Director, NMFS Office of Science and Technology, F/ST, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may also be sent via facsimile at 301-713-1875. Nominations will not be accepted if submitted via electronic mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: On May 9, 2002, NMFS published a request for nominations for the two expert panels. The **Federal Register** notice at 67 FR 31279 provides instructions on the questions and charge of each expert panel, the nomination process, panel member qualifications, the selection process, and the determination of cost reimbursement. It also describes the process NMFS will carry out to solicit nominations, select five qualified scientists for each panel, and recommend them for appointment by the Secretary. The expert panels are scheduled to meet September 4–6, 2002, in La Jolla, CA. Each expert panel will assess peer-reviewed scientific studies and other information and individually provide scientific advice to address specific issues the Secretary will be considering in making the final finding.

Deadline for Submission of Nominations

NMFS is soliciting nominations by July 10, 2002. See **ADDRESSES** above.

Dated: June 26, 2002.

Phil Williams

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–16538 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Re-initiation of Public Scoping Period on the Review of the Gerry E. Studds Stellwagen Bank National Marine Sanctuary Management Plan; Notice of Availability of the "State of the Sanctuary Report"

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS) was designated in 1992. Encompassing an 842-square mile area off the coast of Massachusetts, SBNMS protects one of the most biologically diverse areas along the eastern seaboard. It is one of the primary feeding grounds of the highly migratory humpback whale, the part-time home of the endangered northern right whale, and has a highly varied seafloor that supports a wide variety of demersal fish species and invertebrate species.

In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the NMSP is re-initiating a review of the SBNMS management plan to evaluate substantive progress toward implementing the goals of the Sanctuary and to make revisions to the plan as necessary to fulfill the purposes and policies of the NMSA. NOAA is now seeking comments on the scope, types, and significance of issues related to the Sanctuary management plan and regulations.

Background

The current management plan for the Sanctuarywas originally published in July 1993. In December 1998 and January 1999, the NMSP initiated a reviewd of this plan by holding scoping meetings to solicit public comments on

the status of site management. Scoping participants comments on a variety of issues, which were then characterized by Sanctuary staff and drafted into a "State of the Sanctuary Report" during Winter 2001/2002 (a change in sanctuary adminstration delayed the management plan review process for approximately one year).

The State of the Sanctuary Report, which also contains current background

Authority: 16 U.S.C. Section 1431 *et seq.*

Dated: June 25, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–16651 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

unidentifiable turtles to the lethal take. The request to increase lethal takes of turtles was withdrawn. An additional request to modify the experimental design for 2002 to test the effects of soak times, mackerel bait, and the use of 18/0 circle hooks was authorized. This modification to the research design will decrease the number of turtles caught and the magnitude of the injury if they are caught. This new experimental

House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 27, 2002.

Patricia L. Toppings,

or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, or local governments or civic organizations during actual emergencies, exercises or continuity of operation tests for the purpose of responding to emergency situations.

The DoD 'Blanket Routine Uses' published at the beginning of the OIG DoD compilation of systems of records

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official Personnel Folder and other information obtained from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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the status of site management. Scoping participants comments on a variety of issues, which were then characterized by Sanctuary staff and drafted into a "State of the Sanctuary Report" during Winter 2001/2002 (a change in sanctuary adminstration delayed the management plan review process for approximately one year).

The State of the Sanctuary Report, which also contains current background information on the Sanctuary's administrative capacities, its environmental features and human uses, and its ongoing activities, is now being released to familiarize the public with the current status of Sanctuary management and the range of issues identified during the initial scoping period of 1998/1999. The report can be obtained by contacting the Management Plan Review Coordinator at the address below or by downloading it from the SBNMS Web site at *<http://stellwagen.nos.noaa.gov>*. Interested parties should refer to this report in preparation for submitting comments on the Sanctuary's management plan during this re-initiation of the scoping period.

Comments on the Sanctuary management plan may be submitted in three ways: (1) In writing to SBNMS Management Plan Review Coordinator at the address or fax number below; (2) via e-mail to *sbnmsplan@noaa.gov;* or (3) in writing or orally at formal public meetings that NOAA will conduct at various locations in the Sanctuary region during the Fall 2002. Details on locations, dates, and times for these meetings will be published in a subsequent **Federal Register** notice and local newspapers.

DATES: Comments should be received on or before October 18, 2002.

ADDRESSES: For a copy of the State of the Sanctuary Report, contact the Management Plan Review Coordinator, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Rd. Scituate, MA 02066. Copies can also be downloaded from the SBNMS Web site at *<http://stellwagen.nos.noaa.gov>*.

To submit comments, you may (1) mail them to the address above; (2) fax them to (781) 545–8036; (3) e-mail them to *sbnmsplan@noaa.gov;* or (4) attend the upcoming meetings in the Fall 2002 (dates, times, and locations will be announced in a subsequent **Federal Register** notice and in local newspaper). Comments should be addressed to the attention of the Management Plan Review Coordinator.

FOR FURTHER INFORMATION CONTACT: Katrina VanDine at (781) 545–8026 x203 or via e-mail at *sbnmsplan@noaa.gov*.

Authority: 16 U.S.C. Section 1431 *et seq.*

Dated: June 25, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–16651 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.061202D]

Endangered Species; File No. 1324

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Nancy Thompson, National Marine Fisheries Service, Southeast Fisheries Science Center (SEFSC) has been issued an amendment to scientific research Permit No. 1324.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 27, 2001, notice was published in the **Federal Register** (66 FR 49353) that a modification of Permit No. 1324, issued August 9, 2001 (66 FR 42995), had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The modification requested the increase in authorized lethal take of leatherback turtles from one to two over the life of the permit and to increase the authorized lethal take of green, hawksbill, and Kemp's ridley turtles, in combination, from one to two. It was also requested to include the category of unidentifiable turtles to the lethal take. The request to increase lethal takes of turtles was withdrawn. An additional request to modify the experimental design for 2002 to test the effects of soak times, mackerel bait, and the use of 18/0 circle hooks was authorized. This modification to the research design will decrease the number of turtles caught and the magnitude of the injury if they are caught. This new experimental design decreases the number of hooks used by 121,908 to 324,324.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 26, 2002.

Trevor Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–16601 Filed 7–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Inspector General; Privacy Act of 1974; System of Records

AGENCY: Inspector General, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Inspector General, DoD is adding a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action is effective without further notice on August 1, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Freedom of Information Act Office, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Major Eric L. Kase, USAF, at (703) 604–9744.

SUPPLEMENTARY INFORMATION: The Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 21, 2002, to the

House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 27, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG 19

SYSTEM NAME:

Recall Roster/Locator Records.

SYSTEM LOCATION:

Administration and Information Management Directorate, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704 and at field offices of the OIG DoD, nationwide. Field office locations may be obtained by writing to the above location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, military personnel and contractors assigned to the Inspector General of the Department of Defense (OIG, DoD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, organizational and home addresses, work/home/cellular telephone numbers, home e-mail account, and pager number (if applicable); emergency personnel rosters, contact listing files, organizational telephone directories, and listing of office personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 3020.26, Continuity of Operations Policy and Planning.

PURPOSE(S):

Information is being collected and maintained to ensure that the Office of the Inspector General, DoD, has the ability to recall personnel to place of duty when required, for use in emergency notification, and to perform relevant functions/requirements/actions consistent with managerial functions during an emergency/discovery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, or local governments or civic organizations during actual emergencies, exercises or continuity of operation tests for the purpose of responding to emergency situations.

The DoD 'Blanket Routine Uses' published at the beginning of the OIG DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on a computer client server and in paper form at each location.

RETRIEVABILITY:

Retrieved by individual's name and by organization.

SAFEGUARDS:

Records are maintained in areas accessible only to OIG DoD personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings in locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Records are perpetual because individual records are deleted or added when the file is updated.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administration and Information Management, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves in contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name and work organization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name and work organization.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official Personnel Folder and other information obtained from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–16665 Filed 7–1–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for the Programmatic Environmental Impact Statement (PEIS)–Army Transformation

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the ROD for the PEIS for Army Transformation.

The ROD details the environmental concerns, identified in the PEIS, that may affect various aspects of Army transformation including, but not limited: unit location; materiel acquisition and testing; training areas; range requirements; and strategic deployment.

ADDRESSES: To obtain a copy of the PEIS ROD, access the Army home page at *www.army.mil/a-z.htm*, and scroll to Programmatic Environmental Impact Statement. The PEIS ROD has been posted at this Wed site to facilitate public access.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Lucas at (703) 805–2522.

SUPPLEMENTARY INFORMATION: The Department of the Army prepared a PEIS assessing potential impacts of the Army transformation on the environment. The PEIS was prepared pursuant to the National Environmental Policy Act of 1969 and the Record of Decision has been signed.

As a result of this effort, it has been decided to proceed with a multi-year, phased, and synchronized process to transform the Army. The results of the PEIS were considered along with supporting studies and comments provided during the formal comment and review periods. Based on this review, it was determined that the preferred alternative reflects the proper balance between initiatives for

protection of the environment, appropriate mitigation, and actions to achieve the Army Vision. The Army has identified and shall adopt and implement a variety of measures to avoid or minimize harm to the environment that may be caused by implementation of the proposed action.

Project- and site-specific proposals for transformation actions and activities will be appropriately evaluated for their potential environmental effects. Future existing DPG activities (including chemical and biological defensive testing, other testing programs, training, real property management, and environmental management) with future increases in most testing and training operating areas. Additionally, the Proposed Action includes diversification of DPG operations and implementation of a Summary Development Plan identifying real property planning recommendations for

Avenue, Dugway; Tooele City Public Library, 47 East Vine Street, Tooele. Copies at the public reading rooms are for review purposes only, and extra copies of the documents will not be available at these locations.

Dated: June 27, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 02–16648 Filed 7–1–02; 8:45 am]

Dated: June 25, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–16587 Filed 7–1–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the

Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

DEPARTMENT OF EDUCATION

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protection of the environment, appropriate mitigation, and actions to achieve the Army Vision. The Army has identified and shall adopt and implement a variety of measures to avoid or minimize harm to the environment that may be caused by implementation of the proposed action.

Project- and site-specific proposals for transformation actions and activities will be appropriately evaluated for their potential environmental effects. Future planning for and initiating actions to accomplish transformation shall be subject to appropriate evaluation pursuant to the National Environmental Policy Act and other requirements.

Dated: June 21, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 02–16647 Filed 7–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for Activities Associated With Future Programs at the U.S. Army Dugway Proving Ground, Utah

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the DEIS for Activities Associated with Future Programs at the U.S. Army Dugway Proving Ground (DPG). The DEIS provides information on potential effects to the human and physical environment resulting from present and reasonably foreseeable future activities that have been or may be undertaken by the various units and organizations at DPG. Mitigation of these potential effects is also considered in the DEIS.

DATES: The public comment period for the DEIS will end 45 days after publication of the notice of availability in the **Federal Register** by Environmental Protection Agency.

ADDRESSES: Written comments on the DEIS should be forwarded to: Commander, U.S. Army Dugway Proving Ground, Attn: STEDPPA (Draft EIS), Dugway, UT 84022–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Nicholson at (435) 831–3409, or by e-mail at *nicholsn@dpg.army.mil.*

SUPPLEMENTARY INFORMATION: The Proposed Action (preferred alternative) for the DEIS includes continuation of existing DPG activities (including chemical and biological defensive testing, other testing programs, training, real property management, and environmental management) with future increases in most testing and training operating areas. Additionally, the Proposed Action includes diversification of DPG operations and implementation of a Summary Development Plan identifying real property planning recommendations for DPG.

The DEIS considers two action alternatives to the Proposed Action and a No Action alternative. The two action alternatives are: (1) Decreased mission with a major reduction in operations at DPG and (2) a maximum expanded mission with major increases in most operating areas compared to current DPG operations.

The No Action alternative represents the status quo and assumes that existing DPG operations would continue at approximately their current rates into the foreseeable future. All existing actions currently the subject of environmental documentation, associated mitigation measures and mitigative planning strategies would continue to be implemented under the No Action alternative.

The DEIS is being produced as both a full volume (approximately 1000 pages) and as an Executive Summary (approximately 100 pages). Both the DEIS and Executive Summary are available on Compact Disc in Adobe PDF format.

Public meetings on the DEIS will be held in English Village (on DPG), Tooele, and Salt Lake City, UT. Exact dates and locations will be advertised in the local media and announced on the EIS website (http://www.dugway.army.mil) at least 15 days prior to the meetings. Additional information on the public meetings can also be obtained from the DPG Public Affairs Office at (435) 831–3409.

Anyone wishing to receive a copy of the DEIS or the Executive Summary may write to: U.S. Army Dugway Proving Ground, ATTN: CSTE–DTC–DP–PA (Paula Nicholson), Dugway, UT 84022–5000. A copy of either document may also be requested through the EIS website (http:\\www.dugway.army.mil).

The full DEIS and Executive Summary will be available at the following rooms: Whitmore Library, 2197 East 7000 South, Salt Lake City; University of Utah, J. Willard Marriott Library, Special Collections—Western Americana (5th floor), 15th East and South Campus Drive, Salt Lake City; Dugway Public Library, 5124 Kister Avenue, Dugway; Tooele City Public Library, 47 East Vine Street, Tooele. Copies at the public reading rooms are for review purposes only, and extra copies of the documents will not be available at these locations.

Dated: June 27, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 02–16648 Filed 7–1–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Bioforce Nanosciences, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Bioforce Nanosciences, Inc., a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,372,930 (Navy Case No. 73,568) issued December 13, 1994, entitled "Sensor for Ultra-Low Concentration Molecular Recognition" U.S. Patent No. 5,958,701 (Navy Case No. 79,257) issued September 28, 1999, entitled "Method for Measuring Intramolecular Forces by Atomic Force"; and U.S. Patent No. 5,992,226 (Navy Case No. 78,838) issued November 30, 1999, entitled "Apparatus and Method for Measuring Intermolecular Interactions by Atomic Force Microscopy".

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 17, 2002.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D. Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: June 25, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–16587 Filed 7–1–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54

Burden Hours: 7,006.

Abstract: The information contained in the Consolidated Annual Performance Report for Vocational Technical Education is needed to monitor State performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998. The respondents include eligible agencies in 54 states and insular areas. This revision clarifies instructions and definitions and eliminates the collection of some data elements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2072. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16546 Filed 7–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 3, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education.

Type of Review: New.

Title: Final Reporting Forms for FIPSE International Consortia Programs.

DEPARTMENT OF ENERGY

[Docket No. EA–299]

Application To Export Electric Energy; Energy America LLC.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Energy America LLC (Energy America) has applied for authority to

Issued in Washington, DC, on June 21, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–16640 Filed 7–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the

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Dated: June 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education.

Type of Review: New.

Title: Final Reporting Forms for FIPSE International Consortia Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 40. Burden Hours: 240.

Abstract: Protocols for final performance reports for the European Community-US Higher Education Program, the US-Brazil Higher Education Consortia Program and the Program for North American Mobility in Higher Education are necessary to assure the quality of program management and progress toward meeting performance objectives which include student learning, encouraging international cooperation, and partnerships among higher education institutions in the US and abroad.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2047. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16547 Filed 7–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–269]

Application To Export Electric Energy; Energy America LLC.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Energy America LLC (Energy America) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 1, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. § 824a(e)).

On June 4, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Energy America LLC (Energy America) to transmit electric energy from the United States to Canada. Energy America is a Delaware corporation having its principal place of business in Toronto, Ontario, Canada. Energy America is a direct, wholly-owned subsidiary of Centrica US Holding Ltd. (Centricia US) and Centrica Canada Ltd. Energy America is currently an energy supplier that engages in the purchase and sale of both wholesale and retail energy and capacity in the U.S. and Canadian electricity markets. Energy America does not own or control any electric power generation or transmission facilities and does not have a franchised service area in the United States.

Energy America proposes to arrange for the delivery of wholesale and retail electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Energy America , as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Energy America application to export electric energy to Canada should be clearly marked with Docket EA–269. Additional copies are to be filed directly with Nick Fulford, Sr. Vice President Business Development, Centrica North America/Energy America, 25 Shepard Avenue, W., Suite 1500, Toronto, Ontario, Canada, M2N 6S6 AND Jerry L. Pfeffer, Energy Industries Advisor, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005–2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on June 21, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–16640 Filed 7–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–387–000, CP01–384–000, CP01–385–000, CP01–386–000, CP02–52–000, CP03–31–000]

Algonquin Gas Transmission Company, Islander East Pipeline Company, L.L.C. and Iroquois Gas Transmission System, L.P.; Notice of Non-Decisional Status

June 26, 2002.

Take notice that, for purposes of the above-captioned dockets (and all subdockets in those dockets), Randolph E. Mathura, Director, Division of Pipeline Certificates, Office of Energy Projects, is a non-decisional authority and a non-decisional employee. *Cf.* 18 CFR 385.102(a)(2002) (definition of decisional authority); 18 CFR 385.2201(c)(3) (2002) (definition of decisional employee).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16606 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1936–001]

Ameren Services Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Mount Carmel Public Utility Co. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–1936–000 with the executed Agreements.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16556 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1936–002]

Ameren Services Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–1936–000 with the executed Agreements.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16557 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1957–001]

Ameren Services Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Aquila Energy Marketing Corp. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER02–1957–000 with the executed Agreement.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for

assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16558 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1958–001]

Ameren Services Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Aquila Energy Marketing Corp. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER02–1958–000 with the executed Agreement.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16611 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3103–002 et al.]

Astoria Generating Co., LP., et al.; Notice of Filing

June 21, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1770–002]

California Independent System Operator Corporation; Notice of Filing

June 25, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–003]

California Independent System Operator Corporation; Notice of Filing

June 21, 2002.

Take notice that on June 17, 2002,

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–78–000]

Central Vermont Public Service Corporation and Green Mountain Power Corporation; Notice of Filing

June 21, 2002.

assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16558 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–19–001]

American Transmission Company LLC; Notice of Application

June 26, 2002.

Take notice that on June 19, 2002, American Transmission Company LLC submitted an amendment to its original application in this proceeding, under section 204 of the Federal Power Act. The amendment seeks authorization to issue long-term debt with a maturity date of thirty years or less instead of the previously approved maturity date of ten years or less (with no change in the total aggregate amount outstanding of $400 million).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16552 Filed 6–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1381–002]

Aquila Merchant Services, Inc.; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Aquila Merchant Services, Inc. submitted its compliance filing in the above-captioned docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16611 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3103–002 et al.]

Astoria Generating Co., LP., et al.; Notice of Filing

June 21, 2002.

In the matter of: ER01–3103–002, ER98–4095–002, ER99–1764–003, ER00–1463–002, ER01–2398–004, ER01–852–001; Astoria Generating Co., L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Liberty Electric Power, LLC and Twelvepole Creek, LLC.

Take notice that on June 17, 2002, Astoria Generating Co., L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Liberty Electric Power, LLC and Twelvepole Creek, LLC (collectively, the Orion Companies) tendered for filing their joint triennial market power update.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16564 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1770–002]

California Independent System Operator Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's May 22, 2002, Order "Granting in Part and Denying in Part Rehearing, and Directing Compliance Filing" 99 FERC ¶ 61, 212. The ISO states that it has served copies of this filing upon all parties listed on the official service list for this proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16549 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–003]

California Independent System Operator Corporation; Notice of Filing

June 21, 2002.

Take notice that on June 17, 2002, California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), proposed revised tariff sheets that implement additional elements of its Comprehensive Market Design Proposal.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16567 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–78–000]

Central Vermont Public Service Corporation and Green Mountain Power Corporation; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Central Vermont Public Service Corporation (Central Vermont) and Green Mountain Power Corporation (Green Mountain) filed with the Federal Energy Regulatory Commission (Commission),an application pursuant to Section 203 of the Federal Power Act for authorization to purchase certain shares of non-voting Class C Common Stock ($100 par value) issued by the Vermont Electric Power Company, Inc. (VELCO). The Vermont Public Service Board has previously approved the issuance of the stock by VELCO.

Copies of the filing were served upon the Vermont Public Service Board and the Vermont Department of Public Service.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16561 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–320–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

June 26, 2002.

Take notice that on June 21, 2002, Chandeleur Pipe Line Company

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper (see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16575 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–320–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

June 26, 2002.

Take notice that on June 21, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff, to become effective August 1, 2002:

Second Revised Sheet No. 2
Third Revised Sheet No. 3
Third Revised Sheet No. 3A
Second Revised Sheet No. 6
Original Sheet No. 6A
Fourth Revised Sheet No. 18
Second Revised Sheet No. 18A
Fifth Revised Sheet No. 19
Sixth Revised Sheet No. 19A
First Revised Sheet No. 19A.01
First Revised Sheet No. 19A.02
Sixth Revised Sheet No. 19B
Third Revised Sheet No. 19C
Third Revised Sheet No. 27
Third Revised Sheet No. 28
Original Sheet No. 28A
Sixth Revised Sheet No. 29
First Revised Sheet No. 29A
First Revised Sheet No. 30
Third Revised Sheet No. 31
First Revised Sheet No. 31A
Fourth Revised Sheet No. 32
Original Sheet No. 32A
Second Revised Sheet No. 50
Third Revised Sheet No. 51
First Revised Sheet No. 57
First Revised Sheet No. 72
Original Sheet No. 72A
Original Sheet No. 72B

Chandeleur asserts that the purpose of this filing is to comply with the Commission's directives in Docket No. RP00–320–000 issued May 21, 2002 (May 21 Order). The tariff sheets incorporate all of the *pro forma* provisions approved by the May 21 Order and proposed changes to certain provisions as directed by the May 21 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 3, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16621 Filed 7–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX96–2–005]

City of College Station, TX; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, City of Bryan, Texas (Bryan) tendered for filing with the Federal Energy Regulatory Commission (Commission), its compliance filing setting forth the rates, terms and conditions under which Bryan will provide transmission service to the City of College Station (College Station). The compliance filing is submitted pursuant to the Commission's order in City of College Station, Texas, 86 FERC ¶ 61,165 (February 16, 1999) (Final Order).

Copies of the filing were served upon the official service list in this proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16575 Filed 7–01–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–711–003, CP96–711–004, CP96–712–005, and CP96–719–003]

Discovery Gas Transmission, LLC; Notice of Compliance Filing

June 26, 2002.

Take notice that on May 31, 2002, Discovery Gas Transmission LLC. (Discovery) tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 2002. Discovery states that the purpose of the limited Section 4 filing is to submit revised tariff sheets and supporting workpapers in compliance with Ordering Paragraph C of the Commission's Order Denying Rehearing and Granting Clarification, issued on October 11, 2001, in Discovery Producer Services LLC's Docket No. CP96–711–002 and Discovery Gas Transmission LLC's Docket Nos. CP96–712–004 and CP96–719–002. The October 11, 2002, order directed Discovery to file tariff sheets that state separate gathering rates for those facilities that the Commission determined, in its underlying July 25, 2001, order, to be gathering facilities.

Included in Appendix B of the filing are the worksheets supporting the allocation of the transmission rates and gathering rates on a gross plant basis. Discovery states that copies of the filing are being mailed to affected customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 384.214 of the Commission's Rules of Practices and Procedures. All such motions and comments must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper (see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*). Applicant's designated contact person is Kevin Rehm at 713–215–2694.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16605 Filed 7–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–134–000]

Duke Energy Moapa, LLC; Notice of Amended and Restated Application for Commission Determination of Exempt Wholesale Generator Status

June 21, 2002.

Take notice that on June 19, 2002, Duke Energy Moapa, LLC (Duke Moapa) filed an amended and restated application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Moapa states it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Clark County, Nevada. The eligible facilities will consist of an approximately 1,200 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16562 Filed 7–01–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–782–003]

Florida Power & Light Company; Notice of Filing

June 25, 2002.

Take notice that on June 21, 2002, Florida Power & Light Company submitted a compliance filing of the May 21, 2002 Letter Order issued by the Federal Energy Regulatory Commission in the above-referenced proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16551 Filed 7–01–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–189–000]

Fresno Cogeneration Partners, L.P.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, Fresno Cogeneration Partners, L.P. (Fresno) designates the long-term service agreement entitled Master Power Purchase & Sales Agreement, dated August 3, 2001 (Service Agreement No. 1) between Fresno and the California Department of Water Resources for the sale of power filed in the above referenced docket on October 30, 2001 as Fresno Cogeneration Partners, L.P. Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16565 Filed 7–01–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

requested authorization in Docket No.CP02–376–000 to provide the LNG terminalling services on a firm and interruptible basis pursuant to Section 7(c) of the NGA and Part 284 of the Commission's Regulations. In addition, Hackberry LNG seeks authorization, pursuant to section 7(c) of the NGA and part 157, subpart A of the Commission's Regulations, to construct and operate a 35 mile pipeline and related facilities to

install, and operate the following facilities :

—An LNG unloading slip with two berths, each equipped with three liquid unloading arms and one vapor return/delivery arm;
—Three LNG storage tanks each with a usable volume of 160,000 cubic meters (1,006,000 barrels);
—Nine in-tank pumps, each sized for 250,000 Mcf/d;

and the proposed tariff, by October, 2002, and a final order granting the requested authorizations by August 15, 2003. Hackberry LNG says that this proposed schedule will enable it to commence LNG import terminalling services by November, 2006.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project

Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the

based rate authority and a corrected version has been submitted.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be

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on the Commission's Web site under the "e-Filing" link.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16565 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–374–000, CP02–376–000, CP02–377–000, and CP02–378–000]

Hackberry LNG Terminal, L.L.C.; Notice of Application

June 26, 2002.

Take notice that on May 30, 2002; [as revised on June 24, 2002], Hackberry LNG Terminal, L.L.C. (Hackberry LNG), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed an application seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal located at Hackberry, Louisiana, and a new 35 mile natural gas pipeline in Cameron, Calcasieu, and Beauregard Parishes, Louisiana. The purpose of the LNG terminal is to provide open access LNG tanker services to shippers importing LNG. Hackberry LNG is requesting authorization to offer open access terminalling services at market-based rates; open access transportation service on the proposed pipeline will be separately charged, and calculated on a cost-of-service basis.

The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket # " and follow the instructions (please call (202) 208–2222 for assistance). Any initial questions regarding the application should be directed to Sarah Tomalty, Dynegy Inc., 1500 K Street, NW., Suite 400, Washington DC 20005, Phone: (202) 216–1123.

Hackberry LNG made the request to site, construct and operate the LNG terminal pursuant to section 3(a) of the Natural Gas Act and part 153 of the Commission's regulations (Docket No. CP02–378–000); and section 7(c) of the NGA and part 157, subpart A of the Commission's Regulations (Docket No.CP02–374–000). Hackberry LNG also requests approval of the Hackberry LNG terminal as the place of entry for the imported LNG supplies under section 3(a) of the Natural Gas Act and part 153 of the Commission's regulations (Docket No.CP02–378–000). Hackberry LNG also requested authorization in Docket No.CP02–376–000 to provide the LNG terminalling services on a firm and interruptible basis pursuant to Section 7(c) of the NGA and Part 284 of the Commission's Regulations. In addition, Hackberry LNG seeks authorization, pursuant to section 7(c) of the NGA and part 157, subpart A of the Commission's Regulations, to construct and operate a 35 mile pipeline and related facilities to transport natural gas on an open access basis under Part 284. Finally, in Docket No. CP02–377–000, Hackberry LNG requests a blanket certificate under section 7(c) of the NGA and part 157, subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed 35 mile pipeline.

Hackberry LNG says that following the conclusion of an 85-day open season, it executed a binding precedent agreement with Dynegy Marketing and Trade (Dynegy Marketing) for all of the available firm LNG terminalling capacity. The total available delivery capacity offered by Hackberry LNG in its open season was 1,500,000 Dth per day, and Dynegy Marketing was awarded the entire available delivery quantity because Dynegy Marketing submitted the highest net present value bid. Hackberry LNG says that Dynegy Marketing will contract for and pay a monthly reservation fee based upon its Maximum Daily Delivery Quantity (MDDQ) of 1,500,000 Dth per day. Hackberry LNG says that shippers are allocated LNG storage capacity based on fixed ratio of storage capacity to contracted MDDQ. The LNG storage capacity is proposed to be 1,006,000 barrels or 10.4 Bcf.

Hackberry LNG proposes to offer open-access, non-discriminatory LNG terminalling services, which would include the receipt of imported LNG from ocean-going tankers, and the storage and vaporization of the LNG. Hackberry LNG will also provide pipeline transportation of vaporized LNG from the tailgate of the LNG terminal to the pipeline grid through a proposed pipeline. Dynegy Marketing will be allocated 1,500,000 Dth per day of transportation capacity in the new pipeline. The new 35 mile pipeline is proposed to be interconnected with the facilities of Transcontinental Gas Pipe Line and will cross several other pipelines which could become interconnected.

In order to provide the LNG terminalling and pipeline transportation services, Hackberry LNG requests Commission authorization to construct, install, and operate the following facilities :

—An LNG unloading slip with two berths, each equipped with three liquid unloading arms and one vapor return/delivery arm;
—Three LNG storage tanks each with a usable volume of 160,000 cubic meters (1,006,000 barrels);
—Nine in-tank pumps, each sized for 250,000 Mcf/d;
—Ten second stage pumps, each sized for 188,000 Mcf/d;
—Twelve submerged combustion vaporizers, each sized at 150,000 Mcf/d;
—A boil-off gas compressor and condensing system;
—An LNG circulation system to maintain the facilities at the appropriate temperature when LNG tankers are not being unloaded;
—An natural gas liquids recovery unit;
—Utilities, buildings and service facilities; and
—A 35.4-mile, 36-inch-diameter natural gas send out pipeline.

Hackberry LNG's filing includes a *pro forma* copy of the FERC Gas Tariff under which Hackberry LNG proposes to provide firm and interruptible LNG terminalling services on an open access basis under Rate Schedules LNG–1 and LNG–2, and firm and interruptible transportation services under Rate Schedules FTS and ITS. Hackberry LNG has requested waiver of certain nomination/confirmation/scheduling provisions contained in the GISB/NAESB standards due to the unique nature of scheduling receipt if ocean-going LNG tankers.

Hackberry LNG has requested approval of market based rates for its LNG terminalling services and has requested waiver of the requirements to disclose the capital and operating costs of the LNG terminal. To support its request for market based rates, Hackberry LNG has proved a study in Exhibit Z of its application which concludes that Hackberry LNG meets the criteria for market based rates set forth in Commission's 1996 Policy Statement on this topic. However, Hackberry LNG has estimated the capital cost of the new 35 mile pipeline to be about $ 74.5 million and an annual cost-of-service for the new pipeline to be $ 12.7 million. The proposed firm transportation reservation rate for the new pipeline is $ 0.7087.

Hackberry LNG requests that the Commission issue a preliminary determination on all non-environmental matters, including Hackberry LNG's request for market-based rate authority for the pricing of terminalling services and the proposed tariff, by October, 2002, and a final order granting the requested authorizations by August 15, 2003. Hackberry LNG says that this proposed schedule will enable it to commence LNG import terminalling services by November, 2006.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 19, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16608 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2050–000]

Hartford Power Sales, L.L.C.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, Hartford Power Sales, L.L.C., by and through Edison Mission Energy, submitted its Notice of Cancellation on June 7, 2002, on Market-Base Rate Tariff. It has come to our attention that the first paragraph on page 2 of that filing inadvertently contains erroneous statements as to the history of the Hartford Power sales, L.L.C., market-based rate authority and a corrected version has been submitted.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16570 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1939–000]

Louisville Gas and Electic Company; Notice of Filing

June 21, 2002.

Take notice that on May 30, 2002, Louisville Gas and Electric Company (LG&E) filed with the Federal Energy Regulatory Commission (Commission) an executed letter agreement extending the interconnection agreement between LG&E and Kentucky Utilities (KU) (hereinafter Companies) and Trimble County LLC (TCLC).

The Companies respectfully request that the Commission waive its usual minimum notice requirements and any other requirements of its rules and regulations with which this filing may not comply and accept for filing this service agreement to be effective at the date of filing.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16571 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1940–000]

Louisville Gas and Electic Company; Notice of Filing

June 21, 2002.

Take notice that on May 30, 2002, Louisville Gas and Electric Company (LG&E) filed with the Federal Energy Regulatory Commission (Commission) an executed letter agreement extending the interconnection agreement between LG&E and Kentucky Utilities (KU) (hereinafter Companies) and Trimble County LLC (TCLC).

The Companies respectfully request that the Commission waive its usual minimum notice requirements and any other requirements of its rules and regulations with which this filing may not comply and accept for filing this service agreement to be effective at the date of filing.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

non-jurisdictional refunds is "a violation of FERC orders."

Northern states that these allegations are erroneous, that the Commission has never ordered Northern to make refunds to its non-jurisdictional customers, and that refunds of non-jurisdictional amounts, if any, are governed by the contracts between Northern and its non-jurisdictional customers. Further, Northern states that the Commission

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–367–000]

Petal Gas Storage, L.L.C.; Notice of Application

June 26, 2002.

Take notice that on June 18, 2002, Petal Gas Storage, L.L.C. (Petal), Nine Greenway Plaza, Houston, Texas 77046,

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Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16568 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3001–003]

New York Independent System Operator, Inc.; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, the New York Independent System Operator, Inc. (NYISO) submitted a supplemental report on the status of its demand side management programs in New York State in compliance with the Commission's October 25 Order in the above-captioned proceeding. The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16550 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–638–003]

New York Independent System Operator, Inc.; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) corrected revisions to its Open Access Transmission and Market Administration and Control Area Services Tariffs in order to comply with the Commission's Order issued on February 26, 2002, in the above-captioned docket.

The NYISO has requested an effective date of April 11, 2002, for the filing. The NYISO has served a copy of this filing upon all parties on the official service list maintained by the Commission in the above-captioned docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16566 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–367–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 26, 2002.

Take notice that on June 21, 2002, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2002:

Third Revised Sheet No. 286C
Third Revised Sheet No. 287

Northern Border is filing revised tariff sheets to set forth clearly the conditions under which the Company may elect to terminate a temporary capacity release. Northern Border states that the proposed changes are in response to the Commission's observations as stated in an order at Docket No. RP02–206–000 (95 FERC ¶ 61,182).

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16624 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–385–000]

Northern Natural Gas Company; Notice of Petition for Declaratory Order

June 26, 2002.

Take notice that on June 5, 2002, Northern Natural Gas Company (Northern), filed a Petition for Declaratory Order requesting that the Commission find that: (1) the Commission did not direct Northern to make Kansas *ad valorem* tax refunds to its non-jurisdictional customers; and, (2) Northern is not in violation of any Commission *ad valorem* tax refund orders.

Northern states that on May 10, 2002, the Iowa Utilities Board (IUB) issued an order directing Northern to refund approximately $825,000 of Kansas *ad valorem* tax refunds received from producers to Peoples Natural Gas Company. Peoples was a non-jurisdictional sales customer of Northern during the period at issue. In its May 10th order, the IUB claimed that the Commission required interstate pipelines, including Northern, to refund all Kansas *ad valorem* tax overcharges to their customers, "whether jurisdictional or non-jurisdictional." Further, the IUB asserted that Northern's retention of non-jurisdictional refunds is "a violation of FERC orders."

Northern states that these allegations are erroneous, that the Commission has never ordered Northern to make refunds to its non-jurisdictional customers, and that refunds of non-jurisdictional amounts, if any, are governed by the contracts between Northern and its non-jurisdictional customers. Further, Northern states that the Commission has: (1) issued an order requiring pipelines to make Kansas *ad valorem* tax refunds only to their jurisdictional customers; (2) accepted Northern's annual refund reports showing the allocation of Kansas *ad valorem* tax refunds between jurisdictional and non-jurisdictional customers and approved Northern's refunds to its jurisdictional customers; and, (3) approved a settlement requiring refunds to Northern's jurisdictional customers only.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16623 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–387–000]

Petal Gas Storage, L.L.C.; Notice of Application

June 26, 2002.

Take notice that on June 18, 2002, Petal Gas Storage, L.L.C. (Petal), Nine Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP02–387–000 , for an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct, install, own, operate, and maintain new natural gas underground storage facilities, and related above-ground facilities, located in Forrest County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Petal seeks: (1) A certificate of public convenience and necessity that would authorize Petal to construct, install, own, operate, and maintain high-deliverability salt-dome gas storage facilities that will accommodate the injection, storage, and subsequent withdrawal of natural gas for redelivery in interstate commerce; (2) authorization to provide storage services at market-based rates; and (3) waiver of any Commission regulations necessary to grant the authorizations requested.

Petal proposes to construct and operate one new subsurface natural gas storage cavern (Cavern No. 8), and convert an existing subsurface brine storage cavern (Cavern No. 3) to natural gas storage. Both of these natural gas storage caverns are located adjacent to Petal's existing facilities within the Petal Salt Dome subsurface geologic feature, located in Forrest County, Mississippi.

In association with the construction of Cavern No. 8, Petal is proposing the construction of a 16-inch diameter natural gas pipeline approximately 1,276 feet long; a 12-inch diameter water line approximately 1,786 feet long; and a 12-inch diameter brine transmission line approximately 1,789 feet long. Petal also proposes to construct an additional 16-inch diameter natural gas transmission pipeline, approximately 2,407 feet in length, located between the Petal Cavern

No. 3 wellhead and the existing Petal No. 2 Compressor Station. In addition, Petal proposes to construct fiber optics communications cables between both the Cavern No. 8 and Cavern No. 3 wellheads, and the existing Petal No. 2 Compressor Station, for remote operations of the proposed wellhead facilities.

Petal proposes to construct above-ground facilities. The above-ground facilities consist of: (1) A 5,000 horsepower (hp) electric motor driven compressor unit; (2) a 16-inch diameter pig launcher; (3) a 16-inch diameter pig receiver; (4) a 16-inch diameter natural gas header system; (5) a 12-inch diameter water line; (6) a 12-inch diameter brine transmission line; (7) a 12-inch diameter brine header system; (8) a 16-inch diameter natural gas transmission pipeline; and (9) fiber optics communications cables between both the Cavern No. 8 and Cavern No. 3 wellheads, and the existing Petal No. 2 Compressor Station.

Petal states that the proposed facilities will enable it to provide storage services for its customers. Petal states that it has executed precedent agreements with two customers for the proposed storage capacity and deliverability.

Petal states that the proposed facilities will have no significant impact on the human environment. Petal states that the proposed facilities will not require any additional permanent right-of-way, and that the proposed facilities will be constructed entirely within the boundaries of Petal's existing Petal Salt Dome property.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 16, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16625 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 16, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16626 Filed 7–1–02; 8:45 am]

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No. 3 wellhead and the existing Petal No. 2 Compressor Station. In addition, Petal proposes to construct fiber optics communications cables between both the Cavern No. 8 and Cavern No. 3 wellheads, and the existing Petal No. 2 Compressor Station, for remote operations of the proposed wellhead facilities.

Petal proposes to construct above-ground facilities. The above-ground facilities consist of: (1) A 5,000 horsepower natural gas compression unit on an existing concrete pad located within the Petal No. 2 Compressor Station building; (2) a 250 MMcf/d dehydration contractor, knockout scrubber, and gas/glycol exchanger to the existing Petal dehydration system, adjacent to the Petal No. 2 Compressor Station; and (3) a pressure control system at the Petal No. 2 Compressor Station to control the injection and withdrawal pressures between the station and Cavern No. 3 and Cavern No. 8.

Petal states that the proposed facilities will provide additional gas storage capacity to Petal's storage system, in response to significant increased demand from both existing and new customers for additional firm and interruptible storage services. Petal asserts that currently, all available gas storage space in Petal's existing caverns is fully subscribed.

Petal indicates that in order to accommodate these significant new market demands, Cavern No. 8 will be constructed with a working storage capacity of up to 5.0 Billion cubic feet (Bcf) and Cavern No. 3, once converted for natural gas storage, will have a working storage capacity of up to 3.0 Bcf. Petal states that upon completion of both caverns, the average daily withdrawal capacity for the entire Petal system (4 caverns) will be 1.65 Bcf/d and the daily average injection capacity will be 0.825 Bcf/d.

Any questions regarding this amendment should be directed to Thomas G. Joyce or Veronica Hill, El Paso Corporation, Nine Greenway Plaza, Houston, Texas 77046, at (832) 676–3295, or to J. Gordon Pennington, El Paso Corporation, 555 11th Street, NW, Suite 750, Washington, DC 20004, (202) 637–3544.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 17, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16609 Filed 6–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–122–004]

PJM Interconnection, L.L.C.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's May 15, 2002 "Order Addressing Compliance Filing and Directing Further Modification," 99 FERC ¶ 61,170 (May 15 Order), supplemented its May 30, 2002 compliance filing in this docket to incorporate in the PJM West Transmission Owners Agreement (PJM West TOA) the same changes ordered by the Commission to the PJM Transmission Owners Agreement (PJM TOA). PJM states that, in compliance with the May 15 Order, it requests an effective date of May 15, 2002 for the enclosed revisions to the PJM West TOA.

Copies of this filing have been served on all persons on the service list in Docket No. EL01–122, and on all parties to the PJM West TOA.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16563 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2115–000]

PJM Interconnection, L.L.C.; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interim interconnection service agreement between PJM and Conectiv Mid-Merit, Inc. (CMM) and an executed interconnection service agreement between PJM and Conectiv Bethlehem, Inc. (CBI).

PJM requests a waiver of the Commission's 60-day notice requirement to permit an October 9, 2001 effective date for the interim interconnection service agreement with CMM and an April 25, 2002 effective date for the interconnection service agreement with CBI, as agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16573 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1460–002]

PPL Electric Utilities Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a second supplement to its April 1, 2002 filing in this docket. This supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 116designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16553 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1461–002]

PPL Electric Utilities Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a second supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 116designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16555 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2113–000]

Southern California Edison Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Southern California Edison Company (SCE) filed a second supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of SCE's Rate Schedule FERC No. 116designated in accordance with Order No. 614.

SCE states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16555 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2114–000]

Southern California Edison Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Southern California Edison Company (SCE) filed a second supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of SCE's Rate Schedule FERC No. 116designated in accordance with Order No. 614.

SCE states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16554 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–389–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

June 26, 2002.

Take notice that on June 24, 2002, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP02–389–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to abandon certain facilities in Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Williams proposes to abandon by sale to Mid-Continent Market Center, LLC (Mid-Continent) certain facilities in Kansas. Williams states that Mid-Continent will use the facilities to provide storage services. Williams states that it will continue to provide transportation service to its customers after the abandonment.

Any questions regarding this application should be directed to Kathy D. Henry, Director, Gas Certificates, Williams Gas Pipelines Central, Inc., P.O. Box 20008, Owensboro, Kentucky 42304, (270) 688–6825.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–389–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

June 26, 2002.

Take notice that on June 24, 2002, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP02–389–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to abandon certain facilities in Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Williams proposes to abandon by sale to Mid-Continent Market Center, LLC (Mid-Continent) certain facilities in Kansas. Williams states that Mid-Continent will use the facilities to provide storage services. Williams states that it will continue to provide transportation service to its customers after the abandonment.

Any questions regarding this application should be directed to Kathy D. Henry, Director, Gas Certificates, Williams Gas Pipelines Central, Inc., P.O. Box 20008, Owensboro, Kentucky 42304, (270) 688–6825.

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This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16554 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1482–002]

PPL Electric Utilities Corporation; Notice of Filing

June 25, 2002.

Take notice that on June 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a second supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 117 designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Pennsylvania Electric Company and to the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16560 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–75–000]

South Carolina Electric & Gas Company; Notice of Filing

June 21, 2002.

Take notice that on June 13, 2002, South Carolina Electric & Gas Company (SCE&G) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for authorization under section 203 of the Federal Power Act for sale of certain assets.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16555 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2113–000]

Southern California Edison Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Southern California Edison Company (SCE) tendered for filing a RMS Agreement between SCE and Cabazon Wind Partners, LLC (Cabazon). SCE respectfully requests the RMS Agreement become effective upon 30 days after a Commission order accepting the agreement for filing.

The RMS Agreement sets forth terms and conditions intended to maintain the reliable operation of the Western Interconnection through the generator's commitment to comply with certain reliability standards.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Cabazon.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16571 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2114–000]

Southern California Edison Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and the Industry Urban Development Agency (Industry). The Letter Agreement provides for engineering, design, and preparation of specifications necessary for SCE to install interconnection facilities in order to commence Distribution Service to Industry.

Copies this filing were served upon the Public Utilities Commission of the State of California and Industry.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16572 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–389–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

June 26, 2002.

Take notice that on June 24, 2002, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP02–389–000 , for permission and approval pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon certain pipeline facilities in Johnson County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Specifically, Williams proposes to abandon in place approximately 3.9 miles of 16-inch pipeline (known as Line XQ) in Johnson County. It is stated that the proposed abandonment is part of Williams' ongoing maintenance plan and is being abandoned because of its age and high maintenance costs. It is asserted that no customers will lose service as a result of the abandonment and that the customers receiving service at 4 active domestic taps along this segment of pipeline will either be relocated and connected to Williams' Line XE 26-inch parallel line or converted to service from Greeley Gas, a local distribution company. It is explained that the estimated cost associated with the proposed abandonment is $250,000.

Any questions regarding this amendment should be directed to David N. Roberts, Manager of Certificates and Tariffs, Texas Gas Transmission Corporation, P. O. Box 20008, Owensboro, Kentucky 42304, at (270) 688–6712.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 8, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed

project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Both comments and protests may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16573 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

Progress Ventures requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: July 10, 2002.

3. Southern California Edison Company

[Docket No. ER02–2122–000]

Take notice that on June 19, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and the Industry Urban Development Agency (Industry). The Letter Agreement provides for engineering, design, and preparation of specifications necessary for SCE to install interconnection facilities in order to commence Distribution Service to Industry.

Copies this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: July 10, 2002.

4. KeySpan Energy Trading Services, LLC

[Docket No. ER02–2123–000]

Take notice that on June 19, 2002, KeySpan Energy Trading Services, LLC as a customer under Glenwood's market-based rate tariff. Glenwood requests an effective date of May 24, 2002 for the service agreement.

Comment Date: July 10, 2002.

7. Entergy Services, Inc.

[Docket No. ER02–2123–000]

Take notice that on June 19, 2002, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

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project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16610 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2049–001]

Wisconsin Electric Power Company; Notice of Filing

June 21, 2002.

Take notice that on June 18, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an amended Service Agreement No. 1 under Rate Schedule FERC No. 110 which removes the "confidential" header on the originally-filed service agreement. Wisconsin Electric requests that this Service Agreement become effective May 15, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16569 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2116–000]

Xcel Energy Services, Inc.; Notice of Filing

June 21, 2002.

Take notice that on June 19, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, NSP), submitted for filing a Form of Service Agreement with Consumers Energy Company d/b/a Consumers Energy Traders (Consumers), which is in accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP FERC Electric Tariff, Original Volume No. 6).

XES requests that this agreement become effective on May 3, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 10, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16574 Filed 7–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2117–000, et al.]

Progress Energy Inc., et al.; Electric Rate and Corporate Regulation Filings

June 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Progress Energy Inc., on Behalf of Progress Ventures, Inc.

[Docket No. ER02–2117–000]

Take notice that on June 19, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, North Carolina Electric Membership Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: July 10, 2002.

2. Progress Energy Inc., on Behalf of Progress Ventures, Inc.

[Docket No. ER02–2118–000]

Take notice that on June 19, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, Cincinnati Gas & Electric Company. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: July 10, 2002.

3. Southern California Edison Company

[Docket No. ER02–2119–000]

Take notice that on June 19, 2002, Southern California Edison Company (SCE) tendered for filing a revised rate sheet to the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and Wildflower Energy LP (Wildflower). The revised rate sheet reflects an update of the cost estimates for the interconnection facilities that are utilized by Wildflower to interconnect its generating facility to SCE's electrical system.

SCE respectfully requests that the revised sheet become effective on August 18, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Wildflower.

Comment Date: July 10, 2002.

4. FPLE Rhode Island State Energy, L.P.

[Docket No. ER02–2120–000]

Take notice that on June 19, 2002, FPLE Rhode Island State Energy, L.P. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: July 10, 2002.

5. Exelon Generation Company, LLC

[Docket No. ER02–2121–000]

Take notice that on June 19, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Central Illinois Light Company, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: July 10, 2002.

6. KeySpan-Glenwood Energy Center LLC

[Docket No. ER02–2122–000]

Take notice that on June 19, 2002, KeySpan-Glenwood Energy Center LLC (Glenwood) submitted for filing for informational purposes pursuant to section 205 of the Federal Power Act an executed umbrella service agreement establishing the Long Island Lighting Company d/b/a LIPA, through its agent KeySpan Energy Trading Services, LLC as a customer under Glenwood's market-based rate tariff. Glenwood requests an effective date of May 24, 2002 for the service agreement.

Comment Date: July 10, 2002.

7. Entergy Services, Inc.

[Docket No. ER02–2123–000]

Take notice that on June 19, 2002, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between Entergy Services and the City of North Little Rock, Arkansas.

Comment Date: July 10, 2002.

8. Cross-Sound Cable Company, LLC

[Docket No. ER02–2124–000]

Take notice that on June 19, 2002, Cross-Sound Cable Company, LLC (CSC LLC) tendered for filing an executed Interconnection Agreement between CSC LLC and the Long Island Power Authority. CSC LLC requests an effective date of July 1, 2002.

Comment Date: July 10, 2002.

9. PJM Interconnection, L.L.C

[Docket No. ER02–2125–000]

Take notice that on June 19, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreements: (I) One umbrella agreement for network integration transmission service under state required retail access programs for USP&G (Pennsylvania), Ltd. (USP&G) (ii) one umbrella agreement for short-term firm point-to-point transmission service for USP&G; and (iii) one umbrella agreement for non-firm point-to-point transmission service for USP&G.

PJM requested a waiver of the Commission's notice regulations to permit the effective date of May 20, 2002 for the agreements, the date that the agreements were executed. Copies of this filing were served upon USP&G, as well as the state utility regulatory commissions within the PJM region.

Comment Date: July 10, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16559 Filed 6–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project Nos. 2525–051, et al.]

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Change in Project Boundaries.

b. *Project Nos:* 2525–051, 2546–068, 2560–047, 2522–074, and 2595–065.

c. *Date Filed:* June 17, 2002.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Caldron Falls, Sandstone Rapids, Potato Rapids, Johnson Falls, and High Falls.

f. *Location:* The projects are located on the Peshtigo River, in Marinette and Oconto Counties, Wisconsin. The Caldron Falls Project occupies 640 acres of federal lands, all of which are within the Nicolet National Forest. In addition, a total of about 10 acres of federal lands (consisting of islands in the Peshtigo River) is owned and managed by the U.S. Bureau of Land Management within the boundaries of the High Falls, Sandstone Rapids, and Potato Rapids Projects.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a), 825(r) and 799 and 801.

h. *Applicant Contact:* Greg Egtvedt, Wisconsin Public Service Corporation, P.O. Box 19002, Green Bay, WI 54307–9002, (920) 433–5713.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 219–0022, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the project number (2525–051, 2546–068, 2560–047, 2522–074, and 2595–065) on any comments or motions filed.

k. Description of Application: The licensee proposes to change the project boundaries to remove 1.5 acres of land from the Caldron Falls Project, 0.5 acres of land from the Sandstone Rapids Project, 0.5 acres of land from the Potato Rapids Project, 0.5 acres of land from the Johnson Falls Project, and 0.5 acres of land from the High Falls Project. The land is not necessary for project purposes. The licensee proposes to add 1.5 acres of land to the Caldron Falls Project, 0.5 acres of land to the Sandstone Rapids Project, 0.5 acres of land to the Potato Rapids Project, 0.5 acres of land to the Johnson Falls Project, and 0.5 acres of land to the High Falls Project. The land is necessary for project purposes.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Any person desiring to intervene or to protest this application must file with the Commission, within the time specified for the filing of comments, a motion to intervene, protest, or comments, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C 791(a), 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the project number (2525–051, 2546–068, 2560–047, 2522–074, and 2595–065) on any comments or motions filed.

k. Description of Application: The licensee proposes to change the project boundaries to remove 1.5 acres of land from the Caldron Falls Project, 0.5 acres of land from the Sandstone Rapids Project, 0.5 acres of land from the Potato Rapids Project, 0.5 acres of land from the Johnson Falls Project, and 0.5 acres of land from the High Falls Project. The land is not necessary for project purposes. The licensee proposes to add 1.5 acres of land to the Caldron Falls Project, 0.5 acres of land to the Sandstone Rapids Project, 0.5 acres of land to the Potato Rapids Project, 0.5 acres of land to the Johnson Falls Project, and 0.5 acres of land to the High Falls Project. The land is necessary for project purposes.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Any person desiring to intervene or to protest this application must file with the Commission, within the time specified for the filing of comments, a motion to intervene, protest, or comments, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16559 Filed 6–01–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project Nos. 2525–051, et al.]

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Change in Project Boundaries.

b. *Project Nos:* 2525–051, 2546–068, 2560–047, 2522–074, and 2595–065.

c. *Date Filed:* June 17, 2002.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Caldron Falls, Sandstone Rapids, Potato Rapids, Johnson Falls, and High Falls.

f. *Location:* The projects are located on the Peshtigo River, in Marinette and Oconto Counties, Wisconsin. The Caldron Falls Project occupies 640 acres of federal lands, all of which are within the Nicolet National Forest. In addition, a total of about 10 acres of federal lands (consisting of islands in the Peshtigo River) is owned and managed by the U.S. Bureau of Land Management within the boundaries of the High Falls, Sandstone Rapids, and Potato Rapids Projects.

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g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a), 825(r) and 799 and 801.

h. *Applicant Contact:* Greg Egtvedt, Wisconsin Public Service Corporation, P.O. Box 19002, Green Bay, WI 54307–9002, (920) 433–5713.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 219–0022, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 31, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Please include the project numbers (P–2525–051, 2546–068, 2560–047, 2522–074, and 2595–065) on any comments or motions filed.

k. *Description of Request:* WPSC is requesting Commission approval to amend the project licenses to change the project boundaries to remove project lands: (1) That were conveyed to the Wisconsin Department of Natural Resources (WDNR) pursuant to the Commission's December 20, 2001 Order (Phase I); (2) that will be conveyed to the WDNR in the future; and (3) that WPSC intends to use for development purposes. On those lands WPSC intends to remove from the projects for development, it will grant an easement to WDNR for 100-foot shoreline buffer strip that will remain in the projects' boundaries and open to the public for certain recreational activities.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16613 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to Amend License to remove unnecessary property from within the project boundary.

b. *Project No:* 2686–029.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Duke Power.

e. *Name of Project:* West Fork Hydroelectric Project.

f. *Location:* The project is located on the West Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C 791(a), 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (2686–029) on any comments or motions filed.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16615 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to Amend License to remove unnecessary property from within the project boundary.

b. *Project No:* 2692–030.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Duke Power.

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* The project is located on the Nantahala River, Dick Creek, and White Oak Creek in Clay and Macon Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426. Please include the project number (2692–030) on any comments or motions filed.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16616 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for License.

b. *Project No:* 2698–030.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Duke Power.

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* The project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16617 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for License and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for License.

b. *Project No:* 2698–030.

c. *Date Filed:* June 4, 2002.

d. *Applicant:* Duke Power.

e. *Name of Project:* East Fork Hydroelectric Project.

f. *Location:* The project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff G. Lineberger, Manager of Hydro Licensing, Duke Power, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006 Tel: (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 219–2663 or by e-mail at *hong.tung@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* July 29, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16619 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

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Please include the project number (2698–030) on any comments or motions filed.

k. *Description of Filing:* Duke Power proposes to remove unnecessary property from within the project boundary and clarify project boundaries containing access roads and other minor administrative changes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16617 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12180–000.

c. *Date filed:* June 4, 2002.

d. *Applicant:* Wills Creek Hydro, LLC.

e. *Name and Location of Project:* The Wills Creek Hydroelectric Project would be located on Wills Creek in Coshocton County, Ohio. The project would utilize the U.S. Army Corps of Engineers' existing Wills Creek Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Please include the project number (P–12180–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Wills Creek Dam and Reservoir, would consist of: (1) a proposed 100-foot-long, 8-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 1.5 megawatts, (3) a proposed two-mile-long, 15-kV transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 9.2 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16619 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

June 26, 2002.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12187–000.

c. *Date Filed:* June 3, 2002.

d. *Applicant:* Price Dam Partnership, Limited.

e. *Name of Project:* Price Dam Hydroelectric Project.

f. *Location:* On the Mississippi River, in the city of Alton, Wood River Township, Madison County, Illinois. The project would be constructed on the U.S. Corps of Engineers (Corps) Melvin Price Locks & Dam and the nearby Illinois shoreline of the Mississippi River and would affect 7.8 acres of federal lands (including federal Corps property between Piers 1 to 11 at the dam and a portion of the Illinois shoreline for the transmission line).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, TN 37738, (865) 436–0402, or *jimprice@atlantic.net.*

i. *FERC Contact:* Lee Emery (202) 219–2778 or *lee.emery@FERC.fed.us.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing additional study requests and requests for cooperating agency status:* July 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. *Description of Project:* The proposed Price Dam Project would use the Melvin Price Locks & Dam and reservoir, and would consist of the following facilities: (1) 192 portable, turbine/generator units grouped in six steel modules 108.9 feet long by 26.2 feet wide by 44.0 feet high, (a) each module contains 32 turbine/generator sets (two horizontal rows of 16 units each) installed in six stoplog slots on adjacent piers upstream from the nine existing Taintor gate bays in the dam, and (b) each turbine/generator unit includes a 550 kilowatt bulb-type generator, a fixed-blade propeller turbine, and a single draft tube for each two turbine/generating units; (2) six flexible power cables, each connecting the six, 32 turbine/generator sets to six 7.2 kilovolt (kV) transformer and breaker sets on an adjacent pier; (3) lifting access columns at the end of each module; (4) six air-operated spillway gates, 7 feet high by 96 feet long, installed on top of each module with each gate containing an inflatable rubber bladder; (5) a hallway housing the station service transformer, motor control center, and control system; (6) a slave terminal at the lockmaster's office and a control station located on the dam superstructure; (9) a 6.9-kV/138-kV step-up transformer located on a platform on the dam axis at elevation 479 feet National Geodetic Vertical Datum; (10) a mobile, 1,000 metric ton crane with an auxiliary crane riding on top of the module crane; these cranes would lower and raise the power modules and operate the trash rake; (11) a fish bypass on each module; (12) a trashrack assembly with a two-inch clear spacing between the bars, and a crane-operated trash rake; (13) a 500-kilowatt generator; (14) a 0.9-mile-long, 138-kV transmission line connecting the project power to the Mississippi Substation of Ameren, Incorporated; (15) an auxiliary building; and (16) appurtenant facilities.

The average annual generation is estimated to be 319,000 megawatt-hours. All generated power would be sold to a local utility connected to the grid.

n. With this notice, we are initiating consultation with the *ILLINOIS HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–335–000]

ANR Pipeline Company; Notice of Technical Conference

June 26, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2699–001, 2019–017 and 11563–002–California]

Utica Power Authority, Northern California Power Agency; Notice of Intention to Hold a Public Meeting for

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109

Dr. James Kardatzke, Eastern Region Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214

Salli Benedict, Henry Lickers, Mohawk Council of Akwesasne, P.O. Box 579, Cornwall, Ontario K6H 5T3

developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On November 21, 2001, and December 11, 2001, the Commission issued notices modifying the restricted service list for the purpose of revising the participates. The Storage project is located in Piscataquis and Somerset Counties in Maine. GNE, LLC. is the licensee.

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The average annual generation is estimated to be 319,000 megawatt-hours. All generated power would be sold to a local utility connected to the grid.

n. With this notice, we are initiating consultation with the *ILLINOIS HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

p. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later July 30, 2002, and serve a copy of the request on the applicant.

q. *Procedural schedule:* The application will be processed according to the following milestones, some of which may be combined to expedite processing.

Notice of application has been accepted for filing

Notice of NEPA Scoping (unless scoping has already occurred)

Notice of application is ready for environmental analysis

Notice of the availability of the draft NEPA document

Notice of the availability of the final NEPA document

Order issuing the Commission's decision on the application

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16620 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–335–000]

ANR Pipeline Company; Notice of Technical Conference

June 26, 2002.

In the Commission's order issued on May 31, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, July 18, 2002, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16622 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–155–000]

Gulf South Pipeline Company, L.P.; Notice of Site Visit

June 26, 2002.

On July 11, 2002, the staff of the Office of Energy Projects (OEP) will conduct a pre-certification site visit of the proposed Magnolia Gas Storage Facility and associated pipeline facilities in Assumption Parish, Louisiana. Representatives of Gulf South Pipeline Company, L.P. will accompany OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Contact the Commission's Office of External Affairs at 1–866–208–FERC if you are interested in attending the visit.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16607 Filed 6–1–02; 8:45 am]

BILLING CODE 6717–01–P

[1] *ANR Pipeline Company*, 99 FERC ¶ 61,232 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2699–001, 2019–017 and 11563–002–California]

Utica Power Authority, Northern California Power Agency; Notice of Intention to Hold a Public Meeting for Discussion of the Environmental Assessment for the Upper Utica, Utica, and Angels Projects

June 26, 2002.

On May 29, 2002, the Commission staff mailed an Environmental Assessment (EA) for the Upper Utica, Utica, and Angels Projects to resource and land management agencies, and interested organization and individuals.

The EA was noticed in the **Federal Register** on June 4, 2002 (Vol. 67, Number 107), and comments are due July 29, 2002. The EA was prepared by Commission staff, with the U.S. Forest Service as a cooperating agency. The Upper Utica, Utica, and Angels Projects are located on the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Tuolumne Counties, California, partially within the Stanislaus National Forest. The EA contains our analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A public meeting, which will be recorded by an official stenographer, is scheduled on Tuesday, July 9, from 7:30 p.m. to 9 p.m. at Bret Harte High School, 354 Murphys Grade Road, Angels Camp, California. At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments regarding the EA for the Commission's public record.

For further information, please contact Timothy Welch at (202) 219–2666, *timothy.welch@ferc.gov*, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First St. NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16618 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 26, 2002.

On April 14, 2000, the Federal Energy Regulatory Commission (Commission) issued a notice for the St. Lawrence-FDR Power Project proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On June 5, 2000, the restricted service list was modified to include the Department of the Interior (Interior). On August 2, 2001, the restricted service list was modified to: (1) Change the address for Mr. Thomas Tatham; (2) change the contact for the Saint Regis Mohawk Tribe: (3) change the contact for Interior; and (4) delete Mr. Robert Dean. The St. Lawrence-FDR Power Project is located on the St. Lawrence River, in St. Lawrence County, New York. The New York Power Authority is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes to the existing restricted service list are noted.

The contact for the Bureau of Indian Affairs has changed. Delete "Ms. Malka Pattison" and replace with "Dr. James Kardatzke".

As a result of these changes, the revised final restricted service list, for the purpose of commenting on the PA for the St. Lawrence-FDR Power Project, is as follows:

Dr. Robert Kuhn, NY Office of Parks, Recreation, and Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY 12188–0189

William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109

Dr. James Kardatzke, Eastern Region Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214

Salli Benedict, Henry Lickers, Mohawk Council of Akwesasne, P.O. Box 579, Cornwall, Ontario K6H 5T3

David Blaha, Environmental Resources Management, 2666 Riva Road, Suite 200, Annapolis, MD 21401

Brian Skidders, Mohawk Nation Council of Chiefs, Box 366, Rooseveltown, NY 13683

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, DC 20004

Thomas Tatham, New York Power Authority, 123 Main Street, White Plains, NY 10601

Judith M. Stolfo, Department of the Interior, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, MA 02458–2802

Francis Boots, THPO, Saint Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655

Maxine Cole, Akwesasne Task Force on the Environment, P.O. Box 992, Hogansburg, NY 13655

James Teitt, Environmental Resources Management, 355 East Campus View Blvd, Suite 250, Columbus, OH 43235

Kimberly Owens, Department of the Interior, 1849 C Street, NW, Washington, DC 20240

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16612 Filed 7–1–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2634–007]

GNE, LLC.; Notice of Final Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 26, 2002.

On October 1, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Storage Project (FERC No. 2634–007) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On November 21, 2001, and December 11, 2001, the Commission issued notices modifying the restricted service list for the purpose of revising the participates. The Storage project is located in Piscataquis and Somerset Counties in Maine. GNE, LLC. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes to the existing restricted service list are noted.

Delete "Brian R. Stetson, Manager of Environmental Affairs, Great Northern Paper, Inc., 1 Katahdin Ave., Millinocket, Maine 04462–1373".

Add "Jeffery M. Martin, General Manager, GNE, LLC, 1024 Central Street, Millinocket, Maine 04462".

As a result of these changes, the final restricted service list for purposes of commenting on the PA, for Project No. P–2634 is as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Earle G. Shettleworth, Jr., State Historic Preservation Officer, Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333.

Jeffery M. Martin, General Manager, GNE, LLC, 1024 Central Street, Millinocket, Maine 04462.

Gregory W. Sample, Drummond Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104–5081.

Land and Water Associates, 9 Union Street, Hallowell, Maine 04347.

M. Kirstin Rohrer, Office of the Solicitor, MS–6456, 1849 C St., NW., Washington, DC 20240.

Judith M. Stolfo, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, Massachusetts 02458–02802.

[1] 18 CFR 385.2010.

Barry Dana, Chief, Penobscot Indian Nation, River Road; Indian Island, Old Town, Maine 04468.

Franklin Keel, Bureau of Indian Affairs, Eastern Regional Office, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214.

Donald Soctomah, Passamaquoddy Tribe, P.O. Box 301, Princeton, Maine 04668.

Kevin R. Mendik, National Park Service,

at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1852.02. For technical questions about the ICR contact: Nydia Yanira Reyes-Morales, Office of Transportation and Air Quality, by phone at (202) 564–9264, or by E-Mail at *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION:

technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

standards are as accurate and complete as possible.

DATES: Comments must be submitted by August 16, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. If you wish to comment on this NODA, you must send an original and two copies of the comments referencing Docket Number RCRA–2002–0019 to:

HWC—Hazardous waste combustor
LVM—Low Volatile Metals
MACT—Maximum achievable control technology
NESHAP—National emission standards for hazardous air pollutants
NODA—Notice of data availability
PM—Particulate matter
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile Metals

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Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other

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Barry Dana, Chief, Penobscot Indian Nation, River Road; Indian Island, Old Town, Maine 04468.
Franklin Keel, Bureau of Indian Affairs, Eastern Regional Office, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214.
Donald Soctomah, Passamaquoddy Tribe, P.O. Box 301, Princeton, Maine 04668.
Kevin R. Mendik, National Park Service, Northeast Field Area, 15 State Street, Boston, Massachusetts 02109.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16614 Filed 7–1–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7240–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Exclusion Determinations for New Non-road Spark-ignited Engines at and Below 19 Kilowatts, New Non-road Compression-ignited Engines, New Marine Engines, and New On-road Heavy Duty Engines: OMB Control Number 2060–0395, expiration date 6/30/2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 1, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1852.02 and OMB Control No. 2060–0395, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1852.02. For technical questions about the ICR contact: Nydia Yanira Reyes-Morales, Office of Transportation and Air Quality, by phone at (202) 564–9264, or by E-Mail at *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Exclusion Determinations for New Non-road Spark-ignited Engines at and Below 19 Kilowatts, New Non-road Compression-ignited Engines, New Marine Engines, and New On-road Heavy Duty Engines, OMB Control Number 2060–0395, EPA ICR Number 1852.02, expiration date 6/30/2002. This is a request for extension of a currently approved collection.

Abstract: Some types of engines are excluded from compliance with current regulations. A manufacturer may make an exclusion determination by itself; however, manufacturers and importers may routinely request EPA to make such determination to ensure that their determination does not differ from EPA's. Only needed information such as engine type, horsepower rating, intended usage, etc., is requested to make an exclusion determination.

Responses to this collection are voluntary. The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality to proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/08/2002; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average seven hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Engine manufacturers, equipment manufacturers and importers.

Estimated Number of Respondents: 12.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 69 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $116.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1852.02 and OMB Control No. 2060–0395 in any correspondence.

Dated: June 24, 2002.

Oscar Morales,
Director, Collection Strategies Division.
[FR Doc. 02–16645 Filed 7–1–02; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7240–3]

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Final Replacement Standards and Phase II)—Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of data availability.

SUMMARY: This notice of data availability (NODA) presents for public comment the data bases the Environmental Protection Agency plans to use to propose National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste burning combustors (incinerators, cement kilns, lightweight aggregate kilns, industrial and commercial/institutional boilers, process heaters, and hydrochloric acid production furnaces). We are providing this opportunity for comment to ensure that the data bases used to establish the standards are as accurate and complete as possible.

DATES: Comments must be submitted by August 16, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. If you wish to comment on this NODA, you must send an original and two copies of the comments referencing Docket Number RCRA–2002–0019 to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view the data bases in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the data bases, *see* the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this NODA, contact Frank Behan at 703–308–8476, or *behan.frank@epa.gov*, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Acronyms Used in this Notice

APCD—Air pollution control device
BH—Baghouse
BIF—Boiler and industrial furnaces
CAA—Clean Air Act
CFR—Code of Federal Regulations
D/F—dioxins and furans
EPA—United States Environmental Protection Agency
ESP—Electrostatic precipitator
FR—**Federal Register**
HAP—Hazardous air pollutant
HCl—Hydrochloric acid

HWC—Hazardous waste combustor
LVM—Low Volatile Metals
MACT—Maximum achievable control technology
NESHAP—National emission standards for hazardous air pollutants
NODA—Notice of data availability
PM—Particulate matter
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile Metals

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I. General Information

A. How Can I Get Copies Of The Data Bases?

1. The Docket

EPA has established an official public docket for this action under Docket ID RCRA–2002–0019. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the address above.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public

docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

3. Obtaining the Data Bases Electronically from the HWC Web Site

The data bases can be obtained either as described above, or by downloading

for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0019. The system is an "anonymous access"

information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's

FY2001 (Pub. L. 106–554) directed OMB to issue government-wide information quality guidelines. The OMB guidelines were first issued on September 28, 2001. Pursuant to those guidelines EPA is developing its own guidelines. EPA's information quality guideline development program can be found on the World Wide Web at this URL: *http://www.epa.gov/oei/qualityguidelines*. One of the important components of EPA's draft Information Quality

institutional/commercial boilers and process heaters that do not burn hazardous waste are scheduled to be proposed in late 2002.

Finally, we are also developing MACT standards for HCl production furnaces that burn hazardous waste. These furnaces are a type of halogen acid furnace included within the definition of "industrial furnace" defined at § 260.10 and are currently regulated under 40 CFR part 266, subpart H,

minimizing the potential for conflicting or duplicative federal requirements.

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. However, the Court invited us (or any of

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docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

3. Obtaining the Data Bases Electronically from the HWC Web Site

The data bases can be obtained either as described above, or by downloading from the EPA HWC site on the Internet. If you want to download the data bases over the Internet, you can do so from our "HWC MACT" Web site: *http://www.epa.gov/hwcmact*. Please consult the web page for specific instructions on how to download the data bases. Do not, however, submit comments to this web address. Instead, follow the instructions provided below.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

1. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0019. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. E-mail

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–2002–0019. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S.EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0019. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Is the Purpose of this NODA?

This NODA affects owners and operators of hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial and institutional/commercial boilers, process heaters, and hydrochloric acid production furnaces. We are providing this NODA to request comment on data bases that we will use to develop proposed standards under Section 112(d) (*i.e.*, MACT standards) for these source categories and subcategories.

We view publication of this NODA as a critical component of our quality assurance program that we are using to ensure and maximize the quality, objectivity, utility, and integrity of information that we plan to use in our future MACT rule making. Section 515 of the Treasury and General Government Appropriations Act for FY2001 (Pub. L. 106–554) directed OMB to issue government-wide information quality guidelines. The OMB guidelines were first issued on September 28, 2001. Pursuant to those guidelines EPA is developing its own guidelines. EPA's information quality guideline development program can be found on the World Wide Web at this URL: *http://www.epa.gov/oei/qualityguidelines*. One of the important components of EPA's draft Information Quality Guidelines is to provide the public with an opportunity and vehicle for correcting any errors that might be present in data and information that the agency is using in its decision-making. This NODA provides such an opportunity.

III. Are You Affected by this Notice?

We anticipate that we will develop revised MACT standards for hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns, as defined at 40 CFR 63.1201(a), and that are currently subject to MACT standards at 40 CFR part 63, subpart EEE.

We also plan to develop MACT standards for boilers, as defined at 40 CFR 260.10, that burn hazardous waste as defined at 40 CFR part 261. This definition of boiler includes devices used in industry as process heaters. These boilers are currently subject to regulation under 40 CFR part 266, subpart H, which is commonly referred to as the Boiler and Industrial Furnace (BIF) rule.

Please note that the MACT standards for hazardous waste burning boilers and process heaters would apply to boilers that are currently exempt from certain BIF emission standards under § 266.109 (Low Risk Waste Exemption) and § 266.110 (Waiver of DRE Trial Burn for Boilers). We anticipate, however, that we will propose that boilers currently exempt from part 266, Subpart H, because they qualify for the Small Quantity On-Site Burner Exemption, would not be subject to the MACT standards that we are developing for boilers that burn hazardous waste. Instead, we anticipate proposing that those boilers would be subject to MACT standards the Agency is developing for industrial and institutional/commercial boilers, and process heaters, that do not (otherwise) burn hazardous waste. Those boilers would be subject to MACT standards for boilers and process heaters that do not burn hazardous waste because their nonhazardous waste fuels will dictate the types and concentrations of HAP emissions rather than the de minimis quantities of hazardous waste fuel that they burn. The MACT standards for industrial and institutional/commercial boilers and process heaters that do not burn hazardous waste are scheduled to be proposed in late 2002.

Finally, we are also developing MACT standards for HCl production furnaces that burn hazardous waste. These furnaces are a type of halogen acid furnace included within the definition of "industrial furnace" defined at § 260.10 and are currently regulated under 40 CFR part 266, subpart H.

We do not anticipate proposing MACT standards for hazardous waste burning sulfur recovery furnaces. These industrial furnaces are subject to the BIF rule if they burn hazardous waste other than spent sulfuric acid either for energy recovery or to recover sulfur values. We do not believe MACT standards are warranted for these sources because available emissions data indicate that emissions of hazardous air pollutants are very low. In addition, the Agency has not listed these furnaces as a category of major sources. *See* 57 FR 31576, July 16, 1992. Sulfur recovery furnaces burning hazardous waste other than spent sulfuric acid would remain subject to the BIF rule.

IV. What Led Up to This NODA?

Congress amended the Clean Air Act (CAA) in 1990 to require that hazardous air pollutants be controlled by technology-based standards—standards based on the technical capabilities of control strategies for the emitting industry in question, with further controls required later if significant risk remains after imposition of the technology-based standards. These standards would apply to the HWCs discussed in this notice.

On September 30, 1999, we promulgated standards (referred to as the "Phase I" rule, 64 FR 52828) to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. These emission standards created a technology-based national cap for hazardous air pollutant emissions, assuring that combustion of hazardous waste in these devices is properly controlled. Additionally, the rule satisfied our obligation under the Resource Conservation and Recovery Act (RCRA) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a coordinated fashion, we consolidated regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. However, the Court invited us (or any of the parties to the proceeding) to file a motion to delay issuance of its mandate to request either that the current Phase I standards remain in place or that we be allowed reasonable time to develop interim standards.

On October 19, 2001, after several months of negotiation, we, together with all other petitioners that challenged the hazardous waste combustor emission standards, filed a joint motion asking the Court to stay the issuance of its mandate for four months to allow us time to develop interim standards, and the Court granted this request. In the joint motion, we agreed to take several actions. First, we agreed to issue a one-year extension to the compliance date of September 30, 2002; on December 6, 2001 we published a final rule to extend for one year the compliance date for Phase I sources (66 FR 63313). Second, we committed to (1) publish an interim rule with revised emission standards; and, (2) finalize several compliance and implementation amendments to the rule. These interim standards and compliance and implementation amendments were promulgated on February 13 and 14, 2002 (67 FR 6792 and 67 FR 6968). The interim standards replace the vacated standards temporarily, until we finalize replacement standards that comply with the Court's mandate. Finally, we agreed to issue these final replacement standards that fully comply with the Court's opinion by June 14, 2005.

Also, in this rulemaking, we are developing MACT standards for hazardous waste burning industrial and institutional/commercial boilers, process heaters, and hydrochloric acid production furnaces producing acid from hazardous wastes. These sources are referred to as Phase II sources because the MACT standards for these sources were originally scheduled to be promulgated after the Phase I source MACT standards were finalized.

V. What Data Are Included in This Notice?

We are requesting comment on six separate data bases that compile information on the following source categories or subcategories: incinerators,

cement kilns, lightweight aggregate kilns, coal-fired boilers, liquid-fuel boilers, and hydrochloric acid production furnaces. Each data base summarizes emissions data and ancillary information on HWCs source category or subcategory that we extracted from available test reports. Many of the source test reports were prepared as part of the compliance process for the current RCRA standards. The data bases were also used during the development of the Phase I MACT standards. We made the data bases available during the comment period of the proposed rule. The revised Phase I data base was subsequently published in the **Federal Register** for public comment (62 FR 960, January 7, 1997). The data base was again revised based on these comments. We used this data base to develop the Phase I MACT standards promulgated on September 30, 1999 (64 FR 52828).

Following vacature of the challenged Phase I standards and promulgation of

data for your facility, even if you reviewed the Phase II data base when it was originally noticed.[1] Section VII of today's notice describes the new data comment fields for the Phase II sources. The data bases for the Phase II sources comprise compliance test results for 114 industrial boilers, 11 process heaters, and 16 HC1 production furnaces.[2]

VI. What Data Handling Decisions Did We Make and What Are the Data Gaps?

some of the boiler descriptions are incomplete. A report might simply say the source is a boiler, but not whether it is a watertube or firetube boiler. In other cases, we were unable to determine what emission control equipment, if any, is installed on the source. Because we may use these data to classify and group the data when identifying MACT standards, we encourage owners and operators to provide any such missing source information. We will use this information to update the data bases.

Another situation that may impact the classification of the metals data is the use of surrogates. For example, a source may have spiked lead, but not cadmium, during the test with the intent to use the system removal efficiency of lead to calculate a feedrate limit for cadmium. In this case, our data bases may not identify cadmium as being present. We encourage owners and operators to identify and provide information on test results in the data bases that have been extrapolated and interpolated

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cement kilns, lightweight aggregate kilns, coal-fired boilers, liquid-fuel boilers, and hydrochloric acid production furnaces. Each data base summarizes emissions data and ancillary information on HWCs source category or subcategory that we extracted from available test reports. Many of the source test reports were prepared as part of the compliance process for the current RCRA standards. Ancillary information in the data bases includes general facility information, air pollution control device operating information, composition and feedrate data for the hazardous waste, fossil fuels, and raw materials, combustion gas condition, and stack-related information.

This NODA is an invitation to comment on the data bases that we will use to develop MACT standards for HWCs. As discussed below, some of the data bases have been noticed, in part, for comment previously, and some have been updated since they were last publicly available. We encourage owners and operators of HWCs to review our data bases to ensure that they are as accurate and complete as possible, and to provide corrections and additions in the form of comments to this notice. If you find errors, please submit the pages from the test report that document the missing or incorrect results and the cover page of the test report as reference. We encourage comment only on the accuracy and completeness of the data bases at this time. We do not seek nor will we use or respond to comments on how to use the data bases to identify MACT standards. Rather, we will publish and seek comment on a MACT standard-setting approach and all other aspects of the NESHAP rulemaking in a future notice of proposed rulemaking.

We gathered the emissions data and ancillary information for the data bases from test reports submitted by these sources to EPA Regional Offices or State agencies. The test reports may include certifications of compliance reports, trial burn reports, annual performance test reports, mini-burns, and risk burn reports. Below we summarize our efforts to collect the test results that comprise the data bases.

We first compiled a data base for hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns (*i.e.*, the Phase I data base) to support the April 1996 proposed Maximum Achievable Control Technology (MACT) standards for those source categories (61 FR 17358, April 19, 1996). We received additional test reports and comments on errors in the data base during the public comment period of the proposed rule. The revised Phase I data base was subsequently published in the **Federal Register** for public comment (62 FR 960, January 7, 1997). The data base was again revised based on these comments. We used this data base to develop the Phase I MACT standards promulgated on September 30, 1999 (64 FR 52828).

Following vacature of the challenged Phase I standards and promulgation of the interim MACT standards in February 2002, we initiated an effort with EPA Regional Offices and State agencies to update the data base. We focused on collecting compliance testing documents from Phase I sources for which we had no information, obtaining results from more recent testing conducted since 1997, and updating the universe of operating hazardous waste combustors. In total, we obtained an additional 110 test reports during our 2002 data collection effort.

The current data bases for the Phase I source categories included in today's NODA contain test results for over 100 incinerators, 25 cement kilns, and 9 lightweight aggregate kilns. In many cases, especially for cement and lightweight aggregate kilns, the data bases contain test reports from multiple testing campaigns. For example, our data bases contain test results for a cement kiln source for the years 1992, 1995, and 1998.

The data base for Phase II combustors—industrial boilers, commercial/institutional boilers, process heaters, and HCl production furnaces—was compiled in 1999. In developing that data base, we collected the most recent test report available for each source that included test results under compliance test operating conditions. However, this most recent test report may have also included data used for other purposes (*e.g.*, risk burn), which we also included in the data base. In nearly all instances, the dates of the test reports collected were either 1998 or 1999. In June 2000 we published in the **Federal Register** the Phase II data base for comment (65 FR 39581, June 27, 2000).

We have not collected additional emissions data for Phase II sources. We have, however, updated the Phase II data base to address comments we received to the June 27, 2000 NODA. We also revised the universe of sources by removing those sources that are no longer burning hazardous waste. In addition, we updated some of the comment fields. Therefore, if your facility has a HWC originally included in the Phase II rulemaking, it is important that you review the current data for your facility, even if you reviewed the Phase II data base when it was originally noticed.[1] Section VII of today's notice describes the new data comment fields for the Phase II sources. The data bases for the Phase II sources comprise compliance test results for 114 industrial boilers, 11 process heaters, and 16 HC1 production furnaces.[2]

VI. What Data Handling Decisions Did We Make and What Are the Data Gaps?

In this section, we describe the data handling protocol used during development of the data bases. We also identify additional information that we would like to have and encourage owners and operators to submit such information as available.

A. Data from Sources No Longer Burning Hazardous Waste Are Excluded

The data bases do not include information from sources no longer burning hazardous waste. If we learned that a source had stopped burning hazardous waste and is undergoing, or has indicated to regulatory officials its plan to begin, RCRA closure procedures, then we did not obtain a copy of that source's test report. Although such data may or may not indicate the capabilities of control equipment in general, we conclude that the data from currently operating combustors are adequate to develop standards under Section 112(d).

We identified several sources that are no longer burning hazardous waste and removed their emissions data and related information from the data bases. We encourage owners and operators of hazardous waste combustors to review our list of operating combustors to ensure it is accurate.

B. How Are Nondetect Data Handled?

We assume that analytes in feedstreams or emissions reported as not detected are present at one-half the detection limit. This is consistent with how we handled nondetect measurements in the September 1999 MACT rule for Phase I sources (66 FR at 52844) and in the data base associated with the June 2000 NODA for Phase II sources. All measurements reported as not detected are identified as such in the data bases.

C. Missing Source Description Information

Some test reports omitted source description information. For example, some of the boiler descriptions are incomplete. A report might simply say the source is a boiler, but not whether it is a watertube or firetube boiler. In other cases, we were unable to determine what emission control equipment, if any, is installed on the source. Because we may use these data to classify and group the data when identifying MACT standards, we encourage owners and operators to provide any such missing source description information as a comment to this notice.

D. Use of Metals Extrapolation, Interpolation and Surrogates

In some cases, extrapolation or interpolation of metals test data may have been used to develop operating limits (*e.g.*, metals feed rate limits). Extrapolation means setting limits outside the bounds (above or below) of test results, and interpolation means setting operating limits between the bounds of the test results. As we discuss in Section VII below, we need to know whether the emissions data and feedrates represent a snapshot of normal emissions or whether they represent the highest emissions the source has determined it would emit under a mode of operation. Given that subsequent extrapolation and interpolation of the metals data in the test reports may change the classification of the metals data in the data bases, we encourage owners and operators to identify and provide information on test results in the data bases that have been extrapolated and interpolated.

Another situation that may impact the classification of the metals data is the use of surrogates. For example, a source may have spiked lead, but not cadmium, during the test with the intent to use the system removal efficiency of lead to calculate a feedrate limit for cadmium. In this case, our data bases may not classify properly the feedrate of cadmium. We encourage owners and operators to identify and provide information on test results where metal surrogates were used.

VII. What Are the New Data Comment Fields?

We have added several data comment fields to the data bases since they were published for public comment. Because we may use these data comment fields to classify and group the data when establishing the MACT standards, we encourage owners or operators to review these data comment fields to determine if our designations are accurate.

The new data comment fields that are particularly important pertain to: (1) Classification of the design or operation of the source to enable us to consider establishing MACT standards for subcategories of a source category; (2) classification of emissions data as to whether the data represent the highest emissions a source could be expected to achieve or normal emissions; and (3) characterization of sootblowing operations during emissions testing for boilers.[3]

A. What Information Do We Need to Consider Subcategorization Options?

It may be appropriate to establish different MACT standards for subcategories of a source category if the types or concentration of uncontrolled emissions of hazardous air pollutants are significantly different for a subset of that category because of the design or operation of the sources. An example is our determination that incinerators with wet emission control devices and equipped with waste heat recovery boilers can have much higher D/F emissions than incinerators with wet emission control devices but without heat recovery boilers.[4]

We have evaluated each of the source categories—hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, boilers, and HCl production furnaces—and identified information that we may need to classify each source to consider subcategorization. In the table below, we list the classifications and describe the terms for purposes of this rulemaking effort. We encourage owners and operators to review the classifications for their sources in the data bases to ensure they are accurate.

TABLE 1.—CLASSIFICATION OF SOURCES TO CONSIDER SUBCATEGORIES

Source category/classification	Description
Incinerators:	
Waste heat boiler	Equipped with a waste heat recovery boiler.
Liquid injection incinerator	Feeds only pumpable feedstreams that are atomized into the combustion chamber through the burner nozzles.
Mixed waste incinerator	Feeds low level radioactive waste.
Dry APCD	Equipped with a dry emissions control device (e.g., ESP or BH) as the initial control device.
Cement kilns:	
Short kiln	Equipped with a precalciner, in-line raw mill, and by-pass duct.
Boilers:	
Pulverized coal-fired	Burns pulverized coal in suspension.
Stoker coal-fired	Burns lump coal on a grate.
Liquid fuel boiler	Burns liquid (i.e., pumpable and atomized) or liquid and gaseous fuels only.
HCl production furnaces:	
Waste heat boiler	Equipped with a waste heat recovery boiler.

B. How Will We Distinguish Between Worst-Case and Normal Emissions?[5]

The data bases comprise emissions data from tests conducted for various

[1] See "Hazardous Waste Combustor Data Base Report for Phase I and II Sources," June, 2002, for our response to comments received on the June 27, 2002 NODA.

[2] We are not aware of any commercial/institutional boilers that burn hazardous waste.

[3] Unless specified otherwise, the term "boiler" means industrial and commercial/institutional boilers, and process heaters.

[4] See USEPA "Final Technical Support Document for HWC MACT Standards, vol. III: Selection of MACT Standards and Technologies," July, 1999, p. 3–3.

[5] Please note that we did not conduct a worst-case versus normal analysis for DRE or CO/HC data. Under current RCRA regulations, all sources are required to operate under good combustion conditions by complying with emission limits on CO/HC. All sources are also required to comply with operating limits that ensure compliance with a 99.99% DRE requirement. We do not believe that emissions of organic HAPs will be lowered

Continued

purposes, including compliance testing (*i.e.*, RCRA trial burns or Certification of Compliance tests), risk burns (*i.e.*, emissions testing to generate emissions data to perform site-specific risk assessments), annual performance testing, and research testing. Therefore, some emissions data represent the highest emissions the source is allowed to emit (*i.e.*, worst-case emissions), some data represent normal operating conditions by complying with emission limits on CO/HC. All sources are also required to comply with operating limits that ensure compliance with a 99.99% DRE requirement. We do not believe that emissions of organic HAPs will be lowered covered by variation in the feedrate of metals or chlorine, for example.

The data bases also include normal emissions data. Sources will sometimes measure emissions of a pollutant during a compliance test even though the test is not designed to establish operating limits for that pollutant (*i.e.*, it is not a compliance test for the pollutant). An example is a trial burn where a lightweight aggregate kiln measures as representing worst-case emissions for those pollutants, while other pollutants measured during that test condition may be classified as representing normal emissions.

1. How Do We Define Worst-Case Data?

a. *Boilers and HCl Production Furnaces.* As discussed above, the data bases for boilers and HCl production furnaces are comprised of all test

under the BIF rule for that metal, we nonetheless classified the test condition as worst-case for that metal (if there were no other test conditions with higher emissions). We reasoned that the source was operating under worst-case conditions during the test, but elected to comply with the Tier I feedrate limits because they were less stringent (*i.e.*, higher) than the feedrate levels during the compliance test. As another example, for a few boilers, emissions

approximately 500°F. At that temperature, D/F emissions could be expected to be significant if surface-catalyzed formation reactions are the dominant factor affecting emissions. But, D/F emissions from those two boilers were essentially zero—0.00 and 0.04 ng TEQ/dscm. We conclude that there are other, unquantifiable factors that affect D/F emissions from coal-fired boilers. Sulfur is known to inhibit D/F formation, and we suspect that the

campaign as well as older test campaigns. We use the same definition of worst-case test condition as we use for boilers and HCl production furnaces, as we describe below, except that we apply the definition to the test conditions within each test campaign. For example, assume we have data for a source from three test campaigns run over a period of 10 years. We looked at each test campaign individually and identified the worst-case test condition

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purposes, including compliance testing (*i.e.*, RCRA trial burns or Certification of Compliance tests), risk burns (*i.e.*, emissions testing to generate emissions data to perform site-specific risk assessments), annual performance testing, and research testing. Therefore, some emissions data represent the highest emissions the source is allowed to emit (*i.e.*, worst-case emissions), some data represent normal operating conditions and emissions, and some data represent operating conditions that are neither normal nor worst case, *i.e.*, they represent operating conditions (and emissions) that are in between normal and worst case. We may choose to consider whether the emissions data are "worst-case" or "normal" to consider emissions variability appropriately in establishing achievable MACT floor[6] emission levels. The methodology that we use to establish the MACT floor emission levels may well be influenced by the nature of the emissions data that are used. For example, we may choose to estimate or account for variability in different ways depending on whether the data set we use contains worst-case emission data, data within the range of normal emissions, or a mix of normal and worst case emissions.

Hazardous waste combustors generally emit worst-case emissions during RCRA compliance testing while demonstrating compliance with emission standards. For real-time compliance assurance, sources are required to establish limits on particular operating parameters where the limits are derived from operations during compliance testing. Thus, the emission levels achieved during these compliance tests are the highest emission levels a source is allowed to emit. To ensure that these operating limits do not impede normal operations, sources generally take measures to operate during compliance testing under conditions that are worse than the range of normal operations. For example, sources often feed ash, metals, and chlorine at higher than normal levels (*e.g.*, by spiking the waste feed) to maximize the feedrate, and they often detune the APCDs to minimize collection efficiency. By designing the compliance test to generate emissions higher than the normal range of emissions, sources can establish operating limits that will not impede normal operations while accounting for emissions variability covered by variation in the feedrate of metals or chlorine, for example.

The data bases also include normal emissions data. Sources will sometimes measure emissions of a pollutant during a compliance test even though the test is not designed to establish operating limits for that pollutant (*i.e.*, it is not a compliance test for the pollutant). An example is a trial burn where a lightweight aggregate kiln measures emissions of all RCRA metals, but uses the Tier I metals feedrate limit (rather than the Tier III emissions limit) to comply with the Hg emission standard. Other examples of emissions data that are within the range of normal emissions are annual performance tests that some sources are required to conduct under State regulations, or risk burns. Both of these types of tests are generally performed under normal operating conditions.

Other emissions tests may generate emissions in-between normal and worst-case. An example is a compliance test designed to demonstrate compliance with the particulate matter standard where: (1) The APCD is detuned to achieve worst-case emissions; and (2) the source measures Pb and Cd emissions even though it elects to comply with feedrate limits for those metals and, thus, does not spike those metals. We would conclude that Pb and Cd emissions are in between normal and worst-case emissions because, although emissions of the metals are likely to be higher than normal because the APCD is detuned, emissions are not likely to be worst-case because the source did not use the test to demonstrate compliance with emission standards for the metals (and so did not spike the metals).

To identify normal and worst-case emissions data, we classify emissions data for each pollutant (*i.e.*, D/F, Hg, PM, SVM, LVM, and HCl/Cl2) for each test condition as worst-case (WC);[7] normal (N); in between (IB); unknown (U); or not applicable (NA).[8] We encourage owners and operators to review our classification of their data to ensure that we have applied the terms, as we define them, appropriately, to the information provided for each test condition in the various data fields (*e.g.*, APCD; Spiking; Comments; Condition Description, BIF Tier). Please note that these classifications apply on a pollutant-by-pollutant basis. For example, some pollutants measured during a test condition may be classified as representing worst-case emissions for those pollutants, while other pollutants measured during that test condition may be classified as representing normal emissions.

1. How Do We Define Worst-Case Data?

a. *Boilers and HCl Production Furnaces.* As discussed above, the data bases for boilers and HCl production furnaces are comprised of all test conditions run during the most recent compliance test campaign for which data are available.[9] For the metals, total chlorine, and particulate matter standards, we define the worst-case test condition for a pollutant as the test condition with the highest emissions of that pollutant meeting any of these criteria: (1) A test condition where the feedrate of the pollutant (*i.e.*, metal, chlorine, or ash) is maximized by spiking or other means (*e.g.*, feeding waste with atypically high concentrations of the pollutant); or (2) a test condition that is used to demonstrate compliance under Tier III of the BIF rule for the pollutant; or (3) a test condition with higher emissions of the pollutant under operating conditions that would not have been classified as worst case as discussed above.[10] Test conditions meeting the third criterion are classified WC HE (*i.e.*, worst-case, highest emissions) to clarify that the test condition is worst-case because it has the highest emissions for the test campaign even though its operating conditions would not have suggested that emissions would be worst-case.

It may be helpful to present some examples of how the worst-case definition works. If a metal were spiked during a compliance test, but the source complied with the Tier I feedrate limits

significantly by operating at lower CO/HC levels or higher DRE levels.

[6] The term "floor" refer to the minimum emission standard required pursuant to section 112 of the CAA.

[7] The worst-case (WC) classification is further qualified for some test conditions as "worst-case, highest emissions" (WC HE), as discussed in the text.

[8] NA means the Normal Vs Wors-Case classification is not applicable.

[9] Although we intended to collect test reports from the most recent compliance test campaign, we conclude that for some sources the most recent test reports are for other than compliance tests. For example, for some sources, we apparently have emissions data only for a risk burn representing normal emissions, rather than worst-case emissions under a compliance test.

[10] For PM, the definition of worst-case is more inclusive. If the test report for one or more test conditions in a test campaign indicates that the test is a trial burn or certification of compliance test, we assume that one test condition represents worse-case PM emissions (unless the test report explicitly states otherwise) even if the test report(s) does not explicitly indicate that ask was spiked during the test. This interpretation is appropriate because a source must document compliance with the PM standard by emissions testing. Sources do not have the option of complying with an ash feedrate option (such as the Tier 1 feedrate limits for metals and chlorine) in lie of emissions testing. Consequently, we presume the PM emissions were maximized during one of the compliance tests (*e.g.*, by detuning the APCD; feeding high ash content wastes) event though ask spiking may not be specified.

under the BIF rule for that metal, we nonetheless classified the test condition as worst-case for that metal (if there were no other test conditions with higher emissions). We reasoned that the source was operating under worst-case conditions during the test, but elected to comply with the Tier I feedrate limits because they were less stringent (*i.e.*, higher) than the feedrate levels during the compliance test. As another example, for a few boilers, emissions could be higher during a risk burn (conducted under conditions that appear to represent other than worst case conditions for that pollutant) than a compliance test. In these cases, we assumed the boiler was operating within its operating limits and classified the test condition as worst-case, highest emissions (WC HE) for that pollutant. This approach ensures that we use available emissions data representing the range of performance of the source to identify the MACT floor.

For dioxin/furan emissions, the worst-case classification is related primarily to whether the source uses a wet or no APCD versus a dry APCD. For liquid fuel boilers [11] equipped with an electrostatic precipitator (ESP) or baghouse (BH), we define the worst-case test condition as: (1) The test condition where the inlet temperature to the ESP or BH is maximized (*e.g.*, during a worst-case metals emissions test); or (2) a test condition with higher emissions of the pollutant under operating conditions that would not meet the criteria under (1) above. The test condition where gas temperatures are maximized at the inlet to the ESP or BH should represent worst-case D/F emissions because D/F emissions for sources operated under good combustion conditions (*e.g.*, the BIF requirement to operate at carbon monoxide levels below 100 ppmv) are primarily a function of the temperature of the dry particulate matter control device. D/F formation increases exponentially as the gas inlet temperature increases.[12]

We considered this approach for coal-fired boilers,[13] but determined that factors other than gas temperature at the inlet to the ESP or BH appear to have the dominant effect on D/F emissions. For example, we have D/F emissions data for two coal-fired boilers, both of which operated the ESP at approximately 500°F. At that temperature, D/F emissions could be expected to be significant if surface-catalyzed formation reactions are the dominant factor affecting emissions. But, D/F emissions from those two boilers were essentially zero—0.00 and 0.04 ng TEQ/dscm. We conclude that there are other, unquantifiable factors that affect D/F emissions from coal-fired boilers. Sulfur is known to inhibit D/F formation, and we suspect that the sulfur in the coal is a major factor affecting D/F emissions.

Given that we cannot objectively identify a worst-case test condition for D/F emissions from coal-fired boilers, we conclude that the worst-case vs normal classification is not applicable and classify the D/F emissions data as NA. For purposes of assessing variability of emissions in identifying a MACT floor level, however, we would consider the data to be snapshots of normal emissions.

We had similar issues when classifying D/F emissions from liquid fuel boilers with wet or no APCDs, and HCl production furnaces, all of which have wet emission control systems. For sources with wet APCDs,[14] D/F formation in the emission control device is inhibited because the gas is cooled and because particulate matter is continuously flushed from the control device rather than being held on a surface (*e.g.*, of an ESP plate or BH bag) where particle surface reactions can form D/F. Because we cannot objectively define worst-case conditions for D/F formation for liquid fuel boilers with wet or no APCDs, we conclude that the worst-case vs normal classification is not applicable (as designated by NA). As with the coal-fired boiler D/F data, however, we would consider the data to be snapshots of normal emissions for purposes of assessing variability of emissions in identifying a MACT floor level.

b. *Incinerators, Cement Kilns, and Lightweight Aggregate Kilns.* As discussed above, the data bases for incinerators, cement kilns, and lightweight aggregate kilns are comprised of all available test conditions. The data bases include test conditions from the most recent test campaign as well as older test campaigns. We use the same definition of worst-case test condition as we use for boilers and HCl production furnaces, as we describe below, except that we apply the definition to the test conditions within each test campaign. For example, assume we have data for a source from three test campaigns run over a period of 10 years. We looked at each test campaign individually and identified the worst-case test condition for each pollutant, if any,[15] for each test campaign.

For the metals, total chlorine, and particulate matter standards, we define the worst-case test condition for a pollutant as the test condition with the highest emissions of that pollutant meeting any of these criteria: (1) A test condition where the feedrate of the pollutant (*i.e.*, metal, chlorine, or ash) is maximized by spiking or other means (*e.g.*, feeding waste with atypically high concentrations of the pollutant) or where the emission control device is detuned; or (2) a test condition that a cement or lightweight aggregate kiln used to demonstrate compliance under Tier III of the BIF rule for the pollutant, or that an incinerator used to comply with Tier III of the risk assessment guidance; [16] or (3) a test condition with higher emissions of the pollutant under any operating conditions, provided that another test condition during the test campaign would have met the worst-case definition under (1) or (2) above.[17] As discussed for boilers and HCl production furnaces, test conditions meeting the third criterion are classified WC–HE (*i.e.*, worst-case, highest emissions) to clarify that the test condition is worst-case because it has the highest emissions for the test campaign even though its operating conditions would not have suggested that emissions would be worst-case.

For the D/F standards, we use the same classifications that we used for liquid fuel boilers. For incinerators with wet control systems, a worst-case versus normal classification of D/F emissions is not applicable. For incinerators and kilns equipped with an ESP or BH, we define the worst-case test condition as: (1) The test condition where the inlet temperature to the ESP or BH is maximized (*e.g.*, during a worst-case

[11] That is, boilers that burn liquid or liquid and gaseous fuels only.

[12] See USEPA, "Final Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards and Technologies," July 1999, Chapter 3.

[13] Coal-fired boilers are boilers that burn hazardous waste as a supplemented fuel with coal.

[14] An emission control system comprised of an initial wet control device followed by an ESP or BH would qualify as a wet system. The initial wet device would quench the gas temperature to minimize D/F formation. Conversely, an emission control system comprised of an initial dry control device followed by a wet device (*e.g.*, for HCl control) would not be classified as a wet APCD for purposes of this subcategorization. D/F may be formed in the dry control device before the temperature of the gas is quenched in the wet device below the optimum range for D/F formation.

[15] If a test campaign were comprised of two risk burn test conditions, neither of the test conditions may meet the definition of worst-case.

[16] USEPA, "Guidance on Metals and Hydrogen Chloride Controls for Hazardous Waste Incinerators," December 29, 1988 (Volume IV of the Hazardous Waste Incineration Guidance Series).

[17] This proviso simply precludes classifying as worst-case the highest normal test condition in a test campaign comprised of only ormal test conditions.

metals emissions test); or (2) a test condition with higher emissions of the pollutant under operating conditions that would not meet the criteria under (1) above.

2. How Do We Define the Normal, In Between, Unknown, and Not Applicable Classifications? [18]

We classify emissions data as normal for a pollutant if the available

standard for hazardous waste combustors;

(4) Tests where not all metals in the SVM or LVM group were measured, because SVM and LVM emissions cannot be classified as worst-case or normal if emissions data are not available from the test for both lead and cadmium for SVM, and for arsenic, beryllium, and chromium for LVM; [19] and

(5) Tests where a PM run exceeding

normal operations; or (3) "U" (*i.e.*, unknown), indicating that we do not know whether the boiler blows soot during normal operations or whether the boiler blew soot during testing, and, if so, during which run. For test conditions classified "U", we encourage owners and operators to clarify whether the boiler blows soot during normal operations, and whether the boiler blew soot during the test condition (and, if so, during which run).

State	Permit No.	Area covered by the general permit
	COG652000	Federal Facilities in the State of Colorado, except those located in Indian country, which are covered under permit COG51000.
Montana	MTG650000	State of Montana except for Indian country.
	MTG651000	Indian country within the State of Montana.
North Dakota	NDG650000	State of North Dakota except for Indian country.
	NDG651000	Indian country within the State of North Dakota (except for Indian country located within the former boundaries of the Lake Traverse Indian Reservation, which are covered under permit SDG651000) and that portion of the Standing Rock Indian Reservation located within the State of South Dakota.
South Dakota	SDG651000	Indian country within the State of South Dakota (except for the Standing Rock Indian Reservation, which is covered under permit NDG651000, that portion of the Pine Ridge Indian Reservation lo-

metals emissions test); or (2) a test condition with higher emissions of the pollutant under operating conditions that would not meet the criteria under (1) above.

2. How Do We Define the Normal, In Between, Unknown, and Not Applicable Classifications? [18]

We classify emissions data as normal for a pollutant if the available information indicates that the test was run under operating conditions that would reflect normal operations. For example, we classify risk burns (*i.e.*, emissions testing to generate emissions data to perform site-specific risk assessments) as normal for all pollutants when available information indicates the operating conditions were normal.

We classified a test condition as "in between" (IB) for a pollutant if the test condition was a compliance test (*i.e.*, trial burn or certification of compliance test) for the pollutant but there was another test condition (*i.e.*, WC or WC HE) with higher emissions.

We classified a test condition as "unknown" (U) if available information was incomplete to classify the test condition. For each "unknown" classification, we indicate the information we need to classify the test condition. We encourage owners and operators to provide the information and supporting documentation.

We discuss above how we applied the "not applicable" (NA) classification to D/F data for sources equipped with a wet or no APCD and D/F data for coal-fired boilers. We also applied the NA classification to the following situations:

(1) Tests conducted prior to modifications to the APCD, because emissions data prior to an APCS retrofit may not be representative of current operations;

(2) Miniburns, research tests, demonstration tests, because these types of tests are generally used to determine emissions under modes of operation that may not be representative of normal or worst-case operations;

(3) Baseline tests, because emissions when not burning hazardous waste are not relevant to establishing a MACT standard for hazardous waste combustors;

(4) Tests where not all metals in the SVM or LVM group were measured, because SVM and LVM emissions cannot be classified as worst-case or normal if emissions data are not available from the test for both lead and cadmium for SVM, and for arsenic, beryllium, and chromium for LVM; [19] and

(5) Tests where a PM run exceeding the RCRA emission standard, because, if a PM run failed the 0.08 gr/dscf RCRA standard, the test failed to demonstrate compliance with the RCRA standards and the test could not be used to establish operating limits.

C. What Classifications Do We Use to Address Sootblowing by Boilers?

Some boilers blow soot periodically to clean the steam tubes to improve the energy efficiency of the boiler. During sootblowing, emissions of PM and metals can increase substantially. To account for the impact of sootblowing on average emissions during RCRA compliance testing, we advised owners and operators to blow soot during one of the three test runs whereby the potential buildup of metals and PM would reflect the buildup over a normal operating cycle.[20] We also provided a formula for calculating average emissions accounting for the frequency and duration of sootblowing operations.

Some boilers did not blow soot during testing, some were silent on whether they blew soot, some blew soot and used the averaging formula, and some blew soot and calculated average emissions as the arithmetic average of the three test runs. So that we can understand how each source handled sootblowing and determine how best to account for sootblowing in developing the MACT standards, we encourage owners and operators to review the sootblowing classification we assign to their source to determine if it is accurate. We have added a sootblowing status data field to the data base that indicates: (1) The sootblowing run (*i.e.*, R1, R2, or R3); or (2) "No", indicating the boiler does not blow soot during normal operations; or (3) "U" (*i.e.*, unknown), indicating that we do not know whether the boiler blows soot during normal operations or whether the boiler blew soot during testing, and, if so, during which run. For test conditions classified "U", we encourage owners and operators to clarify whether the boiler blows soot during normal operations, and whether the boiler blew soot during the test condition (and, if so, during which run).

Dated: June 20, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–16643 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

[18] Please note,a s discussed above, the Normal and In Between classifications can be trumped by the "worst-case highest emissions: (WC HE) classification, if in fact, emissions during these test conditions are higher than emissions during a test condition that would otherwise be classified as worst-case.

[19] Plase note that, for some source categories where there are substantial emissions data for only lead or only chromium during a test condition, we classified the lead-only or chromium-only data by worse-case vs normal. In addition, we did not apply the NA classification to LVM emissions data if only beryllium emissions data were missing. This is because beryllium emissions are virtually always substantially lower than either arsenic or chromium emissions, and thus, do not contribute substantially to LVM emissions.

[20] See USEP, "Technical Implementation Document for EPA's Boiler and Industrial Furnance Regulations," March 1992, p. 5–14.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7238–7]

Public Notice of Final NPDES General Permits for Facilities/Operations That Generate, Treat, and/or Use/Dispose of Sewage Sludge by Means of Land Application, Landfill, and Surface Disposal in EPA Region VIII

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of NPDES general permits.

SUMMARY: Region VIII of EPA is hereby giving notice of its issuance of the National Pollutant Discharge Elimination System (NPDES) general permits for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal in the States of CO, MT, ND, and WY and in Indian country, as defined at 18 U.S.C. 1151, in the States of CO, MT, ND, SD, WY and UT (except for the Goshute Indian Reservation and the Navajo Indian Reservation). The effective date of the general permits is August 16, 2002.

The NPDES permit numbers and the areas covered by each general permit are listed below.

State	Permit No.	Area covered by the general permit
Colorado	COG650000	State of Colorado except for Federal Facilities and Indian country
	COG651000	Indian country within the State of Colorado and the portions of the Ute Mountain Indian Reservation located within the States of New Mexico and Utah.

State	Permit No.	Area covered by the general permit
	COG652000	Federal Facilities in the State of Colorado, except those located in Indian country, which are covered under permit COG51000.
Montana	MTG650000	State of Montana except for Indian country.
	MTG651000	Indian country within the State of Montana.
North Dakota	NDG650000	State of North Dakota except for Indian country.
	NDG651000	Indian country within the State of North Dakota (except for Indian country located within the former boundaries of the Lake Traverse Indian Reservation, which are covered under permit SDG651000) and that portion of the Standing Rock Indian Reservation located within the State of South Dakota.
South Dakota	SDG651000	Indian country within the State of South Dakota (except for the Standing Rock Indian Reservation, which is covered under permit NDG651000, that portion of the Pine Ridge Indian Reservation located within the State of Nebraska, and Indian country located within the State of North Dakota within the former boundaries of the Lake Traverse Indian Reservation).
Utah	UTG651000	Indian country within the State of Utah except for the Ute Mountain Indian Reservation (which is covered under permit COG651000), the Goshute Indian Reservation, and the Navajo Indian Reservation.
Wyoming	WYG650000	State of Wyoming except for Indian country.
	WYG651000	Indian country within the State of Wyoming.

Coverage under the general permits may be for one of the following three categories: Category 1—Facilities/operations that generate and/or partially treat sewage sludge, but do not use/dispose of sewage sludge; Category 2—Facilities/operations that use/dispose of sewage sludge and may also generate and/or treat sewage sludge; and Category 3—Wastewater lagoon systems that need to land apply sewage sludge on an occasional, restricted basis. Coverage under the general permit will be limited to one of the three categories, but coverage may be granted to one or more subcategories under Category 2. In applying for coverage under the general permit, the applicant will be required to specify under which category or subcategory(s) coverage is being requested. However, the permit issuing authority will have the final determination as to which category or subcategory(s) the coverage will be granted. Facilities or operations that incinerate sewage sludge are not eligible for coverage under these general permits and must apply for an individual permit. The requirements in the permit for the use/disposal of sewage sludge are based primarily on 40 CFR 503.

The deadlines for applying for coverage under the general permits are given in the permits and the Fact Sheet. For most facilities/operations, the deadline is 90 days after the effective date of the permit. Wastewater lagoon systems that are not using/disposing of sewage sludge do not need to apply for permit coverage unless notified by the permit issuing authority.

DATES: The general permits become effective on August 16, 2002 and will expire five years from that date. For appeal purposes, the 120 day time period for appeal to the U.S. Federal Courts will begin August 16, 2002.

ADDRESSES: The public record is located at EPA Region 8, and is available upon written request. Requests for copies of the public record, including a complete copy of response to comments, a list of changes made from the draft permit to the final permit, the general permit, and the fact sheet for the general permit, should be addressed to William Kennedy,: NPDES PERMITS TEAM (8P–W–P); U.S. EPA, REGION VIII; 999 18TH STREET, SUITE 300; DENVER, CO 80202–2466 or telephone (303) 312–6285. Copies of the general permit, fact sheet, response to comments, and a list of changes from the draft permit to the final permit may also be downloaded from the EPA Region VIII web page at *http://www.epa.gov/region08/water/wastewater/biohome/biohome.html*. Please allow approximately one week after this notice for documents to be posted on the web page.

FOR FURTHER INFORMATION CONTACT: Questions regarding the specific permit requirements may be directed to Bob Brobst, telephone (303) 312–6129 or E-mail at *brobst.bob@epa.gov*.

SUPPLEMENTARY INFORMATION: Region VIII proposed and solicited comments on the general permits at 66 FR 793 (January 4, 2001). In addition, notices and copies of the draft general permit and Fact Sheet were sent to most publicly owned treatment works in Region VIII that would likely have to apply for coverage under the general permit. Comments were received from six facilities/operations that generate, treat, and/or use/dispose of sewage sludge. The comments covered a wide range of issues. Many of the issues were addressed in the final permit. The response to comments is included as part of the public record. Also, the public record includes a list of the changes made from the draft permit to the final permit. The U.S. Fish and Wildlife Service did not have any comments.

The States of South Dakota and Utah have been authorized as the permit authority for sewage sludge, therefore general permits will be issued only for Indian country in those States. The general permit for Indian country in Utah does not include the portions of the Goshute Indian Reservation and the Navajo Indian Reservation in Utah because the permitting activities for these reservations are done by Region IX of EPA. The State of Colorado has not been authorized as the permit authority for Federal facilities. Therefore, a separate general permit is being issued for Federal facilities in Colorado that are not located in Indian country.

On June 21, 2000 and September 21, 2000, U.S. District Judge Donald W. Molloy issued orders stating that until all necessary total maximum daily loads under section 303(d) of the Clean Water Act are established for a particular water quality limited segment, the EPA is not to issue any new permits or increase permitted discharges under the NPDES program. (See *Friends of the Wild Swan, Inc.* v. *EPA*, 130 F. Supp. 2nd 1199 (D. Mont. 2000); 130 F. Supp 2nd 1204 (D. Mont. 2000)) EPA finds that the issuance of these general permits does not conflict with this order, because (1) the permits do not authorize any point source discharges into waters of the United States and (2) as discussed under the "Protection of Public Health and The Environment" section of the Fact Sheet, the use and/or disposal of sewage sludge in compliance with the conditions of these permits is not likely to have any adverse effect on any waterbody in Montana that has been listed under section 303(d) of the Clean Water Act.

Since these permits do not involve discharges to waters of the United States, certification under section 401(a)(1) of the Clean Water Act is not necessary for the issuance of these permits and certification was not requested.

Appeal of Permit

Any interested person may appeal the "NPDES General Permit for Facilities/Operations That Generate, Treat, Use/

generally requires Federal agencies to assess the effects of their "regulatory actions" on tribal, state, and local governments and the private sector. "Regulatory actions" are defined as "rules" subject to the RFA. The permits issued today are not "rules" subject to the RFA; therefore, they are not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

equipment (Category E), in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. Additional categories of assistance under the Public Assistance program may be provided at a later date, if warranted.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors.

available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be

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Since these permits do not involve discharges to waters of the United States, certification under section 401(a)(1) of the Clean Water Act is not necessary for the issuance of these permits and certification was not requested.

Appeal of Permit

Any interested person may appeal the "NPDES General Permit for Facilities/Operations That Generate, Treat, Use/Dispose of Sewage Sludge By Means of Land Application, Landfill, and Surface Disposal" in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. This appeal must be filed within 120 days of the effective date of the permit. Persons affected by a general NPDES permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual permit and then request a formal hearing on the issuance or denial on an individual permit.

Executive Order 12866: Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the EPA must determine whether its regulatory actions are "significant" and therefore subject to review by the OMB. The EPA has determined that the issuance of these general permits is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA): The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements of 5 U.S.C. 553(b) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The permits issued today, however, are not a "rule" subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on tribal, state, and local governments and the private sector. "Regulatory actions" are defined as "rules" subject to the RFA. The permits issued today are not "rules" subject to the RFA; therefore, they are not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 19, 2002.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, Region VIII.

[FR Doc. 02–16272 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1422–DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1422–DR), dated June 25, 2002, and related determinations.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 25, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arizona resulting from wildfires beginning on June 18, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance limited to debris removal (Category A), roads and bridges (Category C), and buildings and equipment (Category E), in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. Additional categories of assistance under the Public Assistance program may be provided at a later date, if warranted.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

Apache and Navajo Counties and the Fort Apache Indian Reservation for Individual Assistance.

Apache and Navajo Counties for debris removal (Category A), roads and bridges (Category C), and buildings and equipment (Category E) under the Public Assistance program.

All counties and Indian Reservations within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16600 Filed 7–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Becker, Beltrami, Clay, Pennington, and Polk Counties for Public Assistance.

Roseau County for Public Assistance (already designated for Individual Assistance).

Koochiching, Lake of the Woods, Mahnomen, Marshall, Norman, and Red Lake Counties for Individual and Public Assistance.

Kittson County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16599 Filed 7–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Employee Stock Ownership Plan Trust of Port Financial Corp., Brighton, Massachusetts, to acquire voting shares of Port Financial Corporation, Brighton, Massachusetts, and thereby indirectly acquire voting shares of Cambridgeport Bank, Cambridge, Massachusetts.

2. Mystic Financial, Inc. Employee Stock Ownership Plan & Trust, Medford, Massachusetts; to acquire voting shares of Mystic Financial, Inc., Medford, Massachusetts and thereby indirectly acquire voting shares of Medford Co-Operative Bank, Medford, Massachusetts.

Board of Governors of the Federal Reserve System, June 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–16582 Filed 7–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. TCF Financial Corporation, Wayzata, Minnesota; to acquire 9.99 percent of the voting shares of MainStreet Bank Shares, Inc., Martinsville, Virginia, and thereby indirectly acquire voting shares of Smith River Community Bank, N.A., Martinsville, Virginia, and Franklin County Community Bank, N.A., Rocky Mount, Virginia, a *de novo* bank.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Prosperity Bancshares, Inc., Houston, Texas; to merge with Paradigm Bancorporation, Inc., Houston, Texas, and thereby indirectly acquire Paradigm Delaware Bancorporation, Inc., Dover, Delaware, and its subsidiary Paradigm Bank Texas, Houston, Texas.

Board of Governors of the Federal Reserve System, June 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–16583 Filed 7–1–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or

assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection

Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether

considered as a single geographic site, such as a building or complex of buildings at a single mailing address. Each facility should designate a responsible facility official (RFO) to complete this form. It is the responsibility of the RFO to ensure management oversight of this notification requirement. The RFO should be either a safety officer, a senior management official of the facility, or

Respondents	Number of Respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Facilities that possess listed biological agents and/or toxins	94,600	1	2	189,200
Total				205,100

Dated: June 26, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning

report is the product of a site visit team that conducted an onsite review of the Division in January. Division staffers will provide a preliminary response to

information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory

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assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to acquire 100 percent of the voting shares of Regional Financial Corporation, Tallahassee, Florida, and thereby indirectly acquire voting shares of First South Bank, Tallahassee, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–16581 Filed 7–1–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–02–56]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. CDC is requesting an emergency clearance from the Office of Management and Budget (OMB) to collect data under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice. OMB is expected to act on the request of CDC within 21 days of publication of this notice.

Proposed Project

Notification of Possession of a Select Agent—New—Office of the Director, Office of Health and Safety (OD/OHS), Centers for Disease Control and Prevention (CDC). Section 202(a) of the Public Health Security and Bioterrorism Preparedness Response Act of 2002 (Public Law 107–188) requires that all persons in possession of a Select Agent notify the Secretary of Health and Human Services by September 10, 2002.

The Secretary of Health and Human Services has designated the CDC as the agency responsible for collecting this information. CDC is specifying that facilities, rather than persons, who possess a Select Agent shall notify CDC by completing the Application for Notice of Possession of a Select Agent. For the purposes of completing this application, a facility should be considered as a single geographic site, such as a building or complex of buildings at a single mailing address. Each facility should designate a responsible facility official (RFO) to complete this form. It is the responsibility of the RFO to ensure management oversight of this notification requirement. The RFO should be either a safety officer, a senior management official of the facility, or both, who has been authorized by the facility to complete and submit this application. The RFO should not be an individual who actually possesses, uses, or transfers such agents or toxins.

In order to complete the application, the RFO will need to inventory its facility and consult with others (*e.g.*, principal investigators) as necessary to obtain the information required for this application. The RFO must review and sign the application and will be the point of contact if CDC has questions concerning the application or other matters related to the Public Law. Facilities that do not possess a listed biological agent or toxin are required to complete the declaration of non-possession and submit the form.

Facilities that possess listed biological agents and/or toxins that are a threat to public health must submit their notification form to the Centers for Disease Control and Prevention (CDC), Office of Health and Safety, 1600 Clifton Road, MS A13, Atlanta, GA 30333. Facilities that possess listed biological agents that are deemed a threat to animal health or animal products are required to submit their form to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services, National Center for Import-Export, Products Program, 4700 Riverdale Road, Unit 40, Riverdale, MD 20737. Facilities that possess listed biological agents and/or toxins that are deemed a threat to both public health and animal health and animal products are required to submit their form to both CDC and APHIS. There is no cost to respondents except their time to complete the notification form.

Respondents	Number of Respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Facilities that do not possess listed biological agents and/or toxins	95,400	1	10/60	15,900
Facilities that possess listed biological agents and/or toxins	94,600	1	2	189,200
Total				205,100

Dated: June 26, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–16674 Filed 7–1–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Advisory Board to the National Center for Toxicological Research; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR).

General Function of the Committee: The Board advises the Director, NCTR, on establishing, implementing, and evaluating the research programs that assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides an extra agency review in ensuring that the research programs at NCTR are scientifically sound and pertinent.

Date and Time: The meeting will be held on August 8, 2002, from 1 p.m. to 5 p.m. and August 9, 2002, from 8 a.m. to 1 p.m.

Location: NCTR, Building #12, Conference Center, 3900 NCTR Dr., Jefferson, AR 72079.

Contact Person: Leonard M. Schechtman, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12559. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will be presented with a draft report on the evaluation of the Division of Chemistry. The draft report is the product of a site visit team that conducted an onsite review of the Division in January. Division staffers will provide a preliminary response to the issues raised and recommendations made. The NCTR Director will provide a Center update and discuss the development of five newly established centers of excellence at the NCTR. These are the: Functional Genomics Center, Structural Genomics Center, Toxicoinformatics Center, Hepatotoxicity Center, and Phototoxicity Center. The Directors of each of these Centers will provide a presentation on the development and future of their respective center. A proposal presented to the Board at the June 2001 meeting regarding the establishment of a subcommittee on scientific opportunities to improve regulatory science through collaborations with external stakeholders will be revisited. The Board will receive an update on activities of an existing subcommittee with a similar focus (Advisory Committee for Pharmaceutical Science, Nonclinical Studies Subcommittee).

Procedure: On August 8, 2002, from 1 p.m. to 5 p.m., and August 9, 2002, from 8 a.m. to 12 noon, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 31, 2002. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon, on August 9, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 31, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On August 9, 2002, from 12 noon to 1 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard M. Schechtman at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 24, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–16588 Filed 7–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States

Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or

8. Kerry Shafer on behalf of Keegan Shafer, Boston, Massachusetts, Court of Federal Claims Number 02–0027V

9. Alexandria Cannell on behalf of Isabelle Cannell, Boston, Massachusetts, Court of Federal Claims Number 02–0028V

10. Ernest Kramer on behalf of Christopher Kramer, Boston, Massachusetts, Court of Federal Claims Number 02–0032V

Township, Michigan, Court of Federal Claims Number 02–0076V

28. Melissa and Devin Jones on behalf of Emma Jones, Liberty, Missouri, Court of Federal Claims Number 02–0080V

29. Joyce and Maurice Robinson on behalf of Maurice L. Robinson, Frederick, Maryland, Court of Federal Claims Number 02–0086V

30. Sue Anna Harwood, Corpus Christi, Texas, Court of Federal Claims

Massachusetts, Court of Federal Claims Number 02–0130V

47. Marianne and Andrew Baker on behalf of Brendan Baker, Kalamazoo, Michigan, Court of Federal Claims Number 02–0138V

48. Dennis Jeffers on behalf of Mary Jane Jeffers, Fort Bragg, North Carolina, Court of Federal Claims Number 02–0143V

49. Teri Bickley on behalf of Olivia Bickley, Vienna, Virginia, Court of

66. Lynn Joyce Thompson on behalf of Alexander Martin Burris, Deceased, Carlsbad, New Mexico, Court of Federal Claims Number 02–0183V

67. Leslee Maust on behalf of Nathan Maust, Boston, Massachusetts, Court of Federal Claims Number 02–0184V

68. Suzanne Monez, Columbus, Ohio, Court of Federal Claims Number, 02–0185V

69. Paul Lambert and Alice Mese on behalf of Katie Nicole Lambert, Deceased, Slidell, Louisiana, Court of

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Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on January 2, 2002, through March 29, 2002.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation, Office of Special Programs, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Graham Parker on behalf of Keenan Parker, Boston, Massachusetts, Court of Federal Claims Number 02–0002V
2. Barbara Bishop Sufian, New York, New York, Court of Federal Claims Number 02–0003V
3. Sarah and Jonathan Nash on behalf of Laura Nash, Braintree, Massachusetts, Court of Federal Claims Number 02–0004V
4. Denise Kretz on behalf of Robert Kretz, Quincy, Massachusetts, Court of Federal Claims Number 02–0006V
5. Joann and Vadim Mostovoy on behalf of Victor Jared Mostovoy, New York, New York, Court of Federal Claims Number 02–0010V
6. Desiree Juraniec on behalf of Cassidy Juraniec, Boston, Massachusetts, Court of Federal Claims Number 02–0014V
7. Tammy J. Brown, New Hartford, Connecticut, Court of Federal Claims Number 02–0015V
8. Kerry Shafer on behalf of Keegan Shafer, Boston, Massachusetts, Court of Federal Claims Number 02–0027V
9. Alexandria Cannell on behalf of Isabelle Cannell, Boston, Massachusetts, Court of Federal Claims Number 02–0028V
10. Ernest Kramer on behalf of Christopher Kramer, Boston, Massachusetts, Court of Federal Claims Number 02–0032V
11. Phillip R. Lujan, Glendale, California, Court of Federal Claims Number 02–0034V
12. Donna McKinley on behalf of Antonio Francisco Saavedra, Nashua, New Hampshire, Court of Federal Claims Number 02–0039V
13. Eugene A. Martinez on behalf of Brad Martinez, Deceased, Orlando Beach, Florida, Court of Federal Claims Number 02–0040V
14. Sarah and Billy Sprock on behalf of Brandon Sprock, Sheldon, Iowa, Court of Federal Claims Number 02–0044V
15. Janice and Marc Lehner on behalf of Erin Pauline Lehner, Derry, New Hampshire, Court of Federal Claims Number 02–0046V
16. Sheryl Schwartz on behalf of Alec Schwartz, Fairfax, Virginia, Court of Federal Claims Number 02–0048V
17. Amy and Dennis Colannino on behalf of Adam Colannino, Vienna, Virginia, Court of Federal Claims Number 02–0049V
18. Heather Waller on behalf of Kaitlyn Waller, Vienna, Virginia, Court of Federal Claims Number 02–0050V
19. Carol Kessler on behalf of Mikaela Kessler, Vienna, Virginia, Court of Federal Claims Number 02–0051V
20. David Russell on behalf of Lauren Russell, Vienna, Virginia, Court of Federal Claims Number 02–0052V
21. Laurie and Richard Coppersmith on behalf of Laurel Coppersmith, Mayfield Heights, Ohio, Court of Federal Claims Number 02–0058V
22. Heidi and Scott Billings on behalf of Matthew Billings, West Buxton, Maine, Court of Federal Claims Number 02–0065V
23. Kim Waldele on behalf of Gabriella Waldele, Boston, Massachusetts, Court of Federal Claims Number 02–0067V
24. Gail Cahill on behalf of Christian Velez, Vienna, Virginia, Court of Federal Claims Number 02–0072V
25. Kathleen Hall on behalf of Zechariah Hall, Baldwinsville, New York, Court of Federal Claims Number 02–0073V
26. Alicia Booker on behalf of Kia Janae Cobbs, Houston, Texas, Court of Federal Claims Number 02–0075V
27. Marianne and Shawn Look on behalf of Camden S. Look, Commerce Township, Michigan, Court of Federal Claims Number 02–0076V
28. Melissa and Devin Jones on behalf of Emma Jones, Liberty, Missouri, Court of Federal Claims Number 02–0080V
29. Joyce and Maurice Robinson on behalf of Maurice L. Robinson, Frederick, Maryland, Court of Federal Claims Number 02–0086V
30. Sue Anna Harwood, Corpus Christi, Texas, Court of Federal Claims Number 02–0087V
31. Kristiana Wienken on behalf of Jonathan Wienken, Vienna, Virginia, Court of Federal Claims Number 02–0090V
32. Michele Hailey on behalf of Tyler Hailey, Vienna, Virginia, Court of Federal Claims Number 02–0091V
33. Leandra and Todd Hanson on behalf of Joel Hanson, Vienna, Virginia, Court of Federal Claims Number 02–0092V
34. Deborah Smith on behalf of Ryan Christopher Smith, Yuma, Arizona, Court of Federal Claims Number 02–0093V
35. Bethany Britton on behalf of Piers Britton, Vienna, Virginia, Court of Federal Claims Number 02–0094V
36. Tami and Wayne Fuesel on behalf of Jessica Marie Fuesel, Vienna, Virginia, Court of Federal Claims Number 02–0095V
37. Gena D. Ankle, Miami, Florida, Court of Federal Claims Number 02–0097V
38. Gary Kompothecras on behalf of Sara Alice Kompothecras, Vienna, Virginia, Court of Federal Claims Number 02–0110V
39. Yolanda Medina on behalf of Elliott Quinones, Freehold, New Jersey, Court of Federal Claims Number 02–0111V
40. Claudia Dennis on behalf of Joseph Dennis, Boston, Massachusetts, Court of Federal Claims Number 02–0112V
41. Nicole and Ken Schweisthal on behalf of Michael Schweisthal, Naperville, Illinois, Court of Federal Claims Number 02–0113V
42. Brenda Tibbs on behalf of Randy Boyle, Vienna, Virginia, Court of Federal Claims Number 02–0114V
43. Cynthia Ruybal Morgan, Colorado Springs, Colorado, Court of Federal Claims Number 02–0120V
44. Lanita and Russell Cunningham on behalf of Ashley Cunningham Youngstown, Ohio, Court of Federal Claims Number 02–0124V
45. Joanne McCormack on behalf of Colin McCormack, Milwaukee, Wisconsin, Court of Federal Claims Number 02–0129V
46. Kathy Rhodomoyer on behalf of Raymond Rhodomoyer, Boston, Massachusetts, Court of Federal Claims Number 02–0130V
47. Marianne and Andrew Baker on behalf of Brendan Baker, Kalamazoo, Michigan, Court of Federal Claims Number 02–0138V
48. Dennis Jeffers on behalf of Mary Jane Jeffers, Fort Bragg, North Carolina, Court of Federal Claims Number 02–0143V
49. Teri Bickley on behalf of Olivia Bickley, Vienna, Virginia, Court of Federal Claims Number 02–0145V
50. Elizabeth and Louis Carnevale on behalf of Joseph M. Carnevale, Vienna, Virginia, Court of Federal Claims Number 02–0146V
51. Ann Heinke and David McCoy on behalf of Timothy Dean McCoy, Loveland, Colorado, Court of Federal Claims Number 02–0152V
52. Mieko Hester on behalf of Joseph Rodriguez, Jr., Boston, Massachusetts, Court of Federal Claims Number 02–0154V
53. Catina Haverlock on behalf of Adam Haverlock, Boston, Massachusetts, Court of Federal Claims Number 02–0155V
54. Gina Manderfeld, Laramie, Wyoming, Court of Federal Claims Number 02–0156V
55. Daniel Baggio on behalf of Giordano P. Baggio, Boston, Massachusetts, Court of Federal Claims Number 02–0157V
56. Daniel Baggio on behalf of Daniel B. Baggio, Boston, Massachusetts, Court of Federal Claims Number 02–0158V
57. Linda Mallam on behalf of Jonathan Mallam, Boston, Massachusetts, Court of Federal Claims Number 02–0159V
58. Beth Rosenberg on behalf of Jackson Rubin, Boston, Massachusetts, Court of Federal Claims Number 02–0160V
59. Bonnie and Alan Shelton on behalf of Casey Jordan Shelton, Vienna, Virginia, Court of Federal Claims Number 02–0161V
60. Christina DeLong, Vienna, Virginia, Court of Federal Claims Number 02–0162V
61. Laura Gibson on behalf of Riley T. Gibson, Jr., Vienna, Virginia, Court of Federal Claims Number 02–0163V
62. Frederick Snipes on behalf of Kaylin D. Snipes, Vienna, Virginia, Court of Federal Claims Number 02–0164V
63. Deborah and Ronald Elliott on behalf of Makayla Morgan Elliott, Granville, Ohio, Court of Federal Claims Number 02–0172V
64. Kelley and Jim O'Clair on behalf of Michael O'Clair, Manchester, New Hampshire, Court of Federal Claims Number 02–0181V
65. Shannon and William Vessels on behalf of Joshua Vessels, Manchester, New Hampshire, Court of Federal Claims Number 02–0182V
66. Lynn Joyce Thompson on behalf of Alexander Martin Burris, Deceased, Carlsbad, New Mexico, Court of Federal Claims Number 02–0183V
67. Leslee Maust on behalf of Nathan Maust, Boston, Massachusetts, Court of Federal Claims Number 02–0184V
68. Suzanne Monez, Columbus, Ohio, Court of Federal Claims Number, 02–0185V
69. Paul Lambert and Alice Mese on behalf of Katie Nicole Lambert, Deceased, Slidell, Louisiana, Court of Federal Claims Number 02–0189V
70. LaTonya and Samuel Williams on behalf of Brandon Williams, Pensacola, Florida, Court of Federal Claims Number 02–0191V
71. Linda Stott, Wrentham, Massachusetts, Court of Federal Claims Number 02–0192V
72. Jennifer and Dan Conaway on behalf of Matthew Conaway, Vienna, Virginia, Court of Federal Claims Number 02–0193V
73. Tammy Jose on behalf of Emelita Jose, Summerville, South Carolina, Court of Federal Claims Number 02–0194V
74. JoAnn Goodman on behalf of Russell L. Goodman, Alexandria, Virginia, Court of Federal Claims Number 02–0201V
75. Katina Eubanks on behalf of Kaitlyn L. Eubanks, Alexandria, Virginia, Court of Federal Claims Number 02–0202V
76. Theodore J. Dayharsh, Vienna, Virginia, Court of Federal Claims Number 02–0203V
77. Lisa Salom on behalf of Jaime Michael Salom, Vienna, Virginia, Court of Federal Claims Number 02–0204V
78. Kathleen and Timothy Begley on behalf of Liam Begley, Newburyport, Massachusetts, Court of Federal Claims Number 02–0206V
79. Dorothy Verdon on behalf of Robert Verdon, Nashua, New Hampshire, Court of Federal Claims Number 02–0208V
80. Michael Jones and Christan Basile-Jones on behalf of Michael P. Jones, Kennebunk, Maine, Court of Federal Claims Number 02–0209V
81. Dawn O'Neill on behalf of John P. O'Neill III, Nashua, New Hampshire, Court of Federal Claims Number 02–0210V
82. Janet Cardillo on behalf of Grace Cardillo, Boston, Massachusetts, Court of Federal Claims Number 02–0211V
83. Susanne and Michael Conroy on behalf of Rylie Veronica Conroy, Waverly, Virginia, Court of Federal Claims Number 02–0212V
84. Angela Robinson on behalf of Brittany Robinson, Panama City, Florida, Court of Federal Claims Number 02–0218V
85. Andrea and Jose Valle on behalf of Justice Valle, Miami, Florida, Court of Federal Claims Number 02–0220V
86. Michele Kupersmith on behalf of Samuel Kupersmith, Boston, Massachusetts, Court of Federal Claims Number 02–0221V
87. Caroline Payne on behalf of Andie Grace Payne, Boston, Massachusetts, Court of Federal Claims Number 02–0247V

Dated: June 24, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–16591 Filed 7–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subject city, state	Effective date
WILSON, NC	
EXPRESS TRANSPORTATION INC	06/20/2002
MILWAUKEE, WI	
FLEITES, MIRELLA D	06/20/2002
HIALEAH, FL	
FREEMAN–METZGER, BARBARA	06/20/2002
WHITING, IA	
GARCIA, RAMON ROGER	06/20/2002
FORT DIX, NJ	
STEVENS, CINDY	06/20/2002
CARMICHAEL, CA	
TAUKEIAHO, SIONE	06/20/2002
W VALLEY CITY, UT	
TELGHEDER, MARGARET	
SPIERDOWIS	06/20/2002
MONTVALE, NJ	
TEXIERA, PATRICIA A	06/20/2002
LOWELL, MA	

Subject city, state	Effective date
OXNARD, CA	
DAROSETT, SHAWN LEE	06/20/2002
BUENA VISTA, CO	
GILES, EDITH MARIE	06/20/2002
DAVENPORT, IA	
HALL, ALLISON GELENE	06/20/2002
BETHEL, MO	
HARTFORD, SALLY MARIE	06/20/2002
TOLEDO, OH	
LATNIK, TINA M	06/20/2002
RICHMOND, MO	
BURGESS, KIMBERLY A	06/20/2002
ARLINGTON, TX	
CAREY, DENNIS L	06/20/2002
GROVEPORT, OH	
CASPER, CINDY D	06/20/2002
CAROL STREAM, IL	
CHAMNESS, BARBARA ANN	06/20/2002
TAYLORVILLE, IL	
CHIN, SANG IL	06/20/2002
LOS ANGELES, CA	

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Florida, Court of Federal Claims Number 02–0218V
85. Andrea and Jose Valle on behalf of Justice Valle, Miami, Florida, Court of Federal Claims Number 02–0220V
86. Michele Kupersmith on behalf of Samuel Kupersmith, Boston, Massachusetts, Court of Federal Claims Number 02–0221V
87. Caroline Payne on behalf of Andie Grace Payne, Boston, Massachusetts, Court of Federal Claims Number 02–0222V
88. Douglas Kelley on behalf of Ryan Kelley, Boston, Massachusetts, Court of Federal Claims Number 02–0223V
89. Kristin and Gordon Welch on behalf of Corey Welch, Bedford, New Hampshire, Court of Federal Claims Number 02–0224V
90. Linda Reid on behalf of Anthony Reid, Vienna, Virginia, Court of Federal Claims Number 02–0226V
91. Linda Reid on behalf of Alexis Reid, Vienna, Virginia, Court of Federal Claims Number 02–0227V
92. Patricia Cramer on behalf of Karli Cramer, Mays Landing, New Jersey, Court of Federal Claims Number 02–0228V
93. Michael Chmura on behalf of Evan Chmura, Cambridge, Massachusetts, Court of Federal Claims Number 02–0229V
94. Michele Frazier on behalf of Anna Schuppenhauer, Jamestown, New York, Court of Federal Claims Number 02–0233V
95. Kellie and Ron Miller on behalf of Avery Hope Miller, Elizabethtown, Kentucky, Court of Federal Claims Number 02–0235V
96. Dale Denault and Charlene Gillenwater on behalf of Destiny Denault, Lewistown, Pennsylvania, Court of Federal Claims Number 02–0236V
97. Margaret and Greg Wilson on behalf of William Mitchell Wilson, Lexington, Kentucky, Court of Federal Claims Number 02–0239V
98. Brenda and Charles Gerard on behalf of Joseph James Gerard, Maplewood, Minnesota, Court of Federal Claims Number 02–0242V
99. Tracie and Louis Kiefer on behalf of Joseph August Kiefer, Raleigh, North Carolina, Court of Federal Claims Number 02–0243V
100. Shirley J. Nelson on behalf of Jennifer Ashley Ray, Cleveland, Ohio, Court of Federal Claims Number 02–0244V
101. Drena and Keith Travis on behalf of Keith Antonio Travis, Chicago, Illinois, Court of Federal Claims Number 02–0245V
102. Samantha and Travis Warren on behalf of Travis Gabriel Warren, Houston, Texas, Court of Federal Claims Number 02–0247V

Dated: June 24, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–16591 Filed 7–1–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABDULLAH, AHMAD OMAR .... ORANGE, VA	06/20/2002
BIRTHFIELD, INEZ O ..... JACKSON, MS	06/20/2002
BRYANT, LESTER ..... JACKSON, MS	06/20/2002
BUTLER, PAUL G JR ..... THREE RIVERS, TX	06/20/2002
CARTER, MELODY J ..... ST ROBERT, MO	06/20/2002
CAUDILL, WILLIAM A ..... SOMERSET, KY	06/20/2002
COCHRAN, GERALD DENOREH ..... BASTROP, TX	06/20/2002
DAGLIYAN, ARTHUR ..... GLENDALE, CA	06/20/2002
DANIELS, EVANGELINE V ..... WILSON, NC	06/20/2002
EXPRESS TRANSPORTATION INC ..... MILWAUKEE, WI	06/20/2002
FLEITES, MIRELLA D ..... HIALEAH, FL	06/20/2002
FREEMAN–METZGER, BARBARA ..... WHITING, IA	06/20/2002
GARCIA, RAMON ROGER ..... HIALEAH, FL	06/20/2002
GONZALEZ, SANDRA ..... LOMA LINDA, CA	06/20/2002
GUERRA, LAZARO ..... MIAMI, FL	04/10/2001
GUERRA, MARIA ..... MIAMI BEACH, FL	04/10/2001
GUTIERREZ, DULCE M ..... HIALEAH, FL	06/20/2002
HAMBRIGHT, BOBBY F JR ..... MILWAUKEE, WI	06/20/2002
HARRIS, THOMAS D ..... POTEAU, OK	06/20/2002
HERITAGE OB/GYN ..... AHOSKIE, NC	06/20/2002
HERRERA, JUAN FIDENCIO .. BASTROP, TX	06/20/2002
IBRAHIM, ELHAFIZ MOHAMMED ..... WINSTON, NC	06/20/2002
LARA, MANUEL J ..... AUSTIN, TX	06/20/2002
LEON, ANGELA ..... MIAMI, FL	06/20/2002
MANCEWICZ & WHITE, D D S, P C ..... KENTWOOD, MI	06/20/2002
MANGIARELLI, KIM ..... CANANDAIGUA, NY	06/20/2002
MARES, DANIEL ALBERTO .... MIAMI, FL	06/20/2002
MCCREA, TERRI L ..... ATLANTA, GA	06/20/2002
MUKHATOVA, LARISA ..... VAN NUYS, CA	06/20/2002
NOVAK, THOMAS V ..... MONGTOMERY, AL	06/20/2002
OUDIN, JAMES CHARLES ..... LAKEWOOD, CA	06/20/2002
PATTERSON, EDDIE PAUL .... PASADENA, CA	06/20/2002
PAZO, LAZARA ..... HIALEAH, FL	06/20/2002
PEREZ, RENE ..... HIALEAH, FL	06/20/2002
POK, MALACCA ..... SHAFTER, CA	06/20/2002
RICHSTONE, GEOFFREY ..... FORT DIX, NJ	06/20/2002
RODRIGUEZ, IRMA COOKIE .. FT WORTH, TX	06/20/2002
RODWELL, DINO ..... ELLICOTT CITY, MD	06/20/2002
ROWAN, VICTORIA ..... SAN DIMAS, CA	06/20/2002
SANCHEZ, ISABEL ..... MIRAMAR, FL	04/10/2001
SHACKELFORD, DAN J ..... ATLANTA, GA	06/20/2002
SHALETT, HAROLD ..... CHATTANOOGA, TN	06/20/2002
SMITH, DEBBIE KAY ..... TRUMANN, AR	06/20/2002
STANLEY, JAMES R.	06/20/2002

Subject city, state	Effective date
FORT DIX, NJ	
STEVENS, CINDY ..... CARMICHAEL, CA	06/20/2002
TAUKEIAHO, SIONE ..... W VALLEY CITY, UT	06/20/2002
TELGHEDER, MARGARET SPIERDOWIS ..... MONTVALE, NJ	06/20/2002
TEXIERA, PATRICIA A ..... LOWELL, MA	06/20/2002
THOMPSON, BRODERICK ..... THREE RIVERS, TX	06/20/2002
TIMALI, SATAALEVAO DIANE SALT LAKE CITY, UT	06/20/2002
TRUMANN PARAMEDIC, INC TRUMANN, AR	06/20/2002
URIBE, FABIOLA ..... MIAMI, FL	06/20/2002
WADLEY, ROGER LEON ..... WILBURTON, OK	06/20/2002
WHEAT, PRISCILLA ..... POPLARVILLE, MS	06/20/2002
WOODARD, CLARENCE W .... FORREST CITY, AR	06/20/2002
FELONY CONVICTION FOR HEALTH CARE FRAUD	
BIEGANOWSKI, VICTOR J ..... EL PASO, TX	06/20/2002
BINION, MAGDA ..... DANBURY, CT	06/20/2002
BOSTON, SAMUEL ..... LILLINGTON, NC	06/20/2002
FARINA, RICHARD J ..... CHURCHVILLE, PA	06/20/2002
FIFER, KIM ANITA ..... LEXINGTON, KY	06/20/2002
GONZALEZ, MICHAEL B ..... ORLANDO, FL	06/20/2002
JENKINS, GARLAND LEE ..... CACHE, OK	06/20/2002
FELONY CONTROL SUBSTANCE CONVICTION	
CABEZA, ILIANA ..... COLEMAN, FL	06/20/2002
DINOZZI, DAVID ANTHONY ... BATAVIA, OH	06/20/2002
GRANT, ALICE R ..... FORT WORTH, TX	06/20/2002
HAYES, BARBARA ANN ..... MAINEVILLE, OH	06/20/2002
HUNTER, CHRISTOPHER W .. SOMERVILLE, NJ	06/20/2002
MINOR, JIMMIE T ..... ELLIJAY, GA	06/20/2002
TESTERMAN, AMY TALBOTT SUTHERLIN, VA	06/20/2002
WHITING, JOAN MYRTLE INNES ..... POCTATELLO, ID	06/20/2002
PATIENT ABUSE/NEGLECT CONVICTIONS	
ARMER, JANICE A ..... SCHENECTADY, NY	06/20/2002
ASLANYAN, ROMELA ..... GLENDALE, CA	06/20/2002
BAKER, THOMAS P ..... HERRIN, IL	06/20/2002
CORTEZ, SYLVIA	06/20/2002
OXNARD, CA	
DAROSETT, SHAWN LEE ..... BUENA VISTA, CO	06/20/2002
GILES, EDITH MARIE ..... DAVENPORT, IA	06/20/2002
HALL, ALLISON GELENE ..... BETHEL, MO	06/20/2002
HARTFORD, SALLY MARIE .... TOLEDO, OH	06/20/2002
LATNIK, TINA M ..... S EUCLID, OH	06/20/2002
LEECH, DARLENE E ..... GUILFORD, NY	06/20/2002
LOVE, KATHY M ..... DELAWARE, AR	06/20/2002
LYLES, LINDA L ..... O'FALLON, IL	06/20/2002
MIER–GASILOS, VICKY ..... EWA BEACH, HI	06/20/2002
PFEIFER, ROCKELLE R ..... WAUKESHA, WI	06/20/2002
PUCKETT, JAMISON ..... HAMILTON, OH	06/20/2002
RODRIQUEZ, CHARLES ..... HUNTSVILLE, TX	06/20/2002
SCHYVINCK, TAMMY L ..... EDGERTON, WI	06/20/2002
SINGLETON, PAMELA L ..... CHARDON, OH	06/20/2002
STOFFELS, JUDITH C ..... ALBANY, NY	06/20/2002
SULKOWSKI, ALICJA ..... VALATIE, NY	06/20/2002
TETRO, ERIC W ..... MURRAY, UT	06/20/2002
WALKER, VENICE ..... UNIVERSITY PARK, IL	06/20/2002
CONVICTION FOR HEALTH CARE FRAUD	
BITKER, CAROLYNN JOY ..... PARK RAPIDS, MN	06/20/2002
BURGESS, COLLETTE ..... SUMTER, SC	06/20/2002
COLE–SEYDLER, VALERIE .... BALLSTON SPA, NY	06/20/2002
DALESKE, PATTI JO ..... ELDORA, IA	06/20/2002
JANOWSKI, MARLEA VERA ... IOWA FALLS, IA	06/20/2002
KAPLAN, ROBERT A ..... STATEN ISLAND, NY	06/20/2002
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ANDREWS, KRISTA MARIE .... WINNSBORO, TX	06/20/2002
APOTHEKER, LESLIE DEBRA FORT LAUDERDALE, FL	06/20/2002
BARNES, DEBRAH S ..... JACKSON, TN	06/20/2002
BOEZI, DONNA M ..... E GREENWICH, RI	06/20/2002
BOONE, LESLIE ..... TRENTON, NJ	06/20/2002
BRADEN, MARK STEPHEN .... CHICO, CA	06/20/2002
BRODIEN, LORIE ..... LITTLETON, NH	06/20/2002
BULGER, PATRICE A ..... BAYVILLE, NJ	06/20/2002
BULK, MARY K ..... RICHMOND, MO	06/20/2002
BURGESS, KIMBERLY A ..... ARLINGTON, TX	06/20/2002
CAREY, DENNIS L ..... GROVEPORT, OH	06/20/2002
CASPER, CINDY D ..... CAROL STREAM, IL	06/20/2002
CHAMNESS, BARBARA ANN TAYLORVILLE, IL	06/20/2002
CHIN, SANG IL ..... LOS ANGELES, CA	06/20/2002
CLARK, BENJAMIN D ..... AURORA, CO	06/20/2002
CLARK, SANDRA A ..... NEWPORT BEACH, CA	06/20/2002
COHEN, SCOTT EDWARD .... CINCINNATI, OH	06/20/2002
COLLINS, ANTHONY WAYNE GONZALES, LA	06/20/2002
CONLEY, BRENDA CAROLYN TURNER ..... COVINGTON, KY	06/20/2002
DAIGLE, FRANCES A F ..... DENISON, TX	06/20/2002
DAVIS, BRENDA RIDER ..... FOLEY, AL	06/20/2002
DENT, AMY ..... ENTERPRISE, AL	06/20/2002
DESSOURCES, MARLENE ..... HOLBROOK, MA	06/20/2002
DEUTCHMAN, RALPH F ..... STAMFORD, CT	06/20/2002
DINGANKAR, HRISHIKESH S DETROIT, MI	06/20/2002
DIX, JOSEPH TIMOTHY ..... LOS ANGELES, CA	06/20/2002
DIXON, DEBORAH D ..... NASHVILLE, TN	06/20/2002
DRUMHELLER, GREGORY SCOTT ..... ROYAL PALM BCH, FL	06/20/2002
ELDRIDGE, MONTE EUGENE LAKEWOOD, CO	06/20/2002
ELLIOTT, CAROLYN ANN ..... COTTONWOOD, AL	06/20/2002
ESKRIDGE, SONYA MARIE .... IRVING, TX	06/20/2002
EYDINOV, BORIS ..... CHESTNUT HILL, MA	06/20/2002
FIELDS, EVA A ROSS ..... ASHLAND, KY	06/20/2002
FITZPATRICK, PATRICIA A .... BURNHAM, ME	06/20/2002
FORTIN, MICHAEL S ..... GOWANDA, NY	06/20/2002
GASIOROWSKI, ELIZABETH E PHOENIX, AZ	06/20/2002
GRIFFIN, GERALD T ..... CRANSTON, RI	06/20/2002
GUSTAFSON, CHRISTINE M .. ATLANTA, GA	06/20/2002
HARRISON, BETTY ..... GREENVILLE, MS	06/20/2002
HENDRICKSON, BRIAN EDWIN ..... MINNEAPOLIS, MN	06/20/2002
HESS, JOHN ..... ALBUQUERQUE, NM	06/20/2002
HICKS, ALESIA JANINE ..... CORDOVA, AL	06/20/2002
HOUCK, GREGORY MILES .... THOUSAND OAKS, CA	06/20/2002
HOWELL, ANNA R	06/20/2002

Subject city, state	Effective date
EL PASO, TX	
HUBBARD, CAROLYN K ..... GREELEY, CO	06/20/2002
HUNTON, CLARA M ..... NORWAY, ME	06/20/2002
HUTSON–MONTOYA, ROBIN KANSAS CITY, MO	06/20/2002
JACKSON, JAMES ..... DALLAS, TX	06/20/2002
JACKSON, BONNIE LYNNE .... GLENDALE, AZ	06/20/2002
NORDLING, DEBRA S ..... WESTPORT, CT	06/20/2002
OGIN, GARY ARTHUR ..... ENGLEWOOD, CO	06/20/2002
PAWLOSKI, PATRICIA LABRECK ..... PEORIA, AZ	06/20/2002
POPE, LANCE W ..... OAK BLUFFS, MA	06/20/2002
SAN LEANDRO, CA	
WALKER, SHARON KAY ..... LINCOLN, NE	06/20/2002
WEBB, KENNETH RANDLE .... FORT WORTH, TX	06/20/2002
WHITE, CONNIE M ..... PAYSON, AZ	06/20/2002
WHOBREY, LAURA ..... GULFPORT, FL	06/20/2002

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Detroit River International Wildlife Refuge, Wayne and Monroe Counties, MI

AGENCY: U.S. Fish and Wildlife Service, Interior.

the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The Comprehensive Conservation Plan will guide management decisions and identify refuge goals, objectives, and strategies for achieving refuge purposes. The public is encouraged to participate in the planning process. The Comprehensive Conservation Plan will provide other agencies and the public with a clear understanding of the

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Subject city, state	Effective date
EL PASO, TX	
HUBBARD, CAROLYN K GREELEY, CO	06/20/2002
HUNTON, CLARA M NORWAY, ME	06/20/2002
HUTSON-MONTOYA, ROBIN KANSAS CITY, MO	06/20/2002
JACKSON, JAMES DALLAS, TX	06/20/2002
JACKSON, BONNIE LYNNE GRAFTON, ND	06/20/2002
JERMYN, KATHLEEN HADDON HGTS, NJ	06/20/2002
JOHNSON, DONNA G BARRE, VT	06/20/2002
JOHNSON, PATRICIA PHILADELPHIA, MS	06/20/2002
JONES, EVELYN FISHER MONTGOMERY, AL	06/20/2002
KARAS, RHONDA ALBUQUERQUE, NM	06/20/2002
KEENEY, SUSAN L COLCHESTER, VT	06/20/2002
KEETH, WALTER E PUEBLO, CO	06/20/2002
KILEN, DOUGLAS ASTOR SUPERIOR, WI	06/20/2002
KUMN, PATRICIA JAMISON POPLARVILLE, MS	06/20/2002
LANDRY, BRYNN WILLIAMSTOWN, VT	06/20/2002
LEONARD, ROBERT CLOVERDALE, CA	06/20/2002
LIEBERMAN, BRUCE IRWIN LEAWOOD, KS	06/20/2002
LILLISTON, PAULINE FRANCES TANGIER, VA	06/20/2002
LISS, DANA JOY MIAMISBURG, OH	06/20/2002
LOVELESS, LISA PICAYUNE, MS	06/20/2002
MAGUIRE, PATRICIA JANE HOPKINS, MN	06/20/2002
MAJOR, WILLIAM C NINILCHIK, AK	06/20/2002
MARES, MICHELLE R MT ZION, IL	06/20/2002
MATONIS, LANA MARIE PHOENIX, AZ	06/20/2002
MCFADDEN, THOMAS C LOUISVILLE, KY	06/20/2002
MELGOZA, CHRISTELLA SUE TUCSON, AZ	06/20/2002
MEREDITH, GEORGE M VIRGINIA BCH, VA	06/20/2002
MERVINE, DOROTHY LANTZ CRESSON, PA	06/20/2002
MILLER, LEIGH A CHICAGO, IL	06/20/2002
MIZE, SHERIECE LAS CRUCES, NM	06/20/2002
MOIR, MARILYN CLARINGTON, PA	06/20/2002
MOORE, DAPHINE MATTOX HAZEL GREEN, AL	06/20/2002
MORRIS, ANTHONY DWAYNE SUMITON, AL	06/20/2002
MORRIS, BRIAN J BUSY, KY	06/20/2002
MYERS, DEBRA LEE VIDOR, TX	06/20/2002
NESTER, RONNIE L GLENDALE, AZ	06/20/2002
NORDLING, DEBRA S WESTPORT, CT	06/20/2002
OGIN, GARY ARTHUR ENGLEWOOD, CO	06/20/2002
PAWLOSKI, PATRICIA LABRECK	06/20/2002
PEORIA, AZ	06/20/2002
POPE, LANCE W OAK BLUFFS, MA	06/20/2002
QUARLES, KRISTI GAIL CIMARRON, NM	06/20/2002
RAYMOND, DANA ALLEN SAN ANTONIO, TX	06/20/2002
RESCIGNO, ELIZABETH A EAST HAVEN, CT	06/20/2002
RICCIARDI, JUDE N BERGEN, NJ	06/20/2002
RICHARD, CINDI LYNN POLLOK, TX	06/20/2002
RICHARDSON, TAD EDWIN PHOENIX, AZ	06/20/2002
RICHARDSON, STEPHEN RALPH FRESNO, CA	06/02/2002
ROUSE, DEBORAH RENA PINE BLUFF, AR	06/20/2002
ROWAN, HERBERT PAUL WATERFORD, MI	06/20/2002
RUDLOFF, SHARON M TUCSON, AZ	06/20/2002
SALO, STEVEN MARTIN CONNEAUT, OH	06/20/2002
SCHRANER, BOBBIE TAYLORSVILLE, MS	06/20/2002
SEDERWALL, GINA M KINGSTON, TN	06/20/2002
SHAH, SURESH B SMITHTOWN, NY	06/20/2002
SHAW, SUZEN TUCSON, AZ	06/20/2002
SHERRILL, DONALD C ORANGE CITY, FL	06/20/2002
SIGNORINE, LOUIS A GILFORD, NH	06/20/2002
SILBERMAN, DAVID J ANDOVER, MA	06/20/2002
SIMPSON, LIZZIE MARIE GOODWATER, AL	06/20/2002
SISK, DONNA J E PRAIRIE, MO	06/20/2002
SMITH, DARWIN LEON MUSKEGON, MI	06/20/2002
SMITH, RHONDA ANN HOYT LAKES, MN	06/20/2002
SMITH, JANICE SUE FORT WAYNE, IN	06/20/2002
SMITH, SHARON LYNN MEXIA, TX	06/20/2002
SMUTZ, HALLY ROCHELLE FORT WORTH, TX	06/20/2002
STEINBERG, JONATHAN M COMSTOCK, NY	06/20/2002
STRAHAN, RONALD W LOS ANGELES, CA	06/20/2002
SWANSON, SUZANNE FAE GRAND ISLAND, NE	06/20/2002
TOMLINSON, PATRICIA MARIE JUNCTION, TX	06/20/2002
ULRICH, CANDACE M CAPE GIRARDEAU, MO	06/20/2002
VALDEZ, KENNETH SAN LEANDRO, CA	06/20/2002
WALKER, SHARON KAY LINCOLN, NE	06/20/2002
WEBB, KENNETH RANDLE FORT WORTH, TX	06/20/2002
WHITE, CONNIE M PAYSON, AZ	06/20/2002
WHOBREY, LAURA GULFPORT, FL	06/20/2002
WILLIAMS, RAMONA VELMARIE PHOENIX, AZ	06/20/2002
WILLIAMS, CYNTHIA R MANTACHIE, MS	06/20/2002
WILSON, RUTHEL W KERRVILLE, TX	06/20/2002
WILSON, CYNTHIA PRETRICE MONTGOMERY, AL	06/20/2002
WILSON, NANCY M GLENDALE HGTS, IL	06/20/2002
WOOD, MARINA F PLAINFIELD, IL	06/20/2002
WYATT, EMILY JEAN ALPINE, AL	06/20/2002
ZENGOTITA, HIRAM E ANDOVER, MA	06/20/2002

FEDERAL/STATE EXCLUSION/ SUSPENSION

CARLOCK, JENNIFER MARIE ST LOUIS, MO	06/20/2002
ESTEY, RAYMOND GRANT SHINGLE SPRINGS, CA	06/20/2002
GEROV, SEMEN LOS ANGELES, CA	06/20/2002
LEE VERN HOME HEALTH SVC INC ST LOUIS, MO	06/20/2002
LEVINE, MARK ALLEN CINCINNATI, OH	06/20/2002
WIGGINS, CHARLES T BIRMINGHAM, AL	06/20/2002

OWNED/CONTROLLED BY CONVICTED ENTITIES

NORWELL FAMILY CHIROPRACTIC NORWELL, MA	06/20/2002
THERESA K MILLER FAMILY ELIZABETHTOWN, KY	06/20/2002

Dated: June 4, 2002.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–16217 Filed 7–1–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in July 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. Among other things, it will receive testimony from interested parties, establish issue priorities and develop a work plan.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: July 17, 2002, 5 p.m. to 6:30 p.m.; Open: July 18, 2002, 8:30 a.m. to 5 p.m.; Open: July 19, 2002, 8:30 a.m. to 3 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857. Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov*

Dated: June 28, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 02–16733 Filed 7–1–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Detroit River International Wildlife Refuge, Wayne and Monroe Counties, MI

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and associated Environmental Assessment for the Detroit Rivers International Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a Comprehensive Conservation Plan and an associated Environmental Assessment for the Detroit River International Wildlife Refuge located in Wayne and Monroe Counties, Michigan. The Service is furnishing this notice in compliance with Service Comprehensive Conservation Plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions;

(2) Obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the Comprehensive Conservation Plan and Environmental Assessment; and

(3) Solicit information from the public about archaeological sites, buildings and structures, historic places, cemeteries, and traditional use sites that could influence decisions about management of the Refuge.

DATES: Beginning in late June 2002, the Service will solicit information from the public via public open house events, workshops, focus groups, and written comments. Special mailings, newspaper articles, radio announcements, and the Service's web site *http://midwest.fws.gov/planning/detroitrivertop.htm* will inform people of the times and places of public involvement opportunities.

FOR FURTHER INFORMATION CONTACT: Address comments and requests for additional information to: Gary Muehlenhardt, NWRS–AP, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111–5406. Email: *gary—muehlenhardt@fws.gov.* Telephone: 1–800–247–1247 extension 5477.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The Comprehensive Conservation Plan will guide management decisions and identify refuge goals, objectives, and strategies for achieving refuge purposes. The public is encouraged to participate in the planning process. The Comprehensive Conservation Plan will provide other agencies and the public with a clear understanding of the desired future conditions of the Refuge and how the Service will implement management strategies.

The Detroit River International Wildlife Refuge (Refuge) was established by Public Law 107–91 on December 21, 2002 and is the first international wildlife refuge in North America. The Refuge will conserve, protect and restore habitat for 29 species of waterfowl, 65 kinds of fish and 300 species of migratory birds along the lower Detroit River in Michigan and Canada. The authorized refuge boundary includes islands, coastal wetlands, marshes, shoals and riverfront lands along 18 miles of the Lower Detroit River.

The Refuge establishing act included Mud Island and Grassy Islands, lands already managed by the Service as Wyandotte National Wildlife Refuge (394 acres). The Act created an "acquisition" boundary for the refuge, called for partnerships with Canada and local communities, and directed the Service to "conduct a study of fish and wildlife habitat and aquatic and terrestrial communities of the north reach of the Detroit River" for potential inclusion in the Refuge, and to report back to Congress in 18 months. To meet this obligation, the Service will be developing a Comprehensive Conservation Plan for the new Refuge.

Dated: June 3, 2002.

William F. Hartwig,

Regional Director.

[FR Doc. 02–16576 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Battle of Midway National Memorial Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Battle of Midway National Memorial Advisory Committee will hold its third meeting by teleconference on Thursday, July 11,

2002, from 2 p.m. to 4 p.m. Eastern Daylight Savings Time. During this teleconference, the committee will review existing monuments to the Battle of Midway located on Midway Atoll, discuss current standards for any new memorials to be placed on the atoll and make recommendations for acceptance or revision of those standards, and review a proposal to erect a joint Japanese-American monument on

Dated: June 14, 2002.

Jerry F. Leinecke,

Project Leader, Hawaiian and Pacific Islands National Wildlife Refuge Complex.

[FR Doc. 02–16679 Filed 6–27–02; 4:15 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

You may obtain nomination forms from the Grand Staircase-Escalante National Monument Office or download the application from the Internet site (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**, above). To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Grand

recommended nominations to the Secretary of the Interior who has responsibility for making the appointments.

The purpose of the Grand Staircase-Escalante National Monument Advisory Committee is to advise the Bureau of Land Management on the management of the Grand Staircase-Escalante National Monument. Each member will be a person who, as a result of training

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who

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2002, from 2 p.m. to 4 p.m. Eastern Daylight Savings Time. During this teleconference, the committee will review existing monuments to the Battle of Midway located on Midway Atoll, discuss current standards for any new memorials to be placed on the atoll and make recommendations for acceptance or revision of those standards, and review a proposal to erect a joint Japanese-American monument on Midway.

DATES: July 11, 2002, 2 p.m. to 4 p.m. Eastern Standard Time.

ADDRESSES: U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia, room 205 or by teleconference.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Barbara Maxfield, External Affairs Chief for the Fish and Wildlife Service's Pacific Islands Office, Box 50088, Honolulu, HI 96850; telephone (808) 541–2749; fax (808) 541–2756 no later than July 8, 2002. You may obtain copies of the draft meeting agenda from the same source.

SUPPLEMENTARY INFORMATION: As directed by Congress, the Secretary of the Interior established the Battle of Midway National Memorial Advisory Committee to facilitate development of a strategy for the dedication and management of this National Memorial. Members of the public are welcome to participate in any of its meetings.

Members of the public in the Washington, DC, area may attend the meeting in person in the U.S. Fish and Wildlife Service's Washington Office at 4401 N. Fairfax Drive, Arlington, Virginia, in room 205. Members of the public may also participate by teleconference, however, teleconference lines are limited. Please call Barbara Maxfield (808) 541–2749 if you are interested in participating in the call and to obtain the dial-in number. Seating in room 205 of the Fish and Wildlife Service's Arlington Square office is limited and is available on a first come, first served basis.

We will distribute written comments submitted to the Fish and Wildlife Service at the Honolulu address above to committee members prior to the meeting if we receive them in sufficient time to allow distribution. We will provide an opportunity for oral comments from the public during this teleconference meeting as well.

Dated: June 14, 2002.

Jerry F. Leinecke,

Project Leader, Hawaiian and Pacific Islands National Wildlife Refuge Complex.

[FR Doc. 02–16679 Filed 6–27–02; 4:15 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–02–1610–DE–24–1A]

Grand Staircase-Escalante National Monument Advisory Committee; Notice of Intent To Establish and Call for Nominations

AGENCY: Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument, Kanab, Utah.

ACTION: Notice of intent to establish and call for nominations for the Grand Staircase-Escalante National Monument Advisory Committee under the provisions of the Approved Management Plan for the Grand Staircase-Escalante National Monument (February 2000).

SUMMARY: BLM is publishing this notice under Section 9(a)(2) of the Federal Advisory Committee Act. Pursuant to the Approved Management Plan for the Grand Staircase-Escalante National Monument (February 2000), BLM gives notice that the Secretary of the Interior intends to establish the Grand Staircase-Escalante National Monument Advisory Committee (Committee). The notice requests the public to submit nominations for membership on the Committee. The Committee is necessary to advise the Secretary and BLM on resource management issues associated with the Grand Staircase-Escalante National Monument.

DATES: Submit a completed nomination form and nomination letters to the address listed below no later than August 1, 2002.

ADDRESSES: Send nominations to: Monument Manager, Grand Staircase-Escalante National Monument, Bureau of Land Management, 190 E. Center St., Kanab, Utah 84741.

FOR FURTHER INFORMATION CONTACT: David Hunsaker, Acting Monument Manager, (435) 644–4300, or the following web site *www.ut.blm.gov/monument.*

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Grand Staircase-Escalante National Monument Advisory Committee. Individuals may nominate themselves for Committee membership. You may obtain nomination forms from the Grand Staircase-Escalante National Monument Office or download the application from the Internet site (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**, above). To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Grand Staircase-Escalante National Monument. You may make nominations for the following categories of interest:

(1) A member with expertise in archaeology, to represent the archaeological community;

(2) A member with expertise in paleontology, to represent the paleontological community;

(3) A member with expertise in geology, to represent the geological community;

(4) A member with expertise in botany, to represent the botanical community;

(5) A member with expertise in wildlife biology, to represent the wildlife biological community;

(6) A member with expertise in history, to represent the historical community;

(7) A member with expertise in social science, to represent the social science community;

(8) A member with expertise in systems ecology, to represent the systems ecology community;

(9) An elected official from Garfield County, to represent the interests of county residents;

(10) An elected official from Kane County, to represent the interests of county residents;

(11) A representative of State or tribal government;

(12) An educator, to represent the educational community;

(13) A representative of the environmental community;

(14) An outfitter and guide operating within the Monument, to represent commercial recreation activities in the Monument;

(15) A livestock grazing permittee operating within the Monument, to represent grazing interests.

The specific category the nominee would be representing should be identified in the letter of nomination and in the nomination form. The State Director, BLM Utah, and Monument Manager will review the nomination forms and letters of reference. The State Director shall confer with the Governor of the State of Utah on potential nominations. The Director, Bureau of Land Management will then forward recommended nominations to the Secretary of the Interior who has responsibility for making the appointments.

The purpose of the Grand Staircase-Escalante National Monument Advisory Committee is to advise the Bureau of Land Management on the management of the Grand Staircase-Escalante National Monument. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Committee will meet at least twice a year. Additional meetings may be called by the Designated Federal Official.

Dated: June 3, 2002.

Sally Wisely,

Utah State Director.

[FR Doc. 02–16578 Filed 7–1–02; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Labor Condition Application and Requirements for Employers Using Nonimmigrants on H–1B Visas.

OMB Number: 1205–0310.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local, or Tribal Government.

Type of Response: Reporting and Recordkeeping.

Frequency: On occasion.

Number of Respondents: 70,000.

Requirement	Responses	Average reponses time (hours)	Annual hours
Labor Condition Applications—20 CFR 655.760	275,000	1.00	275,000
Documentation of Corporate Identity—20 CFR 655.760	1,000	0.50	500
Determination of H–1B Dependency—20 CFR 655.736	400	0.50	200
Retaining Copies of H–1B Petitions and Extensions—20 CFR 655.736	3,500	0.05	175
List of Exempt H–1B Employees in Public Access File—20 CFR 655.737(e)(1)	1,600	0.25	400
Record of Assurances of Non-Displacement of U.S. Workers at Second Employer's Worksite—20 CFR 655.738(e)	7,500	0.17	1,250
Offers of Employment to Displaced U.S. Workers—20 CFR 655.738(e)	75	0.50	38
Documentation of U.S. Worker Recruitment—20 CFR 655.739(i)	10,000	0.33	3,333
Documentation of Fringe Benefits—20 CFR 655.731(b)	7,000	0.25	1,750
Documentation of Fringe Benefits (Multi-national Employers—20 CFR 655.731(b)	17,500	0.08	1,458
Wage Recordkeeping Requirements Applicable to Employers of H–1B Non-immigrants—20 CAR 655.731(b)	10,500	2.50	26,250
Information Form Alleging Violations (WH–4)	200	0.33	67
Totals	334,275		310,421

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under the Immigration and Nationality Act, employers seeking to employ Nonimmigrants on H–1B Visas in specialty occupations are required to file a labor condition application with and receive

by contacting the office shown in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section on or before September 3, 2002.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: Gerald B. Lindrew, Office of Policy and

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Education and Training and Plan Fiduciaries Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in

Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC, this 25th day of June 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16592 Filed 7–1–02; 8:45 am]

presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory

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Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under the Immigration and Nationality Act, employers seeking to employ Nonimmigrants on H–1B Visas in specialty occupations are required to file a labor condition application with and receive certification from the Department of Labor before the Immigration and Nationalization service may approve an H–1B petition.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–16597 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6)

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

By this notice, the Department is soliciting comments concerning the information collection provisions of regulations pertaining to section 104(a)(6) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Under the statute, and regulatory provisions codified at 29 CFR 2520.104a–8, the administrator of an employee benefit plan subject to part 1 of Title I of ERISA is required to furnish the Secretary of Labor with certain documents relating to the plan upon request. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section on or before September 3, 2002.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Taxpayer Relief Act of 1997 (TRA 97) eliminated the ERISA requirement that employee benefit plan administrators file with the Department copies of the summary plan descriptions and summaries of material modifications that are required to be furnished to plan participants and beneficiaries. TRA 97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to Part 1 of Title I of ERISA is required to furnish to the Secretary of Labor, on request, any documents related to the employee benefit plan. Prior to the TRA 97 amendments, ERISA provided that certain documents be filed with the Department of Labor to ensure that plan participants and beneficiaries would have a means to obtain the documents without requesting them from the plan administrator. With the elimination of the filing requirement, the new section 104(a)(6) provision authorizes the Department to obtain documents on behalf of plan participants and beneficiaries. The Department issued final implementing guidance with respect to the requirement to provide these documents on January 7, 2002 (67 FR 772). The ICR relating to responding to these requests was approved following publication of the proposed rule on August 5, 1999 (64 FR 42797). This approval will expire on October 31, 2002.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

The Pension and Welfare Benefits Administration is requesting an extension of the currently approved ICR pertaining to Furnishing Documents to the Secretary of Labor under ERISA section 104(a)(6). The Department is not proposing or implementing changes to the regulation or the existing ICR at this time. A summary of the ICR and current burden estimates follows:

Type of Review: Extension of a currently approved collection.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Furnishing Documents to the Secretary of Labor on Request under ERISA.

OMB Number: 1210–0112.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; Not-for-profit institutions.

Total Respondents: 1,000.

Total Responses: 1,000.

Estimated Total Burden Hours: 95.

Estimated Total Burden Cost: $4,100.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: June 26, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–16598 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Education and Training and Plan Fiduciaries Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of educating and training plan fiduciaries will hold an open public meeting on Wednesday, July 17, 2002, in Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the Working Group is to study means by which the Labor Department could effectively promote and improve the education and training of employee benefit plan fiduciaries with regard to their fiduciary duties under ERISA.

The purpose of the open meeting, which will run from 9 a.m. to approximately 4:30 p.m. with a one-hour lunch break at noon, is for Working Group members to hold an organizational meeting, at which the group's goals for study will be outlined and the group will hear testimony from invited witnesses. Norman Stein, law professor at the University of Alabama at Tuscaloosa, is the new working group chair, and Robert Patrician, a senior research economist for the Communications Workers of America, Washington, DC, is the vice chair.

Members of the public are encouraged to file a written statement pertaining to the topic by sending 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC, this 25th day of June 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16592 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Orphan Plans; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Thursday, July 18, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study orphan plans, which are plans abandoned by all plan fiduciaries designated to manage and operate the plans and their assets. Without a plan sponsor or fudiciary, participants and beneficiaries cannot receive pension distributions or make inquiries about their benefits.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 4 p.m., is for working group members to organize their goals for study of these plans and to hear testimony on the issue. Catherine Heron, Senior Vice President, Fund Business Management Group, Capital Research and Management in Los Angeles, Calif., is the Working Group chair, and David Wray, President of the Profit Sharing/401(k) Council of Chicago, Ill., is the vice chair.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC, this 25th day of June, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16593 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Electronic Reporting; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the employee Retirement Income Security Act of 1974 of (ERISA), 29 U.S.C. 1142, a public meeting will be held Friday, July 19, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study electronic reporting. The purpose of the working group is to identify and prioritize opportunities for DOL to leverage the use of information technology to improve delivery of plan information from and delivery of information and services to its key stakeholders, including plan participants and beneficiaries, plan sponsors, auditors, investment advisors and the general public.

The session will take place in Room N–5437 A–C, U.S. Department of labor Building, 200 Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 1 p.m., is for working group members to outline the group's goals for study at this organizational meeting and to hear from select witnesses on the issue. Working Group chair is Evelyn F. Adams, Business Segment Executive, IBM Global Services, Gaithersburg, MD., and vice chair is Timothy J. Mahota, General

Counsel, Integral Development, Mountain View, Calif.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of labor, Room N–5677, 200 Constitution Avenue, NW, Washington DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC, this 25th day of June 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16594 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Participant Investment Advice; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, July 17, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study participant investment advice. The purpose of the working group is to study the issue of participant investment advice and to hear testimony on the issue. The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 4 p.m., is for working group members to organize their goals for study of these plans and to hear testimony on the issue. Jeffrey Mamorsky, Senior Vice President and General Counsel, Fidelity Investments, Boston, Mass., is the Working Group chair, and Mark Iwry, Senior Benefits Tax Counsel, Department of the Treasury, Washington, DC, is the vice chair.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC, this 25th day of June 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16595 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

6. Federal/State Partnership
7. Jefferson Lecture/National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National

personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 11, 2002.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 8562 and no comments were received. NSF is

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Counsel, Integral Development, Mountain View, Calif.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 9, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of labor, Room N–5677, 200 Constitution Avenue, NW, Washington DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9, at the address indicate in this notice.

Organizations or individuals may also submit statement for the record without testifying. Twenty (20) copies so such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9.

Signed at Washington, DC., this 25 day of June 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16594 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

118th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 118th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Friday, July 19, 2002, in Conference Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 2 p.m. and end at approximately 3:30 p.m., is for members to be updated on activities of the Pension and Welfare Benefits Administration and for chairs of this year's working groups to provide progress reports on their individual study topics.

Members of the public are encouraged to file a written statement pertaining to any topics the Council may be studying during 2001 by submitting 20 copies on before July 9, 2002 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 9 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 9, 2002.

Signed at Washington, DC, this 25 day of June, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–16595 Filed 7–1–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

June 28, 2002.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on July 18–19, 2002.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on July 18–19, 2002, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on July 18, 2002 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion
9:30–10:30 a.m.
- Education Programs—Room M–07
- Federal/State Partnership—Room 507
- Preservation and Access/Challenge Grants—Room 415
- Public Programs—Room 426
- Research Programs—Room 315

(Closed to the Public)

Discussion of specific grant applications and programs before the Council
10:30 a.m. until Adjourned
- Education Programs—Room M–07
- Federal/State Partnership—Room 507
- Preservation and Access/Challenge Grants—Room 415
- Public Programs—Room 426
- Research Programs—Room 315

2–3:30 p.m.
- Jefferson Lecture and National Humanities Medals Committee—Room 507

The morning session on July 19, 2002 will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting
Reports
- A. Introductory Remarks
- A. Staff Report
- B. Congressional Report
- D. Reports on Policy and General Matters
  1. Overview
  2. Research Programs
  3. Education Programs
  4. Preservation and Access/Challenge Grants
  5. Public Programs
  6. Federal/State Partnership
  7. Jefferson Lecture/National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 02–16650 Filed 7–1–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 11, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for History Museums, Historical Organizations and Historical Sites, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

2. *Date:* July 16, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges, Universities and Other Educational Programs, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

3. *Date:* July 23, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges and Universities, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

4. *Date:* July 25, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Art Museums and Cultural Organizations, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

5. *Date:* July 30, 2002.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Public Programming Institutions, submitted to the Office of Challenge Grants at the May 1, 2002 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 02–16652 Filed 7–1–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 8562 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register.**

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send email to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.

OMB Control No.: 3145–0157.

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, "Setting Customer Service Standards," which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector.

Wednesday, July 17, 2002—8:30 a.m. until the conclusion of business

Thursday, July 18, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the NRC Office of Nuclear Regulatory Research (RES) draft Regulatory Guide, DG–1120, "Transient and Accident Analysis Methods". The Subcommittee will also discuss the status of the RES experimental program

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision to a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such

Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. Jeffrey A. Ciocco at (301)415–6391; e-mail *JAC3@NRC.GOV*.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides

C between May 1, 2002, and May 31, 2002, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during May 2002:

Department of Education

Special Assistant to the Chief of Staff. Effective May 9, 2002.

Deputy Chief of Staff for Operations to the Chief of Staff. Effective May 9, 2002.

Deputy Assistant Secretary for Regional Services to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 16, 2002.

Confidential Assistant to the Chief of

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SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.

OMB Control No.: 3145–0157.

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, "Setting Customer Service Standards," which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector. Section 1(b) of that order requires agencies to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." The National Science Foundation (NSF) has an ongoing need to collect information from its customer community (primarily individuals and organizations engaged in science and engineering research and education) about the quality and kind of services it provides and use that information to help improve agency operations and services.

Use of the Information:

Estimate of Burden: The burden on the public will change according to the needs of each individual customer satisfaction survey; however, each survey is estimated to take approximately 10 minutes per response. Based on past experience with these surveys, we estimate 30,000 respondents, for an aggregate total of 5,000 hours.

Respondents: Will vary among individuals or households; business or other for-profit; not-for-profit institutions; farms; federal government; state, local or tribal governments.

Estimated Number of Responses per Survey: This will vary by survey.

Frequency of Responses: Once.

Dated: June 27, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–16649 Filed 7–1–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on July 17–18, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 17, 2002—8:30 a.m. until the conclusion of business

Thursday, July 18, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the NRC Office of Nuclear Regulatory Research (RES) draft Regulatory Guide, DG–1120, "Transient and Accident Analysis Methods". The Subcommittee will also discuss the status of the RES experimental program pertaining to subcooled flow boiling phenomena. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: June 24, 2002.

Sher Bahadur,

Associate Director for Technical Support.

[FR Doc. 02–16638 Filed 7–1–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision to a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–3022 (which should be mentioned in all correspondence concerning this draft guide), is Proposed Revision 1 of Regulatory Guide 3.69, "Topical Guidelines for the Licensing Support Network." This draft guide is being developed to provide guidance acceptable to the NRC staff on the scope of documentary material that should be included in the Licensing Support Network, which is an electronic information system that is being designed and implemented to provide for the entry of and access to potentially relevant licensing information for a geologic repository for high-level radioactive waste.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by September 30, 2002.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/fuels-materials/draft-index.html*. This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. Jeffrey A. Ciocco at (301)415–6391; e-mail *JAC3@NRC.GOV*.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *PDR@NRC>GOV*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *<DISTRIBUTION@NRC.GOV>*; or by fax to (301)415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of June 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–16637 Filed 7–1–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established under Schedule C between May 1, 2002, and May 31, 2002, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during May 2002:

Department of Agriculture

Confidential Assistant to the Administrator, Farm Service Agency and Commodity Credit Corporation. Effective May 8, 2002.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective May 15, 2002.

Special Assistant to the Administrator, Rural Business-Cooperative Service. Effective May 17, 2002.

Special Assistant to the Administrator, Rural Business-Cooperative Service. Effective May 23, 2002.

Special Assistant to the Administrator, Risk Management Agency. Effective May 23, 2002.

Department of Commerce

Chief of Protocol to the Chief of Staff. Effective May 28, 2002.

Director, Congressional and Public Affairs to the Under Secretary for Export Administration, Bureau of Industry and Security. Effective May 29, 2002.

Deputy Press Secretary to the Assistant to the Secretary and Director of Policy and Strategic Planning. Effective May 30, 2002.

Special Assistant to the Assistant Secretary and Director General, United States and Foreign Commercial Service. Effective May 31, 2002.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 6, 2002.

Special Policy Advisor to the Under Secretary of Defense (Policy). Effective May 15, 2002.

Staff Specialist to the Under Secretary of Defense, Acquisition, Technology and Logistics. Effective May 16, 2002.

Coordinator of Reserve Integration to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs). Effective May 17, 2002.

Staff Assistant to the Deputy Assistant Secretary of Defense (near East/South Asia). Effective May 17, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective May 21, 2002.

Department of Education

Special Assistant to the Chief of Staff. Effective May 9, 2002.

Deputy Chief of Staff for Operations to the Chief of Staff. Effective May 9, 2002.

Deputy Assistant Secretary for Regional Services to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 16, 2002.

Confidential Assistant to the Chief of Staff. Effective May 20, 2002.

Secretary's Regional Representative, Region IV, Atlanta, Georgia to the Deputy Assistant Secretary for Regional Services. Effective May 20, 2002.

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective May 21, 2002.

Confidential Assistant to the Director, Faith-Based and Community Initiatives Center. Effective May 22, 2002.

Special Assistant to the Director, White House Initiatives on Hispanic Education. Effective May 22, 2002.

Director, White House Initiative on Hispanic Education to the Secretary of Education. Effective May 24, 2002.

Confidential Assistant to the Director, White House Initiative on Tribal Colleges and Universities. Effective May 24, 2002.

Special Assistant to the Director, White House Initiatives on Tribal Colleges and Universities. Effective May 24, 2002.

Special Assistant to the Chief of Staff. Effective May 24, 2002.

Confidential Assistant to the Director, Faith Based and Community Initiatives Center. Effective May 24, 2002.

Confidential Assistant to the Director, Faith-Based and Community Initiatives Center. Effective May 24, 2002.

Special Assistant to the Director, White House Initiatives on Hispanic Education. Effective May 24, 2002.

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective May 24, 2002.

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective May 24, 2002.

Confidential Assistant to the Chief of Staff. Effective May 24, 2002.

Executive Assistant to the Assistant Secretary for Postsecondary Education. Effective May 28, 2002.

Department of Energy

Senior Policy Advisor to the Chief Financial Officer/Director, Office of Management Budget and Evaluation. Effective May 1, 2002.

Deputy Assistant Secretary for National Security to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 1, 2002.

Deputy Director of Advance for Operations to the Director, Office of Scheduling and Advance. Effective May 1, 2002.

Congressional Liaison Officer to the Deputy Assistant Secretary for Environment and Science. Effective May

Department of the Interior

Special Assistant for Communications to the Assistant Secretary, Indian Affairs. Effective May 17, 2002.

Department of Justice

Research Assistant to the Director, Office of Public Affairs. Effective May 3, 2002.

Deputy Director to the Director, Office of Intergovernmental Affairs. Effective

Special Assistant to the Assistant Secretary for Resource Management. Effective May 16, 2002.

Foreign Affairs Officer to the Assistant Secretary for Public Affairs. Effective May 17, 2002.

Special Assistant to the Deputy Assistant Secretary, China. Effective May 17, 2002.

Senior Technical Advisor to the Coordinator, Office of International and

General Services Administration

Senior Advisor to the Regional Administrator, Great Lakes Region. Effective May 10, 2002.

Chief Technology Officer to the Associate Administrator for Communications. Effective May 30, 2002.

Office of Management and Budget

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25640; 812–11986]

Eaton Vance Income Fund of Boston, et al.; Notice of Application

June 26, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an

Municipals Portfolio, Massachusetts Municipals Portfolio, Michigan Municipals Portfolio, Minnesota Municipals Portfolio, Mississippi Municipals Portfolio, Missouri Municipals Portfolio, National Municipals Portfolio, New Jersey Municipals Portfolio, New York Municipals Portfolio, North Carolina Municipals Portfolio, Ohio Municipals Portfolio, Oregon Municipals Portfolio, Pennsylvania Municipals Portfolio,

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Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 1, 2002.

Deputy Director of Advance for Operations to the Director, Office of Scheduling and Advance. Effective May 1, 2002.

Congressional Liaison Officer to the Deputy Assistant Secretary for Environment and Science. Effective May 6, 2002.

Intergovernmental Liaison Officer to the Deputy Assistant Secretary for Intergovernmental and External Affairs. Effective May 16, 2002.

Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science. Effective May 17, 2002.

Senior Advisor to the Assistant Secretary for Environmental Management. Effective May 21, 2002.

Special Assistant to the Deputy Assistant Secretary for Policy, Planning and Budget. Effective May 23, 2002.

Associate Deputy Assistant Secretary to the Deputy Assistant Secretary for Energy Policy. Effective May 24, 2002.

Senior Policy Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 31, 2002.

Department of Health and Human Services

Executive Director, President's Commission of HIV/AIDS to the Assistant Secretary for Health. Effective May 22, 2002.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective May 6, 2002.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective May 8, 2002.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective May 8, 2002.

Senior Counsel to the Deputy to the Chief of Staff for Policy and Programs. Effective May 9, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 10, 2002.

Special Projects Officer to the Regional Administrator, New York, New York. Effective May 10, 2002.

Administrator of The Manufactured Housing Programs to the Assistant Secretary for Housing. Effective May 20, 2002.

Regional Director to the Assistant Deputy Secretary for Field Policy and Management. Effective May 22, 2002.

Department of the Interior

Special Assistant for Communications to the Assistant Secretary, Indian Affairs. Effective May 17, 2002.

Department of Justice

Research Assistant to the Director, Office of Public Affairs. Effective May 3, 2002.

Deputy Director to the Director, Office of Intergovernmental Affairs. Effective May 6, 2002.

Secretary (OA) to the United States Attorney, Eastern District of Michigan. Effective May 7, 2002.

Secretary (OA) to the United States Attorney, District of Wichita, Kansas. Effective May 30, 2002.

Special Assistant to the Deputy Administrator, Drug Enforcement Administration. Effective May 30, 2002.

Department of Labor

Staff Assistant to the Chief of Staff. Effective May 6, 2002.

Research Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Relations. Effective May 8, 2002.

Staff Assistant to the Director, 21st Century Workforce. Effective May 16, 2002.

Staff Assistant to the Director, Women's Bureau. Effective May 20, 2002.

Special Assistant to the Assistant Secretary for Policy. Effective May 20, 2002.

Special Assistant to the Deputy Assistant Secretary for Disability Employment Policy. Effective May 20, 2002.

Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 23, 2002.

Special Assistant to the Deputy Assistant Secretary for Disability Employment Policy. Effective May 24, 2002.

Associate Deputy Secretary to the Deputy Secretary of Labor. Effective May 24, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 29, 2002.

Secretary's Representative, Chicago, Illinois to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 29, 2002.

Department of State

Foreign Affairs Officer to the Coordinator for Counter-Terrorism. Effective May 7, 2002.

Program Officer to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective May 7, 2002.

Special Assistant to the Assistant Secretary for Resource Management. Effective May 16, 2002.

Foreign Affairs Officer to the Assistant Secretary for Public Affairs. Effective May 17, 2002.

Special Assistant to the Deputy Assistant Secretary, China. Effective May 17, 2002.

Senior Technical Advisor to the Coordinator, Office of International and Information Programs. Effective May 23, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective May 28, 2002.

Staff Assistant to the Deputy Secretary of State. Effective May 31, 2002.

Department of Transportation

Special Assistant to the Administrator, Federal Highway Administration. Effective May 1, 2002.

Assistant for Policy to the Secretary of Transportation. Effective May 1, 2002.

Special Assistant to the Assistant to the Secretary of Director of Public Affairs. Effective May 1, 2002.

Speechwriter to the Assistant Director for Speechwriting. Effective May 1, 2002.

Speechwriter to the Assistant Director of Speechwriting. Effective May 1, 2002.

Special Assistant to the Chief Counsel. Effective May 2, 2002.

Special Assistant to the Assistant Secretary for Aviation and International Affairs. Effective May 20, 2002.

Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective May 21, 2002.

White House Liaison to the Chief of Staff. Effective May 24, 2002.

Director, Office of Congressional and Public Affairs to the Maritime Administrator. Effective May 29, 2002.

Environmental Protection Agency

Associate Assistant Administrator to the Assistant Administrator for Solid Waste and Emergency Response. Effective May 2, 2002.

Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations. Effective May 14, 2002.

Special Assistant to the General Counsel. Effective May 15, 2002.

Federal Emergency Management Agency

Special Assistant to the Director for Administration/White House Liaison. Effective May 6, 2002.

Federal Housing Finance Board

Special Assistant to the Chairman. Effective May 15, 2002.

General Services Administration

Senior Advisor to the Regional Administrator, Great Lakes Region. Effective May 10, 2002.

Chief Technology Officer to the Associate Administrator for Communications. Effective May 30, 2002.

Office of Management and Budget

Public Affairs Specialist to the Associate Director for Communications. Effective May 10, 2002.

Deputy General Counsel to the General Counsel. Effective May 30, 2002.

Office of Personnel Management

Coordinator, Public Liaison and Constituent Services to the Director, Office of Communications. Effective May 2, 2002.

Deputy Director, Office of Communications to the Director, Office of Communications. Effective May 17, 2002.

Confidential Assistant/Scheduler to the Chief of Staff. Effective May 23, 2002.

Office of Science and Technology Policy

Executive Director, President's Council of Advisors on Science and Technology and Counsel to the Director, Office of Science and Technology Policy. Effective May 9, 2002.

Securities and Exchange Commission

Director of Legislative Affairs to the Director of Communications. Effective May 24, 2002.

Small Business Administration

Staff Assistant to the Administrator, Small Business Administration. Effective May 8, 2002.

Regional Administrator to the Administrator, Region IV, Atlanta, Georgia. Effective May 31, 2002.

Social Security Administration

Special Assistant to the Deputy Commissioner for Legislation and Congressional Affairs. Effective May 15, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–16468 Filed 6–28–02; 8:45 am]

BILLING CODE [illegible]

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25640; 812–11986]

Eaton Vance Income Fund of Boston, et al.; Notice of Application

June 26, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 18(f) and 21(b) of the Act, (ii) section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, (iii) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Eaton Vance Income Fund of Boston, Eaton Vance Senior Income Trust, Eaton Vance Advisers Senior Floating Rate Fund, Eaton Vance Prime Rate Reserves, EV Classic Senior Floating-Rate Fund, Eaton Vance Institutional Senior Floating-Rate Fund, Eaton Vance Growth Trust, Eaton Vance Investment Trust, Eaton Vance Municipals Trust, Eaton Vance Municipals Trust II, Eaton Vance Mutual Funds Trust, Eaton Vance Series Trust, Eaton Vance Special Investment Trust, Eaton Vance Variable Trust, Asian Small Companies Portfolio, Growth Portfolio, Greater China Growth Portfolio, Information Age Portfolio, Worldwide Health Sciences Portfolio, California Limited Maturity Municipals Portfolio, Florida Limited Maturity Municipals Portfolio, Massachusetts Limited Maturity Municipals Portfolio, National Limited Maturity Municipals Portfolio, New Jersey Limited Maturity Municipals Portfolio, New York Limited Maturity Municipals Portfolio, Ohio Limited Maturity Municipals Portfolio, Pennsylvania Limited Maturity Municipals Portfolio, Alabama Municipals Portfolio, Arizona Municipals Portfolio, Arkansas Municipals Portfolio, California Municipals Portfolio, Colorado Municipals Portfolio, Connecticut Municipals Portfolio, Florida Municipals Portfolio, Georgia Municipals Portfolio, Kentucky Municipals Portfolio, Louisiana Municipals Portfolio, Maryland Municipals Portfolio, Massachusetts Municipals Portfolio, Michigan Municipals Portfolio, Minnesota Municipals Portfolio, Mississippi Municipals Portfolio, Missouri Municipals Portfolio, National Municipals Portfolio, New Jersey Municipals Portfolio, New York Municipals Portfolio, North Carolina Municipals Portfolio, Ohio Municipals Portfolio, Oregon Municipals Portfolio, Pennsylvania Municipals Portfolio, Rhode Island Municipals Portfolio, South Carolina Municipals Portfolio, Tennessee Municipals Portfolio, Virginia Municipals Portfolio, West Virginia Municipals Portfolio, Florida Insured Municipals Portfolio, Hawaii Municipals Portfolio, High Yield Municipals Portfolio, Kansas Municipals Portfolio, Cash Management Portfolio, Government Obligations Portfolio, High Income Portfolio, Tax-Managed Growth Portfolio, Strategic Income Portfolio, Emerging Markets Portfolio, South Asia Portfolio, Growth & Income Portfolio, Special Equities Portfolio, Utilities Portfolio, Senior Debt Portfolio, Floating Rate Portfolio, Tax-Managed Emerging Growth Portfolio, Tax-Managed International Growth Portfolio, Tax-Managed Value Portfolio, Boston Income Portfolio, Capital Appreciation Portfolio, Investment Grade Income Portfolio, Small-Cap Portfolio, Large-Cap Growth Portfolio, Small Company Growth Portfolio, Tax-Managed Mid-Cap Stock Portfolio, Tax-Managed Small-Cap Value Portfolio, Capital Growth Portfolio, Small Cap Value Portfolio, Tax-Managed Mid-Cap Core Portfolio, U.S. Core Growth Portfolio, Investor Portfolio, or series thereof (collectively, the "Eaton Vance Funds"), Eaton Vance Management, Lloyd George Investment Management (Bermuda) Limited, Lloyd George Management (Hong Kong) Limited, and Boston Management & Research, and any entity controlling, controlled by, or under common control with Eaton Vance Management (collectively, the "Adviser"), and any other registered management investment company that is part of the same group of investment companies as the Eaton Vance Funds that is advised by the Adviser, now or in the future (together with the Eaton Vance Funds, the "Funds").[1]

FILING DATES: The application was filed on February 18, 2000, and amended on June 24, 2002.

[1] All investment companies that currently intend to rely on the order are named as applicants. Any other existing or future Fund that will rely on the order will comply with the terms and conditions of the application.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2002, and should be accompanied by proof of

credit arrangements with their custodian (i.e., overdraft protection), as well as committed lines of credit with a bank syndicate for temporary cash needs.

3. If the Funds were to borrow money under their current arrangements or under other credit arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall

Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. The credit facility would be administered by money market investment professionals employed by the Global Treasury Group at Investors Bank & Trust Company ("IBT") and supervised by members of the Funds'

11. Through information provided by IBT, the Adviser would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the

15. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; (iv) section 17(d) of the Act and rule 17d–

material facts about the Fund's intended participation in the credit facility.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, 225 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Eaton Vance Fund, except Eaton Vance Senior Income Trust and Senior Debt Portfolio, is registered under the Act as an open-end management investment company ("Open-End Funds"). Eaton Vance Senior Income Trust and Senior Debt Portfolio are registered under the Act as closed-end management investment companies ("Closed-End Funds"). Each Eaton Vance Fund is organized as a Massachusetts or a New York business trust. Each Eaton Vance Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from banks for temporary purposes to satisfy redemption requests, cover unanticipated cash shortfalls such as a "fails" in which cash payment for a security sold by a Fund has been delayed, or to cover cash short falls resulting from delays in trade settlement. Currently, the Funds have credit arrangements with their custodian (i.e., overdraft protection), as well as committed lines of credit with a bank syndicate for temporary cash needs.

3. If the Funds were to borrow money under their current arrangements or under other credit arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into lending agreements ("Interfund Lending Agreements") under which the Funds would lend money directly to and borrow money directly from each other through a credit facility for temporary purposes ("Interfund Loan"). Applicants believe that the proposed credit facility would substantially reduce the Open-End Funds' potential borrowing costs and enhance the Funds' ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Open-End Funds' need to borrow from banks, the Funds would retain committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodian. Applicants state that Closed-End Funds will participate in the credit facility exclusively as lenders.

5. Applicants anticipate that the credit facility would provide a borrowing Open-End Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Open-End Funds liquidate portfolio securities to meet redemption requests, which normally are effected within one to three days, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions, sales fails and delayed settlements, under the proposed credit facility a borrowing Open-End Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term reserves or repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the "Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate", each as defined below. The Repo Rate for any day would be the highest rate available from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by the Cash Management Team (defined below) each day an Interfund Loan is made according to a formula established by the Fund's Board of Trustees (the "Board") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. The credit facility would be administered by money market investment professionals employed by the Global Treasury Group at Investors Bank & Trust Company ("IBT") and supervised by members of the Funds" treasurer's office (collectively, the "Cash Management Team"). IBT also serves as custodian for each Fund. Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Cash Management Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Cash Management Team has allocated cash for Interfund Loans, the Adviser will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment to the Funds. Money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believed to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board including a majority of trustees who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. Through information provided by IBT, the Adviser would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the interest rates charged.

12. The Adviser would supervise the credit facility as part of its duties under existing advisory contracts with each Fund and would receive no additional fee as compensation for its services. IBT would administer the day-to-day operations of the credit facility and receive no additional compensation for its services. IBT may collect standard pricing, recordkeeping, bookkeeping and accounting fees applicable to lending transactions, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank transactions.

13. Applicants state that IBT will be performing a ministerial role under the daily supervision of the Adviser. Applicants further state that in conjunction with establishment of the credit facility, IBT will also provide certain cash management services and instruments to address liquidity needs the Funds may encounter from time to time. Applicants state that cash management services provided by IBT will only be employed after any interfund lending needs have been satisfied. Applicants believe that any financial benefits received by IBT for its provision of the cash management alternatives to the Funds will be quantifiable and transparent both to the Adviser and to the Boards. The Adviser will provide information on any such financial benefits received by IBT to the Boards in connection with their annual review of the Funds' participation in the credit facility. Applicants represent that IBT will administer the credit facility solely in the best interests of the Funds.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment polices and limitations. The registration of each Fund discloses the individual borrowing and lending limitations of the Fund. Each Fund will notify shareholders of its intended participation in the proposed credit facility prior to relying upon any relief granted pursuant to the application. The statement of additional information of each Open-End Fund will disclose all material facts about the Fund's intended participation in the credit facility.

15. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having a common investment adviser and by having a common Board.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with potential adverse interests to and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the

investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) the Adviser supervises the program as a disinterested fiduciary; (ii) IBT administers the program as a disinterested service provider; (iii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a joint account or other pooled investment vehicle; (iv) Interfund Loans would not involve any material amount of risk to the lending Fund; (v) the borrowing Fund would receive as favorable a rate as possible and as favorable as it could obtain from an arm's length borrowing; (vi) Interfund Loans would be repaid before any additional borrowings; (vii) the Funds would have the right to prepay Interfund Loans without penalty; and (viii) the Boards would adopt procedures reasonably designed to assure that the Adviser is complying with the conditions to the order.

4. Applicants state that the credit facility would reduce the potential borrowing costs and enhance the potential returns of the lending Funds. The credit facility would offer the borrowing Funds a source of liquidity at a cost that is below the cost of short-term bank loans. Applicants state that the credit facility would not result in any additional compensation for their services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

5. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any borrowing there is an asset coverage of at least 300% for all borrowings of the company. Section 18(g) defines "senior security" to include any borrowing unless it is made solely for purposes other than the meeting of redemptions and is in an amount not exceeding 5% of the value of the total assets of the company at the time when the borrowing is made. Section 18(f)(2) provides that if a company has a class of senior securities that is a form of indebtedness, the company may issue another class of senior securities that is a form of indebtedness only if the company's asset coverage is at least 300% after giving effect to the issuance. Applicants request relief to permit the Funds to participate in the credit facility because Interfund Loans may not comply with the requirements of section 18(f)(1). Applicants state that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

facility only on a secured basis. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund's borrowings through the Credit Facility, as measured on the day the most recent Interfund Loan was made to that Fund, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the

concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in

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investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) the Adviser supervises the program as a disinterested fiduciary; (ii) IBT administers the program as a disinterested service provider; (iii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (iv) the Interfund Loans would not involve a greater risk than other similar investments; (v) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (vi) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that neither the Adviser nor IBT would receive any additional compensation for their services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Open-End Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d-1 provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day the Cash Management Team will compare the Repo Rate with the Bank Loan Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the lending Fund than the Repo Rate and more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (iv) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility only on a secured basis. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (i) repay all its outstanding Interfund Loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets, or (iii) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to a Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Unless the Fund has a policy that prevents it from borrowing for other than temporary or emergency purposes, the Fund's borrowings through the Credit Facility, as measured on the day the most recent Interfund Loan was made to that Fund, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Adviser will invest any amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment to the Funds.

13. The Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Boards of the Funds concerning their participation in the credit facility and the terms and conditions of any extensions of credit thereunder.

14. The Board of each Fund, including a majority of the Independent Trustees, (i) will review, no less frequently than quarterly, the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions, (ii) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula, and (iii) will review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Adviser will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by Conditions 13 and 14.

17. The Adviser will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Adviser will report on the operations of the credit facility at the Board's quarterly meetings. In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (i) That the Interfund Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (ii) compliance with the collateral requirements as set forth in this application; (iii) compliance with the percentage limitations on interfund borrowing and lending; (iv) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (v) that the interest rate on any Interfund Loan does not exceed the interest rate on any third

[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each party.

party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, each Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–16615 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46110; File No. SR–CBOE–2002–34]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Amending Its Obvious Error Rule

June 25, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Interpretation and Policy .01 of CBOE Rule 6.8 to permit the Exchange to allow broker-dealer orders to be executed on the Retail Automatic Execution System ("RAES") for any product within Index Floor Procedure Committee's jurisdiction. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission. Interpretation and Policy .01 remain unchanged.

For competitive reasons, CBOE believes that it is appropriate to expand the products available under the pilot program to those products that are under the jurisdiction of the Index Floor Procedure Committee. CBOE believes that the expansion of products in the pilot program will give the Exchange a fuller and richer data set to evaluate

of the accounts of broker-dealers in this manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's

Interpretation and Policy .01 to CBOE Rule 6.8. In addition, the proposed rule change will increase competition in those products that are a part of the pilot and permit the Exchange to compete for orders of the accounts of broker-dealers in these products.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Acceleration of the operative date will permit the Exchange

party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, each Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless the Fund has fully disclosed in its registration statement all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16659 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46113; File No. SR–CBOE–2002–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Rule 6.8 To Permit the Exchange To Allow Broker-Dealer Orders To Be Executed on RAES for Any Product Within Index Floor Procedure Committee's Jurisdiction

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2002, Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Interpretation and Policy .01 of CBOE Rule 6.8 to permit the Exchange to allow broker-dealer orders to be executed on the Retail Automatic Execution System ("RAES") for any product within Index Floor Procedure Committee's jurisdiction. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The proposed rule change broadens the recent amendment to CBOE Rule 6.8.01, which granted the Index Floor Procedure Committee, on a pilot basis, the authority to allow broker-dealer orders for options on Nasdaq-100 Index" Tracking Stock ("QQQ") to be executed on RAES.[4] The proposed rule change would broaden the products that would be eligible to participate in the pilot to any series of any products within the scope of responsibilities of the Index Floor Procedure Committee, pursuant to the Board approved charter for that Committee.[5] In addition, the proposed rule change would give the Exchange the discretion to determine in which series broker-dealer orders could be executed on RAES.[6] All other aspects of Interpretation and Policy .01 remain unchanged.

For competitive reasons, CBOE believes that it is appropriate to expand the products available under the pilot program to those products that are under the jurisdiction of the Index Floor Procedure Committee. CBOE believes that the expansion of products in the pilot program will give the Exchange a fuller and richer data set to evaluate when it considers whether the pilot program has been effective and whether it has achieved its anticipated purpose.

CBOE believes that giving the Exchange the discretion to add permitted products to the pilot program will enhance the Exchange's ability to administer and evaluate the pilot program. Currently, only one type of product participates in the pilot program, but due to the potential increase in the number of products that may participate in the pilot program under the proposed rule change, CBOE believes the discretion to permit broker-dealer orders on RAES should operate differently.[7] The Exchange believes this is appropriate so that new products will be added to the pilot program in a manner that will optimize the evaluation of the pilot program. Since the evaluation and conclusions of the pilot program could have a broader impact than just on those products that are under the jurisdiction of the Index Floor Procedure Committee, CBOE believes that it is appropriate for the Exchange to have the discretion to determine which products within the jurisdiction of the Index Floor Procedure Committee should be added to the pilot program and when they should be added.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest. CBOE believes, that like the recently amended Interpretation and Policy .01 to CBOE Rule 6.8, the proposed rule change could enhance competition for the automatic execution of broker-dealer orders in a broader range of products. CBOE also believes that the expansion of the products eligible for the pilot program will give the Exchange a better array of information to evaluate the appropriateness of competing for orders

[4] See Securities Exchange Act Release No. 45967 (May 30, 2002), 67 FR 37888 (May 30, 2002) (SR–CBOE–2002–22).

[5] The CBOE represents that RAES has sufficient capacity to handle the processing of the potential increased order flow.

[6] Under the current rule, it is the Index Floor Procedure Committee that has the discretion to permit broker-dealer orders for options on QQQ to be executed on RAES. The Exchange discretion would be limited to any series of any products that are within the jurisdiction of the Index Floor Procedure Committee.

[7] New products will be added to the pilot program upon the recommendation of the Index Floor Procedure Committee.

[8] 15 U.S.C. 78f(b)(5).

of the accounts of broker-dealers in this manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, (or such shorter time as the Commission may designate); and the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day pre-operative waiting period. CBOE contends that, acceleration of the operative date is consistent with the protection of investors and the public interest because the changes that are proposed make no substantive changes to

[9] 15 U.S.C. 78s(b)(3)(A).
[10] 17 CFR 240.19b–4(f)(6).
[11] See 15 U.S.C. 78s(b)(3)(C).
[12] 17 CFR 240.19b–4.

Interpretation and Policy .01 to CBOE Rule 6.8. In addition, the proposed rule change will increase competition in those products that are a part of the pilot and permit the Exchange to compete for orders of the accounts of broker-dealers in these products.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Acceleration of the operative date will permit the Exchange to extend the pilot to a broader number of products, thus increasing competition for such products. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2002–35 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16660 Filed 7–1–02; 8:45 am]

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[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] Commission staff has provided interpretative guidance to the Exchange regarding the application of Section 11(a) of the Act, 15 U.S.C. 78k(a), to the RAES system. See letter from Paula Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated May 16, 2002.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46110; File No. SR–ISE–2001–34]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the International Securities Exchange LLC Amending Its Obvious Error Rule

June 25, 2002.

On November 19, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of the term "obvious error" contained in ISE Rule 720 for options with a theoretical price of less than $3.00.

The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

ISE Rule 720 gives the Exchange authority to bust or adjust trades that result from an "obvious error." The Rule currently defines an obvious error based upon the market conditions and the difference between the execution price and the "theoretical price" of the options series. To be an obvious error, the difference in execution and theoretical price must be the greater of

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] See Securities Exchange Act Release No. 45811 (April 24, 2002), 67 FR 21788 (May 1, 2002).
[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[5] 15 U.S.C. 78f.
[6] 15 U.S.C. 78f(b)(5).

$0.50 or two times the allowable spread in regular market conditions (three times the allowable spread in "fast market" conditions).

As the ISE has noted, ISE Rule 720 does not directly consider the price at which the particular options series is trading in determining whether there has been an obvious error (although the allowable spread does increase as an option's price increases). The ISE

19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish listing standards and listing fees for Portfolio Depository Receipts ("PDRs") and Index Fund Shares ("Fund Shares"). On May 6, 2002, Nasdaq filed Amendment No. 1 to the proposal.[3] On May 13, 2002, Nasdaq filed Amendment No. 2 to the proposal.[4] On May 20, 2002, the

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission further believes that this proposed rule change, as amended, is consistent with the provisions of section 15A(b)(5) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Nasdaq represents that

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June

solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish the fees for non-members for the use of Computer-to-Computer Interface ("CTCI") Transmission Control Protocol/Internet Protocol ("TCP/IP")

("MQ Series") software.[4] Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is in italics. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1)–(2) No change.

(3) The following charges shall apply

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$0.50 or two times the allowable spread in regular market conditions (three times the allowable spread in "fast market" conditions).

As the ISE has noted, ISE Rule 720 does not directly consider the price at which the particular options series is trading in determining whether there has been an obvious error (although the allowable spread does increase as an option's price increases). The ISE represents that in administering the Rule, it has found that (1) the price of an option is a significant factor in determining when there is an obvious error; and (2) a pricing error in an options series trading at less than $3.00 can often be significant even if it does not meet the current $0.50 minimum requirement. The Commission believes that it is reasonable for the ISE, based upon its experience in administering the Rule, to amend the Rule to state that the standard for determining the existence of an obvious error for options series trading at less than $3.00 be whether the difference between the execution price and the theoretical price is at least $0.25.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ISE–2001–34) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16542 Filed 7–1–02; 8:45 am]

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[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46114; File No. SR–NASD–2002–45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Partial Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Establishing Listing Standards and Listing Fees for Portfolio Depository Receipts and Index Fund Shares

June 25, 2002.

On April 3, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish listing standards and listing fees for Portfolio Depository Receipts ("PDRs") and Index Fund Shares ("Fund Shares"). On May 6, 2002, Nasdaq filed Amendment No. 1 to the proposal.[3] On May 13, 2002, Nasdaq filed Amendment No. 2 to the proposal.[4] On May 20, 2002, the Commission published the proposed rule change for comment in the **Federal Register** and granted partial accelerated approval to the portion of the proposal relating to listing standards for PDRs and Fund Shares.[5] In this same release, the Commission published for notice and comment, but did not accelerate approval of, the portion of the proposal that dealt with Nasdaq's proposed new listing fees. The Commission is now approving Nasdaq's proposed new listing fees.

The Commission finds that this proposed rule change, as amended, is consistent with the requirements of section 15A of the Act[6] and the rules and regulations thereunder. Specifically, the Commission finds that this proposed rule change, as amended, is consistent with section 15(A)(b)(6),[7] which provides that the rules of the association be designed to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission further believes that this proposed rule change, as amended, is consistent with the provisions of section 15A(b)(5) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Nasdaq represents that the proposed listing fees for PDRs and Fund Shares are less than the current fees for traditional domestic and foreign equity issues listed on The Nasdaq National Market, as the regulatory and client services costs associated with PDRs and Fund shares are lower than those for traditional equity issues. Furthermore, Nasdaq represents that the proposed listing fees for PDRs and Fund Shares are designed to cover costs and allow Nasdaq to compete for the listing of these securities with national securities exchanges.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the portion of the proposed rule change (SR–NASD–2002–45) relating to the proposed listing fees, as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 02–16540 Filed 7–1–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq did the following: (1) Made corrections to its proposed rule text and proposal; (2) added discussion and stated its statutory basis for the proposed listing fees; (3) clarified that its regular trading hours for PDRs and Fund Shares will be from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., as designated by Nasdaq; and (4) requested accelerated approval for the portion of the proposal relating to the listing and trading standards for PDRs and Fund Shares, and not for the portion on the proposed listing fees.

[4] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated May 13, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq removed the term "member organization" throughout its proposed rule text and proposal.

[5] *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605. Nasdaq requested accelerated approval of all portions of the proposal except those that deal with its proposed new listing fees.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46112; File No. SR–NASD–2002–83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment No. 1 To Establish Fees Assessed on Non-Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 19, Nasdaq amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish the fees for non-members for the use of Computer-to-Computer Interface ("CTCI") Transmission Control Protocol/Internet Protocol ("TCP/IP") lines that use Message Queue Series ("MQ Series") software.[4] Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is in italics. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base
Installation Fee	$2000 per site for dual hubs and routers $1000 per site for single hub and router
Relocation Fee (for the movement of TCP/IP-capable lines within a single location)	$1700 per relocation

*As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which has remained $200 per month per circuit—is increased to $1,275 per month per circuit until the date of the termination of such circuits

(g)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service ("ACT") and orders into Nasdaq's transaction execution systems.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process in January 2001 of "sunsetting" its CTCI × .25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The new CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In May 2002, Nasdaq completed the "sunsetting" process. All members and non-members that access Nasdaq through CTCI have now been transitioned to TCP/IP lines.

As an optional enhancement, Nasdaq will support the use of MQ Series software over the TCP/IP lines. MQ Series is a commercially available messaging product that provides firms with the ability to integrate disparate systems over a common application programming interface ("API") messaging infrastructure. There are over 20 operating systems that are supported by MQ Series, including Windows, Solaris, Mac OS, and Linux. Firms that use MQ Series are able to establish networks with less effort, skill, and resources, thereby achieving a seamless interconnection of disparate communications systems, and can make use of a comprehensive family of APIs designed to make coding for any messaging task straightforward. The use of MQ Series by firms that link to Nasdaq through CTCI TCP/IP is entirely optional.

In order to support the use of MQ Series by firms, Nasdaq has expended, and must continue to expend, resources to license, install, and maintain the software. Moreover, the system resources required to use MQ Series increase with the size of the TCP/IP line with which it is used. Accordingly, Nasdaq believes that it is appropriate to charge firms that opt to use MQ Series a higher fee for lines that use the software than for comparable lines that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 19, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq completely deleted the text of the proposed rule language in the original filing, and provided new proposed rule text.

[4] In a companion filing, SR–NASD–2002–82, Nasdaq proposes to make identical changes to the CTCI TCP/IP fees charged to members. *See* Securities Exchange Act Release No. 46111 (June 25, 2002).

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do not. Fees for firms that do not use MQ Series remain unchanged.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[5] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2002–83 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16543 Filed 7–1–02; 8:45 am]

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[5] 15 U.S.C. 78o–3(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46111; File No. SR–NASD–2002–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Establish Fees Assessed on NASD Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 19, 2002, Nasdaq amended the proposal.[3] Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder[5] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish the fees assessed on NASD members for the use of Computer-to-Computer Interface ("CTCI") Transmission Control Protocol/Internet Protocol ("TCP/IP") lines that use Message Queue Series ("MQ Series") software.[6] Nasdaq will implement the proposed rule change on July 1, 2002.

The text of the proposed rule change is below. Proposed new language is in italics.

Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.

Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq completely deleted the text of the proposed rule language in the original filing, and provided new proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the abrogation period to have commenced on June 19, 2002, the date Nasdaq filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] In a companion filing, SR–NASD–2002–83, Nasdaq proposes to make identical changes to the CTCI TCP/IP fees charged to non-members. *See* Securities Exchange Act Release No. 46112 (June 25, 2002).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 19, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market

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Option 1, 2, or 3 with message queue software enhancement	Fee for option 1, 2, or 3 (including any bandwidth enhancement fee) plus 20%
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base.
Installation Fee	$2000 per site for dual hubs and routers. $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	$1700 per relocation.

*As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which has remained $200 per month per circuit—is increased to $1,275 per month per circuit until the date of the termination of such circuits.

(g)–(r) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service ("ACT") and orders into Nasdaq's transaction execution systems.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process in January 2001 of "sunsetting" its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The new CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In May 2002, Nasdaq completed the "sunsetting" process. All members and non-members that access Nasdaq through CTCI have now been transitioned to TCP/IP lines.

As an optional enhancement, Nasdaq will support the use of MQ Series software over the TCP/IP lines. MQ Series is a commercially available messaging product that provides firms with the ability to integrate disparate systems over a common application programming interface ("API") messaging infrastructure. There are over 20 operating systems that are supported by MQ Series, including Windows, Solaris, Mac OS, and Linux. Firms that use MQ Series are able to establish networks with less effort, skill, and resources, thereby achieving a seamless interconnection of disparate communications systems, and can make use of a comprehensive family of APIs designed to make coding for any messaging task straightforward. The use of MQ Series by firms that link to Nasdaq through CTCI TCP/IP is entirely optional.

In order to support the use of MQ Series by firms, Nasdaq has expended, and must continue to expend, resources to license, install, and maintain the software. Moreover, the system resources required to use MQ Series increase with the size of the TCP/IP line with which it is used. Accordingly, Nasdaq believes that it is appropriate to charge firms that opt to use MQ Series a higher fee for lines that use the software than for comparable lines that do not. Fees for firms that do not use MQ Series remain unchanged.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[7] 15 U.S.C. 78o–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–82 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16542 Filed 7–1–02; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46112; File No. SR–NASD–2002–83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Establish Fees Assessed on NASD Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 19, 2002, Nasdaq amended the proposal.[3] Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder[5] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish the fees assessed on NASD members for the use of Computer-to-Computer Interface ("CTCI") Transmission Control Protocol/Internet Protocol ("TCP/IP") lines that use Message Queue Series ("MQ Series") software.[6] Nasdaq will implement the proposed rule change on July 1, 2002.

The text of the proposed rule change is below. Proposed new language is in italics.

Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.

Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq completely deleted the text of the proposed rule language in the original filing, and provided new proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the abrogation period to have commenced on June 19, 2002, the date Nasdaq filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] In a companion filing, SR–NASD–2002–83, Nasdaq proposes to make identical changes to the CTCI TCP/IP fees charged to non-members. *See* Securities Exchange Act Release No. 46112 (June 25, 2002).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 19, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market

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NYSE SC registration category; and (4) a Series 25 examination that corresponds with the NYSE TA registration category.

Another change affecting NYSE members and member organizations is the Signature and Acknowledgment sections on Form U–4. To accommodate electronic filing, revised Section 15, the "Signatures" section, defines a "signature" as either "a manual signature or an electronically transmitted equivalent." This section

Internal Review DRP, there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record through the use of the Forms. Part II of the Form U–5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U–5 by a former employer.

The revised technical and formatting

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

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communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–82 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16545 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46103; File No. SR–NYSE–2002–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Allow the Use of Revised Forms U–4 and U–5

June 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The NYSE provided the Commission with written notice of its intention to file this proposed rule change on May 28, 2002. The Exchange has asked the Commission to waive the 30-day operative delay.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby submits revised Uniform Application for Securities Industry Registration or Transfer ("Form U–4") and the revised Uniform Termination Notice for Securities Industry Registration ("U–5") for Commission review.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to allow the NYSE to use revised Uniform Application for Securities Industry Registration or Transfer ("Form U–4") and Uniform Termination Notice for Securities Industry Registration ("Form U–5") (together, the "Forms"). The NYSE uses these Forms as part of its registration and oversight of persons associated with members and member organizations. In addition, these Forms are used in connection with the National Association of Securities Dealers, Inc.'s ("NASD") Central Registration Depository ("CRD") system, in which the Exchange participates. The CRD is an industry-wide automated system, which allows for the efficient review and tracking of registered persons in the securities industry, as well as changes in their work and disciplinary histories.

The Forms were filed by NASD Regulation, Inc. ("NASDR") with the Commission, and approved by the Commission on March 11, 2002.[5] The NYSE included in its filing copies of the Forms (marked as Exhibits A and B). SR–NASD–2002–05 was based on NASDR's efforts to enhance the CRD and the registration and termination process of individuals in the securities industry. The Forms were amended to provide additional enhancements and information for more meaningful and detailed disclosure. The Forms are to be submitted electronically through the Internet.

The technical changes to the Forms will (1) update the Form U–4 to add examination and registration categories that were not previously included; (2) make certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; (3) clarify certain items that have been a source of confusion for Web CRD users; (4) provide separate paper filing instructions for those filers that do not use the CRD or Investment Adviser Registration Depository ("IARD") systems; (5) accommodate the electronic submission of investment adviser filings in the IARD system; and (6) establish procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms.

Specific revisions that affect NYSE members and member organizations include the addition of new registration categories. The revised Forms add new registration categories for the NYSE Trading Assistant ("TA") and Specialist Clerk ("SC") positions.[6]

The revised Forms also add: (1) a Series 7A examination that corresponds with the Floor Member Conducting Public Business ("PM") and Floor Clerk Conducting Business ("PC") registration category;[7] (2) a NYSE Branch Manager Series 12 examination that corresponds with the Securities Manager ("SM") registration category;[8] (3) a Series 21 examination that corresponds with the NYSE SC registration category; and (4) a Series 25 examination that corresponds with the NYSE TA registration category.

Another change affecting NYSE members and member organizations is the Signature and Acknowledgment sections on Form U–4. To accommodate electronic filing, revised Section 15, the "Signatures" section, defines a "signature" as either "a manual signature or an electronically transmitted equivalent." This section permits individuals and appropriate signatories to go directly to designated signature fields to execute the electronic signatures required by the Form U–4. Revised Sections 15A and 15B address the individual/applicant's acknowledgment and consent and the firm/appropriate signatory's representations, both of which must be completed on all initial or temporary registration Form U–4 filings. Section 15C addresses the Temporary Registration Acknowledgment, which must be completed for all initial or temporary registrations. Section 15D has been added to address an individual/applicant's acknowledgment and consent to amendments to the disclosure questions or the Disclosure Reporting Pages ("DRPs"). Firms and appropriate signatories must complete Section 15E for all amended Form U–4 filings. In addition, the signature section includes the Firm/Appropriate Signatory Concurrence (15F), which is a new signature section that enables one firm to concur with a filing made by another firm with which an individual is also registered (*i.e.*, the individual is registered with more than one broker/dealer and/or investment adviser firm).

The changes to Form U–5 combine the signatures into Section 8, which includes the firm acknowledgment in Section 8A and the individual acknowledgment and consent in Section 8B. Only appropriate signatories of firms are required to sign the Form U–5; however, if the terminating firm reports on the Form U–5 that an individual is under internal review, that individual may file a Part II to the Internal Review DRP to provide a response.

In addition, unregistered individuals are obligated to report to CRD any address changes for two years following the termination of registration. The individual acknowledgment and consent is included in the proposed changes to the Form U–5 to require individuals submitting an address change or an Internal Review DRP-Part II to attest that the information is accurate and complete. With the exception of Part II of the Form U–5 Internal Review DRP, there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record through the use of the Forms. Part II of the Form U–5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U–5 by a former employer.

The revised technical and formatting amendments do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons. Therefore, members and member organizations are not required to "re-file" disclosure or administrative information for their associated persons.

The amendments will enhance the utility of Forms U–4 and U–5 as part of the Exchange's registration and oversight function by providing more detailed reporting concerning persons associated with members and member organizations as well as enhancements to electronic filing through the Internet.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] in that use of the Forms should foster cooperation and coordination with persons engaged in regulating transactions in securities. Additionally, the NYSE believes the information reported on the Forms assists the Exchange in its responsibilities under Section 6(c) of the Act[10] in denying membership to those subject to a statutory disqualification or who cannot meet such standards of training, experience and competence as are prescribed by the rules of the Exchange or those who have engaged in acts or practices inconsistent with just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[5] See Securities Exchange Act Release No. 45531 (March 11, 2002), 67 FR 11735 (March 15, 2002) (SR–NASD–2002–05).

[6] See Securities Exchange Act Release Nos. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (SR–NYSE–98–36) and 41701 (August 3, 1999), 64 FR 43804 (August 11, 1999) (SR–NYSE–98–20) in which the Commission approved the TA and SC positions, respectively.

[7] See Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993)(SR–NYSE–93–10) in which the Commission approved the NYSE proposed rule change to adopt the Series 7A examination as a module of the Series 7 examination for floor members who only accept orders from professional customers, and to establish a new registration category. *See also* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (SR–NYSE–99–36) in which the Commission approved the NYSE proposal to eliminate the Series 7B examination and adopt a new interpretation of Rule 345 to establish the Series 7A examination as the qualifying examination for floor clerks who only accept orders from professional customers.

[8] See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998)(SR–NYSE–97–33), in which the Commission approved a Continuing Education Program for supervisors that included Series 12 examination-qualified securities managers.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(c).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow immediate use of the Forms. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–21 and should be submitted by July 23, 2002.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16544 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

Trading Committee ("OFTC") and may be for any period of time not in excess of two weeks.[9] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for six months from June 25, 2002 to December 24, 2002. The Exchange is in the process of collecting data to determine the effect of the Auto-

(3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days

thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16544 Filed 7–1–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46115; File No. SR–PCX–2002–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to a Six-Month Extension of the Automatic Execution System Incentive Pilot Program

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 21, 2002, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program for six months. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 25, 2001, the Commission approved, on a nine-month pilot basis, the Exchange's proposal to amend PCX Rule 6.87, which governs the operation of Auto-Ex[5] to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.[6] The pilot program is currently set to expire on June 25, 2002.[7]

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to their percentage of their in-person agency[8] contracts traded in an issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee ("OFTC") and may be for any period of time not in excess of two weeks.[9] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for six months from June 25, 2002 to December 24, 2002. The Exchange is in the process of collecting data to determine the effect of the Auto-Ex Incentive Program on the apportionment of Auto-Ex trades among Market Makers. The added time permits the Exchange an opportunity to continue reviewing and evaluating the program. Therefore, the Exchange believes that a six-month extension of the program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder.

The Exchange has requested that the Commission waive the five-day pre-notice requirement and the 30-day operative delay, to permit the Exchange to implement the proposal immediately. Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow for the continued operation of PCX's Auto-Ex Incentive Pilot Program without interruption.[16] For these reasons, the Commission designates the proposed rule change, as amended, to be effective and operative upon filing with the Commission. The Commission also waives the five-business day pre-filing requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2002–34 and should be submitted by July 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16541 Filed 7–1–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 20, 2002. In Amendment No. 1, the PCX explained that is had inadvertently made two virtually identical submissions to the Commission, which were received on June 7, 2002 and June 14, 2002, respectively, and were both titled SR–PCX–2002–34. The only difference between the two submissions was that the latter contained a pilot expiration date of December 24, 2002 (rather than December 25, 2002 as in the original document). Amendment No. 1 stated that the PCX wished to treat the second submission as amending the first by replacing it in full. Consequently, the operative pilot expiration date is December 24, 2002.

[4] 17 CFR 240.19b–4(f)(6).

[5] Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System ("POETS") for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, Auto-Ex, an on-line order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements to the Exchange.

[6] See Securities Exchange Act Release No. 44847 (September 25, 2001), 66 FR 50237 (October 2, 2001).

[7] The proposed rule changes were, in part, based on CBOE Rule 6.8 *Interpretations and Policies* .06(c) "100 Spoke RAES Wheel". The 100 Spoke RAES Wheel pilot program has received three extensions, the latest being a six month extension issued on January 3, 2002. See Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002).

[8] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.

[9] The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on June 21, 2002, the date that the Exchange filed Amendment No. 1.

[18] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Teleconference

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconference.

DATES: Monday July 29, 2002.

Teleconference: Monday July 29, 2002, 11 AM to 1 PM.

Ticket to Work and Work Incentives Advisory Panel Conference Call

Call-in number: 800–857–9091.

Pass code: PANEL.

Leader/Host: Sarah Wiggins Mitchell.

SUPPLEMENTARY INFORMATION:

Type of meeting: This teleconference meeting is open to the public. The interested public is invited to participate by calling into the teleconference at the number listed above. Public testimony will not be taken.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will deliberate on the implementation of TWWIIA and conduct administrative business. The Panel will be discussing establishing priorities for action in 2003. The agenda for this teleconference meeting will be posted on the Internet at *http://www.ssa.gov/work/panel/* one week prior to the teleconference or can be received in advance electronically or by fax upon request.

Contact Information: Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by:

- Mail addressed to Ticket to Work and Work Incentives Advisory Panel Staff, Social Security Administration, 400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024;
- telephone contact with Kristen Breland at (202) 358–6430;
- fax at (202) 358–6440; or
- e-mail to *TWWIIAPanel@ssa.gov.*

Dated: June 25, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–16536 Filed 7–1–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4059]

Office of Visa Services; Notice of Information Collection under Emergency Review: Form DS–158, Contact Information and Work History for Nonimmigrant Visa Applicant

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Contact Information and Work History for Nonimmigrant Visa Applicant.

Frequency: Once per respondent.

Form Number: DS–158.

Respondents: All nonimmigrant visa applicants seeking to study in the United States and other nonimmigrant visa applicants as appropriate.

Estimated Number of Respondents: 2,500,000.

Dated: June 14, 2002.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–16653 Filed 7–1–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4060]

Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7141; fax: 202–267–5340; e-mail address: *9-awa-avr-design@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Shortly after the September 11 events, the FAA announced the establishment of the Enhanced Airplane Security Program for airplanes with operating certificates issued under part 119 that have a maximum certificated takeoff weight of 45,500 kg (100,309 lbs) or more. The SFAR 92–3 enhancements are believed to have cost operators several thousand dollars more per aircraft. Congress appropriated $100 million to assist the operators in making the modifications. Based on that appropriation, the FAA established levels of reimbursement for each aircraft. These levels are no longer a part of the program.

In its economic evaluation of the door retrofit requirement, the FAA estimated that the direct cost of the reinforced door alone would be at least $17,000 per aircraft. The SFAR 92–3 enhancements are believed to have cost operators several thousand dollars more per aircraft. Congress appropriated $100 million to assist the operators in making the modifications. Based on that appropriation, the FAA established levels of reimbursement for each aircraft. These levels are no longer a part of the program.

Office, ASW–100, Workroom E, 4th Floor, 2601 Meacham Blvd., Fort Worth, Texas, 76137. Those people in the Washington DC metropolitan area can come to the FAA headquarters building, 800 Independence Ave., Conference Room in Room 810, Washington DC, to access to teleconference at 2 p.m. Eastern Standard Time (EST). Persons interested in participating in the teleconference in the FAA headquarters building please contact Angela

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Title of Information Collection: Contact Information and Work History for Nonimmigrant Visa Applicant.

Frequency: Once per respondent.

Form Number: DS–158.

Respondents: All nonimmigrant visa applicants seeking to study in the United States and other nonimmigrant visa applicants as appropriate.

Estimated Number of Respondents: 2,500,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 2,500,000 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by June 24, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW, Washington, DC 20520, who may be reached on 202–663–1163.

Dated: June 14, 2002.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–16653 Filed 7–1–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4060]

Determination Regarding Export-Import Bank Financing of Certain Defense Articles and Services for the Government of Venezuela

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, and State Department Delegation of Authority No. 245 of April 23, 2001, I hereby determine that:

(1) The defense articles and services for which the Government of Venezuela has requested Export-Import Bank (Ex-Im Bank) financing, spare parts for the maintenance of 12 OV–10 aircraft, are being sold primarily for anti-narcotics purposes.

(2) The sale of such defense articles and services is in the national interest of the United States.

(3) The requirement for a determination that the Government of Venezuela has complied with all U.S.-imposed end use restrictions on the use of defense articles and services previously financed under the Act is inapplicable at this time because the six previous transactions involving Ex-Im Bank Bank financing of defense articles and services for Venezuela have not been completed. Ex-Im Bank approved financing in support of six prior transactions involving Venezuela, but neither delivery of the defense article nor provision of the defense services have been completed in any of the six cases. The six previous transactions financed in part by Ex-Im Bank include: (1) Two cases involving the maintenance and refurbishment of the OV–10 aircraft in which the service has not yet been performed; (2) one case involving two 150-foot logistic support vessels that have not yet been delivered; (3) one case involving parts for the modification of four frigates that have not yet been installed; and (4) two cases involving reverse osmosis water purification and air conditioning and engine overhaul equipment for four Landing Ship, Tank (LST) vessels that have not yet been delivered or installed.

(4) The requirement for a determination that the Government of Venezuela has not used defense articles or services previously provided under the Act to engage in a consistent pattern of gross violations of internationally recognized human rights Act is inapplicable at this time because the six previous transactions have not been completed. As stated above, Ex-Im Bank financing has been used in connection with six defense articles or services transactions involving the Government of Venezuela. Two transactions involved maintenance and refurbishment of OV–10 aircraft for which the service has not yet been completed. A third transaction involved the delivery of two vessels, a fourth the modification of four frigates, and the fifth and sixth the modification of four Landing Ship, Tank (LST) naval vessels. None of these transactions have been completed.

This determination shall be reported to Congress and shall be published in the **Federal Register**.

Dated: March 12, 2002.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 02–16655 Filed 7–1–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–11032]

Funding for Mandated Security Modifications to Flightcrew Compartment Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of funding.

SUMMARY: This document announces changes to a program that allows partial reimbursement to passenger and cargo carrying operators for costs incurred following the events of September 11. Specifically, the reimbursement is for costs incurred by those operators required to comply with mandated security requirements for the flightcrew compartment doors. The program allow operators to choose how to use the funds to meet the modification requirements.

ADDRESSES: You may apply using the simplified application form found at *http://www2.airweb.faa.gov/airplane_security/announce/htm*

FOR FURTHER INFORMATION CONTACT: Dave Rich, Technical Programs and Continued Airworthiness Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7141; fax: 202–267–5340; e-mail address: *9-awa-avr-design@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Shortly after the September 11 events, the FAA announced the establishment of the Enhanced Airplane Security Program for airplanes with operating certificates issued under part 119 that conduct operations under part 121 as passenger carrying operations in common carriage (*http://www2.airweb.faa.gov/airplane_security/announce.htm*). The objective of the program is to enhance safety by improving flightdeck security on airplanes meeting the criteria as recommended by the Secretary of Transportation's Rapid Response Team on Aircraft Security. The program specifically authorizes the funds for security enhancements to the flightcrew compartment door, as well as transponder modifications and video cameras in the cabin.

The program required that all participants report their progress against a set of goals, identifying modifications by airplane types, the date when modified airplanes are returned to service, and the actual cost of work on a per aircraft basis, including labor and materials. Participants are required to maintain for 3 years accounting and financial records reflecting all project costs with supporting documents and records that will be sufficient for financial audit.

To ensure the funding is appropriately used, the FAA announced that funding would be dependent on the level of modification, i.e., from level 1-simple modification to level 5-installation of new doors, and that funding would be distributed as follows: 30% when the design is authorized, 40% after completion of the first airplane installation, and the final 30% after the modifications are installed in the last airplane.

Related Activity

In the 7 months since the initial funding announcement, the FAA mandated short-term security enhancements to the flightdeck compartment door in SFAR 92–3 (67 FR 2112, January 15, 2002) and retrofit installation of reinforced doors in Amendments 25–106 and 121–288 (67 FR 2118). The retrofit requires that the reinforced doors be installed by April 9, 2003. These rules eliminated the need to distinguish between the level 1 through level 5 modifications described above. These levels are no longer a part of the program.

In its economic evaluation of the door retrofit requirement, the FAA estimated that the direct cost of the reinforced door alone would be at least $17,000 per aircraft. The SFAR 92–3 enhancements are believed to have cost operators several thousand dollars more per aircraft. Congress appropriated $100 million to assist the operators in making the modifications. Based on that amount, the FAA has decided to reimburse $13,200 of cost for each of the 7,000 affected aircraft. If funding remains available or becomes available, the FAA may increase the amount of the reimbursement. Because the expenditures will exceed the funds available per aircraft, the FAA has decided that this change in its funding strategy is necessary.

For operators that have already submitted an application and received notification from the FAA, nothing else is required. The FAA will contact you if further information is needed. Operators that have not yet applied for reimbursement may apply using the simplified applications form located at: *http://www2.airweb.faa.gov/airplane_security/announce.htm*.

Prior to receiving funding, each operator will have to commit to spending the entire reimbursed amount on the mandated door modifications. Operators will also be required to substantiate the actual level of expenditures per airplane made under this program.

Issued in Washington, DC, on June 26, 2002.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 02–16499 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotocraft issues.

DATES: The meeting will be held on Thursday, July 18, 2002, at 1 p.m. Central Standard Time (CST).

ADDRESSES: Persons in the Forth Worth, Texas area can participate in the teleconference in the FAA Regional Office, ASW–100, Workroom E, 4th Floor, 2601 Meacham Blvd., Fort Worth, Texas, 76137. Those people in the Washington DC metropolitan area can come to the FAA headquarters building, 800 Independence Ave., Conference Room in Room 810, Washington DC, to access to teleconference at 2 p.m. Eastern Standard Time (EST). Persons interested in participating in the teleconference in the FAA headquarters building please contact Angela Anderson at telephone (202) 267–9681, e-mail *angela.anderson@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Ann Phillips, FAA, Rotocraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5124, e-mail *mary.ann.phillips@faa.gov*.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11). The agenda will include discussion of name clarification for the Fatigue Evaluation of Metallic Rotorcraft Structure Working Group and the presentation of the following two notices of proposed rulemaking (NPRMs) to request legal and economic drafting support:

- Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure
- Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure

This meeting was previously scheduled to occur on June 25, 2002. However, due to a telecommunications equipment failure, that meeting was cancelled and is now being rescheduled. Attendance is open to the public but will limited to the space available on the telephone conferencing system. The telephone number for participating in the teleconference will be available by contracting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair at least 7 days prior to the meeting. Copies of the NPRMs that will be presented may be obtained by contacting Mary Ann Phillips at (817) 222–5124 or by emailing her at: *mary.ann.phillis@faa.gov*.

If you are in need as assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington DC, on June 26, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

Decided: June 25, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16455 Filed 7–2–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Negotiable Foreign Deposits, Negotiable CDs & All Short-term Negotiable Securities, and Other Claims; (l) In Form CQ–1, section B has been added to capture foreign affiliate positions (including those with affiliates of the reporter's parents) of insurance underwriting subsidiaries and financial intermediaries. Insurance underwriting subsidiaries of BHCs/FHCs will report positions vis a vis all foreign-resident affiliates. Financial intermediaries will

Affected Public: Business or other for-profit organizations.

Forms CQ–1 and CQ–2 (1505–0024)

Estimated Number of Respondents: 400

Estimated Average Time per Respondent: Four and one/quarter (4.25) hours per respondent per filing. This average time varies from 4.5 hours for the approximately 190 CQ–1 reporters to 4.0 hours for the approximately 210

whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information

quarterly reports filed by nonbanking and non-securities broker and dealer enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial movements. Forms CQ–1 and CQ–2 are

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listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington DC, on June 26, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–16646 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34117]

Pemiscot County Port Authority—Construction Exemption " Pemiscot County, MO

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Pemiscot County Port Authority (Pemiscot) of a 5-mile line of railroad between milepost 212.32 at Hayti, MO, and milepost 217.22 at Pemiscot's existing intermodal port facility in Pemiscot County, MO.

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by July 22, 2002.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34117, to: (1) Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) John D. Heffner, 555 Twelfth Street, NW., Suite 950N, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available on our website at *"http://WWW.STB.DOT.GOV."*

Decided: June 25, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16455 Filed 7–2–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices: Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning Treasury International Capital Forms CQ–1 and CQ–2, Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

DATES: Written comments should be received on or before September 3, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments on international capital transactions and positions to: Department of the Treasury, ATTN: Dwight Wolkow, IP Room 4410 NY, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of delays in mail delivery due to recent events, please also notify Mr. Wolkow by email (*dwight.wolkow@do.treas.gov*), FAX (202–622–1207) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC webpage for forms, http://www.treas.gov/tic/forms.html. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION: *Title:* Treasury International Capital Form CQ–1, Financial Liabilities to, and Claims on, Foreigners; and Treasury International Capital Form CQ–2, Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

OMB Number: 1505–0024

Abstract: Forms CQ–1 and CQ–2 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 USC 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Forms CQ–1 and CQ–2 are quarterly reports filed by nonbanking and non-securities broker and dealer enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies. Current Actions: (a) The exemption level for reporting positions will be raised from $10 million to $50 million for Form CQ–1, and from $10 million to $25 million for Form CQ–2; (b) The period of time a reporter has to submit reports once the exemption level is exceeded has been changed to the remainder of the current calendar year; (c) For Bank Holding Companies and Financial Holding Companies (BHCs/FHCs), their insurance subsidiaries will continue to file TIC Form CQ–1 reports. (BHCs/FHCs and their other subsidiaries will continue to file TIC–B reports, according to the directions given in the instructions for the TIC B reports); (d) These proposed new C Forms and instructions will be effective as of March 31, 2003; (e) The instructions include a more detailed description of the reporting of liabilities and loans placed overseas; (f) The instructions contain a more detailed description of the reporting of short-term securities (including negotiable CDs); (g) On the revised form, respondents will report brokerage balances. A revised description of brokerage balances is included in the instructions; (h) The revised forms each have four memorandum rows for reporting the amounts contained in the grand totals of each column that are denominated in U.S. dollars, Euros, Pound Sterling, and Yen; (i) Both of the revised forms collect data on remaining maturities of the amounts contained in the grand totals of the two liabilities columns on each form. The maturities are broken down into ten categories; previously, there were two categories. Reporting of maturities will only be required from large reporters (more than $1 billion in reportable liabilities on Form CQ–1); (j) In Form CQ–1, Part I, Financial Liabilities, the two columns are redefined for reporting of Short-term Negotiable Securities and Other Liabilities; (k) In Form CQ–1, Part II, Financial Claims, the currently reported two columns for dollar denominated and foreign currency denominated deposits have been combined, and the resulting three columns in the revised form capture the reporting of Non-Negotiable Foreign Deposits, Negotiable CDs & All Short-term Negotiable Securities, and Other Claims; (l) In Form CQ–1, section B has been added to capture foreign affiliate positions (including those with affiliates of the reporter's parents) of insurance underwriting subsidiaries and financial intermediaries. Insurance underwriting subsidiaries of BHCs/FHCs will report positions vis a vis all foreign-resident affiliates. Financial intermediaries will report positions vis a vis all foreign-resident affiliated financial intermediaries; (m) In Form CQ–1, three new memorandum rows have been added for reporting the amounts contained in the grand totals of certain columns that are Borrowings/Loans, Negotiable CDs, and Repurchases/Resale Agreements.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Forms CQ–1 and CQ–2 (1505–0024)

Estimated Number of Respondents: 400

Estimated Average Time per Respondent: Four and one/quarter (4.25) hours per respondent per filing. This average time varies from 4.5 hours for the approximately 190 CQ–1 reporters to 4.0 hours for the approximately 210 CQ–2 reporters.

Estimated Total Annual Burden Hours: 6,800 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 02–16585 Filed 7–1–02; 8:45 am]

BILLING CODE 4810–25–P

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Carolina Heelsplitter; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH31

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Carolina Heelsplitter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Carolina heelsplitter (*Lasmigona decorata*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,335 river kilometers (rkm) (830 river miles (rmi)) in 6 river systems in North Carolina and South Carolina are designated as critical habitat for the Carolina heelsplitter. The primary constituent elements essential for the conservation of the Carolina heelsplitter are those habitat components that support viable mussel populations, including but not limited to, appropriate quality, quantity, and flow of water, adequate substrate, and the presence of fish hosts necessary for the reproduction of the species. Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat areas outside the designated critical habitat may also be essential to the conservation of the species. Federal agencies already consult with us on activities in areas currently occupied by the Carolina heelsplitter to ensure that their actions do not jeopardize the continued existence of the species. These consultations would also ensure adverse modification of critical habitat. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of listed species or destroying or adversely modifying critical habitat. Exemptions are provided for actions authorized, funded, or carried out by the Department of Defense if the Secretary of Defense determines in writing that the action is necessary for national security. The Secretary may also exempt other activities if, for example, the benefits of such exemptions outweigh the benefits of including the areas as critical habitat.

Background

Lea (1852) originally described the Carolina heelsplitter, a native freshwater mussel, as *Unio decoratus*. Johnson (1970) synonymized this species with *Lasmigona subviridis* (Conrad 1835). Clarke (1985) recognized the Carolina heelsplitter as a distinct species, *Lasymigona decorata*, and synonymized *Unio charlottensis* (Lea 1863) and *Unio insolidus* (Lea 1872) with *Lasmigona decorata*. Johnson (1978) synonymized *Lasmigona decorata* with *Lasmigona subviridis*.

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DEPARTMENT OF THE INTERIOR

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Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Carolina Heelsplitter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat for the Carolina heelsplitter (*Lasmigona decorata*), a freshwater mussel, pursuant to the Endangered Species Act of 1973, as amended (Act). The areas designated as critical habitat for the Carolina heelsplitter total approximately 148.4 kilometers (92.2 miles) of streams, including portions of three creeks in North Carolina and one river and six creeks in South Carolina.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 7(a)(2) of the Act requires that each Federal agency shall, in consultation with the Service, insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicited data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

DATES: This rule is effective August 1, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, NC 28801.

FOR FURTHER INFORMATION CONTACT: John Fridell, Fish and Wildlife Biologist (see **ADDRESSES** section), (telephone 828/258–3939, extension 225; facsimile 828/258–5330).

SUPPLEMENTARY INFORMATION:

Background

Lea (1852) originally described the Carolina heelsplitter, a native freshwater mussel, as *Unio decoratus*. Johnson (1970) synonymized this species with *Lasmigona subviridis* (Conrad 1835). Clarke (1985) recognized the Carolina heelsplitter as a distinct species, *Lasymigona decorata*, and synonymized *Unio charlottensis* (Lea 1863) and *Unio insolidus* (Lea 1872) with *Lasmigona decorata*. A genetic comparison of a specimen of *L. decorata* with specimens of *L. subviridis* (Tim King, U.S. Geological Survey, Leetown, West Virginia, pers. comm. 2001) supports Clarke's (1985) position on the taxonomy (scientific classification) of this species.

The Carolina heelsplitter has an ovate, trapezoid-shaped, unsculptured (smooth with no distinct bumps or protrusions) shell. The shell of the largest known specimen measures 11.5 centimeters (cm) (4.5 inches (in)) in length, 3.9 cm (1.5 in) in width, and 6.8 cm (2.7 in) in height. The shell's outer surface varies from greenish brown to dark brown in color, and shells from younger specimens have faint greenish brown or black rays. The nacre (inside surface) is often pearly white to bluish white, grading to orange in the area of the umbo (bulge or beak that protrudes near the hinge of a mussel). However, in older specimens the entire nacre may be a mottled pale orange. The hinge teeth (pseudocardinal teeth and lateral teeth) of the species are well developed but thin and rather delicate. The left valve (half of a mussel shell) has two blade-like pseudocardinal teeth and two lateral teeth, and the right valve has one of each. The left valve may also have an interdental projection, a slight projection located between the lateral and pseudocardinal teeth (adapted from Keferl 1991). Clarke (1985) provides a detailed description of the shell, with illustrations.

Distribution, Habitat, and Life History

The Carolina heelsplitter currently has a very fragmented, relict distribution but historically was known from several locations within the Catawba and Pee Dee River systems in North Carolina and the Pee Dee and Savannah River systems, and possibly the Saluda River system, in South Carolina. Historically, the species was collected from the Catawba River, Mecklenburg County, NC; several streams and "ponds" in the Catawba River system around the Charlotte area of Mecklenburg County, NC; one small stream in the Pee Dee River system in Cabarrus County, NC; one "pond" in the Pee Dee River system in Union County, NC; and an area in South Carolina referred to only as the "Abbeville District," a terminology no longer employed (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The records from the Abbeville District, SC, previously were believed to have been from the Saluda River system (Clarke 1985, Keferl and Shelly 1988, Keferl 1991, Service 1993). However, biologists discovered a population of the Carolina heelsplitter in the spring of 1995 in the Savannah River system (Stevens Creek watershed) (Alderman 1995, 1998a, and 1998b; J. Fridell personal observation 1995, 1998, 2000, 2001). Therefore, the historic records from the Abbeville District may have been from either the Saluda River system or the Savannah River system or both. An additional historic record of the Carolina heelsplitter from the main stem of the Pee Dee River in Richmond County, NC, was discovered recently (Art Bogan, North Carolina Museum of Science and Natural History, pers. comm. 2001); however, surveys by biologists with the North Carolina Wildlife Resources Commission (NCWRC) and North Carolina Department of Transportation (NCDOT) have failed to find any evidence of a surviving population of the species at the site of this record or elsewhere in the main stem of the Pee Dee River (John Alderman, NCWRC, personal communication 2001; Tim Savidge, NCDOT, personal communication 2001).

Recent collection records (Keferl and Shelly 1988; Keferl 1991; Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000) indicate that the Carolina heelsplitter has been eliminated from the majority of its historical range, and only six populations are presently known to exist. In Union County, NC, one small remnant population occurs in Waxhaw Creek, a tributary to the Catawba River, and another small population occurs in both Goose Creek, a tributary in the Rocky River, and Duck Creek, a tributary to Goose Creek, in the Pee Dee River system. In South Carolina, there are four small surviving populations—one each in the Pee Dee and Catawba River systems and two in the Savannah River system. The population in the Pee Dee River system occurs in a relatively short reach of the Lynches River in Chesterfield, Lancaster, and Kershaw Counties and extends into Flat Creek, a tributary to the Lynches River in Lancaster County. In the Catawba River system, the species survives only in a short reach of Gills Creek in Lancaster County. In the Savannah River system, one population is found in Turkey Creek in Edgefield and McCormick Counties, and two of its tributaries, Mountain Creek and Beaverdam Creek in Edgefield County; another smaller population survives in Cuffytown Creek, in Greenwood and McCormick Counties. Despite extensive surveys in recent years, no evidence of a population has been found in the Saluda River system (Keferl and Shelly 1988; Keferl 1991; Alderman 1998a).

Historically, the Carolina heelsplitter was reported from small to large, moderate-gradient streams and rivers as well as ponds. The "ponds" referred to in historic records are believed to have been mill ponds on some of the smaller streams within the species' historic range (Keferl 1991). Presently, the species is known to occur in only nine small streams and one small river. It has been recorded from a variety of substrates (including mud, clay, sand, gravel, and cobble/boulder/bedrock) without significant silt accumulations, along stable, well-shaded stream banks (Keferl and Shelly 1988, Keferl 1991). However, in Mountain Creek in Edgefield County, SC, two young, live individuals were found near the center of the stream channel in a stable, relatively silt-free substrate comprised primarily of a mixture of coarse sand, gravel, and cobble, with scattered areas of exposed boulders/bedrock (J. Fridell personal observation, 1995). It is conceivable that this is the preferred habitat type for the species and that in other areas scouring and degradation of the gravelly substrate in the center of the channel has restricted the species to the softer substrates found along the portion of the stream banks that receive less scouring (Service 1997). The stability of the stream banks and stream-bottom appears to be a habitat feature essential to the species. Keferl (1991) noted that in his surveys of Goose, Waxhaw, and Flat Creeks and the Lynches River, he found the highest concentrations of the species in (bank) undercuts and along shaded banks stabilized with extensive tree roots, a buried log, and rocks.

Like other freshwater mussels, the Carolina heelsplitter feeds by filtering food particles from the water column. The specific food items of the species are unknown, but other freshwater mussels have been documented to feed on detritus (decaying organic matter), diatoms (various minute algae), phytoplankton (microscopic floating aquatic plants), and zooplankton (microscopic floating aquatic animals). The Carolina heelsplitter's life span, their specific fish host species, and many other specific aspects of its life history are unknown, but likely are similar to that of other native freshwater mussels. For the reproductive cycle of mussels in general, males release sperm into the water column; the sperm are then taken in by the females through their siphons during feeding and respiration. The females retain the fertilized eggs in their gills until the larvae (glochidia) fully develop. The mussel glochidia are released into the water, and within a few days they must attach to the appropriate species of host fish, which are then parasitized for a short time while the glochidia develop into juvenile mussels. They then detach from their "fish host" and sink to the stream bottom where they continue to develop, provided they land in a suitable substratum with the correct water conditions.

Reasons for Decline and Threats to Surviving Populations

Available information indicates that several factors have contributed to the decline and loss of populations of the Carolina heelsplitter, and threaten the remaining populations. These factors include pollutants in wastewater discharges (sewage treatment plants and industrial discharges); habitat loss and alteration associated with impoundments, channelization, and dredging operations; channel and streambank scouring associated with increased storm-water runoff; and the runoff of silt, fertilizers, pesticides, and other pollutants from various land disturbance activities with inadequate or poorly maintained erosion and stormwater control (Service 1993, 1997). Many of the streams in the area of Charlotte, NC, that are known to have historically supported the Carolina heelsplitter, but which no longer do, have been degraded by a combination of the factors listed above and appear to no longer support, or be capable of supporting, any species of native mussels. Additionally, large reaches of the main stems of the Pee Dee, Catawba, Saluda, and upper Savannah Rivers, that likely once supported the Carolina heelsplitter, have been significantly affected by impoundments, as well as the other factors listed above, and have lost much of their historic freshwater mussel abundance and diversity (Keferl and Shelly 1988; Kerfel 1991; Alderman 1995, 1998a, 1998b; North Carolina Wildlife Resources Commission 1999, 2000).

The species continues to face a number of threats. In 1997, when the Recovery Plan for the Carolina Heelsplitter was approved (Service 1997) only four populations were known. Although two additional populations—in Gill Creek and Cuffytown Creek—have been found since then, the concerns expressed in the recovery plan regarding the vulnerability of the Carolina heelsplitter are still valid. The recovery plan states: "The low number of individuals and the restricted range of each of the surviving populations make them extremely vulnerable to extirpation from a single catastrophic event or activity, such as a toxic chemical spill or major channel alteration. Also, the existing and potential future land-uses of the surrounding area threaten the habitat and water quality of all four populations with increased discharge or runoff of silt, sediments, and organic and chemical pollutants."

Freshwater mussels, especially in their early life stages, are extremely sensitive to many pollutants (chlorine, ammonia, heavy metals, high concentrations of nutrients, etc.) commonly found in municipal and industrial wastewater effluents (Havlik and Marking 1987, Goudreau *et al.* 1988, Keller and Zam 1991). In the early 1900s, Ortmann (1909) noted that the disappearance of mussels is one of the first and most reliable indicators of stream pollution. The life cycle of native mussels makes the reproductive stages particularly vulnerable to pesticides and other pollutants (Ingram 1957, Stein 1971, Fuller 1974, Gardner *et al.* 1976). Mussels also have been identified as being more sensitive to metals than commonly tested fish and aquatic insects (Keller and Zam 1991).

Activities such as impoundments, channelization projects, and in-stream dredging operations eliminate mussel habitat. These activities can also alter the quality and stability of the remaining stream reaches by affecting the flow regimes, water velocities, and water temperature and chemistry. The effects of impoundments on mussels are summarized as follows in the recovery plan: "Closure of dams changes the habitat from a lotic [moving water] to lentic [standing water] condition. Depth increases, flow decreases, and silt accumulates on the bottom. Fish communities change, and host fish species may be eliminated. Mussel communities change; species requiring clean gravel and sand substrate are eliminated (Bates 1962). In addition, dams result in the fragmentation of populations, making the surviving isolated population segments more vulnerable to extirpation" (Service 1997).

Agriculture (both crop and livestock) and forestry operations, highway and road construction, residential and industrial developments, and other

construction and land-use activities that do not adequately control soil erosion and storm-water runoff alter the hydrology of the stream and contribute excessive amounts of silt, pesticides, fertilizers, heavy metals, and other pollutants. These pollutants can suffocate and poison freshwater mussels. Excessive sediment poses a threat to mussels because they are not able to move long distances to more suitable areas in response to heavy silt

Previous Federal Actions

In the Animal Notice of Review published in the January 6, 1989, **Federal Register** (54 FR 579), we recognized the Carolina heelsplitter as a species under review for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. In that document, we designated the Carolina heelsplitter as a category 2 candidate for Federal listing.

Service, and the Secretary of the Interior, challenging the Service's "not prudent" critical habitat determinations for four species in North Carolina—the Carolina heelsplitter (*Lasmigona decorata*), spruce-fir moss spider (*Microhexura montivaga*), Appalachian elktoe (*Alasmidonta raveneliana*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs

officials, institutions, and other interested parties, by letter dated March 6, 2002, of the availability of the draft economic analysis and the reopening of the comment period until April 5, 2002, and published legal notices in the newspapers listed above inviting comments from the public. Because completion of the draft economic analysis for the proposed critical habitat designation was delayed, we filed a motion in the District Court pursuant to

potential to harm the Carolina heelsplitter and its habitat since the species was listed as endangered. They indicated that they agreed with the Service's 1993 determination that the designation of critical habitat would not provide additional protection to the Carolina heelsplitter beyond what is already afforded the species by the listing. One of these respondents stated that they have been involved in numerous section 7 consultations for

Issue 2: One respondent agreed that the identified habitats for the Carolina heelsplitter are essential and that the designation (of critical habitat) may assist individuals, local and State governments, and others that join conservation efforts to protect the Carolina heelsplitter, as suggested in the proposed rule.

Response: No response necessary.

Issue 3: One respondent expressed support for the designation of critical

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construction and land-use activities that do not adequately control soil erosion and storm-water runoff alter the hydrology of the stream and contribute excessive amounts of silt, pesticides, fertilizers, heavy metals, and other pollutants. These pollutants can suffocate and poison freshwater mussels. Excessive sediment poses a threat to mussels because they are not able to move long distances to more suitable areas in response to heavy silt loads. Although natural sources of sediment resulting from seasonal storms probably do not significantly affect mussels, several types of human activities can create heavy silt loads that can severely affect native freshwater mussels. As noted in the recovery plan, "Siltation has been documented to adversely affect native freshwater mussels both directly and indirectly. Siltation degrades water and substrate quality, limiting the available habitat for freshwater mussels (and their fish hosts); irritates and clogs the gills of filter-feeding mussels, resulting in reduced feeding and respiration; smothers mussels if sufficient accumulation occurs; and increases the potential exposure of the mussels to other pollutants (Ellis 1936, Marking and Bills 1979, Kat 1982). Ellis (1936) found that less than 1 inch of sediment deposition caused high mortality in most mussel species. Sediment accumulations that are less than lethal to adults may adversely affect or prevent recruitment of juvenile mussels into the population through the direct mortality of juvenile mussels or effects to the species' fish host(s)" (Service 1997)

The runoff of storm water from cleared areas, roads, rooftops, parking lots, and other developed areas, which often is ditched or piped directly into streams, not only results in stream pollution but also results in increased water volume and velocity during heavy rains. This change in water volume and velocity causes channel and stream-bank scouring that leads to the degradation and elimination of mussel habitat. Construction and land-clearing operations are particularly detrimental when they result in the alteration of floodplains or the removal of forested stream buffers that ordinarily would help maintain water quality and the stability of stream banks and channels by absorbing, filtering, and slowly releasing rainwater. Also, when storm water runoff increases from land-clearing activities, less water is absorbed to recharge ground water levels. Therefore, flows during dry months can decrease and adversely affect mussels and other aquatic organisms.

Previous Federal Actions

In the Animal Notice of Review published in the January 6, 1989, **Federal Register** (54 FR 579), we recognized the Carolina heelsplitter as a species under review for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. In that document, we designated the Carolina heelsplitter as a category 2 candidate for Federal listing. We no longer maintain a list of category 2 candidate species. At that time, category 2 represented those species for which we had some information indicating that the taxa may be under threat, but sufficient information was lacking, to determine if they warranted Federal listing and to prepare a proposed rule. Subsequently, surveys of historical and potential Carolina heelsplitter habitat were conducted and revealed that the species had undergone a significant decline throughout its historical range and that the remaining known occurrences were threatened by many of the same factors that are believed to have resulted in this decline.

On May 26, 1992, we published a proposed rule to list the Carolina heelsplitter as an endangered species (57 FR 21925). The proposed rule provided information on the species' biology, status, and threats to its continued existence and included our proposed determination that the designation of critical habitat was not prudent for the Carolina heelsplitter. We solicited comments and suggestions concerning the proposed rule from the public, concerned governmental agencies, the scientific community, industry, and other interested parties.

Following our review of all the comments and information received throughout the listing process, we incorporated appropriate changes and, on June 30, 1993, published a final rule listing the Carolina heelsplitter as endangered (58 FR 34926). That decision included our determination that the designation of critical habitat was not prudent for the Carolina heelsplitter because, after a review of all the available information, we determined that the Carolina heelsplitter was threatened by taking and that the designation of critical habitat could be expected to increase the degree of such threat to the species and would not be beneficial to the species.

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Interior, challenging the Service's "not prudent" critical habitat determinations for four species in North Carolina—the Carolina heelsplitter (*Lasmigona decorata*), spruce-fir moss spider (*Microhexura montivaga*), Appalachian elktoe (*Alasmidonta raveneliana*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and, if appropriate, submit to the **Federal Register**, by July 1, 2001, a withdrawal of the existing not prudent determination for the Carolina heelsplitter, together with a new proposed critical habitat determination. We agreed further that if, upon consideration of all the available information and comments, we determined that the designation of critical habitat was prudent for the Carolina heelsplitter, we would send a final rule of this finding to the **Federal Register** by April 1, 2002.

On July 11, 2001, we published a prudency determination and a proposed designation of critical habitat for the Carolina heelsplitter (66 FR 36229). The proposed rule included maps and a description of all areas under consideration for designation as critical habitat for the species. On the same date, by letter, we also notified appropriate Federal and State agencies, local governments, scientific organizations, individuals knowledgeable about the species, and other interested parties about the proposal and requested their comments. A legal notice that announced the availability of the proposed rule and invited public comment was published in the following newspapers—*Enquirer-Journal*, Monroe, NC; *Lancaster News*, Lancaster, SC; *Chronicle-Independence*, Camden, SC; *Cheraw Chronicle*, Cheraw, SC; *The Index-Journal*, Greenwood, SC; *Citizen News*, Edgefield, SC; and, *McCormick Messenger*, McCormick, SC.

In the proposed rule and associated notifications, all interested parties were requested to submit, by September 10, 2001, comments, factual reports or information that might contribute to our determination and the development of a final rule. On March 6, 2002, we published a notice in the **Federal Register** (67 FR 10118) reopening the comment period on the proposed rule and announcing the availability of a draft economic analysis for the proposed designation of critical habitat for the Carolina heelsplitter. We notified appropriate agencies, government officials, institutions, and other interested parties, by letter dated March 6, 2002, of the availability of the draft economic analysis and the reopening of the comment period until April 5, 2002, and published legal notices in the newspapers listed above inviting comments from the public. Because completion of the draft economic analysis for the proposed critical habitat designation was delayed, we filed a motion in the District Court pursuant to our settlement agreement, requesting an extension to complete the final designation. On April 15, 2002, the District Court granted the Service an extension until June 17, 2002 to finalize the critical habitat designation for the Carolina heelsplitter.

Summary of Comments and Recommendations

We received nine written comments during the two comment periods—four during the initial comment period and five during the reopened comment period. We received written comments from one Federal agency, three State agencies, two private organizations, and one private individual. One of the respondents provided comments during the initial comment period on the proposed rule and also submitted two additional letters with comments on the draft economic analysis during the reopened comment period. Of the seven respondents, three expressed support for the designation of critical habitat for the Carolina heelsplitter, while two stated they did not agree that there is a need for the designation of critical habitat for the species. The other two respondents provided comments on the draft economic analysis but expressed neither support nor opposition to the proposed designation of critical habitat for the Carolina heelsplitter.

We also contacted three experts in the field of malacology (native freshwater mussel biology and ecology) and requested that they serve as peer reviewers of the proposal to designate critical habitat for the Carolina heelsplitter. However, none of the three submitted comments on the proposal.

We reviewed all comments received for substantive issues and new information regarding the Carolina heelsplitter. Similar comments were grouped into issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These issues and our response to each are presented below.

Issue 1: Two respondents stated that they have been working closely with the Service to evaluate, and consult on, their activities with regard to their potential to harm the Carolina heelsplitter and its habitat since the species was listed as endangered. They indicated that they agreed with the Service's 1993 determination that the designation of critical habitat would not provide additional protection to the Carolina heelsplitter beyond what is already afforded the species by the listing. One of these respondents stated that they have been involved in numerous section 7 consultations for activities in other areas that are already designated as critical habitat for other listed aquatic species and that in those cases the manner in which the consultations were handled did not differ from the manner in which consultations involving listed aquatic species without designated critical habitat were handled.

Response: Both respondents have been working closely with us to identify their activities with the potential to affect the Carolina heelsplitter and to implement conservation measures to avoid or minimize potential effects to the species and further the conservation of the species. We agree with their comments that the designation of critical habitat is not likely to significantly affect future section 7 consultations with respect to this species. (See section entitled Effects of Critical Habitat Designation, below, for additional information on this topic.) We also agree that the benefits to the Carolina heelsplitter from the designation of critical habitat may be minimal. However, based on our review of all available information, and with consideration of the standards for making a "not prudent" determination and recent court rulings on this topic, we cannot support a "not prudent" determination for the designation of critical habitat for the Carolina heelsplitter. We have not received or obtained any new information that alters the prudency determination we included in the proposed designation of critical habitat for the Carolina heelsplitter that we published in the **Federal Register** on July 11, 2001 (66 FR 36229). As we noted in the proposed rule, the designation of critical habitat may provide some benefit to the Carolina heelsplitter by providing additional information to individuals, local and State governments, and others that join conservation efforts for the species, to assist these entities in long-range planning since areas essential to the conservation of the species are specifically identified and the primary constituent elements of the habitat necessary to the conservation of the species are more clearly defined.

Issue 2: One respondent agreed that the identified habitats for the Carolina heelsplitter are essential and that the designation (of critical habitat) may assist individuals, local and State governments, and others that join conservation efforts to protect the Carolina heelsplitter, as suggested in the proposed rule.

Response: No response necessary.

Issue 3: One respondent expressed support for the designation of critical habitat for the Carolina heelsplitter but expressed concern that protection of habitat only to the ordinary high-water line will be insufficient to protect the species from habitat degradation. The respondent commented on the importance of buffers along proposed stream reaches and suggested the need for 100-foot buffers to protect the Carolina heelsplitter from the effects of sedimentation.

Response: We agree with the respondent about the importance of stream/riparian buffers. Along with other conservation measures as part of an ongoing revision to their Land and Resource Management Plan, the U.S. Forest Service is currently working with us to establish an appropriate minimum width for a forested corridor on each side of all perennial streams and intermittent streams in the watersheds of the creeks supporting the Carolina heelsplitter on the Sumter National Forest in South Carolina. The functions and values of forested buffers to stream ecosystems are numerous. They include, for example, providing essential nutrients and cover substrates, maintaining stream temperature, protecting water quality by capturing and assimilating pollutants carried in run-off from the surrounding watershed, protecting the hydrology of the stream, and maintaining stream channel and bank stability.

The width of the buffer necessary to perform the functions and values necessary for the protection and health of the stream and the Carolina heelsplitter depends on several variables; in most cases, however, a vegetated buffer by itself is not adequate. In many cases, a buffer larger than 100 or 200 feet may be necessary, depending on the activity in question and the health of the rest of the watershed, the type or lack of measures implemented to control runoff, and other relevant factors. However, in other cases, activities carried out in closer proximity to the streams may be acceptable. Accordingly, we are concerned that designating a standard size buffer as part of the designated critical habitat might imply that the fixed width always will be adequate to

protect the Carolina heelsplitter and its habitat. Therefore, we elected to designate only habitat directly utilized by the Carolina heelsplitter and which, if affected, regardless of the proximity of the activity in question, could affect the conservation of species. We note also that designated critical habitat is subject to the provisions of Section 7(a)(2) of the Act with regard to the actions of Federal agencies. Thus, all Federal

scientific and commercial information currently available to us concerning the known historic range of the species and the physical and biological features that are essential to its conservation and that may require special management considerations or protection. The Service's recovery plan for the Carolina heelsplitter, which was written at a time when there were four known populations, states that the species will

recent data, the species and suitable habitat for the species are still present in each of the areas that we are designating as critical habitat, we considered these areas as the most likely sites for focusing conservation efforts for maintaining and recovering the species.

However, to the extent feasible, we will continue, with the assistance of other Federal, State, and private agencies or organizations, to conduct

the cost to small businesses and to society at large if the heelsplitter were to become extinct.

Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species. Such benefits have also been ascribed to the preservation of open space and biodiversity, both of which are associated with species

action agency with the identification of the potential direct and indirect effects of the agency's proposed projects and determine what measures can be implemented to avoid the potential adverse effects, when possible. We are always willing to work with any agency concerning a project, at their earliest convenience. The earlier in project planning that we are brought into the process, the more likely it is that formal consultation will be unnecessary and

economic analysis may very likely not be required, as stated in the draft economic analysis, the estimates in the analysis are conservative (more likely to be overstated) in order to ensure that the costs/effects associated with potential future section 7 consultations are not understated.

Issue 9: One respondent commented that some of the costs in the draft economic analysis associated with project modifications to their agency's

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protect the Carolina heelsplitter and its habitat. Therefore, we elected to designate only habitat directly utilized by the Carolina heelsplitter and which, if affected, regardless of the proximity of the activity in question, could affect the conservation of species. We note also that designated critical habitat is subject to the provisions of Section 7(a)(2) of the Act with regard to the actions of Federal agencies. Thus, all Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of the Carolina heelsplitter or result in the destruction or adverse modification of designated critical habitat (see section entitled Critical Habitat, below). This requirement applies regardless of the location of the Federal action in relation to designated critical habitat—what is important is the likely effect such an action may have on the habitat features essential to the conservation of the species. We will continue working with Federal agencies and landowners through section 7 of the Act, the Service's Partners for Fish and Wildlife Program, Section 10 permits, and other regulations and/or programs to evaluate activities with the potential to affect the Carolina heelsplitter and to recommend sufficient size buffers and implement other conservation measures as necessary to ensure compliance with the Act and/or further the conservation of the species.

Issue 4: One respondent provided comments stating that to ensure the survival and recovery of the Carolina heelsplitter, the Service must designate well-distributed, well-connected areas as critical habitat regardless of whether they are currently occupied, and to do otherwise would consign some populations and perhaps the species to extinction.

Response: The Catawba, Pee Dee, and Savannah River systems are not connected and each feeds separately into the Atlantic Ocean. Consequently, it is not possible to connect the habitat or populations across these three systems. Further, within each river system, each of the surviving populations is separated from the other population in the same river system by extensive stream reaches that, based on the most recent survey data, do not appear to be capable of supporting the Carolina heelsplitter.

The areas we are designating as critical habitat constitute our best assessment of the areas needed for the conservation of the Carolina heelsplitter in accordance with the goals outlined in our recovery plan for the species (Service 1997) and based on the best scientific and commercial information currently available to us concerning the known historic range of the species and the physical and biological features that are essential to its conservation and that may require special management considerations or protection. The Service's recovery plan for the Carolina heelsplitter, which was written at a time when there were four known populations, states that the species will be considered for delisting (recovered) when a total of six distinct viable populations of the species exist that meet the criteria outlined in the plan. (See the section entitled Methods, below, for further explanation of recommendations and criteria in the recovery plan.) Based on the most recent survey data for the Carolina heelsplitter (Keferl and Shelly 1988; Keferl 1991; Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999, 2000), there are six known surviving populations—the Goose Creek/Duck Creek population, Waxhaw Creek population, Gills Creek population, Lynches River/Flat Creek population, Turkey Creek/Mountain Creek/Beaverdam Creek population, and Cuffytown Creek population (see "Background" section). The areas that we are designating as critical habitat for the Carolina heelsplitter contain the habitat elements essential to the life cycle needs of the species, as they are currently known. These areas are distributed in different portions of the species' known historical range, with two occurring in the Catawba River system (Waxhaw Creek population and Gills Creek population), two in the Pee Dee River system (Goose Creek/Duck Creek population and the Flat Creek/Lynches River population), and two in the Savannah river system (Turkey Creek/Mountain Creek/Beaverdam Creek population, and Cuffytown Creek population). Extensive surveys have been conducted, but we are not currently aware of any other streams/stream reaches within the Carolina heelsplitter's historical range that provide suitable habitat for the species.

As discussed in the "Background" section of this document (under "Reasons for Decline and Threats to Surviving Populations"), the majority of the streams known to have historically supported occurrences of the Carolina heelsplitter have been significantly degraded by a variety of factors and appear to no longer be capable of supporting the Carolina heelsplitter. In fact, many appear to no longer be capable of supporting any species of native mussels, even the most tolerant species. Because, based on the most recent data, the species and suitable habitat for the species are still present in each of the areas that we are designating as critical habitat, we considered these areas as the most likely sites for focusing conservation efforts for maintaining and recovering the species.

However, to the extent feasible, we will continue, with the assistance of other Federal, State, and private agencies or organizations, to conduct surveys and research on the species and to evaluate habitat throughout its historic range. Should additional information become available that indicates other areas within the Carolina heelsplitter's historical range are essential to the conservation of the species, we may revise the designated critical habitat accordingly. Similarly, if new information indicates any of the areas we have designated should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revise the designation, we will do so through a subsequent rulemaking.

Issue 5: One respondent commented that the draft economic analysis for the proposed designation of critical habitat for the Carolina heelsplitter (1) appears to contain contradictory and/or unclear statements concerning distinctions made between section 7 consultation costs associated with critical habitat designation and section 7 consultation costs without critical habitat and (2) does a poor job of distinguishing between the two (upper bound and lower bound) baselines in the reporting of costs. The respondent cited statements in the document demonstrating that there are no anticipated costs associated solely with the critical habitat designation, while other statements (section headings) attribute section 7 costs to the designation of critical habitat.

Response: The Service agrees with the respondent's comments on this issue. We have attempted to clarify in the addendum to the economic analysis that the statements in the draft economic analysis addressing the potential costs analyzed under the upper bound baseline are potential future section 7 costs that would occur regardless of whether critical habitat was designated.

Issue 6: Three respondents commented that the draft economic analysis did not adequately assess the benefits of implementation of measures for the protection and recovery of the Carolina heelsplitter and its habitat, and one of these respondents stated that the assessment did not adequately address

the cost to small businesses and to society at large if the heelsplitter were to become extinct.

Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species. Such benefits have also been ascribed to the preservation of open space and biodiversity, both of which are associated with species conservation. Likewise, a local and regional economy can benefit from the preservation of healthy populations of endangered and threatened species and the habitat on which these species depend.

It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the economic analysis. For example, most of the studies in the economic literature do not allow for the separation of the benefits of listing (including the Act's take provisions) from the benefits of critical habitat designation. As our past experience with other species has shown, the designation of critical habitat does not necessarily inhibit the development of private property, which makes it difficult to draw from the literature the economic value of open space to identify the potential benefits of critical habitat designation. Also, while some economic studies attempt to measure the social value of protecting endangered species, the values identified in these studies would be most closely associated with the listing of a species as endangered or threatened because listing serves to provide the majority of the protection and conservation benefits afforded under the Act. Accordingly, the discussion presented in this report provides examples of potential benefits, which derive primarily from the listing of the species, based on information obtained in the course of developing the economic analysis. It is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general or critical habitat designation in particular.

Issue 7: One respondent commented that their Federal agency currently is undertaking an accelerated construction program and expressed concern that the designation of critical habitat for the Carolina heelsplitter may affect the agency's efforts to complete projects. The agency requested that the Service work with them to draft an agreement that would allow the projects to proceed without the need for formal consultation.

Response: The Service's role in informal consultation is to assist the action agency with the identification of the potential direct and indirect effects of the agency's proposed projects and determine what measures can be implemented to avoid the potential adverse effects, when possible. We are always willing to work with any agency concerning a project, at their earliest convenience. The earlier in project planning that we are brought into the process, the more likely it is that formal consultation will be unnecessary and that project delays and modifications at later stages of the project can be avoided. Through cooperation during the early design stages of a project, the Service usually is able to work with the action agency to develop or adjust any project design features that might be needed to avoid or minimize adverse impacts to listed species and/or designated critical habitat as a result of the project. (See also our response to Issue 9, below.) However, section 7 of the Act requires formal consultation on any Federal action that is likely to adversely affect a federally listed species and/or designated critical habitat. Unless the potential adverse effect(s) associated with the proposed projects can be eliminated through informal consultation, formal consultation will be required. Also, all of the units that we are designating as critical habitat for the Carolina heelsplitter currently support populations of the species. Any activity that is likely to result in adverse effects to designated critical habitat would most likely also result in adverse effects to the species and, therefore, would require consultation regardless of whether critical habitat is designated.

Issue 8: One respondent emphasized the difficulty of estimating the number of projects that will require formal consultation. This respondent noted that there has been only one formal consultation involving the Carolina heelsplitter to date, yet the analysis predicts six to eight projects in the future (over the next 10 years) that will require formal consultation.

Response: We agree with the respondent that it is extremely difficult to estimate the number of potential future section 7 consultations that are likely to require formal consultation and that formal consultation is only rarely required. Based on new information provided by the NCDOT, we have revised the estimated number of potential future Federal activities over the next 10 years that are likely to require formal consultation in the addendum to the draft economic analysis. However, while some of the formal consultations included in the estimate in the addendum to the economic analysis may very likely not be required, as stated in the draft economic analysis, the estimates in the analysis are conservative (more likely to be overstated) in order to ensure that the costs/effects associated with potential future section 7 consultations are not understated.

Issue 9: One respondent commented that some of the costs in the draft economic analysis associated with project modifications to their agency's activities were too high, because the estimates were based on past projects, where concerns with the Carolina heelsplitter were not addressed in the project planning and design stages. The respondent stated that their agency has been making a concerted effort to address protected species issues early in the project planning stages so that these concerns can be addressed through project planning, alternative selection, and project design, thereby eliminating many costs associated with project delays and design changes.

Response: We agree with the respondent's comments on this issue and commend the agency for their efforts to address endangered species concerns early in the project planning stages. We have addressed the respondent's comments by amending the costs associated with project design changes relative to the respondent agency's actions in the addendum to the draft economic analysis.

Issue 10: One respondent questioned whether some of the costs in the draft economic analysis associated with the implementation of measures to control erosion and storm water were attributable to section 7 consultation or whether they are more appropriately attributable to other Federal and State regulations, such as the North Carolina Sedimentation Pollution Control Act and the Clean Water Act.

Response: In the addendum to the draft economic analysis, we have acknowledged that some of the costs we are attributing to potential future section 7 consultations may likely be incurred in order to comply with other Federal, State, and local regulations, even in the absence of the listing of the Carolina heelsplitter or designation of critical habitat. However, it is difficult to separate the costs associated with the implementation of measures that some agencies believe they may be required to implement as a result of section 7 consultation (that they believe may go beyond the sedimentation/erosion-control measures required by other regulations) from the costs associated with these other regulations. Therefore, we have elected to be conservative in our estimation of the costs potentially

associated with future section 7 consultations on the Carolina heelsplitter and its designated critical habitat rather than risk understating these costs.

Issue 11: One respondent stated that cost figures for timber sales on the Sumter National Forest in the draft economic analysis were inaccurate. According to this respondent, the Sumter National Forest lost $1.4 million

first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found one or more of the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we

we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that the designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat

provides five criteria that would need to be met to consider delisting the species. The first criterion calls for protection of existing populations, successful establishment of reintroduced populations, or discovery of additional populations, such that six distinct viable populations exist. These six populations must be distributed throughout the species' known historic range, with at least one each in the

and are essential for the conservation of the species. These designated areas are distributed throughout the species' range with at least one occurring in the Catawba, Pee Dee, and Savannah river systems. We will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available indicating that other areas within the Carolina heelsplitter's

reaches with stable, well-vegetated stream bank and riparian areas, and in substrates without heavy accumulations of silt. Based on the best available information, the primary constituent elements essential for the conservation of the Carolina heelsplitter are:

(1) Permanent, flowing, cool, clean water;

(2) Geomorphically stable stream and river channels and banks;

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associated with future section 7 consultations on the Carolina heelsplitter and its designated critical habitat rather than risk understating these costs.

Issue 11: One respondent stated that cost figures for timber sales on the Sumter National Forest in the draft economic analysis were inaccurate. According to this respondent, the Sumter National Forest lost $1.4 million on its timber sales in 1997; therefore, refraining from logging riparian zones in order to protect the Carolina heelsplitter might actually reduce the net costs of this program to the government.

Response: The draft economic analysis focuses on impacts to the local timber economy in the Sumter National Forest and does not attempt to calculate whether the National Forest's timber sale program is profitable for these particular actions. Such an analysis for these particular forecast sales is beyond the scope of this analysis. The opportunity cost of lost timber sales due to the protection of a riparian buffer zone was derived using cost estimates obtained from personnel at the Sumter National Forest and is based on current base rates for timber sales.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Pursuant to regulations at 50 CFR 424.12(e), areas outside the geographical area presently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point where listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define "special management considerations or protection" to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found one or more of the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat for a species at the time of listing, to the extent such habitat is determinable. We are required to designate those areas we know to be critical habitat, based on the best information available to us. When designating critical habitat, we will designate only areas currently known to be essential. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, unless the best available scientific and commercial data demonstrate that the conservation needs of the species can not be met within currently occupied areas, we will not designate critical habitat in areas outside the geographical area presently occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. This policy requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species and the recovery plan, if one has been adopted by the Service. Additional information may be obtained from articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature), and expert opinions.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that the designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be necessary for the conservation of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that contain the physical and biological features that are essential for the conservation of the Carolina heelsplitter. This included information from the listing package for the species, the recovery plan, scientific publications, and recent surveys and reports.

We also reviewed the goals for delisting the Carolina heelsplitter, as provided in our recovery plan for this species (Service 1997). The plan

provides five criteria that would need to be met to consider delisting the species. The first criterion calls for protection of existing populations, successful establishment of reintroduced populations, or discovery of additional populations, such that six distinct viable populations exist. These six populations must be distributed throughout the species' known historic range, with at least one each in the Catawba, Pee Dee, and Savannah River systems. The criterion also states that these populations must be extensive enough that it is unlikely that a single event would eliminate or significantly reduce one or more of them. In defining a viable population for the Carolina heelsplitter, the recovery plan states: "A viable population is defined as a naturally reproducing population that is large enough to maintain sufficient genetic variation to enable it to evolve and respond to natural environmental changes. The number of individuals needed to reach a viable population will be determined as one of the recovery tasks."

In addition to the criterion concerning the existence of six viable populations, the recovery plan includes four other criteria that would need to be achieved to consider removal of the Carolina heelsplitter from Endangered Species Act protection. They include: protection of the six populations and their habitats from any present and foreseeable threats that would jeopardize their continued existence; improvements in habitat where certain types of degradation have occurred; completion of studies and successful implementation of recovery measures to increase population density and/or the length of the river reach inhabited by each of the six populations; and the existence of a certain age class structure in the populations, as well as the presence of appropriate host fish for the mussel's reproductive cycle, over specified periods of time.

The areas we are designating as critical habitat, described below, constitute our best assessment of the areas needed for the conservation and recovery of the Carolina heelsplitter, are consistent with the goals and information outlined in our recovery plan for the species (Service 1997), and are based on the best scientific and commercial information currently available to us concerning the species' known present and historical range, habitat, biology, and threats. All of the areas we are designating as critical habitat are within what we believe to be the geographical area occupied by the Carolina heelsplitter, include all known surviving occurrences of the species, and are essential for the conservation of the species. These designated areas are distributed throughout the species' range with at least one occurring in the Catawba, Pee Dee, and Savannah river systems. We will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available indicating that other areas within the Carolina heelsplitter's historical range are essential to the conservation of the species and provide for the essential life cycle needs of the species, we will revise the designated critical habitat for the Carolina heelsplitter accordingly.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These physical and biological features include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species (50 CFR 424.12(b)).

When considering areas for designation as critical habitat, we are required to focus on the principal biological and physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12 (b)). Although additional information is needed to better define the habitat requirements of the Carolina heelsplitter, particularly the microhabitat requirements, all of the stream reaches that support occurrences of the Carolina heelsplitter are free flowing (no major impoundments) and natural (have not been channelized or otherwise significantly altered), and are not associated with (located a substantial distance from) significant point (discharges) and non-point (runoff) sources of pollutants. Although the species has been observed in a variety of substrates (see "Background" section), it has only been recorded from stable pockets of substrates in stream reaches with stable, well-vegetated stream bank and riparian areas, and in substrates without heavy accumulations of silt. Based on the best available information, the primary constituent elements essential for the conservation of the Carolina heelsplitter are:

(1) Permanent, flowing, cool, clean water;

(2) Geomorphically stable stream and river channels and banks;

(3) Pool, riffle, and run sequences within the channel;

(4) Stable substrates with no more than low amounts of fine sediment;

(5) Moderate stream gradient;

(6) Periodic natural flooding; and

(7) Fish hosts, with adequate living, foraging, and spawning areas for them.

Critical Habitat Designation

The Service's recovery plan for the Carolina heelsplitter states that the species will be considered for delisting when a total of six distinct viable populations exist and other criteria outlined in the plan are met (Service 1997). The critical habitat areas described below constitute our best assessment of the areas essential for the conservation of the Carolina heelsplitter. Critical habitat includes six units that currently are occupied by the species. Based on the most recent survey data for the Carolina heelsplitter (Keferl and Shelly 1988; Keferl 1991: Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000), there are currently six surviving populations: the Goose Creek/Duck Creek population, Waxhaw Creek population, Gills Creek population, Flat Creek/Lynches River population, Turkey Creek/Mountain Creek/Beaverdam Creek population, and Cuffytown Creek population (see "Background" section). The areas in the six units that we are designating as critical habitat for the Carolina heelsplitter include habitat for each of these populations. The lateral extent of designated critical habitat is up to the ordinary high-water line on each bank. In addition, given the threats to the species' habitat discussed in the final listing rule (58 FR 34926) and summarized in the "Background" section, we believe these areas may need special management considerations or protection. We are designating the following areas as critical habitat for the Carolina heelsplitter (see Table 1 below for a summary of approximate stream lengths):

Unit 1. Goose Creek and Duck Creek (Pee Dee River system), Union County, NC

Unit 1 encompasses approximately 7.2 km (4.5 mi) of the main stem of Goose Creek, Union County, NC, from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and approximately 8.8 km (5.5 mi) of the main stem of Duck Creek, Union County, NC, from the

the S.C. Route 51 Bridge, east of the city of Lancaster. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in

Mountain Creek, Edgefield County, SC, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; approximately 10.8 km (6.7 mi) of Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and approximately 18.4 km (11.4 mi) of Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge,

TABLE 1.—APPROXIMATE LENGTHS OF STREAM DESIGNATED AS CRITICAL HABITAT FOR THE CAROLINA HEELSPLITTER

State	County	Unit and stream	Length in kilometers (miles)
North Carolina	Union	Unit 1—Goose Creek	7.2 (4.5)
		Unit 1—Duck Creek	8.8 (5.5)
		Unit 2—Waxhaw Creek	19.6 (12.2)
South Carolina	Lancaster	Unit 3—Gills Creek	9.6 (6.0)
		Unit 4—Flat Creek	18.4 (11.4)
	Lancaster, Chesterfield, and Kershaw	Unit 4—Lynches River	23.6 (14.6)
	Edgefield	Unit 5—Mountain Creek	11.2 (7.0)
		Unit 5—Beaverdam Creek	10.8 (6.7)

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Unit 1. Goose Creek and Duck Creek (Pee Dee River system), Union County, NC

Unit 1 encompasses approximately 7.2 km (4.5 mi) of the main stem of Goose Creek, Union County, NC, from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and approximately 8.8 km (5.5 mi) of the main stem of Duck Creek, Union County, NC, from the Mecklenburg/Union County line downstream to its confluence with Goose Creek. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Pee Dee River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 2. Waxhaw Creek (Catawba River system), Union County, NC

Unit 2 encompasses approximately 19.6 km (12.2 mi) of the main stem of Waxhaw Creek, Union County, NC, from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Catawba River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 3. Gills Creek (Catawba River system), Lancaster County, SC

Unit 3 encompasses approximately 9.6 km (6.0 mi) of the main stem of Gills Creek, Lancaster County, SC, from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Catawba River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 4. Flat Creek (Pee Dee River system), Lancaster County, SC, and the Lynches River (Pee Dee River system), Lancaster, Chesterfield, and Kershaw Counties, SC

Unit 4 encompasses approximately 18.4 km (11.4 mi) of the main stem of Flat Creek, Lancaster County, SC, from the S.C. Route 204 Bridge, downstream to its confluence with the Lynches River, and approximately 23.6 km (14.6 mi) of the main stem of the Lynches River, Lancaster and Chesterfield Counties, SC, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County, SC. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Pee Dee River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 5. Mountain and Beaverdam Creeks (Savannah River system), Edgefield County, South Carolina, and Turkey Creek (Savannah River system), Edgefield and McCormick Counties, SC

Unit 5 encompasses approximately 11.2 km (7.0 mi) of the main stem of Mountain Creek, Edgefield County, SC, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; approximately 10.8 km (6.7 mi) of Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and approximately 18.4 km (11.4 mi) of Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties, SC. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Savannah River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 6. Cuffytown Creek (Savannah River system), Greenwood and McCormick Counties, SC

Unit 6 encompasses approximately 20.8 km (12.9 mi) of the main stem of Cuffytown Creek, from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, SC, downstream to the U.S. Highway 378 Bridge in McCormick County. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area is occupied by one of the six known populations of the Carolina heelsplitter, and supports one of the only two known populations in the Savannah River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

TABLE 1.—APPROXIMATE LENGTHS OF STREAM DESIGNATED AS CRITICAL HABITAT FOR THE CAROLINA HEELSPLITTER

State	County	Unit and stream	Length in kilometers (miles)
North Carolina	Union	Unit 1—Goose Creek	7.2 (4.5)
		Unit 1—Duck Creek	8.8 (5.5)
		Unit 2—Waxhaw Creek	19.6 (12.2)
South Carolina	Lancaster	Unit 3—Gills Creek	9.6 (6.0)
		Unit 4—Flat Creek	18.4 (11.4)
	Lancaster, Chesterfield, and Kershaw	Unit 4—Lynches River	23.6 (14.6)
	Edgefield	Unit 5—Mountain Creek	11.2 (7.0)
		Unit 5—Beaverdam Creek	10.8 (6.7)
	Edgefield and McCormick	Unit 5—Turkey Creek	18.4 (11.4)
	Greenwood and McCormick	Unit 6—Cuffytown Creek	20.8 (12.9)

Land Ownership

Of the stream reaches we are designating as critical habitat, approximately 6.0 km (3.7 mi) of Beaverdam Creek, 13.6 km (8.5 mi) of Turkey Creek, and 1.6 km (1.0 mi) of Cuffytown Creek are bordered by the Sumter National Forest in South Carolina, and 2.4 km (1.5 mi) of Flat Creek that we are designating as critical habitat, are bordered by the Flat Creek Heritage Preserve, which is managed by the State of South Carolina. The remainder of the areas that we are designating as critical habitat for the Carolina heelsplitter, with the exception of State road and highway rights-of-way, are bordered by lands under private ownership.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat will not have any regulatory effect on private or State activities unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(2) of the Act and regulations at 50 CFR 402.10 require Federal agencies to ensure, in consultation with us, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species for which critical habitat was designated. Such alternations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02).

Activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect designated critical habitat of the Carolina heelsplitter will require consultation under section 7 of the Act. However, pursuant to section 7 of the Act and the related consultation regulations, Federal agencies also are required to consult with us on any action that may affect a listed species and to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species. Activities that jeopardize listed species are defined as actions that "directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species" (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species.

Common to the definitions of both "jeopardy" and "destruction or adverse modification of critical habitat" is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of the small size of surviving populations of the Carolina heelsplitter, the species' restricted range, and the limited amount of suitable habitat available to the species; and because all of the units that we are designating as critical habitat for the Carolina heelsplitter currently support populations of the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the Carolina heelsplitter, this designation would not be likely to change the outcome of section 7 consultations.

If, through section 7 consultation, a Federal agency determines that an action/activity that they propose may adversely affect a listed species and/or designated critical habitat, we will issue a biological opinion determining whether the effects of the action are likely to jeopardize the continued existence of the species and/or destroy or adversely modify designated critical habitat. If we issue a biological opinion concluding that the action is likely to jeopardize the species or destroy or adversely modify designated critical habitat, we will also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined as alternative actions that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and

technologically feasible, and that the Director of the Service believes would avoid jeopardizing the species' continued existence and/or the destruction or adverse modification of designated critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat. As discussed above, the role of critical habitat is to support the life-history needs of the species and provide for the conservation of the species. Section 4(b)(2) of the Act requires us to consider economic and other impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effects of the designation. This draft analysis was made available for public review and comment. The draft analysis estimated that the Service will provide technical assistance to various parties on 200 occasions. Our draft analysis assumed that many of the potential future consultations are likely to result in Service recommendations for certain types of project modifications. Based on our draft analysis, we concluded that costs associated with future section 7

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service prepared an economic analysis of this action. The Service used this analysis to meet the requirement of

and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under

Carolina heelsplitter, the economic analysis anticipated that future section 7 consultations could potentially affect small businesses associated with residential development. To be conservative (i.e., more likely to overstate impacts than understate them), the economic analysis assumed that a unique company will undertake each of the consultations forecasted in a given year, and so the number of businesses affected is equal to the total annual

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technologically feasible, and that the Director of the Service believes would avoid jeopardizing the species' continued existence and/or the destruction or adverse modification of designated critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Carolina heelsplitter is appreciably diminished. This may include any activity, regardless of the activity's location in relation to designated critical habitat, that would significantly alter the natural flow regime, channel morphology or geometry, or water chemistry or temperature of any of the six designated critical habitat units, as described by the primary constituent elements, or any activity that could result in the significant discharge or deposition of sediment, excessive nutrients, or other organic or chemical pollutants into any of the six designated critical habitat units. Such Federal activities include (but are not limited to) carrying out or issuing permits, authorizations, or funding for reservoir construction; stream/streambank alterations; wastewater facility development; hydroelectric facility construction and operation; pesticide/herbicide applications; forestry operations; and road, bridge, and utility construction. These same activities also have the potential to jeopardize the continued existence of the Carolina heelsplitter, and Federal agencies are already required to consult with us on these types of activities, or any other activity, that may affect the species.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, or questions regarding whether specific activities will constitute adverse modification of critical habitat, may be addressed to the U.S. Fish and Wildlife Service, Asheville Field Office (see **ADDRESSES** section).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon reaching a determination that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for public review on March 6, 2002 (67 FR 10118). We accepted comments on the draft analysis until April 5, 2002.

Our draft economic analysis evaluated the potential future effects associated with the listing of the Carolina heelsplitter as an endangered species under the Act, as well as any potential effect of the designation of critical habitat above and beyond those regulatory and economic impacts associated with the listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits.

The majority of future section 7 consultations associated with the areas being designated as critical habitat for the Carolina heelsplitter are likely to address residential development, road and bridge construction, water utility expansion, and Federal forestry activities. The draft analysis estimated that, over a 10-year period, approximately 14 formal consultations and 301 informal consultations will occur on projects with the potential to affect the Carolina heelsplitter and its proposed critical habitat. In addition, the draft analysis estimated that the Service will provide technical assistance to various parties on 200 occasions. Our draft analysis assumed that many of the potential future consultations are likely to result in Service recommendations for certain types of project modifications. Based on our draft analysis, we concluded that costs associated with future section 7 consultations involving the Carolina heelsplitter and its designated critical habitat could potentially range from $9,995,000 to $66,686,000 over the next 10 years, but that these potential costs are most appropriately attributable to the listing of the Carolina heelsplitter rather than the designation of critical habitat for the species. Accordingly, we determined that the designation of critical habitat will not result in a significant economic impact.

Following the close of the comment period on the draft economic analysis, a final addendum was completed that incorporated public comments on the draft analysis. Based on new information provided by some of the respondents and additional research conducted pursuant to the comments received, we reduced the estimated number of formal consultations potentially occurring over the next 10 years from 14 to 9 and reevaluated the potential economic effects and costs associated with certain types of project modifications. Based on these changes, in the final addendum, we estimate that costs associated with future section 7 consultations involving the Carolina heelsplitter and its designated critical habitat could potentially range from $9,189,000 to $63,791,000 over the next 10 years. However, as stated in the draft economic analysis, the listing of the heelsplitter and the resultant Federal responsibility to avoid projects that would jeopardize the continued existence of the species is likely to trigger these impacts, whether or not critical habitat is designated, and the designation of critical habitat for the Carolina heelsplitter will not result in a significant economic impact.

A detailed discussion of our analysis is contained in the Draft Economic Analysis of Proposed Critical Habitat Designation for the Carolina Heelsplitter (February 2002) and the Final Addendum to Economic Analysis of Critical Habitat Designation for the Carolina Heelsplitter (April 2002). Both documents are included in the supporting documentation for this rulemaking and are available for inspection at the Asheville Field Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service prepared an economic analysis of this action. The Service used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis was made available for public comment, and we considered comments on it during the preparation of this rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule designating critical habitat for the Carolina heelsplitter will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for this assertion.

According to the Small Business Administration (*http://www.sba.gov/size/*), small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only has the potential to affect activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Activities with Federal involvement that may require consultation regarding the Carolina heelsplitter and its critical habitat include: Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act; forestry activities carried out by the U.S. Forest Service; and, road construction, maintenance, and right of way designation authorized, funded, or carried out by a Federal agency. As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the analysis, we found that the future section 7 consultations resulting from the listing of the Carolina heelsplitter and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects to range between approximately $9.2 and $63.8 million over a ten year period.

In determining whether this rule could "significantly affect a substantial number of small entities," the economic analysis first determined whether critical habitat could potentially affect a "substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. Based on the past consultation history of the Carolina heelsplitter, the economic analysis anticipated that future section 7 consultations could potentially affect small businesses associated with residential development. To be conservative (i.e., more likely to overstate impacts than understate them), the economic analysis assumed that a unique company will undertake each of the consultations forecasted in a given year, and so the number of businesses affected is equal to the total annual number of consultations projected in the economic analysis. Based on our analysis, the number of small businesses estimated to be impacted by future section 7 consultations is approximately 15 percent of the small businesses in the residential development industry in the affected counties. This finding is based on the extremely conservative assumption that the potential universe of affected entities includes only those within the counties in which critical habitat units are located, and attributes all of the effects of section 7 consultation on these activities solely to the critical habitat designation, even though these effects would likely occur with or without the designation of critical habitat for the heelsplitter due to the listing of the species. Because these estimates are less than the 20 percent threshold that would be considered "substantial," the analysis provided a basis for concluding that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for the Carolina heelsplitter. The draft Economic Analysis and final Addendum contain the factual bases for this certification and contain a complete analysis of the potential economic effects of this designation. Copies of these documents are in the supporting record for the rulemaking and are available at the Service's Asheville, North Carolina, Field Office (see **ADDRESSES** section).

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Carolina heelsplitter will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the

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Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment,

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits,

development of habitat conservation plans and the issuance of incidental take permits. Any landowner in areas that are included in the designated critical habitat will continue to have opportunity to use his or her property in ways consistent with the survival of the Carolina heelsplitter.

Federalism

In accordance with Executive Order 13132, this rule does not have

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

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Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed in the economic analysis, future potential section 7 costs in areas that we are designating as critical habitat for the Carolina heelsplitter are anticipated to have a total estimated economic effect ranging between approximately $9.2 and $63.8 million over a 10-year period. Furthermore, because all the areas that we are designating as critical habitat in this rule currently support populations of the Carolina heelsplitter, the Service would consult on the same range of activities in the absence of this critical habitat designation and the above costs are most appropriately attributable to the section 7 jeopardy provisions of the Act due to the listing of the species (see "Effects of Critical Habitat" section).

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat for the Carolina heelsplitter include residential development and forestry operations. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied designated critical habitat.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the takings implications of designating approximately 148.4 km (92.2 mi) of streams in North Carolina and South Carolina in six units of critical habitat for the Carolina heelsplitter. Based on our consideration of the economic analysis and other pertinent information, this rule does not have significant takings implications, and a takings implication assessment is not required. This rule will not "take" private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by the critical habitat designation; however, we expect no regulatory effect from this designation because all areas designated as critical habitat for the Carolina heelsplitter are considered to be within the geographical range occupied by the species and Federal actions would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

This rule will not increase or decrease the current restrictions on private property concerning taking of the Carolina heelsplitter as defined in section 9 of the Act and its implementing regulations (50 CFR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowner in areas that are included in the designated critical habitat will continue to have opportunity to use his or her property in ways consistent with the survival of the Carolina heelsplitter.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat designation with, appropriate State natural resources agencies in North Carolina and South Carolina. We will continue to coordinate any future changes in the designation of critical habitat for the Carolina heelsplitter with the appropriate State agencies. The designation of critical habitat for the Carolina heelsplitter imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of the Carolina heelsplitter. We have made every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the Carolina heelsplitter. Therefore, the designated critical habitat for the Carolina heelsplitter does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John Fridell (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for the "Heelsplitter, Carolina" under "CLAMS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
CLAMS							
.	.	.	.	.	.	.	.
Heelsplitter, Carolina	*Lasmigona decorata*	U.S.A. (NC, SC)	Entire	E	505	17.95(f)	NA
.	.	.	.	.	.	.	.

3. Amend § 17.95(f) by adding critical habitat for the Carolina heelsplitter (*Lasmigona decorata*) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(f) *Clams and snails.* * * *

Carolina heelsplitter (*Lasmigona decorata*)

(1) Critical habitat units are described below and depicted in the maps that follow, with the lateral extent of each designated unit bounded by the ordinary high-water line.

(2) Unit 1.

(i) Union County, NC—main stem of Goose Creek (Pee Dee River system) from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek.

(ii) Map of Unit 1 follows:

BILLING CODE 4310-55-P

Unit 1. Goose Creek and Duck Creek (Pee Dee River System), Union County, North Carolina.

Unit 2. Waxhaw Creek (Catawba River System), Union County, North Carolina.

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Unit 1. Goose Creek and Duck Creek (Pee Dee River System), Union County, North Carolina.

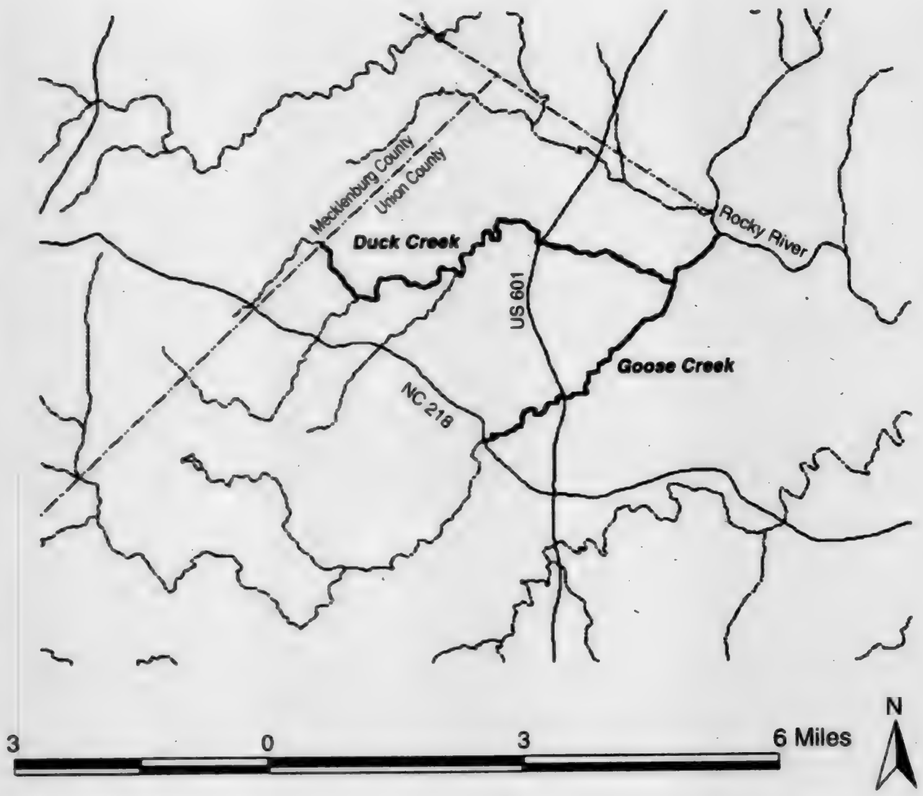

(3) Unit 2.

(i) Union County, NC—main stem of Waxhaw Creek (Catawba River system) from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line.

(ii) Map of Unit 2 follows:

Unit 2. Waxhaw Creek (Catawba River System), Union County, North Carolina.

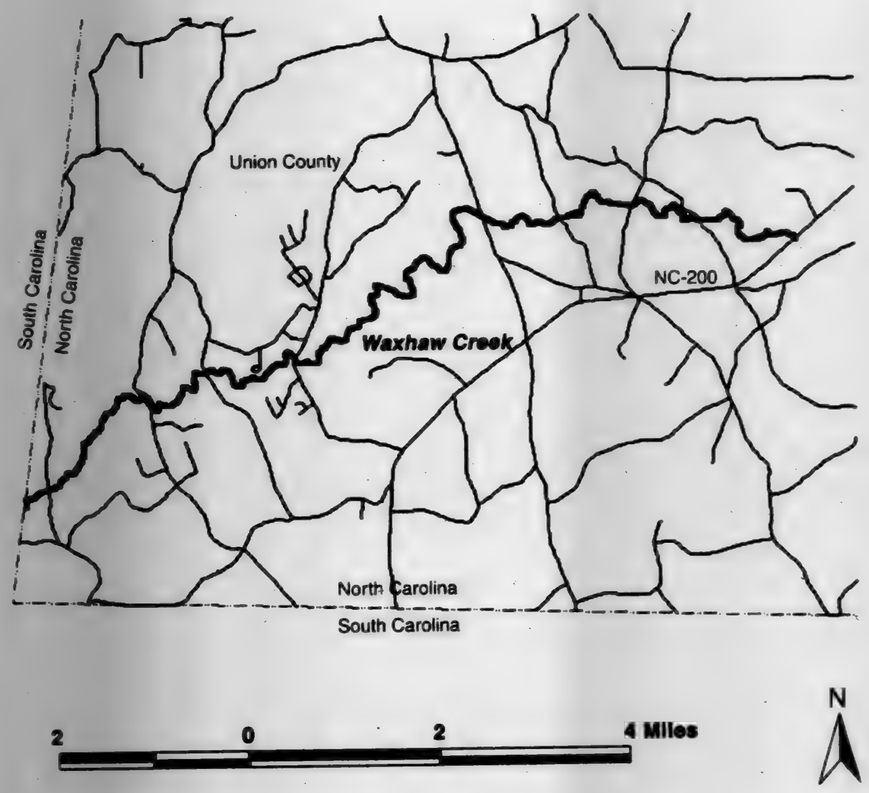

(4) Unit 3.

(i) Lancaster County, SC—main stem of Gills Creek (Catawba River system) from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster.

(ii) Map of Unit 3 follows:

Unit 3. Gills Creek (Catawba River System), Lancaster County, South Carolina.

Unit 4. Flat Creek and Lynches River (Pee Dee River System), Lancaster and Kershaw Counties, South Carolina.

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Unit 3. Gills Creek (Catawba River System), Lancaster County, South Carolina.

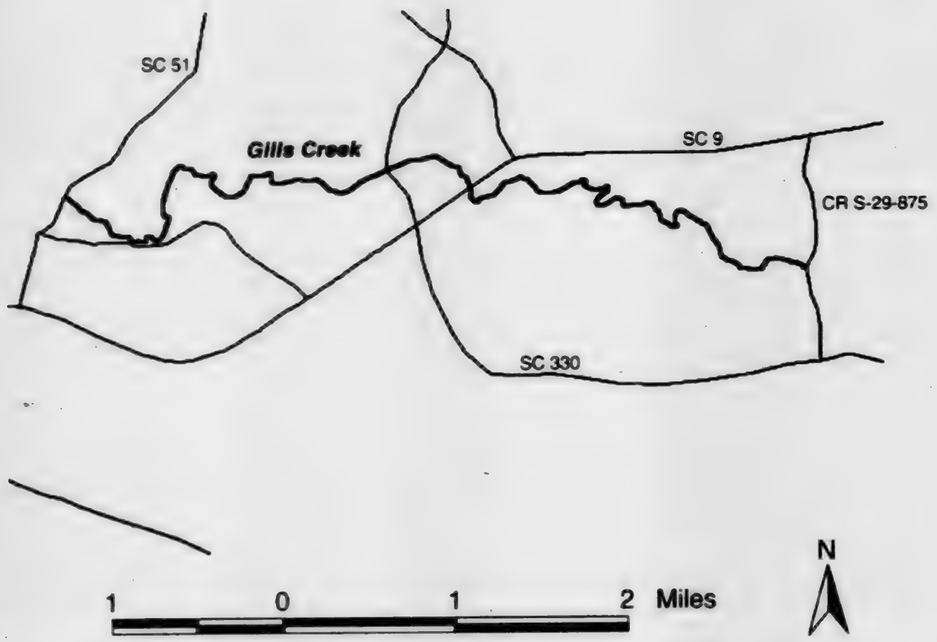

(5) Unit 4.

(i) Lancaster, Chesterfield, and Kershaw Counties, SC—main stem of Flat Creek (Pee Dee River system), Lancaster County, from the S.C. Route 204 Bridge, downstream to its confluence with Lynches River, and the main stem of the Lynches River, Lancaster and Chesterfield Counties, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County.

(ii) Map of Unit 4 follows:

Unit 4. Flat Creek and Lynches River (Pee Dee River System), Lancaster and Kershaw Counties, South Carolina.

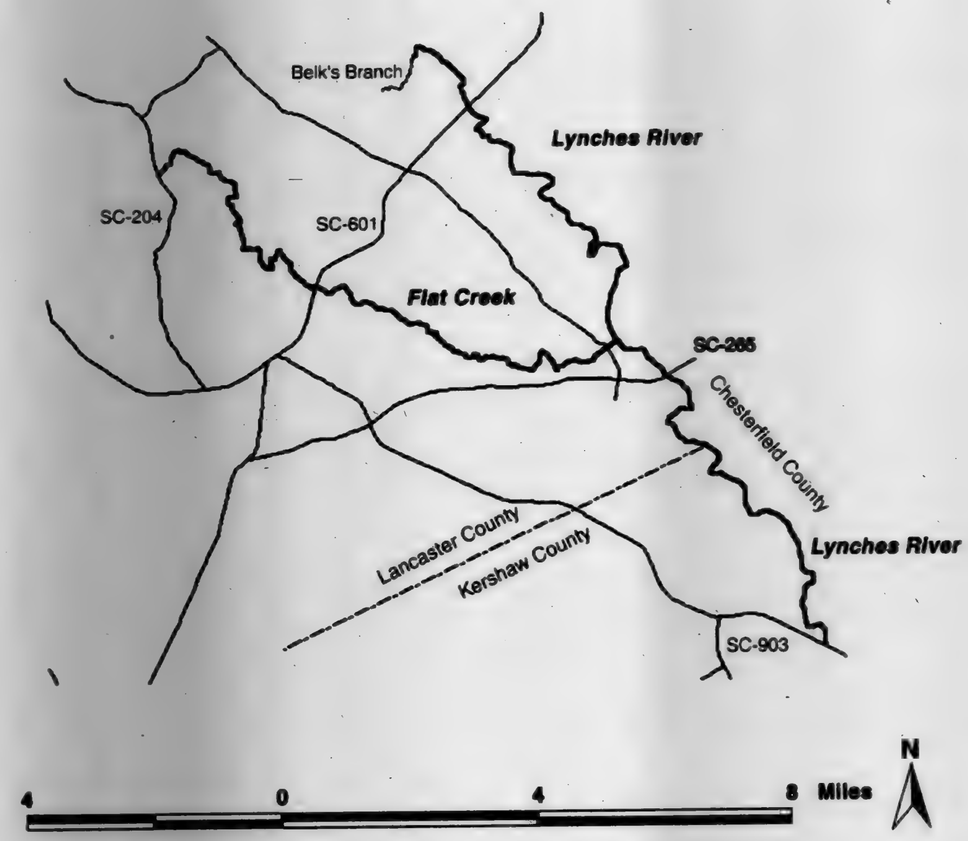

(6) Unit 5.

(i) Edgefield and McCormick Counties, SC—main stem of Mountain Creek (Savannah River system), Edgefield County, SC, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties.

(ii) Map of Unit 5 follows:

Unit 5. Mountain and Beaverdam Creeks (Savannah River System), Edgefield County, South Carolina, and Turkey Creek (Savannah River System), Edgefield and McCormick Counties, South Carolina.

Unit 6. Cuffeytown Creek (Savannah River System), Greenwood and McCormick Counties, South Carolina.

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Unit 5. Mountain and Beaverdam Creeks (Savannah River System), Edgefield County, South Carolina, and Turkey Creek (Savannah River System), Edgefield and McCormick Counties, South Carolina.

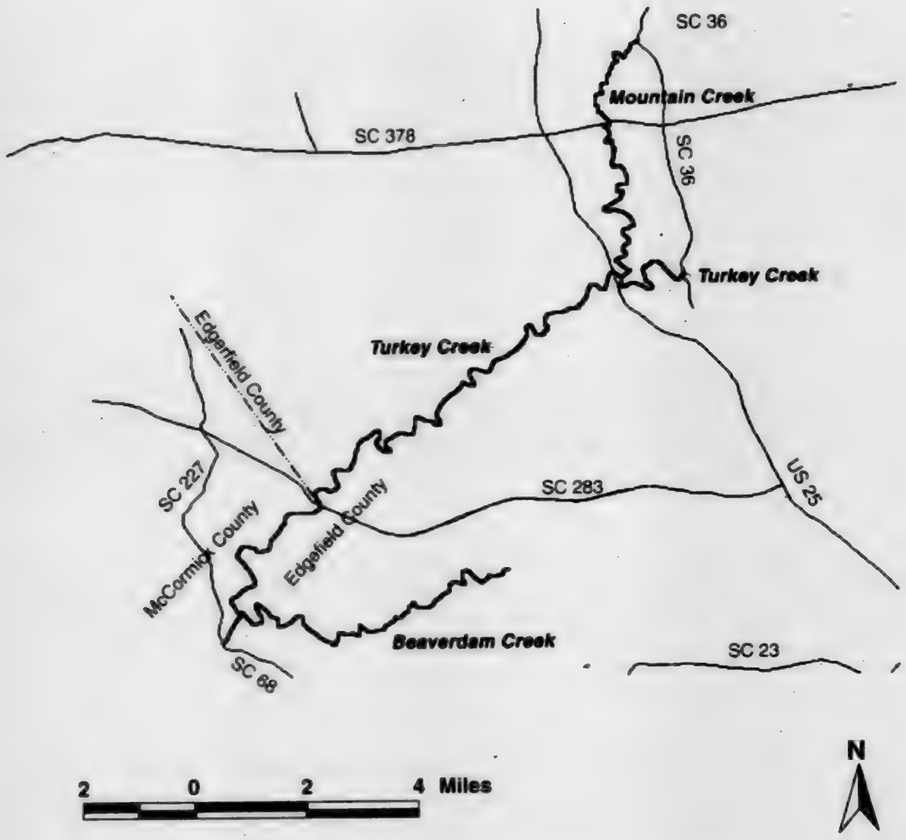

(7) Unit 6.

(i) Greenwood and McCormick Counties, SC—main stem of Cuffytown Creek (Savannah River system), from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, downstream to the U.S. Highway 378 Bridge in McCormick County.

(ii) Map of Unit 6 follows:

Unit 6. Cuffeytown Creek (Savannah River System), Greenwood and McCormick Counties, South Carolina.

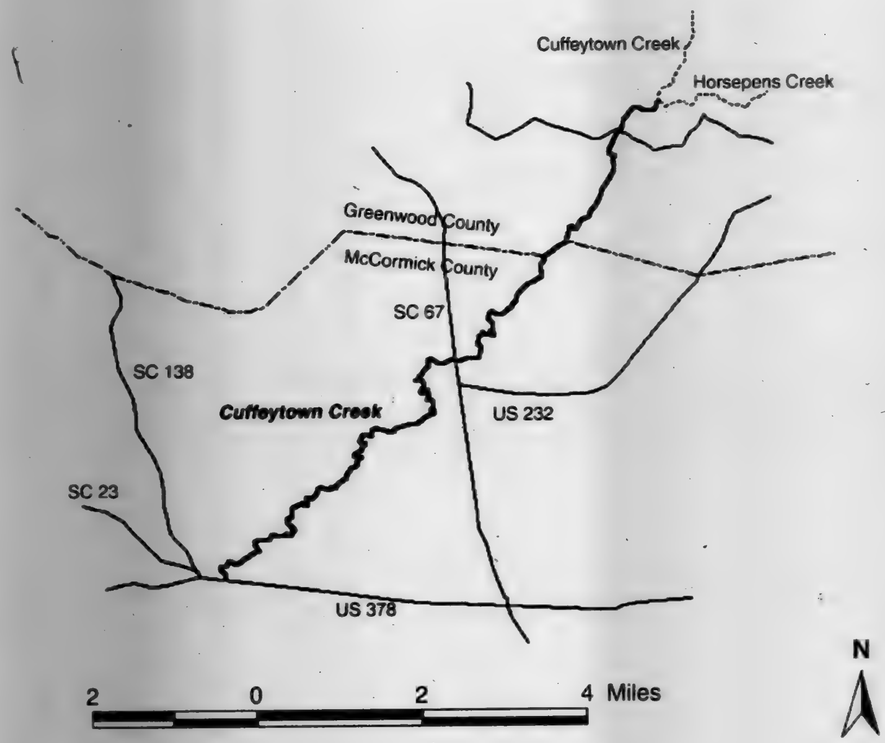

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(8) Within these areas, the primary constituent elements include:

(i) Permanent, flowing, cool, clean water;

(ii) Geomorphically stable stream and river channels and banks;

(iii) Pool, riffle, and run sequences within the channel;

(iv) Stable substrates with no more than low amounts of fine sediment;

(v) Moderate stream gradient;

(vi) Periodic natural flooding; and

(vii) Fish hosts, with adequate living, foraging, and spawning areas for them.

* * * * *

Dated: June 24, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–16580 Filed 7–1–02; 8:45 am]

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S. 2578/P.L. 107–199

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Rules and Regulations

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–093–2" on the subject line.

Inspection Service and California State and county inspectors, we have determined that the Medfly has been eradicated from the quarantined area in Los Angeles County, CA. The last finding of Medfly in that portion of Los

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–093–2]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of Mediterranean fruit fly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that the quarantine and restrictions are no longer necessary. As a result of this action, there are no longer any areas in the continental United States . quarantined because of the Mediterranean fruit fly.

DATES: This interim rule was effective June 27, 2002. We will consider all comments that we receive on or before September 3, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–093–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–093–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–093–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective October 15, 2001, and published in the **Federal Register** on October 19, 2001 (66 FR 53123–53124, Docket No. 01–093–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by the Animal and Plant Health Inspection Service and California State and county inspectors, we have determined that the Medfly has been eradicated from the quarantined area in Los Angeles County, CA. The last finding of Medfly in that portion of Los Angeles County, CA, was September 5, 2001. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Los Angeles County, CA, from the list in § 301.78–3(c) of areas quarantined because of the Medfly. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Medfly.

Immediate Action

Immediate action is warranted to remove restrictions that are no longer necessary. The portion of Los Angeles County, CA, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because we have determined that the Medfly has been eradicated from this area, immediate action is necessary to remove the quarantined status of that portion of Los Angeles County, CA, and to relieve restrictions on the interstate movement of regulated articles from that area. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In an interim rule effective October 15, 2001, and published in the **Federal Register** on October 19, 2001 (66 FR 53123–53124, Docket No. 01–093–1), we added a portion of Los Angeles County,

CA, to the list of areas quarantined because of Medfly. At the time that October 2001 interim rule was published, we did not have all the data necessary for a comprehensive analysis of the effects of that interim rule on small entities. As a result, we performed an initial regulatory flexibility analysis and solicited comments regarding the effects of that action on small entities. Comments on the October 2001 interim rule were required to be received by unnecessary regulatory restrictions on any affected entities.

This interim rule contains no information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–059–2]

Change in Disease Status of Greece With Regard to Foot-and-Mouth Disease

to certain restrictions because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

On March 21, 2002, we published in the **Federal Register** (67 FR 13105–13108, Docket No. 01–059–1) a proposal to amend the regulations to add Greece to the list in § 94.1(a) of regions that are considered free of rinderpest and FMD while removing Greece from the list of regions considered free of rinderpest only, also contained in § 94.1(a). In that rinderpest and FMD by providing additional requirements for any meat and meat products imported into the United States from Greece.

The following analysis addresses the potential economic effects of this rule as required by the Regulatory Flexibility Act.

From an economic standpoint, this rule is likely to have little or no impact on U.S. animal stock and commodities. There are two reasons. First, this rule will not remove other disease-based

tons, less than 1 percent of the total U.S. cheese production.

In 1999, the stock of live sheep and goats in Greece was 14,276,000 head, or 66 percent more than the comparable stock in the United States that year. Here again, however, there appears to be no significant market in the United States for those animals, as evidenced by the fact that the United States imported only 53,165 live sheep and goats from all countries in 1999, which represents less than 1 percent of the

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CA, to the list of areas quarantined because of Medfly. At the time that October 2001 interim rule was published, we did not have all the data necessary for a comprehensive analysis of the effects of that interim rule on small entities. As a result, we performed an initial regulatory flexibility analysis and solicited comments regarding the effects of that action on small entities. Comments on the October 2001 interim rule were required to be received by December 18, 2001. We did not receive any comments.

This interim rule amends the regulations by removing the portion of Los Angeles County, CA, that was added to the list of quarantined areas in the October 2001 interim rule. The economic analysis contained in this interim rule is based on the information provided in the October 2001 interim rule. However, to ensure that our analysis is comprehensive, we are inviting comments on the economic analysis contained in this interim rule. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

This action affects the interstate movement of regulated articles from the portion of Los Angeles County, CA, that had been quarantined because of Medfly. That area is a predominantly residential area with many apartment buildings. Available information indicates that there are no entities in the quarantined area that sell, process, handle, or move regulated articles. Such entities would include fruit sellers, nurseries, growers, packinghouses, certified farmers markets, and swapmeets.

The effect of this action on affected entities should be minimally positive, as they will no longer be required to treat articles to be moved interstate for Medfly.

Therefore, the termination of the quarantine on that portion of Los Angeles County, CA, should have only a minimal economic effect on any affected entities operating in this area. We anticipate that the economic effect of lifting the quarantine, though positive, will be no more significant than was the minimal effect of its imposition.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of Los Angeles County, CA, would impose unnecessary regulatory restrictions on any affected entities.

This interim rule contains no information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3. Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) There are no areas in the continental United States quarantined because of the Mediterranean fruit fly.

Done in Washington, DC, this 27th day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–16683 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–059–2]

Change in Disease Status of Greece With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to add Greece to the list of regions that are considered free of rinderpest and foot-and-mouth disease. We are taking this action because we have determined that Greece is now free of foot-and-mouth disease. We are also adding Greece to the list of regions that are subject to certain import restrictions on meat or meat products because of their proximity to or trading relationships with rinderpest-or foot-and-mouth-disease-affected regions. These actions update the disease status of Greece with regard to foot-and-mouth disease while continuing to protect the United States from an introduction of this disease by providing additional requirements for any meat and meat products imported into the United States from Greece.

EFFECTIVE DATE: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 lists regions of the world that are declared to be free of rinderpest or free of both rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) considers rinderpest or FMD to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that APHIS has determined to be free of rinderpest and FMD, but that are subject

to certain restrictions because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

On March 21, 2002, we published in the **Federal Register** (67 FR 13105–13108, Docket No. 01–059–1) a proposal to amend the regulations to add Greece to the list in § 94.1(a) of regions that are considered free of rinderpest and FMD while removing Greece from the list of regions considered free of rinderpest only, also contained in § 94.1(a). In that document, we also proposed to add Greece to the list in § 94.11(a) of regions declared free of rinderpest and FMD, but that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest-or FMD-affected countries.

We solicited comments concerning our proposal for 60 days ending March 20, 2002. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule adds Greece to the list of regions considered free of rinderpest and FMD. We have determined that approximately 2 weeks are needed to ensure that APHIS personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations to add Greece to the list of regions that are considered free of rinderpest and FMD. We are taking this action because we have determined that Greece is now free of FMD. We are also adding Greece to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions update the disease status of Greece with regard to FMD while continuing to protect the United States from an introduction of rinderpest and FMD by providing additional requirements for any meat and meat products imported into the United States from Greece.

The following analysis addresses the potential economic effects of this rule as required by the Regulatory Flexibility Act.

From an economic standpoint, this rule is likely to have little or no impact on U.S. animal stock and commodities. There are two reasons. First, this rule will not remove other disease-based restrictions on the importation of ruminants or swine (and certain meat and other products from those animals) from Greece into the United States. Because bovine spongiform encephalopathy is considered to exist in Greece, the importation of ruminants and meat, meat products, and certain other products of ruminants that have been in Greece is prohibited. Furthermore, because hog cholera (also known as classical swine fever) and swine vesicular disease are also considered to exist in Greece, the importation of swine from that region into the United States is prohibited, and the importation of pork and pork products is subject to restrictions.

Second, it appears unlikely that the volume of animals and animal products that will be eligible for importation into the United States from Greece under this rulemaking will be sufficient to have a significant impact on the U.S. market. In 2000, Greece produced 287,765 metric tons of beef, veal, mutton, lamb, and pig meat, representing less than 1.5 percent of the comparable U.S. production that year. Similarly, Greece's production of whole, fresh cow milk was 770,000 metric tons, only 1 percent of the comparable U.S. production during that period. Finally, in 1999, live cattle and pig stock in Greece was 1,510,000 head, less than 1 percent of the comparable stock in the United States that year.[1]

Besides cow milk, Greece also produces sheep and goat milk. In 2000, Greece produced 670,000 metric tons of sheep milk and 450,000 metric tons of goat milk. However, there appears to be no significant market in the United States for those commodities, or products made from them, such as cheese, as evidenced by the fact that no sheep or goat milk or cheese is commercially produced in the United States, and U.S. imports of those commodities are relatively minor. In 1999, for example, U.S. imports of cheese made from sheep and goat milk from all countries totaled 32,505 metric tons, less than 1 percent of the total U.S. cheese production.

In 1999, the stock of live sheep and goats in Greece was 14,276,000 head, or 66 percent more than the comparable stock in the United States that year. Here again, however, there appears to be no significant market in the United States for those animals, as evidenced by the fact that the United States imported only 53,165 live sheep and goats from all countries in 1999, which represents less than 1 percent of the sheep and goat stock in the United States that year and less than 1 percent of U.S. imports of all live animals from all countries in 1999.[2]

Entities potentially affected by this rule include U.S. import brokers, agents, and others involved in the sale of animals or animal products from Greece that will no longer be prohibited, or that will be possible to import under less restrictive conditions than they were prior to this rulemaking. The number and size of entities that will be directly involved in the importation and sale of such animals or animal products from Greece is unknown, but it is likely that these entities will be small, based on the U.S. Small Business Administration's (SBA) size standards.[3] Given the disease-based restrictions discussed previously that will remain in place and the minimal level of U.S. imports of animals and animal products that will be eligible for importation from Greece, we expect that declaring Greece free of FMD will have only a negligible effect on U.S. entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

[1] Food and Agriculture Organization of the United States.

[2] Food and Agricultural Organization of the United Nations.

[3] The overwhelming majority of U.S. business entities are small under the SBA's standards.

Lists of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER,

Counsel, Legal Division (202/452–2418), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In light of the heightened concerns regarding security of Federal government personnel and buildings, the Board is implementing a procedure to screen visitors to the Board's premises before

PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT OF 1974

1. The authority citation for part 261a continues to read as follows:

Authority: 5 U.S.C. 552a.

2. In § 261a.13, add a new paragraph (b)(10) to read as follows:

§ 261a.13 Exemptions.

§ 39.13 [Corrected]

On page 21981, in the first column, in AD 2002–09–02, in the ALTERNATIVE METHOD OF COMPLIANCE Section, "**Note 3:** These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS and the MSS of the Instructions for Continued Airworthiness in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals as provided in

parts, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date December 30, 2002.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace

inspections over the life of the HPT disk, the original equipment manager (OEM) developed an inspection of the disk and shaft assembly. Further, the OEM has addressed problems associated with the prototype process in the final approved inspection process for the disk and shaft assembly. Accordingly, this AD requires changes to the life-limits section that incorporate that inspection of the disk and shaft assembly.

Publication of NPRM

One commenter objects to the

Lists of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. Section 94.1 is amended as follows:

a. In paragraph (a)(2), by adding, in alphabetical order, the word "Greece,".

b. In paragraph (a)(3), by removing the words "Greece and the" and adding the word "The" in their place.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by adding, in alphabetical order, the word "Greece,".

Done in Washington, DC, this 27th day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–16682 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 261a

[Docket No. R–1126]

Privacy Act of 1974; Implementation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its Rules Regarding Access to Personal Information under the Privacy Act (Privacy Act Rules) to reflect the implementation of a new system of records. Notice of this new system of records, entitled Visitor Log (BGFRS–32) is published in an adjacent notice.

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In light of the heightened concerns regarding security of Federal government personnel and buildings, the Board is implementing a procedure to screen visitors to the Board's premises before admission to those premises. To conduct this screening, the Board will request, in advance, that each visitor provide his or her name, date of birth, and social security number. Persons who refuse to provide the requested information may be denied admittance to the premises. Using the requested information, the Board will run a brief check through law enforcement data bases to determine whether the visitor may present a risk to the security of the Board. Thus, these records may contain information provided by law enforcement agencies that is exempt from certain provisions of the Privacy Act, including the access provisions, pursuant to section (k)(2), 5 U.S.C. 552a(k)(2).

The Board's Privacy Act Rules must be amended to include this system of records in the list of "exempt" systems of records. The Visitor Log system of records is exempt from certain provisions of the Privacy Act, including those regarding accounting of disclosures and access to records.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

This rule is exempt from the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553, and the Congressional Review Act, pursuant to 5 U.S.C. 804(3)(B) and (C), because it is a rule relating to agency management or personnel and a rule of agency procedure that does not substantially affect the rights or obligations of non–agency parties.

List of Subjects in 12 CFR part 261a

Federal Reserve System, Privacy.

For the reasons set forth in the preamble, the Board amends 12 CFR part 261a as follows:

PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT OF 1974

1. The authority citation for part 261a continues to read as follows:

Authority: 5 U.S.C. 552a.

2. In § 261a.13, add a new paragraph (b)(10) to read as follows:

§ 261a.13 Exemptions.

* * * * *

(b) * * *

(10) BGFRS—32 Visitor Log.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–16725 Filed 7–2–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–36–AD; Amendment 39–12735; AD 2002–09–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. Tay Model 650–15 and 651–54 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–09–02, applicable to Rolls-Royce plc. (RR) Tay Model 650–15 and 651–54 turbofan engines. AD 2002–09–02 was published in the **Federal Register** on May 2, 2002 (67 FR 21979). Note 3 in the Alternative Method of Compliance section is incorrect. This document corrects Note 3. In all other respects, the original document remains the same.

EFFECTIVE DATE: June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR DOC. 02–10549, applicable to RR Tay Model 650–15 and 651–54 turbofan engines, was published in the **Federal Register** on May 2, 2002 (67 FR 21979). The following correction is needed:

§ 39.13 [Corrected]

On page 21981, in the first column, in AD 2002–09–02, in the ALTERNATIVE METHOD OF COMPLIANCE Section, "**Note 3:** These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS and the MSS of the Instructions for Continued Airworthiness in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals as provided in paragraph (a) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement" is corrected to read "**Note 3:** The requirements of this AD have been met when the engine shop manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine shop manuals".

Issued in Burlington, MA, on June 20, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–16534 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD; Amendment 39–12797; AD 2002–13–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT8D–200 series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD adds additional critical life-limited parts for enhanced inspection. This AD is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this AD are intended to prevent the failure of critical, life-limited, rotating engine parts, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date December 30, 2002.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7175, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–21–07, Amendment 39–11939, which is applicable to Pratt & Whitney (PW) JT8D–200 turbofan engines, was published in the **Federal Register** on October 24, 2000 (65 FR 63540) to require revisions to the Time Limits Section (TLS) of the PW JT8D–200 series Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Since the issuance of that AD, additional focused inspection procedures for other critical life-limited rotating engine parts have been developed by PW.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Removal of HPT Assembly Inspection From AD

One commenter suggests that the HPT assembly inspection be removed from the AD because the part is not at piece part level and the prototype cleaning procedures are inadequate. The FAA disagrees. After assembly at manufacture, the HPT disk and shaft essentially can be treated as a single part. The HPT disk and shaft are not required to be separated at overhaul unless there is unrepairable damage to one of the parts or one of the parts has reached a time limit. Further, separation of the parts can cause mechanical damage to the tie rod holes that requires additional repair. The FAA does not want to force the separation of the disk and shaft at every overhaul but does want to have the HPT disk inspected at each opportunity throughout the life of the disk. Therefore, in order to provide a sufficient number of opportunity inspections over the life of the HPT disk, the original equipment manager (OEM) developed an inspection of the disk and shaft assembly. Further, the OEM has addressed problems associated with the prototype process in the final approved inspection process for the disk and shaft assembly. Accordingly, this AD requires changes to the life-limits section that incorporate that inspection of the disk and shaft assembly.

Publication of NPRM

One commenter objects to the publication of the NPRM prior to having the inspection procedure available in the Engine Manual. The commenter states that air carriers that use the affected engines may not have had an opportunity to comment on the inspection procedure. The FAA disagrees. The FAA believes that the nature and scope of the added inspections will not differ significantly from existing inspection procedures. In addition, the FAA has set the effective date of this AD at 180 days after publication to allow time for the manufacturer to include these specific inspection procedures in the next revision of the Engine Manual. Operators may submit additional comments on those inspection procedures and the FAA will consider either extending the effective date further or additional rulemaking, as necessary. The FAA does not believe, however, that this final rule need be delayed pending publication of the inspection procedures.

Effective Date of AD

One commenter requests a 180-day period between the issue date and the effective date of the AD similar to that permitted by the previous rule. The FAA agrees and the effective date of this AD has been extended to 180 days after publication to allow time for the specific procedures to be published. The extra time until the AD becomes effective should allow the manufacturer to issue a manual revision.

Removal of Part Numbers

One commenter believes that the FAA has reversed its position relative to not incorporating part numbers in the AD. The FAA agrees in part. As the commenter notes, the FAA had previously viewed the engine manual for this engine model to be structured so as to make reference to "all" part numbers impractical. The FAA has reviewed the engine manual again and the proposed new changes and determined that individual part numbers may be removed. Therefore, this AD references "all" part numbers,

as with other engine lines. The decision not to include part numbers was originally made to accommodate the industry. The removal of part numbers eliminates the requirement to modify the TLS and Continuous Airworthiness Maintenance programs every time a new part number is introduced by the manufacturer for those parts covered by the AD.

Typographical Error

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11939 (65 FR 63540, October 24, 2000), and by adding a new airworthiness directive,

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Engine manual	
	Section	Inspection No.

Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and

for recalls implemented by the Commission in the final rule.

EFFECTIVE DATE: The regulations became effective April 17, 2002.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294;

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy

Background

3. In Order No. 636, the Commission adopted regulations permitting shippers (releasing shippers) to release their capacity to other shippers (replacement shippers).[2] Under these regulations, releasing shippers were permitted to "release their capacity in whole or in part, on a permanent or short-term basis, without restriction on the terms and conditions of the release."[3] The regulation permits releasing shippers to

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as with other engine lines. The decision not to include part numbers was originally made to accommodate the industry. The removal of part numbers eliminates the requirement to modify the TLS and Continuous Airworthiness Maintenance programs every time a new part number is introduced by the manufacturer for those parts covered by the AD.

Typographical Error

One commenter notes that a typographical error "JT8D/09200," occurs in paragraphs (a) and (e) of the Compliance Section of the NPRM and should be changed to read "JT8D–200." The FAA agrees and the change has been made to the rule.

No comments were received on the economic analysis contained in the proposed rule. Based on that analysis, the FAA has determined that the annual per engine cost of $480 does not create a significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11939 (65 FR 63540, October 24, 2000), and by adding a new airworthiness directive, Amendment 39–12797, to read as follows:

AD 2002–13–08 Pratt & Whitney: Amendment 39–12797. Docket No. 98ANE–43AD. Supersedes AD 2000–21–07, Amendment 39–11939.

Applicability: Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD–80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section contains the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Engine manual	
	Section	Inspection No.
Hub (Disk), 1st Stage Compressor:		
Hub Detail—All P/N's.	72–33–31	–02, –03
Hub Assembly—All P/N's.	72–33–31	–02, –03
Disk, 13th Stage Compressor—All P/N's.	72–36–47	–02
HP Turbine, First Stage:		
Rotor Assembly—All P/N's.	72–52–02	–04
Disk—All P/N's	72–52–02	–03
Disk, 2nd Stage Turbine—All P/N's.	2–53–16	–02
Disk, 3rd Stage Turbine—All P/N's.	72–53–17	–02
Disk, 4th Stage Turbine—.	72–53–18	–02"

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D–200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

Effective Date

(f) This amendment becomes effective on December 30, 2002.

Issued in Burlington, Massachusetts, on June 18, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–16535 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–021; Order No. 587–P]

Standards for Business Practices of Interstate Natural Gas Pipelines

June 26, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing.

SUMMARY: This order denies rehearing of the final rule issued on March 11, 2002 (67 FR 11906, March 18, 2002) requiring that interstate natural gas pipelines permit releasing shippers, as a condition of their capacity release, to recall released capacity and renominate that recalled capacity at each nomination opportunity. In particular, the order denies rehearing of the interim schedule for recalls implemented by the Commission in the final rule.

EFFECTIVE DATE: The regulations became effective April 17, 2002.

FOR FURTHER INFORMATION CONTACT:
Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294;
Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283;
Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

Order Denying Rehearing

1. In Order No. 587–N,[1] the Federal Energy Regulatory Commission (Commission) amended § 284.12(b)(1)(ii) of its open access regulations to require that interstate pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at each nomination opportunity. The Commission established a two-phase implementation schedule: under the first phase, the Commission established an interim schedule under which recalls would be permitted at two (of the four) nomination cycles and for any unscheduled capacity; in the second phase, the Commission provided the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) with six months in which to develop standards governing partial day or flowing day recalls.

2. Duke Energy Trading and Marketing LLC and Dynegy Marketing and Trade (DETM) seek rehearing of the interim schedule adopted by the Commission and seek clarification regarding the determination of when capacity is unscheduled for the purposes of allowing recalls of capacity. For the reasons discussed below, the Commission denies the request for rehearing and provides clarification regarding when capacity is deemed unscheduled for the purposes of allowing a recall.

Background

3. In Order No. 636, the Commission adopted regulations permitting shippers (releasing shippers) to release their capacity to other shippers (replacement shippers).[2] Under these regulations, releasing shippers were permitted to "release their capacity in whole or in part, on a permanent or short-term basis, without restriction on the terms and conditions of the release."[3] The regulation permits releasing shippers to impose terms for a release transaction under which the releasing shipper reserves the right to recall that capacity to use the capacity itself.[4]

4. Beginning with Order No. 587,[5] the Commission has incorporated by reference consensus standards approved by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) (formerly the Gas Industry Standards Board) designed to standardize business practices and communication protocols of interstate pipelines in order to create a more integrated and efficient pipeline grid. NAESB is a private, consensus standards developer whose wholesale natural gas standards are developed by representatives from all segments of the natural gas industry. Although the Commission places great reliance on NAESB's development of consensus standards,[6] the Commission has found it necessary to resolve disputes between industry segments when NAESB has been unable to reach consensus on issues concerning Commission policy, so that the standards development process can proceed in line with Commission policies.[7]

5. In 1996, in NAESB's first set of standards, it adopted standards providing that releasing shippers could recall capacity only if they provided notification to the pipeline by 8 a.m.

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–N, 67 FR 11906 (Mar. 16, 2002), III FERC Stats. & Regs. Regulations Preambles, ¶31,125 (Mar. 11, 2002).

[2] 18 CFR 284.8 (2001).

[3] 18 CFR 284.8(b).

[4] As an example, a shipper might include a recall condition in the event that temperature drops below a pre-determined level. Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–1996] ¶30,939, at 30,418 (Apr. 8, 1992).

[5] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996).

[6] Order No. 587, 61 FR at 39057 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,038, at 30,059

[7] Order No. 587–G, 63 FR at 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,062, at 30,668–72 (Apr. 16, 1998) (resolving dispute over bumping of interruptible service by firm service).

CCT[8] and that releasing shippers could not engage in partial or flowing day recalls.[9] At the time NAESB adopted these standards, its standards provided for one nomination, at 11:30 a.m. CCT for the next gas day and only one intra-day nomination at an indeterminate time. However, since that time, NAESB expanded its nomination opportunities to permit four nomination opportunities:

	Nomination deadline	Effective Time
Timely Nomination	11:30 a.m.	9 a.m. next gas day.
Evening Nomination	6 p.m.	9 a.m. next gas day.
Intra-Day 1	10 a.m.	5 p.m. same gas day.
Intra-Day 2	5 p.m.	9 p.m. same gas day

10. On April 10, 2002, DETM filed a request for rehearing and clarification. It argues that the Commission's interim schedule for recalls makes it impossible for replacement shippers to acquire and nominate substitute release capacity for the upcoming nomination cycle. It requests that the Commission defer implementation of the interim timeline until NAESB adopts comprehensive guidelines governing partial day recalls. It also requests clarification as to the determination of the amount of a

13. The Commission denies the request for rehearing. The Commission adopted the interim schedule to provide releasing shippers with enhanced recall rights so that they will be able to use their capacity as flexibly as possible while the longer process of establishing procedures for flowing day recalls is therefore defer implementation of the interim cycle until NAESB crafts comprehensive guidelines governing recalls and the acquisition of released capacity.

p.m. Evening Cycle, if a releasing shipper recalls capacity for the Evening cycle, the replacement shipper has two additional opportunities (Intra-Day 1 and Intra-Day 2 cycles) to reschedule any of its scheduled gas that has been bumped. This is the same right that an interruptible shipper has to reschedule gas that is bumped at the Evening cycle.[10]

16. DETM's example incorrectly assumes that, under the Commission's policy, the replacement shipper must

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CCT[8] and that releasing shippers could not engage in partial or flowing day recalls.[9] At the time NAESB adopted these standards, its standards provided for one nomination, at 11:30 a.m. CCT for the next gas day and only one intra-day nomination at an indeterminate time. However, since that time, NAESB expanded its nomination opportunities to permit four nomination opportunities:

	Nomination deadline	Effective Time
Timely Nomination	11:30 a.m.	9 a.m. next gas day.
Evening Nomination	6 p.m.	9 a.m. next gas day.
Intra-Day 1	10 a.m.	5 p.m. same gas day.
Intra-Day 2	5 p.m.	9 p.m. same gas day

NAESB, however, did not amend its capacity release recall standards to take into account this expansion of nomination opportunities, and when the recall issue was raised at NAESB, NAESB was unable to come to consensus on whether to expand releasing shippers' recall opportunities.

6. In Order No. 587–N, the Commission determined that permitting an expansion of recall opportunities to match the enhanced nomination schedule adopted by NAESB was consistent with the original intent of the Commission's capacity release regulations and would foster greater efficiency by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, providing greater incentives for releasing shippers to release capacity, and fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible service. As a result, the Commission adopted § 284.12(b)(1)(ii)(B) of its regulations which requires pipelines to permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity according to the notice and bumping provisions applicable to interruptible shippers. Under this regulation, recalls of released capacity will not be permitted to reduce (bump) volumes that are already scheduled for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.[10] The use of recall rights under this provision is voluntary, and depends on the agreement between the releasing and the replacement shipper as to when recall conditions apply.

7. The Commission adopted a two-phase implementation for this regulation. This two-phase approach was designed to ensure an expeditious implementation of recalls that do not raise operational concerns, while at the same time providing time for NAESB to further consider standards to address the operational issues raised. Under this schedule, each pipeline is required to make a compliance filing, by May 1, 2002, to be effective July 1, 2002, that will permit shippers to recall scheduled and unscheduled capacity at both the Timely Nomination Cycle and the Evening Nomination Cycle and to recall capacity at any nomination time if the capacity has not been previously scheduled by the replacement shipper. To ease the compliance and review process, the Commission established a standard tariff provision providing a notification schedule for these recalls. Second, the Commission provided NAESB, and the industry, six months in which to develop standards to apply to the operational details involved in allowing partial or flowing day recalls.

8. The interim recall schedule adopted by the Commission is as follows:

Nomination cycle (all times in CCT)	Receipt scheduled volumes (from prior nomination cycle)	Recall notification to pipeline	Pipeline notification to replacement shipper of recall	Nomination to time (same day)
Timely	NA	8:00 a.m	9:00 a.m	11:30 a.m.
Evening	4:30 p.m CCT same day	5:00 p.m	6:00 p.m	6:00 p.m.
Intra-Day 1	10:00 p.m CCT prior day	8:00 a.m	9:00 a.m	10 a.m.
Intra-Day 2	2:00 p.m CCT same day	3:00 p.m	4:00 p.m	5:00 p.m.

9. The Commission found that the fundamental precept underlying this schedule is to provide releasing shippers with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall. The Commission found that releasing shippers, such as LDCs, need to be aware of the scheduled volumes for their systems prior to determining whether they will need to recall capacity. Thus, the advance notification period is designed to give releasing shippers the time to evaluate the scheduled quantities information before having to submit recall notices.[11]

[8] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. *See* 18 CFR § 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[9] A partial or flowing day recall refers to a recall condition that applies only to part of a gas day, rather than the full gas day. Under the NAESB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i). Nominations Related Standards 1.3.1.

[10] Under the regulation, the releasing shipper can recall scheduled capacity at the Evening Nomination Cycle because the replacement shipper has two opportunities to reschedule capacity (the Intra-Day 1 and Intra-Day 2 cycles). Similarly, a replacement shipper whose scheduled capacity is bumped at the Intra-Day 1 cycle has the opportunity to reschedule the bumped capacity at the Intra-Day 2 cycle. Whether a partial day recall of scheduled volumes can be permitted at the Intra-Day 2 cycle depends on whether the notification schedule permits a replacement shipper sufficient time to reschedule its capacity. Order No. 587–N, at P. 37.

[11] For example, under the Timely Nomination cycle, scheduled volumes are provided at 4:30 p.m. Releasing shippers need sufficient time to evaluate this information before determining whether to

10. On April 10, 2002, DETM filed a request for rehearing and clarification. It argues that the Commission's interim schedule for recalls makes it impossible for replacement shippers to acquire and nominate substitute release capacity for the upcoming nomination cycle. It requests that the Commission defer implementation of the interim timeline until NAESB adopts comprehensive guidelines governing partial day recalls. It also requests clarification as to the determination of the amount of a replacement shipper's unscheduled capacity that is subject to recall by the releasing shipper at all nomination cycles.[12]

Discussion

11. The Commission denies rehearing with respect to the interim schedule and provides clarification as to the determination of the amount of a replacement shipper's unscheduled capacity, subject to recall.

A. Interim Schedule

12. DETM maintains that the interim schedule developed by the Commission makes it impossible for replacement shippers whose capacity is recalled to renominate that capacity. It asserts, for example, that under Version 1.5 of NAESB's standards, a shipper must post a non-biddable release at 5 p.m. for the Evening Cycle, but that under the Commission's interim schedule for recalls, the replacement shipper is not notified of a recall until 6 p.m. DETM argues that a replacement shipper is unable to arrange for a substitute capacity release transaction in time to submit a nomination for the 6 p.m. Evening Nomination Cycle. DETM maintains that the Commission should therefore defer implementation of the interim cycle until NAESB crafts comprehensive guidelines governing recalls and the acquisition of released capacity.

13. The Commission denies the request for rehearing. The Commission adopted the interim schedule to provide releasing shippers with enhanced recall rights so that they will be able to use their capacity as flexibly as possible while the longer process of establishing procedures for flowing day recalls is underway. As the Commission found in Order No. 587–N, enhanced recall rights provide a greater incentive for releasing shippers to release capacity (which they otherwise might not release at all) and will create a more vibrant and competitive capacity market, with more released capacity available to compete with pipeline services.[13] The interim schedule is a way to achieve these benefits immediately, while the industry considers standards to provide for flowing day recalls, and the Commission finds no basis to defer implementation of the interim recall schedule until NAESB's deliberations are complete.

14. As DETM notes, the Commission's policy is that a recall cannot reduce (bump) volumes already scheduled for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.[14] The Commission adopted this policy so that replacement shippers receive protection against loss of scheduled service similar to that interruptible shippers currently receive.[15]

15. The Commission's interim schedule fully achieves that goal. Using DETM's example of a recall for the 6 p.m. Evening Cycle, if a releasing shipper recalls capacity for the Evening cycle, the replacement shipper has two additional opportunities (Intra-Day 1 and Intra-Day 2 cycles) to reschedule any of its scheduled gas that has been bumped. This is the same right that an interruptible shipper has to reschedule gas that is bumped at the Evening cycle.[16]

16. DETM's example incorrectly assumes that, under the Commission's policy, the replacement shipper must have the opportunity to reschedule bumped gas at the same nomination cycle at which the bump notice is received. But the Commission's policy (and the current NAESB standards) do not assure that a bumped shipper will be able to renominate at the same nomination cycle at which the bump has taken place. Interruptible shippers, for example, that are bumped at the Evening Nomination Cycle cannot nominate until the next nomination cycle (Intra-Day 1 Cycle).[17] The interim recall schedule adopted by the Commission, therefore, provides replacement shippers with the same protection against bumping as interruptible shippers have, in accordance with Commission policy.

17. In the alternative, DETM seeks a revision in the Commission's interim schedule. DETM's schedule provides, in its most relevant part, that a releasing shipper would receive scheduled volumes from the pipeline at 4:30 p.m., submit its recall notice at 4:30 p.m., with the pipeline notifying the replacement shipper of the recall at 4:30 p.m., so that the replacement shipper can post a new release at 5 p.m. and nominate under that release at 6 p.m.[18]

Nomination cycle (all times in CCT)	Receipt of scheduled volumes (from prior nomination cycle)	Recall notification to pipeline	Pipeline notification to replacement shipper of recall	Posting pre-arranged releases (version 1.5)	Nomination time (same day)
Evening	4:30 p.m same day	4:30 p.m	4:30 p.m	5:00 p.m	6:00 p.m.

[12] On April 25, 2002, Keyspan Delivery Companies (Keyspan) filed a motion for leave to file an answer and answer to DETM's rehearing request and an answer to DETM's request for clarification, and Consolidated Edison Company of New York and Orange and Rockland Utilities filed an answer to DETM's request for clarification. Under Commission regulations, answers are not permitted to rehearing requests (Rules 213(a)(2) and 713 (d)(1)), and Keyspan's motion is accordingly denied. The answers to the request for clarification are accepted.

[13] Order No. 587–N, P. 27–29.

[14] Order No. 587–N, P. 17. Under this standard, if a replacement shipper fails to nominate under a released capacity contract, then the releasing shipper can recall capacity at any of the nomination times.

[15] Order No. 587–N, P. 30.

[16] *See* Order No. 587–G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,671 (interruptible shippers bumped at 6 p.m. Evening Nomination have two opportunities to renominate); 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.2. (Version 1.5) (interruptible shipper, whose gas has been bumped by a firm shipper's Evening Nomination, is notified of the bump at 9 p.m. and is able to renominate its gas for the next day at the Intra-Day 1 and Intra-Day 2 cycles).

[17] *See* note 17, *supra*. Similarly, interruptible shippers bumped at the Intra-Day 1 cycle have the opportunity to renominate at the Intra-Day 2 cycle; replacement shippers bumped by a recall at the Intra-Day 1 cycle will have the same ability to reschedule their gas at the Intra-Day 2 cycle.

[18] While DETM's proposed schedule also addresses recalls and notices of recalls at the Intra-Day 1 and Intra-Day 2 cycles, these provisions are of less importance, because under the Commission's interim schedule, replacement shippers' scheduled volumes cannot be bumped at the Intra-Day 1 and Intra-Day 2 cycles.

18. But DETM's proposed schedule fails to adhere to the fundamental precept adopted by the Commission in establishing its interim schedule: that releasing shippers must be provided with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall.[19] Under DETM's proposal, three actions must occur concurrently: The releasing shipper must receive scheduled quantities from the pipeline at 4:30 pm. CCT; DETM could enter into release contracts under which a releasing shipper is obligated to provide DETM with earlier notice of recalls than the notice provided by the Commission's interim schedule.

B. Determination of Unscheduled Capacity

21. In Order No. 587–N, the Commission provided that releasing shippers could recall capacity at any of the four nomination cycles if the unscheduled capacity is unclear, the Commission will provide clarification as to how its unscheduled capacity should be determined based on the daily quantity scheduled. Under the Commission's policy, if a replacement shipper has not scheduled its full contract quantity for a gas day, the releasing shipper can recall and reschedule any portion of the unscheduled capacity at the next intra-day nomination opportunity. To provide a specific example, suppose a

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

Occupational Safety and Health Standards for Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; technical

approved by the Director of the Federal Register as of July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Agro Wangdahl, Office of Maritime Safety Standards, Room N 3609, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–2060 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This document makes technical amendments and corrections to various standards codified in 29 CFR Part 1915. In accordance with the rulemaking

category consists of corrections of incorrect citations or cross-references. Some of these errors occurred in 1995 when OSHA published the revised Subpart I, Personal Protective Equipment 61 FR 26352).

The third category includes minor clarifications of regulatory text to reflect the Agency's regulatory intent more accurately. Amendments in this category include, for example, the addition of a word to clarify the meaning of a regulatory provision. For

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18. But DETM's proposed schedule fails to adhere to the fundamental precept adopted by the Commission in establishing its interim schedule: that releasing shippers must be provided with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall.[19] Under DETM's proposal, three actions must occur concurrently: The releasing shipper must receive scheduled quantities from the pipeline at 4:30 pm. CCT; immediately determine whether it needs to recall capacity and notify the pipeline by 4:30 p.m. CCT; and the pipeline, also by 4:30 p.m. CCT, must notify the replacement shipper. The schedule provides the releasing shipper with no opportunity to consider or process the scheduled quantity information provided by the pipeline. Further, DETM's proposed schedule fails to provide the pipelines with any opportunity to process the recall before sending out the notice to the replacement shipper, since, under DETM's schedule, the notification to the replacement shipper must be made simultaneously with the recall notice. Thus, the Commission finds that DETM's proposed schedule is not an adequate substitute for the interim schedule adopted by the Commission.

19. NAESB is considering developing a timeline for partial day recalls. Until NAESB acts, however, the interim schedule adopted by the Commission fairly balances the interests of the releasing and replacement shippers by providing releasing shippers with enhanced recall rights immediately while ensuring that bumped replacement shippers are still provided with an opportunity to reschedule any scheduled capacity that is bumped.

20. Moreover, the Commission finds no reason to defer or amend its interim schedule at this point, because DETM is not bound to accept recall conditions in its capacity release transactions. As the Commission made clear in Order No. 587–N, the Commission's regulation and interim schedule applies only to those situations in which a replacement shipper has agreed to purchase capacity subject to an intra-day recall. The Commission made clear that a releasing shipper's ability to recall capacity during the gas day is prospective only and is based on the terms of the capacity release agreement.[20] Thus, DETM is fully able to protect against intra-day recalls by not purchasing released capacity unless a limitation on recall rights is included in the terms and conditions of the release. For example, DETM could enter into release contracts under which a releasing shipper is obligated to provide DETM with earlier notice of recalls than the notice provided by the Commission's interim schedule.

B. Determination of Unscheduled Capacity

21. In Order No. 587–N, the Commission provided that releasing shippers could recall capacity at any of the four nomination cycles if the capacity has not been previously scheduled for the gas day by the replacement shipper. DETM requests clarification that a replacement shipper who has scheduled all or any portion of its acquired capacity during the gas day will be considered to have previously scheduled that capacity even if that capacity is not scheduled and flowing at the precise time the releasing shipper submits its recall notice. DETM maintains that this clarification is necessary because gas markets do not take gas on a predictable even-flow basis. DETM states, for example, that electric generation loads nearly always burn gas for only part of the gas day, and at flow rates exceeding a uniform-hourly flow of 1/24 of contract demand. DETM maintains its clarification will better reflect these flexible load profiles.

22. DETM's clarification request and example are not entirely clear, because they do not appear to reflect the way in which the scheduling standards operate. Under the scheduling standards, shippers are required to schedule gas for an entire gas day; they do not schedule gas for specific hourly flows.[21] The scheduled quantity reflects the total quantity of gas the shipper will use that day, regardless of its flow rate. Determinations of flow rate are left to the determination of the interconnected parties, and whether a shipper can exceed a uniform hourly flow depends on the individual pipeline's tariff.[22] Thus, even in the situation posited by DETM, where a market, such as electric generation, may have fluctuating hourly flow requirements, a daily quantity must be scheduled, and the replacement shipper cannot schedule different quantities for specific hours, as implied by DETM's example.

23. Although the predicate for DETM's requested clarification is unclear, the Commission will provide clarification as to how its unscheduled capacity should be determined based on the daily quantity scheduled. Under the Commission's policy, if a replacement shipper has not scheduled its full contract quantity for a gas day, the releasing shipper can recall and reschedule any portion of the unscheduled capacity at the next intra-day nomination opportunity. To provide a specific example, suppose a replacement shipper has a release contract for 1000 Dth/day of capacity, and has scheduled 500 Dth of that contract at the Evening Nomination Cycle for the next gas day. The releasing shipper can then recall, and renominate, the unscheduled quantity (500 Dth) at the first Intra-Day Nomination Cycle. Since the replacement shipper has not scheduled its released capacity, the replacement shipper is not having scheduled gas bumped by the releasing shipper's recall. In effect, the replacement shipper would be in no different position than an interruptible shipper which has not scheduled capacity for that day. The interruptible shipper cannot count on being able to submit an intra-day nomination to increase its daily scheduled quantity, since its intra-day nomination is lower in priority than that of a firm shipper. By the same token, a replacement shipper that has failed to schedule gas under a release contract should not be able to rely on its ability to submit an intra-day nomination to increase its scheduled quantity. If, however, DETM faces specific situations in which it needs to reserve the right to make an intra-day nomination (when it has not scheduled its full contract quantity), DETM can seek to have such a limitation on recall rights included as a term of the release agreement.[23]

The Commission Orders

The request for rehearing is denied, and clarification is provided as discussed in the body of the order.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16681 Filed 7–2–02; 8:45 am]

BILLING CODE 6717–01–P

[19] Order No. 587–N, P. 30.

[20] Order No. 587–N, P. 17 n. 26, P. 61.

[21] 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.1, 1.3.9 (all nominations including intra-day nominations should be based on a daily quantity; thus an intra-day nominator need not submit an hourly nomination).

[22] 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.9 (the interconnected parties should agree on the hourly flows of the intra-day nomination, if not otherwise addressed in the transporter's contract or tariff).

[23] See discussion in P. 20, *supra*.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

Occupational Safety and Health Standards for Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; technical amendments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is publishing technical amendments to its Shipyard Employment standards. These standards contain a number of minor typographical, grammatical and other errors. This document corrects those errors, as well as several inaccurate cross-references in these standards. The cross-references are being changed because the referenced section numbers have changed or been removed as a result of prior revisions to OSHA's Shipyard Employment rules. The technical amendments and corrections being published today are not substantive in nature; they will not impose additional compliance obligations on employers or reduce the protections provided to workers by these standards.

DATES: Effective on July 3, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Agro Wangdahl, Office of Maritime Safety Standards, Room N 3609, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–2060 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This document makes technical amendments and corrections to various standards codified in 29 CFR Part 1915. In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553) and 29 CFR 1911.5, OSHA hereby finds good cause to publish these amendments and corrections without any further delay or public procedure.

The types of amendments addressed in this correction notice fall into four basic categories. However, a majority of the amendments contain more than one correction, and may thus fall into more than one of these categories.

The first category involves the correction of errors where text was inadvertently omitted or words were incorrectly spelled. In these editorial corrections, words such as "a," "the," "or," "are," and "an" are added to make complete sentences. Spelling and grammatical errors such as inappropriate hyphens, missing periods, misplaced quotation marks and misspelled words are also corrected. In addition, section headings and other portions of the standards are made consistent with each other. The second category consists of corrections of incorrect citations or cross-references. Some of these errors occurred in 1995 when OSHA published the revised Subpart I, Personal Protective Equipment 61 FR 26352).

The third category includes minor clarifications of regulatory text to reflect the Agency's regulatory intent more accurately. Amendments in this category include, for example, the addition of a word to clarify the meaning of a regulatory provision. For example, in § 1915.165(a), the phrase "also know as chain stoppers" was inserted after "devil claws" for further clarification. The fourth category of amendments includes corrections of errors that were made when converting from English units of measure to metric units. These include corrections of errors in conversion calculations, changes in units of measure for consistency, and changes to report the results of calculations to the second decimal place for the sake of consistency.

Technical Amendments: The amendments and corrections made to the Shipyard Employment Standards are explained below in two tables. The first table includes miscellaneous corrections of typographical, grammatical and metric conversion errors. The second table includes the remainder of the amendments, which correct incorrect citations and cross references and clarify regulatory text. In both tables, the changes will be highlighted.

TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES

Current text	Amended text
§ 1915.4 (k) The term "shipbuilding" ns the construction of a vessel including the installation of machinery and equipment.	(k) The term "shipbuilding" means the construction of a vessel including the installation of machinery and equipment.
§ 1915.5(d)(1)(v) ANSI 87.1–1979 Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 1915.153(b)(2).	(d)(1)(v) ANSI Z87.1–1979 Practice for Occupational and Educational Eye and Face Protection, IBR approved for §1915.153(b)(2).
Note: For flammable liquids with flash points above 150 deg. F (65.6 deg. C), see paragraph (b) of this section.	**Note to paragraph (a)(1)(iv):** For flammable liquids with flash points above 150 deg. F (65.6 deg. C), see paragraph (b) of this section.
§ 1915.14(b)(1)(iii) The engine room and boiler spaces for which a Marine Chemist or a Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section, and.	(b)(1)(iii) The engine room and boiler spaces for which a Marine Chemist or a Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section.
Note to 1915.14: See appendix A for additional information relevant to performing hot work safely.	**Note to § 1915.14:** See appendix A of this subpart for additional information relevant to performing hot work safely.
§ 1915.15(c) *Tests to maintain the conditions of a Marine Chemist's or Coast Guard authorized person's certificates.* A competent person shall visually inspect and test each space certified as "Safe for Workers" or "Safe for Hot Work," as often as necessary to ensure that atmospheric conditions within the space is maintained within the conditions established by the certificate after the certificate has been issued.	(c) *Tests to maintain the conditions of a Marine Chemist's or Coast Guard authorized person's certificates.* A competent person shall visually inspect and test each space certified as "Safe for Workers" or "Safe for Hot Work," as often as necessary to ensure that atmospheric conditions within that space are maintained within the conditions established by the certificate after the certificate has been issued.
§ 1915.15(e) Tests to maintain a competent person's findings	(e) *Tests to maintain a competent person's findings*
§ 1915.35(b)(2) If the ventilation fails or if the concentration of solvent vapors rises above ten (10) percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten (10) percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration down to ten (10) percent of the lower explosive limit shall be provided.	(b)(2) If the ventilation fails or if the concentration of solvent vapors reaches or exceeds ten (10) percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten (10) percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration to below ten (10) percent of the lower explosive limit shall be provided.

TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES—Continued

Current text	Amended text
§ 1915.51(d)(2)(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.	(d)(2)(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.
§ 1915.71(e)(2)(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1 5/16 × 3 inch lumber.	(e)(2)(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1 5/16 × 3 inch lumber.
§ 1915.71(e)(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that width of the platform planking shall not exceed the distance between the siderails.	(e)(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that width of the platform planking shall not exceed the distance between the side rails
§ 1915.71(f)(8) No more than two men shall be permitted to work at	(f)(8) No more than two persons shall be permitted to work at one time

TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES—Continued

Current text	Amended text
§ 1915.131(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum are required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum are required to allow proper retraction and contact with the work.	(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work.
§ 1915.131(d) The moving parts of machinery on dry dock shall be guarded.	(d) The moving parts of machinery on a dry dock shall be guarded.
§ 1915.131(e) Headers, manifolds and widely spaced hose connection	(e) Headers, manifolds and widely spaced hose connections on com-

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TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES—Continued

Current text	Amended text
§ 1915.51(d)(2)(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.	(d)(2)(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.
§ 1915.71(e)(2)(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1⅝6 × 3 inch lumber.	(e)(2)(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1⅝6 × 3 inch lumber.
§ 1915.71(e)(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that width of the platform planking shall not exceed the distance between the siderails.	(e)(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that width of the platform planking shall not exceed the distance between the side rails
§ 1915.71(f)(8) No more than two men shall be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this paragraph. Where heavier construction is used, the number of men permitted to work on the scaffold shall be determined by the size and the safe working load of the scaffold	(f)(8) No more than two persons shall be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this paragraph. Where heavier construction is used, the number of persons permitted to work on the scaffold shall be determined by the size and the safe working load of the scaffold
§ 1915.72(a)(6) Manufactured portable wood ladders provided by the employer shall be in accordance with the provisions of the American National Standards Institute Safety Code for Portable Wood Ladders, A14.1–1975.	(a)(6) Manufactured portable wood ladders provided by the employer shall be in accordance with the provisions of the American National Standards Institute Safety Code for Portable Wood Ladders, A14–1975
§ 1915.72(c)(1)(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fastenings of equivalent strength	(c)(1)(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength.
§ 1915.74(a)(2) Each side of such gangway, and the turn table if used, shall have a railing with a minimum height of approximately 33 inches measured perpendicularly from rail to walking surface at the stanchion, with a mid rail	(a)(2) Each side of such gangway, and the turn table if used, shall have a railing with a minimum height of approximately 33 inches measured perpendicularly from rail to walking surface at the stanchion, with a midrail.
§ 1915.75(b) Each side of such gangway, ramp or permanent stairway, including those which are used for access to wing walls from dry dock floors, shall have a railing with a mid rail.	(b) Each side of such gangway, ramp or permanent stairway, including those which are used for access to wing walls from dry dock floors, shall have a railing with a midrail.
§ 1915.75(d) Railings approximately 42 inches in height, with a mid rail, shall be provided on the edges of wing walls of floating dry docks and on edges of graving docks	(d) Railings approximately 42 inches in height, with a midrail, shall be provided on the edges of wing walls of floating dry docks and on edges of graving docks.
§ 1915.75(e) When employees are working on the floor of a floating dry dock where they are exposed to the hazard of falling into the water, the end of the dry dock shall be equipped with portable stanchions and 42 inch railings with a mid rail. When such a railing would be impracticable or ineffective, other effective means shall be provided to prevent men from falling into the water	(e) When employees are working on the floor of a floating dry dock where they are exposed to the hazard of falling into the water, the end of the dry dock shall be equipped with portable stanchions and 42 inch railings with a midrail. When such a railing would be impracticable or ineffective, other effective means shall be provided to prevent employees from falling into the water.
§ 1915.77(a) Paragraphs (b) through (d) of this section shall apply to ship repairing, shipbuilding operations and shall not apply to shipbreaking	(a) Paragraphs (b) through (d) of this section shall apply to ship repairing shipbuilding operations, and shall not apply to shipbreaking
§ 1915.112(c)(3) Interlink wear, not accompanied by stretch in excess of 5 percent, shall be noted and the chain removed from service when maximum allowable wear at any point of link, as indicated in Table G–9 in 1915.18 has been reached	(c)(3) Interlink wear, not accompanied by stretch in excess of 5 percent, shall be noted and the chain removed from service when maximum allowable wear at any point of link, as indicated in Table G–9 in § 1915.118 has been reached.
§ 115(d) Accessible areas within the swing radius of the outermost part of the body of a revolving derrick or crane wither permanently or temporarily mounted, shall be guarded in such a manner as to prevent an employee from being in such a position as to be struck by the crane or caught between the crane and fixed parts of the vessel or of the crane itself	(d) Accessible areas within the swing radius of the outermost part of the body of a revolving derrick or crane whether permanently or temporarily mounted, shall be guarded in such a manner as to prevent an employee from being in such a position as to be struck by the crane or caught between the crane and fixed parts of the vessel or of the crane itself.
§ 1915.118 Table E–1 Heading 2nd & 3rd columns under "Light Duty" "24 or less" "24 to 40" "40 to 60"	"≤ 24" "> 24 ≤ 40" "> 40 ≤ 60".
§ 1915.118 Table E–3 Heading 2nd & 3rd columns under "Height in Feet" "Up to 10" "10 to 16" "16 to 20"	"≤10" ">10 ≤16" ">16 ≤ 20"
§ 1915.118, in the second column of Table G–1, Diameter in Inches, 1 13/32	15/32
1 13/16	13/16
§ 1915.118, in table G–3 in column "B" under the heading "Vertical," 621	61
§ 1915.118, in table G–7, in the second column under the heading "Single leg." 27,6	27.6
§ 1915.118, in table G–9, in the first column under "Chain size in inches," 1⅛	1⅛
In the second column, under "Maximum allowable wear in fraction of inches" 1 1/64	1/64
1 1/32	1/32

TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES—Continued

Current text	Amended text
§ 1915.131(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum are required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum are required to allow proper retraction and contact with the work.	(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work.
§ 1915.131(d) The moving parts of machinery on dry dock shall be guarded.	(d) The moving parts of machinary on a dry dock shall be guarded.
§ 1915.131(g) Headers, manifolds and widely spaced hose connection on compressed air lines shall bear the work "air" in letters at least 1 inch high, which shall be painted either on the manifold or separate hose connections, or on signs permanently attached to the manifolds or connections	(g) Headers, manifolds and widely spaced hose connections on compressed air lines shall bear the word "air" in letters at least 1 inch high, which shall be painted either on the manifolds or separate hose connections, or on signs permanently attached to the manifolds or connections.
§ 1915.134(c) Cup type wheels used for external grinding shall be protected by either a revolving cup guard or a band type guard in accordance with the provisions of the United States of America Standard Safety Code for the Use, Care, and Protection of Abrasive Wheels, B7.1	(c) Cup type wheels used for external grinding shall be protected by either a revolving cup guard or a band type guard in accordance with the provisions of the United States of America Standard Safety Code for the Use, Care, and Protection of Abrasive Wheels, B7.1–1964.
§ 1915.152(e)(2) The employer shall ensure that each effected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE	(e)(2) The employer shall ensure that each affected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE.

In amendments 25, 26, 27 and 29, there were many numerical mistakes made when converting English units to metric units. Rather than listing standard by standard, this is a listing of which standards are being corrected, together with the current and corrected measurements	Currently Reads	Changed To
§ 1915.158(b)(4)	22.2 Kn	22.24 Kn
§ 1915.159(a)(3)	13.3 Kn	13.34 Kn
§ 1915.159(a)(9)	1.8 m	1.83 m
§ 1915.159(b)(2)	140 kg	140.62 kg
§ 1915.159(b)(3)	4.1 cm	4.13 cm
§ 1915.159(b)(4)	113 kg	113.34 kg
§ 1915.159(b)(6)(iv)	8.89 Kn	8.9 Kn
The Note to paragraph (b)(6)	1.2 m	1.22 m
§ 1915.159(b)(7)	27 m	27.43 m
§ 1915.159(c)(1)(i)	10 Kn	10.01kn
§ 1915.159(c)(8)	10 cm	10.16 cm
§ 1915.160(a)(2)	136 kg	136.08 kg
§ 1915.160(b)(1)	5 cm	5.08 cm
§ 1915.160(b)(2)(i)	0.3 m	0.31 m
§ 1915.160 (b)(2)(ii)	2.3 m	2.29 m
Appendix B to Subpart I—throughout	46 cm	45.72 cm
	100 kg	99.79 kg
	1.6 kg	1.36 kg
	11.2 Kn	11.21 Kn
	30.5 cm	30.48 cm
	1 cm	1.02 mm
	96 cm	96.52 cm

Appendix A to Subpart I, paragraph 10	10. *Selection guidelines for foot protection.*
Selection guidelines for foot protection.	
(a) Safety shoes and boots ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal protection should be provided, and in some other special situations electrical conductive or insulating safety shoes would be appropriate.	(a) Safety shoes and boots must meet ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal (top of foot) protection should be provided, and in some other special situations electrical conductive or insulating safety shoes would be appropriate.
§ 1915.163(a)(1) The isolation and shutoff valves connecting the dead system with the life system or systems shall be secured, blanked, and tagged indicating that employees are working on the systems	(a)(1) The isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, blanked, and tagged indicating that employees are working on the systems.
§ 1915.163(a)(2) Drain connections to atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage	(a)(2) Drain connections to the atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage.
§ 1915.165(a)(1) The devil claws shall be made fast to the anchor chains	(a)(1) The devil claws (also known as chain stoppers) shall be made fast to the anchor chains.
§ 1915.181(c) Deenergizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever is appropriate. The circuit breaker, switch, or fuse location shall be tagged to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it it definitely determined that the work on the circuit has been completed	(c) Deenergizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever is appropriate. The circuit breaker, switch, or fuse location shall be tagged to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it is definitely determined that the work on the circuit has been completed.

§ 1915.1000(d) *Computation formulae*	(d) *Computation formula.*
§ 1915.1001(d)(2) Asbestos hazards at a multi-employer work site shall be abated by the contractor who created or controls the source of asbestos contamination	(d)(2) Asbestos hazards at a multi-employer worksite shall be abated by the contractor who created or controls the source of asbestos contamination.
§ 1915.1001(d)(4) All employers of eployees working adjacent to regulated areas established by another employer on a multi-employer work-site, shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fiberé do not migrate to such adjacent areas	(d)(4) All employers of employees working adjacent to regulated areas established by another employer on a multi-employer worksite, shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fibers do not migrate to such adjacent areas.
§ 1915.1001(g)(5)(ii)(B)(*1*) Each glovebag shall be installed so that it completely covers the circumference of pipe or other structure where the work is to be done	(g)(5)(ii)(B)(*1*) Each glovebag shall be installed so that it completely covers the circumference of pipes or other structures where the work is to be done
§ 1915.1001(g)(5)(ii)(B)(*7*) Where a system uses an attached waste bag, such bag	(g)(5)(ii)(B)(*7*) Where a system uses an attached waste bag, such bag

II. *Saccharin Solution Aerosol Protocol* B. Taste Threshold Screening	B. *Taste Threshold Screening.*
Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory C. Fit test 15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used assign protection factors no higher than ten.	15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.
Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory III. *Irritant Fume Protocol Quantitative Fit Test Procedures* 1. General.	

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§1915.1000(d) *Computation formulae*	(d) *Computation formula.*
§1915.1001(d)(2) Asbestos hazards at a multi-employer work site shall be abated by the contractor who created or controls the source of asbestos contamination	(d)(2) Asbestos hazards at a multi-employer worksite shall be abated by the contractor who created or controls the source of asbestos contamination.
§1915.1001(d)(4) All employers of employees working adjacent to regulated areas established by another employer on a multi-employer work-site, shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fiberś do not migrate to such adjacent areas	(d)(4) All employers of employees working adjacent to regulated areas established by another employer on a multi-employer worksite, shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fibers do not migrate to such adjacent areas.
§1915.1001(g)(5)(ii)(B)(*1*) Each glovebag shall be installed so that it completely covers the circumference of pipe or other structure where the work is to be done	(g)(5)(ii)(B)(*1*) Each glovebag shall be installed so that it completely covers the circumference of pipes or other structures where the work is to be done
§1915.1001(g)(5)(ii)(B)(*7*) Where system uses attached waste bag, such bag shall be connected to collection bag using hose or other material which shall withstand pressure of ACM waste and water without losing its integrity:	(g)(5)(ii)(B)(*7*) Where a system uses an attached waste bag, such bag shall be connected to a collection bag using hose or other material which shall withstand the pressure of ACM waste and water without losing its integrity:
§1915.1001(g)(5)(ii)(B)(*8*) Sliding valve or other device shall separate waste bag from hose to ensure no exposure when waste bag is disconnected:	(g)(5)(ii)(B)(*8*) A sliding valve or other device shall separate the waste bag from the hose to ensure no exposure when the waste bag is disconnected:
§1915.1001(g)(5)(iii)(A) *Specifications:* In addition to specifications for glove bag systems above, negative pressure glove bag systems shall attach HEPA vacuum system or other device to bag to prevent collapse during removal	(g)(5)(iii)(A) *Specifications:* In addition to the specifications for glove bag systems above, negative pressure glove bag systems shall attach the HEPA vacuum system or other device bag to prevent collapse during removal.
§1915.1001(g)(8)(iii)(C) Unwrapped or unbagged panels or shingles shall be immediately lowered to the ground via covered dust-tight chute, crane or hoist, or placed in an impervious waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift.	(g)(8)(iii)(C) Unwrapped or unbagged panels or shingles shall be immediately lowered to the ground via a covered dust-tight chute, crane or hoist, or placed in an impervious waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift.
§1915.1001(h)(1)(iv) During all Class II and III asbestos jobs where the employer does not produce a "negative exposure assessment".	(h)(1)(iv) During all Class II and III asbestos jobs where the employer does not produce a "negative exposure assessment".
§1915.1001 Table 1, first column Not in excess of 1 f/cc (10) × PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section.	Not in excess of 1 f/cc (10 × PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section.
§1915.1001(i)(4)(i) The qualified person shall examine worksuits worn by employees at least once per workshift for rips or tears that may occur during performance of work.	(i)(4)(i) The qualified person shall examine worksuits worn by employees at least once per workshift for rips or tears that may occur during the performance of work.
§1915.1001(k)(3) Duties of employers whose employees perform work subject to this standard in or adjacent to areas containing ACM and PACM.	*(k)(3) Duties of employers whose employees perform work subject to this standard in or adjacent to areas containing ACM and PACM.*
§1915.1001(k)(3)(ii) Before work under this standard is performed employers of employees who will perform such work shall inform the following persons of the location and quantity of ACM and/or PACM present at the work site and the precautions to be taken to insure that airborne asbestos is confined to the area.	(k)(3)(ii) Before work under this standard is performed employers of employees who will perform such work shall inform the following persons of the location and quantity of ACM and/or PACM present at the worksite and the precautions to be taken to insure that airborne asbestos is confined to the area.
§1915.1001(k)(5)(ii)(A) Having a completed inspection conducted pursuant to the requirements of AHERA (40 CFR Part 763, Subpart E) which demonstrates that the material is not ACM; or.	(k)(5)(ii)(A) Having completed an inspection conducted pursuant to the requirements of AHERA (40 CFR Part 763, Subpart E) which demonstrates that the material is not ACM; or
§1915.1001(k)(9)(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in the recognition of damage, deterioration, and delamination of asbestos containing building materials. Such course shall take at least 2 hours.	(k)(9)(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material where the absence of asbestos has not yet been certified; and instruction in the recognition of damage, deterioration, and delamination of asbestos containing building materials. Such a course shall take at least 2 hours.
§1915.1001(k)(9)(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:.	(k)(9)(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by the provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:
§1915.1001(o) *Qualified Person* (1) *General.* On all shipyard worksites covered by this standard, the employer shall designate a qualified person, having the qualifications and authorities for ensuring worker safety and health required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).	(o) *Qualified Person* (1) *General.* On all shipyard worksites covered by this standard, the employer shall designate a qualified person, having the qualifications and authority for ensuring worker safety and health required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	
Qualitative Fit Tast Protocols.	
I. Isoamyl Acetate Protocol	I. *Isoamyl Acetate Protocol*
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	

II. *Saccharin Solution Aerosol Protocol*	
B. Taste Threshold Screening	B. *Taste Threshold Screening.*
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	
C. Fit test	
15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used assign protection factors no higher than ten.	15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	
III. *Irritant Fume Protocol Quantitative Fit Test Procedures*	
1. General.	
a. The method applies to the negative-pressure non-powered air-purifying respirators only.	a. The method applies to negative-pressure non-powered air-purifying respirators only.
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	
III. *Irritant Fume Protocol Quantitative Fit Test Procedures*	
2. *Definitions*	2. *Definitions.*
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	
III. *Irritant Fume Protocol Quantitative Fit Test Procedures*	
5. *Exercise Regime.* Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures.	5. Exercise Regime. Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures.
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	
III. *Irritant Fume Protocol Quantitative Fit Test Procedures*	
6. The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h).	6. Test Termination. The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h)
Appendix C to §1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory	
III. *Irritant Fume Protocol Quantitative Fit Test Procedures*	
9. Other requirements	9. Other requirements
f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.	f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT

Text as it currently reads	Amended text	Explanation
§1915.4(t) The term "portable unfired pressure vessel" means any pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure, excepting pressure vessels built to ICC regulations under 49 CFR Part 178, Subparts C and H.	(t) The term "portable unfired pressure vessel" means any pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure, excepting pressure vessels built to Department of Transportation regulations under 49 CFR Part 178, Subparts C and H.	Correcting a reference to an agency.
§1915.5(d)(1)(i) ANSI A14.1–1959 Safety Code for Portable Wood Ladders, IBR approved for §1915.72(a)(6).	(d)(1)(i) ANSI A14.1–1975 Safety Code for Portable Wood Ladders, IBR approved for §1915.72(a)(6).	Corrects inaccurate date of the incorporated ANSI standard.
§1915.5(d)(1)(ii) ANSI A14.2–1956 Safety Code for Portable Metal Ladders, IBR approved for Sec. 1995.72(a)(4).	(d)(1)(ii) ANSI A14.2–1972 Safety Code for Portable Metal Ladders, IBR approved for §1915.72(a)(4).	Corrects inaccurate date of the incorporated ANSI standard and corrects the reference to §1915.
§1915.14(a)(1)(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in Sec. 1915.12, but are adjacent to spaces containing flammable gases or liquids, as long as the gases or liquids have a flash point below 150 deg. F (65.6 deg. C) and the distance between such spaces and the work is 25 feet (7.5m) or greater.	(a)(1)(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in §1915.12, but are adjacent to spaces containing flammable gases or liquids, with a flash point below 150 °F (65.6 °C) when the distance between such spaces and the work is 25 feet (7.62 m) or greater.	Language changed to ensure the intent of the Agency, in addition to an incorrect measurement.

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

Text as it currently reads	Amended text	Explanation
§1915.14(b)(1)(iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(iv) of this section, and	(b)(1)(iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section,	Corrects inaccurate reference.
Appendix A to Subpart B: *Section 1915.12(a)(4)*	*Section 1915.12(a)(3)*	Previous rulemaking combined §1915.12(a)(3) and (a)(4) to create the current §1915.12(a)(3). Therefore, the correct reference is §1915.12(a)(3).

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

Text as it currently reads	Amended text	Explanation
§1915.51(d)(3) Employees performing such operations in the open air shall be protected by filter type respirators in accordance with the requirements of paragraphs (a) and (d)(2)(iv) of 1915.152, except that employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators in accordance with the requirements of 1915.152(a).	(d)(3) Employees performing such operations in the open air shall be protected by filter type respirators, and employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators, in accordance with the requirements of §1915.154.	See §1915.51(c)(3).
§1915.51(e)(1)(ii) Helpers and other employees in the	(e)(1)(ii) Helpers and other employees in the	See §1915.51(c)(3).

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

Text as it currently reads	Amended text	Explanation
§ 1915.14(b)(1)(iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(iv) of this section, and	(b)(1)(iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section,	Corrects inaccurate reference.
Appendix A to Subpart B: *Section 1915.12(a)(4)*	*Section 1915.12(a)(3)*	Previous rulemaking combined § 1915.12(a)(3) and (a)(4) to create the current § 1915.12(a)(3). Therefore, the correct reference is § 1915.12(a)(3).
Appendix A to Subpart B: 2nd paragraph under *Section 1915.12(a)(4)* An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level less than 20.8 percent and greater than 19.5 percent level should also alert the competent person to look for the causes of the oxygen deficiency and to correct them prior to entry.	*Section 1915.12(a)(4)* An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level greater than 20.8 percent by volume should alert the competent person to look for the cause of the oxygen-enriched atmosphere and correct it prior to entry. In addition, any oxygen level lower than 19.5 percent level should also alert the competent person to look for the cause of the oxygen-deficiency and correct it prior to entry.	As currently written, this provision would require a competent person to look for oxygen deficiency or oxygen enriched atmosphere that would occur between 19.5 percent and 20.8 percent, which is the proper oxygen content for entry. This was changed to reflect the proper oxygen content that would signify an oxygen deficient or oxygen enriched atmosphere.
Appendix A to Subpart B: *Section 1915.12(b)(4),*	*Section 1915.12(b)(3),*	See Section 1915.12(a)(4).
Appendix A to Subpart B: *Section 1915.14(a) and (b) Hot work.* This is a reminder that other sections of the OSHA shipyard safety and health standards in part 1915 should be reviewed prior to starting any hot work. Most notably, Subpart D, Welding, Cutting and Heating, places additional restrictions on hot work: The requirements of 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of 1915.54 must be met before welding, cutting, or heating is begun on any structural voids.	*Section 1915.14(a) and (b) Hot work.* This is a reminder that other sections of the OSHA shipyard safety and health standards in part 1915 should be reviewed prior to starting any hot work. Most notably, Subpart D, Welding, Cutting and Heating, places additional restrictions on hot work: The requirements of §§ 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of § 1915.54 must be met before welding, cutting, or heating is begun on any hollow containers or structures not covered by § 1915.12.	Language added for clarification and consistency.
§ 1915.51(c)(3) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of 1915.152(a), and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency.	(c)(3) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of § 1915.152, and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency.	Corrects paragraph reference to reflect section and paragraph numbering changes made in 1996 revision of Subpart I.
§ 1915.51(d)(1) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with either general mechanical or local exhaust ventilation meeting the requirements of paragraph (a) of this section.	(d)(1) Welding, cutting or heating in any enclosed spaces abroad the vessel involving the metals specified below shall be performed with either general mechanical or local exhaust ventilation meeting the requirements of paragraph (b) of this section.	Corrects an incorrect reference.
§ 1915.51(d)(2) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with local exhaust ventilation in accordance with the requirements of paragraph (b) of this section or employees shall be protected by air line respirators in accordance with the requirements of 1915.152(a).	(d)(2) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with local exhaust ventilation in accordance with the requirements of paragraph (b) of this section or employees shall be protected by air line respirators in accordance with the requirements of § 1915.154.	See § 1915.51(c)(3).

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

Text as it currently reads	Amended text	Explanation
§ 1915.51(d)(3) Employees performing such operations in the open air shall be protected by filter type respirators in accordance with the requirements of paragraphs (a) and (d)(2)(iv) of 1915.152, except that employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators in accordance with the requirements of 1915.152(a).	(d)(3) Employees performing such operations in the open air shall be protected by filter type respirators, and employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators, in accordance with the requirements of § 1915.154.	See § 1915.51(c)(3).
§ 1915.51(e)(1)(ii) Helpers and other employees in the area not protected from the arc by screening as provided in 1915.56(e) shall be protected by filter lenses meeting the requirements of 1915.151(a) and (c). When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements 1915.151(a) and (c) shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.	(e)(1)(ii) Helpers and other employees in the area not protected from the arc by screening as provided in 1915.56(e) shall be protected by filter lenses meeting the requirements of § 1915.153. When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of § 1915.153 shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.	See § 1915.51(c)(3).
§ 1915.51(f)(2) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of 1915.151(a) and (c).	(f)(2) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of § 1915.153.	See § 1915.51(c)(3).
§ 1915.53(d)(1) In enclosed spaces, all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of 1915.152(a).	(d)(1) In enclosed spaces, all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of § 1915.154.	See § 1915.51(c)(3)
§ 1915.53(d)(2) In the open air, employees shall be protected by a filter type respirator in accordance with the requirements of 1915.152 (a) and (d).	(d)(2) In the open air, employees shall be protected by a filter type respirator in accordance with the requirements of § 1915.154.	See § 1915.51(c)(3).
§ 1915.71(j)(3) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted, employees working more than 5 feet above solid surfaces shall be protected by safety belts and life lines meeting the requirements of 1915.154(b), and employees working over water shall be protected by buoyant work vests meeting the requirements of 1915.154(a).	(j)(3) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted, employees working more than 5 feet above solid surfaces shall be protected by safety belts and life lines meeting the requirements of § 1915.159 and § 1915.160, and employees working over water shall be protected by buoyant work vests meeting the requirements of § 1915.158(a).	See § 1915.51(c)(3).
§ 1915.73(e) When employees are working near the unguarded edges of decks of vessels afloat, they shall be protected by personal flotation devices, meeting the requirements of 1915.154(a).	(e) When employees are working near the unguarded edges of decks of vessels afloat, they shall be protected by personal flotation devices, meeting the requirements of § 1915.158(a).	See § 1915.51(c)(3).
§ 1915.74(c)(2) Unless employees can step safely to or from the wharf, float, barge, or river towboat, either a ramp in accordance with requirements of paragraph (a)(7) of this section shall be provided.	(2) Unless employees can step safely to or from the wharf, float, barge, or river towboat, either a ramp meeting the requirements of paragraph (c)(1) of this section or a safe walkway meeting the requirements of paragraph (a)(7) of this section shall be provided.	A portion of the first sentence was inadvertently removed from previous printings. As currently written, the reference of (a)(7) is to the walkway, not the ramp requirements, and "a safe walkway" has been added back in.
§ 1915.77(c) When employees are working aloft, or elsewhere at elevations more than 5 feet above a solid surface, either scaffolds or a sloping ladder, meeting the requirements of this subpart, shall be used to afford safe footing, or the employees shall be protected by safety belts and lifelines meeting the requirements of 1915.154(b).	(c) When employees are working aloft, or elsewhere at elevations more than 5 feet above a solid surface, either scaffolds or a sloping ladder, meeting the requirements of this subpart, shall be used to afford safe footing, or the employees shall be protected by safety belts and lifelines meeting the requirements of § 1915.159 and § 1915.160.	See § 1915.51(c)(3).

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

Text as it currently reads	Amended text	Explanation
§ 1915.77(e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of 1915.154.	(e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of § 1915.158(a).	See § 1915.51(c)(3).
§ 1915.92(e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements	(e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements	The reference has been corrected to be more specific.

secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017) as applicable.

2. In § 1915.4, revise paragraphs (k) and (t) to read as follows:

§ 1915.4 Definitions.

* * * * *

(k) The term *shipbuilding* means the construction of a vessel including the installation of machinery and equipment.

* * * * *

(t) * * * (1) * * *

(iii) The engine room and boiler spaces for which a Marine Chemist or a Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section (iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(iv) of this section.

* * * * *

Note to § 1915.14: See appendix A of this subpart for additional information

oxygen-deficiency and correct it prior to entry.

Section 1915.12(b)(3) Flammable atmospheres. * * *

* * * * *

Section 1915.14 (a) and (b) Hot work. This is a reminder that other sections of the OSHA shipyard safety and health standards in part 1915 should be reviewed prior to starting any hot work. Most notably, subpart D, Welding, Cutting and Heating, places additional restrictions on hot work. The requirements of §§ 1915.51 and 1915.53

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TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

Text as it currently reads	Amended text	Explanation
§ 1915.77(e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of 1915.154.	(e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of § 1915.158(a).	See § 1915.51(c)(3).
§ 1915.92(e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements of 1915.13.	(e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. in nongas free spaces, portable lights shall meet the requirements of 1915.13(b)(9).	The reference has been corrected to be more specific.
§ 1915.97(a) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under 1915.99 of this part and those hazards for which specific precautions are required in Subparts B, C, and D of this part.	(a) The employee shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under § 1915.1200 of this part and those hazards for which specific precautions are required in Subparts B, C, and D of this part.	Corrects paragraph reference to reflect section and paragraph numbering changes made in 1994 when OSHA redesignated § 1915.99 to § 1915.1200 to provide similar section numbers for the same topics in the general industry standards.
§ 1915.116(n) A section of hatch through which materials or equipment are being raised, lowered, moved, or otherwise shifted manually or by a crane, winch, hoist, or derrick, shall be completely opened. The beam or pontoon left in place adjacent to an opening shall be sufficiently lashed, locked or otherwise secured to prevent it from being unshipped so that it cannot be displaced by accident.	(n) A section of hatch through which materials or equipment are being raised, lowered, moved, or otherwise shifted manually or by a crane, winch, hoist, or derrick, shall be completely opened. The beam or pontoon left in place adjacent to an opening shall be sufficiently lashed, locked or otherwise secured to prevent it from moving so that it cannot be displaced by accident.	Language added for clarification.
§ 1915.158(a)(1) PFDs (life preservers, life jackets, and work vests) worn by each affected employee shall be any United States Coast Guard (USCG) approved and marked Type I PFD, type II PFD, or Type III PFD; of PFDs shall be a USCG approved Type V PFD which is marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, subpart Q, Coast Guard Lifesaving Equipment Specifications.	(1) PFDs (life preservers, life jackets, or work vests) worn by each affected employee must be United States Coast Guard (USCG) approved pursuant to 46 CFR part 160 (Type I, II, III, or V PFD) and marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, Coast Guard Lifesaving Equipment Specifications.	The language has been changed to be consistent with § 1917.95(b)(2) and § 1917.95(b)(2) when addressing Personal Flotation Devices (PFD). The new language also clarifies the requirement for PFDs.
§ 1915.172(a) Portable, unfired pressure vessels, built after the effective date of this regulation shall be marked and reported indicating that they have been designed and constructed to meet the standards of the American Society of Mechanical Engines Boiler and Pressure Vessel Code, Section XIII, Rules for Construction of Unfired Pressure Vessels, 1963.	(a) Portable, unfired pressure vessels, built after the effective date of this regulation, shall be marked and reported indicating that they have been designed and constructed to meet the standards of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels 1963. They shall be subjected, to a hydrostatic pressure test of one and one-half times the working pressure of the vessels.	This change corrects the section reference to the ASME Boiler and Pressure Vessel Code.

Good Cause Exception: The corrections and editorial changes in this document are not substantive, and they will become effective on July 3, 2002. OSHA finds good cause for this rule to take effect upon publication, so that these nonsubstantive amendments will be incorporated in the 2002 edition of the CFR. This will increase the convenience to the public in using the new edition of CFR. See 5 U.S.C. 553(d).

For the same reasons, it is certified that no substantive changes are being made which would require analysis under the Regulatory Flexibility Act or under Executive Order 12291.

List of Subjects in 29 CFR Part 1915

Hazardous substances, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping, Shipyards.

Authority: This document has been prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. These technical amendments are made pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 29 CFR part 1911.

Signed at Washington, DC this 26th day of June, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

Accordingly, 29 CFR part 1915 is amended as set forth below:

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017) as applicable.

2. In § 1915.4, revise paragraphs (k) and (t) to read as follows:

§ 1915.4 Definitions.

* * * * *

(k) The term *shipbuilding* means the construction of a vessel including the installation of machinery and equipment.

* * * * *

(t) The term *portable unfired pressure vessel* means any pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure, excepting pressure vessels built to Department of Transportation regulations under 49 CFR part 178, subparts C and H.

* * * * *

3. In § 1915.5, revise paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(v) to read as follows:

§ 1915.5 Incorporation by reference.

* * * * *

(d)(1)* * *

(i) ANSI A14.1–1975 Safety Requirements for Portable Wood Ladders, IBR approved for § 1915.72(a)(6).

(ii) ANSI A14.2–1972 Safety Requirements for Portable Metal Ladders, IBR approved for § 1915.72(a)(4).

* * * * *

(v) ANSI Z87.1–1979 Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 1915.153(b)(2).

* * * * *

4. In § 1915.14, revise paragraph (a)(1)(iv), the note to paragraph (a)(1)(iv), paragraphs (b)(1)(iii), (b)(1)(iv), and the note to § 1915.14 to read as follows:

§ 1915.14 Hot work.

(a) * * * (1) * * *

(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in § 1915.12, but are adjacent to spaces containing flammable gases or liquids, with a flash point below 150 °F (65.6 °C) when the distance between such spaces and the work is 25 feet (7.62 m) or greater.

Note to Paragraph (a)(1)(iv): For flammable liquids with flash points above 150 °F (65.6 °C), see paragraph (b) of this section.

* * * * *

(b) * * * (1) * * *

(iii) The engine room and boiler spaces for which a Marine Chemist or a Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section (iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(iv) of this section.

* * * * *

Note to § 1915.14: See appendix A of this subpart for additional information relevant to performing hot work safely.

5. In § 1915.15, revise paragraph (c) and the heading to paragraph (e) to read as follows:

§ 1915.15 Maintenance of safe conditions.

* * * * *

(c) *Tests to maintain the conditions of a Marine Chemist's or Coast Guard authorized person's certificates.* A competent person shall visually inspect and test each space certified as "Safe for Workers" or "Safe for Hot Work," as often as necessary to ensure that atmospheric conditions within that space are maintained within the conditions established by the certificate after the certificate has been issued.

* * * * *

(e) *Tests to maintain a competent person's findings.* * * *

* * * * *

6. Amend Appendix A to Subpart B as follows:

a. Revise the heading of *Section 1915.12(a)(4)* to read *Section 1915.12(a)(3);*

b. Revise the second paragraph under *Section 1915.12(a)(3);*

c. Revise the heading of *Section 1915.12(b)(4)* to read *Section 1915.12(b)(3);*

d. Revise the paragraph titled *Section 1915.14(a) and (b) Hot Work*

The revisions read as follows:

Appendix A to Subpart B—Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres

* * * * *

Section 1915.12(a)(3).

* * *

An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level greater than 20.8 percent by volume should alert the competent person to look for the cause of the oxygen-enriched atmosphere and correct it prior to entry. In addition, any oxygen level lower than 19.5 percent level should also alert the competent person to look for the cause of the oxygen-deficiency and correct it prior to entry.

Section 1915.12(b)(3) Flammable atmospheres. * * *

* * * * *

Section 1915.14 (a) and (b) Hot work. This is a reminder that other sections of the OSHA shipyard safety and health standards in part 1915 should be reviewed prior to starting any hot work. Most notably, subpart D, Welding, Cutting and Heating, places additional restrictions on hot work. The requirements of §§ 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of § 1915.54 must be met before welding, cutting, or heating is begun on any hollow containers or structures not covered by § 1915.12.

* * * * *

7. In § 1915.35, revise paragraph (b)(2) to read as follows:

§ 1915.35 Painting.

* * * * *

(b) * * *

(2) If the ventilation fails or if the concentration of solvent vapors reaches or exceeds ten (10) percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten (10) percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration to below ten (10) percent of the lower explosive limit shall be provided.

* * * * *

8. In § 1915.51, revise paragraphs (c)(3), (d)(1) introductory text, (d)(2) introductory text, (d)(2)(i), (d)(3), (e)(1)(ii), and (f)(2) to read as follows:

§ 1915.51 Ventilation and protection in welding, cutting and heating.

* * * * *

(c) * * *

(3) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of § 1915.154, and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency.

(d) *Welding, cutting or heating of metals of toxic significance.* (1) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with either general mechanical or local exhaust ventilation

meeting the requirements of paragraph (b) of this section:

* * * * *

(2) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with local exhaust ventilation in accordance with the requirements of paragraph (b) of this section or employees shall be protected by air line respirators in accordance with the requirements of § 1915.154:

10. In § 1915.71, revise paragraphs (e)(2)(ii), (e)(9), (f)(8), and (j)(3) to read as follows:

§ 1915.71 Scaffolds or staging.

* * * * *

(e) * * *

(2) * * *

(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1 5/16 × 3 inch lumber.

(c) *Construction of portable wood cleated ladders from 30 to 60 feet in length.* (1) * * *

(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength.

* * * * *

12. In § 1915.73, revise paragraph (e) to read as follows:

§ 1915.73 Guarding of deck openings and edges.

stanchions and 42 inch railings with a midrail. When such a railing would be impracticable or ineffective, other effective means shall be provided to prevent employees from falling into the water.

* * * * *

15. In § 1915.77, revise the first sentence of paragraphs (a) and (c) and revise paragraph (e) to read as follows:

§ 1915.77 Working surfaces.

be noted and the chain removed from service when maximum allowable wear at any point of link, as indicated in Table G–9 in § 1915.118, has been reached.

* * * * *

19. In § 1915.115, revise paragraph (d) to read as follows:

§ 1915.115 Hoisting and hauling equipment.

* * * * *

remove "1–1/32" and add in its place "11/32";

22. In § 1915.131, revise the first three sentences of paragraph (c), revise paragraph (d) and the first sentence of paragraph (g) to read as follows:

§ 1915.131 General precautions.

* * * * *

(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to

meeting the requirements of paragraph (b) of this section:

* * * * *

(2) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with local exhaust ventilation in accordance with the requirements of paragraph (b) of this section or employees shall be protected by air line respirators in accordance with the requirements of § 1915.154:

(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

* * * * *

(3) Employees performing such operations in the open air shall be protected by filter type respirators, and employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators, in accordance with the requirements of § 1915.154.

* * * * *

(e) *Inert-gas metal-arc welding.* (1) * * *

(ii) Helpers and other employees in the area not protected from the arc by screening as provided in § 1915.56(e) shall be protected by filter lenses meeting the requirements of § 1915.153. When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of § 1915.153 shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.

* * * * *

(f) * * *

(2) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of § 1915.153.

* * * * *

9. In § 1915.53, revise paragraph (d) to read as follows:

§ 1915.53 Welding, cutting and heating in way of preservative coatings.

* * * * *

(d) *Protection against toxic preservative coatings.* (1) In enclosed spaces, all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of § 1915.154.

(2) In the open air, employees shall be protected by a filter type respirator in accordance with the requirements of § 1915.154.

* * * * *

10. In § 1915.71, revise paragraphs (e)(2)(ii), (e)(9), (f)(8), and (j)(3) to read as follows:

§ 1915.71 Scaffolds or staging.

* * * * *

(e) * * *

(2) * * *

(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1 5/16 × 3 inch lumber.

* * * * *

(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that the width of the platform planking shall not exceed the distance between the side rails.

(f) * * *

(8) No more than two persons shall be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this paragraph. Where heavier construction is used, the number of persons permitted to work on the scaffold shall be determined by the size and the safe working load of the scaffold.

* * * * *

(j) * * *

(3) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted, employees working more than 5 feet above solid surfaces shall be protected by safety belts and life lines meeting the requirements of §§ 1915.159 and 1915.160, and employees working over water shall be protected by buoyant work vests meeting the requirements of § 1915.158(a).

* * * * *

11. In § 1915.72, revise paragraphs (a)(4),(a)(6) and (c)(1)(iii) to read as follows:

§ 1915.72 Ladders.

(a) * * *

(4) Portable metal ladders shall be of strength equivalent to that of wood ladders. Manufactured portable metal ladders provided by the employer shall be in accordance with the provisions of ANSI Standard A14.2–1972: Safety Requirements for Portable Metal Ladders (incorporated by reference, see § 1915.5).

* * * * *

(6) Manufactured portable wood ladders provided by the employer shall be in accordance with the provisions of ANSI Standard A14.1–1975: Safety Requirements for Portable Wood Ladders (incorporated by reference, see § 1915.5).

* * * * *

(c) *Construction of portable wood cleated ladders from 30 to 60 feet in length.* (1) * * *

(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength.

* * * * *

12. In § 1915.73, revise paragraph (e) to read as follows:

§ 1915.73 Guarding of deck openings and edges.

* * * * *

(e) When employees are working near the unguarded edges of decks of vessels afloat, they shall be protected by personal flotation devices, meeting the requirements of § 1915.158(a).

* * * * *

13. In § 1915.74 revise paragraph (a)(2) and the first sentence of paragraph (c)(2) to read as follows:

§ 1915.74 Access to vessels.

(a) * * *

(2) Each side of such gangway, and the turn table if used, shall have a railing with a minimum height of approximately 33 inches measured perpendicularly from rail to walking surface at the stanchion, with a midrail. Rails shall be of wood, pipe, chain, wire or rope and shall be kept taut at all times.

* * * * *

(c) * * *

(2) Unless employees can step safely to or from the wharf, float, barge, or river towboat, either a ramp meeting the requirements of paragraph (c)(1) of this section or a safe walkway meeting the requirements of paragraph (a)(7) of this section shall be provided. * * *

* * * * *

14. In § 1915.75, revise the first sentence of paragraphs (b) and (d) and revise paragraph (e) to read as follows:

§ 1915.75 Access to and guarding of dry docks and marine railways.

* * * * *

(b) Each side of such gangway, ramp or permanent stairway, including those which are used for access to wing walls from dry dock floors, shall have a railing with a midrail. * * *

* * * * *

(d) Railings approximately 42 inches in height, with a midrail, shall be provided on the edges of wing walls of floating dry docks and on edges of graving docks. * * *

(e) When employees are working on the floor of a floating dry dock where they are exposed to the hazard of falling into the water, the end of the dry dock shall be equipped with portable

stanchions and 42 inch railings with a midrail. When such a railing would be impracticable or ineffective, other effective means shall be provided to prevent employees from falling into the water.

* * * * *

15. In § 1915.77, revise the first sentence of paragraphs (a) and (c) and revise paragraph (e) to read as follows:

§ 1915.77 Working surfaces.

(a) Paragraphs (b) through (d) of this section shall apply to ship repairing and shipbuilding operations, and shall not apply to shipbreaking. * * *

* * * * *

(c) When employees are working aloft, or elsewhere at elevations more than 5 feet above a solid surface, either scaffolds or a sloping ladder, meeting the requirements of this subpart, shall be used to afford safe footing, or the employees shall be protected by safety belts and lifelines meeting the requirements of §§ 1915.159 and 1915.160. * * *

* * * * *

(e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of § 1915.158(a).

* * * * *

16. In § 1915.92, revise paragraph (e) to read as follows:

§ 1915.92 Illumination.

* * * * *

(e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements of § 1915.13(b)(9).

* * * * *

17. In § 1915.97, revise paragraph (a) to read as follows:

§ 1915.97 Health and sanitation.

(a) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified in § 1915.1200 of this part and those hazards for which specific precautions are required in subparts B, C, and D of this part.

* * * * *

18. In § 1915.112, revise paragraph (c)(3) to read as follows:

§ 1915.112 Ropes, chains and slings.

* * * * *

(c) * * *

(3) Interlink wear, not accompanied by stretch in excess of 5 percent, shall be noted and the chain removed from service when maximum allowable wear at any point of link, as indicated in Table G–9 in § 1915.118, has been reached.

* * * * *

19. In § 1915.115, revise paragraph (d) to read as follows:

§ 1915.115 Hoisting and hauling equipment.

* * * * *

(d) Accessible areas within the swing radius of the outermost part of the body of a revolving derrick or crane, whether permanently or temporarily mounted, shall be guarded in such a manner as to prevent an employee from being in such a position as to be struck by the crane or caught between the crane and fixed parts of the vessel or of the crane itself.

* * * * *

20. In § 1915.116, revise paragraph (n) to read as follows:

§ 1915.116 Use of gear.

* * * * *

(n) A section of hatch through which materials or equipment are being raised, lowered, moved, or otherwise shifted manually or by a crane, winch, hoist, or derrick, shall be completely opened. The beam or pontoon left in place adjacent to an opening shall be sufficiently lashed, locked or otherwise secured to prevent it from moving so that it cannot be displaced by accident.

* * * * *

21. In § 1915.118:

§ 1915.118 Tables.

a. Revise the headings in the second and third columns in table E–1, from "24 or less" "24–40" "40–60" to "≤24" ">24≤ 40" ">40≤60" respectively

b. Revise the heading in table E–3 from "Up to 10" "10 to 16" "16 to 20" to "≤10" ">10≤16" ">16≤20" respectively

c. In the second column of table G–1, under "Diameter in Inches" remove "1–15/32" and add in its place "15/32" and remove "1–13/16" and add in its place "13/16";

d. In table G–3, under 6 x 37 Classification in column "B" under the heading "Vertical," remove "621" and add in its place, "61";

e. In table G–7, in the second column under the heading "Single leg," remove "27,6" and add in its place "27.6";

f. In table G–9, in the first column under "Chain size in inches," remove "1–1/6" and add in its place "1–1/8";

g. In table G–9, in the second column under "Maximum allowable wear in fraction of inches" remove "1–1/64" and add in its place "11/64," and remove "1–1/32" and add in its place "11/32";

22. In § 1915.131, revise the first three sentences of paragraph (c), revise paragraph (d) and the first sentence of paragraph (g) to read as follows:

§ 1915.131 General precautions.

* * * * *

(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work.

* * *

(d) The moving parts of machinery on a dry dock shall be guarded.

* * * * *

(g) Headers, manifolds and widely spaced hose connections on compressed air lines shall bear the word "air" in letters at least 1-inch high, which shall be painted either on the manifolds or separate hose connections, or on signs permanently attached to the manifolds or connections. * * *

* * * * *

23. In § 1915.134, revise the first sentence of paragraph (c) to read as follows:

§ 1915.134 Abrasive wheels.

* * * * *

(c) Cup type wheels used for external grinding shall be protected by either a revolving cup guard or a band type guard in accordance with the provisions of the United States of America Standard Safety Code for the Use, Care, and Protection of Abrasive Wheels, B7.1–1964. * * *

* * * * *

24. In § 1915.152, revise paragraph (e)(2) to read as follows:

§ 1915.152 General requirements.

* * * * *

(e) * * *

(2) The employer shall ensure that each affected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE.

* * * * *

25. In § 1915.158, revise paragraphs (a)(1) and (b)(4) to read as follows:

§ 1915.158 Lifesaving equipment.

(a) *Personal flotation devices (PFDs).*

(1) PFDs (life preservers, life jackets, or work vests) worn by each affected employee must be United States Coast Guard (USCG) approved pursuant to 46

CFR part 160 (Type I, II, III, or V PFD) and marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, Coast Guard Lifesaving Equipment Specifications.

* * * * *

(b) * * *

(4) At least 90 feet (27.43m) of line shall be attached to each ring life buoy.

* * * * *

to comply with the provisions of paragraph (b)(6) only if they are modified appropriately to provide protection for the extra weight of the employee and tools. (7) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than 6 feet (1.83 m) nor contact any lower level.

(c) *Criteria for selection, use and care of systems and system components.*

(1) * * *

must meet ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal (top of foot) protection should be provided, and in some other special situations, electrical conductive or insulating safety shoes would be appropriate.

* * * * *

29. In Appendix B to Subpart I of Part

non-elastic wire lanyard of sufficient length may need to be added to the system (for test purposes) to create the necessary free fall distance.

* * * * *

(c) *Force test general.* * * *

(1) For lanyard systems. (i) A test weight of 220 pounds plus or minus three pounds (99.79 kg plus or minus 1.36 kg) should be used (see paragraph (a)(4) above).

(ii) Lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or

systems) should withstand a drop test consisting of a 250-pound (113.4 kg) weight falling free for a distance of 4 feet (1.22 m). The weight should be a rigid object with a girth of 38 inches plus or minus 4 inches (96.52 cm plus or minus 10.16 cm). The body belt or harness should be affixed to the test weight as it would be to an employee. The system should be connected to the rigid anchor in the manner that the system would be connected in normal

breaker, opening the switch, or removing the fuse, whichever method is appropriate. The circuit breaker, switch, or fuse location shall be tagged to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it is definitely determined that the work on the circuit has been completed.

* * * * *

34. In § 1915.1000, revise the heading to paragraph (d) to read as follows:

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CFR part 160 (Type I, II, III, or V PFD) and marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, Coast Guard Lifesaving Equipment Specifications.

* * * * *

(b) * * *

(4) At least 90 feet (27.43m) of line shall be attached to each ring life buoy.

* * * * *

26. In § 1915.159, revise paragraphs (a)(3), (a)(9), (b)(2), (b)(3), (b)(4), (b)(6)(iv), the note to paragraph (b)(6), paragraphs (b)(7), (c)(1)(i), and (c)(8) to read as follows:

§ 1915.159 Personal fall arrest systems (PFAS).

* * * * *

(a) * * *

(3) D-rings and snaphooks shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.24 Kn).

* * * * *

(9) Anchorages shall be capable of supporting at least 5,000 pounds (22.24 Kn) per employee attached, or shall be designed, installed, and used as follows:

* * * * *

(b) * * *

(2) Vertical lifelines and lanyards shall have a minimum tensile strength of 5,000 pounds (22.24 Kn).

(3) Self-retracting lifelines and lanyards that automatically limit free fall distances to 2 feet (0.61 m) or less shall be capable of sustaining a minimum tensile load of 3,000 pounds (13.34 Kn) applied to a self-retracting lifeline or lanyard with the lifeline or lanyard in the fully extended position.

(4) Self-retracting lifelines and lanyards which do not limit free fall distance to 2 feet (0.61 m) or less, ripstitch lanyards and tearing and deforming lanyards shall be capable of sustaining a minimum static tensile load of 5,000 pounds (22.24 Kn) applied to the device when they are in the fully extended position.

* * * * *

(6) * * *

(iv) Have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of 6 feet (1.83 m), or the free fall distance permitted by the system, whichever is less;

Note to Paragraph (b)(6) of this Section: A personal fall arrest system which meets the criteria and protocols contained in appendix B, is considered to comply with paragraph (b)(6). If the combined tool and body weight is 310 pounds (140.62 kg) or more, systems that meet the criteria and protocols contained in appendix B will be deemed to comply with the provisions of paragraph (b)(6) only if they are modified appropriately to provide protection for the extra weight of the employee and tools. (7) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than 6 feet (1.83 m) nor contact any lower level.

(c) *Criteria for selection, use and care of systems and system components.*

(1) * * *

(i) The attachment point of a body harness shall be located in the center of the wearer's back near the shoulder level, or above the wearer's head. If the free fall distance is limited to less than 20 inches (50.8 cm), the attachment point may be located in the chest position; and

* * * * *

(8) Body belts shall be at least one and five-eighths inches (4.13 cm) wide.

* * * * *

27. In § 1915.160, revise paragraphs (a)(2), (b)(1), the first two sentences of (b)(2)(i) and revise paragraph (b)(2)(ii) to read as follows:

§ 1915.160 Positioning device systems.

* * * * *

(a) * * *

(2) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.24 Kn).

* * * * *

(b) *Criteria for positioning device systems.* (1) Restraint (tether) lines shall have a minimum breaking strength of 3,000 pounds (13.34 Kn).

(2) * * *

(i) A window cleaner's positioning system shall be capable of withstanding without failure a drop test consisting of a 6 foot (1.83 m) drop of a 250-pound (113.4 kg) weight. The system shall limit the initial arresting force to not more than 2,000 pounds (8.9 Kn), with a duration not to exceed 2 milliseconds.

* * *

(ii) All other positioning device systems shall be capable of withstanding without failure a drop test consisting of a 4 foot (1.22 m) drop of a 250-pound (113.4 kg) weight.

* * * * *

28. In Appendix A to subpart I of Part 1915, revise paragraph (a) of section 10, *Selection guidelines for foot protection,* to read as follows:

Appendix A to Subpart I—Non-Mandatory Guidelines For Hazard Assessment, Personal Protective Equipment (PPE), and PPE Training Program

* * * * *

10. *Selection guidelines for foot protection.* (a) Safety shoes and boots must meet ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal (top of foot) protection should be provided, and in some other special situations, electrical conductive or insulating safety shoes would be appropriate.

* * * * *

29. In Appendix B to Subpart I of Part 1915, revise paragraphs 1(a)(2), 1(a)(4), 1(b)(1), 1(b)(3), 1(b)(5), 1(c)(1)(i), 1(c)(1)(ii), 1(c)(2)(i), 1(c)(3), 1(d)(1)(i), 2(a)(1) and (2), the first two sentences of 2(a)(3), and revise 2(a)(4) to read as follows:

Appendix B to Subpart I—General Testing Conditions and Additional Guidelines for Personal Fall Protection Systems (Non-Mandatory)

1. *Personal fall arrest systems.* * * *

(a) * * *

(2) The anchorage should be rigid, and should not have a deflection greater than .04 inches (1 cm) when a force of 2,250 pounds (10.01 Kn) is applied.

* * * * *

(4) The test weight used in the strength and force tests should be a rigid, metal cylindrical or torso-shaped object with a girth of 38 inches plus or minus 4 inches (96.5 cm plus or minus 10.16 cm).

* * * * *

(b) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus 5 pounds (136.08 kg plus or minus 2.27 kg) should be used. (See paragraph (a)(4) above.)

* * * * *

(3) For lanyard systems, the lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or minus 5.08 cm) as measured from the fixed anchorage to the attachment on the body belt or harness.

* * * * *

(5) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to 2 feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of 1 foot (0.31 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight should be rigged to free fall a distance of 7.5 feet (2.29 m) from a point that is 1.5 feet (45.72 cm) above the anchorage point, to its hanging location (6 feet (1.83 m) below the anchorage). The test weight should fall without interference, obstruction, or hitting the floor or the ground during the test. In some cases, a non-elastic wire lanyard of sufficient length may need to be added to the system (for test purposes) to create the necessary free fall distance.

* * * * *

(c) *Force test general.* * * *

(1) For lanyard systems. (i) A test weight of 220 pounds plus or minus three pounds (99.79 kg plus or minus 1.36 kg) should be used (see paragraph (a)(4) above).

(ii) Lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or minus 5.08 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

* * * * *

(2) For all other systems. (i) A test weight of 220 pounds plus or minus 3 pounds (99.79 kg plus or minus 1.36 kg) should be used (see paragraph (a)(4) above).

* * * * *

(3) Failure. A system fails the force test if the recorded maximum arresting force exceeds 1,260 pounds (5.6 Kn) when using a body belt, or exceeds 2,520 pounds (11.21 Kn) when using a body harness.

* * * * *

(d) *Deceleration device tests—general.* * * *

(1) Rope-grab-type deceleration devices. (i) Devices should be moved on a lifeline 1,000 times over the same length of line a distance of not less than 1 foot (30.48 cm), and the mechanism should lock each time.

* * * * *

2. *Positioning device systems*—(a) *Test Conditions.* (1) The fixed anchorage should be rigid and should not have a deflection greater than .04 inches (1.02 mm) when a force of 2,250 pounds (10.01 Kn) is applied.

(2) For lineman's body belts and pole straps, the body belt should be secured to a 250 pound (113.4 kg) bag of sand at a point which simulates the waist of an employee. One end of the pole strap should be attached to the rigid anchorage and the other end to the body belt. The sand bag should be allowed to free fall a distance of 4 feet (1.22 m). Failure of the pole strap and body belt should be indicated by any breakage or slippage sufficient to permit the bag to fall free to the ground.

(3) For window cleaner's belts, the complete belt should withstand a drop test consisting of a 250 pound (113.4 kg) weight falling free for a distance of 6 feet (1.83 m). The weight should be a rigid object with a girth of 38 inches plus or minus four inches (96.52 cm plus or minus 10.16 cm.) * * *

(4) All other positioning device systems (except for restraint line systems) should withstand a drop test consisting of a 250-pound (113.4 kg) weight falling free for a distance of 4 feet (1.22 m). The weight should be a rigid object with a girth of 38 inches plus or minus 4 inches (96.52 cm plus or minus 10.16 cm). The body belt or harness should be affixed to the test weight as it would be to an employee. The system should be connected to the rigid anchor in the manner that the system would be connected in normal use. The weight should be lifted exactly 4 feet (1.22 m) above its "at rest" position and released so as to permit a vertical free fall of 4 feet (1.22 m). Any breakage or slippage which permits the weight to fall free to the ground should constitute failure of the system.

30. In § 1915.163, revise the first sentence of paragraph (a)(1) and revise paragraph (a)(2) to read as follows:

§ 1915.163 Ship's piping systems.

(a) * * *

(1) The isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, blanked, and tagged to indicate that employees are working on the systems.

* * *

(2) Drain connections to the atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage.

31. In § 1915.165, revise paragraph (a)(1) to read as follows:

§ 1915.165 Ship's deck machinery.

(a) * * *

(1) The devil claws (also known as chain stoppers) shall be made fast to the anchor chains.

* * * * *

32. In § 1915.172, revise the first sentence of paragraph (a) to read as follows:

§ 1915.172 Portable air receivers and other unfired pressure vessels.

(a) Portable, unfired pressure vessels, built after the effective date of this regulation, shall be marked and reported indicating that they have been designed and constructed to meet the standards of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels, 1963. * * *

* * * * *

33. In § 1915.181, revise paragraph (c) to read as follows:

§ 1915.181 Electrical circuits and distribution boards.

* * * * *

(c) Deenergizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever method is appropriate. The circuit breaker, switch, or fuse location shall be tagged to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it is definitely determined that the work on the circuit has been completed.

* * * * *

34. In § 1915.1000, revise the heading to paragraph (d) to read as follows:

§ 1915.1000 Air contaminants.

* * * * *

(d) *Computation formula* * * *

* * * * *

35. In § 1915.1001, revise the first sentence of paragraph (d)(2), paragraphs (d)(4), (g)(5)(ii)(B)(*1*), (g)(5)(ii)(B)(7), (g)(5)(ii)(B)(*8*), (g)(5)(iii)(A), (g)(8)(iii)(C), (h)(1)(iv), the first item in the first column of Table 1, paragraphs (i)(4)(i), the heading of (k)(3), (k)(3)(ii), (k)(5)(ii)(A), (k)(9)(vi), (k)(9)(viii), and (o)(1) to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(d) * * *

(2) Asbestos hazards at a multi-employer worksite shall be abated by the contractor who created or controls the source of asbestos contamination.

* * *

* * * * *

(4) All employers of employees working adjacent to regulated areas established by another employer on a multi-employer worksite shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fibers do not migrate to such adjacent areas.

* * * * *

(g) * * *

(5) * * *

(ii) * * *

(B) *Work practices—(1)* Each glovebag shall be installed so that it completely covers the circumference of pipes or other structures where the work is to be done.

* * * * *

(*7*) Where a system uses an attached waste bag, such bag shall be connected to a collection bag using hose or other material which shall withstand the pressure of ACM waste and water without losing its integrity.

(*8*) A sliding valve or other device shall separate the waste bag from the hose to ensure no exposure when the waste bag is disconnected.

* * * * *

(iii) * * *

(A) *Specifications:* In addition to the specifications for glove bag systems above, negative pressure glove bag systems shall attach the HEPA vacuum system or other device to the bag to prevent collapse during removal.

* * * * *

(8) * * *

(iii) * * *

(C) Unwrapped or unbagged panels or shingles shall be immediately lowered to the ground via a covered dust-tight chute or container, or carried or passed down. Neither shall be dropped or thrown.

(D) Wrapped or bagged materials shall be lowered to the ground. Packages shall not be dropped or thrown.

(E) Materials contaminated with asbestos shall be removed from the work area in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(F) Materials contaminated with asbestos shall be wetted with water or an amended water solution before removal.

(G) Materials contaminated with asbestos shall be removed from the work area as soon as practicable after abatement work is completed.

(H) Materials contaminated with asbestos shall be disposed of in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(I) Materials contaminated with asbestos shall be disposed of as soon as practicable after removal.

(J) Upon completion of removal, the area shall be cleaned with wet methods and/or a HEPA vacuum to remove any asbestos fibers that may have been released during removal.

(K) Waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal shall be labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(L) Waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal shall be disposed of as soon as practicable after removal.

(M) Upon completion of removal, the area shall be cleaned with wet methods and/or a HEPA vacuum to remove any asbestos fibers that may have been released during removal.

(N) Employees engaged in removal shall shower and change clothes before leaving the work area for clean areas.

(O) Employees engaged in removal shall wash their hands and faces before eating, drinking, smoking, or applying cosmetics.

(P) Employees engaged in removal shall vacuum their protective clothing with a HEPA vacuum before showering.

(Q) Employees engaged in removal shall wear clothing provided by the employer for their use during their work shift.

(R) Employees engaged in removal shall wear clothing contaminated with asbestos in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(S) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(T) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(U) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(V) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(W) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

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(OOOO) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(PPPP) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(QQQQ) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(RRRR) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(SSSS) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(TTTT) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(UUUU) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(VVVV) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(WWWW) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(XXXX) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(YYYY) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(ZZZZ) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(AAAAA) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(BBBBB) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(CCCCC) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(DDDDD) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(EEEEE) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(FFFFF) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(GGGGG) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(HHHHH) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(IIIII) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(JJJJJ) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(KKKKK) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(LLLLL) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(MMMMM) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(NNNNN) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

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(BBBBBB) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape, adhesive, or other closure to prevent the release of asbestos fibers.

(CCCCCC) Employees engaged in removal shall wear clothing contaminated with asbestos which is to be laundered in labeled, impermeable bags, and sealed with tape

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(A) *Specifications:* In addition to the specifications for glove bag systems above, negative pressure glove bag systems shall attach the HEPA vacuum system or other device to the bag to prevent collapse during removal.

* * * * *

(8) * * *

(iii) * * *

(C) Unwrapped or unbagged panels or shingles shall be immediately lowered to the ground via a covered dust-tight chute, crane or hoist, or be placed in an impervious waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift.

* * * * * *

(h) (1) * * *

(iv) During all Class II and III asbestos jobs where the employer does not produce a "negative exposure assessment."

* * * * * *

TABLE 1.—RESPIRATORY PROTECTION FOR ASBESTOS FIBERS

Airborne concentration of asbestos or conditions of use	Required respirator
Not in excess of 1 f/cc (10 X PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section.	Half-mask air purifying respirator other than a disposable respirator, equipped with high efficiency filters.
Not in excess of 5 f/xx (50 X PEL).	Full facepiece air-purifying respirator equipped with high efficiency filters.
Not in excess of 10 f/cc (100 X PEL).	Any powered air-purifying respirator equipped with high efficiency filters or any supplied air respirator operated in continuous flow mode.

* * * * * *

(i) * * *

(4) *Inspection of protective clothing.*

(i) The qualified person shall examine worksuits worn by employees at least once per workshift for rips or tears that may occur during the performance of work.

* * * * * *

(k) * * *

(3) *Duties of employers whose employees perform work subject to this standard in or adjacent to areas containing ACM and PACM.* * * *

(ii) Before work under this standard is performed employers of employees who will perform such work shall inform the following persons of the location and quantity of ACM and/or PACM present at the worksite and the precautions to be taken to ensure that airborne asbestos is confined to the area.

* * * * * *

(5) * * *

(ii) * * *

(A) Having completed an inspection conducted pursuant to the requirements of AHERA (40 CFR part 763, subpart E) which demonstrates that the material is not ACM; or

* * * * * *

(9) * * *

(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in the recognition of damage, deterioration, and delamination of asbestos containing building materials. Such a course shall take at least 2 hours.

* * * * * *

(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by the provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:

* * * * * *

(o) *Qualified person*—(1) *General.* On all shipyard worksites covered by this standard, the employer shall designate a qualified person, having the qualifications and authority for ensuring worker safety and health required by subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

36. Amend Appendix C to 1915.1001 as follows:

a. Under "Qualitative Fit Test Protocols" revise the heading to Section I, "Isoamyl Acetate Protocol";

b. In Section II, "Saccharin Solution Aerosol Protocol", revise the heading to paragraph B, and revise paragraph C(15);

c. Under Section III, revise the heading of "Irritant Fume Protocol" and under "Quantitative Fit Test Procedures", under heading 1, revise paragraph (a); revise headings of numbers 2 and 5 and revise the first sentence of paragraph 5;

d. Revise paragraph 6 and paragraph 9(f).

The revisions read as follows:

Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory

Qualitative Fit Test Protocols

I. Isoamyl Acetate Protocol

* * *

II. Saccharin Solution Aerosol Protocol

A. * * *

B. Taste Threshold Screening

* * *

C. * * *

15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.

* * * * *

III. Irritant Fume Protocol

* * * * *

Quantitative Fit Test Procedures

1. General.

a. The method applies to negative-pressure non-powered air-purifying respirators only.

* * * * *

2. Definitions.

* * * * *

5. Exercise Regime.

Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures.* * * *

* * * * *

6. Test Termination.

The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h)

* * * * *

9. * * *

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

* * * * *

[FR Doc. 02–16530 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

33 CFR Part 100

[CGD07–02–049]

RIN 2115–AE46

Special Local Regulations; Savannah Waterfront Association July 4th Fireworks Display, Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established on the Savannah River for the Savannah Waterfront Association July 4th Celebration Fireworks Display, Savannah, GA. This rule creates a regulated area on the waters of the Savannah River around the fireworks launch point located ashore but close to the river's edge. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 9 p.m. until 11 p.m. on July 4, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–02–049] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St., Charleston, SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Martinez, Coast Guard Group Charleston at (843)724–7632.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with the aerial fireworks for the Savannah Waterfront Association July 4th Fireworks Display, Savannah, GA. The event sponsor expects approximately 120 spectator craft to observe the show. The fireworks launch point will be located ashore, approximately 35 yards from the river's edge, in approximate position 32°04.991′ N, 081°05.309′ W. This rule creates a regulated area only on the waters of the Savannah River within 175 yards of the launch point, which is located ashore. This rule creates no restrictions on land. It prohibits non-participant persons and vessels from entering the regulated area during the event without the permission of the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the rule minimally impacts navigation: The regulated area will be enforced for two hours, vessels will still be able to transit the waterway around the regulated area (the regulated area extends approximately 140 yards into the channel for a small portion of the river adjacent to the launch site, which leaves approximately 25 yards around the zone in which to navigate), and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Savannah River from 9 p.m. to 11 p.m., July 4, 2002. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it minimally impacts navigation: the regulated area will be enforced for two hours, vessels will still be able to transit the waterway around the regulated area (the regulated area extends approximately 140 yards into the channel for a small portion of the river adjacent to the launch site, which leaves approximately 25 yards around the zone in which to navigate), and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the APBA Off-Shore Boat Race, Tybee Island, Georgia. This rule restricts the movement of non-participating vessels in the regulated area around the race course located off-shore of Tybee Island. This rule is needed to provide for the safety of life on navigable waters during the event.

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because the rule minimally impacts navigation: the regulated area will be enforced for seven hours on two separate days, vessels will still be able

Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

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State, local, or tribal government in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 9 p.m. until 11 p.m. on July 4, 2002, add temporary § 100.35T–07–049 to read as follows:

§ 100.35T–07–049 Savannah Waterfront Association July 4th Fireworks Display, Savannah River, Savannah GA.

(a) *Regulated area.* A regulated area is established for the waters in Savannah River, Savannah, GA, encompassing a 175-yard radius around a point located ashore at approximate position 32° 04.991′ N, 081° 05.309′ W. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited, unless expressly authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This section will be enforced from 9 p.m. until 11 p.m. on July 4, 2002.

Dated: June 27, 2002.

J.W. Stark,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 02–16747 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–02–074]

RIN 2115–AE46

Special Local Regulations; APBA Off-Shore Boat Race, Tybee Island, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the APBA Off-Shore Boat Race, Tybee Island, Georgia. This rule restricts the movement of non-participating vessels in the regulated area around the race course located off-shore of Tybee Island. This rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 11 a.m. on July 6, 2002 until 6 p.m. on July 8, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–074] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston S.C. 29401 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Martinez, Coast Guard Group Charleston at (843) 724–7632.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from a high speed boat race and because there will be numerous spectator craft in the area.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with a high-speed power boat race. This rule prohibits non-participating vessels from entering the designated regulated area off-shore of Tybee Island, Georgia during the event. A Coast Guard Patrol Commander will be present during this event to enforce this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because the rule minimally impacts navigation: the regulated area will be enforced for seven hours on two separate days, vessels will still be able to transit around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Atlantic Ocean, near Tybee Island, Georgia, from 11 a.m. to 6 p.m. on July 6 or July 7, 2002 (or July 8, 2002 if the race is postponed due to weather on July 6 or July 7). The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it has minimal impact on navigation: the regulated area will be enforced for seven hours on two separate days, vessels will still be able to transit around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Assistance for Small Entities

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46.

2. From 11 a.m. July 6, 2002 until 6 p.m. July 8, 2002, add temporary § 100.35T–07–074 to read as follows:

§ 100.35T–07–074, APBA Off-shore Boat Race, Tybee Island, Georgia.

(a) *Regulated Area:* A regulated area is established for all waters within an area enclosed by lines between the following points located off-shore of Tybee Island, GA:

(1) 32–01.638′N 080–50.420′W, then roughly south for about 1 mile to
(2) 32–00.640′N 080–50.334′W, then roughly east for about one-half mile to
(3) 32–00.719′N 080–49.664′W, then roughly southeast for about one-half mile to
(4) 32–00.465′N 080–49.264′W, then roughly east for about one mile to
(5) 32–00.519′N 080–48.501′W, then roughly north-northwest one and one-quarter mile to

(rain date July 5, 2002). This rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 8:30 p.m. July 4, 2002 until 10:15 p.m. July 5, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD07–02–056] and are available for

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the impacts on navigation are expected to be minimal: the rule will be enforced for under two hours, vessels will be able to transit Calibogue Sound around the regulated area, and vessels

Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited unless authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This rule will be enforced from 8:30 p.m. to 10:15 p.m. on July 4,

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(1) 32–01.638′N 080–50.420′W, then roughly south for about 1 mile to
(2) 32–00.640′N 080–50.334′W, then roughly east for about one-half mile to
(3) 32–00.719′N 080–49.664′W, then roughly southeast for about one-half mile to
(4) 32–00.465′N 080–49.264′W, then roughly east for about one mile to
(5) 32–00.519′N 080–48.501′W, then roughly north-northwest one and one-quarter mile to
(6) 32–01.716′N 080–49.122′W, then roughly west one and one-quarter mile to point (1).

All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Group Charleston SC.

(c) *Special Local Regulations:* Non-participant vessels are prohibited from entering the regulated area unless authorized by the Patrol Commander. The sponsor will establish and mark an area suitable for viewing the race from spectator craft.

(d) *Dates:* This section will be enforced from 11 a.m. until 6 p.m. on July 6, 2002, and from 11 a.m. until 6 p.m. on July 7, 2002. If the race is postponed on one of these dates due to weather, this section will be enforced from 11 a.m. until 6 p.m. on July 8, 2002.

Dated: June 27, 2002.

J.W. Stark,

Captain, Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 02–16746 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–02–056]

RIN 2115–AE46

Special Local Regulations; Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. This rule creates a regulated area around the fireworks barge. It will be enforced from 8:30 p.m. to 10:15 p.m. on July 4, 2002 (rain date July 5, 2002). This rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 8:30 p.m. July 4, 2002 until 10:15 p.m. July 5, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD07–02–056] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston, SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Chris Martinez, Coast Guard Group Charleston at (843) 724–7632.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with the aerial fireworks display during the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. The event sponsor expects numerous spectator craft to be in the vicinity of the fireworks display. This rule creates a regulated area on the waters of Calibogue Sound, Harbour Town, Hilton Head, SC, within a 350-yard radius of a fireworks launch barge in approximate position 32°08.2′ N, 080°49.2′ W. Non-participant vessels and persons are prohibited from entering the regulated area without the permission of the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the impacts on navigation are expected to be minimal: the rule will be enforced for under two hours, vessels will be able to transit Calibogue Sound around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Calibogue Sound from 8:30 p.m. to 10:15 p.m. on July 4, 2002 (or July 5, 2002 if the event is postponed). The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the impacts on navigation are expected to be minimal: the rule will be enforced for under two hours, vessels will be able to transit Calibogue Sound around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory

Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 8:30 p.m. on July 4, 2002 until 10:15 p.m. on July 5, 2002, add temporary § 100.35T–07–056 to read as follows:

§ 100.35T–07–056 Harbour Town Fireworks Display, Calibogue Sound, Harbour Town, Hilton Head, SC.

(a) *Regulated area.* A regulated area is established on the waters of Calibogue Sound, Harbour Town, Hilton Head, SC, within a 350-yard radius of a fireworks launch barge in approximate position 32°08.2′ N, 080°49.2′ W. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited unless authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This rule will be enforced from 8:30 p.m. to 10:15 p.m. on July 4, 2002. If the event is postponed on July 4, 2002, it will be enforced from 8:30 p.m. to 10:15 p.m. on July 5, 2002.

Dated: June 14, 2002.

John E. Crowley, Jr.,

Captain, Coast Guard, Acting Commander Seventh Coast Guard District.

[FR Doc. 02–16743 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

33 CFR Part 100

[CGD07–02–045]

RIN 2115–AE46

Special Local Regulations; Skull Creek, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Skull Creek July 4th Celebration Fireworks Display, on Skull Creek, Hilton Head, SC. This rule creates a regulated area around the fireworks barge. This rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 8:30 p.m. on July 4, 2002, until 10:30 p.m. on July 5, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–045] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston S. C. 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Martinez, Coast Guard Group Charleston at (843)—724–7621.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this

rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with the aerial fireworks display during the Skull Creek Fireworks Display, Skull Creek, Hilton Head, SC. The event sponsor expects numerous spectator craft to be in the vicinity of the fireworks display. This rule creates a regulated area on the waters of Skull Creek, Hilton Head, SC, within a 350-yard radius of a fireworks launch barge in approximate position 32°08.2′ N, 080°49.2′ W. Non-participant vessels and persons are prohibited from entering the regulated area without the permission of the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the impacts on navigation are expected to be minimal: the rule will be enforced for under two hours, vessels will be able to transit Skull Creek around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Skull Creek, part of the Intercoastal Waterway, from 8:30 p.m. to 10:30 p.m., July 4, 2002 (or July 5, 2002 if the event is postponed). The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the impacts on navigation are expected to be minimal: the rule will be enforced for under two hours, vessels will be able to transit Skull Creek around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–143]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach, Broward County, FL

discuss this request. After this meeting the Coast Guard determined that to best facilitate the needs of navigation and bridge repair, the bridge would be put on a 20-minute, single leaf opening schedule with double leaf openings available with 2 hours advance notice to the bridge tender. On June 13, 2002 the Coast Guard published a notice of temporary deviation from regulations entitled "Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach,

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rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because of the inherent danger of aerial fireworks for the Skull Creek July 4th Celebration on Skull Creek, Hilton Head, SC. The event sponsor expects approximately 120 spectator craft to observe the show. The fireworks barge will be located in approximate position 32°13.95′ N, 080°45.1′ W, approximately 900 feet offshore from Hudson's Seafood. This rule creates a regulated area that will prohibit non-participant vessels from entering the regulated area during the event without the permission of the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the rule minimally impacts navigation: the regulated area will only be in effect for two hours, the main channel will be open, vessels will still be able to transit the waterway around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Skull Creek, part of the Intercoastal Waterway, from 8:30 p.m. to 10:30 p.m., July 4, 2002 (or July 5, 2002 if the event is postponed). The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it has minimal impact on navigation: the rule will only be in effect for two hours, the main channel will be open, vessels will still be able to transit the waterway around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations, to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-GAIR (1–888–734–3247)

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 8:30 p.m. on July 4, 2002 until 10:30 p.m. on July 5, 2002 add temporary § 100.35T–07–045 to read as follows:

§ 100.35T–07–045; Skull Creek July 4th Celebration, Skull Creek, Hilton Head SC.

(a) *Regulated area.* A regulated area is established for the waters in Skull Creek, Hilton Head, SC, encompassing a 500-foot radius around a barge located in approximate position 32°13.95′ N, 080°45.1′ W. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited, unless expressly authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This section will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2002. If the event is postponed on July 4, 2002, this section will be enforced from 8:30 p.m. to 10:30 p.m. on July 5, 2002.

Dated: June 14, 2002.

John E. Crowly, Jr.,

Captain, Coast Guard, Acting Commander Seventh Coast Guard District.

[FR Doc. 02–16748 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–143]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating regulations of the Dania Beach Boulevard bridge across the Atlantic Intracoastal Waterway, mile 1069.4 at Dania Beach, Florida, from July 31, 2002 to November 15, 2002. This temporary rule allows this bridge to only open a single leaf of the bridge on a regular schedule. Double leaf openings will be provided during certain times. This action is necessary to facilitate repairs to the bridge.

DATES: This rule is effective from 8:01 p.m. on July 31, 2002 until 6 p.m. on November 15, 2002.

ADDRESSES: Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–01–143] and are available for inspection or copying at room 432, Seventh Coast Guard District, Bridge Branch, 909 S.E. 1st Avenue, Miami, Florida, 33130–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, telephone 305–415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 21, 2002 we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations: Dania Beach Boulevard Drawbridge, Atlantic Intracoastal Waterway, Florida" in the **Federal Register** (67 FR 7991).

On April 16, 2002, PCL Constructors, who were hired by Florida Department of Transportation, notified the Coast Guard that due to a safety issue involving the welding of deck plates, the bridge should be put on a single leaf opening schedule as soon as possible, and requested this be done to facilitate repairs. The Coast Guard met with Florida Department of Transportation representatives on April 22, 2002 to discuss this request. After this meeting the Coast Guard determined that to best facilitate the needs of navigation and bridge repair, the bridge would be put on a 20-minute, single leaf opening schedule with double leaf openings available with 2 hours advance notice to the bridge tender. On June 13, 2002 the Coast Guard published a notice of temporary deviation from regulations entitled "Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach, Broward County, FL" in the **Federal Register** (67 FR 40606). This deviation allows the bridge operator to only open a single leaf of the bridge from June 4, 2002 until July 31, 2002 with double leaf openings available with 2 hours advanced notice to the bridge tender.

Background and Purpose

The Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, Broward County, Florida, has a vertical clearance of 22 feet at mean high water and a horizontal clearance of 45 feet between fenders. The existing operating regulations in 33 CFR 117 require the bridge to open on signal.

On November 7, 2001, the Coast Guard met with the Florida Department of Transportation representative, URS to discuss altering the Dania Beach Boulevard bridge regulations to facilitate a major rehabilitation of the bridge. The representatives stated that due to the comprehensive nature of the repairs, which includes rebalancing the bascules, they would only be able to open a single span of the bridge for a period of 45 days during the months of September and October. URS requested the bridge be allowed to only open a single leaf of the bridge on the quarter hour and three-quarter hour during these 45 days. Double leaf openings would not be available during this time period because one span will be inoperable. Since the notice of proposed rulemaking was published, URS determined that the 45 days will begin on September 5, 2002 and end on October 19, 2002.

On April 16, 2002, PCL Contractors notified the Coast Guard that the work on the bridge bascules had started and due to safety issues involving welding deck plates, the current on-demand bridge schedule raised safety concerns and impeded their work. As a result, they requested a 20-minute, single leaf, opening schedule. On April 22, 2002, the Coast Guard contacted URS to discuss this request. As a result of that meeting, the Coast Guard determined that operational and safety concerns justified a 20-minute, single leaf, opening schedule. Double-leaf openings

will be available with 2 hours advance notice to the bridge tender. This action is necessary to facilitate worker safety during repairs to the bridge without significantly hindering navigation. This schedule will run from July 31, 2002 until September 5, 2002 and then again from October 19, 2002 until November 15, 2002.

Although this schedule will run for a longer period of time than that proposed in the notice of proposed rulemaking, a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a

impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act

likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this action and has concluded that under figure 2–1,

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP CHARLESTON–02–065]

RIN 2115–AA97

Security Zones; Charleston Harbor, Cooper River, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

that subversive terrorist activity could be launched by vessels or persons in close proximity to the Port of Charleston, S.C., against bridges within the security zones established by this rule. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. If a bridge were damaged or destroyed, the Port of Charleston would be isolated from access to the sea, crippling the local

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will be available with 2 hours advance notice to the bridge tender. This action is necessary to facilitate worker safety during repairs to the bridge without significantly hindering navigation. This schedule will run from July 31, 2002 until September 5, 2002 and then again from October 19, 2002 until November 15, 2002.

Although this schedule will run for a longer period of time than that proposed in the notice of proposed rulemaking, safety issues that were only discovered after work commenced justified this additional single leaf schedule. The schedule for the additional time still provides for single leaf openings 3 times an hour and provides for double leaf openings with 2 hours advance notice.

Discussion of Comments and Changes

We received 2 written comments and one verbal comment to the notice of proposed rulemaking. The Florida Department of State found that the project would not affect historic properties. The National Oceanic and Atmospheric Administration stated that any adverse effects that may occur on the marine and anadromous fishery resources and essential fish habitat would be minimal so did not have any comments. A representative from Marine Industries of Fort Lauderdale verbally told the Seventh Coast Guard District Bridge Branch staff that he did not oppose the proposed bridge operating schedule. The Coast Guard has not received any comments on the notice of temporary deviation from regulations.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule only temporarily modifies the bridge's operating schedule and still provides for regular single leaf openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this rule will have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this rule only temporarily modifies the bridge's operating schedule and still provides for regular single leaf openings. We are only aware of one vessel that will be unable to pass through the bridge when double leaf openings are unavailable from September 5, 2002 until October 14, 2002. The vessel operator has agreed to moor on the other side of the bridge during this period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Execute Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this action and has concluded that under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket we have indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. A new temporary § 117.261(rr) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(rr) *Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, FL.* (1) The Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, FL need only open a single leaf of the bridge on the hour, 20-minutes after the hour, and 40-minutes after the hour from 8:01 p.m. on July 31, 2002 until 12:01 a.m. on September 5, 2002 and from 11:59 p.m. on October 19, 2002 until 6 p.m. on November 15, 2002. A double-leaf opening will be available if 2 hours advance notice is provided to the bridge tender.

(2) From 12:02 a.m. on September 5, 2002 until 11:58 p.m. on October 19, 2002, the Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, FL need only open a single leaf of the bridge on the quarter hour and three-quarter hour.

Dated: June 26, 2002.

J.W. Stark,

Captain, Coast Guard, Acting Commander Seventh Coast Guard District.

[FR Doc. 02–16754 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP CHARLESTON–02–065]

RIN 2115–AA97

Security Zones; Charleston Harbor, Cooper River, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is maintaining temporary fixed security zones for the waters under the Highway 17 bridges over Charleston Harbor and the Don Holt I–526 Bridge over the Cooper River for an additional 6 months. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Vessels are prohibited from anchoring, mooring, or loitering within these zones, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

DATES: This regulation is effective from 12:01 a.m. on June 16, 2002 until 11:59 p.m. December 16, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Charleston 02–065], will become part of this docket and will be available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Erin Healey, Coast Guard Marine Safety Office Charleston, at (843) 747–7411.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). Publishing a NPRM and delaying the effective date of this rule would be contrary to national security since immediate action is necessary to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attack on the World Trade Center in New York and the Pentagon in Arlington, VA, there is an increased risk that subversive terrorist activity could be launched by vessels or persons in close proximity to the Port of Charleston, S.C., against bridges within the security zones established by this rule. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. If a bridge were damaged or destroyed, the Port of Charleston would be isolated from access to the sea, crippling the local economy and negatively impacting national security. These temporary security zones are necessary to protect the safety of life and property on the navigable waters, prevent potential terrorist threats aimed at the bridges crossing the main shipping channels in the Port of Charleston, S.C. and to ensure the continued unrestricted access to the sea from the Port.

On October 18, 2001, the Coast Guard issued a temporary final rule (Docket Number COTP Charleston 01–012, 67 FR 9194, 9195, February 28, 2002) creating temporary security zones around these bridges. That rule expired on January 15, 2002. On February 28, 2002 the Coast Guard published another temporary final rule in the **Federal Register** continuing these security zones until June 15, 2002 (67 FR 9201). This temporary final rule we are publishing today will maintain security zones in these same areas until December 16, 2002.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal so that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The limited geographic area impacted by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Peterson Building Inc. Bridge, Highway 17 bridges, and the Don Holt I–526 Bridge. This rule will not have a significant economic impact on a substantial number of small entities because the bridges will remain open to vessels that can pass under the bridges. Vessels that can not pass under the bridges may transit the area between bridges. Vessels may also anchor outside the security zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Execute Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

2002 until 11:59 p.m. on December 16, 2002.

Dated: June 12, 2002.

K.B. Janssen,

Lieutenant Commander, Coast Guard, Acting Captain of the Port.

[FR Doc. 02–16744 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

whether this rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the limited geographic area encompassed by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–065 is added to read as follows:

§ 165.T07–065 Security Zones; Charleston Harbor, Cooper River, South Caroline.

(a) *Regulated areas.*,(1) A temporary fixed security zone is established for the waters around the Highway 17 bridges, to encompass all waters of the Cooper River within a line connecting the following points: 32°48.23′ N, 079°55.3′ W; 32°48.1′ N, 079°54.35′ W; 32°48.34′ N, 079 055.25′ W; 32°48.2°N, 079°54.35′ W.

(2) Another temporary fixed security zone is established for the waters around the Interstate 526 Bridge spans (Don Holt Bridge) in Charleston Harbor and on the Cooper River and will encompass all waters within a line connecting the following points: 32°53.49′ N, 079°58.05′ W; 32°53.42′ N, 079°57.48′ W; 32°53.53′ N, 079°58.05′ W; 32°53.47′ N, 079°57.47′ W.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, vessels are allowed to transit through these zones but are prohibited from mooring, anchoring, or loitering within these zones unless specifically authorized by the Captain of the Port.

(c) *Authority.* In addition to 33 U.S.C. 1321 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective dates.* This section is effective from 12:01 a.m. on June 16, 2002 until 11:59 p.m. on December 16, 2002.

Dated: June 12, 2002.

K.B. Janssen,

Lieutenant Commander, Coast Guard, Acting Captain of the Port.

[FR Doc. 02–16744 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–042]

RIN 2115–AA97

Safety Zone; Sturgeon Bay Fireworks, Sturgeon Bay, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Sturgeon Bay Canal off of Peterson Building Inc. for the Sturgeon Bay Fireworks 2002 display. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin.

DATES: This temporary rule is effective from 9:20 p.m. (local time) on July 5, 2002, until 10 p.m. (local time) on July 6, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–042] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Dave McClintock, Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property. Due to known accidents in other Captain of the Port zones, the absence of the safety zone could subject spectators and event organizers to unnecessary risks by being too close to the launch platform. Thus, the Coast Guard believes good causes exists for not delaying the effective date of this rule.

Background and Purpose

This safety zone is being established to safeguard the public from the hazards associated with launching of fireworks in the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be enforced on July 5, 2002, from 9:20 p.m. (local time) until 10 p.m. (CST). The safety zone will encompass the arc of the circle with a 560 foot radius with its center in the approximate position 44°49.51′ N, 087°22.38′ W. These coordinates are based upon North American Datum 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Peterson Building Inc. grounds by the Sturgeon Bay Canal from 9:20 p.m. (CST) until 10 p.m. (CST) on July 5, 2002.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (see **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not

have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zono. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 25, 2002.

entitled Safety Zone; Captain of the Port Milwaukee Zone in the **Federal Register** (67 FR 19144). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

The Coast Guard is establishing 29 permanent safety zones that will be enforced during fireworks displays occurring annually at the same location. The 29 locations are the Henry W. Maier Festival Park Harbor Island, Outer Milwaukee Harbor, Lake Michigan; 80

that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of Comments and Changes

MSO Milwaukee received no comments or related information pertaining to this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory

entities affected during these displays in previous years.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental

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have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 9:20 p.m. (local time) on July 5, 2002, until 10 p.m. (local time) on July 6, 2002, a new temporary § 165.T09–042 is added to read as follows:

§ 165.T09–042 Safety Zone; Sturgeon Bay Canal, Sturgeon Bay, Wisconsin.

(a) *Location.* The safety zone will encompass all waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°49.51′ N, 087°22.38′ W (NAD 83).

(b) *Enforcement period.* This section will be enforced from 9:20 p.m. until 10 p.m. on July 5, 2002. If the event is canceled on July 5, 2002, the event will be rescheduled and the safety zone will be enforced during these same times on July 6, 2002.

(c) *Regulations:* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely effect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 25, 2002.

M.R. DeVries,

Commander, Coast Guard, Captain of the Port, Milwaukee, Milwaukee, Wisconsin.

[FR Doc. 02–16745 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–003]

RIN 2115–AA97

Safety Zone; Annual Fireworks Events in the Captain of the Port Milwaukee Zone

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety zones for annual fireworks displays located in the Captain of the Port Milwaukee Zone. This action provides for the safety of life and property on navigable waters during each event. This action restricts vessel traffic in a portion of the Captain of the Port Milwaukee Zone during the enforcement periods.

DATES: This rule is effective on July 3, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–003 and are available for inspection or copying at, U.S. Coast Guard, Marine Safety Office Milwaukee, 2420 S. Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief, Dave McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 18, 2002, we published a notice of proposed rulemaking (NPRM)

entitled Safety Zone; Captain of the Port Milwaukee Zone in the **Federal Register** (67 FR 19144). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

The Coast Guard is establishing 29 permanent safety zones that will be enforced during fireworks displays occurring annually at the same location. The 29 locations are the Henry W. Maier Festival Park Harbor Island, Outer Milwaukee Harbor, Lake Michigan; 80 feet east of the Annheuser Busch grain elevator, Manitowoc River; 100 feet out on the South Pier, Sheboygan Harbor, Sheboygan River, and Lake Michigan; C Reiss Coal Co. Beach, Lake Michigan and Sheboygan River; Wolfen Buttel Park, Lake Michigan and Kenosha Harbor entrance; Veterans Park, outer Milwaukee Harbor, Lake Michigan; Stephenson Island, Menominee River; 150 feet off Pere Marquette Park, Milwaukee River; 1000 feet east of Manitowoc Yacht Club, Lake Michigan; north breakwall at the elbow, Racine Harbor and Lake Michigan; Leichts Park and the Western Lime Corp. & Leichts Transfer Storage Companies private property, Fox River; Henry W. Maier Festival Park Harbor Island Lagoon, outer Milwaukee Harbor, Lake Michigan; South Shore Park, Lake Michigan; South Pier, Kewaunee Harbor and Lake Michigan; Wisconsin Electric Coal Dock, Port Washington Harbor, Lake Michigan; 1000 feet off Menominee Marina, Lake Michigan; 360 feet off Sturgeon Bay Yacht Harbor, Sturgeon Bay Canal; South breakwall at the second elbow, Algoma Harbor and Lake Michigan; 560 feet off Sister Municipal Marina, Lake Michigan; between East Chicago St. and Humboldt Ave, Milwaukee River; and 500 feet out on the South Pier, Sheboygan Harbor and Lake Michigan.

Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the fireworks launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of Comments and Changes

MSO Milwaukee received no comments or related information pertaining to this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on these small entities for the following reasons: The safety zone is only in effect for a few hours on the day of the event on an annual basis. Vessel traffic can safely pass outside the safety zones during the events. In cases where traffic congestion is greater than expected and blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Milwaukee.

Before the effective period, the Coast Guard will issue maritime advisories widely available to users who might be in the affected area by publication in the **Federal Register** and the Ninth Coast Guard District Local Notice to Mariners Marine information broadcasts and facsimile broadcasts may also be made. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (*see* **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132 Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date and time.* Last week in June through the first two weeks in July; 11:30 a.m. to 9:15 p.m.

(4) *Festa Italiana Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(5) *Summerfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(6) *Mexican Fiesta Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(7) *Bastille Days Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Third week in August; sunset to termination of display.

(8) *Mexican Fiesta Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(9) *Venetian Festival Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(10) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(11) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(12) *Rockets for Schools—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(13) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(14) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(15) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(16) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(17) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(18) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(19) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(20) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(21) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(22) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(23) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(24) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(25) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(26) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(27) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(28) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(29) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(30) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(31) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(32) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(33) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(34) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(35) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(36) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(37) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(38) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(39) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(40) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(41) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(42) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(43) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(44) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(45) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(46) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(47) *Holy Redeemer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.617′ N, 087°53.617′ W; then northwest to 43°01.717′ N, 087°53.817′ W; then northeast to 43°02.067′ N, 087°53.817′ W; then northeast to the point of origin.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(48) *Holy Redeemer Fireworks—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second week in August; sunset to termination of display.

(49) *Holy Redeemer

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taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.909 to read as follows:

§ 165.909 Safety Zones; Annual fireworks events in the Captain of the Port Milwaukee Zone.

(a) *Safety zones.* The following areas are designated safety zones:

(1) *Pridefest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Second week in June; sunset to termination of display.

(2) *Summerfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor encompassed by a line drawn from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Last week in June; sunset to termination of display.

(3) *Summerfest Hole-in-One Shoot/Stunt Shows.*

(i) *Location.* All waters of the Harbor Island Lagoon, outer Milwaukee Harbor from the point of origin at 43°02.50′ N, 087°53.78′ W then west to 43°02.50′ N, 087°53.85′ W; then following the shoreline of the Henry W. Maier Festival Park and Harbor Island back to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date and time.* Last week in June through the first two weeks in July; 11:30 a.m. to 9:15 p.m.

(4) *Festa Italiana Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is also included in this safety zone.

(ii) *Expected date and time.* Third week in July; sunset to termination of display.

(5) *Germanfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Last week in July; sunset to termination of display.

(6) *African World Festival—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* First week in August; sunset to termination of display.

(7) *Irishfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Second Week in September; sunset to termination of display.

(8) *Mexican Fiesta Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Last Week in August; sunset to termination of display.

(9) *Indian Summer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* First week in September; sunset to termination of display.

(10) *Arabianfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Second Week in September; sunset to termination of display.

(11) *St. Patrick's Day Fireworks—Manitowoc.*

(i) *Location.* All waters and adjacent shoreline across from the World War II U.S. Cobia submarine, Manitowoc River encompassed by the arc of a circle with a 70-foot radius with its center in approximate position 44°05.30′ N, 087°39.15′ W (NAD 1983).

(ii) *Expected date and time.* Third week in March; sunset to termination of display.

(12) *Rockets for Schools—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second weekend in May; sunset to termination of display.

(13) *City of Sheboygan Fourth of July Fireworks.*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in the approximate position 43°44.48′ N, 087°42.14′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(14) *City of Kenosha Fourth of July Fireworks.*

(i) *Location.* All waters and adjacent shoreline around the South Pier Light area, Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in approximate position 42°35.17′ N, 087°48.33′ W (NAD 1983). This safety zone will encompass the entrance to Kenosha Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(15) *U.S. Bank (Firstar) Fireworks—Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline south of Juneau Park, outer Milwaukee Harbor encompassed by the arc of a circle with an 840-foot radius of the fireworks barge in approximate position 43°02.23′ N, 087°53.30′ W (NAD 1983).

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(16) *Marinettefest Fireworks.*

(i) *Location.* All waters between the U.S. 41 Interstate Bridge (mile marker 1.88) and the NEW Hydro Inc. Dam (mile marker 2.45) on the Menominee River. This safety zone includes all adjacent shoreline between the bridge and the dam.

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(17) *Riversplash Fireworks-Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline east of Pere Marquette Park, Milwaukee River encompassed by the arc of a circle with a 210-foot radius of the fireworks barge in approximate position 43°02.33′ N, 087°54.46′ W (NAD 1983). (This safety zone will temporarily close down the Milwaukee River.)

(ii) *Expected date and time.* First week in June; sunset to termination of display.

(18) *Manitowoc Municipal Fourth of July Fireworks.*

(i) *Primary location.* All waters and adjacent shoreline east of the Manitowoc Yacht Club, Lake Michigan encompassed by the arc of a circle with an 840-foot radius of the fireworks barge in approximate position 44°06.05′ N, 087°38.37′ W (NAD 1983).

(ii) *Alternate location.* All waters and the adjacent shoreline encompassed by the arc of a circle with a 420-foot radius of the fireworks barge with its center in approximate position 44°05.33′ N, 087°39.00′ W (NAD 1983). If display is moved to secondary site, it will temporarily close entrance to Manitowoc Harbor.

(iii) *Expected date and time.* First week in July; sunset to termination of display.

(19) *Fourthfest of Greater Racine.*

(i) *Primary location.* All waters and adjacent shoreline around the north breakwall, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.14′ N, 087°46.30′ W (NAD 1983).

(ii) *Alternate location.* All waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.21′ N, 087°46.45′ W (NAD 1983) (on the beach north of the northern breakwall).

(iii) *Expected date and time.* First week in July; sunset to termination of display.

(20) *Celebrate Amerifest—Green Bay, WI.*

(i) *Location.* All waters and adjacent shoreline between the Green Bay & Western Railroad Bridge (mile marker 1.03) and the Mason St. Bridge (mile marker 3.52) on the Fox River. This safety will temporarily close the Fox River. (This safety zone does not encompass the water of the East River.)

(ii) *Expected date and time.* First week in July; 2 p.m. to 11 p.m.

(21) *South Shore Frolics Fireworks—Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline east of South Shore Park, Milwaukee Harbor encompassed by the arc of a circle with a 280-foot radius

with its center in approximate position 42°59.43′ N, 087°52.54′ W (NAD 1983).

(ii) *Expected date and time.* Second week in July; sunset to termination of display.

(22) *Kewaunee Annual Trout Festival.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°36.28′ N, 087°25.54′ W (NAD 1983). If display is moved to secondary site, it will temporarily close entrance to Algoma Harbor.

(iii) *Expected time and date.* Second week in August; sunset to termination of display.

(27) *Sister Bay MarinaFest—Sister Bay.*

(i) *Location.* All waters and adjacent

will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

(c) *Enforcement period.* The Captain of the Port Milwaukee will publish at least 10 days in advance a Notice in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section will be enforced.

for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or

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with its center in approximate position 42°59.43′ N, 087°52.54′ W (NAD 1983).

(ii) *Expected date and time.* Second week in July; sunset to termination of display.

(22) *Kewaunee Annual Trout Festival.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°27.30′ N, 087°29.46′ W (NAD 1983). This safety zone will temporarily close the entrance to Kewaunee Harbor.

(ii) *Expected time and date. Third weekend in July; sunset to termination of display.*

(23) *Port Washington Fish Days Fireworks.*

(i) *Location.* All waters and adjacent shoreline around the Wisconsin Electric Coal Dock, Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in approximate position 43°23.07′ N, 087°51.55′ W (NAD 1983). This safety zone will temporarily close the entrance to Port Washington Harbor.

(ii) *Expected date and time.* Third week in July; sunset to termination of display.

(24) *Menominee Waterfront Festival.*

(i) *Location.* All waters and adjacent shoreline off the southeast side of the Menominee Municipal Marina, Lake Michigan encompassed by the arc of a circle with an 840-foot radius of the fireworks launch platform with its center in approximate position 45°20.05′ N, 087°36.49′ W (NAD 1983).

(ii) *Expected date and time.* The Saturday following the first Thursday in August; sunset to termination of display.

(25) *Sturgeon Bay Venetian Night Fireworks.*

(i) *Location.* All waters and adjacent shoreline off the Sturgeon Bay Yacht Club, Sturgeon Bay Canal encompassed by the arc of a circle with a 350-foot radius of the fireworks launch platform with its center in approximate position 44°49.33′ N, 087°23.27′ W (NAD 1983). This safety zone will temporarily close down the Sturgeon Bay Canal.

(ii) *Expected date and time.* First weekend in August; 10 a.m. to termination of fireworks display.

(26) *Algoma Shanty Days Fireworks.*

(i) *Primary location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°36.22′ N, 087°25.55′ W (NAD 1893) forming the primary site.

(ii) *Alternate location.* All waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°36.28′ N, 087°25.54′ W (NAD 1983). If display is moved to secondary site, it will temporarily close entrance to Algoma Harbor.

(iii) *Expected time and date.* Second week in August; sunset to termination of display.

(27) *Sister Bay MarinaFest—Sister Bay.*

(i) *Location.* All waters and adjacent shoreline off the town of Sister Bay, Lake Michigan encompassed by the arc of a circle with a 560-foot radius of the fireworks launch platform with its center in approximate position 45°10.60′ N, 087°06.60′ W (NAD 1983).

(ii) *Expected date and time.* First week in September; sunset to termination of display.

(28) *Milwaukee River Challenge—Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline between the Humboldt Ave. Bridge (mile marker 3.22) and E. Chicago St. (mile marker 1.08) on the Milwaukee River. This safety zone will temporarily close the Milwaukee River for crew boat races.

(ii) *Expected date and time.* Third week in September; 10 a.m. to 5 p.m.

(29) *Sheboygan South High School Homecoming Fireworks.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 420-foot radius with its center in approximate position 43°44.57′ N, 087°42.13′ W (NAD 1983). This safety zone will temporarily close the entrance to Sheboygan Harbor.

(ii) *Expected date and time.* One day in the first two weeks in October; sunset to termination of display.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) The safety zones in this regulation are outside navigation channels and will not adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Milwaukee to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

(c) *Enforcement period.* The Captain of the Port Milwaukee will publish at least 10 days in advance a Notice in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section will be enforced.

Dated: June 24, 2002.

M.R. DeVries,

Commander, Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 02–16749 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD09–02–039

RIN 2115–AA97

Safety Zone; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Bay City Relay for Life Fireworks on August 10, 2002. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Saginaw River.

DATES: This temporary final rule is effective from 10:30 p.m. until 11 p.m. on August 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–039] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists

for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters of the Saginaw River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°35′55″ N, 083°53′34″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 10:30 p.m. until 11 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Saginaw River by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (see **ADDRESSES**.) Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–038 is added to read as follows:

§ 165.T09–038 Safety Zone; Saginaw River, Bay City, MI

DATES: This temporary rule is effective from 3:30 p.m. (local) on July 19, 2002 until 10:40 p.m. (CST) on July 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–032] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal

coordinates are based upon North American Datum 1983 (NAD 83).

The night time safety zone will be enforced on July 19 and again on July 21, 2002 from 9:30 p.m. (local) until 10:40 p.m. (local). The following area is the night time safety zone: all waters and adjacent shoreline of outer Milwaukee Harbor encompassed by the following coordinates: 43°01.22′ N, 087°53.39′ W, east to 43°01.16′ N, 087°53.01′ W, then north to 43°02.13′ N,

p.m. (local) on July 19 and July 21, 2002.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective

$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–038 is added to read as follows:

§ 165.T09–038 Safety Zone; Saginaw River, Bay City, MI.

(a) *Location.* The safety zone will encompass all waters of the Saginaw River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°35′55″ N, 083°53′34″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 10:30 p.m. until 11 p.m. on August 10, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other applicable requirements.

Dated: June 24, 2002.

P.G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–16751 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–032]

RIN 2115–AA97

Safety Zone; Festa Italiana 2002, Milwaukee, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Milwaukee's outer harbor for the Festa Italiana 2002 fireworks display and airshow. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of Lake Michigan and in particular, outer Milwaukee Harbor, Milwaukee, Wisconsin.

DATES: This temporary rule is effective from 3:30 p.m. (local) on July 19, 2002 until 10:40 p.m. (CST) on July 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–032] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule for the fireworks safety zone would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property. In addition, any delay in the effective date of the safety zone for the air show would expose the public and participants to unnecessary hazards associated with low flying aircraft in close proximity to spectator vessels.

Background and Purpose

This safety zone is established to safeguard the public from the hazards associated with launching of fireworks and aircraft flying at high speeds close to the water in Milwaukee's outer Harbor. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The daytime safety zone will be enforced on July 20 and again on July 21, 2002 from 3:30 p.m. (local) until 4:30 p.m. (local). The daytime safety zone will consist of the following: all waters and adjacent shoreline of outer Milwaukee Harbor encompassed by the following coordinates: 43°02.17′ N, 087°53.42′ W, then east to 43°02.11′ N, 087°53.14′ W, then south to 43°01.32′ N, 087°53.21′ W, then west to 43°01.35′ N, 087°53.43′ W, then north along the shoreline to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

The night time safety zone will be enforced on July 19 and again on July 21, 2002 from 9:30 p.m. (local) until 10:40 p.m. (local). The following area is the night time safety zone: all waters and adjacent shoreline of outer Milwaukee Harbor encompassed by the following coordinates: 43°01.22′ N, 087°53.39′ W, east to 43°01.16′ N, 087°53.01′ W, then north to 43°02.13′ N, 087°52.45′ W, then west to 43°02.21′ N, 087°53.27′ W, then south to 43°01.30′ N, 087°53.41′ W, then south along the shoreline to the point of origin (NAD 83).

All persons and vessels shall comply with the instructions of the Captain of the Port Milwaukee or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the outer Milwaukee Harbor during the day zone from 3:30 p.m. (local) until 4:30 p.m. (local) on July 20 and July 21, 2002, and the night zone from 9:30 p.m. (local) until 10:40 p.m. (local) on July 19 and July 21, 2002.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Port of Milwaukee.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

(c) *Enforcement period.* This section is effective from 9:30 p.m. (local) on July

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 30, 2001, we published COTP San Francisco Bay 01–009, a temporary final rule and request for comments, titled "Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA," in the **Federal Register** (66 FR 54663) under 33 CFR 165.T11–095. That rule was similar to the one being enacted herein as it established

rule is impracticable and contrary to the public interest.

As of today, the need for security zones around San Francisco and Oakland International airports still exists. This new temporary final rule will begin at 5 p.m. (PDT) on June 21, 2002, the exact time that the previous airport security zones cease to be in effect, and is set to expire at 4:59 p.m. on December 21, 2002. We have discussed with San Francisco and Oakland airport representatives the

and published that rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). Upon further reflection, and after discussion with airport officials and members of the public, we decided to withdraw the temporary section created by that rule (33 CFR 165.T11–095) and issue a new temporary section in Title 33 of the Code of Federal Regulations. That rule (33 CFR 165.T11–097, published in 67 FR 5482, Feb. 6, 2002), which established security zones extending 1000 yards seaward from the

to assist the Coast Guard in the performance of its duties. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone

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energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–032 is added to read as follows:

§ 165.T09–032 Safety Zone; Milwaukee Harbor, Lake Michigan, Milwaukee, WI.

(a) *Location.* The following are safety zones:

(1) *Day time zone.* All waters and adjacent shoreline of the outer Milwaukee Harbor encompassed by a line drawn between the following coordinates: 43°02.17′ N, 087°53.42′ W; then east to 43°02.11′ N, 087°53.14′ W; then south to 43°01.32′ N, 087°53.21′ W; then west to 43°01.35′ N, 087°53.43′ W; then north along the shoreline to the point of origin (NAD 83).

(2) *Night time zone.* All waters and adjacent shoreline of the outer Milwaukee Harbor encompassed by a line drawn between the following coordinates: 43°01.22′ N, 087°53.39′ W; east to 43°01.16′ N, 087°53.01′ W; then north to 43°02.13′ N, 087°52.45′ W; then west to 43°02.21′ N, 087°53.27′ W, then south to 43°01.30′ N, 087°53.41′ W, then southerly along the shoreline to the point of origin (NAD 83).

(b) *Regulations:* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely effect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

(c) *Enforcement period.* This section is effective from 9:30 p.m. (local) on July 19th, 2002 until 10:40 p.m. (local) on July 21st, 2002. The zone in paragraph (a)(1) will be enforced from 3:30 p.m. until 4:30 p.m. on July 20th; and again during these same times on July 21, 2002. The zones in paragraph (a)(2) will be enforced from 9:30 p.m. until 10:40 p.m. on July 19th; and again during these same times on July 21st, 2002.

Dated: June 24, 2002.

M.R. DeVries,

Commander, Coast Guard, Captain of the Port. Milwaukee, Milwaukee, Wisconsin.

[FR Doc. 02–16752 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02–014]

RIN 2115–AA97

Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5 p.m. (PDT) on June 21, 2002 to 4:59 p.m. (PST) on December 21, 2002.

ADDRESSES: U.S. Coast Guard Marine Safety Office, San Francisco Bay, Coast Guard Island, Building 14, Alameda, CA 94501–5100.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 30, 2001, we published COTP San Francisco Bay 01–009, a temporary final rule and request for comments, titled "Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA," in the **Federal Register** (66 FR 54663) under 33 CFR 165.T11–095. That rule was similar to the one being enacted herein as it established security zones around both San Francisco and Oakland International airports.

On February 6, 2002, we published COTP San Francisco Bay 01–011, a temporary final rule and request for comments, titled "Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA" in the **Federal Register** (67 FR 5482) under 33 CFR 165.T11–097. Similar to its predecessor and the rule being enacted herein, that rule also established security zones around both San Francisco and Oakland International airports.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. On the same day, a similar attack was conducted on the Pentagon in Arlington, Virginia. Also, on the same date, a fourth commercial passenger airplane was hijacked, this one from Newark, New Jersey, and later crashed in Pennsylvania. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels transiting in the San Francisco Bay, and particularly in waters adjacent to San Francisco International Airport and Oakland International Airport. These security zones are needed to protect the United States and more specifically the people, ports, waterways, and properties of the San Francisco Bay area.

The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Francisco and Oakland airports vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to these west coast airports. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

As of today, the need for security zones around San Francisco and Oakland International airports still exists. This new temporary final rule will begin at 5 p.m. (PDT) on June 21, 2002, the exact time that the previous airport security zones cease to be in effect, and is set to expire at 4:59 p.m. on December 21, 2002. We have discussed with San Francisco and Oakland airport representatives the continuing need for security zones and the possibility of making those or similar zones permanent, a process that may require several months to complete.

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. We have requested public comments when publishing the previous regulations and have incorporated the received comments into the security zones being established by this temporary final rule.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the airports adjacent to the San Francisco Bay present possible platforms from which individuals may gain unauthorized access to the airports.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001 have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing two temporary security zones in the navigable waters of the United States surrounding San Francisco International Airport and Oakland International Airport.

On September 21, 2001 we issued a similar temporary final rule under docket COTP San Francisco Bay 01–009, and published that rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). Upon further reflection, and after discussion with airport officials and members of the public, we decided to withdraw the temporary section created by that rule (33 CFR 165.T11–095) and issue a new temporary section in Title 33 of the Code of Federal Regulations. That rule (33 CFR 165.T11–097, published in 67 FR 5482, Feb. 6, 2002), which established security zones extending 1000 yards seaward from the San Francisco and Oakland airport shorelines, will expire at 4:59 (LCL) on June 21, 2002.

We received several written comments about the latest rule (33 CFR 165.T11–097) and the 1000-yard security zones. Virtually all of those comments urged a reduction in size of the security zones in order to allow increased public access to San Francisco Bay for fishing, windsurfing and similar uses. We have also discussed with San Francisco and Oakland airport representatives the continuing need for security zones and the possibility of making those or similar zones permanent, a process that may require several months to complete. Upon considering the written comments and discussions regarding the security zones, we have decided to issue a new temporary final rule that will establish temporary security zones around San Francisco International and Oakland International airports extending approximately 200 yards seaward from the shorelines of each airport.

Discussion of Rule

The Coast Guard is establishing two security zones within the navigable waters of San Francisco Bay that will extend 200 yards seaward from the shorelines of the San Francisco International Airport and the Oakland International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for each airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic, fishing, windsurfing and other activities upon San Francisco Bay.

These temporary security zones are necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Francisco Bay area. These zones will be enforced by the official patrol (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard the patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment for up to 12 years (class C felony).

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the recent terrorist actions against the United States, the implementation of these security zones is necessary for the protection of the United States and its people. Because these security zones are established in an area of the San Francisco Bay that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "Small entities" include small businesses, not-for-profit organizations

that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

These security zones will not have a significant impact on a substantial number of small entities because these security zones will not occupy an area of the San Francisco Bay that is frequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation, because we are establishing security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

(2) *Oakland International Airport Security Zone.* This security zone extends approximately 200 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°43′35″N and longitude 122°15′00″W; thence to 37°43′40″N and 122°15′05″W; thence to 37°43′34″N and 122°15′12″W; thence to 37°43′24″N and

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 062702B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Spring Commercial Red Snapper Component

is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available spring commercial quota of 3.10 million lb (1.41 million kg) for red snapper will be reached when the fishery closes at noon on July 7, 2002. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on October 1, 2002. The operator of a vessel with a valid reef fish

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that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

These security zones will not have a significant impact on a substantial number of small entities because these security zones will not occupy an area of the San Francisco Bay that is frequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Ross Sargent, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation, because we are establishing security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.T11–086 to read as follows:

§ 165.T11–086 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations:* (1) *San Francisco International Airport Security Zone.* This security zone extends approximately 200 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°36′19″N and longitude 122°22′36″W; thence to 37°36′45″N and 122°22′18″W; thence to 37°36′26″N and 122°21′30″W; thence to 37°36′31″N and 122°21′21″W; thence to 37°36′17″N and 122°20′45″W; thence to 37°36′37″N and 122°20′40″W; thence to 37°36′50″N and 122°21′08″W; thence to 37°37′00″N and 122°21′12″; thence to 37°37′21″N and 122°21′53″W; thence to 37°37′39″N and 122°21′44″W; thence to 37°37′56″N and 122°21′51″W; thence to 37°37′50″N and 122°22′20″W; thence to 37°38′25″N and 122°22′54″W; thence to 37°38′25″N and 122°23′02″W, and along the shoreline back to the beginning point. Also, the lighted platform positioned approximately 1000 yards northeast of the airport shoreline is surrounded by a circular security zone with a radius extending 100 yards from the center point, 37°38′12″N and 122°21′40″W.

(2) *Oakland International Airport Security Zone.* This security zone extends approximately 200 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°43′35″N and longitude 122°15′00″W; thence to 37°43′40″N and 122°15′05″W; thence to 37°43′34″N and 122°15′12″W; thence to 37°43′24″N and 122°15′11″W; thence to 37°41′54″N and 122°13′05″W; thence to 37°41′51″N and 122°12′48″W; thence to 37°41′53″N and 122°12′44″W; thence to 37°41′35″N and 122°12′18″W; thence to 37°41′46″N and 122°12′08″W; thence to 37°42′03″N and 122°12′34″W; thence to 37°42′08″N and 122°12′32″W; thence to 37°42′31″N and 122°12′35″W; thence to 37°42′35″N and 122°12′30″W; thence to 37°42′40″N and 122°12′06″W, and along the shoreline back to the beginning point.

(b) *Effective period.* This section is in effect from 5 p.m. (PDT) on June 21, 2002 to 4:59 p.m. (PST) on December 21, 2002. If the need for these security zones ends before the scheduled termination time, the Captain of the Port will cease enforcement of these security zones and will also announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in either of these security zones established by this temporary section, unless authorized by the Captain of the Port, his designated representative or the official patrol consisting of Coast Guard commissioned, warrant or petty officers onboard vessels and patrol craft of the Coast Guard or of any government agency or entity that has agreed to assist the Coast Guard in the performance of its duties. All other general regulations of § 165.33 of this part apply in the security zones established by this temporary section.

Dated: June 21, 2002.

L.L. Hereth,

Captain, Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 02–16753 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 062702B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Spring Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the spring portion of the annual commercial quota for red snapper will be reached on July 7, 2002. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, July 7, 2002, until noon, local time, on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2002. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available spring commercial quota of 3.10 million lb (1.41 million kg) for red snapper will be reached when the fishery closes at noon on July 7, 2002. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on October 1, 2002. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, July 7, 2002.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The 2002 recreational red snapper season opens on April 21, 2002, and closes on October 31, 2002. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, July 7, 2002, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: June 27, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16712 Filed 6–28–02; 3:10 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020313058–2094–02; I.D. 062702E]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Quota Harvested for

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages of the annual quota. The period 1 commercial quota (May through October) is distributed to the coastal states from Maine through Florida as described in § 648.230.

period 1 quota for spiny dogfish has been harvested.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota for the period has been harvested and that no commercial quota for the spiny dogfish fishery is available. The

Proposed Rules

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

Executive Order 12866, Executive Order 12988, Regulatory Flexibility Act, and the Paperwork Reduction Act

This proposed rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and,

official railcar and barge inspections is about 850,000 railcars per year, and about 28,000 barges per year. Less than 2 percent of the total number of railcars and less than 3 percent of the total number of barges were inspected under

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020313058–2094–02; I.D. 062702E]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Quota Harvested for Period 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; commercial quota for period 1.

SUMMARY: NMFS announces that the period 1 spiny dogfish commercial quota available to the coastal states from Maine through Florida has been harvested. Federally permitted commercial vessels may no longer land spiny dogfish for the duration of period 1 (through October 31, 2002). Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing spiny dogfish in these states.

DATES: Effective 0001 hrs local time, July 1, 2002, through 2400 hrs local time, October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, at (978) 281–9104.

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages of the annual quota. The period 1 commercial quota (May through October) is distributed to the coastal states from Maine through Florida as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2001 fishing year was 4,000,000 lb (1,814 mt) (67 FR 30614, May 7, 2002). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30), with trip limits intended to preclude directed fishing. Quota period 1 was allocated 2,316,000 lb (1,050 mt) and quota period 2 was allocated 1,684,000 lb (764 mt) of the commercial quota, respectively.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data and other available information, determines when the commercial quota has been harvested. NMFS is required to publish a notice in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the spiny dogfish commercial quota has been harvested and no commercial quota is available for landing spiny dogfish for the remainder of a given quota period. The Regional Administrator has determined, based upon dealer reports and other available information, that the 2002 commercial period 1 quota for spiny dogfish has been harvested.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota for the period has been harvested and that no commercial quota for the spiny dogfish fishery is available. The Regional Administrator has determined that period 1 for spiny dogfish no longer has commercial quota available. Therefore, effective 0001 hrs local time, July 1, 2002, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through October 31, 2002, 2400 hrs local time. The fishing year 2002 quota period 2 for commercial spiny dogfish harvest will open on November 1, 2002. Effective July 1, 2002, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16713 Filed 6–28–02; 3:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket Number FGIS 2002–003]

RIN 0580–AA76

Exceptions to Geographic Areas for Official Agencies Under the USGSA

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations issued under the United States Grain Standards Act (USGSA) to establish criteria to allow more than one designated official agency to inspect or weigh grain within a single geographic area. This proposal would enhance the orderly marketing of grain by providing segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services without undermining the integrity of the official system.

DATES: Written comments must be submitted on or before September 3, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by electronic mail: *comments.gipsa@usda.gov*. Please state that your comments refer to Docket Number FGIS 2002–003. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Neil Porter, Director, Compliance Division at 202–720–8262

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Executive Order 12988, Regulatory Flexibility Act, and the Paperwork Reduction Act

This proposed rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The U.S. Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). GIPSA conducted a 6-year voluntary pilot program. The pilot program permitted more than one official agency to operate in the same geographic area. There are 58 official agencies (15 States and 43 private agencies) designated under the USGSA. Thirty-six agencies (7 States and 29 private agencies) or 61 percent participated in the pilot program. All 43 private agencies are classified as business services, and all are "small business entities" under the guidelines of the Small Business Administration (SBA). The SBA does not classify States as small or large business entities. Volumes were down for state agencies. Of the 43 private agencies, 29 or 67 percent participated in the pilot program. Fourteen of the 29 saw an increase in service requests and 15 saw a decrease in service requests due to the greater flexibility provided by the pilot program. All increases and decreases in service requests represented inspections of railcars or barges. A 5-year average of official railcar and barge inspections is about 850,000 railcars per year, and about 28,000 barges per year. Less than 2 percent of the total number of railcars and less than 3 percent of the total number of barges were inspected under the pilot program by designated official agencies.

The customers (grain elevators) of the official agencies that requested service under the pilot program represented a mix of both large and small entities as defined for the grain industry by the SBA. GIPSA expects that this would remain the case. Approximately 70 percent of the 128 grain elevators that participated in the pilot program were small entities under the SBA guidelines, and accounted for 82 percent of the service volume for railcars. The 128 elevators that participated in the pilot program represent less than two percent of the estimated 9,695 off-farm storage facilities in the United States that could receive official inspection services.

Fifty-six percent of the volume of railcar inspection services during the pilot program was performed at grain elevators that had not used official services for more than a year. GIPSA believes that the pilot program has enhanced the orderly marketing of grain by providing grain elevators with improved services without undermining the integrity of the USGSA and the official system. At the same time, there has been no significant economic impact on small entity official agencies or grain elevators.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. There would be no additional reporting or recordkeeping requirements imposed by this action. The request to GIPSA for approval can be done by telephone. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Background

In 1976, the USGSA specified exclusive geographic boundaries for each designated entity performing official inspections. In later years, some grain firms reported delays in getting service due to the distance from the inspection laboratories serving them.

Others had difficulty getting service during harvest or other peak demand periods. In April 1993, the General Accounting Office released a study, entitled "Grain Inspection Industry Views on the Decline in Official Inspections and Inspection Costs," which questioned maintaining exclusivity of boundaries.

On November 1, 1995, GIPSA, under the authority of the 1993 Amendments to the USGSA, initiated a pilot program

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867,

than seasonal shipping fluctuations, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original

(Approved by the Office of Management and Budget under control number 0580–0013)

8. Section 800.196 is amended by revising paragraph (f)(1) and the information collection parenthetical to read as follows:

§ 800.196 Designations.

* * * * *

(f) *Area of responsibility.* (1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical

uranium and thorium recovery facilities. In support of its petition the NMA argues that because of adverse economic conditions, the requested fee relief is in the public interest since it would help ensure the continued viability of a domestic uranium recovery industry.

The NRC is denying the petition because the circumstances outlined by the petitioner do not qualify the uranium recovery industry for a "public interest" fee exemption. Further, with extremely limited exceptions, the NRC

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Others had difficulty getting service during harvest or other peak demand periods. In April 1993, the General Accounting Office released a study, entitled "Grain Inspection Industry Views on the Decline in Official Inspections and Inspection Costs," which questioned maintaining exclusivity of boundaries.

On November 1, 1995, GIPSA, under the authority of the 1993 Amendments to the USGSA, initiated a pilot program to study the effect of permitting more than one designated agency to inspect or weigh grain in a single geographic area. GIPSA concluded, based on information gathered from the pilot program, that less restrictive geographic service area requirements on designated official agencies would improve the quality of service provided to the American grain industry and facilitate the marketing of grain without undermining the integrity of the USGSA and the official system. Legislative authority was requested to permit more than one designated official agency to provide official services within a single geographic area.

Congress amended the USGSA in 2000 to give the Department discretion, under certain circumstances, to allow more than one designated official agency to provide official inspection services within a single geographic area. GIPSA is now proposing to implement this authority by revising the regulations under the USGSA. This proposed rule would allow, under certain circumstances, more than one designated official agency to provide official inspection services within a single geographic area. This proposal would provide segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services.

Proposed Action

We propose to revise the following: 7 CFR 800.81, 800.99, 800.116, 800.117, 800.118, 800.185, and 800.196 to implement changes in the USGSA. The proposed changes would allow sampling for official sample-lots, and weighing of sacked grain outside the geographical boundaries assigned to the designated official agency. Program criteria for nonuse of service, timely service, and barge probing would be provided. Requests for original services would allow qualified applicants to use another agency to provide service. Official personnel may operate outside of the area of responsibility assigned to them. The proposed action would allow exceptions to the designated areas of responsibility. The sections regarding certification would be combined for a more logical sequence.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.81 is amended by revising paragraphs (a)(1) and (d) and the information collection parenthetical to read as follows:

§ 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service.* (1) Original official sample-lot inspection service. For original sample-lot inspection purposes, an official sample shall be obtained by official personnel; representative of the grain in the lot; and protected from manipulation, substitution, and improper or careless handling.

* * * * *

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling, except as provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

3. Section 800.99 is amended by revising paragraph (d) to read as follows:

§ 800.99 Checkweighing sacked grain.

* * * * *

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency, except as otherwise provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

4. Section 800.116 is revised to read as follows:

§ 800.116 How to request original services.

(a) *General.* Except as otherwise provided for in § 800.117, requests for original services shall be filed with an agency or field office authorized to operate in the area in which the original service is to be performed. All requests shall include the information specified in §800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If the information specified by § 800.46 is not available at the time the request is filed, official personnel may, at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Except as provided for in § 800.117, requests for original services, other than submitted sample inspections, must be made to the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when official personnel receive the request. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(Approved by Office of Management and Budget under control number 0580–0013.)

5. Section 800.117 is revised to read as follows:

§ 800.117 Who shall perform original services.

(a) *General.* Original services shall be performed by the agency or field office assigned the area in which the service will be provided, except as provided in paragraph (b) of this section.

(b) *Exceptions for official agencies to provide service.* (1) *Timely service.* If the assigned official agency cannot provide service within 6 hours of a request, the service may be provided by another official agency upon approval from the Service.

(2) *Nonuse of service.* If the assigned official agency has not provided official services to an applicant for 90 consecutive days, due to reasons other

than seasonal shipping fluctuations, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original services, and no official agency within a reasonable proximity is willing to provide such services on an interim basis, the services shall be provided by authorized employees of the Secretary, or other persons licensed by the Secretary, until the services can be provided on a regular basis by an official agency, as provided in § 800.196.

6. Section 800.118 is revised to read as follows:

§ 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(Approved by Office of Management and Budget under control number 0580–0013.)

7. Section 800.185 is amended by revising paragraph (d) and the informational parenthetical to read as follows:

§ 800.185 Duties of official personnel and warehouse samplers.

* * * * *

(d) *Scope of operations.* Official personnel and warehouse samplers shall operate only within the scope of their license or authorization and except as otherwise provided in § 800.117, operate only within the area of responsibility assigned to the official agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

8. Section 800.196 is amended by revising paragraph (f)(1) and the information collection parenthetical to read as follows:

§ 800.196 Designations.

* * * * *

(f) *Area of responsibility.* (1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions, except as otherwise provided in § 800.117. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service, or in accordance with provisions set forth in § 800.117.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

Dated: June 27, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–16639 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–EN–F

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[Docket No. PRM–170–5]

National Mining Association; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Denial of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–170–5) submitted by the National Mining Association (NMA). In its petition, NMA asked the NRC to conduct a rulemaking that would establish the basis for waiving all licensing and inspection fees and annual fees imposed on uranium recovery licensees, or alternatively, to waive the fees associated with a contemplated rulemaking that would develop requirements for licensing uranium and thorium recovery facilities. In support of its petition the NMA argues that because of adverse economic conditions, the requested fee relief is in the public interest since it would help ensure the continued viability of a domestic uranium recovery industry.

The NRC is denying the petition because the circumstances outlined by the petitioner do not qualify the uranium recovery industry for a "public interest" fee exemption. Further, with extremely limited exceptions, the NRC does not base its fees on the economic circumstances of particular licensees or classes of licensees. Moreover, the Commission does not envision instituting a rulemaking proceeding to establish a new regulation for licensing uranium and thorium recovery facilities.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner may be examined at the NRC Public Document Room, Room O1F23, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS accession number for the package containing documents related to this petition is ML021230010. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert D. Carlson, Telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: Under the Omnibus Budget Reconciliation Act of 1990 as amended (OBRA–90), for Fiscal Year (FY) 2002, the NRC is required to collect in fees approximately 96 percent of its budget authority (minus sums collected from the Nuclear Waste Fund and any sums appropriated from the General Fund).

The Petition

On November 2, 2001 (66 FR 55604), the NRC published a notice of receipt for a September 11, 2001, petition for

rulemaking (PRM–170–5) filed by NMA. The NMA requested that the Commission modify its rules to waive all licensing and inspection fees (10 CFR part 170) and annual fees (10 CFR part 171) imposed on uranium recovery licensees. Alternatively, NMA asked that fees be waived for a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities (10 CFR part 41).

In making its argument, the NMA asserts that not all licensees pay fees, noting that annual fees are not imposed on those licensees who have relinquished their authority to operate and have permanently ceased operations; that small business entities pay reduced fees; and that non-profit educational institutions are fully exempted from fees. The NMA then states that allowing the domestic uranium recovery industry to "wither to the point of virtual extinction or to

report that the State of Wyoming has granted some tax relief to the uranium recovery industry in Wyoming.

The Governor of Wyoming submitted comments arguing that maintenance of a viable uranium recovery industry not only is in the public interest, but also would further President Bush's national energy policies. The Governor of Wyoming suggests that when, and if, the price for uranium increases to acceptable levels, and there is a sufficient number of licensees, then fees

A private company, Envirocare, argues that grant of the waiver would not be in the public interest because other licensees would be required to bear an inequitable and unfair fee burden. Envirocare further asserts that waiving fees for uranium recovery licensees would provide them with an unfair competitive advantage over companies such as Envirocare, which compete with those licensees for contracts to dispose of 11e.(2) waste material. In effect, Envirocare argues,

the Commission's answers to the questions of fairness and public interest must be suitable to be used for any other petition, regardless of the fee category or industry. The State further comments that since states have direct regulatory responsibility for low-activity radioactive waste disposition and experience in regulating diffuse uranium, thorium and their decay products, the Commission may wish to reconsider the states' offer to take the lead on developing a new 10 CFR part

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rulemaking (PRM–170–5) filed by NMA. The NMA requested that the Commission modify its rules to waive all licensing and inspection fees (10 CFR part 170) and annual fees (10 CFR part 171) imposed on uranium recovery licensees. Alternatively, NMA asked that fees be waived for a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities (10 CFR part 41).

The NMA argues that fee relief for uranium recovery licensees is in the public interest. According to the petitioner, the uranium recovery industry provides value to the United States by producing energy-generating yellowcake, thereby reducing reliance on foreign supplies, and by recycling waste products and providing additional waste disposal options. The NMA believes that the NRC has already recognized this public interest argument in discussions about extensions of time for beginning decommissioning at uranium recovery sites. The petitioner asserts that during these difficult economic times for the domestic uranium recovery industry, NRC fees could have a significantly adverse impact on the industry's viability, including its ability to maintain knowledgeable talent necessary for all the industry to develop and progress.

In support of its petition, the NMA argues that the uranium recovery industry is experiencing a significant economic downturn as a result of a low spot-market price of under $8 per pound (the industry would become profitable if prices rose to $13–16 per pound), a decrease in sector employment of 50 percent since 1996, and a low demand for and an oversupply of uranium. Thus, the petitioner argues that fee relief is needed to help ensure the continued viability of a domestic industry. The petitioner is further concerned that under the existing NRC annual fee schedule, as the number of uranium recovery licensees decrease, the annual fees for the remaining licensees increase, placing an unreasonable financial burden on the few remaining licensees. The NMA further claims that some of the fee increases which have been borne by the uranium recovery licensees have resulted from "regulatory inefficiencies" such as the loss of agency expertise resulting from the Commission's decision to close the Denver Uranium Recovery Field Office, the protracted Hydro Resources Inc. informal NRC hearing, and excessive and dual regulation. Under these circumstances, the NMA argues, fee relief is in the public interest.

In making its argument, the NMA asserts that not all licensees pay fees, noting that annual fees are not imposed on those licensees who have relinquished their authority to operate and have permanently ceased operations; that small business entities pay reduced fees; and that non-profit educational institutions are fully exempted from fees. The NMA then states that allowing the domestic uranium recovery industry to "wither to the point of virtual extinction or to disappear completely" cannot be in the national public interest because of the benefits provided by the industry.

Public Comments

The Commission solicited public comment on the rulemaking petition in the **Federal Register** of November 2, 2001 (66 FR 55604), and requested that comments be filed by January 16, 2002. The NRC also mailed the **Federal Register** notice to all NRC licensees (more than 5000 entities). In response, the Commission received 14 comments. In addition, the NRC in its proposed fee rule for FY 2002 (67 FR 14818; March 27, 2002) noted the pendency of the NMA petition and explained that if the Commission decided to grant the petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The NRC invited any member of the public who had arguments to place before the Commission, which had not been previously submitted in response to the November 2, 2001, **Federal Register** Notice, to do so during the public comment period for the FY 2002 proposed fee rule.

Although three additional comments were received on the NMA petition during the FY 2002 proposed fee rule public comment period, they did not surface any new issues. All three of these commenters disagreed with the NRC's decision to invite additional comments, stating that the initial comment period was sufficient and the NRC should not have reopened it as part of the FY 2002 proposed fee rule.

1. Comments Supporting the NMA Petition

The NRC received eight comment letters in support of the petition; six from uranium recovery licensees, and two from industry groups. The uranium recovery industry supports the petition, endorses the contentions advanced by NMA, and offers additional arguments.

One commenter stated that last year the United States relied on imports, or inventory draw-downs, for 94 percent of the fuel needed to operate the nation's reactors. The commenter asserts that with even lower domestic uranium production expected in 2001, U. S. nuclear utilities will be even more dependent on imports and inventory draw-downs to meet their needs. The commenter further states that granting the petition would be in the public interest because it would provide an immediate and tangible benefit to uranium recovery licensees, and help preserve what is left of the dwindling domestic uranium production industry.

Some commenters stated that the uranium recovery industry is vital to the U. S. energy security and national security, for example, to ensure energy independence and a stable source of domestic uranium for the U.S. Nuclear Navy. Some commenters also noted that conventional mills can offer recycling/disposal options to other generators whose waste contains recoverable uranium.

Two commenters argue that assuring the viability of the domestic uranium recovery resources and waste disposal capacity until the uranium prices recover, and until regulatory policy initiatives are in place to make these resources even more viable, will not result in an unreasonable burden shift to other licensees. In support of this argument, the commenters assert that many other classes of licensees stand to benefit from access to more cost-effective disposal options and from the stability of having viable domestic partners and customers. Further, they argue, some of the licensees who would bear the burden of the shift in fees have benefitted directly from the depressed uranium prices over the years.

Another commenter states that the NRC's current fees represent a tremendous and stifling burden on the uranium recovery industry, with no end to escalating charges in sight. Failure to provide fee relief could thus result in all domestic producers ceasing operations.

The Wyoming Congressional delegation jointly sent in a comment supporting the petition. The members of the delegation argue that the grant of the petition is in the nation's interest because this action would provide assistance to a vital domestic industry that is struggling to maintain viability in the face of depressed worldwide uranium markets. The delegation recognizes that this would ultimately shift the burden of fees to other licensees, but notes that many of these licensees had benefitted from depressed uranium prices. These commenters stress the importance of reducing U.S. dependence on foreign supply sources, especially in light of the events of September 11. The commenters also

report that the State of Wyoming has granted some tax relief to the uranium recovery industry in Wyoming.

The Governor of Wyoming submitted comments arguing that maintenance of a viable uranium recovery industry not only is in the public interest, but also would further President Bush's national energy policies. The Governor of Wyoming suggests that when, and if, the price for uranium increases to acceptable levels, and there is a sufficient number of licensees, then fees should be reinstated.

2. Comments Against the NMA Petition

The NRC received six comment letters opposing the petition. One person holding a license for a nuclear gauge argues that granting NMA members a waiver is unfair to other licensees, who would then be required to bear NRC costs associated with regulation of the uranium recovery industry. Increased fees would thus constitute an "additional tax" that would result in further financial hardships for others. This commenter stated that forcing other companies and industries to pay more so the mining industry can stay in business is not in the public interest. This same commenter argued that if the petitioner's members only need temporary relief, then they should seek loans.

A state employee involved with licensing and inspection, commenting in his private capacity, states that granting the petition would set a bad precedent that could carry over to Agreement States. This commenter further asserts that Canada or Australia can provide the U.S. plentiful supplies of uranium, that there is no reason to expect the domestic market to turn around in the near future, and that most of the uranium recovery licensees are owned by larger companies able to afford annual fees. Finally, the commenter expresses the concern that waiving uranium recovery licensees' fees would result in additional pressure to reduce the amount of funding to be allocated for NRC licensing and inspection of uranium recovery sites.

The U.S. Environmental Protection Agency (EPA), while not taking a position on whether the petition should be granted, said that any use of uranium recovery facilities for disposal of high-volume, low-level radioactive waste, as suggested by the petitioner, "deserve[d] a thorough review. * * *" EPA believes that further discussion regarding the petitioner's suggestion of additional uses for uranium mill tailings impoundments warrants further discussion between EPA, the affected States, and the NRC.

A private company, Envirocare, argues that grant of the waiver would not be in the public interest because other licensees would be required to bear an inequitable and unfair fee burden. Envirocare further asserts that waiving fees for uranium recovery licensees would provide them with an unfair competitive advantage over companies such as Envirocare, which compete with those licensees for contracts to dispose of 11e.(2) waste material. In effect, Envirocare argues, grant of the petition would result in a government-furnished subsidy that would place companies like Envirocare, who pay full fees, at a competitive disadvantage. Envirocare also claims there remains a viable uranium recovery industry that does not need a subsidy.

Representing power reactor licensees, the Nuclear Energy Institute (NEI) argues that the NRC lacks the authority to grant the petition; specifically, the NRC lacks the authority to decide whether maintenance of a domestic uranium recovery industry is in the public interest. Moreover, NEI says, granting fee relief to the uranium recovery industry would be unfair and inequitable to other NRC licensees. The NEI advocates that the NRC should not base its fees on economics and market factors, the economic health of a licensee, or the ability of a licensee to pass along fees to its customers. As an alternative means of reducing uranium recovery fees, NEI supports various regulatory and legislative initiatives to reduce unnecessary regulatory burden, to place greater onus on individual licensees for self-monitoring and regulatory compliance assessment, to make regulations more risk-informed and performance-based, and to end dual regulation. NEI further indicates that there is merit in granting fee relief to uranium recovery facilities that are not operating and are in standby status. However, NEI expresses concern that the grant of the petition would establish a poor public policy precedent of regulating for-profit licensees by exception.

The Colorado Department of Public Health and Environment opposes the grant of the petition noting that uranium recovery licensees may ask for similar fee reductions in Agreement States. The State is concerned that this could serve as a precedent for other industries to petition both the NRC and the Agreement States for fee reductions, and if a state sets its fees by charging a percentage of NRC fees, the reduction in fees for the uranium recovery licensees may translate to an increase for all other licensees in that state, including small gauge holders. The State indicates that the Commission's answers to the questions of fairness and public interest must be suitable to be used for any other petition, regardless of the fee category or industry. The State further comments that since states have direct regulatory responsibility for low-activity radioactive waste disposition and experience in regulating diffuse uranium, thorium and their decay products, the Commission may wish to reconsider the states' offer to take the lead on developing a new 10 CFR part 41.

Intervening NRC Actions

In its FY 2002 proposed fee rule, which the Commission published for public comment on March 27, 2002 (67 FR 14818), the NRC stated that the costs of generic activities for the uranium recovery class of licensees should be distributed among the licensees under both the Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I (sites closed prior to enactment of UMTRCA, for which the U.S. Department of Energy (DOE) is responsible for cleanup) and Title II (sites holding active NRC licenses at the time Congress enacted UMTRCA) programs. In the past, DOE has not been assessed any portion of these generic costs as the sole licensee for all Title I sites. The NRC has adopted this change in the final FY 2002 fee rule, resulting in a decrease of the annual fees assessed to the commercial uranium recovery licensees. This represents an approximately 18 percent decrease in annual fees since FY 2001, and is the second straight year of significant fee reductions for the uranium recovery class of licensees. In FY 2001, the uranium recovery class received an approximately 29 percent reduction in annual fees from FY 2000. The FY 2002 final fee rule, including the current fee schedule for uranium recovery licensees, is scheduled to be published in the **Federal Register** on June 24, 2002.

Denial of the Petition

The NRC is denying the petition for the following reasons:

1. The Commission does not believe that Congress, in establishing user fee requirements, expected the NRC fee structure for a given class of licensee to be based primarily on licensees' economic circumstances, rather than on the NRC's budgeted costs for regulating that class of licensees. OBRA–90 requires that the Commission's annual fees "shall have a reasonable relationship to the cost of providing regulatory services." Granting the fee waiver requested would be inconsistent

with that mandate. Therefore, absent specific legislation from Congress, including appropriations from the general fund, the NRC cannot provide the relief sought by the petitioner.

2. The Commission recognizes the national policy interest in maintaining a domestic source of uranium that has been previously expressed by Congress in the Energy Policy Act of 1992 and the U.S. Energy Corporation Privatization Act. However, there is nothing in this

fees the NRC has established for such entities in § 171.16(c).

Previously, in very limited circumstances, the Commission also granted partial annual fee exemptions to certain reactor licensees when it concluded that, as a result of certain economic factors, the NRC's regulatory costs for those licensees were substantially lower than for other reactors. There are no such entities presently operating. The current annual

reconsideration and ultimately restored the exemption, but not by taking into account the ability of these non-profit educational institutions to "pass through" their costs. Instead, the Commission based the exemption on the theory that these institutions, unlike commercial entities, provide a "public good." This term is used in economic theory to describe goods or services that are non-depletable (one can acquire the goods without reducing the amount

or a licensee's economic status, or a licensee's inability to "pass through" the costs to its customers.

Inevitably, were the Commission to exempt uranium recovery licensees from NRC fees, other licensees—both those forced to subsidize the NRC's regulation of the uranium recovery industry and those claiming economic hardship of their own—would also demand fee relief. Widespread and frequent reevaluation of fee schedules

more detailed discussion of this issue in the subject final rule (58 FR 38665, 38667–69; July 20, 1993). In addition, the Commission might have to look at the overall corporate structures of licensees to see, for example, if a corporate parent or subsidiary could equitably pay the fees imposed on a temporarily distressed enterprise.

The Commission is further concerned that a detailed examination of economic factors would destabilize the NRC's fee

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550–AA22

Safety and Soundness; Correction

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with that mandate. Therefore, absent specific legislation from Congress, including appropriations from the general fund, the NRC cannot provide the relief sought by the petitioner.

2. The Commission recognizes the national policy interest in maintaining a domestic source of uranium that has been previously expressed by Congress in the Energy Policy Act of 1992 and the U.S. Energy Corporation Privatization Act. However, there is nothing in this legislation that supercedes the law requiring the NRC to collect appropriate fees from its licensees and applicants. The Commission further notes that many of the uranium recovery licensees are large corporations, with sales in the millions or billions of dollars, or they are subsidiaries of very large corporations. If the Commission were to grant the petition, other licensees would be required to subsidize the uranium recovery industry through increased fees in order for the Commission to meet the requirements of OBRA–90.

Many other industries regulated by the NRC could also argue that they provide valuable public services, such as power reactors, nonprofit service organizations and medical facilities, and many of these entities may also be experiencing financial difficulties. However, in order for the NRC to meet the requirements of OBRA–90, the NRC is not able to base its fees on the public services these entities provide, nor is it able to base its fees on their economic conditions.

3. While the Commission understands that the uranium recovery industry is operating in adverse economic conditions, historically the Commission has not taken licensees' economic conditions into account when establishing fees, with the exception of licensees who qualify as small entities under NRC size standards. The NRC has established reduced annual fees for qualifying small entities pursuant to the statutory requirement in the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, such that in rulemaking proceedings, the Commission consider the impact of its actions on small entities and consider alternatives to those impacts. In accordance with the Small Business Administration's guidelines, in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards, receipts from all sources, not solely receipts from licensed activities, are considered. Further, a licensee that is a subsidiary of a large entity does not qualify as a small entity. Those uranium recovery licensees that qualify as small businesses under NRC's size standards are eligible to pay the reduced annual fees the NRC has established for such entities in § 171.16(c).

Previously, in very limited circumstances, the Commission also granted partial annual fee exemptions to certain reactor licensees when it concluded that, as a result of certain economic factors, the NRC's regulatory costs for those licensees were substantially lower than for other reactors. There are no such entities presently operating. The current annual fee exemption provision for reactors (10 CFR 171.11(c)) lists age and size of the reactor, number of customers in the rate base, and the net increase in KWh costs for each customer directly related to the annual fee as factors the Commission may consider in granting an exemption for reactors. In establishing this provision, the Commission stated it may grant such relief only if it is persuaded by the licensee that these factors "substantially reduce the NRC's regulatory costs for that plant and the benefits bestowed on that licensee below that of the other power reactors" (51 FR 33224; September 18, 1986). Thus, the reactor exemption provision is not based on the economic factors per se, but rather on any reduction in NRC costs that are the result of these factors.

4. In a 1993 decision, the U.S. Court of Appeals for the District of Columbia Circuit made clear that the Commission cannot take into account the ability of one class of licensees to "pass through" their costs to others, while refusing to consider similar economic considerations for other classes. In *Allied Signal* v. *NRC*, 988 F. 2d 146 (D.C. Cir. 1993), the court remanded for reconsideration parts of the NRC's FY 1991 annual fee rule. The court questioned the Commission's decision to exempt non-profit educational institutions from NRC fees on the grounds (in part) that they could not "pass through" the costs of those fees to their customers, without attempting a similar "pass through" analysis for other licensees. The court indicated that while Congress had not mandated that the NRC consider the ability of a licensee to "pass through" its fees, if this could be done with reasonable accuracy and cost, there appeared no reason why the Commission should not do so. In response to this decision, the Commission issued a final rule which revoked the prior non-profit educational institution fee exemption. The Commission found the ability to "pass through" costs to be an unworkable standard for setting fees.

The university community petitioned the Commission to reconsider its rule. The Commission solicited public comment on the petition for reconsideration and ultimately restored the exemption, but not by taking into account the ability of these non-profit educational institutions to "pass through" their costs. Instead, the Commission based the exemption on the theory that these institutions, unlike commercial entities, provide a "public good." This term is used in economic theory to describe goods or services that are non-depletable (one can acquire the goods without reducing the amount available) and acquirable by anyone (it is impossible to prevent others from acquiring the good). In practice, this term encompasses the non-proprietary research that non-profit educational institutions make available at no cost.

The services provided by NMA members are not a "public good" in the same sense. Uranium is depletable and its owners can prevent its cost-free acquisition by others. Hence, the "public good" based exemption for non-profit educational institutions' research cannot plausibly be extended to the uranium recovery industry.

5. The Commission has consistently taken the position that it will not take licensees' special economic circumstances into account in establishing fees. In 1995, it denied a petition by the uranium recovery industry seeking reduced annual fees for uranium mills in standby status, because these licensees have the authority to operate and have made a business decision to remain in standby status rather than terminate their licenses (60 FR 20918; April 28, 1995). Similarly, the Commission does not base its fees on how much material is possessed by a licensee or how often a licensed device is used.

The Commission is also unable to use factors such as the revenue earned by a licensee or the licensee's profit from the use of licensed material in developing its fees because the governing statute requires that annual charges must, to the maximum extent practicable, have a reasonable relationship to the costs of providing regulatory services (60 FR 20918; April 28, 1995). To grant fee waivers to a particular class of licensees based on economic duress would, under the teachings of Allied Signal, result in the Commission's having to take economic conditions into effect in establishing fees for each of its classes of licensees. Further, as the Commission has stated in numerous fee rules since 1991, and most recently in the FY 2001 final fee rule (66 FR 32452; June 14, 2001), a reduction in fees for one class of licensees would require a corresponding increase in fees for other classes. For these reasons the NRC does not base its fees on market conditions, or a licensee's economic status, or a licensee's inability to "pass through" the costs to its customers.

Inevitably, were the Commission to exempt uranium recovery licensees from NRC fees, other licensees—both those forced to subsidize the NRC's regulation of the uranium recovery industry and those claiming economic hardship of their own—would also demand fee relief. Widespread and frequent reevaluation of fee schedules based on licensees' various economic situations and indeterminate market conditions has the potential to entangle the Commission's statutorily-required user fee program in constant controversy, and ultimately to unravel the program altogether. This is one reason why, in connection with the Allied-Signal remand, the Commission refused to establish a system to consider each licensee's ability to "pass through" NRC fees to customers.

Developing fee schedules based on licensees' current economic circumstances, in any case, is not workable as a practical matter. An economics-driven approach would make NRC fee schedules overly complex and difficult to establish. On July 20, 1993, the Commission implemented the Allied Signal remand of the FY 1991 and 1992 final fee rules by addressing the remanded issues in the statement of considerations accompanying its FY 1993 fee rule (58 FR 38666). In this document, the Commission explained that the NRC "is not a financial regulatory agency, and does not possess the knowledge or resources necessary to continuously evaluate purely business factors" (58 FR 38667; July 20, 1993). The Commission further explained that it recognizes licensees dislike paying user fees; however, such fees must be taken into account in running a business. The Commission then noted that it has neither the expertise nor the information needed to undertake the complex inquiry into whether, in a market economy, particular licensees are able to recoup their user fee payments. The Commission expressed concern that if this sort of inquiry became part of its mission, the agency would have to hire financial specialists which could lead to higher fees charged to pay for an expanded NRC. The Commission further noted as part of any such review it would have to examine tax returns, financial statements, and commercial data that some licensees might be reluctant to provide. See a more detailed discussion of this issue in the subject final rule (58 FR 38665, 38667–69; July 20, 1993). In addition, the Commission might have to look at the overall corporate structures of licensees to see, for example, if a corporate parent or subsidiary could equitably pay the fees imposed on a temporarily distressed enterprise.

The Commission is further concerned that a detailed examination of economic factors would destabilize the NRC's fee schedules because changing economic circumstances and inevitable shifts in economic cycles could result in significant, unexpected fee increases for some classes of licensees. Thus, consideration of economic factors would not bring greater fairness and equity to the NRC's fee schedules because some classes of licensees would unexpectedly, and on short notice, be required to subsidize other classes of licensees based on indeterminate shifts in industry markets.

6. The Commission does not intend to conduct a 10 CFR part 41 rulemaking, which would be a comprehensive set of regulations governing the uranium recovery industry. The Commission has concluded that its current regulations are adequate, but has directed the NRC staff to issue revised guidance to its uranium recovery licensees. Thus, the Commission need not address the issue of whether the uranium recovery industry should bear the costs of developing a new 10 CFR part 41.

The Commission notes that Congress, in the Energy and Water Development Appropriations Act for FY 2001, has given NRC licensees fee relief in the requirement that the NRC collect approximately 100 percent of its budget authority (minus funds appropriated from the Nuclear Waste Fund and General Fund). That percentage is being annually reduced by two percent for five years, so that only 90 percent of the agency's budget authority will have to be collected in fees in FY 2005. Additionally, the NRC staff is reexamining the issue of fee assessment to uranium recovery facilities in standby status.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 27th day of June, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–16721 Filed 7–2–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550–AA22

Safety and Soundness; Correction

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of June 21, 2002, regarding the safety and soundness of the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac). The correction inserts inadvertantly omitted language in the preamble of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Kathleen McLees, Federal Register Liaison Officer, telephone (202) 414–3836 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Correction

In the preamble of the proposed rule, FR Doc. 02–15678, beginning on page 42200 in the issue of June 21, 2002, make the following correction in the Supplementary Information section. On page 42201, in the second column, on line 16, after the words "in a policy guidance will", add the word "not". The sentence should read: "Compliance with the minimum standards articulated in a policy guidance will not preclude the agency from finding that an Enterprise is otherwise engaged in a specific unsafe or unsound practice or is in an unsafe or unsound condition, or requiring corrective or remedial action with regard to such practice or condition."

Dated: June 27, 2002.

Kathleen K. McLees,

Federal Register Liaison Officer, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–16697 Filed 7–2–02; 8:45 am]

BILLING CODE 4220–01–P

VOL 67

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Turboprop Engines

AGENCY: Federal Aviation Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

PW127H, and PW127J turboprop engines. Transport Canada (TC) advises that there have been several field incidents in which one or more of the three studs that attach the fuel bowl to the fuel heater main housing had been pulled partially or completely free of the associated mounting lug, resulting in fuel leaks. Failure was attributed to overtorquing of the nuts that retain the fuel bowl to the housing and a decrease in the housing material hardness. Housing hardness may have been

approximately $12,172 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $15,663,176.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of

PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. These engines are installed on, but not limited to the following airplanes: Aerospatiale ATR–42 and –72; Bombardier DHC–8 series 100, 200, and 300, CL–215T and –415; Construcciones Aeronautics, S.A. (CASA) C–295; Empresa Brasileira de Aeronautica S. A (EMBRAER) EMB–120; Fairchild Dornier 328, Fokker 50 and 60; Ilyushin IL–114–100; BAE Systems (Operations) Ltd. ATP; and XIAN MA–60.

Note 1: This airworthiness directive (AD)

Issued in Burlington, Massachusetts, on June 24, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–16675 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada (PWC) models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. This proposal would require replacing certain part number (P/N) fuel heaters with redesigned fuel heaters. This proposal is prompted by several field incidents in which one or more of the three studs that attach the fuel filter bowl to the fuel heater have been partially or completely pulled free of the fuel heater housing. The actions specified by the proposed AD are intended to prevent the separation of the fuel filter bowl from the fuel heater, which could result in a pressurized fuel leak and possible engine fire.

DATES: Comments must be received by September 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney Canada Corp., 1000, Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; Telephone 450–677–9411. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. Transport Canada (TC) advises that there have been several field incidents in which one or more of the three studs that attach the fuel bowl to the fuel heater main housing had been pulled partially or completely free of the associated mounting lug, resulting in fuel leaks. Failure was attributed to overtorquing of the nuts that retain the fuel bowl to the housing and a decrease in the housing material hardness. Housing hardness may have been reduced due to high temperatures such as a heat treatment process used to remove the flame arrest coating from these parts.

Bilateral Agreement Information

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TC has kept the FAA informed of the situation described above. The FAA has examined the findings of TC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other PWC models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require replacement of fuel heaters, part number (P/N) 3039183, with improved design fuel heaters, P/N 3039798, at the next removal of the engine low pressure fuel filter, but not later than December 31, 2002.

Economic Analysis

There are approximately 2,200 engines of the affected design in the worldwide fleet. The FAA estimates that 1,238 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 8 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $12,172 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $15,663,176.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 2001–NE–34–AD.

Applicability

This airworthiness directive (AD) is applicable to Pratt & Whitney Canada models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. These engines are installed on, but not limited to the following airplanes: Aerospatiale ATR–42 and –72; Bombardier DHC–8 series 100, 200, and 300, CL–215T and –415; Construcciones Aeronautics, S.A. (CASA) C–295; Empresa Brasileira de Aeronautica S. A (EMBRAER) EMB–120; Fairchild Dornier 328, Fokker 50 and 60; Ilyushin IL–114–100; BAE Systems (Operations) Ltd. ATP; and XIAN MA–60.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent the separation of the fuel filter bowl from the fuel heater, which could result in a pressurized fuel leak and possible engine fire, do the following:

(a) Replace fuel heater, part number (P/N) 3039183, with fuel heater, P/N 3039798, at the next removal of the engine low pressure fuel filter, but not later than December 31, 2002.

(b) Do not install any fuel heater, P/N 3039183, after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in Transport Canada airworthiness directive CF–2000–34, dated November 23, 2000.

Issued in Burlington, Massachusetts, on June 24, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–16675 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 301

[REG–116644–01]

RIN 1545–BA18

Receipt of Multiple Notices With Respect to Incorrect Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to backup withholding. The regulations clarify the method of determining whether the payor has received two notices that a payee's taxpayer identification number (TIN) is incorrect. If a payor receives two or more such notices with respect to the same account during a three-year period, the payor must begin backup withholding unless the payee provides verification of its correct TIN pursuant to the regulations. This document also contains proposed regulations which clarify when an information return filer must solicit a payee's TIN following the receipt of a penalty notice. In addition, this document provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by October 1, 2002. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for October 22, 2002, at 10 a.m., must be received by October 1, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–116644–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–116644–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 3406 of the Internal Revenue Code (Code) requires payors to withhold a percentage of reportable payments made to payees who fail to furnish their taxpayer identification numbers (TINs) to payors in the manner required. Section 3406(d)(2) requires payors to verify the payee's TIN with the Social Security Administration or IRS.

If the payor receives two or more notices of incorrect TIN with respect to a payee's account within the same calendar year, the regulations provide that the multiple notices may be treated as one notice for purposes of sending out a first "B" notice, and must be treated as one notice for purposes of sending out a second B notice. However, in some cases, a payor may receive responsible manner both before and after the failure.

The regulation provides that certain actions of the payee or another person providing necessary information with respect to the return may be an event beyond the filer's control. Thus, a payee's furnishing of an incorrect TIN to a payor may be an event beyond the payor's control. However, the payor must also act in a responsible manner with respect to the failure. Section

to these regulations, and because the regulation does not impose a collection of information of small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner

requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

"paragraph (f)(2)" and adding "paragraph (f)(3)" in its place.

3. Amending paragraph (k), *Example 3*(ii), second sentence, by removing the language "§ 35a.3406–1(c)(1) of this paragraph" and adding "§ 31.3406(d)–5(d)(2)(i)" in its place; and by removing the language "(f)(2)" and adding "(f)(3)" in its place.

4. Amending paragraph (k), *Example 3*(ii), fifth sentence, by removing the language "§ 301.6721–1T" and adding "§ 301.6721–1" in its place.

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public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Internal Revenue Code (Code), and to the Procedure and Administration Regulations (26 CFR part 301) under section 6724 of the Code. These proposed amendments to the regulations would revise existing §§ 31.3406(d)–5(d)(2)(ii) and (g)(4), and 301.6724–1(f)(2), (f)(3), (f)(5) and (k).

These proposed regulations address certain issues identified by the Commissioner's Information Reporting Program Advisory Committee (IRPAC) and take into account comments and information provided by IRPAC members.

Section 3406

Section 3406 imposes a requirement to backup withhold on any reportable payment where the Secretary notifies the payor that the TIN furnished by the payee is incorrect. After receiving a notice of incorrect TIN, the payor must backup withhold on reportable payments until the payee furnishes another TIN. However, if the payor receives two notices with respect to the same account within a three year period, the payor must backup withhold on reportable payments until the payor receives a verification of the payee's TIN from the Social Security Administration or the IRS.

The regulations under section 3406 set forth detailed procedures for payors to follow after receipt of a notice of incorrect TIN from the IRS. When the first such notice is received by the payor, the payor must send a notice (commonly referred to as a "B" notice) to the payee stating that the payee will be subject to backup withholding if the payee does not furnish a certified TIN. If a second notice of incorrect TIN is received by a payor with respect to the payee's account within a three-year period, the payor must send a second "B" notice to the payee stating that the payee will be subject to backup withholding unless the payor receives verification of the payee's TIN from the Social Security Administration or IRS.

If the payor receives two or more notices of incorrect TIN with respect to a payee's account within the same calendar year, the regulations provide that the multiple notices may be treated as one notice for purposes of sending out a first "B" notice, and must be treated as one notice for purposes of sending out a second B notice. However, in some cases, a payor may receive multiple notices of incorrect TIN in different calendar years which relate to the same payee's account for the same year. This may occur where a payor files different types of information returns with respect to the same payee, such as a Form 1099–B (gross proceeds reported by brokers) and a Form 1099–DIV (payment of dividends). Typically these information returns all contain the same TIN, following information contained in the payor's records. Variations in the processing of such returns by the IRS may result in the issuance of incorrect TIN notices at different times.

The regulations currently do not provide that two or more notices of incorrect TIN relating to the same payee and the same year, but which are received in different calendar years, count as one notice. Accordingly, a payor must send a first "B" notice to the payee after receipt of the first notice of incorrect TIN, and a second "B" notice after receipt of the second notice of incorrect TIN, even if the second notice relates to an information return filed for the same year as the first notice. The payee must respond to the second notice by obtaining verification of its TIN from the IRS or Social Security Administration.

To avoid this burden on both payor and payee, the proposed amendments to the regulations provide that when a payor receives two or more notices of incorrect TIN with respect to the same payee's account for the same year, the payor is treated as receiving one notice, regardless of the calendar year in which the notices are received.

Section 6724

Section 6724 provides for a waiver of information reporting penalties under sections 6721 through 6723 where the failure giving rise to such penalties was due to reasonable cause and not willful neglect. Under § 301.6724–1(a) of the regulations, in order to prove reasonable cause for a failure, the filer must establish either that there are significant mitigating factors with respect to the failure or that the failure arose from events beyond the filer's control. In addition, the filer must have acted in a responsible manner both before and after the failure.

The regulation provides that certain actions of the payee or another person providing necessary information with respect to the return may be an event beyond the filer's control. Thus, a payee's furnishing of an incorrect TIN to a payor may be an event beyond the payor's control. However, the payor must also act in a responsible manner with respect to the failure. Section 301.6724–1(f) sets forth special rules for acting in a responsible manner with respect to incorrect TINs. The filer is required to make an initial solicitation for the payee's correct TIN at the time the account is opened, and up to two annual solicitations following receipt of penalty notices.

Under the current regulation, if a filer receives a penalty notice with respect to an incorrect payee TIN and a notice of incorrect TIN under section 3406(a)(1)(B) during the same calendar year for the same payee, the filer will satisfy the section 6724 annual solicitation requirements by sending the required "B" notice. The filer does not have to make another solicitation pursuant to section 6724. However, if the filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year, and the following year receives a penalty notice with respect to the same payee and the same year as the section 3406(a)(1)(B) notice, the filer must make an annual solicitation pursuant to section 6724.

To avoid this burden, the proposed amendments to the regulations provide that if a filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year and the following year receives a penalty notice with respect to the same payee and the same year as the 3406(a)(1)(B) notice, the filer is not required to make an annual solicitation for the payee's TIN pursuant to section 6724 provided the filer has sent the required B notice.

Effective Date of Proposed Regulations

The provisions of these regulations are proposed to be applicable the beginning of the first calendar year that begins after these regulations are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information of small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. Written comments on the proposed regulations are due by October 1, 2002.

A public hearing has been scheduled for October 22, 2002, beginning at 10 a.m. in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 1, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 31.3406(d)–5 is amended by revising paragraphs (d)(2)(ii) and (g)(4) to read as follows:

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

* * * * *

(d) * * *

(2) * * *

(ii) *Two or more notices for an account for the same year or received in the same year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, need only send one notice to the payee under this section.

* * * * *

(g) * * *

(4) *Receipt of two notices for the same year or in the same calendar year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, must treat such notices as one notice for purposes of this paragraph (g).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

4. Section 301.6724–1 is amended as follows:

1. Revising paragraphs (f)(2) and (f)(3).

2. Amending paragraph (f)(5)(vi), last sentence, by removing the language "paragraph (f)(2)" and adding "paragraph (f)(3)" in its place.

3. Amending paragraph (k), *Example 3*(ii), second sentence, by removing the language "§ 35a.3406–1(c)(1) of this paragraph" and adding "§ 31.3406(d)–5(d)(2)(i)" in its place; and by removing the language "(f)(2)" and adding "(f)(3)" in its place.

4. Amending paragraph (k), *Example 3*(ii), fifth sentence, by removing the language "§ 301.6721–1T" and adding "§ 301.6721–1" in its place.

5. Amending paragraph (k), *Example 3*(iii), fifth sentence, by removing the language "§ 35a.3406–1(c)(1)" and adding "§ 31.3406(d)–5(d)(2)(i)" in its place.

6. Amending paragraph (k), *Example 3*(iii), last sentence, by removing the language "§ 301.6721–1T" and adding "§ 301.6721–1" in its place.

7. Amending paragraph (k), *Example 5*, final sentence, by removing the language "§ 301.6721–1T" and adding "§ 301.6721–1" in its place.

8. Amending paragraph (k), *Example 6*(ii), sixth sentence, by removing the language "(f)(3)" and adding the language "(f)(2)" in its place.

9. Amending paragraph (k), *Example 7*(ii), fourth sentence, by removing the language "(f)(2)" and adding "(f)(3)" in its place; and by removing the language "§ 35a.3406(c)(1)" and adding "§ 31.3406(d)–5(g)(1)(ii)" in its place.

10. Amending paragraph (k), *Example 7*(ii), fifth sentence, by removing the language "§ 35a.3406–1(c)(1)" and adding "§ 31.3406(d)–5(g)(1)(ii)" in its place.

The revisions read as follows:

§ 301.6724–1 Reasonable cause.

* * * * *

(f) * * *

(2) *Manner of making annual solicitation if notified pursuant to section 6721.* A filer that has been notified of an incorrect TIN by a penalty notice or other notification pursuant to section 6721 may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section; by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section; or by requesting the TIN in person.

(3) *Coordination with solicitations under section 3406(a)(1)(b).* (i) A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under

§ 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies.

(ii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) is not required to make the annual solicitation of this paragraph (f) if—

(A) The filer has received an effective notice pursuant to section 3406(a)(1)(B) with respect to the same payee, either

District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the

to 7 a.m., at least an eight-hour advance notice is required for bridge openings.

The bridge owner, the City of Boston, asked the Coast Guard to change the drawbridge operation regulations to require the bridge to open on signal, from November 1 through March 31, only between 7 a.m. and 3 p.m. All opening requests between 3 p.m. and 7 a.m. would require an eight-hour advance notice.

The number of bridge openings

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

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§ 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies.

(ii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) is not required to make the annual solicitation of this paragraph (f) if—

(A) The filer has received an effective notice pursuant to section 3406(a)(1)(B) with respect to the same payee, either during the same calendar year or for information returns filed for the same year; and

(B) The filer makes a solicitation in the manner and within the time period required under § 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies, before the filer is required to make the annual solicitation of this paragraph (f).

(iii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 with respect to a fiduciary or nominee account to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies is required to make the annual solicitation of this paragraph (f).

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–16525 Filed 7–2–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–020]

RIN 2115–AE47

Drawbridge Operation Regulations; Mystic River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations for the S99 Alford Street Bridge, mile 1.4, across the Mystic River at Boston, Massachusetts. This proposed rule would start the advance notice for openings period at 3 p.m instead of 11 p.m., November through March, when there have been few requests to open the bridge. This action is expected to relieve the bridge owner from the burden of crewing the bridge during the winter months at night when there have been few requests to open the bridge.

DATES: Comments must reach the Coast Guard on or before September 3, 2002.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The S99 Alford Street Bridge has a vertical clearance of 7 feet at mean high water and 16 feet at mean low water.

The existing regulations for the bridge at 33 CFR 117.609, require the bridge to open on signal from 7 a.m. to 11 p.m.; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m. From 11 p.m. to 7 a.m., at least an eight-hour advance notice is required for bridge openings.

The bridge owner, the City of Boston, asked the Coast Guard to change the drawbridge operation regulations to require the bridge to open on signal, from November 1 through March 31, only between 7 a.m. and 3 p.m. All opening requests between 3 p.m. and 7 a.m. would require an eight-hour advance notice.

The number of bridge openings November through March, from 3 p.m. to 7 a.m., for the last two years were 11 requests in 2000, and 5 requests in 2001.

The Coast Guard believes it is reasonable to allow the bridge owner to not be required to crew this bridge during the 3 p.m. to 7 a.m. shift in the winter months as a result of the low number of requests to open the bridge during that time period. We also believe the eight-hour advance notice is appropriate and will meet the reasonable needs of navigation. It will allow any vessel the opportunity to transit the bridge provided they give the required advance notice.

Discussion of Proposal

This proposed rule would revise the drawbridge operation regulations for the S99 Alford Street Bridge, mile 1.4, across the Mystic River at Boston, Massachusetts. This proposed rule would allow the bridge owner to not be required to crew the bridge from November 1 through March 31, from 3 p.m. to 7 a.m., daily. The eight-hour advance notice requirement from 3 p.m. to 7 a.m. should assist the bridge owner in cost savings while still meeting the reasonable needs of navigation.

The Coast Guard believes this proposed rule is reasonable and will meet the present needs of navigation.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will open at all times for the passage of vessel traffic provided the eight-hour notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridge will open at all times for the passage of vessel traffic provided the eight-hour notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this proposed rule.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.609 is revised to read as follows:

§ 117.609 Mystic River.

(a) The draw of the S99 Alford Street Bridge, mile 1.4, shall open on signal; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m., daily. From November 1 through March 31, between 3 p.m. and 7 a.m., at least an eight-hour advance notice is required for bridge openings by calling the number posted at the bridge.

(b) The draw of the Wellington Bridge, mile 2.5, need not open for the passage of vessel traffic.

Dated: June 11, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–16750 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children

period July 1, 2002 through June 30, 2003 reflect a 2.6 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2001 to May 2002 (from a level of 173.1 in May 2001 to 177.6 in May

snacks as part of the National School Lunch Program.

Breakfast Payment Factors

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in "severe

rate—20 cents, free and reduced price rate—20 cents, maximum rate—28 cents; *Alaska*—paid rate—33 cents, free and reduced price rate—33 cents, maximum rate—44 cents; *Hawaii*—paid rate—24 cents, free and reduced price rate—24 cents, maximum rate—32 cents. In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2000–01, payments are: *Contiguous States*—paid rate—22 cents, free and

breakfast—117 cents, reduced price breakfast—87 cents, paid breakfast—22 cents; *Alaska*—free breakfast—187 cents, reduced price breakfast—157 cents, paid breakfast—32 cents; *Hawaii*—free breakfast—137 cents, reduced price breakfast—107 cents, paid breakfast—24 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast—140 cents, reduced price breakfast—110 cents, paid breakfast—22

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Notices

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: The "national average payments," the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 2002 through June 30, 2003.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Semper, Acting Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2002 to June 30, 2003, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 13.50 cents. This reflects a decrease of 6.83 percent in the Producer Price Index for Fluid Milk Products from May 2001 to May 2002 (from a level of 157.9 in May 2001 to 147.1 in May 2002).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs

Pursuant to Sections 11 and 17A of the National School Lunch Act, (42 U.S.C. 1759a and 1766a), and Section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2002 through June 30, 2003 reflect a 2.6 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2001 to May 2002 (from a level of 173.1 in May 2001 to 177.6 in May 2002). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels

Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The National School Lunch Act provides two different Section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these Section 4 payments, Section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The Section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under Sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757, 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Afterschool Snack Payments in Afterschool Care Programs

Section 17A of the National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific Section 4, Section 11 and Section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2002 through June 30, 2003. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 2000–01, the payments for meals served are: *Contiguous States*—paid rate—20 cents, free and reduced price rate—20 cents, maximum rate—28 cents; *Alaska*—paid rate—33 cents, free and reduced price rate—33 cents, maximum rate—44 cents; *Hawaii*—paid rate—24 cents, free and reduced price rate—24 cents, maximum rate—32 cents. In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2000–01, payments are: *Contiguous States*—paid rate—22 cents, free and reduced price rate—22 cents, maximum rate—28 cents; *Alaska*—paid rate—35 cents, free and reduced price rate—35 cents, maximum rate—44 cents; *Hawaii*—paid rate—26 cents, free and reduced price rate—26 cents, maximum rate—32 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—194 cents, reduced price lunch—154 cents; *Alaska*—free lunch—314 cents, reduced price lunch—274 cents; *Hawaii*—free lunch—226 cents, reduced price lunch—186 cents.

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—58 cents, reduced price snack—29 cents, paid snack—5 cents; *Alaska*—free snack—95 cents, reduced price snack—47 cents, paid snack—8 cents; *Hawaii*—free snack—68 cents, reduced price snack—34 cents, paid snack—6 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast—117 cents, reduced price breakfast—87 cents, paid breakfast—22 cents; *Alaska*—free breakfast—187 cents, reduced price breakfast—157 cents, paid breakfast—32 cents; *Hawaii*—free breakfast—137 cents, reduced price breakfast—107 cents, paid breakfast—24 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast—140 cents, reduced price breakfast—110 cents, paid breakfast—22 cents; *Alaska*—free breakfast—223 cents, reduced price breakfast—193 cents, paid breakfast—32 cents; *Hawaii*—free breakfast—163 cents, reduced price breakfast—133 cents, paid breakfast—24 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the Sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

BILLING CODE 3410-30-P

SCHOOL PROGRAMS
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
Expressed in Dollars or Fractions Thereof
Effective from July 1, 2002 - June 30, 2003

NATIONAL SCHOOL LUNCH PROGRAM *		LESS THAN 60%	60% OR MORE	MAXIMUM RATE
CONTIGUOUS STATES	PAID	.20	.22	.28
	REDUCED PRICE	1.74	1.76	1.91
	FREE	2.14	2.16	2.31

intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: June 27, 2002.

the Secretaries of Agriculture and Interior to reduce the impacts of wildland fires on rural communities. The Secretaries subsequently developed the National Fire Plan. This direction was followed by congressionally-approved plans that funded "hazardous fuel reduction" near urban interface areas.

The National Fire Plan directs Federal agencies within USDA/USDI to engage states and local communities in

increasing accumulations of forest fuels. These buildups of forest fuels increase the risk of high intensity fires to the National Forest and to large private subdivisions within the forest boundary. The extensive development and high recreation use have also increased the threat of human-caused fires. A high intensity fire occurring within this area would cause significant damage to property and natural resources. Reducing the risk of wildfires in these

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SCHOOL PROGRAMS
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
Expressed in Dollars or Fractions Thereof
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NATIONAL SCHOOL LUNCH PROGRAM *		LESS THAN 60%	60% OR MORE	MAXIMUM RATE
CONTIGUOUS STATES	PAID	.20	.22	.28
	REDUCED PRICE	1.74	1.76	1.91
	FREE	2.14	2.16	2.31
ALASKA	PAID	.33	.35	.44
	REDUCED PRICE	3.07	3.09	3.32
	FREE	3.47	3.49	3.72
HAWAII	PAID	.24	.26	.32
	REDUCED PRICE	2.10	2.12	2.29
	FREE	2.50	2.52	2.69

SCHOOL BREAKFAST PROGRAM		NON-SEVERE NEED	SEVERE NEED
CONTIGUOUS STATES	PAID	.22	.22
	REDUCED PRICE	.87	1.10
	FREE	1.17	1.40
ALASKA	PAID	.32	.32
	REDUCED PRICE	1.57	1.93
	FREE	1.87	2.23
HAWAII	PAID	.24	.24
	REDUCED PRICE	1.07	1.33
	FREE	1.37	1.63

SPECIAL MILK PROGRAM	ALL MILK	PAID MILK	FREE MILK
PRICING PROGRAMS WITHOUT FREE OPTION	.1350	N/A	N/A
PRICING PROGRAMS WITH FREE OPTION	N/A	.1350	Average cost per ½ pint of milk.
NONPRICING PROGRAMS	.1350	N/A	N/A

AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS		
CONTIGUOUS STATES	PAID	.05
	REDUCED PRICE	.29
	FREE	.58
ALASKA	PAID	.08
	REDUCED PRICE	.47
	FREE	.95
HAWAII	PAID	.06
	REDUCED PRICE	.34
	FREE	.68

* Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds.

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This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: June 27, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–16694 Filed 7–2–02; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie National Forest, Utah, Duck Creek Fuels Treatment Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to implement fuels treatments in the Duck Creek area, within the Cedar City Ranger District, Dixie National Forest, Utah. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by thirty days after publication of this Notice Of Intent in the **Federal Register**. The draft environmental impact statement is expected in June, 2002. The final environmental impact statement is expected in January, 2003.

ADDRESSES: Send written comments to: Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, P.O. Box 627, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, P.O. Box 627, Cedar City, Utah 84720.

SUPPLEMENTARY INFORMATION: The proposed treatments will implement direction in the National Fire Plan, a USDA/USDI effort to reduce impacts of wildfires on people and resources. In August, 2000 President Clinton directed the Secretaries of Agriculture and Interior to reduce the impacts of wildland fires on rural communities. The Secretaries subsequently developed the National Fire Plan. This direction was followed by congressionally-approved plans that funded "hazardous fuel reduction" near urban interface areas.

The National Fire Plan directs Federal agencies within USDA/USDI to engage states and local communities in reducing forest fuels, using a variety of fuel reduction treatments (Mechanical, prescribed fire and intensive manual treatment). Hazardous fuel reduction is a critical investment necessary to reduce fire risk and fire suppression costs into the future and is focused on areas near communities and interface areas that the States have judged to be in harm's way of a wildfire.

The analysis area of 25,741 acres of National Forest system lands is located thirty miles east of Cedar City, Utah. The analysis area includes six tracts of private lands which are surrounded by National Forest lands. The tracts are subdivided into residential lots and contain an estimated 1,900 homes and 10 businesses. The specific subdivisions are as follows:

Subdivision	Legal location (approximate) Salt Lake base meridian
1. Meadow View Heights.	T38S R7w Sec 6
2. Mirror Lake	T38S R7W Sec 5,8
3 Movie Ranch	T38S R7W Sec 7
4. Movie Ranch South.	T38S R7W Sec 7
5. Color Country	T38S R7W Sec 8,17
6. Timber Trails	T38S R7W Sec 7,17,18
7. Ponderosa Villa	T38S R7W Sec 16
8. Strawberry Valley	T38S R7W Sec 20,21
9. Swains Creek	T38S R7W Sec 26,2
10. Blackman Hill	T38S R7W Sec 26,27
11. Harris Springs	T38S R7W Sec 26
12. Swains Creek Pines.	T38S R7W Sec 33,34
13. Ponderosa Ranch	T38S R7W Sec 24; T38S R6W Sec 19
14. Zion View Mtn Estates.	T38S R8W Sec 2
15. Duck Creek Pines	T38S R7W Sec 7

The private lands were designated an "urban interface community at risk from wildfires on National Forestlands" by the Chief of the Forest Service (66FR 43383, August 17, 2001). This designation meant that Federal funds from the National Fire Plan could be spent to reduce fuels on National Forestlands adjacent to the private lands.

Historic prevention and suppression of wildfire has resulted in ever-increasing accumulations of forest fuels. These buildups of forest fuels increase the risk of high intensity fires to the National Forest and to large private subdivisions within the forest boundary. The extensive development and high recreation use have also increased the threat of human-caused fires. A high intensity fire occurring within this area would cause significant damage to property and natural resources. Reducing the risk of wildfires in these areas would provide the best opportunity to protect National Forestlands and adjacent private properties. The Forest Service has determined that the fuels treatment objectives will be met without harvesting trees over nine inches in diameter.

Purpose and Need for Action

The purpose of this project is to modify existing, high fuel loads that influence fire behavior in National Forest lands adjacent to private lands in the Duck Creek Area. There is a need to reduce minute, hour, ten-hour and hundred-hour fuels adjacent to private property and in the defensible fire space zone. There is a need to change the structure and composition of the fuels throughout the project area, especially in aspendominated sites. There is a need to change the characteristics of the residual trees by removing ladder fuels from the ground to eight feet high. Changing these fuels characteristics and reducing the fuel loads would help reduce the risk of property damage and allow sufficient time for firefighters to directly attack and control a wildfire before housing and other developments are threatened or destroyed. The fuel elements that need to be treated are as follows:

Element 1—Ground Fuels Reduction

Current fuel loads adjacent to private lands range from 20–50 tons per acre. The desired condition of the area immediately surrounding the subdivisions, Defensible Fire Space (DFS), is to have fuel loads reduced to 5–10 tons per acre, a level that would not sustain a high intensity wildfire.

The current fuel loads range from 20–50 tons per acre in the general forest area outside of the DFS. Reducing the fuel loads in the general forest area to 10–15 tons per acre would slow the spread of fire and would reduce the potential for a fire to spread into the crowns of the trees.

Element 2—Ladder Fuels Reduction

Lower branches and small trees currently extend from the ground upward, the ladder a fire would climb

to reach higher crowns. Ladder fuels have increased dramatically as ponderosa pine trees with small crowns and few lower branches have been replaced by fir and spruce that have large crowns and branches extending to the ground. Fire suppression has also resulted in a dense understory of young trees that contribute to the fire ladder. The desired condition within the DFS is to effectively prevent a ground fire from

fir, Engelmann spruce and Colorado blue spruce. Fuel loads will be reduced by cutting white fir, Douglas-fir, subalpine fir, Engelmann spruce and Colorado blue spruce trees under nine inches in diameter. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

3. Spruce/fir treatments. Reduce fuel loads on approximately 952 acres of spruce/fir conifer stands in National

soils that are wet and sensitive to compaction, and riparian habitat.

The project will be implemented in accordance with direction in the Dixie National Forest Land and Resource Management Plan.

Possible Alternatives

Three or more alternatives will be considered in the analysis.

No action. Under this alternative, the proposed fuels treatments will not be

1. The proposed fuels treatments would reduce travel corridors for big game (e.g. elk and deer) and birds and small mammals (*e.g.* turkey, grouse, red squirrels and flying squirrels) by substantially fragmenting habitat throughout the project area.

2. The proposed fuels treatments would remove understory trees and limbs, which are used by juvenile goshawks within nest areas and flammulated owls as roosting habitat.

the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact

concerns about the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for

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to reach higher crowns. Ladder fuels have increased dramatically as ponderosa pine trees with small crowns and few lower branches have been replaced by fir and spruce that have large crowns and branches extending to the ground. Fire suppression has also resulted in a dense understory of young trees that contribute to the fire ladder. The desired condition within the DFS is to effectively prevent a ground fire from climbing into upper tree crowns.

Elements 3—Retention of Fire Tolerant Species

Aspen is naturally regenerated by wildfire, and therefore is considered a fire-tolerant species. Aspen stands within the watershed are being encroached upon by tree species such as spruce and fir, which are fire intolerant species. Stands with high density of aspen act as natural firebreaks or areas where fire activity is slowed. Aspen is a short-lived species that requires disturbance in order to regenerate; without disturbance, these stands will eventually be taken over by conifers, eliminating the aspen from the area. Conifer encroachment increases fire susceptibility and fire behavior within these stands. Maintaining aspen stands would help slow the spread of fires that may occur. The desired condition is to regenerate and maintain aspen stands.

Proposed Action

The Forest Service proposes to treat fuels in timber stands located in Kane County, Utah, Salt Lake Base Meridian, T38S R38W, T38S R7W, T39S R8W, T39S R7W and T38S R6W. The specific fuels treatments are as follows:

1. Defensible fire space treatments. Establish a defensible fire space (DFS) in National Forest lands from 500′–2000′ wide immediately surrounding private lands with subdivisions. The area to be treated in the DFS is approximately 2,778 acres. To reduce the risk of a wildfire reaching or spreading through tree crowns within the DFS, intensive fuels removal treatments will be conducted by cutting all conifer trees under nine inches in diameter and pruning limbs under eight feet high on conifer trees to reduce ladder fuels. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

2. Mixed conifer treatments. Reduce fuel loads and favor the establishment of ponderosa pine on approximately 7,002 acres of mixed conifer stands in National Forest lands south and west of the private subdivisions. Mixed conifer stands have major components of ponderosa pine, white fir and Douglas-fir with minor components of subalpine fir, Engelmann spruce and Colorado blue spruce. Fuel loads will be reduced by cutting white fir, Douglas-fir, subalpine fir, Engelmann spruce and Colorado blue spruce trees under nine inches in diameter. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

3. Spruce/fir treatments. Reduce fuel loads on approximately 952 acres of spruce/fir conifer stands in National Forest lands south and west of the private subdivisions. Spruce/fir stands have major components of Engelmann spruce and subalpine fir with minor components of ponderosa pine, Colorado blue spruce, Douglas-fir and white fir. Fuel loads will be reduced by cutting subalpine fir, white fur and Douglas-fir under nine inches in diameter. Engelmann spruce, Colorado blue spruce and ponderosa pine trees under nine inches in diameter will be retained in this area in order to maintain a spruce component into the future. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

4. Aspen treatments. Regenerate and maintain stands dominated by aspen in approximately 2,906 acres of National Forest lands south and west of the private subdivisions by cutting Engelmann spruce, Colorado blue spruce, subalpine fir and white fir trees under nine inches in diameter and underburning fuels. Slash will be pulled away from mature (over 18″ diameter) ponderosa pine and Douglas-fir trees to provide partial protection from prescribed fire. Aspen, a short-lived species that acts to slow the spread of wildfire, requires periodic disturbance to induce new growth. Underburning will result in stimulating and regeneration the aspen. A prescribed fire plan will be developed prior to underburning. The plan will outline appropriate burning conditions and fire control methods to be implemented to insure the prescribed fire is confined to the area to be treated.

Fuels and slash piling may be done by machine, except where Forest Plan standards for soils or slope dictate otherwise. Piles will be burned. The transportation system required to treat or remove fuels is in place. No new roads would be constructed with this project. Riparian areas along perennial streams would be protected,with a 300-foot no-treatment buffer along the edges. Riparian areas along ephemeral streams would be thinned, but piling and burning would occur at least 50 feet away from the channel. No treatment would occur within 100 feet of springs occur in order to protect water sources, soils that are wet and sensitive to compaction, and riparian habitat.

The project will be implemented in accordance with direction in the Dixie National Forest Land and Resource Management Plan.

Possible Alternatives

Three or more alternatives will be considered in the analysis.

No action. Under this alternative, the proposed fuels treatments will not be completed. The current forest fuels conditions would not be substantially changed and natural processes would continue. This alternative will be fully evaluated and described.

Proposed Action (as described above).

Additional Alternatives—Additional alternatives may be developed in response to issues and resource conditions evaluated through the analysis.

Responsible Official

The responsible official for this EIS and the Record of Decision is: Mary Wagner, Forest Supervisor, Dixie National Forest, 1789 Wedgewood, P.O. Box 627, Cedar City, Utah 84720–0627; FAX: (435) 865–3791.

Nature of Decision To Be Made

The Responsible Official will decide whether forest fuels treatment would be conducted to reduce risks from wildfires to the National Forest and to private lands held within the National Forest; and, if so, what extent and types of treatments should be done.

Scoping Process

Public participation was initiated through scoping in October, 2001. A scoping notice was sent to 2,796 individuals and organizations who are potentially affected parties and those currently on the Dixie National Forest mailing list that have expressed interest in natural resource projects. Two public meetings were held (October 27, November 1). Comments and issues were received in response to these public contacts.

Scoping Will Continue

Public participation is especially important during scoping and review of the draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the draft EIS.

Preliminary Issues

The following issues were identified through public scoping and internal resource analyses:

1. The proposed fuels treatments would reduce travel corridors for big game (e.g. elk and deer) and birds and small mammals (*e.g.* turkey, grouse, red squirrels and flying squirrels) by substantially fragmenting habitat throughout the project area.
2. The proposed fuels treatments would remove understory trees and limbs, which are used by juvenile goshawks within nest areas and flammulated owls as roosting habitat.
3. The proposed fuels treatments would create openings in the forest and increase sight distance from the homes within the subdivision into the forest. This would change the visuals/aesthetics of the area by reducing or eliminating the "vegetative screening" that many residents value.
4. Older stands of aspens would be regenerated and replaced by younger stands of aspen, reducing and/or changing the aesthetic value of these stands. Older trees with large, white boles would be replaced by thickets of seedlings and saplings in the short term. Fall color viewing would also be impacted.
5. The proposed fuels treatments would remove young trees and seedlings from the spruce/fir stands, resulting in the eventual loss of the timber stand due to lack of regeneration.
6. The proposed fuels treatments are too costly to implement.
7. The proposed fuels treatment would reduce or eliminate understory vegetation that serves as a barrier to off-road motorized vehicles, especially by ATV's (All Terrain Vehicles).

Comments Requested

Comments will continue to be received and considered througout the analysis process. Comments received in response to this notice and through scoping, including names and addresses of those who comment, will be considered part of the public record of this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that,under the FOIA, confidentiality may be grated in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period for the draft environmental impact statement will be forty-five days from the date the EPA's notice of availability appears in the **Federal Register**. Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points).

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).*

Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider that and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The final EIS is scheduled for completion in January, 2003. The decision will be subject to review under Forest Service Appeal Regulations.

Dated: May 23, 2002.

Mary Wagner,

Forest Supervisor, Dixie National Forest.

[FR Doc. 02–16708 Filed 7–02–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Cedar City Ranger District, Dixie National Forest; Utah; Duck Creek—Swains Access Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for the Forest Service to implement proposals within the Duck Creek—Swains Access Management Project area, on the Cedar City Ranger District, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah 84720–7769; FAX: (435) 865–3791; e-mail: *psummers@fs.fed.us.* This is a revision in accordance with the **Federal Register** stating that a revised notice to intent is require due to a major change. The original notice of Intent for this project was published in the **Federal Register** May 21, 2001 (Vol. 66, No. 98, Pages 27934 to 27936). Six months from

May 21, 2001 would be November 21, 2001, therefore a revision is required.

DATES: The DEIS is expected to be available for review by June 2002. The Record of Decision and Final Environmental Impact Statement are expected to be available by September 2002. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency

road from the Forest Transportation System close to motorized use, and restore to a more natural state.

4. Close approximately 178 miles of road to motorized use, retaining them on the Forest Transportation System for forest management or emergency use.

5. Implement a Code of Federal Regulations Special Order in the Dixie National Forest Travel Map superceding the existing order that would change the wording from: "roads not shown on the

- The miles and location of roads to retain open;
- The miles and location of roads to close;
- The miles and location of roads to decommission;
- The miles and location of new motorized trails to construct;
- The miles and location of roads to restrict for motorized trail use;
- The location of a new motorized bridge across Swains Creek;

Comment Requested

This notice of intent continues the scoping process which guides the development of the environmental impact statement. On May 21, 2001, we published a notice in the **Federal Register** (Vol. 66, No. 98, pgs 27934–27936) soliciting public involvement in the development of issues necessary to complete an analysis of the environmental impacts of reducing roads in the Duck Creek-Swains area of

and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Presentation on Salmon Recovery Plan; (2) Regional Ecosystem Office (REO) update; (3) Bureau of Land Management presentation on Draft Environmental Impact Statement for the Headwaters Forest Reserve; (4) Update on planning for a Province fire ecology fuels treatment workshop; (5) Aquatic Conservation Subcommittee report; (6) Presentation on working with county Fire Safe Counsels; (7) Northwest Forest

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May 21, 2001 would be November 21, 2001, therefore a revision is required.

DATES: The DEIS is expected to be available for review by June 2002. The Record of Decision and Final Environmental Impact Statement are expected to be available by September 2002. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

ADDRESSES: Send written comments to Priscilla Summers, Project Leader, Cedar City Ranger District, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769; FAX: (435) 865–3791; e-mail *psummers@fs.fed.us*. For further information, mail correspondence to Cedar City Ranger District, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769; FAX: (435) 865–3791; e-mail *psummers@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Priscilla Summers, Cedar City Ranger District, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769; FAX: (435) 865–3791; e-mail: *psummers@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of these proposals is to initiate actions that would improve the motorized transportation system, improve habitat for wildlife, and reduce sedimentation and erosion. The project area is located approximately 24 miles east of Cedar City, Utah. The project would be implemented in accordance with direction in the Land and Resource Management Plan (Forest Plan) for the Dixie National Forest, 1986.

Proposed Action

The proposed action includes:

1. Maintain approximately 222 miles of road open to motorized vehicle travel. Approximately 32 miles of this mileage consists of State Highways 14 and 89, plus the Mammoth Creek Road. These three roads are open but restricted to street legal vehicles only. (This does not include approximately 61 miles on private land that would remain open in the Duck/Swains area.)

2. Provide approximately 35 miles of motorized vehicle trail by restricting travel to motorized trail use on approximately 33 miles of road, and constructing approximately 2 miles of new trail. This does not include the Duck Creek ATV Trail system, which is 8.5 miles.

3. Remove (decommission) approximately 123 miles of unneeded road from the Forest Transportation System close to motorized use, and restore to a more natural state.

4. Close approximately 178 miles of road to motorized use, retaining them on the Forest Transportation System for forest management or emergency use.

5. Implement a Code of Federal Regulations Special Order in the Dixie National Forest Travel Map superceding the existing order that would change the wording from: "roads not shown on the map are open to motorized use unless posted as closed on the ground", to: "all roads are close unless designated open" in the Duck Creek—Swains Area.

6. Relocate approximately one-half mile of the Bower's Flat road out of a wet meadow.

7. Any new roads (regardless of origin) inventoried after this proposal and corresponding decision will be decommissioned using existing authority.

These activities would occur over five years, with the Strawberry Creek and Swains Creek watersheds implemented last.

Possible Alternatives

Four tentative alternatives excluding the Proposed Action and the No Action Alternative have been developed to address the issues listed in this notice. These are:

- Alternative C Responds to Issue #1—All closed roads would be decommissioned—301 miles
- Alternative D responds to issue #2 with 265 miles of road open and 35 miles of motorized trail open.
- Alternative E Responds to Issue #3 with 303 miles of road and 35 miles of motorized trail open.
- Alternative F Responds to Issues #4 and #5. 193 miles of road and 29 miles of motorized trail open).

Responsible Official

Mary Wagner, Forest Supervisor, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769.

Nature of Decision To Be Made

Based on the environmental analysis in this Draft EIS, the Dixie National Forest Supervisor will decide whether or not to retain, close, relocate, or decommission roads and motorized trails within the Duck/Swains Area in accordance with Forest Plan goals, objectives and desired future conditions. The Forest Supervisory will decide whether to implement an action alternative, a modified action alternative, or the no action alternative. If an action alternative is selected, it may include:

- The miles and location of roads to retain open;
- The miles and location of roads to close;
- The miles and location of roads to decommission;
- The miles and location of new motorized trails to construct;
- The miles and location of roads to restrict for motorized trail use;
- The location of a new motorized bridge across Swains Creek;
- Changing the Code of Federal Regulations Order to implement closed unless designated open; and/or
- Mitigation measures and monitoring requirements.

This decision does not include a forest plan amendment.

Scoping Process

On May 21, 2001, we published a notice in the Federal Register (Vol. 66, No. 98, pgs 27934–27936) soliciting public involvement in the development of issues necessary to complete an analysis of the environmental impacts of reducing roads in the Duck Creek-Swains area of the Cedar City Ranger District on the Dixie National Forest. We solicited comments on that notice for 45 days and received 184 comments. We will consider all the comments that we received in response to our May 21, 2001 notice during the preparation of the EIS that is the subject of this notice. Therefore, if you submitted comments in response to the March 2001 notice, you do not need to resubmit those comments in order for the information provided in them to be considered during the development of the EIS.

Preliminary Issues

Issues identified to date include the following:

1. Open and closed roads cause resource impacts such as fragmentation and sedimentation.

2. Some of the roads proposed for closure or decommissioning provide access to scenic vistas, woodcutting, picnicking, hunting, and camping. Closing or decommissioning roads would eliminate access to these areas.

3. Increasing ATV and OHV use on the fewer roads left open would not meet current and anticipated demand increase would cause the potential for user conflicts, congestion and displacement.

4. Use on some roads left open could cause impacts to goshawk and peregrine falcon nesting areas, rims, meadows, and other sensitive areas for wildlife.

5. Existing roads cause changes in natural drainage patterns by intercepting subsurface flow, preventing infiltration and redirecting flow.

Comment Requested

This notice of intent continues the scoping process which guides the development of the environmental impact statement. On May 21, 2001, we published a notice in the **Federal Register** (Vol. 66, No. 98, pgs 27934–27936) soliciting public involvement in the development of issues necessary to complete an analysis of the environmental impacts of reducing roads in the Duck Creek-Swains area of the Cedar City Ranger District on the Dixie National Forest. We solicited comments on that notice for 45 days and received 184 comments. We will consider all the comments that we received in response to our May 21, 2001 notice during the preparation of the EIS that is the subject of this notice. Therefore, if you submitted comments in response to the March 2001 notice, you do not need to resubmit those comments in order for the information provided in them to be considered during the development of the EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: May 23, 2002.

Mary Wagner,

Forest Service, Dixie National Forest.

[FR Doc. 02–16709 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on July 17 and 18, 2002, in Humboldt County, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: A business meeting will be held from 10 a.m. to 4 p.m. on July 17, 2002, at the Forest Supervisor's Office, Six Rivers National Forest, in Eureka, CA. A field tour of the Headwaters Forest Reserve will be held on July 18, 2002, from 8:30 a.m. until 3 p.m.

ADDRESSES: The July 17 business meeting will be held at the Forest Supervisor's Office, Six Rivers National Forest, 1330 Bayshore Drive, Eureka, CA. The July 18 field tour will begin at the Bureau of Land Management office, 1695 Heindon Rd., in Arcata, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3316; e-mail *pybrown@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Presentation on Salmon Recovery Plan; (2) Regional Ecosystem Office (REO) update; (3) Bureau of Land Management presentation on Draft Environmental Impact Statement for the Headwaters Forest Reserve; (4) Update on planning for a Province fire ecology fuels treatment workshop; (5) Aquatic Conservation Subcommittee report; (6) Presentation on working with county Fire Safe Counsels; (7) Northwest Forest Plan Implementation Monitoring scheduling; (8) Options for vegetation management; and (9) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 16, 2002.

James Fenwood,

Forest Supervisor.

[FR Doc. 02–16731 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, July 15, 2002. The meeting is scheduled to begin at 6:00 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA,

and consults on a periodic and regular basis on the management of the area. Tentative agenda items include information sharing on the following topics:

Discussion of the decision and rationale for the Opal Creek SRA Management Plan Environmental Analysis;

Discussion on future transition of the Council membership in accordance with provisions of the Council

is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) an the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, and Stanislaus National Forests in Alphine County.

DATES: The meeting will be held at the Turtle Rock County Park, Markleeville, CA.

services. The respondents will be from the coastal natural resource management community.

Affected Public: State, Local, or Tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton

ensure that the activities are considered research and not fishing. NOAA may also grant exemptions from fishery regulations for educational or other activities (e.g., testing of fishing gear). Applications for these exemptions must be submitted, and reports on activities submitted.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, Federal government, and State, Local or

considered, written comments must be submitted on or before August 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: Pursuant to Title 13 of the United States Code, Section 141, the U.S. Census Bureau has conducted the 2000 Census. The amendment updates administrative

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "Censuses"; Insert "Census"; Delete "taken" and insert "conducted"; Delete "1960 and later"; Add "2000".

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete paragraph after "information"; Add "That may include name, address, telephone number, age, sex, relationships, race, Hispanic origin, and housing tenure. About one in six

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and consults on a periodic and regular basis on the management of the area. Tentative agenda items include information sharing on the following topics:

Discussion of the decision and rationale for the Opal Creek SRA Management Plan Environmental Analysis;

Discussion on future transition of the Council membership in accordance with provisions of the Council Charter;

Discussion of future topics and a tentative schedule for the Council meetings;

A direct public comment period is tentatively scheduled to begin at 8:00 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the July 15 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: June 27, 2002.

Y. Robert Iwamoto,

Acting Forest Supervisor.

Disclaimer: This meeting notice is being published less than 15 days prior to the meeting due to the urgency of presenting the Management Plan decision and completing the appeal processes in order to allow the State of Oregon to move ahead with preparing an Economic Development Plan and grant requests as provided in paragraphs (i)(1) and (i)(2) of Public Law 104–208. This late notice is authorized under 41 CFR 1016.1015(b)(2).

[FR Doc. 02–16699 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Advisory Committee (RAC) will meet on July 15, 2002, in Markleeville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) an the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, and Stanislaus National Forests in Alphine County.

DATES: The meeting will be held at the Turtle Rock County Park, Markleeville, CA.

FOR FURTHER INFORMATION CONTACT: Laura Williams, Committee Coordinator, USDA, Homboldt-Toiyabe National Forest, 1536 S Carson St, Carson City, NV 89701, (775) 884–8150, e-mail: *ljwilliams@fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Old business; (2) Project Criteria Discussion; (3) Camping in Alphine County; (4) Project Proposals; (5) New business & Public comment.

The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 26, 2002.

Gary Schiff,

Carson District Ranger.

[FR Doc. 02–16670 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 062702F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Resource Management Customer Survey.

Form Number(s): None.

OMB Approval Number: 0648–0308.

Type of Request: Regular submission.

Burden Hours: 788.

Number of Respondents: 1,575.

Average Hours Per Response: 30 minutes.

Needs and Uses: This survey will be used by the NOAA Coastal Services Center to obtain information from its customers about their natural resource management issues, their information needs, and their technological capabilities to make quality improvements to our products and services. The respondents will be from the coastal natural resource management community.

Affected Public: State, Local, or Tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–16714 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

[I.D. 062702G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).y

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Scientific Research, Exempted Fishing, and Exempted Activity Submissions.

Form Number(s): None.

OMB Approval Number: 0648–0309.

Type of Request: Regular submission.

Burden Hours: 695.

Number of Respondents: 135.

Average Hours Per Response: 6 hours for a Scientific Research Plan; 1 hour for an exempted fishing permit request; 2 hours for an exempted fishing permit report; and 30 minutes for an exempted educational activity request or report.

Needs and Uses: Fishery regulations do not generally affect scientific research activities conducted by a scientific research vessel. Persons planning to conduct such research are encouraged to submit a research plan to ensure that the activities are considered research and not fishing. NOAA may also grant exemptions from fishery regulations for educational or other activities (e.g., testing of fishing gear). Applications for these exemptions must be submitted, and reports on activities submitted.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, Federal government, and State, Local or Tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–16715 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[Docket No.: 020528133–2133–01]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce.

ACTION: Notice of amendment of Privacy Act System of Records; Commerce/Census System 5: Population and Housing Census Records of the 1960 and Subsequent Censuses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce/Census-5, "Population and Housing Census Records of the 1960 and Subsequent Censuses." We invite public comment on the change to the system of records announced in this notice.

DATES: *Effective Date:* The system will become effective without further notice on August 2, 2002, unless comments dictate otherwise. *Comment Date:* To be considered, written comments must be submitted on or before August 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: Pursuant to Title 13 of the United States Code, Section 141, the U.S. Census Bureau has conducted the 2000 Census. The amendment updates administrative information concerning the locations of the system files, the categories of individuals covered by the system, the categories of records in the system, the purpose of the system of records, retrievability , safeguards, and the disposal of the records in the system in addition to other minor administrative updates. Accordingly, the Population and Housing Census Records of the 1960 and Subsequent Censuses system notice originally published at 45 FR 82105, December 12, 1980, is amended by the addition of the following information updates.

The Department of Commerce finds no probable or potential effect of the proposed change to the system of records on the privacy of individuals. Respondent data including personally identifying data are captured as images suitable for computer processing. Images are scheduled for permanent retention. Original data sources are destroyed, according to the disposal procedures for Title 13 ("census confidential") records, after confirmation of successful data capture and data transmission to headquarters. The Individual Census Record File (ICRF) represents a unified record of individual responses, including all names and other written entries provided by the respondent, and all associated address and geographic information for each housing unit or person living in group quarters. The ICRF is scheduled for permanent retention.

Accordingly, the Population and Housing Census Records of the 1960 and Subsequent Censuses is amended by the following updates:

COMMERCE/CENSUS-5

SYSTEM NAME:

Delete "1960 and Subsequent Censuses" and insert "2000 Census."

SYSTEM LOCATION:

Delete "Bureau of the Census 1201 East 10th Street, Jeffersonville, Indiana 47103"; Add Bureau of the Census, Bowie Computer Center, 17101 Melford Boulevard, Bowie, Maryland 20715."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "Censuses"; Insert "Census"; Delete "taken" and insert "conducted"; Delete "1960 and later"; Add "2000".

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete paragraph after "information"; Add "That may include name, address, telephone number, age, sex, relationships, race, Hispanic origin, and housing tenure. About one in six records also contain additional population information including, as applicable: Marital status; income and employment (income; labor force status; industry, occupation, and class of worker; work status last year; and veteran status); education (school enrollment and educational attainment); origins and language (including ancestry; place of birth, citizenship, and year of entry; and language spoken at home); residence five years ago; disability; grandparents as caregivers; physical characteristics of housing (including year built, units in structure, number of rooms; number of bedrooms, kitchen facilities, plumbing facilities, telephone service availability, heating fuel, year moved to unit, and farm residence); and financial characteristics of housing (including value, selected monthly owner costs, and rent). As a part of the 2000 Census test and experimentation program, Social Security numbers were requested from members of 20,000 randomly selected households. These are maintained with the above information for those households that provided them. Provision was voluntary."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE(S):

Add "The purpose of this system of records is to create longitudinal linkages, enhance survey responses, and perform quality control studies."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Insert "These records are maintained and used solely for statistical purposes and are confidential under Title 13 of the United States Code, Sections 8, 9, and 214"

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete "Microform, paper copy" ; Delete punch cards'; After "magnetic tape" add on-line disk storage, CD-ROMs/DVD, server, and hard disk."

RETRIEVABILITY:

After "Information" delete to the end; After "Information" insert "may only be retrieved by address."

SAFEGUARDS:

After "Employees are" delete "also". After "advised of the" delete "regulations issued pursuant to Title 13, U.S.C. governing the". After "data." add "Computer systems processing sensitive information meet the basic security

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Certain New Shipper Antidumping Duty Reviews

AGENCY: Import Administration,

United States on November 30, 2001. On January 7, 2002, the Department initiated new shipper reviews for these companies. See *Fresh Garlic From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 715 (Jan. 7, 2002). The Department also initiated a new shipper review of exports of Huaiyang Hongda Dehydrated Vegetable Company (Hongda) to the United States. However, we have since determined that it is

Initiation of Antidumping Duty New Shipper Review.

EFFECTIVE DATE: July 3, 2002.

SUMMARY: At the request of Huaiyang Hongda Dehydrated Vegetable Company, the Department of Commerce initiated a new shipper review of its shipments of merchandise subject to the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1

Background

On November 30, 2001, we received a request for a new shipper review from Huaiyang Hongda Dehydrated Vegetable Company (Hongda). We reviewed this request, in addition to two other requests, and found that the requests complied with the content requirements for requests for new shipper reviews set forth under 19 CFR 351.214(b)(2). We therefore initiated three new shipper reviews on December 28, 2001. See

since the increased price was not the result of a negotiation between the buyer and the seller, the price increase did not affect the date of sale and should be treated as a billing adjustment.

The petitioner, the Fresh Garlic Producers Association, submitted comments on Hongda's response on April 5, 2002. It argued that the new shipper review should be rescinded on the basis that no sale or entry had

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RETRIEVABILITY:

After "Information" delete to the end; After "Information" insert "may only be retrieved by address."

SAFEGUARDS:

After "Employees are" delete "also". After "advised of the" delete "regulations issued pursuant to Title 13, U.S.C. governing the". After "data." add "Computer systems processing sensitive information meet the basic security requirements for discretionary access control as defined by DOD 5200.28 STD, commonly referred to as C2-level security. This level of security controls through use of specific security features, provides access to information such that only properly authorized individuals, or processes operating on their behalf, will have access to read, write, create, or delete information."

RETENTION AND DISPOSAL:

Delete "Records are retained in accordance with the unit's Record Control Schedule." Add: "Respondent data including personally identifying data are captured as images suitable for computer processing. Images are scheduled for permanent retention. Original data sources are destroyed, according to the disposal procedures for Title 13 ("census confidential") records, after confirmation of successful data capture and data transmission to headquarters. The Individual Census Record File (ICRF) represents a unified record of individual responses, including all names and other written entries provided by the respondent, and all associated address and geographic information for each housing unit or person living in group quarters. The ICRF is scheduled for permanent retention. The computer systems processing this information meet the basic security requirements for discretionary access control as defined by DOD 5200.28 STD, commonly referred to as C2-level security.

SYSTEMS MANAGER(S) AND ADDRESS:

Delete "Administration"; add "Decennial Census".

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Insert "system of" between "this" and "record" in the first sentence and change "record" to "records".

*Indicates that there are no changes to that paragraph of the notice.

Dated: June 27, 2002.

Brenda S. Dolan,

Freedom of Information/Privacy Act Officer, Department of Commerce.

[FR Doc. 02–16723 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Certain New Shipper Antidumping Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of certain new shipper antidumping duty reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of two new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. This extension applies to the new shipper reviews for two producers/exporters, Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company. The period of review is November 1, 2000, through October 31, 2001.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ellman, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5047 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

Extension of Time Limit for Preliminary Results for New Shipper Reviews

On November 29, 2001, Shandong Heze International Trade and Developing Company requested a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, of exports of its merchandise to the United States. Jinan Yipin Corporation, Ltd., also requested such a review of its exports to the United States on November 30, 2001. On January 7, 2002, the Department initiated new shipper reviews for these companies. See *Fresh Garlic From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 715 (Jan. 7, 2002). The Department also initiated a new shipper review of exports of Huaiyang Hongda Dehydrated Vegetable Company (Hongda) to the United States. However, we have since determined that it is appropriate to rescind the review of Hongda. See *Fresh Garlic From the People's Republic of China: Rescission of New Shipper Review and Initiation of New Shipper Review*, published concurrently with this notice. The deadline for completing the preliminary results of these new shipper reviews currently is June 26, 2002.

A number of complex factual and legal questions related to the calculation of dumping margins have arisen in the new shipper reviews. Because a margin has not been calculated during an earlier segment of this proceeding, numerous issues have been raised and commented upon by the petitioner and a respondent concerning the factors of production and the valuation of those factors. In addition, in the case of both Jinan Yipin and Shandong Heze, we are still evaluating their responses to the original questionnaire and two supplemental questionnaires. Therefore, we find that the new shipper reviews are extraordinarily complicated and it is not practicable to complete these reviews within the time limits mandated by section 751(a)(2)(B)(iv) of the Act. As a result, we are extending the time limit for the preliminary results of these reviews to July 24, 2002.

Dated: June 26, 2002

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 02–16741 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Rescission of New Shipper Antidumping Duty Review and Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of New Shipper Antidumping Duty Review and Initiation of Antidumping Duty New Shipper Review.

EFFECTIVE DATE: July 3, 2002.

SUMMARY: At the request of Huaiyang Hongda Dehydrated Vegetable Company, the Department of Commerce initiated a new shipper review of its shipments of merchandise subject to the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2000, through October 31, 2001. However, after review of the company's responses to our original and supplemental questionnaires, we found that the date of sale and entry of the company's U.S. sale fell outside the period of review. We are therefore rescinding this new shipper review.

Although the Department of Commerce is rescinding the November 1, 2000, through October 31, 2001, new shipper review for Huaiyang Hongda Dehydrated Vegetable Company, we still find that its request for review complies with the content requirements for a new shipper review. Further, we find that the date of sale and entry for the transaction covered by the company's request for review fall within the six-month period immediately preceding the May semiannual anniversary month of the antidumping duty order on fresh garlic from the People's Republic of China. Therefore, in accordance with 19 CFR 351.214(g)(1)(B), we are initiating a new shipper antidumping duty review for the period of November 1, 2001, through April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Mark Ross, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3931 or (202) 482-4794, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, for purposes of the rescission, all references are made to the Department of Commerce's (the Department) regulations at 19 CFR Part 351 (2001), and, for purposes of the initiation, all references are made to the Department's regulations at 19 CFR Part 351 (2002).

Background

On November 30, 2001, we received a request for a new shipper review from Huaiyang Hongda Dehydrated Vegetable Company (Hongda). We reviewed this request, in addition to two other requests, and found that the requests complied with the content requirements for requests for new shipper reviews set forth under 19 CFR 351.214(b)(2). We therefore initiated three new shipper reviews on December 28, 2001. See *Fresh Garlic from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 715 (Jan. 7, 2002) (*Initiation Notice*). On January 22, 2002, we issued Hongda a questionnaire. On March 7, 2002, we received a response from Hongda to the questionnaire. The company submitted a response to our May 15, 2002, supplemental questionnaire on June 5, 2002, and supplemented this response with additional information on June 17, 2002.

Rescission of New Shipper Review

In its request for a new shipper review, Hongda stated that its only sale of subject merchandise had occurred on October 29, 2001, and that it considered this date to be both the sales invoice date and the date of sale. It also stated that the merchandise was entered for consumption into the United States on November 28, 2001. In support of its statements, it submitted an invoice, dated October 29, 2001, and a U.S. Customs entry summary form showing an entry date of November 28, 2001. Based on this request and documentation, we concluded that a sale had taken place during the period of review as defined under 19 CFR 351.214(g) and that the request complied with the content requirements for requests set forth under 19 CFR 351.214(b)(2).

In its March 7, 2002, questionnaire response, Hongda confirmed that the invoice date for its U.S. sale was October 29, 2001. However, it claimed that the merchandise was shipped from the factory on November 7, 2001, and that upon its arrival in the United States, the U.S. Customs Service refused entry of the merchandise unless the importer entered the merchandise at a higher price. In support of its claim, Hongda submitted an entry summary reject form from the U.S. Customs Service that showed that entry of the merchandise was rejected on the basis of value claimed. Hongda stated that, as a result, the price was increased and it issued a supplemental invoice to the customer on November 29, 2001, to reflect this price increase. It stated that, since the increased price was not the result of a negotiation between the buyer and the seller, the price increase did not affect the date of sale and should be treated as a billing adjustment.

The petitioner, the Fresh Garlic Producers Association, submitted comments on Hongda's response on April 5, 2002. It argued that the new shipper review should be rescinded on the basis that no sale or entry had occurred during the period of review (POR). The petitioner asserted that a key term of sale the price changed on November 29, 2001, and that, accordingly, the sale of the merchandise did not occur during the POR.

In its June 5, 2002, response to our supplemental questionnaire, Hongda claimed that the U.S. Customs Service had demanded that the U.S. customer import the merchandise at a specified higher price and that this was the price reflected in the price increase between Hongda and the customer. Hongda could not provide an explanation as to why the U.S. Customs Service demanded the higher price.

As set forth under 19 CFR 351.401(i), the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, in identifying the date of sale of the subject merchandise. However, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i). The Department cited and explained this regulatory provision in Appendix I of the January 22, 2002, questionnaire sent to Hongda. See Request for Information Regarding Exports of Fresh Garlic from the PRC, p. I-2 (Jan. 22, 2002). In addition, the Department stated that "if basic terms of sale have changed up to, or even subsequent to, the date of shipment, then the date of shipment is the date of sale." *Id.*

We find, based on a review of the record, that the U.S. Customs Service did not reject entry of the fresh garlic on the basis of the negotiated price between Hongda and the U.S. customer but on the basis of the value of the merchandise. Thus, we find that Hongda's decision to increase the price of its merchandise on November 29, 2001, was a decision it voluntarily made to have the merchandise enter the United States. Therefore, the price increase was not a mere billing adjustment, but a change in the price a material adjustment in the transaction of the goods. Consequently, a material

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term of sale changed on November 29, 2001, and, because this date is subsequent to the date of shipment, we find that the date of sale is November 7, 2001.

This date is outside of the POR for the new shipper review. Under 19 CFR 351.214(g), a new shipper review will normally cover entries, exports, or sales during the twelve-month period preceding the anniversary month of the order if the new shipper review was initiated in the month immediately following the anniversary month. The anniversary month in this proceeding is November, since the antidumping duty order was published on November 16, 1994. We initiated the new shipper review on December 28, 2001. Consequently, the POR covers entries, exports, or sales of merchandise by Hongda from November 1, 2000, until October 31, 2001. Because no sales or entries of merchandise occurred during this period, we are rescinding this review in accordance with 19 CFR 351.214(f)(2), which permits the Department to rescind a new shipper review when we conclude that no entry and sale of subject merchandise to an unaffiliated customer in the United States took place during the period of review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Initiation of New Shipper Review

As indicated in the "background" section above, we found in our *Initiation Notice* that Hongda's November 30, 2001, request for a new shipper review complied with the content requirements set forth under 19 CFR 351.214(b)(2). Therefore, we are initiating a new shipper review for shipments of fresh garlic from the People's Republic of China produced and exported by Hongda. This review will cover entries, exports, and sales during the period of November 1, 2001, through April 30, 2002, as defined under 19 CFR 351.214(g). We intend to issue final results of this review no later than 270 days after the date on which the new shipper review was initiated. See 19 CFR 351.214(i).

We previously instructed the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Hongda in accordance with 19 CFR 351.214(e). These instructions will remain in effect until the completion of the new shipper review.

The interested parties should submit applications for disclosure under APO in accordance with 19 CFR 351.305 and 351.306 of the Department's regulations.

This rescission, initiation, and notice are in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i) of the Department's regulations.

Dated: June 26, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–16742 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 020612145–2145–01]

Request for Technical Input—Standards in Trade Workshops

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for workshop recommendations.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to submit suggestions for workshops covering specific sectors and targeted countries or regions of the world where training in the U.S. system of standards development, conformity assessment, and metrology may facilitate trade. Prospective workshops may be scheduled for one or two week periods. This notice is not an invitation for proposals to fund grants, contracts or cooperative agreements of any kind. Because there are a limited number of workshops that NIST can offer and NIST has limited resources, NIST will consider recommendations in the context of which workshops would be most useful to intended audiences. Additional information about the NIST Standards in Trade Workshops is available at *http://ts.nist.gov/ts/htdocs/210/216/216.htm*.

DATES: All recommendations must be submitted no later than July 31, 2002.

FOR INFORMATION CONTACT: Libby Parker (301) 975–3089, *libby@nist.gov*. Additional information about the NIST Standards in Trade workshops, to include schedules and summary reports for workshops held to date and participant information, is available at *http://ts.nist.gov/ts/htdocs/210/216/216.htm*.

SUPPLEMENTARY INFORMATION: The Standards in Trade Workshops are a major activity of the Global Standards and Information Group (GSIG) in the NIST Standards Services Division (SSD). The workshops are designed to provide timely information to foreign standards officials on U.S. practices in standards and conformity assessment. Participants are introduced to U.S. technology and principles in metrology, standards development and application, and conformity assessment systems.

Each workshop is a one or two week program offering a comprehensive overview of the roles of the U.S. Government, private sector, and regional and international organizations engaged in standards development and conformity assessment practices. Specific workshop objectives are to: (1) Familiarize participants with U.S. technology and practices in metrology, standardization, and conformity assessment; (2) describe and understand the roles of the U.S. Government and the private sector in developing and implementing standards; and (3) develop professional contacts as a basis for strengthening technical ties and enhancing trade. Workshop recommendations (maximum 4 pages) will address at a minimum the following points:

1. Name and Description of the Recommending Organization
2. Point of Contact
3. Industry Sector for Workshop Focus
4. Calendar Dates and Duration Suggested for Workshop
5. Workshop Objectives
6. Anticipated Benefit for Trade and Market Access
7. Proposed Foreign Participants
   a. country or region
   b. types of organizations
8. U.S. Stakeholder Participants (e.g., Associations, Agencies, Users, others)
9. Principal Topics and Recommended Speakers
10. Related Site Visits and Events
11. Expected Outcomes/Measures of Success

All recommendations must be submitted no later than July 31, 2002.

Dated: June 24, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–16698 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Technology Administration

Announcing a Public Workshop on Digital Entertainment and Rights Management

AGENCY: Technology Administration, Commerce.

ACTION: Notice of a public workshop.

SUMMARY: The United States Department of Commerce Technology Administration (TA) announces a public workshop on digital entertainment and its availability to consumers. The workshop will help gather data on such issues as the status of technical standards that provide the framework necessary to enable legitimate digital media distribution and the present state of strengths, weaknesses and availability of current and imminent technological solutions to protect digital content, barriers that are inhibiting movies, music and games from coming online.

DATES: This workshop will be held on July 17, 2002, from 1 p.m.–4 p.m.

ADDRESSES: The workshop will be held at the Herbert C. Hoover Building, 1401 Constitution Avenue, NW., Room 4830, Washington, DC. Entrance on 14th between Pennsylvania and Constitution Aves., NW.

FOR FURTHER INFORMATION CONTACT: Further information relevant to the substantive issues to be addressed by this workshop may be obtained from Chris Israel Deputy Assistant Secretary for Technology Policy, Technology Administration, (202) 482–5687. Limited seating will be available to members of the general public. It is recommended that persons wishing to become general public attendees arrive early, as seating will be first come, first served.

SUPPLEMENTARY INFORMATION: Pursuant to its statutory authority found at 15 U.S.C. 3704(c), the Technology Administration is authorized, among other things, to conduct technology policy analyses to improve United States industrial productivity, technology, and innovation, cooperate with United States industry in the improvement of its productivity, technology, and ability to compete successfully in world markets, and identify technological needs, problems, and opportunities within and across industrial sectors, that, if addressed, could make a significant contribution to the economy of the United States.

With these responsibilities in mind, the Technology Administration is planning on holding a moderated series of informal discussions with relevant stakeholders to gather information on the availability of digital entertainment and status of copyright protection and rights management tools. The discussions will help gather data on such issues as the strength, weaknesses and availability of technological solutions, as well as network capability, and the proper role for the Government in facilitating solutions that are best for innovation and best for consumers.

Topics to be addressed at the workshop include:

- The effectiveness of efforts to pursue technical standards or solutions that are designed to provide a more predictable and secure environment for digital transmission of copyright material;
- Major obstacles facing an open commercial exchange of digital content;
- What a future framework for success might entail;
- Current consumer attitude towards online entertainment.

The workshop will focus on these and other related issues. Anyone wishing to comment on these or raise related issues is free to do so, either in writing before the meeting, or in person at the meeting. Prior comments will be collected via the Technology Administration Web site—*www.ta.doc.gov/<http://www.ta.doc.gov/.>* and are requested by July 11, 2002.

Authority: This work effort is being initiated pursuant to TA's statutory responsibilities, codified at section 3704 of Title 15 of the United States Code.

Dated: June 28, 2002.

Phillip J. Bond,

Undersecretary of Commerce for Technology.

[FR Doc. 02–16740 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–15–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 2, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: June 27, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Grants under Upward Bound (UB) & Upward Bound Math/Science (UBMS) Programs.
Frequency: Once every four years.
Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,450.
Burden Hours: 49,300.
Abstract: The application form is needed to conduct a national competition for the Upward Bound and Upward Bound Math and Science Centers Programs for program year 2003–04. These programs provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of

institutions and agencies and, in exceptional cases, secondary schools to establish and operate projects designed to generate skills and motivations necessary for success in education beyond secondary school. The Math and Science Program provides an intensive six-week summer math-science curriculum program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary

DATES: Wednesday, July 31, 2002 1 p.m.–6:30 p.m.

ADDRESSES: New Mexico Highlands University, Student Center, Las Vegas, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail:

address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of

scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following:

Warning: Modification of this device to receive cellular radiotelephone service

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–67; FCC 02–189]

Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., Pursuant to Section 271 of the

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institutions and agencies and, in exceptional cases, secondary schools to establish and operate projects designed to generate skills and motivations necessary for success in education beyond secondary school. The Math and Science Program provides an intensive six-week summer math-science curriculum program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2064. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16684 Filed 7–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, July 31, 2002 1 p.m.–6:30 p.m.

ADDRESSES: New Mexico Highlands University, Student Center, Las Vegas, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Board Meeting and Retreat Agenda:

Wednesday, July 31, 2002

1–1:15 p.m. Call to Order by Ted Taylor, DDFO; Establishment of a Quorum; Welcome and Introductions by Jim Brannon, Board Chair; Approval of Agenda; Approval of May 31–June 1, 2002 Meeting and Retreat Minutes
1:15–1:30 p.m Public Comment
1:30–2:30 p.m Board Business
A. Recruitment/Membership Update
B. Report from Chairman Brannon
—Update on SSAB Chair's Meeting and SSAB Workshop
—Amendment No. 2 to Bylaws
C. Report from DOE, Ted Taylor, DDFO
—Overview of Parliamentary Procedure
D. Report from Executive Director, Menice S. Manzanares
E. Report from Technical Advisor, Ben Latham
F. New Business
2:30–2:45 p.m. Break
2:45–3:45 p.m. Report from Committees
A. Environmental Restoration Committee, Dr. Fran Berting
B. Monitoring and Surveillance Committee, Dr. June Frabryka-Martin
C. Waste Management Committee, Richard Gale
D. Community Outreach Committee, Debra Welsh
E. Budget committee Report, Don Jordan
3:45–5 p.m.Presentation of FY 03 Work Plans and Budget by Each Committee
5–6 p.m. Dinner Break
6–7:30 p.m. Presentation by DOE on FY 03 Budget
7:30–7:45 p.m. Break
7:45–8:15 p.m. Public Comment
8:15–8:30 p.m. Recap of Meeting
8:30 p.m. Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org*.

Issued at Washington, DC on June 28, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–16695 Filed 7–2–02; 8:45 am]

BILLING CODE 6405–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 26, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 3, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit, Sections 2.1033(b)(11) and 15.121.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; not-for-profit institutions; business or other for-profit entities; and State, Local or Tribal Government.

Number of Respondents: 40.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 40 hours.

Total Estimated Cost: $2,000.

Needs and Uses: The FCC rules under 47 CFR 2.1033(b)(11) require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning, control, and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission also requires manufacturers to submit information with any application for certification that describes: the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following:

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

OMB Control Number: 3060–0329.

Title: Equipment Authorization—Verification, 47 CFR 2.955.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; business or other for-profit entities; and State, Local or Tribal Government.

Number of Respondents: 5,655.

Estimated Time per Response: 18 hours (avg.).

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 101,790 hours.

Total Estimated Cost: $1,131,000.

Needs and Uses: Under certain sections of Part 15 and Part 18 of the Commission rules, manufacturers are required to verify that the equipment being marketed complies with established technical standards and FCC regulations and that the operation of the equipment is consistent with the initially documented test results. The information is essential to controlling potential interference to radio communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–16671 Filed 7–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–67; FCC 02–189]

Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, for Provision of In-Region, InterLATA Services in the State of New Jersey

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission grants the section 271 application of Verizon New Jersey Inc., *et al.* (Verizon) for authority to enter the interLATA telecommunications market in the state of New Jersey. The Commission grants Verizon's application based on its conclusion that Verizon has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Alexis Johns, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at *ajohns@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in WC Docket No. 02–67, FCC 02–189, adopted June 24, 2002 and released June 24, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's website at http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications.

Synopsis of the Order

1. *History of the Application.* On March 26, 2002, Verizon New Jersey Inc., *et al.*, filed its second application with the Commission to provide in-region, interLATA service in New Jersey (NJ II). Although Verizon initially filed a section 271 application for New Jersey with this Commission on December 20, 2001 (NJ I), that application was withdrawn on March 19, 2002 , as a

on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's UNE rates in New Jersey satisfy checklist item two.

6. *Pricing.* Verizon filed its first application to provide interLATA service in New Jersey before the New Jersey Board had issued its final order on rates for unbundled network elements (UNEs). On day 76 of the NJ I proceeding, the New Jersey Board released its Final UNE Rate Order. On

applications. No commenter argues that the manner in which Verizon developed its switching rates is inconsistent with the manner in which Verizon imposes these rates. The Commission therefore rejects commenters' claims that charging both an originating and a terminating rate for every call, regardless of the number of switches involved, is by itself inappropriate or a violation of TELRIC.

9. WorldCom and AT&T also challenge Verizon's inclusion of vertical

reasonable and consistent, TELRIC does not by itself dictate the use of a particular number of days, whether 308, 251, or some other number. Even if the New Jersey Board erred in approving Verizon's use of 251 days together with other inputs, Verizon's non-loop rates in New Jersey pass a benchmark comparison to Verizon's non-loop rates in New York and therefore fall within the range that reasonable application of TELRIC principles would produce.

Verizon continues to argue in NJ II that this rate is Board-approved and TELRIC-complaint, it voluntarily agreed to reduce the effective rates for six hot cut charges to $35.00. The $35.00 hot cut rate is a rate selected by Verizon and that has gone into effect in New Jersey. The $35:00 hot cut rate, which mirrors the effective rate in New York, bears the imprimatur of the New York PSC as well as the numerous competitive LECs who joined that settlement. The New

projected "normal" volume equivalent to the submission of 1.3 million orders per month into the New Jersey SOP. With regard to performance data, KPMG undertook a comprehensive review of Verizon's systems and procedures to measure and report its performance under the Carrier-to-Carrier Guidelines, and KMPG found that Verizon satisfied all 164 test points. The Commission finds, as did the New Jersey Board, that we can rely on the KPMG test results as

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Synopsis of the Order

1. *History of the Application.* On March 26, 2002, Verizon New Jersey Inc., *et al.*, filed its second application with the Commission to provide in-region, interLATA service in New Jersey (NJ II). Although Verizon initially filed a section 271 application for New Jersey with this Commission on December 20, 2001 (NJ I), that application was withdrawn on March 19, 2002 , as a result of "process concerns" that were raised with respect to certain pricing matters.

2. *The New Jersey Board of Public Utilities' (New Jersey Board) Evaluation.* The New Jersey Board conducted an extensive proceeding to facilitate competition in local exchange markets in which it approved and finalized a new Incentive Plan and conducted a lengthy pricing proceeding. Consequently, it recommended that the Commission grant Verizon's section 271 application for New Jersey.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Verizon's New Jersey Application on April 15, 2002. It recommended approval of the application subject to the Commission's review of Verizon's checklist compliance for certain pricing and operation support systems (OSS) issues.

Primary Issues in Dispute

4. *Compliance with Section 271(c)(1)(A).* Section 271(c)(1)(A) (Track A) requires the presence of facilities-based competitors serving both residential and business customers. The Commission concludes that Verizon satisfies the requirements of Track A in New Jersey. Verizon relies on interconnection agreements with MetTel, eLEC, and Broadview in support of its Track A showing, and the Commission finds that each of these carriers serves more than a *de minimis* number of end users predominantly over its own facilities and represents an "actual commercial alternative" to Verizon in New Jersey. Verizon notes that each of these carriers has increased the number of residential lines it serves since the time Verizon filed its NJ I application. Also, the New Jersey Board has stated its intention to take additional measures to further encourage local entry by competitors of Verizon New Jersey, if necessary.

5. *Checklist Item 2—Unbundled Network Elements: Pricing and OSS.* Based on the evidence in the record before us for this application, the Commission finds that Verizon's UNE rates in New Jersey are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's UNE rates in New Jersey satisfy checklist item two.

6. *Pricing.* Verizon filed its first application to provide interLATA service in New Jersey before the New Jersey Board had issued its final order on rates for unbundled network elements (UNEs). On day 76 of the NJ I proceeding, the New Jersey Board released its Final UNE Rate Order. On day 89 of the NJ I proceeding, Verizon notified the Commission that it was withdrawing its application as a result of "process concerns" that were raised with respect to the non-recurring charge for performing a hot cut. The next day, Verizon informed the New Jersey Board that, effective immediately, it would reduce the effective hot cut rate in New Jersey to the same level —$35— that was recently made effective in New York. On March 26, 2002, Verizon filed its second application to provide interLATA service in New Jersey. Both the Department of Justice and the New Jersey Board recommended approval of the NJ II application, although commenters reiterated pricing concerns from the NJ I application and also raised new pricing issues.

7. WorldCom contends that the New Jersey Board incorrectly approved Verizon's fiber/copper feeder and fill factor percentages. WorldCom disagrees with Verizon's assumption that 60 percent of feeder will be served on fiber cable with integrated digital loop carrier (IDLC) and that the remaining 40 percent served on copper feeder. The New Jersey Board considered this very issue and approved Verizon's 60/40 split between fiber and copper feeder. WorldCom presents no arguments or evidence that would cause us to find that these assumptions are inconsistent with TELRIC principles as applied to Verizon in New Jersey. WorldCom also claims that the New Jersey Board approved unreasonably low fill factors for fiber and copper cable, which allegedly results in overstated loop costs. The Board-approved fill factors are not inconsistent with those that the Commission has approved in prior section 271 orders, and the Commission finds no TELRIC errors in the New Jersey Board's analysis of Verizon's fill factors.

8. The NJDRA and WorldCom allege that Verizon improperly "double charges" for calls that both originate and terminate on the same switch. The commenters claim that Verizon should be allowed to charge only once for such intra-switch calls. Verizon's methodology is not inconsistent with our handling of this issue in prior applications. No commenter argues that the manner in which Verizon developed its switching rates is inconsistent with the manner in which Verizon imposes these rates. The Commission therefore rejects commenters' claims that charging both an originating and a terminating rate for every call, regardless of the number of switches involved, is by itself inappropriate or a violation of TELRIC.

9. WorldCom and AT&T also challenge Verizon's inclusion of vertical features in the switching rate. They argue that non-usage-sensitive elements, such as vertical features, should be included with the port charge and not charged on a per-minute basis. no commenter has stated that vertical features are provided over wholly dedicated facilities, nor have they provided evidence that the per-minute charge is inconsistent with the manner in which costs are incurred. Under our rules, the New Jersey Board could have properly directed Verizon to recover the costs of vertical features as part of flat-rated port charges, split the costs between the flat and per-minute switch elements, or recover the costs through the per-minute charge. The New Jersey Board's decision to allow the recovery of such costs in the per-minute switching rate fully complies with our rate structure rules. The Commission finds no TELRIC error in the New Jersey Board's handling of the vertical features costs issue.

10. WorldCom also claims that Verizon has overstated its switching costs by using an inappropriate switch vendor discount. The New Jersey Board directed Verizon to compute its switching costs as if 79.4 percent of the switches would receive the discount for purchases of new switches and 20.6 percent would receive the discount for purchases of growth switches. The Commission concludes that this issue is a fact-specific inquiry amenable in the first instance to determination by the state commissions; it is not a bright-line rule. The Commission has been presented with no evidence or rationale, beyond bare assertions, that would persuade us that the split chosen by the New Jersey Board amounts to a TELRIC error. It is satisfied that the New Jersey Board carefully evaluated this issue, properly rejected Verizon's proposed use of 100 percent growth switches, and validly established what it considered to be more appropriate and state-specific switching discounts.

11. WorldCom contends that Verizon improperly calculates its switching cost by dividing by minutes associated with only 251 business days in a calendar year. In our view, provided that an incumbent LEC's methodology is reasonable and consistent, TELRIC does not by itself dictate the use of a particular number of days, whether 308, 251, or some other number. Even if the New Jersey Board erred in approving Verizon's use of 251 days together with other inputs, Verizon's non-loop rates in New Jersey pass a benchmark comparison to Verizon's non-loop rates in New York and therefore fall within the range that reasonable application of TELRIC principles would produce.

12. In this application, Verizon chooses to rely on a benchmark comparison of its rates in New Jersey to those in New York. The Commission agrees that New York is similar to New Jersey in terms of both geography and rate structure. Having found that New York is an appropriate benchmark state, the Commission finds that New Jersey's non-loop rates are roughly six percent lower than New York non-loop rates. The Commission also finds that New Jersey non-loop costs are roughly one percent higher than New York non-loop costs, after taking a weighted average of New Jersey and New York costs derived from the Commission's Synthesis Model. Therefore, it concludes that New Jersey's non-loop rates pass a benchmark comparison to New York's non-loop rates and that they therefore satisfy our benchmark analysis and the requirements of checklist item two.

13. AT&T argues that Verizon's DUF rates are inflated and do not comply with TELRIC. AT&T did not raise these issues before the New Jersey Board, and it has only recently challenged Verizon's DUF rates in a motion for reconsideration of the Final UNE Rate Order. AT&T's motion is presently pending before the New Jersey Board. The New Jersey Board should have the opportunity to evaluate AT&T's evidence and make any adjustments it finds appropriate. The Commission commends the New Jersey Board's commitment to TELRIC principles, defers to the New Jersey Board's forthcoming resolution of the DUF rate, and finds no TELRIC error on the record before us on this issue.

14. AT&T, ASCENT, the NJDRA, and XO challenge Verizon's "hot cut" charges. A hot cut is the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch. Commenters argue that the $35 hot cut rate is not TELRIC-compliant. They contend generally that the hot cut rate is merely a temporary credit that does not comport with TELRIC principles. During the NJ I proceeding, Verizon's $159.76 hot cut rate generated considerable controversy. Although Verizon continues to argue in NJ II that this rate is Board-approved and TELRIC-complaint, it voluntarily agreed to reduce the effective rates for six hot cut charges to $35.00. The $35.00 hot cut rate is a rate selected by Verizon and that has gone into effect in New Jersey. The $35:00 hot cut rate, which mirrors the effective rate in New York, bears the imprimatur of the New York PSC as well as the numerous competitive LECs who joined that settlement. The New Jersey Board is presently considering AT&T's motion for reconsideration of the hot cut rate and will have an opportunity to weigh AT&T's evidence of the appropriate rate level. We note that the $35 hot cut charge reflects a reduction of over 75 percent from the charge adopted by the New Jersey Board. The Commission also takes comfort that the $35 hot cut rate will remain in effect until at least March 1, 2004. Accordingly, it defers to the New Jersey Board's anticipated resolution of this matter and find no TELRIC error on the record before it in Verizon's $35 hot cut rate.

15. AT&T asserts that the $7.71 service order charge Verizon assesses on a competitive LEC whenever it adds or deletes a telephone feature service, such as caller identification, does not comply with TELRIC. A feature change service order charge is imposed only if a customer is already taking service from a competitive LEC. Even then, not all such customers request changes to their feature services. There is no evidence in the record that a feature change service order charge constitutes a barrier to market entry in the same way that a non-TELRIC hot cut charge could. The Commission notes that AT&T has filed a motion for reconsideration of this issue with the New Jersey Board. It believes that the New Jersey Board should have the opportunity to evaluate the evidence itself and make adjustments it regards as appropriate.

16. *OSS.* The Commission finds, as did the New Jersey Board, that Verizon provides non-discriminatory access to its OSS. In addition to New Jersey performance data, Verizon certifies that it provides competitive LECs in New Jersey with interfaces and gateways to the OSS common to those serving the rest of the former Bell Atlantic service area. Verizon engaged KPMG Consulting (KPMG) to test the interfaces and OSS serving New Jersey. In addition, Verizon engaged PricewaterhouseCoopers (PwC) to conduct two attestation reviews of Verizon's BOS BDT formatted bills in New Jersey in September 2001.

17. KPMG's testing included end-to-end testing and evaluation of integrated operations, including examination at a projected "normal" volume equivalent to the submission of 1.3 million orders per month into the New Jersey SOP. With regard to performance data, KPMG undertook a comprehensive review of Verizon's systems and procedures to measure and report its performance under the Carrier-to-Carrier Guidelines, and KMPG found that Verizon satisfied all 164 test points. The Commission finds, as did the New Jersey Board, that we can rely on the KPMG test results as significant evidence that Verizon provides nondiscriminatory access to its OSS. The Commission's reliance on the KPMG test results is warranted because of the thoroughness and rigorousness with which KMPG conducted its military-style test, which covered 536 transactions and included volume testing. Thus, it sees no need to question the reliability of the data Verizon submitted in its application and, in fact, we are encouraged by Verizon's efforts in coordination with the New Jersey Board, to ensure that its data are accurate, reliable, and widely disclosed.

18. Competitors in New Jersey raise several issues regarding notifier timeliness and accuracy, and the Department of Justice comments that the Commission should satisfy itself that Verizon returns BCNs on an accurate and timely basis. For example, MetTel raises a threshold accusation that Verizon issues "false" order completion notifiers. In contrast to more anecdotal-based challenges made by competitors in previous section 271 proceedings, MetTel has extensively documented and inventoried its submissions of orders and receipt of notifiers. We commend MetTel on its efforts to compile and submit independent evidence and construct an affirmative case for its position. Nevertheless, we continue to place primary reliance on the notifier data that Verizon has submitted with its application. At the same time, the Commission recognizes that, although the issues raised by MetTel do not generally demonstrate checklist noncompliance, Verizon has an affirmative obligation to continue to engage MetTel and attempt to reconcile its disagreements with MetTel through a carrier-to-carrier dispute resolution process. In this regard, it is noted that Verizon has begun a data reconciliation process with MetTel during the course of this proceeding that, although incomplete, has focused the number of issues in dispute and led to a more precise identification of the underlying data in dispute. As a result, it appears that much of the remaining gap between the performance results reported by Verizon and the performance results

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generated by MetTel arise from an apparent disagreement over the application of various aspects of the Carrier-to-Carrier Guidelines. Although the record reveals that this reconciliation process has been contentious and adversarial, at this time we do not believe that Verizon is not engaged in a good-faith effort to resolve these issues. The Commission fully expects Verizon to continue these efforts

competitive LECs; and based on the evidence in the record, we find that Verizon's provision of the DUF meets its obligations in this regard. Several parties, however, raise issues with Verizon's provision of wholesale billing. Specifically, a number of parties dispute the accuracy of the wholesale bill, based on both the BOS BDT format and the retail format.

21. Verizon employs the same billing

evolutionary process and we expect that Verizon continue its efforts to improve its wholesale billing as industry standards evolve.

23. Several competitive LECs assert that their commercial experience shows that Verizon's systems produce recurring or "systemic" inaccuracies in its wholesale bills. We note that no commenter has put forth the type of detailed analysis of its wholesale billing dispute with Verizon that was present

with a meaningful opportunity to compete. Flow-through measures the number of orders that are electronically processed by an incumbent LEC's OSS without the need for manual intervention. In New Jersey, while Verizon's achieved flow-through rate for UNEs has been below the 95 percent standard set by the New Jersey Board, there nevertheless, has been a consistent, upward trend in the rate, reaching 85.34 percent in January, 89.82

November-March period with respect to timeliness and quality. Furthermore, Verizon's performance for repair and maintenance timeliness under the mean time to repair metric also demonstrates parity during the November-March period.

28. *Hot Cut Activity.* Verizon is providing voice grade loops through hot cuts in New Jersey in a nondiscriminatory manner. Verizon has satisfied its benchmark for on time

repair quality " the percentage of repeat trouble reports within 30 days. Verizon's performance under this measure indicates a large disparity in February with respect to the percentage of repeat reports observed for competitive LECs and Verizon retail. Verizon explains, however, that the small sample size of competitive LEC trouble reports observed in February contributed to the wide fluctuation in performance under this measure.

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generated by MetTel arise from an apparent disagreement over the application of various aspects of the Carrier-to-Carrier Guidelines. Although the record reveals that this reconciliation process has been contentious and adversarial, at this time we do not believe that Verizon is not engaged in a good-faith effort to resolve these issues. The Commission fully expects Verizon to continue these efforts at reconciliation as part of its nondiscrimination obligations and to continue to make efforts to improve its OSS performance. It also expects the New Jersey Board will make every effort to facilitate this reconciliation effort either formally through its dispute resolution process or through other administrative measures.

19. For purposes of checklist compliance, the Commission is convinced by the thoroughness and rigorousness of KPMG's independent audit that Verizon's performance data, including its data related to notifiers specifically, is sufficiently accurate. The fact that no other company questions whether Verizon's performance data related to the timeliness and accuracy of Verizon's notifier data gives us additional assurance that such data are reliable. Further, MetTel's attempts to introduce certain usage proxies as indicators of system events and reliance on measures not adopted by the New Jersey Board do not persuade us to abandon the more objective and industry standard performance measures approved by the Board. The Commission concludes that Verizon has demonstrated that it provides notifiers in a nondiscriminatory manner that allows efficient competitors a meaningful opportunity to compete. In reaching this determination, it recognizes that the processes for notifying competitors of the status of their orders, the set of metrics to measure notification, and the corresponding process to record notifier performance, are all evolving and will continue to do so. Accordingly, the Commission expects Verizon to continue to work with MetTel and other competitors in enabling them to understand the business rules and address carrier-specific problems.

20. *Billing.* The Commission finds that Verizon complies with its obligation to provide nondiscriminatory access to its billing functions on the basis of its provision of: (1) Timely and accurate service usage data to competitive LECs; and (2) wholesale billing in a manner that provides competing carriers with a meaningful opportunity to compete. No party raises any issues with Verizon's provision of service usage data to competitive LECs; and based on the evidence in the record, we find that Verizon's provision of the DUF meets its obligations in this regard. Several parties, however, raise issues with Verizon's provision of wholesale billing. Specifically, a number of parties dispute the accuracy of the wholesale bill, based on both the BOS BDT format and the retail format.

21. Verizon employs the same billing systems in New Jersey as it does in Pennsylvania, where our evidentiary finding that Verizon's wholesale bills were checklist compliant was a "close call," and many of the issues commenters raise in New Jersey are similar to the issues raised in Pennsylvania. Accordingly, the Commission agrees with the Department of Justice that the competitive experience in New Jersey is informed by that of Pennsylvania. It recognizes, however, that while the billing systems in New Jersey and Pennsylvania are identical, the overall billing processes differ. The Commission cannot, therefore, merely rely on our previous review of Verizon's billing system in Pennsylvania to make our finding here. It finds that Verizon has made a sufficient showing that both its retail-formatted and BOS BDT bills are accurate, and we reject assertions by AT&T that KPMG's failure to test the BOS BDT bill format fatally undermines Verizon's showing.

22. The Commission finds that Verizon demonstrates the accuracy of the BOS BDT bill format based on the limited commercial performance data available from its use in New Jersey, and consistent with our findings in the Verizon Pennsylvania Order, the PwC attestation that Verizon's BOS BDT bills are consistent with the retail format. Our concerns are satisfied by the recent performance data, by the low and decreasing number of discrepancies between the electronic and paper bills, and by PwC's attestation that the BOS BDT bills in September contained a de minimis amount of erroneous charges. Further, we find that Verizon has adequately demonstrated the accuracy of the BOS BDT bill by having PwC attest that it is reconcilable against the retail-formatted bill, which KPMG had previously found reconcilable with the DUF. Since the retail-formatted bill has been tested for accuracy by KPMG, and PwC has reconciled the BOS BDT bill against the retail-formatted bill, it is reasonable to assume that the BOS BDT bill is also reconcilable with the DUF. As with all OSS functions, although we must judge Verizon's wholesale billing at the time of its application, we recognize that access to OSS is an evolutionary process and we expect that Verizon continue its efforts to improve its wholesale billing as industry standards evolve.

23. Several competitive LECs assert that their commercial experience shows that Verizon's systems produce recurring or "systemic" inaccuracies in its wholesale bills. We note that no commenter has put forth the type of detailed analysis of its wholesale billing dispute with Verizon that was present in our review of Verizon's application for section 271 authority in Pennsylvania As we stated in the Verizon Pennsylvania Order, "we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate." The Commission cannot, without further evidence, find that the parties have demonstrated systemic inaccuracies in Verizon's wholesale bills that would require a finding of checklist noncompliance.

24. Finally, the Commission addresses AT&T's allegations that Verizon's BOS BDT bill does not comply with industry standards. Verizon explains that the issues raised by AT&T are in fact deviations that are allowed under the industry standard and for which Verizon has provided clear documentation. AT&T also acknowledges that Verizon has made attempts to comply with AT&T's specific requests regarding the BOS BDT bill. It finds that Verizon complies with its obligation to provide clear documentation and assistance to AT&T regarding the BOS BDT bill, and that AT&T provides insufficient evidence to support its claim that Verizon does not offer a "readable and auditable" electronic bill format or that Verizon's BOS BDT bill impermissibly deviates from accepted industry standards. Moreover, AT&T's assertions regarding Verizon's implementation of the BOS BDT bill format are a fact-specific, carrier-to-carrier dispute concerning AT&T's use of Verizon's BOS BDT bill. As the Commission has stated in prior proceedings, given the statutory period for our review, the section 271 process simply could not function if we were required to resolve every individual factual dispute between a BOC and each competitive LEC regarding the precise content of the BOC's obligations to each competitor. The Commission takes added comfort in the special measures that the New Jersey Board announced to ensure nondiscriminatory access to electronic billing.

25. *Flow Through.* The Commission concludes, as did the New Jersey Board, that Verizon's electronic processing of orders is sufficient to provide carriers with a meaningful opportunity to compete. Flow-through measures the number of orders that are electronically processed by an incumbent LEC's OSS without the need for manual intervention. In New Jersey, while Verizon's achieved flow-through rate for UNEs has been below the 95 percent standard set by the New Jersey Board, there nevertheless, has been a consistent, upward trend in the rate, reaching 85.34 percent in January, 89.82 percent in February and 90.50 percent in March 2002. Even if the Commission looks beyond achieved flow-through to total flow-through rates and order reject rates, it notes that Verizon's performance appears to show an improving trend. Moreover, it notes that KPMG's OSS test included an examination of Verizon's ability to electronically process service orders in varying mixes of order types at reasonably foreseeable commercial volumes and that KPMG and the New Jersey Board found Verizon's performance satisfactory. The Commission finds that the positive trends in both Verizon's flow-through and order reject rates, along with Verizon's overall performance in providing service order information in a timely and accurate manner and KPMG's findings regarding the scalability of Verizon's OSS are sufficient to demonstrate checklist compliance.

26. *Checklist Item 4—Unbundled Local Loops.* Verizon has adequately demonstrated that it provides unbundled local loops as required by section 271 and the Commission's rules. Specifically, the Commission's conclusion is based on its review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, and high capacity loops, and its review of Verizon's processes for line sharing and line splitting. As of February 2002, competitors in New Jersey have acquired from Verizon and placed into use approximately 59,000 stand-alone loops (including DSL loops), and about 51,000 loops provided as part of network element platforms that include switching and transport elements.

27. *Voice Grade Loops.* The Commission finds that Verizon provisions voice grade loops in a nondiscriminatory manner. It notes that voice grade loops comprise the overwhelming majority of loops ordered by competitive LECs in New Jersey. Verizon's performance in provisioning voice grade loops has met the relevant parity standard throughout the November-March period with respect to timeliness and quality. Furthermore, Verizon's performance for repair and maintenance timeliness under the mean time to repair metric also demonstrates parity during the November-March period.

28. *Hot Cut Activity.* Verizon is providing voice grade loops through hot cuts in New Jersey in a nondiscriminatory manner. Verizon has satisfied its benchmark for on time performance for hot cuts for each month of the relevant November-March period. Although Verizon's installation quality performance for hot cuts is not reported in the New Jersey Carrier-to-Carrier Performance Reports, Verizon does provide a calculation of its performance under the New York guidelines. Verizon states that its installation quality performance has consistently been better than the two percent New York benchmark for trouble reports received within seven days of installation.

29. *xDSL-Capable Loops.* Verizon demonstrates that it provides stand-alone xDSL-capable loops in a nondiscriminatory manner. Verizon makes xDSL-capable loops available in New Jersey under approved interconnection agreements, and provides timely order confirmation notices to competitors. Verizon's performance for all relevant months under the missed appointment metric indicates that Verizon provisions xDSL loops in a timely manner. With respect to installation quality, Verizon also maintained parity during the relevant months under the installation quality measure. For almost every month during the relevant period, Verizon also maintained parity for measures of repair and maintenance timeliness and quality.

30. *Digital Loops.* Verizon provisions digital loops to competitors in a nondiscriminatory fashion in New Jersey. As an initial matter, we note that digital loops only represent a small number of the total loops provided by Verizon in New Jersey. Verizon provided digital loops to competitors in a timely manner throughout the relevant period. Verizon also achieves parity from November through March with respect to the measure of installation quality we have traditionally relied on, which measures the percent of installation troubles reported within 30 days. In addition, Verizon achieved parity performance throughout the relevant period with respect to maintenance and repair timeliness under the mean time to repair metric. Verizon also maintained parity performance during the relevant period for every month except February with respect to a measure of maintenance and repair quality " the percentage of repeat trouble reports within 30 days. Verizon's performance under this measure indicates a large disparity in February with respect to the percentage of repeat reports observed for competitive LECs and Verizon retail. Verizon explains, however, that the small sample size of competitive LEC trouble reports observed in February contributed to the wide fluctuation in performance under this measure. Moreover, this one month disparity is not competitively significant and does not warrant a finding of checklist noncompliance, given that Verizon returns to parity performance under this measure in March.

31. *High Capacity Loops.* Given the totality of the evidence, the Commission finds that Verizon's performance with respect to high capacity loops does not result in a finding of noncompliance for checklist item 4. Verizon states that, as of February 2002, competitive LECs have in service in New Jersey approximately 400 high capacity DS–1 loops, and no high capacity DS–3 loops, provided by Verizon. According to Verizon, high capacity loops represent only about 0.4 percent of all unbundled loops provisioned to competitors in New Jersey. Verizon's performance under the missed installation appointment metric suggests that Verizon has generally been timely in the provisioning of high capacity loops. Verizon achieved parity for repair and maintenance timeliness under the mean time to repair metric for three of the five relevant months. Verizon's performance with respect to repair and maintenance quality also indicates parity for four of the five months during the relevant period. The Commission recognizes, however, that Verizon does not achieve parity during the relevant period other than in February with respect to the installation quality metric, the percentage of installation troubles reported within 30 days. Verizon contends that this measure may not be an accurate indicator of its performance because the retail group for this metric (Verizon retail) does not provide a meaningful comparison. Verizon also argues that the small number of installation trouble reports received during the relevant period for high capacity loops, interoffice facilities, and loop/transport combinations are too few to provide meaningful performance results, and are "not as reliable an indicator of checklist compliance." The Commission does not find that Verizon's performance with respect to troubles reported within thirty days warrants a finding of checklist

noncompliance, given that high capacity loops represent less than one percent of the unbundled loops that Verizon provides to competitors in New Jersey, and in light of Verizon's generally good performance under the other measures of high capacity loop provisioning, maintenance, and repair discussed above.

32. *Line Sharing and Line Splitting.* Verizon demonstrates that it provides nondiscriminatory access to the high

competing carriers, as it has done in prior section 271 proceedings. It notes that no commenter faults Verizon's interconnection quality or timeliness, and that the New Jersey Board found that Verizon provides equal-in-quality interconnection on terms and conditions that are just and reasonable and in accordance with the section 271.

34. *Checklist Item 8—White Pages Directory Listings.* Based on the record, the Commission finds that Verizon

It further finds that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

40. *Price Squeeze Analysis.* Commenters allege the existence of a price squeeze in New Jersey that, they assert, compels a finding that the grant of Verizon's NJ II application is not in

who are also long distance carriers would receive net access savings or revenues. After subtracting UNE-platform costs from estimated monthly residential rates, staff of the New Jersey Board determined that competitors could expect to earn a monthly gross profit of approximately $6.50. The Commission commends the New Jersey Board's independent analysis of the price squeeze issue and finds that it provides additional support for our

also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. The mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided

All visitors to the buildings maintained by the Board of Governors of the Federal Reserve System ("Board").

Categories of records in the system:

Information concerning the identity of an individual who wishes to enter a building maintained by the Board. Such information will include the individual's name; social security number, passport number, or visa number; and date of birth. In addition, information derived from law enforcement data bases may be included in some records.

Authority for maintenance of the system:

12 U.S.C. 243

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noncompliance, given that high capacity loops represent less than one percent of the unbundled loops that Verizon provides to competitors in New Jersey, and in light of Verizon's generally good performance under the other measures of high capacity loop provisioning, maintenance, and repair discussed above.

32. *Line Sharing and Line Splitting.* Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, and access to network elements necessary for competing carriers to provide line splitting. Verizon generally has met the relevant performance standards for provisioning, maintaining and repairing line-shared loops for competitors in New Jersey. Commenters in this proceeding do not criticize Verizon's performance with regard to the provisioning, maintenance and repair of line shared loops. Verizon also provides nondiscriminatory access to line-splitting in accordance with our rules. Verizon provides carriers that purchase line splitting with access to the same pre-ordering capabilities as carriers that purchase unbundled DSL loops or line sharing. In addition, working with competitive LECs through the New York DSL Collaborative, Verizon implemented a permanent OSS process for line splitting on October 20, 2001, throughout the Verizon East territory, including New Jersey. We note that AT&T raises challenges to Verizon's ordering process for line splitting, but we find that this process allows competitors a meaningful opportunity to compete. Accordingly, the Commission finds that Verizon complies with the requirements of this checklist item with respect to its line sharing and line splitting processes.

Other Checklist Items.

33. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and applied in the Commission's prior orders. Pursuant to this checklist item, Verizon must provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory. Based on the Commission's review of the record, it concludes, as did the New Jersey Board, that Verizon complies with the requirements of this checklist item. In reaching this conclusion, the Commission examined Verizon's performance in providing collocation and interconnection trunks to competing carriers, as it has done in prior section 271 proceedings. It notes that no commenter faults Verizon's interconnection quality or timeliness, and that the New Jersey Board found that Verizon provides equal-in-quality interconnection on terms and conditions that are just and reasonable and in accordance with the section 271.

34. *Checklist Item 8—White Pages Directory Listings.* Based on the record, the Commission finds that Verizon provides white page directory listings for customers of the other carrier's telephone exchange service and permits competitive providers of telephone exchange service and toll service to have access to directory listings in compliance with checklist item 8.

35. *Checklist Item 13—Reciprocal Compensation.* The Commission finds that Verizon demonstrates that it provides reciprocal compensation as required by checklist item 13.

36. *Checklist Item 14—Resale.* Based on the evidence in the record, the Commission concludes that Verizon satisfies the requirements of this checklist item in New Jersey in that it makes telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

37. *Checklist Items 3, 5, 6, 7, 9, 10, 11 and 12.* An applicant under section 271 must demonstrate that it complies with checklist item 3 (poles, ducts, conduits, and rights of way), item 5 (transport), item 6 (switching), item 7 (911/E911, directory assistance, and operator services), item 9 (numbering administration), item 10 (databases and associated signaling), item 11 (number portability), and item 12 (local dialing parity). Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it is in compliance with checklist items 3, 5, 6, 7, 9, 10, 11, and 12 in New Jersey. The New Jersey Board also concludes that Verizon complies with the requirements of each of these checklist items.

38. *Section 272 Compliance.* Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in accordance with the requirements of section 272.

39. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From the Commission's extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, it finds that barriers to competitive entry in New Jersey's local exchange market have been removed, and that the local exchange market is open to competition. It further finds that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

40. *Price Squeeze Analysis.* Commenters allege the existence of a price squeeze in New Jersey that, they assert, compels a finding that the grant of Verizon's NJ II application is not in the public interest. While no commenter argues that the $35 hot cut rate in New Jersey effects a price squeeze on competitors, XO contends that the Commission must determine whether Verizon's previous hot cut rates of $159.76 and $233.13 constitute a price squeeze. XO specifically alleges that the $35 rate in New Jersey, unlike that in New York, is merely a temporary credit. There is no evidence that the specific hot cut terms in New York differ significantly from those in New Jersey. We therefore reject commenters' argument that that there are material differences between the New Jersey and New York hot cut rates that would warrant disapproval of the NJ II application, and we also decline to conduct a price squeeze analysis using Verizon's previous hot cut rates of $159.76 and $233.13.

41. The Commission also rejects the UNE price squeeze arguments of AT&T and WorldCom from NJ I, which they incorporate by reference in NJ II. Both commenters make related arguments concerning the allegedly insufficient profit margin available to them in the residential telephone market in New Jersey. Significantly, neither commenter claims that it cannot earn a positive gross margin in New Jersey. As it has noted previously, conducting a price squeeze analysis requires a determination of what a "sufficient" profit margin is. Resolving that issue requires more than simply determining what is sufficient for a particular carrier. The evidence before us demonstrates that competitive LECs in New Jersey can realize positive margins in 100 percent of the state and that the statewide average gross margin is $5.62. There is no record evidence before us that these profit margins are inadequate for an efficient competitor. The Commission also notes that the New Jersey Board itself considered allegations of a price squeeze in the New Jersey residential market. During a November 20, 2001 state hearing, staff of the New Jersey Board presented evidence that the average residential customer generates approximately $30.00 in monthly revenue. New Jersey Board staff noted that local competitors such as AT&T who are also long distance carriers would receive net access savings or revenues. After subtracting UNE-platform costs from estimated monthly residential rates, staff of the New Jersey Board determined that competitors could expect to earn a monthly gross profit of approximately $6.50. The Commission commends the New Jersey Board's independent analysis of the price squeeze issue and finds that it provides additional support for our conclusion that commenters have not established the existence of a price squeeze in New Jersey. It rejects commenters' allegations of a price squeeze and conclude that there is no evidence in the record that warrants disapproval of this application based on such contentions, whether couched as a violation of the public interest standard or as discrimination in violation of checklist item two.

42. *Section 271(d)(6) Enforcement Authority.* Working with the New Jersey Board, the Commission intends to monitor closely post-entry compliance and to enforce the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–16739 Filed 7–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1125]

Privacy Act of 1974; Notice of New System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is publishing notice of the establishment of a new system of records, entitled Visitor Log (BGFRS–32). We invite public comment on this new system of records.

DATES: Comment must be received on or before August 2, 2002.

ADDRESSES: Comments, which should refer to Docket No. R–1125, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. The mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of the Telecommunications Device for the Deaf (TDD) only, contract 202/263–4869.

SUPPLEMENTARY INFORMATION: In light of the heightened concerns regarding security of federal government personnel and buildings, the Board is implementing a procedure to screen visitors to the Board's premises before admission to those premises. To conduct this screening, the Board will request, in advance, that each visitor provide his or her name, date of birth, and social security number or passport number. Persons who refuse to provide the requested information may be denied admittance to the premises. This information will be used to facilitate searches of law enforcement databases to determine whether the visitor may present a risk to the security of the Board. As required by the General Records Schedule 18, published by the National Archives, the records will be retained for two years from date of admittance to the Board.

In accordance with 5 U.S.C. 552a(r), a report of this new system of records is being filed with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget. This new system of records will become effective on August 12, 2002, without further notice, unless the Board publishes a notice to the contrary in the Federal Register.

BG FRS–32

System name: BGFRS–32 – Visitor Log

System location:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

Categories of individuals covered by the system:

All visitors to the buildings maintained by the Board of Governors of the Federal Reserve System ("Board").

Categories of records in the system:

Information concerning the identity of an individual who wishes to enter a building maintained by the Board. Such information will include the individual's name; social security number, passport number, or visa number; and date of birth. In addition, information derived from law enforcement data bases may be included in some records.

Authority for maintenance of the system:

12 U.S.C. 243

Purpose(s):

The purpose of this system of records is to permit the Board to provide for the security of its premises and the personnel in those premises by pre–screening visitors.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

a. Disclosure to the Department of Justice and other Federal, state, and local governmental agencies having a prosecutive function for the use by attorneys, magistrates, and judges; and parole and probation authorities for the purpose of prosecuting, sentencing, and determining the parole and probation status of criminal offenders or suspected criminal offenders.

b. Disclosure to personnel of Federal, state, and local governmental agencies, and other government agencies, foreign or domestic, where such disclosures are considered reasonably necessary for the purpose of furthering efforts to determine the risk posed by an individual wishing to visit the Board.

c. Disclosure to personnel of Federal, state, and local law enforcement agencies and other governmental agencies, foreign or domestic, where there is a showing of a reasonable need to accomplish a valid enforcement purpose.

d. Disclosure to personnel of private institutions and to private individuals of identifying information pertaining to actual or suspected criminal offenders or other individuals wishing to visit the Board for the purpose of furthering efforts to evaluate the danger such individuals pose.

e. Disclosures in the course of presenting evidence to a court, magistrate or administrative tribunal and disclosures to opposing counsel in the course of discovery proceedings for the purpose of enforcing, or prosecuting, a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statue or particular program statue, or by regulation, rule or order issued pursuant thereto.

f. Disclosures and/or responses to Federal, state or local agencies maintaining civil, criminal or other relevant law enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the issuance of a contract, grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

g. Disclosure to the National Archives and Records Administration in connection with

records management inspections and its role as Archivist.

h. Disclosure to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

Disclosure to consumer reporting agencies:

Not applicable.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in paper and electronic format.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

four of their generic Adalat products. That agreement (the "Agreement"), and the Respondents' conduct arising out of that Agreement, are the subject of the Commission's complaint. The complaint alleges that, by entering the Agreement, Respondents illegally created market power in the United States market for sales of 30 mg and 60 mg dosages of generic Adalat. There is little prospect of new entry in the near future, because no other companies have applied for

As the complaint alleges, the Agreement gave Biovail substantial incentives not to launch its own 30 mg product. Although Biovail has had final FDA approval to market its 30 mg product for over one year, and the Agreement purports to require Biovail to use "reasonable commercial endeavors" to launch that product "with reasonable dispatch," Biovail has not yet launched that product. Biovail's launch of its own 30 mg product could be expected to

Biovail to control or influence pricing and other competitive features of both its and Elan's 30 mg and 60 mg generic Adalat products. Biovail was thus in a position to profit by suppressing competition between its and Elan's products.

For the above reasons, the complaint alleges that Respondents' Agreement is an agreement not to compete between the only two producers of the 30 mg and 60 mg generic Adalat products. As a

records management inspections and its role as Archivist.

h. Disclosure to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

Disclosure to consumer reporting agencies:

Not applicable.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in paper and electronic format.

Retrievability: Electronically–stored information may be retrieved based on name, social security number, passport or visa number, or date of birth.

Safeguards: Only authorized personnel will have access to this information. Access to information derived from law enforcement data bases will be extremely limited.

Retention and disposal: Information in this system of records will be destroyed two years after the date the individual is admitted to the Board's premises.

System manager(s) and address:

Billy Sauls, Chief of Uniform Security, Management Division, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

Notification procedure:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security or passport number, and approximate date of record.

Record access procedures:

Same as "Notification procedure" above.

Contesting record procedures:

Same as "Notification procedure" above.

Record source categories:

Information will be gathered primarily from the individual who wishes to enter the Board's premises. Additional information may be gathered from law enforcement data bases where appropriate.

Systems exempted from certain provisions of the act:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

By order of the Board of Governors of the Federal Reserve System, June 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–16724 Filed 7–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 011 0132]

Biovail Corporation and Elan Corporation, plc; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 29, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Joseph Simmons or Randall Marks, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3300 or 326–2571.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 28 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 27, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/06/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement and proposed consent order with Biovail Corporation ("Biovail") and Elan Corporation, plc ("Elan"), settling charges that the two companies illegally agreed to restrain competition in the market for generic Adalat CC. The Commission has placed the proposed consent order on the public record for thirty days to receive comments by interested persons. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by either Biovail or Elan that it violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

Background

Biovail is a Canadian manufacturer of branded and generic pharmaceutical products. Elan is an Irish manufacturer of branded and generic pharmaceutical products. Biovail and Elan are the only two sellers of generic forms of Adalat CC ("generic Adalat"), a once-a-day antihypertension medication. No other company has even sought Food and Drug Administration ("FDA") approval to sell a 30 mg or a 60 mg dosage form of generic Adalat. Bayer AG ("Bayer") manufactures branded Adalat CC. In 1999, before the entry of generic equivalents to Adalat CC, Bayer's United States sales of the 30 mg and 60 mg doses of Adalat CC were in excess of $270 million.

Biovail was the first to file an Abbreviated New Drug Application ("ANDA") for FDA approval on the 60 mg dosage, and Elan was the first to file an ANDA for FDA approval on the 30 mg dosage. Thus, Elan had 180 days of exclusivity for the 30 mg product upon receiving final FDA approval, and Biovail had the 180-day exclusivity on the 60 mg product upon receiving final FDA approval. Each was the second to file on the other dosage.

In October 1999, after both Biovail and Elan (hereinafter sometimes referred to as "Respondents") had filed for FDA approval of their 30 mg and 60 mg generic Adalat products, they entered into an agreement involving all

four of their generic Adalat products. That agreement (the "Agreement"), and the Respondents' conduct arising out of that Agreement, are the subject of the Commission's complaint. The complaint alleges that, by entering the Agreement, Respondents illegally created market power in the United States market for sales of 30 mg and 60 mg dosages of generic Adalat. There is little prospect of new entry in the near future, because no other companies have applied for FDA approval of a 30 mg or a 60 mg generic Adalat product.

The Challenged Conduct

Under the Respondents' Agreement, Elan appointed Biovail as the exclusive distributor of Elan's 30 mg and 60 mg generic Adalat products. At the time of the Agreement, neither Elan nor Biovail distributed its own generic drugs in the United States. Teva Pharmaceuticals, Inc. ("Teva"), a distributor of some of Biovail's products, participated in the negotiations leading up to the Agreement. The Agreement provided that Biovail appoint Teva to sub-distribute Elan's 30 mg generic Adalat product in the United States. With respect to Elan's 60 mg product, the Agreement provided that, upon notice from Elan that Elan's 60 mg product was ready for commercial launch, Biovail would appoint either Teva or another company as a sub-distributor of that product. The Agreement has a minimum term of 15 years.

The FDA approval Elan's mg generic Adalat product in March 2000 and its 60 mg product in October 2001. It approved Biovail's 30 mg and 60 mg generic Adalat products in December 2000. Biovail began selling Elan's 30 mg product immediately after receiving final FDA approval. Biovail began selling its own 60 mg product through Teva immediately after the FDA gave final approval to that product. Neither Elan's 60 mg product nor Biovail's 30 mg product, however, has ever been launched commercially. Thus, although two 30 mg generic Adalat products and two 60 mg generic Adalat products have had FDA approval for many months, consumers can purchase only one product at each strength.

The complaint alleges that, in exchange for the right to distribute Elan's products and share in the profits of those products, Biovail agreed to make specified payments to Elan. To date, Biovail has paid Elan approximately $33 million in connection with its distribution of Elan's 30 mg generic Adalat product, and $12.75 million in connection with the right to distribute Elan's 60 mg generic Adalat product.

As the complaint alleges, the Agreement gave Biovail substantial incentives not to launch its own 30 mg product. Although Biovail has had final FDA approval to market its 30 mg product for over one year, and the Agreement purports to require Biovail to use "reasonable commercial endeavors" to launch that product "with reasonable dispatch," Biovail has not yet launched that product. Biovail's launch of its own 30 mg product could be expected to cause a significant reduction in the price of Elan's incumbent 30 mg product, and generate for Elan's product lower total profits, which Biovail shares with Elan. For the same reasons, the Agreement diminished Biovail's incentives to exercise maximum efforts at eliminating the technological obstacles, if any, that Biovail asserts have impeded its ability to launch a self-manufactured 30 mg product. Elan also does not have any incentive to enforce the Agreement's provision requiring that Biovail use reasonable efforts to launch its 30 mg product in competition with Elan's product.

Similarly, the complaint alleges that the Agreement gave Elan substantial incentives not to launch its 60 mg product. Under the Agreement, in exchange for receiving a large up-front payment, Elan, in effect, stood to receive no royalties upon launch of its 60 mg product, until that product generated certain profits for Biovail. It would take several years of sales before Elan's 60 mg product would generate such profits, and once that triggering event happened, Elan's royalty was to be only 6% of profits. Accordingly, the complain alleges that the Agreement compensated Elan for its 60 mg product up-front and pre-entry, while substantially diminishing that product's value to Elan thereafter. The Agreement also diminished Elan's incentives to exercise maximum efforts at eliminating any technological obstacles to launching its 60 mg product, if any, that Elan has asserted to exist. Moreover, neither Elan nor Biovail had any financial incentives to enforce the provision requiring launch of Elan's 60 mg product. As with the launch of Biovail's 30 mg product, Respondents knew that Elan's launch of its own 60 mg product could be expected to cause a reduction in the price of Biovail's incumbent 60 mg product by a significant amount and generate lower total profits for Biovail's product. It was in Bilvail's strategic interest, therefore, for Elan not to launch its 60 mg products.

The complaint further alleges that even its Bilvail had launched its 30 mg product and Elan had launched its 60 mg product, the Agreement allows Biovail to control or influence pricing and other competitive features of both its and Elan's 30 mg and 60 mg generic Adalat products. Biovail was thus in a position to profit by suppressing competition between its and Elan's products.

For the above reasons, the complaint alleges that Respondents' Agreement is an agreement not to compete between the only two producers of the 30 mg and 60 mg generic Adalat products. As a result, Teva, Biovail's distributor, is the only firm selling generic Adalat to consumers in the United States, and consumers have had access to only one of two approved generic Adalat products at each strength. Moreover, the Agreement is not justified by an countervailing efficiency.

The Proposed Order

The proposed order remedies the Respondents' anticompetitive conduct by requiring them to end their anticompetitive Agreement and barring them from engaging in similar conduct in the future. It maintains supply of the incumbent generic Adalat products while Respondents unwind their anticompetitive Agreement and eliminates the anticompetitive obstacles to entry of a second 30 mg and a second 60 mg generic Adalat product.

Paragraph I of the proposed order contains definitions, one of which defines the "Adalat CC Agreement" as the "License, Distribution & Supply Agreement" covering generic Adalat that Biovail and Elan executed on October 4, 1999, and all modifications and amendments thereto. We discuss other definitions below, as needed to explain the substantive provisions of the proposed order.

Paragraph II of the proposed order is a core provision, prohibiting Biovail or Elan from repeating the instant conduct by entering anticompetitive price, output, or distribution agreements with other generic drug companies. This provision targets agreements between either Respondent and other persons concerning a generic drug for which both parties to the agreement have filed for FDA approval of an ANDA referencing the same pioneer drug product. It aims to prohibit agreements between competing generic drug manufacturers that restrict the marketing of competing generic drugs.

Paragraph III of the proposed order requires Biovail and Elan to terminate their agreement on generic Adalat no later than the date on which the order becomes final. Paragraph 13 of the Agreement Containing Consent Order required them to start the termination process upon their execution of that

document. The proviso to Paragraph III allows Biovail and Elan to resolve financial issues connected to the termination of their agreement on generic Adalat on mutually agreeable terms; however, they cannot resolve those financial issues by using sales, revenues, or profits generated by generic Adalat or any other drug product, or by transferring rights connected to any drug product. This limitation is intended to ensure that, in resolving the

The cost definition is narrow, to minimize Elan's ability to profit from the Interim Supply Agreement through manipulation of the definition. Preventing Elan from profiting by supplying Biovail with the Elan 30 mg generic Adalat product gives Elan a strong incentive to launch its own 30 mg product through an indecent distributor as quickly as possible. Only through that launch will Elan begin to earn a profit on its 30 mg product.

these reports every thirty days until they have complied with the proposed order.

Paragraph VI of the proposed order requires Biovail and Elan to give the Commission notice of two types of agreements with other pharmaceutical manufacturers. First, Paragraph VI.A requires Biovail and Elan to give notice of agreements where, at the time of the agreement, the parties to the agreement each own, control, or license another product that is in the same "Therapeutic

containing the proposed order or make the proposed order final.

By accepting the proposed order subject to final approval, the Commission anticipates that the competitive issues alleged in the complaint will be resolved. The purpose of this analysis is to facilitate public comment on the agreement. It is not intended to constitute an official interpretation of the agreement, the complaint, or the proposed consent

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60

metabolic disease are identified in a timely manner and within the parameters defined by the newborn screening system of each state. These children are referred for diagnosis and treatment. However, some cases are not detected at all or the detection comes too late to prevent harm. These "missed cases" often result in severe morbidity such as mental retardation or death.

In this project, we will update and expand a previous epidemiological

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document. The proviso to Paragraph III allows Biovail and Elan to resolve financial issues connected to the termination of their agreement on generic Adalat on mutually agreeable terms; however, they cannot resolve those financial issues by using sales, revenues, or profits generated by generic Adalat or any other drug product, or by transferring rights connected to any drug product. This limitation is intended to ensure that, in resolving the financial issues, Respondents do not perpetuate the anticompetitive effects of the Agreement by continuing the entanglements between them on generic Adalat or on other drug products.

Paragraph IV of the proposed order prohibits Elan from distributing its generic Adalat product through Teva. This prohibition is necessary because Biovail and Teva have a longstanding commercial relationship, whereby Teva distributes some of Biovail's product. Forbidding Elan from distributing this generic Adalat products through Teva will minimize the risk of inappropriate information exchange among Biovail, Elan, and Teva regarding generic Adalat, by eliminating any legitimate reason for all three companies to discuss their marketing of the products. Thus, it will help ensure that the termination of the Agreement fully restores the proper competitive incentives for each company.

The proviso to Paragraph IV requires Elan to supply Teva, through Biovail, with Elan's 30 mg product, until the earlier of Biovail's launch of its own 30 mg product or May 31, 2003 (the "Interim Suppiy Agreement"). This provision eliminates any disruption of supply of the 30 mg product to consumers while Elan makes alternate arrangements for the distribution of its products. Once Elan begins to distribute its own product through an independent distributor, the Interim Supply Agreement will assure that consumers have access to two generic 30 mg Adalat products. The Interim supply Agreement may continue for up to a year, to give consumers the continued benefit of two 30 mg generic Adalat products while Biovail solves its purported manufacturing difficulty. Biovail has assured the Commission that it expects to overcome any manufacturing problems it has and launch its 30 mg generic Adalat product within a year. (Paragraph V further addresses Biovail's launch of its own 30 mg product, as we discuss below.)

Paragraph IV prohibits Elan from charging Biovail more than Elan's "Cost" for the product. Paragraph I of the proposed order defines "Cost" to mean Elan's actual manufacturing cost. The cost definition is narrow, to minimize Elan's ability to profit from the Interim Supply Agreement through manipulation of the definition. Preventing Elan from profiting by supplying Biovail with the Elan 30 mg generic Adalat product gives Elan a strong incentivo to launch its own 30 mg product through an indecent distributor as quickly as possible. Only through that launch will Elan begin to earn a profit on its 30 mg product. Because, under the Interim Supply Agreement, Biovail will receive Elan's 30 mg product at Elan's 30 mg product at Elan's manufacturing cost, Biovail will be in the same competitive position with respect to the cost of the 30 mg product as will Elan. In addition, Biovail will have to compete with Elan's new distributor to gain and maintain market share. Thus, the narrow cost definition will also give consumers the benefit of immediate price competition between the 30 mg product marketed by Teva and the 30 mg product marketed by Elan's independent distributor.

Paragraph V of the proposed order require Elan to use best efforts to launch its 30 mg and 60 mg generic Adalat products as promptly as possible through a distributor other than Teva. It also requires Biovail to use best efforts to manufacture and distribute its 30 mg Adalat product, and to use best efforts to continue to manufacture and distribute its 60 mg generic Adalat product through a distributor other than Elan's generic Adalat distributor. Paragraph V.C states that the purpose of these requirements is to restore competitive incentives in the market for generic Adalat, and to remedy the lessening of competition resulting from the anticompetitive practices alleged in the Commission's complaint. This provision covers all four generic Adalat products, to ensure that Biovail and generic market their 30 mg and 60 mg products through separate distributors. The proposed order defines "Launch" to require Biovail and Elan to deliver commercial quantities of their generic Adalat products to a viable pharmaceutical distributor pursuant to a commercially reasonable, multi-year contract. This definition will ensure that the launch of Elan's 60 mg product and of Biovail's 30 mg product is on a competitive scale.

The Commission will closely monitor Respondents' efforts to market their products. To facilitate this, the proposed order includes reporting requirements. Paragraph VIII requires Biovail and Elan to submit to the Commission verified written reports detailing each of their efforts to comply with the proposed order. Biovail and Elan must submit these reports every thirty days until they have complied with the proposed order.

Paragraph VI of the proposed order requires Biovail and Elan to give the Commission notice of two types of agreements with other pharmaceutical manufacturers. First, Paragraph VI.A requires Biovail and Elan to give notice of agreements where, at the time of the agreement, the parties to the agreement each own, control, or license another product that is in the same "Therapeutic Class" as the product covered by the agreement. (The proposed order defines "Therapeutic Class" as a class of drugs categorized by the Unified System of Classification contained in the most recent version of the IMS Health Incorporated publication Market Research Database: Product Directory.) Aa proviso excepts from the reporting requirement agreements that only transfer "Drug Delivery Technology" in exchange for a commercially reasonable cash royalty not to exceed drive per cent of revenue. The proposed order defines "Drug Delivery Technology" to mean technology that controls the release rate, or enhances the absorption or utilization of a pharmaceutical compound.)

Second, Paragraph VI.B requires Biovail and Elan to give notice of agreements involving a product for which one party to the agreement has an ANDA that references a New Drug Application ("DNA") that the other party owns, controls, or licenses. The notification provisions contained in Paragraph VI are necessary, because the core prohibition in Paragraph II only reaches agreements involving ANDAs that reference the same branded drug. Paragraph VI ensures that the Commission will receive notice of potentially anticompetitive agreements not covered by Paragraph II (*i.e.*, agreements involving potentially competitive branded products, and agreements regarding a brand product and its generic equivalent.)

Paragraphs VII, VIII, IX, and X of the proposed order contain reporting and other standard Commission order provisions designed to assist the Commission in monitoring compliance with the order. Paragraph XI provides that the order will expire in ten years.

Opportunity for Public Comment

The proposed order has been placed on the public record for thirty days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the agreement containing the proposed order or make the proposed order final.

By accepting the proposed order subject to final approval, the Commission anticipates that the competitive issues alleged in the complaint will be resolved. The purpose of this analysis is to facilitate public comment on the agreement. It is not intended to constitute an official interpretation of the agreement, the complaint, or the proposed consent order, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–16711 Filed 7–2–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–67]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Descriptive Epidemiology of Missed or Delayed Diagnosis for Conditions Detected by Newborn Screening—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Every state in the United States and Washington DC has a public health program to test newborn babies for congenital metabolic and other disorders through laboratory testing of dried blood spots. These programs screen between 4 and 30 different conditions including phenylketonuria (PKU) and congenital hypothroidism, with testing performed in both state laboratories and private laboratories contracted by state health departments. The screening process or system is broader than the state public health newborn screening program, which is composed only of the laboratory and follow-up personnel. It involves the collection of blood from a newborn, analysis of the sample in a screening laboratory, follow up of abnormal results, confirmatory testing and diagnostic work up.

Parents, hospitals, medical providers including primary care providers and specialists, state laboratory and follow-up personnel, advocates, as well as other partners such as local health departments, police, child protection workers and courts play important roles in this process. Most children born with metabolic disease are identified in a timely manner and within the parameters defined by the newborn screening system of each state. These children are referred for diagnosis and treatment. However, some cases are not detected at all or the detection comes too late to prevent harm. These "missed cases" often result in severe morbidity such as mental retardation or death.

In this project, we will update and expand a previous epidemiological study of missed cases of two disorders published in 1986. We will assess the number of cases of each disorder missed, the reasons for the miss and legal outcomes, if any. The reasons for the miss will be tabulated according to which step or steps of the screening process it occurred. Data will be collected by asking state public health laboratory directors, newborn screening laboratory managers, follow up coordinators, lawyers and parent groups with an interest in newborn screening for information regarding missed cases. An estimated 250 subjects will be requested to complete a short questionnaire that asks for information regarding the details of any missed cases of which they are aware. Follow-up telephone calls may be necessary to clarify responses. There is no cost to the respondents.

The survey will highlight procedures and actions taken by states and other participants in newborn screening systems to identify causes of missed cases and to modify policies and procedures to prevent or minimize recurrences. The information gleaned from this study may be used to help craft changes in the screening protocols that will make the process more organized and efficient and less likely to fail an affected child. Further, it is not clear that there is a systematic assessment of missed cases on a population basis; this project will seek to identify procedures for routine surveillance of missed cases.

Respondents	Number of respondents	Number of responses/respondents	Average burden/response (in hours)	Total burden (in hours)
Questionnaire	125	2	15/60	62
Telephone Follow-up	75	2	10/60	24
Total				86

Dated: June 26, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–16673 Filed 7–2–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through December 31, 2003.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates banking, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions.

4. Vaccines and Related Biological Products Advisory Committee: Five vacancies occurring January 31, 2003; immunology, molecular biology, recombinant deoxyribonucleic acid (rDNA), virology, bacteriology,

field of activity of the committee. The particular needs at this time for each committee are shown in the first paragraph of the **SUPPLEMENTARY INFORMATION** section of this document. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the

4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 24, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–16692 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–01–S

subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the

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Dated: June 26, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–16673 Filed 7–2–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02136]

Reducing Sexual Risk for HIV Transmission in Substance-Using Men Who Have Sex With Men, Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for a cooperative agreement program to support research on Reducing Sexual Risk for HIV Transmission in Substance-Using Men Who Have Sex With Men, was published in the **Federal Register** dated May 24, 2002, Vol. 67, No. 101, pages 36608–36610. On page 36609, section E. Application Content, third sentence, should be amended to read: "The narrative should be no more than 40 double-spaced pages, printed on one side with one inch margins in a 12-point font. The budget and budget justification are not included in the 40 page limit."

Dated: June 27, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–16701 Filed 7–2–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Biological Response Modifiers Advisory Committee, Blood Products Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through December 31, 2003.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to the appropriate contact person in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding nominations except for consumer representatives: Jane Brown, Scientific Advisors and Consultants Staff, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314.

Regarding nominations for consumer representatives: Linda Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members with appropriate expertise for vacancies listed as follows:

1. Allergenic Products Advisory Committee: Three vacancies occurring August 31, 2003; immunology, pediatrics, internal medicine, biochemistry, statistics, consumer interest, and related scientific fields.

2. Blood Products Advisory Committee: One vacancy occurring September 30, 2002; and six vacancies occurring September 30, 2003; clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields.

3. Transmissible Spongiform Encephalopathies Advisory Committee: Five vacancies occurring January 31, 2003; clinical administrative medicine, hematology, virology, neurology, infectious diseases, immunology, blood banking, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions.

4. Vaccines and Related Biological Products Advisory Committee: Five vacancies occurring January 31, 2003; immunology, molecular biology, recombinant deoxyribonucleic acid (rDNA), virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, biochemistry, and consumer interest.

Functions

1. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

2. Blood Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

3. Transmissible Spongiform Encephalopathies Advisory Committee

Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

4. Vaccines and Related Biological Products Advisory Committee

Reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular needs at this time for each committee are shown in the first paragraph of the **SUPPLEMENTARY INFORMATION** section of this document. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Consumer Representatives

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a group of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vita of each nominee, current address and telephone numbers, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 24, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–16692 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0043]

Determination That Piperacillan for Injection USP, 40–Gram Pharmacy Bulk Package, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that piperacillan for injection USP (PIPRACIL), 40-gram (g) pharmacy bulk package, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for piperacillan for injection USP, 40-g pharmacy bulk package.

FOR FURTHER INFORMATION CONTACT: Nicole Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Piperacillan for injection USP, 40-g pharmacy bulk package, is the subject of approved NDA 50–545 held by Lederle (part of Wyeth-Ayerst Pharmaceuticals) under the trade name PIPRACIL. Piperacillan for injection USP, 40-g pharmacy bulk package, is a broad-spectrum penicillin indicated for the treatment of serious infections and for prophylactic use in surgery. According to information from Wyeth-Ayerst submitted in 2001, production of the 40-g pharmacy bulk package was discontinued. On January 17, 2002, Mr. Michael Lisjak submitted a citizen petition (Docket No. 02P–0043) under 21 CFR 10.30 and 314.122; requesting that the agency determine whether piperacillan for injection USP, 40-g pharmacy bulk package, was withdrawn from sale for reasons of safety or effectiveness. The petitioner seeks this determination in preparation for filing an ANDA for piperacillan for injection USP, 40-g pharmacy bulk package.

The agency has determined that Wyeth-Ayerst's piperacillan for injection USP, 40-g pharmacy bulk package, was not withdrawn from sale for reasons of safety or effectiveness. Two grounds support the agency's finding. First, Wyeth-Ayerst continues to market PIPRACIL in 2-, 3-, and 4-g vials. The 40-g pharmacy bulk package is a larger package of the same product; it contains up to 20 doses of piperacillan for injection USP. Second, the petitioner identified no data or other information suggesting that PIPRACIL (piperacillan for injection USP, 40-g pharmacy bulk package) was withdrawn

from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports, but has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, Wyeth-Ayerst's piperacillan

Date and Time: The public workshops are scheduled as follows:

1. Thursday, July 25, 2002, 8:30 a.m. to 4:30 p.m., Oakland, CA.
2. Wednesday, August 28, 2002, 8:30 a.m. to 4:30 p.m., Los Angeles, CA.
3. Tuesday, September 24, 2002, 8:30 a.m. to 4:30 p.m., Seattle, WA.

Location: The public workshops will be held at the following locations:

1. Oakland—Ronald V. Dellums Federal Building Auditorium and

(Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: June 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–16667 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND

information to the committee for their consideration. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1-business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the July 8, 2002, session will be posted on July 5, 2002; material for the July 9, 2002, session will be posted on July 8, 2002.

Procedure: On July 8, 2002, from 1:30

Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 25, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

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from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports, but has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, Wyeth-Ayerst's piperacillan for injection USP, 40-g pharmacy bulk package, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list piperacillan for injection USP, 40-g pharmacy bulk package, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to piperacillan for injection USP, 40-g pharmacy bulk package, may be approved by the agency.

Dated: June 24, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–16668 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Industry Exchange Workshops on Food Security and Recalls; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA) and the Pacific Region Small Business Office, in cooperation with the Western Association of Food and Drug Officials (WAFDO), is announcing a series of workshops on food security and recalls. Topics for discussion include: Food safety and security guidance and procedures, preparing for and conducting a food recall, the use of tamper-evident packaging to avoid product counterfeiting, and the introduction of adulterants. These 1-day workshops for the food industry target food manufacturers, repackers, growers, and transporters. The workshops will include both industry and FDA perspectives.

Date and Time: The public workshops are scheduled as follows:

1. Thursday, July 25, 2002, 8:30 a.m. to 4:30 p.m., Oakland, CA.
2. Wednesday, August 28, 2002, 8:30 a.m. to 4:30 p.m., Los Angeles, CA.
3. Tuesday, September 24, 2002, 8:30 a.m. to 4:30 p.m., Seattle, WA.

Location: The public workshops will be held at the following locations:

1. Oakland—Ronald V. Dellums Federal Building Auditorium and Conference Center, 1301 Clay St., Oakland, CA.
2. Los Angeles—Ronald Reagan State Building Auditorium, 300 South Spring St., Los Angeles, CA.
3. Seattle, WA—Seattle Center, Lopez Room, 300 First Ave. North, corner of Republican Street, Seattle, WA.

Contact: Marcia Madrigal, Industry and Small Business Representative, Food and Drug Administration, Oakland Federal Building, 1301 Clay St., suite 1180N, Oakland, CA 94612, 510–637–3980, FAX 510–637–3977, or e-mail: mmadriga@ora.fda.gov.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and registration fee to Chuck Henry at WAFDO, 14344 East Caley Ave., Aurora, CO 80016, FAX 303–753–6809, or e-mail: chuck.henry@state.co.us.

The registration fee will be used to offset the expenses of hosting the conferences, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marcia Madrigal at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The "Food Security and Recalls" workshops help fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by preventing and countering terrorism related to the nation's food supply. FDA has made providing security guidance and information to the food industry a high priority.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: June 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–16667 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 8, 2002, from 1 p.m. to 5 p.m., and July 9, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet address of http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: On July 8, 2002, the committee will discuss and make recommendations on the classification of a preamendment device, the silicone elastomer for scar management. The committee will also discuss and make recommendations on the reclassification of a transitional class III device, the absorbable hemostatic agent and dressing device intended for hemostasis during surgical procedures. On July 9, 2002, FDA and two manufacturers of approved saline inflatable breast implant devices will present postmarket information to the committee for their consideration. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1-business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the July 8, 2002, session will be posted on July 5, 2002; material for the July 9, 2002, session will be posted on July 8, 2002.

Procedure: On July 8, 2002, from 1:30 p.m. to 5 p.m., and on July 9, 2002, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 5, 2002. Oral presentations from the public will be scheduled between approximately 1:45 p.m. and 2:15 p.m. and 4 p.m. and 4:30 p.m. on July 8, 2002; and between approximately 8:30 a.m. and 10:30 a.m. on July 9, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by July 5, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 8, 2002, from 1 p.m. to 1:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to pending issues and applications.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, by July 5, 2002.

FDA regrets that it was unable to publish this notice 15 days prior to the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 25, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–16734 Filed 6–28–02; 3:10 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov and http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115, (Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/ CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/ 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 033101; Formerly:

Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections

248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part

Permit No. TE–055419

Applicant: Turner Biological Consulting, LLC, Tuscola, Texas

Applicant requests a permit for recovery purposes to conduct presence/absence surveys and assess habitat for black-capped vireo (Vireo atricapillus) and to assess habitat for northern aplomado falcon (Falco femoralis septentrionalis), golden-cheeked warbler (Dendroica chrysoparia), and interior least tern (Sterna antillarum).

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Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468
DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.)
DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500
Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/ 800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/ 800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/ 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/ 800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/ 800–541–7891x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 033101; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline qBeecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 Federal Register, 9 June 1994, Pages After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Patricia Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 02–16696 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request to the address above for a copy of such documents within 30 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION:

Permit No. TE–056457

Applicant: Peter Stacey, Albuquerque, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/ absence and monitoring surveys for southwestern willow flycatcher (Empidonax traillii extimus) within New Mexico.

Permit No. TE–055107

Applicant: Adam Crateau, Santa Fe, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/ absence surveys for southwestern willow flycatcher (Empidonax traillii extimus) within San Juan Counties of New Mexico and Utah.

Permit No. TE–055111

Applicant: Animas Environmental, Farmington, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/ absence surveys for southwestern willow flycatcher (Empidonax traillii extimus) within San Juan County, New Mexico.

Permit No. TE–055339

Applicant: USDA, ARS, Grassland, Soil and Water Research Laboratory, Temple, Texas

Applicant requests a permit for recovery purposes to collect live plants and stem cuttings of Johnston's Frankenia (Frankenia johnstonii) within Texas.

Permit No. TE–055419

Applicant: Turner Biological Consulting, LLC, Tuscola, Texas

Applicant requests a permit for recovery purposes to conduct presence/ absence surveys and assess habitat for black-capped vireo (Vireo atricapillus) and to assess habitat for northern aplomado falcon (Falco femoralis septentrionalis), golden-cheeked warbler (Dendroica chrysoparia), and interior least tern (Sterna antillarum). All activities are to occur within Texas.

Permit No. TE–035885

Applicant: Melvin J. Wilhelm, Vernon, Arizona

Applicant requests an amendment to an existing permit to allow presence/ absence surveys for southwestern willow flycatcher (Empidonax traillii extimus) within Arizona and New Mexico.

Permit No. TE–056119

Applicant: Marlin B. Sawyer, San Antonio, Texas

Applicant requests a permit for recovery purposes to conduct presence/ absence surveys within Texas for the following species: black-capped vireo (Vireo atricapillus), golden-cheeked warbler (Dendroica chrysoparia), red-cockaded woodpecker (Picoides borealis), ocelot (Leopardus pardalis), jaguarundi (Herpailurus yagouaroundi cacomitli), and Houston toad (Bufo houstonensis).

Permit No. TE–056118

Applicant: Charles L. Black, Albuquerque, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/ absence and monitoring surveys for southwestern willow flycatcher (Empidonax traillii extimus) within New Mexico.

Permit No. TE–056471

Applicant: Gregory Tickle, Santa Fe, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/ absence surveys within Texas for the following species: black-capped vireo (Vireo atricapillus), golden-cheeked warbler (Dendroica chrysoparia), and southwestern willow flycatcher (Empidonax traillii extimus).

Permit No. TE–038050

Applicant: Trevor Hare, Tucson, Arizona

Applicant requests an amendment to an existing permit to allow presence/ absence surveys for desert pupfish (Cyprinodon macularius) and Gila topminnow (Poeciliopsis occidentalis) within Arizona.

Susan MacMullin,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 02–16702 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the Bureau of Land Management (BLM) Arizona Resource Advisory Council (RAC) will meet as indicated below.

DATES: August 15, 2002, 8 a.m. to 5 p.m.

ADDRESSES: BLM, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

SUPPLEMENTARY INFORMATION: Diamond Bar Road provides access to Grand Canyon West, mainly for commercial and private vehicles originating from Las Vegas. Grand Canyon West is a development on the Hualapai Indian Reservation near the rim of the Grand Canyon. This development now consists

30-day period with the comments being conveyed to the BLM Field Manager in Kingman, Arizona, who is the person authorized to make the decision for BLM on this project. The public may review the comments, including names and street addresses of respondents, at the above address from 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. The comments may be published as part of the project record or other related documents. Individual

Senator Sam Brownback, (R–KS); and Senator Max Cleland, (D–GA).

National Park Service Director Fran Mainella will address the Board and then Commissioners will have the opportunity to introduce themselves.

Dr. John Hope Franklin, Professor Emeritus, Duke University, has been invited to deliver an address to the Commissioners about the meaning of a National Museum dedicated to African American History and Culture.

complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Kate Stevenson, Office of Historic Preservation, Recreation & Partnerships, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone (202) 208–7625).

Draft minutes of the meeting will be available for public inspection

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topminnow (Poeciliopsis occidentalis) within Arizona.

Susan MacMullin,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 02–16702 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–076–4610–00]

Proposed Area of Critical Environmental Concern; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: On June 28, 2002, the Bureau of Land Management published a notice in the **Federal Register** (67 FR 43680) concerning proposed Area of Critical Environmental Concern Designations (ACEC) in Idaho. The notice contained an incorrect date for when the public comment period begins. The correct date is June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Baker, Field Manager, Shoshone Field Office, (208) 732–7286.

Correction

In the **Federal Register** of June 28, 2002 on page 43680 in the third column correct the **DATES** caption to read:

DATES: The public comment period on the proposed ACEC designations begins on June 28, 2002. Written comments on the Shoshone Land Use Plans Draft Amendments/EA must be submitted or postmarked no later than August 27, 2002. Comments, including the names and street addresses of respondents, will be available for public review at the address listed below during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Meetings will be held to receive public comments on the Draft Amendments/EA; the dates, times, and locations of these public meetings will be announced locally through public mailings and area media.

Dated: June 28, 2002.

Michael Schwartz,

Group Manager, Regulatory Affairs.

[FR Doc. 02–16829 Filed 7–1–02; 1:21 pm]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–2800–ER–00; AZA–28734]

Notice of Availability of Final Environmental Impact Statement for The Diamond Bar Road Improvement Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a Final Environmental Impact Statement for the Diamond Bar Road Improvement Project.

SUMMARY: The Bureau of Land Management (BLM), Kingman Field Office, Arizona, has prepared a final environmental impact statement (EIS) in response to an application for a right-of-way across public lands. The EIS analyzes the effects of a proposal to realign and improve approximately 11 miles of the Diamond Bar Road across public lands to access the Hualapai Indian Reservation. The EIS was prepared with assistance from Bureau of Indian Affairs (BIA) and National Park Service (NPS) as cooperating agencies. The BLM will be making the decision to grant a right-of-way, BIA will be making the decision on the expenditure of Federal Highway Trust Funds to construct the road, and NPS has special expertise concerning the effect on the National Natural Landmark, which the proposed road traverses. The analysis was prepared under the authority of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976.

DATES: BLM and BIA will issue separate Records of Decision no earlier than 30 days from the date the Environmental Protection Agency publishes the notice of filing for the final EIS in the **Federal Register**.

ADDRESSES: Copies of the final EIS may be obtained from the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

FOR FURTHER INFORMATION CONTACT: Don McClure, phone: (928) 692–4400; e-mail, *don__mcclure@blm.gov*; address, BLM, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

SUPPLEMENTARY INFORMATION: Diamond Bar Road provides access to Grand Canyon West, mainly for commercial and private vehicles originating from Las Vegas. Grand Canyon West is a development on the Hualapai Indian Reservation near the rim of the Grand Canyon. This development now consists of an airport and terminal building, a food service facility, restrooms, and a permit office. Implementing the 1994 Master Plan for Grand Canyon West is expected to increase the number of visitors up to sixfold over a 10-year period. This increase would greatly increase the number of vehicles on Diamond Bar Road. The proposed road improvement would accommodate this increased volume by providing a roadway designed for up to 2,400 vehicles per day.

Management concerns that have been addressed in the final EIS include impacts on vegetation, visual quality, recreation, cultural resources, socioeconomic conditions, public safety, and the Joshua Tree Forest Area of Critical Environmental Concern. Studies conducted include a native plant inventory, biological evaluation, cultural resource survey, traffic study, and visual impact analysis. Tribal consultation is ongoing under section 106 of the National Historic Preservation Act of 1966, as amended. The EIS has been prepared by an interdisciplinary team of resource specialists in vegetation, wildlife, visual quality, archaeological and traditional cultural resources, soils, range management, realty, and roadway design.

There were 41 comment letters received on the draft EIS. The concerns in these letters have been addressed in the final EIS. Most of the concerns were about the Entrance Realignment Option and related to the following: Building the road through a residential area and impacting residential quality of life; traffic, including traffic safety; noise; air quality; wildlife and Joshua trees; visual impacts; private property; access; and economics and efficiency. The BLM Preferred Alternative in the final EIS documents the preference of not using the Entrance Realignment Option. The final EIS addresses the above concerns as well as providing responses to individual comments.

If you wish to comment on the final EIS, please mail or hand deliver comments to the address listed in the **ADDRESSES** section of this notice. Comments will be accepted during this

30-day period with the comments being conveyed to the BLM Field Manager in Kingman, Arizona, who is the person authorized to make the decision for BLM on this project. The public may review the comments, including names and street addresses of respondents, at the above address from 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. The comments may be published as part of the project record or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or disclosure under the Freedom of Information Act, you must state this request prominently at the beginning of your written comment. BLM will honor such requests to the extent allowed by law. The public may inspect in its entirety any submission from organizations or businesses or from representatives or officials of organizations or businesses.

Dated: June 3, 2002.

Willie R. Taylor,

Director, Office of Environmental, Policy and Compliance.

[FR Doc. 02–16828 Filed 7–1–02; 1:09 pm]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Presidential Commission for the National Museum of African American History and Culture; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the Presidential Commission for the National Museum of African American History and Culture will meet July 16th and 17th, 2002, in Ballroom 2 of the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC. The Board will convene at 8 a.m. on the 16th and at 9 a.m. on the 17th, and adjourn at 5:30 p.m. on the 16th and at 12:30 PM on the 17th.

During the morning session on July 16th, 2002, after the swearing-in of the Commissioners, the Bill sponsors will be invited to address the members of the Commission on their vision of what a National Museum of African American History and Culture might be and what the charge of the Commission is in regards to a Plan of Action for a National Museum. These sponsors include: Representative John Lewis, (D–GA); Representative J.C. Watts, (R–OK); Senator Sam Brownback, (R–KS); and Senator Max Cleland, (D–GA).

National Park Service Director Fran Mainella will address the Board and then Commissioners will have the opportunity to introduce themselves.

Dr. John Hope Franklin, Professor Emeritus, Duke University, has been invited to deliver an address to the Commissioners about the meaning of a National Museum dedicated to African American History and Culture.

In the afternoon, the Commission will travel to various locations on or adjacent to the Mall to visit sites that may be considered for use as the location for a National Museum of African American History and Culture.

On the morning of July 17th, 2002, the Commission will hear from representatives of the Association of African American Museums, the Association for the Study of African American Life and History, the Joint Center for Political and Economic Studies, the African American Cultural Complex, Inc.; the Friends of the National Museum of African American History and Culture; the American Association of Museums, and the Smithsonian Institution.

Later in the morning, beginning at 10:30 AM, the Commission will hear public testimony regarding the National Museum for African American History and Culture.

The Commission meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed in this notice at least two weeks (2 weeks) before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file a written statement concerning the establishment of a National Museum for African American History and Culture with the Commission. The Commission may also permit attendees to address the assembled Commission, but may restrict the length of the presentations, as necessary to allow the Commission to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Kate Stevenson, Office of Historic Preservation, Recreation & Partnerships, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone (202) 208–7625).

Draft minutes of the meeting will be available for public inspection approximately 12 weeks after the meeting, in room 3327, Main Interior Building, 1849 C Street, NW, Washington, DC.

Kate Stevenson,

Associate Director, Historic Preservation, Recreation & Partnerships, National Park Service.

[FR Doc. 02–16710 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities; Extension of a Currently Approved Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) intends to extend a current information collection approved under the Office of Management and Budget's (OMB) emergency approval procedures. The collection is entitled Summary of Water Requirements for Crops Grown on Eligible Land, OMB No. 1006–0024. Before submitting the information collection request to the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of that form.

DATES: Comments on this notice must be received by September 3, 2002.

ADDRESSES: Address all comments concerning this notice to Bureau of Reclamation, Northern California Area Office, Attention: Donald A. Bultema, PO Box 988, Willows, California 95988.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection information form, contact Rita F. Hoofard at (530) 934–1359.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed

collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information on

Dated: June 12, 2002.

Rayleen Cruz,

Acting Manager, Property and Office Services Division.

[FR Doc. 02–16700 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF LABOR

Office of the Secretary

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection

Agency: Bureau of Labor Statistics

Title: Labor Market Information (LMI) Cooperative Agreement.

OMB Number: 1220–0079.

Affected Public: State, Local, or Tribal Government.

Frequency: Monthly, Quarterly and Annually.

Number of Respondents: 55.

Number of Annual Responses: 832.

Estimated Time Per Response and Total Burden Hours:

Frequency: On occasion.

Number of Respondents: 7,000.

Number of Annual Responses: 7,000.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 1,750.

Total Annualized Capital/Startup Costs: 0.

Total Annual costs (operating/maintaining systems or purchasing services): 0.

Description: Section 8104(a) of the

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collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information on respondents, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Title: Summary of Water Requirements for Crops Grown on Eligible Land.

Abstract: Reclamation developed Form LS–924, Summary of Water Requirements for Crops Grown on Eligible Land, to facilitate and standardize the submission of data from the Sacramento River settlement contractors that divert water from Sacramento River sources. The information requested is required to ensure the proper implementaion of 43 CFR 426.15 and the commingling provisions in the Sacramento River settlement contracts.

Description of respondents: There are approximately 44 Sacramento River settlement contractors (individual/districts) that are required to file Form LS–924 for the purpose of contract administration.

Frequency: Annually.

Estimated completion time: An average of 60 minutes per respondent.

Annual responses: 44 respondents.

Annual burden hours: 44.

Public Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: June 12, 2002.

Rayleen Cruz,

Acting Manager, Property and Office Services Division.

[FR Doc. 02–16700 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or Email *Howze-Marlene@dol. gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316, within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Rehabilitation Action Report.

OMB Number: 1215–0182.

Affected Public: Business or other for-profit; and individuals or households.

Frequency: On occasion.

Number of Respondents: 7,000.

Number of Annual Responses: 7,000.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 1,750.

Total Annualized Capital/Startup Costs: 0.

Total Annual costs (operating/maintaining systems or purchasing services): 0.

Description: Section 8104(a) of the Federal Employees' Act provides that eligible injured workers are furnished vocational rehabilitation services. The costs of these services are paid from the Employee's Compensation Fund. Section 8111(b) provides that persons undergoing vocational rehabilitation may receive additional compensation. The OWCP–44 is the Rehabilitation Action Report submitted to the Office of Worker's Compensation Programs by the rehabilitation counselor to report transition periods during vocational rehabilitation and to request prompt adjudication claims action. If the OWCP–44 were not utilized, delays in acting would cause waste of government funds and potential fraud and abuse.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 02–16716 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–CH–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 28, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or email *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection

Agency: Bureau of Labor Statistics (BLS).

Title: Labor Market Information (LMI) Cooperative Agreement.

OMB Number: 1220–0079.

Affected Public: State, Local, or Tribal Government.

Frequency: Monthly, Quarterly and Annually.

Number of Respondents: 55.

Number of Annual Responses: 832.

Estimated Time Per Response and Total Burden Hours:

Form	Total respondents	Frequency	Total responses	Average minutes	Estimated total burden (in hours)
Work Statements	55	1	55	1–2 hrs.	55–110
BIF (LMI 1A, 1B)	55	1	55	1–6 hrs.	55–330
Quarterly Automated Financial Reports	48	4	192	10–50 min.	32–160
Monthly Automated Financial Reports	48	*8	384	5–25 min.	32–160
BLS Cooperative Statistics Financial Report (LMI 2A)	7	12	84	1–5 hrs.	84–420
Quarterly Status Report (LMI 2B)	1–30	4	4–120	1 hr.	4–120
Total	1–55		774–890		264–1300
Average Totals	55		832		781

* Reports are not received for end-of-quarter months, i.e., December, March, June, and September.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The LMI Cooperative Agreement (CA) includes all information needed by the State Employment Security Agencies (SESAs) to apply for funds to assist them to operate one or more of the five LMI programs operated by the Bureau of Labor Statistics, and, once awarded, report on the status of obligation and expenditure of funds as well as close out the Cooperative Agreement. Information collected under the CA is used by Federal regional and national office staffs to carry out their fiduciary responsibilities to negotiate the CA funding levels with the SESAs, monitor their financial and programmatic performance, and monitor their adherence to administrative requirements imposed by 29 CFR part 97.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 02–16808 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–34–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Mass Layoff Statistics (MLS) Program Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 3, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Ms. Hobby can be reached on 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 309 (2) (a) (1) (A) (iii) of the Workforce Investment Act (WIA) states that the Secretary of Labor shall oversee development, maintenance, and continuous improvements of the program to measure the incidence of, industrial and geographical location of, and number of workers displaced by, permanent layoffs and plant closings. Prior to the WIA, Section 462(e) of PL 97–300, the Job Training Partnership Act (JTPA), provided that the Secretary of Labor develop and maintain statistical data relating to permanent mass layoffs and plant closings and issue an annual report. The report includes, at a minimum, the number of plant closings and mass layoffs, and the number of workers affected. The data are summarized by geographic area and industry.

The Mass Layoff Statistics (MLS) program uses a standardized, automated approach to identify, describe, and track the impact of major job cutbacks. The

program utilizes, to the greatest degree possible, existing Unemployment Insurance (UI) records and computerized data files, supplemented by direct employer contact. Its major features include:

- The identification of major layoffs and closings through initial UI claims filed against the identified employer;
- The use of existing files on claimants to obtain basic demographic

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Frequency: SESAs report quarterly and monthly. Affected employers report on occasion.

Total Responses: 23,848.

Average Time Per Response: 60 minutes for SESAs and 20 minutes for employers.

Estimated Total Burden Hours: 81,547 hours.

Total Burden Cost (capital/startup): $0.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

thus more efficient, choices. Research based on the NLSW contributes to the formation of national policy in the areas of education, training and employment programs, unemployment compensation, and retirement income from pensions and Social Security. In addition, members of the academic community publish articles and reports based on NLSW data for the Department of Labor (DOL) and other funding agencies. The DOL uses the

III. Current Actions

The Bureau of Labor Statistics seeks approval to conduct the 2003 NLSW. The 2003 NLSW will document work experience, labor force attachment, participation in educational or training programs, financial status, health, and health insurance coverage. The survey will continue to obtain detailed information on the work history and pension coverage of respondents and

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program utilizes, to the greatest degree possible, existing Unemployment Insurance (UI) records and computerized data files, supplemented by direct employer contact. Its major features include:

- The identification of major layoffs and closings through initial UI claims filed against the identified employer;
- The use of existing files on claimants to obtain basic demographic and economic characteristics on the individual;
- The telephone contact of those employers meeting mass layoff criteria to obtain specific information on the nature of the layoff and characteristics of the establishment;
- The identification of the continuing impact of the mass layoff on individuals by matching affected initial claimants with persons in claims status; and,
- The measurement of the incidence of the exhaustion of regular state UI benefits by affected workers.

In the program, State Employment Security Agencies (SESAs) submit seven comprehensive reports each quarter, and a preliminary, summary report each month. These computerized reports contain information from State administrative files and information obtained from those employers meeting the program criteria of a mass layoff.

Congress has provided for the implementation of the MLS program by the Bureau of Labor Statistics (BLS) through the Fiscal Years 1984–1992 appropriations for the Departments of Labor, Health and Human Services, Education, and related agencies. The program was not operational in Fiscal Years 1993 and 1994. Program operation resumed in Fiscal Year 1995 with funds provided by the Employment and Training Administration (ETA).

At the present time, all states (including the District of Columbia and Puerto Rico and the Virgin Islands) are participating in the program.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Office of Management and Budget clearance is being sought for the Mass Layoff Statistics (MLS) Program.

In addition to the BLS uses of MLS data, such data are used by Congress, the Executive Branch, the business, labor, and academic communities, SESAs, and the U.S. Department of Labor for both macro- and microeconomic analysis, including specific labor market studies geared towards manpower assistance and development. Congress used these data in conjunction with the findings from a supplemental study of layoff actions in the development of the Worker Adjustment and Retraining Notification (WARN) Act, which was enacted in August 1988. Furthermore, the ETA uses MLS microdata in the evaluation of dislocated worker programs to assess the effectiveness of those activities and services.

A Congressionally mandated use of mass layoff data includes the WIA, which replaces Title III of the JTPA. Section 133 of the WIA encourages the use of MLS data in substate allocations relating to dislocated worker employment and training activities.

State agencies use the MLS data in various ways, including the identification of geographic areas in need of special manpower services; ailing or troubled industries; specific employers needing assistance; outreach activities for the unemployed; and workers in need of temporary health care services.

There is no other comprehensive source of statistics on either establishments or workers affected by mass layoffs and plant closings; therefore, none of the aforementioned data requirements could be fulfilled if this data collection did not occur.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Mass Layoff Statistics Program.

OMB Number: 1220–0090.

Affected Public: Business or other for profit; not-for-profit institutions; farms; Federal Government; State, Local or Tribal Government.

Total Respondents: 23,053.

Frequency: SESAs report quarterly and monthly. Affected employers report on occasion.

Total Responses: 23,848.

Average Time Per Response: 60 minutes for SESAs and 20 minutes for employers.

Estimated Total Burden Hours: 81,547 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 17th day of June, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–16717 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "National Longitudinal Survey of Women." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 3, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Women (NLSW) has been conducted since the late 1960s. Historically, the NLSW was collected as two surveys, the Survey of Work Experience for Mature Women (which includes women born from April 1, 1922 to March 31, 1937) and the Survey of Work Experience for Young Women (which includes women born in the years 1943 to 1953). In 1995, the Bureau of the Census, which collects the data for the Bureau of Labor Statistics, combined the mature and young women's cohorts into a single survey, a change that has improved the efficiency of survey operations.

The data collected in the NLSW contribute to the knowledge about opportunities and services for women who are in the labor force, want to re-enter the labor force, or choose not to participate in the labor force. Survey data also contribute to the knowledge about women's ability to succeed in the job market and how their levels of success relate to educational attainment, vocational training, prior occupational experiences, general and job-specific experiences, and retirement decisions.

The mission of the Department of Labor (DOL) is to promote the development of the U.S. labor force and the efficiency of the U.S. labor market. The BLS contributes to this mission by gathering information about the labor force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSW contributes to the formation of national policy in the areas of education, training and employment programs, unemployment compensation, and retirement income from pensions and Social Security. In addition, members of the academic community publish articles and reports based on NLSW data for the Department of Labor (DOL) and other funding agencies. The DOL uses the measurement of changes in the labor market to design programs that would ease employment and unemployment problems. The survey design provides data gathered over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, and the DOL could not perform its policy- and report-making activities, as described above.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Bureau of Labor Statistics seeks approval to conduct the 2003 NLSW. The 2003 NLSW will document work experience, labor force attachment, participation in educational or training programs, financial status, health, and health insurance coverage. The survey will continue to obtain detailed information on the work history and pension coverage of respondents and their husbands. In addition, the survey will obtain information on intergenerational transfers of time and money between respondents and their children or their spouses' children. Respondents living in long-term care institutions who are mentally competent to answer questions will be interviewed in the 2003 NLSW; institutionalized respondents were considered to be out of scope in prior rounds of the survey. The 2003 NLSW will include contacts with approximately 6,677 women (2,810 ages 66 to 80 and 3,867 ages 49 to 60). A subsample of 50 women will be selected for a pretest to be conducted in January 2003 to ensure that the survey instrument and all procedures are working properly before the main fielding begins in June. Assuming the pretest works successfully, these 50 women will not be interviewed a second time during the main fielding. As in previous administrations of the NLSW, 10 percent of the sample in 2003 will be asked to participate in a brief follow-up interview that will last approximately 5 minutes. This reinterview is a quality-control tool, in which managers at the Census Bureau ask respondents a few questions to verify that an interview took place.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Women.

OMB Number: 1220–0110.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
2003 NLSW Pretest	50	Biennially	50	70	58
2003 NLSW Main Fielding	6,627	Biennially	6,627	70	7789
Reinterview	663	Biennially	663	5	55
Totals	6,677		7,340		7,902

Note: The difference between the total number of respondents and the total number of responses reflects the fact that 663 respondents will be interviewed twice, once in either the pretest or the main fielding and a second time in the quality-control reinterview. An additional 58 burden hours have been included for the main fielding to account for the possibility of having to interview the 50 women selected for the pretest again in the main fielding in the unlikely event that the pretest fails completely.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 24th day of

and 406(b) of the Employee Retirement Income Security Act (ERISA or the Act) or a parallel restriction described in section 8477(c)(2) of the Federal Employees' Retirement Systems Act (FERSA), and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code. The amendment adopted by

permit parties to either base their submission on substantially similar transactions described in two individual exemptions granted within the past 60 months; or on one individual exemption granted within the past 120 months and one transaction which received final authorization by the Department under PTE 96–62 within the past 60 months (the Authorized Transaction). The Department believes that the alternate

accordance with section 404(a)(1)(B) of ERISA. This exemption, if granted, does not affect the requirement of section 401(a) of the Code that a plan must operate fo. the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The Department finds that the exemption is administratively feasible, in the interests of the plan(s) and of participants and beneficiaries, and protective of the rights of the

beneficiaries as a result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

Section II—Specific Exemption. Effective July 31, 1996, a restriction described in section 406(b) of ERISA, or a parallel restriction described in section 8477(c)(2) of FERSA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel

any party dealing with the plan with respect to the transaction; and

(3) Ensures that the transaction remains in the interests of the plan.

Section III—Authorization Requirements. The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) A separate written declaration by

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Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 24th day of June 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–16718 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No: D–10936]

Adoption of Amendment to Prohibited Transaction Exemption 96–62 (PTE 96–62) To Permit Certain Authorized Transactions Between Plans and Parties in Interest

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Adoption of amendment to PTE 96–62.

SUMMARY: This document amends PTE 96–62 (61 FR 39988, July 31, 1996). PTE 96–62 permits certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to two individual exemptions granted by the Department within the 60 month period ending on the date of filing of a written submission seeking authorization for the transaction. The amendment affects plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

EFFECTIVE DATE: This amendment is effective July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration at (202) 693–8540 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 20, 2002, notice was published in the **Federal Register** (67 FR 13019) of the pendency before the Department of a proposed amendment to PTE 96–62. PTE 96–62 provides relief from a restriction described in sections 406(a) and 406(b) of the Employee Retirement Income Security Act (ERISA or the Act) or a parallel restriction described in section 8477(c)(2) of the Federal Employees' Retirement Systems Act (FERSA), and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code. The amendment adopted by this notice was proposed by the Department on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

The notice gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. No public comments or requests for a hearing were received.

For the sake of convenience, the entire text of PTE 96–62, as amended, has been reprinted with this notice.

Description of the Exemption

Section I of PTE 96–62 provides relief from certain of the restrictions described in section 406(a) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, for a transaction between a plan and a party in interest with respect to such plan, provided the conditions of the exemption are met. Under section II, additional relief is provided from certain of the restrictions described in section 406(b) of ERISA and the parallel restrictions described in section 8477(c)(2) of FERSA, as well as from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F). Sections I(a) and II(a) require that the transaction be substantially similar (as defined in section IV(a) of PTE 96–62) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60-month period ending on the date of filing of the written submission.[2]

The amendment granted by this notice expands sections I(a) and II(a) to permit parties to either base their submission on substantially similar transactions described in two individual exemptions granted within the past 60 months; or on one individual exemption granted within the past 120 months and one transaction which received final authorization by the Department under PTE 96–62 within the past 60 months (the Authorized Transaction). The Department believes that the alternate method for satisfying the requirements of sections I(a) and II(a) will continue to ensure that the transactions that the party compares to its proposed transaction reflect the current policies of the Department.[3] The amendment also adds a definition for the term "Authorized Transaction" in section IV(g).

The Department notes that all other conditions contained in PTE 96–62 must continue to be satisfied with respect to those parties seeking to base their submissions on an Authorized Transaction rather than on two substantially similar individual exemptions. Accordingly, these parties should submit, among other things, a comparison of the proposed transaction with the Authorized Transaction and the transaction which was the subject of the individual exemption, including an explanation as to why any differences should not be considered material.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interest of participants and beneficiaries of the plan and in a prudent fashion in

[1] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] Section IV(a) defines the term "substantially similar" to mean alike in all respects as determined by the Department, in its sole discretion.

[3] The Department maintains, on its website (*www.dol.gov/pwba*) a list of Authorized Transactions. This list includes the following information: The final authorization numbers, the name of the applicants, a description of the transactions, and the grant numbers and **Federal Register** citations of the exemptions on which the submissions were based. Parties wishing to base their submissions on an Authorized Transaction will be able to refer to the submissions previously filed by parties under PTE 96–62 and to the two granted individual exemptions identified as substantially similar for additional information regarding the subject transactions.

accordance with section 404(a)(1)(B) of ERISA. This exemption, if granted, does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The Department finds that the exemption is administratively feasible, in the interests of the plan(s) and of participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan(s);

(3) This amendment is supplemental to and not in derogation of any other provisions of ERISA or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The amendment is applicable to a transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

Accordingly, PTE 96–62 is amended under the authority of section 408(a) of ERISA, section 4975(c)(2) of the Code and section 8477(c)(3) of FERSA, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

Section I—General Exemption. Effective July 31, 1996, a restriction described in section 406(a) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) effective July 3, 2002, one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing of the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));

(b) There is little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

Section II—Specific Exemption. Effective July 31, 1996, a restriction described in section 406(b) of ERISA, or a parallel restriction described in section 8477(c)(2) of FERSA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, or if FERSA relief is requested, the ERISA relief provided parallels the restrictions of section 8477(c)(1) of FERSA, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) effective July 3, 2002, one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing of the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));

(b) There is little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction;

(c) Prior to its execution, the transaction has met the requirements described in section III;

(d) Where either of the previously granted exemptions identified in the written submission described in section III, required the involvement of an independent fiduciary, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries;

(e) The independent fiduciary described in section II(d) represents the interests of the plan in the execution of the transaction; and

(f) If the transaction is continuing in nature, the independent fiduciary described in section II(d)—

(1) Represents the interests of the plan for the duration of the transaction and monitors the transaction on behalf of the plan;

(2) Enforces compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and

(3) Ensures that the transaction remains in the interests of the plan.

Section III—Authorization Requirements. The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) A separate written declaration by the party who is to engage in the transaction that the written submission is made with the intention of demonstrating compliance with the conditions of this class exemption,

(2) All information required to be submitted with an individual exemption application in accordance with the procedures set forth in 29 CFR 2570 subpart B,

(3) A specific statement demonstrating that the proposed transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries,

(4) A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department, or the subject of an individual exemption granted by the Department within the 120-month period and an Authorized Transaction, and an explanation as to why any differences should not be considered material for purposes of this exemption, and

(5) A complete and accurate draft of the notice (as defined in section IV(b)) prepared for distribution to interested persons and a description of the proposed method of distribution for such notice.

(b) With respect to a transaction described in section II of this exemption, the written submission referred to in section (a) above contains the following additional information:

(1) The identity of the independent fiduciary,

(2) A description of such fiduciary's independence from the parties in interest involved in the subject transaction,

(3) A statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interest and protective of the participants and beneficiaries of the plan(s) involved,

(4) An agreement by the independent fiduciary to represent the interests of the plan(s) involved in the transaction, and

(5) A description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction.

(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons,

transaction meets the requirements for tentative authorization.

(d) For purposes of this exemption, "final authorization" occurs upon the expiration of:

(1) The five (5) day period immediately following the comment period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this

granted within the 60-month period ending on the date of the filing, or the subject of one individual exemption that was granted by the Department within the 120-month period ending on the date of filing, and at least one Authorized Transaction and an explanation why any differences should not be considered material.

[ ] A complete and accurate draft of the notice to interested persons (as

the party as substantially similar to the contemplated transaction.

Signed at Washington, DC this 28th day of June, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–16737 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–29–P

"*moffittb@pwba.dol.gov*", or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of April 24, 2001, to

(a) the lending of securities, under certain "exclusive borrowing" arrangements, to

(1) Deutsche Bank AG (Deutsche

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(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons, informs interested persons of the date of the expiration of the comment period, and resolves all substantive adverse comments (as defined in section IV(f)) to the satisfaction of the Department.

(e) The transaction meets the requirements for final authorization (as defined in section IV(d)).

Section IV—Definitions. (a) The term "substantially similar" means alike in all material respects as determined by the Department, in its sole discretion.

(b) The term "notice" means written notification to interested persons which includes—

(1) An objective description of the transaction, including all material terms and conditions,

(2) The approximate date on which the transaction will occur,

(3) A statement that the proposed transaction has met the requirements for tentative authorization under this exemption,

(4) A statement apprising interested persons of their right to comment to the Department on the proposed transaction at the following address: Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Ave, NW, Room N–5649, Washington, DC 20210,

(5) The expiration date of the comment period, and

(6) The **Federal Register** citations for the prior exemption(s) and/or the final authorization number of the Authorized Transaction (including the related **Federal Register** citations for the prior exemptions cited therein) identified by the party as substantially similar to the contemplated transaction.

(c) For purposes of this exemption, "tentative authorization" occurs upon the earlier of:

(1) The expiration of the 45-day period following an acknowledgment by the Department of receipt of the written submission with respect to the transaction under this exemption unless the Department has notified the party who is to engage in the transaction during that period that the transaction is not eligible for authorization under the terms of this exemption, or

(2) The issuance of a written determination by the Department during the 45-day period that the proposed transaction meets the requirements for tentative authorization.

(d) For purposes of this exemption, "final authorization" occurs upon the expiration of:

(1) The five (5) day period immediately following the comment period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this exemption, and

(2) If necessary in order to resolve any substantive adverse comments received by the Department from interested persons within the comment period, a period of time extending beyond the five-day period immediately following the comment period as mutually agreed between the Department and the party.

(e) The term "comment period" means the 25-day period following the completion of distribution of the notice to interested persons by the party who is to engage in the transaction. For this purpose, distribution of notice by first class mail will be deemed complete three business days following the date of mailing to interested persons.

(f) The term "substantive adverse comments" means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department.

(g) The term "Authorized Transaction" means a transaction that has received final authorization pursuant to PTE 96–62 within a 60-month period ending on the date of the filing of the written submission referred to in section III(a).

Section V—Optional Checklist. Completion and submission of the following optional checklist to accompany the written submission described in section III(a) will assist the Department in the consideration of the transaction under the class exemption.

The written submission filed with the Department contains the following information:

[ ] A separate written declaration of the intent to comply with the conditions of the class exemption.

[ ] All information required to be submitted with an individual exemption application under 29 CFR 2570 subpart B.

[ ] A statement demonstrating that the transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries.

[ ] A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted within the 60-month period ending on the date of the filing, or the subject of one individual exemption that was granted by the Department within the 120-month period ending on the date of filing, and at least one Authorized Transaction and an explanation why any differences should not be considered material.

[ ] A complete and accurate draft of the notice to interested persons (as described in section IV(b)).

[ ] A description of the proposed method of distribution for such notice.

If either of the previously granted exemptions or the Authorized Transactions identified in the written submission required the involvement of an independent fiduciary, the written submission must contain the following additional information:

[ ] The identity of the independent fiduciary responsible for reviewing the proposed transaction, and representing the interests of the plan in the execution of the transaction. (If the transaction is continuing in nature, the independent fiduciary represents the interests of the plans for the duration of the transaction and takes all necessary action on behalf of the plan.)

[ ] A description of such fiduciary's independence from the parties involved in the transaction.

[ ] A statement from the independent fiduciary explaining why the transaction is in the interests and protective of the plan participants and beneficiaries.

[ ] An agreement by the independent fiduciary to represent the interests of the plan.

[ ] A description of the procedures for the replacement of the independent fiduciary, if necessary, during the term of the transaction.

The notice to interested persons filed with the Department includes the following information:

[ ] An objective description of the transaction, including all material terms and conditions.

[ ] The approximate date on which the transaction will occur.

[ ] A statement that the transaction has met the requirements for tentative authorization under the exemption.

[ ] A statement apprising interested persons of their right to comment on the proposed transaction at the address contained in the exemption.

[ ] The expiration date of the comment period.

[ ] The **Federal Register** citations for the prior exemption(s) and/or the final authorization number of the Authorized Transaction (including the related **Federal Register** citations for the prior exemptions cited therein) identified by the party as substantially similar to the contemplated transaction.

Signed at Washington, DC this 28th day of June, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–16737 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10991, et al.]

Proposed Exemptions; Deutsche Bank AG and its Affiliates

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG and Its Affiliates, Located in Frankfurt am Main, Germany

[Application No. D–10991]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

[1] For purposes of the proposed exemption, all references to specific provisions of Title I of the Act, unless otherwise indicated, shall refer also to the corresponding provisions of the Code.

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of April 24, 2001, to

(a) the lending of securities, under certain "exclusive borrowing" arrangements, to

(1) Deutsche Bank AG (Deutsche Bank); or

(2) Its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank AG, New York Branch (DBNY), and the "Foreign Borrowers," as defined in Section III (collectively, with Deutsche Bank, referred to as the "Borrowers," as defined in Section III)

by employee benefit plans (Plans), including commingled investment funds holding assets of such Plans, with respect to which the Borrowers are a party in interest; and

(b) The receipt of compensation by Deutsche Bank or its affiliates in connection with the securities lending transactions, provided that the conditions, set forth in Section II, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to the Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary that is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is

equal to a percentage of the value of the total balance of the outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings generated by such cash collateral may be retained by the Borrower (not to exceed the Exclusive Fee). If the Borrower deposits collateral other than cash collateral, the Borrower pays the Plan a fee equal to the Exclusive Fee.

(f) The Borrower provides (or causes to be provided) to the Plan (or its fiduciary) prior to the execution of the Borrowing Agreement, and at least annually thereafter, sufficient information to permit the Plan (or its fiduciary) to make an informed judgment as to whether to enter into, or maintain, a Borrowing Agreement with the Borrower.

(g) The Borrowing Agreement may be terminated by the Plan (or its fiduciary) at any time, without penalty to the Plan, on the basis of prior notice to the Borrower fixed by the Plan (or its fiduciary) not to exceed the standard settlement period for lending transactions in the United States, and the Borrower promptly thereafter shall deliver (or cause to be delivered) the borrowed securities to the Plan or credit the account of the Plan with the equivalent securities.

(h) The Borrower indemnifies the Plan (or its fiduciary) against any losses resulting from a Borrower's failure to return borrowed securities, except for losses resulting from investment of cash collateral. The Borrower may satisfy this indemnification requirement by allowing the Plan to purchase, at the Borrower's expense, replacement securities in the event the Borrower fails to return borrowed securities. The Borrower may also satisfy this indemnification requirement by (i) marking the value of the borrowed securities to market each business day, and (ii) requiring that the Borrower deliver (or cause to be delivered) to the Plan (or its fiduciary) the amount of any deficiency between the value of the collateral and the value of the borrowed securities on the next business day. The Borrower will indemnify the Plan in the United States with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly

Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity

confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is subject to regulation by (i) the Bundesaufsichtsamt fuer das Kreditwesen (the BAK) and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the

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equal to a percentage of the value of the total balance of the outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee)(the Lending Fee and the Shared Earnings Compensation are collectively referred to as the "Transaction Lending Fee"). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage, or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Deutsche Bank or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) (and as further amended or superseded).[2] Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held with a third party, an affiliate of the Borrower, or a branch of Deutsche Bank other than the Borrower that is a trustee or custodian of the Plan. If maintained by an affiliate of the Borrower or a branch of Deutsche Bank other than the Borrower, the collateral will be segregated from the assets of such affiliate or branch.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent of the market value of the loaned securities on the close of business on the day preceding the date of the loan and, if the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by the Plan or its designee, which may be Deutsche Bank or any of its affiliates, including Deutsche Bank Trust Company Americas (DBT), which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The Borrowing Agreement will provide the Plan with a continuing security interest in, and a lien on, the collateral, or will provide for the transfer of title to the collateral to the Plan.

[2] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's financial condition.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[3] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities,

[3] The Department notes the Borrowers' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

the Borrower will indemnify the Plan in the United States with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Germany, the United Kingdom, Japan, Canada, and/or Australia, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers—provided, however, that

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations, or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million—provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations, or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above is formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of this exemption, if granted, (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[4]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including, but not limited to, the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is subject to regulation by (i) the Bundesaufsichtsamt fuer das Kreditwesen (the BAK) and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia.

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) that provides foreign broker-dealers a limited exception from U.S. registration requirements;

(3) All collateral is maintained in U.S. dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, Deutsche Bank or the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by Deutsche Bank or the Foreign Borrower will occur in the U.S. courts.

(s) Deutsche Bank or the Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are

[4] The Department notes the Borrowers' representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, i.e., the Borrowers will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities, or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Borrowers or their affiliates may monitor the level of collateral and the value of the loaned securities.

[illegible] to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than the director, or employee, or in which such person is a partner.

(b) The term "Foreign Borrower" or "Foreign Borrowers" means any broker-dealer or bank that, now or in the future, is an affiliate of Deutsche Bank that is subject to regulation by (i) the BAK and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia.

(c) The term "Borrowing Agreement" means a written agreement between the Borrower and the Plan or its designee, which may be Deutsche Bank or any of its affiliates, including DBT, which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan.

(d) The term "Borrower" means any Foreign Borrower, Deutsche Bank, or any affiliate of Deutsche Bank that borrows securities from the Plan pursuant to the Borrowing Agreement.

(e) The term "Deutsche Bank" means Deutsche Bank AG and any affiliate thereof.

(f) The term "DBSI" means Deutsche Bank Securities Inc. (i.e., DBS), an affiliate of Deutsche Bank, is incorporated under the laws of the State of Delaware and is registered with and regulated by the SEC as a U.S. broker-dealer under Section 15 of the 1934 Act. As of December 31, 2000, DBS had approximately $98,070,582,098 in assets

Federal Reserve Bank. In addition, DBNY is subject to regulation by the BAK and the Deutsche Bundesbank. Deutsche Bank Securities Inc. (i.e., DBS), an affiliate of Deutsche Bank, is incorporated under the laws of the State of Delaware and is registered with and regulated by the SEC as a U.S. broker-dealer under Section 15 of the 1934 Act. As of December 31, 2000, DBS had approximately $98,070,582,098 in assets

also subject to regulation by the BAK and the Deutsche Bundesbank.

Deutsche Bank requests an individual exemption to cover the Foreign Borrowers identified above, as well as any broker-dealer or bank that, now or in the future, is an affiliate of Deutsche Bank that is subject to regulation by (i) the BAK, and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United [illegible] regarding adequate internal controls, oversight, administration, and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Deutsche Bank by requiring

6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer

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to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Deutsche Bank or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An "affiliate" of a person means:

(i) any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) any officer, director, employee, or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner.

(b) The term "Foreign Borrower" or "Foreign Borrowers" means any broker-dealer or bank that, now or in the future, is an affiliate of Deutsche Bank that is subject to regulation by (i) the BAK and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia.

(c) The term "Borrower" or "Borrowers" means Deutsche Bank, DBS, DBNY, the Foreign Borrowers, and any other affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank.

Effective Date: The proposed exemption, if granted, will be effective as of April 24, 2001.

Summary of Facts and Representations

1. Deutsche Bank AG, a full service universal bank, is organized under German law and is regulated by the Deutsche Bundesaufsichtsamt fuer das Kreditwesen (i.e., the BAK) and the Deutsche Bundesbunk. Deutsche Bank, as of December 31, 2000, had approximately € 697,306,000 in assets and € 19,807,000 in stockholders' equity.

Deutsche Bank Trust Company Americas (i.e., DBT), a wholly owned subsidiary of Deutsche Bank, is a New York banking corporation and a leading commercial bank, providing a wide range of banking, fiduciary, custodial, brokerage, and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors. Deutsche Bank indirectly owns all of the equity interest of DBT, which is also a member bank of the Federal Reserve system. DBT is one of the largest trustees of ERISA plans and a large manager of passively managed funds. Other Deutsche Bank asset managers may also manage ERISA assets in passively managed styles in the future.

Deutsche Bank AG, New York Branch (i.e., DBNY) is subject to regulation by the New York State Banking Authority and the Board of Governors of the Federal Reserve Bank. In addition, DBNY is subject to regulation by the BAK and the Deutsche Bundesbank. Deutsche Bank Securities Inc. (i.e., DBS), an affiliate of Deutsche Bank, is incorporated under the laws of the State of Delaware and is registered with and regulated by the SEC as a U.S. broker-dealer under Section 15 of the 1934 Act. As of December 31, 2000, DBS had approximately $98,070,582,098 in assets and $6,705,615,063 in stockholders' equity. Deutsche Bank has foreign branches and affiliates worldwide that are in the business of trading securities and engaging in broker-dealer activities (among other investment and trading activities) in their respective countries. The affiliated foreign broker-dealers or banks of Deutsche Bank to be covered by this proposed exemption (i.e., the Foreign Borrowers), and their respective regulating entities, are as follows:

(a) Deutsche Bank AG, located in Frankfurt am Main, is subject to regulation in Germany by the BAK and the Deutsche Bundesbank;

(b) Deutsche Bank AG, London Branch, located in London, is subject to regulation by the BAK and the Deutsche Bundesbank and, in the United Kingdom, is subject to regulation by the Securities and Futures Authority in respect of the conduct of investment business;

(c) Morgan Grenfell & Co., Ltd., located in London, is subject to regulation in the United Kingdom by the Financial Services Authority in respect of prudential supervision;

(d) Deutsche Bank Securities Limited, Tokyo Branch, located in Tokyo, is subject to regulation in Japan by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange;

(e) Deutsche Bank AG, Canada Branch, Deutsche Bank Canada, and Deutsche Bank Securities Limited, located in Toronto, are subject to regulation in Canada by the Office of the Superintendent of Financial Institutions Canada and the Ontario Securities Commission, as well as the Investment Dealers Association, a self-regulatory organization. In addition, Deutsche Bank AG, Canada Branch is also subject to regulation by the BAK and the Deutsche Bundesbank; and

(f) Deutsche Bank AG, Sydney Branch and Deutsche Securities Australia Ltd., located in Sydney, are subject to regulation in Australia by the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, and the Australian Stock Exchange Limited. In addition, Deutsche Bank AG, Sydney Branch is also subject to regulation by the BAK and the Deutsche Bundesbank.

Deutsche Bank requests an individual exemption to cover the Foreign Borrowers identified above, as well as any broker-dealer or bank that, now or in the future, is an affiliate of Deutsche Bank that is subject to regulation by (i) the BAK, and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia.

2. The Borrowers, acting as principals, actively engage in the borrowing and lending of securities. The Borrowers utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. The Borrowers represent that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales, for non-purpose loans to exempted borrowers, or in the event of a failure to receive securities that a broker-dealer is required to deliver.

3. Deutsche Bank represents that the Foreign Borrowers are subject to regulation by a governmental agency in the foreign country in which they are located. Deutsche Bank further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: The protection of the investor by the regulation of securities markets.

With respect to Germany, the BAK, a federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration, and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Deutsche Bank by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Deutsche Bank. German banking law mandates penalties to ensure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

Germany, the United Kingdom, Japan, Canada, and Australia all have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

4. Deutsche Bank represents that, in addition to the protections afforded by the applicable foreign regulatory body, compliance by the Foreign Borrowers with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (and the amendments and interpretations thereof) will offer further protections to the Plans.[5] SEC Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors," as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term "major U.S. institutional investor" is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million, or an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[6] The Borrowers represent that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Borrowers represent that under SEC Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance

[5] According to the Borrowers, section 3(a)(4) of the 1934 Act defines "broker" to mean "any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank." Section 3(a)(5) of the 1934 Act provides a similar exclusion for "banks" in the definition of the term "dealer." However, section 3(a)(6) of the 1934 Act defines "bank" to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15a–6(b)(3) provides that the term "foreign broker-dealer" means "any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the [1934] Act." Therefore, the test of whether an entity is a "foreign broker" or "dealer" is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term "broker" or "dealer." Thus, for purposes of this exemption request, the Borrowers are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

[6] Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by a No-Action letter issued by the SEC. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (April 9, 1997 No-Action Letter).

with Rule 15a–6[7] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking

person may have direct communications and contact with the U.S. Institutional Investor.[9] (See April 9, 1997 No-Action Letter.)

5. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (e.g., from the receipt of any interest, dividends, or other

Borrowers, by exercising their contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrowers, the lending of securities to the Borrowers may be outside the scope of relief provided by PTE 81–6.[10]

7. For each Plan, the Borrowers will directly negotiate a Borrowing

and retain the earnings on the collateral (i.e., the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee. The Lending Fee, together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee.

10. By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan will receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by U.S. banks

may agree to pay the Borrower a rebate fee and retain the earnings on the collateral. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement, and will be based upon an objective methodology which takes into account several factors, including potential demand for the loaned securities, the applicable

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with Rule 15a–6[7] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by SEC Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities);[8] and

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. The Borrowers represent that, under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor.[9] (See April 9, 1997 No-Action Letter.)

5. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the borrower deposits cash collateral, the lender invests the collateral, and the borrowing agreement may provide that the lender pay the borrower a previously-agreed upon amount or rebate fee and keep the earnings on the collateral. If the borrower deposits government securities, the borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the borrower deposits irrevocable bank letters of credit as collateral, the borrower pays the lender a fee as compensation for the loan of its securities. These fees, defined below as the Transaction Lending Fee, may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

6. The Borrowers request an individual exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Deutsche Bank or any of its affiliates is a party in interest (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act. For each Plan, neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. It is represented that because the Borrowers, by exercising their contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrowers, the lending of securities to the Borrowers may be outside the scope of relief provided by PTE 81–6.[10]

7. For each Plan, the Borrowers will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrowers. Under the Borrowing Agreement, the Borrowers will have exclusive access for a specified period of time to borrow certain securities of the Plan, pursuant to certain conditions. The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrowers pay all transfer fees and transfer taxes relating to the securities loans. The terms of each loan of securities by a Plan to a Borrower will be at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

8. The Borrowers may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage, or other percentage determined pursuant to an objective formula.

9. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (i.e., the Exclusive Fee).

If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan, or the Plan may agree to pay the Borrower a rebate fee

[7] If it is determined that applicable regulation under the 1934 Act does not require Deutsche Bank or the Borrower to comply with SEC Rule 15a–6, both entities will nevertheless comply with subparagraphs (a) and (b) of Item 4 above.

[8] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Deutsche Bank or between a Plan and the Foreign Borrower. The Borrowers note that in such situations, the U.S. registered broker-dealer will not be acting as principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[9] The term "foreign associated person" as defined in Rule 15a–6(b)(2) means any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

[10] PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

and retain the earnings on the collateral (i.e., the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee. The Lending Fee, together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee.

The Transaction Lending Fee, if any, may be in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. For example, in addition to the Borrower's paying different fees to different Plans, the Borrower may pay different fees for different portfolios of securities (i.e., the fee for a domestic securities portfolio may be different from the fee for a foreign securities portfolio). The Borrower may also pay different fees for securities of issuers in different foreign countries; for example, there may be a different fee for German securities than for French securities. In addition, with respect to, for example, the French securities, there may be different fees for liquid securities than for illiquid securities.

Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities that the Plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

10. By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan will receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by U.S. banks other than Deutsche Bank or its affiliates, or other collateral permitted under PTE 81–6 (as amended or superseded). Such collateral will be deposited and maintained in an account on behalf of a Plan which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan. If maintained by an affiliate of the Borrower or a branch of Deutsche Bank other than the Borrower, the collateral will be segregated from the assets of such affiliate or branch.

The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Plan, its independent fiduciary or its designee, which may be Deutsche Bank or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan, will monitor the level of the collateral daily and, if the market value of the collateral on the close of a business day falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities at the close of business on such day, the Borrower will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to at least 102 percent. The Borrowing Agreement will provide the Plan with a continuing security interest in, and lien on, the collateral, or will provide for the transfer of title to the collateral to the Plan.

If the Borrower deposits cash collateral, the Plan invests the collateral, and all earnings on such cash collateral shall be returned to the Borrower—except that the Borrowing Agreement may provide that the Plan receive Shared Earnings Compensation, which, as discussed above, may be a percentage of the earnings on the collateral which may be retained by the Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement, and will be based upon an objective methodology which takes into account several factors, including potential demand for the loaned securities, the applicable benchmark cost of fund indices (typically, the U.S. Federal Funds rate established by the U.S. Federal Reserve System (the Federal Funds), the overnight REPO[11] rate, or the like), and anticipated investment return on overnight investments permitted by the independent fiduciary of the Plan. If the Borrower deposits non-cash collateral, such as government securities or irrevocable bank letters of credit, the Borrower shall be entitled to the earnings on its non-cash collateral—except that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

The Borrower will provide a monthly report to the independent fiduciary of the Plan which includes the following information. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

11. Before entering into a Borrowing Agreement, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's

[11] An overnight REPO is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes, and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other).

any securities loan, the Borrower will deliver securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

15. In the event that the Borrower fails

Commission, and the Investment Dealers Association in Canada, or (e) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia;

(ii) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act that provides foreign broker-dealers a

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement, and the

Goldman Sachs & Co. (located in New York, NY) and its Affiliates

[Application No. D–11084]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847

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well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's financial condition. Further, the Borrowing Agreement will contain a representation by the Borrower that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

12. Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of this exemption, if granted, (and the notice of pendency) will be provided to the Plan, and the Borrower will inform the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.

13. With regard to those Plans for which Deutsche Bank or any of its affiliates provides custodial, directed trustee, clearing and/or reporting functions relative to securities loans, Deutsche Bank and a Plan fiduciary independent of Deutsche Bank and its affiliates will agree in advance, and in writing, to any fee that Deutsche Bank or any of its affiliates is to receive for such custodial, directed trustee, clearing and/or reporting services. Such fees, if any, would be fixed fees (e.g., Deutsche Bank or any of its affiliates might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount), and any such fee would be in addition to any fee Deutsche Bank or any of its affiliates has negotiated to receive from any such Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for Deutsche Bank or any of its affiliates to provide such functions relative to securities loans to the Borrowers will be terminable by the Plan within five business days of the receipt of written notice without penalty to the Plan, except for the return to the Borrowers of a pro-rata portion of the Exclusive Fee paid by the Borrowers to the Plan, if the Plan has also terminated its exclusive borrowing arrangement with the Borrowers.

14. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of any securities loan, the Borrower will deliver securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

15. In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the United States with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

16. Except as provided herein, all the procedures under the Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Germany, the United Kingdom, Japan, Canada and/or Australia, as appropriate. In addition, in order to ensure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers—provided, however, that

(a) In the case of two or more Related Plans whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million—provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of two or more Unrelated Plans whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity.

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above is formed for the sole purpose of making loans of securities.)

The Borrowers represent that the opportunity for the Plans to enter into exclusive borrowing arrangements with the Borrowers under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

17. In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(i) Such Foreign Borrower is a bank which is subject to regulation by (a) the BAK and the Deutsche Bundesbank in Germany, (b) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (c) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (d) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (e) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia;

(ii) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act that provides foreign broker-dealers a limited exception from U.S. registration requirements;

(iii) All collateral is maintained in U.S. dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded);

(iv) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(v) Prior to entering into a transaction involving a Foreign Borrower, Deutsche Bank or the Foreign Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint a Process Agent in the United States;

(3) Consent to the service of process on the Process Agent; and

(4) Agree that enforcement by a Plan of the indemnity provided by Deutsche Bank or the Foreign Borrower will occur in the U.S. courts.

18. In summary, the Borrowers represent that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) Each Borrower will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans will be permitted to lend to the Borrower, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan the Exclusive Fee, which as discussed above may be either (i) a flat fee (which may be a percentage of the value of the total securities subject to the Borrowing Agreement), (ii) a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii);

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement, and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by the independent fiduciary;

(g) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, except for the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan, and whereupon the Borrower will return any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities;

(h) Neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan;

(i) The minimum Plan size requirement (as specified in Section II(o) above) will ensure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and

(j) All the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as applicable securities laws of the United States, Germany, the United Kingdom, Japan, Canada and/or Australia, as appropriate.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Goldman Sachs & Co. (located in New York, NY) and its Affiliates

[Application No. D–11084]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[12]

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply as of March 22, 2002, to:

(a) The lending of securities, under certain exclusive borrowing arrangements, to:

(1) Goldman, Sachs & Co. (Goldman) and any affiliate of Goldman that, now or in the future, is a U.S. registered broker-dealer, a government securities broker or dealer or U.S. bank (together with Goldman, the "U.S. Broker-Dealers");

(2) Goldman Sachs Canada Inc., which is subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association;

(3) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), which are subject to regulation in the United Kingdom by the Financial Services Authority (the UK FSA) (formerly, the Securities and Futures Authority (the UK SFA));

(4) Goldman, Sachs & Co. oHG, which is subject to regulation in Germany by the Deutsche Bundesbank and the Federal Banking Supervisory Authority, e.g., der Bundesaufsichtsamt für das Kreditwesen (the BAK);

(5) Goldman Sachs (Japan) Ltd., which is subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange;

(6) Goldman Sachs Australia Pty Limited, which is subject to regulation in Australia by the Australian Securities & Investments Commission (the ASIC);

(7) Goldman, Sachs & Co. Bank, which is subject to regulation in Switzerland by the Swiss Federal Banking Commission; and

(8) Any broker-dealer or bank that, now or in the future, is an affiliate of Goldman which is subject to regulation

[12] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

by the Ontario Securities Commission and the Investment Dealers Association in Canada, the UK FSA in the United Kingdom, the Deutsche Bundesbank and/or the BAK in Germany, the Financial Services Agency and the Tokyo Stock Exchange in Japan, the ASIC in Australia or the Swiss Federal Banking Commission in Switzerland (each such affiliated foreign broker-dealer or bank referred to as a "Foreign Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan and/or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, any earnings on the non-cash collateral

combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, Jan. 23 1981, as amended at 52 FR 18754, May 19, 1987) (PTE 81–6) (as amended or superseded) [13] having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent. Such

its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, any cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[14] had

securities laws of the United States, Canada, the United Kingdom, Germany, Japan, Australia, or Switzerland, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same

commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption, if granted, (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the

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by the Ontario Securities Commission and the Investment Dealers Association in Canada, the UK FSA in the United Kingdom, the Deutsche Bundesbank and/or the BAK in Germany, the Financial Services Agency and the Tokyo Stock Exchange in Japan, the ASIC in Australia or the Swiss Federal Banking Commission in Switzerland (each such affiliated foreign broker-dealer or bank referred to as a "Foreign Borrower," and, together with the U.S. Broker-Dealers, collectively referred to as the "Borrowers"), by employee benefit plans, including commingled investment funds holding assets of such plans (Plans) with respect to which Goldman or any of its affiliates is a party in interest; and

(b) The receipt of compensation by Goldman or any of its affiliates in connection with securities lending transactions, provided that the following conditions set forth in Section II, below, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to the Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower pledges cash collateral, any earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan and/or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, any earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the "Lending Fee") (the Lending Fee and the Shared Earnings Compensation are referred to herein as the "Transaction Lending Fee"). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage of portfolio value or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Goldman or an affiliate of Goldman, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, Jan. 23 1981, as amended at 52 FR 18754, May 19, 1987) (PTE 81–6) (as amended or superseded) [13] having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent. Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or a custodian of the Plan. If maintained by an affiliate of the Borrower, the collateral will be segregated from the assets of such affiliate.

(h) If the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by the Plan or its designee, which may be Goldman or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, any cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[14] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement and paragraph (l) above, the Plan's remedy will be the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. against any losses resulting from its use of the borrowed securities equal to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default together with expenses incurred by the Plan plus applicable interest at a reasonable rate including reasonable attorneys fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Canada, the United Kingdom, Germany, Japan, Australia, or Switzerland, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity——

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption, if granted, (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[15]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrower. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving a Foreign Borrower must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, in the United Kingdom by the UK FSA, in Germany by the Deutsche Bundesbank and the BAK, in Japan by the Financial Services Agency and the Tokyo Stock Exchange, in Australia by the ASIC, or in Switzerland by the Swiss Federal Banking Commission;

[13] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as adealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[14] The Department notes that Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreing tax withholdings and that the Borrower will alwsays put the Plan back in at least as good a position as it would have been had it not loaned securities.

[15] The Department notes the Applicants' representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, e.g., the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit described in paragraph (g) above, or in a combination thereof, or other collateral permitted under PTE 81–6, and is held in accordance with paragraph (g) above;

(4) The Borrower submits to the jurisdiction of the United States courts and designates an agent for service of process in the United States (which may be the Borrower itself or any person meeting the requirements for such designation contained in Rule 17f–3(c)(2)(i) through (iii) under the Investment Company Act of 1940, as amended);

(5) The Borrower agrees to provide to the Plan's independent fiduciary the information specified in paragraph (i) above, and to make its books and records available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of a participating Plan, or any duly authorized representative of such participant or beneficiary;

(6) Before the Borrower may borrow securities from a Plan, the Borrower and the Plan's independent fiduciary enter into a Borrowing Agreement which expressly provides that the Plan has the rights set forth in paragraphs (l) and (m) above, and that the Borrower consents to the jurisdiction of the United States courts and designates an agent for service of process in the United States (which may be the Borrower itself or any person meeting the requirements for such designation contained in Rule 17f–3(c)(2)(i) through (iii) under the Investment Company Act of 1940, as amended);

(7) Prior to the Borrower's borrowing any securities, the Plan's independent fiduciary receives a representation from the Borrower that the Borrower is not ineligible to perform the functions described in paragraph (r)(4) above, and will promptly notify the Plan's independent fiduciary if it becomes ineligible to perform such functions or to make such representation; and

(8) The Borrower is not ineligible to perform the functions described in paragraph (r)(4) above.

Section III—Definitions

(a) The term "Borrower" means Goldman, the U.S. Broker-Dealers, and any Foreign Borrower.

(b) The term "Foreign Borrower" means any broker-dealer or bank that is an affiliate of Goldman subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, in the United Kingdom by the UK FSA, in Germany by the Deutsche Bundesbank and the BAK, in Japan by the Financial Services Agency and the Tokyo Stock Exchange, Goldman Sachs Australia Pty Limited or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Australia by the ASIC, Goldman, Sachs & Co. Bank or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Switzerland by the Swiss Federal Banking Commission.

(c) The term "Borrower" includes Goldman, the U.S. Broker-Dealers, and any Foreign Borrower.

Agency and the Tokyo Stock Exchange in Japan, (e) Goldman Sachs Australia Pty Limited, located in Sydney, is subject to regulation by the Australian Securities & Investments Commission (the ASIC) in Australia, (f) Goldman, Sachs & Co. Bank, located in Zurich, is subject to regulation by the Swiss Federal Banking Commission in Switzerland, and (g) any broker-dealer or bank that, now or in the future, is an affiliate of Goldman which is subject to regulation in Switzerland by the Swiss Federal Banking Commission.

4. The Applicants represent that although Goldman Sachs International and Goldman Sachs Equity Securities (U.K.) or any other foreign broker-dealer of Goldman in the United Kingdom will not be registered with the SEC, their activities are governed by the rules, regulations and membership requirements of the UK FSA. In this SEC share a common objective: the protection of the investor by the regulation of securities markets.

sector. The BAK insures that Goldman, Sachs & Co. oHG has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-

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(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

(s) Goldman or the Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Goldman and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Goldman or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An "affiliate" of a person means:

(i) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The term "Foreign Bortower" or "Foreign Borrowers" means Goldman Sachs Canada Inc. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, Goldman Sachs International and Goldman Sachs Equity Securities (U.K.) or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in the United Kingdom by the UK FSA, Goldman, Sachs & Co. oHG or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Germany by the Deutsche Bundesbank and the BAK, Goldman Sachs (Japan) Ltd. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange, Goldman Sachs Australia Pty Limited or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Australia by the ASIC, Goldman, Sachs & Co. Bank or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Switzerland by the Swiss Federal Banking Commission.

(c) The term "Borrower" includes Goldman, the U.S. Broker-Dealers, and the Foreign Borrowers.

Effective Date: This proposed exemption, if granted, will be effective as of March 22, 2002.

Summary of Facts and Representations

1. Goldman, Sachs & Co. (Goldman), a New York limited partnership, is a wholly owned subsidiary and the principal operating subsidiary of The Goldman Sachs Group, Inc. (the GS Group), a Delaware corporation. Goldman, a full-line investment services firm, is registered with and regulated by the Securities and Exchange Commission (the SEC) as a broker-dealer and as an investment adviser, is registered with and regulated by the Commodity Futures Trading Commission (the CFTC) as a futures commission merchant, is a member of the New York Stock Exchange (the NYSE) and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. (the NASD). As of August 31, 2001, the GS Group had approximately $302 billion in assets and $17.96 billion in shareholders' equity.

Goldman has several foreign affiliates which are broker-dealers or banks. The affiliated foreign broker-dealers or banks of Goldman that will be covered by this proposed exemption (the Foreign Borrowers), and their respective regulating entities, are as follows: (a) Goldman Sachs Canada Inc., located in Toronto, is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association in Canada, (b) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), located in London, are subject to regulation by the Securities and Futures Authority (the UK FSA) (formerly, the Securities and Futures Authority (the UK SFA)) in the United Kingdom, (c) Goldman, Sachs & Co. oHG, located in Frankfurt, is subject to regulation by the Deutsche Bundesbank and the Federal Banking Supervisory Authority, i.e., der Bundesaufsichtsamt für das Krewitwesen (the BAK) in Germany, (d) Goldman Sachs (Japan) Ltd., located in Tokyo, is subject to regulation by the Financial Services Agency and the Tokyo Stock Exchange in Japan, (e) Goldman Sachs Australia Pty Limited, located in Sydney, is subject to regulation by the Australian Securities & Investments Commission (the ASIC) in Australia, (f) Goldman, Sachs & Co. Bank, located in Zurich, is subject to regulation by the Swiss Federal Banking Commission in Switzerland, and (g) any broker-dealer or bank that, now or in the future, is an affiliate of Goldman which is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association in Canada, the UK SFA in the United Kingdom, the Deutsche Bundesbank and the BAK in Germany, the Financial Services Agency and the Tokyo Stock Exchange in Japan, the ASIC in Australia, or the Swiss Federal Banking Commission in Switzerland.

2. The Borrowers, acting as principal, actively engage in the borrowing and lending of securities. The Borrowers utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. The Applicants represent that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales, for non-purpose loans to exempted borrowers, or in the event of a failure to receive securities that a broker-dealer is required to deliver.

The Applicants wish to enter into exclusive borrowing arrangements with employee benefit plans, including commingled investment funds holding the assets of such plans (Plans), for which Goldman or any affiliate of Goldman may be a party in interest. For example, Goldman or an affiliate may be an investment manager for assets of a Plan that are unrelated to the assets involved in the transaction. Goldman or any of its affiliates may provide securities custodial services, directed trustee services, clearing and/or reporting functions in connection with securities lending transactions, or other services to the Plan.

3. The Applicants represent that although the Foreign Borrowers will not be registered with the SEC, their activities are subject to regulation by a governmental agency in the foreign country in which they are located. The Applicants further represent that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets.

4. The Applicants represent that although Goldman Sachs International and Goldman Sachs Equity Securities (U.K.) or any other foreign broker-dealer of Goldman in the United Kingdom will not be registered with the SEC, their activities are governed by the rules, regulations and membership requirements of the UK FSA. In this regard, the Applicants state that these broker-dealers are subject to the UK FSA rules relating to, among other things, minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and books and records requirements with respect to client accounts. The Applicants represent that the UK FSA rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they may fall due, and that the UK FSA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition, to demonstrate capital adequacy, the Applicants state that the UK FSA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements. In this regard, required records must be produced at the request of the UK FSA at any time. The Applicants further state that the rules and regulations of the UK FSA for broker-dealers are backed up by potential fines and penalties as well as a comprehensive disciplinary system.

5. With respect to Canada, the United Kingdom, Japan, and Australia, all these countries have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

6. With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that Goldman, Sachs & Co. oHG has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Goldman, Sachs & Co. oHG by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Goldman, Sachs & Co. oHG. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

7. With respect to Switzerland, the powers of the Swiss Federal Banking Commission include licensing banks, issuing directives to address violations by or irregularities involving banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. The Swiss Federal Banking Commission exercises oversight over Swiss banks, such as Goldman, Sachs & Co. Bank, through independent auditors known as "Recognized Auditors," which act on behalf of the Commission under detailed statutory provisions. Each Swiss bank, including Goldman, Sachs & Co. Bank, must appoint a recognized Auditor and notify the Swiss Federal Banking Commission of an intent to change its auditor. The Recognized Auditor may take action within a bank as deemed necessary or as instructed by the Swiss Federal Banking Commission and must inform the Commission of supervisory matters. The Swiss Federal Banking Commission insures that Goldman, Sachs & Co. Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and

financial resources. The Swiss Federal Banking Commission reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the Recognized Auditor.

The Swiss Federal Banking Commission obtains information on the condition of Goldman, Sachs & Co. Bank and its foreign offices and subsidiaries by requiring submission of periodic

requirements, will offer additional protections to the Plans.[16]

10. Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among

intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicants represent that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person[20] and the U.S. institutional investor (other than a major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. The Applicants represent that, under certain circumstances, the foreign associated person may have direct communications

a party in interest (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act. For each Plan, neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c))

15. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee).

financial resources. The Swiss Federal Banking Commission reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the Recognized Auditor.

The Swiss Federal Banking Commission obtains information on the condition of Goldman, Sachs & Co. Bank and its foreign offices and subsidiaries by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the Recognized Auditor. The Swiss Federal Banking Commission also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposures from Goldman, Sachs & Co. Bank.

Swiss banking law mandates penalties to insure correct reporting to the Swiss Federal Banking Commission. Recognized Auditors face penalties for gross violations of their duties in auditing, or reporting misleading information, omitting essential information from the audit report, failing to request pertinent information or failing to report to the Swiss Federal Banking Commission.

8. With respect to Australia, Goldman Sachs Australia Pty Limited is subject to regulation by ASIC, and as a participating organization, by the Australian Stock Exchange Limited (ASX). The rules of ASX (which are more detailed than those of ASIC) require each firm to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of ASX set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the ASX impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting, and recordkeeping requirements, to the effect that required records must be produced upon request. ASIC also has rules covering these matters. Finally, the rules and regulations of ASX and ASIC impose potential fines and penalties on broker-dealers, establishing a comprehensive disciplinary system.

9. Goldman represents that, in connection with the transactions covered by this proposed exemption, the Foreign Borrowers' compliance with any applicable requirements of Rule 15a–6 (17 C.F.R. 240.15a–6) of the 1934 Act (as discussed further in Paragraph 10, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.[16]

10. Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term "major U.S. institutional investor" is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million or an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[17] The Applicants represent that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicants represent that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6[18] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities);[19] and

[16] According to the Applicants, section 3(a)(4) of the 1934 Act defines "broker" to mean "any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank." Section 3(a)(5) of the 1934 Act provides a similar exclusion for "banks" in the definition of the term "dealer." However, section 3(a)(6) of the 1934 Act defines "bank" to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15a–6(b)(3) provides that the term "foreign broker-dealer" means "any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the [1934 Act]." Therefore, the test of whether an entity is a "foreign broker" or "dealer" is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term "broker" or "dealer." Thus, for purposes of this exemption request, the Applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments to Rule 15a–6.

[17] Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by a Securities and Exchange Commission No-Action letter. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (April 9, 1997 No-Action Letter).

[18] If it is determined that applicable regulation under the 1934 Act does not require Goldman or the Borrower to comply with Rule 15a–6, both entities will nevertheless comply with subparagraphs (a) and (b) of Representation 10.

[19] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Goldman or between a Plan and the Foreign

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person[20] and the U.S. institutional investor (other than a major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. The Applicants represent that, under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the borrower deposits cash collateral, the lender invests the collateral, and the borrowing agreement may provide that the lender pay the borrower a previously-agreed upon amount or rebate fee and keep any earnings on the collateral. If the borrower deposits government securities, the borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the borrower deposits irrevocable bank letters of credit as collateral, the borrower pays the lender a fee as compensation for the loan of its securities. These fees, defined below as the Transaction Lending Fee, may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

12. The Applicants request an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Goldman or any of its affiliates is a party in interest (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act. For each Plan, neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. The Applicants represent that because the Borrower, by exercising its contractual rights under the proposed exclusive borrowing arrangement, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrower, the lending of securities to the Borrower may be outside the scope of relief provided by PTE 81–6.[21]

13. For each Plan, the Borrower will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrower. Under the Borrowing Agreement, the Borrower will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The form of the Borrowing Agreement to be used in foreign jurisdictions will reflect appropriate local industry or market standards.[22] The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrower pay all transfer fees and transfer taxes relating to the securities loans. The terms of each loan of securities by a Plan to a Borrower will be at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

14. The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage of portfolio value or other percentage determined pursuant to an objective formula.

15. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, any earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan and/or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the "Lending Fee") (the Lending Fee and the Shared Earnings Compensation are referred to herein as the "Transaction Lending Fee"). The Transaction Lending Fee, if any, may be in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. For example, in addition to the Borrower paying different fees for different portfolios of securities (i.e., the fee for a domestic securities portfolio may be different than the fee for a foreign securities portfolio), the Borrower may also pay different fees for securities of issuers in different foreign countries (i.e., there may be a different fee for German securities than for French securities). In addition, with respect to, for example, the French securities, there may be different fees for liquid securities than for illiquid securities. Any change in, or a change in the method of determining, the Exclusive Fee or the Transaction Lending Fee that the Applicants pay to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee

Borrower. The Applicants note that in such situations, the U.S. registered broker-dealer will not be acting as principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[20] The term "foreign associated person" as defined in Rule 15a–6(b)(2) means any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker-dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

[21] PTE 81–6 requires in part that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

[22] For example, the form of the Borrowing Agreement to be used in the United Kingdom differs from the standard U.S. Borrowing Agreement. Under the form Borrowing Agreement to be used in the United Kingdom, the Plan receives title to (rather than a pledge of or a security interest in) the collateral.

changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional shares pursuant to rights issues. The Borrower will deliver to the Plan on the termination date of the loan, or on such earlier date as the Plan may request in connection with the sale of the loaned securities, the same amount of securities as were loaned to the Borrower. If the Borrower is unable to deliver such securities, the Borrower will pay the Plan the cash equivalent of the securities, including reasonable attorneys fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

23. Except as provided herein, all the procedures under the Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Canada, the United Kingdom and other jurisdictions, as applicable. The Borrowing Agreement will provide that the Plan may terminate the loan at any time, whereupon the Borrower will deliver the loaned securities within the lesser of the customary delivery period for such securities or five business days after notice by the Plan to the Borrower of the termination of the loan. The Borrowing Agreement will also provide that the Plan will receive an amount equal to any dividends or interest paid on the securities loaned to the Borrower if the Plan would have received such amount had it not loaned the securities. The Borrowing Agreement will provide that the Plan will receive a fee equal to the fee paid to the Borrower in the case of cash collateral, or a fee calculated as the agreed upon percentage of the value of the collateral for the period during which the loan is outstanding in the case of collateral other than cash. The Borrowing Agreement will provide that the Plan will receive the collateral in the event of the Borrower's bankruptcy or insolvency. The Borrowing Agreement will provide that the Borrower will be liable to the Plan for any loss resulting from a breach by the Borrower of the Borrowing Agreement.

24. Prior to the Plan's entering into a Borrowing Agreement with the Borrower, the Plan fiduciary will receive the following information: (a) The most recent publicly available financial statements of the Borrower; (b) a representation from the Borrower that there has been no material adverse change in the Borrower's financial condition since the date of the most recent financial statements; and (c) a representation from the Borrower that the Borrower will provide updated financial statements promptly after they become available.

25. The Plan fiduciary will receive daily information regarding the value of the securities loaned and the collateral. If the Borrower fails to maintain the required collateral, the Borrower will be in default and the Plan fiduciary will have the right to liquidate the collateral and purchase securities identical to the loaned securities. The Borrowing Agreement will provide that the Borrower will be liable to the Plan for any loss resulting from a default by the Borrower, including any failure to return the loaned securities when due.

26. The Plan fiduciary will receive quarterly reports detailing the compensation earned by the Plan as a result of the loans, and the Plan fiduciary will receive such additional information as may reasonably be requested by the Plan fiduciary to monitor the performance of the lending arrangement. The Plan fiduciary will also receive annual reports from Goldman with respect to the Plan's securities lending activities.

27. Prior to the Plan's participation in the lending arrangement, the Plan fiduciary will receive a copy of the exemption granted by the Department pursuant to this proposed exemption application. The Plan fiduciary will authorize the Plan's participation in the lending arrangement in writing, and will enter into a Borrowing Agreement with the Borrower.

28. The Plan fiduciary will be provided with the right to vote the loaned securities if a material event affecting the investment occurs. The Plan fiduciary will receive sufficient notice of any corporate meeting to enable it to terminate the loan so that the loaned securities can be voted at the meeting.

29. The Plan fiduciary will have the right to recall the loaned securities in order to exercise voting rights in connection with corporate events or proxy contests affecting the investment.

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102. Prior to the Plan's participation in the lending arrangement, the Plan fiduciary will receive a copy of the exemption granted by the Department pursuant to this proposed exemption application. The Plan fiduciary will authorize the Plan's participation in the lending arrangement in writing, and will enter into a Borrowing Agreement with the Borrower.

103. The Plan fiduciary will be provided with the right to vote the loaned securities if a material event affecting the investment occurs. The Plan fiduciary will receive sufficient notice of any corporate meeting to enable it to terminate the loan so that the loaned securities can be voted at the meeting.

104. The Plan fiduciary will have the right to recall the loaned securities in order to exercise voting rights in connection with corporate events or proxy contests affecting the investment.

105. The Plan fiduciary will have the right to terminate the loan at any time, whereupon the Borrower will deliver the loaned securities within the lesser of the customary delivery period for such securities or five business days after notice by the Plan to the Borrower of the termination of the loan.

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107. Prior to the Plan's participation in the lending arrangement, the Plan fiduciary will receive a copy of the exemption granted by the Department pursuant to this proposed exemption application. The Plan fiduciary will authorize the Plan's participation in the lending arrangement in writing, and will enter into a Borrowing Agreement with the Borrower.

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130. The Plan fiduciary will have the right to terminate the loan at

changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities that the Plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

16. An independent fiduciary of a Plan may provide written instructions directing that the investment of any cash collateral, or any portion thereof, be managed by Goldman or any of its affiliates or be invested in one or more mutual funds managed by Goldman or any of its affiliates. Goldman or such affiliate, as applicable, may receive a reasonable and customary investment management fee, provided that the independent fiduciary of the Plan approves of such compensation arrangement after receiving written disclosure of the compensation arrangement to be paid to Goldman or such affiliate, as applicable, in connection with such investment management. The independent fiduciary of the Plan may revoke such written instructions at any time.[23]

17. By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan will receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by U.S. banks other than Goldman or an affiliate of Goldman, or other collateral permitted under PTE 81–6 (as amended or superseded) having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent. Such collateral will be deposited and maintained in an account on behalf of the Plan which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan. The Plan, its independent fiduciary or its designee, which may be Goldman or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan, will monitor the level of the collateral daily and, if the market value of the collateral on the close of a business day falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities at the close of business on such day, the Borrower will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to at least 102 percent. The applicable Borrowing Agreement will give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

If the Borrower pledges cash collateral, the Plan invests the collateral, and all earnings on such cash collateral shall be returned to the Borrower; provided that the Borrowing Agreement may provide that the Plan receive Shared Earnings Compensation, which, as discussed above, may be a percentage of the earnings on the collateral which may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of comparable arm's length transactions between unrelated parties taking into account the exclusive arrangement, and will be based upon an objective methodology which may take into account one or more of several factors, including potential demand for the loaned securities, the applicable benchmark cost of fund indices (typically, the U.S. Federal Funds rate established by the U.S. Federal Reserve System (the Federal Funds), the overnight REPO[24] rate, or the like) and/or the anticipated investment return on overnight investments permitted by the independent fiduciary of the Plan. If the Borrower pledges non-cash collateral, such as government securities or irrevocable bank letters of credit, the Borrower shall be entitled to any earnings on its non-cash collateral; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

The Borrower will provide a monthly report to the independent fiduciary of the Plan which includes the following information. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

18. Before entering into a Borrowing Agreement, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement. Further, the Borrowing Agreement will contain a representation by the Borrower that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

19. Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption, if granted, (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.

[23] This transaction is outside the scope of the proposed exemption. The Department notes that it is the responsibility of Goldman to determine whether the conditions of ERISA section 408(b)(2) will be met with respect to the transaction (i.e., the reasonable contract or arrangement requirement and the reasonable compensation requirement).

[24] An overnight REPO is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other).

20. With regard to those Plans for which Goldman or any of its affiliates provides custodial, directed trustee, clearing and/or reporting functions relative to securities loans, Goldman or its applicable affiliate and a Plan fiduciary independent of Goldman and its affiliates will agree in advance and in writing to any fee that Goldman or any of its affiliates is to receive for such services. Such fees, if any, would be fixed fees (e.g., Goldman or any of its affiliates might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount) and any such fee would be in addition to any fee Goldman or any of its affiliates has negotiated to receive from any such Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for Goldman or any of its affiliates to provide such functions relative to securities loans to the Borrower will be terminable by the Plan within five business days of the receipt of written notice without penalty to the Plan, except for the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan, if the Plan has also terminated its exclusive borrowing arrangement with the Borrower.

21. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of any securities loan, the Borrower will deliver securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

22. In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement and the immediately preceding paragraph, the Plan's remedy will be the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. against any losses resulting from its use of the borrowed securities equal to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

23. Except as provided herein, all the procedures under the Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Canada, the United Kingdom, Germany, Japan, Australia or Switzerland, as appropriate. In addition, in order to ensure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(a) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 C.F.R. 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

The Applicants represent that the opportunity for the Plans to enter into exclusive borrowing arrangements with the Borrower under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the return on the lending portfolio.

24. In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(i) Such Foreign Borrower is a registered broker-dealer subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, in the United Kingdom by the UK FSA, in Germany by the Deutsche Bundesbank and the BAK, in Japan by the Financial Services Agency and the Tokyo Stock Exchange, in Australia by the ASIC, or in Switzerland by the Swiss Federal Banking Commission;

(ii) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements;

(iii) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded);

(iv) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under Section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)–1; and

(v) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consent to the service of process on the Process Agent; and

(e) The Borrower will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially will have, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount,

4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11039]

Notice of Proposed Individual Exemption To Amend Prohibited Transaction Exemption (PTE) 95–31 Involving the Financial Institutions Retirement Fund (the Fund) and the

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–11039. Interested persons are also invited to submit comments and/or hearing requests to PWBA via email to

services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to employee benefit plans (the Plans) and to their sponsoring employers (the Employers) that participate in the Fund and the Thrift Plan; provided that [certain] conditions are met.

As set forth in the Summary of Facts and Representations contained in the proposed notice to PTE 95–31 (60 FR 5700 (January 30, 1995)), the exemption

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(v) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consent to the service of process on the Process Agent; and

(4) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

25. In addition to the protections cited above, Goldman or the Borrower will maintain, or cause to be maintained, within the United States for a period of six years from the date of a transaction, such records as are necessary to enable the Department and other persons (as specified herein in Section II(t)(1)) to determine whether the conditions of the exemption have been met.

26. In summary, the Applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Borrower will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans will be permitted to lend to the Borrower, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan the Exclusive Fee, which as discussed above may be either (i) a flat fee (which may be a percentage of the value of the total securities subject to the Borrowing Agreement), (ii) a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii);

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially will have, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent and will be monitored daily by the independent fiduciary or its designee, which may be Goldman or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan;

(g) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, except for the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan, and whereupon the Borrower will return any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities;

(h) Neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan;

(i) The minimum Plan size requirement (as specified in Section II(o)) will ensure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and

(j) All the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as applicable securities laws of the United States, Canada, the United Kingdom, Germany, Japan, Australia or Switzerland, as appropriate.

Effective Date: This proposed exemption, if granted, will be effective as of March 22, 2002.

For Further Information Contact: Karen E. Lloyd, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–16736 Filed 7–2–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11039]

Notice of Proposed Individual Exemption To Amend Prohibited Transaction Exemption (PTE) 95–31 Involving the Financial Institutions Retirement Fund (the Fund) and the Financial Institutions Thrift Plan (the Thrift Plan) Located in White Plains, NY

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to amend PTE 95–31.

SUMMARY: This document contains a notice of pendency before the U.S. Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 95–31 (60 FR 18619, April 12, 1995), an exemption granted to the Fund and the Thrift Plan. PTE 95–31 involves the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to: Employers (the Employers) that participate in the Fund and the Thrift Plan; and employee benefit plans (the Plans) sponsored by such Employers.

If granted, the proposed exemption would incorporate, by reference, certain of the facts, representations and conditions contained in PTE 95–31. However, the proposed exemption would expand the scope of PTE 95–31 by allowing for the provision of certain trust services, and the receipt of compensation for such services, by Trustco, a wholly-owned subsidiary of Pentegra, to the Plans, the Employers, the Thrift Plan, and the individual retirement accounts (the IRAs) established by certain employees, officers, directors and/or shareholders of the Employers (the Individuals). In addition, the proposed exemption would permit the provision of certain services, and the receipt of compensation with respect to such services, by Pentegra to the Thrift Plan and the IRAs.

Thus, the proposed exemption will affect the Fund, the Thrift Plan, the Plans, the Employers, the IRAs, the Individuals, and, when relevant, the participants and beneficiaries thereof.

DATES: Written comments and requests for a public hearing should be received by the Department on or before September 16, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–11039. Interested persons are also invited to submit comments and/or hearing requests to PWBA via email to *moffittb@pwba.dol.gov* or by fax to (202) 219–0204. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8544. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption to amend PTE 95–31. PTE 95–31 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of the Fund and the Thrift Plan (together, the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, the proposed exemption is being issued solely by the Department.

PTE 95–31 provides that—

• The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to employee benefit plans (the Plans) and to their sponsoring employers (the Employers) that participate in the Fund and the Thrift Plan; provided that [certain] conditions are met.

As set forth in the Summary of Facts and Representations contained in the proposed notice to PTE 95–31 (60 FR 5700 (January 30, 1995)), the exemption provides relief for the provision of administrative services by Pentegra to the Plans and the Employers, and the receipt of compensation by Pentegra for such provision of services. The services provided by Pentegra include document preparation, the procurement of favorable determination letters from the Internal Revenue Service, the maintenance of plan books, and other similar plan administration services. At the time the exemption was granted, Pentegra did not offer trust services to any of its clients, including the Plans and/or the Employers.

The Applicants state that, to date, Pentegra has been successful in providing services to 66 defined contribution plans, 72 employee stock ownership plans, and 32 nonqualified plans. In addition, the Applicants represent that, in building a large and diverse client base, the Fund and the Thrift Plan complied with all of the conditions contained in PTE 95–31. The Fund now intends to create Trustco, a for-profit, limited purpose, national trust company as a means of providing trust services to, among others, the Plans, the Employers, the Thrift Fund, and the IRAs. The Applicants represent that the Fund seeks to create Trustco primarily in response to requests by numerous of Pentegra's current and prospective clients that Pentegra offer trust services to complement its various other administrative services.

The Applicants state that, once established, Trustco will offer trust services that are similar in nature to the services described in PTE 95–31. In this regard, the Applicants state that Trustco will provide only directed, non-discretionary trust services.[1] Accordingly, the Applicants request that such provision of services be subject to substantially the same conditions as those contained in PTE 95–31.

The Applicants state that the Fund, the Plans, the IRAs, and the Thrift Plan will be adequately protected with respect to the receipt by each such entity of services from Trustco. In this

[1] In so doing, the applicant represents, Trustco, will not participate in securities lending transactions or provide cash management services.

regard, with respect to the Fund, the Applicants state that the provision of trust services by Trustco to the Thrift Plan, the Plans, the IRAs and the Employers will be subject to, among other things, the prior approval of an independent fiduciary. In addition, the financial statements of Trustco will be subject to an annual audit conducted by an independent certified accountant and an annual review conducted by an independent fiduciary. With respect to the Plans, the Applicants state that the Trustco trust services will be provided pursuant to a written agreement between Trustco and the Plans, and will be limited to, as described in footnote 2, upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable. The Applicants additionally state that the IRAs will be adequately protected since, among other things, the terms associated with any receipt of services by the IRAs from Pentegra will be no less favorable to the IRAs than the terms contained in comparable agreements for services between unrelated parties.

employers that participate in the Fund and/or the Thrift Plan (the Employers); employee benefit plans sponsored by the Employers (the Plans); and the individual retirement accounts (the IRAs) established by certain employees, officers, directors and/or shareholders of the Employers (the Individuals); provided that the following conditions are met:

(a) A qualified, independent fiduciary of the Fund determines that the services described in footnote 2, upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable. The Applicants additionally state that the IRAs will be adequately protected since, among other things, the terms associated with any receipt of services by the IRAs from Pentegra will be no less favorable to the IRAs than the terms contained in comparable agreements for services between unrelated parties.

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a

estimate as to the amount of fees the Service Providers expect to receive during the following year from such Plans and Employers;

(h) Not less frequently than annually, the independent fiduciary will conduct a detailed review of approximately 10 percent of all transactions completed by the Service Providers which will include a reasonable cross-section of all services performed; such transactions will be reviewed for compliance with

Section II. Recordkeeping

(1) The independent fiduciary and the Fund will maintain, or cause to be maintained, for a period of 6 years, the records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the independent

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regard, with respect to the Fund, the Applicants state that the provision of trust services by Trustco to the Thrift Plan, the Plans, the IRAs and the Employers will be subject to, among other things, the prior approval of an independent fiduciary. In addition, the financial statements of Trustco will be subject to an annual audit conducted by an independent certified accountant and an annual review conducted by an independent fiduciary. With respect to the adequate protection of the Plans and the IRAs, the Applicants state that, among other things, the terms associated with any receipt of services by the Plans and the IRAs from Trustco will be no less favorable to the Plans and the IRAs than the terms contained in comparable agreements for services between unrelated parties. With respect to the adequate protection of the Thrift Plan, the Applicants state that, among other things, any selection of Trustco as provider of trust services to the Thrift Plan will be made by the Board of Directors of the Thrift Plan upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable.[2]

The Applicants additionally seek relief for the provision of certain services by Pentegra to the Thrift Plan and the IRAs. The Applicants state that such provision of services is important to the continued success of Pentegra given that the employer market for pension plan services appears to be declining. The Applicants state that the proposed transactions involve services of the same nature and type as those described in PTE 95–31 and request that the terms and conditions applicable to this proposed provision of services be substantially the same as the terms and conditions contained therein. The Applicants state that the Thrift Plan will be adequately protected since, among other things, any selection of Pentegra as provider of trust services to Thrift Plan will be made by the Board of Directors of the Thrift Plan, such Board being independent of Pentegra as described in footnote 2, upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable. The Applicants additionally state that the IRAs will be adequately protected since, among other things, the terms associated with any receipt of services by the IRAs from Pentegra will be no less favorable to the IRAs than the terms contained in comparable agreements for services between unrelated parties.

Accordingly, this proposed exemption amends and revises the operative language of PTE 95–31 through the addition of: (1) The provision of non-discretionary, directed trust services by Trustco to the Plans, the Employers, the IRAs, and the Thrift Plan; and (2) the provision of certain services by Pentegra to the IRAs and the Thrift Plan.

[2] In this regard, the Applicants state that the Thrift Plan's Board of Directors will at all times be independent of the Fund's Board of Directors, Trustco's Board of Directors, and Pentegra's Board of Directors. Specifically, with respect to the provision of services by Trustco (Pentegra) to the Thrift Plan, a majority of the members of the Thrift Plan Board will not contemporaneously participate as members of the Trustco Board (Pentegra Board). Moreover, to the extent a Thrift Plan Board member does participate as a member of the Trustco Board (Pentegra Board), such member: will abstain from any discussions or deliberations involving the provision of services by Trustco (Pentegra); and will not otherwise exercise, with respect to such provision of services, any of the authority, control or responsibility which makes him or her a fiduciary.

Notice to Interested Persons

Notice to Interested Persons: The applicant represents that notice to interested persons will be made within forty-five (45) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than seventy-five (75) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 95–31 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, and Trustco, a wholly-owned subsidiary corporation of Pentegra (collectively, the Service Providers), to: The Thrift Plan;

employers that participate in the Fund and/or the Thrift Plan (the Employers); employee benefit plans sponsored by the Employers (the Plans); and the individual retirement accounts (the IRAs) established by certain employees, officers, directors and/or shareholders of the Employers (the Individuals); provided that the following conditions are met:

(a) A qualified, independent fiduciary of the Fund determines that the services provided by the Service Providers are in the best interests of the Fund and are protective of the rights of the participants and beneficiaries of the Fund;

(b) The terms associated with the provision of services by the Service Providers to the Plans, the Thrift Fund, and the IRAs, at the time such services are entered into, are not less favorable to all parties to the transaction than the terms generally available in comparable arm's-length transactions involving unrelated parties;

(c) The Service Providers receive reasonable compensation for the provision of services, as determined by an independent fiduciary;

(d) Prior to the provision of services by the Service Providers, the independent fiduciary will first review such services and will determine that such services are reasonable and appropriate for the Service Providers, taking into account such factors as: whether the Service Providers have the capability to perform such services, whether the fees to be charged reflect arm's-length terms, whether Service Provider personnel have the qualifications to provide such services, and whether such arrangements are reasonable based upon a comparison with similarly qualified firms in the same or similar locales in which the Service Providers propose to operate;

(e) No services will be provided by the Service Providers without the prior review and approval of the independent fiduciary;

(f) Not less frequently than quarterly, the independent fiduciary will perform periodic reviews to ensure that the services offered by the Service Providers remain appropriate for the Service Providers and that the fees charged by the Service Providers represent reasonable compensation for such services;

(g) Not less frequently than annually, the Service Providers will provide a written report to the board of directors of the Fund describing in detail the services provided to the Plans, the Employers, the IRAs, and the Thrift Plan, a detailed accounting of the fees received for such services, and an estimate as to the amount of fees the Service Providers expect to receive during the following year from such Plans and Employers;

(h) Not less frequently than annually, the independent fiduciary will conduct a detailed review of approximately 10 percent of all transactions completed by the Service Providers which will include a reasonable cross-section of all services performed; such transactions will be reviewed for compliance with the terms and conditions of this exemption;

(i) The financial statements of the Service Providers will be audited each year by an independent certified public accountant, and such audited statements will be reviewed by the independent fiduciary;

(j) The independent fiduciary shall have the authority to prohibit the Service Providers from performing services that such fiduciary deems inappropriate and not in the best interests of the Service Providers and the Fund;

(k) Each Service Provider contract with an Employer, an IRA, the Thrift Plan or a Plan will be subject to termination without penalty by any of the parties to the contract for any reason upon reasonable written notice;

(l) Trustco will act solely as a directed trustee and will not:

(1) Have any investment discretion with respect to the assets being held in trust,

(2) engage in any securities lending transactions, and/or

(3) provide any cash management services; and

(m) A majority of the Board of Directors of the Thrift Plan will at all times be independent of, and separate from, the Board of Directors of the Fund, the Board of Directors of Pentegra, and the Board of Directors of Trustco, and, with respect to the selection of Trustco and/or Pentegra as provider(s) of services to the Thrift Plan:

(1) Such majority members alone will give prior approval upon determining that such services are necessary and the associated fees charged are reasonable; and

(2) Any member of the Board of Directors of the Thrift Plan contemporaneously participating as a member of the Board of Directors of Pentegra (Trustco) will remove himself or herself from all consideration by the Thrift Plan regarding the provision of services by Trustco (Pentegra) to the Thrift Plan and will not otherwise exercise, with respect to such provision(s) of services, any of the authority, control or responsibility which makes him or her a fiduciary.

Section II. Recordkeeping

(1) The independent fiduciary and the Fund will maintain, or cause to be maintained, for a period of 6 years, the records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the independent fiduciary and the Fund, or their agents, the records are lost or destroyed before the end of the six year period; and (b) no party in interest other than the independent fiduciary and the Board of Directors of the Fund shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (2) below.

(2)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any employer participating in the Fund and/or Thrift Plan or any duly authorized employee or representative of such employer;

(3) Any participant or beneficiary of the Fund, Thrift Plan, or Plan or any duly authorized representative of such participant or beneficiary; and

(4) Any Individual.

(b) None of the persons described above in subparagraphs (a)(2) and (a)(3) of this paragraph (2) shall be authorized to examine trade secrets of the independent fiduciary or the Fund, or their affiliates, or commercial or financial information which is privileged or confidential.

(3) For purposes of this section, references to the Fund shall also include the Service Providers.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of

the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 95–31, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 28th day of June, 2002.

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the four advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science

categories). A portion of this meeting, from 9:30 a.m. to 10:30 a.m. on August 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on August 5th–8th, and from 10:30 a.m. to 4 p.m. on August 9th, will be closed.

Local Arts Agencies (A): August 7–8, 2002, Room 730 (Creativity category). A portion of this meeting, from 9 a.m. to 9:45 a.m. on August 8th, will be open

Infrastructure Research (Special Emphasis Panel in Advanced Networking and Infrastructure Research).

4. #1192—Proposal Review Panel for Computer—Communications Research (Special Emphasis Panel in Computing—Communications Research).

5. #1193—Proposal Review Panel for Experimental and Integrative Activities (Special Emphasis Panel in

10. #1205—Proposal Review Panel for Civil and Mechanical Systems (Special Emphasis Panel in Civil and Mechanical Systems).

21. #1190—Proposal Review Panel for Chemical and Transport Systems (Special Emphasis Panel in Chemical and Transport Systems).

22. #1194—Proposal Review Panel for Design, Manufacture, and Industrial Innovation (Special Emphasis Panel in Design, Manufacture, and Industrial

100 cm² for beta-gamma sources and 20 dpm/100 cm² for alpha sources, which is required by the Certificate, to 10,000 dpm/100 cm² for beta-gamma sources and 100 dpm/100 cm² for alpha sources. The potential increase in radiation dose to members of the public from this exemption request was determined to be up to 1.42 mrem/year at 100 meters. Even with this potential increase in dose, the overall potential dose to members of the public would remain

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the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 95–31, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 28th day of June, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–16735 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Theater/Musical Theater (A): July 15–19, 2002, Room 714 (Creativity category). A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on July 18th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on July 15th to 17th, 9:30 a.m. to 2:30 p.m. and 4:30 p.m. to 6:30 p.m. on July 18th, and from 9:30 a.m. to 5 p.m. on July 19th, will be closed.

Literature: July 30–August 1, 2002, Room 730 (Creativity and Organizational Capacity categories). A portion of this meeting, from 9 a.m. to 10:30 a.m. on August 1st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on July 30th and July 31st, and from 10:30 a.m. to 4 p.m. on August 1st, will be closed.

Theater (B): August 5–9, 2002, Room 714 (Creativity and Organizational Capacity categories). A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on August 8th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on August 5th–7th, from 9:30 a.m. to 2:30 p.m. and 4:30 p.m. to 6:30 p.m. on August 8th, and from 9:30 a.m. to 5 p.m. on August 9th, will be closed.

Dance: August 5–9, 2002, Room 716 (Creativity and Organizational Capacity categories). A portion of this meeting, from 9:30 a.m. to 10:30 a.m. on August 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on August 5th–8th, and from 10:30 a.m. to 4 p.m. on August 9th, will be closed.

Local Arts Agencies (A): August 7–8, 2002, Room 730 (Creativity category). A portion of this meeting, from 9 a.m. to 9:45 a.m. on August 8th, will be open to the public for policy discussion. The remaining portion of this meeting, from 9 a.m. to 5:30 p.m. on August 7th, will be closed.

Local Arts Agencies (B): August 8, 2002, Room 730 (Organizational Capacity category). A portion of this meeting, from 1:15 p.m. to 1:45 p.m., will be open to the public for policy discussion. The remaining portion of this meeting, from 10 a.m.. to 1:15 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 27, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–16669 Filed 7–2–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the four advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1. Committee on Equal Opportunities in Science and Engineering (#1173).
2. Advisory Committee for Computer and Information Sciences and Engineering (#1115).
3. Advisory Committee for Mathematical and Physical Sciences (#66).
4. Advisory Committee for Social, Behavioral & Economic Sciences (#1171).

Effective date for renewal is July 1, 2002. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 28, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–16727 Filed 7–2–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the advisory committees listed below determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* The committees will be renamed (the previous name is in parenthesis). The committee number is the stay the same. This determination following consultation with the Committee Management Secretariat, General Services Administration.

1. #1209—Proposal Review Panel for Polar Programs (Special Emphasis Panel in Polar Programs).
2. #1185—Proposal Review Panel for Advanced Computational Infrastructure and Research (Special Emphasis Panel in Advanced Computational Infrastructure and Research).
3. #1207—Proposal Review Panel for Advanced Networking and Infrastructure Research (Special Emphasis Panel in Advanced Networking and Infrastructure Research).
4. #1192—Proposal Review Panel for Computer—Communications Research (Special Emphasis Panel in Computing—Communications Research).
5. #1193—Proposal Review Panel for Experimental and Integrative Activities (Special Emphasis Panel in Experimental and Integrative Activities).
6. #1200—Proposal Review Panel for Information and Intelligent Systems (Special Emphasis Panel in Information and Intelligent Systems).
7. #1186—Proposal Review Panel for Astronomical Sciences (Special Emphasis Panel in Astronomical Sciences).
8. #1191—Proposal Review Panel for Chemistry (Special Emphasis in Chemistry).
9. #1203—Proposal Review Panel for Materials Research (Special Emphasis Panel in Materials Research).
10. #1204—Proposal Review Panel for Mathematical Sciences (Special Emphasis Panel in Mathematical Sciences).
11. #1208—Proposal Review Panel for Physics (Special Emphasis Panel in Physics).
12. #57—Proposal Review panel for Graduate Education (Special Emphasis Panel in Graduate Education).
13. #1214—Proposal Review panel for Undergraduate Education (Special Emphasis Panel in Undergraduate Education).
14. #1198—Proposal Review Panel for Experimental Programs to Stimulate Competitive (Special Emphasis Panel in Experimental Programs to Stimulate Competitive).
15. #59—Proposal Review Panel for Elementary, Secondary, and Informal Education (Special Emphasis Panel in Elementary, Secondary, and Informal Education).
16. #1765—Proposal Review Panel for Educational Systemic Reform (Special Emphasis Panel in Educational Systemic Reform).
17. #1199—Proposal Review Panel for Human Research Development (Special Emphasis Panel in Human Research Development).
18. #1210—Proposal Review Panel for Research, Evaluation, and Communication (Special Emphasis Panel in Research, Evaluation, and Communication).
19. #1189—Proposal Review Panel for Bioengineering and Environmental Systems (Special Emphasis Panel in Bioengineering and Environmental Systems).
10. #1205—Proposal Review Panel for Civil and Mechanical Systems (Special Emphasis Panel in Civil and Mechanical Systems).
21. #1190—Proposal Review Panel for Chemical and Transport Systems (Special Emphasis Panel in Chemical and Transport Systems).
22. #1194—Proposal Review Panel for Design, Manufacture, and Industrial Innovation (Special Emphasis Panel in Design, Manufacture, and Industrial Innovation).
23. #1196—Proposal Review Panel for Electrical and Communications Systems (Special Emphasis Panel in Electrical and Communication Systems).
24. #173—Proposal Review Panel for Engineering Education and Centers (Special Emphasis Panel in Engineering Education and Centers).

Effective date for renewal is July 1, 2002. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 28, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–16726 Filed 7–2–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 72–30]

Maine Yankee Atomic Power Company; Independent Spent Fuel Storage Installation, Issuance of Environmental Assessment and Finding of No Significant Impact for the Proposed Exemption From Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Maine Yankee Atomic Power Company (MYAPC or licensee), pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214. The licensee is planning to use the NAC–UMS Storage System to store spent nuclear fuel from the decommissioning reactor. The requested exemption would allow MYAPC to deviate from requirements of the NAC–UMS Certificate of Compliance No. 1015 (CoC or Certificate), Appendix A, Limiting Condition for Operation (LCO) Items 3.2.1.a and 3.2.1.b, "CANISTER Surface Contamination." Specifically, the requested exemption would allow an increase in removable contamination limits on the accessible NAC–UMS exterior canister surfaces and interior transfer cask surfaces from 1000 dpm/100 cm^2 for beta-gamma sources and 20 dpm/100 cm^2 for alpha sources, which is required by the Certificate, to 10,000 dpm/100 cm^2 for beta-gamma sources and 100 dpm/100 cm^2 for alpha sources. The potential increase in radiation dose to members of the public from this exemption request was determined to be up to 1.42 mrem/year at 100 meters. Even with this potential increase in dose, the overall potential dose to members of the public would remain within the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated October 30, 2001, as supplemented on November 29, 2001, and February 7, 2002, MYAPC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214 to deviate from the requirements in CoC No. 1015, Appendix A, LCO Items 3.2.1.a and 3.2.1.b. MYAPC has informed the NRC of its plans to store spent nuclear fuel under the general licensing provisions of 10 CFR Part 72. The licensee indicated that it plans to use the NAC–UMS Storage System to store spent fuel from the Maine Yankee Atomic Power Station at an Independent Spent Fuel Storage Installation (ISFSI) located in Wiscasset, Maine.

By exempting MYAPC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214, MYAPC will be authorized to increase the removable contamination limits on the accessible exterior canister surfaces and interior transfer cask surfaces. The contamination limits required by CoC No. 1015 are 1000 dpm/100 cm^2 for beta-gamma source and 20 dpm/100 cm^2 for alpha sources. Instead, MYAPC requested to limit removable contamination on the accessible exterior canister surface and interior transfer cask surface to 10,000 dpm/100 cm^2 for beta-gamma sources and 100 dpm/100 cm^2 for alpha sources.

The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.The NRC staff has reviewed the exemption request and determined that the revised LCO contamination limits are consistent with the safety analyses previously reviewed for the NAC–UMS system, and would have no impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action: The MYAPC fuel loading campaign is scheduled to begin in July 2002. An avoidance of potential excessive

radiological exposure to workers during this campaign could be achieved if the storage canisters were allowed to be stored with higher surface contamination. The licensee calculated that a reduction in radiological exposure to the operators, fuel handlers, and security personnel involved in handling, preparing and transferring the canisters could be over 5 rem during the dry spent fuel loading campaign with the revised contamination limits in the environmental impact of increasing the LCO contamination limits is no greater than the environmental impact already assessed in the initial rulemaking for the NAC–UMS Storage System (65 FR 62581, dated October 19, 2001).

The proposed action will not significantly increase the probability or consequences of the analyzed accidents, no changes are being made to the types of effluents that may be released offsite, and there is no significant increase in the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–30. For further details with respect to this action, see the exemption request dated October 30, 2001, as supplemented November 29, 2001, and February 7, 2002. The NRC maintains an Agencywide Documents Access and

timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, July 15, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the prior to the offering. The information is needed to provide public notice that an issuer is relying on the exemption. Public companies are the likely respondents. An estimated ten submissions are made pursuant to Rule 236 annually, resulting in an estimated annual total burden of 15 hours.

The information is needed to establish qualification for reliance on the exemption. The information provided by Rule 236 is required to obtain or

or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 18, 2002 the application(s) and/or declaration(s), as

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radiological exposure to workers during this campaign could be achieved if the storage canisters were allowed to be stored with higher surface contamination. The licensee calculated that a reduction in radiological exposure to the operators, fuel handlers, and security personnel involved in handling, preparing and transferring the canisters could be over 5 rem during the dry spent fuel loading campaign with the revised contamination limits in the exemption request.

Environmental Impacts of the Proposed Action: MYAPC requested the exemption to increase storage canister contamination limits. The staff performed a safety evaluation of the proposed exemption. The analysis in the NAC–UMS Safety Analysis Report (SAR) for radioactive particulate release was previously reviewed by NRC staff. The analysis demonstrated that residual contamination levels of approximately 157,000 dpm/100 cm^2 from beta-gamma sources, and 524 dpm/100 cm^2 from alpha sources yields a dose from direct exposure of 2 mrem at a distance of 100 meters for an array of 20 canisters. MYAPC's proposed LCO contamination limits are 10,000 dpm/100 cm^2 for beta-gamma sources, and 100 dpm/100 cm^2 for alpha sources. These proposed new limits remain significantly less than those assumed in the currently approved NAC–UMS SAR. The safety evaluation performed by the staff concludes that the NRC has reasonable assurance that increasing the removal surface contamination limits to 10,000 dpm/100 cm^2 beta-gamma and 100 dpm/100 cm^2 alpha has minimal impact on off-site doses, results in a dose savings to workers, and meets the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301, and is therefore acceptable.

MYAPC submitted two independent calculations to support the exemption request. In the first case, MYAPC assumed that a contamination release fraction of 5% of the removable surface contamination from 20 canisters is instantaneously released through the storage overpack vents to the environment. The analysis showed that the off-site impact from the event is 0.72 mrem/year at 100 meters. In the second analysis, MYAPC conservatively assumed that the entire isotopic inventory of the cask surface was released at 100 meters away, ignoring the wake effects of the berm surround the cask storage pad. These assumptions lead to a calculated does of 1.42 mrem/year at 100 meters. The staff reviewed the assumptions and calculation and agrees that the analyses are conservative. Therefore, the environmental impact of increasing the LCO contamination limits is no greater than the environmental impact already assessed in the initial rulemaking for the NAC–UMS Storage System (65 FR 62581, dated October 19, 2001).

The proposed action will not significantly increase the probability or consequences of the analyzed accidents, no changes are being made to the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Therefore, the staff has determined that there is no reduction in the ability of the system to perform its safety function, nor significant environmental impacts, as a result of increasing the contamination limits in LCO 3.2.1.a and 3.2.1.b.

Alternative to the Proposed Action: Since there is no significant environment impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact, but would result in a potential dose increase to workers involved in cask decontamination activities.

Agencies and Persons Consulted: On March 14, 2002, Mr. Patrick J. Dostie of the Office of Nuclear Safety Division of Health Engineering for the State of Maine submitted comments to the NRC on the MYAPC exemption request. The potential safety issues raised by Mr. Dostie were considered by NRC staff in the evaluation of the exemption request and did not provide sufficient basis to deny the exemption request. The Commission addressed Mr. Dostie's comments in a letter dated June 21, 2002.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214 allowing MYAPC to increase contamination limits for the accessible exterior surfaces of the storage canisters and accessible interior surfaces of the transfer cask from 1000 dpm/100 cm^2 for beta-gamma sources to 10,000 dpm/100 cm^2 and from 20 dpm/100 cm^2 for alpha sources to 100 dpm/100 cm^2 will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–30. For further details with respect to this action, see the exemption request dated October 30, 2001, as supplemented November 29, 2001, and February 7, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of June 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–16719 Filed 7–2–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

July 18, 2002 Public Hearing, Sunshine Act

Time and Date: 2 p.m., Thursday, July 18, 2002.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing Open to the Public at 2 PM.

Purpose: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Monday, July 15, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, July 15, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. the agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: July 1, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–16822 Filed 7–1–02; 11:46 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 236—SEC File No. 270–118, OMB Control No. 3235–0095.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 236 under the Securities Act of 1933 ("Securities Act") requires issuers choosing to rely on an exemption from Securities Act registration for the issuance of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction to furnish specified information to the Commission in writing at least ten days prior to the offering. The information is needed to provide public notice that an issuer is relying on the exemption. Public companies are the likely respondents. An estimated ten submissions are made pursuant to Rule 236 annually, resulting in an estimated annual total burden of 15 hours.

The information is needed to establish qualification for reliance on the exemption. The information provided by Rule 236 is required to obtain or retain benefits. All information provided to the Commission is available to the public for review upon request.

General comments regarding the above information should be directed to the following persons: (I) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 24, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16687 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27544]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

June 28, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 18, 2002 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 18, 2002 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Grid Group plc, et al. (70–10025)

National Grid Group plc ("National Grid"), a registered holding company, 15 Marylebone Road, London NW1 5JD, United Kingdom; National Grid's registered holding company subsidiary National Grid USA ("Grid USA") 01582; Grid USA's exempt holding company subsidiary, New England Power Company ("NEP"), both located at 25 Research Drive, Westborough, MA; and Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), an electric public utility subsidiary company of NEP, 185 Old Ferry Road, Brattleboro, VT 05703 (together, "Applicants"), have filed a declaration under sections 6(a), 7, and 12(d) of the Act and rules 44, 53, and 54 under the Act.

Vermont Yankee is a single purpose electric utility which operates a 540 MW nuclear powered electric generating plant ("Plant") located in Vernon, Vermont. Vermont Yankee is owned by New England Power Company, a subsidiary of each of National Grid USA and National Grid Group plc, both registered holding companies, owns 23.89% of the outstanding common stock of Vermont Yankee.[1] Vermont Yankee's output is currently shared by the eight utility companies which own Vermont Yankee ("Sponsoring Utilities").[2] The Sponsoring Utilities

[1] Connecticut Power & Light Company ("CP&L"), Western Massachusetts Electric Company ("WME"), and Public Service Company of New Hampshire ("PSC"), all public utility subsidiaries of Northeast Utilities ("Northeast"), a registered holding company, own an aggregate of 16.99% of the outstanding common stock of Vermont Yankee. Central Maine Power Company ("Central Maine"), an indirect electric utility subsidiary of Energy East Corporation ("Energy East"), a registered holding company, also owns 4.25% of the outstanding common stock of Vermont Yankee. Northeast and Energy East have filed applications S.E.C. File Nos. 70–10033 and 70–10070, respectively, regarding the sale of Vermont Yankee's assets and the Commission is issuing a notice of those filings simultaneously with the issuance of this notice.

[2] The eight Sponsoring Utilities are: Central Vermont Public Service Corporation, New England Power Company, Green Mountain Power

Continued

and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission ("FERC") and additional power contracts.

On August 15, 2001,Vermont Yankee entered into a purchase and sale agreement ("PSA") with Entergy Nuclear Vermont Yankee, L.L.C. ("ENVY"), a subsidiary of Entergy, a registered holding company doing

2. The funds in Vermont Yankee's decommissioning trust ("Decommissioning Trust"), which had a fair market value of approximately $299.6 million as of September 30, 2001,[3]

3. Vermont Yankee's rights with respect to the funds held by the State of Vermont in connection with the Texas Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the output is currently shared by the eight utility companies which own Vermont Yankee ("Sponsoring Utilities").[13] The Sponsoring Utilities and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission ("FERC") and additional power contracts.

On August 15, 2001,Vermont Yankee entered into a purchase and sale agreement ("PSA") with Entergy Nuclear Vermont Yankee, L.L.C.

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and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission ("FERC") and additional power contracts.

On August 15, 2001,Vermont Yankee entered into a purchase and sale agreement ("PSA") with Entergy Nuclear Vermont Yankee, L.L.C. ("ENVY"), a subsidiary of Entergy, a registered holding company doing business in Texas, among other states. The PSA states that Vermont Yankee proposes to sell to ENVY substantially all of its assets, including the Plant. The PSA contemplates that ENVY will pay a purchase price of $180 million, subject to closing adjustments, and will assume Vermont Yankee's obligation for operating and decommissioning the Plant in exchange for the transfer at the closing of the sale ("Closing") of:

1. Substantially all of the assets comprising the Plant,

2. The funds in Vermont Yankee's decommissioning trust ("Decommissioning Trust"), which had a fair market value of approximately $299.6 million as of September 30, 2001,[3]

3. Vermont Yankee's rights with respect to the funds held by the State of Vermont in connection with the Texas Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life[4] under a power purchase agreement ("PPA") between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements ("Amendatory Agreements") with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, "Power Contracts") to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.[5]

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

Northeast Utilities, et al. (70–10033)

Northeast Utilities ("Northeast"), a registered holding company, 107 Selden Street, Berlin, CT 06037; Northeast's wholly owned direct public utility subsidiaries, The Connecticut Light and Power Company ("CP&L"), 107 Selden Street, Berlin, CT 06037, Western Massachusetts Electric Company ("WME"), 174 Brush Hill Avenue, West Springfield, MA 01090, and Public Service Company of New Hampshire ("PSC"), 1000 Elm Street, Manchester, NH 03101; and Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), an indirect electric public utility subsidiary of Northeast 185 Old Ferry Road, Brattleboro, VT 05703 (together, "Applicants"), have filed a declaration under sections 6(a), 7, and 12(d) of the Act and rules 44, 53, and 54 under the Act.

Vermont Yankee is a single purpose electric utility which operates a 540 MW nuclear powered electric generating plant ("Plant") located in Vernon, Vermont. CP&L, WME, and PSC own an aggregate of 16.99% of the outstanding common stock of Vermont Yankee.[6] Vermont Yankee's output is currently shared by the eight utility companies which own Vermont Yankee ("Sponsoring Utilities").[7] The Sponsoring Utilities and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission ("FERC") and additional power contracts.

On August 15, 2001, Vermont Yankee entered into a purchase and sale agreement ("PSA") with Entergy Nuclear Vermont Yankee, L.L.C. ("ENVY"), a subsidiary of Entergy, a registered holding company doing business in Texas, among other states. The PSA states that Vermont Yankee proposes to sell to ENVY substantially all of its assets, including the Plant. The PSA contemplates that ENVY will pay a purchase price of $180 million, subject to closing adjustments, and will assume Vermont Yankee's obligation for operating and decommissioning the Plant in exchange for the transfer at the closing of the sale ("Closing") of:

1. Substantially all of the assets comprising the Plant,

2. The funds in Vermont Yankee's decommissioning trust ("Decommissioning Trust"), which had a fair market value of approximately $299.6 million as of September 30, 2001,[8]

3. Vermont Yankee's rights with respect to the funds held by the State of Vermont in connection with the Texas Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life[9] under a power purchase agreement ("PPA") between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements ("Amendatory Agreements") with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, "Power Contracts") to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.[10]

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

Energy East Corporation, et al. (70–10070)

Energy East Corporation ("Energy East"), a registered holding company, CMP Group, Inc. ("CMP"), an exempt holding company subsidiary of Energy East,[11] both located in Albany, NY 12212–2904, Central Maine Power Company ("Central Maine"), a wholly owned electric utility subsidiary company of CMP, 83 Edison Drive, Augusta, ME 04336, and Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), an indirect electric public utility subsidiary of Energy East, 185 Old Ferry Road, Brattleboro, VT 05703 (together, "Applicants"), have filed a declaration under sections 6(a), 7, and 12(d) of the Act and rules 44, 53, and 54 under the Act.

Vermont Yankee is a single purpose electric utility which operates a 540 MW nuclear powered electric generating plant ("Plant") located in Vernon, Vermont. Central Maine owns 4.25% of the outstanding common stock of Vermont Yankee.[12] Vermont Yankee's output is currently shared by the eight utility companies which own Vermont Yankee ("Sponsoring Utilities").[13] The Sponsoring Utilities and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission ("FERC") and additional power contracts.

On August 15, 2001,Vermont Yankee entered into a purchase and sale agreement ("PSA") with Entergy Nuclear Vermont Yankee, L.L.C. ("ENVY"), a subsidiary of Entergy, a registered holding company doing business in Texas, among other states. The PSA states that Vermont Yankee proposes to sell to ENVY substantially all of its assets, including the Plant. The PSA contemplates that ENVY will pay a purchase price of $180 million, subject to closing adjustments, and will assume Vermont Yankee's obligation for operating and decommissioning the Plant in exchange for the transfer at the closing of the sale ("Closing") of:

1. Substantially all of the assets comprising the Plant,

2. The funds in Vermont Yankee's decommissioning trust ("Decommissioning Trust"), which had a fair market value of approximately $299.6 million as of September 30, 2001,[14]

3. Vermont Yankee's rights with respect to the funds held by the State of Vermont in connection with the Texas

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Corporation, CP&L, Central Maine, PSC, WME, and Cambridge Electric Light Company.

[3] Although the PSA provides that Vermont Yankee may be required to fund fully or "top-off" the Decommissioning Trust, Applicants state that any "top-off" payment is contingent on several factors. First, if the value of the assets of the Decommissioning Trust at Closing meets or exceeds the Nuclear Regulatory Commission required minimum, no "top-off" payment will be required. Second, any "top-off" payment will be capped at $5.4 million, which represents the difference between the amount that would have been collected by Vermont Yankee before the recent settlement in a FERC proceeding relating to secondary purchaser issues ($16.8 million) and the amount that would be collected under that settlement ($11.4 million). Based on an analysis of all relevant factors at the time of execution of the PSA, Vermont Yankee does not anticipate that it will have to make a "top-off" payment at the Closing, although this expectation could change based on a change in circumstances.

[4] The Plant's remaining licensed life ends March 21, 2012.

[5] It is important for Vermont Yankee to remain in existence because the Power Contracts between Vermont Yankee and the Sponsoring Utilities are within the jurisdiction of the FERC and have been accepted by the FERC. Under the present Power Contracts, the Sponsoring Utilities may include Power Contract payments in the calculation of rates to their customers. If Vermont Yankee ceased to exist, and the Sponsoring Utilities were to enter into Power Contracts directly with ENVY, their ability to include those Power Contract payments in their rate calculations would be uncertain and a method to cover other ongoing Vermont Yankee costs, including unamortized net plant investment, and residual obligations under the PSA would be necessary.

[6] New England Power Company, a subsidiary of each of National Grid USA and National Grid Group plc ("National Grid"), both registered holding companies, also owns 23.89% of the outstanding common stock of Vermont Yankee. Central Maine Power Company, an indirect electric utility subsidiary of Energy East Corporation ("Energy East"), a registered holding company, also owns 4.25% of the outstanding common stock of Vermont Yankee. National Grid and Energy East have filed applications, S.E.C. File Nos. 70–10025 and 70–10070, respectively, regarding the sale of Vermont Yankee's assets and the Commission is issuing a notice of those filings simultaneously with the issuance of this notice.

[7] The eight Sponsoring Utilities are: Central Vermont Public Service Corporation, New England Power Company, Green Mountain Power Corporation, CP&L, Central Maine Power Company, PSC, WME, and Cambridge Electric Light Company.

[8] Although the PSA provides that Vermont Yankee may be required to fund fully or "top-off" the Decommissioning Trust, Applicants state that any "top-off" payment is contingent on several factors. First, if the value of the assets of the Decommissioning Trust at Closing meets or exceeds the Nuclear Regulatory Commission required minimum, no "top-off" payment will be required. Second, any "top-off" payment will be capped at $5.4 million, which represents the difference between the amount that would have been collected by Vermont Yankee before the recent settlement in a FERC proceeding relating to secondary purchaser issues ($16.8 million) and the amount that would be collected under that settlement ($11.4 million). Based on an analysis of all relevant factors at the time of execution of the PSA, Vermont Yankee does not anticipate that it will have to make a "top-off" payment at the Closing, although this expectation could change based on a change in circumstances.

[9] The Plant's remaining licensed life ends March 21, 2012.

[10] It is important for Vermont Yankee to remain in existence because the Power Contracts between Vermont Yankee and the Sponsoring Utilities are within the jurisdiction of the FERC and have been accepted by the FERC. Under the present Power Contracts, the Sponsoring Utilities may include Power Contract payments in the calculation of rates to their customers. If Vermont Yankee ceased to exist, and the Sponsoring Utilities were to enter into Power Contracts directly with ENVY, their ability to include those Power Contract payments in their rate calculations would be uncertain and a method to cover other ongoing Vermont Yankee costs, including unamortized net plant investment, and residual obligations under the PSA would be necessary.

[11] *See* Holding Co. Act Release No. 27224 (Aug. 31, 2000), approving CMP's exemption from registration under the Act.

[12] New England Power Company, a subsidiary of each of National Grid USA and National Grid Group plc ("National Grid"), both registered holding companies, also owns 23.89% of the outstanding common stock of Vermont Yankee. Connecticut Power & Light Company ("CP&L"), Western Massachusetts Electric Company ("WME"), and Public Service Company of New Hampshire ("PSC"), all public utility subsidiaries of Northeast Utilities ("Northeast"), a registered holding company, own an aggregate of 16.99% of the outstanding common stock of Vermont Yankee. National Grid and Northeast have filed applications, S.E.C. File Nos. 70–10025 and 70–10033, respectively, regarding the sale of Vermont Yankee's assets and the Commission is issuing a notice of those filings simultaneously with the issuance of this notice.

[13] The eight Sponsoring Utilities are: Central Vermont Public Service Corporation, New England Power Company, Green Mountain Power Corporation, CP&L, Central Maine Power Company, PSC, WME, and Cambridge Electric Light Company.

[14] Although the PSA provides that Vermont Yankee may be required to fund fully or "top-off" the Decommissioning Trust, Applicants state that any "top-off" payment is contingent on several factors. First, if the value of the assets of the Decommissioning Trust at Closing meets or exceeds the Nuclear Regulatory Commission required minimum, no "top-off" payment will be required. Second, any "top-off" payment will be capped at $5.4 million, which represents the difference between the amount that would have been collected by Vermont Yankee before the recent settlement in a FERC proceeding relating to secondary purchaser issues ($16.8 million) and the amount that would be collected under that settlement ($11.4 million). Based on an analysis of all relevant factors at the time of execution of the PSA, Vermont Yankee does not anticipate that it will have to make a "top-off" payment at the Closing, although this expectation could change based on a change in circumstances.

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Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life under a power purchase agreement ("PPA") between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements ("Amendatory Agreements") with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, "Power Contracts") to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

For the Commission by the Division of Investment Management, pursuant to

the proposal. On May 28, 2002, the Amex filed Amendment No. 4 to the proposed rule change.[7] This order approves the proposed rule change, as amended.

I. Description of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 26, and adopt Commentaries .04, .05, .06, and .07 to Amex Rule 26 to revise the current system for

- Percentage of orders that receive price improvement.
- Percentage of time at NBBO.
- Average bid/offer spread.
- Liquidity enhanced trades.[9]
- Average execution time.
- Size of orders eligible for Auto-Ex.
- Timeliness of openings relative to the underlying security.
- Floor Broker Questionnaire rankings.
- Average number of Performance

Exchange would notify specialists of their ratings following calculation.[12] The Exchange notes that the Performance Committee may consider any relevant information, including the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, market share, order flow statistics, level and adequacy of staffing, and other pertinent information in reviewing a specialist or unit.

In addition to the performance ratings

securities exchange.[14] In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[15]

The Commission believes that

Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life[15] under a power purchase agreement ("PPA") between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements ("Amendatory Agreements") with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, "Power Contracts") to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.[16]

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

[15] The Plant's remaining licensed life ends March 21, 2012.

[16] It is important for Vermont Yankee to remain in existence because the Power Contracts between Vermont Yankee and the Sponsoring Utilities are within the jurisdiction of the FERC and have been accepted by the FERC. Under the present Power Contracts, the Sponsoring Utilities may include Power Contract payments in the calculation of rates to their customers. If Vermont Yankee ceased to exist, and the Sponsoring Utilities were to enter into Power Contracts directly with ENVY, their ability to include those Power Contract payments in their rate calculations would be uncertain and a method to cover other ongoing Vermont Yankee costs, including unamortized net plant investment, and residual obligations under the PSA would be necessary.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16832 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46122; File No. SR–Amex–2001–95]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Its Performance Evaluation Procedures for Option, Equity and ETF Specialists

June 26, 2002.

On February 19, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the Exchange's performance evaluation procedures for options, equity and Exchange Traded Fund ("ETF") specialists. The Amex filed Amendment Nos. 1,[3] 2,[4] and 3[5] to the proposed rule change, respectively. The proposed rule change, as amended, was published for public comment in the **Federal Register** on April 1, 2002.[6] The Commission received no comments on the proposal. On May 28, 2002, the Amex filed Amendment No. 4 to the proposed rule change.[7] This order approves the proposed rule change, as amended.

I. Description of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 26, and adopt Commentaries .04, .05, .06, and .07 to Amex Rule 26 to revise the current system for evaluating option, equity and ETF specialists by adding and codifying a number of objective criteria in the rating scheme and implementing defined consequences for poor performance. The Exchange also proposes to codify its existing market share methodology for evaluating options specialist performance.[8]

Under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange would notify specialists of any changes to the criteria, and the weightings thereof, in advance of the calendar quarter in which the change would be implemented.

The Exchange proposes to use the following performance criteria for specialist evaluation until further notice:

Option Specialist Evaluation Criteria

- Percentage of trades executed at or better than the National Best Bid and Offer ("NBBO").

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation ("Division"), Commission (December 13, 2001) ("Amendment No. 1").

[4] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (January 31, 2002) ("Amendment No. 2").

[5] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (February 14, 2002) ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 45643 (March 25, 2002), 67 FR 15434 (proposing SR–Amex–2001–95).

[7] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (May 24, 2002) ("Amendment No. 4"). Amendment No. 4 clarifies that the Exchange may change the performance rating criteria and their weightings from time to time as warranted by market conditions without filing such changes pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b), provided that the Exchange follows the procedures in the proposed rule for changing the criteria and their weightings. This was a technical amendment and is not subject to notice and comment.

[8] The Exchange notes that upon implementation of the new evaluation system for equity specialists, the Performance Committee will no longer assign performance ratings for specific transactions, but may take such other action as is available to the Performance Committee that would be appropriate in the circumstances. The Exchange will continue to order ticket reviews for options and ETFs for regulatory purposes. The Exchange may incorporate the results of these reviews into the performance evaluation rating system with the criteria that measure the number of Minor Floor Violation Disciplinary actions.

- Percentage of orders that receive price improvement.
- Percentage of time at NBBO.
- Average bid/offer spread.
- Liquidity enhanced trades.[9]
- Average execution time.
- Size of orders eligible for Auto-Ex.
- Timeliness of openings relative to the underlying security.
- Floor Broker Questionnaire rankings.
- Average number of Performance Committee actions per option.
- Average number of Minor Floor Violation Disciplinary Committee actions [10] per option.

Equity Specialist Evaluation Criteria

- Percentage of volume executed better than the NBBO.
- Percentage of volume at the NBBO.
- Percentage of time at the NBBO.
- Percentage of market orders executed within sixty seconds.
- Percentage of manual display of better limit orders.
- Number of issues opened after 9:45.
- Floor Broker Questionnaire rankings.
- Average response time to ITS [11] commitments.

ETF Specialist Evaluation Criteria

- Percentage of orders that receive price improvement.
- Percentage of time at the NBBO.
- Average bid/offer spread.
- Average execution time for market and marketable limit orders.
- Floor Broker Questionnaire rankings.
- Average response time to ITS commitments.
- Average number of Performance or Minor Floor Violation Disciplinary Committee actions per ETF.

The Exchange would rate all specialists from "1" to "5" on a curve based upon their scores with respect to the criteria. ETFs would be "tiered" and evaluated for rating purposes in separate groups based upon trading volume to ensure that comparisons between specialists are based upon securities with similar trading characteristics. The Exchange would notify specialists of their ratings following calculation.[12] The Exchange notes that the Performance Committee may consider any relevant information, including the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, market share, order flow statistics, level and adequacy of staffing, and other pertinent information in reviewing a specialist or unit.

In addition to the performance ratings system described above, the Exchange also proposes to codify its current program for evaluating options specialists based upon market share. Under this program, options specialists are regularly evaluated with respect to non-market maker contract volume in options that are actively traded in the United States.[13] The Exchange may change the minimum market share criteria used to evaluate specialists from time to time as warranted by market conditions. The Exchange would notify specialists of any changes to the market share criteria in advance of the calendar quarter in which the change will be implemented. The Exchange also would notify specialists of their market share.

The market share evaluation program for options specialists would be separate from the performance ratings system. Thus, for example, an options specialist with performance ratings that would not trigger remedial action could be referred to the Performance Committee for consideration of reallocation or other action based upon sub-standard market share in one or more options.

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[15]

The Commission believes that codifying the Exchange's performance evaluation procedures for options, equity and ETF specialists should help to protect investors, issuers and ETF sponsors by ensuring that the better qualified specialists receive and retain allocations, thus potentially making this marketplace more competitive. The Commission also believes that the proposal helps the Exchange maintain market quality and integrity by providing the Exchange's Performance Committee with a means to identify the specialists that fail to satisfy market responsibilities. Further, the Commission believes that the proposal provides specialists more guidance regarding how the Exchange evaluates market performance.

The Commission notes that under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange will notify specialists of their ratings.[16] The Commission notes that the Exchange may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange will notify specialists of any changes to the criteria, and/or weightings thereof, in advance of the calendar quarter in which the change will be implemented, which should provide specialists with reasonable notice of the measures being used to judge their market performance.

[9] The Amex states that liquidity enhancement is a measure of the depth of a market. The percentage of trades that receive liquidity enhancement equals the percentage of trades where an order for more than 20 contracts was executed at one price, at or between the NBBO.

[10] The Amex states that the term "action" would be defined to include any time the Committees did something other than "no action" the matter. For example, an admonitory letter from the Performance or Minor Floor Violation Disciplinary Committee would be considered "action" for the purposes of calculating specialist performance ratings.

[11] The term "ITS" means Intermarket Trading System.

[12] A rating of "1" would represent the best possible score. A specialist unit that received a "4" or a "5" rating in any quarter would be referred to the Performance Committee for consideration of a preclusion on new allocations, or other appropriate remedial action. A specialist unit that received a "5" rating in any two of four consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action. A specialist unit that received ratings of "4" or "5" in any three of six consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action.

[13] The Exchange represents that options specialists are not evaluated on their market share in a newly listed option for the six months following listing on the Exchange. In addition, under the program, a specialist that falls below the minimum market share criteria in one or more options is referred to the Performance Committee for consideration of reallocation or other remedial action based upon poor market share in one or more options.

[14] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes Amex Rule 26(e), amongst other things, provides that the Performance Committee may meet with specialists who fail to satisfy minimum performance standards. In such an event, specialists would be notified in writing of the grounds to be considered by the Performance Committee and given access to all written materials to be reviewed by the Performance Committee.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–2001–95), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16829 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46119; File No. SR–CBOE–2002–16]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Removal of the Restriction on Floor Brokers From Trading in the Same Crowds as Affiliated Designated Primary Market-Makers

June 26, 2002.

On March 1, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove the restriction on floor brokers from trading in the same crowds as affiliated designated primary market-makers ("DPMs"). The proposed rule change was published for comment in the **Federal Register** on April 1, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

Currently, CBOE Rule 8.91(d) prohibits floor brokers from trading in the same crowds as affiliated DPMs. The Exchange proposes to remove this restriction. The Exchange represents that the proposed rule change will allow floor brokers to trade in the same crowds as affiliated DPMs, but will continue to prohibit floor brokers from executing orders for the DPM's account or for accounts affiliated with the DPM. The Exchange represents that floor brokers will be permitted to trade in the same crowds as affiliated DPMs only when they are executing orders for the accounts of unaffiliated persons. The Exchange represents that floor brokers will be permitted to trade in the same crowds as affiliated DPMs only when they are executing orders for the accounts of unaffiliated persons. The Exchange represents that floor brokers will be permitted to trade in the same crowds as affiliated DPMs only when they are executing orders for the accounts of unaffiliated persons.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15436.

principal transactions, not charging any brokerage commission for the execution of orders for which the DPM acts as both agent and principal and not representing discretionary orders. The CBOE represented that its current rules will continue to prohibit DPMs from circumventing their obligations.[7] Therefore, the Commission believes that the regulatory concerns that CBOE Rule 8.91(d) was intended to address will continue to be prevented. The

17Ab2–1 promulgated thereunder,[2] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.[3] The Commission subsequently has extended GSCC's registration through June 30, 2002.[4] GSCC requested that the Commission extend GSCC's temporary registration until such time as the Commission is prepared to grant GSCC permanent registration.[5]

The Commission today is extending

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16706 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–46136; File No. 600–22]

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III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–2001–95), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16689 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46123; File No. SR–BSE–2001–09]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Clearly Erroneous Transactions in Nasdaq Securities

June 26, 2002.

I. Introduction

On December 26, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change related to clearly erroneous transactions in The Nasdaq Stock Market, Inc. ("Nasdaq") securities. The proposed rule change was published for comment in the **Federal Register** on April 30, 2002.[3] No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to add a section to Chapter XXXV of its rules, which pertains to the trading of Nasdaq securities on the Exchange. Proposed Section 30 would govern situations in which there is an obvious error in any part of a Nasdaq security transaction. In large part, the proposed Section 30 conforms to Nasdaq Rule 11890, Clearly Erroneous Transactions, and obliges Exchange specialists to cooperate with officers of Nasdaq in their review of clearly erroneous transactions occurring on a Nasdaq system.

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[4] in general, and section 6(b)(5) of the Act,[5] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposal establishes a BSE rule that is an analogue to Nasdaq Rule 11890(b) and (c), regarding clearly erroneous transactions. This rule will foster cooperation between BSE specialists and officers of Nasdaq who are reviewing trades on Nasdaq systems to determine if they are clearly erroneous. This cooperation is particularly important because BSE currently participates in Nasdaq's SuperSoes and SelectNet systems and intends to participate in Nasdaq's SuperMontage system once it is launched. The proposal should help to ensure that clearly erroneous transactions are dealt with in such a manner that a fair and orderly market is maintained and that investors and the public interest are protected.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–BSE–2001–09) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16691 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46119; File No. SR–CBOE–2002–16]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Removal of the Restriction on Floor Brokers From Trading in the Same Crowds as Affiliated Designated Primary Market-Makers

June 25, 2002.

On April 18, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete existing CBOE Rule 8.91(d) that prohibits a member affiliated with a Designated Primary Market-Maker ("DPM") from acting as a floor broker in any trading crowd in which that DPM is the appointed DPM.

The proposed rule change was published for comment in the **Federal Register** on May 17, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act[4] and the rules and regulations thereunder.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which, among other things, requires that the CBOE's rules be designed to facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. According to the CBOE, its Rule 8.91(d) was originally intended to prevent DPMs from circumventing their affirmative obligations, such as placing eligible public orders in the book, according priority to any order which the DPM acts as agent over the DPM's principal transactions, not charging any brokerage commission for the execution of orders for which the DPM acts as both agent and principal and not representing discretionary orders. The CBOE represented that its current rules will continue to prohibit DPMs from circumventing their obligations.[7] Therefore, the Commission believes that the regulatory concerns that CBOE Rule 8.91(d) was intended to address will continue to be prevented. The Commission expects the CBOE to surveil its DPMs and affiliated floor brokers to ensure that they are not using their affiliations to circumvent CBOE rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–2002–16) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16690 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–46135; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

June 27, 2002.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Government Securities Clearing Corporation's ("GSCC") temporary registration as a clearing agency through June 30, 2003. On May 24, 1988, pursuant to sections 17A(b) and 19(a) of the Act[1] and Rule 17Ab2–1 promulgated thereunder,[2] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.[3] The Commission subsequently has extended GSCC's registration through June 30, 2002.[4] GSCC requested that the Commission extend GSCC's temporary registration until such time as the Commission is prepared to grant GSCC permanent registration.[5]

The Commission today is extending GSCC's temporary registration as a clearing agency in order that GSCC may continue to act as a clearing agency while the Commission seeks comment on granting GSCC permanent registration as a clearing agency.[6] GSCC acts as the central clearing entity for the U.S. Government securities trading and financing marketplaces.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. All submissions should refer to File No. 600–23 and should be submitted by July 24, 2002.

It is therefore ordered that GSCC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through June 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16706 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–46136; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

June 27, 2002.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 5, 2002, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a request that the Commission grant MBSCC full registration as a clearing agency or in the alternative extend MBSCC's temporary registration as a clearing agency until such time as the Commission is able to grant MBSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through June 30, 2003.

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted MBSCC registration as a clearing agency on a temporary basis for a period of eighteen months.[5] The Commission subsequently has extended MBSCC's registration through June 30, 2002.[6]

The Commission today is extending MBSCC's temporary registration as a

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 21304.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–2(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 45909 (May 10, 2002), 67 FR 35165.

[4] 15 U.S.C. 78f.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] For example, according to the CBOE, its Rule 6.43, Manner of Bidding and Offering, prohibits a DPM from directing its trades to particular members. Also, according to the CBOE, its Rule 7.4, Obligations for Orders, requires a DPM to "use due diligence to execute the orders placed in his custody at the best prices available to him under the Rules of the Exchange." Finally, the CBOE represented that its Rule 4.1, Just and Equitable Principles of Trade, provides a general protection from any illicit intentions by stating that: "No member shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with members shall have the same duties and obligations as members under the Rules of this Chapter [IV]."

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78q–1(b) and 78s(a).

[2] 17 CFR 240.17Ab2–1.

[3] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[4] Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8968; 44553 (July 13, 2001), 66 FR 37714; and 45164 (December 18, 2001), 66 FR 66957.

[5] Letter from Jeffrey Ingber, Managing Director, General Counsel, and Secretary, GSCC (June 4, 2002).

[6] The Commission continues to consider two issues related to GSCC's permanent registration status: (1) GSCC's organizational structure after its integration with The Depository Trust & Clearing Corporation and (2) the appropriate standard of care for GSCC.

[7] 15 U.S.C. 78s(a)(1).

[8] 17 CFR 200.30–3(a)(1506).

[1] 15 U.S.C. 78s(a).

[2] Letter from Jeffrey F. Ingber, Managing Director, General Counsel, and Secretary, MBSCC (June 4, 2002).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; and 45607 (March 20, 2002), 67 FR 14755.

clearing agency so that MBSCC may continue to act as a clearing agency while the Commission seeks comment on granting MBSCC permanent registration as a clearing agency. MBSCC provides for the safe and efficient clearance and settlement of transactions in mortgage backed securities.

Interested persons are invited to submit written data, views, and

rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities

issuer to satisfy its prospectus delivery requirements under the Securities Act of 1933 with respect to two or more investors sharing the same address by sending a single prospectus to that address, subject to certain conditions.[2,3] The SEC refers to this process as "householding." In adopting Rule 154, the SEC noted that, as a result of increased ownership of securities by individuals through different accounts (*e.g.*, brokerage accounts, individual

For open-end management investment companies (i.e., mutual funds) and dealers that are required to deliver the disclosure documents of such companies, SEC Rule 154(c) requires, at least annually, that the dealer explain to investors who have provided written or implied consent how such consent can be revoked. This information may be provided through any means reasonably designed to reach the investor, such as a prospectus, shareholder report or

Thus, the MSRB has determined to amend Rule G–32(a) to reference SEC Rule 154 and state that a dealer may satisfy its official statement delivery obligations by complying with that Rule's requirements when sending disclosure documents to two or more customers sharing the same address. The amendment further provides that dealers that are required to send ongoing disclosure documents to customers who participate in a periodic

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clearing agency so that MBSCC may continue to act as a clearing agency while the Commission seeks comment on granting MBSCC permanent registration as a clearing agency. MBSCC provides for the safe and efficient clearance and settlement of transactions in mortgage backed securities.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or institution proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All submissions should refer to File No. 600–22 and should be submitted by July 24, 2002.

It is therefore ordered that MBSCC's temporary registration as a clearing agency (File No. 600–22) be and hereby is extended through June 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16707 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46124; File No. SR–MSRB–2002–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Disclosures in Connection With New Issues

June 26, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on June 21, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–06). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] 15 U.S.C. 78s(a)(1).

[8] 17 CFR 200.30–3(a)(30).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed amendment to Rule G–32, on disclosures in connection with new issues, as well as amendments to Rule G–8, on books and records, and Rule G–9, on preservation of records (hereafter referred to as "the proposed rule change"). Below is the text of the proposed rule change. New language is italicized; deletions are in brackets.

Rule G–32. Disclosures in Connection With New Issues

(a) Customer Disclosure Requirements. No broker, dealer or municipal securities dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer no later than the settlement of the transaction:

(i) a copy of the official statement in final form prepared by or on behalf of the issuer or, if an official statement in final form is not being prepared by or on behalf of the issuer, a written notice to that effect together with a copy of an official statement in preliminary form, if any; provided, however, that:

(A) No change

(B) (1) No change

(2) sends to the customer a copy of the official statement in final form, by first class mail or other equally prompt means, no later than the business day following receipt thereof by the broker, dealer or municipal securities dealer; [and]

(B) *if two or more customers share the same address, a broker, dealer or municipal securities dealer may satisfy the delivery obligations set forth in this section (a)(i) by complying with the requirements set forth in Rule 154 of the Securities Act of 1933, on delivery of prospectuses to investors at the same address. In addition, any such broker, dealer or municipal securities dealer shall comply with paragraph (c) of Rule 154, on revocation of consent, if subject to the delivery requirements in section (a)(i)(A) of this rule, concerning a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program; and*

(ii) No change.

(b) through (d) No change.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xii) No change.

(xiii) Records Concerning Deliveries of Official Statements. A record of all deliveries to purchasers of new issue municipal securities, of official statements or other disclosures concerning the underwriting arrangements required under rule G–32[.] *and, if applicable, a record evidencing compliance with section (a)(i)(C) of rule G–32.*

(xiv)–(xxi) No change.

(b)–(g) No change.

Rule G–9. Preservation of Records

(a) No change.

(b) Records to be Preserved for Three Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less that three years:

(i)–(ix) No change.

(x) all records of deliveries of rule G–32 disclosures *and, if applicable, a record evidencing compliance with section (a)(i)(C) of rule G–32* required to be retained as described in rule G–8(a)(xiii);

(xi)–(xv) No change.

(c)–(g) No change.

* * * * *

(a) Not applicable.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SEC Rule 154, on delivery of prospectuses to investors at the same address, permits a broker-dealer or issuer to satisfy its prospectus delivery requirements under the Securities Act of 1933 with respect to two or more investors sharing the same address by sending a single prospectus to that address, subject to certain conditions.[2,3] The SEC refers to this process as "householding." In adopting Rule 154, the SEC noted that, as a result of increased ownership of securities by individuals through different accounts (*e.g.*, brokerage accounts, individual retirement accounts and custodial accounts for minors), duplicate copies of disclosure documents often were mailed to a single household.[4] The purpose of Rule 154 is to reduce the number of duplicate disclosure documents delivered to such investors, thereby resulting in greater convenience for investors and cost savings for broker-dealers and issuers.[5]

SEC Rule 154 permits broker-dealers to satisfy their delivery obligations by sending a single document to two or more investors sharing the same address. The investors do not have to be related. The document may be addressed to the investors as a group (*e.g.*, "Jane Doe and Household" or "The Smith Family") or to each of the investors individually (*e.g.*, "Jane Doe and John Smith"). The address may be a residential, commercial, or electronic address (*i.e.*, it may be a street address, post office box, fax number, or e-mail address).[6]

The broker-dealer must obtain the investors' written consent to the delivery of a single document on behalf of all such investors, or the broker-dealer may rely on "implied consent" if the following conditions are met: (1) The investor has the same last name as the other investors, or the broker-dealer reasonably believes that they are members of the same family; (2) the dealer sends each investor written notice at least 60 days before relying on this provision, and provides each investor with an opportunity to opt out of this method of delivery;[7] (3) the investor does not opt out during the 60-day notice period; and (4) the dealer delivers the documents to a residential street address or a post office box.[8]

[2,3] The Commission has similar requirements under the Act and the Investment Company Act of 1940 with respect to shareholder reports.

[4] *See* SEC Release No. 33–7766 (November 4, 1999).

[5] *Id.*

[6] An e-mail address may be used if the dealer obtains the investors' written consent for electronic delivery and it is a shared e-mail address.

[7] The dealer must provide either a toll-free number or a pre-addressed, postage paid form.

[8] Rule 154 provides that a dealer can assume that an address is a residential address unless it has information that indicates it is a business address.

For open-end management investment companies (i.e., mutual funds) and dealers that are required to deliver the disclosure documents of such companies, SEC Rule 154(c) requires, at least annually, that the dealer explain to investors who have provided written or implied consent how such consent can be revoked. This information may be provided through any means reasonably designed to reach the investor, such as a prospectus, shareholder report or newsletter. Unlike other issuers, mutual funds typically send investors updated disclosure materials annually, and the ongoing nature of this relationship dictates that investors be informed of their right to revoke consent and begin receiving individual copies of disclosure documents, if they so desire.

MSRB Rule G–32, on disclosures in connection with new issues, generally requires that any dealer selling municipal securities to a customer during the issue's underwriting period must deliver the official statement in final form, if any, to the customer by settlement of the transaction. The MSRB believes that, with respect to this delivery requirement, if two or more customers share the same address, Rule G–32 should allow for the same "householding" process as that contained in SEC Rule 154. In addition, Rule G–32(a)(i)(A) provides that, if a customer participates in a periodic municipal fund security plan or a non-periodic municipal fund security program and has previously received an official statement in final form in connection with such a plan or program, the dealer may sell additional shares or units to that customer if the dealer sends a copy of any new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally prompt means.[9] Allowing for householding in the context of municipal fund securities would be particularly beneficial, especially where one family has accounts for multiple children (or each parent has separate accounts for the same child) and the dealer may be required to deliver disclosure documents on an ongoing basis (*e.g.*, the customer participates in a periodic plan or non-periodic program).

If the dealer has reason to believe that the address is a multi-unit dwelling, the address must include the investor's unit number. *See* Rule 154(b)(4) and (d).

[9] If the dealer sends a supplement, amendment or sticker without including the remaining portions of the final official statement, the dealer must include a written statement describing which documents constitute the complete final official statement and stating that it is available upon request.

Thus, the MSRB has determined to amend Rule G–32(a) to reference SEC Rule 154 and state that a dealer may satisfy its official statement delivery obligations by complying with that Rule's requirements when sending disclosure documents to two or more customers sharing the same address. The amendment further provides that dealers that are required to send ongoing disclosure documents to customers who participate in a periodic municipal fund security plan or a non-periodic municipal fund security program are specifically required to comply with SEC Rule 154(c) by providing those customers with information, at least annually, on how to revoke their consent to the householding process and thereby receive individual copies of disclosure documents, if they so desire.

The proposed rule change also amends Rule G–8, on books and records, and Rule G–9, on preservation of records, to account for the changes to Rule G–32.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which authorizes the MSRB to adopt rules that shall:

> be designed to * * * promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The proposed rule change incorporates by reference SEC Rule 154, on delivery of prospectuses to investors at the same address, and is intended as an accommodation for those brokers, dealers and municipal securities dealers that, pursuant to MSRB Rule G–32, are required to deliver multiple copies of the same disclosure document to customers sharing the same address. The proposed rule change will reduce the number of duplicate disclosure documents delivered to certain customers, thereby resulting in greater convenience for such customers and cost savings for brokers, dealers and municipal securities dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply

equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New system of records and proposed routine uses.

I. Background and Purpose of the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System, 60–0305

A. General Background

Pursuant to the authority provided under 5 U.S.C. 7905, SSA has established a mass transportation subsidy program to encourage its employees to use means other than

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed System of Records, the SSA Mass Transportation Subsidy Program System

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in the proposed new system as discussed below.

1. *To the Office of the President for* disclose information to the Department of Treasury, the Department of Transportation, the Environmental Protection Agency, the Office of Personnel Management, the General Services Administration, and the Office of Management and Budget responsible under Executive Order 13150 for analysis of program effectiveness in reducing single occupancy vehicle travel and local area traffic congestion.

5. *To the Internal Revenue Service (IRS) or the Civil Rights Commission, in response to a subpoena for information contained in this system of records.*

We will disclose information under this routine use, as necessary, when a Federal agency with subpoena power, such as the IRS or the Civil Rights Commission, exercises its right to subpoena records from this system as part of a case that involves the Agency's Mass Transportation Subsidy Program and the administration of qualified

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equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–06 and should be submitted by July 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16688 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11) we are issuing public notice of our intent to establish a system of records entitled the *SSA Mass Transportation Subsidy Program System*, together with routine uses applicable to this system of records. We are also issuing notice that we may disclose personally identifiable information to consumer reporting agencies in accordance with (5 U.S.C. 552a(b)(12)) and 31 U.S.C. 3711(e).

The proposed system of records will consist of information collected by SSA for use in administering the Mass Transportation Subsidy Program established pursuant to 5 U.S.C. 7905, 26 U.S.C. 132(f), and Executive Order 13150, dated April 21, 2000. The proposed system of records is entitled the *SSA Mass Transportation Subsidy Program System*. We invite public comment on this proposal.

DATES: We filed a report of the proposed system of records and routine uses with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 26, 2002.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela McLaughlin, Social Insurance Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–3677, e:mail: *pam.mclaughlin@ssa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System, 60–0305

A. General Background

Pursuant to the authority provided under 5 U.S.C. 7905, SSA has established a mass transportation subsidy program to encourage its employees to use means other than single-occupancy motor vehicles to commute to and from work. This program involves the distribution of transit passes by SSA to qualified employees for use in commuting to and/or from work by means of mass transit facilities and/or commuter highway vehicles. SSA will purchase transit passes with Agency-provided funds. The value of the transit passes received by those employees participating in the program is excluded from their gross income as qualified transportation fringe benefits pursuant to 26 U.S.C. 132(f).

B. Collection and Maintenance of the Data for the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System

SSA must collect and maintain relevant information about SSA employees who are applicants for or participants in SSA's Mass Transportation Subsidy Program. This information will be maintained in the *SSA Mass Transportation Subsidy Program System* database and in manual files. The information maintained will include copies of applications and certifications; distribution lists; correspondence with applicants/participants; and administrative reports. The information maintained will also include identifying information of the participants/applicants such as: names, SSN, office addresses, office telephone numbers, bargaining unit status, transit providers and monthly transportation costs, and names, office addresses and office telephone numbers of supervisors. SSA will use the information in the proposed system to administer the SSA Mass Transportation Subsidy Program. Specifically, the information will assist SSA in managing and verifying the scheduling and distribution of transportation subsidies and the accounting of funds expended under the SSA Mass Transportation Subsidy Program. We will retrieve information from the proposed system of records by using the participants'/applicants' SSNs. This information constitutes a system of records under the Privacy Act.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed System of Records, the SSA Mass Transportation Subsidy Program System

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in the proposed new system as discussed below.

1. *To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.*

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to his or her participation in the SSA Mass Transportation Subsidy Program. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to his or her participation in the SSA Mass Transportation Subsidy Program. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. *To the Department of Transportation (DOT) so that it may correctly purchase and distribute transit passes to employees; verify employee eligibility and participation in the program, and account to SSA for funds expended in administering SSA's Mass Transportation Subsidy Program.*

We will disclose information under this routine use, as necessary, to enable the Department of Transportation to accurately purchase and distribute transit passes to eligible SSA employees.

4. *To a Federal agency for the purpose of responding to surveys and preparing reports on mass transportation subsidy programs, including compliance with applicable laws and executive orders relating to such programs.*

We will disclose information under this routine use, as necessary, to a Federal agency in response to a survey or a request for information required to prepare a report. For example, we will disclose information to the Department of Treasury, the Department of Transportation, the Environmental Protection Agency, the Office of Personnel Management, the General Services Administration, and the Office of Management and Budget responsible under Executive Order 13150 for analysis of program effectiveness in reducing single occupancy vehicle travel and local area traffic congestion.

5. *To the Internal Revenue Service (IRS) and to State and local government tax agencies in response to inquiries regarding an employee's receipt of qualified transportation fringe benefits.*

We will disclose information under this routine use to the IRS and to State and local government tax agencies, as necessary, information regarding the value of the transit subsidy received by employees, the time frames in which transit subsidies were received and the type of transit subsidy issued, i.e., vouchers, passes, cash reimbursement or other fare media, as well as any other relevant and necessary information regarding an employee's receipt of qualified transportation fringe benefits.

6. *To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:*

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

We will disclose information under this routine use only as necessary to enable DOJ, a court, or other tribunal, to effectively defend SSA, its components or employees in litigation involving the proposed system of records.

7. *To other Federal agencies having the power to subpoena records, for example, the Internal Revenue Service (IRS) or the Civil Rights Commission, in response to a subpoena for information contained in this system of records.*

We will disclose information under this routine use, as necessary, when a Federal agency with subpoena power, such as the IRS or the Civil Rights Commission, exercises its right to subpoena records from this system as part of a case that involves the Agency's Mass Transportation Subsidy Program and the administration of qualified transportation fringe benefits to eligible employees.

8. *To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.*

We will disclose information to the EEOC to assist in investigations into alleged or possible discriminatory practices in the administration of the SSA Mass Transportation Subsidy Program.

9. *To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices, matters before an arbitrator or the Federal Impasses Panel.*

We will disclose information under this routine use, as necessary, to the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator in which all or part of the allegations involve the Agency's administration of the SSA Mass Transportation Subsidy Program.

10. *To student volunteers, individual's working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.*

We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned duties.

11. *Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records*

Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. § 2904 with promulgating standards, procedures and guidelines regarding record management and conducting records management

that which is needed to establish the identity of the individual debtor, the amount, status, and history of the debt, and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies

V. Effect of the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System on the Rights of Individuals

The proposed new system of records will maintain only that information that is necessary for the efficient and effective administration and evaluation of SSA's Mass Transportation Subsidy Program. There are existing security standards that protect access to and

Social Security Administration, San Francisco Regional Office, Frank Hagel Federal Building, P.O. Box 4200, Richmond, California 94801.

Social Security Administration, Seattle Regional Office, 701 Fifth Avenue, Suite 2900, M/S 301, Seattle, Washington 98104–7075.

Social Security Administration, Office of Central Operations, Center for Management Support, 1500 Woodlawn Drive, Room 7030 Security West Tower,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below. However, disclosure of any information constituting "return or return information" within the scope of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed unless disclosure is authorized by that statute.

1. To the Office of the President for

7. To other Federal agencies having the power to subpoena records, for example, the Internal Revenue Service (IRS) or the Civil Rights Commission, in response to a subpoena for information contained in this system of records.

8. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal

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Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. § 2904 with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA Regulations at 20 CFR permits us to disclose information under a routine use where necessary to carry out SSA programs. Section 401.120 of SSA Regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 10 above, will ensure efficient administration of the SSA Mass Transportation Subsidy Program; the disclosure that would be made under routine use number 11 is required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Disclosure to Consumer Reporting Agencies

The Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(12)) permits Federal agencies to disclose certain information to consumer reporting agencies in accordance with 31 U.S.C. 3711(e) without the consent of the individuals to whom the information pertains. The purpose of this disclosure is to provide an incentive for individuals to pay any outstanding debts they owe to the Federal government by including information about these debts in the records relating to those persons maintained by consumer reporting agencies. This is a practice commonly used by the private sector. The information disclosed will be limited to that which is needed to establish the identity of the individual debtor, the amount, status, and history of the debt, and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, et. Seq.) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

IV. Records Storage Medium and Safeguards for the Proposed New System, the SSA Mass Transportation Subsidy Program System

We will maintain information about SSA's Mass Transportation Subsidy Program System in electronic and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas.

Contractor personnel having access to data in the proposed system of records along with contractor personnel involved in the evaluation of SSA's Mass Transportation Subsidy Program System will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

V. Effect of the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System on the Rights of Individuals

The proposed new system of records will maintain only that information that is necessary for the efficient and effective administration and evaluation of SSA's Mass Transportation Subsidy Program. There are existing security standards that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: June 26, 2002.

Jo Anne B. Barnhart,

Commissioner.

60–0305

SYSTEM NAME:

SSA Mass Transportation Subsidy Program System/Social Security Administration/Office of Personnel.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Human Resources, Office of Personnel, 6401 Security Boulevard, Baltimore, Maryland 21235, and SSA Regional Offices, Centers for Human Resources (SSA Headquarters).

Social Security Administration, Boston Regional Office, J.F.K. Federal Building, Room 1900, Boston, Massachusetts 02203.

Social Security Administration, New York Regional Office, Room 40–102, 26 Federal Plaza, New York, NY 10278.

Social Security Administration, Philadelphia Regional Office, 300 Spring Garden Street, Philadelphia, Pennsylvania 19123.

Social Security Administration, Atlanta Regional Office, 61 Forsyth Street, SW., Suite 22T64, Atlanta, Georgia 30303–8907.

Social Security Administration, Chicago Regional Office, Harold Washington Social Security Center, P.O. Box 8280, 10th Floor, Chicago, Illinois 60680–8280.

Social Security Administration, Dallas Regional Office, 1301 Young Street, Suite 500, Dallas, Texas 75202–5433.

Social Security Administration, Kansas City Regional Office, Richard Bolling Federal Building, Room 436, 601 East 12th Street, Kansas City, Missouri 64106.

Social Security Administration, Denver Regional Office, Federal Office Building, 1961 Stout Street, Room 325, Denver, Colorado 80294.

Social Security Administration, San Francisco Regional Office, Frank Hagel Federal Building, P.O. Box 4200, Richmond, California 94801.

Social Security Administration, Seattle Regional Office, 701 Fifth Avenue, Suite 2900, M/S 301, Seattle, Washington 98104–7075.

Social Security Administration, Office of Central Operations, Center for Management Support, 1500 Woodlawn Drive, Room 7030 Security West Tower, Baltimore, Maryland 21241–1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers SSA employees who are applicants for or participants in SSA's Mass Transportation Subsidy Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include any paper and electronic records required by SSA to administer the mass transportation subsidy program in accordance with legal requirements. Paper records may include: copies of applications and certifications; distribution lists; correspondence to applicants/participants; and administrative reports. Electronic records may include data from the employee applications and may contain information reflecting: the distribution of transit passes and authorized cash reimbursements to program participants; names, office addresses, telephone and fax numbers for Local Transit Coordinators; the frequency of transit benefit distributions; transit benefit amounts received by participants during distributions; and the form and method by which transit passes are issued to program participants. Paper and electronic records may include information related to program applicants/participants such as: names; Social Security numbers; office addresses; office telephone numbers; bargaining unit status; transit providers and monthly transportation costs; and names, office addresses and office telephone numbers of supervisors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905, 26 U.S.C. 132(f), and Executive Order 13150.

PURPOSE(S):

Information in the system will be used to administer the SSA Mass Transportation Subsidy Program. Specifically, the information will assist SSA in managing and verifying the scheduling and distribution of transportation subsidies, in accounting for funds expended under the SSA Mass Transportation Subsidy Program, and in ensuring the integrity of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below. However, disclosure of any information constituting "return or return information" within the scope of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed unless disclosure is authorized by that statute.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Transportation (DOT), so that it may correctly purchase and distribute transit passes to employees; verify employee eligibility and participation in the program, and account to SSA for funds expended in administering SSA's Mass Transportation Subsidy Program.

4. To a Federal agency for the purpose of responding to surveys and preparing reports on mass transportation subsidy programs, including compliance with applicable laws and executive orders relating to such programs.

5. To the Internal Revenue Service (IRS) and to State and local government tax agencies in response to inquiries regarding an employee's receipt of qualified transportation fringe benefits.

6. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

7. To other Federal agencies having the power to subpoena records, for example, the Internal Revenue Service (IRS) or the Civil Rights Commission, in response to a subpoena for information contained in this system of records.

8. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

9. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

10. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

11. Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, et seq.) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's

identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both electronic and paper form at the system locations identified above.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on

DEPARTMENT OF STATE

[Public Notice 4061]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Babbar Khalsa International and the International Sikh Youth Federation

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation

American Canoe Association (the ACA) received after the close of the comment period raised a new issue on definitions of watercraft. This notice seeks comments on the desirability of establishing definitions of water-jet-powered watercraft, particularly PWC.

DATES: Comments and related material must reach the Document Management Facility on or before December 30, 2002.

ADDRESSES: To make sure your

boating as they relate to PWC. Because PWC are physically different from conventional boats, they cannot comply with current standards of the Coast Guard for safety. Therefore, manufacturers of PWC must apply for exemptions from these standards and demonstrate equivalent levels of safety. The petition suggested that we replace the exemption process with a requirement for manufacturers to comply with certain standards

propulsion, combining the just-discussed definitions. The comment states that we should refrain from referring to these vessels by a different name from *PWC*, because everyone is familiar with the term and our changing it would be counter-productive. According to the comment, many States have passed statutes and instated rules on PWC and have adopted all or part of the Model Act of NASBLA for PWC, and any change in the terminology therefore

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identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both electronic and paper form at the system locations identified above.

RETRIEVABILITY:

Records are retrieved by employee name and/or SSN.

SAFEGUARDS:

Only authorized personnel who have a need for the information in the performance of official duties will be permitted access to the information in this system of records.

RETENTION AND DISPOSAL:

Records in this system are retained for three years at which time they are destroyed. The means of disposal will be appropriate to the storage medium (e.g., deletion of individual electronic records or shredding of paper records).

SYSTEM MANAGER(S) AND ADDRESS(ES):

For Paper Files—In Headquarters: Associate Commissioner, Office of Personnel, Office of Human Resources, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. In the Field: Center for Human Resources, Office of the Regional Commissioner (see systems location above for addresses). For Electronic Records: Associate Commissioner, Office of Personnel, Office of Human Resources, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. If an individual does not have identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURE(S):

Same as "Notification" procedures. Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

CONTESTING RECORD PROCEDURE(S):

Same as "Notification" procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system of records is: (1) Supplied directly by the individual; (2) supplied by the Department of Transportation; or (3) supplied by SSA officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 02–16685 Filed 7–2–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4061]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Babbar Khalsa International and the International Sikh Youth Federation

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that Babbar Khalsa International and the International Sikh Youth Federation have committed, or pose a serious risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–16799 Filed 7–2–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4734]

Exemptions of Manufacturers From Standards for Recreational Boats: Definitions of Watercraft

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In a notice published on October 19, 1999, the Coast Guard solicited comments so it could better respond to a petition for rulemaking submitted by the Personal Watercraft Industry Association (the PWIA). The petition asked the Coast Guard to authorize a new method of complying with laws on safety of recreational boating as they relate to personal watercraft (PWC). A comment from the American Canoe Association (the ACA) received after the close of the comment period raised a new issue on definitions of watercraft. This notice seeks comments on the desirability of establishing definitions of water-jet-powered watercraft, particularly PWC.

DATES: Comments and related material must reach the Document Management Facility on or before December 30, 2002.

ADDRESSES: To make sure your comments and related material [referred to USCG 1998–4734] do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Alston Colihan, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–0981 or by e-mail at *acolihan@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a request for comments on October 19, 1999 [64 FR 56287], so it could better respond to a petition for rulemaking submitted by the PWIA. The petition asked us to authorize a new method of complying with laws on safety of recreational boating as they relate to PWC. Because PWC are physically different from conventional boats, they cannot comply with current standards of the Coast Guard for safety. Therefore, manufacturers of PWC must apply for exemptions from these standards and demonstrate equivalent levels of safety. The petition suggested that we replace the exemption process with a requirement for manufacturers to comply with certain standards generated by the industry itself. The comment period closed on January 19, 2000.

The Coast Guard received 11 timely comments in response to that petition. But a comment from the ACA, received after the close of the comment period, raised a new issue on definitions of watercraft. While we haven't decided how or even whether to proceed with rulemaking, this request seeks public comments on the question of what to call PWC or how to define them.

Discussion of Comments

We received 11 timely comments about the notice and a request from the ACA to re-open the comment period and deal with a new issue. Here follow summaries of the comments and the request, and an analysis of the definitions propounded by the request.

Comments From State Boating Officials

A State Boating Law Administrator (SBLA) urges that we formally recognize a definition for *PWC* using the definitions from the International Standards Organization (ISO) and the Model Acts of the National Association of State Boating Law Administrators (NASBLA) and the PWIA as models to establish the definition. The SBLA states that we should refrain from referring to these vessels by a different name from *PWC*, because such a change would only create further confusion.

A second SBLA also favors adoption of an amended definition for *PWC* that addresses other forms of propulsion, combining the definitions from the Model Act of NASBLA for PWC and from ISO 13590. The comment states that our definition should not limit the number of persons that may be carried, but should limit the length of the vessel to 13 feet or preferably 16 feet. The comment favors use of the term *PWC* because of the public's familiarity with its usage. If we stopped using the term, the change would confuse nearly everyone, substantially impeding implementation of programs relative to these vessels.

A comment from NASBLA states that we should adopt an amended definition for *PWC* that addresses other forms of propulsion, combining the just-discussed definitions. The comment states that we should refrain from referring to these vessels by a different name from *PWC*, because everyone is familiar with the term and our changing it would be counter-productive. According to the comment, many States have passed statutes and instated rules on PWC and have adopted all or part of the Model Act of NASBLA for PWC, and any change in the terminology therefore would have a large effect on uniformity of boating laws throughout the country.

Comments From the PWIA

A comment from the PWIA states that there is no need for us to recognize or adopt a formal Federal definition of *PWC* separate from the existing definitions of vessel, motor vessel, recreational vessel, boat, and motorboat in relevant Federal statutes and rules. According to the comment, the existing definitions reflect a principled approach to retain broad definitions that cover a wide range of types of vessels, rather than attempt to create separate definitions for each different or new type. The comment states that the existing definitions encompass all past and current models of PWC and will cover any future models, regardless of their size, mode of propulsion, cargo and towing capacities, or other features. The comment states that PWC have undergone substantial changes in design and production and that the continuing evolution of the features of the vessels makes having a separate definition for PWC impracticable and unnecessary, especially considering that we have not attempted to develop or adopt separate definitions for other types of motorboats, such as bass boats, airboats, or racing boats.

The comment further states that the standards recommended by the ISO and SAE include a definition of PWC, and that the purpose of the definition is to specify those vessels that are subject to those standards. While there are other boats that might fit under this definition, except that they are powered by outboard motors, the comment states, the standards of the ISO and SAE are thus not applicable to such vessels. The comment also notes that somewhat different definitions of PWC appear in the Model State legislation of the PWIA and NASBLA and that the purpose of those definitions is to specify those vessels that are subject to States' age restrictions, operational rules, and livery requirements for PWC. The comment states that many States have modified NASBLA's definition of PWC to account for particular States' circumstances and policies. As a result,

according to the comment, the States have shown that they do not want a uniform definition of PWC, and instead have used their discretion to develop definitions necessary to accomplish their interests in regulating the use of PWC within their jurisdictions.

With regard to the term *thrillcraft*, the comment states that, in addition to being pejorative, the term has no clearly understood meaning; similarly, the states that the manufacturers of no particular type of craft should be able to simply lay claim to a general term. It notes that Webster's Dictionary defines the term *personal* to mean *of, related to, or affecting a person* and defines the term *watercraft* to mean *craft for water transport*. It states that these are real words with concrete meanings and thus that their usage together has a concrete meaning that is broad and not

because of their unique design, they have different impacts on the environment and on other users of waterways.

Other Comments

A comment from an association promoting the safety of PWC states that we should formally recognize a definition of PWC because there is a mandate for change in the design of

waters that conventional motorboats can't navigate.

Call for Comments

The Coast Guard encourages you to submit comments and related material responding to the suggestions of the ACA; others just discussed; the questions that follow; or other issues concerning definitions of watercraft. We also welcome any other comments in connection with this notice. Please

definitions depend upon a minimum of water-jet thrust?

4. Should the Coast Guard adopt fresh terms and definitions to identify other types of recreational vessels such as canoes, kayaks, houseboats, bowriders, bassboats, and jonboats? If so, why?

Dated: June 24, 2002.

Kenneth T. Venuto,

Rear Admiral, Coast Guard, Director of Operations Policy.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to

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according to the comment, the States have shown that they do not want a uniform definition of PWC, and instead have used their discretion to develop definitions necessary to accomplish their interests in regulating the use of PWC within their jurisdictions.

With regard to the term *thrillcraft*, the comment states that, in addition to being pejorative, the term has no clearly understood meaning; similarly, the words *sport boat* would appear to encompass a wide variety of recreational vessels. According to the comment, use of the term *Jet Ski*, is also inappropriate, because the term is a registered trademark.

Comments From the ACA

Definitions Recommended by the ACA

The ACA asks that we phase out the use of the general term *PWC* for jet-pump-powered watercraft on which the operator and any passengers do not ride within the confines of a conventional hull, and that we replace it with a more specific term such as *Personal Water Jet* or *Personal Jet Craft*. The ACA recommends that we adopt the following definition or something close to it for the craft currently referred to as *PWC*:

The term, _____, means any watercraft that uses an engine powering a water-jet pump, or other form of jet thrust, as its primary source of propulsion, and that is designed to be operated by a person or persons sitting or standing on or astride the craft, rather than within the confines of the hull. These craft are often designed specifically for high-speed use and performance, and are often capable of carrying multiple passengers and gear.

The ACA also asks that we adopt specific terminology to describe water-jet-powered craft on which that the operator and passengers do ride within the confines of conventional hulls. The ACA recommends the use of a term such as *Jet Boat, Jet Craft*, or *Water Jet* to identify such watercraft. The ACA recommends that we adopt the following definition or something close to it for these craft:

The term, _____, means any watercraft that uses an engine powering a water-jet pump, or other form of jet thrust, as its primary source of propulsion, and that is designed to be operated from within the confines of the hull or cockpit. These craft are often designed specifically for high-speed use and performance, and are often capable of carrying multiple passengers and gear.

According to the ACA, the general term *PWC* is ambiguous and could just as easily describe any watercraft designed for operation by a single person—a canoe, kayak, catamaran, rowboat, or some other such craft. It states that the manufacturers of no particular type of craft should be able to simply lay claim to a general term. It notes that Webster's Dictionary defines the term *personal* to mean *of, related to, or affecting a person* and defines the term *watercraft* to mean *craft for water transport*. It states that these are real words with concrete meanings and thus that their usage together has a concrete meaning that is broad and not exclusively related to jet-pump-powered watercraft.

Confusion Concerning Watercraft Alleged by the ACA

The ACA believes that what it considers improper usage of this terminology creates the likelihood of confusion on the nation's waterways and throughout the regulatory process. According to the ACA, the confusion caused by the industry's use of the term *PWC* is already widespread. Across the nation, there are public *watercraft-launching* areas that do not allow the launching of so-called *PWC* of the jet-powered kind. In areas that intend to forbid the launching of jet-powered PWC, other boaters have misinterpreted signs and literature to forbid the launching of all privately owned watercraft. The same confusion often occurs when outfitters of canoes and kayaks advertise *PWC rentals*: People believe that they can rent jet-powered *Personal Watercraft*.

The ACA believes that this problem is almost certain to get worse as the generic term *watercraft* is increasingly used as a term referring to specific water-jet-powered craft, contrary to its true definition as a term that refers to all waterborne vessels.

Operational Issues and PWC From the Perspective of the ACA

The ACA states that there is ample evidence that craft powered by water-jet pumps, especially those currently referred to as *Personal Watercraft*, are very different from traditional types of boats and need to be regulated differently in order to ensure the safety of other waterway users—including canoeists and kayakers—as well as the safety of the operators of the PWC themselves.

The ACA states that the need for these official definitions for regulatory purposes is obvious. Watercraft powered by water-jet pumps have significantly different operational characteristics from craft with traditional inboard and outboard motors; they are used differently from craft with traditional inboard and outboard motors; they are designed specifically for high-speed use; and, because of their unique design, they have different impacts on the environment and on other users of waterways.

Other Comments

A comment from an association promoting the safety of PWC states that we should formally recognize a definition of PWC because there is a mandate for change in the design of PWC to include capabilities of off-throttle steering and braking. According to the comment, subcategories of PWC might include craft designed to carry more than one person. The comment offers the definition from the PWIA as a simple definition of *PWC*. According to the comment, other terms such as *jet skis, water scooters*, and *sport boats* are not adequate, because the industry itself has, for the most part, adopted PWC in self-description.

A comment from the NTSB notes that for industry standards to be consistently applied manufacturers will need a clear definition of *PWC*.

A comment from a private association engaged in advocacy for national parks states that we should formally recognize a definition for *PWC* that includes larger vessels and jet boats. It favors a definition addressing design characteristics and end use, rather than specific dimensions. It also favors inclusion of all vessels whose primary purpose is thrill-related. It states that PWC are distinct in design and in intended use from traditional recreational boats, and that they should be defined as thrillcraft as they are in the State of Hawaii. It also states that the definition from the PWIA is inadequate, because it doesn't encompass all types of PWC, for example, special-purpose vessels propelled by PWC, and jet boats. The comment states that the definition from the PWIA fails to recognize that PWC are designed and marketed as high-speed thrillcraft meant to be used aggressively.

A comment from an environmental association believes that the definition from the PWIA is seriously flawed. It mentions the special-purpose vessels propelled by PWC and states that merely adding appendages to a PWC should not disqualify it from being regulated as a PWC. The comment also states that the definition from the PWIA excludes vessels such as jet boats that are clearly PWC. According to the comment, jet boats share, besides technology, many of the performance characteristics of modern PWC, such as the ability to perform extreme maneuvers and turns, achieve remarkably high speeds, and reach waters that conventional motorboats can't navigate.

Call for Comments

The Coast Guard encourages you to submit comments and related material responding to the suggestions of the ACA; others just discussed; the questions that follow; or other issues concerning definitions of watercraft. We also welcome any other comments in connection with this notice. Please include with your submission your name and address, identify the docket number for this rulemaking [USCG–1998–4734], indicate the specific questions in the next four paragraphs to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Your comments will help us to determine whether to initiate a rulemaking in accordance with the petitioner's request.

Questions

1. Are the difficulties associated with the use of water-jet-driven recreational vessels so severe that they require the Coast Guard to adopt fresh terms and definitions, so as to describe those vessels and distinguish them from conventional propeller-driven vessels?

2. Should the Coast Guard adopt fresh terms and definitions to identify the recreational vessels now generally referred to as *PWC* that lack conventional hulls? If so, what? Is the definition suggested by the ACA adequate for one? Should any terms and definitions depend upon a minimum of water-jet thrust? Should any of them cover similar propeller-driven recreational vessels? How many people should such vessels carry, and how large should they be allowed to get, before they fall outside the definitions?

3. Should the Coast Guard adopt fresh terms and definitions to identify other types of recreational vessels propelled by water-jet pumps that have conventional hulls? If so, what? Is the definition suggested by the ACA adequate for one? Should any terms and definitions depend upon a minimum of water-jet thrust?

4. Should the Coast Guard adopt fresh terms and definitions to identify other types of recreational vessels such as canoes, kayaks, houseboats, bowriders, bassboats, and jonboats? If so, why?

Dated: June 24, 2002.

Kenneth T. Venuto,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 02–16755 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34212]

Central Railroad Company of Indianapolis—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a written trackage rights agreement entered into between NSR and Central Railroad Company of Indianapolis (CERA) [1] has agreed to grant overhead and limited local trackage rights to CERA over a portion of NSR's track (1) from CERA's connection with NSR and the trackage of the West Marion Belt at Michael, IN, at milepost TS–157.44, to the connection between the West Marion Belt and the trackage of Winamac Southern Railroad Company adjacent to NSR-operated Goodman Yard at Marion, IN, and (2) from CERA's connection with NSR at milepost TS–157.44, through the switch serving Bell Fiber Corporation at milepost TS–155.6, to, and including, the switch serving Essex Wire, Incorporated, at milepost TS–154.65, a total distance of approximately 5 miles.

The transaction was scheduled to be consummated on or shortly after June 21, 2002, the effective date of the exemption (7 days after the notice was filed).

The trackage rights will allow CERA to enhance rail service for certain shippers and provide more efficient and economical routings and service for the shippers' traffic.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34212, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: June 27, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16720 Filed 7–2–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 14, 2002, CERA concurrently filed a notice of exemption in STB Finance Docket No. 34221, *Central Railroad Company of Indianapolis—Acquisition and Control Exemption—Norfolk Southern Railway Company*, wherein CERA would acquire and continue to operate approximately 31.66 miles of railroad from NSR, which runs between (1) Kokomo, IN, milepost I–51.8 and near Kokomo, IN milepost I–57.2, and (2) near West Marion Belt, IN, milepost TS–157.44, and Kokomo, IN, milepost TS–183.7.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 26, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 2, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0001.
Form Number: IRS Form CT–1.
Type of Review: Revision.
Title: Employer's Annual Railroad Retirement Tax Return.

Description: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA). Form CT–1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.

Respondents: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 2,387.

Estimated Burden Hours Per Respondent/Recordkeeper:

	CT–1 (Part I)	CT–1 (Part II)
Recordkeeping	9 hr., 34 min	4 hr., 4 min.
Learning about the law or the form	2 hr., 1 min	0 min.
Preparing, copying, assembling, and sending the form to the IRS	4 hr., 39 min	4 min.

DEPARTMENT OF VETERANS AFFAIRS.

[OMB Control No. 2900–0594]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.gov*. Please refer to "OMB Control No. 2900–0594."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–

when the individual either negotiates a check or receives education benefits via direct deposit or electronic funds transfer under the program elected. The election is used to determine which benefit is payable based on the individual's Selected Reserve service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Description: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA). Form CT–1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.

Respondents: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 2,387.

Estimated Burden Hours Per Respondent/Recordkeeper:

	CT–1 (Part I)	CT–1 (Part II)
Recordkeeping	9 hr., 34 min	4 hr., 4 min.
Learning about the law or the form	2 hr., 1 min	0 min.
Preparing, copying, assembling, and sending the form to the IRS	4 hr., 39 min	4 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 46,206 hours.

OMB Number: 1545–0795.

Form Number: IRS Form 8233.

Type of Review: Extension.

Title: Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

Description: Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form 8233 is used to request exemption from withholding.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 480,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 5 min.

Learning about the law or the form—31 min.

Preparing and sending the form to the IRS—57 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,320,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–16722 Filed 7–2–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Universal Federal Savings Bank, Chicago, IL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Universal Federal Savings Bank, Chicago, Illinois (OTS No. 03327), on June 27, 2002.

Dated: June 28, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–16728 Filed 7–2–02; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0086]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0086."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0086" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for a Certificate of Eligibility for VA Home Loan Benefits, VA Form 26–1880.

OMB Control Number: 2900–0086.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1880 is used by an applicant to establish eligibility for loan guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2002, at page 18305.

Affected Public: Individuals or households.

Estimated Annual Burden: 110,625 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 442,500.

Dated: June 21, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–16704 Filed 7–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS.

[OMB Control No. 2900–0594]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.gov.* Please refer to "OMB Control No. 2900–0594."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0594" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Election to Apply Selected Reserve Services to either Montgomery GI Bill-Active Duty or to the Montgomery GI Bill-Selected Reserve—38 CFR 21.7042 and 21.7540.

OMB Control Number: 2900–0594.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA is authorized to pay educational benefits to veterans, persons on active duty, and reservists, and eligible persons pursuing approved programs of education. This information collection relates to elections between chapters 30 and 1606 education benefits. Reservists must make elections in writing. The election takes effect when the individual either negotiates a check or receives education benefits via direct deposit or electronic funds transfer under the program elected. The election is used to determine which benefit is payable based on the individual's Selected Reserve service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 22, 2002, at page 19623.

Affected Public: Individuals or households.

Estimated Annual Burden: 36 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12.

Dated: June 21, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–16705 Filed 7–2–02; 8:45 am]

BILLING CODE 8301–01–P

Corrections

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

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Corrections

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

Correction

In notice document 02–12502 beginning on page 35505 in the issue of Monday, May 20, 2002, make the following correction:

On page 35506, first column, under the heading **DATES**, second line, "July 19, 2002" should read "June 19, 2002".

[FR Doc. C2–12502 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

Correction

In notice document 02–12503 beginning on page 35506 in the issue of Monday, May 20, 2002, make the following correction:

On page 35506, second column, under the heading **DATES**, second line, "July 19, 2002" should read "June 19, 2002".

[FR Doc. C2–12503 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

Correction

In notice document 02–12504 beginning on page 35506 in the issue of Monday, May 20, 2002, make the following correction:

On page 35506, third column, under the heading **DATES**, second line, "July 19, 2002" should read "June 19, 2002".

[FR Doc. C2–12504 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

Correction

In notice document 02–12505 beginning on page 35507 in the issue of Monday, May 20, 2002, make the following correction:

On page 35507, first column, under the heading **DATES**, second line, "July 19, 2002" should read "June 19, 2002".

[FR Doc. C2–12505 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Western Area Power Administration

Western Area Colorado Missouri Control Area Energy Imbalance Service—Rate Order No. WAPA–97

Correction

In notice document 02–14609 beginning on page 39970 in the issue of June 11, 2002, make the following corrections:

On pages 39973 and 39974, Tables 1 and 2 should read as follows:

Examples of Energy Imbalance Service Calculations

TABLE 1

Within the bandwidth	
Credits for over deliveries (based on weighted average real-time sale price)	Charges for under deliveries (based on weighted average real-time purchase price)
Scenario: WACM Aggregate Net Over Delivery	Scenario: WACM Aggregate Net Under Delivery.
Sale #1 25 MW @ $22 ($550)	Purchase #1 100 MW @ $35 ($3,500)
Sale #2 25 MW @ $20 ($500)	Purchase #2 50 MW @$32 ($1,600)
Sale #3 25 MW @ $17 ($425)	Purchase #3 100 MW @ $15 ($1,500)
Sale #4 25 MW @ $12 ($300)	Purchase #4 50 MW @ $10 ($ 500)
Calculation:	Calculation:
($550+$500+$425+$300) = $1,775	($3,500+$1,600+$1,500+$500)=$7,100
$1,775 / 100 MW = $17.75/MW	$7,100 / 300 MW = $23.67/MW.
Weighted Average Real-Time Sale Price Price = $17.75/MW	Weighted Average Real-Time Purchase Price = $23.67/MW.
Customer would be credited $17.75/MW	Customer would be charged $23.67/MW.
Pricing Defaults: If no hourly real-time sales, default is to daily real-time sales weighted average on/off-peak. If no daily real-time sales, default is to monthly real-time sales weighted averaged on-/off-peak. If no monthly real-time sales, default is to the prior month real-time sales weighted average on-/off-peak.	Pricing Defaults: If no hourly real-time purchase, default is to daily real-time purchase weighted averaged on-/off-peak. If no daily real-time purchase, default is to monthly real-time purchase weighted averaged on-/off-peak. If no monthly real-time purchase, default is to prior month real-time purchase weighted average on-/off-peak.
Applicable transmission cost deducted	Applicable transmission cost added.

TABLE 2

Outside the bandwidth	
Credits for over deliveries (based on weighted average real-time sale price)	Charges for under deliveries (based on weighted average real-time purchase price)
Scenario: Customer A Over Delivered	Scenario: Customer B Under Delivered.
Sale #1 25 MW @ $22 ($550)	Purchase #1 100 MW @ $35 ($3,500)
Sale #2 25 MW @ $20 ($500)	Purchase #2 50 MW @ $32 ($1,600)
Sale #3 25 MW @ $17 ($425)	Purchase #3 100 MW @ $15 ($1,500)
Sale #4 25 MW @ $12 ($300)	Purchase #4 50 MW @ $10 ($ 500)
Calculation:	Calculation:
($550+$500+$425+$300) = $1,775	($3,500+$1,600+$1,500+$500)=$7,100
$1,775 / 100 MW = $17.75/MW	$7,100 / 300 MW = $23.67/MW.
Weighted Average Real-Time Sale Price Price = $17.75/MW	Weighted Average Real-Time Purchase Price = $23.67/MW.
Customer would be credited $17.75/MW	Customer would be charged $23.67/MW.
Pricing Defaults: If no hourly real-time sales, default is to daily real-time sales weighted average on/off-peak. If no daily real-time sales, default is to monthly real-time sales weighted averaged on-/off-peak. If no monthly real-time sales, default is to the prior month real-time sales weighted average on-/off-peak.	Pricing Defaults: If no hourly real-time purchase, default is to daily real-time purchase weighted averaged on-/off-peak. If no daily real-time purchase, default is to monthly real-time purchase weighted averaged on-/off-peak. If no monthly real-time purchase, default is to prior month real-time purchase weighted average on-/off-peak.
Applicable transmission cost deducted	Applicable transmission cost added.

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TABLE 2

Outside the bandwidth	
Credits for over deliveries (based on weighted average real-time sale price)	Charges for under deliveries (based on weighted average real-time purchase price)
Scenario: Customer A Over Delivered	Scenario: Customer B Under Delivered.
Sale #1 25 MW @ $22 ($550)	Purchase #1 100 MW @ $35 ($3,500)
Sale #2 25 MW @ $20 ($500)	Purchase #2 50 MW @ $32 ($1,800)
Sale #3 25 MW @ $17 ($425)	Purchase #3 100 MW @ $15 ($1,500)
Sale #4 25 MW @ $12 ($300)	Purchase #4 50 MW @ $10 ($ 500)
Calculation:	Calculation:
($550+$500+$425+$300) = $1,775	($3,500+$1,600+$1,500+$500)=$7,100
$1,775 / 100 MW = $17.75/MW	$7,100 / 300 MW = $23.67/MW.
Weighted Average Real-Time Sale Price = $17.75/MW	Weighted Average Real-Time Price = $23.67/MW.
Customer credited 50% = $8.88/MW	Customer charged 150% = $35.50/MW.
Pricing Defaults: Same as shown in Table 1	Pricing Defaults: Same as shown in Table 1.
Applicable transmission cost deducted	Applicable transmission cost added.

* * * * *

[FR Doc. C2–14609 Filed 7–2–02; 8:45 am]
BILLING CODE 1505–01–D

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PAGE NUMBER 44670 IS MISSING IN NUMBER ONLY.

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Federal Register

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Wednesday,
July 3, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants; Proposed Rules

VOL 67 ISS 128 JL 3 2002 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7236–6]

RIN 2060–AE85

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for mercury cell chlor-alkali plants. The proposed standards would limit mercury air emissions from these plants. The proposed standards would implement section 112(d) of the Clean Air Act (CAA) which requires all categories and subcategories of major sources and area sources listed in section 112(c) to meet hazardous air pollutant emission standards reflecting the application of the maximum achievable control technology (MACT). The proposed standards would reduce nationwide mercury emissions from these sources by about 4,100 kilograms per year (kg/yr) (9,100 pounds per year (lb/yr)) from the levels allowed by the existing mercury NESHAP.

Mercury is a neurotoxin that accumulates, primarily in the especially potent form of methylmercury, in aquatic food chains. The highest levels are reached in predator fish species. Mercury emitted to the air from various types of sources (usually in the elemental or inorganic forms) transports through the atmosphere and eventually deposits onto land or water bodies. When mercury is deposited to surface waters, natural processes (bacterial) can transform some of the mercury into methylmercury that accumulates in fish. The health effect of greatest concern due to methylmercury is neurotoxicity, particularly with respect to fetuses and young children.

DATES: *Comments.* Submit comments on or before September 3, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 23, 2002, a public hearing will be held on August 2, 2002.

ADDRESSES: *Docket.* Docket No. A–2000–32 contains supporting information used in developing the proposed standards for the mercury cell chlor-alkali plant source category. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5308, facsimile: (919) 541–5600, electronic mail address: *rosario.iliam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® format. All comments and data submitted in electronic form must note the docket number: Docket No. A–2000–32. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Office (C404–02) Attention: Iliam Rosario, Metals Group, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Cassie Posey, telephone number: (919) 541–0069. Persons interested in attending the public hearing must also call Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in rule development. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web Information. In addition to being available in the docket, an electronic copy of today's proposed rule will also be available through EPA's World Wide Web site. Following signature, a copy of the rule will be posted on our policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The web site provides information and technology exchange in various areas of air pollution control. If more information regarding the web site is needed, call our web site help line at (919) 541–5384.

Regulated entities. Entities potentially affected by this action include plants engaged in the production of chlorine and caustic in mercury cells. Regulated categories and entities include those sources listed in the primary Standard Industrial Classification code 2812 or North American Information Classification System code 325181.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine § 63.8182 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA contains our authorities for reducing emissions of hazardous air pollutants (HAP). Section 112(d) requires us to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed pursuant to section 112(c). Section 112(d)(2) specifies that emission standards promulgated under the section shall require the maximum degree of reductions in emissions of the HAP subject to section 112 that are deemed achievable considering cost and any non-air quality health and environmental impacts and energy requirements.

Each national emission standard for hazardous air pollutants (NESHAP) established reflects the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as maximum achievable control technology (MACT).

Section 112(c)(6) requires us to list source categories and subcategories assuring that sources accounting for not less than 90 percent of the aggregate emissions of each of seven specific pollutants (including mercury) are subject to standards under section 112(d) of the CAA.

Mercury cell chlor-alkali plants are among the sources listed to achieve the 90 percent goal for mercury.

B. What Criteria Are Used in the Development of NESHAP?

Section 112(d)(2) specifies that NESHAP for new and existing sources must reflect the maximum degree of reduction in HAP emissions that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental benefits, and energy requirements. This level of control is commonly referred to as MACT.

Section 112(d)(3) defines the minimum level of control or floor allowed for NESHAP. In essence, the MACT floor ensures that the standard is set at a level that assures that all affected sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy impacts.

C. What Is a Mercury Cell Chlor-alkali Plant?

1. Mercury Cell Chlor-Alkali Production Facilities

At a mercury cell chlor-alkali plant, mercury cell chlor-alkali production facilities are used to manufacture chlorine and caustic as co-products and hydrogen as a by-product through the electrolytic decomposition of brine in mercury cells. The central unit is the mercury cell which is a device comprised of an electrolyzer (electrolytic cell) and decomposer with one or more end boxes and other components linking them. While each mercury cell is an independent production unit, numerous cells are connected electrically in series to form a cell circuit. Cells are situated in a cell room and typically arranged in two rows separated by a center aisle. The cell room is generally a two-story structure in which mercury cells are housed on the upper floor. The lower floor houses various process and housekeeping functions. The number of mercury cells at a given plant ranges from 24 to 116 and averages 56. A mercury cell involves two distinct reactions which occur in separate vessels. The electrolyzer produces chlorine gas, and the decomposer produces hydrogen gas and caustic solution (sodium hydroxide or potassium hydroxide). The electrolyzer can be described as an elongated, shallow steel trough enclosed by side panels and a top cover. A typical electrolyzer measures about 15 meters (about 50 feet) in length and 1.5 meters (about 5 feet) in width and holds about 3,600 kilograms (around 8,000 pounds) of mercury. The decomposer is a 4-to-5 feet high cylindrical vessel located at the outlet end of the electrolyzer and is usually oriented vertically. The electrolyzer and the decomposer are typically linked by an inlet end box and an outlet end box.

A shallow stream of liquid mercury flows continuously between the

electrolyzer and the decomposer. The mercury enters the cell at the inlet end box and flows down a slight grade to the outlet end box, where it flows out of the cell into the decomposer. After being processed in the decomposer, the mercury is pumped back to the inlet end box of the cell.

Saturated brine (sodium chloride solution or potassium chloride solution) is fed to the electrolytic cell via the inlet end-box ventilation system is not in direct contact with mercury. However, due to the elevated temperatures in this equipment, particularly end boxes, mercury diffuses through the liquid and is present in the vapor spaces. The concentration of mercury in end-box ventilation systems before any steps are taken to remove mercury varies greatly depending on the vacated equipment. The collected gases are usually cooled potential for emissions of mercury from the brine system.

Because the caustic solution produced directly from the decomposer is commercial grade, the only additional treatment needed is mercury removal. The concentration of mercury in the caustic stream leaving the decomposer ranges from about 3 to 15 ppm. Mercury is removed by cooling and filtration. Residual mercury contained in the caustic product is typically around 0.06

discharged in accordance with a plant's discharge permit. The wastewater treatment sludges produced, which consist mainly of the mercuric sulfide filter cake, are classified as hazardous under Resource Conservation and Recovery Act (RCRA) regulations (40 CFR part 261, subpart D). This waste, designated as K106, must be treated for mercury removal prior to disposal or landfilling which generally means high temperature treatment.

and residence time. Oven retorts have lower operating temperatures (around 1,000°F) and substantially longer residence times (24 to 54 hours) than do kilns which operate at around 1,375°F with residence times approaching 3 hours.

Noteworthy among all six thermal recovery units is the relatively small volume of exhaust gas generated. Volumetric flow rates range from around 50 standard cubic feet per

Most of these sources are associated with cell rooms. Liquid mercury exposed to the atmosphere evaporates at a rate depending on temperature, air flow, and other variables. Methods of controlling fugitive mercury emissions include the containment of liquid mercury leaks, clean up of liquid mercury spills and accumulations, repair of equipment leaking liquid mercury, and containment of mercury-containing wastes under an aqueous

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electrolyzer and the decomposer. The mercury enters the cell at the inlet end box and flows down a slight grade to the outlet end box, where it flows out of the cell into the decomposer. After being processed in the decomposer, the mercury is pumped back to the inlet end box of the cell.

Saturated brine (sodium chloride solution or potassium chloride solution) is fed to the electrolytic cell via the inlet end box and flows toward the outlet end box above the shallow layer of mercury. Both brine and mercury flow beneath dimensionally stable metal anodes, typically made of a titanium substrate with a metal catalyst that are suspended in the electrolyzer top. The flowing mercury serves as the cathode.

Electric current applied between the anodes and the mercury cathode causes a reaction that produces chlorine at the anode, while an alkali metal (sodium or potassium) binds with the mercury as an amalgam at the cathode. The chlorine gas is collected at the top of the cell and transported to an ancillary gas purification system followed in most cases by a liquefaction facility. The alkali metal/mercury amalgam exits via the outlet end box and enters the decomposer. The brine, whose salt content has been partially depleted in the reaction, also exits the cell via the outlet end box and is transferred to an ancillary brine preparation system.

The decomposer functions as a packed bed reactor in which the alkali metal/mercury amalgam contacts deionized water in the presence of a catalyst. The amalgam reacts with the water, liberating the mercury and yielding caustic soda (sodium hydroxide) or caustic potash (potassium hydroxide) and hydrogen. The caustic and mercury are separated in a trap at the end of the decomposer. The caustic and hydrogen are each transferred to ancillary treatment, and the mercury is pumped back to the inlet end of the cell.

As previously noted, end boxes serve as connections between the electrolyzer and decomposer in a mercury cell. The inlet end box collects and combines raw materials at the inlet end of the cell, and the outlet end box separates and directs various materials out of the cell. An end-box ventilation system, which is present at most but not all plants, evacuates the vapor spaces of the end boxes. The end-box ventilation system also commonly evacuates the vapor space of other vessels and process equipment, such as pump seals, wash water tanks, and caustic tanks and headers. In most cases, mercury contained in this equipment is covered with a layer of water or other aqueous liquid so the air being pulled into the end-box ventilation system is not in direct contact with mercury. However, due to the elevated temperatures in this equipment, particularly end boxes, mercury diffuses through the liquid and is present in the vapor spaces. The concentration of mercury in end-box ventilation systems before any steps are taken to remove mercury varies greatly depending on the vacated equipment. The collected gases are usually cooled and then treated in a mist eliminator and other control equipment prior to being discharged to the atmosphere. It is the mercury remaining in the treated stream that causes the end-box ventilation system vent to be a point source of mercury air emissions for plants that have these systems.

Important ancillary operations at a mercury cell chlor-alkali plant include chlorine purification and liquefaction, brine preparation, caustic purification, by-product hydrogen cleaning, and wastewater treatment.

Chlorine gas is collected under vacuum from each mercury cell and fed into a header system leading out of the cell room. The chlorine then undergoes cooling, mist elimination, and drying. Only trace amounts of mercury remain in the product chlorine gas, typically less than 0.03 parts per million (ppm). Thus, limited mercury emissions are associated with the chlorine purification operation, as this level is achieved without any steps for mercury removal and is consistent with final mercury concentrations for well-controlled gaseous by-product hydrogen streams. In most instances, further cooling, compression, and liquefaction are conducted to obtain liquid chlorine.

Brine flows in a continuous loop through the mercury cells and the brine preparation system which provides clean saturated brine for electrolysis. An important function of the brine system is the removal of impurities naturally associated with salt such as calcium, iron, and aluminum. The presence of these elements can adversely affect cell efficiency. These impurities are removed by the addition of caustic and sodium carbonate which react to form metal precipitates that are removed by filtration. Subsequently, the brine is acidified to remove excess caustic, subjected to heat exchange for temperature adjustment, and returned to the mercury cells as clean saturated brine. Mercury exists in the brine system in the form of dissolved mercuric chloride and on the order of 3 to 25 ppm. The low vapor pressure of mercuric chloride, which is approximately 30 times lower than that of elemental mercury at 35°C, limits the potential for emissions of mercury from the brine system.

Because the caustic solution produced directly from the decomposer is commercial grade, the only additional treatment needed is mercury removal. The concentration of mercury in the caustic stream leaving the decomposer ranges from about 3 to 15 ppm. Mercury is removed by cooling and filtration. Residual mercury contained in the caustic product is typically around 0.06 ppm.

Hydrogen gas exiting a decomposer contains mercury vapor. A mercury-saturated hydrogen gas stream typically leaves a decomposer at a temperature over 200°F. The mercury concentration of this stream can be as high as 3,500 milligrams per cubic meter (mg/m^3). Accordingly, in most situations, each decomposer is equipped with an adjacent cooler through which the hydrogen gas stream is routed to condense mercury and return it to the mercury cell. After initial cooling, the hydrogen gas from each decomposer is collected into a common header. The combined gas is then treated for mercury with additional cooling and adsorption (or absorption) control equipment. The cleaned hydrogen gas is then either burned as fuel in a boiler, transferred to another process as a raw material, or vented directly to the atmosphere. Due to the mercury remaining in the treated stream, the by-product hydrogen stream is a point source of mercury air emissions.

Mercury cell chlor-alkali plants generate a variety of aqueous waste streams that contain mercury and are treated in a wastewater treatment system. These wastewaters originate from a variety of sources, ranging from wastewaters produced from cell room washdowns and cleanup activities to liquids or slurries produced from purged brine from the brine system and backwash water from the filtration equipment used for caustic purification.

Wastewater treatment applied at most mercury cell chlor-alkali plants entails three basic steps. First, sodium hydrosulfide is added to the wastewater (which contains both elemental mercury and mercury compounded as mercuric chloride) to form mercuric sulfide. This compound has a very low vapor pressure which practically eliminates the potential for mercury air emissions from wastewater treatment. Next, the mercuric sulfide is removed through precipitation and filtration which results in a liquid fraction and a mercuric sulfide filter cake. Any dissolved mercury contained in the liquid is removed by treatment in a carbon adsorber prior to being discharged in accordance with a plant's discharge permit. The wastewater treatment sludges produced, which consist mainly of the mercuric sulfide filter cake, are classified as hazardous under Resource Conservation and Recovery Act (RCRA) regulations (40 CFR part 261, subpart D). This waste, designated as K106, must be treated for mercury rembval prior to disposal or landfilling which generally means high temperature treatment.

2. Mercury Recovery Facilities

Nine mercury cell chlor-alkali plants have mercury recovery facilities on-site to recover elemental mercury from mercury-containing wastes. The wastes treated include those considered K106 wastes, as cited above, and debris and nondebris D009 wastes. The D009 wastes, as classified under RCRA regulations (40 CFR part 261, subpart D), are nonspecific mercury-containing wastes. Debris wastes include any contaminated material or item greater than 2½ inches in any one dimension, such as hardware, protective gear, piping, and equipment. Nondebris wastes include graphite from decomposers, cell room sump sludges, spent carbon media from carbon adsorption control devices, and other small solids.

The most commonly used process is thermal recovery (retorting), where mercury-containing wastes are heated to volatilize the mercury which is then condensed and recovered. Six plants each operate a mercury thermal recovery unit. In such a unit, mercury in wastes is driven to the vapor phase at temperatures over 1,000°F inside one or more retorts. The retort off-gas, which is rich in mercury vapor, is routed through cooling equipment to condense the mercury for recovery. However, because it is not possible to condense all of the mercury, the off-gas is typically routed through polishing control equipment to further reduce mercury before the stream is discharged to the atmosphere. This causes the mercury thermal recovery unit vent to be a point source of mercury air emissions. Mercury that never vaporizes and subsequently is neither condensed nor emitted remains in the retort ash, whose mercury content is limited by RCRA land disposal restrictions (40 CFR part 268, subpart E).

Mercury thermal recovery units can be classified, based on the type of retort used, as oven type units and non-oven type units. Three plants have batch oven retorts, and three plants have non-oven retorts (rotary kiln or single hearth). There are differences between the two types related to operating temperature and residence time. Oven retorts have lower operating temperatures (around 1,000°F) and substantially longer residence times (24 to 54 hours) than do kilns which operate at around 1,375°F with residence times approaching 3 hours.

Noteworthy among all six thermal recovery units is the relatively small volume of exhaust gas generated. Volumetric flow rates range from around 50 standard cubic feet per minute (scfm) on one oven type unit to 1,200 scfm on one non-oven type unit. Non-oven type units have higher volumetric flow rates with an average flow rate of 1,000 scfm and a median of 1,075 scfm than oven type units with an average of 130 scfm and a median of 100 scfm.

Two of the nine plants use a chemical process in which mercuric sulfide and elemental mercury in wastes are chemically transformed to mercuric chloride from which elemental mercury is then precipitated. This process differs from mercury thermal recovery in that it is an entirely liquid-phase operation. Moreover, owing to the low vapor pressure of mercuric chloride, the potential for mercury air emissions from this process is limited. Mercury that is not converted and recovered remains in the processed waste materials whose mercury content is limited by RCRA land disposal restrictions for nonthermal mercury recovery processes (40 CFR part 268, subpart E).

The ninth plant uses a batch purification still for recovering elemental mercury only from end-box residues which are high in mercury content. The system involves heating small batches of end-box residues to volatilize the mercury contained followed by a condenser for mercury recovery. This contrasts with thermal recovery units that treat large volumes of low mercury content wastes. The still is operated under vacuum such that the gas stream after the condenser is routed through two carbon adsorption beds in series to limit mercury air emissions. The system is used only a few times per year for 1 to 2 days at a time. Due to the small volumetric flow rate and mercury concentration of the vented stream and limited operation of the still, mercury air emissions are very low from recovery in the batch purification still.

Fugitive mercury emissions can occur due to leaking equipment, liquid mercury spills, or accumulations in many locations throughout mercury cell chlor-alkali production facilities and mercury recovery facilities, including areas of maintenance activities, liquid mercury collection and handling, and storage for mercury-containing wastes. Most of these sources are associated with cell rooms. Liquid mercury exposed to the atmosphere evaporates at a rate depending on temperature, air flow, and other variables. Methods of controlling fugitive mercury emissions include the containment of liquid mercury leaks, clean up of liquid mercury spills and accumulations, repair of equipment leaking liquid mercury, and containment of mercury-containing wastes under an aqueous liquid or in closed containers. Since liquid mercury can be visually identified, routine visual inspections are an effective method to detect these problems. Mercury vapor leaks, by comparison, are much more difficult to detect and typically result in higher emissions. Vapor leaks occur mostly at the decomposer and in the hydrogen system.

D. What are the Health Effects Associated With Mercury?

Mercury is highly toxic, persistent, and bioaccumulates in the food chain. Most people have some exposure to mercury as a result of normal daily activities. People may be exposed to mercury through inhalation of ambient air; consumption of contaminated food, water, or soil; and/or dermal exposure to substances containing mercury. Also, exposures occur as the result of dental amalgams and from various other sources.

Mercury is a naturally occurring element that is found in air, water, and soil in various inorganic and organic forms. The three primary forms of interest are elemental mercury, inorganic mercury, and methylmercury. As mercury moves through environmental media, it undergoes complex transformations.

Mercury emitted to the air from various types of sources (usually in elemental or inorganic forms) transports through the atmosphere and eventually deposits onto land or water bodies. Once deposited, natural processes can transform some of the mercury into methylmercury which is a highly toxic, more bioavailable form that biomagnifies in the aquatic food chain (such as in fish). Generally, fish consumption dominates the pathway for human and wildlife exposure to mercury.

Inhalation is the primary direct exposure route of concern for elemental mercury because this form strongly partitions to air. Absorption of elemental mercury vapor occurs rapidly through the lungs. Once absorbed, elemental mercury is readily distributed throughout the body; it crosses both placental and blood-brain barriers. The

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elemental mercury is oxidized to divalent mercury in most body tissues. Once elemental mercury crosses these barriers and is oxidized to divalent mercury, return to the general circulation is impeded, and mercury can be retained in brain tissue. Effects on the nervous system appear to be the most sensitive toxicological endpoint following exposure to elemental mercury. Exposures above the threshold level can result in tremors, nervousness, irritability, insomnia, memory loss, neuromuscular effects, headaches, and cognitive disturbances. Animal studies have demonstrated that exposure to elemental mercury can result in kidney damage. Exposure to elemental mercury during pregnancy can result in delayed onset of walking and talking. Also, lower *in utero* exposures have resulted in delays and deficits in learning abilities.

E. How Does This Action Relate to the Part 61 Mercury NESHAP?

We promulgated the National Emission Standard for Mercury on April 6, 1973 (40 CFR part 61, subpart E).[1] Those standards (hereafter referred to as the Mercury NESHAP) limit mercury reporting requirements and requirements that supplement existing RCRA provisions for the storage of mercury-containing wastes. While we cannot quantify the mercury emissions reductions that would be achieved by the proposed work practice standards, we are confident that their implementation would result in additional reductions in mercury emissions beyond that currently

B. What Are the Affected Sources and Emission Points To Be Regulated?

The proposed rule defines two affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities. The former includes all cell rooms and ancillary operations used in the manufacture of chlorine, caustic, and by-product hydrogen at a plant site. The latter includes all processes and associated operations

reconstructed, or existing mercury recovery facilities with non-oven type mercury thermal recovery units, the proposed limit is 4 mg/dscm. Additionally, we are proposing that a mercury concentration operating limit (based on elemental mercury) be established concurrent with the initial performance test for each mercury thermal recovery unit vent.

D. What Are the Work Practice

Visual inspections for liquid mercury spills or accumulations would be required twice per day. If a liquid mercury spill or accumulation is identified during an inspection, the owner or operator would need to initiate cleanup of the liquid mercury within 1 hour of its detection. Acceptable cleanup methods would include wet vacuum cleaning, washing to a trench or canal with an aqueous liquid cover, or a suitable alternative method approved

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elemental mercury is oxidized to divalent mercury in most body tissues. Once elemental mercury crosses these barriers and is oxidized to divalent mercury, return to the general circulation is impeded, and mercury can be retained in brain tissue. Effects on the nervous system appear to be the most sensitive toxicological endpoint following exposure to elemental mercury. Exposures above the threshold level can result in tremors, nervousness, insomnia, neuromuscular changes (such as weakness, muscle atrophy, and muscle twitching), headaches, polyneuropathy, and memory loss.

Inhalation and ingestion exposure routes are of interest for inorganic mercury because this form is found in air and other media such as soils and water. There is some limited information suggesting that about 40 percent of the inhaled inorganic mercury is absorbed. Absorption of inorganic mercury through the gastrointestinal tract varies with the particular mercuric salt involved. The portion that is absorbed remains in the body for a considerable length of time. The reported half-life of inorganic mercury in blood is about 20 to 66 days. There is no evidence that inorganic mercury is methylated to form methylmercury in the human body. The inorganic mercury has a limited capacity for penetrating the blood-brain or placental barriers. Limited data suggest that inorganic mercury is a possible human carcinogen. The most sensitive general systemic adverse effect due to exposure to inorganic mercury is the formation of autoimmune glomerulonephritis (that is, inflammation of the kidney).

Ingestion is the primary exposure route of interest for methylmercury. Dietary methylmercury is almost completely absorbed into the blood and distributed to all tissues, including the brain. It also readily passes through the placenta to the fetus and fetal brain. Methylmercury has a relatively long half-life in the human body (about 70 to 80 days). Neurotoxicity is the health effect of greatest concern with methylmercury exposure. The developing fetus is considered most sensitive to the effects from methylmercury. Therefore, women of child-bearing age are the population of greatest concern. During several poisoning incidents in Minamata, Japan, in the 1950's and Iraq in the 1970's, children born of women who were exposed to high doses of methylmercury during pregnancy through ingestion of contaminated fish or grain suffered neurological harms. These harms included death, cerebral palsy, or delayed onset of walking and talking. Also, lower *in utero* exposures have resulted in delays and deficits in learning abilities.

E. How Does This Action Relate to the Part 61 Mercury NESHAP?

We promulgated the National Emission Standard for Mercury on April 6, 1973 (40 CFR part 61, subpart E).[1] Those standards (hereafter referred to as the Mercury NESHAP) limit mercury emissions from mercury cell chlor-alkali plants as well as mercury ore processing facilities and sludge incineration and drying plants. Specifically, the Mercury NESHAP limits mercury emissions from mercury cell chlor-alkali plants to 2,300 grams per day and requires that mercury emissions be measured (in a one-time test) from hydrogen streams, end-box ventilation systems, and the cell room ventilation system. As an alternative to measuring ventilation emissions from the cell room to demonstrate compliance, the Mercury NESHAP allows an owner or operator to assume a ventilation emission value of 1,300 grams per day of mercury providing the owner/operator adheres to a suite of approved design, maintenance and housekeeping practices. Every mercury cell chlor-alkali plant currently in operation in the United States complies with the cell room ventilation provisions by carrying out these practices rather than by measuring mercury emissions discharged from the cell room. Since every plant uses the 1,300 grams per day assumed value for its cell room ventilation emissions, subtracting the 1,300 grams per day cell room value from the 2,300 grams per day plantwide standard effectively creates an emission limit for the combined emissions from hydrogen streams and end-box ventilation systems of 1,000 grams per day.

The requirements in today's proposed standards are more stringent than the requirements in the Mercury NESHAP. Using the 1,000 grams per day value as the baseline, we estimate that the mercury emissions would be reduced to less than 60 grams per day (on average) by the proposed rule. This represents about 94 percent reduction from the Mercury NESHAP baseline for vents. In addition, the work practice standards in today's proposal represent the most explicit compilation of practices currently employed by the industry, along with detailed recordkeeping and reporting requirements and requirements that supplement existing RCRA provisions for the storage of mercury-containing wastes. While we cannot quantify the mercury emissions reductions that would be achieved by the proposed work practice standards, we are confident that their implementation would result in additional reductions in mercury emissions beyond that currently achieved by the existing Mercury NESHAP.

We believe that every aspect of the Mercury NESHAP that applies to mercury cell chlor-alkali plants is addressed in today's proposed 40 CFR part 63, subpart IIIII. In fact, as discussed above, the proposed requirements are more stringent than the respective requirements in the Mercury NESHAP. Consequently, we believe that when mercury cell chlor-alkali plants are required to comply with the proposed rule as the promulgated, the requirements of the Mercury NESHAP that apply to them will no longer be relevant or applicable. Therefore, upon the proposed compliance date as indicated in § 63.8186 of the proposed rule, mercury cell chlor-alkali plants will no longer have any obligation to comply with the Mercury NESHAP, nor will they be allowed to comply with the Mercury NESHAP instead of the applicable provisions in the proposed 40 CFR part 63, subpart IIIII. Specifically, we are proposing that affected sources subject to the proposed rule would no longer be subject to §§ 61.52(a), 61.53(b) and (c), and 61.55(b), (c) and (d) of 40 CFR part 61, subpart E, after the compliance date which is proposed to be 2 years following the promulgation of the final rule.

II. Summary of the Proposed Standards

A. What Is the Source Category?

The source category is Chlorine Production. However, this proposal only applies to one type of chlorine production process—the mercury cell chlor-alkali process. Today's proposal applies to all plants engaged in the manufacture of chlorine and caustic in mercury cells. Other chlor-alkali cell types used to produce chlorine and caustic, such as diaphragm cell and membrane cell technologies, would not be covered by this proposed rule because they do not emit mercury. Emissions of chlorine and HCL from all chlorine production facilities are addressed in a separate action elsewhere in today's **Federal Register**.

[1] This regulatory program was originally set forth at 38 FR 8826, April 6, 1973; and amended at 40 FR 48302, October 14, 1975; 47 FR 24704, June 8, 1982; 49 FR 35770, September 12, 1984; 50 FR 46294, November 7, 1985; 52 FR 8726, March 19, 1987; and 53 FR 30972, September 23, 1988.

B. What Are the Affected Sources and Emission Points To Be Regulated?

The proposed rule defines two affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities. The former includes all cell rooms and ancillary operations used in the manufacture of chlorine, caustic, and by-product hydrogen at a plant site. The latter includes all processes and associated operations needed for mercury recovery from wastes.

Emission points addressed within mercury cell chlor-alkali production facilities include each mercury cell by-product hydrogen stream, each mercury cell end-box ventilation system vent, and fugitive emission sources throughout each cell room and various areas. Emission points addressed within mercury recovery facilities include each mercury thermal recovery unit vent and fugitive emission sources associated with storage areas for mercury-containing wastes.

C. What Are the Emission Limitations?

For new or reconstructed mercury cell chlor-alkali production facilities, the proposed rule would prohibit mercury emissions.

For existing mercury cell chlor-alkali production facilities with end-box ventilation systems, we are proposing that aggregate mercury emissions from all by-product hydrogen streams and end-box ventilation system vents not exceed 0.067 grams of total mercury emitted per megagram of chlorine produced (grams Hg/Mg Cl_2), or 1.3×10^{-4} pounds of total mercury per ton of chlorine produced (lb Hg/ton Cl_2). For existing mercury cell chlor-alkali production facilities without end-box ventilation systems, we are proposing that mercury emissions from all by-product hydrogen streams not exceed 0.033 grams Hg/Mg Cl_2, or 0.66×10^{-4} lb Hg/ton Cl_2. In addition, we are proposing that separate mercury concentration operating limits be established for each affected by-product hydrogen stream and each affected end-box ventilation system vent. The mercury concentration operating limits would be based only on elemental mercury, and each vent stream outlet would be continuously monitored for elemental mercury to show relative changes in mercury levels.

For new, reconstructed, or existing mercury recovery facilities with oven type mercury thermal recovery units, we are proposing that total mercury emissions not exceed 23 milligrams per dry standard cubic meter (mg/dscm) from each oven type unit vent. For new, reconstructed, or existing mercury recovery facilities with non-oven type mercury thermal recovery units, the proposed limit is 4 mg/dscm. Additionally, we are proposing that a mercury concentration operating limit (based on elemental mercury) be established concurrent with the initial performance test for each mercury thermal recovery unit vent.

D. What Are the Work Practice Standards?

We are proposing a set of work practice standards to address and mitigate fugitive mercury releases at mercury cell chlor-alkali plants. These provisions include specific equipment standards such as the requirement that end boxes either be closed (that is, equipped with fixed covers), or that end-box headspaces be routed to a ventilation system. Other examples include requirements that piping in liquid mercury service have smooth interiors, that cell room floors be free of cracks and spalling and coated with a material that resists mercury absorption, and that containers used to store liquid mercury have tight-fitting lids. The proposed work practice standards also include operational requirements. Examples of these include requirements to allow electrolyzers and decomposers to cool before opening, to keep liquid mercury in end boxes and mercury pumps covered by an aqueous liquid at a temperature below its boiling point at all times, to maintain end-box access port stoppers in good sealing condition, and to rinse all parts removed from the decomposer for maintenance prior to transport to another work area.

A cornerstone of the proposed work practice standards is the inspection program for equipment problems, leaking equipment, liquid mercury accumulations and spills, and cracks or spalling in floors and pillars and beams. Specifically, the proposed rule would require that visual inspections for equipment problems, such as end-box access port stoppers not securely in place, liquid mercury in open containers not covered by an aqueous liquid, or leaking vent hoses, be conducted twice each day (once every 12 hours). If a problem is found during an inspection, the owner or operator would need to take immediate action to correct the problem. Monthly inspections for cracking or spalling in cell room floors would also be required as well as semiannual inspections for cracks and spalling on pillars and beams. Any cracks or spalling found would need to be corrected within 1 month.

Visual inspections for liquid mercury spills or accumulations would be required twice per day. If a liquid mercury spill or accumulation is identified during an inspection, the owner or operator would need to initiate cleanup of the liquid mercury within 1 hour of its detection. Acceptable cleanup methods would include wet vacuum cleaning, washing to a trench or canal with an aqueous liquid cover, or a suitable alternative method approved upon petition.

In addition to cleanup, the proposed rule would require that an inspection of equipment in the area of the spill or accumulation be conducted to identify the source of the liquid mercury. If the source is found, the owner or operator would be required to repair the leaking equipment as discussed below. If the source is not found, the owner or operator would be required to reinspect the area every 6 hours until the source is identified or until no additional liquid mercury is found at that location.

Inspections of specific equipment for liquid mercury leaks would be required once per day. If leaking equipment is identified, the proposed rule would require that any dripping mercury be contained and covered by an aqueous liquid, and that a first attempt to repair leaking equipment be made within 1 hour of the time it is identified. The proposed rule would require that leaking equipment be repaired within 4 hours of the time it is identified, although there are provisions for delaying repair of leaking equipment for up to 48 hours.

Inspections for hydrogen gas leaks would be required twice per day (once each 12 hours). For a hydrogen leak at any location upstream of a hydrogen header, a first attempt at repair would be required within 1 hour of detection of the leaking equipment, and the leaking equipment would need to be repaired within 4 hours (with provisions for delay of repair if the leaking equipment is isolated). For a hydrogen leak downstream of the hydrogen header but upstream of final control, a first attempt at repair would be required within 4 hours, and complete repair would be required within 24 hours (with delay provisions if the header is isolated).

As a complement to the inspection program, the proposed rule also includes a requirement to institute a cell room monitoring program whereby owners and operators would continuously monitor mercury concentration in the upper portion of each cell room and take corrective actions as soon as practicable when elevated mercury vapor levels are

detected. The proposed rule does not include detailed requirements for this program. However, we do plan to develop specific criteria for such a program which would be issued either as guidance outside of the final rule or as an amendment to the final rule.

The program would not be a continuous monitoring system inasmuch as the results would be used only to determine relative changes in air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices at least to the levels required by the proposed rule, as required under § 63.6(e)(1)(i) of the NESHAP General Provisions. The proposed rule would require each owner and operator to prepare and implement a written startup, shutdown, and malfunction plan according to the operation and

emission limits, we are proposing that a performance test be conducted for each vent using Method 101 or 101A. Once again, the performance test would need to follow a site-specific test plan developed by the owner and operator according to § 63.7(c)(2) of the NESHAP General Provisions. The proposed rule would require that during the test, the type of waste resulting in the highest mercury concentration in the mercury

performance test, the proposed rule would require that a continuous mercury vapor monitor be used to measure elemental mercury concentration in the vent stream at least once every 15 minutes for the entire duration of each performance test run. The average elemental mercury concentration measured during any valid test run conducted during the performance test in which mercury

H. What Are the Notification and Reporting Requirements?

The proposed rule would require that owners or operators submit the following notifications and reports:

- Initial Notification
- Notification of Intent to conduct a performance test
- Notification of Compliance Status (NOCS)
- Compliance reports.

end-box ventilation system vents, and mercury thermal recovery unit vents include the following: performance test results, records showing the establishment of the applicable mercury concentration operating limits (including records of the mercury concentration monitoring conducted during the performance tests), records of the continuous mercury concentration monitoring data, records of the daily average elemental mercury

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detected. The proposed rule does not include detailed requirements for this program. However, we do plan to develop specific criteria for such a program which would be issued either as guidance outside of the final rule or as an amendment to the final rule.

The program would not be a continuous monitoring system inasmuch as the results would be used only to determine relative changes in mercury vapor levels rather than compliance with a cell room emission or operating limit. Generally, the owner or operator would need to establish an action level for each cell room which would be based on preliminary monitoring to determine normal baseline conditions. The action level, or levels if appropriate, would then be established as a yet to be determined multiple of the baseline values. Once the action level(s) is established, continuous monitoring would need to be conducted. If an action level is exceeded, actions to correct the situation would need to be initiated as soon as possible. If the elevated mercury vapor level is due to a maintenance activity, the owner or operator would need to ensure that all work practices related to that maintenance activity are followed. If a maintenance activity is not the cause, inspections and other actions would be needed to identify and correct the cause of the elevated mercury vapor level.

For fugitive mercury emissions associated with storage areas for mercury-containing waste, the proposed rule would require that carbon media from decomposers and cell room sludges either be stored in closed containers or be stored in open containers under a layer of aqueous liquid that is replenished at least once per week. For all other mercury-containing wastes, the proposed rule would require that the wastes either be washed or chemically decontaminated to remove visible mercury or be stored in closed containers.

Finally, the proposed rule would establish the duty for owners and operators to routinely wash surfaces throughout the plant where liquid mercury could accumulate. Owners and operators would be required to prepare and follow a written washdown plan detailing how and how often specific areas specified in the proposed rule would be washed down to remove any accumulations of liquid mercury.

E. What Are the Operation and Maintenance Requirements?

We are proposing that each owner and operator would always operate and maintain affected source(s), including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices at least to the levels required by the proposed rule, as required under § 63.6(e)(1)(i) of the NESHAP General Provisions. The proposed rule would require each owner and operator to prepare and implement a written startup, shutdown, and malfunction plan according to the operation and maintenance requirements in § 63.6(e)(3) of the NESHAP General Provisions.

F. How Are Initial and Continuous Compliance With the Emission Limitations To Be Demonstrated?

The proposed rule would require compliance with emission limitations within 2 years from [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

To demonstrate initial compliance with the proposed emission limits for by-product hydrogen streams and end-box ventilation system vents, we are proposing that each owner and operator would conduct performance tests and perform specified calculations. A test would be needed for each by-product hydrogen stream using 40 CFR part 61, appendix A, Method 102. A test would also be required for each end-box ventilation system vent using 40 CFR part 61, appendix A, Method 101 or 101A. Each performance test would be conducted in accordance with a site-specific test plan prepared pursuant to the performance test quality assurance program requirements in § 63.7(c)(2) of the NESHAP General Provisions. Each performance test would be comprised of at least three runs, each lasting 2 hours at a minimum. Concurrent with each test run, the quantity of chlorine produced would need to be determined according to an equation contained in the proposed rule that calculates chlorine production based on cell line electric current load. Then, the mass of mercury emitted per unit mass of chlorine produced would be calculated for each test run, and the runs would be averaged for each tested vent. Initial compliance would be achieved if the sum of the average mass of mercury emitted per mass of chlorine produced of all by-product hydrogen streams and all end-box ventilation system vents is less than 0.067 gm $Hg/Mg\ Cl_2$ for plants with end-box ventilation systems, or if the sum of the average mass of mercury emitted per mass of chlorine produced of all by-product hydrogen streams is less than 0.033 gm $Hg/Mg\ Cl_2$ for plants without end-box ventilation systems.

To demonstrate initial compliance with the mercury thermal recovery unit emission limits, we are proposing that a performance test be conducted for each vent using Method 101 or 101A. Once again, the performance test would need to follow a site-specific test plan developed by the owner and operator according to § 63.7(c)(2) of the NESHAP General Provisions. The proposed rule would require that during the test, the type of waste resulting in the highest mercury concentration in the mercury thermal recovery unit vent be processed. Documentation of the mercury content of this type of waste and an explanation of why it results in the highest mercury concentration would be required as part of the site-specific test plan. Three test runs would need to be conducted at a point after the last control device for each vent. Initial compliance would be achieved if the average vent mercury concentration is less than 23 mg/dscm for each oven type vent or 4 mg/dscm for each non-oven type vent.

To continuously comply with the emission limit for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit, we are proposing that each owner and operator would continuously monitor outlet elemental mercury concentration and compare the daily average results with a mercury concentration operating limit for the vent. This operating limit would be established during the required performance tests, as explained later in this section. Continuous compliance would be demonstrated by collecting outlet elemental mercury concentration data using a continuous mercury vapor monitor, calculating daily averages, and documenting that the calculated daily average values are no higher than established operating limits. Each daily average vent elemental mercury concentration greater than the established operating limit would be considered a deviation.

The proposed rule would require that each continuous mercury vapor monitor be installed, operated, and maintained in accordance with a site-specific monitoring plan. For each monitor, this plan would need to address installation and siting, monitor performance specifications, performance evaluation procedures and calibration criteria, ongoing operation and maintenance procedures, ongoing data assurance procedures, and ongoing recordkeeping and reporting procedures.

Owners or operators would establish a mercury concentration operating limit for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit vent as part of the initial compliance demonstration. During each performance test, the proposed rule would require that a continuous mercury vapor monitor be used to measure elemental mercury concentration in the vent stream at least once every 15 minutes for the entire duration of each performance test run. The average elemental mercury concentration measured during any valid test run conducted during the performance test in which mercury emissions did not exceed the applicable emission limit would then be established as the mercury concentration operating limit.

G. How Are Initial and Continuous Compliance With the Work Practice Standards To Be Demonstrated?

The proposed rule would require compliance with the work practice standards within 2 years from [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. The proposed work practice standards would primarily be requirements for ongoing operational activities. For these activities, there is no specific action called for to demonstrate initial compliance, other than a commitment by the owner or operator that the work practices standards will be met. Therefore, the major component of the initial compliance demonstration for the work practice standards would be a certification by the owner or operator that the work practice standards will be met. In addition, there are a few requirements that could cause an owner or operator to install new equipment or upgrade existing equipment. Documentation of any such actions would also be required in the initial compliance demonstration.

The proposed rule contains specific recordkeeping requirements related to the work practice standards. These include records of when inspections were conducted, problems identified, and actions taken to correct problems. Continuous compliance with work practice standards would be demonstrated by maintaining these required records.

Initial compliance with the washdown plan would be demonstrated by submission of the plan by the owner or operator and certification that they operate according to, or will operate according to, the plan. Continuous compliance with the plan would be demonstrated by maintaining related records. Records would also be required to demonstrate compliance with the cell room monitoring program.

H. What Are the Notification and Reporting Requirements?

The proposed rule would require that owners or operators submit the following notifications and reports:

- Initial Notification
- Notification of Intent to conduct a performance test
- Notification of Compliance Status (NOCS)
- Compliance reports.

For the Initial Notification, we are proposing that each owner or operator notify us that their plant is subject to the NESHAP for mercury cell chlor-alkali plants, and that they provide other basic information about the plant. For existing sources, this notification would need to be submitted no later than [DATE 120 CALENDAR DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

For the Notification of Intent report, we are proposing that each owner or operator notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin.

The Notification of Compliance Status for the work practice standards would be due [DATE 30 DAYS AFTER THE PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] for existing sources. In this notification, the owner or operator would need to certify that the work practice standards are being or will be met. Furthermore, we are proposing that the washdown plan be submitted as part of this notification, and that the owner or operator certify that they operate or will operate according to the plan.

For the emission limits where a performance test is required to demonstrate initial compliance (that is, the emission limits for by-product hydrogen streams and end-box ventilation system vents and the mercury thermal recovery unit vent limits), the tests would have to be conducted within 180 days after the compliance date, and the Notification of Compliance Status would be due 60 days after the completion of the performance test. We are proposing that the site-specific plan addressing the use of continuous mercury vapor monitors for vents be submitted as part of this notification.

Reporting on continuous compliance would be required semiannually, with the first report due within the first 6 months after initial compliance.

I. What Are the Recordkeeping Requirements?

Records required by the proposed rule related to by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents include the following: performance test results, records showing the establishment of the applicable mercury concentration operating limits (including records of the mercury concentration monitoring conducted during the performance tests), records of the continuous mercury concentration monitoring data, records of the daily average elemental mercury concentration values, and records associated with site-specific monitoring plans.

With regard to the work practice standards, the proposed rule would require that records be maintained to document when each required inspection was conducted and the results of each inspection. Records noting equipment problems (such as end-box cover stoppers not securely in place or mercury in an open container not covered by an aqueous liquid) identified during a required inspection and the corrective action taken would also be required. If equipment that is leaking mercury liquid or hydrogen/mercury vapor is identified during a required inspection or at any other time, the proposed rule would require records of when the leak was identified and when it was repaired. Similarly, if a mercury spill or accumulation is identified at any time, the proposed rule would require records of when the spill or accumulation was found and when it was cleaned up.

A copy of the current version of the washdown plan would need to be kept on-site and be available for inspection. Records of when washdowns were conducted would be required.

The proposed rule would require that copies of each notification and report that is submitted to comply with this subpart be kept and maintained for 5 years, the first 2 of which must be on-site.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category?

The mercury cell chlor-alkali production portion of the chlorine production source category was among the categories and subcategories of major and area sources listed for regulation under section 112(c)(6) of the CAA (63 FR 17838, April 10, 1998) to assure that sources accounting for not less than 90 percent of the aggregate mercury emissions nationwide are subject to standards under section 112(d). We estimate that mercury cell chlor-alkali production accounts for over 5 percent of all stationary source emissions of mercury and over 25 percent of the emissions from stationary noncombustion sources. The Chlorine Production source category is comprised of 43 facilities engaged in the manufacture of chlorine and caustic in electrolytic cells. Cell types employed include the diaphragm cell, membrane cell, and mercury cell. Of these, only the mercury cell process has the potential to emit mercury. For the 1997 base year of

described previously, each is a potentially significant source of mercury emissions. Chlorine purification, brine preparation, and wastewater treatment operations are believed to have low mercury emissions to the air. Accordingly, today's proposal contains no requirements for these operations.

Unit operations and emission points grouped within the mercury recovery facilities affected source include all mercury thermal recovery unit vents

Not unexpectedly, emissions data on cell room and waste storage emissions are very limited as in the case of cell rooms, or nonexistent as in the case of waste storage areas. As such, we believe that it is not feasible to either prescribe or enforce numerical emission limit(s) for fugitive mercury emissions from cell rooms and waste storage areas. Consequently, today's proposed standards address fugitive emission

1. By-Product Hydrogen Streams and End-Box Ventilation System Vents

The fundamental unit in the mercury cell chlor-alkali process is a mercury cell. The by-product hydrogen stream and the end-box ventilation system vent represent the mercury emission point sources that originate from a mercury cell. As discussed earlier, hydrogen gas is incidentally produced as a result of the catalyzed reaction of sodium/

these systems for purposes of establishing MACT.

Accordingly, we are proposing, for plants with end-box ventilation systems, a single emission limit for mercury emissions from all by-product hydrogen streams and mercury emissions from all end-box ventilation system vents in units of mass of mercury emissions per mass of chlorine produced. For plants without end-box ventilation systems, we are proposing an emission limit for

The MACT floor was calculated as follows. For each plant, we divided the sum of the reported annual mercury emissions from all by-product hydrogen streams and end-box ventilation system vents by the annual chlorine production. The chlorine production values used are largely representative of actual annual chlorine production levels. We then ranked the plants from lowest to highest emitters for combined normalized mercury emissions. The

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over 5 percent of all stationary source emissions of mercury and over 25 percent of the emissions from stationary noncombustion sources. The Chlorine Production source category is comprised of 43 facilities engaged in the manufacture of chlorine and caustic in electrolytic cells. Cell types employed include the diaphragm cell, membrane cell, and mercury cell. Of these, only the mercury cell process has the potential to emit mercury. For the 1997 base year of the MACT analysis, twelve facilities employed mercury cells. We are aware that one of the twelve facilities ceased operations permanently in September 2000. Nonetheless, we considered it to be part of the source category for the development of MACT since it was in operation in 1997.

B. How Did We Select the Affected Sources and Emission Points To Be Regulated?

For the purposes of implementing NESHAP, an affected source is defined to mean the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by relevant standards or other requirements established under section 112 of the CAA. An affected source specifies the group of unit operations, equipment, and emission points that are subject to the standards. We can define an affected source as narrowly as a single piece of equipment or as broadly as all equipment at a plant site.

We decided to separate the unit operations and emission points related to the production of chlorine and caustic from the unit operations and emissions points related to mercury recovery. Mercury cell chlor-alkali production facilities include a number of integrated operations dedicated to the production, storage, and transfer of product chlorine, product caustic, and by-product hydrogen. In contrast, mercury recovery facilities are operations dedicated to the recovery of mercury from mercury-containing wastes. These operations are independent of the chlor-alkali process and are thus not integral to production. As a result, the proposed rule addresses emissions from two separate affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities.

Unit operations and emission points grouped within the mercury cell chlor-alkali production facilities affected source are by-product hydrogen streams, end-box ventilation system vents, and fugitive mercury emissions associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes. As described previously, each is a potentially significant source of mercury emissions. Chlorine purification, brine preparation, and wastewater treatment operations are believed to have low mercury emissions to the air. Accordingly, today's proposal contains no requirements for these operations.

Unit operations and emission points grouped within the mercury recovery facilities affected source include all mercury thermal recovery unit vents and fugitive mercury emissions associated with mercury-containing waste storage areas. Chemical mercury recovery and recovery in a batch purification still are believed to have low mercury emissions to the air. Accordingly, today's proposal contains no requirements for these operations.

C. How Did We Select the Form of the Standards?

Section 112 of the CAA requires that standards be specified as numerical emission standards, whenever possible. However, if it is determined that it is not feasible to prescribe or enforce a numerical emission standard, section 112(h) indicates that a design, equipment, work practice, or operational standard may be specified.

With the exception of standards for fugitive emission sources, we are proposing numerical emission limits for all other mercury emission sources. Specifically, the proposed standards include numerical emission limits for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents.

Cell rooms bring together mercury, a large electrical load, and hot production equipment. Accordingly, most fugitive mercury emission sources at mercury cell chlor-alkali plants are associated with cell rooms. Reliable quantification of these cell room fugitive emissions would be costly, owing to the need to measure both mercury vapor concentration and air flow rate at ceiling apertures with sophisticated equipment. Some plants have many separate ceiling apertures, and plants in warm climates tend to be little enclosed on the sides. Moreover, levels of fugitive mercury vary with cell room operations, precluding the setting of a numerical limit.

Mercury cell chlor-alkali plant fugitive mercury emission sources are also associated with storage areas for mercury-containing wastes. The measurement of mercury emissions from mercury-containing waste storage areas is also impracticable as these are usually located in several places throughout a plant, many of which are open areas.

Not unexpectedly, emissions data on cell room and waste storage emissions are very limited as in the case of cell rooms, or nonexistent as in the case of waste storage areas. As such, we believe that it is not feasible to either prescribe or enforce numerical emission limit(s) for fugitive mercury emissions from cell rooms and waste storage areas. Consequently, today's proposed standards address fugitive emission sources at mercury cell chlor-alkali plants through the establishment of work practice standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing Sources?

Section 112 of the CAA establishes a minimum baseline or "floor" for MACT standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources may be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best-performing five sources for categories or subcategories with fewer than 30 sources for which the Administrator has emissions information.

After the floor has been determined for a category or subcategory, the Administrator must set MACT standards that are technically achievable and no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate emission limits may be established for new and existing sources.

The EPA generally determines the MACT floor and then considers beyond-the-floor control options. Here, EPA considers the achievable reductions in emissions of HAP (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other non-air environmental impacts. The objective is to achieve the maximum degree of HAP emission reduction without incurring unreasonable cost or other impacts.

1. By-Product Hydrogen Streams and End-Box Ventilation System Vents

The fundamental unit in the mercury cell chlor-alkali process is a mercury cell. The by-product hydrogen stream and the end-box ventilation system vent represent the mercury emission point sources that originate from a mercury cell. As discussed earlier, hydrogen gas is incidentally produced as a result of the catalyzed reaction of sodium/mercury amalgam and deionized water to produce caustic in a decomposer. The end-box ventilation stream is a collection of vapors from head spaces of end boxes and possibly other vessels, including pump tanks and seal legs, wash water tanks, and caustic tanks and headers. The mercury content of the by-product hydrogen stream and the end-box ventilation stream, prior to control, is a direct function of the design of the mercury cell. Ten different mercury cell models are used by the twelve mercury cell chlor-alkali plants. Given these differences in cell design and their effect on potential vent mercury emissions, we opted to develop a cell-wide standard for mercury emissions from both points.

Given the large variation among the plants in terms of production capacity (the largest plant is capable of producing over five times as much chlorine as the smallest) and mercury emissions potential, we concluded that any equitable assessment of MACT should account for this disparity. We selected the actual amount of chlorine produced by weight as the uniform parameter for our analysis for the following reasons: Chlorine is the primary product generated; chlorine production can be accurately determined; and chlorine and hydrogen are generated in the same stoichiometric quantities, that is one molecule of hydrogen is produced for each molecule of chlorine produced.

We then considered the fact that two plants do not have end-box ventilation systems. Both plants operate cells with closed end boxes. Consequently, there is no need for end-box ventilation and, therefore, no end-box ventilation system emission point. Next, we examined whether the mercury cells at the ten plants equipped with end-box ventilation systems could be reconfigured with closed end boxes. We concluded that the use of an end-box ventilation system is an inherent feature of the original design of a cell, and that it is not technically feasible to eliminate end-box ventilation systems at these plants. We have, therefore, decided to distinguish plants with end-box ventilation systems and plants without these systems for purposes of establishing MACT.

Accordingly, we are proposing, for plants with end-box ventilation systems, a single emission limit for mercury emissions from all by-product hydrogen streams and mercury emissions from all end-box ventilation system vents in units of mass of mercury emissions per mass of chlorine produced. For plants without end-box ventilation systems, we are proposing an emission limit for mercury emissions from all by-product hydrogen streams in units of mass of mercury emissions per mass of chlorine produced.

• Emission Limit for Plants With End-Box Ventilation Systems

In order to establish MACT for the combined mercury emissions from by-product hydrogen streams and end-box ventilation system vents, we relied on estimates of annual mercury emissions for each vent and information on annual chlorine production provided by the ten plants with end-box ventilation systems. A total of twenty mercury emission estimates were provided, one emission estimate for all by-product hydrogen streams and one emission estimate for all end-box ventilation system vents at each of the ten plants. Background information on these emission estimates is available in the docket to this rulemaking (No. A–2000–32).

Of the twenty emission estimates, fourteen (six for by-product hydrogen streams and eight for end-box ventilation system vents) are based on stack tests performed in accordance with established EPA reference methods specific to chlor-alkali plants. These include Method 101 for the determination of particulate and gaseous mercury from air streams (i.e., end-box ventilation system vents) and Method 102 for the determination of mercury in hydrogen streams. We obtained and reviewed copies of all available test reports and determined that the tests were conducted correctly. Six emission estimates (four for by-product hydrogen streams and two for end-box ventilation system vents) are based on periodic measurements of mercury concentration in the vent streams. The methods used for these periodic measurements are largely modifications of EPA reference test methods. As such, we believe that they provide reasonably accurate results consistent with what would otherwise be obtained with the EPA reference test methods. Our conclusion is that these data represent the best information available on mercury emissions from these vents, and that they are appropriate for use in establishing MACT.

The MACT floor was calculated as follows. For each plant, we divided the sum of the reported annual mercury emissions from all by-product hydrogen streams and end-box ventilation system vents by the annual chlorine production. The chlorine production values used are largely representative of actual annual chlorine production levels. We then ranked the plants from lowest to highest emitters for combined normalized mercury emissions. The normalized mercury emission values range from 0.067 grams Hg/Mg Cl_2 to 3.41 grams Hg/Mg Cl_2. We should note that the lowest value, 0.067 grams Hg/Mg Cl_2, is from the plant that closed permanently in September 2000. Nonetheless, we believe that it is appropriate to retain it in the pool of existing sources used to determine existing source MACT. Prior to closure, this plant was the lowest-emitting and best-performing source. The average (mean) of the best (lowest) five normalized values results in a floor value for existing sources of 0.14 grams Hg/Mg Cl_2.

Of the ten plants with by-product hydrogen streams and end-box ventilation systems, we project that seven would need to install additional controls or upgrade existing controls to meet the 0.14 grams Hg/Mg Cl_2 floor level. We assume the following plant-specific actions: Two plants would need to install new carbon adsorbers on their by-product hydrogen streams (one plant would be replacing an existing adsorber with a new, larger adsorber); one plant would need to install a new packed scrubber on its end-box ventilation system vent; three plants would need to install new controls on both their by-product hydrogen streams and end-box ventilation system vents; and one plant would need to both upgrade carbon adsorber control on its by-product hydrogen stream by switching to impregnated carbon and replacing carbon more frequently as well as install a new packed scrubber on its end-box ventilation system vent.

We estimate that the total aggregate installed capital control costs needed to meet the existing source MACT floor for the seven affected plants to be about $660,000. We estimate total aggregate annual control costs, including costs for labor, materials, electricity, capital recovery, taxes, insurance, and administrative charges (excluding costs for monitoring, reporting, and recordkeeping) for the seven affected plants to be about $570,000 per year. Mercury emission reductions against actual emissions would total 556 kg/yr (1,225 lbs/yr) for the seven affected plants. Mercury emission reductions

against the potential-to-emit baseline, as represented by the allowable emissions under the Mercury NESHAP, would total over 3,400 kg/yr (over 7,500 lbs/yr) for the seven affected plants. The associated annual cost per unit of mercury emission reduction values would be approximately $465 per pound (actuals baseline) and under $80 per pound (potential-to-emit baseline), respectively.

respectively), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. We project that the nine plants with baseline emissions greater than 0.067 grams Hg/Mg Cl_2 would meet the 0.067 grams Hg/Mg Cl_2 beyond-the-floor option through the installation of new controls or the upgrading of existing controls. We assume the following plant-specific actions: two

in total. The incremental secondary air pollution impacts are estimated to total 35 Mg/yr (39 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted. Further, we believe that the incremental costs of achieving such emission reductions, as well as

emissions from by-product hydrogen streams and information on actual chlorine production provided by the two plants for 1997. Both emission estimates are based on periodic measurements of mercury concentration in the vent streams obtained using methods that are largely modifications of EPA reference test methods. Background information on these emission estimates is available in the

quality health and environmental impacts and energy requirements. The beyond-the-floor option would result in an additional 6 kg/yr (14 lb/yr) of total mercury emission reductions (a 47 percent incremental reduction from the floor option). The incremental installed capital costs are estimated to total around $182,000. The incremental annual costs are estimated to total around $126,000 per year. The

relative to the frequency and scope of inspections, as well as recordkeeping and reporting. We decided that clarification and elaboration on these general practices was warranted to make them more explicit and to improve assurance of compliance. Accordingly, we initiated a thorough examination of specific measures employed across the industry to limit fugitive mercury emissions.

In the summer of 1998, we conducted

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against the potential-to-emit baseline, as represented by the allowable emissions under the Mercury NESHAP, would total over 3,400 kg/yr (over 7,500 lbs/yr) for the seven affected plants. The associated annual cost per unit of mercury emission reduction values would be approximately $465 per pound (actuals baseline) and under $80 per pound (potential-to-emit baseline), respectively.

Water pollution impacts due to the increased use of packed bed scrubbers involving aqueous hypochlorite scrubbing solution on end-box ventilation systems are estimated to total 1.2 million liters (320 thousand gallons) of additional wastewater. Impacts on solid waste due to increased use of carbon adsorption for by-product hydrogen streams are estimated to total 17 megagrams per year (Mg/yr), 19 tons per year (tpy), of mercury-containing spent carbon. Energy requirements are estimated to total an additional 878 thousand kilowatt-hours per year (kW-hr/yr). Estimated secondary air pollution impacts due to heightened energy consumption total 282 Mg/yr (311 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We then examined beyond-the-floor MACT options. We selected the lowest normalized value among the ten plants, namely 0.067 grams Hg/Mg Cl_2, as a beyond-the-floor option. As noted above, this 0.067 grams Hg/Mg Cl_2 value is from a plant that is now closed. Nonetheless, as stated previously, we believe it is appropriate to retain it in the pool of existing sources and to include it in the beyond-the-floor assessment.

The 0.067 grams Hg/Mg Cl_2 value corresponds to 0.05 grams Hg/Mg Cl_2 from the by-product hydrogen stream controlled by a condenser coupled with a molecular sieve adsorber, and 0.017 grams Hg/Mg Cl_2 from the end-box ventilation system vent, also controlled by a condenser coupled with a molecular sieve adsorber. It is our understanding that molecular sieve technology for mercury vapor emission control is no longer commercially available. We, thus, acknowledge some uncertainty associated with the achievability of this level of control. However, for the reasons set forth below, we believe that other technologies and operating practices exist that can achieve this level of emissions control.

Due to the very low volumetric flow rates associated with both by-product hydrogen streams and end-box ventilation system vents (typically less than 5,000 scfm and 4,500 scfm, respectively), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. We project that the nine plants with baseline emissions greater than 0.067 grams Hg/Mg Cl_2 would meet the 0.067 grams Hg/Mg Cl_2 beyond-the-floor option through the installation of new controls or the upgrading of existing controls. We assume the following plant-specific actions: two plants would need to install new carbon adsorbers on their by-product hydrogen streams (one plant would be replacing an existing adsorber with a new, larger adsorber); three plants would need to install a new packed scrubber on their end-box ventilation system vents; three plants would need to install new controls on both their by-product hydrogen streams and end-box ventilation system vents; and one plant would need to both upgrade existing carbon adsorber control on its by-product hydrogen stream by switching to impregnated carbon and replacing carbon more frequently as well as install a new packed scrubber on its end-box ventilation system vent. We project that the five new carbon adsorbers would need to accommodate a 25 percent higher carbon charge than assumed to meet the floor option. Upgrades to existing carbon adsorber control would involve more frequent carbon replacement than that assumed to meet the floor option. Five of the seven new packed scrubbers on end-box ventilation systems would need to be operated more efficiently than assumed to meet the floor option.

In evaluating regulatory options that are more stringent than the floor, we must consider the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements. The beyond-the-floor option would result in an additional 76 kg/yr (168 lb/yr) of total mercury emission reductions for the nine affected plants (a 48 percent incremental reduction from the floor option). For the nine affected plants, the incremental installed capital costs are estimated to total around $210,000, and the incremental annual costs are estimated to total around $150,000 per year. The incremental cost per unit of incremental mercury emission reduction is $900 per pound.

The incremental water pollution impacts are estimated to total 550 thousand liters (145 thousand gallons) of additional wastewater. The incremental solid waste impacts are estimated as 5.1 Mg/yr (5.6 tpy) of mercury-containing spent carbon in total. The incremental energy impacts are estimated as 110 thousand kW-hr/yr in total. The incremental secondary air pollution impacts are estimated to total 35 Mg/yr (39 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted. Further, we believe that the incremental costs of achieving such emission reductions, as well as incremental non-air environmental impacts and energy requirements, are reasonable for mercury. Therefore, we selected the 0.067 grams Hg/Mg Cl_2 beyond-the-floor option as MACT for plants with end-box ventilation systems.

If comments are received on this proposal that lead us to conclude that this level of control is unachievable, we retain the option of setting the standard at the next lowest normalized emission value. Accordingly, we have evaluated the impacts of an alternative 0.076 grams Hg/Mg Cl_2 mercury emission limit for plants with end-box ventilation systems.

We project that the eight plants with baseline emissions greater than 0.076 grams Hg/Mg Cl_2 would need to install new controls or upgrade existing controls to meet this level. This would result in an additional 65 kg/yr (143 lb/yr) of total mercury emission reductions for the eight affected plants (a 41 percent incremental reduction) from the floor option. We assume the same plant-specific actions as those assumed to meet the 0.067 grams Hg/Mg Cl_2 value, given the small difference in emission reductions at the two levels. For the eight affected plants, the incremental installed capital costs are estimated to total around $197,000, and the incremental annual costs are estimated to total around $125,000 per year. The incremental cost per unit of incremental mercury emission reduction is $875 per pound.

The incremental water pollution impacts are estimated to total 317 thousand liters (84 thousand gallons) of additional wastewater. The incremental solid waste impacts are estimated as 5.1 Mg/yr (5.6 tpy) of mercury-containing spent carbon in total. The incremental energy impacts are estimated as 105 thousand kW-hr/yr in total. The incremental secondary air pollution impacts are estimated to total 34 Mg/yr (37 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

• Emission Limit for Plants Without End-Box Ventilation Systems

In order to establish MACT for mercury emissions from by-product hydrogen streams for the two plants without end-box ventilation systems, we used estimates of annual mercury

emissions from by-product hydrogen streams and information on actual chlorine production provided by the two plants for 1997. Both emission estimates are based on periodic measurements of mercury concentration in the vent streams obtained using methods that are largely modifications of EPA reference test methods. Background information on these emission estimates is available in the docket to this rulemaking (No. A–2000–32).

For each plant, we divided the reported annual mercury emissions from by-product hydrogen streams by the annual chlorine production. The normalized values are 0.033 grams Hg/Mg Cl_2 and 0.17 grams Hg/Mg Cl_2. Although there are fewer than five sources from which to constitute a MACT floor, we opted to take the average (mean) of the two normalized values, resulting in 0.10 grams Hg/Mg Cl_2 as the floor value for existing sources. We project that the higher emitting plant would need to upgrade existing controls to meet the 0.10 grams Hg/Mg Cl_2 floor level. Specifically, the carbon in its existing carbon adsorbers would need to be replaced more frequently. There would be no capital costs as more frequent carbon media replacement is only a recurring annual cost estimated at $13,000 per year. Mercury emission reductions against actual emissions would total 6 kg/yr (14 lbs/yr). Mercury emission reductions against the potential-to-emit baseline, as represented by the allowable emissions under the Mercury NESHAP, would total over 600 kg/yr (over 1,300 lbs/yr). The associated annual cost per unit of mercury emission reduction values would be approximately $940 per pound and less than $10 per pound, respectively. There are no associated secondary air pollution, water pollution, or energy impacts. Estimated solid waste impacts due to increased use of carbon adsorption total 1.0 Mg/yr (1.1 tpy).

We then examined beyond-the-floor MACT options. We selected the lowest normalized value among the two plants, namely 0.033 grams Hg/Mg Cl_2, as a beyond-the-floor option. Controls applied to achieve this value include a condenser coupled with a carbon adsorber. For purposes of estimating impacts, we assumed that the higher-emitting plant would replace its existing carbon adsorber with a new, larger adsorber to meet the 0.033 grams Hg/Mg Cl_2 level.

In evaluating regulatory options that are more stringent than the floor, we must consider the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements. The beyond-the-floor option would result in an additional 6 kg/yr (14 lb/yr) of total mercury emission reductions (a 47 percent incremental reduction from the floor option). The incremental installed capital costs are estimated to total around $182,000. The incremental annual costs are estimated to total around $126,000 per year. The incremental cost per unit of incremental mercury emission reduction is approximately $9,000 per pound. There are no associated incremental water pollution impacts. The estimated incremental solid waste impacts total an additional 5.3 Mg/yr (5.8 tpy) of mercury-containing spent carbon. The incremental energy impacts are estimated as 252 thousand kW-hr/yr in total. The incremental secondary air pollution impacts are estimated to total 81 Mg/yr (89 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted. Further, we believe that the incremental costs of achieving such emission reductions as well as incremental non-air environmental impacts and energy requirements are reasonable for mercury. Therefore, we selected the 0.033 grams Hg/Mg Cl_2 level as MACT for plants without end-box ventilation systems, which is approximately half the level selected for plants with end-box ventilation systems.

2. Sources of Fugitive Mercury Emissions

As explained above, we have determined that work practice standards provide the most appropriate approach for addressing fugitive mercury emissions at mercury cell chlor-alkali plants. Every mercury cell chlor-alkali plant is currently subject to the Mercury NESHAP and implements the design, maintenance, and housekeeping practices referenced in the NESHAP to control fugitive cell room emissions. We believe that these existing requirements represent the MACT floor for existing mercury fugitive emission sources. Since these floor requirements are currently observed at each existing plant, a standard based on this floor level of control would not be expected to reduce mercury emissions from current levels or produce any associated cost, non-air environmental or energy impacts.

We then examined beyond-the-floor options. We noted that many of the existing work practice requirements are general in nature and nonspecific relative to the frequency and scope of inspections, as well as recordkeeping and reporting. We decided that clarification and elaboration on these general practices was warranted to make them more explicit and to improve assurance of compliance. Accordingly, we initiated a thorough examination of specific measures employed across the industry to limit fugitive mercury emissions.

In the summer of 1998, we conducted site visits to five mercury cell chlor-alkali plants to observe and document their design, operational, maintenance, housekeeping, and recordkeeping practices. The five plants were selected to provide a broad representation of ownership (the five plants are owned by five different companies) and different mercury cell models (mercury cells made by all three manufacturers and of varying sizes are represented). We also selected plants in different areas of the United States (U.S.) to account for geographical variations such as climate. In addition to the site visits, we obtained current standard operating procedures for mitigating sources of fugitive mercury emissions from all twelve plants. We used this knowledge and information to develop a detailed compilation of practices currently used across the industry to control fugitive mercury emissions.

We used this compilation to identify explicit practices for each individual plant area, equipment type, and inspection procedure and assembled them as beyond-the-floor work practice requirements. We feel that the resulting work practice standards represent the most stringent practices applied in the industry.

The types of enhancements from the MACT floor level requirements that are included in the beyond-the-floor option may be generally classified in three categories. First, the beyond-the-floor requirements add considerable specificity. The equipment and areas to be inspected are identified along with the required frequency of the inspections and the conditions that trigger corrective action. Response time intervals for when the corrective actions must occur are also included. Second, some types of inspections are required at more frequent intervals than required by the Mercury NESHAP (e.g., inspecting decomposers for hydrogen leaks once each 12 hours rather than once each day). Third, the beyond-the-floor option includes additional requirements not included in the floor level. The two most obvious examples are the detailed recordkeeping procedures and reporting provisions which are more fully developed than

those in the Mercury NESHAP and the requirements for storage of mercury-containing wastes.

Also included in the beyond-the-floor option is a requirement for owners and operators to develop and implement a plan for the routine washdown of accessible surfaces in the cell room and other areas. All plants currently wash down cell room surfaces regularly. However, due to plant-specific

and correct situations resulting in elevated mercury levels (and obviously, increased mercury emissions) as part of the beyond-the-floor option for fugitive mercury emission sources. We considered basing such a program on periodic measurement, which would correspond to the programs currently in place at mercury cell chlor-alkali plants. We also considered basing such a program on the continuous

vapor spectroscopy system or an open-path, differential optical absorption spectroscopy system, would be at the discretion of the owner or operator, provided that performance criteria, such as a minimum detection limit, were met. A sampling configuration would be specified to acquire a composite measurement representative of the entire cell room air. For example, the sampling configuration may involve

beyond-the-floor option, we attempted to estimate the cost associated with the equipment needed to carry out cell room monitoring as well as increased demand for labor and overhead needed to fully implement the proposed monitoring, inspection, recordkeeping, and reporting activities. We estimate the total installed capital costs needed to meet the beyond-the-floor option for fugitive mercury emissions to be around $663,000. We estimate the total annual

rulemaking steps as necessary to fully implement this program, including assuring opportunity for industry and the public to comment.

3. Mercury Thermal Recovery Unit Vents

As previously discussed, nine of the twelve mercury cell chlor-alkali plants have mercury recovery processes. Six of the nine plants operate a thermal recovery unit in which mercury-

The rotary kilns are long, refractory-lined rotating steel cylinders in which the waste charge to be treated flows counter current to hot combustion gases used for heating. Wastes to be treated are conveyed into a ram feeder which inserts a waste charge into the kiln at regular intervals, typically about every 5 minutes. Each is directly fired with natural gas and is heated to over 1,300°F. The rotation of the kiln provides for mixing and transfer of the

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those in the Mercury NESHAP and the requirements for storage of mercury-containing wastes.

Also included in the beyond-the-floor option is a requirement for owners and operators to develop and implement a plan for the routine washdown of accessible surfaces in the cell room and other areas. All plants currently wash down cell room surfaces regularly. However, due to plant-specific considerations, we are uncomfortable with issuing a specific set of requirements for washdowns that would apply at all plants. As a result, the beyond-the-floor option establishes the duty for owners or operators to prepare and implement a written plan for washdowns and identifies elements to be addressed in the plan. Although washdowns are an ongoing practice at all plants, we believe that including such a requirement in the beyond-the-floor option will elevate the importance of washdowns as part of an overall approach to reducing cell room fugitive emissions.

As a final element of the beyond-the-floor option, we considered the extent to which measurement of ambient mercury levels in the cell room air should be incorporated. Currently, all mercury cell chlor-alkali plants periodically monitor mercury vapor levels at the cell room floor plane, in keeping with Occupational Safety and Health Administration (OSHA) standards for worker exposure to mercury. Typically, on a daily basis, a plant operator measures and records the mercury vapor level in the cell room. Some plants use technologies that measure the mercury vapor level at a single point, such as portable mercury vapor analyzers based on ultraviolet light absorption or gold film amalgamation detection. Plant operators using these technologies take readings at specified locations in the cell room. Other plants utilize procedures that provide an aggregate reading, such as chemical absorption into potassium permanganate solution followed by separate cold vapor atomic absorption analysis in a laboratory setting. This composite sample is most often obtained by a plant operator walking through the cell room with a small sampling pump.

When a mercury vapor level above the OSHA personal exposure limit is measured, plant operators require the use of respirators in the area. They also take action to determine and eliminate the cause of the elevated mercury level.

Given the fact that all plants conduct cell room mercury vapor measurements, we determined that it was appropriate to include requirements to conduct cell room monitoring as a means to identify and correct situations resulting in elevated mercury levels (and obviously, increased mercury emissions) as part of the beyond-the-floor option for fugitive mercury emission sources. We considered basing such a program on periodic measurement, which would correspond to the programs currently in place at mercury cell chlor-alkali plants. We also considered basing such a program on the continuous measurement of mercury vapor levels in the upper portions of the cell room. We are aware of technologies, including extractive, cold vapor spectroscopy systems and open-path, differential optical absorption spectroscopy systems, designed for such continuous monitoring applications. In August of 2000, we studied cell room mercury vapor levels at a U.S. mercury cell chlor-alkali plant using both extractive and open-path technologies. In addition, we are aware of extractive systems currently in use in Europe for this purpose.

Upon consideration of the benefits of periodic versus continuous monitoring of the cell room mercury vapor levels, we selected continuous monitoring as part of the proposed cell room monitoring program for the following reasons. First, we believe that continuous monitoring would identify hydrogen leaks or other situations that result in elevated mercury levels in the cell room much more promptly than periodic monitoring. If periodic monitoring was conducted on a daily basis, hours could pass before such a leak was detected. We also believe that the continuous monitoring of mercury vapor levels during maintenance activities would provide information to help plant operators refine and improve such maintenance activities to reduce mercury emissions.

Finally, we believe that the monitoring on the cell room floor plane could fail to detect hydrogen leaks or other situations resulting in mercury vapor leaks that may occur at higher elevations. Continuous monitoring in the upper portion of the cell room would provide a representation of all areas of the cell room at all levels.

Therefore, we have included a program involving the continuous monitoring of mercury vapor levels in the cell room as part of the beyond-the-floor option. We envision the basic elements for this program to be as follows. Each owner or operator would be required to install a mercury monitoring system in each cell room and continuously monitor the elemental mercury concentration in the upper portion of the cell room. The type of technology, whether an extractive, cold vapor spectroscopy system or an open-path, differential optical absorption spectroscopy system, would be at the discretion of the owner or operator, provided that performance criteria, such as a minimum detection limit, were met. A sampling configuration would be specified to acquire a composite measurement representative of the entire cell room air. For example, the sampling configuration may involve sampling at least three points along the center aisle of the cell room and above the mercury cells at a height sufficient to ensure representative readings.

For each cell room, the owner or operator would need to establish an action level which would be based on preliminary monitoring to determine normal baseline conditions. The onset and duration of this preliminary monitoring would be specified as well as guidelines for setting the action level. Continuous monitoring would commence after a specified time period following establishment of the action level and its documentation in a notification to us. A minimum data acquisition requirement would be established, such as a requirement to collect and record data for at least a certain percent of the time in any 6-month period.

Actions to correct the situation as soon as possible would be required when measurements above the action level were obtained over a defined duration, such as a certain number of consecutive measurements or an average over a certain time period above the action level. If the elevated mercury vapor level was due to a maintenance activity, the owner or operator would need to keep records describing the activity and verifying that all work practices related to that maintenance activity are followed. If a maintenance activity was not the cause, then inspections and other actions would need to be conducted within specific time periods to identify and correct the cause of the elevated mercury vapor level.

In evaluating whether to establish the beyond-the-floor option as MACT, we looked at the incremental impacts on emissions, cost, energy, and other non-air effects. Relative to emissions, we firmly believe that although we are unable to actually quantify the reductions expected with the implementation of the beyond-the-floor option, substantial reductions would nonetheless occur. We know from experience and inference that the added scrutiny inherent in the suite of beyond-the-floor practices will of necessity result in fewer fugitive emissions. In considering the cost impacts of the beyond-the-floor option, we attempted to estimate the cost associated with the equipment needed to carry out cell room monitoring as well as increased demand for labor and overhead needed to fully implement the proposed monitoring, inspection, recordkeeping, and reporting activities. We estimate the total installed capital costs needed to meet the beyond-the-floor option for fugitive mercury emissions to be around $663,000. We estimate the total annual costs to be around $840,000 per year, consisting of about $94,000 for annualized capital expenditure on mercury monitoring systems; about $736,000 per year for labor for monitoring, inspections, and recordkeeping, about $2,100 per year for mercury monitoring system utilities, and about $7,500 per year for mercury monitoring system replacement parts. We are unable to estimate increases in wastewater associated with washdown and cleanup activities for liquid mercury spills and accumulations as well as increases in solid waste since these would be highly plant-specific. Energy requirements for mercury monitoring systems are estimated to total an additional 53 thousand kW-hr/yr. Estimated secondary air pollution impacts due to heightened energy consumption total 17 Mg/yr (19 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted and that the estimated incremental costs to meet this level are reasonable. Therefore, we are selecting the beyond-the-floor work practice standards as MACT for fugitive mercury emission sources.

With regard to the cell room monitoring program, we acknowledge that there are uncertainties associated with the use of mercury monitoring systems for continuous monitoring that can only be addressed through actual field validation. We are specifically requesting comment on the feasibility of using such systems for continuous monitoring to prompt corrective actions for elevated mercury vapor levels in the cell room. We are also requesting comment on the detailed elements of the cell room monitoring program which we are unable to delineate in its entirety at this time.

Following proposal, we will involve the public in defining this program. Specifically, we will enter into a joint effort with industry, monitoring instrument suppliers, and other interested parties, to detail the elements and requirements of this program. We will take additional appropriate rulemaking steps as necessary to fully implement this program, including assuring opportunity for industry and the public to comment.

3. Mercury Thermal Recovery Unit Vents

As previously discussed, nine of the twelve mercury cell chlor-alkali plants have mercury recovery processes. Six of the nine plants operate a thermal recovery unit in which mercury-containing wastes are heated and the resulting mercury-laden off-gas is cooled and treated for mercury removal prior to being discharged to the atmosphere. Two plants recover mercury with a chemical process and one plant recovers mercury in a purification still; in both cases, mercury air emissions are believed to be low.

In establishing MACT for mercury thermal recovery units, we obtained information from all six plants with these units. Each plant provided descriptions of its thermal recovery operation, including the types of wastes processed and the control devices applied. Where available, plants also provided results of performance testing or periodic sampling and an estimate of their mercury emissions.

Each of the six plants operates one or more retorts (as part of its mercury thermal recovery unit) in which mercury-containing wastes are heated to a temperature sufficient to volatilize the mercury. The off-gas containing mercury vapor is then cooled in the mercury recovery/control system, causing the mercury to condense to liquid. The liquid mercury condensate is then collected from recovery devices for reuse in the mercury cells. The primary emission source is the mercury thermal recovery unit vent where off-gas that has passed through the recovery/control system is discharged to the atmosphere. Retorts used include three basic designs: batch oven (three plants), rotary kiln (two plants), and single hearth (one plant).

The batch ovens are D-tube retorts which are so named because each resembles an uppercase letter "D" on its side. Pans are filled with waste, typically around 10 cubic feet, and then placed into an oven. After inserting three or four pans, the oven door is closed and the retort is indirectly heated to about 1,000°F. The residence time varies from about 24 to 48 hours, depending on the type of waste being processed. While heating, the oven is kept under a vacuum and the mercury vapors are pulled into the mercury recovery/control system. After the cycle is completed, the unit is allowed to cool and the pans are then removed.

The rotary kilns are long, refractory-lined rotating steel cylinders in which the waste charge to be treated flows counter current to hot combustion gases used for heating. Wastes to be treated are conveyed into a ram feeder which inserts a waste charge into the kiln at regular intervals, typically about every 5 minutes. Each is directly fired with natural gas and is heated to over 1,300°F. The rotation of the kiln provides for mixing and transfer of the waste to the discharge end. The residence time is about 3 hours. The gas stream leaving the kiln passes through an afterburner where the temperature is increased to around 2,000°F to complete combustion reactions involving sulfur and carbon and then to a mercury recovery/control system.

The single hearth retort is comprised of a vertically mounted, refractory lined vessel with a single hearth and a rotating rabble. Waste is charged onto the hearth through a charge door by way of a conveyor. Once charged, the conveyor is withdrawn, the charge door is closed, and the heating or treatment cycle begins. The waste is stirred by the rabble rake, which turns continuously, and is heated to around 1,350°F. The residence time, which ranges according to waste type, is typically much longer than for rotary kilns. Similar to rotary kilns, the gas stream leaving the hearth retort passes through an afterburner where the temperature is increased to around 2,000°F to complete combustion reactions involving sulfur and carbon and then to a mercury recovery/control system.

As noted above, there are several important differences between the oven retorts and the non-oven (rotary kiln and single hearth) retorts related to operating temperature and residence time. There are also significant differences in the volumetric flow rates produced by the oven and the non-oven retorts. Oven retorts typically have volumetric flow rates around 100 scfm, which is an order of magnitude lower than flow rates for non-oven retorts which are around 1,000 scfm. Together, these differences can have a material impact on mercury concentration, mass flow rate of mercury, and other factors that influence mercury leadings to the recovery/control system. After evaluation of these technical and operational differences between oven retorts and non-oven retorts and their potential effect on emissions characteristics and control device applicability, we are proposing to distinguish between retort types for the purpose of establishing MACT.

With the exception of the plant with a single hearth retort that is controlled

with a scrubber as the final control device, the recovery/control system at each plant consists of condensation and carbon adsorption for final mercury control. The amount and type of carbon adsorbent used in the fixed bed, nonregenerative carbon adsorbers varies among the five plants. One plant uses activated carbon, one uses iodine-impregnated carbon, and three use sulfur-impregnated carbon. We believe that each type is effective in removing mercury vapor. The amount of carbon in the beds ranges from 1,000 to 20,000 pounds. The frequency with which the adsorbent is replaced ranges from 1 to 12 months. The frequency is based on the amount of mercury in the waste being processed and the adsorbing capacity of the carbon. The frequency is determined by the plant and is dependent on when the adsorbent is replaced since the adsorbing capacity of any sorbent decreases as saturation and breakthrough are approached.

In assessing potential formats for a numerical emission limit, we considered a limit on emissions in a specified time period, a limit normalized on the amount of wastes processed, and an outlet mercury concentration limit. The amounts and types of wastes processed at each plant are highly variable. Therefore, we believe that a limit normalized on the amount of wastes processed would not be appropriate. Also, we believe that a limit on emissions in a specified time period would not be appropriate because the amount of wastes processed in a specified time period is highly variable. Therefore, we are proposing an outlet mercury concentration limit.

We have data from all six plants with thermal recovery units. Four of the six plants have data from performance tests or periodic sampling. Two of the four plants have data from multiple tests. The other two plants were unable to provide emissions data. Therefore, data from this best-controlled plant were used to establish the MACT floor. Mercury emissions data from the best-controlled plant are from periodic sampling results over 3 years. The data from the best-controlled plant are from a single hearth retort that is controlled

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with a scrubber as the final control device, the recovery/control system at each plant consists of condensation and carbon adsorption for final mercury control. The amount and type of carbon adsorbent used in the fixed bed, nonregenerative carbon adsorbers varies among the five plants. One plant uses activated carbon, one uses iodine-impregnated carbon, and three use sulfur-impregnated carbon. We believe that each type is effective in removing mercury provided the adsorbent is replaced at a frequency appropriate to prevent breakthrough.

In contrast, the plant with the single hearth retort utilizes a chlorinated brine packed-tower scrubber for final mercury control. In this scrubber, elemental mercury vapor is removed by chemically reacting with the chlorinated brine solution to form mercuric chloride, a nonvolatile mercury salt which is readily soluble in aqueous solutions. The resulting scrubber effluent is returned to the brine system causing the absorbed mercury to be recycled back to the mercury cells. Performance data for this brine scrubber system shows that the effectiveness is comparable to that of the condenser/carbon adsorber systems used at the other five plants.

While examining the performance capabilities of the condenser/carbon adsorber systems, we identified several factors that influence performance. We believe that a primary factor affecting mercury recovery and control is the temperature to which retort off-gas is cooled prior to entering the final control device. Because of the volatile nature of elemental mercury, temperature has a direct effect on the concentration of mercury vapor that can exist in a gas stream. For example, the concentration of mercury vapor that could exist in a gas stream at 50°F is 5 mg/m^3, while the predicted concentration at 85°F is 30 mg/m^3, a six-fold increase. At 100°F, the concentration could potentially be over 50 mg/m^3.

A key factor relative to the performance of carbon adsorbers is contact time. As noted previously, we believe that generally each of the carbon adsorbents presently used in the industry can effectively collect mercury vapor. However, it is essential for optimum performance that the contact time between the gas stream to be treated and the carbon adsorbent be long enough to allow for maximum adsorption. Consequently, design and operational factors such as carbon bed depth, sorbent particle size, and gas velocity have an appreciable impact on collection efficiency. Another key consideration is the frequency at which the adsorbent is replaced since the adsorbing capacity of any sorbent decreases as saturation and breakthrough are approached.

In assessing potential formats for a numerical emission limit, we considered a limit on emissions in a specified time period, a limit normalized on the amount of wastes processed, and an outlet mercury concentration limit. The amounts and types of wastes processed at each plant and among plants vary considerably. We believe, generally, that mercury emissions from the thermal recovery unit vent are proportional to the amount of mercury-containing wastes processed and the amount of mercury contained in these wastes. Therefore, we concluded that limiting emissions over a specified time period would unfairly impact plants that process larger amounts of wastes and/or wastes that contain more mercury. A mercury emission limit normalized on the amount of wastes processed would eliminate this inequity. However, given the wide variation in the mercury content of different types of wastes and the varying mix of waste types processed at different plants, we concluded that setting and enforcing such an emissions limit is impractical.

Several factors influence the concentration of mercury in the thermal recovery unit vent exhaust. The most significant include the mercury content of the wastes being processed and the volumetric flow rate through the system. Volumetric flow rate is dependent on process rate, fuel usage, and the volume of combustion gas generated. The mercury concentration may also vary depending on the stage of the heating cycle. The mercury content of the exhaust stream leaving the condenser(s) or other type of cooling unit should remain relatively constant, provided that the outlet temperature is constant and the residence time is sufficient. Depending on the effectiveness of the carbon adsorber or brine scrubber, the mercury concentration would be further reduced. As a result, we conclude that concentration at the outlet of the final control device is the most meaningful and practical measure of the combined performance of each element of the mercury recovery/control system. Therefore, we have selected concentration for the format of the MACT standard for mercury thermal recovery units.

Finally, we evaluated how, or if, the proposed standards should address different waste types; that is, should different emission limits be set for different waste types or should one limit be set for the waste type shown to be the highest emitting. We analyzed all the available data but were unable to ascertain any relationship between the type of waste (K106, D009 debris, or D009 nondebris) being treated during testing or sampling and the outlet mercury concentration measured across all plants. As a result, we are proposing an outlet mercury concentration limit that is neutral to the type of waste being processed. The analysis also influenced our decision on the proposed requirements for performance testing. We are proposing that testing be conducted during conditions representative of the most extreme, relative to potential mercury concentration, expected to occur under normal operation. While we would have preferred that the proposed rule specify the type of waste to be processed during testing, our inability to discern a relationship between waste type and outlet mercury concentration across plants prevented us from doing so. Therefore, the proposed rule would obligate owners and operators to process mercury-containing wastes that result in the highest vent mercury concentration during performance testing.

In summary, our review and analysis of all the available information on mercury thermal recovery units leads us to the following conclusions:

- Separate MACT emission limits should be developed for oven type and non-oven (rotary kiln and single hearth) type mercury thermal recovery units.
- These emission limits should not distinguish among waste types processed.
- Concentration is the appropriate format for the numerical emission limits.

The following describes how we selected the proposed emission limits for oven type and non-oven type mercury thermal recovery units.

There are three plants that use oven retorts. All are owned and operated by the same company. One plant operates five ovens, another operates three ovens, and the third operates two ovens. Thermal recovery at all three plants is conducted between 6,000 to 7,000 hours per year. The amounts of waste processed and the amounts of mercury recovered range from 90 to almost 300 tpy and from 3 to 20 tpy, respectively. At all three plants, the mercury-laden off-gas leaving the retort is cooled and treated for particulates and acid gases in a wet scrubber with caustic solution, followed by further cooling in a condenser. The cooled gas is then routed through one or more fixed-bed, nonregenerative carbon adsorbers before being discharged to the atmosphere. We conducted an evaluation of the mercury recovery/control systems at all three plants, considering the condenser outlet temperature and the amount of carbon in the beds.

The plant that ranked highest in this evaluation, which we consider to be the best-controlled plant, provided mercury emissions data (periodic sampling results) over 3 years. The other two plants were unable to provide emissions data. Therefore, data from this best-controlled plant were used to establish MACT. Since an emission limit based on the best-controlled plant would obviously be more stringent than the floor level, the selection of a level associated with the best-performing recovery/control system for this retort type clearly meets our statutory requirement regarding the minimum level allowed for NESHAP.

This best-controlled plant has five ovens and two separate but identical mercury recovery/control systems. One treats the exhaust gas from three ovens while the other services two ovens. Each system is comprised of a wet scrubber and condenser, which cool the exhaust gases to around 70°F, followed by a carbon adsorber with about 700 pounds of activated carbon. Available test data for this plant consist of bimonthly measurements for 1997, 1998, and 1999 on each stack. We reviewed the sampling method used to obtain these data which are largely based on EPA reference methods for mercury emissions from mercury cell chlor-alkali plants and concluded that it is capable of producing measurements of reasonable accuracy that are suitable for use as the basis for MACT. We removed six data points that we determined were statistical outliers and combined the data for both control systems into one data set comprised of 134 individual measurements.

We then evaluated options for how these data should be used to establish a numerical emission limit to represent MACT. While this limit must represent the performance of the controls in place at this best-controlled plant, it also must account for variability in outlet mercury concentration due to processing different mercury-containing waste types and normal variation in recovery/control equipment performance. As noted previously, we are proposing that performance tests for mercury thermal recovery units be conducted under the most challenging conditions, which we are defining as the processing of wastes that result in the highest recurring mercury concentration in the vent exhaust. Each performance test would consist of at least three runs, and the average concentration measured would be compared with the emission limit to determine compliance. Given our inability to establish a discernible correlation between waste type processed and emissions, our obligation to set standards that are achievable under the full range of normal acceptable operating conditions and the fact that initial performance is based on at least three separate test runs, we chose to set the standard based on the average of the three highest measured values in the data set of 134 measurements for the best-controlled plant. The three measured values are 20.4, 22.1, and 26.4 mg/m^3. The average of the three is 23 mg/dscm, which we are proposing as the mercury concentration emission limit for oven type units.

Due to the very low volumetric flow rates associated with oven type mercury thermal recovery unit exhaust streams (typically less than 300 scfm), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. For purposes of estimating the impacts of the proposed emission limit, we assumed that the two plants with lower-performing control systems would need to install new, larger carbon adsorbers to meet the 23 mg/dscm level. The total installed capital control costs are estimated to be around $217,000 for all three plants, and the total annual control costs are estimated to be around $163,000 per year for all three plants. Estimated mercury emission reductions against actual baseline emissions would total 33 kg/yr (74 lbs/yr) for all three plants. The associated annual cost per unit of mercury emission reduction would be approximately $2,200 per pound.

Impacts on solid waste due to increased use of carbon adsorption are estimated total 5.2 Mg/yr (5.7 tpy) of mercury-containing spent carbon. Energy requirements are estimated to be an additional 473 thousand kW-hr/yr. Estimated secondary air pollution impacts due to heightened energy consumption are 152 Mg/yr (168 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

As noted previously, three plants operate retorts other than oven-type retorts. Thermal recovery at these three plants is conducted between 1,500 and 5,000 hours per year. The amounts of waste processed and the amounts of mercury recovered range from 50 to 500 tpy and from 3 to 12 tpy, respectively. The mercury recovery/control systems operated at the two plants with rotary kiln retorts consist of direct contact cooling, particulate and acid gas scrubbing, condensation, and carbon adsorption. The retort off-gas at both plants is cooled to a temperature of 55° F on average before being routed through two fixed-bed, nonregenerative adsorbers containing sulfur-impregnated carbon media. The mercury recovery/control system at the plant with a single hearth retort employs a direct contact water quench tower, a venturi scrubber, and a caustic packed-tower scrubber, which lower the retort off-gas temperature to an average of 80° F, and a chlorinated brine packed-tower scrubber as the final control device. The following summarizes the emissions data available and our approach to determining MACT for non-oven type units.

At one of the plants with a rotary kiln, the mercury concentration is determined daily at the outlet of the last carbon adsorber bed using a company-developed procedure derived from an OSHA method for determining worker exposures in the workplace. When submitting data obtained using this method, the company cautioned that although the routine sampling with the modified OSHA procedure produces credible information on relative changes in performance, it does not produce accurate information on actual mercury releases. Specifically, we believe the data obtained using this method are biased low. The average measured mercury concentration for this plant is an order of magnitude lower than averages for the other two plants (discussed below), and the minimum measured value is two orders of magnitude lower. It is our conclusion that data from this plant are unsuitable for standard setting, as they greatly understate emissions and thus overstate the performance of the mercury recovery/control system.

At the other plant with a rotary kiln, concentration measurements are made monthly using a method that is a modification of EPA Method 101 for determining mercury emissions from mercury cell chlor-alkali plants. Data were provided for each month in 1998. The measured mercury concentrations range from 1.4 mg/m^3 to 6.0 mg/m^3, with a mean of 2.8 mg/m^3.

Personnel at the plant with the single hearth retort conduct monthly measurements of the mercury concentration in the brine scrubber exhaust gas. The measurement method used is based on an EPA reference method and is very similar to the method used at the second rotary kiln plant discussed above. Data were provided for 1997, 1998, and 1999. The measured mercury concentrations range from 0.2 mg/m^3 to 10.8 mg/m^3, with a mean and median value of 1.6 and 2.2 mg/m^3, respectively.

In establishing the MACT floor and subsequently MACT, we focused on the two plants for which we have credible emissions data. We removed two points determined to be statistical outliers from the 3-year data set at the plant with the single hearth retort and determined there were no statistical outliers in the 1998 data set for the second plant with a rotary kiln. These data were used in the MACT determination for non-oven

streams (typically less than about 2,000 scfm), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. For purposes of estimating impacts, we assumed that one plant would need to upgrade its controls, and that it would do this by further increasing its carbon replacement frequency to meet the 4 mg/dscm level. We assume that the remaining plant

be less stringent than the emission control that is achieved in practice by the best-controlled similar source, as determined by the Administrator.

In the case of mercury cell chlor-alkali production facilities, of the 43 chlor-alkali production facilities in operation in the U.S. at the time of this analysis, 32 use cell technologies other than mercury (23 use diaphragm cells and 9 use membrane cells). As explained

the beyond-the-floor option selected for proposal for existing sources.

In the case of mercury recovery facilities, we know of three plants that employ low emitting mercury recovery processes. These processes include chemical mercury recovery used at two plants and recovery in a batch purification still used at a third plant. Unlike thermal recovery units which are capable of treating a variety of waste

Method 101A was developed to measure mercury emissions from sewage sludge incinerators, it is appropriate for use for end-box ventilation system vents and mercury thermal recovery unit vents.

The NESHAP General Provisions specify at § 63.7(e)(3) that each test consist of three separate test runs. The proposed rule would adopt this requirement. Further, the proposed rule would require that each test run be at

frequency of measurement, varies from plant to plant. Types of instruments used include rail car weigh scales, weigh cells on liquid storage tanks, and gas flow meters. Calibration procedures for these instruments are plant-specific and dependent on the involvement of third parties concerned with quantifying actual chlorine production for billing and other purposes. Moreover, at a given plant, an accurate value for actual

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In establishing the MACT floor and subsequently MACT, we focused on the two plants for which we have credible emissions data. We removed two points determined to be statistical outliers from the 3-year data set at the plant with the single hearth retort and determined there were no statistical outliers in the 1998 data set for the second plant with a rotary kiln. These data were used in the MACT determination for non-oven thermal recovery unit vents.

Although there are fewer than five sources from which to constitute a MACT floor, we opted to take the mean of the data from these two plants as the MACT floor option for existing sources. We averaged the three highest concentration data points for each plant and took the mean of the two plant averages (3.9 mg/dscm and 5.4 mg/dscm) rounded to one significant figure, 5 mg/dscm, as the floor value.

Of the three plants with non-oven type mercury thermal recovery unit vents, we project that only one plant would need to upgrade existing controls to meet the 5 mg/dscm floor level, and that this could be accomplished by replacing the carbon in its existing carbon adsorbers more frequently than current practice. There would be no capital costs as more frequent carbon media replacement is only a recurring annual cost estimated at $1,200 per year. Mercury emission reductions against actual baseline emissions would total about 2 kg/yr (5 lbs/yr) for the three plants. The associated annual cost per unit of mercury emission reduction would be approximately $240 per pound. With the assumption of more frequent carbon media replacement, there are no associated secondary air pollution, water pollution, or energy impacts. Estimated solid waste impacts due to increased use of carbon adsorption total 0.09 Mg/yr (0.1 tpy).

We then examined beyond-the-floor MACT options. A direct comparison of the data for the two plants providing credible data indicates that the emission levels recorded at one plant (with mean and median values of 1.2 and 0.7 mg/m^3, respectively) are about half that recorded at the other plant (with mean and median values of 2.8 and 1.9 mg/m^3, respectively). Further, the highest monthly values recorded were 4.3 mg/m^3 and 5.9 mg/m^3, respectively. We used the data from the lower-emitting plant to establish a beyond-the-floor option. We averaged the three highest values for this plant (not including the values determined to be outliers) for a beyond-the-floor value of 4 mg/dscm.

Due to the very low volumetric flow rates associated with non-oven type mercury thermal recovery unit exhaust streams (typically less than about 2,000 scfm), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. For purposes of estimating impacts, we assumed that one plant would need to upgrade its controls, and that it would do this by further increasing its carbon replacement frequency to meet the 4 mg/dscm level. We assume that the remaining plant would not need to upgrade its existing controls to meet the beyond-the-floor level.

In evaluating regulatory options that are more stringent than the floor, we must consider the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements. The beyond-the-floor option would result in an additional 6 kg/yr (13 lbs/yr) of total mercury emission reductions for the three plants (a 10 percent incremental reduction from the floor option). The incremental annual costs are estimated to total around $5,800 per year. The incremental cost per unit of incremental mercury emission reduction is approximately $450 per pound. With the assumption of more frequent carbon media replacement, there are no associated incremental secondary air pollution, water pollution, or energy impacts. The estimated solid waste impacts total an additional 0.4 Mg/yr (0.5 tpy) of mercury-containing spent carbon.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted. Further, we believe that the incremental costs of achieving such emission reductions, as well as incremental non-air environmental impacts and energy requirements, are reasonable for mercury. Therefore, we selected 4 mg/dscm as MACT for non-oven type mercury thermal recovery unit vents.

In summary, the proposed emission limits are 23 mg/dscm and 4 mg/dscm for oven type mercury thermal recovery unit vents and non-oven type mercury thermal recovery unit vents, respectively. We believe that both proposed limits are representative of the best-performing systems for each retort type based on available data and as such, each limit clearly meets our statutory safeguard regarding the minimum level of control allowed under the statute.

E. How did We Determine the Basis and Level of the Proposed Standards for New Sources?

Section 112(d)(3) of the CAA specifies that standards for new sources cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source, as determined by the Administrator.

In the case of mercury cell chlor-alkali production facilities, of the 43 chlor-alkali production facilities in operation in the U.S. at the time of this analysis, 32 use cell technologies other than mercury (23 use diaphragm cells and 9 use membrane cells). As explained further below, we consider these chlor-alkali facilities using non-mercury cell technology to be "similar sources," and, as such, a suitable basis for the standard for new source MACT. Such a standard would effectively eliminate mercury emissions from new source chlor-alkali production facilities.

The impact of such a standard would be negligible given that in terms of cost, economic and air and non-air environmental impacts, we don't believe that a new mercury cell chlor-alkali plant would otherwise ever be constructed. No new mercury cell chlor-alkali plant has been constructed in the U.S. in over 30 years, and we have no indication of any plans for future construction. In addition, we believe that any future demand for new or replacement chlor-alkali production capacity would be met easily through the construction of new production facilities that do not use or emit mercury. Consequently, we believe it is appropriate to consider non-mercury cell facilities as similar sources and the prohibition of new mercury cell chlor-alkali production facilities achievable. Accordingly, we are proposing a complete prohibition on mercury emissions for new source MACT for mercury cell chlor-alkali production facilities. We are not proposing any initial and continuous compliance requirements related to this emission limit as we believe they are unnecessary since the emissions prohibition effectively precludes the new construction or reconstruction of a mercury cell chlor-alkali production facility.

As highlighted in the previous discussion on the selection of standards for existing sources, the emission levels achieved by the best-controlled sources were selected as the proposed existing source MACT levels for mercury recovery facilities. These best levels of control for point sources are 23 mg/dscm of exhaust from an oven type mercury thermal recovery unit vent, and 4 mg/dscm of exhaust from a non-oven type mercury thermal recovery unit vent. For fugitive emission sources, the best level of control identified is the work practice standard represented in the beyond-the-floor option selected for proposal for existing sources.

In the case of mercury recovery facilities, we know of three plants that employ low emitting mercury recovery processes. These processes include chemical mercury recovery used at two plants and recovery in a batch purification still used at a third plant. Unlike thermal recovery units which are capable of treating a variety of waste types, the chemical recovery and the purification still processes have limited application. Both are suitable to treating only certain waste types, K106 wastes for the former and end-box residues for the latter. Plants using these nonthermal recovery processes transfer their remaining wastes off-site for treatment, which typically involves thermal recovery. Given this limitation, we do not believe that these nonthermal recovery processes qualify as a suitable basis for new source MACT. Consequently, for new source MACT for mercury recovery facilities, we are proposing numerical mercury emission limits consistent with that achieved by the best similar sources, 23 mg/dscm for oven type thermal recovery unit vent and 4 mg/dscm for non-oven type thermal recovery units.

F. How did We Select the Testing and Initial Compliance Requirements?

We selected the proposed testing and initial and continuous compliance requirements based on requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A). These requirements were adopted for mercury cell chlor-alkali plants to be consistent with other part 63 NESHAP. These requirements were chosen to ensure that we obtain or have access to sufficient information to determine whether an affected source is complying with the standards specified in the proposed rule.

The proposed rule would require initial and periodic compliance tests for determining compliance with the emission limits for by-product hydrogen streams and end-box ventilation system vents, and the emission limits for oven type and non-oven type mercury thermal recovery unit vents. The proposed rule would require the use of published EPA methods for measuring total mercury. Specifically, the proposed rule would allow the use of Method 101 or 101A (of appendix A of 40 CFR part 61) for end-box ventilation system vents and mercury thermal recovery unit vents and Method 102 for by-product hydrogen streams. Methods 101 and 102 were developed in the 1970's specifically for use at mercury cell chlor-alkali plants. Although Method 101A was developed to measure mercury emissions from sewage sludge incinerators, it is appropriate for use for end-box ventilation system vents and mercury thermal recovery unit vents.

The NESHAP General Provisions specify at § 63.7(e)(3) that each test consist of three separate test runs. The proposed rule would adopt this requirement. Further, the proposed rule would require that each test run be at least 2 hours long. This is the duration specified in Method 101 and referenced in Methods 101A and 102.

In the stack test data that were provided to us, there were numerous incidents where the results were reported as "less than" a certain level. We believe that this is primarily related to the sensitivity of the analytical instrument (that is, the absorption spectrophotometer) used to measure the amount of mercury in the collected sample. Method 101 states that the absorption spectrometer must be the "Perkin Elmer 303, or equivalent, containing a hollow-cathode mercury lamp and the optical cell * * *." It is our understanding that this particular model is no longer commercially available, and that newer, more sensitive absorption spectrophotometers are available. We considered whether it was necessary to specify, either in the proposed rule or through a modification to the test method, that Perkin Elmer 303 did not have to be used. We concluded that the "or equivalent" language contained in Method 101 allows for the use of newer, more sensitive instruments and as a result, adding rule language or amending Method 101 was unnecessary.

Even with the 2-hour minimum test run period and the clarification that newer, more sensitive absorption spectrophotometers are allowed to be used, we remain concerned that quantifiable results of mercury emissions may not be obtained during performance tests. As a result, the proposed rule includes a requirement that the amount of mercury collected during each test run be at least 2 times the limit of detection for the analytical method used. This will assure that a reliably quantifiable amount of mercury is collected for each test run.

The emission limits for by-product hydrogen streams and end-box ventilation system vents are in the form of mass of mercury emissions per mass of chlorine produced. Therefore, criteria for the measurement of chlorine production during performance testing are also necessary. It is our understanding that instrumentation used to measure actual chlorine production, as well as the location and frequency of measurement, varies from plant to plant. Types of instruments used include rail car weigh scales, weigh cells on liquid storage tanks, and gas flow meters. Calibration procedures for these instruments are plant-specific and dependent on the involvement of third parties concerned with quantifying actual chlorine production for billing and other purposes. Moreover, at a given plant, an accurate value for actual chlorine production based on these measurements is generally obtained at the end of an operating month when mass balance calculations are performed to verify measurements.

For a compliance test run on the order of several hours, we, therefore, needed to rely on some other reasonable indicator of chlorine production. All mercury cell chlor-alkali plants measure the electric current through on-line mercury cells, also known as the cell line load or cell line current load, with a digital monitor that provides readings continuously. This cell line current load measurement can be used in conjunction with a theoretical chlorine production rate factor to obtain the instantaneous chlorine production rate. The theoretical factor is based on a statement of Faraday's Law that 96,487 Coulombs (Faraday's constant, where a Coulomb is a fundamental unit of electrical charge) are required to produce one gram equivalent weight of the electrochemical reaction product (chlorine). It is our understanding that chlorine production calculated in this manner would differ from the actual quantity produced at the plant by about 3 to 7 percent due to electrical conversion efficiency and reaction efficiency determined by equipment characteristics and operating conditions. We consider this degree of variability acceptable.

We, therefore, stipulate in the proposed rule that the cell line current load be continuously measured during a performance test run and that measurements be recorded at least every 15 minutes over the duration of the test run. We further specify equations for computing the average cell line current load and for calculating the quantity of chlorine produced over the test run.

In addition to the requirement to conduct performance tests to demonstrate compliance with the emission limits, owners or operators would be required to establish a mercury concentration operating limit for each vent as part of the initial compliance demonstration. Then, at least twice a permit term (at mid-term and renewal), they would conduct subsequent compliance demonstrations and at the same time reestablish

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operating limit values. The proposed rule would require that these mercury concentration operating limits be determined directly from the concentration monitoring data collected concurrent with the initial performance test.

For the work practice standards, initial compliance is demonstrated by documenting and certifying that the standards are being met or will be met

compounds in particulate form. Monitors that are capable of measuring total vapor phase mercury range in price from $50,000 to $80,000. Simpler monitors that measure only elemental mercury vapor average about $10,000.

For the proposed emission limits for by-product hydrogen streams and end-box ventilation system vents, which are expressed in grams of mercury per megagram of chlorine produced, we

continuous monitoring of elemental mercury vapor as a surrogate to the total mercury emission limit using the simpler of the available monitors provides an acceptable and cost-effective means of tracking relative changes in emissions and control device performance. Therefore, as proposed for by-product hydrogen streams and end-box ventilation system vents, we are proposing for oven type and non-oven

inclusion of monitoring data collected during startups, shutdowns, and malfunctions into the daily averages would be inconsistent with the data used to develop the emission limits and, subsequently, the mercury concentration operating limits.

While we did not identify situations in the mercury cell chlor-alkali industry where elemental mercury concentration is being continuously monitored, we

based on 1,300 grams per day assumed for each plant's cell room ventilation system when the eighteen design, maintenance, and housekeeping practices referenced in the Mercury NESHAP are followed. Annual potential-to-emit baseline emissions for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents would be 4,380 kg/yr (9,656 lb/yr), based on the

principally carbon dioxide, would result from the production of electricity required to operate new monitoring equipment assumed for plant cell rooms. We estimate the secondary air impacts of the proposed rule for fugitive sources to be 17 Mg/yr (19 tpy).

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

We do not expect that there will be any significant adverse non-air health

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operating limit values. The proposed rule would require that these mercury concentration operating limits be determined directly from the concentration monitoring data collected concurrent with the initial performance test.

For the work practice standards, initial compliance is demonstrated by documenting and certifying that the standards are being met or will be met by submitting a washdown plan and by certifying that the plan is being followed or will be followed. This approach assures initial compliance by requiring the owner or operator to submit a certified statement in the Notification of Compliance Status report.

G. How Did We Select the Continuous Compliance Requirements?

For each of the proposed emission limits, which consist of the limits on mercury emissions from hydrogen streams, end-box ventilation systems, and thermal recovery units, we considered the feasibility and suitability of continuous emission monitors (CEM) as the means of demonstrating continuous compliance. While we were unable to identify any mercury cell chlor-alkali plant currently using a mercury CEM on any vent, we did determine that there are mercury CEM commercially available that may be suitable for use at mercury cell chlor-alkali plants. To date, most of the development work on mercury CEM has focused on the development of monitors for the continuous measurement of mercury air emissions from either coal-fired utility boilers or hazardous waste incinerators. Most mercury CEM are extractive monitors which extract a continuous or nearly continuous sample of gas, then transfer the gas to an instrument for spectroscopic analysis by way of either cold vapor atomic absorption or cold vapor atomic fluorescence.

These cold vapor techniques have similar limitations. Both detect mercury vapor only in its elemental form. To measure other forms of mercury vapor (*e.g.*, oxidized/inorganic/divalent mercury, such as mercuric chloride), the sampled gases must first pass through a converter which reduces any nonelemental mercury vapor present to the elemental form prior to analysis. None of the available monitors based on the cold vapor techniques are capable of measuring particulate or nonvapor phase mercury since the sample gas must be filtered to remove any particulate matter present prior to conversion and analysis. This would include elemental mercury condensed on particulate matter and any mercury compounds in particulate form. Monitors that are capable of measuring total vapor phase mercury range in price from $50,000 to $80,000. Simpler monitors that measure only elemental mercury vapor average about $10,000.

For the proposed emission limits for by-product hydrogen streams and end-box ventilation system vents, which are expressed in grams of mercury per megagram of chlorine produced, we evaluated two options: continuous compliance against the proposed gram per megagram standards, and continuous compliance against plant and vent specific operating limits expressed in terms of concentration. In addition to monitoring mercury concentration, the first option would require continuous monitoring of volumetric flow rate and a continuous, or at least periodic, measurement of chlorine production. The operating limits for the second option would be set at the time that initial compliance with the emission limit is demonstrated.

Since the predominant form of liquid mercury in mercury cells and other production facilities is elemental, we assumed that the mercury contained in the vent gas from either by-product hydrogen streams or end-box ventilation system vents is similarly largely in the elemental vapor form. Thus, the simpler, less expensive monitors for measuring elemental mercury vapor only should be suitable.

We concluded that monitoring only elemental mercury concentration provides a simpler, less expensive, and more reliable alternative to demonstrating continuous compliance than monitoring against the gram per megagram standards. As a result, we are proposing that continuous compliance for by-product hydrogen streams and end-box ventilation system vents be demonstrated through the continuous monitoring of elemental mercury concentration in the vent exhaust.

To the best of our knowledge, mercury contained in the exhaust gas of thermal recovery units, both oven and non-oven types, should exist as both vapor (elemental or nonelemental) and fine particulate matter. As highlighted above, none of the currently available monitors are capable of measuring particulate mercury. Consequently, continuous monitoring to demonstrate continuous compliance with the total mercury concentration limit would not be possible.

Similar to the by-product hydrogen streams and end-box ventilation system vents, we also considered the feasibility and usefulness of monitoring vapor phase mercury, specifically the elemental form. We concluded that the continuous monitoring of elemental mercury vapor as a surrogate to the total mercury emission limit using the simpler of the available monitors provides an acceptable and cost-effective means of tracking relative changes in emissions and control device performance. Therefore, as proposed for by-product hydrogen streams and end-box ventilation system vents, we are proposing for oven type and non-oven type mercury thermal recovery units that continuous compliance be demonstrated through continuous monitoring of elemental mercury concentration against an applicable concentration operating limit established as part of the initial compliance demonstration.

Another important aspect of continuous compliance is the time period over which continuous compliance is determined. One option would be an instantaneous period, where any measurement outside of the established range (that is, above the established concentration limit) would constitute a deviation. More commonly, the average of the monitoring data over a specified time period, for example an hour, is compared to the established limit.

While mercury cell chlor-alkali production facilities are generally operated continuously, there are process fluctuations that impact emissions. Mercury recovery facilities are operated intermittently, depending on the amount of mercury-containing waste to be treated and other factors. We believe that an emissions averaging period is necessary for both situations. We considered a daily averaging period and concluded that daily averaging would accommodate process variations while precluding avoidable periods of high emissions. Therefore, we are proposing a daily averaging period for demonstrating continuous compliance.

We also considered how to address monitoring data collected during startups, shutdowns, and malfunctions. We believe that it is important to continue to monitor the outlet mercury concentration during startups, shutdowns, and malfunctions to minimize emissions and to demonstrate that the plant's startup, shutdown, and malfunction plan is being followed. However, as provided for in the NESHAP General Provisions (40 CFR part 63, subpart A), we do not believe that the data collected during these periods should be used in calculating the daily average values. The emission limits were developed based on normal operation, and the performance tests will be conducted during representative operating conditions. Therefore, the inclusion of monitoring data collected during startups, shutdowns, and malfunctions into the daily averages would be inconsistent with the data used to develop the emission limits and, subsequently, the mercury concentration operating limits.

While we did not identify situations in the mercury cell chlor-alkali industry where elemental mercury concentration is being continuously monitored, we believe that continuous elemental mercury concentration monitoring devices are available for use at mercury cell chlor-alkali plants. We recognize that the transfer of this monitoring technology to applications at mercury cell chlor-alkali plants will introduce uncertainties that can only be addressed through actual field demonstration. We are specifically requesting comment on the technical feasibility of using continuous elemental mercury concentration monitors for indicating relative changes in control system performance. We are also requesting comment on the proposed specifications for these devices.

Continuous compliance with the proposed work practice standards for the fugitive emission sources would be demonstrated by maintaining the required records documenting conformance with the standards and by maintaining the required records showing that the washdown plan was followed.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the proposed notification, recordkeeping, and reporting requirements based on requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A). As with the proposed initial and continuous compliance requirements, these requirements were adapted for mercury cell chlor-alkali plants to be consistent with other part 63 national emission standards.

IV. Summary of Environmental, Energy, Cost, and Economic Impacts

A. What Are the Air Emission Impacts?

As discussed previously, the level of mercury emissions allowed by the Mercury NESHAP is 2,300 grams per day. If one assumes that all twelve plants in the source category emit mercury at this level and that each operates 365 days a year, total annual potential-to-emit baseline emissions would be 10,074 kg/yr (22,200 lb/yr). Annual potential-to-emit baseline emissions for fugitive emission sources would be 5,694 kg/yr (12,544 lb/yr), based on 1,300 grams per day assumed for each plant's cell room ventilation system when the eighteen design, maintenance, and housekeeping practices referenced in the Mercury NESHAP are followed. Annual potential-to-emit baseline emissions for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents would be 4,380 kg/yr (9,656 lb/yr), based on the remaining 1,000 grams per day allowed. We estimate that the proposed rule would reduce industrywide mercury emissions for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents from this annual potential-to-emit baseline to around 245 kg/yr (545 lb/yr), which is equivalent to about 94 percent reduction.

While the level of mercury emissions allowed by the Mercury NESHAP defines the potential-to-emit baseline, the sum of annual mercury emissions releases from by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery vents, as estimated by mercury cell chlor-alkali plants, defines an annual actual baseline for vents of about 935 kg/yr (2,060 lb/yr). We estimate that the proposed rule would reduce industrywide mercury emissions for vents from this annual actual baseline to around 245 kg/yr (545 lb/yr), which is equivalent to about 74 percent reduction.

We estimate that secondary air pollution emissions would result from the production of electricity required to operate new control devices and new monitoring equipment assumed for plant vents. Assuming electricity production as based entirely on coal combustion for a worst-case scenario, we estimated plant-specific impacts for carbon dioxide, sulfur dioxide, nitrogen oxides, particulate matter, and carbon monoxide emissions. The total estimated secondary air impacts of the proposed requirements for point sources at the twelve mercury cell chlor-alkali plants is around 554 Mg/yr (611 tpy) for all pollutants combined, with carbon dioxide emissions comprising 99 percent of the estimate.

We are unable to quantify the primary air emission impacts associated with the proposed work practice standards, so no mercury emission reduction is assumed for fugitive emission sources. However, we believe strongly that the new and more explicit requirements contained in the proposed standards will in fact result in mercury emission reductions beyond baseline levels. Relative to secondary impacts, we expect that secondary air pollution emissions, principally carbon dioxide, would result from the production of electricity required to operate new monitoring equipment assumed for plant cell rooms. We estimate the secondary air impacts of the proposed rule for fugitive sources to be 17 Mg/yr (19 tpy).

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

We do not expect that there will be any significant adverse non-air health impacts associated with the proposed standards for mercury-cell chlor-alkali plants.

We estimate that an increase in the amount of mercury-containing waters would result from the heightened use of packed tower scrubbing assumed for several plant vents. The total estimated water pollution impact of the proposed rule for point sources is about 1.8 million liters (466 thousand gallons) of additional wastewater per year. We estimate that an increase in the amount of mercury-containing solid wastes would result with the heightened use of carbon adsorption assumed for several plant vents. The total estimated solid waste impact of the proposed rule for point sources is about 34 Mg/yr (38 tpy) of additional mercury-containing spent carbon.

We are unable to quantify non-air environmental impacts associated with the proposed work practice standards, so no wastewater and solid waste impacts are assumed for fugitive emission sources.

We estimate that the proposed requirements for point sources would result in increased energy consumption, specifically additional fan power in conveying gas streams through new carbon adsorbers and new packed scrubbers assumed for certain plant vents and additional power consumed by new vent monitoring equipment. The total estimated energy impacts of the proposed requirements for point sources is about 1,724 thousand kW-hr/yr.

We estimate that the proposed requirements for fugitive sources would result in increased energy consumption required to operate new monitoring equipment assumed for plant cell rooms. The total estimated energy impacts of the proposed requirements for fugitive sources is about 53 thousand kW-hr/yr.

C. What Are the Cost and Economic Impacts?

For projecting cost impacts of the proposed rule on the mercury cell chlor-alkali industry, we estimate that all twelve plants would incur costs to meet the proposed work practice standards and the proposed monitoring,

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recordkeeping, and reporting requirements. We estimate that ten plants would incur costs to meet the proposed emission limits for by-product hydrogen streams and end-box ventilation system vents, and three plants would incur costs to meet the proposed emission limits for mercury thermal recovery units. The total estimated capital cost of the proposed rule for the twelve mercury cell chlor-alkali plants is around $2.5 million, and the total estimated annual cost is about $2.2 million per year. Plant-specific annual costs in our estimate range from about $91,000 for the least-impacted plant to about $375,000 for the worst-impacted plant.

The purpose of the economic impact analysis is to estimate the market response of chlor-alkali production facilities to the proposed standards and to determine the economic effects that may result due to the proposed NESHAP. Chlor-alkali production jointly creates both chlorine and caustic, usually sodium hydroxide, in fixed proportions. Being joint commodities, the economic analysis considers the impacts of the proposed NESHAP on both the chlorine and sodium hydroxide markets.

The chlorine production source category contains 43 facilities, but only twelve facilities using mercury cells are directly affected by the proposed standards. These twelve facilities are located at twelve plants that are owned by eight companies. Although one of these twelve plants permanently closed due to reasons unrelated to this rulemaking, the following impacts are based on the twelve plants in operation at the time the analysis was conducted.

Chlor-alkali production in mercury cells leads to potential mercury emissions from hydrogen streams, end-box ventilation system vents, mercury thermal recovery units, and fugitive emission sources. The compliance costs for the proposed standards, therefore, relate to the purchase, installation, operation, and maintenance of pollution control equipment at the point sources, as well as the labor costs and overheads associated with observing work practices addressing fugitive emissions. The estimated total annual costs for the proposed NESHAP are $1.8 million. This cost estimate represents about 0.38 percent of the 1997 chlorine sales revenue for the twelve mercury cell chlor-alkali production facilities. Furthermore, the total annual costs represent only 0.01 percent of the revenues of owning the directly affected mercury cell chlor-alkali plants.

The economic analysis predicts minimal changes in industry outputs and the market prices of chlorine and sodium hydroxide as a result of the estimated control costs. The new market equilibrium quantities of chlorine and sodium hydroxide decrease by less than 0.1 percent. Equilibrium prices of chlorine and sodium hydroxide both rise by less than 0.1 percent due to the proposed standards. Based on these estimates, we conclude that the proposed standards are not likely to have a significant economic impact on the chlorine production industry as a whole or on secondary markets such as the labor market and foreign trade.

We perform an economic analysis to determine facility- and company-specific impacts. These economic impacts are measured by calculating the ratio of the estimated annualized compliance costs of emissions control for each entity to its revenues (*i.e.*, cost-to-sales ratio). After the cost-to-sales ratio is calculated for each entity, it is then multiplied by 100 to convert the ratio into percentages. Actual revenues at the facility level are not available, therefore, estimated facility revenues received from the sale of chlorine are used. Some of these facilities also produce caustic as potassium hydroxide, but the revenues from the sale of this product are not estimated. The twelve mercury cell chlor-alkali plants have positive cost-to-sales ratios. The ratio of costs to estimated chlorine sales revenue for these facilities range from a low of 0.16 percent to a high of 1.00 percent. The average cost-to-sales ratio for the twelve mercury process chlorine production facilities is 0.46 percent. More detailed economic analysis predicted minimal changes in chlorine production at each facility. Thus, overall, the economic impact of the proposed standards is minimal for the facilities producing chlorine.

The share of compliance costs to company sales are calculated to determine company level impacts. Since eight companies own the twelve affected facilities, all eight firms face positive compliance costs from the proposed NESHAP. The ratio of costs to estimated revenues range from a low of less than 0.01 percent to a high of 0.22 percent, and the average ratio of costs to company revenues is 0.06 percent. Again, more detailed economic analysis at the company level predicts little change in company output or revenues. So, at the company level, the proposed standards are not anticipated to have a significant economic impact on companies that own and operate the chlorine production facilities.

No facility or company is expected to close as a result of the proposed standards, and the economic impacts to consumers are anticipated to be minimal. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using chlorine or sodium hydroxide. For more information, consult the economic impact analysis report entitled "Economic Impact Analysis for the Proposed Mercury Cell Chlor-Alkali Production NESHAP," which is available in the docket to this rulemaking.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of the proposed standards from all interested parties. You need to submit appropriate supporting data and analyses with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–2000–32 (see **ADDRESSES**).

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that OMB determines is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under section 6 of Executive Order 13132, the EPA may not issue a rule that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the rule. The EPA also may not issue a rule that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the rule.

If the EPA complies by consulting, Executive Order 13132 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of the EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the rule, and a statement of the extent to which the concerns of State and local officials have been met. Also, when the EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the EPA must include a certification from the Agency's Federalism Official stating that the EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule is mandated by statute and does not impose requirements on States; however, States will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. States will collect permit fees that will be used to offset the resource burden of implementing the rule. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule. Although section 6 of Executive Order 13132 does not apply to the proposed rule, the EPA did consult with State and local officials in developing the proposed rule.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed rule.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045 applies to any rule (1) that OMB determines is "economically significant," as defined under Executive Order 12866, and (2) the EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental, health, or safety aspects relevant to children and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

As with most rulemakings developed under section 112(d) of the CAA, today's proposal is based on MACT. Risks to public health and impacts on the environment are not typically considered in the development of emissions standards under section 112(d). Rather, these risks and impacts are considered later (within 8 years after promulgation of the MACT rule) under the residual risk program as required by section 112(f) of the CAA. While we do not believe the proposed rule to be "economically significant," as defined under Executive Order 12866, we do believe that it addresses environmental health or safety risks that may have a disproportionate effect on children.

Mercury has been identified as a priority pollutant under EPA's National Agenda to Protect Children's Health from Environmental Threats and by the Federal Children's Health Protection Advisory Committee (CHPAC). The CHPAC was formed to advise, consult with, and make recommendations to the EPA on issues associated with the development of regulations to address the prevention of adverse health effects to children. One of the CHPAC's primary missions was to identify five existing EPA regulations, which if reevaluated, could lead to better protection for children. The CHPAC recommended the Mercury NESHAP for chlor-alkali plants as one of the regulations to be reevaluated considering impacts on children. We adopted the CHPAC recommendation. Therefore, we have considered the impacts on children in the development of the proposed rule. A qualitative assessment of the potential impacts on children's health due to mercury emissions from chlor-alkali plants is presented here.

1. What Is Mercury and How Is It Transported in the Environment?

Mercury is a naturally occurring element found in air, water and soil. Mercury is found in various inorganic and organic forms in the environment. The three primary forms of interest for this assessment are: elemental mercury, inorganic or divalent mercury, and methylmercury. Based on available information, it appears that most of the mercury emitted from chlor-alkali plants is in the elemental form, and a small percentage is in the divalent form. The air transport and deposition patterns of mercury emissions depend on various factors including the chemical form of mercury emitted, stack height, characteristics of the area surrounding the site, topography, and

meteorology. As it moves through environmental media (e.g., air, sediments, water), mercury undergoes complex transformations.

Mercury is highly toxic, persistent, and bioaccumulates in the food chain. The mercury emitted to the air from various types of sources (usually in elemental or divalent forms) transports through the atmosphere and eventually deposits onto land or water bodies. The pregnancy. The RfD is an estimated daily ingestion level anticipated to be without adverse effect to persons, including sensitive subpopulations, over a lifetime. At the RfD or below, exposures are expected to be safe. The risks following exposures above the RfD are uncertain, but the potential for adverse health effects increases as exposures to MeHg increase. The National Academy of Sciences (NAS), in

Most of the mercury currently entering U.S. water bodies and contaminating fish is the result of air emissions which, following atmospheric transport, deposit onto watersheds or directly to water bodies. We have concluded that there is a plausible link between emissions of mercury from anthropogenic sources (including chlor-alkali plants) and MeHg in fish. Waste water discharges also contribute to

exposures for people living near these plants will depend on various factors, including local terrain and meteorology, personal life style, activity patterns, and consumption patterns.

We admit there are uncertainties regarding the extent of the risks due to mercury emissions from specific anthropogenic cources. For example, there is no quantification of how much

7. How Do Chlor-Alkali Plant Emissions Contribute to Global Mercury levels?

Mercury is a globa pollutant. Emissions, expecially those in the elemental form, can transport very long distances and become part of the global pool. In addition to their potential contributions to mercury exposures locally, chlor-alkali plants are one of the many sources contributing to the global pool and to overall mercury levels in the

uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal

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meteorology. As it moves through environmental media (e.g., air, sediments, water), mercury undergoes complex transformations.

Mercury is highly toxic, persistent, and bioaccumulates in the food chain. The mercury emitted to the air from various types of sources (usually in elemental or divalent forms) transports through the atmosphere and eventually deposits onto land or water bodies. The deposition can occur locally near the source or at long distances (e.g., hundreds or thousands of miles away). Once deposited, the chemical form of mercury can change (through a methylation process) into methylmercury (MeHg), which biomagnifies in the aquatic food chain. As reported in the 1997 EPA Mercury Study, nearly all of the mercury that accumulates in fish is MeHg. Generally, fish consumption dominates the pathway for human and wildlife exposure to mercury. As of July 2000, 40 States have issued fish advisories for mercury. Thirteen of these States have issued advisories for all water bodies in their State, and the other 27 States have issued advisories for over 1,900 specific water bodies.

2. What Are the Health Effects of the Various Mercury Compounds?

The health effects of the various mercury compounds were discussed earlier. Methylmercury is discussed further in this section because it is the primary form for which the general U.S. population is exposed.

Neurotoxicity is the health effect of greatest concern with MeHg exposure. The developing fetus is considered most sensitive to the effects from MeHg. Therefore, women of child-bearing age are the population of greatest concern. Some offspring born of women exposed to relatively high doses of MeHg during pregnancy exhibited a variety of developmental neurological abnormalities, including delayed onset of walking and talking, cerebral palsy, and reduced neurological test scores. Far lower *in utero* exposures have resulted in delays and deficits in learning abilities. It is also possible that children exposed after birth are also potentially more sensitive to the toxic effects of MeHg than adults because their nervous systems are still developing.

Extrapolating from high-dose exposure incidents, we derived a reference dose (RfD) for MeHg of 0.1 microgram per kilogram body weight per day (0.1 ug/kg/day) based on developmental neurological effects observed in children born to mothers who were exposed to MeHg during pregnancy. The RfD is an estimated daily ingestion level anticipated to be without adverse effect to persons, including sensitive subpopulations, over a lifetime. At the RfD or below, exposures are expected to be safe. The risks following exposures above the RfD are uncertain, but the potential for adverse health effects increases as exposures to MeHg increase. The National Academy of Sciences (NAS), in its July 2000 report "Toxicological Effects of Methylmercury" (NAS, 2000), affirmed our assessment of MeHg toxicity and the level of our RfD.

3. What Are the Human Exposures to MeHg and the Potential Health Impacts?

The results of dietary surveys indicate that most of the U.S. population consumes fish and is exposed to some MeHg as a result. The typical fish consumer (who eats moderate amounts of fish from restaurants and grocery stores) in the U.S. is not likely to be at risk of consuming harmful levels of MeHg; however, people who eat more fish than is typical or eat fish that are more contaminated than typical fish may be at risk. Furthermore, certain groups, such as pregnant women and their fetuses, young children, and subsistence fish-eating populations may be at particular risk.

Based on an exposure assessment presented in the 1997 EPA Mercury Study, we estimate that about 7 percent of women of childbearing age (i.e., between the ages of 15 and 44 years) in the U.S. are exposed to MeHg at levels exceeding the RfD, and about 1 percent of women have MeHg exposures 3 to 4 times this level. Moreover, the NAS estimated in their recent report that over 60,000 children born each year in the U.S. are at risk for adverse neurological effects due to *in utero* exposure to MeHg (NAS, 2000). These exposure estimates are also supported by a recent study by the U.S. Center's for Disease Control and Prevention (CDC) on mercury levels in women of childbearing age as measured in hair and blood. The results of that study (which were published in the CDC's Morbidity and Mortality Weekly Report on March 2, 2001) show that about 10 percent of women of childbearing age in the U.S. are exposed to mercury at levels above the EPA's RfD.

Methylmercury exposure rates on a per body weight basis among children are predicted to be higher than for adults. The EPA estimates that about 25 percent of children are exposed to MeHg through consumption of fish at levels exceeding the RfD, and 5 percent of children have MeHg exposures 2 to 3 times this level (EPA, 1997).

Most of the mercury currently entering U.S. water bodies and contaminating fish is the result of air emissions which, following atmospheric transport, deposit onto watersheds or directly to water bodies. We have concluded that there is a plausible link between emissions of mercury from anthropogenic sources (including chlor-alkali plants) and MeHg in fish. Waste water discharges also contribute to environmental loadings, but to a much lesser degree than air emissions. Based on modeling conducted for the 1997 EPA Mercury Study, we estimate that roughly 60 percent of the total mercury deposited in the U.S. comes from U.S. anthropogenic air emission sources; this percentage is estimated to be even higher in certain regions (e.g., Northeast U.S.). The remainder of the deposited mercury comes from natural emission sources, re-emissions of historic global anthropogenic mercury releases, and from current anthropogenic sources outside the U.S.

We predict that increased mercury deposition will lead to increased levels of MeHg in fish, and that increased levels in fish will lead to toxicity in fish-eating birds and mammals, including humans. The NAS, in its July 2000 report, stated that "because of the beneficial effects of fish consumption, the long-term goal needs to be a reduction in the concentrations of methylmercury in fish." We agree with this goal and believe that reducing emissions of mercury from various anthropogenic sources is an important step toward achieving this goal.

4. What Is the Effect of Mercury Emissions From Chlor-Alkali Plants?

The majority of the mercury emitted from chlor-alkali plants is in the elemental form, with a much smaller percent in the divalent form. As stated above, fish consumption generally dominates the pathway for human and wildlife exposure to mercury. However, for people living close to chlor-alkali plants, other exposure pathways may be significant. Appreciable exposures to elemental mercury and divalent mercury may occur through inhalation. Likewise, exposures to divalent mercury and MeHg may occur through ingestion of contaminated soils or plants. Based on modeling conducted for the 1997 EPA Mercury Study, we estimate that mercury levels in multiple environmental media (air, soil, water, plants, and fish) near a typical chlor-alkali plant could be elevated above background levels. We also estimate that exposures for people living near these facilities could be higher than for people living further away. The extent of exposures for people living near these plants will depend on various factors, including local terrain and meteorology, personal life style, activity patterns, and consumption patterns.

We admit there are uncertainties regarding the extent of the risks due to mercury emissions from specific anthropogenic cources. For example, there is no quantification of how much of the MeHg in fish consumed by the U.S. population is due to emissions from chlor-alkali plants relative to other mercury sources *e.g.*, natural and other anthropogenic sources__. Nonetheless, chlor-alkali plants re significant sources of mercury emissions which contribute to the environmental loadings and to the exposures for humans.

5. What Are the Effects of Aggregate Exposures?

People living lcose to chlor-alkali plants could be exposed to elemental or divalent at elevated levels through inhalation f contaminated air and exposed to some divalent mercury and MeHg through ingestion of home grown plants. If these same people consumed fish from local ponds, they would be exposed to additional quantities of MeHg. These exposure pathways could be additional to those exposures more commonly experienced in the general U.S. populations such as through the consumption of various commercial fish (*e.g.*, tuna, pollack, swordfish) and from dental fillings containing mercury amalgams. These exposures are also, because of mercury's half-life in the human body, additional to some portion of a person's previous mercury exposures. For people living close to chlor-alkali plants, this combination f sources may lead to elevated mercury exposures and body burdens. The degree or extent to which this occurs will largely depend on lifestyles, consumption patterns and other characteristics of this population.

6. What are the Exposures and Risks For Children?

Exposures for children could be greater than exposures for adults because children consume more food and breathe more air per body weight than adults. Children are also potentially more sensitive to the toxic effects of mercury than adults because their nervous systems are still developing. In addition, exposures to MdHg for women who are pregnant, or who may become pregnant, are of particular concern because of potential effects on the developing fetus.

7. How Do Chlor-Alkali Plant Emissions Contribute to Global Mercury levels?

Mercury is a globa pollutant. Emissions, expecially those in the elemental form, can transport very long distances and become part of the global pool. In addition to their potential contributions to mercury exposures locally, chlor-alkali plants are one of the many sources contributing to the global pool and to overall mercury levels in the environment.

8. How Did the EPA Consider Impacts on Children's Health in the Development of Today's Proposed Rule?

Partly due to our concerns for children's health protection, we have strived to develop the proposed rule such that it will result in the greatest emissions reductions that are, consistent with section 112(d) of the CAA, currently technically and economically feasible. Today's proposed rule is based on the best available control technologies and stringent management practices. The emissions reductions achieved through the proposed rule will help reduce the mercury exposures to humans, including children.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be less than about $2.5 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

Because the proposed rule does not include a Federal mandate and is estimated to result in expenditures less than $100 million in any 1 year by State, local, and Tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by the proposed rule, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The RFA generally requires that an agency conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business with less than 1,000 employees, (according to the Small Business Administration definition of a small business in SIC 2812); (2) a small governmental jurisdiction that is a government of a city, county, town,

Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are

specifications as well as procedures for performance evaluation, ongoing operation and maintenance, ongoing data quality assurance, and ongoing recordkeeping and reporting for continuous mercury vapor monitors for vents; acquisition and installation of vent monitors; performance testing for each vent (one time in the 3 year period), including notification of intent to conduct testing and establishment of

Division (2822), U.S. EPA (2136), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Office for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after July 3, 2002, a comment to OMB is best

proposed rule (Please see docket No. A–2000–32).

The 14 voluntary consensus standards are as follows: ASME C00031 or PTC 19–10–1981, "Part 10 Flue and Exhaust Gas Analyses," for EPA Method 3; ASME PTC–38–80 R85 or C00049, "Determination of the Concentration of Particulate Matter in Gas Streams," for EPA Method 5; ASTM D3154–91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA

Velocity Traverse," for EPA Method 2 (and possibly 1); ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; PREN 13211 (1998), "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," for EPA Methods 101, 101A (and mercury portion of EPA

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small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business with less than 1,000 employees, (according to the Small Business Administration definition of a small business in SIC 2812); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. In accordance with the RFA, we conducted an assessment of the proposed standards on small businesses within the chlorine manufacturing industry. Based on definition of a small entity explained above, we identified three of the eight companies that own mercury cell chlor-alkali plants as small. Although small businesses represent 30 percent of the companies within the source category, they are expected to incur only 18 percent of the total industry annual compliance costs. There are no companies with compliance costs equal to or greater than 1 percent of their sales. No firms are expected to close rather than incur the costs of compliance with the proposed rule. Furthermore, firms are not projected to shut down their facilities due to the proposed rule.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we have nonetheless worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligation under the CAA.

In summary, this analysis supports today's certification under the RFA because no firms experience a significant impact due to the proposed rule. For more information, consult the docket for the proposed rule.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by the EPA for mercury cell chlor-alkali plants (ICR No. 2046.01), and a copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule contains monitoring, inspection, recordkeeping, and reporting requirements. The monitoring requirements are associated with the use of control devices to observe operating limits for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents. The inspection requirements are associated with the observation of work practice standards for cell rooms, hydrogen systems, caustic systems, and the storage of mercury-containing wastes. The recordkeeping and reporting requirements are the means of complying with emission limitations and work practice standards in the proposed rule.

The respondent universe consists of twelve existing mercury cell chlor-alkali plants in the U.S. which would need to comply with requirements within 2 years of the effective date of the subpart. The annual respondent monitoring, inspection, recordkeeping, and reporting burden for this collection of information (averaged over the first 3 years after the effective date of the subpart) is estimated to total about 14,000 labor hours at a total annual cost of about $630,000. This estimate includes rule review and planning; initial notification (one-time) to the EPA; one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports if procedures in the plan were followed or immediate reporting if they were not followed; one-time preparation of a site-specific monitoring plan addressing performance and equipment specifications as well as procedures for performance evaluation, ongoing operation and maintenance, ongoing data quality assurance, and ongoing recordkeeping and reporting for continuous mercury vapor monitors for vents; acquisition and installation of vent monitors; performance testing for each vent (one time in the 3 year period), including notification of intent to conduct testing and establishment of vent mercury concentration operating limits; reporting of test results, including one-time preparation of notification of compliance status for vents; one-time preparation of a washdown plan; one-time preparation of notification of compliance status for work practice standards; continuous monitoring of vent outlet elemental mercury concentration and recording of data; recording of information related to the washdown plan; inspections and keeping records related to equipment problems, deficiencies in floors, pillars, and beams, caustic leaks, liquid mercury spills and accumulations, liquid mercury leaks, and hydrogen/mercury vapor leaks; keeping records related to liquid mercury collection; keeping records related to storage of mercury-containing wastes; and preparation of semiannual compliance reports.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our rules are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA (2136), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Office for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after July 3, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by August 2, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rule involve technical standards. The EPA proposes in the proposed rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 3A, 3B, 4, 5, 101, 101A, and 102. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, and 102. The search and review results have been documented and are placed in the docket (No. A–2000–32) for the proposed rule.

This search for emissions monitoring procedures identified 14 voluntary consensus standards and 5 draft standards. The EPA determined that the 14 standards were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, the EPA does not propose to adopt these 14 voluntary consensus standards in the proposed rule. The detailed EPA review comments for these 14 standards are in the docket for the proposed rule (Please see docket No. A–2000–32).

The 14 voluntary consensus standards are as follows: ASME C00031 or PTC 19–10–1981, "Part 10 Flue and Exhaust Gas Analyses," for EPA Method 3; ASME PTC–38–80 R85 or C00049, "Determination of the Concentration of Particulate Matter in Gas Streams," for EPA Method 5; ASTM D3154–91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 2C, 3, 3B, and 4; ASTM D3464–96, "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," for EPA Method 2; ASTM D3685/D3685M–98, "Test Methods for Sampling and Determination of Particulate Matter in Stack Gases," for EPA Method 5; ASTM D3796–90 (1998), "Standard Practice for Calibration of Type S Pitot Tubes," for EPA Method 2; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," for EPA Methods 3A; ASTM E337–84 (Reapproved 1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4; CAN/CSA Z223.1-M1977, "Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams," for EPA Method 5; CAN/CSA Z223.2-M86 (1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Methods 3A; CAN/CSA Z223.26-M1987, "Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method," for EPA Methods 101 and 101A; ISO 9096:1992 (in review 2000), "Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," for EPA Method 5; ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A; ISO 10780:1994, "Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," for EPA Method 2.

Five of the standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; PREN 13211 (1998), "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," for EPA Methods 101, 101A (and mercury portion of EPA Method 29); and ASTM Z6590Z, "Manual Method for Both Speciated and Elemental Mercury" is a potential alternative for portions of EPA Methods 101A and Method 29 (mercury portion only).

We are not proposing to include these five draft voluntary consensus standards in the proposed rule. The EPA, however, will review the standards when they are final. The review comments for these five standards are in the same docket entry as cited above.

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why the proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A was used).

Section 63.8232 of the proposed standards lists the EPA testing methods included in the proposed rule. Under § 63.8 of the NESHAP General Provisions, a source may apply to the EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Air emissions control, Hazardous air pollutants, Reporting and recordkeeping requirements.

Dated: June 17, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

63.8248 What other requirements must I meet to demonstrate continuous compliance?

Notifications, Reports, and Records

63.8252 What notifications must I submit and when?
63.8254 What reports must I submit and when?
63.8256 What records must I keep?
63.8258 In what form and how long must I keep my records?

part of) a major source of hazardous air pollutant (HAP) emissions or an area source of HAP emissions. A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year. An area source of HAP is a plant site that has the potential to emit HAP but is not a major source.

(c) Beginning on [DATE 2 YEARS

meets the definition of "reconstruction" in § 63.2.

§ 63.8186 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you no later than [DATE 2 YEARS FROM THE DATE OF

(ii) 0.033 grams of mercury per megagram of chlorine produced (6.59 x 10^{-5} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams when there are no end-box ventilation systems.

(3) New, reconstructed, or existing mercury recovery facility. You must not discharge to the atmosphere mercury emissions in excess of the applicable limit in paragraph (a)(3)(i) or (ii) of this section.

(d) You must prepare, submit, and operate according to a written washdown plan designed to minimize fugitive mercury emissions through routine washing of surfaces where liquid mercury could accumulate. The written plan must address the elements contained in Table to this subpart.

(e) You must institute a cell room monitoring program to continuously monitor the elemental mercury vapor concentration in the upper portion of

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Dated: June 17, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 63 amended by adding Subpart IIIII to read as follows:

Subpart IIIII—National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-Alkali Plants

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Notifications, Reports, and Records

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Subpart IIIII—National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-Alkali Plants

What This Subpart Covers

§ 63.8180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for sources of mercury emissions at mercury cell chlor-alkali plants. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and work practice standards in this subpart.

§ 63.8182 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a mercury cell chlor-alkali plant.

(b) You are required to obtain a title V permit for each source subject to this subpart, whether your source is (or is part of) a major source of hazardous air pollutant (HAP) emissions or an area source of HAP emissions. A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year. An area source of HAP is a plant site that has the potential to emit HAP but is not a major source.

(c) Beginning on [DATE 2 YEARS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the provisions of subpart E of 40 CFR part 61 that apply to mercury chlor-alkali plants, which are listed in paragraphs (c)(1) through (3) of this section, are no longer applicable.

(1) 40 CFR 61.52(a).

(2) 40 CFR 61.53 (b) and (c).

(3) 40 CFR 61.55 (b), (c) and (d).

§ 63.8184 What parts of my plant does this subpart cover?

(a) This subpart applies to each affected source at a plant site where chlorine and caustic are produced in mercury cells. This subpart applies to two types of affected sources: the mercury cell chlor-alkali production facility, as defined in paragraph (a)(1) of this section; and the mercury recovery facility, as defined in paragraph (a)(2) of this section.

(1) The mercury cell chlor-alkali production facility designates an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a plant site. This subpart covers mercury emissions from by-product hydrogen streams, end-box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes.

(2) The mercury recovery facility designates an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a plant site. This subpart covers mercury emissions from mercury thermal recovery unit vents and fugitive emission sources associated with storage areas for mercury-containing wastes.

(b) An affected source at your mercury cell chlor-alkali plant is existing if you commenced construction of the affected source before July 3, 2002.

(c) A mercury recovery facility is a new affected source if you commence construction or reconstruction of the affected source after July 3, 2002. An affected source is reconstructed if it meets the definition of "reconstruction" in § 63.2.

§ 63.8186 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you no later than [DATE 2 YEARS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new or reconstructed mercury recovery facility and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(c) If you have a new or reconstructed mercury recovery facility and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you upon initial startup.

(d) You must meet the notification and schedule requirements in § 63.8252. Several of these notifications must be submitted before the compliance date for your affected source(s).

Emission Limitations and Work Practice Standards

§ 63.8190 What emission limitations must I meet?

(a) Emission limits. You must meet each emission limit in paragraphs (a)(1) through (3) of this section that applies to you.

(1) New or reconstructed mercury cell chlor-alkali production facility. Emissions of mercury are prohibited from a new or reconstructed mercury cell chlor-alkali production facility.

(2) Existing mercury cell chlor-alkali production facility. You must not discharge to the atmosphere aggregate mercury emissions in excess of the applicable limit in paragraph (a)(2)(i) or (ii) of this section.

(i) 0.067 grams of mercury per megagram of chlorine produced (1.3×10^{-4} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams and all end-box ventilation system vents when both types of emission points are present.

(ii) 0.033 grams of mercury per megagram of chlorine produced (6.59×10^{-5} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams when there are no end-box ventilation systems.

(3) New, reconstructed, or existing mercury recovery facility. You must not discharge to the atmosphere mercury emissions in excess of the applicable limit in paragraph (a)(3)(i) or (ii) of this section.

(i) 23 milligrams per dry standard cubic meter from each oven type mercury thermal recovery unit vent.

(ii) 4 milligrams per dry standard cubic meter from each non-oven type mercury thermal recovery unit vent.

(b) Operating limits. You must meet each operating limit in paragraphs (b)(1) and (2) of this section that applies to you.

(1) Existing mercury cell chlor-alkali production facility. You must maintain the daily average mercury concentration in each by-product hydrogen stream no higher than the level established during the initial performance test. You must maintain the daily average mercury concentration in each end-box ventilation system vent exhaust no higher than the level established during the initial performance test.

(2) New, reconstructed, or existing mercury recovery facility. You must maintain the daily average mercury concentration in each oven type mercury thermal recovery unit vent exhaust no higher than the level established during the initial performance test. You must maintain the daily average mercury concentration in each non-oven type mercury thermal recovery unit vent exhaust no higher than the level established during the initial performance test.

§ 63.8192 What work practice standards must I meet?

(a) You must meet the work practice standards in Tables 1 through 5 to this subpart.

(b) You must adhere to the response intervals specified in Tables 1 through 5 to this subpart at all times. Nonadherence to the intervals in Tables 1 through 5 to this subpart constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(c), with the date and time of the deviation, cause of the deviation, a description of the conditions, and time actual compliance was achieved.

(c) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in Tables 1 through 5 to this subpart.

(d) You must prepare, submit, and operate according to a written washdown plan designed to minimize fugitive mercury emissions through routine washing of surfaces where liquid mercury could accumulate. The written plan must address the elements contained in Table to this subpart.

(e) You must institute a cell room monitoring program to continuously monitor the elemental mercury vapor concentration in the upper portion of each cell room against a predetermined site-specific action level(s). When a mercury concentration is detected that exceeds the established action level(s), you must identify the cause of the elevated concentration and take corrective action as quickly as possible. At a minimum, these follow-up activities should include the relevant work practices in Tables 1 through 5 to this subpart. You must also keep records related to the inspections and corrective actions performed.

Operation and Maintenance Requirements

§ 63.8222 What are my operation and maintenance requirements?

As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source(s), including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

General Compliance Requirements

§ 63.8226 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents in § 63.8190 at all times, except during periods of startup, shutdown, and malfunction. You must be in compliance with the applicable work practice standards in § 63.8192 at all times, except during periods of startup, shutdown, and malfunction.

(b) During the period between the compliance date specified for your affected source in § 63.8186 and the date upon which mercury concentration continuous monitoring systems (CMS) have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and

malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.8186 for

than twice (at mid-term and renewal) during each term of each title V permit.

§ 63.8232 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits?

You must conduct a performance test for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit vent according to the requirements in § 63.7(e)(1) and the conditions detailed

run for an end-box ventilation system vent, you must continuously measure the electric current through the operating mercury cells and record a measurement at least once every 15 minutes.

(f) During each test run for a mercury thermal recovery unit vent, the mercury-containing waste processed in the retort must be the type of waste that results in the highest mercury concentration in the mercury thermal recovery unit vent.

$$P_{Cl_2,run} = (1.3\times10^{-6})(CL_{avg,run})(n_{cells,run})(t_{run}) \quad \text{(Eq. 2)}$$

Where:

$P_{Cl2, run}$ = Amount of chlorine produced during the test run, megagrams chlorine ($Mg\ Cl_2$);

1.3×10^{-6} = Theoretical chlorine production rate factor, $Mg\ Cl_2$ per hour per ampere per cell;

$CL_{avg, run}$ = Average measured cell line

the end-box ventilation system vent, if applicable.

(6) Calculate the total mercury emission rate from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at the mercury cell chlor-alkali production facility using Equation 5 of

mercury thermal recovery unit vent exhaust using Equation 7 of this section as follows:

$$C_{Hg,avg} = \frac{\sum_{i=1}^{n} C_{Hg,run}}{n} \quad \text{(Eq. 7)}$$

malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.8186 for your affected source to demonstrate initial compliance with the emission limits in § 63.8190(a)(2) for by-product hydrogen streams and end-box ventilation system vents and the emission limits in § 63.8190(a)(3) for mercury thermal recovery unit vents.

(b) For each work practice standard in § 63.8192 where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.8186.

(c) If you commenced construction or reconstruction of a mercury recovery facility between July 3, 2002 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**, you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than [DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction of a mercury recovery facility between July 3, 2002 and [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [DATE 3 YEARS AND 180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.8231 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate compliance with the emission limits in § 63.8190(a)(2) for by-product hydrogen streams and end-box ventilation system vents and the emission limits in § 63.8190(a)(3) for mercury thermal recovery unit vents no less frequently than twice (at mid-term and renewal) during each term of each title V permit.

§ 63.8232 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits?

You must conduct a performance test for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit vent according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (a) through (f) of this section.

(a) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(b) For each performance test, you must develop a site-specific test plan in accordance with § 63.7(c)(2).

(c) You must conduct at least three valid test runs in order to comprise a performance test, as specified in § 63.7(e)(3). To be considered a valid test run, the sampling time must be at least 2 hours and the mercury concentration in the field sample must be at least 2 times the limit of detection for the analytical method.

(d) You must use the test methods specified in paragraphs (d)(1) through (4) of this section and the applicable test methods in paragraphs (d)(5) through (7) of this section.

(1) Method 1 or 1A in appendix A of 40 CFR part 60 to determine the sampling port locations and the location and required number of sampling traverse points.

(2) Method 2, 2A, 2C, or 2D in appendix A of 40 CFR part 60 to determine the stack gas velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B in appendix A of 40 CFR part 60 to determine the stack gas molecular weight.

(4) Method 4 in appendix A of 40 CFR part 60 to determine the stack gas moisture content.

(5) For each by-product hydrogen stream, Method 102 in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(6) For each end-box ventilation system vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(7) For each mercury thermal recovery unit vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(e) During each test run for a by-product hydrogen stream and each test run for an end-box ventilation system vent, you must continuously measure the electric current through the operating mercury cells and record a measurement at least once every 15 minutes.

(f) During each test run for a mercury thermal recovery unit vent, the mercury-containing waste processed in the retort must be the type of waste that results in the highest mercury concentration in the mercury thermal recovery unit vent. You must document the mercury content of this type of waste and an explanation of why it results in the highest mercury concentration in the site-specific test plan required in § 63.8232(b).

§ 63.8234 What equations and procedures must I use?

(a) To determine the grams of mercury discharged per megagram (grams Hg/Mg Cl_2) of chlorine produced from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at a mercury cell chlor-alkali production facility, you must follow the procedures in paragraphs (a)(1) through (6) of this section.

(1) Determine the mercury emission rate for each test run, R_{run}, in grams per day for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, from Method 101, 101A, or 102 (40 CFR part 61).

(2) Calculate the average measured electric current through the operating mercury cells during each test run for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 1 of this section as follows:

$$CL_{avg,run} = \frac{\sum_{i=1}^{n} CL_{i,run}}{n} \quad \text{(Eq. 1)}$$

Where:

$CL_{avg,run}$ = Average measured cell line current load during the test run, amperes;

$CL_{i,run}$ = Individual cell line current load measurement (i.e., 15 minute reading) during the test run, amperes; and

n = Number of cell line current load measurements taken over the duration of the test run.

(3) Calculate the amount of chlorine produced during each test run for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 2 of this section as follows:

$$P_{Cl_2,run} = (1.3\times10^{-6})(CL_{avg,run})(n_{cells,run})(t_{run}) \quad \text{(Eq. 2)}$$

Where:

$P_{Cl2,\ run}$ = Amount of chlorine produced during the test run, megagrams chlorine (Mg Cl_2);

1.3×10^{-6} = Theoretical chlorine production rate factor, Mg Cl_2 per hour per ampere per cell;

$CL_{avg,\ run}$ = Average measured cell line current load during test run, amperes, calculated using Equation 1 of this section;

$n_{cell,\ run}$ = Number of cells on-line during the test run; and

t_{run} = Duration of test run, hours.

(4) Calculate the mercury emission rate in grams of mercury per megagram of chlorine produced for each test run for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 3 of this section as follows:

$$E_{Hg,run} = \left[\frac{(R_{run})(t_{run})}{(24)(P_{Cl_2,run})}\right] \quad \text{(Eq. 3)}$$

Where:

$E_{Hg,\ run}$ = Mercury emission rate for the test run, grams Hg/Mg Cl_2;

R_{run} = Measured mercury emission rate for the test run from paragraph (a)(1) of this section, grams Hg per day;

t_{run} = Duration of test run, hours;

24 = Conversion factor, hours per day; and

$P_{Cl2,\ run}$ = Amount of chlorine produced during the test run, calculated using Equation 2 of this section, Mg Cl_2.

(5) Calculate the average mercury emission rate for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 4 of this section as follows:

$$E_{HG,avg} = \frac{\sum_{i=1}^{n} E_{Hg,run}}{n} \quad \text{(Eq. 4)}$$

Where:

$E_{Hg,avg}$ = Average mercury emission rate for the by-product hydrogen stream or the end-box ventilation system vent, if applicable, grams HMg Cl_2;

$E_{Hg,run}$ = Mercury emission rate for each test run for the by-product hydrogen stream or the end-box ventilation system vent, if applicable, grams Hg/Mg Cl_2, calculated using Equation 3 of this section; and

n = Number of test runs conducted for the by-product hydrogen stream or the end-box ventilation system vent, if applicable.

(6) Calculate the total mercury emission rate from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at the mercury cell chlor-alkali production facility using Equation 5 of this section as follows:

$$E_{Hg,H_2EB} = \sum_{i=1}^{n} E_{Hg,avg} \quad \text{(Eq. 5)}$$

Where:

$E_{Hg,H2EB}$ = Total mercury emission rate from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at the affected source, grams Hg/Mg Cl_2;

$E_{Hg,avg}$ = Average mercury emission rate for each by-product hydrogen stream and each end-box ventilation system vent, if applicable, grams Hg/Mg Cl_2, determined using Equation 4 of this section; and

n = total number of by-product hydrogen streams and end-box ventilation system vents at the affected source.

(b) To determine the milligrams of mercury per dry standard cubic meter exhaust discharged from mercury thermal recovery unit vents, you must follow the procedures in paragraphs (b)(1) and (2) of this section.

(1) Calculate the concentration of mercury in milligrams of mercury per dry standard cubic meter of exhaust for each test run for each mercury thermal recovery unit vent using Equation 6 of this section as follows:

$$C_{Hg,run} = \left[\frac{(m_{Hg})(10^{-3})}{(V_{m(std)})}\right] \quad \text{(Eq. 6)}$$

Where:

$C_{Hg,\ run}$ = Mercury concentration for the test run, milligrams of mercury per dry standard cubic meter of exhaust;

m_{Hg} = Mass of mercury in test run sample, from Method 101, 101A, or 102, micrograms;

10^{-3} = Conversion factor, milligrams per microgram; and

$V_{m(std)}$ = Dry gas sample volume at standard conditions, from Method 101, 101A, or 102, dry standard cubic meters.

(2) Calculate the average concentration of mercury in each mercury thermal recovery unit vent exhaust using Equation 7 of this section as follows:

$$C_{Hg,avg} = \frac{\sum_{i=1}^{n} C_{Hg,run}}{n} \quad \text{(Eq. 7)}$$

Where:

$C_{Hg,avg}$ = Average mercury concentration for the mercury thermal recovery unit vent, milligrams of mercury per dry standard cubic meter exhaust;

$C_{Hg,run}$ = Mercury concentration for each test run, milligrams of mercury per dry standard cubic meter of exhaust, calculated using Equation 6 of this section; and

n = Number of test runs conducted for the mercury thermal recovery unit vent.

(c) For each by-product hydrogen stream, each end-box ventilation system vent, and each mercury thermal recovery unit vent, you must establish a site-specific mercury concentration operating limit according to the procedures in paragraphs (c)(1) and (2) of this section.

(1) Using a mercury concentration CMS required in § 63.8240, measure and record the elemental mercury concentration after the last control device at least once every 15 minutes for the entire duration of each performance test run.

(2) Calculate the mercury concentration operating limit based on the mercury concentration monitoring data obtained during each valid test run of the performance test during which the mercury emissions did not exceed the applicable mercury emission limit in § 63.8190(a)(2) through (3) using Equation 8 of this section as follows:

$$OL_{Hgconc} = \frac{\left(\sum_{i=1}^{n} C_{Hg,i}\right)}{n} \quad \text{(Eq. 8)}$$

Where:

OL_{Hgconc} = Mercury concentration operating limit, ppmv or concentration units selected by the owner/operator;

$C_{Hg,i}$ = Concentration of elemental mercury measured at the interval i (i.e., 15 minute reading) during each valid test run of the performance test during which the mercury emissions did not exceed the applicable mercury emission

limit in § 63.8190(a)(2) through (3) using a mercury concentration CMS, ppmv or concentration units selected by the owner/operator; and

n = Number of concentration measurements taken during all test runs of the performance test.

(d) You may change a mercury concentration operating limit by following the requirements in paragraphs (d)(1) through (3) of this section.

(1) Conduct a performance test according to the requirements in § 63.8232 and this section.

(2) Establish a new mercury concentration operating limit according to the procedures in paragraphs (c)(1) and (2) of this section.

(3) Submit a notification of process change as required in § 63.8(e)(3)(iii).

§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with the emission limits in § 63.8190(a)(2) through (3) for by-product hydrogen streams and end-box ventilation system vents and the emission limits in § 63.8190(a)(3) for mercury thermal recovery unit vents.

(b) For each mercury recovery facility, you have demonstrated initial compliance with the emission limits for mercury thermal recovery unit vents in § 63.8190(a)(3) if:

(1) Mercury concentration in each mercury thermal recovery unit vent exhaust, as measured during the performance test required in § 63.8232, is less than or equal to the mercury concentration operating limit established in § 63.8234(c); and

(2) You have installed, calibrated, and operated a mercury concentration CMS for each mercury thermal recovery unit vent exhaust that has the capability to detect an elemental mercury concentration at or below 0.5 times the mercury concentration operating limit established in § 63.8234(c).

(c) In lieu of a promulgated performance specification as required in § 63.8(a)(2), you must develop a site-specific monitoring plan that addresses the elements in paragraphs (c)(1) through (6) of this section.

(1) Installation and measurement

preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) For each by-product hydrogen stream, each end-box ventilation system vent, and each mercury thermal

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to

performance test, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). The Notification of Compliance Status must contain the information in § 63.9(h)(2)(ii)(A) through (G). The site-specific monitoring plan required in § 63.8242(c) must also be submitted.

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limit in § 63.8190(a)(2) through (3) using a mercury concentration CMS, ppmv or concentration units selected by the owner/operator; and

n = Number of concentration measurements taken during all test runs of the performance test.

(d) You may change a mercury concentration operating limit by following the requirements in paragraphs (d)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your intent to conduct a new performance test to revise the mercury concentration operating limit at least 60 calendar days before the test is scheduled to begin.

(2) Conduct a performance test and demonstrate compliance with the applicable emission limit.

(3) Establish a revised mercury concentration operating limit according to the procedures in paragraph (c) of this section.

(e) You must calculate the daily average elemental mercury concentration using Equation 9 of this section as follows:

$$C_{Hg,dailyavg} = \frac{\left(\sum_{i=1}^{n} C_{Hg,i}\right)}{n} \quad \text{(Eq. 9)}$$

Where:

$C_{Hg,dailyavg}$ = Average elemental mercury concentration for the operating day, ppmv or concentration units selected by the owner/operator;

$C_{Hg,i}$ = Concentration of elemental mercury measured at the interval i (i.e., 15 minute reading) using a mercury concentration CMS, ppmv or concentration units selected by the owner/operator; and

n = Number of concentration measurements taken during the operating day.

§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) For each mercury cell chlor-alkali production facility, you have demonstrated initial compliance with the emission limits for by-product hydrogen streams and end-box ventilation system vents in § 63.8190(a)(2) if:

(1) Total mercury emission rate from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at the affected source, determined in accordance with §§ 63.8232 and 63.8234(a), did not exceed the applicable emission limit in § 63.8190(a)(2)(i) or (ii); and

(2) You have established a mercury concentration operating limit for each by-product hydrogen stream and each end-box ventilation system vent, if applicable, in accordance with § 63.8234(c), and have a record of all mercury concentration monitoring data used to establish the limit.

(b) For each mercury recovery facility, you have demonstrated initial compliance with the emission limits for mercury thermal recovery unit vents in § 63.8190(a)(3) if:

(1) Mercury concentration in each mercury thermal recovery unit vent exhaust, determined in accordance with §§ 63.8232 and 63.8234(b), did not exceed the applicable emission limit in § 63.8190(a)(3)(i) or (ii); and

(2) You have established a mercury concentration operating limit for each mercury thermal recovery unit vent in accordance with § 63.8234(c) and have a record of all mercury concentration monitoring data used to establish the limit.

(c) For each affected source, you have demonstrated initial compliance with the work practice standards in § 63.8192 if you certify in your Notification of Compliance Status that you meet or will meet each of the work practice standards, if you prepare the washdown plan and mercury vapor measurement plan and submit them as part of your Notification of Compliance Status, and if you certify in the notification that you operate according to or will operate according to the plan.

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(e).

Continuous Compliance Requirements

§ 63.8240 What are my monitoring requirements?

For each by-product hydrogen stream, each end-box ventilation system vent, and each mercury thermal recovery unit vent, you must continuously monitor the elemental mercury concentration using a mercury concentration CMS monitor according to the requirements in § 63.8242.

§ 63.8242 What are the installation, operation, and maintenance requirements for my mercury concentration continuous monitoring systems?

You must install, operate, and maintain each mercury concentration CMS according to paragraphs (a) through (e) of this section.

(a) Each mercury concentration CMS must sample, analyze, and record the concentration of elemental mercury at least once every 15 minutes.

(b) Each mercury concentration CMS analyzer must have a detector with the capability to detect an elemental mercury concentration at or below 0.5 times the mercury concentration operating limit established in § 63.8234(c).

(c) In lieu of a promulgated performance specification as required in § 63.8(a)(2), you must develop a site-specific monitoring plan that addresses the elements in paragraphs (c)(1) through (6) of this section.

(1) Installation and measurement location downstream of the last control device for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit vent.

(2) Performance and equipment specifications for the sample interface, the pollutant concentration analyzer, and the data collection and reduction system.

(3) Performance evaluation procedures and acceptance criteria (i.e., calibrations).

(4) Ongoing operation and maintenance procedures in accordance with the requirements of § 63.8(c)(1), (3), and (4)(ii).

(5) Ongoing data quality assurance procedures in accordance with the requirements of § 63.8(d).

(6) Ongoing recordkeeping and reporting procedures in accordance the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(d) You must conduct a performance evaluation of each mercury concentration CMS in accordance with your site-specific monitoring plan.

(e) You must operate and maintain each mercury concentration CMS in continuous operation according to the site-specific monitoring plan.

§ 63.8244 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor elemental mercury concentration continuously (or collect data at all required intervals) at all times that the affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) For each by-product hydrogen stream, each end-box ventilation system vent, and each mercury thermal recovery unit vent, you must demonstrate continuous compliance with each mercury concentration operating limit by:

(1) Collecting mercury concentration data according to § 63.8244(a), representing at least 90 percent of the 15 minute periods in the operating day (with data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities not counting toward the 90 percent requirement);

(2) Reducing the mercury concentration data to daily averages using Equation 9 of § 63.8234(e), not including data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities;

(3) Maintaining the daily average elemental mercury concentration no higher than the mercury concentration operating limit established in § 63.8234(c); and

(4) Maintaining records of mercury concentration monitoring and daily average values, as required in § 63.8256(b)(3) and (4).

(b) You must demonstrate continuous compliance with the work practice standards in § 63.8192 by maintaining records in accordance with § 63.8256(c).

§ 63.8248 What other requirements must I meet to demonstrate continuous compliance?

(a) Deviations. You must report each instance in which you did not meet each emission limitation in § 63.8190 that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each work practice standard in § 63.8192 that applies to you. These instances are deviations from the emission limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.8254.

(b) Startups, shutdowns, and malfunctions. During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan required in § 63.8226(c).

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notification, Reports, and Records

§ 63.8252 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f) and 63.9(b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification not later than [DATE 120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed mercury recovery facility on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification not later than 120 days after you become subject to this subpart.

(d) For each performance test that you are required to conduct for by-product hydrogen streams and end-box ventilation system vents and for mercury thermal recovery unit vents, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) You must submit a Notification of Compliance Status in accordance with paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration. This Notification of Compliance Status must certify that you meet or will meet each work practice standard in § 63.8192. The washdown plan must also be submitted, and the Notification of Compliance Status must certify that you operate according to or will operate according to the plan.

(2) For each initial compliance demonstration that does include a performance test, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). The Notification of Compliance Status must contain the information in § 63.9(h)(2)(ii)(A) through (G). The site-specific monitoring plan required in § 63.8242(c) must also be submitted.

§ 63.8254 What reports must I submit and when?

(a) Compliance report due dates. Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8186 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source in § 63.8186.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source, if your title V permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) Compliance report contents. Each compliance report must contain the information in paragraphs (b)(1) through (3) of this section, and as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in § 63.8246 that apply to you, the compliance report must include a statement that there were no deviations from the continuous compliance requirements during the reporting period.

(6) If you had a deviation from any continuous compliance requirement during the reporting period, the compliance report must include the information in paragraphs (b)(6)(i) through (vi) of this section.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(iii) The number, duration, and cause for monitor downtime incidents (including unknown cause, if applicable).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, malfunction, and other periods.

(7) If you had a deviation from any work practice standard during the reporting period, the compliance report must include the information in paragraphs (b)(7)(i) through (iii) of this section.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(iii) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(8) If you had a deviation from any emission limitation during the reporting period, the compliance report must include the information in paragraphs (b)(8)(i) through (vi) of this section.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(iii) The number, duration, and cause for monitor downtime incidents (including unknown cause, if applicable).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, malfunction, and other periods.

(c) Immediate startup, shutdown, and malfunction report. If you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

§ 63.8256 What records must I keep?

(a) General records. You must keep the records in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of

according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8262 What parts of the General Provisions apply to me?

Table 9 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.8264 Who implements and enforces

and is burned as fuel, transferred to another process as raw material, or discharged directly to the atmosphere.

Caustic means an aqueous solution of alkali metal hydroxide, as sodium hydroxide or potassium hydroxide, that is produced in the decomposer.

Caustic basket means a fixture adjacent to the decomposer that contains a serrated funnel over which the caustic from the decomposer passes, breaking into droplets such that electric

metal-mercury amalgam (mercury amalgam).

Emission limitation means any emission limit or operating limit.

End box means a component of a mercury cell for transferring materials between the electrolyzer and the decomposer. The inlet end box collects and combines raw materials at the inlet end of the cell, and the outlet end box separates and directs various materials either into the decomposer or out of the

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(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in § 63.8246 that apply to you, a statement that there were no deviations from the emission limitations and work practice standards during the reporting period.

(6) If there were no periods during which the mercury concentration CMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the mercury concentration CMS was out-of-control during the reporting period.

(7) For each deviation from the requirements for work practice standards in Tables 1 through 5 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(c)), the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(8) For each deviation from an emission limitation (emission limit and operating limit) occurring at an affected source where you are using a mercury concentration CMS, in accordance with the site-specific monitoring plan required in § 63.8242(c), to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time of each instance in which a continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration of each instance in which a continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) An identification of each hazardous air pollutant that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in monitoring system, processes, or controls since the last reporting period.

(c) Immediate startup, shutdown, and malfunction report. If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan required in § 63.8226(c), you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) Part 70 monitoring report. For each affected source, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation and work practice standard in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.8256 What records must I keep?

(a) General records. You must keep the records in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(b) Records associated with the by-product hydrogen stream and end-box ventilation system vent emission limitations and the mercury thermal recovery unit vent emission limitations. You must keep the records in paragraphs (b)(1) through (5) of this section related to the emission limitations in § 63.8190(a)(2) through (3) and (b).

(1) Records of performance tests as required in § 63.10(b)(2)(viii).

(2) Records of the establishment of the applicable mercury concentration operating limits, including records of the mercury concentration monitoring conducted during the performance tests.

(3) Records of the continuous mercury concentration monitoring data.

(4) Records of the daily average elemental mercury concentration values.

(5) Records associated with your site-specific monitoring plan required in § 63.8242(c) (i.e., results of inspections, calibrations, and validation checks of each mercury concentration CMS).

(c) Records associated with the work practice standards. You must keep the records specified in Table 8 to this subpart related to the work practice standards in Tables 1 through 5 to this subpart. You must also maintain a copy of your current washdown plan and records of when each washdown occurs.

§ 63.8258 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8262 What parts of the General Provisions apply to me?

Table 9 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.8264 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) of this section will not be delegated to State, local, or tribal agencies.

(1) Approval of alternatives under § 63.6(g) to the non-opacity emission limitations in § 63.8190 and work practice standards in § 63.8192.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8266 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Aqueous liquid means a liquid mixture in which water is the predominant component.

Brine means an aqueous solution of alkali metal chloride, as sodium chloride salt solution or potassium chloride salt solution, that is used in the electrolyzer as a raw material.

By-product hydrogen stream means the hydrogen gas from each decomposer that passes through the hydrogen system and is burned as fuel, transferred to another process as raw material, or discharged directly to the atmosphere.

Caustic means an aqueous solution of alkali metal hydroxide, as sodium hydroxide or potassium hydroxide, that is produced in the decomposer.

Caustic basket means a fixture adjacent to the decomposer that contains a serrated funnel over which the caustic from the decomposer passes, breaking into droplets such that electric current is interrupted.

Caustic system means all vessels, piping, and equipment that convey caustic and remove mercury from the caustic stream. The caustic system begins at the decomposer and ends after the primary filters.

Cell room means a building or other structure in which one or more mercury cells are located.

Control device means a piece of equipment (such as condensers, coolers, chillers, heat exchangers, mist eliminators, absorption units, and adsorption units) that removes mercury from gaseous streams.

Decomposer means the component of a mercury cell in which mercury amalgam and water react in bed of graphite packing (within a cylindrical vessel), producing caustic and hydrogen gas and returning mercury to its elemental form for re-use in the process.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Electrolyzer means the main component of the mercury cell that consists of an elongated, shallow steel trough that holds a layer of mercury as a flowing cathode. The electrolyzer is enclosed by side panels and a top that suspends metal anodes. In the electrolyzer, brine is fed between a flowing mercury cathode and metal anodes in the presence of electricity to produce chlorine gas and an alkali metal-mercury amalgam (mercury amalgam).

Emission limitation means any emission limit or operating limit.

End box means a component of a mercury cell for transferring materials between the electrolyzer and the decomposer. The inlet end box collects and combines raw materials at the inlet end of the cell, and the outlet end box separates and directs various materials either into the decomposer or out of the cell.

End-box ventilation system means all vessels, piping, and equipment that evacuate the head space of each mercury cell end box (and possibly other vessels and equipment) to the atmosphere. The end-box ventilation system begins at the end box (and other vessel or equipment which is being evacuated) and terminates at the end-box ventilation system vent. The end-box ventilation system includes all control devices.

End-box ventilation system vent means the discharge point of the end-box ventilation system to the atmosphere after all control devices.

Hydrogen leak means hydrogen gas (containing mercury vapor) that is escaping from the decomposer or hydrogen system.

Hydrogen system means all vessels, piping, and equipment that convey a by-product hydrogen stream. The hydrogen system begins at the decomposer and ends at the point where the by-product hydrogen stream is either burned as fuel, transferred to another process as raw material, or discharged directly to the atmosphere. The hydrogen system includes all control devices.

In liquid mercury service means containing or coming in contact with liquid mercury.

Liquid mercury accumulation means one or more liquid mercury droplets, or a pool of liquid mercury, present on the floor or other surface exposed to the atmosphere.

Liquid mercury leak means the liquid mercury that is dripping or otherwise escaping from process equipment.

Liquid mercury spill means a liquid mercury accumulation resulting from a liquid mercury that leaked from process equipment or that dripped during maintenance or handling.

Mercury cell means a device consisting of an electrolyzer and decomposer, with one or more end boxes, a mercury pump, and other components linking the electrolyzer and decomposer.

Mercury cell amalgam seal pot means a compartment through which mercury amalgam passes from an outlet end box to a decomposer.

Mercury cell chlor-alkali plant means all contiguous or adjoining property that is under common control, where mercury cells are used to manufacture product chlorine, product caustic, and by-product hydrogen and where mercury may be recovered from wastes.

Mercury cell chlor-alkali production facility means an affected source consisting of all cell rooms and ancillary operations used in the manufacture of

Mercury recovery facility means an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a mercury cell chlor-alkali plant.

Mercury thermal recovery unit means the retort(s) where mercury-containing wastes are heated to volatilize mercury and the mercury recovery/control system (control devices and other recovery unit in which each retort is a batch oven retort.

Responsible official means responsible official as defined in 40 CFR 70.2.

Retort means a furnace where mercury-containing wastes are heated to drive mercury into the gas phase. The types of retorts used as part of mercury thermal recovery units at mercury cell chlor-alkali plants include batch oven

TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

For . . .	You must . . .
	g. If you step into an electrolyzer bottom, either remove all visible mercury from your footwear or replace them immediately after stepping out of the electrolyzer. h. If an electrolyzer is disassembled for overhaul maintenance or for any other reason, chemically clean the bed plate or thoroughly flush it with an aqueous liquid. i. Before transporting each electrolyzer part to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport. j. After completing maintenance on an electrolyzer, check any mercury piping flanges that were

Mercury cell chlor-alkali plant means all contiguous or adjoining property that is under common control, where mercury cells are used to manufacture product chlorine, product caustic, and by-product hydrogen and where mercury may be recovered from wastes.

Mercury cell chlor-alkali production facility means an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a mercury cell chlor-alkali plant.

Mercury concentration CMS, or mercury concentration continuous monitoring system, means a CMS, as defined in § 63.2, that continuously measures the concentration of mercury.

Mercury-containing wastes means waste materials containing mercury, which are typically classified under Resource Conservation and Recovery Act (RCRA) solid waste designations. K071 wastes are sludges from the brine system. K106 are wastewater treatment sludges. D009 wastes are non-specific mercury-containing wastes, further classified as either debris or nondebris (i.e., cell room sludges and carbon from decomposers).

Mercury pump means a component of a mercury cell for conveying elemental mercury re-created in the decomposer to the beginning of the mercury cell. A mercury pump is typically found either as an in-line mercury pump (near a mercury suction pot or mercury seal pot) or submerged mercury pump (within a mercury pump tank or mercury pump seal).

Mercury recovery facility means an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a mercury cell chlor-alkali plant.

Mercury thermal recovery unit means the retort(s) where mercury-containing wastes are heated to volatilize mercury and the mercury recovery/control system (control devices and other equipment) where the retort off-gas is cooled, causing mercury to condense and liquid mercury to be recovered.

Mercury thermal recovery unit vent means the discharge point of the mercury thermal recovery unit to the atmosphere after all recovery/control devices. This term encompasses both oven type vents and non-oven type vents.

Mercury vacuum cleaner means a cleanup device used to draw a liquid mercury spill or accumulation (via suction pressure) into a closed compartment.

Non-oven type mercury thermal recovery unit vent means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which the retort is either a rotary kiln or single hearth retort.

Open-top container means any container that does not have a tight-fitting cover that keeps its contents from being exposed to the atmosphere.

Oven type mercury thermal recovery unit vent means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which each retort is a batch oven retort.

Responsible official means responsible official as defined in 40 CFR 70.2.

Retort means a furnace where mercury-containing wastes are heated to drive mercury into the gas phase. The types of retorts used as part of mercury thermal recovery units at mercury cell chlor-alkali plants include batch oven retorts, rotary kilns, and single hearth retorts.

Spalling means fragmentation by chipping.

Sump means a large reservoir or pit for wastewaters (primarily washdown waters).

Trench means a narrow channel or depression built into the length of a cell room floor that leads washdown materials to a drain.

Vent hose means a connection for transporting gases from the mercury cell.

Washdown means the act of rinsing a floor or surface with a stream of aqueous liquid to cleanse it of a liquid mercury spill or accumulation, generally by driving it into a trench.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart IIIII of Part 63

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS

For . . .	You must . . .
1. Cell rooms	a. Construct each cell room interior using materials that are resistant to absorption of mercury, resistant to corrosion, facilitate the detection of liquid mercury spills or accumulations, and are easy to clean. b. Limit access around and beneath mercury cells in each cell room to prevent liquid mercury from being tracked into other areas. c. Provide adequate lighting in each cell room to facilitate the detection of liquid mercury spills or accumulations. d. Minimize the number of items stored in each cell room.
2. Mercury cells and electrolyzers	a. Operate and maintain each electrolyzer, decomposer, end box, and mercury pump to minimize leakage of mercury. b. Prior to opening an electrolyzer for maintenance, do the following: (1) complete work that can be done before opening the electrolyzer in order to minimize the time required to complete maintenance when the electrolyzer is open (e.g., removing bolts from a side panel while the electrolyzer is cooling); (2) fill the electrolyzer with an aqueous liquid; (3) allow the electrolyzer to cool before opening; and (4) schedule and staff maintenance of the electrolyzer to minimize the time the electrolyzer is open. c. When the electrolyzer top is raised and before moving the top and anodes, thoroughly flush all visible mercury from the top and the anodes with an aqueous liquid. d. While an electrolyzer is open, keep the bottom covered with an aqueous liquid or maintain a continuous flow of aqueous liquid. e. During an electrolyzer side panel change, take measures to ensure an aqueous liquid covers or flows over the bottom. f. Each time an electrolyzer is opened, inspect and replace components, as appropriate.

TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

For . . .	You must . . .
	g. If you step into an electrolyzer bottom, either remove all visible mercury from your footwear or replace them immediately after stepping out of the electrolyzer. h. If an electrolyzer is disassembled for overhaul maintenance or for any other reason, chemically clean the bed plate or thoroughly flush it with an aqueous liquid. i. Before transporting each electrolyzer part to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport. j. After completing maintenance on an electrolyzer, check any mercury piping flanges that were opened for liquid mercury leaks. k. If a liquid mercury spill occurs during any maintenance activity on an electrolyzer, clean it up in accordance with the requirements in Table 3 to this subpart.
3. Vessels in liquid mercury service	If you replace a vessel containing mercury that is intended to trap and collect mercury after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], replace it with a vessel that has a cone shaped bottom with a drain valve or other design that readily facilitates mercury collection.
4. Piping and process lines in liquid mercury service.	a. Use piping with smooth interiors to avoid liquid mercury buildups within the pipe. b. To prevent mercury buildup after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], equip each new process line and piping system with adequate low point drains or mercury knock-out pots to facilitate mercury collection and recovery.
5. Cell room floors	a. Maintain a coating on cell room floors that is resistant to absorption of mercury and that facilitates the detection of liquid mercury spills or accumulations. b. Maintain cell room floors such that they are smooth and free of cracking and spalling. c. Maintain troughs and trenches to prevent mercury accumulation in the corners. d. Maintain a layer of aqueous liquid on liquid mercury contained in trenches or drains and replenish the aqueous layer at least once per day. e. Keep the cell room floor clean and free of debris. f. If you step into a liquid mercury spill or accumulation, either remove all visible mercury from your footwear or replace your footwear immediately.
6. End boxes	a. Either equip each end box with a fixed cover that is leak tight, or route the end box head space to an end-box ventilation system. b. For each end-box ventilation system: (1) maintain a flow of aqueous liquid over the liquid mercury in the end box and maintain the temperature of the aqueous liquid below its boiling point, (2) maintain a negative pressure in the end-box ventilation system, and (3) maintain the end-box ventilation system in good condition. c. Maintain each end-box cover in good condition and keep the end box closed when the cell is in service and when liquid mercury is flowing down the cell, except when operation or maintenance activities require short- term access. d. Keep all bolts and C-clamps used to hold the covers in place when the cell is in service and when liquid mercury is flowing down the cell. e. Maintain each access port stopper in an end-box cover in good sealing condition and keep each end-box access port closed when the cell is in service and when liquid mercury is flowing down the cell.
7. Decomposers	a. Maintain each decomposer cover in good condition and keep each decomposer closed and sealed, except when maintenance activities require the cover to be removed. b. Maintain leak-tight connections between the decomposer and the corresponding cell components, hydrogen system piping, and caustic system piping, except when maintenance activities require access to these connections. c. Keep each mercury cell amalgam seal pot closed and sealed, except when operation or maintenance activities require short-term access. d. Prior to opening a decomposer, do the following: (1) fill the decomposer with an aqueous liquid or drain the decomposer liquid mercury into a container that meets requirements listed below for closed containers, (2) allow the decomposer to cool before opening, and (3) complete work that can be done before opening the decomposer. e. Take precautions to avoid mercury spills when changing graphite grids or balls in horizontal decomposers or graphite packing in vertical decomposers. If a spill occurs, you must clean it up in accordance with the requirements in Table 3 to this subpart. f. After each maintenance activity, use an appropriate technique (see Table 7 to this subpart) to check for hydrogen leaks. g. Before transporting any internal part from the decomposer (such as the graphite basket) to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport. h. Store carbon from decomposers in accordance with the requirements in Table 5 to this subpart until the carbon is treated or is disposed.
8. Submerged mercury pumps	a. Provide a vapor outlet connection from each submerged pump to an end-box ventilation system. The connection must be maintained under negative pressure. b. Keep each mercury pump tank closed, except when maintenance or operation activities require the cover to be removed. c. Maintain a flow of aqueous liquid over the liquid mercury in each mercury pump tank and maintain the aqueous liquid at a temperature below its boiling point.

TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

For . . .	You must . . .
9. Containers holding liquid mercury	Maintain a layer of aqueous liquid over liquid mercury containers in each open-top container. Replenish the aqueous layer holding liquid at least once per day and collect the liquid mercury mercury from the container in accordance with the requirements in Table 4 to this subpart.
10. Containers used to store liquid mercury.	a. Store liquid mercury in containers with tight fitting covers. b. Maintain the seals on the covers in good condition. c. Keep each container securely closed when mercury is not being added to, or removed from, the

TABLE 2 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED INSPECTIONS—Continued

You must inspect . . .	At least once each . . .	And if you find . . .	You must . . .
11. Each electrolyzer bottom, electrolyzer side panel, end box, mercury amalgam seal pot, decomposer, mercury pump, and hydrogen cooler, and all other vessels, piping, and equipment in liquid mercury service in the cell room.	24 hours	equipment that is leaking liquid mercury	take the required action specified in Table 3 to this subpart.

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TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

For . . .	You must . . .
9. Containers holding liquid mercury	Maintain a layer of aqueous liquid over liquid mercury containers in each open-top container. Replenish the aqueous layer holding liquid at least once per day and collect the liquid mercury mercury from the container in accordance with the requirements in Table 4 to this subpart.
10. Containers used to store liquid mercury.	a. Store liquid mercury in containers with tight fitting covers. b. Maintain the seals on the covers in good condition. c. Keep each container securely closed when mercury is not being added to, or removed from, the container.
11. Caustic systems	a. Maintain the seal between each caustic basket cover and caustic basket by using gaskets and other appropriate material. b. Prevent solids and liquids collected from back-flushing each primary caustic filter to contact floors or run into open trenches. c. Collect solids and liquids from back-flushing each primary caustic filter and store these mercury-containing wastes in accordance with the requirements in Table 5 to this subpart. d. Keep each caustic basket closed and sealed, except when operation or maintenance activities require short term access.
12. Hydrogen systems	a. Collect drips from each hydrogen seal pot and compressor seal in containers meeting the requirements in this table for open containers. These drips should not be allowed to run on the floor or in open trenches. b. Minimize purging of hydrogen from a decomposer into the cell room by either sweeping the decomposer with an inert gas or by routing the hydrogen to the hydrogen system. c. Maintain hydrogen piping gaskets in good condition. d. After any maintenance activities, use an appropriate technique (see Table 7 to this subpart) to check all hydrogen piping flanges that were opened for hydrogen leaks.

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 2 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED INSPECTIONS

You must inspect . . .	At least once each . . .	And if you find . . .	You must . . .
1. Each vent hose on each mercury cell.	12 hours	a leaking vent hose	take action immediately to correct the leak.
2. Each open-top container holding liquid mercury.	12 hours	liquid mercury that is not covered by an aqueous liquid.	take action immediately to cover the liquid mercury with an aqueous liquid.
3. Each end box	12 hours	a. an end-box cover not securely in place	take action immediately to put the end-box cover securely in place.
		b. an end-box stopper not securely in place	take action immediately to put the end-box stopper securely in place.
		c. liquid mercury in an end box that is not covered by an aqueous liquid at a temperature below boiling.	take action immediately to cover the liquid mercury with an aqueous liquid.
4. Each mercury amalgam seal pot.	12 hours	a seal pot cover that is not securely in place	take action immediately to put the seal pot cover securely in place.
5. Each mercury seal pot	12 hours	a mercury seal pot stopper not securely in place.	take action immediately to put the mercury seal pot stopper securely in place.
6. Cell room floors	month	cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped.	repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency.
7. Pillars and beams	6 months	cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped.	repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency.
8. Each caustic basket	12 hours	a caustic basket cover that is not securely in place.	take action immediately to put the caustic basket cover securely in place.
9. All equipment and piping in the caustic system.	24 hours	equipment that is leaking caustic	initiate repair of the leaking equipment within 72 hours from the time that you identify the caustic leak.
10. All floors and other surfaces where liquid mercury could accumulate in cell rooms and other production facilities and in mercury recovery facilities.	12 hours	a liquid mercury spill or accumulation	take the required action specified in Table 3 to this subpart.

TABLE 2 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED INSPECTIONS—Continued

You must inspect . . .	At least once each . . .	And if you find . . .	You must . . .
11. Each electrolyzer bottom, electrolyzer side panel, end box, mercury amalgam seal pot, decomposer, mercury pump, and hydrogen cooler, and all other vessels, piping, and equipment in liquid mercury service in the cell room.	24 hours	equipment that is leaking liquid mercury	take the required action specified in Table 3 to this subpart.
12. Each decomposer and all hydrogen piping up to the hydrogen header.	12 hours	equipment that is leaking hydrogen and/or mercury vapor.	take the required action specified in Table 3 to this subpart.
13. All equipment in the hydrogen system from the start of the header to the last control device.	3 months	equipment that is leaking hydrogen and/or mercury vapor.	take the required action specified in Table 3 to this subpart.

NOTE: See Table 7 of this subpart for examples of techniques for conducting the inspections required in this table.

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED ACTIONS FOR LIQUID MERCURY SPILLS AND ACCUMULATIONS AND HYDROGEN AND MERCURY VAPOR LEAKS

During a required inspection or at any other time, if you find . . .	You must . . .
1. A liquid mercury spill or accumulation	a. Initiate clean up of the liquid mercury spill or accumulation as soon as possible, but no later than 1 hour from the time you detect it. b. Clean up liquid mercury using: (1) a mercury vacuum cleaner, (2) by washing the mercury to the nearest trench or sump, or (3) by using an alternative method. If you use an alternative method to clean up liquid mercury, you must submit a description of the method to the Administrator in your Notification of Compliance Status report. c. If you use a mercury vacuum cleaner: (1) the vacuum cleaner must be designed to prevent generation of airborne mercury, (2) you must cap the ends of hoses after each use, and (3) after vacuuming, you must wash down the area. d. Inspect all equipment in liquid mercury service in the surrounding area to identify the source of the liquid mercury within 1 hour from the time you detect the liquid mercury spill or accumulation. e. If you identify leaking equipment as the source of the spill or accumulation, contain the dripping mercury, stop the leak, and repair the leaking equipment as specified below. f. If you cannot identify the source of the liquid mercury spill or accumulation, re-inspect the area within 6 hours of the time you detected the liquid mercury spill or accumulation, or within 6 hours of the last inspection of the area.
2. Equipment that is leaking liquid mercury.	a. Contain the liquid mercury dripping from the leaking equipment by placing a container under the leak within 30 minutes from the time you identify the liquid mercury leak. b. The container must meet the requirement for open-top containers in Table 1 to this subpart. c. Make a first attempt at stopping the leak within 1 hour from the time you identify the liquid mercury leak. d. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the liquid mercury leak. e. You can delay repair of equipment leaking liquid mercury if you either: (1) isolate the leaking equipment from the process so that it does not remain in mercury service; or (2) determine that you cannot repair the leaking equipment without taking the cell off line, provided that you contain the dripping mercury at all times as described above, and take the cell off line as soon as practicable, but no later than 48 hours from the time you identify the leaking equipment. You cannot place the cell back into service until the leaking equipment is repaired.
3. A decomposer or hydrogen system piping up to the hydrogen header that is leaking hydrogen and/or mercury vapor.	a. Make a first attempt at stopping the leak within 1 hour from the time you identify the hydrogen and/or mercury vapor leak. b. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the hydrogen and/or mercury vapor leak. c. You can delay repair of equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment or take the cell off line until you repair the leaking equipment.
4. Equipment in the hydrogen system, from the start of the hydrogen header to the last control device, that is leaking hydrogen and/or mercury vapor.	a. Make a first attempt at stopping the leak within 4 hours from the time you identify the hydrogen and/or mercury vapor leak. b. Stop the leak and repair the header within 24 hours from the time you identify the hydrogen and/or mercury vapor leak.

TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED ACTIONS FOR LIQUID MERCURY SPILLS AND ACCUMULATIONS AND HYDROGEN AND MERCURY VAPOR LEAKS—Continued

During a required inspection or at any other time, if you find . . .	You must . . .
	c. You can delay repair of equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment.

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR MERCURY LIQUID

As stated in Tables 1 and 2 of Subpart IIIII, examples of techniques for equipment problem identification, leak detection and mercury vapor measurements can be found in the following table:

TABLE 7 TO SUBPART IIIII OF PART 63.—EXAMPLES OF TECHNIQUES FOR EQUIPMENT PROBLEM IDENTIFICATION, LEAK DETECTION AND MERCURY VAPOR MEASUREMENTS

To Detect . . .	You could use . . .	Principle of detection . . .
1. Leaking vent hoses; liquid mercury that is not covered by an aqueous liquid in open-top containers or end boxes; end-box covers or stoppers,	Visual inspections.	

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TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED ACTIONS FOR LIQUID MERCURY SPILLS AND ACCUMULATIONS AND HYDROGEN AND MERCURY VAPOR LEAKS—Continued

During a required inspection or at any other time, if you find . . .	You must . . .
	c. You can delay repair of equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment.

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 4 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR MERCURY LIQUID COLLECTION

You must collect liquid mercury from . . .	When		Additional requirements	
1. Open-top containers	a. at least once each 72 hours.	i. If you spill liquid mercury during collection or transport, you must take the action specified in Table 3 to this subpart for liquid mercury spills and accumulations.	(1) From the time that you collect liquid mercury into a temporary container until the time that you store the liquid mercury, you must keep it covered by an aqueous liquid.	(A) Within 4 hours from the time you collect the liquid mercury, you must transfer it from each temporary container to a storage container that meets the specifications in Table 1 to this subpart.
2. Vessels, low point drains, mercury knockout pots, and other closed mercury collection points.	a. at least once each week	See 1.a.i. above	See 1.a.i.(1) above	See 1.a.i.(A) above.
3. All other equipment	a. whenever maintenance activities require the opening of the equipment.	See 1.a.i. above	See 1.a.i.(1) above	See 1.a.i.(A) above.

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 5 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR HANDLING AND STORAGE OF MERCURY-CONTAINING WASTES

For . . .	You must . . .
1. Carbon media from decomposers and cell room sludges.	a. Store wastes in closed containers, or b. Maintain a layer of aqueous liquid over wastes in open-top containers and replenish the aqueous layer at least once per week.
2. All other mercury-containing wastes	a. Wash or chemically decontaminate wastes to remove visible mercury, or b. Store wastes in closed containers.

As stated in § 63.8192, your written washdown plan must address the elements contained in the following table:

TABLE 6 TO SUBPART IIIII OF PART 63.—REQUIRED ELEMENTS OF WASHDOWN PLANS

For each of the following areas . . .	You must establish the following as part of your plan . . .
1. Center aisles of cell rooms 2. Electrolyzers. 3. End boxes and areas under end boxes. 4. Decomposers and areas under decomposers. 5. Caustic baskets and areas around caustic baskets. 6. Hydrogen system piping. 7. Basement floor of cell rooms. 8. Tanks. 9. Pillars and beams in cell rooms. 10. Mercury cell repair areas. 11. Maintenance shop areas. 12. Work tables. 13. Castings. 14. Storage areas for mercury-containing wastes.	A description of the manner of washdown of the area, and the washdown frequency for the area.

As stated in Tables 1 and 2 of Subpart IIIII, examples of techniques for equipment problem identification, leak detection and mercury vapor measurements can be found in the following table:

TABLE 7 TO SUBPART IIIII OF PART 63.—EXAMPLES OF TECHNIQUES FOR EQUIPMENT PROBLEM IDENTIFICATION, LEAK DETECTION AND MERCURY VAPOR MEASUREMENTS

To Detect . . .	You could use . . .	Principle of detection . . .
1. Leaking vent hoses; liquid mercury that is not covered by an aqueous liquid in open-top containers or end boxes; end-box covers or stoppers, amalgam seal pot stoppers, or caustic basket covers not securely in place; cracks or spalling in cell room floors, pillars, or beams; caustic leaks; liquid mercury accumulations or spills; and equipment that is leaking liquid mercury.	Visual inspections.	
2. Equipment that is leaking hydrogen and/or mercury vapor during required by Table 2 to inspections. this subpart.	a. Auditory and visual inspections.	
	b. Portable mercury vapor analyzer—ultraviolet light absorption detector..	A sample of gas is drawn through a detection cell where ultraviolet light at 253.7 nanometers (nm) is directed perpendicularly through the sample toward a photodetector. Mercury absorbs the incident light in proportion to its concentration in the air stream.
	c. Portable mercury vapor analyzer—gold film amalgamation detector..	A sample of gas is drawn through a detection cell containing a gold film detector. Mercury amalgamates with the gold film, changing the resistance of the detector in proportion to the mercury concentration in the air sample.
	d. Portable short-wave ultraviolent light, fluorescent background—visual indication..	Ultraviolet light is directed toward a fluorescent background positioned behind a suspected source of mercury emissions. Mercury vapor absorbs the ultraviolet light, projecting a dark shadow image on the fluorescent background.
	e. Portable combustible gas meter.	
3. Level of mercury vapor in the cell room and other areas.	a. Portable mercury vapor analyzer—ultraviolet light absorption detector.	A sample of gas is drawn through a detection cell where ultraviolet light at 253.7 nanometers (nm) is directed perpendicularly through the sample toward a photodetector. Mercury absorbs the incident light in proportion to its concentration in the air stream.
	b. Portable mercury vapor analyzer—gold film amalgamation detector.	A sample of gas is drawn through a detection cell containing a gold film detector. Mercury amalgamates with the gold film, changing the resistance of the detector in proportion to the mercury concentration in the air sample.
	c. Permanganate impingement	A known volume of gas sample is absorbed in potassium permanganate solution. Mercury in the solution is determined using a cold vapor adsorption analyzer, and the concentration of mercury in the gas sample is calculated.

As stated in § 63.8256(c), you must keep the records (related to the work practice standards) specified in the following table:

TABLE 8 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS

For each . . .	You must record the following information . . .
1. Inspection required by Table 2 to this subpart	Date and time the inspection was conducted.
2. Of the following situations found during an inspection required by Table 2 to this subpart: leaking of vent hose; open-top container where liquid mercury is not covered by an aqueous liquid; end-box cover that is not securely in place; end-box stopper that is not securely in place; end box where liquid mercury is not covered by an aqueous liquid at a temperature below boiling; seal pot cover that is not securely in place; open or mercury seal pot stopper that is not securely in place; crack, spalling, or other deficiency in a cell room floor, pillar, or beam that could cause liquid mercury to become trapped; or caustic basket that is not securely in place.	a. Description the condition. b. Location of the condition. c. Date and time you identify the condition. d. Description of the corrective action taken. e. Date and time you successfully complete the corrective action.
3. A caustic leak during an inspection required by Table 2 to this subpart.	a. Location of the leak. b. Date and time you identify the leak.

TABLE 8 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS—Continued

For each . . .	You must record the following information . . .
4. Liquid mercury spill or accumulation identified during an inspection required by Table 2 to this subpart or at any other time.	c. Date and time you successfully stop the leak and repair the leaking equipment. a. Location of the liquid mercury spill or accumulation. b. Estimate of the weight of liquid mercury. c. Date and time you detect the liquid mercury spill or accumulation. d. Method you use to clean up the liquid mercury spill or accumulation. e. Date and time when you clean up the liquid mercury spill or accumulation.

TABLE 9 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII—Continued

Citation	Subject	Applies to Subpart IIIII	Explanation
§ 63.10(d)(3)	Reporting Opacity or VE Observations	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.11	Flares	No	Subpart IIIII does not require flares.
§ 63.12	Delegation	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information	Yes.	

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TABLE 8 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS—Continued

For each . . .	You must record the following information . . .
4. Liquid mercury spill or accumulation identified during an inspection required by Table 2 to this subpart or at any other time.	c. Date and time you successfully stop the leak and repair the leaking equipment. a. Location of the liquid mercury spill or accumulation. b. Estimate of the weight of liquid mercury. c. Date and time you detect the liquid mercury spill or accumulation. d. Method you use to clean up the liquid mercury spill or accumulation. e. Date and time when you clean up the liquid mercury spill or accumulation. f. Source of the liquid mercury spill or accumulation. g. If the source of the liquid mercury spill or accumulation is not identified, the time when you reinspect the area.
5. Liquid mercury leak or hydrogen leak identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the leak. b. Date and time you identify the leak. c. If the leak is a liquid mercury leak, the date and time that you successfully contain the dripping liquid mercury. d. Date and time you first attempt to stop the leak. e. Date and time you successfully stop the leak and repair the leaking equipment. f. If you take a cell off line or isolate the leaking equipment, the date and time you take the cell off line or isolate the leaking equipment, and the date and time you put the cell or isolated equipment back into service.
6. Carbon media from decomposers and cell room sludges.	a. A statement that these wastes are stored in closed containers, or b. Date and time you replenish the aqueous layer over these wastes stored in open-top containers.
7. All other mercury-containing wastes	a. A description of how you remove visible mercury, or b. A statement that these wastes are stored in closed containers.

As stated in §63.8262, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 9 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII

Citation	Subject	Applies to Subpart IIIII	Explanation
§63.1	Applicability	Yes.	
§63.2	Definitions	Yes.	
§63.3	Units and Abbreviations	Yes.	
§63.4	Prohibited Activities	Yes.	
§63.5	Construction/Reconstruction	Yes.	
§63.6 (a)–(g), (i), (j)	Compliance with Standards and Maintenance Requirements.	Yes.	
§63.6(h)	Compliance with Opacity and Visible Emission Standards.	No	Subpart IIIII does not have opacity and visible emission standards.
§63.7	Performance Testing Requirements	Yes.	Subpart IIIII specifies additional requirements related to site-specific test plans and the conduct of performance tests.
§63.8 (a)(1), (a)(3); (b); (c)(1)–(4), (6)–(8); (d); (e); and (f)(1)–(5).	Monitoring Requirements	Yes.	
§63.8(a)(2)	Continuous Monitoring System (CMS) Requirements.	No	Subpart IIIII requires a site-specific monitoring plan in lieu of a promulgated performance specification for a mercury concentration CMS.
§63.8(a)(4)	Additional Monitoring Requirements for Control Devices in §63.11.	No	Subpart IIIII does not require flares.
§63.8(c)(5)	COMS Minimum Procedures	No	Subpart IIIII does not have opacity and visible emission standards.
§63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart IIIII does not require CEMS.
§63.8(g)	Data Reduction	No	Subpart IIIII specifies mercury concentration CMS data reduction requirements.
§63.9(a)–(e), (g)–(j)	Notification Requirements	Yes.	
§63.9(f)	Notification of VE/Opacity Test	No	Subpart IIIII does not have opacity and visible emission standards.
§63.10(a); (b)(1); (b)(2)(i)–(xii), (xiv); (b)(3); (c); (d)(1)–(2), (4)–(5); (e); (f).	Recordkeeping/Reporting	Yes.	
§63.10(b)(2) (xiii)	CMS Records for RATA Alternative	No	Subpart IIIII does not require CEMS.

TABLE 9 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII—Continued

Citation	Subject	Applies to Subpart IIIII	Explanation
§63.10(d)(3)	Reporting Opacity or VE Observations	No	Subpart IIIII does not have opacity and visible emission standards.
§63.11	Flares	No	Subpart IIIII does not require flares.
§63.12	Delegation	Yes.	
§63.13	Addresses	Yes.	
§63.14	Incorporation by Reference	Yes.	
§63.15	Availability of Information	Yes.	

[FR Doc. 02–15873 Filed 7–2–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7229–6]

National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions From Chlorine Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision not to regulate.

SUMMARY: EPA proposes not to regulate chlorine and hydrochloric acid (HCl) emissions for the Chlorine Production source category. We have determined that no further control is necessary because chlorine and HCl have well-defined health thresholds, and chlorine and HCl air emissions from chlorine producers result in human exposures in the ambient air that are below the threshold values with an ample margin of safety. This notice does not address mercury emissions from mercury cell chlor-alkali plants. Those emissions are addressed in a separate action in the proposed rule section of this **Federal Register**.

DATES: *Comments.* Submit comments on or before September 3, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 23, 2002, a public hearing will be held on August 2, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2002–09, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2002–09, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina.

Docket. Docket No. A–2002–09 contains supporting information used in developing the notice of proposed action for the Chlorine Production source category. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5308, facsimile: (919) 541–5600, electronic mail address: rosario.iliam@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect format. All comments and data submitted in electronic form must note the docket number: Docket No. A–2002–09. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Office (C404–02), Attention: Iliam Rosario, Metals Group, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Cassie Posey, telephone number: (919) 541–0069. Persons interested in attending the public hearing must also call Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in rule development. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The materials related to this notice of proposed action are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

WorldWide Web (www) Information. In addition to being available in the docket, an electronic copy of today's notice of proposed action will also be available through EPA's www site. Following signature, a copy of the rule will be posted on our policy and

guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The web site provides information and technology exchange in various areas of air pollution control. If more information regarding the web site is needed, call our web site help line at (919) 541–5384.

Regulated entities. Entities potentially affected by this action include facilities engaged in the production of chlorine.

The CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Section 112(d)(4) allows us to use discretion in developing risk-based standards for HAP "for which a health threshold has been established" provided that the standards achieve an "ample margin of safety."

B. What Is the Source Category?

None of the 20 chlor-alkali plants are major in and of themselves, but are major due to collocation. That is, they are part of a larger contiguous establishment that is a major source. These larger establishments include organic chemical manufacturers, polymer and resin producers, and pulp and paper mills, all of which are already subject to one or more NESHAP. For instance, the organic chemical

chlorine gas and an alkaline solution. Chlorine is collected from the cell room and is cooled, dried, and condensed in the purification process. The dried, gaseous chlorine then may be cooled further and compressed and liquified using multiple-stage condensers in the compression/liquefaction operation. Chlorine can be emitted from the tail gas stream from the final liquefier, the cell room, and equipment in chlorine service. Hydrochloric acid is used to

edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females and increased fetal mortality

threshold level for an individual exposed at the upper end of the exposure distribution. The upper end of the exposure distribution is calculated using the "high end exposure estimate," defined as a plausible estimate of individual exposure for those persons at the upper end of the exposure distribution, conceptually above the 90th percentile, but not higher than the individual in the population who has the highest exposure. We believe that

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guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg*. The web site provides information and technology exchange in various areas of air pollution control. If more information regarding the web site is needed, call our web site help line at (919) 541–5384.

Regulated entities. Entities potentially affected by this action include facilities engaged in the production of chlorine. Affected categories and entities include those sources listed in the primary Standard Industrial Classification code 2812 or North American Information Classification System code 325181.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What is the source category?
C. What are the health effects of chlorine and hydrogen chloride?
II. Summary of Proposed Action
III. Rationale for Proposed Action
A. What is our statutory authority under section 112(d)(4)?
B. What is the basis for our proposed action?
IV. Solicitation of Comments and Public Participation

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA contains our authority for reducing emissions of hazardous air pollutants (HAP). Section 112(d) requires us to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed pursuant to section 112(c). Section 112(d)(2) specifies that emission standards promulgated under the section shall require the maximum degree of reductions in emissions of the HAP subject to section 112 that are deemed achievable considering cost and any non-air quality health and environmental impacts and energy requirements.

National emission standards for hazardous air pollutants (NESHAP) reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as maximum achievable control technology (MACT).

The CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Section 112(d)(4) allows us to use discretion in developing risk-based standards for HAP "for which a health threshold has been established" provided that the standards achieve an "ample margin of safety."

B. What Is the Source Category?

The Chlorine Production source category was initially listed as a major source of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). At the time of the initial listing, we defined the Chlorine Production source category as follows:

> * * * The Chlorine Production Source Category includes any facility engaged in the production of chlorine. The category includes, but is not limited to, facilities producing chlorine by the following production methods: diaphragm cell, mercury cell, membrane cell, hybrid fuel cell, Downs cell, potash manufacture, hydrochloric acid decomposition, nitrosyl chloride process, nitric acid/salt process, Kel-Chlor process, and sodium chloride/sulfuric acid process.

We know of no facilities that produce chlorine using hybrid fuel cells, the nitrosyl chloride process, the Kel-Chlor process, the sodium chloride/sulfuric acid process, or as a by-product from potash manufacturing. We have identified 45 facilities that produce chlorine using mercury cells, diaphragm cells, or membrane cells. Collectively, these facilities are referred to as chlor-alkali plants as they produce chlorine and alkali (sodium hydroxide) as co-products.

We have also identified three facilities that produce chlorine as a by-product: one from the production of sodium metal in Downs cell, another from the production of potassium nitrate fertilizer that uses the nitric acid/salt process, and a third that produces chlorine as a by-product from primary magnesium refining. In addition, we have identified a resin producer that produces chlorine both in a chlor-alkali plant and through the decomposition of HCl.

Of the 48 facilities that produce chlorine, we have identified 21 that are major sources, including 20 chlor-alkali plants and the one primary magnesium refining facility. The primary magnesium refining facility is itself a major source emitting on the order of 600 tons of chlorine and 3,000 tons of HCl yearly, and is, in fact, a separately listed source category. As such, it will be addressed on its own in a separate rulemaking.

None of the 20 chlor-alkali plants are major in and of themselves, but are major due to collocation. That is, they are part of a larger contiguous establishment that is a major source. These larger establishments include organic chemical manufacturers, polymer and resin producers, and pulp and paper mills, all of which are already subject to one or more NESHAP. For instance, the organic chemical manufacturers are subject to the Hazardous Organic NESHAP, or HON (40 CFR part 63, subparts F, G, and H). The HON is a comprehensive rule that covers process vent, transfer, storage tank, equipment leak and wastewater emissions from the production of almost 400 organic chemicals. More than 100 organic HAP are regulated under the HON.

Polymers and resins producers are subject to four separate NESHAP (40 CFR part 63, subparts U, W, JJJ, and OOO) and must control process vent, transfer, storage tank, equipment leak and wastewater emissions. Chlor-alkali facilities that are collocated with pulp and paper mills are covered by 40 CFR part 63, subpart S (Pulp and Paper MACT III) and 40 CFR part 63, subpart KK (Printing and Publishing MACT). Chlor-alkali production facilities are also collocated with the following source categories: hazardous waste pesticide active ingredients production (subject to 40 CFR part 63, subpart MMM), polyether polyols production (subject to 40 CFR part 63, subpart PPP), and polycarbonates production (subject to 40 CFR part 63, subpart YY). There is also the Miscellaneous Organic Chemical Products and Processes NESHAP, currently under development, which will cover a variety of smaller, specialty chemical manufacturing processes, many that utilize chlorine. Therefore, most major processes at the sites where chlor-alkali facilities are located are subject to, or will be subject to, NESHAP to reduce HAP emissions. In addition to NESHAP, the chlorine production facilities are themselves subject to rules pursuant to section 112(r) of the CAA for the prevention of accidental releases of chemicals (40 CFR part 68).

The primary HAP emitted from chlorine production facilities processes are chlorine and HCl.[1] In each of the three chlor-alkali electrolytic cell processes, an electric current is passed through a salt solution (brine) causing the dissociation of salt to produce

[1] The mercury cell chlor-alkali process also emits mercury. Those emissions are addressed in a separate proposal elsewhere in today's **Federal Register**.

chlorine gas and an alkaline solution. Chlorine is collected from the cell room and is cooled, dried, and condensed in the purification process. The dried, gaseous chlorine then may be cooled further and compressed and liquified using multiple-stage condensers in the compression/liquefaction operation. Chlorine can be emitted from the tail gas stream from the final liquefier, the cell room, and equipment in chlorine service. Hydrochloric acid is used to pretreat feed brine prior to entering a chlor-alkali cell and at other locations throughout the process to adjust pH. It can also be emitted from storage tanks and equipment in HCl service.

Since chlor-alkali processes produce both chlorine and hydrogen, it is common for a direct synthesis HCl production unit to be incorporated into a chlor-alkali facility. This is the situation at four of the 20 chlor-alkali facilities at major source plant sites. In the direct synthesis process, chlorine and hydrogen are burned together to produce HCl. The gaseous HCl stream is then routed to an absorber and concentrated to produce a liquid HCl product. In many instances at chlor-alkali facilities, gaseous chlorine-containing waste streams (such as the tail gas from the liquifiers) provide chlorine to the HCl production unit. Therefore, we consider these direct synthesis HCl production units to be a part of the chlor-alkali facilities. These direct synthesis HCl production units can emit HCl from the absorber vent and associated storage vessels and transfer racks.

C. What Are the Health Effects of Chlorine and Hydrogen Chloride?

Acute (short-term) exposure to high levels of chlorine in humans can result in chest pain, vomiting, toxic pneumonitis, and pulmonary edema. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs. Chronic (long-term) exposure to chlorine gas in workers has resulted in respiratory effects including eye and throat irritation and airflow obstruction. Animal studies have reported decreased body weight gain, eye and nose irritation, non-neoplastic nasal lesions, and respiratory epithelial hyperplasia from chronic inhalation exposure to chlorine. No information is available on the carcinogenic effects of chlorine in humans from inhalation exposure. We have not classified chlorine for potential carcinogenicity.

Hydrogen chloride is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified HCl for carcinogenicity.

II. Summary of Proposed Action

We are proposing not to regulate chlorine and HCl emissions from chlorine production processes. Under the authority of section 112(d)(4), we have determined that no further control is necessary because chlorine and HCl are "health threshold pollutants," and chlorine and HCl levels emitted from chlorine production processes are below their threshold values within an ample margin of safety. Further, due to the fact that these two pollutants are the only HAP emitted in significant quantities from chlorine production plants, we are proposing not to develop any NESHAP for the Chlorine Production source category, with the exception of a NESHAP for mercury emissions from mercury cell chlor-alkali plants.

III. Rationale for Proposed Action

This section explains the statutory basis for considering health thresholds when establishing standards, and the basis for today's proposed action, including a discussion of the risk assessment conducted to support the ample margin of safety decision.

A. What Is Our Statutory Authority Under Section 112(d)(4)?

As stated previously in this notice, section 112 of the CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Of relevance here, section 112(d)(4) allows us to develop risk-based standards for HAP "for which a health threshold has been established" provided that the standards achieve an "ample margin of safety." Therefore, we believe we have the discretion under section 112(d)(4) to develop risk-based standards which may be less stringent than the corresponding floor-based MACT standards for some categories emitting threshold pollutants.

In deciding standards for this source category, we seek to assure that emissions from every source in the category or subcategory are less than the threshold level for an individual exposed at the upper end of the exposure distribution. The upper end of the exposure distribution is calculated using the "high end exposure estimate," defined as a plausible estimate of individual exposure for those persons at the upper end of the exposure distribution, conceptually above the 90th percentile, but not higher than the individual in the population who has the highest exposure. We believe that assuring protection to persons at the upper end of the exposure distribution is consistent with the "ample margin of safety" requirement in section 112(d)(4).

We emphasize that the use of section 112(d)(4) authority is wholly discretionary. As the legislative history indicates, cases may arise in which other considerations dictate that we should not invoke this authority to establish less stringent standards, despite the existence of a health effects threshold that is not jeopardized. For instance, we do not anticipate that we would set less stringent "risk-based" standards where evidence indicates a threat of significant or widespread environmental effects, although it may be shown that emissions from a particular source category do not approach or exceed a level requisite to protect public health with an ample margin of safety. We may also elect not to set less stringent risk-based standards where the estimated health threshold for a contaminant is subject to large uncertainty. Thus, in considering appropriate uses of our discretionary authority under section 112(d)(4), we consider other factors in addition to health thresholds, including uncertainty and potential "adverse environmental effects," as that phrase is defined in section 112(a)(7).

B. What Is the Basis for Our Proposed Action?

We are proposing in today's notice not to develop NESHAP for the Chlorine Production source category other than the mercury standards being proposed elsewhere in today's **Federal Register** for mercury cell processes. This decision is based on the following. First, we consider chlorine and HCl to be threshold pollutants. Second, we have defined threshold values in the form of Inhalation Reference Concentrations (RfC) and acute exposure guideline levels (AEGL). Third, chlorine and HCl are emitted from chlorine production plants (in the absence of additional control) in quantities that result in human exposure in the ambient air at levels well below the threshold values with an ample margin of safety. Finally, there are no adverse environmental

effects associated with these pollutants. The bases and supporting rationale for these conclusions are provided in the following sections.

1. Threshold Pollutants

For the purposes of section 112(d)(4), several factors are considered in our decision on whether a pollutant should be categorized as a health threshold pollutant. These factors include evidence and classification of chemicals, and emissions particular to this category.

Hazard Identification and Dose-Response Assessment

The RfC is a "long-term" threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per

assessment. Acute exposure guideline level toxicity values are estimates of adverse health effects due to a single exposure lasting 8 hours or less. The confidence in the AEGL (a qualitative rating or either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A

Chlorine and HCl emissions were reported for point sources and fugitive emissions from the chlorine production units at each site. For the four sites where direct synthesis HCl production units are part of the chlorine production facility, emissions were also reported.

Respondents provided maximum annual and hourly chlorine and HCl emissions (typically, permitted emission rates were provided) and release characteristics. According to the information submitted, plantwide

emission sources. Therefore, we assumed an area of 2,000 square meters for every fugitive emission source, which is a standard default used in modeling.

Exposure Assessment

The exposure assessment was conducted for chlorine and HCl emissions from all chlorine production processes in the source category (*i.e.*, from the chlorine production processes at the 20 sites that are major sources of

exposed to annual average HCl concentrations greater than 1 percent of the RfC. In fact, well over 99 percent were exposed to annual average HCl concentrations less than 0.1 percent of the RfC.

To determine the impacts of short-term exposures to chlorine and HCl emissions from chlorine production plants, we used the maximum hourly emission values provided by the plants and obtained the highest individual hourly concentrations from the ISCST3

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effects associated with these pollutants. The bases and supporting rationale for these conclusions are provided in the following sections.

1. Threshold Pollutants

For the purposes of section 112(d)(4), several factors are considered in our decision on whether a pollutant should be categorized as a health threshold pollutant. These factors include evidence and classification of carcinogenic risk and evidence of noncarcinogenic effects. For a detailed discussion of factors that we consider in deciding whether a pollutant should be categorized as a health threshold pollutant, please see the April 15, 1998 **Federal Register** document (63 FR 18766).

In the April 15, 1998 action cited above, we determined that HCl, a Group D pollutant, is a health threshold pollutant for the purpose of section 112(d)(4) of the CAA (63 FR 18753). We also believe that it is reasonable to classify chlorine as a Group D pollutant. There have been limited animal studies and observations of human occupational inhalation exposure for chlorine. There has been no evidence of a carcinogenic response in chronic, subchronic, or acute inhalation exposures in laboratory animal studies or from occupational inhalation exposure. Based on the limited negative carcinogenicity data, and on our knowledge of how chlorine reacts in the body and its likely mechanism of action, we presumptively consider chlorine to be a threshold pollutant.

2. Health Effects Exposure Assessment

We conducted a risk assessment to determine whether the emissions of chlorine and HCl from chlorine production plants at the current baseline levels are in quantities that are below the threshold values for chlorine and HCl within an ample margin of safety. The summary of this assessment is organized as follows: (1) Hazard identification and dose-response assessment, (2) emissions and release information, and (3) exposure assessment.

It is important to note that the risk assessment methodology applied here should not be interpreted as a standardized approach that sets a precedent for how EPA will analyze application of section 112(d)(4) in other cases. The approach presented here, including assumptions, models, and worst-case of sensitivity analysis, was selected to meet the unique needs of this particular case, to provide the appropriate level of detail and margin of safety given the data availability, chemicals, and emissions particular to this category.

Hazard Identification and Dose-Response Assessment

The RfC is a "long-term" threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation (63 FR 18766, April 15, 1998). Therefore, we used this RfC as the threshold value in our exposure assessment for HCl emitted from chlorine production plants.

We also considered using the RfC for chlorine. In cases where we have not studied a chemical itself, we rely on the studies of other governmental agencies, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the Office of Health Hazard Assessment of California's Environmental Protection Agency (CAL EPA), for RfC values. The CAL EPA developed an RfC value of 0.2 $\mu g/m^3$ for chlorine based on a large inhalation study with rats.

Since chlorine does not generally persist in the atmosphere, we evaluated the appropriateness of using this chlorine RfC for this assessment. Chlorine in the atmosphere photolyzes to chloride ions (Cl^-) and then quickly reacts with methane to form HCl in bright sunshine. The estimated chlorine lifetime under these conditions is approximately 10 minutes. Even though emissions of chlorine in the absence of sunshine (e.g., at nighttime) remain as chlorine in the atmosphere until sunlight emerges, we do not believe that use of the chlorine RfC was appropriate for this assessment since long-term exposure to significant levels of chlorine is unlikely. EPA requests comments on the appropriateness of using a chlorine RfC to assess impacts of long-term exposure in this case.

However, we did conclude that the health effects of the long-term exposure to the HCl formed from the chlorine emitted from chlorine production plants should be considered. Therefore, we calculated the amount of HCl that would be formed from the emitted chlorine and used the HCl RfC of 20 $\mu g/m^3$ for determining the long-term noncarcinogenic effects of the chlorine emissions.

In addition to these effects of long-term inhalation of HCl, we also considered whether thresholds for short-term exposure to chlorine and HCl should be considered in this assessment. Acute exposure guideline level toxicity values are estimates of adverse health effects due to a single exposure lasting 8 hours or less. The confidence in the AEGL (a qualitative rating or either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A national advisory committee organized by the EPA has developed AEGL for priority chemicals for 30-minute, 1-hour, 4-hour, and 8-hour airborne exposures. They have also determined the levels of these chemicals at each exposure duration that will protect against discomfort (AEGL1), serious effects (AEGL2), and life-threatening effects or death (AEGL3). Hydrogen chloride has been assigned a 1-hour AEGL2 of 33,000 $\mu g/m^3$. Above this level, it is predicted that the general population, including sensitive individuals (such as asthmatics, children, or the elderly), could experience irreversible or other serious, long-lasting adverse health effects, or an impaired ability to escape. This value is a medium confidence value based on the severe nasal or pulmonary histopathology observed in rats exposed to a high concentration of 1,950,000 $\mu g/m^3$ HCl for 30 minutes. The AEGL2 value for HCl is displayed in an EPA internal database, the Air Toxics Health Effects Database (ATHED), as the appropriate value to use in short-term modeling.

Chlorine has been assigned a 1-hour AEGL2 toxicity value of 5,800 $\mu g/m^3$. This value is based on a human inhalation exposure study that included a sensitive individual, and this AEGL value has a high confidence value (62 FR 58839). This AEGL2 value is also contained in EPA's ATHED as the appropriate value to use in short-term modeling.

We used these AEGL values as threshold values for assessing the inhalation health effects of short-term exposures to chlorine and HCl. While chlorine does photolyze and eventually form HCl, we concluded that it was appropriate to use the chlorine AEGL value of 5,800 $\mu g/m^3$ for this assessment since it would be possible for individuals to be exposed to chlorine for 1-hour periods at night or on cloudy days.

Emissions and Release Information

Under the authority of section 114, we collected chlorine and HCl emissions information for all chlorine production facilities at the 20 major source sites.

Chlorine and HCl emissions were reported for point sources and fugitive emissions from the chlorine production units at each site. For the four sites where direct synthesis HCl production units are part of the chlorine production facility, emissions were also reported.

Respondents provided maximum annual and hourly chlorine and HCl emissions (typically, permitted emission rates were provided) and release characteristics. According to the information submitted, plantwide annual chlorine emissions from chlorine production processes ranged from less than one kilogram per year to over 6 Megagrams per year (Mg/yr). Of the 20 plant sites, 11 reported HCl emissions from chlorine production (and for four sites, HCl production processes), which ranged from less than one kilogram per year to around 32 Mg/yr.

The hourly plantwide chlorine emissions from chlorine production processes ranged from less than 2 grams per hour (g/hr) to around 10 kilograms per hour (kg/hr). For the 11 sites reporting HCl emissions, the hourly HCl emissions ranged from less than 1 g/hr to around 1 kg/hr.

Ten of the plant sites did not report any fugitive emissions. We believe that it is reasonable to expect that all chlorine production facilities would have some fugitive emissions. Therefore, we developed emission factors based on the reported fugitive emissions and related capacities for those plant sites that did report fugitive emissions. These factors ranged from 6.3×10^{-8} to 2.88 pounds per ton of chlorine production capacity. We used the maximum emission factor to conservatively estimate fugitive emissions for the 10 facilities that did not report fugitive emissions.

The release characteristics needed for the dispersion model included stack height, stack diameter, temperature, and exit velocity for point sources. For approximately 98 percent of the point sources reported, these parameters were provided in the section 114 responses. If release characteristics were not provided, we assigned default parameters based on data for the chlorine production industry in national emission databases and other data reported in response to the survey. The release characteristics needed for fugitive emission sources are release height and area. Release heights were provided for about 17 percent of the fugitive emission sources. For those fugitive emission sources for which information on release heights were not provided, we assumed that they were at 1 meter. No information was provided regarding the area of the fugitive emission sources. Therefore, we assumed an area of 2,000 square meters for every fugitive emission source, which is a standard default used in modeling.

Exposure Assessment

The exposure assessment was conducted for chlorine and HCl emissions from all chlorine production processes in the source category (*i.e.*, from the chlorine production processes at the 20 sites that are major sources of HAP). As discussed above, the emissions data and release characteristics provided directly from all 20 plants were used as inputs to the assessment.

The Industrial Source Complex—Short Term Dispersion Model, Version 3 (ISCST3), was used for this exposure assessment. Receptors were placed at the center of census blocks (based on the 2000 Census) within 2 kilometers of the site and in the population-weighted centers of census block groups or census tracks out to 50 kilometers. Meteorological data from the nearest representative meteorological station were used. EPA requests comments on how to consider locations of receptors in assessing potential impacts on an individual exposed at the upper end of the exposure distribution for a large number of diverse facilities.

To determine the impacts of long-term exposure to chlorine and HCl emissions from chlorine plants, we used the maximum annual emission values provided by the plants. As discussed above, we converted the chlorine emissions to HCl since chlorine only persists in the atmosphere for a short amount of time. Therefore, we modeled the annual average HCl concentration at each receptor that was the result of the combination of the HCl emissions and the chlorine emissions that were converted to HCl through photolysis and subsequent reaction with methane.

As noted earlier, ten of the plants did not report any fugitive emissions. For these plants, we modeled the reported point source emissions and then modeled the estimated fugitive emissions separately. We added the highest concentration resulting from point source emissions with the highest concentration resulting from the fugitive emissions to obtain a conservative estimate of the highest HCl concentration that would be expected.

The highest modeled annual average HCl concentration from any chlorine production plant was 0.6 $\mu g/m^3$. This is less than 3 percent of the HCl RfC of 20 $\mu g/m^3$. Over 15 million people live in the areas around these 19 plant sites. Of these people, only around 1,300 were exposed to annual average HCl concentrations greater than 1 percent of the RfC. In fact, well over 99 percent were exposed to annual average HCl concentrations less than 0.1 percent of the RfC.

To determine the impacts of short-term exposures to chlorine and HCl emissions from chlorine production plants, we used the maximum hourly emission values provided by the plants and obtained the highest individual hourly concentrations from the ISCST3 model. Separate runs were conducted for chlorine and HCl. The same process described above was used for plants that did not report any fugitive emissions.

The highest 1-hour chlorine concentration modeled was 346 $\mu g/m^3$, which is less than 6 percent of the AEGL2 1-hour threshold value for chlorine (5,800 $\mu g/m^3$). This highest 1-hour HCl modeled concentration was 120 $\mu g/m^3$, which is less than 1 percent of the AEGL2 1-hour threshold value for HCl (33,000 $\mu g/m^3$). We modeled these short-term concentrations for 5 years for each plant, which means concentrations were obtained for over 830,000 hours. Only around 75 hours (less than one hundredth of one percent) had modeled chlorine concentrations greater than 5 percent of the AEGL2 value, and no hours had modeled HCl concentrations greater than the AEGL2 value.

Given the fact that the highest modeled concentrations were so far below the threshold values, we elected to primarily evaluate the uncertainty and variability of this assessment qualitatively, coupled with a few basic sensitivity analyses. These sensitivity analyses focused on evaluating the uncertainties for the "worst-case" situations, as we were not concerned with uncertainties that resulted in even lower estimated risks.

We identified four potential areas of uncertainty/ variability in the exposure assessment described above. These are emissions, the fate and transport model, exposure estimates, and toxicological dose response. Each of these areas is briefly discussed in the following.

As emission rates increase, exposure and risk increase. As noted earlier, the facilities reported maximum annual and maximum hourly emission rates. Most often, the reported rates were the facility's permitted emission rates. In addition, for those facilities that did not report any fugitive emissions, we estimated and modeled fugitive emissions based on the highest emission factor. Therefore, we would expect actual emissions to be less than those modeled, and thus, we believe that the results are biased high.

The primary uncertainties identified that are associated with the fate and transport modeling were the inherent uncertainty associated with the trying to represent complex atmospheric processes with a series of equations in the ISCST3 model (which is beyond the scope of this assessment) and missing release parameters, particularly for fugitive emission sources.

For the point sources, around 2 percent of the parameters were missing. discussed above, the factors that we believe could result in underestimated HAP concentrations (and, therefore, underestimated risks) include the default stack parameters for point sources and the default size and location of the fugitive emission sources.

We conducted a worst-case analysis for both long-term and short-term exposures to evaluate the potential upper-end impact of these uncertainties. magnification with toxic effects manifest at higher trophic levels.

As discussed above, the evidence available to date indicates that chlorine and HCl are threshold pollutants for the purposes of section 112(d)(4). Since chlorine is converted to HCl in the atmosphere, we did not perform a separate evaluation of chlorine exposure in this analysis.

No research has been identified for effects on terrestrial animal species

aqueous aerosols, due to its great affinity for water, and removed from the troposphere by rainfall. In addition, HCl will react with hydroxy ions to yield water plus chloride ions. However, the concentration of hydroxy ions in the troposphere is low, so HCl may have a relatively long residence time in areas of low humidity. No studies are reported of HCl levels in ponds or other small water bodies or soils near major sources of HCl emissions. Toxic effects of HCl can be corrosive to tissue when above a threshold concentration. The chloride ions may be concentrated in some plant tissues, but may be distributed throughout the organism, as most organisms have chloride ions in their fluids. Leaves or other tissues exposed to HCl may show some concentration above that of their immediate environment; that is, some degree of bioconcentration can occur. However, long-term storage in specific organs and chlorine and HCl emissions from chlorine production facilities are well below the health threshold values. Furthermore, the threshold values, for which the RfC and AEGL values were determined to be appropriate values, were not exceeded when taking into account an ample margin of safety. Finally, no significant or widespread adverse environmental effects from chlorine and HCl are anticipated. Therefore, under authority of section

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The primary uncertainties identified that are associated with the fate and transport modeling were the inherent uncertainty associated with the trying to represent complex atmospheric processes with a series of equations in the ISCST3 model (which is beyond the scope of this assessment) and missing release parameters, particularly for fugitive emission sources.

For the point sources, around 2 percent of the parameters were missing. For each missing parameter, we assigned a default parameter that was within the ranges provided by the other respondents. Since the actual release characteristics could be either higher or lower than these defaults, the results could be biased either way for this small percentage of the point sources.

Release heights were only provided for 17 percent of the fugitive emission sources, which ranged from 1.8 meters to 9.1 meters. For the fugitive sources without heights provided, we used a default height of 1 meter, which is more conservative than any reported value. Therefore, we anticipated that this could bias the results high.

There was considerable uncertainty associated with the size and location of fugitive emission sources. We used a default area of 2,000 m^2 for every fugitive emission source, with dimensions approximately 45 meters by 45 meters. This is a generic default value that we typically use for modeling fugitive emission sources, and it is not based on information provided by actual chlorine production facilities. The southwest corner of this area was placed at the mid-point of the locations for all reported point sources for the facility. The lack of information regarding the true size and location of chlorine production facilities could bias the concentration estimates high or low.

Uncertainty and variability also exist in the exposure estimates and the toxicological dose response, most of which result in the overestimation of risk. The RfC and AEGL2 values used in the assessment, which were discussed above, may contain multiple uncertainty factors whose impact is to add degrees of conservatism resulting in an overestimation of noncancer effects. In addition, the RfC assumes that individuals would be continuously exposed to the modeled concentration. As we believe these factors would only decrease the risk estimates, we did not evaluate their impact.

As noted above, our focus was only on those uncertainties that might increase the risk estimates and, thus, impact our decision not to regulate HCl and chlorine emissions from this source category. Of the basic uncertainties discussed above, the factors that we believe could result in underestimated HAP concentrations (and, therefore, underestimated risks) include the default stack parameters for point sources and the default size and location of the fugitive emission sources.

We conducted a worst-case analysis for both long-term and short-term exposures to evaluate the potential upper-end impact of these uncertainties. For this analysis, we selected the single point source location from all plants that resulted in the highest estimated concentration people would be exposed to when run using a uniform emission rate. We then modeled the highest total facility emissions (maximum annual emissions for the long-term analysis and maximum hourly emissions for the short-term analysis) of chlorine and HCl at that point source location and used the most conservative stack parameters. We then chose the highest of these totals for chlorine and for HCl to put at the single point location. We also modeled a fugitive emission source using the highest reported emission factor coupled with the highest production capacity.

The results of this analysis show that, even with these worst-case conditions, the modeled concentrations were well below the threshold values. For the long-term impacts of the chlorine and HCl emissions (modeled as HCl, as discussed previously), the highest modeled annual HCl concentration was less than 5 $\mu g/m^3$, which is less than 23 percent of the HCl RfC. The highest modeled maximum 1-hour chlorine and HCl concentrations were around 2,500 $\mu g/m^3$ and 230 $\mu g/m^3$, respectively. These values represent around 44 percent of the 1-hour chlorine AEGL2 threshold value and less than 1 percent of the 1-hour HCl AEGL2.

3. Environmental Effects

The standards for emissions must also protect against significant and widespread adverse environmental effects to wildlife, aquatic life, and other natural resources. We did not conduct a formal ecological risk assessment. However, we have reviewed publications in the literature to determine if there would be reasonable expectation for serious or widespread adverse effects to natural resources.

We consider the following aspects of pollutant exposure and effects: Toxicity effects from acute and chronic exposures to expected concentrations around the source (as measured or modeled), persistence in the environment, local and long-range transport, and tendency for bio-magnification with toxic effects manifest at higher trophic levels.

As discussed above, the evidence available to date indicates that chlorine and HCl are threshold pollutants for the purposes of section 112(d)(4). Since chlorine is converted to HCl in the atmosphere, we did not perform a separate evaluation of chlorine exposure in this analysis.

No research has been identified for effects on terrestrial animal species beyond that cited in the development of the HCl RfC. Modeling calculations indicate that there is little likelihood of chronic or widespread exposure to HCl at concentrations above the threshold around chlorine production facilities. Based on these considerations, we believe that the RfC can reasonably be expected to protect against widespread adverse effects in other animal species as well.

Plants also respond to airborne HCl levels. Chronic exposure to about 600 $\mu g/m^3$ can be expected to result in discernible effects, depending on the plant species. Plants respond differently to HCl as an anhydrous gas than to HCl aerosols. Relative humidity is important in plant response; there appears to be a threshold of relative humidity above which plants will incur twice as much damage at a given dose. Effects include leaf injury and decrease in chlorophyll levels in various species given acute, 20-minute exposures of 6,500 to 27,000 $\mu g/m^3$. A field study reports different sensitivity to damage of foliage in 50 species growing in the vicinity of an anhydrous aluminum chloride manufacturer. American elm, bur oak, eastern white pine, basswood, red ash and several bean species were observed to be most sensitive. Concentrations of HCl in the air were not reported. Chloride ion in whole leaves was 0.2 to 0.5 percent of dry weight; sensitive species showed damage at the lower value, but tolerant species displayed no injury at the higher value. Injury declined with distance from the source with no effects observed beyond 300 meters. Maximum modeled long-term HCl concentrations (0.6 $\mu g/m^3$) are well below the 600 $\mu g/m^3$ chronic threshold, and the maximum short-term HCl concentration (346 $\mu g/m^3$) are far below the 6,500 $\mu g/m^3$ acute exposure threshold. Therefore, no adverse exposure effects are anticipated.

Prevailing meteorology strongly determines the fate of HCl in the atmosphere. However, HCl is not considered a strongly persistent pollutant, or one where long range transport is important in predicting its ecological effects. In the atmosphere, HCl can be expected to be absorbed into aqueous aerosols, due to its great affinity for water, and removed from the troposphere by rainfall. In addition, HCl will react with hydroxy ions to yield water plus chloride ions. However, the concentration of hydroxy ions in the troposphere is low, so HCl may have a relatively long residence time in areas of low humidity. No studies are reported of HCl levels in ponds or other small water bodies or soils near major sources of HCl emissions. Toxic effects of HCl to aquatic organisms would likely be due to the hydronium ion, or acidity. — Aquatic organisms in their natural environments often exhibit a broad range of pH tolerance. Effects of HCl deposition to small water bodies and to soils will primarily depend on the extent of neutralizing by carbonates or other buffering compounds. Chloride ions are essentially ubiquitous in natural waters and soils so minor increases due to deposition of dissolved HCl will have much less effect than the deposited hydronium ions. Deleterious effects of HCl on ponds and soils, where such effects might be found near a major source emitting to the atmosphere, likely will be local rather than widespread, as observed in plant foliage.

Effects of HCl on tissues are generally restricted to those immediately affected and are essentially acidic effects. The rapid solubility of HCl in aqueous media releases hydronium ions, which can be corrosive to tissue when above a threshold concentration. The chloride ions may be concentrated in some plant tissues, but may be distributed throughout the organism, as most organisms have chloride ions in their fluids. Leaves or other tissues exposed to HCl may show some concentration above that of their immediate environment; that is, some degree of bioconcentration can occur. However, long-term storage in specific organs and biomagnification of concentrations of HCl in trophic levels of a food chain would not be expected. Thus, the chemical nature of HCl results in deleterious effects, that when present, are local rather than widespread.

In conclusion, acute and chronic exposures to expected HCl and chlorine concentrations around the source are not expected to result in adverse toxicity effects. These pollutants are not persistent in the environment. Effects of HCl and chlorine on ponds and soils are likely to be local rather than widespread. Finally, chlorine and HCl are not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not anticipate any adverse ecological effects from chlorine and HCl.

4. Summary of Basis for Proposed Action

The results of the exposure assessment showed exposure levels to chlorine and HCl emissions from chlorine production facilities are well below the health threshold values. Furthermore, the threshold values, for which the RfC and AEGL values were determined to be appropriate values, were not exceeded when taking into account an ample margin of safety. Finally, no significant or widespread adverse environmental effects from chlorine and HCl are anticipated. Therefore, under authority of section 112(d)(4), we have determined that further control of chlorine and HCl emissions from chlorine production facilities is not necessary.

IV. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this notice of proposed action from all interested parties. You need to submit appropriate supporting data and analyses with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–2002–09 (*see* **ADDRESSES**).

Dated: June 5, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–15874 Filed 7–2–02; 8:45 am]

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Part III

Department of the Treasury

Customs Service

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Procedures; Notice

DEPARTMENT OF THE TREASURY

Customs Service

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of intent to distribute offset for Fiscal Year 2002.

distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term "affected domestic producer" means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, countervailing duty order or finding has been issued, and

(B) Remains in operation.

To receive a distribution, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution.

As required by § 159.62(b), Customs Regulations (19 CFR 159.62(b)), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under § 159.63 to claim a distribution. However, although § 159.62(b) also

While there is no established format for a certification, the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (Product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following: (1) The total amount of any qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category; (2) The total amount of those expenditures which have been the subject of any prior distribution under 19 U.S.C. 1675c; and (3) The net amount

order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under

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DEPARTMENT OF THE TREASURY

Customs Service

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of intent to distribute offset for Fiscal Year 2002.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is Customs notice of intention to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2002 in connection with antidumping duty orders or findings or countervailing duty orders. This document sets forth the list of individual antidumping duty orders or findings and countervailing duty orders, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings.

DATES: Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by September 3, 2002.

ADDRESSES: Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (ATTN: Jeffrey J. Laxague).

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings, (202–572–8876).

SUPPLEMENTARY INFORMATION:

Background

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("Act"). The provisions of the CDSOA are contained in Title X (sections 1001–1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term "affected domestic producer" means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) Remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC has supplied Customs with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case that are potentially eligible to receive an offset. This list appears at the end of this document.

Customs Regulations Implementing the CDSOA

It is noted that Customs published a final rule in the **Federal Register** (66 FR 48546) on September 21, 2001, as T.D. 01–68, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of the Customs Regulations (19 CFR part 159, subpart F (§§ 159.61—159.64)).

Notice of Intent To Distribute Offset

This document announces Customs intention to distribute to affected domestic producers the assessed antidumping or countervailing duties that are available for distribution in Fiscal Year 2002 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. Section 159.62(a), Customs Regulations (19 CFR 159.62(a)), provides that Customs will publish such a notice of intention to distribute assessed duties at least 90 days before the end of a fiscal year.

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution.

As required by § 159.62(b), Customs Regulations (19 CFR 159.62(b)), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under § 159.63 to claim a distribution. However, although § 159.62(b) also provides that the dollar amounts subject to distribution that were contained in the special account for each listed order or finding as of June 1, 2002, would appear in this notice, because these dollar amounts were not available in time for inclusion in this publication, these amounts will instead be posted shortly on the Customs Web site (*www.customs.gov*), for purposes of enabling affected domestic producers to determine whether it would be worthwhile to file a certification in a given case.

A successor to a company appearing on the list of affected domestic producers in this notice, or a member company of an association that appears on the list of affected domestic producers in this notice, where the member company does not appear on the list, should also consult § 159.61(b)(1)(i) or 159.61(b)(1)(ii), Customs Regulations, respectively (19 CFR 159.61(b)(1)(i) or 159.61(b)(1)(ii)), concerning whether and, if so, the additional procedures under which such party may file a certification to claim an offset.

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification, in triplicate, to the Acting Assistant Commissioner, Office of Regulations and Rulings, Headquarters, containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

As provided in § 159.63(b), Customs Regulations (19 CFR 159.63(b)), certifications to obtain a distribution of an offset must be received by Customs 60 days after the date of publication of the notice of intent in the **Federal Register**.

While there is no established format for a certification, the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (Product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The address of the domestic producer (if a post office box, the secondary street address must also appear), including, if applicable, a specific room number or department;
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s);
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled "Amount Claimed for Distribution";
11. A statement of eligibility, as described in the section below entitled "Eligibility to Receive Distribution"; and
12. A signature by a corporate officer legally authorized to bind the producer.

Qualifying Expenditures Which May Be Claimed for Distribution

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following: (1) The total amount of any qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category; (2) The total amount of those expenditures which have been the subject of any prior distribution under 19 U.S.C. 1675c; and (3) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in item "(1)" above minus the total amount that was the subject of any prior distribution as noted in item "(2)" above) (§ 159.63(b)(2)(i)–(b)(2)(iii), Customs Regulations (19 CFR 159.63(b)(2)(i)–(b)(2)(iii))).

Additionally, these qualifying expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case (§ 159.61(c), Customs Regulations (19 CFR 159.61(c))).

Eligibility To Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer. Also, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (§ 159.63(b)(3)(i), Customs Regulations (19 CFR 159.63(b)(3)(i))).

Furthermore, where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures (§ 159.63(b)(3)(ii), Customs Regulations (19 CFR 159.63(b)(3)(ii))).

Moreover, as required by 19 U.S.C. 1675c(b)(1) and § 159.63(b)(3)(iii), Customs Regulations (19 CFR 159.63(b)(3)(iii)), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer would again not be considered an affected domestic producer entitled to receive a distribution. The records must be those that are normally kept in the ordinary course of business; these records must support each qualifying expenditure enumerated in the certification; and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public, as specified in § 159.63(e), Customs Regulations (19 CFR 159.63(e)). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section

below entitled "Verification of Certification").

Review and Correction of Certification

A certification that is submitted in response to this notice of distribution must be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer, as provided in § 159.63(c), Customs Regulations (19 CFR 159.63(c)). It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory will result in the domestic producer not receiving a distribution.

Verification of Certification

Certifications are subject to Customs verification. Because of this, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification (see § 159.63(d), Customs Regulations (19 CFR 159.63(d))).

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–570–502	731–TA–265	Iron construction castings/China.	Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry.
C–351–504	701–TA–249	Heavy iron construction castings/Brazil.	Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry.
		Frozen concentrated orange	Florida Citrus Mutual

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below entitled "Verification of Certification").

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Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–588–028	AA1921–111	Roller chain/Japan	American Chain Association; Acme Chain Division, North American Rockwell; Atlas Chain & Precision Products; Diamond Chain; Link-Belt Chain Division, FMC; Morse Chain Division, Borg Warner; Rex Chainbelt.
A–401–040	AA1921–114	Stainless steel plate/Sweden	Jessop Steel.
A–588–041	AA1921–115	Synthetic methionine/Japan	Monsanto.
A–588–046	AA1921–129	Polychloroprene rubber/Japan	E.I. du Pont de Nemours.
A–122–047	AA1921–127	Elemental sulphor/Canada	Duval.
A–588–056	AA1921–162	Melamine/Japan	Melamine Chemical.
A–475–059	AA1921–167	Pressure-sensitive plastic tape/Italy.	Minnesota Mining & Manufacturing.
A–588–068	AA1921–188	Prestressed concrete steel wire strand/Japan.	American Spring Wire; Armco Steel; Bethlehem Steel; CF&I Steel; Florida Wire & Cable.
C–408–046	104–TAA–7	Sugar/EU	No petition at the Commission; Commerce service list identifies: U.S. Beet Sugar Association; Florida Sugar Marketing and Terminal Association; American Sugar Cane League; American Sugarbeet Growers Association; Florida Sugar Cane League; Rio Grande Valley Sugar Growers Association; Michigan Sugar; Amstar Sugar; Sugar Cane Growers Cooperative of Florida; Alexander & Baldwin; Michigan Farm Bureau; H&R Brokerage; Talisman Sugar; American Farm Bureau Federation; Leach Farms; A.J. Yates; Hawaiian Agricultural Research Center; United States Beet Sugar Association; United States Cane Sugar Refiners' Association.
A–423–077	AA1921–198	Sugar/Belgium	Florida Sugar Marketing and Terminal Association.
A–427–078	AA1921–199	Sugar/France	Florida Sugar Marketing and Terminal Association.
A–428–082	AA1921–200	Sugar/Germany	Florida Sugar Marketing and Terminal Association.
A–122–085	731–TA–3	Sugar and syrups/Canada	Amstar Sugar.
A–427–098	731–TA–25	Anhydrous sodium metasilicate/France.	PQ.
A–427–001	731–TA–44	Sorbitol/France	Lonza; Pfizer.
A–570–007	731–TA–149	Barium chloride/China	Chemical Products.
A–570–101	731–TA–101	Greige polyester cotton printcloth/China.	Alice Manufacturing; Clinton Mills; Dan River; Greenwood Mills; Hamrick Mills; M. Lowenstein; Mayfair Mills; Mount Vernon Mills.
C–357–004	701–TA–A	Carbon steel wire rod/Argentina	Atlantic Steel; Continental Steel; Georgetown Steel; North Star Steel; Raritan River Steel.
A–357–007	731–TA–157	Carbon steel wire rod/Argentina	Atlantic Steel; Continental Steel; Georgetown Steel; North Star Steel; Raritan River Steel.
A–469–007	731–TA–126	Potassium permanganate/Spain	Carus Chemical.
A–570–001	731–TA–125	Potassium permanganate/China.	Carus Chemical.
A–570–002	731–TA–130	Chloropicrin/China	LCP Chemicals & Plastics; Niklor Chemical.
C–533–063	303–TA–13	Iron metal castings/India	Campbell Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Pinkerton Foundry; U.S. Foundry & Manufacturing; Vulcan Foundry.
A–122–503	731–TA–263	Iron construction castings/Canada.	Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry.
A–351–503	731–TA–262	Iron construction castings/Brazil	Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–570–502	731–TA–265	Iron construction castings/China.	Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry.
C–351–504	701–TA–249	Heavy iron construction castings/Brazil.	Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry.
A–351–605	731–TA–326	Frozen concentrated orange juice/Brazil.	Florida Citrus Mutual.
A–570–825	731–TA–653	Sebacic acid/China	Union Camp.
C–122–404	701–TA–224	Live swine/Canada	National Pork Producers Council; Wilson Foods.
A–357–405	731–TA–208	Barbed wire and barbless wire strand/Argentina.	CF&I Steel; Davis Walker; Forbes Steel & Wire; Oklahoma Steel Wire.
A–570–501	731–TA–244	Natural bristle paint brushes/China.	Baltimore Brush; Bestt Liebco; Elder & Jenks; EZ Paintr; H&G Industries; Joseph Lieberman & Sons; Purdy; Rubberset; Thomas Paint Applicators; Wooster Brush.
A–570–003	731–TA–103	Cotton shop towels/China	Milliken; Texel Industries; Wikit.
C–535–001	701–TA–202	Cotton shop towels/Pakistan	Milliken.
C–333–401	701–TA–E	Cotton shop towels/Peru	No case at the Commission; Commerce service list identifies: Durafab; Kleen-Tex Industries; Pavis & Harcourt; Lewis Eckert Robb; Milliken.
A–538–802	731–TA–514	Cotton shop towels/Bangladesh	Milliken.
A–570–504	731–TA–282	Petroleum wax candles/China	Candle-Lite; Colonial Candle of Cape Cod; Lenox Candles; Lumi-Lite Candle; Meuch-Kreuzer Candle; National Candle Association; WNS.
A–588–045	AA1921–124	Steel wire rope/Japan	AMSTED Industries.
A–201–806	731–TA–547	Carbon steel wire rope/Mexico	Bridon American; Macwhyte; Paulsen Wire Rope; The Rochester Corporation; Williamsport; Wire-rope Works; Wire Rope Corporation of America; United Automobile, Aerospace and Agricultural Implement Workers (Local 960).
A–580–811	731–TA–546	Carbon steel wire rope/Korea	Bridon American; Macwhyte; Paulsen Wire Rope; The Rochester Corporation; Williamsport; Wire-rope Works; Wire Rope Corporation of America; United Automobile, Aerospace and Agricultural Implement Workers (Local 960).
A–351–505	731–TA–278	Malleable cast iron pipe fittings/Brazil.	Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing.
A–580–507	731–TA–279	Malleable cast iron pipe fittings/Korea.	Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing.
A–583–507	731–TA–280	Malleable cast iron pipe fittings/Taiwan.	Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing.
A–588–605	731–TA–347	Malleable cast iron pipe fittings/Japan.	Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing.
A–549–601	731–TA–348	Malleable cast iron pipe fittings/Thailand.	Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing.
A–570–506	731–TA–298	Porcelain-on-steel cooking ware/China.	General Housewares.
A–201–504	731–TA–297	Porcelain-on-steel cooking ware/Mexico.	General Housewares.
A–583–500	731–TA–299	Porcelain-on-steel cooking ware/Taiwan.	General Housewares.
C–201–505	701–TA–265	Porcelain-on-steel cooking ware/Mexico.	General Housewares.
A–580–601	731–TA–304	Top-of-the-stove stainless steel cooking ware/Korea.	Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex.
C–580–602	701–TA–267	Top-of-the-stove stainless steel cooking ware/Korea.	Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex.
A–583–603	731–TA–305	Top-of-the-stove stainless steel cooking ware/Taiwan.	Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex.
C–583–604	701–TA–268	Top-of-the-stove stainless steel cooking ware/Taiwan.	Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex.
C–351–604	701–TA–269	Brass sheet and strip/Brazil	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–351–603	731–TA–311	Brass sheet and strip/Brazil	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–122–601	731–TA–312	Brass sheet and strip/Canada	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–451–801	731–TA–340–D	Solid urea/Lithuania	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–485–601	731–TA–339	Solid urea/Romania	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–821–801	731–TA–340–E	Solid urea/Russia	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–842–801	731–TA–340–F	Solid urea/Tajikistan	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R.

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Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–351–603	731–TA–311	Brass sheet and strip/Brazil	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–122–601	731–TA–312	Brass sheet and strip/Canada	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–580–603	731–TA–315	Brass sheet and strip/Korea	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–427–602	731–TA–313	Brass sheet and strip/France	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
C–427–603	701–TA–270	Brass sheet and strip/France	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–428–602	731–TA–317	Brass sheet and strip/Germany	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–475–601	731–TA–314	Brass sheet and strip/Italy	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–401–601	731–TA–316	Brass sheet and strip/Sweden	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–588–704	731–TA–379	Brass sheet and strip/Japan	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Pegg Metals; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–421–701	731–TA–380	Brass sheet and strip/Netherlands.	American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; North Coast Brass & Copper; Olin; Pegg Metals; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America.
A–831–801	731–TA–340–A	Solid urea/Armenia	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–822–801	731–TA–340–B	Solid urea/Belarus	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–447–801	731–TA–340–C	Solid urea/Estonia	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–451–801	731–TA–340–D	Solid urea/Lithuania	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–485–601	731–TA–339	Solid urea/Romania	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–821–801	731–TA–340–E	Solid urea/Russia	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–842–801	731–TA–340–F	Solid urea/Tajikistan	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–843–801	731–TA–340–G	Solid urea/Turkmenistan	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–823–801	731–TA–340–H	Solid urea/Ukraine	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
A–844–801	731–TA–340–I	Solid urea/Uzbekistan	Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace.
C–508–605	701–TA–286	Industrial phosphoric acid/Israel	Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical.
A–423–602	731–TA–365	Industrial phosphoric acid/Belgium.	Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical.
A–489–602	731–TA–364	Aspirin/Turkey	Dow Chemical; Monsanto; Norwich-Eaton.
A–122–605	731–TA–367	Color picture tubes/Canada	Philips Electronic Components Group; Zenith Electronics Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America.
A–588–609	731–TA–368	Color picture tubes/Japan	Philips Electronic Components Group; Zenith Electronics; Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America.
A–580–605	731–TA–369	Color picture tubes/Korea	Philips Electronic Components Group; Zenith Electronics; Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America.
A–559–601	731–TA–370	Color picture tubes/Singapore	Philips Electronic Components Group; Zenith Electronics; Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America.
A–588–054	AA1921–143	Tapered roller bearings 4 inches and under/Japan.	No companies identified as petitioners at the Commission; Commerce service list identifies: Mitsubishi; Nissan Motor; Yamaha Motors; NSK; Hoover-NSK Bearing; ITOCHU International; Toyota Motor Sales; Timken; Nippon Seiko; Kawasaki Heavy Duty Industries; Komatsu America; Nachi Western; Ford Motor; Federal Mogul; Itocho; Kanematsu-Goshu USA; Nissan Motor USA; Nachi America; Motorambar; Honda; General Motors; Sumitomo; Koyo Seiko; American Honda Motor; Subaru of America; Suzuki Motor; Kubota Tractor; Isuzu; Nachi-Fujikoshi; NTN.
A–570–601	731–TA–344	Tapered roller bearings/China	Timken; Torrington.
A–437–601	731–TA–341	Tapered roller bearings/Hungary.	Timken; Torrington.
A–485–602	731–TA–345	Tapered roller bearings/Romania.	Timken; Torrington.
A–588–604	731–TA–343	Tapered roller bearings over 4 inches/Japan.	Timken; Torrington.
A–427–801	731–TA–392–A	Ball bearings/France	MPB; Torrington.
A–427–801	731–TA–392–B	Cylindrical roller bearings/France.	MPB; Torrington.
A–427–801	731–TA–392–C	Spherical plain bearings/France	Torrington.
A–428–801	731–TA–391–A	Ball bearings/Germany	MPB; Torrington.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–428–801	731–TA–391–B	Cylindrical roller bearings/Germany.	MPB; Torrington.
A–428–801	731–TA–391–C	Spherical plain bearings/Germany.	Torrington.
A–475–801	731–TA–393–A	Ball bearings/Italy	MPB; Torrington.
A–475–801	731–TA–393–B	Cylindrical roller bearings/Italy	MPB; Torrington.
A–588–804	731–TA–394–A	Ball bearings/Japan	Kubar Bearings; MPB; Torrington.
A–588–804	731–TA–394–B	Cylindrical roller bearings/Japan.	Kubar Bearings; MPB; Torrington.
A–588–804	731–TA–394–C	Spherical plain bearings/Japan	Kubar Bearings; Torrington.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–580–809	731–TA–533	Circular welded nonalloy steel pipe/Korea.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube.
A–201–805	731–TA–534	Circular welded nonalloy steel pipe/Mexico.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube.
A–583–814	731–TA–536	Circular welded nonalloy steel pipe/Taiwan.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube;

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Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–428–801	731–TA–391–B	Cylindrical roller bearings/Germany.	MPB; Torrington.
A–428–801	731–TA–391–C	Spherical plain bearings/Germany.	Torrington.
A–475–801	731–TA–393–A	Ball bearings/Italy	MPB; Torrington.
A–475–801	731–TA–393–B	Cylindrical roller bearings/Italy	MPB; Torrington.
A–588–804	731–TA–394–A	Ball bearings/Japan	Kubar Bearings; MPB; Torrington.
A–588–804	731–TA–394–B	Cylindrical roller bearings/Japan.	Kubar Bearings; MPB; Torrington.
A–588–804	731–TA–394–C	Spherical plain bearings/Japan	Kubar Bearings; Torrington.
A–485–801	731–TA–395	Ball bearings/Romania	MPB; Torrington.
A–559–801	731–TA–396	Ball bearings/Singapore	MPB; Torrington.
A–401–801	731–TA–397–A	Ball bearings/Sweden	MPB; Torrington.
A–401–801	731–TA–397–B	Cylindrical roller bearings/Sweden.	MPB; Torrington.
A–412–801	731–TA–399–A	Ball Bearings/United Kingdom	MPB; Torrington.
A–412–801	731–TA–399–B	Cylindrical roller bearings/United Kingdom.	MPB; Torrington.
A–588–703	731–TA–377	Internal combustion industrial forklift trucks/Japan.	Hyster; Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama Facilities; Allied Industrial Workers of America; Independent Lift Truck Builders Union; International Association of Machinists & Aerospace Workers; United Shop & Service Employees.
A–588–706	731–TA–384	Nitrile rubber/Japan	Uniroyal Chemical.
A–583–008	731–TA–132	Small diameter carbon steel pipe and tube/Taiwan.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Copperweld Tubing J&L Steel; Kaiser Steel; Merchant Metals; Pittsburgh Tube; Southwestern Pipe; Western Tube & Conduit.
C–489–502	701–TA–253	Welded carbon steel pipe and tube/Turkey.	Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube.
A–549–502	731–TA–252	Welded carbon steel pipe and tube/Thailand.	Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube.
A–533–502	731–TA–271	Welded carbon steel pipe and tube/India.	Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube.
A–489–501	731–TA–273	Welded carbon steel pipe and tube/Turkey.	Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube.
A–122–506	731–TA–276	Oil country tubular goods/Canada.	CF&I Steel; Copperweld Tubing; Cyclops; KPC; Lone Star Steel; LTV Steel; Maverick Tube; Quanex; U.S. Steel.
A–583–505	731–TA–277	Oil country tubular goods/Taiwan.	CF&I Steel; Copperweld Tubing; Cyclops; KPC; Lone Star Steel; LTV Steel; Maverick Tube; Quanex; U.S. Steel.
A–559–502	731–TA–296	Small diameter standard and rectangular pipe and tube/Singapore.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Cyclops; Hannibal Industries; Laclede Steel; Pittsburgh Tube; Sharon Tube; Western Tube & Conduit; Wheatland Tube.
A–583–803	731–TA–410	Light-walled rectangular tube/Taiwan.	Bull Moose Tube; Hannibal Industries; Harris Tube; Maruichi American; Searing Industries; Southwestern Pipe; Western Tube & Conduit.
A–357–802	731–TA–409	Light-walled rectangular tube/Argentina.	Bull Moose Tube; Hannibal Industries; Harris Tube; Maruichi American; Searing Industries; Southwestern Pipe; Western Tube & Conduit.
A–351–809	731–TA–532	Circular welded nonalloy steel pipe/Brazil.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–580–809	731–TA–533	Circular welded nonalloy steel pipe/Korea.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube.
A–201–805	731–TA–534	Circular welded nonalloy steel pipe/Mexico.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube.
A–583–814	731–TA–536	Circular welded nonalloy steel pipe/Taiwan.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube.
A–307–805	731–TA–537	Circular welded nonalloy steel pipe/Venezuela.	Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube.
A–588–707	731–TA–386	Granular polytetrafluoroethylene/Japan.	E.I. du Pont de Nemours; ICI Americas.
A–475–703	731–TA–385	Granular polytetrafluoroethylene/Italy.	E.I. du Pont de Nemours; ICI Americas.
A–351–602	731–TA–308	Carbon steel butt-weld pipe fittings/Brazil.	Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America; Weldbend.
A–583–605	731–TA–310	Carbon steel butt-weld pipe fittings/Taiwan.	Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America; Weldbend.
A–588–602	731–TA–309	Carbon steel butt-weld pipe fittings/Japan.	Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America; Weldbend.
A–570–814	731–TA–520	Carbon steel butt-weld pipe fittings/China.	Hackney; Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America.
A–549–807	731–TA–521	Carbon steel butt-weld pipe fittings/Thailand.	Hackney; Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America.
A–484–801	731–TA–406	Electrolytic manganese dioxide/Greece.	Chemetals; Kerr-McGee; Rayovac.
A–588–806	731–TA–408	Electrolytic manganese dioxide/Japan.	Chemetals; Kerr-McGee; Rayovac.
A–428–802	731–TA–419	Industrial belts/Germany	The Gates Rubber Company; The Goodyear Tire and Rubber Company.
A–475–802	731–TA–413	Industrial belts/Italy	The Gates Rubber Company; The Goodyear Tire and Rubber Company.
A–588–807	731–TA–414	Industrial belts/Japan	The Gates Rubber Company; The Goodyear Tire and Rubber Company.
A–559–802	731–TA–415	Industrial belts/Singapore	The Gates Rubber Company; The Goodyear Tire and Rubber Company.
A–427–009	731–TA–96	Industrial nitrocellulose/France	Hercules.
A–351–804	731–TA–439	Industrial nitrocellulose/Brazil	Hercules.
A–570–802	731–TA–441	Industrial nitrocellulose/China	Hercules.
A–428–803	731–TA–444	Industrial nitrocellulose/Germany.	Hercules.
A–588–812	731–TA–440	Industrial nitrocellulose/Japan	Hercules.
A–580–805	731–TA–442	Industrial nitrocellulose/Korea	Hercules.
A–412–803	731–TA–443	Industrial nitrocellulose/United Kingdom.	Hercules.
A–479–801	731–TA–445	Industrial nitrocellulose/Yugoslavia.	Hercules.
A–122–804	731–TA–422	Steel rails/Canada	Bethlehem Steel; CF&I Steel.
C–122–805	701–TA–297	Steel rails/Canada	Bethlehem Steel; CF&I Steel.
A–588–811	731–TA–432	Drafting machines/Japan	Vemco.
A–588–810	731–TA–429	Mechanical transfer presses/Japan.	Allied Products; United Autoworkers of America; United Steelworkers of America.
A–570–803	731–TA–457–A	Axes and adzes/China	Warwood Tool; Woodings-Verona.
A–570–803	731–TA–457–B	Bars and wedges/China	Warwood Tool; Woodings-Verona.
A–570–803	731–TA–457–C	Hammers and sledges/China	Warwood Tool; Woodings-Verona.
A–570–803	731–TA–457–D	Picks and mattocks/China	Warwood Tool; Woodings-Verona.
A–570–805	731–TA–466	Sodium thiosulfate/China	Calabrian.
A–428–807	731–TA–465	Sodium thiosulfate/Germany	Calabrian.
A–412–805	731–TA–468	Sodium thiosulfate/United Kingdom.	Calabrian.
C–469–004	701–TA–178	Stainless steel wire rod/Spain	AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Colt Industries; Cyclops; Guterl Special Steel; Joslyn Stainless Steels; Republic Steel.
A–533–808	731–TA–638	Stainless steel wire rod/India	AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–351–819	731–TA–636	Stainless steel wire rod/Brazil	AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–427–811	731–TA–637	Stainless steel wire rod/France	AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–580–810	731–TA–540	Welded ASTM A–312 stainless steel pipe/Korea.	Avesta Sandvik Tube; Bristol Metals; Crucible Materials; Damascus Tubular Products; United Steelworkers of America.
A–583–815	731–TA–541	Welded ASTM A–312 stainless steel pipe/Taiwan.	Avesta Sandvik Tube; Bristol Metals; Crucible Materials; Damascus Tubular Products; United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
C–423–806	701–TA–319	Cut-to-length carbon steel plate/Belgium.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–351–818	701–TA–320	Cut-to-length carbon steel plate/Brazil.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–428–817	701–TA–322	Cut-to-length carbon steel plate/Germany.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel;

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Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–351–819	731–TA–636	Stainless steel wire rod/Brazil	AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–427–811	731–TA–637	Stainless steel wire rod/France	AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–580–810	731–TA–540	Welded ASTM A–312 stainless steel pipe/Korea.	Avesta Sandvik Tube; Bristol Metals; Crucible Materials; Damascus Tubular Products; United Steelworkers of America.
A–583–815	731–TA–541	Welded ASTM A–312 stainless steel pipe/Taiwan.	Avesta Sandvik Tube; Bristol Metals; Crucible Materials; Damascus Tubular Products; United Steelworkers of America.
A–403–801	731–TA–454	Fresh and chilled Atlantic salmon/Norway.	Heritage Salmon; The Coalition for Fair Atlantic Salmon Trade.
C–403–802	701–TA–302	Fresh and chilled Atlantic salmon/Norway.	Heritage Salmon; The Coalition for Fair Atlantic Salmon Trade.
A–580–807	731–TA–459	Polyethylene terephthalate film/Korea.	E.I. du Pont de Nemours; Hoechst Celanese; ICI Americas.
A–570–804	731–TA–464	Sparklers/China	B.J. Alan; Diamond Sparkler; Elkton Sparkler.
A–588–702	731–TA–376	Stainless steel butt-weld pipe fittings/Japan.	Flowline; Shaw Alloy Piping Products; Taylor Forge Stainless.
A–580–813	731–TA–563	Stainless steel butt-weld pipe fittings/Korea.	Gerlin; Markovitz Enterprises; Shaw Alloy Piping Products; Taylor Forge Stainless.
A–583–816	731–TA–564	Stainless steel butt-weld pipe fittings/Taiwan.	Gerlin; Markovitz Enterprises; Shaw Alloy Piping Products; Taylor Forge Stainless.
A–201–802	731–TA–451	Gray portland cement and clinker/Mexico.	Alamo Cement; Blue Circle; BoxCrow Cement; Calaveras Cement; Capitol Aggregates; Florida Crushed Stone; Gifford-Hill; Hanson Permanente Cement; Ideal Basic Industries; National Cement Company of Alabama; National Cement Company of California; Phoenix Cement; Southdown; Tarmac America; Texas Industries; Independent Workers of North America (Locals 49, 52, 89, 192, and 471); International Union of Operating Engineers (Local 12).
A–588–815	731–TA–461	Gray portland cement and clinker/Japan.	Calaveras Cement; Hanson Permanente Cement; National Cement Company of California; Southdown; Independent Workers of North America (Locals 49, 52, 89, 192, and 471); International Union of Operating Engineers (Local 12).
A–307–803	731–TA–519	Gray portland cement and clinker/Venezuela.	Florida Crushed Stone; Southdown; Tarmac America.
C–307–804	303–TA–21	Gray portland cement and clinker/Venezuela.	Florida Crushed Stone; Southdown; Tarmac America.
A–588–817	731–TA–469	Electroluminescent flat-panel displays/Japan.	The Cherry Corporation; Electro Plasma; Magnascreen; OIS Optical Imaging Systems; Photonics Technology; Planar Systems; Plasmaco.
A–570–808	731–TA–474	Chrome-plated lug nuts/China	Consolidated International Automotive; Key Manufacturing McGard.
A–583–810	731–TA–475	Chrome-plated lug nuts/Taiwan	Consolidated International Automotive; Key Manufacturing McGard.
A–122–814	731–TA–528	Pure magnesium/Canada	Magnesium Corporation of America.
C–122–815	701–TA–309–A	Alloy magnesium/Canada	Magnesium Corporation of America.
C–122–815	701–TA–309–B	Pure magnesium/Canada	Magnesium Corporation of America.
A–557–805	731–TA–527	Extruded rubber thread/Malaysia.	Globe Manufacturing; North American Rubber Thread.
A–843–802	731–TA–539	Uranium/Kazakhstan	Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers.
A–821–802	731–TA–539–C	Uranium/Russia	Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers.
A–844–802	731–TA–539–F	Uranium/Uzbekistan	Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers.
A–823–802	731–TA–539–E	Uranium/Ukraine	Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers.
A–583–080	AA1921–197	Carbon steel plate/Taiwan	No petition (self-initiated by Treasury); Commerce service list identifies: U.S. Steel; China Steel; Bethlehem Steel.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
C–423–806	701–TA–319	Cut-to-length carbon steel plate/Belgium.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–351–818	701–TA–320	Cut-to-length carbon steel plate/Brazil.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–428–817	701–TA–322	Cut-to-length carbon steel plate/Germany.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–201–810	701–TA–325	Cut-to-length carbon steel plate/Mexico.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–469–804	701–TA–326	Cut-to-length carbon steel plate/Spain.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–401–804	701–TA–327	Cut-to-length carbon steel plate/Sweden.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
C–412–815	701–TA–328	Cut-to-length carbon steel plate/United Kingdom.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–423–805	731–TA–573	Cut-to-length carbon steel plate/Belgium.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–351–817	731–TA–574	Cut-to-length carbon steel plate/Brazil.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–122–823	731–TA–575	Cut-to-length carbon steel plate/Canada.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–405–802	731–TA–576	Cut-to-length carbon steel plate/Finland.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–428–816	731–TA–578	Cut-to-length carbon steel plate/Germany.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–201–809	731–TA–582	Cut-to-length carbon steel plate/Mexico.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–455–802	731–TA–583	Cut-to-length carbon steel plate/Poland.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–485–803	731–TA–584	Cut-to-length carbon steel plate/Romania.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–469–803	731–TA–585	Cut-to-length carbon steel plate/Spain.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–401–805	731–TA–586	Cut-to-length carbon steel plate/Sweden.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.
A–412–814	731–TA–587	Cut-to-length carbon steel plate/United Kingdom.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
C–401–401	701–TA–231	Cold-rolled carbon steel flat products/Sweden.	Bethlehem Steel; Chaparral; U.S. Steel.
C–428–817	701–TA–340	Cold-rolled carbon steel flat products/Germany.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–580–818	701–TA–342	Cold-rolled carbon steel flat products/Korea.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–820	701–TA–343	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–821	701–TA–344	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–805	701–TA–345	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–803	701–TA–346	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–806	701–TA–347	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–822	701–TA–348	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–806	701–TA–349	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–804	701–TA–350	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–807	701–TA–351	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–823	701–TA–352	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–807	701–TA–353	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–805	701–TA–354	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–808	701–TA–355	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–824	701–TA–356	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–808	701–TA–357	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–806	701–TA–358	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–809	701–TA–359	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–825	701–TA–360	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–809	701–TA–361	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–807	701–TA–362	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–810	701–TA–363	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–826	701–TA–364	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–810	701–TA–365	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–808	701–TA–366	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–811	701–TA–367	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–827	701–TA–368	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–811	701–TA–369	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–809	701–TA–370	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–812	701–TA–371	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–828	701–TA–372	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–812	701–TA–373	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–810	701–TA–374	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–813	701–TA–375	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–829	701–TA–376	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–813	701–TA–377	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–811	701–TA–378	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–814	701–TA–379	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–830	701–TA–380	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–814	701–TA–381	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–812	701–TA–382	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–815	701–TA–383	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–831	701–TA–384	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–815	701–TA–385	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–813	701–TA–386	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–816	701–TA–387	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–832	701–TA–388	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–816	701–TA–389	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–814	701–TA–390	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–817	701–TA–391	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–833	701–TA–392	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–817	701–TA–393	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–815	701–TA–394	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–818	701–TA–395	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–834	701–TA–396	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–818	701–TA–397	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–816	701–TA–398	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–819	701–TA–399	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–835	701–TA–400	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–819	701–TA–401	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–817	701–TA–402	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–820	701–TA–403	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–836	701–TA–404	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–820	701–TA–405	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–560–818	701–TA–406	Cold-rolled carbon steel flat products/Indonesia.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–533–821	701–TA–407	Cold-rolled carbon steel flat products/India.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–351–837	701–TA–408	Cold-rolled carbon steel flat products/Brazil.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–357–821	701–TA–409	Cold-rolled carbon steel flat products/Argentina.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel

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C–401–401	701–TA–231	Cold-rolled carbon steel flat products/Sweden.	Bethlehem Steel; Chaparral; U.S. Steel.
C–428–817	701–TA–340	Cold-rolled carbon steel flat products/Germany.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–580–818	701–TA–342	Cold-rolled carbon steel flat products/Korea.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–428–814	731–TA–604	Cold-rolled carbon steel flat products/Germany.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–580–815	731–TA–607	Cold-rolled carbon steel flat products/Korea.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–421–804	731–TA–608	Cold-rolled carbon steel flat products/Netherlands.	Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–427–810	701–TA–348	Corrosion-resistant carbon steel flat products/France.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–428–817	701–TA–349	Corrosion-resistant carbon steel flat products/Germany.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
C–580–818	701–TA–350	Corrosion-resistant carbon steel flat products/Korea.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–602–803	731–TA–612	Corrosion-resistant carbon steel flat products/Australia.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–122–822	731–TA–614	Corrosion-resistant carbon steel flat products/Canada.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–427–808	731–TA–615	Corrosion-resistant carbon steel flat products/France.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–428–815	731–TA–616	Corrosion-resistant carbon steel flat products/Germany.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–588–826	731–TA–617	Corrosion-resistant carbon steel flat products/Japan.	Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Lukens Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–580–816	731–TA–618	Corrosion-resistant carbon steel flat products/Korea.	Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America.
A–570–815	731–TA–538	Sulfanilic acid/China	R–M Industries.

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A–533–806	731–TA–561	Sulfanilic acid/India	R–M Industries.
C–533–807	701–TA–318	Sulfanilic acid/India	R–M Industries.
A–570–806	731–TA–472	Silicon metal/China	American Alloys; Elkem Metals; Globe Metallurgical; Silicon Metaltech; SiMETCO; SKW Alloys; International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693); Oil, Chemical and Atomic Workers (Local 389); Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60); United Steelworkers of America (Locals 5171, 8538, and 12646).
A–351–806	731–TA–471	Silicon metal/Brazil	American Alloys; Globe Metallurgical; Silicon Metaltech; SiMETCO; International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693); Oil, Chemical and Atomic Workers (Local 389); Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60); United Steelworkers of America (Locals 5171, 8538, and 12646).
A–357–804	731–TA–470	Silicon metal/Argentina	American Alloys; Elkem Metals; Globe Metallurgical; Silicon Metaltech; SiMETCO; SKW Alloys; International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693); Oil, Chemical and Atomic Workers (Local 389); Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60); United Steelworkers of America (Locals 5171, 8538, and 12646).
A–570–819	731–TA–567	Ferrosilicon/China	AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–843–804	731–TA–566	Ferrosilicon/Kazakhstan	AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–823–804	731–TA–569	Ferrosilicon/Ukraine	AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
C–307–808	303–TA–23	Ferrosilicon/Venezuela	AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–821–804	731–TA–568	Ferrosilicon/Russia	AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–307–807	731–TA–570	Ferrosilicon/Venezuela	AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–351–820	731–TA–641	Ferrosilicon/Brazil	AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–823–805	731–TA–673	Silicomanganese/Ukraine	Elkem Metals; Oil, Chemical and Atomic Workers (Local 3–639).
A–351–824	731–TA–671	Silicomanganese/Brazil	Elkem Metals; Oil, Chemical and Atomic Workers (Local 3–639).
A–570–828	731–TA–672	Silicomanganese/China	Elkem Metals; Oil, Chemical and Atomic Workers (Local 3–639).
A–583–820	731–TA–625	Helical spring lock washers/Taiwan.	Illinois Tool Works.
A–570–822	731–TA–624	Helical spring lock washers/China.	Illinois Tool Works.
A–533–809	731–TA–639	Forged stainless steel flanges/India.	Gerlin; Ideal Forging; Maass Flange; Markovitz Enterprises.
A–583–821	731–TA–640	Forged stainless steel flanges/Taiwan.	Gerlin; Ideal Forging; Maass Flange; Markovitz Enterprises.
A–421–805	731–TA–652	Aramid fiber/Netherlands	E.I. du Pont de Nemours.

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C–475–812	701–TA–355	Grain-oriented silicon electrical steel/Italy.	Allegheny Ludlum; Armco Steel; Butler Armco Independent Union; United Steelworkers of America; Zanesville Armco Independent Union.
A–588–831	731–TA–660	Grain-oriented silicon electrical steel/Japan.	Allegheny Ludlum; Armco Steel; United Steelworkers of America.
A–475–811	731–TA–659	Grain-oriented silicon electrical steel/Italy.	Allegheny Ludlum; Armco Steel. Butler Armco Independent Union; United Steelworkers of America; Zanesville Armco Independent Union.
A–570–831	731–TA–683	Fresh garlic/China	A&D Christopher Ranch; Betridge Packing; Colusa Produce; Denice & Filice Packing; El Camino Packing; The Garlic

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A–489–805	731–TA–735	Pasta/Turkey	A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni.
A–428–821	731–TA–736	Large newspaper printing presses/Germany.	Rockwell Graphics Systems.
A–588–837	731–TA–737	Large newspaper printing presses/Japan.	Rockwell Graphics Systems.
A–201–820	731–TA–747	Fresh tomatoes/Mexico	Accomack County Farm Bureau; Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers; Florida Farm Bureau Federation; Florida Fruit and Vegetable Association; Florida Tomato Exchange; Florida Tomato Growers Exchange;

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C–475–812	701–TA–355	Grain-oriented silicon electrical steel/Italy.	Allegheny Ludlum; Armco Steel; Butler Armco Independent Union; United Steelworkers of America; Zanesville Armco Independent Union.
A–588–831	731–TA–660	Grain-oriented silicon electrical steel/Japan.	Allegheny Ludlum; Armco Steel; United Steelworkers of America.
A–475–811	731–TA–659	Grain-oriented silicon electrical steel/Italy.	Allegheny Ludlum; Armco Steel. Butler Armco Independent Union; United Steelworkers of America; Zanesville Armco Independent Union.
A–570–831	731–TA–683	Fresh garlic/China	A&D Christopher Ranch; Belridge Packing; Colusa Produce; Denice & Filice Packing; El Camino Packing; The Garlic Company; Vessey and Company.
A–570–826	731–TA–663	Paper clips/China	ACCO USA; Labelon/Noesting; TRICO Manufacturing.
A–570–827	731–TA–669	Cased pencils/China	Blackfeet Indian Writing Instrument; Dixon-Ticonderoga; Empire Berol; Faber-Castell; General Pencil; J.R. Moon Pencil; Musgrave Pen & Pencil; Panda; Writing Instrument Manufacturers Association, Pencil Section.
A–570–830	731–TA–677	Coumarin/China	Rhone-Poulenc.
A–351–825	731–TA–678	Stainless steel bar/Brazil	AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America.
A–533–810	731–TA–679	Stainless steel bar/India	AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America.
A–588–833	731–TA–681	Stainless steel bar/Japan	AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America.
A–469–805	731–TA–682	Stainless steel bar/Spain	AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America.
A–570–836	731–TA–718	Glycine/China	Chattem; Hampshire Chemical.
A–570–832	731–TA–696	Pure magnesium/China	Dow Chemical; Magnesium Corporation of America; International Union of Operating Engineers (Local 564); United Steelworkers of America (Local 8319).
A–570–835	731–TA–703	Furfuryl alcohol/China	QO Chemicals.
A–549–812	731–TA–705	Furfuryl alcohol/Thailand	QO Chemicals.
A–821–807	731–TA–702	Ferrovanadium and nitrided vanadium/Russia.	Shieldalloy Metallurgical.
A–549–813	731–TA–706	Canned pineapple/Thailand	Maui Pineapple; International Longshoreman's and Warehouseman's Union.
A–357–809	731–TA–707	Seamless pipe/Argentina	Koppel Steel; Quanex; Timken; United States Steel.
A–351–826	731–TA–708	Seamless pipe/Brazil	Koppel Steel; Quanex; Timken; United States Steel.
A–428–820	731–TA–709	Seamless pipe/Germany	Koppel Steel; Quanex; Timken; United States Steel.
A–475–814	731–TA–710	Seamless pipe/Italy	Koppel Steel; Quanex; Timken; United States Steel.
C–475–815	701–TA–362	Seamless pipe/Italy	Koppel Steel; Quanex; Timken; United States Steel.
C–475–817	701–TA–364	Oil country tubular goods/Italy	IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe.
A–357–810	731–TA–711	Oil country tubular goods/Argentina.	IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe.
A–475–816	731–TA–713	Oil country tubular goods/Italy	Bellville Tube; IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe.
A–588–835	731–TA–714	Oil country tubular goods/Japan	IPSCO; Koppel Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel.
A–580–825	731–TA–715	Oil country tubular goods/Korea	Bellville Tube; IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe.
A–201–817	731–TA–716	Oil country tubular goods/Mexico.	IPSCO; Koppel Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe.
A–570–840	731–TA–724	Manganese metal/China	Elkem Metals; Kerr-McGee.
A–570–842	731–TA–726	Polyvinyl alcohol/China	Air Products and Chemicals.
A–588–836	731–TA–727	Polyvinyl alcohol/Japan	Air Products and Chemicals.
A–583–824	731–TA–729	Polyvinyl alcohol/Taiwan	Air Products and Chemicals.
A–588–838	731–TA–739	Clad steel plate/Japan	Lukens Steel.
C–475–819	701–TA–365	Pasta/Italy	A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni.
C–489–806	701–TA–366	Pasta/Turkey	A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni.
A–475–818	731–TA–734	Pasta/Italy	A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni.

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A–489–805	731–TA–735	Pasta/Turkey	A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni.
A–428–821	731–TA–736	Large newspaper printing presses/Germany.	Rockwell Graphics Systems.
A–588–837	731–TA–737	Large newspaper printing presses/Japan.	Rockwell Graphics Systems.
A–201–820	731–TA–747	Fresh tomatoes/Mexico	Accomack County Farm Bureau; Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers; Florida Farm Bureau Federation; Florida Fruit and Vegetable Association; Florida Tomato Exchange; Florida Tomato Growers Exchange; Gadsden County Tomato Growers Association; South Carolina Tomato Association.
A–588–839	731–TA–740	Sodium azide/Japan	American Azide.
A–570–844	731–TA–741	Melamine institutional dinnerware/China.	Carlisle Food Service Products; Lexington United; Plastics Manufacturing.
A–560–801	731–TA–742	Melamine institutional dinnerware/Indonesia.	Carlisle Food Service Products; Lexington United; Plastics Manufacturing.
A–583–825	731–TA–743	Melamine institutional dinnerware/Taiwan.	Carlisle Food Service Products; Lexington United; Plastics Manufacturing.
A–570–846	731–TA–744	Brake rotors/China	Brake Parts; Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers; Kelsey Hayes; Kinetic Parts Manufacturing; Iroquois Tool Systems; Overseas Auto Parts; Wagner Brake.
A–489–807	731–TA–745	Steel; concrete reinforcing bar/Turkey.	AmeriSteel; Auburn Steel; Birmingham Steel; Commercial Metals; Marion Steel; New Jersey Steel;.
A–588–840	731–TA–748	Gas turbo-compressor systems/Japan.	Demag Delaval; Dresser-Rand; United Steelworkers of America.
A–570–847	731–TA–749	Persulfates/China	FMC.
A–570–848	731–TA–752	Crawfish tail meat/China	Crawfish Processors Alliance.
A–588–841	731–TA–750	Vector supercomputers/Japan	Cray Research.
A–570–849	731–TA–753	Cut-to-length carbon steel plate/China.	Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel; United Steelworkers of America.
A–821–808	731–TA–754	Cut-to-length carbon steel plate/Russia.	Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel; United Steelworkers of America.
A–791–804	731–TA–755	Cut-to-length carbon steel plate/South Africa.	Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel United Steelworkers of America.
A–823–808	731–TA–756	Cut-to-length carbon steel plate/Ukraine.	Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel United Steelworkers of America.
A–570–850	731–TA–757	Collated roofing nails/China	Illinois Tool Works; International Staple and Machines; Stanley-Bostitch.
A–583–826	731–TA–759	Collated roofing nails/Taiwan	Illinois Tool Works; International Staple and Machines; Stanley-Bostitch.
A–583–827	731–TA–762	SRAMs/Taiwan	Micron Technology.
A–337–803	731–TA–768	Fresh Atlantic salmon/Chile	Atlantic Salmon of Maine; Cooke Aquaculture US; DE Salmon; Global Aqua USA; Island Aquaculture; Maine Coast Nordic; Scan Am Fish Farms; Treats Island Fisheries; Trumpet Island Salmon Farm.
C–475–821	701–TA–373	Stainless steel wire rod/Italy	AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–475–820	731–TA–770	Stainless steel wire rod/Italy	AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–588–843	731–TA–771	Stainless steel wire rod/Japan	AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–580–829	731–TA–772	Stainless steel wire rod/Korea	AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–469–807	731–TA–773	Stainless steel wire rod/Spain	AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–401–806	731–TA–774	Stainless steel wire rod/Sweden.	AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–583–828	731–TA–775	Stainless steel wire rod/Taiwan	AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America.
A–337–804	731–TA–776	Preserved mushrooms/Chile	L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning.

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A–570–851	731–TA–777	Preserved mushrooms/China	L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning;
A–533–813	731–TA–778	Preserved mushrooms/India	L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning.
A–560–802	731–TA–779	Preserved mushrooms/Indonesia.	L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning.
C–423–809	701–TA–376	Stainless steel plate in coils/Belgium.	Allegheny Ludlum; Armco Steel; Lukens Steel; United Steelworkers of America.
C–475–823	701–TA–377	Stainless steel plate in coils/Italy.	Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; United Steelworkers of America.
C–791–806	701–TA–379	Stainless steel plate in coils/South Africa.	Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; United Steelworkers of America.
A–423–808	731–TA–788	Stainless steel plate in coils/Belgium.	Allegheny Ludlum; Armco Steel; Lukens Steel; North American Stainless; United Steelworkers of America.
A–122–830	731–TA–789	Stainless steel plate in coils/Canada.	Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless.
A–475–822	731–TA–790	Stainless steel plate in coils/Italy.	Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; United Steelworkers of America.
A–580–831	731–TA–791	Stainless steel plate in coils/Korea.	Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless; United Steelworkers of America.
A–791–805	731–TA–792	Stainless steel plate in coils/South Africa.	Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless; United Steelworkers of America.
A–583–830	731–TA–793	Stainless steel plate in coils/Taiwan.	Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless; United Steelworkers of America.
A–560–803	731–TA–787	Extruded rubber thread/Indonesia.	North American Rubber Thread.
A–588–846	731–TA–807	Hot-rolled carbon steel flat products/Japan.	Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; Ispat/Inland; LTV Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
C–351–829	701–TA–384	Hot-rolled carbon steel flat products/Brazil.	Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; ispat/Inland; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–351–828	731–TA–806	Hot-rolled carbon steel flat products/Brazil.	Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; Ispat/Inland; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–821–809	731–TA–808	Hot-rolled carbon steel flat products/Russia.	Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; Ispat/Inland; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–427–814	731–TA–797	Stainless steel sheet and strip/France.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
A–428–825	731–TA–798	Stainless steel sheet and strip/Germany.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
A–475–824	731–TA–799	Stainless steel sheet and strip/Italy.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
A–588–845	731–TA–800	Stainless steel sheet and strip/Japan.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
A–580–834	731–TA–801	Stainless steel sheet and strip/Korea.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.

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A–201–822	731–TA–802	Stainless steel sheet and strip/Mexico.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; North American Stainless; United Steelworkers of America.
A–583–831	731–TA–803	Stainless steel sheet and strip/Taiwan.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
A–412–818	731–TA–804	Stainless steel sheet and strip/United Kingdom.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
C–427–815	701–TA–380	Stainless steel sheet and strip/France	Allegheny Ludlum; Armco Steel; Bethlehem Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
C–475–825	701–TA–381	Stainless steel sheet and strip/Italy.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
C–580–835	701–TA–382	Stainless steel sheet and strip/Korea.	Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization.
A–570–852	731–TA–814	Creatine monohydrate/China	Pfanstiehl Laboratories.
C–427–817	701–TA–387	Cut-to-length carbon steel plate/France.	Bethlehem Steel; Geneva Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America.
C–533–818	701–TA–388	Cut-to-length carbon steel plate/India.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America.
C–560–806	701–TA–389	Cut-to-length carbon steel plate/Indonesia.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America.
C–475–827	701–TA–390	Cut-to-length carbon steel plate/Italy.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America.
C–580–837	701–TA–391	Cut-to-length carbon steel plate/Korea.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America.
A–427–816	731–TA–816	Cut-to-length carbon steel plate/France.	Bethlehem Steel; Geneva Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America.
A–533–817	731–TA–817	Cut-to-length carbon steel plate/India.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America.
A–560–805	731–TA–818	Cut-to-length carbon steel plate/Indonesia.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America.
A–475–826	731–TA–819	Cut-to-length carbon steel plate/Italy.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America.
A–588–847	731–TA–820	Cut-to-length carbon steel plate/Japan.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America.
A–580–836	731–TA–821	Cut-to-length carbon steel plate/Korea.	Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America.
A–507–502	731–TA–287	Raw in-shell pistachios/Iran	Blackwell Land; California Pistachio Orchard; T.M. Duche Nut; Keenan Farms; Kern Pistachio Hulling & Drying; Los Ranchos de Poco Pedro; Pistachio Producers of California.
C–507–501	None	Raw in-shell pistachios/Iran	No case at the Commission; no service list at Commerce.
C–507–601	None	Roasted in-shell pistachios/Iran	No case at the Commission; no service list at Commerce.
A–821–811	731–TA–856	Ammonium nitrate/Russia	Agrium; Air Products and Chemicals; Mississippi Chemical; El Dorado Chemical; Nitram; LaRoche; Wil-Gro Fertilizer.
A–580–839	731–TA–825	Polyester staple fiber/Korea	E.I. du Pont de Nemours; Arteva Specialties S.a.r.l.; Wellman; Intercontinental Polymers.
A–583–833	731–TA–826	Polyester staple fiber/Taiwan	Arteva Specialties S.a.r.l.; Wellman; Intercontinental Polymers.
A–570–855	731–TA–841	Non-frozen apple juice concentrate/China.	Coloma Frozen Foods; Green Valley Apples of California; Knouse Foods Coop; Mason County Fruit Packers Coop; Tree Top.
A–588–852	731–TA–853	Structural steel beams/Japan	Northwestern Steel and Wire; Nucor-Yamato Steel; TXI-Chaparral Steel; United Steelworkers of America.
C–580–842	701–TA–401	Structural steel beams/Korea	Northwestern Steel and Wire; Nucor-Yamato Steel; TXI-Chaparral Steel; United Steelworkers of America.

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A–580–841	731–TA–854	Structural steel beams/Korea	Northwestern Steel and Wire; Nucor-Yamato Steel; TXI-Chaparral Steel; United Steelworkers of America.
A–570–856	731–TA–851	Synthetic indigo/China	Buffalo Color; United Steelworkers of America.
A–588–850	731–TA–847	Large-diameter carbon steel seamless pipe/Japan.	North Star Steel; Timken; U.S. Steel; USS/Kobe; United Steelworkers of America.
A–588–851	731–TA–847	Small-diameter carbon steel seamless pipe/Japan.	Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America.
A–791–808	731–TA–850	Small-diameter carbon steel seamless pipe/South Africa.	Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America.

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A–791–809	731–TA–905	Hot-rolled steel products/South Africa.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–580–008	731–TA–134	Color television receivers/Korea	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color television.
A–583–009	731–TA–135	Color television receivers/Taiwan.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Depart-

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A–580–841	731–TA–854	Structural steel beams/Korea	Northwestern Steel and Wire; Nucor-Yamato Steel; TXI-Chaparral Steel; United Steelworkers of America.
A–570–856	731–TA–851	Synthetic indigo/China	Buffalo Color; United Steelworkers of America.
A–588–850	731–TA–847	Large-diameter carbon steel seamless pipe/Japan.	North Star Steel; Timken; U.S. Steel; USS/Kobe; United Steelworkers of America.
A–588–851	731–TA–847	Small-diameter carbon steel seamless pipe/Japan.	Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America.
A–791–808	731–TA–850	Small-diameter carbon steel seamless pipe/South Africa.	Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America.
A–485–805	731–TA–849	Small-diameter carbon steel seamless pipe/Romania.	Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America.
A–201–827	731–TA–848	Large-diameter carbon steel seamless pipe/Mexico.	North Star Steel; Timken; U.S. Steel; USS/Kobe; United Steelworkers of America.
A–851–802	731–TA–846	Small-diameter carbon steel seamless pipe/Czech Republic.	Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America.
A–570–853	731–TA–828	Aspirin/China	Rhodia.
A–580–812	731–TA–556	DRAMs of 1 megabit and above/Korea.	Micron Technology; NEC Electronics; Texas Instruments.
A–475–828	731–TA–865	Stainless steel butt-weld pipe fittings/Italy.	Markovitz Enterprises; Gerlin; Shaw Alloy Piping Products; Taylor Forge Stainless.
A–557–809	731–TA–866	Stainless steel butt-weld pipe fittings/Malaysia.	Markovitz Enterprises; Gerlin; Shaw Alloy Piping Products; Taylor Forge Stainless.
A–565–801	731–TA–867	Stainless steel butt-weld pipe fittings/Philippines.	Markovitz Enterprises; Gerlin; Shaw Alloy Piping Products; Taylor Forge Stainless.
A–588–856	731–TA–888	Stainless steel angle/Japan	Slater Steels; United Steelworkers of America.
A–580–846	731–TA–889	Stainless steel angle/Korea	Slater Steels; United Steelworkers of America.
A–469–810	731–TA–890	Stainless steel angle/Spain	Slater Steels; United Steelworkers of America.
A–588–015	AA1921–66	Television receivers/Japan	AGIV (USA); Casio Computer; CBM America; Citizen Watch; Funai Electric; Hitachi; Industrial Union Department; Matsushita; Mitsubishi Electric; NEC; Orion Electric; J.C. Penny; Philips Electronics; Philips Magnavox; P.T. Imports; Sanyo; Sharp; Toshiba; Toshiba America Consumer Products; Victor Company of Japan; Montgomery Ward; Zenith Electronics.
A–822–804	731–TA–873	Steel concrete reinforcing bar/Belarus.	AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–570–860	731–TA–874	Steel concrete reinforcing bar/China.	AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–560–811	731–TA–875	Steel concrete reinforcing bar/Indonesia.	AmeriSteel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–580–844	731–TA–877	Steel concrete reinforcing bar/Korea.	AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–449–804	731–TA–878	Steel concrete reinforcing bar/Latvia.	AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–841–804	731–TA–879	Steel concrete reinforcing bar/Moldova.	AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–455–803	731–TA–880	Steel concrete reinforcing bar/Poland.	AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–823–809	731–TA–882	Steel concrete reinforcing bar/Ukraine.	AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel.
A–823–810	731–TA–894	Ammonium nitrate/Ukraine	Agrium Air Products and Chemicals; Committee for Fair Ammonium Nitrate Trade; El Dorado Chemical; LaRoche Industries; Mississippi Chemicals; Nitram; Prodica.
A–570–862	731–TA–891	Foundry coke/China	ABC Coke; Citizens Gas and Coke Utility; Erie Coke; Tonawanda Coke; United Steelworkers of America.
C–357–815	701–TA–404	Hot-rolled steel products/Argentina.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–357–814	731–TA–898	Hot-rolled steel products/Argentina.	Bethlehen Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
A–791–809	731–TA–905	Hot-rolled steel products/South Africa.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–580–008	731–TA–134	Color television receivers/Korea	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color television.
A–583–009	731–TA–135	Color television receivers/Taiwan.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television.
A–122–006	AA1921–49	Steel jacks/Canada	Bloomfield Manufacturing (Harrah); Seaburn Metal Products.
A–588–029	AA1921–85	Fish netting of man-made fiber/Japan.	Jovanovich Supply; LFSI; Trans-Pacific Trading.
A–588–038	AA1921–98	Bicycle speedometers/Japan	Avocet; Cat Eye; Diversified Products; N.S. International; Sanyo Electric; Stewart-Warner.
A–588–055	AA1921–154	Acrylic sheet/Japan	Polycast Technology.
C–351–037	104–TAA–21	Cotton Yarn/Brazil	Harriet & Henderson Yarns; LaFar Industries; American Yarn Spinners Association.
A–588–005	731–TA–48	High power microwave amplifiers/Japan.	Aydin; MCL.
A–122–401	731–TA–196	Red raspberries/Canada	Rader farms; Ron Roberts; Shuksan Frozen Food; Northwest Food Producers' Association; Oregon Caneberry Commission; Washington Red Raspberry Commission.
A–588–405	731–TA–207	Cellular mobile telephones/Japan.	E.F. Johnson; Motorola.
C–421–601	701–TA–278	Fresh cut flowers/Netherlands	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–301–602	731–TA–329	Fresh cut flowers/Colombia	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Pajaro Valley Greenhouses; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–331–602	731–TA–331	Fresh cut flowers/Ecuador	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–201–601	731–TA–333	Fresh cut flowers/Mexico	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–401–603	731–TA–354	Stainless steel hollow products/Sweden.	AL Tech Specialty steel; Allegheny Ludlum Steel; ARMCO; Carpenter Technology; Crucible Materials; Damacus Tubular Products; Specialty Tubing Group.
A–508–604	731–TA–366	Industrial phosphoric acid/Israel	Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical.
A–588–602	731–TA–389	3.5″ microdisks/Japan	Verbatim.
A–588–809	731–TA–426	Small business telephone systems/Japan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–583–806	731–TA–428	Small business telephone systems/Taiwan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–580–803	731–TA–427	Small business telephone systems/Korea.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–570–811	731–TA–497	Tungsten ore concentrates/China.	Curtis Tungsten; U.S. Tungsten.
A–427–804	731–TA–553	Hot-rolled lead and bismuth carbon steel products/France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.
C–427–805	701–TA–315	Hot-rolled lead and bismuth carbon steel products/France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.
A–588–823	731–TA–571	Professional electric cutting tools/Japan.	Black & Decker.
A–821–805	731–TA–697	Pure magnesium/Russia	Dow Chemical; Magnesium Corporation of America; International Union of Operating Engineers; United Steelworkers of America.
C–533–821	701–TA–405	Hot-rolled steel products/India	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
C–560–813	701–TA–406	Hot-rolled steel products/Indonesia.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
C–791–810	701–TA–407	Hot-rolled steel products/South Africa.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
C–549–818	701–TA–408	Hot-rolled steel products/Thailand.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–570–885	731–TA–899	Hot-rolled steel products/China	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–533–820	731–TA–900	Hot-rolled steel products/India	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
C–475–830	701–TA–413	Stainless steel bar/Italy	Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America.
A–570–867	731–TA–922	Automotive replacement glass windshields/China.	Apogee Enterprises; PPG Industries; Safelite Glass.
A–588–854	731–TA–860	Tin-mill products/Japan	Weirton Steel; Independent Steelworkers; United Steelworkers of America.

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Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
C–791–810	701–TA–407	Hot-rolled steel products/South Africa.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
C–549–818	701–TA–408	Hot-rolled steel products/Thailand.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–570–865	731–TA–899	Hot-rolled steel products/China	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–533–820	731–TA–900	Hot-rolled steel products/India	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–560–812	731–TA–901	Hot-rolled steel products/Indonesia.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–834–806	731–TA–902	Hot-rolled steel products/Kazakhstan.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dymanics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–421–807	731–TA–903	Hot-rolled steel products/Netherlands.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Independent Steelworkers; United Steelworkers of America.
A–485–806	731–TA–904	Hot-rolled steel products/Romania.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Independent Steelworkers; United Steelworkers of America.
A–583–835	731–TA–906	Hot-rolled steel products/Taiwan.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–549–817	731–TA–907	Hot-rolled steel products/Thailand.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–823–811	731–TA–908	Hot-rolled steel products/Ukraine.	Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America.
A–570–864	731–TA–895	Pure magnesium (granular)/China;.	Concerned Employees of Northwest Alloys; Magnesium Corporation of America; United Steelworkers of America; United Steelworkers of America (Local 8319).
A–588–857	731–TA–919	Welded large diameter line pipe/Japan;.	American Cast Iron Pipe; Berg Steel Pipe; Bethlehem Steel; Napa Pipe/Oregon Steel Mills; Saw Pipes USA; Stupp; U.S. Steel.
A–201–828	731–TA–920	Welded large diameter line pipe/Mexico.	American Cast Iron Pipe; Berg Steel Pipe; Bethlehem Steel; Napa Pipe/Oregon Steel Mills; Saw Pipes USA; Stupp; U.S. Steel.
C–357–813	701–TA–402	Honey/Argentina	American Honey Producers Association; Sioux Honey Association.
A–357–812	731–TA–892	Honey/Argentina	American Honey Producers Association; Sioux Honey Association.
A–570–863	731–TA–893	Honey/China	American Honey Producers Association; Sioux Honey Association.
A–570–866	731–TA–921	Folding gift boxes/China	Field Container; Harvard Folding Box; Sterling Packaging; Superior Packaging.
A–427–818	731–TA–909	Low enriched uranium/France	USEC.
C–427–819	701–TA–409	Low enriched uranium/France	USEC.
C–428–829	701–TA–410	Low enriched uranium/Germany.	USEC.
C–421–809	701–TA–411	Low enriched uranium/Netherlands.	USEC.
C–412–821	701–TA–412	Low enriched uranium/United Kingdom.	USEC.
A–427–820	731–TA–913	Stainless steel bar/France	Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America.
A–428–830	731–TA–914	Stainless steel bar/Germany	Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America.
A–475–829	731–TA–915	Stainless steel bar/Italy	Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America.
A–580–847	731–TA–916	Stainless steel bar/Korea	Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America.
A–412–822	731–TA–918	Stainless steel bar/United Kingdom.	Carpenter Technology; Crucible Specialty Metal Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/country	Petitioners/supporters
C–475–830	701–TA–413	Stainless steel bar/Italy	Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America.
A–570–867	731–TA–922	Automotive replacement glass windshields/China.	Apogee Enterprises; PPG Industries; Safelite Glass.
A–588–854	731–TA–860	Tin-mill products/Japan	Weirton Steel; Independent Steelworkers; United Steelworkers of America.

Dated: June 27, 2002.

Sandra L. Bell,

Acting Assistant Commissioner, Office of Regulations and Rulings.

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Part IV

Department of Health and Human Services

Announcement of Anticipated Availability of Funds for Family Planning Clinical Specialty Training Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Clinical Specialty Training Projects

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

Advanced practice nurse—a registered professional nurse who has graduated from an educational program beyond basic nursing preparation, and is currently recognized to practice as an advanced practice nurse in at least one state, including current licensure as a registered nurse in that state .

Application—a request for financial support of a project submitted to OPA on specified forms and in accordance with instructions provided.

Statutory and Regulatory Background

Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural

X family planning services projects (including an increasing number of males) prompted a reassessment of the need for the nurse practitioner training program. This reassessment prompted the transition depicted in the March 23, 1999, **Federal Register** Notice (64 FR 14080) requesting applications for Family Planning Nurse Practitioner and Specialty Training grants. This announcement phased-out full-course certificate nurse practitioner training,

Region VI (Arkansas, Louisiana, New Mexico, Texas and Oklahoma); *Region VII* (Iowa, Kansas, Missouri and Nebraska); *Region VIII* (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming); *Region IX* (Arizona, California, Hawaii, Nevada, American Samoa, Federated States of Micronesia, Republic of Marshall Islands, Commonwealth of Northern Mariana Islands, Republic of Palau and Guam); *Region X* (Alaska, Idaho, Oregon and Washington).

The training programs funded under this announcement will be responsible

education and counseling; (2) HIV/AIDS and sexually transmitted disease (STD) education and counseling; and (3) Intimate partner violence and compliance with state reporting laws regarding child abuse, child molestation, sexual abuse, rape or incest. At a minimum, successful specialty training applications will include a description of how the following components will be implemented in the training program:

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Clinical Specialty Training Projects

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice.

SUMMARY: The Office of Population Affairs (OPA) announces the availability of approximately $1,000,000 to support two Family Planning Clinical Specialty Training grants, as authorized under Section 1003 of the PHS Act. The training projects to be funded will provide specialized, evidence-based information to clinical providers working in family planning services projects funded under Title X of the PHS Act. This training will enable Title X clinical service providers to maintain a high level of clinical knowledge and skill in family planning and reproductive health.

Authority: Section 1003 of the Public Health Service (PHS) Act.

DATES: Applications must be received in the Office of Grants Management, or clearly postmarked, not later than August 12, 2002. Applications which do not meet the deadline will not be accepted for review, and will be returned. Applications sent via facsimile or by electronic mail will not be accepted for review.

ADDRESSES: Applications kits may be requested from, and applications submitted to: Office of Grants Management, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814.

Application kits are also available online at the Office of Population Affairs (OPA) Web site at *http://opa.osophs.dhhs.gov* or may be requested by FAX at 301–594–5980.

FOR FURTHER INFORMATION CONTACT: Administrative and Budgetary Requirements: Andrea Brandon, Office of Grants Management/Office of Population Affairs, 301–594–4012.

Program Requirements: Kathleen Woodall, Office of Family Planning/ Office of Population Affairs, 301–594–4008.

SUPPLEMENTARY INFORMATION:

Definitions

For the purposes of this announcement, the following definitions apply:

Advanced practice nurse—a registered professional nurse who has graduated from an educational program beyond basic nursing preparation, and is currently recognized to practice as an advanced practice nurse in at least one state, including current licensure as a registered nurse in that state .

Application—a request for financial support of a project submitted to OPA on specified forms and in accordance with instructions provided.

Eligible applicants—any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a Title X Family Planning Clinical Specialty Training grant. Faith-based organizations are eligible to apply for these Title X Family Planning Clinical Specialty Training grants.

Evidence-based—relevant scientific evidence that has undergone comprehensive review and rigorous analysis.

Family planning clinical specialty training—specialized, evidence-based family planning training, the purpose of which is to promote and improve the knowledge, skills, and abilities of persons delivering clinical family planning services.

Family planning training—job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services.

Grant—financial assistance in the form of money, awarded by the Federal Government to an eligible recipient (a grantee or recipient is the entity that receives a Federal grant and assumes the legal and financial responsibility and accountability for the awarded funds and performance of activities approved for funding).

Health care practitioner—an advanced practice nurse, physician's assistant, Doctor of Medicine or Doctor of Osteopathy who is recognized by a state to practice within the scope of the applicable state practice act or law.

Project—those activities described in the grant application and supported under the approved budget.

Registered professional nurse—a nurse who has graduated from a state-approved nursing education program and is currently licensed to practice as a registered nurse in at least one state.

Statutory and Regulatory Background

Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." Section 1003 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to provide the training for personnel to carry out family planning service programs. (Catalog of Federal Domestic Assistance Number 93.260). Section 1008 of the Act, as amended, stipulates that "none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service providers. Prospective applicants should refer to the regulations in their entirety. Training provided must be in accordance with the requirements regarding the provision of family planning services under Title X. These requirements can be found in the Title X statute, the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the "Program Guidelines for Project Grants for Family Planning Services," issued in January 2001. Copies of the Title X statute, regulations, and Program Guidelines may be obtained by contacting the Office of Grants Management, Office of Population Affairs (at the address above), or downloaded from the Office of Population Affairs Web site at *http://opa.osophs.dhhs.gov*.

Program Background

From the early 1970s until the year 2000, the Office of Family Planning in the Office of Population Affairs funded certificate family planning/women's health nurse practitioner training programs in order to prepare registered professional nurses to serve the clinical needs of clients in Title X family planning services projects. Changes in state practice requirements and the health care system, as well as the increasing availability of more broadly prepared providers, under-utilization of the Title X-supported nurse practitioner training programs, and the growing diversity of populations served in Title X family planning services projects (including an increasing number of males) prompted a reassessment of the need for the nurse practitioner training program. This reassessment prompted the transition depicted in the March 23, 1999, **Federal Register** Notice (64 FR 14080) requesting applications for Family Planning Nurse Practitioner and Specialty Training grants. This announcement phased-out full-course certificate nurse practitioner training, and replaced it with targeted specialty training in family planning and reproductive health for credentialed advanced practice nurses, physician's assistants, and physicians. These projects have been in operation for two years.

Title X family planning services project grantees, training providers, and Federal Title X staff have recently identified a need to also provide clinical training for registered professional nurses working in family planning projects who are not advanced practice nurses. This component has been incorporated into this solicitation for applications, but may not include training for procedures or practices that are beyond the scope of nursing practice, as delineated by the Nurse Practice Act for the specific state.

Role and Operation of the Clinical Specialty Training Program

The purpose of the clinical specialty training program is to ensure that health care practitioners and registered professional nurses working in Title X family planning services projects have the knowledge, skills, and abilities necessary to provide effective, high quality clinical family planning services. This announcement solicits applications from all eligible applicants, including faith-based organizations, to support two clinical specialty training programs, as follows:

(1) One grant with a range of $450,000–$500,000 to support a clinical specialty training program in PHS Regions I–V:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont); *Region II* (New Jersey, New York, Puerto Rico and the Virgin Islands); *Region III* (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia); *Region IV* (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee); *Region V* (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin).

(2) One grant with a funding range of $450,000–$500,000 to support a clinical specialty training program in PHS Regions VI–X:

Region VI (Arkansas, Louisiana, New Mexico, Texas and Oklahoma); *Region VII* (Iowa, Kansas, Missouri and Nebraska); *Region VIII* (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming); *Region IX* (Arizona, California, Hawaii, Nevada, American Samoa, Federated States of Micronesia, Republic of Marshall Islands, Commonwealth of Northern Mariana Islands, Republic of Palau and Guam); *Region X* (Alaska, Idaho, Oregon and Washington).

The training programs funded under this announcement will be responsible for design and delivery of specialty training for health care practitioners and registered professional nurses which will enhance knowledge, skills, and abilities in the provision of family planning and reproductive health services in Title X-funded projects. Each grantee funded under this announcement will be expected to conduct two types of training activities: (1) Specialty training specific to the provision of clinical family planning and reproductive health for health care practitioners in Title X family planning services projects; and (2) Training courses relevant to the provision of family planning and reproductive health services where continuing education credits are granted for registered nurses and health care practitioners in Title X family planning services projects. Training provided with these grant funds is not intended to substitute for formal nurse practitioner education, but rather to enhance the ability of multiple levels of clinical providers to deliver quality family planning and reproductive health services within the scope of applicable State practice acts or laws. Training content and design should be adjusted to the skill and practice role of the target audience as well as the scope of practice as delineated in applicable State practice acts or laws.

Content of specialty training may vary depending on the needs of the service providers in the applicable regions. However, the course offerings should promote and improve family planning and reproductive health knowledge and clinical skills as they relate to the provision of family planning services in Title X-funded projects. The full clinical specialty training course is available only to health care practitioners as defined in this announcement. Registered professional nurses, as defined in this announcement, may participate only in continuing education courses that are not intended to train on procedures or practices that are appropriate to the role of the health care practitioner. Training content described in the application should include the following topics: (1) Abstinence education and counseling; (2) HIV/AIDS and sexually transmitted disease (STD) education and counseling; and (3) Intimate partner violence and compliance with state reporting laws regarding child abuse, child molestation, sexual abuse, rape or incest. At a minimum, successful specialty training applications will include a description of how the following components will be implemented in the training program:

- Training specific to provision of clinical family planning and reproductive health services in Title X-funded projects, including training on abstinence education and counseling, and HIV/AIDS and STD education and counseling;
- Face-to-face didactic and supervised clinical courses for increasing knowledge and enhancing clinical skills of health care practitioners in selected content areas (*e.g.*, women's reproductive health, men's reproductive health, IUD insertion, etc.);
- Methodology for evaluating the knowledge, competence and skill level of health care practitioners and registered professional nurses after completion of training as compared with their knowledge, competence and skill level prior to completion of training;
- Availability of continuing education credit through on-site and/or distance learning for registered professional nurses and health care practitioners;
- Clinical mentor/preceptorship arrangements for health care practitioners returning to practice settings;
- Training in identifying and providing appropriate counseling and referral in cases of intimate partner violence;
- Training in identifying cases of child abuse, child molestation, sexual abuse, rape, or incest, and in complying with applicable state reporting laws.

The content and number of offerings should be based on an assessment of the need of the Title X family planning service providers in the applicable regions. Offerings should be designed and delivered in a manner appropriate to the content and professional preparation of the participants. The on-site didactic and supervised clinical components of specialty course offerings should provide adequate time for instruction and interaction with faculty, but must not exceed a total of three weeks per course. In order to assure integration into practice of the knowledge and skills learned in the on-site component of specialty training

offerings, successful applicants will include a strategy for incorporating a clinical mentorship/preceptorship component for students returning to their practice settings. Distance learning components should provide an opportunity for interaction with faculty if needed, and reasonable time for completion of the offering(s). Successful applicants will demonstrate the ability to maximize available resources to achieve the objectives of the program.

criteria after the first year must also be submitted as part of the continuation application. The cost to the grant per Title X-supported student for the specialty course may not exceed $4,000. The maximum cost to the grant for continuing education units must be specified in the application, but may not exceed $20 per contact hour.

Successful applicants will be responsible for the overall management of training activities within the scope of

staffs and a network of agencies which include Title X service providers and training advisory committees. Working in collaboration with the Regional Training Centers for Family Planning is strongly encouraged.

Grantees will be expected to make available, at cost, all materials developed with Title X funds as requested by other Title X projects. Grantees will be required to participate in at least one meeting with the Office

announcement to guide them in developing their applications. Applications should be limited to 50 double-spaced pages, not including appendices. Appendices may provide curriculum vitae, curriculum, or examples of organizational capabilities, or other supplemental information. Applicants are required to submit an original application and two copies.

Applications must be submitted in accordance with the deadline

planning services delivery needs of the area to be served, which may include, among other things:

(i) Development of clinical family planning and reproductive health knowledge and expertise within family planning services projects to provide orientation and in-service training to their own staffs;

(ii) Improvement of the family planning services delivery skills of registered professional nurses and

effective use of grant funds provided, and availability of funds.

Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." As soon as possible, the applicant should

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offerings, successful applicants will include a strategy for incorporating a clinical mentorship/preceptorship component for students returning to their practice settings. Distance learning components should provide an opportunity for interaction with faculty if needed, and reasonable time for completion of the offering(s). Successful applicants will demonstrate the ability to maximize available resources to achieve the objectives of the program.

Project Requirements and Management

The successful applicants will be responsible for all costs associated with training program administration and management, and for training costs directly associated with the on-site portion of Title X-sponsored trainee preparation (*e.g.*, educational materials, classroom and clinical training sites, *etc.*). The training projects are not expected to be responsible for transportation, housing and other personal expenses incurred by trainees. However, training projects should be prepared to assist trainees with making necessary arrangements at a reasonable cost. There is no required match for this Federal grant.

Each of the two training programs is intended to provide training primarily for Title X family planning services projects located in the applicable regions. However, applicants may apply for admission to the alternate program on a space-available basis and to access offerings unique to that program.

The design of the specialty training program, including the curricula, must be consistent with Title X statute and regulations. The application should demonstrate the applicant's expertise and ability to develop, implement, manage and evaluate clinical training in family planning and reproductive health.

As part of the application, the applicant should submit a proposed curriculum outline for the specialty training course, as well as projected admissions criteria, training plan, and a course schedule for the first year of the grant. In addition, the projected number of continuing education courses and subject areas should be submitted with the application. Within 60 days of the Notice of Grant Award, a finalized curriculum outline, admissions criteria, training plan, course schedule, and continuing education course offerings will be negotiated with the Office of Family Planning (OFP). In succeeding years, the training plan, course schedule, and continuing education courses will be a part of the continuation application. Any changes to the curriculum outline or admissions criteria after the first year must also be submitted as part of the continuation application. The cost to the grant per Title X-supported student for the specialty course may not exceed $4,000. The maximum cost to the grant for continuing education units must be specified in the application, but may not exceed $20 per contact hour.

Successful applicants will be responsible for the overall management of training activities within the scope of the approved training plan. This responsibility includes:

- Meeting national or State recognition requirements as a provider of continuing education through a national nursing organization or one of its constituents;
- Facilitating the award of continuing education units (CEUs) to program participants;
- Considering for admission trainees from Title X-funded services projects before accepting privately-funded students;
- Conducting an annual assessment of the need for family planning and reproductive health training for Title X clinical service providers in the applicable regions;
- Maintaining data on training activities and trainees sufficient to allow evaluation by accrediting bodies, licensing bodies, and OPA;
- Developing and implementing an evaluation plan which assesses all aspects of the training program and is consistent with the scope of the training program. Evaluation should include not only the content of the clinical specialty training, the delivery mechanisms, and how well the offerings met the needs of the trainee and sponsoring agency, but also a description of how the training program will be evaluated in terms of improving the quality of care provided;
- Submitting to OPA, as part of the annual progress report, the following data regarding trainees and training activities:

1. *Trainees:* state; sponsoring agency including funding source (*i.e.*, Title X or non-Title X); race/ethnicity; professional classification (*e.g.*, registered professional nurse, type of health care practitioner); courses/offerings attended; course completion data; and number of CEUs awarded.

2. *Training activities:* title of course/offering; location; hours on site (didactic and clinical)/hours distance learning; course content; number of CEUs offered; number and professional classification of attendees; faculty data; outcome information.

Successful applicants will be required to work closely with Title X Family Planning Central and Regional Office staffs and a network of agencies which include Title X service providers and training advisory committees. Working in collaboration with the Regional Training Centers for Family Planning is strongly encouraged.

Grantees will be expected to make available, at cost, all materials developed with Title X funds as requested by other Title X projects. Grantees will be required to participate in at least one meeting with the Office of Family Planning/OPA each year.

Application Requirements

Any public or private nonprofit organization located in a state is eligible to apply for a Title X Family Planning Clinical Specialty Training grant. If the successful applicant is not physically located within one of the applicable regions, a major training facility of the organization must be located within the cluster of regions the applicant will serve. Awards will be made only to those organizations or agencies which demonstrate the capability of providing the proposed services and which have met all applicable requirements.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents. It is the practice of the Office of Population Affairs to maintain a summary of funded grants, and to post this information on the OPA Web site. The abstract will be used as the basis for this posting and for other requests for summary information.

As described earlier, the application must include the proposed curriculum outline for the specialty training course, admissions criteria, training plan, and course schedule for the first year of the training project, as well as the projected continuing education courses.

Applications must be submitted on the Form OPHS–1(Revised 6/01) and in the manner prescribed in the application kits available from the Office of Grants Management, Office of Population Affairs and on the Web site. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

A copy of the legislation and regulations governing this program will be included as part of the application kit package. Applicants should use the legislation, regulations and other information included in this announcement to guide them in developing their applications. Applications should be limited to 50 double-spaced pages, not including appendices. Appendices may provide curriculum vitae, curriculum, or examples of organizational capabilities, or other supplemental information. Developed with Title X funds as requested by other Title X projects. Applicants are required to submit an original application and two copies.

Applications must be submitted in accordance with the deadline requirements of this announcement. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which are postmarked or delivered to the Office of Grants Management after the deadline date will not be accepted for review. Applications which do not conform to the requirements of this program announcement or meet the applicable parts of 42 CFR part 59, subpart C, will not be accepted for review, and will be returned to the applicant.

Application Consideration and Assessment

Eligible applications will be reviewed by a panel of independent reviewers and will be assessed according to the following criteria:

1. The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 59.205 (20 points);

2. The extent to which the proposed clinical specialty training program will increase the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services (20 points);

3. The extent to which the training program promises to fulfill the family planning services delivery needs of the area to be served, which may include, among other things:

(i) Development of clinical family planning and reproductive health knowledge and expertise within family planning services projects to provide orientation and in-service training to their own staffs;

(ii) Improvement of the family planning services delivery skills of registered professional nurses and health care practitioners;

(iii) Improvement in the utilization and career development of clinical providers in family planning projects;

(iv) Expansion of family planning services, particularly in rural areas, through new or improved approaches to program planning and deployment of resources; (20 points total for this section)

4. The competence of the project staff in relation to the services to be provided (15 points);

5. The administrative and management capability and competence of the applicant (15 points); and

6. The capacity of the applicant to make rapid and effective use of the grant assistance, including evidence of flexibility in the utilization of resources and training plan design (10 points).

In making grant award decisions, the Director, Office of Population Affairs, will fund those projects which will, in her judgement, best promote the purposes of section 1003 of the Act, within the limits of funds available for such projects.

Grants will be approved for project periods of up to three years and will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOC's which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by applicant regarding the submission to the relevant SPOC. The SPOC should forward any comment(s) to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Notification of Grant Award

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: June 7, 2002.

Mireille B. Kanda,

Acting Director, Office of Population Affairs.

[FR Doc. 02–16732 Filed 7–2–02; 8:45 am]

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Part V

The President

Executive Order 13268—Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001

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Title 3—

The President

Executive Order 13268 of July 2, 2002

Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001

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Title 3—

The President

Executive Order 13268 of July 2, 2002

Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that the situation that gave rise to the declaration of a national emergency in Executive Order 13129 of July 4, 1999, with respect to the Taliban, in allowing territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Ladin and the Al-Qaida organization, has been significantly altered given the success of the military campaign in Afghanistan, and hereby revoke that order and terminate the national emergency declared in that order with respect to the Taliban. At the same time, and in order to take additional steps with respect to the grave acts of terrorism and threats of terrorism committed by foreign terrorists, the continuing and immediate threat of further attacks on United States nationals or the United States, and the national emergency described and declared in Executive Order 13224 of September 23, 2001, I hereby order:

Section 1. The Annex to Executive Order 13224 of September 23, 2001, is amended by adding thereto the following persons in appropriate alphabetical order:

Mohammed Omar (aka, Amir al-Mumineen [Commander of the Faithful])

The Taliban.

Sec. 2. For the purposes of this order and Executive Order 13224 of September 23, 2001, the term "the Taliban" is also known as the "Taleban," "Islamic Movement of Taliban," "the Taliban Islamic Movement," "Talibano Islami Tahrik," and "Tahrike Islami'a Taliban". The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to modify the definition of the term "the Taliban," as appropriate.

Sec. 3. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 4. Pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergency with respect to the Taliban shall not affect any action taken or proceeding pending not finally concluded or determined as of the date of this order, or any action or proceeding based on any act committed prior to the date of this order, or any rights or duties that matured or penalties that were incurred prior to the date of this order.

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Sec. 4. Pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergency with respect to the Taliban shall not affect any action taken or proceeding pending not finally concluded or determined as of the date of this order, or any action or proceeding based on any act committed prior to the date of this order, or any rights or duties that matured or penalties that were incurred prior to the date of this order.

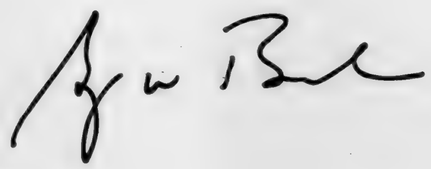

THE WHITE HOUSE,
July 2, 2002.

[FR Doc. 02–16951
Filed 7–2–02; 11:09 am]
Billing code 3195–01–P

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Part VI

The President

Proclamation 7575—Lewis and Clark Bicentennial

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Presidential Documents

Title 3—

The President

Proclamation 7575 of June 28, 2002

Lewis and Clark Bicentennial

By the President of the United States of America

A Proclamation

Nearly 200 years ago, President Thomas Jefferson sent an expedition westward to find and map a transcontinental water route to the Pacific Ocean. With approval from the Congress, Captains Meriwether Lewis and William Clark embarked on their legendary 3-year journey to explore the uncharted West. The expedition included 33 permanent party members, known as the Corps of Discovery.

Their effort to chart the area between the Missouri River and the Pacific Coast set these courageous Americans on a remarkable scientific voyage that changed our Nation. In successfully completing the overland journey between the Missouri and Columbia River systems, they opened the unknown West for future development. During their exploration, Lewis and Clark collected plant and animal specimens, studied Indian cultures, conducted diplomatic councils, established trading relationships with tribes, and recorded weather data. To accomplish their goals, the Corps of Discovery relied on the assistance and guidance of Sakajawea, a Shoshone Indian woman.

As we approach the 200th anniversary of Lewis and Clark's expedition, we commend their resourcefulness, determination, and bravery. This Bicentennial should also serve to remind us of our Nation's outstanding natural resources. Many of these treasures first detailed by Lewis and Clark are available today for people to visit, study, and enjoy. As the commemoration of this journey begins in 2003, I encourage all Americans to celebrate the accomplishments of Lewis and Clark and to recognize their contributions to our history.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby designate 2003 through 2006 as the Lewis and Clark Bicentennial. I ask all Americans to observe this event with appropriate activities that honor the achievements of the Lewis and Clark Expedition. I also direct Federal agencies to work in cooperation with each other, States, tribes, communities, and the National Council of the Lewis and Clark Bicentennial to promote educational, cultural, and interpretive opportunities for citizens and visitors to learn more about the natural, historical, and cultural resources that are significant components of the Lewis and Clark story.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of June, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

22 CFR

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of June, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

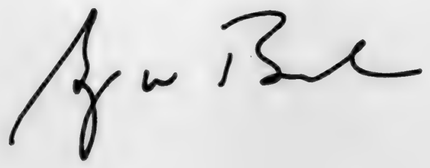

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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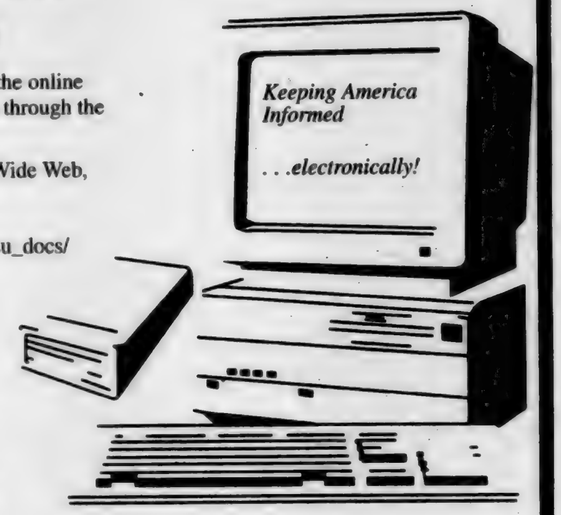

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Federal Register
Vol. 67, No. 129
Friday, July 5, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

debtor by NARA or other Federal agencies;

• Referring the debt to a private collection contractor; and

• Referring the matter to the U.S. Department of Justice (DOJ) for

to comments received within the comment period.

This interim rule is a significant regulatory action for the purpose of Executive Order 12866 and has been reviewed by the Office of Management

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Federal Register
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Friday, July 5, 2002

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1201

RIN 3095–AA77

Debt Collection

AGENCY: National Archives and Records Administration (NARA).

ACTION: Interim final rule.

SUMMARY: The National Archives and Records Administration (NARA) is issuing regulations governing the collection of debts owed to it and other Federal agencies. Federal agencies are required to try to collect debts owed to the Federal government. These regulations describe actions that NARA may take to collect debts, and apply, with certain exceptions, to any person or entity. These regulations also provide that NARA may enter into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

DATES: This rule is effective on: August 5, 2002. Comments are due by September 3, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0319. You may also comment via the Internet to *comments@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: Under these regulations, NARA may collect debts owed to it through a number of actions, including the following:

- Making offsets against amounts, including salary payments, owed to the debtor by NARA or other Federal agencies;
- Referring the debt to a private collection contractor; and
- Referring the matter to the U.S. Department of Justice (DOJ) for initiation of a judicial proceeding against the debtor.

In addition, these regulations describe the actions necessary for NARA to take collection actions on behalf of another Federal agency. These actions could include making offsets against the salary of a NARA employee or any other amounts owed by NARA to the debtor. These regulations also provide that NARA may enter into a cross-servicing agreement with the Department of the Treasury (Treasury) to take all of the above-listed actions to collect debts for NARA, or refer debts to a private debt collection agency.

These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321). These regulations are issued in conformity with the Federal Claims Collection Standards issued by DOJ and the Treasury (31 CFR Chapter IX, parts 900–904, 65 FR 70390 (11/22/2000)). The regulations in this part are also issued in conformity with the regulations of the Office of Personnel Management (OPM) on offsets against Federal employee salaries (5 CFR part 550, subpart K), and the Treasury regulations on Administrative Wage Garnishment (31 CFR 285.11).

NARA has determined that these interim regulations pertain to agency practice and procedure and are interpretative in nature. The procedures contained in these regulations for salary, tax refund, and administrative offsets are mandated by law and by regulations promulgated by OPM, the Financial Management Service, and jointly by the DOJ and the Treasury. Therefore, under 5 U.S.C. 553(b)–(d), these regulations are not subject to the Administrative Procedures Act (APA) and the requirements of the APA for a notice and comment period and a delayed effective date. Nonetheless, NARA is delaying the effective date until 30 days following publication of these interim regulations, and will modify the regulations, if appropriate, in response to comments received within the comment period.

This interim rule is a significant regulatory action for the purpose of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that these regulations will not have a significant economic impact on a substantial number of small entities. This rule has no federalism implications. This rule is not a major rule.

Please submit Internet comments within the body of your email message or as an attachment. Please also include "Attn: 3095–AA76" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Regulation Comment desk at 301–713–7360, ext. 240.

List of Subjects in 36 CFR Part 1201

Administrative practice and procedures; Claims; Debts; Government employees; Wages.

For the reasons set forth in the preamble, NARA is adding part 1201 to subchapter A of chapter XII, title 36, Code of Federal Regulations, as follows:

PART 1201—COLLECTION OF CLAIMS

Subpart A—Introduction

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1201.1 Why is NARA issuing these regulations?
1201.2 Under what authority does NARA issue these regulations?
1201.3 What definitions apply to the regulations in this part?
1201.4 What types of claims are excluded from these regulations?
1201.5 If a claim is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?
1201.6 What is a claim or debt?
1201.7 Why does NARA have to collect debts?
1201.8 What action might NARA take to collect debts?
1201.9 What rights do I have as a debtor?

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1201.10 Will NARA use a cross-servicing agreement with the Department of the Treasury to collect its claims?
1201.11 Will NARA refer claims to the Department of Justice?
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1201.14 What should I expect to receive from NARA if I owe a debt to NARA?
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1201.16 What will the notice tell me about my opportunity for review of my debt?
1201.17 What must I do to obtain a review of my debt, and how will the review

Subpart F—Administrative Wage Garnishment

1201.55 How will NARA collect debts through Administrative Wage Garnishment?

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701–3720A, 3720D; 44 U.S.C. 2104(a).

Subpart A—Introduction

§ 1201.1 Why is NARA issuing these regulations?

These regulations describe actions that NARA may take to collect debts, and apply, with certain exceptions, to any person or entity. These regulations also provide that NARA may enter into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

§ 1201.2 Under what authority does NARA issue these regulations?

(a) These regulations are issued under the authority of the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321). These regulations are issued in conformity with the Federal Claims Collection Standards issued by DOJ and the Treasury (31 CFR Chapter IX, parts 900–904, 65 FR 70390 (11/22/2000)).

(b) These regulations are also issued in conformity with the regulations of the Office of Personnel Management (OPM) on offsets against Federal employee salaries (5 CFR part 550, subpart K), and the Treasury regulations on Administrative Wage Garnishment (31 CFR 285.11).

(c) These regulations are also issued in conformity with the Treasury regulations on tax refund offsets (31 CFR 285.2), and administrative offsets (31 CFR 285.5).

(d) These regulations are also issued in conformity with the Treasury regulations on cross-servicing (31 CFR 285.12).

(e) All of these claims collection regulations are issued under NARA's authority under 44 U.S.C. 2104(a).

§ 1201.3 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset means withholding funds payable by the

enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Marina Islands; or the Commonwealth of Puerto Rico.

Debtor means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms "I," "you," "me," and similar references to the reader of the regulations in this part are meant to apply to debtors as defined

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

§ 1201.4 What types of claims are excluded from these regulations?

The following types of claims are excluded:

appropriate under the FCCS, or the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) An employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part.

§ 1201.6 What is a claim or debt?

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1201.14 What should I expect to receive from NARA if I owe a debt to NARA?
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1201.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to NARA?

Subpart F—Administrative Wage Garnishment

1201.55 How will NARA collect debts through Administrative Wage Garnishment?

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701–3720A, 3720D; 44 U.S.C. 2104(a).

Subpart A—Introduction

§ 1201.1 Why is NARA issuing these regulations?

(a) NARA is issuing these regulations to inform the public of procedures that may be used by NARA for the collection of debt.

(b) These regulations provide that NARA will attempt to collect debts owed to it or other Government agencies either directly, or by other means including salary, administrative, tax refund offsets, or administrative wage garnishment.

(c) These regulations also provide that NARA may enter a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

§ 1201.2 Under what authority does NARA issue these regulations?

(a) NARA is issuing the regulations in this part under the authority of 31 U.S.C. Chapter 37, 3701–3720A and 3720D. These sections implement the requirements of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

(b) NARA is also issuing the regulations in this part to conform to the Federal Claims Collection Standards (FCCS), which prescribe standards for handling the Federal Government's claims for money or property. The FCCS are issued by the Department of Justice (DOJ) and the Treasury at 31 CFR Chapter IX, Parts 900–904. NARA adopts those standards without change. The regulations in this part supplement the FCCS by prescribing procedures necessary and appropriate for NARA operations.

(c) NARA is also issuing the regulations in this part to conform to the standards for handling Administrative Wage Garnishment processing by the Federal Government. The standards are issued by the Treasury at 31 CFR 285.11. NARA adopts those standards without change. The regulations in this part supplement the standards by prescribing procedures necessary and appropriate for NARA operations.

(d) NARA is further issuing the regulations in this part under the authority of 5 U.S.C. 5514, and the salary offset regulations published by the Office of Personnel and Management at 5 CFR part 550, subpart K.

(e) All of these claims collection regulations are issued under NARA's authority under 44 U.S.C. 2104(a).

§ 1201.3 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

Administrative Wage Garnishment means a process whereby a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15 percent of your wages for payment to the Federal agency to satisfy a delinquent non-tax debt.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Archivist means the Archivist of the United States, or his or her designee.

Certification means a written statement received by a paying agency or disbursing official from a creditor agency that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Claim (*see* definition of debt in this section).

Compromise means the settlement or forgiveness of a debt.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of the creditor agency.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt collection center means the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debt and *claim* are deemed synonymous and interchangeable. These terms mean an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart E of these regulations, the terms, "debt" and "claim" also include money, funds or property owed by a person to a State (including past-due support being

enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Marina Islands; or the Commonwealth of Puerto Rico.

Debtor means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms "I," "you," "me," and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph.

Delinquent debt means a debt that has not been paid by the date specified in NARA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

Disposable pay means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Federal Claims Collection Standards (FCCS) means the standards currently published by DOJ and the Treasury at 31 CFR parts 900–904.

NARA means the National Archives and Records Administration.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, NARA may be both the creditor agency and the paying agency.

Payroll office means the office that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, state or local government, or other entity that is capable of owing a debt to the United States; however, agencies of the United States are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means a payroll procedure to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to NARA or any other Federal agency.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

§ 1201.4 What types of claims are excluded from these regulations?

The following types of claims are excluded:

(a) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*); except as provided under sec. 204(f) and 1631 (42 U.S.C. 404(f) and 1383(b)(4)(A)).

(b) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(c) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(d) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, as described in the FCCS, unless DOJ authorizes NARA to handle the collection;

(e) Claims between Federal agencies;

(f) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be initiated more than 10 years after the Government's right to collect the debt first accrued. (Exception: The 10-year limit does not apply if facts material to the Federal Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.) The 10-year limitation also does not apply to debts reduced to a judgement; and

(g) Unless otherwise stated, claims which have been transferred to Treasury or referred to the Department of Justice will be collected in accordance with the procedures of those agencies.

§ 1201.5 If a claim is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

Nothing in this part precludes:

(a) The compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) An employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part.

§ 1201.6 What is a claim or debt?

A claim or debt is an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency (*see* § 1201.3).

§ 1201.7 Why does NARA have to collect debts?

Federal agencies are required to try to collect claims of the Federal Government for money, funds, or property arising out of the agency's activities.

§ 1201.8 What action might NARA take to collect debts?

(a) There are a number of actions that NARA is permitted to take when attempting to collect debts. These actions include:

(1) Salary, tax refund or administrative offset, or administrative wage garnishment (*see* subparts C, D, E, and F of this part respectively); or

(2) Using the services of private collection contractors.

(b) In certain instances, usually after collection efforts have proven unsuccessful, NARA transfers debts to the Treasury for collection or refers them to the DOJ for litigation (*see* §§ 1201.10 and 1201.11).

§ 1201.9 What rights do I have as a debtor?

As a debtor you have several basic rights. You have a right to:

(a) Notice as set forth in these regulations (*see* § 1201.14);

(b) Inspect the records that NARA has used to determine that you owe a debt (*see* § 1201.14);

(c) Request review of the debt and possible payment options (*see* § 1201.17);

(d) Propose a voluntary repayment agreement (*see* § 1201.19); and/or

(e) Question if the debt is excluded from these regulations (*see* § 1201.5(b)).

Subpart B—General Provisions.

§ 1201.10 Will NARA use a cross-servicing agreement with the Department of the Treasury to collect its claims?

(a) NARA may enter into a cross-servicing agreement that authorizes the

Treasury to take the collection actions described in this part on behalf of NARA. This agreement will describe procedures that the Treasury uses to collect debts. The debt collection procedures that the Treasury uses are based on 31 U.S.C. chapter 37.

(b) NARA must transfer to the Treasury any debt that has been delinquent for a period of 180 days or more so that the Secretary of the

(2) Provides the notice required under § 1201.14 if a current address is available; and

(3) Obtains satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency,

(c) Requires the contractor to account accurately and fully for all amounts collected; and

(d) Requires the contractor to provide to NARA, upon request, all data and reports contained in its files related to its collection actions on a debt.

§ 1201.14 What should I expect to receive from NARA if I owe a debt to NARA?

(a) NARA will send you a written notice when we determine that you owe

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if

(e) By referring the debt to the Treasury for offset against any refund of overpayment of tax (*see* subpart D of this part);

(f) By administrative offset (*see* subpart E of this part);

(g) By administrative wage garnishment (*see* subpart F of this part); or

(h) By liquidation of security or collateral. NARA has the right to hold security or collateral, liquidate it, and

or regulations governing the program for which the collection is being made; and

(h) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

§ 1201.17 What must I do to obtain a review of my debt, and how will the review process work?

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Treasury to take the collection actions described in this part on behalf of NARA. This agreement will describe procedures that the Treasury uses to collect debts. The debt collection procedures that the Treasury uses are based on 31 U.S.C. chapter 37.

(b) NARA must transfer to the Treasury any debt that has been delinquent for a period of 180 days or more so that the Secretary of the Treasury may take appropriate action to collect the debt or terminate collection action. NARA may also transfer to the Treasury any debt that is less than 180 days delinquent.

(c) Paragraph (b) of this section will not apply to any debt or claim that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sales program;

(3) Has been referred to a private collection contractor for collection for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt or claim is first delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury.

§ 1201.11 Will NARA refer claims to the Department of Justice?

NARA will refer to DOJ for litigation claims on which aggressive collection actions have been taken, but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive NARA collection action, and within the period for bringing a timely suit against the debtor.

§ 1201.12 Will NARA provide information to credit reporting agencies?

(a) NARA will report certain delinquent debts to appropriate consumer credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, NARA:

(1) Takes reasonable action to locate the debtor if a current address is not available;

(2) Provides the notice required under § 1201.14 if a current address is available; and

(3) Obtains satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency, NARA provides a written statement to the reporting agency that all required actions have been taken. In addition, NARA thereafter ensures that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verifies or corrects information relevant to the debt.

(d) If a debtor disputes the validity of the debt, the credit reporting agency refers the matter to the appropriate NARA official. The credit reporting agency excludes the debt from its reports until NARA certifies in writing that the debt is valid.

(e) NARA may disclose to a commercial credit bureau information concerning a commercial debt, including the following:

(1) Information necessary to establish the name, address, and employer identification number of the commercial debtor;

(2) The amount, status, and history of the debt; and

(3) The program or pertinent activity under which the debt arose.

§ 1201.13 How will NARA contract for collection services?

NARA uses the services of a private collection contractor where it determines that such use is in NARA's best interest. When NARA determines that there is a need to contract for collection services, NARA:

(a) Retains sole authority to:

(1) Resolve any dispute with the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the DOJ for litigation; and

(5) Take any other action under this part;

(b) Requires the contractor to comply with the:

(1) Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m);

(2) Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o); and

(3) Other applicable Federal and State laws pertaining to debt collection practices and applicable regulations of NARA in this part;

(c) Requires the contractor to account accurately and fully for all amounts collected; and

(d) Requires the contractor to provide to NARA, upon request, all data and reports contained in its files related to its collection actions on a debt.

§ 1201.14 What should I expect to receive from NARA if I owe a debt to NARA?

(a) NARA will send you a written notice when we determine that you owe a debt to NARA. The notice will be hand-delivered or sent to you at the most current address known to NARA. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt;

(2) That a designated NARA official has reviewed the claim and determined that it is valid;

(3) That payment of the debt is due as of the date of the notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date of the notice;

(4) NARA's policy concerning interest, penalty charges, and administrative costs (*see* § 1201.18), including a statement that such assessments must be made against you unless excused in accordance with the FCCS and this part;

(5) That you have the right to inspect and copy disclosable NARA records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(6) That you have the opportunity to enter into an agreement, in writing and signed by both you and the designated NARA official, for voluntary repayment of the debt (*see* § 1201.19);

(7) The address, telephone number, and name of the NARA official available to discuss the debt;

(8) Possible collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice (*see* § 1201.15 for a fuller description of possible actions);

(9) That NARA may suspend or revoke any licenses, permits, or other privileges for failure to pay a debt; and

(10) Information on your opportunity to obtain a review of the debt (*see* § 1201.16).

(b) NARA will respond promptly to communications from you.

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. With respect to the regulations covering internal salary offset collections (*see* § 1230.32), NARA excepts from the provisions of paragraph (a) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 1201.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?

The notice provided under § 1201.14 will advise you that within 60 days of the date of the notice, your debt (including any interest, penalty charges, and administrative costs) must be paid or you must enter into a voluntary repayment agreement. If you do not pay the debt or enter into the agreement within that deadline, NARA may enforce collection of the debt by any or all of the following methods:

(a) By referral to a credit reporting agency (*see* § 1201.12), private collection contractor (*see* § 1201.13), or the DOJ (*see* § 1201.11).

(b) By transferring any debt to the Treasury for collection, including under a cross-servicing agreement with the Treasury (*see* § 1201.10).

(c) If you are a NARA employee, by deducting money from your disposable pay account until the debt (and all accumulated interest, penalty charges, and administrative costs) is paid in full (*see* subpart C of this part). NARA will specify the amount, frequency, approximate beginning date, and duration of the deduction. 5 U.S.C. 5514 and 31 U.S.C. 3716 govern such proceedings;

(d) If you are an employee of a Federal agency other than NARA, by initiating certification procedures to implement a salary offset by that Federal agency (*see* subpart C of this part). 5 U.S.C. 5514 governs such proceedings;

(e) By referring the debt to the Treasury for offset against any refund of overpayment of tax (*see* subpart D of this part);

(f) By administrative offset (*see* subpart E of this part);

(g) By administrative wage garnishment (*see* subpart F of this part); or

(h) By liquidation of security or collateral. NARA has the right to hold security or collateral, liquidate it, and apply the proceeds to your debt through the exercise of a power of sale in the security instrument or a foreclosure. NARA will not follow the procedures in this paragraph (h) if the cost of disposing the collateral will be disproportionate to its value.

§ 1201.16 What will the notice tell me about my opportunity for review of my debt?

The notice provided by NARA under §§ 1201.14 and 1201.15 will also advise you of the opportunity to obtain a review within NARA concerning the existence or amount of the debt or the proposed schedule for offset of Federal employee salary payments. The notice will also advise you of the following:

(a) The name, address, and telephone number of a NARA official whom you may contact concerning procedures for requesting a review;

(b) The method and time period for requesting a review;

(c) That the filing of a request for a review on or before the 60th day following the date of the notice will stay the commencement of collection proceedings;

(d) The name and address of the NARA official to whom you should send the request for a review;

(e) That a final decision on the review (if one is requested) will be issued in writing at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(f) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act (31 U.S.C. 3729–3733) or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(g) Any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the program for which the collection is being made; and

(h) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

§ 1201.17 What must I do to obtain a review of my debt, and how will the review process work?

(a) *Request for review.* (1) You have the right to request a review by NARA of the existence or amount of your debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable. If you want a review, you must send a written request to the NARA official designated in the notice (*see* § 1201.16(d)).

(2) You must sign your request for review and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses that support your position. Your request for review should be accompanied by available evidence to support your contentions.

(3) Your request for review must be received by the designated officer or employee of NARA on or before the 60th calendar day following the date of the notice. Timely filing will stay the commencement of collection procedures. NARA may consider requests filed after the 60-day period provided for in this section if you:

(i) Can show that the delay was the result of circumstances beyond your control; or

(ii) Did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Inspection of NARA records related to the debt.* (1) If you want to inspect or copy NARA records related to the debt (*see* § 1201.14(a)(5)), you must send a letter to the NARA official designated in the notice. Your letter must be received within 30 days of the date of the notice.

(2) In response to the timely request described in paragraph (b)(1) of this section, the designated NARA official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection of NARA records related to the debt is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* (1) When required by Federal law or regulation, such as in a salary offset situation, NARA will request an administrative law judge, or hearing official from another agency who is not under the supervision or

control of the Archivist, to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Archivist for the issuance of NARA's final decision (*see* paragraph (f) of this section for content of the review decision).

(2) When Federal law or regulation does not require NARA to have the review conducted by an administrative

(f) *Content of review decision.* The review official will prepare a written decision that includes:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The review official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(g) *Interest, penalty charge, and*

costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* NARA may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Archivist may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or

will be binding on NARA unless it is in writing and signed by both you and the Archivist. At NARA's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a claim.

§ 1201.20 What is the extent of the Archivist's authority to compromise debts owed to NARA, or to suspend or terminate

waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

§ 1201.32 What are NARA's procedures for salary offset?

(a) NARA will coordinate salary deductions under this subpart as appropriate.

(b) If you are a NARA employee who owes a debt to NARA, NARA's payroll

simultaneously within the 15 percent limitation.

§ 1201.33 How will NARA coordinate salary offsets with other agencies?

(a) *Responsibilities of NARA as the creditor agency (i.e. when the debtor owes a debt to NARA and is an employee of another agency).* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, NARA must submit a claim to a paying

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control of the Archivist, to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Archivist for the issuance of NARA's final decision (*see* paragraph (f) of this section for content of the review decision).

(2) When Federal law or regulation does not require NARA to have the review conducted by an administrative law judge, or by a hearing official from another agency who is not under the supervision or control of the Archivist, NARA has the right to appoint a hearing official to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Archivist for the issuance of NARA's final decision (*see* paragraph (f) of this section for the content of the review decision).

(d) *Review procedure.* If you request a review, the review official will notify you of the form of the review to be provided. The review official will determine whether an oral hearing is required, or if a review of the written record is sufficient, in accordance with the FCCS. Although you may request an oral hearing, such a hearing is required only when a review of the documentary evidence cannot determine the question of indebtedness, such as when the validity of the debt turns on an issue of credibility or truthfulness. In either case, the review official will conduct the review in accordance with the FCCS. If the review will include an oral hearing, the notice sent to you by the review official will set forth the date, time, and location of the hearing.

(e) *Date of decision.* (1) The review official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing. This decision will be issued as soon as practical, but not later than 60 days after the date on which NARA received your request for a review, unless you request, and the review official grants, a delay in the proceedings.

(2) If NARA is unable to issue a decision within 60 days after the receipt of the request for a hearing:

(i) NARA may not issue a withholding order or take other action until the hearing (in whatever form) is held and a decision is rendered; and

(ii) If NARA previously issued a withholding order to the debtor's employer, NARA must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing (in whatever form) is held and a decision is rendered.

(f) *Content of review decision.* The review official will prepare a written decision that includes:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The review official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(g) *Interest, penalty charge, and administrative cost accrual during review period.* Interest, penalty charges, and administrative costs authorized by law will continue to accrue during the review period.

§ 1201.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to NARA?

(a) *Interest.* (1) NARA will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. NARA will not recover interest if you pay the debt within 30 days of the date on which interest begins to accrue. NARA will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is either necessary to protect the interests of NARA or established by a contract, repayment agreement, or statute. NARA will notify you of the basis for its finding when a different rate is necessary to protect the interests of NARA.

(3) The Archivist may extend the 30-day period for payment without interest where he or she determines that such action is in the best interest of NARA. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* NARA will assess a penalty charge of 6 percent a year on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* NARA will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of NARA.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* NARA may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Archivist may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of NARA.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, and unless otherwise stated in these regulations, where these charges have been collected before the waiver decision, they will not be refunded. The Archivist's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 1201.19 How can I resolve my debt through voluntary repayment?

(a) In response to a notice of debt, you may propose to NARA that you be allowed to repay the debt through a voluntary repayment agreement in lieu of NARA taking other collection actions under this part.

(b) Your request to enter into a voluntary repayment agreement must:

(1) Be in writing;

(2) Admit the existence of the debt; and

(3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) NARA will collect claims in one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, NARA may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay.

(d) NARA will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Archivist may request additional information from you, including financial statements if you request to make payments in installments, in order to determine whether to accept a voluntary repayment agreement. It is within the Archivist's discretion to accept a repayment agreement instead of proceeding with other collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. No repayment agreement

will be binding on NARA unless it is in writing and signed by both you and the Archivist. At NARA's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a claim.

§ 1201.20 What is the extent of the Archivist's authority to compromise debts owed to NARA, or to suspend or terminate collection action on such debts?

(a) The Archivist may compromise, suspend, or terminate collection action on those debts owed to NARA that do not exceed $100,000 excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended. NARA will follow the policies in § 902.2 of the FCCS.

(b) The uncollected portion of a debt owed to NARA that is not recovered as the result of a compromise will be reported to the Internal Revenue Service (IRS) as income to the debtor in accordance with IRS procedures if the debt is at least $600.00.

§ 1201.21 May NARA's failure to comply with these regulations be used as a defense to a debt?

No, the failure of NARA to comply with any standard in the FCCS or these regulations will not be available to any debtor as a defense.

Subpart C—Salary Offset

§ 1201.30 What debts are included or excluded from coverage of these regulations on salary offset?

(a) The regulations in this subpart provide NARA procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to NARA or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the FCCS.

(d) A levy imposed under the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

§ 1201.31 May I ask NARA to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

Yes, the regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

§ 1201.32 What are NARA's procedures for salary offset?

(a) NARA will coordinate salary deductions under this subpart as appropriate.

(b) If you are a NARA employee who owes a debt to NARA, NARA's payroll office will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by NARA's payroll office of certification of debt from the creditor agency.

(d) The Notice provisions of these regulations do not apply to certain debts arising under this section (*see* § 1201.14(c)).

(e) Types of collection. (1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount. If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check.* A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the FCCS in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from NARA and the balance of the debt cannot be liquidated by offset of the final salary check, NARA may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the FCCS.

(f) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, NARA's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

§ 1201.33 How will NARA coordinate salary offsets with other agencies?

(a) *Responsibilities of NARA as the creditor agency (i.e. when the debtor owes a debt to NARA and is an employee of another agency).* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, NARA must submit a claim to a paying agency or disbursing official.

(1) In its claim, NARA must certify, in writing, the following:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date NARA's right to collect the debt first accrued;

(iv) That NARA's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K; and

(v) That NARA has met the certification requirements of the paying agency.

(2) If the collection must be made in installments, NARA's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. NARA may also advise the paying agency of the number of installments to be collected and the date of the first installment, if that date is other than the next officially established pay period.

(3) NARA will also include in its claim:

(i) The employee's written consent to the salary offset;

(ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or

(iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, NARA must submit its claim to the paying agency or disbursing official for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and NARA. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart

K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, NARA must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for

determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from NARA to another paying agency. If, after the creditor agency has submitted the claim to NARA, the employee transfers from NARA to a different paying agency before the debt is collected in full, NARA will certify the total amount collected on the debt and notify the

debt is not past due or legally enforceable;

(ii) Considered evidence presented by the debtor; and

(iii) Determined that an amount of the debt is past due and legally enforceable;

(4) With respect to which NARA has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days of the date of the notice, the debt may be

1201.14 through 1201.16 of this part) available to defer the offset or prevent it from taking place.

Subpart E—Administrative Offset

§ 1201.50 Under what circumstances will NARA collect amounts that I owe to NARA (or some other Federal agency) by offsetting the debt against payments that NARA (or some other Federal agency) owes me?

(a) The regulations in this subpart

Federal agency instead be paid to NARA to satisfy a debt you owe to NARA. NARA will refer debts to the Treasury for centralized administrative offset in accordance with the FCCS and the procedures established by the Treasury. Where centralized offset is not available or appropriate, NARA may request offset directly from the Federal agency that is holding funds for you. In requesting administrative offset, NARA will certify in writing to the Federal

§ 1201.53 When may NARA make an offset in an expedited manner?

NARA may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 1201.51 and 1201.52 if failure to take the offset would substantially jeopardize NARA's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset

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K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, NARA must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making the other payments before the collection can be made.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, NARA may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be administratively offset to collect the debt.

(6) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, NARA will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. NARA will submit a properly certified claim to the new paying agency and will subsequently review the debt to ensure that the collection is resumed by the new paying agency.

(b) *Responsibilities of NARA as the paying agency (i.e. when the debtor owes a debt to another agency and is an employee of NARA).* (1) Complete claim. When NARA receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, NARA sends the employee a written notice containing:

(i) A statement that NARA has received a certified claim from the creditor agency;

(ii) The amount of the claim;

(iii) The date salary offset deductions will begin; and

(iv) The amount of such deductions.

(2) Incomplete claim. When NARA receives an incomplete certification of debt from a creditor agency, NARA will return the claim with a notice that the creditor agency must:

(i) Comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and

(ii) Properly certify a claim to NARA before NARA will take action to collect from the employee's current pay account.

(3) NARA is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from NARA to another paying agency. If, after the creditor agency has submitted the claim to NARA, the employee transfers from NARA to a different paying agency before the debt is collected in full, NARA will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 1201.34 Under what conditions will NARA make a refund of amounts collected by salary offset?

(a) If NARA is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs NARA to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 1201.35 Will the collection of a claim by salary offset act as a waiver of my rights to dispute the claimed debt?

No, your involuntary payment of all or any portion of a debt under this subpart will not be construed as a waiver of any rights that you may have under 5 U.S.C. 5514 or other provisions of a law or written contract, unless there are statutory or contractual provisions to the contrary.

Subpart D—Tax Refund Offset

§ 1201.40 Which debts can NARA refer to the Treasury for collection by offsetting tax refunds?

(a) The regulations in this subpart implement 31 U.S.C. 3720A, which authorizes the Treasury to reduce a tax refund by the amount of a past-due, legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due, legally enforceable debt referrable to the Treasury for tax refund offset is a debt that is owed to NARA and:

(1) Is at least $25.00;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) With respect to which NARA has:

(i) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable;

(ii) Considered evidence presented by the debtor; and

(iii) Determined that an amount of the debt is past due and legally enforceable;

(4) With respect to which NARA has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days of the date of the notice, the debt may be referred to the Treasury for offset against any refund of overpayment of tax; and

(5) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset (31 CFR 285.2) have been satisfied.

§ 1201.41 What are NARA's procedures for collecting debts by tax refund offset?

(a) NARA's Financial Services Division will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) NARA will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) NARA will submit to the Treasury a notification of a taxpayer's liability for past-due legally enforceable debt. This notification will contain the following:

(1) The name and taxpayer identification number of the debtor;

(2) The amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of § 1201.40(b) have been satisfied; and

(5) Any other information as prescribed by Treasury.

(d) For purposes of this section, notice that collection of the debt is stayed by a bankruptcy proceeding involving the debtor will bar referral of the debt to the Treasury.

(e) NARA will promptly notify the Treasury to correct data when NARA:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under Title 11 of the United States Code and the automatic stay is in effect or has been adjudicated bankrupt and the debt has been discharged.

(f) When advising debtors of NARA's intent to refer a debt to the Treasury for offset, NARA will also advise debtors of remedial actions (*see* §§ 1201.9 and 1201.14 through 1201.16 of this part) available to defer the offset or prevent it from taking place.

Subpart E—Administrative Offset

§ 1201.50 Under what circumstances will NARA collect amounts that I owe to NARA (or some other Federal agency) by offsetting the debt against payments that NARA (or some other Federal agency) owes me?

(a) The regulations in this subpart apply to the collection of any debts you owe to NARA, or to any request from another Federal agency that NARA collect a debt you owe by offsetting your debt against a payment NARA owes you. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3716). NARA will carry out administrative offset in accordance with the provisions of the FCCS. The regulations in this subpart are intended only to supplement the provisions of the Federal Claims Collection Standards.

(b) The Archivist, after attempting to collect a debt you owe to NARA under Section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset only after giving you:

(1) Written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor;

(2) An opportunity to inspect and copy the records of the agency related to the claim;

(3) An opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) An opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

(c) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years, unless facts material to NARA or a Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(d) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly prohibited by statute; or

(2) Debts owed to NARA by Federal agencies.

§ 1201.51 How will NARA request that my debt to NARA be collected by offset against some payment that another Federal agency owes me?

The Archivist may request that funds due and payable to you by another Federal agency instead be paid to NARA to satisfy a debt you owe to NARA. NARA will refer debts to the Treasury for centralized administrative offset in accordance with the FCCS and the procedures established by the Treasury. Where centralized offset is not available or appropriate, NARA may request offset directly from the Federal agency that is holding funds for you. In requesting administrative offset, NARA will certify in writing to the Federal agency that is holding funds for you:

(a) That you owe the debt;

(b) The amount and basis of the debt; and

(c) That NARA has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, the applicable administrative offset regulations of the agency holding the funds, and the applicable provisions of the FCCS with respect to providing you with due process.

§ 1201.52 What procedures will NARA use to collect amounts I owe to a Federal agency by offsetting a payment that NARA would otherwise make to me?

(a) Any Federal agency may request that NARA administratively offset funds due and payable to you in order to collect a debt you owe to that agency. NARA will initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency stating:

(i) That you owe the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing you with any required hearing or review; and

(2) A determination by the Archivist that offsetting funds payable to you by NARA in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

(b) *Multiple debts.* In instances where two or more creditor agencies are seeking administrative offsets, or where two or more debts are owed to a single creditor agency, NARA may, in its discretion, allocate the amount it owes to you to the creditor agencies in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1201.53 When may NARA make an offset in an expedited manner?

NARA may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 1201.51 and 1201.52 if failure to take the offset would substantially jeopardize NARA's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be followed promptly by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the United States, will be promptly refunded.

§ 1201.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to NARA?

Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728 and 31 U.S.C. 3716.

Subpart F—Administrative Wage Garnishment

§ 1201.55 How will NARA collect debts through Administrative Wage Garnishment?

NARA will collect debts through Administrative Wage Garnishment in accordance with the Administrative Wage Garnishment regulations issued by the Treasury. NARA adopts, for the purposes of this subpart, the Treasury's Administrative Wage Garnishment regulations in 31 CFR 285.11.

Dated: June 27, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–16703 Filed 7–3–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095–AB07

Nixon Presidential Materials; Reproduction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising the regulations for obtaining copies of the Nixon White House tape recordings, which are in NARA custody. First, NARA is now allowing the public to obtain copies of all Nixon White House tape recordings after they are officially released to the public. Previously, NARA only permitted the public to obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. This final rule will apply to the public.

EFFECTIVE DATE: August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–3023, or fax number 301–837–0319.

schedule set forth in part 1258 of this chapter.

* * * * *

2. Amend § 1275.66 by revising paragraph (a) to read as follows:

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in § 1275.64, may be done by NARA, by a contractor

requirements in the final rule and clarifies two issues arising from explanatory language in the preamble to the direct final rule amendments of April 5, 2002.

Section 553 of the Administrative Procedure Act, 5 U.S. C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and

the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–92–53.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly

www.epa.gov/ttn/oarpg. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities

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obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. This final rule will apply to the public.

EFFECTIVE DATE: August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the March 15, 2002, **Federal Register** (67 FR 11632) for a 60-day comment period. NARA did not receive any comments. This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. The regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA amends part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 is revised to read as follows:

Authority: 44 U.S.C. 2104, 2111 note.

1. Amend § 1275.64 by revising paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in § 1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

* * * * *

2. Amend § 1275.66 by revising paragraph (a) to read as follows:

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in § 1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

* * * * *

3. Amend Appendix A to Part 1275—Settlement Agreement, by revising the introductory paragraph to read as follows:

Appendix A to Part 1275—Settlement Agreement

Settlement Agreement filed April 12, 1996 in *Stanley I. Kutler and Public Citizen* v. *John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92–0662–NHJ (D.D.C.) (Johnson, J.).* By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

* * * * *

Dated: May 23, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–16663 Filed 7–3–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7240–5]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarifications and correction.

SUMMARY: On April 5, 2002, the EPA issued a direct final rule to amend the national emission standards for hazardous air pollutants for the portland cement industry. That action, in part, amended the monitoring requirements for the industry. This action corrects the corresponding table of monitoring requirements in the final rule and clarifies two issues arising from explanatory language in the preamble to the direct final rule amendments of April 5, 2002.

Section 553 of the Administrative Procedure Act, 5 U.S. C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior notice and comment procedure because it merely corrects a summary table to reflect amended monitoring requirements and clarifies preamble language from the direct final rule amendments. Both the proposed rule and direct final rule amendments (as well as the Settlement Agreement that occasioned these amendments) were subject to exhaustive notice and comment (including comment on the matters addressed in this notice). Thus, notice and comment are contrary to the public interest and unnecessary. We find that the circumstances described constitute good cause under 5 U.S.C. 553(b)(3)(B) and 553(d)(3) which authorizes an agency to make a rule immediately effective where it finds that there is good cause for doing so.

EFFECTIVE DATE: July 5, 2002.

ADDRESSES: Docket number A–92–53, containing supporting information used in the development of this notice is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Effective August 27, 2002, the Office of Air and Radiation Docket and Information Center will have a new address: 1301 Constitution Avenue NW., Room B108, Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–92–53.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Industry	32731	3241	Owners or operators of portland cement manufacturing plants.
State	32731	3241	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	3241	Owners or operators of portland cement manufacturing plants.
Federal agencies	None	None	None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background. On June 14, 1999, we published in the **Federal Register** the final rule entitled, "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry" (40 CFR part 63, subpart LLL). The American Portland Cement Alliance (APCA) petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the final rule under section 307(b)(1) of the Clean Air Act (CAA). The APCA and the EPA negotiated and agreed to the terms of a Settlement Agreement and its implementation. As agreed to under the terms of the Settlement Agreement, EPA issued direct final amendments (67 FR 16614, April 5, 2002) to improve implementation of the rule primarily in areas of applicability, emissions testing, and monitoring (there were no amendments to the emission standards themselves). After publication of the direct final rule amendments, commenters requested a correction to the rule and clarification of preamble language to better reflect provisions in the Settlement Agreement and to avoid regulatory misinterpretations. In response to these comments, we are issuing this final rule amendments.

Maximum Production Rate Not an Operating Limit. In the preamble to the April 5, 2002, direct final amendments, we explained why we amended § 63.1349(b) to require that performance testing be conducted under representative conditions rather than under "the highest load or capacity reasonably expected to occur" (67 FR 16616). We stated, "If the kiln is operated under a condition not representative of the condition during the performance test, e.g., the kiln is operated at a production rate higher than the production rate at which it was tested, the performance test will need to be re-conducted and temperature limit(s) reestablished." Although we did not receive any comments on the amended regulatory text, "* * * when the affected source is operating at the representative performance conditions in accordance with § 63.7(e)" (67 FR 16619), we did receive comments addressing specifically the example we gave of a supposedly unrepresentative condition, which they felt conflicted with the intent of the regulatory amendment. Our intent was to make the rule more consistent with the General Provisions language that performance tests be conducted under representative conditions and to provide guidance on the representativeness of a particular operating condition. Today, we are clarifying that if a source operates at a higher production level than that at which it tested, the previous performance test *may* not have been representative of operating conditions and emissions at that higher production level. Whether the test was representative depends on how much higher actual production levels are than those that existed during the performance test and on other factors affecting the effectiveness of the pollution control equipment; the ultimate measure being whether any of these changes may adversely affect compliance with the emission standards. The production rate of a kiln is only one of many indicators (i.e., potentially relevant indicia) of representative operating conditions. In addition, the production rate may be temporarily and slightly higher than the rate at which the kiln was operating during a performance test and still be representative. A source is not automatically required to conduct a performance test if the source's operating conditions vary from those in place during the most recent prior performance test. However, the burden is on the source to demonstrate that it is able to comply with the emission limits when operating under the alternative operating conditions. That is, it is the source's ultimate burden of persuasion to demonstrate that its performance testing conditions remain representative. This is in accordance with the general principle that the party claiming an exception to an established protective rule has the burden of justifying that exception. See *Beth Israel Hospital* v. *NLRB*, 437 U.S. 482, 493, 502 (1978); see also *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355, 366–67 (D.C. Cir. 1989) (permissible for agency to assign ultimate burden of persuasion).

Both commenters stated that the example we gave suggests that production limits are established by the performance test, and that this conflicts with the Settlement Agreement and our letter to the APCA (April 17, 2002), where we explicitly stated that the production rate is not an operating limit. The example in the preamble does

not, however, impose a production limit or establish the production rate as an operating limit. We are clarifying and reiterating language from the Settlement Agreement and from our letter to APCA that the production rate is not a parameter for which operating limits are established, and the production rate measured during dioxin/furan (D/F) or particulate matter (PM) performance test is not an operating limit for the source. Section 63.1344 of the rule lists all of determining whether compliance is adversely affected. For example, temperature of the exhaust gas plays an important role in D/F formation and for this reason, the rule requires the source to establish temperature operating limits. Regarding the PM emission limit, although the mass emission rate of PM may increase with an increase in production rate, compliance may not necessarily be adversely affected since the format of the standard is in pounds from the mill to the kiln. Other subpart Y transfer points (such as those transferring coal from a barge to a coal pile) would continue to be subject to subpart Y requirements, as appropriate.

Monitoring Requirements for Raw Mills and Finish Mills (Table 1 to § 63.1350). Consistent with the Settlement Agreement, we revised the monitoring requirements for raw mills and finish mills to allow for the use of continuous monitoring systems in lieu of daily visible emission monitoring.

U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review effective date of July 5, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection,

the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart LLL—[AMENDED]

2. Table 1 to § 63.1350, entitled

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not, however, impose a production limit or establish the production rate as an operating limit. We are clarifying and reiterating language from the Settlement Agreement and from our letter to APCA that the production rate is not a parameter for which operating limits are established, and the production rate measured during dioxin/furan (D/F) or particulate matter (PM) performance test is not an operating limit for the source. Section 63.1344 of the rule lists all of the operating limits that kilns are subject to as part of the requirements of the NESHAP. Those operating limits relate to the D/F emission standards and include only temperature limits and limits pertaining to the use of activated carbon injection. Section 63.1344 makes no mention of a kiln's production rate as an operating limit, and indeed this was our intent in drafting the final rule. This means that if the kiln production rate exceeds the production rate during the previous performance test, it is not in violation of any operating parameter requirement. This does not mean, however, that a change in production rate (or change in any other operating practice which is not a parametric monitoring requirement established in the rule) is irrelevant in determining whether the kiln is operating in compliance with the emission limit.

One of the commenters stated that the aforementioned example in the April 5, 2002, preamble conflicts with § 63.1349(e)(1) and (2) of the newly amended rule which state that if a source plans to undertake a change in operations that may adversely affect compliance with an applicable D/F or PM standard, the source must conduct a new performance test. As such, the facility would only be required to re-conduct the performance test if it determines that an increase in the production rate may adversely affect compliance (and, of course, that this determination is correct).

We are clarifying today that a source would need to re-conduct a performance test if the current operation is not representative of the operation during the previous performance test such that the change in operation may adversely affect compliance. As discussed above, production rate levels that are only slightly higher than the production rate levels achieved during the previous performance test may not adversely affect compliance, and therefore, may still be representative. Although increased production rates would tend to increase exhaust gas stream flow rates and, therefore, potentially diminish control device effectiveness, there are other factors which may be more important in controlling emissions and determining whether compliance is adversely affected. For example, temperature of the exhaust gas plays an important role in D/F formation and for this reason, the rule requires the source to establish temperature operating limits. Regarding the PM emission limit, although the mass emission rate of PM may increase with an increase in production rate, compliance may not necessarily be adversely affected since the format of the standard is in pounds of PM per ton of dry feed, and an increase in production rate would allow for some increase in the mass emission rate of PM. However, as stated above, the burden is on the source to demonstrate that they are able to comply with the emission limits when operating under conditions which vary from those in place during the most recent prior performance test.

In summary, there is no operating limit associated with the production rate. Further, the example we gave in the April 5, 2002, preamble wasn't meant to create the presumption that an increase in production rate beyond the production rate during the previous performance test automatically means that the kiln must be retested. Production rate could be relevant in determining representativeness of the original test, but in some cases, an increase may not adversely affect emissions, and the effect of other operating factors (such as exhaust gas stream temperature) should not be discounted since they may often affect emissions more. Although the source has to show that it was tested under representative conditions, we expect that there are situations where a source can show that an increase in the production rate does not adversely affect compliance.

Only Transfer Points Used to Convey Coal from the Mill to the Kiln are Potential Affected Sources. This issue concerns the interface between the new source performance standards (NSPS) for coal preparation plants (40 CFR part 60, subpart Y) and the portland cement NESHAP (40 CFR part 63, subpart LLL). The direct final amendments correctly revise § 63.1356 of the final rule to clarify that the systems used to convey and transfer coal from the coal mill to the kiln at portland cement plants that are major sources of hazardous air pollutants are not subject to the NSPS for coal preparation plants. However, the industry trade association believes the April 5, 2002, preamble language confuses the issue. In response, we clearly state that the *only* subpart Y sources potentially subject to subpart LLL requirements at major sources are the transfer points used to convey coal from the mill to the kiln. Other subpart Y transfer points (such as those transferring coal from a barge to a coal pile) would continue to be subject to subpart Y requirements, as appropriate.

Monitoring Requirements for Raw Mills and Finish Mills (Table 1 to § 63.1350). Consistent with the Settlement Agreement, we revised the monitoring requirements for raw mills and finish mills to allow for the use of continuous monitoring systems in lieu of daily visible emission monitoring. Our direct final rule amendments correctly reflect these new options in § 63.1350(m). However, we inadvertently omitted the new options from Table 1 to § 63.1350 (Monitoring Requirements). Today's rule amendments correct Table 1 to include the continuous monitoring system options for raw mills and finish mills.

Administrative Requirements

Under Executive Order 12866, Regulatory Planning and Review, (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, does not apply to this action. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a significant regulatory action under Executive Order 12866. This rule does not have any federalism implications under Executive Order 13132, Federalism. The Paper Reduction Act and the National Technology Transfer and Advancement Act do not apply here. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 5, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

For the reasons stated in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart LLL—[AMENDED]

2. Table 1 to § 63.1350, entitled "Monitoring Requirements," is amended by revising the entry for raw mills and finish mills at major sources/opacity to read as follows:

§ 63.1350 Monitoring requirements.

* * * * *

TABLE 1 TO § 63.1350.—MONITORING REQUIREMENTS

Affected source/pollutant or opacity	Monitor type/operation/process	Monitoring requirements
* *	* * *	* *
Raw mills and finish mills at major sources/opacity.	Method 22 visible emissions test. (This requirement does not apply to a raw mill or finish mill equipped with a continuous opacity monitor or bag leak detection system.).	Conduct daily 6-minute Method 22 visible emissions test while mill is operating at representative performance conditions; if visible emissions are observed, initiate corrective action within 1 hour and conduct follow up Method 22 test. If visible emissions are observed, conduct 30-minute Method 9 test.
.....	Continuous opacity monitor, if applicable	Install, operate, and maintain in accordance with general provisions and with PS–1. A six-minute average greater than 10% opacity is a violation.
.....	Bag leak detection system, if applicable	Install, operate, and maintain in accordance with § 63.1350(m). Operate and maintain such that alarm is not activated and alarm condition does not exist for more than 5% of the total operating time in a 6-month period. If alarm sounds, initiate corrective action.

[FR Doc. 02–16644 Filed 7–3–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket # AK–02–003; FRL–7240–8]

Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for Fairbanks Carbon Monoxide Nonattainment Area, Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Fairbanks Carbon Monoxide (CO) nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO by the deadline required by the Clean Air Act Amendments of 1990 (CAAA), December 31, 2001.

EFFECTIVE DATE: August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, EPA, Region 10, Office of Air Quality, Mail Code: OAQ–107, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

I. Background

EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date. In this case the EPA was required to make a determination concerning whether the Fairbanks serious CO nonattainment area attained the NAAQS by its December 31, 2001, attainment date. Pursuant to the CAAA, the EPA is required to make an attainment determination for this area by June 30, 2002, no later than six months following the attainment date for the area. This final rule was based on all available, quality-assured data collected from the CO monitoring sites, which has been entered into the Aerometric Information

Retrieval System (AIRS). This data was reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," dated June 18, 1990.

On May 23, 2002 (67 FR 36135), EPA

requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

approved ocean dumping site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Cape Fear River, North Carolina vicinity. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

EPA, in cooperation with the Wilmington District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled "Final

consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (section 102(a)) or conditions of designation (section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. Non-ocean disposal options have been examined and are discussed in the FEIS.

C. Site Designation

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Retrieval System (AIRS). This data was reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," dated June 18, 1990.

On May 23, 2002 (67 FR 36135), EPA proposed to determine that the Fairbanks CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO as of December 31, 2001. A detailed discussion of EPA's proposal is contained in the May 23, 2002, proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Public Comments

We received no comments in response to EPA's proposed action to determine that the Fairbanks CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide as of December 31, 2001.

III. Attainment Determination

EPA has determined that the Fairbanks serious CO nonattainment area has attained the CO NAAQS by its attainment date of December 31, 2001. Consistent with CAAA section 188, the area will remain a serious CO nonattainment area with the additional planning requirements that apply to serious CO nonattainment areas. This finding of attainment should not be confused with a redesignation to attainment under CAAA section 107(d). Alaska has not submitted a maintenance plan as required under section 175A(a) of the CAAA for redesignation to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Fairbanks CO nonattainment area until such time as EPA finds that Alaska has met the CAAA requirements for redesignation to attainment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, National parks, Reporting and recordkeeping requirements, Wilderness areas.

Dated: June 26, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–16854 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7241–2]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a new Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Wilmington, North Carolina, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Cape Fear River, North Carolina vicinity. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: This final rule is effective on August 5, 2002.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Section, Water Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/562–9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This designation of a new site offshore Wilmington, North Carolina, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. The existing ODMDS was designated and has been used since 1987. However, site capacity limitations and a proposed realignment of the ocean bar channel negate the utility of the existing site. The details of these issues can be found in the "Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation."

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

EPA, in cooperation with the Wilmington District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled "Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation." On November 30, 2001, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (66 FR 59787 (November 30, 2001)). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the final EIS closed on December 31, 2001.

The proposed rule was published for public review and comment in the **Federal Register** (67 FR 15348 (April 1, 2002)). No comments were received.

This rule permanently designates the continuing use of the new ODMDS near Wilmington, North Carolina. The purpose of the action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a new Wilmington ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Cape Fear River area and the issues raised by site capacity and channel realignment. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the new Wilmington ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220 through 229) and the COE regulations (33 CFR 209.120 and 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (section 102(a)) or conditions of designation (section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. Non-ocean disposal options have been examined and are discussed in the FEIS.

C. Site Designation

The site is located approximately 5 nautical miles offshore Bald Head Island. The ODMDS occupies an area of about 9.4 square nautical miles (nmi²). Water depths within the area range from 35–52 feet (ft.). The coordinates of the New Wilmington site are as follows:

33°46′ N	78°02.5′ W
33°46′ N	78°01′ W
33°41′ N	78°01′ W
33°41′ N	78°04′ W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The site conforms to the five general criteria.

In addition to these general criteria in § 228.5, § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. *Geographical position, depth of water, bottom topography, and distance from coast (40 CFR 228.6(a)(1)).*

The boundary of the site is given above. The northern boundary of the site is located about 5 nmi offshore of Bald Head Island, North Carolina. The site is approximatelty 9.4 nmi² in area. Water depth in the area ranges from 35–52 ft.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage*

areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)).

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is

3. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean (40 CFR 228.6(a)(3)).*

4. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)).*

The existing ODMDS has been used to dispose of the material from the Cape Fear River project for fifteen years. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

5. *Interference with shipping, fishing,*

EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agency for cause.

action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

potentially effective and reasonably feasible alternatives considered by EPA.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final rule would only have the

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 5, 2002.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork

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areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)).

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

3. *Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)).*

The site is located approximately 5 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS and further distance that the new disposal site is offshore of beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any (40 CFR 228.6(a)(4)).*

The type of materials to be disposed of within this site is dredged material as described in type and quantity by section 2 of the FEIS. Disposal would be by hopper dredge or dump scow. All disposals shall be in accordance with the approved Site Management and Monitoring Plan developed for this site (FEIS, appendix A).

5. *Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)).*

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be modified for cause by the responsible agency. A copy of the SMMP may be obtained at the any of the addresses given above.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area including prevailing current direction and velocity, if any (40 CFR 228.6(a)(6)).*

A detailed current study, along with fate modelling of dredged material, was conducted within the site and can be found described in the FEIS. The findings of these studies indicate that transport of disposed material should not present any adverse impacts.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)).*

The existing ODMDS has been used to dispose of the material from the Cape Fear River project for fifteen years. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean (40 CFR 228.6(a)(8)).*

The shape of the ODMDS was designed to avoid interference with commericial shipping. The location was also selected to move away from commercial fishing, particularly trawling bottoms. It is not anticipated that the site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)).*

Appropriate water quality and ecological assessments have been performed at the site. Site-specific information concerning the water quality and ecology at the ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)).*

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance (40 CFR 228.6(a)(11)).*

The only resource known to exist in close proximity to the site is the wreck of the Virginius. This wreck lies outside the eastern boundary of the site. Since no disposal will occur within 600 ft. of the boundary, and the wreck lies in shallower water, placement of material within the site is not expected to adversely affect it.

E. Site Management

Site management of the New Wilmington ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agency for cause.

F. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the New Wilmington site as an EPA-approved ODMDS is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The New Wilmington ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Wilmington, North Carolina vicinity.

G. Regulatory Assessments

1. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the modification will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

2. Executive Order 12866

Under Executive Order 12866, EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

3. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this rule.

4. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

5. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply, EPA did consult with State officials in developing this rule and no concerns were raised.

6. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 5, 2002.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: June 7, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as follows.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (h)(20) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(20) New Wilmington, NC; Ocean Dredged Material Disposal Site.

(i) Location:

33°46′ N	78°02.5′ W.
33°46′ N	78°01′ W.
33°41′ N	78°01′ W.
33°41′ N	78°04′ W.

(ii) Size: Approximately 9.4 square nautical miles.

(iii) Depth: Ranges from 35–52 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Wilmington, North Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 02–16855 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–07]

Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations

AGENCY: Federal Maritime Commission.

some passenger vessel operators,[2] reduced the amount of coverage required.

The Commission's implementing regulations at 46 CFR part 540, subpart A, currently require PVOs to evidence financial responsibility by means of self-insurance, guaranty, escrow arrangement, surety bond, insurance policy, or combination thereof. Financial responsibility must be established in the amount of at least

Alaska Sightseeing Tours ("Cruise West"), Glacier Bay Park Concessions, Inc. d/b/a Glacier Bay Cruiseline ("Glacier Bay"), Goldbelt, Incorporated ("Goldbelt"), International Group of P&I Clubs ("P&I Clubs"), and the Passenger Vessel Association ("PVA"). Goldbelt is the sole shareholder of Glacier Bay. The P&I Clubs is an organization of Protection and Indemnity Associations, some of which have provided section 3 guarantees under the Commission's

warranted by the particular operator's circumstances. Cruise West states that the proposed rule could jeopardize smaller U.S. operators by putting them at a competitive disadvantage with respect to larger foreign operators. Cruise West points out that, because of the current $15 million ceiling, a major cruise line with hundreds of millions of dollars in UPR would be required to cover only a small fraction of its UPR, whereas a smaller operator with a total

acknowledges that recent circumstances warrant review of the Commission's current rules. However, PVA states that the proposed rule (1) puts smaller vessels at a disadvantage, because the $15 million ceiling allows larger vessel operators to cover only a fraction of the UPR, (2) discriminates against U.S. flag operators because the statute's requirements only apply to a vessel embarking passengers at United States ports (the Alaska trade is cited as an

PVA indicate a desire that the statute be amended to impose financial responsibility requirements on voyages embarking U.S. passengers from foreign ports. We know about the failures of three PVOs within the past two years which affected U.S. passengers embarking from foreign ports. Two of those PVOs participated in the Commission's program by having coverage for certain vessels embarking passengers at U.S. ports (but not for U.S.

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FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–07]

Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission") is amending its rules on passenger vessel financial responsibility for nonperformance of transportation, by eliminating the availability of self-insurance, limiting guarantees to those Protection and Indemnity Associations approved by the Commission, and discontinuing the existing sliding scale formula for determining the amount of coverage required.

DATES: This rule is effective August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Room 970, Washington, DC 20573–0001, 202–523–5787, E-mail: *sandrak@fmc.gov*.

SUPPLEMENTARY INFORMATION: On April 23, 2002, the Commission published in the **Federal Register** a notice of proposed rulemaking, 67 FR 19730, to amend 46 CFR part 540, the implementing regulations for section 3, Pub. L. 89–777, 46 U.S.C. app. 817e, ("section 3").[1] Section 3 requires that passenger vessel operators ("PVOs") establish financial responsibility to indemnify passengers for nonperformance of transportation. The amendments would eliminate self-insurance as a means of evidencing required financial responsibility, limit guarantors of financial responsibility to those Protection and Indemnity Associations approved by the Commission, and eliminate the availability of a sliding scale that, for some passenger vessel operators,[2] reduced the amount of coverage required.

The Commission's implementing regulations at 46 CFR part 540, subpart A, currently require PVOs to evidence financial responsibility by means of self-insurance, guaranty, escrow arrangement, surety bond, insurance policy, or combination thereof. Financial responsibility must be established in the amount of at least 110% of the PVO's highest unearned passenger revenue ("UPR")[3] over the most recent two-year period, subject to a $15 million maximum for those PVOs establishing financial responsibility by means other than self-insurance or escrow agreement. However, under current regulations, those PVOs not qualifying by self-insurance may elect to use a sliding scale formula to compute a reduced amount of financial responsibility required, if they can establish five years operational experience in the U.S. trades with a satisfactory explanation of any claim for nonperformance. Self-insuring PVOs currently must establish net worth equal to at least 110% of UPR.

In determining to amend its regulations, the Commission cited recent bankruptcies of several PVOs, coupled with the experience of passengers in receiving payment in satisfaction of claims, as causing the Commission to re-evaluate its rules governing PVO coverage for nonperformance. Also, the Commission referred to the lapse of time before the Commission becomes aware of substantial changes in financial and economic conditions, the greater risk to passengers posed by self-insurers under the Commission's program, the current economic uncertainty and its effect on sales of cruises, and the impending substantial increase in cruise ship capacity.

Comments

Comments on the proposed rule were filed by American West Steamboat Company, LLC ("American West"), Carnival Corporation ("Carnival"),[4] West Travel, Inc. d/b/a Cruise West and Alaska Sightseeing Tours ("Cruise West"), Glacier Bay Park Concessions, Inc. d/b/a Glacier Bay Cruiseline ("Glacier Bay"), Goldbelt, Incorporated ("Goldbelt"), International Group of P&I Clubs ("P&I Clubs"), and the Passenger Vessel Association ("PVA"). Goldbelt is the sole shareholder of Glacier Bay. The P&I Clubs is an organization of Protection and Indemnity Associations, some of which have provided section 3 guarantees under the Commission's program. PVA is an association of U.S.-flag passenger vessels of all types, including overnight cruise vessels. The remaining commenters are PVOs that participate in the Commission's program.

American West, a U.S. flag PVO, is the only commenter to state that it fully supports the proposed changes. However, American West also supports an in-depth review by the Commission of all of its financial responsibility regulations. In particular, American West supports lifting of the current $15 million maximum coverage requirement, supports reducing the required coverage from 110% of UPR to 100%, and believes the Commission should consider the role of credit cards and third-party travel insurance in determining the amount of coverage required. None of those suggestions is within the scope of this proposed rule.

Carnival, one of the larger PVOs, states that the increase in the fleets of the larger PVOs in recent years has increased the shortfall in coverage between the current $15 million maximum coverage requirement and the actual amount of unearned passenger revenues. Carnival believes that eliminating self-insurance while maintaining the current $15 million cap does little to provide the necessary financial security to passengers. Carnival suggests that the Commission's rules should be drawn so as to be "self-adjusting" as cruise lines increase in size. Moreover, Carnival reiterates its comments to proposed rules in 1994 and 1996, namely that the Commission's rules should allow foreign and U.S. companies with investment grade credit ratings and strong balance sheets to qualify for self-insurance and increase the current $15 million cap. In addition, Carnival recommends that the Commission support a change in Public Law 89–777 to extend the financial responsibility requirements to voyages embarking U.S. passengers in foreign ports.

Cruise West, a U.S. flag PVO, believes the Commission should allow itself the flexibility to evaluate particular operators and determine appropriate evidence of financial responsibility as warranted by the particular operator's circumstances. Cruise West states that the proposed rule could jeopardize smaller U.S. operators by putting them at a competitive disadvantage with respect to larger foreign operators. Cruise West points out that, because of the current $15 million ceiling, a major cruise line with hundreds of millions of dollars in UPR would be required to cover only a small fraction of its UPR, whereas a smaller operator with a total UPR of only $15 million, would have to cover 100% of its UPR. Cruise West asserts this places smaller companies at a significant competitive disadvantage, and believes that the sliding scale was intended to partially alleviate that disadvantage. Moreover, Cruise West states that self-insurance is one of the few advantages to maintaining a U.S. based cruise line, because self-insurance is expressly tied to ownership of U.S. based assets, an important factor considered in enacting Public Law 89–777. Cruise West suggests that closer scrutiny of self-insured cruise lines, requiring additional coverage as appropriate, is better than eliminating self-insurance. Cruise West therefore believes that the Commission should retain the option to accept self-insurance and sliding scale coverage on a case-by-case basis. Lastly, Cruise West indicates that an immediate and complete transition to the new rule would have significant, potentially devastating, effects on Cruise West. Cruise West asks that sufficient time for transition to the new rules be provided, and that the Commission give itself the latitude to handle this transition on a case-by-case basis.

Glacier Bay and its owner, Goldbelt, indicate that the proposed rule would cause Glacier Bay considerable financial hardship, which could force Glacier Bay to discontinue operations. Goldbelt states that escrowing deposits is not an acceptable alternative, since Glacier Bay begins selling cruises up to nine months before its May through September operating season, and needs those deposits as working capital to prepare for the operating season. Goldbelt states that preliminary quotes from its insurance broker indicate that a bond will cost anywhere from $150,000 to $200,000. Glacier Bay indicates that its prices for next year are in the process of being set, and Goldbelt states that prices are already set for this year, with no way to recapture the additional costs that will be caused by this rule. Goldbelt asks that, should the rule be made final, it be phased in over a period of two years.

PVA claims to be the "national voice" of U.S. flag passenger vessels. PVA acknowledges that recent circumstances warrant review of the Commission's current rules. However, PVA states that the proposed rule (1) puts smaller vessels at a disadvantage, because the $15 million ceiling allows larger vessel operators to cover only a fraction of the UPR, (2) discriminates against U.S. flag operators because the statute's requirements only apply to a vessel embarking passengers at United States ports (the Alaska trade is cited as an example, with most foreign flag operators allegedly embarking passengers at Vancouver, British Columbia), and (3) does not provide affected operators with sufficient time to comply.

P&I Clubs is concerned that many vessel operators that have become self-insurers in recent years will look to the P&I Clubs to provide the necessary security. P&I Clubs makes clear that its members would not be willing to increase their current involvement, and asks that the rule be reconsidered or postponed in order to provide more detailed consultation with the cruise industry.

Discussion

A number of comments deal with issues outside the scope of this rulemaking. Several comments indicate a desire that the Commission lift its current $15 million ceiling. American West supports lifting the ceiling, and believes this should be part of a comprehensive review of Commission regulations. PVA and Cruise West indicate that the ceiling creates a competitive disadvantage for smaller U.S. flag operators, as compared to their larger, foreign flag competitors. Interestingly, one of the larger, foreign flag operators, Carnival, also believes that the ceiling should be lifted, and should automatically adjust in line with increasing UPR. The Commission is mindful that the $15 million ceiling is only a fraction of the UPR potentially at risk for some PVOs, and shares the concerns of these commenters. Accordingly, the Commission has directed its staff to undertake a comprehensive review of the Commission's rules, including whether to change the ceiling. Based on that review, the Commission may institute a future rulemaking proceeding. Since the ceiling was not addressed in this proposed rule, however, the Commission is unable to effect any changes through this proceeding.

Another matter beyond the scope of this proceeding is the concern about the lack of protection available to those passengers on cruises not embarking passengers at U.S. ports. Carnival and PVA indicate a desire that the statute be amended to impose financial responsibility requirements on voyages embarking U.S. passengers from foreign ports. We know about the failures of three PVOs within the past two years which affected U.S. passengers embarking from foreign ports. Two of those PVOs participated in the Commission's program by having coverage for certain vessels embarking passengers at U.S. ports (but not for U.S. passengers embarking at foreign ports). Accordingly, those passengers who were to embark from U.S. ports were protected under the Commission's program, while other U.S. passengers had no protection. No passengers of the third PVO were protected by the Commission's program. The Commission has previously supported legislation to require coverage for ticket contracts sold in the United States, even for passengers embarking from foreign ports. The Commission intends to reiterate its concerns to Congress.

The concern of P&I Clubs that many current self-insurers will look to its members for required coverage appears to be unwarranted. Contrary to P&I Clubs' assertion, the elimination of self-insurance and limitation of guarantors will affect only two PVOs currently in the Commission's program. Preliminary indications are that neither of those PVOs would look to Protection and Indemnity Associations for coverage.

Cruise West, Glacier Bay (and Goldbelt) and PVA oppose the proposed rule, expressing concern about its impact on smaller, U.S. flag PVOs, which they claim will be disadvantaged. Cruise West suggests that the Commission maintain the flexibility to approve self-insurance and sliding scale treatment on a case-by-case basis. Should the Commission finalize the proposed rules, all ask for time to phase in their compliance.

The Commission is concerned about the financial protection provided to passengers under its program, and believes that self-insurance is a matter requiring immediate protection. The bankruptcy of a self-insurer leaves many passengers devoid of protection. Cruise West argues that rather than eliminate self-insurance, the Commission should scrutinize more closely the financial condition of self-insurers and require additional coverage as appropriate. While such an approach may appear to have merit in theory, experience has shown that requiring additional coverage is virtually impossible once a PVO's financial condition has deteriorated. Even now, Cruise West and Glacier Bay argue that the Commission should not impose greater

[1] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accomodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation

[2] For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provide passage on a vessel having berth or stateroom accomodations for fifty or more passengers and which embarks passengers at U.S. ports.

[3] UPR means "passenger revenue recieved for water transportation and all other accomodations, services, and facilities relating thereto not yet performed." (46 CFR 540.2(i)).

[4] Carnival's comments were submitted on behalf of Carnival Cruise Lines, Holland America Line, Cunard Line, Seabourn Cruise Line, Costa Cruises and Windstar Cruises, all of which are owned by Carnival.

requirements because of the financial impact. Once a self-insurer's financial situation has deteriorated, imposition of additional coverage requirements would increase the likelihood of the PVO's failure and expose passengers to the very losses the Commission's program is designed to prevent. Also, experience demonstrates that the lag time in receiving financial data may prevent the Commission from knowing about a [illegible] deterioration until well

issuance of this amendment to its rules, and allow some flexibility during a transition period. Accordingly, it is not necessary to modify the proposed rule to provide for such a transition period.

Commission staff have contacted those affected by this rule and will continue to be available to discuss an effective transition. However, this should not be seen as a willingness on the part of the Commission to allow continuation of self-insurance, even for

d. Redesignate paragraph (f) as paragraph (d).

The revisions read as follows:

§ 540.5 Insurance, guaranties, and escrow accounts.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1478, MB Docket No. 02–65, RM–10370]

Digital Television Broadcast Service; Georgetown, SC

AGENCY: Federal Communications Commission.

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under South Carolina, is amended by removing Georgetown, TV channel *41–.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by adding

end of a contract, to warrant an additional interim evaluation. The final evaluation will include this period of contract performance.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities

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requirements because of the financial impact. Once a self-insurer's financial situation has deteriorated, imposition of additional coverage requirements would increase the likelihood of the PVO's failure and expose passengers to the very losses the Commission's program is designed to prevent. Also, experience demonstrates that the lag time in receiving financial data may prevent the Commission from knowing about a PVO's financial deterioration until well after it is too late to remedy the lack of coverage.

In support of self-insurance, Cruise West, Glacier Bay (and Goldbelt) and PVA indicate that its elimination would disadvantage small U.S. flag operators, since the qualifying assets currently must be maintained in the United States. This requirement has so far resulted in only U.S. flag PVOs requesting approval as a self-insurers. Yet one small U.S. flag operator, American West, fully supports the changes. Most U.S. flag PVOs do not utilize the self-insurance option. Instead, they provide evidence of financial responsibility with a bond or escrow agreement. Some of these U.S. flag PVOs compete with Cruise West and Glacier Bay, who argue that the costs of a bond or escrow agreement are competitively disadvantageous. However, finalizing the rule as proposed would put all of these operators on equal footing in this regard.

The Commission is sensitive to the impact of an abrupt change to its rules. For this reason, at its meeting of January 30, 2002, the Commission directed its staff to begin discussions with affected PVOs about alternative means of coverage. All affected PVOs were apprised of the Commission's intentions during the first week of February 2002. Currently, the introductory paragraph to 46 CFR 540.5 provides:

> Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, unless the applicant qualifies for consideration under § 540.5(e). *The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required.* * * * (Emphasis added)

Thus, Commission rules already provide for case-by-case consideration of differing circumstances. The Commission will give consideration to special circumstances caused by issuance of this amendment to its rules, and allow some flexibility during a transition period. Accordingly, it is not necessary to modify the proposed rule to provide for such a transition period.

Commission staff have contacted those affected by this rule and will continue to be available to discuss an effective transition. However, this should not be seen as a willingness on the part of the Commission to allow continuation of self-insurance, even for a short time period. All affected parties have been on notice of the Commission's intention in this regard since at least early February. The Commission has determined that self-insurance provides inadequate coverage, and that it must undertake to make sure that passengers achieve the protections contemplated by the governing statute. Accordingly, while some flexibility in timing may be allowed, affected parties will be expected immediately to begin the transition with adequate safeguards in place to protect passengers. The Commission's staff will be available to discuss means of doing so.

The rule contains no additional information collection or recordkeeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Chairman has certified, pursuant to 5 U.S.C. 605, that the rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as amended (46 U.S.C. app. 1716(a), and for the reasons stated above, the Federal Maritime Commission amends 46 CFR part 540 as follows:

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

1. The authority citation to part 540 continues to read:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 317(e, 817d); sec. 17(a) of the Shipping Act of 1984 (46 U.S.C. app. 1716(a)).

2. Section 540.5 is amended as follows:

a. Revise the heading and introductory text;

b. Revise paragraph (c);

c. Remove paragraphs (d) and (e);

d. Redesignate paragraph (f) as paragraph (d).

The revisions read as follows:

§ 540.5 Insurance, guaranties, and escrow accounts.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

* * * * *

(c) Filing with the Commission a guaranty on Form FMC–133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

3. Amend Form FMC–131, part II, as follows:

a. Revise Item 10;

b. Remove Item 15.

The revision reads as follows:

Part II—Performance

* * * * *

10. Items 11–14 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

☐ Insurance (item 11).

☐ Escrow (item 12).

☐ Surety bond (item 13).

☐ Guaranty (item 14).

* * * * *

15. [Removed]

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–16756 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1478, MB Docket No. 02–65, RM–10370]

Digital Television Broadcast Service; Georgetown, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Community Television, Inc., an applicant for a new station to operate on channel *41 at Georgetown, South Carolina, substitutes DTV channel *38 for channel *41– at Georgetown. *See* 67 FR 15769, April 3, 2002. DTV channel *38 can be allotted to Georgetown, South Carolina, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 33–25–58 N. and 79–16–16 W. with a power of 500, HAAT of 144 meters and with a DTV service population of 220 thousand. With is action, this proceeding is terminated.

DATES: Effective August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–65, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under South Carolina, is amended by removing Georgetown, TV channel *41–.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by adding Georgetown, DTV channel *38.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–16871 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1842

RIN 2700–AC33

Contractor Performance Information

AGENCY: National Aeronautics and Space Administration.

ACTION: Final Rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) by deleting the requirement for interim performance evaluations on contracts whose anniversary of award coincides with or occurs within three months of the end of the contract period of performance. This action eliminates redundancy in performance evaluations.

EFFECTIVE DATE: July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Yolande Harden, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1279; e-mail: *yharden@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This change eliminates redundancy in performance evaluations on contracts where the length of time between the last interim evaluation and the final evaluation is relatively short. When the award anniversary is within 3 months of the end of the contract period of performance, the requirement to conduct both an interim and final evaluation creates an added burden on the evaluators as well as the contractor. Typically, there is little or no change in contractor performance during such a short span of time, particularly at the end of a contract, to warrant an additional interim evaluation. The final evaluation will include this period of contract performance.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1842 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1842

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR part 1842 is amended as follows:

1. The authority citation for 48 CFR part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Revise section 1842.1502 to read as follows:

1842.1502 Policy.

(a) Within 60 days of every anniversary of the award of a contract having a term exceeding one year, contracting officers must conduct interim evaluations of performance on contracts subject to FAR Subpart 42.15 and this subpart. Interim evaluations are not required on contracts whose award anniversary is within 3 months of the end of the contract period of performance. The final evaluation will include an evaluation of the period between the last interim evaluation and the end of the contract period of performance. Interim performance evaluations are optional for SBIR/STTR Phase II contracts. A final evaluation summarizing all performance must be conducted on all contracts.

[FR Doc. 02–16881 Filed 7–3–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 660

[Docket No. 011231309–2090–03; I.D. 062702C]

Fisheries off West Coast States and in

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented

where darkblotched rockfish are found. This leads to an increased catch of darkblotched rockfish when Dover sole and petrale sole are targeted during this time. In order to allow the darkblotched rockfish stock to rebuild, inseason adjustments for target species that co-occur with darkblotched rockfish are necessary to minimize both the catch of darkblotched rockfish.

Management measures in 2002, which were intended to keep the darkblotched

fisheries in the Monterey area. Because of this new information, significant landings of darkblotched rockfish were projected south of 40°10′ N. lat. during the first six months of 2002. Therefore, NMFS promulgated measures to reduce darkblotched rockfish landings on May 1, 2002, and this approach reduced darkblotched rockfish landings south of 40°10′ N. lat. NMFS and the Pacific Council manage the coastwide groundfish fisheries to minimize

bottom trawl fisheries to continue through August.

Limited Entry Trawl and Limited Entry Fixed Gear Limits for Pacific Ocean Perch (POP) North of 40°10′ N. lat.

Much like darkblotched rockfish, POP are found in waters along the edge of the continental shelf, as well as in the waters of the upper continental slope. Because darkblotched rockfish and POP are both found along the shelf and

including area restrictions, must be considered in a two-meeting process before implementation. New types of management measures are usually introduced in the two-meeting process used to develop annual specifications and management measures.

When reviewing 2002 landings data and historical survey data for darkblotched rockfish, the Pacific Council found that deepwater fisheries where the incidental take of

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 660

[Docket No. 011231309–2090–03; I.D. 062702C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments and Closures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason trip limit adjustments and closures; request for comments.

SUMMARY: NMFS announces changes in the following trip limits for the Pacific Coast groundfish fisheries: limited entry groundfish trawl gear fisheries north of 40°10′ N. lat. and limited entry fixed gear, open access, and recreational fisheries south of 40°10′ N. lat. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to prevent the fisheries from exceeding optimum yield (OY) and to protect the overfished species of darkblotched and bocaccio rockfish.

DATES: Changes to management measures are effective 0001 hours (local time) July 1, 2002, through the effective dates of the 2003 specifications and management measures for the Pacific Coast groundfish fishery, unless modified, superseded, or rescinded, by a subsequent rule which will be published in the **Federal Register**. Comments on this rule will be accepted through July 22, 2002

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213. This **Federal Register** document is available on the Government Printing Office's website at: *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Becky Renko (Northwest Region, NMFS) 206–526–6140.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the current fishing year (January 1–December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1–February 28, 2002 (67 FR 1540, January 11, 2002), and as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), then finalized effective March 1, 2002 (67 FR 10490, March 7, 2002). The final rule was subsequently amended at 67 FR 15338, April 1, 2002, at 67 FR 18117, April 15, 2002, at 67 FR 30604, May 7, 2002, and at 67 FR 40870, June 14, 2002.

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its June 18–21, 2002, meeting in Foster City, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments will be made as necessary to allow achievement of or avoid exceeding the 2002 OYs and allocations.

Management Measures North of 40°10′ N. lat.

Darkblotched rockfish, an overfished species, are typically encountered along the central Pacific Coast (Oregon and northern California)and occur at depths between 180 m and 360 m along the continental slope. Both adult and juvenile darkblotched rockfish are associated with mud and rock habitats. Adults move to deeper water as they increase in size and age; they are typically observed resting on mud, near cobble and boulders and do not often rise above the ocean floor.

Darkblotched rockfish are harvested by several sectors of the groundfish fishery and have experienced higher than expected landing during the first four months of 2002. Due to its overfished status, darkblotched rockfish is not managed as a targeted species in the 2002 Pacific Coast groundfish fishery. However, it is known to co-occur with several groundfish species that are directly targeted by the fishery. For example, Dover sole and petrale sole seasonally occupy areas and depths where darkblotched rockfish are found. This leads to an increased catch of darkblotched rockfish when Dover sole and petrale sole are targeted during this time. In order to allow the darkblotched rockfish stock to rebuild, inseason adjustments for target species that co-occur with darkblotched rockfish are necessary to minimize both the catch of darkblotched rockfish.

Management measures in 2002, which were intended to keep the darkblotched rockfish catch within its OY, include small cumulative trip limits of darkblotched rockfish that accommodate incidental catch but discourage targeting them. In addition, the 2002 management measures constrain northern DTS (Dover sole, thornyhead, sablefish) trawl fisheries during the November–December period to reduce the incidental catch of darkblotched rockfish. The management measures also constrain flatfish fisheries limits during the summer months when participation in the fishery is greatest and darkblotched rockfish are most likely to be encountered. Lower sablefish and Dover sole OYs are also expected to reduce the incidental take of darkblotched rockfish. On May 1, 2002, further action was taken by NMFS to reduce minor slope rockfish trip limits between 40°10′ N. lat. and 36° N. lat. for both the trawl and fixed gear limited entry fleets. This action was necessary as it reduced the catch of darkblotched rockfish while landings data were verified to determine if darkblotched rockfish were landed south of 40o10' N. lat during 2001.

For the 2002 specifications and management measures, NMFS introduced a new bycatch model for estimating rates that certain overfished species, including darkblotched rockfish, co-occur with healthier stocks that fishers specifically target. For the purpose of the bycatch model,"bycatch" is the term used to describe a species other than the target species, regardless of whether or not it was retained (landed, sold, or otherwise used) or discarded. Co-occurrence rates for darkblotched rockfish (the proportion of darkblotched rockfish in relation to the target species) used in the bycatch model were in part based on landings data reported on fish tickets. Upon re-evaluation of fish ticket data it was determined that the darkblotched rockfish landings from waters between 40°10′ N. lat. and 36° N. lat. (Monterey management area) were not incorporated into the initial bycatch model. As a result, catch projections for darkblotched rockfish based on the initial model were lower than what may have actually occurred in the target

fisheries in the Monterey area. Because of this new information, significant landings of darkblotched rockfish were projected south of 40°10′ N. lat. during the first six months of 2002. Therefore, NMFS promulgated measures to reduce darkblotched rockfish landings on May 1, 2002, and this approach reduced darkblotched rockfish landings south of 40°10′ N. lat. NMFS and the Pacific Council manage the coastwide groundfish fisheries to minimize opportunities for incidental darkblotched rockfish catch so as to not exceed the darkblotched rockfish OY, which is set at a level that is intended to rebuild the stock.

At the June Pacific Council meeting, the best available science indicated that landings of darkblotched rockfish in 2002 were greater than projected. Coastwide commercial landings through June 8, 2002 were between 73 mt and 98 mt which represents 56 percent to 75 percent of the darkblotched rockfish landed catch OY (not including catch in the at-sea whiting sector). As of June 8, 2002, approximately 30 mt were landed south of 40°10′ N. lat. Due to the magnitude of catches earlier in the year combined with projected darkblotched rockfish bycatch from the area north of 40°10′ N. lat., and landings and estimated discards from the area south of 40°10′ N. lat., the projected year-end catch of darkblotched rockfish, under the current trip limit schedule, would exceed the rebuilding OY of 168 mt by approximately 35–40 mt.

In order to prevent the commercial fleet from exceeding the darkblotched rockfish OY, the Pacific Council recommended the following management measures: a small footrope requirement, changes to trip limits, and area closures. These management measures are designed to limit the darkblotched rockfish catch to 160 mt, which is within the 2002 darkblotched rockfish OY of 168 mt.

Limited Entry Trawl Small Footrope Requirement North of 40°10′ N. lat.

Due to concern about the incidental catch of darkblotched rockfish in the limited entry trawl fishery, the Pacific Council recommended eliminating the large footrope bottom trawl option for the remainder of the year. Beginning July 1, all vessels using bottom trawl gear must use a small footrope bottom trawl in order to reduce the incidental harvest of darkblotched rockfish. This small footrope bottom trawl requirement is expected to discourage fishing effort in the rocky habitat which darkblotched rockfish are believed to inhabit, thereby, reducing the interception of darkblotched rockfish, while allowing bottom trawl fisheries to continue through August.

Limited Entry Trawl and Limited Entry Fixed Gear Limits for Pacific Ocean Perch (POP) North of 40°10′ N. lat.

Much like darkblotched rockfish, POP are found in waters along the edge of the continental shelf, as well as in the waters of the upper continental slope. Because darkblotched rockfish and POP are both found along the shelf and associated with the ocean floor, darkblotched rockfish are taken as bycatch in the slope rockfish fishery along with POP.

In an effort to discourage targeting on POP but to allow for the incidental catch of POP in other slope fisheries, the Pacific Council recommended reducing trip limits for POP. Beginning July 1, the limited entry trawl and limited entry fixed gear limits for POP north of 40°10′ N. lat. will be reduced from 4,000 lb (1,814 kg) per month to 4,000 lb (1,814 kg) per 2 months. This reduction in POP trip limits is part of the Pacific Council's efforts to reduce the harvest of deepwater species so as to decrease the likelihood that darkblotched rockfish will be taken in fisheries targeting other deepwater species.

Limited Entry Bottom Trawl Closure North of 40°10′ N. lat.

Implementing a small footrope requirement in the limited entry trawl fishery and reducing the cumulative limit of POP, as described above, is expected to aid in reducing the interception of darkblotched rockfish. However, these measures alone may not be adequate to keep the 2002 darkblotched rockfish catch within its 168 mt OY, as the projected catch of darkblotched rockfish is still expected to be approximately 160 mt by the end of August. As a further precautionary measure to keep darkblotched rockfish within the 2002 OY and allow rebuilding of the stock, beginning September 1, it will be prohibited to prosecute any groundfish fishery north of 40o10' N. lat. with bottom trawl gear (small or large footrope).

The Pacific Council held a prolonged debate weighing the need to close fisheries in which darkblotched rockfish are taken incidentally versus the economic difficulties that would be felt in fishing communities that depend on groundfish income. In particular, the Pacific Council and the public were frustrated that the current management measure process does not allow fisheries for healthy stocks to occur in areas where darkblotched rockfish are not commonly found. Under the FMP, new groundfish management measures, including area restrictions, must be considered in a two-meeting process before implementation. New types of management measures are usually introduced in the two-meeting process used to develop annual specifications and management measures.

When reviewing 2002 landings data and historical survey data for darkblotched rockfish, the Pacific Council found that deepwater fisheries where the incidental take of darkblotched rockfish occurs tend to be prosecuted inshore of the 200 fathom depth contour. DTS species tend to be available to vessels operating offshore of 200 fathoms, particularly during the fall and winter months. Because of the FMP's process requirements for introducing new management measures, the Pacific Council understood that they could not craft new depth-based fishery restrictions through the usual specifications and management measures for a July 1 implementation. Using the two-meeting process, depth-based restrictions allowing the harvest of healthy stocks offshore of areas where darkblotched rockfish typically occur would likely not be in place until October 1, 2002, following the June and September Pacific Council meetings. To expedite fisheries access to deepwater stocks, the Pacific Council has requested NOAA consider depth-based restrictions beginning September 1, 2002, via an emergency rule. If NOAA determines that an emergency rule is necessary and appropriate, NMFS will announce the action in the **Federal Register**.

Management Measures South of 40°10′ N. lat.

Another overfished rockfish species, with higher than projected landings for the first half of 2002, is bocaccio rockfish. Bocaccio are widespread throughout central and southern California. Larvae can be found far from shore in the upper 10 m of the water column, juveniles often occur in shallow, nearshore waters, and adults move into deeper water (depths ranging from 50 - 300 m) along the continental shelf as they age. Because bocaccio are found in a broad range of depths and habitats throughout their life cycle, bocaccio are frequently intercepted in Pacific Coast groundfish fisheries.

In order to allow the bocaccio stock to rebuild, precautionary management measures have been in place for bocaccio and those species that co-occur with bocaccio. In 2002, bottom trawl opportunities for shelf rockfish have been extremely limited, no landings of bocaccio rockfish are allowed with large footrope trawl gear, and small amounts of bocaccio, an unavoidable bycatch,

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taken with small footrope or midwater trawl gear were allowed to be landed in fisheries for healthy stocks. The chilipepper rockfish OY continues to be reduced to limit the incidental take of bocaccio. Additionally, California hook-and-line commercial fisheries have been closed during the same periods and in the same areas as the recreational fisheries and California maintained a rockfish bag limit of 10 fish, no more

Sablefish Minimum Size Requirements and Cumulative Limits for All Groundfish Fisheries South of 40°10′ N. lat.

In an effort to reduce fishing effort on the continental shelf where bocaccio are found and move vessels into deeper waters off the slope, the Pacific Council recommended reinstating the minimum 22 inch (56 cm) size requirement for sablefish taken with nontrawl gear and

land rockfish and lingcod with recreational gear outside of 20 fathom (36.9 m) south of 40°10′ N. lat. In keeping with these management measures, the state of California will implement similar regulations effective by July 1, 2002.

Limited Entry Trawl, Limited Entry Fixed Gear, and Open Access Limits for Minor Slope Rockfish and Splitnose Rockfish Between 40°10′ N. Lat. and 36° N. lat.

Beginning September 1, limited entry limits for minor slope rockfish south of 36° N. lat. will be reduced as follows: the trawl limit will be reduced from 50,000 lb (22,680 kg) per 2 months to 15,000 lb (816 kg) per 2 months and the fixed gear limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months. Beginning September 1, limited entry limits for splitnose rockfish south of 36° N. lat. will be reduced as follows: the

overfished species while allowing the harvest of healthy groundfish stocks. These depth restrictions are a new type of management measure and need to be implemented via emergency rule. Because of the required timeline for an emergency rule, depth restrictions are not expected to be implemented before September 1, 2002.

At the September 9–13, 2002, Pacific Council meeting in Portland, Oregon, additional groundfish landing data will

inches (56 cm) TL for whole fish, is 15.5 inches (39 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ: fisher should contact fishery enforcement officials in the state where

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taken with small footrope or midwater trawl gear were allowed to be landed in fisheries for healthy stocks. The chilipepper rockfish OY continues to be reduced to limit the incidental take of bocaccio. Additionally, California hook-and-line commercial fisheries have been closed during the same periods and in the same areas as the recreational fisheries and California maintained a rockfish bag limit of 10 fish, no more than 2 of which may be bocaccio rockfish.

As of June 8, 2002, the commercial landings of bocaccio rockfish were 21 mt, which represents 57 percent of the commercial harvest guideline. Although the commercial harvest is slightly higher than projected preseason, the estimated landings of bocaccio in the recreational fishery is of much greater concern. Recreational data estimates for the January - April period indicated that approximately 60 mt of bocaccio were taken. This estimated catch exceeds the 2002 recreational harvest guideline of 56 mt. By the end of June, the projected catch in the commercial and recreational fisheries combined may exceed the rebuilding OY of 100 mt and could approach or exceed the ABC of 122 mt. In order to allow the bocaccio stock to rebuild and prevent overfishing from occurring, the Pacific Council recommended that NMFS take the following actions to limit the harvest of bocaccio and co-occurring species.

Limited Entry Trawl and Exempted Open Access Trawl Limits for Groundfish (With the Exception of DTS, Minor Slope Rockfish, and Rex, Petrale, and English Sole Landed with DTS) South of 40°10′ N. lat.

Beginning July 1, the Pacific Council recommended that NMFS prohibit limited entry vessels from using trawl gear be prohibited south of 40°10′ N. lat. for all groundfish species except the deepwater DTS complex and minor slope rockfish.

In keeping with these measures, the amount of groundfish retention by vessels using exempted gear is also of concern. Typically only a few metric tons of bocaccio are taken with exempted gear. However, since the fleet is likely to harvest the bocaccio OY by the end of June, the Pacific Council recommended that NMFS prohibit the retention of groundfish in exempted trawl fisheries. Therefore, beginning July 1, it is prohibited to take and retain, possess, or land groundfish with exempted trawl gear south of 40°10′ N. lat.

Sablefish Minimum Size Requirements and Cumulative Limits for All Groundfish Fisheries South of 40°10′ N. lat.

In an effort to reduce fishing effort on the continental shelf where bocaccio are found and move vessels into deeper waters off the slope, the Pacific Council recommended reinstating the minimum 22 inch (56 cm) size requirement for sablefish taken with nontrawl gear and a reduced trip limit for sablefish under the 22 inch (56 cm) requirement taken with trawl gear. Larger sablefish tend to be found at greater depths, thus, prohibiting retention of small sablefish in the nontrawl fisheries and reducing the trip limit in the limited entry trawl fishery is expected to force vessels into deeper water when targeting sablefish. In the trawl fishery south of 40o10'N. lat., the currently scheduled cumulative sablefish limit of 3,000 lb (1,361 kg) per 2 months will remain in effect, with a per trip restriction of no more than 500 lb (227 kg) of sablefish smaller than 22 inches (56 cm). To encourage the non-trawl fisheries to also operate in deeper waters, currently scheduled limits will apply, but retention of sablefish smaller than 22 inches (56 cm) will be prohibited.

Limited Entry Fixed Gear, All Open Access Gears, and Recreational Limits for Groundfish Fisheries (With the Exception of Primary Sablefish and Slope Rockfish) South 40°10′ N. lat.

Because of the projected catch of bocaccio combined with bocaccio's depth distribution and widespread co-occurrence with other groundfish species, the catch of bocaccio by limited entry fixed gear and open access fisheries is of concern. Therefore, the Pacific Council recommended that, beginning July 1, outside of 20 fathoms (36.9 m) it will prohibited to take and retain, possess, or land all groundfish species (with the exception of sablefish and slope rockfish) with fixed gear south of 40°10′ N. lat. In addition, beginning July 1, inside of 20 fm (36.9 m) it will be prohibited to take and retain, possess, or land minor shelf rockfish, bocaccio, and chilipepper rockfish south of 40°10′ N. lat. These inshore closures for shelf rockfish species are needed to further reduce bocaccio catch.

Because the estimated amount of bocaccio catch in the recreational fishery has been so high during the first few months of 2002, the Pacific Council also recommended a closure outside of 20 fm (36.9 m) in the recreational fishery. Therefore, beginning July 1, it is prohibited to take and retain, possess, or land rockfish and lingcod with recreational gear outside of 20 fathom (36.9 m) south of 40°10′ N. lat. In keeping with these management measures, the state of California will implement similar regulations effective by July 1, 2002.

Limited Entry Trawl, Limited Entry Fixed Gear, and Open Access Limits for Minor Slope Rockfish and Splitnose Rockfish Between 40°10′ N. Lat. and 36° N. lat.

The best available information indicates that landings of minor slope rockfish by limited entry and open access fisheries has been approximately 17 percent of the harvest guideline. The minor slope rockfish fisheries will continue at their currently scheduled trip limits for the July–August cumulative period to allow access to healthy minor slope rockfish stocks during summer months. However, in keeping with other management measures to reduce the catch of bocaccio and to ensure that trip limit reductions are distributed among the groundfish fleet, the Pacific Council recommended a reduction in trip limits for minor slope rockfish starting September 1, 2002. Therefore, minor slope rockfish limits between 40°10′ N. lat. and 36° N. lat. will be as follows: the limited entry trawl limit will be reduced from 50,000 lb (22,680 kg) per 2 months to 1,800 lb (816 kg) per 2 months; the limited entry fixed gear limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 1,800 lb (816 kg) per 2 months; and the open access limit will be reduced from 10,000 lb (4,536 kg) per 2 months to 1,800 lb (816 kg) per 2 months.

2002 landings of splitnose rockfish during the first six months of 2002 have been approximately 29 mt or 7 percent of the landed catch OY. Because the Pacific Council is concerned about the economic impacts associated with the July 2002 inseason management measures, attempts to allow harvesting of healthy groundfish stocks are allowed when possible. Beginning September 1, retention of splitnose rockfish between 40°10′ N. lat. and 36° N. lat. will be restricted to 1,800 lb (816 kg) per 2 months for limited entry trawl, limited entry fixed gear, and open access.

Limited Entry Trawl and Limited Entry Fixed Gear Limits for Minor Slope Rockfish and Splitnose Rockfish South of 36° N. lat.

For reasons described above, cumulative limited entry trawl and limited entry fixed gear limits for minor slope and splitnose rockfish are being adjusted for September - December. Beginning September 1, limited entry limits for minor slope rockfish south of 36° N. lat. will be reduced as follows: the trawl limit will be reduced from 50,000 lb (22,680 kg) per 2 months to 15,000 lb (816 kg) per 2 months and the fixed gear limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months. Beginning September 1, limited entry limits for splitnose rockfish south of 36° N. lat. will be reduced as follows: the trawl limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months and the fixed gear limit will be reduced from 25,000 lb (11,340 kg) per 2 months to 15,000 lb (6,804 kg) per 2 months.

Limited Entry Trawl Limits for Rex Sole, Petrale, Sole, English Sole, Arrowtooth Flounder, and Other Flatfish South of 40°10′ N. lat.

To allow for retention of incidentally caught healthy flatfish stocks, the Pacific Council recommended an incidental catch allowance of rex sole, petrale sole, English sole, and arrowtooth flounder, beginning July 1, provided these fish are harvested and landed with the DTS complex. Therefore, beginning July 1, limited entry trawl flatfish limits for rex sole, petrale sole, English sole, and arrowtooth flounder, south of 40°10′ N. lat. will be 1,000 lb (454 kg) per trip if landed with DTS species. Flatfish landings must not exceed landing of DTS and flatfish other than the four species cannot be retained as of July 1, 2002.

As discussed previously, the Pacific Council recommended that depth restrictions be incorporated in the Pacific Council's suite of management options in an effort to minimize the economic impact of groundfish management measures on the Pacific Coast fishing industry. Depth restrictions would help shift fishing effort to areas and depths where overfished groundfish species are less likely to be encountered. This type of management measure should decrease the interception and landings of overfished species while allowing the harvest of healthy groundfish stocks. These depth restrictions are a new type of management measure and need to be implemented via emergency rule. Because of the required timeline for an emergency rule, depth restrictions are not expected to be implemented before September 1, 2002.

At the September 9–13, 2002, Pacific Council meeting in Portland, Oregon, additional groundfish landing data will be available. The projected catch of both darkblotched rockfish and bocaccio will be re-assessed at this time. Based on this updated information, groundfish management measures for the remainder of 2002 will be adjusted accordingly. Additionally, the Pacific Council's Groundfish Management Team (GMT) is scheduled to meet in early August. If the GMT projects that the darkblotched rockfish OY will be reached prior to the Pacific Council's September meeting, a recommendation will be made to NMFS that it should restrict the fishery to eliminate the catch of darkblotched rockfish.

NMFS Actions

For the reasons stated here, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2002 specifications and management measures (67 FR 10490 March 7, 2002, as amended at 67 FR 15338 April 1, 2002, 67 FR 18117 April 15, 2002, 67 FR 30604 May 1, 2002, 67 FR 40870 June 14, 2002) to read as follows:

1. On page 10511, in column 1, in section *IV.* under A. General Definitions and Provisions,, paragraph (d) is revised to read as follows:

* * * * *

(d) *Sablefish size and weight limit conversions.* The following conversions apply to both the limited entry and open access fisheries when size and trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size limit for headed sablefish, which corresponds to 22 inches (56 cm) TL for whole fish, is 15.5 inches (39 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ: fisher should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

* * * * *

2. On page 10513, in column 1, in section *IV.* under A. *General Definitions and Provisions*, paragraph (14(b)(iv) is revised to read as follows:

* * * * *

(iv) *More than one type of trawl gear on board.* The cumulative trip limits in Table 3 must not be exceeded. When fishing in areas where the use of a particular type of trawl gear [Example: large footrope gear] is prohibited, a fisher may not have more than one gear type on board. When fishing in areas where trawling is not restricted, a fisher may have more than one type of trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. [Example: If a vessel has large footrope gear on board, it cannot land yellowtail rockfish, even if the yellowtail rockfish is caught with a small footrope trawl. If a vessel has both small footrope trawl and midwater trawl gear on board, the landing is attributed to the most restrictive gear-specific limit, regardless of which gear type was used.

* * * * *

3. On page 10517, in section *IV*, under B. *Limited Entry Fishery*, at the end of paragraph (1), Tables 3 and 4 are revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

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Table 3. Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear

Other Limits and Requirements Apply – Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR **NORTH OF 40°10′ N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS **PROHIBITED.**						
	NOTE FOR **SOUTH OF 40°10′ N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS **CLOSED** EXCEPT FOR DTS COMPLEX, MINOR SLOPE ROCKFISH SPECIES AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
1	Minor slope rockfish						
2	North	1,800 lb/ 2 months				CLOSED[3]	
3	South						
4	40°10′ - 36° N. lat.	50,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
5	South of 36° N. lat.	50,000 lb/ 2 months				15,000 lb/ 2 months	
6	Splitnose - South						

Table 3. (CONTINUED) Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear

Other Limits and Requirements Apply – Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR **NORTH OF 40°10′ N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS **PROHIBITED.**						
	NOTE FOR **SOUTH OF 40°10′ N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS **CLOSED** EXCEPT FOR DTS COMPLEX, MINOR SLOPE ROCKFISH SPECIES AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
37	Minor shelf rockfish						
38	North	300 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[3]	
39	South	500 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[3]	
40	Canary rockfish						

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Table 3. Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS PROHIBITED.						
	NOTE FOR SOUTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS CLOSED EXCEPT FOR DTS COMPLEX, MINOR SLOPE ROCKFISH SPECIES AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
1	**Minor slope rockfish**	1,800 lb/ 2 months				CLOSED[7]	
2	North						
3	South						
4	40°10' - 38° N. lat.	50,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
5	South of 38° N. lat.	50,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 38° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
8	South of 38° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
9	**Pacific ocean perch - North**[8]	2,000 lb/ month		4,000 lb/ month		4,000 lb/ 2 months	
10	**Chilipepper - South**[9]						
11	mid-water trawl	25,000 lb/ 2 months				CLOSED[7]	
12	small footrope trawl	7,500 lb/ 2 months		4,000 lb/ 2 months			
13	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year					
14	**DTS complex - North**						
15	Sablefish	6,000 lb/ 2 months		3,500 lb/ 2 months	3,000 lb/ 2 months	CLOSED[7]	
16	Longspine thornyhead	10,000 lb/ 2 months		6,000 lb/ 2 months	1,500 lb/ 2 months		
17	Shortspine thornyhead	2,600 lb/ 2 months		2,000 lb/ 2 months	1,500 lb/ 2 months		
18	Dover sole	30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months			
19	**DTS complex - South**	4,500 lb/ 2 months					
20	Sablefish[10]	10,000 lb/ 2 months					
21	Longspine thornyhead	2,600 lb/ 2 months					
22	Shortspine thornyhead	22,000 lb/ 2 months					
23	Dover sole						
24	**Flatfish - North**						
25	All other flatfish[3]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	SMALL FOOTROPE REQUIRED: 40,000 lb/ month, no more than 15,000 of which may be petrale sole	CLOSED[7]	
		SMALL FOOTROPE:		SMALL FOOTROPE:		CLOSED[7]	
		15,000 lb/ month	35,000 lb/ month	30,000 lb/ month, no more than 10,000 of which may be petrale sole			
26	Petrale sole	Not limited, large footrope allowed					
27	Rex sole						
28	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited		CLOSED[7]	
		SMALL FOOTROPE:					
		30,000 lb/ trip					
29	**Flatfish - South**						
30	All other flatfish 3/	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	CLOSED[7] With the exception of 1,000 lb/ trip of rex sole, petrale sole, English sole, and arrowtooth flounder combined when landed with DTS complex. The amount of per trip flatfish landings must not exceed the amount of DTS landed. Landings can be made with large footrope gear.		
		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs.		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole.			
31	Petrale sole	Not limited, large footrope allowed					
32	Rex sole						
33	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited			
		SMALL FOOTROPE:					
		30,000 lb/ trip					
35	**Whiting**[4]	20,000 lb/ trip		Primary Season		CLOSED[7]	

Table 3. (CONTINUED) Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS PROHIBITED.						
	NOTE FOR SOUTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS CLOSED EXCEPT FOR DTS COMPLEX, MINOR SLOPE ROCKFISH SPECIES AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
37	**Minor shelf rockfish**						
38	North	300 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[7]	
39	South	500 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[7]	
40	**Canary rockfish**						
	North	200 lb/ 2 months		500 lb/ 2months		500 lb/ 2 months	CLOSED[7]
	South					CLOSED[7]	
	Widow rockfish						
41	North						
42	mid-water trawl	CLOSED[7]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month			CLOSED[7]
43	small footrope trawl	1,000 lb/ month					CLOSED[7]
	South						
	mid-water trawl	CLOSED[7]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[7]	
	small footrope trawl	1,000 lb/ month				CLOSED[7]	
44	**Yellowtail - North**[9]						
45	mid-water trawl	CLOSED[7]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			CLOSED[7]
46	small footrope trawl	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb/ 2 months.				CLOSED[7]	
47	**Bocaccio - South**[9]	600 lb/ 2 months		1,000 lb/ 2 months		CLOSED[7]	
48	**Cowcod**	CLOSED[7]					
49	**Minor nearshore rockfish**						
50	North	300 lb/ month				CLOSED[7]	
51	South	600 lb/ month				CLOSED[7]	
	Lingcod[8]						
	North	600 lb/ 2 months		1,000 lb/ 2 months		CLOSED[7]	
	South			1,000 lb/ 2 months		CLOSED[7]	
52	**Other Fish**[10]	Not limited			Grenadier retention permitted	CLOSED[7]	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained above. See IV.A.(14).
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. In areas where trawl gear is restricted, only one type of trawl gear is allowed on board at any one time. See above.
6/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length. No more than 500 lb of undersized sablefish may be landed per trip.
10/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. Trip Limits[1] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT FOR SABLEFISH, SHORTSPINE THORNYHEAD, AND SLOPE ROCKFISH. SEE FOOTNOTE 8/.						
1	**Minor slope rockfish**	1,000 lb/ month		5,000 lb/ 2 months		2,000 lb/ 2 months	
2	North						
3	South						
4	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
9	**Pacific ocean perch - North**[7]	3,100 lb/ month		4,000 lb/ month		4,000 lb/ 2 months	2,000 lb/ month
10	**Chilipepper - South**[8]	25,000 lb/ 2 months				CLOSED[6]	
11	**DTS complex - North**						
12	Sablefish	6,000 lb/ 2 months		3,500 lb/ 2 months	3,000 lb/ 2 months	CLOSED[6]	
13	Longspine thornyhead	10,000 lb/ 2 months		6,000 lb/ 2 months	1,500 lb/ 2 months		
14	Shortspine thornyhead	2,600 lb/ 2 months		2,000 lb/ 2 months	1,500 lb/ 2 months		
15	Dover sole	30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months			
16	**DTS complex - South**	4,500 lb/ 2 months					
17	Sablefish[9]	10,000 lb/ 2 months					
18	Longspine thornyhead	2,600 lb/ 2 months					
19	Shortspine thornyhead	22,000 lb/ 2 months					
20	Dover sole						
21	**Flatfish - North**						
22	All other flatfish[2]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	SMALL FOOTROPE REQUIRED: 40,000 lb/ month, no more than 15,000 of which may be petrale sole	CLOSED[6]	
		SMALL FOOTROPE:		SMALL FOOTROPE:		CLOSED[6]	
		15,000 lb/ month	35,000 lb/ month	30,000 lb/ month, no more than 10,000 of which may be petrale sole			
23	Petrale sole	Not limited, large footrope allowed					
24	Rex sole						
25	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited		CLOSED[6]	
		SMALL FOOTROPE:					
		30,000 lb/ trip					
26	**Flatfish - South**						
27	All other flatfish 2/	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	CLOSED[6] With the exception of 1,000 lb/ trip of rex sole, petrale sole, English sole, and arrowtooth flounder combined when landed with DTS complex. The amount of per trip flatfish landings must not exceed the amount of DTS landed. Landings can be made with large footrope gear.		
		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs.		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole.			
28	Petrale sole	Not limited, large footrope allowed					
29	Rex sole						
30	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited			
		SMALL FOOTROPE:					
		30,000 lb/ trip					
32	**Whiting**[3]	20,000 lb/ trip		Primary Season		CLOSED[6]	

Table 5. Trip Limits[1] for Open Access Gears
Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT SABLEFISH AND MINOR SLOPE ROCKFISH. SEE FOOTNOTE 8/.						
	NOTE: EFFECTIVE JULY 1, 2002, THERE IS NO RETENTION OF GROUNDFISH WITH EXEMPTED TRAWL GEAR.						
1	**Minor slope rockfish**						
2	North	Per trip, no more than 25% of weight of the sablefish landed					
3	South						
4	40°10' - 36° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	10,000 lb/ 2 months					
6	**Splitnose - South**	200 lb/ month					
7	**Pacific ocean perch - North**[6]	100 lb/ month					
8	**Chilipepper - South**[7]	2,000 lb/ 2 months				CLOSED[5]	
9	**DTS complex - North**						
10	Sablefish	1,000 lb/ month					
11	Longspine thornyhead	2,000 lb/ 2 months					
12	Shortspine thornyhead	2,000 lb/ 2 months					
13	Dover sole	2,000 lb/ 2 months					
14	**DTS complex - South**	1,000 lb/ month					
15	Sablefish[8]	2,000 lb/ 2 months					
16	Longspine thornyhead	2,000 lb/ 2 months					
17	Shortspine thornyhead	2,000 lb/ 2 months					
18	Dover sole	2,000 lb/ 2 months					
19	**Flatfish - North**	2,000 lb/ 2 months					
20	**Flatfish - South**	2,000 lb/ 2 months					
21	**Whiting**[3]	20,000 lb/ trip		Primary Season		CLOSED[5]	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.
4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
7/ The minimum size requirement for sablefish is 22 inches (56 cm) total length. No more than 500 lb of undersized sablefish may be landed per trip.
8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. Trip Limits[1] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	"NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT FOR SABLEFISH, SHORTSPINE THORNYHEAD, AND SLOPE ROCKFISH. SEE FOOTNOTE 8/.						
1	Minor slope rockfish	1,000 lb/ month		5,000 lb/ 2 months			2,000 lb/ 2 months
2	North						
3	South						
4	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
6	Splitnose - South						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb / 2 months	
9	Pacific ocean perch - North[2]	2,000 lb/ month		4,000 lb/ month	4,000 lb/ 2 months		2,000 lb/ month
10	Sablefish						
11	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
12	South of 36° N. lat.[2]	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
13	Longspine thornyhead	8,000 lb/ 2 months				9,000 lb/ 2 months[3]	
14	Shortspine thornyhead	2,000 lb/ 2 months				North of 36° N. lat: 2,000 lb/ 2 months South of 36° N. lat. CLOSED[4]	
15	Dover sole	5,000 lb/ month (all flatfish)				5,000 lb/ month (all flatfish)[3]	
16	Arrowtooth flounder						
17	Petrale sole						
18	Rex sole						
19	All other flatfish[2]	20,000 lb/ trip					
20	Whiting[3]	250 lb/ month					
21	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[3]						
22	North						
23	South						
24	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[4]	CLOSED[4]		
25	South of 34°27' N. lat.	CLOSED[4]	1,000 lb/ month				
26	Canary rockfish	CLOSED[4]					
27	Yelloweye rockfish	CLOSED[4]					
28	Cowcod	CLOSED[4]					
29	Bocaccio - South[5]						
30	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4]		CLOSED[4]		
31	South of 34°27' N. lat.	CLOSED[4]	200 lb/ month				
32	Chilipepper - South[5]						
33	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[4]		CLOSED[4]		
34	South of 34°27' N. lat.	CLOSED[4]	2,500 lb/ month				
35	Minor nearshore rockfish						
36	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish[3]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[3]			
37	South						
38	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	CLOSED[4]	Shoreward of 20 fm depth, 1,600 lb/ 2 months, otherwise CLOSED[4]	1,600 lb/ 2 months[3]		CLOSED[4]
39	South of 34°27' N. lat.	CLOSED[4]	2,000 lb/ 2 months		2,000 lb/ 2 months[3]		
40	Lingcod[6]						
41	North	CLOSED[4]		400 lb/ month			CLOSED[4]
42	South						
43	40°10' - 34°27' N. lat.	CLOSED[4]		Shoreward of 20 fm depth, 400 lb/ month, otherwise CLOSED[4]	400 lb/ month[3]		CLOSED[4]
44	South of 34°27' N. lat.			400 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies.
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
5/ Yelloweye rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.
9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

4. On page 10519 in section *IV.*, under *C. Trip Limits in the Open Access Fishery*, at the end after paragraph (1), Table 5 is revised to read as follows:

IV. NMFS Actions

C. Trip Limits in the Open Access Fishery

(1) * * *

Table 5. Trip Limits[1] for Open Access Gears
Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	"NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT SABLEFISH AND MINOR SLOPE ROCKFISH. SEE FOOTNOTE 8/. ** NOTE: EFFECTIVE JULY 1, 2002, THERE IS NO RETENTION OF GROUNDFISH WITH EXEMPTED TRAWL GEAR.						
1	Minor slope rockfish	Per trip, no more than 25% of weight of the sablefish landed					
2	North						
3	South						
4	40°10' - 36° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	10,000 lb/ 2 months					
6	Splitnose - South	200 lb/ month					
7	Pacific ocean perch - North[2]	100 lb/ month					
8	Sablefish						
9	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
10	South of 36° N. lat.[2]	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
11	Thornyheads						
12	North of 34°27' N. lat.	CLOSED[3]					
13	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months				50 lb/ day, no more than 2,000 lb/ 2 months[3]	
14	Dover sole	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs				3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs[3]	
15	Arrowtooth flounder						
16	Petrale sole						
17	Rex sole						
18	All other flatfish[2]						
19	Whiting	300 lb/ month					
20	Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[3]						
21	North	200 lb/ month					
22	South						
23	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[3]	CLOSED[3]		
24	South of 34°27' N. lat.	CLOSED[3]	500 lb/ month				
25	Canary rockfish	CLOSED[3]					
26	Yelloweye rockfish	CLOSED[3]					
27	Cowcod	CLOSED[3]					
28	Bocaccio - South[4]						
29	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3]		CLOSED[3]		
30	South of 34°27' N. lat.	CLOSED[3]	200 lb/ month				
31	Chilipepper - South[4]						
32	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[3]		CLOSED[3]		
33	South of 34°27' N. lat.	CLOSED[3]	2,500 lb/ month				
34	Minor nearshore rockfish						
35	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[3]			
36	South						
37	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	CLOSED[3]	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED[3]	1,200 lb/ 2 months[3]		CLOSED[3]
38	South of 34°27' N. lat.	CLOSED[3]	1,200 lb/ 2 months				
39	Lingcod[5]						
40	North	CLOSED[3]		300 lb/ month			CLOSED[3]
41	South						
42	40°10' - 34°27' N. lat.	CLOSED[3]		Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED[3]	300 lb/ month[3]		CLOSED[3]
43	South of 34°27' N. lat.			300 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40o10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.
3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
4/ Yelloweye rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
6/ The size limit for lingcod is 24 inches (61 cm) total length.
7/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.
8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510-22-C

5. On page 10521, in section *IV.*, under *C. Trip Limits in the Open Access Fishery*, paragraph (2)(a) is revised to read as follows:

* * * * *

(i) (a) *Trip limits.* Beginning July 1, it is prohibited to take and retain, possess, or land any groundfish species with exempted trawl gear south of 40°10′ N. lat. The trip limit is 300 lb (136 kg) of groundfish per fishing trip north of

and yelloweye rockfish retention is prohibited. Recreational fishing for cowcod is prohibited all year in all areas.

(iii) *Bag limits. boat limits, hook limits.* In times and areas when the recreational season for rockfish is open, there is a 2–hook limit per fishing line, and the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, no more than 1 may be canary

NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the cumulative trip limit period for the

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final

Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title.

located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a

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5. On page 10521, in section *IV.*, under *C. Trip Limits in the Open Access Fishery*, paragraph (2)(a) is revised to read as follows:

* * * * *

(i) (a) *Trip limits.* Beginning July 1, it is prohibited to take and retain, possess, or land any groundfish species with exempted trawl gear south of 40°10′ N. lat. The trip limit is 300 lb (136 kg) of groundfish per fishing trip north of 40°10′ N. lat. North of 40°10′ N. lat, limits in Table 5 also apply and are counted toward the 300 lb (136 kg) groundfish limit. In any landing by a vessel engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (*Squalas acanthias*) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb (136 kg) per trip overall groundfish limit. The daily trip limits for sablefish north of 40°10′ N. lat. may not be multiplied by the number of days of the fishing trip. The closures listed in table 5 also apply.

* * * * *

6. On page 10521, in column 3, in Section *IV.*, under *D. Recreational Fishery*, paragraph (1)(9)(ii) is revised and on page 10522, in columns 1 and 2, under *D. Recreational Fishery*, paragraph (1)(a)(iii) is revised and paragraph (1)(b)(ii) is revised to read as follows:

* * * * *

(ii) *Seasons.* North of 40°10′ N. lat., recreational fishing for rockfish is open from January 1 through December 31. South of 40°10′ N. lat. and north of Point Conception (34° 27′ N. lat.), recreational fishing for rockfish is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational rockfish fishing from May 1 through October 31, except that fishing for rockfish is permitted inside the 20 fm (37 m) depth contour, subject to the bag limits in paragraph (iii) of this section, except that bocaccio, canary rockfish and yelloweye rockfish retention is prohibited. South of Point Conception (34°27′ N. lat.), recreational fishing for rockfish is closed from January 1 through February 28 and from November 1 through December 31. This area is also closed to recreational rockfish fishing from July 1 through October 31, except that fishing for rockfish is permitted inside the 20 fm (37 m) depth contour, subject to bag limits in paragraph (iii) of this section, except that bocaccio, canary rockfish and yelloweye rockfish retention is prohibited. Recreational fishing for cowcod is prohibited all year in all areas.

(iii) *Bag limits. boat limits, hook limits.* In times and areas when the recreational season for rockfish is open, there is a 2–hook limit per fishing line, and the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, no more than 1 may be canary rockfish, and no more than 1 may be yelloweye rockfish. No more than 2 yelloweye rockfish may be retained per vessel. Cowcod may not be retained. Bocaccio, canary rockfish, and yelloweye rockfish may not be retained, and no more than 2 shelf rockfish may be retained, in the area between 40°10′ N. lat. and Point Conception (34°27′ N. lat.) from May 1 through June 30, or in the area south of 40°10′ N. lat. from July 1 through October 31. (Note: California scorpionfish, are subject to California's 10 fish bag limit per species, but are not counted toward the 10 rockfish bag limit.) Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(ii) *Seasons.* North of 40°10′ N. lat., recreational fishing for lingcod is open from January 1 through December 31. South of 40°10′ N. lat. and north of Point Conception (34°27′ N. lat.), recreational fishing for lingcod is closed from March 1 through April 30, and from November 1 through December 31. This area is also closed to recreational lingcod fishing from May 1 through October 31, except that fishing for lingcod is permitted inside the 20 fm (36.9 m) depth contour, subject to the bag limits in paragraph (iii) of this section. South of Point Conception (34° 27′ N. lat.), recreational fishing for lingcod is closed from January 1 through February 28 and from November 1 through December 31. This area is also closed to recreational lingcod fishing from May 1 through October 31, except that fishing for lingcod is permitted inside the 20 fm (36.9 m) depth contour, subject to the bag limits in paragraph (iii) of this section.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the cumulative trip limit period for the Pacific Coast groundfish fishery begins July 1, 2002, and affording prior notice and opportunity for public comment would impede the agency's function of managing fisheries to remain within the OY. Delaying implementation of these closures and trip limit reductions past July 1, 2002, may cause the catch of darkblotched rockfish to exceed its OY and may cause the catch of bocaccio rockfish to further exceed its OY and approach or exceed its ABC. Most of the trip limits adjustments in this document are reductions from the status quo. Decreases to trip limits and closures must be implemented in a timely manner to protect overfished and depleted groundfish species and to prevent the harvest of healthy stocks from exceeding the OY for 2002. Because the Pacific Coast groundfish fishery is managed by trip limits, most of which are based on a 2–month cumulative period (January–February, March–April, May–June, July–August, September–October, November–December), these actions should be implemented by the beginning of the next cumulative trip limit period (July 1, 2002). Delaying implementation of these closures and trip limit changes would allow fishers to harvest the higher trip limits that were previously scheduled for the July-August cumulative period. Allowing fishers to continue harvesting these higher trip limits or harvesting in an open fishery after the start of the cumulative trip limit period may cause the fisheries to exceed OYs for protected rockfish species. For these reasons, good cause also exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 300.63(a)(3) and 660.323(b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773–773k; 180i *et seq.*

Dated: June 28, 2002.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16811 Filed 7–1–02; 10:17 am]

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Proposed Rules

Federal Register
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–04]

Indian Housing Block Grant Allocation Formula: Second Notice of Intent To Establish a Negotiated Rulemaking Committee; Second Request for Nominations; Clarification of Selection Criteria; and Announcement of Nominees

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Second notice of intent to establish a negotiated rulemaking committee; request for comments.

SUMMARY: HUD again announces its intent to establish a negotiated rulemaking committee for the purpose of negotiating a proposed rule that would revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. HUD first published a notice of intent to establish a negotiated rulemaking committee, but due to the events of September 11, 2001, HUD was not able to act on this notice within the timeframes originally intended, and is therefore publishing a second notice.

This notice therefore: Again advises the public of the establishment of the committee; provides the public with information regarding the committee; again solicits nominations for selection to the committee; explains the nomination procedures and criteria that will be used to select members of the committee; announces the names of those who successfully completed applications under the original notice; and announces the tentative dates for the first meeting of the committee.

DATES: *Comment Due Date:* August 5, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding the Committee and its proposed members to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 401–7914 (this number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1998 (63 FR 12349), HUD published its final rule implementing the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized the system of Federal housing assistance to Native Americans by eliminating several separate HUD programs of assistance and replacing them with a single Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, NAHASDA provides Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. As required by NAHASDA, HUD developed the March 12, 1998 final rule with active tribal participation and used the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The March 12, 1998, final rule created a new 24 CFR part 1000 containing the regulations for the IHBG Program.

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with statutory and regulatory requirements, the grant is made. In Federal fiscal year 2001, HUD allocated approximately $643.4 million to Indian tribes.

Section 1000.306 of the IHBG Program regulations provides that the allocation formula shall be reviewed within five years after issuance. This 5-year period does not close until March 2003. However, the recently enacted Omnibus Indian Advancement Act (Pub. L. 105–568, approved December 27, 2000) (Omnibus Act) makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to revisit the IHBG formula and to determine whether any changes, in addition to those mandated by the Omnibus Act, should be made to 24 CFR part 1000, subpart D.

The Omnibus Act made two statutory changes concerning allocations under the IHBG formula. First, section 1003(g) of the Omnibus Act amends section 302(d)(1) of NAHASDA to address the allocation of funds for operation and modernization of housing units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to tribes with an Indian housing authority that owns or operates fewer than 250 units. Further, section 1003(k)(3) of the Omnibus Act amends section 502(a) of NAHASDA to provide that any housing that was subject to a terminated contract for tenant-based assistance under the 1937 Act shall be treated as a dwelling unit for purposes of section 302(b)(1) of NAHASDA (which establishes the factors for determination of need under the IHBG formula).

II. Negotiated Rulemaking

HUD intends to establish a negotiated rulemaking committee for the purpose of reviewing HUD's regulations for the IHBG formula (24 CFR part 1000, subpart D), and negotiating recommendations for a possible proposed rule modifying the formula. The committee membership will consist of elected officers of tribal governments (or authorized designees of those tribal representation of Indian tribes. NAHASDA acknowledges the government-to-government relationship that exists between the Federal Government and federally-recognized Indian tribes. In furtherance of this fundamental principle, membership on the committee shall be limited to elected officers of tribal governments (or authorized designees of those tribal governments). After receiving comments

Listed below are the names of the nominees with complete applications. They represent the first round of successful candidates. Under this notice, HUD is also announcing that, in the Department's opinion, the interests represented by successful candidates do not constitute sufficient geographic distribution or diversity. Therefore, the Department is soliciting additional applications for a second and final nomination process. HUD will review

meets other requirements and provides evidence that they are authorized to represent the interests of the tribe or tribes which the person purports to represent. The phrase "or other relevant experience" has been added to clarify the intent of this criterion.

HUD invites interested persons and organizations to submit nominations for members of this committee. HUD will review the nominations submitted for committee membership to ensure that

organization, or other relevant experience;

- Selection of the nominee will help to ensure the committee contains an appropriate balance of representatives from small, medium and large Indian tribal governments;
- Selection of the nominee will ensure the geographic diversity of the committee membership; and
- The nominee has demonstrated ability to analyze and extrapolate

Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, approved March 22, 1995), FACA is not applicable to consultations between the Federal government and elected officers of Indian tribal governments (or their designated employees with authority to act on their behalf).

The Office of Management and Budget (OMB) issued guidelines implementing section 204(b). The OMB guidelines interpret the exemption broadly to

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II. Negotiated Rulemaking

HUD intends to establish a negotiated rulemaking committee for the purpose of reviewing HUD's regulations for the IHBG formula (24 CFR part 1000, subpart D), and negotiating recommendations for a possible proposed rule modifying the formula. The committee membership will consist of elected officers of tribal governments (or authorized designees of those tribal governments) with a definable stake in the outcome of a proposed rule. The committee would be established, and conduct its work, in accordance with the procedures of the Negotiated Rulemaking Act of 1990.

The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule to bring together representatives of affected interests for face-to-face negotiations. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems. The establishment of the negotiated rulemaking committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the distribution of funds under the IHBG formula.

The use of negotiated rulemaking procedures in this matter is consistent with the statutory goal of NAHASDA to respect the rights of Indian self-determination and tribal self-governance. Negotiated rulemaking also conforms to the consultation requirements of Executive Order 13175, entitled *"Consultation and Coordination with Indian Tribal Governments,"* issued on November 6, 2000 (the Order was published in the **Federal Register** on November 9, 2000 at 65 FR 67249). Executive Order 13175 requires that Federal agencies establish regular and meaningful collaboration with Indian tribal officials in the development of Federal policies that have tribal implications.

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a notice in the **Federal Register** announcing its intent to establish the committee, provide certain information regarding the formation of the committee, and solicit nominations for selection to the committee. The purpose of this notice is to implement the requirements of section 564.

III. Committee Membership

HUD's goal is to develop a committee whose membership reflects a balanced representation of Indian tribes. NAHASDA acknowledges the government-to-government relationship that exists between the Federal Government and federally-recognized Indian tribes. In furtherance of this fundamental principle, membership on the committee shall be limited to elected officers of tribal governments (or authorized designees of those tribal governments). After receiving comments that the size of the committee should be increased, HUD has determined that a total of 24 tribal representatives will fairly represent the wide range of diverse interests needed. Two HUD representatives will represent the interests of the Federal Government. HUD will pay travel and per diem costs on an as-needed basis.

Comments were received in response to the original notice stating that the definition of "small, medium and large tribe" was unclear. The Department determined that it was unnecessary to strictly define these terms in the original notice, as most tribes can calculate for themselves where their interests lie within these categories. That determination remains the case. In general, the Department will use guidelines that consider tribes with under 250 affordable housing units in management as small, those with between 250 and 500 units as medium, and those with over 500 units in management as large.

In response to the original notice on this subject published on July 16, 2001 (66 FR 37098), HUD received a total of 44 nominations to the committee. Approximately one-half of the nominees provided complete applications. The Department wrote to all nominees in November, 2001, informing those with complete applications that they would be considered for membership on the committee unless HUD was informed by them that they were no longer interested, and requesting those with incomplete applications to provide the missing information identified in the letter within 30 days. Due to mail service delays caused by events beyond the control of either the Department or the nominees, replies from some nominees have taken longer than 60 days to be received. HUD will be extremely flexible in accepting information from these nominees. To date, approximately one-half of those with missing information have replied to the letters. The Department will continue to accept mail replies containing this information as it arrives, or until the deadline for submission of the second round of applications, whichever is later.

Listed below are the names of the nominees with complete applications. They represent the first round of successful candidates. Under this notice, HUD is also announcing that, in the Department's opinion, the interests represented by successful candidates do not constitute sufficient geographic distribution or diversity. Therefore, the Department is soliciting additional applications for a second and final nomination process. HUD will review all applications received under criteria identical to the original notice, and again afford those with incomplete or otherwise deficient applications the opportunity to provide the missing or incomplete information. HUD will notify those nominees by letter. After the deadline has passed for submission of missing or incomplete information, the Department will select participants from a consolidated list of both the original and second-round nominees. No distinctions will be made between original and second-round nominees when final selections are made.

First-round nominees whose names are not listed below may reapply under this notice and will be given equal consideration to that given to other nominees. No additional opportunities to apply for participation on the committee will occur.

The successful nominees are: Sabrina Jacobs, Bruce LaPointe, Grace Bunner, Glenn Edwards, Russell Sossamon, Robert Carlile, Jefferson Keel, Marvin Jones, Robert Gauthier, Wayne Ducheneaux, Miles McAllister, Gillard White, Jack Sawyers, Darlene Tooley, Michael Reed, Phil Bush, Dennis Jose, Judith Marasco, Larry Coyle, Tim King, Herb Johns, Dale Jones, Virginia Brings Yellow, Elena Bassett, David Frey, Don Kashevaroff, Blake Kazama, Delbert Rexford, Carol Gore, Marty Shuravloff, Myron Naneg.

Section IV of this notice establishes criteria for nominating individuals with the requisite experience and expertise, representing a wide range of interests (including geographically diverse small, medium and large tribes) that are willing and able to work within a consensus framework, on determining the need to revise the IHBG allocation formula.

Comments were received that the "experience" criterion was exclusionary, as it required an applicant to have served as a member of a board of commissioners of a housing authority or housing entity, or as a board member of another tribal organization. We wish to clarify that an employee of a tribe, housing authority or housing entity, or other organization is eligible for membership, so long as that person meets other requirements and provides evidence that they are authorized to represent the interests of the tribe or tribes which the person purports to represent. The phrase "or other relevant experience" has been added to clarify the intent of this criterion.

HUD invites interested persons and organizations to submit nominations for members of this committee. HUD will review the nominations submitted for committee membership to ensure that those selected will reflect the diversity of tribes in terms of size, location, and special circumstances. After review of all the nominations, HUD will publish a notice in the **Federal Register** announcing its proposed list of committee members, and soliciting public comment on the proposed membership.

HUD does not believe that each potentially affected tribe must have its own representative. However, HUD must be satisfied that the group as a whole reflects a proper balance and mix of interests. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

IV. Nominations for Committee Membership

Interested persons and organizations may nominate persons for committee membership by submitting a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice no later than August 5, 2002. Nominations for membership on the committee must include:

1. The name and address of the nominee and a description of the interests such person shall represent;

2. Evidence that the nominee is authorized to represent a tribal government or group of tribal governments related to the interests the person proposes to represent;

3. A written commitment that the nominee shall actively participate in good faith in the development of the rule under consideration; and

4. A written statement indicating how the nominee meets the following five selection criteria:

- The nominee is an elected tribal officer, or is otherwise authorized by the tribal government to act on the tribe's behalf during the negotiated rulemaking sessions;
- The nominee has demonstrated housing experience as a member of the board of commissioners of a housing authority or housing entity, or other organization, or other relevant experience;
- Selection of the nominee will help to ensure the committee contains an appropriate balance of representatives from small, medium and large Indian tribal governments;
- Selection of the nominee will ensure the geographic diversity of the committee membership; and
- The nominee has demonstrated ability to analyze and extrapolate complex data.

V. Final Committee Membership

After reviewing any comments on this notice and all nominations for membership, HUD will issue a follow-up **Federal Register** notice. That notice will announce HUD's proposed list of negotiated rulemaking committee members, and provide the public with an opportunity to comment on the proposed membership. HUD will announce the final composition of the negotiated rulemaking committee in a subsequent **Federal Register** notice.

VI. Tentative Schedule

At this time, HUD's tentative plan is to hold the first committee meeting on January 14 and 15, 2003, at the Denver Marriott City Center, 1701 California Street, Denver, CO 80202. The purpose of the meeting will be to orient members to the negotiated rulemaking process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter.

Advance notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided the opportunity to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. In the event that the date and time of these meetings is changed, HUD will advise the public through **Federal Register** notice.

VII. Applicability of the Federal Advisory Committee Act (FACA)

Comments were received about the applicability of FACA. The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) do not apply to this negotiated rulemaking committee. In accordance with section 204(b) of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, approved March 22, 1995), FACA is not applicable to consultations between the Federal government and elected officers of Indian tribal governments (or their designated employees with authority to act on their behalf).

The Office of Management and Budget (OMB) issued guidelines implementing section 204(b). The OMB guidelines interpret the exemption broadly to include State, local, or tribal representatives with the authority to act on behalf of the State, local, or tribal government, regardless of their actual employment status. As the OMB guidelines provide:

> In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration. This exemption applies to meetings between Federal officials and employees and State, local or tribal governments acting through their elected officers, officials, employees, and Washington representatives, at which 'views, information, or advice' are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive Order. The scope of meetings covered by this exemption should be construed broadly to include meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus, exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration. (OMB Memorandum 95–20 (September 21, 1995), pp. 6–7, published at 60 FR 50651, 50653 (September 29, 1995)).

Additionally, on July 10, 2001 (66 FR 37728), the General Services Administration (GSA) updated its regulations governing Federal Advisory Committee Management, and in these regulations, the GSA codified the OMB guidance issued in 1995. GSA's regulations at 41 CFR 102–3.40 provide that FACA does not apply to committees composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. The GSA provides that FACA does not apply to these groups with the following qualification:

> However, the purpose of such a committee must be solely to exchange views, information or advice relating to the management or implementation of Federal programs established pursuant to statute, that

explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002).

Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours

one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight

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explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002).

That FACA may not apply to this negotiated rulemaking committee does not necessarily mean that HUD, or HUD and the committee members, would decide not to apply FACA voluntarily. Additional comments on this issue are welcome.

Dated: June 27, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–16766 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–33–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1480, MB Docket No. 02–02–152, RM–10457]

Television Broadcast Service; Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KB Prime Media LLC, an applicant for a construction permit for a new television station to operate on channel 56 at Wiggins, Mississippi, proposing the substitution of channel 46- for channel 56 at Wiggins. TV Channel 46- can be allotted to at reference coordinates 30–32–32 N. and 89–10–40 W.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037–1128 (Counsel for KB Prime Media LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–152, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Mississippi, is amended by removing Channel 56+ and adding Channel 46- at Wiggins.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–16867 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1479, MB Docket No. 02–151, RM–10453]

Digital Television Broadcast Service; Yuma, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Arizona Western College proposing the allotment of DTV channel 24 at Yuma, Arizona, as the community's first local noncommercial DTV allotment. DTV Channel *24 can be allotted to Yuma at reference coordinates 32–56–57 N. and 114–36–46 W. with a power of 540, a height above average terrain HAAT of 490 meters. Since the community of Yuma is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William K. Keane, Arter & Hadden LLP, 1801 K Street, NW., Third Floor I. Street, Washington, DC 20006–1301 (Counsel for Arizona Western College).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–151, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Arizona is amended by adding DTV channel *24 at Yuma.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–16868 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1483, MB Docket No. 02–155, RM–10452]

Digital Television Broadcast Service; Charleston, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Pappas Telecasting of America, an applicant for a new station to operate on analog channel 23 at Charleston, West Virginia, proposing the substitution of DTV channel 52 for channel 23 at Charleston. DTV Channel 52 can be allotted to at reference coordinates 38–30–21 N. and 82–12–33 W. with a power of 100, a height above average terrain HAAT of 273 meters. Since the community of Charleston is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications, Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for Pappas Telecasting of America).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–155, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Kansas, is amended by removing Channel 22 and adding Channel 43- at Topeka.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–16869 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1481, MB Docket No. 02–153, RM–10454]

Digital Television Broadcast Service; Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Meredith Corporation, an applicant for a new station to operate on analog channel 22 at Topeka, Kansas, with a plus offset at reference coordinates 39–00–00 N. and 96–07–45 W.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee G. Petro, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for Meredith Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–153, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of control date for the purposes of controlling entry in the Atlantic mackerel fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the Atlantic mackerel (Scomber scombrus) resource if a management regime is developed

fisheries (57 FR 36384, August 13, 1992), which stated that as of that date no vessel would be guaranteed entry into a limited access fishery, if the Council chose to implement one. This 1992 control date was rescinded for Atlantic mackerel on September 27, 1994 (59 FR 49235), because the Council and NMFS believed that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the Atlantic mackerel fishery would not

A second control date of September 12, 1997 (62 FR 48047)(1997 control date), was established to discourage speculative entry into the Atlantic mackerel fishery while potential management regimes to control access into the fishery were discussed and possibly developed by the Council. The Council intended to consider a controlled access plan in an amendment to the FMP, however, subsequent amendments focused on other issues,

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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under West Virginia is amended by removing channel 23 at Charleston.

§ 73.622 [Amended]

3. Section 73.622(b), the Digital Table of Television Allotments under West Virginia is amended by adding DTV channel 52 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–16869 Filed 7–3–02; 8:45 am]

BILLING CODE 5712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1482, MB Docket No. 02–154, RM–10490]

Television Broadcast Service; Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Davis Television Topeka, LLC, an applicant for a new station to operate on channel 43 at Topeka, Kansas, proposing the substitution of channel 22 for channel 43. Channel 22 can be allotted to Topeka, Kansas, with a plus offset at reference coordinates 39–00–00 N. and 96–07–45 W.

DATES: Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*).*See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:Dennis P. Corbett, Leventhal, Senter & Lerman, PLLC, Suite 600, 2000 K Street, NW., Washington, DC 20006–1809 (Counsel for Davis Television Topeka, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–154, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Kansas, is amended by removing Channel 43 and adding Channel 22+ at Topeka.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–16870 Filed 7–3–02; 8:45 am]

BILLING CODE 5712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020620152-2152-01; I.D. 061102A]

RIN 0648–AQ11

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for Atlantic Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of control date for the purposes of controlling entry in the Atlantic mackerel fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the Atlantic mackerel (Scomber scombrus) resource if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the Mid-Atlantic Fishery Management Council (Council) and NMFS consider whether and how access to the Atlantic mackerel fishery should be controlled. The date of publication of this notification, July 5, 2002, shall be known as the "control date" and may be used for establishing eligibility criteria for determining levels of future access to the Atlantic mackerel fishery subject to Federal authority.

DATES: Written comments must be received on or before 5 p.m., local time, August 5, 2002.

ADDRESSES: Written comments should be directed to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. Mark the outside of the envelope, "Comments on Atlantic Mackerel Control Date." Comments also may be sent via facsimile (fax) to (302) 674–5399. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Atlantic mackerel (*Scomber scombrus*) is a migratory species that supports important recreational and commercial fisheries along the Atlantic coast of the United States and Canada. The most recent stock assessment (SAW 30, 2000) concluded that the stock biomass is at high levels and is under exploited. The Council developed the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish (FMP) to provide for the development of the U.S. Atlantic mackerel, squid, and butterfish (MSB) fisheries. An initial notice establishing a control date of August 13, 1992 (1992 control date), was issued for the MSB fisheries (57 FR 36384, August 13, 1992), which stated that as of that date no vessel would be guaranteed entry into a limited access fishery, if the Council chose to implement one. This 1992 control date was rescinded for Atlantic mackerel on September 27, 1994 (59 FR 49235), because the Council and NMFS believed that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the Atlantic mackerel fishery would not require limited-entry management in the foreseeable future. Removal of the 1992 control date also removed a disincentive to accessing this underutilized resource for vessel owners who were facing severe restrictions in other Northeast fisheries.

In Amendment 5 to the FMP, the Council included a provision that would require the Secretary of Commerce to publish a control date for the Atlantic mackerel fishery when commercial landings reached 50 percent of allowable biological catch. NMFS did not include this provision in the proposed rule because, as explained in the preamble to that rule (60 FR 65618, December 20, 1995), it was not considered a management measure to be implemented by regulation. Rather, it was viewed as a statement of Council intent. NMFS further noted that the Council could recommend the publication of a control date when it deemed the action necessary. At its May 1997 meeting, the Council requested that NMFS issue an advance notice of proposed rulemaking reestablishing a control date for Atlantic mackerel. The Council intended the control date to discourage new vessels from entering the fishery speculatively while the Council considered implementing a management program for this fishery that would control the rate on capitalization in the fishery. Amendment 5 to the FMP estimated that the hold capacity for vessels issued MSB permits approached 50,000 mt if each vessel made just one trip at full capacity. The Council members noted that this capacity, combined with reports that a large factory trawler might enter the fishery, raised concerns because the estimate of long-term potential yield for the fishery was 150,000 mt. Further, both NMFS and the Council had indicated that first preference for entry into this fishery should be afforded to Northeast region vessels as an alternative to traditional fisheries that have been severely overfished. For these reasons, the Council voted to request publication of a second control date for Atlantic mackerel.

A second control date of September 12, 1997 (62 FR 48047)(1997 control date), was established to discourage speculative entry into the Atlantic mackerel fishery while potential management regimes to control access into the fishery were discussed and possibly developed by the Council. The Council intended to consider a controlled access plan in an amendment to the FMP, however, subsequent amendments focused on other issues, including the need to address the requirements of the 1996 Sustainable Fisheries Act.

The Council recently adopted a recommendation for an increase in the 2003 Domestic Annual Processing (DAP) specification for Atlantic mackerel to 150,000 mt. This three fold increase in the DAP specification compared with specifications in previous years was based on testimony from members of the harvesting and processing sectors of the Atlantic mackerel industry who indicated that there is significant interest in expansion of domestic shore-side processing for Atlantic mackerel in 2003. While the proposed increase in DAP for 2003 is consistent with the FMP and current stock condition, the Council is concerned about rapid expansion of harvest capacity in the fishery and possible overcapitalization. In addition, the Council is concerned that nearly five years have passed since the 1997 control date was published. The Council requested at its April 2002 meeting that a new control date for the Atlantic mackerel fisher y be published.

Publication of this July 5, 2002, control date is intended to discourage speculative entry into the Atlantic mackerel fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. Establishment of a new control date will help to distinguish established participants from speculative entrants to the fishery. Although participants are notified that entering the fishery after this new control date will not assure them of future access to the Atlantic mackerel resource on the grounds of previous participation, additional and/or other qualifying criteria also may be applied. The Council may choose different and variably weighted methods to qualify fishermen, based on the type and length of participation in the fishery or on the quantity of landings. This notice establishes July 5, 2002, for potential use in determining historical or traditional participation in the Atlantic mackerel fishery. This action does not commit the Council to develop any particular management regime or to

use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson-

ADDRESSES: Comments on Amendment 69 may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Copies of Amendment 69 and the Regulatory

The Council concurred and adopted Amendment 69 in October 2000. This amendment would revise the inshore cooperative structure to allow an inshore cooperative to contract with a non-member AFA inshore catcher vessel that is a member of another inshore cooperative to harvest a portion of the cooperative's allocation. However, this amendment would not change cooperative memberships or authorize non-AFA vessels to harvest BSAI

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency

on advisory committees and/or research and promotion boards. The information will be used to both conduct background clearances and to compile annual reports on advisory committees.

Estimate of Burden: Public reporting

Dated: June 28, 2002.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 02–16826 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–01–M

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use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the Atlantic mackerel fishery in Federal waters.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16813 Filed 7–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 062602E]

RIN 0648–AP71

Fisheries of the Exclusive Economic Zone off Alaska; Amendment 69 To Allow American Fisheries Act Inshore Pollock Cooperatives To Contract With Non-Member Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability (NOA); request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 69 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would allow an American Fisheries Act inshore pollock cooperative to contract with a non-member catcher vessel to harvest a portion of the cooperative's annual pollock allocation. The purpose of this action is to provide a means by which the members of a cooperative may harvest their entire pollock allocation in a safe and cost-effective manner.

DATES: Comments on Amendment 69 must be received at the following address by September 3, 2002.

ADDRESSES: Comments on Amendment 69 may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Copies of Amendment 69 and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, (907) 586–7228 or *kent.lind@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment.

The American Fisheries Act (AFA) established a system of inshore pollock cooperatives under which the owners of catcher vessels that deliver to a particular processor may form a cooperative and receive an exclusive allocation of Bering Sea and Aleutian Islands Management Area (BSAI) pollock. Subparagraph 210(b)(1)(B) of the AFA specifies that only the member vessels of a cooperative may harvest the cooperative's annual pollock allocation.

In 2000, several inshore catcher vessel owners petitioned the Council to provide cooperatives with greater flexibility to contract with non-member vessels. They argued that members of inshore cooperatives need greater flexibility to (1) increase efficiency and provide vessel owners with a more functional market for leasing of individual pollock allocations, (2) ensure that a cooperative is able to harvest its entire allocation in the event of vessel breakdowns or other unanticipated emergencies, and (3) improve safety by providing greater flexibility for larger vessels to harvest cooperative allocations during hazardous winter months and when Steller sea lion conservation measures require that fishing be done further offshore–outside of Steller sea lion critical habitat.

The Council concurred and adopted Amendment 69 in October 2000. This amendment would revise the inshore cooperative structure to allow an inshore cooperative to contract with a non-member AFA inshore catcher vessel that is a member of another inshore cooperative to harvest a portion of the cooperative's allocation. However, this amendment would not change cooperative memberships or authorize non-AFA vessels to harvest BSAI pollock.

Subsection 213(c) of the AFA provides the Council with the authority to recommend measures that supersede certain aspects of the AFA. Subsection 213(c) states:

"The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act–that supersede the provisions of this title, except for Sections 206 and 208 for conservation or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery."

Amendment 69 would supersede inshore cooperative restrictions set out in paragraphs 210(b)(1)(B) and 210(b)(5) of the AFA.

Public comments are being solicited on the amendment through the end of the comment period stated in this NOA. A proposed rule that would implement the amendment may be published in the Federal Register for public comment following NMFS's evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment, whether specifically directed to the amendment or the proposed rule. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered in the approval/disapproval decision, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Dated: June 28, 2002.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16812 Filed 7–3–02; 8:45 am]

BILLING CODE 3510–22–S

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Intent To Seek Approval To Collect Information

AGENCY: Office of the Secretary, USDA.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and the Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Office of the White House Liaison's intention to request an extension of the currently approved manner of information collection (form AD–755) for all Advisory Committee Membership Background Information—expiration July 31, 2002; with the inclusion of one item (#19) at the end of the form, to be detailed later in this announcement.

DATES: Comments on this notice must be received by September 9, 2002.

ADDRESSES: Address all comments concerning this notice to Denise Bell, Program Support Specialist, Office of the White House Liaison, Telephone: (202) 720–2406, 1400 Independence Avenue, SW., the Whitten Building, Room 219–A, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Advisory Committee Membership Background Information. OMB Number 0505–0001.

FOR FURTHER INFORMATION CONTACT: Denise Bell at the above address or telephone: (202) 720–2406.

Expiration Date of Approval: July 31, 2002.

Type of Request: To extend the use of the currently approved information collection form (AD–755) with one addition to the form.

Abstract: The primary objective for the use of the AD–755 form is to determine the qualifications, suitability and availability of a candidate to serve on advisory committees and/or research and promotion boards. The information will be used to both conduct background clearances and to compile annual reports on advisory committees.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per respondent.

Respondents: Individuals or households.

Estimated number of respondents: 1,631.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 815.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including, whether the information will have practical utility. (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used. (c) Ways to enhance the quality, utility, and clarity of the information to be collected. (d) Finally, ways to minimize the burden of the collection of information on those who are to respond; such as through the use of appropriate automated, electronic, mechanical or other technological collection techniques or forms of information technology.

Additional Information: The USDA intends to provide electronic access and a submission alternative for applicants submitting this information on or before December 31, 2002.

Proposed Change to form AD–755: The Office of the White House Liaison proposes the addition of a section 19, requesting that a copy of the applicant's personal biography and/or résumé be submitted along with form AD–755.

Send comments to: Denise Bell, Program Support Specialist. Office of the White House Liaison. 1400 Independence Avenue, SW. The Whitten Building, Room 219–A Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Dated: June 28, 2002.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 02–16826 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Solicitation of Applicants for Membership on a National Board on Rural America

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) was amended by section 6030 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) to create the National Board on Rural America. The Act provides that the Board shall consist of 14 members appointed by the Secretary. This notice solicits candidates interested in serving on this Board. Qualifications for candidates are specified in the **SUPPLEMENTARY INFORMATION** section of this Notice. Other than recommendations by elected members of Federal, State or county governments, nominations will be accepted from organizations only and should be on the organization's letterhead. Nominations from individuals, either for themselves or others, will not be considered.

DATES: Submit a completed application by 5:00 p.m. on July 19, 2002.

ADDRESSES: Submit completed written applications to the Office of the Under Secretary, Rural Development. ATTN: Duane Ischer. 1400 Independence Avenue, SW., Room 206–W, STOP 0107, Washington, DC 20250–0107 or by FAX to 202–720–2080. To ensure timely delivery, nominations may be faxed to (202) 720–2080.

FOR FURTHER INFORMATION CONTACT: Duane Ischer, Office of the Under Secretary, Rural Development, 202–720–2721. E-Mail: *Duane.Ischer@USDA.GOV.*

SUPPLEMENTARY INFORMATION: The Act provides that, in addition to the Secretary or the designee of the Secretary, the National Board shall consist of 14 members appointed by the Secretary from among representatives of:

(1) Nationally recognized entrepreneurship organizations;
(2) Regional planning and development organizations;
(3) Community-based organizations;
(4) Elected members of county governments;
(5) Elected members of State legislatures;
(6) The rural philanthropic community; and

by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–073–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–073–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your

Animal and Plant Health Inspection Service, USDA, regulates the importation of animals and animals products in order to prevent the introduction of animal diseases, such as exotic Newcastle disease, into the United States. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR) in title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities in Mexico, and personnel in Sinaloa and Sonora, Mexico, who operate slaughtering and processing plants and who engage in the export of poultry meat and other poultry products to the United States.

Estimated annual number of

with our analysis of potential individual and cumulative impacts of an expanded oral rabies vaccine program.

DATES: We will consider all comments that we receive by August 5, 2002. Unless new substantial issues bearing on the effects of the proposed expansion of the oral rabies vaccine program are brought to our attention, the new decision/finding of no significant impact will take effect upon the close of the comment period.

59 Chennell Drive, Suite 7, Concord, NH 03301–8548; phone (603) 223–6832.

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between

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(1) Nationally recognized entrepreneurship organizations;
(2) Regional planning and development organizations;
(3) Community-based organizations;
(4) Elected members of county governments;
(5) Elected members of State legislatures;
(6) The rural philanthropic community; and
(7) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

An AD Form 755, Nominee Background Information, is required for each nominee. A copy of the AD Form 755 is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/rd/farmbill2002.html*.

The term of office initially will be 4 years for 5 members, 3 years for 5 members, and 2 years for 4 members. After the initial term, the term will be for 4 years.

The responsibilities of the board include developing a national strategic investment plan for rural America and overseeing the delivery of planning and innovation grants to regional boards.

Dated: June 27, 2002.

Ann M. Veneman,

Secretary.

[FR Doc. 02–16825 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–XY–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–073–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico.

DATES: We will consider all comments we receive on or before September 3, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–073–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–073–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–073–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the regulations regarding importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, contact Dr. Michael David, Assistant Director, Sanitary International Standards Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737; (301) 734–8093. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora, Mexico.

OMB Number: 0579–0144.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible. In connection with this mission, Veterinary Services of the Animal and Plant Health Inspection Service, USDA, regulates the importation of animals and animals products in order to prevent the introduction of animal diseases, such as exotic Newcastle disease, into the United States. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR) in title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

We currently have regulations in place that restrict the importation of poultry meat and other poultry products from Mexico and other regions of the world where exotic Newcastle disease has been determined to exist. However, we allow the importation, under specified conditions, of poultry meat and poultry products from the Mexican States of Sinaloa and Sonora because we have determined that poultry meat and products from these two Mexican States, when imported in accordance with those conditions, pose a negligible risk of introducing exotic Newcastle disease into the United States. To ensure that these items are safe for importation, we require that certain data appear on the foreign meat inspection certificate that accompanies the poultry meat or other poultry products from Sinaloa and Sonora. We also require that serially numbered seals be applied to containers carrying the poultry meat or other poultry products. These requirements necessitate the use of information collection activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities in Mexico, and personnel in Sinaloa and Sonora, Mexico, who operate slaughtering and processing plants and who engage in the export of poultry meat and other poultry products to the United States.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 40.

Estimated total annual burden on respondents: 40 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–16824 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–009–4]

Wildlife Services; Availability of a Supplemental Decision/Finding of No Significant Impact for Oral Rabies Vaccine Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: We are advising the public that we have prepared a supplement to an August 2001 decision/finding of no significant impact relative to oral rabies vaccination programs in several States. Since the publication of our original decision/finding of no significant impact, we have determined there is a need to expand the oral rabies vaccine program to include the States of Kentucky and Tennessee to effectively stop the westward spread of raccoon rabies. The purpose of the new decision/finding of no significant impact is to facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of an expanded oral rabies vaccine program.

DATES: We will consider all comments that we receive by August 5, 2002. Unless new substantial issues bearing on the effects of the proposed expansion of the oral rabies vaccine program are brought to our attention, the new decision/finding of no significant impact will take effect upon the close of the comment period.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–009–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–009–4. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–009–4" on the subject line.

To obtain copies of the environmental assessment, the original decision/finding of no significant impact, and the supplemental decision/finding of no significant impact, contact Tara Wilcox, Operational Support Staff, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; phone (301) 734–7921, fax (301)734–5157, or e-mail: *tara.c.wilcox@aphis.usda.gov*. When requesting copies, please specify the document or documents you wish to receive.

You may also read the documents discussed in this notice, as well as any comments that we receive, in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Slate, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301–8548; phone (603) 223–6832.

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On December 7, 2000, a notice was published in the **Federal Register** (65 FR 76606–76607, Docket No. 00–045–1) in which the Secretary of Agriculture declared an emergency and transferred funds from the Commodity Credit Corporation to APHIS–WS for the continuation and expansion of oral rabies vaccination (ORV) programs to address rabies in the States of Ohio, New York, Vermont, Texas, and West Virginia.

On March 7, 2001, we published a notice in the **Federal Register** (66 FR 13697–13700, Docket No. 01–009–1) to solicit public involvement in the planning of a proposed cooperative program to stop the spread of rabies in the States of New York, Ohio, Texas, Vermont, and West Virginia. The notice also stated that a small portion of northeastern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts, and discussed the possibility of APHIS–WS cooperating in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, Virginia, and Alabama. The March 2001 notice contained detailed information about the history of the problems with raccoon rabies in eastern States and with gray fox and coyote rabies in Texas, along with information about previous and ongoing efforts using ORV baits in programs to prevent the spread of the rabies variants or "strains" of concern.

Subsequently, on May 17, 2001, we published in the **Federal Register** (66 FR 27489, Docket No. 01–009–2) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental effects of the ORV programs described in our March 2001 notice. We solicited comments on the EA for 30 days ending on June 18, 2001. We received one comment by that date. The comment was from an animal protection organization and supported APHIS' efforts toward limiting or eradicating rabies in wildlife populations. The commenter did not, however, support the use of lethal monitoring methods or local depopulation as part of an ORV program.

Finally, on August 30, 2001, we published a notice in the **Federal**

raccoon rabies in the eastern States and gray fox and coyote rabies in Texas. The EA analyzed the proposed action and several alternatives with respect to a number of environmental and other issues raised by involved cooperating agencies and the public. Analyses of the potential impacts of ORV programs in those specific geographic areas that were not examined in the EA are presented in the supplemental decision/FONSI and have been incorporated into

will allow interested persons additional time to prepare and submit comments.

Accessing the Revised Risk Analysis on the Internet

The Internet address for accessing the revised risk analysis is *http://www.aphis.usda.gov/vs/reg-request.html*. At the bottom of that Web site page, click on "Information previously submitted by Regions requesting export approval and their

completed by June 30, 2003. Authority to make Horse Breeder loans terminates September 30, 2003. Comments on the information collection associated with this notice must be received on or before September 3, 2002, to be given full consideration.

ADDRESSES: General information and the application form FSA 410–1 may be obtained from the FSA Internet web site at: *www.fsa.usda.gov* or the USDA, Farm Service Agency listed in your local

percent of the mares owned, or boarded on a farm owned, operated, or leased by the breeder must have failed to conceive, miscarried, aborted or otherwise failed to produce a live, healthy foal.

All persons approved for loan assistance must execute loan instruments and legal documents to secure the loan. For entity applicants, the loan instruments and legal documents must be executed in the

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2001. We received one comment by that date. The comment was from an animal protection organization and supported APHIS' efforts toward limiting or eradicating rabies in wildlife populations. The commenter did not, however, support the use of lethal monitoring methods or local depopulation as part of an ORV program.

Finally, on August 30, 2001, we published a notice in the **Federal Register** (66 FR 45835–45836, Docket No. 01–009–3) in which we advised the public of APHIS' decision and finding of no significant impact (FONSI) regarding the use of oral vaccination to control specific rabies virus strains in raccoons, gray foxes, and coyotes in the United States. That decision allows APHIS–WS to purchase and distribute ORV baits, monitor the effectiveness of the ORV programs, and participate in implementing contingency plans that may involve the reduction of a limited number of local target species populations through lethal means (i.e., the preferred alternative identified in the EA). The decision was based upon the final EA, which reflected our review and consideration of the comments received from the public in response to our March 2001 and May 2001 notices and information gathered during planning/scoping meetings with State health departments, other State and local agencies, the Ontario Ministry of Natural Resources, and the Centers for Disease Control and Prevention.

Since the August 2001 publication of our original decision/FONSI, we have determined there is a need to expand the ORV programs to include the States of Kentucky and Tennessee to effectively stop the westward spread of raccoon rabies. The purpose of the new decision/FONSI is to facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of the expanded ORV programs.

The States where APHIS–WS involvement would be continued or expanded include Kentucky, Tennessee, New York, Ohio, Texas, Vermont, Florida, Virginia, and West Virginia. A small portion of northwestern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts. In addition, APHIS–WS may cooperate in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, and Alabama as part of the proposed action. As noted above, the primary goal of the ORV programs is to stop the spread of specific strains of the rabies virus, i.e., raccoon rabies in the eastern States and gray fox and coyote rabies in Texas. The EA analyzed the proposed action and several alternatives with respect to a number of environmental and other issues raised by involved cooperating agencies and the public. Analyses of the potential impacts of ORV programs in those specific geographic areas that were not examined in the EA are presented in the supplemental decision/FONSI and have been incorporated into the decisionmaking process.

The EA, the August 2001 FONSI, and the supplemental FONSI that is the subject of this notice have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 28th day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–16823 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–090–3]

Classical Swine Fever: Availability of Risk Analysis Related to the Importation of Swine and Swine Products From the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for a revised analysis of the risk of introducing classical swine fever virus in swine and swine products imported from the European Union. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before July 17, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–090–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–090–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98–090–2" on the subject line.

You may read the revised risk analysis and any comments that we receive on that document in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may request a copy of "Risk Analysis for Importation of Classical Swine Fever in Swine and Swine Products from the European Union December 2000" by writing to the person listed below under **FOR FURTHER INFORMATION CONTACT**. The risk analysis is also available on the Internet. Instructions for electronic access are included below under **SUPPLEMENTARY INFORMATION.**

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2002, we published in the **Federal Register** (67 FR 22388–22389, Docket No. 98–090–2) a notice of the availability of and request for comments on a revised risk analysis of the risk of introducing classical swine fever virus in swine and swine products imported from the European Union.

Comments on the revised risk analysis were required to be received on or before July 2, 2002. We are reopening and extending the comment period on the risk analysis for an additional 15 days ending July 17, 2002. This action will allow interested persons additional time to prepare and submit comments.

Accessing the Revised Risk Analysis on the Internet

The Internet address for accessing the revised risk analysis is *http://www.aphis.usda.gov/vs/reg-request.html*. At the bottom of that Web site page, click on "Information previously submitted by Regions requesting export approval and their supporting documentation." At the next screen, click on the triangle beside "European Union/Not Specified/Classical Swine Fever," then on the triangle beside "Response by APHIS." A link will then appear for "Risk Analysis for Importation of Classical Swine Fever Virus in Swine and Swine Products from the European Union December 2000." Following that link will allow you to view the revised risk analysis.

Authority: 7 U.S.C. 450, 1622, 7711–7714, 7751, 7754, 8303, 8306, 8307, 8308, 8310, 8311, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 2nd day of July 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–16992 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Funds Availability (NOFA) Inviting Applications for the Horse Breeder Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of funding to implement the Horse Breeder Loan Program as required by section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Act) (Pub. L. 107–76), which was enacted November 28, 2001. The Act directed the Secretary to implement a temporary low-interest loan program to assist horse breeders suffering economic loss as a result of mare reproductive loss syndrome (MRLS).

DATES: The Agency will begin accepting applications on July 1, 2002. The deadline for receipt of an application Form FSA 410–1 is September 30, 2002. The Agency will not consider any application received after the deadline. The application package must be completed by June 30, 2003. Authority to make Horse Breeder loans terminates September 30, 2003. Comments on the information collection associated with this notice must be received on or before September 3, 2002, to be given full consideration.

ADDRESSES: General information and the application form FSA 410–1 may be obtained from the FSA Internet web site at: *www.fsa.usda.gov* or the USDA, Farm Service Agency listed in your local telephone directory.

FOR FURTHER INFORMATION CONTACT: Cathy Quayle, Senior Loan Officer or Patrick Spalding, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250–0522; telephone (202) 720–1472; facsimile (202) 720–6797; electronic mail: *Cathy_Quayle@wdc.usda.gov* or *Patrick_Spalding@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires consultation with State and local officials.

During the 2001 horse breeding season, horse breeders suffered from an overwhelming number of early and late term fetal losses. Even with possible improvement in the coming breeding seasons, the economic impact on breeders will present financial difficulties over an extended period. The Agency is required by section 759(c) of the Act to make loans available to eligible horse breeders who have suffered a qualifying loss as a result of MRLS. Researchers have not pinpointed the exact cause of MRLS; however, as a result of extensive studies, common factors that are believed to have been the cause have been identified. The Agency is adopting the definition of MRLS developed by experts from the equine industry that is recognized and accepted by veterinarians.

These loans will mitigate the income loss and reduction in credit availability faced by horse breeders. Assistance is limited to only those horse breeders who have suffered losses as a result of MRLS, cannot obtain sufficient credit elsewhere and meet all other requirements established in this notice. To assure that the recipients of these loans are those most impacted by the effects of MRLS, eligibility requirements are restrictive. As required by the Act, the horse breeder must derive more than 70 percent of their income from breeding, boarding, raising, training, or selling horses. The losses must have resulted from MRLS, and at least 30 percent of the mares owned, or boarded on a farm owned, operated, or leased by the breeder must have failed to conceive, miscarried, aborted or otherwise failed to produce a live, healthy foal.

All persons approved for loan assistance must execute loan instruments and legal documents to secure the loan. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and all officers or partners and any board members. Horse Breeder loans are not made under the authority of the Consolidated Farm and Rural Development Act (CONACT), (7 U.S.C. 1961 *et seq.*); therefore, the Agency will service Horse Breeder loans in accordance with existing non-program Agency regulations in 7 CFR part 1951, subpart J, or its successor regulation. The Agency will not provide direct farm loan program loan servicing benefits to Horse Breeder Loan Program borrowers.

Environmental Compliance

The environmental impacts of the loan program to be implemented by this NOFA have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321, *et seq.*) Based on the nature and scope of this notice, FSA has concluded that the notice will not have any significant impacts upon the human environment as documented through the completion of an environmental assessment. A copy of the environmental assessment is available for inspection and review upon request. Therefore, FSA has developed a Finding of No Significant Impact (FONSI) pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 1940, subpart G.

Paperwork Reduction Act

A request for emergency clearance of the information collections associated with this notice has been submitted to the Office of Management and Budget (OMB) under 5 CFR 1320.13(a)(2)(iii).

In accordance with the Paperwork Burden Reduction Act of 1995, FSA will provide a regular submission of the information collection package to OMB at the end of the comment period for the following notice.

Title: Horse Breeder Loans.

OMB Control Number: 0560–NEW.

Type of request: Request for review and extension.

Abstract: The collection of the information required by this notice is

required in order to certify that applicants for loans are eligible to receive benefits. The information will be collected from applicants in paper form by Agency loan approval officials in the county office that serves the applicant's geographic area. The information will be used and evaluated by the loan approval official to determine if the applicant meets the criteria established by the Agency. The information may be

Adequate security is property that provides a security value at least equal to the amount of the loan.

Agency is the Farm Service Agency, its employees, and any successor agency.

Applicant is the individual or business entity applying for the loan.

Approval official is an Agency official who has been delegated approval authorities within applicable loan

Horse breeder business is the business of breeding, boarding, raising, training, or selling horses.

Losses are the verifiable damages of the interrupted horse reproductive process resulting from MRLS.

Mare Reproductive Loss Syndrome (MRLS) is, during the period beginning April 24, 2001, and ending June 30, 2001, the occurrence of any of the following equine medical conditions:

1. Early- and late-term equine fetal

1 of any calendar year 2000, 2001 or 2002:

(a) 30 percent or more of the mares owned by the applicant failed to conceive, miscarried, aborted or otherwise failed to produce a live healthy foal; or

(b) 30 percent or more of mares boarded on a farm owned, operated or leased by the applicant failed to conceive, miscarried, aborted or otherwise failed to produce a live

qualified alien under applicable Federal immigration laws. For an entity applicant, the majority of the entity must be owned by members meeting the citizenship test or other entities that are domestically owned.

7. *Legal capacity.* The loan applicant must be of legal age, mental capacity, and have the authority to enter into a legally binding agreement. An entity applicant, and all entity members who will execute the promissory note, must

needs of the applicant; or (b) the amount of loss suffered by the applicant as measured by Section XI of this notice.

3. Outstanding loan balances from Agency Farm Loan Programs, direct or guaranteed, will not affect the amount an applicant is eligible to receive under this section.

VI. Prohibited Use of Loan Funds

1. Loan funds may not be used to pay

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required in order to certify that applicants for loans are eligible to receive benefits. The information will be collected from applicants in paper form by Agency loan approval officials in the county office that serves the applicant's geographic area. The information will be used and evaluated by the loan approval official to determine if the applicant meets the criteria established by the Agency. The information may be viewed, used and monitored by other Agency or USDA officials, and may be released in accordance with the Privacy Act or Freedom of Information Act. The information will be collected on an as needed basis. Failure to collect this information may result in persons receiving benefits other than intended program beneficiaries.

Estimate of Burden: Public reporting for this collection of information is estimated to average .63 hours per response.

Respondents: Farms, individuals and businesses.

Estimated number of respondents: 800.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 1258 hours.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden collection on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be addressed to Cathy Quayle, Senior Loan Officer, USDA, Farm Loan Programs, STOP 0522, 1400 Independence Avenue, SW, Washington DC 20250–0522. Comments are assured of having effect if received within 60 days of this notice. Comments received after that date will be considered to the extent practicable. All comments received in response to this notice, including names and addresses, will be a matter of public record. Copies of the submission may be obtained from Cathy Quayle by calling (202) 690–4018.

I. Definitions Applicable to Horse Breeder Loans

Additional security is property that provides security in excess of the amount of security value equal to the loan amount.

Adequate security is property that provides a security value at least equal to the amount of the loan.

Agency is the Farm Service Agency, its employees, and any successor agency.

Applicant is the individual or business entity applying for the loan.

Approval official is an Agency official who has been delegated approval authorities within applicable loan programs.

Bred is the attempt to produce offspring by sexual union or artificial insemination.

Business entity is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

Cash flow budget is a projection listing all anticipated cash inflows (including all farm income, non-farm income and all loan advances) and all cash outflows (including all farm and non-farm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate.

False information is information provided by an applicant, borrower, or other source to the Agency which is known by the provider to be incorrect, and was provided to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

Feasible plan is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency. The plan must demonstrate that the applicant will meet all other credit needs and obligations, including judgments, for which the applicant is legally responsible.

Financial needs are ordinary and necessary expenses, and financial obligations which are incurred, in connection with the horse breeder business.

Financial obligations are the debts owed by the horse breeder that are directly related to the horse breeder business.

Horse is any mammal in the genus Equus, to include but not limited to ass, mule, pony and donkey.

Horse breeder is an individual or business entity who as of November 28, 2001, derives more than 70 percent of their gross income from the horse breeding business during the shorter of:

1. The 5-year period ending on January 1, 2001; or
2. the period the individual or business entity has been engaged in the horse breeder business.

Horse breeder business is the business of breeding, boarding, raising, training, or selling horses.

Losses are the verifiable damages of the interrupted horse reproductive process resulting from MRLS.

Mare Reproductive Loss Syndrome (MRLS) is, during the period beginning April 24, 2001, and ending June 30, 2001, the occurrence of any of the following equine medical conditions:

1. Early- and late-term equine fetal losses;
2. Pericarditis;
3. Epicarditis;
4. Unilateral endophthalmitis; or
5. Panophthalmitis.

Ordinary and necessary expenses are the operating expenses directly related to the horse breeder business, including, but not limited to: taxes, feed, veterinary expenses, fixtures and farm maintenance.

Readily available is when the insurance is sold by insurance agents in the applicant's normal trade area.

Security is property or right of any kind that is subject to a real or personal property lien. Any reference to "collateral" or "security property" will be considered a reference to the term "security."

States or United States is the United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

United States non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

II. Appeals

An applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR parts 11 and 780 or its successor regulation.

III. Eligibility Requirements

Applicants must meet all of the following requirements to be eligible for a Horse Breeder loan:

1. *Timely application.* The applicant must submit a signed form FSA 410–1 completed to the best of the applicant's ability to the Agency no later than September 30, 2002.

2. *Horse breeder.* The applicant must be a horse breeder as defined by this notice.

3. *Qualifying loss.* During the period beginning January 1 and ending October 1 of any calendar year 2000, 2001 or 2002:

(a) 30 percent or more of the mares owned by the applicant failed to conceive, miscarried, aborted or otherwise failed to produce a live healthy foal; or

(b) 30 percent or more of mares boarded on a farm owned, operated or leased by the applicant failed to conceive, miscarried, aborted or otherwise failed to produce a live healthy foal.

4. *Financial need.* The applicant is be unable to meet financial obligations, or pay ordinary and necessary expenses incurred in connection with the horse breeder business.

5. *Test for credit.* The applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms.

(a) To establish this, the applicant must obtain written denials of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the denial as follows:

(1) In the case of a loan request of $300,000 or more, two written denials of credit are required.

- One of these lenders must be the applicant's normal lender.
- Both lenders must typically make horse breeder business loans.

(2) In the case of a loan request of less than $300,000, one written denial of credit is required.

- The applicant's normal lender will be contacted unless the lender has already denied a request to continue with the applicant or extend additional credit.
- The applicant may contact another lender that makes horse breeder business loans.

(3) In the case of a loan request of $100,000 or less, the Agency may waive the requirement for obtaining a written denial of credit if the Agency determines that requiring a written denial would pose an undue burden on the applicant and based on the applicant's circumstances credit is not likely to be available.

(b) Notwithstanding the applicant's submission of the required written denial of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere.

(c) When the applicant is an entity, all individuals, members, stockholders, and partners must meet test for credit requirements.

6. *Citizenship.* The applicant must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority of the entity must be owned by members meeting the citizenship test or other entities that are domestically owned.

7. *Legal capacity.* The loan applicant must be of legal age, mental capacity, and have the authority to enter into a legally binding agreement. An entity applicant, and all entity members who will execute the promissory note, must meet this requirement.

8. *Federal debt.* At loan closing, the applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, nor be a federal judgment debtor on a non-tax debt.

9. *Unpaid judgement.* At loan closing the applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgements obtained by the United States in any court.

10. *False information.* The applicant, in past or present dealings with the Agency, must not have knowingly provided the Agency with false information.

11. *Credit history.* The individual or business entity applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history.

12. *Repayment.* The applicant must submit a feasible plan as defined in this notice.

IV. Loan Uses

Loan funds only may be used to:

1. Pay ordinary and necessary expenses for the horse breeding business.
2. Replace mares and foals lost or disabled due to MRLS.
3. Purchase or lease additional existing pasture to replace pasture where a veterinarian or other recognized expert has determined the potential for MRLS exists.
4. Pay or refinance financial obligations as defined by this notice, provided the applicant can demonstrate a need to do so.
5. Pay loan closing costs.

V. Limitations

1. The maximum cumulative loan amount any individual or business entity may receive under this notice is limited to $500,000.

2. The amount of the loan is further limited to the lesser of; (a) the financial needs of the applicant; or (b) the amount of loss suffered by the applicant as measured by Section XI of this notice.

3. Outstanding loan balances from Agency Farm Loan Programs, direct or guaranteed, will not affect the amount an applicant is eligible to receive under this section.

VI. Prohibited Use of Loan Funds

1. Loan funds may not be used to pay expenses incurred for lobbying or related activities.

2. Loan funds may not be used for any purpose which contributes to excessive erosion of highly-erodible land or to the conversion of wetlands to produce an agricultural commodity.

3. Loan funds may not be used to refinance consumer debt, such as home equity loans, automobile loans, or credit card debt unless such debt is directly attributable to the horse breeder business operation.

4. Loan funds may not be used to pay Federal judgments.

VII. Loans to Agency Employees

Loans may be made to Agency employees otherwise qualified for the loans.

VIII. Federal Equal Credit Opportunity Act (ECOA)

The Agency must comply with the provisions of ECOA and the implementing regulations of the Federal Reserve System published in 12 CFR part 202.

IX. Environmental Compliance

1. The environmental and historic preservation requirements contained in 7 CFR part 1940, subpart G or its successor regulation must be met prior to approval of any loan.

2. In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation.

(a) The Agency will not accept as security any real estate which has significant environmental risks, such as, but not limited to the presence of known or suspected underground storage tanks or hazardous waste.

(b) If the real estate offered as security contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, at the applicant's expense or offering other non-contaminated property as security for the loan.

X. Other Federal, State, and Local Requirements

Horse Breeder loan borrowers are required to comply with all applicable:

1. Federal, State, or local laws;
2. Regulatory commission rules; and
3. Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(a) Borrowing money, pledging security, signing notes, mortgages, security agreements, financing statements, and other documents;

(b) Nondiscrimination in lending and employment;

(c) Protection of environmental resources, including, but not limited to, wetlands, highly erodible land, and historic properties;

(d) Control of noxious weeds and application of pesticides;

(e) Construction, operation, and maintenance of facilities;

(f) Conservation practices;

(g) Participation in other Federal programs;

(h) Payment of taxes; and

(i) Any other matters affecting the property or operations.

XI. Calculation of Loss

The applicant's loss will be determined by subtracting all cash business expenses and proceeds from sales of weanlings, yearlings, and 2 year old offspring, from all business income reported on Schedule F and other related schedules of the applicant's Federal income tax return. Any depreciation shown on Schedule F is not a cash expense and must not be included as an expense in loss calculations.

6. Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FSA 431–2 or other similar plan of operation acceptable to the Agency.

7. Verification of off-farm employment, and other non-farm income, if any. This will be required only when the applicant is relying on off-farm income for a feasible plan.

8. A legal description of farm, real estate property securing the loan and a

the loan. In addition, the applicant shall provide additional security, if available, not to exceed 150 percent of the loan amount.

2. Loans shall be secured by collateral that can be adequately described in security instruments.

3. The Agency will take the best lien obtainable on the following security, if available, as necessary to protect the Government's interest. The security will be taken in the order of priority as

applicant has been in the horse breeder business.

(4) The applicant has given the Agency an assignment on any USDA program payments, unencumbered installment sales proceeds, or other contractually based income.

XVI. Appraisals and Valuation Requirements

Appraisals generally are required for real estate and chattel property used to

complete application. Loan approval is subject to the availability of Emergency loan funds.

XX. Loan Closing

The loan approval official, or designee, shall close the loan according to the following.

1. The applicant must meet all conditions specified in this notice prior to loan closing.

2. There must have been no

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X. Other Federal, State, and Local Requirements

Horse Breeder loan borrowers are required to comply with all applicable:

1. Federal, State, or local laws;
2. Regulatory commission rules; and
3. Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(a) Borrowing money, pledging security, and raising revenues for repayment of debt;

(b) Accounting and financial reporting; and

(c) Protection of the environment.

4. Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards.

XI. Loss Calculations

1. (a) The applicant's Federal income tax and business records will the primary source of financial information for the loss calculation. Sales, receipts, invoices, or other official sale records will document the sales price of individual animals as referenced in paragraph (2) of this section.

(b) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production and expenses for those years for which the applicant does not have a complete year of business records. To the extent such additional information is unavailable, the Agency will use the applicant's available business records to make realistic income and expense calculations.

2. To determine the value of foals lost or disabled as a result of MRLS:

(a) The average sales price of horses sold by the applicant will be determined by adding the total proceeds from the sales of horses including only: weanlings, yearlings and 2-year old offspring for the previous 3 non-loss years, and dividing by the number of horses sold during those 3 years.

(b) The average sales price will be multiplied by the number of mares shown on the veterinarian certification that failed to conceive or produce a live healthy foal due to MRLS.

3. To determine the value of all other losses:

(a) Calculate the average annual net income for the horse breeder business for the previous 3 non-loss years, and subtract the horse breeder business net income for the loss year.

(b) The annual net income for the horse breeder business will be determined by subtracting all cash business expenses and proceeds from sales of weanlings, yearlings, and 2 year old offspring, from all business income reported on Schedule F and other related schedules of the applicant's Federal income tax return. Any depreciation shown on Schedule F is not a cash expense and must not be included as an expense in loss calculations.

(c) The average annual net income for the horse breeder business shall be calculated by adding the applicant's horse breeder business annual net income from the previous 3 non-loss years and dividing by 3.

4. The results of the calculations from paragraphs 2 and 3 of this section shall be added together to determine the total amount of loss the applicant has suffered as a result of MRLS.

XII. Complete Loan Application

An Agency application Form FSA 410–1, completed to the best of the applicant's ability and submitted on or before September 30, 2002, will meet the application deadline. However, a loan decision will not be made until a complete application is received in accordance with this section. All forms listed are available at any Agency office. The Agency will not consider any application that is not complete as of June 30, 2003. A complete loan application includes all of the following items:

1. A completed form FSA 410–1.
2. If the applicant is a business entity, all legal documents evidencing the organization and any state recognition of the entity such as articles of incorporation or partnership agreements. The application must include the following information for each entity member:

(a) Name.

(b) Address.

(c) Social Security number, or IRS tax ID number for a member that is a business entity.

(d) Percent ownership interest in the entity.

(e) In the case of a member that is itself a business entity, legal documents evidencing the organization and any State recognition of the entity.

3. Verification that the applicant or individual members of an entity applicant cannot obtain credit elsewhere including a loan guarantee by a State or other Federal agency.
4. Income tax and business records for the lesser of the previous 3 years or the number of years in business.
5. A current balance sheet that was prepared within 90 days of the date of application.
6. Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FSA 431–2 or other similar plan of operation acceptable to the Agency.
7. Verification of off-farm employment, and other non-farm income, if any. This will be required only when the applicant is relying on off-farm income for a feasible plan.
8. A legal description of farm, real estate property securing the loan and a copy of any lease, contract, option or agreement, or a written statement setting forth terms or conditions of any agreement entered into by the applicant which may be pertinent to consideration of the application.
9. A written certification from a licensed veterinarian, see Exhibit 1 sample, stating the number of mares:

(a) Owned or boarded that were bred.

(b) That failed to conceive or otherwise produce a live healthy foal.

10. A credit report fee of $28.00 for individual applicants, $34.00 for joint applicants and $40.00 for commercial business applicants.
11. Any other documents requested by the Agency and needed to process the application.

XIII. Interest Rate

Loans closed in accordance with this notice will be charged interest at the rate established for Emergency loans in 7 CFR part 764. Current rates are available at any Agency office.

XIV. Terms

1. *Repayment period.* The Agency schedules repayment of Horse Breeder loans based on the useful life of the loan security and the applicant's repayment ability, but not to exceed 20 years. Loans secured only by collateral other than real estate shall not exceed 7 years. If necessary to improve the repayment ability of the borrower and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years from the date of the promissory note. Balloon installments are prohibited. Balloon installments are final installments that exceed twice the amount of the regular amortized installment.

2. *Minimum payment requirement.* The repayment schedule must include at least one payment every year. Payments must be no less than the interest accrued on the principal balance at the time the installment is to be paid and may not result in a prohibited balloon installment.

XV. Security Requirements

1. The applicant shall have sufficient equity to provide adequate security for the loan. In addition, the applicant shall provide additional security, if available, not to exceed 150 percent of the loan amount.
2. Loans shall be secured by collateral that can be adequately described in security instruments.
3. The Agency will take the best lien obtainable on the following security, if available, as necessary to protect the Government's interest. The security will be taken in the order of priority as follows:

(a) *Real Estate.* A survey is not required if the property is adequately described. The applicant is responsible for obtaining and paying any costs for documentation necessary to properly identify the security property.

(b) *Chattels and crops, other than horses.* Chattels consist of equipment or livestock, other than horses. Equipment must be identified by manufacturer, model, year, and serial number, where available.

(c) *Other assets owned by the applicant.* Other assets owned by the applicant such as certificates of deposit may be taken as security. The applicant shall provide satisfactory documentation as to the value of the assets and their availability for Agency lien perfection.

(d) *Third party pledges of property not owned by the applicant.* Interests in property not owned by the applicant (such as, but not limited to: real estate, leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan.

(e) *Horses.* Horses must be identified by color, sex, and distinguishing marks (i.e., socks, blaze, registration numbers).

(f) *Repayment ability.* The applicant's repayment ability may be accepted as adequate security provided that the applicant can meet all of the following requirements.

(1) The applicant has pledged as security for the loan all available personal and business collateral.

(2) The feasible plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history and addresses applicable income risks to the extent practicable through the use of breeder's insurance, mortality insurance, or similar risk management practices.

(3) The applicant has had positive net income from the horse breeder business in at least 3 of the past 5 years. If the applicant has been in the horse breeder business for fewer than 5 years, the applicant must have had positive net income from the horse breeder business in at least 50 percent of the years the applicant has been in the horse breeder business.

(4) The applicant has given the Agency an assignment on any USDA program payments, unencumbered installment sales proceeds, or other contractually based income.

XVI. Appraisals and Valuation Requirements

Appraisals generally are required for real estate and chattel property used to secure a Horse Breeder loan. Real estate appraisals, however, are not required when the amount of the loan does not exceed $50,000 and the loan approval official clearly documents that the estimated value of security, less existing liens, exceeds the loan amount. Real estate and chattel appraisals shall be completed in accordance with 7 CFR 761.7.

XVII. Taking Indian Trust Lands as Security

The Agency may take a lien on Indian Trust lands as security provided that the requirements of 7 CFR part 1943, subpart A or its successor regulations are satisfied.

XVIII. Insurance for Loan Security

An applicant must obtain insurance, consistent with this section, equal to the lesser of the value of the security at the time of loan closing, or the principal of the loan.

1. *Hazard insurance.* All security (except growing crops) must be covered by hazard insurance if it is readily available and economically feasible.
2. *Flood or mudslide insurance.* Real estate security located in a special Flood Hazard Area as determined by the Federal Emergency Management Agency, must be covered by flood or mudslide insurance.
3. *Crop insurance.* Growing crops used to provide adequate security must be covered by crop insurance if such insurance is readily available and economically feasible.
4. *Mortality insurance.* All horses used as security for the loan must be covered by mortality insurance if it is readily available and economically feasible.
5. *Indemnities.* An applicant must:

(a) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(b) In the case of crop and mortality insurance, execute an assignment of indemnity in favor of the Agency.

XIX. Funding Applications

Loan requests will be funded based on the date the Agency receives the complete application. Loan approval is subject to the availability of Emergency loan funds.

XX. Loan Closing

The loan approval official, or designee, shall close the loan according to the following.

1. The applicant must meet all conditions specified in this notice prior to loan closing.
2. There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved and less than 90 days has passed since financial information has been updated.
3. The applicant shall execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security position in property, and protect the Government's interests in accordance with applicable State and Federal laws.
4. Horse Breeder loans with security other than real estate shall be closed in accordance with 7 CFR part 1941, subpart B, or its successor regulation.
5. Horse Breeder loans secured by real estate shall be closed in accordance with 7 CFR part 1927, subpart B, or its successor regulation. Loans with real estate security will be closed by a closing agent, selected by and paid for by the applicant.

(a) For loans over $25,000, title clearance is required when real estate is taken as security.

(b) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, naming the record owner of the real estate in question and listing the balances due on all known debts against the real estate. Whenever the loan approval official is uncertain of the record owner or debts against the real estate security, a title search is required.

XXI. Fees

The applicant will pay all loan closing fees including but not limited to fees for title clearance, recording any legal instruments determined to be necessary, and all notary, lien search, attorney fees and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

XXII. Reporting

The borrower must notify the Agency of any adverse actions related to the loan, including but not limited to, anticipated default on the loan.

XXIII. Loan Servicing

If any installment is not paid according to the terms of the loan agreement, the loan is not fully satisfied at expiration of the loan agreement, or the borrower is in default on any term of the loan agreement or security instruments, the loan will be serviced in accordance with 7 CFR 1951.468 or its successor regulation, during the term of

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2002–June 30, 2003

Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7

Day care homes	Breakfast		Lunch and supper		Supplement	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
Alaska	1.55	.56	2.93	1.76	.87	.24
Hawaii	1.13	.42	2.11	1.27	.63	.17

ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES

[Per home/per month rates in U.S. dollars]

	Initial 50	Next 150	Next 800	Each additional

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XXIII. Loan Servicing

If any installment is not paid according to the terms of the loan agreement, the loan is not fully satisfied at expiration of the loan agreement, or the borrower is in default on any term of the loan agreement or security instruments, the loan will be serviced in accordance with 7 CFR 1951.468 or its successor regulation, during the term of the loan.

Signed at Washington, DC, on June 28, 2002.

James R. Little,

Administrator, Farm Service Agency.

Exhibit 1.—Sample Veterinary Certification

Woodside Veterinary Clinic, P.O. Box 29, Alexandria, Virginia 45207

William A. Doctor, D.V.M.
Tanya J. Thoms, D.V.M.
Equine and Companion Animals Medicine and Surgery
Telephone: 303–233–4455
FAX 303–233–4456

Name of Client: Circle K Farms.
Address of Client: 123 Shade Tree Lane, Alexandria, Virginia 45207.
Period covered by this Certification: 2000 and 2001 Breeding and Foal Seasons.

The number of mares owned that were bred _____
The number of mares boarded that were bred _____
As a result of MRLS:
The number of mares that failed to conceive or produce a live healthy foal._____

Signature of Veterinarian

[FR Doc. 02–16827 Filed 7–3–02; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2002–June 30, 2003

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to: The national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 2002 through June 30, 2003. As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on June 27, 2001, at 66 FR 34144 (for the period July 1, 2001–June 30, 2002).

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars]
[Effective from July 1, 2002–June 30, 2003]

Centers	Breakfast	Lunch and supper[1]	Supplement
Contiguous States:			
Paid	.22	.20	.05
Reduced price	.87	1.74	.29
Free	1.17	2.14	.58
Alaska:			
Paid	.32	.33	.08
Reduced price	1.57	3.07	.47
Free	1.87	3.47	.95
Hawaii:			
Paid	.24	.24	.06
Reduced price	1.07	2.10	.34
Free	1.37	2.50	.68

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register**.

Day care homes	Breakfast		Lunch and supper		Supplement	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
Contiguous States	.98	.37	1.80	1.09	.53	.14

Day care homes	Breakfast		Lunch and supper		Supplement	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
Alaska	1.55	.56	2.93	1.76	.87	.24
Hawaii	1.13	.42	2.11	1.27	.63	.17

ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES

[Per home/per month rates in U.S. dollars]

	Initial 50	Next 150	Next 800	Each additional
Contiguous States	84	64	50	44
Alaska	136	104	81	71
Hawaii	98	75	59	52

The changes in the national average payment rates for centers reflect a 2.59 percent increase during the 12-month period, May 2001 to May 2002, (from 173.1 in May 2001 to 177.6 in May 2002) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 1.56 percent increase during the 12-month period, May 2001 to May 2002, (from 172.8 in May 2001 to 175.5 in May 2002) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 1.18 percent increase during the 12-month period, May 2001 to May 2002, (from 177.7 in May 2001 to 179.8 in May 2002 in the series for all items of the CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sec. 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. § 1753(b)(2), 1759a, 1766(f)(3)(B)) and sec. 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: June 27, 2002.

Roberto Salazar,

Administrator.

[FR Doc. 02–16906 Filed 7–3–02; 8:45 am]
BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

Authority: 16 U.S.C. 472,551.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the ranger district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

The Notice of Intent to prepare an environmental impact statement was first published in the **Federal Register** on Friday, May 5, 1999 (Volume 64, Number 86, pages 24132–24134). The Notice announced that a draft environmental impact statement would be available for review in July 1999, and a final environmental impact statement would be available for review in September 1999. A Revised Notice of Intent was published in the **Federal Register** on March 8, 2000 (Volume 65, Number 46, page 12202). The revised Notice announced that a draft environmental impact statement was now expected to be available for public review in July 2000 and a final environmental impact statement should be available for review by October 2000. This Notice revises the expected date of availability for public review of a draft environmental impact statement to June 2002, a final environmental impact statement should be available for review in October 2000.

FOR FURTHER INFORMATION CONTACT: Rick Newmon or Mark Cadwallader, Lincoln National Forest, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico 88317, (505) 682–2551.

Dated: April 17, 2002.

Jose M. Martinez,

Forest Supervisor, Lincoln National Forest.

[FR Doc. 02–16878 Filed 7–3–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glady Fork Environmental Impact Statement, Monongahela National Forest, Randolph and Tucker Counties, WV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement for timber harvest, stream restoration, wildlife enhancement, and

road management activities in the Glady Fork watershed of the Monongahela National Forest. This notice provides a description of the proposed action, displays the estimated dates for filing the EIS, provides information concerning public participation, and provides the names and addresses of the responsible agency official and individuals who can provide additional information.

793 acres of conventional ground-based skidding. Post-harvest treatments proposed include 609 acres of herbicide use, site preparation, and fencing, and 51 acres of planting.

Road management proposed in the Glady Fork project includes 2.0 miles of new road construction, 25.5 miles of road maintenance, 3.3 miles of road to be put in storage, and 10.3 miles of road to be abandoned.

Planting or seeding of willow, aspen, which will be used to develop alternatives to the proposed action. Comments should be as specific as possible. In order for the Forest Service to consider research identified in comments, the commentor must identify why the research is pertinent to the Glady Fork project and must provide a copy of the research papers.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft

(Authority: 40 CFR 1501.7. and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 28, 2002.

Clyde N. Thompson,

Forest Supervisor.

[FR Doc. 02–16816 Filed 7–3–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

approval of the August 21, 2002 minutes, projects submitted for the new fiscal year 2003, reports from subcommittees and selection of projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530)

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

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road management activities in the Glady Fork watershed of the Monongahela National Forest. This notice provides a description of the proposed action, displays the estimated dates for filing the EIS, provides information concerning public participation, and provides the names and addresses of the responsible agency official and individuals who can provide additional information.

DATES: We need to receive your comments on this Notice of Intent in writing 45 days after this notice is published in the **Federal Register**. The draft environmental impact statement is expected February 2003 and the final environmental impact statement is expected May 2003.

ADDRESSES: Send written comments to: Michele Jones, Forest NEPA Team Leader, Monongahela National Forest, 200 Sycamore Street, Elkins, West Virginia 26241. Faxes should be sent to (304) 636–1875. For further information, mail correspondence to the same address.

FOR FURTHER INFORMATION CONTACT: Michele Jones, Forest NEPA Team Leader, Monongahela National Forest, 200 Sycamore Street, Elkins, West Virginia 26241, or by calling (304) 636–1800.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for action in the Glady Fork project area is to increase forest health, to improve water quality and fish habitat, to enhance wildlife habitat, and to provide forest products to the local community.

Proposed Action

The proposed activities all fall within Management Prescription 6.1 under the Monongahela National Forest Land and Resource Management Plan. The primary purpose of Management Prescription 6.1 is to manage for remote habitat species intolerant of disturbance. Secondary purposes are to manage for a semi-primitive non-motorized type of recreational environment, a mix of forest products, and manage sites reverting from hardwood to conifer and the intermingled high site hardwood types.

The proposed action includes an estimated 797 acres of thinning, 689 acres of crop tree release, 51 acres of clearcuts, 96 acres of shelterwood, 345 acres of two-age harvest, and 20 acres of overstory removal. In total, approximately 1,998 acres of commercial timber harvest is proposed, which would be logged by using helicopter yarding on 1,205 acres and 793 acres of conventional ground-based skidding. Post-harvest treatments proposed include 609 acres of herbicide use, site preparation, and fencing, and 51 acres of planting.

Road management proposed in the Glady Fork project includes 2.0 miles of new road construction, 25.5 miles of road maintenance, 3.3 miles of road to be put in storage, and 10.3 miles of road to be abandoned.

Planting or seeding of willow, aspen, alder, or other native trees or shrubs along Daniels Creek is proposed to provide shade and future large woody debris. In addition, trees would be placed in Daniels Creek, McCray Run, and Nichols Lane Run to help channel stability and to provide stream structure.

The proposed action includes one stand that would be converted to a savannah, approximately 10 acres in size. An estimated 56 acres of red spruce release would occur to improve habitat for wildlife species such as the endangered West Virginia northern flying squirrel. Two wildlife openings, approximately 3 acres each, would be developed to provide open, grassy habitat for species such as white-tailed deer, wild turkey, and black bear.

Responsible Official

The responsible official is Clyde N. Thompson, Monongahela National Forest Supervisor, 200 Sycamore Street, Elkins, West Virginia 26241.

Nature of Decision To Be Made

The responsible official will make a determination in his decision whether the proposed action should proceed as proposed, as modified, or not at all. The decision will also include mitigation measures to be implemented with the project and associated monitoring requirements. The decision maker will also determine whether or not an amendment to the Monongahela National Forest Land and Resource Management Plan is needed.

Scoping Process

The scoping period last for 45 days from the date this notice is published in the **Federal Register**. Written and oral comments from the public will be received through the postal service, via fax, or over the telephone. No public meetings, open houses, or field trips are planned at this time.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments will be used to identify significant issues, which will be used to develop alternatives to the proposed action. Comments should be as specific as possible. In order for the Forest Service to consider research identified in comments, the commentor must identify why the research is pertinent to the Glady Fork project and must provide a copy of the research papers.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7. and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 28, 2002.

Clyde N. Thompson,

Forest Supervisor.

[FR Doc. 02–16816 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–462) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Wednesday, August 7th, 2002, Wednesday, August 21st, 2002, and Wednesday, September 11th, 2002; in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting August 7th begins at 5 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of July 10, 2002 minutes, projects submitted for the new fiscal year 2003, reports from subcommittees and review and selection of projects that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting. The business meeting August 21st begins at 5 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of the August 7, 2002 minutes, projects submitted for the new fiscal year 2003, reports from subcommittees and selection of projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments at the beginning of the meeting. The business meeting September 11th begins at 5 pm., at the Modoc National Forest Office, Conference Room 800 West 12th St., Alturas. Agenda topics will include approval of the August 21, 2002 minutes, projects submitted for the new fiscal year 2003, reports from subcommittees and selection of projects on the Modoc National Forest that meet the intent of Pub. L. 106–393. Time will be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 02–16810 Filed 7–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lower Clear Boggy Creek Watershed, Site 32B, Atoka County, Oklahoma

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: M. Darrel Dominick, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with the installation of the Lower Clear Boggy Creek Watershed, Site 32B project is available. Single copies of this record of decision may be obtained from M. Darrel Dominick at the address shown below.

FOR FURTHER INFORMATION CONTACT: M. Darrel Dominick, State Conservationist, Natural Resources Conservation Service, State Office, 100 USDA Suite 206, Stillwater, Oklahoma, 74074–2655, telephone (405) 742–1227.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: June 19, 2002.

M. Darrel Dominick,

State Conservationist.

[FR Doc. 02–16876 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: August 4, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters

should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Battery, Nonrechargeable/ 6135–00–826–4796 (Remaining

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products have been proposed for deletion from the

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Used to study gait mechanics in multiple successive strides especially during movement at walking/marching speeds.

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement/Environmental Impact Report for a Proposed Deguerre Point Dam Fish Passage Improvement Project

AGENCY: Department of the Army, U.S.

licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: As assay for detecting, measuring, or monitoring the activity of concentration of at least two proteins that have similar or overlapping properties is disclosed. The assay comprises first determining the sensitivity coefficients of the substrates

ladders. Potential siting and configuration depends on engineering design considerations.

2. Notch Dam to Passable Height

This alternative concept would cut a notch out of the existing dam to a height that adult fish can successfully pass. Accumulated sediment behind the dam may be dredged or released downstream naturally.

should idenfify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Battery, Nonrechargeable/ 6135–00–826–4798. (Remaining Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.
Product/NSN: Battery, Nonrechargeable/ 6135–00–900–2139. (Remaining Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.
Product/NSN: Battery, Nonrechargeable/ 6135–00–985–7845. (Total Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.
Product/NSN: Paper, Toilet Tissue, 48 Ct., 2-ply/8540–00–NIB–0043.
NPA: Outlook-Nebraska, Incorporated, Fremont, Nebraska.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.
Product/NSN: Board, Assembly, Jack, Ground/2510–00–741–7585.
NPA: Pennyroyal Regional MH–MR Board, Inc., Hopkinsville, Kentucky.
Contract Activity: Defense Supply Center—Columbus, Columbus, Ohio.

Services

Service Type/Location: Custodial Service/ Basewide, Schriever AFB, Colorado.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contract Activity: USAF, 50 CONS/LGCZW, Schriever AFB, Colorado.
Service Type/Location: Janitorial/Custodial/ Naval Air Station, Buildings 180 and 349 Whidbey Island, Oak Harbor, Washington.
NPA: New Leaf, Inc., Oak Harbor, Washington.
Contract Activity: Naval Facilities Engineering Command, Oak Harbor, Washington.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products have been proposed for deletion from the Procurement List:

Products

Product/NSN: Harness Assembly/1660–00–066–2078.
NPA: Human Technologies Corporation, Utica, New York.
Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.
Product/NSN: Insert, Foam, Laminated/ 8135–00–NSH–0002.
NPA: None currently authorized.
Contract Activity: Bureau of the Mint, Department of the Treasury, Washington, DC.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–16843 Filed 7–3–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Assay for Detecting, Measuring, and Monitoring the Activities and Concentrations of Proteins and Methods of Use Thereof

AGENCY: Department of the Army, DOD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/848,370 entitled "Assay for Detecting, Measuring, and Monitoring the Activities and Concentrations of Proteins and Methods of Use Thereof," filed May 4, 2001. Foreign rights are also available (PCT/US01/14444). The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: As assay for detecting, measuring, or monitoring the activity of concentration of at least two proteins that have similar or overlapping properties is disclosed. The assay comprises first determining the sensitivity coefficients of the substrates for each of the proteins in which the concentrations are to be determined. This method may be used for detecting, measuring, or monitoring the activity and concentration of AChE, BChE, or both in a test sample which test sample may be whole and unprocessed blood or tissue. Also disclosed are methods of using the assay to detect a subject's exposure to an agent which affects cholinesterase, determine the efficacy or progress of a treatment, determine the amount of protection provided against exposure to an agent which affects cholinesterase, or both, screen a subject for having a drug sensitivity or a particular disease, detect a change in red blood cell count of a subject, determine whether a candidate compound affects cholinesterase. Also disclosed are devices and kits for detecting, measuring, or monitoring the activities and concentrations of AChE, BChE, or both.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–16884 Filed 7–3–02; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Force Sensing Treadmill

AGENCY: Department of the Army, DOD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 60/368,807 entitled "Force Sensing Treadmill," filed March 21, 2002. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army. Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Used to study gait mechanics in multiple successive strides especially during movement at walking/marching speeds.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–16883 Filed 7–3–02; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Ricin Vaccine and Methods of Making and Using Thereof

AGENCY: Department of the Army, DoD.
ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 110/083.336 entitled "Ricin Vaccine and Methods of Making and Using Thereof," filed February 27, 2002. Foreign rights are also available (PCT/US02/05732). The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 691–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Methods of immunizing against, treating, and preventing ricin intoxication are disclosed.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–16885 Filed 7–2–02; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement/Environmental Impact Report for a Proposed Daguerre Point Dam Fish Passage Improvement Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.
ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) and the California Department of Water Resources (DWR) are lead agencies preparing a joint Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR), pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), to evaluate the Daguerre Point Dam Fish Passage Improvement Project. The purpose of the project is to improve fish passage at Daguerre Point Dam. The project has a goal to improve upstream and downstream fish passage for native anadromous fish species at Daguerre Point Dam and contribute to overall population recovery. Additional objectives are to keep water interests whole and not increase food risk. Stakeholder meetings have identified alternatives to consider during the preparation of the environmental document.

DATES: Written comments will be accepted no later than July 25, 2002.

ADDRESSES: Submit written comments to Ted Frink, Department of Water Resources Fish Passage Improvement Program, P.O. Box 942836, Sacramento, CA 94236–0001, phone (916) 651–9630, fax (916) 651–9607.

FOR FURTHER INFORMATION CONTACT: Doug Grothe, U.S. Army Corps of Engineers, Englebright/Martis Creek Lakes, P.O. Box 6, Smartville, CA 95977, phone (530) 639–2342, fax (530) 639–2175.

SUPPLEMENTARY INFORMATION: Preliminary resource issues that have been identified and will be evaluated in the joint document include but are not limited to fish passage, water supply, sediment fate, and biological resources. In addition to No Action/No Project, four alternative concepts are being considered.

1. State-of-the-Art Fish Ladder(s)

This alternative concept would replace the two existing fish ladders with either one or two state-of-the-art ladders. Potential siting and configuration depends on engineering design considerations.

2. Notch Dam to Passable Height

This alternative concept would cut a notch out of the existing dam to a height that adult fish can successfully pass. Accumulated sediment behind the dam may be dredged or released downstream naturally.

3. Natural River Channel Bypass Around Dam

This alternative concept would create a new river channel that bypasses the existing dam. The bypass channel length and width would be determined based on engineering design considerations. Daguerre Point Dam would remain in place.

4. Dam Removal

This alternative concept would remove Daguerre Point Dam. Accumulated sediment behind the dam may be dredged or released downstream naturally. The environmental review will be conducted pursuant to NEPA and CEQA, the Endangered Species Act, and other applicable laws, to analyze potential environmental impacts of implementing each feasible alternative. The Daguerre Point Dam Preliminary Fish Passage Improvement Study completed in 2001 by the USACE is the starting point for this process. Alternatives described in this report will be re-evaluated and updated to reflect current conditions and knowledge. Public input on additional alternatives or combination of alternatives that should be considered will be sought through the scoping process.

Comments, including names and addresses of respondents, are typically made available for public review. Individual respondents may request their home addresses withheld from public disclosure. These requests would be honored to the extent allowable by law. Requests to withhold your home address must be stated prominently at the beginning of your comment letter. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available to the public in its entirety. A public scoping meeting for the DEIS/EIR was held on June 27, 2002 from 6:30 to 8:30 p.m., at Yuba-Sutter Chamber of Commerce (meeting room), 429 10th Street, Marysville, CA 95901. (See Dates and Addresses above for more information.)

Availability of the DEIS/EIR: The DEIS/EIR is estimated to be available in early 2003.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–16882 Filed 7–3–02; 8:45 am]
BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action. The Corps may ultimately make a determination to permit or deny the above project or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the preparation of a subsequent

and thereby reducing environmental impacts of increased container terminal operations in the West Basin area. The proposed improvement projects involve dredge and fill operations, new wharf construction, renovation of existing wharfs coupled with terminal expansion on adjacent areas of existing land, and improvement of transportation infrastructure.

Optimization of terminals and infrastructure in the West Basin was

Marine Terminal Improvement Projects EIS/SEIR, the proposed improvement projects include the following elements:

(a) Berth 100–102 area Phase II and III projects.

(1) Construction and operation of a second 1,300 foot long wharf.

(2) Construct and operate container terminal backlands, buildings, facilities and infrastructure on the 43 acres created under Channel Deepening Project.

3. Issues

There are several potential environmental issues that will be addressed in the EIS/SEIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(a) Land use and planning impacts, including creation of new landfill requiring amendment of the Port Master Plan and approval by the California

6. Availability of the Draft SEIR/EIS

The Draft SEIR/EIS is expected to be published and circulated in the fall of 2002 and a public hearing will be held after the publication of the Draft EIS/ SEIR.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–16886 Filed 7–3–02; 8:45 am]
BILLING CODE 3710–KF–M

VOL 67 ISS 129 JL 5 2002 UMI

Availability of the DEIS/EIR: The DEIS/EIR is estimated to be available in early 2003.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–16882 Filed 7–3–02; 8:45 am]
BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement/Subsequent Environmental Impact Report for a Permit Application for the Proposed West Basin Marine Terminal Improvement Projects in the Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Los Angeles District is considering future applications for Section 404 and Section 10 permits to conduct dredge and fill activities associated with a continuing program of waterside, marine terminal, and transportation improvement projects in the West Basin area of the Port of Los Angeles. Some of the project elements are completed and others are previously approved actions by the Port of Los Angeles (Port) and the Corps, including the Channel Deepening Project (Corps/Port 2000) that will dredge all navigational channels in the West Basin to −53 feet and construct 43 acres of new landfill in the Southwest Slip. Major project elements to be covered in the Draft Environmental Impact Statement/Subsequent Environmental Impact Statement/Subsequent Environmental Impact Report (EIS/SEIR) include: Dredging, wharf renovation and new wharf construction, to match the approved −53 foot channel depths construction of new landfill, and potential channel realignment. Landside developments will include expansion, redevelopment and construction of marine terminal facilities, and transportation infrastructure improvements including a grade separation a bridge structure, an intermodal rail facility and potential realignment of road and railways.

The primary Federal concern is the dredging and discharging of materials within waters of the United States and potential impacts on the human environment. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action. The Corps may ultimately make a determination to permit or deny the above project or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the preparation of a subsequent Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a Draft EIS/SEIR in order to optimize efficiency and avoid duplication. The Draft EIS/SEIR is intended to be sufficient in scope to address both the Federal and the state and local requirements and environmental issues concerning the proposed activities and permit approvals.

DATES: A public scoping meeting for the Draft EIS/SEIR will be held at the Port of Los Angeles on July 16, 2002, at 6:30 P.M. Written comments will be received until August 5, 2002.

ADDRESSES: Copies of comments and questions regarding scoping of the Draft EIS/SEIR may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch. ATTN: File Number 2002–01070–AOA, P.O. Box 532711, Los Angeles, CA 90053–2325. Copies should also be sent to Dr. Ralph Apply, Director of Environmental Management, Port of Los Angels, 425 S. Palos Verdes St., San Pedro, CA 90731.

FOR FURTHER INFORMATION CONTACT: Phone messages or questions can be directed to Dr. Aaron O. Allen: (805) 585–2148.

SUPPLEMENTARY INFORMATION:

1. Project Site and Background Information

The proposed project is located in the northwestern portion of the Port of Los Angeles, adjacent to the Wilmington and San Pedro Districts of the City of Los Angeles, CA. The proposed dredge activities would take place at various berths throughout the West Basin portion of the Port of Los Angeles, including the Berth 100–102 area, the Berth 118–131 area, and the Berth 136–147 area. Dredging would also be required if the navigation channel at Berths 121–127 was to be widened. Major areas of fill include the Southwest Slip and possibly the slip at Berths 132–134. The proposed improvement projects represent a continuation of a long-term, ongoing process of optimizing cargo handling efficiencies and thereby reducing environmental impacts of increased container terminal operations in the West Basin area. The proposed improvement projects involve dredge and fill operations, new wharf construction, renovation of existing wharfs coupled with terminal expansion on adjacent areas of existing land, and improvement of transportation infrastructure.

Optimization of terminals and infrastructure in the West Basin was initially evaluated in the West Basin Transportation Improvements Program Environmental Impact Report (WBTIP EIR, LAHD 1997a). The 1997 EIR and subsequent CEQA and NEPA assessments have been used to certify and approve many project elements in the West Basin. Since the certification of the 1997 Program EIR many project elements have been completed and others are planned.

Key objectives of the new West Basin EIS/SEIR identified in this notice of intent will be to: (1) Establish an updated baseline of current Port operations and environmental conditions with the West Basin and (2) assess potential environmental effects of implementing currently proposed projects within this part of the Port of Los Angeles. A key component of this new EIS/SEIR will be to update the cargo-handling capacity of the West Basin container terminals and update environmental impacts of ship, truck, and rail traffic associated with proposed project elements.

2. Proposed Action

Construction of the proposed project would require dredging approximately 1,000,000 cubic yards of material if all project elements are implemented. Placement of sediment within the West Basin to construct additional landfill in the Southwest slip would require approximately 5,000,000 cubic yard of material and result in the permanent loss of 32 acres of open-water habitat. The placement of material generated by the federal channel deepening project in the Southwest slip to meet this need has been reviewed in terms of dredge disposal options in the Port of Los Angeles Channel Deepening Project SEIS/SEIR (2000). The potential channel widening between Berths 121 to 126 would create an additional 6 acres of open-water habitat and the potential fill between Berths 131 to 136 would remove 13 acres of open-water habitat. Additional material would originate from sources outside of the West Basin such as the Pier 400 storage area. In addition to project elements that may arise from the public scoping process will also be evaluated in the West Basin Marine Terminal Improvement Projects EIS/SEIR, the proposed improvement projects include the following elements:

(a) Berth 100–102 area Phase II and III projects.

(1) Construction and operation of a second 1,300 foot long wharf.

(2) Construct and operate container terminal backlands, buildings, facilities and infrastructure on the 43 acres created under Channel Deepening Project.

(3) Construct a bridge to the Berth 118–131 area across the Southwest Slip.

(4) Potential realignment of the Front Street road and railways around Knoll Hill.

(5) Consolidation of adjacent parcels at Berth 99, from the Front Street realignment, and the former Todd Shipyard parking lot for container terminal operators.

(6) Creation of up to 32 acres of new landfill in the adjacent Southwest Slip for construction and operation of terminal backlands and infrastructure.

(b) Improvements to the Berth 118–131 area.

(1) Construction and upgrades of up to 2,800 feet of new and reconstructed wharves to match the planned −53 foot channel depths.

(2) Wharf improvements, including upgrade to 100-foot gauge crane rail.

(3) Construction of new facilities and buildings.

(4) Redevelopment of the 20-acre marine oil terminal at Berths 118–129 to container terminal operations.

(5) Potential widening of the navigation channel at between Berths 121 to 126.

(6) Potential landfill at the slip between Berths 131 to 136 of approximately 13 acres.

(c) Improvements to the Berth 136–151 area.

(1) Consolidation of the area into a single facility.

(2) Construct and upgrade up to 2,600 feet of wharves.

(3) Wharf improvement, including upgrade to 100-foot gauge crane rail.

(4) Construct and operate additional terminal gate facilities and buildings.

(5) Construction and operation of a grade separation at Neptune Avenue.

(6) Expansion of the terminal into the 20-acre area south of the realigned Harry Bridges Blvd.

(7) Construction and operation of additional 10-acre intermodal rail and infrastructure.

(8) Consolidation of the 17-acre marine oil terminal and infrastructure at Berths 148–151 into a five to six acre site and redevelopment of the area at Berth 149 to container terminal operations.

3. Issues

There are several potential environmental issues that will be addressed in the EIS/SEIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(a) Land use and planning impacts, including creation of new landfill requiring amendment of the Port Master Plan and approval by the California Coastal Commission.

(b) Geological issues including dredging and stabilization of fill areas in an area of known seismic activity.

(c) Impacts to water quality.

(d) Potential impacts to marine biological resources and endangered species of birds.

(e) Impacts to air quality.

(f) Impacts to traffic, including marine navigation and ground transportation.

(g) Potential for noise impacts.

(h) Impacts to public utilities and services.

(i) Potential impacts to aesthetic resources including increased light and glare.

(j) Potential impacts on public health and safety.

(k) Potential impacts to recreation.

(l) Cumulative impacts.

4. Alternatives

Several alternatives are being considered for the proposed improvement projects. These alternatives will be further formulated and developed during the scoping process and an appropriate range of alternatives, including the no federal action alternative, will be considered in the EIS/SEIR.

5. Scoping Process

A public scoping meeting (see **DATES**) will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS/SEIR. Participation in the public meeting by federal, state and local agencies and other interested organizations and persons is encouraged.

The Corps will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act. Additionally, the EIS/SEIR will assess the consistency of the proposed action with the Coastal Zone Management Act and assess potential water quality impacts pursuant to Section 401 of the Clean Water Act.

6. Availability of the Draft SEIR/EIS

The Draft SEIR/EIS is expected to be published and circulated in the fall of 2002 and a public hearing will be held after the publication of the Draft EIS/SEIR.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–16886 Filed 7–3–02; 8:45 am]
BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, July 15, 2002, from 8:30 a.m. to 1 p.m. The closed Executive Session will be from 12:15 p.m. to 1 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Dining Room of Alumni Hall at the U.S. Naval Academy.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark DeBuse, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy

has determined in writing that the special committee meeting shall be partially closed to the public because it will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7), and (9) of title 5 U.S.C.

Dated: June 21, 2002.

R.E. Vincent II,
Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

located in West Windsor Township, Mercer County, New Jersey.

2. *Conshohocken Borough Authority D–2001–59 CP.* A project to rerate a 2.3 mgd sewage treatment plant (STP) to treat 2.35 mgd on an average monthly basis and up to 3 mgd as a maximum monthly flow. The STP will continue to provide high quality secondary treatment and discharge to the Schuylkill River through the existing outfall. The project is located at Elm and

respectively, and to limit the existing withdrawal from all sources to 543 mg/30 days. The project is located in the St. Jones River watershed in the City of Wyoming, Kent County, Delaware.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the May 31, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the Executive Director; and a report by

equity in education; to enable educational agencies to meet the requirements of title IX of the Education Amendments of 1972; and to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age.

Eligible Applicants: Public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and

implementation of gender equity programs in schools. Examples of statutory activities under the program include—

(a) Assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972;

(b) Training for teachers, counselors, administrators, and other school personnel, especially preschool and elementary school personnel, in gender-equitable teaching and learning

(l) Programs to improve representation of women in educational administration at all levels; and

(m) Planning, development, and initial implementation of:

• Comprehensive institution- or districtwide evaluatio to assess the presence or absence of gender equity in educational settings;

• Comprehensive plans for implementation of equity programs in State and local educational agencies and institutions of higher education.

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has determined in writing that the special committee meeting shall be partially closed to the public because it will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7), and (9) of title 5 U.S.C.

Dated: June 21, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–16037 Filed 7–3–02; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, July 17, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 10 a.m. Topics of discussion will include an update on the Comprehensive Plan (CP); reports on the PCB TMDL development effort; a report on the development of water quality criteria for toxic pollutants; a report on the Flow Management Technical Advisory Committee meeting of June 25; and an update on Flood Advisory Committee activities.

The subjects of the public hearing to be held during the 1 p.m. business meeting include, in addition to the dockets listed below: a resolution correcting paragraph 2.A. of Resolution No. 2002–6 to reflect that the Thermal Release Bank expires on April 30, 2003 and not on October 31, 2002; a resolution amending Docket D–77–110 CP by the addition of a "Designated Unit" to Table A (Revised); and a resolution concerning the declaration of drought emergency issued by the Commission on December 18, 2001.

The dockets scheduled for public hearing are as follows:

1. *Holdover Project: Mercer County Improvement Authority D–99–28 CP.* A project to construct a surface water intake on Assunpink Creek at Mercer Lake to withdraw 2.6 million gallons per day (mgd) of water. The new intake, in addition to an existing intake that can provide 1.3 mgd, will irrigate the applicant's Mercer Oaks II Golf Course located in West Windsor Township, Mercer County, New Jersey.

2. *Conshohocken Borough Authority D–2001–59 CP.* A project to rerate a 2.3 mgd sewage treatment plant (STP) to treat 2.35 mgd on an average monthly basis and up to 3 mgd as a maximum monthly flow. The STP will continue to provide high quality secondary treatment and discharge to the Schuylkill River through the existing outfall. The project is located at Elm and Jones Streets in Conshohocken Borough, Montgomery County, Pennsylvania. The plant will continue to serve Conshohocken Borough, plus portions of Whitemarsh and Plymouth Townships, all within Montgomery County.

3. *Newark Country Club D–2002–12.* A ground water withdrawal project to supply up to 2.1 mg/30 days of water to the applicant's golf course from new Well No.5 in the Christianstead Gneiss Formation, and to increase the existing withdrawal from all wells to 5.0 mg/30 days. The project is located in the Christina River and White Clay Creek watersheds in the City of Newark, New Castle County, Delaware.

4. *Bidermann Golf Club D–2002–13.* A ground water withdrawal project to supply up to 0.864 mg/30 days of water to the applicant's golf course from new Well No. 5 in the Wissahickon Formation, and to increase the existing withdrawal from all sources to 15.8 mg/30 days. The project is located in the Brandywine Creek watershed in the City of Wilmington, New Castle County, Delaware.

5. *Town of Roxbury D–2002–14 CP.* A project to export 0.3 mgd of water, half in the form of raw sewage from failing on-lot systems and half as ground water supply, from the Hamlet of Roxbury in the Delaware River Basin to the Hamlet of Grand Gorge in the Mohawk-Hudson River Basin. Both hamlets are located in the Town of Roxbury, Delaware County, New York. The proposed ground water withdrawal and exportation project will replace a collapsed production well (No. 1) in the Roxbury Water District with a new one. The proposed ground water withdrawal from new Well No. 1 of up to 3 mg/30 days will be taken from the Catskill Formation. The raw sewage will be conveyed via force main to the existing NYCDEP Grand Gorge Sewage Treatment Plant located off State Route 23, and following treatment will be discharged to adjacent Bear Creek.

6. *Fifer Orchards, Inc. D–2002–20.* A ground water withdrawal project to supply up to 51.45 mg/30 days of water to the applicant's orchard from new Wells Nos. 6 and 7, in the Columbia/Choptank and Columbia Formations, respectively, and to limit the existing withdrawal from all sources to 543 mg/30 days. The project is located in the St. Jones River watershed in the City of Wyoming, Kent County, Delaware.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the May 31, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the Executive Director; and a report by the Commission's General Counsel, including consideration by the Commission of an agreement reached by the Petitioners in the appeal of Docket No. D–98–11 CP of the Pennsylvania Suburban Water Company (the "Cornog Quarry" project). The meeting will end with an opportunity for public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY), to discuss how the Commission may accommodate your needs.

Dated: June 28, 2002.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 02–16809 Filed 7–3–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.083A]

Women's Educational Equity Program (WEEA); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Summary: The Secretary invites applications for new grant awards for FY 2002 for the Women's Educational Equity Program. These grants are authorized by subpart 21, part D, title V, of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act, Public Law 107–110.

Purpose of Program: To provide financial assistance: to promote gender equity in education; to enable educational agencies to meet the requirements of title IX of the Education Amendments of 1972; and to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age.

Eligible Applicants: Public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and individuals.

Applications Available: July 5, 2002.

Deadline for Transmittal of Applications: August 19, 2002.

Deadline for Intergovernmental Review: October 18, 2002.

Available Funds: $842,000.

Estimated Range of Awards: $95,000–$200,000.

Estimated Average Size of Awards: $145,000.

Estimated Number of Awards: 4–7 (The Department is not bound by any estimates in this notice).

Note: In order to ensure the equitable distribution of grants, the Secretary, to the extent feasible, will award a slate of grants that address:

- A variety of levels of education, including preschool, elementary and secondary education, higher education, vocational education and adult education;
- Different regions of the United States; and
- A diversity of urban, rural, and suburban entities.

Project Period: Up to 48 months. Fiscal year 2002 funds available under this competition would be used for the first 12 months of a project.

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for the Women's Educational Equity program to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than August 5, 2002. The e-mail notification should be sent to Diane Austin at *diane.Austin@ed.gov*. Applicants that fail to provide this e-mail notification may still apply for funding.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: The Department will award grants for the implementation of gender equity programs in schools. Examples of statutory activities under the program include—

(a) Assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972;

(b) Training for teachers, counselors, administrators, and other school personnel, especially preschool and elementary school personnel, in gender-equitable teaching and learning practices;

(c) Leadership training for women and girls to develop professional and marketable skills to compete in the global marketplace, improve self-esteem, and benefit from exposure to positive role models;

(d) School-to-work transition programs, guidance and counseling activities, and other programs to increase opportunities for women and girls to enter a technologically demanding workplace and, in particular, to enter highly skilled, high-paying careers in which women and girls have been underrepresented;

(e) Enhancing educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and on race, ethnic origin, limited English proficiency, disability, socioeconomic status, or age;

(f) Assisting pregnant students and students rearing children to remain in or to return to secondary school, graduate, and prepare their preschool children to start school;

(g) Evaluating exemplary model programs to assess the ability of such programs to advance educational equity for women and girls;

(h) Introduction into the classroom of textbooks, curricula, and other materials designed to achieve equity for women and girls;

(i) Programs and policies to address sexual harassment and violence against women and girls and to ensure that educational institutions are free from threats to the safety of students and personnel;

(j) Nondiscriminatory tests of aptitude and achievement and of alternative assessments that eliminate biased assessment instruments from use;

(k) Programs to increase educational opportunities, including higher education, vocational training, and other educational programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children benefits;

(l) Programs to improve representation of women in educational administration at all levels; and

(m) Planning, development, and initial implementation of:

- Comprehensive institution- or districtwide evaluatio to assess the presence or absence of gender equity in educational settings;
- Comprehensive plans for implementation of equity programs in State and local educational agencies and institutions of higher education, including community colleges; and
- Innovative approaches to school-community partnerships for educational equity.

Note: Due to a limited budget, the Department is not inviting applications under CFDA #84.083B (research and development grants) for FY 2002.

Invitational Priority for Implementation Grants: The Secretary invites and encourages applications that meet one or more of the following three invitational priorities for implementation grants:

(1) Projects that replicate or expand, and evaluate exemplary model programs that advance educational equity and contribute to improving teaching and learning for girls and women with disabilities. The Secretary is particularly interested in projects that include one of the following:

(a) Programs involving disabled girls and women who are likely to experience, or have experienced, multiple forms of discrimination based on sex, race, ethnic origin, limited English proficiency, disability, socioeconomic status or age;

(b) Mentoring programs and leadership training for disabled girls and women; and

(c) Identification of curricula and other materials designed to achieve equity for girls and women with disabilities and the effective implementation of these materials in the classroom.

(2) Projects that assist pregnant students and students with children to:

(a) Remain in or return to secondary school and graduate;

(b) Prepare their preschool children for school with an emphasis on reading;

(c) Explore postsecondary training and education.

(3) Projects that increase the role of parents in working in partnership with educational institutions to develop programs to encourage the full educational development of girls and women

(4) Projects that seek to increase opportunities for girls and women to enter a technologically demanding

workplace and, in particular, to enter highly skilled careers in which women have been underrepresented, particularly in mathematics, scientific and information technology fields.

Note: An application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria for Implementation Grants: The Secretary evaluates applications for implementation grants using the following selection criteria:

(1) *Need for project.* (10 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

a. The magnitude or severity of the problem to be addressed by the proposed project.

b. The extent to which the proposed project will promote equity in educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and race, ethnic origin, limited English proficiency, disability, or age.

(5) *Quality of the project design.* (20 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

b. The extent to which the proposed project is of sufficient quality, intensity, and duration to lead to improvements in achievement, attainment, or other relevant outcomes.

c. The extent to which the proposed activities constitute a coherent, sustained approach to improving teaching and learning for children with disabilities.

d. The extent to which the proposed activities are appropriate for the age range, disability, gender, and language backgrounds of the children or students to be served by the proposed project.

(8) *Quality of the management plan.* (15 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

a. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined

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DEPARTMENT OF EDUCATION

[CFDA No. 84.361]

Office of Elementary and Secondary Education; Voluntary Public School Choice Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: This program provides grants to eligible applicants to assist them in establishing or expanding

your application. You must limit Part IV to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" × 11", on one side only, with 1" margins at the top, bottom, and on both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all

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workplace and, in particular, to enter highly skilled careers in which women have been underrepresented, particularly in mathematics, scientific and information technology fields.

Note: An application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria for Implementation Grants: The Secretary evaluates applications for implementation grants on the basis of the following criteria. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(1) *Effectively achieving the purposes of WEEA.* (10 points)

The Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

Note: Applicants should consider the following statutory provisions when responding to this criterion. Under 20 U.S.C. 7283a, the purpose of the WEEA program is: (a) To promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age. Under 20 U.S.C. 7283d(e) nothing in this subpart shall be construed as prohibiting men and boys from participating in any program or activity assisted with funds under this subpart.

(2) *Project as a component of a comprehensive plan.* (10 points)

The Secretary reviews each application to determine the extent to which the project is a significant component of a comprehensive plan for educational equity and compliance with title IX of the Educational Amendments of 1972 in the particular school district, institution of higher education, vocational-technical institution, or other educational agency or institution.

(3) *Implementing an institutional change strategy.* (5 points)

The Secretary reviews each application to determine the extent to which the project implements an institutional change strategy with long-term impact that will continue as a central activity of the applicant after the WEEA grant has been terminated.

(4) *Need for project.* (10 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

a. The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

b. The extent to which the proposed project will promote equity in educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and race, ethnic origin, limited English proficiency, disability, or age.

(5) *Quality of the project design.* (20 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

c. The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

d. The extent to which the project promotes the involvement of parents.

(6) *Quality of Project Personnel.* (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

a. The qualifications, including relevant training and experience, of the project director or principal investigator.

b. The qualifications, including relevant training and experience, of key project personnel.

c. The qualifications, including relevant training and experience, of project consultants or subcontractors.

(7) *Adequacy of resources.* (5 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

a. The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

b. The extent to which the budget is adequate to support the proposed project.

(8) *Quality of the management plan.* (15 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

a. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

b. The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

c. How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(9) *Quality of the project evaluation.* (15 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

b. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

c. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

d. The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: Applicants should consider the following statutory provision when responding to this criterion. Under 20 U.S.C. 7283c(1), applicants for WEEA funds are required to describe policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/about/ordering.jsp*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.363A.

For Content Information and Technical Assistance Contact: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E124, Washington, DC 20202–6140. Telephone: (202) 260–1393 or via Internet: *diane.austin@ed.gov*

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Program Authority: 20 U.S.C. 6651(b).

Dated: July 1, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–16888 Filed 7–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.361]

Office of Elementary and Secondary Education; Voluntary Public School Choice Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: This program provides grants to eligible applicants to assist them in establishing or expanding a program of voluntary public school choice in order to provide parents, particularly parents whose children attend low-performing schools, with greater choice in their children's education.

Eligible Applicants: (a) One or more State educational agencies (SEAs); (b) one or more local educational agencies (LEAs); (c) one or more SEAs in partnership with one or more LEAs or other public, for-profit, or non-profit entities; or (d) one or more LEAs in partnership with one or more public, for-profit, or non-profit entities.

Applications Available: July 5, 2002.

Deadline for Transmittal of Applications: August 19, 2002

Deadline for Intergovernmental Review: September 18, 2002.

Estimated Available Funds: $25,000,000.

Estimated Range of Awards: $2,500,000–$5,000,000 per year.

Estimated Average Size of Awards: $3,750,000 per year.

Estimated Number of Awards: 5–10.

Note: These estimates are for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to five years.

Note: Not more than 12 months may be used to plan and design a program.

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for this program to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than August 5, 2002. The e-mail notification should be sent to Ms. Iris Lane at *Iris.Lane@ed.gov*. Applicants that fail to provide this e-mail notification still may apply for funding.

Page Limits: The Program Narrative (Part IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part IV to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" × 11", on one side only, with 1" margins at the top, bottom, and on both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the table of contents; Part III, the project abstract and application requirements; Part V, the budget section, including the narrative budget justification; part VI, the assurances and certifications; or Part VII, the proof of eligibility. However, you must include all of the program narrative in Part IV.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations and Statute: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 86, 97, 98, and 99. (b) Title V, Part B, Subpart 3 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, 20 U.S.C. 7225–7225g.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice might have applied to one or more of the priorities and requirements in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new or substantially revised program from this requirement. Because this competition is the first Voluntary Public School Choice program competition under the newly reauthorized ESEA, it qualifies as a new competitive grant program and is exempt from notice and comment rulemaking. The Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forego public comment. This notice applies to the FY 2002 competition only.

Application Requirements: An application submitted to the Secretary must include the following:

(1) A description of the program for which the eligible entity seeks funds and the goals for the program;

(2) A description of how and when parents of students in the area to be served by the program will be notified of the existence of the program and of the program's availability, and provided in participating schools. In determining whether a proposed project would provide a wide variety of choices, the Department will consider, among other things, the characteristics of the school district. For example, a wide variety of choices in a small rural district may differ from a wide variety of choices in a large urban school district.

(b) *Substantial Impact on Students in Low-Performing Schools* (up to 5

(b) *Significance* (up to 15 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement.

(2) The extent to which the proposed project is likely to build local capacity

Parent and Community Involvement and Notice

In carrying out a project under this program, an eligible entity must—

(1) Develop the project with (a) the involvement of parents and others in the community to be served; and (b) individuals who will carry out the program, including administrators, teachers, principals, and other staff; and

(2) Provide to parents of students in

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FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 400 Maryland Avenue, SW, room 3527, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8105 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: *Debra.Sturdivant@ed.gov.*

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Application Requirements: An application submitted to the Secretary must include the following:

(1) A description of the program for which the eligible entity seeks funds and the goals for the program;

(2) A description of how and when parents of students in the area to be served by the program will be notified of the existence of the program and of the program's availability, and provided a clear explanation of how the program will operate, as required under section 5245(a)(2) of the ESEA;

(3) A description of how students will be selected for the program;

(4) A description of how the program will be coordinated with, and will complement and enhance, other related Federal and non-Federal programs administered by the applicant or applicants;

(5) If the program is to be carried out by a partnership, the name of each partner and a description of the partner's responsibilities; and

(6) A description of the information collection that the applicant plans to conduct in order to meet the requirements of 34 CFR 75.590 and to participate in any evaluation of the program that the Secretary conducts under section 5246(b) of the ESEA. Section 75.590 requires the recipient of an award to evaluate at least annually its progress in meeting the purposes of the program, and the effect of the program on the participants in the project. Section 5246(b) of the ESEA authorizes the Secretary to conduct evaluations that examine, among other things, how, and the extent to which, projects promote educational equity and excellence; the characteristics of students participating in projects; and the effect of projects on academic achievement of students participating in the projects, including students who move from school improvement under section 1116 of the ESEA to schools not so identified.

Note: The application requirements described above must be addressed in the Project Abstract and Application Requirements section (Part III) of your application.

Priority Points: Under 34 CFR 75.105(c)(2) of the Education Department General Administrative Regulations, the Secretary will award a maximum of up to 5 priority points for each criterion the applicant meets, and a maximum of up to 15 priority points for applications that meet all of the following criteria:

(a) *Wide Variety of Choices* (up to 5 points). The project would provide a wide variety of choices to all students in participating schools. In determining whether a proposed project would provide a wide variety of choices, the Department will consider, among other things, the characteristics of the school district. For example, a wide variety of choices in a small rural district may differ from a wide variety of choices in a large urban school district.

(b) *Substantial Impact on Students in Low-Performing Schools* (up to 5 points). The project would, through various choice options, have a substantial impact in allowing students in low-performing schools to attend higher-performing schools. In determining whether a proposed project would have a substantial impact in allowing students in low-performing schools to attend higher-performing schools, the Department will consider, among other things, the percentage of students in low-performing schools who would be able to attend higher-performing schools under the jurisdiction of the applicant(s).

Note: The term "low-performing school" means a public elementary or secondary school that has failed to make adequate yearly progress, as described in section 1111(b) of the ESEA, for two or more consecutive years.

(c) *Partnership/Interdistrict Approach* (up to 5 points). The project would establish a partnership that implements an interdistrict approach to carrying out a public school choice program.

These priorities are specified in the authorizing statute for the program (see section 5244 of the ESEA). The priority points are in addition to any points the applicant earns under the selection criteria listed below. The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority. The maximum number of points an application may earn based on the priority points and the selection criteria is 115 points.

Selection Criteria: The Secretary will use the selection criteria in 34 CFR 75.210 and selection criteria based on statutory provisions to evaluate applications for new grants under this competition. The maximum possible score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Need for the Project* (up to 100 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance* (up to 15 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services (*i.e.*, choice options) that address the needs of the target population.

(3) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) Quality of Project Design). (up to 40 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project encourages parental involvement and ensures that parents have high-quality information about their choices.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extend to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about

Permissible Uses of Funds

An eligible entity that receives a grant under this subpart may use the grant funds for—

(a) Planning or designing a program (for not more than 1 year);

(b) The cost of making tuition transfer payments to public elementary schools or secondary schools to which students transfer under the program.

(c) The cost of capacity-enhancing activities that enable high-demand public elementary schools or secondary schools to accommodate transfer requests under the program;

(d) The cost of carrying out public education campaigns to inform students and parents about the program; and

(e) Other costs that are reasonably necessary to implement the program.

Nonpermissible Use of Funds

An eligible entity that receives a grant under this program may not use the grant funds for school construction.

Parent and Community Involvement and Notice

In carrying out a project under this program, an eligible entity must—

(1) Develop the project with (a) the involvement of parents and others in the community to be served; and (b) individuals who will carry out the program, including administrators, teachers, principals, and other staff; and

(2) Provide to parents of students in the area to be served by the program with prompt notice of (a) the existence of the program; (b) the program's availability; and (c) a clear explanation of how the program will operate.

Selection of Students by Lottery

An eligible entity that receives a grant under this program must select students to participate in its public school choice program on the basis of a lottery, if more students apply for admission to the program than can be accommodated.

Note: For purposes of this program, a lottery is defined as a random selection process through which applicants for admission to a participating public school are admitted to the school.

Voluntary Participation

Student participation in a project funded under this program must be voluntary.

For Applications or Information Contact: Iris A. Lane, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C156, Washington, DC 20202–6140. Telephone: (202) 260–1999. Inquiries may also be sent by e-mail to: *Iris.Lane@ed.gov*

Or by FAX to: (202) 205–5630. The Department intends to offer prospective applicants further information about the program and assistance in preparing applications at the following Internet site: *http://www.ed.gov/GrantApps/#84.361*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 7225–7225g.

Dated: July 1, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–16889 Filed 7–3–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Inviting Applications for New Awards

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal years (FY) 2002; Correction.

On May 24, 2002, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under the Special Education—Training and Information for Parents of Children with Disabilities Program was published in the **Federal Register** (67 FR 36774). Under the Parent Training and Information Centers (84.328M) priority on page 36776, in column 1, "Estimated Project Awards" section, and the table also included on page 36777, the notice states that one award may be made to New York in the amount of $234,075 to a qualified applicant for a parent center to serve the entire State. The first sentence in the second paragraph of the "Estimated Project Awards" section is corrected to begin, "With the exception of New York, where the award will serve the metropolitan New York City area, one award may be made in the following amounts to a qualified applicant for a parent center to serve the entire State".

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 400 Maryland Avenue, SW, room 3527, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8105 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: *Debra.Sturdivant@ed.gov.*

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Program Authority: 20 U.S.C. 1482.

Dated: July 1, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–16880 Filed 7–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of the annual updates to the income contingent repayment (ICR) plan formula for 2002.

SUMMARY: The Secretary announces the annual updates to the ICR plan formula for 2002. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay

their student loans under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and interest rate. Each year, we adjust the formula for calculating a borrower's payment to reflect changes due to inflation. This notice contains the constant multiplier chart and the required updates based on inflation for examples of how the calculation of the

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the two will be your annual payment amount. In this example, you will be paying the amount calculated under Step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,751.58 ÷ 12 = $145.97

Example 2. In this example, you are married. You and your spouse have a combined AGI of $61,121 and are repaying your loans jointly under the ICR plan. You have no children. You have a Direct Loan balance of $10,000, and your spouse has a Direct Loan balance of $15,000. Your interest

- $25,751 − $21,641 = $4,110

Step 3: Determine the difference between the two income percentage factors that are given for these incomes (for this discussion, we will call the result, the "income percentage factor interval"):

- 80.33% − 71.89% = 8.44%

Step 4: Subtract from your income the closest income shown on the chart that is less than your income of $25,000:

- $25,000 − $21,641 = $3,359

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

- $3,359 ÷ $4,110 = 0.81727

Step 6: Multiply the result of Step 5 by the income percentage factor interval:

- 8.44% × 0.81727 = 6.89776%

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $25,000 in income:

- 6.89776% + 71.89% = 78.79% (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR plan.

BILLING CODE 4000–01–P

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their student loans under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and interest rate. Each year, we adjust the formula for calculating a borrower's payment to reflect changes due to inflation. This notice contains the constant multiplier chart and the required updates based on inflation for examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, and charts showing sample repayment amounts. These updates are effective from July 1, 2002 to June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Don Watson, U.S. Department of Education, Room 092B1, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Direct Loan Program borrowers may choose to repay their Direct Loans under the ICR plan. The attachment to this notice provides updates to examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts.

We have updated the income percentage factors to reflect changes based on inflation. We have revised the income percentage factor table by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all urban consumers from December 2001 to December 2002. Further, we provide examples of monthly repayment amount calculations and two charts that show sample repayment amounts for single and married or head-of-household borrowers at various income and debt levels based on the updated income percentage factors.

The updated income percentage factors, at any given income, may cause a borrower's payments to be slightly lower than they were in prior years. This updated amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

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Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: July 1, 2002.

Candace M. Kane,

Acting Chief Operating Officer, Federal Student Aid.

Attachment—Examples of the Calculations of Monthly Repayment Amounts

Example 1. This example assumes you are a single borrower with $15,000 in Direct Loans, the interest rate being charged is 8.25 percent, and you have an adjusted gross income (AGI) of $32,345.

Step 1: Determine your annual payments based on what you would pay over 12 years using standard amortization. To do this, multiply your loan balance by the constant multiplier for 8.25 percent interest (0.1315449). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 × $15,000 = $1,973.17

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table that corresponds to your income and then divide the result by 100. (If your income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the "Interpolation" heading later in this notice.):

- 88.77 × $1,973.17÷100 = $1,751.58

Step 3: Determine 20 percent of your discretionary income. Because you are a single borrower, subtract the poverty level for a family of one, as published in the **Federal Register** on February 14, 2002 (67 FR 6931), from your income and multiply the result by 20 percent:

- $32,345 − $8,860 = $23,485
- $23,485 × 0.20 = $4,697

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be your annual payment amount. In this example, you will be paying the amount calculated under Step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,751.58 ÷ 12 = $145.97

Example 2. In this example, you are married. You and your spouse have a combined AGI of $61,121 and are repaying your loans jointly under the ICR plan. You have no children. You have a Direct Loan balance of $10,000, and your spouse has a Direct Loan balance of $15,000. Your interest rate is 8.25 percent.

Step 1: Add your and your spouse's Direct Loan balances together to determine your aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the annual payment based on what you would pay over 12 years using standard amortization. To do this, multiply your aggregate loan balance by the constant multiplier for 8.25 percent interest (0.1315449). (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 × $25,000 = $3,288.62

Step 3: Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table that corresponds to your and your spouse's income and then divide the result by 100. (If your and your spouse's aggregate income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the "Interpolation" heading later in this notice.):

- 109.40 × $3,288.62÷ 100 = $3,597.75

Step 4: Determine 20 percent of your discretionary income. To do this, subtract the poverty level for a family of two, as published in the **Federal Register** on February 14, 2002 (67 FR 6931), from your aggregate income and multiply the result by 20 percent:

- $61,121 − $11,940 = $49,181
- $49,181 × 0.20 = $9,836.20

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be your annual payment amount. You and your spouse will pay the amount calculated under Step 3. To determine your monthly repayment amount, divide the annual amount by 12.

- $3,597.75÷12 = $299.81

Interpolation: If your income does not appear on the income percentage factors table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $25,000.

Step 1: Find the closest income listed that is less than your income of $25,000 and the closest income listed that is greater than your income of $25,000.

Step 2: Subtract the lower amount from the higher amount (for this discussion, we will call the result the "income interval"):

- $25,751 − $21,641 = $4,110

Step 3: Determine the difference between the two income percentage factors that are given for these incomes (for this discussion, we will call the result, the "income percentage factor interval"):

- 80.33% − 71.89% = 8.44%

Step 4: Subtract from your income the closest income shown on the chart that is less than your income of $25,000:

- $25,000 − $21,641 = $3,359

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

- $3,359 ÷ $4,110 = 0.81727

Step 6: Multiply the result of Step 5 by the income percentage factor interval:

- 8.44% × 0.81727 = 6.89776%

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $25,000 in income:

- 6.89776% + 71.89% = 78.79% (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR plan.

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2002 Income Percentage Factors

(Based on Annual Income)

Single		Married/ Head of Household	
Income	% Factor	Income	% Factor
8,455	55.00%	8,455	50.52%
11,634	57.79%	13,342	56.68%
14,970	60.57%	15,900	59.56%
18,383	66.23%	20,786	67.79%
21,641	71.89%	25,751	75.22%
25,751	80.33%	32,345	87.61%
32,345	88.77%	40,565	100.00%
40,566	100.00%	48,788	100.00%
48,788	100.00%	61,121	109.40%
58,637	111.80%	81,674	125.00%
75,082	123.50%	110,450	140.60%
106,340	141.20%	154,469	150.00%
121,929	150.00%	252,414	200.00%
217,178	200.00%		

Constant Multiplier Chart for 12-Year Amortization

Interest Rate	Annual Constant Multiplier
7.00%	0.1234057
7.25%	0.1250107
7.46%	0.1263678
7.50%	0.1266272
7.75%	0.1282550
8.00%	0.1298943
8.25%	0.1315449
8.38%	0.1324076
8.50%	0.1332067
8.75%	0.1348796
9.00%	0.1365637

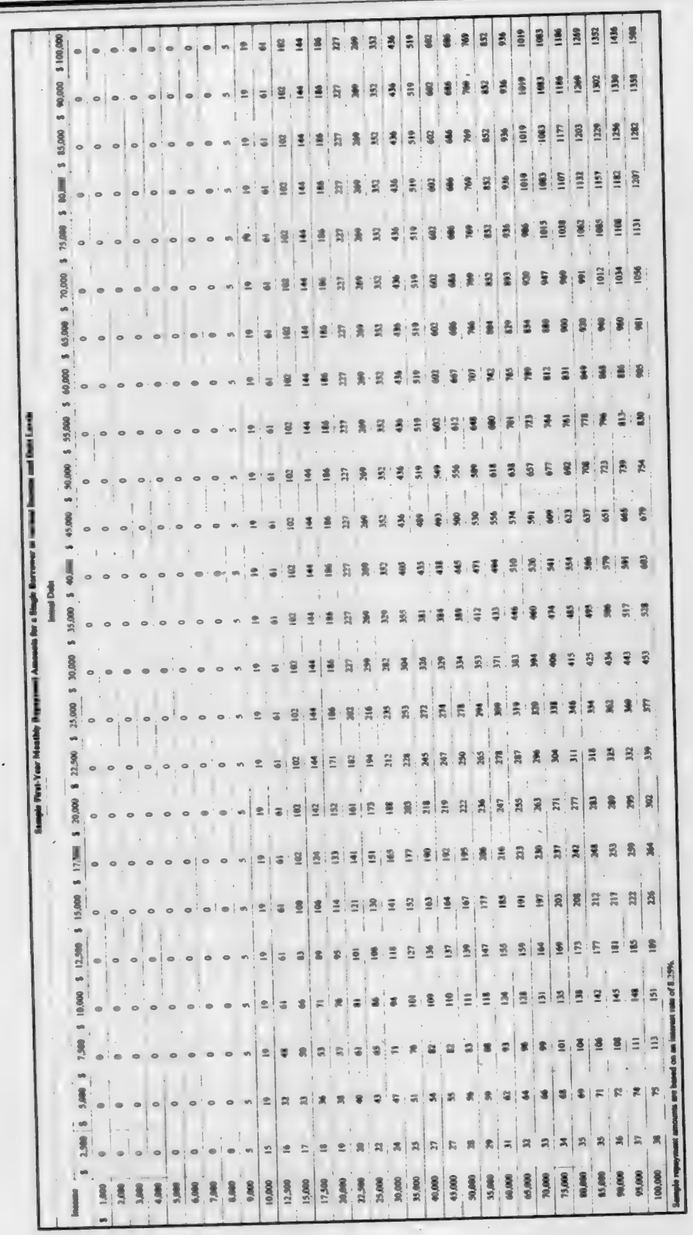

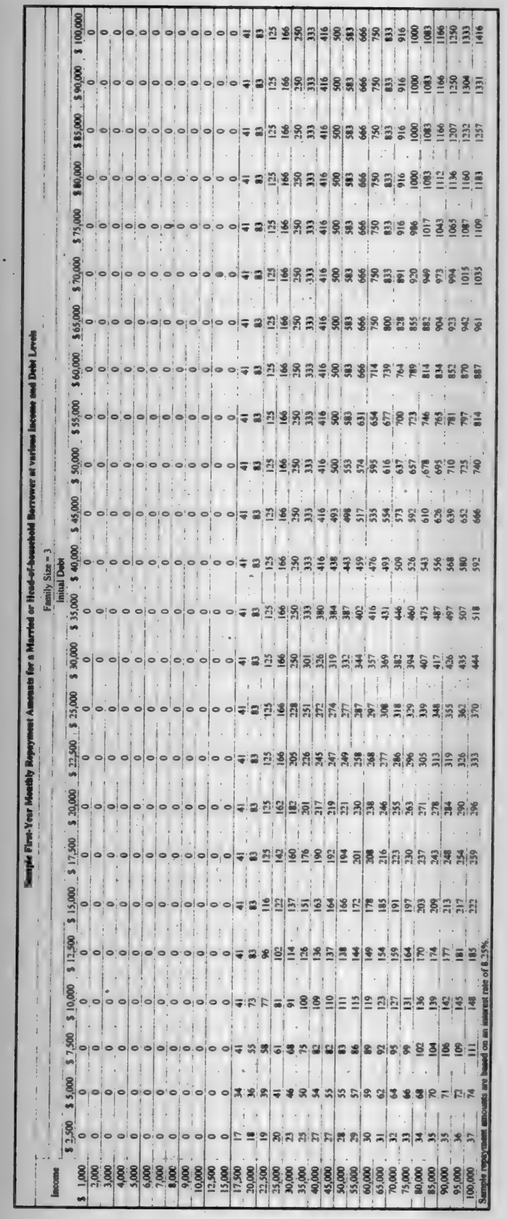

[FR Doc. 02–16879 Filed 7–3–02; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–73–001]

Comment Date: July 5, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–16833 Filed 7–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2033–001]

Midwest Independent Transmission System Operator, Inc., American Transmission Company LLC; Notice of Filing

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–47–000]

Old Dominion Electric Cooperative; Notice of Application

June 28, 2002.

Take notice that on June 21, 2002, Old Dominion Electric Cooperative (Old Dominion) submitted an application for authorization to issue short-term debt securities pursuant to section 204 of the Federal Power Act.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 12, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–104–011, EL01–1–012, EL01–2–006, EL01–68–016]

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Investigation of Practices of the California Independent System Operator and the California Power Exchange, Public Meeting in San Diego, California, Reliant Energy Power Generation, Inc., Dynegy Power

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[FR Doc. 02–16879 Filed 7–3–02; 8:45 am]
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–73–001]

Caledonia Generating, LLC, Cogentrix Energy Power Marketing, Inc., Cogentrix Lawrence County, LLC, Green Country Energy, LLC, Jackson County Power, LLC, Quachita Power, LLC, Rathdrum Power, LLC, Southaven Power, LLC & Aquila Merchant Services, Inc.; Notice of Filing

June 28, 2002.

Take notice that on June 17, 2002, Caledonia Generating, LLC, Cogentrix Energy Power Marketing, Inc., Cogentrix Lawrence County, LLC, Green Country Energy, LLC, Jackson County Energy, LLC, Quachita Power, LLC, Rathdrum Power, LLC, Southaven Power, LLC (Operating Companies) and Aquila Merchant Services, Inc. (AMS) filed with the Federal Energy Regulatory Commission (Commission), an amendment to the joint application submitted on June 5, 2002 in the above-referenced docket. The amendment removed Section VI thereof in its entirety, while the Application remains unchanged in all other respects.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 5, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–16833 Filed 7–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–46–000]

McDonough Power Cooperative; Notice of Application

June 28 , 2002.

Take notice that on June 20, 2002, McDonough Power Cooperative (McDonough) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make borrowings under a long-term loan agreement with the National Rural Utilities Cooperative Finance Corporation by issuing one or more secured promissory notes during a two-year period in an amount not to exceed $15,900,000.

McDonough also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 19, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–16835 Filed 7–05–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2033–001]

Midwest Independent Transmission System Operator, Inc., American Transmission Company LLC; Notice of Filing

June 27, 2002.

Take notice that on June 25, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and American Transmission Company LLC (ATCLLC) filed an errata to their June 5, 2002 filing proposing revisions to the Midwest ISO open access transmission tariff to add limitation of liability provisions. Applicant request an effective date of August 5, 2002.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO has posted this filing on its Internet site at *www.midwestiso.org*, and the Midwest ISO will provide hard copies to any interested parties upon request.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–16801 Filed 7–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–47–000]

Old Dominion Electric Cooperative; Notice of Application

June 28, 2002.

Take notice that on June 21, 2002, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to and including $66 million of long-term debt.

Old Dominion also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 19, 2002.

Dated:

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–16836 Filed 7–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

June 28, 2002.

In the matter of: EL00–95–084, EL00–98–053, EL00–107–012, EL00–97–006, EL00–104–011, EL01–1–012, EL01–2–006, EL01–68–016; San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Investigation of Practices of the California Independent System Operator and the California Power Exchange, Public Meeting in San Diego, California, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C. v. California Independent System Operator Corporation, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Californians for Renewable Energy, Inc. (CARE) v. Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; Notice of Filing.

Take notice that on June 24, 2002, the California Independent System Operator Corporation (ISO) submitted a filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission Order issued in the captioned dockets on May 15, 2002, 99 FERC ¶61,158. The ISO states that it has served the filing upon all entities that are on the official service lists for the captioned dockets.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). 0Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 15, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–16834 Filed 7–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–204–000]

Transcontinental Gas Pipe Line Corporation; Notice of Site Visit

June 27, 2002.

On July 9, 2002, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of Transcontinental Gas Pipe Line Corporation's (Transco) Trenton Woodbury Expansion Project in Mercer and Burlington Counties, New Jersey. We will examine the proposed project route and potential route variations. Representatives of Transco will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Those interested in attending should meet at 1:00 p.m. at the following location: Municipal Building, Township of Chesterfield, 300 Bordentown-Chesterfield Road, Trenton, New Jersey 08620.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–16800 Filed 7–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2102–000]

Utility Contract Funding, L.L.C.; Notice of Filing

June 27, 2002.

Take notice that on June 24, 2002, Utility Contract Funding, L.L.C. (UCF) submitted for filing a Service Agreement and Network Operating Agreement between ASC and City of Farmington, Missouri. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–930–000 with revised unexecuted Agreements.

Comment Date: July 15, 2002.

7. International Transmission Company

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–79–000, et al.]

Electric Rate and Corporate Regulation Filings

June 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2102–000]

Utility Contract Funding, L.L.C.; Notice of Filing

June 27, 2002.

Take notice that on June 24, 2002, Utility Contract Funding, L.L.C. (UCF) submitted for filing a Service Agreement and Network Operating Agreement between ASC and City of Farmington, Missouri. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–930–000 with revised unexecuted Agreements.

Comment Date: July 15, 2002.

7. International Transmission Company

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2942–005, 2931–002, 2941–002, 2932–003, and 2897–003]

S.D. Warren Company; Notice of Availability of Final Environmental Impact Statement

June 27, 2002.

The DEA contains the staff's analysis of the potential environmental impacts of the dam remediation project and contains measures to minimize those impacts. The DEA concludes that the project, with recommended mitigation measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2102–000]

Utility Contract Funding, L.L.C.; Notice of Filing

June 20, 2002.

Take notice that on June 14, 2002, Utility Contract Funding, L.L.C. submitted a Notice of Succession pursuant to 18 CFR 35.16 and 131.51. Utility Contract Funding, L.L.C. is succeeding to the electric tariffs, rate schedules, and service agreements currently on file with the Federal Energy Regulatory Commission by Cedar Brakes III, L.L.C.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16803 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–79–000, et al.]

Electric Rate and Corporate Regulation Filings

June 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Logan Generating Company, L.P., Pittsfield Generating Company, L.P., and Cogentrix Energy, Inc.

[Docket Nos. EC02–79–000, ER95–1007–015, and ER98–4400–004]

Take notice that on June 21, 2002, Logan Generating Company, L.P. (Logan), Pittsfield Generating Company, L.P. (Pittsfield), and Cogentrix Energy, Inc. (Cogentrix) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities that will result from the sale of Cogentrix's indirect interest in Logan and Pittsfield to General Electric Capital Corporation. Logan controls and operates a 218 MW qualifying cogeneration facility located in Logan Township, New Jersey. Pittsfield controls and operates a 165 MW qualifying cogeneration facility located in Pittsfield, Massachusetts. Logan and Pittsfield also request that that the Commission accept the filing as a notice of change in status in their respective rate dockets.

Comment Date: July 11, 2002.

2. Lake Road Trust Ltd., Lake Road Generating Company, L.P.

[Docket No. EC02–80–000]

Take notice that on June 21, 2002, Lake Road Trust Ltd. (Lake Road Trust) and Lake Road Generating Company, L.P. (Lake Road Gen), tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application to authorize an assignment of beneficial interests in Lake Road Trust to Lake Road Gen.

Comment Date: July 12, 2002.

3. Metcalf Energy Center, LLC

[Docket No. EG02–157–000]

Take notice that on June 21, 2002, Metcalf Energy Center, LLC (Metcalf) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Metcalf, a Delaware limited liability company, proposes to own and operate a nominally rated 600 megawatt natural gas-fired, combined cycle electric generating facility to be located in Santa Clara County, California. Metcalf intends to sell the output at wholesale to an affiliated marketer.

Comment Date: July 18, 2002.

4. Keyspan-Ravenswood, Inc.

[Docket No. EG02–158–000]

Take notice that on June 20, 2002 KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood) filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

KeySpan-Ravenswood states it is a New York corporation that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Queens, New York. The eligible facilities will consist of approximately 2,210 MW of gas and/or oil fired electric generation facilities and related interconnection facilities. The output of the eligible facilities will be sold exclusively at wholesale.

Comment Date: July 18, 2002.

5. Maine Public Service Company

[Docket No. ER00–1053–006]

Take notice that on June 18, 2002, pursuant to section 2.4 of the Settlement Agreement filed on June 30, 2000, in Docket No. ER00–1053–000, and accepted by the Federal Energy Regulatory Commission on September 15, 2000, Maine Public Service Company (MPS) submited a correction to its June 17, 2002 informational filing that set forth the changed open access transmission tariff charges effective June 1, 2002 together with back-up materials.

Copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER00–1053–000, the Commission Trial Staff, the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: July 9, 2002.

6. Ameren Services Company

[Docket No. ER02–930–001]

Take notice that on June 24, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and City of Farmington, Missouri. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER02–930–000 with revised unexecuted Agreements.

Comment Date: July 15, 2002.

7. International Transmission Company

[Docket Nos. ER02–1576–001]

Take notice that on June 24, 2002, International Transmission Company tendered a filing with the in response to a deficiency letter from the Federal Energy Regulatory Commission (Commission) issued on June 14, 2002, in the above-referenced docket. The Commission's June 14, 2002 letter requested additional information and support from International Transmission Company regarding its treatment of certain facilities in its Generator Interconnection and Operating Agreement with FirstEnergy Generation Corp. as interconnection facilities.

Comment Date: July 15, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385,214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16821 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2942–005, 2931–002, 2941–002, 2932–003, and 2897–003]

S.D. Warren Company; Notice of Availability of Final Environmental Impact Statement

June 27, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (FERC or Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff has reviewed the applications for new licenses for the Dundee, Gambo, Little Falls, Mallison Falls, and the Saccarappa hydroelectric projects, and has prepared a Final Environmental Impact Statement (FEIS) for the projects. In the FEIS, the Commission's staff has analyzed the potential environmental impacts of the existing projects and has recommended that approval of the projects, with appropriate environmental protection measures, would be in the public interest.

Copies of the FEIS are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16802 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516, South Carolina]

South Carolina Electric & Gas Company; Notice of Availability of Draft Environmental Assessment

June 28, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared a Draft Environmental Assessment (DEA) for the Saluda Dam Seismic Remediation Project. The Saluda Dam is a part of the Saluda Project (FERC No. 516) and is located on the Saluda River in Lexington, Richland, Newberry, and Saluda counties, South Carolina.

The DEA contains the staff's analysis of the potential environmental impacts of the dam remediation project and contains measures to minimize those impacts. The DEA concludes that the project, with recommended mitigation measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance), or at *http://www.ferc.gov/hydro/docs/saludaea.pdf.*

Any comments must be filed by July 15, 2002 and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. P–516 to all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

For further information, contact John Mudre at (202) 219–1208 or john.mudre@ferc.gov.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16837 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 6058–005 and 6059–006 New York]

Hydro Development Group, Inc.; Notice of Availability of Multi-Project Environmental Assessment

June 28, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for licenses for the Hailesboro #4 Hydroelectric Project (P–6058–005), and Fowler #7 Project (P–6059–006), located on the Oswegatchie River in St. Lawrence County, New York, and has prepared a multi-project Environmental Assessment (EA) for the projects. There are no Federal lands or Indian reservations occupied by projects' works

or located within the projects' boundaries.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the

The Act authorizes FERC to accept a hydropower license application from Gustavus Electric Company (GEC) for the construction, operation and maintenance of the proposed 800 kW Falls Creek Hydroelectric Project located within Glacier Bay National Park. GEC filed their application with FERC on October 23, 2001.

The Act authorizes the Secretary of the Interior to exchange designated

The EIS will consider a reasonable range of alternatives developed in response to issues raised through public involvement and comment from the GEC pre-application scoping process and any additional scoping occurring under this Notice of Intent. The potential range of alternatives will include the proposed action as described in the PDEA, a no action, a modified proposed action and

the document on that resource agency. All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

a. *Type of Application:* New Major License.

b. *Project No.:* 1979–012.

c. *Date Filed:* June 21, 2002.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Alexander Hydroelectric Project.

f. *Location:* On the Wisconsin River near the City of Merrill, Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power

385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.* n. With this notice, we are initiating consultation with the *Wisconsin State Historic Preservation Officer (SHPO),* as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final*

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or located within the projects' boundaries.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 6058–005 and 6059–006 to all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

For further information, contact Monte TerHaar at (202) 219–2768.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16840 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission; National Park Service, Department of the Interior

[Project No. 11659–002 Alask]

Gustavus Electric Company; Notice of Intent to Prepare Environmental Impact Statement

June 28, 2002.

Summary: The Federal Energy Regulatory Commission (FERC) and the National Park Service (NPS) are jointly preparing an environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA) of 1969, and consistent with the Council on Environmental Quality's guidelines, 40 CFR part 1500, on a proposal to construct the Falls Creek Hydroelectric Project (FERC No 11659–002). The Glacier Bay National Park Boundary Adjustment Act of 1998 [105 Public Law 317; 112 Stat. 3002 (1998)] (Act) specifies the NPS shall participate as a joint lead agency (with FERC) in the development of this environmental document.

The Act authorizes FERC to accept a hydropower license application from Gustavus Electric Company (GEC) for the construction, operation and maintenance of the proposed 800 kW Falls Creek Hydroelectric Project located within Glacier Bay National Park. GEC filed their application with FERC on October 23, 2001.

The Act authorizes the Secretary of the Interior to exchange designated wilderness land located in Glacier Bay National Park to the State of Alaska (State), for this project. This exchange is authorized if the Secretary of the Interior concludes that the Falls Creek Hydroelectric Project can be constructed and operated without adversely impacting the purposes and values of the park, as constituted after the land exchange. The exchange is predicated upon the State conveying to the United States lands worthy of being included in the National Park System. To ensure this transaction maintains approximately the same amount of designated wilderness in the National Wilderness Preservation System as currently exists, other land in Glacier Bay National Park and Preserve shall be designated wilderness upon consummation of the land exchange. This land shall be administered according to the laws governing national wilderness areas in Alaska.

The federal actions under consideration in this EIS are whether to issue a license for construction, operation and maintenance of the Falls Creek Hydroelectric Project; the exchange of federal land with state land; and the removal of land from wilderness designation and designation of other land as wilderness.

To prepare the license application, GEC followed the FERC alternative licensing procedures. In accordance with the FERC Regulations for Licensing Hydroelectric Projects at 18 CFR 4.34 this included conducting a scoping process and preparing a preliminary draft environmental assessment (PDEA). The PDEA describes GEC's scoping process and includes copies of comments received by GEC.

The information and analysis from the PDEA will be used, in conjunction with other information, to prepare the EIS. A copy of the PDEA and license application is on file with FERC and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). The PDEA and application are also available from GEC, P.O. Box 102, Gustavus, Alaska 99826, 907–697–2299.

The EIS will consider a reasonable range of alternatives developed in response to issues raised through public involvement and comment from the GEC pre-application scoping process and any additional scoping occurring under this Notice of Intent. The potential range of alternatives will include the proposed action as described in the PDEA, a no action, a modified proposed action and alternative means of power generation that may be economically and environmentally viable.

The potential alternatives will consider the issues previously identified through GEC's scoping and other issues identified in scoping for the EIS. The major issues are: (1) The impact of reduced water flow on the hydrologic regime, resident Dolly Varden, associated Falls Creek habitats, and aesthetics; (2) impacts to the Falls Creek uplands and wetlands from the access and penstock routes; (3) impacts of the proposal on surrounding Glacier Bay National Park lands and waters; (4) effect of the proposal on the purposes and values of Glacier Bay National Park; (5) impacts on resources and recreation in the project area and surrounding lands resulting from a change in land management from NPS to State administration; and (6) impacts of the land exchange, including the removal of wilderness lands from Glacier Bay National Park wilderness and designation of wilderness lands elsewhere.

Scoping: The scoping conducted to date by GEC under the FERC Alternative Licensing Process and comments filed with FERC on the application apply and will be taken into account in the EIS. No additional scoping meetings will be held. FERC and NPS are soliciting written comments from federal and state agencies, local government, private organizations, recreational users, and the public. Notice of this comment period will be announced in local and regional newspapers, including Gustavus, Juneau and Anchorage.

DATES: Comments concerning the scope of this project should be filed within 60 days of the issuance of this notice. The draft EIS is projected to be available in late 2002 or early 2003.

Filing Information: FERC's Rules of Practice require all intervenors filing documents with FERC to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with FERC relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of

the document on that resource agency. All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must comply with Commission regulations (see 18 CFR 388.112). In particular, individuals requesting their name and/or address be withheld from public disclosure must submit two versions of each filing: one with their name and/or address redacted from the document, and one unredacted version of the document that includes the information to be withheld and boldly indicating on the front page "Contains Privileged Information—Do Not Release." There also may be circumstances wherein the FERC and NPS will withhold a respondent's identity to the extent allowable by law. All submissions from organizations, businesses, or persons identifying themselves as representatives or officials of organizations and businesses will be made available for public inspection. Anonymous comments will not be considered.

Any questions regarding this notice may be directed to Bob Easton (FERC representative) at (202) 219–2782 or Bruce Greenwood (NPS representative) at (907) 257–2623.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16841 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

June 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1979–012.

c. *Date Filed:* June 21, 2002.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Alexander Hydroelectric Project.

f. *Location:* On the Wisconsin River near the City of Merrill, Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. David W. Harpole, Wisconsin Public Service Corporation, 700 N. Adams Street, P.O. Box 19002, Green Bay, Wisconsin. 54307 (920) 433–1264.

i. *FERC Contact:* Michael Spencer, *michael.spencer@FERC.fed.us*, (202) 219–2846.

j. *Deadline for filing additional study requests:* August 20, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The existing Alexander Project consists of:* (1) A dam, comprised of earthen embankments, an integral powerhouse and a gated spillway; (2) a 803-acre reservoir; (3) a powerhouse with an total installed capacity of 4,200-kilowatts and (4) appurtenant facilities. The applicant estimates that the average annual generation is 23,550 mega-watthours.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

Additional study requests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*. n. With this notice, we are initiating consultation with the *Wisconsin State Historic Preservation Officer (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so.

Issue Deficiency Letter—August 2002

Issue Acceptance letter—November 2002

Issue Scoping Document 1 for comments—December 2002

Request Additional Information—February 2003

Issue Scoping Document 2—March 2003

Notice of application is ready for environmental analysis—March 2003

Notice of the availability of the draft EA—September 2003

Notice of the availability of the final EA—December 2003

Ready for Commission's decision on the application—December 2003

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16838 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3615–002]

Drew River Mill, Inc.; Notice of Site Visit

June 28, 2002.

The staff of the Office of Energy Projects (OEP) will be conducting a site visit for the Branch River Mill Project (Project) on August 1, 2002. Representative(s) of Drew River Mill, Inc. will accompany the OEP staff. All interested parties may meet at 9:30 a.m. at the Project dam. Attendees must provide their own transportation.

For further information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16839 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding.

requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 3.25 hours per

0095, current expiration date March 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 3, 2002.

ADDRESSES: Gajindar Singh, Office of Wastewater Management, Mail Code 4204M, U.S. Environmental Protection

Title: Construction Grants Delegation to States; OMB No. 2040 0095; EPA ICR No. 0909.07 expiring 3/31/2003.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Program Delegation to States, 40 CFR part 35, subpart J, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan

For further information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16839 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 28, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

Docket No.	Date Filed	Presenter or Requester
Exempt		
1. CP01–415–000	6–20–02	Bill Carrico
2. CP01–415–000	6–20–02	Olen L. Gallimore
3. CP01–415–000	6–20–02	Calvin H. Web
4. Project No. 1494–000	6–25–02	Jim Burroughs
5. Project No. 2659–000	6–25–02	Nancy Kochan
6. Project No. 10100–000	6–25–02	Bonnie B. Bunning
7. CP01–361–000	6–26–02	Nancy Morris

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16842 Filed 7–3–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7241–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Synopses of Proposed Contract Actions and Market Research Questions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Synopses of Proposed Contract Actions and Market Research Questions, EPA ICR Number 1910.02, OMB Control No. 2030–0039 expiring 12/31/02. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 3, 2002.

ADDRESSES: Ariel Rios Building, 1200 Pennsylvania Avenue NW, Attn: 3802R, Washington, DC 20460.

FOR FURTHER INFORMATION OR A COPY CONTACT: Jill Robbins, (202) 564–1052, email: *robbins.jill@epa.gov*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which seek to provide supplies and services to EPA. Title: Synopsis of Proposed Contract Actions and Market Research Questions (OMB Control Number 2030–0039 ; EPA ICR No. 1910.02) expiring 12/31/02.

Abstract: EPA frequently publicizes anticipated contract actions in accordance with FAR Part 5, and also conducts market research in accordance with FAR Part 10. In both instances, the public is invited to voluntarily respond to specific questions regarding anticipated procurements or to provide comments to EPA. Comments received are used by the Agency for acquisition planning purposes. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 3.25 hours per response. It is estimated that any individual may respond to synopses or market research questions 5 times per year. EPA anticipates publicizing approximately 250 contract actions per year, and conducting 3800 market research inquiries. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 28, 2002.

Leigh Pomponio,

Manager, Policy and Oversight Service Center.

[FR Doc. 02–16856 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7242–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Delegation to States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Construction Grants Delegation to States Information Collection Request, EPA ICR No. 0909.07 and Control No. 2040–0095, current expiration date March 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 3, 2002.

ADDRESSES: Gajindar Singh, Office of Wastewater Management, Mail Code 4204M, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by writing to the preceding address.

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, Telephone Number: (202) 564–0634 , Facsimile Number: (202) 501–2396, E-mail: *singh.gajindar@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments: Comments shall be submitted to Gajindar Singh, Mail Code 4204M, Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. Comments may also be submitted electronically to *singh.gajindar@epa.gov* or faxed to (202) 501–2396.

Electronic comments must be submitted as a Word Perfect or Word file. Electronic comments must be identified by the use of words "Construction Grants Delegation Comments." No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in Corel Word Perfect or Word file. The record for this proposed ICR renewal has been established in the Office of Wastewater Management, Municipal Assistance Branch, and includes supporting documentation. It does not include any information claimed as CBI. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, at the Municipal Assistance Branch, 1201 Constitution Ave., NW., Washington, DC 20460. For access to the docket materials, please call (202) 564–0634 to schedule an appointment.

Affected entities: Entities potentially affected by this action are States which administer elements of the construction grants program under a delegation agreement with EPA and municipalities which received construction grants from EPA.

Title: Construction Grants Delegation to States; OMB No. 2040 0095; EPA ICR No. 0909.07 expiring 3/31/2003.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the Construction Grants Program Delegation to States, 40 CFR part 35, subpart J, and Title II of the Clean Water Act (CWA). While the Construction Grants Program is being phased out and replaced by the State Revolving Loan Fund (SRF) program, collection activities for the Construction Grants Program must continue until program completion. The program includes reporting, monitoring, and program requirements for municipalities and delegated States.

The information collection activities described in this ICR are authorized under section 205(g) of the Clean Water Act as amended, 33 U.S.C. 1251 *et seq.*, and under 40 CFR part 35, subpart J. The requested information provides the minimum data necessary for the Federal government to maintain appropriate fiscal accountability for use of section 205(g) construction grant funds. The information is also needed to assure an adequate management overview of those State project review activities that are most important to fiscal and project integrity, design performance, Federal budget control, and attainment of national goals.

Managers at the State and Federal levels both rely on the information described in this ICR. State managers rely on the information for their own program and project administration. Federal managers rely on this information to assess, control, and predict the impacts of the construction grants program on the Federal Treasury. Federal managers also use this information to respond to OMB and Congressional requests and to maintain fiscal accountability. In addition, builders of wastewater treatment plants may use the information discussed in this ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

3501 *et seq.*), this document announces that the following Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval: Superfund Orphan Share Compensation Reform Survey ICR, EPA ICR 2035.01; Superfund De Minimis Settlement Reform Survey ICR, EPA ICR 2036.01; and PRP Oversight Reform Survey ICR, EPA ICR 2037.01. The ICRs describe the nature of the information

actions. No confidential information is being collected under this ICR.

Burden Statement: Affected Entities: Entities potentially affected by this action are persons who have participated in the orphan share compensation reform.

Estimated Number of Respondents: 500.

Frequency of Response: One time.

Estimated Total Annual Burden: 825 hours.

Oversight Reform's overall effectiveness in promoting effective and efficient PRP oversight and identifying best practices which could be more widely applied to meet the reform's goals and objectives. No confidential information is being collected under this ICR.

Respondents/Affected Entities: Entities potentially affected by this action are parties that did work during FY00 under settlement agreements with EPA that provide for payment of

Dated: June 27, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–16861 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7242–3]

Agency Information Collection

Media)," OMB Control No. 2050–0161; EPA ICR No. 1775.03, expiration date June 30, 2002. This is a request for extension of a currently approved collection.

Abstract: All information collection activities required by this rule are authorized by sections 3004 and 3005 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42

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proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Respondents: States and municipalities.

Estimated Number of Respondents: 15.

Frequency of Response: 47 per year.

Responses Per Respondent: 2.6 per year.

Estimated Total Annual Hour Burden: 2,297 hours.

Average Burden Hours Per Response: 52.5.

Estimated Total Annualized Cost Burden: $98,432.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 26, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–16860 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7242–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Superfund Administrative Reform Surveys

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval: Superfund Orphan Share Compensation Reform Survey ICR, EPA ICR 2035.01; Superfund De Minimis Settlement Reform Survey ICR, EPA ICR 2036.01; and PRP Oversight Reform Survey ICR, EPA ICR 2037.01. The ICRs describe the nature of the information collection and their expected burden and costs; and they include the actual data collection instrument.

DATES: Comments must be submitted on or before August 5, 2002.

ADDRESSES: Send comments, referencing EPA ICR Nos. 2035.01, 2036.01 and/or 2037.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Nos. 2035.01, 2036.01 and/or 2037.01. For technical questions about any of the ICRs contact Bruce Pumphrey by phone at 202–564–6076 or by e-mail at *pumphrey.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: (1) Superfund Orphan Share Compensation Reform Survey ICR, EPA ICR No. 2035.01. This is a new collection.

Abstract: This voluntary one-time information collection is for a survey of orphan share compensation reform participants who were offered orphan share compensation as part of the reform. The survey will be administered to a non-random sample consisting of one-third (33 percent) of the settlors and one-third (33 percent) of the non-settlors for each offer extended by the Agency, subject to a minimum of three offerees in each category. The information will not be generalized to the population of relevant offerees. The information collected from this survey will be used in a broader evaluation of the orphan share compensation reform's overall effectiveness. The information will also be used to identify any revisions to the reform necessary to achieve the goal of promoting settlements with responsible parties to perform or pay for response actions. No confidential information is being collected under this ICR.

Burden Statement: Affected Entities: Entities potentially affected by this action are persons who have participated in the orphan share compensation reform.

Estimated Number of Respondents: 500.

Frequency of Response: One time.

Estimated Total Annual Burden: 825 hours.

Estimated Total Annual Cost Burden: $25,403.

Title: (2) Superfund De Minimis Settlement Reform Survey ICR, EPA ICR No. 2036.01. This is a new collection.

Abstract: This voluntary one-time information collection is for a survey of de minimis settlement reform participants who were offered a de minimis settlement as part of the reform. The survey will be administered to a non-random sample consisting of one-fifth (20 percent) of the settlors and one-fifth (20 percent) of the non-settlors for each offer extended by the Agency, subject to a minimum of three offerees in each category. The information will not be generalized to the population of relevant offerees. The information collected from this survey will be used in a broader evaluation of the de minimis settlement reform's overall effectiveness in achieving the goals of the reform (promoting early settlement with small waste contributors and minimizing their legal transaction costs) and to identify any changes necessary to achieve these goals. No confidential information is being collected under this ICR.

Respondents/Affected Entities: Entities potentially affected by this action are persons who have participated in the de minimis settlement reform.

Estimated Number of Respondents: 347.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 1041 hours.

Estimated Total Annual Cost Burden: $32,743.

Title: (3) Superfund PRP Oversight Reform Survey ICR, EPA ICR No. 2037.01. This is a new collection.

Abstract: This voluntary one-time information collection is for a survey of parties that did work during FY00 under settlement agreements with EPA that provide for payment of oversight costs. The survey will be administered to all of the approximately 210 potential respondents that are willing to voluntarily participate. The information collected from this survey will be used in a broader evaluation of the PRP Oversight Reform's overall effectiveness in promoting effective and efficient PRP oversight and identifying best practices which could be more widely applied to meet the reform's goals and objectives. No confidential information is being collected under this ICR.

Respondents/Affected Entities: Entities potentially affected by this action are parties that did work during FY00 under settlement agreements with EPA that provide for payment of oversight costs.

Estimated Number of Respondents: 210.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 682.

Estimated Total Annual Cost Burden: $21,848.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 9, 2001 (66 FR 56670). No comments were received. Burden Statement: The annual reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Nos. 2035.01, 2036.01 and/or 2037.01 in any correspondence.

Dated: June 27, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–16861 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7242–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR-Media)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: "Hazardous Remediation Waste Management Requirements (HWIR-Media)," EPA ICR Number 1775.03; OMB Control Number 2050–0161; expiration date June 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 5, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1775.03 and OMB Control No. 2050–0161, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *auby.susan@epamail.epa.gov* or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1775.03. For technical questions about the ICR contact Mike Fitzpatrick at EPA by phone at (703) 308–8411 or by e-mail at *fitzpatrick.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: "Hazardous Remediation Waste Management Requirements (HWIR-Media)," OMB Control No. 2050–0161; EPA ICR No. 1775.03, expiration date June 30, 2002. This is a request for extension of a currently approved collection.

Abstract: All information collection activities required by this rule are authorized by sections 3004 and 3005 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6924, 6925, 6926, and 6927. EPA believes the information collection for this rule is necessary to balance streamlined regulations of remediation wastes with the Agency's responsibility to protect human health and the environment. The respondents are primarily owners or operators of facilities that wish to voluntarily clean up contamination of their site. The information to be collected includes the name, location and other identifying information for the site, a chemical and physical analysis of the waste or contaminated media to be managed, along with a plan for the management of such materials sufficient to determine whether the management of these materials will be protective of human health and the environment and will be in compliance with standards established pursuant to RCRA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 20, 2002 (67 FR 12988); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average about 28 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facility Owners and Operators of Hazardous Remediation Waste Management Sites.

Estimated Number of Respondents: 176.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 4,959 hours.

Estimated Total Annual Cost Burden: $230,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1775.03 and OMB Control No. 2050–0161 in any correspondence.

Dated: June 27, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–16862 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7242–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or http://www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed June 24, 2002 Through June 28, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020279, FINAL EIS, FRC, MI, WI, Bond Falls Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 1864–005) Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI, *Wait Period Ends:* August 05, 2002, Contact: Patrick K. Murphy (202) 219–2659. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm*.

EIS No. 020280, FINAL EIS, FRC, MI, WI, Bond Falls Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 1864–005) Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI, *Wait Period Ends:* August 05, 2002, Contact: Patrick K. Murphy (202) 219–2659. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm*.

EIS No. 020281, FINAL EIS, FRC, GA, Chamblee Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 2942) Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020280, FINAL EIS, FRC, MI, WI, Bond Falls Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 1864–005) Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI, *Wait Period Ends:* August 05, 2002, Contact: Patrick K. Murphy (202) 219–2659. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm*.

EIS No. 020281, FINAL EIS, FRC, GA, Chamblee Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 2942) Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020282, FINAL EIS, FRC, GA, Dundee Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 2942) Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020283, FINAL EIS, FRC, GA, Gambo Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 2931) Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020284, FINAL EIS, FRC, GA, Little Falls Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 2932) Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020285, FINAL EIS, FRC, GA, Mallison Falls Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 2941) Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020286, FINAL EIS, FRC, GA, Saccarappa Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 2897) Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020287, FINAL EIS, FRC, ME, Cumberland County, ME, *Wait Period Ends:* August 05, 2002, Contact: Allan Creamer (202) 219–0365. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm*.

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7242–4]

Request for Applications for Cooperative Agreement: New and Emerging Air Technologies (NEAT) Web Data Base

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for applications.

X. Pre-Application Assistance
XI. Fields in the EPA Data Base

I. Statutory Authority

The statutory authority for this action is Clean Air Act Section 103(b)3. The Catalog of Federal Domestic Assistance (CFDA) Number is 66.606.

II. Background

Section 108(h) of the Clean Air Act (the Act) Amendments of 1990, "RACT/BACT/LAER Clearinghouse" (RBLC) would be through the establishment of a Web data base that would provide information on new and emerging air pollution technologies. Air pollution technologies include methods, procedures, or devices, developed in the U.S. or abroad, that are used to: monitor air quality; control or prevent air pollution; analyze air pollution and related impacts; or test, monitor and verify compliance. This new Web data base would complement the existing

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complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facility Owners and Operators of Hazardous Remediation Waste Management Sites.

Estimated Number of Respondents: 176.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 4,959 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $334.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1775.03 and OMB Control No. 2050–0161 in any correspondence.

Dated: June 27, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–16862 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6630–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.Weekly receipt of Environmental Impact Statements Filed June 24, 2002 Through June 28, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020270, DRAFT SUPPLEMENT, NRC, PA, Peach Bottom Atomic Power Station Unit 2 and 3, Renewal of the Operating License for Nuclear Plants, NUREG–1437 Supplement 10, Located on the Banks of the Susquehanna River, York County, PA, *Comment Period Ends:* September 17, 2002, Contact: Duke Wheeler (301) 415–1444.

EIS No. 020271, DRAFT SUPPLEMENT, COE, KS, John Redmond Lake (JRL) Reallocation of Water Supply Storage Project, Equitable Redistribution of Water Storage between the Flood Control Pool and the Conservation Pools, Neosho River, Marion and Council Grove Lakes, Coffey and Lyon Counties, KS, *Comment Period Ends:* August 19, 2002, Contact: James C. Randolph (918) 669–4396.

EIS No. 020272, FINAL EIS, FRC, ME, Presumpscot River Projects, Relicensing of Five Hydroelectric Projects for Construction and Operation, Dundee Project (FERC No. 2942); Gambo Project (FERC No. 2931); Little Falls Project (FERC No. 2932); Mallison Falls Project (FERC No. 2941) and Saccarappa Project (FERC No. 2897), Cumberland County, ME, *Wait Period Ends:* August 05, 2002, Contact: Allan Creamer (202) 219–0365. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm.*

EIS No. 020273, FINAL EIS, FHW, NE, Lincoln South and East Beltways Project, Circumferential Transportation System Completion linking I–80 on the north and US 77 on the west, Funding and US Army COE Section 404 Permit and NPDES Permit Issuance, Lancaster County, NE, *Wait Period Ends:* August 05, 2002, Contact: Edward Kosola (402) 437–5973.

EIS No. 020274, DRAFT EIS, BLM, AK, Renewal of Federal Grant for the Trans-Alaska Pipeline System, Right-of-Way, Approval, AK, *Comment Period Ends:* August 20, 2002, Contact: Rob McWhorter (907) 257–1355.

EIS No. 020275, DRAFT EIS, GSA, WI, Badger Army Ammunition Plant, Property Disposal, Implementation, Townships of Sumpter and Merrimac, Sauk County, WI, *Comment Period Ends:* August 19, 2002, Contact: Mark N. Lundgren (312) 353–0302.

EIS No. 020276, FINAL SUPPLEMENT, FRC, WA, Condit Hydroelectric (No. 2342) Project, Updated Information concerning an Application to Amend the Current License to Extend the License Term to October 1, 2006, White Salmon River, Skamania and Klickitat Counties, WA, *Wait Period Ends:* August 05, 2002, Contact: Nicholas Jayjack (202) 219–2825.

EIS No. 020277, DRAFT EIS, FHW, NC, US–17 Interstate Corridor Improvements, south of NC–1127 (Possum Track Road) to north of NC–1418 (Roberson Road) Funding and Permit Issuance, City of Washington and Town of Chocowinity Vicinity, Beaufort and Pitt Counties, NC, *Comment Period Ends:* August 30, 2002, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 020278, DRAFT EIS, FHW, NY, NY–17 Highway Reconstruction, Bridge Reconstruction and Modification, Funding and US Army COE Section 404 Permit Issuance, Town and Village of Horseheads, Chemung County, NY, *Comment Period Ends:* August 19, 2002, Contact: Robert E. Arnold (518) 431–4127.

EIS No. 020279, FINAL EIS, GSA, GA, Chamblee Campus Centers for Disease Control and Prevention (CDC) Expansion, Atlanta Metro Area, City of Chamblee, Dekalb County, GA, *Wait Period Ends:* August 05, 2002, Contact: Phil Youngberg (404) 562–0787.

EIS No. 020280, FINAL EIS, FRC, MI, WI, Bond Falls Project, Issuing a New License for Existing Hydroelectric License, (FERC No. 1864–005) Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI, *Wait Period Ends:* August 05, 2002, Contact: Patrick K. Murphy (202) 219–2659. This document is available on the Internet at: *http://www.ferc.fed.us/online/rims.htm.*

EIS No. 020281, DRAFT EIS, USA, UT, Activities Associated with Future Programs at US Army Dugway Proving Ground, Implementation, Tooele and Jaub Counties, UT, *Comment Period Ends:* August 19, 2002, Contact: Nicholas J. Cavallaro (703) 697–8995.

EIS No. 020282, FINAL EIS, COE, NJ, Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS, US Army COE Section 10 and 404 Permit Issuance, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ, *Wait Period Ends:* August 05, 2002, Contact: Steven Schumach (212) 264–0183.

EIS No. 020283, FINAL EIS, FTA, WA, Sound Transit, Lakewood-to-Tacoma Commuter Rail and WA–512 Park and Ride Expansion, Construction and Operation, Central Puget Sound Regional Transit Authority, City of Tacoma and City of Lakewood, WA, *Wait Period Ends:* August 05, 2002, Contact: Rick Krochalis (206) 220–7954.

EIS No. 020284, FINAL EIS, AFS, MT, White Pine Creek Project, Timber Harvest, Prescribe Fire Burning, Watershed Restoration and Associated Activities, Implementation, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT, *Wait Period Ends:* August 05, 2002, Contact: John Gubel (406) 827–3533.

Dated: July 1, 2002.

B. Katherine Biggs,

Associate Division Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–16875 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7242–4]

Request for Applications for Cooperative Agreement: New and Emerging Air Technologies (NEAT) Web Data Base

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for applications.

SUMMARY: This request for applications (RFA) solicits proposals to develop, maintain, promote and sustain a New and Emerging Air Technologies (NEAT) data base on the World Wide Web (Web). The purpose of this Web site is to aid industry, contractors, and State and local air permitting agencies in identifying new and emerging air technologies. These technologies need to be addressed in major permitting actions. They also need to be considered by State and local air pollution agencies and tribes in implementing programs to maintain and improve ambient air quality and protect public health.

DATES: The opening date of the solicitation is July 5, 2002. Letters of intent to apply must be postmarked, or sent via electronic mail (E-mail), no later than August 5, 2002. The closing date of the solicitation is November 1, 2002.

ADDRESSES: *Official Mailing Address:* NEAT Project, Attn: Bob Blaszczak (E143–03), U.S. EPA, OAQPS, ITPID, ITG, Research Triangle Park, NC 27711. *Courier Address:* NEAT Project, Attn: Bob Blaszczak (E143–03), U.S. EPA, OAQPS, ITPID, ITG, 4930 Old Page Road, Research Triangle Park, NC . 27709. *E-mail Address: blaszczak.bob@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bob Blaszczak, Information Transfer Group (E143–03), Information Transfer & Program Integration Division, Office of Air Quality Planning & Standards, Office of Air & Radiation, U.S. EPA, Research Triangle Park, NC 27711. Telephone (919) 541–5432, Fax (919) 541–0242, E-mail *blaszczak.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this notice:

I. Statutory Authority
II. Background
III. Funding
IV. Duration
V. Eligibility
VI. Description/Scope
VII. Review and Selection Process
VIII. Additional Considerations
IX. How to Apply
X. Pre-Application Assistance
XI. Fields in the EPA Data Base

I. Statutory Authority

The statutory authority for this action is Clean Air Act Section 103(b)3. The Catalog of Federal Domestic Assistance (CFDA) Number is 66.606.

II. Background

Section 108(h) of the Clean Air Act (the Act) Amendments of 1990, "RACT/BACT/LAER Clearinghouse" (RBLC), requires that the Administrator of EPA make information regarding emission control technology available to States and the general public through a central data base. As prescribed in the Act, the primary sources for this information are permits to construct new and/or modified major stationary sources issued by State and local agencies. These permits are part of the New Source Review (NSR) program legislated by Congress in parts C and D of Title I of the Act. These permitting actions require that the applicants propose and that permitting agencies determine, on a case-by-case basis, Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) for emission sources locating in attainment (meets National Ambient Air Quality Standards) and nonattainment areas, respectively.

In 1993, the Clean Air Act Advisory Committee (CAAAC) recommended that the RBLC provide information on new and emerging air pollution prevention and control technologies in addition to NSR permit technology decisions. The CAAAC is made up of representatives from industry, State and local permitting agencies, and environmental organizations. The information on new and emerging technologies would be used by all of these groups, tribes and the public at large to expedite the NSR permitting process. This permit process requires:

1. Preparation of a comprehensive permit application by industry (or their contractors) that addresses emission control and prevention options and recommends the best technology (the application also must include analyses of potential air quality and other environmental impacts, air quality monitoring data or a plan to acquire it, and compliance verification procedures);

2. Review and processing of permit applications and issuance of permits by State or local permitting agencies and tribes that require best technology; and

3. Public review and comment on the permit and technology requirements.

The EPA has concluded that the best way to address this recommendation would be through the establishment of a Web data base that would provide information on new and emerging air pollution technologies. Air pollution technologies include methods, procedures, or devices, developed in the U.S. or abroad, that are used to: monitor air quality; control or prevent air pollution; analyze air pollution and related impacts; or test, monitor and verify compliance. This new Web data base would complement the existing RBLC Web that contains data on air permit emission limits and technology decisions that have already been made. To be successful the NEAT Web needs to:

1. Rely on coordination and communications with air pollution technology developers and suppliers;

2. List supplier and vender information on a public Web page;

3. Provide links to commercial sites; and

4. Promote the NEAT Web site and its capabilities.

The EPA believes that these activities are essential to the creation and maintenance of this new Web site, and will be very beneficial to the public. These essential activities can best be accomplished by an independent organization or institution with an existing presence on the Web, and a reputation for expertise in the field of air pollution. The EPA also believes that this proposed air pollution technology data base could generate revenue and sustain itself over time once it has been established (i.e., venders and suppliers would be willing to pay a nominal fee to list their technologies and/or provide linkage to a vender/supplier Web site or E-mail). The EPA expects to negotiate a program income plan with the successful offeror that will ensure long term sustainability. (See 40 CFR 30.24(b)(1) and (h))

This project directly benefits all parties (industry, contractors, State and local agencies, and the general public) involved in the development, review and processing of NSR permit applications and permits. Funds cannot be awarded for projects intended for the direct use and benefit of the Federal Government.

III. Funding

The amount of Federal funds available is $ 300,000 and the number of individual awards is one. All revenue generated by the operation of the NEAT Web site shall be used to maintain, improve, and sustain the NEAT Web site.

Funds awarded under this agreement may not be used to solicit user feedback or conduct user surveys. Non-Federal

funds must be used for such activities. However, funds awarded under this agreement may be used to analyze information derived from user feedback mechanisms and surveys specifically related to the implementation of the NEAT Web site.

The EPA shall provide applicants that submit a letter of intent to apply (See Section IX—How to Apply) with a Microsoft Access data base that contains information on new and emerging air technologies. The applicant shall use this data base as a starting point for developing and maintaining the Web site. However, discussions regarding EPA collaboration will not take place until the final negotiation phase of the cooperative agreement.

The EPA reserves the right to reject all applications and proposals and make no award.

VI. Description/Scope

This solicitation is for a cooperative

Technology Web site and data base. (Weight: 30%)

4. Plan to acquire and evaluate user/stakeholder input and implement improvements to generate and sustain interest in and usefulness of the site. Funds awarded under this agreement may not be used to solicit user feedback or conduct user surveys. Non-Federal funds must be used for such activities. However, funds awarded under this agreement may be used to analyze

3. Include a narrative that addresses all of the areas listed under Section VI (Description/Scope); and

4. Submit one (1) original and four (4) printed copies of the application to the address listed under **ADDRESSES** above. Applications must be received by 4:00 PM Eastern Daylight Savings Time November 1, 2002. Only a printed (hard copy) submittal will be accepted.

X. Pre-Application Assistance

11. CSTON—P1—Average Annual Cost Per Ton of Primary Pollutant Reduced
12. POLL—2—Secondary Pollutant Treated (NO_X, SOx, VOC, PM2.5, PM10, NH3, HAP, CO)
13. CONTEFF—P2—Likely Control Efficiency for Secondary Pollutant
14. CONTEFF—H—P2—Maximum Control Efficiency for Secondary Pollutant
15. CONTEFF—L—P2—Minimum Control Efficiency for Secondary

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funds must be used for such activities. However, funds awarded under this agreement may be used to analyze information derived from user feedback mechanisms and surveys specifically related to the implementation of the NEAT Web site.

The EPA shall provide applicants that submit a letter of intent to apply (See Section IX—How to Apply) with a Microsoft Access data base that contains information on new and emerging air pollution technologies compiled by EPA. Section XI of this notice provides a list and description of fields included in the EPA data base. The data base contains records for approximately 300 new and emerging technologies developed in the U.S. and abroad. Note that the data base is part of a system that consists of various Web interfaces that interact with the data base. These interfaces are written in Microsoft Active Server Pages (ASP) and, in order to use the interfaces, must reside on a Windows server running Microsoft Internet Information Systems (IIS). This data base (and the interfaces, if appropriate) can be used by the successful applicant as the startup data base for the NEAT Web site. The data base and interfaces to be provided by EPA for review by applicants shall be on Compact Disk (CD).

IV. Duration

This assistance effort will last 2 years starting from the date of award.

V. Eligibility

Academic and not-for-profit institutions and organizations located in the U.S. are eligible to apply. Profit-making firms are not eligible to receive cooperative agreements from EPA under this program. Applications will be accepted from single institutions or organizations and from consortia that include more than one institution or organization. Federal agencies, national laboratories funded by Federal agencies (Federally Funded Research and Development Centers, FFRDCs), and Federal employees are not eligible to submit applications to this program and may not serve in a principal leadership role on this award.

Federal employees may not receive salaries or in other ways augment their agency's appropriations through this cooperative agreement. However, the nature of the cooperative assistance agreement mechanism, which will be used to support the NEAT Web site, contemplates collaboration between EPA personnel and the assistance provider's institution, organization or consortium. Personnel from EPA will actively consult and collaborate with the awardee in developing and maintaining the Web site. However, discussions regarding EPA collaboration will not take place until the final negotiation phase of the cooperative agreement.

The EPA reserves the right to reject all applications and proposals and make no award.

VI. Description/Scope

This solicitation is for a cooperative agreement. Because of RBLC staff experience in working with stakeholders and in supplying air pollution technology information, EPA anticipates that there will be substantial EPA involvement in the design and initial implementation of this proposal. Also, EPA is suppling a Web compatible data base to serve as a starting point for implementing this proposal and is prepared to advise the applicant concerning the development and maintenance of that data base.

The applicant must address the following items in the proposal:

1. Existing Web presence, equipment, capabilities, security and support.

2. Institution's/organization's level of expertise and recognition in the field of air pollution and air pollution technologies.

3. The approach that will be taken to establish a searchable Web data base (including an automated data entry procedure/system for information providers) that contains information on new, emerging and existing air technologies. These technologies shall include emission controls, pollution prevention, emissions and ambient air monitoring, air pollution modeling, and environmental management, tracking, and decision-making approaches. Provisions shall be made to include both U.S. and foreign technologies.

4. How the data base will be maintained and kept current. This should include a procedure to require venders to update their data periodically.

5. Methods that will be used to promote this data base to encourage data submittal by technology developers and suppliers and use by industry, permitting agencies, environmental groups and the general public. If applicable, indicate methods that will be used to acquire appropriate co-sponsors (e.g., industry and professional trade associations, environmental groups, etc.)

6. Basic quality assurance and security procedures to maintain the integrity of the data base.

7. Mechanism to acquire feedback from stakeholders and users that can be used in establishing and maintaining this Web data base as a relevant and reliable information source. Funds awarded under this agreement may not be used to solicit user feedback or conduct user surveys. Non-Federal funds must be used for such activities. However, funds awarded under this agreement may be used to analyze information derived from user feedback mechanisms and surveys specifically related to the implementation of the NEAT Web site.

8. Sustainability Plan—methods, procedures and time frame to make the NEAT Web site self-sustaining and ensure the viability of the site. Applicants should describe the decision-making process that will be used to identify and evaluate revenue generating procedures that can sustain this site over time. Revenue generating opportunities may include, but are not limited to, nominal fees for listing technologies, links to vender Web sites, E-mail links to venders, and including existing air technologies in the data base to increase the potential revenue base. Applicants should describe the decision-making process to determine how and when revenue generating procedures will be implemented once the NEAT Web site has established itself as a major air technologies Web site. Applicants should indicate other resources that may be used to support and sustain the NEAT Web.

9. Budget, staffing and administrative procedures. OMB circulars on regulations, cost principles, and other administrative requirements (40 CFR part 30) shall be followed. See Application Kit for Federal Assistance under Section IX (How to Apply) for more information.

10. Applicants must clearly mark any information in the application that they consider confidential. The EPA will make final confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B.

VII. Review and Selection Process

Applicants must have an established presence on the World Wide Web and possess strong expertise in the field of air pollution. Applicants will be judged on the following criteria:

1. Adequacy of existing Web site (hardware and software) to support the New and Emerging Air Technologies Web. (Weight: 10%)

2. Relevant experience of the applicant (institution/organization) in the field of air pollution technology. (Weight: 10%)

3. Originality and creativity of the proposal to develop, maintain, support and promote the New and Emerging Air Technology Web site and data base. (Weight: 30%)

4. Plan to acquire and evaluate user/stakeholder input and implement improvements to generate and sustain interest in and usefulness of the site. Funds awarded under this agreement may not be used to solicit user feedback or conduct user surveys. Non-Federal funds must be used for such activities. However, funds awarded under this agreement may be used to analyze information derived from user feedback mechanisms and surveys specifically related to the implementation of the NEAT Web site. (Weight: 20%)

5. Originality and creativity of the proposal's Sustainability Plan in identifying, evaluating, selecting and implementing procedures that will generate revenue and allow the site to become self-sustaining. (Weight: 30%)

All applications will be reviewed by an appropriate application review panel. The panel will be composed of EPA staff with expertise in information transfer, World Wide Web applications, air pollution prevention and control technology, and environmental monitoring, measurements and analysis.

VIII. Additional Considerations

Executive Order 12372, "Intergovernmental Review of Federal Programs," provides States the opportunity to review and comment on activities proposed for Federal funding. Where feasible, and to the extent permitted by law, State and local review processes and comments must be incorporated into Federal Programs as early in the planning stage as possible. See Application Kit for Federal Assistance under Section IX (How to Apply) for additional information.

IX. How To Apply

Applicants must:

1. Send a letter of intent to apply to the address listed under **ADDRESSES** above (or via E-mail to blaszczak.bob@epa.gov) before submitting an application for this assistance. Letters of intent to apply must be postmarked (or sent via E-mail) no later than August 5, 2002. Letters of intent must include the name of your organization and a contact person's name, mailing address, E-mail address, phone number, and fax number.

2. Obtain, complete and submit an Application Kit for Federal Assistance. The kit and any additional forms can be acquired on the Web at <*http://www.epa.gov/ogd/grants/how_to_apply.htm*>. Hard copies are available from the Program Office contact listed under **FOR FURTHER INFORMATION CONTACT** above.

3. Include a narrative that addresses all of the areas listed under Section VI (Description/Scope); and

4. Submit one (1) original and four (4) printed copies of the application to the address listed under **ADDRESSES** above. Applications must be received by 4:00 PM Eastern Daylight Savings Time November 1, 2002. Only a printed (hard copy) submittal will be accepted.

X. Pre-Application Assistance

The EPA will conduct one conference call to allow potential applicants to ask questions. Only potential applicants who submit letters of intent to apply will be provided conference call information. The call is intended to assist applicants with questions about the proper completion and submission of their proposals. The content of the calls is entirely dependent upon the questions asked. The EPA will also take questions via E-mail that is posted (dated) on or before September 6, 2002. All E-mail questions must be sent to the Program Office Contact listed under **FOR FURTHER INFORMATION CONTACT** above. All questions received by E-mail and EPA's response to the questions will be posted on the Web at <*http://www.epa.gov/ttn/catc/*> no later than September 23, 2002.

In order to ensure that all applicants have access to the same information, the only forums for posing substantive questions on the competition are the conference call and E-mail procedure noted above. Except for responses to procedural questions (e.g., due dates, proposal formats), EPA will not provide other assistance prior to final submission of applications.

XI. Fields in the EPA Data Base

The following fields are in the current EPA data base:

1. ID—Primary Key
2. TECH—Name of Technology
3. SUMMARY—Description of Technology
4. CLASS—Classification of Technology (pollution prevention, modeling, monitoring, testing, add-on)
5. DEGDEV—Degree of Development (commercially available, prototype, product design phase)
6. CATEGORY—Controlled Process Type (based on RBLC process types)
7. POLL—1—Primary Pollutant Treated (NO_x, SOx, VOC, PM2.5, PM10, NH3, HAP, CO)
8. CONTEFF—P1—Likely Control Efficiency of Primary Pollutant
9. CONTEFF—H—P1—Maximum Control Efficiency of Primary Pollutant
10. CONTEFF—L—P1—Minimum Control Efficiency of Primary Pollutant
11. CSTON—P1—Average Annual Cost Per Ton of Primary Pollutant Reduced
12. POLL—2—Secondary Pollutant Treated (NO_x, SOx, VOC, PM2.5, PM10, NH3, HAP, CO)
13. CONTEFF—P2—Likely Control Efficiency for Secondary Pollutant
14. CONTEFF—H—P2—Maximum Control Efficiency for Secondary Pollutant
15. CONTEFF—L—P2—Minimum Control Efficiency for Secondary Pollutant
16. CSTON—P2—Average Annual Cost Per Ton of Secondary Pollutant Reduced
17. POLL—3—Tertiary Pollutant Treated (NO_x, SOx, VOC, PM2.5, PM10, NH3, HAP, CO)
18. CONTEFF—P3—Likely Control Efficiency for Tertiary Pollutant
19. CONTEFF—H—P3—Maximum Control Efficiency for Tertiary Pollutant
20. CONTEFF—L—P3—Minimum Control Efficiency for Tertiary Pollutant
21. CSTON—P3—Average Annual Cost Per Ton of Tertiary Pollutant Reduced
22. CAPCST—Capital Cost ($)
23. OMCST—Operation and Maintenance Cost ($/year)
24. DLYR—Cost Dollar Year ($1999, $2000, etc.)
25. LIFETIME—Expected Equipment Life (years)
26. NAME—Name of Vendor, or Developer
27. EMAIL—E-mail of Vendor, or Developer
28. VZP—Zip Code of Vendor, or Developer
29. VST—State of Vendor, or Developer (all U.S. States and Canadian Provinces)
30. PURL—Web Page URL for Technology
31. VCTY—City of Vendor, or Developer
32. VADD—Address of Vendor, or Developer
33. VADD2—Additional Address Information of Vendor, or Developer
34. VNAME—Name of Organization that developed, or sells technology
35. VPH—Phone Number of Vendor, or Developer
36. TITLE—Job Title of Point of Contact
37. POLL—CONC—Applicable Pollutant Concentration (microgram per cubic meter, concentration ranges)
38. STREAM—TEMP—Applicable Gas Stream Temperature (degrees Celsius, temperature ranges)
39. STREAM—TEMP—H—Maximum Temperature of Gas Stream (degrees Celsius, temperature ranges)
40. STREAM—TEMP—L—Minimum Temperature of Gas Stream (degrees Celsius, temperature ranges)

41. VOL—FL—RT—Volumetric Flow Rate (cubic feet per second, rate ranges)
42. APP—ST—States that have Approved Use of this Technology
43. APP—AGENCIES—Federal Agencies that have Approved Use of this Technology
44. PARAM—MEA—Monitored Parameter
45. SAMP—FREQ—Sampling Frequency

Dated: June 28, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–16996 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0125; FRL–7183–1]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Pesticide Program Dialogue Committee (PPDC) established under the Federal Advisory Committee Act (FACA) to discuss a number of issues relating to the implementation of the Food Quality Protection Act (FQPA) and other activities. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. This meeting is open to the public.

DATES: The meeting will be held on July 30–31, 2002, from 8:30 a.m. to approximately 5 p.m.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

To request accommodation of a disability, contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Joseph Merenda, Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5306; fax number: (703) 308–4776; e-mail address: merenda.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an interested person who wishes to participate in a public meeting. Potentially affected entities may include, but are not limited to:

- Persons who are or may be required to conduct testing of chemical substances under the FFDCA and FIFRA.
- Persons who are or may be required to conduct testing for chemical substances under the Toxic Substances Control Act (TSCA).
- Persons who are or may be interested in the Agency's development of regulatory policies in implementing the Food Quality Protection Act (FQPA) and Tolerance Reassessment Advisory Committee (TRAC) activities.
- Persons who are or may be interested in the Agency's development of regulatory policies in implementing the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act Scientific Advisory Panel (FQPA SAP) to consider and review EPA's Draft Termite Bait Product Performance Testing Guideline

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41. VOL—FL—RT—Volumetric Flow Rate (cubic feet per second, rate ranges)
42. APP—ST—States that have Approved Use of this Technology
43. APP—AGENCIES—Federal Agencies that have Approved Use of this Technology
44. PARAM—MEA—Monitored Parameter
45. SAMP—FREQ—Sampling Frequency
46. SAMP—PREC—Sampling Precision
47. SAMP—ACC—Sampling Accuracy
48. MAN—AUTO—Manual or Automated (manual, automated, or not applicable)
49. ADDITIONAL—Other Applicable Information
50. PRF—TST—MTHD—Performance Test Method
51. ENFORC—PROC—Enforcement and Inspection Procedure
52. CONT—PARA—Continuous or Parametric Monitoring System
53. CRIT—HAP?—Criteria Pollutant or HAP List?
54. IONIC—Ionic Species as Applicable
55. PHYS—ST—Physical State at X Temperature
56. PHYS—ST—TEMP—Physical State Temperature
57. PHYS—ST—PRES—Physical State Pressure
58. OP—PARAM—CONT—PM—MONT—Operational Parameters for Continuous Parametric Monitoring
59. COLL—MECH—Sample Collection, Transport, Recovery and Analysis Mechanisms
60. VALID—STAT—Validation Status as related to Verification, EPA Method 301 validation, Peer Review, or Collaborative Testing Results
61. AVAIL—DOC—Available Documentation
62. COST—PER—TEST—Cost Per Test numeric
63. SYS—REQ—System Requirements

Dated: June 27, 2002 .

Elizabeth Craig,

Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–16863 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0125; FRL–7186–6]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act Scientific Advisory Panel (FQPA SAP) to consider and review EPA's Draft Termite Bait Product Performance Testing Guideline.

DATES: The meeting will be held on July 30–31, 2002, from 8:30 a.m. to approximately 5 p.m.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: This meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0125 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: odiott.olga@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**— Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guideline referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

A meeting agenda, EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available no later than July 15. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPP–2002–0125. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0125 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, July 25, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

1. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, July 22, 2002, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

2. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Olga Odiott at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

D. Submission of Requests and Written Comments

1. *By mail.* Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0/9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0125. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The FIFRA SAP will meet to consider and review the design and scientific soundness of the Agency's draft Termite Bait Product Performance Testing Guideline, OPPTS 810.3800 - Termite Baits. The guideline outlines both the testing methodologies and performance standards for efficacy data submitted to EPA to allow evaluation of the performance of termite bait products.

The use of termite bait products has emerged as an important method of termite control. Because of the highly specialized nature of termite baits, a number of evaluation issues have arisen in the past 6 years, including minimum product performance standards needed for termite bait product registration. This meeting of the FIFRA SAP will provide a forum for experts and the public to comment on the product performance standards and testing protocols proposed by the Agency to address these and other issues related to termite bait products.

B. The FIFRA SAP Meeting Minutes

FIFRA SAP will prepare a report of its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION.**

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 28, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–16996 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0028; FRL–7186–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 3, 2002 to May 21, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

DATES: Comments identified by the docket control number OPPT–2002–0028 and the specific PMN number, must be received on or before August 5, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0028 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**— Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guideline referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

A meeting agenda, EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available no later than July 15. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPP–2002–0125. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0125 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, July 25, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

1. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, July 22, 2002, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

2. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Olga Odiott at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

D. Submission of Requests and Written Comments

1. *By mail.* Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0/9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0125. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The FIFRA SAP will meet to consider and review the design and scientific soundness of the Agency's draft Termite Bait Product Performance Testing Guideline, OPPTS 810.3800 - Termite Baits. The guideline outlines both the testing methodologies and performance standards for efficacy data submitted to EPA to allow evaluation of the performance of termite bait products.

The use of termite bait products has emerged as an important method of termite control. Because of the highly specialized nature of termite baits, a number of evaluation issues have arisen in the past 6 years, including minimum product performance standards needed for termite bait product registration. This meeting of the FIFRA SAP will provide a forum for experts and the public to comment on the product performance standards and testing protocols proposed by the Agency to address these and other issues related to termite bait products.

B. The FIFRA SAP Meeting Minutes

FIFRA SAP will prepare a report of its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION.**

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 28, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–16996 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–S

as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-02-0600	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0601	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0602	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0603	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0604	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0605	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0606	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0607	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0608	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0609	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0610	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0611	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0612	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0613	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0614	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0615	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0616	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0617	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0618	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0619	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0620	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0621	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0622	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0623	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0624	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0625	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0626	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0627	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0628	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0629	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0630	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0631	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0632	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0633	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0634	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0635	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0636	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0637	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0638	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0639	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0640	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0641	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0642	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0643	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0644	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0645	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0646	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0647	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0648	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0649	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0650	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0651	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0652	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0653	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0654	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0655	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0656	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0657	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0658	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0659	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0660	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0661	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0662	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0663	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0664	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0665	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0666	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0667	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0668	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0669	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0670	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0671	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0672	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0673	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0674	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0675	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0676	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin
P-02-0677	05/03/02	08/01/02	Confidential	(G) Resin for industrial paints	(G) Modified polyester resin

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FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations"," Regulations and Proposed Rules, and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0028. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0028 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0028 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 3, 2002 to May 21, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0630	05/06/02	08/04/02	Solutia Inc.	(S) Resin for industrial paints	(G) Modified polyester resin
P–02–0631	05/06/02	08/04/02	CBI	(S) Reactive dye for textile	(G) Substituted naphthalene sulfonic acid, alkali salt
P–02–0632	05/06/02	08/04/02	CBI	(S) Acrylic polymer used as a photoresist component	(G) Acrylic polymer
P–02–0633	05/06/02	08/04/02	Solutia Inc.	(S) Resin for industrial paints	(G) Modified polyester resin
P–02–0634	05/07/02	08/05/02	CBI	(G) Fuel oil/diesel oil	(G) Methoxymethylbenzenes methylanisoles
P–02–0635	05/07/02	08/05/02	CBI	(G) Fuel oil/diesel oil	(G) Methoxymethylbenzenes methylanisoles
P–02–0636	05/07/02	08/05/02	CBI	(G) Fuel oil/diesel oil	(G) Methoxymethylbenzenes methylanisoles
P–02–0637	05/07/02	08/05/02	CBI	(G) Fuel oil/diesel oil	(G) Methoxymethylbenzenes methylanisoles
P–02–0638	05/07/02	08/05/02	Alberdingk Boley Inc.	(S) Exterior wood protection	(G) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, hexanedioic acid amide derivative, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1'-methylenebis[4-isocyanatocyclohexane], compound with nu, nu-diethylethanearnine
P–02–0639	05/07/02	08/05/02	EM Industries, Inc.	(G) Treating agent	(S) Silane, trimethoxydecyl-
P–02–0640	05/08/02	08/06/02	Clariant LSM (America) Inc.	(S) Anti-fouling agent in marine paints	(G) Mono-halo tri-alkylsilane
P–02–0641	05/08/02	08/06/02	Clariant LSM (America) Inc.	(S) Anti-fouling agent in marine paints	(G) Tri-alkyl-silyl ester
P–02–0642	05/08/02	08/06/02	Clariant LSM (America) Inc.	(S) Anti-fouling agent in marine paints	(G) Tri-alkylsilyl hydride
P–02–0643	05/08/02	08/06/02	Forbo adhesives, LLC	(G) Hot melt adhesive	(G) Hot melt polyurethane adhesive
P–02–0644	05/08/02	08/06/02	Forbo adhesives, LLC	(G) Hot melt adhesive	(G) Hot melt polyurethane adhesive
P–02–0645	05/09/02	08/07/02	Houghton International, Inc.	(S) Lubricant additive/emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, diesters with polyethylene glycol
P–02–0646	05/09/02	08/07/02	CBI	(S) Surfactant for making aqueous adhesive dispersions	(G) Ethoxylated phosphate salt
P–02–0647	05/09/02	08/07/02	U.S. Paint Corporation	(G) Resin for coatings	(G) Hydroxyl-terminated aliphatic polycarbonate
P–02–0648	05/09/02	08/07/02	Phillips Petroleum Company	(S) Hydrocarbon solvent	(S) Naphtha (petroleum), hydrodesulfurized, light, dearomatized
P–02–0649	05/10/02	08/08/02	CBI	(G) Component of polyurethane	(G) Aromatic polyester polyol
P–02–0650	05/10/02	08/08/02	CBI	(G) Component of polyurethane	(G) Aromatic polyester polyol
P–02–0651	05/10/02	08/08/02	Vantico Corp.	(S) Resin for structural composites; resin for electronic laminates	(G) Bis(phenol), 3,3-bis(3,4-dihydro-3phenyl-2h-1,3-benzoxazin-6-yl) derivative
P–02–0652	05/09/02	08/07/02	CBI	(G) Pigment dispersant	(G) Polyurethane derivative
P–02–0653	05/10/02	08/08/02	Vantico Corp.	(S) Resin for electronic laminates; adhesives resin; encapsulants resin; composites resin	(G) Polyphenol, 2h-1,3-benzoxazine derivative
P–02–0654	05/13/02	08/11/02	CBI	(G) Open, non-dispersive, (resin)	(G) Powder polyester coating resin
P–02–0655	05/13/02	08/11/02	CBI	(S) Marine(antifouling) coating	(G) Copolymer of acrylic and methacrylic esters
P–02–0656	05/13/02	08/11/02	CBI	(G) Open, non-dispersive, (resin)	(G) Powder coating polyester resin
P–02–0657	05/13/02	08/11/02	CBI	(G) Open, non-dispersive, (resin)	(G) Powder coating resin

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0658	05/13/02	08/11/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymer modifier	(G) Ethylene copolymer
P–02–0659	05/14/02	08/12/02	Crompton Corporation	(G) Catalyst	(S) Stannane, dimethylbis[[(9z)-1-oxo-9-octadecenyl]oxy]-
P–02–0660	05/15/02	08/13/02	Dow Agro Sciences	(S) Chemical intermediate	(G) Chlorooxazole
P–02–0661	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0662	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0663	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0664	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0665	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0666	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0667	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0668	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0669	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0670	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0671	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0672	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0673	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0674	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0675	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0676	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0677	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0678	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0679	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0680	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0681	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0682	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0683	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0684	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0685	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0686	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0687	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0688	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0689	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0690	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0691	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0692	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0693	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0694	05/21/02	08/19/02	CBI	(G) Lubricant base fluid	(G) Saturated hydrocarbon
P–02–0695	05/21/02	08/19/02	CBI	(G) Lubricant base fluid	(G) Saturated hydrocarbon
P–02–0696	05/21/02	08/19/02	CBI	(G) Polymeric binder	(G) Styrene-methacrylate copolymer
P–02–0697	05/20/02	08/18/02	CBI	(G) Catalyst component	(G) Dineopentyl-4-substituted phthalate
P–02–0716	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, nitrate

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I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0658	05/13/02	08/11/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymer modifier	(G) Ethylene copolymer
P–02–0659	05/14/02	08/12/02	Crompton Corporation	(G) Catalyst	(S) Stannane, dimethylbis[[(9z)-1-oxo-9-octadecenyl]oxy]-
P–02–0660	05/15/02	08/13/02	Dow Agro Sciences	(S) Chemical intermediate	(G) Chlorooxazole
P–02–0661	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0662	05/15/02	08/13/02	CBI	(S) Reactive dye for textile	(G) Substituted naphthalene sulfonic acid, alkali salt
P–02–0663	05/15/02	08/13/02	CBI	(G) Open, non-dispersive (urethane)	(G) Polyurethane-polyurea based on ipdi
P–02–0664	05/15/02	08/13/02	American Honda Motor Co., Inc.	(S) Component of electrolyte for capacitor of automobile	(S) Ethanaminium, nu,nu-diethyl-nu-methyl-, tetrafluoroborate (1-)
P–02–0665	05/15/02	08/13/02	Crompton Corporation	(G) Lubricating oil additive	(S) Benzoic acid, 5-dodecyl-2-hydroxy-, calcium salt (2:1), branched
P–02–0666	05/16/02	08/14/02	CBI	(S) Additive for adhesion of rubber to metal in tire and wire coatings	(G) Dicyclopentadiene-resorcinol copolymer
P–02–0667	05/15/02	08/13/02	Houghton international, Inc.	(S) Lubricant additive/emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, esters with polyethylene glycol mono(branched 4-nonylphenyl) ether
P–02–0668	05/13/02	08/11/02	Wacker silicones, a division of wacker chemical corporation	(S) Binder for silicone coatings	(S) Siloxanes and silicones, di-me, polymers with ph silsesquioxanes, hydrolyzed, reaction products with trimethoxy[3-(oxiranylmethoxy)propyl]silane
P–02–0669	05/16/02	08/14/02	CBI	(S) Resin component for ultraviolet cure coatings	(G) Aliphatic diacrylate
P–02–0670	05/16/02	08/14/02	Gelest, Inc.	(S) Catalyst research	(S) Titanium, chlorotris(2-propanolato)-
P–02–0671	05/14/02	08/12/02	Vulcan Performance Chemicals	(G) Open, non-dispersive use in paper pulp	(G) Alkoxylated alkyl ether phosphate
P–02–0672	05/20/02	08/18/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymeric polymer additive-open non-dispersive	(G) Modified polyvinyl butyral
P–02–0673	05/20/02	08/18/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymeric polymer additive-open non-dispersive	(G) Modified polyvinyl butyral
P–02–0674	05/20/02	08/18/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymeric polymer additive-open non-dispersive	(G) Modified polyvinyl butyral
P–02–0675	05/20/02	08/18/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymeric polymer additive-open non-dispersive	(G) Modified polyvinyl butyral
P–02–0676	05/20/02	08/18/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymeric polymer additive-open non-dispersive	(G) Modified polyvinyl butyral
P–02–0677	05/20/02	08/18/02	E.I. Dupont De Nemours and Co., Inc	(G) Polymeric polymer additive-open non-dispersive	(G) Modified polyvinyl butyral
P–02–0678	05/20/02	08/18/02	CBI	(S) Intermediate for polyurethanes	(G) Urethane diol
P–02–0679	05/20/02	08/18/02	CBI	(S) Laminating adhesive; ink receptive coating (printing)	(G) Polyester polyurethane polymer
P–02–0680	05/20/02	08/18/02	CBI	(G) Destructive use-plastics additive	(G) Surface modified aluminum hydroxide
P–02–0681	05/20/02	08/18/02	CBI	(G) Destructive use-plastics additive	(G) Surface modified aluminum hydroxide
P–02–0682	05/20/02	08/18/02	CBI	(G) Destructive use-plastics additive	(G) Surface modified aluminum hydroxide
P–02–0683	05/20/02	08/18/02	CBI	(G) Destructive use-plastics additive	(G) Surface modified aluminum hydroxide
P–02–0684	05/20/02	08/18/02	CBI	(G) Destructive use-plastics additive	(G) Surface modified aluminum hydroxide
P–02–0685	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds
P–02–0686	05/21/02	08/19/02	CBI	(G) Emulsifier or surfactant	(G) Alkylamidoalkylsulfonic acid salt
P–02–0687	05/21/02	08/19/02	CBI	(G) Emulsifier or surfactant	(G) Alkylamidoalkylsulfonic acid salt
P–02–0688	05/21/02	08/19/02	CBI	(G) Chemical intermediate	(G) Unsaturated hydrocarbon
P–02–0689	05/21/02	08/19/02	CBI	(G) Chemical intermediate	(G) Unsaturated hydrocarbon
P–02–0690	05/21/02	08/19/02	CBI	(G) Chemical intermediate	(G) Unsaturated hydrocarbon
P–02–0691	05/21/02	08/19/02	CBI	(G) Chemical intermediate	(G) Unsaturated hydrocarbon
P–02–0692	05/21/02	08/19/02	CBI	(G) Lubricant base fluid	(G) Saturated hydrocarbon
P–02–0693	05/21/02	08/19/02	CBI	(G) Lubricant base fluid	(G) Saturated hydrocarbon

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 05/03/02 TO 05/21/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0694	05/21/02	08/19/02	CBI	(G) Lubricant base fluid	(G) Saturated hydrocarbon
P–02–0695	05/21/02	08/19/02	CBI	(G) Lubricant base fluid	(G) Saturated hydrocarbon
P–02–0696	05/21/02	08/19/02	CBI	(G) Polymeric binder	(G) Styrene-methacrylate copolymer
P–02–0697	05/20/02	08/18/02	CBI	(G) Catalyst component	(G) Dineopentyl-4-substituted phthalate
P–02–0716	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, nitrate
P–02–0717	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, lactate
P–02–0718	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, acetate
P–02–0719	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, hydrochloride
P–02–0720	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, citrate
P–02–0721	05/21/02	08/19/02	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, acrylate

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 26 NOTICES OF COMMENCEMENT FROM: 05/03/02 TO 05/21/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0011	05/21/02	04/15/02	(G) Alcohols, ethoxylated propoxylated
P–00–1149	05/20/02	04/18/02	(S) Benzene, diethenyl-, polymer with ethenylbenzene and ethenylethylbenzene, chloromethylated, cyclized, reaction products with ethylbenzene
P–01–0187	05/16/02	05/10/02	(G) Fatty acids, tall-oil, reaction products with castor oil and substituted amines, acetates
P–01–0188	05/16/02	05/10/02	(G) Fatty acids, tall-oil, reaction products with castor oil and substituted amines, phosphates
P–01–0238	05/07/02	04/10/02	(G) Modified polyacrylate
P–01–0262	05/13/02	04/26/02	(G) Distillates (petroleum), steam-cracked, polymers with light steam-cracked petroleum conc. and tall oil fatty acid
P–01–0833	05/07/02	04/26/02	(G) Crosslinked polyamine
P–01–0869	05/03/02	04/22/02	(G) Acrylic polymer
P–01–0870	05/08/02	05/01/02	(G) Acrylic non-aqueous dispersion
P–02–0017	05/07/02	04/04/02	(G) Azo oil soluble dye
P–02–0057	05/10/02	04/16/02	(G) Polycarboxylic resin
P–02–0095	05/13/02	04/09/02	(G) Substituted pyridine
P–02–0121	05/03/02	04/08/02	(S) Siloxanes and silicones, di-me, hydrogen-terminated, reaction products with bisphenol a diglycidyl ether and 10-undecenoic acid
P–02–0157	05/03/02	04/15/02	(G) Polyurethane-poly carbonate polymer
P–02–0227	05/10/02	04/12/02	(G) Polyether
P–02–0233	05/10/02	04/18/02	(G) Modified alkyl ammonium salts
P–02–0236	05/10/02	04/16/02	(G) Acrylic copolymer
P–02–0244	05/10/02	04/18/02	(G) Urea resin
P–02–0263	05/10/02	04/30/02	(G) Acrylate/allylether copolymer
P–02–0268	05/10/02	04/22/02	(G) Acrylic copolymer
P–02–0275	05/10/02	04/22/02	(G) Acrylic copolymer
P–02–0277	05/15/02	05/08/02	(G) Polyester acrylate
P–98–0513	05/14/02	04/22/02	(G) Methylacrylate copolymer
P–98–1029	05/03/02	04/21/02	(S) 1,2-ethanediamine, n-[3-(triethoxysilyl)propyl]-
P–99–0851	05/08/02	01/16/02	(G) Metal ammine nitrate complex
P–99–1327	05/03/02	04/02/02	(G) Halogenated alkane

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 20, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–16896 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–S

party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Wednesday, July 17, 2002

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

Time and Date: 10:00 a.m., Wednesday, July 10, 2002.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be open to the public.

uncontainerized bagged cocoa as an excepted cargo.

Agreement No.: 201113–001.

Title: Oakland/SSA Terminals, LLC Preferential Assignment Agreement.

Parties: Port of Oakland, SSA Terminals, LLC.

Synopsis: The amendment revises the delivery of certain portions of the leasehold, clarifies the improvements

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Further notice of inquiry.

SUMMARY: In connection with an ongoing inquiry, the Federal Maritime Commission ("FMC" or "Commission") issued a Notice of Inquiry seeking information regarding the Regulations of the PRC on International Maritime Transportation (Regulations), promulgated on December 21, 2001 and effective January 1, 2002. 67 Fed. Reg. 11695–11696 (March 15, 2002). The Commission, in its effort to continue to monitor the issues identified in this proceeding, is now issuing this Further Notice of Inquiry.

Recently, the Ministry of

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List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 20, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–16896 Filed 7–3–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 02–1487]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 28, 2002, the Commission released a public notice announcing the July 17–18, 2002 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The address is: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW, Suite 5–A420, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: *Released:* June 28, 2002.

The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday July 17, 2002, from 8:30 a.m. until 5 p.m., and on Thursday, July 18, 2002, from 8:30 a.m., until 12 noon (if required). The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC.

This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Wednesday, July 17, 2002

1. Announcements and Recent News
2. Approve Minutes
—Meeting of May 21–22, 2002
3. Report of North American Numbering Plan Administrator (NANPA)
—NANP Exhaust Results
—NPA Relief Planning Status Report
—CO Code Activity Report
—NRUF Update
—Update on Return Codes with Ported TNs
—Review of NANPA Performance Improvement Plan (PIP)
—Review of NANC Chairman letter to FCC re Change Management Administration contractor
4. Update on Selection of Next NANPA
—Issuance of Requirements Document
—Procurement Schedule
5. Report of NANP Expansion/ Optimization IMG
6. Review of Oversight Working Groups
—Regular Report of NANPA Oversight Working Group (NOWG)
—Formation of Pooling Administrator Oversight Working Group (PAOWG)
—Rechartering NOWG
—Two WG's or one?
7. Status of Industry Numbering Committee activities
8. Report of the Local Number Portability Administration (LNPA) Working Group Wireless Number Portability Operations (WNPO) Subcommittee
—WNPO/CTIA: Status of meeting the Nov. 24, 2002 pooling and porting deadline
9. Report of National Thousands-Block Pooling Administrator
10. Report of NAPM LLC
11. Report from NBANC
—Status of next NBANC contract
12. Report of Cost Recovery Working Group
13. Report of E–Conferencing Subcommittee
14. Steering Committee
—Table of NANC Projects
15. Report of Steering Committee
16. Action Items
17. Public Participation (5 minutes each)
18. Other Business

Adjourn (no later than 5:00 p.m.) Thursday, July 18, 2002 (if required)

19. Complete any unfinished Agenda Items
20. Other Business

Adjourn (no later than 12:00 Noon)

Next meeting: September 24–25, 2002.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 02–16872 Filed 7–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

Time and Date: 10:00 a.m., Wednesday, July 10, 2002.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matters To Be Considered During Portions Open to the Public:

- Federal Home Loan Bank of Indianapolis Capital Plan
- Federal Home Loan Bank of Des Moines Capital Plan
- Federal Home Loan Bank of Topeka Capital Plan

Contact Person for More Information: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–16954 Filed 7–2–02; 11:15 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 011809.

Title: Tropical/Tecmarine Agreement.

Parties: Tropical Shipping & Construction Company, Ltd. Tecmarine Lines, Inc.

Synopsis: Under the proposed agreement, Tecmarine will refrain from competing with Tropical in the trade between the Untied States and the Guianas and the Eastern Caribbean. This agreement is in consideration of Tropical's purchase of certain Tecmarine assets and stock companies operating in the foregoing trading areas.

Agreement No.: 200063–023.

Title: NYSA–ILA Tonnage Assessment Agreement Assignment Agreement.

Parties: New York Shipping Association, Inc. International Longshoremen's Association, AFL–CIO.

Synopsis: The amendment reduces certain assessment rates and classifies uncontainerized bagged cocoa as an excepted cargo.

Agreement No.: 201113–001.

Title: Oakland/SSA Terminals, LLC Preferential Assignment Agreement.

Parties: Port of Oakland, SSA Terminals, LLC.

Synopsis: The amendment revises the delivery of certain portions of the leasehold, clarifies the improvements the port will install on the premises, and clarifies the repair and maintenance obligations of the parties. The amendment also amends the minimum annual guarantees and break point levels as well as revises the terms for the termination of other agreements.

By Order of the Federal Maritime Commission.

Dated: June 28, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–16757 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below listed agreements provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the agreements. This action prevents the agreements from becoming effective as originally scheduled.

Agreement No.: 011804.

Title: Eastern Car Liner/Fesco Ocean Management Ltd. Space Charter Agreement.

Parties: Eastern Car Liner, Ltd., Fesco Ocean Management Limited.

Agreement No.: 011807.

Title: SNL/HASCO Cross Space Charter and Sailing Agreement.

Parties: Sinotrans Container Line Co., Ltd., Shanghai Hai Hua Shipping Co., Ltd.

By Order of the Federal Maritime Commission.

Dated: June 28, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–16804 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Further notice of inquiry.

SUMMARY: In connection with an ongoing inquiry, the Federal Maritime Commission ("FMC" or "Commission") is seeking comments from the shipping public specifically with regards to recently proposed implementing rules of the Government of the People's Republic of China which may have an adverse impact on U.S. shipping, and which may merit Commission attention under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988.

DATE: Comments due on or before August 5, 2002.

ADDRESS: Send comments (original and 15 copies) to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, e-mail: *Secretary@fmc.gov.*

FOR FURTHER INFORMATION, CONTACT: David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

This proceeding was initiated on August 12, 1998, to gather information regarding certain apparently restrictive laws, rules and regulations of the People's Republic of China ("PRC" or "China") with the issuance of Information Demand Orders and a Notice of Inquiry. The Commission is attempting to compile a record in order to determine if further Commission action under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988 is warranted.[1] The Commission issued a Notice of Inquiry seeking information regarding the Regulations of the PRC on International Maritime Transportation (Regulations), promulgated on December 21, 2001 and effective January 1, 2002. 67 Fed. Reg. 11695–11696 (March 15, 2002). The Commission, in its effort to continue to monitor the issues identified in this proceeding, is now issuing this Further Notice of Inquiry.

Recently, the Ministry of Communications ("MOC") issued a "Notice on Inviting Comments on the Implementing Rules for the Regulations of the People's Republic of China on International Maritime Transportation" ("Notice") on June 21, 2002. This Notice, published on the MOC website (*http://www.moc.gov.cn*), together with the text of the proposed "Implementing Rules," both in English, solicits comments in writing (via fax or email) by July 15, 2002.

The Commission is concerned that the proposed Implementing Rules may have significant effects on the companies currently operating in the U.S.-China trade, as well as the Commission's continuing review of potentially restrictive practices of the PRC. Therefore, the Commission is now issuing this Further Notice of Inquiry. The Commission may also formulate further Information Demand Orders, as appropriate, to ensure it has the most accurate information with regard to these issues, and so that it may in turn determine whether any current Chinese laws, rules, regulations or practices merit the initiation of a proceeding under section 19 of the Merchant Marine Act, 1920, or the Foreign Shipping Practices Act.

Discussion and Request for Comments

It appears that U.S. ocean transportation intermediaries, carriers and other transportation operators may face serious restrictions in obtaining the necessary licenses and permissions to do business in China. Indeed, it appears that wholly foreign-owned NVOCCs continue to be completely barred from engaging in a number of commercial activities, such as offering through transportation as an NVOCC. Other

[1] Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes and directs the Commission, *inter alia*, to "make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country * * *." The Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a, authorizes the Commission to investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime related services in a foreign country result in the existence of conditions that (1) adversely affect the operations of United States carriers in the United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States. If the Commission determines that such adverse conditions exist, it may take actions including limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

types of services may be permitted, but only if a foreign firm enters into a joint venture with a Chinese entity. It appears that these enterprises must be structured in such a way that the Chinese partner controls the majority of the joint venture and that Chinese nationals must control the highest levels of management. The Commission is also interested in hearing about any other impacts of the Implementing Rules on companies

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–16760 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

License Number: 11870N.
Name: I.T.N. Consolidators, Inc.
Address: 8430 NW 72nd Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3574F.
Name: I.T.N. of Miami, Inc. dba International, Transportation Network.
Address: 8430 NW 72nd Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11870N.
Name: I.T.N. Consolidators, Inc.
Address: 8430 NW 72nd Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1941F.
Name: Rome International Freight Consultants, Inc.
Address: 8000 NW 66th Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 41F.
Name: Trac-Mar Network Inc.
Address: 7225 NW 25 Street, Suite 203, Miami, FL 33122.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4202F.
Name: Ameritrans World Group, Inc.
Address: 7102 NW 50th Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–16759 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary

Individual), Catherine Wagner, Vice President.

Trac-Mar Network Inc., 7225 NW 25 Street, Suite 203, Miami, FL 33122.
Officers: Teresita Rodriguez-Adan, President (Qualifying Individual), Juan J. Adan, Secretary.

Ameritrans World Group, Inc., 7102 NW 50th Street, Miami, FL 33166–5636.
Officers: Martin Roy Leon, President, Cesar Ocampo, Senior Vice President, Henry Zuluaga, Exec. Vice President,

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types of services may be permitted, but only if a foreign firm enters into a joint venture with a Chinese entity. It appears that these enterprises must be structured in such a way that the Chinese partner controls the majority of the joint venture and that Chinese nationals must control the highest levels of management. The Commission is also interested in hearing about any other impacts of the Implementing Rules on companies serving the U.S.-China trade.

The Commission is particularly seeking to establish a clear record of the likely or anticipated impact of these rules on the services U.S. NVOCCs are now permitted to perform in China, what activities are prohibited, what requirements or prerequisites are imposed and what, if any, detrimental effects these requirements and prohibitions have on U.S. companies doing business or seeking to do business in China. It would also be helpful to learn whether compliance with the Implementing Rules by ocean common carriers, agents or other entities has affected or is likely to affect the ability of U.S. NVOCCs to do business and serve customers in China and the U.S.

In light of the publication of the Notice and Implementing Rules by the Government of the People's Republic of China, the Commission encourages companies affected by the Regulations and the Implementing Rules to submit comments to MOC. The Commission would also welcome comments from any carrier, shipper, intermediary or any other party directly or indirectly affected by the Implementing Rules. Providing such comments will assist the Commission in measuring the effects of the Implementing Rules. Specifically, the Commission is seeking information with regard to how companies serving the U.S.-China trade will be affected by the Implementing Rules. Any supporting documentation would be especially welcome. Upon request, the Commission may hold information submitted in response to this Further Notice of Inquiry confidential, pursuant to 46 U.S.C. 876(h) and 46 U.S.C. 1710a(d)(3). The Commission cannot, however, ensure the confidentiality of documents submitted via e-mail due to the nature of such transmissions.

Persons who have commented on the Commission's prior NOI may wish to take this opportunity to supplement their comments, if necessary, in light of these new implementing rules.

Now therefore, it is ordered, that this Further Notice of Inquiry be published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–16760 Filed 7–3–02; 8:45 am]

BILLING CODE 6320–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 2770NF.
Name: All Flags Forwarding Inc.
Address: 147–35 183rd Street, Jamaica, NY 11434.
Date Revoked: May 12, 2002.
Reason: Failed to maintain valid bonds.

License Number: 13566N.
Name: Amerilines—U.S.A., Inc.
Address: 1890 NW 82nd Avenue, Suite 112, Miami, FL 33126.
Date Revoked: May 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15077N.
Name: Anchor Shipping Co. dba Anchor Shipping Line.
Address: 1031 Ives Dairy Road, Suite 228, North Miami Beach, FL 33179.
Date Revoked: June 1, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17337NF.
Name: Clarke Transportation Services, Inc.
Address: 2000 Professional Way, Bldg. 100, Woodstock, GA 30188.
Date Revoked: May 17, 2002.
Reason: Failed to maintain valid bonds.

License Number: 1682F.
Name: New England Household International Division of New England Household Moving & Storage, Inc.
Address: 104 Bartzak Drive, Holliston, MA 01746–0000.
Date Revoked: May 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15367N.
Name: IOCC Corp.
Address: 10865 NW 29th Street, Suite 200, Miami, FL 33172.
Date Revoked: June 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11870N.
Name: I.T.N. Consolidators, Inc.
Address: 8430 NW 72nd Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3574F.
Name: I.T.N. of Miami, Inc. dba International, Transportation Network.
Address: 8430 NW 72nd Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 10443N.
Name: Immortal Service Inc.
Address: 440 South Hindry Avenue, Suite F, Inglewood, CA 90301.
Date Revoked: June 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4246F.
Name: International Shipping Link, Inc.
Address: 2418 W. Devon Avenue, Chicago, IL 60659.
Date Revoked: May 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16503NF.
Name: Lukini Shipping Inc.
Address: JFK International Airport, Cargo Bldg. 80, Room 203, Jamaica, NY 11430.
Date Revoked: May 25, 2002.
Reason: Failed to maintain valid bonds.

License Number: 16031N.
Name: Marquis International Consolidators, Inc.
Address: 8209 N.W. 68th Street, Miami, FL 33166.
Date Revoked: April 30, 2002.
Reason: Surrendered license voluntarily.

License Number: 4613F.
Name: N.C.A. International Ocean Freight Forwarders, Inc.
Address: 6801 Chippendale Court, Tampa, FL 33634.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15567NF.
Name: Osher Corporation.
Address: 10838 27th Street, Miami, FL 33172.
Date Revoked: May 29, 2002.
Reason: Failed to maintain valid bonds.

License Number: 16171N.
Name: Petcon Air Freight (USA) Inc.
Address: 175–01 Rockaway Blvd., Room 215, Jamaica, NY 11434.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1941F.
Name: Rome International Freight Consultants, Inc.
Address: 8000 NW 68th Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 41F.
Name: S. Jackson & Son, Inc.
Address: 1555 Poydras Street, Suite 1600, New Orleans, LA 70112.
Date Revoked: May 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 12905N.
Name: Schaefco Container Ltd.
Address: 555 Route 1 South, Woodbridge Towers, Iselin, NJ 08830.
Date Revoked: June 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1457F.
Name: Schmidt, Pritchard & Co., Inc.
Address: 9801 West Lawrence Avenue, Schiller Park, IL 60176.
Date Revoked: May 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2745NF.
Name: Ssangyong (U.S.A.), Inc.
Address: 601 16th Street, Carlstadt, NJ 07072.
Date Revoked: June 6, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17334N.
Name: Suburban Moving & Storage, Inc.
Address: 1720 Willow Avenue, Weehawken, NJ 07087.
Date Revoked: May 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11619N.
Name: Victoriana C. Tirona dba Bulakena Ocean & Air Forwarders.
Address: 4995 Mission Street, San Francisco, CA 94112.
Date Revoked: June 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16837F.
Name: West Coast Forwarding, Inc.
Address: 3255 Wilshire Blvd., Suite 1805, Los Angeles, CA 90010.
Date Revoked: May 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4341F.
Name: USA Logistics, Incorporated.
Address: 22029 West Conway Place, Saugus, CA 91350.
Date Revoked: May 22, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–16759 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Go-Trans (New York) Ltd., 147–32 Farmers Blvd., 2/F., Jamaica, NY 11434. *Officer:* Muhammad Bhatti, Chief Operating Officer (Qualifying Individual).

Marine Express, Inc., P.O. Box 6448, Concordia #249 Altos, Mayaguez, P.R. 00681–6448. *Officers:* Nestor Gonzalez, President (Qualifying Individual), Dr. Luis Aponte, Vice President.

Mirsonia, Inc., 611 Howard Street #236, Glendale, CA 91206. *Officers:* Jamie Yoon, Vice President (Qualifying Individual), Kiryong Lee, President.

Zohar Worldwide LLC dba Relampago International, dba Reillampago Express, 1069 Sneath Lane, San Bruno, CA 94066. *Officers:* Houshang Arasteh, Vice President (Qualifying Individual), Carlos A. Larios, Jr., President.

Dimex Consulting, Inc., 118 W. Hazel Street, Ste. A, Inglewood, CA 90302. *Officer:* Diem T. Nguyen, Owner.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Eastern Shipping Worldwide, Inc., 1050 Busse Highway, Suite 125, Bensenville, IL 60106. *Officers:* Eric Wagner, President (Qualifying Individual), Catherine Wagner, Vice President.

Trac-Mar Network Inc., 7225 NW 25 Street, Suite 203, Miami, FL 33122. *Officers:* Teresita Rodriguez-Adan, President (Qualifying Individual), Juan J. Adan, Secretary.

Ameritrans World Group, Inc., 7102 NW 50th Street, Miami, FL 33166–5636. *Officers:* Martin Roy Leon, President, Cesar Ocampo, Senior Vice President, Henry Zuluaga, Exec. Vice President, Carlos Ospina, Vice President (Qualifying Individuals), Roy Leon Jr., Vice President.

Speedex Air & Ocean, Inc., 12906 Acord Street, Cerritos, CA 90703. *Officer:* Jung Ah Shim, President (Qualifying Individual).

Dated: June 28, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–16758 Filed 7–3–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer–Joseph F. Lackey, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 10235, Washington, DC 20503 (202–395–7316).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:

1. *Report title:* Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks
Agency form number: Reg H–5

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 2, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–17013 Filed 7–2–02; 2:14 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and

Dated: June 21, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–16232 Filed 7–3–02; 8:45 am]

BILLING CODE 4163–18–P

their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Only one application from each State or Territory may be submitted.

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Executive Office Building, Room 10235, Washington, DC 20503 (202–395–7316).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:

1. *Report title:* Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks
Agency form number: Reg H–5
OMB Control number: 7100–0261
Frequency: Aggregate report, quarterly; policy statement, annually
Reporters: State member banks
Annual reporting hours: 21,060 hours
Estimated average hours per response: Aggregate report, 5 hours; policy statement, 20 hours
Number of respondents: 976
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1828(o)) and is not given confidential treatment.
Abstract: State member banks must adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Board of Governors of the Federal Reserve System, June 27, 2002.
Jennifer J. Johnson
Secretary of the Board.
[FR Doc. 02–16661 Filed 7–3–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *First Commerce Financial Corporation*, Marysville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Commerce Bank, National Association, Marysville, Kansas, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 27, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–16662 Filed 7–3–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with Palm Beach National Holding Company, Palm Beach, Florida, and thereby indirectly acquire voting shares of Palm Beach National Bank and Trust Company, Palm Beach, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Sterling Bancshares, Inc.*, Houston, Texas; to merge with ENB Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire voting shares of ENB Delaware Bankshares, Inc., Wilmington, Delaware, and its banking subsidiary Eagle National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, June 28, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–16783 Filed 7–3–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EDT) July 15, 2002.
PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, DC.
STATUS: Parts will be open to the public and part closed to the public.
MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the June 17, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director (with discussion of litigation to be closed to the public).

Part Closed to the Public

Discussion of litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 2, 2002.
Elizabeth S. Woodruff,
Secretary to the Board, Federal Retirement Thrift Investment Board.
[FR Doc. 02–17013 Filed 7–2–02; 2:14 pm]
BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02175]

Applied Research on Antimicrobial Resistance (AR): Validation of National Committee for Clinical Laboratory Standards (NCCLS) Breakpoints for Bacterial Pathogens of Public Health Importance; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Applied Research on Antimicrobial Resistance (AR): Validation of National Committee for Clinical Laboratory Standards (NCCLS) Breakpoints for Bacterial Pathogens of Public Health Importance was published in the **Federal Register** on June 4, 2002, Vol. 67, No. 107, pages 38501–38503. The notice is amended as follows: On page 38502, first column, Section E. Program Requirements, Paragraph 3, should be revised to read:

"2. For organisms for which NCCLS has yet to establish and publish a standardized susceptibility testing method, a method in line with other NCCLS methods would have to be elucidated (including the appropriate quality control organisms and the ranges of MICs or zone diameters that constituted a test that was in control). Thus, potential projects include validating existing interpretive criteria for pathogens of public health importance, developing new interpretive criteria for pathogens of public health importance using existing NCCLS methods and quality control, or developing new interpretive criteria and new antimicrobial susceptibility testing methods for pathogens of public health importance using existing NCCLS methods and quality control as a starting point for novel test development."

Dated: June 21, 2002.
Sandra R. Manning,
CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.
[FR Doc. 02–16232 Filed 7–3–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02199]

Centers of Excellence for Autism and Other Developmental Disabilities Epidemiology; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Centers of Excellence for Autism and Other Developmental Disabilities Epidemiology. This program addresses the "Healthy People 2010" focus areas for Maternal, Infant, and Child Health.

The purpose of the program is to collect and analyze epidemiologic data on the prevalence, correlates, and causes of autism and other developmental disabilities. The new Center(s) will be part of an existing collaborative network (which consist of four Centers presently) investigating autism spectrum disorder (ASD) and other developmental disabilities. The Centers will conduct active population-based surveillance; multi-Center analytic case-control studies; and Center-initiated special studies. Quantifiable and measurable outcomes of the cooperative agreement will be measured against the Government Performance Results Act performance goal, to find causes and risk factors for birth defects and developmental disabilities in order to develop prevention strategies.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 311 and 317(C) of the Public Health Service Act, (42 U.S.C. Sections 241, 243, and 247b–4), as amended, and Section 102 of the Children's Health Act of 2000, (Pub. L. 106–310). The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Assistance will be provided only to the Health Departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Only one application from each State or Territory may be submitted.

To be eligible, applicants must document a study population of at least 30,000 live births per year (in order to be able to detect sufficient numbers of cases) within a State, a contiguous area of a State (such as the catchment of a local health agency), or a contiguous area comprised of a combination of States, based on United States Census Data (based on 2000 census data). This information should be placed directly behind the face page of the application. Applications that fail to submit the evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code, Section 1611 states than an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $400,000 to $700,000 will be available in FY 2002 to fund approximately one award. The average award will be approximately $500,000. It is expected that the award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

It is anticipated that in FY 2003, additional approved but not funded awards may be made from this announcement, if funds become available.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under "1. Recipient Activities," and CDC will be responsible for the activities listed under "2. CDC Activities."

1. Recipient Activities:
a. Surveillance System.

(1) Develop or enhance a population-based epidemiologic surveillance system for ASD and other developmental disabilities to generate timely population-based data. Activities may include, but are not limited to, development or enhancement of surveillance case definitions, multiple source case ascertainment methods (e.g., from educational and medical sources), and data collection instruments.

(2) Establish or enhance a multiple-source, population-based surveillance system for ASD and other developmental disabilities.

(3) Collect data on ASD and other developmental disabilities.

(4) Analyze data on ASD and other developmental disabilities.

(5) Disseminate findings of the surveillance system to the professional community and the public to increase public health awareness.

b. Develop and implement a multi-Center, case-control study to identify risk factors for ASD and other developmental disabilities.

c. Develop and implement Center-initiated special studies.

d. Disseminate findings of the Surveillance, Collaborative Case-Control, and Center-Initiated Special Studies activities for the professional community and the public to increase public health awareness.

e. Participate fully as a member of the coordinating committee, which is comprised of principal investigators of all funded Centers of Excellence.

2. CDC Activities:

Applications

Applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important for applicants to follow the specific information noted in laying out the program plan.

G. Submission and Deadline

Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description of Program and Methodology (30 points).

3. Goals and Objectives (15 points).
a. Extent to which applicant clearly describes the short-term and long-term goals and measurable objectives of the project;
b. Extent to which applicant's goals and objectives are realistic and are consistent with the stated goals and purpose of this announcement;
c. The degree to which applicant has met the CDC policy requirements regarding the inclusion of women,

b. Extent to which applicant has the ability to manage and coordinate surveillance, research, and integration components of the project.
c. Extent to which applicant demonstrates expertise in abstracting and reviewing records.
d. Extent to which there is appropriate dedicated staff time to develop and implement the project.
e. Extent to which applicant provides an appropriate time line and includes

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(1) Develop or enhance a population-based epidemiologic surveillance system for ASD and other developmental disabilities to generate timely population-based data. Activities may include, but are not limited to, development or enhancement of surveillance case definitions, multiple source case ascertainment methods (e.g., from educational and medical sources), and data collection instruments.

(2) Establish or enhance a multiple-source methodology for case ascertainment by developing collaborative relationships with appropriate professionals and organizations.

(3) Develop or enhance a plan for training community service providers to improve case ascertainment.

(4) Implement or enhance quality assurance procedures to ensure that study protocols are followed.

(5) Develop or enhance an evaluation plan for estimating the validity and completeness of the surveillance system.

(6) Develop, implement, and evaluate a plan to use surveillance data to improve community and service provider awareness regarding ASD and other developmental disabilities and/or access of children with ASD and other developmental disabilities to comprehensive, community-based, family-centered care.

b. Collaborative Case-Control Study: Collaborate with other previously funded Centers to design, implement, analyze, and evaluate joint case-control studies based on a pooled study data base.

c. Center-Initiated Special Studies: Develop, implement, and evaluate a Center-initiated special study drawing on special strengths and expertise of Center staff. It is anticipated that development of the special study would be initiated in Year Two of the grant award and utilize the Center's surveillance and case-control study infrastructure. The study could include, but may not be limited to, the following issues related to ASD or other developmental disabilities:

(1) Evaluation of prenatal, perinatal, and/or postnatal risk factors, including genetic factors and environmental exposures,

(2) Evaluation of natural history, including associated developmental disabilities and secondary conditions,

(3) Identification of biomarkers,

(4) Evaluation of economic costs,

(5) Development, implementation, and evaluation of intervention programs for children with ASD and their families,

d. Disseminate findings of the Surveillance, Collaborative Case-Control, and Center-Initiated Special Studies activities for the professional community and the public to increase public health awareness.

e. Participate fully as a member of the coordinating committee, which is comprised of principal investigators of all funded Centers of Excellence.

2. CDC Activities:

a. Surveillance Activities.

(1) Assist recipient in the development and implementation of surveillance activities including the development of standardized surveillance case definitions.

(2) Provide current information on surveillance methods, including the identification of potential sources for surveillance.

(3) Assist recipient, in the development of quality assurance procedures.

(4) Provide assistance, in the development of an evaluation plan for the completeness and validity of data from the surveillance system.

(5) Facilitate communication/coordination among funded Centers, to improve efficiency of activities and quality of surveillance data.

(6) Provide technical consultation regarding data analyses.

b. Collaborative Case-Control Studies.

(1) Assist recipients in developing a plan for on-site activities, such as selection and enrollment of study subjects, implementation of the joint study protocol, quality assurance procedures, data management, and timely submission of computerized data to a central repository for inclusion in a pooled data set.

(2) Obtain CDC Institutional Review Board (IRB) clearances and Office of Management and Budget (OMB) clearance as necessary.

F. Content of Application

Letter of Intent (LOI)

An LOI is requested for this program announcement. The LOI will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest and plan for the review more efficiently. The LOI should be no more than two, double-spaced pages, printed on one side, with one-inch margins and 12 point font. The LOI should include the following information: this program announcement number; applicant's name and address; project director's name, phone number, and e-mail address.

Applications

Applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important for applicants to follow the specific information noted in laying out the program plan.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 22, 2002, submit the LOI to the official designated for programmatic technical assistance identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 398 (OMB Number 0925–0001). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

The application must be received on or before 5 p.m. Eastern Time, August 9, 2002. Submit the application to: Technical Information Management-PA 02199, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of various identified objectives of the grant/cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement.

Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description of Program and Methodology (30 points).

a. Extent to which applicant describes the methods they will use to (1) identify all relevant sources for surveillance case ascertainment for ASD and other developmental disabilities within the study area; (2) obtain permission to access records from relevant sources; (3) develop standard case definitions for ASD and other developmental disabilities and implement a strategy to conduct multiple-source case ascertainment; (4) train community service providers to improve case ascertainment; (5) develop and implement quality assurance procedures and an evaluation plan for the surveillance system; (6) develop and implement a plan to use surveillance data to improve public awareness regarding ASD and other developmental disabilities and/or access to care of affected children; and (7) develop an analytic and dissemination plan, and prepare manuscripts.

b. Extent to which applicant describes the plan for implementing the collaborative case-control study, including selection and enrollment of cases and controls from the applicant's study population.

c. Extent to which the applicant describes the objectives, based on special strengths and expertise of the applicant, for a Center-initiated special study.

2. Understanding the Problem (15 points).

a. Extent to which applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement;

b. Extent to which applicant understands the issues, challenges, and barriers associated with developing and implementing population-based surveillance and epidemiologic studies for ASD and other developmental disabilities;

c. Extent to which applicant understands the issues, challenges, and barriers associated with case ascertainment for ASD; and

d. Extent to which applicant describes the need for funds to develop/enhance ASD and other developmental disability surveillance and epidemiologic studies in their State.

3. Goals and Objectives (15 points).

a. Extent to which applicant clearly describes the short-term and long-term goals and measurable objectives of the project;

b. Extent to which applicant's goals and objectives are realistic and are consistent with the stated goals and purpose of this announcement;

c. The degree to which applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Collaborative Efforts (15 points).

a. Extent to which applicant demonstrates the ability to collaborate with multiple sources such as school systems, diagnostic centers, health/mental health service providers and other intervention service providers for the purpose of case ascertainment (include written assurances).

b. Extent to which applicant demonstrates their willingness to collaborate with other Centers to develop joint project efforts and carry out the joint project efforts in a manner that allows for pooling of standardized data.

c. Extent to which recipient identifies possible collaborative relationships with existing surveillance and research programs that may enhance recipients' future research activities (e.g., birth defects surveillance, National Institutes of Health, Collaborative Programs of Excellence in Autism).

d. Extent to which collaborative efforts with other relevant programs are documented (such as Part C, State developmental disabilities programs, genetics programs, etc.).

5. Staffing and Management System (15 points).

a. Extent to which key personnel have qualifications, skills and experience in epidemiologic methods, public health surveillance, data management and analysis to develop and implement surveillance and analytic studies in ASD and other developmental disabilities.

b. Extent to which applicant has the ability to manage and coordinate surveillance, research, and integration components of the project.

c. Extent to which applicant demonstrates expertise in abstracting and reviewing records.

d. Extent to which there is appropriate dedicated staff time to develop and implement the project.

e. Extent to which applicant provides an appropriate time line and includes activities and personnel responsibilities.

f. Extent to which applicant demonstrates an organizational structure (include an organizational chart) and facilities/space/equipment that are adequate to carry out the activities of the program.

6. Evaluation Plan (10 points).

a. Extent to which applicant describes an evaluation plan that will monitor reliability, progress, timeliness, and completeness of the objectives and activities of the project.

b. Extent to which applicant describes a study to evaluate the completeness of ascertainment of children for the surveillance portion of the study.

7. Human Subjects Review (not scored).

Does the applicant adequately address the requirements of 45 CFR part 46 for the protection of human subjects?

8. Budget (not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. Applicants should include in their first year budget two trips to CDC, Atlanta for up to two persons and two days each trip.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Semiannual progress reports, which should include:

a. Brief project description;

b. Comparison of the actual accomplishments to the goals and objectives established for the period;

c. Data requirements that demonstrates measures of effectiveness. In the case that established goals and objectives are not accomplished, or are delayed, please discuss the reason for the goals and objectives not being accomplished, as well as the anticipated corrective action needed to achieve the goals and objectives. If there is a need to change or delete goals or objectives, please discuss and explain the reason;

d. Other pertinent information, including preliminary findings from the analysis of any available data; and

e. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02059]

Cooperative Agreement for Development of the National Violent Death Reporting System (NVDRS); Notice of Availability of Funds

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280(b)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

C. Eligible Applicants

from child fatality review committees on violent deaths occurring in children less than 18 years of age.

Minimum Requirements

In order to qualify for this funding, the applicant must provide evidence of an existing centralized statewide child fatality review committee and access to information on individual, identifiable decedents generated by this committee.

Acceptable documentation, at a

"New" and "Experienced" system applications will be evaluated separately; at least one applicant from each group will be funded. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Approximately $100,000 of optional funding is available to fund up to five states to pilot test the child fatality

record tracking system, edit reports, systematic review of the accuracy and completeness of abstracted data from all core data sources, and methods to identify and resolve case ascertainment and data collection and processing problems, e.g., identifying and removing duplicate records prior to submission to CDC.

h. Transmit data free of personal identifiers electronically to CDC using a specified time schedule.

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e. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants" and "Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl Heard, Grants Management Specialist, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 02199, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2723, email address: *shl3@cdc.gov*.

For program technical assistance, contact: Frank Destefano, M.D., M.P.H., National Center on Birth Defects and Development Disabilities, 4770 Buford Highway, Mail Stop F–15, Atlanta, Georgia 30341, Telephone number: 770–488–7288, email address: *fxd1@cdc.gov*.

Dated: June 27, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–16815 Filed 7–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02059]

Cooperative Agreement for Development of the National Violent Death Reporting System (NVDRS); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Development of the National Violent Death Reporting System (NVDRS). This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purpose of the program is to begin establishing state violent death information collection systems that will form the basis of NVDRS. The purpose of NVDRS is to generate public health surveillance information at the national, state, and local levels that is more detailed, useful, and timely than is currently available. This information will help develop, inform, and evaluate violence prevention strategies at both state and national levels. The proposed system will build upon a pilot system, the National Violent Injury Statistics System (NVISS), that has been under development since 1999. Additional information on this pilot system can be found at www.NVISS.org.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Injury Prevention and Control (NCIPC):

1. Reduce the risk of youth violence.

2. Reduce violence against women.

3. Enhance the capacity of states to implement effective rape prevention and education programs.

4. Increase external input on the research priorities, policies, and procedures related to the extramural research supported by CDC.

5. Provide online access to injury prevention data.

6. Improve the uniformity, quality, and accessibility of emergency department data for public health surveillance in several states; ultimately developing the capacity to improve data in all states through development of guidelines, recommendations, or technical assistance.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280(b)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

C. Eligible Applicants

Assistance will be provided only to the health departments of states or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the federally recognized Indian tribal governments. In consultation with States, assistance may be provided to political subdivisions of States.

The ability to obtain population-based information from core data sets is crucial for the successful development of the NVDRS. Eligible applicants must document through letters of support access to information on individual, identifiable decedents from all of the following data sources:

1. Death certificates.

2. Medical examiner and/or coroner records.

3. Police records (Supplemental Homicide Reports at a minimum).

4. Crime laboratory records.

The letters of support must come from the agency authorized to grant access to the specific required data. They must note the most recent year for which data are available and make a statement regarding a memorandum of agreement/understanding that is in place between the applicant and the data agency. The memorandum of agreement must provide the applicant access to data while specifying any limitations regarding data use. A copy of the memorandum of agreement/understanding should accompany each letter of support to confirm access.

Applicants from states that do not have centralized, statewide medical examiner/coroner or police records must obtain the letters of support from the appropriate agencies serving the three largest cities within the state.

Applications that fail to submit evidence listed above will be considered non responsive and will be returned without review.

Funding will be available to those applicants who are willing to pilot test a child fatality NVDRS module developed to collect additional data

from child fatality review committees on violent deaths occurring in children less than 18 years of age.

Minimum Requirements

In order to qualify for this funding, the applicant must provide evidence of an existing centralized statewide child fatality review committee and access to information on individual, identifiable decedents generated by this committee.

Acceptable documentation, at a minimum, is a letter of support from the child fatality review committee on committee letterhead. The letter must note the most recent year for which data are available and make a statement regarding a memorandum of agreement/understanding that is in place between the applicant and the data agency. The memorandum of agreement must provide the applicant access to data while specifying any limitations regarding data use. A copy of the memorandum of agreement/understanding should accompany each letter of support to confirm access. Applicants that do not apply for this optional funding will not be considered non responsive because this activity is optional.

Applications will be classified into two categories, "New" and "Experienced." States with funding from an external source (other than state funds) for any form of violent death reporting or surveillance occurring among adults, defined as 18 years of age or older, will be considered an "Experienced" system. States with surveillance projects (state or local) funded by the Harvard Injury Control Research Center as part of the NVISS will be considered Experienced. States without any such external funding will be considered a "New" system. Funds awarded for this program cannot be used to supplant (replace) existing activity funds.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $1.2 million is available in FY 2002 to fund approximately five awards. It is expected that the average award will be $240,000, ranging from $150,000 to $220,000 for states with up to 800 cases of violent death in calendar year 2000 and from $220,000 to $320,000 for states with greater than 800 cases of violent death in 2000. At least one applicant from each funding range will be funded.

"New" and "Experienced" system applications will be evaluated separately; at least one applicant from each group will be funded. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Approximately $100,000 of optional funding is available to fund up to five states to pilot test the child fatality NVDRS module. It is expected the average award will be $20,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Matching funds are not required for this program.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and the availability of funds.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. or 2. and 3. (if applying for optional funds), Recipient Activities, and CDC will be responsible for the activities under 4. CDC Activities.

For New Violent Death Reporting Systems

1. Recipient Activities.

a. Establish an advisory committee that will help in the development of the state violent death reporting system. Membership should include representatives from agencies that control medical examiner/coroner records, death certificates, police records, and crime laboratory data.

b. Establish routine access to uniquely identifiable case information from each of the four critical data sources for deaths occurring on January 1, 2003 or later.

c. Use uniform data elements provided by the CDC to collect required data.

d. Abstract and code uniform data elements from all core data sources for all cases identified.

e. Develop procedures to combine information from the data sources. Maintain a unique case ID number.

f. Establish (1) a centralized location for maintaining a secure data storage system that allows for ready access and retrieval of abstracted and edited data and (2) an off-site backup storage system of abstracted and edited data.

g. Develop a quality assurance program that includes an automated record tracking system, edit reports, systematic review of the accuracy and completeness of abstracted data from all core data sources, and methods to identify and resolve case ascertainment and data collection and processing problems, e.g., identifying and removing duplicate records prior to submission to CDC.

h. Transmit data free of personal identifiers electronically to CDC using a specified time schedule.

i. Disseminate surveillance results.

j. Evaluate the surveillance system according to standard guidelines, including simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness and stability. (See MMWR Recommendations and Reports, "Updated guidelines for evaluating public health surveillance systems," RR–13, vol. 50, July 27, 2001.)

k. Prepare standard reports with aggregated data and distribute them widely.

l. Share information learned from project through presentations, peer-reviewed journals and media events.

m. Participate in a collaborative effort to establish a uniform violent death reporting system across states. Meetings will be held on a semiannual basis.

For Experienced Violent Death Reporting Systems

2. Recipient Activities.

a. Maintain an advisory committee that will help in the enhancement of the reporting system. The committee should be able to help develop methods for data dissemination and set priorities for helping to develop prevention strategies. The committee should include, at a minimum, representatives from agencies that control the core data sources.

b. Maintain or expand routine access to uniquely identifiable case information from each of the four core data sources for deaths occurring on January 1, 2003 or later.

c. Use uniform data elements provided by the CDC to collect required data.

d. Use or modify existing procedures that combine information from the data sources. Maintain a unique case ID number.

e. Maintain or modify (1) an existing secure data storage system that allows for ready access and retrieval of all abstracted and edited data and (2) off-site backup data storage system for all abstracted and edited data from the core data sources.

f. Develop a quality assurance program that includes an automated

record tracking system, edit reports, systematic review of the accuracy and completeness of abstracted data from all core data sources, and methods to identify and resolve case ascertainment and data collection and processing problems e.g., identifying and removing duplicate records prior to submission to CDC.

g. Transmit data free of personal identifiers electronically to the CDC

distributed (a stand-alone server located in the state) system. The software will be menu-driven with editing functions, data transmission protocols, and report options for use in data review and quality assurance by the state prior to submission to CDC.

c. Provide training in data standards and coding, data entry, data editing and other quality assurance functions, record tracking, and transmission of data to the CDC.

number of violent deaths category into which the state fits (less than or equal to 800 or greater than 800 deaths), and whether the state is applying for the child fatality NVDRS module optional funding.

3. Background.

4. Goal(s) and Objectives.

5. Methods.

6. Experience.

7. Capacity and Staffing.

8. Evaluation.

documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will

collecting, linking, editing, managing and analyzing surveillance information from multiple data sets, especially experience with mortality surveillance.

b. The extent that the applicant provides evidence of experience in injury surveillance, conducting data quality assurance activities and generating data reports.

4. Capacity and Staffing (15 points).

a. The extent that the applicant provides evidence of existing staff with

The extent that the applicant documents the magnitude of the violent death problem in the applicant's state and/or target area.

8. Child Fatality NVDRS Module Plan (Not Scored).

The extent that the applicant adequately describes how the child fatality NVDRS module will be incorporated into the existing or proposed state violent death reporting system.

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record tracking system, edit reports, systematic review of the accuracy and completeness of abstracted data from all core data sources, and methods to identify and resolve case ascertainment and data collection and processing problems e.g., identifying and removing duplicate records prior to submission to CDC.

g. Transmit data free of personal identifiers electronically to the CDC using a specified time schedule.

h. Disseminate surveillance results.

i. Evaluate the surveillance system according to standard guidelines including simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness and stability. (See MMWR Recommendations and Reports, "Updated guidelines for evaluating public health surveillance systems," RR–13, vol. 50, July 7, 2001.)

j. Prepare standard reports with aggregated data and distribute them widely.

k. Share information learned from the project through presentations, peer review journals and media events.

l. Participate in a collaborative effort to establish a uniform violent death reporting system across states. Meetings will be held on a semiannual basis.

Child Fatality NVDRS Module

3. Recipient Activities.

a. Establish or maintain partnership with child death review team(s).

b. Use uniform data elements provided by the CDC to collect required data.

c. Transmit data free of personal identifiers electronically to the CDC using a specified time schedule.

d. Provide feedback to CDC regarding the appropriateness of module for gaining data related to violent deaths to children.

Note: "New" recipients may choose to begin data gathering in smaller geographic areas, such as a city or region rather than beginning statewide.

"Experienced" recipients may choose to expand data gathering to a broader geographic area, region or statewide, if not currently statewide. If an applicant chooses to begin collecting data in a portion of the state, the applicant must outline a plan for expansion statewide within the five-year project period.

4. CDC Activities.

a. Provide required uniform data elements and definitions to be collected similar to those used by NVISS.

b. Provide standardized software that will be used to transmit data to CDC, either through a web-based or distributed (a stand-alone server located in the state) system. The software will be menu-driven with editing functions, data transmission protocols, and report options for use in data review and quality assurance by the state prior to submission to CDC.

c. Provide training in data standards and coding, data entry, data editing and other quality assurance functions, record tracking, and transmission of data to the CDC.

d. Provide technical assistance in solving problems in all aspects of the system.

e. Provide updates to the necessary software as needed.

f. Review submitted records for quality and completeness and provide feedback to recipients. Work with the recipient to systematically resolve problems of missing or inaccurate data.

g. Prepare an analysis file of final edited data to be shared with the recipient for data analysis and reporting of findings.

h. Prepare standard reports with aggregated data and distribute them widely.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one side, with one inch margins, and unreduced font. The total number of pages should not exceed 65 pages, including appendices and abstract. Applicants that fit into the "Experienced" category are allowed up to an additional five pages for a required appendix that evaluates their current violent death surveillance system according to standard guidelines. States applying for funding to pilot test the child fatality NVDRS module should submit a separate plan no greater than five pages in length.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

The application narrative should include the following information:

1. Documentation of access to required data source.

2. A one-page abstract of proposed activities and project outcomes. The abstract should specify the type of applicant ("new" or "experienced"), the number of violent deaths category into which the state fits (less than or equal to 600 or greater than 800 deaths), and whether the state is applying for the child fatality NVDRS module optional funding.

3. Background.

4. Goal(s) and Objectives.

5. Methods.

6. Experience.

7. Capacity and Staffing.

8. Evaluation.

9. Collaboration.

10. Human Subjects.

11. Budget.

12. Plan for incorporating child fatality NVDRS module into existing or proposed state violent death system. (Only if applying for child fatality NVDRS module optional funds).

13. Appendices.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subjects Certification
Indirect Cost Rate Agreement
Narrative

The application must be received on or before 5:00 p.m. Eastern Time August 19, 2002. Submit the application to: Technical Information Management Section, PA 02059, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications will be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness will be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Methods (25 points).

a. The extent that the applicant describes the methods used for case ascertainment and those used to access and abstract data from core data sources. This should include a discussion of methods used in motivating reporting sources, ensuring high quality data abstraction, and resolving data issues.

b. The extent that the applicant documents a detailed and clear description of how linkage of records from different sources will be or is accomplished.

c. The extent that the applicant describes how data will be maintained, edited, and transferred to the CDC from a central location in the state.

d. The extent that the applicant provides a five-year time line for the planned activities.

e. The extent that the applicant provides a detailed plan for assuring confidentiality where required by state law or regulation.

f. The extent that the applicant provides evidence that proposed activities are not duplications of existing activities. (Experienced applicants only)

2. Goal(s) and Objectives (15 points).

a. The extent that the applicant has included goals which are relevant and consistent with the purpose of the program announcement.

b. The extent that the objectives are specific, measurable, assigned, realistic, and time-phased.

3. Experience (15 points).

a. The extent that the applicant documents experience in accessing, collecting, linking, editing, managing and analyzing surveillance information from multiple data sets, especially experience with mortality surveillance.

b. The extent that the applicant provides evidence of experience in injury surveillance, conducting data quality assurance activities and generating data reports.

4. Capacity and Staffing (15 points).

a. The extent that the applicant provides evidence of existing staff with SAS and Microsoft Access expertise, computer programming skills, and skills in data management and quality assurance, especially involving large complex databases, or a plan (position description) to hire someone with such skills and expertise. Resumes or curriculum vitae should be included.

b. The extent that the applicant provides a time table showing when information regarding the occurrence of a violent death during a given calendar quarter is available to the applicant from each of the four required data sources.

c. The extent that the applicant describes existing or needed computer facilities for storing, managing and transmitting data to CDC.

5. Collaboration (15 points).

a. The extent that the applicant provides evidence of involvement by key stakeholders in the current system or a plan for including key stakeholders in the development of a violent death reporting system.

b. The extent that the applicant documents the quality and specificity of access to required and optional data sources, e.g., the limitations of that access, the most recent year data are available, the timeliness and availability of data from all core and optional data sources, the duration of access, etc. Information from the letters of support will be considered in this context.

c. The extent that the applicant provides additional letters of support from potential partners in the project.

d. The extent that the letters of support document specific contributions of the partner, including but not limited to a description of the precise nature of past and proposed collaborations, products, services, and other activities that will be provided by and to the applicant through the proposed collaboration.

6. Evaluation (10 points).

a. The extent that the applicant provides a detailed plan for evaluating the surveillance system. The plan should include standard surveillance evaluation measures described above.

b. The extent that the applicant describes both system and data quality assurance procedures.

7. Background (5 points).

The extent that the applicant documents the magnitude of the violent death problem in the applicant's state and/or target area.

8. Child Fatality NVDRS Module Plan (Not Scored).

The extent that the applicant adequately describes how the child fatality NVDRS module will be incorporated into the existing or proposed state violent death reporting system.

9. Human Subjects (Not Scored).

The extent that the applicant adequately addresses the requirements of 45 CFR Part 46 for the protection of human subjects.

10. Budget (Not Scored).

a. The extent that the budget request is clearly explained, adequately justified, reasonable, sufficient and consistent with the stated objectives and planned activities.

The Budget should include funds for at least two trips to CDC for program related meetings and training.

b. If applying to pilot test the child fatality NVDRS module, a separate budget must be attached.

Note: Applicants applying for additional funds to pilot test the child fatality NVDRS module will only receive this funding if they successfully compete for NVDRS funding.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

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AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then

notice of its intention to noncompetitively supplement the cooperative agreement with UMCP. FDA awarded the noncompetitive supplement to the cooperative agreement with UMCP on September 29, 1999.

JIFSAN is a jointly administered, multidisciplinary research, education, and outreach program. Under the cooperative agreement, UMCP has established and staffed the JIFSAN at

years of support. Competition is limited to UMCP because of the unique partnership between FDA and UMCP. The cooperative agreement will continue to allow for a more efficient use of research, education, and outreach resources which enhances overall public health by expanding and improving food safety and nutrition programs as well as other program areas that impact on public health policy.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national effort to reduce

B. Project Emphasis

The purpose of this cooperative agreement will be to continue to:

1. Develop a critical mass of scientific expertise to address ongoing and increasingly complex key public health issues, to provide early warning of emerging problems, to provide support during emergencies and crisis situations, and to provide scientific expertise in close proximity to FDA's administrative office to expedite

The American people will benefit from this type of collaboration because it will ensure that FDA is positioned to respond rapidly in crisis situations to protect, promote, and enhance the health of the public.

III. Mechanism of Support

A. Award Instrument

Support of this program, if awarded, will be in the form of a cooperative agreement. In FY 2002, FDA anticipates

AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact: Van A. King, Grants Management Specialist ,Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770)488–2751, E-mail address: *Vking@cdc.gov*.

For program technical assistance, contact: Leroy Frazier, Jr., MSPH, CHES, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE, MS K60, Atlanta, GA 30341, Telephone number: (770)488–1507, E-mail address: *Lfrazier1@cdc.gov*.

Dated: June 27, 2002.

Sandra R. Manning,

CGFM Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–16814 Filed 7–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement To Support the Joint Institute for Food Safety and Applied Nutrition; Notice of Intent To Renew a Cooperative Agreement; RFA–FDA–CFSAN–02–04

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement in fiscal year (FY) 2002 to the University of Maryland, College Park (UMCP) to support the Joint Institute for Food Safety and Applied Nutrition (JIFSAN), which is located on the University of Maryland campus in College Park, MD. An estimated amount of support in FY 2002 will be up to $3 million per year (direct and indirect costs), with an additional 4 years of support. Competition is limited to UMCP because of the unique partnership between FDA and UMCP. The cooperative agreement will continue to allow for a more efficient use of research, education, and outreach resources which enhances overall public health by expanding and improving food safety and nutrition programs as well as other program areas that impact on public health policy.

DATES: Submit the application by August 19, 2002. If this date falls on a weekend, it will be extended to Monday; if this date falls on a holiday, it will be extended to the following workday.

ADDRESSES: The completed application should be submitted to Peggy Jones, Grants Management Officer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. If the application is either hand carried or commercially delivered, it should be addressed to Peggy Jones, 5630 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7160, FAX 301–827–7101, e-mail address: pjones1@oc.fda.gov.

The application forms are available either from Peggy Jones (see **ADDRESSES**) or by the Internet at http://grants.nih.gov/grants/funding/phs398/phs398.html. NOTE: Do not send the application to the Center for Scientific Research (CSR), National Institutes of Health (NIH).

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Peggy Jones (see **ADDRESSES**).

Regarding the programmatic aspects: Christine L. Hileman, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–7153; e-mail: Chileman@CFSAN.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing its intention to accept and consider a single source application from UMCP for a cooperative agreement to support JIFSAN. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national effort to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the "Healthy People 2010" objectives, volumes I and II, conference edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion Communication Support Center (Center), P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of "Healthy People 2010" is priced at $2 per copy. Telephone orders can be placed to the Center on 301–468–5690. The Center also sells the complete conference edition in CD-ROM format (B0071) for $5. This publication is available as well on the Internet at http://health.gov/healthypeople. Internet viewers should proceed to "Publications."

I. Background

Through a formal Memorandum of Understanding (MOU) between FDA and UMCP, JIFSAN was established in April 1996. JIFSAN creates a partnership that allows for more efficient use of research, education, and outreach resources, thereby enhancing overall public health by expanding and improving food safety and nutrition programs as well as in other program areas that impact on public health policy. The primary focus of JIFSAN is food safety and nutrition, specifically as related to risk analysis, applied microbiology, natural toxins, chemical contaminants, animal health sciences, biotechnology and food composition and nutrition. JIFSAN also encompasses other program areas such as cosmetics, dietary supplements, and food labeling.

In the **Federal Register** of May 22, 1997 (62 FR 28049), FDA published a request for a single source application for a cooperative agreement to support JIFSAN. The application was reviewed and approved by an ad hoc panel of experts. The panel's approval recommendation was then approved by the National Advisory Environmental Health Sciences Council in September 1997. FDA awarded the cooperative agreement to UMCP on September 30, 1997.

In the **Federal Register** of July 26, 1999 (64 FR 40380), FDA published a notice of its intention to noncompetitively supplement the cooperative agreement with UMCP. FDA awarded the noncompetitive supplement to the cooperative agreement with UMCP on September 29, 1999.

JIFSAN is a jointly administered, multidisciplinary research, education, and outreach program. Under the cooperative agreement, UMCP has established and staffed the JIFSAN at the UMCP campus. UMCP has established core facilities that enable FDA and the University to share resources, such as major laboratory instrumentation, and has initiated a mechanism to permit access to the university's library facilities for appropriate FDA employees. Programs initiated by JIFSAN have demonstrated that the benefits from this partnership are substantial. The unique administrative structure of JIFSAN allows it to most effectively use resources to plan, organize, and run multidisciplinary, multiinstitutional programs in research, education, and outreach. The structure and policies of a major land-grant university offer the flexibility needed to enable JIFSAN to create and operate strategic alliances involving multiple partners and multiple funding sources. JIFSAN provides a neutral environment in which experts from industry, consumer and trade groups, international organizations, government agencies, and academia pool their resources and ideas to provide the scientific bases for the development of sound public health policy.

II. Goals and Objectives

A. Concept

FDA believes that the cooperative research with UMCP through JIFSAN will further research related to food safety, will help to ensure the security of the American food supply, and will provide opportunities to leverage additional resources so that important national and international problems in food, nutrition, animal health science activities, cosmetics, dietary supplements, biotechnology, and food labeling can be addressed in a timely manner. FDA also believes that cooperative research through JIFSAN will promote the efficient use of the complementary resources (e.g., major instrumentation, space, information, and computer technologies) of both parties. All research will be related to FDA program requirements that ensure the safety of food.

B. Project Emphasis

The purpose of this cooperative agreement will be to continue to:

1. Develop a critical mass of scientific expertise to address ongoing and increasingly complex key public health issues, to provide early warning of emerging problems, to provide support during emergencies and crisis situations, and to provide scientific expertise in close proximity to FDA's administrative office to expedite regulatory policy and decisions. (All official regulatory activities, however, will be performed by FDA employees only);
2. Provide a collaborative environment and expertise for more efficient use of current resources devoted to risk analysis and biotechnology research and related activities;
3. Develop more effective methods for communicating public health policy and risk associated with both microbial and chemical hazards to the general public by going beyond the study of the science to the study of how that science is heard and understood;
4. Share resources to enhance the research infrastructure and provide for effective use of increasingly sophisticated scientific equipment with high acquisition, installation, and maintenance costs and the corresponding expertise of both parties; and
5. Establish mechanisms for exchange of technical information and scientific concepts between FDA, other Federal and State agencies, industry, academia, consumer and trade groups, and international organizations.

C. Summary of Future Objectives

The MOU between FDA and UMCP continues to provide the essential foundation for a vigorous, high quality scientific research program to support sound regulatory policy and performance. FDA faces an increasing number of critical and complex food safety issues. Having a nearby source of complementary and specialized scientific expertise and facilities, enhances FDA's ability to respond rapidly to regulatory challenges and to expedite regulatory policy and decisions. FDA believes that JIFSAN is a sound investment to ensure the public health of American consumers. It provides an opportunity for extensive cooperation with University scientists, and it will significantly stimulate collaborative efforts between Government, academia, industry, and consumers to improve and ensure a safe food supply.

The American people will benefit from this type of collaboration because it will ensure that FDA is positioned to respond rapidly in crisis situations to protect, promote, and enhance the health of the public.

III. Mechanism of Support

A. Award Instrument

Support of this program, if awarded, will be in the form of a cooperative agreement. In FY 2002, FDA anticipates providing up to $3 million (direct and indirect costs) for this award. It is anticipated that funding will remain at this level in the subsequent noncompetitive years unless appropriations change. The award will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52, 45 CFR part 74, and the PHS grants policy statement.

B. Length of Support

The length of support will be 1 year, with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon satisfactory performance during the preceding year and the availability of Federal fiscal year appropriations.

IV. Reasons for Single Source Selection

UMCP is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. UMCP is in close proximity to the congressionally directed location of FDA's Center for Food Safety and Applied Nutrition's (CFSAN's) and Center for Veterinary Medicine's (CVM's) offices and laboratories in Prince Georges's County, MD. UMCP has vast resources, which complement and greatly expand FDA's research, scientific, and outreach resources. UMCP is the Washington region's most comprehensive research institution, with numerous academic programs relevant to FDA's mission and the resources to support CFSAN's areas of interest, including: Microbiology, chemistry, food science, animal health sciences, biotechnology, agriculture, public policy, risk assessment, computational science, economics, and survey methodology. UMCP serves as the primary center for graduate study and research and provides undergraduate instruction across a broad spectrum of academic disciplines. The University extends its vast intellectual resources to the community through innovative projects designed to serve individuals, governments, and the private sector throughout the State of

Maryland, the nation, and the international community. In 1988 the General Assembly of Maryland designated UMCP as the flagship institution for the University of Maryland System, which consists of 11 campuses across the State and offers programs at some 200 sites worldwide.

The University has developed core facilities to provide effective use of state-of-the-art scientific

emergency response readiness credentials of the FDA Safety Staff who are responsible for maintaining and ensuring safety and regulatory compliance at FDA facilities where collaborative research is conducted.

Collaboration between the public and the private sectors has proven to be an efficient means for both FDA and the University to remain current with scientific and technical advances related

VII. Review Procedures

First, the grants management and program staff will review the application submitted in response to this request for application (RFA) for responsiveness. To be responsive, an application must: (1) Be received by the specified due date, (2) be submitted in accordance with sections VIII. "Submission Requirements" and IX.A. "Submission Instructions" of this

evidenced by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier, unless it arrives too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. An application not received on time will not be considered for review and will be returned to the applicant. (The applicant should note that the U.S. Postal Service does not uniformly provide dated postmarks.

instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–001.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–16817 Filed 7–3–02; 8:45 am]

BILLING CODE 4160–01–S

guidance for industry entitled "Revising ANDA Labeling Following Revision of the RLD Labeling" to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to agency guidance documents.

FOR FURTHER INFORMATION CONTACT: Rita

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Maryland, the nation, and the international community. In 1988 the General Assembly of Maryland designated UMCP as the flagship institution for the University of Maryland System, which consists of 11 campuses across the State and offers programs at some 200 sites worldwide.

The University has developed core facilities to provide effective use of state-of-the-art scientific instrumentation with high acquisition, installation, and maintenance costs to conduct research at the forefront of science. An electron microscopy facility jointly supported by FDA and the University opened in 2000. CFSAN has moved its nuclear magnetic resonance (NMR) instrumentation and personnel to the University's NMR facility in the Chemistry building. These instrumentation centers complement CFSAN's resources and expertise.

The University has developed a food safety risk analysis clearinghouse with oversight from the interagency risk assessment consortium (RAC) established under the auspices of the former administration's Food Safety Initiative. The intent of the clearinghouse is to provide a centralized information source in areas of risk analysis related to food safety with initial emphasis on microbial pathogens and their toxins. The unique feature of this clearinghouse model lies in the examinations and documentation of state-of-the-art methods, data sources, and current results of on-going risk assessments so that a much more complete and up-to-date picture of risk assessment is assembled.

Acknowledging the importance of an interdisciplinary approach to knowledge, the University maintains organized research units outside the usual department structures (i.e., Department of Chemistry and Biochemistry and Department of Molecular, Cell and Microbial Biology, etc.). Through the collaborative projects, FDA has access to additional University resources that include: (1) The Center for Research in Public Communication, where cooperative projects related to risk communication studies could be developed; (2) the Survey Research Center and the Institute for Philosophy and Public Policy, which will promote more efficient development and dissemination of public policy; (3) the University of Maryland's Biotechnology Institute, including its Center for Agricultural Biotechnology, which will facilitate the development of a biotechnology program focused on food safety and nutrition; and (4) the Maryland Fire and Rescue Institute, which will facilitate the maintenance of emergency response readiness credentials of the FDA Safety Staff who are responsible for maintaining and ensuring safety and regulatory compliance at FDA facilities where collaborative research is conducted.

Collaboration between the public and the private sectors has proven to be an efficient means for both FDA and the University to remain current with scientific and technical advances related to food safety and applied nutrition. These collaborative programs produce knowledge and expertise that can be used by all segments of the food safety and nutrition community, as well as by public health organizations, other Federal agencies, and academic institutions in the performance of their roles. The partnership between FDA and UMCP provides both the technical and educational expertise for effective creation of technology transfer mechanisms that facilitate the movement of new technology and provides fundamental food safety and nutrition information to the public and private sector.

V. Reporting Requirements

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 90 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

VI. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the projects funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will have prior approval of the appointment of all key administrative and scientific personnel proposed by the grantee.

2. FDA will be directly involved in the guidance and development of the program and of the personnel management structure for the program.

3. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, coauthorship of publications.

VII. Review Procedures

First, the grants management and program staff will review the application submitted in response to this request for application (RFA) for responsiveness. To be responsive, an application must: (1) Be received by the specified due date, (2) be submitted in accordance with sections VIII. "Submission Requirements" and IX.A. "Submission Instructions" of this document, (3) not exceed the recommended funding amount stated in the **SUMMARY** of this document, (4) address the specific program goals and objectives as detailed in section II.B. "Project Emphasis", and (5) bear the original signatures of both the principal investigator and the University's authorized official. Staff will consider the application nonresponsive if it does not contain the information set forth in this section. If the application is found to be nonresponsive, the staff will return the application to the applicant without further consideration. The staff will also consider an application nonresponsive for any of the following reasons: (1) The applicant organization is ineligible, (2) it is received after the specified receipt date, (3) it is incomplete, (4) it is illegible, (5) it is not responsive to the RFA, or (6) the material presented is insufficient to permit an adequate review.

Next, if the application is responsive, it will undergo a dual peer review. A responsive application will be reviewed first for scientific and technical merit by an ad hoc panel of experts in areas associated with food safety, nutrition, animal health sciences, biotechnology, and risk analysis. The application will then be presented to the National Advisory Environmental Health Sciences Council for their concurrence with the ad hoc panel's recommendation.

VIII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (rev. 4/98 or Rev. 5/01) with copies of the appendices for each of the copies, must be delivered to Peggy Jones (see **ADDRESSES**). No supplemental or addendum material will be accepted after the receipt date.

IX. Method of Application

A. Submission Instruction

An application from UMCP will be accepted during normal business hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. The application will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier, unless it arrives too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. An application not received on time will not be considered for review and will be returned to the applicant. (The applicant should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) Do not send the application to the CSR, NIH. The application must be submitted via mail or hand delivered as stated above. FDA is unable to receive the application electronically. The applicant is advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH for its applications.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01). All "General Instructions" and "Specific Instructions" in the application kit must be followed with the exception of the receipt dates and the mailing label address.

The face page of the application must reflect the request for application number, RFA-FDA CFSAN–02–3.

Data and information included in the application, if identified by the applicant as trade secret or confidential commercial information will be given treatment as such to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–001.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–16817 Filed 7–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0253]

Withdrawal of 53 Guidances on Individual Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of 53 individual product labeling guidances. The guidances are being withdrawn because they are outdated and of little use to the generic drug industry. The agency has developed other guidance and resources to assist industry in obtaining up-to-date labeling for reference listed drugs.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for the guidance for industry entitled "Revising ANDA Labeling Following Revision of the RLD Labeling" to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to agency guidance documents.

FOR FURTHER INFORMATION CONTACT: Rita Hassall, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

SUPPLEMENTARY INFORMATION: FDA is announcing the withdrawal of 53 individual product labeling guidances. These labeling guidances, currently available on the Center for Drug Evaluation and Research (CDER) guidance list, were intended to provide sponsors of abbreviated new drug applications (ANDAs) with product specific templates for package insert labeling that would be accepted by the Office of Generic Drugs (OGD). Package insert labeling for innovator products changes frequently, and it is difficult to keep the guidances updated. The guidances are being withdrawn because they are outdated and of limited use to the generic drug industry.

The withdrawal of these 53 product specific labeling guidances is part of a long-term effort in OGD to review guidance documents on the development of generic drug products with the goal of identifying documents that need to be revised, reformatted, or withdrawn because they are no longer current (64 FR 36886, July 8, 1999).

The following guidances are withdrawn:

Guidance	Date of Issuance
Acetaminophen, Aspirin and Codeine Phosphate Tablets and Acetaminophen, Aspirin and Codeine Phosphate Capsules	Revised December 1993
Acetaminophen and Codeine Phosphate Oral Solution and Oral Suspension	Revised December 1993
Alprazolam Tablets	Revised August 1996
Amiloride Hydrochloride-and Hydrochlorothiazide Tablets USP	September 1997
Amlodipine Besylate Tablets	September 1997
Astemizole Tablets	September 1997
Atenolol Tablets	August 1997
Butalbital, Acetaminophen and Caffeine Tablets USP or Butalbital, Acetaminophen and Caffeine Capsules USP	September 1997
Butalbital, Acetaminophen, Caffeine and Hydrocodone Bitartrate Tablets	September 1997
Butorphanol Tartrate Injection USP	Revised October 1992
Captopril and Hydrochlorothiazide Tablets USP	April 1995
Captopril Tablets	February 1995
Carbidopa and Levodopa Tablets USP	Revised February 1992
Cimetidine Hydrochloride Injection	September 1995
Cimetidine Tablets USP	Revised September 1995
Cisapride Oral Suspension	September 1997
Cisapride Tablets	September 1997
Clindamycin Phosphate Injection, USP	Revised September 1996
Diclofenac Sodium Delayed-Release Tablets	Revised February 1995
Diltiazem Hydrochloride Extended-Release Capsules	Revised September 1995

Guidance	Date of Issuance
Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution USP	April 1995
Diphenoxylate Hydrochloride and Atropine Sulfate Tablets USP	April 1995
Fludeoxyglucose F18 Injection	January 1997
Flurbiprofen Tablets USP	Revised January 1994
Fluvoxamine Maleate Tablets	September 1997
Gentamicin Sulfate Ophthalmic Solution USP and Gentamicin Sulfate Ophthalmic Ointment USP	Revised April 1992
Heparin Sodium Injection USP	Revised March 1991
Hydrocodone Bitartrate and Acetaminophen Tablets USP	Revised April 1994
Indomethacin Capsules USP	Revised September 1995
Itraconazole Capsules	September 1998
	July 1996

I. Background

FDA is announcing the availability of a guidance for industry entitled "Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation." This guidance provides recommendations on the information that should be submitted in NDAs and ANDAs for these products, including information on drug product components, manufacturing process, ...

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

percutaneous image-guided needle biopsy using an RF ablation probe. The invention is designed to limit the risks of bleeding and needle track seeding that are inherent risks of any needle biopsy. The device uses a coaxial biopsy arrangement with the outer needle coated with a non-conducting polymer that insulates the needle shaft and the tissue immediately in contact with the shaft. As the needle is pulled back from the organ or tumor target, RF energy is

Guidance	Date of Issuance
Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution USP	April 1995
Diphenoxylate Hydrochloride and Atropine Sulfate Tablets USP	April 1995
Fludeoxyglucose F18 Injection	January 1997
Flurbiprofen Tablets USP	Revised January 1994
Fluvoxamine Maleate Tablets	September 1997
Gentamicin Sulfate Ophthalmic Solution USP and Gentamicin Sulfate Ophthalmic Ointment USP	Revised April 1992
Heparin Sodium Injection USP	Revised March 1991
Hydrocodone Bitartrate and Acetaminophen Tablets USP	Revised April 1994
Indomethacin Capsules USP	Revised September 1995
Itraconazole Capsules	September 1998
Leucovorin Calcium for Injection	July 1996
Leucovorin Calcium Tablets USP	July 1996
Medroxyprogesterone Acetate Tablets USP	Revised September 1998
Metaproterenol Sulfate Inhalation Solution USP	Revised May 1992
Metaproterenol Sulfate Syrup USP	Revised May 1992
Metaproterenol Sulfate Tablets USP	Revised May 1992
Metoclopramide Tablets USP and Metoclopramide Oral Solution USP	Revised February 1995
Naproxen Sodium Tablets USP	September 1997
Naproxen Tablets USP	September 1997
Paclitaxel Injection	September 1997
Quinidine Sulfate Tablets, USP	October 1995
Ranitidine Tablets USP	Revised November 1993
Risperidone Oral Solution	September 1997
Risperidone Tablets	September 1997
Sulfacetamide Sodium Ophthalmic Solution USP and Sulfacetamide Sodium Ophthalmic Ointment USP	Revised August 1993
Sulfacetamide Sodium and Prednisolone Acetate	Revised January 1995
Sulfamethoxazole and Trimethoprim Tablets USP and Sulfamethoxazole and Trimethoprim Oral Suspension USP	Revised August 1993
Theophylline	Revised February 1995
Theophylline Intravenous Dosage Forms	September 1995
Tobramycin Sulfate Injection USP	Revised May 1993
Venlafaxine Hydrochloride Tablets	October 1997
Verapamil Hydrochloride Tablets	October 1991
Zolpidem Tartrate Tablets	September 1997

In May 2000, the agency issued the guidance for industry entitled "Revising ANDA Labeling Following Revision of the RLD Labeling." This guidance provides information on how to access current package insert labeling on OGD's Labeling Review Branch Web site at http://www.fda.gov/cder/ogd/rld/labeling_review_branch.htm.

Interested persons may submit written or electronic comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the Internet may obtain CDER guidance documents at http://www.fda.gov/cder/guidance/index.htm.

Dated: June 24, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–16796 Filed 7–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1454]

Guidance for Industry on Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation." This document provides guidance for industry on the chemistry, manufacturing, and controls documentation that should be submitted in new drug applications (NDAs) and abbreviated new drug applications (ANDAs) for nasal spray and inhalation solution, suspension, and spray drug products intended for local and/or systemic effect. The guidance also provides recommendations on labeling.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Guirag Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation." This guidance provides recommendations on the information that should be submitted in NDAs and ANDAs for these products, including information on drug product components, manufacturing process, and the associated controls. However, it does not address the manufacture of drug substances. The guidance gives recommendations on information that should be provided to ensure continuing quality and performance characteristics for these drug products. This guidance also provides information on labeling.

In the **Federal Register** of June 2, 1999 (64 FR 29657), FDA announced the availability of a draft version of this guidance. The June 1999 guidance gave interested persons an opportunity to submit comments through August 31, 1999. All comments received during the comment period have been carefully reviewed and incorporated in this revised guidance where appropriate. As a result of the public comment, the guidance is clearer and more concise than the draft version. FDA is participating in research relating to these types of drug products through the Product Quality Research Institute (Internet address at http://www.pqri.org) and will evaluate whether to update the guidance as information from this research becomes available.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on chemistry, manufacturing, and controls documentation for nasal spray and inhalation solution, suspension, and spray drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (see **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: June 24, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–16797 Filed 7–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Radio Frequency Cauterization Biopsy

Bradford J. Wood and Christan Pavlovich (CC)

DHHS Reference Nos. E–207–01/0 filed Oct 17, 2001 and E–207–01/1 filed Apr 08, 2002

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a method and apparatus for using radio frequency (RF) energy to cauterize the needle track after percutaneous image-guided needle biopsy using an RF ablation probe. The invention is designed to limit the risks of bleeding and needle track seeding that are inherent risks of any needle biopsy. The device uses a coaxial biopsy arrangement with the outer needle coated with a non-conducting polymer that insulates the needle shaft and the tissue immediately in contact with the shaft. As the needle is pulled back from the organ or tumor target, RF energy is applied to an exposed end portion of the probe, causing cauterization and coagulation of the tissue immediately adjacent to the needle track. A variation on the device could be used to limit bleeding after catheter placement into organs, such as for nephrostomy, biliary drainage, or transhepatic islet cell transplantation.

Method and Apparatus for Countercurrent Chromatography

Yoichiro Ito (NHLBI)

DHHS Reference No. E–148–01/0 filed Apr 05, 2002

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

This invention is an improved column design for High Speed Counter Current Chromatography (HSCCC) that increases partition efficiency by using novel tubing geometries. A standard HSCCC centrifuge uses a multilayer coil as a separation column to produce a high efficiency separation with good retention of the stationary phase in many solvent systems. However, the standard HSCCC, when used for highly viscous, low interfacial solvent systems, is unsuccessful at retaining a suitable amount of the stationary phase. This invention greatly improves efficiency by modifying the column from a coil to spiral geometry. Thereby, this invention creates a centrifugal force gradient, which allows for distribution of the heaver phase in the peripheral and the lighter phase in the proximal part of the column. The effect of the gradient becomes more pronounced as the pitch of the spiral is increased.

Method for Segmenting Medical Images and Detecting Surface Anomalies in Anatomical Structures

Ronald M. Summers et al. (CC)

U.S. Patent 6,246,784 issued Jun 12, 2001; U.S. Patent 6,345,112 issued Feb 05 2002; Serial No. 10/072,667 filed Feb 05, 2002

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a method for automatically detecting surface anomalies in anatomical structures in virtual colonoscopy and other imaging studies. A region growing method segments three-dimensional image data of an anatomical structure using a tortuous path length limit to constrain voxel growth. The path length limit constrains the number of successive generations of voxel growth from a seed

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel SBIR Contract Topic 017.

Date: July 23, 2002.

Time: 1:30 pm to 3 pm.

Agenda: To review and evaluate contract

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 26, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16794 Filed 7–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health

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The invention is a method for automatically detecting surface anomalies in anatomical structures in virtual colonoscopy and other imaging studies. A region growing method segments three-dimensional image data of an anatomical structure using a tortuous path length limit to constrain voxel growth. The path length limit constrains the number of successive generations of voxel growth from a seed point to prevent leakage of voxels outside the boundary of the anatomical structures. Once segmented, a process for detecting surface anomalies performs a curvature analysis on a computer model of the surface of the structure. This process detects surface anomalies automatically by traversing the vertices in the surface model, computing partial derivatives of the surface at the vertices, and computing curvature characteristics from the partial derivatives. To identify possible anomalies, the process compares the curvature characteristics with predetermined curvature characteristics of anomalies and classifies the vertices. The process further refines potential anomalies by segmenting neighboring vertices that are classified as being part of an anomaly using curvature characteristics. Finally, the process colorizes the anomalies, and computes a camera position and direction for each one to assist the user in viewing 2D rendering of the computer model.

The method may be useful for automated detection of inflammatory, pre-cancerous and cancerous lesions of internal body cavities, such as the colon, airways, blood vessels and bladder. An example of a potential commercial application is as a component of software for clinical interpretation of virtual colonoscopy (CT colonography) examinations.

This research is also described in Summers et al., "Automated Polyp Detection at CT Colonography: Feasibility Assessment in a Human Population," Radiology 219:51–59 (2001) and in Summers et al., "Complementary Role of Computer-Aided Detection of Colonic Polyps with CT Colonography," Radiology, in press.

Dated: June 24, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–16795 Filed 7–3–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, Excellence in Partnerships for Community Outreach, Research on Health Disparities and Training.

Date: July 15–17, 2002.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Teresa Chapa, PhD, Chief, Division of Extramural Activities, National Center on Minority Health hand Health Disparities, National Institutes of Health, Bethesda, MD 20852, 301/402–1366, *chapat@od.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: June 26, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16793 Filed 7–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Fellowship Application.

Date: July 16, 2002.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Kathy Ray, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2932, klray@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–007—Mutant Mouse Phenotyping: Ethanol-related Behavior and Nervous System Function.

Date: July 17, 2002.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–006 Non-Human Primate Models of Neurobiological Mechanisms of Adolescent Alcohol Abuse.

Date: July 18, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sandra Camman, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9419, *scamman@willco.niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel SBIR Contract Topic 023.

Date: July 18, 2002.

Time: 12:30 pm to 2 pm.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel SBIR Contract Topic 017.

Date: July 23, 2002.

Time: 1:30 pm to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–011—Role of S-adenosyl-L-methionine (SAMe) in the Treatment of Alcoholic Liver Disease.

Date: July 25–26, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, Rockville, MD 20852.

Contact Person: Kathy Ray, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2932, klray@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–009—Intergrative Neuroscience Initiative on Alcoholism

Date: July 30–31, 2002.

Time: 8 am to 5 pm.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kathy Ray, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–2932, klray@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA AA02–010 Stem Cells in Alcohol Research.

Date: August 13, 2002.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 26, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16792 Filed 7–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, WHO Collaborative Agreement Review.

Date: July 11, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1601, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 26, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–16794 Filed 7–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

SAMHSA Last Receipt Date for Program Announcement (PA) No. PA–98–090—Conference Grants

SUMMARY: This notice is to inform the public that the last receipt date for applications under SAMHSA Program Announcement No. PA–98–090, SAMHSA Knowledge Dissemination Conference Grants (Short Title: SAMHSA Conference Grants) will be September 10, 2002. A new program announcement for conference grants will be published soon after that date.

Conference Grants fund up to 75 percent of the total direct costs of domestic conferences that are of national significance to consumer and provider services oriented constituency groups for the purpose of advancing the mental health and substance abuse fields through knowledge synthesis and dissemination. Each of the three centers participate when funding is available. Awards range from a minimum of $25,000 to a maximum of $50,000 in total costs.

Information about the program and the full text of the current PA–98–090 conference grant announcement can be obtained from:

The CMHS Knowledge Exchange Network (KEN) at: 1–800–789–2647, Monday through Friday, 8:30 a.m. to 5:00 p.m., EST, *Write:* P.O. Box 42490, Washington, DC 20015

The National Clearinghouse for Alcohol and Drug Information at: 1–800–729–6686, Monday through Friday, 8:30 a.m. to 5:00 p.m., EST, *Write:* P.O. Box 2345, Rockville, MD 20847–2345

Or from the SAMHSA web site at *http://www.SAMHSA.gov.*

For questions concerning program issues, contact:

For mental health topics: David Morrissette, DSW, Center for Mental Health Services/SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, (301) 443–3653, e-mail: *dmorriss@samhsa.gov.*

For substance abuse treatment topics: Kim Plavsic, Center for Substance Abuse Treatment/SAMHSA, 5515 Security Lane, Suite 840, Rockville, MD 20852, (301) 443–7916, e-mail: *kplavsic@samhsa.gov.*

For substance abuse prevention topics: Boris R. Aponte, Ph.D., CHES, Center for Substance Abuse Prevention/SAMHSA, 5515 Security Lane, Suite 800, Rockville, MD 20852, (301) 443–2290, e-mail: *baponte@samhsa.gov.*

For more information on PA–98–090 go to the online announcement.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–26]

Notice of Proposed Information Collection: Comment Request; Request for Credit Approval of Substitute Mortgagor

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 3, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Notice lists the following information:

Title of Proposal: Request for Credit Approval of Substitute Mortgagor.

OMB Control Number, if applicable: 2502–0036.

Description of the need for information and proposed use: This information collection is used by HUD to approve the credit of a substitute mortgagor. The collection is also used to approve the transfer of physical assets requirements. The collection is also used to approve the transfer of physical assets requirements.

Agency form numbers, if applicable: HUD–9823A, 9823B, 9824B, 9835, 9835A, and 9835B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 760, the number of respondents is 1,520, the frequency of response is on occasion, and the hours per response is 0.5.

Status of the proposed information collection: Extension of currently approved collection.

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MD 20852, (301) 443–7916, e-mail: *kplavsic@samhsa.gov*.

For substance abuse prevention topics: Boris R. Aponte, Ph.D., CHES, Center for Substance Abuse Prevention/ SAMHSA, 5515 Security Lane, Suite 800, Rockville, MD 20852, (301) 443–2290, e-mail: *baponte@samhsa.gov*.

For more information on PA–98–090 go to the online announcement.

Dated: June 26, 2002.

Patricia Bransford,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–16818 Filed 7–3–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Correction of Application Deadline for the Grant Program, National Technical Assistance Center for the Mental Health Services Needs of Older Adults (SM 02–016)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Correction of application Deadline for the grant program, National Technical Assistance Center for the Mental Health Services Needs of Older Adults (SM 02–016).

SUMMARY: This notice is to inform the public that the application deadline published on June 27, 2002, for the grant program, National Technical Assistance Center for the Mental Health Services Needs of Older Adults (SM 02–016), is incorrect. The correct application deadline is August 8, 2002.

PROGRAM CONTACT: For questions about the due date for this program or other program issues relating to this program, contact: Betsy McDonel Herr, Ph.D., Social Science Analyst, Center for Mental Health Services, SAMHSA, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 594–2197, (301) 443–0541 (Fax), e-mail: *bmcdonel@samhsa.gov*.

Dated: June 28, 2002.

Chuck Novak,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–16789 Filed 7–3–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–26]

Notice of Proposed Information Collection: Comment Request; Request for Credit Approval of Substitute Mortgagor

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 3, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review; as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Credit Approval of Substitute Mortgagor.

OMB Control Number, if applicable: 2502–0036.

Description of the need for information and proposed use: This information collection is used by HUD to approve the credit of a substitute mortgagor who desires to assume an FHA-insured mortgage. The information is also needed to document the financial stability of the mortgagor.

Agency form numbers, if applicable: HUD–92210.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 10,000, the number of respondents is 1,000 generating approximately 10,000 annual responses, the frequency of response is on occasion, and the number of hours per response is one.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 27, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 02–16761 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–25]

Notice of Proposed Information Collection: Comment Request; Flexible Subsidy, Capital Improvement Loan Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commission, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 3, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Flexible Subsidy, Capital Improvement Loan Program.

OMB Control Number, if applicable: 2502–0395.

Description of the need for the information and proposed use: The collection of such information is necessary to the Department to determine which projects will best benefit from Flexible Subsidy loans in order to improve financial soundness, improve management and maintain affordability. In addition, this information provides the Department with a means to account for, on a project specific basis, the use of flexible subsidy dollars and the progress being made by each project toward its physical, financial, and management improvement goals.

Agency form numbers, if applicable: HUD–9823A, 9823B, 9824B, 9835, 9835A, and 9835B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 760, the number of respondents is 20 generating approximately 320 annual responses, the frequency of response is monthly, quarterly, and annually, and the number of hours per response varies from one to 20 hours.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 27, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commission.

[FR Doc. 02–16762 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–24]

Notice of Proposed Information Collection: Comment Request; Contractor's Requisition Project Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 3, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contractor's Requisition Project Mortgages.

OMB Control Number, if applicable: 2502–0028.

Description of the need for the information and proposed use: This information is collected on form HUD–92448 from contractors and is used to obtain program benefits, consisting of distribution of insured mortgage proceeds when construction costs are involved. The information regarding completed work items is used by the Multifamily Hub Centers to ensure that payments from mortgage proceeds are made for work actually completed in a satisfactory manner. The certification regarding prevailing wages is used by the Multifamily Hub Centers to ensure compliance with prevailing wage rates.

Agency form numbers, if applicable: HUD–92448.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 1,000 generating 12,000 responses annually, the estimated time needed to prepare each response is approximately 6 hours, the frequency of

response is monthly, and the total burden hours requested is 72,000.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 26, 2002.

Sean G. Cassidy,

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–07]

Notice of Proposed Information Collection for Public Comment—Management Operations Certification

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

This Notice also lists the following information:

Title of Proposal: Management Operations Certification.

OMB Control Number: 2577—(Formerly 2535–0106).

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) annually submit management operations information to HUD in accordance with the requirements of the Public Housing Assessment System. Electronic Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving federal funds from HUD. The Real Estate Assessment Center responsibility for this collection of information was transferred to the Assistant Secretary for Public and Indian Housing.

Agency form numbers, if applicable: Form HUD–50072.

Members of affected public: Local,

hours of response: Management Operations Certification: 3,169 PHAs; annual submission per PHA; average hours for PHA response is 1.9 hours; the total reporting burden is 6,202.5 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

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response is monthly, and the total burden hours requested is 72,000.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 26, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 02–16763 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–23]

Notice of Proposed Information Collection: Comment Request; Local Appeals to Single-Family Mortgage Limits

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 3, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarify of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Local Appeals to Single-Family Mortgage Limits.

OMB Control Number, if applicable: 2502–0302.

Description of the need for the information and proposed use : HUD's collection of this information permits interested parties to appeal for increases in FHA's maximum mortgage limits for specific counties or metropolitan statistical areas (MSA's). This collection also sets forth the general and specific requirements, which must be met before a property can be endorsed for data to support an increase in mortgage limits.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 80 generating approximately 80 responses annually, frequency of response is on occasion, the estimated time needed to prepare the response is 40 hours, and the estimated annual burden hours requested is 3,200.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 26, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 02–16764 Filed 7–3–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–07]

Notice of Proposed Information Collection for Public Comment—Management Operations Certification

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 3, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Operations Certification.

OMB Control Number: 2577—(Formerly 2535–0106).

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) annually submit management operations information to HUD in accordance with the requirements of the Public Housing Assessment System. Electronic submission of this data requires the use of a template. HUD will continue to use the management operations information it collects from PHAs to assist in evaluation of their overall condition. Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving federal funds from HUD. The Real Estate Assessment Center responsibility for this collection of information was transferred to the Assistant Secretary for Public and Indian Housing.

Agency form numbers, if applicable: Form HUD–50072.

Members of affected public: Local, State, or Tribal Governments, Not-for-profit Institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Management Operations Certification: 3,169 PHAs; annual submission per PHA; average hours for PHA response is 1.9 hours; the total reporting burden is 6,202.5 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 28, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–32–M

Public Housing Assessment System (PHAS) Management Operations Certification

U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

Public reporting burden for this collection of information is estimated to average 1.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is collected to implement section 502 of the National Affordable Housing Act of 1990, as amended, which established specific indicators to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. PHAs will complete the PHAS Certification form HUD-50072 and electronically submit it to HUD. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has Internet [illegible] PHA may go to the nearest HUD Public Housing program office and assistance will be given to the PHA to transmit this PHAS

Public Housing Assessment System (PHAS) Management Operations Certification

U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
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CF11100	Total funds authorized for grants older than 2 FFYs old.	$
CF11200	Total funds obligated over 2 FFYs old.	$
CF11300	Unobligated funds approved by HUD over 2 FFYs old.	$
CF11400	Unobligated funds with time extensions due to reasons outside of PHA control.	$
CF11500	Adjusted total unobligated funds.	$ [READ ONLY]

Component #2: Adequacy of Contract Administration

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U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No: 2535-0106
(exp.09/01/2002)

Public reporting burden for this collection of information is estimated to average 1.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is collected to implement section 502 of the National Affordable Housing Act of 1990, as amended, which established specific indicators to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. PHAs will complete the PHAS Certification form HUD-50072 and electronically submit it to HUD. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has Internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public Housing program office and assistance will be given to the PHA to transmit this PHAS certification. The information is used by HUD as a component of PHAS to assess all major areas of PHA's management operations, designate PHAs as troubled and PHAs troubled with respect to the program for assistance from the Capital Fund under Section 9, enter into a Memorandum of Agreement (MOA) with troubled PHAs and PHAs troubled with respect to the program for assistance from the Capital Fund under Section 9, and report annually to Congress on the status of troubled PHAs and PHAs troubled with respect to the program for assistance from the Capital Fund under Section 9. This information is required for HUD to fulfill statutory requirements of the 1990 Act. The information collected does not lend itself to confidentiality.

Instructions: A PHA/AME's electronic response to this certification must be the PHA/AME's actual data; e.g., prior to any adjustments to the indicators. Round percentages to the nearest two decimal points.

PHA/AME Name	For FY Ending	Submission Date

Project name(s) if AME

The management functions for the following sub-indicator (s) have been assumed by an RMC, and the RMC certification will be completed and submitted to HUD (enter sub-indicator numbers or N/A):

Sub-Indicator #1: Vacant Unit Turnaround Time

V12400	Total number of turnaround days.	
V12500	Total number of vacancy days exempted for Capital Fund.	
V12600	Total number of vacancy days exempted for other reasons.	
V12700	Total number of vacant units turned around and lease in effect in the PHA's immediate past fiscal year.	
V12800	Average number of calendar days units were in down time.	
V12900	Average number of calendar days units were in make ready time.	
V13000	Average number of calendar days units were in lease up time.	
V13100	Average unit turnaround days.	[READ ONLY]

Sub-Indicator #2: Capital Fund

CF10000	Do you have any open Capital Fund programs (e.g., CIAP, CGP, Hope VI, LBPRA, VRP) (Y/N)? Open = any program that does not have a pre-audit end date or that received a pre-audit end date during the fiscal year being assessed. Component #1 and #2 (please circle yes or no)	Yes No

Component #1: Unexpended Funds Over Three Federal Fiscal Years (FFYs) Old

CF10050	Total funds authorized over 3 FFYs old that do not have a pre-audit end date or that received a pre-audit end date during the fiscal year being assessed.	$
CF10100	Total funds expended over 3 FFYs old that do not have a pre-audit end date or that received a pre-audit end date during the fiscal year being assessed.	$
CF10200	Unexpended funds to be recaptured.	$
CF10300	Unexpended funds approved by HUD over 3 FFYs old.	$
CF10400	Unexpended funds with time extensions due to reasons outside of PHA control.	$
CF10500	Adjusted total unexpended funds.	$ [READ ONLY]

Component #2: Timeliness of Fund Obligation

Public Housing Assessment System (PHAS) Management Operations Certification

U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

CF11100	Total funds authorized for grants older than 2 FFYs old.	$
CF11200	Total funds obligated over 2 FFYs old.	$
CF11300	Unobligated funds approved by HUD over 2 FFYs old.	$
CF11400	Unobligated funds with time extensions due to reasons outside of PHA control.	$
CF11500	Adjusted total unobligated funds.	$ [READ ONLY]

Component #3: Adequacy of Contract Administration

CF11700	The date of the last HUD/Army Corps of Engineers on-site inspection and/or audit related to contract administration (include A-133 Audit).	(mm/dd/yyyy)
CF11800	The number of findings related to contract administration.	
CF11900	The number of findings related to contract administration that have been corrected by the PHA.	
CF12000	The number of findings related to contract administration that the PHA is in the process of correcting.	

Component #4: Quality of the Physical Work

CF12200	The date of the last HUD/Army Corps of Engineers on-site inspection and/or audit related to the quality of physical work.	(mm/dd/yyyy)
CF12300	The number of findings related to the quality of physical work.	
CF12400	The number of findings related to the quality of physical work that have been corrected by the PHA.	
CF12500	The number of finding related to the quality of physical work that the PHA is in the process of correcting.	

Component #5: Adequacy of Budget Controls

CF12700	Total amount of Capital Funds expended during the PHA fiscal year being assessed.	$
CF12800	The amount of Capital Funds expended on approved work items not subject to budget revisions during the PHA fiscal year being assessed.	$
CF12900	The amount of Capital Funds expended under budget revisions with prior HUD approval during the PHA fiscal year being assessed.	$
CF13000	The amount of Capital Funds expended under budget revisions not requiring prior HUD approval during the PHA fiscal year being assessed.	$

Sub-Indicator #3: Work Orders

Component #1: Emergency Work Orders

W10000	Total number of emergency work orders.	
W10100	Total number of emergency work orders completed / abated within 24 hours.	
W10200	Percentage of emergency work orders completed / abated within 24 hours.	[READ ONLY] %

Component #2: Non-Emergency Work Orders

W10500	Total number of non-emergency work orders.	
W10600	Total number of calendar days it took to complete non-emergency work orders.	
W10700	Average number of days PHA has reduced the time it takes to complete non-emergency work orders over the past three years.	
W10800	Average completion days.	[READ ONLY]

Sub-Indicator #4: Annual Inspection of Dwelling Units and Systems

Public Housing Assessment System (PHAS) Management Operations Certification

U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

Component #1: Annual Inspection of Dwelling Units

A10000	The total number of ACC units.	
A10100	The sum of units exempted where the PHA made two documented attempts to inspect and is enforcing the lease.	
A10200	Vacant units exempted for Capital Fund.	
A10300	Vacant units exempted for other reasons.	

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U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

S11000	The date the PHA implemented current eviction procedures that reflect the One-Strike criteria.	(mm/dd/yyyy)
S11100	PHA can document that current eviction screening procedures resulted in the eviction of residents who meet the One-Strike criteria. (please circle yes or no)	Yes No
S11200	The total number of evictions as a result of the One-Strike criteria.	

Component#4: Drug Prevention and/or Crime Reduction Program Goals

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U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

Component #1:	Annual Inspection of Dwelling Units	
A10000	The total number of ACC units.	
A10100	The sum of units exempted where the PHA made two documented attempts to inspect and is enforcing the lease.	
A10200	Vacant units exempted for Capital Fund.	
A10300	Vacant units exempted for other reasons.	
A10400	Total number of units inspected using the Uniform Physical Condition Standards (UPCS).	
A10550	Total number of units inspected that did not require repairs.	
A10600	The number of units where necessary repairs were completed to comply with UPCS either during the inspection, issued work orders for the repairs, or referred the deficiency to the current year's or next year's Capital Fund program.	
A10700	Adjusted units available.	[READ ONLY]
A10800	Percent of units inspected by PHA.	[READ ONLY]%

Component #2:	Annual Inspection of Systems including Common Areas and Non-Dwelling Space	
A11100	Total number of sites.	
A11200	Total number of sites exempted from the inspection of systems.	
A11300	The total number of sites where all systems were inspected in accordance with the UPCS.	
A11400	Total number of buildings.	
A11500	Total number of buildings exempted from the inspection of systems.	
A11600	The total number of buildings where all systems were inspected in accordance with the UPCS.	
A11700	The number of buildings and sites where necessary repairs were completed to comply with the Uniform Physical Conditions Standards either during the inspection, issued work orders for the repairs, or referred the deficiency to the current year's or next year's Capital Funds program.	
A11800	Percentage of sites inspected.	[READ ONLY]%
A11900	Percentage of buildings inspected.	[READ ONLY]%

Sub-Indicator #5: Security

Component#1:	Tracking and Reporting Crime-Related Problems	
S10000	The date that the Board adopted current policies to track crime and crime-related problems.	(mm/dd/yyyy)
S10100	The date that the PHA implemented the current procedures to track crime and crime-related problems.	(mm/dd/yyyy)
S10200	The date that the PHA implemented a current cooperative system for tracking and reporting crime to local police authorities.	(mm/dd/yyyy)
S10300	The number of crimes that the PHA can document it reported to local police authorities.	
S10400	Percentage of developments where PHA can document it tracks crime and crime-related problems.	%

Component#2:	Screening of Applicants	
S10500	The date the Board adopted current screening policies that reflect the One-Strike criteria.	(mm/dd/yyyy)
S10600	The date the PHA implemented current screening procedures that reflect the One-Strike criteria.	(mm/dd/yyyy)
S10700	PHA can document that current screening procedures result in successfully denying admission to applicants who meet the One-Strike criteria. (please circle yes or no)	Yes No
S10800	The total number of applicants denied who met the One-Strike criteria.	

Component#3:	Lease Enforcement	
S10900	The date the Board adopted current eviction procedures that reflect the One-Strike criteria.	(mm/dd/yyyy)

Public Housing Assessment System (PHAS) Management Operations Certification

U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

S11000	The date the PHA implemented current eviction procedures that reflect the One-Strike criteria.	(mm/dd/yyyy)
S11100	PHA can document that current eviction screening procedures resulted in the eviction of residents who meet the One-Strike criteria. (please circle yes or no)	Yes No
S11200	The total number of evictions as a result of the One-Strike criteria.	

Component#4:	Drug Prevention and/or Crime Reduction Program Goals	
S11350	The number of HUD-funded drug prevention and/or crime reduction programs.	
S11450	The number of non HUD-funded drug prevention and/or crime reduction programs that the PHA requests to be assessed.	
S11550	The number of documented program goals that are related to drug prevention and/ or crime reduction.	
S11600	The number of goals the PHA can document it met under the implementation plan(s) for any and all of these programs.	
S11700	Percentage of goals that the PHA can document it met under implementation plan(s) for any and all of these programs.	[READ ONLY]%

Sub-Indicator #6: Economic Self-Sufficiency

E10000	The number of HUD-funded economic self-sufficiency programs.	
E10100	The number of non HUD-funded economic self-sufficiency programs that the PHA requests to be assessed.	
E10200	The number of documented program goals that are related to economic self-sufficiency.	
E10300	The number of goals the PHA can document it met under the implementation plan(s) for any and all of these programs.	
E10400	Percentage of goals that the PHA can document it met under implementation plan(s) for any and all of these programs.	[READ ONLY]%

Adjustments for Physical Condition and/or Neighborhood Environment

Please enter project number and name and indicate which area the adjustment for Physical Condition and/or Neighborhood Environment applies for a project. (Check all that apply)

Project No.	Project Name	Site	Common Areas	Building Exteriors
		☐	☐	☐
		☐	☐	☐

Please attach additional sheets as necessary for additional projects.

I certify that, as of the submission date, the above sub-indicators, under Public Housing Assessment System indicator #3 Management Operations are true and accurate for the fiscal year indicated. I further certify that, to my present knowledge, there is no evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to present and protect its public housing developments and operate them in accordance with

Public Housing Assessment System (PHAS) Management Operations Certification

U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

Federal law and regulations. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatory.

A Board Resolution approving this certification is required. I further certify that Board Resolution number _____ approving this certification was passed on (mm/dd/yyyy) _____.

[FR Doc. 02–16787 Filed 7–3–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–22]

Notice of Proposed Information Collection: Comment Request; Construction Complaint—Request for Financial Assistance

on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Construction Complaint—Request for Financial Assistance.

OMB Control Number, if applicable: 2502–0047.

HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line

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Public Housing Assessment System (PHAS) Management Operations Certification

U.S. Department of Housing and Urban Development
Real Estate Assessment Center

OMB No. 2535-0106
(exp.09/01/2002)

Federal law and regulations. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatory.

A Board Resolution approving this certification is required. I further certify that Board Resolution number _____ approving this certification was passed on (mm/dd/yyyy) _____.

Executive Director (signature)	Date (mm/dd/yyyy)
X	X

Previous editions are obsolete

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form HUD-50072 (4/2000)
ref. Handbook 7480.5

[FR Doc. 02–16767 Filed 7–3–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–22]

Notice of Proposed Information Collection: Comment Request; Construction Complaint—Request for Financial Assistance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 3, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Construction Complaint—Request for Financial Assistance.

OMB Control Number, if applicable: 2502–0047.

Description of the need for the information and proposed use: There is a need for HUD to know defects in new construction. The HUD form 92556 is used to identify the items of complaint in order to help the homeowner obtain correction. The information collection is also used to identify builders not conforming to applicable standards, and to determine eligibility for financial assistance.

Agency form numbers, if applicable: HUD–92556.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 5,000 generating approximately 5,000 annual responses, frequency of response is on occasion, the estimated time needed to prepare each response is 30 minutes, and the estimated annual burden hours requested is 2,500.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 26, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–16765 Filed 7–3–02; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 27, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–16686 7–3–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–10]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room B133-P3214, Washington, DC 20410; telephone (202) 708–2830. (This is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In

within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the tenth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement

202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of

Dated: June 24, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–16768 Filed 7–3–02; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Raymond D. Bond, Butte, MT, PRT–058635.

The applicant requests a permit to import the sport-hunted trophy of one

hearing is at the discretion of the Director.

Applicant: Bonnie L. Prochnow, Medford, WI, PRT–058491.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Charles A. Dorrance, Austin, TX, PRT–058414.

The applicant requests a permit to

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SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the tenth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action

The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
A and E Mortgage Co. LLC	625 W First Ave., Roselle, NJ 07203	Newark, NJ	05/02/2002	Philadelphia.
Alliance Mortgage Banking Corp	2735 Buffalo Road, Rochester, NY 14624.	Buffalo, NY	05/01/2002	Philadelphia.
Embassy Mortgage Inc	2121 Woodale Blvd., Ste C, Baton Rouge, LA 70806.	New Orleans, LA	05/01/2002	Denver.
Lincoln Mortgage Corp	27950 Orchard Lake Rd., Ste 120, Farmington Hills, MI 48334.	Detroit, MI	03/02/2002	Philadelphia.
Luzal Inc	10312 Jurupa Road, Mira Loma, CA 91752.	Santa Ana, CA	05/01/2002	Santa Ana.
Mortgage One Corp	9610 Two Notch Road, Ste 5, Columbia, SC 29223.	Columbia, SC	05/01/2002	Atlanta.
Regal Mortgage Services, Inc	3802 W. 96th Street, Ste 120, Indianapolis, IN 46268.	Indianapolis, IN	05/02/2002	Atlanta.
SGB Corporation	1 South 660 Midwest Rd., Ste 100, Oakbrook Terrace, IL 60181.	Chicago, IL	05/02/2002	Atlanta.

Dated: June 24, 2002.
John C. Weicher,
Assistant Secretary for Housing-Federal Housing Commissioner.
[FR Doc. 02–16768 Filed 7–3–02; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 5, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Brian Bailey, Roswell, NM, PRT–058597.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: William E. Kessler, Suwanee, GA, PRT–058636.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Raymond D. Bond, Butte, MT, PRT–058635.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Raymond H. Robertson, Carson City, NV, PRT–058816.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Antibody Systems, Inc., Hurst, TX, PRT–058324.

The applicant requests a permit to import biological samples from Komodo Island monitor (*Varanus komodoensis*) collected in the wild from Komodo, Rintja, and Flores Islands, Indonesia for the purpose of scientific research. This notice covers activities conducted by the applicant over a five year period.

Applicant: Dr. Claudio Ciofi/Yale University, New Haven, CT, PRT–058696.

The applicant requests a permit to import biological samples from Komodo Island monitor (*Varanus komodoensis*) collected from wild and captive-bred specimens in Indonesia, for the purpose of scientific research. This notice covers activities conducted by the applicant over a five year period.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Bonnie L. Prochnow, Medford, WI, PRT–058491.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Charles A. Dorrance, Austin, TX, PRT–058414.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: George R. Harms, Brielle, NJ, PRT–058893.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: June 21, 2002.
Michael S. Moore,
Senior Permit Biologist, Branch of Permits, Division of Management Authority.
[FR Doc. 02–16805 Filed 7–3–02; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Services

Notice of Receipt of Applications for Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*). The U.S. Fish and Wildlife Service solicits review and comment from local, State, and Federal agencies, and the public on the following permit-requests.

DATES: Written comments on these permit applications must be received within 30 days of the date of publication of this notice.

ADDRESSES: Written data or comments should be submitted to the Chief,

Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: June 12, 2002.
Carolyn A. Bohan,
Regional Director, Region 1, Portland, Oregon.
[FR Doc. 02–16798 Filed 7–3–02; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine

Dated: June 21, 2002.
Michael S. Moore,
Senior Permit Biologist, Branch of Permits, Division of Management Authority.
[FR Doc. 02–16806 Filed 7–3–02; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–990–02–5101–ER–L016]

August 20, 2002. Written comments may also be hand-delivered to the Joint Pipeline Office in Anchorage, Alaska, by 4 p.m. ADT on August 20, 2002.

ADDRESSES: Written comments should be mailed to BLM TAPS Renewal EIS, Argonne National Laboratory EAD/900, 9700 S. Cass Avenue, Argonne, IL 60439. As an alternative, written comments can be hand-delivered to BLM TAPS Renewal Team in Anchorage at the Joint Pipeline Office 411 W. 4th

under supervision and direction by BLM.

DEIS Availability

To obtain an electronic copy:

- visit the TAPS Renewal EIS Web site at *http://tapseis.anl.gov* (available as downloadable and searchable pdf files),
- order a CD through the TAPS Renewal EIS Web site at *http://tapseis.anl.gov*

Hard copies of this voluminous

Hotel, Denali Room, 500 West Third Avenue

- Tuesday, August 6, 2002, 7 p.m. ADT: Fairbanks; Chena River Convention Center, Conference Room/Main Hall A, 109 Clay Street
- Wednesday, August 7, 2002, 2 p.m. ADT: Minto, Minto Lodge
- Friday, August 9, 2002, 7 p.m. ADT: Barrow; Inupiat Heritage Center, multi-purpose room; 5421 Northstar Street (Inupiat translator)

The BLM seeks information and

Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–026092

Applicant: Paul Kephart, Carmel Valley, California. The permittee requests an amendment to remove/reduce to possession the *Erysimum menziesii* (Menzies' wallflower) in conjunction with restoration efforts in Monterey County, California for the purpose of enhancing its survival.

Permit No. TE–057714

Applicant: Dawn Reis, Santa Cruz, California. The applicant request a permit to take (harass by survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys in Santa Cruz, Monterey, San Benito, and San Luis Obispo Counties, California for the purpose of enhancing its survival.

Permit No. TE–056801

Applicant: Alan Roy Wilkins, Middleton, Massachusetts. The applicant requests a permit to purchase, in interstate commerce, captive bred Hawaiian (=nene) geese (*Nesochen [=Branta] sandvicensis*) for the purpose of enhancing the species propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

Permit No. 058955

Applicant: Morro Estuary Greenbelt Alliance, Incorporated. The permittee request an amendment to take (locate and capture) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with habitat enhancement in San Luis Obispo, California for the purpose of enhancing its survival.

Dated: June 12, 2002.

Carolyn A. Bohan,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–16796 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On January 11, 2002, a notice was published in the **Federal Register** (67 FR 1494), that an application had been filed with the Fish and Wildlife Service by Xavier University for a permit (PRT–049136) to conduct research with sound recognition on one captive-held and one captive-born manatee (*Trichechus manatus latirosis*).

Notice is hereby given that on June 19, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 7, 2002, a notice was published in the **Federal Register** (67 FR 30721), that an application had been filed with the Fish and Wildlife Service by Truman D. Wade for a permit (PRT–055298) to import one polar bear taken from the Northern Beaufort Sea population in Canada for personal use.

Notice is hereby given that on June 11, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: June 21, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–16806 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–990–02–5101–ER–L016]

Notice of Availability of Trans-Alaska Pipeline System Right-of-Way Renewal Draft Environmental Impact Statement (DEIS), Announcement of Public Review Period and Hearings Schedule Including Subsistence-Related Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of DEIS, Announcement of Public Review Period and Hearings Schedule Including Subsistence-Related Hearings.

SUMMARY: The Bureau of Land Management (BLM) announces availability of the Trans-Alaska Pipeline System (TAPS) Right-of-Way Renewal Draft Environmental Impact Statement (DEIS). The current Right-of-Way expires in 2004. Three alternatives are considered in the DEIS: to renew the TAPS Right-of-Way for 30 years, to renew the Right-of-Way for less than 30 years, and to not renew the Right-of-Way. Appendix E of the Draft EIS indicates that each of the alternatives may affect subsistence activities. As required by section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), BLM is evaluating the effects of the alternatives on subsistence uses and needs and is holding public hearings in the vicinity of the area involved.

BLM is closely cooperating with the State of Alaska in preparation of the DEIS and is coordinating all aspects of the renewal process within the purview of the inter-agency Joint Pipeline Office. BLM and the Alaska Department of Natural Resources will offer joint public hearings for the TAPS Renewal DEIS, ANILCA 810 Subsistence, and the State of Alaska Commissioner's Analysis and Proposed Determination. Although the meetings are being held jointly, commenters will be asked to state if they are addressing state or federal documents.

DATES: The DEIS will be available beginning July 5, 2002. The public will have 45 days to review and comment on the DEIS. The BLM will accept written comments on the DEIS postmarked by August 20, 2002. Written comments may also be hand-delivered to the Joint Pipeline Office in Anchorage, Alaska, by 4 p.m. ADT on August 20, 2002.

ADDRESSES: Written comments should be mailed to BLM TAPS Renewal EIS, Argonne National Laboratory EAD/900, 9700 S. Cass Avenue, Argonne, IL 60439. As an alternative, written comments can be hand-delivered to BLM TAPS Renewal Team in Anchorage at the Joint Pipeline Office 411 W. 4th Avenue, Suite 2 [Do not mail comments to this address]. Comments also can be submitted through the "Public Comment Form" feature on the TAPS Renewal EIS Web site at *http://tapseis.anl.gov*, by fax toll free to 1–866–542–5904, or by voice message toll free at 1–866–542–5903.

FOR FURTHER INFORMATION CONTACT: Rob McWhorter at the Joint Pipeline Office, 411 W 4th Avenue, Suite 2, Anchorage, Alaska, phone 907–257–1355, e-mail *rmcwhort@jpo.doi.gov*, or visit the TAPS Renewal EIS Web site at *http://tapseis.anl.gov*.

Withholding of Personal Information: It is the BLM's practice to make comments, including names and addresses of commenters, available for public review during regular business hours. Individual commenters may request that we withhold their home address from the public comment record, and we will honor such requests to the extent allowable by law. Circumstances may also arise in which we would withhold from the public comment record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The EIS is being prepared under authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321), as amended; the Council on Environmental Quality regulations (40 CFR parts 1500–1508); and the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended, including Title II—the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651). Argonne National Laboratory, Argonne, Illinois, is providing technical assistance and is preparing the DEIS under supervision and direction by BLM.

DEIS Availability

To obtain an electronic copy:

- visit the TAPS Renewal EIS Web site at *http://tapseis.anl.gov* (available as downloadable and searchable pdf files),
- order a CD through the TAPS Renewal EIS Web site at *http://tapseis.anl.gov*

Hard copies of this voluminous document will be available at the following public reading rooms or can be requested through the TAPS Renewal EIS Web site at *http://tapseis.anl.gov*

Anchorage

- Alaska Resources Library; 3150 C Street, Suite 100
- Z.J. Loussac Library, 3600 Denali Street
- Bureau of Land Management Public Room; 222 West 7th Avenue, #13
- State of Alaska, Department of Natural Resources Public Information Center; 550 West 7th Avenue, Suite 1260

Barrow

Tuzzy Consortium Library

Cordova Public Library

Fairbanks

- Fairbanks North Star Borough Public Library; 1215 Cowles Street
- Bureau of Land Management Public Room; 1150 University Avenue
- State of Alaska, Department of Natural Resources Public Information Center; 3700 Airport Way

Glennallen

Bureau of Land Management; Glennallen Field Office

Juneau

Alaska State Library
Valdez Public Library

Washington, DC

Department of the Interior Library; 1849 C Street, NW

Meeting/Hearing Dates and Locations

Oral or written comments can be made at one of the following locations on the dates specified:

- Friday, July 26, 2002, 7 p.m. ADT: Cordova; Moose Lodge, 514 2nd Street
- Tuesday, July 30, 2002, 7 p.m. ADT: Valdez; Valdez Convention and Civic Center, Ballroom 1, 110 Clifton Drive
- Wednesday, July 31, 2002, 7 p.m. ADT: Glennallen; Copper River High School auditorium, Mile 186, Glenn Highway
- Monday, August 5, 2002, 7 p.m. ADT: Anchorage; Anchorage Hilton Hotel, Denali Room, 500 West Third Avenue
- Tuesday, August 6, 2002, 7 p.m. ADT: Fairbanks; Chena River Convention Center, Conference Room/Main Hall A, 109 Clay Street
- Wednesday, August 7, 2002, 2 p.m. ADT: Minto, Minto Lodge
- Friday, August 9, 2002, 7 p.m. ADT: Barrow; Inupiat Heritage Center, multi-purpose room; 5421 Northstar Street (Inupiat translator)

The BLM seeks information and comments on the potential impacts discussed in the DEIS and additional data or information that would improve the analysis in the DEIS. BLM is also seeking comments on the subsistence evaluation in Appendix E of the DEIS.

Linda S.C. Rundell,

Acting State Director.

[FR Doc. 02–16236 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0119).

SUMMARY: To comply with the Paperwork Reduction Act of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "Royalty-in-Kind (RIK) Determination of Need."

DATES: Submit written comments on or before September 3, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption.

If you do not receive a confirmation that we have received your e-mail, contact Ms. Shelby at (303) 231–3151.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385, e-mail *Carol.Shelby@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: Royalty-in-Kind (RIK) Determination of Need.

OMB Control Number: 1010–0119.

Abstract: The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the Outer Continental Shelf, collecting royalties from lessees who produce minerals, and distributing the royalties to recipients. The Secretary has delegated some of these responsibilities to MMS. The Mineral Leasing Act, as amended, requires royalties be paid in value or in kind. Royalty-in-kind (RIK) is royalty paid in the form of production rather than in money. Royalty-in-value (RIV) is royalty paid in money. Most royalties are paid in value. MMS's RIK regulations are found at 30 CFR 208.4. MMS's RIV regulations are found at 30 CFR 206.

MMS's RIK regulations require MMS to determine that RIK sales will not result in additional costs to the Government or harm marketing of other lease production before we may take royalties in kind. MMS's RIK regulations require us to consult with affected States and Indian tribes before we may take royalties in kind. MMS's RIK regulations require us to solicit comments from interested parties before we may take royalties in kind. MMS's RIK regulations require us to publish our findings in the **Federal Register** before we may take royalties in kind.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in value. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a unit agreement. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a communitization agreement.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a cooperative agreement. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a participating area. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease stipulation. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease term.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease condition. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease provision. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease clause. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease agreement.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease amendment. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease modification. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease termination. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease renewal.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease extension. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease suspension. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease cancellation. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease relinquishment.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease assignment. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease transfer. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease conveyance. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease grant.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease permit. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease right-of-way. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease easement. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease servitude.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease tenement. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease hereditament. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease appurtenance. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease attachment.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease fixture. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease improvement. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease betterment. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease accession.

MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease addition. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease alteration. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease change. MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease modification.

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MMS's RIK regulations require us to collect information to determine whether royalties should be taken in kind or value for leases subject to a lease change

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FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385, e-mail *Carol.Shelby@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: Royalty-in-Kind (RIK) Determination of Need.

OMB Control Number: 1010–0119.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

MMS, on behalf of the Secretary, also performs Determinations of Need prior to issuing a Notice of Availability of Sale in the **Federal Register** advising industry of a forthcoming RIK sale. The first step in this process is to issue a **Federal Register** notice requesting specific information from eligible refiners, such as: the location of their refinery; desirability of offshore versus onshore crude; type of crude desired (e.g., Wyoming Sweet); ability to obtain long-term supply of desired crude (with supporting documentation such as "denial" by major supplier); ability to obtain desired crude at fair market prices (with supporting documentation that desired oil was not available or equitably priced for the area or region in question); percentage of total refining capacity attributable to Federal oil versus other sources; etc. MMS uses feedback from refiners (or other interested parties, like lease owners or operators) to assess current marketplace conditions—*i.e.*, whether small, independent refiners have access to ongoing supplies of crude oil at equitable prices. If MMS determines that small refiners do not have adequate access to crude oil supplies, we will take the Government's royalty oil in kind and offer the oil for sale to small refiners.

MMS is requesting OMB's approval to continue to collect this information. Without feedback from interested refiners regarding their recent marketplace experience in obtaining adequate crude oil supplies and whether those supplies are fairly priced, MMS cannot perform a reasonable or meaningful Determination of Need. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 25 small refiners.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 100 hours. The table below shows the breakdown of burden hours by CFR section and paragraph:

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.4(a) and (d)	The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items [submitted by small refiners] and will determine whether eligible refiners have access to adequate supplies of cure oil * * * *interim sales.* The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase * * *.	4	25	100

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy. We will post all comments in response to this notice on our web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 26, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–16890 Filed 7–3–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States* v. *Acme Alloys et al.*, Civ. No. 02–2886 (WHW), was lodged with the United States District Court for the District of New Jersey on June 6, 2002, ("De Minimis Consent Decree"). The De Minimis Consent Decree will resolve the liability of eleven parties against whom the United States asserted a claim on behalf of the United States Environmental Protection Agency under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9670(a), for injunctive relief and recovery of costs incurred by the United States in connection with the NL Industries Superfund Site in Pedricktown, New Jersey. The De Minimis Consent Decree requires 11 generators of hazardous substances to pay $460,000, which will be deposited into a special account to pay for response activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed De Minimis Consent Decree and Consent Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Acme Alloys, et al.*, DOJ Ref. #90–11–2–1075/2.

The proposed De Minimis Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, 502 Federal Building, 970 Broad Street (contact Assistant United States Attorney Susan Cassell); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel, Damaris Cristiano). A copy of the proposed De Minimis Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs) for the De Minimis Consent Decree and Consent Order, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–16778 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree with Fort James Operating Company ("Fort James") in the case captioned *United States and the State of Wisconsin* v. *Fort James Operating Company*, Civil Action No. 02–C–0602 (E.D. Wis.) was lodged with the United States District Court for the Eastern District of Wisconsin on June 20, 2002. The complaint filed in the case by the United States and the State of Wisconsin (the "Plaintiffs") alleges that Fort James is party liable for certain response costs associated with the release and threatened release of hazardous substances from facilities at or near the Fox River/Green Bay Site in northeastern Wisconsin (the "Site"), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*

The proposed consent decree sets forth the terms of a proposed settlement between the Plaintiffs and Fort James addressing both: (1) the claims for recovery of response costs that are included in the complaint; and (2) related claims for natural resource damages at the Site. The Oneida Tribe of Indians of Wisconsin and the Menominee Indian Tribe of Wisconsin are additional parties to the settlement, as Tribal trustees for injured natural resources at and near the Site.

Under the settlement, Fort James would agree to preserve more than 1000 acres of wildlife habitat in northeastern Wisconsin and pay an additional $8.5 million for other restoration projects as compensation for injuries to natural resources caused by widespread polychlorinated biphenyl ("PCB") contamination at the Site. The Federal, State, and Tribal trustees that are parties to the Consent Decree have reviewed and approved the specific restoration projects described in an Appendix to the Consent Decree, and will jointly select future projects to be funded with additional money available under the settlement. In addition to its payments for restoration projects, Fort James would pay $1.6 million to help offset natural resource damage assessment costs and certain cleanup-related response costs incurred by the United States and the State.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States and the State of Wisconsin* v. *Fort James Operating Company*, Civil Action No. 02–C–0602 (E.D. Wis.), and DOJ Reference Number 90–11–2–1045/1. A copy of the proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Eastern District of Wisconsin, U.S. Courthouse and Federal Building—Room 530, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 (contact Matthew Richmond (414–297–1700)); and (2) the U.S. Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Peter Felitti (312–886–5114)). Copies of the proposed consent decree may also be

obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the above-referenced case name and DOJ Reference Number, and enclose a check made payable to the Consent Decree Library for $15.25 (61 pages at 25 cents per page reproduction cost).

William D. Brighton,

Pennsylvania 15219, and at U.S. EPA Region III Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut St, Ste 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19013. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check in the amount of

to receive formal notices and submissions under the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, that South Jersey Clothing Company, Inc., is liable for the costs in responding to the release or threatened release of hazardous substances at the South Jersey Clothing Company/Garden State Cleaners Superfund Sites in Minotola, New Jersey (the Sites). Under the terms of the proposed consent decree, the United States and the State of New Jersey will be paid $4,285,102.00 as

information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail to King-Daring@dol.gov.

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obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the above-referenced case name and DOJ Reference Number, and enclose a check made payable to the Consent Decree Library for $15.25 (61 pages at 25 cents per page reproduction cost).

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–16779 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on June 17, 2002, a Consent Decree in *United States of America, Plaintiff, and Commonwealth of Pennsylvania, Plaintiff-Intervenor* v. *Borough of Indiana, Defendant,* Civil Action No. 02–CV–1079 was lodged with the United States District Court for the Western District of Pennsylvania.

In this action the United States sought injunctive relief and civil penalties under Section 301 of the Clean Water Act, 33 U.S.C. 1311 for the Borough of Indiana, Pennsylvania's wastewater treatment plant and sewer collection system. The Consent Decree addresses the Borough of Indiana's (1) discharge of pollutants from its wastewater treatment plan, (2) bypassing sewage from an outfall in violation of the bypass prohibition in its permit, and (3) discharge of sewage from two unpermitted sanitary sewer overflow points in its collection system. Pursuant to the settlement, the Borough of Indiana will also pay a civil penalty of $240,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America, Plaintiff, and Commonwealth of Pennsylvania, Plaintiff-Intervenor* v. *Borough of Indiana, Defendant,* D.J. Ref. 90–5–1–1–4475.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office & Courthouse, Pittsburgh, Pennsylvania 15219, and at U.S. EPA Region III Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $29.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–16777 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on June 24, 2002, a proposed consent decree in *United States* v. *Pennsylvania Industrial Development Authority, et al.,* Civ. Action No. 02–4038, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.,* in connection with the Franklin Smelting Site ("Site") in Philadelphia, Pennsylvania. The decree will require defendants to pay $5,000 in partial reimbursement of the United States' past response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and transmitted by one of the following methods: (1) via U.S. Mail to PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, c/o Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington DC 20005. Each communication should reference *United States* v. *Pennsylvania Industrial Development Authority, et al.,* D.J. Ref. No. 90–11–2–07622/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut St, Ste 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19013. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. Exhibits to the consent decree may be obtained for an additional charge.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–16782 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed and agreed upon Amendment to Consent Decree Entered on May 18, 1995 in *United States* v. *Scovill, Inc.,* Civil Action No. 3:95CV159, was lodged with the United States District Court for the Eastern District of Virginia on June 6 2002.

The original Consent Decree involved the settlement of claims brought by the United States, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It sought recovery of costs and injunctive relief for the Arrowhead Plating Superfund Site located in Montross, Westmoreland County, Virginia. The proposed and agreed upon Amendment would modify the Consent Decree by: (1) Conforming the groundwater remedy provisions of the 1995 Consent Decree to the requirements of the 2001 Record of Decision Amendment which replaced the pump and treat system selected as the remedy in the original ROD with a Permeable Reactive Subsurface Barrier ("PRSB") and surface cap; (2) including an agreement where Saltire Industrial, Inc. (successor to Scovill, Inc.) agrees to undertake certain unanticipated work at the Site in exchange for a credit against future oversight costs incurred by the EPA; and (3) updating the representatives of the parties designated

to receive formal notices and submissions under the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Each communication should refer on its face to *United States* v. *Scovill, Inc.,* DOJ #90–11–3–859.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314; and at U.S. Environmental Protection Agency, Region III Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed Amendment to Consent Decree may be obtained by (1) mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; or by (2) faxing the request to Tonia Fleetwood, U.S. Department of Justice, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $2.00 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–16781 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 21, 2002, a proposed consent decree in *United States* v. *South Jersey Clothing Company, Inc.* Civil Action No. 96–3166 (JBS), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States alleged under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, that South Jersey Clothing Company, Inc., is liable for the costs in responding to the release or threatened release of hazardous substances at the South Jersey Clothing Company/Garden State Cleaners Superfund Sites in Minotola, New Jersey (the Sites). Under the terms of the proposed consent decree, the United States and the State of New Jersey will be paid $4,285,102.00 as reimbursement for past and future response costs with respect to the Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, U.S. Courthouse, One John F. Gerry Plaza, Camden, New Jersey, and at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decree (without appendices), please so note and enclose a check in the amount of $11.00 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–16780 Filed 7–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail to King-Daring@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Slings—29 CFR 1910.184.

OMB Number: 1218–0223.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 65,000.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Alloy Steel Chain Slings—1910.184(e):			
Permanently affixed durable identification—1910.184(e)(1)	96	0.50	49
Periodic inspection—1910.184(e)(3)(i)	68,250	0.25	17,063

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Certificate of proof testing—1910.184(e)(4)	24,375	0.05	1,219
Wire Rope Slings—1910.184(f)	48,750	0.05	2,438
Metal Mesh Slings—1910.184(g):			
Permanently affixed durable marking—1910.184(g)(1)	13	0.50	7
Written records for repaired slings—1910.184(g)(8)(ii)	1,300	0.05	65
Synthetic Web Slings—1910.184(i):			
Marked or coded for rated capacities—1910.184(i)(1)	52	0.50	26
Certificate of proof testings—1910.184(i)(8)(ii)	13,000	0.05	650
	155,838		21,517

Frequency: On occasion, Quarterly, biennially, and Annually. *Type of Response:* Recordkeeping, Reporting, and Third-party disclosure. *Number of Respondents:* 27,000.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Burden Hours for State Consultation Projects:			
Safety and health Program Assessment Worksheet—1908.6(e)(3):			
Comprehensive Assistance	2,700	0.50	1,350
Safety and health Achievement Recognition Program (SHARP)	400	0.50	200
Inspection Deferral	200	0.50	100
Other visits	23,700	0.17	3,950
Referrals for Enforcement—1908.6(f)(1) and (4)	10	0.050	5

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Requirement	Annual responses	Average response time (hours)	Annual burden hours
Cetificate of proof testing—1910.184(e)(4)	24,375	0.05	1,219
Wire Rope Slings—1910.184(f)	48,750	0.05	2,438
Metal Mesh Slings—1910.184(g):			
Permanently affixed durable marking—1910.184(g)(1)	13	0.50	7
Written records for repaired slings—1910.184(g)(8)(ii)	1,300	0.05	65
Synthetic Web Slings—1910.184(i):			
Marked or coded for rated capacities—1910.184(i)(1)	52	0.50	26
Certificate of proof testings—1910.184(i)(8)ii)	13,000	0.05	650
Grand Totals:	155,838		21,517

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Standard specifies several collection-of-information (paperwork) requirements, depending on the type of sling. The purpose of each of these requirements is to prevent employees from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling.

Paragraph (e) of the Standard covers alloy steel chain slings. Paragraph (e)(1) requires that alloy steel chain slings have permanently affixed durable identification stating size, grade, rated capacity, and reach. The information, supplied by the manufacturers, is typically marked on a metal tag and affixed to the sling.

Paragraph (e)(3)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (e)(3)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and make this record available for examination.

Paragraph (e)(4) requires the employer to retain certificates of proof testing. Employers must ensure that before use, each now, repaired, or reconditioned alloy steel chain sling, including all welded components in the sling assembly, has been proof tested by the sling manufacturer, or an equivalent entity. The certificates of proof testing must be retained and made available for examination.

Paragraph (f) of the Standard covers wire rope slings. Paragraph (f)(4)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraph (g) of the Standard covers metal mesh slings. Paragraph (g)(1) requires each metal mesh sling to have a durable marking permanently affixed that states the rated capacity for vertical basket hitch and choker hitch loadings.

Paragraph (g)(8)(ii) requires that once repaired, each metal mesh sling be permanently marked or tagged, or a written record maintained to indicate the date and nature of the repairs and the person or organization that performed the repairs. Records of the repairs shall be made available for examination.

Paragraph (i) of the Standard covers synthetic web slings. Paragraph (i)(1) requires that synthetic web slings be marked or coded to show the rated capacities for each type of hitch and type of synthetic web material.

Paragraph (i)(8)(i) prohibits the use of repaired synthetic web slings until they have been proof tested by the manufacturer or equivalent entity. Paragraph (i)(8)(ii) requires the employer to retain a certificate of the proof test and make it available for examination.

The information on the identification tags, markings or codings assist the employer in determining whether the sling can be used for the lifting task. The sling inspections enable early detection of faulty slings. The inspection and repair records provide employers with information about when the last inspection was made and about the nature of the repairs made. This information provides some assurance about the condition of the slings. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard. Proof-testing certificates give employers, employees, and OSHA compliance officers assurance that slings are safe to use. The certificates also provide the compliance officers with an efficient means to assess employer compliance with the Standard.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Standard on Manlifts—29 CFR 1910.68(e)(3).

OMB Number: 1218–0226.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Frequency: Monthly.

Type of Response: Recordkeeping and Third-party disclosure.

Number of Respondents: 3,000.

Number of Annual Responses: 36,000.

Annual Burden Hours: 41,400.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.68(e) requires that each manlift be inspected at least once every 30 days. Paragraph (e)(3) requires a certification record of the inspection must be made upon completion of the inspection. The record must contain the date of the inspection, the signature of the person who performed the inspection, and the serial number or other identifier of the inspected manlift. Employers are to maintain the certification record and make them available to OSHA compliance officers. This record provides assurance to employers, employees, and compliance officers that manlifts were inspected as required by the Standard. The inspections are made to keep equipment in safe operating condition, thereby preventing manlift failure while carrying employees to elevated worksites. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Agency: Occupational Safety and health Administration (ISHA).

Type of Review: Revision of a currently approved collection.

Title: Consultation Agreements.

OMB Number: 1218–0110.

Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.

Frequency: On occasion, Quarterly, biennially, and Annually. *Type of Response:* Recordkeeping, Reporting, and Third-party disclosure. *Number of Respondents:* 27,000.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Burden Hours for State Consultation Projects:			
Safety and health Program Assessment Worksheet—1908.6(e)(3):			
Comprehensive Assistance	2,700	0.50	1,350
Safety and health Achievement Recognition Program (SHARP)	400	0.50	200
Inspection Deferral	200	0.50	100
Other visits	23,700	0.17	3,950
Referrals for Enforcement—1908.6(f)(1) and (4)	10	0.050	5
List of Serious Hazardous and Correction Due Dates—1908.6(g)	27,000	0.06	2,250
Compile and Transmit Statical Information—1908.9(c)	1,680	0.50	840
Prepare and Submit Cooperative Agreement—1908.10(c)	48	40.00	1,920
Sub-total	55,738		10,615
Burden Hours for employers:			
Notifying the consultation project manager in writing when serious hazardous are correct—1908.6	27,000	0.25	6,750
Informing OSHA or State Compliance Officer that a Consultation Visit is in Progress—1908.7	1,350	0.10	135
Post notice of participation in Inspection Deferral and SHARP—1908.7(a)(4)	600	0.05	30
Sub-Total:	28,950		6,915
Grant Total:	84,688		17,530

Total Annualized Capital/Startup cost: $0.

Total Annual Cost (Operating/Maintaining System or Purchasing Services): $0.

Description: 29 CFR 1908 requires occupatiuonal safety and health consultation programs to collect, disclose, and report certain information. The purpose of these regulations is to establish and support cooperative agreements under which employers subject to the Occupational Safety and health Act of 1970 (and amendments) may consult with State personnel with respect to Occupational Safety and health Regulations as well as other voluntary compliance efforts.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–16807 Filed 7–3–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Divisions; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determinations Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration date and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined in prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitted this data may be obtained by writing to the U.S. Department of Labor,

Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

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Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of June, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–16729 Filed 7–3–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–079)]

NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee (SSUAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting location change.

SUMMARY: In accordance with the Federal Advisory Committee, Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a change of location for the meeting of the NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee (SSUAS); Notice Number 02–077.

DATES: July 9, 2002, July 10, 2002, and July 12, 2002, 8 a.m. to 5 p.m.

Previously Announced Locations: Center for Advance Space Studies, 3600 Bay Boulevard, Houston, Texas.

Change in the Meeting: The meeting will now be held at the Courtyard Marriott, 3435 North Atlantic Avenue, Cocoa Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Dr. Neal Pellis, Code U, Lyndon B. Johnson Space Center, Houston, Texas, (281) 483–2357

Dated: June 28, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–16786 Filed 7–3–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

waste material had been placed within two underground silos during previous operations at the facility, which began during the late 1940s. These operations by United States Radium Corporation and later the SLC, involved the manufacturing and distributing of self-illuminating watch and instrument dials, and other uses of a variety of radioactive material until about 1968, when tritium was the only radionuclide

including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requesters areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

In accordance with 10 CFR 2.1205(e),

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic

may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's

incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on June 17, 2002.

Applicant's Address: 500 Grant St., Suite 2226, Pittsburgh, PA 15219.

Merrill Lynch Intermediate Government Bond Fund [File No. 811–4839]

Summary: Applicant seeks an order declaring that it has ceased to be an

Dated: June 28, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–16786 Filed 7–3–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03–005000]

Consideration of Amendment Request for Sorting, Characterizing, and Repackaging Waste at the Safety Light Corporation Facility, Bloomsburg, PA, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for sorting, characterizing, and repackaging waste at the Safety Light Corporation facility, Bloomsburg, Pennsylvania, and opportunity for a hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to By-Product Materials License No. 37–00030–02 (License No. 37–00030–02), issued to Safety Light Corporation (SLC), to authorize the sorting, characterizing, and repackaging of containerized waste located at the SLC facility in South Central Township, about five miles from Bloomsburg, Pennsylvania.

During 1999 and 2000, the licensee removed waste from two underground silos, as part of site remediation of the radiological contamination at the SLC facility, in accordance with the conditions described in License No. 37–00030–02. The waste is stored in two temporary waste storage areas, because additional sorting and characterization of the waste is required. The SLC facility is located adjacent to the Susquehanna River, so these storage areas potentially could flood during severe hurricane-type conditions. On February 6, 2002, the licensee submitted the "Work Plan for SLC, Bloomsburg, PA, Radioactive Waste Repackaging" (Work Plan) for NRC review and approval. The radioactive contamination in this waste, based on previous characterization data, consists primarily of tritium, Sr–90 and Cs–137 that is regulated by NRC, and Ra–226 that is regulated by the Commonwealth of Pennsylvania Department of Environmental (PADEP). There may also be some mixed waste (radioactive and hazardous waste) that is dually regulated by NRC and PADEP. The waste material had been placed within two underground silos during previous operations at the facility, which began during the late 1940s. These operations by United States Radium Corporation and later the SLC, involved the manufacturing and distributing of self-illuminating watch and instrument dials, and other uses of a variety of radioactive material until about 1968, when tritium was the only radionuclide used.

During all waste processing activities, the NRC will require the licensee to maintain effluents and doses within NRC requirements, and as low as reasonably achievable. Prior to approving the Work Plan and supporting information, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. Approval of the Work Plan at the SLC Bloomsburg, PA facility will be documented in an amendment to License No. 37–00030–02. The NRC has coordinated this NRC licensing action with PADEP and the United States Environmental Protection Agency Region III, which have separate jurisdictions related to this waste material and this facility.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(c). A request for hearing must be filed withing thirty (30) days of the date of publication of the **Federal Register** Notice.

The request for the hearing must be filed with the Office of the Secretary either:

1. By delivery to the Document Control Desk or may be delivered to the Commission's Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings & Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requesters areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Safety Light Corporation, 4150–A Old Berwick Road, Bloomsburg, PA 17815, Attention: Larry Harmon, Plant Manager; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the Work Plan and supporting information dated February 6, April 25 and May 28, 2002 is available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD, and from *http://www.nrc.gov/reading-rm.html*.

Dated at King of Prussia, Pennsylvania, this 27th day of June 2002.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Deputy Director, Division of Nuclear Materials Safety, RI.

[FR Doc. 02–16830 Filed 7–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on July 23, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 23, 2002—8:30 a.m.–10:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: June 27, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–16831 Filed 7–3–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25643]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 28, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St. NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Brazos Insurance Funds [File No. 811–9811]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 28, 2002, applicant's shareholders voluntarily redeemed their shares, based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on April 5, 2002, and amended on June 26, 2002.

Applicant's Address: 5949 Sherry Lane, Suite 1600, Dallas, TX 75225.

Dreyfus Institutional Short Term Treasury Fund [File No. 811–7097]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 10, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Date: The application was filed on June 17, 2002.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

The Mallard Fund, Inc. [File No. 811–7861]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 27, 2002, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $5,509 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on June 17, 2002.

Applicant's Address: 500 Grant St., Suite 2226, Pittsburgh, PA 15219.

Merrill Lynch Intermediate Government Bond Fund [File No. 811–4839]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 15, 2000, applicant transferred its assets to Merrill Lynch Short Term U.S. Government Fund, Inc., based on net asset value. Expenses of $104,087 incurred in connection with the reorganization were paid by the surviving fund.

Filing Dates: The application was filed on May 7, 2002, and amended on June 18, 2002.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

AmeriSen Funds [File No. 811–10285]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on May 30, 2002, and amended on June 18, 2002.

Applicant's Address: 14340 Torrey Chase Blvd., Suite 170, Houston, TX 77014.

Merrill Lynch Multi-State Limited Maturity Municipal Series Trust [File No. 811–4264]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 8, 2002, applicant transferred its assets to The Limited Maturity Portfolio of Merrill Lynch Municipal Bond Fund, Inc., based on net asset value. Expenses of approximately $166,531 incurred in connection with the reorganization were paid by the surviving fund.

Filing Date: The application was filed on June 4, 2002.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

SIFE Trust Fund [File No. 811–987]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 25, 2002, applicant transferred its assets to Wells Fargo SIFE Financial Services Fund, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on June 6, 2002.

Applicant's Address: 100 North Wigot Ln., Walnut Creek, CA 94598.

Phillips Capital Investments, Inc. [File No. 811–5245]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2001, applicant made a liquidating

Filing Dates: The applications were filed on April 30, 2002, and amended on May 30, 2002.

Applicants' Address: 800 Nicollet Mall, Minneapolis, MN 55402.

Mercury Target Select Equity Fund, Inc. [File No. 811–10037]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 26,

by 5:30 p.m. on July 23, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

"Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of each Fund. Under the terms of the Advisory Agreement, the Adviser manages the investment of assets of each Fund and may, subject to oversight by the Board, hire one or more subadvisers ("Subadvisers") to provide portfolio management services to each of the

matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly

Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without that agreement, including the compensation to be paid under it, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a

Filing Date: The application was filed on June 6, 2002.

Applicant's Address: 100 North Wiget Ln., Walnut Creek, CA 94598.

Phillips Capital Investments, Inc. [File No. 811–5245]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on May 28, 2002.

Applicant's Address: 18007 Old Preston Court, Dallas, TX 75252.

Questar Funds, Inc. [File No. 811–8655]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant consists of three separate series: MacroTends Fund, Imperial Financial Services Fund and Excalibur Fund (formerly Phoenix Management Fund). By March 13, 2002, all of applicant's shareholders had redeemed their shares based on net asset value. Expenses of $8,690, $8,650 and $8,812 were incurred in connection with the liquidation and were paid, respectively, by each series of applicant.

Filing Date: The application was filed on May 28, 2002.

Applicant's Address: 1500 Forest Ave., Suite 223, Richmond, VA 23229.

SHARCS Trust I [File No. 811–21025]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on May 16, 2002, and amended on June 2, 2002.

Applicant's Address: c/o Salomon Smith Barney Inc., 388 Greenwich St., New York, NY 10013.

American Municipal Term Trust Inc. II [File No. 811–6356]

Minnesota Municipal Term Trust Inc. [File No. 811–6359]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 10, 2002, each applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $12,610 and $12,621, respectively, were incurred in connection with the liquidations and were paid by each applicant.

Filing Dates: The applications were filed on April 30, 2002, and amended on May 30, 2002.

Applicants' Address: 800 Nicollet Mall, Minneapolis, MN 55402.

Mercury Target Select Equity Fund, Inc. [File No. 811–10037]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 26, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $4,500 incurred in connection with the liquidation were paid by Merrill Lynch Investment Managers, parent of applicant's sub-adviser.

Filing Dates: The application was filed on January 30, 2002, and amended on May 30, 2002.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16846 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25642 ; 812–12498]

Vision Group of Funds, *et al.*; Notice of Application June 28, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of the Application: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Vision Group of Funds (the "Trust") and Manufacturers and Traders Trust Company ("M&T").

Filing Dates: The application was filed on April 4, 2001 and amended on June 27, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, c/o C. Grant Anderson, Esq., Federated Services Company, Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust currently offers eighteen series ("Funds"), each of which has its own investment objectives, policies and restrictions. M&T Asset Management (the "Adviser"), a department of M&T, is registered under the Investment Advisers Act of 1940 (the "Advisers Act"), and serves as the investment adviser to the Funds. M&T is a national banking association and is wholly owned by M&T Bank Corporation, a bank holding company.

2. Applicants also request relief with respect to any existing or future registered open-end management investment company or series thereof that (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the adviser/subadviser structure that is described in the application; and (c) complies with the terms and conditions in the application (together with any current or future series of the Trust, the "Funds").

3. The Adviser serves as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust ("Advisory Agreement") that was approved by the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of each Fund. Under the terms of the Advisory Agreement, the Adviser manages the investment of assets of each Fund and may, subject to oversight by the Board, hire one or more subadvisers ("Subadvisers") to provide portfolio management services to each of the Funds pursuant to separate investment advisory agreements ("Subadvisory Agreements"). Each Subadviser is an investment adviser registered under the Advisers Act. Subadvisers are recommended to the Board by the Adviser and selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser's fees are paid by the Adviser out of the management fees received by the Adviser from the respective Fund.[1]

4. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation, and reallocation, of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

5. Applicants request relief to permit the Adviser, subject to the Board's approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief would not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants submit that the requested relief will reduce the Funds' expenses associated with shareholder meetings and proxy solicitations, and enable the Funds to operate more efficiently. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund, as described in the application, will be approved by the vote of a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders before offering shares of that Fund to the public.

2. Each Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to review of the Board, to monitor and evaluate Subadvisers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without that agreement, including the compensation to be paid under it, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the affected Fund with the information about the Subadviser that would be included in a proxy statement. The information will include any changes caused by the addition of the new Subadviser. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to the Funds including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will (a) set each Fund's overall investment strategies; (b) evaluate, select, and recommend Subadvisers to manage all or a part of a Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the Fund's investment objectives, restrictions and policies.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer), any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either

[1] The Trust is the only existing investment company that currently intends to rely on the order. Applicants represent that if the name of any Fund contains the name of a Subadviser that is not an Affiliated Subadviser as defined below, it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16845 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46090; File No. SR–NASD–2002–84]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Plan for the Operation of and Participation in the Nasdaq Last Sale Information Service

June 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend the Plan for the Operation of and Participation in the Nasdaq Last Sale Information Service ("Plan") to reflect changes to the Plan and to the 13th Amendment to the Plan. The text of the proposed rule change is available at Nasdaq and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission originally approved the Plan on a pilot basis on June 26, 1990.[9] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[10]

III. Description and Purpose of the Amendment

The complete text of the Plan, as amended, is attached as Exhibit A. The proposed amendments to the Plan and reflects several changes unanimously adopted by the Committee. The Commission is putting into effect summarily part of the 13th Amendment, granting an exemption under Rule 11Aa3–2(f)[5] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d),[6] and publishing this notice to solicit comments from interested persons on the 13th Amendment generally.

which market may suspend an issue under the Plan.

3. Section III.E. of the Plan, which defines "Market," is amended to reflect that Nasdaq will be participating in the Plan as an independent national securities exchange and that the NASD will continue to participate as a national securities association.

4. Section III.G. of the Plan, which defines "NASD Participant," is added to reflect that the NASD will participate in

13. Section XI.D. is amended to eliminate reference to individual Nasdaq Participants, and also to change a reference from "best bid and offer" to "national best bid and offer."

14. Section XVIII (Operational Issues) is amended to substitute "Participant" for "Exchange Participant" and to substitute "Processor" for "Nasdaq."

15. The 13th Amendment to the Plan also amends Plan Exhibit 1, which governs the distribution of revenue

of the Internal SIP. However, as stated above in Category 1.7, NQDS will not be fully eliminated as a data feed disseminated by the Processor until Nasdaq is registered as an exchange.

3. Section III.K. of the Plan changes the name of the Nasdaq Last Sale Information Service to "UTP Trade Data Feed," but makes no changes to the data elements contained in that data feed. While this change is effective upon launch of the Internal SIP, the Processor

a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16845 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46139; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Partial Summary Effectiveness of Amendment No. 13 to the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, the Pacific Exchange, the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

June 28, 2001.

I. Introduction

Pursuant to Rule 11Aa3–2 [1] and Rule 11Aa3–1 [2] under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"), notice is hereby given that on May 31, 2002, the Cincinnati Stock Exchange Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (hereinafter referred to as "Participants"),[3] as members of the operating committee ("Operating Committee" or "Committee") [4] of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plan. The proposal represents the 13th amendment ("13th Amendment") made to the Plan and reflects several changes unanimously adopted by the Committee. The Commission is putting into effect summarily part of the 13th Amendment, granting an exemption under Rule 11Aa3–2(f) [5] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d),[6] and publishing this notice to solicit comments from interested persons on the 13th Amendment generally.

II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/National Market ("Nasdaq/NM") and Nasdaq SmallCap securities listed on Nasdaq or traded on an exchange pursuant to unlisted trading privileges ("UTP").[7] The Plan provides for the collection from Plan Participants, and the consolidation and dissemination to vendors, subscribers and others, of quotation and transaction information in "eligible securities."[8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer ("BBO"); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.

The Commission originally approved the Plan on a pilot basis on June 26, 1990.[9] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[10]

III. Description and Purpose of the Amendment

The complete text of the Plan, as amended, is attached as Exhibit A. The following is a summary of the proposed changes to the Plan prepared by the Participants. Each category of amendments listed below will have distinct effectiveness dates as noted by each category title and as discussed in Section IV below.

Category 1: Effective Upon Nasdaq's Exchange Registration

1. Section I.A.8. of the Plan has been added to reflect the addition of The Nasdaq Stock Market, Inc. as a new and separate signatory to the Plan.

2. Section III.B. of the Plan, which defines "Eligible Security," is amended to reflect that such securities will be listed on a national securities exchange and to clarify that Eligible Security under the Plan shall not include any security that is an "Eligible Security" within the Consolidated Tape Association Plan. Finally, Section III.B. is amended to reflect that securities will cease to be Eligible Securities based upon a suspension from trading, and to establish a procedure for determining which market may suspend an issue under the Plan.

3. Section III.E. of the Plan, which defines "Market," is amended to reflect that Nasdaq will be participating in the Plan as an independent national securities exchange and that the NASD will continue to participate as a national securities association.

4. Section III.G. of the Plan, which defines "NASD Participant," is added to reflect that the NASD will participate in the Plan as a national securities association separate and apart from Nasdaq.

5. Section III.H. of the Plan, which defines "Transaction Reporting System," is amended to reflect that, due to Nasdaq's registration as a national securities exchange, the governing Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3–1, shall no longer be referred to as the NASD Transaction Reporting Plan. The Plan Participants anticipate further amending this Section of the Plan to clarify the status of the Plan under the Exchange Act.

6. Section III.I. and III.J, regarding Nasdaq Level 2 and Level 3 Services, will be eliminated when Nasdaq registers as a national securities exchange.

7. Section III.N. of the Plan, which defines "OTC Montage Data Feed," is amended to reflect that, as a result of Nasdaq's registration as a national securities exchange, the Processor will no longer disseminate the NQDS Service.

8. Section III.R. of the Plan, which defines "Quotation Information" is amended to reflect that Nasdaq will no longer send individual market participant information to the Processor. It is also amended to clarify that only displayed quotation sizes are included in the definition and that market center identifiers are also included.

9. Section VIII.A. (Quotation Information) is amended to reflect that as an exchange, Nasdaq will submit a Best Bid and Offer in compliance with the SEC Quote Rule.

10. Section VIII.C. is amended to reflect that Nasdaq and the NASD will both be participating in the Plan as separate and independent entities.

11. Section IX. (Market Access) is amended to reflect that Nasdaq will no longer participate in the Plan as a national securities association.

12. Section X. (Regulatory Halts) is amended to reflect that the Listing Market, rather than the Primary Market, shall have authority to call a Regulatory Halt, and a definition of Listing Market is established.

13. Section XI.D. is amended to eliminate reference to individual Nasdaq Participants, and also to change a reference from "best bid and offer" to "national best bid and offer."

14. Section XVIII (Operational Issues) is amended to substitute "Participant" for "Exchange Participant" and to substitute "Processor" for "Nasdaq."

15. The 13th Amendment to the Plan also amends Plan Exhibit 1, which governs the distribution of revenue attributable to the sale of market data collected pursuant to the Plan. Specifically, Paragraph 3 of Plan Exhibit 1 is amended to reflect the change in definition of the UTP Quote, UTP Trade, and OTC Montage Data Feeds contained in Sections III.I., III.J., and III.N. of the Plan. Paragraph 3 of Plan Exhibit 1 is also amended to change certain aspects of the allocation of Securities Information Processor ("SIP" or "Processor") costs attributable to collecting, consolidating, validating, generating, and disseminating the Data Feeds. Finally, Paragraph 3 is amended to limit the applicability of the definition of "quote engine" and "trade engine" to the period when Nasdaq serves as the Processor for the Plan. Paragraph 4 of Plan Exhibit 1 is amended to eliminate reference to computer-to-computer interfaces.

Category 2: Effective Upon Launch of the Internal SIP [11]

1. Section III.I. of the Plan, which defines "UTP Quote Data Feed," is amended to reflect that the Processor will replace the Level 1 Service as it currently exists. In its place, the Processor will disseminate a data feed containing the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current Level 1 service for a three-month parallel period ("Legacy SIP") to enable market data vendors to have a smooth transition to the new feed.

2. Section III.N. of the Plan defines the "OTC Montage Data Feed," which will be launched as a new data feed for the dissemination of NASD ADF Participant quotations with the launch of the Internal SIP. However, as stated above in Category 1.7, NQDS will not be fully eliminated as a data feed disseminated by the Processor until Nasdaq is registered as an exchange.

3. Section III.K. of the Plan changes the name of the Nasdaq Last Sale Information Service to "UTP Trade Data Feed," but makes no changes to the data elements contained in that data feed. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current Nasdaq Last Sale Information Service for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed.

4. Section III.R. of the Plan, which defines "Quotation Information" is amended to reflect that the NASD ADF will send individual market participant information to the Processor. It is also amended to clarify that only displayed quotation sizes are included in the definition and that market center identifiers are also included.

5. Section VI.B. (Collection and Consolidation of Information) has been amended to clarify the devices available for sending information to the Processor and the data feeds which the Processor shall disseminate, for as long as Nasdaq remains the Processor. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current data feeds for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed. In addition, the Processor will continue to disseminate NQDS until Nasdaq registers as an exchange.

6. Section VI.C. (Dissemination of Information) has been amended to identify the data feeds that the Processor shall disseminate. While this change is effective upon launch of the Internal SIP, the Processor will continue to disseminate the current data feeds for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed. In addition, the Processor will continue to disseminate NQDS until Nasdaq registers as an exchange.

7. Section VI.C.1. (Best Bid and Offer) is amended to change the method of calculating the national best bid and offer from price/time/size to price/size/time and to establish a precise methodology for calculation.

8. Section VI.C.3. is renamed "Quotation Data Stream," and amended to reflect the change in definition of the UTP Quote Data Feed contained in Section III.I. of the Plan.

9. Section VI.C.4. (Transaction Reports) is amended to reflect the change in name of the UTP Trade Data Feed contained in Section III.K. of the Plan.

10. Section XI (Hours of Operation) has been amended to change the reporting procedures for Participants that execute transactions in Eligible Securities outside of the normal trading hours of 9:30 a.m. to 4 p.m. EST.

Category 3: Effective Upon End of Parallel Period—Elimination of the

IV. Date of Effectiveness of the Proposed Amendment

The Commission has determined, pursuant to Rule 11Aa3–2(c)(4) under the Act,[12] that the amendments detailed above in Category 2, which generally cover the creation of new data feeds associated with the launch of the Internal SIP, will be effective summarily upon publication of this notice of amendment in the **Federal Register** on a temporary basis not to exceed 120

Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Internal SIP in a manner different than specified in Section VI.C.1. of the Plan.

To relieve this inherent conflict among the SuperMontage approval order,[17] Rule 11Aa3–2,[18] and the Plan, the Commission has determined to grant the NASD an exemption under Rule 11Aa3–2(f)[19] from compliance with

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Amendment No. 13—Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis

collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

A. *Current* means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the

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[1] 17 CFR 240.11Aa3–2.

[2] 17 CFR 240.11Aa3–1.

[3] The CSE was elected chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq UTP Plan" or "Plan") by the Participants.

[4] Among other things, the 13th Amendment shall add the Nasdaq Stock Market, Inc. ("Nasdaq") as a Participant. The Committee is made up of all the Participants.

[5] 17 CFR 240.11Aa3–2(f).

[6] 17 CFR 240.11Aa3–2(d).

[7] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits UTP under certain circumstances. For example, Section 12(f) of the Act, among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note .

[8] Pursuant to the 13th Amendment, the Plan defines "Eligible Securities" as any Nasdaq/NM or Nasdaq SmallCap listed security, as defined in Nasdaq Rule 4200: (i) As to which UTP have been granted to a national securities exchange pursuant to Section 12(f) of the Act; or (ii) which also is listed on a national securities exchange other than Nasdaq. Moreover, the definition states that "Eligible Securities" shall not include any security that is defined as an "Eligible Security" within Section VII of the Consolidated Tape Association Plan.

[9] *See* Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

[10] *See* Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36366 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

[11] In November of 2001, Nasdaq began implementing the "Internal SIP" project. The Internal SIP is a separate technology infrastructure within Nasdaq that will perform the functions of the SIP for Nasdaq-listed securities. When the Internal SIP is in place, Nasdaq will be able to separate its functions as a stock market from its functions as a SIP for the Plan.

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Feed contained in Section III.K. of the Plan.

10. Section XI (Hours of Operation) has been amended to change the reporting procedures for Participants that execute transactions in Eligible Securities outside of the normal trading hours of 9:30 a.m. to 4 p.m. EST.

Category 3: Effective Upon End of Parallel Period—Elimination of the Legacy SIP

1. Section VI.C.1. is amended to reflect that the Processor shall no longer carry quotation information from one trading day to the next, and that the Processor shall not calculate the best bid and offer for any individual Participant, including the NASD.

2. Section VI.C.1. is also amended to reflect that the Processor shall disseminate an internally locked or crossed quotation submitted by a single Participant.

3. Section XVIII.D.3, regarding Price Checks, is eliminated to reflect the Operating Committee's agreement that the Processor should no longer perform these functions.

4. Plan Exhibit 1, Paragraph 3(d)(5) is eliminated to reflect that MarketWatch costs are no longer eligible Processor Operating Costs, contingent upon the elimination of the Processor's ability to perform price checks on Participant's trade reports.

Category 4: Timing Not An Issue

1. Section III.S. of the Plan, which defines "Regulatory Halt," is amended to include halts that are called for regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue.

2. Section IV.A. (Operating Committee: Composition) has been amended to permit entities that are actively pursuing registration as a national securities exchange to participate in Operating Committee meetings in limited capacities.

3. Section IV.C. (Operating Committee: Voting) has been amended to eliminate references to events and contingencies that occurred when the Plan was first adopted. It also is clarified to reflect the Participants' agreement that neither the Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems.

4. Section IV.D. (Operating Committee: Meetings) will permit the Operating Committee to waive the advance notice requirement contained therein.

5. Section IV.E. has been added to establish an Advisory Committee and to define its composition and authority.

6. Section V.A. (Selection and Evaluation of the Processor: Generally) has been amended to eliminate references to events and contingencies that occurred when the Plan was first adopted.

7. Section VI.C. is amended to eliminate references to agreements between the NASD and certain foreign exchanges.

8. Section VI.D. (Immediate Hard Copy Confirmations) is eliminated and the remaining subsections of Section VI. are re-lettered.

9. Section VIII.B. (Transaction Reports) is amended to clarify that this Section applies only to transactions between Plan Participants pursuant to the Plan, and to eliminate reference to shared computer-to-computer interfaces.

10. Section X. is amended to include halts that are called for regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue and to state that during a halt the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

11. Section XI.C. is amended to reflect that late trades can be reported between the hours of 8 a.m. and 6:30 p.m. on the same trading day that the transaction occurred.

12. Section XI.E. governing changes to operating hours, is eliminated.

13. Section XIII (Undertakings by NASD) is eliminated, and subsequent sections re-numbered.

14. Section XXI (Depth of Book Display) is added to reflect the Operating Committee's determination that the entity that succeeds Nasdaq as the Processor, upon certain specific conditions being met through a further Plan amendment should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations. Section XXI states that implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues.

15. Within the body of the 13th Amendment, there are numerous "house-keeping" corrections, including punctuation and renumbering changes. These changes are reflected in Exhibit A hereto.

IV. Date of Effectiveness of the Proposed Amendment

The Commission has determined, pursuant to Rule 11Aa3–2(c)(4) under the Act,[12] that the amendments detailed above in Category 2, which generally cover the creation of new data feeds associated with the launch of the Internal SIP, will be effective summarily upon publication of this notice of amendment in the **Federal Register** on a temporary basis not to exceed 120 days. The Commission believes that it is appropriate to put into effect summarily the Category 2 amendments because they deal with the creation of data feeds associated with the Internal SIP and should remove impediments to, and, perfect the mechanism of, a national market system. By granting temporary summary effectiveness, the July 1, 2002 target launch date for the new Internal SIP data feeds may be met.

Moreover, the Commission approved Nasdaq's Order Display Facility, Order Collector Facility, and Trading Platform (collectively, "SuperMontage"),[13] contingent upon the NASD offering a quote and trade reporting alternative thereto, subsequently named the Alternative Display Facility ("ADF"). In addition, the SuperMontage approval order required, as a condition for extension of the Plan, that the Participants develop an alternative SIP for all Nasdaq securities to provide an alternative to participation in SuperMontage.[14]

The result of these two contingencies is that, with concurrent operation of SuperMontage and the ADF, Nasdaq and the NASD need to submit distinct BBOs to the Internal SIP—one representing the SuperMontage execution facility, and the other representing Participants outside of SuperMontage. While both Nasdaq and the NASD operate under the umbrella of a single Plan Participant, the submission of two distinct BBOs could be deemed inconsistent with Section VI.C.1 of the Plan.[15] Pursuant to the 13th Amendment of the Plan and Rule 11Aa3–2(a),[16] Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Internal SIP in a manner different than specified in Section VI.C.1. of the Plan.

To relieve this inherent conflict among the SuperMontage approval order,[17] Rule 11Aa3–2,[18] and the Plan, the Commission has determined to grant the NASD an exemption under Rule 11Aa3–2(f)[19] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d)[20] until such time as Nasdaq is registered as a national securities exchange.

V. Solicitation of Comments

The Commission seeks general comments on the 13th Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. The 13th Amendment is being published as Exhibit A to this proposal. Copies of the amendment will also be available for inspection and copying at the office of the Secretary of the Committee, currently located at the CSE, One Financial Place, 440 South LaSalle St., Suite 2600, Chicago, IL 60126. All submissions should refer to File No S7–24–89 and be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Amendment No. 13—Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges of an Unlisted Trading Privilege Basis

The undersigned registered national securities association and national securities exchanges (collectively referred to as the "Participants"), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan ("Nasdaq UTP Plan" or "Plan").

I. Participants.

The Participants include the following:

A. Participants

1. American Stock Exchange, LLC, 86 Trinity Place, New York, New York 10006
2. Boston Stock Exchange, 100 Franklin Street, Boston, Massachusetts 02110
3. Chicago Stock Exchange, 440 South LaSalle Street, Chicago, Illinois 60605
4. Cincinnati Stock Exchange, 440 South LaSalle Street, 26th Floor, Chicago, Illinois 60605
5. National Association of Securities, Dealers, Inc., 1735 K Street, NW, Washington, DC 20006
6. Pacific Exchange, Inc., 301 Pine Street, San Francisco, CA 94104
7. Philadelphia Stock Exchange, 1900 Market Street, Philadelphia, Pennsylvania 19103
8. Nasdaq Stock Market, Inc., 1 Liberty Plaza, New York, New York 10006

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

A. *Current* means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. *Eligible Security* means any Nasdaq National Market or Nasdaq SmallCap listed security, as defined in Nasdaq Rule 4200: (i) As to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Exchange Act; or (ii) which also is listed on a national securities exchange other than Nasdaq. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an "Eligible Security" within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) The security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such security is listed provided, however, that if such security is listed on more than one exchange, then such determination shall be made by the exchange on which the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. *Commission* and *SEC* shall mean the U.S. Securities and Exchange Commission.

D. *Exchange Act* means the Securities Exchange Act of 1934.

E. *Market* shall mean (i) when used with respect to Quotation Information, the NASD in the case of an NASD Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

[12] 17 CFR 240.11Aa3–2(c)(4).

[13] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[14] *Id.*

[15] Section VI.C.1. of the Plan, as approved by the Operating Committee in the 13th Amendment, states that "[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD * * *."

[16] 17 CFR 240.11Aa3–2(a).

[17] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[18] 17 CFR 240.11Aa3–2.

[19] 17 CFR 240.11Aa3–2(f).

[20] 17 CFR 240.11Aa3–2(d).

[21] 17 CFR 200.30–3(a)(27).

F. *NASD* means the National Association of Securities Dealers, Inc.

G. *NASD Participant* means an NASD member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of the NASD pursuant to applicable NASD rules.

H. *Transaction Reporting System* means the System provided for in the Transaction Reporting Plan filed with the SEC pursuant to Rule 11Aa3–1 under the Exchange Act.

I. *Nasdaq* means The Nasdaq Stock Market, Inc.

J. *Nasdaq Participant* means a Nasdaq member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of Nasdaq pursuant to applicable Nasdaq rules.

K. *Participant* means a Participant in the Plan.

L. *Plan Processor* means the single entity selected by the Operating Committee pursuant to Section V of the Plan to perform the processing functions described herein.

M. *Quotation Information* means all bids, offers, quotation sizes and related information entered into the Nasdaq System by a Nasdaq Participant or into the facilities of any other Market by any other Participant, including the identity of the Participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

S. *Regulatory Halt* means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue.

T. *Transaction Report* means a report reflecting a transaction in an Eligible Security that is required to be disseminated pursuant to this Plan.

U. *Transaction Information* means the last sale information for Eligible Securities required to be collected by the Processor and made available pursuant to this Plan.

V. *Tape* means the Nasdaq Level 1 service.

IV. Rights of Participants

Nothing in this Plan shall be deemed to affect the rights of any Participant to seek redress from the SEC pursuant to Rule 11Aa3–2 under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization ("Organization") which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. Amendments to contracts between the Processor and Vendors, Subscribers and Users;

c. Changes in the Processor;

d. Changes in the Fee Schedule;

e. Changes in the Operating Committee Voting Procedures;

f. Changes in the Operating Committee Meeting Procedures;

g. Changes in the Operating Committee Composition;

h. Changes in the Operating Committee Chairman;

i. Changes in the Operating Committee Meeting Notice Requirements;

j. Changes in the Operating Committee Meeting Quorum Requirements;

k. Changes in the Operating Committee Meeting Minutes Requirements;

l. Changes in the Operating Committee Meeting Agenda Requirements;

m. Changes in the Operating Committee Meeting Attendance Requirements;

n. Changes in the Operating Committee Meeting Voting Requirements;

o. Changes in the Operating Committee Meeting Proxy Requirements;

p. Changes in the Operating Committee Meeting Conduct Requirements;

q. Changes in the Operating Committee Meeting Adjournment Requirements;

r. Changes in the Operating Committee Meeting Reconvening Requirements;

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F. *NASD* means the National Association of Securities Dealers, Inc.

G. *NASD Participant* means an NASD member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of the NASD pursuant to applicable NASD rules.

H. *Transaction Reporting System* means the System provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule11Aa3–1, governing the reporting of transactions in Nasdaq securities.

I. *UTP Quote Data Feed* means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities.

J. *Nasdaq System* means the automated quotation system operated by Nasdaq.

K. *UTP Trade Data Feed* means the service that provides Vendors and Subscribers with Transaction Reports.

L. *Nasdaq Security* or *Nasdaq-listed Security* means any security listed on the Nasdaq National Market or Nasdaq SmallCap Market.

M. *News Service* means a person that receives Transaction Reports or Quotation Information provided by the Systems or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

N. *OTC Montage Data Feed* means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each NASD Participant.

O. *Participant* means a registered national securities exchange or national securities association that is a signatory to this Plan.

P. *Plan* means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

Q. *Processor* means the entity selected by the Participants to perform the processing functions set forth in the Plan.

R. *Quotation Information* means all bids, offers, displayed quotation sizes, market center identifiers and, in the case of NASD, the NASD market participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

S. *Regulatory Halt* means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue.

T. *Subscriber* means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

U. *Transaction Reports* means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

V. *Upon Effectiveness of the Plan* means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.

W. *Vendor* means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee ("Operating Committee"), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 11Aa3–2 under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization ("Organization") which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants and their representatives to participate on the Operating Committee in any manner other than as an advisor or observer, or in any Executive Session of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;

2. Periodically evaluating the Processor;

3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;

5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and

6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. Amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;

c. Replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;

d. Reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and

e. Except as provided under Section IV(C)(3) hereof, requests for system changes; and

f. All other matters not specifically addressed by the Plan.

2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by Section IV(C)(1)(e) hereof.

b. Interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. Interpretive matters arising under Exchange Act Rules 11Aa3–1 and 11Acl–1; and

d. Denials of access (other than for breach of contract, which shall be handled by the Processor),

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace or, in the case of the NASD, from NASD Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a 2/3rd majority vote of all Participants, a quorum of at least 2/3rd of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee. Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

A. Advisory Committee

1. Composition

a. Each Plan Participant may designate three representatives to participate in the Advisory Committee. The representatives shall each be an employee of a member of that Participant, a professor or other academic involved in the scholarly study of the securities industry, or an expert in one or more areas of the securities industry.

b. Each representative shall serve a one-year term on the Advisory Committee.

2. Authority

The Advisory Committee shall have the opportunity to:

a. Meet twice yearly, each meeting to occur one day prior to a meeting of the Operating Committee.

b. Discuss any matter related to the operation of the Plan.

c. Present written comments or inquiries to the Operating Committee regarding matters related to the operation of the Plan.

d. Respond to written inquiries from the Operating Committee seeking comment from the Advisory Committee on matters related to the operation of the Plan.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply

the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its

majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

a. Draft the Operating Committee's request for proposal for bids on a new processor;

b. Assist the Operating Committee in evaluating bids for the new processor; and

c. Otherwise provide assistance and guidance to the Operating Committee in

manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so

lines (*i.e.*, a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Eligible Securities

a. Number of Eligible Securities—If the Commission by order expands the number of Eligible Securities beyond 1,000, the number of Eligible Securities that Participants may trade shall be

be prohibited from the practice of "auto-quoting." "Auto-quoting" means the practice of tracking, by automated means, the changes to the best bid or best ask quotation and responding by generating another quote change to keep that Participant away from the best bid or ask quotation, but for purposes of this Plan, shall not include:

(i) An update that is in response to an execution in the security by that Participant;

(i) On a monthly basis, each Participant shall provide the Processor with a good faith estimate of the Participant's previous month's daily average number of aggregate quote updates to permit the Processor to determine compliance with the auto-quoting limitation referenced in Section VI.C.2.(b) of the Plan.

(ii) If the Processor determines, from the Participant's data or otherwise, that the Participant has not complied with

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the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right To Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the "Selection Procedures"). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a two-thirds majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

a. Draft the Operating Committee's request for proposal for bids on a new processor;

b. Assist the Operating Committee in evaluating bids for the new processor; and

c. Otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. The minimum technical and operational requirements to be fulfilled by the Processor;

3. The criteria to be considered in selecting the Processor; and

4. The entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including the NASD.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output

lines (*i.e.*, a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Eligible Securities

a. Number of Eligible Securities—If the Commission by order expands the number of Eligible Securities beyond 1,000, the number of Eligible Securities that Participants may trade shall be phased in (added) according to the schedule set out below:

(i) At the end of the first calendar quarter following the Commission's order expanding the number of Eligible Securities beyond 1,000 but in no case before September 30, 2001, Participants may commence trading 500 additional securities;

(ii) At the end of each of the four calendar quarters following the date established under provision VI.C(2)(a)(i) of the Plan, Participants may commence trading an additional 500 securities, and at the end of the fifth calendar quarter following the date established under provision VI.C(2)(a)(i) of the Plan, Participants shall be permitted to trade all Eligible Securities.

(iii) In no case shall the number of Eligible Securities exceed the number of securities that the Commission deems are eligible for trading pursuant to this Plan.

(iv) After each of the aforementioned phase in periods (*i.e.*, calendar quarters), the Processor shall evaluate its performance to determine whether it is prudent, in light of system capacity and any other operational factors, to continue to add additional securities pursuant to the phase in schedule. If the Processor determines, in light of system capacity and any other operational factors, that it is not prudent to continue to expand the number of Eligible Securities, the Processor upon notice to the Participants immediately may suspend the phase-in schedule and delay the expansion of the number of Eligible Securities that may be traded under the Plan. The Processor shall commence adding securities pursuant to a revised phase-in schedule, when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors.

(v) This provision shall not apply to The Nasdaq Stock Market, Inc., or Nasdaq market participants acting in such capacity, nor shall it apply to any Participant that does not engage in auto-quoting, as described in paragraph VI.C.(2)(b) below.

b. Limitation on Auto-Quoting—Except as provided in sub-paragraph VI.C(2)(c) of this Plan, Participants shall be prohibited from the practice of "auto-quoting." "Auto-quoting" means the practice of tracking, by automated means, the changes to the best bid or best ask quotation and responding by generating another quote change to keep that Participant away from the best bid or ask quotation, but for purposes of this Plan, shall not include:

(i) An update that is in response to an execution in the security by that Participant;

(ii) An update that requires a physical entry;

(iii) An update that is to reflect the receipt, execution, or cancellation of a customer limit order; or

(iv) The practice of automatically generating quote changes at a rate of less than 35% of all price changes to the national best bid or ask quotation. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

c. Applicability of Auto-Quoting Limitation—The Limitation on Auto-Quoting contained in subparagraph VI.C(2)(b) of this Plan shall only apply if the Processor deems it necessary to maintain adequate capacity for the normal and efficient operation of the Processor and the Processor provides at least 30 calendar days notice to the Participants and the basis thereof of such determination. The Processor shall lift the limitation on auto-quoting when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors. Additionally, the Limitation on Auto-Quoting set forth in subparagraph VI.C(2)(b) of this Plan will not apply to a Participant whose aggregated quoting activity in eligible Nasdaq securities does not exceed 1% of the total quotation traffic across all Nasdaq securities by all Nasdaq market participants and Exchange Participants. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

d. Obligations of Participants Regarding Capacity—Each Participant shall exercise due diligence to promote quotation generation practices that mitigate quotation traffic so as to ensure prudential excess capacity within the Processor. The Operating Committee shall periodically review the performance of Participants and take such action as necessary to maintain prudential excess capacity.

e. Procedures for Ensuring Acceptable Quote Generation Practices—The following procedures shall apply if, in accordance with Section VI.C.2(c) of the Plan, the Processor determines that a capacity concern exists.

(i) On a monthly basis, each Participant shall provide the Processor with a good faith estimate of the Participant's previous month's daily average number of aggregate quote updates to permit the Processor to determine compliance with the auto-quoting limitation referenced in Section VI.C.2.(b) of the Plan.

(ii) If the Processor determines, from the Participant's data or otherwise, that the Participant has not complied with the limitations of Section VI.C.2.(b), the Processor shall give the Participant written notice of such condition. The Participant shall have 30 calendar days after receipt of the written notice to remedy the condition.

(iii) If, after the aforementioned 30-day period has expired, the condition has not been remedied to the reasonable satisfaction of the Processor, then the Processor shall submit to the Operating Committee a written request for relief together with supporting documentation evidencing the alleged condition (i.e., failure to comply with the limitations of Section VI.C.2.(b)) and quantifying the impact of the violation on overall capacity of the Processor. The Processor's request for relief shall be limited to such remedial action (including but not limited to the termination of service to the subject Participant) as is necessary to modify the subject Participant's quote generation practices on a prospective basis, for such period as is necessary to resolve the condition that gave rise to the Processor's request for relief. The Participant shall have 15 calendar days to respond in writing to the Processor's request for relief.

(iv) The Operating Committee, following written notice to the Participant and the Processor, shall conduct a hearing within five (5) business days after expiration of the 15-day response period to determine whether to grant or deny the Processor's claim for remedial action. At the hearing, the Operating Committee may consider, among other information, the request of the Processor, the response (if any) of the Participant and any other evidence (written or oral) that is presented at the hearing. At the conclusion of the hearing, the Operating Committee shall grant or deny the Processor's request. An affirmative vote of two-thirds of the Operating Committee members entitled to vote (excluding the subject Participant) shall be required for any decision of the Operating Committee. The decision of the Operating Committee shall be final and therefore reviewable by the Commission; *provided, however*, that any decision of the Operating

Committee shall not become effective until five business days after the date of the decision.

f. Limitation on Applicability of Rule—The phase-in schedule contained in VI.C(2)(a) and the Limitation on Auto-Quoting contained in VI.C(2)(c) shall not apply:

(i) To any Participant upon the designation and the operation of a new Processor; and

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as "late" by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of

members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

A. Each Participant shall permit each

Halt (as well as notice of the lifting of a regulatory halt) through the UTP Quote Data Feed. This notice shall serve as official notice of a regulatory halt for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's

between 9:30 a.m. and 4 p.m. Eastern Time ("ET") on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and

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Committee shall not become effective until five business days after the date of the decision.

f. Limitation on Applicability of Rule—The phase-in schedule contained in VI.C(2)(a) and the Limitation on Auto-Quoting contained in VI.C(2)(c) shall not apply:

(i) To any Participant upon the designation and the operation of a new Processor; and

(ii) To a Participant for the number of securities that the Participant quoted as of May 1, 2001; provided, however the exemption contained herein shall expire a year from the end-date of the phase-in schedule contained in VI.C(2)(a).

3. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates. Quotation Information from individual NASD Participants will not be disseminated on the UTP Quote Data Feed. The Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all NASD Participants from which quotations emanate.

4. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

D. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a "closing price" for each Eligible Security. Such "closing price" shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure website.

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The priced bid and offer, together with size;
3. The NASD Participant along with that NASD Participant's market participant identification; or Participant from which the quotation emanates;
4. Identification of quotations that are not firm; and
5. Through appropriate codes and messages, withdrawals and similar matters.

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The number of shares in the transaction;
3. The price at which the shares were purchased or sold;
4. The buy/sell/cross indicator;
5. The Market of execution; and,
6. Through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as "late" by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;
2. Transactions made in reliance on Section 4(2) of the Securities Act of 1933;
3. Transactions in which the buyer and the seller have agreed to trade at a price unrelated to the Current Market for the security, e.g., to enable the seller to make a gift;
4. Odd-lot transactions;
5. The acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;
6. Purchases of securities pursuant to a tender offer; and
7. Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the Current Market.

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the Participant marketplaces:

Code	Participant
A	American Stock Exchange
B	Boston Stock Exchange
C	Cincinnati Stock Exchange
M	Chicago Stock Exchange
D	NASD
Q	Nasdaq
P	Pacific Exchange
X	Philadelphia Stock Exchange

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

A. Each Participant shall permit each NASD market participant, acting in its capacity as such, direct telephone access to the specialist, trading post, market maker and supervisory center in each Eligible Security in which such NASD market participant is registered as a market maker or electronic communications network/alternative trading system with NASD. Such access shall include appropriate procedures or requirements by each Participant or employee to assure the timely response to communications received through telephonic access. No Participant shall permit the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Securities effected with NASD market participants which are communicated to the floor by telephone pursuant to the provisions of this Plan. A Participant shall be free to charge for other types of access to its floor or facilities.

B. The NASD shall assure that each Participant, and its members shall have direct telephone access to the trading desk of each NASD market participant in each Eligible Security in which the Participant displays quotations, and to the NASD Supervisory Center. Such access shall include appropriate procedures or requirements to assure the timely response of each NASD market participant to communications received through telephone access. No NASD market participant shall impose any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Securities effected with a member of a Participant which are communicated by telephone pursuant to the provisions of this Plan.

X. Regulatory Halts

A. Whenever, in the exercise of its regulatory functions, the Listing Market for an Eligible Security determines that a Regulatory Halt is appropriate, all other Participants shall also halt or suspend trading in that security until notification that the halt or suspension is no longer in effect. The Listing Market shall immediately notify the Processor of such Regulatory Halt as well as notice of the lifting of a Regulatory Halt. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a regulatory halt) through the UTP Quote Data Feed. This notice shall serve as official notice of a regulatory halt for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information and monitor for transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Listing Market determines that an adequate publication or dissemination of information has occurred or the regulatory problem has been addressed so as to permit the termination of the Regulatory Halt then in effect, the Listing Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Listing Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance of orders or other market-related problems involving such security. During a regulatory halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this Section X, "Listing Market" for an Eligible Security means the Participant's Market on which the Eligible Security is listed. If an Eligible Security is dually listed, Listing Market shall mean the Participant's Market on which the Eligible Security is listed that also has the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The Listing Market for dually-listed Eligible Securities shall be determined at the beginning of each calendar quarter.

XI. Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4 p.m. Eastern Time ("ET") on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4 p.m., ET, shall be reported as follows:

(i) Transactions in Eligible Securities executed between 8 a.m. and 9:29:59 a.m. ET and between 4:00:01 and 6:30 p.m. ET, shall be designated as ".T" trades to denote their execution outside normal market hours;

(ii) Transactions in Eligible Securities executed after 6:30 p.m. and before 12 a.m. (midnight) shall be reported to the Processor between the hours of 8 a.m. and 6:30 p.m. ET on the next business day (T+1), and shall be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) Transactions in Eligible Securities executed between 12 a.m. (midnight) and 8 a.m. ET shall be transmitted to the Processor between 8 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ".T" trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) Transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 8 a.m. and 6:30 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities between 8 a.m. and 9:30 a.m. ET, and after 4 p.m. ET, when any Participant or NASD Participant is open for trading, until 6:30 p.m. ET (the "Additional Period"); provided, however, that the national best bid and offer quotation will not be disseminated before 9:30 a.m. or after 6:30 p.m. ET. Participants that enter Quotation Information or Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions [illegible] and the Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such

for which it may be responsible pursuant to Section XIII hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to Plan

The Plan may be modified from time

immediate processing in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.

In witness whereof, this Plan has been executed as of the ____ day of , 2002, by each of the Signatories hereto.

[illegible] Stock Exchange, Inc.

consolidating, and disseminating National Best Bid and Offer data, exchange best bid and offer data, and consolidated last sale data.

Vendors for the year (trade/volume average). For any given year, a Participant's percentage of total trades shall be calculated by dividing the total number of trades that that Participant reports to the Processor as the selling party for that year by the total number of trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year. A Participant's total share volume shall be calculated

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XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

XIII. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Processor system made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation and Revenue Sharing

The provision governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan.

C. Maintenance of Financial Records

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) A statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

XIV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified Participant.

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIII hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to Plan

The Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the SEC.

XVII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of Vendors, News Services, Subscribers and other persons contracting with Participants in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

XVIII. Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within their own system prior to transmitting this data to the Processor.

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor's existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject non-conforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (*i.e.*, those that pass the validation check), the information shall be retained for

immediate processing in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

XXI. Depth of Book Display

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocation those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information ("core data"), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

(1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor allocating in whatever manner those Participants might agree; and

(2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data, exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.

In witness whereof, this Plan has been executed as of the ____ day of , 2002, by each of the Signatories hereto.

American Stock Exchange, Inc.

By: _____

Boston Stock Exchange, Inc.

By: _____

Cincinnati Stock Exchange, Inc.

By: _____

Pacific Exchange, Inc.

By: _____

Nasdaq Stock Market, Inc

By: _____

Chicago Stock Exchange, Inc.

By _____

National Association of Securities Dealers, Inc.

By _____

Philadelphia Stock Exchange

By: _____

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year to be determined by multiplying (i) that Participant's percentage of total volume in Nasdaq securities reported to the Processor and disseminated to Vendors for that calendar year by (ii) the total distributable net operating income (as defined below) for that calendar year, provided, however, that for the implementation year (as defined in Paragraph 4 below), a Participant's payment shall be multiplied by the number of months during the implementation year the interface was in operation divided by twelve. In the event that total distributable net operating income is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants.

2. A Participant's percentage of total volume in Nasdaq securities will be calculated by taking the average of (i) the Participant's percentage of total trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year and (ii) the Participant's percentage of total share volume in Nasdaq securities reported to the Processor and disseminated to Vendors for the year (trade/volume average). For any given year, a Participant's percentage of total trades shall be calculated by dividing the total number of trades that that Participant reports to the Processor as the selling party for that year by the total number of trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year. A Participant's total share volume shall be calculated by multiplying the total number of trades in Nasdaq securities in that year that that Participant reports to the Processor as the selling party multiplied by the number of shares for each such trade. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31.

3. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed, including revenues from the dissemination of information of Eligible Securities to foreign marketplaces (collectively, "the Data Feeds"), and subtracting from such revenues the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include, but are not limited to, the following:

a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:

1. Cost of collecting Participant quotes into the Processor's quote engine;

2. Cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;

3. Cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

b. The costs directly attributable to creating the UTP Quote Data Feed, including:

1. The costs of collecting each Participant's best bid, best offer, and aggregate volume into the Processor's quote engine;

2. Cost of calculating the national best bid and offer price within the Processor's quote engine;

3. Cost of creating the UTP Quote Data Feed message within the Processor's quote engine;

4. Cost of the Processor's communication management subsystem that distributes the UTP Quote Data Feed to the marker data vendors' networks for further distribution.

c. The costs directly attributable to creating the UTP Trade Data Feed, including:

1. The costs of collecting each Participant's last sale and volume amount into the Processor's quote engine;

2. Cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

3. Cost of utilizing the Processor's

(implementation date) until December 31 of the implementation year, Nasdaq shall pay the Participant a pro rata amount of its payment or bill the Participant for a pro rata amount of its losses for the implementation year (as calculated in Paragraph 1 above). This calculation and resultant payment (or bill) will be made (or due) within ninety (90) days after the twelfth month following the implementation date.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46131; File No. SR–Amex–2002–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Proposing To Designate the New

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed this proposed rule change in connection with its proposal to trade Nasdaq securities on an unlisted basis ("Nasdaq UTP Program").[4] This proposed rule change would designate Harry's as a "separate

for purposes of stocks and related options.[6]

In 2001, the Exchange opened its new trading facility, Harry's, located in a separate area on the ground floor of the Exchange. Harry's is on a separate level of the Amex and may only be accessed from the Exchange's other trading locations by an escalator. Accordingly, Harry's is physically separate from the other trading areas at the Exchange, and therefore, is not visible from the

Exchange believes that the Commission should approve the designation of Harry's as a "separate trading area."

2. Statutory Basis

The Exchange believes the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

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c. The costs directly attributable to creating the UTP Trade Data Feed, including:

1. The costs of collecting each Participant's last sale and volume amount into the Processor's quote engine;

2. Cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

3. Cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors.

4. Cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.

d. The additional costs that are shared across all Data Feeds, including:

1. Telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;

2. Telecommunications Operations costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. Overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, so long as Nasdaq is the Processor, the following definitions shall apply:

1. "Quote engine" shall mean the Nasdaq's UNISYS or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. "Trade engine" shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

4. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue for the year in which the interface is implemented (implementation year).

5. From the date a Participant is eligible to receive revenue (implementation date) until December 31 of the implementation year, Nasdaq shall pay the Participant a pro rata amount of its payment or bill the Participant for a pro rata amount of its losses for the implementation year (as calculated in Paragraph 1 above). This calculation and resultant payment (or bill) will be made (or due) within ninety (90) days after the twelfth month following the implementation date.

6. For the calendar year subsequent to the implementation year, and continuing thereafter, the calculation of the Participant's annual payment or loss will be performed and the payment made or bill delivered by March 31 of the following year. Estimated quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Interest shall not accrue during the period of up to 45 days between the end of each calendar quarter and the date on which an estimated quarterly payment or billing is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants an itemized statement setting forth the basis upon which net operating income was calculated, including an itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs shall be reconciled annually based solely on the Processor's audited annual financial information. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

[FR Doc. 02–16769 Filed 7–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46131; File No. SR–Amex–2002–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Proposing To Designate the New Trading Floor on the Ground Floor of the Exchange as a "Separate Trading Area"

June 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 6, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to designate the new trading floor on the ground floor of the Exchange ("Harry's") as a "separate trading area."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 5, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex confirmed that it currently permits the trading of options on both listed and non-Amex-listed stocks on the "Harry's" trading floor.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed this proposed rule change in connection with its proposal to trade Nasdaq securities on an unlisted basis ("Nasdaq UTP Program").[4] This proposed rule change would designate Harry's as a "separate trading area."

In 1988, the Exchange received Commission approval to trade options on Amex-listed stocks.[5] The approval was based upon, among other things, the Amex's trading floors for equities and options on those equities[6] being sufficiently separated such that there could be no time and place advantage derived from the physical proximity of the two floors which could be exploited. The Amex currently has five designated trading locations: (1) The main trading floor ("Main Trading Floor" or "Designated Stock Area"); (2) the mezzanine trading level, which is located above the Main Trading Floor ("Mezzanine") (options Amex-listed stocks may not trade on that part of the Mezzanine visible from the Main Trading Floor); (3) a separate room connected by a hallway to the Main Trading Floor (the "Red Room" or "Designated Options Area");[7] (4) the back row of the west side of the Main Trading Floor referred to as the west side of the Exchange Posts 12, 13 and 15 ("Back Row"), and (5) "Harry's". In addition, the Main Trading Floor, the Red Room, the Mezzanine and the Back Row are considered physically separate for purposes of stocks and related options.[8]

In 2001, the Exchange opened its new trading facility, Harry's, located in a separate area on the ground floor of the Exchange. Harry's is on a separate level of the Amex and may only be accessed from the Exchange's other trading locations by an escalator. Accordingly, Harry's is physically separate from the other trading areas at the Exchange, and therefore, is not visible from the Exchange's other trading locations. The Exchange submits that Harry's is a "separate trading area."[9]

In the 1998 Order, the Commission granted approval to permit options trading on Amex-listed stocks in two locations of the Exchange in addition to the Red Room: (1) The Mezzanine and (2) the Back Row.[10] Since the 1998 approval was granted, the trading of options on Amex-listed securities has continued to occur on the Exchange at locations that are deemed physically separate from locations where the trading of Amex-listed securities occurs. The Exchange maintains that Harry's is a physically separate trading location, and therefore, trading of options on Amex-listed stocks is permissible based on the 1988 and 1998 Orders. In addition, the absence of a "line of sight" with respect to options trading on Harry's and any underlying stock of such option reinforces the Exchange's belief that Harry's is a separate trading area and, therefore, no time or place advantage exists.[11] The Exchange believes that it is consistent with both the 1988 and 1998 Orders, as well as the Index Order, to permit the trading of options on both Amex-listed and non-Amex-listed stocks on Harry's.[12] The Exchange believes that the Commission should approve the designation of Harry's as a "separate trading area."

2. Statutory Basis

The Exchange believes the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities

[4] *See* Securities Exchange Act Release Nos. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002) (proposing to admit trading on the Amex of Nasdaq National Market Securities pursuant to unlisted trading privileges); 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) (approving proposal to adopt Amex Rule 28 to establish allocation procedures for securities admitted to dealings on an unlisted trading privilege basis).

[5] Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) ("1988 Order").

[6] For purposes of this proposal, the terms stock(s), equity and equities are used interchangeably.

[7] Amex-listed stocks, options on non-Amex-listed stocks and options on indices (excluding options on indices where Amex-listed stocks comprise more than ten percent of the index value by weight) trade on the Main Trading Floor. Options on indices where Amex-listed stocks comprise more than ten percent of the index value by weight and options on non-Amex-listed stocks trade on the Mezzanine. Options on Amex-listed stocks, non-Amex-listed stocks and indices where Amex-listed stocks comprise more than ten percent of the index value by weight trade in the Red Room. *See* Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994) ("Index Order").

[8] *See* 1988 Order, *supra* note 4; Securities Exchange Act Release No. 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998) ("1998 Order").

[9] The Exchange currently permits the trading of options on both listed and non-Amex-listed stocks on Harry's.

[10] *See* 1998 Order, *supra* note 7.

[11] The Exchange represents that it maintains adequate surveillance systems designed to prevent trading abuses and manipulation as well as to ensure compliance with the relevant Exchange rules consistent with the 1988, 1998 and Index Orders. Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, Commission, on May 17, 2002.

[12] The Exchange notes that it has filed a companion proposal to expand designated trading locations to permit the ability to trade an Amex-listed stock and its underlying options on Harry's provided that an intervening post or physical structure sufficient to block a "line of sight" between the appropriate trading crowds existed. *See* File No. SR–Amex–2002–37. Accordingly, if approved, the Exchange may determine to trade Amex-listed stocks on Harry's provided a "line of sight" does not exist between the trading crowds of the underlying stock and its related option. Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and, Kelly Riley, Senior Special Counsel, Division, Commission, on June 6, 2002. *See also* Amendment No. 1, *supra* note 3.

[13] 15 U.S.C. 78f(b)(5).

and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

Company Guide. The proposed changes would implement the same fee structure governing the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications that was recently adopted by the New York Stock Exchange, Inc. ("NYSE").

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deleted language is [bracketed]

connection with proxy solicitations pursuant to Rule 576 and in mailing interim reports or other material pursuant to Rule 585. *In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual*

Charges for Interim Report Mailings

[20¢] *15¢* for each copy, plus postage, for interim reports, *annual reports if mailed separately,* post meeting reports or other material, with a minimum of $2.00 for all sets mailed[;]. Member organizations may charge for envelopes, provided they are not furnished by the person soliciting proxies.

Incentive Fees

An "Incentive Fee" (as defined below)

supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners

proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to security holders* [for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[70¢] *$1.00* for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, *for a meeting for which an*

and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–38 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16771 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46146; File No. SR–Amex–2002–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rules 576 and 585, and Sections 722 and 725 of the Amex Company Guide

June 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 3, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 576 and 585, and Sections 722 and 725 of the *Amex Company Guide*. The proposed changes would implement the same fee structure governing the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications that was recently adopted by the New York Stock Exchange, Inc. ("NYSE").

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deleted language is [bracketed].

* * * * *

Transmission of Proxy Material to Customers

Rule 576. (a). No change.

(b) Such member organization shall transmit with such material either:

(1) A request for voting instructions and, as to matters which may be voted without instructions under Rule 577, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(2) A signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such member organization, and also a letter informing the beneficial owner or the beneficial owner's designated investment adviser, of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

This rule shall not apply to beneficial owners outside the United States.

* * * **Commentary**

.10 through .70 No change.

.80 Schedule of approved charges by member organization in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 576 and in mailing interim reports or other material pursuant to Rule 585. *In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.*[:]

Charges for Initial Proxy and/or Annual Report Mailings

[60¢] *40¢* for each set of proxy material, i.e. proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to security holders* [for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[70¢] *$1.00* for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, *for a meeting for which an opposition proxy statement has been furnished to security holders* [for those meetings which include a proposal requiring beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[20¢] *15¢* for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum charge of $3.00 for all sets mailed.

The Exchange has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: $20.00 per nominee plus (i) 10¢ for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5¢ for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

Charges for Proxy Follow-up Mailings

40¢ for each set of follow-up materials, plus postage. [, when the follow-up material is mailed to all beneficial owners;]

[60¢ for each set of follow-up materials, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing;]

Charges for Interim Report Mailings

[20¢] *15¢* for each copy, plus postage, for interim reports, *annual reports if mailed separately*, post meeting reports or other material, with a minimum of $2.00 for all sets mailed[;]. Member organizations may charge for envelopes, provided they are not furnished by the person soliciting proxies.

Incentive Fees

An "Incentive Fee" (as defined below) for proxy material mailings, including the annual report, and 10¢ for interim report mailings, with respect to each account where the member organization has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)

With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.

With respect to issuers whose shares are held in fewer than 200,000 nominee accounts, the Incentive Fee shall be 50¢.

[Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.]

.90 No change

.91 No change

.92 No change

.93 Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates: provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.

.94 "Householding" of Reports. Rules 576 and 585 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Securities Exchange Act of 1934).

* * * * * *

Transmission of Interim Reports and Other Material

Rule 585. No change.

* * * **Commentary**

.10 No change.

.20 Mailing charges by member organizations.—These charges are set forth at [Commentary] *Commentaries .80, .90, .91, .93 and .94* to Rule 576.

* * * * *

Amex Company Guide

Sec. 722. Transmission of Proxy Material to Customers (See Exchange Rule 576)

(a) and (b) No change.

* * * **Commentary**

.10 through .70 No change.

.80 Schedule of approved charges by member organization in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 576 and in mailing interim reports or other material pursuant to Rule 585. *In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.*[:]

Charges for Initial Proxy and/or Annual Report Mailings

[60¢] *40¢* for each set of proxy material, i.e. proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to security holders* [for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[70¢] *$1.00* for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, *for a meeting for which an opposition proxy statement has been furnished to security holders* [for those meetings which include a proposal requiring beneficial owner instructions, plus postage], with a minimum of $5.00 for all sets mailed;

[20¢] *15¢* for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum charge of $3.00 for all sets mailed.

The Exchange has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees:

$20.00 per nominee plus (i) 10¢ for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5¢ for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

Charges for Proxy Follow-up Mailings

40¢ for each set of follow-up materials, plus postage. [, when the follow-up material is mailed to all beneficial owners;]

[60¢ for each set of follow-up materials, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing;]

Charges for Interim Report Mailings

[20¢] *15¢* for each copy, plus postage, for interim reports, *annual reports if mailed separately*, post meeting reports or other material, with a minimum of $2.00 for all sets mailed[;]. Member organizations may charge for envelopes, provided they are not furnished by the person soliciting proxies.

Incentive Fees

An "Incentive Fee" (as defined below) for proxy material mailings, including the annual report, and 10¢ for interim report mailings, with respect to each account where the member organization has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)

With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.

With respect to issuers whose shares are held in fewer than 200,000 nominee accounts, the Incentive Fee shall be 50¢.

[Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.]

.90 No change

.91 No change

.92 No change

.93 Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates: provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.

.94 "Householding" of Reports. Rules 576 and 585 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Securities Exchange Act of 1934).

* * * * * *

Transmission of Interim Reports and Other Material

(See Exchange Rule 585)

Section 725. No change.

Commentary

* * *

.10 No change.

.20 Mailing charges by member organizations.—These charges are set forth at [Commentary] *Commentaries .80, .90, .91, .93 and .94* to Rule 576.

* * * * *

to the filing date of the proposed rule change.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Amex has requested that the Commission waive the 30-day pre-operative period. The Commission believes that waiving the 30-day pre-operative period is consistent with the protection of investors and the public interest because it will allow the Amex to implement the same fee structure governing the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications that was recently adopted by the NYSE. For this reason, the Commission designates that the proposed rule change become operative immediately upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its "Enhanced Size Pilot" (the "Pilot") until October 31, 2002. The Exchange also proposes to add 17 new options to the Pilot and to amend the definition of "deep-in-the-money" options that are excluded from the Pilot. The text of the rule change is available at the Office of the Secretary of the Exchange and at the

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

rules for shareholder communications between the Amex and NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(5) of the Act[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

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same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)

With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.

With respect to issuers whose shares are held in fewer than 200,000 nominee accounts, the Incentive Fee shall be 50¢.

[Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates; provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.]

.90 No change

.91 No change

.92 Rescinded [Form of bill to be used by member organizations-The form of bill to be used by member organizations is set forth at Commentary .30 to Rule 585.]

.93 Member organizations are required to mail out such material as provided by Rules 576 and 585 when satisfactory assurance is received of reimbursement of expenses at such rates: provided that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.

.94 "Householding" of Reports. Rules 576 and 585 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b–1 under the Securities Exchange Act of 1934).

* * * * *

Transmission of Interim Reports and Other Material

(See Exchange Rule 585)

Section 725. No change.

Commentary

* * *

.10 No change.

.20 Mailing charges by member organizations. " These charges are set forth at [Commentary] *Commentaries .80, .90, .91, .93 and .94* to Rule 576.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved changes to the NYSE's rules regarding the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communications.[3] In light of these changes, the Amex is proposing to amend its rules regarding the reimbursement of these costs to conform them to those of the NYSE. The Amex also is amending its rules to permit the "householding" of reports and annual mailings if done in compliance with Rule 14b–1 under the Act.[4] The Amex believes that these changes will facilitate compliance by members with applicable self-regulatory organization rules by establishing consistent fees and rules for shareholder communications between the Amex and NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(5) of the Act[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The proposed rule change also furthers the objectives of section 6(b)(4) of the Act[7] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Amex has requested that the Commission waive the 30-day pre-operative waiting period. The Amex believes that acceleration of the operative date will permit the immediate harmonization of exchange fee schedules for the transmission of shareholder communications and, thus, will ease member firm compliance burdens. In addition, the Amex believes that the Commission has recently considered all issues raised by the Amex's filing in connection with its approval of the NYSE's proposal.

The Commission, consistent with the protection of investors and the public interest, has waived the thirty-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative as of the date of filing to allow the Amex to implement its revised proxy fee schedule immediately.[12] The Commission notes that it has already considered and addressed issues that may be raised by this proposal when it approved similar proposals by the NYSE.[13] The Commission further notes that this proposal will allow for consistency in proxy fees between the Amex and the NYSE. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–51 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16848 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 45844 (March 25, 2002), 67 FR 15440 (April 1, 2002) (order approving File No. SR–NYSE–2001–53).

[4] *See* Securities Exchange Act Release No. 7912 (October 27, 2000), 65 FR 65736 (November 2, 2000) (amending proxy rules under Act relating to householding of materials); and 43993 (February 22, 2001), 66 FR 13364 (March 5, 2001) (File No. SR–NYSE–01–03) (amending NYSE rules to conform to the Commission's rules on householding of materials).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[13] *See* Securities Exchange Act Release Nos. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) (order approving File No. SR–NYSE–2001–53); and 43993 (February 22, 2001), 66 FR 13364 (March 5, 2001) (order approving File No. SR–NYSE–01–03).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46129; File No. SR–ISE–2002–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Extend Its Enhanced Size Pilot

June 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its "Enhanced Size Pilot" (the "Pilot") until October 31, 2002. The Exchange also proposes to add 17 new options to the Pilot and to amend the definition of "deep-in-the-money" options that are excluded from the Pilot. The text of the rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend and expand the Exchange's Enhanced Size Pilot. On April 25, 2002, the Commission approved the Pilot, requiring market makers to quote in larger size for 19 of the 25 most-actively-traded options.[3] This is currently a three-month Pilot scheduled to expire on July 25, 2002. The initial analysis of trading pursuant to the Pilot indicates: the average size of the ISE's quotations in these options has increased; there has been no adverse effect on quotation spreads; and ISE market share has increased in these options.

Based on these initial, though limited results, the Exchange proposes to extend the Pilot for an additional three months, through October 31, 2002. ISE also proposes to increase the Pilot to include 17 additional options out of the 50 most-active options: Banc of America; Ciena; Dell; Fannie Mae; Motorola; Merrill Lynch; Nvidia; Xilinx; Amazon.com; Halliburton; Nextel Communications; J.P. Morgan Chase; ADC Telecommunication; Best Buy; Calpine; General Motors; and Hewlett

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–45823 (April 25, 2002); 67 FR 22143 (May 2, 2002) (File No. SR–ISE–20010–23).

Packard. We have determined to include these particular options in the Pilot based on recommendations by our market makers.

In all other respects, except one, the Pilot will remain unchanged. For Primary Market Makers ("PMMs"), the minimum size for quotes will continue to be 100 contracts for customers and 50 contracts for broker-dealers, although this enhanced quotation size

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16772 Filed 7–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

such bids/offers were exhausted, or (b) the market maker's last displayed bid/offer. If the resulting bid/offer quote would create a locked or crossed market, NNMS would instead re-open the market maker's bid/offer quote at a price that is one penny inferior to the unexchanged contra side of the market. Finally, Nasdaq proposes to suspend from trading on SuperMontage market makers that fail to maintain a clearing relationship. Once the market maker

and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, should assist market makers in maintaining two-sided quotes and facilitate their continued participation in Nasdaq. By reducing the amount of time, from 3 minutes to 30 seconds, that a quote is in a closed state and by only closing out the side of the quote that has been zeroed out, the revised procedures

monitor the use of the system defaults by market makers to ensure that they do not become a surrogate for meaningful market making, and that the NASD will reevaluate the penalties against market makers for failure to properly maintain two-sided quotes if there is a decline in the overall quality of market making, particularly during market volatility.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, as amended (File

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Packard. We have determined to include these particular options in the Pilot based on recommendations by our market makers.

In all other respects, except one, the Pilot will remain unchanged. For Primary Market Makers ("PMMs"), the minimum size for quotes will continue to be 100 contracts for customers and 50 contracts for broker-dealers, although this enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least 10 contracts when the quotation consists, in part, of a customer order for less than 10 contracts. For Competitive Market Makers, the size requirements will continue to be half of the PMM requirement: 50 contracts for customers, 25 contracts for broker-dealers. The enhanced broker-dealer size will not apply to executions against other market makers, where the minimum size would continue to be one contract.

These enhanced size requirements will apply only to the options series in the three months closest to expiration. Moreover, the pilot will not apply to "deep-in-the-money" options, or an option in the last three days of that option's trading (that is, the pilot will not apply for the last three days of trading during an option series' expiry week). In the one change to the Pilot, ISE proposes to amend the definition of "deep-in-the-money." Currently, the rule excludes options that are deep-in-the-money, with the definition based on the number of pricing intervals a strike is from the at-the-money strike. ISE proposes to change this by defining "deep-in-the-money" to mean options with strike prices that are in the money by 12 percent or more in relation to the price of the underlying stock. This change to the definition is based on market makers' experience trading under the Pilot today, and ISE believes that this amended definition will reduce market makers' exposure to risk, while continuing to apply the Pilot to options representing over two-thirds of all trading volume.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an exchange have rules that are designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

[4] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date of filing; and (iv) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6)[6] thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–17 and should be submitted by July 26, 2002.

[5] 15 U.S.C. 78s(b)(3)(A).
[6] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[7] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46141; File No. SR–NASD–2002–01]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Automatic Refreshing of Quotations in Nasdaq's SuperMontage System and the Withdrawal of Market Makers That Fail to Maintain a Clearing Relationship

June 28, 2002.

On January 3, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rules 4710(b)(5) and 4619(c) to modify the procedures for refreshing exhausted market maker quotes in, and withdrawing market makers that fail to maintain proper clearing arrangements from, Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage").

Specifically, Nasdaq proposes to reduce from 3 minutes to 30 seconds the amount of time that a market maker can leave its bid or offer quotation at zero before SuperMontage begins its automatic quote refresh process. The process would only operate against the single bid or offer side of a quotation that has been reduced to zero through executions. If there are no available quotes from which to determine a refresh price, SuperMontage would refresh the exhausted side of a quote to a normal unit of trading at a price level that is one penny inferior to the lesser of either: (a) The last valid displayed inside bid/offer in the security before all

such bids/offers were exhausted, or (b) the market maker's last displayed bid/offer. If the resulting bid/offer quote would create a locked or crossed market, NNMS would instead re-open the market maker's bid/offer quote at a price that is one penny inferior to the unexchanged contra side of the market. Finally, Nasdaq proposes to suspend from trading on SuperMontage market makers that fail to maintain a clearing relationship. Once the market maker regains a clearing relationship, the suspend status would be lifted, and the market maker would be free to participate again.

Nasdaq submitted Amendment No. 1 on March 5, 2002.[3] The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on April 8, 2002.[4] The Commission received no comments on the proposal. Nasdaq submitted Amendment No. 2 on June 13, 2002.[5]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act,[8] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, should assist market makers in maintaining two-sided quotes and facilitate their continued participation in Nasdaq. By reducing the amount of time, from 3 minutes to 30 seconds, that a quote is in a closed state and by only closing out the side of the quote that has been zeroed out, the revised procedures should help ensure the presence of liquidity providers, while preserving priority for orders that may be represented by the unexhausted side of the quote. Further, Nasdaq, by establishing procedures for refreshing an exhausted quote where there are no available quotes, has addressed any potential instance in which trading interest is not being displayed. This should ensure that quotes may be refreshed in all instances. Finally, Nasdaq's proposal to suspend market makers who fail to maintain clearing relationships from participating in the SuperMontage should encourage market makers to maintain appropriate clearing relationships at all times.

The Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**, pursuant to section 19(b)(2) of the Act.[9] The Commission finds that Amendment No. 2 merely clarifies the proposed rule change by explaining that references to automatic adjustment of quotes at "inferior" prices refer to both bid and offer prices, with an inferior price adjustment on the bid side of the quote resulting in a higher offer price, and that references to a "clearing relationship" refer to a clearing relationship between a firm and a registered clearing agency or, alternatively, with a member of such an agency. Accordingly, the Commission believes that granting accelerated approval of Amendment No. 2 is appropriate and consistent with section 15A(b)(6)[10] and 19(b)(2) of the Act[11] in that it should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

As stated previously in the order approving SuperMontage, the Commission wishes to again emphasize that it fully expects that the NASD will monitor the use of the system defaults by market makers to ensure that they do not become a surrogate for meaningful market making, and that the NASD will reevaluate the penalties against market makers for failure to properly maintain two-sided quotes if there is a decline in the overall quality of market making, particularly during market volatility.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, as amended (File No. SR–NASD–2002–01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16847 Filed 7–3–02; 8:45 am]

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[3] See Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 4, 2002 ("Amendment No. 1").
[4] See Securities Exchange Act Release No. 45671 (March 28, 2002), 67 FR 16784.
[5] See Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Marc F. McKayle, Special Counsel, Division, Commission, dated June 13, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made two points of clarification: (1) References to automatic adjustment of quotes at "inferior" prices refer to both bid and offer prices, with an inferior price adjustment on the bid side of the quote resulting in a lower bid price, and an inferior price adjustment on the offer price resulting in a higher offer price, (2) references to a "clearing relationship" refer to a clearing relationship between a firm and a registered clearing agency or, alternatively, with a member of such an agency.
[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[7] 15 U.S.C. 78o–3.
[8] 15 U.S.C. 78o–3 (b)(6).
[9] 15 U.S.C. 78s(b)(2).
[10] 15 U.S.C. 78o–3(b)(6).
[11] 15 U.S.C. 78s(b)(2).
[12] 15 U.S.C. 78s(b)(2).
[13] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] In Amendment No. 1, the NASD revised the language of the proposed rule change regarding the time frame in which the managing underwriter must deliver CUSIP information to the TRACE Operations Center, and a member's obligations in instances in which the member is not required to report yield data to the NASD. See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 13, 2002 ("Amendment No. 1").

Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on May 22, 2002.[4] The Commission received one comment letter, from The Bond Market Association ("TBMA"), regarding the proposal.[5]

On June 25, 2002, the NASD filed Amendment No. 2 to the proposed rule change and a response to TBMA's

concurrently with approval of this proposal.[11]

The TRACE Rules will become effective on July 1, 2002. On that day, members must begin to report transactions in TRACE-eligible securities, and the TRACE system will begin the dissemination of certain reported information.

III. Description of the Proposal

The proposed amendments to the

applies; and (5) a brief description of the issue. The NASD represents that the additional information will enable it to verify the accuracy of the CUSIP numbers provided by the underwriters.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. When an intra-day offering occurs at or after 5:00 p.m., the underwriter will be required to provide the CUSIP

protection by facilitating the availability of TRACE.

As previously noted, the Commission received one comment letter, from TBMA, on the proposed rule change.[15] Although TBMA's Letter generally supported the latest amendments, it raised a number of specific concerns. As a result, the NASD entered into discussions with TBMA aimed at responding to its comments. On June 25, 2002, the NASD filed Amendment No.

by the end of the same business day on which the takedown occurs.

The NASD noted in its response that the deadline for providing CUSIPs was moved back to immediately precede the actual offering day to address regulatory concerns that the audit trail, especially for those bonds that trade infrequently after the initial offering, would contain substantial gaps if the underwriter was not required to provide the CUSIP until the end of the first day of trading, with

industry that night. The NASD stated that it will make the final determination whether a debt security is TRACE-eligible.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. When an intra-day offering occurs on or after 5:00 p.m., the underwriter will be required to provide the CUSIP number and additional information to the TRACE Operations Center not later

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Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on May 22, 2002.[4] The Commission received one comment letter, from The Bond Market Association ("TBMA"), regarding the proposal.[5]

On June 25, 2002, the NASD filed Amendment No. 2 to the proposed rule change and a response to TBMA's Letter.[6] On June 26, 2002, the NASD filed Amendment No. 3 to the proposed rule change. This order approves the proposed rule change, as amended by Amendment No. 1, accelerates approval of Amendment Nos. 2 and 3, and solicits comments from interested persons on Amendment Nos. 2 and 3.

II. Background

On January 23, 2001, the Commission approved the TRACE Rules to establish a corporate bond trade reporting and transaction dissemination facility and to eliminate Nasdaq's Fixed Income Pricing System ("FIPS").[7] Subsequently, on March 5, 2001, the Commission approved amendments to the TRACE Rules requiring trade reports in transactions between two NASD members to be filed by each member.[8] In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE Rules had become effective on filing.[9] Finally, on May 6, 2002, the NASD filed a proposed rule change to establish fees for the use of TRACE.[10] On June 26, 2002, the NASD amended that filing to implement the TRACE fee structure on a pilot basis. The Commission is approving the TRACE fee filing, and granting accelerated approval of the amendment regarding pilot status, concurrently with approval of this proposal.[11]

The TRACE Rules will become effective on July 1, 2002. On that day, members must begin to report transactions in TRACE-eligible securities, and the TRACE system will begin the dissemination of certain reported information.

III. Description of the Proposal

The proposed amendments to the TRACE Rules are intended to make technical changes to the TRACE Rules and clarify certain provisions of those Rules prior to implementation of TRACE. Specifically, the proposed amendments: extend the reporting period from one hour to one hour and 15 minutes; incorporate certain FIPS standards in Rule 6250; require members to provide new CUSIP numbers to TRACE at an earlier time under Rule 6260; clarify existing provisions in the Rule 6200 Series, especially Rule 6210(a) regarding "TRACE-eligible securities" and certain reporting provisions in Rule 6230(c) and (d); and make other minor modifications to the existing requirements. These amendments are discussed in greater detail in the Commission's notice soliciting public comment on this proposal.[12]

In Amendment No. 1, the NASD proposed to amend Rule 6260 to require that the managing underwriter of any newly issued TRACE-eligible security provide CUSIP data to the TRACE Operations Center by 5:00 p.m. on the business day preceding the day the registration statement will become effective or, if registration is not required, the day the securities will be priced initially ("prior day CUSIP notification").

In Amendment No. 2, the NASD proposed an exception to prior day CUSIP notification for underwriters that offer securities on an intra-day basis under Rule 415 under the Securities Act of 1933 ("Securities Act") or Rule 144A under the Securities Act. In such offerings, the managing underwriter must obtain the CUSIP number and provide it to the TRACE Operations Center by 5:00 p.m. on the day the securities are priced and offered. The NASD also proposes to require the underwriter to provide the following descriptive information relating to the security to the TRACE Operations Center in addition to the CUSIP number: (1) Issuer name; (2) coupon rate; (3) maturity; (4) whether Rule 144A applies; and (5) a brief description of the issue. The NASD represents that the additional information will enable it to verify the accuracy of the CUSIP numbers provided by the underwriters.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. When an intra-day offering occurs at or after 5:00 p.m., the underwriter will be required to provide the CUSIP number and additional information to the TRACE Operations Center not later than 5:00 p.m. on the next business day. In addition, the NASD proposed to allow the underwriter to provide NASD with information other than the six listed items in Rule 6260(b) to comply with the notification requirement, because industry participants have stated that some of the required information, such as coupon rate and maturity, may not have been fixed at the time the underwriter obtains the CUSIP number for the security and would provide it to the NASD. In light of this, the NASD proposed to allow underwriters to submit alternative types of information, as specified by the NASD, if necessary.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended by Amendments Nos. 1, 2, and 3, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of section 15A(b)(6).[13] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.[14] The TRACE Rules, as originally approved by the Commission on January 23, 2001 and as further amended, dramatically improve the transparency of the corporate bond market. The Commission believes that the NASD's clarification of the TRACE Rules in this proposed rule change will enable it to implement TRACE more effectively, thus enhancing investor

[4] *See* Securities Exchange Act Release No. 45943 (May 16, 2002), 67 FR 36049.

[5] *See* letter from Michel de Konkoly Thege, Vice President and Associate General Counsel, TBMA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 12, 2002 ("TBMA's Letter"). TBMA's Letter is described in Section IV, *infra*.

[6] Amendment No. 2 is described in Section III, *infra*.

[7] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65). FIPS, which was operated by Nasdaq, collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds.

[8] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[9] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[10] *See* Securities Exchange Act Release No. 45960 (May 17, 2002), 67 FR 36654 (May 24, 2002) (Commission notice seeking public comment on NASD proposal).

[11] *See* Securities Exchange Act Release No. [ ], (June 28, 2002).

[12] *See supra*, note 4.

[13] 15 U.S.C. 78o–3(b)(6).

[14] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

protection by facilitating the availability of TRACE.

As previously noted, the Commission received one comment letter, from TBMA, on the proposed rule change.[15] Although TBMA's Letter generally supported the latest amendments, it raised a number of specific concerns. As a result, the NASD entered into discussions with TBMA aimed at responding to its comments. On June 25, 2002, the NASD filed Amendment No. 2 to the proposal to address the concerns articulated in TBMA's Letter.

TBMA's Letter noted that the proposed rule change contained a number of useful clarifications concerning the workings of the TRACE Rules and reflected certain suggestions that TBMA had made in previous comment letters on the TRACE Rules and in discussions with the staff of the NASD. Nonetheless, TBMA urged further changes to the requirement applicable to managing underwriters to provide CUSIPs for new issues, requested further clarification and guidance on definitional matters, and requested the NASD to resolve pending legal, operational and technology matters relating to implementation.

Rule 6260 as originally adopted stated that the lead underwriter of any newly issued TRACE-eligible security was required to provide a CUSIP number to the TRACE Operations Center "no later than on the effective date of the offering." As initially filed, this proposed rule change revised that requirement to require the managing underwriter to provide the CUSIP "not later than 5:00 p.m. on the first business day following the day that the registration statement becomes effective, or, if registration is not required, the day that the securities are first priced." Amendment No. 1 required the CUSIP to be provided to the TRACE Operations Center not later than 5:00 p.m. on the business day preceding such day.

TBMA stated that frequently an issuer's decision to take advantage of a market window and the pricing of an offering occur within the same day. TBMA stated that Rule 6260 as amended by Amendment No. 1 would prevent the issuer from pricing such a transaction until the next business day. TBMA suggested that Rule 6260 should be further revised to deal with the case of same-day takedowns under shelf registration statements and Rule 144A documentation. In such cases, TBMA suggested that Rule 6260 should require a managing underwriter to make reasonable efforts to provide the CUSIP by the end of the same business day on which the takedown occurs.

The NASD noted in its response that the deadline for providing CUSIPs was moved back to immediately precede the actual offering day to address regulatory concerns that the audit trail, especially for those bonds that trade infrequently after the initial offering, would contain substantial gaps if the underwriter was not required to provide the CUSIP until the end of the first day of trading, with the result that all first day trading would not be reported. In addition, price transparency would be reduced because the first day of trading in a debt security is often its most active day.

In response to TBMA's comments, the NASD proposed Amendment No. 2 providing for an exception to the prior day CUSIP notification in Rule 6260 for intra-day offerings. (These offerings are generally referred to as "off-the-shelf" or "shelf" offerings.) The NASD stated that when securities are previously registered under Rule 415 of the Securities Act or are unregistered securities that may be resold pursuant to Rule 144A of the Securities Act,[16] an issuer and an underwriter may decide to take advantage of favorable market conditions and offer the issuer's debt securities on that day. The NASD stated that when such intra-day offerings occur, it would be impossible for an underwriter to price, offer and sell such securities and comply with the prior day CUSIP notification. The NASD noted that it was not its intent to inhibit same-day access to the capital markets. Therefore, the NASD proposed to except from the prior day CUSIP notification intra-day unregistered offerings for Rule 144A resales and shelf offerings. In such offerings, the underwriter must obtain the CUSIP number and provide it to the TRACE Operations Center not later than 5:00 p.m. on the business day that the securities are priced and offered.

In Amendment No. 2, the NASD also proposed to amend Rule 6260 to require the underwriter to provide information in addition to the CUSIP number to the TRACE Operations Center. The additional information is the issuer's name, the coupon rate of the security, the maturity, Rule 144A applicability, and a brief description of the issue (*e.g.*, senior subordinated note, senior note). The NASD represented that this information will allow the TRACE Operations Center to compare the CUSIP and related information about the security with information available from vendors, and verify that the CUSIP numbers are accurate before the NASD disseminates the CUSIP numbers to the industry that night. The NASD stated that it will make the final determination whether a debt security is TRACE-eligible.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. When an intra-day offering occurs on or after 5:00 p.m., the underwriter will be required to provide the CUSIP number and additional information to the TRACE Operations Center not later than 5:00 p.m. on the next business day. In addition, the NASD proposed to allow the underwriter to provide the NASD with information other than the six listed items in Rule 6260(b) to comply with the notification requirement, because industry participants have stated that some of the required information, such as coupon rate and maturity, may not have been fixed at the time the underwriter obtains the CUSIP number for the security and would provide it to the NASD. In light of this, the NASD proposed to allow underwriters to submit alternative types of information, as specified by the NASD, if necessary.

The Commission believes that Amendment Nos. 2 and 3 address the primary concerns of TBMA with respect to certain intra-day offerings. The proposed changes will allow the NASD to balance the interests of issuers in obtaining expedited, well-timed access to the capital markets and those of investors in enabling the NASD to collect a more complete audit trail (and, when dissemination occurs, obtaining more complete price information).

TBMA's Letter also requested further clarification and guidance on various definitional matters under the TRACE Rules and items to be submitted in trade reports. TBMA noted that the term "money market instrument" is important because it defines one category of instruments that are excluded from the definition of TRACE-eligible security. For the purpose of the proposed exclusion, Rule 6210(a) of the TRACE Rules defines a money market instrument as a debt instrument that "at issuance has a maturity of one year or less." TBMA recommended that the definition of money market instrument in Rule 6210(a) track the definition of Eligible Security contained in Rule 2a–7(a)(10) under the Investment Company Act of 1940.

In its response, the NASD stated that it did not believe that it is appropriate to revise the definition of money market instrument in the TRACE Rules to track the definition of "Eligible Security" under Rule 2a–7(a)(10). First, the NASD noted that the definition of "Eligible Security" is quite complex, and that

[15] *See supra*, note 5.

[16] 17 CFR 230.415; 17 CFR 230.144A.

making use of the definition is inconsistent with the NASD's goal to clearly delineate those securities subject to the TRACE Rules. In addition, the NASD said that, with respect to a particular security, Rule 2a–7(a)(10) applies differently over time. The NASD noted that the definition in Rule 2a–7(a)(10) may apply to long and medium term securities as they approach maturity. Under the definition proposed by the NASD, eligibility under TRACE in which the price and yield of all transactions can be compared. The Commission believes that the NASD is correct in requiring that a party report the lower of yield to call or yield to maturity because such yields are the benchmarks for comparing bonds.

TBMA expressed concern that the NASD's proposal forces reporting firms to incur unnecessary expenses by requiring that transactions, including the two transactions that occur in an

V. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause to approve Amendment Nos. 2 and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Rule 6260 would require most but not all underwriters to provide CUSIP numbers to the NASD by 5 p.m. Eastern Time on the business day prior to the initial sale

Amendment Nos. 2 and 3 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46145; File No. SR–NASD–2002–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto, by the National

solicits comments from interested persons on Amendment No. 3.

II. Background

On January 23, 2001, the Commission approved the Rule 6200 Series providing for reporting and dissemination of transaction information in eligible debt securities ("TRACE rules").[7] Subsequently, on March 5, 2001, the Commission approved additional amendments to the

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making use of the definition is inconsistent with the NASD's goal to clearly delineate those securities subject to the TRACE Rules. In addition, the NASD said that, with respect to a particular security, Rule 2a–7(a)(10) applies differently over time. The NASD noted that the definition in Rule 2a–7(a)(10) may apply to long and medium term securities as they approach maturity. Under the definition proposed by the NASD, eligibility under TRACE requires a single determination for the life of the security. Thus, the NASD stated that applying the definition in Rule 2a–7 would not clarify or simplify a determination of whether a debt instrument is TRACE-eligible or excluded as a money market instrument and would not make it consistent with instruments that are eligible for money market funds. In addition, the NASD noted that the term "Eligible Security" in the Investment Company Act and the term "TRACE-eligible security" in the TRACE Rules are applied in different contexts. The Commission agrees, and does not believe that the definition of money market instrument in the TRACE Rules should be revised.

TBMA stated that the NASD's exclusion of clearing brokers from the defined term "parties to the transaction" is unclear. In response, the NASD stated that it excluded "clearing broker" from the definition to indicate that a broker that merely clears a transaction does not have a reporting obligation under the TRACE Rules. The NASD represented that for purposes of TRACE, a broker that performs only a clearing function is not considered a party to the transaction and should not submit a transaction report, unless the broker has also performed the executing function, or the clearing broker is reporting a transaction for an actual party to the transaction pursuant to an agreement to do so (*e.g.*, where a clearing broker, pursuant to a privately negotiated agreement with a correspondent, reports on behalf of the correspondent whenever the correspondent has a reporting obligation under TRACE).

TBMA stated that requiring a party to report the lower of yield to call or yield to maturity is confusing. The NASD responded that it believes that requiring the reporting of the lower of these two yields is appropriate and necessary for the protection of investors and the integrity of the debt markets. The Commission agrees. The Commission believes that the data reported for each trade as "yield" must be comparable to the data to: (1) Inform buyers and sellers, including public investors, of the price and yield of comparable debt securities; and (2) create an audit trail in which the price and yield of all transactions can be compared. The Commission believes that the NASD is correct in requiring that a party report the lower of yield to call or yield to maturity because such yields are the benchmarks for comparing bonds.

TBMA expressed concern that the NASD's proposal forces reporting firms to incur unnecessary expenses by requiring that transactions, including the two transactions that occur in an "agency cross," must be reported separately. The NASD responded that the TRACE Rules require the reporting of each transaction and that the requirement that both transactions be reported individually is in furtherance of a regulatory goal. The NASD stated that the TRACE system was so designed based on input from market surveillance and market regulation personnel, and that it was determined that, in some instances, "single" trade reporting may raise issues, and creates gaps in the regulatory audit trail. The NASD represented that in creating a new bond reporting system, it determined not to incorporate certain features that may hinder the creation of a complete audit trail and therefore hinder efficient oversight of the market. For these reasons, the NASD determined that the agency cross transaction should be reported as two transactions. The Commission believes that the NASD's decision is reasonable, and is consistent with the Act.

TBMA also asked that the NASD address and clarify certain interpretive issues, which include TRACE eligibility questions, the trade reporting obligations of broker-dealers that are alternative trading systems ("ATSs"), the identification of transactions that do not reflect secondary market pricing, and others. The NASD responded that these and other interpretive issues will be addressed in NASD Notices to Members. In addition, TBMA requested that the NASD address several operational and technical issues, and respond to contractual and testing issues in a manner that would notify the entire industry. The NASD responded that it addresses the operational, technical and testing issues raised in TBMA's Letter on the TRACE website, which is *http://www.nasd.com/trace.asp*, and that it has responded to issues raised in agreements by revising its agreements.[17]

[17] In this connection the Commission emphasizes its statement in the original TRACE approval order, Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001), that members that provide data to TRACE are "free to sell or give the same information to information vendors." The NASD may not, by contract or otherwise, restrict a member's ability to distribute data that is has reported to TRACE to information vendors.

V. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause to approve Amendment Nos. 2 and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Rule 6260 would require most but not all underwriters to provide CUSIP numbers to the NASD by 5 p.m. Eastern Time on the business day prior to the initial sale of securities. This prior day CUSIP notification was previously published and subject to comment. The proposed exception to the prior day CUSIP notification provides that underwriters that are offering securities on an intra-day basis shall provide CUSIP numbers to the NASD not later than 5 p.m. Eastern Time on the same day that pricing and sales occur, provided that if such securities are priced and offered on or after 5 p.m., the member shall provide the information not later than 5 p.m. on the next business day. Although not previously published, the proposal is an appropriate and narrowly drafted exception to the previously published proposal and responds to the concerns that Rule 6260 would negatively impact issues that are offered and sold in the market on an intra-day basis.

Amendment No. 2 also requires that an underwriter supply to the TRACE Operations Center, in addition to the CUSIP number for each newly issued security, the issuer's name, the coupon rate, the maturity, a brief description of the security and whether the issue is being resold pursuant to Rule 144A. Amendment No. 3 allows the underwriter to provide the TRACE Operations Center alternative types of information, as specified by the NASD, if necessary. The NASD believes, and the Commission agrees, that the acceleration of the approval of these provisions are necessary to protect customers and the integrity of the audit trail. The NASD will use the information to promptly determine if the CUSIP numbers submitted are accurate before the NASD loads the new CUSIP numbers in the TRACE system and transmits such numbers to the industry. If the CUSIP numbers are inaccurate, transaction activity will be incorrect either because a report reflects the wrong security or a report was rejected by the TRACE system.

For these reasons, the Commission finds good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act, to accelerate approval of Amendment Nos. 2 and 3 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–46 and should be submitted by July 26, 2002.

VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASD–2002–46), as amended, be and hereby is approved, and that Amendment Nos. 2 and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–16850 Filed 7–3–02; 8:45 am]

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46145; File No. SR–NASD–2002–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto, by the National Association of Securities Dealers, Inc., Relating to Proposed Fees for the Trade Reporting and Compliance Engine (TRACE) for Corporate Bonds

June 28, 2002.

I. Introduction

On May 6, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to establish fees for use of TRACE. TRACE provides for the reporting and dissemination of transaction information in eligible corporate debt securities. The NASD submitted Amendment No. 1 to the proposed rule change on May 16, 2002.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on May 24, 2002.[4] The NASD submitted Amendment No. 2 to the proposed rule change on May 28, 2002.[5] The Commission received one comment letter, from The Bond Market Association ("TBMA"), regarding the proposal.[6]

On June 25, 2002, the NASD filed Amendment No. 3 to the proposed rule change and a response to TBMA's Letter. This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2, accelerates approval of Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

II. Background

On January 23, 2001, the Commission approved the Rule 6200 Series providing for reporting and dissemination of transaction information in eligible debt securities ("TRACE rules").[7] Subsequently, on March 5, 2001, the Commission approved additional amendments to the TRACE rules requiring trade reports in transactions between two NASD members to be filed by each member.[8] In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE rules had become effective on filing.[9] Finally, on April 3, 2002, the NASD filed a proposed rule change to make certain technical changes to the TRACE rules. The NASD subsequently submitted Amendment No. 1 to that filing, and the Commission published notice of the proposal and Amendment No. 1 thereto.[10] The NASD subsequently submitted Amendment Nos. 2 and 3 to that filing. The Commission is approving that filing, and granting accelerated approval of Amendment Nos. 2 and 3, concurrently with approval of this proposal.[11]

The TRACE rules will become effective on July 1, 2002. On that day, members must begin to report transactions in TRACE-eligible securities, and the TRACE system will begin the dissemination of certain reported information.

III. Description of the Proposal

The proposed rule change establishes fees for participants and users of the TRACE facility and rescinds the FIPS fees. The proposed fees are divided into three general categories: (1) System fees paid by member firms based on the method chosen by the member to report corporate bond transactions to the NASD (members will have several options on how to report trades and the fees will vary accordingly); (2) transaction reporting fees paid by members to file trade reports and cancel or correct trade reports; and (3) market data fees paid by members and non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), dated May 16, 2002. Amendment No. 1 corrected a typographical error in the filing.

[4] *See* Securities Exchange Act Release No. 45960 (May 17, 2002), 67 FR 36654.

[5] *See* letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine England, Assistant Director, Division, dated May 24, 2002. Amendment No. 2 made the language of the rule internally consistent and corrected certain typographical errors.

[6] *See* letter from Michel de Konkoly Thege, Vice President and Associate General Counsel, TBMA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 14, 2002 ("TBMA's Letter"). TBMA's Letter is described in Section IV, *infra*.

[7] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65).

[8] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[9] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[10] *See* Securities Exchange Act Release No. 45843 (May 16, 2002), 67 FR 36049 (May 22, 2002).

[11] *See* Securities Exchange Act Release No. 46144, (June 28, 2002).

members that use or distribute the data collected through the TRACE system and disseminated by the NASD.

System Fees. The NASD proposes to charge fees to members who use the TRACE system based on the method the member selects to input transaction information to the NASD. Under the proposed rules, members will have three means by which to input

Transaction Reporting Fees. Members will be charged fees to file transaction reports and cancel or correct transaction reports. The NASD proposes to charge a trade reporting fee using a sliding scale, based upon the size of the transaction reported. A member will be charged a Trade Reporting Fee on a sliding scale ranging from $0.50 to $2.50 per trade based on the size of the reported transaction. For trades up to and

real-time TRACE transaction data; (ii) BTDS Internal Usage Authorization Fee of $500 per month per organization for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to

association. In particular, the Commission believes that the proposed rule change is consistent with the requirement of section 15A(b)(5)[15] that the rules of an association provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities; and the requirement of section 15A(b)(6)[16] that the rules of the association are not designed to

users who repackage the data for delivery outside of the organization. The Commission believes that this use-based approach is consistent with equitable distribution of fees.

2. Reasonableness

The Commission believes that the TRACE fee structure is reasonable under the Act. In its initial filing, the NASD represented that it believes the TRACE

4. NASD Amendment No. 3 and Response to TBMA's Letter

In response, the NASD submitted Amendment No. 3 establishing the TRACE fees as a six-month pilot program; the NASD also agreed to reassess the fees within six months or less after the effective date of TRACE.

In addition, the NASD addressed the issue of whether the TRACE fees meet the standards set forth in the Act. With

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members that use or distribute the data collected through the TRACE system and disseminated by the NASD.

System Fees. The NASD proposes to charge fees to members who use the TRACE system based on the method the member selects to input transaction information to the NASD. Under the proposed rules, members will have three means by which to input transaction information directly to the NASD: (1) A web browser through the Internet, which will be useful primarily for low-volume firms; (2) a web browser using a private data network ("PDN"); or (3) a computer-to-computer interface ("CTCI"), which the Association anticipates will be used primarily by high volume firms. Members may also choose to report transactions indirectly to the NASD through third parties, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation ("NSCC"), which will in turn report to the NASD through one of the approved methods described above.

Members may report transaction information manually through a web browser using their own Internet provider. Members using a web browser will be charged a monthly access fee as follows: for the first user ID registered, a charge of $85 per month; for the next two through nine user IDs registered, a charge of $75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of $70 per month, per user ID from two to ten or more. Members reporting through a web browser may elect to report transaction information through a PDN that is owned and operated by Nasdaq's designated network provider, which is currently WorldCom, Inc. Members choosing to report transaction information directly to the NASD using a PDN will be charged a $100 per line administration fee per month by the NASD. Members should be aware that this fee does not include fees that will be charged by Nasdaq for services provided by its designated network provider that will be billed directly by Nasdaq.

Members also may report transaction data through the CTCI operated by Nasdaq for most of its transaction reporting facilities. Nasdaq currently leases dedicated lines from WorldCom, Inc. and provides direct connection from a member firm to the NASD. The NASD monthly charge for reporting through a CTCI is $25 per month, per line, whether or not such line is used exclusively for TRACE, and does not include Nasdaq charges for its designated network provider.

Transaction Reporting Fees. Members will be charged fees to file transaction reports and cancel or correct transaction reports. The NASD proposes to charge a trade reporting fee using a sliding scale, based upon the size of the transaction reported. A member will be charged a Trade Reporting Fee on a sliding scale ranging from $0.50 to $2.50 per trade based on the size of the reported transaction. For trades up to and including $200,000 par value, members will be charged a fee of $0.50 per trade; for trades between $201,000 par value and $999,000 par value, members will be charged a fee of $0.0025 multiplied by the number of bonds traded; and for trades of $1,000,000 par value or more, members will be charged a fee of $2.50 per trade.

The NASD proposes to charge a cancel or correct trade fee of $3.00 per trade. The NASD also proposes to charge an "as/of" trade late fee of $3.00 per trade. Under proposed rule 6230(a)(2), SR–NASD–2002–46, a transaction that is executed after 6:30 p.m. must be reported within the first 1 hour and 15 minutes after the open of the market on the following business day to be reported on time "as/of."[12] A member shall be charged an "as/of" trade late fee of $3.00 per transaction for those transactions reported beyond such time frame. To provide firms time to adjust to the new reporting system, the cancel or correct trade fee and "as/of" trade late fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. In addition, NASD proposes a browse and query fee of $0.05 for each returned page of query beyond the first page. This feature will allow members to review their own previously reported data.

In order to standardize corporate bond reporting obligations and minimize industry technology burdens, NASD has proposed (as part of the TRACE filing with the Commission) the elimination of the separate FIPS system and its related rules and costs. The TRACE trade reporting fee will replace the flat fee of $1.00 per trade currently charged to report corporate bonds through FIPS.

Market Data Fees. The NASD proposes to charge market professionals who subscribe to receive real-time market data as follows: (i) Bond Trade Dissemination Service ("BTDS") Professional Display Fee of $60 per month per terminal for each interrogation or display device receiving real-time TRACE transaction data; (ii) BTDS Internal Usage Authorization Fee of $500 per month per organization for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities;[13] (iii) BTDS External Usage Authorization Fee of $1,000 per month per organization for dissemination of real-time TRACE transaction data used in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.[14] Non-professionals that subscribe to receive real-time TRACE transaction data will be charged $1.00 per month; per terminal. In addition, the NASD proposes a fee of $15.00 per month, per subscriber for the daily list fax service that will contain all of the daily additions, deletions, modifications to the list of TRACE-eligible securities.

Market participants and others who wish to receive real-time TRACE data directly from the NASD will be required to enter into agreements with the NASD. For example, a vendor or broker/dealer firm that wishes to distribute TRACE real-time data externally will be required to enter into a vendor agreement, which among other things will standardize display facilities and require the vendor to collect specified dissemination fees from its end users for remittance to the NASD. Vendors or broker/dealer firms that wish to receive real-time TRACE data directly from the NASD and subsequently disseminate real-time TRACE data only internally will also be required to execute agreements with the NASD, which among other things, will require firms to represent that the TRACE real-time data will not be disseminated externally.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a registered securities

[12] The NASD has proposed generally to amend the reporting period from 1 hour to 1 hour and 15 minutes, and this period would apply to transactions executed after 6:30 p.m. and reported the next morning. That proposal is being approved concurrently with this proposal.

[13] Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.

[14] Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.

association. In particular, the Commission believes that the proposed rule change is consistent with the requirement of section 15A(b)(5)[15] that the rules of an association provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities; and the requirement of section 15A(b)(6)[16] that the rules of the association are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17] The Commission believes that the fees allow users great flexibility in how they will interact with the system, and are scaled according to objective criteria applied across-the-board to all categories of users.

1. Equitable Allocation and Unfair Discrimination

The Commission believes that the proposal provides for the equitable allocation of reasonable fees, dues, and other charges, and does not permit unfair discrimination between customers, issuers, brokers, or dealers. For example, in several instances, the TRACE fee structure adopts a sliding scale approach. The Commission believes that this sliding scale structure promotes an equitable distribution of the relevant fees while reducing the possibility of unfair discrimination between customers, issuers, brokers, or dealers.[18] For example, transaction reporting fees vary depending on the size of the transaction reported by the member, with fees ranging from $0.50 per trade (for the smallest trades) to $2.50 per trade (for the largest trades). Similarly, system fees for members who report to TRACE through a web browser are scaled so that the amount of the fee decreases in proportion to the number of user identification members registered to the member. This permits members to take advantage of economies of scale.

In other instances, the TRACE fees vary according to the way in which the user intends to use the disseminated TRACE data. For example, market data fees are lower for users who limit their use of the information to internal distribution, and relatively higher for users who repackage the data for delivery outside of the organization. The Commission believes that this use-based approach is consistent with equitable distribution of fees.

2. Reasonableness

The Commission believes that the TRACE fee structure is reasonable under the Act. In its initial filing, the NASD represented that it believes the TRACE fees are reasonably related to the costs of developing the new facility and to meeting the estimated operating expenses of the TRACE system. Specifically, the NASD represented that developmental costs of TRACE, to date, were roughly $7.2 million. In addition, the NASD represented that total operating costs for TRACE are estimated to be approximately $6 million annually. The NASD represented that the proposed fees are intended to help the NASD recover the developmental costs of the new system, fund ongoing operational costs, and fund the regulatory activities necessary for surveillance of the market, with a view towards making TRACE financially self-sustaining. The NASD also represented that the various levels of market data fees are intended to provide market participants with the flexibility to select the usage level that best meets their needs. In determining the proposed market data fees, the NASD represented that its staff reviewed comparable industry fees for market data. Finally, recognizing that the TRACE system is new and that participants will need time to adjust to the requirements of the TRACE Rules, the NASD proposed that the "cancel and correct" and "as/of" late fee not be charged until the later of October 1, 2002 or 90 days from the effective date of TRACE.

3. TBMA's Letter

TBMA stated that the NASD has not provided sufficient basis to determine whether the TRACE fees meet the requirements of the Act regarding equitable allocation and reasonableness. TBMA stated that the NASD failed to: (1) Reasonably substantiate its costs; (2) match revenue streams from the various fees with the costs it seeks to recover; (3) explain the relative allocation of the different categories of fees on a total revenue basis; and (4) recognize that historical trade information should be distributed and commercialized separately from real-time data. TBMA further suggested that the TRACE fees be reassessed as soon as possible after TRACE becomes effective and that the proposal be amended to reflect a pilot status.

4. NASD Amendment No. 3 and Response to TBMA's Letter

In response, the NASD submitted Amendment No. 3 establishing the TRACE fees as a six-month pilot program; the NASD also agreed to reassess the fees within six months or less after the effective date of TRACE.

In addition, the NASD addressed the issue of whether the TRACE fees meet the standards set forth in the Act. With respect to equitable allocation and unfair discrimination, the NASD noted that it has adopted a sliding scale to more equitably allocate transaction reporting fees. It noted that its fee structure allows participants to report required information according to the method that best meets their requirements based on volume, cost, and other individual needs. In addition, the NASD noted that its market data fees permit users to select the level of real-time TRACE data that they would like to receive and set up a system accordingly. Finally, the NASD provided additional justification for the reasonableness of its fees. It stated that its staff has determined the fee structure based on the best available information regarding the number of participants, debt securities transaction volume, potential use of data, etc. It represented that a number of analyses have been conducted to estimate revenue, including requesting a sample of NASD members to estimate transaction volumes and consulting market data vendors about appropriate pricing levels for market data distribution. Finally, it stated that the only development costs included in its cost estimates are those specifically related to the operation of the current TRACE system; and that, in preparing its estimates, it has projected to recover developmental costs related to TRACE over a four-year period.

The Commission believes that the NASD has adequately addressed TBMA's concerns regarding whether the TRACE fees satisfy the statutory standards regarding equitable allocation, unfair discrimination, and reasonableness. In any event, because the NASD proposes to implement the TRACE fees on a six-month pilot basis, the Commission will be able to address any concerns that arise regarding consistency with the Act at the end of the pilot program. Moreover, the NASD itself has agreed to revisit these issues prior to the expiration of the pilot.

V. Accelerated Approval of Amendment No. 3

For these reasons, the Commission finds good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] As vendors and other market participants who review transaction information could be considered customers of TRACE, the Commission believes that the statutory provision prohibiting unfair discrimination against customers prohibits the NASD from unfairly discriminating against those vendors and market participants.

Act, to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 provides that TRACE fees will operate as a six-month pilot program. Conversion of the fee filing to a pilot program will enable the Commission to re-evaluate issues relating to consistency with the Act at

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46155; File No. SR–NASD–2002–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Day and Good-Till-Cancelled Order

entering party, or until 1 year after entry, whichever comes first.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) No Change.

(1) No Change.

(A) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the proposal, SuperMontage will accept, retain, display, and execute orders at multiple price levels. The system will allow Quoting Market Participants[3] to enter Non-Directed

Directed Orders that are designated Day or GTC will be processed as follows:

1. Pre-Market Session

The Pre-Market Session runs from 7:30:00 to 9:29:29 a.m. Eastern Time. During this time, users may enter and cancel GTC and Day Non-Directed Orders. Day Orders entered into the system in the pre-market period, or GTC orders entered into the system in the

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Act, to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 provides that TRACE fees will operate as a six-month pilot program. Conversion of the fee filing to a pilot program will enable the Commission to re-evaluate issues relating to consistency with the Act at the end of the pilot program and recommend any needed changes to the NASD at the end of that time.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–63 and should be submitted by July 26, 2002.

VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2002–63), as amended, be and hereby is approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–16851 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46155; File No. SR–NASD–2002–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Day and Good-Till-Cancelled Order Designations for Non-Directed Orders and Establishing Time Priority in Nasdaq's Future Order Display and Collector Facility ("NNMS" or "SuperMontage")

July 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish "Good-till-Cancelled" ("GTC") and "Day" designations for Non-Directed Orders and clarify the processing of such orders when held in Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage"). In addition, to clarify the SuperMontage capability to accept, retain, display, and execute orders at multiple price levels, Nasdaq also proposes to remove the term "marketable" from the text of Rule 4706(a)(1)(B). If approved, Nasdaq will implement this rule change within 30 days after successful completion of SuperMontage user acceptance testing.

Proposed new language is italicized and deleted text is bracketed.

4701. Definitions

(a) through (hh) No Change.

(ii) The term "Good-till-Cancelled" shall mean, for orders so designated, that if after entry into NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) No Change.

(B) A Non-Directed Order must be a market or [marketable] limit order, must be a round lot or a mixed lot, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant may be designated as "Immediate or Cancel"[.], *or as a "Day" or a "Good-till-Cancelled" order. If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4:00 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will returned to the sender. If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4:00 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).*

(C) through (E) No Change.

(F)(2) No Change.

(b) through (f) No Change.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(1) No Change.

(A) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' Displayed Quotes/Orders and Reserve Size in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. *The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry.*

(i) through (iv) No Change.

(C) through (E) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the proposal, SuperMontage will accept, retain, display, and execute orders at multiple price levels. The system will allow Quoting Market Participants[3] to enter Non-Directed Orders and designate that those orders should be: (1) returned to them if they are not immediately executed (*i.e.*, an Immediate or Cancel or IOC order),[4] (2) if not immediately executed or thereafter cancelled, held in the SuperMontage system for potential display and/or execution until the 4:00 p.m., Nasdaq market close, and then returned to them (*i.e.*, a Day order), or (3) if not immediately executed or thereafter cancelled, held in the SuperMontage system for potential display (if non-marketable) and/or execution for up to one year and then to be purged by Nasdaq (*i.e.*, a Good-till-Cancelled or GTC order).[5] In this filing, Nasdaq seeks to establish both the GTC and Day order designations for Non-Directed Orders, and clarify for market participants how the time priority among those orders is established and how such orders will, or will not, be executed during the trading day.

a. Retention and Processing of Non-Directed Orders Designated as Day or GTC Orders

As currently contemplated, SuperMontage will have four distinct time periods over the course of the trading day: (1) the Pre-Market Session (7:30 to 9:29:29 Eastern Time), (2) the Pre-Open Unlocking/Uncrossing Process (9:29:30 a.m. to 9:29:59 Eastern Time),[6] (3) Normal Market Day (9:30 a.m. to 4:00 p.m. Eastern Time), and (4) the After-Hours Session (4:00 to 6:30 p.m. Eastern Time).[7] During these time periods, Non-Directed Orders that are designated Day or GTC will be processed as follows:

1. Pre-Market Session

The Pre-Market Session runs from 7:30:00 to 9:29:29 a.m. Eastern Time. During this time, users may enter and cancel GTC and Day Non-Directed Orders. Day Orders entered into the system in the pre-market period, or GTC orders entered into the system in the pre-market period or carried over from a previous day, though displayable, will not be available for execution until the Pre-Open Unlocking/Uncrossing Process set forth in proposed Rule 4710(b)(3)(B) commences at 9:29:30 a.m. Eastern Time, if approved by the Commission.[8]

2. Pre-Open Unlocking/Uncrossing Process

If approved, the Pre-Open Unlocking/Uncrossing Process will run from 9:29:30 to 9:29:59 Eastern Time.[9] During the Pre-Market Unlocking/Uncrossing Process, GTC and Day orders will continue to be displayable and, starting at 9:29:30 a.m., be automatically executed if necessary to cure a locked/crossed market condition. Quotes and orders from automatic execution participants will receive execution reports, and SuperMontage delivery participants will have the execution delivered to them for acceptance, partial acceptance, or decline.[10] Once this unlocking/uncrossing is completed, the system will resume processing incoming quotes, orders, and cancels until the 9:30 a.m. market open. If a Day or GTC order arrives during this period, it will be executed if it would lock or cross the market. If the new Day or GTC order does not lock/cross the market, it will be retained by SuperMontage for display and/or execution during the remainder of the trading day for Day orders and for GTC orders, and for GTC orders each day thereafter starting at 9:29:30 a.m. until the 4:00 p.m. normal market close.

3. Normal Market Session

The Normal Market Session runs from 9:30 a.m. to 4:00 p.m. Eastern Time. During this period Day and GTC orders may be entered by Quoting Market

[3] The term "Quoting Market Participants" refers to NNMS Market Makers, NNMS Electronic Communication Networks ("ECNs"), and Unlisted Trading Privilege Exchange Specialists. See Rule 4701(cc).

[4] If no designation is selected by the entering party, SuperMontage will automatically designate such orders as IOC.

[5] GTC orders that remain in the system for 1 year will be purged after the close on the anniversary date of their entry. If this anniversary date falls on a date when the Nasdaq market is closed, the order will be purged after the close on the next business day.

[6] Nasdaq recently filed with the Commission a proposal seeking to establish a Pre-Open Unlocking/Uncrossing Process for SuperMontage. See Securities Exchange Act Release No. 45965 (May 20, 2002), 67 FR 36659 (May 28, 2002) (Notice of File No. NASD–2002–42).

[7] Nasdaq will soon formally file with the Commission a proposal clarifying that the After-Hours session in a SuperMontage environment will operate in a manner similar to Nasdaq's current after-hours program.

[8] During the Pre-Market Session executions can only occur through the SuperMontage Directed Order process. Telephone conversation between Thomas Moran, Office of the General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on July 1, 2002.

[9] See note 6, supra.

[10] Once dispatched to an order delivery market participant, an execution/order may not be cancelled.

Participants at any time and will be retained by the system until they are executed or cancelled. Each GTC and Day order will, like all other representations of trading interest in SuperMontage, be individually time-stamped and executed if appropriate. Remainders of quote/orders reduced by execution, and retained by the system, will retain the time priority of their original entry.

its time priority. For example, a GTC order entered at 7:45 a.m. is not executable, but such an order will have time priority over all other orders entered after that time. Similarly, that GTC order would retain its time priority over all other orders entered on days after that GTC order was entered into NNMS. In short, if NNMS allows the entry of the quote/order at a particular point in the trading day, the quote/

B. institute proceedings to determine whether the proposed rule change should be disapproved.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[9] Following receipt of comments from interested parties and the SEC staff, on January 19,

until August 31, 2002 to provide additional time to evaluate the issues presented by the Pilot, in light of recently adopted requirements relating to disclosure of equity compensation plan information.[14] In addition, on June 6, 2002, the Exchange's special Committee on Corporate Accountability and Listing Standards ("Committee") recommended to the Exchange's Board of Directors that shareholders "be given

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Participants at any time and will be retained by the system until they are executed or cancelled. Each GTC and Day order will, like all other representations of trading interest in SuperMontage, be individually time-stamped and executed if appropriate. Remainders of quote/orders reduced by execution, and retained by the system, will retain the time priority of their original entry.

4. After-Hours Session

If approved, the After-Hours Session in a SuperMontage environment will run from 4:00 p.m. (Market close) to 6:30 p.m. Eastern Time.[11] At market close, SuperMontage Non-Directed Order Processing ends for the day, and all Day orders expire and are returned to the entering party. GTC orders that have not been executed or cancelled will be retained by the system for the next trading session. Such orders will not, however, be available for execution in the after-hours session. During the after-hours session, Quoting Market Participants may continue to enter new GTC orders and cancel any previously entered GTC order. GTC orders are not displayed during the after-hours session. Day orders may not be entered during the after-hours session.

b. Time Priority in SuperMontage

The default priority for executing Non-Directed Orders in SuperMontage is price/time. As such, the system, unless requested otherwise by the party entering the Non-Directed Order,[12] will access the highest buy prices or the lowest sell prices residing in the system.[13] Generally, among equally priced buying interest, or equally priced selling or market-priced interest, the system is programmed to automatically access the quotes/orders that were entered first into the system.[14] This time priority attaches to a quote/order based upon the date and time it was entered into NNMS and remains until the quote/order is executed in full or it is cancelled by the entering party or by NNMS. The ability to execute against a particular quote/order will not impact its time priority. For example, a GTC order entered at 7:45 a.m. is not executable, but such an order will have time priority over all other orders entered after that time. Similarly, that GTC order would retain its time priority over all other orders entered on days after that GTC order was entered into NNMS. In short, if NNMS allows the entry of the quote/order at a particular point in the trading day, the quote/order's time priority is established at that time.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[15] in general, and with Section 15A(b)(6) of the Act,[16] in particular, in that the proposals are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–92 and should be submitted by July 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17000 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* note 7, *supra.*

[12] A party entering a Non-Directed Order may also elect to have it order interact in the system on a price/time basis that takes into account access fees or on a price/size/time basis. *See* Rule 4710(b)(1)(B)(i), (ii) and (iii).

[13] If a Non-Directed Order is entered by a NNMS Market Maker or ECN, NNMS will, before sending it to a Quoting Market Participant, first attempt to match the order off against the entering party's own quote/order, if that quote/order is at the best price in Nasdaq. See Rule 4710(b)(1)(B)(iv)(a).

[14] Parties entering Non-Directed Orders also have an option to preference such orders to a particular market participant. See Rule 4710(b)(1)(B)(iv)(b).

[15] 15 U.S.C. 78o–3.

[16] 15 U.S.C. 78o–3(b)(6).

[17] Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day of publication in the **Federal Register**.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46143 ; File No. SR–NYSE–2002–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through August 31, 2002

June 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until August 31, 2002, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.[3] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[4] The Pilot has since been extended until January 11, 2002,[5] March 11, 2002,[6] May 13, 2002,[7] and June 30, 2002.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[3] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) ("Original Pilot Approval Order").

[4] Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[5] Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) ("2001 Extension Request").

[6] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[7] *See* Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR–NYSE–2002–14).

[8] *See* Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR–NYSE–2002–18).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[9] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[10] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[11] The Exchange's 2001 Extension Request became effective on September 28, 2001, on a pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[12] The Pilot was again extended until March 11, 2002, May 13, 2002, and June 30, 2002 for the same reasons.[13]

The Exchange proposes to further extend the effectiveness of the Pilot until August 31, 2002 to provide additional time to evaluate the issues presented by the Pilot, in light of recently adopted requirements relating to disclosure of equity compensation plan information.[14] In addition, on June 6, 2002, the Exchange's special Committee on Corporate Accountability and Listing Standards ("Committee") recommended to the Exchange's Board of Directors that shareholders "be given the opportunity to vote on all equity-compensation plans."[15] The NYSE represents that its Board of Directors is expected to vote at its August 2002 Board meeting on the final recommendations from the Committee and on rule changes to implement them. The Exchange requests an extension of the Pilot until August 31, 2002 to provide time within which to file such rule changes as are approved by its Board of Directors in August. The Exchange believes that, upon filing of such rule changes, further extension of the Pilot will likely be necessary to provide time for notice, comment and approval of such rule changes.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[17] which requires, among other things, that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[9] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) ("2000 Extension Request").

[10] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[11] *See* note 4 supra.

[12] *See* note 5 *supra*. One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request. *See* letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors ("CII") to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. *See* note 14 *infra* below.

[13] *See* notes 6 through 8 *supra*.

[14] Release Nos. 33–8048 and 34–45169 (December 21, 2001), 67 FR 232 (January 2, 2002).

[15] *Report of Corporate Accountability and Listing Standards Committee*, June 6, 2002, p. 17.

[16] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on June 26, 2002.

[17] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.[22] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the

All submissions should refer to the File No. SR–NYSE–2002–22 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16849 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)[7] because it changes a PCX fee. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is

Iditarod Regional Education Attendance Areas (REAA), Aniak, Crooked Creek, Red Devil and Sleetmute in the Kuspuk REAA, Kwethluk in the Lower Kuskokwim REAA and Ekwok and New Stuyahok in the Southwest Region REAA in the State of Alaska constitute a disaster area due to damages caused by flooding occurring on April 27, 2002 through May 30, 2002. Applications for loans for physical damage as a result of

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C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) [19] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before June 30, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived the five-day pre-notice and thirty-day operative date requirements for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change to extend the Pilot through August 31, 2002, become operative on June 30, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

[18] 15 U.S.C. 78s(b)(3)(A).
[19] 17 CFR 240.19b–4(f)(6).
[20] *Id.*
[21] 17 CFR 240.19b–4(f)(6)(iii).

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.[22] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change to extend the Pilot through August 31, 2002, become operative on June 30, 2002.[23] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

[22] See Original Pilot Approval Order, note 3 *supra*.
[23] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to the File No. SR–NYSE–2002–22 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16849 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46138; File No. SR–PCX–2002–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

June 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[24] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to lead market makers for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Rates beginning at the commencement of the June trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business. Only the amount of the fee is being changed.

The PCX believes that the proposal is consistent with section 6(b) of the Act,[4] in general, and section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

[3] See Securities Exchange Act Release No. 44810 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).
[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f) [7] because it changes a PCX fee. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the PCX. All submissions should refer to File No. SR–PCX–2002–32 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–16770 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).
[7] 17 CFR 19b–4(f)(2).
[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3427]

State of Alaska; Disaster Loan Areas

As a result of the President's major disaster declaration on June 26, 2002, I find that Fairbanks North Star Borough, McGrath and Lime Village in the Iditarod Regional Education Attendance Areas (REAA), Aniak, Crooked Creek, Red Devil and Sleetmute in the Kuspuk REAA, Kwethluk in the Lower Kuskokwim REAA and Ekwok and New Stuyahok in the Southwest Region REAA in the State of Alaska constitute a disaster area due to damages caused by flooding occurring on April 27, 2002 through May 30, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 25, 2002 and for economic injury until the close of business on March 26, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

In addition, applications for economic injury loans from small businesses located in the following areas and jurisdictions in Alaska may be filed until the specified date at the above location: Alaska Gateway REAA, Delta/Greely REAA, Iditarod REAA, Kahsunamiut (Chevak) REAA, Lower Kuskokwim REAA, Lower Yukon REAA, Southwest Region REAA, Yupiit (Akiachak, Akiak and Tulusak) REAA, Lake & Peninsula Borough, Yukon Flats REAA, Denali Borough and Yukon-Koyukuk REAA.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Busineses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 342706. For economic injury the number is 9Q3700 for Alaska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 27, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–16787 Filed 7–3–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9Q36]

Commonwealth of Massachusetts; Disaster Loan Areas

Suffolk County and the contiguous counties of Essex, Middlesex and Norfolk constitute an economic injury

A Women's Business Center is a 5-year community-based project that is funded by the U.S. Small Business Administration through a matching grant. The project is a planned scope of activities that provide business skills services targeted to women. The project must operate as a distinct unit of the recipient's organization having its own budget for facilities, equipment and

DATES: The opening date of the application period is July 15, 2002 and the closing date is August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Sharon Gurley (202) 205–6622.

Wilma Goldstein,

Assistant Administrator, SBA/Office of Women's Business Ownership.

paper or electronic form. Comments may be mailed to Deepti Rohatgi, Office of the Coordinator—International Communications and Information Policy Mail Code EB/CIP, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–5820. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft

Dated: June 11, 2002.

Steven W. Lett,

Deputy U.S. Coordinator, International, Communications Information Policy, Department of State.

[FR Doc. 02–15974 Filed 7–3–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

To attend the meeting, please contact Matt Lauer at (202) 619–4463 and provide date of birth and Social Security number. For more information visit *www.state.gov/r/adcompd.*

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SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9Q36]

Commonwealth of Massachusetts; Disaster Loan Areas

Suffolk County and the contiguous counties of Essex, Middlesex and Norfolk constitute an economic injury disaster loan area as a result of a fire that occurred in the Roxbury section of Boston, MA on June 9, 2002. The fire destroyed commercial buildings in Dudley Square. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on March 27, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent. The number assigned for economic injury for this disaster is 9Q3600 for Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: June 27, 2002.

Melanie R. Sabelhaus,

Acting Administrator.

[FR Doc. 02–16788 Filed 7–3–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance for Women's Business Centers (WBC) To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Program Announcement No. OWBO–2002–018.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. OWBO–2002–018 to invite applications from eligible nonprofit organizations to conduct Women's Business Center (WBC) projects. The successful applicant will receive a cooperative agreement to provide counseling, training and other technical assistance to women who want to start or expand businesses. The authorizing legislation is the Small Business Act, §§ 2(h) and 29, 15 U.S.C. 631(h) and 656. Approximately three (3) grants will be awarded.

A Women's Business Center is a 5-year community-based project that is funded by the U.S. Small Business Administration through a matching grant. The project is a planned scope of activities that provide business skills services targeted to women. The project must operate as a distinct unit of the recipient's organization having its own budget for facilities, equipment and resources to carry out project activities. The WBC services must include long-term training and counseling pertaining to financial, management and marketing assistance to benefit small business concerns owned and controlled by women. SBA Headquarters must receive applications/proposals by 4:00 p.m., Eastern Standard Time, on the closing date of August 12, 2002. SBA will select successful applicants using a competitive technical evaluation process. Applicants from states and territories without an SBA-funded Women's Business Center will receive special consideration. States and U.S. territories without a center are Delaware, Guam, Ohio, South Carolina and West Virginia.

Service and assistance areas must include financial, management, marketing, loan packaging, eCommerce, government procurement/certification assistance and training on the business uses of the Internet. Applicants must plan to include women who are socially and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, agribusiness, rural or urban areas, etc. The applicant may propose to serve women who are veterans, women with home-based businesses, women with disabilities, etc. SBA will request award recipients to provide content and support activities to the SBA Online Women's Business Center, *www.onlinewbc.gov*.

The applicants' technical proposal must contain information about its current status and past performance. Also, the applicant must provide a 5-year plan for service delivery, fund-raising, training and technical assistance activities. The grant will be issued annually through a 5-year term without re-competition. The non-Federal match requirement is one non-Federal dollar for each two Federal dollars in years 1 and 2; and one non-Federal dollar for each Federal dollar in years 3, 4, and 5. Up to one-half of the non-Federal match funds may be in the form of in-kind contributions (i.e., 50% of match must be in cash).

DATES: The opening date of the application period is July 15, 2002 and the closing date is August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Sharon Gurley (202) 205–6622.

Wilma Goldstein,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 02–16785 Filed 7–3–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #4036]

Request for Comments; United States Privatization of Intergovernmental Satellite

The Department of State requests comments regarding the effects of the privatization of Inmarsat and INTELSAT on the United States industry, United States jobs, and United States industry access to the to the global marketplace. The Department notes that Inmarsat privatized on April 15, 1999 and INTELSAT privatized on July 18, 2001.

On March 17, 2000, the President signed into law the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act, Public Law No. 106–180. This legislation seeks to "promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat." *Id.* at sec. 2. In addition, the ORBIT Act requires the President to provide an annual report to Congress on the progress of privatization in relation to the objectives, purposes, and provisions of the Act, including the "[v]iews of the industry and consumers on privatization" and the "[i]mpact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace." *See id.* at sec. 646(b)(3) and (4). The first such report was released on February 27, 2001.[1] By this public notice and RFC, we are soliciting the views of the industry and consumers on the privatizations.

DATES: Comments must be received by July 19, 2002.

ADDRESSES: The Department invites the public to submit written comments in

[1] *See* Department of State, Report to Congress, *Report Pursuant to Section 646(a) of Section 3 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (Pub. L. 106–180)*, (Feb. 2001) ["ORBIT Report"].

paper or electronic form. Comments may be mailed to Deepti Rohatgi, Office of the Coordinator—International Communications and Information Policy Mail Code EB/CIP, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–5820. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format.

Comments submitted in electronic form may be sent to *ebcipsatellites@state.gov*. Electronic comments should be submitted in the formats specified above.

Comments submitted electronically will be posted on the Department's Web site at *http://www.state.gov/e/eb/cip*.

FOR FURTHER INFORMATION CONTACT: Deepti Rohatgi (202) 647–5832.

SUPPLEMENTARY INFORMATION:

Background

INTELSAT was created as an intergovernmental organization (with final charter entering into force on February 12, 1973) to enhance global communications and to spread the risks of creating a global satellite system across operating companies and agencies from many countries.[2] On July 18, 2001, INTELSAT was fully privatized by transferring all of its operating assets to Intelsat LLC, a Bermuda corporation that enjoys no privileges or immunities. Inmarsat was created as an intergovernmental organization (with its final charter entering into force on July 16, 1979) to improve global maritime communications through a satellite system that would provide distress and safety communications services to seafaring nations in a cooperative, cost-sharing entity. On April 15, 1999, Inmarsat was fully privatized by transferring its assets and operations to Inmarsat Ltd., a U.K. corporation that enjoys no privileges or immunities. Previously, INTELSAT had divested some of its satellites in 1998 to New Skies Satellites, NV, a Netherlands corporation.[3]

[2] *See* Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

[3] Although both ISOs are fully privatized, two small residual intergovernmental organizations, ITSO from INTELSAT, and IMSO (International Mobile Satellite Organization) from Inmarsat, will remain to monitor the performance of certain public services.

Dated: June 11, 2002.

Steven W. Lett,

Deputy U.S. Coordinator, International, Communications Information Policy, Department of State.

[FR Doc. 02–15974 Filed 7–3–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4040]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Friday, July 19 in Room 1406 of the U.S. Department of State at 2201 C Street, NW, Washington, DC. The meeting will take place from 10 a.m. to 11 a.m.

The Commission, reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will hear from experts who are launching a global initiative designed to ensure that health becomes an important component of U.S. foreign policy and is used to improve America's image abroad, defuse anger and resentment by people in the Middle East and other regions against the United States, and attack some of the root causes of terrorism.

Dr. Kenneth L. Shine, who recently joined the new RAND Center for Domestic and International Health Security as its first director, will be the principal speaker at the session. Dr. Shine is one of the nation's leading physicians and was the president of the Institute of Medicine at the National Academy of Sciences. Dr. C. Ross Anthony, associate center director for international health, will also speak. Dr. Anthony is the former director of development resources for USAID/Europe and an international health expert.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Washington, DC; Lewis Manilow of Illinois; and Maria Elena Torano of Florida.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

To attend the meeting, please contact Matt Lauer at (202) 619–4463 and provide date of birth and Social Security number. For more information visit *www.state.gov/r/adcompd*.

Dated: June 28, 2002.

Matthew Lauer,

Executive Director, Department of State.

[FR Doc. 02–16887 Filed 7–3–02; 8:45 am]

BILLING CODE 4710–11–P

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

DATE: Saturday, July 27, 2002, 9 a.m.–5 p.m.

PLACE: The Samoset Resort, Rockport, ME.

MATTERS TO BE CONSIDERED: Consideration of proposals submitted for Institute funding and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Consideration of proposals submitted for Institute funding and internal Institute business other than personnel matters.

PORTIONS CLOSED TO THE PUBLIC: Discussion of internal personnel matters.

CONTACT PERSON: David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 02–17037 Filed 7–2–02; 3:40 pm]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST–01–11164 and OST–01–11198]

Application of Caribbean Star Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2002–6–16)

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Caribbean Star Airlines, Inc., fit, willing, and able, and awarding it certificates of public

convenience and necessity to engage in interstate and foreign scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than July 11, 2002.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–01–11164 and OST–01–11198 and

SR 299 is the principal arterial between Interstate 5 and Highway 101 and is designated as a high emphasis route in he Interregional Roadway System. SR 299 is of economic importance to the region as it provides access to a vast recreational area and links the upper Sacramento Valley with the deepwater port in Eureka. The project portion of the highway, the

Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 2, 2002.

David Nicol,

Assistant Division Administrator-California Division, Federal Highway Administration.

[FR Doc. 02–16877 Filed 7–3–02; 8:45 am]

which will be approved or disapproved on or before December 22, 2002. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft

150. such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act,

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

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convenience and necessity to engage in interstate and foreign scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than July 11, 2002.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–01–11164 and OST–01–11198 and addressed to the Department of Transportation Dockets (SVC–124, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: June 27, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–16897 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Shasta and Trinity Counties, CA

AGENCY: Federal Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed State Route 299 (SR 299) project in Shasta and Trinity Counties, California.

FOR FURTHER INFORMATION CONTACT: Harry Khani, Transportation Engineer, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, California 95814, telephone: (916) 498–5056, e-mail: *Harry.Khani@fhwa.dot.gov*. Chris Cummings, California Department of Transportation Project Manager, 1657 Riverside Drive, Redding, CA 96049, telephone: (530) 225–3495, e-mail: *chris_cummings@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an EIS for a proposed highway improvement project of SR 299 in Shasta and Trinity Counties, California.

SR 299 is the principal arterial between Interstate 5 and Highway 101 and is designated as a high emphasis route in he Interregional Roadway System. SR 299 is of economic importance to the region as it provides access to a vast recreational area and links the upper Sacramento Valley with the deepwater port in Eureka. The project portion of the highway, the Buckhorn Grade, represents the only obstacle preventing interstate trucks and oversize permit loads from utilizing this direct access to the coast.

The proposed project limits extends approximately 7.5 miles from the boundary of the Whiskeytown-Shasta-Trinity National Recreation Area to west of the Shasta-Trinity-County line. the existing SR 299 corridor within these limits consists of a two-lane highway with limited passing lanes at various locations. The road closely follows the extremely rugged terrain forming a steep, twisted alignment with a design speed of 25 mph.

The proposed project would construct a new two-lane alignment, with truck climbing lanes, standard shoulders, 50 mph design speed, and maximum 7% grade. Possible alignment variations includes bridges, viaducts, and a possible tunnel at the Buckhorn Summit. The replaced SR 299 alignment would be relinquished or reclaimed (all or part).

Caltrans has been investigating Buckhorn Grade realignment designs of over 40 years. Since the early 1990's four Project Study Reports have been completed. Since 2000, Caltrans has conducted over 11 meetings with the public, with local governmental officials, and with jurisdictional agencies.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. In addition, a public workshop will be held, with public notice given of the time and location. The draft EIS will be available for public and agency review and comment prior to the public workshop.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 2, 2002.

David Nicol,

Assistant Division Administrator-California Division, Federal Highway Administration.

[FR Doc. 02–16877 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Brownsville/South Padre Island International Airport Brownsville, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Brownsville for Brownsville/South Padre Island International Airport under the provisions of Title 49 U.S.C., Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Brownsville/South Padre Island International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before December 22, 2002.

DATES: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is June 25, 2002. The public comment period ends August 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Nan L. Terry, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193–0650, (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Brownsville/South Padre Island International Airport are in compliance with applicable requirements of part 150, effective June 25, 2002. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 22, 2002. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Brownsville submitted to the FAA on June 17, 2002, noise exposure maps, descriptions and other documentation which were produced during the Federal Aviation Regulations (FAR) Part 150 Airport Noise Compatibility Planning Study for Brownsville/South Padre Island International Airport beginning on September 25, 1998. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Brownsville. The specific maps under consideration are: 1999 Noise Exposure Map Existing Condition Noise Exposure Map, Exhibit 4.6 and 2004 Future Condition Noise Exposure Map with Existing Runway Configuration, Exhibit 5.2a in the submission.

The FAA has determined that these maps for Brownsville/South Padre Island International Airport are in compliance with applicable requirements. This determination is effective on June 25, 2002. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Brownsville/South Padre Island International Airport, also effective on June 25, 2002. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 22, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

Department of Aviation, City of Brownsville, 700 S. Minnesota Avenue, Brownsville, Texas 75821.

Questions may be directed to the individual named above under the heading, for further information contact.

Issued in Fort Worth, Texas, June 25, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–16891 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program, submitted by the manager of the airfield line of business for Seattle-Tacoma International Airport, under the provisions of 49 U.S.C., Sec. 47504(b), and 14 CFR part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96–52 (1980).

On December 3, 2001, the FAA determined that the noise exposure maps submitted, under part 150, by the manager of the airfield line of business for Seattle-Tacoma International Airport, were in compliance with applicable requirements. On June 3, 2002, the Associate Administrator for Airports approved the Seattle-Tacoma International Airport noise compatibility program. Program measures 1, 9, 12, 13, 14, 15, 16, 17, 18, and 19 received outright approval. Measures 5 and 6 were approved as voluntary. Measures 3, 4 and 10 were disapproved, pending submission of additional information. Measures 7 and 11 were disapproved outright, 2 was disapproved, in part, pending submission of additional information. Measure 8 required no FAA action.

EFFECTIVE DATE: The effective date of the FAA's approval of the Seattle-Tacoma International Airport noise compatibility program is June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation

types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and airport traffic control systems, or adversely affecting any other powers and responsibilities of the Administrator prescribed by law.

e. Program measures are reasonable, consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses, and do not unreasonably burden interstate or foreign commerce.

f. Program measures relating to the use of flight procedures may be implemented prior to the submission of a revised noise exposure map, if the measures are not inconsistent with safe and efficient use of the navigable airspace and airport traffic control systems, and they do not create an unreasonable interference with interstate or foreign commerce.

The FAA completed its review of the noise exposure maps and documentation submitted by the manager of the airfield line of business for Seattle-Tacoma International Airport. On December 3, 2001, the FAA determined that the noise exposure maps submitted for the airport under part 150 were in compliance with applicable requirements. On June 3, 2002, the Associate Administrator for Airports approved the Seattle-Tacoma International Airport noise compatibility program. Program measures 1, 9, 12, 13, 14, 15, 16, 17, 18, and 19 received outright approval. Measures 5 and 6 were approved as voluntary. Measures 3, 4 and 10 were disapproved, pending submission of additional information. Measures 7 and 11 were disapproved outright, 2 was disapproved, in part, pending submission of additional information. Measure 8 required no FAA action. The overall program, therefore, was approved by the Associate

Class I: Coverage less than One Billion U.S. Dollars—
$0.03 × _____ enplanements + ($0.03 × _____ RPMs ÷ 1000) + $0.17 × RTMs ÷ 1000 ..... $_____
Class II: Coverage One Billion U.S. Dollars or more, but less than Two Billion U.S. Dollars—
$0.04 × _____ enplanements + ($0.04 × _____ RPMs ÷ 1000) + $0.25 × RTMs ÷ 1000 ..... $_____
Class III: Coverage Two Billion U.S. Dollars or more, but less than Three Billion U.S. Dollars—
$0.05 × _____ enplanements + ($0.05 × _____ RPMs ÷ 1000) + $0.30 × RTMs ÷ 1000 ..... $_____
Class IV: Coverage Three Billion U.S. Dollars or more—
$0.05 × _____ enplanements + ($0.05 × _____ RPMs ÷ 1000) + $0.33 × RTMs ÷ 1000 ..... $_____
Total Premium ..... $_____

DEPARTMENT OF TRANSPORTATION

DATES: New Policy in Effect: 23:59 GMT

available. With the approval of the

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11 were disapproved outright, 2 was disapproved, in part, pending submission of additional information. Measure 8 required no FAA action.

EFFECTIVE DATE: The effective date of the FAA's approval of the Seattle-Tacoma International Airport noise compatibility program is June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, SW., Renton, Washington, 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Seattle-Tacoma International Airport, effective June 3, 2002. Under 49 U.S.C., Sec. 27504(a), an airport operator, who has previously submitted a noise exposure map, may submit to the FAA a noise compatibile program that sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatibility land uses, and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The 49 U.S.C., Sec. 27503(a)(1), requires such a program to be developed in consultation with interested and affected parties, including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR), part 150, is a local, not federal, program. The FAA does not substitute its judgment for that of the airport proprietor, with respect to which measures should be recommended for action. The FAA's approval or disapproval of the FAR, part 150, program recommendations is measured according to the standards expressed in part 150 and the Aviation Safety and Noise Abatement Act of 1979, and it is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR, part 150.

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport, and preventing the introduction of additional noncompatible land uses.

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and airport traffic control systems, or adversely affecting other powers and responsibilities of the Administrator, as prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR, part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program, or a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Seattle Airports District Office.

The manager of the airfield line of business for Seattle-Tacoma International Airport submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study contacted at Seattle-Tacoma International Airport. The Seattle-Tacoma International Airport noise exposure maps were determined by the FAA, on December 3, 2001, to be in compliance with applicable requirements. Notice of this determination was published in the **Federal Register** on December 10, 2001.

The proposed Seattle-Tacoma International Airport noise compatibility program is comprised of actions designed for phased implementation by airport management and adjacent jurisdictions, from the date of study completion to the year 2004. It was requested that the FAA evaluate and approve this material as a noise compatibility program, as described in 49 U.S.C., Sec. 47504(a). The FAA began its review of the program on December 3, 2001, and was required by a provision of 49 U.S.C., Sec. 47504(b), to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program. The FAA completed its review and determined that the procedural and substantive requirements of 49 U.S.C., Sec. 47504(b), and FAR 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports, effective June 3, 2002.

These determinations are set forth in detail in a Record of Approval, endorsed by the Associate Administrator for Airports on June 3, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Seattle-Tacoma International Airport.

Issued in Renton, Washington, on June 12, 2002.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 02–16895 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Party War Risk Liability Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Issuance of New FAA Third Party War Risk Liability Insurance.

SUMMARY: The Federal Aviation Administration has issued a new Third Party War Risk Liability Insurance Policy to replace the policies that terminated on June 18, 2002. The new Policy changes the amount and basis of the premium to be charged, incorporates interim amendments made since the issuance of the premium policies, and adds actions in the event of default by the insured due to failure to pay premiums. The premium is based upon the extent to which the Insured conducts passenger or (dedicated) air cargo operations, or a combination of both. There are four classes of premiums based upon the coverage limit held by the carrier.

Class I: Coverage less than One Billion U.S. Dollars—
$0.03 × _____ enplanements + ($0.03 × _____ RPMs ÷ 1000) + $0.17 × RTMs ÷ 1000 ..... $_____
Class II: Coverage One Billion U.S. Dollars or more, but less than Two Billion U.S. Dollars—
$0.04 × _____ enplanements + ($0.04 × _____ RPMs ÷ 1000) + $0.25 × RTMs ÷ 1000 ..... $_____
Class III: Coverage Two Billion U.S. Dollars or more, but less than Three Billion U.S. Dollars—
$0.05 × _____ enplanements + ($0.05 × _____ RPMs ÷ 1000) + $0.30 × RTMs ÷ 1000 ..... $_____
Class IV: Coverage Three Billion U.S. Dollars or more—
$0.05 × _____ enplanements + ($0.05 × _____ RPMs ÷ 1000) + $0.33 × RTMs ÷ 1000 ..... $_____

Total Premium ..... $_____

DATES: New Policy in Effect: 23:59 GMT (7:59 pm EDT) June 18, 2002 until 23:59 GMT (7:59 pm EDT) August 17, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. To obtain copy of the new policy go to FAA Insurance Web site: *http://api.hq.faa.gov/911policies/inscover.html.*

SUPPLEMENTARY INFORMATION: On June 13, 2002, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

MEMORANDUM TO THE PRESIDENT

"Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(c) of chapter 443 of 49 U.S.C.—Aviation Insurance, the period for provision of insurance shall be extended from June 18, 2002, through August 17, 2002."

/s/ Norman Y. Mineta

Affected Public: U.S. domestic airline industry—Air Carriers who previously were insured under the Third Party War-Risk Liability Insurance Policies with the Federal Aviation Administration or Air Carriers who are interested in obtaining insurance.

Issued in Washington, DC on June 26, 2002.

Nan Shellabarger,

Deputy Director, Office of Aviation Policy and Plans.

[FR Doc. 02–16893 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices or standardization, clarification, and upgrading of terminology and procedures.

DATES: The meting will be held from July 15–18, 2002, from 9 a.m. to 4 p.m. each day.

ADDRESSES: The meeting will be held at the Department of Transportation, NASSIF Building, 400 7th Street, SW., Room 3328, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Madison, Acting Executive Director, ATPAC, Air Traffic Planning and Procedures 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held July 15 through July 18, 2002, at the Department of Transportation, NASSIF Building 400 7th Street, SW., Room 3328, Washington, DC 20590.

The agenda for this meeting will cover; a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 12, 2001. The next quarterly meeting of the FAA ATPAC is planned to be held from October 7–10, 2002, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on July 2, 2002.

David W. Madison,

Acting Executive Dirctor, Air Traffic Procedures Advisory Committee.

[FR Doc. 02–16997 Filed 7–2–02; 1:56 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Luis Obispo County Regional Airport, San Luis Obispo, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Luis Obispo County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 5, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In

addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Martin Pehl, Assistant Airports Manager, County of San Luis Obispo, at the following address: 903–5 Airport Drive, San Luis Obispo, CA 93401. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of San Luis Obispo under

of Airport Master Plan, Install Omni-Directional Approach Lighting System for Runway 29, Relocate Threshold for Runway 25, Construction of Aircraft Rescue and Firefighting Facility, Construction of Taxiway L, Construction of Taxiway N.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: nonscheduled/

uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 5, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12684. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th

plus 2 crew or total of 8 persons on board."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "* * * uninspected vessel engaged in crewed sight seeing charters on the inside coastal waters of Washington State—specifically Puget Sound, the San Juan Islands, and Straits of Juan DeFuca as far west as Cape Flattery; crewed

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPINDRIFT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under

received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S

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addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Martin Pehl, Assistant Airports Manager, County of San Luis Obispo, at the following address: 903–5 Airport Drive, San Luis Obispo, CA 93401. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of San Luis Obispo under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst; San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Luis Obispo County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 20, 2002, the FAA determined that the application to impose and use a PFC submitted by the County of San Luis Obispo was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 26, 2002.

The following is a brief overview of the impose and use application No. 02–07–C–00–SBP:

Level of proposed PFC: $4.50.

Proposed charge effective date: July 1, 2015.

Proposed charge expiration date: July 1, 2019.

Total estimated PFC revenue: $1,790,380.

Brief description of the proposed projects: Construction of Hangar Taxiways, Construction of Runway 11–29 Blast Pads, Construction of Airport Service Road, Construction of Northeast Access Road, Construction of "EPA/National Discharge Elimination System" Pollution Control Facility, Runway 11–29 & Taxiway A Extension (Phase I), Runway 11–29 & Taxiway A Extension (Phase II), Safety Area Grading and Drainage, Construction of Southwest Apron, Rehabilitation/Reconstruction of Taxiway A, Construction of Taxiway D, Construction of Taxiway H, Construction of Taxiway M, Acquisition of Runway Sweeping Equipment, Airfield Lighting Improvements, Update of Airport Master Plan, Install Omni-Directional Approach Lighting System for Runway 29, Relocate Threshold for Runway 25, Construction of Aircraft Rescue and Firefighting Facility, Construction of Taxiway L, Construction of Taxiway N.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Luis Obispo County Airport.

Issued in Hawthorne, California, on June 20, 2002.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–16892 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12684]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JEANNE PIERRE II.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 5, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12684. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: JEANNE PIERRE II. *Owner:* James K. Pearson and Sarah Peck Pearson.

(2) Size, capacity and tonnage of vessel. According to the applicant: "LOA 44'3"; *Beam:* 13'10"; *Draft:* 5'9"; Displacement *Tonnage:* 23,550 lbs; *Capacity:* Maximum of 6 passengers plus 2 crew or total of 8 persons on board."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "* * * uninspected vessel engaged in crewed sight seeing charters on the inside coastal waters of Washington State—specifically Puget Sound, the San Juan Islands, and Straits of Juan DeFuca as far west as Cape Flattery; crewed charters to British Columbia from the coastal waters of Washington State; crewed charters from British Columbia to the coastal waters of Washington State; and crewed charters on the Inside Passage to and including the coastal waters of Southeast Alaska."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1993. *Place of construction:* St. Hilaire, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "We would not compete with any commercial ferry services which transport persons from one location to another for a fee. Most of our charters would leave from and return to the same location, although some would be point to point. There are a few small, individual, independent operators in both Washington and Southeast Alaska that take guests on crewed sailing charters or crewed sailing vacations as we propose to do. With baby boomers and retirees, the market is large and the variation in charter specialties (ie. Sport fishing, diving, nature educations, gourmet meals, learn to sail cruises, etc.) great enough that we don't believe our sight seeing cruises would adversely affect existing operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "We don't believe this application will have any impact on US Shipyards."

Dated: June 28, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–16773 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATON

Maritime Administration

[Docket Number: MARAD–2002–12686]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPINDRIFT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 5, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12686. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: SPINDRIFT. *Owner:* Mark I. and Monique Davies.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length-over-all (LOA): 43 feet 2 inches; *Beam:* 12 feet 7 inches; *Draft:* 6 feet; 6 berths; *Diesel auxiliary Power:* 63 HP; *Tonnage:* 11 NRT pursuant to 46 U.S.C. 14502"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: If the waiver be granted, the vessel would be engaged in crewed charter operations (owners as captain and crew) along the East Coast of the United States, primarily in Maine waters; and possibly in the U.S. Virgin Islands and Puerto Rico as well."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1991. *Place of construction:* Manila, The Philippines.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "We do not believe this intended use of our sailboat will have any significant adverse impact on other commercial passenger vessel operators. We intend to provide only crewed charters, serving as captain and crew ourselves, and to do so only on an occasional basis rather than as a source of livelihood. We anticipate that most of the chartering will be done in Maine waters, where almost all of the crewed charters are much larger vessels in the Windjammer (schooner) fleet in Bothbay, Camden and other points East, for which we present virtually no competition. Our base of operations would be in Harpswell, ME (New Meadows River, NE Casco Bay), and we are aware of only one or possibly two other owners of sailing vessels who offer crewed charters in this immediate area of the coast * * * We anticipate that our use of this vessel for crewed charter elsewhere on the East Coast of the U.S. will be only occasional and seasonal, as we sail southward in the fall and

northward from the Caribbean in the spring."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "We chose our vessel SPINDRIFT precisely because of her unique features that we could not find in any U.S.-built sailboat of the same size and configuration. The boats now built in the U.S. * * * did and do

the Township of Cranford; (3) the former Rahway Valley Railroad Company (Rahway Valley) main line from milepost 0 at the junction with the NJ Transit (Raritan Valley Line) in Cranford to milepost 3.9 immediately southeast of the Rahway River Bridge in Union, inclusive of the branch line from the junction at milepost 3.1 and extending northeast approximately 1.1 miles, and the branch line from the

The rail lines qualify for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

M&E indicates that, even though rehabilitation subsidies are being provided, the lines will operate without

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66

northward from the Caribbean in the spring."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "We chose our vessel SPINDRIFT precisely because of her unique features that we could not find in any U.S.-built sailboat of the same size and configuration. The boats now built in the U.S. * * * did and do not meet our needs or specifications, and we were not able to afford a custom design either in the U.S. or abroad. In short, we believe that the impact of the waiver requested for this vessel would be negligible."

Dated: June 28, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–16775 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12685]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TAI–PAN.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 5, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12685. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: TAI–PAN. Owner: Tai-Pan Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The length is 67.0, breadth 19 and depth 4.6. Her tonnage is 29 gross, 26 net * * *

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "We would like to be able to charter the vessel in the United States and possibly occasional trips to the Bahamas. The vast majority of the charters would center in the southwest section of Florida as she is based in Punta Gorda, Florida. Punta Gorda is approximately 60 miles south of Sarasota and 30 miles north of Ft. Myers, Florida."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Kowloon, Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "We do not know of another vessel of this type operating in our area of Southwest Florida. There is a commercial operator in Punta Gorda who takes out head boat cruises for sight seeing tours. However that is an entirely different operation from our occasional private live aboard 7 day charters that our guests usually prefer."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Since our vessel is 15 years old and lightly used in the occasional charter trade we can not see any adverse affect on US Shipyards. Rather we would expect a positive effect on the local maintenance yards if we are able to get more use out of the vessel."

Dated: June 28, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–16774 Filed 7–3–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34054]

Morristown & Erie Railway, Inc.—Modified Rail Certificate

On June 5, 2002, as amended by facsimile on June 24, 2002, Morristown & Erie Railway, Inc. (M&E), filed an application for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate certain railroad lines in New Jersey. Based on M&E's representations, the following lines will be activated for service in four phases: (1) The former line of the Staten Island Railway Corporation (Staten Island Railway) from milepost 7.4 immediately west of the New Jersey Turnpike in Linden to milepost 9.8 immediately east of St. Georges Avenue in Linden; (2) the former line of the Staten Island Railway from milepost 9.8 to milepost 12.09 at the junction of the Staten Island Railway and the New Jersey Transit (NJ Transit) (Raritan Valley Line) in Cranford, exclusive of the portion of the line immediately west of milepost 9.8 to milepost 11.5 at the municipal boundary of the Borough of Roselle and the Township of Cranford; (3) the former Rahway Valley Railroad Company (Rahway Valley) main line from milepost 0 at the junction with the NJ Transit (Raritan Valley Line) in Cranford to milepost 3.9 immediately southeast of the Rahway River Bridge in Union, inclusive of the branch line from the junction at milepost 3.1 and extending northeast approximately 1.1 miles, and the branch line from the junction at milepost 1.1 and extending southeast approximately .50 miles; and (4) the former Rahway Valley main line from milepost 3.9 immediately southeast of the Rahway River Bridge in Union to milepost 7.1 at the junction of the Rahway Valley Line and the NJ Transit (Morris and Essex Line) in Summit, NJ.[1] These lines are currently in the custody of the County of Union, NJ (the County).

On May 9, 2002, the County and M&E entered into a 10-year operating agreement commencing on May 15, 2002.[2] Under the agreement, which contemplates rehabilitation of the lines, M&E will complete all rehabilitation of the lines specified in Phases I and II, except for the limitation specified in Phase II, and be ready to initiate rail services over these segments within 6 months. M&E will not proceed with the rehabilitation of Phase III lines and the commencement of rail services until it receives the written concurrence of the County. Upon receiving such concurrence, M&E agrees to proceed with the rehabilitation of Phase III lines and initiate service over this portion within 9 months. Phase IV lines will be rehabilitated only upon the mutual consent of the County and M&E.

M&E states that it will interline freight with Consolidated Rail Corporation (Conrail), Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSXT), at Cranford, Bayway (Linden), and Bound Brook, NJ. In addition, M&E states that it will be able to operate through service by using its rights to operate over NJ Transit at Cranford Junction, NJ.[3]

[1] Abandonment of the lines was previously authorized in *Staten Island Railway Corporation-Abandonment*, Docket No. AB–263 (Sub-No. 3) (ICC served Dec. 5, 1991), and *Rahway Valley Railroad Company-Abandonment-Between Aldene and Summit in Union County, NJ*, Docket No. AB–211 (ICC served Aug. 27, 1992). According to M&E, line segments of the Staten Island Railway and the entire line of Rahway Valley were subsequently conveyed to the State of New Jersey.

[2] Pursuant to the agreement, M&E will have the option to extend the 10-year period for two additional 5-year periods.

[3] On June 13, 2002, Conrail filed comments in this proceeding. Conrail states that no interchange and/or operating arrangements have been made between Conrail, M&E, CSXT, and NS in conjunction with M&E's proposal to operate the subject lines. Moreover, it states that there is no connection between the former Rahway Valley and Staten Island Railway lines. Conrail contends that the connection M&E seeks to create is over the Raritan Valley line now owned by NJ Transit and over which exclusive freight rights were granted to Conrail by agreement effective on October 1, 1984. Conrail reserves the right to make comments at a later date once M&E is ready to activate rail service and in the event that reasonable interchange and/or operating arrangements cannot be reached between Conrail and M&E.

The rail lines qualify for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

M&E indicates that, even though rehabilitation subsidies are being provided, the lines will operate without any operating subsidies. M&E also indicates that there are no preconditions for shippers to meet in order to receive rail service, and that it has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street NW., Suite 520, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*."

Decided: June 27, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16844 Filed 7–3–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Soremа North America Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 27 to the Treasury Department Circular 570; 2001 Revision, Published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6915.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35055, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June, 24 2002.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 02–16791 Filed 7–3–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Universal Bonding Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 28 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7116.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections

9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35059, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Service Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 24, 2002.

Judith R. Tillman,

Assistant Commissioner, Financial

Corrections

Federal Register

Vol. 67, No. 129

Friday, July 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are

June 25, 2002, make the following corrections:

1. On page 42709, in the third column, under **SUPPLEMENTARY INFORMATION:** in the ninth line "COP"

GENERAL SERVICES ADMINISTRATION

Submission for Public Comments: General Services Administration (GSA)

VOL 67 ISS 129 JL 5 2002 UMI

9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35059, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Service Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 24, 2002.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 02–16790 Filed 7–3–02; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 67, No. 129
Friday, July 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB60

Profile Documents for Commodity Pools; Correction

Correction

In rule document 02–15994 beginning on page 42709 in the issue of Tuesday, June 25, 2002, make the following corrections:

1. On page 42709, in the third column, under **SUPPLEMENTARY INFORMATION:** in the ninth line "COP" should read "CPO".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION:** in the second paragraph, in the fourth line, "comment" should read "document".

3. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION:** in the third paragraph, in the first line, "commission" should read "Commission".

[FR Doc. C2–15994 Filed 7–3–02; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

Submission for Public Comments: General Services Administration (GSA) Household Goods Tender of Service (HTOS); Conversion of Flat Industrial Funding Fee (IFF) to a Percentage IFF

Correction

In notice document 02–15736 beginning on page 42259, in the issue of Friday, June 21, 2002 make the following corrections:

On page 42262, the table should read as set forth below:

Examples:

(1) Domestic:

A	B	C	D	E	F	G	H	I	J	K	L
S	GSAA	GD	HHG	RXPG8TY43	Q794912349XXXXX	19990612	S12345XX	V	19990105	19990312	007

M	N	O	P	Q	R	S	T	U	T	U
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* * * * *

[FR Doc. C2–15736 Filed 7–3–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 00N–1663]

RIN 0910–AA61

Investigational New Drugs: Export Requirements for Unapproved New Drug Products

Correction

In proposed rule document 02–15358 beginning on page 14642 in the issue of Wednesday, June 19, 2002, make the following corrections:

1. On page 41644, in the second column, in the first paragraph, in the eight and tenth lines from the bottom, "802©" should read "802(c)".

2. On page 41645, in the first column, in the last paragraph, in the first line, "§312.110©" should read "§312.110(c)".

3. On page 41646, in the first column, in the last paragraph, in the third, sixth, and 15th lines "802©" should read "802(c)".

4. On the same page, in the second column, in the first complete paragraph, in the 12th line, "802©" should read "802(c)".

[FR Doc. C2–15358 Filed 7–3–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

Correction

In rule document 02–13164 beginning on page 36512 in the issue of Friday, May 24, 2002, make the following correction:

On page 34514, in the first column, correct the signature to read as follows:

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. C2–13164 Filed 7–3–02; 8:45 am]

BILLING CODE 1505–01–D

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Part II

Department of the Interior

Fish and Wildlife

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Southwestern Washington/ Columbia River Distinct Population Segment of the Coastal Cutthroat Trout as Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF45

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of the Coastal Cutthroat Trout as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, withdraw our proposed rule to list the southwestern Washington/Columbia River distinct population segment (DPS) of the coastal cutthroat trout (*Oncorhynchus clarki clarki*) as threatened under the Endangered Species Act of 1973, as amended (Act). We have determined that the southwestern Washington/Columbia River DPS of coastal cutthroat trout does not meet the Act's definition of a species because it is not discrete from other coastal cutthroat trout populations and is not significant to the taxon to which it belongs. Therefore, we withdraw our proposed rule to list the southwestern Washington/Columbia River DPS of coastal cutthroat trout as threatened.

DATES: The proposed rule published on March 9, 1999 (64 FR 11544), is withdrawn as of July 5, 2002.

ADDRESSES: The complete file for this withdrawal is available for inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503 (telephone 360/753–9440; facsimile 360/753–9405).

SUPPLEMENTARY INFORMATION:

Background

Coastal cutthroat trout (*Oncorhynchus clarki clarki*) are native to coastal drainages from Prince William Sound in Alaska to the Eel River in northern California (Trotter 1997) and inland from the Coast Range of Alaska to roughly the crest of the Cascades of Washington and Oregon (Trotter 1997). The southwestern Washington/Columbia River DPS proposed for listing as threatened includes the Columbia River and its tributaries from the mouth to the Klickitat River on the Washington side of the river and Fifteenmile Creek on the Oregon side, the Willamette River and tributaries to Willamette Falls, and all drainages between the Columbia River and the Pacific Ocean from the Columbia River mouth to Cape Disappointment, Washington.

Coastal cutthroat trout differ in appearance from other subspecies by the numerous small to medium irregularly-shaped spots evenly covering virtually the entire sides of the body, often extending to the ventral surface and anal fin (Behnke 1992). Skin color on sea-run fish is often silvery, and may mask body spots, while freshwater forms are usually more vividly colored with yellow, olive, or brown backgrounds (Behnke 1992). Coastal cutthroat trout are typically fall spawners, but spring spawning populations have been reported (Trotter 1997). Spawning usually occurs in small, low gradient streams with suitable gravel and adequate dissolved oxygen (Trotter 1997). Coastal cutthroat trout are iteroparous, meaning they are capable of spawning more than once before they die. Fecundity ranges from 1,000 to 5,000 eggs per female (Trotter 1997). Eggs hatch in 4 to 6 weeks depending on water temperature (Trotter 1997). Fry emerge from the gravel in 2 to 3 weeks (Trotter 1997). Juveniles rear in freshwater for 1 to 4 years before migrating to the ocean (Trotter 1997). Juveniles may also migrate to the estuary and remain there over the summer without smolting or migrating to the open ocean (Johnson *et al.* 1999). Seaward migration of Columbia River smolts may occur to more protected areas at an earlier age and smaller size than migration to more exposed areas such as the outer Washington coast. Columbia River smolts generally make their first migration at age two, at a mean size of about 160 mm (6 in) (Johnson *et al.* 1999). Coastal cutthroat trout are opportunistic feeders, with their diet varying by season, life history stage, and habitat (Trotter 1997). Juveniles feed on aquatic and terrestrial insects, while adults feed on fish, crustaceans, and amphibians (Trotter 1997). Coastal cutthroat trout are found in small streams to large rivers, lakes, and estuaries (Trotter 1997). They are usually found in cool, clear, well-oxygenated streams with abundant cover (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of gradients, but are usually found in streams with gradients less than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of flow regimes, but are usually found in streams with perennial flow (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of substrate types, but are usually found in streams with gravel and cobble substrates (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of riparian conditions, but are usually found in streams with well-developed riparian vegetation (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of water temperatures, but are usually found in streams with temperatures less than 20 degrees Celsius (C) (68 degrees Fahrenheit (F)) (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of dissolved oxygen concentrations, but are usually found in streams with dissolved oxygen concentrations greater than 6 milligrams per liter (mg/l) (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pH values, but are usually found in streams with pH values between 6.5 and 8.5 (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of turbidity levels, but are usually found in streams with turbidity levels less than 25 nephelometric turbidity units (NTU) (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of fine sediment levels, but are usually found in streams with fine sediment levels less than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of large woody debris levels, but are usually found in streams with large woody debris levels greater than 20 pieces per 100 meters (m) (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool frequencies, but are usually found in streams with pool frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool depths, but are usually found in streams with pool depths greater than 0.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool widths, but are usually found in streams with pool widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool lengths, but are usually found in streams with pool lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of riffle frequencies, but are usually found in streams with riffle frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of riffle depths, but are usually found in streams with riffle depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of riffle widths, but are usually found in streams with riffle widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of riffle lengths, but are usually found in streams with riffle lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide frequencies, but are usually found in streams with glide frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide depths, but are usually found in streams with glide depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide widths, but are usually found in streams with glide widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide lengths, but are usually found in streams with glide lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run frequencies, but are usually found in streams with run frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run depths, but are usually found in streams with run depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run widths, but are usually found in streams with run widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run lengths, but are usually found in streams with run lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade frequencies, but are usually found in streams with cascade frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade depths, but are usually found in streams with cascade depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade widths, but are usually found in streams with cascade widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade lengths, but are usually found in streams with cascade lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step frequencies, but are usually found in streams with step frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step depths, but are usually found in streams with step depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step widths, but are usually found in streams with step widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step lengths, but are usually found in streams with step lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle frequencies, but are usually found in streams with pool-riffle frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle depths, but are usually found in streams with pool-riffle depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle widths, but are usually found in streams with pool-riffle widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle lengths, but are usually found in streams with pool-riffle lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide-riffle frequencies, but are usually found in streams with glide-riffle frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide-riffle depths, but are usually found in streams with glide-riffle depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide-riffle widths, but are usually found in streams with glide-riffle widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of glide-riffle lengths, but are usually found in streams with glide-riffle lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run-riffle frequencies, but are usually found in streams with run-riffle frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run-riffle depths, but are usually found in streams with run-riffle depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run-riffle widths, but are usually found in streams with run-riffle widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of run-riffle lengths, but are usually found in streams with run-riffle lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade-riffle frequencies, but are usually found in streams with cascade-riffle frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade-riffle depths, but are usually found in streams with cascade-riffle depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade-riffle widths, but are usually found in streams with cascade-riffle widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade-riffle lengths, but are usually found in streams with cascade-riffle lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle frequencies, but are usually found in streams with step-riffle frequencies greater than 20 percent (Trotter 1997). 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Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide frequencies, but are usually found in streams with step-riffle-glide frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide depths, but are usually found in streams with step-riffle-glide depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide widths, but are usually found in streams with step-riffle-glide widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide lengths, but are usually found in streams with step-riffle-glide lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run frequencies, but are usually found in streams with pool-riffle-glide-run frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run depths, but are usually found in streams with pool-riffle-glide-run depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run widths, but are usually found in streams with pool-riffle-glide-run widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run lengths, but are usually found in streams with pool-riffle-glide-run lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of cascade-riffle-glide-run frequencies, but are usually found in streams with cascade-riffle-glide-run frequencies greater than 20 percent (Trotter 1997). 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Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run depths, but are usually found in streams with step-riffle-glide-run depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run widths, but are usually found in streams with step-riffle-glide-run widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run lengths, but are usually found in streams with step-riffle-glide-run lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade frequencies, but are usually found in streams with pool-riffle-glide-run-cascade frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade depths, but are usually found in streams with pool-riffle-glide-run-cascade depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade widths, but are usually found in streams with pool-riffle-glide-run-cascade widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade lengths, but are usually found in streams with pool-riffle-glide-run-cascade lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run-cascade frequencies, but are usually found in streams with step-riffle-glide-run-cascade frequencies greater than 20 percent (Trotter 1997). 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Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide depths, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide widths, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide lengths, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run-cascade-step-riffle-glide frequencies, but are usually found in streams with step-riffle-glide-run-cascade-step-riffle-glide frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run-cascade-step-riffle-glide depths, but are usually found in streams with step-riffle-glide-run-cascade-step-riffle-glide depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run-cascade-step-riffle-glide widths, but are usually found in streams with step-riffle-glide-run-cascade-step-riffle-glide widths greater than 1.5 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of step-riffle-glide-run-cascade-step-riffle-glide lengths, but are usually found in streams with step-riffle-glide-run-cascade-step-riffle-glide lengths greater than 3 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide-run frequencies, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide-run frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide-run depths, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide-run depths greater than 0.2 m (Trotter 1997). 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Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide-run-cascade frequencies, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide-run-cascade frequencies greater than 20 percent (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide-run-cascade depths, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide-run-cascade depths greater than 0.2 m (Trotter 1997). Coastal cutthroat trout are found in streams with a wide range of pool-riffle-glide-run-cascade-step-riffle-glide-run-cascade widths, but are usually found in streams with pool-riffle-glide-run-cascade-step-riffle-glide-run-cascade widths greater than 1.5 m (Trotter 1997). 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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF45

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of the Coastal Cutthroat Trout as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule, published in the **Federal Register** on April 5, 1999, to list the southwestern Washington/Columbia River Distinct Population Segment (DPS) of coastal cutthroat trout as threatened. The DPS includes all coastal cutthroat trout in waters draining into Grays Harbor, Willapa Bay, and the Columbia River upstream to the Klickitat River in Washington and to Fifteen Mile Creek in Oregon, excluding the Willamette River above Willamette Falls. The coastal cutthroat trout inhabits streams, lakes, rivers, estuaries, and near-shore ocean habitats throughout the range of the DPS.

The change in forest management regulation, the latest information indicating relatively healthy-sized total populations in a large portion of the DPS, and our improved understanding of the ability of freshwater forms to produce anadromous progeny, lead us to conclude that this DPS does not meet the definition of a threatened species (in danger of becoming endangered in the foreseeable future) at this time.

ADDRESSES: The complete file for this withdrawal is available for inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, State Supervisor, Oregon Fish and Wildlife Office (*see* ADDRESSES) (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

Coastal cutthroat trout (*Oncorhynchus clarki clarki*), one of 10 formally described subspecies of cutthroat trout (Behnke 1992), are distributed along the Pacific Coast of North America from Prince William Sound in Alaska to the Eel River in California (Behnke 1992, Trotter 1997) and inland from the Coast Range of Alaska to roughly the crest of the Cascades of Washington and Oregon (Trotter 1997). The southwestern Washington/Columbia River DPS proposed for listing as threatened includes the Columbia River and its tributaries from the mouth to the Klickitat River on the Washington side of the river and Fifteenmile Creek on the Oregon side; the Willamette River and its tributaries from its confluence with the Columbia upstream to Willamette Falls; Willapa Bay and its tributaries; and Grays Harbor and its tributaries.

The DPS inhabits portions of five Ecoregions, the Coast Range, Puget Lowland, Cascades, Willamette Valley, and Eastern Cascades. Most of the DPS occurs in the Coast Range, Puget Lowland, and Cascades Ecoregions. The Coast Range Ecoregion has a maritime climate, characterized by medium to high rainfall averaging 200 to 240 centimeters (cm) (80 to 90 inches (in) per year, which peaks in the winter months, with very little precipitation in July or August. Random events, such as strong storms with heavy rains can have damaging effects, especially on a disturbed landscape. Floods and landslides triggered by these events can significantly affect aquatic resources throughout the stream system. The Puget Lowland Ecoregion experiences reduced rainfall (50 to 120 cm (20 to 47 in)), with peak flows from December to June. The area tends to have groundwater resources from bordering mountain ranges that help sustain river flows during droughts. The Cascades Ecoregion includes headwater tributaries of many coastal cutthroat streams. Precipitation can average 280 cm (110 in) per year, much of it in the form of heavy snowfall. There is little storage capacity for long-term groundwater except where porous rock substrate exists. In these porous areas, streams receive 75 to 95 percent of their average discharge as groundwater and are able to maintain flows during dry periods. Surface water flow originating in the Cascade Range influences river flows throughout this region. A smaller portion of the DPS occurs in the Willamette Valley Ecoregion, which lies in the rainshadow of the Coast Ranges and typically experiences rainfall of 120 cm (47 in), with peak flows in December and January. A small portion of the DPS occurs in the Eastern Cascades Slopes and Foothills Ecoregion, which is marked by a transition between the high rainfall areas of the Cascades Ecoregion and the drier regions to the east. This Ecoregion receives 30 to 60 cm (10 to 20 in) of precipitation. Streamflow is often intermittent, especially during the summer (Johnson *et al.* 1999).

Coastal cutthroat trout differ in appearance from other subspecies by the numerous small to medium irregularly-shaped spots evenly covering virtually the entire sides of the body, often extending to the ventral surface and anal fin (Behnke 1992). Skin color on sea-run fish is often silvery, and may mask body spots, while freshwater residents are darker with a copper or brassy sheen.

Relatively little is known about the specific life history and habitat requirements of coastal cutthroat trout. Coastal cutthroat trout spend more time in the freshwater environment and make more extensive use of this habitat, particularly small streams, than do most other Pacific salmonids (Johnson *et al.* 1999). The life history of coastal cutthroat trout may be one of the most complex of any Pacific salmonid. Coastal cutthroat trout exhibit a variety of life history strategies across their range (Northcote 1997, Johnson *et al.* 1999) that include three basic variations: Resident or primarily non-migratory; freshwater migrants; and marine migrants. Residents may stay within the same stream segment their entire life. Freshwater migrants may make migrations from small tributaries to larger tributaries or rivers, or may migrate from tributary streams to lakes or reservoirs. Marine migrations (anadromy) are generally thought to be limited to near shore marine areas; individuals may not venture out of the estuary in some cases (Trotter 1997). There are numerous exceptions to these generalized behaviors and we lack observations of definitive genetic relationships between individual or population migratory strategies (Behnke 1997). In areas above long-standing barriers, coastal cutthroat trout are limited to resident or fresh-water migratory life history strategies. In areas accessible to the ocean, all three life history strategies (resident, freshwater migratory, and anadromous) are likely to be expressed in the same area.

Coastal cutthroat trout appear to exhibit very flexible life history strategies. The extent to which individuals expressing these various strategies are isolated from other life history forms is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors in their life time (Johnson *et al.* 1999). For convenience we refer to individuals that migrate to marine waters as anadromous or anadromous life form. In doing so, we do not intend to imply that they represent a separate population from

freshwater forms. We are treating all forms as part of a single population in this analysis.

As a result of their wide distribution and variable life history behavior, coastal cutthroat trout are exposed to a wide range of water temperatures. Several studies concluded that cutthroat trout, like other salmonids, were not typically found in water temperatures higher than 22 degrees Celsius (C) (72 degrees Fahrenheit (F)) although they could tolerate temperatures as high as 26 to 28 degrees C (79 to 82 degrees F) for short periods. Optimum temperatures for coastal cutthroat trout spawning range from 6.1 to 17.2 degrees C (43 to 63 degrees F), and for egg incubation from 4.4 to 12.7 degrees C (40 to 55 degrees F) (Bell 1986). The preferred temperature range of adult coastal cutthroat is between 9 and 12 degrees C (48 and 54 degrees F) (Bell 1986). Giger (1972) reported that temperature was believed to be the most influential characteristic in the migration and distribution of coastal cutthroat in estuaries. Giger further states that high upper estuary temperatures (23.9 to 26.7 degrees C (75 to 80 degrees F)) probably prevent movement to cooler tributaries until later in the fall.

Coastal cutthroat trout spawn in a variety of gravel sizes from 0.6 to 30 cm (0.2 to 12 in) (Hooper 1973, Hanson 1977). Gravels free from fine sediment support higher egg to fry survival for salmonids (Irving and Bjornn 1984, Weaver and Fraley 1993). Anadromous coastal cutthroat trout spawn and complete early rearing in headwater stream sections, often above those used by other anadromous salmonids (Glova and Mason 1977, Michael 1983), and then migrate downstream eventually entering the estuary and near ocean environment to complete growth and maturation. By spawning higher in the watersheds than other salmonids, cutthroat trout may avoid competition for suitable spawning sites, reduce the likelihood of hybridization, and reduce competitive interactions between juvenile coastal cutthroat trout and other salmonids. Salmonids need water free from high levels of suspended sediment to feed and migrate. When very high sediment loads are present (greater than 4,000 parts per million (ppm)) salmonids cease movement or migration (Bjornn and Reiser 1991). Cutthroat trout are known to stop feeding and move to cover when turbidity is above 35 ppm (Pauley *et al.* 1989).

Coastal cutthroat trout are poorer swimmers than other anadromous salmonids, probably due to morphological characteristics, including their large heads and narrow caudal (tail) regions (Bisson *et al.* 1988, Hawkins and Quinn 1996). In laboratory tests of two different hatchery stocks of coastal cutthroat trout, Hawkins and Quinn (1996) found critical swimming speeds were between 5.58 to 6.69 body lengths per second, whereas steelhead (*Oncorhynchus mykiss*) had critical velocities of 7.69 body lengths per second. In field studies, two-to four-year old coastal cutthroat trout were found in streams with velocities of 0.14 to 0.20 meters per second (0.46 to 0.66 feet per second) (Hanson 1977). Coastal cutthroat trout juveniles were most often in streams where water velocities were between 0.25 and 0.50 meters per second (0.82 to 1.6 feet per second) (Pauley *et al.* 1989).

The timing of fish returns to estuary and freshwater habitat varies considerably across the range and within river basins (Trotter 1997, Behnke 1992). For example, return migrations of anadromous coastal cutthroat trout in the Columbia River system usually begin as early as late June and continue through October, with peaks in late September and October. Anadromous coastal cutthroat trout spawning typically starts in December and continues through June, with peak spawning in February.

Coastal cutthroat trout are repeat spawners. Some individuals have been documented to spawn each year for at least five years (Giger 1972), others may not spawn every year, and some do not return to seawater after spawning, remaining in fresh water for at least a year. Eggs begin to hatch within six to seven weeks of spawning, depending on temperature; fry emerge between March and June, with peak emergence in mid-April. At emergence, fry appear to seek refugia near channel margins and backwater habitats, although they may use fast water habitats (riffles and glides) when exposed to competitive interactions with other native salmonids (Johnson *et al.* 1999).

Coastal cutthroat trout juveniles generally remain in upper tributaries until they are one year of age, at which time they may begin moving more extensively throughout the river system. Juvenile salmonids on marine-directed migrations undergo physiological changes to adapt to salt water called smoltification. These individuals are called smolts. Downstream movement may begin with the first spring rains, usually in mid-April with peak movement in mid-May. Time of initial seawater entry generally begins as early as March, peaks in mid-May, and is essentially over by mid-June. Some juveniles may enter the estuary and remain there over the summer without smolting or migrating to the open ocean. Seaward migration of Columbia River smolts may occur to more protected areas at an earlier age and smaller size than migration to more exposed areas such as the outer Washington coast. Columbia River smolts generally make their first migration at age two, at a mean size of about 160 mm (6 in) (Johnson *et al.* 1999).

Upstream movement of juveniles appears to begin with the onset of winter freshets (overflows) during November and continues through the spring, frequently peaking during late winter and early spring. Many of these yearling fish may average less than 200 mm (8 in) in length and can be found in streams that run through ponds or sloughs (Hartman and Gill 1968, Garrett 1998). In winter, coastal cutthroat trout move to pool areas with dense cover such as near log jams or overhanging banks (Bustard and Narver 1975, Waters 1993).

Coastal cutthroat trout that enter nearshore marine waters reportedly move moderate distances along the shoreline. Individual marked fish have been reported to move 72 to 290 kilometers (km) (45 to 180 miles (mi)) off the Oregon Coast (Pearcy 1997). Sea-run cutthroat trout along the Oregon coast may swim or be transported with the prevailing currents long distances during the summer. It is unclear how far offshore coastal cutthroat trout migrate. Cutthroat trout have been routinely caught up to 6 km (4 mi) off the mouth of the Nestucca River (Sumner 1953, 1972). Coastal cutthroat trout have also been captured between 10 and 46 km (6 to 28 mi) offshore of the Columbia River, though it is unclear whether they were carried by the freshwater plume of the Columbia River or moved offshore in search of prey.

Resident (non-migratory) fish appear to mature earlier (two to three years) and are shorter-lived than the migratory form (Trotter 2000). Smoltification has been reported to occur from one to six years of age, most commonly at ages two through four (Trotter 1997), and at sizes of from 175 to 225 millimeters (mm) (7 to 9 in) (Behnke 1992). Sexual maturity rarely occurs before age four in anadromous coastal cutthroat trout (Johnson *et al.* 1999). Growth rates increase during the initial period of ocean residence, but decrease following the first spawning due to energy expenditures from migration and spawning (Giger 1972). Behnke (1992) reports the maximum age of sea-run cutthroat to be approximately 10 years.

The diverse life history strategies shown by coastal cutthroat trout are not well understood, but are thought to represent unique adaptations to local environments and the subspecies' response to environmental variability and unpredictability. The significance of the various life history strategies, the extent to which each strategy is controlled by genetic versus

cutthroat trout, whether from above long-standing natural barriers or human-created barriers, likely varies according to river basin characteristics, the length of time barriers have been in place, and the genetic composition of coastal cutthroat trout within each basin (Johnson *et al.* 1999). In addition, the significance and long-term success of freshwater cutthroat trout contributing

cutthroat trout captured at Bingham Creek from 1983 to 2001 ranged from a low of zero to a high of 35 with a mean of eight. This trap measures all fish returning to an 8,250 hectare (ha) (20,386 acre (ac)) watershed and likely catches all coastal cutthroat trout migrating upstream. On the West Fork Hoquiam River, the number of migrating coastal cutthroat trout (wild and hatchery) captured from 1986 to 2000

1982. This trap is located above the natural, historic anadromous cutthroat trout zone, in an area blocked to upstream passage by a falls until a ladder was built in 1936. In addition, the trap is designed to catch and hold adult salmon, having a 3.8 cm (1.5 in) bar spacing. According to WDFW (2001), most adult sea-run cutthroat trout would pass through this trap undetected because of the wide bar

reliable indicators of population size than adult counts, they do provide some information on the level of production. Numbers of total juveniles produced are available from 21 traps in the Grays Harbor system, based on either total counts or estimates derived using trap efficiency data provided by the WDFW (2001). Total numbers of juveniles produced is likely affected by the amount of habitat available in the

based on coastal cutthroat trout caught at a single location in Spring Creek. Densities were calculated for all sites, whether or not cutthroat were located. The Oregon Department of Fish and Wildlife (ODFW) provided information on densities of coastal cutthroat over 85 mm in size in the Hood River above the area accessible to anadromous salmonids (ODFW 1998). While

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The diverse life history strategies shown by coastal cutthroat trout are not well understood, but are thought to represent unique adaptations to local environments and the subspecies' response to environmental variability and unpredictability. The significance of the various life history strategies, the extent to which each strategy is controlled by genetic versus environmental factors, and the extent of isolation among individuals expressing these various strategies is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors over time (Johnson *et al.* 1999). The few existing studies show that, although both allele frequencies and morphology may differ between populations above and below barriers, the portions of the population displaying different life history strategies are generally more closely related within a drainage than are populations from different drainages (Behnke 1997, Johnson *et al.* 1999). These results indicate that migratory and non-migratory portions of the population of cutthroat trout represent a single evolutionary lineage in which the various life history characteristics have arisen repeatedly in different geographic regions (Johnson *et al.* 1999).

Many coastal cutthroat populations are isolated above natural barriers. Recent studies have shown low levels of downstream migration over these natural barriers indicating that these isolated populations likely are contributing demographically and genetically to populations below them (Griswold 1996, Johnson *et al.* 1999). Furthermore, populations above natural barriers may represent genetic resources shared by populations below these barriers and therefore may constitute a significant component of diversity for the population (Johnson *et al.* 1999).

There is increasing evidence that coastal cutthroat trout isolated for long periods of time above impassable dams retain the capacity to produce marine migrants. The Washington Department of Fish and Wildlife (WDFW) (2001) reported that between 476 and 1,756 smolts were produced from the freshwater form of coastal cutthroat trout above Cowlitz Falls Dam on the Cowlitz River in 1997 and 1998. Tagging and otolith microchemistry analysis of one returning adult showed the tagged fish, originating from above the dam, migrated to salt water and returned. The report suggested that the resident portion of the population of cutthroat trout is making contributions to the anadromous portion of the population. The significance of marine migrant production from the freshwater coastal cutthroat trout, whether from above long-standing natural barriers or human-created barriers, likely varies according to river basin characteristics, the length of time barriers have been in place, and the genetic composition of coastal cutthroat trout within each basin (Johnson *et al.* 1999). In addition, the significance and long-term success of freshwater cutthroat trout contributing to the saltwater migrant cutthroat trout may be largely dependent upon the ability of downstream habitat conditions and near-shore environments to support the persistence of this life history strategy.

The effects of interspecific competition between coastal cutthroat trout and other salmonids, particularly coho salmon (*Oncorhynchus kisutch*), rainbow trout (*O. mykiss*), and steelhead (the anadromous form of rainbow trout) are well documented. In general, steelhead and coho are more commonly found in the larger river reaches and coastal cutthroat trout are more abundant in the headwater tributaries, reducing the potential for competition (Hartman and Gill 1968). However, when they do overlap, steelhead tend to dominate coastal cutthroat trout in the riffles and juvenile coho dominate cutthroat in pools and glides. As a result, coastal cutthroat trout are often displaced to less desirable habitats in the presence of other native salmonids (Griffith 1988). Coastal cutthroat trout evolved with these competitive interactions and competition with native salmonids is not anticipated to adversely affect this DPS of coastal cutthroat trout.

Population Size

Little data exist to determine the actual population size of cutthroat trout in the DPS. Most counts were conducted only in the area accessible to anadromous salmonids; include only coastal cutthroat trout moving up or down stream (mostly migrants); and were collected incidental to studies for other salmonid species using traps or collection facilities designed for salmon and steelhead. We lack information on the efficiency of these systems in capturing coastal cutthroat trout, therefore, data from most traps cannot be used to determine or estimate actual population size for coastal cutthroat trout. We have updated the population analyses using the latest data received from WDFW, as well as evaluating the accuracy of data in depicting actual coastal cutthroat trout population levels.

Two sets of data from the Grays Harbor tributaries provide some population information (WDFW 2001c). The number of migrating adult coastal cutthroat trout captured at Bingham Creek from 1983 to 2001 ranged from a low of zero to a high of 35 with a mean of eight. This trap measures all fish returning to an 8,250 hectare (ha) (20,386 acre (ac)) watershed and likely catches all coastal cutthroat trout migrating upstream. On the West Fork Hoquiam River, the number of migrating coastal cutthroat trout (wild and hatchery) captured from 1986 to 2000 ranged from 17 to 122 with a mean of 51. No hatchery cutthroat trout have been detected at this facility since 1995, and the mean number of fish since 1995 is 55. This trap measures almost all adult coastal cutthroat trout returning to a 2,166 ha (5,352 ac) watershed.

Catch data for coastal cutthroat trout were recorded incidental to creel surveys for salmon and steelhead in the Columbia River, though no data were collected on angler effort for coastal cutthroat trout. These data were collected from four points in Washington. No creel census data were received from Oregon. The number of coastal cutthroat trout recorded in the creel surveys for the lower Columbia River is likely to be strongly influenced by the change in cutthroat trout fishing regulations (WDFW 2001c). During the period when creel census data were collected, the general fishing regulation limits for coastal cutthroat trout in Washington decreased from 12 to 8 trout per angler in 1983, to 2 trout in the marine environment and 8 trout in freshwater in 1986, and finally to 2 trout in 1992. Minimum size limits also became more restrictive during this period. In addition, catch and release angling for wild cutthroat was implemented in some streams within the DPS's range starting in 1989 and expanded to all lower Columbia River streams below Portland and Vancouver in 1992 (Leider 1997). The lack of angling effort data make it impossible to determine if the decline in creel census numbers are the result of low populations or low angling effort for coastal cutthroat trout. Creel census personnel have noted reduced angler effort in traditional cutthroat trout angling areas and fewer anglers using traditional sea-run cutthroat trout gear (WDFW 2001c). Given the lack of angler effort with which to standardize the counts, we can no longer conclude that the creel census data indicate an extremely low number of anadromous cutthroat trout in the DPS as described in the proposed rule (64 FR 16397, April 5, 1999).

Trap data are similarly difficult to interpret. The Kalama River trap has detected low numbers of coastal cutthroat trout in all but four years since

1982. This trap is located above the natural, historic anadromous cutthroat trout zone, in an area blocked to upstream passage by a falls until a ladder was built in 1936. In addition, the trap is designed to catch and hold adult salmon, having a 3.8 cm (1.5 in) bar spacing. According to WDFW (2001), most adult sea-run cutthroat trout would pass through this trap undetected because of the wide bar spacing. Therefore, because the trap is above a previous natural migration barrier and has a large bar spacing, the trap likely significantly underestimates the actual number of adult cutthroat trout returning to this drainage, resulting in data that are unreliable for determining population level.

The number of adult coastal cutthroat trout trapped at the North Fork Toutle River rose from 1988 until 1995 and has declined since (WDFW 2001c). The maximum number trapped reached 153 in 1995. This increase likely tracks the recovery of the population following the eruption of Mount St. Helens in 1980 and the resulting massive mud and debris flows in the Toutle River. The recent decline in numbers of coastal cutthroat trout counted is likely a result of the continued failure of the Fish Collection Facility to handle the high sediment loads still common in this system. The trap has been closed during fall freshets in recent years due to high sediment loads, coinciding with the upstream migration of anadromous cutthroat (WDFW 2001c). A third trap was added at the Grist Mill Fish Ladder on Cedar Creek in 1998. Because adult cutthroat trout may bypass the ladder, this count is an underestimate of actual population size. The numbers of fish captured at the Grist Mill Fish Ladder ranged from 57 to 120.

Of the nine adult traps with population data in southwest Washington and the Columbia River tributaries below Bonneville Dam, four have total annual counts below 10 coastal cutthroat trout in recent years. In at least one case (Kalama River trap), this may well be due to the inefficiency of the trap in collecting adult coastal cutthroat trout as described above. Five of these traps have counts (averaged for the last five years) of 50 to 1,400 adult cutthroat trout per year. These data indicate higher numbers than previously described and we no longer conclude that the annual number of adults returning to these traps in the DPS are consistently below 10 fish as described in the proposed rule (64 FR 16407).

Many juvenile fish traps are monitored in tributaries of Grays Harbor. While juvenile counts are less reliable indicators of population size than adult counts, they do provide some information on the level of production. Numbers of total juveniles produced are available from 21 traps in the Grays Harbor system, based on either total counts or estimates derived using trap efficiency data provided by the WDFW (2001). Total numbers of juveniles produced is likely affected by the amount of habitat available in the system, which varies widely. We attempted to correct for this by calculating the number of downstream migrants per square kilometer (km\2\) of watershed above the trap. The number of downstream migrants per km\2\ of watershed area in the Grays Harbor tributaries varied widely from 0.04 to 10.4 per km\2\ (0.1 to 26.8 per square mi (mi\2\)), with some watersheds producing large numbers of downstream migrants. The total estimated number of juveniles produced from Columbia River tributaries below Bonneville Dam were available from eight traps. The number of downstream migrants per km\2\ of watershed area varied from 0.5 to 38.4 per km\2\ (1.4 to 99.4 per mi\2\), with most watersheds producing more than 6 outmigrants per km\2\ (15 per mi^2).

Mongillo and Hallock (2001) conducted extensive surveys of 156 locations within the Washington portion of the DPS's range for abundance of coastal cutthroat trout. Data were collected by single-pass electrofishing, a method which likely underestimates the actual abundance, and included areas used by resident and anadromous coastal cutthroat trout. Additional data were presented by the WDFW (2001) for surveys conducted by Weyerhaeuser Company in 1994 and 1995 and from one study in the Humptulips Basin in the 1970s. The relative density for all locations below Bonneville Dam ranged from 0.009 to 0.222 fish per square meter (m^2) (0.09 to 2.4 per ft^2). These values were compared to population densities from the 1970s in the Olympic Peninsula and Puget Sound (0.009 to 0.384 fish per m^2 (0.09 to 4.1 per ft^2)), which were considered healthy (in terms of abundance) during that period (WDFW 2001c) and were not considered likely to be in danger of extinction in the foreseeable future by the Status Review Team (Johnson *et al.* 1999). Densities recorded in southwest Washington by Mongillo and Hallock (2001) were not significantly different from densities recorded in the 1970s from the Olympic Peninsula and Puget Sound.

Densities measured in Washington above Bonneville Dam were lower (0.0003 fish per m\2\ (0.003 per ft\2\)), based on coastal cutthroat trout caught at a single location in Spring Creek. Densities were calculated for all sites, whether or not cutthroat were located. The Oregon Department of Fish and Wildlife (ODFW) provided information on densities of coastal cutthroat over 85 mm in size in the Hood River above the area accessible to anadromous salmonids (ODFW 1998). While cutthroat trout were not detected in all streams sampled, cutthroat trout densities where present were relatively high, ranging from 0.003 to 0.283 fish per m\2\ (0.03 to 3.0 per ft\2\). The watersheds above Bonneville Dam are ecologically very different from the remainder of the subspecies' range. These include the only watersheds where this subspecies is found east of the Cascade Mountain Divide. This area experiences a very different hydrologic and climatic environment that may influence the densities of cutthroat.

The National Marine Fisheries Service (NMFS) Status Review (Johnson *et al.* 1999) also cited concern over "* * * two near extinctions of anadromous runs in the Hood and Sandy Rivers" (64 FR 16407). The Sandy River basin occupies 4 percent of the DPS's range. Data on adult cutthroat trout numbers are derived from a trap that is located on a tributary approximately 34 km (21 mi) from the mouth of the Sandy River and 3 km (2 mi) up Cedar Creek from its confluence with the Sandy River. This trap historically captured two to three dozen anadromous coastal cutthroat trout, though none have been captured in recent years (Johnson *et al.* 1999). Trap data from this off-channel location may not accurately represent the number of anadromous cutthroat in the Sandy River. As a substantial portion of the historic anadromous-accessible habitat in the Sandy River has been isolated by dams and other barriers, the number of anadromous coastal cutthroat trout is likely depressed from historic levels. However, it is difficult to extrapolate data from one trap located on a tributary to the main river to a meaningful estimate of the anadromous component of the population for the basin as a whole. Resident cutthroat trout are considered well-distributed in the Sandy River basin, occurring above and below Marmot and Little Sandy Dams (PGE 2000). Much of the upper Sandy River Basin is under Federal land management which minimizes future threats of habitat degradation that would cause population declines (see Federal Land Management Section below). We conclude that the anadromous portion of the population

of coastal cutthroat trout in the Sandy River has declined from historic levels, though the limited data do not allow us to determine if they are nearly extinct in this small portion of the DPS, as described in the proposed rule. The resident portion of the population remains well distributed in the Sandy River.

Powerdale Dam, completed in 1922, cutthroat trout in lower Columbia River streams, indicated by low incidental catch of coastal cutthroat trout in salmon and steelhead recreational fisheries, and by low trap counts in a number of tributaries throughout the region and that numbers of adults returning to traps in the lower Columbia River tributaries were consistently below 10 fish in most streams over each

Evaluating the reliability of the trend information is very important in determining the appropriate use of the information. The reliability of analyses in truly depicting any population trend could be affected by the collection method, length of data set, specific concerns for individual collection sites, and statistical reliability of the test results. In interpreting the results of the

well and lowers our confidence that the observed trend accurately represents the true trend. Highly variable data often result in a low r\2\ value.

The proposed rule stated that "[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining" (64 FR 16407) and that "[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower

within the Grays Harbor portion of the DPS. Most of the trend analyses from these data sets are not reliable due to short time series or poor statistical results. Only the Stevens Creek data were considered relatively reliable (p less than 0.001, $r^2 = 0.67$). This population was declining at a rate of 15 percent per year as of 1994 (Johnson *et al.* 1999) and there were no additional data available for this trap. New data

The Kalama River trap has detected low numbers of coastal cutthroat trout in all but four years since 1982. The Kalama River basin occupies 1.5 percent of the DPS's range. This trap is located above the traditional anadromous cutthroat trout zone, in an area blocked to upstream passage until a ladder was built at the falls in 1936. The trap is designed for adult salmon with a 3.8 cm (1.5 in) bar spacing. According to

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of coastal cutthroat trout in the Sandy River has declined from historic levels, though the limited data do not allow us to determine if they are nearly extinct in this small portion of the DPS, as described in the proposed rule. The resident portion of the population remains well distributed in the Sandy River.

Powerdale Dam, completed in 1922, lies 7.2 km (4.5 mi) up the Hood River from its confluence with the Columbia River. The area between the dam and the powerhouse (river mile (rmi) 1.5) was historically dewatered at times, though now has minimum required flows. The dam likely has affected the number of anadromous cutthroat trout using the Hood River, which comprises two percent of the DPS's range. Hood River lies upriver of Bonneville Pool and Dam, which may further impede anadromous cutthroat trout movements. Hood River lies near the eastern edge of the range of coastal cutthroat trout. No information is available as to anadromous cutthroat trout use and numbers prior to construction of Powerdale and Bonneville Dams, and only limited information exists on numbers in even recent times. Trap data from 1962 to 1971 shows variable, but significant numbers of adult cutthroat trout trapped (mean 61, range 8 to 177) followed by a gap in information until 1992. Very few adult fish have been trapped at the facility since 1992, with no fish captured in 6 of 10 years. However, in 2001, 11 adult coastal cutthroat trout returned to Powerdale Dam (Connolly *et al.* 2002). From 1994 to 1999, downstream smolt traps in the Hood River system continued to trap migrants, though at low numbers (mean of 24 fish). Given the location and long history of Powerdale Dam, it is not surprising that the anadromous portion of the population in Hood River is depressed. Resident forms within this system are in better condition, with relatively high densities (0.003 to 0.238 fish per m\2\ (0.03 to 2.56 fish per ft\2\) for fish greater than 85 mm (approximately 3 in) in length (ODFW 1998). We conclude that the anadromous portion the population of coastal cutthroat trout in the Hood River has declined severely from historic levels in this small portion of the DPS. The resident portion of the population remains well distributed at relatively high densities in the Hood River. Occasional upstream migrants continue to be trapped in some years, and in 2001, a total of 11 upstream migrants were captured (Connolly *et al.* 2002).

The proposed rule stated that NMFS was concerned about the extremely low population size of anadromous coastal cutthroat trout in lower Columbia River streams, indicated by low incidental catch of coastal cutthroat trout in salmon and steelhead recreational fisheries, and by low trap counts in a number of tributaries throughout the region and that numbers of adults returning to traps in the lower Columbia River tributaries were consistently below 10 fish in most streams over each of the past 6 years (64 FR 16407). Based on the information described in this section, we conclude that, while the anadromous portion of the population of coastal cutthroat trout is likely at lower-than-historic levels, there is little information available to determine the actual size of runs or to indicate that populations, or even the anadromous portion alone, are at extremely low levels in most areas of the DPS. The anadromous portion of the population may be at very low numbers in Hood and Sandy Rivers (6 percent of the DPS's range), though the location of the trap on the Sandy River makes it difficult to support the conclusion that anadromous coastal cutthroat trout are near extinction in this river as described in the proposed rule (64 FR 16407). Resident/freshwater forms remain well distributed and at reasonable densities in these same river systems. Coastal cutthroat trout in the southwest Washington portion of the DPS (75 percent of the land base) remain at comparable densities to other areas considered to have healthy-sized populations. Therefore, we conclude that the population of coastal cutthroat trout as a whole in the DPS is not extremely low in numbers or at levels that would lead to increased risk of extinction due to small population size in the foreseeable future.

Population Trends Across the DPS

The proposed rule stated that "[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining" (64 FR 16407) and that "[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years," with the only increase in the Toutle River (64 FR 16407).

During the public comment period we received new data from several of the fish traps operating in the DPS's range. Based on analyses of these new data, including further information on individual traps from WDFW (2001), we evaluated the trend in the population of coastal cutthroat trout in the DPS and the reliability of the trend information from each individual data set.

Evaluating the reliability of the trend information is very important in determining the appropriate use of the information. The reliability of analyses in truly depicting any population trend could be affected by the collection method, length of data set, specific concerns for individual collection sites, and statistical reliability of the test results. In interpreting the results of the analyses, less weight was given to results with low statistical reliability, short data sets, and where the agency managing the trap/collection indicated specific problems that could bias or affect trend information.

Most information was collected in areas accessible to anadromous salmonids, incidental to studies for other salmonid species, using traps or collection facilities designed for other species. Information on the efficiency of these systems in detecting or collecting cutthroat trout is lacking. Therefore, these values do not represent the trends of all portions of the DPS. We carefully explored information on the individual traps or other information to ensure that potential biases that could affect use of these data as indices of population trend were minimized. Trends from short-term data sets are particularly suspect. There is naturally high variation in all adult and juvenile counts, with some apparent short-term cyclicity. The trend in a short data set is therefore more likely indicative of the particular time span of the data collection, and position in the "cycle," than an indication of true long-term trend in the population. Only a few long-term data sets were available.

Data sets were analyzed for the percent annual decline using a regression of the natural log of the trap counts. Where data sets were longer than 11 years, analyses were conducted for entire data set (long term) and for the last 7 to 11 years (short term). These same methods were used by NMFS in the Status Review (Johnson *et al.* 1999). We used statistical analyses to determine the reliability of the observed trend. The accuracy of the observed trend is evaluated by the p value. A low p value indicates that the trend we calculated is likely to be an accurate representation of the true trend in the population. For example, a p value of 0.10 indicates a 90 percent probability that the observed trend is accurate, a p value of 0.5 indicates only a 50 percent probability that the observed trend is accurate. With regression statistics, we also report the r\2\ value which describes how well the straight trend line fits the observed population data. Low r\2\ values indicate that the straight trend line does not fit the data well and lowers our confidence that the observed trend accurately represents the true trend. Highly variable data often result in a low r\2\ value.

The proposed rule stated that "[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining" (64 FR 16407) and that "[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years" (64 FR 16407). The latest trend data, as described below, do not support this conclusion.

Population Trends in Grays Harbor

Trends in the counts of adult coastal cutthroat trout migrants from the Grays Harbor portion of the DPS were analyzed from three available data sets. Data used in the Status Review (Johnson *et al.* 1999) indicated a declining trend for the West Fork Hoquiam River (5 percent annual decline, data through 1995). In the latest analysis there is no reliable indication of a trend, increasing or decreasing ($p = 0.44$, $r^2 = 0.05$) in the West Fork Hoquiam River. Adult migrant counts from Bingham Creek were not used in the Status Review's assessment (Johnson *et al.* 1999). Analysis of data from 1983 through 2001 show an increasing long-term trend (7 percent annual increase) that is considered relatively reliable, though the straight trend line does not fit the data well ($p = 0.05$, $r^2 = 0.2$). Additional hook and line data were available from a single individual who kept very accurate catch records over 15 years (WDFW 2001c). Such data can be biased by changes in the individual's skill and effort over time, however, these data do generally support the conclusion of an increasing trend (4 percent annual increase, p less than 0.01, $r^2 = 0.58$). WDFW also concluded, based on angler data, that the percentage of repeat spawners or larger fish in the population has also recently increased, indicating an improvement in population condition (WDFW 2001c). Based on analysis of data from the West Fork Hoquiam River, Bingham Creek, and the angler data, there is no evidence that the adult portion of the population in the Grays Harbor tributaries, which comprises 18 percent of the DPS, is declining over the long term as described in the proposed rule (64 FR 16407), and there is some indication that the adult portion of the population may be stable or increasing, at least in Bingham Creek.

Juvenile (downstream migrant) count data were available from many locations within the Grays Harbor portion of the DPS. Most of the trend analyses from these data sets are not reliable due to short time series or poor statistical results. Only the Stevens Creek data were considered relatively reliable (p less than 0.001, $r^2 = 0.67$). This population was declining at a rate of 15 percent per year as of 1994 (Johnson *et al.* 1999) and there were no additional data available for this trap. New data were available from the Chehalis River trap. Hatchery releases in this area have declined significantly and no hatchery marked coastal cutthroat trout have been recorded at the trap in recent years. The number of total coastal cutthroat trout caught at the trap appears to have declined in recent years (11 percent annual decline, $p = 0.18$, $r^2 = 0.19$). However, when only unmarked (*i.e.*, naturally spawned) coastal cutthroat trout were counted, the number of fish counted appears to have increased over the long term (10 percent annual increase, $p = 0.18$, $r^2 = 0.14$). Given the moderate p values and poor r^2 values, these data have relatively poor reliability. Therefore, the Chehalis River trap provides no strong evidence of either a long-term positive or negative population trend.

Population Trends in the Columbia River and Tributaries

Trends in the numbers of migratory adult coastal cutthroat trout returning to traps in the lower Columbia River portion of the DPS were analyzed on five available data sets discussed below. These analyses provide some indication of decline in the numbers of adult anadromous coastal cutthroat trout, though there are concerns about the reliability and confidence in the magnitude of these trends for most of the data sets. These concerns are poor statistical reliability, lack of trap efficiency data, and consistency problems that likely bias the results. No data exist specific to trends in the resident portion of coastal cutthroat trout population in the DPS.

Two of the five data sets were from a limited time period and not considered reliable indicators of trend. In addition, the North Fork Toutle River trap was considered unreliable for determining trend due to recent continued failure of the Fish Collection Facility leading to closures coinciding with the upstream migration of anadromous cutthroat trout (WDFW 2001c). Trends for wild fish returns for the Elochoman River trap were difficult to fully analyze due to a significant gap in the data. There are only seven years of data following this gap, ending in 1995 when trapping was discontinued.

The Kalama River trap has detected low numbers of coastal cutthroat trout in all but four years since 1982. The Kalama River basin occupies 1.5 percent of the DPS's range. This trap is located above the traditional anadromous cutthroat trout zone, in an area blocked to upstream passage until a ladder was built at the falls in 1936. The trap is designed for adult salmon with a 3.8 cm (1.5 in) bar spacing. According to WDFW, most adult sea-run cutthroat trout would pass through undetected (WDFW 2001c). While these factors may affect total counts at this location, it is still potentially usable for trend analyses. The data indicate a long-term declining trend (10 percent annual decline, p less than 0.001, $r^2 = 0.62$). WDFW (2000) noted that after a sharp decline in the mid-1980s, counts at the Kalama facility have been low and stable, though our analysis of data since 1987 indicates that the number of cutthroat trapped has continued to decline at a similar rate.

Creel census data for coastal cutthroat trout from the lower Columbia River were collected incidentally to studies of salmon and steelhead fisheries, and no data were collected on angler effort for coastal cutthroat trout. Based on the latest creel census data, there is an indication of an 18 percent annual rate of decline over the long term. The number of cutthroat trout recorded in the creel surveys for the lower Columbia River, and thus the calculated trend, is likely to be strongly influenced by the change in cutthroat trout fishing regulations during this period (WDFW 2001c) with a decrease in limits and an increase in minimum size (see Population Size section), as well as changes in salmon and steelhead fisheries. The lack of angler effort data make it impossible to determine if the decline in creel census numbers is the result of declining populations or declining effort. Creel census personnel have noted reduced angler effort in traditional cutthroat trout areas and fewer anglers using traditional sea-run cutthroat trout gear (WDFW 2001c). The change in regulations likely changed fishing behavior, reducing the angler effort. With reduced effort, we would expect a lower catch and therefore the appearance of a decline. While it is likely that there has been some decline in the number of adult anadromous cutthroat trout, it is impossible to determine the rate of decline with any certainty in the absence of data on angling effort (WDFW 2001c). Given the lack of angler effort with which to standardize the counts, we can no longer conclude that the creel census

data indicates a specific level of decline in the anadromous portion of the cutthroat trout DPS as described in the proposed rule (64 FR 16397).

The NMFS Status Review also cited concern relative to two near extinctions of anadromous runs in the Hood and Sandy Rivers (6 percent of the DPS's range) (see Population Size section). There has been a decline in the number of anadromous cutthroat caught at the (64 FR 16407). Based on the latest information, there is no reliable evidence that the adult population in the Grays Harbor tributaries is declining over the long term and some indication that the adult population may be stable or increasing in at least some areas. There is an indication from a single trap that juvenile outmigration may be declining, though we lack data for the past seven years. Therefore, we no

population trends indicate that coastal cutthroat trout are likely to be extirpated from any significant portion of their range in the foreseeable future.

Life History Diversity

The proposed rule stated that "[a] significant risk factor for coastal cutthroat trout in this [DPS] was a reduction of life-history diversity" (64 FR 16407), based on serious declines in anadromous life history forms and near

catastrophic events. Genetic exchange can be important in evolutionary time scales to maintain diversity within populations, but requires that only a few individuals interbreed successfully over time. The Pacific Northwest is subject to periodic catastrophic events such as volcanic eruptions and stand replacement fires that can seriously depress, and even extirpate, local populations. These types of events occur on very long time scales and at

migration. WDFW has marked coastal cutthroat trout smolts produced by upstream freshwater fish at Cowlitz Falls, which lies above Mayfield Dam. Two adults returned from smolts tagged in 1997, one of which was sacrificed and microchemistry results confirmed it had migrated to salt water and returned. Eight fish from smolts tagged returned in 1998. While this portion of the DPS may contain residualized anadromous cutthroat trout trapped behind the dam,

rivers). In addition, there is no evidence at this time that coastal cutthroat trout pursuing the anadromous life history strategy are segregated from the remainder of the population. In fact, studies show that individuals above barriers and below barriers with access to the sea are more closely related within a drainage than are individuals from different drainages (Behnke 1997, Johnson *et al.* 1999). This further supports the conclusion that

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data indicates a specific level of decline in the anadromous portion of the cutthroat trout DPS as described in the proposed rule (64 FR 16397).

The NMFS Status Review also cited concern relative to two near extinctions of anadromous runs in the Hood and Sandy Rivers (6 percent of the DPS's range) (see Population Size section). There has been a decline in the number of anadromous cutthroat caught at the trap in the Sandy River, though it is difficult to extrapolate data from one trap located on a tributary to the main river to a meaningful population trend in this system. Captures have been very low at Powerdale Dam on the Hood River (see Population Size section). The data were insufficient to conduct any meaningful trend analysis. Given the long history of this dam, it is not surprising that the anadromous portion of the population in Hood River is severely depressed. The resident portion of the population within this system is in better condition, with relatively high densities (ODFW 1998), though no trend data exist for this portion of the population.

Data were available for the smolt to adult return rate at the Cowlitz River Hatchery. These rates have declined in the long-term (19 years) (6 percent decline per year, $p = 0.01$, $r^2 = 0.34$). In the short term (11 years), the data do not reliably show an increasing or decreasing trend ($p = 0.46$, $r^2 = 0.06$). The last return rate (1998 juveniles) was 4.1 percent, the highest value since 1988. These data are based on hatchery fish and likely underestimate natural survival rates of cutthroat in this system because of the higher levels of survival of wild over hatchery produced salmonids (Chilcote in prep).

Data on population trends for juveniles (downstream migrants) were very limited. Most data sets were short and trend could not be determined with any certainty. Trends varied from weak increases to weak declines. The Status Review noted a 16 percent decline in smolt abundance in the Kalama River. This was based on data from 7 years (1978–1984) followed by a gap of 8 years and 3 years of additional data (1992–1994). The gap and short nature of the end portion of the data make it difficult to interpret a reliable rate of decline.

Summary of Trend Analysis

Based on the above information, population trends of the DPS appear more variable than previously thought. The proposed rule stated that "[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining" (64 FR 16407). Based on the latest information, there is no reliable evidence that the adult population in the Grays Harbor tributaries is declining over the long term and some indication that the adult population may be stable or increasing in at least some areas. There is an indication from a single trap that juvenile outmigration may be declining, though we lack data for the past seven years. Therefore, we no longer conclude that trends of the adult anadromous portion of the population and outmigrating juveniles in the southwest Washington portion of the DPS are all declining markedly as described in the proposed rule (64 FR 16407).

The proposed rule stated that "[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years," with the only increase in the Toutle River (64 FR 16407). The petition to list sea-run cutthroat trout (ONRC 1998) stated that "[i]f angler catch truly mirrors run size, * * * then the latest surveys suggest a decline of close to 99 percent in sea-run cutthroat trout numbers from historical levels in the lower Columbia River and its tributaries." As described above, due to changes in regulations and the lack of angler effort data, we conclude that angler catch data for the lower Columbia River is likely not a true representation of run size. Data for the lower Columbia River are limited and there are significant concerns about the reliability of the results. There are indications of declines in the anadromous component of the adult portion of the population in the Columbia River, though the rate of the decline is uncertain due to concerns over the reliability of the analyses and potential biases in the data sets. While the number of anadromous coastal cutthroat trout have likely declined in the Columbia River, we do not have sufficient data to determine a reliable rate of recent decline and, therefore, no longer conclude that returns of anadromous cutthroat trout in almost all lower Columbia River streams have "declined markedly over the last 10 to 15 years" as described in the proposed rule (64 FR 16407). There is little information on population trends for resident or freshwater forms of cutthroat trout in the DPS, though populations in the Washington portion of the DPS appear to remain at levels comparable to healthy-sized populations, indicating that large-scale, long-term declines have not occurred at a landscape level. Based on these data, we do not find that the population trends indicate that coastal cutthroat trout are likely to be extirpated from any significant portion of their range in the foreseeable future.

Life History Diversity

The proposed rule stated that "[a] significant risk factor for coastal cutthroat trout in this [DPS] was a reduction of life-history diversity" (64 FR 16407), based on serious declines in anadromous life history forms and near extirpation in at least two rivers on the Oregon side of the basin. The proposed rule does acknowledge that freshwater forms remained well distributed and in relative high abundance (64 FR 16407). The proposed rule indicated that habitat degradation in stream reaches accessible to anadromous cutthroat trout, and poor ocean and estuarine conditions, likely have combined to severely deplete the anadromous life history form throughout the lower Columbia River Basin. Finally, the proposed rule further stated that "Reduced abundance in anadromous fish will tend to restrict connectivity of populations in different watersheds, which can increase genetic and demographic risks. * * * The significance of this reduction in life-history diversity to the [*sic*] both the integrity and the likelihood of this [DPS's] long-term persistence is a major concern to NMFS" (64 FR 16407).

ODFW and WDFW presented preliminary evidence to the Status Review team that freshwater cutthroat trout could produce anadromous migrants, which could mitigate risks to the anadromous portion of the population. The proposed rule did note that the presence of well distributed freshwater forms in relatively high abundance, coupled with the possibility that freshwater forms could produce anadromous progeny "* * * could act to mitigate risk to anadromous forms of coastal cutthroat trout," though the observation that sea-run coastal cutthroat trout population sizes remained consistently low remained a cause for concern (64 FR 16407).

Anadromous cutthroat trout, particularly in the lower Columbia River, are the most negatively affected portion of the DPS. The degree to which the reduced numbers of the anadromous portion of the population of coastal cutthroat trout represent a risk to the DPS as a whole depends, in part, on the importance of this life history strategy and the extent to which the expression of life history strategies are genetically versus environmentally controlled.

The anadromous life history strategy is likely important to the DPS for genetic mixing in the long-term and for potential recolonization after

catastrophic events. Genetic exchange can be important in evolutionary time scales to maintain diversity within populations, but requires that only a few individuals interbreed successfully over time. The Pacific Northwest is subject to periodic catastrophic events such as volcanic eruptions and stand replacement fires that can seriously depress, and even extirpate, local populations. These types of events occur on very long time scales and at watershed or sub-basin scales. Anadromous cutthroat represent one possible source of individuals for recolonization, the other being resident cutthroat trout above or outside the area of the catastrophic event. The ability of anadromous cutthroat trout to recolonize is limited by barriers and they cannot provide rescue to populations above large, natural barriers.

The extent to which each life history expression is partitioned or isolated among and within populations is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors over time (Johnson *et al.* 1999). Coastal cutthroat trout that were believed to be freshwater forms one year may migrate to the sea another year; some individuals may not make their initial migration to sea until age six (Sumner 1962, Geiger 1972). Some sea-run cutthroat trout may not enter saltwater every year after their initial seaward migration (Tomasson 1978).

Both ODFW (1998) and WDFW (2001) presented information showing evidence of production of anadromous progeny by freshwater resident cutthroat trout. Studies of brown trout have demonstrated that non-anadromous adults can produce anadromous offspring, though at lower levels than anadromous adults. For other salmonids with multiple life history forms, Jonsson and Jonsson (1993) suggested that in a single mating, parents may produce offspring with different migratory strategies, though this has not been confirmed experimentally for coastal cutthroat trout (Johnson *et al.* 1999).

WDFW (2001) provided additional information on the production of downstream migrants by cutthroat trout entrained above dams on the Cowlitz River. A downstream migrant trap at Mayfield Dam recorded between 60 and 812 migrants per year from 1978 to 1999. There was a single release of hatchery-derived anadromous cutthroat trout above Mayfield Dam in 1981, but all cutthroat trout currently above the dam are considered to be freshwater forms (WDFW 2001c). Mayfield Dam was built in 1962, blocking upstream migration. WDFW has marked coastal cutthroat trout smolts produced by upstream freshwater fish at Cowlitz Falls, which lies above Mayfield Dam. Two adults returned from smolts tagged in 1997, one of which was sacrificed and microchemistry results confirmed it had migrated to salt water and returned. Eight fish from smolts tagged returned in 1998. While this portion of the DPS may contain residualized anadromous cutthroat trout trapped behind the dam, it has continued to produce downstream migrants for over 40 years (more than 10 generations). These results are consistent with the hypothesis that resident fish in anadromous fish zones are capable of producing migratory juveniles (*i.e.*, smolts) and "sea-run" adults.

The few existing studies show that, although both allele frequencies and morphology may differ between populations above barriers and populations below barriers with access to the sea, these different life history forms are generally more closely related within a drainage than are populations from different drainages (Behnke 1997, Johnson *et al.* 1999). These results indicate that the migratory and non-migratory portions of the population of cutthroat trout represent a single evolutionary lineage in which the various life history characteristics have arisen repeatedly in different geographic regions. These relationships for coastal cutthroat trout are similar to those for other salmonid fishes, particularly sockeye salmon (*Oncorhynchus nerka*) and its non-anadromous form, kokanee.

NMFS (Johnson *et al.* 1999) acknowledged that if freshwater coastal cutthroat trout can produce smolts, this could mitigate the risks to the anadromous portion of the population, though at the time they lacked information on the length of isolation of populations above Mayfield Dam to fully evaluate this phenomenon. They did note that even if smolts were being produced, the anadromous portion of the population remains consistently low in many areas which is cause for concern. Coastal cutthroat trout above Mayfield Dam have been isolated for over 40 years, representing many generations, and continue to produce appreciable numbers of downstream migrants. The fact that they continue to produce smolts after long isolation suggests that even if the anadromous portion of the population continues to experience low number and declines, smolts will be produced that can supplement the anadromous portion of the population and take advantage of any improvement in anadromous habitat (*e.g.*, ocean, estuary, mainstem rivers). In addition, there is no evidence at this time that coastal cutthroat trout pursuing the anadromous life history strategy are segregated from the remainder of the population. In fact, studies show that individuals above barriers and below barriers with access to the sea are more closely related within a drainage than are individuals from different drainages (Behnke 1997, Johnson *et al.* 1999). This further supports the conclusion that anadromous and non-anadromous individuals are not substantially separate subpopulations. Therefore, based on the evidence that freshwater and isolated portions of the population are capable of producing anadromous migrants, we now conclude that freshwater and isolated portions of the coastal cutthroat trout population are mitigating risks to anadromous forms to some degree. The ability for non-anadromous cutthroat trout to produce anadromous progeny reduces the risk of loss of the anadromous life history strategy in the foreseeable future.

Distinct Population Segment

The analysis for this listing determination is based on the DPS as described in the April 5, 1999, **Federal Register** proposed rule (64 FR 16397). In that proposed rule, the DPS was defined to include naturally spawned cutthroat trout below long-standing, naturally-impassable barriers. However, at that time we indicated that, prior to the final listing, we would examine the relationship between hatchery and naturally spawned cutthroat trout, and cutthroat trout above barriers to assess whether any of these populations warrant inclusion in the DPS. In the proposed rule, we indicated that this could result in the inclusion of specific hatchery populations or populations above barriers as part of the DPS.

Only one coastal cutthroat trout hatchery remains active in the DPS's range, the Cowlitz River Hatchery. We examined the relationship between this hatchery and unmarked fish from the DPS. Genetically, the remaining hatchery population appears more similar to other populations within the DPS than to populations from outside the DPS (Johnson *et al.* 1999). Stock for this hatchery came initially from the now closed Beaver Creek Hatchery, which in turn was initiated using a mixed stock of fish from within the DPS (Crawford 1979). We have no information that would lead us to exclude the Cowlitz River Hatchery stock from the DPS at this time. Therefore, all further analyses were conducted including the Cowlitz River Hatchery stock.

As described in the proposed rule, we indicated that populations above barriers that permit some one-way migration should generally be included in the DPS. Populations above such barriers may contribute demographically and genetically to populations below barriers. The genetic similarity observed between populations above and below barriers supports this interpretation (Johnson *et*

cutthroat trout due to budgetary limitations. On August 29, 2001, we issued a press release announcing that, as part of a settlement agreement with conservation groups, we would commence work on the final listing decision for the Southwestern Washington/Columbia River coastal cutthroat trout DPS (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)). This was followed by another proposed rule

specifically allows for the recognition of DPSs at levels below taxonomically recognized species or subspecies. The coastal cutthroat trout is a recognized subspecies of cutthroat trout (Behnke 1992).

Issue 2: Two commenters suggested that all life history forms, including populations above long-standing, naturally-impassable barriers should be included in the DPS. Two commenters suggested that resident coastal cutthroat

between populations to effectively keep the population genetics from diverging significantly, the differences described in the Status Review (Johnson *et al.* 1999) demonstrate marked separation of the coastal cutthroat trout in the DPS from other adjacent areas.

The second requirement for DPS status is the biological and ecological significance of the population to the subspecies. Significance includes, but is not limited to the following: (1)

(50 mi)), and the fact that coastal cutthroat trout are not thought to cross large open water as potential isolating factors that would support smaller DPSs. However, the same commenter did provide evidence that isolation between Grays Harbor, Willapa Bay and/or Lower Columbia coastal cutthroat is not complete, because hatchery marked coastal cutthroat are frequently observed at Willapa Bay salmon hatcheries. WDFW (2000)

analysis, treatment of outliers and hybrids, analysis procedures (*e.g.*, measures of genetic distance), presence of hatchery and mixed origin stocks in the samples, and the potential effect of hatchery stock on local population genetics. WDFW provided an alternative analysis and conclusion of the genetic information.

Service Response: The principal purpose of genetic analyses for Endangered Species Act evaluations is

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As described in the proposed rule, we indicated that populations above barriers that permit some one-way migration should generally be included in the DPS. Populations above such barriers may contribute demographically and genetically to populations below barriers. The genetic similarity observed between populations above and below barriers supports this interpretation (Johnson *et al.* 1999). Few, if any, natural barriers prevent some one-way migration. Therefore, we have included all above-barrier populations as part of the DPS for the following analysis. Therefore, the DPS analyzed in this listing determination includes all coastal cutthroat trout, whether naturally spawned, from hatcheries, or above barriers, within the area described above.

Previous Federal Actions

NMFS published a Status Review of coastal cutthroat trout in Washington, Oregon, and California in January 1999. On April 5, 1999, NMFS and the Service published a proposed rule in the **Federal Register** (64 FR 16397) proposing to list the coastal cutthroat trout population in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls, as threatened pursuant to the Endangered Species Act of 1973 (Act). We published a document in the **Federal Register** (65 FR 20123) on April 14, 2000, extending the deadline from April 5, 2000, to October 5, 2000 for the final action on the proposed rule to list this population in Washington and Oregon, and to provide a 30-day comment period. On April 21, 2000, NMFS and the Service published a notice of our assumption of jurisdiction for coastal cutthroat trout. We published a document on June 2, 2000 (65 FR 35315), reopening the public comment period and announcing a public hearing in Illwaco, WA, on June 20, 2000. On July 14, 2000, we published a proposed rule in the **Federal Register** (65 FR 43730) to clarify the take prohibitions for coastal cutthroat trout and provide for a 30-day public comment period. This proposed rule was necessary to answer questions we had received regarding the application of the take prohibitions of section 9 of the Act to the proposed listing of the coastal cutthroat trout as threatened. The comment period was again reopened September 6, 2000 (65 FR 53974), and a hearing was held September 21, 2000, in Aberdeen, WA, based on a request during the public comment period. In November 2000, we suspended work on the proposed listing of the coastal cutthroat trout due to budgetary limitations. On August 29, 2001, we issued a press release announcing that, as part of a settlement agreement with conservation groups, we would commence work on the final listing decision for the Southwestern Washington/Columbia River coastal cutthroat trout DPS (*Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.)). This was followed by another proposed rule announcing an additional 30-day comment period, published in the **Federal Register** (66 FR 58706) on November 23, 2001. We requested any new information related to the status and biology of the coastal cutthroat trout population in southwestern Washington and the Columbia River, any threats to the species, and any efforts being made to protect native, naturally reproducing populations.

Summary of Comments and Recommendations

In the April 5, 1999, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Additional requests for public comment were published on April 14, 2000 (65 FR 20123); July 14, 2000 (65 FR 43730); September 6, 2000 (65 FR 53974); and November 23, 2001 (66 FR 58706). Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. During the five open comment periods, a total of 127 comments were received from 96 different government agencies, organizations, or individuals, including oral testimony at the four hearings held during the process. Many government agencies, organizations, and individuals provided comments during more than one public comment period or hearing.

Issue 1: Several commenters stated that coastal cutthroat trout should not be listed as a DPS, but should be considered for listing at the subspecies levels and then only if it is reasonably certain that it constitutes a separate subspecies based on significant characteristics.

Service Response: The Act defines species as "any species of fish or wildlife or plants, and any DPS of any species of vertebrate fish or wildlife that interbreeds when mature." 16 U.S.C. 1532(15). A DPS is a population of a vertebrate species that is distinct from, and significant to, the remainder of the species or subspecies to which it belongs (61 FR 4721). This definition specifically allows for the recognition of DPSs at levels below taxonomically recognized species or subspecies. The coastal cutthroat trout is a recognized subspecies of cutthroat trout (Behnke 1992).

Issue 2: Two commenters suggested that all life history forms, including populations above long-standing, naturally-impassable barriers should be included in the DPS. Two commenters suggested that resident coastal cutthroat trout may contribute to anadromous smolt production, supporting the inclusion of resident fish in the DPS.

Service Response: We fully evaluated information on the relationship between populations above and below long-standing, naturally-impassable barriers and agree with the commenters (see Distinct Population Segment section). Based on the latest information provided by WDFW (2001), we concur that there are data showing that cutthroat trout above long-standing barriers produce offspring that migrate to the estuary or ocean and return. We have considered this information fully in the Life History Diversity section above. We have included all life history forms and populations above long-standing, naturally-impassable barriers in the final analysis of the DPS.

Issue 3: One commenter questioned the delineation of the DPS, suggesting that observed minor differences in genetic makeup, life history, phenotypic traits, and habitat characteristics did not support multiple DPSs for coastal cutthroat trout. Several commenters suggested the DPS did not meet the requirement for discreteness from other populations beyond the DPS.

Service Response: DPSs of vertebrate populations may be listed under the Act if they satisfy the following two elements: (1) discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) significance of the population segment to the species or subspecies to which it belongs (61 FR 4721).

To be considered discrete, a DPS must be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. Genetic tests of samples from coastal cutthroat trout in the DPS show that populations within the DPS are more closely related to each other than to populations in adjacent areas. This indicates some level of reproductive isolation. As it only requires interbreeding of a few individuals between populations to effectively keep the population genetics from diverging significantly, the differences described in the Status Review (Johnson *et al.* 1999) demonstrate marked separation of the coastal cutthroat trout in the DPS from other adjacent areas.

The second requirement for DPS status is the biological and ecological significance of the population to the subspecies. Significance includes, but is not limited to the following: (1) persistence of the DPS in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; or (3) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4721). The DPS has unique ecological characteristics that distinguish it from other portions of the range. The DPS occupies aquatic systems that feed three large estuaries with extensive intertidal mud and sandflats, very different from estuaries north and south of the DPS. Loss of coastal cutthroat in the DPS would result in a significant gap in the range of the taxon. Populations may be reproductively isolated because of limited migratory range and timing. The loss of these populations would negatively affect the genetic resources of coastal cutthroat.

Based on a review of available information, we concluded that the DPS meets the criteria for discreteness and significance. Available data demonstrate that both environmental and genetic factors indicate that the DPS is different from other populations of coastal cutthroat trout. Further, we concluded that the available information supports the conclusion that the southwest Washington/Columbia River DPS of coastal cutthroat is biologically and ecologically significant to the subspecies.

Issue 4: Several commenters recommended splitting the DPS into smaller segments. Most commenters suggested separating the Grays Harbor/Willapa Bay area from the Columbia River because of physical, geographic, and/or biological isolating mechanisms. One commenter provided an alternative genetic analysis that indicated the DPS should be split into three separate DPSs.

Service Response: There are significant ecological and genetic similarities between the Columbia River, Willapa Bay, and Grays Harbor portions of the DPS. All three occupy large estuary systems. One commenter pointed to the relatively long distances between the Willapa Bay and Columbia River tributaries (approximately 80 km (50 mi)), and the fact that coastal cutthroat trout are not thought to cross large open water as potential isolating factors that would support smaller DPSs. However, the same commenter did provide evidence that isolation between Grays Harbor, Willapa Bay and/or Lower Columbia coastal cutthroat is not complete, because hatchery marked coastal cutthroat are frequently observed at Willapa Bay salmon hatcheries. WDFW (2000) suggested that the hatchery marked fish originated from either Lower Columbia River or Grays Harbor because there were no hatchery plants of coastal cutthroat in Willapa Bay during this time period. Therefore, we conclude that the distance between Willapa Bay and Columbia River coastal cutthroat trout populations would not prevent anadromous cutthroat from interacting across these systems.

The alternative genetic analysis presented by WDFW (2001) actually revealed a slightly higher genetic similarity between Willapa Bay and Lower Columbia River populations than between the former populations and Grays Harbor. We agree that populations of coastal cutthroat trout in the DPS appear to be substructured according to major geographic areas. However, the magnitude of this substructuring, relative to the amount of genetic divergence among the six DPSs identified by NMFS (Johnson *et al.* 1999), does not warrant further partitioning into two or more separate DPSs. WDFW also presented observed differences regarding life history characteristics of juvenile anadromous coastal cutthroat (smoltification age) comparing a single stream in the Columbia River portion to a combined data set from three streams in Willapa Bay. While there were differences in the percentage of individuals making their first marine migration at age two (86 versus 61 percent), this may well be evidence of minor local adaptations to the specific conditions in these few individual streams. Without a more extensive study, it is impossible to determine if this difference is indicative of these portions of the DPS.

Based on the latest information, we conclude that the DPS as defined in the proposed rule (64 FR 16397) meets the requirements of a DPS, and that alternative smaller DPSs are not supported by the information available at this time.

Issue 5: Several commenters questioned the analysis and interpretation of genetic data based on sample size, limited collection period, lack of information on the resident portion of the population in the analysis, treatment of outliers and hybrids, analysis procedures (*e.g.*, measures of genetic distance), presence of hatchery and mixed origin stocks in the samples, and the potential effect of hatchery stock on local population genetics. WDFW provided an alternative analysis and conclusion of the genetic information.

Service Response: The principal purpose of genetic analyses for Endangered Species Act evaluations is to understand the magnitude of genetic diversity among populations throughout the range of the species considered for listing under the Act. The goal of such evaluations is not to identify every genetically isolated (or diverged) population, but rather to identify geographic subsets of the species conforming to the definition of a DPS (61 FR 4721). The pattern of genetic diversity throughout the range of the species is evaluated geographically to identify potential subsets for further evaluation as DPSs.

In the genetic analysis, Johnson *et al.* (1999) excluded some outlier populations from the statistical analysis. None of the populations within the DPS were excluded. Most of the excluded populations were from the Upper Willamette DPS, and only one was from an adjacent DPS with anadromous components. Therefore, the exclusion of outlier populations is unlikely to have significantly affected the interpretation of the genetic information relative to the DPS.

We recognize that exclusion of "hybrids" from the population genetic analyses conducted by the Status Review Team may be more problematic. NMFS used a qualitative, genotypic approach in their genetic analyses to classify each individual fish as either a cutthroat trout, a rainbow/steelhead trout, or a "hybrid" (Johnson *et al.* 1999). It is necessary to remove hybrids to accurately analyze regional genetic patterns for coastal cutthroat trout, especially where hybrids are common. We are currently re-analyzing the data with a more quantitative approach based on multivariate statistical analyses. These analyses are not yet complete, but preliminary analyses indicate that the quantitative and qualitative approaches are classifying most individuals consistently.

Issue 6: Several commenters reported that coastal cutthroat (especially resident forms) are distributed throughout the DPS and are locally abundant in most areas.

Service Response: Since obtaining sole jurisdiction for this subspecies (64 FR 21376), we have assembled an extensive database regarding

distribution (presence) of coastal cutthroat in the DPS. For example, in Washington, we have documented that coastal cutthroat occur in over 1,300 locations within the DPS. This data set includes the year 2001 sampling effort conducted by WDFW in Lower Columbia River streams. With this new distribution information, we now have a high degree of certainty that this subspecies is well distributed

we invoked this provision to help resolve substantial scientific disagreement concerning above-barrier coastal cutthroat and hatchery populations of coastal cutthroat (65 FR 20123). In addition, the current listing decision is part of a settlement agreement with conservation groups that requires the final listing decision by June 23, 2002. Therefore, we are using the best available scientific and

healthy-sized outside the DPS. However, this does not prove that freshwater conditions have not contributed to declines in the anadromous portions of the coastal cutthroat trout population. Conditions in spawning areas used by anadromous individuals and barriers to historic anadromous spawning areas likely contributed to declines, as have changes in the migration corridors (large rivers), estuaries, and marine conditions.

and Grazing Management, Mining, and Urban and Industrial Development sections below). While these activities have affected aquatic and riparian conditions in the DPS's range, they are generally localized in impact and do not affect the majority of the DPS. Under current regulations, continued impacts from these activities are not likely to lead to the endangerment of the coastal cutthroat trout in the foreseeable future.

Issue 12: Several commenters

coastal cutthroat trout in the DPS have likely decreased angler effort, in turn reducing direct and indirect mortality of coastal cutthroat trout in the DPS. Information obtained during the public comment periods supports the observation that angler effort has decreased over time (see Overutilization for Commercial, Recreational, Scientific, or Educational Purposes section below). We are aware that coastal cutthroat trout

steelhead and coho could affect cutthroat trout in localized areas, depending on the location and magnitude of the releases. Releases in areas outside of historic coho habitat or in numbers that greatly exceed natural levels could have negative effects on cutthroat trout in the area of the release. However, information demonstrating effects to the DPS from coho releases is limited and the extent to which

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distribution (presence) of coastal cutthroat in the DPS. For example, in Washington, we have documented that coastal cutthroat occur in over 1,300 locations within the DPS. This data set includes the year 2001 sampling effort conducted by WDFW in Lower Columbia River streams. With this new distribution information, we now have a high degree of certainty that this subspecies is well distributed throughout suitable habitats in the DPS. From these data, it is now apparent that the historical distribution of coastal cutthroat has not contracted appreciably in the DPS (see Range and Distribution section below).

Issue 7: Several commenters suggested that the biological information presented in the Status Review and proposed rule was not adequate to proceed with a final listing. Several commenters requested that we extend the time for the decision on the proposed rule to list, in part to better assess or gather additional biological information.

Service Response: We are fully aware of limited data available for the coastal cutthroat trout in the DPS. The proposed rule (64 FR 16397) specifically addressed this issue in a section entitled, Data Limitations and Scientific Uncertainty. In the proposed rule and subsequent **Federal Register** proposed rules, we specifically requested additional information to aid us in acquiring the best scientific and commercial data available. In 2001, WDFW biologists, with some funding from the Service, sampled over 130 locations to determine presence/absence and relative abundance of coastal cutthroat in Lower Columbia River tributaries. They also compiled other fish survey data sets from the year 2000 to increase the sample size to over 150 locations. The data collected from these surveys were extremely valuable in assessing presence/absence and relative abundance, and in the analysis of the five threat factors for much of the DPS. In 2001 we also funded a study that helped resolve issues of hybridization with rainbow/steelhead trout in Washington. We have made every effort to gather all available information to complete this listing determination.

The Act requires us to complete a final listing decision within one year of the publication of a proposed listing, though it does allow for an extension of not more than six months if there is " * * * substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination concerned* * *." On April 14, 2000, we invoked this provision to help resolve substantial scientific disagreement concerning above-barrier coastal cutthroat and hatchery populations of coastal cutthroat (65 FR 20123). In addition, the current listing decision is part of a settlement agreement with conservation groups that requires the final listing decision by June 23, 2002. Therefore, we are using the best available scientific and commercial information to reach a listing decision, as required by the Act, and by the court agreed deadline.

The Act requires that listing determinations be based on the best available commercial and scientific information. We have received new information since the proposed listing specific to coastal cutthroat trout in the DPS. While information on this species is not as rigorous and complete as is available for some other salmonids, we believe we have sufficient information and evidence to support a final listing determination at this time.

Issue 8: Several commenters requested that we provide specific numeric values for distribution and population thresholds. They stated that these values were essential to determine threatened status and future recovery for this subspecies.

Service Response: Distribution and population levels were evaluated in determining the status of the species in the context of the historic condition of the DPS, rather than in the context of predetermined specific numerical thresholds. We did not find any significant change in distribution of coastal cutthroat trout in this DPS. As with most species, actual population numbers were not available for most of the DPS. Indices of population levels and trends were used to evaluate these aspects of the DPS and are described in the Population Size section above. Perhaps of more value in determining current condition and threats to the DPS than actual numbers are the trends in these index values and in potential threats to the DPS, which were also used in this determination and described in the Population Trend section above.

Issue 9: One commenter suggested that because resident cutthroat trout populations are generally healthy-sized, one could conclude that human and natural factors resulting in adverse marine conditions, rather than freshwater conditions, are the cause of declines in anadromous forms.

Service Response: We agree that the latest information indicates that the resident portion of the population exists in range and densities comparable to populations that are thought to be healthy-sized outside the DPS. However, this does not prove that freshwater conditions have not contributed to declines in the anadromous portions of the coastal cutthroat trout population. Conditions in spawning areas used by anadromous individuals and barriers to historic anadromous spawning areas likely contributed to declines, as have changes in the migration corridors (large rivers), estuaries, and marine conditions.

Issue 10: Several commenters described the impact of continued effects of logging to coastal cutthroat trout populations, including effects on large woody debris availability, increased disease, altered timing of juvenile migrations, increased predation, smothering of eggs and fry in gravels, and adverse effects to benthic (bottom dwelling) invertebrates that provide food for cutthroat trout.

Service Response: We agree that logging activities may have adverse effects on coastal cutthroat trout and have fully evaluated the past, current, and future threats from these activities. Our analysis is described in the Forest Management section below. The completion of two large-scale forest HCPs and Washington Forest Practices Regulations have significantly reduced the threats to coastal cutthroat trout from logging in the DPS. Collectively, remnant high quality habitat, ongoing forest recovery, active efforts to identify and correct legacies of past management, improved standards for future management actions, and the ability of coastal cutthroat trout to survive for long periods in degraded aquatic and riparian systems provide the basis for maintenance of habitat for the DPS of coastal cutthroat trout. Therefore, forest management is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Issue 11: One commenter expressed concern about the potential impacts of municipal discharges and its impact to water quality; instream and adjacent gravel pit operations and its effects on spawning gravels; water withdrawals reducing flows at critical periods; sedimentation as a result of road building near spawning beds; and development resulting in reduced riparian zones. Another commenter pointed out the potential effects of agriculture and urban/rural development on habitat conditions for coastal cutthroat trout.

Service Response: We agree that all of these activities may adversely affect coastal cutthroat trout. We have fully evaluated the past, current, and future threats from these activities (Agriculture and Grazing Management, Mining, and Urban and Industrial Development sections below). While these activities have affected aquatic and riparian conditions in the DPS's range, they are generally localized in impact and do not affect the majority of the DPS. Under current regulations, continued impacts from these activities are not likely to lead to the endangerment of the coastal cutthroat trout in the foreseeable future.

Issue 12: Several commenters described the potential effects of barriers (dams and culverts) to anadromous cutthroat trout, including blockage of historic habitat and significant declines in all major tributaries above dams, with the likely extinction of populations in the Wind and Klickitat Rivers. One commenter pointed out that coastal cutthroat trout have generally not been included in the trucking efforts for other salmonids, increasing the impact of barriers to these fish.

Service Response: We agree that barriers can adversely affect migratory coastal cutthroat trout (see Dams and Barriers section below). Existing dams block upstream access in several portions of the DPS's range. The anadromous portion of the population is most likely affected by these large dams, while resident and some freshwater migratory portions are likely little affected as their habitat remains substantially intact above dams and diversions. Culverts are the most widespread potential barriers to upstream migration. Again, anadromous and migratory portions of the coastal cutthroat trout population are the most likely affected by these barriers, while the resident portion of the population likely remains extant above most barriers. Blockage of upstream migration is not likely to increase given current regulations, and some improvements are likely through dam removal and culvert improvements. Despite existing barriers, coastal cutthroat trout remain well distributed throughout the DPS's range and at levels apparently comparable to healthy-sized populations in many areas. Based on the current and likely future effects, existing dams and other barriers are not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future.

Issue 13: Two commenters indicated that fishing pressure for anadromous coastal cutthroat has decreased under the current restricted regulations. Another commenter indicated that hooking mortality from steelhead and salmon fishing is a threat to coastal cutthroat trout.

Service Response: We are aware that increasing restrictions of harvest for coastal cutthroat trout in the DPS have likely decreased angler effort, in turn reducing direct and indirect mortality of coastal cutthroat trout in the DPS. Information obtained during the public comment periods supports the observation that angler effort has decreased over time (see Overutilization for Commercial, Recreational, Scientific, or Educational Purposes section below). We are aware that coastal cutthroat trout are susceptible to hook and handling mortality. While there are no studies that have specifically evaluated the hooking mortality from bycatch of cutthroat trout in steelhead and salmon fisheries, we anticipate that mortality from this bycatch would generally be small because of differences in the gear used and timing of these fisheries.

Issue 14: Several commenters expressed concern about the potential effects of the introduction of non-native predators, including brook trout (*Salvelinus fontinalis*), shad (*Alosa sapidissima*), largemouth bass (*Micropterus dolomieui*), smallmouth bass (*Micropterus salmoides*), and walleye (*Stizostedion vitreum*). Several commenters were also concerned about the potential effects of competition from hatchery-stocked cutthroat trout, coho, and steelhead; hybrid cutthroat/steelhead; and introduced non-native fish.

Service Response: We agree that introduced predators or competitors can adversely affect coastal cutthroat trout (see Disease and Predation section below). Some of the non-native fish species listed by the commenters are known to prey on, or compete with, salmonids in the DPS's range (Poe *et al.* 1994). However, no specific information exists regarding predation impacts by introduced predatory fishes on coastal cutthroat trout and we have no evidence that introduced predators represent a major threat to the DPS of coastal cutthroat trout at this time.

We agree that competition with hatchery salmonids or non-native fish could adversely affect cutthroat trout (see Disease and predation, Hatchery management, and Other Factors sections below). Only one hatchery still produces and stocks cutthroat trout within the DPS's range. This hatchery produces anadromous cutthroat trout in a system with several barrier dams that have reduced natural access to historic freshwater habitat for anadromous cutthroat trout which is considered part of the DPS. Hatchery steelhead and coho are stocked in several streams in the DPS's range. Cutthroat trout and coho are naturally sympatric and have likely evolved mechanisms to coexist. However, release of hatchery-raised steelhead and coho could affect cutthroat trout in localized areas, depending on the location and magnitude of the releases. Releases in areas outside of historic coho habitat or in numbers that greatly exceed natural levels could have negative effects on cutthroat trout in the area of the release. However, information demonstrating effects to the DPS from coho releases is limited and the extent to which hatchery management affects coastal cutthroat as a whole is uncertain.

Interactions with hybrid steelhead/cutthroat trout are likely limited. Hybrid fish are no longer stocked in the DPS's range. Cutthroat trout and steelhead are naturally sympatric and have likely evolved mechanisms to avoid hybridization. Recent genetic data indicate that high levels of hybridization are limited to a few areas. This is not currently considered a significant threat to the DPS of coastal cutthroat trout.

Issue 15: Several commenters suggested that we had not fully evaluated the contribution of existing conservation efforts and regulatory mechanisms to potential future conditions for the coastal cutthroat trout, including the Oregon Salmon Plan, the Healthy Streams Partnership, Oregon Land Use Planning regulations, Washington Growth Management Planning, Federal and State Clean Water laws, Federal listing of other species under the Act, recent changes in Oregon and Washington Forest Practices Regulations, changes in fishing regulations, and actions of local governments to protect and restore watersheds.

Service Response: We fully evaluated information on the most recent regulations and their implementation, including the State Forest Practices Regulations and Clean Water Act (CWA). There have been significant changes in the Washington Forest Practices Regulations since the publication of the proposed rule. We also evaluated all other conservation efforts for salmonids, many of which are non-regulatory in nature. In all cases, we evaluated the likelihood that the regulation or program would be implemented and would prove effective in reducing threats to the coastal cutthroat trout (see Inadequacy of Existing Regulatory Mechanisms and Foreseeable Conservation Measures sections below).

Issue 16: One commenter described the impacts from dredging, filling, and diking, all of which can affect important staging and feeding areas for outmigrating trout, and thus adversely affect populations. Another commenter

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stated that current guidelines for permitting programs (dredging, wetland filling, etc.) lack a method for assessing cumulative impacts.

Service Response: We agree that dredging, filling, and diking can adversely affect coastal cutthroat trout (see Inadequacy of Existing Regulatory Mechanisms section below). However, based on the implementation of current laws and regulatory programs, we

be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). If, upon consideration of these five factors, the species is found to meet the definition of either a threatened or endangered species, then listing is called for. The proposed rule summarized the "* * * findings regarding the principal factors for decline across the range of coastal

life-history form throughout the lower Columbia River Basin" (64 FR 16407). While neither of these references specify habitat loss due to forest management, this is the principal factor for decline described in the proposed rule related to freshwater habitat loss.

Forest Management

The proposed rule to list the DPS as threatened stated that "[h]abitat

survived in all portions of the DPS for many generations, and apparently remain at densities comparable to healthy-sized populations elsewhere (WDFW 2001), indicating that they are capable of surviving long periods under these conditions. There is no reason to believe that they will not continue to do so. We have no specific evidence of disease outbreaks, altered timing of migration, and accelerated maturation resulting from water temperature

Inadequacy of Existing Regulatory Mechanisms section). Collectively, remnant high quality habitat, ongoing forest recovery, active efforts to identify and correct legacies of past management, improved standards for future management actions (Inadequacy of Existing Regulatory Mechanisms section), and the ability of coastal cutthroat trout to survive for long periods in degraded aquatic and riparian systems provide the basis for

management was not identified as a primary threat to the subspecies or the DPS in the proposed rule and is not considered a significant threat at this time.

Dams and Barriers

Within the DPS, migratory coastal cutthroat trout access and movements are blocked in some areas by dams, diversions, dikes, tide gates, poorly-designed culverts, and poor water

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stated that current guidelines for permitting programs (dredging, wetland filling, etc.) lack a method for assessing cumulative impacts.

Service Response: We agree that dredging, filling, and diking can adversely affect coastal cutthroat trout (see Inadequacy of Existing Regulatory Mechanisms section below). However, based on the implementation of current laws and regulatory programs, we conclude that the regulation of dredge, fill, and in-water construction activities through the section 404 and section 10 permit processes and through State programs will provide some protection and support of aquatic resources, though they may not fully remove the risk of some losses to cumulative effects from small individual projects. The remaining risks from cumulative effects are likely to be small in the short term and we do not anticipate that cumulative effects of these small projects will reach a level at which they would be likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Issue 17: One commenter requested that we propose critical habitat at the time of listing.

Service Response: When we list a species as threatened or endangered, the Act requires that the listing rule specify, "* * * to the maximum extent prudent and determinable," the species' critical habitat. However, critical habitat is no longer an issue as we are withdrawing the proposed rule to list the coastal cutthroat trout.

Issue 18: Grays Harbor County suggested that we are required to complete an Environmental Impact Statement under the National Environmental Policy Act (NEPA) on the proposed listing and asked to be designated as the lead organization for writing the document.

Service Response: In regards to NEPA, we have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the NEPA of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list of threatened and endangered species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). If, upon consideration of these five factors, the species is found to meet the definition of either a threatened or endangered species, then listing is called for. The proposed rule summarized the "* * * findings regarding the principal factors for decline across the range of coastal cutthroat trout" (64 FR 16402) (hereafter referred to as subspecies-wide review). These were generalized for the entire range of the six DPSs of the subspecies, and were not specific to the southwestern Washington/Columbia River DPS that was proposed for listing. The specific factors relevant to the proposed rule to list the Southwestern Washington/Columbia River DPS are described in a separate section of the proposed rule (64 FR 16407, 16408). These factors and their application to our decision to withdraw the proposed rule to list the coastal cutthroat trout in southwest Washington and the Columbia River are described below. The following specifically addresses conditions and threats within the DPS's range.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Threats to Coastal Cutthroat Trout Habitat

Six types of activities or land use have potential to affect coastal cutthroat trout habitat, including forest management, agriculture and livestock management, dams and barriers, urban and industrial development, mining, and estuary degradation. Only forest management and estuary degradation were described as principal factors for declines across the range of coastal cutthroat trout in the subspecies-wide review in the proposed rule (64 FR 16402) and only estuary degradation was specifically mentioned specific to the southwestern Washington/Columbia River DPS (64 FR 16407).

Specific to the southwestern Washington/Columbia River DPS, the proposed rule stated that "* * * severe habitat degradation throughout the lower Columbia River has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers" (64 FR 16407). The proposed rule also stated that "[h]abitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuary conditions, likely combined to severely deplete this life-history form throughout the lower Columbia River Basin" (64 FR 16407). While neither of these references specify habitat loss due to forest management, this is the principal factor for decline described in the proposed rule related to freshwater habitat loss.

Forest Management

The proposed rule to list the DPS as threatened stated that "[h]abitat degradation and impacts associated with logging and related land management activities, in particular, have likely contributed to the decline of coastal cutthroat trout" (64 FR 16402). The potential effects of logging and related practices described in the proposed rule included changes in water temperature leading to potential disease outbreaks, altered timing of migration, and accelerated maturation; changes in stream flow regimes potentially leading to adverse water velocities and depth characteristics; loss of potential for new large woody debris potentially increasing predation rates on cutthroat trout; loss of riparian areas leading to decreased invertebrate production and detritus sources, key components in the food chain; and siltation which may hinder fry emergence and production of benthic invertebrates. Indirect effects of logging could also reduce dissolved oxygen reducing egg and fry survival.

Past and current forest management is the most widespread source of modification of aquatic, riparian, and watershed conditions within the DPS's range, as forests cover 66 percent of the land base. Past timber management practices such as the use of splash dams (early 1900s), extensive riparian harvest, concentrated upland harvest, riparian and mid-slope roads, and sidecast road construction have modified aquatic and riparian conditions in many portions of the DPS's range. These practices have reduced current and future large woody debris, reduced pool quality, decreased stream shading resulting in increased water temperature, and increased the prevalence of landslides in some areas. This is of particular concern in areas where watersheds have been fully harvested in the past, such as some Grays Harbor tributaries (1940s and 1950s), and in areas where harvest did not peak until the late 1970s, such as some Willapa Bay tributaries. Most of these practices are no longer allowed under recent and current forest management regulations, and splash dams have not been used for many decades.

Despite the long-term, widespread impacts to aquatic and riparian conditions, coastal cutthroat trout have survived in all portions of the DPS for many generations, and apparently remain at densities comparable to healthy-sized populations elsewhere (WDFW 2001), indicating that they are capable of surviving long periods under these conditions. There is no reason to believe that they will not continue to do so. We have no specific evidence of disease outbreaks, altered timing of migration, and accelerated maturation resulting from water temperature changes, or of significantly increased predation rates, which were described in the proposed rule as principal factors for declines across the range of coastal cutthroat trout (64 FR 16402) as the consequences of logging and related land management activities. Nor do we have any evidence of decreased invertebrate production in forested areas leading to decreases in available food or reduced egg or fry survival, also described in the proposed rule as the consequences of logging and related land management activities.

Conditions of the riparian and aquatic systems in some forest lands are actually in the long-term process of recovery from past forest management practices, though the total area of improvement is unrecorded. For example, some flow regimes are already beginning to improve as forest cover has increased and some riparian areas are revegetated with 40-year-old conifers that will provide large woody debris sources in the future. Some areas of high quality aquatic and riparian systems remain. Approximately eight percent of the DPS's range is in wilderness or National Parks and is in good condition. High quality aquatic and riparian areas remain on other lands, ranging from 13 percent in narrow valleys to 31 percent in wider, forested valleys.

Over time, aquatic and riparian habitats important to coastal cutthroat trout are likely to continue to improve. Federal forest management and Washington Forest Practices Regulations have been revised significantly in recent years so that habitat modification of the magnitude or type experienced over the past 70 years is no longer likely to occur. Current regulations, mainly aimed at improving stream habitat for salmon and steelhead, impose more restrictive standards for riparian harvest, harvest on unstable slopes, road construction, and road maintenance; and reduce the likelihood of large-scale removal of forest cover in a watershed on Federal lands, and State and private timberlands in Washington. These changes have greatly reduced the long-term risk of continued modification of aquatic and riparian habitats in 57 percent of the DPS's range (*see* Inadequacy of Existing Regulatory Mechanisms section). Collectively, remnant high quality habitat, ongoing forest recovery, active efforts to identify and correct legacies of past management, improved standards for future management actions (Inadequacy of Existing Regulatory Mechanisms section), and the ability of coastal cutthroat trout to survive for long periods in degraded aquatic and riparian systems provide the basis for maintenance of habitat for the DPS of coastal cutthroat trout. Therefore, forest management is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Agriculture and Livestock Management

Agriculture and livestock management occur on at least 16 percent of the lands in the southwestern Washington/Columbia River DPS, with relatively greater representation in the Grays Harbor tributaries. Neither of these activities were identified as a threat to coastal cutthroat trout in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407). Some of the aquatic and riparian impacts associated with agriculture are locally severe and very long-term, such as diking, filling, riparian conversions, channelization, sediment and flow regime changes, and persistent toxic chemicals. In addition, agricultural areas are often located in the lowest stream sections which are often the most productive portions of the streams. Impacts to these stream sections have a proportionally greater effect on the anadromous and migratory portions of the DPS of coastal cutthroat trout, which use these sections for migration, overwintering, and rearing young, while much of the resident portion of the population resides in the upper watershed areas where agriculture is not generally prevalent.

Most lands suitable for agriculture and grazing management have already been converted and it is unlikely that there will be any significant increase in the amount of agricultural and grazing lands in the future. While agriculture and grazing management may have had significant localized and long-term effects to riparian and aquatic systems in the DPS's range, coastal cutthroat trout remain extant in all the affected watersheds. Based on the limited extent of agricultural lands, agriculture and grazing are not likely to result in the southwestern Washington/Columbia River DPS of coastal cutthroat trout becoming endangered in the foreseeable future. Agriculture and livestock management was not identified as a primary threat to the subspecies or the DPS in the proposed rule and is not considered a significant threat at this time.

Dams and Barriers

Within the DPS, migratory coastal cutthroat trout access and movements are blocked in some areas by dams, diversions, dikes, tide gates, poorly-designed culverts, and poor water quality, though dams and barriers were not identified as threats in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407). Existing dams have blocked access for upstream migration to several portions of the DPS. Even dams with fish passage structures result in some mortality and may delay migrations. The anadromous portion of the DPS is the most likely affected by dams and diversions, as these often limit access to historic spawning areas. Resident and some freshwater migratory portions of the DPS are likely little affected by large barriers, as their access to habitat remains intact above the dam. Road culverts, especially on forest roads, present widely-dispersed potential barriers to upstream movements of coastal cutthroat trout in the DPS, though most culverts allow for downstream movements, and some allow upstream movement seasonally. Existing information indicates that culverts have limited upstream access to a portion of historic habitat though the extent of this limitation is not fully documented. Again, anadromous and migratory portions of the coastal cutthroat trout population are the most likely affected by these barriers, while the resident portion of the population likely remains extant above most barriers.

Current Washington and Oregon State Forest Management Regulations and fish passage standards will minimize the threat that new culverts will block fish passage (see Inadequacy of Regulatory Mechanisms section). In addition, under the latest Washington Forest Practices Regulations, forest managers are required to develop road maintenance and management plans within 5 years and implement such plans within 15 years. Blockage of upstream migration is not likely to increase given current regulations. Despite existing barriers, coastal cutthroat trout remain well distributed throughout the DPS's range and at levels apparently comparable to healthy-sized populations in many areas. The greatest threat from barriers is interference with recolonization of

areas after catastrophic disturbances, though these are very long-term concerns. Floods and related events, in particular, tend to remove roads and barrier culverts. Based on the current and likely future effects, and the low potential for significant additional barriers to be created under current regulations, dams and barriers are not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future.

Urban and Industrial Development

Urban and industrial development is concentrated in the lowest stream sections in the DPS, which are often the most productive portions of the streams. Impacts to these stream sections have a proportionally greater effect on the anadromous and migratory portions of the DPS of coastal cutthroat trout, which use these sections for migration, overwintering, and rearing young, while much of the resident portion of the population resides in the upper watershed areas where urban and industrial development is not generally prevalent.

Most lands suitable for urban and industrial development have already been converted and it is unlikely that there will be any significant increase in the amount of urban and industrial lands in the future. While urban and industrial development may have had significant localized and long-term effects to riparian and aquatic systems in the DPS's range, coastal cutthroat trout remain extant in all the affected watersheds. Based on the limited extent of urban and industrial lands, urban and industrial development are not likely to result in the southwestern Washington/Columbia River DPS of coastal cutthroat trout becoming endangered in the foreseeable future. Urban and industrial development was not identified as a primary threat to the subspecies or the DPS in the proposed rule and is not considered a significant threat at this time.

Mining

Mining occurs in the DPS, but is not widespread. Mining was not identified as a threat to the subspecies or the DPS in the proposed rule and is not considered a significant threat at this time.

Estuary Degradation

Estuary degradation was described as a principal factor for decline across the range of coastal cutthroat trout in the subspecies-wide review in the proposed rule (64 FR 16402) and was specifically mentioned specific to the southwestern Washington/Columbia River DPS (64 FR 16407). Estuary degradation was described as a principal factor for decline across the range of coastal cutthroat trout in the subspecies-wide review in the proposed rule (64 FR 16402) and only estuary degradation was specifically mentioned specific to the southwestern Washington/Columbia River DPS (64 FR 16407).

Specific to the southwestern Washington/Columbia River DPS, the proposed rule stated that "* * * severe habitat degradation throughout the lower Columbia River has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers" (64 FR 16407). The proposed rule also stated that "[h]abitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuary conditions, likely combined to severely deplete this life-history form throughout the lower Columbia River Basin" (64 FR 16407). While neither of these references specify habitat loss due to estuary degradation, this is the principal factor for decline described in the proposed rule related to freshwater habitat loss.

Estuarine habitat has been substantially altered by diking, filling, and channelization. Estuarine habitat is important for juvenile coastal cutthroat trout rearing and migration. Juvenile coastal cutthroat trout have been found in estuarine habitats in the Columbia River and Grays Harbor

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areas after catastrophic disturbances, though these are very long-term concerns. Floods and related events, in particular, tend to remove roads and barrier culverts. Based on the current and likely future effects, and the low potential for significant additional barriers to be created under current regulations, dams and barriers are not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future. Dams and barriers, other than those potentially associated with logging practices, were not identified as a primary threat in the proposed rule and are not considered a significant threat at this time.

Urban and Industrial Development

Although the direct aquatic and riparian impacts of urbanization in the southwestern Washington/Columbia River DPS are not widespread, they are locally severe and essentially permanent. Urban and industrial development was not specifically identified as a threat in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407), although it was identified as a potential effect in the range of the species where it occurs within estuaries. "Dredging, filling, and diking of estuarine areas for * * * commercial or municipal uses have resulted in loss of many estuary habitats" (64 FR 16402). This element of development is addressed in the Estuary Degradation section. Many of the largest urban areas in this DPS lie above the estuaries, and therefore have not resulted in physical changes to the estuaries.

Urban areas are expected to expand in some areas as human populations increase, particularly in the Portland Metropolitan area. The long-term effects of urbanization include diking, filling, riparian conversion, channelization, sediment and flow regime changes, water storage, and persistent toxic chemicals. These urban areas are often located in the lowest stream sections where flood plains are wide and stream gradients are low, and therefore have a proportionally greater effect on the anadromous and migratory portions of the coastal cutthroat trout population that use these sections for migration, overwintering, and rearing. Much of the resident portion of the population resides in the upper watershed areas where urbanization is not prevalent. While urbanization and associated industrial development have potentially substantial effects on aquatic and riparian habitats in localized areas, these include only about three percent of the current land base in the DPS. Expansion of urban areas is likely to occur primarily within the areas already impacted and is not likely to substantially increase the impacts to the DPS. The vast majority of the DPS is not significantly affected by urbanization. Therefore, urbanization and industrial development are not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Mining

Gravel mining has degraded some stream channels in portions of the DPS's range as a result of past, unregulated removal. Mining was not identified as a threat in the subspecies-wide review of listing factors (64 FR 16402) or the DPS-specific review for the southwestern Washington/Columbia River DPS (64 FR 16407). Current regulations and permit requirements have reduced, though not totally eliminated, the impact of gravel mining (see Inadequacy of Existing Regulatory Mechanisms section). While some continued problems may occur, these will be fairly small and localized, and do not represent a major threat to the DPS of coastal cutthroat trout at this time. There is a single coal mine in the Skookumchuck basin (WSCC 2001) and no known plans for additional coal or hardrock mining in the DPS's range. Other mining activity in the DPS's range is very limited and does not represent a major threat to the coastal cutthroat trout. Mining was not identified as a primary threat in the proposed rule and is not considered a significant threat at this time.

Estuary Degradation

The proposed rule described the potential loss of important estuary habitat through the "[d]redging, filling, and diking of estuarine areas for agricultural, commercial, or municipal uses" (64 FR 16402) and stated that "reductions in the quantity and quality of estuarine * * * habitat have probably contributed to declines, but the relative importance of these risks is not well understood" (64 FR 16408).

Anadromous coastal cutthroat trout likely make use of estuaries for growth and development, though we have little information on how individual trout use the various portions of the estuary, especially the large estuaries included in this DPS. The Columbia River estuary has lost 12 percent of its area since 1868, including 65 to 75 percent of off-channel habitats. Thirty percent of the historical wetland habitat in Grays Harbor estuary has been lost, as well as 31 percent of the historical Willapa Bay estuary wetlands. Without information on how coastal cutthroat trout use the estuary habitats, we cannot predict the effect of this loss on the coastal cutthroat trout population. However, the loss of estuary habitat has likely contributed to the lower-than-historical numbers of the anadromous portion of the DPS, though anadromous cutthroat trout remain extant in all three major basins within the DPS. Resident and freshwater migratory portions of the population do not use, and therefore are not affected by changes in, the estuaries.

Given current laws and regulations on wetland dredge and fill (see Inadequacy of Existing Regulatory Mechanisms section), we do not anticipate additional large-scale conversion or loss of estuary or off-channel areas, though some small scale impacts are still likely, and the legacy of past actions will result in some continued changes. The only large-scale project currently proposed is the Columbia River Channel Improvement Project which will deepen 166 km (103 mi) of the already-dredged, narrow navigation channel. This project is anticipated to have limited short-term impacts to estuarine and riverine conditions, and will be monitored carefully in the future to minimize any impacts to known fish habitat (USFWS 2002). The resident portion of the population is completely unaffected by estuary conditions and changes. The current condition, limited likelihood of continued degradation or loss of estuary habitat, and remaining populations of cutthroat trout lead us to conclude that estuary conditions are not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

The proposed rule described the potential loss of important estuary habitat and stated that reductions in the quantity and quality of estuarine habitat probably contributed to declines of anadromous cutthroat trout, but the relative importance of these risks was not well understood (64 FR 16402). This is further complicated by the lack of information on how coastal cutthroat trout use these large estuary systems. Significant portions of the estuarine wetlands remain intact in the Willapa Bay and Grays Harbor systems and, to a lesser degree, the Columbia River estuary. Given current regulations, we do not anticipate additional large-scale conversion or loss of estuary or off-channel areas. While past losses of estuaries may have contributed to a reduction in the anadromous portion of the coastal cutthroat trout population over historic levels, we do not have evidence that the past and potential future losses are likely to result in the DPS of coastal cutthroat trout as a whole becoming endangered in the foreseeable future.

Conclusion

The proposed rule stated that "* * * severe habitat degradation throughout the lower Columbia River has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers," and that "[h]abitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuary conditions, likely combined to severely deplete this life-history form throughout the lower Columbia River Basin" (64 FR 16407). Based on analysis of the latest data, we now conclude that, while the anadromous portion of the population of coastal cutthroat trout is likely at lower-than-historic levels, there is little specific information indicating that populations, even of the anadromous portion of the DPS, are at extremely low levels in most areas of the DPS (see Population Size section). Relative to the two near extinctions cited in the proposed rule, the data do not support this conclusion (see Population Size section). The trap location on a side channel in the Sandy River system makes it impossible to extrapolate to the entire River system. Anadromous cutthroat trout are still occasionally trapped at Powerdale Dam on the Hood River, including 11 upstream migrants in 2001 (Connolly *et al.* 2002).

The proposed rule's conclusions assumed that the anadromous component of the population of coastal cutthroat trout is effectively isolated from other portions of the population and that the anadromous component represents a significant portion of the DPS. However, new data indicate that fish with these various life strategies do interact and that anadromous progeny may be produced by non-anadromous parents, even after many generations of isolation above barriers (see Life History Diversity section). Therefore, coastal cutthroat trout populations are more appropriately evaluated including all life history strategies, anadromous, migratory and resident. Resident/freshwater forms remain well distributed and at reasonable densities in the lower Columbia River, including areas accessible to anadromous fish, and in the Sandy and Hood Rivers where the anadromous portion of the population is low.

While aquatic and riparian systems have been heavily altered in some areas, the latest information does not support the conclusion that this has severely affected the habitat of the coastal cutthroat trout throughout the range of this DPS. Some areas have begun to recover from past forest practices and new regulations are in place that reduce the risk of continued adverse impacts to much of the DPS. Conditions in many parts of the DPS's range are expected to continue to improve over time and many of the most damaging past practices (*e.g.*, splash dams, large-scale wetland conversion) are not expected to occur in the future due to current laws and regulations. Given that coastal cutthroat trout have not only survived the long-term and widespread impacts of these past practices to aquatic and riparian conditions in large portions of the DPS's range for many generations, but apparently remain well distributed at densities comparable to healthy-sized populations elsewhere, the condition of aquatic and riparian systems is not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future. Therefore, we no longer conclude that past habitat degradation has led to severe declines in the population of coastal cutthroat trout in the southwestern Washington/Columbia River DPS. In addition, current regulations (described in the Forest Management and State Land Use Practices sections) greatly reduce the risk that significant additional modification of habitat will occur in the foreseeable future.

Curtailment of Range

According to WDFW (2001), the southwestern Washington-lower Columbia River region historically supported healthy, highly productive coastal cutthroat trout populations. Coastal cutthroat trout, especially the freshwater forms, are still well distributed in most river basins in this geographic region, although probably in lower numbers relative to historical population sizes (Johnson *et al.* 1999). Based on over 1,300 locations from 5 data sources (WDFW 2001a (Resident Fish Database 1987–97), WDFW 2001b (Priority Habitat Species database 1989–90), Washington Department of Natural Resources (WDNR) 2001 (Last Fish, Last Fish Habitat Database 2001), Mongillo and Hallock 2001, U.S. Forest Service Watershed Analysis Documents 1995–2001), cutthroat trout remain extant throughout their historic range in the Washington portion of the DPS. Little systematic information is available for the Oregon portion of the DPS, though cutthroat trout, particularly resident forms, are known to occur throughout the DPS in Oregon (Hooton 1997).

Mongillo and Hallock (2001) conducted extensive surveys of 156 locations within the Washington portion of the DPS for presence and abundance of coastal cutthroat trout. Additional data were presented by WDFW (2001) for surveys conducted by Weyerhaeuser Company in 1994–95. The percentage of locations with cutthroat trout from both studies was compared to data collected in the 1970s from the Olympic Peninsula and Puget Sound areas. Populations in these areas were considered healthy-sized during this time period (WDFW 2001c). The percentage of sample sites with coastal cutthroat trout within the DPS's range below Bonneville Dam (Mongillo and Hallock 2001, WDFW 2001c) was not significantly different than the early data from the apparently healthy-sized populations in the Olympic Peninsula and Puget Sound DPSs, indicating that populations in the DPS are still well distributed.

The percentage of sites where cutthroat trout were found in the Washington portion of the DPS above Bonneville Dam was very low when compared to the rest of the DPS. No similar information was available for Oregon portions of the DPS. The area above the Bonneville Dam is ecologically very different from the remainder of the subspecies' range and is the only area within its range where the subspecies is found east of the Cascade Mountain Divide. This area experiences a very different hydrologic and climatic environment than the rest of the subspecies' range, which may influence the abundance of coastal cutthroat trout. In addition, many sample sites from the Mongillo and Hallock study (2001) in the Washington portion of the DPS above Bonneville Dam included areas outside the likely historic range of the species, which would have artificially depressed the percentage of locations with cutthroat trout. Based on these factors, the calculated percentage of sites with cutthroat trout from the Mongillo and Hallock study (2001) above Bonneville Dam likely under-represents the true density of coastal cutthroat trout in this area.

There has been a change in the accessibility of some areas to anadromous cutthroat trout due to barriers created by dams, diversions, culverts, dikes, tidegates, and water quality. Some streams within the DPS's range have been lost to development, such as streams in the more developed portions of Portland, Oregon. The total amount of currently inaccessible habitat is unknown, but it includes only a very small percentage of the total available habitat within the DPS's range and is interspersed with occupied habitat. Despite the long-term, widespread

impacts to aquatic and riparian conditions, coastal cutthroat trout have survived in these areas for many generations and remain well distributed at densities comparable to healthy-sized populations in large portions of the DPS's range. There is no reason to believe that they will not continue to do so. Based on the above information, there is no significant present or identifiable threat of curtailment of the

portions of the DPS in Washington. Washington's current fishing regulations, particularly the more restrictive "special rules" which affect nearly all of the DPS, provide protection to coastal cutthroat while allowing fishing opportunities that can promote conservation of this subspecies. We believe that carefully regulated fishing can promote awareness and conservation of coastal cutthroat trout

might occur and this was not identified as a specific threat in the southwestern Washington/Columbia River DPS (64 FR 16407). There is no evidence that poaching is a significant threat to the DPS of cutthroat trout.

There is no information to indicate that commercial or recreational fishing represents a threat to the DPS of coastal cutthroat trout. Overutilization, including recreational and commercial fishing, was not identified in the

at some sites (NMFS 2000). At levels of 120 percent, gas bubble disease affects a maximum of 0.7 percent of fish exposed, and near 140 percent, over 3 percent of fish exposed are affected (NMFS 2000). While this could cause the loss of some individuals, it is not considered a significant threat at this time.

Ceratomyxa shasta, a native parasite that can kill cutthroat trout when water temperatures are high, occurs in the

Columbia River estuary near artificial islands in the Columbia River, though there is no information on the vulnerability of cutthroat trout in this situation. There is no evidence that mammal or bird predation represents a significant threat to the DPS of coastal cutthroat trout at this time. Predation was not identified in the proposed rule as a specific threat to this DPS (64 FR 16407) and is not considered a threat at this time.

productivity and resiliency of riparian and aquatic ecosystems.

Riparian reserves apply to all lands managed under the Northwest Forest Plan and are intended to maintain and restore riparian structures and functions. They occur at the margins of standing and flowing water, intermittent stream channels, ephemeral ponds, and wetlands, though they may also include upland areas necessary for maintaining ecological processes. Key watersheds

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impacts to aquatic and riparian conditions, coastal cutthroat trout have survived in these areas for many generations and remain well distributed at densities comparable to healthy-sized populations in large portions of the DPS's range. There is no reason to believe that they will not continue to do so. Based on the above information, there is no significant present or identifiable threat of curtailment of the range of the DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Cutthroat trout are not harvested commercially. Scientific and educational programs have probably had little or no impact on the DPS.

The proposed rule to list the Southwestern Washington/Columbia River coastal cutthroat trout DPS stated that "* * * cutthroat trout are a popular gamefish throughout the Pacific Northwest, and available information indicates that recreational fishing may have contributed to the general decline of cutthroat trout populations (Gresswell and Harding 1997)" (64 FR 16402). This information was not specific to coastal cutthroat trout, or to the southwestern Washington/Columbia River DPS, and the referenced paper does not indicate that angling is a direct cause of decline.

Cutthroat trout are among the salmonids most vulnerable to overharvest by angling (Gresswell and Harding 1997, Johnson *et al.* 1999), especially during post-spawning outmigrations to summer feeding areas. In many areas, coastal cutthroat trout harvest is primarily incidental in recreational fisheries for other species of salmonids. Because of harvest restrictions on naturally produced coastal cutthroat trout in many areas and the lack of targeted fisheries, direct mortality due to fishing pressure is thought to be relatively low, at least in recent years (Hooton 1997, Gerstung 1997, WDFW 1998a). In addition, fishing regulations establishing size and bag limits are relatively recent, and biologists familiar with coastal cutthroat trout feel that in some areas their abundance has begun to increase only recently due to imposition of these more restrictive fishing limits (WDFW 1998b).

The Washington and Oregon trout fishing regulations have become incrementally more restrictive in the past two decades. Several types of recreational fishing for coastal cutthroat trout are allowed under current fishing regulations in these States. However, catch and keep fisheries on wild coastal cutthroat trout are limited to some portions of the DPS in Washington. Washington's current fishing regulations, particularly the more restrictive "special rules" which affect nearly all of the DPS, provide protection to coastal cutthroat while allowing fishing opportunities that can promote conservation of this subspecies. We believe that carefully regulated fishing can promote awareness and conservation of coastal cutthroat trout by maintaining public support for its conservation. Continued recreational fishing conducted in a manner consistent with the conservation of the coastal cutthroat trout helps to maintain a broad support base for the conservation of aquatic resources, including coastal cutthroat trout.

Leider (1997) provided a summary of WDFW "special regulation" changes that were developed to protect coastal cutthroat in Washington. In the DPS's range, major special regulations occurred in 1983 (limit reduced from 12 to 8 trout per angler), 1986 (limit further reduced to 5 fish), 1992 (limit reduced to 2 fish). Minimum size limits also increased during this time. In addition, wild cutthroat release was required in some streams within the DPS's range starting in 1989 and expanded to all lower Columbia River streams below Portland/Vancouver in 1992 (Leider 1997). Currently, in the Chehalis River Basin, most streams allow a 2-fish daily limit with a 36 cm (14 in) minimum size limit and, in Willapa Bay and Lower Columbia tributaries, wild cutthroat release is generally required. The exceptions to this wild cutthroat release regulation are mainly in the mainstem Columbia River above Bonneville Dam, above the Cowlitz River Dams, and in the Toutle River Drainage (WDFW 2001d).

The proposed rule stated that "* * * coastal cutthroat trout are especially susceptible to hooking mortality and incidental catch in recreational and commercial fisheries targeting Pacific salmon and steelhead" (64 FR 16402). Studies of anadromous cutthroat trout show variable susceptibility to baited hook mortality, from 6 to 58 percent (Gresswell and Harding 1997). There is no current evidence that recreational harvest, whether targeted or incidental to other fisheries, is contributing to declines in the DPS. There is also no evidence that bycatch of coastal cutthroat trout in commercial salmon and steelhead fisheries is a significant source of mortality in this DPS.

The proposed rule stated that "* * * poaching may pose a significant threat to depressed populations of cutthroat trout in some areas" (64 FR 16402), though it did not indicate where this might occur and this was not identified as a specific threat in the southwestern Washington/Columbia River DPS (64 FR 16407). There is no evidence that poaching is a significant threat to the DPS of cutthroat trout.

There is no information to indicate that commercial or recreational fishing represents a threat to the DPS of coastal cutthroat trout. Overutilization, including recreational and commercial fishing, was not identified in the proposed rule as a threat to this DPS and is not considered a threat at this time. The States of Washington and Oregon have continued to modify regulations in response to changes in cutthroat trout populations.

C. Disease or Predation

The proposed rule stated that "[d]isease may be a factor contributing to the decline of cutthroat trout populations," including the parasite *Ceratomyxa shasta* in the Columbia and Willamette Rivers (ODFW 1998), though the extent to which this and other diseases affect cutthroat trout populations was unknown (64 FR 16402). Disease or parasites were not listed as a specific threat to the majority of the DPS (64 FR 16407). Predation by non-native fish and pinnipeds (seals and sea lions) was also identified as a potential threat, though the extent to which this was a factor in coastal cutthroat trout declines was unknown (64 FR 16402) and predation was not listed as a specific threat to the DPS (64 FR 16407).

Coastal cutthroat trout in the Columbia and other large rivers with hydroelectric dams are potentially vulnerable to gas bubble disease caused by increased gas saturation levels associated with the spilling of water at dams. The disease's effects can range from temporary debilitation to mortality. Because of variability in water temperature, depth, flow, and other factors, the biological effects of a given level of dissolved gas saturation are likely to vary in different areas at various times of the year. Increased gas saturation levels have been identified at the Bonneville and Dalles dams, and can adversely affect fish downstream of these dams. In recent years, NMFS has proposed to balance the needs of juvenile salmonid migrants by increasing spill levels to reduce turbine-related mortalities, resulting in elevated gas supersaturation levels in the Columbia River. Spill levels of up to 120 percent of saturation at ambient temperature and pressure have occurred in recent years during managed spills, with involuntary spill episodes resulting in levels as high as 140 percent

at some sites (NMFS 2000). At levels of 120 percent, gas bubble disease affects a maximum of 0.7 percent of fish exposed, and near 140 percent, over 3 percent of fish exposed are affected (NMFS 2000). While this could cause the loss of some individuals, it is not considered a significant threat at this time.

Ceratomyxa shasta, a native parasite that can kill cutthroat trout when water temperatures are high, occurs in the lower Columbia River drainages (Hoffmaster *et al.* 1988) and has been a factor in the loss of cutthroat trout at hatcheries in this area. The effect of the parasite increases as water temperature increases. *Ceratomyxa shasta* is a native parasite in the Pacific Northwest and coastal cutthroat trout have likely developed strategies or life history adaptations to cope with this parasite. Parasites and diseases were not listed in the proposed rule as specific threats in the DPS (64 FR 16407) and are still not anticipated to threaten wild coastal cutthroat trout in the DPS. No introduced diseases have been documented in the DPS. There is no evidence of significant loss of wild cutthroat trout to parasites or disease in the DPS at this time.

Several non-native fish species are known to prey on, or compete with, salmonids within the DPS's range (Poe *et al.* 1991). However, no specific information exists regarding predation impacts by predatory fishes on cutthroat trout, though it is reasonable to assume some predation does occur. We have no evidence that aquatic predators have significantly reduced coastal cutthroat trout populations or represent a major threat to coastal cutthroat trout. Non-native predators were not identified in the proposed rule as a threat to this DPS (64 FR 16407) and are not considered a significant threat at this time.

The proposed rule stated that while pinniped populations are increasing on the West Coast, "* * * the extent to which pinnipeds predation is a factor causing the decline of coastal cutthroat trout is unknown" (64 FR 16402). Pinnipeds are potential natural predators of cutthroat trout that use the estuaries and near-shore marine environment (NMFS 1997, Beach *et al.* 1985). In addition, mustelids, such as otter and mink, and other mammals are natural predators in both salt and freshwater environments, though there are no studies of the level of predation by any mammals. Piscivorus birds, such as terns and cormorants, are also natural predators of coastal cutthroat trout. There is information indicating that terns and cormorants may take significant numbers of salmonids in the Columbia River estuary near artificial islands in the Columbia River, though there is no information on the vulnerability of cutthroat trout in this situation. There is no evidence that mammal or bird predation represents a significant threat to the DPS of coastal cutthroat trout at this time. Predation was not identified in the proposed rule as a specific threat to this DPS (64 FR 16407) and is not considered a threat at this time.

D. The Inadequacy of Existing Regulatory Mechanisms.

Federal Land Management Practices

The proposed rule indicated that the Northwest Forest Plan's management policy provided important benefits for salmonids, including coastal cutthroat trout, though its effectiveness in conserving cutthroat trout was limited by the extent and distribution of Federal land ownership (64 FR 16397).

Approximately 27 percent of the land base within the DPS's range is Federal land, managed by the Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service. One percent of the DPS's range is in National Parks or National Wildlife Refuges, both of which are managed under laws and regulations that should provide adequate management for the conservation of the cutthroat trout. The remaining 26 percent is managed under the requirements of the Northwest Forest Plan. The Northwest Forest Plan contains important benefits to, and conservation measures for, salmonids, including cutthroat trout. The overall effectiveness of the Northwest Forest Plan in conserving the DPS of cutthroat trout is somewhat limited by the extent of Federal lands and by the fact that Federal land ownership is not uniformly distributed. Most of the lands in the DPS's range are located in the upper watersheds, providing habitat primarily for freshwater forms of the cutthroat trout. Two components of the Northwest Forest Plan provide conservation for salmonids, the Aquatic Conservation Strategy and land allocations with their associated standards and guidelines.

The Aquatic Conservation Strategy was developed to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within lands administered by the Bureau of Land Management and Forest Service. It consists of four primary elements: (1) riparian reserves; (2) key watersheds; (3) watershed analyses; and (4) watershed restoration. All four of these components are designed to operate together to maintain and restore the productivity and resiliency of riparian and aquatic ecosystems.

Riparian reserves apply to all lands managed under the Northwest Forest Plan and are intended to maintain and restore riparian structures and functions. They occur at the margins of standing and flowing water, intermittent stream channels, ephemeral ponds, and wetlands, though they may also include upland areas necessary for maintaining ecological processes. Key watersheds serve as refugia for maintaining and recovering habitat for at-risk stocks of anadromous salmonids and resident fish species.

Watershed analyses are the principal tool for implementation of the Aquatic Conservation Strategy and play a critical role in providing for aquatic and riparian habitat protection. Watershed analyses should identify processes that are active within a watershed, how those processes are distributed in time and space, the current upland and riparian conditions of the watershed, and how all of these factors influence riparian habitat and other beneficial uses. Watershed analyses provide the contextual basis at the site level for decision makers to set appropriate boundaries of Riparian Reserves, plan land use activities compatible with disturbance patterns, design road transportation networks that pose minimal risk, identify high priority restoration activities, and establish specific parameters and activities to be monitored. Watershed restoration is also an integral part of a program to aid recovery of fish habitat, riparian habitat, and water quality, and is based on watershed analyses and planning.

All lands within the Northwest Forest Plan are placed into one of six land use allocations. These allocations dictate the type and standards for activities within the allocation. Congressionally Reserved Areas (*e.g.*, wilderness areas) constitute 22 percent of the Federal lands within the DPS's range and are the most protected type of allocation. Administratively Withdrawn Areas are designated for a variety of reasons and are generally fairly protective of aquatic and riparian systems. Administratively Withdrawn Areas constitute 5.7 percent of the Federal lands within the DPS's range. There is a low likelihood of short- or long-term adverse effects to cutthroat trout in Congressionally Reserved Areas or Administratively Withdrawn Areas due to the low likelihood of activities occurring that impact resident or anadromous coastal cutthroat trout or their habitat.

Late-Successional Reserves are intended to maintain a functional, interactive, late-successional and old

growth forest ecosystem. In the long term, Late-Successional Reserves and their associated Standards and Guidelines, will likely prove extremely beneficial to resident and anadromous fish by providing islands of functional reserves in late seral (older) forest condition with high water quality and habitat complexity. Late-Successional Reserves constitute 31.2 percent of the Federal land allocations in the DPS's range. Some Late-Successional Reserves have been identified and prioritized. Both Federal and State agencies have funded the adaptive management monitoring and research to date, and support for continued funding remains high.

Approximately 325,450 ha (804,202 ac) (8.7 percent of the DPS's range) within the Washington portion of the DPS are managed through the provisions of HCPs approved under section 10 of the Act. The most significant of these include those

correction of site-specific road impacts (culvert replacement, drainage problems, etc.).

Based on the Aquatic Conservation Strategy and management guidelines for the individual land allocations, Federal lands within the DPS's range (27 percent of the land base) should be managed in a manner that provides long-term improvement in aquatic habitat and limits short-term habitat

of specific stream classes. This was designed to provide greater certainty that they would identify and conserve areas with direct and indirect influence on the streams and associated salmonids, including cutthroat trout. Overall, the HCP should result in stream protections similar to, or greater than, those required under Washington Forest Practices Regulations, and improved remediation or closure of problematic forest roads (USDI 2000). Collectively,

Act is limited, and minimum guidelines established by the State for designating natural resource lands and procedural criteria to guide the development of comprehensive plans are not mandatory for the cities and counties.

The Washington Forest Practices Act (WFPA) regulates timber management and related activities on most non-Federal forest lands in the Washington portion of the DPS's range (30 percent of DPS's range). The WFPA was

small streams and lakes. Every local government with shorelines is required to adopt a local shoreline plan which must be reviewed and approved by the Department of Ecology for consistency with State-level Shoreline Management Act guidelines. Most of the local shoreline master programs in effect today were originally adopted in the mid-to late-1970s and are based on guidelines that do not reflect current scientific understanding or the current

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growth forest ecosystem. In the long term, Late-Successional Reserves and their associated Standards and Guidelines, will likely prove extremely beneficial to resident and anadromous fish by providing islands of functional reserves in late seral (older) forest condition with high water quality and habitat complexity. Late-Successional Reserves constitute 31.2 percent of the Federal land allocations in the DPS's range. Managed Late-Successional Areas are similar to Late-Successional Reserves, but constitute less than one percent of the Federal lands in the DPS's range. Management activities in both of these allocations may result in some latent impacts due to present baseline conditions (existing riparian and upslope roads, past timber management activity), silviculture, road-related impacts, and short-term impacts associated with restoration activities. However, these impacts will be reduced over time as Riparian Reserves and forests mature.

Adaptive Management Areas are landscape units designated to encourage the development and testing of technical and social approaches to achieving desired ecological, economic, and social objectives. Activities may vary greatly, depending on the individual management plans of these areas. Adaptive Management Areas comprise seven percent of the Federal land in the DPS's range. Matrix lands constitute 33.4 percent of the Federal land in the DPS's range. This allocation focuses on providing for timber harvest and commodity resources and will have the highest level of management activities. Riparian Reserve and other Aquatic Conservation Strategy requirements do apply to Matrix lands. Management activities on Matrix lands are expected to have somewhat greater impacts to aquatic systems than in reserve land allocations due to the latent effects of past management (existing riparian and upslope roads, past timber management activity), ongoing silvicultural activities, road-related impacts, and short-term impacts associated with restoration activities. However, impacts to aquatic and riparian systems will be reduced over time as Riparian Reserves mature. Some long-term indirect impacts from management activity may occur due to timber management and silvicultural activities in upslope areas. Both short- and long-term road-related impacts may result from new and existing roads used to implement management direction. We expect that the level of road-related impacts will be reduced over time through reduced road densities and correction of site-specific road impacts (culvert replacement, drainage problems, etc.).

Based on the Aquatic Conservation Strategy and management guidelines for the individual land allocations, Federal lands within the DPS's range (27 percent of the land base) should be managed in a manner that provides long-term improvement in aquatic habitat and limits short-term habitat quality declines. These lands should provide significant contributions to the conservation of the coastal cutthroat trout in the foreseeable future. These lands typically lie in the upper portions of the watersheds, above the areas generally used by the anadromous portion of the population.

State Land Use Practices

Washington

The proposed rule concluded that the Washington Forest Practices Regulations did "* * * not provide for properly functioning riparian and instream habitats," including failure to address large woody debris recruitment, tree retention to maintain stream band and channel integrity, and chronic and episodic inputs of coarse and fine sediments (64 FR 16402).

Washington's Growth Management Act requires counties and cities in the State to designate natural resource lands and to designate and protect critical areas (such as wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and aquifer recharge areas) consistent with overall State-level guidelines and objectives. The cities and counties are required to review and implement development regulations relative to these designations on a five-year cycle. Development regulations include a zoning code, subdivision ordinance, clearing and grading ordinance, critical areas ordinance and other regulations as necessary. Recent amendments to the Growth Management Act require the use of "best available science" and consideration of salmonid habitat in developing these regulations. However, recent reviews of Growth Management Act implementation (State of Washington 1998 and 1999) have indicated that protection of water quality and aquatic and riparian resources have not been prioritized in local planning, many cities and counties have not yet adopted the required designations and regulations, and most local plans have not yet incorporated the best available data. Additionally, the ability of the State to impose sanctions on the cities and counties for failure to comply with the Growth Management Act is limited, and minimum guidelines established by the State for designating natural resource lands and procedural criteria to guide the development of comprehensive plans are not mandatory for the cities and counties.

The Washington Forest Practices Act (WFPA) regulates timber management and related activities on most non-Federal forest lands in the Washington portion of the DPS's range (30 percent of DPS's range). The WFPA was improved in 2001 to address water quality concerns and conservation of listed salmonids which will also contribute to coastal cutthroat trout conservation. The new rules set standards for timber harvest activities in and around riparian areas and unstable slopes, and for road use, construction, and maintenance related to forest management. These rules include regulations requiring increased riparian buffer widths, reduced level of management activities within the buffers, and an increase in the percentage of the stream network subject to these buffers. Under the new regulations, virtually all perennial streams will receive some level of protection. Landowners will be required to develop plans for ensuring that existing forest roads meet improved standards for fish passage, protection of unstable slopes, minimization of sediment and runoff within 15 years. These new rules represent a substantial improvement over previous practices and should substantially reduce the adverse impacts of current and future management activities to aquatic and riparian systems supporting coastal cutthroat trout compared to those that would have occurred under previous standards. Revegetation and natural regeneration will result in the long-term process of recovery of these areas from past forest management practices. Standards for construction of new roads are also designed to meet water quality goals.

We and others have noted some uncertainty about the effects of portions of this regulatory program, especially as related to non-fish bearing streams, road practices, and management of cumulative watershed impacts. A comprehensive, long-term research, monitoring, and adaptive management program has been established to determine the validity of these and other concerns, and to remedy any identified shortfalls of the WFPA in a timely fashion. This adaptive management includes a formal, structured process with the Service as a participant. Specific questions and issues related to concerns raised during the development of these rules have been identified and prioritized. Both Federal and State agencies have funded the adaptive management monitoring and research to date, and support for continued funding remains high.

Approximately 325,450 ha (804,202 ac) (8.7 percent of the DPS's range) within the Washington portion of the DPS are managed through the provisions of HCPs approved under section 10 of the Act. The most significant of these include those developed by Simpson Timber (61,638 ha (152,311 ac)) (USFWS and NMFS 2000) and the WDNR (263,812 ha (651,891 ac)) (WDNR 1997). These HCPs include riparian management standards somewhat different from those normally applied under the WFPA. The WDNR HCP was approved in 1997, though not fully addressed in the original listing proposal, and is scheduled to remain in effect through 2093. This HCP contains a Riparian Conservation Strategy designed to maintain the integrity and function of freshwater stream habitat necessary for the health and persistence of aquatic species, including coastal cutthroat trout. The strategy includes stream, lake, and wetland buffers of various widths managed under standards that must "maintain or restore salmonid habitat" (WDNR 1997). The HCP also includes road maintenance and network planning standards, protection of disturbance-sensitive sites, and overall landscape-level forest habitat condition standards. Collectively, these HCP measures should minimize the adverse effects to coastal cutthroat trout of future forest management activities on WDNR lands in the DPS's range. However, even with the HCP in place, "adverse impacts to salmonid habitat will continue to occur because past forest management practices have left a legacy of degraded riparian ecosystems, deforested unstable slopes, and a poorly planned and maintained road network" (WDNR 1997). While the HCP will address some of these legacy threats, implementation of the full suite of necessary corrective and restorative actions on WDNR land is subject to the WFPA and other State programs and policies.

The Simpson Timberlands HCP was approved in 2000 and is scheduled to remain in effect through 2050. It contains elements similar to those in the WDNR HCP, including a riparian conservation strategy; buffers for streams, lakes, wetlands, and other disturbance-sensitive sites; and road maintenance and network planning standards. The HCP is unique in that buffers and management standards for riparian resources are tailored to the geomorphology and hydrologic function of specific stream classes. This was designed to provide greater certainty that they would identify and conserve areas with direct and indirect influence on the streams and associated salmonids, including cutthroat trout. Overall, the HCP should result in stream protections similar to, or greater than, those required under Washington Forest Practices Regulations, and improved remediation or closure of problematic forest roads (USDI 2000). Collectively, the HCP measures should minimize the adverse effects of future forest management activities on Simpson Timberlands in the DPS.

Changes in the WFPA since the original proposed rule to list the coastal cutthroat trout as threatened in the southwestern Washington/Columbia River DPS (64 FR 16397) and provisions of two long-term forest HCPs completed in the Washington portion of the DPS should greatly reduce the risk of continued degradation of aquatic and riparian systems on forest lands in 30 percent of the DPS's range. The proposed rule concluded that the WFPA did "* * * not provide for properly functioning riparian and instream habitats," with specific concerns about failure to address large woody debris recruitment, tree retention to maintain stream band and channel integrity, and chronic and episodic inputs of coarse and fine sediments (64 FR 16402). Based on the new provisions addressing: (1) Timber harvest activities in and around riparian areas and unstable slopes; (2) road use, construction, and maintenance related to forest management; and (3) increased riparian buffer widths, reduced level of management activities within the buffers and an increase in the percentage of the stream network subject to these buffers, we no longer conclude, as described in the proposed rule (64 FR 16402), that the Washington Forest Practices Regulations do not provide for the conservation of coastal cutthroat trout and their habitat. While some degradation of aquatic and riparian systems will continue as a legacy of past management activities, and some elements of the riparian/aquatic systems are naturally slow to recover, these conservation efforts should significantly improve the long-term conditions for coastal cutthroat trout in a significant portion of the DPS's range.

Within the Washington portion of the DPS, there are two additional regulatory programs that apply to all of the non-federal land use activities discussed above, the Shoreline Management Act and State Environmental Policy Act. The Shoreline Management Act applies statewide to all water bodies, except for small streams and lakes. Every local government with shorelines is required to adopt a local shoreline plan which must be reviewed and approved by the Department of Ecology for consistency with State-level Shoreline Management Act guidelines. Most of the local shoreline master programs in effect today were originally adopted in the mid-to late-1970s and are based on guidelines that do not reflect current scientific understanding or the current emphasis on salmonid conservation. Recent efforts by the Washington Department of Ecology to ensure that local plans were revised consistent with current science and priorities have been subject to litigation and have not been finalized. Thus, the extent to which the Shoreline Management Act can be used as a tool to support salmonid conservation is uncertain. Under the State Environmental Policy Act, an agency may deny permits or other approvals if the proposed rule would likely result in significant adverse environmental impacts and if mitigation measures would be insufficient to avoid or reduce those impacts. The use of the State Environmental Policy Act in this fashion by local and State agencies has been extremely limited and, as a result, has not effectively served as a conservation mechanism or to address the inadequacies of other regulatory programs (State of Washington 1999).

Oregon

The proposed rule stated that the Oregon Forest Practices Act did not adequately protect salmonid habitat, specifically including production and introduction of large woody debris into medium, small, and non-fish bearing streams; timber harvest and road construction on unstable slopes subject to mass wasting; and cumulative effects (64 FR 16403).

Oregon was the first State to adopt comprehensive land-use planning laws and these remain among the strongest in the nation. Under this regulatory program, the State's 36 counties and 240 municipalities were required to develop comprehensive plans that addressed applicable statewide planning goals, including several related to maintenance of natural resource lands (agriculture and forest), critical fish and wildlife habitats, and protection of water quality and supply. The planning goals themselves do not regulate individual land development decisions, but are implemented through county and local comprehensive plans, ordinances, and standards which, in turn, regulate individual land use and development decisions. The comprehensive plans typically involve

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tradeoffs to balance numerous goals and objectives, some of which may conflict. Most local plans now in effect have not prioritized goals related to water quality and aquatic habitat protection, and have not been based on the best currently available data; therefore, they may not eliminate adverse effects to the riparian and aquatic environment and provide protection for some areas of cutthroat habitat (State of Oregon 2000a).

Dredge, Fill, and Inwater Construction Programs

The proposed rule described the as described in the proposed rule (64 FR 16403). However, as the OFPA affects a relatively small portion of the DPS (8 percent of the land base), it is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

amount needed to complete the project; and replacement, re-establishment and replanting riparian vegetation is an essential permit condition. As with CWA permits, removal-fill permits are also reviewed by the Department of Environmental Quality for consistency with State water quality standards. Protection and restoration of salmonid habitat has recently received increased emphasis in administration of this law.

maintain the chemical, physical and biological integrity of the nation's waters. As part of this process, the States develop standards for TMDLs of pollutants relative to particular water quality standards. TMDLs offer a method for quantitatively assessing environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other uses of rivers, lakes, and streams. TMDLs

percent saturation of the water column or intergravel dissolved oxygen criterion for a given stream reach or sub-basin, or in natural lakes. In addition to revising numeric standards, Oregon incorporated language to address water bodies exceeding the relevant numeric temperature criterion and included on the State's 303(d) list. Oregon rules require development and implementation of a surface water temperature management plan which

hatchery introductions may significantly reduce the production and survival of native, naturally-spawned cutthroat trout" (64 FR 16403). The proposed rule described potential effects of introduction of rainbow/steelhead trout outside their historic range where cutthroat trout had not evolved in concert with these species (64 FR 16403) and discussed the past loss of interior strains of cutthroat trout to hybridization due to these hatchery

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tradeoffs to balance numerous goals and objectives, some of which may conflict. Most local plans now in effect have not prioritized goals related to water quality and aquatic habitat protection, and have not been based on the best currently available data; therefore, they may not eliminate adverse effects to the riparian and aquatic environment and provide protection for some areas of cutthroat habitat (State of Oregon 2000a).

The Oregon Forest Practices Act (OFPA) regulates timber management and related activities on most non-Federal forest lands in the Oregon portion of the DPS (8 percent of DPS's range). The OFPA sets standards for timber harvest activities in and around riparian areas, and was improved in 1995 to better protect aquatic resources and address water quality concerns. Additional improvements were recently recommended to better support watershed health and conservation of listed salmonids (State of Oregon 2000b). While some of these recommendations may be implemented as regulations through the OFPA in the future, others will likely be implemented voluntarily and through various incentive-based programs. Even considering possible near-term improvements, there is substantial concern about whether the types and levels of management activities allowed within and adjacent to riparian zones under the regulatory component of the OFPA will adequately support riparian processes and conditions crucial to salmonid habitat. Specifically, there is concern for how well current OFPA regulations address tree retention to maintain stream bank integrity and channel networks within flood plains; chronic and episodic inputs of coarse and fine sediment processes; and the recruitment of large woody debris into the aquatic systems, all of which are critical to maintaining functioning habitat for all life stages of cutthroat trout. Much of the concern focuses on management standards for medium, small, and non-fish bearing streams. The OFPA does not adequately manage timber harvest and road construction on sensitive, unstable slopes subject to mass wasting, and the lack of consideration for cumulative effects is of concern, especially in light of current harvest rotation schedules (approximately 50 years).

While potential changes are on the horizon, we are still concerned that the OFPA may not adequately provide for large woody debris input into medium, small, and non-fish bearing streams; address timber harvest and road construction on unstable slopes subject to mass wasting; and cumulative effects, as described in the proposed rule (64 FR 16403). However, as the OFPA affects a relatively small portion of the DPS (8 percent of the land base), it is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Dredge, Fill, and Inwater Construction Programs

The proposed rule described the potential protection of aquatic systems under section 404 of the CWA, though there was concern for the lack of a specific methodology to address cumulative effects and additive effects of continued development (64 FR 16403). Dredge, fill, and inwater construction programs were not listed as a specific threat to the DPS (64 FR 16407), though they may have contributed to some past habitat loss, particularly in the estuaries and large rivers.

A wide variety of instream and near-stream activities are regulated under section 404 of the CWA and section 10 of the Rivers and Harbors Act of 1899, which are administered by the U.S. Army Corps of Engineers (COE). Examples include wetland fills; channel dredging; bank stabilization; pipeline trenches; road and bridge construction; survey activities; outfall construction; and boat ramps, pilings and other structures. Section 404 of the CWA requires that the COE not permit such activities if they "cause or contribute to significant degradation of the waters of the United States." The States also play a role in CWA implementation by reviewing and conditioning proposed section 404 permits relative to State water quality standards and State coastal zone management policies. These joint State/Federal CWA determinations focus primarily on water quality and pollution. COE guidelines do lack a specific methodology for assessing cumulative impacts in the decision-making process, or for minimizing and mitigating the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

Many of the activities regulated under the CWA are also controlled by State-level regulatory programs. In Oregon, work which may modify the bed or banks of rivers, lakes, streams, estuaries and wetlands of the State must receive a permit under the Removal-Fill Law administered by the Division of State Lands. Permits are conditioned to reduce adverse impacts to water quality and aquatic resources or to mitigate those impacts. A standard condition stipulates that riparian vegetation removal be limited to the minimum amount needed to complete the project; and replacement, re-establishment and replanting riparian vegetation is an essential permit condition. As with CWA permits, removal-fill permits are also reviewed by the Department of Environmental Quality for consistency with State water quality standards. Protection and restoration of salmonid habitat has recently received increased emphasis in administration of this law. In Washington, similar activities are regulated under the State Hydraulics Code, which is administered by the WDFW through its Hydraulic Project Approval program. Hydraulic Project Approval program standards and guidelines are specifically focused on the protection of fish life and aquatic habitats, and are subject to review every five years to ensure consistency with these objectives.

Based on the implementation of current laws and regulatory programs, we conclude that the regulation of dredge, fill, and in-water construction activities through the section 404 and section 10 permit processes, and through State programs, will provide some protection and support of aquatic resources, though they may not fully remove the risk of some losses to cumulative effects from small individual projects. The remaining risks from cumulative effects are likely to be small in the short term, and we do not anticipate that the cumulative effects of these small projects will reach a level at which they would be likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future. Dredge, fill, and inwater construction programs were not identified in the proposed rule as a threat to this DPS (64 FR 16407) and are not considered a significant threat at this time.

Water Quality Programs

The proposed rule stated that "* * * implementation [of the Federal CWA] has not been effective in adequately protecting fishery resources, particularly with respect to non-point sources of pollution"(64 FR 16403), though this was not listed as a specific threat to the DPS (64 FR 16407). The proposed rule did describe the long-term benefits of developing Total Maximum Daily Loads (TMDLs) and the ability of these to protect cutthroat trout in the long term, though they would be difficult to develop in the short term and their efficacy in protecting salmonid habitat would be unknown for years (64 FR 16403).

Under section 303(c) of the CWA, States are required to adopt water quality standards to restore and

maintain the chemical, physical and biological integrity of the nation's waters. As part of this process, the States develop standards for TMDLs of pollutants relative to particular water quality standards. TMDLs offer a method for quantitatively assessing environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other uses of rivers, lakes, and streams. TMDLs address pollution sources, including such point sources as sewage or industrial plant discharges, and such non-point discharges as runoff from roads, farm fields, and forests. The CWA gives State governments the primary responsibility for establishing TMDLs. Section 303(d) of the CWA requires States to identify surface waters that do not meet State water quality standards.

The Oregon Department of Environmental Quality (ODEQ) submitted revised water quality standards to the U.S. Environmental Protection Agency (EPA) for review and approval on July 11, 1996. EPA considered approval of Oregon's water quality standards for dissolved oxygen, temperature, and pH as submitted, with the exception of the temperature criterion for the Willamette River from the river's mouth to river mile 50. Consideration of the temperature criterion for this reach of the Willamette River was deferred until a final action (approval of a revised State criterion or a new criterion promulgated by EPA) is proposed by EPA. ODEQ has recently finalized the 1998 303(d) list and submitted to EPA a schedule for completing TMDLs by the year 2007.

Unless specifically allowed under an ODEQ-approved surface water temperature management plan, no measurable surface water temperature increase resulting from anthropogenic activities is allowed in the following cases: (1) In a basin for which salmonid fish rearing is a designated beneficial use, and in which surface water temperatures exceed 17.8 degrees C (64 degrees F); (2) in waters and periods of the year determined by the ODEQ to support native salmonid spawning, egg incubation, and fry emergence from the egg and from the gravels in a basin which exceeds 12.8 degrees C (55.0 degrees F); (3) in waters determined by the ODEQ to be ecologically significant cold-water refugia; (4) in stream segments containing Federally-listed threatened or endangered species if the increase would impair the biological integrity of the threatened or endangered population; and (5) in Oregon waters when the dissolved oxygen levels are within 0.5 ppm or 10 percent saturation of the water column or intergravel dissolved oxygen criterion for a given stream reach or sub-basin, or in natural lakes. In addition to revising numeric standards, Oregon incorporated language to address water bodies exceeding the relevant numeric temperature criterion and included on the State's 303(d) list. Oregon rules require development and implementation of a surface water temperature management plan which describes the best management practices, measures, and/or control technologies which will be used to reverse the warming trend of the basin, watershed, or stream segment identified as water quality limited for temperature.

Washington has submitted, and is implementing, a TMDL schedule running through 2013. As of May 2000, TMDLs had been established for approximately 249 stream/water body segments and additional TMDLs are under development. A memorandum of agreement between EPA and the Washington Department of Ecology stipulates that time frames for meeting water quality standards, a plan to implement control actions, and a monitoring plan will be developed by 2003.

Inadequacy of water quality regulatory mechanisms was not identified in the proposed rule as a specific threat to this DPS (64 FR 16407) and is not considered a significant threat at this time. The current standards established by Oregon, and the ongoing efforts by both States, to establish TMDLs and rectify water quality problems should result in significant improvements in habitat conditions for cutthroat trout in the long term. However, until TMDLs are finalized and remediation efforts implemented for a period of time, adverse water quality may continue in some portions of the DPS's range. The ability of these TMDLs to protect cutthroat trout should be significant in the long term, and significant increases in water quality problems should not occur in the interim. Water quality regulations and programs should reduce the risk of continued habitat degradation, and water quality concerns are not likely to increase to a level at which they are likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Hatchery Management

The proposed rule stated that "* * * the impact of [hatchery] programs on native, naturally spawned stocks are not well understood," but noted that "[c]ompetition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-spawned cutthroat trout" (64 FR 16403). The proposed rule described potential effects of introduction of rainbow/steelhead trout outside their historic range where cutthroat trout had not evolved in concert with these species (64 FR 16403) and discussed the past loss of interior strains of cutthroat trout to hybridization due to these hatchery releases. However, this is not true for the DPS or the coastal subspecies in general. This subspecies has evolved with rainbow/steelhead trout and has not suffered the impacts from hatchery introductions described for interior subspecies (see Hybridization section for more information).

Specific to this DPS, the proposed rule stated that "[n]egative effects of hatchery coastal cutthroat trout may be contributing to the risks facing naturally spawned coastal cutthroat trout in this [DPS]" (64 FR 16407). They noted that lower Columbia River tributaries were the only streams receiving hatchery-origin coastal cutthroat trout, and that the number of trout released has been substantially curtailed. The proposed rule stated that "[t]he ultimate effects of hatchery fish depend on the relative size of hatchery and naturally spawned populations, the spatial and temporal overlap of hatchery and naturally spawned fish throughout their life cycles and the actual extent to which hatchery fish spawn naturally and interbreed with naturally produced fish" (64 FR 16407), as well as the level of incidental harvest of naturally spawned fish in fisheries targeting hatchery salmonids. The proposed rule provided no estimate or evaluation of these factors.

In an attempt to mitigate the loss of habitat, hatchery programs were implemented by the States throughout the range of coastal cutthroat trout. Until recently, the transfer of hatchery stocks of coastal cutthroat trout between distant watersheds and facilities was a common management practice in Oregon and Washington watersheds (Crawford 1979, Kostow 1995). Growing concern about the genetic and ecological consequences of this practice prompted management agencies to institute policies to reduce the exchange of coastal cutthroat trout stocks among watersheds, primarily by terminating releases of fish in all but a few locations. Appendix A–1 of the Status Review (Johnson *et al.* 1999) contains detailed records of the stocking history of the DPS's range. Only the Cowlitz River Hatchery continues to produce and release coastal cutthroat trout within the

DPS, and this at substantially reduced levels. This hatchery produces anadromous cutthroat trout in a system with several barrier dams that have reduced natural access to historic freshwater habitat for anadromous cutthroat trout.

There is no evidence that competition, genetic introgression, or disease transmission from hatchery introductions which were described in the proposed rule as the potential

fish are likely to be concentrated in the anadromous-accessible areas. The resident portion of the population in the upper portions of the watersheds is not likely to be affected by these hatchery releases. However, information demonstrating effects from coho releases is limited within the DPS's range, and the extent to which hatchery management affects the DPS of coastal cutthroat as a whole is unknown. We have no evidence that coho releases in

considered a significant threat at this time.

Fire events in Pacific northwest coastal zones are generally of low frequency (more than 200 years between disturbances) and high severity (*e.g.*, a high proportion of the trees are killed) (Agee 1993). Although fires can be large and intense, unburned patches and refugia often persist. These refugia provide a source of fish to recolonize other areas once the habitat recovers. The effects of fire are likely to be

interior subspecies of cutthroat trout that evolved in the absence of other salmonids, coastal cutthroat trout evolved in sympatry with a suite of other Pacific salmonids, their range closely overlapping with steelhead in coastal drainages of western North America. Behnke (1992) concluded that cutthroat and rainbow trout shared a common ancestor as recently as two million years ago. As a result, it is likely that the long evolutionary association of

steelhead trout in tributaries of the Columbia River and found hybridization to be common, though at low levels in most samples. Only a few isolated locations showed high levels of hybridization.

Although the data on hybridization between coastal cutthroat trout and rainbow/steelhead trout are limited, indications are that hybridization has likely been occurring for at least several decades at low levels where these two

because specific proposals are subject to ongoing legal challenges; (2) the ecological effects of practices and projects that are implemented may not be realized for years or even decades; and (3) for some suites of activities, there is no readily available information regarding the nature or distribution of on-ground practices or projects.

The States' overall recovery frameworks are contained within the Oregon Plan for Salmon and Watersheds

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DPS, and this at substantially reduced levels. This hatchery produces anadromous cutthroat trout in a system with several barrier dams that have reduced natural access to historic freshwater habitat for anadromous cutthroat trout.

There is no evidence that competition, genetic introgression, or disease transmission from hatchery introductions which were described in the proposed rule as the potential consequences of the release of hatchery raised cutthroat trout (64 FR 16403) have significantly reduced the production and survival of native, naturally spawned cutthroat trout in the DPS. Coastal cutthroat trout production has been reduced to a single hatchery and there is no information at this time to indicate that the limited ongoing coastal cutthroat hatchery releases have an adverse effect on the DPS of coastal cutthroat trout. Therefore, we conclude that release of hatchery coastal cutthroat trout in this DPS does not represent a significant risk to naturally spawning cutthroat trout in this DPS.

The proposed rule also described the potential "* * * negative consequences of interactions between coho salmon fry released from hatcheries and coastal cutthroat trout" (64 FR 16403), though this was not identified as a specific threat to the DPS (64 FR 16407). Coho fry can compete with cutthroat trout for feeding and rearing habitat. Release of hatchery coho and steelhead may have adverse effects to local cutthroat trout populations, especially if they are stocked in headwater tributaries above traditional coho or steelhead habitat. Juvenile coho are dominant over juvenile cutthroat trout (Chapman 1962, Glova 1987, Rosenau and McPhail 1987, Trotter *et al.* 1993, Johnson *et al.* 1999) and coastal cutthroat trout are often displaced to less desirable habitats in the presence of other native salmonids (Hartman and Gill 1968, Griffith 1988). Coho and steelhead are natural competitors of cutthroat trout and cutthroat trout are likely adapted to some levels of competition from these species. The effect of coho and steelhead stocking is dependent on the location and magnitude of the releases. Releases in areas outside of historic coho habitat or in numbers that greatly exceed natural levels could have negative effects on cutthroat trout in the area of the release. Effects are likely to be limited to the stocked area and downstream migration habitats.

Hatchery coho and steelhead releases are likely to have a proportionally greater effect on the anadromous portion of the coastal cutthroat trout population because releases of these anadromous fish are likely to be concentrated in the anadromous-accessible areas. The resident portion of the population in the upper portions of the watersheds is not likely to be affected by these hatchery releases. However, information demonstrating effects from coho releases is limited within the DPS's range, and the extent to which hatchery management affects the DPS of coastal cutthroat as a whole is unknown. We have no evidence that coho releases in the DPS are producing competition above natural levels or represent a significant risk to the DPS. Competition from hatchery releases of coho salmon was not identified as a specific threat to the DPS (64 FR 16407) and is still not considered a significant threat to the DPS at this time.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Climate and Catastrophic Natural Events

The proposed rule stated that "[p]ersistent drought conditions have reduced the already limited spawning, rearing, and migration habitat" (64 FR 16403), though this was not listed as a specific threat to the DPS (64 FR 16407). The proposed rule also stated that climate conditions appeared to have resulted in decreased ocean productivity, which might have compounded degraded freshwater habitat (64 FR 16403). Juvenile and adult anadromous cutthroat trout use tidal rivers and low-gradient estuarine sloughs and tributaries during spawning and feeding migrations (Kostow 1995). These nearshore areas can be influenced by ocean productivity. The El Niño-Southern Oscillation cycle (commonly known as El Nino), causes periodic declines in ocean productivity that could affect the survival and productivity of anadromous coastal cutthroat trout during low periods. During periods of warm ocean conditions, freshwater habitat conditions may also be affected due to reduced rainfall with associated impacts on streamflows and increasing river temperatures (Greenland 1998). These types of climate changes are natural, long-term cycles, and coastal cutthroat trout are likely adapted to this variation. Therefore, these climate cycles would not be expected to significantly threaten coastal cutthroat trout in the foreseeable future. There is no evidence that drought or other climate cycles have significantly reduced spawning, rearing, or migration habitat for the DPS. Climate change, specifically persistent drought, was not identified in the proposed rule as a specific threat to this DPS (64 FR 16407) and is not considered a significant threat at this time.

Fire events in Pacific northwest coastal zones are generally of low frequency (more than 200 years between disturbances) and high severity (*e.g.*, a high proportion of the trees are killed) (Agee 1993). Although fires can be large and intense, unburned patches and refugia often persist. These refugia provide a source of fish to recolonize other areas once the habitat recovers. The effects of fire are likely to be episodic, dispersed through time and space. Coastal cutthroat trout appear to be well adapted to such natural pulsed disturbances. This process historically may have posed little threat to most local and regional populations.

Coastal cutthroat trout are well distributed within the all three major drainage areas within the DPS's range. This wide distribution reduces the likelihood that catastrophic natural events would severely deplete populations throughout the DPS's range. Stochastic events such as fire, flood, and volcanic eruptions, are likely to impact coastal cutthroat trout at a watershed or sub-basin scale and would not affect all portions of the DPS concurrently. Therefore, even if portions of the DPS are depressed, the risk of a catastrophic event severely impacting the DPS as a whole is very limited and is not anticipated to significantly threaten coastal cutthroat trout in the foreseeable future.

Hybridization

The proposed rule stated that "[h]ybridization between coastal cutthroat trout and *Oncorhynchus mykiss* may prose serious risks for this species" (64 FR 16403), though it was not listed as a threat to the DPS (64 FR 16407). The proposed rule described the potential adverse effects of the widespread release of hatchery rainbow trout throughout the range of interior cutthroat trout; resulting hybridization between the species could pose serious risks for cutthroat trout (64 FR 16403). However, this is specific to interior subspecies that did not evolve in contact with rainbow/steelhead trout. The coastal cutthroat trout differs from these interior subspecies as they evolved with the presence of rainbow/steelhead trout and therefore have developed mechanisms to limit hybridization.

Hybridization of coastal cutthroat trout among subspecies and with other species of trout, particularly rainbow trout, is known to occur, and has long been implicated in the decline of other cutthroat subspecies (Busack and Gall 1981, Young 1995, Willers 1991). Unlike

interior subspecies of cutthroat trout that evolved in the absence of other salmonids, coastal cutthroat trout evolved in sympatry with a suite of other Pacific salmonids, their range closely overlapping with steelhead in coastal drainages of western North America. Behnke (1992) concluded that cutthroat and rainbow trout shared a common ancestor as recently as two million years ago. As a result, it is likely that the long evolutionary association of rainbow and coastal cutthroat trout would have led to isolating mechanisms that would minimize the occurrence of hybridization.

Recent information (Campton 1981, Campton and Utter 1985, Hawkins and Quinn 1996, Williams *et al.* 1997, Johnson *et al.* 1999) suggests that hybridization of coastal cutthroat trout with steelhead may be more prevalent in the Pacific Northwest than previously believed. Hybridization appears to occur in a mosaic pattern at naturally low levels in areas where coastal cutthroat trout and steelhead spawn in the same streams, but the conditions triggering this apparent interbreeding are unknown. Hubbs (1955) and Campton (1987) suggest that anthropogenic factors can cause or stimulate natural hybridization where it previously was rare or uncommon. However, biologists studying this issue cannot determine whether the observed occurrences of hybridization result from anthropogenic factors (*e.g.*, stocking of hatchery-origin steelhead, habitat modifications, etc.) or simply reflect a natural evolutionary process that has been ongoing for hundreds, perhaps thousands of years.

The most recent hybridization studies within southwest Washington and the Columbia River indicate that hybridization occurs in scattered locations, but generally at low levels throughout the range of coastal cutthroat. In 2000 and 2001, U.S. Geological Service-Biological Resources Division investigators analyzed a total of 230 coastal cutthroat tissue samples from coastal cutthroat trout captured within southwest Washington and the Columbia River (Carl Ostberg, U.S. Geologic Survey, pers. comm., 2001). Fourteen streams were sampled including six streams within the Grays Harbor drainage, three streams in the Willapa Bay drainage, and one stream each from the Lower Columbia, Upper Cowlitz, Kalama, East Fork Lewis, and Upper Washougal rivers. Only 1 of the 14 streams sampled contained hybrids (the Green Fork of the East Fork Lewis River (4 of 25 individuals) (USFWS 2001). Spruell *et al.* (1998) examined incidence of hybridization between coastal cutthroat trout and rainbow/steelhead trout in tributaries of the Columbia River and found hybridization to be common, though at low levels in most samples. Only a few isolated locations showed high levels of hybridization.

Although the data on hybridization between coastal cutthroat trout and rainbow/steelhead trout are limited, indications are that hybridization has likely been occurring for at least several decades at low levels where these two species co-exist. Much scientific uncertainty currently surrounds the causes of hybridization and its evolutionary consequences. In view of the limited nature of hybridization in the DPS and the natural co-occurrence of these species, hybridization between cutthroat trout and rainbow/steelhead trout is not currently considered a significant threat to the DPS of coastal cutthroat trout. Low levels of hybridization may represent natural interaction between rainbow/steelhead trout and coastal cutthroat trout. Populations with high levels of hybridization are few and isolated. Hybridization was not identified in the proposed rule as a specific threat in the DPS, and is not considered a significant threat at this time.

Foreseeable Conservation Measures

Numerous conservation efforts related to maintenance and protection of threatened salmonids, riparian and aquatic habitats, and overall watershed health are underway in Oregon and Washington. These are being driven by the overall salmonid recovery frameworks in place in the States and by specific growth management and Endangered Species Act considerations. Efforts range from broad scale application undertaken by State or regional authorities to site-specific projects implemented by individual landowners or local action groups such as watershed councils. These are generally non-regulatory in nature, relying on incentives or voluntary compliance, or are still in development. Therefore, while they may contribute to conservation of coastal cutthroat trout, we have not assumed any specific contribution in the listing determination.

Several factors make it difficult to predict the extent to which these efforts will result in improved implementation of the non-federal land use practices described above, or redress problems associated with past activities, including: (1) Many specific regulatory changes and on-ground projects have not yet been implemented either because related negotiation and rule-making are in the formative stages, or because specific proposals are subject to ongoing legal challenges; (2) the ecological effects of practices and projects that are implemented may not be realized for years or even decades; and (3) for some suites of activities, there is no readily available information regarding the nature or distribution of on-ground practices or projects.

The States' overall recovery frameworks are contained within the Oregon Plan for Salmon and Watersheds (Oregon Plan) and the Washington Statewide Strategy to Recover Salmon: "Extinction is not an Option" (Washington Strategy). Both of these frameworks emphasize improved implementation and enforcement of existing regulations, greater coordination and prioritization of conservation projects, and voluntary and incentive-based measures to provide greater site-specific protection. Based on recent implementation of these recovery frameworks, there will likely be some level of widespread effort to identify and correct existing fish passage problems (and to prevent future obstacles), and to restore previously degraded riparian and aquatic habitats on a site-specific basis. The Oregon Plan and the Washington Strategy also encourage or otherwise support a handful of larger, more comprehensive, restoration-oriented conservation projects within the DPS's range, such as the multi-stakeholder Sandy River Basin Agreement in Oregon. These projects will likely continue under the auspices of scientifically credible watershed assessments that minimize the likelihood of inappropriate "fixes" and undesirable adverse effects. Such restoration-oriented projects have the potential to substantially improve conditions for this species in many watersheds in the DPS's range. However, such improvements may not be sufficient, and in many cases may be negated, unless the broader suite of land-use activities occurring within the watersheds are modified to reduce future adverse effects.

The Washington Strategy targets a number of specific land-use regulatory programs for improvement, and in general supports consideration of improved regulatory standards, either through formal rule-making or through stakeholder negotiation processes. In addition to the previously mentioned Hydraulic Project Approval program revisions, examples include efforts to strengthen the Shoreline Management Act and State water policies, and to develop more consistent and reliable standards for agricultural practices and pesticide use. These efforts may lead to at least some improvement in statewide

standards for agricultural practices and urban and rural development, and redress some of the previously noted problems with these practices.

In limited portions of the DPS's range in both States, regional and local efforts to address growth management issues and Federal Endangered Species Act issues for other listed species may improve programmatic standards or landowner-specific practices beyond those likely under the broad State measures under consideration. For example, under the City of Portland's "Healthy Portland Streams" program and Metro's Statewide Planning Goal 5 program, new rules are being developed to protect important streamside areas and vulnerable upslope habitats from inappropriate development and to facilitate restoration of some previously degraded areas. Similarly, the Portland Water Bureau's Bull Run Watershed Management program is close to

Washington portion of this [DPS] are all declining" (64 FR 16407) and that "[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years," with the only increase in the Toutle River (64 FR 16407). The most recent data indicate variable population trends throughout the DPS and do not support the conclusion that trends of

"The significance of this reduction in life-history diversity to both the integrity and the likelihood of this [DPS's] long-term persistence is a major concern to NMFS" (64 FR 16407). WDFW (2001) provided additional information demonstrating the capability of resident coastal cutthroat trout to produce anadromous progeny after long isolation (40 years), suggesting that even if the anadromous portion of the population continues to experience

Some areas have begun to recover from past forest practices and new regulations are in place that reduce the risk of continued adverse impacts to much of the DPS. Conditions in many parts of the DPS's range are expected to continue to improve over time and many of the most damaging past practices (*e.g.*, splash dams, large-scale wetland conversion) are not expected to occur in the future due to current laws and regulations. Despite the long term,

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standards for agricultural practices and urban and rural development, and redress some of the previously noted problems with these practices.

In limited portions of the DPS's range in both States, regional and local efforts to address growth management issues and Federal Endangered Species Act issues for other listed species may improve programmatic standards or landowner-specific practices beyond those likely under the broad State recovery frameworks. In the Washington portion of the DPS's range, several forestry and agricultural planning efforts are underway, including the Cowlitz Tree Farm HCP, Tagshinny Safe-Harbor and Candidate Conservation Agreement, Scatter Creek HCP, and Lewis County Family Forest Conservation project. In addition, Clark County has initiated an Endangered Species Act Response Program that will address water quality, aquatic and riparian habitat protection, and conservation of listed salmonids for a number of development and urban land-use activities under the county's purview. Ongoing and future components of this effort include assessments of biological resources and potential impacts of various activities; review and revision of development codes, ordinances, and operating procedures; and prioritization and implementation of restoration and acquisition projects.

In the Oregon portion of the DPS's range, a large number of municipalities and counties in the Portland metropolitan area have initiated efforts to revise comprehensive plans and address Endangered Species Act issues in a fashion similar to those described for Clark County, Washington. Primary examples include Clackamas County, the City of Lake Oswego, City of Gresham, the Metro regional government, and the City of Portland. These efforts are in various stages of development and are likely to evolve incrementally (*i.e.*, sets of measures to address road management followed by measures to address stormwater management or streamside development, etc.) over the next several years.

Notwithstanding the formative and uncertain nature of most of these local level planning efforts, we are encouraged by the efforts. Most of the sponsoring entities have continued to commit staff and financial resources to the projects despite recent budget limitations. The issues and approaches comprising many of the projects appear consistent with conservation objectives for cutthroat trout. Finally, the handful of projects that are more evolved show promise in terms of some of the measures under consideration. For example, under the City of Portland's "Healthy Portland Streams" program and Metro's Statewide Planning Goal 5 program, new rules are being developed to protect important streamside areas and vulnerable upslope habitats from inappropriate development and to facilitate restoration of some previously degraded areas. Similarly, the Portland Water Bureau's Bull Run Watershed Management program is close to finalizing proposals to more appropriately manage water quality, flow, temperature, and other impacts associated with the City's water supply and distribution operations. In these programs, the measures being considered represent improvements over previous practices, and could be an important contribution to ensuring that the activities of local governments and their constituents in the Portland metropolitan region are consistent with the conservation of this species. Once fully in force, these programs may also contribute significantly to the conservation of other sensitive species and help preclude the need to list them as threatened or endangered.

Continuation and successful implementation of conservation efforts such as those mentioned above, and expansion of these efforts to additional activities and areas will be necessary to fully address concerns associated with previous management legacies and with the existing regulatory framework. Such efforts will be a critical determinant of whether current cutthroat trout habitats and populations are maintained and improved in the long run to an extent that supports long-term conservation. As such, we will continue to monitor and review the progress of these efforts very carefully to determine their impact on the future status of the species. However, because these are non-regulatory programs or are still in development, we did not base our final listing determination on the assumption that these programs would be implemented.

Finding and Withdrawal

As described in the proposed rule (64 FR 16407), some portions of the proposed coastal cutthroat trout DPS are likely at lower-than-historic levels and are probably still declining. However, new information and recent changes in regulations have changed our conclusion about the risk that the species may become endangered in the foreseeable future. This withdrawal is based on: (1) New data indicating that coastal cutthroat trout are more abundant in southwest Washington than previously thought and that population sizes are comparable to those of healthy populations in other areas; (2) new information and analyses calling into question past interpretation of the size of the anadromous portion of the population in the Columbia River and indicating higher numbers than previously described; (3) new data and analyses no longer showing declining adult populations in the Grays Harbor tributaries; (4) new analyses that call into question the past interpretation of trend data, and therefore the magnitude of the trend in the anadromous portion of the population in the Columbia River; (5) new information about the production of anadromous progeny by above-barrier cutthroat trout; and (6) two large-scale Habitat Conservation Plans (HCPs) and significant changes in Washington Forest Practices Regulations substantially reducing threats to aquatic and riparian habitat on forest lands in Washington.

The proposed rule stated that "NMFS remains concerned about the extremely low population size of anadromous coastal cutthroat trout in lower Columbia River streams, indicated by low incidental catch of coastal cutthroat trout in salmon and steelhead recreational fisheries, and by low trap counts in a number of tributaries throughout the region," and that "* * * numbers of adults returning to traps in the lower Columbia River tributaries were consistently below 10 fish in most streams over each of the past 6 years" (64 FR 16407). Despite extensive changes to aquatic and riparian condition in many portions of the DPS's range, coastal cutthroat trout remain extant throughout their historic habitat and populations in a large portion of the DPS are found in densities comparable to populations considered to be healthy-sized. The anadromous portion of the DPS is likely depressed from historic levels, though it also appears to remain extant in all accessible portions of the DPS's range. There is little specific information indicating the actual size of the anadromous portion of the population or that these populations are extremely low. Coastal cutthroat trout as a whole, in the Washington portion of the DPS, remain at comparable densities to other areas considered to have healthy-sized populations. There is no information that leads us to conclude that coastal cutthroat trout populations in a significant portion of the DPS's range are at levels that would lead to risk of extinction due to small population size in the foreseeable future.

The proposed rule stated that "[t]rends in anadromous adults and outmigrating smolts in the southwestern Washington portion of this [DPS] are all declining" (64 FR 16407) and that "[r]eturns of both naturally and hatchery produced anadromous coastal cutthroat trout in almost all lower Columbia River streams have declined markedly over the last 10 to 15 years," with the only increase in the Toutle River (64 FR 16407). The most recent data indicate variable population trends throughout the DPS and do not support the conclusion that trends of anadromous adults and outmigrating smolts in the DPS are all declining, as described in the proposed rule. There is no evidence that the adult portion of the population in the Grays Harbor tributaries is declining over the long term, and some indication that the adult portion of the population may be stable or increasing. Therefore, we no longer conclude that trends in anadromous adults and outmigrating smolts in southwest Washington are all declining as described in the proposed rule. There are indications of declines in the adult portion of the population in the Columbia River tributaries, though the rate of the decline is uncertain due to concerns over the reliability of the analyses and potential biases in the data sets. Therefore, we no longer conclude that returns of anadromous cutthroat trout in "almost all" lower Columbia River streams have declined markedly over the last 10 to 15 years as described in the proposed rule (64 FR 16407). There is little information on population trends for the resident or freshwater portion of the population in the DPS, though populations in the Washington portion of the DPS appear to remain at levels comparable to healthy-sized populations, indicating that large-scale declines have not occurred at a landscape level. Based on these data, we do not find that population trends indicate that coastal cutthroat trout are likely to be extirpated from any significant portion of their range in the foreseeable future.

The degree to which the reductions in the anadromous portion of the coastal cutthroat trout population represent a risk to the population in the DPS as a whole depends, in part, on the extent to which various coastal cutthroat trout life history strategies are genetically versus environmentally controlled. The proposed rule stated that "* * * a significant risk factor for coastal cutthroat trout in this [DPS] was a reduction of life-history diversity" and that "[r]educed abundance in anadromous fish will tend to restrict connectivity of populations in different watersheds, which can increase genetic and demographic risk" (64 FR 16407). "The significance of this reduction in life-history diversity to both the integrity and the likelihood of this [DPS's] long-term persistence is a major concern to NMFS" (64 FR 16407). WDFW (2001) provided additional information demonstrating the capability of resident coastal cutthroat trout to produce anadromous progeny after long isolation (40 years), suggesting that even if the anadromous portion of the population continues to experience low number and declines, smolts will be produced that can supplement the anadromous portion of the population and take advantage of any improvement in anadromous habitat. There is no evidence at this time that coastal cutthroat trout pursuing the anadromous life history strategy are segregated from the remainder of the population. In fact, studies show that individuals above barriers and below barriers with access to the sea are more closely related within a drainage than are individuals from different drainages (Behnke 1997, Johnson *et al.* 1999). This further supports the conclusion that anadromous and non-anadromous individuals are not substantially separate subpopulations. Therefore, based on the evidence that freshwater and isolated portions of the population are capable of producing anadromous migrants, we now conclude that freshwater and isolated portions of the coastal cutthroat trout population are contributing to the anadromous portion of the population and mitigating risks to anadromous portion of the population to some degree. The ability for non-anadromous cutthroat trout to produce anadromous progeny reduces the risk of loss of the anadromous life history strategy in the foreseeable future.

Specific to the southwestern Washington/Columbia River DPS, the proposed rule stated that "* * * severe habitat degradation throughout the lower Columbia River has contributed to dramatic declines in anadromous coastal cutthroat trout populations and two near extinctions of anadromous runs in the Hood and Sandy Rivers' (64 FR 16407). The proposed rule also stated that "[h]abitat degradation in stream reaches accessible to anadromous coastal cutthroat trout, and poor ocean and estuary conditions, likely combined to severely deplete this life-history form throughout the lower Columbia River Basin" (64 FR 16407). While aquatic and riparian systems have been heavily altered in some areas, the latest information does not support the conclusion that this has severely affected the habitat of the coastal cutthroat trout in this DPS as a whole. Some areas have begun to recover from past forest practices and new regulations are in place that reduce the risk of continued adverse impacts to much of the DPS. Conditions in many parts of the DPS's range are expected to continue to improve over time and many of the most damaging past practices (*e.g.*, splash dams, large-scale wetland conversion) are not expected to occur in the future due to current laws and regulations. Despite the long term, widespread impacts to aquatic and riparian conditions, coastal cutthroat trout have survived in these areas for many generations and remain at densities comparable to healthy-sized populations in large portions of the DPS's range. Therefore, there is no significant present or identifiable threat of curtailment of the range of the DPS. Given that coastal cutthroat trout have survived the long-term and widespread impacts of these past practices on aquatic and riparian conditions in large portions of the DPS's range for many generations, and apparently remain well distributed at densities comparable to healthy-sized populations elsewhere, the condition of aquatic and riparian systems is not likely to result in endangerment of the DPS of coastal cutthroat trout in the foreseeable future. Therefore, we no longer conclude that past habitat degradation has led to severe declines in the population of coastal cutthroat trout in the southwestern Washington/Columbia River DPS.

All Federal lands within the DPS's range (27 percent) are managed in a manner conducive to the conservation of coastal cutthroat trout. The proposed rule concluded that the Washington Forest Practices Regulations did "* * * not provide for properly functioning riparian and instream habitats," including failure to address large woody debris recruitment, tree retention to maintain stream band and channel integrity, and chronic and episodic inputs of coarse and fine sediments (64 FR 16402). The Washington Forest Practices Regulations were updated since the proposed rule. These new regulations include improvements to: (1) Timber harvest activities in and around riparian areas and unstable slopes; (2) road use, construction, and maintenance related to forest management; and (3) increased riparian buffer widths, reduced level of management activities within the buffers, and an increase in the percentage of the stream network subject to these buffers. Given these improvements, we no longer conclude that the Washington Forest Practices

Regulations do not provide for the conservation of coastal cutthroat trout and their habitat. The lands affected by the WFPA and two long-term forest HCPs completed in the Washington portion of the DPS's range should greatly reduce the risk of continued cutthroat habitat degradation and loss in an additional 30 percent of the DPS's range. Therefore, 57 percent of the DPS's range is under management and

16407), as well as the level of incidental harvest of naturally spawned fish in fisheries targeting hatchery salmonids. The proposed rule provided no estimate or evaluation of these factors. Coastal cutthroat trout production has been reduced to a single hatchery. Analysis of the remaining hatchery stock history and genetics indicate that the hatchery stock is similar to the naturally spawned stock. There is no information at this

While regulation of dredge, fill, and in-water construction activities through the section 404 permit process in the DPS's range may not eliminate all adverse effects to the riparian and aquatic environment, we conclude that it should provide significant protection for aquatic resources, and the ability for us to track continuing effects through the review of permit applications. The remaining risks from cumulative effects

barriers, urban and industrial development, and mining. We evaluated the latest information on each of these potential threats and concluded that they are still not a significant threat at this time.

While populations of some portions of the DPS of coastal cutthroat trout are likely at lower-than-historic levels and probably still declining, recent changes in regulations have reduced threats to the DPS as a whole. This, and the latest

southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls, as threatened. We will continue to monitor the conditions of the coastal cutthroat trout in southwest Washington and the Columbia River. In the event that conditions or threats change and the species becomes imperiled, we could again propose to list the species as endangered or threatened under the Act. We will continue to provide

Oregon Fish and Wildlife Office (*see* **ADDRESSES**).

Authors

The primary authors of this document are Robin Bown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES**) and Scott Craig, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Lacey, WA 98503.

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Regulations do not provide for the conservation of coastal cutthroat trout and their habitat. The lands affected by the WFPA and two long-term forest HCPs completed in the Washington portion of the DPS's range should greatly reduce the risk of continued cutthroat habitat degradation and loss in an additional 30 percent of the DPS's range. Therefore, 57 percent of the DPS's range is under management and regulations that should greatly reduce the rate of future habitat impacts and provide for long-term improvement of coastal cutthroat trout habitat in the DPS's range. Collectively, remnant high quality habitat, ongoing forest recovery, active efforts to identify and correct legacies of past management, improved standards for future management actions, and the ability of coastal cutthroat trout to survive for long periods in degraded aquatic and riparian systems provide the basis for maintenance of habitat for coastal cutthroat trout within the DPS's range. Therefore, forest management is not likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

The proposed rule described the potential loss of important estuarine habitat and stated that reductions in the quantity and quality of estuarine habitat probably contributed to declines of anadromous cutthroat trout, but the relative importance of these risks was not well understood (64 FR 16402). This is further complicated by the lack of information on how coastal cutthroat trout use large estuary systems. Significant portions of the estuarine wetlands in the Willapa Bay and Grays Harbor systems, and to a lesser degree in the Columbia River estuary, remain intact. Given current regulations, we do not anticipate additional large-scale conversion or loss of estuary or off-channel areas. While past losses of estuaries may have contributed to a reduction in the anadromous portion of the coastal cutthroat trout population over historic levels, we do not have evidence that the past and potential future losses are likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future.

Specific to this DPS, the proposed rule stated that "[n]egative effects of hatchery coastal cutthroat trout may be contributing to the risks facing naturally spawned coastal cutthroat trout in this [DPS]" (64 FR 16407), though the ultimate effects of hatchery practices depend on the relative size of the populations, the overlap of hatchery and naturally spawned fish, and the actual extent to which hatchery fish interbreed with naturally produced fish (64 FR 16407), as well as the level of incidental harvest of naturally spawned fish in fisheries targeting hatchery salmonids. The proposed rule provided no estimate or evaluation of these factors. Coastal cutthroat trout production has been reduced to a single hatchery. Analysis of the remaining hatchery stock history and genetics indicate that the hatchery stock is similar to the naturally spawned stock. There is no information at this time to indicate that the limited ongoing coastal cutthroat hatchery releases have an adverse effect on the DPS of coastal cutthroat trout. Therefore, we conclude that the release of hatchery coastal cutthroat trout in this DPS does not represent a significant risk to naturally spawning cutthroat trout in this DPS.

Several other potential threats were described in the Summary of Factors Affecting the Species section of the proposed rule (64 FR 16402) as principal factors for decline in the subspecies-wide review of listing factors (64 FR 16402), but were not identified as a specific threat to the southwestern Washington/Columbia River DPS (64 FR 16407). These include overutilization for commercial, recreational, scientific, or educational purposes (recreational angling, by catch in recreational and commercial harvest of other species, and scientific or educational uses); predation; some regulatory mechanisms (dredge, fill, and inwater construction programs and water quality programs); climate and catastrophic natural events, and hybridization. We evaluated the latest information on each of these potential threats and conclude that they are still not considered a threat at this time.

Cutthroat trout are not harvested commercially within the DPS. Scientific and educational programs likely have little impact on these populations and recreational fishing under current regulations does not represent a significant threat to the DPS of cutthroat trout. No introduced diseases have been documented in coastal cutthroat trout populations within the DPS and there is no evidence of significant, elevated loss of wild cutthroat trout to native disease in the DPS at this time. No specific information exists regarding predation impacts by predatory fishes on cutthroat trout, though it is reasonable to assume some predation does occur. We have no evidence that aquatic predators have significantly reduced coastal cutthroat trout populations or represent a major threat to coastal cutthroat trout at this time. There is no evidence that mammal or bird predation represents a significant threat to the DPS of cutthroat trout at this time.

While regulation of dredge, fill, and in-water construction activities through the section 404 permit process in the DPS's range may not eliminate all adverse effects to the riparian and aquatic environment, we conclude that it should provide significant protection for aquatic resources, and the ability for us to track continuing effects through the review of permit applications. The remaining risks from cumulative effects are likely to be small in the short term and we do not anticipate that the cumulative effects of these small projects will reach a level at which they would be likely to result in the DPS of coastal cutthroat trout becoming endangered in the foreseeable future. Current standards established by Oregon under the CWA should result in significant improvements in habitat conditions for native fish.

The proposed rule stated that drought and climate condition resulting in decreased ocean productivity might have compounded degraded freshwater habitat (64 FR 16403). These types of climate changes are natural, long-term cycles and coastal cutthroat trout are likely adapted to this variation. Therefore, these climate cycles would not be expected to significantly threaten coastal cutthroat trout in the foreseeable future. There is no evidence that drought or other climate cycles have significantly reduced spawning, rearing, or migration habitat for the DPS.

Hybridization with other species could affect coastal cutthroat trout. The most recent hybridization studies within southwest Washington and the Columbia River indicate that hybridization occurs in scattered locations, but generally at low levels throughout the range of coastal cutthroat. Coastal cutthroat trout, unlike most other cutthroat trout subspecies, evolved in contact with rainbow/steelhead trout and it is likely that the long evolutionary association of rainbow and coastal cutthroat trout would have led to isolating mechanisms that would minimize the occurrence of hybridization. This means there is a low potential risk of hybridization significantly affecting coastal cutthroat trout. The few areas observed with high levels of hybridization are isolated and scattered, and do not appear to represent a widespread threat to coastal cutthroat trout at this time.

A few potential threats were not described in the subspecies-wide review of listing factors in the proposed rule (64 FR 16402) or identified as a DPS-specific threat to the southwestern Washington/Columbia River DPS. These include losses of habitat to agriculture and livestock management, dams and barriers, urban and industrial development, and mining. We evaluated the latest information on each of these potential threats and concluded that they are still not a significant threat at this time.

While populations of some portions of the DPS of coastal cutthroat trout are likely at lower-than-historic levels and probably still declining, recent changes in regulations have reduced threats to the DPS as a whole. This, and the latest information indicating relatively healthy-sized total populations (all life history strategies) in a large portion (75 percent) of the DPS's range, and the production of anadromous trout from residents, lead us to conclude that the DPS of coastal cutthroat trout is not in danger of becoming endangered in the foreseeable future and, therefore, does not meet the definition of a threatened species at this time. Therefore, we withdraw the April 5, 1999, proposed rule (64 FR 16397) to list the coastal cutthroat trout population in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls, as threatened. We will continue to monitor the conditions of the coastal cutthroat trout in southwest Washington and the Columbia River. In the event that conditions or threats change and the species becomes imperiled, we could again propose to list the species as endangered or threatened under the Act. We will continue to provide technical assistance to Federal, State, and other entities and encourage them to address the conservation needs of the coastal cutthroat trout. We will continue to work with these agencies and entities to collect additional biological information, monitor the status of coastal cutthroat trout, and monitor the progress of conservation efforts for the DPS.

References Cited

A complete list of all references cited is available upon request from the Oregon Fish and Wildlife Office (*see* **ADDRESSES**).

Authors

The primary authors of this document are Robin Bown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES**) and Scott Craig, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Lacey, WA 98503.

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 24, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

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Part III

Securities and Exchange Commission

17 CFR Parts 210 and 229

Framework for Enhancing the Quality of Financial Information Through Improvement of Oversight of the Auditing Process; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 229

[Release Nos. 33–8109; 34–46120; 35–27543; IA–2039; IC–25624; File No. S7–24–02]

RIN 3235–AJ41

Framework for Enhancing the Quality of Financial Information Through Improvement of Oversight of the Auditing Process

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing a framework for enhancing the quality of financial information through improvement of oversight of the auditing process. The proposals would establish a private sector system of regulatory oversight directed by representatives of investors and issuers, not self-regulation by the profession. The proposals would require registration with a public accounting oversight board, and would require the board to establish auditing and quality control standards, conduct inspections of registered accounting firms, and investigate and discipline registered accounting firms and their associated persons. The proposals would require registered accounting firms to cooperate with the board's oversight activities, and would require the board to cooperate with the Commission's oversight activities. The proposals would require registered accounting firms to make certain reports to the board and to the Commission, and would require the board to make certain reports to the Commission. The proposals would require registered accounting firms to maintain certain records, and would require the board to maintain certain records. The proposals would require registered accounting firms to make certain disclosures to their clients, and would require the board to make certain disclosures to the Commission. The proposals would require registered accounting firms to maintain certain records, and would require the board to maintain certain records. The proposals would require registered accounting firms to make certain disclosures to their clients, and would require the board to make certain disclosures to the Commission.

DATES: Comments should be received on or before September 3, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

been sanctioned as a member accountant by a PAB within the last five years and the sanction has not been reversed, suspended, or vacated.

invest their savings in the securities of public companies and thereby make capital allocation decisions in reliance on the financial statements of those companies. If investors lack confidence in the reliability of the information presented, the fundamental purposes of the federal securities laws—to protect investors and promote efficient markets—are thwarted.

Effective oversight of the accounting profession is critical to quality financial

These factors highlight longstanding deficiencies in the regulatory system used to oversee the quality of the audits and reviews of financial statements that are filed with the Commission and relied on by investors and the Commission. These factors, among others, have contributed to a consequent decline in investor confidence, and provide the impetus for the Commission's proposals.

We are proposing a new system of

well as others discussed in more detail below, are the foundation of our proposals:

- Private Sector System of Regulatory Oversight. The accounting profession would be subject to a private sector system of regulatory oversight directed by representatives of investors and issuers, not self-regulation by the profession.
- Requirements as to Financial Statements. To assure that the benefits

recognition by the Commission would include a PAB's irrevocable consent to the continuous oversight function by the Commission.

- *Cooperation with a PAB.* To remain in "good standing," accounting firms, individual accountants, companies, and companies' management would cooperate with PAB quality control reviews, supplemental reviews, and disciplinary proceedings.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 229

[Release Nos. 33–8109; 34–46120; 35–27543; IA–2039; IC–25624; File No. S7–24–02]

RIN 3235–AJ41

Framework for Enhancing the Quality of Financial Information Through Improvement of Oversight of the Auditing Process

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is proposing rules designed to restore investors" faith in the financial information that they rely on for their investment decisions. The proposed rules reform oversight and improve accountability of auditors of public companies, thereby enhancing the reliability and integrity of the auditing and financial reporting processes. Under the proposed rules, a registrant's financial statements will not comply with the requirements of the securities laws and Commission rules and regulations thereunder unless the registrant's independent accountant is a member of a Public Accountability Board ("PAB"), and the registrant engaging the accountant to audit or review financial statements or prepare attestation reports that are filed with the Commission is an adjunct member of the same PAB to which the accountant belongs.

To improve oversight of and investor confidence in the quality of financial reports filed with the Commission, the Commission will not recognize a PAB unless the PAB meets certain conditions and performs certain functions. A PAB must have a Board that is dominated by persons who are not members of the accounting profession and must be subject to the Commission's oversight. A PAB must be committed to improving the quality of financial statements relied on by investors and the professional conduct of accountants by, among other things, directing periodic reviews of accounting firms' quality controls over their accounting and auditing practices and, when appropriate, disciplining accountants. A PAB also would set, or rely on and oversee designated private sector bodies to set, audit, quality control, and ethics standards. Disclosure would be required in Commission filings if an executive officer, director, or director nominee of a registrant has been sanctioned as a member accountant by a PAB within the last five years and the sanction has not been reversed, suspended, or vacated.

DATES: Comments should be received on or before September 3, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–24–02. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Samuel L. Burke, Associate Chief Accountant, Bert W. Mehrer, Assistant Chief Accountant, or Robert E. Burns, Chief Counsel, Office of the Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: We are proposing to amend rule 1–02 [2] and rule 2–01 [3] of Regulation S–X, add new rules 13–01 through 13–07 to Regulation S–X,[4] and amend item 401 [5] of Regulation S–K.

I. Executive Summary

Congress, through the federal securities laws, imposed on public companies the obligation to disclose complete and accurate financial information. Cognizant of the lessons of history, however, Congress built into the securities laws a significant safeguard: requirements that a public company's financial information filed with the Commission be audited by certified or public accountants that are independent of that company.

The investing public and the Commission must rely on the competence, ethics, and independence of accountants who certify the financial statements of public companies. People invest their savings in the securities of public companies and thereby make capital allocation decisions in reliance on the financial statements of those companies. If investors lack confidence in the reliability of the information presented, the fundamental purposes of the federal securities laws—to protect investors and promote efficient markets—are thwarted.

Effective oversight of the accounting profession is critical to quality financial information and trust in and reliance on that information. By having effective oversight, investors are assured that skilled, disinterested professionals operating under high ethical standards and strict quality control procedures are auditing financial statements. Strong oversight helps to strengthen audit practice and to detect and deter weaknesses that could detract from an accountant's ability to fulfill the goal of having financial statements audited by competent, independent accountants. Further, when oversight is compromised, the quality of financial information can be affected, and investors' trust in the quality of financial information is compromised as well.

The current system of oversight has not produced a credible result. Flaws in the system have contributed to the confluence of several factors that have undermined investor confidence in financial information and market efficiency.[6] Those factors include:

- The dramatic and sometimes sudden reversals of public companies' financial conditions, with corresponding significant financial losses by investors and pensioners;
- Revelations of accounting irregularities at public companies, including large and seemingly well-regarded companies;
- The number of restatements of financial information by public companies;
- Increasing pressures on company management and auditors in today's economic environment;
- Continuing concerns about the oversight of the accounting profession, including issues regarding the independence and effectiveness of the current peer review and disciplinary processes; and
- The ineffectiveness of the Public Oversight Board ("POB") that had overseen the peer review system of public accountants.

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 210.1–02.

[3] 17 CFR 210.2–01.

[4] 17 CFR 210.13–01–13.07.

[5] 17 CFR 229.401.

[6] *See, e.g.*, Matt Krantz and Greg Farrell, *Fuzzy accounting raises flags*, USA Today, June 22, 2001, at 1B (quoting an individual investor, "I almost don't believe any numbers I read anymore"); Rebecca Byrne, *Audit Business Nearing Crisis of Faith*, TheStreet.com, Dec. 10, 2001.

These factors highlight longstanding deficiencies in the regulatory system used to oversee the quality of the audits and reviews of financial statements that are filed with the Commission and relied on by investors and the Commission. These factors, among others, have contributed to a consequent decline in investor confidence, and provide the impetus for the Commission's proposals.

We are proposing a new system of independent private sector regulation designed to improve oversight of the auditing process and strengthen investor confidence in financial information. The accounting profession would not and could not control or dominate the proposed system. Rather, instead of a body that functions under the aegis of the American Institute of Certified Public Accountants ("AICPA"), which represents the accounting profession, we propose to create a framework for a new independent, private sector body (or bodies) that we have termed a "Public Accountability Board" ("PAB").[7]

Among other things, a PAB would discipline accounting firms and individual accountants for unethical or incompetent conduct or other violations of professional standards. A PAB would also direct periodic reviews of accounting firms' quality controls for their accounting and auditing practices. A PAB would supplement, not supplant, our enforcement efforts. We would continue vigorously to investigate and pursue instances of accounting misconduct. The new system would expand the opportunities to detect and remedy ethical lapses or deficiencies in competence, or violations of professional standards, thereby complementing our enforcement efforts.

Based on public input we have received to date, and our own experience, we have identified certain key elements of a new framework to improve oversight of the accounting profession. We believe that these elements will promote investor confidence in the financial reporting process.[8] The following elements, as well as others discussed in more detail below, are the foundation of our proposals:

- Private Sector System of Regulatory Oversight. The accounting profession would be subject to a private sector system of regulatory oversight directed by representatives of investors and issuers, not self-regulation by the profession.
- Requirements as to Financial Statements. To assure that the benefits of the oversight process extend to investors in all public companies:
- An SEC registrant's financial statements would not comply with Commission requirements unless the registrant's accountants who audited or reviewed those statements were members of a PAB; and
- An SEC registrant's financial statements would not comply with Commission requirements unless the registrant were a member of, and thereby bound to cooperate in any review or proceeding commenced by, the same PAB as its accountants.[9]
- *Independent Board.* To ensure independence from the accounting profession that it would oversee, a PAB would be a diverse board, dominated by persons who are not associated with the accounting profession.
- *Independent and Dependable Funding Source.* To assure continuity and independence, a PAB would have a dependable, uninterrupted funding source and not be voluntarily or solely funded by members of the accounting profession. A PAB's operations would be funded through the assessment of fees on accounting firms who are members of the PAB and on the audit clients of those firms—a funding mechanism that is not controlled by the accounting profession.
- *SEC Oversight.* Because a PAB would serve an important public function, a private entity could not serve as a PAB unless it was recognized by the Commission after Commission review of, among other things, the entity's proposed structure, its charter, by-laws, budget, and proposed board members. Conditions of a PAB's recognition by the Commission would include a PAB's irrevocable consent to the continuous oversight function by the Commission.
- *Cooperation with a PAB.* To remain in "good standing," accounting firms, individual accountants, companies, and companies' management would cooperate with PAB quality control reviews, supplemental reviews, and disciplinary proceedings.
- *PAB Quality Control Reviews.* A PAB would perform quality control reviews of audit procedures and practices. To maintain high standards of auditing, ethics, and quality control among its members, a PAB would perform periodic quality control reviews of its member accounting firms. In conducting reviews, a PAB would ensure that accounting firms have quality control policies and procedures regarding, among other things: (i) independence, integrity, and objectivity; (ii) personnel management; (iii) acceptance and continuation of clients; (iv) audit performance; (v) audit methodology; and (vi) consultation and resolution of differences of professional opinion. A PAB would perform annual reviews of large accounting firms.
- *PAB Disciplinary Powers.* A PAB would conduct public disciplinary proceedings and would have the ability to discipline accountants for unethical or incompetent conduct or other violations of professional standards. A PAB would be able to impose a wide range of disciplinary or remedial sanctions, including:
  - Fines;
  - Censures;
  - Required remediation;
  - Removal of an individual or termination of a firm from an audit engagement;
  - Limitations on certain activities; and
  - Suspension or disbarment from membership in a PAB.
- *Audit Standard Setting.* A PAB should have responsibility for assuring high standards of ethics, auditing, and quality controls for its members. A PAB should either set such standards or oversee any private sector bodies designated to set standards.

[7] Under our proposals, more than one PAB could be formed. For purposes of this release, however, we will refer to PABs in the singular.

[8] *See, e.g.*, Transcripts from the public Roundtables that the Commission sponsored on *Assuring Adequate Oversight of Auditing Function* held on March 4, and 6 and April 4, 2002, in New York, Washington, DC and Chicago, respectively ("SEC Roundtables"). Transcripts of the SEC Roundtables are available through the Commission's web site: www.sec.gov. Participants included: On March 4, Robert Mundheim (moderator), William Allen, Warren Buffet, James Copeland, David Shedlarz, Melvyn Weiss; on March 6, Judge Stanley Sporkin (Ret.) (moderator), Robert Glauber, Neil Lerner, Professor Jonathan Macey, Ted White; on April 4, J. Carter Beese, Jr. (moderator), Ken Bertsch, Davis Costello, Professor Dan Fischel, Barbara Franklin, and Edward Nusbaum. The Commission also held an Investor Summit ("Investor Summit") at which it received valuable input. The webcast of the Investor Summit is available at www.connectivo.com/events/secsummits/.

[9] As we discuss in detail below, a PAB will require a registrant's cooperation only to the extent necessary to further a PAB's reviews or proceedings regarding the registrant's accountant. A PAB will not conduct "roving" investigation of registrants and will not sanction registrants.

II. The Pressing Need To Improve Oversight of, and Restore Confidence in, the Auditing and Financial Reporting Processes

A. The Federal Securities Laws Contemplate, and Their Effective Application Depends Upon, the Existence of Mechanisms for Adequate Oversight of the Auditing Component of the Financial Disclosure Process

certified public accountants.[12] Without an unqualified audit opinion from an accounting firm,[13] a Commission registrant or issuer in an initial public offering has not satisfied and cannot satisfy the statutory and regulatory requirements for audited financial statements, its filings are deficient under the securities laws, and it cannot sell securities to the public or file its annual reports in conformity with

that Commission registrants and issuers *must* engage before making a public offering of or having a public market for their securities. That alone is a significant indication of legislative intent concerning the critical role of the auditing process, but Congress did not stop by describing the required professionals merely as "accountants." Rather, the securities laws qualify that term so that accountants auditing the

comments on a great many filings, it does not, cannot, and should not perform the extensive audit or review procedures that auditors must perform under GAAS. In addition, the volume of financial information filed with us far exceeds what the Commission staff can meaningfully review. We, therefore, must rely heavily on the accounting profession, as Congress intended, to ensure and enhance the integrity of the large volume of financial information

inefficient capital allocation in the markets.

B. Current Oversight Mechanisms Do Not Meet Their Objectives

Several factors lead us to consider whether the accounting profession's self-regulatory oversight mechanisms, on which the markets and we have previously been willing to rely, do not meet the necessary objectives. For the reasons described below, we conclude

confidence in the financial reporting process.

Through the 1990s, such restatements, as well as allegations of accounting irregularities at companies such as Miniscribe and Phar-Mor, and more recently at companies such as Rite-Aid, Cendant, MicroStrategy, Sunbeam, McKesson HBOC, Waste Management, and Xerox have caused increasing concern. The bankruptcy of Enron Corporation last year, which was the

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II. The Pressing Need To Improve Oversight of, and Restore Confidence in, the Auditing and Financial Reporting Processes

A. The Federal Securities Laws Contemplate, and Their Effective Application Depends Upon, the Existence of Mechanisms for Adequate Oversight of the Auditing Component of the Financial Disclosure Process

It is no mystery what problem Congress intended to remedy—and believed it was remedying—by seeking to insure that issuers provide investors with "complete information relative to the financial condition of the issuer." [10] As the Senate Report on the Securities Exchange Act of 1934 ("Exchange Act") described:

> The committee has repeatedly heard testimony illustrating the evasions, suppressions, distortions, exaggerations, and outright misrepresentations practiced by corporations with intent to cloak their operations and to present to the investing public a false or misleading appearance as to financial condition. The chairman of the committee on stock list of the New York Stock Exchange testified that * * * [in one case] practically all the assets of the company consisted of notes receivable, good will, and licenses arbitrarily valued at grossly exaggerated figures. The testimony also established that within a period of a few days the assets of the company were written up 100 percent in value. In another case brought to the attention of the committee, the assets of a company were marked up from $4,000,000 to $24,000,000. A memorandum prepared by a corporate official was introduced in evidence which discussed the alternatives of preparing the corporation's annual report in either the 'standard' or the 'understandable'; form, the decision being in favor of the former. Many other instances of 'window dressing' were observed, where inexcusable methods were employed to inflate assets, obscure liabilities, and conceal deficits.[11]

We begin from the premise that, through the securities laws' requirements related to financial disclosure, Congress intended to address these issues directly and forcefully. Congress did so by prescribing certain general statutory requirements and delegating to the Commission the regulatory flexibility to implement those requirements and to adopt regulations in furtherance of the statutes' purposes.

Those statutory prescriptions include requirements that public companies' financial information filed with us be certified by independent public or certified public accountants.[12] Without an unqualified audit opinion from an accounting firm,[13] a Commission registrant or issuer in an initial public offering has not satisfied and cannot satisfy the statutory and regulatory requirements for audited financial statements, its filings are deficient under the securities laws, and it cannot sell securities to the public or file its annual reports in conformity with Commission rules. Furthermore, without an accounting firm's review of a registrant's quarterly financial statements,[14] a registrant cannot not file its quarterly reports in conformity with Commission rules.[15] Accounting firms also must prepare attestation reports related to the internal controls of certain broker dealers,[16] investment companies,[17] transfer agents,[18] and others.[19]

Under the statutory scheme, accountants are the only professionals that Commission registrants and issuers *must* engage before making a public offering of or having a public market for their securities. That alone is a significant indication of legislative intent concerning the critical role of the auditing process, but Congress did not stop by describing the required professionals merely as "accountants." Rather, the securities laws qualify that term so that accountants auditing the financial statements of public companies are both subject to oversight intended to facilitate a high level of competence—reflected in the statutory requirement to be "certified public" or "public"—and disinterested in any outcome of the audit process other than getting reliable information to the public—reflected in the statutory requirement to be "independent." [20] The securities laws supplement those safeguards by giving the Commission significant flexibility to make rules and regulations bearing on public companies' financial disclosures, including the methods and forms employed in making those disclosures.

The Commission relies on certified financial statements, and consequently on the competence, ethics, and independence of accountants, to protect its processes and carry out its mandate.[21] While our staff reads and

[10] S. Rep. No. 73–792, 1934 WL 1289 at *10 (Apr. 17, 1934) (Senate Report on Securities Exchange Act of 1934).

[11] *Id.* at 11.

[12] For example, Items 25 and 26 of Schedule A to the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77aa(25) and (26), and Section 17(e) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78q(e), expressly require that financial statements be audited by independent public or certified accountants. Sections 12(b)(1)(J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78*l*(b) and 78m(s)(2), Sections 5(b)(2)(H) and (I), 10(a)(1)(G), and 14 of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. 79e(b), 79j(a)(1)(G), and 79n, Sections 8(b)(5) and 30(e) and (g) of the Investment Company Act of 1940 ("ICA"), 15 U.S.C. 80a–8(b)(5) and 80a–29, and Section 203(c)(1)(D) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. 80b–3(c)(1)(D), authorize the Commission to require the filing of financial statements that have been audited by independent public accountants.

[13] "An unqualified opinion states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles." AICPA, Statements on Auditing Standards ("SAS") No. 58, Codification of Statements on Auditing Standards ("AU") § 508.10.

[14] The proposed rules would define "review" in this context to mean a review of financial statements in accordance with generally accepted auditing standards ("GAAS"), as may be modified or supplemented by the Commission. A review includes procedures that are less in scope than an audit, and consists generally of inquiries and analytical procedures, rather than research and verification procedures. *See*, SAS No. 71, AU § 722 (as revised by SAS No. 90).

[15] Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d), which states in part, "Prior to filing, interim financial statements included in quarterly reports on Form 10–Q (17 CFR 249.308(a)) must be reviewed by an independent public accountant using professional standards and procedures for conducing such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission."

[16] 17 CFR 240.17a–5(g), (h), and (j).

[17] Form N–SAR, item 77B; 17 CFR 274.101.

[18] 17 CFR 240.17Ad–13.

[19] *See, e.g.*, Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) regarding clearing agencies and Exchange Act Release No. 24218 (Mar. 13, 1987), 52 FR 8998 (Mar. 20, 1987) regarding depository trust companies.

[20] The Supreme Court has recognized and underscored the significant and unique role in which the securities laws cast accountants that audit public companies. In declining to extend to accounting firms certain confidentiality protections available to attorneys representing a client and preparing for trial, the Court emphasized that:

> [a]n independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client * * * [and] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public.

United States v. *Arthur Young & Co.*, 465 U.S. 805, 817–18 (1984). The Court further noted that, pursuant to the securities laws, "The SEC requires the filing of audited financial statements in order to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the Nation's industries." *Id.* at 819 n.15.

[21] In this regard, the Commission adopted Rule 102(e) of our Rules of Practice to protect the integrity of Commission processes. 17 CFR 201.102(e). *See, e.g., Touche Ross & Co.* v. *SEC*, 609 F.2d 570, 582 (2d Cir. 1979) (upholding the predecessor to Rule 102(e) as "reasonably related" to the purposes of the securities laws, in part because the rule "provides the Commission with the means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence").

To protect its own processes, and by extension the investing public, the Commission vigorously pursues violations of professional standards. We have initiated Rule 102(e) proceedings when auditors failed to adhere to professional standards.

comments on a great many filings, it does not, cannot, and should not perform the extensive audit or review procedures that auditors must perform under GAAS. In addition, the volume of financial information filed with us far exceeds what the Commission staff can meaningfully review. We, therefore, must rely heavily on the accounting profession, as Congress intended, to ensure and enhance the integrity of the large volume of financial information that forms the cornerstone of our full disclosure system.[22]

In sum, investors and the Commission rely on accountants to assure disclosure of accurate and reliable financial information. As a result, "[b]reaches of professional responsibility jeopardize the achievement of the objectives of the securities laws and can inflict great damage on public investors." [23] Effective oversight of the accounting profession therefore is critical to protecting the public interest and preventing this "great damage" to investors.

We are concerned that we are today facing some of the same problems that Congress sought to address in the 1930s when the federal securities laws were enacted. Certainly there is evidence of a public perception that these problems are recurring with disconcerting, and unacceptable, frequency.[24] It falls to the Commission to try to identify the causes of the problem, and, to the extent possible, craft solutions consistent with its statutory mandate.

We have carefully considered the causes. For the reasons described below, we believe that the oversight mechanism for insuring that public companies have their financial statements audited by skilled, disinterested professionals operating under high ethical standards and strict quality control procedures is not working as intended. We are concerned that the deficiencies in that mechanism frustrate the financial disclosure purpose of the securities laws, undermine investor confidence in financial disclosures, and contribute to inefficient capital allocation in the markets.

B. Current Oversight Mechanisms Do Not Meet Their Objectives

Several factors lead us to consider whether the accounting profession's self-regulatory oversight mechanisms, on which the markets and we have previously been willing to rely, do not meet the necessary objectives. For the reasons described below, we conclude that the self-regulatory mechanisms are not producing credible results, and that this failure may be linked to features that cannot realistically be expected to change through further self-regulation or minor changes to the current oversight mechanism.

The factors that concern us include the recent increases in the number of public companies restating their financials, revelations of serious financial difficulties at a variety of companies, a closed-door professional disciplinary process, and serious questions related to the current system of firm-on-firm "peer reviews" as a check on accountants' quality control processes.[25] The need for significant structural reforms in the oversight process to protect the public has been suggested by several people.[26]

As noted, one indication of the need for an enhanced regulatory structure is the increase in the number of restatements in recent years. According to a recent study, in the last three years more than 700 companies have restated earnings.[27] While there are many reasons for these restatements, we are concerned that they contribute to investor confusion and weaken investor confidence in the financial reporting process.

Through the 1990s, such restatements, as well as allegations of accounting irregularities at companies such as Miniscribe and Phar-Mor, and more recently at companies such as Rite-Aid, Cendant, MicroStrategy, Sunbeam, McKesson HBOC, Waste Management, and Xerox have caused increasing concern. The bankruptcy of Enron Corporation last year, which was the largest bankruptcy in history and resulted in substantial financial losses to investors and pensioners, has dramatically heightened the public attention given to those concerns, posing a critical threat to investor confidence in financial information generally.[28]

To the extent that restatements and accounting irregularities suggest a failure of those in the accounting profession to perform consistently with sufficient skill and competence,[29] we are concerned that inherent limitations in the existing oversight mechanism prevent that mechanism from doing all that is required to curb such lapses. For example, the existing self-regulatory mechanism has not through its system of peer review uncovered significant deficiencies in competence, and it does not, and probably cannot, include the power to suspend incompetent individuals altogether from providing audit, review, or attest services to public companies.

While some aspects of the existing system are plainly beneficial, including, for example some portions of the Quality Control Inquiry Committee ("QCIC") process,[30] the profession's

For example, we sanctioned auditors under Rule 102(e) for not appropriately responding to warning signals pointing to client fraud (*see, e.g., In the Matter of Nanette Miller*, Accounting and Auditing Enforcement Release No. ("AAER") 1241 (Mar. 29, 2000); *In the Matter of Laubscher and Griffin*, AAER 1082 (Sept. 29, 1998)), and when they have failed to obtain the specialized knowledge necessary to perform an audit (*see, e.g., In the Matter of Ruzicka*, AAER 1155 (Aug. 24, 1999).

[22] The courts have recognized this regulatory regime. *Touche Ross*, 609 F.2d at 581.

[23] *Id.*

[24] *See, e.g.*, Nanette Byrnes, *Accounting Failures Aren't New—Just More Frequent*, Bus. Wk., Jan. 28, 2002, at 46.

[25] During the initial stages of the Commission's consideration of these issues, the profession's vehicle for oversight of the peer review system was the POB, until it voted to disband, and as of April 30, 2002, ceased official operations. The AICPA's SEC Practice Section (for firms that audit financial statements filed with the Commission) ("SECPS") has indicated that, notwithstanding the POB's decision to terminate operations, the SECPS will continue its peer review and QCIC programs until such time as a new regulatory model replaces them. The SECPS also has indicated that it will continue to fund the oversight operations of the POB staff (now called the Transition Oversight Staff, or TOS) during this transition period. Letter from Robert J. Kueppers, Chair, to Robert K. Herdman, Chief Accountant (Feb. 15, 2002). *See also* SEC Press Release No. 2002–40 (Mar. 19, 2002) regarding the TOS's continuing review of certain accounting firms' quality control systems for assuring compliance with auditor independence requirements.

[26] *See generally* Section II.C. below.

[27] One recent study identified 234 restatements in 1999, 258 restatements in 2000, and 305 restatements in 2001. Huron Consulting Group, *A Study of Restatement Matters: For the Five Years Ended December 31, 2001*, at 8 (June 11, 2002). *See also* Jim McTague, *Fixable Flaws*, Barron's, Jan. 7, 2002, at 16.

[28] During the 1990s, federal banking regulators reviewed the performance of accounting firms in relation to the savings and loan crisis of the late 1980s and early 1990s. Accounting firms' settlements of actions pending before the Office of Thrift Supervision included, among other things, increased training requirements for individuals working on audits of financial institutions, work paper retention requirements, additional consultation procedures within the firms, and the payment of significant restitution to the Federal Deposit Insurance Corporation and Resolution Trust Corporation. *See In the Matter of Ernst & Young*, OTS Order No. AP 92–127 (Nov. 23, 1992); *In the Matter of Deloitte & Touche*, OTS Order No. AP 94–13 (Mar. 14, 1994); *In the Matter of KPMG Peat Marwick*, OTS Order No. AP 94–37 (Aug. 9, 1994); *In the Matter of Grant Thornton, L.L.P.*, OTS Order No. AP 96–30 (Oct. 3, 1996).

[29] *See* Janet Whitman, *For Competence, Accounting Gets "D" in New Poll*, Wall St. J., Apr. 10, 2002, at A7; *Accounting Faces Crisis of Competence, Not Integrity; "Andersen-itis" Isn't What Ails the Industry*, Newstream.com, Apr. 10, 2002 (surveyed companies indicated accountants lack competence in certain technical areas).

[30] Under the membership requirements of the SECPS, after receiving service of a complaint in any litigation against the firm or its personnel, or the

Continued

ability to discipline or remedy incompetent or unethical conduct has been a persistent concern.[31] The profession's disciplinary program continues to suffer from several inherent weaknesses, including:

- *Peer reviews may not consistently be as thorough as necessary.* Peer review is the process by which other accountants assess and test compliance with quality control systems for the

to the public of peer reviewers' findings.[33] For many years, we had stated in our Annual Report that the peer review and QCIC processes resulted in accounting firms "focusing on and achieving the important goal of maintaining and improving effective quality control systems."[34] Because of our growing concerns, however, we intentionally did not include that statement in our 1999, 2000, and 2001

C. The Need for Reform Is Widely Recognized

Investor confidence in the quality of financial information is critical, and it is directly linked to investor confidence in the quality of audits.[37] As a participant in the Commission's Roundtables stated:

> [T]he public should have real confidence that their interest is being looked after in the mechanism for regulating the profession, and disciplining the members of the profession,

ethics principles by punishing individual offenders.[39]

In addition, the Commission recently held the SEC Roundtables to discuss a variety of issues relating to the financial reporting process, including auditor oversight and held an Investor Summit.[40] Participants in our Roundtables represented a variety of constituencies. Participants provided us with the benefit of extensive and diverse insights into the issues confronting the

encouraged the development of a stronger body that plays a more active role in the oversight of quality control reviews and professional discipline. Former SEC Chairman Arthur Levitt also has called for a new oversight body. In his testimony before the Senate Committee on Governmental Affairs, he supported a "truly independent" non-governmental oversight body that has the power to conduct timely investigations and to discipline

important, its connection to the AICPA creates an appearance of control by that body.[47]

Former SEC Chief Accountants and other leaders of the accounting profession also have stated publicly that a new regulatory body is needed.[48] Mr. James Turley, Chairman of Ernst & Young LLP, recently stated in an op-ed article in The Wall Street Journal:

> [W]e should create a new regulatory body for the profession. It should have its own

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ability to discipline or remedy incompetent or unethical conduct has been a persistent concern.[31] The profession's disciplinary program continues to suffer from several inherent weaknesses, including:

• *Peer reviews may not consistently be as thorough as necessary.* Peer review is the process by which other accountants assess and test compliance with quality control systems for the accounting and auditing practices of SEC Practice Section ("SECPS") members. The objectives of peer review are to determine whether the reviewed firm: (i) designed its system to meet Quality Control Standards established by the AICPA; (ii) complied with its quality control system to provide reasonable assurance of complying with professional standards; and (iii) complied with SECPS membership requirements. Upon the completion of a review the peer reviewer prepares a report and a letter of comments, which may recommend improvements to the firm's system of compliance. On occasion, firms have received "clean" peer review reports despite well-publicized problems within a firm. For example, a report published by an independent consultant noted one firm had numerous violations of the auditor independence rules,[32] yet the next peer review report on the firm mentioned neither the need for improvements in the firm's quality controls in this area nor the efforts the reviewed firm had underway to make those improvements. Our staff has provided the POB with comments on peer reviews with the goal of improving the process and achieving more understandable communications to the public of peer reviewers' findings.[33] For many years, we had stated in our Annual Report that the peer review and QCIC processes resulted in accounting firms "focusing on and achieving the important goal of maintaining and improving effective quality control systems."[34] Because of our growing concerns, however, we intentionally did not include that statement in our 1999, 2000, and 2001 Annual Reports.

• *The disciplinary process is voluntary.* The disciplinary program is conducted within the auspices of the AICPA, which is a voluntary private sector organization dominated by accounting firms.

• *There is no independent and dependable funding source.* During discussions about the POB's reviews of the firms' systems of quality controls over auditor independence, the SECPS took the unprecedented step of threatening to halt the funding for the POB's reviews.

• *The disciplinary process relies solely on information gathered from accountants.* The process is generally limited to reviewing information obtained from the accountants and does not include obtaining information from third parties, such as management of the audit client. As Norman R. Walker, former chairman of an AICPA disciplinary panel has said, "Basically we're confined to looking at the [public] record and the information that the [member] is able to provide and willing to provide."[35]

• *Sanctions are weak.* The most stringent sanction in an AICPA proceeding is expulsion from the AICPA, which does not directly affect an accountant's ability to practice before the Commission or elsewhere.[36]

• *The disciplinary proceedings are not public.* AICPA disciplinary proceedings are conducted behind closed doors and, while improvements have been made in the public reporting of sanctions, limited information is available regarding the results of its proceedings.

C. The Need for Reform Is Widely Recognized

Investor confidence in the quality of financial information is critical, and it is directly linked to investor confidence in the quality of audits.[37] As a participant in the Commission's Roundtables stated:

> [T]he public should have real confidence that their interest is being looked after in the mechanism for regulating the profession, and disciplining the members of the profession, setting professional standards. All of those. They want to know that the way that this is done is going to look after their interests, and not just the interests of the body of the individuals who practice in that profession.[38]

Because of the above-described concerns, calls for improved oversight of the accounting profession have become more urgent.

Congress, the Commission, and many others have questioned whether weaknesses inherent in the profession's self-regulatory process limit its ability to improve sufficiently the performance of audits of public companies. More generally, strong public sentiment has emerged calling for more effective oversight. The connection between that oversight and investor confidence has never been as pronounced as it is today.

The need for reform has been highlighted by President George W. Bush. On March 7, President Bush announced a ten-point plan to improve corporate disclosure, make corporate officers accountable, and develop a stronger and more independent audit system. In discussing the latter point, President Bush stated:

> An independent regulatory board should ensure that the accounting profession is held to the highest ethical standards. Under this proposal, an independent regulatory board would be established, under the supervision of the SEC, to develop standards of professional conduct and competence. This board would have the ability to monitor, investigate, and where needed, enforce its ethics principles by punishing individual offenders.[39]

In addition, the Commission recently held the SEC Roundtables to discuss a variety of issues relating to the financial reporting process, including auditor oversight and held an Investor Summit.[40] Participants in our Roundtables represented a variety of constituencies. Participants provided us with the benefit of extensive and diverse insights into the issues confronting the profession's self-regulatory programs and how those programs should be improved.[41] For example, Mr. Ken Bertsch, Director, Corporate Governance, at Teachers Insurance and Annuity Association College Retirement Equities Fund ("TIAA–CREF"), noted his organization's lack of confidence in the current peer review process. Others, such as Mr. David Shedlarz, Chief Financial Officer, Pfizer Inc., offered constructive outlines of the attributes and duties for a new regulatory body. While our proposals are not identical to any one participant's suggested approach, the discussions at the Roundtables were very valuable in helping us to identify issues, consider alternatives, and frame the positions contained in our proposed rules.

Beyond our Roundtables, others have voiced concerns with the current self-regulatory system and called for reform. For example, the Consumer Federation of America has called for a complete overhaul of the profession's self-regulatory system.[42] The Financial Executives International ("FEI") also has recommended the creation of a new oversight body for the accounting profession.[43] The FEI has indicated that a majority of the new oversight body's board should be executives with knowledge in accounting and finance, but should not be drawn from the audit profession. FEI further has stated that the new body's principal tasks should be oversight of audits and discipline.[44]

Many other observers and members of the accounting profession have lost confidence in the efficacy of the SECPS programs overseen by the POB and have encouraged the development of a stronger body that plays a more active role in the oversight of quality control reviews and professional discipline. Former SEC Chairman Arthur Levitt also has called for a new oversight body. In his testimony before the Senate Committee on Governmental Affairs, he supported a "truly independent" non-governmental oversight body that has the power to conduct timely investigations and to discipline accountants. He also stated that the new body should operate in public—not behind closed doors—and, to preserve its integrity, the accounting profession should not fund the body.[45]

In addition, Harold Williams, who was the Chairman of the Commission at the time the SECPS and POB were created, stated in recent testimony before the Senate Committee on Banking, Housing, and Urban Affairs:

> Self-regulation, aggressively overseen, can be much more effective in enforcing the spirit of the rules than can a policing agency of government. However, it is evident that the existing structure is not adequate to the task and needs to be redesigned and strengthened * * *.
>
> The Public Oversight Board was created by the profession during my chairmanship as an effort at self-regulation. We expressed concern at the time whether the peer review process administered by the profession would be adequate. But, as believers in the principle of self-regulation, we concluded that the Board should have the opportunity to prove itself. In my opinion, the events over the intervening years have demonstrated that it does not meet the needs and is not adequate * * *. A system needs to be established which is independent of the accounting profession, transparent and able to serve both effective quality control and disciplinary functions.[46]

At the same hearing, former SEC Chairman David Ruder called for a new private sector regulatory system to oversee the accounting profession. In describing the deficiencies in the current system, he said:

> [A]lthough the POB's powers have been strengthened, it does not have sufficient budget to allow it to function effectively. It does not have the power to force accounting firms to provide the documents necessary to complete investigations * * *. It is forced to rely upon the accounting profession itself to engage in enforcement activities. Most important, its connection to the AICPA creates an appearance of control by that body.[47]

Former SEC Chief Accountants and other leaders of the accounting profession also have stated publicly that a new regulatory body is needed.[48] Mr. James Turley, Chairman of Ernst & Young LLP, recently stated in an op-ed article in The Wall Street Journal:

> [W]e should create a new regulatory body for the profession. It should have its own funding, offices and staff. It should have direct power over the profession's disciplinary and audit quality control programs, replacing the current "peer review" process in which firms review each other. To ensure maximum public credibility, this oversight should come from a body other than the American Institute of Certified Public Accountants, because many believe it has not maintained its historic focus on professional responsibility.[49]

Similarly, PricewaterhouseCoopers LLP, in letters to certain audit clients that are Commission registrants, stated, "[T]here is no question that the current regulatory structure is in need of reform."[50] It stated that changes that are especially critical include having oversight come from outside the accounting profession and involve more participative reviews by staff that is independent of the accounting firms. It

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commencement of any publicly announced regulatory investigation, that alleges deficiencies in the conduct of an audit of the financial statements of a Commission registrant, the firm must not only review the engagement to evaluate the performance of senior personnel with respect to the specific issues contained in the complaint but also report the matter to the QCIC. SECPS, *Requirements of Members*, at k; SECPS, *Appendix M—Procedures in Connection with an Alleged Audit Failure*, SECPS § 1000.46. The QCIC will review the matter and, if appropriate, refer it to the AICPA Professional Ethics Division, which will evaluate whether the matter warrants investigation.

[31] *See, e.g.*, David S. Hilzenrath, *Auditors Face Scant Discipline*, Wash. Post, Dec. 6, 2001, at A01; *See, e.g.*, John C. Burton, *The Evolutionary Revolution in Public Accounting*, 52 Brook. L. Rev. 1041, 1046–47 (1987) (Mr. Burton, former Chief Accountant to the SEC, commenting on the POB, has stated that "[w]hile the structure created was highly promising and the development of a regular process of peer review is very desirable, my own judgment is that the results have fallen short of expectations. In the first place, the emphasis on process and remedial actions has been too limiting. Peer reviews need to go beyond process to look at application of procedures and to develop a significant disciplinary process").

[32] *See* SEC Press Release No. 2000–4 (Jan. 6, 2000).

[33] *See, e.g.*, SEC, *Annual Report 2001*, at 90; SEC, *Annual Report 1999*, at 91. The SEC staff oversees the peer review and QCIC processes by periodically selecting at random a sample of peer reviews and evaluating working papers and POB oversight files related to those reviews. Our staff also reviews QCIC closed case summaries and related POB oversight files.

[34] *See, e.g.*, SEC, *Annual Report 1998*, at 74.

[35] David S. Hilzenrath, *Auditors Face Scant Discipline*, *supra* note 31.

[36] *AICPA, Official Releases: Organizational Structure and Functions of the SEC Practice Section of the AICPA Division for CPA Firms*, J. Acct., Nov. 1977, at 113, 115.

[37] *See Relationships Between Registrants and Independent Accountants*, Accounting Series Release No. 296 (Aug. 20, 1981), 46 FR 43181 (Aug. 27, 1981), which states in part:

> [T]he capital formation process depends in large part on the confidence of investors in financial reporting. An investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest. The quality of information disseminated in the securities markets and the continuing conviction of individual investors that such information is reliable are thus key to the formation and effective allocation of capital. Accordingly, the audit function must be meaningfully performed and the accountant's independence not compromised.

[38] EC Roundtables, *supra* note 8, at 37 (Mar. 6, 2002) (statement of Neil Lerner, Head of Risk Management (U.K.), KPMG).

[39] Specifics on the President's Ten-Point Plan (Mar. 7, 2002) are available at *http://www.whitehouse.gov/news/releases/2002/03/20020307.html*.

[40] *See supra* note 8 regarding the SEC Roundtables and Investor Summit.

[41] *Id.*

[42] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, at 6 (Mar. 20, 2002) (statement of Senator Howard M. Metzenbaum (Ret.), Chairman, Consumer Federation of America).

[43] FEI, *FEI Observations and Recommendations: Improving Financial Management, Financial Reporting and Corporate Governance* (Mar. 2002).

[44] *Id.* at 3.

[45] *The Fall of Enron: How Could It Have Happened?: Hearing Before the Senate Comm. on Governmental Affairs* (Jan. 24, 2002) (statement of Arthur Levitt, Chairman, Securities and Exchange Commission, 1993–2000).

[46] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Oversight Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Feb. 12, 2002) (statement of The Honorable Harold M. Williams, Chairman, Securities and Exchange Commission, 1977–81).

[47] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Oversight Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, at 8 (Feb. 12, 2002) (statement of David S. Ruder, Chairman, Securities and Exchange Commission, 1987–89)

[48] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Oversight of the Accounting Profession, Audit Quality and Independence, and Formulation of Accounting Principles: Hearing Before the Senate Comm. on banking, Housing, and Urban Affairs* (Feb. 26, 2002) (statement of Michael H. Sutton, Chief Accountant, Securities and Exchange Commission, 1995–98) which states: "Regulatory processes that will build confidence in the auditing profession will be truly independent; they will be open; they will actively engage, inform, and involve the public; they will be adequately resourced and empowered to accomplish their mission; and they will be amendable to change as events dictate. I believe that the critical ingredients of an effective regulatory process that can restore and maintain pubic trust include:

- Timely and thorough investigations of circumstances that may involve fraudulent financial reporting.
- Objective and fair assessments of the role and performance of the auditor.
- Timely and meaningful discipline of auditors and firms that violate acceptable norms of conduct.
- Regular oversight and periodic examinations of the policies and performance of independent auditors.
- Timely and responsive changes in professional standards and guidance when a need for improvements is identified."

[49] James S. Turley, *How Accounting Can Get Back Its Good Name*, Wall St. J., Feb. 4, 2002, at A16.

[50] Letters from Samuel A. DiPiazza, Jr., Chief Executive Officer, PricewaterhouseCoopers LLP to selected audit clients (Jan. to Feb. 2002).

also stated that the regulatory structure "needs teeth" and, "if an independent oversight body finds quality procedures lacking, it must have the right to revoke an individual's or firm's right to practice."[51]

Congress has introduced several bills that would create bodies similar to, but in some respects different than, a PAB. Numerous committees in both the Senate and House have held hearings to legislation that is enacted. The Commission must proceed with its proposal under its existing statutory mandate, however, to strengthen investor confidence in the oversight of the auditing process and assure investors of comprehensive reform in the event that no legislation is passed.

D. The History of Audit Oversight Mechanisms Suggests the Need for a Different Type of Oversight Mechanism

The Senate hearings began with a staff study prepared for the Subcommittee on Reports, Accounting, and Management that was critical of the accounting profession. The staff study stated, "Reforms are needed to restore public confidence in the accuracy and reliability of financial and other information reported by publicly-owned companies."[57] During the several months that followed, the Subcommittee gathered extensive

Discussions among the Commission staff, POB, SECPS, AICPA, accounting firms, and others, culminated in the adoption of a new POB charter in February 2001. The principal features of the new charter included:

- Oversight of the SECPS and, for the first time, oversight of the Auditing Standards Board and the now-defunct Independence Standards Board;
- Expanded responsibility for improving communications among

would enhance investors' confidence that accounting firms are performing their public responsibilities and that, therefore, the financial information published by registrants and issuers is reliable.

After full consideration of the weaknesses of the present system and how it can be improved, we have based our proposed rules on the position that a PAB should reflect eight core principles:

who are not associated with the accounting profession and who are in the position to make all significant decisions on quality control and disciplinary issues.

5. *A PAB should have an independent and dependable funding source*—A PAB must have an independent and dependable funding source. The POB was funded by the AICPA, which called into question its ability to act totally separate from the profession. To assure

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also stated that the regulatory structure "needs teeth" and, "if an independent oversight body finds quality procedures lacking, it must have the right to revoke an individual's or firm's right to practice."[51]

Congress has introduced several bills that would create bodies similar to, but in some respects different than, a PAB. Numerous committees in both the Senate and House have held hearings to explore reform of the accounting regulatory structure. A common theme in these hearings was the need for improvements in the manner in which accountants are regulated, and, in particular, the need for effective private-sector regulation of the accounting profession.[52]

We intend to continue to work with Congress on these and other bills, and will monitor the progress of pending legislation. We will implement any legislation that is enacted. The Commission must proceed with its proposal under its existing statutory mandate, however, to strengthen investor confidence in the oversight of the auditing process and assure investors of comprehensive reform in the event that no legislation is passed.

D. The History of Audit Oversight Mechanisms Suggests the Need for a Different Type of Oversight Mechanism

Over the years the accounting profession has been subject to various forms of oversight with varying degrees of success. As a foundation for understanding the elements of the new oversight mechanism that we propose, we believe that it is useful to examine the history of the present system.

The current self-regulatory mechanism was developed as a result of concerns expressed during congressional hearings in the mid to late 1970s. These hearings investigated unexpected failures by major corporations and questioned why auditors failed to detect, and financial statements failed to reflect, illegal payments made by United States companies to foreign officials. During these hearings, the accounting profession's competence to detect and deter such problems was a significant issue. The question was asked, "Where was the independent auditor?"[53] And bills were introduced that would have created a new regulatory structure for the profession.[54]

The hearings in the House of Representatives focused on how several federal agencies used the regulatory powers granted by Congress.[55] After considering the work of accounting firms that audit registrants' financial statements, the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce found that the "SEC's reliance on the private accounting profession alone to assure that corporate records are examined by independent auditors has been insufficient to protect public investors and to accomplish the objectives of the Federal securities laws."[56]

The Senate hearings began with a staff study prepared for the Subcommittee on Reports, Accounting, and Management that was critical of the accounting profession. The staff study stated, "Reforms are needed to restore public confidence in the accuracy and reliability of financial and other information reported by publicly-owned companies."[57] During the several months that followed, the Subcommittee gathered extensive information from accounting firms, the Commission, and others. At the conclusion of the hearings, the Senate Subcommittee Report stated, "Self-initiated action by the private sector in cooperation with the SEC is the method of reform preferred by subcommittee members."[58]

The Commission's involvement in issues related to the AICPA's self-regulatory processes, which included the establishment in 1977 of the POB, increased during and after these congressional hearings. The Commission undertook to oversee, and annually report to Congress on, the profession's response to Congressional concerns.[59] The 1977 self-regulatory system is described in more detail in Appendix A.

As concerns about the quality of financial reports has increased in recent years, the POB, the Commission and others began to call for an update to the governance mechanisms of the POB, which were adopted soon after it was formed in 1977. While intended to be autonomous (the POB could set its own budget, establish its own operating procedures, and appoint its own members, chairperson, and staff), the POB relied for its funding on voluntary dues paid by AICPA firms that audited public companies and belonged to the AICPA section composed of such firms—SECPS. In addition, the POB lacked the ability to organize and implement its own quality control reviews. And, the POB was not given any authority to sanction auditors for deficiencies or incompetence noted during quality control reviews.

[51] *Id.*

[52] *See H.R. 3763, the Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002: Hearing Before the House Comm. on Financial Services* (Apr. 9, 2002) (statement of Richard C. Breeden, Former Chairman, U.S. Securities and Exchange Commission 1989–93) ("[T]here is only one governmental 'regulator' for the accounting industry, and that regulator is now and should remain the SEC. The SEC has the history, the culture and the institutional strength to be able to stand up to any wrongdoer. However, private sector groups working under the SEC's aegis can extend the reach of supervision in a healthy fashion."); *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Feb. 14, 2002)(statement of Paul A. Volcker, Chairman of the Trustees of the International Accounting Standards Board and Former Chairman, Board of Governors of the Federal Reserve System) ("[E]xperience strongly suggests that governmental oversight, with investigation and enforcement powers, is necessary to assure discipline * * *. [T]his committee will want to explore means for providing more "backbone" for industry oversight, either through legislation or by encouraging exercise of SEC regulatory authority. Better means of identifying professional misconduct, with the possibility of meaningful fines and withdrawal of professional licenses, appears essential."); *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 5, 2002) (statement of Joel Seligman, Dean and Ethan A.H. Shepley University Professor, Washington University School of Law) ("I believe at this time a new auditing self-regulatory organization is necessary. It should replace not just the POB, but a byzantine structure of accounting disciplinary bodies which generally have lacked adequate and assured financial support; clear and undivided responsibility for discipline; and an effective system of SEC oversight."); *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 6, 2002) (statement of Shaun O'Malley, Chair of the 2000 Public Oversight Board Panel on Audit Effectiveness, and Former Chair, Price Waterhouse LLP) ("I am in favor of the creation of an organization to oversee the accounting profession, whether it is created by regulation or by legislation.").

[53] Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Government Operations, 95th Cong., *Report on the Accounting Establishment: A Staff Study*, 7 (Subcomm. Print Mar. 31, 1977).

[54] *See, e.g.*, H.R. 13175, 95th Cong. (1978).

[55] *See* Staff of Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 94th Cong., *Report on Federal Regulation and Regulatory Reform*, 1 (Subcomm. Print Oct. 1976). (also known as the "Moss Report").

[56] *Id.* at 38.

[57] Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Government Operations, 95th Cong., *Report on the Accounting Establishment: A Staff Study*, 20 (Subcomm. Print Mar. 31, 1977).

[58] Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Governmental Affairs, 95th Cong., *Report on Improving the Accountability of Publicly Owned Corporations and Their Auditors* 4 (Subcomm. Print Nov. 4, 1977).

[59] *Accounting and Auditing Practices and Procedures: Hearing Before the Subcomm. on Reports, Accounting and Management of the Senate Comm. on Governmental Affairs* (June 13, 1977) (statement of Harold M. Williams, Chairman, U.S. Securities and Exchange Commission).

Discussions among the Commission staff, POB, SECPS, AICPA, accounting firms, and others, culminated in the adoption of a new POB charter in February 2001. The principal features of the new charter included:

- Oversight of the SECPS and, for the first time, oversight of the Auditing Standards Board and the now-defunct Independence Standards Board;
- Expanded responsibility for improving communications among various bodies involved in the profession's regulatory processes;
- Expanded responsibilities to undertake special reviews and projects; and
- Increased funding from the SECPS.[60]

Even under the new charter, however, the POB lacked the express authority to direct the review of a firm's quality control system or to discipline a firm, or persons in a firm, for noncompliance with professional standards or the SECPS membership requirements. The new charter also provided that the SECPS would continue to be the sole source for the POB's funding, and required the SECPS to approve funding for the POB's special or unanticipated projects and for any amount above the $5.2 million annual limit set forth in the charter.[61]

E. A New System of Private Sector Oversight Will Address Current Problems and Increase Investor Confidence

The private sector framework we are proposing would provide reasonable assurance to investors and to the Commission that accounting firms' audit, review, and attest procedures, which are required by the securities laws and Commission regulations, fulfill their statutory and regulatory purposes, and thereby will increase assurances that financial reporting, also required by the securities laws and Commission regulations, meet applicable legal and regulatory requirements. While no system of private sector or government regulation can ensure one hundred percent compliance with professional standards, we believe that this system would enhance investors' confidence that accounting firms are performing their public responsibilities and that, therefore, the financial information published by registrants and issuers is reliable.

After full consideration of the weaknesses of the present system and how it can be improved, we have based our proposed rules on the position that a PAB should reflect eight core principles:

1. A *PAB should be separate from, and independent of, the AICPA*—Despite the POB's oversight, significant failures in the auditing process continue to exist. In addition, there is a perceived conflict between the AICPA's dual roles of serving the best interests of its membership and serving investors. To restore confidence in the system, we believe that it is necessary for a new PAB to be established, operated, and overseen completely outside of the profession.

2. *Requirements as to financial statements*—To assure that the benefits of the oversight process extend to investors in all public companies, the financial statements of an SEC-registered company would not comply with Commission requirements unless the company's accountants were members of a PAB and the company was a member of, and thereby bound to cooperate in any review or proceeding commenced by, the same PAB as its accountants. In the Commission's view this is necessary to assure cooperation and access necessary to carry out its reviews, quality control, and disciplinary activities over the accounting profession.

3. *A PAB should operate under the SEC's oversight*—The SEC's relationship with the POB was based on the desire of the profession and the POB to provide assurance to Congress and to the public that the peer review process and related programs were working well. The SEC had limited ability to affect the work of the POB or the peer review program. Under the new framework, the Commission would recognize a PAB after reviewing, and being satisfied with, among other things, the entity's charter, by-laws, proposed budget, and proposed board members. The SEC would have the ability to review, alter, modify, or abrogate any PAB rule and to review any PAB disciplinary action.

4. *Public members should dominate a PAB*—To be credible, it must be clear that the PAB is an independent organization and places the public interest and the interest of investors above all else. A PAB would be a diverse board, dominated by persons who are not associated with the accounting profession and who are in the position to make all significant decisions on quality control and disciplinary issues.

5. *A PAB should have an independent and dependable funding source*—A PAB must have an independent and dependable funding source. The POB was funded by the AICPA, which called into question its ability to act totally separate from the profession. To assure continuity and independence, a PAB should be neither controlled nor principally funded by members of the accounting profession. A PAB's operations should be funded on a non-voluntary basis through the assessment of fees on accounting firms who are members of the PAB and on those firms' audit clients, the reliability of whose financial reporting would be presumptively benefited by the activities of the PAB.[62]

6. *For larger firms, annual PAB-directed reviews of firms' quality controls for accounting, auditing, and auditor independence should replace triennial firm-on-firm peer reviews*—While individuals within accounting firms generally regard firm-on-firm peer reviews as serious events that can affect their careers, investors and critics of the program often consider such reviews among the limited number of large firms to be a "one hand washes the other" approach to regulation.[63] In addition, the triennial reviews are too infrequent for large firms.[64]

7. *A PAB should have the ability to discipline firms and individuals and be able to impose a wide range of sanctions, including the ability to require an accountant to no longer audit a particular public company*—A primary criticism of the current system is that it does not include effective disciplinary proceedings. The strongest sanction issued by the AICPA is expulsion from that organization, which does not remove the individual or firm

[60] POB, *Annual Report 2000*, at 5. The POB charter is available at *http://www.publicoversightboard.org/charter.htm*.

[61] The new POB charter also fell short of instituting all of the recommendations of the Panel on Audit Effectiveness. For example, the Panel had recommended that the POB should approve all appointments to the Auditing Standards Board and SECPS Executive Committee, that the POB oversee the AICPA's evaluations, compensatory hiring and promotion decisions with respect to the staff of the AICPA committees it was to oversee, and the establishment of "no strings attached" funding for the POB. The Panel on Audit Effectiveness, *Report and Recommendations* 140 (Aug. 31, 2002).

[62] *See, e.g.*, SEC Roundtables, *supra* note , at 38 (Mar. 6, 2002) (statement of Ted White, Corporate Governance Director, California Public Employees' Retirement System) ("I would suggest some of the key tenets be * * * a board that consisted of independent members with solely independent funding").

[63] *See, e.g.*,Editorial, Watching the Watchers, Wash. Post, May 21, 2002, at A16; SEC Roundtables, *supra* note , at 55–56 (Mar. 4, 2002) (statement of William Allen, New York University Law School) (suggesting that the public perception of the current peer review process is an "I scratched your back, you scratch my back organization").

[64] *See* Letter from Robert J. Kueppers, Chair, SECPS Executive Committee, to Managing Partners of SECPS Member Firms, (Mar. 21, 2002), which announces new requirements for member firms with more than 500 SEC clients to undergo annual review procedures during each of the years between triennial peer reviews.

from practice before the Commission. We believe that we should continue to pursue violations of the securities laws and disciplinary actions under Rule 102(e). We also believe, however, for a PAB's quality control system to have "teeth" the PAB should have the ability to discipline its member accountants for incompetent, unethical, or other deficient conduct discovered during a quality control review or that otherwise

registrant is a member of the same PAB as its accountants, and thereby is bound to cooperate in that PAB's reviews or proceedings regarding the registrant's accountant.

For the Commission to recognize a PAB, a PAB would have to meet certain conditions and perform certain functions. We also are proposing to require disclosure if an executive officer, director, or person nominated to

company requires special expertise.[65] The foundation for that expertise has been developed over many generations of accountants practicing before us and is embodied in professional standards for auditing, attestations, quality controls, ethics, and other areas. These standards guide accountants in their daily work of examining the accuracy and completeness of financial information disclosed by management

professional engagement period, that accountant is not a member in good standing of a PAB (*see* below for discussion of the definition of "member accountant in good standing"). A PAB's oversight of accountants, particularly as to independence issues, will in some cases require a PAB to consider information that can be supplied only by the audit client. We therefore believe that the purposes of the statutory requirements will be advanced

rule regarding registrant membership. Should registrants be adjunct members? Could our objectives be accomplished other than by having registrants be adjunct members—for example, by simply requiring registrants to participate in funding a PAB and to cooperate with a PAB's reviews and proceedings? Why or why not? We solicit comment on alternative frameworks to accomplish our goals. For example, if registrants can demonstrate

Accountant. Proposed rule 13–02(a) would define "accountant" for the purposes of Article 13. This definition has two important characteristics. First, it encompasses both accounting firms and individual accountants. Second, it limits the term "accountants" to those public or certified public accountants and firms engaged in auditing or reviewing financial statements, or preparing attest reports, that are filed with the Commission. The definition is

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from practice before the Commission. We believe that we should continue to pursue violations of the securities laws and disciplinary actions under Rule 102(e). We also believe, however, for a PAB's quality control system to have "teeth" the PAB should have the ability to discipline its member accountants for incompetent, unethical, or other deficient conduct discovered during a quality control review or that otherwise comes to its attention, and that it must be able to sanction accounting firms for deficient quality control systems. The public must be assured that a PAB would be expected to and able to take appropriate and meaningful action to address incompetent or unethical conduct and violations of professional standards.

8. *A PAB should issue public reports of its activities*—Although the POB issued an annual report, the SECPS has not issued a separate public report since 1997. To promote the understanding of its processes and to inform the public of the results of its programs and proceedings, a PAB should issue reports to the public at least annually and, to the extent possible, on a real time basis, that describe the PAB's quality control and disciplinary activities, contain the PAB's audited financial statements, explain the fees it has imposed on its members, and other information.

The Commission invites comments on these factors, including suggestions for alternative or additional factors that should lay the foundation for our rules. In addition, the Commission invites and encourages persons who would consider forming a PAB to begin a dialogue with the Commission as soon as possible. The Commission will make itself available for meaningful dialogue to further and facilitate the timely establishment of a PAB.

III. Discussion of Proposed Rules

We are proposing to amend and add rules to Regulation S–X. To assure that the benefits of the oversight process extend to investors in all public companies:

- An SEC registrant's financial statements would not comply with Commission requirements unless the accountants who have audited or reviewed those statements are members of a PAB. Attest reports would not comply with Commission requirements unless prepared by outside accountants who are members of a PAB; and
- An SEC registrant's financial statements and attestation reports contained in or accompanying an SEC registrant's reports or registration statements would not comply with Commission requirements unless the registrant is a member of the same PAB as its accountants, and thereby is bound to cooperate in that PAB's reviews or proceedings regarding the registrant's accountant.

For the Commission to recognize a PAB, a PAB would have to meet certain conditions and perform certain functions. We also are proposing to require disclosure if an executive officer, director, or person nominated to become a director of a public company has been sanctioned as a member accountant by a PAB within the last five years.

A. Regulation S–X Definitions

Rule 1–02 contains the general definitions for terms used throughout Regulation S–X.[65] Although the terms "review" and "attest" are common to accountants, they have never been defined within Regulation S–X. Because those terms are used in the rules we are proposing in this release, and in other rules within Regulation S–X,[66] we are proposing to define them in rule 1–02(d). Each proposed definition codifies the current common understanding of the term by referring to GAAS and to Statements on Standards for Attestation Agreements,[67] as may be modified by the Commission.

We solicit comments on the above definitions. Do the definitions of "review" and "attest" capture the understanding of the words common to accountants? Should the definitions differ from those in GAAS? If so, why and in what way? Are there reasons why we should not define "review" or "attest" in the rule? Should we narrow or broaden the definitions? If so, how?

B. Requirements for Financial Statements and Attestation Reports

Qualifications of Accountants

Existing Commission regulations state that accountants are not qualified to practice before the Commission unless they are licensed under the laws of the place of their residence or principal office, and are independent from their audit clients.[68] As a practical matter, however, it has long been recognized that, in addition to these two qualifications, auditing a public company requires special expertise.[69] The foundation for that expertise has been developed over many generations of accountants practicing before us and is embodied in professional standards for auditing, attestations, quality controls, ethics, and other areas. These standards guide accountants in their daily work of examining the accuracy and completeness of financial information disclosed by management to investors. It is imperative, therefore, that auditors reach reasoned decisions that are well grounded in these professional standards.

Further, as we stated when we revised our auditor independence rules in 2000, auditor independence is instrumental to the financial reporting process and to investor confidence in financial statements.[70] Investors will commit their savings to an impersonal securities market only if they know that unbiased auditors take a critical look at managements' decisions and processes used to prepare the financial statements and that those auditors will place the concerns and interests of investors above not only the company's interests but above the accountant's self-interest as well.[71]

Strong oversight of the profession helps to (and one goal of a PAB is to) strengthen firms' audit practices and to detect and deter weaknesses that might detract from an accountant's ability to fulfill professional standards of ethics and competence and requirements of auditor independence. In performing quality control reviews and through the disciplinary process, a PAB would play an important role in identifying and addressing competency, ethics, independence, and other professional practice issues.[72]

In recognition of the critical importance in having auditors well-versed in professional standards operating under effective quality control systems, proposed rule 2–01(a)(2) would state that the Commission would not recognize any accountant to be a "certified public accountant" or "public accountant," or as "independent" with respect to an audit client if, during the

[65] 17 CFR 210.1–02.

[66] *See e.g.*, Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d), which requires that quarterly financial statements in Forms 10–Q be reviewed by an independent accountant prior to a registrant filing its Form 10–Q with the Commission.

[67] *See generally* SAS No.71, AU § 722 (as revised by SAS No. 90). *See also* Attestation Standards: Revision and Recodification, Statement on Standards for Attestation Engagements No. 10 (Jan. 2001).

[68] 17 CFR 210.2–01.

[69] *See generally* SECPS membership requirements. *See also* SAS No. 1, § AU 210.

[70] *Revision of the Commission's Auditor Independence Requirements*, Securities Act Release No. 33–7919 (Nov. 21, 2000), 65 FR 76008 (Dec. 5, 2000).

[71] *Relationships Between Registrants and Independent Accountants*, Accounting Series Release No. 296 (Aug. 20, 1981), 46 FR 43181 (Aug. 27, 1981).

[72] The securities laws require, or authorize the Commission to require, that registration statements and reports include financial statements that have been audited by an independent public or certified public accountant. *See supra* note 12.

professional engagement period, that accountant is not a member in good standing of a PAB (*see* below for discussion of the definition of "member accountant in good standing"). A PAB's oversight of accountants, particularly as to independence issues, will in some cases require a PAB to consider information that can be supplied only by the audit client. We therefore believe that the purposes of the statutory requirements will be advanced significantly if an audit client is a member of the same PAB as its accountant, and thereby agrees to supply information in connection with that PAB's reviews and proceedings regarding the accountant. Accordingly, the proposed rule contemplates that an audit client be an adjunct member of the same PAB of which its accountant is a member.

Registrants' Reports and Registration Statements

Under the same reasoning as discussed above, proposed rule 13–01(a) requires reports and registration statements filed with the Commission that contain financial statements[73] be audited or reviewed by an accountant that: (1) Is a member in good standing of a PAB of which the registrant[74] filing the report or statement is an adjunct member in good standing, and (2) satisfies all other requirements prescribed by the federal securities laws and the rules and regulations thereunder concerning an accountant that audits, reviews, or prepares such report or registration statement.

We request comment on proposed rules 2–01(a)(2) and 13–01(a), including the approach and structure of those rules for the filing with the Commission of financial statements and attestation reports. Are the definitions appropriate? Will they further the goals of enhanced oversight of the financial reporting process and enhanced quality of financial information? We request comment on the aspect of the proposed rule regarding registrant membership. Should registrants be adjunct members? Could our objectives be accomplished other than by having registrants be adjunct members—for example, by simply requiring registrants to participate in funding a PAB and to cooperate with a PAB's reviews and proceedings? Why or why not? We solicit comment on alternative frameworks to accomplish our goals. For example, if registrants can demonstrate that their accountants have an alternative system or process that meets the objectives of our rules (*e.g.*, through third-party reviews or other organizations), should the registrants be exempted from the operation of the rules, in particular Rules 2–01(a)(2) and 13–01? Should such systems or processes be required to operate with our approval and under our oversight? In addition, we solicit comment on what role, if any, exchanges and the National Association of Securities Dealers—("NASD") should play with respect to a PAB.

Investment advisers, certain broker-dealers, transfer agents and certain other entities that file audited financial statements with us are not considered to be "registrants" under Regulation S–X because they are not issuers of securities and, therefore, would not fall within Article 13. Nonetheless, because the auditor independence rules discuss "audit clients" and not registrants, auditors of such entities' financial statements, and the entities, would be subject to the proposed rules. Is this appropriate? Should entities that are not registrants be outside the scope of the proposed rules? Should accountants that audit only entities that are not issuers of securities be outside the scope of the rules?

The proposals utilize the definition of "audit client" that is contained in Rule 2–01(f)(6) of Regulation S–X. That definition includes affiliates of the audit client. We request comment on the application of that definition to the rules proposed in this release. Should the definition of "audit client" include affiliates for purposes of the proposed rules? Why or why not? Are there special concerns in the investment company, investment adviser, or broker-dealer context that are raised because of the inclusion of affiliates?

C. Definitions for Article 13

In addition to providing definitions for use throughout Regulation S–X, the proposed rules would provide certain definitions of terms that would have a specific meaning for the purposes of Article 13 and a PAB.

Accountant. Proposed rule 13–02(a) would define "accountant" for the purposes of Article 13. This definition has two important characteristics. First, it encompasses both accounting firms and individual accountants. Second, it limits the term "accountants" to those public or certified public accountants and firms engaged in auditing or reviewing financial statements, or preparing attest reports, that are filed with the Commission. The definition is similar to the definition of "accountant" in our auditor independence rules.[75]

Is this definition appropriate? Is it appropriate for the definition to include both accounting firms and individual accountants? Would the goals of the proposed rules be better or more appropriately accomplished if only one or the other was required to be a PAB member? Does this definition raise practical problems for firms that have partners who specialize in tax or other non-audit services, but also may be consulted briefly during an audit? For example, a firm might wish to have a tax partner consult for a very brief time with an audit engagement partner about a company's tax accrual. Would requiring such partners to be members of a PAB pose an unnecessary burden on the partners or accounting firms? If there would be an unnecessary burden, what would that burden be and is there any empirical data that would quantify such a burden?

Adjunct member in good standing. Under proposed rule 13–02(b), an entity is an "adjunct member in good standing," when the entity is an adjunct member of a PAB and is not delinquent (as defined in proposed rule 13–02(c)) in paying fees assessed by the PAB, or in appropriately responding to a PAB's request for documents and testimony relevant to a PAB quality control review, supplemental review, or disciplinary proceeding concerning the adjunct member's accountant. With respect to documents and testimony, the adjunct member's "good standing" would turn on whether it has produced documents that a PAB has requested from the adjunct member or its management, provided testimony that a PAB has requested from the adjunct member or its management, and used best efforts to cause its agents and non-management employees to supply any documents and testimony requested

[73] *See, e.g.*, Section 13(b)(1) of the Exchange Act, 15 U.S.C. 78m(b)(1), which states, "The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth * * *". Regulation S–X, 17 CFR 210, prescribes the form and content of financial statements filed with the Commission.

[74] "Registrant" is defined in rule 1–02(t) of Regulation S–X, 17 CFR 210.1–02(t), to mean "the issuer of the securities for which an application, a registration statement, or a report is filed." As discussed above, for purposes of proposed amendments to § 210.2–01, adjunct membership requirements would also extend to "audit clients." Accordingly, throughout the discussion in this release, any reference to "registrant" should also be understood to encompass "audit client" where the context requires.

[75] Rule 2–01(f)(1) of Regulation S–X, 17 CFR 210.2–01(f)(1), which states, "Accountant * * * means a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated."

from it by the PAB.[76] In defining "good standing," the proposed rule provides only for "best efforts" by an adjunct member with respect to non-management employees and agents. While such employees may often have documents and knowledge relevant to a PAB review or disciplinary proceeding, we are concerned about making the good standing of every public company turn on its ability to preclude any single

[76] *See* proposed section 13–04(d)(11)) that the member or adjunct member has failed to pay the fees assessed by the PAB, or has failed to produce required documents or provide required testimony after any good faith legal objection to the request for documents or testimony has, in accordance with the PAB's rules, been resolved in the PAB's favor. An adjunct member may also be determined to be delinquent if it fails to use best efforts

We request comment on the proposed definition of delinquent. Are the proposed notice provisions appropriate? Are there other additional circumstances when a member or adjunct member of a PAB should be considered delinquent? What are they? Should the rule explicitly identify specific privileges or categories of privileges that a PAB may not invade? If so, what are they?

accountant in good standing involves two further elements that must be satisfied. The first element is satisfied if the accountant has not been barred, suspended, or otherwise sanctioned by a PAB. Alternatively, if the accountant has been barred, suspended or otherwise sanctioned, the first element is satisfied if the accountant has been reinstated by the PAB after having been barred or suspended, or if the

independent during the professional engagement period, and we do not want to permit any gamesmanship with respect to cooperating with the PAB.

The term "professional engagement period" is defined in proposed rule 13–02(g) to begin when an accountant either signs an engagement contract to review or audit financial statements or to prepare an attestation report, or begins audit, review, or attest procedures, whichever is earlier. The

to a triennial quality control review. For consistency, we have incorporated into the proposed rule the definition of "SEC clients" that is found in the AICPA's bylaws and resolutions,[87] but we have provided a PAB with the ability to amend the definition to add entities that the PAB believes should be considered to be SEC clients for the purpose of this rule. Under the AICPA definition, SEC clients include issuers in initial public offerings and registrants filing periodic

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from it by the PAB.[76] In defining "good standing," the proposed rule provides only for "best efforts" by an adjunct member with respect to non-management employees and agents. While such employees may often have documents and knowledge relevant to a PAB review or disciplinary proceeding, we are concerned about making the good standing of every public company turn on its ability to preclude any single employee from refusing to cooperate with a PAB review or proceeding. Rather, an adjunct member will remain in good standing as long as it uses its best efforts to cause those employees and other agents to comply with PAB requests for testimony, and so long as the adjunct member and its management provide all requested documents and testimony and the adjunct member is timely in paying fees assessed by the PAB.

We invite comments on alternative approaches. Are there other, preferable, ways to define or condition an audit client's good standing that are sufficient to achieve the goals of PAB funding and PAB access to information relevant to its mission? Should the good standing of an adjunct member be contingent on willingness of management to testify? How should former management be treated? How, if at all, should "management" be defined for these purposes? Should more than management be covered by the requirement? For example, our auditor independence rules use the defined term "accounting role or financial reporting oversight role."[77] Should the proposed rule include all or any of the individuals covered by that definition? Should the rule cover directors? With respect to non-management employees and agents, is it appropriate for the rule to require only that the adjunct member make best efforts to secure from them any documents or testimony requested by the PAB, or should the adjunct member's good standing depend upon the adjunct member actually causing the employee or agent to supply the documents and testimony? Is there an appropriate intermediate approach to addressing that issue? Alternatively, should the standard be "reasonable efforts" instead of "best efforts."

Delinquent. Under proposed rule 13–02(c), a member or adjunct member of a PAB is "delinquent" when a PAB has provided public notice (consistent with proposed section 13–04(d)(11)) that the member or adjunct member has failed to pay the fees assessed by the PAB, or has failed to produce required documents or provide required testimony after any good faith legal objection to the request for documents or testimony has, in accordance with the PAB's rules, been resolved in the PAB's favor. An adjunct member may also be determined to be delinquent if it fails to use best efforts to cause its non-management employees and agents to supply requested documents or testimony.

A PAB's ability to obtain fees, documents, and testimony from members and adjunct members would be critical to the PAB's ability to carry out the purposes of the proposed rules. Accordingly, becoming delinquent in paying or responding to a PAB request, in accordance with a PAB's rules, automatically terminates the good standing of a member or adjunct member.

Under proposed rule 13–04(d)(11), discussed below, a PAB must devise a rule for advance public notice of the danger of a delinquency, sufficient to give audit clients an opportunity to prepare for such a delinquency and the consequent potential loss of good standing by their accounting firm.

In addition, proposed rules 13–04(d)(7) and 13–04(d)(11) condition a PAB's Commission recognition on the PAB having fair procedures for requesting documents and testimony and for resolving any disputes concerning those requests or concerning fees. We would expect a PAB to take seriously the need for full and fair procedures before making a delinquency determination as to a member or adjunct member asserting a good faith legal basis for objecting to any request for documents or testimony.[78]

We request comment on the proposed definition of delinquent. Are the proposed notice provisions appropriate? Are there other additional circumstances when a member or adjunct member of a PAB should be considered delinquent? What are they? Should the rule explicitly identify specific privileges or categories of privileges that a PAB may not invade? If so, what are they?

Foreign Accountant. We have proposed in rule 13–02(d) to define "foreign accountant" to mean an accountant:[79] (1) Having a place of residence and principal office outside the United States and its territories, and (2) not licensed in the United States or its territories. If an accountant resides, practices, or is licensed in the United States, that accountant would be subject to the proposed rules. In this regard, if a foreign-licensed accountant resides in the United States as a result of a temporary assignment to work at a U.S. firm, he or she might be subject to the proposed rules. We intend for the PAB, however, to consider such issues and the many variations of working relationships that may arise in the operation of the firms' international organizations and, if considered necessary or appropriate, to interpret this provision, adopt related rules, or request amendments to the Commission's definition.

Is the proposed definition of "foreign accountant" appropriate? Is the requirement that both the residence and principal place of business be outside the United States and its territories unduly restrictive, or not restrictive enough? Are there other factors that should be included in the definition? Is the intent to permit a PAB to consider this issue appropriate? Does the proposed definition provide sufficient flexibility for a PAB to consider these issues?

Member accountant in good standing. Proposed rule 13–02(e) describes the requirements that an accountant must satisfy to be a member accountant in good standing with a PAB. First, the accountant must be a member of the PAB, a status that would be obtained through enrollment procedures devised by a PAB pursuant to proposed rule 13–04(d)(1). In addition, status as a member

[76] As discussed with respect to the definition of "delinquent," below, we expect that a PAB will adopt reasonable practices and procedures for dealing fairly with good faith assertions of legal objections to document and testimony requests.

[77] Rule 2–01(f)(3) of Regulation S–X, 17 CFR 210.2–01(f)(3).

[78] We would expect that, with respect to good faith assertions of privilege, a PAB would adopt a reasonable approach comparable to that of other private organizations or similarly situated private parties. *Cf. D.L. Cromwell Investments, Inc.* v. *NASD Regulation, Inc.*, 279 F.3d 155, 161–63 (2d Cir. 2002) (interview demand issued by private membership organization to a member lacked sufficient nexus to government inquiry to trigger Fifth Amendment protection, since organization was not state actor and interview demand was not result of collusion with government) (citing *Desiderio* v. *National Association of Securities Dealers, Inc.*, 191 F.3d 198, 206 (2d Cir. 1999), *cert. denied*, 531 U.S. 1069 (2001) (rejecting constitutional challenges to NASD action because "NASD is a private actor, not a state actor") and *United States* v. *Solomon*, 509 F.2d 863, 867–71 (2d Cir. 1975) (rejecting Fifth Amendment challenge to New York Stock Exchange inquiry of member because New York Stock Exchange is not government actor)). We would specifically expect, however, that a PAB would not honor any assertion of an accountant-client privilege. An accountant client privilege is not recognized under federal law. *See United States* v. *Arthur Young & Co.*, 465 U.S. 805 (1984); *Couch* v. *United States*, 409 U.S. 322 (1973). Further, the recognition of such privilege by a PAB would significantly impair its ability to further the goals and purposes of federal securities laws reflected in the proposed rules.

[79] As noted previously, under proposed rule 13–02, the term "accountant" includes both individuals and firms, but is limited to those auditing or reviewing financial statements or preparing attestation reports filed with the Commission.

accountant in good standing involves two further elements that must be satisfied. The first element is satisfied if the accountant has not been barred, suspended, or otherwise sanctioned by a PAB. Alternatively, if the accountant has been barred, suspended or otherwise sanctioned, the first element is satisfied if the accountant has been reinstated by the PAB after having been barred or suspended, or if the accountant has not been cited by the PAB in a public notice as being noncompliant with the terms and conditions of any other sanction imposed by the PAB. The second element is rooted in the need to ensure funding of, and cooperation with, a PAB, and so is similar to the requirements to be an adjunct member in good standing, described above. Specifically, an accountant satisfies the second element if the accountant is not delinquent in paying fees or supplying required documents and testimony. The documents and testimony that must be supplied at a PAB's request in order for the accountant to remain in good standing are the accountant's documents and testimony and the documents and testimony of any of the accountant's employees, or other agents.[80] Should the rule prescribe different limits on the documents and testimony that an accountant must provide to maintain good standing? Are there other factors that the rule should take into account for purposes of determining "good standing?"

Public Accountability Board. Proposed rule 13–02(f) would define the term "Public Accountability Board" or "PAB" to mean an entity that is organized in accordance with, and for the purposes described in, proposed Article 13, and that is recognized by the Commission.

Professional Engagement Period. Both proposed rule 2–01(a)(2) and proposed rule 13–01 operate by reference to the "professional engagement period." Under the operation of those rules, if either the accountant or the audit client is not a member in good standing with a PAB for any portion of the professional engagement period, the financial statements and attestation reports included in or accompanying that audit client's filings with the Commission will not be acceptable. We consider it important that any failure of good standing during the professional engagement period have significant consequences since auditors must be independent during the professional engagement period, and we do not want to permit any gamesmanship with respect to cooperating with the PAB.

The term "professional engagement period" is defined in proposed rule 13–02(g) to begin when an accountant either signs an engagement contract to review or audit financial statements or to prepare an attestation report, or begins audit, review, or attest procedures, whichever is earlier. The period ends when the registrant or accountant notifies the Commission that the registrant is no longer the accountant's audit client.[81] This definition parallels the definition of the same term in the auditor independence rules.[82]

Does the proposed definition capture the appropriate period? Is there a different beginning point that would be more appropriate? Would a different end point be appropriate?

Professional Standards. Proposed rule 13–02(h) defines "professional standards" to include accounting,[83] auditing,[84] and attestation standards,[85] the Commission's auditor independence regulations,[86] the standards of the Independence Standards Board, and any other standards related to the audit, review, or preparation of financial statements filed with the Commission. These standards would include those set, or designated as authoritative, by a PAB, including auditing, quality control, or ethics standards. Does this definition capture all of the standards and regulations that are needed and appropriate?

SEC clients. Proposed rule 13–03(i) defines the term "SEC clients." We have defined this term, which is distinct from "registrant," for the very limited purpose of identifying the dividing line (by reference to the number of "SEC clients") between those accounting firms that will be subject to an annual quality control review and those (with fewer SEC clients) that will be subject to a triennial quality control review. For consistency, we have incorporated into the proposed rule the definition of "SEC clients" that is found in the AICPA's bylaws and resolutions,[87] but we have provided a PAB with the ability to amend the definition to add entities that the PAB believes should be considered to be SEC clients for the purpose of this rule. Under the AICPA definition, SEC clients include issuers in initial public offerings and registrants filing periodic reports under the Exchange Act (except broker-dealers filing only because of section 15(a) of that Act[88]) or the Investment Company Act. With respect to SEC clients, should companies whose reporting obligations arise solely under Section 15(d) of the Exchange Act be included within the definition of SEC clients?

We also generally request comment on all of the definitions in the proposed rule, including the proposed scope of those definitions, and whether there are additional definitions that should be added or proposed definitions that should not be included in any final rules?

D. Commission Recognition of Public Accountability Boards

A PAB must be an organization that places the interests of investors above all else. To assure the ability and desire of an entity to represent investors and promote high quality financial reporting, the Commission would study carefully each organization before determining whether to recognize it as a PAB under the proposed rules. In this regard, proposed rule 13–03(a) would require that each entity desiring to become a PAB make a submission to the Commission containing the representations and materials necessary for the Commission to determine the entity's ability to carry out the functions and to accomplish the purposes that are described in Article 13. As noted in proposed rule 13–03(b), the Commission may ask the entity to supplement its submission with additional information.

Proposed rule 13–03(b) also indicates that the Commission would, consistent

[80] As discussed above with respect to the definition of "delinquent," we expect that a PAB will adopt reasonable practices and procedures for dealing fairly with good faith assertions of legal objections to document and testimony requests.

[81] Such notice may occur under item 4 of Form 8–K, 17 CFR 249.308.

[82] 17 CFR 210.2–01(f)(5)(ii)(A) and (B).

[83] The Financial Accounting Board ("FASB") and other sources establish generally accepted accounting principles ("GAAP") used to prepare financial statements filed with the Commission. For the "hierarchy of GAAP," *see* SAS No. 69, AU § 411.

[84] The AICPA's Auditing Standards Board ("ASB") issues SAS. Under Rule 202 of the AICPA's Rules of Professional Conduct, AICPA members must adhere to these standards or be prepared to justify any departures from them. The ASB's Audit Issues Task Force is assigned the responsibility to provide timely guidance on the application of the ASB's pronouncements.

[85] The AICPA's ASB issues Statements on Standards for Attestation Engagements, or SSAEs.

[86] 17 CFR 210.2–01.

[87] AICPA Bylaw section 230R, Implementing Resolutions Under Section 2.3.5 for Definition of "SEC Client" (As adopted by Council Jan. 8, 1990), which states:

That for purposes of section 2.3, an SEC Client is

- An issuer making an initial filing, including amendments, under the Securities Act of 1933.
- A registrant that files periodic reports (for example, forms N–SAR and 10–K) with the SEC under the Securities Exchange Act of 1934 (except brokers or dealers registered only because of Section 15(a) of that Act) or the Investment Company Act of 1940.

[88] 15 U.S.C. 78o(a).

with the public interest and for the protection of investors, decide whether to recognize an entity as a PAB based on the entity's commitment and capacity to carry out the functions and accomplish the purposes of the proposed rules. The Commission would make its determination by issuance of a Commission order.

We request comment on the procedures for Commission recognition

Proposed rule 13–03(c)(4) requires an entity seeking Commission recognition as a PAB to represent that it would establish rules, membership requirements, systems and procedures designed to further the goals described in proposed rule 13–03(c)(3) and sufficient to accomplish, at a minimum, the further objectives described in proposed section 13–04(d), and discussed below. With regard to

must be, and must be perceived by investors to be, dominated by representatives of investors and issuers, or "public members," as opposed to representatives of the accounting profession. Proposed rule 13–04(b) sets forth several requirements for the structure, membership, and budget of a PAB designed to ensure that public board members dominate all aspects of a PAB's activities. First, proposed rule 13–04(b)(1) would require that a PAB

of the work of these committees. Because the PAB would be more involved than the POB had been in evaluating each review report, determining the appropriateness of attendant recommendations for improvements in quality controls, directing reviews of larger firms, and performing similar functions, we believe that some minimal professional representation on the PAB is appropriate. We have taken the added

Should we revise the criteria or ratios set forth above? Is the two-year parameter regarding employees of an accountant's professional organization appropriate? Would revising the criteria result in a board dominated by public members? Is the rule setting the ten-year parameter appropriate to ensure that the board has appropriate representation to fulfill the goals of the proposals? Are there other qualifications or restrictions on board members that ought to be

We solicit comment on the proposal to require that the Chairman and the Vice-Chairman be public board members and that at least one of them serve on a full-time basis. Is this requirement appropriate? Is it appropriate to limit the chairmanship and vice-chairmanship to the public members? Is it necessary or appropriate to accomplishing the purposes of a PAB that the Chairman or the Vice-Chairman be required to serve full time? Should

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with the public interest and for the protection of investors, decide whether to recognize an entity as a PAB based on the entity's commitment and capacity to carry out the functions and accomplish the purposes of the proposed rules. The Commission would make its determination by issuance of a Commission order.

We request comment on the procedures for Commission recognition of a PAB. In particular, is the standard for recognition of a PAB appropriate? Should we base our determination on factors other than or in addition to the entity's commitment and capacity to carry out the functions and to accomplish the purposes of the proposed rules? What other factors should the Commission consider?

Proposed rule 13–03(c) sets forth the information to be submitted to the Commission by an entity seeking recognition as a PAB. Under proposed rule 13–03(c)(1), the entity's submission must include its organizational structure, proposed budget, and proposed board members and terms of board membership. This information must be sufficient for the Commission to determine that the entity will satisfy the requirements set out in proposed section 13–04(b), and discussed below. Under proposed rule 13–03(c)(2), the proposed PAB must submit its charter and bylaws. Specific criteria that the charter and bylaws must satisfy are set out in proposed section 13–04(c) and discussed below. We solicit comment on the materials that a PAB should submit to the Commission when seeking recognition as a PAB. Are these materials appropriate for the Commission to require? Are there other materials regarding the organization of an entity seeking recognition as a PAB that the Commission should require or review to inform its determination of whether to recognize a PAB? For example, should we require an entity seeking to be recognized to submit its rules, membership requirements, and descriptions of its systems and procedures for our review before we make a determination about recognition?

In seeking recognition as a PAB, under proposed rule 13–03(c)(3), an entity would represent that it would pursue certain goals, such as to work to improve the quality of member firms' audits and reviews; work to improve member firms' quality controls and compliance with auditor independence and ethics requirements; enhance investor confidence in the audit process; and foster cooperation and coordination among private sector standard-setting bodies.

Proposed rule 13–03(c)(4) requires an entity seeking Commission recognition as a PAB to represent that it would establish rules, membership requirements, systems and procedures designed to further the goals described in proposed rule 13–03(c)(3) and sufficient to accomplish, at a minimum, the further objectives described in proposed section 13–04(d), and discussed below. With regard to proposed rules 13–03(c)(3) and (4), are these appropriate representations for the Commission to require? More generally, are there additional representations or information that an entity should be required to provide to aid the Commission's determination of whether to recognize the entity as a PAB?

Finally, proposed rule 13–03(c)(5) would require an entity seeking recognition as a PAB to represent that it would study and monitor quality control developments in other countries and report periodically to the Commission on whether the exemption for foreign accountants in proposed rule 13–07, discussed below, should be withdrawn. A PAB may recommend that the exemption be maintained, withdrawn in whole or part, or modified to place conditions on the receipt of the exemption. Although not stated in our proposed rules, a PAB also may choose to participate in efforts to develop and improve international or foreign national auditing, quality control or ethics standards. With regard to proposed rule 13–03(c)(5), is this an appropriate and useful study for a PAB to conduct? What should be the time frame of the study? Are there other areas that we should require a PAB to study and report on to the Commission?

E. Conditions of Commission Recognition of Public Accountability Boards

Proposed section 13–04 sets conditions to ongoing Commission recognition of a PAB. An entity seeking recognition as a PAB under proposed section 13–03 must meet certain of these requirements, specifically those contained in subsections (b) and (c), at the time of its initial request for recognition. For continued recognition by the Commission, the criteria in this section must be met on an ongoing basis. For the reasons described below, we believe that these conditions are necessary to ensure that a PAB acts in the public interest, consistently with the rules.

Organizational Structure, Board Membership, and Budget

To improve investor confidence in the integrity of the oversight process, a PAB must be, and must be perceived by investors to be, dominated by representatives of investors and issuers, or "public members," as opposed to representatives of the accounting profession. Proposed rule 13–04(b) sets forth several requirements for the structure, membership, and budget of a PAB designed to ensure that public board members dominate all aspects of a PAB's activities. First, proposed rule 13–04(b)(1) would require that a PAB have a fixed number of board members, none of whom are, or have been at any time in the previous two years, an employee of an accountants' professional organization.[89] Additionally, no more than one-third of the members, and in no event more than three of the members, may be, or have been at any time in the ten year period preceding his or her PAB term: (1) An accountant; (2) a partner, principal, shareholder, or managerial employee of an accounting firm; or (3) a retired partner, principal, shareholder, or managerial employee of an accounting firm.

The proposed rule does not set the number of PAB board members, but rather leaves this to a PAB's discretion. In this regard, however, because of the variety of functions to be performed by the PAB, we suggest that a PAB consisting of nine members likely could meet the objectives of the rule.

We believe that having a small minority of accountants on a PAB would be appropriate because of the functions we anticipate a PAB would perform. Under the previous self-regulatory system, the POB had five members who had not been, or had not recently been, members of the accounting profession. That regulatory system also contained, however, the SECPS Executive Committee, the Peer Review Committee, and the QCIC, which were comprised entirely of active or retired accountants. We envision a PAB taking over the work of not only the prior POB but also much, if not all,

[89] One of our core principles for a PAB is that it be outside the auspices of the AICPA or similar association or organization that has a purpose of serving the interests of "accountants," as defined in Article 13. If an employee of such an organization served on a PAB, he or she would be obligated to serve both accountants and investors. While the interests of accountants and investors often are the same, they also may differ at times. To avoid real conflicts and the appearance of conflicts of interest, we have proposed that no employee of such an association or organization be a PAB board member and that there be a two-year period between working for such an organization and serving on a PAB. Because members of state boards of accountancy, which are state governmental agencies assigned the mission of protecting the public, would not face such conflicts, being a member or employee of a state board would not disqualify an individual from serving on a PAB.

of the work of these committees. Because the PAB would be more involved than the POB had been in evaluating each review report, determining the appropriateness of attendant recommendations for improvements in quality controls, directing reviews of larger firms, and performing similar functions, we believe that some minimal professional representation on the PAB is appropriate. We have taken the added precaution, in proposed rule 13–04(g)(5), however, of stating that only public board members, and not any accountant or retired accountant board members, may participate in any vote on whether to institute a disciplinary proceeding, or any vote on the findings or sanctions to be imposed in any such proceeding.

Under the proposed rule, the remainder of the PAB board members would be public members. A PAB may have as many public members as it believes are appropriate and necessary to fulfill its duties under Article 13. Public members should represent the interests of individual investors, institutional investors, and issuers. We anticipate that the public members may include, among others, former public officials, lawyers, bankers, institutional investors, securities industry executives, academics, economists, and business executives.

Each public member should have a background that permits him or her to make a contribution to the operations of the PAB. Having been, at some point in his or her career, an accountant who audited or reviewed financial statements that were filed with the Commission, or a partner or employee of an accounting firm that performed those functions, would not necessarily preclude a person from being a public member. To assure that such a member is, and is perceived as a public member, the proposed rule would require that he or she not have practiced as an accountant or been a partner or employee of an accounting firm for at least the ten-year period immediately before joining the PAB. We believe that an individual with such a prolonged separation from practice and from accounting firms, and with the intervening experiences gained in other professional endeavors, should not be presume to be a representative of the accounting profession.

We request comment on the composition of the board. Should the proposed rule set the number of board members? If so, what number is appropriate to accomplish the goals of the rules? We also request comment on the board membership requirements. Should we revise the criteria or ratios set forth above? Is the two-year parameter regarding employees of an accountant's professional organization appropriate? Would revising the criteria result in a board dominated by public members? Is the rule setting the ten-year parameter appropriate to ensure that the board has appropriate representation to fulfill the goals of the proposals? Are there other qualifications or restrictions on board members that ought to be addressed by Commission rule?

Does the rule appropriately define accountant members and public members or is some other definition more appropriate? We have indicated a person may be a "public" member of a PAB if he or she has not been an accountant within the last ten years. Is ten years too long? If a different period is appropriate, what period should it be?

We solicit comment on allowing a small number of accountants to be on a PAB. Should we require, rather than permit, that a certain percentage of board members be accountants? Whether mandatory or permissive, is the one-third standard appropriate, too high, or too low? Why? Is it appropriate to limit the number of accountants to three, no matter how large the board? Should there be no accountants permitted to be on a PAB, or is their expertise necessary for a PAB to carry out its mission?

Under proposed rule 13–04(b)(2) members would serve staggered terms in order to ensure continuity of operations. The proposed rule does not set the duration of terms or impose term limits on members. While the proposed rule leaves these matters to the PAB's discretion, we believe that three-year terms with some term limit, perhaps nine years, is appropriate. Such a term limit would allow new members with fresh ideas to make a contribution. We solicit comment on board terms. Should terms be staggered? Why or why not? Should the rule specify term limits and length of terms? If so, what would be an appropriate term and limit. For example, would a three-year term and nine-year limit further the goals of the rules?

Serving on a PAB would be a serious and time-consuming task. We have proposed in rule 13–03(b)(3) that a PAB's Chairman and Vice Chairman would be selected from among the public members and that at least one of these individuals would serve on a full-time basis. We envision that the remaining PAB members would devote approximately 20 to 25 percent of their professional time to PAB activities. A PAB's rules could provide for additional full-time members.

We solicit comment on the proposal to require that the Chairman and the Vice-Chairman be public board members and that at least one of them serve on a full-time basis. Is this requirement appropriate? Is it appropriate to limit the chairmanship and vice-chairmanship to the public members? Is it necessary or appropriate to accomplishing the purposes of a PAB that the Chairman or the Vice-Chairman be required to serve full time? Should more than one board member be required to serve full time, and if so, does it matter which board member(s)? Should we require the PAB to monitor and report to us on the time spent by PAB board members on PAB matters? Should requirements short of full-time service be placed on the percentage of time some or all the remaining board members devote to a PAB?

Another essential attribute for any entity applying to be a PAB, as reflected in proposed rule 13–03(b)(4), would be adequate staff and facilities, and the ability to hire consultants or advisers, necessary to carry out the purposes of Article 13. We anticipate that the professional staff of a PAB would include accountants with extensive experience in auditing and in the structure and operation of firms' quality control systems. These individuals must be able to assess the quality of audits and detect flaws in complicated quality control systems. They must be able to structure plans for reviewing firms' quality controls, put those plans into action, and conduct or supervise reviews that yield tangible improvements in the audit process. We also envision a PAB having a sufficient legal staff to facilitate effective disciplinary proceedings and provide sound advice on legal, procedural, and regulatory matters.

We solicit comment on the proper make-up of a PAB's staff. Should the proposed rules provide additional requirements regarding a PAB's staff or the means, capacity, and plans to hire that staff? Should a PAB be required to report to the Commission with respect to staff resource issues? If so, how often, and what should the reports entail? We have designed the composition of the board to provide assurance that a PAB would administer competently the proposed rules and that the public members would dominate the activities of a PAB. We request comment on all aspects of our proposed structure for the composition of a PAB, and on whether a PAB, as proposed, would be able to carry out its mandate effectively.

During our Roundtable discussions, Neil Lerner, a partner in the United Kingdom ("U.K.") KPMG accounting

firm, discussed the professional oversight system recently adopted in that country.[90] The UK system uses a series of boards, each having a majority of non-accountant members, to oversee the setting of professional standards and to discipline inappropriate professional conduct. We solicit comment on this and similar comprehensive regulatory approaches and the extent to which such systems may be the basis for the

require a PAB to have in its charter and bylaws?

Rules, Membership Requirements, Systems, and Procedures

Proposed rule 13–04(d) describes certain rules, membership requirements, systems, and procedures that a PAB must have in place to be recognized by the Commission. A PAB would need to have these requirements in place, at a

Under proposed rule 13–04(d)(3), a PAB would require its member-accountants to comply with their quality control systems in a way that provides reasonable assurance of conforming with professional standards. A PAB would also, under proposed rule 13–04(d)(4), develop and administer a continuing quality control review program for its members concerning accounting and auditing practices, and

04(d)(6), Commission recognition of a PAB would be conditioned on a PAB having rules and procedures for conducting supplemental reviews and disciplinary proceedings in accordance with the criteria set out in proposed rule 13–04(g), discussed below. Under proposed rule 13–04(d)(7), a PAB would need to provide procedures for requesting documents and testimony relevant to any PAB review or

influenced by, the profession. Accordingly, under proposed rule 13–04(d)(9)(i), a PAB would impose fees on both member accounting firms and on registrants who are adjunct members, to fund the operations and administration of the PAB. A PAB would be encouraged to adopt schedules that provide for different classes of firms and registrants to pay different fees, such that the fees would not impose unfair or

particular approaches to billing and payment arrangements that would work best? Should our rules more specifically prescribe those arrangements? Should adjunct members contribute to the funding of these reviews?

Funding for the FASB. Proposed rule 13–04(d)(9)(ii) indicates that a PAB would collect fees sufficient not only to fund its own operations but also to fund the operation and administration of an

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firm, discussed the professional oversight system recently adopted in that country.[90] The UK system uses a series of boards, each having a majority of non-accountant members, to oversee the setting of professional standards and to discipline inappropriate professional conduct. We solicit comment on this and similar comprehensive regulatory approaches and the extent to which such systems may be the basis for the regulatory system used in the United States.

Charter and Bylaws

Proposed rule 13–04(c) sets certain requirements for a PAB's charter and bylaws. First, to limit the potential for excessive or unnecessary fees, proposed rule 13–04(c)(1) requires the charter and bylaws to provide that the entity will be a not-for-profit entity. Second, to assure that recusals, vacancies, or other factors do not result in a shift of voting power among the PAB members that would defeat public board member control of a PAB, proposed rule 13–04(c)(2) states that the entity's charter or bylaws must include quorum provisions ensuring that the public members can control the outcome of each vote by PAB members. Third, under proposed section 13–04(c)(3), in order to obtain Commission recognition, a PAB's charter and bylaws must provide that it will be subject to, and act in accordance with, Commission oversight as described in proposed section 13–04(i). Finally, proposed rule 13–04(c)(4) provides that a PAB's charter and bylaws must provide for immediate effectiveness of any changes that the Commission makes to the PAB's rules. As discussed below, proposed rule 13–04(i)(1) allows the Commission, by rule, to abrogate, add to, and delete from the rules of a PAB. In order for any such Commission rulemaking to operate efficiently, the PAB's charter or bylaws must make these changes effective with or without further action by the PAB.

We request comment on our proposals concerning a PAB's charter and bylaws. Should a PAB be required to be a not-for-profit entity? Could a for-profit entity achieve the purposes and goals of proposed Article 13 as well as, or better than, a not-for-profit entity? Are the other proposed requirements for a PAB's charter and bylaws necessary or appropriate to achieve the purposes and goals of proposed Article 13? Are there more appropriate and effective means for addressing these issues other than through a PAB's charter and bylaws? Are there other items that we should require a PAB to have in its charter and bylaws?

Rules, Membership Requirements, Systems, and Procedures

Proposed rule 13–04(d) describes certain rules, membership requirements, systems, and procedures that a PAB must have in place to be recognized by the Commission. A PAB would need to have these requirements in place, at a minimum, in order to achieve the goals set forth in proposed section 13–03(c). These rules, requirements, systems, and procedures would accomplish the following:

Enrollment Procedures. Proposed rule 13–04(d)(1) would require a PAB to provide for membership enrollment procedures that: (1) minimize the administrative burden on individual accountants by maximizing the extent to which an accounting firm could satisfy the requirements on behalf of its individual accountants, and (2) require members and adjunct members to agree to be bound by a PAB's rules and membership requirements. The proposed rule allows a PAB latitude to determine the best approach to enrolling accountant-members, consistent with our requirement to minimize any burden on individual accountants. We expect that a PAB could adopt enrollment procedures that allow an accounting firm to enroll automatically all of its individual accountants by providing a PAB with a list of their names. This would eliminate any administrative burden on individual accountants. The proposed rule also reflects our intention that all members and adjunct members be made aware of their obligation to comply with a PAB's rules and membership requirements.

We solicit comment on our proposals concerning PAB enrollment procedures. Should our rules allow a PAB more or less flexibility in this area? Are there ways to reduce further administrative burden that could be specified in our rules? Should an entity that is an audit client of a PAB member accountant be required to file an application or other information with a PAB?

Quality Control Systems. Proposed rules 13–04(d)(2)-(4) concern a PAB's quality control system requirements for its members. Under proposed rule 13–04(d)(2), a PAB's rules would require member-accountants to maintain a system of quality controls for their accounting and auditing practices designed to meet requirements set or designated by a PAB. At a minimum, a PAB would set or designate quality control requirements that would encompass those described in proposed section 13–04(e), discussed below. Under proposed rule 13–04(d)(3), a PAB would require its member-accountants to comply with their quality control systems in a way that provides reasonable assurance of conforming with professional standards. A PAB would also, under proposed rule 13–04(d)(4), develop and administer a continuing quality control review program for its members concerning accounting and auditing practices, and adherence to Commission and professional auditor independence requirements. The requirements for the quality control review program are set out in proposed rule 13–04(f), discussed below.

We solicit comments on the proposed rules concerning a PAB's requirements for members concerning quality control systems. Should a PAB have any other rules in place concerning its members' quality control systems?

Retention of Documentation Related to Audits and Reviews. It will be critical for a PAB to be able to review documents relating to audits performed and accordingly, it will be important for a PAB to have clear and effective requirements regarding record retention. Under proposed rule 13–04(d)(5), Commission recognition of a PAB would be conditioned on a PAB having in place rules, membership requirements, systems, or procedures that would direct each member firm to retain documentation related to the firm's audit and review engagements for a set period of time after completion of the engagement, and in accordance with such other policies as a PAB may establish. The records to be kept would include those required by the professional auditing literature,[91] and records that otherwise document the procedures performed and the resolution of material issues during the engagement. Record retention policies and the period of time for the records to be kept would be determined by a PAB under its rulemaking process.

We request comment on the requirement for a PAB to direct its member firms to retain certain documents. Are the categories of records the proposed rules would require a PAB to direct its members to retain appropriate? Should we be more specific in our rules with respect to either which documents must be retained or for how long? If so, please be specific about the types of documents and the length of time.

Supplemental Reviews, Disciplinary Proceedings, and Dispute Resolution Procedures. Under proposed rule 13–04(d)(6), Commission recognition of a PAB would be conditioned on a PAB having rules and procedures for conducting supplemental reviews and disciplinary proceedings in accordance with the criteria set out in proposed rule 13–04(g), discussed below. Under proposed rule 13–04(d)(7), a PAB would need to provide procedures for requesting documents and testimony relevant to any PAB review or proceeding as described in proposed rules 13–04(f) and 13–04(g). We expect that a PAB will adopt rules and procedures in this area that are fair to all concerned while appropriately reflecting the need for strong enforcement mechanisms.

We solicit comments on our proposals regarding PAB procedures for disciplining and sanctioning member accountants, and resolving disputes with members and adjunct members. Should our rules provide more or less flexibility for a PAB in this area? Should we specify procedures for a PAB to resolve disputes with its members and adjunct members about fees, documents or testimony? Should we specify procedures, in addition to those described in proposed rule 13–04(g) below, for disciplining and sanctioning member accountants? If so, what specific procedures would be appropriate?

Conflicts of Interest. Under proposed rule 13–04(d)(8), a PAB would adopt appropriate policies to address any conflicts or potential conflicts of interest that may arise involving the PAB's board members, employees, contractors, and professional representatives. Even the appearance of a conflict of interest can damage investor confidence. Accordingly, we expect a PAB to devote careful attention to this area, and adopt policies that reassure investors that the PAB is acting in the public interest.

We solicit comments on our proposal concerning a PAB's conflict of interest policies. What conflicts of interest are likely to arise? Will a PAB be able to adopt policies to address these conflicts? Do we need to be concerned about an appearance of conflict? If so, should we revise the proposed rules to address better eliminating perceived conflicts of interest? Should we require a PAB to adopt specific rules in this area or should we allow a PAB to develop its own rules? What specific rules, if any, should we require?

Funding for a PAB. As noted above, a mandatory and continuous source of funds is critical to the independence and viability of a PAB. A PAB should not be dependent solely on the accounting profession for its funds or it may be viewed as beholden to, and influenced by, the profession. Accordingly, under proposed rule 13–04(d)(9)(i), a PAB would impose fees on both member accounting firms and on registrants who are adjunct members, to fund the operations and administration of the PAB. A PAB would be encouraged to adopt schedules that provide for different classes of firms and registrants to pay different fees, such that the fees would not impose unfair or disproportionate burdens on any one firm or registrant. We also would expect that the fee structure would not result in the PAB being overly reliant on any class of firms or registrants for its revenues. The PAB would determine the most appropriate method for collecting the fees.

Each accounting firm, however, should bear the cost of its own quality control reviews. Proposed rule 13–04(d)(10), therefore, would provide for each firm to pay fees to the PAB, separate and apart from the fees determined according to the schedules discussed in the preceding paragraphs, that are sufficient for the PAB to recover its costs and expenses related to each quality control review of that firm pursuant to proposed rule 13–04(f). The review of a large firm's quality controls may cost in excess of a million dollars. It would be inappropriate, in our view, to have smaller or competing firms shoulder part of those costs.

We request comment on our proposals concerning funding for a PAB. Are there alternative funding mechanisms that would better achieve the goals and purposes for which a PAB would be established? The proposed rules permit a PAB to impose fees on its members and adjunct members, but the proposed rules do not describe in detail how such fees should be set or collected. Should we be more specific, or should such matters be left to the discretion of the PAB?

The proposed rules would require a PAB to impose fees on each member firm to reimburse it for the costs associated with the quality control review of the firm. Under our proposals, firms with 70 or fewer SEC Clients might undergo quality control reviews performed by other accounting firms. The PAB would impose fees on the reviewed firm related to the PAB's evaluation and oversight of the review. The reviewed firm, however, might pay the reviewer directly. Is the fee provision appropriate? Should each firm bear the approximate cost of its own quality control reviews, or should these costs be spread evenly among firms? Are there advantages or disadvantages to a system in which each firm bears the costs of its own reviews? Are there particular approaches to billing and payment arrangements that would work best? Should our rules more specifically prescribe those arrangements? Should adjunct members contribute to the funding of these reviews?

Funding for the FASB. Proposed rule 13–04(d)(9)(ii) indicates that a PAB would collect fees sufficient not only to fund its own operations but also to fund the operation and administration of an accounting standards-setting body endorsed by the Commission as the primary source for generally accepted accounting principles. Today that body is the FASB.

The FASB currently receives most of its funding from two sources—sales of its publications and the receipt of voluntary donations.[92] Because accounting firms and corporations purchase a significant portion of FASB's publications and make the majority of the voluntary donations to the FASB, these two groups have significant influence over the funds available to the FASB. By reducing donations, or by reducing the volume of their purchases, they have the potential to impact the funds available to the FASB.

During debates of controversial accounting proposals, perceptions may arise that a corporation or accounting firm, or groups of corporations or firms, could use donations and sales volume to influence the FASB's decisions on substantive accounting issues.[93] To remove such possibilities, and to increase the stature, neutrality, and perceived independence of the FASB, we have proposed that the FASB, through fees paid to a PAB, have a mandatory and continuous source of funds.

Accordingly, we anticipate that a PAB would receive a proposed budget from the FASB and the PAB would include the amount required to fund the FASB in determining the fees to be collected from accounting firm members and registrant-adjunct members. After collection, a PAB would pass those funds to the FASB.[94] We anticipate that the Financial Accounting Foundation ("FAF"), which is a private sector body

[90] SEC Roundtables, *supra* note 8, at 40–41 (Mar. 8, 2002) (statement of Neil Lerner, Head of Risk Management (U.K.), KPMG).

[91] *See generally*, SAS No. 96, AU § 339 (as revised 2002).

[92] Financial Accounting Foundation, *High-Quality Financial Reporting: 2001 Annual Report*, at 29, which indicates FASB received net contributions of $5,113,000 and subscription and publication sales of $14,818,000; its direct costs of sales was $1,586,000.

[93] *See, e.g.*, Stephen Barr, *FASB Under Siege*, CFO Magazine, Sept. 1994, at 34, 46; Dean Foust, *It's Time to Free the FASB Seven*, Bus. Wk., May 3, 1993, at 144.

[94] In the event that more than one entity obtains Commission recognition as a PAB, as we anticipate that the FASB would receive funding through each PAB according to a formula that takes fair account of any significant difference in the size of the various PAB's membership.

comprised of representatives of the business, professional, and academic communities that selects FASB members and handles financial matters for the FASB,[95] would continue to play a significant oversight role in determining the FASB's budget.[96]

We request comment on our proposal concerning funding for the FASB. Should fees collected by a PAB be used to fund the FASB? How would an

above in connection with the definition of "delinquent," we would expect a PAB to take very seriously the need for fair procedures to resolve any good faith disputes.

The proposed rule also specifies the need for a PAB to have procedures for providing appropriate notice to member accountants, adjunct members, the Commission, and the public, of any action that could result, or has resulted,

Commission when any such request is made.

Under proposed rule 13–04(d)(13), a PAB would also request that matters be added to the agendas of private sector bodies that set accounting or independence standards, and similarly notify the Commission of each such request. Under proposed rule 13–04(d)(14), a PAB also would sponsor meetings with and among private sector standard-setting bodies to coordinate

goals does it serve in the context of a PAB? Should our rules specify the types of procedures that a PAB should employ in rulemaking, or is this better left to a PAB to decide? What matters should a PAB be required to address only through an open process? Are there circumstances we should provide for under which issues concerning the amendment of governing documents, rules, membership requirements, and procedures should be handled other

require training. Should we specify the particulars of a required training program? What would be the components of such a program? Should our proposed rules require a specific amount of training per year? How much training should be required?

Other Duties or Requirements. Under proposed rule 13–04(d)(18), a PAB's rules, membership requirements, systems, and procedures would specify that the PAB would perform such other

may supplement or otherwise modify the quality control elements and specific requirements with other elements and requirements it deems appropriate.

"Independence, integrity, and objectivity" policies address the firm's relationships with its clients. "Personnel management" refers to the criteria for the hiring, development, continuing education, advancement,

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comprised of representatives of the business, professional, and academic communities that selects FASB members and handles financial matters for the FASB,[95] would continue to play a significant oversight role in determining the FASB's budget.[96]

We request comment on our proposal concerning funding for the FASB. Should fees collected by a PAB be used to fund the FASB? How would an appropriate amount of fees for such a purpose be determined? Is it sufficient to rely on the FAF to assist in the preparation of the FASB's budget or should the FASB be required to submit an annual budget to the PAB? Our proposal anticipates full funding for the FASB, with the FASB appropriately reducing or eliminating the cost of its publications. Should the FASB, however, continue to generate revenues from the sale of its publications, and replace only the donations it receives with fees collected by a PAB? Would a PAB collect fees to fund the FASB in a different manner than the fees used to fund the PAB's operations and, if so, how should the fees to fund the FASB be collected? Should registrants and accounting firms be required to join the FAF so that the FAF may directly impose fees to fund the FASB?

In addition to raising funds for the FASB, the FAF raises funds for the GASB, which sets financial accounting and reporting standards for state and local governmental entities. Financial reports prepared under GASB may be the basis for investment, credit, and regulatory decisions. Because GASB has not been in existence as long as FASB, more of its funding is derived from private contributions. Costs associated with GASB are discussed in the Cost-Benefit Section of this Release. Should a PAB collect fees to fund GASB as well as FASB?

Fair Dispute Resolution Procedures and Notices of Delinquencies. Under proposed rule 13–04(d)(11), Commission recognition of a PAB would be conditioned on the PAB having fair procedures for disciplining and sanctioning accountants and for resolving disputes with member accountants and adjunct members concerning fees, document requests and requests for testimony. As discussed above in connection with the definition of "delinquent," we would expect a PAB to take very seriously the need for fair procedures to resolve any good faith disputes.

The proposed rule also specifies the need for a PAB to have procedures for providing appropriate notice to member accountants, adjunct members, the Commission, and the public, of any action that could result, or has resulted, in suspension or bar of a member accountant, or any other loss of good standing by a member accountant or an adjunct member. The PAB's rules and procedures should be designed to balance a member or adjunct member's legitimate interest in keeping certain disputes nonpublic (such as may occur during a nonpublic PAB supplemental review) with the need to provide the public, including an accountant's audit clients, with sufficient notice of an accountant's potential loss of good standing before actually revoking good standing. In addition, it is pursuant to this proposed rule that a PAB must have procedures for providing actual notice that a member accountant or adjunct member has been determined to be delinquent.

We request comments on our proposals regarding these notices. Should the proposed rules be more specific about when these notices would be required, or about the content of the notices? If so, when should the notices be required? For example, would it be appropriate to require a 90-day notice period before a PAB makes a public determination that a member or adjunct member is delinquent? What should the notices say?

Professional Standards. For a PAB to be effective, it must be able to address not only personnel and systems failures in accounting firms, it must be able to address poor quality or vague standards that lead to deficient audits. When a PAB sees a need for new or revised standards, it must have a means to assure those standards are adopted and that other standard-setters, to the extent appropriate, conform their standards to facilitate the correction of the problem. Accordingly, a PAB, under proposed rule 13–04(d)(12), would either set, or designate private sector bodies to set, audit, quality control, and ethics standards. If it chooses to designate private sector bodies to set such standards, then a PAB would oversee the designated bodies by attending meetings, commenting on proposed standards, meeting as needed with each body, and, requesting that items be added to the private sector standard-setters' agendas and notifying the Commission when any such request is made.

Under proposed rule 13–04(d)(13), a PAB would also request that matters be added to the agendas of private sector bodies that set accounting or independence standards, and similarly notify the Commission of each such request. Under proposed rule 13–04(d)(14), a PAB also would sponsor meetings with and among private sector standard-setting bodies to coordinate their activities and to promote the sharing of information and effective communications.[97] These meetings would include not only the bodies involved in setting audit, quality control, and ethics standards, but also accounting standard-setting bodies, the Commission staff, and any other persons that the PAB considers appropriate.

We request comments on our proposals regarding professional standards. What is the proper role of a PAB in standard setting? Should a PAB have the ability to set standards? Should it have the ability to designate which bodies would be considered authoritative? We request comment on the proposed role of a PAB in contributing to the agenda of private sector bodies that set accounting or independence standards and in coordinating among standard-setting bodies. Are these appropriate and useful roles for a PAB to play in satisfying the goals and purposes sought through proposed Article 13? Are there more specific or additional roles that a PAB ought to play in this regard? Should the Commission approve the bodies designated by a PAB before those bodies are considered authoritative?

Open and Deliberative Process. A PAB's process for amending governing documents, rules, membership requirements, and procedures would include an open and deliberative rulemaking process with open meetings and publication for public comment of draft rules, requirements and procedures. Allowing for public input would enhance public confidence in a PAB's process, and improve the quality of a PAB's governing documents, rules, membership requirements, and procedures. Accordingly, we have addressed the need for such processes in proposed rule 13–04(d)(15).

We request comment on the importance of an open and deliberative rulemaking process for a PAB. What

[95] The FAF is comprised of 16 Trustees representing a broad range of professional backgrounds. The FAF currently has responsibilities for FASB and the Government Accounting Standards Board ("GASB"), and for their Advisory Councils, including oversight of the standard-setting process, selection of FASB and GASB members, and arrangements for financing.

[96] Further discussion of the history of the Commission's endorsement and oversight of FASB can be found in Appendix B.

[97] *See, e.g.*, The Panel on Audit Effectiveness, *Report and Recommendations*, at 141 (Aug. 31, 2000), which emphasizes the need for effective communications among standard-setting bodies and the bodies involved in disciplining accountants and conducting reviews of accounting firms' quality control systems.

goals does it serve in the context of a PAB? Should our rules specify the types of procedures that a PAB should employ in rulemaking, or is this better left to a PAB to decide? What matters should a PAB be required to address only through an open process? Are there circumstances we should provide for under which issues concerning the amendment of governing documents, rules, membership requirements, and procedures should be handled other than through such open processes?

Full Faith and Credit. Under proposed rule 13–04(d)(16), a PAB would give "full faith and credit" to the sanctions and good standing requirements of another PAB. This would be necessary, if more than one PAB is formed, to prevent an accountant from attempting to avoid a sanction by one PAB by resigning and joining a different PAB. This provision also notes that a registrant may not avoid a finding that it is in violation of a PAB's good standing requirements (due to not paying fees assessed by the PAB or not providing requested testimony or documents) simply by firing its current accountant and engaging another accountant that is a member of a different PAB. In such circumstances, the new PAB would consider the registrant to be not in good standing until the registrant remedied the nonpayment of fees or delinquency in providing testimony or documents.

We request comment on the proposed requirement to extend full faith and credit to another PAB. How would this requirement work in practice? Will a requirement to extend full faith and credit prevent attempts to avoid sanction by resigning from one PAB and joining a different PAB? Should our rules be more specific?

Training. A key to maintaining professional competence is continued training throughout an accountant's career. Business and financial transactions, as well as audit practices, change with ever-increasing speed. Accountants need to be able to keep abreast of these developments and adapt their skills. Under proposed rule 13–04(d)(17), therefore, we condition the Commission's recognition of a PAB on the PAB providing training for, or imposing appropriate training requirements on, its member accountants in matters relating to accounting, auditing, attestation, assurance, ethics, independence, and quality controls. A training requirement should increase investor confidence that audits are being performed effectively and competently.

We request comment on the proposed requirement that a PAB provide or require training. Should we specify the particulars of a required training program? What would be the components of such a program? Should our proposed rules require a specific amount of training per year? How much training should be required?

Other Duties or Requirements. Under proposed rule 13–04(d)(18), a PAB's rules, membership requirements, systems, and procedures would specify that the PAB would perform such other duties or functions as the Commission determines are necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of proposed Article 13. This provision would allow the Commission to oversee effectively a PAB's activities to make sure that the PAB is operating in accordance with the proposed rules, and would allow for the possibility of marshalling a PAB's resources for special projects that fall within its realm of responsibility. For example, in the past ten years, we asked the former POB to study accounting firms' quality control systems related to auditor independence, recent changes in audit techniques and practices, and various issues related to professionalism and independence.[98] We solicit comment on this provision.

More generally, we solicit comment on these rules and requirements. Should we include other requirements necessary for the proper functioning of a PAB as we describe it? Are any of the proposed requirements too onerous? Why?

Quality Control Requirements

Proposed rule 13–04(e) conditions Commission recognition of a PAB on the PAB ensuring that its member accountants maintain a quality control system designed to meet the requirements of quality controls set or designated as authoritative by the PAB. These controls should encompass at least the current AICPA quality control elements: independence, integrity, and objectivity; personnel management; acceptance and continuance of clients and engagements; engagement performance; and monitoring.[99] In addition, the proposed rule conditions Commission recognition on a PAB requiring its members to maintain certain specific quality controls, many of which are current SECPS membership requirements.[100] A PAB may supplement or otherwise modify the quality control elements and specific requirements with other elements and requirements it deems appropriate.

"Independence, integrity, and objectivity" policies address the firm's relationships with its clients. "Personnel management" refers to the criteria for the hiring, development, continuing education, advancement, and assignment of personnel. The element related to the "acceptance and continuance of clients and engagements" is designed to provide reasonable assurance that the likelihood of associating with a client's management that lacks integrity is minimized. "Engagement performance" policies are intended to provide reasonable assurance that the firm complies with applicable professional standards and regulatory requirements. And "monitoring" involves an ongoing evaluation of the relevance of the firm's policies, the appropriateness of the firm's guidance materials and practice aids, the effectiveness of professional development activities, and compliance with the firm's policies and procedures.[101] We believe that these elements continue to be essential to high quality accounting and auditing practice and should continue to be required.

We request comment on conditioning Commission recognition on a PAB requiring that its member accountants maintain a quality control system. We stated that the controls should encompass at least the current AICPA elements and certain SECPS membership requirements. Are these elements appropriate to address the concerns discussed in the release? Are there other elements that we should require a PAB to include as part of its quality control system?

The specific quality controls that should continue to guide accounting firms' accounting and auditing practices include:

- Rotating the partner in charge of an audit engagement at least once every seven years;[102]
- Having a second-partner (one other than the partner in charge of the audit engagement) independently review the audit report and the financial statements,[103] unless the PAB authorizes alternative procedures where

[98] These projects are noted in Appendix A.

[99] AICPA, *System of Quality Control for a CPA Firm's Accounting and Auditing PRactice*, ¶7, Quality Control ("QC") § s20.07.

[100] *See generally*, SECPS, *Requirements of Members*, items, e, f, h, i, k, m, n, o, and p. The membership requirements are available online at *htt://www.aicpa.org/members/div/secps/require.htm*.

[101] *See supra* note 99, QC §§ 20.07–20.20 (description of each quality control eleemnt).

[102] SECPS, *Requirements of Members*, at item e.

[103] *Id.* at item f.

this requirement cannot be met because of the size of the firm;

- Ensuring policies and procedures are in place to comply with auditor independence requirements and to refrain from providing to audit clients consulting services that are inconsistent with § 210.2–01 and conducting public opinion polls and merger and acquisition assistance for a finder's fee;[104]

function that has expertise in accounting and financial reporting matters, and having policies and procedures in place for: (1) Engagement partners and others to consult with that office, and (2) the resolution of differences of opinions between that office and engagement partners. Proposed rule 13–04(e)(8) would condition Commission recognition of a PAB on the PAB ensuring that member

SECPS's peer review process and membership requirements to create a stronger, more diligent and independent system. Proposed rule 13–04(f) conditions Commission recognition of a PAB on the PAB having a continuing program for the review and inspection of member accountants' compliance with the PAB's rules and membership requirements and professional standards.

may be appropriate? If a PAB is granted discretion to change the trigger, are there factors the Commission should identify to guide the exercise of that discretion?

Proposed rule 13–04(f)(2) would permit a PAB to direct its member firms to make and keep records that are necessary for the conduct of the reviews. Proposed rule 13–04(f)(3) would make clear our expectation that

to the extent those functions are deemed necessary by a PAB.

Under proposed rules 13–04(f)(5) a PAB would direct and make all key decisions related to each review of a firm that has over 70 SEC clients, or such other number of SEC clients as the PAB may determine. For firms with 70 or fewer SEC clients, a PAB may permit the reviews to be conducted by non-PAB staff, but only if the PAB: (1) Approves the review program; (2)

directed review, should a PAB be permitted to engage, on a contract basis, employees of firms that are not affiliated with the firm being reviewed to do the "leg work" on the review? We have proposed that firms with 70 or fewer SEC clients may have quality control reviews conducted under a review program approved by a PAB. Should firm-on-firm reviews be allowed? If firm-on-firm peer reviews are allowed, should a PAB, as part of its oversight of

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this requirement cannot be met because of the size of the firm;

- Ensuring policies and procedures are in place to comply with auditor independence requirements and to refrain from providing to audit clients consulting services that are inconsistent with § 210.2–01 and conducting public opinion polls and merger and acquisition assistance for a finder's fee; [104]
- Reporting to the audit client and the SEC when the firm resigns, declines to stand for reelection, or is dismissed; [105]
- Seeking to have foreign associated firms adopt policies and procedures consistent with the objectives of the proposed rules, and notifying the Commission when any such firms have done so; [106] and
- Ensuring the firm has policies and procedures for reporting litigation or government investigations or proceedings to the PAB, [107] with a copy of the report to the Commission's Office of the Chief Accountant.

We request comment on each of these items. Is a requirement to rotate a partner every seven years, for example, the appropriate time frame? Should a PAB be permitted to make any exceptions to these requirements in some cases? If so, under what circumstances?

In addition to the current SECPS membership requirements, other practices currently enhance investors' confidence and contribute to improved audit quality. Under proposed rule 13–04(e), Commission recognition of a PAB depends on the PAB requiring its members' quality control systems to encompass these practices as well. For example, proposed rule 13–04(e)(4) essentially restates the requirement in Independence Standard No. 1 regarding communications on auditor independence issues between an accountant and the audit committee of its audit client. [108]

Another example of a beneficial practice is maintaining a central office function that has expertise in accounting and financial reporting matters, and having policies and procedures in place for: (1) Engagement partners and others to consult with that office, and (2) the resolution of differences of opinions between that office and engagement partners. Proposed rule 13–04(e)(8) would condition Commission recognition of a PAB on the PAB ensuring that member firms maintain such a central office function, but a PAB could authorize alternative procedures for firms that could not meet this requirement because of their size. We solicit comment on the central office function requirement. Would this requirement place a burden on those firms that do not already maintain a central office function? Would conditioning recognition on the maintenance of a central office function pose any competitive concerns?

Finally, proposed rule 13–04(e)(9) would condition Commission recognition of a PAB on the PAB ensuring that its members incorporate many of the procedures discussed by the Independence Standards Board in Independence Standard No. 3, *Employment with Audit Clients*. [109] This standard requires an accounting firm, when an audit client employs a former firm professional, to take steps to eliminate the risk that the firm's former partner or employee could, by reason of his or her knowledge of or relationships with the firm, adversely influence the quality or effectiveness of the audit. [110]

We request comment on the quality control elements and specific requirements we have included in the proposed rule. Should we require these items, or should we defer to a PAB's discretion to devise quality control elements and requirements or to designate another entity's as authoritative? If they should be retained, should any be omitted or should additional procedures be added? Which ones? For example, should all partners who participate in a portion of the audit of a registrant's financial statements be rotated periodically? Are there other circumstances when we should require reporting to the audit client, a PAB, and/or the SEC? What are they? Should the Commission provide greater or lesser direction regarding the content of requirements set or adopted by a PAB?

Quality Control Review Program

In section 13–04(f), we propose to build on the most successful parts of the SECPS's peer review process and membership requirements to create a stronger, more diligent and independent system. Proposed rule 13–04(f) conditions Commission recognition of a PAB on the PAB having a continuing program for the review and inspection of member accountants' compliance with the PAB's rules and membership requirements and professional standards.

The frequency of the reviews of a firm's quality control system under proposed rule 13–04(f)(1) would vary based on the number of the firm's SEC clients. For each member firm with more than 70 SEC clients, or such other number of SEC clients as the PAB may determine, the proposed rule would require a PAB to conduct an annual review of the firm's quality control system. For all other member firms, a review would be conducted at least once every three years.

According to a recent computer run of SECPS members, ten accounting firms have more than 70 SEC clients. [111] We have chosen 70 SEC clients for the dividing line to ensure that those accountants who audit the vast majority of registrants will be subject to very frequent scrutiny by a PAB. We recognize that the number of firms with more or less than 70 SEC clients, and the need to review more or fewer firms on an annual basis, may change over time. Proposed rule 13–04(f)(1), therefore, would provide a PAB with the discretion to change the number of SEC clients that would trigger an annual, as opposed to a triennial, review.

Should a PAB conduct reviews more or less often than annually for the larger firms? Will triennial reviews for small firms meet the goals of the proposed rules? Should a PAB have the discretion to alter these frequency requirements based on experience over time with the review process? If so, in what way, if any, should that discretion be guided by Commission rules?

We also request comment on whether 70 SEC clients is the appropriate trigger for an annual review or whether a larger or smaller number of SEC clients would be more appropriate. Additionally, we request comment on the proposal to provide a PAB with discretion to alter the 70 SEC client trigger/standard. Should a PAB have that discretion? If it does not, how should developments over time and a PAB's experience with the review process be factored into or accounted for in adjusting the trigger, as may be appropriate? If a PAB is granted discretion to change the trigger, are there factors the Commission should identify to guide the exercise of that discretion?

Proposed rule 13–04(f)(2) would permit a PAB to direct its member firms to make and keep records that are necessary for the conduct of the reviews. Proposed rule 13–04(f)(3) would make clear our expectation that a PAB would establish the policies and procedures for conducting reviews, establish reporting requirements, and maintain public files. Under proposed rule 13–04(f)(4), a PAB would monitor each review to ensure that it is conducted in a fair and impartial manner and that appropriate procedures are recommended and implemented to correct any noted deficiencies in a timely and effective manner.

We request comment on all aspects of our proposals regarding quality control reviews, including on the elements of a strong quality control review program. How can a PAB best assess compliance of its members with rules of a PAB and with professional standards? How can a PAB best assess compliance of individual accountants associated with a firm?

If a PAB program would be compared to the peer review program that currently is conducted under the auspices of the AICPA, we would expect that the PAB and its staff would perform the functions related to peer reviews that currently are performed by the Peer Review Committee, [112] the SECPS Executive Committee, [113] and until recently the POB and the POB staff, [114] to the extent those functions are deemed necessary by a PAB.

Under proposed rules 13–04(f)(5) a PAB would direct and make all key decisions related to each review of a firm that has over 70 SEC clients, or such other number of SEC clients as the PAB may determine. For firms with 70 or fewer SEC clients, a PAB may permit the reviews to be conducted by non-PAB staff, but only if the PAB: (1) Approves the review program; (2) establishes policies and procedures for the reviews as well as for reporting the results of the reviews; (3) maintains public files related to the reviews; (4) monitors the program to insure that reviews are conducted in a thorough and impartial manner; and (5) evaluates each review to gain assurance that appropriate procedures are being recommended and implemented to correct any noted deficiencies in a timely and effective manner.

We request comment on whether a PAB should be permitted to use approved review programs. The five items listed should help to make sure that such programs operate effectively. Are there any other requirements that should be added to this list before a PAB may permit reviews under a review program? If review under a program is permitted, should a PAB, as part of its oversight of such a program, have control or veto power over the reviewer?

Under proposed rule 13–04(f)(5)(i), in performing a PAB-directed review, the PAB may engage accountants from one or more non-associated firms to work on the review. As noted above, however, all key decisions must be made by the PAB. We are proposing to allow the PAB to engage such accountants to assist in doing the "leg work" of the reviews, so that a PAB may decide whether to hire a larger permanent staff or to contract for additional support on reviews as needed. Any accountants engaged to assist the PAB in conducting the reviews would perform only assigned functions and be supervised by the PAB or its staff.

Should a PAB be permitted to engage accountants to work on a review? If so, what is the scope of functions that accountants engaged to assist a PAB in conducting reviews should be permitted to perform? Should there be other limitations or requirements on the accountants that may be engaged to assist a PAB in conducting a review? Would it be practical, and would a PAB be able to obtain the necessary expertise, if it had to conduct all or a significant portion of reviews exclusively with its own staff? Should a PAB direct the reviews, and make all key decisions for all reviews? In a PAB-directed review, should a PAB be permitted to engage, on a contract basis, employees of firms that are not affiliated with the firm being reviewed to do the "leg work" on the review? We have proposed that firms with 70 or fewer SEC clients may have quality control reviews conducted under a review program approved by a PAB. Should firm-on-firm reviews be allowed? If firm-on-firm peer reviews are allowed, should a PAB, as part of its oversight of such a program, have veto power over a firm's selection of its reviewer? Should these reviews be conducted by teams of persons from one accounting firm or should the teams include members from several firms? What are the advantages and disadvantages of either team composition? Should firms employ staff members dedicated, at least on a part-time basis, to PAB quality control reviews?

Proposed rule 13–04(f)(6) provides that a PAB or approved reviewer would examine various offices and personnel within the firm. It also would require a PAB or reviewer to determine whether the firm's quality control system is appropriate, whether adequate documentation and communication of quality control policies and procedures exists within the firm, and whether those policies and procedures provide reasonable assurance of compliance with the Commission's rules, the PAB's rules and membership requirements, and professional standards. Under proposed rule 13–04(f)(7), a PAB or reviewer would prepare a report of its findings and comments during each review. Each report and any response provided by the reviewed firm would be available to the public.

We solicit comments on the appropriate scope of a review and the type of report and access to the report that should be established by the rules.

Supplemental Reviews and Disciplinary Proceedings

In proposed rule 13–04(g) we have created the framework for a disciplinary process that for the first time would add teeth to the quality control review process. Under this proposal, the PAB could suspend or bar an individual or firm from being a member of a PAB or impose other remedial or disciplinary sanctions, as it believes appropriate. Such a proceeding might be based on an individual accountant's incompetent or unethical conduct, other acts or omissions that constitute a failure to comply with professional standards, or for violations of the PAB's rules or membership requirements. A proceeding against a firm might be based on the issuance of an adverse

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[104] *Id.* at item h and o.

[105] *Id.* at item m.

[106] *Id.* at item n. As discussed elsewhere in this release, foreign accountants would be exempt from the coverage of the proposed rules. The provisions in this section is intended only to continue current practices, under the SECPS membership requirements, of encouraging foreign firms to improve their quality systms.

[107] *Id.* at items k and p.

[108] Independence Standards Board, *Independence Discussions with Audit Committes*, Independence Standard No. 1 (Jan. 1999), which requires the auditor to disclose to the audit committee, in wiritng, relationships that the auditor believes may reasonably be thought to bear on auditor independence, confirm in the letter its independence, and discuss its independence with the audit committee.

[109] *See* Independence Standards Board, *Employment with Audit Clients*, Independence Standards No. 3 (July 2000).

[110] *Id.*

[111] The same data, derived from a list obtained from the SECPS, indicates that ten firms have between 30 and 75 SEC clients and approximately 800 firms have fewer than 30 SEC clients.

[112] The Peer Review Committee administers the peer review program, establishes standards for conducting peer reviews, establishes standards for reports on peer reviews and publication of such reports, requests the SECPS Executive Committee to appoint a hearing panel when it believes that sanctions should be imposed on a member firm for failure to comply with membership requirements, keeps records of peer reviews, and establishes and maintains a public file for each member firm, which includes the firm's three most recent annual reports, the latest peer review report, the reviewer's letter of comments, and the firm's response. *See* AICPA, *Governing Bodies* at: *http://www.aicpa.org/members/div/secps/bodies/index.htm*.

[113] The SECPS Executive Committee, among other things, establishes requirements for membership in the SECPS and determines sanctions to be imposed on member firms for failure to comply with the SECPS's membership requirements, ordinarily through the appointment of hearing and appeals panels. *Id.*

[114] The POB and the POB staff, among other things, monitored and evaluated the effectiveness of the Peer Review Committee and the SECPS Executive Committee and determined whether the Peer Review Committee was ascertaining that firms were taking appropriate action as a result of findings during peer reviews. *Id.*

review report, which indicates that the firm's quality controls, or compliance with those controls, are deficient and fail to provide reasonable assurance that the firm is complying with professional standards during its audit, review, or attest engagements. A PAB could also institute disciplinary proceedings against a firm or an individual for conduct that comes to the attention of a PAB other than through the quality control review process.

We request comment on the requirement that a PAB establish procedures for disciplinary proceedings. Should our rules be more specific with respect to the procedures a PAB must establish, such as specifically providing for appropriate burdens of proof or evidentiary rules? We request comment on the ability of a PAB to institute disciplinary proceedings and supplemental reviews, and on the procedures proposed for those limitations, and controls should apply to a PAB's exercise of its disciplinary powers? Should the rule provide more specific limits on the circumstances in which a PAB may pursue a supplemental review?

If a PAB becomes aware of information indicating that a violation of the securities laws has, or is likely to have, occurred, then under proposed rule 13–04(g)(2) the PAB would notify

same extent as our Rule 102(e) proceedings.

We request comment on which safeguards, if any, a PAB should provide to its members. Are there additional safeguards that any final rules should require a PAB to provide? Are there safeguards that we propose that are unnecessary and would impede a PAB's ability to accomplish the goals and purposes of Article 13? Should the Commission provide more guidance or limitations on an accountant's activities, including requiring resignation from a specific audit, review, or attest engagement; suspend or bar an accountant from participating in any SEC audit, review, or attest engagement; impose fines and censures; and impose any other appropriate sanction.

The Commission requests comment on whether these are appropriate sanctions. Should our rules be more or less specific with respect to the

accounting firms provide diverse and varied services, it is possible for a firm to retain an individual to perform services that are unrelated to audits, reviews, or attest services for Commission registrants. Under this provision, however, the firm would notify the PAB of its relationship with the sanctioned individual and undertake procedures to make sure the terms of the sanction, order, or ruling are not violated. We request comment

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review report, which indicates that the firm's quality controls, or compliance with those controls, are deficient and fail to provide reasonable assurance that the firm is complying with professional standards during its audit, review, or attest engagements. A PAB could also institute disciplinary proceedings against a firm or an individual for conduct that comes to the attention of a PAB other than through the quality control review.

Proposed rule 13–04(g)(1) conditions Commission recognition of a PAB on the PAB having rules, membership requirements, systems, and procedures, incorporating the criteria described in this section, pursuant to which it could institute public disciplinary proceedings to determine whether an accountant has violated PAB rules or membership requirements, or professional standards, and to impose sanctions. Prior to making a determination to institute a disciplinary proceeding, under proposed rule 13–04(g)(1)(ii) a PAB may, on the basis of information suggesting such a violation, engage in a nonpublic "supplemental review" process of gathering information relevant to its determination of whether to institute a disciplinary proceeding.

The supplemental review process would be an important part of the PAB's mission. We would expect a PAB to pursue a supplemental review on the basis of any information suggesting the possibility of the type of violation described above, whether that information comes to a PAB through a routine quality control review or otherwise. Some supplemental reviews might be very brief, with PAB staff satisfying itself in the course of a single interview that there is no basis for inquiring further, while other supplemental reviews could be complex, requiring careful consideration of a large amount of information to make a responsible decision about whether to institute a disciplinary proceeding. Proposed rule 13–04(g)(4) provides that a PAB may request relevant testimony and documents from any person in connection with a supplemental review or a disciplinary proceeding.

We request comment on the proposed supplementary review and disciplinary mechanisms. Under what circumstances should a PAB exercise this power? Should a PAB have the power to suspend or bar an individual or firm from being a PAB member? Should the rules set forth detailed requirements regarding the procedures that a PAB should employ before exercising disciplinary powers? What procedures, limitations, and controls should apply to a PAB's exercise of its disciplinary powers? Should the rule provide more specific limits on the circumstances in which a PAB may pursue a supplemental review?

If a PAB becomes aware of information indicating that a violation of the securities laws has, or is likely to have, occurred, then under proposed rule 13–04(g)(2) the PAB would notify the Commission. As noted above, we intend to continue to address instances of violations of the securities laws and other conduct through our enforcement efforts, including enforcement of Rule 102(e) of our Rules of Practice. Violations of the securities laws and other actionable conduct should not go unaddressed because they are detected during a quality control review as opposed to coming to light through another means. While we recognize that some may fear that such a referral procedure could have a chilling effect on the review process, to provide otherwise would be contrary to our mandate under the securities laws. In light of the balance between these interests, we request comment on whether we should require that a PAB notify the Commission of information indicating that a violation of the securities laws has or is likely to have occurred. Would this referral procedure affect the review process? If so, how?

Further, to ensure that there is not unnecessary duplication of effort or burden on a party, and to retain the Commission's control over the enforcement of the securities laws, we propose that a PAB could only institute a disciplinary proceeding regarding that information after notifying and consulting with the Commission. We solicit comment on whether the Commission should prohibit a PAB's institution of a disciplinary proceeding in this manner. Are there alternative ways to achieve the purposes of this limitation? Should a PAB have broader discretion and disciplinary powers to conduct proceedings related to violations of the securities laws?

Under proposed rule 13–04(g)(3), a PAB must establish fair procedures for supplemental reviews and disciplinary proceedings. The rule also would require a PAB's disciplinary proceeding to be public unless otherwise ordered by the PAB with the prior approval of the Commission. We intend for a PAB's disciplinary proceedings to be open and transparent to the same extent that our Rule 102(e) proceedings are open to the public.[115]

We request comment on the requirement that a PAB establish procedures for disciplinary proceedings. Should our rules be more specific with respect to the procedures a PAB must establish, such as specifically providing for appropriate burdens of proof or evidentiary rules? We request comment on the ability of a PAB to institute disciplinary proceedings and supplemental reviews, and on the procedures proposed for those proceedings and reviews. Under the proposal, disciplinary proceedings would be public. Are there reasons that all disciplinary proceedings, certain categories of disciplinary proceedings, or certain portions of disciplinary proceedings should not be public, or as to which a PAB should have discretion to make them non-public? Is providing a PAB discretion to close a disciplinary proceeding, but only with prior Commission approval, an appropriate response to these situations, given that it may not be possible to foresee all possible contingencies?

We are not proposing to prescribe the details of the hearing process. A PAB, if it chooses, may have independent, non-accountant hearing officers conduct a hearing and recommend findings and sanctions to the PAB, in a manner not dissimilar to the process used by the NASD. Alternatively, it may require a panel of PAB members, with the advice of legal counsel, to conduct the hearings, or it may adopt rules and procedures for other suitable proceedings. Should we require a particular process in this area?

At a minimum, however, under proposed rule 13–04(g)(3), a PAB should provide its members with procedural safeguards similar to those required by statute in proceedings conducted by the securities exchanges and the NASD. These include notice of specific charges, an opportunity to defend against the charges, a record of the proceedings, and an explanation of the grounds for any sanction imposed.[116] As noted above, we believe that to have a credible process and protect the interests of both investors and accountants, these proceedings should be public to the

[115] See 17 CFR 201.102(e)(7). In 1986, the Commission amended Rule 102(e) to state that proceedings shall be public unless the Commission otherwise directs, and stated that the reasons supporting public proceedings against accountants include that disciplinary proceedings against broker-dealers and other market professionals are public, that private proceedings create an incentive for delay, that there is considerable public and professional interest in such proceedings, and that public proceedings are more favored in the law than are closed proceedings. *See Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission*, Release No. 33–6783 (July 7, 1988), 53 FR 26427 (July 13, 1988).

[116] *See, e.g.*, 15 U.S.C. 78o–3(h).

same extent as our Rule 102(e) proceedings.

We request comment on which safeguards, if any, a PAB should provide to its members. Are there additional safeguards that any final rules should require a PAB to provide? Are there safeguards that we propose that are unnecessary and would impede a PAB's ability to accomplish the goals and purposes of Article 13? Should the Commission provide more guidance or detail regarding the safeguards it proposes or may adopt in this proposed rule?

Under proposed rule 13–04(g)(4), Commission recognition of a PAB is also conditioned on the PAB having rules pursuant to which it may request that any person provide documents or testimony relevant to any supplemental reviews or disciplinary proceeding. We have not proposed any provisions pursuant to which a PAB could require production or testimony from anyone who is not a member or adjunct member of the PAB.

Are there appropriate mechanisms that could be included in the rule to increase the PAB's ability to obtain documents and testimony? Should the rule limit the circumstances under which, or the methods by which, a PAB should be permitted to seek documents and testimony?

Proposed rule 13–04(g)(5) states that PAB board members who are not public members would not vote on any disciplinary matters (but could be consulted in connection with supplemental reviews and disciplinary proceedings). Placing the outcome of disciplinary matters solely in the hands of representatives of investors and issuers would serve to enhance investor confidence that their interests are being protected.

Is this proposed restriction on voting in disciplinary matters to the public board members appropriate in light of the importance of assuring investor confidence in these proceedings? Are there circumstances when the accountant board members should be able to vote? Should further or other limitations be placed on the participation of accountant board members with regard to disciplinary proceedings or supplemental reviews? For example, should consultation be prohibited as well? If so, why?

Under proposed rule 13–04(g)(6), if a PAB finds in a disciplinary proceeding that an accountant has violated rules or membership requirements of a PAB or professional standards, it could, among other sanctions, revoke or suspend the accountant's membership in, or expel the accountant from, the PAB; impose limitations on an accountant's activities, including requiring resignation from a specific audit, review, or attest engagement; suspend or bar an accountant from participating in any SEC audit, review, or attest engagement; impose fines and censures; and impose any other appropriate sanction.

The Commission requests comment on whether these are appropriate sanctions. Should our rules be more or less specific with respect to the sanctions and remedial actions a PAB could take? If so, how?

To provide heightened transparency in the disciplinary process, proposed rule 13–04(g)(7) would provide for a PAB to issue a public written report whenever it imposes a sanction. Copies of the report would be provided to the Commission and to any state or foreign financial regulatory authorities, with which the individual or firm is licensed, registered, or certified to practice public accounting. Each report would name the accountant being sanctioned, describe the acts or omissions on which the sanction is based, describe the nature of the sanction, and contain such other information as the PAB deems appropriate. We request comment on the persons to whom the report should be sent, whether it should be public, and what information it should contain. In addition, we solicit comment on whether public reports, either on a case-by-case basis or otherwise, should be provided when a PAB determines that no sanction should be imposed, and, if so, what those reports ought to include.

Under proposed rule 13–04(g)(8), if a PAB is unable to complete a proceeding because of the refusal of any person to provide testimony or documents or otherwise to cooperate with the PAB, then the PAB would report that refusal to the Commission. Further, where the uncooperative party is a registrant, the PAB would additionally report the refusal to any market or exchange on which that registrant's securities are traded. Under this proposed rule, a PAB also may refer any other matter to the Commission that it deems appropriate.

We solicit comments on the reporting and referral provisions in proposed rule 13–04(g)(8). Among other matters, should the Commission provide guidance or details regarding the timing and content of those reports and referrals. Are there other circumstances when a PAB should report to the Commission or to an exchange or market on which a registrant's securities are traded?

Proposed rule 13–04(g)(9) addresses the situation where a firm employs a person who is subject to a PAB sanction, order, or ruling. Because many accounting firms provide diverse and varied services, it is possible for a firm to retain an individual to perform services that are unrelated to audits, reviews, or attest services for Commission registrants. Under this provision, however, the firm would notify the PAB of its relationship with the sanctioned individual and undertake procedures to make sure the terms of the sanction, order, or ruling are not violated. We request comment on these proposed requirements. Is it necessary or appropriate to the accomplishment of the goals and purposes of Article 13 for a member accounting firm to provide notice if the individual is not going to perform any audit, review, or attest services for registrants? Should the requirement to provide notice take into account whether the sanctioned person would perform services unrelated to audits of Commission registrants? Should the firm's requirement to notify a PAB of its relationship with the sanctioned person be a one-time or continuous requirement?

Rule 102(e)(2) of the Commission's Rules of Practice states that any person whose license to practice as an accountant has been revoked or suspended in any state, and any person who has been convicted of a felony or a misdemeanor involving moral turpitude, shall be forthwith suspended from appearing or practicing before the Commission.[117] Should proposed rule 13–04(g)(9), if adopted, include a provision that any person barred, suspended, or expelled from membership in a PAB shall be forthwith suspended from appearing or practicing before the Commission? Should we include such a provision in Rule 102(e)(2)?

Public Reporting

To facilitate our oversight and to provide transparency regarding a PAB's operations and processes, we would encourage a PAB to make as much information available on a "real-time" basis as possible. Under proposed rule 13–04(h), a PAB would report to the Commission and the public at least annually, and where practicable on a current basis:

- A description of its quality control review and disciplinary activities;
- Annual audited financial statements;
- An explanation of fees and charges imposed on member accountants and adjunct members;
- A summary of issues discussed in the PAB-sponsored meetings with, or in

[117] 17 CFR 201.102(e)(2).

connection with its oversight of, private sector standard-setting bodies;

- A list of matters referred to each private sector standard-setter that were not placed on the standard-setter's agenda within 90 days of the referral; and
- Other matters as the PAB or the Commission deems appropriate.

Transparency is essential if a PAB is going to be a credible private sector control systems, including sanctioning or removing from practice before the Commission incompetent or unethical individuals.

The proposed rule allows a PAB to set auditing, ethical and quality control standards, perform quality control and supplemental reviews, and impose disciplinary sanctions. As discussed elsewhere in this release, these powers are necessary in order for a PAB to this requirement raise any concerns in light of state law requirements in the areas of fiduciary duty and business judgment?

Under the self-regulatory structure, a 1982 memorandum of understanding ("MOU") among the Commission, the SECPS Peer Review Committee, the SECPS Executive Committee, and the POB significantly limited our oversight. For example, the MOU provided for the

notified by the PAB of the sanction or delinquency determination to file an application with the Commission for review. The Commission also could review a PAB sanction or delinquency determination on its own motion. A Commission review, however, would not stay the operation of the sanction unless the Commission so orders.

We seek comment on Commission review of a PAB disciplinary or delinquency action. Under the proposed competition or is excessive or oppressive.

We request comment on the Commission proceeding to review a PAB's disciplinary actions or delinquency determinations. What should such a hearing entail? Should the rule allow for us to increase the sanction imposed on an accountant when appropriate? Under the proposed rules, we may cancel, reduce or require

deliberations of, the PAB and its agents to receive appropriate confidential treatment under applicable law. We also find it in the public interest for a PAB to claim such protection, except to the extent that such information is requested by the Commission, any other Federal agency or department, any state licensing or criminal law authorities, and any foreign governmental or foreign financial regulatory authorities.

The Commission anticipates and

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connection with its oversight of, private sector standard-setting bodies;

- A list of matters referred to each private sector standard-setter that were not placed on the standard-setter's agenda within 90 days of the referral; and
- Other matters as the PAB or the Commission deems appropriate.

Transparency is essential if a PAB is going to be a credible private sector regulatory body, develop the trust of both accountants and government bodies, and enhance the confidence of investors in the audit process and in the integrity of the information that fuels our securities markets. Public reports are one means of providing that transparency.

We request comment on our proposed public reporting provisions. Should we be more specific? Will the specified reports achieve an adequate level of transparency? If not, on what other types of reporting should we condition a PAB's Commission recognition? We also request comment on the appropriate timing and the scope of the reports.

Commission Oversight

As discussed above, under proposed section 13–04(i), Commission recognition is conditioned on a PAB's charter and bylaws providing that it will be subject to, and act in accordance with, Commission oversight. Our oversight authority under proposed section 13–04(i) is substantial. We expect to monitor closely the activities of any PAB and exercise particular aspects of our oversight authority whenever the public interest so requires. Among other things, under these proposed rules, the Commission may make changes to a PAB's rules, inspect and monitor a PAB's operations, review PAB disciplinary proceedings and modify or reverse any sanctions imposed, remove PAB board members under certain circumstances, redirect fees paid to a PAB that fails to comply with the conditions of recognition, and, ultimately, withdraw recognition. We believe that the system of private regulation proposed by the release, coupled with Commission oversight, is the best way to achieve our goals of improving audit quality and financial disclosure.

We envision a more thorough and extensive oversight of a PAB's processes than existed under the prior self-regulatory structure. We would intend to have full access to the process so that we would be able to determine to our satisfaction whether a PAB is operating in the interests of investors and working diligently to improve firms' quality control systems, including sanctioning or removing from practice before the Commission incompetent or unethical individuals.

The proposed rule allows a PAB to set auditing, ethical and quality control standards, perform quality control and supplemental reviews, and impose disciplinary sanctions. As discussed elsewhere in this release, these powers are necessary in order for a PAB to improve audit quality and enhance public confidence in our markets. Because a PAB's influence on financial reporting will be significant, Commission oversight is necessary to ensure that a PAB exerts its influence exclusively in the public interest.

We request comment on the structure and scope of Commission oversight provided in the proposed rules. Would our goals better be served by a system of oversight that was less extensive? Why or why not? Should our rules set forth detailed criteria with respect to when the Commission would exercise its oversight? What should those criteria be?

Although we would not approve a PAB's rules before they take effect, as we do for the securities exchanges and others, one of the conditions of Commission recognition of a PAB would be, as set out in proposed rule 13–04(i)(1), that the PAB consent to and act in compliance with any Commission rule that abrogates, adds to, or deletes from the rules of a PAB. Using this provision, we could, by rule, amend a PAB's rules to remove inconsistencies, assure compliance with the securities laws or our regulations, and otherwise fulfill the purposes of Article 13. We would notify a PAB of our intention to take such action before we commenced a rulemaking proceeding. We also would follow our normal rulemaking process under the Administrative Procedure Act,[118] including publication of the proposed changes in the **Federal Register**, to solicit a wide range of comments on the proposed amendments. As discussed above, a PAB's charter and bylaws would provide that any changes we make to a PAB's rules would be immediately effective without further action by a PAB. We request comment on this provision. Should we review or approve of a PAB's rules before they take effect? Should the Commission amend a PAB's rules or should we only suggest or require that changes be made by the PAB itself? We request comment on our requirement that a PAB provide that any changes we make to a PAB's rules would be immediately effective. Does this requirement raise any concerns in light of state law requirements in the areas of fiduciary duty and business judgment?

Under the self-regulatory structure, a 1982 memorandum of understanding ("MOU") among the Commission, the SECPS Peer Review Committee, the SECPS Executive Committee, and the POB significantly limited our oversight. For example, the MOU provided for the Commission staff to have access to POB staff workpapers, but only to certain workpapers of the peer reviewers on a random selection basis. The MOU also stated that the Commission staff was not permitted to retain or make copies of POB or reviewer workpapers.

Under proposed rule 13–04(i)(2), a totally different approach is proposed that would give the Commission the requisite involvement and oversight of a PAB's activities. Under the rule, our staff periodically may monitor and inspect the operations, records, and results of a PAB to ensure it is operating in the public interest and fulfilling the purposes of the Commission's rules. We intend that our staff would, in fact, regularly inspect the PAB's operations, records, and results, and would meaningfully monitor the PAB's operations. Among other things, we expect that monitoring to include our staff's attendance at meetings between a PAB and firms in connection with closing conferences at the completion of quality control reviews. The rule also requires a PAB to make and keep records that the Commission staff deems necessary for its inspections of the PAB's quality control reviews, supplemental reviews, and disciplinary activities.

We solicit comment on the approach to oversight in the proposed rules and on Commission involvement of a PAB's activities. How extensive should the involvement be of our staff in meetings between a PAB and a firm being reviewed? At what stage of the oversight process would our staff's involvement be most productive?

Because a PAB may limit or suspend an accountant's practice before the Commission, an adversely affected firm or individual should have the opportunity to seek Commission review of a PAB disciplinary decision. In addition, any member or adjunct member who is found delinquent in paying fees, producing documents or providing testimony should have an opportunity to seek Commission review of that determination. Under proposed rule 13–04(i)(3)(i), a PAB member accountant or adjunct member would have 30 days from the date the member accountant or adjunct member was

[118] *See* 5 U.S.C. 553 *et seq.*

notified by the PAB of the sanction or delinquency determination to file an application with the Commission for review. The Commission also could review a PAB sanction or delinquency determination on its own motion. A Commission review, however, would not stay the operation of the sanction unless the Commission so orders.

We seek comment on Commission review of a PAB disciplinary or delinquency action. Under the proposed rules, a PAB member or adjunct member would have 30 days to file an application for review. Is 30 days sufficient time to file an application? Should an application for review stay the operation of the sanction?

Under 13–04(i)(3)(ii), a Commission proceeding for review of a PAB's final disciplinary action against a member accountant would allow for notice and an opportunity for a hearing. The hearing may consist solely of consideration of the record before the PAB and opportunity for the presentation of supporting reasons to affirm, set aside, or modify the sanction. Under the proposed rule, the Commission would make a finding determining whether the member accountant engaged in the acts or omissions that the PAB found the accountant to have engaged in; whether those acts or omissions violated the provisions of the securities laws or rules thereunder, rules or membership requirements of the PAB, or professional standards that the PAB specified; and whether those provisions are, and were applied in a manner, consistent with proposed Article 13. If the Commission makes those findings, the Commission would by order so declare, and affirm or modify the sanction or, where appropriate, remand it to the PAB for further proceedings. If the Commission does not make those findings, it would set aside the sanction and, if appropriate, remand it to the PAB. We are not proposing that the Commission, during such a review, be able to increase the sanction imposed on the accountant. If the Commission deems a greater sanction to be necessary, it would initiate its own civil, administrative, or disciplinary proceedings.

Proposed rule 13–04(i)(3)(iii) sets forth similar procedures for Commission review of a PAB delinquency determination against a member or adjunct member. In proposed rule 13–04(i)(3)(iv), we have expressed specifically our authority to cancel, reduce, or require remission of a sanction or to cancel a delinquency determination, if we find that the sanction or delinquency determination imposes an unnecessary burden on competition or is excessive or oppressive.

We request comment on the Commission proceeding to review a PAB's disciplinary actions or delinquency determinations. What should such a hearing entail? Should the rule allow for us to increase the sanction imposed on an accountant when appropriate? Under the proposed rules, we may cancel, reduce or require remission of a sanction or cancel a delinquency determination if it would impose an unnecessary burden on competition or is excessive or oppressive. Are these the appropriate instances when we should take such action? Are there other circumstances when we should act to ameliorate a sanction? What are they?

Proposed rule 13–04(i)(4) allows us, by order, to remove from office or censure any PAB board member if we find, after notice and opportunity for hearing that the member has (1) willfully violated any provision of the securities laws, rules or regulations thereunder, or the rules of the PAB; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse failed to enforce a PAB member's compliance with any such provision or professional standards. In addition, under proposed rule 13–04(i)(5), if the Commission finds that a PAB is failing or has failed to comply with any of the conditions of recognition in proposed rule 13–04, we could withdraw recognition of the PAB and direct that PAB fees be deposited into escrow pending either correction of the PAB's failing or redirection of the funds to another PAB with which the formerly recognized PAB's members have enrolled.

Does our proposal set forth the appropriate circumstances for when we would remove from office or censure a PAB board member? We solicit comment on the redirection of funds to another PAB. Are there other circumstances that would warrant such action by the Commission? Are there alternative approaches for resolving or correcting a PAB's failure to meet the conditions of ongoing recognition?

We request comment on all aspects of Commission oversight of a PAB. Are there important aspects of Commission oversight that we have not identified? What are they? We request comment on our proposed rule that would allow us to withdraw recognition of a PAB.

F. Confidentiality and Immunity

Proposed rule 13–05(a) contains the Commission's finding that it is in the public interest for reports, memoranda, and other information prepared by, and deliberations of, the PAB and its agents to receive appropriate confidential treatment under applicable law. We also find it in the public interest for a PAB to claim such protection, except to the extent that such information is requested by the Commission, any other Federal agency or department, any state licensing or criminal law authorities, and any foreign governmental or foreign financial regulatory authorities.

The Commission anticipates and intends that a PAB vigorously will claim confidentiality for its quality control review files, supplemental review files, and other files to the full extent permitted under law. Courts have recognized the strong public interest in allowing non-governmental entities entrusted with enforcing rules of conduct to minimize disclosure of investigative materials.[119] In *Ross* v. *Bolton*, the court noted the danger in "making NASD files fair game for any of the thousands of private securities fraud litigants across the country who wish to shortcut their own discovery efforts and instead to reap the benefits of the Association's ongoing, statutorily governed work."[120]

Those who possess information may be less forthcoming in responding to a PAB inquiry if they believe that the information they provide will be made public or made available to private litigants.[121] The PAB's efforts to improve audit quality accordingly would be hindered.[122] Additionally, we believe that in most instances a plaintiff's legitimate interest in obtaining discovery from a PAB will be slight at best. This particularly will be the case where the PAB is not a party to the litigation or where a PAB inquiry is not the subject of a plaintiff's claims.[123] Moreover, a plaintiff generally will be able to obtain the information it seeks from sources other than a PAB. Accordingly, a PAB's files should receive significant protection from compelled disclosure. The scope of

[119] *See Fiero Bros.* v. *Mishkin*, No. 95–08203 JLG, 1999 WL 1747410 (S.D.N.Y. Dec. 8, 1999); *Apex Oil Co.* v. *DiMauro*, 110 F.R.D. 490, 496 (S.D.N.Y. 1985); *Ross* v. *Bolton*, 106 F.R.D. 22, 23 (S.D.N.Y. 1985).

[120] *Ross*, 106 F.R.D. at 24.

[121] *See Apex Oil*, 110 F.R.D. at 496.

[122] Additionally, as with our own proceedings, substantial harm may occur to individuals, accounting firms, or registrants if materials are released either prematurely or after a determination has been made that allegations or suspicions of misconduct have not been substantiated sufficiently to warrant instituting a PAB disciplinary proceeding. Absent such confidentiality, the reputation of innocent professionals could be tarnished irreparably and the price of a registrant's securities could suffer based on unfounded suspicion or rumor.

[123] *See Apex Oil*, 110 F.R.D. at 497.

this protection, however, should not be so broad as to permit a PAB to deny Commission access to the PAB's materials, nor should it permit a PAB to deny access to the other governmental authorities described above.

We request comment on our proposal that the Commission find that information prepared by a PAB receive confidential treatment. Should such

the safeguards against abuse provided by the Commission's oversight.[127]

Although we are proposing the framework for a private sector regulatory organization that is not self-regulatory in nature, a PAB and its employees should be immune for activities within the scope of their duties under these rules. Like an SRO, the PAB will further the purposes of the federal securities laws by setting

Commission on a recurring basis and whose audit reports are filed with us only in accordance with Rule 3–05 of Regulation S–X.[130] Rule 3–05 requires that the audited financial statements of certain businesses acquired, or to be acquired, by registrants be filed with the Commission. An audit of a private business that subsequently is acquired by a registrant, therefore, would not, by itself, require the accountant performing

practice of encouraging their international organizations and individual foreign associated firms to improve their quality control policies and procedures, in a manner consistent with the objectives of Article 13.[132] We also would expect that domestic firms would continue to urge their foreign associated firms to adopt policies and procedures that are at least as rigorous as those set forth in Appendix K to the current SECPS Membership

We request comments on our proposal regarding foreign accountants. Is the exemption for foreign accountants appropriate? There may be situations where, for example, a foreign company has the majority of its assets and operations in the United States and as a result it engages a U.S. firm to conduct the audit of the foreign company's financial statements. Should the exemption be broadened to include such a foreign issuer? Are there

placing the requirement in Regulation S–B as well. Should small business issuers make this disclosure? Assuming disclosure is required of PAB sanctions that have been imposed on executive officers, directors, or director nominees, should disclosure also be required of sanctions that have been imposed against such individuals in disciplinary actions under Rule 102(e) of the Commission's Rules of Practice? Should disclosure be required for sanctions that

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this protection, however, should not be so broad as to permit a PAB to deny Commission access to the PAB's materials, nor should it permit a PAB to deny access to the other governmental authorities described above.

We request comment on our proposal that the Commission find that information prepared by a PAB receive confidential treatment. Should such information be treated confidentially? Why or why not? Our proposal sets forth exceptions to confidentiality, such as information requested by a federal agency. Should our rules provide for other exceptions? We seek comment on the effect that discovery requests in private actions would have on a PAB inquiry. Would those who possess information be less willing to share information if the information could be subject to discovery in a private action? Is there some other way to address this concern besides a PAB maintaining confidentiality of the information?

In proposed Section 13–05(b), the Commission finds that public policy dictates that a PAB, its staff, contractors, and professional representatives should be immune from liability in a private civil suit for any action or failure to act in connection with the PAB's responsibilities under Article 13. We anticipate, and intend, that a PAB and its members and employees will claim and be entitled to immunity from private civil liability for any action or failure to act in connection with a PAB's responsibilities under the proposed rules.[124] Common law provides immunity for non-governmental actors who perform public functions such as the "development and promulgation of interpretations of statutory and regulatory requirements, the dissemination and implementation of these interpretations, and the provision of information to government agencies."[125] Accordingly, self-regulatory organizations ("SROs"), for example, have been held to enjoy immunity for actions taken within the scope of their duties as SROs, including interpretive, enforcement, adjudicatory, and referral activities.[126] Immunity from civil liability attaches because of, among other things, the likelihood of recriminatory lawsuits against SROs and the safeguards against abuse provided by the Commission's oversight.[127]

Although we are proposing the framework for a private sector regulatory organization that is not self-regulatory in nature, a PAB and its employees should be immune for activities within the scope of their duties under these rules. Like an SRO, the PAB will further the purposes of the federal securities laws by setting standards, enforcing compliance, and providing the Commission with information. A PAB will perform critical public functions as it fulfills its mission to ensure reliable financial information and enhance public confidence in our markets. A PAB will, to the same extent as an SRO, be susceptible to lawsuits that could hamper its important public mission or discourage public-spirited persons from serving on a PAB. Finally, a PAB will be subject to Commission oversight to guard against abuses. Accordingly, a PAB and its employees should be immune from civil liability to the same extent as the SROs.[128]

We solicit comment on our proposed finding that a PAB be immune from private liability. Should we make such a finding? Would immunity be appropriate, as our proposed finding suggests, for staff, contractors, and professional representatives of a PAB? Are there reasons we should not find that such immunity is appropriate?

G. Exemptions

The Commission's broad exemptive authority[129] is reflected in proposed rule 13–06(a). Under this provision, on our own motion or upon an application by any interested party, we may exempt, conditionally or unconditionally, in whole or in part, any registrant, accountant, or class of registrants or accountants, from the operation of Article 13 and proposed rule 2–01(a)(2) of Regulation S–X.

In proposed rule 13–06(b), we would use our authority and exempt from the operation of Article 13 and proposed rule 2–01(a)(2) of Regulation S–X those accountants who do not audit or review financial statements filed with the Commission on a recurring basis and whose audit reports are filed with us only in accordance with Rule 3–05 of Regulation S–X.[130] Rule 3–05 requires that the audited financial statements of certain businesses acquired, or to be acquired, by registrants be filed with the Commission. An audit of a private business that subsequently is acquired by a registrant, therefore, would not, by itself, require the accountant performing the audit to become a member of a PAB.

Under proposed rule 13–06(c), the Commission may relieve a PAB from any of its obligations under Article 13 to enforce rules or membership requirements of a PAB or professional standards with respect to any accountant, adjunct member, or class of accountants or adjunct members. We believe this proposal is appropriate to clarify our ability to address unintended consequences or unforeseen events that may occur and result in a need to suspend or alter the functions performed by a PAB.

We request comment on the proposed use of our exemptive authority. Should the Commission grant exemptions for accountants whose reports are filed only pursuant to Rule 3–09, regarding the financial statements of certain unconsolidated subsidiaries and "50 percent or less owned persons," or Rule 3–10, regarding the financial statements of certain guarantors and issuers of guaranteed securities?

H. Foreign Accountants

Under proposed rule 13–07(a), foreign accountants that audit or review financial statements filed with the Commission, and foreign issuers that engage foreign accountants for such services, would be exempt from the operation of Article 13 and proposed rule 2–01(a)(2) of Regulation S–X.[131] As noted above, under proposed section 13–03(c)(5), a PAB would study the quality control systems of foreign accountants and periodically report to us on whether the exemption provided to foreign accountants should be withdrawn. We would expect a PAB, at an appropriate time, to recommend that all or various classes of foreign accountants, conditionally or unconditionally, should be subject to proposed Article 13 and proposed rule 2–01(a)(2) of Regulation S–X.

In the meantime, we would require, under proposed section 13–04(e)(6), that domestic firms that are associated with foreign firms continue the current practice of encouraging their international organizations and individual foreign associated firms to improve their quality control policies and procedures, in a manner consistent with the objectives of Article 13.[132] We also would expect that domestic firms would continue to urge their foreign associated firms to adopt policies and procedures that are at least as rigorous as those set forth in Appendix K to the current SECPS Membership Requirements.[133] These policies and procedures are intended to provide a mechanism for persons knowledgeable in United States accounting, auditing, and auditor independence requirements to assist foreign accountants in the performance of audits of financial statements included in filings with the Commission. Appendix K also addresses policies and procedures related to an annual inspection process that would include the review of a sample of audit engagements performed by foreign associated firms for clients that are Commission registrants.[134] We would require under proposed rule 13–04(e)(6) that domestic accountants would report to a PAB, as they currently report to the SECPS, the name and country of the foreign associated firms, if any, that have advised the domestic accountant that such policies and procedures have been put in place.[135]

In this regard, under proposed rule 13–07(b), during a review of a member firm's quality controls, a PAB or other reviewer would examine the procedures performed by the firm related to documents filed with the Commission that contain audit reports prepared by the firm's foreign associated firms.

We request comments on our proposal regarding foreign accountants. Is the exemption for foreign accountants appropriate? There may be situations where, for example, a foreign company has the majority of its assets and operations in the United States and as a result it engages a U.S. firm to conduct the audit of the foreign company's financial statements. Should the exemption be broadened to include such a foreign issuer? Are there situations in which a U.S. firm's audit work for public companies is limited to companies that are foreign issuers? If so, should the exemption be broadened to include those issuers, but not broadened to include foreign issuers whose U.S. accounting firm also provides audit services to domestic issuers, and would therefore be required to be a PAB member anyway? Should we include an explicit provision to prevent domestic issuers from avoiding the PAB requirement by engaging a foreign accounting firm as their principal auditor?

I. Disclosure by Directors, Executive Officers, Promoters, and Control Persons

Under our proposed addition to item 401(f) of Regulation S–K,[136] disclosure would be required if, during the past five years, any director, person nominated to become a director, or executive officer was, in his or her capacity as a PAB member accountant, sanctioned by a PAB for violations of professional standards or the PAB's rules or membership requirements and that sanction has not been subsequently reversed, suspended, or vacated.

Item 401 currently requires disclosure of similar sanctions, such as court orders or judgments by federal or state authorities barring or limiting the right of the person to engage in activities related to, among other things, commodity trading, any type of business practice, or the purchase or sale of any securities.

A PAB sanction would be designed to protect investors from incompetent or unethical conduct or other failures to comply with professional standards. Such a sanction would be considered to be sufficiently serious that investors should be notified of the sanction for consideration in connection with investment or voting decisions.

We request comment on our proposal regarding disclosure. The disclosure requirement has been placed in Regulation S–K but not in Regulation S–B in order not to increase the compliance burden on small business issuers. We are considering, however, placing the requirement in Regulation S–B as well. Should small business issuers make this disclosure? Assuming disclosure is required of PAB sanctions that have been imposed on executive officers, directors, or director nominees, should disclosure also be required of sanctions that have been imposed against such individuals in disciplinary actions under Rule 102(e) of the Commission's Rules of Practice? Should disclosure be required for sanctions that were imposed longer than five years ago?

J. Transition Period

We are considering the appropriate timing for the implementation of final rules, if any are adopted, and how best to allow for an orderly transition to the new rules. We are considering what, if any, delay would be necessary or appropriate in this case.

We could set a transition or compliance date that would allow additional time for a PAB to be established, recognized by the Commission, and in a position to begin accepting members. We anticipate that one or more entities seeking to be a PAB will submit appropriate information to the Commission soon after the final rules are published. We further anticipate that we would review that information promptly and, if practicable, issue an order recognizing a PAB by January 2003. Even though such a PAB might not be in a position for several months to begin conducting quality control reviews or disciplinary proceedings, it could begin accepting members soon after it conducts a rulemaking project related to the content and processing of accounting firms' applications.

One alternative, therefore, may be for a transition or compliance date to be based on the public issuance of the Commission's Order recognizing a PAB. For example, the compliance date could be 90 days after the public release of a Commission Order recognizing a PAB. Another alternative, which would encourage entities desiring to be a PAB to submit information to us promptly, might be to set a date certain or specific period of time after the effective date for full compliance with the rules.

We solicit comments on the appropriate timing for compliance with the proposed rules. Would a period of time beyond the effective date be necessary or appropriate for compliance with the rules? How should such a date be determined?

IV. General Request for Comments

We invite any interested person wishing to submit written comments on

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[124] We do not intend anything in this rule to suggest that a PAB would or should be immune from civil law enforcement actions.

[125] *See D'Alessio* v. *New York Stock Exchange Inc.*, 125 F. Supp. 2d 656, 658 (S.D.N.Y. 2000), *aff'd*, 258 F.3d 93 (2d Cir. 2001).

[126] *See D'Alessio* v. *New York Stock Exchange Inc.*, 258 F.3d 93, 106 (2d Cir. 2001).

[127] *See Barbara* v. *New York Stock Exchange Inc.*, 99 F.3d 49, 59 (2d Cir. 1996); *Austin Municipal Securities, Inc.* v. *National Assoc. of Securities Dealers, Inc.*, 757 F.2d 676, 692 (5th Cir. 1985).

[128] The distinction between private regulation and self-regulation is important because under these rules the accounting profession will not be responsible for regulating itself. Rather, a private sector entity not controlled or dominated by accountants will assume this role. We do not believe, however, that distinction is relevant for the purposes of determining whether a PAB will be immune from civil liability.

[129] *See, e.g.*, Section 36 of the Exchange Act, 15 U.S.C. 78mm.

[130] 17 CFR 210.3–05.

[131] This proposed exemption would not preclude the Commission from initiating Rule 102(e) proceedings or other appropriate proceedings when warranted.

[132] The Commission staff also will continue to seek comfort regarding a foreign accountant's knowledge of United States accounting, auditing, and auditor independence requirements as part of its review of filings or in anticipation of being requested to exercise its judgment in the public interest to accelerate the effectiveness of registration statements.

[133] Appendix K is available at *http://www.aicpa.org/members/div/secps/inmere.htm*.

[134] Persons knowledgeable in U.S. GAAP, GAAS and independence requirements and Commission regulations (the "inspection reviewers") would review the engagements. The inspection reviewers would determine whether anything came to their attention to cause them to believe that: (1) Either the financial statements did not comply with U.S. GAAP or the required reconciliation to U.S. GAAP did not include appropriate treatment of material reconciling items; (2) the audit engagement was not performed in accordance with U.S. GAAS; (3) the foreign associated firm did not comply with U.S. auditor independence requirements; and (4) the foreign associated firm did not comply with procedures for having Commission filings reviewed by a person knowledgeable in U.S. GAAP, U.S. GAAS, U.S. auditor independence requirements, and Commission regulations. *See Id.*

[135] SECPS, *Requirements of Members*, at n.

[136] 17 CFR 229.401(f).

these proposed rules to do so. We specifically request comments from investors, accounting firms, and registrants and other audit clients. We solicit comment, both general and specific, on each component of the proposals.

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to Regulation S–X and the proposed rules operate effectively. This collection of information encompasses:

- An initial submission to the Commission;
- Notices concerning the loss of good standing;
- Requests to add items to agendas of standard-setters and related notices to the Commission;
- Publication of rules;
- Foreign accountants' quality control reviews;
- Inspection reports;
- Disciplinary proceedings and sanctions;
- Periodic reports to the Commission; and
- Recordkeeping.

The proposed rules would require a PAB to notify the Commission and the public of (1) any action that could result in a member or adjunct member's loss of good standing in the PAB, and (2) the loss of good standing by a PAB member or adjunct member. The notice requirements could be triggered by a failure to pay fees, produce documents or provide testimony, or by noncompliance with a PAB sanction.[138] We expect that such notices would be rare. Accordingly, for the purposes of the PRA, we estimate that this aspect of the proposed rules would require approximately one burden hour. Accordingly, we estimate that this aspect of the proposed rules would impose 205 burden hours per year.

Publication of Rules. Under proposed rule 13–04(d)(14), a PAB would provide an open and deliberative rulemaking process that would include publication of draft rules for notice and comment. We expect that a PAB would publish a relatively small number of rules each year, and that the rules would require approximately 40 burden hours to prepare. We expect that preparing a PAB quality control review report should take approximately the same amount of time. We therefore estimate, for purposes of the PRA, that a PAB would require approximately 400 burden hours per year to complete reports of quality control reviews.

Under the proposed rules, a PAB also would maintain public files of all quality control review reports and any

The reports might be oral or written, and might be accompanied by such information that indicates a violation or non-cooperation. We estimate that these reports will require approximately two burden hours each, and therefore that 40 burden hours per year would be required to comply with this requirement.

Notices of Charges in Disciplinary Proceedings. Under proposed rule 13–04(g)(3), a PAB would notify a member

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these proposed rules to do so. We specifically request comments from investors, accounting firms, and registrants and other audit clients. We solicit comment, both general and specific, on each component of the proposals.

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to Regulation S–X and Regulation S–K contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The titles for the collections of information are "Framework for a Public Accountability Board—PAB," "Framework for a Public Accountability Board—Accountants and Audit Clients," and "Regulation S–K" (OMB Control No. 3235–0071). Compliance with the collection of information requirements would be mandatory. There would be no mandatory retention period for the information, except as provided below. Responses to the disclosure requirements would not be kept confidential. The collections of information are necessary to provide assurance that audit, review, and attest services performed by accountants fulfill their statutory and regulatory purpose and enhance the confidence of investors in the audit and review processes and in reported financial information.

Information Provided by a PAB

We are proposing a collection of information entitled "Framework—PAB" for information that would be provided by a PAB to the Commission, the public and others. The respondents to this collection of information would be PABs and entities seeking Commission recognition as PABs. As discussed below, we estimate solely for the purposes of the PRA that only one PAB would respond to this collection of information. This collection of information is necessary to allow the Commission to oversee a PAB to ensure that it is operating in the public interest. In addition, the collection of information would provide the public with important information concerning a PAB's activities. Finally, the information is necessary to ensure that the proposed rules operate effectively. This collection of information encompasses:

- An initial submission to the Commission;
- Notices concerning the loss of good standing;
- Requests to add items to agendas of standard-setters and related notices to the Commission;
- Publication of rules;
- Foreign accountants' quality controls report;
- Quality control review reports and files;
- Referrals to the Commission, markets, and exchanges;
- Notices of charges in disciplinary proceedings;
- Reports of sanctions;
- Public reports; and
- Record retention.

Initial Submission to the Commission. Under proposed rule 13–03, an entity seeking Commission recognition as a PAB must make a submission to the Commission that would include its charter, bylaws, organizational structure, proposed budget, proposed board members and terms of board membership, and representations that it would perform certain functions and have rules, membership requirements, systems, and procedures to accomplish certain tasks. After evaluating this information and such other information as the Commission might request, the Commission would determine whether to recognize a PAB.

We estimate solely for the purposes of the PRA that only one entity would apply to be a PAB [137] and that it would prepare a charter, bylaws, and other governing documents for the purpose of incorporation under state law. While we would carefully scrutinize an entity's submission in order to determine its commitment and capacity to carry out the functions and to accomplish the purposes of a PAB, we do not believe that the submission would be onerous to prepare. As a result, for purposes of the PRA, we estimate it would take approximately 240 hours to prepare a submission to be filed with the Commission.

Notices Concerning the Loss of Good Standing. Under proposed rule 13–04(d)(11), a PAB would have in place rules to provide notices to the member or adjunct member, the Commission, and the public of (1) any action that could result in a member or adjunct member's loss of good standing in the PAB, and (2) the loss of good standing by a PAB member or adjunct member. The notice requirements could be triggered by a failure to pay fees, produce documents or provide testimony, or by noncompliance with a PAB sanction.[138] We expect that such notices would be rare. Accordingly, for the purposes of the PRA, we estimate that a PAB would provide 15 such notices each year. The paperwork burden involved in preparing the notice would be minimal because the notice would consist only of a short, factual statement. Accordingly, we estimate that each notice would require one hour to prepare, and that 15 burden hours per year would be spent on preparing these notices.

Requests to Add Items to Agendas of Standard-Setters and Related Notices to the Commission. Under proposed rule 13–04(d)(12), a PAB would either set audit, quality control and ethics standards or designate private sector bodies' standards as authoritative. If it chooses the latter, it would notify the Commission any time it requests that a private sector standard-setter add an item to its agenda. Proposed rule 13–04(d)(13) would require a similar notice to the Commission any time a PAB requests that a private sector body that sets accounting or independence standards add an item to its agenda.

For purposes of the PRA, we estimate that, after it completes its quality control review cycle, a PAB would make approximately five requests to standard-setting bodies to add several items to each body's agenda reflecting concerns that arose during the quality control review process.[139] Each request would necessitate a letter to the appropriate standard-setting body, and would require a PAB to consider carefully any requests it would make. We therefore estimate, for purposes of the PRA, that each such request letter would require approximately 40 burden hours. The required notice to the Commission could simply include a copy of the request and an appropriate cover letter. As a result, the notice to the Commission would result in little additional burden. We estimate for

[137] We use this assumption, which we make solely for the purposes of the PRA, throughout this discussion of the information collection requirements that would be imposed by the proposed rules. Thus, wherever an estimate of the number of PABs is necessary to calculate an estimated paperwork burden, we assume that there will be only one PAB.

[138] As discussed below, proposed rule 13–04(d)(11) also requires notice when the PAB takes action that could result, or results, in a suspension or bar from the PAB. The burden that would result from these notices is discussed in the section entitled "Notices of Charges in Disciplinary Proceedings," below.

[139] We estimate that a PAB might make one request regarding each of the five types of standards enumerated in the proposed rules.

purposes of the PRA that such a notice would require approximately one burden hour. Accordingly, we estimate that this aspect of the proposed rules would impose 205 burden hours per year.

Publication of Rules. Under proposed rule 13–04(d)(14), a PAB would provide an open and deliberative rulemaking process that would include publication of draft rules for notice and comment. We expect that a PAB would publish a large number of rules during its first year after recognition. In later years, we expect that a PAB would publish fewer, if any, new rules per year. Thus, we estimate, for the purposes of the PRA, that, on average, a PAB will publish approximately ten new rules per year. We expect that a PAB would expend significant time and effort in developing appropriate rules and requirements for its members. We also expect that a PAB would make its rules available to its members. Therefore, we estimate for purposes of the PRA that a PAB would spend, on average, approximately 200 burden hours for each rule it publishes. Accordingly, we estimate that this aspect of the proposed rules would impose approximately 2,000 burden hours per year.

Foreign Accountants' Quality Controls Report. Under proposed rule 13–03(c)(5), a PAB would study and periodically report to the Commission on matters related to the quality controls of foreign accountants. Foreign accountants are not covered by the proposed rules. A PAB would, however, periodically review whether foreign accountants should be subject to the rules, and report to the Commission on that issue. This proposed rule might require foreign travel, an analysis of various foreign legal and regulatory requirements, an analysis of foreign professional standards, and other items. We therefore estimate for the purposes of the PRA that this aspect of the collection of information may require 1,000 burden hours.

Quality Control Review Reports and Files. Under the proposed rules, a PAB would issue a report at the end of each PAB-directed quality control review. A PAB-directed review would be required each year for accounting firms with more than 70 SEC clients. We estimate that there are currently approximately ten firms with more than 70 SEC clients;[140] a PAB would therefore issue approximately ten such reports each year. We estimate that under the current SECPS system, a report requires approximately 40 burden hours to prepare. We expect that preparing a PAB quality control review report should take approximately the same amount of time. We therefore estimate, for purposes of the PRA, that a PAB would require approximately 400 burden hours per year to complete reports of quality control reviews.

Under the proposed rules, a PAB also would maintain public files of all quality control review reports and any responses to the reports by the reviewed accounting firms. According to our records, there are approximately 850 domestic accounting firms that currently perform audits for SEC registrants. Accordingly, we estimate that approximately 850 accounting firms would be members of a recognized PAB under the proposed rules. Ten of these firms would undergo a PAB-directed quality control review each year. The remaining 840 firms would be reviewed at least every three years. We therefore estimate that each year, a PAB would create or add to 290 public files of quality control review reports.[141] Making the reports publicly available by maintaining them in a public file would not impose a significant burden. As a result, we estimate for purposes of the PRA that publicly maintaining one report would require one burden hour. Thus, 290 burden hours would be expended per year on this aspect of the proposed rule.

Referrals to the Commission, Markets and Exchanges. Under proposed rule 13–04(g)(2), a PAB would report information indicating a violation of the securities laws to the Commission. Under proposed rule 13–04(g)(8), a PAB would similarly refer matters to the Commission anytime it is unable to conduct or complete a supplemental review or a disciplinary proceeding because of the refusal of any person to cooperate. If an uncooperative party is a registrant, the PAB would also report the registrant's lack of cooperation to the relevant market or exchange. A PAB would also refer any other matter it deems appropriate to the Commission. Although we cannot estimate with precision how frequently a PAB would make such a referral, for purposes of the PRA we estimate that a PAB would make 20 such referrals per year. These reports would likely be fact specific, and not result in significant burdens. The reports might be oral or written, and might be accompanied by such information that indicates a violation or non-cooperation. We estimate that these reports will require approximately two burden hours each, and therefore that 40 burden hours per year would be required to comply with this requirement.

Notices of Charges in Disciplinary Proceedings. Under proposed rule 13–04(g)(3), a PAB would notify a member of specific charges in any disciplinary proceeding. We anticipate that this notice would be similar to a complaint or an order instituting administrative proceedings. Based on our experience with disciplinary proceedings against accountants, we estimate that a PAB might initiate approximately 75 disciplinary proceedings per year.[142] This notice would require careful formulation and, possibly, legal review. Additionally, under proposed rule 13–04(d)(11), any disciplinary proceeding that could result in suspension or bar of a member accountant would trigger a requirement that a PAB provide notice, in addition to the member accountant, to the Commission, and to the public. Solely for the purposes of the PRA, we estimate that a PAB also would provide notice under 13–04(d)(11) each time it institutes disciplinary proceedings against an accountant. We estimate for the purposes of the PRA that approximately 30 burden hours would be required to complete both notices, and that a PAB would therefore expend 2,250 hours per year on this aspect of the proposed rules.

Reports of Sanctions. Under proposed rule 13–04(g)(7), anytime a PAB imposes a disciplinary sanction on an accountant, the PAB would report the sanction to the Commission, the public, and the appropriate state or foreign authorities. These reports would include the name of the accountant being sanctioned, a description of the acts or omissions upon which the sanction is based, the nature of the sanction, and such other information as a PAB deems appropriate. Based on our experience with disciplinary proceedings against accountants, we anticipate that a PAB may make approximately 50 such reports each year. Assuming for purposes of the PRA

[140] We make this assumption based on a list of SECPS member firms compiled by the SECPS. *See supra* note 111.

[141] We derived this number by assuming that each year, one-third of the accounting firms not subject to an annual PAB-directed review will be reviewed under a PAB-approved program. Thus, 280 of these firms would be reviewed per year. In addition, each year a PAB would review the ten firms with more than 70 SEC clients. As a result, the PAB would create or add to 290 public files per year.

[142] The Commission initiates approximately 100 cases per year related to deficient financial reporting. *See, e.g.*, SEC, *Annual Report 2001*, at 134. We estimate that approximately one-half of these cases involve disciplinary actions against accountants. Because of its ability to detect issues during its reviews, we expect that a PAB would initiate at least as many actions as, and possibly more than, the Commission. Accordingly, we estimate that a PAB may initiate 75 disciplinary proceedings per year.

that preparation and internal legal review of one report would require approximately 50 burden hours, there would be an annual burden of approximately 2,500 hours imposed by this requirement.

Public Reports. Under proposed rule 13–04(h), a PAB would report to the public and the commission at least annually, and where practicable on a current basis, detailed descriptions of its

Information Provided by Accountants and Audit Clients

The proposed rules would require accountants that are members of a PAB to provide certain information to the Commission, a PAB, the public, and others. A primary focus of the proposed rules is on the thoroughness of the quality control reviews and disciplinary proceedings resulting from these reviews. For the most part, the (resulting in no more than approximately 15 burden hours, as discussed below), audit clients. As discussed below, we estimate that approximately 850 accounting firms would respond per year to the proposed collection of information requirements. In addition, up to approximately 53 individual accountants and 3 audit clients per year might respond to the collection of information requirements, depending on circumstances.[145] The

Above, we estimated that approximately 850 accounting firms would be members of a PAB under the proposed rules. Accordingly, we estimate that accounting firms might expend 4,250 hours on enrollment procedures.

Auditor Independence Reports. Under proposed rule 13–04(e)(4), each accounting firm that is a member of a PAB would disclose at least annually to the audit committee of each audit client that is a Commission registrant all

this requirement would impose 3 burden hours on accountants.

Notices Upon Beginning Employment Discussions. Under proposed rule 13–04(e)(9), a PAB would ensure that its member accounting firms have policies requiring prompt notification to the firm when an individual accountant who is a partner or employee of the firm begins employment discussions with an audit client. Under Independence Standards Board Standard No. 3,[148] all accounting

government investigations or proceedings once per year. We expect that a firm could satisfy the reporting requirement by sending the PAB and the Commission a copy of the complaint (or other relevant document) with a short cover letter. We therefore estimate for purposes of the PRA that one burden hour would be required to satisfy the proposed requirement, and that accounting firms would therefore incur two burden hours per year under this

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that preparation and internal legal review of one report would require approximately 50 burden hours, there would be an annual burden of approximately 2,500 hours imposed by this requirement.

Public Reports. Under proposed rule 13–04(h), a PAB would report to the public and the commission at least annually, and where practicable on a current basis, detailed descriptions of its activities, annual audited financial statements, explanations of its fees and charges, a summary of issues discussed with private sector standard-setting bodies, a list of matters referred to each standard-setter that were not placed on the standard-setter's agenda within 90 days, and such other information as a PAB considers appropriate or that the Commission requires by order. All of the information required would be readily available to a PAB. Nevertheless, some time would be required to compile the information and put it into usable form. We estimate for purposes of the PRA that 200 burden hours per year would be associated with the preparation of these reports. Burdens associated with preparation of the reports might be minimized if a PAB creates a website and updates information on that website on an ongoing basis.

Record Retention. Under proposed rule 13–04(i)(2), a PAB would be required to make and keep records that the Commission staff deems necessary for its inspection of the PAB's quality control review activities, supplemental reviews, and disciplinary proceedings. A PAB would adopt a record retention policy that would be approved by the Commission. The policy would provide for the retention of records until the Commission has either inspected them or informed the PAB that they no longer need to be retained. In addition, under proposed rule 13–04(g)(3), a PAB would keep a record of its disciplinary proceedings. We estimate for purposes of the PRA that 1,000 burden hours would be associated with these recordkeeping requirements.

We therefore estimate for purposes of the PRA that a total of approximately 10,140 burden hours would be imposed on a PAB by this collection of information. We estimate that approximately 25% of these hours would be expended by a PAB's outside lawyers, while the rest would be incurred in-house. Assuming a cost of $300 per hour for outside legal expenses, the cost associated with the burden hours incurred by a PAB's outside counsel would be $760,500.

Information Provided by Accountants and Audit Clients

The proposed rules would require accountants that are members of a PAB to provide certain information to the Commission, a PAB, the public, and others. A primary focus of the proposed rules is on the thoroughness of the quality control reviews and disciplinary proceedings resulting from these reviews. For the most part, the information to be provided by accountants currently is reported to the SECPS, or is otherwise required under professional standards. We assume that, if the proposed rules are adopted, the SECPS would no longer impose any requirements that would be duplicative of PAB requirements. In many instances, therefore, the proposed rules would simply require that information be directed to a PAB rather than the SECPS. Accordingly, most of what the proposed rules would require from accountants is usual and customary and would not impose a new burden.[143]

We estimate, however, that approximately 80 accounting firms that are not currently members of the SECPS would likely become members of a PAB under the proposed rules.[144] These firms are, we believe, smaller firms with one or two SEC clients that chose not to join the SECPS. Under the proposed rules, however, these firms would likely join a PAB in order to maintain those SEC clients. These firms would incur new paperwork burdens under the proposed rules, and we have estimated these burdens below, along with new burdens that would be imposed on all PAB-member accounting firms, regardless of membership in the SECPS.

This information collection is necessary to enhance investor confidence that auditors of public companies are acting in the public interest and in furtherance of the purposes of the federal securities laws. The information would be used by a PAB, accounting firms, registrants, and the public to monitor accountants' compliance with the federal securities laws, PAB rules, and professional requirements. The respondents to this collection of information would be accountants and, extremely rarely (resulting in no more than approximately 15 burden hours, as discussed below), audit clients. As discussed below, we estimate that approximately 850 accounting firms would respond per year to the proposed collection of information requirements. In addition, up to approximately 53 individual accountants and 3 audit clients per year might respond to the collection of information requirements, depending on circumstances.[145] The title for this collection of information is "Framework for a Public Accountability Board—Accountants and Audit Clients." The collection of information would encompass:

- Enrollment procedures;
- Auditor independence reports;
- Reports concerning the termination of an auditor-client relationship;
- Notices upon beginning employment discussions;
- Reports concerning foreign associated firms;
- Reports concerning litigation and government investigations or proceedings;
- Applications for Commission review;
- Quality control review reports;
- Record retention; and
- Notices concerning the hiring or retention of sanctioned individuals.

Enrollment Procedures. Under proposed rule 13–04(d)(1), a PAB would provide for membership enrollment procedures that would minimize the administrative burden on individual accountants by maximizing the extent to which the enrollment requirements could be satisfied by an accounting firm on behalf of its individual accountants. A PAB would develop its own procedures under this proposed rule. We expect, however, that most likely a PAB would require each member accounting firm to provide at least a list of the individual accountants working for the firm. We believe that accounting firms will have this information, and the other information a PAB might require, readily available. For the purpose of the PRA, we estimate that each member-accounting firm might expend five burden hours per year on enrollment in a PAB and any updating requirements.

[143] *See* 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.*, in compiling and maintaining business records) will be excluded from the 'burden' if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.").

[144] We estimate that the audit reports of approximately 850 domestic accounting firms are filed with the Commission, and that approximately 770 of these firms are SECPS members.

[145] Individual accountants and audit clients could, in rare cases, be subject to this collection of information. First, as discussed below, individual accountants could provide a notice upon beginning employment discussions with an audit client. Because such notices are already required, however, individual accountants would incur no new burden with respect to this usual and customary activity. Second, as discussed below, we estimate that as many as 53 individual accountants and 3 audit clients per year might file applications for Commission review of PAB disciplinary sanctions or delinquency determinations.

Above, we estimated that approximately 850 accounting firms would be members of a PAB under the proposed rules. Accordingly, we estimate that accounting firms might expend 4,250 hours on enrollment procedures.

Auditor Independence Reports. Under proposed rule 13–04(e)(4), each accounting firm that is a member of a PAB would disclose at least annually to the audit committee of each audit client that is a Commission registrant all relationships between the accountant and its related entities that may bear on auditor independence, and confirm that it is independent of the registrant. Reports such as these have been required since 1999 by Independence Standards Board Standard No. 1.[146] Accordingly, all accounting firms that would be members of a PAB already make such reports. Thus, these reports are usual and customary and no new burden would be imposed.

Reports Concerning the Termination of an Auditor-Client Relationship. Under proposed rule 13–04(e)(5), when an accountant's relationship with a Commission registrant ends, a PAB member accountant would report this fact to the registrant and the Commission. The proposed rule simply codifies a long-standing SECPS requirement.[147] Accordingly, all accountants that are members of the SECPS already are making such reports. Therefore, these reports are a usual and customary activity for SECPS members, and no additional burden would be imposed on them.

As discussed above, we estimate that approximately 80 accountants that are not currently members of the SECPS would be members of a PAB under the proposed rules. These firms would most likely be smaller firms, with longstanding personal relationships with their one or two SEC clients. We believe that each year only a few of these firms would be required to provide notice of the termination of a relationship with a Commission registrant. We estimate, therefore, for the purposes of the PRA that approximately 6 of the 80 accountants that are not members of the SECPS would be required to make one of these reports each year. The report should require no more than one or two sentences and should not take more than one-half hour. We therefore estimate for purposes of the PRA that this requirement would impose 3 burden hours on accountants.

Notices Upon Beginning Employment Discussions. Under proposed rule 13–04(e)(9), a PAB would ensure that its member accounting firms have policies requiring prompt notification to the firm when an individual accountant who is a partner or employee of the firm begins employment discussions with an audit client. Under Independence Standards Board Standard No. 3,[148] all accounting firms that would be members of a PAB are already required to make such reports. Accordingly, this is a usual and customary activity and no new burden would be imposed.

Reports Concerning Foreign Associated Firms. Under proposed rule 13–04(e)(6), PAB member accountants would report at least annually the name and country of any foreign associated firms that have notified the PAB member in writing that they have adopted policies and procedures that are consistent with proposed Article 13. Currently, accounting firms make such reports to the SECPS; these reports are therefore a usual and customary practice.[149] Having such reports directed to a PAB instead of to the SECPS would impose no additional burden.[150]

Reports Concerning Litigation and Government Investigations and Proceedings. Under proposed rule 13–04(e)(7), a PAB would adopt a rule requiring its member accounting firms to have policies or procedures in place to report to the PAB, with a copy to the Commission, litigation or any proceeding or investigation by a government agency alleging deficiencies in an audit or review or violations of the securities laws. Currently, these reports are made to the SECPS QCIC.[151] Accordingly, the proposed rule should not increase the burden of this usual and customary activity for accounting firms that are members of the SECPS.

This proposed rule, however, would impose a new paperwork burden for any of the approximately 80 accounting firms that are not members of the SECPS but would be members of a PAB. We expect that litigation or government investigations or proceedings involving these firms would be relatively rare. Accordingly, we estimate that two of these 80 firms would report litigation or government investigations or proceedings once per year. We expect that a firm could satisfy the reporting requirement by sending the PAB and the Commission a copy of the complaint (or other relevant document) with a short cover letter. We therefore estimate for purposes of the PRA that one burden hour would be required to satisfy the proposed requirement, and that accounting firms would therefore incur two burden hours per year under this aspect of the proposed rules.

Applications for Commission Review. Under proposed rule 13–04(i)(3), any final PAB disciplinary action or determination of a loss of good standing as a result of a failure to pay fees, produce documents, or provide testimony is subject to Commission review upon application by any person aggrieved by the action. An application for review would not need to be lengthy or burdensome. We therefore estimate for purposes of the PRA that such an application would require approximately 5 burden hours.

We estimated above that a PAB might sanction approximately 50 accountants per year. Assuming, for purposes of the PRA, that each sanctioned accountant requests Commission review, accountants would file 50 applications each year. These accountants could include individual accountants as well as accounting firms. We estimated above that a PAB might issue 15 notices per year that a member or adjunct member might lose, or has lost, good standing as a result of either: (1) Failing to pay fees, produce documents, or provide testimony, or (2) not complying with a PAB sanction other than a suspension or a bar. We expect that few of these notices would result from an actual loss of good standing as a result of a failure to pay fees, produce documents, or provide testimony. Accordingly, we estimate for purposes of the PRA that 3 accounting firms, individual accountants, or adjunct members would make one request each for Commission review of such a good standing determination per year. Thus, for purposes of the PRA, we estimate that this aspect of the proposed rules would impose 265 burden hours. Up to fifteen of these hours could be incurred by audit clients, depending on the circumstances.

Quality Control Review Reports. As discussed above, the proposed rules would require all members of a PAB to undergo quality control reviews. A PAB would direct the reviews of all members

[146] Independence Standards Board, *Independence Discussions with Audit Committees*, Independence Standard No. 1 (Jan. 1999).

[147] SECPS, *Requirements of Members*, at m. These requirements are available at *www.aicpa.org/members/div/secps/require.htm*.

[148] Independence Standards Board, *Employment with Audit Clients*, Independence Standard No. 3, (July 2000).

[149] SECPS, *Requirements of Members*, at n.

[150] We expect that none of the approximately 80 smaller firms that are not members of the SECPS but would be members of a PAB would have foreign associated firms.

[151] SECPS, *Requirements of Members*, at k.

with more than 70 SEC clients.[152] Reviews of PAB members with 70 or fewer SEC clients could be conducted under a review program approved and monitored by the PAB.

Under the SECPS system, accountants already prepare reports at the conclusion of reviews. Preparation of such reports, therefore, is a usual and customary activity for accountants. We expect that the SECPS will no longer require reviews if our proposed rules are adopted. Accordingly, we estimate that the proposed rules would impose no burden on accountants with respect to this requirement.

Notice of Disciplinary Sanctions. Under proposed rule 13–04(g)(9), a member firm would notify a PAB if the firm employs or becomes associated with an individual during any period in which that person is subject to a sanction, order, or ruling issued by a PAB. This notice would alert the PAB to consider, during quality control reviews, whether the firm and individual are in compliance with the PAB sanction. We anticipate that the notice would be relatively short and identify the individual, firm, sanction, and effective date. We therefore estimate for purposes of the PRA that this notice would require one burden hour. We estimate that approximately 50 accountants per year would be sanctioned by a PAB. Assuming that each sanctioned accountant is employed by a member firm, we estimate that 50 burden hours would be imposed by this requirement.

Reports Concerning Hiring or Retention of Sanctioned Individuals. Under proposed rule 13–04(g)(10), a PAB would require its member accounting firms to report to the PAB any hiring or retention of a person who is subject to a PAB sanction. We estimate that this requirement would impose one burden hour on accountants. We estimated above that a PAB might sanction approximately 50 accountants per year. Assuming that each sanctioned accountant is employed by a member firm, we estimate that 50 burden hours would be imposed by this requirement.

Reports Concerning Disciplinary Proceedings. Under proposed rule 13–04(h)(3), a PAB would report to the Commission, at least annually, and where practicable on a current basis, detailed descriptions of its disciplinary proceedings. We estimate for purposes of the PRA that 1,000 burden hours would be associated with these reporting requirements.

Reports Concerning Quality Control Reviews. Under proposed rule 13–04(h)(4), a PAB would report to the Commission, at least annually, and where practicable on a current basis, detailed descriptions of its quality control reviews. We estimate for purposes of the PRA that 1,000 burden hours would be associated with these reporting requirements.

Reports Concerning Inspections. Under proposed rule 13–04(h)(5), a PAB would report to the Commission, at least annually, and where practicable on a current basis, detailed descriptions of its inspections. We estimate for purposes of the PRA that 1,000 burden hours would be associated with these reporting requirements.

Reports Concerning Investigations. Under proposed rule 13–04(h)(6), a PAB would report to the Commission, at least annually, and where practicable on a current basis, detailed descriptions of its investigations. We estimate for purposes of the PRA that 1,000 burden hours would be associated with these reporting requirements.

Reports Concerning Enforcement Proceedings. Under proposed rule 13–04(h)(7), a PAB would report to the Commission, at least annually, and where practicable on a current basis, detailed descriptions of its enforcement proceedings. We estimate for purposes of the PRA that 1,000 burden hours would be associated with these reporting requirements.

Reports Concerning Registration Statements, Proxy and Information Statements, and Reports Filed by Registrants. Under proposed rule 13–04(h)(8), a PAB would report to the Commission, at least annually, and where practicable on a current basis, detailed descriptions of its oversight of disclosure requirements for annual and quarterly reports, registration statements, and proxy and information statements filed by registrants to ensure that investors are informed. The proposed disclosure requirement would provide investors with important information regarding executive officers, directors, and director nominees. The hours and costs associated with preparing, filing, and sending these disclosures constitute reporting and cost

Solicitation of Comments

Pursuant to 44 U.S.C. 3506(c), we solicit comments to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of our estimates of the burdens of the proposed collections of information; (3) determine whether there are ways to enhance the

the accounting profession's self-regulatory programs. During this examination, the POB, which had overseen the profession's programs since 1977, voted to disband.

Many of the criticisms of the accounting profession that existed when the current self-regulatory process was created in 1977 continue to exist today. Congressional hearings held in the first half of 2002, reminiscent of those held approximately 25 years before,

would facilitate communications among these bodies and others.

A PAB would be required to meet the conditions specified in the proposed rules to be recognized by the Commission. These conditions include Commission oversight and a board dominated by persons who are not members of the accounting profession. To ensure that result, our rules would set a maximum number of accountant-board members. A PAB, with a

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with more than 70 SEC clients.[152] Reviews of PAB members with 70 or fewer SEC clients could be conducted under a review program approved and monitored by the PAB.

Under the SECPS system, accountants already prepare reports at the conclusion of reviews. Preparation of such reports, therefore, is a usual and customary activity for accountants. We expect that the SECPS will no longer require reviews if our proposed rules are adopted. While we expect that our proposed quality control review system would provide increased confidence in the reliability of audited financial statements, we do not expect that the preparation of the reports would require more burden hours than is currently required. While we estimate that there are approximately 1,250 SECPS members (some of whom do not in fact audit financial statements of public companies), we have estimated that approximately 850 accounting firms would be members of a PAB. Accordingly, no new burden would be imposed by this aspect of the proposed rules.

Record Retention. Under proposed rule 13–04(d)(5), a PAB would adopt rules or membership requirements that direct member accounting firms to make and keep for specified periods of time records that are required by professional standards or that otherwise document procedures performed and the resolution of material issues during audit and review engagements. Additionally, proposed rule 13–04(f)(2) would require a PAB to direct its members to make and keep, for such periods as the PAB determines necessary, records that are necessary for the conduct of quality control reviews. The creation and retention of such records already is required by GAAS and, therefore, is a usual and customary activity within the accounting profession.[153] Accordingly, accounting firms would not incur a new paperwork burden associated with this proposed rule. We do not know whether a PAB might impose rules requiring longer retention periods than are currently in place at accounting firms. Any such requirement, and resulting incremental burden, would be a function of PAB rules.

Notices Concerning the Hiring or Retention of Sanctioned Individuals. Finally, under proposed rule 13–04(g)(9), a member firm would notify a PAB if the firm employs or becomes associated with an individual during any period in which that person is subject to a sanction, order, or ruling issued by a PAB. This notice would alert the PAB to consider, during quality control reviews, whether the firm and individual are in compliance with the PAB sanction. We anticipate that the notice would be relatively short and identify the individual, firm, sanction, and public report announcing the sanction. Such a report should take less than an hour to prepare. We estimate that no more than 10 such reports would be made in any year. Accordingly, compliance with this provision would require approximately 10 burden hours.

Thus, member-accounting firms would incur a total of approximately 4,530 burden hours.[154] We estimate that approximately 25% of these 4,530 hours would be expended by outside lawyers, while the rest would be incurred in-house. Assuming a cost of $300 per hour for outside legal expenses, the cost associated with the burden hours incurred by outside counsel would be $339,750.

Information Disclosed by Registrants

We have proposed an amendment to item 401 of Regulation S–K[155] that would require disclosure if, within the last five years, any director, person nominated to be a director, or executive officer was sanctioned by a PAB for violations of professional standards or the PAB's rules or membership requirements and that sanction has not been subsequently reversed, suspended, or vacated. This information is necessary to alert investors of violations of PAB membership requirements or professional standards by directors, persons nominated to be directors, and executive officers. Investors would use this information to help them make informed investment decisions. The potential respondents are registrants. Below, we estimate that approximately 10 registrants per year would make one disclose each under the proposed amendment.

The title for the collection of this information is "Regulation S–K" (OMB Control No. 3235–0071). This regulation was adopted pursuant to the Securities Act and the Exchange Act and sets forth disclosure requirements for annual and quarterly reports, registration statements, and proxy and information statements filed by registrants to ensure that investors are informed. The proposed disclosure requirement would provide investors with important information regarding executive officers, directors, and director nominees. The hours and costs associated with preparing, filing, and sending these disclosures constitute reporting and cost burdens imposed by each collection of information. Regulation S–K, however, historically has carried only one response and one burden hour because the burdens associated with the items within Regulation S–K are reflected in the estimated burdens assigned to each form, report, or registration statement.

For disclosure to occur under the proposed amendment, an individual would have to be sanctioned by a PAB, not have that sanction reversed, suspended, or vacated, and within five years from the date of the sanction become an executive officer, director, or director nominee of a public company. We anticipate that these circumstances will occur infrequently. We estimated above that approximately 50 accountants might be sanctioned by a PAB per year. It is difficult to estimate, however, how many of these sanctioned individuals might be engaged to serve as an executive officer or director of a public company. Solely for the purpose of the PRA, we estimate that this disclosure would occur approximately ten times per year. It most likely would appear in a Form S–1 (OMB Control No. 3235–0065), Schedule 14A (OMB Control No. 3235–0059), or Form 10–K (OMB Control No. 3235–0063).[156] Such disclosure may be no more than a few lines that include a citation to the sanction and clarifying information, if any. Because it may be a relatively brief disclosure, printing and dissemination costs should be inconsequential. We estimate that no more than three burden hours would be required to prepare and review such disclosure, for a total burden of 30 hours. This burden would be divided evenly among Form S–1, Schedule 14A, and Form 10–K. Our proposal would therefore increase the burden hour inventory for Form S–1 from 196,846 to 196,856, the burden hour inventory for Schedule 14A from 98,868 to 98,878, and the burden hour inventory for Form 10–K from 12,309,462 to 12,309,472.

[152] The burden imposed by the reports at the of these reviews is included in the information collection entitled "Framework for a Public Accountability Board—PAB" discussed above.

[153] *See generally*, SAS No. 96, AU § 339 (as revised 2002).

[154] As described in the section entitled "Applications for Commission Review," above, we estimate that up to 205 of these hours might instead be incurred by up to 53 individual accountants, and up to 15 of these hours might instead be incurred by up to three audit clients, depending on the circumstances.

[155] 17 CFR 229.401.

[156] Item 401, Regulation S–K disclosures are required by, among other provisions, item 11(k) of Form S–1, item 10 of Form 10–K, and item 7 of Schedule 14A; 17 CFR 239.11, 240.14a–101, and 249.310 respectively.

Solicitation of Comments

Pursuant to 44 U.S.C. 3506(c), we solicit comments to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of our estimates of the burdens of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burdens of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–24–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–24–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of these proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed amendments.

A. Background

In the wake of recent corporate failures that caused significant losses to investors and pensioners, Congress, the Commission, and others have been examining longstanding deficiencies in the accounting profession's self-regulatory programs. During this examination, the POB, which had overseen the profession's programs since 1977, voted to disband.

Many of the criticisms of the accounting profession that existed when the current self-regulatory process was created in 1977 continue to exist today. Congressional hearings held in the first half of 2002, reminiscent of those held approximately 25 years before, considered why major corporations have failed without adequate warning in the companies' financial reports. Witnesses during those hearings expressed a lack of confidence in the self-regulatory system and the need for change.[157]

Our proposals would create the framework for a new private sector regulatory structure for accountants that audit or review financial statements, or prepare attestation reports, that are filed with the Commission. Under the proposed rules, these accountants would be members of a Public Accountability Board, or PAB. A Commission registrant engaging an accountant to perform such services would be an adjunct member of the same PAB to which the accountant belongs.

As discussed in detail above, our objective is to lay the foundation for a new, stronger system of private sector regulation that would enhance investor confidence in the audit process and in the reliability of the financial information used to make investment and voting decisions.

A PAB would oversee the quality of financial statements relied on by investors by, among other things, directing periodic reviews of accounting firms' quality controls over their accounting and auditing practices and, when appropriate, disciplining accountants for deficiencies noted during those quality control reviews or otherwise coming to a PAB's attention. We focused on the need for a PAB to be able to remedy any deficiencies in standards that it may detect during quality control or disciplinary proceedings. The rules provide, therefore, that a PAB also would set, or rely on designated private sector standard-setting bodies to set, audit, quality control, or ethics standards, and would facilitate communications among these bodies and others.

A PAB would be required to meet the conditions specified in the proposed rules to be recognized by the Commission. These conditions include Commission oversight and a board dominated by persons who are not members of the accounting profession. To ensure that result, our rules would set a maximum number of accountant-board members. A PAB, with a significant majority of public members, a diligent quality control review process, effective disciplinary proceedings, the ability to set standards or influence standard setters, and close oversight by the Commission, should be in a position to make meaningful improvements in the quality of audits and enhance the confidence of investors in both the audit process and in the reliability of financial information.

The proposal addresses the need for all accountants providing audit, review or attest services to Commission registrants to have a strong, effective organization that could operate in the public interest without fear of losing its funding. We therefore included in our framework provisions regarding membership in such an organization, continuous and involuntary funding, and an effective disciplinary mechanism. The proposal also would allow a PAB to collect fees from its members and adjunct members to fund not only its own administration and operations, but also the administration and operations of an accounting standard-setting body recognized by the Commission, which currently is the FASB. We have included funding for the FASB in our proposal because that body currently collects funds primarily through donations from, and by selling its publications to, accounting firms and corporations. There is a perception that such funding may be increased or decreased based on the reaction of accounting firms or companies to proposed accounting standards.[158] To remove this perception, a PAB would establish a mandatory and continuous source of funding for the FASB. A PAB would collect sufficient fees from its

[157] *See, e.g., Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 19, 2002). For discussion of the profession in 1977, *see, e.g.*, Staff of Subcomm. on Reports, Accounting, and Management of the Senate Comm. on Government Operations, 95th Cong., *Report on the Accounting Establishment: A Staff Study*, 7 (Subcomm. Print Mar. 31, 1977).

[158] *See, e.g.*, Stephen Barr, *FASB Under Siege*, CFO Magazine, Sept. 1994, at 34, 46, which states that the FASB reported reduced contributions during the debate over the accounting for employee stock options, and Dean Foust, *It's Time to Free the FASB Seven*, Bus. Wk., May 3, 1993, at 144, which states: "It's time to free the FASB Seven [board members] from this outside influence—beginning with their financial support. . . Critics contend that some executives have threatened to withhold support if FASB doesn't vote their way. A good solution is to require that corporations filing documents with the SEC pay a small sum each time to create a permanent endowment for FASB."

members and adjunct members to fund the FASB and then transfer those funds to it.

Our proposal would keep the requirements under the current system that we believe increase the quality of audits. Our proposal would place these requirements, however, in a stronger system that is more independent from the profession, more transparent, more closely overseen by the Commission, and other standards affecting the accounting profession. The primary purpose for these meetings would be to facilitate an understanding of one another's projects, which may lead to better coordinated and more efficient standard-setting within the profession.

We request comment on each of the items identified above. Would they result in higher quality audits? Would they result in enhanced investor protection and investor confidence? Accountants and registrants also may benefit from a more streamlined and efficient regulatory process.

The benefits of a stronger, more transparent, and more efficient regulatory system for the accounting profession should translate into increased investor confidence in the audit process and in the financial information provided to our securities markets. If the rule amendments lead to increased investor confidence in disciplining incompetent and unethical practices, a PAB would improve the overall quality of the audit, review, and attest services.

4. *Improved transparency regarding the regulatory system.* In order for a PAB to earn investors' trust, investors must be able to view the PAB's regulatory system at work. Our proposals would not only encourage "real-time" reporting by the PAB of its regulatory activities, they also would open a PAB's

and oversees those reviews. We assume that those firms will cease to pay the SECPS to perform those functions once a PAB is in place and that the costs attendant to our proposals will be offset by that cost savings.[162] The proposed framework may result in incremental costs to small accounting firms that do not currently undergo quality control reviews, to Commission registrants, and to other accounting firms. Incremental costs could result from the performance

The ISB, which from 1997 to 2001 undertook the development of auditor independence standards, had a part-time board of eight members, three full-time staff and one administrative employee. The annual budget for the ISB was approximately $2,000,000 to $2,200,000.

The SECPS has an annual budget of less than $1,000,000, most of which relates to travel and lodging expenses. SECPS members are not compensated

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members and adjunct members to fund the FASB and then transfer those funds to it.

Our proposal would keep the requirements under the current system that we believe increase the quality of audits. Our proposal would place these requirements, however, in a stronger system that is more independent from the profession, more transparent, more closely overseen by the Commission, more willing and able to discipline its members, and more efficient in coordinating the efforts of the various participants in the regulatory process. In addition, we are adding features to the current system, such as public disciplinary proceedings by a PAB, increased frequency of reviews of the largest firm's quality control systems, and requiring maintenance of a central office function with expertise in accounting and financial reporting matters.

Congressional proposals, suggestions made during the SEC Roundtables, the U.K. system of regulation of the accounting profession, and recommendations submitted by others, all of which are discussed above, have provided numerous alternatives for the regulation of the accounting profession. Based on that input, we considered alternative frameworks that would include, among other things:

- Different mixes of accountant and "public" representatives on a PAB's governing board;
- Membership for accounting firms only, and not for individual accountants or registrants;
- Different funding sources and more specific methods of collecting fees assessed by a PAB;
- Funding that did not include the FASB;
- No standard-setting responsibilities;
- More disciplinary authority, including the authority to compel the production of documents and testimony from persons who are neither members nor adjunct members of a PAB; and
- Foreign accountants as members.
- An increased level of Commission oversight over the current self-regulatory system.

Of the alternatives considered, we believe that our proposal would best protect investors.

B. Potential Benefits of the Proposed Rules

Potential benefits to the proposed rule amendments include increased investor confidence in the audit process and in the reliability of reported financial information, and enhanced corporate governance resulting from more disclosure about directors and officers. Accountants and registrants also may benefit from a more streamlined and efficient regulatory process.

The benefits of a stronger, more transparent, and more efficient regulatory system for the accounting profession should translate into increased investor confidence in the audit process and in the financial information provided to our securities markets. If the rule amendments lead to increased investor confidence in financial reporting, they also may encourage investment and facilitate capital formation. Issuers, therefore, may be able to lower their cost of capital, or raise capital where they might have been unable to do so. Additionally, the benefits of enhanced disclosure by directors, director nominees, and officers should translate into enhanced corporate governance in registrants. These benefits flow from the following six points, as well as other features of our proposal:

1. *Independence from the accounting profession and assured funding.* A PAB established under our framework would be outside the realm of the AICPA. Representatives of investors and issuers, not accountants, would dominate a PAB's governing board, would actively participate in directing quality control reviews of large accounting firms, and would evaluate the quality control reviews of smaller firms. Funding, instead of being dependent on the AICPA, would be mandatory and flow from both accountants and registrants. Continuous and mandatory funding also would be provided for the FASB, which sets accounting standards.

2. *Periodic reviews.* The current ability of an accounting firm to avoid periodic reviews of its quality control system, simply by deciding not to join a regulatory organization, would be removed. Reviews of quality control systems would occur more often for some firms and for the first time for some firms that were not previously members of the SECPS. Because registrants would be adjunct members, the payment of fees by registrants and the cooperation by registrants in a PAB's quality control reviews and disciplinary proceedings, would be assured.

3. *Enhanced quality of audit, review, and attest services.* High quality audit, review, and attest services form a cornerstone of the Commission's full disclosure system. A PAB, after conducting an appropriate disciplinary process, could suspend individuals and firms from conducting audits and reviews of financial statements and from preparing attestation reports filed with us, or impose other appropriate remedial or disciplinary sanctions. By disciplining incompetent and unethical practices, a PAB would improve the overall quality of the audit, review, and attest services.

4. *Improved transparency regarding the regulatory system.* In order for a PAB to earn investors' trust, investors must be able to view the PAB's regulatory system at work. Our proposals would not only encourage "real-time" reporting by the PAB of its regulatory activities, they also would open a PAB's disciplinary proceedings to the public to the same extent that our Rule 102(e) proceedings are public.[159] Open proceedings would shed light on a professional disciplinary process that the AICPA has conducted behind closed doors.

5. *Enhanced disclosure by corporate officers, directors, and director nominees of PAB sanctions.* We are proposing that investors be informed if an executive officer, director, or person nominated to become a director has been sanctioned as a member accountant by a PAB within the last five years. We anticipate that a PAB would initiate disciplinary proceedings in cases of incompetence, unethical behavior, or serious breaches of professional standards. Sanctions imposed following these proceedings, therefore, would be of interest to investors making investment or voting decisions.

6. *Improved cooperation among standard-setting bodies.* As noted by the Panel on Audit Effectiveness and others, one of the limitations of the current system is a lack of effective communications among the various entities involved in oversight of the audit process.[160] That Panel recommended that the profession's system of governance be united under a POB that oversees standard setting, monitoring, discipline, and supplemental reviews.[161] Our proposals reflect the need for greater communication and coordination among the participants of the regulatory system. Under our proposed rules, a PAB would either set, or rely on designated private bodies to set, audit, ethics, and quality control standards. To the extent that a PAB relies on others to set these standards, a PAB would oversee their efforts and encourage communication and coordination among them. In addition, a PAB would conduct periodic meetings with these bodies and include in those meetings the bodies that set accounting principles

[159] 17 CFR 201.102(e)(7).

[160] The Panel on Audit Effectiveness, *Report and Recommendations*, at 138–41 (Aug. 31, 2000).

[161] *Id.*

and other standards affecting the accounting profession. The primary purpose for these meetings would be to facilitate an understanding of one another's projects, which may lead to better coordinated and more efficient standard-setting within the profession.

We request comment on each of the items identified above. Would they result in higher quality audits? Would they result in enhanced investor protection and investor confidence? Would the proposed rules, if adopted, yield other benefits? Is it possible to quantify the benefits of the proposed rules?

Accountants and registrants also may benefit from a more coordinated and efficient regulatory process. As noted, our proposals would centralize into one independent body the quality control review functions previously performed by the POB and its staff, the SECPS's Peer Review Committee, the SECPS Executive Committee, the QCIC, and portions of the AICPA's disciplinary program. This body also would facilitate communications among various standard-setting bodies. We believe that a more efficient and leaner regulatory system, and a more coordinated standard-setting process, would benefit all participants in the financial reporting process. Among other things, we believe that these changes would reduce uncertainty about the regulatory and disciplinary system and would increase compliance.

The Commission seeks comment on the benefits of the proposed rule. What methods are available to estimate the benefits to investors and others that would result from a private sector regulatory scheme for accountants? We request comment, including supporting data if available, on these benefits, and commenters with quantitative or empirical data on these issues are invited to provide that data for our consideration.

C. Potential Costs of the Proposed Rules

We are sensitive to the costs that might result from our rules. We believe that the costs related to the proposals in this release would fall within three general categories: costs that are similar to costs currently borne, incremental costs, and costs that will be redistributed among market participants. We recognize that redistributed costs are not mutually exclusive of costs already borne.

The proposal may result in costs similar to those already exisiting. SECPS member accounting firms already bear significant costs related to quality control reviews and to the POB-SECPS regulatory structure that administers and oversees those reviews. We assume that those firms will cease to pay the SECPS to perform those functions once a PAB is in place and that the costs attendant to our proposals will be offset by that cost savings.[162] The proposed framework may result in incremental costs to small accounting firms that do not currently undergo quality control reviews, to Commission registrants, and to other accounting firms. Incremental costs could result from the performance of functions by a PAB that are performed today by no one. Finally, the proposal may result in redistributed costs. Funding for the FASB, for example, would not likely increase as a result of the proposals, but the burden might be redistributed from registrants and firms that make voluntary contributions to the FASB, or those that purchase a significant number of its publications, to all registrants and accounting firms that benefit from FASB's standards.[163]

We discuss each category of costs in more detail below in relation to the costs needed to fund a PAB (and the FASB), the imposition of costs on accounting firms and registrants, and the costs of preparing disclosure.

The proposed rules would entail costs to a PAB for its operations. Our proposals would leave many facets of a PAB's operations to its discretion. It is difficult, therefore, to estimate the budget that would be required to fund a PAB's full range of activities. Nonetheless, to estimate the funds that a PAB may require, we examined the budgets of other accounting regulatory bodies. The FAF, for example, has approximately 140 employees and reported 2001 net operating revenues of $22,137,000. The POB was smaller, with five part-time board members, a permanent staff of five full-time professional employees, seven part-time professional employees, and two administrative employees. The POB's annual budget, without special projects, was approximately $3,500,000, although under the February 2001 charter, the POB could have increased its budget to $5,200,000 per year. The POB Chairman received $70,000 per year, the Vice Chairman $60,000, and members $50,000.

[162] Because a PAB would have discretion in determining the nature and extent of procedures to be performed each year, we cannot reliably estimate what those additional costs may be.

[163] We recognize that some portion of the voluntary contributions may be derived from fees paid by registrants to their auditors. Direct payment by registrants may lead to reduced audit fees or a decrease in the rate of audit fee increases. To that extent, our proposals should have no redistributive effects.

The ISB, which from 1997 to 2001 undertook the development of auditor independence standards, had a part-time board of eight members, three full-time staff and one administrative employee. The annual budget for the ISB was approximately $2,000,000 to $2,200,000.

The SECPS has an annual budget of less than $1,000,000, most of which relates to travel and lodging expenses. SECPS members are not compensated for their time, and except for a $300,000 per year charge that the SECPS pays to the AICPA, the AICPA pays for the SECPS staff. The AICPA annual report, however, does not specifically provide the cost of its peer review program.[164]

We recognize that a proposed PAB would not be identical to any of these organizations. They provide guidance, however, to the cost of a comparably-sized organization within the accounting profession. The FAF, for example, funds standard-setting organizations that conduct neither on-site reviews of the performance of accounting firms nor disciplinary proceedings. The FAF budget, however, might provide some evidence of the revenues needed to run an organization within the accounting regulatory system that has 125 to 150 employees and permanent facilities. The amounts paid to the FASB Chairman and FASB members also might provide an indication of the amount of compensation required to attract a full-time Chairman or Vice Chairman to a PAB.

The POB's budget undoubtedly would be too small to fund a PAB, due to the more "hands-on" approach that we believe a PAB would take when directing large firms" reviews, evaluating smaller firms' reviews, conducting supplemental reviews, conducting disciplinary proceedings, and improving communications and coordination among various standard-setting bodies. Even when the funds budgeted to the SECPS are added to the POB's budget, the total amount might underestimate the amount required for a PAB due to the SECPS's reliance on volunteers from the accounting firms and on the payment of certain expenses by the AICPA. We anticipate that the cost of a PAB would be at least as much as the cost to run the POB and the SECPS, plus the cost of services provided to those organizations by volunteers. Moving these costs to a PAB would not result in an incremental cost.

[164] The AICPA notes expenses related to "professional examinations" of $12,121,000, but it is unclear what amounts are included in this category. AICPA, *Annual Report 2000–2001*, at 26.

Incremental costs may occur, however, from the performance of additional functions. Because our proposal leaves the identification of, and procedures for, these functions to the discretion of a PAB, we cannot quantify those costs.

We anticipate that quality control reviews by a PAB would entail greater costs than those for quality control reviews by the POB. A PAB, for example, may incur significant costs to

by a PAB, among other things, would add to a PAB's costs.

Costs To fund the FASB Through a PAB

Our rules would impose costs on a PAB to fund the FASB. The revenues and expenses of the FASB are generally known. According to the 2001 Annual Report published by the FAF, the FASB received contributions of $5,113,000, sold subscriptions and publications for

We invite comment and data on estimated revenues needed by a PAB to conduct the programs described in this release and our proposed rules. Are our estimates correct? We also seek comment on the extent to which those costs would be incremental costs, and the extent to which the funding costs may be redistributed among various market participants. We request comment on the costs that would be

approximately 850 audit the financial statements of Commission registrants and approximately 400 do not. All 1,250 firms now contribute to the SECPS budget of approximately $1 million and to the POB's budget of approximately $3.5 million. Because 400 of the SECPS member firms would not be required to join a PAB, any amounts paid by those 400 firms might have to be borne by accounting firm and registrant members of a PAB, to the extent a PAB performs

should be able to construct a fee schedule that is fair and equitable. Assuming that the FASB and a PAB each would require $20 million to fund its administrative functions and operations, an average of approximately $2,000 per member and adjunct member would be assessed. Larger registrants and firms would be assessed significantly larger amounts; smaller firms and registrants would pay less.

Finally, we believe that certain firms

the Paperwork Reduction Act, we estimated the number of burden hours that would be incurred by a PAB, accountants, audit clients, and registrants as a result of the proposed rules. This "paperwork burden" is described in detail in Section V. of this release.

A PAB would incur costs as a result of complying with the information collection requirements in the proposed rules. These requirements are discussed

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Incremental costs may occur, however, from the performance of additional functions. Because our proposal leaves the identification of, and procedures for, these functions to the discretion of a PAB, we cannot quantify those costs.

We anticipate that quality control reviews by a PAB would entail greater costs than those for quality control reviews by the POB. A PAB, for example, may incur significant costs to visit the offices of accounting firms during quality control reviews. If a PAB were directing a review, a PAB member or staff would conduct on-site visits to numerous and widely-dispersed offices of the accounting firm. Even if a PAB were not directing a quality control review but monitoring the review for its thoroughness and impartiality, we expect that a PAB or its staff would attend conferences between the reviewer and the firm being reviewed, and conduct on-site inspections during the conduct of the review. Fees to recover these costs, however, would be assessed separately from the more general fees imposed on all registrants and firms. As noted, we have proposed that each firm pay the cost of its own quality control reviews, as they do under the SECPS peer review system. To the extent that the cost of a PAB directed or approved quality control review exceeded both the cost of a peer review under the current SECPS peer review system and the cost of professional services donated to the SECPS and its committees, it would be an incremental cost. At this point, however, we are unable to quantify that cost. We also anticipate that incremental costs may result from a PAB conducting disciplinary hearings, preparing records of proceedings, and monitoring compliance with sanctions.

A PAB may incur costs attendant to an open and deliberative standard-setting process. These costs may include hiring staff who are experts not only in a given subject area, but also experts in drafting standards. These costs may also include hiring staff for the preparation and publication of standards. If a PAB elects not to set standards but to designate other private sector bodies to set them, a PAB would incur costs related to its oversight of those bodies, including costs related to reviews of their standards and other documents.

Finally, a PAB would have costs associated with our oversight. The preparation of an initial application and ongoing public reports, keeping quality control review records for our inspection, and preparing reports and records of disciplinary proceedings so we may review the sanctions imposed by a PAB, among other things, would add to a PAB's costs.

Costs To fund the FASB Through a PAB

Our rules would impose costs on a PAB to fund the FASB. The revenues and expenses of the FASB are generally known. According to the 2001 Annual Report published by the FAF, the FASB received contributions of $5,113,000, sold subscriptions and publications for $14,818,000, and had direct costs of sales of $1,586,000. The FASB, therefore, had revenues of $19,931,000 and revenues minus costs of sales equal to $18,345,000. The FASB and the GASB, also overseen and financed through the FAF, had combined net operating income of $22,137,000. The FAF Annual Report does not break out expenses between the FASB and GASB, but it reports total program expenses of $18,345,000 and total support expenses of $4,883,000, for total expenses of $23,228,000 and a combined operating loss (*i.e.*, revenues minus expenses) of $1,091,000. The FAF Annual Report also notes a decline in investments and unrestricted net assets of $2,342,000, from $28,812,000 to $26,470,000. The FAF has indicated to our staff that it has 141 employees, with 65 assigned to the FASB, 25 assigned to the GASB, and 51 assigned as FAF administrative support staff for both the FASB and GASB. We understand that the FASB Chairman is paid $535,000 per year and that each of the other six full-time FASB members receive $435,000 per year.

An estimate of the funds that a PAB would have to collect each year for the FASB, therefore, might range from $20 million to $24 million. Some registrants and accounting firms (the two groups that would pay fees to fund the FASB under our proposals) already bear these costs through voluntary contributions and purchases of FASB publications. The proposals, however, might result in a more even redistribution of these costs among all registrants and accounting firms, not simply those wishing to make contributions or purchase large volumes of publications. We believe that by spreading the costs more evenly, we would enhance investor confidence by promoting a system whereby those with an interest in the system do not have a larger role in funding it. In any event, the fees an accounting firm or registrant would pay to a PAB to fund the FASB would be largely offset by reductions in contributions to the FASB and the elimination of costs for FASB's publications.[165]

[165] Our proposal anticipates full funding for the FASB, with the FASB appropriately reducing or eliminating the cost of its publications. We have requested comment, however, regarding whether the FASB should continue to generate revenues from the sale of its publications, and replace only the donations it receives with fees collected by a PAB.

We invite comment and data on estimated revenues needed by a PAB to conduct the programs described in this release and our proposed rules. Are our estimates correct? We also seek comment on the extent to which those costs would be incremental costs, and the extent to which the funding costs may be redistributed among various market participants. We request comment on the costs that would be imposed on a PAB to fund the FASB. Are our estimates correct?

Imposition and Distribution of Costs Incurred by Accounting Firms and Registrants

This section of the cost-benefit analysis discusses how the costs imposed by the proposal would be distributed among accounting firms and registrants. Under our proposal, the costs to fund a PAB and the FASB would be paid through fees assessed by a PAB. We expect a PAB to assess such fees according to schedules that apportion fees based on relative size of accounting firms and registrants such that fees would not be significant to any one entity. We also expect each accounting firm to continue to pay the costs of its own quality control reviews.

As noted, accounting firms and registrants currently bear the costs associated with the self-regulatory system. Both accounting firms and registrants make contributions to the FASB and buy FASB publications. Accounting firms pay fees to the SECPS and other organizations to fund the current peer review and professional standard-setting processes, and they pay the costs of their own peer reviews. Registrants pay increased audit fees to compensate accounting firms for conducting peer reviews and for other professional expenses. To the extent that a registrant or accounting firm makes donations to the FASB or purchases FASB publications, a reduction in those amounts would offset the new fees paid to a PAB. To the extent that the SECPS and other organizations no longer would perform peer reviews or conduct similar programs after a PAB begins operations, the reduction in costs associated with the SECPS self-regulatory system would offset new costs imposed by the PAB. These offsets would reduce the net or incremental cost of a PAB-based system.

Not all SECPS members would be members of a PAB. Of approximately 1,250 SECPS members, we estimate that approximately 850 audit the financial statements of Commission registrants and approximately 400 do not. All 1,250 firms now contribute to the SECPS budget of approximately $1 million and to the POB's budget of approximately $3.5 million. Because 400 of the SECPS member firms would not be required to join a PAB, any amounts paid by those 400 firms might have to be borne by accounting firm and registrant members of a PAB, to the extent a PAB performs similar functions.

We also estimate that approximately 80 domestic small accounting firms that audit the financial statements of Commission registrants are not members of, and do not pay fees to, the SECPS or the AICPA. Amounts paid by these 80 firms to a PAB, therefore, would not be offset by reduced payments to the SECPS or AICPA. We expect, as noted, that a PAB would assess fees based on an entity's size or other relevant criteria. These firms, however, for the first time, may incur costs related to the conduct of quality control reviews. Because of the relatively small size of these firms, we anticipate that large, automated quality control systems would not be necessary. Nonetheless, the incremental costs of establishing controls and preparing and paying for reviews may be significant to a small firm. Some of these costs might be passed on or redistributed to the firm's audit clients that are Commission registrants, but such a redistribution would not affect the aggregate incremental cost of these firms' reviews.

In addition to the approximately 850 accounting firms that would be members of a PAB, approximately 16,242 public companies and 5,587 investment companies, as adjunct members, would pay fees to a PAB.[166] By creating a base of at least 20,000 paying adjunct members,[167] a PAB should be able to construct a fee schedule that is fair and equitable. Assuming that the FASB and a PAB each would require $20 million to fund its administrative functions and operations, an average of approximately $2,000 per member and adjunct member would be assessed. Larger registrants and firms would be assessed significantly larger amounts; smaller firms and registrants would pay less.

Finally, we believe that certain firms would face costs in maintaining a central office function. Many firms already have procedures for consultation with a central office and resolution of differences of opinion between the central office and other offices. The rule would require a PAB to ensure that member firms maintain this function. Those firms that do not currently do so, therefore, could face costs to establish and maintain a central office function that would likely not be offset from any other source.

We solicit comments on the potential costs that would be imposed on registrants and accounting firms. What types of additional costs might be incurred? For example, if an accounting firm currently does not have a central office function, what would be the costs associated with creating and maintaining one? We seek comment on our assumptions about which costs would be offset and which would be incremental costs. Is it possible to quantify the costs discussed? We solicit quantitative data to assist in our assessment of the compliance costs related to a PAB.

Our proposal would result in differences in the timing and conduct of quality control reviews of those accounting firms with more than 70 SEC Clients and those with 70 or fewer SEC Clients. From a cost-benefit perspective, is this an appropriate dividing line? If not, what should be the cutoff, if any? We solicit any quantitative data that may be helpful in making this determination. We also request data on whether such costs would be costs that already are being borne by the accounting profession or others, incremental costs, or a redistribution of costs among market participants.

Costs of Complying With Collections of Information

The proposed rules would impose costs associated with disclosure, record retention, notice, and other information collection requirements. For purposes of the Paperwork Reduction Act, we estimated the number of burden hours that would be incurred by a PAB, accountants, audit clients, and registrants as a result of the proposed rules. This "paperwork burden" is described in detail in Section V. of this release.

A PAB would incur costs as a result of complying with the information collection requirements in the proposed rules. These requirements are discussed in detail in Section V., above. Solely for the purposes of the Paperwork Reduction Act, we estimated that a PAB would incur 10,140 burden hours as a result of the proposed rules. Certain of these burden hours, specifically those associated with an initial submission to the Commission would be non-recurring costs for any PAB. All other burden hours would recur annually. We estimate that of the total burden hours, 75% of them would be incurred by the in-house staff of a PAB and 25% of them would be incurred by outside counsel. Assuming a rate of $100 for in-house staff, a PAB would incur a cost of $760,500 for in-house work. Assuming a rate of $300 for outside counsel, a PAB would incur a cost of $760,500 for work performed by outside counsel. Under these assumptions, a PAB would therefore expend approximately $1,521,000 on paperwork requirements.

Accountants also would incur costs as a result of complying with collection of information requirements that would be imposed by the proposed rules. These requirements are discussed in detail in Section V, above. Solely for purposes of the PRA, we estimated that accountants would incur 4,530 burden hours as a result of our proposed rules. As discussed above, we estimated that as many as approximately 15 of these hours might be incurred by audit clients as opposed to accountants. We estimate that 75% of the 4,530 hours would be incurred in-house, and that 25% would be incurred by outside counsel. Based on staff experience, we estimate that the hours expended in-house by accountants would cost approximately $100 per hour. We estimate that outside legal work would cost $300 per hour. Under these assumptions, the in-house hours would result in a cost of $339,750 and the hours incurred by outside counsel would result in a cost of $339,750. Thus, the cost to accountants of information collection requirements would be $679,500.

Finally, registrants would incur costs in complying with a new disclosure requirement under the proposed rules. Registrants would be required to make disclosure if a director, person nominated to be a director, or executive

[166] According to OMB Active Information Collections as of April 30, 2002, the following number of responses are submitted annually on the following forms: Form 10–K—10,381; Form 10–KSB—3,641; Form 11–K—774; Form S–1—3,617. We estimate that only 40 percent of the filers on Form S–1 will include financial statements and that the remainder are reporting companies making repeat filings. Therefore, to avoid duplication in determining the number of registrants filing financial statements with the Commission, we have reduced this number to 1,446 (3,617 × .4).

[167] If the Commission determines to include the approximately 865 investment advisers, 8,100 broker-dealers, 950 transfer agents, and the auditors of their financial statements within the scope of the rules, this base may be significantly expanded. In addition, a PAB might determine to assess fees to investment companies based on the numbers of portfolios, in the case of mutual funds and unit investment trusts other than insurance company separate accounts, and sub-accounts, in the case of insurance company separate accounts. Currently, there are approximately 8,364 portfolios of open-end management investment companies, 14,451 sub-accounts of insurance company separate accounts, and 9,940 portfolios of unit investment trusts other than insurance company separate accounts.

officer was, in his or her capacity as a PAB member accountant, sanctioned by a PAB for violations of professional standards or the rules or membership requirements of the PAB within the previous five years, and that sanction has not been subsequently reversed, suspended, or vacated. For purposes of the PRA, we estimated that registrants would incur 30 burden hours per year in connection with this proposed rule.

statements, or prepare attestation reports, filed with the Commission. We have identified two possible areas where the proposed rules could place a burden on competition. A possible impact on competition could occur as a result of: (1) Accountants and registrants being members and adjunct members, respectively, of a PAB in order to satisfy conditions necessary to make financial statements and attestation reports

eroding their ability to compete for the provision of audit services with larger audit firms. Alternatively, these audit firms with relatively few SEC clients may choose to withdraw providing services to SEC registrants in order to avoid these additional costs. This may also result in less competition for the provision of audit services to some set of smaller SEC registrants.

We request comment regarding the

to proposed revisions to rule 1–02[173] and rule 2–01[174] of Regulation S–X, the proposed addition of Rules 13–01 through 13–07 to Regulation S–X, and proposed revisions to Item 401 of Regulation S–K.[175] The proposals would create the framework for a new private sector regulatory structure for oversight of accountants that audit or review financial statements, or prepare attestation reports, that are filed with the Commission.

- Provide for more Commission oversight of the audit quality control process;
- Subject to periodic quality control reviews accounting firms that audit or review registrants' financial statements or provide attestation reports;
- Establish a consistent source of funds for the regulatory and accounting standard-setting processes, which is not dependent on voluntary contributions by the accounting profession;
- For larger firms, replace "firm-on-

members of the accounting profession, and being subject to the Commission's oversight.

Disclosure would be required in Commission filings if an executive officer, director, or director nominee had been, in his or her capacity as a PAB member accountant, sanctioned as a member accountant by a PAB within the previous five years and that sanction had not been reversed, suspended, or vacated.

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officer was, in his or her capacity as a PAB member accountant, sanctioned by a PAB for violations of professional standards or the rules or membership requirements of the PAB within the previous five years, and that sanction has not been subsequently reversed, suspended, or vacated. For purposes of the PRA, we estimated that registrants would incur 30 burden hours per year in connection with this proposed rule. Thus, registrants would incur a cost associated with the 30 hours per year spent on the proposed disclosure requirement. We solicit comments on the costs of complying with the collections of information requirements that would be imposed by the proposed rules.

D. Request for Comments

We request comment on all aspects of this cost-benefit analysis. Would the primary benefits of the proposal be enhanced investor confidence and corporate governance? Are there other significant benefits we have not discussed? Are we correct in our assumption that the proposal would entail costs similar to those already incurred, incremental costs, and redistributed costs? Are there other categories of costs we have not discussed? To assist the Commission in its evaluation of the costs and benefits that may result from the proposed rules discussed in this release, we request that commenters provide views and data relating to any costs and benefits associated with the proposed rules. Is it possible to quantify the costs and benefits discussed? What methods should we employ in attempting to place values on the costs and benefits?

VII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For the purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[166] we are requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact on competition of any rule we adopt. The proposed rules are intended to create a framework for a new, independent, private-sector regulatory structure for oversight of accountants who audit or review financial statements, or prepare attestation reports, filed with the Commission. We have identified two possible areas where the proposed rules could place a burden on competition. A possible impact on competition could occur as a result of: (1) Accountants and registrants being members and adjunct members, respectively, of a PAB in order to satisfy conditions necessary to make financial statements and attestation reports acceptable for filing with the Commission, and (2) new costs placed on small accounting firms that currently are not subject to periodic quality control reviews. To the extent that a PAB uses fee schedules based on the relative size of registrants and accounting firms, we would expect that there would not be a significant burden imposed on a substantial number of small accounting firms and small registrants.

Any competitive impact stemming from membership of accountants in a PAB in order to provide audit, review, or attest services to a Commission registrant must be balanced against the need for investors to have confidence in the quality of audits and in the integrity of the financial information that fuels our securities markets. As noted above, accountants are assigned critical roles under the securities laws and our regulations, including reviewing and certifying financial statements and reporting their opinions on those statements directly to investors. If investors do not believe in the integrity and competence of the accountants providing those opinions, then investors might lose faith in the integrity of reported financial information and lose confidence in our markets. Our rule proposals are intended to provide a structure for a regulatory system that would foster the confidence of investors.

As noted in our cost-benefit analysis, firms that currently do not undergo periodic quality control reviews would have additional costs related to those reviews.[169] We estimate that this could occur for approximately 80 audit firms who are not currently members of the SECPS. These additional costs might also lead to an impact on competition. Under our proposals, these same audit firms with relatively few SEC clients would be members of a PAB. The imposition of PAB-related costs might lead to higher audit fees by these firms, eroding their ability to compete for the provision of audit services with larger audit firms. Alternatively, these audit firms with relatively few SEC clients may choose to withdraw providing services to SEC registrants in order to avoid these additional costs. This may also result in less competition for the provision of audit services to some set of smaller SEC registrants.

We request comment regarding the degree to which our proposal would have harmful competitive effects on such small firms. We also request comment on any indirect effects on these firms' audit clients, including whether these costs might discourage some companies from making an initial public offering or entering our securities markets.

Section 2(b) of the Securities Act,[170] section 3(f) of the Exchange Act,[171] and section 2(c) of the ICA,[172] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We believe that the proposed rules would promote market efficiency and capital formation by enhancing confidence in the financial information provided by registrants and examined or reviewed by accountants. Investors would have more confidence that: (1) Accounting firms' quality control systems reasonably assure the performance of high quality audit, review, and attest services and that individual accountants are adhering to those systems; (2) incompetent or unethical accountants are being identified and appropriately disciplined; and (3) there are direct lines of communication between quality control reviewers who discover problems with audit, quality control, ethics, or other standards and the body or bodies that can change those standards.

The possible effects of our rule proposals on efficiency, competition, and capital formation are difficult to quantify. We request comment on these matters in connection with our proposed rules.

VIII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates

[166] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[169] As noted in our cost-benefit analysis, even firms that currently undergo SECPS reviews may incur incremental costs associated with PAB quality controls. Because a PAB would have discretion in determining the nature and extent of procedures to be performed each year, we cannot reliably estimate what those additional costs may be.

[170] 15 U.S.C. 77b(b).

[171] 15 U.S.C. 78c(f).

[172] 15 U.S.C 80a–2(c).

to proposed revisions to rule 1–02[173] and rule 2–01[174] of Regulation S–X, the proposed addition of Rules 13–01 through 13–07 to Regulation S–X, and proposed revisions to Item 401 of Regulation S–K.[175] The proposals would create the framework for a new private sector regulatory structure for oversight of accountants that audit or review financial statements, or prepare attestation reports, that are filed with the Commission.

A. Reasons for the Proposed Action

In the wake of recent corporate failures that caused significant losses to investors and pensioners, Congress, the Commission, and others have been examining longstanding deficiencies in the accounting profession's self-regulatory programs. During this examination, the POB, which had overseen the profession's programs since 1977, voted to disband, leaving the profession without its "conscience and critic."[176] The consequences of not remedying the problems we have outlined in more detail above are significant to the quality of the audit process and the reliability of the financial information disseminated to investors. We have continuing concerns about the oversight of the accounting profession, including the effectiveness of the quality control review process. Without rules such as those we are proposing today, we are concerned that effective oversight will not be accomplished.

B. Objectives

Our objective is to lay the foundation for a new, stronger system of private sector regulation that would enhance investors' confidence in the audit process and in the reliability of the financial information used to make voting and investment decisions. Our proposals, among other things, would facilitate the formation of a stronger and more independent system of private sector regulation that would enhance investors' confidence in the quality of the audit process and in the integrity of reported financial information. The system, among other things, would:

- Move the system of regulation outside the AICPA and place it within the control of the representatives of public;
- Provide for more Commission oversight of the audit quality control process;
- Subject to periodic quality control reviews accounting firms that audit or review registrants' financial statements or provide attestation reports;
- Establish a consistent source of funds for the regulatory and accounting standard-setting processes, which is not dependent on voluntary contributions by the accounting profession;
- For larger firms, replace "firm-on-firm peer reviews" with PAB-directed reviews and assure that reviews of smaller firms' quality controls are conducted under programs that, among other things, are approved by a PAB, use a PAB's procedures, and provide for a PAB evaluation of each review; and
- Give the PAB the ability to discipline, in a public forum, accounting firms and individual accountants for incompetent or unethical conduct, or other violations of professional standards, and to discipline accounting firms for not having sufficient quality control systems or not complying with them.

Under the proposed rules, an SEC registrant's financial statements would not comply with Commission requirements unless the accountant who audited or reviewed those statements is a member of a PAB. Attestation reports would not comply with Commission requirements unless prepared by outside accountants who are members of a PAB. Furthermore, an SEC registrant's financial statements and attestation reports contained in or accompanying an SEC registrant's reports or registration statements would not comply with Commission requirements unless the registrant is an adjunct member of, and thereby bound to cooperate in any review or proceeding commenced by, the same PAB as its accountant.

A PAB would oversee the quality of financial statements relied on by investors by, among other things, administering a program of periodic reviews of accounting firms' quality controls and, when appropriate, disciplining accountants for deficiencies noted during those quality control reviews or that otherwise come to a PAB's attention. A PAB also would set, or rely on designated private sector standard-setting bodies to set audit, quality control, and ethics standards, and to facilitate communications among these bodies and others. To be recognized by the Commission, a PAB would be required to meet the conditions specified in the proposed rules, including having a board dominated by individuals who are not members of the accounting profession, and being subject to the Commission's oversight.

Disclosure would be required in Commission filings if an executive officer, director, or director nominee had been, in his or her capacity as a PAB member accountant, sanctioned as a member accountant by a PAB within the previous five years and that sanction had not been reversed, suspended, or vacated.

C. Legal Basis

We are proposing the rule amendments and new rules under the authority set forth in Schedule A and Sections 2, 4, 5, 6, 7, 8, 10, 11, 19, and 28 of the Securities Act; Sections 2, 3, 9, 10, 10A, 12, 13, 14, 15, 17, 23, and 36 of the Exchange Act; Sections 5, 10, 14, and 20 of the PUHCA; Sections 304, 305, 307, 308, 309, 310, 314, and 319 of the Trust Indenture Act of 1939 ("Trust Indenture Act"); Sections 6, 8, 20, 30, 31, and 38 of the ICA; and Sections 203, 206A and 211 of the Advisers Act.

D. Small Entities Subject to the Proposed Rules

The proposals would affect small registrants and small accounting firms that are small entities. Exchange Act Rule 0–10(a)[177] and Securities Act Rule 157[178] define a company to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that, as of February 20, 2002, approximately 2,500 companies were small entities, other than investment companies.

For purposes of the ICA, Rule 0–10[179] defines "small business" to be an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that, as of May 17, 2002, approximately 225 investment companies met this definition.[180]

Our rules do not define "small business" or "small organization" for purposes of accounting firms. The Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[181] We have only limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $6 million in revenues that

[173] 17 CFR 210.1–02.

[174] 17 CFR 210.2–01.

[175] 17 CFR 229.401.

[176] *Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 19, 2002) (statement of Charles A. Bowsher, Chairman, Public Oversight Board, Former Comptroller General of the United States).

[177] 17 CFR 240.0–10(e).

[178] 17 CFR 230.157.

[179] 17 CFR 270.0–10.

[180] *See Proposed Amendments to Investment Company Advertising Rules*, Release No. 33–8101 (May 17, 2002), at n.142, 67 FR 36712 (May 24, 2002).

[181] 13 CFR 121.201.

practice before the Commission. We request comment on the number of accounting firms with revenue under $6 million.

Our rules do not define "small business" or "small organization" in terms of private sector regulatory organizations such as a PAB. Because no such entity exists at this time, we cannot reliably estimate its revenues or expenses. In addition, we cannot know

below, and in our cost-benefit analysis, many accountants already undergo periodic quality control reviews. For small firms currently participating in these programs, the incremental costs should not be significant. For small accounting firms not currently participating in these programs, the incremental costs may be greater and a firm may attempt to pass these costs to a registrant-audit client. Even these

offset, however, by reductions in costs currently paid to the SECPS and AICPA and amounts donated and paid to the FASB. In addition, many of these costs already are incurred to comply with requirements under GAAS to have an adequate quality control system.[185]

As noted in our cost-benefit analysis, the vast majority of firms practicing before the Commission already are involved in a peer review program. For

Nonetheless, we recognize that the costs of preparing and paying for reviews may be significant to a small firm. To address this concern, our proposals indicate that smaller firms would be required to have a review only once every three years, instead of the annual reviews required of larger firms.

We invite comments on the anticipated incremental costs to small firms of participating in the quality control review program discussed in

4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

Congressional proposals, suggestions made during the SEC Roundtables, the U.K. system of regulation of the accounting profession, and recommendations submitted by others have provided numerous alternatives for the regulation of the accounting profession.

After full consideration, we have

nature of the potential impact on those small entities, how to quantify the number of small accounting firms that would be affected by the proposals, and how to quantify the impact of the proposed amendments.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if

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practice before the Commission. We request comment on the number of accounting firms with revenue under $6 million.

Our rules do not define "small business" or "small organization" in terms of private sector regulatory organizations such as a PAB. Because no such entity exists at this time, we cannot reliably estimate its revenues or expenses. In addition, we cannot know in advance whether more than one PAB would exist, and if so, whether one PAB may be a small entity while another would not be a small entity. A PAB, however, would collect fees to fund not only its own operations but also approximately $20 to $24 million to fund the FASB. It would appear, therefore, that based on its revenues and scope of operations a PAB would not be a small entity.

We request comment on whether a PAB would be a small entity. What criteria should be used to make this determination? If more than one PAB is formed and recognized by the Commission, is it likely that there would be both small and large PABs?

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rules would affect small accounting firms and small audit clients of accounting firms.

Registrants

The proposed rules would impose minor reporting, recordkeeping, and compliance requirements on small entity registrants related to the operations of a PAB.

Registrants would provide testimony and documents, upon request, to a PAB. The proposed rules do not direct a registrant, however, to keep or prepare documents or to maintain them in any specific form. Any burden under the proposals would relate to releasing documents and providing testimony to the PAB in supplemental reviews and disciplinary proceedings against the registrant's accountant. Although we cannot estimate at this time how often these events would occur, we do not expect this burden to have a significant economic impact on a substantial number of small entities.

Registrants would pay fees assessed by a PAB and, through increased audit fees, might pay for increased costs incurred by accounting firms, as discussed below. We anticipate that a PAB would impose fees based on the relative size of registrants and accounting firms, such that the fees would not be significant to any one entity. Possible increases in audit fees also should not be significant. As noted below, and in our cost-benefit analysis, many accountants already undergo periodic quality control reviews. For small firms currently participating in these programs, the incremental costs should not be significant. For small accounting firms not currently participating in these programs, the incremental costs may be greater and a firm may attempt to pass these costs to a registrant-audit client. Even these firms, however, as explained below, currently must have a quality control system in place. The direct and indirect incremental fees imposed on small registrants, therefore, should not have a significant economic impact on a substantial number of small registrants.

We also have proposed a disclosure requirement in Regulation S–K for registrants with an executive officer, director, or director nominee who, in his or her capacity as a PAB member accountant, was sanctioned by a PAB during the past five years. The information required to make this disclosure, when necessary, would be readily available from the individual and from a PAB's public reports. The proposed rules, therefore, would impose very low incremental costs, if any, for the collection and retention of information. In addition, in the relatively rare instances where the information would be disclosed, we anticipate that it would consist of no more than a few lines in a document and that drafting, reviewing, filing, printing, and dissemination costs, therefore, would be insignificant.

In addition, we have not added this disclosure requirement to Regulation S–B,[182] which, in lieu of Regulation S–K, is the source of disclosure requirements for "small business issuers."[183] A small business issuer is one that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and, if a majority owned subsidiary, has a parent that also is a small business issuer.[184] Accordingly, the disclosure requirement should not impose a significant economic impact on a substantial number of small registrants.

We request comment on the reporting, recordkeeping, and other compliance requirements applicable to small entity registrants. Please quantify, if possible, what the likely burden would be.

Accountants

The proposed rules might impose incremental costs on some small accounting firms. These costs may be offset, however, by reductions in costs currently paid to the SECPS and AICPA and amounts donated and paid to the FASB. In addition, many of these costs already are incurred to comply with requirements under GAAS to have an adequate quality control system.[185]

As noted in our cost-benefit analysis, the vast majority of firms practicing before the Commission already are involved in a peer review program. For these firms, any costs imposed by the proposed rules of maintaining quality control systems and having quality control reviews should be offset to a large degree by reductions of fees paid to the SECPS or to others for such reviews.

We have estimated, however, that approximately 80 domestic small accounting firms that audit the financial statements of Commission registrants are not members of the SECPS and do not participate in the SECPS peer review program. To the extent that such a firm does not participate in a peer review conducted by another organization, it may incur costs for the first time related to the conduct of quality control reviews. Because of the relatively small size of these firms, however, we anticipate that large, automated quality control systems would not be necessary.[186] We also note that these firms already likely incur costs related to the establishment and maintenance of a quality control system as required by GAAS, which states:

> A firm of independent auditors needs to comply with the quality control standards in conducting an audit practice. Thus, a firm should establish quality control policies and procedures to provide it with reasonable assurance of conforming with generally accepted auditing standards in its audit engagements. The nature and extent of a firm's quality control policies and procedures depend on factors such as its size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations.[187]

[182] 17 CFR 228.

[183] 17 CFR 228.10.

[184] 17 CFR 228.10(a)(1).

[185] *See* SAS No. 25, AU § 161.

[186] *See*, AICPA, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*, at 4, QC § 20.04, which states:

> A firm's system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide the firm with reasonable assurance of complying with professional standards. The nature, extent, and formality of a firm's quality control policies and procedures should be appropriately comprehensive and suitably designed in relation to the firm's size, the number of its offices, the degree of authority allowed its personnel and its offices, the knowledge and experience of its personnel, the nature and complexity of the firm's practice, and appropriate cost-benefit considerations.

[187] SAS No. 25, AU § 161.02 (as revised by SAS No. 96, Apr. 2002).

Nonetheless, we recognize that the costs of preparing and paying for reviews may be significant to a small firm. To address this concern, our proposals indicate that smaller firms would be required to have a review only once every three years, instead of the annual reviews required of larger firms.

We invite comments on the anticipated incremental costs to small firms of participating in the quality control review program discussed in this release. What would the reporting, recordkeeping, and other compliance costs be? Please quantify, if possible, any likely burden on small accounting firms.

In addition to paying costs associated with quality control reviews, accounting firms would pay fees imposed by a PAB to fund not only the PAB's operations but also the operations of the FASB. We expect, however, that a PAB would assess fees according to schedules based on an entity's size or other relevant criteria, such that the fees paid would not be significant to any one entity.

An accounting firm or individual accountant also might incur costs if the firm or individual becomes the subject of, or is required to participate in, a PAB's disciplinary proceedings. At this time, however, we cannot estimate the likely burden that would fall on small accounting firms as a result. In any case, we believe that they will not have a significant economic impact on a substantial number of small entities. We request comment on any likely burden that would result from disciplinary proceedings.

F. Duplicative, Overlapping, or Conflicting Federal Rules

We are not aware of any federal rules that duplicate, overlap, or conflict with the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities;

3. The use of performance rather than design standards; and

4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

Congressional proposals, suggestions made during the SEC Roundtables, the U.K. system of regulation of the accounting profession, and recommendations submitted by others have provided numerous alternatives for the regulation of the accounting profession.

After full consideration, we have included provisions in our proposed rules specifically designed to reduce the impact on small entities. We have provided for:

- A PAB to tailor fees based on a registrant's or accounting firm's size or other relevant criteria;
- Small firms to have triennial, as opposed to annual, quality control reviews; and
- Disclosure to be made by registrants complying with Regulation S–K, but not by small business issuers under Regulation S–B.

In drafting requirements for a PAB, we have made use of certain standards that set performance goals. A PAB would have the ability to design its rules, membership requirements, policies, and procedures to best achieve the goals discussed in this release.

Additional alternatives would be to exclude small entities from the rules or to provide an extended period of time for them to adhere to the rules. Because of the importance of high quality audits for all Commission registrants, we believe that small as well as large firms who audit public companies should be covered under the proposed rules.[188] We have not provided delayed implementation dates just for small firms because most firms currently are participating in a review program. We also believe that some time would be required for a PAB to be formed, adopt the appropriate rules and procedures, and hire the needed staff to begin to conduct reviews. This should give smaller firms sufficient time to prepare for those reviews.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Specifically, we request comment regarding the number of small entities that may be affected by the proposed amendments, the existence or nature of the potential impact on those small entities, how to quantify the number of small accounting firms that would be affected by the proposals, and how to quantify the impact of the proposed amendments.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

[188] *See, e.g.*, Mark S. Beasley, Joseph V. Carcello, and Dana R. Hermanson, *Fraudulent Financial Reporting, 1987–1997, An Analysis of U.S. Public Companies* (1999); Mark S. Beasley, Joseph V. Carcello, and Dana R. Hermanson, *Fraud Related SEC Enforcement Actions Against Auditors: 1987–1997* (2000).

IX. Codification Update

The Commission proposes to amend the "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982):

By adding a new section 700, captioned "Matters Relating to a Public Accountability Board," to include the text in the adopting release that discusses the final rules, which, if the proposals are adopted, would be substantially similar to Section III of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

X. Statutory Authority

We are proposing the rule amendments and new rules under the authority set forth in Schedule A and Sections 2, 4, 5, 6, 7, 8, 10, 11, 19, and 28 of the Securities Act; Sections 2, 3, 9, 10, 10A, 12, 13, 14, 15, 17, 23, and 36 of the Exchange Act; Sections 5, 10, 14, and 20 of the PUHCA; Sections 304, 305, 307, 308, 309, 310, 314, and 319 of the Trust Indenture Act; Sections 6, 8, 20, 30, 31, and 38 of the ICA; and Sections 203, 206A and 211 of the Advisers Act.

Text of Proposed Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210

public accountant or a public accountant, or as independent with respect to an audit client, if, during the professional engagement period, the accountant is not a member accountant in good standing of a Public Accountability Board or if the audit client is not an adjunct member in good standing of the same Public Accountability Board, as those terms are defined in § 210.13.

(b) *Adjunct member in good standing* means an entity that is an adjunct member of a PAB and:

(1) Is not delinquent in the payment of fees assessed by such PAB;

(2) Is not delinquent in the production of documents of the adjunct member or of the adjunct member's management employees, requested by such PAB and

firm with which the certified public accountant or public accountant is affiliated.

(2) Who is not licensed by any state or territory of the United States.

(e) *Member accountant in good standing* means an accountant that is a member of a PAB and:

(1) Either:

(i) Has not been barred, suspended, or otherwise sanctioned by a PAB; or

(ii)(A) Has been reinstated by the PAB after having been barred or suspended from membership with the PAB; or

(B) Has not been cited in a public notice by the PAB as being

statements or accountant's reports that accompany or are contained in filings made with the Commission, including auditing, quality control and ethics standards issued by a PAB or by a standard-setting body designated as authoritative by a PAB, as may be modified or supplemented by the Commission.

(i) *SEC clients* means issuers making initial public offerings, registrants filing periodic reports with the Commission

(2) The entity's charter and bylaws, which shall satisfy the criteria described in § 210.13–04(c);

(3) Representations that the entity shall undertake to:

(i) Improve the quality of audit, review and attest services provided by its member accountants;

(ii) Improve the quality controls over member firms' accounting practices, auditing practices, and compliance with auditor independence and ethics

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PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77*f*, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11, unless otherwise noted.

* * * * *

2. Section 210.1–02 is amended by:

a. Removing the authority citation following § 210.1–02;

b. Redesignating paragraph (d) as paragraph (d)(1);

c. Removing the period at the end of newly redesignated paragraph (d)(1) and in its place adding a colon; and

d. Adding paragraphs (d)(2) and (d)(3).

The revision and additions read as follows:

§ 210.1–02 Definition of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(d)(1) *Audit (or examination).* * * *

(2) *Review.* The term *review*, when used in regard to financial statements, means a review of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission.

(3) *Attest or attestation.* The term *attest* or *attestation*, when used in regard to a report filed with the Commission pursuant to the securities laws or the rules or regulations thereunder, means a report by an independent accountant, on a written assertion that is the responsibility of another party, in accordance with Statements on Standards for Attestation Engagements, as may be modified or supplemented by the Commission, for purposes of issuing a report thereon.

* * * * *

3. Section 210.2–01 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 210.2–01 Qualifications of accountants.

* * * * *

(a)(1) * * *

(2) The Commission will not recognize any accountant as a certified public accountant or a public accountant, or as independent with respect to an audit client, if, during the professional engagement period, the accountant is not a member accountant in good standing of a Public Accountability Board or if the audit client is not an adjunct member in good standing of the same Public Accountability Board, as those terms are defined in § 210.13.

* * * * *

4. Section 210 is amended by adding an undesignated center heading and §§ 210.13–01 through 210.13–07 to read as follows:

Article 13—Public Accountability Boards

Sec.

210.13–01 Financial statements and attestation reports.
210.13–02 Definitions.
210.13–03 Commission recognition of Public Accountability Boards.
210.13–04 Conditions of Commission recognition of Public Accountability Boards.
210.13–05 Confidentiality and immunity.
210.13–06 Exemptions.
210.13–07 Foreign accountants.

Article 13—Public Accountability Boards

§ 210.13–01 Financial statements and attestation reports.

(a) Audited or reviewed financial statements or attestation reports contained in or accompanying reports or registration statements filed with the Commission must be audited or reviewed, in the case of financial statements, or prepared, in the case of attestation reports, by an accountant that, throughout the professional engagement period:

(1) Is a member accountant in good standing of a Public Accountability Board of which the registrant filing the report or statement is an adjunct member in good standing; and

(2) Satisfies all other requirements prescribed by the federal securities laws and the rules and regulations thereunder concerning an accountant that audits, reviews, or prepares such a statement or report.

(b) [Reserved]

§ 210.13–02 Definitions.

For the purposes of this § 210.13:

(a) *Accountant* means an independent public or certified public accountant that audits or reviews financial statements filed with the Commission, or that prepares attest reports filed with the Commission pursuant to the securities laws or the rules or regulations thereunder. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.

(b) *Adjunct member in good standing* means an entity that is an adjunct member of a PAB and:

(1) Is not delinquent in the payment of fees assessed by such PAB;

(2) Is not delinquent in the production of documents of the adjunct member or of the adjunct member's management employees, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g);

(3) Is not delinquent in providing testimony of the adjunct member or of the adjunct member's management employees, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g); and

(4) Is not delinquent in using its best efforts to cause its non-management employees and agents to provide to such PAB any documents or testimony requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g).

(c) A member or adjunct member of a PAB is *delinquent* when a PAB has provided public notice, in accordance with PAB rules consistent with § 210.13–04(d)(11), that:

(1) With respect to payment of fees assessed by a PAB, the member or adjunct member has failed to pay the fees; or

(2) With respect to producing documents or providing testimony requested by a PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g):

(i) In the case of a PAB request made to a member accountant, the member accountant has failed to produce the documents or provide the testimony after any good faith legal objection to the request has, in accordance with such PAB's rules, been resolved in such PAB's favor; and

(ii) In the case of a PAB request made to an adjunct member, the adjunct member has failed to produce the documents or provide the testimony, or has failed to use its best efforts to cause any of its non-management employees or agents to produce the documents or provide the testimony, after any good faith legal objection to the request has, in accordance with such PAB's rules, been resolved in such PAB's favor.

(d) *Foreign accountant* means an accountant, including associated entities of United States domiciled accountants:

(1) Whose place of residence and principal office is outside the United States and its territories; and

(2) Who is not licensed by any state or territory of the United States.

(e) *Member accountant in good standing* means an accountant that is a member of a PAB and:

(1) Either:

(i) Has not been barred, suspended, or otherwise sanctioned by a PAB; or

(ii)(A) Has been reinstated by the PAB after having been barred or suspended from membership with the PAB; or

(B) Has not been cited in a public notice by the PAB as being noncompliant with the terms and conditions of any remedial or disciplinary sanction, other than suspension or bar, imposed by the PAB; and

(2) Is not:

(i) Delinquent in the payment of fees assessed by the PAB of which it is a member;

(ii) Delinquent in the production of documents of the accountant, or of any of the accountant's employees or agents, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g); or

(iii) Delinquent in providing testimony of the accountant, or of any of the accountant's employees or agents, requested by such PAB and relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g).

(f) *Public Accountability Board,* or *PAB,* means an entity organized in accordance with, and for the purposes described in, this § 210.13 that the Commission recognizes pursuant to §§ 210.13–03 and 210.13–04.

(g) *Professional engagement period* means the period of the engagement to audit or review the registrant's financial statements or to prepare a report filed with the Commission. The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements or to prepare an attestation report to be filed with the Commission) or begins audit, review, or attest procedures, whichever is earlier. The professional engagement period ends when the registrant or the accountant notifies the Commission that the registrant is no longer the accountant's audit client.

(h) *Professional standards* means generally accepted accounting principles, generally accepted auditing standards, generally accepted standards for attestation engagements, the Commission's auditor independence regulations, the standards of the Independence Standards Board, and any other standards related to the audit, review or preparation of financial statements or accountant's reports that accompany or are contained in filings made with the Commission, including auditing, quality control and ethics standards issued by a PAB or by a standard-setting body designated as authoritative by a PAB, as may be modified or supplemented by the Commission.

(i) *SEC clients* means issuers making initial public offerings, registrants filing periodic reports with the Commission under the Securities Exchange Act of 1934 (except broker-dealers registered only because of section 15(a) of that Act (15 U.S.C. 78o(a)) or the Investment Company Act of 1940, and any other Commission registrant that a PAB, by rule, may include within that category for the purposes for which the term is used in this § 210.13.

§ 210.13–03 Commission recognition of Public Accountability Boards.

(a) To obtain Commission recognition as a PAB, an entity must submit for Commission review representations and materials on the basis of which the Commission can make a determination as to the entity's commitment and capacity to carry out the functions and to accomplish the purposes of a PAB as described in this § 210.13. Such submission shall include, at a minimum, the representations and materials described in paragraph (c) of this section.

(b) After receiving any submission pursuant to paragraph (a) of this section, the Commission shall, by order, determine whether the entity making the submission shall be recognized as a PAB. The Commission shall, consistent with the public interest and for the protection of investors, make its determination on the basis of the entity's commitment and capacity to carry out the functions and accomplish the purposes of a PAB as described in this § 210.13. Before making its determination, the Commission may ask the entity to supplement its submission with such materials, representations, or written answers to questions as the Commission determines are necessary for the Commission to make an appropriate determination in the public interest and for the protection of investors.

(c) Any submission pursuant to paragraph (a) of this section must include:

(1) The entity's organizational structure, proposed board members and terms of board membership, and proposed budget, sufficient to determine that the entity will satisfy the requirements set out in § 210.13–04(b);

(2) The entity's charter and bylaws, which shall satisfy the criteria described in § 210.13–04(c);

(3) Representations that the entity shall undertake to:

(i) Improve the quality of audit, review and attest services provided by its member accountants;

(ii) Improve the quality controls over member firms' accounting practices, auditing practices, and compliance with auditor independence and ethics regulations;

(iii) Enhance investors' confidence in the audit process; and

(iv) To the extent it relies on private sector bodies to set auditing, ethics or quality control standards, foster cooperation and coordination among such private sector bodies, both domestic and international, and among those private sector bodies and private sector bodies that set standards for accounting and independence;

(4) Representations that the entity shall put in place rules, membership requirements, systems and procedures designed to further the goals described in paragraph (c)(3) of this section and sufficient to accomplish, at a minimum, the objectives described in § 210.13–04(d); and

(5) A representation that the entity will study matters concerning the quality control systems of foreign accountants and periodically report to the Commission on whether, or under what conditions, the exemption concerning foreign accountants in § 210.13–07(a) should be withdrawn.

§ 210.13–04 Conditions of Commission recognition of Public Accountability Boards.

(a) *Conditions of recognition.* Commission recognition of a PAB is conditioned upon the PAB satisfying the criteria described in paragraphs (b) through (i) of this section.

(b) *Organizational structure, board membership, and budget.* A PAB shall:

(1) Have a fixed number of board members:

(i) None of whom may be, or have been at any time in the two-year period immediately preceding his or her PAB term, an employee of any accountants' professional organization;

(ii) No more than one-third of whom, and in any event no more than three of whom, may:

(A) Be, or have been at any time in the ten-year period immediately preceding his or her PAB term, an accountant or a partner, principal, shareholder, or managerial employee of an accounting firm; or

(B) Be a retired partner, principal, shareholder, or managerial employee of

an accounting firm, eligible to receive benefits under an accounting firm's partner retirement plan or a comparable plan; and

(iii) The remainder of whom shall be designated as "public board members;"

(2) Have staggered terms for board members;

(3) Have a Chairman and Vice Chairman who are selected from among the public board members, and at least

(2) Require that member accountants maintain a system of quality control for the accountant's accounting and auditing practice designed to meet the requirements of quality controls set or designated as authoritative by the PAB, but encompassing, at a minimum, the requirements described in paragraph (e) of this section;

(3) Require member accountants to comply with their own system of quality controls in a manner that provides

and expenses of conducting or overseeing quality control reviews of that firm as described in paragraph (f) of this section;

(11) Provide fair procedures for disciplining and sanctioning accountants and for resolving disputes with member accountants and adjunct members concerning fees, document requests and requests for testimony, including procedures providing for appropriate notice to the member

assurance, ethics, independence, and quality controls; and

(18) Perform such other duties or functions as shall be provided in any rule or order that the Commission may adopt or issue in furtherance of the public interest or for the protection of investors and to carry out the purposes of this § 210.13.

(e) *Quality control requirements.* A PAB shall require that each of its member accountants maintain a system

accountant's independence with the audit committee (or board of directors);

(5) When the member firm has been the auditor of the financial statements of a Commission registrant and has resigned, declined to stand for reelection, or been dismissed, promptly reporting in writing to the registrant, with a simultaneous copy to the Commission's Office of the Chief Accountant, the fact that the client-auditor relationship has ceased;

(ii) Review of that accountant's work on engagements for that client to determine whether changes in the audit plan or audit team are necessary and to assure adherence to the Commission's auditor independence rules.

(f) *Quality control review program.* A PAB shall administer and conduct a continuing program of quality control reviews and inspections of each member firm to assess compliance by such firm, and by individual accountants

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an accounting firm, eligible to receive benefits under an accounting firm's partner retirement plan or a comparable plan; and

(iii) The remainder of whom shall be designated as "public board members;"

(2) Have staggered terms for board members;

(3) Have a Chairman and Vice Chairman who are selected from among the public board members, and at least one of whom shall serve on a full-time basis; and

(4) Have the means, capacity and plan to obtain the resources to employ a professional staff that includes a sufficient number of professionals with expertise in the audit process and quality control reviews to structure and supervise the quality control reviews required under paragraph (f) of this section, to conduct the supplemental reviews and disciplinary proceedings described in paragraph (g) of this section, and to engage consultants and other representatives and advisers necessary to carry out the purposes of this § 210.13.

(c) *Charter and bylaws.* A PAB's charter and bylaws shall:

(1) Provide that the entity shall be a not for profit entity;

(2) Include quorum provisions that insure that the public board members will have the ability to control the outcome of any matter submitted to a vote of the board;

(3) Provide that the entity shall be subject to and shall act in accordance with Commission oversight as described in paragraph (i) of this section; and

(4) Provide that, immediately upon the effective date of any Commission rule abrogating, adding to, or deleting from the entity's rules, the entity's rules shall be deemed, without further action, to be amended as provided by such Commission rule.

(d) *Rules, membership requirements, systems, and procedures.* A PAB shall have in place rules, membership requirements, systems, and procedures designed to further the goals described in § 210.13–03(c)(3), and sufficient to accomplish, at a minimum, the following:

(1) Provide for membership enrollment procedures that:

(i) Minimize the administrative burden on individual accountants by maximizing the extent to which the enrollment requirements, and any periodic updating requirements, may be satisfied by an accounting firm on behalf of its individual accountants; and

(ii) Require members and adjunct members to agree to be bound by the PAB's rules and membership requirements;

(2) Require that member accountants maintain a system of quality control for the accountant's accounting and auditing practice designed to meet the requirements of quality controls set or designated as authoritative by the PAB, but encompassing, at a minimum, the requirements described in paragraph (e) of this section;

(3) Require member accountants to comply with their own system of quality controls in a manner that provides reasonable assurance of conforming with professional standards;

(4) Have a continuing program of review of each member firm's quality control systems concerning accounting practices, auditing practices, and adherence to Commission and professional auditor independence requirements; and administer that program according to the criteria described in paragraph (f) of this section;

(5) Direct member firms to make and keep for specified periods of time records that:

(i) Are required by professional standards in connection with each audit, review, or attest of a registrant's financial statements or reports; or

(ii) Otherwise document the procedures performed and the resolution of material issues during each audit or review engagement;

(6) Conduct supplemental reviews and disciplinary proceedings, in accordance with the criteria described in paragraph (g) of this section;

(7) Provide procedures for requesting and obtaining documents and testimony relevant to a review or proceeding by such PAB as described in §§ 210.13–04(f) through (g);

(8) Adopt appropriate policies to address any conflicts or potential conflicts of interest that may arise involving the PAB's board members, employees, contractors, and professional representatives;

(9) Collect from each registrant that is an adjunct member of the PAB, and from each member accounting firm, reasonable fees and charges, which fees may be assessed by the PAB according to schedules specifying different fees for different classes of registrants and accounting firms, sufficient:

(i) To fund the operation and administration of the PAB; and

(ii) To fund the operation and administration of an accounting standards-setting body endorsed by the Commission as the primary source for generally accepted accounting principles;

(10) Collect from each member accounting firm reasonable fees and charges sufficient to recover the costs and expenses of conducting or overseeing quality control reviews of that firm as described in paragraph (f) of this section;

(11) Provide fair procedures for disciplining and sanctioning accountants and for resolving disputes with member accountants and adjunct members concerning fees, document requests and requests for testimony, including procedures providing for appropriate notice to the member accountant or adjunct member, the Commission, and the public of any action that could result or has resulted in suspension or bar of a member accountant or a loss of good standing by a member accountant or adjunct member;

(12) Set, or rely on designated private sector bodies to set, auditing, ethical or quality control standards for its members and, to the extent it relies on private sector bodies to set such standards, oversee such bodies and request that such matters as the PAB deems appropriate be added to the standard-setting agendas of such private sector bodies, and notify the Commission of each such request;

(13) Request that matters be added to the agenda of private sector bodies that set accounting or independence standards, and notify the Commission of each such request;

(14) Facilitate and participate in periodic meetings of representatives of the private sector bodies that set accounting, auditing, quality control, ethics and independence standards, representatives of the Commission, and such other persons as the PAB deems appropriate, for the purpose of furthering the coordination and cooperation among such bodies;

(15) Provide that the PAB's process for amending governing documents, rules, membership requirements and procedures shall include an open and deliberative rulemaking process with open meetings, the publication for public comment of draft rules, requirements and procedures and substantive consideration of those comments;

(16) Provide for extending full faith and credit to the sanctions and good standing requirements of any other PAB, such that an accountant sanctioned by, or an accountant or registrant in violation of the good standing requirements of, one PAB may not evade any sanction, inquiry, or failure of good standing by switching its membership to a different PAB;

(17) Provide or require training for accountants in matters related to accounting, auditing, attestation, assurance, ethics, independence, and quality controls; and

(18) Perform such other duties or functions as shall be provided in any rule or order that the Commission may adopt or issue in furtherance of the public interest or for the protection of investors and to carry out the purposes of this § 210.13.

(e) *Quality control requirements.* A PAB shall require that each of its member accountants maintain a system of quality control for the accountant's accounting and auditing practice designed to meet the requirements of quality controls set or designated as authoritative by the PAB, including quality controls concerning independence, integrity, and objectivity; personnel management; acceptance and continuance of clients and engagements; engagement performance; and monitoring. The quality controls required by a PAB shall include, at a minimum:

(1) Assigning a new audit engagement partner to be in charge of an audit engagement that has had another audit partner-in-charge for a period of seven consecutive years;

(2) Establishing policies and procedures for a review of the audit report and financial statements by a partner other than the audit partner-in-charge of an audit engagement before issuance of an audit report on the financial statements and before the reissuance of such an audit report where performance of subsequent events procedures is required by professional standards, or alternative procedures that a PAB authorizes where this requirement cannot be met because of the size of the member firm;

(3) Ensuring policies and procedures are in place to comply with applicable auditor independence requirements and to refrain from performing consulting services that are inconsistent with § 210.2–01, and to refrain from conducting public opinion polls or merger and acquisition assistance for a finder's fee;

(4) At least annually, disclosing to the audit committee of each audit client that is a Commission registrant (or the board of directors if there is no audit committee), in writing, all relationships between the accountant and its related entities that in the accountant's professional judgment may reasonably be thought to bear on auditor independence; confirming in that letter that, in the accountant's professional judgment, it is independent of the registrant within the meaning of the securities laws, the rules and regulations thereunder, and professional standards; and discussing the accountant's independence with the audit committee (or board of directors);

(5) When the member firm has been the auditor of the financial statements of a Commission registrant and has resigned, declined to stand for reelection, or been dismissed, promptly reporting in writing to the registrant, with a simultaneous copy to the Commission's Office of the Chief Accountant, the fact that the client-auditor relationship has ceased;

(6) For member firms that are associated with international firms or international associations of firms:

(i) Seeking the adoption of policies and procedures by the international organization or individual foreign associated firms that are consistent with the objectives of this § 210.13; and

(ii) Reporting annually, or more frequently as the PAB may prescribe, the name and country of the foreign associated firms, if any, for which the member firm has been advised in writing by its international organization or the individual foreign associated firms that such policies and procedures have been established;

(7) Ensuring that the member firm has policies and procedures in place to report to the PAB, with a copy of the report to the Commission's Office of the Chief Accountant, litigation or any proceeding or investigation by a government agency alleging either deficiencies in the conduct of an audit or review of financial statements filed with the Commission by a present or former audit client, or any other violation of the securities laws, within 30 days of service of the first pleading in the matter on the accountant or on any partner or employee of a member accounting firm;

(8) Ensuring that the member firm maintains a central office function that develops expertise in technical accounting and financial reporting matters, and has in place the following policies and procedures, or alternative procedures that a PAB authorizes where these requirements cannot be met because of the size of the member firm:

(i) Polices and procedures requiring, as appropriate, consultations with that office by engagement partners and others within the member firm; and

(ii) Policies and procedures for the resolution of differences of opinion between that central office and engagement partners; and

(9) Ensuring that the member firm has policies and procedures that require:

(i) Prompt notification to the firm when an individual accountant who is a partner or employee of the firm begins discussions with an audit client respecting possible employment; and

(ii) Review of that accountant's work on engagements for that client to determine whether changes in the audit plan or audit team are necessary and to assure adherence to the Commission's auditor independence rules.

(f) *Quality control review program.* A PAB shall administer and conduct a continuing program of quality control reviews and inspections of each member firm to assess compliance by such firm, and by individual accountants associated with such firm, with the rules and membership requirements adopted by the PAB, and professional standards, and shall administer such program according to the following criteria:

(1) A PAB shall annually conduct such a quality control review of each member accounting firm that audits or reviews the financial statements of more than 70 SEC clients, or such other number of SEC clients as the PAB by rule may determine, and shall conduct such a quality control review of all other member accounting firms at least once every three years;

(2) A PAB shall direct member firms to make and keep, for such periods as the PAB determines necessary, records that are necessary for the conduct of the quality control reviews required by this section;

(3) A PAB shall establish policies and procedures for conducting the quality control reviews, establish procedures for reporting of the results of the quality control reviews, and maintain public files for each member accounting firm containing recent quality control review reports on the firm and the firm's response to each report;

(4) A PAB shall provide for monitoring of the quality control reviews to ensure that they are conducted in a fair and impartial manner and for evaluating each quality control review and report to gain assurance that appropriate procedures are recommended and being implemented to correct noted deficiencies, if any, in a timely and effective manner;

(5) A PAB or its staff shall plan and direct all such quality control reviews, make all key decisions related to such quality control reviews, and perform all tasks necessary to conduct such quality control reviews, except that:

(i) A PAB may engage individual accountants from a firm or firms not associated with the firm being reviewed to assist in the conduct of such quality control reviews, provided that such accountants perform only assigned functions and are under the supervision of the PAB or its staff; and

(ii) Quality control reviews of member accounting firms that audit or review the financial statements of 70 or fewer SEC clients, or such other number of SEC clients as the PAB by rule may determine, may be conducted pursuant to quality control review programs approved by the PAB, provided any such quality control review program follows the PAB's policies and procedures and the PAB administers the

(2) If a PAB, at any time, becomes aware of information indicating that a violation of the securities laws has or is likely to have occurred, then the PAB promptly shall notify the Commission of that information. A PAB may initiate a disciplinary proceeding regarding that information only after notifying and consulting with the Commission;

(3) A PAB shall establish fair procedures for supplemental reviews

(i) The name of the accountant against whom the sanction is imposed;

(ii) A description of the acts or practices, or omissions to act, upon which the sanction is based;

(iii) The nature of the sanction; and

(iv) Such other information respecting the circumstances of the disciplinary action as the PAB deems appropriate;

(8) In the event that a PAB is unable to conduct or complete a proceeding under this section because of the refusal

ensure the fair and efficient administration of the PAB, to conform its rules to requirements of the securities laws or the rules and regulations thereunder, or otherwise in furtherance of the purposes of the securities laws. The Commission shall notify the PAB of any such action prior to publication of the notice of proposed rulemaking in the **Federal Register**;

(2) The Commission staff periodically may inspect and monitor the operations,

for hearing (which hearing may consist solely of consideration of the record before the PAB and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction):

(A) If the Commission finds that the member accountant has engaged in such acts or practices, or has omitted such acts, as the PAB has found the accountant to have engaged in or omitted, that such acts or practices or

(iv) If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with this paragraph (i)(3) that a sanction imposed, or a delinquency determination made, by the PAB imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the securities laws or is excessive or oppressive, the Commission may cancel such

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(ii) Quality control reviews of member accounting firms that audit or review the financial statements of 70 or fewer SEC clients, or such other number of SEC clients as the PAB by rule may determine, may be conducted pursuant to quality control review programs approved by the PAB, provided any such quality control review program follows the PAB's policies and procedures and the PAB administers the program and performs the functions described in paragraphs (f)(2) through (f)(4) of this section;

(6) In conducting such quality control reviews, a PAB or, in the case of a quality control review program, the reviewer, shall review, among such other things as the PAB may determine, selected audit and review engagements performed at various offices and by various persons associated with the firm under review, and, in connection therewith, evaluate whether such firm's quality control system is appropriate, whether its policies and procedures are adequately documented and communicated to its personnel, and whether the firm is in compliance with such policies and procedures sufficient to provide reasonable assurance of conformity with Commission rules, PAB membership requirements and rules, and professional standards; and

(7) In connection with each quality control review, a PAB or, in the case of a quality control review program, the reviewer, shall prepare a report of its findings and comments, and such report, accompanied by any letter of response from the member firm, shall be made publicly available as specified in paragraph (f)(3) of this section.

(g) *Supplemental reviews and disciplinary proceedings.* (1) A PAB shall have rules, membership requirements, systems, and procedures, incorporating the criteria described in paragraphs (g)(2) through (g)(9) of this section, pursuant to which a PAB may:

(i) Institute public proceedings (hereinafter "disciplinary proceedings") to determine whether an accountant has engaged in any act or practice, or omitted to act, in violation of the rules or membership requirements adopted by the PAB or professional standards, and to impose remedial or disciplinary sanctions for any such act, practice, or omission; and

(ii) On the basis of information suggesting the possibility of any such act, practice, or omission, engage in a nonpublic practice of requesting and reviewing information (hereinafter "supplemental reviews") to determine whether to institute disciplinary proceedings;

(2) If a PAB, at any time, becomes aware of information indicating that a violation of the securities laws has or is likely to have occurred, then the PAB promptly shall notify the Commission of that information. A PAB may initiate a disciplinary proceeding regarding that information only after notifying and consulting with the Commission;

(3) A PAB shall establish fair procedures for supplemental reviews and for disciplinary proceedings. In any disciplinary proceeding, a PAB shall bring specific charges, notify such firm or person of those charges, give such firm or person an opportunity to defend against those charges, and keep a record. Disciplinary proceedings shall be public unless otherwise ordered by the PAB with the prior approval of the Commission;

(4) For purposes of supplemental reviews or disciplinary proceedings, a PAB may request that any person provide testimony or documents relevant to the review or proceeding;

(5) PAB board members who are not public board members may be consulted in connection with supplemental reviews and disciplinary proceedings but shall not have a vote in the PAB's determination whether to institute a disciplinary proceeding, what findings to make in a disciplinary proceeding, or what sanctions to impose;

(6) If, as the result of a disciplinary proceeding, a PAB finds that an accountant has engaged in any act or practice, or omitted to act, in violation of the rules or membership requirements adopted by the PAB or professional standards, then the PAB may impose any appropriate disciplinary or remedial sanctions including revocation or suspension of membership, or expulsion from, the PAB; limitations on activities, functions, and operations, including requiring a member firm to resign a specific audit, review or attestation engagement; suspending or barring an accountant from participating in any way in any audit, review or attest engagement for any Commission registrant; fine; censure; or any other appropriate sanction;

(7) Whenever a PAB imposes a disciplinary sanction against an accountant, the PAB shall report such sanction in writing to the accountant against whom the sanction is imposed, to the Commission, to the appropriate State or foreign financial regulatory authority or authorities with which such firm or such person is licensed, registered, or certified to practice public accounting, and to the public. Each PAB report shall include:

(i) The name of the accountant against whom the sanction is imposed;

(ii) A description of the acts or practices, or omissions to act, upon which the sanction is based;

(iii) The nature of the sanction; and

(iv) Such other information respecting the circumstances of the disciplinary action as the PAB deems appropriate;

(8) In the event that a PAB is unable to conduct or complete a proceeding under this section because of the refusal of any person to testify, produce documents, or otherwise cooperate with the PAB, the PAB shall report such refusal to the Commission. If the uncooperative party is a registrant, the PAB shall also report such refusal to any market or exchange where the registrant's securities are traded or listed. A PAB may refer any other matter to the Commission, as the PAB deems appropriate; and

(9) PAB rules shall require member accounting firms:

(i) To notify the PAB in the event that the member firm employs or becomes associated with an individual accountant during any period in which that individual accountant is subject to a sanction, order or ruling issued by a PAB; and

(ii) To undertake procedures to ensure that the individual accountant does not violate the terms of the sanction, order or ruling.

(h) *Public reporting.* A PAB shall report to the Commission and to the public at least annually, and where practicable on a current basis, the following matters:

(1) A detailed description of the quality control review and disciplinary activities of the PAB;

(2) The annual audited financial statements of the PAB;

(3) An explanation of the fees and charges imposed by the PAB on members and adjunct members;

(4) A summary of the issues addressed in the PAB-sponsored periodic meetings with, or in connection with its oversight of, private sector standard-setting bodies;

(5) A list of all matters the PAB referred to each private sector standard-setting body that were not placed on the agenda of that body within 90 days of the PAB's referral; and

(6) Such other matters as the PAB deems appropriate or the Commission, by order, requires.

(i) *Commission oversight.* A PAB shall consent to, and act in compliance with, Commission oversight as follows:

(1) The Commission, by rule, may abrogate, add to, and delete from the rules of a PAB as the Commission deems necessary or appropriate to

ensure the fair and efficient administration of the PAB, to conform its rules to requirements of the securities laws or the rules and regulations thereunder, or otherwise in furtherance of the purposes of the securities laws. The Commission shall notify the PAB of any such action prior to publication of the notice of proposed rulemaking in the **Federal Register**;

(2) The Commission staff periodically may inspect and monitor the operations, records, and results of a PAB to ensure the PAB is operating in the public interest and for the protection of investors and fulfilling the purposes of the Commission in adopting this § 210.13. A PAB shall make and keep records, reports and summaries of its activities that the Commission staff deems necessary for its inspection of the PAB's quality control review activities, supplemental reviews, and disciplinary proceedings. A PAB shall adopt a policy, which shall be subject to Commission approval by order, identifying the categories of records, reports, and summaries that it shall retain. A PAB shall adopt a policy that provides for the retention of such materials until such time as the Commission has either inspected the materials or informed the PAB that it need no longer retain the documents;

(3) The PAB shall, in accordance with paragraphs (g)(7) and (d)(11) of this section, promptly notify the Commission whenever it imposes any final disciplinary sanction on any member accountant or determines any member accountant or adjunct member to be delinquent. The Commission may review that sanction as follows:

(i) Any final PAB disciplinary action or delinquency determination shall be subject to review by the Commission on its own motion at any time, or upon application by any person aggrieved thereby filed within thirty days after the date the notice required by paragraph (g)(7) or paragraph (d)(11) of this section was filed with the Commission and received by such aggrieved person, or within such longer period as the Commission, by order, allows. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments);

(ii) In any Commission proceeding to review a final disciplinary sanction imposed by a PAB on a member accountant, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the PAB and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction):

(A) If the Commission finds that the member accountant has engaged in such acts or practices, or has omitted such acts, as the PAB has found the accountant to have engaged in or omitted, that such acts or practices or omissions to act are in violation of such provisions of the securities laws, the rules or regulations thereunder, the rules or membership requirements adopted by the PAB, or professional standards as have been specified in the determination of the PAB, and that such provisions are, and were applied in a manner, consistent with the purposes of this § 210.13, then the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the PAB, modify the sanction in accordance with paragraph (i)(3)(iv) of this section, or, if appropriate, remand to the PAB for further proceedings; or

(B) If the Commission does not make the finding set forth in paragraph (i)(3)(ii)(A) of this section, it shall, by order, set aside the sanction imposed by the PAB and, if appropriate, remand to the PAB for further proceedings; or

(iii) In any Commission proceeding to review a PAB determination that a member accountant or adjunct member is delinquent, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the PAB and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the determination):

(A) If the Commission finds that the member accountant or adjunct member has failed to comply with PAB rules or membership requirements concerning fee payments, requests for documents, or requests for testimony, that the PAB's determination is in accordance with the rules of the PAB, and that such rules are, and were applied in a manner, consistent with the purposes of this § 210.13, the Commission, by order, shall so declare and, as appropriate, affirm the delinquency determination, cancel the delinquency determination in accordance with paragraph (i)(3)(iv) of this section, or, if appropriate, remand to the PAB for further proceedings; or

(B) If the Commission does not make the findings set forth in paragraph (i)(3)(iii)(A) of this section, the Commission shall, by order, set aside the delinquency determination and, if appropriate, remand to the PAB for further proceedings; or

(iv) If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with this paragraph (i)(3) that a sanction imposed, or a delinquency determination made, by the PAB imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the securities laws or is excessive or oppressive, the Commission may cancel such delinquency determination or may cancel, reduce, or require the remission of such sanction;

(4) The Commission, by order, may remove from office or censure any board member of a PAB if the Commission finds, on the record after notice and opportunity for hearing, that such member has willfully violated any provision of the securities laws, the rules or regulations thereunder, or the rules of the PAB, willfully abused his or her authority, or without reasonable justification or excuse has failed to enforce compliance with any such provision or any professional standard by any accountant that is a member of the PAB.

(5) If the Commission finds that a PAB has failed or is failing to comply with any of the conditions of recognition described in this § 210.13–04, the Commission may, by order, withdraw recognition of such PAB and direct that any fees described in paragraphs (d)(9) and (d)(10) of this section and collected by, or due and owing to, such PAB shall be held in escrow pending:

(i) Resolution or correction of such PAB's failings, satisfactory to the Commission; or

(ii) A Commission order that such funds be paid to one or more other PABs that enroll members from the PAB that the Commission has ceased to recognize.

§ 210.13–05 Confidentiality and immunity.

(a) Because a PAB's nonpublic proceedings and deliberations are subject to Commission oversight, and are governed by this § 210.13 in furtherance of the purposes of the securities laws, including the enforcement of certain standards, the Commission finds that, except to the extent that such information is requested by the Commission, any other Federal department or agency, the appropriate State licensing authority or authorities, State criminal law enforcement authorities, and foreign governmental authorities or foreign financial regulatory authorities, it is in the public interest for a PAB:

(1) To be able to maintain the confidentiality of reports, memoranda

and other information prepared by it, and of its deliberations; and

(2) To claim confidentiality protection for its nonpublic reports, memoranda, other information prepared by it, and of its deliberations, to the full extent allowed by law.

(b) Because a PAB's activities are subject to Commission oversight, and are governed by this § 210.13 in furtherance of the purposes of the

compliance with §§ 210.13 and 210.2–01(a)(2).

(b) In reviewing the quality controls of any member firm that has associated entities that are foreign accountants, the PAB or reviewer should review the procedures performed by the member firm related to documents filed with the Commission that contain the reports or opinions of those foreign accountants.

the SECPS has imposed membership requirements on firms and required member firms to participate in two programs intended to promote effective quality control systems. The first is a peer review program, which in recent years has involved firm on firm reviews.[190] The SECPS's Peer Review Committee administers the peer review program. The second program reviews allegations of audit failures involving Commission registrants that are contained in litigation filed against member firms. The QCIC conducts the second program.

concerned about the status of accounting firms' quality controls over auditor independence, it asked the POB to oversee a review of the firms' systems and procedures in this area.[194] During discussions about the POB's reviews of the firms' systems of quality controls over auditor independence, the SECPS took the unprecedented step of threatening to halt the funding for the POB's reviews.[195] The SECPS indicated that this step was part of its obligations to its member firms to exercise fiscal responsibility, but it was perceived widely as an indication of the

Practically since the Commission's inception, however, we have looked to the accounting profession for leadership in establishing and improving the accounting principles used to prepare financial statements filed with the Commission and relied on by investors.[198] These principles come from a variety of sources, and together form generally accepted accounting principles, or GAAP.[199] Commission rules state that financial statements that do not follow GAAP will be presumed to be misleading, unless the Commission has directed otherwise.[200]

the staff refers them to the FASB for guidance. It is our expectation that, in response to such a referral, the FASB will add an item to its agenda to address the issue and will ensure that the item receives the priority requested by the Commission or by our staff.

As the FASB conducts its deliberations, our staff monitors each project to ensure that the process is fair and deliberative, and that any final standard improves financial reporting for investors. The Commission

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and other information prepared by it, and of its deliberations; and

(2) To claim confidentiality protection for its nonpublic reports, memoranda, other information prepared by it, and of its deliberations, to the full extent allowed by law.

(b) Because a PAB's activities are subject to Commission oversight, and are governed by this § 210.13 in furtherance of the purposes of the securities laws, the Commission finds that it is in the public interest for the PAB and its board members, employees, contractors, and professional representatives:

(1) To have immunity from private civil liability for any action or failure to act in connection with the PAB's responsibilities; and

(2) To claim immunity from private civil liability, for any action or failure to act in connection with the PAB's responsibilities, to the full extent allowed by law.

§ 210.13–06 Exemptions.

(a) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt in whole or in part any accountant or any Commission registrant, or any class of accountants or Commission registrants, from any or all of the provisions of §§ 210.13 and 210.2–01(a)(2), if the Commission finds that such exemption is consistent with the public interest and the protection of investors.

(b) Accountants that do not audit or review financial statements or prepare attestation reports filed with the Commission on a recurring basis and whose audit reports are filed with the Commission only in accordance with § 210.3–05 are exempt from the requirements of this §§ 210.13 and 210.2–01(a)(2).

(c) The Commission, by rule or order, consistent with the public interest, the protection of investors, and the other purposes of the securities laws, may relieve a PAB of its responsibility to enforce compliance with any specified provision in § 210.13, the rules or membership requirements adopted by a PAB, or professional standards, with respect to any accountant, Commission registrant, or any class of accountants or registrants.

§ 210.13–07 Foreign accountants.

(a) Any foreign accountant that audits or reviews financial statements filed with the Commission, or prepares reports that are filed with the Commission, and any foreign issuer that engages a foreign accountant for such services, shall be exempt from compliance with §§ 210.13 and 210.2–01(a)(2).

(b) In reviewing the quality controls of any member firm that has associated entities that are foreign accountants, the PAB or reviewer should review the procedures performed by the member firm related to documents filed with the Commission that contain the reports or opinions of those foreign accountants.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

5. The general authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), and 80b–11, unless otherwise noted.

* * * * *

6. Section 229.401 is revised by adding paragraph (f)(7) before the Note to Paragraph (f) of Item 401 to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(f) * * *

(7) Such person was sanctioned by a Public Accountability Board under § 210.13 of this Chapter for violations of professional standards or the rules or membership requirements of that Public Accountability Board and that sanction has not been subsequently reversed, suspended or vacated.

* * * * *

Dated: June 26, 2002.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A and B to the preamble will not appear in the Code of Federal Regulations.

Appendix A

Brief History of the Self-Regulatory System

The self-regulatory system established in September 1977 included the formation within the AICPA of a Division for CPA Firms and then the organization of that Division into two sections, one for those firms that audit financial statements filed with the Commission (the SECPS) and one for those that do not.[189] Since its formation, the SECPS has imposed membership requirements on firms and required member firms to participate in two programs intended to promote effective quality control systems. The first is a peer review program, which in recent years has involved firm on firm reviews.[190] The SECPS's Peer Review Committee administers the peer review program. The second program reviews allegations of audit failures involving Commission registrants that are contained in litigation filed against member firms. The QCIC conducts the second program.

The September 1977 resolution of the AICPA Council that created the SECPS also provided for the establishment of the POB.[191] This resolution indicated that the POB, among other things, would "(a) Monitor and evaluate [the regulatory and sanction] activities of the Peer Review and [SECPS] Executive Committees to assure their effectiveness, (b) Determine that the Peer Review Committee is ascertaining that firms are taking appropriate action as a result of peer reviews, (c) Conduct continuing oversight of all other activities of the Section."[192]

Operating under this resolution and related provisions, the POB oversaw the SECPS peer review and quality control inquiry programs and gradually expanded its scope to monitor and comment on other matters that affect public confidence in the integrity of the audit process.[193] When the Commission was

[189] The section for those firms that do not audit Commission registrants was formerly called the Private Companies Practice Section. The AICPA recently renamed its efforts for firms that provide services to private companies as "Partnering for CPA Practice Success."

[190] Although it is our understanding that "firm on firm" reviews are most prevalent, an SECPS member firm may choose a review team formed by a state CPA society (a committee-appointed review team, known as a CART review), or by an association of CPA firms authorized by the AICPA Peer Review Committee to assist its members by forming review teams to carry out peer reviews (an association review). *See* AICPA, *Standards for Performing and Reporting on Peer Reviews* at ¶ 15.

[191] AICPA, *Official Releases: Organizational Structure and Functions of the SEC Practice Section of the AICPA Division for CPA Firms*,). Acct., Nov. 1997, at 113, 114.

[192] *See* Division for CPA Firms SEC Practice Section, *SECPS Reference Manual*, at SECPS § 100.23.

[193] For example, in 1993 the POB issued a document entitled *In the Public Interest: Issues Confronting the Accounting Profession*, which contained recommendations designed to enhance the reliability of financial statements and improve the performance of auditors. In 1994, in response to issues raised by then-SEC Chief Accountant Walter Schuetze, the POB sponsored a committee that published *Strengthening the Professionalism of the Independent Auditor*, which contained further recommendations in the areas of auditor independence, litigation reform, and the relationship of the accounting profession with various standard-setting and regulatory bodies, including the Commission. More recently, in response to the Commission's concerns about the impact of changes in audit procedures on the efficacy of the audit process, the POB formed the Panel on Audit Effectiveness ("Panel"). The Panel used a "Quasi Peer Review" ("QPR") process to examine the audit processes of large SECPS member firms. The Panel on Audit Effectiveness, *Report and Recommendations*, at 211–17 (Aug. 31, 2000). Each QPR was conducted under the close supervision of the Panel staff, including at least one senior

concerned about the status of accounting firms' quality controls over auditor independence, it asked the POB to oversee a review of the firms' systems and procedures in this area.[194] During discussions about the POB's reviews of the firms' systems of quality controls over auditor independence, the SECPS took the unprecedented step of threatening to halt the funding for the POB's reviews.[195] The SECPS indicated that this step was part of its obligations to its member firms to exercise fiscal responsibility, but it was perceived widely as an indication of the POB's lack of financial independence from the AICPA.[196]

Appendix B

The Commission's Endorsement and Oversight of FASB

We have ample authority to set accounting requirements for Commission registrants.[197] Practically since the Commission's inception, however, we have looked to the accounting profession for leadership in establishing and improving the accounting principles used to prepare financial statements filed with the Commission and relied on by investors.[198] These principles come from a variety of sources, and together form generally accepted accounting principles, or GAAP.[199] Commission rules state that financial statements that do not follow GAAP will be presumed to be misleading, unless the Commission has directed otherwise.[200]

In Accounting Series Release No. 150, which was published on December 20, 1973, the Commission endorsed the establishment of the FASB and stated that standards promulgated by the FASB would be considered to have "substantial authoritative support" and that those contrary to FASB pronouncements would be deemed to have no such support. The Commission, in making that decision, noted that the commitment of resources to the FASB by the private sector was "impressive" and evidenced an intention on the part of the private sector to support the FASB in accomplishing its task of taking "prompt and reasonable actions flowing from research and consideration of varying viewpoints."[201] In that release, the Commission acknowledged and endorsed the FASB as the primary source for GAAP.

The FASB operates under the Commission's oversight. That oversight reflects the fact that our staff, by virtue of its day-to-day activities, often is among the first to identify emerging issues and areas of accounting that need attention. As the staff identifies issues, such as revenue recognition and accounting for business combinations, the staff refers them to the FASB for guidance. It is our expectation that, in response to such a referral, the FASB will add an item to its agenda to address the issue and will ensure that the item receives the priority requested by the Commission or by our staff.

As the FASB conducts its deliberations, our staff monitors each project to ensure that the process is fair and deliberative, and that any final standard improves financial reporting for investors. The Commission staff, however, does not dictate final standards, but rather allows the private-sector standard setting process to work. Once a FASB project is completed, our staff evaluates the final product taken as a whole. We would expect to take action with respect to a FASB standard if we determine that the standard does not adequately protect the interests of investors.

As companies adopt new FASB standards, our staff monitors implementation,[202] addresses additional questions, and refers unique issues to the FASB's interpretative body, the Emerging Issues Task Force ("EITF"). Through this cycle, many EITF issues have been addressed at the request of the Commission staff because of implementation problems the staff observed in practice.

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member of the Panel staff, and all of the reviewers had relevant industry experience. *Id.* at 213. The Panel also reviewed the relevant issues and held public hearings. In August 2000, the Panel issued a report containing recommendations for those involved in the audit process and for those who oversee that process. The Panel on Audit Effectiveness, *Report and Recommendations* (Aug. 31, 2000).

[194] The program is in progress and will be completed by the POB staff under the review of an independent party, Donald Kirk. *See* SEC Press Release No. 2002–40 (Mar. 19, 2002).

[195] Letter from David Brumbeloe, Director, SECPS, to Jerry D. Sullivan, Executive Director, POB (May 3, 2000), which states, in part: "The SEC Practice Section (the "Section") will not approve nor authorize payment for invoices submitted by the Public Oversight Board ("POB") or its representatives that contain charges for the special reviews until such time that the Section and POB determine that such reviews will take place, and accordingly, that the work plan is agreed to by all parties."

[196] *See, e.g., Accounting and Investor Protection Issues Raised by Enron and Other Public Companies: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs* (Mar. 19, 2002) (statement of Charles A. Bowsher, Chairman, Public Oversight Board, Former Comptroller General of the United States).

[197] *See, e.g.*, 15 U.S.C. 77s(a), 78c(b), and 78m(b)(1).

[198] *See* Accounting Series Release Nos. 4 (Apr. 25, 1938) and 150 (Dec. 20, 1973).

[199] For a discussion of the various sources of GAAP and the hierarchy used to determine the most authoritative among conflicting principles or practices, *see* SAS No. 69 (for periods ending after Mar. 15, 1992), AU § 411.

[200] Rule 4–01(a)(1) of Regulation S–X, 17 CFR 210.4–01(a)(1).

[201] Accounting Series Release No. 150 (Dec. 20, 1973), which is reprinted in the Commission's Codification of Financial Reporting Policies, § 101.

[202] In light of the SEC's unique role, it is critical that the SEC work closely with the FASB. However, no matter how good accounting standards are, there will be instances where answers will not be clear and additional guidance will be needed. In these instances, we have encouraged registrants and their auditors to discuss the issue with the staff prior to the filing of the registrant's financial statements. *See* Preliminary Note to § 210.2–01; Staff Accounting Bulletin No. 99, *General Comments* (Aug. 13, 1999).

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Part IV

Department of Health and Human Services

Announcement of Anticipated Availability of Funds for Family Planning Services Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

767–3088; Region VII (Iowa, Kansas, Missouri, Nebraska)—Elizabeth Curtis, 816–426–2924; Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)— Jill Leslie, 303–844–7856 or Laura Grogan, 303–844–7849; Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federal States of Micronesia, Republic of the Marshall

services, and services for adolescents)." The broad range of services should include abstinence education. Section 1001 of the statute also requires that, to the extent practicable, Title X service providers shall encourage family participation in family planning services projects. Section 1008 of the Act, as amended, stipulates that "none of the funds appropriated under this title shall be used in programs where abortion is a method of family

funds will be used for continued support of grants and activities which are not competitive in FY 2003. This program announcement is subject to the appropriation of funds and is a contingency action taken to ensure that, should funds become available for this purpose, applications can be processed in an orderly manner, and funds can be awarded in a timely fashion. Competing grant applications are invited for the following areas (please note, in order to maximize access to family planning services, one or more grants may be awarded for each area listed):

TABLE I

Populations/areas to be served	Approximate		
	Funding available	Application due date	Approx. grant funding date

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice.

AUTHORITY: Section 1001 of the Public Health Service (PHS) Act.

SUMMARY: The Office of Population Affairs (OPA) announces the anticipated availability of funds for Fiscal Year (FY) 2003 family planning services grants under the authority of Title X of the Public Health Service Act and solicits applications for competing grant awards to serve the areas and/or populations set out below. Only applications which propose to serve the populations and/or areas listed in Table I will be accepted for review and possible funding.

DATES: Application and funding dates vary. See **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Applications for grants in DHHS Regions I–X should be sent to: Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, TX 75202.

Application kits are also available online at the Office of Population Affairs web site at *http://opa.osophs.dhhs.gov* or may be requested by fax at (214) 767–3425.

FOR FURTHER INFORMATION CONTACT:

Administrative and Budgetary Requirements

Regions I–X: Maudeen Pickett, Office of Grants Management for Family Planning Services, 214–767–3401.

Program Requirements

Regional Program Consultants for Family Planning: Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)—Suzanne Theroux, 617–565–1063; Region II (New Jersey, New York, Puerto Rico, Virgin Islands)—Robin Lane, 212–264–3935; Region III (Delaware, Washington, D.C., Maryland, Pennsylvania, Virginia, West Virginia)—Louis Belmonte, 215–861–4641; Region IV (Kentucky, Mississippi, North Carolina, Tennessee, Alabama, Florida, Georgia, South Carolina)—Cristino Rodriguez, 404–562–7900; Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)—Janice Ely, 312–886–3864; Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)—Evelyn Glass, 214–767–3088; Region VII (Iowa, Kansas, Missouri, Nebraska)—Elizabeth Curtis, 816–426–2924; Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)— Jill Leslie, 303–844–7856 or Laura Grogan, 303–844–7849; Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federal States of Micronesia, Republic of the Marshall Islands)—Nadine Simons, 415–437–7984; Region X (Alaska, Idaho, Oregon, Washington)—Janet Wildeboor, 206–615–2776.

SUPPLEMENTARY INFORMATION:

Definitions

For the purposes of this announcement, the following definitions apply:

Application—a request for financial support of a project submitted to OPA on specified forms and in accordance with instructions provided.

Eligible Applicants—any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a Title X family planning grant. Faith-based organizations are eligible to apply for these Title X family planning grants.

Evidence-based—relevant scientific evidence that has undergone comprehensive review and rigorous analysis.

Grant—financial assistance in the form of money, awarded by the Federal Government to an eligible recipient (a *grantee* or *recipient* is the entity that receives a Federal grant and assumes the legal and financial responsibility and accountability for the awarded funds and performance of activities approved for funding).

Project—those activities described in the grant application and supported under the approved budget.

Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." The broad range of services should include abstinence education. Section 1001 of the statute also requires that, to the extent practicable, Title X service providers shall encourage family participation in family planning services projects. Section 1008 of the Act, as amended, stipulates that "none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

Requirements regarding the provision of family planning services under Title X can be found in the Title X statute, the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the "Program Guidelines for Project Grants for Family Planning Services," published in January 2001. Copies of the Title X statute, regulations, and Program Guidelines may be obtained by contacting the Office of Grants Management for Family Planning Services (at the address above), or downloaded from the Office of Population Affairs web site at *http://opa.osophs.dhhs.gov/grants*. All Title X requirements—including those derived from the statute, the regulations, and the Program Guidelines—apply to all activities funded under this announcement. (For example, projects must meet the regulatory requirements set out at 42 CFR 59.5 regarding charges to clients, and the funding criteria set out at 42 CFR 59.7 apply to all applicants under this announcement. As stated in Sec. 59.7(b) "* * * No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project that was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975." Furthermore, Sec. 59.7(c) stipulates that "no grant may be made for an amount equal to 100 percent for the project's estimated costs.") A description of the Title X Family Planning Program can be found at OMB Catalog of Federal Domestic Assistance 93.217.

The anticipated FY 2003 appropriation for the Title X Family Planning program is approximately $265 million. Of this amount, approximately $100 million will be made available for competing grant awards. This notice announces the anticipated availability of funds for competitive family planning service grants in 22 states. (See Table I for competing areas and approximate amount of awards). The remaining

funds will be used for continued support of grants and activities which are not competitive in FY 2003. This program announcement is subject to the appropriation of funds and is a contingency action taken to ensure that, should funds become available for this purpose, applications can be processed in an orderly manner, and funds can be awarded in a timely fashion. Competing grant applications are invited for the following areas (please note, in order to maximize access to family planning services, one or more grants may be awarded for each area listed):

TABLE I

Populations/areas to be served	Approximate Funding available	Approximate Application due date	Approximate Approx. grant funding date
Region I			
Massachusetts-Central/Southeast	$1,471,813	09–01–02	01–01–03
Region II			
New Jersey	7,974,484	09–01–02	01–01–03
Region III			
Delaware	1,009,643	12–01–02	04–01–03
Maryland	3,729,883	12–01–02	04–01–03
Pennsylvania	11,951,606	03–01–03	07–01–03
Virginia	4,299,203	12–01–02	04–01–03
West Virginia	2,008,201	12–01–02	04–01–03
Region IV			
Alabama	4,315,101	03–01–03	07–01–03
Florida	7,652,636	03–01–03	07–01–03
Georgia	7,080,259	03–01–03	07–01–03
Kentucky	4,759,359	03–01–03	07–01–03
Mississippi	4,508,789	03–01–03	07–01–03
North Carolina	6,076,410	03–01–03	07–01–03
Region V			
Minnesota	2,242,934	09–01–02	01–01–03
Minneapolis, Minnesota	187,945	05–29–03	09–29–03
Ohio	5,202,414	12–01–02	03–01–03
Portage, Summit & Medina Counties, Ohio	749,745	03–01–03	07–01–03
Region VI			
Louisiana	3,743,201	03–01–03	07–01–03
Region VII			
Iowa	2,206,340	03–01–03	07–01–03
	951,128	05–30–03	09–30–03
Region VIII			
None competing in FY 2003			
Region IX			
Arizona	3,811,522	09–01–02	01–01–03
California	20,123,818	09–01–02	01–01–03
Washoe County, Nevada	613,415	03–01–03	07–01–03
Region X			
Idaho	949,660	03–01–03	07–01–03
Seattle, WA	163,438	05–30–03	09–30–03

Title X Program Priorities

The following priorities represent overarching goals for the Title X program. The application should describe how the proposed project will address each priority:

(1) Assurance of continued high quality clinical family planning and reproductive health services that will improve the overall health of individuals;

(2) Increasing access to family planning and reproductive health services by partnering with public health providers and other community-based organizations that have related interests and that work with similar populations;

(3) Emphasis on clinical services for hard-to-reach populations, *e.g.*, uninsured or under-insured women, males in need of clinical services, adolescents, substance abusers, migrant workers, and the homeless; and

(4) Assuring access to a broad range of family planning and reproductive health clinical services, including provision of highly effective contraceptive methods; breast and cervical cancer screening and prevention; STD and HIV prevention education, counseling, and testing; and abstinence education and counseling. The broad range of services does not include abortion as a method of family planning.

Key Issues

The following key issues impact the current and future delivery of family planning services, and should be considered when developing the proposal:

(1) The U.S. Department of Health and Human Services' priorities and Healthy People 2010 objectives (*http://www.health.gov/healthypeople*);

(2) Medicaid waivers, managed care, State Children's Health Insurance Program (SCHIP), Temporary Assistance to Needy Families (TANF), Title XX of the Social Services Block Grant, state

support, and private insurance coverage related to family planning and reproductive health services, teen pregnancy and abstinence education (e.g., Title XX of the PHS Act—Adolescent Family Life (AFL) Program, Title V of the Social Security Act—SPRANS and State Block Grants for Abstinence Education), and ACF Infant Adoption Awareness Training Program;

(3) Increased need for current and

will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 a.m. and 5 p.m. on or before the application due date. Applications which do not meet the deadline will be considered late and will not be accepted for review. Also, applications which do not meet the requirements of this program announcement and/or the applicable regulatory requirements at 42 CFR part 59, subpart A, will not be

Grants are funded in annual increments (budget periods). An annual non-competitive continuation application is required to obtain continued support. Application kits for non-competing grants will automatically be sent to the project director indicated on the Notice of Grant Award. Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and efficient and

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support, and private insurance coverage related to family planning and reproductive health services, teen pregnancy and abstinence education (e.g., Title XX of the PHS Act—Adolescent Family Life (AFL) Program, Title V of the Social Security Act—SPRANS and State Block Grants for Abstinence Education), and ACF Infant Adoption Awareness Training Program;

(3) Increased need for current and reliable data to use in program planning and monitoring program performance;

(4) Use of electronic technologies in program activities and management;

(5) Use of evidence-based information to support program activities; and

(6) Legislative mandates such as counseling teens on involving families and avoiding coercive sexual relationships, and program compliance with state reporting laws regarding child abuse, child molestation, sexual abuse, rape or incest.

Application Requirements

Application kits (including the application form, Form OPHS–1, Revised 6/01), may be obtained by contacting the Office of Grants Management for Family Planning Services (at the address listed above), or downloaded from the Office of Population Affairs web site at *http://opa.osophs.dhhs.gov/grants*. Applications should be limited to 60 double-spaced pages, not including appendices. Appendices may provide examples of organizational capabilities or other supplemental information. Completed applications must be submitted to the Office of Grants Management for Family Planning Services.

A copy of the legislation and regulations governing this program will be included as part of the application kit package. Applications must address all applicable regulatory requirements. Applicants should use the legislation, regulations, and information included in this announcement to guide them in developing their applications. The information collections (reporting requirements) contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.

Applications will be considered as meeting the deadline if they are postmarked on or before the application due date (listed for all areas in Table I). A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 a.m. and 5 p.m. on or before the application due date. Applications which do not meet the deadline will be considered late and will not be accepted for review. Also, applications which do not meet the requirements of this program announcement and/or the applicable regulatory requirements at 42 CFR part 59, subpart A, will not be accepted for review. Any application which is not accepted will be returned to the applicant. Applications will not be accepted by fax or e-mail. The submission deadlines will not be extended.

The Office of Public Health and Science (OPHS) requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

Application Consideration and Assessment

Each regional office is responsible for evaluating applications and setting funding levels according to criteria in 42 CFR 59.7. Applications will be evaluated based on the following criteria (42 CFR 59.7(a)):

(1) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations at 42 CFR part 59, subpart A (20 points);

(2) The extent to which family planning services are needed locally (20 points);

(3) The number of patients, and, in particular, the number of low-income patients to be served (15 points);

(4) The adequacy of the applicant's facilities and staff (15 points);

(5) The capacity of the applicant to make rapid and effective use of the Federal assistance (10 points);

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project (10 points); and

(7) The relative need of the applicant (10 points).

In making grant award decisions, the Regional Health Administrator will fund those projects which will, in his judgement, best promote the purposes of section 1001 of the Act, within the limits of funds available for such projects.

Grants are generally approved for project periods of three to five years. Grants are funded in annual increments (budget periods). An annual non-competitive continuation application is required to obtain continued support. Application kits for non-competing grants will automatically be sent to the project director indicated on the Notice of Grant Award. Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and efficient and effective use of grant funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not listed, further inquiries regarding the review process designed by their State should be made to the Governor's office of the pertinent State. The SPOC should forward any comment(s) to the Office of Grants Management for Family Planning Services, 1301 Young Street, Ste. 766, Dallas, TX 75202. The SPOC has 60 days from the applicable closing date as listed in Table I of this announcement to submit any comments.

Notification of Grant Award

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award. This document specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, and terms and conditions of the grant award.

Dated: June 7, 2002.

Mireille B. Kanda,

Acting Director, Office of Population Affairs.

[FR Doc. 02–16784 Filed 7–3–02; 8:45 am]

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Federal Register

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July 5, 2002

Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determinations Concerning Petitions for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency; Interim Final Rules

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determination Concerning the

(202) 586–4617; or Electronic Mail: *jim.raba@ee.doe.gov*.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103; Telephone: (202) 586–7432; Telefax: (202) 586–4116; or Electronic Mail: *francine.pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0101, telephone (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Additional information about CSA International's Motor Efficiency Verification Service Program (MEVS Program or Program) and its Petition to be a nationally recognized certification program for electric motor efficiency

program for electric motors by the Department of Energy.

For a certification program to be classified by the Department as being nationally recognized, the program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent; (3) be qualified to operate in a highly competent manner; (4) be expert in the

NEMA did not appear to state a position on national recognition, but instead commented on the appropriateness of CSA International's sampling plan. GE recommended CSA International use a process equivalent to the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program for determining the competency of a testing facility. NEMA asserted that the CSA International process of selecting motors

private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity. Further, it should disclose any relationship it believes might appear to create a conflict of interest. ISO/IEC Guide 65 sets forth requirements for a certification program to be impartial, and have a documented structure that safeguards that impartiality. For example, each decision on certification

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–98–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determination Concerning the CSA International Petition for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Public notice of an interim determination and solicitation of comments.

SUMMARY: Today's action announces the Department of Energy's interim determination classifying the CSA International Motor Efficiency Verification Service Program as a nationally recognized certification program in the United States for the purposes of section 345(c) of the Energy Policy and Conservation Act. The Department solicits comments, data and information with respect to its interim determination prior to issuing a final determination.

DATE: Written comments, data and information, and a signed original with an electronic copy, must be received at the Department of Energy by August 5, 2002.

ADDRESSES: Comments, data and information should be labeled "Interim Determination Concerning the CSA International Petition for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency," and submitted to: Ms. Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. Also, a copy of such comments should be submitted to Mr. Otto Krepps, Manager, Accreditations, CSA International, 178 Rexdale Boulevard, Toronto, Ontario, Canada M9W 1R3. Telephone: (416) 747–2798; Telefax (416) 747–4173.

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121; Telephone: (202) 586–8654; Telefax: (202) 586–4617; or Electronic Mail: *jim.raba@ee.doe.gov*.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103; Telephone: (202) 586–7432; Telefax: (202) 586–4116; or Electronic Mail: *francine.pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. Authority
B. Background
II. Discussion
A. General
B. Application of Evaluation Criteria
1. Standards and Procedures for Conducting and Administering a Certification System
2. Independence
3. Operation of a Certification System in a Highly Competent Manner
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c. General Rules for a Model Third-Party Certification System for Products (ISO/IEC Guide 28)
d. General Requirements for the Competence of Testing Laboratories (ISO/IEC Guide 25)
(1) Operating Procedures
(2) Testing Laboratory
4. Expertise in IEEE 112–1996 Test Method B and CSA C390–93 Test Method (1)
5. Sampling Criteria and Procedures for Selecting an Electric Motor for Energy Efficiency Testing
III. Conclusion
A. Interim Determination
B. Future Proceedings

I. Introduction

A copy of the "Petition for Recognition of CSA International as a Nationally Recognized Certification Program for Motor Efficiency" (CSA International Petition or the Petition) was published in the **Federal Register** on April 26, 2000. 65 FR 24429. The Petition consisted of a letter from CSA International to the Department, narrative statements on five subject areas, and supporting documentation. At the same time, the Department of Energy (Department) solicited comments, data and information as to whether CSA International's Petition should be granted. The Department also conducted an independent investigation concerning the CSA International Petition pursuant to 10 CFR 431.28(f).

The supporting documents that accompanied the Petition, as well as the material CSA International subsequently submitted to the Department in support of the Petition, are available in the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0101, telephone (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Additional information about CSA International's Motor Efficiency Verification Service Program (MEVS Program or Program) and its Petition to be a nationally recognized certification program for electric motor efficiency can be obtained on the World Wide Web at *http://www.csa-international.org/welcome.html*, or from Mr. Otto Krepps, Manager, Accreditations, CSA International, 178 Rexdale Boulevard, Toronto, Ontario, Canada M9W 1R3; Telephone: (416) 747–2798; Telefax: (416) 747–4173; or Electronic Mail at *otto.krepps@csa-international.org*.

The final rule for "Test Procedures, Labeling, and Certification Requirements for Electric Motors" was published in the **Federal Register** on October 5, 1999. 64 FR 54141. It is codified in 10 CFR Part 431 in subparts A, B, E and G. It can also be obtained from the Office of Building Research and Standards, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; Telephone: 202–586–9127; or on the World Wide Web at *http://www.eren.doe.gov/buildings/codes_standards/rules/motors/index.htm*.

A. Authority

Part C of Title III of the Energy Policy and Conservation Act (EPCA) contains energy conservation requirements for electric motors, including requirements for test procedures, energy efficiency standards, and compliance certification (42 U.S.C. 6311–6316). Section 345(c) of EPCA directs the Secretary of Energy to require motor manufacturers "to certify, through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard." 42 U.S.C. 6316(c). Regulations to implement this EPCA directive, with respect to certification programs, are codified in 10 CFR Part 431 at sections 431.123, *Compliance Certification*, 431.27, *Department of Energy recognition of nationally recognized certification programs, and 431.28, Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs*. Sections 431.27 and 431.28 of 10 CFR Part 431 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by the Department of Energy.

For a certification program to be classified by the Department as being nationally recognized, the program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent; (3) be qualified to operate in a highly competent manner; (4) be expert in the test procedure and methodology in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors; and (5) have satisfactory criteria and procedures for selecting and sampling electric motors for energy efficiency testing. 10 CFR 431.27(b).

B. Background

Pursuant to 10 CFR 431.28, the Department is required to publish the CSA International Petition in the **Federal Register** in order to solicit comments, data and information on whether the Petition should be granted. CSA International may then respond in writing to any comments received. After review of the Petition, other applicable documents, including public comments and facts found through investigation, the Department is required to issue an interim determination and notify CSA International in writing of that interim determination. Also, the Department is required to publish its interim determination in the **Federal Register** and solicit comments, data and information with respect to the interim determination. After review of the comments and information that is submitted, the Department is required to publish in the **Federal Register** an announcement of its final detemination on the Petition. See 10 CFR 431.28(a) through (f).

The Department received comments on the CSA International Petition from the following four manufacturers and one trade association with respect to the CSA International Petition: Sterling Electric, Inc. (Sterling), Baldor Electric Company (Baldor), Siemens Energy & Automation, Inc. (Siemens), GE Industrial Systems (GE), and the National Electrical Manufacturers Association (NEMA), dated May 16, May 22, May 23, May 24, and May 26, 2000, respectively. In general, Sterling, Baldor, and Siemens believe CSA International to be qualified to test and certify electric motors for energy efficiency, and favor national recognition in the United States of the CSA International Program. GE and NEMA did not appear to state a position on national recognition, but instead commented on the appropriateness of CSA International's sampling plan. GE recommended CSA International use a process equivalent to the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program for determining the competency of a testing facility. NEMA asserted that the CSA International process of selecting motors for energy efficiency testing appeared to be burdensome to manufacturers.

The Department also conducted an independent investigation of the CSA International Program pursuant to 10 CFR 431.28(f).

II. Discussion

A. General

Sections 431.27(b)(1) and (c)(1) of 10 CFR Part 431 set forth criteria and guidelines for the standards and procedures for conducting and administering a certification system and for granting a certificate of conformity. As such, a certification program must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow-up activities to assure that basic models of electric motors continue to conform to the efficiency levels for which they were certified and for granting a certificate of conformity. ISO/IEC Guide 65 (discussed in 10 CFR 431.27(c)(3) and also below) sets forth the general requirements intended to ensure a certification program is operated in a consistent and reliable manner. These requirements address: (1) Impartiality; (2) sufficient personnel having the necessary education, training, technical knowledge and experience; (3) relevant procedures for sampling, testing and inspecting the product, and the means necessary to evaluate conformance by a manufacturer with those standards; (4) surveillance and periodic audits to ensure continued conformance with the applicable standards; (5) subcontracting work, such as testing, with proper arrangements to ensure competence, impartiality, and compliance with the applicable standards; (6) procedures to control records, documents and data, including review and approval by appropriately authorized personnel; and (7) control over use and display of certificates and marks of conformity.

Sections 431.27(b)(2) and (c)(2) of 10 CFR Part 431 set forth criteria and guidelines for independence. A certification program must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity. Further, it should disclose any relationship it believes might appear to create a conflict of interest. ISO/IEC Guide 65 sets forth requirements for a certification program to be impartial, and have a documented structure that safeguards that impartiality. For example, each decision on certification is made by a person(s) different from those who carried out an evaluation or actual testing of the motor. Its policies and procedures must distinguish between product certification and other activities; its certification process must be free from any commercial, financial and other pressures that might influence decisions; and it must have a committee structure where members are chosen to provide a balance of affected interests.

Sections 431.27(b)(3) and (c)(3) of 10 CFR Part 431 set forth criteria and guidelines requiring that a certification organization must be qualified to operate a certification system in a highly competent manner. Of particular relevance is documentary evidence that establishes experience in the application of guidelines contained in International Standards Organization/International Electrotechnical Commission (ISO/IEC) Guide 65: 1996, *General requirements for bodies operating product certification systems*, ISO/IEC Guide 27: 1983, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk*, ISO/IEC Guide 28: 1982, *General rules for a model third-party certification system for products*, as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25: 1990, *General requirements for the competence of calibration and testing laboratories*.

Sections 431.27(b)(4) and (c)(4) of 10 CFR Part 431 set forth criteria and guidelines requiring that a certification program must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1). Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 25.

ISO/IEC Guide 25 addresses general requirements for establishing quality systems in laboratories and for recognizing their competence to carry

out specified tests. In part, these requirements address: (1) Organization and management that are free from commercial, financial, and other pressures which might adversely affect quality of work; (2) independence of judgment and integrity; (3) supervision by persons familiar with the applicable test procedures; (4) a quality system, and manual which contains procedures for control and maintenance of standards, programs and procedures, integrity of its "Energy Efficiency Marking," and continuous improvement. CSA International asserts that it has implemented the requirements specified in the ISO/IEC Guide 65. Further, CSA International asserts that it has implemented the requirements specified in SCC/CAN P–3 and SCC/CAN P–4, which the Department understands are the Standards Council of Canada and the sampling procedure to be used, were not marked with identification numbers and information such as date of issue, sources or authorities by which the documents were issued and approved, revision numbers, or a particular page from a set of pages. Consequently, the Department requested that CSA International submit documents relevant to the motor efficiency evaluation procedure that had been processed and approved by the

305—*Quality/Management System Audit Program;* DQD No. 313—*Guidelines on Retesting;* DQD No. 332—*Document Control Procedure;* DQD No. 424—*Technical Training;* DQD No. 425—*Periodic Technical and Process Review;* and DQD No. 513—*Factory Audit Report*.

CSA International's letter, dated March 1, 2002, addressed the above matters and submitted a revised copy of DQD No. 308.01, dated February 15, 2002, to reflect the references to IEEE 112–1996 Test Method B and CSA C390–93 Test Method (1). CSA International's letter also addressed the Department's request that CSA International provide an explanation as to why a direct or indirect relationship with a motor manufacturer, importer, or private labeler through (a) the combined energy efficiency and product safety certification processes, (b) status as a "Certification Member," (c) membership on the Certification Council, or (d) participation in the Certification Council's Technical Committee, does not compromise CSA International's independence from any relationship with a manufacturer, importer, or supplier which might create a conflict of interest with its MEVS Program. Also, the Department requested

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out specified tests. In part, these requirements address: (1) Organization and management that are free from commercial, financial, and other pressures which might adversely affect quality of work; (2) independence of judgment and integrity; (3) supervision by persons familiar with the applicable test procedures; (4) a quality system, and manual which contains procedures for control and maintenance of documents, and procedures for periodic audit and review; (5) sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions, and that training of its personnel is kept up-to-date; (6) all items of equipment and reference materials for the correct performance of tests, and that equipment is properly maintained and calibrated; (7) test equipment that is calibrated and verified prior to operation, and there is traceability to national standards of measurement; (8) documented instructions for the use and operation of equipment, manuals, and applicable test procedures; (9) retention of testing records with sufficient information to permit repetition of a test; and (10) where a laboratory is sub-contracted to conduct testing, that laboratory complies with the requirements contained in ISO/IEC Guide 25 and is competent to perform the applicable testing activities. An example of a "sub-contracted" laboratory would be a manufacturer's laboratory that tests motors for energy efficiency under the CSA International MEVS Program.

Also, where 10 CFR 431.27(b)(4) requires a certification program to have satisfactory criteria and procedures for the sampling and selection of electric motors, likewise, ISO/IEC Guide 25 requires the use of documented sampling procedures and appropriate techniques to select samples.

B. Application of Evaluation Criteria

1. Standards and Procedures for Conducting and Administering a Certification System

Sections 431.27(b)(1) and (c)(1) of 10 CFR part 431, and ISO/IEC Guide 65, set forth criteria and guidelines for the standards and procedures to be used in administering a certification system and granting a certificate of conformity.

The CSA International Petition asserts, in general, that its certification quality assurance program system is based on national and international accreditation requirements and specific customer requirements in order to ensure technical excellence, consistency of interpretation, application of standards, programs and procedures, integrity of its "Energy Efficiency Marking," and continuous improvement. CSA International asserts that it has implemented the requirements specified in the ISO/IEC Guide 65. Further, CSA International asserts that it has implemented the requirements specified in SCC/CAN P–3 and SCC/CAN P–4, which the Department understands are the Standards Council of Canada equivalents of ISO/IEC Guides 65 and 25, respectively. In order to substantiate these assertions, CSA International has provided to the Department certain Divisional Quality Documents (DQDs) which contain the operating procedures and guidelines used by CSA International's staff in support of its MEVS Program.

In view of the above, the Department understands that the CSA International Program carries out the ISO/IEC Guides 65 and 25 requirements through its Quality Assurance System and DQD No. 050, "Certification Division Quality Assurance Manual," DQD No. 200, "Certification Program," DQD No. 306, "Guidelines for Handling Complaints and Disputes," DQD No. 306.1, "Customer Complaints," DQD No. 318, Guidelines for Handling Product Incidents Investigations," DQD No. 320, "Factory Inspections," DQD No. 326, "Handling of Non-conformances," and DQD No. 327, "Corrective & Preventive Action," which provide necessary operating procedures and guidelines.

The Department's investigation found that the CSA International procedures for operating a certification system were very general in nature and could be satisfactorily applied to any certification program conducted by CSA International. This raised the issue as to whether the specific standards and procedures by which the CSA International Program operates in order to certify the energy efficiency of electric motors were adequate, properly documented, well established and maintained, understood, and in fact carried out by staff.

For example, according to section 4.8.2 of ISO/IEC Guide 65, the certification body shall establish procedures to control all documents and data that relate to its certification functions, and these documents shall be reviewed and approved by authorized personnel prior to being issued following initial development or subsequent amendment. The Department found that procedural documents used in the electric motor efficiency evaluation process, including witness testing by CSA International staff at non-CSA International facilities, and the sampling procedure to be used, were not marked with identification numbers and information such as date of issue, sources or authorities by which the documents were issued and approved, revision numbers, or a particular page from a set of pages. Consequently, the Department requested that CSA International submit documents relevant to the motor efficiency evaluation procedure that had been processed and approved by the CSA International Engineering Quality Assurance group. CSA International complied and submitted, under a letter dated June 14, 2001, the following DQDs:

Certification Division Quality/ Management System Manual, DQD No. 050, dated October 4, 2000.

Guidelines for the Selection of Test and Measurement Equipment and Validation of Borderline Test Measurements, DQD No. 308, dated March 12, 2001.

Selection of Test and Measurement Equipment/Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors, DQD No. 308.01, dated March 12, 2001.

Witness Testing, DQD No. 316, dated January 22, 2001.

Electric Motor Efficiency Evaluation, DQD No. 384, dated January 23, 2001.

Application Process—CSA Energy Efficiency Verification Program for Three Phase Induction Motors, DQD No. 385, dated January 24, 2001.

Review of Work and Designation of Signatories, DQD No. 431, dated October 17, 2000.

The Department has examined the above documents and concluded that they provide evidence that the standards and procedures CSA International uses to conduct a motor efficiency verification program satisfy the requirements set forth in 10 CFR 431.27(b)(1). Nevertheless, the Department's December 20, 2001, electronic message to CSA International requested that CSA International clarify or make corrections to certain procedures and documents used in its MEVS Program. In sum, the Department requested that CSA International confirm or correct the following: (1) Confirm that DQD No. 308.01 refers to IEEE Standard 112–1996 Test Method B with the modifications described under appendix A to subpart B of 10 CFR part 431, paragraph 2 subparagraph (2); and (2) correct DQD No. 385 to refer to C390–93 Test Method (1). Also, the Department requested that CSA International submit the following documents for examination: DQD No. 305—*Quality/Management System Audit Program;* DQD No. 313—*Guidelines on Retesting;* DQD No. 332—*Document Control Procedure;* DQD No. 424—*Technical Training;* DQD No. 425—*Periodic Technical and Process Review;* and DQD No. 513—*Factory Audit Report.*

CSA International's letter, dated March 1, 2002, addressed the above matters and submitted a revised copy of DQD No. 308.01, dated February 15, 2002, to confirm the reference to IEEE Standard 112–1996 Test Method (1) as set forth under appendix A to subpart B of 10 CFR part 431, and a revised copy of DQD 385 that refers to C390–93 Test Method (1). CSA International's March 1 letter asserts that its MEVS Program operates pursuant to DQD No. 385, wherein fully qualified staff would visit each testing facility to witness the tests being performed, write a detailed report, and have the manufacturer sign an agreement to manufacture the product [motor] in accordance with the description in the report. Also, CSA International confirms that there will be a minimum of one audit visit per year by certification staff.

CSA International also submitted, with its March 1, 2002, letter, DQD Nos. 305, 313, 320, 385, 424, 425 and 513. Furthermore, CSA International stated that DQD No. 332, *Document Control Procedure,* had been withdrawn from its Quality System and the Department should refer to DQD 050 section 1.5, "Documentation System," section 6.0, "Document Control," and section 12.0, "Maintenance of Records." In view of the criteria and guidelines set forth in 10 CFR 431.27(b)(1) and (c)(1), and ISO/IEC Guide 65, the Department examined the above-referenced DQDs. In sum, DQD No. 305 sets forth procedures and guidelines for staffing, organizing, and conducting audits of the CSA International quality system, including technical audits of testing facilities in accordance with ISO/IEC Guide 25. DQD No. 313 sets forth procedures and guidelines for witness retesting to ensure continued compliance with, for example, motor efficiency standards. DQD No. 320, *Factory Inspections,* sets forth guidelines for scheduling and conducting factory audits. DQD No. 385, *Electric Motor Efficiency Evaluation,* sets forth the process for evaluating the energy efficiency of three-phase induction motors and applies both to the regulations in Canada and the United States, including the scope, sampling methods, test procedures, alternative efficiency determination methods, and efficiency levels in 10 CFR part 431. DQD No. 424, *Technical Training,* sets forth the policy and guidelines for the training of technical staff, which is an ongoing activity that is monitored, evaluated and documented in the individual's training record. DQD No. 425, *Periodic Technical and Process Review,* sets forth guidelines to ensure that technical, administrative and quality records are maintained and periodically reviewed by management. DQD No. 513 is a facility audit report form with provisions for sampling and compliance with standards. In addition, CSA International submitted DQD No. 510.02, *List of Fully Qualified Project Holders for the Motor Energy Verification Program,* dated February 28, 2002, and DQD No. 050, revised November 30, 2001, *CSA International Quality Management System Manual,* that supersedes DQD No. 332. CSA International's March 1, 2002, letter confirms that all compliance and follow up testing is witnessed by technically qualified staff.

The Department has examined the Petition and all other documents described above, and concludes that the standards and procedures CSA International uses to conduct its MEVS Program satisfy the requirements set forth 10 CFR 431(b)(1) and (c)(1), and the guidelines contained in ISO/IEC Guide 65.

2. Independence

Sections 431.27(b)(2) and (c)(2) of 10 CFR Part 431, and ISO/IEC Guide 65, set forth criteria and guidelines for impartiality.

Under Section 2 of its Petition, entitled "CSA International," CSA International provides an overview of its history and a copy of its incorporation document, by-laws, annual report and an organization chart. CSA International asserts that it is an independent organization, has no affiliation with manufacturers or suppliers of products submitted for certification, and provides a copy of its "Statement of Independence" to substantiate these claims. However, the Department understands that the CSA International Standards Division administers the development of voluntary consensus standards for safety matters that involve participation from electric motor manufacturers, while the Certification Division and Quality Management Institute provide conformity assessment programs that carry out laboratory testing certification and inspection of electric motors.

The Department's May 14, 2001, letter requested that CSA International submit to the Department any documents that set forth the policies and procedures that provide assurance of CSA International's independence from any relationship with a manufacturer, importer, or supplier which might create a conflict of interest with its MEVS Program. Also, the Department requested that CSA International provide an explanation as to why a direct or indirect relationship with a motor manufacturer, importer, or private labeler through (a) the combined energy efficiency and product safety certification processes, (b) status as a "Certification Member," (c) membership on a CSA International technical or standards development committee, or (d) shared certification whereby a manufacturer could perform unwitnessed motor testing and submit a certification report to CSA International, would not compromise CSA International's independence or bias information presented to CSA International for the purposes of compliance with 10 CFR 431.27(b)(2).

CSA International submitted, under a letter dated June 14, 2001, the following documents of policy and procedures as further evidence of its independence from manufacturers, importers, distributors, private labelers or vendors:

Corporate Policy Manual, dated December 1, 1996.

Certification Division Policies and Practices Manual, dated February 1999.

Standards of Business Conduct, dated May 1993.

Annual Report 2000.

Statement of Independence, signed by the Vice President, Corporate Secretary of CSA International and a Commissioner of Oaths and Notary Public, Province of Ontario, Canada, dated June 4, 1998.

The Department has examined the above documents and concludes that they provide sufficient evidence that the CSA International MEVS Program meets the requirements for independence which are set forth in 10 CFR 431.27(b)(2), and (c)(2). Its MEVS Program meets the guidelines for the objectivity and impartiality of technical persons and committees which are set forth in ISO/IEC Guide 65, including freedom from commercial pressures that might influence the results of the certification process, an organizational structure that provides a balance of affected interests, and procedures that assure each decision on certification is made by a person(s) different from those who carried out an efficiency evaluation or actual testing of a motor. Furthermore, CSA International's MEVS Program meets the ISO/IEC Guide 25 requirements for organization and management to ensure confidence that its independence of judgement and integrity are maintained at all times.

3. Operation of a Certification System in a Highly Competent Manner

Sections 431.27(b)(3) and (c)(3) of 10 CFR Part 431 require that the petitioner demonstrate that its certification program operates in a highly competent manner by establishing its experience in the application of certain ISO/IEC Guides, including ISO/IEC Guides 65, 27 and 28, as well as experience in overseeing compliance with the manufacturer's testing facility. The Department understands that CSA International uses these guidelines in conjunction with DQD No. 316, *Witness Testing,* whereby qualified CSA International technical staff evaluate a manufacturer's motor testing laboratory and witness the testing of a motor for energy efficiency.

Also, the Certification Division of CSA International, in its June 14 letter, asserts that procedures are in place for certified product. The Department construes this to mean the unauthorized use by a manufacturer or private labeler of the CSA International Motor Efficiency Verification Marking (Marking) on an electric motor, such as the use of a counterfeit Marking. Under ISO/IEC Guide 27, the certification program would then be required to have strong corrective procedures in place. Such corrective measures would depend upon the nature of the misuse and the

have a suitable organizational structure and utilize personnel, equipment, and operating procedures that comply with the criteria for a testing laboratory in ISO/IEC Guide 25.

Consistent with the above ISO/IEC Guide 28 guidelines, Section 4 to the CSA International Petition, "CSA International's Motor Efficiency Verification Program," describes the CSA International MEVS as depending upon: (1) Satisfactory evaluation,

for misuse of a certificate or mark of conformity. The Department concludes that the CSA International Program satisfies the general guidelines for a model third-party certification system in 10 CFR 431.27(c)(3), and the guidelines set forth in ISO/IEC Guide 28.

The above-referenced DQD No. 050, *Quality Management System Manual,* DQD No. 385, *Electric Motor Efficiency Evaluation,* and DQD No. 308.01, *Selection of Test and Measurement*

Third party certification programs must have experience overseeing compliance with the guidelines contained in ISO/IEC Guide 25. ISO/IEC Guide 25 sets out the general requirements by which a laboratory must operate if it is to be recognized as competent to carry out specific tests.

According to Section 3 of the CSA International Petition, "Certification Division Quality Assurance Manual," CSA International's "Quality

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3. Operation of a Certification System in a Highly Competent Manner

Sections 431.27(b)(3) and (c)(3) of 10 CFR Part 431 require that the petitioner demonstrate that its certification program operates in a highly competent manner by establishing its experience in the application of certain ISO/IEC Guides, including ISO/IEC Guides 65, 27 and 28, as well as experience in overseeing compliance with the guidelines in ISO/IEC Guide 25.

Section 3 of the CSA International Petition, "Certification Division Quality Assurance Manual," states that "CSA International has implemented the requirements specified in ISO/IEC Guide 65, General requirements for bodies operating product certification systems." Furthermore, CSA International asserts that its Quality Assurance system is based, in part, on ISO/IEC Guide 25. Also, CSA International asserts that it has both implemented the requirements specified in SCC/CAN P–3 and SCC/CAN P–4, which the Department understands are the Standards Council of Canada equivalents of ISO/IEC Guides 65 and 25 respectively.

a. General Operating Requirements (ISO/IEC Guide 65)

The Department's letter to CSA International, dated May 14, 2001, requested evidence that, at a minimum, the initial determination as to whether an electric motor is in compliance with 10 CFR 431.42(a) is in fact witnessed by CSA International staff and procedures are in place for regular quality audits of all inspections and testing.

CSA International submitted, by letter dated June 14, 2001, the following documents of policy and procedures as further evidence of its competency and expertise in operating a certification system: *Certification Division Policies and Practices Manual*, dated February 1999; *Certification and Testing Services Brochure;* DQD No. 050—*Certification Division Divisional Quality/ Management System Manual*, October 4, 2000; *Application for CSA Certification Services Agreement* Form; and DQD No. 301—*Guidelines for Certification Division Representation on Standards Committees*, dated March 31, 2001.

Also, CSA International submitted a copy of DQD No. 385, *Application Process—CSA Energy Efficiency Verification Program for Three Phase Induction Motors*, Attachment 1, paragraph 6, "Qualification of a Manufacturers Testing Facilities," and paragraph 12, "Follow-up Visits," which set forth guidelines for initial and subsequent evaluation of a manufacturer's testing facility. The Department understands that CSA International uses these guidelines in conjunction with DQD No. 316, *Witness Testing*, whereby qualified CSA International technical staff evaluate a manufacturer's motor testing laboratory and witness the testing of a motor for energy efficiency.

Also, the Certification Division of CSA International, in its June 14 letter, asserts that procedures are in place for regular quality inspections. Further, CSA International submitted DQD 385, Attachment No. 1, "Guide to the CSA Energy Efficiency Verification Service," that states in paragraph 12.1 "a minimum of one visit to each manufacturing plant will be carried out each year."

The Department believes that the above documents provide evidence that procedures are in place for initial compliance testing that is witnessed by CSA International staff, and procedures are in place for regular quality inspections of manufacturers' facilities. Nevertheless, the Department's electronic message to CSA International, dated December 20, 2001, requested that CSA International confirm that all compliance and follow-up testing of motors for energy efficiency is witnessed by a technically qualified CSA International representative.

CSA International's letter, dated March 1, 2002, confirms that "all compliance and follow-up testing is witnessed by technically qualified staff." Further, CSA International submitted as evidence revised DQD No. 385, *Electric Motor Efficiency Evaluation*, dated February 28, 2002, and DQD No. 510.02, *List of Fully Qualified Project Holders for the Motor Energy Efficiency Verification Program*, dated February 28, 2002, to substantiate its assertion of witness testing. The Department has examined the above documents and concludes that the standards and procedures CSA International uses to conduct its MEVS Program satisfy the requirements for training, expertise, and experience in operating a certification system which are set forth in 10 CFR 431.27(b)(3) and (c)(3), and ISO/IEC Guide 65.

b. Guidelines for Corrective Action in the Event of Misapplication of a Mark of Conformity (ISO/IEC Guide 27)

ISO/IEC Guide 27 identifies procedures which a certification program should consider in response to a reported misuse of its registered mark of conformity. According to paragraph 1.1(a) of ISO/IEC Guide 27, "misuse" may take a variety of forms, such as a mark of conformity appearing on a non-certified product. The Department construes this to mean the unauthorized use by a manufacturer or private labeler of the CSA International Motor Efficiency Verification Marking (Marking) on an electric motor, such as the use of a counterfeit Marking. Under ISO/IEC Guide 27, the certification program would then be required to have strong corrective procedures in place. Such corrective measures would depend upon the nature of the misuse and the desire by the certification program to protect the integrity of its mark.

The Department has examined the CSA International *Certification Division Policies and Practices Manual* and finds that it contains rules for authorized use of the CSA International Marking, and procedures that address unauthorized representation of certification of a product or process, and the measures that CSA International would take to protect the integrity of its Marking. Also, the Department has examined sections 15.0, "Control on Non-conformances," and 16.0, "Corrective and Preventive Action," contained in the CSA International *Quality Management System Manual*, DQD 050, revised November 30, 2001. These sections establish policies and procedures to control CSA International services, within the CSA International "Quality Management System," which do not conform to the specified requirements, prevent their unintended use, establish a system for taking appropriate actions to resolve actual or potential non-conformances, and apply suitable corrective and preventive actions. The Department concludes that the CSA International Program satisfactorily follows the guidelines for corrective action to be taken by a certification organization in the event of misapplication of a mark of conformity to an electric motor, set forth in 10 CFR 431.27(c)(3) and ISO/IEC Guide 27.

c. General Rules for a Model Third-Party Certification System for Products (ISO/IEC Guide 28)

ISO/IEC Guide 28 addresses minimum guidelines for a third party certification system in determining conformity with product standards through sample selection, initial testing and assessment of a factory quality management system, follow-up surveillance, subsequent testing of samples from the factory, and the use of a mark of conformity. Furthermore, ISO/IEC Guide 28 requires a certification program operating at a national level, such as under section 345(c) of EPCA which requires manufacturers to certify compliance through a "nationally recognized" certification program, to have a suitable organizational structure and utilize personnel, equipment, and operating procedures that comply with the criteria for a testing laboratory in ISO/IEC Guide 25.

Consistent with the above ISO/IEC Guide 28 guidelines, Section 4 to the CSA International Petition, "CSA International's Motor Efficiency Verification Program," describes the CSA International MEVS as depending upon: (1) Satisfactory evaluation, sampling and testing to determine that the requirements of the applicable standard, for example CSA Standard C390–93, are met on a continuing basis; (2) identification of the critical features that affect motor efficiency; (3) initial motor qualification testing and follow-up retesting to ensure continued compliance; (4) continued access to a manufacturer's facilities and records, product retesting and challenge testing; (5) annual follow-up inspections; (6) proper authorization to apply the CSA International Motor Efficiency Verification Service Marking; and (7) corrective action when a motor fails to comply.

In view of the above ISO/IEC 28 criteria, the Department examined the CSA International *Certification Division Policies and Practices Manual*, dated February 1999, *Quality Management System Manual*, DQD No. 050, dated November 30, 2001, *Management System Audit Program*, DQD No. 305, dated October 31, 2001, *Guidelines on Retesting*, DQD No. 313, dated November 19, 1999, *Selection of Test and Measurement Equipment/ Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors*, DQD No. 308.1, dated February 15, 2002, *Factory Inspections*, DQD No. 320, dated January 27, 1999, *Electric Motor Efficiency Evaluation*, DQD No. 385, dated February 28, 2002, *Periodic Technical and Process Review*, DQD No. 425, dated October 3, 2000, and *Facility Audit Report*, DQD No. 513, Revision A. The Department finds that, in general, both ISO/IEC Guide 28, and the above-referenced CSA International documents address: (1) The basic conditions and rules for a manufacturer to obtain and retain a certificate of conformity or mark of conformity; (2) initial inspection of a motor factory and a manufacturer's quality management system; (3) sample selection; (4) initial testing; (5) product evaluation; (6) surveillance; (7) identification of conformity in the form of a certificate of conformity or mark of conformity; (8) withdrawal of a certificate or mark of conformity by the certification program; and (9) guidelines on corrective action for misuse of a certificate or mark of conformity. The Department concludes that the CSA International Program satisfies the general guidelines for a model third-party certification system in 10 CFR 431.27(c)(3), and the guidelines set forth in ISO/IEC Guide 28.

The above-referenced DQD No. 050, *Quality Management System Manual*, DQD No. 385, *Electric Motor Efficiency Evaluation*, and DQD No. 308.01, *Selection of Test and Measurement Equipment/Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors*, provide general policies, practices and procedures that govern the conformity assessment services, and, in particular, those that relate to the electric motor efficiency certification program. The CSA International *Quality Management System Manual* addresses, for example, "Quality System," "Standards of Conduct," "Organization," "Periodic Technical and Process Review," "Audit Program," "Staff Training," "Inspection, Measuring and Test Equipment," "Maintenance of Records," and "Certification and Testing Programs and Services." The *Electric Motor Efficiency Evaluation* addresses, for example, "Operational Rules/Procedure," "Evaluation," "Qualification of Manufacturers Test Facilities, Test Audit," "Marking Authorization," "Follow-up Visits," "Product Retesting," "Electric Motor Efficiency Evaluation Procedure," "MEEV—Sampling Procedure for U.S.," and "Plan and Procedure Relative to Alternative Efficiency Determination Methods (AEDMs)." *Selection of Test and Measurement Equipment/ Significant Parameters—CSA Energy Efficiency Verification Program for Three-Phase Induction Motors* addresses, for example, the requirements of IEEE Standard 112–1996, Test Method B, with the modifications described under appendix A to subpart B of 10 CFR Part 431, the National Institute of Standards and Technology (NIST) Handbook 150–10 entitled, *Efficiency of Electric Motors*, and CSA C390–93 when selecting test and measurement equipment.

The Department has examined the contents of these manuals and concludes that they satisfy the guidelines for conducting a model third-party certification program at the national level as applicable under 10 CFR 431.27(c)(3) and ISO/IEC Guide 28.

d. General Requirements for the Competence of Testing Laboratories (ISO/IEC Guide 25)

(1) Operating Procedures

Third party certification programs must have experience overseeing compliance with the guidelines contained in ISO/IEC Guide 25. ISO/IEC Guide 25 sets out the general requirements by which a laboratory must operate if it is to be recognized as competent to carry out specific tests.

According to Section 3 of the CSA International Petition, "Certification Division Quality Assurance Manual," CSA International's "Quality Assurance" system is based on national and international accreditation requirements, one of which is ISO/IEC Guide 25. In view of ISO/IEC Guide 25, the Department examined the procedures and guidelines contained in CSA International's *Quality Management System Manual*, DQD No. 050, and the above DQD Nos. 385, 308.01 and 316 as they apply to the evaluation of an electric motor testing facility.

The Department finds that DQD No. 050 establishes the general policies, standards of conduct, procedures, guidelines and organization requirements for CSA International's quality program. These are based on national and international accreditation requirements such as ANSI Z34.1, *American National Standard for Certification—Third Party Certification Program*, EN 45004, *General Criteria for the Operation of Various Types of Bodies Performing Inspection*, ISO/IEC 17025, *General Requirements for the Competence of Testing and Calibration Laboratories*, ISO/IEC Guide 65, *General Requirements for Bodies Operating Product Certification Systems*, and NIST Handbook 150, *National Voluntary Laboratory Accreditation Program (NVLAP)—Procedures and General Requirements*. Furthermore, the Department finds that the Standards Council of Canada[1] lists CSA International as an accredited certification body in the area of its Energy Efficiency Verification Service and specifically identifies CSA C390, "Energy Efficiency Test Methods for Three-Phase Induction Motors," which adds credence to the evidence that CSA International operates its certification program in a highly competent manner, including overseeing compliance with the guidelines contained in ISO/IEC Guide 25 to test electric motors for energy efficiency.

The Department finds that DQD No. 385 establishes the guidelines for CSA International's operation of its motor

[1] The Standards Council is a federal Crown corporation which has the mandate to coordinate and oversee the efforts of the National Standards System in Canada.

energy efficiency evaluation process in the United States pursuant to 10 CFR Part 431, including the test procedures, alternative efficiency determination methods, and sampling procedures in 10 CFR 431.23 and 431.24. Under DQD No. 385, a manufacturer's motor testing facility is required to have adequate controls in place to ensure manufacturing consistency and consistent product performance with

that it utilizes, for example CSA Standard C390, (2) the technical capability of testing facility staff, ongoing training of that staff and maintenance of personnel records, (3) suitability of the testing environment, (4) suitability and accuracy of the test equipment that is to be used, (5) the system for calibrations and control of test methods, and (6) traceability of calibration to national standards. Also, DQD No. 316 requires examination of

staff to monitor product control measures and testing facilities, to conduct retesting, and to take any corrective actions.

• ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have sufficient personnel having the necessary education, training, technical knowledge and experience. Similarly, the CSA International Program evaluates the technical capability of the testing facility staff, staff training, and

Standards Council of Canada equivalent of ISO/IEC Guide 25.

GE Industrial Systems' comments, dated May 24, 2000, recommend that a test facility, such as the ones used by CSA International which test motors for energy efficiency, should be established and maintained by a process equivalent to the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP) as set forth in the NIST

to 50 horsepower. Also, the Department understands that LTEE, although not officially listed in the NIST/NVLAP *2001 Directory*, participates in the NIST/ NVLAP Proficiency Testing Program.

Section 431.27 of 10 CFR Part 431 does not require a certification program to actually operate its own motor testing laboratory, nor is a laboratory operated or observed by a certification program required to be accredited. Nevertheless, the Department believes that a testing

the selection and sampling of electric motors tested for energy efficiency, and provide documents that establish experience in applying the guidelines for confidence in testing laboratories contained in ISO/IEC Guide 25. Such guidelines address quality audits and reviews, personnel, equipment, test methods, sampling, and records.

Section 3, "Certification Division Quality Assurance Manual," of the CSA International Petition, states that its

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energy efficiency evaluation process in the United States pursuant to 10 CFR Part 431, including the test procedures, alternative efficiency determination methods, and sampling procedures in 10 CFR 431.23 and 431.24. Under DQD No. 385, a manufacturer's motor testing facility is required to have adequate controls in place to ensure manufacturing consistency and consistent product performance with respect to energy usage. Also, the testing facility is examined for the type and accuracy of test equipment, calibration, test procedures and measurement techniques, a system for documenting test results, and staff training. The Department finds that under DQD No. 385, the CSA International sampling procedure adheres to the sampling procedure in 10 CFR 431.24(b). Also, DQD No. 385 requires periodic audit of the test facility and calibration system. A minimum of one visit per year to a manufacturing plant is carried out by CSA International staff to monitor product control measures and testing facilities, and to conduct retesting. Furthermore, DQD No. 385 sets forth procedures that address Alternative Efficiency Determination Methods (AEDMs) in order to reduce testing burden and accommodate the large number of motors a manufacturer would produce. The CSA International procedures essentially follow the procedures for the substantiation of an AEDM as provided in 10 CFR 431.24(a)(3). The Department understands that CSA International uses these guidelines in conjunction with DQD No. 316, whereby qualified CSA International technical staff evaluate a manufacturer's motor testing laboratory and witness the testing of an electric motor for energy efficiency.

The Department finds that DQD No. 308.01 establishes guidelines that follow the requirements of IEEE Standard 112–1996 Test Method B, CSA Standard C390–93, and NIST Handbook 150–10, *Efficiency of Electric Motors*, when selecting test and measurement equipment that would be utilized for testing electric motors under the CSA Motor Efficiency Verification Service Program. These are the same procedures identified in 10 CFR 431.23.

The Department finds that DQD No. 316, *Witness Testing*, provides guidelines for evaluating and monitoring the capability of a testing facility, such as a manufacturer's motor efficiency testing facility for performing tests that are witnessed by CSA International technical staff. Under DQD No. 316, a motor manufacturer's testing facility is evaluated according to (1) the scope of the standard and test method that it utilizes, for example CSA Standard C390, (2) the technical capability of testing facility staff, ongoing training of that staff and maintenance of personnel records, (3) suitability of the testing environment, (4) suitability and accuracy of the test equipment that is to be used, (5) the system for calibrations and control of test methods, and (6) traceability of calibration to national standards. Also, DQD No. 316 requires examination of the manufacturer's quality system, proper supervision and control of testing, documentation control, and retention of records.

In addition to examining the underlying documentation that establishes the policies and procedures of the CSA International quality system and operating procedures for evaluating electric motors, the Department directly compared the requirements in ISO/IEC Guide 25 with CSA International's MEVS Program as it would apply to a manufacturer's motor testing laboratory under a certification program and found them to be consistent with each other. The Department found, for example:

- ISO/IEC Guide 25 sets forth requirements for organization and management of a testing laboratory to ensure proper supervision and integrity of data. Similarly, the CSA International Program requires examination of the manufacturer's quality system, proper supervision and control of testing, documentation control, and retention of records.
- ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have a quality system with documented policies and procedures, such as for the organization and operation of a testing laboratory, traceability of measurements, calibration of equipment, test procedures used, procedures for corrective actions and audits. Similarly, the CSA International Program requires use of the test procedures and calibration of equipment set forth in 10 CFR 431.23 and the requirements of IEEE Standard 112–1996, Test Method B, with the modifications described in appendix A to subpart B of 10 CFR Part 431, and CSA Standard C390–93. In addition, the CSA International Program requires use of the quality system set forth in NIST Handbook 150–10 when selecting test and measurement equipment, meeting significant calibration parameters for electric motor efficiency evaluation, and having traceability of calibrated equipment to national standards. Also, the CSA International Program requires periodic audits of the test facility and calibration system, whereby a minimum of one visit per year to a manufacturing plant is carried out by CSA International staff to monitor product control measures and testing facilities, to conduct retesting, and to take any corrective actions.
- ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have sufficient personnel having the necessary education, training, technical knowledge and experience. Similarly, the CSA International Program evaluates the technical capability of the testing facility staff, staff training, and maintenance of personnel records.
- ISO/IEC Guide 25 requires the proper environment and equipment for performance of testing, and that such equipment is properly maintained and calibrated. Similarly, the CSA International Program requires the proper environment for testing, control of test methods, and suitable equipment that is accurate and properly calibrated and traceable to nationally recognized standards of measurement.
- ISO/IEC Guide 25 requires the testing laboratory to maintain a record system of original observations, calculations, reference to sampling procedures, and derived data sufficient to permit repetition of a test. Similarly, the CSA International Program requires that the test procedures be under documentation control, and that test records be current and properly maintained. Also, the CSA International sampling procedure is consistent with the sampling procedure set forth in 10 CFR 431.24(b).
- Both ISO/IEC Guide 25 and the CSA International Program require test reports that contain similar information.

In view of these comparisons, the Department believes that CSA International's MEVS Program satisfies the requirement of 10 CFR 431.27(c)(3) for documentary evidence that establishes experience in operating a certification system and overseeing compliance with the guidelines for competence contained in ISO/IEC Guide 25 to test electric motors for energy efficiency.

(2) Testing Laboratory

Under Section 1, "Designated Testing Facility," of the CSA International Petition, it is stated that "as part of CSA International's Motor Energy Efficiency Verification Program we are using our Toronto test facility," and that "the facilities of Toronto are used for testing the full range of motors up to 50 horsepower." Also, under Section 3, "Certification Division Quality Assurance Manual," of the CSA International Petition, CSA International asserts that its Quality Assurance system is based, in part, on ISO/IEC Guide 25 and SCC/CAN P–4 that is the Standards Council of Canada equivalent of ISO/IEC Guide 25.

GE Industrial Systems' comments, dated May 24, 2000, recommend that a test facility, such as the ones used by CSA International which test motors for energy efficiency, should be established and maintained by a process equivalent to the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP) as set forth in the NIST Handbook 150–10, "Efficiency of Electric Motors." Also, GE Industrial Systems recommends that any organization that certifies the energy efficiency of electric motors participate in the NIST/NVLAP proficiency testing program in order to understand, document, and make known any variations among participating testing facilities.

The Department's investigation found that the CSA International testing facility in Toronto was not fully operational at the time of the CSA International Petition, and that the CSA International Program relies heavily on the manufacturer to provide most of the test data, including data for initial qualification based on sampling and testing motors for energy efficiency, that are not witnessed by CSA International staff. Nor was there clear evidence of what quality control exists for monitoring the validity of motor efficiency testing by a manufacturer. Also, it appeared that the CSA International Program lacked sufficient staff to perform all the annual follow-up inspections, bi-annual retesting, cross-testing every three years, unannounced retesting, and challenge testing which it claimed would occur. The Department's May 14, 2001, letter requested that CSA International submit information concerning its Toronto motor testing facility, its oversight of testing performed at a motor manufacturer's facility, and procedures for regular quality audits of all inspections and testing for motor efficiency.

The Certification Division of CSA International, in its June 14, 2001 letter, asserts that the Toronto test facility is fully operational, initial compliance testing is witnessed by CSA International staff, and that procedures are in place for regular quality inspections of a manufacturer's motor testing laboratory. In view of the June 14 letter, the Department understands that CSA International uses the Laboratoire des technologies electrochimiques et des electrotechnologies d'Hydro-Quebec (LTEE) for testing motors over 50 horsepower, and acknowledges that the CSA International test laboratory in Toronto is capable of testing motors up to 50 horsepower. Also, the Department understands that LTEE, although not officially listed in the NIST/NVLAP *2001 Directory*, participates in the NIST/NVLAP Proficiency Testing Program.

Section 431.27 of 10 CFR Part 431 does not require a certification program to actually operate its own motor testing laboratory, nor is a laboratory operated or observed by a certification program required to be accredited. Nevertheless, the Department believes that a testing facility operated or observed by a certification program should follow the guidelines in ISO/IEC Guide 25 and in principle be reasonably close to conforming to the technical requirements of an accredited laboratory. The Department understands that, in general, the evaluation of a motor testing laboratory under an accreditation program includes an on-site assessment, proficiency testing, audit of a laboratory's policies and operational procedures, review of staff qualifications, checks of proper maintenance and calibration of test equipment, and records review. Likewise, the evaluation under the CSA International Program includes evaluation of the manufacturer's testing facility, control and maintenance and calibration of test equipment, factory audits for continued compliance, document control, periodic audits of the operational and technical consistency of the program, control of non-conformances, staff training, and witness testing. The Department believes that the goal of a third party certification program is to provide assurance that test results are accurate, valid, and capable of being replicated. Tests must be performed with a degree of oversight so that the results are not influenced by marketing and production concerns. The Department believes that the CSA International Program, while not identical to a laboratory accreditation program, nevertheless satisfactorily follows the ISO/IEC 25 Guidelines.

4. Expertise in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1)

Sections 431.27(b)(4) and (c)(4) of 10 CFR Part 431 set forth evaluation criteria and guidelines whereby personnel conducting a certification program should be expert and experienced in the content and application of IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors. The program must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency, and provide documents that establish experience in applying the guidelines for confidence in testing laboratories contained in ISO/IEC Guide 25. Such guidelines address quality audits and reviews, personnel, equipment, test methods, sampling, and records.

Section 3, "Certification Division Quality Assurance Manual," of the CSA International Petition, states that its Quality Assurance system is based on national and international requirements that include ISO/IEC Guide 25. The Department understands that section 6, "Personnel," of ISO/IEC Guide 25 sets forth general requirements for the training, technical knowledge, and experience of testing laboratory personnel. In sum, it states that the testing laboratory shall have sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions; training of personnel is kept up-to-date; and records on relevant qualifications, training, skills, and experience of the technical personnel shall be maintained.

The Department's investigation found that the technical qualifications of the CSA International staff involved in the MEVS Program were very limited with regard to electric motor construction, performance, and efficiency testing. Also, it appeared to the Department that CSA International has only one person that actually participates in the qualification of a motor manufacturer's test facility, witnesses testing, and both directs and evaluates compliance testing, cross testing, and retesting. Consequently, the Department requested that CSA International address its intention to assign additional expert staff to its MEVS Program, and submit evidence as to the nature and extent of training the current staff receives in order to maintain proficiency in the evaluation of motor design and construction, and the practice of efficiency testing.

CSA International, in its June 14, 2001 letter, asserts that it has identified additional staff for participation in the operation of its MEVS Program, additional training would be provided, and that it would ensure its staff resources are appropriate to the amount of work required by its Motor Efficiency Verification Program. On August 20, 2001, the Department received an electronic message from CSA International which identified additional staff, their credentials, and the associated training each would receive as part of its MEVS Program in order to fulfill the requirements set forth in 10 CFR 431.27(b)(4) and 431.27(c)(4). In sum, the Department understands that this training addresses electric motor construction, performance, and efficiency testing, and will become part of a regular training program. Also, the Department understands that certain technical staff will work under the direction of a CSA International senior engineer or qualified project leader.

In the Department's view, any technically qualified person could

for compliance testing provides statistically meaningful sampling procedures." Moreover, the NIST analysis was extensive in order to determine whether a particular sampling plan would be valid for the purpose of establishing compliance with EPCA motor efficiency levels. Also, section 10.5 of ISO/IEC Guide 25: 1990 requires the use of documented procedures and appropriate statistical techniques to select samples.

International statistical approach to sampling of motors for testing as the selection and testing of 5 basic models with a sample size of 1 to 5. GE Industrial Systems asserts that a minimum sample selection to substantiate an Alternative Efficiency Determination Method [2] should be 5 randomly selected units of 5 basic models, in order to provide a look at the population and statistical variation in the basic model. Further, GE Industrial

statistically valid and result in a confidence level such that the true mean energy efficiency of a basic model meets or exceeds the motor's represented energy efficiency level. Further, the Department's letter requested that CSA International submit its plan and procedures to evaluate a manufacturer's AEDMs.

CSA International, in its June 14, 2001 letter, describes its plan and procedures to evaluate a manufacturer's AEDMs, whereby CSA International verifies that

CSA International which set forth its "Plan and Procedure Relative to Alternative Efficiency Determination Methods (AEDMs)" (Plan and Procedure). In sum, CSA International asserts that it will require a motor manufacturer to submit predicted energy efficiency values that represent a group of motors. CSA International would then select a minimum of 5 basic models from that group, and 5 samples of each basic model, for testing to

for Motor Model Qualification Testing" should be modified to read "Samples of Units Required for Motor Model Qualification Testing," (3) the section entitled "Selection of Basic Model Types to Represent a Group of Motors" should be modified to read "Selection of Basic Models for Testing," and (4) the specific example provided under "Example Scope of Certification" should be corrected to accurately depict the sampling guidelines that precede it

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in 10 CFR 431.27(b)(4) and 431.27(c)(4). In sum, the Department understands that this training addresses electric motor construction, performance, and efficiency testing, and will become part of a regular training program. Also, the Department understands that certain technical staff will work under the direction of a CSA International senior engineer or qualified project leader.

In the Department's view, any technically qualified person could satisfy the criteria for expertise in the content, application and methodologies of the test procedures pursuant to 10 CFR 431.27 (b)(4) if that person: (1) Is proficient in the test methodology of IEEE Standard 112 Test Method B and CSA C390–93 Test Method (1); (2) is familiar with the electrical, mechanical and environmental capabilities of a testing laboratory system; (3) understands how to prepare and mount a motor for testing, which includes the connection and operation of the test equipment; (4) is competent in calibrating test equipment; and (5) is competent with data collection and analysis. CSA International's experience in standards development, testing and evaluation of motors to both U.S. and International safety and similar energy efficiency procedures and methodologies provide sufficient evidence of CSA International staff having the necessary proficiency and expertise to conduct energy efficiency evaluations under ISO/IEC Guide 25. Thus, the Department believes that the credentials of the CSA International staff, regular additional training, and monitoring by CSA International management, satisfy the general requirements for the training, technical knowledge, and experience of testing laboratory personnel under 10 CFR 431.27(b)(4) and (c)(4).

5. Sampling Criteria and Procedures for Selecting an Electric Motor for Energy Efficiency Testing

Section 431.27(b)(4) of 10 CFR Part 431 requires a certification organization to have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. Based on the National Institute of Standards and Technology report, NISTIR 6092, "Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431: Title 10, Code of Federal Regulations," January 1998, which analyzed various criteria and sampling plans proposed for establishing compliance with the nominal full-load efficiency levels prescribed by EPCA, 42 U.S.C. 6313(b)(1), the Department determined that "the NEMA proposal for compliance testing provides statistically meaningful sampling procedures." Moreover, the NIST analysis was extensive in order to determine whether a particular sampling plan would be valid for the purpose of establishing compliance with EPCA motor efficiency levels. Also, section 10.5 of ISO/IEC Guide 25: 1990 requires the use of documented procedures and appropriate statistical techniques to select samples.

Under section 4 of the Petition, entitled "CSA International's Motor Efficiency Verification Program," CSA International describes its process for the selection and sampling of electric motors to be tested for energy efficiency. CSA International asserts that the objective of its sampling process is to minimize manufacturers' tests, costs and time to market, while providing sufficient confidence that the series of motors verified meet the applicable energy efficiency standard. Further, CSA International conducts unannounced follow-up inspections, random motor retesting, and challenge testing to ascertain continued compliance with energy efficiency standards by a manufacturer. The Department understands that under the CSA International sampling program, a minimum of 5 basic models are required to be tested to verify the energy efficiency ratings of a series of motors. The basic models are selected so as to represent the complete range of motors within the series, which could require more than 5 basic models. Thereafter, 1 to 5 units of each basic model are tested. The average efficiency of the sample lot must equal or exceed the required nominal full load efficiency. Furthermore, CSA International's goal for verifying continued compliance is to retest high volume motors at least once every 2 years. Other motors of different frame series are retested as needed to ensure continued compliance. Also, the Department understands that under the CSA International retesting program, the initial sample lot is one motor, and if after retesting the result equals or exceeds the minimum result from the qualification tests, then no further samples would be required. If the result is less than the minimum result from the qualifying tests, then motor samples would be selected pursuant to the qualifying test procedure.

GE Industrial Systems' comments, dated May 24, 2000, assert that there should be some understanding of the level of confidence CSA International believes appropriate for the efficiency data that is determined from testing, and the basis for that confidence level. GE Industrial Systems describes the CSA International statistical approach to sampling of motors for testing as the selection and testing of 5 basic models with a sample size of 1 to 5. GE Industrial Systems asserts that a minimum sample selection to substantiate an Alternative Efficiency Determination Method [2] should be 5 randomly selected units of 5 basic models, in order to provide a look at the population and statistical variation in the basic model. Further, GE Industrial Systems asserts that frequent sampling over time is more appropriate to an assessment of design and manufacturing variables, and therefore an ongoing sampling program would be appropriate.

NEMA's comment, dated May 26, 2000, asserts that CSA International's sampling process appears to be more burdensome than required by the Department of Energy. NEMA did not elaborate on its comment.

In view of GE Industrial Systems' and NEMA's comments, the Department's investigation found confusing statements from CSA International concerning its intentions to substantiate a manufacturer's AEDMs, either (1) by analyzing and comparing a manufacturer's energy efficiency modeling methods to actual test measurements, or (2) through comparisons between a motor manufacturer's energy efficiency calculations on a software program and a CSA International software program. It is not clear to the Department that the CSA International Program would substantiate an AEDM in a manner that is consistent with 10 CFR 431.24(a)(3) and (4), whereby a manufacturer could test 5 units each of 5 basic models and use the test results to substantiate an AEDM. Furthermore, it is not clear that the CSA International sampling plan would be valid if the initial sample lot is one motor, nor is it clear that testing all the basic models that a manufacturer produces would not be unduly burdensome. The Department's May 14, 2001, letter requested that CSA International submit documents and other materials to substantiate that its motor sampling procedures are

[2] Alternative Efficiency Determination Method (AEDM) means a method of calculating the total power loss and average full load efficiency of an electric motor. See 10 CFR 431.2. Section 431.24(a)(1) of 10 CFR Part 431 provides that the energy efficiency of a motor must be determined either by testing in accordance with the Department of Energy test procedure or application of an AEDM. Section 431.24(a)(3) of 10 CFR Part 431 requires that, in sum, the accuracy and reliability of an AEDM must be substantiated through testing at least 5 basic models; and that the calculated total power loss for each basic model must be within plus or minus 10 percent of the mean total power loss determined from testing.

statistically valid and result in a confidence level such that the true mean energy efficiency of a basic model meets or exceeds the motor's represented energy efficiency level. Further, the Department's letter requested that CSA International submit its plan and procedures to evaluate a manufacturer's AEDMs.

CSA International, in its June 14, 2001 letter, describes its plan and procedures to evaluate a manufacturer's AEDMs, whereby CSA International verifies that the manufacturer's software energy efficiency calculations are in agreement with its independent calculated values using the methods described in CSA Standard C390. The Department understands that CSA International uses the test data measurements, and then (a) performs its own calculations to determine the efficiency of the tested motor and (b) matches it with the manufacturer's calculated efficiency. If the two values are in agreement for all the motors tested, then CSA International would accept the manufacturer's efficiency calculation procedure as intended by 10 CFR 431.24(b)(3). In its June 14 letter, CSA International asserts that its sampling procedures for electric motor efficiency evaluations are statistically valid, use random selection, and result in confidence levels such that the true mean energy efficiency of a basic model meets or exceeds the motor's represented energy efficiency level.

Furthermore, CSA International's DQD 384, *Electric Motor Efficiency Evaluation*, paragraph 6.2 and Attachment No. 2, *MEEV—Sampling Procedure*, dated January 23, 2001, set forth the CSA International sampling procedure whereby, in sum, CSA International staff selects a minimum of 5 basic models that represent a complete range of motors, and tests 1 to 5 units of those basic models to determine whether the average efficiency of the sample lot equals or exceeds the required efficiency rating. Also, the Department understands that CSA International is establishing a database to substantiate that the sampling plan is valid, uses random selection, and provides the required confidence limits. In view of the above-referenced sampling plan, the Department calculates that a manufacturer could be required to test only 5 motors (5 basic models × 1 unit = 5 motors) to substantiate compliance for up to 113 basic models. The Department believed this approach was not statistically valid for the purposes of 10 CFR 431.24 and 431.27(b)(4).

On August 28, 2001, the Department received an electronic message from CSA International which set forth its "Plan and Procedure Relative to Alternative Efficiency Determination Methods (AEDMs)" (Plan and Procedure). In sum, CSA International asserts that it will require a motor manufacturer to submit predicted energy efficiency values that represent a group of motors. CSA International would then select a minimum of 5 basic models from that group, and 5 samples of each basic model, for testing to determine the correlation between the predicted efficiency and the tested efficiency. CSA International asserts that the individual and average efficiency of the motors tested shall be in accordance with 10 CFR 431.24(b)(2)(i) and (ii). Also, CSA International asserts that it will conduct periodic follow-up audits and testing witnessed by CSA International staff.

The Department finds that the above Plan and Procedure is consistent with 10 CFR 431.24(a)(1)–(4)(i). However, in item 3 of the Plan and Procedure, CSA International states that "tests may be performed at the manufacturer's previously evaluated testing facility with some testing witnessed by [CSA International] CSAI staff." This appeared to contradict the aforementioned CSA International policies and procedures in DQDs 385 and 316, and assertions by CSA International in its *Certification and Testing Services* booklet, that both initial compliance and periodic follow-up tests are witnessed by qualified CSA International technical staff. The Department requested that CSA International confirm that the "witness testing" policies and procedures apply to initial and subsequent verification of a manufacturer's AEDMs.

On August 30, 2001, the Department received an electronic message from CSA International containing a revised sampling plan and procedure DQD 384, "Attachment 2, MEEV—Sampling Procedure for U.S., Part 431—DOE Energy Efficiency Program for Motors," dated August 29, 2001, for motor compliance testing, substantiation of an AEDM, and retesting. The Department examined the above DQD 384 Attachment 2 and, in general, found it to be consistent with 10 CFR 431.24(a)(1)–(4)(i) and 431.24(b)(1). However, where the CSA International sampling procedures follow 10 CFR 431.24, the Department recommended that DQD 384 Attachment 2 clearly state that (1) the average full load efficiency of each basic model of electric motor must be determined either by testing or by the application of an Alternative Efficiency Determination Method, (2) the section entitled "Samples Required for Motor Model Qualification Testing" should be modified to read "Samples of Units Required for Motor Model Qualification Testing," (3) the section entitled "Selection of Basic Model Types to Represent a Group of Motors" should be modified to read "Selection of Basic Models for Testing," and (4) the specific example provided under "Example Scope of Certification" should be corrected to accurately depict the sampling guidelines that precede it in DQD 384 Attachment 2.

Also, DQD 384 Attachment 2, entitled "Samples Required for Scheduled Motor Retesting," states: "The initial retest sample lot shall consist of one motor. If the measured full load efficiency from retest meets or exceeds the lowest full load efficiency determined from the qualification testing, then no further samples are required for testing." It is not clear to the Department whether the "lowest full load efficiency determined from the qualification testing" refers to the results of actual tests or some other criterion. Consequently, the Department requested that the procedures to be used during retesting be clarified.

Moreover, the Department believes that the sampling procedures set forth in 10 CFR 431.24(b)(2)(i) and (ii) provide reasonable assurance that the average full load efficiency of the basic model being retested meets or exceeds the mandated efficiency level and, accordingly, may be applied during re-testings. The Department recommended that CSA International adopt these sampling procedures for retesting. Thus, when testing a sample size of one motor during retesting, the efficiency of that unit must not be less than the full load efficiency described in section 431.24(b)(2)(ii); and, when samples of two or more motors are tested during retesting, the average efficiency of the lot must not be less than the full load efficiency described in section 431.24(b)(2)(i) and, the lowest efficiency of any unit in the lot must not be less than the full load efficiency described in section 431.24(b)(2)(ii).

CSA International's letter, dated March 1, 2002, addresses the above recommendations. As such, the Department understands that DQD No. 384 and DQD No. 385 have been combined into one document, and have been revised to clarify the sampling and compliance requirements. Also, CSA International revised the above DQD No. 384, Attachment 2, *MEEV—Sampling Procedure* which is now DQD No. 385, Attachment 2 in order to incorporate the Department's above recommendations both for initial qualification testing and retesting. The Department has examined the above documents and concludes

that the standards and procedures CSA International uses to conduct sampling under its MEVS Program are consistent with 10 CFR 431.24 and 431.42, and satisfy the criteria for the selection and sampling of electric motors to be tested for energy efficiency under 10 CFR 431.27(b)(4).

III. Conclusion

A. Interim Determination

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determination Concerning the

Telephone (202) 586–8654, Telefax (202) 586–4617, or: *jim.raba@ee.doe.gov*.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, Telephone (202) 586–4116, or: *francine.pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, Telephone (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Additional information about UL's Energy Verification Service (UL EVS Program or Program) and its Petition to be a nationally recognized certification program for electric motor

set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by the Department of Energy.

For a certification program to be classified by the Department as being nationally recognized, the program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system,

II. Discussion

A. General

Sections 431.27(b)(1) and (c)(1) of 10 CFR part 431 set forth criteria and guidelines for the standards and procedures for conducting and administering a certification system and for granting a certificate of conformity. As such, a certification program must have satisfactory standards and procedures for conducting and

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that the standards and procedures CSA International uses to conduct sampling under its MEVS Program are consistent with 10 CFR 431.24 and 431.42, and satisfy the criteria for the selection and sampling of electric motors to be tested for energy efficiency under 10 CFR 431.12(b)(2).

III. Conclusion

A. Interim Determination

In view of CSA International's Petition and supporting documents, the public comments received, the Department's independent investigation, and CSA International's actions to correct the defects the Department addressed as described above, the Department concludes that the CSA International Motor Efficiency Verification Service Program satisfactorily meets the criteria in 10 CFR 431.27.

Therefore, the Department's interim determination is, as of today's **Federal Register** notice, to classify the CSA International Motor Efficiency Verification Service Program as nationally recognized in the United States for the purposes of section 345(c) of EPCA. In the event that a final determination recognizes the CSA International Motor Efficiency Verification Service Program as a nationally recognized certification program pursuant to the criteria in 10 CFR 431.27, and the Program thereafter fails to meet the criteria for recognition, the Department can withdraw its recognition after following the procedural requirements in 10 CFR 431.28(g).

B. Future Proceedings

Pursuant to 10 CFR 431.28(d), the Department will notify CSA International in writing of this interim determination. Today's **Federal Register** notice solicits comments, data and information concerning the Department's interim determination to classify the CSA International Motor Efficiency Verification Service Program as nationally recognized in the United States. After review of information submitted concerning the interim determination, the Department will publish in the **Federal Register** an announcement of its final determination. See 10 CFR 431.28(e).

Issued in Washington, DC, on June 28, 2002.

Douglas L. Faulkner,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Interim Determination Concerning the Petition for Recognition of Underwriters Laboratories Inc. as a Nationally Recognized Certification Program for Electric Motor Efficiency

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Public notice of an interim determination and solicitation of comments.

SUMMARY: Today's action announces the Department of Energy's interim determination classifying the Underwriters Laboratories Inc. Energy Verification Service Program for Electric Motors as a nationally recognized certification program in the United States for the purposes of section 345(c) of the Energy Policy and Conservation Act. The Department solicits comments, data and information with respect to its interim determination prior to issuing a final determination.

DATES: Written comments, data and information, as a signed original with an electronic copy, must be received at the Department of Energy by August 5, 2002.

ADDRESSES: Comments, data and information should be labeled "Interim Determination Concerning the Underwriters Laboratories Inc. Petition for Recognition as a Nationally Recognized Certification Program for Electric Motor Efficiency," and submitted to: Ms. Brenda Edwards-Jones, Office of Building Research and Standards, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. Also, a copy of such comments should be submitted to Ms. Jodine E. Smyth, Senior Coordinator, Global Accreditation Services, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062. Telephone: (847) 272–8800, ext. 42418; or Telefax (847) 509–6321.

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–8654, Telefax (202) 586–4617, or: *jim.raba@ee.doe.gov.*

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I. Introduction

A copy of Underwriters Laboratories Inc.'s Petition, "Classification in Accordance with 10 CFR 431.27," (UL Petition or the Petition) was published in the **Federal Register**, on October 3, 2001. 66 FR 50355. The Petition consisted of a letter from Underwriters Laboratories Inc. (UL) to the Department, narrative statements on five subject areas, and supporting documentation. At the same time, the Department of Energy (Department) solicited comments, data, and information as to whether UL's Petition should be granted. The Department received two comments. The Department also conducted an independent investigation concerning the UL Petition pursuant to 10 CFR 431.28(f).

The supporting documents that accompanied the Petition, as well as the material UL subsequently submitted to the Department in support of UL's Petition, are available in the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585–0101, Telephone (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Additional information about UL's Energy Verification Service (UL EVS Program or Program) and its Petition to be a nationally recognized certification program for electric motor efficiency can be obtained on the World Wide Web at *http://www.eren.doe.gov/buildings/codes_standards/rules/index.htm*, or from Ms. Jodine E. Smyth, Senior Coordinator, Global Accreditation Services, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062, or Telephone: (847) 272–8800, ext. 42418; or Telefax (847) 509–6321, or electronic mail at *Jodine.E.Smyth@us.ul.com.*

The final rule for "Test Procedures, Labeling, and Certification Requirements for Electric Motors," was published in the **Federal Register** on October 5, 1999. 64 FR 54141. It is codified in 10 CFR Part 431 in Subparts A, B, E and G. It can also be obtained from the Office of Building Research and Standards, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121, or Telephone 202–586–9127, or on the World Wide Web at *http://www.eren.doe.gov/buildings/codes_standards/rules/motors/index.htm.*

A. Authority

Part C of Title III of the Energy Policy and Conservation Act (EPCA) contains energy conservation requirements for electric motors, including requirements for test procedures, energy efficiency standards, and compliance certification (42 U.S.C. 6311–6316). Section 345(c) of EPCA directs the Secretary of Energy to require motor manufacturers "to certify, through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard." 42 U.S.C. 6316(c). Regulations to implement this EPCA directive, with respect to certification programs, are codified in 10 CFR part 431 at sections 431.123, *Compliance Certification*, 431.27, *Department of Energy recognition of nationally recognized certification programs*, and 431.28, *Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs*. Sections 431.27 and 431.28 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by the Department of Energy.

For a certification program to be classified by the Department as being nationally recognized, the program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent; (3) be qualified to operate in a highly competent manner; and (4) be expert in the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors; and (5) have satisfactory criteria and procedures for selecting and sampling electric motors for energy efficiency testing. 10 CFR 431.27(b).

B. Background

Pursuant to 10 CFR 431.28, the Department is required to publish the UL Petition in the **Federal Register** in order to solicit comments, data and information on whether the Petition should be granted. UL may then respond in writing to any comments received. After review of the Petition, other applicable documents, including public comments and facts found through investigation, the Department is required to issue an interim determination and notify UL in writing of that interim determination. Also, the Department is required to publish its interim determination in the **Federal Register** and solicit comments, data and information with respect to the interim determination. After review of comments and information that is submitted, the Department is required to publish in the **Federal Register** an announcement of its final determination on the Petition. See 10 CFR 431.28(a)-(f).

The Department received comments on the UL Petition from Advanced Energy, dated October 12, 2001, and Emerson Motor Company, dated October 15, 2001. Advanced Energy is an independent motor testing facility and Emerson is a manufacturer of electric motors. In general, neither of these companies believes Underwriters Laboratories Inc. to be qualified to test and certify electric motors for energy efficiency for the purposes of section 345(c) of EPCA.

II. Discussion

A. General

Sections 431.27(b)(1) and (c)(1) of 10 CFR part 431 set forth criteria and guidelines for the standards and procedures for conducting and administering a certification system and for granting a certificate of conformity. As such, a certification program must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of electric motors continue to conform to the efficiency levels for which they were certified and for granting a certificate of conformity. ISO/IEC Guide 65 (discussed in 10 CFR 431.27(c)(3) and also below) sets forth the general requirements intended to ensure a certification program is operated in a consistent and reliable manner. These requirements address: (1) Impartiality; (2) sufficient personnel having the necessary education, training, technical knowledge and experience; (3) relevant procedures for sampling, testing and inspecting the product, and the means necessary to evaluate conformance by a manufacturer with those standards; (4) surveillance and periodic audits to ensure continued conformance with the applicable standards; (5) subcontracting work, such as testing, with proper arrangements to ensure competence, impartiality, and compliance with the applicable standards; (6) procedures to control records, documents and data, including review and approval by appropriately authorized personnel; and (7) control over use and display of certificates and marks of conformity.

Sections 431.27(b)(2) and (c)(2) of 10 CFR part 431 set forth criteria and guidelines for independence. A certification program must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity. Further, it should disclose any relationship it believes might appear to create a conflict of interest. ISO/IEC Guide 65 sets forth requirements for a certification program to be impartial and have a documented structure that safeguards impartiality. For example, each decision on certification is made by a person(s) different from those who carried out the evaluation or actual testing of the motor. Its policies and procedures must distinguish between product certification and other activities, its certification process must be free from any commercial, financial

and other pressures that might influence decisions, and it must have a committee structure where members are chosen to provide a balance of affected interests.

Sections 431.27(b)(3) and (c)(3) of 10 CFR part 431 set forth criteria and guidelines requiring that a certification organization must be qualified to operate a certification system in a highly competent manner. Of particular relevance is documentary evidence that materials for the correct performance of tests, and that the equipment is properly maintained and calibrated; (7) test equipment that is calibrated and verified prior to operation, and there is traceability to national standards of measurement; (8) documented instructions for the use and operation of equipment, manuals, and applicable test procedures; (9) retention of testing records with sufficient information to properly documented, well established and maintained according to the aforementioned ISO/IEC Guide 65 criteria. The Department's letter to UL, dated June 12, 2001, requested copies of the specific documents that have been approved by appropriately authorized UL personnel, and are used as the standard operating procedures for the UL EVS Program as it pertains to electric motors.

UL's letter to the Department, dated

testing. The *Motor Efficiency Guide* outlines the criteria that UL utilizes to evaluate motor efficiency in accordance with the energy efficiency regulations in the United States and Canada. It is used in combination with the EVS Manual for conducting evaluations in accordance with UL's EVS Program. It contains a tutorial on motor efficiency, information on correlation of stray load loss and the basis of acceptability for motor efficiency, sample selection, assessment

In Attachment 2 to the UL Petition, entitled "Independence," UL asserts that it is independent and impartial of any individual electric motor supplier or purchaser and is free from any other conflict of interest. A notarized Statement of Independence signed by an officer of the corporation was submitted in support of its assertion.

The Department's June 12, 2001, letter to UL requested additional documents concerning the policies or procedures

forth in ISO/IEC Guide 65. Furthermore, the UL EVS Program meets the ISO/IEC Guide 25 requirements for organization and management to ensure confidence that its independence of judgement and integrity are maintained at all times.

3. Operation of a Certification System in a Highly Competent Manner

Sections 431.27(b)(3) and (c)(3) of 10 CFR 431 require that the petitioner demonstrate that its certification

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and other pressures that might influence decisions, and it must have a committee structure where members are chosen to provide a balance of affected interests.

Sections 431.27(b)(3) and (c)(3) of 10 CFR part 431 set forth criteria and guidelines requiring that a certification organization must be qualified to operate a certification system in a highly competent manner. Of particular relevance is documentary evidence that establishes experience in the application of guidelines contained in International Standards Organization/ International Electrotechnical Commission (ISO/IEC) Guide 65: 1996, *General requirements for bodies operating product certification systems*, ISO/IEC Guide 27: 1983, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk*, ISO/IEC Guide 28: 1982, *General rules for a model third-party certification system for products*, as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25: 1990, *General requirements for the competence of calibration and testing laboratories*.

Sections 431.27(b)(4) and (c)(4) of 10 CFR part 431 set forth criteria and guidelines requiring that a certification program must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1). Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 25.

ISO/IEC Guide 25 addresses general requirements for establishing quality systems in laboratories and for recognizing their competence to carry out specified tests. In part, these requirements address: (1) Organization and management that are free from commercial, financial, and other pressures which might adversely affect quality of work; (2) independence of judgment and integrity; (3) supervision by persons familiar with the applicable test procedures; (4) a quality system, and manual which contains procedures for control and maintenance of documents, and procedures for periodic audit and review; (5) sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions, and that training of its personnel is kept up-to-date; (6) all items of equipment and reference materials for the correct performance of tests, and that the equipment is properly maintained and calibrated; (7) test equipment that is calibrated and verified prior to operation, and there is traceability to national standards of measurement; (8) documented instructions for the use and operation of equipment, manuals, and applicable test procedures; (9) retention of testing records with sufficient information to permit repetition of a test; and (10) where a laboratory is subcontracted to conduct testing, that laboratory complies with the requirements contained in ISO/IEC Guide 25 and is competent to perform the applicable testing activities. An example of a "subcontracted" laboratory would be a manufacturer's laboratory that tests motors for energy efficiency under the UL EVS Program.

Also, where 10 CFR 431.27(b)(4) requires a certification program to have satisfactory criteria and procedures for the sampling and selection of electric motors, likewise, ISO/IEC Guide 25 requires the use of documented sampling procedures and appropriate techniques to select samples.

B. Application of Evaluation Criteria

1. Standards and Procedures for Conducting and Administering a Certification System

Sections 431.27(b)(1) and (c)(1) of 10 CFR 431, and ISO/IEC Guide 65, set forth criteria and guidelines for the standards and procedures to be used in administering a certification system and granting a certificate of conformity.

In Attachment 1 to the UL Petition, entitled "431.27(c)(1) Standards and Operating Procedures," it is stated that "Underwriters Laboratories Inc. product safety certification program is an ISO Guide 65 compliant program" and that "UL's Energy Verification utilizes the same operation manuals as UL's product safety certification services with minor variations that are detailed in the UL Energy Verification Manual."

Advanced Energy's comments, dated October 12, 2001, and Emerson Motor Company's comments, dated October 15, 2001, generally assert that the UL EVS Program is not an ISO/IEC Guide 65 compliant program.

The Department's investigation found that the UL procedures for operating a certification system, provided as attachments to the Petition, were very general in nature and could be satisfactorily applied to any UL certification program. This raised the issue as to whether the specific standards and procedures by which the UL EVS Program operates are adequate, properly documented, well established and maintained according to the aforementioned ISO/IEC Guide 65 criteria. The Department's letter to UL, dated June 12, 2001, requested copies of the specific documents that have been approved by appropriately authorized UL personnel, and are used as the standard operating procedures for the UL EVS Program as it pertains to electric motors.

UL's letter to the Department, dated July 2, 2001, asserts that procedures which demonstrate compliance with sections 4.3, 4.8, 5 and 13 of ISO/IEC Guide 65 are contained in UL's *Conformity Assessment Manual*, the *Energy Verification Service Manual* (EVS Manual), and the *Client Interactive Programs Manual*. Copies were submitted to the Department during its investigative process. UL's letter, dated July 31, 2001, conveyed a copy of its *Motor Efficiency Guide*, 2001, which outlines the criteria UL uses to evaluate motor efficiency in the United States:

The UL *Conformity Assessment Manual* and *Client Interactive Programs Manual* establish general operating procedures that form a basis for UL certification programs, including the certification program for electric motors. The Department finds that ISO/IEC Guide 65 and the UL *Conformity Assessment* and *Client Interactive Programs Manuals* are consistent with each other in that they address, for example: (1) Steps necessary to evaluate conformance with relevant product standards, such as energy efficiency standards for electric motors; (2) competence of persons carrying out testing; (3) documented procedures for granting, maintaining and withdrawing certification; (4) control of documentation; and (5) surveillance to assure continued conformity with standards, such as energy efficiency standards for motors. The Department understands that these manuals are used in conjunction with the UL *EVS Manual* and *Motor Efficiency Guide*. The *Conformity Assessment Manual* and *Client Interactive Programs Manual* are further addressed in section II.3.c. of today's **Federal Register** Notice.

The EVS Manual outlines the standard criteria and operating procedures by which UL evaluates and verifies the energy efficiency of various types of products. In the case of electric motors, the EVS Manual refers to the energy efficiency test procedures found in 10 CFR 431.27. Its contents include efficiency verification procedures, documentation, sample selection, product testing, test facility evaluation, product construction evaluation, and manufacturers ongoing and follow-up

testing. The *Motor Efficiency Guide* outlines the criteria that UL utilizes to evaluate motor efficiency in accordance with the energy efficiency regulations in the United States and Canada. It is used in combination with the EVS Manual for conducting evaluations in accordance with UL's EVS Program. It contains a tutorial on motor efficiency, information on correlation of stray load loss and the basis of acceptability for motor efficiency, sample selection, assessment of a testing facility, test record data sheets, and guides the UL representative that conducts a facility assessment and witness testing. For example, the section entitled "Assessment of Client Facility," lists areas of a manufacturer's testing facility that UL would investigate under its certification program. These include investigation of a manufacturer's quality program system as to whether (1) an ISO 9001 or ISO 9002 quality assurance program is in place, (2) proficiency of personnel is witnessed, (3) the motor testing laboratory environment is properly maintained, (4) testing equipment is properly maintained and calibrated, and (5) testing of the energy efficiency of electric motors is conducted in accordance with 10 CFR 431.23.

Also, UL submitted the revised *Motor Efficiency Guide* ULS–02194–ZWAA, "Test Record Data Sheet" pages 1 through 14, and a page ULS–02194-ZWAA "Appendix D," page 0001, "Manufacturer's Test Equipment." The Department understands that this revised guide supersedes the above-referenced earlier version and is used in combination with the *Energy Verification Services Manual* for conducting evaluations in accordance with UL's EVS Program. Further, UL provided the Department a copy of UL's specific standard operating procedures which are utilized as part of the UL EVS Program. These included data sheets that describe the test methodology, follow-up inspections to verify electric motor efficiency, and an exemplary "Certificate of Compliance."

The Department has examined UL's Petition and all other documents described above, and concludes that these documents provide evidence of satisfactory standards and procedures for UL to conduct its EVS Program to satisfy the requirements set forth in 10 CFR 431.27(b)(1) and (c)(1), and the guidelines contained in ISO/IEC Guide 65.

2. Independence

Sections 431.27(b)(2) and (c)(2) of 10 CFR part 431, and ISO/IEC Guide 65, set forth criteria and guidelines for impartiality.

In Attachment 2 to the UL Petition, entitled "Independence," UL asserts that it is independent and impartial of any individual electric motor supplier or purchaser and is free from any other conflict of interest. A notarized Statement of Independence signed by an officer of the corporation was submitted in support of its assertion.

The Department's June 12, 2001, letter to UL requested additional documents concerning the policies or procedures that distinguish (a) a direct or indirect relationship with a motor manufacturer, importer, or private labeler that is in a situation where UL both provides safety certification services and an EVS for such entity's motors, and (b) where a manufacturer's representative serves, for example, on UL Standards Technical Panel UL 1004, Electric Motors. Such relationships need more explanation as to why each would not create or appear to create a conflict of interest, compromise UL's independence, or bias information presented to UL for the purposes of compliance with 10 CFR part 431.

UL's letter to the Department, dated July 2, 2001, asserts that UL is "independent and impartial of any individual supplier or purchaser and is free from any other conflict of interest," and that "UL has no stockholders, i.e., no direct or indirect relationship with manufacturers, importers or private labelers." UL explains that it is incorporated as a not-for-profit organization in the State of Delaware, and its policy regarding conflict of interest is both addressed as a condition for employment and in its code of ethics. Also, chapter 2 of the UL "*Client Interactive Programs Manual*" sets forth procedures whereby each decision on certification is made by a person or persons different from those who carried out a motor efficiency evaluation. Furthermore, UL explains that its standards development process for safety matters is organizationally separated from its certification operations. Thus, a manufacturer's representative who participates in a UL Technical Panel as part of the standards development process only provides technical input to standards and has no influence over certification functions, such as the EVS Program for Electric Motors.

The Department has examined the above documents and concludes that they provide sufficient evidence that the UL EVS Program meets the requirements for independence which are set forth in 10 CFR 431.27(b)(2) and(c)(2), and the guidelines for objectively and impartiality of technical persons and committees which are set forth in ISO/IEC Guide 65. Furthermore, the UL EVS Program meets the ISO/IEC Guide 25 requirements for organization and management to ensure confidence that its independence of judgement and integrity are maintained at all times.

3. Operation of a Certification System in a Highly Competent Manner

Sections 431.27(b)(3) and (c)(3) of 10 CFR 431 require that the petitioner demonstrate that its certification program operates in a highly competent manner by establishing its experience in the application of certain ISO/IEC Guides, including ISO/IEC Guides 65, 27 and 28, as well as experience in overseeing compliance with the guidelines in ISO/IEC Guide 25.

In Attachment 3 to the UL Petition, "Testing Experience and Expertise," UL asserts that it has been conducting product safety evaluations for 105 years, and that in 1999 alone it conducted more than 94,300 product evaluations. As to further experience in operating a certification system and application of guidelines contained in ISO/IEC Guide 65, UL states in Attachment 3, "Summary of UL's Accreditations," that it is involved in more than 80 accreditation programs that are involved with the evaluation and testing of products for public safety. It states that its competence as a product certification organization has been, for the most part, established under the criteria in ISO/IEC Guides 25 and 65. Copies of UL's accreditation documents from the American National Standards Institute (ANSI) and the Standards Council of Canada (SCC), and recognition as a Nationally Recognized Testing Laboratory from the Occupational Safety and Health Administration were attached to the UL Petition.

a. General Operating Requirements (ISO/IEC Guide 65)

Both Advanced Energy and Emerson Motor Company state that "UL has a solid reputation in testing services and quality assurance for safety programs," and is capable of administering safety programs because they are ISO/IEC Guide 65 compliant, as demonstrated by the ANSI accreditation. However, both Advanced Energy and Emerson Motor Company "find no evidence of this being true with respect to UL's Energy Verification Program." Advanced Energy's letter, dated October 12, 2001, asserts that UL's EVS Program has the potential to confuse customers in the marketplace and unduly burden motor manufacturers, because UL would visit each motor manufacturer's facilities twice per year, require testing of an unspecified number of sample motors,

and require inspection of the motor manufacturing processes. Advanced Energy and Emerson Motor Company state that the UL EVS Program is not sufficient for the purposes of EPCA on motor efficiency, and that it conflicts with the intent of EPCA and 10 CFR part 431.

In response to the above comments from Advanced Energy and Emerson Motor Company, UL's letter to the

in the product certification process. UL's July 2nd letter conveyed resumes of certain staff involved in the EVS Program.

As to any undue burden on a manufacturer caused by UL's biannual inspections of a motor facility, the Department understands that UL's surveillance program consists of two random unannounced audits of the manufacturer's facilities, and such

Efficiency (Mark or UL Mark) on an electric motor, such as the use of a counterfeit UL Mark. Under ISO/IEC Guide 27, the certification program would then be required to have strong corrective procedures in place. Such corrective measures would depend upon the nature of the misuse and the desire by the certification program to protect the integrity of its mark.

The Department has examined the UL

In view of ISO/IEC Guide 28, the Department examined the UL EVS Manual that outlines the criteria by which UL performs third-party energy efficiency certifications for various products, including electric motors. In sum, the UL EVS Manual contains the general operating procedures and business document formats applicable to UL's EVS Program, that when utilized in conjunction with the procedures and technical document formats in the UL

facilities and are subject to review and audit by UL. Furthermore, the "Client Test Data Program" establishes policies and procedures consistent with ISO/IEC Guide 25 which address operating a laboratory quality system, testing equipment, qualification of personnel, test standards and procedures for testing, training, assessment of a test facility, program administration, documentation, and issuing a certificate of qualification. The Department

with UL's CTDP." According to the January 24 letter, UL has determined that Guide 25 as written "can not solely be the basis on which it accepts responsibility for the test data generated from a manufacturer's laboratories," and as a result, UL's Client Test Data Program requirements are "an adaptation of Guide 25, with necessary changes made, so that UL has an adequate basis for taking responsibility

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and require inspection of the motor manufacturing processes. Advanced Energy and Emerson Motor Company state that the UL EVS Program is not sufficient for the purposes of EPCA on motor efficiency, and that it conflicts with the intent of EPCA and 10 CFR part 431.

In response to the above comments from Advanced Energy and Emerson Motor Company, UL's letter to the Department, dated October 22, 2001, asserts that Advanced Energy's view of the UL certification program is based upon limited exposure to UL's technical expertise and other portions of the EVS Program related to electric motors. Also, UL believes that Emerson Motor Company's concerns are addressed under 10 CFR part 431 concerning the use of a certification program.

The Department examined the above UL accreditations and found that the majority of them concerned product safety certification and there was no explicit reference to the certification of energy efficiency for electric motors. The Department's June 12, 2001, letter to UL requested evidence as to whether the UL EVS Program for electric motors is, or will become, accredited by another organization, such as ANSI. Also, the Department's letter requested evidence of the technical qualifications and experience held by UL personnel directly involved with the UL EVS Program, such as technical evaluations and decisions concerning critical motor construction features, performance, and testing for energy efficiency using IEEE 112–1996 Test Method B and CSA C390–93 Test Method (1).

Thereafter, the Department received a letter, dated June 26, 2001, from ANSI which affirms that the UL EVS Program is covered under the scope of the ANSI accreditation for Electrical and Electronic Products, Processes, Systems, and Services in accordance with ISO/IEC Guide 65. Also in response to the Department's June 12 letter, UL's letter, dated July 2, 2001, asserts that UL has documented procedures to ensure that qualified personnel review the evaluation of motors for compliance with energy efficiency requirements, and written instructions that set forth the duties and responsibilities of such personnel. UL staff undergoes continual on-the-job training and is evaluated through a documented performance appraisal process. UL has supervisory and review staff with the necessary education, training, skill, abilities and experience for evaluating motors for compliance with energy efficiency requirements, and its management structure provides for the supervision of reviewers and other personnel involved in the product certification process. UL's July 2nd letter conveyed resumes of certain staff involved in the EVS Program.

As to any undue burden on a manufacturer caused by UL's biannual inspections of a motor facility, the Department understands that UL's surveillance program consists of two random unannounced audits of the manufacturer's facilities, and such audits can be conducted separately or in conjunction with its motor safety investigations, thereby lessening the compliance burden on a manufacturer. Therefore, the Department believes that the UL EVS Program does not present any undue burden on a manufacturer.

As to the above-referenced comments from Advanced Energy and Emerson Motor Company concerning the UL EVS Program not meeting the requirements for a "certification program" in section 345(c) of EPCA and in 10 CFR 431.123(a)(1), the Department finds no facts or convincing arguments that support the assertions of Advanced Energy or Emerson Motor Company that the UL certification program is "not sufficient" or "conflicts with the intent" of EPCA, or "would place additional burden on manufacturers." Such issues involving the merits and use of an accredited laboratory or a certification program were argued at length under section II.C.2. and 3. of the Preamble to the Final Rule for Electric Motors, 64 FR 54124–26 (October 5, 1999) and need not be repeated here. The Department continues to believe that use of a certification program, such as the UL EVS Program, where it meets the requirements set forth in 10 CFR 431.27(a) will provide adequate assurance of compliance with EPCA's energy efficiency requirements. Because the assertions of Advanced Energy and Emerson Motor Company are merely arguments against the wisdom of the final rule and of the Departments regulations themselves, and are not directed at the UL Petition, they are rejected.

b. Guidelines for Corrective Action in the Event of Misapplication of a Mark of Conformity (ISO/IEC Guide 27)

ISO/IEC Guide 27 identifies procedures which a certification program should consider in response to a reported misuse of its registered mark of conformity. According to paragraph 1.1 (a) of ISO/IEC Guide 27, "misuse" may take a variety of forms, such as a mark of conformity appearing on a non-certified product. The Department construes this to mean the unauthorized use by a manufacturer or private labeler of the UL Verification Mark for Energy Efficiency (Mark or UL Mark) on an electric motor, such as the use of a counterfeit UL Mark. Under ISO/IEC Guide 27, the certification program would then be required to have strong corrective procedures in place. Such corrective measures would depend upon the nature of the misuse and the desire by the certification program to protect the integrity of its mark.

The Department has examined the UL *Conformity Assessment Manual* and finds that it contains procedures for reporting the misuse of any UL Mark used to identify certified products, such as any unauthorized or counterfeit use of a UL Registered mark. The Department concludes that the UL *Conformity Assessment Manual* satisfactorily follows the guidelines for corrective action to be taken by a certification organization in the event of misapplication of a mark of conformity to an electric motor set forth in 10 CFR 431.27(c)(3) and ISO/IEC Guide 27.

c. General Rules for a Model Third-Party Certification System for Products (ISO/IEC Guide 28)

ISO/IEC Guide 28 addresses minimum guidelines for a third-party certification system in determining conformity with product standards through sample selection, initial testing and assessment of a factory quality management system, follow-up surveillance, subsequent testing of samples from the factory, and the use of a mark of conformity.

Consistent with the above ISO/IEC Guide 28 guidelines, Attachment 1 to the UL Petition, entitled "431.27(c)(1) Standards and Operating Procedures," describes the UL certification of motors under its EVS Program as being based upon: (1) Satisfactory evaluation and testing to the requirements of the applicable standard, which in this case is under 10 CFR 431.23; (2) continued surveillance at the manufacturing location; (3) initial motor evaluation that consists of an examination of motor efficiency test data, test facilities, and motor design and construction; (4) selection of samples and witness testing by a UL representative; (5) where an electric motor is found to be in compliance, authorization to apply a mark of conformity; and (6) procedures for withdrawal or cancellation of a mark of conformity if an electric motor is found in non-conformance. Also, UL submitted its *Energy Verification Service Manual* as evidence that its EVS Program for electric motors follows the guidelines contained in ISO/IEC Guide 28.

In view of ISO/IEC Guide 28, the Department examined the UL EVS Manual that outlines the criteria by which UL performs third-party energy efficiency certifications for various products, including electric motors. In sum, the UL EVS Manual contains the general operating procedures and business document formats applicable to UL's EVS Program, that when utilized in conjunction with the procedures and technical document formats in the UL *Conformity Assessment Manual* and *Motor Efficiency Guide*, correspond to the "model" procedures and example forms contained in ISO/IEC Guide 28. The Department finds that, in general, both ISO/IEC Guide 28, and the UL EVS and *Conformity Assessment Manuals* address: (1) The basic conditions and rules for a manufacturer to obtain and retain a certificate of conformity or mark of conformity; (2) initial inspection of a motor factory and a manufacturer's quality management system; (3) sample selection; (4) initial testing; (5) product evaluation; (6) surveillance; (7) identification of conformity in the form of a certificate of conformity or mark of conformity; (8) withdrawal of a certificate or mark of conformity by the certification program; and (9) guidelines on corrective action for misuse of a certificate or mark of conformity. The Department concludes that the UL EVS Program satisfies the general guidelines for a model third-party certification system under 10 CFR 431.27(c)(3) and the guidelines set forth in ISO/IEC Guide 28.

Also, ISO/IEC Guide 28 requires a certification program operating at a national level, such as under section 345(c) of EPCA which requires manufacturers to certify compliance through a "nationally recognized" certification program, to have a suitable organizational structure and utilize personnel, equipment, and operating procedures that comply with the criteria for a testing laboratory in ISO/IEC Guide 25. Consistent with these guidelines, the UL *Conformity Assessment Manual* and *Client Interactive Programs Manual* provide general policies, practices and procedures that govern UL's conformity assessment services. These include submitting a product for investigation, conduct of the investigation, witnessed test data procedures, compliance management, issuance of the UL Mark, and follow-up services. The Department finds that the "Client Test Data Program," contained in the *Client Interactive Programs Manual*, particularly addresses the UL EVS Program, whereby tests for energy efficiency are conducted at client facilities and are subject to review and audit by UL. Furthermore, the "Client Test Data Program" establishes policies and procedures consistent with ISO/IEC Guide 25 which address operating a laboratory quality system, testing equipment, qualification of personnel, test standards and procedures for testing, training, assessment of a test facility, program administration, documentation, and issuing a certificate of qualification. The Department understands that both the *Conformity Assessment* and *Client Interactive Programs Manuals* are used in conjunction with UL's product-specific operations manuals, such as the UL *Energy Verification Service Manual*, that applies specific procedures to the acceptance of energy efficiency test data for electric motors.

The Department has examined the contents of these manuals and concludes that they satisfy the guidelines for conducting a model third-party certification program at the national level as applicable under 10 CFR 431.27(c)(3) and ISO/IEC Guide 28.

d. General Requirements for the Competence of Testing Laboratories (ISO/IEC Guide 25)

Third-party certification programs must have experience overseeing compliance with the guidelines contained in ISO/IEC Guide 25. ISO/IEC Guide 25 sets out the general requirements by which a laboratory must operate if it is to be recognized as competent to carry out specific tests.

According to Attachment 3 to the UL Petition, "Summary of UL's Accreditations," the majority of UL's accreditations cover UL as a testing laboratory and product safety certification organization. Although each accreditor to a certain extent establishes its own criteria, for the most part, two sets of criteria are utilized for evaluating the competence of a testing laboratory and product certification organization: ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories* and ISO/IEC Guide 65 *General Requirements for Bodies Operating Product Certification Systems*. UL's written policies and associated operating procedures were designed using the criteria of these two guides.

UL's letter to the Department, dated January 24, 2002, asserts that UL has "significant experience understanding, adapting, documenting and applying the requirements of Guide 25 to manufacturers' laboratories as evidenced by the [Client Test Data Program] CTDP documentation and overseeing compliance of manufacturers with UL's CTDP." According to the January 24 letter, UL has determined that Guide 25 as written "can not solely be the basis on which it accepts responsibility for the test data generated from a manufacturer's laboratories," and as a result, UL's Client Test Data Program requirements are "an adaptation of Guide 25, with necessary changes made, so that UL has an adequate basis for taking responsibility for the test data from a manufacturer's laboratory." For example, even though not required by ISO/IEC Guide 25, UL requires repeat testing and requires that the data from that repeat testing correlate with the original test data generated by the manufacturer. In addition, UL conducts audits of manufacturers' laboratories under the Client Test Data Program, whereas ISO/IEC Guide 25 only requires a laboratory to audit itself. UL believes such additional oversight requirements are necessary in order for it to accept responsibility for the test data. Further, UL asserts that it does not rely solely on a manufacturer's self-monitoring of laboratory competence through the laboratory's quality system; rather, UL itself "directly monitors those aspects of laboratory operations that contribute to the accuracy of the test data produced." Thus, UL adds a second level of assurance through audit testing and subsequent data correlation. UL's January 24 letter concludes with the assertion that it has "demonstrated experience overseeing a laboratory not just to Guide 25 requirements, but to even more stringent requirements related to transfer of responsibility for test data."

The Department compared ISO/IEC Guide 25 with UL's CTDP as it would apply to a manufacturer's motor efficiency testing laboratory under a certification program and found them to be consistent with each other. Under UL's CTDP, a motor manufacturer's laboratory must, in sum, have a quality program that is subject to assessment and reassessment, have physical resources, equipment, qualified personnel and procedures that conform to national and international accreditation criteria, and have test data that is reviewed and subject to a regular audit. The Department found, for example:

- Where ISO/IEC Guide 25 sets forth requirements for organization and management of a testing laboratory to ensure proper supervision and integrity of data, similarly, the UL CTDP requires a testing laboratory to have procedures and policies in place to assure accuracy and correctness of the performance of the tests, test data developed, and

results reported, as well as qualified staff to oversee testing and ensure proper documentation.

- Where ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have a quality system with documented policies and procedures, such as for the organization and operation of a testing laboratory, traceability of measurements, calibration of equipment, test procedures used, procedures for corrective actions and

accredited. Nevertheless, the Department believes that the quality program to which a motor efficiency testing laboratory adheres under a certification program that is "nationally recognized" for the purposes of EPCA should be inherently stringent because its efficiency measurements are the basis for compliance determinations for many motors. Therefore, the Department believes that a testing facility operated

equipment, test methods, sampling, and records.

In Attachment 4 to the UL Petition entitled, "431.27(c)(4) Expertise in Motor Test Procedures," it is stated that "UL has been providing Energy Verification certification services since 1995," and that "UL has evaluated motors in sizes ranging from 1 hp to 200 hp using the standards IEEE 112 Test Method B or CSA C390." According to the Petition, UL publishes a *Directory of*

Furthermore, UL's letter dated September 20, 2001, asserts that the test procedures in "CSA C390–93 method B" [sic] are similar to those procedures already in place under other CSA International Standards as well as UL Standards, and that the data and information recorded to verify energy efficiency is some of the same data and information required under the testing it conducts on a routine basis and which follows UL Standard 1004, "Electric

other portions of the UL's EVS Program, including staff with specific technical capability related to motor testing, were not completed at that time, nor had Advanced Energy been exposed to the "full expertise" within the UL Program.

UL's letter to the Department, dated February 21, 2002, asserts that its experience in standards development, testing, and safety evaluation of motors according to the requirements of UL and other U.S. and International standards

electric motors tested for energy efficiency. Based on the National Institute of Standards and Technology report, NISTIR 6092, "Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431: Title 10, Code of Federal Regulations," January 1998, which analyzed various criteria and sampling plans proposed for establishing compliance with the nominal full-load efficiency levels prescribed by EPCA, 42

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results reported, as well as qualified staff to oversee testing and ensure proper documentation.

• Where ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have a quality system with documented policies and procedures, such as for the organization and operation of a testing laboratory, traceability of measurements, calibration of equipment, test procedures used, procedures for corrective actions and audits, likewise, the UL CTDP requires a manufacturer's testing laboratory to have procedures and policies that assure accuracy and correctness of the performance of a test, test data developed, and results reported, and oversight of sampling, testing, data recording and periodic audits.

• Where ISO/IEC Guide 25 requires a manufacturer's testing laboratory to have sufficient personnel having the necessary education, training, technical knowledge and experience, the UL CTDP requires similar qualifications of testing laboratory personnel.

• Where ISO/IEC Guide 25 requires the proper environment and equipment for performance of testing, and that such equipment is properly maintained and calibrated, the UL CTDP requires the proper environment for testing, and requires that equipment is fully operational, calibrated and traceable to nationally recognized standards of measurement.

• Where ISO/IEC Guide 25 requires the testing laboratory to maintain a record system of original observations, calculations, and derived data sufficient to permit repetition of a test, similarly, the UL CTDP requires data recording and test reports, and other documentation of initial assessments and reassessments and verification. Also, the UL CTDP requires that reference standards and test procedures used by the testing laboratory are current.

• Both ISO/IEC Guide 25 and the UL CTDP require test reports or test certificates that contain similar information.

In view of these comparisons, the Department believes that UL's EVS Program satisfies the requirement of 10 CFR 431.27(c)(3) for documentary evidence that establishes experience in operating a certification system and overseeing compliance with the guidelines for competence contained in ISO/IEC Guide 25 to test electric motors for energy efficiency.

Also, 10 CFR 431.27 does not require a certification program to actually operate its own motor testing laboratory, nor is a laboratory operated or observed by a certification program required to be accredited. Nevertheless, the Department believes that the quality program to which a motor efficiency testing laboratory adheres under a certification program that is "nationally recognized" for the purposes of EPCA should be inherently stringent because its efficiency measurements are the basis for compliance determinations for many motors. Therefore, the Department believes that a testing facility operated or observed by a certification program should follow the guidelines in ISO/IEC Guide 25: 1990. The Department understands that, in general, the evaluation of a motor testing laboratory under ISO/IEC Guide 25 includes an on-site assessment, proficiency testing, an audit of a laboratory's policies and operational procedures, review of staff qualifications, checks of proper maintenance and calibration of test equipment, and records review. Likewise, evaluation of a motor testing laboratory under the UL EVS includes evaluation of the manufacturer's testing facility, control and maintenance and calibration of test equipment, factory audits for continued compliance, document control, periodic audits of the operational and technical consistency of the program, control of non-conformances, staff training, and witness testing.

The Department believes that the goal of a third-party certification program is to provide assurance that test results are accurate, valid, and capable of being replicated. Tests must be performed with a degree of oversight so that the results are not influenced by marketing and production concerns. The Department believes that the UL EVS Program essentially follows the ISO/IEC 25 Guidelines.

4. Expertise in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1)

Section 431.27(b)(4) of 10 CFR part 431 set forth evaluation criteria and guidelines whereby personnel conducting a certification program should be expert and experienced in the content and application of IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors. The program must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency, and provide documents that establish experience in applying the guidelines for confidence in testing laboratories contained in ISO/IEC Guide 25. Such guidelines address quality audits and reviews, personnel, equipment, test methods, sampling, and records.

In Attachment 4 to the UL Petition entitled, "431.27(c)(4) Expertise in Motor Test Procedures," it is stated that "UL has been providing Energy Verification certification services since 1995," and that "UL has evaluated motors in sizes ranging from 1 hp to 200 hp using the standards IEEE 112 Test Method B or CSA C390." According to the Petition, UL publishes a *Directory of Electric, Gas Fired, and Oil-Fired Equipment Verified for Energy Efficiency 1999*, which includes electric motors, and asserts that each member of its engineering staff has at least four-year Bachelor of Science degree in engineering. Also, UL submitted to the Department a copy of its *Conformity Assessment Manual, EVSs Manual, Client Interactive Programs Manual*, and *Motor Efficiency Guide* as evidence of its expertise in electric motor test procedures.

The Department's letter to UL, dated June 12, 2001, requested evidence as to the nature and extent of training that current staff actually involved with the EVS Program regularly undergoes to maintain proficiency with the evaluation of motor designs and construction, and the practice of energy efficiency testing.

UL's letter, dated July 2, 2001, asserts that UL has documented procedures to ensure that qualified personnel review the evaluation of motors for compliance with energy efficiency requirements. These include the written instructions for the duties and responsibilities of personnel with respect to the evaluation of motor efficiency investigations, as well as qualification requirements to assure that its personnel are qualified in the scientific disciplines related to energy efficiency. Further, UL asserts that its staff undergoes continual, on-the-job training and each person is evaluated through a documented performance appraisal process. UL has supervisors as review staff with the necessary education, training, skill, abilities and experience for evaluating motors for compliance with energy efficiency requirements. Also, UL has developed its own *Motor Efficiency Guide* as a reference for staff involved in conducting motor efficiency evaluations. UL's management structure provides for the supervision of reviewers and other personnel involved in the product certification process. UL's letter, dated September 20, 2001, contains the names of UL technical staff involved with the EVS Program, indicates their experience with CSA C390–93 and IEEE 112–1996, and contains a resume for each.

Furthermore, UL's letter dated September 20, 2001, asserts that the test procedures in "CSA C390–93 method B" [sic] are similar to those procedures already in place under other CSA International Standards as well as UL Standards, and that the data and information recorded to verify energy efficiency is some of the same data and information required under the testing it conducts on a routine basis and which follows UL Standard 1004, "Electric Motors," UL Standard 2111, "Overheating Protection for Motors," UL 547, "Thermally Protected Motors," and CSA C22.2 No. 77, "Overheating Protection for Motors," and CSA C22.2 No. 100, "Motors and Generators." UL asserts that the data and information recorded for energy verification testing is some of the same data and information required under the above-referenced test procedures, which it uses in an automated spreadsheet program entitled "Motor Efficiency Testing Program V3.0," UL copyrighted 1994 and 1997, to calculate motor efficiency. The September 20 letter from UL compares the IEEE 112 and CSA C390 test procedures with similar procedures in the above "UL" and "CSA" standards for performance and safety.

Advanced Energy's letter, dated October 12, 2001, expresses concern with "the level of 'expert' knowledge regarding motor testing." Advanced Energy asserts that UL is thorough in the documentation of procedures and calibrations of laboratory equipment, but weak in motor efficiency testing, test data analysis, and in its prescriptive audit process that does not involve motor testing, review of motor test data, or proficiency testing by a laboratory.

Emerson Motor Company's letter, dated October 15, 2001, expresses concern that UL uses a motor manufacturer's testing facilities that have been "reviewed" by a UL staff member, but there is no evidence of the staff member's credentials, knowledge, level of training and certification with regard to motor efficiency testing laboratories.

In response to the above comments from Advanced Energy and Emerson Motor Company, UL's letter, dated October 22, 2001, asserts that Advanced Energy's view of the UL certification program is based upon limited exposure to UL's technical expertise when both UL and Advanced Energy were exploring a business relationship in the 1990s. According to UL, a laboratory assessment is one part of its Client Test Data Program under which external testing, such as by Advanced Energy, would be accepted by UL. However, other portions of the UL's EVS Program, including staff with specific technical capability related to motor testing, were not completed at that time, nor had Advanced Energy been exposed to the "full expertise" within the UL Program.

UL's letter to the Department, dated February 21, 2002, asserts that its experience in standards development, testing, and safety evaluation of motors according to the requirements of UL and other U.S. and International standards and the corresponding data acquisition necessary to accomplish these endeavors, is "equivalent to and demonstrative of the indicated UL staff having the necessary proficiency and expertise to conduct energy efficiency evaluations." In sum, the experience with CSA C390–93 and IEEE Standard 112 of the five UL staff persons engaged in the UL EVS Program ranges from one to four years, which is in addition to their four to 13 years experience with test procedures for motor safety.

In the Department's view, any technically qualified person could satisfy the criteria for expertise in the content, application, and methodologies of the test procedures pursuant to 10 CFR 431.27(b)(4) if that person: (1) Is proficient in the test methodology of IEEE Standard 112 Test Method B and CSA C390–93 Test Method (1); (2) is familiar with the electrical, mechanical and environmental capabilities of a testing laboratory system, (3) understands how to prepare and mount a motor for testing, which includes the connection and operation of the test equipment, (4) is competent in calibrating test equipment; and (5) is competent with data collection and analysis. UL's experience in standards development, testing and evaluation of motors to both U.S. and International safety and similar energy efficiency procedures and methodologies provide sufficient evidence of UL staff having the necessary proficiency and expertise to conduct energy efficiency evaluations under ISO/IEC Guide 25. Thus, the Department believes that the qualifications of the UL Staff named in the above September 20 letter, regular additional training, and monitoring by UL management, satisfy the general requirements for the training, technical knowledge, and experience of testing laboratory personnel under 10 CFR 431.27(b)(4) and (c)(4).

5. Sampling Criteria and Procedures for Selecting an Electric Motor for Energy Efficiency Testing

Section 431.27(b)(4) of 10 CFR 431 requires a certification organization to have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. Based on the National Institute of Standards and Technology report, NISTIR 6092, "Analysis of Proposals for Compliance and Enforcement Testing Under the New Part 431: Title 10, Code of Federal Regulations," January 1998, which analyzed various criteria and sampling plans proposed for establishing compliance with the nominal full-load efficiency levels prescribed by EPCA, 42 U.S.C. 6313(b)(1), the Department determined that "the NEMA proposal for compliance testing provides statistically meaningful sampling procedures." Moreover, the NIST analysis was extensive in order to determine whether a particular sampling plan would be valid for the purpose of establishing compliance with EPCA motor efficiency levels. Also, section 10.5 of ISO/IEC Guide 25: 1990 requires the use of documented procedures and appropriate statistical techniques to select samples.

In Attachment 1 of its Petition, UL describes its sample selection process as one where representative samples from the manufacturer's production are selected for use in testing and witnessed by UL engineering staff. According to the Petition, representative samples are those that, when reviewed as a group, can adequately represent a line of similar models that use the same major energy consuming components. UL asserts that the objective in selecting representative samples is to obtain sufficient confidence that the series of motors verified meet the applicable energy efficiency standard while at the same time minimize the number of tests the manufacturer is required to perform. Samples are selected to represent an entire range of motors. Furthermore, as part of a manufacturer's ongoing production testing, UL audits the number of samples tested and the frequency of testing and test results which are documented by the manufacturer. The manufacturer is required to document the test results, which UL audits as part of each follow-up visit.

Notwithstanding UL's above assertions, the Department found no evidence that the samples used for a motor manufacturer's test data was selected randomly, that a UL representative participated in the sample selection process or witnessed any of the initial testing, or that it was clear that "two samples" were sufficient to statistically validate the energy efficiency of an entire line of electric motors.

Subsequently, UL submitted to the Department, under cover letter dated

July 31, 2001, a copy of its *Motor Efficiency Guide* (Guide), to outline the criteria by which UL evaluates motor efficiency in accordance with energy efficiency regulations. The Department examined the Guide and found that appendix D contained a section entitled "Sample Selection," Form Page 8 on ULS–02194–ZWAA–Appendix–0001, which set forth procedures whereby samples consisting of production units

IEC Guide 65, Emerson Motor Company's comments, dated October 15, 2001, object to any requirement to display a compliance certification labeling mark, such as the UL Mark, on an electric motor either in place of or in addition to the required Compliance Certification number supplied by the Department of Energy as provided for in 10 CFR 431.82(a)(1)(ii). Emerson Motor Company asserts that such additional

catalogs and other marketing materials according to 10 CFR 431.82(b)(2). The Department believes that display of the UL Mark is a matter between UL and the manufacturer or private labeler.

III. Conclusion

A. Interim Determination

In view of the UL Petition and supporting documents, the public comments received, the Department's

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July 31, 2001, a copy of its *Motor Efficiency Guide* (Guide), to outline the criteria by which UL evaluates motor efficiency in accordance with energy efficiency regulations. The Department examined the Guide and found that appendix D contained a section entitled "Sample Selection," Form Page 8 on ULS–02194–ZWAA–Appendix–0001, which set forth procedures whereby samples consisting of production units are "randomly selected by UL Staff" and appeared to satisfy one of the Department's concerns. However, in the "Definitions" section of the Guide, the Department found that the definition of "nominal full load efficiency" was not consistent with the definition of "nominal full load efficiency" in 10 CFR 431.2, nor did the Guide contain a definition of the term "Sample." Also, the "Basis of Acceptability," on Form Page 11 of appendix D in the Guide, which provided procedure to calculate a tolerance for "permitted values of energy efficiency" using a "Coefficient K" and required that the "actual motor efficiency value will be not less than the associated minimum value," was inconsistent with 10 CFR 431.24, "Determination of efficiency," and 10 CFR 431.42, "Energy conservation standards." Thereafter, UL submitted to the Department, under cover letters dated January 11 and January 28, 2002, a copy of the revised pages in the Guide that were in question. These included a definition for the term "sample," revised sample selection criteria, identification of UL's initial factory production visit to select the random samples, and corrections to the "Statistical Test Method" formulas and the "Basis of Acceptability" in order to be consistent with the applicable provisions in 10 CFR 431.

The Department concludes that the above documents, as corrected by UL, are consistent with 10 CFR 431.24 and 431.42, and satisfy the criteria and procedures for the selection and sampling of electric motors to be tested for energy efficiency under 10 CFR 431.27(b)(4).

C. Other Matters

In a separate matter related to 10 CFR 431.82, "Labeling requirements," and section 14, "Use of licenses, certificates and marks of conformity," in the ISO/IEC Guide 65, Emerson Motor Company's comments, dated October 15, 2001, object to any requirement to display a compliance certification labeling mark, such as the UL Mark, on an electric motor either in place of or in addition to the required Compliance Certification number supplied by the Department of Energy as provided for in 10 CFR 431.82(a)(1)(ii). Emerson Motor Company asserts that such additional marks would add significant financial burdens on motor manufacturers and confuse the motor purchaser. Further, Emerson Motor Company asserts that the Department of Energy Compliance Certification number is the only mark allowed.

Advanced Energy's comments, dated October 12, 2001, object to the proposed UL requirement that a manufacturer display the UL Mark. Advanced Energy asserts that there would be an added financial burden to a manufacturer because of being forced to display the UL Mark, with possible confusion to a motor purchaser attempting to distinguish between one motor with a Compliance Certification number alone and another motor with both a Compliance Certification number and the UL mark.

Section 431.82(a)(1) of 10 CFR 431 requires a manufacturer or private labeler to mark the permanent nameplate of an electric motor clearly with the motor's nominal full load efficiency and a Compliance Certification number supplied by the Department. However, 10 CFR 431.82(a)(3) permits the optional display of the encircled lowercase letters "ee" or some comparable designation or logo on either the permanent nameplate of an electric motor, a separate plate, or decalcomania. The UL Mark falls into the "optional display" category and would be comparable to the encircled lowercase letters "ee." Therefore, display of the UL Mark would be permitted in addition to the labeling requirements set forth under section 431.82(a)(1). But, such optional display is not a replacement mark for the motor's nominal full load efficiency and the Compliance Certification number supplied by the Department. The optional logo or designation, (such as the UL Mark) may also be used in catalogs and other marketing materials according to 10 CFR 431.82(b)(2). The Department believes that display of the UL Mark is a matter between UL and the manufacturer or private labeler.

III. Conclusion

A. Interim Determination

In view of the UL Petition and supporting documents, the public comments received, the Department's independent investigation, and UL's corrections to its Program described above, the Department concludes that the UL EVS Program for Electric Motors satisfactorily meets the criteria in 10 CFR 431.27.

Therefore, the Department's interim determination is, as of today's **Federal Register** notice, to classify the UL EVS Program for Electric Motors as nationally recognized in the United States for the purposes of section 345(c) of EPCA. In the event that a final determination recognizes the UL EVS Program for Electric Motors as a nationally recognized certification program pursuant to the criteria in 10 CFR 431.27, and the Program thereafter fails to meet the criteria for recognition, the Department can withdraw its recognition after following the regulatory procedural requirements in 10 CFR 431.28(g).

B. Future Proceedings

Pursuant to 10 CFR 431.28(d), the Department will notify UL in writing of this interim determination. Today's **Federal Register** notice solicits comments, data and information concerning the Department's interim determination to classify the UL EVS Program for Electric Motors as nationally recognized in the United States. After review of information submitted concerning the interim determination, the Department will publish in the **Federal Register** an announcement of its final determination. See 10 CFR 431.28(e).

Issued in Washington, DC, on June 28, 2002.

Douglas L. Faulkner,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02–16820 Filed 7–3–02; 8:45 am]

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Federal Register

Friday,
July 5, 2002

Part VI

Department of Education

34 CFR Part 200

Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA92

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

made by the NCLB Act. These included the following:

- Clarifying in § 200.1(b)(2) that States have the flexibility to develop academic content standards in reading/language arts and mathematics that cover either each grade specifically or more than one grade. If a State develops academic content standards that cover more than one grade, the State must have content expectations that indicate
- Including in § 200.5(c) the statutory requirement that a State provide assessment results to school districts, schools, and teachers no later than the beginning of the next school year. This requirement starts with the 2002–2003 school year.
- Clarifying in § 200.6 the requirement that State assessment systems include all students and provide appropriate accommodations for students with disabilities and

The final regulations reflect these provisions, modified as noted in the analysis of comments and changes in the appendix.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 140 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at

at the following site: *www.ed.gov/legislation/FedRegister.*

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§ 200.1 State responsibilities for developing challenging academic standards.

(a) *Academic standards in general.* A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must—

(1) Be the same academic standards

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DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA92

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing programs administered under Title I, part A, of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These regulations implement recent changes to the standards and assessment requirements of Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act) and were drafted subject to a negotiated rulemaking process.

DATES: These regulations are effective August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION: These regulations implement changes to Title I, part A, of the Elementary and Secondary Education Act, as amended by the NCLB Act (Public Law 107–110), enacted January 8, 2002.

On May 6, 2002, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 30452). The proposed regulations were developed through a negotiated rulemaking process on the issues of standards and assessments in accordance with section 1901(b)(3) of Title I.

In the preamble to the NPRM, the Secretary discussed on pages 30453 through 30456 the major changes proposed in that document to implement changes in the standards and assessment provisions of Title I, part A, made by the NCLB Act. These included the following:

- Clarifying in § 200.1(b)(2) that States have the flexibility to develop academic content standards in reading/language arts and mathematics that cover either each grade specifically or more than one grade. If a State develops academic content standards that cover more than one grade, the State must have content expectations that indicate to teachers and others the portion of the standards to be taught at each grade level.
- Specifying in § 200.1(c)(2) that, although academic content standards may cover more than one grade, States must have academic achievement standards for each grade and subject assessed.
- Clarifying in § 200.1(c)(3) that, with regard to student achievement standards in science, States must have achievement levels and descriptions of those levels in place by the 2005–2006 school year. The actual assessment scores (called "cut scores" by the assessment community) for those achievement levels, however, would not have to be set until the assessments are due in the 2007–2008 school year.
- Incorporating in § 200.2 the statutory requirements for a State to implement a system of high-quality, yearly student academic assessments.
- Requiring in § 200.2(b)(2) that a State's assessment system be designed to be valid and accessible for use with the widest possible range of students, including students with disabilities and students with limited English proficiency.
- Clarifying in § 200.3 that a State may use different types of assessments as long as those assessments (for each grade and subject) address the depth and breadth of the State's academic content standards; are valid, reliable, and of high technical quality; and express results in terms of the State's academic achievement standards.
- Clarifying in § 200.4(a) that, if a State is prohibited by State law from establishing standards and assessments applicable to all public school students, the State may adopt standards and assessments applicable to students participating under subpart A of this part or permit each LEA to adopt its own standards and assessments subject to criteria developed by the State.
- Clarifying in § 200.5(a) that, beginning no later than the 2005–2006 school year, States must administer yearly assessments in both reading/language arts and in mathematics in each of grades 3 through 8 and at least once in grades 10 through 12.
- Including in § 200.5(c) the statutory requirement that a State provide assessment results to school districts, schools, and teachers no later than the beginning of the next school year. This requirement starts with the 2002–2003 school year.
- Clarifying in § 200.6 the requirement that State assessment systems include all students and provide appropriate accommodations for students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973.
- Requiring in § 200.6(a)(2) that a State's academic assessment system must provide one or more alternate assessments for those students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act), who, in the determination of the student's IEP team, cannot participate in all or part of the State assessments, even with appropriate accommodations.
- Requiring in § 200.6(b)(2) that a State assess, in English, limited English proficient students' achievement in reading/language arts if those students have been in schools in the United States (except Puerto Rico) for three or more consecutive years and clarifying that this requirement does not exempt a State from assessing LEP students for three years.
- Clarifying in § 200.7(a)(2) that, in disaggregating data, a State is responsible for determining how many students constitute a sufficient number to make the results reliable for accountability and reporting purposes.
- Clarifying in § 200.7(b)(2) that a State must apply section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act) in determining whether disaggregated data would reveal personally identifiable information.
- Requiring in § 200.8(a) that individual student reports must describe achievement measured against the State's academic achievement standards.
- Requiring in § 200.9(b) that a State must continue to develop assessments if amounts appropriated at the Federal level for assessments are below a certain minimum.
- Clarifying in § 200.10 that nothing in § 200.2 would require a private school to participate in a State's assessment system. However, through timely consultation with private school officials, an LEA must determine how it will assess academic services to participating private school students and how it will use the assessment results to improve services to these students.

The final regulations reflect these provisions, modified as noted in the analysis of comments and changes in the appendix.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 140 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We discuss substantive issues under the sections of these regulations to which they pertain. Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize the Secretary to make. We also do not address suggested changes to other parts of Title I that are not covered in these regulations. Those comments will be considered as we develop future proposed regulations, as appropriate.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the following topic:

Executive Order 12866

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of children with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians-education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: June 28, 2002.

Rod Paige,

Secretary of Education.

The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. The heading for part 200 is revised to read as set forth above.

3. Revise the first undesignated center heading in subpart A of this part to read as follows:

Standards and Assessments

4. Revise §§ 200.1 through 200.6 to read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) *Academic standards in general.* A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must—

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part;

(2) Include the same knowledge, skills, and levels of achievement expected of all students; and

(3) Include at least mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science, and may include other subjects determined by the State.

(b) *Academic content standards.* (1) The challenging academic content standards required under paragraph (a) of this section must—

(i) Specify what all students are expected to know and be able to do;

(ii) Contain coherent and rigorous content; and

(iii) Encourage the teaching of advanced skills.

(2) A State's academic content standards may—

(i) Be grade specific; or,

(ii) Cover more than one grade if grade-level content expectations are provided for each of grades 3 through 8.

(3) At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/language arts, mathematics, and, beginning in the 2005–06 school year, science, irrespective of course titles or years completed.

(c) *Academic achievement standards.* (1) The challenging student academic achievement standards required under paragraph (a) of this section must—

(i) Be aligned with the State's academic content standards; and

(ii) Include the following components for each content area:

(A) Achievement levels that describe at least—

(*1*) Two levels of high achievement—proficient and advanced—that determine how well students are mastering the material in the State's academic content standards; and

(*2*) A third level of achievement—basic—to provide complete information about the progress of lower-achieving students toward mastering the proficient and advanced levels of achievement.

(B) Descriptions of the competencies associated with each achievement level.

(C) Assessment scores ("cut scores") that differentiate among the achievement levels as specified in paragraph (c)(1)(ii)(A) of this section, and a description of the rationale and procedures used to determine each achievement level.

(2) A State must develop academic achievement standards for every grade

(1) Be the same assessment system used to measure the achievement of all students in accordance with § 200.3 or § 200.4.

(2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

(3)(i) Be aligned with the State's challenging academic content and

Act (IDEA) as compared to all other students; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with § 200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c) The State assessment system may include academic assessments that do

(1) Identifies the assessments to be used;

(2) Indicates the relative contribution of each assessment towards—

(i) Ensuring alignment with the State's academic content standards; and

(ii) Determining the adequate yearly progress of each school and LEA; and

(3) Provides information regarding the progress of students relative to the State's academic standards in order to inform instruction.

(2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under subpart A of this part will adopt academic standards and academic assessments aligned with those standards that—

(i) Meet the requirements in §§ 200.1 and 200.2; and

(ii) Are applicable to all students served by the LEA.

(b) A State that qualifies under paragraph (a) of this section must—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) *Science.* Beginning no later than the 2007–2008 school year, the science

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(B) Descriptions of the competencies associated with each achievement level.

(C) Assessment scores ("cut scores") that differentiate among the achievement levels as specified in paragraph (c)(1)(ii)(A) of this section, and a description of the rationale and procedures used to determine each achievement level.

(2) A State must develop academic achievement standards for every grade and subject assessed, even if the State's academic content standards cover more than one grade.

(3) With respect to academic achievement standards in science, a State must develop—

(i) Achievement levels and descriptions no later than the 2005–06 school year; and

(ii) Assessment scores ("cut scores") after the State has developed its science assessments but no later than the 2007–08 school year.

(d) *Subjects without standards.* If an LEA serves students under subpart A of this part in subjects for which a State has not developed academic standards, the State must describe in its State plan a strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations in those subjects as are all other students.

(e) *Other subjects with standards.* If a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part.

(Authority 20 U.S.C. 6311(b)(1))

(Approved by the Office of Management and Budget under control number 1810–0576)

§ 200.2 State responsibilities for assessment.

(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality, yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007–08 school year, science.

(2)(i) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards.

(ii) If a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

(b) The assessment system required under this section must meet the following requirements:

(1) Be the same assessment system used to measure the achievement of all students in accordance with § 200.3 or § 200.4.

(2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and

(ii) Provide coherent information about student attainment of those standards.

(4)(i) Be valid and reliable for the purposes for which the assessment system is used; and

(ii) Be consistent with relevant, nationally recognized professional and technical standards.

(5) Be supported by evidence (which the Secretary will provide, upon request, consistent with applicable federal laws governing the disclosure of information) from test publishers or other relevant sources that the assessment system is—

(i) Of adequate technical quality for each purpose required under the Act; and

(ii) Consistent with the requirements of this section.

(6) Be administered in accordance with the timeline in § 200.5.

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content.

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of items—

(i) Such as constructed-response, short answer, or essay questions; or

(ii) That require a student to analyze a passage of text or to express opinions.

(9) Provide for participation in the assessment system of all students in the grades being assessed consistent with § 200.6.

(10) Except as provided in § 200.7, enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status as defined in Title I, part C of the Elementary and Secondary Education Act (hereinafter "the Act");

(v) Students with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) as compared to all other students; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with § 200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c) The State assessment system may include academic assessments that do not meet the requirements in paragraph (b) of this section as additional measures. Those additional assessments—

(1) May not reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 of Title I of the Act, if those assessments were not used; but

(2) May identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.3 Designing State Academic Assessment Systems.

(a)(1) For each grade and subject assessed, a State's academic assessment system must—

(i) Address the depth and breadth of the State's academic content standards under § 200.1(b);

(ii) Be valid, reliable, and of high technical quality;

(iii) Express student results in terms of the State's student academic achievement standards; and

(iv) Be designed to provide a coherent system across grades and subjects.

(2) A State may include in its academic assessment system under § 200.2 either or both—

(i) Criterion-referenced assessments; and

(ii) Assessments that yield national norms, provided that, if the State uses only assessments referenced against national norms at a particular grade, those assessments—

(A) Are augmented with additional items as necessary to measure accurately the depth and breadth of the State's academic content standards; and

(B) Express student results in terms of the State's student academic achievement standards.

(b) A State that includes a combination of assessments as described in paragraph (a)(2) of this section, or a combination of State and local assessments, in its State assessment system must demonstrate in its State plan that the system has a rational and coherent design that—

(1) Identifies the assessments to be used;

(2) Indicates the relative contribution of each assessment towards—

(i) Ensuring alignment with the State's academic content standards; and

(ii) Determining the adequate yearly progress of each school and LEA; and

(3) Provides information regarding the progress of students relative to the State's academic standards in order to inform instruction.

(c) A State that includes local assessments in the system described in § 200.2(b) must—

(1) Establish technical criteria to ensure that each local assessment meets the requirements of paragraphs (a)(1) and (c)(2) of this section;

(2) Demonstrate in its State plan that all local assessments used for this purpose—

(i) Are equivalent to one another and to State assessments, where they exist, in their content coverage, difficulty, and quality;

(ii) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(iii) Provide unbiased, rational, and consistent determinations of the annual progress of schools and LEAs within the State;

(3) Review and approve each local assessment to ensure that it meets or exceeds the State's technical criteria in paragraph (c)(1) of this section and the requirements in paragraph (c)(2) of this section; and

(4) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(d) A State's academic assessment system may rely exclusively on local assessments only if it meets the requirements of § 200.4.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.4 State law exception.

(a) If a State provides satisfactory evidence to the Secretary that neither the State educational agency (SEA) nor any other State government official, agency, or entity has sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State's public schools, the State may meet the requirements under §§ 200.1 and 200.2 by—

(1) Adopting academic standards and academic assessments that meet the requirements of §§ 200.1 and 200.2 on a Statewide basis and limiting their applicability to students served under subpart A of this part; or

(2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under subpart A of this part will adopt academic standards and academic assessments aligned with those standards that—

(i) Meet the requirements in §§ 200.1 and 200.2; and

(ii) Are applicable to all students served by the LEA.

(b) A State that qualifies under paragraph (a) of this section must—

(1) Establish technical criteria for evaluating whether each LEA's—

(i) Academic content and student academic achievement standards meet the requirements in § 200.1; and

(ii) Academic assessments meet the requirements in § 200.2, particularly regarding validity and reliability, technical quality, alignment with the LEA's academic standards, and inclusion of all students in the grades assessed;

(2) Review and approve each LEA's academic standards and academic assessments to ensure that they—

(i) Meet or exceed the State's technical criteria; and

(ii) For purposes of this section—

(A) Are equivalent to one another in their content coverage, difficulty, and quality;

(B) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(C) Provide unbiased, rational, and consistent determinations of the annual progress of LEAs and schools within the State; and

(3) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(Authority: 20 U.S.C. 6311(b)(5))

§ 200.5 Timeline for assessments.

(a) *Reading/language arts and mathematics.* (1) Through the 2004–2005 school year, a State must administer the assessments required under § 200.2 at least once during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(2) Except as provided in paragraph (a)(3) of this section, beginning no later than the 2005–2006 school year, a State must administer both the reading/language arts and mathematics assessments required under § 200.2—

(i) In each of grades 3 through 8; and

(ii) At least once in grades 10 through 12.

(3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) *Science.* Beginning no later than the 2007–2008 school year, the science assessments required under § 200.2 must be administered at least once during—

(1) Grades 3 through 5;

(2) Grades 6 through 9; and

(3) Grades 10 through 12.

(c) *Timing of results.* Beginning with the 2002–2003 school year, a State must promptly provide the results of its assessments no later than before the beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed.

(a) *Students eligible under IDEA and Section 504.* (1) *Appropriate accommodations.* A State's academic assessment system must provide—

(i) For each student with disabilities, as defined under section 602(3) of the IDEA, appropriate accommodations that each student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(ii) For each student covered under section 504 of the Rehabilitation Act of 1973 (Section 504), appropriate accommodations that each student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grades in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(2) *Alternate assessment.* (i) The State's academic assessment system must provide for one or more alternate assessments for a student with disabilities as defined under section 602(3) of the IDEA who the student's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii) Alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraph (b)(2) of this section, the State must assess limited English proficient students, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until they have attained English language proficiency.

(ii) To the extent practicable, the State must assess the achievement of limited English proficient students who have attained English language proficiency, for a period of up to two consecutive years, in reading/language arts in English.

(2) *Assessing English language proficiency.* The State must require each LEA, beginning no later than the 2002–2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information

(2) Are provided to parents, teachers, and principals—

(i) As soon as is practicable after the assessment is given;

(ii) In an understandable and uniform format, including an alternative format (e.g., Braille or large print) upon request; and

(iii) To the extent practicable, in a language that parents can understand.

(b) *Itemized score analyses for LEAs and schools.* (1) A State's academic assessment system must produce itemized score analyses to be reported to LEAs and schools consistent with § 200.8(b). These itemized score analyses must report the number of students who—

(i) Answered each item correctly; and

(ii) Answered each item incorrectly.

(2) The itemized score analyses must be—

(i) Provided to LEAs and schools in a manner that is clear and easy to understand; and

(ii) Designed to assist parents, teachers, and principals to interpret the assessment results and address the specific academic needs of students.

(c) *Privacy.* The results of assessments described in paragraph (b)(1) of this section must be reported in a manner consistent with the privacy requirements in section 9528 of the Act.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.8 Publication and reporting of assessment results.

(a) *Publication of State assessment results.* (1) A State must publish annually the following information:

(i) The number and percentage of students in the State who were assessed.

(ii) The number and percentage of students in the State who were assessed in each of the categories listed in § 200.2(b)(10).

(iii) The number and percentage of students in the State who were assessed who were included in the State's definition of "full academic year."

(iv) The number and percentage of students in the State who were assessed who were not included in the State's definition of "full academic year."

(v) The number and percentage of students in the State who were assessed who were tested with accommodations.

(vi) The number and percentage of students in the State who were assessed who were tested with alternate assessments.

(vii) The number and percentage of students in the State who were assessed who were tested with alternate assessments aligned to alternate achievement standards.

(viii) The number and percentage of students in the State who were assessed who were tested with alternate assessments based on modified achievement standards.

(ix) The number and percentage of students in the State who were assessed who were tested with alternate assessments based on modified achievement standards who were included in the State's definition of "full academic year."

(x) The number and percentage of students in the State who were assessed who were tested with alternate assessments based on modified achievement standards who were not included in the State's definition of "full academic year."

(xi) The number and percentage of students in the State who were assessed who were limited English proficient students.

(xii) The number and percentage of students in the State who were assessed who were limited English proficient students who were included in the State's definition of "full academic year."

(xiii) The number and percentage of students in the State who were assessed who were limited English proficient students who were not included in the State's definition of "full academic year."

(xiv) The number and percentage of students in the State who were assessed who were limited English proficient students who were tested with accommodations.

(xv) The number and percentage of students in the State who were assessed who were limited English proficient students who were tested with alternate assessments.

(xvi) The number and percentage of students in the State who were assessed who were limited English proficient students who were tested with alternate assessments aligned to alternate achievement standards.

(xvii) The number and percentage of students in the State who were assessed who were limited English proficient students who were tested with alternate assessments based on modified achievement standards.

(xviii) The number and percentage of students in the State who were assessed who were limited English proficient students who were tested with alternate assessments based on modified achievement standards who were included in the State's definition of "full academic year."

(xix) The number and percentage of students in the State who were assessed who were limited English proficient students who were tested with alternate assessments based on modified achievement standards who were not included in the State's definition of "full academic year."

(xx) The number and percentage of students in the State who were assessed who were migrant students.

(xxi) The number and percentage of students in the State who were assessed who were migrant students who were included in the State's definition of "full academic year."

(xxii) The number and percentage of students in the State who were assessed who were migrant students who were not included in the State's definition of "full academic year."

(xxiii) The number and percentage of students in the State who were assessed who were migrant students who were tested with accommodations.

(xxiv) The number and percentage of students in the State who were assessed who were migrant students who were tested with alternate assessments.

(xxv) The number and percentage of students in the State who were assessed who were migrant students who were tested with alternate assessments aligned to alternate achievement standards.

(xxvi) The number and percentage of students in the State who were assessed who were migrant students who were tested with alternate assessments based on modified achievement standards.

(xxvii) The number and percentage of students in the State who were assessed who were migrant students who were tested with alternate assessments based on modified achievement standards who were included in the State's definition of "full academic year."

(xxviii) The number and percentage of students in the State who were assessed who were migrant students who were tested with alternate assessments based on modified achievement standards who were not included in the State's definition of "full academic year."

(xxix) The number and percentage of students in the State who were assessed who were students with disabilities.

(xxx) The number and percentage of students in the State who were assessed who were students with disabilities who were included in the State's definition of "full academic year."

(xxxi) The number and percentage of students in the State who were assessed who were students with disabilities who were not included in the State's definition of "full academic year."

(xxxii) The number and percentage of students in the State who were assessed who were students with disabilities who were tested with accommodations.

(xxxiii) The number and percentage of students in the State who were assessed who were students with disabilities who were tested with alternate assessments.

(xxxiv) The number and percentage of students in the State who were assessed who were students with disabilities who were tested with alternate assessments aligned to alternate achievement standards.

(xxxv) The number and percentage of students in the State who were assessed who were students with disabilities who were tested with alternate assessments based on modified achievement standards.

(xxxvi) The number and percentage of students in the State who were assessed who were students with disabilities who were tested with alternate assessments based on modified achievement standards who were included in the State's definition of "full academic year."

(xxxvii) The number and percentage of students in the State who were assessed who were students with disabilities who were tested with alternate assessments based on modified achievement standards who were not included in the State's definition of "full academic year."

(xxxviii) The number and percentage of students in the State who were assessed who were economically disadvantaged students.

(xxxix) The number and percentage of students in the State who were assessed who were economically disadvantaged students who were included in the State's definition of "full academic year."

(xl) The number and percentage of students in the State who were assessed who were economically disadvantaged students who were not included in the State's definition of "full academic year."

(xli) The number and percentage of students in the State who were assessed who were economically disadvantaged students who were tested with accommodations.

(xlii) The number and percentage of students in the State who were assessed who were economically disadvantaged students who were tested with alternate assessments.

(xliii) The number and percentage of students in the State who were assessed who were economically disadvantaged students who were tested with alternate assessments aligned to alternate achievement standards.

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(xlv) The number and percentage of students in the State who were assessed who were economically disadvantaged students who were tested with alternate assessments based on modified achievement standards who were included in the State's definition of "full academic year."

(xlvi) The number and percentage of students in the State who were assessed who were economically disadvantaged students who were tested with alternate assessments based on modified achievement standards who were not included in the State's definition of "full academic year."

(xlvii) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students.

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(cvi) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments aligned to alternate achievement standards.

(cvii) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments based on modified achievement standards.

(cviii) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments based on modified achievement standards who were included in the State's definition of "full academic year."

(cix) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments based on modified achievement standards who were not included in the State's definition of "full academic year."

(cx) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with accommodations.

(cxi) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments.

(cxii) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments aligned to alternate achievement standards.

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(cxiv) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments based on modified achievement standards who were included in the State's definition of "full academic year."

(cxv) The number and percentage of students in the State who were assessed who were students with disabilities who were economically disadvantaged students who were tested with alternate assessments based on modified achievement standards who were not included in the State's definition of "full academic year."

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(ii) Alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraph (b)(2) of this section, the State must assess limited English proficient students in a valid and reliable manner that includes—

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) In its State plan, the State must—

(A) Identify the languages other than English that are present in the student population served by the SEA; and

(B) Indicate the languages for which yearly student academic assessments are not available and are needed.

(iii) The State—

(A) Must make every effort to develop such assessments; and

(B) May request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

(2) *Assessing reading/language arts in English.* (i) Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State must assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess a limited English proficient student under paragraph (b)(1) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph (b)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for limited English proficient students.

(3) *Assessing English proficiency.* (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section, the State must require each LEA, beginning no later than the 2002–2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(*1*) A natural disaster; or

(*2*) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(c) *Migratory and other mobile students.* A State must include migratory students, as defined in Title I, part C, of the Act, and other mobile students in its academic assessment system, even if those students are not included for accountability purposes under section 1111(b)(3)(C)(xi) of the Act.

(d) *Students experiencing homelessness.*

(1) A State must include homeless students, as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Act, in its academic assessment, reporting, and accountability systems, consistent with section 1111(b)(3)(C)(xi) of the Act.

(2) The State is not required to disaggregate, as a separate category under § 200.2(b)(10), the assessment results of the students referred to in paragraph (d)(1) of this section.

(Approved by the Office of Management and Budget under control number 1810–0576)

(**Authority:** 20 U.S.C. 6311(b)(3))

5. Add § 200.7 to read as follows:

§ 200.7 Disaggregation of data.

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making adequate yearly progress on the basis of the performance of each subgroup under section 1111(b)(2)(C)(v) of the Act.

(4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement results under section 1111(h) of the Act and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated subgroups.

(Approved by the Office of Management and Budget under control number 1810–0576)

(**Authority:** 20 U.S.C. 6311(b)(3); 1232g)

6. Transfer the undesignated center heading "Schoolwide Programs" from its location after § 200.7 and place it after § 200.17 in subpart A of part 200.

7. Redesignate § 200.8 as § 200.18 and place it under the undesignated center heading "Schoolwide Programs" in subpart A of part 200.

8. Add a new § 200.8 and place it under the undesignated center heading "Standards and Assessments" to read as follows:

§ 200.8 Assessment reports.

(a) *Student reports.* A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that—

(1)(i) Include information regarding achievement on the academic assessments under § 200.2 measured against the State's student academic achievement standards; and

(ii) Help parents, teachers, and principals to understand and address the specific academic needs of students; and

(2) Are provided to parents, teachers, and principals—

(i) As soon as is practicable after the assessment is given;

(ii) In an understandable and uniform format, including an alternative format (e.g., Braille or large print) upon request; and

(iii) To the extent practicable, in a language that parents can understand.

(b) *Itemized score analyses for LEAs and schools.* (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with § 200.2(b)(4), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

(2) The requirement to report itemized score analyses in paragraph (b)(1) of this section does not require the release of test items.

(**Authority:** 20 U.S.C. 6311(b)(3))

9. Add § 200.9 under the undesignated center heading "Standards and Assessments" to read as follows:

§ 200.9 Deferral of assessments.

(a) A State may defer the start or suspend the administration of the assessments required under § 200.2 that were not required prior to January 8, 2002 for one year for each year for which the amount appropriated for State assessment grants under section 6113(a)(2) of the Act is less than the trigger amount in section 1111(b)(3)(D) of the Act.

(b) A State may not cease the development of the assessments referred to in paragraph (a) of this section even if sufficient funds are not appropriated under section 6113(a)(2) of the Act.

(**Authority:** 20 U.S.C. 6311(b)(3); 7301b(a)(2))

§ 200.10 [Redesignated as § 200.14]

10. Redesignate § 200.10 as § 200.14.

11. Add a new § 200.10 and place it under the undesignated center heading "Standards and Assessments" to read as follows:

§ 200.10 Applicability of a State's academic assessments to private schools and private school students.

(a) Nothing in § 200.1 or § 200.2 requires a private school, including a private school whose students receive services under subpart A of this part, to participate in a State's academic assessment system.

(b)(1) If an LEA provides services to eligible private school students under subpart A of this part, the LEA must, through timely consultation with appropriate private school officials, determine how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services.

(2) The assessments referred to in paragraph (b)(1) of this section may be the State's academic assessments under § 200.2 or other appropriate academic assessments.

(**Authority:** 20 U.S.C. 6320, 7886(a))

Appendix—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Comment: One commenter recommended amending the regulations to make clear that, if a State has adopted academic content standards in subjects other than reading/language arts, mathematics and science for all students, those standards must be the basis of instruction for Title I students in those other subjects.

Discussion: The statute explicitly requires that a Title I student be taught the same knowledge and skills and be held to the same expectations as all students in subjects a student is taught, but for which a State is not required to develop academic standards. The Secretary agrees that a clarification is needed to ensure that Title I students are also held to the same expectations as all students when a State has academic content standards for all students in subjects other than reading/language arts, mathematics and science. However, ensuring that such standards apply to Title I students does not change the statutory requirements for calculating adequate yearly progress.

Changes: Section 200.1(e) has been added to clarify that, if a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part.

Comment: One commenter recommended amending the regulations to require States to develop standards in computer science.

Discussion: The NLCB Act identifies reading/language arts, mathematics, and science as the three subjects for which States must develop academic contents standards. States are free to develop standards in other subject areas and, in fact, many have done so.

Changes: None.

Comment: Several commenters raised issues related to student academic achievement standards. One commenter sought clarification as to whether States may have more than three levels of student achievement standards. Several other commenters indicated a need for States to have grade-specific examples of student work to help ensure that the public has a clear understanding of what the "proficient" level of achievement entails.

Discussion: States have the flexibility to develop more than three levels of student achievement standards. However, States choosing to do so must ensure that their student achievement standards include at least the three levels required by the statute. With regard to increasing public understanding of what constitutes the "proficient" level of achievement, the regulations already specify that student achievement standards must include descriptions of the competencies associated with each achievement level. As a result, States will need to have grade-specific information for each subject assessed.

Changes: None.

Comment: One commenter suggested that greater clarity was needed as to when "assessment scores" or "cut scores" defining the boundaries between achievement levels on science assessments must be provided.

Discussion: The regulations state that "assessment scores" or "cut scores" for achievement levels on science assessments do not have to be set until the assessment are due in 2007–2008. For tests administered in the 2007–2008 school year, completion of science assessment scores for each achievement level is expected by December 2008.

Changes: None.

Comment: One commenter expressed concern that the regulations requiring that high school content standards define the knowledge and skills that all students are expected to know and be able to do will result in standards based on minimum competencies.

Discussion: High school standards must reflect what a State expects all students to know by the time they graduate in the broad academic content areas of reading/language arts, mathematics and science, as opposed to the content covered in a specific course that not all students take. Academic content standards address both skills and subject content. While a student may be able to demonstrate process skills through different content, the intent of content standards is that there is a body of challenging knowledge in an academic content area that all students, not just those in a particular class, are expected to know. All students must have access to the same challenging content if no child is to be left behind.

Changes: None.

Comment: One commenter suggested that the Secretary provide a deadline for the development of grade-level content standards or expectations as well as the descriptions of competencies associated with each achievement level in mathematics and reading/language arts.

Discussion: The 2002 Consolidated State Application requires that States provide a timeline of major milestones for either adopting challenging content standards in, or disseminating grade-level expectations for, reading/language arts and mathematics at each grade level for grades 3 through 8. States must provide evidence of content standards or grade-level expectations in reading/language arts and mathematics for grades 3 through 8 by May 2003.

Changes: None.

Section 200.2 State Responsibilities for Assessment

Comment: A number of commenters commented generally on the NCLB Act's assessment requirements. One commenter, for example, applauded the NCLB Act's

efforts to move districts to annual assessments in grades 3 through 8. Another commenter supported a national test to obtain more standardization among States. Another commenter, however, expressed concern that the NCLB Act places a disproportionate emphasis on nationwide testing and insufficient emphasis on basic learning and curriculum deficits. The commenter noted that, without the necessary curriculum frameworks in place, students would not be able to successfully pass the promoting achievement to high standards by schools and students using standards-based assessments aligned with a State's academic content and achievement standards. Individual level assessments (or levels assessments or adaptive assessments) would measure the performance of some students at a particular grade level against lower standards. This would result in some schools being held to lower standards than other schools in the same school district. Use of levels assessments would not allow all State must administer those assessments to Title I students.

Discussion: Section 1111(b)(1) of the Act concerning academic standards makes clear that a State must have such standards for all public elementary and secondary school students, including students served under this part, in subjects determined by the State. Those subjects must include reading/language arts, mathematics, and science, but may certainly include other subjects as well. Section 1111(b)(3) of the Act also requires a State to have assessments that are aligned

are not an acceptable means to meet the State's assessment requirements under §§ 200.2 and 200.6 or the accountability requirements of the NCLB Act.

Changes: None.

Comment: Several commenters commented on § 200.2(b)(5), which requires a State assessment system be supported by evidence from test publishers or other relevant sources that the system is of adequate technical quality for each purpose required under the Act. One commenter requested that this requirement be phased in to apply to new

Changes: None.

Section 200.3 Designing State Academic Assessment Systems

Comment: A number of commenters generally supported the flexibility afforded in § 200.3.

Discussion: The Secretary appreciates the commenters' support. In developing this provision, the Secretary intends to afford significant flexibility to States, consistent with section 1111(b)(3) of the Act, to enable States to design assessment systems that best

Discussion: Section 200.1(b)(3) is intended to make clear that a State must define the academic content standards it expects high-school students to know and be able to do. These standards may well include content that is covered in several courses. For example, a State's mathematics standards may include content in algebra, geometry, and probability. Under § 200.3(a)(1)(i), a State's high-school assessments must address the depth and breadth of the State's content standards. As a result, an end-of-course Algebra I test may not measure the depth and

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efforts to move districts to annual assessments in grades 3 through 8. Another commenter supported a national test to obtain more standardization among States. Another commentgr, however, expressed concern that the NCLB Act places a disproportionate emphasis on nationwide testing and insufficient emphasis on basic learning and curriculum deficits. The commenter noted that, without the necessary curriculum frameworks in place, students would not be able to successfully pass the required tests. Other commenters, particularly teachers, criticized reliance on one assessment to judge performance and emphasized the need for multiple assessments throughout the year to truly know that students are learning.

Discussion: The assessment requirements are one cornerstone of the NCLB Act. They implement President George W. Bush's plan to assess students in grades 3 through 8 and at least once during high school to help teachers and parents know how their students are achieving. These assessments also are the primary vehicle for holding schools and school districts accountable for student achievement. The NCLB Act assessment requirements do not require, or even envision, a national test. Rather, they rely on each State to develop or adopt an assessment system that is aligned with the State's own academic content and achievement standards. Moreover, the NCLB Act assessment requirements do not purport to be the sole assessments that schools will use to measure the achievement of their students. Teachers regularly assess the progress of their students through formal and informal measures and modify their instruction accordingly.

Changes: None.

Comment: Several commenters questioned whether § 200.2 permits a State assessment system to include approaches such as matrix sampling or parallel forms that administer different questions to different students. The commenters expressed support for flexibility in this regard.

Discussion: The statute does not preclude the use of parallel test forms or assessments that employ a matrix design as long as the assessments yield individual student results expressed in terms of the State academic content and achievement standards. The statute does require that all students be held to the same achievement standards. This means that assessments for a particular grade and subject must elicit comparable content knowledge and understanding, within the framework of the standards, for all students tested. If parallel forms or a matrix design are used, the State must provide evidence that all students are being held to the same academic achievement standards for the grade tested.

Changes: None.

Comment: One commenter recommended that a State's assessment system under § 200.2 require "individual level assessments." According to the commenter, those assessments are a valuable tool in learning and teaching because they assess where a child is and how much growth the child has made in a nine-month period.

Discussion: The focus of the NCLB standards and assessment regulations is promoting achievement to high standards by schools and students using standards-based assessments aligned with a State's academic content and achievement standards. Individual level assessments (or levels assessments or adaptive assessments) would measure the performance of some students at a particular grade level against lower standards. This would result in some schools being held to lower standards than other schools in the same school district. Use of levels assessments would not allow all schools and students to be held to the same high standards required by the NCLB Act.

Changes: None.

Comment: One commenter suggested that the final regulations clarify that charter schools must comply with all the assessment and reporting requirements that apply to traditional public schools. The commenter also suggested that chartering agencies be required to submit all data to the SEA in order to provide parents and the public comprehensive and accurate information on all public schools in the State.

Discussion: Under section 1111(b)(3)(A) of the Act, each State must implement a set of high-quality, yearly student assessments that will be used as the primary means of determining the yearly performance of the State and of each LEA and school in the State. Thus, the assessment requirements in §§ 200.2 through 200.9 apply, as appropriate, to all public elementary and secondary schools in a State. As such, they also apply to public charter schools.

Changes: None.

Comment: A number of commenters commented on the fact that the regulations require a State's assessment system to meet certain requirements. Two commenters supported the emphasis on an assessment system, noting that it recognizes a coherent program of standards and assessments that provides flexibility to States. Other commenters, however, disagreed and suggested changing the phrases "assessment system" and "system of assessments" throughout the regulations to "assessments" to be consistent with the statute. The commenters expressed concern that, under an assessment system, a State could depart from using the same assessments for all students.

Discussion: Section 1111(b)(3) of the Act requires a State to develop and implement a "set of high-quality, yearly student academic assessments." The final regulations intentionally use the phrases "assessment system" and "system of assessments" to emphasize that this set of assessments must produce a coherent and rational system for measuring the depth and breadth of the State's content standards and for holding schools and LEAs accountable. It also permits flexibility in how that system is structured. Using the word "system" in no way negates the fact that the assessments required under § 200.2 must be the same assessments used to measure the achievement of all students.

Changes: None.

Comment: One commenter noted regarding § 200.2(a)(2) that, if a State develops assessments in subjects other than reading/language arts, mathematics, and science, the State must administer those assessments to Title I students.

Discussion: Section 1111(b)(1) of the Act concerning academic standards makes clear that a State must have such standards for all public elementary and secondary school students, including students served under this part, in subjects determined by the State. Those subjects must include reading/language arts, mathematics, and science, but may certainly include other subjects as well. Section 1111(b)(3) of the Act also requires a State to have assessments that are aligned with its academic standards, and those assessments must be the same academic assessments used to measure the achievement of all students. As a result, if a State adopts standards and aligned assessments in subjects not required under section 1111, the State must also use those standards and assessments to measure the achievement of students participating under subpart A of this part. However, assuring that such assessments apply to Title I schools does not change the statutory requirements for calculating adequate yearly progress.

Changes: Section 200.2(a)(2)(ii) has been added to make clear that, if a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

Comment: A number of commenters noted that the provision in § 200.2(b)(1) requires the assessment system to measure the achievement of all students. The commenters expressed concern that, because students do not all achieve at the same level, the assessment system must be allowed to assess a student's actual level of achievement, not just the desired level of achievement. Teachers, in particular, emphasized that all students do not achieve at the same level and that tests, to be helpful for planning instruction, must focus on student performance, not a student's grade level. Other commenters specifically supported "out-of-level" tests for students who are studying at a lower academic level than their grade level, suggesting that grade-level assessments would not be valid because they would not focus on what a student was actually learning nor would they provide meaningful information to parents.

Discussion: One of the bedrock principles of the NCLB Act is that all students can learn to high standards. As a result, section 1111(b)(1) requires challenging academic content and student achievement standards that a State applies to all schools and students in the State. Similarly, section 1111(b)(3) requires a State to develop aligned assessments that the State uses to measure the achievement of all students. These requirements are accurately implemented in §§ 200.2(b)(1) and 200.6(a) of the final regulations. Specifically, as § 200.6(a)(1) indicates, a State's assessment system must provide accommodations so that a student with disabilities or a student covered under Section 504 of the Rehabilitation Act of 1973 can be held to the content and achievement standards for the grade in which the student is enrolled. Although "out-of-level" tests, for example, may provide instructional information about a student's progress, they

are not an acceptable means to meet the State's assessment requirements under §§ 200.2 and 200.6 or the accountability requirements of the NCLB Act.

Changes: None.

Comment: Several commenters commented on § 200.2(b)(5), which requires a State assessment system be supported by evidence from test publishers or other relevant sources that the system is of adequate technical quality for each purpose required under the Act. One commenter requested that this requirement be phased in to apply to new assessments entered into by States after the effective date of the final regulations. The commenter expressed concern that evidence of technical quality may not be covered under existing contracts. Other commenters suggested adding disclosure protections provided for under State law and contractual agreements.

Discussion: Section 200.2(b)(5) implements a new requirement in section 1111(b)(3)(C)(iv) that a State must provide the Secretary evidence from the test publisher or other relevant sources that the State's assessments are of adequate technical quality. Although this is a new statutory requirement, the Secretary has requested evidence of technical quality in its review of State assessment systems under the Improving America's Schools Act, predecessor to the NCLB Act. As a result, the Secretary does not anticipate that this requirement will pose a problem for States. Moreover, this requirement applies to assessments developed to meet the new NCLB Act requirements and should thus afford States sufficient time to modify test contracts, if necessary. With respect to the comment to protect disclosure of information based on State law or contractual provisions, we would expect the State and its test publishers to work out any issues in a manner that permits submission of adequate evidence of technical quality. Once submitted to the Department, the technical information is a public record, subject only to Federal disclosure rules and protections.

Changes: None.

Comment: One commenter requested that the Secretary clarify the requirement in § 200.2(b)(7) that a State's assessment system must include multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content. According to the commenter, multiple measures means multiple ways of measuring the same proficiencies to increase the validity of determinations based on the assessment results.

Discussion: The term "multiple measures" has several meanings. On occasion, it means assessments using different formats (selected response, constructed response, etc.). It also refers to assessments that measure objectives within a particular content domain and assessments with items that measure both higher-order thinking skills (reasoning, synthesis, analysis, etc.) as well as knowledge and recall items to assess the depth and breadth of mastery of the particular content domain. The final regulations, therefore, do not limit the meaning.

Changes: None.

Section 200.3 Designing State Academic Assessment Systems

Comment: A number of commenters generally supported the flexibility afforded in § 200.3.

Discussion: The Secretary appreciates the commenters' support. In developing this provision, the Secretary intends to afford significant flexibility to States, consistent with section 1111(b)(3) of the Act, to enable States to design assessment systems that best meet their needs. At the same time, the Secretary has included safeguards to ensure that those systems adequately measure a State's standards, hold schools and students to high academic achievement standards, are valid, reliable, and of high technical quality, express student results in terms of the State's standards, and are designed to provide a coherent system across grades and subjects.

Changes: None.

Comment: Several commenters commented on § 200.3(a)(1)(i), which requires a State's assessment system to address the depth and breadth of the State's academic content standards. Some commenters endorsed the regulatory language as written, noting that the system as a whole must address the depth and breadth of the State's standards but not necessarily each assessment component. One commenter, in particular, argued persuasively that it would be literally impossible, as well as unnecessary, for a State to measure students' attainment of every single content standard. This commenter suggested that States need to be able to identify their highest-priority content standards and then ensure that students' mastery of those standards is appropriately measured to inform instruction. Other commenters, however, strongly supported requiring an assessment system to address fully the depth and breadth of the State's standards. These commenters believed that, without the word "fully," any assessment system could meet the requirement that it address the depth and breadth of a State's content standards.

Discussion: Section 1111(b)(3)(C)(ii) of the Act requires a State's assessment system to be aligned with its academic content and student achievement standards and provide coherent information about student attainment of those standards. The purpose of § 200.3(a)(1)(i) is to ensure that a State's assessment system measures both the depth and breadth of the State's standards. As the comments suggest, the system as a whole must meet this requirement. The Secretary does not believe that adding the word "fully' would significantly strengthen this requirement.

Changes: None.

Comment: One commenter questioned whether § 200.3(a)(1)(i) in effect requires a graduation test. The commenter expressed concern that, read in conjunction with § 200.1(b)(3), which requires high-school content standards "irrespective of course titles or years completed," the requirement in § 200.3(a)(1)(i) that high-school assessments address the depth and breadth of the State's content standards would result in a de facto graduation test.

Discussion: Section 200.1(b)(3) is intended to make clear that a State must define the academic content standards it expects high-school students to know and be able to do. These standards may well include content that is covered in several courses. For example, a State's mathematics standards may include content in algebra, geometry, and probability. Under § 200.3(a)(1)(i), a State's high-school assessments must address the depth and breadth of the State's content standards. As a result, an end-of-course Algebra I test may not measure the depth and breadth of this State's mathematics standards unless that test also measures geometry and probability. The provision in § 200.3(a)(1)(i), however, is not intended to require a de facto graduation test.

Changes: None.

Comment: A number of commenters addressed § 200.3(a)(2), which permits a State to include in its assessment system either or both criterion-referenced assessments or nationally normed assessments that are augmented with additional items. Some commenters supported this flexibility. One commenter supported the use of nationally normed assessments only if those assessments are augmented with additional items as necessary to measure a State's content standards. Other commenters, however, strongly criticized the use of nationally normed assessments at all, arguing they are contrary to the intent of the NCLB Act and would damage effective implementation. These commenters noted that norm-referenced assessments measure performance relative to other students rather than to standards and thus are antithetical to the notion that all students can learn at high levels. Another commenter noted that norm-referenced assessments are not aligned with State standards.

Discussion: The Secretary has carefully considered these comments and believes the final regulations contain the proper amount of flexibility for States while requiring any State that uses only a nationally normed assessment at a particular grade to augment that assessment with additional items as necessary to measure the depth and breadth of the State's standards. Moreover, student results from an augmented nationally normed assessment must be expressed in terms of the State's achievement standards, not relative to other students in the nation. The Secretary believes these provisions address the commenters' concerns and will ensure that, before a State includes a nationally normed assessment in its assessment system, the State carefully examines the alignment of the assessment with the State's standards and the extent to which the State must add items to fully address its standards. Moreover, if a State combines criterion-referenced and nationally normed assessments, the State must demonstrate that its system has a rational and coherent design.

Changes: None.

Comment: A number of commenters commented on § 200.3(b), which permits a State assessment system to include a combination of State and local assessments, provided the system has a rational and coherent design and meets a number of

rigorous requirements. Some commenters strongly supported the flexibility this provision affords States. Several commenters, however, criticized this provision. The commenters argued that this provision conflicts with section 1111(b)(3)(C) of the Act, which requires a State's assessments to "be the same academic assessments used to measure the achievement of all children" in the State. Moreover, the commenters believed that LEAs, which are subject under the NCLB Act to much stricter accountability

voluntary consortia of LEAs using common sets of standards, benchmarks, and assessments be permitted.

Discussion: The NCLB Act requires a State to use its State assessment system to measure the adequate yearly progress (AYP) of each public school and LEA in the State and to hold schools and LEAs accountable for failing to make AYP. To ensure that LEAs are evaluated fairly and consistently across a State that is using only local assessments, it is thus critical that the State establish criteria to ensure equivalence in content coverage,

have attended several schools in an LEA for a full academic year but have not attended the same school for a full academic year must be included in assessments and their performance be used in determining whether LEAs make AYP. As a result, data for these students will influence whether SEAs make AYP also. Moreover, even if homeless children attend schools in several LEAs, they must be assessed and their performance would be included in determining State AYP.

Changes: None.

Section 200.7 Disaggregation of Data

assessment development to cease once it begins, even if sufficient Federal funds are not available.

Changes: None.

Section 200.10 Applicability of a State's Academic Assessments to Private Schools and Private School Students

Comment: Several commenters commented generally on the applicability of a State's academic assessments to private schools and private school students. Additionally, one commenter suggested that the regulation should be revised to make it clearer that the LEA has the sole authority for determining which assessment to use when assessing services to eligible students attending private schools.

Discussion: These regulations do, in fact, indicate that the decision rests with the LEA. However, the LEA must consult with private school officials in making the determination.

Changes: None.

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rigorous requirements. Some commenters strongly supported the flexibility this provision affords States. Several commenters, however, criticized this provision. The commenters argued that this provision conflicts with section 1111(b)(3)(C) of the Act, which requires a State's assessments to "be the same academic assessments used to measure the achievement of all children" in the State. Moreover, the commenters believed that LEAs, which are subject under the NCLB Act to much stricter accountability requirements than under the prior law, would have an incentive to adopt easier local assessment measures in order to ensure that their students make adequate yearly progress. The commenters also questioned whether LEAs have sufficient resources and expertise needed to develop local assessments that truly meet the rigorous standards for alignment, multiple measures, and inclusion that the Act requires. In addition, the commenters noted that using local assessments would preclude like comparisons of all students.

Discussion: The Secretary appreciates the commenters' concerns and believes that local assessments must be held to a high standard before they may be included in a State's assessment system. A State must demonstrate, for example, that its local assessments meet requirements such as validity, reliability, technical quality, alignment, and inclusion of all students. Furthermore, the State must demonstrate that the assessments are equivalent to one another in their content coverage, difficulty, and quality; have comparable validity and reliability; and provide unbiased, rational, and consistent determinations of the adequate yearly progress of schools and LEAs within the State. If local assessments can meet these requirements, the Secretary believes a State may include them in its State assessment system.

Changes: None.

Comment: One commenter questioned the reference in § 200.3(c)(1), which deals with local assessments in a State's assessment system, to § 200.3(a)(2), which permits either or both criterion-referenced or augmented nationally normed assessments. The commenter believed that the cross-reference assumed that any local assessment would be nationally normed.

Discussion: The purpose of the requirements in § 200.3(c)(1) is to ensure that a State whose assessment system includes local assessments establish technical criteria to ensure that each local assessment meets statutory requirements applicable to statewide assessments. Its purpose is not to require that local assessments be nationally normed assessments.

Changes: The cross-reference in § 200.3(c)(1) has been changed to refer to § 200.3(a)(1) and (c)(2), which establish requirements for local assessments that comprise a State's system.

Section 200.4 State Law Exception

Comment: One commenter objected to the regulation specifying that local assessments be equivalent to one another in content coverage, difficulty, and quality across a State. Instead, the commentar suggested that voluntary consortia of LEAs using common sets of standards, benchmarks, and assessments be permitted.

Discussion: The NCLB Act requires a State to use its State assessment system to measure the adequate yearly progress (AYP) of each public school and LEA in the State and to hold schools and LEAs accountable for failing to make AYP. To ensure that LEAs are evaluated fairly and consistently across a State that is using only local assessments, it is thus critical that the State establish criteria to ensure equivalence in content coverage, difficulty, and quality of LEA's local assessments. In addition, the statute requires that AYP be calculated for a State based on the State's aligned assessment system. In a State relying solely on local assessments, the results of AYP calculations could not provide statistically valid and reliable results without equivalency among assessments.

Changes: None.

Section 200.6 Inclusion of All Students

Comment: One commenter indicated that clarification was needed regarding the inclusion of students with limited English proficiency (LEP) in State assessments. The commenter suggested that the Secretary require States to establish criteria and procedures for including LEP students in the mathematics and science tests prior to the three-year schooling requirement for including them in reading/language arts assessments. This commenter felt that the inclusion of LEP students in the assessments from the beginning of the school year is neither practical nor conducive to the attainment of valid and reasonable assessment results.

Discussion: The statute requires that LEP students be included in State assessment systems. For their first three years in U.S. schools, such students must be tested in reading/language arts and mathematics content (and science by 2007–2008) in a valid and reliable manner, including, to the extent practicable, native language assessments if a native language assessment would yield better information on what a student knows and can do. Students with limited-English proficiency who have been in U.S. schools (except Puerto Rico) for three or more years are to be tested in English on the reading/language arts assessment.

Changes: None.

Comment: One commenter recommended that SEAs and LEAs be required to report on the progress of students who are homeless and who attend school in more than one school district in a school year. That commenter also recommended amending the regulations to require that the performance of homeless children who attend more than one school in an LEA be used in determining the progress of the SEA in meeting adequate yearly progress.

Discussion: The goal of the NCLB Act is to ensure that all students benefit from school reforms designed to increase achievement, including students who are experiencing homelessness. As additional guidance documents are developed, the Secretary will work to identify ways to assist States and LEAs accomplish this goal.

On the issue of calculating AYP for States, the statute already requires that students who have attended several schools in an LEA for a full academic year but have not attended the same school for a full academic year must be included in assessments and their performance be used in determining whether LEAs make AYP. As a result, data for these students will influence whether SEAs make AYP also. Moreover, even if homeless children attend schools in several LEAs, they must be assessed and their performance would be included in determining State AYP.

Changes: None.

Section 200.7 Disaggregation of Data

Comment: A number of commenters expressed concern regarding the requirement that States set their own group sizes and minimum thresholds. One commenter suggested that the regulations specify what a reliable group size is. Many commenters recommended that the Secretary set a uniform minimum student threshold for reporting accountability to ensure statistical reliability and validity. On the other hand, one commenter supported the State's ability to set its own minimum thresholds. This commenter commended the Department's acknowledgement of the flexibility in the threshold necessary to accommodate the variability in circumstances.

Discussion: The statute states that subgroup disaggregation is not required for accountability or reporting purposes if the number is too small to yield reliable information or if the results would reveal personally identifiable information. This issue was subject to a great deal of discussion during negotiated rulemaking. Ultimately, it was decided that each State is in the best position to make this determination due to the wide variety in school size across the nation, differences in test psychometric properties, and the fact that different numbers may be reliable for reporting than for accountability.

Changes: None.

Section 200.8 Assessment Reports

Comment: One commenter recommended amending the regulations to require that score analyses indicate the number of items and assessment instruments that support a determination that a student is less than proficient in meeting a particular State standard.

Discussion: The regulations do not specify what a score analyses must include so that States may have maximum flexibility in tailoring their score analyses to the type of assessment system they have developed. The Secretary agrees that there may be circumstances where such information is helpful. A State may certainly include the commenter's suggested items in its score analyses.

Change: None.

Section 200.9 Deferral of Assessments

Comment: One commenter indicated that requiring continued work on assessment development when the appropriation falls below the trigger amount would be difficult if Federal funds are being used for assessment development.

Discussion: The regulations restate the statutory requirements. The Secretary believes that Congress did not want assessment development to cease once it begins, even if sufficient Federal funds are not available.

Changes: None.

Section 200.10 Applicability of a State's Academic Assessments to Private Schools and Private School Students

Comment: Several commenters commented generally on the applicability of a State's academic assessments to private schools and private school students. Additionally, one commenter suggested that the regulation should be revised to make it clearer that the LEA has the sole authority for determining which assessment to use when assessing services to eligible students attending private schools.

Discussion: These regulations do, in fact, indicate that the decision rests with the LEA. However, the LEA must consult with private school officials in making the determination.

Changes: None.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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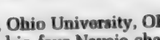

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Vol. 67, No. 130
Monday, July 8, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under

SW Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and

the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV02–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2001–2002 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim final rule that established interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2001–2002 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 4.9363 and 95.0637 percent, respectively, and the final free and restricted percentages are 6.1048 and 93.8952 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: August 7, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2001–2002 marketing year (July 1, 2001, through June 30, 2002). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect marketing percentages that allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) has estimated hazelnut production at 48,000 tons for the Oregon

and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The Board adjusted the crop estimate down to 44,588 tons by taking into consideration the average crop disappearance over the preceding three years (7.12 percent) and the undeclared crop. The Board then computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,201 tons × 80 percent/44,588 tons = 3.9495 percent.) The preliminary free percentage thus initially released 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use, and the restricted percentage withheld 42,804 or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and

this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about producer prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental United States. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 through November 30, primarily to supply holiday nut demand.

inshell trade demand to the domestic market. The purpose of releasing only 80 percent is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on the preliminary crop estimate. NASS has estimated hazelnut production at 48,000 tons for the Oregon and Washington area.

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and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The Board adjusted the crop estimate down to 44,588 tons by taking into consideration the average crop disappearance over the preceding three years (7.12 percent) and the undeclared carry-in (6 tons.) Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. This difference or disappearance consists of unharvested hazelnuts, cull product that is harvested and delivered to handlers but later discarded, or product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,201 tons × 80 percent/44,588 tons = 3.9495 percent.) The preliminary free percentage thus initially released 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use, and the restricted percentage withheld 42,804 tons for the export and kernel market.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.*, desirable carry-out). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 4.9363 percent free and 95.0637 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were recommended at 6.1048 percent free and 93.8952 percent restricted effective May 31, 2002. The final free percentage releases 2,722 tons of inshell hazelnuts from the 2001 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell Supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387
(14) Final percentages (Item 10 divided by Item 5) × 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 800 producers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $35,700. This is computed by dividing National Agriculture Statistics Service (NASS) figures for the average value of production for 1999 and 2000 ($28.563 million) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three market outlets: inshell domestic, inshell export, and shelled (kernel) markets. Handlers and producers receive the highest return on inshell domestic, less for inshell export, and the least for kernels (shelled). Based on Board records of average shipments for 1997–2000, the percentage going to each of those markets was 13 percent (domestic inshell), 46 percent (export inshell), and 41 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low producer prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental United States. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry address its marketing problems by keeping inshell hazelnut supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

This rule continues in effect volume control procedures for the 2001–2002 marketing year that established marketing percentages (free and restricted percentages) determining the quantity of inshell hazelnuts that may be marketed in domestic markets. The free percentages reflect the quantity that may be marketed in domestic inshell markets and the restricted percentages are the quantity that must be exported, shelled, or otherwise disposed of by handlers. The computations for 2001–2002 are explained herein.

The Board is required to meet prior to September 20 of each marketing year to establish its marketing policy for that year. At its marketing policy meeting, the Board computes and announces its estimate of inshell trade demand, which is the quantity of inshell hazelnuts that handlers typically ship to the domestic market throughout the marketing season. If it determines that volume regulations would tend to effectuate the declared policy of the Act, the Board also computes and announces the preliminary free and restricted percentages for that year. At subsequent meetings, the Board determines interim final percentages and final percentages. The interim and final free percentages may be the same as, or higher than, the preliminary free percentage.

The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. If market conditions warrant, the Board may increase the three-year average by up to 25 percent.

Establishing the preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on the preliminary crop estimate. NASS has estimated hazelnut production at 48,000 tons for the Oregon and Washington area.

At its November 15, 2001, meeting, the Board computed the available supply of merchantable product for sale by handlers by subtracting the average crop disappearance over the preceding three years (7.12 percent) from the 48,000-ton hazelnut crop estimate. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are harvested and delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. Subtracting an additional 6 tons (the undeclared carryin) yielded the adjusted crop estimate of 44,588 tons.

The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted inshell trade demand by 80 percent and dividing the result by the adjusted crop estimate: (2,201 tons × 80 percent)/ 44,588 tons = 3.9495 percent. Establishing the 3.9495 percent preliminary free percentage allowed the initial release of 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use. Establishing the 96.0505 percent restricted percentage had the effect of allocating 42,804 tons to the export and kernel markets.

Under the order, the Board must meet again on or before November 15 each year to recommend interim final and final percentages, using current crop estimates. The interim final percentages are calculated in the same way as the preliminary percentages. Computing and announcing the interim final percentage allows the release of the remaining 20 percent (to total 100 percent) of the inshell trade demand previously computed by the Board. In establishing final free percentage and restricted percentages, the Board may release up to an additional 15 percent of the average of the preceding three years'

trade acquisitions, to provide an adequate carryover into the following season (*i.e.*, desirable carry-out).

The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The recommended interim final free and restricted percentages were 4.9363 percent free and 95.0637 percent restricted. Recommended final acquisitions for desirable carry-out, were 6.1048 percent free and 93.8952 percent restricted, effective May 31, 2002. Establishing the final free percentage releases for domestic use the full amount of the adjusted inshell trade demand of inshell hazelnuts from the 2001 supply (2,722 tons).

The final marketing percentages are based on the Board's final production

provides an illustration of the order's price-stabilizing impacts.

Comparing producer revenue to cost is useful in highlighting the impact on producers of recent product and price levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average hazelnut producer revenue per

develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Europe has historically been the primary export market for U.S. produced inshell

available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended May 13, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the

trade acquisitions, to provide an adequate carryover into the following season (*i.e.*, desirable carry-out).

The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The recommended interim final free and restricted percentages were 4.9363 percent free and 95.0637 percent restricted. Recommended final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were 6.1048 percent free and 93.8952 percent restricted, effective May 31, 2002. Establishing the final free percentage releases for domestic use the full amount of the adjusted inshell trade demand of inshell hazelnuts from the 2001 supply (2,722 tons).

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell Supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1)	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387
(14) Final percentages (Item 10 divided by Item 5) × 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to at least 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons (average trade acquisitions for three prior years) and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the 110 percent goal of the Guidelines.

The high level of production and carryin were key market factors leading to the 6.1048 percent final free percentage. Hazelnut production in 2001 is estimated to be an all-time record, 1,000 tons higher than the previous record set in 1997. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (*i.e.*, average trade acquisitions of 3,473 tons) equals about 8 percent of the supply (44,588 tons subject to regulation). However, the free tonnage carryin level of 1,272 tons was also high (37 percent of the quantity of inshell hazelnuts that handlers typically ship), meaning that even less of the new production was needed to fully supply the 2001–2002 domestic inshell market. Although the domestic inshell market is a relatively small proportion of total sales (13 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower producer prices. The other market segments, inshell exports and kernels, are expected to continue to provide good outlets for U.S. hazelnut production.

Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2002, and burdensome carryin levels will likely be significantly reduced.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1991 and 2000, from a low of 16,500 tons (inshell) in 1998 to a high of 47,000 tons in 1997. Production in the shortest crop year and the biggest crop year were 55 percent and 157 percent, respectively, of the 10-year average tonnage of 29,880. The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the 10-year period is 35 percent. In contrast, the CV for hazelnut producer prices is 16 percent, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing producer revenue to cost is useful in highlighting the impact on producers of recent product and price levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average hazelnut producer revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2000. Average producer revenue was below typical costs in the other years. Without the stabilizing impact of the order, producers may have lost more money. The volume regulations contribute to orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell hazelnut market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2001–2002 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the United States. This production represents, on average, less than 5 percent of total U.S. production for other tree nuts, and less than 5 percent of the world's hazelnut production.

Last season, 82 percent of the kernels were marketed in the domestic market and 18 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a 10-year average of 5,452 tons out of total average exports of 10,236 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 3,986 tons, representing 28 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 58 percent of total exports of 14,400 tons in 2000. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This final rule does not change those requirements. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 31, and November 15, 2001, were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on March 14, 2002. Copies of the rule were mailed by the Board's staff to all Board members and hazelnut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended May 13, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 11406, March 14, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 67 FR 11406 on March 14, 2002, is adopted as a final rule without change.

Dated: July 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–16973 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–46–AD; Amendment 39–12796; AD 2002–13–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F Airplanes; Model MD–10–10F and –30F Airplanes; and Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; Model MD–10–10F and –30F airplanes; and Model MD–11 and –11F airplanes. This AD requires repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. This action is necessary to prevent arcing of

airplanes; was published in the **Federal Register** on September 20, 2001 (66 FR 48388). That action proposed to require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary.

Explanation of New Relevant Service Information

electrical continuity and resistance tests that would be required by paragraph (a) of the AD. The commenters note that the referenced service bulletins allow the use of an equivalent megohm meter that meets current and voltage requirements. One of the commenters explains that it is common for test equipment to change frequently and the required model specified in the AD may not be available in the future.

Revise Cost Impact

Two commenters request that we revise the estimated cost impact of the proposed AD. They state that the estimate of 65 work hours and a total cost of $3,900 per airplane is low. The commenters want the cost estimate to include the cost for repairing pumps and replacing wiring harnesses. One commenter stresses the poor reliability of the boost pump housing check valves.

Cost Impact

There are approximately 399 Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes; of the affected design in the worldwide fleet. The FAA estimates that 313 airplanes of U.S. registry will be affected by this AD, that it will take approximately 65 work hours per airplane to accomplish the required

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation

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–30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; Model MD–10–10F and –30F airplanes; and Model MD–11 and –11F airplanes. This AD requires repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. This action is necessary to prevent arcing of connectors in the fuel boost/transfer pump circuit, which could result in a fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective August 12, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5263; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; Model MD–10–10F and –30F series airplanes; and Model MD–11 and –11F series airplanes; was published in the **Federal Register** on September 20, 2001 (66 FR 48388). That action proposed to require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary.

Explanation of New Relevant Service Information

Since the issuance of the proposed AD, the manufacturer has issued Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. The proposed AD refers to the original issue, dated December 11, 2000, and Revision 01, dated July 16, 2001, of that service bulletin, as acceptable sources of service information for McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes. Revision 02 of the service bulletin contains no new procedures, but adds a single airplane, which was inadvertently omitted from previous issue of the service bulletin, to the effectivity listing.

The FAA has revised applicable paragraphs of this final rule to refer to Revision 02 as an acceptable source of service information. However, the applicability statement of this final rule continues to refer to Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01. Because the effectivity listing of Revision 02 adds an airplane, we find that requiring accomplishment of the actions in this AD on that airplane would necessitate issuance of a supplemental notice of proposed rulemaking and re-opening of the comment period. Considering the nature of this unsafe condition and the number of airplanes in the affected fleet, we find that it would be inappropriate to delay issuance of this final rule in this way. The FAA may consider additional rulemaking to require accomplishment of the actions in this AD on the airplane added to Revision 02 of the referenced service bulletin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Allow Use of Equivalent Equipment

Three commenters, together with the Air Transport Association of America (on behalf of its members), note that the proposed AD specifies the use of a Quadtech 1864 megohm meter for the electrical continuity and resistance tests that would be required by paragraph (a) of the AD. The commenters note that the referenced service bulletins allow the use of an equivalent megohm meter that meets current and voltage requirements. One of the commenters explains that it is common for test equipment to change frequently and the required model specified in the AD may not be available in the future.

The FAA concurs that an equivalent megohm meter that meets current and voltage requirements, as specified in the applicable referenced service bulletin, is acceptable for doing the required tests. We have revised paragraph (a) of this final rule accordingly.

Extend Compliance Time

Two commenters, as well as the Air Transport Association on behalf of their members, request that we extend the compliance time for the initial inspection from the proposed period of six months after the effective date of the AD. One commenter asks for 12 months and another for 18 months on the basis that the proposed compliance time may not be sufficient to allow operators to do the requirements during scheduled maintenance. The commenter that requests 18 months states that such an extension would provide an acceptable level of safety. As its rationale, the commenter notes that it is not aware of any previous incidents of arcing of the connectors that occurred without corresponding fuel boost/transfer pump circuit protection, and a low-fuel-pressure light illuminated during these incidents. Further, the commenter explains that another AD has mandated new cockpit procedures that eliminate the possibility of continued arcing and significantly reduce the likelihood of an ignition source in the fuel tank in the event of a pump failure.

We do not concur. The intent of the proposed tests and inspections is to find and fix arcing damage or installation defects of the boost/transfer pump, pump connector, and associated wiring, in order to minimize pump failures or subsequent damage. In the continuing investigation of arcing damage of pumps and connectors, we have found other instances of arcing that occurred without fuel boost/transfer pump circuit protection and without cockpit indication that arcing damage has occurred. Because of the continuing incidents of arcing damage during operation, we find that it would be inappropriate to extend the compliance time for the requirements of this AD. No change to the final rule is necessary in this regard.

Revise Cost Impact

Two commenters request that we revise the estimated cost impact of the proposed AD. They state that the estimate of 65 work hours and a total cost of $3,900 per airplane is low. The commenters want the cost estimate to include the cost for repairing pumps and replacing wiring harnesses. One commenter stresses the poor reliability of the boost pump housing check valves.

We do not concur. The cost impact estimate in AD actions is limited to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, such as repair or replacement ("corrective actions, if necessary"). Such "on-condition" repair actions would be required to be accomplished, regardless of AD requirements, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change to the final rule is necessary in this regard.

Explanation of Changes to Final Rule

The FAA has revised the applicability statement in this final rule to identify model designations as published in the most recent type certificate data sheet for the affected models. We have also revised related model designations in the preamble.

Also, for clarification, we have revised the definition of a "general visual inspection" in this final rule.

Also, we have revised Note 1 of this final rule to clarify that airplane FUEL TANKS on which the fuel/boost pump and wiring connector have been removed and the fuel tank made inoperable are not subject to the requirements of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 399 Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes; of the affected design in the worldwide fleet. The FAA estimates that 313 airplanes of U.S. registry will be affected by this AD, that it will take approximately 65 work hours per airplane to accomplish the required tests and inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators of these airplanes is estimated to be $1,220,700, or $3,900 per airplane, per test or inspection cycle.

There are approximately 179 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry will be affected by this AD, that it will take approximately 78 work hours per airplane to accomplish the required tests and inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $538,200, or $4,680 per airplane, per test or inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–13–10 McDonnell Douglas: Amendment 39–12798. Docket 2001–NM–46–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes; as listed in Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01, dated July 16, 2001; and Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000; certificated in any category.

Note 1: Airplane fuel tanks on which the fuel/boost pump and wiring connector have been physically removed and the fuel tank made inoperable are NOT subject to the requirements of this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of connectors of the fuel boost/transfer pump, which could result in a fire or explosion of the fuel tank, accomplish the following:

Repetitive Tests and Inspections

(a) Within 6 months after the effective date of this AD, do tests (using a digital multi-meter and Quadtech 1864 megohm meter or an equivalent megohm meter that meets current and voltage requirements, as

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by the Brazilian Bolsa de Mercadorias & Futuros ("BM&F") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the

representatives; and (3) notify NFA of the commencement of business in the U.S.[3]

By letter dated May 24, 2001 and subsequent correspondence through November 14, 2001, BM&F petitioned the Commission on behalf of members of the Exchange who are Clearing Members or Commodities Brokerage Houses, located and doing business in Brazil, for an exemption from the

statutes and regulations in effect in Brazil.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in Brazil who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in

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To prevent arcing of connectors of the fuel boost/transfer pump, which could result in a fire or explosion of the fuel tank, accomplish the following:

Repetitive Tests and Inspections

(a) Within 6 months after the effective date of this AD, do tests (using a digital multimeter and Quadtech 1864 megohm meter or an equivalent megohm meter that meets current and voltage requirements, as specified in the applicable service bulletin) for electrical continuity and resistance and general visual inspections to detect discrepancies (*e.g.*, damage, arcing, loose parts, wear) of the fuel boost/transfer pump (alternating current pumping unit) by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000 (for Model MD–11 and –11F airplanes); or Boeing Alert Service Bulletin DC10–28A228, including Appendix, dated December 11, 2000, or Revision 01, dated July 16, 2001, or Revision 02, dated December 7, 2001 (for Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes); as applicable. Repeat the tests and inspections thereafter every 18 months.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions, If Necessary

(b) If the result of any test required by paragraph (a) of this AD is outside the limits specified in the applicable service bulletin identified in that paragraph, or if any discrepancy is detected during any inspection required by paragraph (a) of this AD, before further flight, accomplish corrective actions (e.g., replacement of connector/wire assembly with serviceable connector/wire assembly, and replacement of the pump with a serviceable fuel boost/transfer pump), as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000 (for Model MD–11 and –11F airplanes); or Boeing Alert Service Bulletin DC10–28A228, including Appendix, dated December 11, 2000, Revision 01, dated July 16, 2001, or Revision 02, dated December 7, 2001 (for Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes); as applicable.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000; Boeing Alert Service Bulletin DC10–28A228, including Appendix, dated December 11, 2000; Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01, dated July 16, 2001; or Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 12, 2002.

Issued in Renton, Washington, on June 25, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16531 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by the Brazilian Bolsa de Mercadorias & Futuros ("BM&F") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Esq., Associate Chief Counsel, Susan A. Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Bolsa de Mercadorias & Futuros ("BM&F") From the Application of Certain of the Foreign Futures and Option Rules the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein

Commission rules governing the offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's rules.[1] These rules include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures, that are generally comparable to those applicable to transactions on U.S. markets.

[1] Commission rules referred to herein are found at 17 CFR Ch. I (2001).

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's rules based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.[2] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[3]

By letter dated May 24, 2001 and subsequent correspondence through November 14, 2001, BM&F petitioned the Commission on behalf of members of the Exchange who are Clearing Members or Commodities Brokerage Houses, located and doing business in Brazil, for an exemption from the application of the Commission's Part 30 rules to those firms. In support of its petition, BM&F states that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and options transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act ("Act") and the rules thereunder.

Based upon a review of the petition, supporting materials filed by BM&F and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, have been met and that compliance with applicable Brazilian law and BM&F rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by BM&F as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7;
—Those sections of Part 1 of the Commission's financial rules that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
—Those sections of Part 1 of the Commission's rules relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Brazil.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in Brazil who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, BM&F, and the Brazilian regulatory authorities on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Brazil, position data, and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, for example, without limitation, the antifraud provision in Rule 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the rules of BM&F for products that customers located in the U.S. may trade.[4] The relief does not

[2] 52 FR 28990, 29001 (August 5, 1987).

[3] 52 FR 28980, 28981 and 29002.

[4] This Order granting exemptive relief does not authorize the offer or sale of any contract beyond the scope of the Part 30 rules or otherwise inconsistent with the CEA. Thus, for example, BM&F members may not offer or sell to U.S. customers any security futures product. See, e.g., Sections 2(a)(1)(c) and (d) of the Commodity Exchange Act.

extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[5] Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to

protection than Brazilian customers under all relevant provisions of Brazilian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the

seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective as to any designated BM&F member firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in

Issued in Washington, DC on June 28, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–16911 Filed 7–5–02; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Dated: June 25, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–17006 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

Dated: June 25, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–17007 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

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extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[5] Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers.[6] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The relief also does not extend to trading, directly or indirectly, on any other non-U.S. exchanges. Should BM&F seek to extend the Rule 30.10 relief set forth herein to permit designated members to solicit and accept orders from customers located in the U.S. for otherwise permitted transactions on any other non-U.S. exchange, it must apply for and receive prior approval from the Commission.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Brazil; such firm is engaged in business with customers in Brazil as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers made in the U.S. will be made on or subject to the rules of BM&F and the Commission will receive prompt notice of all material changes to the relevant laws in Brazil, any rules promulgated thereunder and BM&F rules;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Brazilian customers under all relevant provisions of Brazilian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Brazil upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal, or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2), from directly applying to do business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Brazilian laws and BM&F rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted; and

(g) Consents that all futures transactions for customers located in the U.S. will be undertaken from a location in Brazil (except as otherwise permitted by the Commission) solely with respect to transactions on or subject to the rules of BM&F, and which U.S. customers may trade.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[7] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective as to any designated BM&F member firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraph (2). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and BM&F.

This Order is issued pursuant to Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A, have been met. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

[5] See, e.g., 17 CFR part 18 (2001).

[6] See, e.g., 17 CFR parts 17 and 21 (2001).

[7] 62 FR 47792, 47793 (September 11, 1999). Among other duties, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order and to grant exemptive relief from registration to qualifying firms.

Issued in Washington, DC on June 28, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–16911 Filed 7–5–02; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–070]

Drawbridge Operation Regulations: Little Harbor, NH

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR1B Bridge, mile 1.0, between New Castle and Rye, New Hampshire. This deviation from the regulations, effective from July 15, 2002 through July 16, 2002, allows the bridge to remain in the closed position for vessel traffic. This temporary deviation is necessary to facilitate scheduled maintenance repairs at the bridge.

DATES: This deviation is effective from July 15, 2002 through July 16, 2002.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The existing drawbridge operating regulations are listed at 33 CFR 117.699.

The bridge owner, New Hampshire Department of Transportation (NHDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary electrical repairs at the bridge.

This deviation to the operating regulations, effective from 7 a.m. on July 15, 2002 through 3:30 p.m. on July 16, 2002, allows the SR1B Bridge to remain in the closed position for vessel traffic. There have been few requests to open this bridge in past years since this is a back channel to the Piscataqua River. Vessels may take an alternative route on the Piscataqua River to transit.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: June 25, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–17006 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–071]

Drawbridge Operation Regulations: Hampton River, NH

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR1A Bridge, mile 0.0, across the Hampton River in New Hampshire. This deviation from the regulations, effective from December 2, 2002 through January 30, 2003, allows the bridge to remain in the closed position for vessel traffic. This temporary deviation is necessary to facilitate scheduled maintenance on the bridge.

DATES: This deviation is effective from December 2, 2002 through January 30, 2003.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The existing drawbridge operating regulations are listed at 33 CFR 117.697.

The bridge owner, New Hampshire Department of Transportation (NHDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary mechanical repairs at the bridge.

This deviation to the operating regulations, effective from December 2, 2002 through January 30, 2003, allows the SR1A Bridge to not open for vessel traffic. This repair work will be performed during the winter months when the bridge has few requests to open.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: June 25, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–17007 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–076]

Drawbridge Operation Regulations: Eastchester Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the South Fulton Avenue Bridge, mile 2.9, across Eastchester Creek in New York. This deviation allows the bridge owner to keep the bridge in the closed position from 8 a.m. on Monday through 4:30 p.m. on Thursday, from July 22, 2002 through August 22, 2002. This action is necessary to facilitate structural maintenance on the bridge.

DATES: This deviation is effective from July 22, 2002 through August 22, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The South Fulton Avenue Bridge has a vertical clearance of 6 feet at mean high water, and 13 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.793.

The bridge owner, Westchester County Department of Public Works, requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled structural maintenance, sidewalk replacement, at the bridge.

This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 8 a.m. on Monday through 4:30 p.m. on Thursday, July 22, 2002 through August 22, 2002.

This work is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: June 25, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–17005 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

recreational piers in the vicinity of the zone. Interests of public safety compel prompt establishment of this zone to protect waterway users from the hazards associated with this scheduled fireworks display.

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone in the waters of Sag Harbor Bay. The safety zone will be restricted from the zone, the opportunity for vessels to transit around the zone during the event, the ability of vessels to moor at or get underway from commercial or recreational piers in the vicinity of the zone, and the advance notifications that will be made.

The size of this safety zone was determined using National Fire Protection Association and the Captain of the Port Long Island Sound Standing

concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, in the Operations Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4408.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because

until 10:30 p.m. on July 6, 2002. In the event of inclement weather on July 6, 2002, this rule will be enforced from 9:30 p.m. until 10:30 p.m. on July 7, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port,

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Dated: June 25, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–17005 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–065]

RIN 2115–AA97

Safety Zone: Sag Harbor Fireworks Display, Sag Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located in Sag Harbor Bay, Southampton, NY. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Sag Harbor Bay.

DATES: This rule is effective from 9:30 p.m. on July 6, 2002, until 10:30 p.m. on July 7, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–065) and are available for inspection or copying at Coast Guard Group/Marine Safety Office, 120 Woodward Ave., New Haven, CT 06512, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM2 R.L. Peebles, Marine Events Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making the rule effective less than 30 days following publication. An NPRM was considered unnecessary because the safety zone is a local event that will have minimal impact on the waterway. The zone is only enforced for 1 hour and vessels can be given permission to transit the zone during all but about 15 minutes of this time. Vessels may transit around the zone at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Interests of public safety compel prompt establishment of this zone to protect waterway users from the hazards associated with this scheduled fireworks display.

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone in the waters of Sag Harbor Bay. The safety zone encompasses all waters of sag Harbor Bay within a 1200 foot radius of approximate position 41°00′29″ N, 072°17′33″ W (NAD 1983). The proposed safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Rule

The safety zone is for a fireworks display in Sag Harbor Bay, sponsored by Sag Harbor Yacht Club. The safety zone will be in effect from 9:30 p.m. to 10:30 p.m. on July 6, 2002. In the event of inclement weather on July 6, 2002, this rule will be enforced from 9:30 p.m. until 10:30 p.m. on July 7, 2002. The safety zone encompasses all waters of Sag Harbor Bay within a 1200 foot radius of approximate position 41°00′29″ N, 072°17′33″ W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be allowed to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, the opportunity for vessels to transit around the zone during the event, the ability of vessels to moor at or get underway from commercial or recreational piers in the vicinity of the zone, and the advance notifications that will be made.

The size of this safety zone was determined using National Fire Protection Association and the Captain of the Port Long Island Sound Standing Orders for 12 inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Sag Harbor Bay during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit around the zone during the event, the zone is only enforced for 1 hour and vessels can be given permission to transit the zone except for all but about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via Local Notice to Mariners and Marine Information Broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, in the Operations Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4408.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 9:30 p.m. on July 6, 2002, through 10:30 p.m. on July 7, 2002, add temporary § 165.T01–065 to read as follows:

§ 165.T01–065 Safety Zone: Sag Harbor Fireworks Display, Southampton, NY.

(a) *Location.* The following area is a safety zone: All waters of Sag Harbor Bay within a 1200 foot radius of the fireworks barge in approximate position 41°00′29″ N, 072°17′33″ W (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 9:30 p.m. until 10:30 p.m. on July 6, 2002. In the event of inclement weather on July 6, 2002, this rule will be enforced from 9:30 p.m. until 10:30 p.m. on July 7, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 25, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–17002 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Eligibility Standards for Free Matter for the Blind and Other Physically Handicapped Persons

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule adopts a proposal to amend the *Domestic Mail Manual (DMM)* to clarify and simplify the eligibility standards for free matter for the blind and other physically handicapped persons in conformance, to the extent practicable, with similar standards adopted by the Library of Congress (LOC) for its National Library Service for the Blind and Physically Handicapped (NLS). In addition, other standards applicable to the use of free matter for the blind and other physically handicapped persons are clarified.

EFFECTIVE DATE: August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 703–292–3652.

SUPPLEMENTARY INFORMATION: Congress established the free matter privilege in 1904 to provide reading materials for the blind when sent by public institutions and public libraries as a loan and when returned by the blind readers to those institutions (Ch. 1612, 33 Stat. 313, Public Law No. 171). In 1931, the National-Books-for-the-Blind

program was established under the auspices of the Library of Congress to provide books for use by adult residents of the United States, "including the several States, Territories, insular possessions, and the District of Columbia." (Ch. 400, 46 Stat. 1487, Public Law No. 787). The Library of Congress issued standards for making arrangements for circulation of books (using the free matter privilege) to and

major changes. First, it eliminated the requirement that organizations maintain individual records of eligible recipients and made the maintenance of such records optional. Second, the new proposal required mailers of free matter who entered mailings of 200 or more pieces to register with the Post Office(s) of mailing and to submit statements of mailing. A form requiring minimal mailing information would have been

using the free matter privilege to mail matter to eligible persons did not change mailers' obligations. Nevertheless, the Postal Service has removed the standards in 1.5, Certification of Eligible Recipients by Organizations, and 5.2, Reporting Mailings, from this final rule to accommodate the concerns of the comments. The proposed requirement for registration and submission of

confirmation, the Postal Service might, as a last resort, contact the individual addressees directly. However, it should be noted that, under current policy, all recipients of free matter are required to provide such evidence of eligibility to their postmasters. This policy will not change under this proposal. Postmasters will still be required to maintain a list of eligible recipients under their jurisdiction.

4. An organization's advertisement of its own services or issues, or any other business of the publisher, whether in display advertising or reading matter. See DMM E211.1. In order to alleviate any confusion, this language has been incorporated into the free matter standards.

The Postal Service also adopts additional standards clarifying what may be mailed as free matter. These do

[Revise E040 to insert the word "physically" before the word "handicapped" in each instance where it appears.]

E040 Free Matter for the Blind and Other Physically Handicapped Persons

* * * * *

1.0 BASIC INFORMATION

1.1 General

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program was established under the auspices of the Library of Congress to provide books for use by adult residents of the United States, "including the several States, Territories, insular possessions, and the District of Columbia." (Ch. 400, 46 Stat. 1487, Public Law No. 787). The Library of Congress issued standards for making arrangements for circulation of books (using the free matter privilege) to and from blind users through libraries designated as local or regional centers.

In 1966, Congress expanded the National Books-for-the-Blind program to include other physically handicapped persons (Public Law 89–522, 2 U.S.C. 135a and 135b). Congress expanded the program to meet the reading needs of physically handicapped persons who cannot read or use conventional printed books because of impaired eyesight or other factors that make these persons physically unable to manipulate these materials. Certification by competent authority of individuals for eligibility to participate in the program was (and remains today) pursuant to regulations prescribed by the Library of Congress. From this time on, the program became known as the National Library Service for the Blind and Physically Handicapped (see 36 CFR 701.10).

Consistent with the intent of Congress embodied in the Act that created the Library of Congress National Library Service for the Blind and Physically Handicapped, the Postal Reorganization Act (39 U.S.C. 3403(a)(1)) expanded the free matter privilege to include mail for the use of the blind or other persons who cannot use or read conventionally printed material because of a physical impairment. The persons must be certified by competent authority in accordance with the regulations established by the Library of Congress. Under the current law, Congress reimburses the Postal Service for free matter mailings (39 U.S.C. 2401(c)). Accordingly, the Postal Service is clarifying its eligibility standards for the free matter privilege to incorporate, as closely as practicable, the standards devised by the Library of Congress for establishing eligibility and certification for participation in the National Library Service for the Blind and Physically Handicapped (see 36 CFR. 701.10).

On September 1, 2000, the Postal Service published a proposed rule in the **Federal Register** (65 FR 53212) amending the postal standards for free matter for the blind and other physically handicapped persons. Based on comments received, the Postal Service published a second, revised proposed rule for comment on January 3, 2002 (67 FR 275). The revised rule contained two major changes. First, it eliminated the requirement that organizations maintain individual records of eligible recipients and made the maintenance of such records optional. Second, the new proposal required mailers of free matter who entered mailings of 200 or more pieces to register with the Post Office(s) of mailing and to submit statements of mailing. A form requiring minimal mailing information would have been developed for this purpose. In addition, the proposal included a provision that the Postal Service may audit an organization's use of the free matter privilege. The proposal explained that this specification was new to the *Domestic Mail Manual* but codified existing authority and practice.

The Postal Service received eight comments on the January 3, 2002, proposal. The comments generally supported the overall goal to clarify standards for eligibility and most expressed support for or did not object to the clarifying language for eligibility in 1.3 and certifying authority in 1.4. Accordingly, these proposed standards are adopted without change. However, one comment requested that a provision be added that clarifies that mailings of acceptable matter may be mailed by organizations. The Postal Service acknowledges that the comment is correct and consistent with the standards for the mailing of free matter. However, since 1.1 already addresses these circumstances by permitting matter for the use of blind or other physically handicapped persons to be mailed free of postage, an additional provision is not incorporated in the new standards. One comment supported the proposal in its entirety and one objected only to any change that would not allow the mailing of cassette talking machines. The proposed rule does not contemplate changing the standards for acceptable matter mailed as free matter. Therefore, cassette talking machines and other devices for use by eligible recipients remain acceptable to be mailed as free matter.

There were several common objections to the proposal. Six comments objected to the proposal requiring free matter mailers to submit statements of mailings for mailings of 200 pieces or more. Three of the six comments expressed concern about the additional administrative burden of submitting statements of mailing, and three comments objected to the proposal in 1.5 that required an organization to certify on the statements of mailing that each recipient is eligible to receive free matter. By law, free matter may be sent only to eligible persons. The proposed certification standard for organizations using the free matter privilege to mail matter to eligible persons did not change mailers' obligations. Nevertheless, the Postal Service has removed the standards in 1.5, Certification of Eligible Recipients by Organizations, and 5.2, Reporting Mailings, from this final rule to accommodate the concerns of the comments. The proposed requirement for registration and submission of statements of mailing for large volume mailings was intended to facilitate a more precise count of free matter volume and appropriation to the Postal Service to cover the revenue forgone on this mail. However, in view of the comments, the Postal Service finds that this need does not outweigh the administrative burden that would be placed on mailers. Accordingly, under this final rule, mailers of free matter will not at this time be required to submit statements of mailing with free matter mailings of more than 200 pieces. Furthermore, the Postal Service has eliminated the proposal in 5.1 that would have required a mailer to register with the Post Office(s) of mailing prior to submitting mailings of over 200 pieces.

Two comments expressed concerns about the provision in 1.5 that discussed potential audits of mailers of free matter by the Postal Service. This section attempts to clarify what is already in practice today. As stated in the January 3, 2002, proposal, any organization that mails under the free matter privilege, whether maintaining individual records or not, is subject to Postal Service reviews of the eligibility of the addressees.

Any method of audit is determined on a case-by-case basis. For example, an audit may include a review of the individuals on the organization's mailing list to ensure they meet the eligibility standards for receipt of free matter. The procedures used in these reviews may depend on the records maintained by the organization. Record keeping by organizations making use of the free matter privilege will facilitate any audits that take place. For example, if the organization chooses to maintain records substantiating that each person on its mailing list is eligible to receive free matter, the Postal Service might be able to complete an audit simply by reviewing a sample of those records. If the organization does not maintain such records, the Postal Service might need to contact an outside source, such as the Library of Congress, for addressees registered with that organization to determine whether the addressees are eligible to receive free matter. If no other source is available to provide that confirmation, the Postal Service might, as a last resort, contact the individual addressees directly. However, it should be noted that, under current policy, all recipients of free matter are required to provide such evidence of eligibility to their postmasters. This policy will not change under this proposal. Postmasters will still be required to maintain a list of eligible recipients under their jurisdiction.

It should be noted that whether or not an organization maintains records to confirm that addressees meet the eligibility standards for free matter, the entry of matter at the "free" rates is the mailer's certification that the matter qualifies for free matter privileges and that the recipients are eligible to receive free matter.

Two organizations expressed concern that the potential for audits of mailing lists containing names of those receiving free matter creates privacy issues that should be addressed before such audits are undertaken. As noted earlier, the authority to audit and practice of auditing mailing lists is not new. And, to the knowledge of the Postal Service, no breaches of privacy have occurred. Moreover, by statute (39 U.S.C. 410(c)(1), 412), the Postal Service is required to keep the names and addresses of its patrons confidential. As a result, there will be no releases of the names and addresses of individual patrons based on the collection of the information as part of assuring that those using and benefiting from the free matter privilege are qualified individuals.

Two comments had concerns about the Postal Service's definition of advertising. The two comments misinterpreted the standard to prohibit material such as a "meeting notice." As a general standard for any material sent as free matter, the material may not contain any advertising. The Postal Service does not consider meeting notices and other informational material as advertising unless it falls within the Postal Service definition of advertising. Under DMM standards, advertising is defined as:

1. All material of which a valuable consideration is paid, accepted, or promised, that calls attention to something to get people to buy it, sell it, seek it, or support it.

2. Reading matter or other material of which an advertising rate is charged.

3. Articles, items, and notices in the form of reading matter inserted by custom or understanding that textual matter is to be inserted for the advertiser or the advertiser's products in which a display advertisement appears.

4. An organization's advertisement of its own services or issues, or any other business of the publisher, whether in display advertising or reading matter. See DMM E211.1. In order to alleviate any confusion, this language has been incorporated into the free matter standards.

The Postal Service also adopts additional standards clarifying what may be mailed as free matter. These do not create substantive changes, but codify existing policies.

Three comments expressed concern that the proposed change in 2.1a was intended to further limit the standards for acceptable matter mailed as free matter. To the contrary, the change simply clarifies section (a) to say "reading matter in braille or 14-point or larger sightsaving type" is eligible to be sent as free matter. There was no change in sections (b) through (e) which list other acceptable matter that may be mailed as free matter.

Two comments requested that the Postal Service extend the standards for free matter to include handwritten letters that are written or printed in 14-point or larger type. This issue was addressed in the January 3, 2002, proposed rule. To reiterate the Postal Service's position, the history of the free matter privilege does not support that the intent was to include handwritten letters. Section 3404 of Title 39 specifically requires that letters sent using the privilege must be "in raised characters, or sightsaving type, or in the form of sound recordings * * *" Since the Postal Service does not have the authority to consider such a change, this request is outside the scope of this final rule.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the *Domestic Mail Manual*, which is incorporated by reference in the *Code of Federal Regulations* (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as follows:

E Eligibility

E000 Special Eligibility Standards

* * * * *

[Revise E040 to insert the word "physically" before the word "handicapped" in each instance where it appears.]

E040 Free Matter for the Blind and Other Physically Handicapped Persons

* * * * *

1.0 BASIC INFORMATION

1.1 General

[Revise 1.1 to read as follows:]

Subject to the standards below, matter may be entered free of postage if mailed by or for the use of blind or other persons who cannot read or use conventionally printed materials due to a physical handicap. The provisions of E040 apply to domestic mail only.

* * * * *

[Revise title and text of 1.3 to read as follows:]

1.3 Eligibility

The following persons are considered to be blind or unable to read or use conventionally printed material due to a physical handicap for purposes of this section:

a. Certified participants in the Library of Congress National Library Service for the Blind and Physically Handicapped (NLS).

b. Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting lenses, or whose widest diameter of visual field subtends angular distance no greater than 20 degrees.

c. Other physically handicapped persons certified by competent authority as meeting one or more of the following conditions:

(1) Having a visual disability, with correction and regardless of optical measurement, that prevents the reading of standard printed material.

(2) Being unable to read or unable to use standard printed material as a result of physical limitations.

(3) Having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(4) Meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors. These persons are eligible during the time in which they are certified by a competent authority as unable to read or use conventional materials.

d. Eligible participants must be residents of the United States, including

the several states, territories, insular possessions, and the District of Columbia, or American citizens domiciled abroad.

[Revise title and text of 1.4 to read as follows:]

1.4 Certifying Authority

For purposes of this standard:

a. The postmaster may extend the free matter privilege to an individual

d. The matter contains no advertising. Advertising is defined as:

(1) All material of which a valuable consideration is paid, accepted, or promised, that calls attention to something to get people to buy it, sell it, seek it, or support it.

(2) Reading matter or other material of which an advertising rate is charged.

(3) Articles, items, and notices in the

Act), we are approving a local rule that address definitions.

DATES: This rule is effective on September 6, 2002, without further notice, unless EPA receives adverse comments by August 7, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	101	Definitions	37235	37329

On May 7, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA

emission controls found in other local agency requirements. In combination with the other requirements, this rule must be enforceable (*see* section 110(a)

proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same

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the several states, territories, insular possessions, and the District of Columbia, or American citizens domiciled abroad.

[Revise title and text of 1.4 to read as follows:]

1.4 Certifying Authority

For purposes of this standard:

a. The postmaster may extend the free matter privilege to an individual recipient based on personal knowledge of the individual's eligibility.

b. In cases of blindness, visual impairment, or physical limitations, "competent authority" is defined to include doctors of medicine; doctors of osteopathy; ophthalmologists; optometrists; registered nurses; therapists; and professional staff of hospitals, institutions, and public or private welfare agencies (e.g., social workers, caseworkers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library of Congress (see 36 CFR 701.10(b)(2)(i)).

c. In the case of reading disability from organic dysfunction, "competent authority" is defined as doctors of medicine and doctors of osteopathy.

[Add new 1.5 to read as follows:]

1.5 Qualifying Individuals

The USPS may require individuals claiming entitlement to the free matter privilege to furnish evidence of eligibility consistent with the standards in 1.3 and 1.4, or verify by other means that the recipients are eligible to receive free matter.

2.0 MATTER SENT TO BLIND OR OTHER PHYSICALLY HANDICAPPED PERSONS

2.1 Acceptable Matter

Subject to 2.2, this matter may be mailed free:

[Revise item a by adding "in braille or 14-point or larger sightsaving type" to read as follows:]

a. Reading matter in braille or 14-point or larger sightsaving type and musical scores.

* * * * *

2.2 Conditions

The matter listed in 2.1 must meet these conditions:

[Revise item d by adding the definition of advertising to read as follows:]

d. The matter contains no advertising. Advertising is defined as:

(1) All material of which a valuable consideration is paid, accepted, or promised, that calls attention to something to get people to buy it, sell it, seek it, or support it.

(2) Reading matter or other material of which an advertising rate is charged.

(3) Articles, items, and notices in the form of reading matter inserted by custom or understanding that textual matter is to be inserted for the advertiser or the advertiser's products in which a display advertisement appears.

(4) An organization's advertisement of its own services or issues, or any other business of the publisher, whether in display advertising or reading matter.

* * * * *

3.0 MATTER SENT BY BLIND OR OTHER PHYSICALLY HANDICAPPED PERSONS

3.1 Acceptable Letters

[Revise 3.1 to read as follows:]

Only letters in braille or in 14-point or larger sightsaving type or in the form of sound recordings, and containing no advertising, may be mailed free, and only if unsealed and sent by a blind or other physically handicapped person as described in 1.3.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–16908 Filed 7–5–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0354a; FRL–7234–5]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that address definitions.

DATES: This rule is effective on September 6, 2002, without further notice, unless EPA receives adverse comments by August 7, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	101	Definitions	37235	37329

On May 7, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

ICAPCD adopted a version of Rule 101 on September 14, 1999, which EPA approved into the SIP on July 11, 2001. Rule 101 was adopted on December 11, 2001 and submitted to EPA for SIP approval on March 15, 2002.

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 101 has been revised to include a definition for crematories and pathological incinerators for the purpose of clarification of Rule 302, Fee schedule; Schedule 10, Crematories and Pathological Incinerators. Rule 302, Schedule 10, is used to assess Permit to Operate fees for crematories and pathological incinerators. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

This rule describes administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, this rule must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Do the Rules Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. There are no issues associated with this notice. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 7, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 6, 2002. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

A. Why Were These Rules Submitted?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. This rule was developed as part of the local agency's program to control these pollutants. Table 2 lists some of the national milestones leading to the submittal of this rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons,

County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from crude oil separation and storage operations, liquid reactive organic compound storage, and organic liquid loading and transport. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in

Why Were These Rules Submitted?
IV. Administrative Requirements

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SBCAPCD	325	Crude Oil Production and Separation Rule	07/19/01	11/7/01
SBCAPCD	326	Storage of Reactive Organic Compound Liquids	01/18/01	05/08/01

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distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 24, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(297)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(B) Imperial County Air Pollution Control District.

(*1*) Rule 101, adopted on July 28, 1981 and amended on December 11, 2001.

* * * * *

[FR Doc. 02–16864 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA247–0330a; FRL–7220–8]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and El Dorado County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from crude oil separation and storage operations, liquid reactive organic compound storage, and organic liquid loading and transport. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 6, 2002 without further notice, unless EPA receives adverse comments by August 7, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117; and

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SBCAPCD	325	Crude Oil Production and Separation Rule	07/19/01	11/7/01
SBCAPCD	326	Storage of Reactive Organic Compound Liquids	01/18/01	05/08/01
EDCAPCD	244	Organic Liquid Loading and Transport Vessels	09/25/01	11/9/01

EPA found these rule submittals met the completeness criteria in 40 CFR part 51, appendix V on the following dates: on February 22, 2002 for SBCAPCD Rule 325; July 20, 2001 for SBCAPCD Rule 326; and, on January 18, 2002 for EDCAPCD Rule 244. These completeness criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

EPA approved versions of SBCAPCD Rules 325 and 326 into the SIP on May 6, 1998. We approved a version of EDCAPCD Rule 244 into the SIP on August 27, 2001. Between these dates and today's action, CARB submitted a prior version of only Rule 325. This version of Rule 325 was adopted on January 18, 2001 and submitted by CARB on May 8, 2001. While we can act on only the most recently submitted version, these past rule revisions will be reviewed along with the latest revisions to Rule 325.

C. What Is the Purpose of the Submitted Rule Revisions?

SBCAPCD Rule 325—Crude Oil Production and Separation is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in producing, gathering storing, processing, and separating crude oil and natural gas prior to transfer from these facilities to transport facilities and networks. VOCs are emitted from containing vessels such as tanks and transfer lines due to the high vapor pressure of the processed crude oil and organic compounds. Rule 325 limits these vapor emissions by recapture, disposal, or combustion.

SBCAPCD Rule 326—Storage of Reactive Organic Compound Liquids is a rule designed to reduce VOC emissions at industrial sites engaged in storing any organic liquids with a vapor pressure greater than 0.5 pounds per square inch atmospheric. Rule 326 establishes vapor pressure containment and control requirements for organic liquid storage tanks. Rule 326 also sets specific requirements for vapor loss control devices, closure devices, external floating roofs, and internal floating roofs.

SBCAPCD's July 19, 2001 amendments to Rule 325 included these significant changes to the 1996 SIP approved version.

—Test methods were revised to include EPA Methods 5030B, 5035, and 8015B to determine the reactive organic compound content of liquids in milligrams per liter.

SBCAPCD's January 18, 2001 amendments to Rule 325 and Rule 326 included these significant changes to the respective versions within the SIP.

—Definitions for Heavy Oil, Light Oil, and HOST Test Method were added.

—The HOST Test Method ("Test Method for Vapor Pressure of Reactive Organic Compounds in Heavy Crude Oil Using Gas Chromatography") was added.

—A Heavy Oil Compliance Schedule was added to Rule 325.

—A compliance schedule for true vapor pressure sampling was added to Rule 326.

EDCAPCD Rule 244—Organic Liquid Loading and Transport Vessels is a rule designed to reduce VOC emissions at industrial sites engaged in loading and unloading organic liquids with a vapor pressure greater than 1.5 pounds per square inch atmospheric into and from tank trucks, trailers, or railroad tank cars. Rule 244 establishes vapor pressure containment and control requirements for organic liquid storage tanks such as gasoline loading facilities, transport vessels, and non-gasoline loading facilities.

EDCAPCD's September 25, 2001 amendments to Rule 244 included these significant changes to the 2001 SIP approved version.

—A definition for Bulk Terminal was added.

—Required vapor recovery rates at gasoline loading facilities were increased from 95% to 99%.

The respective TSD for each rule has more information about these rule revisions.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SBCAPCD and EDCAPCD regulate an ozone nonattainment area (see 40 CFR part 81), so Rules 325, 326 and 244 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants," EPA–450/2–83–007, USEPA, December 1983.

4. "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047, USEPA, December 1978.

5. "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks," EPA–450/2–77–036, USEPA, December 1977.

6. "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA–450/2–78–051, USEPA, December 1978.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance

regarding enforceability, RACT, and SIP relaxations.

The emission limits, requirements, and work practices of SBCAPCD Rules 325 and 326 conform with the EPA's CTG and remain unchanged compared to the SIP version of the rule. Also, Rules 325 and 326 contain adequate record keeping and test methods provisions for monitoring the

providing source-category specific exemptions for excess emissions that occur during start-up and shutdown periods only if the source's control strategy is such that compliance with otherwise applicable emission limits or technology requirements is technologically infeasible during these periods. The policy also requires that the frequency and duration of the excess

However, EPA recommends that this exemption be redrafted to fully implement the provisions of the Excess Emissions Policy during the next revision of this rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

(A) El Dorado County Air Pollution Control District.

(*1*) Rule 244 adopted on March 27, 2001, and amended on September 25, 2001.

* * * * *

[FR Doc. 02–16857 Filed 7–5–02; 8:45 am]

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regarding enforceability, RACT, and SIP relaxations.

The emission limits, requirements, and work practices of SBCAPCD Rules 325 and 326 conform with the EPA's CTG and remain unchanged compared to the SIP version of the rule. Also, Rules 325 and 326 contain adequate record keeping and test methods provisions for monitoring the compliance of regulated facilities. SBCAPCD's changes incorporate new test methods into the rule. These changes clarify the rules and allow for more precise determinations of compliance. As such, both submitted Rule 325 and 326 do not interfere with reasonable further progress or attainment.

EDCAPCD Rule 244's limits, requirements, and work practices conform with the EPA's CTG and remain unchanged compared to the SIP version of the rule. Also, Rule 244 contains adequate record keeping and test methods provisions for monitoring the compliance of regulated facilities. EDCAPCD's changes clarify and strenghthen the rule. As such, the submitted Rule 244 does not interfere with reasonable further progress or attainment.

The TSD for each respective rule has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

Section B.2 of Rule 325 provides for exemption from the requirements of section D.1 of the rule during maintenance operations on vapor recovery systems or tank batteries. EPA policy on exemptions which apply to excess emissions that occur during malfunctions, start-up and shutdown is contained in a memorandum dated September 20, 1999, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown" (the Excess Emissions Policy).

The Excess Emissions Policy states that EPA may approve SIP revisions providing source-category specific exemptions for excess emissions that occur during start-up and shutdown periods only if the source's control strategy is such that compliance with otherwise applicable emission limits or technology requirements is technologically infeasible during these periods. The policy also requires that the frequency and duration of the excess emissions be minimized to the maximum extent practicable. These requirements are based on sections 110(l) and 172(c)(1) of the Clean Air Act and are meant to ensure that the excess emissions provisions do not interfere with attainment, maintenance, or other applicable requirements. EPA has determined that maintenance activities might sometimes necessitate exemption from emissions limitations or technology requirements analogous to those available for start-up and shutdown under the Excess Emissions Policy. However, such exemptions must be narrowly tailored so that exemption is allowed only when compliance is rendered technologically infeasible by the maintenance activities.

The exemption in section B.2 of Rule 325 appears to be overly broad as it applies during any maintenance of a tank battery irrespective of whether such maintenance activity necessarily interferes with an operator's ability to meet the requirements of section D.1. Further, the Excess Emissions Policy requires that the duration of the exemption be minimized and that emissions be reduced as much as possible during the exemption. Section B.2 does not implement these requirements. However, section B.2 does limit the exemption to a maximum of 24 hours and requires prior notification of the Air Pollution Control District. Because this exemption is limited, EPA has determined that the rule's failure to fully conform to the requirements of the Excess Emissions Policy is not of sufficient concern to affect the approvability of the rule. However, EPA recommends that this exemption be redrafted to fully implement the provisions of the Excess Emissions Policy during the next revision of this rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 7, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 6, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 2, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(C), (c)(292)(i)(B), and (c)(296) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(284) * * *

(i) * * *

(C) Santa Barbara County Air Pollution Control District.

(*1*) Rule 326 adopted on December 14, 1993, and amended on January 18, 2001

* * * * *

(292) * * *

(i) * * *

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 325 adopted on January 25, 1994, and amended on July 19, 2001.

* * * * *

(296) New and amended regulations for the following APCD were submitted on November 9, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) El Dorado County Air Pollution Control District.

(*1*) Rule 244 adopted on March 27, 2001, and amended on September 25, 2001.

* * * * *

[FR Doc. 02–16857 Filed 7–5–02; 8:45 am]

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determined that the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery in Zone 1 of the BSAI has been reached. Consequently, the Regional Administrator is closing directed fishing for Pacific cod by vessels using trawl gear in Zone 1 of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

finds that the need to immediately implement this action to avoid exceeding the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery in Zone 1 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 2002.

Proposed Rules

Federal Register
Vol. 67, No. 130
Monday, July 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the

FOR FURTHER INFORMATION CONTACT: Mr. J.J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, at (617) 223–8355.

SUPPLEMENTARY INFORMATION:

grounds in Frenchman Bay near Bar Harbor, Maine.

Presently, there are no designated anchorage grounds in this area. The locations traditionally used for

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 070102A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery category in Zone 1.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 red king crab bycatch allowance specified for Zone 1 of the BSAI trawl Pacific cod fishery category, which is defined at § 679.21(e)(3)(iv)(E), is 11,664 animals (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has

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determined that the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery in Zone 1 of the BSAI has been reached. Consequently, the Regional Administrator is closing directed fishing for Pacific cod by vessels using trawl gear in Zone 1 of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery in Zone 1 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 2002.

Virginia M. Fay

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–16898 Filed 7–1–02; 4:46 pm]

BILLING CODE 3510–23–S

Proposed Rules

Federal Register
Vol. 67, No. 130
Monday, July 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01–02–027]

RIN 2115–AA98

Anchorage Grounds; Frenchman Bay, Bar Harbor, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two anchorage grounds in Frenchman Bay near Bar Harbor, Maine. This action is necessary to provide designated anchorage grounds on Frenchman Bay thereby facilitating safe and secure anchorages, and improved Captain of the Port & Harbormaster coordination and management of congested harbor areas for an increasing number of large passenger vessels calling on the Port of Bar Harbor. This action is intended to increase safety for vessels through enhanced voyage planning and also by clearly indicating the location of anchorage grounds for ships proceeding along the Frenchman Bay Recommended Route for Deep Draft vessels.

DATES: Comments and related material must reach the Coast Guard on or before October 7, 2002.

ADDRESSES: Comments should be mailed to: Commander (oan) (CGD01–02–027), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, or deliver them to room 628 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Office of Aids to Navigation Branch, First Coast Guard District maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J.J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, at (617) 223–8355.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Persons submitting comments should include their names and addresses, identify the docket number for this rulemaking (CGD01–02–027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. We will consider all comments and material received during the comment period. We may change this proposed rule in view of the comments received.

Public Meeting

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Office of Aids to Navigation Branch at the Address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If we determine that the opportunity for oral presentations will aid this rulemaking, we will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In November 1999, the Maine Department of Transportation contracted with a local firm to produce a cruise ship traffic demand management study for the Town of Bar Harbor, Maine. One of the purposes was to develop a scheduling and reservation system for arriving cruise ships so that Town facilities would not be overburdened. The study included basic research into the history and outcomes of past cruise ship visits, observation of present cruise ship operations and anchorages. Based on the findings and recommendations of this study, the Penobscot Bay and River Pilots Association has requested that the Coast Guard establish two Federal anchorage grounds in Frenchman Bay near Bar Harbor, Maine.

Presently, there are no designated anchorage grounds in this area. The locations traditionally used for anchorage of large vessels calling on Bar Harbor are situated north and south of Bar Island. The proposed size and shape of the anchorage grounds are minimal. The proposed size and shape make best use of available water, designating anchorage locations for both large and small vessels, thereby reducing the amount of vessels anchored in and transiting through the harbor. These proposed anchorage locations would make the harbor safer given the large amount of current vessel traffic along with the foreseen increased use of this waterway.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

This rule does not intend to exclude fishing activity or the transit of vessels in the anchorage grounds. The Coast Guard anticipates the proposed anchorage grounds would cause minimal transit interference, by way of increased vessel anchorage.

Discussion of Proposed Rule

The rule creates two new anchorage grounds. Anchorage "A" (general) would be that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

Latitude	Longitude
44°23′43″N	068°11′00″W; thence to
44°23′52″N	068°11′22″W; thence to
44°23′23″N	068°10′59″W; thence to
44°23′05″N	068°11′32″W; returning to start.

Anchorage "B" (general-primarily intended for vessels 200 feet and longer) would be that portion of Frenchman's Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

Latitude	Longitude
44°24′33″N	068°13′09″W; thence to

Latitude	Longitude
44°24′42″N	068°11′47″W; thence to
44°24′11″N	068°11′41″W; thence to
44°23′02″N	068°13′03″W; returning to start.

All proposed coordinates are North American Datum 1983. This proposal does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(f) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule should have minimal economic impact on lobster fishing vessels and recreational boaters. This conclusion that the proposed rule should have a minimal economic impact on small entities is based upon the fact that there are no restrictions for

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable

Latitude	Longitude
44°23′23″N	068°10′59″W; thence to
44°23′05″N	068°11′32″W; returning to start.

(2) Anchorage "B" is that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern definitions. We are proposing to approve a local rule that addresses definitions under the Clean Air Act as amended in 1990 (CAA or the

Latitude	Longitude
44°24'42"N	068°11'47"W; thence to
44°24'11"N	068°11'41"W; thence to
44°23'02"N	068°13'03"W; returning to start.

All proposed coordinates are North American Datum 1983. This proposal will significantly enhance safety of navigation and efficiency for large passenger vessels calling on the Port of Bar Harbor. Additionally, the new anchorage grounds would relieve some of the overcrowding in the existing Bar Harbor waterfront by reducing vessel anchorage and transit within the waterfront area thus further increasing vessel safety.

The rule would also increase vessel safety by providing the Captain of the Port vessel coordination capabilities. Vessels must be capable of moving with reasonable promptness when ordered by the Captain of the Port.

Regulatory Evaluation

This proposed regulation is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This conclusion is based upon the fact that there are no fees, permits, or specialized requirements for the maritime industry to utilize these anchorage areas. The regulation is solely for the purpose of advancing the safety of maritime commerce.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule should have minimal economic impact on lobster fishing vessels and recreational boaters. This conclusion that the proposed rule should have a minimal economic impact on small entities is based upon the fact that there are no restrictions for entry or use of the proposed anchorage targeting small entities. The proposed regulation creates only two new anchorage areas; it does not govern its usage.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro at the address listed in **ADDRESSES** above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposed rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(f) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

This rule proposes creating two new anchorage areas to the east of Bar Harbor. These designated anchorages would enhance the safety in the waters of Frenchman Bay, Maine by relieving vessel congestion within the bay. Thus, these two designated anchorages would provide a safer approach for deep draft vessels.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons set forth in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

§§ 110.130 through 110.134 [Redesignated]

2. Redesignate § 110.130 through § 110.134 as follows:

Old section	New section
§ 110.130	110.132
§ 110.131	110.133
§ 110.132	110.134
§ 110.133	110.136
§ 110.134	110.138

3. Add § 110.130 to Part 110, Subpart B, to read as follows:

§ 110.130 Bar Harbor, Maine.

(a) *Anchorage grounds.* (1) Anchorage "A" is that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

Latitude	Longitude
44°23'43"N	068°11'00"W; thence to
44°23'52"N	068°11'22"W; thence to
44°23'23"N	068°10'59"W; thence to
44°23'05"N	068°11'32"W; returning to start.

(2) Anchorage "B" is that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

Latitude	Longitude
44°24'33"N	068°13'09"W thence to
44°24'42"N	068°11'47"W thence to
44°24'11"N	068°11'41"W thence to
44°23'02"N	068°13'03"W returning to start.

(b) *Regulations.* (1) Anchorage A is a general anchorage ground reserved for passenger vessels, small commercial vessels and pleasure craft. Anchorage B is a general anchorage ground reserved primarily for passenger vessels 200 feet and greater.

(2) These anchorage grounds are authorized for use year round.

(3) Temporary floats or buoys for marking anchors will be allowed in all anchorage areas.

(4) Fixed moorings, piles or stakes are prohibited.

(5) Any vessels anchored in this area shall be capable of moving and when ordered to move by the Captain of the Port shall do so with reasonable promptness.

(6) The anchoring of vessels is under the coordination of the local Harbormaster.

Dated: June 21, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–17003 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0354b; FRL–7234–6]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern definitions. We are proposing to approve a local rule that addresses definitions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 7, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: ICAPCD 101. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 24, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–16865 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA247–0330b; FRL–7220–9]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District, El Dorado County Air Pollution Control

DATES: Any comments on this proposal must arrive by August 7, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at

Compound Liquids, and EDCAPCD Rule 244—Organic Liquid Loading and Transport Vessels. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the

Notices

Federal Register
Vol. 67, No. 130
Monday, July 8, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and

The public may inspect comments received at Forest Service headquarters in the Yates Federal Building, 201 14th Street, SW., Room 1 SW., Washington, DC, during normal business hours.

State's full payment amount through the act. A decision to receive a share of the State's 25 percent payment is effective for two years; a decision to receive a share of the act's full payment amount

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA247–0330b; FRL–7220–9]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and El Dorado County Air Pollution Control District (EDCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from crude oil separation and storage operations, liquid reactive organic compound storage, and organic liquid loading and transport. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 7, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117; and

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SBCAPCD Rule 325—Crude Oil Production and Separation, SBCAPCD Rule 326—Storage of Reactive Organic Compound Liquids, and EDCAPCD Rule 244—Organic Liquid Loading and Transport Vessels. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 2, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

[FR Doc. 02–16858 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 130

Monday, July 8, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Secure Rural Schools and Community Self-Determination Act of 2000

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on an extension of an information collection associated with the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). Annually, each State Treasurer for those States containing National Forest System lands is requested to notify the Forest Service, by September 30, of the projected payment distributions to each county and, when required, each county's elected proportion of funds for Title II or for Title III of the act. Every two years, these States are also asked to provide the Forest Service with information on which counties elect to continue receiving their share of the State's payment under the 25 percent fund (16 U.S.C. 500) and which counties elect to receive their share of the State's full payment amount under the 2000 act.

DATES: Comments must be received in writing on or before September 6, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Director, Policy Analysis Staff, Forest Service, USDA, Mail Stop 1131, 1400 Independence Ave., SW., Washington, DC 20250–1131.

Comments also may be submitted to the Director via facsimile transmission to (202) 205–1074 or by e-mail to *tquinn01@fs.fed.us.*

The public may inspect comments received at Forest Service headquarters in the Yates Federal Building, 201 14th Street, SW., Room 1 SW., Washington, DC, during normal business hours. Visitors are encouraged to call (202) 205–1775 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Tom Quinn, Policy Analysis Unit, (202) 205–1775 or *tquinn01@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Secure Rural Schools and Community Self-Determination Act of 2000.

OMB Number: 0596–0165.

Expiration Date of Approval: 3/31/2002.

Type of Request: Extension with no revision.

Abstract: On May 23, 1908, the U.S. Congress enacted 16 U.S.C. 500, which created what is commonly known as the Twenty-Five Percent Fund. Under this act, States receive payment from the Federal Government of twenty-five percent of the revenues generated from the national forests that are located within their borders. On October 30, 2000, the Congress enacted the Secure Rural Schools, and Community Self-Determination Act (Public Law 106–393; hereafter, the act), which is intended to restore stability and predictability to the annual payments made to States and counties containing National Forest System lands and public domain lands managed by the Bureau of Land Management. Like the 25 percent fund, the counties may use the proceeds only for the benefit of public schools, roads, and other purposes.

The Secretary of Agriculture is directed to implement the act. Under the act, eligible counties and their States need to reach an agreement on the distribution of funds authorized by the act and the amount that each county will receive as its share of the State's full payment amount. Counties will need to determine whether they wish to continue to receive their share of the State's twenty-five percent payment or whether they choose their share of the State's full payment amount through the act. A decision to receive a share of the State's 25 percent payment is effective for two years; a decision to receive a share of the act's full payment amount stays in effect through fiscal year 2006.

Those counties choosing the full payment and receiving more than $100,000 under the act are required to make an election regarding the proportion of their funds (between fifteen and twenty percent) to be applied to Title II or Title III of the act. Title II allows the funds paid under the act to be used for special projects on Federal lands that meet the requirements described in Title II of the act, and Title III allows the funds to be spent on county projects that meet the requirements described under Title III of the act. Annually, each State Treasurer is requested to notify the Forest Service, by September 30, of the projected payment distributions to each county and, when required, each county's elected proportion of funds for Title II or for Title III.

Upon receipt, the Forest Service will evaluate the information from States in order to properly implement the act. States and counties must provide the requested information in order for the Forest Service to properly calculate and distribute the State's full payment amount authorized by Public Law 106–393 and, by extension, provide counties with their commensurate share of that full payment amount. This information collection is a vital and integral part of the Forest Service's ability to implement the act. Failure to implement the act would potentially lead to unnecessary harm to those schools and counties that benefit from the funds.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: State Treasurers and Counties.

Estimated Annual Number of Respondents: 41.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 22 hours per year.

Comment is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the

agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or

time. All other information in the May 2, 2002 NOI remains the same.

Dated: June 28, 2002.

Tamara S. Malone,

Deputy Forest Supervisor.

[FR Doc. 02–16920 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA-Forest Service will prepare an Environmental Impact Statement (EIS) for the Baltimore Vegetative Management Project (VMP) to disclose the effects of the following activities: Timber harvest; site preparation for natural and artificial

The proposed project area includes portions of management areas (MAs) 1.1, 8.1, 9.2, and 9.3, and is comprised of National Forest System lands and parcels of private land. The Ottawa Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area

of which approximately 290 acres would be classified as managed old growth and approximately 1360 acres would be classified as unmanaged old growth.

The proposed National Forest road management needed to access the treatment areas would include an estimated: 1.1 miles of new system road construction, 9.7 miles of system road reconstruction, 40.8 miles of system

improvement of a small parking area near the Ontonagon River access site.

The proposed management needed to address public health and safety concerns would include relocating a portion of snowmobile trail #3 that is currently located in the US–45 right of way. The existing trail location creates a less than ideal safety situation for motor vehicle users on the highway and also for snowmobilers.

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agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the information collection submission for Office of Management and Budget approval.

Dated: July 2, 2002.

Elizabeth Estill,

Deputy Chief, Programs and Legislation.

[FR Doc. 02–17043 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Finger Lakes National Forest (Seneca and Schuyler Counties, NY)

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent supplement.

SUMMARY: On May 2, 2002 the USDA Forest Service published in the **Federal Register**, a Notice of Intent (NOI) to prepare an Environmental Impact Statement and to revise the Finger Lakes National Forest Land and Resource Management Plan (Forest Plan). A supplement to the NOI was published on June 19, 2002 extending the comment period from 60 to 90 days. A document titled, "Implementing the Finger Lakes Land and Resource Management Plan—A Fifteen Year Retrospective" (Retrospective) was referenced in the NOI and was not available at the beginning of the 60-day public comment period. Printing the Retrospective has taken longer than expected. To ensure that those who want to reference the Retrospective when commenting on the NOI may do so, the comment period on the NOI is being extended until August 31, 2002.

Supplement: The Finger Lakes National Forest is extending the comment period for the NOI until August 31, 2001. Written comments on the NOI will now be accepted until that time. All other information in the May 2, 2002 NOI remains the same.

Dated: June 28, 2002.

Tamara S. Malone,

Deputy Forest Supervisor.

[FR Doc. 02–16920 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Green Mountain National Forest (Addison, Bennington, Rutland, Washington, Windham, and Windsor Counties, VT)

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent Supplement.

SUMMARY: On May 2, 2002 the USDA Forest Service published in the **Federal Register**, a Notice of Intent (NOI) to prepare an Environmental Impact Statement and to revise the Green Mountain National Forest Land and Resource Management Plan (Forest Plan). A supplement of the NOI was published on June 19, 2002 extending the comment period from 60 to 90 days. A document titled, "Implementing the Green Mountain Land and Resource Management Plan—A Fifteen Year Retrospective" (Retrospective) was referenced in the NOI and was not available at the beginning of the 60-day public comment period. Printing the Retrospective has taken longer than expected. To ensure that those who want to reference the Retrospective when commenting on the NOI may do so, the comment period on the NOI is being extended until August 31, 2002.

SUPPLEMENTARY INFORMATION: The Green Mountain National Forest is extending the comment period for the NOI until August 31, 2001. Written comments on the NOI will now be accepted until that time. All other information in the May 2, 2002 NOI remains the same.

Dated: June 28, 2002.

Tamara S. Malone,

Deputy Forest Supervisor.

[FR Doc. 02–16919 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ottawa National Forest, Ontonagon County, MI; Baltimore Vegetative Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA-Forest Service will prepare an Environmental Impact Statement (EIS) for the Baltimore Vegetative Management Project (VMP) to disclose the effects of the following activities: Timber harvest; site preparation for natural and artificial regeneration; tree planting; dispersed parking area improvement and development; trail construction; relocating a portion of an existing snowmobile trail; classification of old growth; maintenance of permanent openings and mowing roads for wildlife habitat; fisheries habitat improvement; expansion of an existing gravel pit; and transportation management that would include road construction, road reconstruction, temporary road construction, road maintenance, road decommissioning and obliteration, and road closure to passenger vehicles.

The project area begins approximately 4 miles north of Bruce Crossing, Michigan, and lies to the east and west of US Highway 45 (US–45). It is in the Baltimore Opportunity Area on the Ontonagon Ranger District and the North Ewen Opportunity Area on the Bergland Ranger District.

DATES: Comments and suggestions concerning the scope of the analysis should be received within 30 days following publication of this notice. The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November 2002, and the final environmental impact statement (FEIS) is expected in March 2003.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to: District Ranger, Ontonagon Ranger District, 1209 Rockland Road, Ontonagon, MI 49953.

FOR FURTHER INFORMATION CONTACT: John Strasser, Interdisciplinary Team Leader, Ontonagon Ranger District, Phone: (906) 884–2411.

SUPPLEMENTARY INFORMATION: The project area contains approximately 35,900 acres, of which approximately 28,475 are National Forest System acres, on the Ontonagon and Bergland Ranger Districts on the Ottawa National Forest, Ontonagon County, Michigan. The legal description of the project area contains all or parts of the following locations: T49N R38W, Sections 18, 19, 30; T49N R39W, Sections 1–36; T49N R40W, Sections 1–4, 8–17, 20–28, 33–36; and T50N R39W, Sections 27, 31–35, Michigan Meridian.

The proposed project area includes portions of management areas (MAs) 1.1, 8.1, 9.2, and 9.3, and is comprised of National Forest System lands and parcels of private land. The Ottawa Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

Purpose and Need for Action

The purpose and need for action is to:

(1) Promote and maintain processes that would enhance natural species diversity while providing a supply of wood products for regional and local needs to help support a stable economic base within the market area.

(2) Maintain and enhance habitat conditions that sustain viable populations of a variety of fish and wildlife species and enhance watershed conditions.

(3) Maintain a road system that allows for management of National Forest System lands and provides for public access while meeting other resource needs.

(4) Provide recreational opportunities to meet the public's needs.

(5) Provide for public safety.

Proposed Action

The Forest Service proposes treatments on approximately 3360 acres of National Forest System land that would harvest approximately 48,000 hundred cubic feet (CCF) (equivalent to approximately 61,000 cords) of timber through a variety of harvest methods. Silvicultural treatment systems that would be used include: clearcut with reserve trees on approximately 1975 acres, selection harvest on approximately 100 acres, commercial thinning on approximately 825 acres, shelterwood harvest on approximately 360 acres, and removal harvest on approximately 100 acres. This proposal includes 15 temporary openings greater than 40 acres (size range is approximately 50 to 186 acres), to treat Aspen forest types at high risk of loss to insect and disease (60 days' public notice period and Regional Forester review would be required prior to signing the Record of Decision for exceeding the forty-acre temporary opening limit set in 36 CFR 219.27(d)(2)). Connected treatment actions would include site preparation for natural and artificial regeneration on approximately 2200 acres, and supplemental conifer planting on approximately 400 acres. The proposal also includes the classification of approximately 1650 acres of old growth, of which approximately 290 acres would be classified as managed old growth and approximately 1360 acres would be classified as unmanaged old growth.

The proposed National Forest road management needed to access the treatment areas would include an estimated: 1.1 miles of new system road construction, 9.7 miles of system road reconstruction, 40.8 miles of system road maintenance, and 1.0 mile of temporary road construction. Temporary roads would be obliterated and allowed to revegetate to a natural state following completion of treatment activities.

In addition to the above proposed road treatments, the following road management would allow for future management of National Forest lands, provide for public access, and meet other resource needs. This includes an estimated: 28.1 miles of road decommissioning, 15.6 miles of system road reconstruction, 49.6 miles of system road maintenance, and 2.6 miles of road being unclassified. The 2.6 miles of unclassified road are no longer needed for long-term management of forest resources, but are access routes currently under special use permit or being used by leaseholders.

The proposed expansion of the Gauthier Gravel Pit would provide materials necessary for future transportation management.

The proposed wildlife and fisheries management activities, intended to maintain or enhance wildlife and fisheries habitat, would include: maintaining approximately 165 acres of permanent openings, mowing along approximately 13 miles of road to improve succulent forage for grouse, scarifying some sites for seeding or natural regeneration of conifers to increase the conifer component in existing conifer stands, hand-cutting small patches of Tag Alder adjacent to Aspen stands to rejuvenate woodcock habitat, add/create large coarse woody debris to some of the harvested Aspen stands for grouse and other species, and adding large woody debris at selected sites in the Baltimore River.

The proposed dispersed recreation management activities, intended to maintain or enhance existing recreation opportunities to meet current and expected future demand while protecting resources, would include: hardening, enhancing, or developing some dispersed recreation camping sites adjacent to Forest Roads 730 and 733, conversion of approximately 300 feet of existing unclassified road to a trail to protect resources while still allowing for Ontonagon River access, and improvement of a small parking area near the Ontonagon River access site.

The proposed management needed to address public health and safety concerns would include relocating a portion of snowmobile trail #3 that is currently located in the US–45 right of way. The existing trail location creates a less than ideal safety situation for motor vehicle users on the highway and also for snowmobilers.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest System lands will be considered. The EIS will disclose site-specific design criteria.

Responsible Official

Ralph E. Miller, Acting District Ranger, Ontonagon Ranger District, 1209 Rockland Rd., Ontonagon, MI 49953, is the Responsible Official. As the Responsible Official he will decide if the proposed project will be implemented. He will document the decision and reasons for the decision in the Record of Decision.

Nature of Decision To Be Made

The Ontonagon District Ranger will decide the following:

- Whether or not to implement vegetation management activities, and if so, identify the selection of, and site-specific location of, appropriate timber management practices (silvicultural prescription, site preparation, and reforestation).
- Identify road construction, reconstruction, maintenance, and temporary road construction necessary to provide access to accomplish treatments, or provide for long-term resource management, as well as any appropriate design criteria.
- Whether or not to permanently decommission, obliterate, or close roads to restrict passenger vehicle access or protect resources, and if so, where and how.
- Whether or not to expand an existing gravel pit, and if so, to what extent.
- Whether or not to maintain permanent openings and mow certain

roads, and if so, the location and size of openings to be maintained and roads to be mowed.

- What improvements or developments, if any, should be undertaken to enhance dispersed recreation opportunities.
- Whether or not to relocate a portion of snowmobile trail #3, and if so, where.
- What, if any, specific project

Vegetation

There are large areas of mature and declining Aspen that are at high risk of loss to insects or disease. When proposed harvest areas are added to recently harvested adjacent areas (0–10 years ago), several temporary open areas exceeding 40 acres would be created.

Public Health and Safety

review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be

round robin information sharing session. A fifteen-minute public comment period is scheduled for approximately 11:15 a.m. The committee welcomes the publics' written comments on committee business at anytime. The meeting should end around 2:30 p.m. Interested citizens are encouraged to attend. Lunch will be on your own.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Broadband Pilot Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Rural Utilities Service (RUS) announces a pilot grant program

Comments on this notice must be received by September 6, 2002.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance

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roads, and if so, the location and size of openings to be maintained and roads to be mowed.

- What improvements or developments, if any, should be undertaken to enhance dispersed recreation opportunities.
- Whether or not to relocate a portion of snowmobile trail #3, and if so, where.
- What, if any, specific project monitoring requirements would be needed to assure design criteria are implemented and effective.

Public Involvement and Scoping

In July 1998, initial scoping was done for the Thumper Vegetation Management Project that was listed in the 1998 winter edition of the Ottawa Quarterly. The 1999 summer edition of the Ottawa Quarterly further included the Winterfest Timber Sale as part of the Thumper Vegetation Management Project. This project was never completed and is now included in the Baltimore analysis. Comments received regarding the Thumper Vegetation Management Project prior to this notice will be included in the documentation for the EIS. The public is encouraged to take part in the process by communicating or visiting with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, as well as other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Initiating public involvement.
- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Identifying alternatives to the proposed action.
- Identifying potential environmental effects of this proposed action and the alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

Preliminary Issues

Tentatively, a few preliminary issues of concern have been identified. These issues are briefly described below.

Transportation System

Implementation of the proposed action would decommission roads not needed for the long-term transportation system. Some additional segments of road would be managed as closed to some types of motorized use. This may affect the public's ability to use traditional access routes.

Vegetation

There are large areas of mature and declining Aspen that are at high risk of loss to insects or disease. When proposed harvest areas are added to recently harvested adjacent areas (0–10 years ago), several temporary open areas exceeding 40 acres would be created.

Public Health and Safety

A portion of snowmobile trail #3 is located in the US–45 right of way. The present trail location creates a situation where snowmobile traffic must parallel the highway, cross the highway several times, and cross the Ontonagon River by traveling over and along the US–45 bridge. This creates a less than ideal safety situation for motor vehicle users on the highway and also for snowmobilers. Within the scope of this project, proposing to relocate a portion of the existing trail could reduce the amount of trail within the US–45 right of way. For reasons outside the scope of this project, a separate analysis and document is needed to propose alternative methods for crossing the Ontonagon River, which could reduce the number of times the trail has to cross US–45 and eliminate snowmobiles having to travel over and along the US–45 bridge.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft EIS will be prepared for comment. The draft EIS is expected to be filed with the EPA and to be available for public review in November 2002. At that time the EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: June 24, 2002.

Robert Lueckel,

Forest Supervisor.

[FR Doc. 02–16586 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on July 18, 2002. The meeting will begin at 9 a.m., in the Siuslaw National Forest Supervisor's Office, 4077 SW Research Way, Corvallis, Oregon. Agenda items, with a theme of "Landscape Dynamics," will include an overview of the Coastal Landscape & Monitoring System (CLAMS), an overview of the University of Washington Landscape Management System, a Nestucca Adaptive Management Area overview, and a round robin information sharing session. A fifteen-minute public comment period is scheduled for approximately 11:15 a.m. The committee welcomes the publics' written comments on committee business at anytime. The meeting should end around 2:30 p.m. Interested citizens are encouraged to attend. Lunch will be on your own.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541/750–7075 or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, OR 97339.

Dated: June 28, 2002.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 02–16942 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee (RAC) will meet on August 2, 2002. The meeting will begin at 9 a.m., in the Siuslaw Fire & Rescue Station, 2625 Highway 101 North, Florence, OR. Agenda items will include: An update by the Siuslaw NF Supervisor, feedback on the National Forest Counties & Schools Coalition Conference, 2002 projects status, fiscal adjustments for 2002, counties electronics for 2003, project success stories, Forest Work Camp in one grant, presentation of public projects, presentation of new Forest Service projects, a review of project selection criteria, and a public comment period. The public comment period is expected to begin at approximately 10:05 a.m. The meeting is expected to adjourn at 4 p.m. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, OR 97339.

Dated: June 28, 2002.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 02–16941 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Broadband Pilot Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Rural Utilities Service (RUS) announces a pilot grant program for the provision of broadband transmission service in rural America. For fiscal year 2002, $20 million in grants will be made available through a national competition to applicants proposing to provide broadband transmission service on a "community-oriented connectivity" basis. The "community-oriented connectivity" approach will target rural, economically-challenged communities and offer a means for the deployment of broadband transmission services to rural schools, libraries, education centers, health care providers, law enforcement agencies, public safety organizations as well as residents and businesses. This all-encompassing connectivity concept will give small, rural communities a chance to benefit from the advanced technologies that are necessary to foster economic growth, provide quality education and health care opportunities, and increase and enhance public safety efforts.

DATES: Applications for grants will be accepted as of the date of this notice through November 5, 2002. All applications must be delivered to RUS or bear postmark no later than November 5, 2002. Comments regarding the information collection requirements under the Paperwork Reduction Act must be received on or before September 6, 2002, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). These requirements have been approved by emergency clearance under OMB Control Number 0572–0127.

Comments on this notice must be received by September 6, 2002.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

Title: Broadband Pilot Grant Program

Type of Request: New collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 152 hours per response.

Respondents: Public bodies, commercial companies, cooperatives, nonprofits, Indian tribes, and limited dividend or mutual associations and must be incorporated or a limited liability company.

Estimated Number of Respondents: 105.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 16,005 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

General Information

The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. To further this objective, RUS will provide financial assistance to eligible entities that propose, on a "community-oriented connectivity" basis, to provide broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. RUS will provide

this assistance in the form of grants. RUS will give priority to rural areas that it believes have the greatest need for broadband transmission services.

Twenty million dollars in grant authority will be utilized to deploy broadband infrastructure to extremely rural, lower income communities on a "community-oriented connectivity" basis. The "community-oriented

Vermont, Virginia, Virgin Islands, West Virginia, Wisconsin: Mr. Kenneth Kuchno, Director, Eastern Area, Telecommunications, Rural Utilities Service, USDA, STOP 1599, 1400 Independence Avenue SW., Washington, DC 20250–1599, Telephone (202) 690–4673.

Applications from: Alaska, Idaho, Iowa, Minnesota, Missouri, Montana,

working hours and on Saturday or Sunday. Examples of facilities that may be partially used for the described purposes include school, library, or city hall.

Computer access points means a new computer terminal with access to basic broadband transmission service.

Critical community facility means a public school, public library, public

goal for which the circuit or signal was established.

Eligible Applicant

To be eligible for a grant, the applicant must:

(a) Be a public body; an Indian tribe; a cooperative, nonprofit, limited dividend or mutual association; municipality; an incorporated or limited liability company; or other legally

the greater of 5 percent of the grant amount requested or $100,000;

(c) End-user equipment needed to carry out the project;

(d) Operating expenses incurred in providing broadband transmission service to critical community facilities for the first 2 years of operations and to provide training and instruction. Salary and administrative expenses will be subject to review, and may be limited,

matching contributions unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution.

Completed Application

A completed application must include the following documentation, studies, reports and information in a form satisfactory to RUS. Applications

this assistance in the form of grants. RUS will give priority to rural areas that it believes have the greatest need for broadband transmission services.

Twenty million dollars in grant authority will be utilized to deploy broadband infrastructure to extremely rural, lower income communities on a "community-oriented connectivity" basis. The "community-oriented connectivity" concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. RUS will provide financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents. Under this Notice, grants will be made available, on a competitive basis, for the deployment of broadband transmission services to critical community facilities, rural residents, and rural businesses and for the construction, acquisition, or expansion and operation of a community center that provides free access to broadband transmission services to community residents for at least two years. Funding is also available for end-user equipment, software, and installation costs. A state-of-the-art community center will not only provide improved access but will aid rural residents in developing on-line businesses and will allow them to reap the benefits of Internet-based advanced placement courses, and continuing adult education. An application is limited to including only one project, as defined in this notice. Applicants wishing to serve multiple projects must submit an application for each project. Applicants will be required to provide a minimum matching contribution that is equal to 15 percent of the grant amount awarded.

Agency Contacts

For application information, contact the following individuals:

Applications from: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Virgin Islands, West Virginia, Wisconsin: Mr. Kenneth Kuchno, Director, Eastern Area, Telecommunications, Rural Utilities Service, USDA, STOP 1599, 1400 Independence Avenue SW., Washington, DC 20250–1599, Telephone (202) 690–4673.

Applications from: Alaska, Idaho, Iowa, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Washington, Wyoming: Mr. Jerry Brent, Director, Northwest Area, Telecommunications, Rural Utilities Service, USDA, STOP 1595, 1400 Independence Avenue SW., Washington, DC 20250–1595, Telephone (202) 720–1025.

Applications from: Arizona, Arkansas, California, Colorado, Hawaii, Kansas, Louisiana, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah, American Samoa, Federated States of Micronesia, Guam, Republic of Marshall Islands, Republic of Palau, Commonwealth of the Northern Marianas Islands: Mr. Ken Chandler, Director, Southwest Area, Telecommunications, Rural Utilities Service, USDA, STOP 1597, 1400 Independence Avenue SW., Washington, DC 20250–1597, Telephone (202) 720–0800.

Definitions

As used in this notice:

Bandwidth means the capacity of the radio frequency band or physical facility needed to carry the broadband transmission services.

Basic broadband transmission service means the broadband transmission service level provided by the applicant at the lowest rate or service package level for residential or business customers, as appropriate, providing such service meets the requirements of this notice.

Broadband transmission service means providing an information rate equivalent to at least 200 kilobits/second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

Community means any incorporated or unincorporated city, town, village, or borough.

Community center means a public building, or a section of a public building, that is used solely for the purposes of providing free access to and/or instruction in the use of broadband Internet service, and is of the appropriate size to accommodate this sole purpose. The community center must be open and accessible to area residents before and after normal working hours and on Saturday or Sunday. Examples of facilities that may be partially used for the described purposes include school, library, or city hall.

Computer access points means a new computer terminal with access to basic broadband transmission service.

Critical community facility means a public school, public library, public medical clinic, public hospital, community college, public university, or law enforcement, fire and ambulance stations.

Eligible applicant shall have the meaning set forth in that paragraph entitled "Eligible Applicant."

Eligible grant purposes shall have the meaning set forth in that paragraph entitled "Eligible Grant Purposes."

End-user equipment means computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, inside wiring, interactive video equipment, or other facilities required for the provision and use of broadband transmission services.

Matching contribution means the applicant's qualified contribution to the project.

Project means the approved purposes financed by the grant and the applicant's matching contribution to serve one community and the contiguous, unincorporated areas located outside the community's boundaries.

Rural area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population of more than 20,000 inhabitants.

Service area means a single community and the contiguous, unincorporated areas located outside the community's boundaries.

Spectrum means a defined band of frequencies that will accommodate the broadband transmission services.

Telecommunications terminal equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Eligible Applicant

To be eligible for a grant, the applicant must:

(a) Be a public body; an Indian tribe; a cooperative, nonprofit, limited dividend or mutual association; municipality; an incorporated or limited liability company; or other legally organized entity. The applicant may not be an individual or a partnership; and

(b) Have the legal authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable Federal statutes and regulations.

Eligible Project

To be eligible for a grant, the project must:

(a) Propose to serve a rural area where broadband transmission service does not currently exist;

(b) Propose to serve one community;

(c) Deploy basic broadband transmission service, free of all charges for at least 2 years, to all critical community facilities located within the proposed service area;

(d) Deploy basic broadband transmission service, free of all charges for at least 2 years, to the community center;

(e) Offer basic broadband transmission service to all residential and business customers within the proposed service area; and

(f) Provide a community center within the proposed service area and make broadband transmission service available, free of all charges to users within the center for at least 2 years. The community center must have, as a minimum, 10 computer access points or computer access points equal to 1 percent of the service area's population, whichever is greater.

Eligible Grant Purposes

Grant funds may be used to finance:

(a) The construction, acquisition, or lease of facilities, including spectrum, to deploy broadband transmission services to all critical community facilities and to offer such service to all residential and business customers located within the proposed service area;

(b) The improvement, expansion, construction, or acquisition of a community center that furnishes free access to broadband Internet service, provided that the community center is open and accessible to area residents before and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of 5 percent of the grant amount requested or $100,000;

(c) End-user equipment needed to carry out the project;

(d) Operating expenses incurred in providing broadband transmission service to critical community facilities for the first 2 years of operations and to provide training and instruction. Salary and administrative expenses will be subject to review, and may be limited, by RUS for reasonableness in relation to the scope of the project; and

(e) The purchase of land, buildings, or building construction needed to carry out the project.

Grant funds may not be used to finance the duplication of any existing broadband transmission services provided by other entities.

Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such services.

Matching Contributions

The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be in the form of:

(a) Cash for eligible grant purposes; and

(b) In-kind contributions of purposes that could have been financed with grant funds under this notice. In-kind contributions must be new or non-depreciated assets with established monetary values. Manufacturers' or service providers' discounts are not matching contributions.

(c) The rental value of space provided within an existing community center, provided that the space is provided free of charge to the applicant;

(d) Salary expenses incurred for the individual(s) operating the community center.

(e) Expenses incurred in operating the community center.

Cost incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application, shall not be considered as an eligible grant purpose or matching contribution.

Rental values of space provided must be substantiated by rental agreements documenting the cost of space of a similar size in a similar location.

Rental values, salaries, and other expenses incurred in operating the community center will be subject to review by RUS for reasonableness in relation to the scope of the project.

Any financial assistance from Federal sources will not be considered as matching contributions unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution.

Completed Application

A completed application must include the following documentation, studies, reports and information in a form satisfactory to RUS. Applications should be prepared in conformance with the provisions of this notice and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Completed applications must include the following:

(a) *An application for Federal Assistance.* A completed Standard Form 424.

(b) *An executive summary of the project.* The applicant must provide RUS with a general project overview that addresses the following categories:

(1) A description of why the project is needed;

(2) A description of the applicant;

(3) An explanation of the total project cost;

(4) A general overview of the broadband telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(5) Documentation describing the procedures used to determine the unavailability of existing broadband transmission service; and

(6) A description of the participating community organizations (such as schools, health care providers, police and fire departments, etc.).

(c) *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed in the "Scoring of Applications" section hereafter.

(d) *System Design.* The applicant must submit a system design that contains the following, satisfactory to RUS:

(1) A narrative discussing the proposed community center and all costs of the project, all existing and proposed facilities that are a part of the project, the services to be provided by the project, and the proposed service area;

(2) Engineering design studies providing an economical and practical engineering design of the project, including a detailed description of the facilities to be funded, technical specifications, data rates, and costs; and

(3) A map of the proposed service area reflecting the proposed location of the community center and critical community facilities; and

(e) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities and services to be performed under the project;

(2) Who will carry out the activities and services;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for all capital and administrative expenditures reflecting the line-item costs for eligible purposes following completion. The following financial information is required:

(1) Certified financial statements, if available; and

(2) 5 years of pro-forma financial information, evidencing the sustainability of the project.

(h) *A statement of experience.* Information on the owners and principal employees' relevant work experience that would ensure the conformance with the provisions of this Notice. RUS may contact the applicant for additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

(G) Level 7 means any community having a population over 5,000 and not in excess of 10,000 inhabitants.

(H) Level 8 means any community having a population over 10,000 and not in excess of 20,000 inhabitants.

(ii) Each application will receive points based on the location of the facilities financed using the definitions above.

(A) For a service area that includes a

(ii) If an applicant proposes service in more than one county, an average score will be calculated based on each county's individual scores.

(3) *The benefits derived from the proposed service*—up to 30 points.

(i) This criterion will be used to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the project, and

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–815]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the Republic of South Africa

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(e) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities and services to be performed under the project;

(2) Who will carry out the activities and services;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for all capital and administrative expenditures reflecting the line item costs for eligible purposes for the grant funds, the matching contributions, and other sources of funds necessary to complete the project.

(f) *Community-oriented connectivity plan.* The applicant must provide a community-oriented connectivity plan consisting of the following:

(1) A listing of all critical community facilities to be connected, including public schools, public libraries, public medical clinics, public hospitals, community colleges, public universities, and law enforcement, fire and ambulance stations. The applicant must provide documentation of consultation with these groups, including commitments to participate in the proposed project;

(2) A description of the services available to local residents through the use of the community center;

(3) A listing of the proposed telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the broadband telecommunications system designed to further the deployment and use of broadband transmission services, that the applicant intends to build or fund using RUS grant funds and matching contribution; and

(4) A description of the consultations with the appropriate telecommunications carriers (including interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed broadband telecommunications system.

(g) *Financial information and sustainability.* The applicant must provide a narrative description demonstrating sustainability of the project, including having sufficient resources and expertise necessary to undertake and complete the project and how the project will be sustained following completion. The following financial information is required:

(1) Certified financial statements, if available; and

(2) 5 years of pro-forma financial information, evidencing the sustainability of the project.

(h) *A statement of experience.* Information on the owners and principal employees' relevant work experience that would ensure the success of the project. The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and perform the activities proposed under the grant application.

(j) *Funding commitment from other sources.* If the project requires additional funding from other sources in addition to the RUS grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the project.

(k) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

(1) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(2) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(3) 7 CFR part 3017—Government wide Debarment and Suspension (Nonprocurement).

(4) Government wide Requirements for Drug-Free Workplace.

(5) 7 CFR part 3018—New Restrictions on Lobbying.

(6) Certification regarding Architectural Barriers.

(7) Certification regarding Flood Hazard Precautions.

(8) An environmental report, in accordance with 7 CFR 1794.

(9) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing broadband transmission services.

(10) Federal Obligation Certification on Delinquent Debt.

Review of Grant Applications

(a) All applications for grants must be delivered to RUS at the address listed above or postmarked no later than November 5, 2002 to be considered eligible for FY 2002 grant funding. RUS will review each application for conformance with the provisions of this Notice. RUS may contact the applicant for additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

(c) Applications conforming with this Notice will then be evaluated competitively by a panel of RUS employees selected by the Administrator, RUS, and be awarded points as described in the scoring criteria section below. The applications will be ranked and grants awarded in rank order until all grant funds are expended.

(d) Regardless of the score an application receives, if RUS determines that the project is technically or financially infeasible, RUS will notify the applicant, in writing, and the application will be returned with no further action.

Scoring of Applications

(a) All eligible applications will receive points for the following scoring criteria:

(1) The rurality of the project;

(2) The economic need of the project's service area (up to 20 points); and

(3) The benefits derived from the proposed service (up to 30 points). .

(b) Scoring criteria:

(1) *The rurality of the project*—up to 40 points.

(i) This criterion will be used to evaluate the rurality of the community served by the project, in accordance with the following method of scoring. Rurality shall be determined by the 2000 population data contained in the U.S. Bureau of the Census at *http://factfinder.census.gov/servlet/BasicFactsServlet.* The following categories are used in the evaluation of rurality:

(A) Level 1 means any community having a population of less than 500 inhabitants.

(B) Level 2 means any community having a population of at least 500 and not in excess of 1,000 inhabitants.

(C) Level 3 means any community having a population over 1,000 and not in excess of 2,000 inhabitants.

(D) Level 4 means any community having a population over 2,000 and not in excess of 3,000 inhabitants.

(E) Level 5 means any community having a population over 3,000 and not in excess of 4,000 inhabitants.

(F) Level 6 means any community having a population over 4,000 and not in excess of 5,000 inhabitants.

(G) Level 7 means any community having a population over 5,000 and not in excess of 10,000 inhabitants.

(H) Level 8 means any community having a population over 10,000 and not in excess of 20,000 inhabitants.

(ii) Each application will receive points based on the location of the facilities financed using the definitions above.

(A) For a service area that includes a Level 1 community, it will receive 40 points.

(B) For a service area that includes a Level 2 community, it will receive 35 points.

(C) For a service area that includes a Level 3 community, it will receive 30 points.

(D) For a service area that includes a Level 4 community, it will receive 25 points.

(E) For a service area that includes a Level 5 community, it will receive 20 points.

(F) For a service area that includes a Level 6 community, it will receive 15 points.

(G) For a service area that includes a Level 7 community, it will receive 10 points.

(H) For a service area that includes a Level 8 community, it will receive 5 points.

(2) *The economic need of the project service area*—up to 30 points.

(i) This criterion will be used to evaluate the economic need of the service area. Applicants must utilize the per capita personal income by County, as determined by the Bureau of Economic Analysis, U.S. Department of Commerce, at *www.bea.doc.gov/bea/regional/reis/.* Applicants will be awarded points as outlined below for service provided in each county where the per capita personal income (PCI) is less than 70 percent of the national average per capita personal income (NAPCI):

(A) PCI is 75 percent or greater of NAPCI; 0 points;

(B) PCI is less than 75 percent and greater than or equal to 70 percent of NAPCI; 5 points;

(C) PCI is less than 70 percent and greater than or equal to 65 percent of NAPCI; 10 points;

(D) PCI is less than 65 percent and greater than or equal to 60 percent of NAPCI; 15 points;

(E) PCI is less than 60 percent and greater than or equal to 55 percent of NAPCI; 20 points;

(F) PCI is less than 55 percent and greater than or equal to 50 percent of NAPCI; 25 points;

(G) PCPI is less than 50 percent of NAPCPI; 30 points;

(ii) If an applicant proposes service in more than one county, an average score will be calculated based on each county's individual scores.

(3) *The benefits derived from the proposed service*—up to 30 points.

(i) This criterion will be used to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the project, and local community involvement in planning and implementation of the project. Applicants may receive up to 30 points for documenting the need for services and benefits derived from service as explained in this section.

(ii) RUS will consider:

(A) The extent of the applicant's documentation explaining the economic, education, health care, and public safety issues facing the community and the applicant's proposed plan to address these challenges on a community-wide basis;

(B) The extent of the project's planning, development, and support by local residents, institutions, and community facilities will be considered. This includes evidence of community-wide involvement, as exemplified in community meetings, public forums, and surveys. In addition, applicants should provide evidence of local residents' participation in the project planning and development;

(C) The extent to which the community center will be used for instructional purposes including Internet usage, Web-based curricula, and Web page development; and

(D) Web-based community resources enabled or provided by the applicant, such as community bulletin boards, directories, public web-hosting, notices, etc.

Grant Documents

The terms and conditions of grants shall be set forth in grant documents prepared by RUS. The documents shall require the applicant to own all equipment and facilities financed by the grant. Among other matters, RUS may prescribe conditions to the advance of funds that address concerns regarding the project feasibility and sustainability. RUS may also prescribe terms and conditions applicable to the construction and operation of the project and the delivery of broadband transmission services to rural areas.

Dated: July 2, 2002.

Curtis M. Anderson,

Deputy Administrator as Acting Administrator, Rural Utilities Service.

[FR Doc. 02–17018 Filed 7–5–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–815]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the Republic of South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Crystal Crittenden or Mark Manning (Xstrata) at (202) 482–0989 or (202) 482–5253 and Timothy P. Finn or John Conniff (Highveld), at (202) 482–0065 or (202) 482–1009, respectively; AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Preliminary Determination

We preliminarily determine that ferrovanadium from the Republic of South Africa (South Africa) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

The investigation was initiated on December 17, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Ferrovanadium from the People's Republic of China and the Republic of South Africa*, 66 FR 66398 (December 26, 2001) (*Initiation Notice*).[1]

[1] The petitioners in this case are The Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

Since the initiation of the investigation, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, at 66 FR 66398. On January 3, 10, and 17, 2002, the petitioners submitted comments on product coverage. On January 7, 15, and 17, 2002, Highveld Steel and Vanadium

2002, for the purpose of including Vametco in the Department's respondent selection analysis. *See Selection of Respondents* section below. We received responses to our questionnaire from all respondents. We issued supplemental questionnaires, pertaining to sections A, B, C, and D of the antidumping questionnaire, to Highveld and Xstrata in February,

exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures

7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject

Value sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to NVs.

Use of Partial Facts Available

During the course of this investigation, the Department issued seven supplemental questionnaires to Highveld requesting that the company

Movement expenses included, where appropriate, foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling charges, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses, and warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted from the starting price

Since the initiation of the investigation, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, at 66 FR 66398. On January 3, 10, and 17, 2002, the petitioners submitted comments on product coverage. On January 7, 15, and 17, 2002, Highveld Steel and Vanadium Corporation (Highveld) and Xstrata South Africa (Proprietary) Limited (Xstrata) submitted product coverage comments.

On December 27, 2002, the Department solicited comments from interested parties regarding model-matching criteria. *See* Letter from Holly Kuga (December 27, 2001). The petitioners and respondents submitted model-matching comments to the Department on January 9, 2002. The petitioners also submitted rebuttal model-matching comments on January 10, 2002.

On January 14, 2002, Xstrata submitted comments to the Department regarding the sales below cost investigation the Department initiated on December 17, 2001. The Department received a rebuttal to Xstrata's comments from the petitioners on January 17, 2002. On January 17, 2002, the Department received comments regarding the sales below cost investigation from Highveld.

On January 10, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from South Africa of ferrovanadium that are alleged to be sold in the United States at LTFV. *See Ferrovanadium From China and South Africa*, 67 FR 2236 (January 16, 2002).

After reviewing the comments on product coverage and characteristics, on January 18, 2002, the Department issued the antidumping duty questionnaire[2] to Highveld and Xstrata. The Department issued an abridged Section A questionnaire, requesting quantity and value (Q&V) data, to Vametco Minerals Corporation (Vametco) on January 29, 2002, for the purpose of including Vametco in the Department's respondent selection analysis. *See Selection of Respondents* section below. We received responses to our questionnaire from all respondents. We issued supplemental questionnaires, pertaining to sections A, B, C, and D of the antidumping questionnaire, to Highveld and Xstrata in February, March, April, and May 2002. Highveld and Xstrata responded to these supplemental questionnaires in February, March, April, May, and June 2002. On February 11, 2002, Xstrata provided information demonstrating that the home market was not viable and submitted Q&V data for its largest third-country markets. On March 1, 2002, the Department designated Germany as the appropriate third-country market for which to calculate Xstrata's normal value (NV). *See* Memorandum from Howard Smith to the File, "The Appropriate Comparison Market for Xstrata South Africa (Proprietary) Limited in the Antidumping Duty Investigation of Ferrovanadium from the Republic of South Africa," dated March 1, 2002 (*Xstrata Third Country Market Selection Memorandum*). On March 12 and 15, 2002, the petitioners submitted amendments to the cost allegation contained in the petition for this investigation to include German-specific price and cost information placed on the record by Xstrata. The Department, in accordance with section 773(b)(2)(A)(i) of the Act, concluded that there was a reasonable basis to suspect that Xstrata is selling ferrovanadium in Germany at prices below the cost of production (COP) and initiated a cost investigation on ferrovanadium sales in Germany on March 26, 2002. *See* the *Cost of Production Analysis* section below.

On April 24, 2002, pursuant to section 733(c)(1)(B) of the Act, the Department postponed the preliminary determination of this investigation 50 days, from May 6, 2002, until June 25, 2002. *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Notice of Postponement of Preliminary Antidumping Duty Determinations*; 67 FR 20069 (April 24, 2002).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On June 21, 2002, Xstrata requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Xstrata also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination.. Accordingly, since we have made an affirmative preliminary determination, and the requesting party accounts for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of publication of the preliminary determination, and are extending the provisional measures accordingly. *See* Xstrata's letter to the Secretary, dated June 21, 2002.

Period of Investigation

The period of investigation (POI) is October 1, 2000, through September 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2001). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The scope of these investigations covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the COP of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can reasonably be examined. The petition identified three South African producers of ferrovanadium that export to the United States: Highveld, Vametco, and Xstrata. Due to limited resources, we determined that we could investigate only the two South African producers/exporters that accounted for the largest volume of exports to the United States during the POI. *See* the Memorandum from Howard Smith to Holly A. Kuga, "Selection of Respondents for the Antidumping Investigation of Ferrovanadium from South Africa," which is on file in the Central Records Unit (CRU), room B–099 of the main Department of Commerce building. Therefore, we designated Highveld and Xstrata as mandatory respondents and sent them the antidumping questionnaire.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents in the home market and covered by the description in the *Scope of Investigation* section, above, and sold in the home market or designated third-country market (*i.e.*, the comparison market) during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied upon product grade and maximum and minimum product size to match U.S. sales of subject merchandise to NV.

Fair Value Comparisons

To determine whether sales of ferrovanadium from South Africa were made in the United States at LTFV, we compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to NVs.

Use of Partial Facts Available

During the course of this investigation, the Department issued seven supplemental questionnaires to Highveld requesting that the company provide certain information necessary for our determination. Despite the fact that the Department provided Highveld with repeated opportunities to provide the requested information, Highveld withheld certain information and failed to provide other information in the form and manner requested by the Department. As a result, the Department has determined to use facts available to calculate certain sales adjustments. These adjustments include U.S. commission/indirect selling expenses, home and U.S. market packing costs, U.S. warehousing expenses, and financing expenses associated with U.S. sales.

Furthermore, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party in selecting from among the facts otherwise available if the Department finds that the party has failed to cooperate by not acting to the best of its ability. In this case the Department has found that Highveld failed to cooperate by not acting to the best of its ability with respect to these sales adjustments. Therefore, for the preliminarily determination, we have made an inference that is adverse to Highveld in selecting from among the facts available to calculate the sales adjustment noted above. For a detailed discussion of this issue, *see* the Memorandum from Howard Smith to Holly A. Kuga, "Application of Partial Adverse Facts Available for the Preliminary Determination: Highveld Steel & Vanadium Limited," dated June 25, 2002.

Constructed Export Price

For both Highveld and Xstrata, we calculated CEP, in accordance with section 772(b) of the Act, for all sales to unaffiliated purchasers that took place after importation into the United States. Highveld and Xstrata reported only CEP sales in the United States. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP for all U.S. sales by Highveld and Xstrata on the packed FOB or delivered prices to unaffiliated purchasers in the United States and made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included, where appropriate, foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling charges, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses, and warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses. Also, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Selection of Comparison Market (Third-Country Comparison)

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or has sufficient aggregate value, if quantity is inappropriate) and that there is no particular market situation in the home market that prevents a proper comparison with the EP or CEP transaction. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. For this investigation, we found that Highveld had a viable home market for ferrovanadium. Thus, the home market is the appropriate comparison market for Highveld in this investigation, and we used the respondent's submitted home market sales data for purposes of calculating NV.

Xstrata did not have a viable home market in South Africa. Therefore, the Department considered the Q&V of Xstrata's POI sales of subject merchandise in the United States and the three largest third-country markets. In selecting the appropriate comparison market for Xstrata's U.S. sales, we applied the criteria listed in section 351.404(e) of the Department's regulations, which direct the Department to consider the similarity of the foreign like product exported to the third-country market to the subject merchandise exported to the United States; the volume of export sales to the third-country market; and such other factors as the Secretary considers appropriate.

After comparing Xstrata's U.S. market sales with the three third-country

market sales of subject merchandise, the Department selected Germany as the appropriate comparison market for Xstrata. *See Xstrata Third Country Market Selection Memorandum*.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Constructed Value* section below.

tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble - Department's Final Antidumping Regulations* (May 19, 1997). Sales to affiliated customers in

Cost of Production for Xstrata South Africa (Proprietary) Limited (Xstrata)," dated March 26, 2002. As a result, the Department initiated, on March 26, 2002, a COP investigation with respect to Xstrata's sales in Germany.

The Department has conducted an investigation to determine whether the respondents made sales in the home market or third-country market at prices

sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the comparison market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing

of sale adjustments). Pursuant to section 773(a)(8) of the Act, we have included, where possible, the appropriate adjustments in our calculation of CV. For further information, *see* the Memorandum from Mark Manning and Crystal Crittenden to the File, "Calculation Memorandum for the Preliminary Determination of the Investigation of Xstrata South Africa (Proprietary) Limited (Xstrata)." (*Xstrata*

average margins calculated for Highveld and Xstrata.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of ferrovanadium from South Africa that are entered, or withdrawn from warehouse, for consumption on or after the date of

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market sales of subject merchandise, the Department selected Germany as the appropriate comparison market for Xstrata. *See Xstrata Third Country Market Selection Memorandum.*

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Constructed Value* section below.

B. *Date of Sale*

For reporting purposes, Highveld used the last day of the month in which the merchandise was picked up or delivered as the home market date of sale even though it indicated that the sales terms are finalized on the invoice date (*see* Highveld's April 19, 2002, supplemental at pages 5 and 6). The Department's practice is to consider the invoice date as the date of sale unless a different date better reflects the date on which the material terms of sale are established, or the invoice date is after the shipment date (*see Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000) and accompanying "Decision Memorandum" at Comment 15). Because the invoice date for Highveld's home market sales is subsequent to the shipment date, we have considered the shipment date that Highveld reported to be the date of sale.

Xstrata initially reported the date of sale as the contract date. On May 8, 2002, Xstrata reported that the invoice date is the more appropriate date to use as the date of sale because certain material terms of the sale are not set until the invoice date. Xstrata provided additional discussion of how the terms of sale changed after the contract date on April 17, May 8, and June 13, 2002. Because of this information, we have considered the invoice date to be the date of sale for Xstrata.

C. *Affiliated-Party Transactions and Arm's-Length Test*

During the POI, Highveld made home market sales to affiliated customers. We applied the arm's-length test to sales from Highveld to its affiliated customers by comparing them to sales of identical merchandise from Highveld to unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, commissions, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble - Department's Final Antidumping Regulations* (May 19, 1997). Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

Xstrata had no comparison market sales to affiliated customers during the POI.

D. *Cost of Production Analysis*

On November 26, 2001, in the petition for the imposition of antidumping duties, the petitioners alleged that sales of ferrovanadium in the home market were made at prices below the fully absorbed COP. Accordingly, the petitioners requested that the Department conduct a country-wide sales-below-cost investigation. Based upon the comparison of adjusted home market prices to the COP for South African producers, in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that home market sales of ferrovanadium produced in South Africa were made at prices below the COP and initiated a country-wide cost investigation. *See Initiation Notice.*

On February 11, 2002, Xstrata provided information demonstrating that the home market was not viable and submitted Q&V data for its largest third-country markets. On February 21, 2002, the petitioners submitted a country-specific cost allegation for each of the third-country markets presented by Xstrata. On March 1, 2002, the Department designated Germany as the appropriate third-country market for which to calculate NV. *See Xstrata Third Country Market Selection Memorandum.* On March 12 and 15, 2002, the petitioners filed amendments to the cost allegation contained in their February 21, 2002, submission to include Germany-specific price and cost information placed on the record by Xstrata. The Department, in accordance with section 773(b)(2)(A)(i) of the Act, concluded that there was a reasonable basis to suspect that Xstrata is selling ferrovanadium in Germany at prices below the COP and initiated a cost investigation on ferrovanadium sales in Germany. *See* Memorandum to Holly Kuga from the Team, "Analysis of Petitioner's Allegations of Sales Below Cost of Production for Xstrata South Africa (Proprietary) Limited (Xstrata)," dated March 26, 2002. As a result, the Department initiated, on March 26, 2002, a COP investigation with respect to Xstrata's sales in Germany.

The Department has conducted an investigation to determine whether the respondents made sales in the home market or third-country market at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each respondent based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market or third country market general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by Highveld and Xstrata in their respective cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued.

a. Highveld. Highveld calculated the reported net interest expense ratio based on its own consolidated financial statements, rather than on the consolidated financial statements of its parent corporation. In accordance with the Department's longstanding practice, we recalculated the interest expense ratio by dividing the full-year interest expense by the cost of sales reported on the audited fiscal-year financial statements which correspond most closely to the POI at the highest level of consolidation (i.e., we used the financial statements of Highveld's corporate parent). *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa*, 67 FR 35485 (May 20, 2002) and accompanying "Decision Memorandum" at Comment 7; see also the Memorandum from Timothy P. Finn to the File, "Calculation Memorandum for the Preliminary Determination of the Investigation of Highveld Steel and Vanadium Corp. Ltd. (Highveld)," dated June 25, 2002 (Highveld Calculation Memorandum).

b. Xstrata. We made no modifications to Xstrata's reported COP.

2. Test of Home Market and Third-Country Market Sales Prices

We compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these

sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the comparison market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing.

3. Results of the Cost of Production Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined that such sales were made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

E. *Calculation of Normal Value Based on Constructed Value*

Section 773(b)(1)(B) of the Act provides that if, after disregarding all sales made at prices below the COP, there are no comparison market sales made in the ordinary course of trade, NV shall be based on constructed value (CV). Pursuant to section 773(b)(1)(B) of the Act, because both respondents made all of their comparison market sales at prices below the COP, we disregarded all comparison market sales and based NV on CV. We calculated CV as the sum of each respondent's cost of materials, fabrication, selling, general and administrative (SG&A) expenses, profit and U.S. packing costs. In addition, because all comparison market sales were made at prices below the COP, we calculated selling expenses and profit in accordance with section 773(e)(2)(B)(iii) of the Act. We based the selling expenses and profit for Highveld and Xstrata on figures obtained from each company's financial statements and available information regarding the selling expenses incurred by each. Section 773(a)(8) of the Act directs the Department to make certain adjustments to CV, as appropriate (*i.e.*, circumstance of sale adjustments). Pursuant to section 773(a)(8) of the Act, we have included, where possible, the appropriate adjustments in our calculation of CV. For further information, *see* the Memorandum from Mark Manning and Crystal Crittenden to the File, "Calculation Memorandum for the Preliminary Determination of the Investigation of Xstrata South Africa (Proprietary) Limited (Xstrata)," (*Xstrata Calculation Memorandum*) and the *Highveld Calculation Memorandum*, both dated June 25, 2002.

F. *Level of Trade/Constructed Export Price Offset*

Since all of Highveld's home market sales and Xstrata's third country sales failed the cost test, we are unable to use these sales as the basis of NV and instead must calculate NV based on CV. The selling expenses and profit for CV, as noted above, were obtained from Highveld's financial records, therefore, we have no basis for attributing a level of trade (LOT) to this CV. As such, we are unable to conduct a LOT analysis. For this reason, we made no LOT adjustment or CEP offset to either Highveld's or Xstrata's NV.

G. *Currency Conversions*

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank, the Department's preferred source for exchange rates.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

All Others Rate

Section 735(c)(5)(A) of the Act provides for the use of an "all others" rate, which is applied to non-investigated firms. *See Statement of Administrative Actions, Uruguay Round Agreements Act*, Pub. L. 103–465, 103rd Cong. 2d Sess., H. Doc. 103–316, vol. I (1994) (SAA) at 873. This section states that the all others rate shall generally be an amount equal to the weighted average of the weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins based entirely upon the facts available. Therefore, we have preliminarily assigned to all other exporters of ferrovanadium from South Africa a margin that is based on the weighted-average margins calculated for Highveld and Xstrata.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of ferrovanadium from South Africa that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Highveld Steel and Vanadium Corporation Ltd	45.58
Xstrata South Africa (Proprietary) Limited	37.29
All Others	41.72

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceeding in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary sales at LTFV determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries

should be limited to five pages total, including footnotes. Further, the Department respectfully requests that all parties submitting written comments also provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity

Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1009 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act

Dated: June 27, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–16899 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(December 26, 2001) (*Initiation Notice*).[1] Since the initiation of the investigation, the following events have occurred.

On January 10, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of ferrovanadium imports from the PRC and the Republic of South Africa. *See* days, from May 6, 2002, until June 25, 2002. *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Notice of Postponement of Preliminary Antidumping Duty Determinations*; 67 FR 20089 (April 24, 2002).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides

chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as ferrovanadium. The scope of this investigation specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as

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should be limited to five pages total, including footnotes. Further, the Department respectfully requests that all parties submitting written comments also provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the Department will make its final determination within 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: June 25, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–16900 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1009 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On November 21, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on barium chloride from the People's Republic of China, covering the period October 1, 2000, through September 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 66 FR 58432. The preliminary results are currently due no later than July 3, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than August 3, 2002. *See* Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: June 27, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–16899 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–873]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081, and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations codified at 19 CFR Part 351 (April 2002).

Preliminary Determination

We preliminarily determine that ferrovanadium from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on December 17, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Ferrovanadium from the People's Republic of China and the Republic of South Africa*, 66 FR 66398

(December 26, 2001) (*Initiation Notice*).[1] Since the initiation of the investigation, the following events have occurred.

On January 10, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of ferrovanadium imports from the PRC and the Republic of South Africa. *See Ferrovanadium From China and South Africa*, 67 FR 2236 (January 16, 2002). During January 2002, the Department provided participating parties with an opportunity to comment on scope and product characteristics. Only the petitioners submitted comments.

After reviewing the comments on product coverage and characteristics, on January 18, 2002, the Department issued its antidumping questionnaire[2] to the PRC's Ministry of Foreign Trade & Economic Cooperation (MOFTEC), the Embassy of the PRC in Washington D.C., and the companies identified in the petition, Jinzhou Ferroalloy (Group) Co, Ltd., Chengde Xinghua Vanadium Chemical Co., Ltd., and Pangang Group International Economic and Trading Corporation (Pangang). The Department requested that MOFTEC send the questionnaire to all companies that manufacture and export ferrovanadium to the United States, as well as all manufacturers that produce ferrovanadium for companies engaged in exporting subject merchandise to the United States, and the companies that export ferrovanadium to the United States, during the period of investigation (POI). Only Pangang responded to the Department's questionnaire. The Department issued supplemental questionnaires to Pangang, where appropriate.

On April 24, 2002, pursuant to section 733(c)(1)(B) of the Act, the Department postponed the preliminary determination of this investigation 50 days, from May 6, 2002, until June 25, 2002. *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Notice of Postponement of Preliminary Antidumping Duty Determinations*; 67 FR 20089 (April 24, 2002).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On June 21, 2002, Pangang requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Pangang also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting party accounts for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination determination, and are extending the provisional measures accordingly. *See* Pangang's letter to the Secretary, dated June 21, 2002.

Period of Investigation

The POI is April 1, 2001 through September 30, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November, 2001). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The scope of this investigation covers all ferrovanadium produced in the PRC, regardless of grade, chemistry, form, shape or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as ferrovanadium. The scope of this investigation specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000 and 8112.40.6000 is specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy (NME) country in previous antidumping investigations (*e.g.*, *see Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000); and the *Notice of Final Determination of Sales at Less Than Fair Value Certain: Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001)). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked. No party to this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as a NME country.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Separate Rates

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the

[1] The petitioners in this case are the Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the COP of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Pangang has provided the requested company-specific separate rates information and has indicated that there is no element of an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Pangang has placed on the record a number of documents to demonstrate the absence of *de jure* control, including its business license, and the "Company Law of the People's Republic of China." the information provided, we preliminarily determine that there is an absence of *de facto* government control over Pangang's export functions. Consequently, we preliminarily determine that the respondent has met the criteria for the application of a separate rate.

The PRC-Wide Rate

In all NME cases, the Department

based the PRC-wide rate on total facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate the recalculated dumping margin from the petition (see below). In the petition, the petitioners based export price (EP) on import values declared to the U.S. Customs Service. For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy, and

Export Price

We used EP methodology in accordance with section 772(a) of the Act because Pangang sold subject merchandise to unaffiliated U.S. customers prior to importation and because constructed export price (CEP) methodology was not otherwise warranted. At the time of sale, Pangang knew that its reported sales of the subject merchandise were destined for

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respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Pangang has provided the requested company-specific separate rates information and has indicated that there is no element of government ownership or control over its operations. We have considered whether Pangang is eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide* and the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22545 (May 8, 1995).

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Pangang has placed on the record a number of documents to demonstrate the absence of *de jure* control, including its business license, and the "Company Law of the People's Republic of China." Other than limiting Pangang's operations to the activities referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the "Company Law of the People's Republic of China" and found that it establishes an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial- . Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

With regard to the issue of *de facto* control, Pangang has reported the following: (1) there is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection, and (4) there are no restrictions on the use of its export revenue and it is responsible for financing its own losses. Additionally, Pangang's questionnaire response does not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Pangang's questionnaire response reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Pangang's export functions. Consequently, we preliminarily determine that the respondent has met the criteria for the application of a separate rate.

The PRC-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters located in the NME country comprise a single exporter under common government control, the "NME entity." The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate. Although the Department provided all PRC exporters of ferrovanadium with the opportunity to respond to its questionnaire, only Pangang submitted a response thereto. However, our review of U.S. import statistics reveals that there are other PRC companies, in addition to Pangang, that exported ferrovanadium to the United States during the POI. Because these exporters did not submit a response to the Department's questionnaire, and thus did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, some exporters of the subject merchandise failed to respond to the Department's request for information. The failure of these exporters to respond also significantly impedes this proceeding. Thus, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have based the PRC-wide rate on total facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action (SAA) accompanying the URAA*, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). The complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate the recalculated dumping margin from the petition (see below). In the petition, the petitioners based export price (EP) on import values declared to the U.S. Customs Service. For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy, and representative capital costs) on the quantities of inputs used by the petitioners.

With regard to the EP calculation in the petition, the information relied upon was based on publicly available sources, that is, official U.S. government statistics; therefore, we find that the U.S. price from the petition margin is sufficiently corroborated. To corroborate the petitioners' NV calculations, we compared the petitioners' factor consumption data to that data on the record of this investigation. As discussed in a separate memorandum to the file, we found that the factors consumption data in the petition were reasonable and of probative value. *See* the memorandum to the file regarding corroboration of the petition data for the PRC-wide entity, dated June 25, 2002. The values for the factors of production in the petition were based on publicly available information for comparable inputs; therefore, we find that these surrogate values are sufficiently corroborated.

During the course of this investigation, several of the surrogate values used in the petition are new or have been revised. In order to take into account the more recent information, we recalculated the petition margin using, where possible, the new or revised surrogate values to value the petitioners' consumption rates. As a result of this recalculation, the PRC-wide rate is, for the preliminary determination, 78.52 percent. For the final determination, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Fair Value Comparison

To determine whether Pangang's sales of ferrovanadium to customers in the United States were made at LTFV, we compared EP to NV, calculated using our NME methodology, as described in the "Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because Pangang sold subject merchandise to unaffiliated U.S. customers prior to importation and because constructed export price (CEP) methodology was not otherwise warranted. At the time of sale, Pangang knew that its reported sales of the subject merchandise were destined for the United States.

We calculated EP based on the packed, delivered prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage and handling, international freight, and marine insurance. Where foreign inland freight, marine insurance, and brokerage and handling were provided by NME companies, we used surrogate values from South Africa to value these expenses (*see* the Factors of Production Valuation Memorandum dated June 25, 2002, on file in the Central Records Unit (CRU) located in B–099 of the main Department of Commerce building). For sales with international freight provided by NME shipping companies we used as the surrogate value a freight cost obtained from U.S. customs import statistics (see the Factors of Production Valuation Memorandum).

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, on the prices or costs of factors of production in one or more market economy countries that are 1) at a level of economic development comparable to that of the NME country; and 2) significant producers of comparable merchandise. The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. Those countries are India, Pakistan, Indonesia, Sri Lanka and the Philippines (*see* the memorandum from Jeffrey May to Holly Kuga dated February 28, 2002). However, we could find no evidence that any of these countries are significant producers of "comparable merchandise." Where the countries normally considered at a level of economic development similar to that of the country in question do not produce comparable merchandise, the Department's practice is to find the most comparable surrogate country that is a

significant producer of comparable merchandise. *See Initiation Notice*, 66 FR 66398, 66400. Therefore, we requested and received from the Office of Policy a list of additional potential surrogate countries. We examined export and import statistics for each country on this list to determine if any of them are significant producers of "comparable merchandise."[3] We found

with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost using the shorter of the reported

We valued labor using the method described in 19 CFR 351.408(c)(3).

We valued electricity using the published prices for industrial electricity obtained from the South African Statistics.

To value truck freight rates, we used price quotes received from Freight Tainer, a South African transportation company. We valued rail rates using the

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Pangang.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of

ADDRESSES: Submit one signed original and two copies of the proposal to: Building and Fire Research Laboratory (BFRL), Attn.: Ms. Wanda Duffin, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660, Tel: (301) 975–6863, e-mail: *wanda.duffin@nist.gov*, Web site: *http://www.bfrl.nist.gov*.

One of the copies submitted may be

significant producer of comparable merchandise. *See Initiation Notice*, 66 FR 66398, 66400. Therefore, we requested and received from the Office of Policy a list of additional potential surrogate countries. We examined export and import statistics for each country on this list to determine if any of them are significant producers of "comparable merchandise."[3] We found evidence of significant production of "comparable merchandise" by only one of these countries, South Africa (*see* the memorandum from Karine Gziryan to the file regarding identification of significant producers of comparable merchandise dated June 25, 2002). Therefore, we have preliminarily calculated NV by applying South African values to Pangang's factors of production.Pangang's factors of production.

2. Factors of Production

In its questionnaire responses, Pangang reported factors of production for two companies which it identified as producers of the subject merchandise. After examining the record regarding the production process for ferrovanadium, we have preliminarily determined that one of the companies which Pangang identified as a producer of the subject merchandise in fact produces an input used in the production of subject merchandise, rather than the subject merchandise. Therefore, we have not relied upon the factors of production reported for this company. Rather, we have valued the input obtained from this company using South African surrogate values, and in accordance with section 773(c) of the Act, we calculated NV based on the factors of production utilized by the producer of the ferrovanadium during the POI.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. *See* section 773(c) of the Act. To calculate NV, we multiplied the reported per-unit quantities by publicly available surrogate values from South Africa.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the surrogate values. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

We valued material inputs and packing materials (including vanadium slag, limestone, sulfuric acid, ammonium sulfuric acid, calcium chloride, soda, aluminum, inferior iron, paper bags, wooden pallets, wooden boxes, iron drums and plastic woven bags) using values from the appropriate Harmonized Tariff Schedule (HTS) number, from 2000 and 2001 South African imports and exports statistics reported in the United Nations Commodity Trade Statistics and the World Trade Atlas Import and Export Statistics. In accordance with the Department's practice, we used export values to calculate NV when import values for like products were not available. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69503, (December 13, 1999).

We valued coke oven gas based on the value of natural gas published in the Energy Prices and Taxes quarterly statistics, III Quarter, 2001. Specifically, we calculated the value for coke oven gas by multiplying the value for natural gas by the ratio of the BTU equivalent of coke oven gas to the BTU equivalent of natural gas. We valued blast furnace gas based on the value of natural gas published in the Energy Prices and Taxes quarterly statistics, III Quarter, 2001. Specifically, we calculated the value for blast furnace gas by multiplying the value for natural gas by the ratio of the BTU equivalent of blast furnace gas to the BTU equivalent of natural gas.

We valued labor using the method described in 19 CFR 351.408(c)(3).

We valued electricity using the published prices for industrial electricity obtained from the South African Statistics.

To value truck freight rates, we used price quotes received from Freight Tainer, a South African transportation company. We valued rail rates using the surrogate value from South Africa employed in pure magnesium from the Russian Federation. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 21319 (April 30, 2001). *See* also the Factors of Production Valuation Memorandum.

We based our calculation of selling, general and administrative (SG&A) expenses, overhead, and profit on the 2001 financial statement of Highveld Steel and Vanadium Corporation Limited, a South African producer of the subject merchandise.

For a complete analysis of surrogate values used in the preliminary determination, *see* the Factors of Production Valuation Memorandum.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service (Customs Service) to suspend liquidation of all entries of ferrovanadium from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-Average Margin (percent)
Pangang Group International Economic & Trading Corporation	73.29
PRC-Wide Rate	78.52

[3] Although Pangang claimed that India is a significant producer of comparable merchandise, it provided no evidence supporting its claim, nor did the Department find any indication that India was such a producer.

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Pangang.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of ferrovanadium from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification report. Rebuttal briefs, whose content is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: June 25, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–16901 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 011204291–2159–02]

RIN 0693–ZA47

Fire Research Grants Program; Availability of Additional Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: On December 27, 2001, the National Institute of Standards and Technology (NIST) announced in the **Federal Register** the availability of fiscal year 2002 funding for its small grants programs, including the Fire Research Grants Program. NIST has recently received from the Department of Defense (DoD) $100,000 for the award of a grant or cooperative agreement as part of work conducted by NIST and DoD's Next Generation Fire Suppression Technology Program. NIST will award these funds under the Fire Research Grants Program. However, some of the requirements for the additional funds differ slightly from those announced for the Fire Research Grants Program. Therefore, all requirements and procedures applicable to proposals for this $100,000 appear in this notice.

DATES: Proposals must be received no later than 3:00 PM Eastern Daylight Time on August 7, 2002.

SUPPLEMENTARY INFORMATION:

ADDRESSES: Submit one signed original and two copies of the proposal to: Building and Fire Research Laboratory (BFRL), Attn.: Ms. Wanda Duffin, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660, Tel: (301) 975–6863, e-mail: *wanda.duffin@nist.gov*, Web site: *http://www.bfrl.nist.gov*.

One of the copies submitted may be in electronic format on a 3½" diskette or CD-ROM (DOS-formatted, with text in Word 97 or 2000).

Authority: As authorized by 15 U.S.C. 278f, the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program.

Program Description and Objectives

On December 27, 2001, the National Institute of Standards and Technology (NIST) announced in the **Federal Register** the availability of fiscal year 2002 funding for its small grants programs, including the Fire Research Grants Program (66 FR 66874). NIST has recently received from the Department of Defense (DoD) $100,000 for the award of a grant as part of work conducted by NIST and DoD's Next Generation Fire Suppression Technology Program. NIST will award these funds under the Fire Research Grants Program. A full description of the program is found in the December 27, 2001 **Federal Register** notice (66 FR 66874).

Environmentally Acceptable Fire Suppressants: The objective is to identify candidate fire suppressant chemicals that are effective, environmentally acceptable, and user-safe and that meet the operational requirements currently satisfied by halon 1301 in aircraft. In particular, NIST is seeking proposals to examine families of chemical compounds and determine by examination of the published literature, calculation and/or experiment (a) whether there are any potentially effective suppressants in the examined family(ies) and (b) the optimal such chemicals.

The proposal should, at a minimum, identify the family(ies) of compounds to be considered, the rationale for their selection, why there is reason to believe they will be effective, and how the attributes of the chemicals will be screened. The proposer should then describe how the optimal candidates will be identified, how many of these chemicals will be procured in sufficient quantity to verify the fire suppression efficiency, and how this verification will be performed. No testing on humans or animals is to be included. All partner and subcontractor

organizations and the technical principals shall be identified.

Travel budgets should include, at a minimum, one trip to the Halon Options Technical Working Conference, held each spring in Albuquerque, NM, and one trip to NIST in Gaithersburg, MD, in the autumn of each year.

NIST Technical Note 1443, "Alternative Fire Suppressant

Proposal Review Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for recordkeeping purposes. The

Generation Fire Suppression Technology Program (NGP). (0–35 points).

b. *Potential impact of the results.* Reviewers will assess the potential impact and the technical application of the results to our in-house programs, the fire safety community, and the NGP. (0–25 points)

c. *Staff and institution capability to*

contact the appropriate Program official to obtain information.

Fees and/or Profit: It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

Automated Standardized Application for Payment System (ASAP): During FY 2002 and becoming mandatory in FY 2003, the Department of Commerce will

and products for delivery to NIST is not available under this announcement.

Classification

This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

the requirements of NOAA's regulations; (3) Florida's CZMA objection is premature because Appellant had not submitted a consistency certification. Florida disputed all of Appellant's claims and, in addition, claimed that the Secretary of Commerce does not have authority under the CZMA to decide procedural matters such as those argued by Appellant.

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organizations and the technical principals shall be identified.

Travel budgets should include, at a minimum, one trip to the Halon Options Technical Working Conference, held each spring in Albuquerque, NM, and one trip to NIST in Gaithersburg, MD, in the autumn of each year.

NIST Technical Note 1443, "Alternative Fire Suppressant Chemicals: A Research Review with Recommendations" provides the most recent survey of the field and discusses desirable attributes of the chemicals. It should be consulted in preparing a proposal. It and additional background information on the research program of which this is a part can be found at the web site: *http://www.bfrl.nist.gov/866/NGP.*

The Project Leader and contact person for this topic is Richard Gann, and he can be reached at (301) 975–6866 or *richard.gann@nist.gov.*

Eligibility: Eligible applicants are institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments and Federal agencies with appropriate legal authority. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from non-NIST Federal agencies will be funded through an interagency transfer. Please Note: Before non-NIST Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. As this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Funding Availability: A total of $100,000 is available to fund one grant or cooperative agreement in fiscal year 2002.

Award Period: Proposals will be considered for research projects from one to three years at a funding level not to exceed $100,000 per year. When a proposal for a multi-year project is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, continuing relevance to the mission of the program, and the availability of funds.

Proposal Review Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for recordkeeping purposes. The remaining copies will be destroyed.

Responsive proposals will be forwarded to the Project Leader who will assign them to appropriate reviewers. Proposals are evaluated for technical merit based on the evaluation criteria by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies, and experts from the fire research community at large. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. The Project Leader will make funding recommendations to the Chief, Fire Research Division based on the technical evaluation score and the relationship of the work proposed to the objectives of the program.

In making application selections, the Chief, Fire Research Division will take into consideration the results of the evaluations, the scores of the reviewers, the Project Leader's recommendation, the availability of funds, and relevance to the objectives of the Fire Research Grants Program, as described in the Program Description and Objectives section for this program.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time. The Program will retain one copy of each application that is not funded for three years for recordkeeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The technical evaluation criteria are as follows:

a. *Technical quality of the research.* Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's in-house fire research program and the Next Generation Fire Suppression Technology Program (NGP). (0–35 points).

b. *Potential impact of the results.* Reviewers will assess the potential impact and the technical application of the results to our in-house programs, the fire safety community, and the NGP. (0–25 points)

c. *Staff and institution capability to do the work.* Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points)

d. *Match of budget to proposed work.* Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points)

Matching Requirements: Matching funds are not required.

Application Kit: For the *Fire Research Grants Program*, an application kit, containing all required application forms and certifications is available by contacting Ms. Wanda Duffin, (301) 975–6863, website: *http://www.bfrl.nist.gov/866/extramuralprogram.htm.*

Additional Information: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh*, 172 F.Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

In addition, the following information is applicable to this program.

Catalog of Federal Domestic Assistance Name and Number

Measurement and Engineering Research and Standards—11.609

FOR FURTHER INFORMATION CONTACT: All grants related administration questions concerning these programs should be directed to the NIST Grants and Agreements Management Division at (301) 975–6328.

Where websites are referenced within this notice, those who do not have access to the internet websites may contact the appropriate Program official to obtain information.

Fees and/or Profit: It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

Automated Standardized Application for Payment System (ASAP): During FY 2002 and becoming mandatory in FY 2003, the Department of Commerce will begin using the Department of Treasury's ASAP. NIST began using the ASAP system in July 2001 and continues to establish new accounts in ASAP. Awards made pursuant to this announcement may contain the ASAP payment clause. In order to receive payments for services under these awards, recipients will be required to register with the Department of Treasury and indicate whether or not they will use the on-line or voice response method of withdrawing funds from their ASAP established accounts. More information regarding ASAP can be found on-line at *http://www.fms.treas.gov/asap/index.html.*

Paperwork Reduction Act

The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Type of Funding Instrument

The funding instrument will be a grant or cooperative agreement, depending on the nature of the proposed work. A grant will be used unless NIST is "substantially involved" in the project, in which case a cooperative agreement will be used. A common example of substantial involvement is collaboration between NIST scientists and recipient scientists or technicians. Further examples are listed in Section 5.03.d of Department of Commerce Administrative Order 203–26, which can be found at *http://www.doc.gov/oebam/GCA manual.htm.* NIST will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NIST is not available under this announcement.

Classification

This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Applications under these programs are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: July 2, 2002.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 02–16987 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Collier Resources Company by an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Dismissal of appeal.

On April 3, 2000, the Secretary of Commerce (Secretary) received a notice of appeal from Collier Resources Company (Appellant) pursuant to section 307(c)(3) (A) and (B) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.* and the Department of Commerce's implementing regulations 15 CFR part 930, subpart H. The appeal was taken from an objection by the State of Florida to Appellant's consistency certification for a National Park Service approval of a Landing Strips Plan of Operations to conduct geophysical exploration of a portion of their mineral estate beneath the Big Cypress National Preserve.

Appellant challenged Florida's CZMA objection on three procedural grounds: (1) Florida did not follow NOAA's regulations in listing the permits subject to CZMA consistency in its CMP and therefore, Appellant is not required to submit to CZMA consistency; (2) Florida's CZMA objection did not meet the requirements of NOAA's regulations; (3) Florida's CZMA objection is premature because Appellant had not submitted a consistency certification. Florida disputed all of Appellant's claims and, in addition, claimed that the Secretary of Commerce does not have authority under the CZMA to decide procedural matters such as those argued by Appellant.

In his letter dismissing this matter for good cause, the Under Secretary found that the Secretary of Commerce has the authority, as a matter of law, to review consistency appeals for compliance with CZMA Federal consistency procedures and issue decisions prior to development or consideration of the substantive issues; that Florida has not properly listed the National Park Service oil and gas exploration approvals in its coastal management program; that a consistency certification is an essential part of the Federal consistency review process and without it Florida cannot issue a valid objection. The Under Secretary decided that Florida's objection was not valid and dismissed the appeal for good cause.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, 301–713–2967.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: June 24, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–17036 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070202B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate and Monkfish Committees in July, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on Monday, July 22, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

Monday, July 22, 2002, 9:30 a.m.—Skate Oversight Committee Meeting.

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The committee will include a discussion of outstanding issues identified by NMFS related to the Council's submission of the Draft Skate

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Thursday, July 11, 2002.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17182 Filed 7–3–02; 2:33 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board

Dated: June 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–16915 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

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England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on Monday, July 22, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Danvers, MA and Portland, ME. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: *Monday, July 22, 2002, 9:30 a.m.*—Monkfish Oversight Committee Meeting.

Location: DoubleTree Hotel, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774–5611.

The Committee will review the report of the Plan Development Team on options for revising the overfishing definition reference points and status determination criteria. The Committee will finalize its recommendations to the New England and Mid-Atlantic Councils for management alternatives to be analyzed in the Amendment 2 Draft Supplemental Environmental Impact Statement. Alternatives designed to achieve the approved goals and objectives include, but are not limited to: permit qualification criteria for vessels fishing south of 38°N; management program for a deepwater directed fishery in the Southern Fishery Management Area (SFMA); separation of monkfish days-at-sea (DAS) from multispecies and sea scallop DAS programs, including counting of monkfish DAS as 24-hour days; measures to minimize impacts of the fishery on endangered sea turtles; measures to minimize bycatch in directed in non-directed fisheries, including mesh size and other gear requirements; an exemption program for vessels fishing for monkfish outside of the Exclusive Economic Zone (EEZ) (in the NAFO Regulated Area); alternative measures to minimize impacts of the fishery on essential fish habitat (EFH); measures to improve data collection and research on monkfish, including mechanisms for funding cooperative research programs. The Committee may develop and recommend other management alternatives not included in the list above.

Monday, July 22, 2002, 9:30 a.m.—Skate Oversight Committee Meeting.

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The committee will include a discussion of outstanding issues identified by NMFS related to the Council's submission of the Draft Skate Fishery Management Plan (FMP) and Environmental Impact Statement (EIS). The committee will review and discuss PDT progress towards resolving the issues identified by NMFS. Also on the agenda will be a review of the revised sections of the Draft Skate FMP/EIS related to establishing a concrete link between skates and management measures in other fisheries and develop recommendations for Council consideration. They will review revised sections of the Draft Skate FMP/EIS related to specifications of Maximum Sustainable Yield (MSY)/Optimum Yield (OY) and rebuilding programs for overfished species and develop recommendations for Council consideration. There will also be a discussion of timing and location of public hearings for the Draft Skate FMP/EIS. The committee will also review progress towards development of a Skate Species Identification Guide.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 2, 2002.

Theophilus B. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17046 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Thursday, July 11, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17180 Filed 7–3–02; 2:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Tuesday, July 30, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Program Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17181 Filed 7–3–02; 2:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Thursday, August 1, 2002.

PLACE: 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Commodity Futures Trading Commission Roundtable on Clearing Issues.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17182 Filed 7–3–02; 2:33 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Defense Against Unconventional Use of Nuclear Weapons Against the U.S. Homeland will meet in closed session on August 6–8, 2002, at the Beckman Center, Irvine, CA. The Task Force will review the Department of Defense's (DoD) responsibilities, current capabilities, and the scope of activities conducted by DoD to ensure its future preparedness to prevent, deter, detect, identify, warn, defend against, respond to, and attribute attack of the U.S. homeland by unconventional delivery of conventional and unconventional nuclear weapons, as well as radiological weapons.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will determine the adequacy of the U.S. ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorist or sub national entities. The Task Force will also identify capabilities of the Department to provide protection against such nuclear attacks in support of national capabilities in homeland defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be close to the public.

Dated: June 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–16914 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on B–52 Re-Engining will meet in closed session on July 15, 2002; August 27–28, 2002; and September 23, 2002, at the Institute for Defense Analysis, 4850 Mark Center Drive, Alexandria, VA. This Task Force will review and advise on key aspects of the policy and technology issues associated with re-engining the USAF B–52 fleet.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review the Department's policy and technology associated with re-engining the B–52 fleet. Re-engining has been undertaken for several weapons systems in the recent past, to include the KC–135 tanker fleet, and currently, the RC–135 fleet. Given the projected retention of the B–52 for several decades into the future, the Task Force will examine and assess the operational and supportability of B–52 re-engining from the perspectives of: effective operational weapons system employment, to include tanker demands; efficient ground and flight operations, to include fuel consumption factors; engine reliability and systems performance; technical and supportability risks of remaining with the TF–33 engine for future decades; streamlined support concepts from a best value viewpoint, to include total contractor support options; implementation issues, to include conventional as well as innovative acquisition and financing options; contracting and legal considerations—to include termination issues; and affordability of re-engining as compared to life extension concepts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: June 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–16915 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on the Role and Status of DoD Red Teaming Activities will meet in closed session on July 22, 2002, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will review the role and status of Red Teaming in the Department of Defense (DoD) and recommend ways to make it a more effective tool.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defenses for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate current and past Red Team activities within the Department of Defense and its agencies, as well as other government and non-government organizations (including those initiated since September 11). The Task Force will prepare recommendations that are relevant to red teaming that portrays both state and non-state adversaries. It will also look at how the Department should work with other government departments and agencies to foster effective red teaming. The Task Force will address issues of red team products, processes and organization. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: June 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–16916 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Mission Capabilities will meet in closed session on July 22–23, 2002, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will review and assess the capabilities of the Department of Defense to perform its assigned missions and functions. The Task Force will review the Department's ability to meet its assigned missions and functions in the context of the Quadrennial Defense Review.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to meet its assigned missions and functions. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: June 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–16917 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

AGENCY: Department of Defense.

ACTION: Notice of per diem rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

SUMMARY: The Department of Defense is publishing the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 226 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE

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DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Enduring Freedom Lessons Learned will meet in closed session on July 18, 2002, in the Pentagon, Washington, DC. This Task Force will review current activities of Operation Enduring Freedom to determine both near and longer-term technical and operational considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command and control, intelligence, combat support activities, weapon system performance, and science and technology requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: June 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–16917 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 226. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 226 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 2002.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 225. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows.

Dated: June 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 226 ARE UPDATES TO RATES FOR NOME, ST. GEORGE ISLAND, SEWARD, TALKEETNA, AND TOGIAK ALASKA.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
BARROW	159	95	254	05/01/2002
BETHEL	129	66	195	05/01/2002
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	99	63	162	05/01/2002
CORDOVA	105	89	194	05/01/2002
CRAIG	75	57	132	05/01/2002
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	79	58	137	05/01/2002
DENALI NATIONAL PARK				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
DILLINGHAM	95	69	164	05/01/2002
DUTCH HARBOR-UNALASKA	120	78	198	05/01/2002
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
ELMENDORF AFB				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FAIRBANKS				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	79	58	137	05/01/2002
FT. RICHARDSON				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FT. WAINWRIGHT				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
HOMER				
05/15 - 09/15	109	76	185	06/01/2002
09/16 - 05/14	76	72	148	06/01/2002
JUNEAU	119	83	202	05/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	95	76	171	05/01/2002
11/01 - 03/31	60	71	131	05/01/2002
KENNICOTT	159	77	236	05/01/2002
KETCHIKAN				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	75	57	132	05/01/2002
KODIAK	105	81	186	05/01/2002
KOTZEBUE				
05/01 - 08/31	167	99	266	06/01/2002
09/01 - 04/30	136	96	232	06/01/2002
KULIS AGS				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
MCCARTHY	159	77	236	05/01/2002
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
NOME	120	103	223	07/01/2002
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/31 - 09/30	174	105	279	07/01/2002
10/01 - 05/30	79	96	175	07/01/2002
SITKA-MT. EDGECUMBE				
05/16 - 09/16	159	98	257	05/01/2002
09/17 - 05/15	139	97	236	05/01/2002
SKAGWAY				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
SPRUCE CAPE	105	81	186	05/01/2002
ST. GEORGE	105	39	144	07/01/2002
TALKEETNA	100	89	189	07/01/2002
TANANA	120	103	223	07/01/2002
TOGIAK	100	39	139	07/01/2002
UMIAT	200	20	220	05/01/2002
VALDEZ				
05/01 - 10/01	124	71	195	05/01/2002

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/02 - 04/30	69	66	135	05/01/2002
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	95	60	155	01/01/2000
WRANGELL				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	69	204	11/01/2001
HAWAII				
CAMP H M SMITH	112	72	184	06/01/2002
EASTPAC NAVAL COMP TELE AREA	112	72	184	06/01/2002
FT. DERUSSEY	112	72	184	06/01/2002
FT. SHAFTER	112	72	184	06/01/2002
HICKAM AFB	112	72	184	06/01/2002
HONOLULU (INCL NAV & MC RES CTR)	112	72	184	06/01/2002
ISLE OF HAWAII: HILO	108	69	177	06/01/2002
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	72	184	06/01/2002
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
KILAUEA MILITARY CAMP	108	69	177	06/01/2002
LUALUALEI NAVAL MAGAZINE	112	72	184	06/01/2002
MCB HAWAII	112	72	184	06/01/2002
NAS BARBERS POINT	112	72	184	06/01/2002
PEARL HARBOR [INCL ALL MILITARY]	112	72	184	06/01/2002
SCHOFIELD BARRACKS	112	72	184	06/01/2002
WHEELER ARMY AIRFIELD	112	72	184	06/01/2002
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	150	88	238	11/01/2001
TINIAN	85	71	156	05/01/2002
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE

[FR Doc. 02–16918 Filed 7–5–02; 8:45 am]
BILLING CODE 5001–08–C

Dated: July 1, 2002.
John Tressler,
Leader, Regulatory Information Management, Office of the Chief Information Officer.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

Office of Educational Research and Improvement

Type of Review: New.

Title: Preschool Curricula Evaluation Research (PCER) Program.

DEPARTMENT OF EDUCATION

Intent to Compromise Claim Against the Commonwealth of Puerto Rico Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim with request for comments.

SUMMARY: The United States Department of Education (Department) intends to

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Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
12/24 - 04/10	195		75		270	01/01/2000
CAROLINA						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82		54		136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
HUMACAO	82		54		136	01/01/2000
LUIS MUNOZ MARIN IAP AGS						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
MAYAGUEZ	85		59		144	01/01/2000
PONCE	96		69		165	01/01/2000
ROOSEVELT RDS & NAV STA	82		54		136	01/01/2000
SABANA SECA [INCL ALL MILITARY]						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
SAN JUAN & NAV RES STA						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
[OTHER]	62		57		119	01/01/2000
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	93		72		165	01/01/2000
12/15 - 04/14	129		76		205	01/01/2000
ST. JOHN						
04/15 - 12/14	219		84		303	01/01/2000
12/15 - 04/14	382		100		482	01/01/2000
ST. THOMAS						
04/15 - 12/14	163		73		236	01/01/2000
12/15 - 04/14	288		86		374	01/01/2000
WAKE ISLAND						
WAKE ISLAND	60		32		92	09/01/1998

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[FR Doc. 02–16918 Filed 7–5–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or. recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 1, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Preschool Curricula Evaluation Research (PCER) Program.

Frequency: Semi-Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 7,217.

Burden Hours: 5,281.

Abstract: The primary objective of the PCER Program is to evaluate the effectiveness of selected preschool curricula on child development outcomes such as language skill, pre-reading and pre-math abilities, cognition, general knowledge, and social competence. Although there is a need for preschool programs to enhance their instructional content, there is weak evidence regarding the effectiveness of classroom curricula. These data will provide critical data to allow government agencies to recommend and preschool providers to choose among the array of available curricula. The respondents include children, teachers and parents.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2078. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washingotn, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16924 Filed 7–5–02; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Intent to Compromise Claim Against the Commonwealth of Puerto Rico Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim with request for comments.

SUMMARY: The United States Department of Education (Department) intends to compromise a claim against the Commonwealth of Puerto Rico Department of Education (PRDE) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 97–52–R. Before compromising a claim, the Department must publish its intent to do so in the **Federal Register** and provide the public an opportunity to comment on that action (20 U.S.C. 1234a(j)).

DATES: We must receive your comments on the proposed action on or before August 19, 2002.

ADDRESSES: Comments should be addressed to Kay Rigling, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E312, Washington, DC 20202–2110.

FOR FURTHER INFORMATION CONTACT: Kay Rigling, Esq., Telephone 202–401–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8399.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed action. During and after the comment period, you may inspect all public comments in room 6E312, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The claim in question arose when the Department's Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued a program determination letter (PDL) on March 26, 1997. The PDL demanded a refund of $1,846,718 of funds provided to the PRDE for school years 1991–92 and 1992–93 under Chapter 1 of Title I of

has determined that it would not be practical or in the public interest to continue this proceeding. In addition, in light of subsequent changes in the Chapter 1/Title I assessment requirements that permit testing all students, there is little or no likelihood of a recurrence of this problem. As a result, under the authority in 20 U.S.C. 1234a(j), the Department has

the Tank Waste Remediation System, Hanford Site, Richland, Washington, Final Environmental Impact Statement (TWRS EIS, DOE/EIS–0189, August 1996). The TWRS EIS evaluated alternatives for the disposal of mixed, radioactive, and hazardous waste stored or projected to be stored in 177 underground storage tanks and approximately 60 active and inactive

Office Box 450, Mail Stop H6–60, Richland, WA 99352, Electronic Mail: Gae_M_Neath@rl.gov, Telephone: (509) 376–7828.

FOR FURTHER INFORMATION CONTACT: For information regarding the TWRS EIS or the Supplemental EIS, contact Ms. Neath as described above. For information on DOE's National Environmental Policy Act (NEPA)

between 1970 and 1986. Most of these tanks are designed for up to 50 years of storage. They are similar to the single-shell tanks, but double-shell tanks have a second steel containment wall. The space between the two walls is monitored for leaks, and none of the double-shell tanks has been known to leak. The double-shell tanks are used to treat and store a variety of liquid radioactive wastes from the single-shell

scale facilities constructed during Phase II.

In accordance with the TWRS ROD, DOE has continued to evaluate new information pertinent to Hanford tank waste remediation and is now reconsidering aspects of Phase I implementation for low-activity waste. Specifically, DOE is now considering a different type of disposal facility, a different on-site disposal location, and a

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Background

The claim in question arose when the Department's Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued a program determination letter (PDL) on March 26, 1997. The PDL demanded a refund of $1,846,718 of funds provided to the PRDE for school years 1991–92 and 1992–93 under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.* (1988)). Specifically, the Assistant Secretary found that the PRDE had used Chapter 1 funds to assess the educational needs of all public and private school children in violation of statutory and regulatory requirements that permitted the use of those funds only for programs designed to meet the special educational needs of low-achieving children. Accordingly, the Assistant Secretary disallowed the percent of the total assessment contract costs for 1991–92 and 1992–93 attributable to non-Chapter 1 students.

The PRDE filed a timely appeal with the OALJ. In response to a motion for partial summary judgment filed by the PRDE, the OALJ held that $1,017,440 of the Assistant Secretary's claim was barred from recovery by the statute of limitations in 20 U.S.C. 1234a(k). As a result, $829,278, representing costs incurred in school year 1992–93, remains at issue. The Administrative Law Judge assigned to the appeal granted the parties' joint motion to stay proceedings pending settlement negotiations.

During settlement discussions, the PRDE submitted substantial documentation to demonstrate that additional assessment costs were allowable Chapter 1 costs. For example, the PRDE demonstrated that certain fixed costs for in-service workshops and the preparation of required reports were necessary to meet Chapter 1 requirements, irrespective of the number of students assessed. Moreover, the PRDE demonstrated that it had properly assessed additional students no longer receiving Chapter 1 services in order to meet certain Chapter 1 requirements. After conducting a thorough review of this documentation, the Assistant Secretary has decided to accept the PRDE's documentation and withdraw $414,733 from the remaining claim, thereby reducing the claim to $414,545.

The Department proposes to compromise this remaining claim to $214,545. Based on litigation risks and costs of proceeding through the administrative and, possibly, court process for this appeal, the Department has determined that it would not be practical or in the public interest to continue this proceeding. In addition, in light of subsequent changes in the Chapter 1/Title I assessment requirements that permit testing all students, there is little or no likelihood of a recurrence of this problem. As a result, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim for $214,545 is appropriate.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing to Kay Rigling, Esq. at the telephone number and address listed at the beginning of this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at 202–512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1234a(j).

Dated: July 2, 2002.

Jack Martin,

Chief Financial Officer.

[FR Doc. 02–16958 Filed 7–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Supplemental Environmental Impact Statement for Disposal of Immobilized Low-Activity Wastes From Hanford Tank Waste Processing

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare a supplemental environmental impact statement (Supplemental EIS) to the Tank Waste Remediation System, Hanford Site, Richland, Washington, Final Environmental Impact Statement (TWRS EIS, DOE/EIS–0189, August 1996). The TWRS EIS evaluated alternatives for the disposal of mixed, radioactive, and hazardous waste stored or projected to be stored in 177 underground storage tanks and approximately 60 active and inactive miscellaneous underground storage tanks associated with the Hanford Site's tank farm operations. The TWRS EIS also evaluated alternatives for the management and disposal of approximately 1,930 cesium and strontium capsules stored at the Hanford Site. This EIS included analyses of on-site disposal of immobilized (vitrified) low-activity waste resulting from chemical separation of the Hanford tank wastes. In its Record of Decision (62 FR 8693, February 1997), DOE decided on the Phased Implementation Alternative, to chemically separate and vitrify high-level and low-activity wastes retrieved from the tanks. In Phase I, the immobilized low-activity waste would be placed in near-surface, retrievable disposal vaults on-site. DOE is now reconsidering the type of disposal facility for the immobilized low-activity waste, the location of this disposal facility on the Site, and the physical form of the vitrified low-activity waste product. Accordingly, DOE invites public comment on the scope of the Supplemental EIS that would evaluate potential changes in the Department's plans.

DATES: The public scoping period begins with the publication of this Notice and extends through August 26, 2002. DOE invites all interested parties to submit written comments or suggestions during the scoping period. Written comments must be postmarked by August 26, 2002 and submitted to the DOE document manager (see **ADDRESSES** below). Comments postmarked after that date will be considered to the extent practicable.

Oral and written comments will be received at a public scoping meeting to be held on the date and at the location given below: Richland, Washington, August 20, 2002, 6:00 pm to 8:00 pm Red Lion Hanford House, Benton-Franklin Room, 802 George Washington Way, Richland, WA 99352.

For further information, see Public Scoping Meetings under **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Address comments on the scope of the Supplemental EIS to the DOE Document Manager: Ms. Gae M. Neath, U.S. Department of Energy, Post Office Box 450, Mail Stop H6–60, Richland, WA 99352, Electronic Mail: Gae_M_Neath@rl.gov, Telephone: (509) 376–7828.

FOR FURTHER INFORMATION CONTACT: For information regarding the TWRS EIS or the Supplemental EIS, contact Ms. Neath as described above. For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–4600, Facsimile: (202) 586–7031, or leave a message at 1–800–472–2756 (toll free).

SUPPLEMENTARY INFORMATION: The Federal government established the Hanford Site, near Richland, Washington, in 1943, to produce plutonium for national defense as part of the Manhattan Project. Metallic uranium fuel was irradiated in nuclear reactors, and then the fuel was chemically processed to recover plutonium. Plutonium production at the Hanford Site stopped in 1988.

Tank Wastes at the Hanford Site

Processing reactor fuel and related activities at the Hanford Site created a wide variety of radioactive wastes that have been stored in 177 underground tanks. Typically, the tank wastes are highly radioactive and mixed with hazardous waste.

There are 149 single-shell tanks storing about 125.7 million liters (ML) (33.2 million gallons (Mgal)) of waste at the Hanford Site. Single shell tanks have one steel wall, surrounded by reinforced concrete; they were constructed between 1944 and 1964 with a design life of 20 to 30 years. The single-shell tanks received waste from chemical processing until 1980. The capacity of most single-shell tanks is 1.9 ML to 3.8 ML (0.5 Mgal to 1.0 Mgal). The tanks are located under ground and are covered with 1.8 to 3 meters (6 to 10 feet) of earth. These tanks contain radioactive liquids, saltcake, and sludge. About half of the single-shell tanks have leaked or are assumed to have leaked. Approximately 3.9 ML (1.0 Mgal) of waste has leaked or spilled into the nearby soil. Over the years, much of the liquid stored in single-shell tanks has been evaporated or pumped to double-shell tanks as part of DOE's Interim Tank Stabilization Program to prevent further leakage.

There are twenty-eight 3.9 ML (1.0 Mgal) double-shell tanks at Hanford. The double-shell tanks were constructed between 1970 and 1986. Most of these tanks are designed for up to 50 years of storage. They are similar to the single-shell tanks, but double-shell tanks have a second steel containment wall. The space between the two walls is monitored for leaks, and none of the double-shell tanks has been known to leak. The double-shell tanks are used to treat and store a variety of liquid radioactive wastes from the single-shell tanks and from various Hanford Site processes. The double-shell tanks now contain about 79.5 ML (21.0 Mgal) of waste.

Tank Waste Remediation System Environmental Impact Statement

The TWRS EIS addressed the management, treatment, storage, and disposal of the waste currently stored in the existing tanks and other wastes that may be generated during future decontamination and decommissioning activities at Hanford. The scope of the EIS included safe operations, waste retrieval, and treatment and disposal of tank waste. The EIS also addressed the management of approximately 1930 radioactive cesium and strontium capsules. The EIS evaluated 10 tank waste alternatives and 4 alternatives for managing the cesium and strontium capsules. The tank waste alternatives included a No Action Alternative and a range of action alternatives that involved varying degrees of tank waste retrieval and chemical separation of high-level and low-activity wastes. In all of the alternatives involving chemical separation of tank wastes, the high-level waste would be vitrified and stored until it could be shipped to a potential geologic repository. The low-activity waste would be immobilized and placed into near-surface concrete (grout) vaults on site.

The TWRS EIS Record of Decision (TWRS ROD) selected the Department's Preferred Alternative, the Phased Implementation Alternative, and deferred a decision on the cesium and strontium capsules. During Phase I (demonstration phase) of the Phased Implementation Alternative, DOE would retrieve a portion of the waste from the tanks and chemically separate the low-activity and high-level wastes. Demonstration-scale waste treatment facilities would be designed, constructed, and operated to immobilize tank waste. DOE also decided that immobilized low-activity waste would be prepared for future on site disposal in existing grout vaults. The phased approach would allow DOE to use the lessons learned from the demonstration phase to improve the design, construction, and operations of full-scale facilities constructed during Phase II.

In accordance with the TWRS ROD, DOE has continued to evaluate new information pertinent to Hanford tank waste remediation and is now reconsidering aspects of Phase I implementation for low-activity waste. Specifically, DOE is now considering a different type of disposal facility, a different on-site disposal location, and a different physical form of the vitrified low-activity waste product than were originally analyzed in the TWRS EIS. Accordingly, DOE has decided to prepare a Supplemental EIS.

Proposed Action

DOE proposes to dispose of immobilized low-activity waste generated from the retrieval and treatment of tank wastes at the Hanford Site in near-surface trenches located in the 200 East Area of the Hanford Site. This proposal represents a change in DOE's decision in the TWRS ROD to retrievably dispose of low-activity wastes in concrete vaults.

The proposed low-activity waste form also is different from the Phased Implementation Alternative, under which tank waste would be immobilized in vitrified cullet, produced by quenching the molten glass in water following vitrification, resulting in gravel-sized pieces of glass. DOE proposes instead to immobilize low-activity waste in monoliths, produced by casting the molten glass into a canister, resulting in a single encased piece of glass.

In accordance with the TWRS ROD, DOE will continue to evaluate new information relative to the tank waste remediation program. As this information becomes available, DOE may consider new treatment technologies and would conduct further NEPA review as appropriate.

Preliminary Alternatives

Disposal of Immobilized Low-Activity Waste in Near-Surface Engineered Systems (i.e., Trenches) in the 200 East Area of the Hanford Site

This alternative reflects current DOE planning for disposal of immobilized low-activity waste generated from tank waste retrieval and chemical separation. The immobilized low-activity waste would be placed in sealed containers, and disposed of in lined trenches with leachate collection systems in the 200 East Area of the Hanford Site. DOE will evaluate the impacts associated with the disposal of immobilized low-activity waste in trenches and closing and capping the trenches with a range of barriers.

Disposal of Immobilized Low-Activity Waste in Near-Surface Engineered Systems (i.e., Trenches) in the 200 West Area of the Hanford Site

Under this alternative, the immobilized low-activity waste would be placed in sealed containters and disposed of in lined trenches with leachate collection systems at a representative site in the 200 West Area

(9) Unavoidable adverse environmental effects;

(10) Short-term uses of the environment versus long-term productivity;

(11) Potential irretrievable and irreversible commitment of resources.

Cooperating Agency

The Hanford Communities, a Washington State intergovernmental

U.S. Department of Energy, Washington, DC, 1996, Record of Decision issued February 1997, and Supplement Analyses 1 (June 1997), 2 (May 1998), and 3 (March 2001).

(2) Final Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, Washington, DOE/EIS–0212, 1995, Record of Decision issued

• Use of Existing Borrow Areas, Hanford Site, Richland, Washington, DOE/EA–1403, FONSI October 2001;

• Transuranic Waste Retrieval from the 218–W–4B and 218–W–4C Low-Level Burial Grounds, Hanford Site, Richland, Washington, DOE/EA–1405, FONSI March 2002.

Issued in Washington, DC on June 28, 2002.

Beverly A. Cook,

merit of the approach. DOE anticipates issuing one or more financial assistance instruments from this solicitation. Funding in the amount of $500,000 is anticipated to be available. Cost sharing by the applicant is desired.

DATES: Applications are to be received no later than 3 p.m. local prevailing time on August 1, 2002. Any application received after the due date will not be evaluated.

385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

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Disposal of Immobilized Low-Activity Waste in Near-Surface Engineered Systems (i.e., Trenches) in the 200 West Area of the Hanford Site

Under this alternative, the immobilized low-activity waste would be placed in sealed containters and disposed of in lined trenches with leachate collection systems at a representative site in the 200 West Area of the Hanford Site. DOE will evaluate the impacts associated with the disposal of the low-activity waste in trenches and closing and capping the trenches with a range of barriers.

No Action Alternative

In the Supplemental EIS, the No Action Alternative will be the Phased Implementation Alternative selected in the TWRS EIS ROD. Under this alternative, DOE would implement its previous decision concerning immobilized low-activity waste: retrievable disposal of the low-activity waste in concrete vaults located at the Hanford Site. The analysis of this alternative would be updated with information that has become available since the TWRS EIS was published to ensure an appropriate comparison among alternatives.

Preliminary Issues Identified for Analysis

The following issues have been preliminarily identified for analysis in the Supplemental EIS. This list is presented to facilitate public comment on the scope of the Supplemental EIS and is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives.

(1) Potential effects on the public and onsite workers from releases of radiological and nonradiological materials during normal operations and from reasonably forseeable accidents;

(2) Pollution prevention and waste minimization;

(3) Potential effects on air and water quality and other environmental consequences of normal operations and potential accidents;

(4) Potential cumulative effects of operations at the Hanford Site, including relevant impacts from past, present, and reasonably foreseeable activities at the Site;

(5) Potential effects on endangered species, floodplain/wetlands, archaeological/historical sites;

(6) Potential long-term effects on groundwater, surface water, and human health;

(7) Effects from normal transportation and postulated transportation accidents;

(8) Potential socioeconomic impacts on surrounding communities;

(9) Unavoidable adverse environmental effects;

(10) Short-term uses of the environment versus long-term productivity;

(11) Potential irretrievable and irreversible commitment of resources.

Cooperating Agency

The Hanford Communities, a Washington State intergovernmental group representing the local communities of Richland, West Richland, Kennewick, and Pasco, Benton County, and the Port of Benton, is a cooperating agency in the preparation of this Supplemental EIS.

Public Scoping Meeting

DOE invites the public to attend a scoping meeting at which comments may be presented on the scope of the Supplemental EIS. Oral and written comments will be considered equally in preparation of the Supplemental EIS. Oral and written comments will be received at the public scoping meeting as stated under **DATES** above.

DOE will begin the scoping meeting with a short presentation on the Supplemental EIS process, the proposed action, preliminary alternatives, and other related information. Individuals and organizations will then be invited to present comments. Requests to speak at the public meetings may be made by calling or writing to the DOE document manager (see **ADDRESSES** above). Registered speakers will be heard on a first-come, first-served basis. Requests to speak made at the meeting will be honored as time permits. Written comments will be accepted at the meeting. Speakers are encouraged to provide written versions of their oral comments for the record.

A moderator will conduct the meeting. DOE staff and the moderator may ask speakers clarifying questions. Individuals speaking on behalf of an organization must identify the organization. Each speaker will be allowed five minutes to present comments unless more time is available. Comments will be recorded by a court reporter and will become part of the scoping meeting record. A question and answer period will be held after speakers have had an opportunity to speak.

Related NEPA Documentation

Other NEPA documents that may be relevant to the Supplemental EIS include:

(1) Final Environmental Impact Statement for the Tank Waste Remediation System, Hanford Site, Richland, Washington, DOE/EIS–0189, U.S. Department of Energy, Washington, DC, 1996, Record of Decision issued February 1997, and Supplement Analyses 1 (June 1997), 2 (May 1998), and 3 (March 2001).

(2) Final Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, Washington, DOE/EIS–0212, 1995, Record of Decision issued November 1995, U.S. Department of Energy, Richland, Washington.

(3) Final Environmental Impact Statement for Disposal of Hanford Defense High-Level Transuranic and Tank Wastes, Hanford Site, Richland, Washington, DOE/EIS–0113, 1987, Record of Decision issued April 1988, U.S. Department of Energy, Washington, DC.

(4) Final Environmental Statement for Waste Management Operations, Hanford Reservation, Richland, Washington, ERDA–1538, 1975. U.S. Energy Research and Development Administration, Washington, DC.

(5) Final Environmental Impact Statement for Hanford Comprehensive Land Use Plan, Hanford Site, Richland, Washington, DOE/EIS–0222, 1999, Record of Decision issued November 1999, U.S. Department of Energy, Washington, DC.

(6) Waste Management Programmatic Environmental Impact Statement, DOE/EIS–0200, U.S. Department of Energy, Washington, DC, May 1997. DOE published Records of Decision: TRU Treatment January 1998; Hazardous Waste Treatment August 1998; High-Level Waste Storage August 1999; Low-Level and Mixed Low-Level Waste, February 2000.

(7) Draft Environmental Impact Statement for Hanford Site Solid (Radioactive and Hazardous) Waste Program, DOE/EIS–0286, April 2002, U.S. Department of Energy, Richland, Washington.

(8) Draft Environmental Impact Statement for Idaho High-Level Waste and Facilities Disposition, DOE/EIS–0287, January 2001, U.S. Department of Energy, Washington, DC.

(9) Draft SEPA Environmental Impact Statement for Commercial Low-Level Radioactive Waste Disposal Site (US Ecology) on the Hanford Site, August 2000, Washington Department of Ecology, Olympia, Washington.

(10) Environmental Assessments.

- Trench 33 Widening in 218–W–5 Low-Level Burial Ground, DOE/EA–1203, FONSI July 1997;
- Widening Trench 36 of the 218–E–12B Low-Level Burial Ground, DOE/EA–1276, FONSI February 1999;
- Use of Existing Borrow Areas, Hanford Site, Richland, Washington, DOE/EA–1403, FONSI October 2001;
- Transuranic Waste Retrieval from the 218–W–4B and 218–W–4C Low-Level Burial Grounds, Hanford Site, Richland, Washington, DOE/EA–1405, FONSI March 2002.

Issued in Washington, DC on June 28, 2002.

Beverly A. Cook,

Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 02–16946 Filed 7–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation

AGENCY: Albuquerque Operations Office, Department of Energy.

ACTION: Notice of availability of solicitation-research and development of the Nevada Solar Dish Power Project.

SUMMARY: The U.S. Department of Energy (DOE), Albuquerque Operations Office (AL), is seeking applications for research and development for a new project to deploy solar dish-engine systems at a site in southern Nevada. The Project, entitled The Nevada Solar Dish Power Project, is sponsored by the DOE's Concentrating Solar Power (CSP) Program to provide a "bridge" from R&D to commercialization of solar dish technology. Therefore, it is aimed at deploying systems that have established operational credentials not at performing R&D on system designs. The two project objectives are (1) to fabricate and field 1 megawatt or more of solar dish-engine systems in a power plant environment, and (2) to develop a project development, installation, and O&M database for dish-engine systems. We expect the installation and testing of the systems to start in late 2002 or early 2003 and to continue through 2004–2005. Since this is a pre-commercial deployment, we plan for dish-engine power plant to continue to operate in a sustainable manner following the completion of the project. We anticipate the authorization project funding in FY2002 and subsequent years, subject to Congressional appropriations. The financial assistance award(s) will be made on a competitive basis, utilizing an objective merit review process, and may consist of multiple cooperative agreements. A written proposal that includes technical and cost volumes will be solicited. A DOE technical panel will perform a scientific and engineering evaluation of each responsive application to determine the merit of the approach. DOE anticipates issuing one or more financial assistance instruments from this solicitation. Funding in the amount of $500,000 is anticipated to be available. Cost sharing by the applicant is desired.

DATES: Applications are to be received no later than 3 p.m. local prevailing time on August 1, 2002. Any application received after the due date will not be evaluated.

FOR FURTHER INFORMATION CONTACT: Martha L. Youngblood, Contracting Officer, DOE/AL, at (505) 845–4268 or by e-mail at *MYOUNGBLOOD@DOEAL.GOV*

SUPPLEMENTARY INFORMATION: The solicitation will be available on the Internet on or about July 1, 2002 at the following web site: http://e-center.doe.gov/. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. For profit and not-for-profit organizations, state and local governments, Indian tribes, and institutions of higher learning are eligible for awards under this solicitation. Collaboration between industry, industry organizations, and universities are encouraged.

Issued in Albuquerque, New Mexico June 21, 2002.

Martha L. Youngblood,

Contracting Officer, Complex Support Branch, Contracts and Procurement Division.

[FR Doc. 02–16945 Filed 7–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–36–001]

Consumers Energy Company; Notice of Application

July 1, 2002.

Take notice that on June 28, 2002, Consumers Energy Company submitted an amendment to its original application in this proceeding, under section 204 of the Federal Power Act. The amendment seeks a waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2 related to issuances used to refinance and replace its revolving credit facility.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16969 Filed 7–5–02; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–392–000]

Ozark Gas Transmission, L.L.C.; Notice of Application

July 1, 2002.

Take notice that on June 21, 2002, Ozark Gas Transmission, L.L.C. (Ozark), 515 Central Park Drive, Oklahoma City, Oklahoma 73105, filed in Docket No. CP02–392–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction of an upgrade to an existing delivery point in Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Ozark proposes to upgrade its existing delivery point serving the Thomas B.Fitzhugh Generating Station (Fitzhugh) in Franklin County, Arkansas, in order to provide natural gas service to Arkansas Electric Cooperative Corporation (AECC). It is stated that AECC is re-powering the

generating station by replacing its current boiler with a dual fuel combustion turbine in order to increase its capacity and serve an expanding market. It is explained that Ozark's existing facilities would not provide sufficient capacity and pressure to supply gas to the electric generating station following the re-powering. It is asserted that Ozark will upgrade its

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be

on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

informational filing setting forth the changed open access transmission tariff charges effective June 1, 2002 together with back-up materials.

Copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER00–1053–000, the Commission Trial Staff, the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: July 11, 2002.

5. Maine Electric Power Company and Central Maine Power Company

[Docket No. ER02–2128–000]

Please take notice that on June 26, 2002 , Maine Electric Power Company (MEPCO) and Central Maine Power Company (CMP) tendered for filing a Support Services Agreement for support services provided by MEPCO to CMP,

Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6, effective on June 15, 2000.

The Company respectfully requests an effective date of June 1, 2002, as requested by the customer. Copies of the filing were served upon Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: July 11, 2002.

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generating station by replacing its current boiler with a dual fuel combustion turbine in order to increase its capacity and serve an expanding market. It is explained that Ozark's existing facilities would not provide sufficient capacity and pressure to supply gas to the electric generating station following the re-powering. It is asserted that Ozark will upgrade its measurement station by adding measurement devices to handle and accurately measure a minimum flow rate of 150 Mcf of gas per day (Mcfd) and a maximum flow rate of 45,000 Mcfd. Ozark estimates the cost of the proposed facilities at $475,212. Ozark requests that a certificate be issued by September 11, 2002, so that it can supply test gas to Fitzhugh by December 1, 2002.

It is explained that the proposed upgrade could have been authorized under the automatic provisions of Ozark's blanket certificate. However, the project is located in an area of Western Arkansas (Township 9N, Range 26W) that is the subject of a Stipulation and Consent Agreement entered into between Ozark's predecessor, Ozark Gas Transmission System and the Commission in 1982. This settlement agreement requires Ozark to obtain a certificate of public convenience and necessity from the Commission before constructing any pipeline or compression facility in Township 9N, Range 26W.

Any questions regarding this amendment should be directed to James F. Bowe, Jr., Attorney, Dewey Ballantine LLP, at (202) 429–1444.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 22, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16968 Filed 7–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–980–006, et al.]

Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bangor Hydro-Electric Company

[Docket No. ER00–980–006]

Take notice that on June 17, 2002, pursuant to Section 2.11 of the Settlement Agreement filed on November 1, 2000, in Docket No. ER00–980–000, and accepted and modified by the Federal Energy Regulatory Commission (Commission) on February 26, 2001, Bangor-Hydro Electric Company (Bangor Hydro) submits this informational filing showing the implementation of Bangor Hydro's open access transmission tariff formula rate for the charges that became effective on June 1, 2002.

Copies of this filing were sent to Bangor Hydro's open access transmission tariff customers that have requested to receive a copy (Indeck Maine Energy, L.L.C.), the Commission Trial Staff, the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: July 8, 2002.

2. Maine Public Service Company

[Docket No. ER00–1053–006]

Take notice that on June 17, 2002, pursuant to Section 2.4 of the Settlement Agreement filed on June 30, 2000, in Docket No. ER00–1053–000, and accepted by the Federal Energy Regulatory Commission on September 15, 2000, Maine Public Service Company (MPS) submits this informational filing setting forth the changed open access transmission tariff charges effective June 1, 2002 together with back-up materials.

Copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER00–1053–000, the Commission Trial Staff, the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: July 8, 2002.

3. Oncor Electric Delivery Company

[Docket No. ER02–2019–000]

Take notice that on June 5, 2002, Oncor Electric Delivery Company (Oncor) tendered for filing its FERC Electric Tariff, Third Revised Volume No. 2 for transmission service to Tex-La Electric Cooperative of Texas (Tex-La) to supersede Oncor's current FERC Electric tariff, Second Revised Volume No. 2.

Oncor states that this filing has been served upon Tex-La and the Public Utility Commission of Texas.

Comment Date: July 15, 2002.

4. Consolidated Edison Company of New York, Inc. (Complainant)

[Docket No. ER02–2126–000]

Take notice that on June 20, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an unexecuted Interconnection Agreement (Agreement) between Con Edison and PSEG Power In-City I, LLC (PSEG Power). Con Edison requested that the Agreement be allowed to become effective September 1, 2002.

Con Edison states that copies of the filing were served upon PSEG Power, the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: July 11, 2002.

5. Boston Edison Company

[Docket No. ER02–2127–000]

Take notice that Boston Edison Company (BECo), on June 20, 2002, tendered for filing pursuant to the provisions of Section 205 of the Federal Power Act unexecuted Service Agreements for the Town of Concord, Massachusetts, Municipal Light Department (Concord) and the Town of Wellesley, Massachusetts, Municipal Light Department (Wellesley), respectively, to take local network transmission service pursuant to the provisions of BECo's FERC Electric Tariff, Volume No. 8. BECo requests a June 1, 2002 effective date.

BECo states that copies of this filing have been served upon Concord and Wellesley and on the Massachusetts Department of Telecommunications and Energy.

Comment Date: July 11, 2002.

5. Maine Electric Power Company and Central Maine Power Company

[Docket No. ER02–2128–000]

Please take notice that on June 26, 2002 , Maine Electric Power Company (MEPCO) and Central Maine Power Company (CMP) tendered for filing a Support Services Agreement for support services provided by MEPCO to CMP, and designated as Rate Schedule FERC No. 18, Supplement No. 1.

Comment Date: July 11, 2002.

6. American Electric Power Service Corporation

[Docket No. ER02–2129–000]

Take notice that on June 20, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Network Integration Transmission Service Agreement for Central Virginia Electric Cooperative (CVEC). This agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff, Second Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after May 21, 2002. A copy of the filing was served upon the CVEC and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 11, 2002.

7. Lake Road Generating Company, L.P.

[Docket No. ER02–2130–000]

Take notice that on June 20, 2002, Lake Road Generating Company, L.P. (Lake Road) tendered for filing an Electric Purchase/Sale Agreement for power sales (Agreement) with PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Lake Road will sell electric wholesale services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment Date: July 11, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02–2131–000]

Take notice that on June 20, 2002, Virginia Electric and Power Company (the Company) respectfully tendered for filing the following Service Agreement by Virginia Electric and Power Company to Sempra Energy Trading Corp. designated as Service Agreement No. 18 under the Company's Wholesale Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6, effective on June 15, 2000.

The Company respectfully requests an effective date of June 1, 2002, as requested by the customer. Copies of the filing were served upon Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: July 11, 2002.

9. Dominion Energy Marketing, Inc.

[Docket No. ER02–2133–000]

Take notice that on June 20, 2002, Dominion Energy Marketing, Inc. (the Company) respectfully tendered for filing the following Service Agreement by Dominion Energy Marketing, Inc. to Sempra Energy Trading Corp. designated as Service Agreement No 6 under the Company's Market-Based Sales Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 15, 2000. The Company requests an effective date of June 1, 2002, as requested by the customer.

Copies of the filing were served upon the Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: July 11, 2002.

10. Just Energy, LLC

[Docket No. ER02–2134–000]

Take notice that on June 19, 2002, Just Energy, LLC (Just Energy) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Just Energy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Just Energy intends to engage in wholesale electric power and energy purchases and sales as a marketer. Just Energy is not in the business of generating or transmitting electric power. Just Energy sells electricity to customers in various deregulated states.

Comment Date: July 11, 2002.

11. Central Maine Power Company and Maine Electric Power Company

[Docket No. ER02–2135–000]

Please take notice that on June 20, 2002 , Central Maine Power Company (CMP) and Maine Electric Power Company (MEPCO) tendered for filing a Support Services Agreement for support services provided by CMP to MEPCO, and designated as Rate Schedule FERC No. 115, First Revised

Comment Date: July 11, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in

31, 2002 and October 31, 2002 reports is limited in the size of the files it can accept. The May 29, 2002 order did not fully address options for parties with filings larger than the current size limit of five megabytes (MB). To accommodate the larger filings, we will increase the file size limitation for the Electric Quarterly Report filings to ten MB.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–383–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed National Fuel Replacement/

with 8-inch-diameter plastic pipeline extending from Station No. CV–RM–1T in the Town of Centerville, Allegany County, New York, to Station No. CE–RM–1T in the Town of Caneadea, Allegany County, New York; and

- Abandon 27.35 miles of Line PY–10 from Station CE–RM–2T in Caneadea, Allegany County, New York to Station AD–RM–11T in Andover, Allegany County, New York.

All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general

- Five crossings of perennial streams are proposed for the replacement section of pipeline.
- Four wetlands would be crossed by the replacement section of the project: total impact 1.35 acres.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–16971 Filed 7–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–8–000]

Revised Public Utility Filing Requirements; Notice

July 1, 2002.

In *Order Issuing Instruction Manual for Public Utilities to Use to File Their Electric Quarterly Reports*, issued on May 29, 2002, the Commission defined the specific filing instructions for complying with Order 2001, *Revised Public Utility Filing Requirements*, (67 FR 31043, FERC Stats. & Regs. ¶ 31,127, April 25, 2002). This notice is to provide a filing alternative to utilities with very large Electric Quarterly Report Filings.

Several utilities have expressed concern that their Electric Quarterly Report filings will be too large to conform to the current size constraints of FERC's electronic filing system. While the ultimate system will be able to accommodate these large filings, the interim method being used for the July 31, 2002 and October 31, 2002 reports is limited in the size of the files it can accept. The May 29, 2002 order did not fully address options for parties with filings larger than the current size limit of five megabytes (MB). To accommodate the larger filings, we will increase the file size limitation for the Electric Quarterly Report filings to ten MB.

All utilities filing Electric Quarterly Reports that are 10MB or less are required to file as instructed in the Commission's May 29, 2002 order issued in RM01–8–000.

Utilities filing Electric Quarterly Reports that are larger than ten MB shall break the Electric Quarterly Report into files that are each ten MB or less and electronically file each part via FERC's electronic filing system. The file name for each part filed must be identical except the last character(s) of the file name, before the file extension (i.e., .csv, .xls, or .xlb). That character shall identify each part sequentially. The first part to be filed shall end with the number "1" and be increased by one for each successive part filed. For example, if the first part filed is named myutilityeqr1.csv, the second part will be named myutilityeqr2.csv, and so on. By using this naming convention, staff and the public will be able to reconstruct the utility's Electric Quarterly Report by placing the parts filed in the correct order. The filings will be available in RIMS and/or FERRIS as multiple documents. The ten MB file size will reduce the adverse impact of network connection problems and PC configuration limitations when the public downloads the files.

If utilities experience difficulties filing their Electric Quarterly Reports, FERC staff will work with filers on a case by case basis to resolve technical issues. For assistance or to discuss problems with making electronic filings, contact the Helpline at 202–208–0258 during the Commission's business hours (8:30 a.m. to 5:00 p.m. Eastern time) or e-mail *efiling@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–16966 Filed 7–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–383–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed National Fuel Replacement/Abandonment Project and Request for Comments on Environmental Issues

July 1, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the National Fuel Replacement/Abandonment Project involving construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Allegany County, New York.[1] These facilities would consist of replacement of about 5.44 miles of 10-inch-diameter steel pipeline (Line PY–10) and abandonment of 27.35 miles of Line PY–10. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice National Fuel provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

Summary of the Proposed Project

National Fuel seeks authority to:

- Replace 5.44 miles of 10-inch-diameter steel pipeline (Line PY–10) with 8-inch-diameter plastic pipeline extending from Station No. CV–RM–IT in the Town of Centerville, Allegany County, New York, to Station No. CE–RM–1T in the Town of Caneadea, Allegany County, New York; and
- Abandon 27.35 miles of Line PY–10 from Station CE–RM–2T in Caneadea, Allegany County, New York to Station AD–RM–11T in Andover, Allegany County, New York.

National Fuel proposes to abandon this section of pipeline because of its age, condition of pipeline, changing gas markets, and the cost to replace certain deteriorated sections of this pipeline. This abandonment would remove 12 points of delivery from National Fuel to National Fuel Gas Distribution Corporation (NFC). NFC has consented to the abandonment of the delivery points.

National Fuel states it would abandon Line PY–10 in place, except for those sections where the landowner specifically requests National Fuel to remove the pipeline.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 41.5 acres of land. Following construction, about 33.0 acres would be maintained as permanent right-of-way of which 0.60 acre would be new permanent right-of-way. The remaining 8.5 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA.

[1] National Fuel's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", "our" refer to the environmental staff of the Office of Energy Projects (OEP).

All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Hazardous waste
- Public safety

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities:

- Air quality and noise

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by National Fuel. This preliminary list of issues may be changed based on your comments and our analysis.

- Two residences near mileposts 1.07 and 1.19 would be within 50 feet of the construction right-of-way for the replacement pipeline.
- The project has a potential to impact cultural resources.
- Five crossings of perennial streams are proposed for the replacement section of pipeline.
- Four wetlands would be crossed by the replacement section of the project: total impact 1.35 acres.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes for the replacement), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of (Gas Branch 2).
- Reference Docket No. CP02–383–000.
- Mail your comments so that they will be received in Washington, DC on or before July 31, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and

must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meetings

July 1, 2002.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit for renewal the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Performance Evaluation Studies of

Abstract: Performance Evaluation (PE) studies provide an objective demonstration that participating laboratories are capable of producing valid data for monitored pollutants. Participation in the Water Pollution (WP) studies that relate to wastewater analyses and Water Supply (WS) studies that relate to drinking water analyses are only mandated by the USEPA for those laboratories that receive federal funds to

response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

Management and Budget, 725 17th Street NW, Washington, DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV*. Comments should also be sent to Frances M. Hart, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile

must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website (*http://www.ferc.gov*) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16967 Filed 7–5–02; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meetings

July 1, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the El Dorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process.

On Monday, July 8, the aquatics-hydrology workgroup will meet from 9:00am until 4:00pm. On Tuesday, July 9, meetings will be held as follows:

Recreation Workgroup 9 am—12 noon
Terrestrial Workgroup 1 pm—4 pm

The workgroup meetings will focus on reviewing study results and the development of management objectives. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the Rancho Cordova Holiday Inn, located at 11131 Folsom Blvd, Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–16970 Filed 7–5–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7242–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Evaluation Studies of Water and Wastewater Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit for renewal the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Performance Evaluation Studies of Water and Wastewater Laboratories, EPA ICR No. 0234.08, OMB Control No. 2080–0021. This ICR currently expires on October 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be transmitted on or before September 6, 2002.

ADDRESSES: Please send comments, referencing EPA ICR No. 0234.08 and OMB Control No. 2080–0021, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone, at (202) 566–1672, by e-mail, at *Auby.Susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0234.08. For technical questions about the ICR contact Ed Glick, EPA, Technical Support Center, 26 West Martin Luther King Drive, (MS–140), Cincinnati, Ohio 45268, by fax number, (513) 569–7191, or e-mail, at *glick.ed@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those laboratories that participate in Performance Evaluation (PE) studies, the private sector companies who offer these studies, and those who use the data generated from their participation to determine the certification status of laboratories involved in producing environmental monitoring measurements in water. This includes EPA and state certifying authorities for the Drinking Water, Wastewater, and the National Pollution Discharge Elimination System (NPDES) programs.

Title: Performance Evaluation Studies of Water and Wastewater Laboratories (OMB Control No. 2080–0021; EPA ICR No. 0234.08.). Expiring 10/31/2002.

Abstract: Performance Evaluation (PE) studies provide an objective demonstration that participating laboratories are capable of producing valid data for monitored pollutants. Participation in the Water Pollution (WP) studies that relate to wastewater analyses and Water Supply (WS) studies that relate to drinking water analyses are only mandated by the USEPA for those laboratories that receive federal funds to perform these analyses. However, states that certify laboratories for drinking water and wastewater analyses also often require successful participation in these studies for certification. Participation in the Discharge Monitoring Report-Quality Assurance (DMR–QA) studies is mandatory for those designated wastewater dischargers who are conducting self-monitoring analyses required under a National Pollutant Discharge Elimination System (NPDES) permit. EPA initiated these studies and originally administered them as part of the Agency's mandate to assure the quality of environmental monitoring data. Subsequently, all of these studies have been privatized. Private sector companies manufacture and distribute samples to the participating laboratories who then will submit their analytical results to these PE venders for evaluation. The PE venders then send evaluations of the submitted data to the laboratory and any other designated certifying/accrediting authority. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA is soliciting comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Estimated number of Respondents: 17,168.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 165,179 hours.

Estimated Total Annualized Capital, Operating and Maintenance Cost Burden: $9,938,880.

Dated: June 27, 2002.

Gregory Carroll,

Center Chief, Technical Support Center, Office of Ground Water and Drinking Water, Office of Water.

[FR Doc. 02–16993 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Elementary-Secondary Staff Information Report

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of information collection under review; Elementary-Secondary Staff Information Report EEO–5.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it has submitted the existing collection of information listed below to the Office of Management and Budget (OMB) for approval. No public comments were received in response to the EEOC's April 3, 2002 initial notice soliciting comments on the proposed collection.

DATES: Written comments on this final notice must be submitted on or before August 7, 2002.

ADDRESSES: Comments on this final notice must be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV*. Comments should also be sent to Frances M. Hart, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street NW, Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commissions estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Collection Title: Elementary-Secondary Staff Information Report EEO–5.

OMB-Number: 0346–0003.

Frequency of Report: Biennial.

Type of Respondent: Public elementary and secondary school districts with 100 more employees.

Description of Affected Public: State and Local Government.

Number of Responses: 5,000.

Reporting Hours: 10,000 (revised).

Federal Cost: $80,000.

Number of Forms: 1.

The EEOC received no comment in response to that solicitation.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1440]

Freeze on the Filing of TV and DTV "Maximization" Applications in Channels 52–59

AGENCY: Federal Communications Commission.

Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or

disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual

Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16932 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1418–DR]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

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Federal Cost: $80,000.

Number of Forms: 1.

The EEOC received no comment in response to that solicitation.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirement for various kinds of employers. Public elementary and secondary schools systems and districts have been required to submit EEO–5 reports to EEOC since 1974 (biennially in even numbered years since 1982). Since 1996 each school district or system has submitted all of the district data on a single form, EEOC Form 168A. The individual school form, EEOC Form 168B, was discontinued in 1996, greatly reducing the respondent burden and cost.

EEO–5 data are used by the EEOC to investigate charges of employment discrimination against public elementary and secondary school districts. The data are used to support EEOC decisions and conciliations, and for research. The data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the EEO–5 collection is 5,000 public elementary and secondary school districts. The number of responses per respondent is one report. The annual number of responses is approximately 5,000 and the total hours per response is between one (1) and five (5) hours. Based upon the large number of school districts responding via diskette, the total response burden has been re-estimated to equal 10,000 hours each time the survey is conducted (i.e. biennially). Respondents are continued to be encouraged to report data electronic media such as magnetic tapes and diskettes.

Dated: June 28, 2002.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 02–16930 Filed 7–5–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1440]

Freeze on the Filing of TV and DTV "Maximization" Applications in Channels 52–59

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an immediate freeze on the filing of "maximization" applications, as defined further, by analog and digital television broadcast stations in the 698–746 MHz spectrum band, currently comprising television channels 52–59. This freeze will assist participants in Auction No. 44, consisting of spectrum licenses in the 698–746 MHz band (Lower 700 MHz band), to determine the areas potentially available in the band for the provision of service by auction winners before the channels are cleared of broadcast stations at the end of the DTV transition.

DATES: The Freeze became effective on June 18, 2002

ADDRESSES: 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418–2120.

SUPPLEMENTARY INFORMATION: Beginning immediately, and until further notice, the Federal Communications Commission ("Commission") will not accept for filing television modification applications that would increase a station's analog or DTV service area in channels 52–59 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of this Notice. We will continue to process applications on file as of June 18, 2002, the date this Notice was released. The Media Bureau may consider, on a case by case basis and consistent with the public interest, amendments to those applications to, for example, resolve interference with other stations or pending applications or resolve mutual exclusivity with other pending applications.

The Bureau will consider, on a case-by-case basis, requests for waiver of this freeze where the modification application: (1) Would permit co-location of transmitter sites in a market in circumstances consistent with the Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or where unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. In particular, we would be inclined to grant waivers of the freeze for broadcast stations that seek new tower sites due to the events of September 11, 2001.

As with any request for waiver of our rules, a request for waiver of the freeze imposed in this Notice will be granted only upon a showing of good cause and where grant of the waiver will serve the public interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 02–16903 Filed 7–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1423–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1423–DR), dated June 26, 2002, and related determinations.

EFFECTIVE DATE: June 26, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 26, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from flooding beginning on April 27, 2002, through May 30, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Fairbanks North Star Borough, McGrath and Lime Villages in the Iditarod Regional Education Attendance Areas (REAA), Aniak, Crooked Creek, Red Devil and Sleetmute in the Kuspuk REAA, Kwethluck in the Lower Kuskokwim REAA and Ekwok and New Stuyahok in the Southwest Region REAA for Individual Assistance.

Matanuska-Susitna Borough for Public Assistance.

All areas within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16932 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1423–DR]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1423–DR), dated June 26, 2002, and related determinations.

EFFECTIVE DATE: June 27, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 2002:

Fairbanks North Star Borough, McGrath and Lime Villages in the Iditarod Regional Education Attendance Areas (REAA), Aniak, Crooked Creek, Red Devil and Sleetmute in the Kuspuk REAA, Kwethluk in the Lower Kuskokwim REAA and Ekwok and New Stuyahok in the Southwest Region REAA for Individual Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16935 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1418–DR]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1418–DR), dated June 13, 2002, and related determinations.

EFFECTIVE DATE: June 26, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 2002:

Perry County for Individual and Public Assistance.

Clay County for Individual Assistance.

Greene, Jefferson, Johnson, Knox, Montgomery, Owen, Parke, Putnam, and Washington Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16933 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1420–DR]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–1420–DR), dated June 19, 2002, and related determinations.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 19, 2002:

Clarke County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16934 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Bank Holding Companies and Change in Bank Control; Notice of Applications Accepted for Processing

The companies listed in this notice have filed an application under § 225.14 of Regulation Y (12 CFR 225.14) for approval of the acquisition of shares of a bank or bank holding company or for the formation of a bank holding company. The applicant(s) listed in this notice have also applied to become a financial holding company pursuant to section 4(l) of the Bank Holding Company Act (12 U.S.C. 1842(l)) and § 225.81 of Regulation Y (12 CFR 225.81). Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Community Bancshares, Inc.*, Brighton, Michigan; to acquire 100 percent of the voting shares of Community Bank, Ann Arbor, Michigan.

B. Federal Reserve Bank of Kansas City (Susie Stafford, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Bank of Commerce Holdings*, Redding, California; to acquire 100 percent of the voting shares of Bank of Commerce, Redding, California.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Community Financial Group, Inc.*, Ramsey, Minnesota; to acquire 100 percent of the voting shares of Community Financial Group, Inc., Ramsey, Minnesota, and thereby indirectly acquire Community Financial Group Bank, Ramsey, Minnesota.

Board of Governors of the Federal Reserve System, July 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–17067 Filed 7–5–02; 8:45 am]

BILLING CODE 6210–01–S

This form is now a State Department form. You can request copies of the new form from: Department of State, A/RPS/DIR, SA–22, 16th and G Streets NW; Suite 2400, Washington, DC 20522–2201, 202–312–9605.

DATES: Effective July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

DEPARTMENT OF STATE

[Public Notice 4116]

Environmental Impact Statement: Development and Future Build Out for the CDC in Chamblee, Georgia

AGENCY: Department of State.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces its Notice of Availability (NOA) of the Final EIS for the proposed development and future build out for the CDC in Chamblee, Georgia. The proposed action includes the expansion of facilities and will include replacement buildings, additional buildings, parking structures, and infrastructure on Government-

participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Small Research Grant Award is to be reviewed and discussed

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–1420–DR), dated June 19, 2002, and related determinations.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 25, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16934 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2002: Pemiscot County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–16931 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Delta National Bancorp, Manteca, California; to directly engage *de novo* in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–17067 Filed 7–5–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Wednesday, July 10, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17183 Filed 7–3–02; 2:09 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of an Optional Form by the Department of State

AGENCY: Office of Communications, GSA.

ACTION: Notice.

SUMMARY: The Department of State cancelled the following Optional Form: OF 230, Part 2, Application for Immigrant Visa and Alien Registration.

This form is now a State Department form. You can request copies of the new form from: Department of State, A/RPS/DIR, SA–22, 16th and G Streets NW; Suite 2400, Washington, DC 20522–2201, 202–312–9605.

DATES: Effective July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

Dated: June 28, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–16980 Filed 7–5–02; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Printed Construction Cancellation of a Standard Form by the Department of Defense

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: Because of low usage only the padded, cutsheet version of the following Standard Form is cancelled by the Department of Defense: SF 153, COMSEC Material Report (NSN 7540–00–042–8528).

The 4-part marginally punched set form (NSN 7540–00–935–5860) is still current and available from the Federal Supply Service.

DATES: Effective July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: June 17, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–16978 Filed 7–5–02; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Notice of Availability (NOA) of the Final Environmental Impact Statement (FEIS) for the Future Master Plan Development for the Centers for Disease Control (CDC) in Chamblee, GA

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces its Notice of Availability (NOA) of the Final EIS for the proposed development and future build out for the CDC in Chamblee, Georgia. The proposed action includes the expansion of facilities and will include replacement buildings, additional buildings, parking structures, and infrastructure on Government-owned property located in Chamblee located south of Tucker Road between Peachtree Dekalb Airport and Buford Highway. The EIS has examined the impacts of this proposed development on the natural and human environment and included impacts to wetlands, floodplains, traffic, and other potential impacts identified by the community through the scoping process.

The EIS has addressed the potential impacts of two alternatives considered: the Proposed Action (Development Alternative), and No-Action Alternative (met facility requirements without full development on site). GSA solicited community input throughout this process, and incorporated comments into the decision process. Additional information is available from GSA at the following address: Mr. Phil Youngberg, Environmental Manager (4PT), General Services Administration (GSA), 77 Forsyth Street, Suite 450, Atlanta, GA 30303.

Dated: June 22, 2002.

Phil Youngberg,

Environmental Manager (4PT).

[FR Doc. 02–16979 Filed 7–5–02; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Small Research Grant Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Health Services Research Small Research Grant on Quality of Care.

Date: July 8, 2002 (Open on July 8 from 4:00 p.m. to 4:10 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, Office of Director, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

"This notice is being published less than 15 days prior to the July 8 meeting due to the time constraints of reviews and funding cycles."

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 28, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17061 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of

the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Small Research Grant Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

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Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, Office of Director, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

"This notice is being published less than 15 days prior to the July 8 meeting due to the time constraints of reviews and funding cycles."

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 28, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17062 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Program Announcement for Dissertation Research Grants on Violence-Related Injury Prevention

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Announcement of program guidance.

SUMMARY: The Centers for Disease Control and Prevention announces the availability of program guidance for dissertation research grants on violence-related injury prevention. This program announcement is amended in most sections to identify the eligible dissertation candidates. Therefore, the program for all doctoral candidates for violence-related injury prevention research (2) change the application submission and deadline to August 7, 2002, (3) adjust the Evaluation Criteria section, and (4) emphasize the targeted minority population. The announcement is amended in most sections to identify the eligible dissertation candidates. Therefore, the

minority communities. The purpose of this extramural research grant program is to attract young scientists to the field of violence by encouraging doctoral candidates from a variety of disciplines to conduct violence prevention research and hopefully carry this focus on throughout their careers. The number of individuals who are members of minority groups and who are engaged in violence-related injury prevention

funding cap noted above will be excluded from the competition and returned to the applicant.

Grants to support dissertation research will provide no more than $20,000 in direct and indirect costs. Grants will be awarded for twelve months, but may be extended without additional funds for up to a total of 24 months. Grant funds will not be made available to support the provision of

change of a mentor. A biographical sketch of the new mentor must be provided for approval by the CDC program official.

3. A dissertation research grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

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the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Small Research Grant Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Health Services Research Small Research Grant on Guideline Adherence.

Date: July 16, 2002 (Open on July 16 from 1:30 p.m. to 1:40 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, Office of Director, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 28, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17062 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02152]

Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 grant funds for Program Announcement Number 02152, entitled "Dissertation Awards for Minority Doctoral Candidates for Violence-Related Injury Prevention Research was published in the **Federal Register** on May 9, Vol. 67, No. 90, pages 31344–31348. The notice is amended primarily to (1) open the program for all doctoral candidates for violence-related injury prevention research (2) change the application submission and deadline to August 7, 2002, (3) adjust the Evaluation Criteria section, and (4) emphasize the targeted minority population. The announcement is amended in most sections to identify the eligible dissertation candidates. Therefore, the entire amended announcement is submitted below.

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for an extramural grant program for Dissertation Awards to Doctoral Candidates for Violence-Related injury prevention research. This program addresses the "Healthy People 2010" focus areas of injury and violence prevention.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for The National Center for Injury Prevention and Control (NCIPC):

1. Reduce the risk of youth violence in minority communities.
2. Reduce violence against women in minority communities.
3. Enhance the capacity of states to implement effective rape prevention and education programs for minority communities.
4. Increase external input on the research priorities, policies, and procedures related to the extramural research supported by CDC.

The purposes of this program are to:

1. Stimulate and encourage doctoral candidates from a variety of academic disciplines and programs, including, but not limited to public health, health care, criminal justice, and behavioral and social sciences, to conduct violence-related injury prevention research.
2. Assist students in the completion of their dissertation research on a violence-related topic.
3. Encourage investigators to build research careers related to the prevention of violence-related injuries, disabilities, and deaths.

A dissertation represents the most extensive research experience formulated and carried out by a doctoral candidate, with the advice and guidance of a mentor (the chair of the dissertation committee or other academic advisor). Dissertation research involves a major investment of the doctoral student's time, energy, and interest and its substance is often the basis for launching a research career. This research initiative is aimed at providing students with assistance to complete their dissertation research on a violence-related topic and thereby increase their representation in violence-related injury research.

Deaths and injuries associated with interpersonal violence and suicidal behavior are a major public health problem in the United States and around the world. In 1999, more than 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are more than 100 non-fatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity associated with violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

Violence has a disproportionate impact on racial and ethnic minorities. In 1999, homicide was the leading cause of death for African Americans and the second leading cause of death for Hispanics between the ages of 15 and 34. Suicide was the second leading cause of death for American Indians and Alaskan Natives and Asian and Pacific islanders 15 to 34 years of age. It is important to note that existing research indicates that race or ethnicity, per se, is not a risk factor for violent victimization or a cause of violent behavior. Rather, racial or ethnic status is associated with many other factors, such as poverty, that do influence the risk of becoming a victim or behaving violently. Nevertheless, racial and ethnic minorities in the United States are at high risk for both violent victimization and perpetration. A better understanding of the factors that contribute to this vulnerability or protection from such risk is important to furthering effective violence prevention programs that address racial and ethnic minorities.

There is a critical need for highly qualified scientists to carry out research on violence that can help in the development, implementation, and evaluation of effective violence prevention programs. In particular, scientists are needed that bring an understanding and sensitivity to the problems of violence as they affect

minority communities. The purpose of this extramural research grant program is to attract young scientists to the field of violence by encouraging doctoral candidates from a variety of disciplines to conduct violence prevention research and hopefully carry this focus on throughout their careers. The number of individuals who are members of minority groups and who are engaged in violence-related injury prevention research is currently small. This research program should also attract young minority scientists to the field of violence.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391 (a) (42 U.S.C. 280b(a)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

C. Eligibility

Eligible institutions include any United States public or private institution such as a university or college that supports an accredited doctoral level training program. The performance site must be domestic.

Note: Title 2 of the United States Code section 1611 states that an organization described in Section 501 (C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applicants must be students in good standing enrolled in an accredited doctoral degree program. The applicant must have the authority and responsibility to carry out the proposed project. Applicants must be conducting or intending to conduct research in one of the areas described under the Research Objectives section. To receive this funding, applicants must have successfully defended their dissertation proposal, which must be verified in a letter of certification from the mentor (the chair of the dissertation committee or other academic advisor) and submitted with the grant application, if available, or before the negotiation and award of the grant.

D. Availability of Funds

Approximately $100,000 is expected to be available in FY 2002 for up to five dissertation awards for doctoral candidates. The availability of Federal funding may vary and is subject to change. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a one-year project period. Applications that exceed the funding cap noted above will be excluded from the competition and returned to the applicant.

Grants to support dissertation research will provide no more than $20,000 in direct and indirect costs. Grants will be awarded for twelve months, but may be extended without additional funds for up to a total of 24 months. Grant funds will not be made available to support the provision of direct patient care including medical and/or psychiatric care.

Allowable costs include direct research project expenses, such as interviewer expenses, data processing, participant incentives, statistical consultant services, supplies, dissertation printing costs, and travel to one scientific meeting, if adequately justified. Applicants should include travel costs for one two-day trip to CDC in Atlanta to present research findings. No tuition support is allowed.

Matching funds are not required for this program.

E. Program Requirements

Research Objectives

For the purpose of this program announcement the highest priority will be given to dissertation research that addresses the following areas of inquiry:

1. Identifying shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behaviors, and examining the relationships among these forms of violence in minority communities.
2. Evaluating the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence, or suicidal behavior in minority communities.
3. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior in minority communities.

Other Special Conditions for Dissertation Research Grants

1. The doctoral candidate must be the designated principal investigator. The principal investigator will be responsible for planning, directing, and executing the proposed project with the advice and consultation of the mentor and dissertation committee.
2. The responsible program official for CDC must be informed if there is a change of a mentor. A biographical sketch of the new mentor must be provided for approval by the CDC program official.
3. A dissertation research grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).
4. Two copies of the dissertation, including abstract, must be submitted to the CDC program official and will constitute the final report of the grant. The dissertation must be officially accepted by the dissertation committee or university official responsible for the candidate's dissertation and must be signed by the responsible university official.
5. Any publications directly resulting from the grant should be reported to the CDC program official. The grantee also should cite receiving support from the NCIPC and CDC, both in the dissertation and any publications directly resulting from the dissertation grant.

F. Content

Application

Use the information in the Program Requirements and Evaluation Criteria sections described below to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, and economic losses in minority communities. This would include describing an understanding and sensitivity to the problems of violence as they affect minority communities.
2. Specific, and time-framed objectives.
3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.
4. A description of the principal investigator's role and responsibilities, along with that of the mentor.
5. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.
7. A description of the involvement of other entities that will relate to the proposed project, if applicable. Letters of collaboration and a clear statement of their roles are required from all collaborating organizations.
8. A detailed budget for the grant.

August 7, 2002. Submit the application to: Technical Information Management-PA02152, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146.

Deadline

Applications shall be considered as

described under "Program Requirements'.

2. *Approach:* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the principal investigator demonstrate an understanding and sensitivity to the problems of violence as they affect minority communities?

7. *Study Samples:* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary application and associated forms can be found on the CDC

The purpose of this program is to conduct innovative assessments of mental health and trauma related morbidity in complex emergency affected countries. This program will help to establish an improved understanding of the burden of war-related trauma and mental health morbidity in refugee populations, and how these effects may be mitigated.

Measurable outcomes of the program

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. Letters of collaboration and a clear statement of their roles are required from all collaborating organizations.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries.

The narrative portion of the application that describes the Research Plan for the dissertation may not exceed fifteen pages.

Additional Materials Required

The applicant must also submit the following materials, attached to the application as appendices:

1. A letter from the applicant's mentor which: (a) Fully identifies the members of the dissertation committee. (b) Certifies that the mentor has read the application and believes that it reflects the work to be completed in the dissertation. (Letters certifying approval of the dissertation proposal must be received before negotiation and award of the grant.) (c) Certifies that the institution's facilities and general environment are adequate to conduct the proposed research.

2. A tentative time line for completion of the research, the dissertation, and the dissertation defense.

3. An official transcript of the applicant's graduate school record showing that the applicant has completed all required course work for the degree with the exception of the dissertation.

4. A statement of the applicant's career goals and intended career trajectory.

5. A biography of the mentor, limited to two pages (use the Biographical Sketch page in application form PHS 398).

G. Submission and Deadline

Application

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. Forms may also be obtained by contacting the Grants Management Specialist in "Where to Obtain Additional Information" section of this announcement.

Applications must be received on or before 5:00 p.m. Eastern Time on August 7, 2002. Submit the application to: Technical Information Management-PA02152, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146.

Deadline

Applications shall be considered as meeting the deadline if they are received before 5:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline. Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

Note: Applicants who submitted their applications to meet the June 24, 2002, deadline have the opportunity to make changes to their original applications if they wish. Any revisions, however, must be submitted to meet the August 7, 2002, deadline.

H. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness and eligibility as outlined in Section "C. Eligibility". Applications that are incomplete, not responsive, from applicants that are not eligible, or request more than the dollar limit will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive will undergo a review by an objective review panel appointed by CDC. The objective review panel will use the current National Institutes of Health (NIH) criteria listed below to evaluate the methods and scientific quality of the applications.

1. *Significance:* Does this study address an important problem? There must be an overall match between the applicant's proposed topic and research objectives, and the research objectives described under "Program Requirements'.

2. *Approach:* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the principal investigator demonstrate an understanding and sensitivity to the problems of violence as they affect minority communities?

3. *Innovation:* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies? Will it help expand and advance our understanding of violence, its causes, and prevention strategies?

4. *Investigator:* Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor described?

5. *Environment:* Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of agreements to collaborate or other institutional support?

6. *Ethical Issues:* What provisions have been made for the protection of human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, e.g., suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. *Study Samples:* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

8. *Dissemination:* What plans have been articulated for disseminating findings?

I. Other Requirements

Technical Reporting Requirements

The grantee must provide CDC with an original plus two copies of:

1. The dissertation, including abstract that will constitute the final report of the grant.

2. A financial status report, no more than 90 days after the end of the budget period.

3. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (e.g., state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the dissertation abstract with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program:

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary application and associated forms can be found on the CDC homepage Internet *address—http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Nancy Pillar, Grants Management Specialist, Procurement and Grants Office—PA02152, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Telephone: (770) 488–2721, Email address: *nfp6@cdc.gov*.

For program technical assistance, contact:

Melinda Williams, Project Officer, Prevention Development and Evaluation Branch, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–60, Atlanta, GA 30341–4723, Telephone: (770) 488–4647, Email address: *mwilliams1@cdc.gov*.

Dated: June 27, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–16939 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02109]

War-Related Mental Health and Trauma Assessment Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to increase the understanding of war-related mental health and trauma morbidity in countries which have experienced complex emergencies.

The purpose of this program is to conduct innovative assessments of mental health and trauma related morbidity in complex emergency affected countries. This program will help to establish an improved understanding of the burden of war-related trauma and mental health morbidity in refugee populations, and how these effects may be mitigated.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmetal Health: Increase the understanding of the relationship between environmental exposures and health effects.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 307, and 317 of the Public Health Service Act, [42 U.S.C. 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Assistance will be provided to university-based organizations or organizations with significant research capacity, including faith-based organizations. Eligible organizations will have:

1. Three years expertise in refugee health, landmine/war-related injuries, mental health and psycho-social trauma related to conflict, in at least four international settings.

2. Three years experience in conducting mental health and trauma related studies in populations affected by war and displacements in at least two less developed countries.

3. A history of publication in peer-reviewed literature in the fields of psycho-social trauma and mental health related to war in less developed countries.

Note: Title 2 of the United States Code, Section 1611, states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Availability of Funds

Approximately $250,000 is available in FY 2002 to fund up to two awards. The average award will be $75,000 to $150,000. It is expected that awards will begin on or about October 1, 2002 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Matching funds are not required for this program.

Continuation awards within an approved project period will be made

on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

1. All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for

F. Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) "carrier error"

qualified, including evidence of experience similar to this project.

5. Budget (not scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

6. Human Subjects (not scored)

J. Where to Obtain Additional Information

This and other CDC announcements, and the necessary application and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Vincent.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to a FY02 Congressional appropriation.

Contact Person for More Information: Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway Cincinnati, OH., telephone (513) 841–4560.

The Director, Management Analysis and Services Office has been delegated the

on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

1. All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

2. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, the International Emergency Refugee Health Branch (IERHB) must be notified in advance of such purchases.

3. The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations.

4. The majority of funds are expected to directly support costs associated programs conducted under this announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Conduct an innovative assessment of:

(1) Psycho-social trauma related to war in a less developed country; and/or,

(2) Mental health morbidity related to war in a less developed country.

b. Present and disseminate findings from program activities so as to add to the body of knowledge and methods related to mental health and trauma related to war in less developed countries by publishing in peer-reviewed literature.

c. Make recommendations for future research needed to adequately describe the burden of psycho-social trauma related to war in less developed countries.

2. CDC Activities

a. Provide consultation and assistance, as needed, in planning and implementing psycho-social trauma and mental health related assessments.

b. Collaborate on the epidemiologic analysis and the preparation and presentation of findings from assessments.

F. Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

In completing the application, the applicant should:

1. Concisely state the understanding of the objectives and program intent, problems, complexities, and interactions required of this cooperative agreement.

2. Present a plan and approach for carrying out the assessment of psycho-social trauma and/or mental health assessments in war-affected less developed countries.

3. Describe their experience in conducting similar work.

4. Identify the professional personnel to be assigned to this project and their commitment to this effort, and describe the support staff services to be provided.

5. Provide first year budget estimates for addressing each of the activities described.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http:www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Narrative

The application must be received by 5 p.m. Eastern Time August 9, 2002. Submit the application to: Technical Information Management, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) "carrier error", when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) "significant weather delays or natural disasters", CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Understanding of the problem (25 percent)

The extent to which the applicant demonstrates a clear, concise understanding of the nature of the problem to be addressed. This includes a description of the public health importance of the planned activities to be undertaken, and realistic presentation of proposed objectives.

2. Technical approach (25 percent)

The extent to which the applicant's proposed activities form a logical strategy, including a reasonable activity time line, and measurable management and effectiveness and data analysis steps.

3. Ability to carry out the project (25 percent)

The extent to which the applicant provides evidence of its technical ability to carry out the proposed project.

4. Personnel (25 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

5. Budget (not scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

6. Human Subjects (not scored)

The applicant must state if there is a need of human subjects review and describe a plan for the review of their proposed project by an accredited review board. The CDC Institutional Review Board (IRB) will review and approve the protocol initially and on at least an annual basis until the research project is completed.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semi-annual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Awardee is required to obtain an annual audit of these CDC funds (program specific audit) by a U.S. based audit firm with international branches and current license/authority in-country, and in accordance with International Accounting Standards or equivalent.

A fiscal Recipient Capability Assessment may be required, pre-award or post-award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds. Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement in the application kit.

The following additional requirements are applicable to this program.

AR–1 Human Subjects
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting

J. Where to Obtain Additional Information

This and other CDC announcements, and the necessary application and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Vincent Falzone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2763, Email address: *vfalzone@cdc.gov.*

For program technical assistance, contact: Barbara Lopes Cardozo, International Emergency Refugee Health Branch, Division of Emergency and Environmental Health Services, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (F–48), Atlanta, GA 30341, Telephone number: (770) 488–4138, Email address: *BLopesCardozo@cdc.gov.*

Dated: June 29, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–16938 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Sleep Disorders Research

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Sleep Disorders Research.

Times and Dates: 2:00 p.m.–2:30 p.m., July 23, 2002 (Open); 2:40 p.m.–4:00 p.m., July 23, 2002 (Closed).

Place: Teleconference number (513) 841–4560.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to a FY02 Congressional appropriation.

Contact Person for More Information: Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway Cincinnati, OH., telephone (513) 841–4560.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17101 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: New Investigator Awards for Unintentional, Violence, and Acute Case, Disability, and Rehabilitation Related Prevention Research, Program Announcement #02121

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): New Investigator Awards for Unintentional, Violence, and Acute Case, Disability, and Rehabilitation Related Prevention Research, Program Announcement #02121.

Times and Dates: 6:00 p.m.–6:30 p.m., July 28, 2002 (Open); 6:30 p.m.–8:00 p.m., July 28, 2002 (Closed); 9:00 a.m.–5:00 p.m., July 29, 2002 (Closed).

Place: The Westin Hotel (Atlanta Airport) 4736 Best Road, Atlanta, GA 30337 Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02121.

Contact Person for More Information: Dr. Lynda Doll, Associate Director for Science,

National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia 30341; (770) 488–1430.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–16939 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Conference Support Cooperative Agreement Program: Addressing Multiple Health Issues in American Indian/Alaska Native Communities

Announcement Type: New.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: August 8, 2002.

Application Deadline: September 9, 2002.

I. Purpose

A. Background

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for public health conference support to address multiple health issues in American Indian/Alaska Native (AI/AN) communities. This program addresses the "Healthy People 2010" focus area of Public Health Infrastructure.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a PHS-led national activity for setting priority areas. This announcement is related to the priority area of Public Health Infrastructure. For the conference support activities listed in this announcement, the following national meetings of AI/AN organizations during late summer and early fall of 2002: the Association of American Indian Physicians (AAIP), the National Alaska Native American Indian Nurses Association (NANAINA), the National Council on Urban Indian Health (NCUIH), the National Indian Health Board (NIHB), the Indian Health Leadership Council, the Self Government Advisory Committee, and other AI/AN organizations) are addressing multiple health issues that affect AI/AN communities including, but not limited to, diabetes, injuries, tobacco use, cardiovascular health, cancer, maternal-child health, and infectious diseases such as HIV/AIDS, other sexually transmitted diseases, hepatitis, antibiotic-resistant bacterial infections, and hantavirus.

As does the Department of Health and Human Services, CDC considers consultation to be "an enhanced form of communication which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and

Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 2002 (67 FR 14719), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and

displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0331. The approval expires on December 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: June 27, 2002.

Margaret M. Dotzel,

National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia 30341; (770) 488–1430.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17105 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Regional Tribal Consultations

In 2001, a draft Tribal Consultation Policy was published with other Department of Health and Human Services tribal consultation policies. CDC is now seeking further tribal guidance on the proposed CDC policy and its implementation through regional tribal consultations and national meetings. We are inviting elected Tribal leaders, Executive Directors of American Indian/Alaska Native (AI/AN) organizations, Health Directors of AI/AN Programs, and AI/AN community members to attend scheduled Consultation meetings. The intent of this consultation process is to establish a mutually acceptable and more effective process of communication between CDC and AI/AN governments and communities. The goal is to establish protocol and to identify public health problems and priorities so that the needs of AI/AN populations are better incorporated into CDC plans and programs.

SUMMARY: CDC has scheduled a series of Regional Tribal Consultations to occur throughout the United States during the time frame of June through early October 2002. The CDC Regional Tribal Consultations will be geographically linked to the Indian Health Service areas as follows: Aberdeen Area (9/02), Alaska Area (8/23/02), Albuquerque Area (8/02), Bemidji Area (8/02–9/02), Billings Area (8/14/02), California Area (7/19/02), Nashville Area (6/12/02), Navajo Area (8/02), Oklahoma Area (7/9/02), Phoenix & Tucson Areas (7/17/02), and Portland Area (6/21/02). In addition, open forums & national tribal consultations will be scheduled at the following national meetings of AI/AN organizations during late summer and early fall of 2002: the Association of American Indian Physicians (AAIP), the National Alaska Native American Indian Nurses Association (NANAINA), the National Council on Urban Indian Health (NCUIH), the National Indian Health Board (NIHB), the Indian Health Leadership Council, the Self Government Advisory Committee, and the National Congress of American Indians.

Background: The CDC is committed to improving the public health of AI/AN communities, and recognizes both the unique relationship it has with its AI/AN constituents and the cultural diversity of that constituency. To formally guide its efforts to develop and implement a tribal consultation, CDC has established an agency-wide Tribal Consultation Working Group (TCWG), members of which are native and non-native representatives from each of the Centers, Institute, and Offices that compromise CDC and the Agency for Toxic Substances and Disease Registry (ATSDR). In addition to the TCWG, CDC has established two full-time professional staff positions within the Office of the Director to help plan and coordinate CDC programs for AI/AN communities: (1) The CDC Senior Tribal Liaison for Policy and Evaluation and (2) the CDC Senior Tribal Liaison for Science and Public health. Located in Atlanta, GA and Albuquerque, NM, respectively, these CDC staff members report directly to the Associate Director for Minority Health and serve as CDC points-of-contact for programs/issues relevant to issues of AI/AN public health.

The Agency's commitment to AI/AN public health is further demonstrated by the active engagement of more of its professional staff in broader, more systematic efforts to partner with AI/AN communities across the United States. Prominent among these efforts is the placement of CDC staff in situations that enhance tribal access to CDC personnel and resources (*e.g.*, at least 12 CDC professionals field-assigned to work exclusively on AIAN issues in Indian Country). CDC is also expanding its partnerships with the Indian Health Service (IHS) through multiple intra-agency agreements, collaborative projects, and the establishment of the IHS–CDC–ATSDR Senior Policy Group. A priority for IHS–CDC partnerships is the expansion of the Tribal Epidemiology Centers Program. Overall, CDC and its partners (tribal governments and communities, state health departments, academic institutions, and other federal organizations) are addressing multiple health issues that affect AI/AN communities including, but not limited to, diabetes, injuries, tobacco use, cardiovascular health, cancer, maternal-child health, and infectious diseases such as HIV/AIDS, other sexually transmitted diseases, hepatitis, antibiotic-resistant bacterial infections, and hantavirus.

FOR FURTHER INFORMATION CONTACT: To express interest in attending and/or participating in the regional or national consultations and to obtain additional information, contact:

Captain Pelagie "Mike" Snesrud, RN, Senior CDC Tribal Liaison for Policy and Evaluation, Office of the Director, Centers for Disease Control and Prevention, MS–D39, 1600 Clifton Rd, NE, Atlanta, Georgia 30329, Phone: 404–639–0432; Fax: 404–639–2195, Email: *pws8@cdc.gov.*

or

Captain Ralph T. Bryan, M.D., Senior CDC Tribal Liaison for Science and Public Health, Office of the Director, Centers for Disease Control and Prevention, c/o IHS National Epidemiology Program, 5300 Homestead Rd. NE., Albuquerque, NM 87110, Phone: 505–248–4226; Fax: 505–248–4393, e-mail: *rrb2@cdc.gov.*

SUPPLEMENTARY INFORMATION: The mission of the CDC is to promote health and quality of life by preventing and controlling disease, injury and disability. CDC accomplishes its mission by working with partners throughout the United States and the world to monitor health, detect and investigate health problems, conduct applied research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training. CDC's priorities are: Strengthen science for public health action, Collaborate with health care partners for prevention, Promote healthy living at all stages of life, and Work with partners to improve global health.

The CDC will honor the sovereignty of American Indian/Alaska Native Governments, respect the inherent rights of self-governance and commit to work on a government-to-government basis. The CDC will confer with Tribal Governments, Alaska Native Organizations and AIAN communities, before taking actions and/or making decisions that affect them. Consultation will include all AI/AN governments and organizations.

As does the Department of Health and Human Services, CDC considers consultation to be "an enhanced form of communication which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decision-making."

Once all Regional Tribal Consultations National meetings are completed, a draft implementation document will be prepared and submitted to the National Indian Health Board, the National Congress of American Indians, and tribal governments for review and final comments. Thereafter, the finalized document will be published in the **Federal Register**, posted on appropriate federal and AI/AN websites, and made available to AI/AN governments and organizations.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the ATSDR.

Dated: July 1, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, CDC.

[FR Doc. 02–16936 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0458]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 2002 (67 FR 14719), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0389. The approval expires on June 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17073 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0459]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling; Notification Procedures for Statements on Dietary Supplements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 7, 2002 (67 FR 5828), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0331. The approval expires on December 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17074 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0280]

Agency Information Collection Activities; Proposed Collection; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for filing objections and requests for a hearing on a regulation or order.

DATES: Submit written or electronic comments on the collection of information by September 6, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management

(HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submission to OMB. In compliance with section 3506(c)(2)(A) of the PRA, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Agency Information Collection Activities; Proposed Collection; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

Description: Under section 701(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(1)), any person adversely affected by a regulation or order issued under the act specifying the manner in which section 402 or 409 of the act (21 U.S.C. 342 or 348) is to be complied with may file objections with the Dockets Management Branch specifying with particularity the provisions of the regulation or order deemed objectionable and stating the grounds for the objections. Under section 701(e)(2) of the act, if a hearing is requested, the person must state the issues for the hearing, the basis for the person's position on each issue, and the type of evidence the person plans to rely on at the hearing. These requirements are set forth in § 12.20(d). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, that is submitted or relied on in support of the objection. Failure to comply with these requirements may result in denial of a hearing.

Under section 701(e)(3) of the act, if a hearing is requested and granted, the presiding officer must issue a written notice of the time and place at which the hearing will commence. Under section 701(e)(4) of the act, the presiding officer must issue a written ruling on each objection. Under section 701(e)(4) of the act, the presiding officer must also issue a written ruling on the request for the hearing, including a ruling on whether the person has satisfied the requirements for a hearing. These requirements are set forth in § 12.28. Under section 701(e)(4) of the act, the presiding officer must also issue a written ruling on the request for the hearing, including a ruling on whether the person has satisfied the requirements for a hearing. These requirements are set forth in § 12.28.

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(HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Filing Objections and Requests for a Hearing on a Regulation or Order—21 CFR Part 12 (OMB Control No. 0910–0184)—Extension

Section 12.22 (21 CFR 12.22), issued under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), sets forth the instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d) (21 CFR 12.20(d)). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis to determine whether a hearing request is justified. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under 21 CFR 12.24 and do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.22	10	1	10	20	200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on past filings. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order, estimate approximately 10 requests are received by the agency annually, with each requiring approximately 20 hours of preparation time.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17075 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0268]

Agency Information Collection Activities; Proposed Collection; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Cosmetic Product Voluntary Reporting Program.

DATES: Submit written or electronic comments on the collection of information by September 6, 2002.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this

requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Cosmetic Product Voluntary Reporting Program—(21 CFR 720.4, 720.6, and 720.8)—(OMB Control Number 0910–0030)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products (§ 720.4). Ingredient statements for new submissions (§ 720.4) are reported on Form FDA 2512, "Cosmetic Product Ingredient Statement," and on Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, "Discontinuance of Commercial Distribution of Cosmetic Product Formulation" (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's database also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise deleterious to the public health. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

The Cosmetic Product Voluntary Reporting Program was suspended during fiscal year (FY) 1998 due to a lack of budgetary funding and was reinstated at the beginning of FY 1999. The estimated hour burden is 60 percent of the previous level reported in 1999. In general, the larger cosmetic companies have resumed participating in the program, whereas the smaller companies are lagging.

FDA estimates the annual burden of this collection of information as follows:

H=≥1≥≤Form No.
Annual Frequency per Response
H=≥1≥≤Hours per Response

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of Respondents	Total Annual Responses	Total Hours			
720.1–720.4 (new submissions)	FDA 2512 FDA 2512a	54	35.6	1,920	0.5	960
720.4 and 720.6 (amendments)	FDA 2512 FDA 2512a	54	1.4	75	0.33	25
720.3 and 720.6 (notices of discontinuance)	FDA 2514	54	0.4	20	0.1	2
720.8 (requests for confidentiality)		0	0	0	1.5	0
Total		54		2,015		987

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17078 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The committee will address questions on clinical study design, specular microscopy (endothelial cell counts), lens opacity, and contrast sensitivity. Background information for each day's topic, including the attendee list, agenda, and questions for the committee, will be available to the public 1-business day before the meeting, on the Internet at http://

meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Procedure: On July 22, 2002, from 8:30 a.m. to 5 p.m., the meeting is open

permanent contraceptive device. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the July 22, 2002, session will be posted on July 19, 2002.

concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 2, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy,

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This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17076 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0063]

Agency Information Collection Activities; Announcement of OMB Approval; Consumer Surveys on Food and Dietary Supplement Labeling Issues

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Consumer Surveys on Food and Dietary Supplement Labeling Issues" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 21, 2002 (67 FR 8030), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0492. The approval expires on December 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17078 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 1, 2002, from 8:30 a.m. to 4:30 p.m., and on August 2, 2002, from 8:30 a.m. to 3 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 1, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an excimer laser system for use in wavefront guided laser in situ keratomileusis correction for the reduction or elimination of myopia up to -7 diopters (D) with less than -0.50D of astigmatism at the spectacle plane in subjects who are 21 years of age or older. On August 2, 2002, the committee will discuss issues related to the development of an FDA guidance, an American National Standards Institute standard, and an International Standards Organization standard for intraocular lenses for the treatment of myopia or hyperopia in phakic patients. The committee will address questions on clinical study design, specular microscopy (endothelial cell counts), lens opacity, and contrast sensitivity. Background information for each day's topic, including the attendee list, agenda, and questions for the committee, will be available to the public 1-business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the August 1, 2002, session will be posted on July 31, 2002; material for the August 2, 2002, session will be posted on August 1, 2002.

Procedure: On both days from 8:30 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 26, 2002. On August 1, 2002, formal oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. On August 2, 2002, oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of committee deliberations on the agenda topics, a 30-minute open public session will be conducted for interested persons to address issues specific to the topics before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 26, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On August 1, 2002, from 3 p.m. to 4:30 p.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information relevant to pending and future device submissions for vitreoretinal, surgical and diagnostic devices, intraocular and corneal implants, and contact lenses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 26, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–16904 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of the Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 22, 2002, from 8:30 a.m. to 5 p.m., and on July 23, 2002, from 8 a.m. to 11 a.m.

Location: DoubleTree Hotel, Plaza I and II, 1750 Rockville Pike, Rockville, MD.

Contact Person: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 22, 2002, the committee will hear a presentation on post-market surveillance of vacuum assisted delivery devices. The committee will also discuss, make recommendations, and vote on a premarket approval application for a permanent contraceptive device. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the July 22, 2002, session will be posted on July 19, 2002.

Procedure: On July 22, 2002, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 11, 2002. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m., and 3:30 p.m. and 4 p.m. on July 22, 2002. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before July 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On July 23, 2002, from 8 a.m. to 11 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future device issues. In addition, the committee will discuss and review trade secret and/or confidential commercial information presented by a sponsor.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the July 22, 2002, Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issue(s) to public discussion and qualified members of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 2, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17115 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0274]

Denture Cleaners, Adhesives, Cushions, and Repair Materials; Revocation of Compliance Policy Guide 7124.05

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the Compliance Policy Guide (CPG) entitled "Sec. 315.200 Status of Dental Supplies such as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic (CPG 7124.05)." This CPG is no longer necessary because the agency has classified these products as devices.

DATES: The revocation is effective August 7, 2002.

ADDRESSES: Submit written requests for single copies of the CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (301–827–0411) or fax your request to 301–827–0482.

A copy of the CPG may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Governale, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued the CPG entitled "Sec. 315.200 Status of Dental Supplies such as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic (CPG 7124.05)" on April 26, 1976. This CPG, as revised on August 9, 1988, considered these products to be devices within the meaning of section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)).

In accordance with section 513 of the

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10 (a) (2)

Dated: July 2, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–17071 Filed 7–5–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set aside $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance

make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A combination of new and continuation awards will be made through new and prior year separate announcements.

- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will

as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic (CPG 7124.05)" on April 26, 1976. This CPG, as revised on August 9, 1988, considered these products to be devices within the meaning of section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)).

In accordance with section 513 of the act (21 U.S.C. 360c), the agency has classified dental products as devices by regulation, including but not limited to:

1. Karaya and sodium borate with or without acacia denture adhesive (21 CFR 872.3400)
2. Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive (21 CFR 872.3410)
3. Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive (21 CFR 872.3420)
4. Ethylene oxide homopolymer and/or karaya denture adhesive (21 CFR 872.3450)
5. Polyacrylamide polymer (modified cationic) denture adhesive (21 CFR 872.3480)
6. Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive (21 CFR 872.3490)
7. Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive (21 CFR 872.3500)
8. Over-the-counter (OTC) denture cleanser (21 CFR 872.3520)
9. Mechanical denture cleaner (21 CFR 872.3530)
10. OTC denture cushion or pad (21 CFR 872.3540)
11. OTC denture repair kit (21 CFR 872.3570)
12. Denture relining, repairing, or rebasing resin (21 CFR 872.3760)

Given these device classifications, FDA is revoking CPG 7124.05, in its entirety, to eliminate unnecessary compliance policy.

II. Electronic Access

Prior to August 7, 2002, a copy of the CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs (ORA) home page includes the referenced document that may be accessed at http://www.fda.gov/ora/compliance_ref/cpg/cpgdev/cpg315-200.html.

Dated: June 28, 2002.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–17079 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September:

Name: Council on Graduate Medical Education (COGME).

Date and Time: September 11, 2002, 8:30 a.m.–4:30 p.m., September 12, 2002, 8 a.m.–11:15 a.m.

Place: Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

The meeting is open to the public.

Agenda: The agenda for September 11 will include: Welcome and opening comments from the Associate Administrator for Health Professions, the Chair of COGME, and the Acting Executive Secretary of COGME. There will be a panel of speakers on the topic of "Competencies in Graduate Medical Education" and a panel of speakers on the topic of "Financial Situation of Teaching Hospitals."

In the afternoon the Council's three workgroups will convene. They are: Workgroup on Diversity, Workgroup on Graduate Medical Education Financing, and Workgroup on Workforce.

The agenda for September 12 will include a discussion of the June 17–18 Health Professions Education Summit co-sponsored by the Council on Graduate Medical Education (COGME), the National Advisory Council on Nurse Education and Practice, and the Institute of Medicine. The three workgroup chairs will give their reports. There will be a discussion of the status of COGME's 2002 Summary Report, plans for future work, and new business.

Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Agenda items are subject to change as priorities dictate.

Dated: July 2, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–17047 Filed 7–5–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 2002.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Date and Time: August 19, 2002; 8:30 a.m.–4:45 p.m.

Place: The Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting is open to the public.

Purpose: The Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD) will discuss and consider criteria for performance measurement and outcome assessment of primary care medicine and dentistry grant programs that are funded through Title VII, section 747 of the Public Health Service Act, as amended. The Committee will review current performance measurement and outcome assessment methods, discuss potential alternative methods, and consider recommendations of potential performance measurement and outcome assessment methods that might be employed in the future.

Agenda: The meeting on Monday, August 19 will begin with welcoming and opening comments from the Chair and Executive Secretary. A plenary session will follow in which Division of Medicine and Dentistry staff will review criteria currently used to measure performance and assess the outcome of primary care medicine and dentistry grant programs funded through Title VII, section 747 of the Public Health Service Act, as amended. Following this presentation, Committee members will discuss the criteria currently used, consider potential alternative criteria for performance measurement and outcome assessment of the aforementioned grant programs, and formulate recommendations for alternative criteria.

Anyone interested in obtaining a roster of members or other relevant information should write or contact Stan Bastacky, D.M.D., M.H.S.A., Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The Web address for information on the Advisory Committee is *http://www.bhpr.hrsa.gov/dm/actpcmd.htm.*

Dated: July 2, 2002.

Jane M. Harrison;

Director, Division of Policy Review and Coordination.

[FR Doc. 02–17071 Filed 7–5–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Final Notice of Allocations to States of FY 2002 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 2002 funds for refugee social services.

SUMMARY: This notice establishes the allocations to States of FY 2002 funds for social services under the Refugee Resettlement Program (RRP).

This notice includes $11.5 million in two set-aside allocations to: Support programs to promote healthy families through community-based organizations; and provide planned upgrading of employment, employment retraining, and subsidized employment tied to a labor market need leading to an offer of unsubsidized employment.

DATES: Effective date is July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara R. Chesnik, Division of Refugee Self-Sufficiency, telephone: (202) 401–4558, email: *bchesnik@acf.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Amounts For Allocation

The Office of Refugee Resettlement (ORR) has available $158,600,000 in FY 2002 refugee social service funds as part of the FY 2002 appropriation for the Department of Health and Human Services (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Public Law 107–116).

The FY 2002 House Appropriations Committee Report (H.R. Rept. No. 107–229) reads as follows with respect to social services funds:

> The bill provides $158,621,000 for social services, $15,000,000 more than the fiscal year 2001 appropriation and the budget request. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The bill includes $15,000,000 to increase educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentration of refugees.
>
> The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set aside $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost, benefits including SSI, TANF and Medicaid, in obtaining citizenship.

The FY 2002 Conference Report on Appropriations (H.R. Conf. 107–342) reads as follows concerning social services:

> The conference agreement appropriates $460,203,000, instead of $460,224,000 as proposed by the House and $445,224,000 proposed by the Senate. Within this amount, for Social Services, the agreement provides $158,600,000 instead of $156,621,000 as proposed by the House and $143,621,000 as proposed by the Senate.
>
> The conferees specify that funds for section 414 of the Immigration and Nationality Act shall be available for three fiscal years, as proposed by the House.
>
> The conference agreement includes $15,000,000 that is to be used under social services to increase educational support to schools with a significant proportion of refugee children, consistent with language contained in the House report.
>
> The agreement also includes $19,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance, consistent with language contained in the House report.

ORR will use the $158,600,000 appropriated for FY 2002 social services as follows:

- $71,910,000 will be allocated under the three-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $12,690,000 will be awarded as new and continuation social service discretionary grants under new and prior year competitive grant announcements issued separately from this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded through continuation awards under a separate prior year announcement.
- $26,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A combination of new and continuation awards will be made through new and prior year separate announcements.
- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through a separate announcement.
- $15,000,000 will be awarded to increase educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees. New awards will be made through a separate announcement.

In addition, we are adding $11.5 million in prior year funds to the FY 2002 formula social services allocation as two set-aside allocations as follows: (1) $3 million for support for healthy families through community-based organizations, and (2) $8.5 million for planned upgrading of employment, employment retraining, and subsidized employment tied to a labor market need leading to unsubsidized employment, increasing the total amount available in FY 2002 through this announcement to $83,410,000.

Congress provided ORR with broad carry-over authority of FY 2000 refugee funds in a supplemental appropriations law (Emergency Supplemental Act, 2000, Pub.L. No. 106–246) as follows:

> Funds appropriated under this heading [Refugee and Entrant Assistance] in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(4) of Public Law 106–113) for fiscal year 2000, pursuant to section 414(a) of the Immigration and Nationality Act, shall be available for the costs of assistance provided and other activities through September 30, 2002.

Refugee Social Service Funds

The population figures for the formula social services allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $71,910,000 to States on the basis of each State's proportion of the national population of refugees who had been in the United States three years or less as of October

1, 2001 (including a floor amount for States which have small refugee populations).

The use of the three-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] . . . shall be

difficult. As a result, refugee families also may encounter severe inter-generational strains. Children are caught between the demand of their traditional culture (presented by their parents and grandparents) and American culture (represented by schools, peers, and the media).

In order to maintain the well-being of the family, guidance and support may

employment for refugees is being achieved in many areas across the country, refugees who continue in language and employment training programs, or access additional training several months after placement in employment, do so on a random or ad hoc basis with varying amounts of formal assistance from refugee services providers. During their first few years in

date on the certification letter (See ORR State letter No. 01–13, May 3, 2001).

Services to refugees must be provided in accordance with the rules of 45 CFR Part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the three-year refugee population, States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and

which are provided to refugees who participate in Wilson/Fish projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that

that the potential exists for the unserved populations to apply for services in the near future and therefore a State should be given credit for all persons granted asylum and certified as victims of a severe form of trafficking, not just those who received services.

Response: In the Final Notice of Allocations to States of FY 2001 Funds for Refugee Social Services, $10 million in set-aside funding was provided for

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1, 2001 (including a floor amount for States which have small refugee populations).

The use of the three-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] . . . shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then —

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

As mentioned in the previous section, the Director is also allocating an additional total of $11.5 million from prior year carry-over funds as two set-aside allocations, increasing the total amount available in FY 2002 through this announcement to $83,410,000.

Regarding the $3 million set-aside allocation, ORR is interested in supporting programs to promote healthy families. The refugee experience—fleeing one's homeland, leaving family and friends, sometimes living for an extended period of time in a camp setting in a country of first asylum, and adapting to life in a new country—places considerable stress on the family. Most refugee families are unfamiliar with the culture, language, roles, and responsibilities of individuals and families in the United States. Both parents may now be required to work in order to sustain the family economically and may have to work different shifts so that one parent is at home to care for the children. Communication becomes more difficult. As a result, refugee families also may encounter severe inter-generational strains. Children are caught between the demand of their traditional culture (presented by their parents and grandparents) and American culture (represented by schools, peers, and the media).

In order to maintain the well-being of the family, guidance and support may be needed to assist these families to know how to better deal with the changing circumstances and choices they face.

Through this set-aside, ORR is looking to support orientation, education, and counseling to help maintain healthy marriages, promote responsible fatherhood, and maintain the well-being of families. States should use the set-aside funds to support programs which focus on a range of subjects to promote family well-being, such as: increasing the recognition of the critical contributions that fathers make to children's development; parental roles in U.S. schools—increasing both parents', particularly fathers', participation in the children's education and in school activities; family literacy programs; family conflict resolution; child-nurturing techniques including positive ways to discipline children; dealing with anger and depression in the family; and substance abuse and other problems facing young adults and the family in the United States.

The organizations funded by the set-aside amount are expected to have ties to the ethnic communities they serve and to conduct outreach into the community to identify refugee families in need of services. The opportune time frame for providing these services to families, we believe, is within the first three years after a refugee family's arrival. We strongly encourage States to fund, to the extent possible, Mutual Assistance Associations (MAAs), ethnic community-based organizations, and indigenous faith-based organizations with refugee experience, to the extent possible, to provide family support, outreach, education, orientation, and counseling. ORR defines an MAA as an organization with the following qualifications: (a) The organization is legally incorporated as a nonprofit organization; and (b) not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Regarding the $8.5 million set-aside, there continues to be a need to focus funding on planned employment upgrading of refugees. While early employment for refugees is being achieved in many areas across the country, refugees who continue in language and employment training programs, or access additional training several months after placement in employment, do so on a random or ad hoc basis with varying amounts of formal assistance from refugee services providers. During their first few years in the country, refugees often appear to be revolving through a series of entry level placements. To be self-sufficient, refugees need to be in a position to market their experience and skills to employers. Funding provided through this set-aside is to assist States to implement programs which tie early employment to planned job up-grading services, including vocational training, professional and skills recertification, assistance with courses leading to certification (for example, courses leading to State certification to teach, to work as a nurse or medical aide, to become a draftsman, or become certified in the information technology field).

States and employment services providers are strongly encouraged to work in partnership with the MAAs, ethnic or community-based organizations, including faith-based organizations, funded through the $3 million set-aside, if possible, and to encourage MAA partnerships with other non-profit organizations and funded social service providers.

For activities funded with the two set-aside allocations, the Director is utilizing his authority, pursuant to 45 CFR 400.300, to waive the five-year (60) month limitation on social services (400.152(b)). Refugees who have been in the United States longer than 60 months (five years), but have not attained U.S. citizenship, may receive social services funded by the set-aside allocations. There are limited exceptions to this citizenship rule for certain U.S. born minor children in refugee families (45 CFR 400.208) and certain Amerasians from Vietnam who are U.S. citizens (Pub. L. 100.461).

Population to be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22, 2000)). In addition, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted (See ORR State Letter No. 00–12, effective June 15, 2000). Victims of a severe form of trafficking who have received a certification or eligibility letter from ORR are eligible from the date on the certification letter (See ORR State letter No. 01–13, May 3, 2001).

Services to refugees must be provided in accordance with the rules of 45 CFR Part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the three-year refugee population, States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and interpreter services and citizenship and naturalization preparation services for which there is no time limitation (45 CFR 400.152(b)). On December 5, 2001, however, the Director of ORR, using the authority in 45 CFR 400.300, issued a blanket waiver of the time-in-country limit for services (ORR State Letter 01–31). This waiver, in effect until September 30, 2002, was issued to assist States in providing services to refugees following the events of September 11, 2001 and the subsequent cessation of refugee arrivals during most of the first quarter, FY 2002. In addition, as discussed in a section above, the five-year limitation on services has been waived for refugees served with the two set-aside allocations in this announcement.

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections which the State may wish to provide must be submitted to and approved by the Director of ORR (§ 400.155(h)).

Service Priorities

Priorities for provision of services are specified in 45 CFR 400.147. In order for refugees to move quickly off Temporary Assistance for Needy Families (TANF), States should, to the extent possible, ensure that all newly arriving refugees receive refugee-specific services designed to address the employment barriers that refugees typically face.

We encourage States to re-examine the range of services they currently offer to refugees. Those States that have had success in helping refugees achieve early employment may find it to be a good time to expand beyond provision of basic employment services and address the broader needs that refugees have in order to enhance their ability to maintain financial security and to successfully integrate into the community. Other States may need to reassess the delivery of employment services in light of local economic conditions and develop new strategies to better serve the currently arriving refugee groups.

States should also be aware that ORR will make social services formula funds available to pay for social services which are provided to refugees who participate in Wilson/Fish projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (64 FR 19793 (April 22, 1999)).

II. Discussion of Comments Received

Four comments were received in response to the proposed notice published on April 9, 2002 (67 FR 17079–17082).

Comment: Two comments were received from individuals representing the same agency, who opposed the cut in funds allocated for Social Services in the proposed notice of allocations.

Response: The difference between the final formula amount for social services in FY 2001 and the amount in the FY 2002 proposed formula allocation was a little more than $17,000, not a relatively significant amount. The commenters were most likely concerned that the total funding allocated to the State was less in the proposed notice of FY 2002 allocations because a set-aside amount was not included. For the final notice of FY 2002 allocations, the Director has included $11.5 million in set-aside funds. While the formula amount has been approximately the same during the last three years, set-aside funds have been possible as a result of authority to spend prior year surplus funds and the availability of surplus funds.

Comment: One comment was received from a State Refugee Coordinator who opposed ORR's methodology for making adjustments to population estimates for persons granted asylum and victims of a severe form of trafficking. This commenter suggested that a State should be given credit for all eligible asylees and certified victims of a severe form of trafficking in their State, not just the eligible asylees and trafficking victims who had received services in the State during the past year. Citing the burden placed upon the State to respond within a short notice, the Coordinator believed that ORR was in the best position to have data on these populations. The commenter also noted that the potential exists for the unserved populations to apply for services in the near future and therefore a State should be given credit for all persons granted asylum and certified as victims of a severe form of trafficking, not just those who received services.

Response: In the Final Notice of Allocations to States of FY 2001 Funds for Refugee Social Services, $10 million in set-aside funding was provided for States to set up systems to identify, bring into services, and provide services to those asylees in need of services.

ORR strongly believes that it is important to have data which show the extent to which States have now established outreach systems to bring asylees into services and are now serving them. Unlike refugees, individuals granted asylum and certified victims of a severe form of trafficking do not have voluntary agency caseworkers assigned to them upon arrival. These caseworkers, funded through the U.S. Department of State's Reception and Placement Cooperative Agreement, are required to refer refugees into the network of refugee program and benefits.

Over the past 20 years, through regulations, funding, and monitoring of the refugee program, ORR has sought to ensure that newly arrived refugees are served through a network of refugee specific, bilingual and bicultural services. We are confident that there is the strongest possible link between the number of refugees arriving in a state and the number of refugees receiving services in that State. This is not true, however, for persons granted asylum. We do not know the extent to which asylees need services, the extent to which they are able to access services and assistance, and the extent to which their needs mirror the needs of newly arriving refugees. Many asylees have been in the United States for more than one year before they receive a grant of asylum. It may be that they are already integrated into communities and are not in need of transitional assistance and services. Likewise, we do not have data supporting an assumption that the address provided on the asylum application directly corresponds to the location where asylees choose to reside after asylum is granted. For these reasons, it makes greater sense to adjust the allocations to States based upon the number of asylees who were granted asylum during the past three years and who have actually been served in the State refugee program.

While we concur that ORR knows the number of victims of a severe form of trafficking who have been certified, Section 107(b)(1)(D) ("Annual Report")

of the Trafficking Victims Protection Act of 2000 (Pub.L. 106–386) requires that HHS report information annually on the number of victims who received benefits or other services.

Comment: One commenter noted that the proposed announcement did not extend the Director's waiver of the 60-month time-in-country limit for services that was issued by the Director on

3. The total number of asylees and certified victims of a severe form of trafficking who were served by the State in the prior year, as identified by the State. Certified victims of a severe form of trafficking include minors who have been provided eligibility letters by ORR. These individuals must have been granted asylum or certified no more than three years prior to the beginning

based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 2001, for secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants.

For fiscal year 2002, ORR's formula social service allocations for the States are based on the numbers of refugees,

FY 2002 SOCIAL SERVICES FORMULA NOTICE

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/ASYLEE/PAROLEE POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 2002

State	Refugees[1]	Entrants	Havana parolees[2]	Asylees[3]	Total population	Final formula amount	Final allocation	$3 million Set-asides	$8.5 million Set-asides	Total final allocation
	1	2	3	4	5	6	7	8	9	10
Alabama	381	5	35	.....	421	$102,381	$102,381	$5,000	$12,148	$119,529
Alaska	115	0	0	7	122	29,669	75,000	5,000	5,000	85,000

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of the Trafficking Victims Protection Act of 2000 (Pub.L. 106–386) requires that HHS report information annually on the number of victims who received benefits or other services.

Comment: One commenter noted that the proposed announcement did not extend the Director's waiver of the 60-month time-in-country limit for services that was issued by the Director on December 5, 2001. The State encouraged the Director to continue the waiver through 2003. This commenter noted the downturn in the service industry and other sectors in the State in which refugees and entrants tend to work. The commenter also expressed concern about the effect on newly enrolled social services clients (presumably those in the country for more than 60 months) when services were stopped at the expiration of the waiver (September 30, 2002).

Response: For the formula allocation, the Director has decided not to extend a blanket waiver at this time. However, pursuant to 45 CFR 400.300, States may submit individual waiver requests for requirements in part 400, and the Director may issue a waiver if it is determined that the waiver will advance the purposes of the regulations and is consistent with Federal refugee policy objectives.

States may allow clients who have been in the country for more than 60 months and who were enrolled in a social services funded component before October 1, 2002 and who have not yet completed that component to remain in that component until completion.

As noted in an earlier section of this announcement, the Director has waived the five-year limitation on services to clients served with the two set-aside allocations in this announcement.

III. Allocation Formulas

Of the funds available for FY 2002 for social services, $71,910,000 is to be allocated to States in accordance with the formula specified in A. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, and Amerasians from Vietnam, who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System; and

3. The total number of asylees and certified victims of a severe form of trafficking who were served by the State in the prior year, as identified by the State. Certified victims of a severe form of trafficking include minors who have been provided eligibility letters by ORR. These individuals must have been granted asylum or certified no more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as identified by States.

The resulting per capita amount is multiplied by—

4. The number of persons in items 2 and 3, above, in the State as of October 1, 2001, adjusted for secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

B. A State's allowable two set-aside allocations are calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, and Amerasians from Vietnam who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shows by the ORR Refugee Data System; and

3. The total number of asylees and certified victims of a severe form of trafficking served by the State in the prior year, as identified by the State. "Certified" victims of a severe form of trafficking include minors who have been provided eligibility letters by ORR. These individuals must have been granted asylum or certified no more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as identified by States.

The resulting per capita amount is multiplied by—

4. The number of persons in items 2 and 3 above, in the State as of October 1, 2001, adjusted for secondary migration.

The calculation above yields the basis for the set-aside allocations for each State. A minimum allocation of $5,000 was provided to States that would have received less than this amount based upon the formula.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 2002 for the formula social service allocation are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 2001, for secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants.

For fiscal year 2002, ORR's formula social service allocations for the States are based on the numbers of refugees, Amerasians, and entrants in the ORR data base. The numbers are based upon the arrivals during the preceding three fiscal years: 1999, 2000, and 2001.

The estimates of secondary migration are based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the United States for 36 months or less, as of September 30, 2001. The total migration reported by each State is summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates are developed separately for refugees and entrants and then combined into a total estimated three-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below, because they are tabulated separately from other entrants. Havana parolee arrivals for all States are based on actual data.

Table 1, below, shows the estimated three-year populations, as of October 1, 2001, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); asylees and certified victims of a severe form of trafficking (col. 4); total population, (col.5); the final formula amounts which the population estimates yield, (col. 6); the final allocation amount (col 7); the first set-aside allocation amount (col. 8); the second set-aside allocation (col. 9); and the total allocation (col. 10).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

The following amounts are for allocation for refugee social services in FY 2002:

FY 2002 SOCIAL SERVICES FORMULA NOTICE

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/ASYLEE/PAROLEE POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 2002

State	Refugees[1]	Entrants	Havana parolees[2]	Asylees[3]	Total population	Final formula amount	Final allocation	$3 million Set-asides	$8.5 million Set-asides	Total final allocation
	1	2	3	4	5	6	7	8	9	10
Alabama	381	5	35	.....	421	$102,381	$102,381	$5,000	$12,148	$119,529
Alaska[4]	115	0	0	7	122	29,669	75,000	5,000	5,000	85,000
Arizona	7,092	405	2	.....	7,499	1,823,651	1,823,651	75,677	216,377	2,115,705
Arkansas	39	9	4	.....	52	12,646	75,000	5,000	5,000	85,000
California[4]	28,779	74	238	1,549	30,640	7,451,218	7,451,218	309,206	884,091	8,644,517
Colorado[4]	3,247	4	4	5	3,260	792,786	792,786	32,899	94,065	919,750
Connecticut	3,511	30	34	.....	3,575	869,390	869,390	36,078	103,154	1,008,622
Delaware	125	15	0	.....	143	34,776	75,000	5,000	5,000	85,000
Dist. of Columbia	348	4	8	317	677	164,637	164,637	6,832	19,534	191,003
Florida	13,293	15,253	32,735	4,447	65,728	15,984,126	15,984,126	563,303	1,896,525	8,543,954
Georgia	10,059	35	110	385	10,589	2,575,096	2,575,096	106,860	305,537	2,987,493
Hawaii	(7)	0	0	42	35	8,512	75,000	5,000	5,000	85,000
Idaho[4]	2,742	1	3	.....	2,746	667,789	667,789	27,712	79,233	774,734
Illinois	9,323	15	102	.....	9,440	2,295,675	2,295,675	95,265	272,383	2,663,323
Indiana	1,656	6	11	.....	1,673	406,850	406,850	16,883	48,273	472,006
Iowa	4,619	0	2	.....	4,621	1,123,762	1,123,762	46,633	133,335	1,303,730
Kansas	600	5	4	1	610	148,343	148,343	6,156	17,601	172,100
Kentucky[4]	3,358	1,088	8	.....	4,454	1,083,150	1,083,150	44,948	128,516	1,256,614
Louisiana	1,161	127	44	.....	1,332	323,924	323,924	13,442	38,434	375,800
Maine	1,108	0	0	.....	1,108	269,450	269,450	11,182	31,970	312,602
Maryland	3,670	12	20	489	4,191	1,019,192	1,019,192	42,294	120,928	1,182,414
Massachusetts[4]	5,814	160	36	629	6,641	1,614,998	1,614,998	67,019	191,620	1,873,637
Michigan	8,186	863	31	62	9,142	2,223,206	2,223,206	92,258	263,785	2,579,249
Minneeota	13,503	6	8	3	13,520	3,287,874	3,287,874	136,439	390,108	3,814,421
Mississippi	0	3	6	2	11	2,675	75,000	5,000	5,000	85,000
Missouri	7,729	12	24	.....	7,765	1,888,339	1,888,339	78,362	224,052	2,190,753
Montana	1	0	4	.....	5	1,216	75,000	5,000	5,000	85,000
Nebraska	1,736	2	5	.....	1,743	423,873	423,873	17,590	50,293	491,756
Nevada[4]	1,152	752	53	59	2,016	490,263	490,263	20,345	58,170	568,778
New Hampshire	1,710	0	0	.....	1,710	415,848	415,848	17,257	49,341	482,446
New Jersey	4,364	353	758	4	5,479	1,332,416	1,332,416	55,292	158,092	1,545,800
New Mexico	493	321	2	.....	816	198,440	198,440	8,235	23,545	230,220
New York	21,133	1,149	195	468	22,945	5,579,902	5,579,902	231,553	662,058	6,473,513
North Carolina	3,363	21	47	1	3,432	834,614	834,614	34,634	99,027	968,275
North Dakota[4]	1,237	0	0	.....	1,237	300,821	300,821	12,483	35,693	348,997
Ohio	5,336	6	8	.....	5,350	1,544,231	1,544,231	64,082	183,224	1,791,537
Oklahoma	393	0	5	.....	398	98,788	100,000	5,000	11,484	116,484
Oregon	3,753	489	4	.....	4,246	1,032,568	1,032,568	42,849	122,515	1,197,932
Pennsylvania	7,869	241	47	24	8,181	1,989,504	1,989,504	82,560	236,056	2,308,120
Rhode Island	774	2	7	10	793	192,846	192,846	8,003	22,881	223,730
South Carolina	211	1	20	.....	232	56,419	94,260	5,000	6,694	105,954
South Dakota[4]	1,277	0	0	.....	1,277	310,548	310,548	12,887	36,847	360,282
Tennessee	2,891	8	38	.....	2,937	714,237	714,237	29,639	84,745	828,621
Texas	11,928	854	115	245	13,142	3,195,950	3,195,950	132,624	379,201	3,707,775
Utah	2,943	2	2	.....	2,947	716,689	716,689	29,740	85,033	831,442
Vermont	876	0	0	.....	876	213,031	213,031	8,840	25,276	247,147
Virginia	5,179	92	29	305	5,605	1,363,057	1,363,057	56,564	161,728	1,581,349
Washington	15,318	0	14	7	15,339	3,730,229	3,730,229	154,796	442,594	4,327,619
West Virginia	17	0	0	.....	17	4,134	75,000	5,000	5,000	85,000
Wisconsin	2,030	5	4	.....	2,039	495,856	495,856	20,577	58,834	575,267
Wyoming[5]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	227,438	22,430	34,828	9,061	293,757	71,437,575	71,910,000	3,000,000	8,500,000	83,410,000

[1] Includes Amerasian immigrants. Adjusted for secondary migration.
[2] For all years, Havana Parolee arrivals for all States are based on actual data.
[3] Includes victims of a severe form of trafficking.
[4] The allocations for Alaska, Colorado, Idaho, Kentucky, Massachusetts, Nevada, North Dakota, South Dakota and for San Diego County, California are expected to be awarded to Wilson/Fish projects.
[5] Wyoming no longer participates in the Refugee Resettlement Program.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: July 1, 2002.

Nguyen Van Hanh,

- Office of the Administrator (MA)
- Office of Applied Studies (MC)
- Office of Program Services (MB)
- Center for Mental Health Services (MS)
- Center for Substance Abuse Prevention (MP)
- Center for Substance Abuse Treatment (MT)

Section M.20 Functions

a focal point for communications activities as follows: (1) Coordinates agency communications activities; (2) plans public events, including press conferences, speeches, and site visits for the Administrator, other SAMHSA officials, and DHHS representatives; (3) publishes SAMHSA brochures, fact sheets, and quarterly issues of SAMHSA News; (4) coordinates electronic

carrying out the Agency's role as it relates to extramural policies and participation in HHS and other interagency initiatives; and, (6) manages the SAMHSA National Advisory Council and the SAMHSA Joint Advisory Council.

B. *Office of Applied Studies (MC).* (1) Collects information as required by statute on the incidence, prevalence, trends, correlates, and the economic,

and other surveys of the population to obtain information on substance abuse and mental health problems; (2) develops, implements, and evaluates new statistical and data collection methods, questionnaires, and sampling strategies for surveys; (3) analyzes information obtained from surveys conducted by the Office of Applied Studies to determine the incidence, prevalence, correlates, and

and provides information and expertise to SAMHSA, the Department, and the States on issues related to the formula in accordance with legislative authorities; (4) directs special studies to examine such questions as the validity of data collection strategies such as those employed by the Drug Abuse Warning Network and the Drug and Alcohol Services Information System, the costs and long term effects of

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VI. Paperwork Reduction Act

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(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: July 1, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–17027 Filed 7–5–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Susbstance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as amended most recently at 63 FR 1112–1113, January 8, 1998 and 61 FR 39146–39151, July 26, 1996 is being amended. The changes are to update and realign SAMHSA organization structure as a result of it delayering efforts to streamline the administrative functions, which will strengthen SAMHSA's programs and allow SAMHSA to more effectively use its resources. For instance, this reorganization will consolidate all administrative, policy and budgeting functions within the Office of the Administrator. The changes are as follows:

I. Delete Part M, Substance Abuse and Mental Health Administration in its entirety and replace with the following:

Substance Abuse and Mental Health Services Administration

M.00 Mission
M.10 Organization
M.20 Functions
M.30 Order of succession
M.40 Delegation of Authority

Section M.00 Mission. The mission of the Substance Abuse and Mental Health Services Administration is to improve the quality and availability of treatment and prevention services for people with substance abuse and mental illness.

Section M.10 Organization: The Substance Abuse and Mental Health Services Administration is an Operating Division under the direction of an Administrator who reports directly to the Secretary, and include the following components:

- Office of the Administrator (MA)
- Office of Applied Studies (MC)
- Office of Program Services (MB)
- Center for Mental Health Services (MS)
- Center for Substance Abuse Prevention (MP)
- Center for Substance Abuse Treatment (MT)

Section M.20 Functions

A. *Office of the Administrator (MA).* The Administrator is responsible to the Secretary for managing and directing SAMHSA. The office functions are as follows: (1) Provides leadership in the development of agency policies and programs; (2) maintains liaison with the Office of the Secretary on matters related to program and other activities; (3) provides oversight for coordination between SAMHSA and the National Institutes of Health (NIH) on the conduct of research and the dissemination of research findings in the areas of alcohol, drug abuse, and mental health; (4) develops Agency strategic plans and conducts, analyzes, and supports future planning activities; (5) analyzes legislative issues, and maintains liaison with congressional committees; (6) provides leadership and guidance in developing and implementing Agency plans to meet women's substance abuse and mental health services needs; (7) coordinates Agency minority affairs activities; (8) coordinates service quality and financing activities; (9) coordinates Agency-wide AIDS activities; (10) coordinates Agency communications and conducts public affairs activities; and (11) provides agency-wide correspondence control services.

1. *Immediate Office of the Administrator (MA–1).* Provides leadership and direction to the program and activities of the Substance Abuse and Mental Health Services Administration as follows: (1) Responsible for program policy development; (2) provides liaison with other HHS components, other Federal organizations, the Office of the National Drug Control Policy, and outside groups; (3) provides oversight for coordination between SAMHSA and the National Institutes of Health; (4) provides correspondence control for the Agency and controls all Agency public correspondence; and (5) analyzes legislative issues, and maintains liaison with congressional committees.

2. *Office of Communications (MAB).* Provides leadership in the development of SAMHSA's priorities, strategies, and practices for effective communications to targeted public audiences, including relations with the media; and serves as a focal point for communications activities as follows: (1) Coordinates agency communications activities; (2) plans public events, including press conferences, speeches, and site visits for the Administrator, other SAMHSA officials, and DHHS representatives; (3) publishes SAMHSA brochures, fact sheets, and quarterly issues of SAMHSA News; (4) coordinates electronic dissemination of information, within the Agency and through the Internet and World-Wide Web; (5) develops communications channels and targets media placements; (6) develops and disseminates news releases and coordinates media contacts with Agency representatives; (7) provides editorial and policy review of all Agency publications; (8) fulfills public affairs requirements of DHHS; (9) provides agency contributions to the DHHS forecast report on significant activities; (10) manages the Agency conference exhibit program; and (11) responds to Freedom of Information Act requests.

3. *Office of Policy, Planning and Budget (MAC).* (1) Develops Agency policy for the Administrator and senior staff; (2) manages the Agency-wide planning process, including strategic planning, identification of policy priorities, and other Agency-wide and departmental planning activities; and, (3) manages the budget formulation process and provides policy guidance for the Guidance for Applicants (GFAs) development process.

a. *Division of Policy Coordination (MAC–1).* (1) Develops policy recommendations and issues for the Administrator and senior leadership and manages the coordination and implementation of the Agency's national program policies; (2) coordinates the Administrator's program priorities and principles as they relate to policy; (3) provides expertise for Agency leadership in issues and initiatives for alcohol, HIV/AIDS, minority health, and women's services; and, (4) manages the Agency's coordination of departmental and Presidential initiatives, nationally and internationally.

b. *Division of Planning and Budget (MAC–2).* (1) Manages the planning process for SAMHSA; (2) manages the budget formulation process by coordinating budget plans, formulating and presenting future budget activities, and preparing budget justification documents; (3) develops the Government Performance and Results Act (GPRA) process for SAMHSA, oversees progress in attaining goals, and reports accomplishments; (4) provides policy guidance for the GFA development process; (5) supports the Administrator in formulating and

carrying out the Agency's role as it relates to extramural policies and participation in HHS and other interagency initiatives; and, (6) manages the SAMHSA National Advisory Council and the SAMHSA Joint Advisory Council.

B. *Office of Applied Studies (MC).* (1) Collects information as required by statute on the incidence, prevalence, trends, correlates, and the economic, behavioral and medical consequences of substance abuse and mental health problems in the United States; (2) collects information as required by statute on the number, characteristics, conduct, and performance of facilities and organizations providing prevention and treatment services for substance abuse at the national, state and local level; (3) plans, directs,and conducts studies based on data collected by the Office of Applied Studies and other organizations of issues associated with substance abuse and mental health problems; (4) designs and carries out special data collection and analytic projects to examine topical issues for SAMHSA and other Federal agencies; (5) conducts epidemiological, statistical, and policy studies of existing or emerging issues; (6) provides information for program evaluation activities of the Agency; (7) manages Agency activities associated with the Paperwork Reduction Act and the Office of Management and Budget clearance of information collection activities; and (8) prepares reports and disseminates findings through Agency publications, the press, scientific journals, and electronic systems.

1. *Office of the Director (MC–1).* (1) Provides overall leadership for the Office of Applied Studies; (2) determines that data collection and analytic activities are consistent with the mission and priorities of the Department and the Agency; (3) advises the Administrator and other Agency officials and staff on policy and technical issues associated with collecting information on substance abuse and mental health problems; and (4) serves as Agency liaison to the Office of the Secretary, the Office of National Drug Control Policy, the Drug Enforcement Administration, and other Federal agencies; to State and local government agencies; and to non-governmental organizations and institutions on matters related to the collection and analysis of data on substance abuse and mental health problems.

2. *Division of Population Surveys (MCA).* (1) Plans, develops, and manages the National Survey on Drug Use and Health (the Household Survey) and other surveys of the population to obtain information on substance abuse and mental health problems; (2) develops, implements, and evaluates new statistical and data collection methods, questionnaires, and sampling strategies for surveys; (3) analyzes information obtained from surveys conducted by the Office of Applied Studies to determine the incidence, prevalence, correlates, and consequences of substance abuse; (4) analyzes data from the Household Survey and related sources of information to examine program and policy issues and evaluate the impact of various Federal initiatives related to substance abuse; (5) prepares statistical publications, special reports, and analyses based on information derived from the Household Survey and other surveys of the population; and (6) serves as a source of expertise on substance abuse survey methods, sampling design, statistics, and analytic techniques for SAMHSA and the Department.

3. *Division of Operations (MCB).* (1) Manages the operational activities of the Office of Applied Studies (OAS) including development of the budget, oversight of procurement, and personnel; (2) manages SAMHSA responsibilities under the Paperwork Reduction Act, including the process for obtaining Office of Management and Budget clearance for information collection activities; (3) develops methods for and collects information through the Drug Abuse Warning Network (DAWN), the Drug and Alcohol Services Information System (DASIS), and other data collection projects on admissions to and services provided by treatment programs in the United States; (4) prepares statistical publications and reports based on data obtained from DAWN, DASIS, and other sources; (5) manages the process for clearing, publishing, and disseminating studies and reports produced by OAS; (6) provides computer support for OAS; and (7) organizes and manages various meetings to obtain advice and assistance from States with respect to the structure and content of OAS surveys.

4. *Division of Analysis (MCC).* (1) Conducts epidemiologic, behavioral, demographic, and economic studies on topics of major and immediate concern in the area of substance abuse and mental health care; (2) conducts policy research on issues relevant to the demand for treatment for substance abuse and mental health problems and the supply of services; (3) determines the annual allotment of Block Grant funds to States and Territories for substance abuse prevention and treatment and mental health services, and provides information and expertise to SAMHSA, the Department, and the States on issues related to the formula in accordance with legislative authorities; (4) directs special studies to examine such questions as the validity of data collection strategies such as those employed by the Drug Abuse Warning Network and the Drug and Alcohol Services Information System, the costs and long term effects of substance abuse treatment, and the problems and access to care of special populations; (5) manages special contracts developed to analyze data from multiple sources; and (6) provides advice and expertise to other components of SAMHSA and the Department on research topics and the design of studies relevant to concerns in the areas of substance abuse and mental health.

C. *Office Of Program Services (MB).* The Office of Program Services works in partnership with other SAMHSA and HHS components in managing, providing leadership, and ensuring SAMHSA's needs are met in the following service areas: information resources management (IRM), financial management, human resources management, grants and contracts management, administrative services, grant and contract application review, equal employment opportunity, civil rights, and organizational development and analysis.

1. *Office of the Director (MB–1).* (1) Provides leadership and guidance, oversees and monitors the range of administrative and program services which are provided to all SAMHSA components; (2) provides general policy review and executive oversight of crosscutting management and administrative issues; (3) streamlines, improves, and integrates administrative services and systems; (4) coordinates crosscutting tasks and initiatives; (5) processes both informal and formal complaints of employment discrimination under three primary statutes; (6) plans and administers a coordinated Agency special emphasis/affirmative employment program, including the SAMHSA affirmative employment plan; (7) manages the reasonable accommodations process regarding employee disabilities; (8) develops internal civil rights compliance policy for the Agency and serves as the focal point for civil rights and related issues; and (9) tracks and measures administrative program performance.

2. *Division of Information Resources Management (MBA).* (1) Provides leadership, guidance, and technical expertise in the Agency's transition

from conventional information systems to a data base environment, including the continual improvement of Agency systems; (2) coordinates Agency-wide database administration and systems configuration management; (3) serves as the focal point for Agency-wide information resources management, office automation and information systems policy, strategic planning,

with other HHS components such as the Program Support Center (PSC) accounting and procurement staffs, and the contract travel agency; (3) evaluates internal fiscal controls to assure compliance with laws, regulations, policies, and sound business practices; (4) manages overall Agency budget execution, including the apportionment and allotment processes, overhead and

quality effective programs and services for people with, or at risk for, these disorders, as well as for their families and communities; and to promote an improved state of mental health within the Nation, as well as the rehabilitation of people with mental disorders.

1. *Office of the Director (MS–1).* (1) Provides leadership in planning, implementing, and evaluating the

3. *Division of Prevention, Traumatic Stress and Special Programs (MSC).* (1) Serves as the focal point in planning for alcohol, drug abuse, and mental health services during national disasters; (2) cooperates with the Office of Emergency Preparedness and the Federal Emergency Management Agency (FEMA) and other Federal agencies to coordinate disaster assistance,

national activities designed to improve systems and service delivery for persons with, or at risk for, mental health problems; (2) directs a clearinghouse that serves as a one-stop information and referral service for the public, consumers and family members, educators, policy makers, and for those who design, finance, and deliver mental health services;(3) administers the Projects for Assistance in Transition

for the Department's efforts on substance abuse prevention; (2) plans, directs, and provides overall administration of the programs and activities of CSAP; (3) provides leadership and expert medical, clinical, and technical assistance in the identification of new and emerging issues and the integration of primary medical care and early intervention knowledge and information into major

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from conventional information systems to a data base environment, including the continual improvement of Agency systems; (2) coordinates Agency-wide database administration and systems configuration management; (3) serves as the focal point for Agency-wide information resources management, office automation and information systems policy, strategic planning, budget preparation, coordination, and security; (4) maintains information resources management support through the local area network (LAN); (5) maintains, operates, and provides services, or coordinates with other service components, for the LAN and personal computers, databases, voice mail/faxes, and general machine repairs; (6) exercises clearance authority for Agency-wide information resources management and office automation projects and procurement; and (7) provides advice, assistance, and training to Agency staff in obtaining maximum utilization of and services from its information systems and databases; (8) trains Agency staff in the use of new products and applications as necessary; (9) develops and secures new programming software to meet individual program requirements, as well as broad Agency needs; (10) reviews and analyzes new information resources management developments and ensures necessary support services are provided; and (11) initiates and carries out studies to implement improvements in systems and services.

3. *Division of Extramural Program Management (MBB).* (1) Provides leadership and direction in the management of SAMHSA's extramural grant and contract programs; (2) conducts all aspects of the SAMHSA grants management process; (3) conducts all aspects of the SAMHSA contracts management process; (4) plans, administers, and coordinates review of all grant and contract proposals; (5) provides guidance to Agency staff, applicants, and awardees on the management and administrative aspects of extramural programs; (6) develops SAMHSA policies and procedures regarding the administrative management of extramural programs; (7) prepares reports and responds to information requests; and (8) measures and tracks extramural program performance.

4. *Division of Administrative Services (MBG).* (1) Provides centralized administrative services for the Agency, including processing and coordinating requests for and providing advice on procurement actions, travel, property, facilities, personnel and other activities; (2) coordinates actions as necessary with other HHS components such as the Program Support Center (PSC) accounting and procurement staffs, and the contract travel agency; (3) evaluates internal fiscal controls to assure compliance with laws, regulations, policies, and sound business practices; (4) manages overall Agency budget execution, including the apportionment and allotment processes, overhead and assessment changes, and monitoring of expenditures; (5) manages expenditure plans and their execution such as program reserve, block grant set-asides, and Agency operating costs; (6) manages and tracks FTE allocations and staffing levels; and (7) coordinates Agency responses to outside financial management initiatives, such as financial aspects of the Government Performance and Results Act, and audited financial statements.

5. *Division of Management Systems and Analysis (MBC).* (1) Provides leadership in the development of policies for and the analysis, performance measurement, and improvement of SAMHSA administrative and management systems; (2) coordinates the provision of central human resource management services, working with HHS service components and outside organizations as necessary and monitoring their performance; (3) manages the SAMHSA ethics program; (4) coordinates and serves as a focal point for SAMHSA intern and summer employment programs; (5) provides advisory services to managers and supervisors in such matters as organizational development, analysis, performance, and performance measurement; (6) coordinates General Accounting Office and Office of the Inspector General reviews and information requests, internal control reviews, and Federal Managers Financial Integrity Act responses; (7) plans and coordinates various management activities such as records management, forms management, Privacy Act, and OPS Freedom of Information Act requests; (8) develops, maintains, and manages administrative management systems regarding policies and procedures; and (9) measures and tracks program performance in all areas of administrative management.

D. *Center for Mental Health Services (MS).* The mission of the Center for Mental Health Services (CMHS) is to promote effective mental health services in every community. CMHS provides national leadership to ensure the application of scientifically established findings and practice-based knowledge in the prevention and treatment of mental disorders; to improve access, reduce barriers, and promote high quality effective programs and services for people with, or at risk for, these disorders, as well as for their families and communities; and to promote an improved state of mental health within the Nation, as well as the rehabilitation of people with mental disorders.

1. *Office of the Director (MS–1).* (1) Provides leadership in planning, implementing, and evaluating the Center's goals, priorities, policies, and programs, including equal employment opportunity, and is the focal point for the Department's efforts in mental health services; (2) plans, directs, and provides overall administration of the programs of CMHS; (3) conducts and coordinates Center interagency, interdepartmental, intergovernmental, and international activities; (4) provides information to the public and constituent organizations on CMHS programs; (5) maintains liaison with national organizations, other Federal departments and agencies, the National Institute of Mental Health and with other SAMHSA Centers; (6) administers committee management and reports clearance activities; (7) promotes the prevention of HIV infection in people at risk, the delivery of effective mental services for people with HIV infection, and the education of health care providers to address the neuropsychiatric and the psycho-social aspects of HIV infection and AIDS; (8) conducts services quality and financing activities and coordinates these activities with other components in SAMHSA; (9) conducts consumer affairs activities; and, (10) monitors the conduct of equal employment opportunity activities of CMHS.

2. *Office of Program Analysis and Coordination (MSA).* (1) Supports the Center's implementation of programs and policy by providing guidance in the administration, analysis, planning, and coordination of the Center's programs, consistent with agency priorities; (2) manages the Center's participation in the agency's policy planning, budget formulation, program development and clearance, and internal and external requests, including strategic planning, identification of program priorities, and other agency-wide and departmental planning exercises; and (3) performs Center-specific functions such as support for the Center Director, impact analysis of proposed legislation and rule making, council management, support and liaison for administrative functions, special studies, data analysis and coordination, liaison for special populations/initiatives, GPRA reporting, performance partnerships, and regulatory activities.

3. *Division of Prevention, Traumatic Stress and Special Programs (MSC).* (1) Serves as the focal point in planning for alcohol, drug abuse, and mental health services during national disasters; (2) cooperates with the Office of Emergency Preparedness and the Federal Emergency Management Agency (FEMA) and other Federal agencies to coordinate disaster assistance, community response, and other mental health emergency services as a consequence of national disasters or mass criminal events, such as terrorism and school shootings; (3) serves as a focal point for refugee mental health programs, including liaison with other Federal agencies; (4) conducts program development activities and engages with the faith community, when appropriate, to promote effective programs and policies to special populations including women, minorities, youth in juvenile justice facilities, and elderly persons living in rural areas; and (5) administers violence and suicide prevention programs, trauma and terrorism/bio-terrorism initiatives, and programs that prevent mental and behavioral disorders and promote mental health and resilience across the life cycle.

4. *Division of State and Community Systems Development (MSE).* (1) Administers the Community Mental Health Services Block Grant, including monitoring State implementation of the Mental Health State Plan, compliance with the provisions of the Public Health Service Act, as amended, regarding use of the payments and maintenance of effort; (2) provides technical assistance to the States with respect to the planning, development, financing, and operation of programs or services carried out pursuant to the block grant program; (3) administers a program of State human resource development; (4) plans and supports programs of mental health education, with emphasis on targeted populations; (5) plans and supports programs to provide protection and advocacy services for persons with severe mental disorders; and (6) supports programs for: (a) obtaining, analyzing, and disseminating national statistics on mental health services, (b) developing methodologies for data collection in biometry and mental health economics, and (c) consulting with and providing technical assistance to State and local mental health agencies on statistical methodology, mental health information systems, and the use of statistical and demographic data.

5. *Division of Service and Systems Improvement (MSF).* (1) Develops, plans, implements, and monitors national activities designed to improve systems and service delivery for persons with, or at risk for, mental health problems; (2) directs a clearinghouse that serves as a one-stop information and referral service for the public, consumers and family members, educators, policy makers, and for those who design, finance, and deliver mental health services;(3) administers the Projects for Assistance in Transition from Homelessness (PATH) program; and (4) directs the Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbances Program; (5) places priority on two target populations, adults with severe mental illness (including those who are homeless) and children and adolescents with serious mental disturbances; (6) emphasizes acquisition, exchange, and application of knowledge in all of its activities; (7) develops guidance for applications and requests for contracts to implement these activities; (8) monitors grants, cooperative agreements, contracts, interagency agreements, and memoranda of understanding; (9) identifies needs for and provides technical assistance to a variety of customers through both direct and indirect activities, including the development of standards and guidelines; (10) establishes and maintains collaborative relationships with other Federal, State, and local governmental agencies, national organizations, local communities, providers, consumers, and families; and (11) promotes adoption of practices in communities through the Nation by synthesizing knowledge, exchanging information, and providing opportunities for consensus building.

E. *Center for Substance Abuse Prevention (MP).* The mission of the Center for Substance Abuse Prevention (CSAP) is to bring effective prevention to every community. CSAP provides national leadership in the development of policies, programs and services to prevent the onset of illegal drug use, underage alcohol and tobacco use, and to reduce the negative consequences of using substances. CSAP disseminates effective substance abuse prevention practices and builds the capacity of States, communities and other groups to apply prevention knowledge effectively. An integrated systems approach is used to coordinate these activities and collaborate with other Federal, State, public and private organizations.

1. *Office of the Director (MP–1).* (1) Provides leadership, coordination, and direction in the development and implementation of CSAP goals and priorities, and serves as the focal point for the Department's efforts on substance abuse prevention; (2) plans, directs, and provides overall administration of the programs and activities of CSAP; (3) provides leadership and expert medical, clinical, and technical assistance in the identification of new and emerging issues and the integration of primary medical care and early intervention knowledge and information into major CSAP program efforts; (4) organizes and manages CSAP's special projects; and (5) monitors the conduct of the equal employment opportunity activities of CSAP.

2. *Office of Program Analysis and Coordination (MPA).* (1) Supports the Center's implementation of programs and policy by providing guidance in the administration, analysis, planning, and coordination of the Center's programs, consistent with agency priorities; (2) manages the Center's participation in the Agency's policy planning, budget formulation, program development and clearance, and internal and external requests, including strategic planning, identification of program priorities, and other Agency-wide and departmental planning activities; and (3) performs Center-specific functions such as impact analysis of proposed legislation and rule making, council management, support and liaison for administrative functions, special studies, data analysis and coordination, liaison for special populations/initiatives, GPRA reporting, performance partnerships, and regulatory activities.

3. *Division of State and Community Systems Development (MPB).* (1) Promotes and establishes comprehensive, long-term State and community alcohol, tobacco, and other drug abuse prevention/intervention strategies, programs, and support activities; (2) reviews, approves and administers the primary prevention set-aside of the Substance Abuse Prevention and Treatment (SAPT) Block Grant and reviews and analyzes the SAPT plans submitted by the States; (3) administers community and State Targeted Capacity Expansion grant programs and cooperative agreements to support and enhance comprehensive and effective State and community substance abuse prevention systems, drug prevention coalitions and related health promotion systems; (4) develops and updates regulations, core performance measures and/or guidelines for the use of the primary prevention and tobacco provisions of SAPT; (5) provides technical assistance and capacity-building to States and communities in the planning, development, and operation of prevention programs and

systems; (6) promotes interagency collaboration with both the public and private sectors at the Federal, State and local levels, including, among others, foundations, business, industry, labor, law enforcement, education, faith communities, health and social welfare entities, to optimize the use of fiscal and human resources and needed program development in new and existing

physical health problems; (11) collaborates with other Federal departments and agencies that are relevant to CSAP's mission, including the National Institutes of Health, the Agency for Health Care Research and Quality, the Administration for Children and Families, the Centers for Disease Control and Prevention, and the Office of Disease Prevention and Health

(9) provides leadership within SAMHSA and the field in developing and disseminating knowledge in workplace violence related to substance abuse, including risk factors in the workplace and community and the role of the workplace as a substance abuse and violence prevention agent within the community and family; and (10) evaluates managed care and other

(CSAT) is to bring effective alcohol and drug treatment to every community. CSAT provides national leadership to expand the availability of effective treatment and recovery services for alcohol and drug problems; to improve access, reduce barriers and promote high quality effective treatment and recovery services for people with alcohol and drug problems, abuse, or addiction as well as for their families

and adoption of evidence-based practices; (3) collaborates on the development of Guidance for Applications (GFAs) and Requests for Contracts for the national treatment capacity expansion and services improvement agenda; (4) monitors grants, cooperative agreements, contracts, interagency agreements, and memoranda of understanding for treatment capacity expansion,

provides leadership for human research and participant protection programs; and (9) collaborates with other Federal, State, and local agencies, especially Institutes within NIH on science-to-service issues.

5. *Division of State and Community Assistance (MTE).* (1) Administers the Substance Abuse Block Grant Program, including oversight and approval of Block Grant applications and

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systems; (6) promotes interagency collaboration with both the public and private sectors at the Federal, State and local levels, including, among others, foundations, business, industry, labor, law enforcement, education, faith communities, health and social welfare entities, to optimize the use of fiscal and human resources and needed program development in new and existing prevention systems nationally; (7) develops guidelines for state-of-the-art prevention programs and systems while conducting quality assurance activities such as the Block Grant performance measures initiative and developing prevention guidance documents; (8) compiles State and local prevention outcome findings, national cross site evaluation findings and promising practices to support CSAP's on-going capacity-building role; (9) develops and integrates needs assessment and management information system data into State and community prevention systems for the improvement of planning efforts in substance abuse prevention nationally; (10) administers the Synar regulations governing youth access to tobacco products; and (11) provides overall support, training and technical assistance in integrating effective substance abuse prevention into managed health care systems.

4. *Division of Knowledge Application and System Improvement (MPC).* (1) Provides leadership in advancing CSAP's substance abuse, HIV/AIDS and emergent substance abuse issues agenda by employing a broad range of mechanisms; (2) conducts extramural evaluation studies at the individual, family, community and systems levels; (3) manages the grant program portfolios; (4) conducts national cross-site evaluation studies on the portfolio of knowledge application grant programs; (5) conducts secondary analysis of original prevention research studies; (6) synthesizes knowledge acquired through grants, cooperative agreements, contracts, and field input; (7) promotes the development of new methodologies and advocates use of rigorous methods for conducting prevention studies and evaluating service provision; (8) supports professional development in the science of prevention; (9) helps develop extramural policy; (10) provides information to CSAP and other SAMHSA components, other HHS components, the Congress, and other Federal entities concerning the most effective prevention approaches that focus on the prevention needs of individuals and families affected by co-occurring drug, alcohol, mental, and/or physical health problems; (11) collaborates with other Federal departments and agencies that are relevant to CSAP's mission, including the National Institutes of Health, the Agency for Health Care Research and Quality, the Administration for Children and Families, the Centers for Disease Control and Prevention, and the Office of Disease Prevention and Health Promotion; (12) identifies effective programs developed by government, foundations and private industry through its National Registry of Effective Prevention Programs; (13) ensures accountability by identifying, promoting and monitoring the national implementation of science-based prevention programs.

5. *Division of Workplace Programs (MPE).* (1) Establishes goals and objectives in the administration of a national program designed to promote substance abuse free workplaces; (2) provides leadership and oversight to assure that effective employee assistance programs are developed and evaluated to prevent substance abuse in the workplace; (3) develops, implements, and evaluates employee education/prevention programs, access to counseling, early intervention, and referral treatment/rehabilitation, and support services for employees following treatment/rehabilitation; (4) advises, coordinates, and certifies activities related to the implementation and administration of Federal drug free workplace programs, convenes the Drug Testing Advisory Board, and conducts surveys on Federal programs; (5) advises other SAMHSA components and HHS regarding workplace programmatic directions and actions and enters into collaborative arrangements with other Federal agencies; (6) collaborates in the development and implementation of substance abuse prevention and early intervention strategies for public/private sector use at the State and community levels, and operates the Workplace Hotline Contract as a means for dissemination, outreach and technical assistance to businesses, States and communities; (7) provides technical assistance to facilitate national training and certification programs for substance abuse professionals and practitioners, provides staff expertise in training and credentialing standards for Medical Review Officers (MROs) and the Department of Transportation mandated Substance Abuse professionals; (8) provides leadership within SAMHSA in the development, training and use of the geographic information system (GIS) to support policy development for Federal substance abuse prevention, initiatives; (9) provides leadership within SAMHSA and the field in developing and disseminating knowledge in workplace violence related to substance abuse, including risk factors in the workplace and community and the role of the workplace as a substance abuse and violence prevention agent within the community and family; and (10) evaluates managed care and other treatment provider practices as they are applied in the workplace.

6. *Division of Prevention Education and Dissemination (MPF).* (1) Provides national leadership in the development, coordination, and assessment of information for purposes of knowledge transfer and application; (2) develops and disseminates information and knowledge about alcohol, tobacco, and drugs; (3) assesses the need for, and promotes the development and widespread use of, prevention and intervention-related messages, materials and technologies by national, State and community organizations, especially directed towards traditionally under-served audiences and those at high risk; (4) develops and coordinates national media campaigns and stimulates media coverage of substance abuse issues with an emphasis on prevention; (5) prepares and acquires materials based on needs of target audiences; (6) manages the CSAP National Clearinghouse for Alcohol and Drug Information and the Regional Alcohol and Drug Awareness Resource Network; (7) demonstrates national leadership in electronic information technologies through PREVLine, the Internet, and other mechanisms; (8) develops, in collaboration with other CSAP offices, material and technologies which provide learning opportunities for CSAP staff; (9) promotes and provides training and technical assistance for increased capacity of State agencies and key constituent organizations to carry out knowledge transfer and application activities; (10) sponsors and conducts workshops, conferences, and related efforts to foster state-of-the-art knowledge transfer and application activities; (11) develops, implements, and evaluates a program to demonstrate effective communication, diffusion and knowledge exchange to help reduce substance abuse; (12) reviews and/or prepares clearance documents for all communication products developed by the Center; and (13) provides public affairs liaison with the Office of the Administrator, Office of Communications, and other HHS components.

F. *Center for Substance Abuse Treatment (MT).* The mission of the Center for Substance Abuse Treatment (CSAT) is to bring effective alcohol and drug treatment to every community. CSAT provides national leadership to expand the availability of effective treatment and recovery services for alcohol and drug problems; to improve access, reduce barriers and promote high quality effective treatment and recovery services for people with alcohol and drug problems, abuse, or addiction as well as for their families and communities. To accomplish this, the Center works to close the gap between available treatment capacity and demand; support adaptation and adoption of evidence-based and best practices by community-based treatment programs and services; and improve and strengthen substance abuse treatment organizations and systems.

1. *Office of the Director (MT–1).* (1) Provides leadership in planning, implementing, and evaluating the Centers goals and is the focal point for SAMHSA's effort to improve and expand substance abuse treatment services; (2) plans, directs, and provides overall administration for the programs of CSAT; (3) coordinates Center consumer education functions and develops consumer education strategies and materials; and (4) monitors the conduct of equal employment opportunity activities of CSAT.

2. *Office of Program Analysis and Coordination (MTA).* (1) Supports the Center's implementation of programs and policy by providing guidance in the administration, analysis, planning, and coordination of the Center's programs, consistent with agency priorities; (2) manages the Center's participation in the agency's policy planning, budget formulation, program development and clearance, and internal and external requests, including strategic planning, identification of program priorities, and other agency-wide and departmental planning activities; and (3) performs Center-specific functions such as impact analysis of proposed legislation and rule making, council management, support and liaison for administrative functions, special studies, data analysis and coordination, liaison for special populations/initiatives, GPRA reporting, performance partnerships, and regulatory activities.

3. *Division of Services Improvement (MTB).* (1) Develops, plans, implements, and monitors national treatment capacity expansion and knowledge adoption program designed to improve treatment services throughout the United States, including services in other systems of care; (2) provides leadership and guidance to CSAT on the organization and financing of services for substance abuse treatment, HIPAA, and adoption of evidence-based practices; (3) collaborates on the development of Guidance for Applications (GFAs) and Requests for Contracts for the national treatment capacity expansion and services improvement agenda; (4) monitors grants, cooperative agreements, contracts, interagency agreements, and memoranda of understanding for treatment capacity expansion, knowledge adoption, and services improvement; (5) supports the development and testing of performance measures for public and private managed care plans and other systems of care; (6) collects, analyzes, and disseminates data and information pertaining to public and private financing and expenditures for treatment services; (7) identifies the need for, develops, and provides technical assistance to grantees, other service providers and systems of care, and others on adoption of evidence-based practices, capacity expansion, and organization and financing of services; (8) establishes and maintains collaborative relationships with other Federal, State, and local governmental agencies, national organizations, and constituency groups; (9) maintains internal expertise and collaborates with national experts on the science-to-services agenda; (10) develops funding levels for Division programs and activities.

4. *Office of Evaluation Scientific Analysis and Synthesis (MTC).* (1) Oversees the design and plan for evaluation of CSAT programs; (2) serves as the focus for State and local data infrastructure development issues; (3) provides guidance and oversight of training services for treatment of professionals, such as the ATTC program; (4) provides leadership for the provision of technical assistance and consultative services on evaluation of the grant process, on data infrastructure development, and on training in the substance abuse treatment field; (5) provides leadership on workforce development activities; (6) collaborates with other Federal, State, and local agencies in workforce development, training, and data infrastructure activities; (7) maintains current expertise in the alcohol and drug treatment services and systems literatures as well as in related fields; (8) collaborates with all Branches in the Division of Services Improvement and the Division of State and Community Assistance in the implementation of monitoring and evaluation activities for grants and cooperative agreements, as well as on HIPAA implementation; (8) provides leadership for human research and participant protection programs; and (9) collaborates with other Federal, State, and local agencies, especially Institutes within NIH on science-to-service issues.

5. *Division of State and Community Assistance (MTE).* (1) Administers the Substance Abuse Block Grant Program, including oversight and approval of Block Grant applications and maintenance of effort (MOE) issues; (2) administers the Substance Abuse Performance Partnership Grant (PPG), negotiating PPG agreements with States; (2) monitors and ensures State compliance with legislative and regulatory provisions which apply to PPG funds at State and provider levels; (3) provides guidance and technical assistance to States in preparation of State substance abuse plans; (4) conducts performance reviews of State agencies and treatment programs; (5) works closely with data and evaluation to assure proper reporting and data integrity; (6) administers the State Incentive Grant program for co-occurring disorders and the TCE grant program for co-occurring disorders; (7) works collaboratively with the Division of Services Improvement on performance measurement, GPRA, and HIPAA issues.

6. *Division of Pharmacologic Therapies (MTG).* (1) Administers the day-to-day regulatory and oversight activities necessary to implement and enforce SAMHSA's opioid treatment program (methadone and LAAM) rules under 42 CFR part 8; (2) develops, plans, implements and monitors national technical assistance and training projects to improve OTP compliance with accreditation standards and requirements; (3) develops, plans, implements and monitors national projects designed to improve medication assisted substance abuse treatment throughout the United States and internationally; (4) develops, plans, implements and monitors Guidance for Applications (GFAs), grants, cooperative agreements, interagency agreements, memoranda of understanding, Requests for Contracts (RFCs), purchase orders and task orders for activities related to OTP certification and accreditation standards and processes; (5) administers the day-to-day regulatory and oversight activities of the Drug Addiction Treatment Act of 2000, including the development and implementation of regulatory actions, guidance on the use of medication assisted treatments, and OMB required information collection activities; (6) identifies needs, develops, and provides technical assistance to support the

improvement of medication assisted addiction treatment; (7) establishes and maintains collaborative relationships with other Federal, State, and local government agencies, national organizations, and constituency groups involved in activities associated with medication assisted treatment; (8) maintains internal expertise and collaborates with national experts in the

Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), federally-listed as threatened, through loss and modification of its habitat associated with construction and occupation of a

Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Incidental take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing

Black Squirrel Creek corridor onsite and its associated riparian areas from all future development through the replanting of 0.215 acre of temporarily disturbed grassland and the protection of an additional 4.3 acres on an existing conservation easement with enhancement of 0.89 acre through native shrub planting. Measures will be taken during construction to minimize

eligible to receive funding and can compete successfully on the basis of strong project resource values.

DATES: Proposals must be postmarked no later than Friday, November 29, 2002.

ADDRESSES: Address proposals to: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110,

received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits. This priority system does not preclude former NAWCA grant recipients from receiving Small Grants funding; ultimately, project resource value is the critical factor in deciding which projects receive funding. Also, projects are likely to receive a greater level of attention if they are part of a broader related or

improvement of medication assisted addiction treatment; (7) establishes and maintains collaborative relationships with other Federal, State, and local government agencies, national organizations, and constituency groups involved in activities associated with medication assisted treatment; (8) maintains internal expertise and collaborates with national experts in the development of CSAT, SAMHSA and DHHS treatment standards and guidelines concerning medication assisted treatment; (9) provides national leadership and advice on medication assisted treatments and on related policy issues; (10) supports the Federal Interagency Narcotic Treatment Policy Review Board; and (11) develops funding levels for division programs and activities.

II. *Section M.30, Order of Succession:* During the absence or disability of the Administrator, SAMHSA, or in the event of a vacancy in that office, the first official listed below would perform the duties of the Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession: (1) Deputy Administrator; and (2) Executive Officer, SAMHSA.

III. *Section M.40, Delegations of Authority:* All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this restructuring and delayering shall continue in effect pending further redelegation, providing they are consistent with the reorganization.

These organizational changes are effective July 1, 2002.

Dated: June 25, 2002.

Charles Curie,

Administrator.

[FR Doc. 02–16940 Filed 7–5–02; 8:45 am]

BILLING CODE 4150–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Residential Home Site on the Lefever Property, Black Forest, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Thomas Lefever (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), federally-listed as threatened, through loss and modification of its habitat associated with construction and occupation of a residential home site at the Lefever Property, Black Forest, Colorado. The duration of the permit would be 5 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application that includes a combined Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the Preble's meadow jumping mouse (Preble's) for the Lefever Property. The proposed EA/HCP is available for public review and comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the EA/HCP for the proposed issuance of the incidental take permit. We provide this notice pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the EA and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and EA/HCP should be received on or before September 6, 2002.

ADDRESSES: Comments regarding the permit application and EA/HCP should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Incidental take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Lefever Property is located at 12715 Kaibab Court, Abert Estates Lot 4, along Black Squirrel Creek, in the Town of Black Forest, El Paso County, State of Colorado. The project site is 5.4 acres, but the proposed project will directly impact a maximum of 0.56 acre that may result in incidental take of the Preble's. Of the total amount of impacted acreage, 0.215 acre will be temporarily disturbed and will be revegetated. An HCP has been developed as part of the preferred alternative. The proposed HCP will allow for the incidental take of the Preble's by permitting a single family residence to be constructed in an area that may be periodically used as foraging or hibernation habitat.

Alternatives considered in addition to the Proposed Action, included waiting for the approval of the El Paso County Regional Habitat Conservation Plan, and no action. The draft EA analyzes the onsite, offsite, and cumulative impacts of the proposed project and all associated development and construction activities and mitigation activities on the Preble's, other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, or cultural resources. None of the proposed impacts occur within the riparian corridor. All of the proposed impacts are in upland areas outside of the 100-year floodplain. The Applicant, using the Service's definition of Preble's habitat, has determined that the proposed project would impact approximately 0.56 acre of potential Preble's habitat. The mitigation will likely provide a net benefit to the Preble's mouse and other wildlife by improving or creating new riparian areas, planting of native shrubs, and protecting existing habitat along Black Squirrel Creek from any future development.

Only one federally listed species, the threatened Preble's, occurs on site and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides mitigation for the residential site by protection of the Black Squirrel Creek corridor onsite and its associated riparian areas from all future development through the replanting of 0.215 acre of temporarily disturbed grassland and the protection of an additional 4.3 acres on an existing conservation easement with enhancement of 0.89 acre through native shrub planting. Measures will be taken during construction to minimize impact to the habitat, including the use of silt fencing to reduce the amount of sediment from construction activities that reaches the creek. All of the proposed mitigation area is within the boundaries of the Lefever property, all of which is included in the drainage basin of Black Squirrel Creek.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction and occupation of a single-family residential lot on the Lefever Property. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: June 19, 2002.

John A. Blankenship,

Acting Regional Director.

[FR Doc. 02–17072 Filed 7–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Act: Request for Small Grants Proposals for Year 2003

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that we, the U.S. Fish and Wildlife Service (Service) and the North American Wetlands Conservation Council (Council), are currently entertaining proposals that request match funding for wetland and wetland-associated upland conservation projects under the Small Grants program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. We will give funding priority to projects from new grant applicants with new partners, where the project ensures long-term conservation benefits. However, previous Act grantees are eligible to receive funding and can compete successfully on the basis of strong project resource values.

DATES: Proposals must be postmarked no later than Friday, November 29, 2002.

ADDRESSES: Address proposals to: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Small Grants Coordinator, or Office Secretary, Division of Bird Habitat Conservation, 703.358.1784; facsimile 703.358.2282.

SUPPLEMENTARY INFORMATION: The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended (16 U.S.C. 4401 *et seq.*) is, through partnerships, to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitats. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated uplands habitat.

Initiated in 1996, the underlying objective of the NAWCA-based Small Grants program is to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to compete in the Standard Grants program. We also hope that successful participants in the Small Grants program will be encouraged to participate as a grantee or partner in the Standard Grants program. Over the first seven years of the Small Grants program, 553 proposals requesting a total of approximately $19.8 million competed for funding. Ultimately, 164 projects were funded over this period for about $6.7 million. For 2003, with the approval of the Migratory Bird Conservation Commission, we have made the Small Grants program operational at a base level of $1.0 million. Between $1.0 and $2.0 million in Small Grants projects may be funded. However, ultimately, the level of Small Grant funding depends upon the quality of the pool of grant proposals.

To be considered for funding in the 2003 cycle, proposals must have a grant request no greater than $50,000. We will accept all wetland conservation proposals that meet the requirements of the Act. However, considering appropriate proposal resource values, we will give funding priority to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits. This priority system does not preclude former NAWCA grant recipients from receiving Small Grants funding; ultimately, project resource value is the critical factor in deciding which projects receive funding. Also, projects are likely to receive a greater level of attention if they are part of a broader related or unrelated effort to bring or restore wetland or wetland-associated upland conservation values to a particular area or region.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget must constitute 10 percent or less of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands. Mitigation-related projects may be precluded from consideration, depending upon the nature of the mitigation.

Please keep in mind that NAWCA and matching funds may be applied only to wetlands acquisition, creation, enhancement, and/or restoration; they may not be applied to signage, displays, trails or other educational features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, acceptable project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals are not considered for funding.

Even though we require less total application information for Small Grants than we do for the Standard Grants program, Small Grant proposals must have clear explanations and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council-established guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, "Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds." Applicants must submit a completed Standard Form 424, Application For Federal Assistance. Hard copies of Small Grant instructions (booklets) are no longer provided, except under special circumstances. However, the NAWCA Program website, *http://birdhabitat.fws.gov*, contains instructions for completing and submitting a Small Grant application, as well as forms and instructions for the Standard Form 424.

Conservation Council and the Migratory Bird Conservation Commission; is necessary to determine the eligibility and relative value of wetland projects; results in an approximate paperwork burden of 80 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by

Dated: June 5, 2002.

Russ McFarling,

Acting District Manager.

[FR Doc. 02–17133 Filed 7–3–02; 2:00 pm]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine and coastal environments; to

paper form submission, and is calculated as follows:

In the Gulf of Mexico OCS Region:

25% of 13,000 well tests via electronic submission = 3,250 reports x 5 minutes/60 = 271 hours.

75% of 13,000 via paper form/average 5 wells/form = 1,950 forms x 30 minutes/60 = 975 hours.

In the Pacific OCS Region:

100% of 600 well tests via paper

has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 7, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual

Federal Assistance. Hard copies of Small Grant instructions (booklets) are no longer provided, except under special circumstances. However, the NAWCA Program website, *http://birdhabitat.fws.gov*, contains instructions for completing and submitting a Small Grant application, as well as forms and instructions for the Standard Form 424.

Small Grant proposals may be submitted prior to the due date but must be postmarked no later than Friday, November 29, 2002. Address submitted proposals as follows: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203, Attn: Small Grants Coordinator.

Applicants must submit *complete* grant request packages to the Division of Bird Habitat Conservation (DBHC), including *all* of the documentation of partners (partner letters) with funding pledge amounts. Information on funding in partner letters, i.e., amounts and description regarding use, must correspond with budget amounts in the budget table and any figures provided in the narrative.

With the volume of proposals received, we are not usually able to contact proposal sources to verify and/or request supplemental data and/or materials. Thus, those proposals lacking required information or containing conflicting information are subject to being declared ineligible and not further considered for funding.

For more information, call the DBHC office secretary at 703.358.1784, facsimile 703.358.2282, or send e-mail to *R9ARW_DBHC@FWS.GOV*. Small Grant application instructions may be available by E-mail as a WordPerfect© file, upon special request.

In conclusion, we require that, upon arrival in the DBHC, proposal packages must be: complete with regard to the information requested, presented in the format requested, and be presented according to the established deadline.

The Service has submitted information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. On May 26, 1999, OMB gave its approval for this information collection and confirmed the approval number as 1018–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the North American Wetlands Conservation Council and the Migratory Bird Conservation Commission; is necessary to determine the eligibility and relative value of wetland projects; results in an approximate paperwork burden of 80 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

North American Wetlands Conservation Act: Request for Small Grants Proposals for Year 2003.

Dated: June 17, 2002.

Steve A. Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–16982 Filed 7–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Upper Snake River District Resource Advisory Council Meeting; Correction, Location and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Upper Snake River District Resource Advisory Council Meeting: Correction, Location and Times.

SUMMARY: On May 20, 2002, we published the date of the next Upper Snake River District Resource Advisory Council (RAC) Meeting as May 29, 2002 (67 FR 35572). The notice would not have allowed enough time for public participation. The meeting has been re-scheduled for July 24, 2002, beginning at 1 p.m.; and July 25, 2002, beginning at 8 a.m. The meeting will be held at the Sun Valley Elkhorn Lodge, 1 Elkhorn Road, in Sun Valley, Idaho.

SUPPLEMENTARY INFORMATION: The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. All meetings are open to the public. Each formal council meeting has time allocated for hearing public comments, and the public may present written or oral comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact the address below.

FOR FURTHER INFORMATION: David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

Dated: June 5, 2002.

Russ McFarling,

Acting District Manager.

[FR Doc. 02–17133 Filed 7–3–02; 2:00 pm]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of information collection (1010–0017).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of form MMS–128, Semiannual Well Test Report. This notice also provides the public a second opportunity to comment on the paperwork burden of this reporting requirement.

DATES: Submit written comments by August 7, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0017), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments to MMS, the e-mail address is: *rules.comments@MMS.gov*. Reference Information Collection 1010–0017 in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, at (703) 787–1600. You may also contact Alexis London to obtain a copy of the form at no cost.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–128, Semiannual Well Test Report.

OMB Control Number: 1010–0017.

Abstract: The Outer Continental Shelf (OCS) Lands Act (Act), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

This notice pertains to a form used to collect information required under 30 CFR 250, subpart K, on production rates. Section 250.1102(b) requires respondents to submit form MMS–128. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2). Regional Supervisors use information submitted on form MMS–128 to evaluate the results of well tests to find out if reservoirs are being depleted in a way that will lead to the greatest ultimate recovery of hydrocarbons. We designed the form to present current well data on a semiannual basis to allow the updating of permissible producing rates and to provide the basis for estimates of currently remaining recoverable gas reserves. We are proposing no changes to the data elements on form MMS–128. However, we are reducing the number of copies respondents must submit to only an original and "one" copy.

Frequency: Semiannual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The burden for submitting semiannual well test reports does not include the time to test the well or the pre-stabilization period. Respondents generally conduct tests even more frequently than required by our regulations. We only consider the burden to be the time to submit the information to MMS. We estimate respondents submit the results of approximately 13,000 well tests each year in the GOMR and about 600 in the POCSR, with an estimated annual hour burden of 1,336 hours. Based on $50 per hour, the hour burden cost to respondents is $66,800. The burden varies only slightly for electronic versus paper form submission, and is calculated as follows:

In the Gulf of Mexico OCS Region:

25% of 13,000 well tests via electronic submission = 3,250 reports x 5 minutes/60 = 271 hours.

75% of 13,000 via paper form/average 5 wells/form = 1,950 forms x 30 minutes/60 = 975 hours.

In the Pacific OCS Region:

100% of 600 well tests via paper form/average 20 wells/form = 30 forms x 3 hours = 90 hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens associated with the subject form.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 1, 2002, we published a **Federal Register** notice (67 FR 15408) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, 30 CFR 250.199 and the PRA statement on the form explain that the MMS will accept comments at any time on the information collection burden of our regulations and associated forms. We display the OMB control number and provide the address for sending comments to MMS. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 7, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 5, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–16925 Filed 7–5–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Connecticut State Museum of Natural History, University of Connecticut, Storrs, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Connecticut State Museum of Natural History, University of Connecticut that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items.

The National Park Service is not responsible for the determinations within this notice.

The 10 cultural items are a string of clamshell wampum beads, a brass arrow point, three stone pestles, an iron trade hatchet, an iron spike, a brass trade cooking pan, a brass trade kettle, and a brass button.

In 1942, these cultural items were removed during excavations related to a unassociated funerary objects should contact Nicholas F. Bellantoni, Connecticut State Archaeologist, Office of State Archaeology, University of Connecticut, Storrs, CT 06269-4214, telephone (860) 486-5248 before August 7, 2002. Repatriation of these unassociated funerary objects to the Mashantucket Pequot Tribe of Connecticut may begin after that date if before 1950 by Hosteen Left Hand, a Navajo Hataalii.

Representatives of the Navajo Nation, Arizona, New Mexico & Utah state that the Windway, Mountainway, Shootingway, and Evilway are four chants still performed by the Navajo Nation, Arizona, New Mexico & Utah. Bundles for these chants should only be in the possession of a qualified Hataalii

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Preliminary)]

Certain Frozen Fish Fillets From Vietnam

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping

www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 28, 2002, by the Catfish Farmers of

2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement

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The National Park Service is not responsible for the determinations within this notice.

The 10 cultural items are a string of clamshell wampum beads, a brass arrow point, three stone pestles, an iron trade hatchet, an iron spike, a brass trade cooking pan, a brass trade kettle, and a brass button.

In 1942, these cultural items were removed during excavations related to a home lot development project from in Mystic, CT, and were sold by the property owner, Mr. Al Kowsz, to Mr. Norris L. Bull sometime thereafter. In 1963, the family of Norris L. Bull donated the cultural items to the University of Connecticut; the items were held by the Department of Anthropology at the University of Connecticut until 1994, when they were accessioned by the Connecticut State Museum of Natural History. Museum records indicate that the cultural items were found with the human remains of five Native American individuals. The Connecticut State Museum of Natural History is not in possession of the human remains from these burials.

Based on geographic and historical evidence, the area in which the burials were located coincides with the aboriginal territory of the Pequot Indians, and lies in close proximity to the site of the Pequot Fort attacked by John Mason in 1637. The stylistic attributes of the burial goods are consistent with a 17th century date for the burials. Members of the Mashantucket Pequot Tribe of Connecticut are the direct descendants of the Pequot Indians.

Based on the above-mentioned information, officials of the Connecticut State Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), the 10 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Connecticut State Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Mashantucket Pequot Tribe of Connecticut.

This notice has been sent to officials of the Mashantucket Pequot Tribe of Connecticut and the Mohegan Indian Tribe of Connecticut. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Nicholas F. Bellantoni, Connecticut State Archaeologist, Office of State Archaeology, University of Connecticut, Storrs, CT 06269-4214, telephone (860) 486-5248 before August 7, 2002. Repatriation of these unassociated funerary objects to the Mashantucket Pequot Tribe of Connecticut may begin after that date if no additional claimants come forward.

Dated: March 20, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-17091 Filed 7-5-02 8:45 am]

BILLING CODE 4310-70-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Kennedy Museum of Art, Ohio University, Athens, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Kennedy Museum of Art, Ohio University, Athens, OH, that meet the definitions of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural items are ceremonial bundles of faunal materials, minerals, leather, feathers, and cloth, including one offering kit, one paint kit, one feather wand, three gourd rattles, one hide rattle, two buckskin saddlebags, one abalone shell, two silver stamps, one watching stone, and other assorted shells, stones, and arrowheads. Collectively these items are referred to as jish, representing universal objects used in four Navajo chantways: Windway, Mountainway, Shootingway, and Evilway.

The jish was donated to the Kennedy Museum of Art in January 1993 by Tobe A. Turpen, Jr. In correspondence with the museum in 1993, Mr. Turpen stated that the jish had been given to his father, Tobe Turpen, Sr., sometime before 1950 by Hosteen Left Hand, a Navajo Hataalii.

Representatives of the Navajo Nation, Arizona, New Mexico & Utah state that the Windway, Mountainway, Shootingway, and Evilway are four chants still performed by the Navajo Nation, Arizona, New Mexico & Utah. Bundles for these chants should only be in the possession of a qualified Hataalii (chanter, singer, or medicine person) capable of understanding the jish. In Navajo tradition, jish can only be cared for by an individual; it is not "property" and cannot be "owned." Documentation associated with the jish and information provided by representatives of the Navajo Nation, Arizona, New Mexico & Utah confirm that a relationship exists between the original makers of the ceremonial bundles and the Navajo Nation, Arizona, New Mexico & Utah.

Based on the above information, officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 43 CFR 10.2 (d)(3), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Kennedy Museum of Art, Ohio University, have also determined that, pursuant to 43 CFR 10.2 (d)(4), these cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and may not be alienated, appropriated, or conveyed by any individual tribal or organizational member. Lastly, officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Navajo Nation, Arizona, New Mexico & Utah.

This notice has been sent to officials of the Navajo Nation, Arizona, New Mexico & Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Jennifer McLerran, Curator, Kennedy Museum of Art, Ohio University, Lin Hall, Athens, OH 45701, telephone (740) 593-0952 or (749) 593-1304 before August 7, 2002. Repatriation of these cultural items to the Navajo Nation, Arizona, New Mexico & Utah may begin after that date if no additional claimants come forward.

Dated: April 11, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-17089 Filed 7-5-02; 8:45 am]

BILLING CODE 4310-70-S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1012 (Preliminary)]

Certain Frozen Fish Fillets From Vietnam

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1012 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 12, 2002. The Commission's views are due at Commerce within five business days thereafter, or by August 19, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-205-3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 28, 2002, by the Catfish Farmers of America, a trade association of U.S. catfish farmers and processors, and by individual U.S. catfish processors.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 19, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-205-3185) not later than July 17, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 1, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-16953 Filed 7-5-02; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-376, 377, and 379 and 731-TA-788-793 (Final) (Remand)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping and countervailing duty investigations, *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, Nos. 701-TA-376, 377 and 379 (Final) and 731-TA-788-793 (Final).

Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, August 12, 2002. The meeting is tentatively scheduled for 2 p.m.

Reopening Record

In order to assist it in making its determination on remand, the

notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395-7285.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses are estimated annually with an average of 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 hours annually.

decisions which have been rendered in an alien's case.

Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395-7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping and countervailing duty investigations, *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, Nos. 701–TA–376, 377 and 379 (Final) and 731–TA–788–793 (Final).

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake, Office of Investigations, telephone 202–205–3188 or Neal J. Reynolds, Office of General Counsel, telephone 202–205–3093, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

In May 1998, the Commission determined, by a four-to-two vote, that an industry in the United States was not being materially injured or threatened with material injury by reason of imports of cold-rolled stainless steel plate in coils from Belgium and Canada. On August 28, 2000, the Court of International Trade affirmed this determination as being in accordance with law and supported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, 116 F.Supp. 2d 1276 (CIT 2000). On April 19, 2002, the U.S. Court of Appeals for the Federal Circuit vacated lower court's ruling, finding that the Commission's volume and impact findings with respect to cold-rolled stainless steel plate were not in accordance with law and that its pricing finding for cold-rolled plate was unsupported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, Appeal No. 01–1223 (April 19, 2002). On June 18, 2002, in accordance with the Federal Circuit's decision, the Court of International Trade vacated its earlier decision and remanded to the Commission its final negative determination with respect to cold-rolled stainless steel plate. In its order, the Court of International Trade remands the determination to the Commission "for proceedings not inconsistent with the Federal Circuit's decision in Appeal No. 01–1223." It also directs the Commission to issue a remand determination within sixty days of the date of the order, *i.e.*, by August 19, 2002.

Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, August 12, 2002. The meeting is tentatively scheduled for 2 p.m.

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to seek additional data with respect to the impact of the subject imports from Belgium and Canada on the domestic industry producing cold-rolled stainless steel plate in coils.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this remand proceeding.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order ("APO") in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons who are on the Judicial Protective Order in the related CIT case, but are not currently covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

Each party who is an interested party in this remand proceeding may submit a written brief to the Commission. The brief must be concise and be limited to comments on how the data obtained in this remand proceeding affect the Commission's original determination with respect to cold-rolled stainless steel plate products. Any material in the comments not addressing this limited issue will be stricken from the record. The brief must be double-spaced, single-sided, and on stationary measuring 8½ inches. The comments will be limited to thirty (30) pages, and must be filed no later than the close of business on August 7, 2002.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 1, 2002.

By order of the Commission.

Marilyn Abbott,

Secretary.

[FR Doc. 02–16902 Filed 7–5–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office of Immigration for Review; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: revision of a currently approved collection, 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 71, page 18036 on April 12, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *Title of the form:* Alien's change of address form: 33/BIA Board of Immigration Appeals and 33/IC Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR 33/BIA, EOIR 33/IC, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* An alien whose immigration proceedings is statutorily required to report any change of address. *Other:* None. *Abstract:* The information on the change of address form is used by the Immigration Courts and the Board of Immigration Appeals to ascertain where to send the notice of the next administrative action or notice of any decisions which have been rendered in an alien's case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses are estimated annually with an average of 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 hours annually.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: June 28, 2002.

Brenda E. Dyer,

Department Deputy Clearance Office, United States Department of Justice.

[FR Doc. 02–16988 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a current approved collection, COPS Making Officer Redeployment Effective (MORE) Grant Program.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 36, page 8318 on February 22, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* COPS Making Officer Redeployment Effective (MORE) Grant Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: none. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal government. Other: None. The information collection will be used by the COPS Office to determine whether law enforcement agencies are eligible for one year grants specifically targeted to provide funding for technology and equipment. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 2,300 respondents will complete the

application. The amount of estimated time required for the average respondent to respond is 27 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours to conduct this survey is 62,100 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy

three of these divestitures have already been successfully accomplished; the fourth divestiture—the divestiture, at the Defendant's option, of either the New York City subway or bus advertising business—has not been completed, despite the efforts of the Defendants and a Court-appointed Trustee. The parties propose that the

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on May

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SWRI"): Clean Diesel III

Correction

In Notice Document 01–7769

concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the

(6) *An estimate of the total public (in hours) associated with the collection:* 41,938 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Service Division, Immigration and

application. The amount of estimated time required for the average respondent to respond is 27 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours to conduct this survey is 62,100 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: June 28, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer.

[FR Doc. 02–16989 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. CBS Corporation, Infinity Broadcasting Corporation, and Outdoor Systems, Inc., No. 1:99–CV3212 (D.D.C. June 6, 1999); United States' Notice of Proposed Termination of Final Judgment

Notice is hereby given that the United States and CBS Corporation, Infinity Broadcasting Corporation, and Outdoor Systems, Inc. (collectively "CBS"), have entered a Stipulation to modify the Final Judgment entered by the United States Court for the District of Columbia on June 6, 2000. In this Stipulation filed with the Court, the United States has provisionally consented to modification of the Final Judgment, but has reserved the right to withdraw its consent pending receipt of the public comments.

On December 6, 1999, the United States filed the Complaint in this case alleging that the acquisition by Infinity Broadcasting Corporation and CBS Corporation (collectively "CBS") of Outdoor Systems, Inc. ("OSI") violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleged that CBS and OSI were two of the largest out-of-home advertising companies in the United States; that the sale of out-of-home advertising constituted a relevant antitrust product market; and that the acquisition was likely to substantially reduce competition in three metropolitan areas: New York, New Orleans, and Phoenix.

The Final Judgment, which was entered by consent of the parties on June 6, 2000, ordered the divestiture of four separate groups of assets. To date, three of these divestitures have already been successfully accomplished; the fourth divestiture—the divestiture, at the Defendant's option, of either the New York City subway or bus advertising business—has not been completed, despite the efforts of the Defendants and a Court-appointed Trustee. The parties propose that the current Final Judgment be modified by substituting the Defendants' New York City telephone kiosk advertising business for the assets previously required to be divested.

The United States has filed a memorandum with the Court setting forth the reasons it believes modification of the Final Judgment would serve the public interests. Copies of the joint motion of the United States and CBS to establish procedures to modify the Final Judgment, the stipulation containing the United States' provisional consent to modification of the Final Judgment, the supporting memorandum, and all additional papers filed with the Court in connection with this motion are available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Room 215 North, Liberty Place Building, Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 2001. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested person may submit comments regarding the proposed modification of the Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days of the last publication of notices appearing in *The Wall Street Journal* and *Advertising Age* and will be filed with the Court by the United States. Comments should be addressed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Room 3000, Washington, DC 20530 (telephone: 202–307–0924). Comments may also be sent via electronic mail to *Allen.Grunes@usdoj.gov* or faxed to the attention of Allen Grunes at 202–514–7308.

Dorothy B. Fountain,

Deputy Director of Operations.

[FR Doc. 02–16923 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on May 15, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS"), the National Center for Manufacturing Sciences, Inc. ("NCMS"), has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aereous, L.L.C., Ann Arbor, MI; EER Systems, Inc., Chantilly, VA; and University of Tennessee, Knoxville, TN have been added as parties to the venture. Also, Erie Press Systems (an EFCO Company), Erie, PA; Auto-trol Technology Corporation, McLean, VA; Forging Industry Association, Cleveland, OH; Michigan BIDCO, Ann Arbor, MI; Michigan State University, East Lansing, MI; S.E. Huffman Corporation, Clover, SC; and VE Technologies, Blacksburg, VA have resigned as members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on December 18, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 23, 2002 (67 FR 3236).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–16922 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SWRI"): Clean Diesel III

Correction

In Notice Document 01–7769 appearing on pages 17204–17205 in the issue of Thursday, March 29, 2001, in the third column, heading of Notice, fifth line, "Clear Diesel" should read "Clean Diesel".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–16921 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Application for Nonimmigrant Status; Form I–914.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 31, 2002 at 67 FR 4784. Notification in the preamble of the interim rule allowed for a 60-day public comment period. Public comments were received by the INS and have been addressed and reconciled in the accompanying Supporting Statement.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of he proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–914, I–914 Supplement S, and I–914 Supplement B. Service Center Operations, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, a well as a brief abstract:* Primary: Individuals or households. This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386) and a request for employment. The information on all three parts of the form will be used for by the Service to determine whether applicants meet the eligibility requirements for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,750 Form I–914 responses at 2.25 hours per response; 18,750 Form I–914 Supplement A responses at 1 hour per response; and 7,000 Form I–914 Supplement B responses at .50 hours per response.

(6) *An estimate of the total public (in hours) associated with the collection:* 41,938 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Service Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: June 27, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–16943 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Freedom of Information/Privacy Act request.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 19, 2002 at 67 FR 12585, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

jurisdictional preparedness to respond to a terrorism incident. Approximately 4 months after the training, a sample of participants will be asked to complete a follow-up survey on how useful the training has been to them in performing their job actions they have taken to enhance response capacities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average to respond/

ACTION: Notice of correction.

SUMMARY: In the **Federal Register**, Vol. 67, No. 100, Wednesday, May 23, 2002 the competition was announced and the SGA printed in its entirety. Two of the background materials listed, the *Bolivia Country Report* and the *Peru Country Report*, were not available on-line as described in the SGA at the time of publication. These two country reports

notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

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Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Type of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–639. FOIA/PA Section, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street NW., Suite 1600, Washington, DC 20530.

Dated: June 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–16944 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: New; domestic preparedness training evaluation and follow-up.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume XX, Number 67, page 11517 on March 14, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Domestic Preparedness Training Evaluation and Follow-up.

(3) *The agency form number if any, and the applicable component of the Department sponsoring the collection:* The Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice is sponsoring the collections. A form number has not been assigned.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals who participate in office for Domestic Preparedness-sponsored training other: None. The data collection effort is designed to obtain feedback from participants, who attend Office for Domestic Preparedness-sponsored training, on enhanced knowledge and/or skills, course improvements, and actions to use the information to improve personal, agency, or jurisdictional preparedness to respond to a terrorism incident. Approximately 4 months after the training, a sample of participants will be asked to complete a follow-up survey on how useful the training has been to them in performing their job actions they have taken to enhance response capacities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average to respond/reply. It is estimated that approximately 21,390 respondents will be asked to complete the training evaluation forms and that will take approximately 15 minutes to complete.

(6) *An estimate of the total public burden (in hours associated with the collection:* The total hour burden to complete evaluation forms is approximately 5,347 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 2, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–16990 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of The Secretary

Solicitation for Grant Applications (SGA) 02–04; Combating Child Labor Through Education in Bolivia and Peru; Correction

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of correction.

SUMMARY: In the **Federal Register**, Vol. 67, No. 100, Wednesday, May 23, 2002 the competition was announced and the SGA printed in its entirety. Two of the background materials listed, the *Bolivia Country Report* and the *Peru Country Report*, were not available on-line as described in the SGA at the time of publication. These two country reports are now available on-line for review by the public at the following website address: *http://www.dol.gov/ilab/programs/iclp/bkgrdsga0204.htm.*

Due to this delay, the due date for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 pm EDT, July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 693–4570, e-mail: *harvey-lisa@dol.gov.*

Signed at Washington, DC this 2nd day of July, 2002.

Lawrence J. Kuss,

Director, Procurement Services Center.

[FR Doc. 02–16974 Filed 7–5–02; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/17/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
45,645	Clements Manufacturing (Comp)	Harbor Beach, MI	05/15/2002	Wire Harnesses.
45,646	Trinity Industries (Wrks)	Beaumont, TX	05/23/2002	Freight.
45,647	DuPont Co. (Wrks)	Niagara Falls, NY	05/20/2002	Polyethene Glycol.
45,648	Breeze Industrial Product (Comp)	Saltsburg, PA	05/13/2002	Hose Clamps.
45,649	Calument Steel Co (Wrks)	Chicago Heights, IL	05/24/2002	Bars.
45,650	Gerber Childrenswear (Wrks)	Ballinger, TX	06/03/2002	Blanket Sleepers.
45,651	Tyco Electronics Corp (Wrks)	Carlisle, PA	01/24/2002	Electroplated Components.
45,652	Sagem, Inc. (Comp)	Greenville, SC	05/27/2002	Gas Injectors.
45,653	La-Z-Boy East (IUE)	Florence, SC	05/23/2002	Recliner Chairs.
45,654	Harry J. Price Textiles (Comp)	Lowell, NC	05/15/2002	Various Fabrics.
45,655	BTA-Perlex (Wrks)	Butler, WI	05/22/2002	Industrial Heat and Pressure Vessels.
45,656	Hancock Manufacturing Co (Wrks)	Toronto, OH	05/29/2002	Steel Stampings.
45,657	Chevron Phillips Chemical (Wrks)	Orange, TX	05/20/2002	Polyethylene.
45,658	TNS Mills/Gaffney Weaving (Wrks)	Gaffney, SC	05/10/2002	Cloth for Men's Apparel.
45,659	Louisiana Uniform Ind. (Comp)	Delhi, LA	05/17/2002	Aprons, Vest, Doublets.
45,660	Amspec Chemical Corp (Wrks)	Gloucester City, NJ	03/06/2002	Antmony Flame Retardants.

APPENDIX—Continued

[Petitions instituted on 06/17/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
45,661	Soilmec Branham, Inc. (Wrks)	Conroe, TX	05/23/2002	Oil Field Equipment.
45,662	Cerro Copper Products (USWA)	St. Louis, MO	05/07/2002	Copper Tubes.
45,663	Gold Toe Brands, Inc. (Comp)	Burlington, NC	05/20/2002	Socks.
45,664	Alyeska Pipeling Service (Comp)	Anchorage, AK	04/16/2002	Crude Oils.
45,665	Scotty's Fashions (UNITE)	Lewistown, PA	05/30/2002	Ladies Sportswear.

APPENDIX—Continued

[Petitions instituted on 06/10/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,625	InSystem Technologies (Wrks)	Roanoke, VA	05/02/2002	Software Sales Support.
41,626	Sitel Corp. (Wrks)	Longview, TX	05/09/2002	Customer Care Center.
41,627	Moltrup Steel Co (Wrks)	Beaver Falls, PA	05/17/2002	Steel Bars.
41,628	Darco Kentucky (Comp)	Louisville, KY	05/20/2002	Orthopedic Softgoods.
41,629	Standard Steel (Wrks)	Burnham, PA	05/22/2002	Forged Railway Wheels.

APPENDIX—Continued
[Petitions instituted on 06/17/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
45,661	Soilmec Branham, Inc. (Wrks)	Conroe, TX	05/23/2002	Oil Field Equipment.
45,662	Cerro Copper Products (USWA)	St. Louis, MO	05/07/2002	Copper Tubes.
45,663	Gold Toe Brands, Inc. (Comp)	Burlington, NC	05/20/2002	Socks.
45,664	Alyeska Pipeling Service (Comp)	Anchorage, AK	04/16/2002	Crude Oils.
45,665	Scotty's Fashions (UNITE)	Lewistown, PA	05/30/2002	Ladies Sportswear.
45,666	P.S.M. Fastener Corp. (Wrks)	St. Louis, MO	05/24/2002	Metal Inserts.
45,667	Mechanical Products (IAMAW)	Jackson, MI	05/28/2002	Circuit Breakers.
45,668	Visiontek, LLC (Wrks)	Gurnee, IL	05/08/2002	Computer Graphic Accelerator Cards.
45,669	Hankison International (USWA)	Washington, PA	05/24/2002	Compressed Air Dryers.
45,670	Burlington Industries (Comp)	Graham, NC	05/22/2002	Furniture Upholstery.
45,671	West Penn Hat and Cap (UNITE)	Creighton, PA	05/14/2002	Baseball Caps and Visors.
45,672	VMV Enterprises, Inc. (IAMAW)	Paducah, KY	05/29/2002	Repairs & Locomotives, Traction Motors.
45,673	Nichirin Coupler (Wrks)	El Paso, TX	05/28/2002	Transfering Machines.
45,674	Kennametal Greenfield (Wrks)	Greenfield, MA	05/14/2002	Taps.
45,675	Great Lakes Chemicals (Wrks)	Newport, TN	05/10/2002	Brominated Flame Retardant.
45,676	Thomson Multimedia, Inc., (IAMAW)	Lancaster, PA	05/24/2002	Televisions.
45,677	Ames True Temper (USWA)	Parkersburg, WV	05/17/2002	Lawn and Garden Tools.
45,678	Pepperell Paper Co (PACE)	Pepperell, MA	05/28/2002	Colored Paper.
45,679	NewSouth Apparel, LLC (Comp)	Brewton, AL	06/07/2002	Apparel.
45,680	Goodyear Tire and Rubber (USWA)	Green, OH	06/04/2002	Rubber Air Springs.
45,681	Farley's and Sathers (Wrks)	Pittston, PA	05/14/2002	Candy.
45,682	Canon Business Machines (Comp)	Costa Mesa, CA	05/14/2002	Ink Jet Printers and Peripheral Products.
45,683	International Comfort (IAMAW)	Lewisburg, TN	05/20/2002	Commercial Heating Ventilation.
45,684	Supreme Tool and Die Co (Comp)	Fenton, MO	05/22/2002	Tooling.
45,685	Dana Corporation (Comp)	Columbia City, IN	06/10/2002	Power Steering Assembly.
45,686	Buehler Motor, Inc. (Comp)	Kinston, NC	05/29/2002	Sub-fractional HP Permanent Motors.
45,687	Oxford of South Carolina (Comp)	Walhalla, SC	05/31/2002	Women's Apparel.
45,688	Stork H and E Turbo (Wrks)	Ithaca, NY	06/03/2002	Gas and Steam Turbine Blades.

[FR Doc. 02–16975 Filed 7–5–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of June, 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

APPENDIX
[Petitions instituted on 06/10/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,616	Greenfield Industries (USWA)	Lyndonville, VT	05/14/2002	Taps.
41,617	American Papermills (PACE)	Gilman, VT	05/28/2002	Printing Paper.
41,618	Ethan Allen, Inc. (Comp)	Randolph, VT	05/29/2002	Furniture.
41,619	Ube Automotive (UAW)	Mason, OH	05/29/2002	Aluminum Wheels.
41,620	Atofina Chemicals, Inc. (Wrks)	Wichita, KS	05/13/2002	RZZ Refrigerant.
41,621	Gorham Manufacturing Comp)	Smithfield, RI	05/30/2002	Sterling Silver/Stainless Steel.
41,622	Permagraphics, Inc. (Comp)	Eugene, OR	05/28/2002	Window Stickers.
41,623	DeCrane Aircraft Seating (Wrks)	Marinette, WI	05/24/2002	Medical Equipment.
41,624	ADC Telecommunications Wrks)	Shakopee, MN	05/30/2002	Fiber Optic Cables.

APPENDIX—Continued
[Petitions instituted on 06/10/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
41,625	InSystem Technologies (Wrks)	Roanoke, VA	05/02/2002	Software Sales Support.
41,626	Sitel Corp. (Wrks)	Longview, TX	05/09/2002	Customer Care Center.
41,627	Moltrup Steel Co (Wrks)	Beaver Falls, PA	05/17/2002	Steel Bars.
41,628	Darco Kentucky (Comp)	Louisville, KY	05/20/2002	Orthopedic Softgoods.
41,629	Standard Steel (Wrks)	Burnham, PA	05/22/2002	Forged Railway Wheels.
41,630	Metokote Corp. (Wrks)	Loudon, TN	05/07/2002	Upper and Lower Links, Buckets.
41,631	Smiths-Aerospace (Comp)	Malvern, PA	05/13/2002	Facility Products.
41,632	Tecknit, Inc. (Comp)	Cranford, NJ	05/01/2002	O-Rings, Fingerstock, Wire Mesh.
41,633	Specialty Machine Co (Comp)	Gastonia, NC	05/17/2002	Tool and Die Parts.
41,634	Ansell Protective Product (Wrks)	Coshocton, OH	05/17/2002	Industrial Gloves.
41,635	T and J Personal Services (Comp)	Clearfield, PA	05/14/2002	Janitorial Services.
41,636	Invensys, Inc-Foxboro Co. (Comp)	Foxboro, MA	05/03/2002	Cable Assemblies.
41,637	Jones Apparel Group (Wrks)	Rural Hall, NC	04/30/2002	Clothes.
41,638	Glenn Enterprises, Inc (Wrks)	Sulligent, AL	05/14/2002	Ladies/Men's Casual Pants.
41,639	Sony Electronics (Wrks)	San Diego, CA	05/10/2002	Television and Computer Monitors.
41,640	Halmode Apparel, Inc. (Comp)	Roanoke, VA	05/15/2002	Ladies Apparel.
41,641	Southwest Cupid (Comp)	Bristow, OK	05/29/2002	Ladies Undergarments.
41,642	Parksley Apparel (Comp)	Parksley, VA	05/24/2002	Ladies' Blouses.
41,643	JD Holding Co., Inc. (Wrks)	Springport, MI	05/29/2002	Automatic Brake Systems.
41,644	Lear Corp Mariette (UAW)	Mariette, MI	05/31/2002	Headliners & Sunvisors.

[FR Doc. 02–16976 Filed 7–05–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Wage and Hour Division, is soliciting comments concerning the proposed collection "Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations 29 CFR part 529 (WH–201)." A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 6, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(b)(3) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to provide certificates authorizing the employment of full-time students at subminimum wages in institutions of higher education to the extent necessary to prevent curtailment of opportunities for employment. This section also sets limits on such employment and protects the full-time employment opportunities of other workers. Th WH–201 is used by employers seeking such authorization. This information collection is currently approved by the Office of Management and Budget (OMB) for use through January 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an approval of the revision of the information collection instrument to simplify the application process for employers. The instructions have been clarified and employers are no longer requested to provide the information regarding the number of students they expect to employ at subminimum wages. The revised form will allow the Wage and Hour Division (WHD) to take advantage of new report writing capabilities available to the WHD through its automated Certificate Processing System (CPS). By standardizing the information requested about the number of full-time students being employed by employers who request certification, the CPS will generate accurate reports concerning the

employment of all full-time students at subminimum wages. The reformatting of the WH–201 provides sufficient space to allow the CPS to generate preprinted renewal applications for employers prior to the expiration of each certificate. These renewal applications will be sent to employers sixty days before the expiration date of their current certificates.

Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

DATES: Wednesday, July 17, 2002, 8:30 a.m. to 5 p.m., Thursday, July 18, 2002, 8:30 a.m. to 5 p.m., and Friday, July 19, 2002, 9–11:30 a.m.

Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

DATES: Tuesday, July 16, 2002, 8:30 a.m. to 5:30 p.m., Wednesday, July 17, 2002, 8:30 a.m. to 5:30 p.m., and Thursday, July 18, 2002, 8:30 a.m. to Noon.

National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received by July 23, 2002.

FOR FURTHER INFORMATION CONTACT:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–083]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the

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employment of all full-time students at subminimum wages. The reformatting of the WH–201 provides sufficient space to allow the CPS to generate preprinted renewal applications for employers prior to the expiration of each certificate. These renewal applications will be sent to employers sixty days before the expiration date of their current certificates.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations Part 519.

OMB Number: 1215–0080.

Agency Number: WH–201.

Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions.

Total Respondents: 15.

Total Responses: 15.

Burden Hours per Response (Reporting): 15 to 30 minutes.

Burden Hours Per Response: (Recordkeeping): 1 minute.

Total Burden Hours: (Reporting and Recordkeeping): 5.

Total Burden Cost: (capital/startup): $0.

Total Burden Cost: (operation/maintenance): $5.55.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 2, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–16977 Filed 7–5–02; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–082]

NASA Advisory Council, Space Science Advisory Committee Solar System Exploration Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

DATES: Wednesday, July 17, 2002, 8:30 a.m. to 5 p.m., Thursday, July 18, 2002, 8:30 a.m. to 5 p.m., and Friday, July 19, 2002, 9–11:30 a.m.

ADDRESSES: NASA Headquarters, 300 E Street SW, Washington, DC 20546, Room 6H46 on July 17 and room 9H40 on July 18 and 19.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Briefing on NRC Decadal Survey of Solar System Exploration
- Status reports on the Solar System Exploration Program, Mars Exploration Program, Deep Space Network (DSN), and Planetary Data System (PDS)
- Reports from Mars science working groups
- Discussion and working session for preparation of next Solar System Exploration Roadmap
- Evaluation of Solar System Exploration Program performance for Government Performance and Results Act (GPRA)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 1, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–16962 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–084]

NASA Advisory Council, Space Science Advisory Committee; Sun-Earth Connection Advisory Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

DATES: Tuesday, July 16, 2002, 8:30 a.m. to 5:30 p.m., Wednesday, July 17, 2002, 8:30 a.m. to 5:30 p.m., and Thursday, July 18, 2002, 8:30 a.m. to Noon.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Washington, DC 20546, room 7H46 on July 16 and July 17, and room 6H46 on July 18.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Division Director's Report
- Sun-Earth Connection Theme Roadmaps
- Discipline Scientists' Reports
- Status of Living with a Star Program
- FY 02 Outcomes for Government Performance and Results Act Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 2, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–16963 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–080]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Detcon Inc. of the Woodlands, TX, has applied for an exclusive patent license to practice the invention described and claimed in U.S. Patent No. 5,625,342, entitled "Plural-Wavelength Flame Detector that Discriminates between Direct and Reflected Radiation," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received by July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: July 1, 2002.

Paul G. Pastorek,

General Counsel.

[FR Doc. 02–16960 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–081]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Radio Sound, Inc. of Louisville, Kentucky, has applied for a partially exclusive patent license to practice the invention described and claimed in U.S. Patent Application Serial Number 09/163,794, entitled "Communication System with Adaptive Noise Suppression," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received by August 22, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: July 1, 2002.

Paul G. Pastorek,

General Counsel.

[FR Doc. 02–16961 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–083]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that TAO Systems of Integration, Inc., of Williamsburg, Virginia, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 4,936,146 (NASA Case Number 13952–2–SB), entitled "Method and Apparatus for Detecting Laminar Flow Separation and Reattachment," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; Telephone 757–864–3227; Fax (757) 864–9190.

Dated: July 1, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–16964 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Additional notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 22, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in American History, submitted to the Division of Research Programs at the May 1, 2002 deadline.

2. *Date:* July 23, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Studies of Science and Medicine, submitted to the Division of Research Programs at the May 1, 2002 deadline.

3. *Date:* July 24, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Music, submitted to the Division of Research Programs at the May 1, 2002 deadline.

4. *Date:* July 25, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Religious Studies, submitted to the Division of Research Programs at the May 1, 2002 deadline.

5. *Date:* July 25, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: M07.
Program: This meeting will review applications for Fellowships Program in

American Literature, submitted to the Division of Research Programs at the May 1, 2002 deadline.

6. *Date:* July 26, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Philosophy, submitted to the Division of Research Programs at the May 1, 2002 deadline.

Dated: July 1, 2002.

Laura S. Nelson,

Acting Director, Office of Guidelines and Standards.

[FR Doc. 02–16965 Filed 7–5–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit No. 1; Exemption

1.0 Background

The FirstEnergy Nuclear Operating Company (FENOC) is the holder of Facility Operating License No. NPF–3 which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Ottawa County, Ohio.

2.0 Request/Action

Pursuant to 10 CFR 50.12(a), FENOC has requested an exemption from the requirements of 10 CFR 50.46(a)(1)(i) and 10 CFR Part 50, Appendix K, I.A.5.(b)(2) to allow the use of the M5 cladding alloy for fuel rods in the DBNPS reactor core. Specifically, the exemption would allow the use of M5 cladding alloy for fuel rods in the DBNPS reactor core for the remainder of Cycle 14 and for Cycle 15.

3.0 Discussion

Pursuant to 10 CFR 50.12(a), the Commission may grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

10 CFR 50.46(a)(1)(i) requires that each boiling or pressurized-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated performance must satisfy the acceptance criteria set forth in paragraph 10 CFR 50.46(b). 10 CFR Part 50, Appendix K, I.A.5.(b)(2) requires that the Baker-Just equation be used to predict the rate of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction.

The purpose of 10 CFR 50.46(a)(1)(i) is to ensure adequate emergency core cooling system performance. The purpose of 10 CFR Part 50, Appendix K, I.A.5.(b)(2) is to ensure a conservative calculation of the energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The underlying purpose of these rules is to ensure adequate emergency core cooling system performance. The licensee has proposed to use the M5 cladding alloy for fuel rods in the DBNPS reactor core for the remainder of Cycle 14 and for Cycle 15. The licensee has performed a plant-specific loss-of-coolant accident (LOCA) analysis using the NRC-approved Babcock & Wilcox Nuclear Power Generation Group (BWNPGG) LOCA evaluation model. The licensee has demonstrated that the LOCA analysis using the M5 cladding alloy meets the acceptance criteria set forth in 10 CFR 50.46(b). Therefore, the licensee has demonstrated that the underlying purpose of 10 CFR 50.46(a)(1)(i) and 10 CFR Part 50, Appendix K, I.A.5.(b)(2) is met.

4.0 Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health or safety, and is consistent with the common defense and security. The Commission has also determined that special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants FENOC an exemption from the requirements of 10 CFR 50.46(a)(1)(i) and 10 CFR Part 50, Appendix K, I.A.5.(b)(2) to allow the use of the M5 cladding alloy for fuel rods in the DBNPS reactor core for the remainder of Cycle 14 and for Cycle 15.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 39,600).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of July 2002.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–16966 Filed 7–5–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is proposing to request extension of a currently approved information collection, Standard Form 2817, Life Insurance Election.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540

and

Joseph Lackey, Jr., OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: A copy of this proposal, the request for clearance (SF 83), and supporting statement may be obtained by contacting Mary Beth Smith-Toomey, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540, or by telephone at 202–606–2150, or by FAX at 202–418–3251, or by e-mail at *mbtoomey@opm.gov*. Please include a mailing address with your request.

SUPPLEMENTARY INFORMATION: Standard Form 2817 is used by employees to elect Federal Employees' Group Life Insurance (FEGLI) coverage, to waive coverage, to change coverage, or to decline coverage. The form is also used by employees to designate a beneficiary for basic insurance coverage. Approximately 100,000 SF 2817's are completed annually. We estimate it takes an average of 15 minutes to complete the form. The total annual burden is 25,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey at 202–606–2150, FAX 202–418–3251 or e-mail *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street,

assurance of consideration cannot be given to comments received after this date: Bryon Allen, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this first day of July, 2002.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–16965 Filed 7–5–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit No. 1; Exemption

1.0 Background

The FirstEnergy Nuclear Operating Company (FENOC) is the holder of Facility Operating License No. NPF–3 which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Ottawa County, Ohio.

2.0 Request/Action

Pursuant to 10 CFR 50.12(a), FENOC has requested an exemption from the requirements of 10 CFR 50.46(a)(1)(i) and 10 CFR Part 50, Appendix K, I.A.5.(b)(2) to allow the use of the M5 cladding alloy for fuel rods in the DBNPS reactor core. Specifically, the exemption would allow the use of M5 cladding alloy for fuel rods in the DBNPS reactor core for the remainder of Cycle 14 and for Cycle 15.

3.0 Discussion

Pursuant to 10 CFR 50.12(a), the Commission may grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

10 CFR 50.46(a)(1)(i) requires that each boiling or pressurized-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated performance must satisfy the acceptance criteria set forth in paragraph 10 CFR 50.46(b). 10 CFR Part 50, Appendix K, I.A.5.(b)(2) requires that the Baker-Just equation be used to predict the rate of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction.

The purpose of 10 CFR 50.46(a)(1)(i) is to ensure adequate emergency core cooling system performance. The purpose of 10 CFR Part 50, Appendix K, I.A.5.(b)(2) is to ensure a conservative calculation of the energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The underlying purpose of these rules is to ensure adequate emergency core cooling system performance. The licensee has proposed to use the M5 cladding alloy for fuel rods in the DBNPS reactor core for the remainder of Cycle 14 and for Cycle 15. The licensee has performed a plant-specific loss-of-coolant accident (LOCA) analysis using the NRC-approved Babcock & Wilcox Nuclear Power Generation Group (BWNPGG) LOCA evaluation model. The licensee has demonstrated that the LOCA analysis using the M5 cladding alloy meets the acceptance criteria set forth in 10 CFR 50.46(b). Therefore, the licensee has demonstrated that the underlying purpose of 10 CFR 50.46(a)(1)(i) and 10 CFR Part 50, Appendix K, I.A.5.(b)(2) is met.

4.0 Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health or safety, and is consistent with the common defense and security. The Commission has also determined that special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants FENOC an exemption from the requirements of 10 CFR 50.46(a)(1)(i) and 10 CFR Part 50, Appendix K, I.A.5.(b)(2) to allow the use of the M5 cladding alloy for fuel rods in the DBNPS reactor core for the remainder of Cycle 14 and for Cycle 15.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 39,600).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of July 2002.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–16966 Filed 7–5–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is proposing to request extension of a currently approved information collection, Standard Form 2817, Life Insurance Election.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540

and

Joseph Lackey, Jr., OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: A copy of this proposal, the request for clearance (SF 83), and supporting statement may be obtained by contacting Mary Beth Smith-Toomey, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540, or by telephone at 202–606–2150, or by FAX at 202–418–3251, or by e-mail at *mbtoomey@opm.gov*. Please include a mailing address with your request.

SUPPLEMENTARY INFORMATION: Standard Form 2817 is used by employees to elect Federal Employees' Group Life Insurance (FEGLI) coverage, to waive coverage, to change coverage, or to decline coverage. The form is also used by employees to designate a beneficiary for basic insurance coverage. Approximately 100,000 SF 2817's are completed annually. We estimate it takes an average of 15 minutes to complete the form. The total annual burden is 25,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey at 202–606–2150, FAX 202–418–3251 or e-mail *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street,

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American Literature, submitted to the Division of Research Programs at the May 1, 2002 deadline.

6. *Date:* July 26, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in Philosophy, submitted to the Division of Research Programs at the May 1, 2002 deadline.

7. *Date:* July 29, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in European History I, submitted to the Division of Research Programs at the May 1, 2002 deadline.

8. *Date:* July 31, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships Program in American History II, submitted to the Division of Research Programs at the May 1, 2002 deadline.

Heather Gottry,
Acting Advisory Committee Management Officer.
[FR Doc. 02–16912 Filed 7–5–02; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.
ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.
FOR FURTHER INFORMATION CONTACT: Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5405.
SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts: Eileen B. Mason, Senior Deputy Chairman, Laurence M. Baden, Deputy Chairman for Management and Budget, Alfred B. Spellman, Jr., Deputy Chairman for Guidelines, Panel, and Council Operations, Ann G. Hingston, Congressional and White House Liaison, Michael R. Burke, Chief Information Officer.

Murray R. Walsh,
Director of Administrative Services, National Endowment for the Arts.
[FR Doc. 02–16927 Filed 7–5–02; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).
ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* 10 CFR part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. In addition, recordkeeping must be performed on an on-going basis, and reports of transfer of byproduct material must be reported every 10 years.
5. *Who will be required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees or persons exempt from licensing.
6. *An estimate of the number of responses:* 3,502.
7. *The estimated number of annual respondents:* 194 NRC licensees and 491 Agreement State licensees.
8. *An estimate of the number of hours needed annually to complete the requirement or request:* 151,644 (53,012 hours for NRC licensees [4,507 reporting + 48,505 hours recordkeeping]) or an average of 273 hours per licensee and (98,632 hours for Agreement State licensees [3,210 hours reporting + 95,422 hours recordkeeping]) or 201 hours per Agreement State licensee.
9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.
10. *Abstract:* 10 CFR part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees or persons exempt from licensing. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a specific license, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. In addition, 10 CFR part 32 prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 7, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date: Bryon Allen, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this first day of July, 2002.

For the Nuclear Regulatory Commission.
Beth C. St. Mary,
Acting NRC Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 02–16955 Filed 7–5–02; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a New Information Collection System

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), 5 CFR 1320.5(a)(1)(iv), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a new information collection. 5 CFR part 317 provides regulations for the administration of a Senior Executive Service. As a part of that Service, a Senior Executive Service Senior Opportunity and Resume System (SOARS) is to be established for the purpose of facilitating the mobility of executives across the Federal government. This System will be collecting resume data from SES members for the purpose of matching this data with available position vacancies for executives.

It is estimated, based upon the pilot that is being used, that 300 short resumes will be completed in the first year of the program. Each resume will take about 30 minutes to complete for an annual estimated burden of 150 hours.

Comments are particularly invited on:
- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who respond through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at 202–606–2150, FAX 202–418–3251 or e-mail *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal must be received within 60 calendar days from the date of this publication.
ADDRESSES: Send or deliver comments to: Joyce Edwards, Chief, Office of Executive Resources Management, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6484, Washington, DC 20415.

U.S. Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–16948 Filed 7–5–02; 8:45 am]
BILLING CODE 6325–43–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 34–1 and RI 34–3

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM to determine whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Amount Due Because of Annuity Overpayment, informs the annuitant about the overpayment and collects information.

Approximately 520 RI 34–1 and 1,561 RI 34–3 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 520 hours and 1,561 hours respectively.

For copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358, FAX (202) 418–3251 or via e-mail at *mbtoomey@opm.gov.*

Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.
ADDRESSES: Send or deliver comments to:
Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.
FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing & Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–16949 Filed 7–5–02; 8:45 am]
BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2809

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection. SF 2809, Employee Health Benefits Election Form, is used by Federal employees to enroll for health insurance coverage under the Federal Employees Health Benefits (FEHB) Program. Certain former spouses of Federal employees, who are eligible for enrollment under the Spouse Equity Act of 1984 (P.L. 98–615), and former employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.
ADDRESSES: Send or deliver comments to:
Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.
FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publishing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–16950 Filed 7–5–02; 8:45 am]
BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2817

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection. SF 2817, Life Insurance Election, is used by Federal employees to enroll for life insurance coverage under the Federal Employees' Group Life Insurance (FEGLI) Program. Certain former spouses of Federal employees, who are eligible for enrollment under the Spouse Equity Act of 1984 (P.L. 98–615), and former employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEGLI law (5 U.S.C. 8706(b)) also use this form.

Approximately 9,000 SF 2817 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.
ADDRESSES: Send or deliver comments to:
Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.
FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publishing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–16951 Filed 7–5–02; 8:45 am]
BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46149; File No. SR–CBOE–2002–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending for a Three-Month Period

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 25, 2000, the Commission approved on a nine-month pilot basis the Exchange's proposal to amend Rule 6.8, which governs the operation of RAES,[4] to provide the appropriate FPC system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's

approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415–3600, and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Budget and Administrative Services Division, Desktop Publishing and Printing Team, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–16950 Filed 7–5–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2809–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, is used by annuitants of Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP) and certain former dependents of these individuals. These include former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615) and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of Federal Employees Health Benefits (FEHB) law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415–3600 and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Budget and Administrative Services Division, Desktop Publishing and Printing Team, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–16952 Filed 7–5–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–7, Marital Status Certification Survey, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1000 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to William C. Jackson, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2336, Washington, DC 20415–3560.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–16947 Filed 7–5–02; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46149; File No. SR–CBOE–2002–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending for a Three-Month Period the Pilot Program for the Exchange's 100 Spoke RAES Wheel

June 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by CBOE as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend, for an additional three-month period, the pilot program that permits the appropriate Floor Procedure Committee ("FPC") to allocate orders on the Exchange's Retail Automatic Execution System ("RAES") under the allocation system known as the 100 Spoke RAES Wheel.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 25, 2000, the Commission approved on a nine-month pilot basis the Exchange's proposal to amend Rule 6.8, which governs the operation of RAES,[4] to provide the appropriate FPC with a third choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.[5] In those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades to participating market-makers is essentially identical to the distribution of in-person agency market-maker trades for non-RAES trades in that class. The 100 Spoke RAES Wheel pilot program is used as anticipated.

The pilot program was extended three times and currently ends on June 28, 2002.[6] The Exchange now proposes to extend the pilot program for an additional three-month period ending September 28, 2002[7] for additional study of the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular. Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) Does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.

The Exchange has requested that the Commission waive the five-day pre-notice requirement and the 30-day operative delay, to permit the Exchange to implement the proposal immediately. Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest

[4] RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[5] Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000) (SR–CBOE–99–40).

[6] Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (six-month extension, SR–CBOE–2001–07); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (four-month extension, SR–CBOE–2001–47); and Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (six-month extension, SR–CBOE–2001–68).

[7] In the narrative portion of the filing, CBOE inadvertently identified the expiration date of the three-month extension that is the subject of the filing as June 28, 2002. According to CBOE, the intended expiration date is September 28, 2002. Telephone conversation among Madge Hamilton, Legal Division, CBOE, Gordon Fuller, Counsel to the Assistant Director, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

because it will allow for the continued operation of the pilot without interruption.[14] According to CBOE, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE maintains that given the widespread use of the 100

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16983 Filed 7–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE

4701. Definitions

(a) through (gg) No Change.

(hh) The term "Day" shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4:00 p.m. Eastern Time), after which it shall be returned

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

Time. According to Nasdaq, since quotes are not open or considered firm at this time, a Directed Order with a Day designation entered prior to the 9:30 a.m. market open will not obligate the receiving party to execute that order. However, such orders may be accepted, countered, or otherwise may commence negotiations leading to a transaction between the parties. Directed Orders with a Day designation may not be

price levels displayed in SuperMontage. Nasdaq's proposal seeks to alleviate concerns that the separation of aggregated price level information from the remainder of aggregate interest could lead to potential confusion among users of the summary scan feature as to what constitutes the best price in Nasdaq at a particular time. According to Nasdaq, the proposed changes to the summary scan combines information,

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because it will allow for the continued operation of the pilot without interruption.[14] According to CBOE, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE maintains that given the widespread use of the 100 Spoke RAES Wheel in equity options trading stations, requiring the Exchange to discontinue the use of the 100 Spoke RAES Wheel as of June 29, 2002 would cause disruption to those trading stations and thus, be disruptive to investors and the public interest. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission. The Commission also waives the five-business-day pre-filing requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-CBOE–2002–34 and should be submitted by July 29, 2002.

[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16983 Filed 7–5–02; 8:45 am]

BILLING CODE 3010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46140; File No. SR–NASD–2002–81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness by the National Association of Securities Dealers, Inc. Relating to the Time In Force and Cancellation Parameters for Directed Orders and the Summary Scan Functionality of Nasdaq's SuperMontage System

June 28, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to add NASD Rule 4701(hh), and amend paragraphs (b)(2) of NASD Rule 4706 ("Order Entry Parameters"), and (d) of NASD Rule 4707 ("Entry and Display of Quotes/Orders"), which govern the time in force parameters for Directed Orders, and the summary scan functionality of Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage"), respectively. Nasdaq proposes to implement this proposed rule change within 30 days after successful completion of SuperMontage user acceptance testing. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4701. Definitions

(a) through (gg) No Change.

(hh) The term "Day" shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4:00 p.m. Eastern Time), after which it shall be returned to the entering party.

4706. Order Entry Parameters

(a) No Change.

(b) Directed Orders A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of [1] *3* to 99 minutes[.], *or may be designated as a "Day" order.*

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) through (f) No Change.

4707. Entry and Display of Quotes/Orders

(a) through (c) No Change.

(d) Summary Scan—The "Summary Scan" functionality, which is a query only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) [below] *including* the number of price levels authorized for aggregation and display pursuant to Rule 4701 (ee).

(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its ongoing preparation for the launch of SuperMontage, Nasdaq is engaging in a continuing review of the system's functionality, and rules thereof, with a view towards constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq proposes to modify certain SuperMontage parameters, functionality, and rules as they relate to time in force of Directed Orders and SuperMontage's summary scan feature.

a. Directed Orders

Nasdaq proposes to provide additional flexibility for SuperMontage participants in determining the life of Directed Orders sent to the system. Directed Orders are orders that are sent to a specific market maker or electronic communications network. In SuperMontage, a firm that receives a Directed Order has the ability to choose whether it will consider those Directed Orders as a liability order or a non-liability order.

Currently, a Directed Order in SuperMontage may have a time in force from 1 to 99 minutes. Nasdaq proposes to amend the time in force provision to a 3 to 99 minute standard, and also provide the capability for SuperMontage users to designate Directed Orders as a "Day" order. As defined in proposed NASD Rule 4701 (hh), a Day order designation would indicate that the order is to remain in force until the Nasdaq market closes (currently 4:00 p.m. Eastern Time) on the day the order was submitted. Under the proposal, unexecuted Day orders would be cancelled and returned by Nasdaq to the sender at market close.

Like other Directed Orders, a Directed Order with a Day designation may be entered starting at 8:00 a.m. Eastern Time. According to Nasdaq, since quotes are not open or considered firm at this time, a Directed Order with a Day designation entered prior to the 9:30 a.m. market open will not obligate the receiving party to execute that order. However, such orders may be accepted, countered, or otherwise may commence negotiations leading to a transaction between the parties. Directed Orders with a Day designation may not be entered or executed during Nasdaq's after-hours session (4:00 p.m. to 6:30 p.m. Eastern Time),[3] nor will they participate in the pre-open unlocking and uncrossing process recently proposed by Nasdaq in File No. SR–NASD–2002–56.[4]

Nasdaq believes that the proposed amendments to the time in force parameters for Directed Orders will provide an additional degree of flexibility to market participants to manage their Directed Order flow. Nasdaq believes that the ability to set a specific time period that an order will remain in effect, including the ability to have an order remain in effect for the entire day, are long-standing industry functionalities used by many market participants that accept and retain orders. In addition, Nasdaq believes that these new SuperMontage standards are consistent with current time in force practices in Nasdaq's SelectNet service, and can be expected to reduce technological burdens on firms converting to SuperMontage and thereby assist and simplify the transition to the system.

b. Summary Scan

Nasdaq also proposes to improve the SuperMontage summary scan feature. Currently, the summary scan feature allows SuperMontage participants to query the system and see the aggregate attributed and unattributed size of quotes/orders for all price levels in a particular security, below the best five price levels in SuperMontage.[5] In response to input from market participants, Nasdaq proposes to modify the summary scan feature to combine all aggregate quote/order information, including the aggregate of the five best price levels displayed in SuperMontage. Nasdaq's proposal seeks to alleviate concerns that the separation of aggregated price level information from the remainder of aggregate interest could lead to potential confusion among users of the summary scan feature as to what constitutes the best price in Nasdaq at a particular time. According to Nasdaq, the proposed changes to the summary scan combines information, already available separately through SuperMontage, into a single integrated information source.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and Section 15A(b)(6) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder[9] because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, provided

[3] Nasdaq anticipates submitting a proposed rule change to extend the operation of the After Hours Pilot program to SuperMontage. *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (Approval of After Hours Pilot program for the Nasdaq SelectNet Service).

[4] *See* Securities Exchange Act Release No. 45985 (May 20, 2002), 67 FR 36659 (May 24, 2002).

[5] Nasdaq recently expanded the aggregated price levels available through the Nasdaq Order Display Facility from three to five. *See* Securities Exchange Act Release No. 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*s*(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

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that Nasdaq has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46153; File No. SR–NASD–2002–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National

language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit[.]

For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter

an order into CAES that is executed in whole or in part, *and $0.002 per share executed shall be credited to the CAES market maker that executes such an order.*[*]

(B) As of [November 1, 1997, $1.00 per commitment] *July 1, 2002, $0.002 per share executed* shall be paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in

participate in the InterMarket, and ITS, a system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[7]

Nasdaq proposes to modify the InterMarket fee structure to encourage market participants to provide additional liquidity to support executions through the InterMarket and

similar programs[10] and thereby maintain market share in listed securities.

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA ("Tape A"),

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that Nasdaq has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2002–81 and should be submitted by July 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16985 Filed 7–5–02; 8:45 am]

BILLING CODE 8010–01–P

[10] As required under Rule 19b–4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46153; File No. SR–NASD–2002–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Modify Execution Fees for Nasdaq's Intermarket Trading System and Computer Assisted Execution System, and to Extend the Transaction Credit Pilot Program for InterMarket Trades

July 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 21, 2002, Nasdaq amended the proposal.[3] Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder[5] as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes (i) to modify the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System ("ITS") and Nasdaq's Computer Assisted Execution System ("CAES"); and (ii) to modify and extend the transaction credit pilot program for InterMarket trades ("Program"). Nasdaq will implement the rule change on July 1, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit[.]

For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and ending with the calendar quarter starting on [April] *October* 1, 2002. *Effective as of July 1, 2002, for purposes of calculating the credit for trades executed through ITS or CAES, trade reports will be credited to the member that sells in response to a buy order or that buys in response to a sell order.*

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per *share* transaction charge plus equipment-related charges.

(1) Service Charges.

$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges.

(A) As of [January 1, 1998, $0.50 per execution] *July 1, 2002, $0.003 per share executed* shall be paid by an order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part, *and $0.002 per share executed shall be credited to the CAES market maker that executes such an order.*[*]

(B) As of [November 1, 1997, $1.00 per commitment] *July 1, 2002, $0.002 per share executed* shall be paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part, *and $0.001 per share executed shall be credited to a member that executes such an order.*[**]

[*As of September 1, 2000, a CAES market maker that receives and executes a CAES order or any part of a CAES order will not be required to pay a CAES transaction charge.]

[**As of September 1, 2000, a member that receives a commitment through the ITS/CAES linkage to buy or sell a security that is executed in whole or in part will not be required to pay a CAES transaction charge.]

(e)—(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[6] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The InterMarket comprises CAES, a system that facilitates the execution of trades in listed securities between NASD members that participate in the InterMarket, and ITS, a system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[7]

Nasdaq proposes to modify the InterMarket fee structure to encourage market participants to provide additional liquidity to support executions through the InterMarket and thereby enhance its competitiveness. Specifically, Nasdaq will replace the current CAES execution fee of $0.50 with a per share execution fee of $0.003, and will credit $0.002 per share to a member whenever it provides the liquidity to support an execution through CAES (*i.e.* sells in response to a buy order or buys in response to a sell order). Similarly, the current ITS execution fee of $1.00 will be replaced with a per share execution fee of $0.002, and a member that provides liquidity to support an ITS execution will receive a credit of $0.001 per share. This fee structure is similar to the structure that has been in place for Nasdaq's SuperSOES system since November 2001 and that will be used for Nasdaq's SuperMontage system which Nasdaq hopes to launch in the third quarter of 2002.[8]

Nasdaq also proposes to modify the Program that began in 1999.[9] Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association ("CTA"), by providing a transaction credit to members who exceed certain levels of OTC trading activity in NYSE and Amex listed securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also an important tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs[10] and thereby maintain market share in listed securities.

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA ("Tape A"), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades ("Tape B"). Eligibility for transaction credits is based on concurrent quarterly trading activity. Hitherto, trade reports of ITS and CAES transactions, which are reported to Nasdaq automatically, have been attributed to the sell side of the trade.[11] As an added encouragement for members to provide liquidity for executions through ITS and CAES, however, Nasdaq is modifying the Program to attribute ITS and CAES trades to a member that provides liquidity (*i.e.*, that sells in response to an order to buy or that buys in response to an order to sell). As is currently the case, members will be required to maintain an average daily level of attributable trades during a quarter to be eligible for a credit.

Nasdaq is also extending the Program, which is scheduled to expire on June 30, 2002. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the Program through December 31, 2002.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[12] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,[13] which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See June 21, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical, non-substantive changes to the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. See Securities Exchange Act Release No. 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–2000–32).

[7] See CAES/ITS User Guide, p.5, at www.intermarket.nasdaqtrader.com.

[8] See Securities Exchange Act Release Nos. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR–NASD–2001–67); and 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44).

[9] See Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). The Commission issued notice of subsequent extensions of the Program. See Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–2000–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–2000–32); 43831 (January 10, 2001), 66 FR 4862 (January 18, 2001) (SR–NASD–2000–72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR–NASD–2001–15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR–NASD–2001–42); and 45273 (January 14, 2002); 67 FR 2716 (January 18, 2002) (SR–NASD–2001–92).

[10] See Securities Exchange Act Release Nos 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997)(SR–CHX–97–01) and 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997)(SR–CSE–97–12).

[11] Non-Nasdaq system trades that are reported to Nasdaq are attributed to the member identified in the trade report as the executing party, which is either the reporting party or a "give-up" on whose behalf the trade is reported. The crediting of non-Nasdaq system trades remains unchanged.

[12] 15 U.S.C. 78o–3(b)(5).

[13] 15 U.S.C. 78o–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16986 Filed 7–5–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

which is broken down into "electronic data entry" and "electronic data retrieval," to Rule 101 to provide a more flexible and broader description of the electronic means by which OCC and its clearing members can communicate.[4]

The proposed rule change also eliminates outdated provisions that require clearing members to send representatives to access lock boxes to

accurately reference Rule 205 instead of Rule 206.

OCC also submitted as a part of the proposed rule change the "Supplement to the Agreement for OCC Services for Internet Access" that will be entered into between OCC and its clearing members. OCC is developing a front-end portal called MyOCC that will provide a unified access point from which

interpretation, severability, waiver, survival, and governing law.

II. Conclusion

In Section 17A(a)(1)(A) of the Act, Congress set forth its finding that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. Section 17A(b)(3)(A) and (b)(3)(F)

Management Agency, dated June 26, 2002, the above numbered declaration is hereby amended to include Clay, Greene, Jefferson, Johnson, Knox, Montgomery, Owen, Parke, Perry, Putnam and Washington Counties in the State of Indiana as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

In addition, applications for economic

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B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (f)(2) of Rule 19b–4 thereunder,[15] because the proposal establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–68 and should be submitted by July 29, 2002.

[14] 15 U.S.C. 78s(b)(3)(A).
[15] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16986 Filed 7–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46152; File No. SR–OCC–2001–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Regarding Access to The Option Clearing Corporation's Information and Data Systems Via Electronic Means

July 1, 2002.

On August 1, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] a proposed rule change (File No. OCC–2001–09). On April 23, 2002, OCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on June 7, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change amends OCC's rules regarding access to its information and data systems via electronic means. OCC rules currently support on-line data entry and data retrieval, but these provisions are limited solely to direct access via on-line terminals. OCC is in the process of developing a new clearance and settlement system to replace its existing system.[3] The new system will support internet access at a clearing member's election. The proposed rule change adds the definition of "electronic data entry," which is broken down into "electronic data entry" and "electronic data retrieval," to Rule 101 to provide a more flexible and broader description of the electronic means by which OCC and its clearing members can communicate.[4]

The proposed rule change also eliminates outdated provisions that require clearing members to send representatives to access lock boxes to obtain papers and documents distributed by OCC and clarifies the manner by which clearing members exchange information with OCC. Under the proposed rule change, Rules 205 ("Submission of Items to Corporation [OCC]") and 206 ("Retrieval of Items from Corporation [OCC]") require that a clearing member submit and retrieve instructions, notices, reports, data, and other items via electronic data entry or electronic data retrieval unless otherwise prescribed by OCC. Rules 205 and 206 also provide that such electronic transmissions constitute valid "writings" for purposes of applicable law. In the event unusual or unforeseen conditions prevent a clearing member from submitting or retrieving such items electronically, OCC has the discretion to designate alternative means or to extend any applicable cutoff times as may be deemed reasonable, practicable, and equitable under the circumstances. The proposed rule change amends Rule 208 ("Reports by the Corporation [OCC]") to provide clearing members with the ability to notify OCC via facsimile or e-mail of any errors contained in reports made available by OCC.

Under the proposed rule change, a new Rule 212 ("Security Measures") sets forth the obligations of clearing members to comply with security measures implemented by OCC, including access codes and authorization stamps. Under Rule 212, a clearing member would be bound by submissions made using a current access code or authorization stamp.

Finally, the proposed rule change makes conforming changes to Interpretations and Policies under Rules 801 ("Exercise of Options") and 1606A ("Alternative Settlement Procedures") to delete references to "on-line data entry" and to replace those references with the newly defined term "electronic data entry." Interpretations and Policies .01 under Rule 801 also is amended to

[16] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] Securities Exchange Act Release No. 46005 (May 30, 2002), 67 FR 39460.
[3] As previously reported to the Commission, OCC is developing a new clearance and settlement system known as ENCORE to replace its existing system, INTRACS. OCC's implementation strategy is to replace INTRACS on a modular basis with new development code modules replacing targeted pieces of INTRACS, which pieces will then be "decommissioned." Newly developed and installed code will interface with remaining portions of INTRACS until the old system is completely replaced.
[4] Under the proposal, "electronic data entry" is defined as the transmission by a clearing member to OCC via electronic means of reports, notices, instructions, data, or other items. "Electronic data retrieval" is defined as the retrieval by a clearing member via electronic means of reports, notices, instructions, data, and other items made available by OCC.

accurately reference Rule 205 instead of Rule 206.

OCC also submitted as a part of the proposed rule change the "Supplement to the Agreement for OCC Services for Internet Access" that will be entered into between OCC and its clearing members. OCC is developing a front-end portal called MyOCC that will provide a unified access point from which clearing members will be able to obtain information from various applications contained within MyOCC for which the clearing member is authorized to have access. Access to MyOCC will be available to clearing members through the internet, existing enhanced clearing member interface terminals, or dedicated leased lines. To the extent clearing members elect to access OCC's information and data systems through internet connections, the Supplement specifies requirements relating to access codes, registration, authorization, and security.

The Supplement is structured to fit within OCC's existing framework of the "Agreement for OCC Services."[5] Provisions of the Supplement, which are generally self-explanatory, describe the respective responsibilities of the clearing member and OCC. Section 1 describes the scope of information and data systems that will be made available through the internet. Section 2 creates a requirement on the part of the clearing member to maintain a backup communication channel as a means to obtain access to OCC's information and data systems. Sections 3 and 4 set forth criteria relating to the right to use internet access. Section 5 allocates responsibility relating to the confidentiality and security of access codes. That section also requires the clearing member to provide information as may be necessary to register its authorized users for internet access and to maintain its own equipment. Section 5 also requires the clearing member if it is acting as a "managing clearing member" to represent and warrant that it is authorized to obtain internet access on behalf of the "managed clearing member." Sections 6 through 9 set forth further rights and responsibilities of the parties including limitations on liability, indemnification, and termination provisions. Section 10 discloses that OCC may monitor the use of internet access to ensure compliance with the Supplement. Section 11 contains general terms including interpretation, severability, waiver, survival, and governing law.

II. Conclusion

In Section 17A(a)(1)(A) of the Act, Congress set forth its finding that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. Section 17A(b)(3)(A) and (b)(3)(F) require that a clearing agency be organized, have the capacity, and have rules designed to promote the prompt and accurate clearance and settlement of securities transactions. By amending its rules so that OCC and its clearing members can use a wider range of electronic means by which to communicate with each other, OCC is fulfilling this statutory obligation of providing for the prompt and accurate clearance and settlement of securities transactions. Therefore, the Commission finds that the proposal is consistent with the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. Internet access to clearing reports is a key feature of OCC's new clearing system, and OCC wants to implement this feature as soon as possible. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow OCC to implement internet access to reports consistent with its systems implementation schedule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2001–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16984 Filed 7–5–02; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3422]

State of Indiana; Amendment # 1

In accordance with a notice received from the Federal Emergency Management Agency, dated June 26, 2002, the above numbered declaration is hereby amended to include Clay, Greene, Jefferson, Johnson, Knox, Montgomery, Owen, Parke, Perry, Putnam and Washington Counties in the State of Indiana as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Bartholomew, Brown, Clark, Floyd, Fountain, Harrison, Jackson, Jennings, Monroe, Ripley, Scott, Switzerland and Tippecanoe Counties in Indiana; Breckinridge, Carroll, Hancock, Meade and Timble Counties in Kentucky; and Crawford and Lawrence Counties in Illinois. All other contiguous counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 12, 2002, and for economic injury the deadline is March 13, 2003.

Dated: June 28, 2002.
(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–17106 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3425]

State of Iowa; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency, dated June 25, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on June 3, 2002 and continuing through June 25, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 18, 2002, and for economic injury the deadline is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).
Dated: June 28, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–17107 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

[5] *See* Securities Exchange Act Release No. 21015, 49 FR 23971 (June 4, 1984) [File No. SR–OCC–84–7] for the text of the Agreement for OCC Services.
[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the

SMALL BUSINESS ADMINISTRATION

Region 5 Wisconsin District Advisory Council; Public Meeting

The Small Business Administrations Region 5 Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12:00 noon on Wednesday, July 17, 2002, at the Metro

Special Counsel, 1730 M Street, N.W. (Suite 201), Washington, DC 20036–4505; comments sent by electronic mail should be addressed to info__quality@osc.gov. All comments received will be included in the official record of this action

FOR FURTHER INFORMATION CONTACT: Sharyn Danch, by mail (Planning and Advice Division, Office of Special

Background

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Pub. L. 106–181. Among other things, the statute established a new pilot program designed to help smaller communities enhance their air service. To fund the program, the statute authorized a

ACTION: Notice of Order to Show Cause (Order 2002–6–17), Docket OST–01–10874.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Florida Coastal Airlines, Inc., fit, willing, and able to provide scheduled passenger operations as a commuter air carrier

Qualification criteria and experience required are as follows:

Qualifications. DAR/ODAR applicants must meet the general and specialized experience (as appropriate) listed below:

1. *General.* Current and thorough working knowledge of pertinent Code of Federal Regulations (CFR), directives, and related material.

a. Current technical knowledge and experience commensurate with that

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SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.375 (5 3/8) percent for the July—September quarter of FY 2002.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 02–16928 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Office of the National Ombudsman—Region V Regulatory Fairness Board

Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration, Office of the National Ombudsman and Region V Regulatory Fairness Board, will hold a Public Hearing on Monday, July 8, 2002 at 8:30 a.m. at the Italian Community Center, 631 East Chicago Street, Milwaukee, WI 53202, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Janice Wipijewski in writing at U.S. Small Business Administration, Wisconsin District Office, 310 West Wisconsin Avenue, Milwaukee, WI 53203, phone (414) 297–1096, fax (414) 297–1377, e-mail *janice.wipkjewski@sba.gov.*

For more information about this event and assistance with excessive federal regulatory enforcement actions, such as repetitive audits or investigations, punitive fines, penalties, threats, retaliation or other unfair enforcement action taken by a federal agency, visit the National Ombudsman's Web site at *www.sba.gov/ombudsman.*

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–16929 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 5 Wisconsin District Advisory Council; Public Meeting

The Small Business Administrations Region 5 Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12:00 noon on Wednesday, July 17, 2002, at the Metro Milwaukee Area Chamber Building 756 North Milwaukee Street, 4th Floor, Milwaukee, WI 53202, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolonda Staples Lassiter, EDA, in writing by letter or by fax no later than July 11, 2002, in order to be put on the agenda. For further information, write or call Yolanda Staples Lassiter, EDA U.S. Small Business Administration 310 West Wisconsin Ave., Suite 400 Milwaukee, Wisconsin 53203 (414) 297–1090.

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–17100 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

UNITED STATES OFFICE OF SPECIAL COUNSEL

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: United States Office of Special Counsel

ACTION: Notice

SUMMARY: On April 30, 2002, the Office of Special Counsel (OSC) published a Draft Report and Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel. Public comments were invited and were due on or before June 1, 2002. This notice announces an extension of the June 1st deadline for comments to July 10, 2002.

DATES: Comments on the OSC draft report and guidelines must be postmarked or sent by electronic mail on July 8, 2002, or before July 10, 2002, to the addresses provided below.

ADDRESSES: Comments should be sent by regular mail or electronic mail to OSC's Planning and Advice Division. Comments sent by regular mail should be addressed to: Sharyn Danch, Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W. (Suite 201), Washington, DC 20036–4505; comments sent by electronic mail should be addressed to info__quality@osc.gov. All comments received will be included in the official record of this action

FOR FURTHER INFORMATION CONTACT: Sharyn Danch, by mail (Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W. (Suite 201), Washington, DC 20036–4505), or electronic mail (info__quality@osc.gov). The draft report and guidelines referred to in this notice are available on the OSC Web site, at www.osc.gov (at the "Reading Room" link on the home page).

SUPPLEMENTARY INFORMATION: On April 30, 2002, OSC published its draft report and information quality guidelines in the *Federal Register* and announced that it was seeking comments by June 1, 2002. 67 FR 21316. The draft guidelines describe OSC procedures for pre-dissemination information quality control, and an administrative mechanism for the receipt of requests to correct covered information.

OSC is now extending the comment period to July 10, 2002, to provide the public with additional time to comment. This extension is provided at the suggestion of the Office of Management and Budget (OMB) in its notice providing agencies with an extension of time in which to submit their draft report and guidelines to OMB. 67 FR 40755 (June 6, 2002).

Dated: July 01, 2002.

Elaine D. Kaplan,

Special Counsel.

[FR Doc. 02–17017 Filed 7–5–02; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2002–11590]

In the Matter of the Small Community Air Service Development Pilot Program, Under 49 U.S.C. 41743 *et seq.*; Order Setting Final Deadline for Applications

Issued by the Department of Transportation on the 1st day of July, 2002.

SUMMARY: By this order, the Department sets a final deadline of July 19, 2002, for the filing of all applications and supplements thereto under the Small Community Air Service Development Program.

Background

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Pub. L. 106–181. Among other things, the statute established a new pilot program designed to help smaller communities enhance their air service. To fund the program, the statute authorized a funding level of $20.0 million for fiscal year 2001 and $27.5 million for each of fiscal years 2002 and 2003; no funds were appropriated in fiscal year 2001 and only $20 million in fiscal year 2002. We established April 22, 2002 as the deadline for the filing of applications seeking priority consideration. On June 26, 2002 (Order 2002–6–14), we announced the award of 40 grants totaling almost $20 million, subject to each applicant's executing a formal grant agreement with the Department. We also noted that it is possible that not all of the funds awarded in that Order may be expended, since we intend to include in each grant agreement success milestones that each grantee must meet to ensure continuation of funding. All applications received by April 22, 2002, and any received thereafter will be considered equally for any such unexpended funds.

To provide administrative finality to the filing of applications, we will not accept any application, nor any supplement thereto, received after July 19, 2002. The only exception will be if Departmental staff requests additional information from an applicant to facilitate consideration of its application.

Accordingly, the deadline for submitting applications in this Docket, or supplements to applications, is July 19, 2002.

This order will be published in the **Federal Register.**

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

[FR Doc. 02–17001 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Florida Coastal Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2002–6–17), Docket OST–01–10874.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Florida Coastal Airlines, Inc., fit, willing, and able to provide scheduled passenger operations as a commuter air carrier under 49 U.S.C. 41738.

Responses: Objections and answers to objections should be filed in Docket OST–01–10874 and addressed to the Department of Transportation Dockets, PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: July 1, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–16907 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request for Comments on Advisory Circular (AC) 183–35H, Airworthiness Designee Function Codes and Consolidated Directory for DMIR/DAR/ODAR/DAS/DOA and SFAR No. 36

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: This document announces a proposed change to AC 183–35H. The change will add a new authorized Function Code to the AC. This Code will be identified as Data Management Function Code 50 (pending). It will allow a Designated Airworthiness Representatives (DAR) and Organizational Designated Airworthiness Representatives (ODAR) responsible for managing alterations programs leading to the issuance of a FAA Field Approval and/or approval for return to service to alter U.S.-registered aircraft. It also provides a certification of completeness (FAA Form 337 or equivalent) when all requirements are met.

Qualification criteria and experience required are as follows:

Qualifications. DAR/ODAR applicants must meet the general and specialized experience (as appropriate) listed below:

1. *General.* Current and thorough working knowledge of pertinent Code of Federal Regulations (CFR), directives, and related material.

a. Current technical knowledge and experience commensurate with that required for the particular function (e.g., Boeing Airplane Model 707–100, Bell Model 47B), and/or related parts/components, appliance, etc.).

b. Unquestionable integrity, cooperative attitude, and ability to exercise sound judgement.

c. Ability to maintain the highest degree of objectivity while performing authorized functions on behalf of the FAA.

d. Two years of satisfactory experience working directly in the type of work to be covered in the authorized function.

e. Good command of the English language, both oral and written.

f. Persons applying for Data Management Function Code 50 must hold a current DAR/ODAR certificate for a period of at least one year with Function Code 08 and/or Function Code 23. The person must have used current publications and demonstrated sound judgement when issuing standard airworthiness certificates on behalf of the FAA. The person must also have attended the FAA Part 21 Seminar #27903, the Flight Standards Alteration Course #21811 and, if applying for an Avionics function code, the person must also have attended the Avionics Certification Procedures Course #21846.

2. *Specialized Experience.* A DAR or ODAR applicant for Data Management Function Code 50 must meet the specialized experience listed below. Individuals who are to perform authorized functions under an ODAR need only *meet* the specialized experience required for the specific function to be performed.

a. *A DAR applicant.*

(1) A DAR applicant must have five years of experience as an FAA Airworthiness Inspector involved in the actual issuance of an FAA Field Approval, or as an airworthiness inspector responsible for managing programs leading to the issuance of an FAA Field Approval, for aircraft or avionics components and systems. The aircraft or avionics components and systems must be of the *same type and complexity* as those for which authorization is sought.

(2) A DAR applicant must be responsible for managing alteration

programs leading to the issuance of an FAA Field Approval and/or approval for return-to-service (e.g. Chief Inspector or Director of Maintenance at an FAA-approved repair station or at the facility of the holder of an air carrier or commercial operator's certificate). He must hold a current mechanic certificate with Airframe and Power plant (A&P) ratings or an Avionics Certificate

address or telephone (405) 954–6923 (7:00 a.m. to 3:30 p.m.)

SUPPLEMENTARY INFORMATION: As explained in Amendment 183–6 of 14 CFR part 183, it is not possible to specify by regulation all areas in which a DAR/ODAR may serve. As written in the amendment, the FAA will seek public comment each time that it is proposed to add or delete an authorized

Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this process by submitting

Reagan Washington National Airport (Reagan National) and Newark International Airport (Newark) (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR takeoff or landing during a specific 30- or 60-

slots, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub or nonhub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must

Extension of Lottery Allocation

On June 12, 2001, a Notice of Alternative Policy Options for Managing Capacity at LaGuardia and Proposed Extension of the Lottery Allocation was published in the **Federal Register**, in which the FAA sought comment on both long-term policy options and a short-term extension of the cap on exemption slots at LaGuardia (66 FR 31731). The number of AIR–21

programs leading to the issuance of an FAA Field Approval and/or approval for return-to-service (e.g. Chief Inspector or Director of Maintenance at an FAA-approved repair station or at the facility of the holder of an air carrier or commercial operator's certificate). He must hold a current mechanic certificate with Airframe and Power plant (A&P) ratings or an Avionics Certificate (Associate Degree in Electronics) with the proper qualifications, skills and the ability to perform maintenance, repairs, alterations, and operational checks on aircraft or avionics components and systems in accordance with FAA regulations. He must also demonstrate the ability to determine that the aircraft or avionics components and systems (of *the same type and complexity* as those for which authorization is sought) submitted for FAA Field Approval have remained in or have been returned to their FAA-approved type design configuration and meet pertinent CFR requirements; or

(3) The specialized experience outlined in FAA Order 8100.8A, Table II (give location of order) may be used when an applicant has a minimum of two additional years experience leading to the issuance of a Supplemental Type Certificate (STC) for aircraft or avionics components and systems of the same type and complexity as those for which authorization is sought. The applicant's experience must demonstrate his direct involvement in determining that an aircraft or avionics components and systems conform to the FAA-approved type design configuration and meet pertinent CFR requirements.

b. *An ODAR applicant.* an ODAR applicant must be the holder of a domestic Aircraft or Avionics maintenance repair station certificate under 14 CFR part 145 with the appropriate ratings and have a person(s) certificated under part 65 in its employ with five years experience in and a history of the qualifications specified in paragraphs 1a, b, and c.

DATES: Comments must be received on or before September 6, 2002.

ADDRESSES: All comments should be addressed to the attention of George Torres, Federal Aviation Administration, Designee Standardization Branch, AFS–640, P.O. Box 25082, Oklahoma City, OK 73125. Comments also may be submitted electronically at the following e-mail address: *georgetorres@mmac.iccbi.gov* or Fax: (405) 954–4104. All comment letters should refer to proposed Function Code 50.

FOR FURTHER INFORMATION CONTACT: George Torres, AFS–640, at the above address or telephone (405) 954–6923 (7:00 a.m. to 3:30 p.m.)

SUPPLEMENTARY INFORMATION: As explained in Amendment 183–6 of 14 CFR part 183, it is not possible to specify by regulation all areas in which a DAR/ODAR may serve. As written in the amendment, the FAA will seek public comment each time that it is proposed to add or delete an authorized function. Additional areas of delegation will be selected and authorized by the Director of Flight Standards based on recommendations from other FAA elements and the aviation community.

Issued in Washington, DC, on June 26, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–16905 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9852]

High Density Airports; Notice of Extension of the Lottery Allocation and Request for Comments

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension of the lottery allocation for takeoff and landing times at LaGuardia Airport and request for comments.

SUMMARY: This notice announces a two-year extension of the current exemption slot allocation at LaGuardia Airport (La Guardia) through October 30, 2004. This action maintains the current operating environment at LaGuardia pending a long-term solution. Additionally, the FAA seeks comment on proposed modifications to the procedures used to reallocate exemption slots that may become available during this interim period.

DATES: Comments must be received on or before August 7, 2002.

ADDRESSES: Comments on this notice should be mailed or delivered in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA 2001–9852, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: *http://DMS.dot.gov*. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this process by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions. Communications should identify the docket number and be submitted in duplicate to the above-specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. FAA 2001–9852." When the FAA receives the comment, the postcard will be dated, time stamped, and returned to the commenter.

Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport (JFK), LaGuardia, O'Hare International Airport (O'Hare), Ronald Reagan Washington National Airport (Reagan National) and Newark International Airport (Newark) (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR takeoff or landing during a specific 30- or 60-minute period. The restrictions at Newark were lifted in the early 1970s.

"AIR–21"

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" ("AIR–21") was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. 41714 to phase out slots at LaGuardia, JFK, and O'Hare. Section 41715 terminates slots at O'Hare as of July 1, 2002, and at LaGuardia and JFK on January 1, 2007. Section 231 also included new provisions codified at 49 U.S.C. 41716, 41717, and 41718 that enable air carriers meeting specified criteria to obtain exemptions (referred to as "exemption slots") from the requirements of subparts K and S of part 93 of Title 14 of the Code of Federal Regulations at LaGuardia, JFK, O'Hare, and Reagan National. As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemption slots authorized by the statute..

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides that an exemption slot must be granted to any airline using State 3 aircraft with fewer than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub airport in 1997, under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub airport and LaGuardia during the week of November 1, 1999; (2) the proposed service between the small hub or nonhub airports and LaGuardia exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

Under AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for exemption slots, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub or nonhub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of exemption slots and the times needed to provide the service.,

Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states that exemption slots must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of exemption slots granted under this subsection to such air carrier with respect to such airport when added to the slots and exemption slots held by such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 41715(b)(1), expressly provides that the provisions for exemption slots are not to affect the FAA's authority over safety and the movement of air traffic. The reallocation of exemption slot times by the lottery procedures described in this Notice is based on the FAA's statutory authority and does not rescind the exemptions issued by the Department under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain an allocation of exemption slot times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LaGuardia, especially during peak hours, even if those operations would otherwise quality for exemptions under AIR–21.

Lastly, § 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described here and allows for special conditions to be included when circumstances warrant special consideration.

Extension of Lottery Allocation

On June 12, 2001, a Notice of Alternative Policy Options for Managing Capacity at LaGuardia and Proposed Extension of the Lottery Allocation was published in the **Federal Register**, in which the FAA sought comment on both long-term policy options and a short-term extension of the cap on exemption slots at LaGuardia (66 FR 31731). The number of AIR–21 exemption slots that may be operated at the airport was limited by the FAA to 159 operations effective January 31, 2001, and allocated in accordance with the lottery held on December 4, 2000. This allocation capped scheduled operations at 75 per hour between the hours of 7:00 a.m. and 9:59 p.m., which limited daily and hourly demand on airport facilities and the air traffic control system. The FAA has found that this number of flights can be accommodated in good weather conditions and at the same time, provides access for AIR–21 flights. (This number does not include extra sections of scheduled air carrier flights or the six reservations per hour for "Other" nonscheduled operations, including general aviation, charters and military flights. Therefore, this allocation maintains total operations of approximately 81 per hour.)

On August 2, 2001, the FAA extended the lottery allocation through October 26, 2002, set the date of August 15, 2001 for a second lottery, and established procedures for subsequent allocation of exemption slots in the event that any exemption slots were returned or withdrawn by the FAA for non-use (66 FR 41294; August 7, 2001).

Following the terrorist attacks on September 11, 2001, and the resulting impacts on the aviation industry, the FAA suspended the closing date for the comment period regarding the Notice of Policy Alternatives for Managing Capacity at LaGuardia Airport (66 FR 52170; October 12, 2001). On March 22, the FAA announced that the comment period on demand management options would close on June 20, 2002 (67 FR 13401). Developing a long-term solution for demand management at LaGuardia remains an agency priority; a solution cannot be finalized and implemented, however, prior to the expiration of the current lottery restrictions on October 27, 2002. While traffic at LaGuardia is currently below pre-September 11 levels, operations have been increasing steadily and are expected to increase throughout the summer. Today, there are approximately 1,120 operations per day, which is seven percent below the level of operations last summer. We

note that operations during the winter months were approximately 14 percent below the level of operations in winter 2000–2001.

Maintaining the cap on total operations at LaGuardia is imperative until the long-term solution is finalized and implemented. If the cap on AIR–21 exemption slots were lifted, carriers could begin adding an unlimited number of qualified operations at the

offered first (on a first-come, first-serve basis) to any carrier that does not operate at the airport, has certified accordingly with the Department, and has a written request on file with the Slot Office. Also, under these procedures, if a carrier that does not operate at the airport does not select the available exemption slots, the exemption slots will be made available to all carriers for selection in accordance

August 7 notice, the first four exemption slots (returned or withdrawn) that are available for reallocation will be made available to any carrier that is not conducting operations at the airport and that meets the specified criteria. If there is no eligible carrier, we propose that the exemption slots would be made available to any carrier operating at the airport that holds or operates less than 20 slots and exemption slots in

carriers providing small hub/non-hub service. Second, it would ensure that there would be a continued finite number of exemption slots available for new entrant service and small hub/non-hub service and represent an opportunity for equitable allocation of exemptions slots between competing categories. Lastly, it puts in place a process to provide opportunity to maintain parity.

December 4 rank order. This concludes Phase I.

4. Phase II: If any subsequent exemption slots become available for reallocation and there is an eligible carrier not conducting service at the airport seeking exemption slots, then the available exemption slots would be offered to that carrier first, provided that the total number of exemption slots

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

Designation of Transportation Management Areas

AGENCIES: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

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note that operations during the winter months were approximately 14 percent below the level of operations in winter 2000–2001.

Maintaining the cap on total operations at LaGuardia is imperative until the long-term solution is finalized and implemented. If the cap on AIR–21 exemption slots were lifted, carriers could begin adding an unlimited number of qualified operations at the airport, which could lead to a situation similar to that in the fall of 2000 where the airport, airlines, and public experienced an unacceptable level of delay. Significant delays and operational disruptions at LaGuardia have a negative effect on the national air traffic control system and result in a ripple effect on delays and operations at many other airports. The airport cannot accommodate, nor can the FAA permit, unrestrained growth in operations at this time.

The FAA is accordingly adopting a two-year extension of the current allocation and hourly limits through October 30, 2004. A two-year extension of the exemption slot allocation is appropriate due to the complex issues associated with the proposed long-term solutions and the competing interests that must be addressed. The comment period for potential long-term concepts closed on June 20, 2002. The FAA and the Office of the Secretary will review and analyze all submitted comments. Identifying a preferred access management process for LaGuardia will require much consideration of complex statutory, regulatory, and policy issues raised by the suggested demand management options as well as variations and additional options received in the comments. Consequently, a two-year extension of the current allocation is necessary to accomplish the development and implementation of a long-term solution while continuing a framework that allows airlines to make operational plans. Therefore, the current allocation and hourly limits are extended through October 30, 2004.

Proposed Changes to Post-Lottery Allocation Procedures

The FAA is proposing certain changes to the procedures used for reallocation of exemption slots that are returned or withdrawn for non-use. In the **Federal Register** notice published on August 7, 2001, the FAA adopted certain procedures for returned or withdrawn exemption slots, which included a continued preference for carriers that currently do not conduct any operations at LaGuardia. Therefore, any returned or withdrawn exemption slots would be offered first (on a first-come, first-serve basis) to any carrier that does not operate at the airport, has certified accordingly with the Department, and has a written request on file with the Slot Office. Also, under these procedures, if a carrier that does not operate at the airport does not select the available exemption slots, the exemption slots will be made available to all carriers for selection in accordance with the appropriate established rank order, i.e., the December 4 rank order for carriers providing small community service and the August 15 rank order for all carriers that hold or operate fewer than 20 slots and exemption slots. The exemption slots are to be selected by alternating between the two rank orders. The FAA believes that alternating selections between the two established rank orders would provide equitable treatment and opportunity to both categories of operations to obtain any available capacity throughout this allocation period.

After the initial December 5, 2000, lottery, the number of available exemption slots was split almost evenly between the two categories of carriers (new entrants carriers with 79 exemption slots and small hub/non-hub service carriers with 80 exemption slots). This split achieved the balance originally sought by the agency in devising procedures that would result in an allocation that was as fair as possible among the competing entities and consistent with the purposes of AIR–21. As a result of the August 15 lottery, the new entrant carriers hold a total of 75 exemption slots and the carriers providing small hub/non hub service hold 84 exemption slots. Both the FAA and the Office of the Secretary recognize that during the next two years, new entrant carriers' ability to increase service is significantly disadvantaged in comparison to the flexibility of the large, incumbent carriers that have major slot holdings at LaGuardia. While the large carriers did in fact have to reduce service to some markets after the December 2000 lottery, these carriers still hold approximately 92 percent of the slots at LaGuardia and have the ability to use existing slot holdings for service to small hub/non-hub communities without additional exemption slots. New entrant carriers do not enjoy this flexibility as the majority of access to LaGuardia for new entrants is due to exemption slots.

Recognizing the importance of both categories of service at LaGuardia, we find it necessary to provide the opportunity to maintain parity between the categories of operations to the extent practicable. Therefore, as stated in the August 7 notice, the first four exemption slots (returned or withdrawn) that are available for reallocation will be made available to any carrier that is not conducting operations at the airport and that meets the specified criteria. If there is no eligible carrier, we propose that the exemption slots would be made available to any carrier operating at the airport that holds or operates less than 20 slots and exemption slots in accordance with the August 25 rank order. This process would be termed Phase I. After Phase I is completed, the new entrant category would be comprised of 79 exemption slots and the small hub/non-hub category would be comprised of 80 exemption slots. The division of exemption slots between the two categories would place both categories on comparable footing.

The FAA and the Office of the Secretary continue to believe that the goals of AIR–21 should be the guiding principles in allocating the limited exemption slots during this interim period. AIR–21 did not purport a preference of any one category of operations over another. As stated above, however, new entrant carriers do experience limitation on access at LaGuardia that are not experienced by the large incumbent carriers. Consequently, as Phase II, we propose that when subsequent exemption slots become available and there is an eligible carrier not conducting service at the airport seeking exemption slots, then the available exemption slots would be offered to that carrier first, provided that the total number of exemption slots allocated to carriers providing small hub/non-hub service is not below 76. This would allow specific opportunity for access to a carrier that currently is not operating at LaGuardia without tipping the balance too far to one category.

If no new carrier is interested or eligible, we propose that available exemption slots would be offered first to the category of carriers that is below parity up to the level of reestablishing parity, using the respective rank order. Remaining exemption slots would then be offered to carriers in the category from which the exemption slots came from using the respective rank order. Lastly, if there are exemption slots available, they would be offered to the carriers in the other category using its respective rank order.

Adopting this process would achieve several desirable goals. First, it would allow for access to the airport by new carriers, but by incorporating a threshold of four exemption slots, it does not allow new carriers to gain unconstrained access to the detriment of carriers providing small hub/non-hub service. Second, it would ensure that there would be a continued finite number of exemption slots available for new entrant service and small hub/non-hub service and represent an opportunity for equitable allocation of exemptions slots between competing categories. Lastly, it puts in place a process to provide opportunity to maintain parity.

Finally, the FAA proposes that a carrier will have three business days from the date of the FAA offer of an available exemption slot to accept or reject offered exemption slots. This procedure would provide a definitive timeframe for decisionmaking and assist in ensuring that exemption slots do not go unused for an extended period of time. From the date of acceptance of an offered exemption slot, a carrier has 120 days to begin using that exemption slot. (See adopted lottery procedures for the August 15, 2001 lottery.)

The reallocation procedures adopted in the August 7, 2001, notice will be followed for the reallocation of returned or withdrawn exemption slots pending a decision on these proposed procedures after the close of the comment period. The proposed, applicable conditions are restated as follows:

1. The cap on AIR–21 exemption slots (7:00 a.m. through 9:59 p.m.) will remain in effect through October 30, 2004.

2. The FAA may approve the transfer of exemption slot times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

3. Phase I: If any exemption slots are returned to the FAA or are withdrawn for non-use, the FAA would make the first four exemption slots available on a first-come, first serve basis to a carrier that was not operating at LaGuardia as of August 15, 2001, certified to the Department in accordance with the procedures articulated in OST Order 2000–4–10, and has a written request on file with the Slot Office. Any of the first four returned or withdrawn exemption slots that are not selected by such a carrier would be available to the carriers that have less than 20 slots and exemption slots at LaGuardia for selection in accordance with the August 15 established rank order, with each carrier able to select two exemption slots. Any exemption slots not selected during this process then would be made available to the carriers providing small hub/non-hub service using the December 4 rank order. This concludes Phase I.

4. Phase II: If any subsequent exemption slots become available for reallocation and there is an eligible carrier not conducting service at the airport seeking exemption slots, then the available exemption slots would be offered to that carrier first, provided that the total number of exemption slots allocated to carriers providing small hub/non-hub service is not below 76. If a new, eligible carrier does not select the exemption slots, then they would be offered to the category of carriers that is below parity, up to the level of re-establishing parity (using respective rank order). If the exemption slots are not selected or there are available exemption slots remaining, then they would be offered to carriers in the same category from which the exemption slots came. Any remaining exemption slots not selected would be offered to the other category of carriers, using its respective rank order.

5. A carrier would have three business days after an offer from the Slot Office to accept the offered exemption slot time. Acceptance must be in writing to the Slot Office. If the Slot Office does not receive an acceptance to an offer within three business days, the carrier would be recorded as rejecting the offer and the next carrier on the list would be offered the available exemption slot times.

6. Carriers that are offered exemption slot times by the Slot Office must re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000–4–10 and 2000–4–11 prior to operations, and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operation, before the exemption slot times will be allocated by the FAA to the carrier.

7. All operations allocated under the post-lottery procedures must commence within 120 days of a carrier's acceptance of an available exemption slot.

8. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the allocation process.

Issued on July 1, 2002, in Washington, DC.

David G. Laitch,

Chief Counsel.

[FR Doc. 02–17004 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

Designation of Transportation Management Areas

AGENCIES: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

ACTION: Notice of designation.

SUMMARY: The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) are announcing that all urbanized areas (UZAs) with populations greater than 200,000 as determined by the 2000 Census, are hereby designated as Transportation Management Areas (TMAs). The FTA and the FHWA are taking this action in compliance with the agencies' authorizing statutes, 23 U.S.C. 134, and 49 U.S.C. 5305. This action supersedes the agencies' designations of TMAs made in the **Federal Register** on May 18, 1992, at 57 FR 21160.

DATES: This notice is effective July 8, 2002.

FOR FURTHER INFORMATION CONTACT: For FTA related questions, Paul L. Verchinski, Office of Planning Operations (TPL–11), (202) 366–1626, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *Paul.verchinski@fta.dot.gov*. Scott Biehl, Office of Chief Counsel (TCC), (202) 366–4063, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *scott.biehl@fta.dot.gov*. Office hours for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

For FHWA related questions, Sheldon Edner, Office of Metropolitan Planning (HEPM), (202) 366–4066, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *sheldon.edner@fhwa.dot.gov*. Reid Alsop, Office of Chief Counsel (HCC), (202) 366–1371, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *reid.alsop@fhwa.dot.gov*. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Titles 23 and 49 of the United States Code (23 U.S.C. 134 (i), and 49 U.S.C. 5305, respectively) require the Secretary of Transportation to designate urbanized areas over 200,000 population as Transportation Management Areas

(TMAs). A number of Census Bureau defined areas across the United States have recently exceeded 200,000 in population as determined by the 2000 Census. Accordingly, this notice hereby designates such areas as TMAs. Designated TMAs are subject to special planning and programming requirements. The FTA and the FHWA have developed a series of "Questions

previously designated TMAs at Gubernatorial request; Santa Barbara, California; Southern New Jersey, New Jersey; and Petersburg, Virginia. Of these three areas, only Santa Barbara, California did not meet the statutory population threshold for formal designation. However, Santa Barbara continues to be designated as a TMA as a result of the previous request.

list, since its Census designated population no longer meets the 200,000 threshold after a portion of the area has been absorbed by another, larger TMA (Cleveland).

The Census Bureau defined the Census 2000 urbanized areas using the criteria published in the **Federal Register** on March 15, 2002 (67 FR 11663). As a result of using these

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
Temecula—Murrieta, CA	229,810	No change.
Antioch, CA	217,591	New TMA with Name Change.
Thousand Oaks, CA	210,990	TMA formed by UA split.
Victorville—Hesperia—Apple Valley, CA	200,436	New TMA with Name Change.
State Total	26,792,392	
Colorado		
Denver—Aurora, CO	1,984,887	Name Change.
Colorado Springs, CO	466,122	No change.

(TMAs). A number of Census Bureau defined areas across the United States have recently exceeded 200,000 in population as determined by the 2000 Census. Accordingly, this notice hereby designates such areas as TMAs. Designated TMAs are subject to special planning and programming requirements. The FTA and the FHWA have developed a series of "Questions and Answers" related to applying 2000 Census data to Urbanized and Urban areas in the FTA and FHWA planning processes. More information can be found at *http://www.fhwa.dot.gov/planning/census/faqa2cdt.htm* or *http://www.fta.dot.gov/library/planning/census/qa.html*. These requirements apply to the metropolitan planning area that must be determined jointly under 23 U.S.C. 134(c), and 49 U.S.C 5303(d).

Additional areas shall be designated as TMAs upon request of the Governor and the MPO or affected local officials. Notification of any additional TMAs will be issued through a Secretarial Memorandum to the appropriate State Governors and MPOs, not as a notice published in the **Federal Register**. The UZAs with populations over 200,000, which are hereby designated as TMAs, are listed below. Three areas were previously designated TMAs at Gubernatorial request; Santa Barbara, California; Southern New Jersey, New Jersey; and Petersburg, Virginia. Of these three areas, only Santa Barbara, California did not meet the statutory population threshold for formal designation. However, Santa Barbara continues to be designated as a TMA as a result of the previous request.

There have been significant changes in the Census 2000 universe of urbanized areas from those defined, based on the 1990 census and criteria. These changes include new areas, areas formed by splits or mergers, name changes, and areas with significant boundary changes.

For multi-state urbanized areas over 200,000 population, the urbanized area is listed under the State with the largest share of the population. However, the TMA designation applies to the entire multi-state urbanized area. Montgomery, Alabama was previously designated a TMA, but fell below 200,000 in population and thus no longer meets the minimum population threshold to be classified as a TMA and is not included in the list of TMAs. Lorain-Elyria, Ohio was also previously designated as a TMA but is not included in the current list, since its Census designated population no longer meets the 200,000 threshold after a portion of the area has been absorbed by another, larger TMA (Cleveland).

The Census Bureau defined the Census 2000 urbanized areas using the criteria published in the **Federal Register** on March 15, 2002 (67 FR 11663). As a result of using these definitions, there were significant changes in the Census 2000 universe of urbanized areas from those defined, based on the 1990 census and criteria. A detailed description of the terminology and changes noted in the column entitled "Area Comparison to 1990 Census TMAs" is presented in the Census Bureau's notice of "Qualifying Urban Areas for Census 2000" in the **Federal Register** on May 1, 2002 (67 FR 21961).

Authority: 23 U.S.C. 315; 23 U.S.C. 134(i), 49 U.S.C. 5305, 49 CFR 1.48 and 1.51.

Issued on: July 1, 2002.

Jennifer L. Dorn,
Federal Transit Administrator.

Mary E. Peters,
Federal Highway Administrator.

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
Alabama		
Birmingham, AL	663,615	No change.
Mobile, AL	317,605	No change.
Huntsville, AL	213,253	New TMA.
State Total	1,194,473	
Alaska		
Anchorage, AK	225,744	Reduced in Geographic Area.
State Total	225,744	
Arizona		
Phoenix—Mesa, AZ	2,907,049	No change.
Tucson, AZ	720,425	Reduced in Geographic Area.
State Total	3,627,474	
Arkansas		
Little Rock, AR	360,331	Name Change.
State Total	360,331	
California		
Los Angeles—Long Beach—Santa Ana, CA	11,789,487	TMA formed by UA split.
San Francisco—Oakland, CA	2,995,769	Increased in Geographic Area.
San Diego, CA	2,674,436	No change.
San Jose, CA	1,538,312	Reduced in Geographic Area.
Riverside—San Bernardino, CA	1,506,816	No change.
Sacramento, CA	1,393,498	No change.
Fresno, CA	554,923	No change.
Concord, CA	552,824	TMA formed by UA split.
Mission Viejo, CA	533,015	TMA formed by UA split.
Bakersfield, CA	396,125	No change.
Oxnard, CA	337,591	TMA formed by UA split.
Stockton, CA	313,392	No change.
Modesto, CA	310,945	No change.
Santa Rosa, CA	285,406	New TMA.
Lancaster—Palmdale, CA	263,532	New TMA.
Indio—Cathedral City—Palm Springs, CA	254,856	TMA formed by UA merger with Name Change.
San Rafael—Novato, CA	232,836	TMA formed by UA split.

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
Temecula—Murrieta, CA	229,810	No change.
Antioch, CA	217,591	New TMA with Name Change.
Thousand Oaks, CA	210,990	TMA formed by UA split.
Victorville—Hesperia—Apple Valley, CA	200,436	New TMA with Name Change.
State Total	26,792,392	
Colorado		
Denver—Aurora, CO	1,984,887	Name Change.
Colorado Springs, CO	466,122	No change.
Fort Collins, CO	206,633	New TMA.
State Total	2,657,642	
Connecticut		
Bridgeport—Stamford, CT—NY	888,690	TMA formed by UA merger with Name Change.
Hartford, CT	851,535	TMA formed by UA merger with Name Change.
New Haven, CT	531,314	Name Change.
State Total	2,271,739	
Delaware		
State Total.		
District of Columbia		
Washington, DC—VA—MD	3,933,920	Name Change.
State Total	3,933,920	
Florida		
Miami, FL	4,919,036	TMA formed by UA merger with Name Change.
Tampa—St. Petersburg, FL	2,062,339	Name Change.
Orlando, FL	1,157,431	Reduced in Geographic Area.
Jacksonville, FL	882,295	No change.
Sarasota—Bradenton, FL	559,229	No change.
Palm Bay—Melbourne, FL	393,289	No change.
Cape Coral, FL	329,757	Name Change.
Pensacola, FL—AL	323,783	Name Change.
Port St. Lucie, FL	270,774	TMA formed by UA merger with Name Change.
Daytona Beach—Port Orange, FL	255,353	Name Change.
Bonita Springs—Naples, FL	221,251	New TMA with Name Change.
Tallahassee, FL	204,260	New TMA.
State Total	11,578,797	
Georgia		
Atlanta, GA	3,499,840	No change.
Augusta—Richmond County, GA—SC	335,630	Name Change.
Columbus, GA—AL	242,324	No change.
Savannah, GA	208,866	New TMA, Reduced in Geographic Area.
State Total	4,286,660	
Hawaii		
Honolulu, HI	718,182	No change.
State Total	718,182	
Idaho		
Boise City, ID	272,625	New TMA.
State Total	272,625	
Illinois		
Chicago, IL—IN	8,307,904	TMA formed by UA merger with Name Change.
Rockford, IL	270,414	Increased in Geographic Area.
Peoria, IL	247,172	No change.
Round Lake Beach—McHenry—Grayslake, IL—WI	226,848	New TMA.
State Total	9,052,338	
Indiana		
Indianapolis, IN	1,218,919	No change.
Fort Wayne, IN	287,759	No change.
South Bend, IN—MI	276,498	Name Change.
Evansville, IN—KY	211,989	New TMA.
State Total	1,995,165	
Iowa		
Des Moines, IA	370,505	No change.
Davenport, IA—IL	270,626	Name Change.
State Total	641,131	
Kansas		

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
Wichita, KS	422,301	No change.
State Total	422,301	
Kentucky		
Louisville, KY—IN	863,582	No change.
Lexington—Fayette, KY	250,994	No change.
State Total	1,114,576	

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
New York—Newark, NY—NJ—CT	17,799,861	Name Change, Reduced in Geographic Area.
Buffalo, NY	976,703	Name Change.
Rochester, NY	694,396	No change.
Albany, NY	558,947	Name Change.
Syracuse, NY	402,267	No change.
Poughkeepsie—Newburgh, NY	351,982	TMA formed by UA merger with Name Change.
State Total	20,784,156	
North Carolina		
Charlotte, NC—SC	758,927	Name Change, Increased in Geographic Area.

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State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
Wichita, KS	422,301	No change.
State Total	422,301	
Kentucky		
Louisville, KY—IN	863,582	No change.
Lexington—Fayette, KY	250,994	No change.
State Total	1,114,576	
Louisiana		
New Orleans, LA	1,009,283	No change.
Baton Rouge, LA	479,019	No change.
Shreveport, LA	275,213	No change.
State Total	1,763,515	
Maine		
State Total.		
Maryland		
Baltimore	2,076,354	TMA formed by UA merger with Name Change.
State Total	2,076,354	
Massachusetts		
Boston, MA—NH—RI	4,032,484	TMA formed by UA merger with Name Change.
Springfield, MA—CT	573,610	No change.
Worcester, MA—CT	429,882	No change.
Barnstable Town, MA	243,667	New TMA.
State Total	5,279,643	
Michigan		
Detroit, MI	3,903,377	No change.
Grand Rapids, MI	539,060	No change.
Flint, MI	365,096	No change.
Lansing, MI	300,032	Name Change.
Ann Arbor, MI	283,904	No change.
State Total	5,391,489	
Minnesota		
Minneapolis—St. Paul, MN	2,388,593	No change.
State Total	2,388,593	
Mississippi		
Jackson, MS	292,637	Reduced in Geographic Area.
Gulfport—Biloxi, MS	205,754	New TMA.
State Total	498,391	
Missouri		
St. Louis, MO—IL	2,077,662	No change.
Kansas City, MO—KS	1,361,744	TMA formed by UA split.
Springfield, MO	215,004	New TMA.
State Total	3,654,410	
Montana		
State Total.		
Nebraska		
Omaha, NE—IA	626,623	No change.
Lincoln, NE	226,582	New TMA.
State Total	853,205	
Nevada		
Las Vegas, NV	1,314,357	No change.
Reno, NV	303,689	No change.
State Total	1,618,046	
New Hampshire		
State Total.		
New Jersey		
Atlantic City, NJ	227,180	New TMA.
Trenton, NJ	268,472	Name Change.
State Total	495,652	
New Mexico		
Albuquerque, NM	598,191	No change.
State Total	598,191	
New York		

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
New York—Newark, NY—NJ—CT	17,799,861	Name Change, Reduced in Geographic Area.
Buffalo, NY	976,703	Name Change.
Rochester, NY	694,396	No change.
Albany, NY	558,947	Name Change.
Syracuse, NY	402,267	No change.
Poughkeepsie—Newburgh, NY	351,982	TMA formed by UA merger with Name Change.
State Total	20,784,156	
North Carolina		
Charlotte, NC—SC	758,927	Name Change, Increased in Geographic Area.
Raleigh, NC	541,527	No change.
Winston-Salem, NC	299,290	New TMA.
Durham, NC	287,796	No change.
Fayetteville, NC	276,368	No change.
Greensboro, NC	267,884	New TMA.
Asheville, NC	221,570	New TMA.
State Total	2,653,362	
North Dakota		
State Total.		
Ohio		
Cleveland, OH	1,786,647	No change.
Cincinnati, OH—KY—IN	1,503,262	Name Change, Increased in Geographic Area.
Columbus, OH	1,133,193	No change.
Dayton, OH	703,444	Increased in Geographic Area.
Akron, OH	570,215	Reduced in Geographic Area.
Toledo, OH—MI	503,008	No change.
Youngstown, OH—PA	417,437	TMA formed by UA merger with Name Change.
Canton, OH	266,595	No change.
State Total	6,883,801	
Oklahoma		
Oklahoma City, OK	747,003	No change.
Tulsa, OK	558,329	No change.
State Total	1,305,332	
Oregon		
Portland, OR—WA	1,583,138	Name Change.
Eugene, OR	224,049	New TMA.
Salem, OR	207,229	New TMA.
State Total	2,014,416	
Pennsylvania		
Philadelphia, PA—NJ—DE—MD	5,149,079	TMA formed by UA merger with Name Change.
Pittsburgh, PA	1,753,136	No change.
Allentown—Bethlehem, PA—NJ	576,408	Name Change.
Scranton, PA	385,237	Name Change.
Harrisburg, PA	362,782	No change.
Lancaster, PA	323,554	New TMA.
Reading, PA	240,264	New TMA.
State Total	8,790,460	
Rhode Island		
Providence, RI—MA	1,174,548	TMA formed by UA merger with Name Change.
State Total	1,174,548	
South Carolina		
Charleston—North Charleston, SC	423,410	Name Change.
Columbia, SC	420,537	No change.
Greenville, SC	302,194	No change.
State Total	1,146,141	
South Dakota		
State Total.		
Tennessee		
Memphis, TN—MS—AR	972,091	Name Change.
Nashville-Davidson, TN	749,935	Name Change.
Knoxville, TN	419,830	No change.
Chattanooga, TN—GA	343,509	No change.
State Total	2,485,365	
Texas		
Dallas—Fort Worth—Arlington, TX	4,145,659	Name Change.
Houston, TX	3,822,509	Increased in Geographic Area.

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
San Antonio, TX	1,327,554	No change.
Austin, TX	901,920	No change.
El Paso, TX	674,801	No change.
McAllen, TX	523,144	Name Change.
Denton—Lewisville, TX	299,823	TMA formed by UA merger with Name Change.
Corpus Christi, TX	293,925	No change.
Lubbock, TX	202,225	New TMA.
State Total	12,191,560	

type designations that appear on the vehicle certification label indicate the recommended rim size. In the case of this noncompliance, the rim size is missing only from the tire size designation. Therefore, the consumer can still determine the recommended rim size from the rim type designation on the certification label.

In consideration of the foregoing, NHTSA has decided that the applicant believe that due to redundant emergency locking features of the subject safety belts, combined with the very low number of potentially noncomplying belts, the noncompliance in question is inconsequential to motor vehicle safety.

Summary of the Petition

According to GM, certain 2001 and 2002 vehicles that it produced between

the seat-manufacturing facilities also could disable the vehicle-sensitive emergency locking function, TKH progressively initiated (or reinitiated) a 100% inspection of the seat belts in assembled seats. GM claims that, for seating units produced prior to January 15, 2002, there is a potential noncompliance of 90 belts per million produced, and for seating units produced from January 15, 2002 through

State/urbanized area (UZA)	UZA 2000 population	Area comparison to 1990 Census TMAs; population
San Antonio, TX	1,327,554	No change.
Austin, TX	901,920	No change.
El Paso, TX	674,801	No change.
McAllen, TX	523,144	Name Change.
Denton—Lewisville, TX	299,823	TMA formed by UA merger with Name Change.
Corpus Christi, TX	293,925	No change.
Lubbock, TX	202,225	New TMA.
State Total	12,191,560	
Utah		
Salt Lake City, UT	887,650	Reduced in Geographic Area.
Ogden—Layton, UT	417,933	Name Change, Increased in Geographic Area.
Provo—Orem, UT	303,880	No change.
State Total	1,609,263	
Vermont		
State Total.		
Virginia		
Virginia Beach, VA	1,394,439	Name Change, Reduced in Geographic Area.
Richmond, VA	818,836	TMA formed by UA merger with Name Change.
State Total	2,213,275	
Washington		
Seattle, WA	2,712,205	TMA formed by UA split with UA merger.
Spokane, WA—ID	334,858	Name Change.
State Total	3,047,063	
West Virginia		
State Total.		
Wisconsin		
Milwaukee, WI	1,308,913	No change.
Madison, WI	329,533	No change.
State Total	1,638,446	
Wyoming		
State Total.		
Puerto Rico		
San Juan, PR	2,216,616	TMA formed by UA merger with Name Change.
Aguadilla—Isabela—San Sebastian, PR	299,086	New TMA with Name Change.
State Total	2,515,702	
U.S. Totals	163,700,187	
U.S. & Puerto Rico Totals	166,215,889	

[FR Doc. 02–16998 Filed 7–5–02; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–11420, Notice 2]

DaimlerChrysler Corporation, Inc., Grant of Application for Decision of Inconsequential Noncompliance

DaimlerChrysler Corporation, Inc., (DaimlerChrysler) has determined that approximately 28,265 of its model year 2002 RS vehicles (Dodge and Chrysler mini-vans) do not meet the labeling requirements of paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 "Tire Selection and Rims for Motor Vehicles Other than Passenger Cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), DaimlerChrysler has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR section 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on February 6, 2002, in the **Federal Register** (67 FR 5640). NHTSA received no comments.

DaimlerChrysler determined that the rim size was inadvertently omitted from the tire size designation included on the certification label affixed to 28,265 of its model year 2002 RS vehicles. The recommended tire size designation for these vehicles is P215/65R16. Due to an error in the printing process, the rim size designation number, specifically the number 16, was inadvertently omitted from the certification label. As a result, the recommended tire size designation on the vehicle's certification label reads as "P215/65R," rather than "P215/65R16."

DaimlerChrysler believes that the noncompliance is inconsequential to motor vehicle safety for several reasons. First, the noncompliant 2002 RS vehicles were constructed with P215/65R16 tires. DaimlerChrysler believes that most vehicle owners, dealers, and tire service technicians would refer to the vehicles' existing tires (specifically P215/65 R16 tires) to determine the appropriate size for a replacement tire rather than to the certification label. Second, the certification label lists the complete designated rim size, including the rim diameter, appropriate for the P215/65 R16 tires.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 120, paragraph S5.3, is whether the tire rim size information is indicated to the consumer on the certification label. Normally, both the tire size and rim type designations that appear on the vehicle certification label indicate the recommended rim size. In the case of this noncompliance, the rim size is missing only from the tire size designation. Therefore, the consumer can still determine the recommended rim size from the rim type designation on the certification label.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, DaimlerChrysler's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17009 Filed 7–5–02; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12366 Notice 1]

General Motors Corporation; Receipt of Application for Determination of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 209 "Seat Belt Assemblies," on the basis that the noncompliance is inconsequential to motor vehicle safety. GM has filed a report of noncompliance pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120, and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Pursuant to the requirements of 49 CFR part 556, GM requests exemption from the notification and remedy requirements of 49 U.S.C. sections 30118(d) and 30120(h). This exemption is requested for noncompliance with certain provisions of FMVSS No. 209. Based on its review of an analysis provided by TK Holdings, Inc. (TKH), the seat belt supplier, both GM and TKH believe that due to redundant emergency locking features of the subject safety belts, combined with the very low number of potentially noncomplying belts, the noncompliance in question is inconsequential to motor vehicle safety.

Summary of the Petition

According to GM, certain 2001 and 2002 vehicles that it produced between July 1, 2000 and April 29, 2002 may not meet the requirements of S4.3(j)(1) of FMVSS No. 209. Specifically, it is possible that approximately 90 seat belt assemblies per million (0.009%) produced by TKH between July 1, 2000 and January 14, 2002 for the front outboard seats, might not lock before the webbing extends 25 mm (1 inch) when the retractor assembly is subjected to an acceleration of 7 m/s^2 (0.7 g). For vehicles produced from January 15, 2002 through April 29, 2002, the frequency of the noncompliance declines to approximately 32 assemblies per million (0.003%). The noncompliance occurs because the vehicle-sensitive emergency locking system in a small number of seat belt assemblies can be disabled by atypical handling during transit from TKH to the seat suppliers or during installation in the vehicle seats. The specific noncompliance is discussed in more detail in the April 9, 2002 Part 573 report submitted to NHTSA.

The noncompliance initially was discovered by TKH when seat belt assemblies shipped to Europe for ECE Type Approval were returned because of the noncomplying condition. During inspections of completed seating units at some of the seat assembly plants, a small number of seat belt assemblies were discovered in which the vehicle-sensitive emergency locking system was not functioning. Upon analysis of these parts, TKH determined that there was a possibility that atypical handling during transit could disable this vehicle-sensitive emergency locking function in approximately 58 out of every 1 million retractors. TKH also determined that subsequent handling of the seat belt assemblies at the seat-manufacturing facilities could produce additional incidents on the order of 32 per million retractors, for a total of 90 retractor assemblies per million.

On January 15, 2002, TKH initiated a 100% inspection of the seat belt assemblies upon their arrival at the seat-manufacturing facilities, and some inspections of the seat belts after installation in seats was started on January 30, 2002. During March and April of 2002, upon learning that handling of the seat belt assemblies at the seat-manufacturing facilities also could disable the vehicle-sensitive emergency locking function, TKH progressively initiated (or reinitiated) a 100% inspection of the seat belts in assembled seats. GM claims that, for seating units produced prior to January 15, 2002, there is a potential noncompliance of 90 belts per million produced, and for seating units produced from January 15, 2002 through April 29, 2002, there is a potential noncompliance of 32 belts per million produced.

Since April 30, 2002, when all seat belts and all seating units have been subjected to a 100% inspection, GM is confident that all vehicles produced include belts assemblies that comply with the emergency locking requirements of FMVSS 209. Further, beginning in April 2002, a design change was made to this emergency locking system to improve the robustness of the mechanism to make sure that it cannot be disabled by handling during shipping or during installation in the seats. TKH intends to end the 100% inspection of seating units and seat belt assemblies after a high level of confidence is established by inspecting the improved assemblies.

Based on the TKH analysis to date, GM estimates that in the approximately 1,870,000 vehicles produced between May 2000 (the earliest vehicle production start date among the affected vehicles) and April 29, 2002, there are approximately 271 noncomplying seat belt assemblies. This represents a combined rate of approximately 0.007%.

Availability of the Petition and Other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–12366. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street SW, Washington, DC 20590 (10:00 a.m. to 5:00 p.m., Monday through Friday). You may also view the petition and other relevant information on the internet. To do this, do the following:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "simple search."

(3) On the next page (*http://dms.dot.gov/searchform.simple.cfm/*), type in the docket number "12366." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of GM, represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliant vehicles were produced and sold with brake warning indicators that do not meet certain requirements mandated by FMVSS No. 135. Paragraph S5.5.5(a) of FMVSS No. 135 requires that all vehicles be equipped with a brake warning application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: August 7, 2002.

exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the BMW [confidential] vehicle line, beginning with MY 2003. The petition has been filed pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Based on the evidence on the MY 2003 BMW [confidential] vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW discussed the uniqueness of its locks and its ignition key. The keys have guide-ways milled in the middle of both sides of the key bit. The same key operates the door locks and the ignition/steering lock and it can be inserted in

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(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL 401, 400 Seventh Street SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 7, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17010 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12544; Notice 1]

Mercedes-Benz, U.S.A., Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz, U.S.A., Inc., (MBUSA) has determined that a limited number of model year 2003 Mercedes-Benz SL-Class, E-Class and CLK-Class vehicles it produced and sold is not in full compliance with 49 CFR 571.135, Federal Motor Vehicle Safety Standard (FMVSS) No. 135, "Passenger Car Brake Systems," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." MBUSA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliant vehicles were produced and sold with brake warning indicators that do not meet certain requirements mandated by FMVSS No. 135. Paragraph S5.5.5(a) of FMVSS No. 135 requires that all vehicles be equipped with a brake warning indicator lamp. The standard enumerates specific minimum parameters applicable to the warning:

Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) [i.e., "Brake"] and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (⅛ inch) high and the letters and background shall be of contrasting colors, one of which is red. Words and symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of safety.

The affected vehicles are equipped with a "Brake" indicator warning lamp located in the upper right hand corner of the speedometer display. The letters in the indicator warning "BRAKE" were changed from all upper case letters to mixed upper and lower case letters. As a result, the letters "B" and "k" in the "Brake indicator lamp meet the minimum height requirements of FMVSS No. 135, but the letters "r," "a," and "e" are 7/10 mm shorter than the minimum 3.2 mm requirements. MBUSA does not believe that the 7/10 mm difference is discernable by the average driver for the following reasons:

1. The "Brake" warning indicator is still easily recognizable due to its positioning on the dashboard, the color of the indicator and other factors.

2. In addition to the "Brake" warning indicator, each of the affected Mercedes-Benz vehicles is also equipped with a dual screen message center that provides brake system information in a highly visible and audible manner.

MBUSA believes that the noncompliance is inconsequential to motor vehicle safety, and no corrective action is warranted. Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: August 7, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17011 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Vehicle Theft Prevention Standard; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of BMW of North America, LLC (BMW) for an exemption of a high-theft line, the BMW [confidential nameplate], from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. The BMW vehicle line will replace the current Z3 vehicle line. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. BMW requested confidential treatment for some of the information submitted in support of its petition. The agency will address BMW's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with the 2003 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTAL INFORMATION: In a petition dated May 17, 2002, BMW of North America, LLC (BMW), requested

exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the BMW [confidential] vehicle line, beginning with MY 2003. The petition has been filed pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW [confidential] vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts-marking requirements for not more than one additional line of a manufacturer for MYs 1997–2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts-marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to Section 330103(d)(3).

BMW's submittal is considered a complete petition, as required by 49 CFR part 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. BMW will install its antitheft device as standard equipment on the MY 2003 BMW [confidential] vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by the use of its radio frequency remote control. Locking the vehicle door and trunk by using the key cylinder or the radio frequency remote control will further secure the vehicle. BMW stated that the frequency codes for the remote control constantly change to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control.

The EWS system consists of a key with a transponder, a loop antenna (coil) around the steering lock cylinder, an EWS control unit and an engine control unit (DME/DDE) with encoded start release input.

BMW stated that in the key is a transponder, a special transmitter/receiver that communicates with the EWS control through the transceiver module. The transponder chip which is integrated in the key consists of a transmitter/receiver, a small antenna coil, and a memory which can be written to and read from. The memory contains its own unique key and customer service data.

BMW states that the EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. BMW also states that the engine control unit with coded start release input has been designed in such a manner that the ignition and the fuel supply are only released when a correct release signal has been sent by the EWS control unit. The EWS control unit inspects the key data for correctness and allows the ignition to operate and fuel supply to be released when a correct signal has been received.

The vehicle is also equipped with a central locking system which locks all doors, the hood, the trunk and fuel filler lid. The central locking system also allows the driver to unlock the driver's door while the passenger doors remain locked. This feature offers additional security by preventing unauthorized entry of the vehicle through the passenger doors. BMW also states that it is also possible to unlock all doors via the central locking system. To prevent locking the keys in the car upon exiting, the driver's door can only be locked with a key or by use of the radio frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW discussed the uniqueness of its locks and its ignition key. The keys have guide-ways milled in the middle of both sides of the key bit. The same key operates the door locks and the ignition/steering lock and it can be inserted in a keyhole in either direction. However, BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market.

BMW also stated that a special key blank, key-cutting machine and owner's individual key code are needed to cut a new key, and that its key blanks, machines and codes will be closely controlled. Additionally, new keys will only be issued to authorized persons and spare keys can only be obtained through the dealership because they are not copies of lost originals, but new keys with their original electronic identification. As an additional security measure, lost keys can be disabled at the vehicle and enabled again. BMW also stated that every key request is documented so that any inquiries by insurance companies and investigative authorities can be followed up on.

BMW states that the steering/ignition lock is hardened against the grip of a screw and the housing is reinforced to prevent removal of the lock. When the key is removed, a mechanism causes the lock to engage, thereby preventing steering wheel movement without any additional action. Additionally, vehicles equipped with automatic transmission have an ignition/transmission interlock that prevents ignition key removal unless the shift lever is in the "Park" position preventing movement of the shift lever until the key is turned in the lock.

The BMW [confidential nameplate] battery will be covered and inaccessibly located. Disconnecting the battery will not unlock the doors. However, in the event of an accident, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the data indicate that lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of part 541, and has concluded that the antitheft device proposed for this line is no less effective than those devices in the lines for which

The agency believes that the device will provide four of the five types of performance listed in 49 CFR part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–17008 Filed 7–5–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

No. 205. They supplied two "Notice of Equipment Compliance" reports. The first one provided compliance information for the material that was used in the vehicle prior to inclusion of the marking and that expired in 1998. TMC also provided a second set of compliance information for the same material, which was used after the marking was placed on the airdam. TMC claims there is virtually no difference

closing date, will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 7, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 2, 2002.

Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders not retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce. Only DOT-approved facilities are authorized to perform cylinder hydrostatic retesting.

FOR FURTHER INFORMATION CONTACT:

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BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of part 541, and has concluded that the antitheft device proposed for this line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its new vehicle line for MY 2003 exactly the same system that is currently installed on its Carline 3, Carline 5, Carline 7, X5 and MINI vehicle lines. The agency granted BMW's petition for modification of its Carline 7 beginning with MY 1995 (*See* 59 FR 47973, September 19, 1994); and its petitions for exemptions granted in full for Carline 5 beginning with MY 1997, Carline 3 beginning with MY 1999, the X5 vehicle line beginning with MY 2000, and the MINI beginning with MY 2002. (*See* 61 FR 6292, February 16, 1996, 62 FR 62800, November 25, 1997, 64 FR 33947, June 24, 1999 and 66 FR 33604, June 22, 2001 respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests conducted: climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and allow deactivation of the vehicle by electronic means and not by use of the mechanical key.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii)).

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device. For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2003 vehicle line from the parts-marking requirements of 49 CFR part 541. If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–17008 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12367; Notice 1]

Toyota Motor Corporation; Receipt of Application for Determination of Inconsequential Non-Compliance

Toyota Motor Corporation (TMC) of Toyota-cho, Aichi-ken, Japan, has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 205 "Glazing Materials," on the basis that the noncompliance is inconsequential to motor vehicle safety. TMC has filed a report of noncompliance pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application. *See* 49 U.S.C. 30118(d) and 30120(h).

TMC submitted the following information in accordance with the requirements of 49 CFR part 556, "Exemption for Inconsequential Defect or Noncompliance."

Summary of the Petition

TMC has determined that certain 2002 model year Lexus SC430 vehicles are equipped with an airdam which fails to meet the marking requirement of FMVSS No. 205 "Glazing Materials." Based on production records, TMC has determined the affected vehicle population includes model year 2002 Lexus SC430 vehicles produced by TMC between January 8, 2001 and May 17, 2001. The total number of vehicles potentially affected is 5,789.

Certain Lexus SC430 vehicles were equipped with an airdam, which was not marked as specified in Section 6 of ANS Z26 (incorporated by reference in FMVSS No. 205), with the "DOT" symbol and a manufacturer's code marking. According to TMC, during its design and testing process, it confirmed that the airdam meets the performance requirements of ANS Z26 for item 4 and item 5 glazing as referenced by FMVSS No. 205. They supplied two "Notice of Equipment Compliance" reports. The first one provided compliance information for the material that was used in the vehicle prior to inclusion of the marking and that expired in 1998. TMC also provided a second set of compliance information for the same material, which was used after the marking was placed on the airdam. TMC claims there is virtually no difference between the compliance data; therefore, TMC believes that there is no safety risk.

TMC maintains that, although this failure to mark constitutes a noncompliance with the marking requirements of FMVSS No. 205, it is inconsequential to motor vehicle safety and, therefore, TMC should be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act.

Availability of the Petition and other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–12367. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 (10:00 a.m. to 5:00 p.m., Monday through Friday). You may also view the petition and other relevant information on the internet. To do this, do the following:

(1) Go to the Docket Management System (DMS) web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "Simple Search."

(3) On the next page (*http://dms.dot.gov/searchform.simple.cfm/*), type in the docket number "12367." After typing the docket number, click on "Search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of TMC described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 7, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17012 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–6]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that the Department of Transportation is investigating the unauthorized marking of high- and low-pressure compressed gas cylinders, primarily fire extinguishers and self-contained breathing apparatuses, by Tech Fire and Safety, Inc. (Tech Fire). Tech Fire is located at 514 4th Street, Watervliet, NY 12189. In 2000, Research and Special Programs Administration (RSPA) conducted an investigation and evaluation of Tech Fire's DOT specification and exemption cylinder retesting procedures and determined that Tech Fire was not fit to conduct such retests. Consequently, RSPA terminated Tech Fire's approval to test DOT specification and exemption cylinders on October 2, 2001. RSPA subsequently received information that Tech Fire had continued to retest and mark DOT specification cylinders as properly tested in accordance with the Hazardous Materials Regulations (HMR) after its approval to retest had been revoked.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders not retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce. Only DOT-approved facilities are authorized to perform cylinder hydrostatic retesting.

FOR FURTHER INFORMATION CONTACT: Chris Michalski, Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, W. Trenton, NJ 08034. Telephone: (609) 989–2256, Fax: (609) 989–2277.

SUPPLEMENTARY INFORMATION: Through its previous investigations of Tech Fire, RSPA determined that Tech Fire demonstrated a history of non-compliance with the HMR and of improper retesting of cylinders. Based on this non-compliance, RSPA terminated Tech Fire's approval to restest DOT specification and exemption cylinders on October 2, 2001. Subsequently, RSPA was notified that Tech Fire had continued to represent cylinders as being properly retested in accordance with the HMR after its approval to conduct such retests was no longer valid.

The purpose of this safety advisory is to notify the public that Tech Fire is not authorized to retest DOT specification or exemption cylinders. Anyone who has a cylinder serviced by Tech Fire after October 2, 2001, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility.

Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged. Cylinders that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged. Upon discharge, the cylinders should be taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and to ensure their suitability for continuing service. The inspector can provide a list of authorized retest facilities in your area, or you may obtain the list at the following Web site: *http://hazmat.dot.gov*. Under no circumstances should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and

retested by a DOT-authorized retest facility.

Tech Fire's Retester Identification Number (RIN) was B753. The cylinders in question are stamped or labeled with RIN B753 in the following pattern:

B7

M Y

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 28, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 1415, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision (OTS)

OMB Number: 1550–0023.

Type of Review: Extension.

Title: Thrift Financial Report.

Description: The Thrift Financial Report is the financial report filed by savings associations. The data are used to monitor the financial condition of savings associations and to administer the prompt corrective action provisions of section 38 of the Federal Deposit Insurance Act.

Respondents: Savings associations.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Response: 40.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 160,000 hours.

Clearance Officer: Ralph Geer, (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a

DEPARTMENT OF THE TREASURY

Customs Service

Customs COBRA Fees Advisory Committee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This document announces a

industry as COBRA Fees Advisory Committee members:

(1) Kathy Hansen, Manager, Customs Compliance Con-Way Transportation Services, Inc.;

(2) Ann W. White, Director of Industry Affairs, American Airlines;

(3) Barbara Kostuk, Director, Federal Affairs & Facilitation Air Transport Association;

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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retested by a DOT-authorized retest facility.

Tech Fire's Retester Identification Number (RIN) was B753. The cylinders in question are stamped or labeled with RIN B753 in the following pattern:

B7

M Y

35

M is the month of retest (e.g., 10), and Y is the year of the retest (e.g., 01).

RSPA requests that any person possessing a cylinder described in this safety advisory telephone or provide a facsimile to Inspector Michalski with the following information for each cylinder: (1) The cylinder manufacturer's name, (2) the serial number of the cylinder, (3) the DOT specification or exemption information for the cylinder, and (4) the month and year of the last marked retest by Tech Fire.

Issued in Washington, D.C. on July 2, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–16999 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–52–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 7, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, fax to (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Annual Thrift Satisfaction Survey.

OMB Number: 1550–0087.

Form Number:

Description: This survey will be sent to federal savings associations on an annual basis to obtain information about their satisfaction with OTS services.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 300.

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: .25 hours.

Estimated Total Burden: 75 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–16909 Filed 7–5–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 28, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 7, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1128.

Form Number: IRS Form 8814.

Type of Review: Extension.

Title: Parents' Election To Report Child's Interest and Dividends.

Description: Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 min.
Learning about the law or the form—9 min.
Preparing the form—24 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,408,000 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–16910 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Customs COBRA Fees Advisory Committee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This document announces a change to the date and time of the first scheduled meeting of the U.S. Customs COBRA Fees Advisory Committee. This notice also publishes the provisional agenda for the meeting and identifies representatives from the private sector transportation industry that have been appointed by the Commissioner of Customs as COBRA Fees Advisory Committee members.

DATES: The first meeting of the U.S. Customs COBRA Fees Advisory Committee has been rescheduled for July 15, 2002, from 1 p.m. to 3 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Interested parties must provide Customs with notice of their intent to attend the meeting by July 11, 2002. Notice may be provided to Carlene Warren at (202) 927–1391 or via e-mail at *Carlene.warren@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Carlene Warren, U.S. Customs Service, Office of Field Operations, Passenger Programs, at (202) 927–1391 or via e-mail at *Carlene.warren@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c), as amended by the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36), directs the Commissioner of Customs to establish an advisory committee whose membership consists of representatives from the airline, cruise ship, and other transportation industries who may be subject to fees under 19 U.S.C. 58c.

The Committee will advise the Commissioner of Customs on issues relating to inspection services performed by the Customs Service, including issues pertaining to the time periods during which inspections should be performed, the proper number and deployment of inspection officers, and the amount of any proposed fees.

The Commissioner of Customs has appointed the following representatives from the private sector transportation industry as COBRA Fees Advisory Committee members:

(1) Kathy Hansen, Manager, Customs Compliance Con-Way Transportation Services, Inc.;

(2) Ann W. White, Director of Industry Affairs, American Airlines;

(3) Barbara Kostuk, Director, Federal Affairs & Facilitation Air Transport Association;

(4) Benson Bowditch, Jr., Manager, Compliance Department Lykes Brothers Steamship Company; and

(5) Joseph Mangiaracino, Team Leader, National Customer Service Center Union Pacific Railroad.

On June 14, 2002, a notice published in the **Federal Register** (67 FR 40983) announced that the first COBRA Fee Advisory Committee meeting was scheduled for June 28, 2002.

This notice announces that the meeting has been rescheduled. The first meeting of the COBRA Fees Advisory Committee is now scheduled for July 15, 2002, from 1 p.m. to 3 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, NW., Washington, DC 20229. The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. Interested parties, other than Advisory Committee members, who wish to attend the meeting should contact Carlene Warren by July 11, 2002, at (202) 927–1391 or via e-mail at *Carlene.warren@customs.treas.gov.*

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

Agenda

I. Opening remarks by COBRA Fees Advisory Committee Chairperson, Deputy Commissioner of the U.S. Customs Service, Douglas M. Browning

II. Briefing by Office of Finance—Budget

III. Topics for Discussion

1. Consideration of New Fees:

a. In Light of New Security Procedures and Equipment;

b. Fees on Cargo

IV. Other Business

V. Adjourn

Dated: July 3, 2002.

Douglas M. Browning,

Deputy Commissioner of Customs.

[FR Doc. 02–17114 Filed 7–5–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–EZ, Short Form Return of Organization Exempt from Income Tax.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Title: Short Form Return of Organization Exempt From Income Tax.

OMB Number: 1545–1150.

Form Number: 990–EZ.

Abstract: An annual return is required by Internal Revenue Code section 6033 for organizations exempt from income tax under Code section 501(a). Form 990–EZ is used by tax exempt organizations and nonexempt charitable trusts whose gross receipts are less than $100,000 and whose total assets at the end of the year are less than $250,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax exempt organizations are operating within the limitations of their tax exemption.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 124,184.

Estimated Time Per Respondent: 55 hrs., 38 min.

Estimated Total Annual Burden Hours: 6,909,598.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–C, Cancellation of Debt.

DATES: Written comments should be

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Averaging of Farm Income.

OMB Number: 1545–1662.

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

media informing the IRS as to what type of information is contained on the media being submitted. This label must be attached to each and every piece of media to identify items needed so that the media can be processed by the Internal Revenue Service.

Current Actions: There are no changes being made to Notice 210 at this time.

Type of Review: Extension of a

Estimated Number of Respondents: 124,184.

Estimated Time Per Respondent: 55 hrs., 38 min.

Estimated Total Annual Burden Hours: 6,909,598.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 25, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17014 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–C, Cancellation of Debt.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Cancellation of Debt.

OMB Number: 1545–1424.

Form Number: 1099–C.

Abstract: Form 1099–C is used by Federal government agencies, financial institutions, and credit unions to report the cancellation or forgiveness of a debt of $600 or more, as required by section 6050P of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the debtor has included the proper amount of canceled debt in income on his or her income tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Responses: 647,993.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 110,159.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17015 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–121063–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–121063–97 (TD 8972), Averaging of Farm Income (§ 1.1301–1).

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Averaging of Farm Income.

OMB Number: 1545–1662.

Regulation Project Numbers: REG–121063–97.

Abstract: Code section 1301 allows an individual engaged in a farming business to elect to reduce his or her regular tax liability by treating all or a portion of the current year's farming income as if it had been earned in equal proportions over the prior three years. The regulation provides that the election for averaging farm income is made by filing Schedule J of Form 1040, which is also used to record and total the amount of tax for each year of the four year calculation.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Farms and individuals or households.

The burden for this requirement is reflected in the burden estimate for Schedule J of Form 1040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17016 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 210

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 210, Preparation Instructions for Media Labels.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of Notice 210 should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Preparation Instructions for Media Labels.

OMB Number: 1545–0295.

Form Number: Notice 210.

Abstract: Section 6011(e)(2)(A) of the Internal Revenue Code requires certain filers of information returns to report on magnetic media. Notice 210 instructs the filers on how to prepare a pressure sensitive label that is affixed to the media informing the IRS as to what type of information is contained on the media being submitted. This label must be attached to each and every piece of media to identify items needed so that the media can be processed by the Internal Revenue Service.

Current Actions: There are no changes being made to Notice 210 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 12,765.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17020 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8884

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8884, New York Liberty Zone Business Employee Credit.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: New York Liberty Zone Business Employee Credit.

OMB Number: 1545–1409.

Form Number: 8884.

Abstract: Section 1400L(a) of the Internal Revenue Code allows a credit against income tax for qualified New York Liberty Zone business employee compensation paid or incurred after March 9, 2002, and before January 1, 2004. Form 8884 is used to figure the credit. The data is used to verify that the credit claimed is correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hr., 46 min.

Estimated Total Annual Burden Hours: 3,760.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17017 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120PC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120PC, U.S. Property and Casualty Insurance Company Income Tax Return.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Property and Casualty Insurance Company Income Tax Return.

OMB Number: 1545–1031.

Form Number: 1120PC.

Abstract: Form 1120PC is used by property and casualty insurance companies to report their income, deductions, and tax liability. The IRS uses the information to determine if the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 80 hr., 31 min.

Estimated Total Annual Burden Hours: 160,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17018 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17019 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–MSA, Distributions From an Archer MSA or Medicare+Choice MSA.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From an Archer MSA or Medicare+Choice MSA.

OMB Number: 1545–1514.

Form Number: 1099–MSA.

Abstract: Form 1099–MSA is used to report distributions from Archer MSAs and Medicare+Choice MSAs. The IRS uses the form to verify that the distributions are properly reported by the trustee and properly included in income by the beneficiary.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hr., 46 min.

Estimated Total Annual Burden Hours: 3,760.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17021 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8884

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8884, New York Liberty Zone Business Employee Credit.

DATES: Written comments should be received on or before September 6, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: New York Liberty Zone Business Employee Credit.

OMB Number: 1545–1785.

Form Number: 8884.

Abstract: Form 8884 is used by business owners to request the Liberty Zone Credit for wages paid to qualified employees. This form was created by section 301 of the Job Creation and Worker Assistance Act of 2002.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 176,250.

Estimated Time Per Respondent: 11 hours, 45 minutes.

Estimated Total Annual Burden Hours: 15,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17021 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120PC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120PC, U.S. Property and Casualty Insurance Company Income Tax Return.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Property and Casualty Insurance Company Income Tax Return.

OMB Number: 1545–1027.

Form Number: 1120–PC.

Abstract: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,200.

Estimated Time Per Respondent: 191 hours, 51 minutes.

Estimated Total Annual Burden Hours: 422,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17022 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6765

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6765, Credit for Increasing Research Activities.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activities.

OMB Number: 1545–0619.

Form Number: 6765.

Abstract: IRC section 38 allows a credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 23,947.

Estimated Time Per Respondent: 22 hours, 58 minutes.

Estimated Total Annual Burden Hours: 529,948.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17023 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–MSA, Distributions From an MSA or Medicare+Choice MSA.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From an MSA or Medicare+Choice MSA.

OMB Number: 1545–1517.

Form Number: 1099–MSA.

Abstract: This form is used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,839

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 3,617

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17026 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From an MSA or Medicare+Choice MSA.

OMB Number: 1545–1517.

Form Number: 1099–MSA.

Abstract: This form is used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,839

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 3,617

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17024 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8821

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8821, Tax Information Authorization.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Information Authorization.

OMB Number: 1545–1165.

Form Number: 8821.

Abstract: Form 8821 is used by taxpayers to designate any individual, corporation, firm, organization or partnership to inspect and/or receive confidential tax information. The information is used by the IRS to disclose confidential tax information to the designee.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 10 hours, 31 minutes.

Estimated Total Annual Burden Hours: 10,510,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17025 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9465

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9465, Installment Agreement Request.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Installment Agreement Request.

OMB Number: 1545–1446.

Form Number: 9465.

Abstract: Form 9465 is used by taxpayers to request to enter into an installment agreement for the payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the federal government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a

enter into an installment agreement for the payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the federal government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 176,250.

Estimated Time Per Respondent: 11 hours, 45 minutes.

Estimated Total Annual Burden Hours: 15,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17027 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Collection; Comment Request for Notice of Change in Director or Senior Executive Officer

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the OTS is soliciting comments concerning the Notice of Change in Director or Senior Executive Officer.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Marilyn K. Burton, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information

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unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17024 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8379

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8379, Injured Spouse Claim and Allocation.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Injured Spouse Claim and Allocation. OMB Number: 1545–1210.

Form Number: 8379.

Abstract: Form 8379 is used by a non-obligated spouse to request the non-obligated spouse's share of a joint income tax refund that would otherwise be applied to the past due obligation owed to a state or Federal agency by the other spouse. The IRS uses the information provided by the injured spouse on For 8379 to determine the proper allocation of the joint refund.

Current Actions: There are no changes being made to the form at this time. Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Responses: 300,000.

Estimated Time Per Response: 1 hour., 47 minutes.

Estimated Total Annual Burden Hours: 534,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17025 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9465

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9465, Installment Agreement Request.

DATES: Written comments should be received on or before September 6, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Agreement Request.

OMB Number: 1545–1350.

Form Number: 9465.

Abstract: Form 9465 is used by the public to provide identifying account information and financial ability to enter into an installment agreement for the payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the federal government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 760,000.

Estimated Time Per Respondent: 1 hour, 4 minutes.

Estimated Total Annual Burden Hours: 805,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17026 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 7, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, fax to (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Savings and Loan Holding Company Registration Statement—H–(b)10.

OMB Number: 1550–0020.

Form Number: H–(b)10.

Regulation Requirement: 12 CFR 584.1(a).

Description: The information collection is used to determine a savings and loan holding company's adherence to the statutes, regulations, and conditions of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings association.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 72.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 8 hours.

Estimated Total Burden: 576 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–16926 Filed 7–5–02; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 67, No. 130

Monday, July 8, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are

line, "(301) 619–7807" should read, "(301) 619–7808".

[FR Doc. C2–16375 Filed 7–5–02; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Monday,

July 8, 2002

VOL 67 ISS 130 JL 8 2002 UMI

Corrections

Federal Register
Vol. 67, No. 130
Monday, July 8, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTEMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Automated Method of Identifying and Archiving Nucleic Acid Sequences

Correction

In notice document 02–16375 beginning on page 43587 in the issue of Friday, June 28, 2002, make the following correction:

On page 43588, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the third line, "(301) 619–7807" should read, "(301) 619–7808".

[FR Doc. C2–16375 Filed 7–5–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–3]

Amendment to Class E Airspace; Caruthersville, MO

Correction

In rule document 02–9406 beginning on page 19107 in the issue of Thursday, April 18, 2002, make the following correction:

§ 71.1 [Corrected]

On page 19108, in the second column, in §71.1, under the heading "**ACE MO E5 Caruthersville, MO [REVISED]**", "(Lat. 36°10'30"N., long. 90°40'30"W.)" should read "(Lat. 36°10'30"N., long. 89°40'30"W.)".

[FR Doc. C2–9406 Filed 7–5–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–04–AD; Amendment 39–12754; AD 2002–10–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80E1 Series Turbofan Engines

Correction

In rule document 02–12631 beginning on page 36090 in the issue of Thursday, May 23, 2002, make the following correction:

§39.13 [Corrected]

On page 36091, in the second column, in §39.13, under the heading "**2002–10–08 General Electric Company:**", "Docket No. 2000–NE–04–AD." should read "Docket No. 2002–NE–04–AD.".

[FR Doc. C2–12631 Filed 7–5–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
July 8, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–54 & 91–275]

RIN 2120–AH03

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. The docket is available for public inspection before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. The docket is available for public inspection before and after the comment closing date. All comments will be considered by the Administrator before taking action on this proposed rule. The proposals contained in this notice may be changed in light of comments received. Comments received after the closing date for comments may be considered if consideration of them does not delay or impede the rulemaking process.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2000–7587." The postcard will be date stamped and returned to the commenter.

Small Entity Inquiries

The FAA's Regulatory Flexibility Initiative provides small entities the opportunity to participate in the development of regulations that may affect them. If you are a small entity and have a question regarding this document, you may contact a local FAA official, or the FAA Regulatory Flexibility Ombudsman at 1–888–REG–FLEX. For more information see the FAA's Regulatory Flexibility Publication on our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Background

Current Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribed

1, and its associated Technical Manual, as the basis for development of these harmonization proposals. The working group forwarded a recommendation to amend part 36 to the ARAC. After due consideration, including a meeting open to the public on May 18, 2000, ARAC forwarded this recommendation, in the form of a draft NPRM, to the FAA for consideration.

FAA Response

While recognizing AIA's concern about potential misinterpretations that might result from the language differences between part 36 and ICAO Annex 16, harmonization of part 36 with JAR 36 and ICAO Annex 16 is not contingent upon these standards being identical, word for word. These language differences resulted primarily from the need to (1) ensure that the

with ICAO noise standards. The AIA further urges that all items that have not been agreed upon by the Harmonization Working Group should be identified as technical issues to be studied and resolved by appropriate task groups within ICAO committee on Environmental Protection (CAEP) Working Group 1.

FAA Response

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–54 & 91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; requests for comments.

SUMMARY: The FAA is amending the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These changes are based on the joint effort of the Federal Aviation Administration (FAA), the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for subsonic jet airplanes and subsonic transport category large airplanes. These changes will provide nearly uniform noise certification standards for airplanes certificated in the United States and in the JAA countries. The harmonization of the noise certification standards will simplify airworthiness approvals for import and export purposes.

DATES: *Effective Date:* August 7, 2002. *Comments Date:* Comments on revised 36.2 concerning the applicable noise requirements are due on or before September 6, 2002.

FOR FURTHER INFORMATION CONTACT: James Skalecky, AEE–100, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3699; facsimile (202) 267–5594; or e-mail at *james.skalecky@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted with prior notice and prior public comment. In response to a comment received during the comment period the FAA is proposing a change to section 36.2. Considering the degree of the change from what was noted in Notice No. 00–08 and the requirement that is being implemented, this final rule includes a request for comments only on revised section 36.2.

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Offices's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number of docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Background

Current Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribed "standards to measure aircraft noise and sonic boom;...and regulations to control and abate aircraft noise and sonic boom." Part 36 of Title 14 of the Code of Federal Regulations contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft. Subpart A, B, and C and appendices A, B, and C of part 36 contain the requirements and standards and apply to subsonic jet airplanes and subsonic transport category large airplanes. Appendices A, B, and C of part 36 specify the test conditions, procedures, and noise levels necessary to demonstrate compliance.

Government and Industry Cooperation

In June 1990 at a meeting of the JAA Council, which consists of JAA members from European countries and the FAA, the FAA Administrators committed the FAA to support the harmonization of U.S. regulations with the Joint Aviation Regulations (JAR). The JARs are developed for use by the European authorities that are member countries of the JAA.

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee to serve as a forum for the FAA to obtain input from outside the government on major regulatory issues facing the agency. The FAA tasked ARAC with noise certification issues. These issues involve the harmonization of 14 CFR part 36 with JAR 36, the harmonization of associated guidance material including equivalent procedures, and interpretations of the regulations. On October 17, 1995, the ARAC established the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes (60 FR 53824). The working group task included reviewing the applicable provisions of subparts A, B, and C, and appendices A, B, and C part 36, and harmonizing them with the corresponding applicable provisions of JAR 36. The FAA asked the working group to consider the current international standards and recommended practices, as issued under International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. The working group forwarded a recommendation to amend part 36 to the ARAC. After due consideration, including a meeting open to the public on May 18, 2000, ARAC forwarded this recommendation, in the form of a draft NPRM, to the FAA for consideration.

On July 11, 2000, the FAA published Notice No. 00–08 entitled "Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes" (65 FR 42796). The FAA solicited comments on the proposals, which are discussed in the following section. This final rule is based on Notice No. 00–08.

Discussion of Comments

Four commenters responded to Notice No. 00–08. These comments and the FAA responses are discussed below.

General Comments

The Air Line Pilots Association (ALPA) comments that it had reviewed both the Notice of Proposed Rulemaking (NPRM) (Notice No. 00–08) and draft Advisory Circular 36–4C (65 FR 48794). In its comments, ALPA compliments the FAA and JAA for pursuing the harmonization of noise certification standards and concurred with both documents. ALPA also states that certification standards are the appropriate means of reducing noise, and that aviation noise reduction should be accomplished primarily through technological advances in engine and aircraft design/certification, and not with the development of special pilot procedures.

The Aerospace Industries Association (AIA) endorses the FAA's efforts to harmonize the U.S. and European regulations. The AIA also comments that the proposed rule would improve the compatibility of part 36 with the noise standards prescribed in ICAO Annex 16, Volume 1. However, AIA also urges FAA to eliminate the language differences that would remain between part 36 and ICAO Annex 16 and its associated guidance material. The AIA identified several sections where it believes that these differences would cause the typical noise certification applicant to question whether the two standards (*i.e.*, part 36 and ICAO Annex 16) have the same meaning. The AIA comments that these differences could make it more difficult and costly for applicants that might want reciprocal approvals by different certificating authorities.

FAA Response

While recognizing AIA's concern about potential misinterpretations that might result from the language differences between part 36 and ICAO Annex 16, harmonization of part 36 with JAR 36 and ICAO Annex 16 is not contingent upon these standards being identical, word for word. These language differences resulted primarily from the need to (1) ensure that the terminology used in part 36 is consistent with that which is commonly used in U.S. regulations, and (2) more precisely define several JAR 36 and ICAO Annex 16 provisions that were incorporated into part 36. The FAA believes that, rather than leading to misinterpretation, as suggested by AIA, more precise definitions of these regulatory provisions will result in less chance of misinterpretation. Accordingly, the FAA has not changed the proposed rule to eliminate these language differences.

Calibration

The AIA notes the inconsistent use of the term "changes" in section A36.3.9.5 of the proposed rule, compared to "any changes," used in section A36.3.9.7 to refer to calibration requirements.

FAA Response

The FAA agrees. The word "any" has been removed from section A36.3.9.5.

Sound Propagation Effects on the Lateral Noise Measurement

The AIA comments that the material in section A36.9.3.2(b)(1) concerning sound propagation effects on the lateral noise measurement would be more appropriate in section A36.9.3.2(b)(2)(ii).

FAA Response

The FAA agrees and the material has been moved to section A36.9.3.2(b)(2)(ii). This text is now designated as a "note," since it is advisory in nature. This change is also included in section A36.9.4.2(b)(2)(ii), which contains the same material.

Compatibility With ICAO Standards

The AIA comments that the proposed rule preamble discussion under "Compatibility With ICAO Standards" suggests that the FAA is willing to simply file differences between the 14 CFR part 36 noise standards and ICAO noise standard and maintain that status because it had not been possible to reach agreement on some items in the ARAC Harmonization Working Group. The AIA urges the FAA to review the proposed rule to re-assess the FAA's position on achieving full compatibility with ICAO noise standards. The AIA further urges that all items that have not been agreed upon by the Harmonization Working Group should be identified as technical issues to be studied and resolved by appropriate task groups within ICAO committee on Environmental Protection (CAEP) Working Group 1.

FAA Response

Those items identified in the proposed rule as items for which the FAA intends to file differences were placed in that category after considerable review by the Harmonization Working Group indicated that the differences could not realistically be resolved prior to publication of the proposed rule. The FAA fully intends to continue to work toward resolution of these remaining differences, and is currently participating in ICAO CAEP Working Group 1 task groups that are addressing each of these differences.

Special Retroactive Requirements

The AIA expresses support for the FAA's recognition of the incompatibility of current 14 CFR part 36, ICAO Annex 16, and JAR 36 on the date used in determining the applicable noise standards relative to the date of type certificate application. The AIA comments, however, that simply removing section 36.2, as proposed, would not solve the incompatibility problem. Further, given the text contained in ICAO Annex 16 (*i.e.*, date of application for the certificate of airworthiness for the prototype), AIA does not view the proposed rule as meeting the FAA's stated intent to "harmonize with the applicability designation of part 36 with that contained in section 1.7 of ICAO Annex 16, Chapter 1."

The AIA comments that the proposed rule did not make clear how the FAA would handle the date for applicable noise standards for type design changes if reference to part 36 is removed from part 21.

Further, considering the proposal to revise section 36.2, the AIA questions whether section A36.1.1 should continue to specify that the procedures used for noise certification are those in effect on the effective date of this final rule.

FAA Response

The FAA agrees that removing and reserving section 36.2 and deferring to part 21 as proposed is not adequate to determine the applicable noise certification basis. Accordingly, section 36.2 has been retained and revised to

address the concerns expressed by AIA in its comment, while maintaining the FAA's intent to use the date of certification application as a basis for part 36 applicability. The heading of section 36.2 is also changed to "Requirements as of date of application." The revisions made to section 36.2 are within the scope of Notice No. 00–08; the FAA is not

applied, or have incorrectly applied, calibration adjustments to acoustic data. Although such adjustments are usually of small magnitude, their effect can be significant, especially when calculated noise levels are close to the noise level limits specified in part 36.

As the commenter suggests, the effect of applying these adjustments will be the same, whether performed internally

reporting requirements for these items and parameters already exist under current section A36.5, which specifies that the aircraft configuration and engine performance parameters relative to noise generation be reported.

The FAA proposed in section A36.5.2.5(c) that the test airplane's center of gravity be reported. Transport Canada requests that the FAA provide

is held constant by varying the pitch angle based on torque demand. The commenter further stated that, while torque is a measured parameter, propeller pitch angle is not.

FAA Response

The FAA agrees that torque and propeller RPM are an acceptable substitute for propeller pitch angle. The

because noise compliance data are not on board the airplane.

We received one comment concerning this subject. Airbus (U.K.) comments that it has received occasional queries from British Aircraft Corporation (BAC) 1–11 operators who have had difficulties with certain airport authorities when approved noise data have not been available. The commenter states that in the absence of a noise

FAA Response

The proposed rule did not propose any change to the current section A36.5(c)(2)(ii) 3 degree approach reference glide path angle or the current section C36.9(c) glide path angle test tolerance. The proposed rule moves the current requirement for approach glide path angle from the current sections to sections B36.7(c)(1) and B36.8(e) to

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address the concerns expressed by AIA in its comment, while maintaining the FAA's intent to use the date of certification application as a basis for part 36 applicability. The heading of section 36.2 is also changed to "Requirements as of date of application." The revisions made to section 36.2 are within the scope of Notice No. 00–08; the FAA is not proposing a new standard. The change was made because of the comment that was received relative to section 36.2. Given the change from Notice No. 00–08 in the manner in which this requirement is implemented, however, this final rule includes a request for comments on the revised section 36.2.

The FAA recognizes that revised section 36.2 in this final rule does not correspond word for word with section 1.7 of ICAO Annex 16, Chapter 1. The FAA believes, however, that the revised section 36.2 is in agreement with the intent of section 1.7 to use the date of certification application as the basis for noise certification standard applicability.

The change to section 36.2 specifies that the part 36 requirements applicable to a specific certification project are those in effect on the date of application for the new, amended, or supplemental type certificate. The FAA also agrees with the AIA's comment that a date need not be specified in section A36.1.1. Accordingly, since section 36.2 will determine the applicable noise certification requirements, no date is specified in section A36.1.1.

Measurement of Airplane Noise Received on the Ground

Transport Canada comments that the calibration adjustments of proposed section A36.3.9.1 be applied to the measured sound levels at the output of the analyzer, rather than within the analyzer, as permitted by the current rule. The commenter states that because the algorithms for adjustments are defined and pre-programmed into the analyzer by the applicant, the impact on the final result can be predicted with a high degree of accuracy. The commenter further states that, provided that these correction algorithms are discussed and agreed upon with the certificating authority, it should not make much difference whether they are programmed internally or applied externally to the analyzer. The commenter recommends that the current rule requirement be retained.

FAA Response

The FAA disagrees with the comment. There have been instances in which certification applicants have either not applied, or have incorrectly applied, calibration adjustments to acoustic data. Although such adjustments are usually of small magnitude, their effect can be significant, especially when calculated noise levels are close to the noise level limits specified in part 36.

As the commenter suggests, the effect of applying these adjustments will be the same, whether performed internally or externally to the analyzer. Other adjustments to acoustic data, however, such as microphone and system response corrections, are required to be applied externally to the analyzer, even though it is technically possible with many current systems to apply them internally.

External application of these corrections enables the reconstruction of calculated noise levels from raw acoustic data, if such need should arise. Therefore, even though the internal or external application of these calibration adjustments will have the same effect, the requirement to apply the calibration adjustments externally to the analyzer will remain as proposed to enable the FAA to determine whether these adjustments have been applied correctly. Moreover, the requirement to apply these calibration adjustments externally was included in the revision to ICAO Annex 16 that was approved by the ICAO Council on June 27, 2001.

Reporting of Airplane Center of Gravity

Transport Canada recommends that the FAA provide a more detailed explanation of why information on center of gravity is needed and how it will benefit aircraft definition for noise certification purposes.

Airbus (U.K.) also comments that section A36.5.2.5(c), would require noise certification applicants to report the center of gravity range for each series of test runs. The commenter states that it already reports center of gravity in the flight manual, but notes that it currently reports the takeoff center of gravity as being "mid center of gravity" and the approach center of gravity as being "forward center of gravity." The commenter hopes that this reporting practice would continue to be sufficient and that no greater detail would be required.

FAA Response

In section A36.5.2.5, the FAA proposed specific airplane configuration items and engine operating parameters that must be reported to the FAA in the applicant's noise certification compliance report. The FAA explained that each of the proposed configuration items and parameters can affect the airplane noise signature, and that the reporting requirements for these items and parameters already exist under current section A36.5, which specifies that the aircraft configuration and engine performance parameters relative to noise generation be reported.

The FAA proposed in section A36.5.2.5(c) that the test airplane's center of gravity be reported. Transport Canada requests that the FAA provide more detail to explain why reporting is needed. In response to Transport Canada's comment, the airplane center of gravity is an example of an identifying characteristic of the airplane test configuration and an item that could influence measured noise levels. The center of gravity will affect the performance of the airplane and is therefore an integral part of the noise certification flight test and reference procedure. For example, for the approach noise certification, where part 36 requires that the reference airplane configuration be the noisiest configuration, the forward center of gravity position is usually associated with the noisiest airplane configuration. The forward center of gravity position forces the airplane's elevator to push down on the tail thereby increasing airframe drag and, in turn, the power required to maintain the required 3 degree glideslope. Both the increase in airframe drag and required power result in a higher approach noise level.

The final rule specifically identifies the requirement to report center of gravity. Accordingly, the current practice identified by Airbus (U.K.) of reporting center of gravity as "forward" or "mid" for each series of test runs will still be acceptable after the effective date of this final rule. Further, the center of gravity used in demonstrating compliance with part 36 is not required to be reported in the Airplane Flight Manual for noise certification purposes, as Airbus (U.K.) implies. This final rule only specifies that the center of gravity range must be reported in the applicant's noise certification compliance report.

Reporting of Propeller Pitch Angle

Transport Canada comments on the requirement to report propeller pitch angle proposed in section A36.5.2.5(d). Because the pitch angle at which a propeller operates is a function of torque demand and propeller revolutions per minute (RPM) the commenter recommended that torque and propeller RPM be reported as a substitute for propeller pitch angle. The commenter stated that Stage 3 noise compliant turboprops generally operate on the principle of governed propeller speed. In other words the propeller RPM is held constant by varying the pitch angle based on torque demand. The commenter further stated that, while torque is a measured parameter, propeller pitch angle is not.

FAA Response

The FAA agrees that torque and propeller RPM are an acceptable substitute for propeller pitch angle. The source noise (i.e., the noise generated by the airplane) adjustments required by section A36.9.3.4 can be made using torque and propeller RPM, and torque and propeller RPM can be more readily determined than propeller pitch angle. Engine torque and propeller rotational speed reporting requirements were proposed and reporting of these parameters is required by section A36.5.2.5(h)(2). Therefore, the proposed requirement to report propeller pitch angle has been removed in this final rule.

Adjustment of Airplane Flight Test Results

Transport Canada comments that section A36.9.1.1 needs an explanatory note to identify the components that are the likely noise sources that must typically be addressed in accounting for the effect that airspeed has on source noise.

FAA Response

The FAA agrees with the commenter's recommendation to identify the components that are the likely noise sources to typically be addressed in accounting for the effect of airspeed on source noise. This type of information is, however, more appropriate for inclusion in guidance material associated with part 36 rather than in part 36 itself. Therefore, information on the components to typically be addressed in accounting for the effect of airspeed on source noise have been included in Advisory Circular 36–4C, which is being published concurrently with this final rule.

Noise Certificates

In the proposed rule discussion of compatibility with ICAO standards, the FAA stated that the agency is not authorized to issue Noise Certificates. The proposed rule also notes that while section 36.1581 of part 36 requires that the certificated noise levels be included in the Airplane Flight Manual (AFM), the FAA does not require the AFM to be carried in the airplane. An operations manual that may not contain certificated noise levels is carried in some airplanes. The FAA invited comments on the extent of any problems encountered because noise compliance data are not on board the airplane.

We received one comment concerning this subject. Airbus (U.K.) comments that it has received occasional queries from British Aircraft Corporation (BAC) 1–11 operators who have had difficulties with certain airport authorities when approved noise data have not been available. The commenter states that in the absence of a noise certificate, the AFM is the only FAA-approved manufacturer's document that is, or may be, available to provide substantiation of the noise levels. If the AFM is not carried on board, the commenter recommends that the FAA consider issuing noise certificates.

FAA Response

Because only one comment was received, there is no indication that a widespread problem exists. The FAA, however, is continuing to pursue solutions that would result in sufficient noise data being carried on board aircraft to assist carriers in certain situations.

Noise Certification Reference Procedures

Airbus (U.K.) comments on proposed section B36.7(c)(5). Airbus (U.K.) states that the landing approach certification is already done at a range of aircraft configurations in case specific airports need it.

FAA Response

No change is made to the final rule based on this comment. The proposed rule did not propose to change the current section C36.9(b) requirement that bases the approach noise certification on the airplane landing configuration that is the most critical from a noise standpoint. The proposed rule moves the requirement from current section C36.9(b) to section B36.7(c)(5) to more closely align the formatting of part 36 with JAR 36 and ICAO Annex 16. Further, this requirement is consistent with that contained in JAR 36 and ICAO Annex 16.

Noise Certification Test Procedures

Airbus (U.K.) comments that the approach glide path angle (3 degrees ± 0.5 degrees) proposed in section B36.8(e) does not allow for designs for steeper approaches, despite the existing use of steeper approaches at specific airports. The commenter further states that if an aircraft was now designed specifically for steeper approach and was not capable of the 3 degree approach it might be uncertifiable, or difficult to certify, for noise purposes.

FAA Response

The proposed rule did not propose any change to the current section A36.5(c)(2)(ii) 3 degree approach reference glide path angle or the current section C36.9(c) glide path angle test tolerance. The proposed rule moves the current requirement for approach glide path angle from the current sections to sections B36.7(c)(1) and B36.8(e) to more closely align the formatting of part 36 with JAR 36 and ICAO Annex 16. The approach glide path angle requirements are also consistent with those contained in JAR 36 and ICAO Annex 16.

In addition, while the 3 degree reference glide path angle is currently used to establish the part 36 approach noise certification level, part 36 requirements for noise tests have no bearing on the use of other glide path angles during normal operation of an airplane. The FAA believes, however, that a glide path angle of 3 degrees is the nominal glide path angle that is generally used during normal operations by the class of airplanes to which part 36, subpart B is appropriate. In the case of an airplane that is designed with steep approach capability such that it may not be capable of a 3 degree approach, the FAA may determine that part 36, subpart B is not the appropriate noise certification standard for that airplane. If such a determination were made, an appropriate noise certification basis for the airplane would be developed using U.S. rulemaking procedures including a public comment period. No change to the glide path requirement proposed in sections B36.7(c)(1) and B36.8(e) of the proposed rule is being made.

Corrections and Other Minor Changes to the Proposed Rule

This final rule includes some corrections and other minor changes from the proposed rule.

Typographical errors, word omissions, etc., that appeared in the proposed rule have been corrected. Incorrect section and appendix designations have also been corrected. For example, the change in appendix designation from "C" to "B" was not changed in all of the sections that it should have been. Corrections to terminology have been made. For example, in some sections of part 36 the proposed change in terminology from "sideline" to "lateral", or from "turbojet" to "jet" was not carried through in all of the sections that needed to be changed. Errors in the section cross reference table have been corrected.

Sections 36.1(f)(4) and 36.1(f)(6) have been changed to reflect the relocation of the tradeoff provision from current section C36.5(b) to section B36.6.

In section 36.103(a) the reference to the "flight test conditions" of section B36.8 has been changed to "test procedures" to be consistent with the title of section B36.8.

In section B36.4(b), the phrase "* * * obtain a sufficient number * * *" has been changed to "obtain sufficient number * * *" to be consistent with the wording of section A36.4(b).

In section B36.4(c), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.4(c).

In section B36.4(d), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.4(d).

In section B36.4(e), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.4(e).

In section B36.5(a), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(a).

In section B36.5(b), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(b).

In section B36.5(c), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(c).

In section B36.5(d), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(d).

In section B36.5(e), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(e).

In section B36.5(f), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(f).

In section B36.5(g), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(g).

In section B36.5(h), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(h).

In section B36.5(i), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(i).

In section B36.5(j), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(j).

In section B36.5(k), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(k).

In section B36.5(l), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(l).

In section B36.5(m), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(m).

In section B36.5(n), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(n).

In section B36.5(o), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(o).

In section B36.5(p), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(p).

In section B36.5(q), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(q).

In section B36.5(r), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(r).

In section B36.5(s), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(s).

In section B36.5(t), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(t).

In section B36.5(u), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(u).

In section B36.5(v), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(v).

In section B36.5(w), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(w).

In section B36.5(x), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(x).

In section B36.5(y), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(y).

In section B36.5(z), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(z).

In section B36.5(aa), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(aa).

In section B36.5(bb), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(bb).

In section B36.5(cc), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(cc).

In section B36.5(dd), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(dd).

In section B36.5(ee), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ee).

In section B36.5(ff), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ff).

In section B36.5(gg), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(gg).

In section B36.5(hh), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(hh).

In section B36.5(ii), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ii).

In section B36.5(jj), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(jj).

In section B36.5(kk), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(kk).

In section B36.5(ll), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ll).

In section B36.5(mm), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(mm).

In section B36.5(nn), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(nn).

In section B36.5(oo), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(oo).

In section B36.5(pp), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(pp).

In section B36.5(qq), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(qq).

In section B36.5(rr), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(rr).

In section B36.5(ss), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ss).

In section B36.5(tt), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(tt).

In section B36.5(uu), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(uu).

In section B36.5(vv), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(vv).

In section B36.5(ww), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ww).

In section B36.5(xx), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(xx).

In section B36.5(yy), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(yy).

In section B36.5(zz), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(zz).

In section B36.5(aaa), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(aaa).

In section B36.5(bbb), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(bbb).

In section B36.5(ccc), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ccc).

In section B36.5(ddd), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ddd).

In section B36.5(eee), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(eee).

In section B36.5(fff), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(fff).

In section B36.5(ggg), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ggg).

In section B36.5(hhh), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(hhh).

In section B36.5(iii), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(iii).

In section B36.5(jjj), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(jjj).

In section B36.5(kkk), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(kkk).

In section B36.5(lll), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(lll).

In section B36.5(mmm), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(mmm).

In section B36.5(nnn), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(nnn).

In section B36.5(ooo), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ooo).

In section B36.5(ppp), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ppp).

In section B36.5(qqq), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(qqq).

In section B36.5(rrr), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(rrr).

In section B36.5(sss), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(sss).

In section B36.5(ttt), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ttt).

In section B36.5(uuu), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(uuu).

In section B36.5(vvv), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(vvv).

In section B36.5(www), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(www).

In section B36.5(xxx), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(xxx).

In section B36.5(yyy), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(yyy).

In section B36.5(zzz), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(zzz).

In section B36.5(aaaa), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(aaaa).

In section B36.5(bbbb), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(bbbb).

In section B36.5(cccc), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(cccc).

In section B36.5(dddd), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(dddd).

In section B36.5(eeee), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(eeee).

In section B36.5(ffff), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ffff).

In section B36.5(gggg), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(gggg).

In section B36.5(hhhh), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(hhhh).

In section B36.5(iiii), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(iiii).

In section B36.5(jjjj), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(jjjj).

In section B36.5(kkkk), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(kkkk).

In section B36.5(llll), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(llll).

In section B36.5(mmmm), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(mmmm).

In section B36.5(nnnn), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(nnnn).

In section B36.5(oooo), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(oooo).

In section B36.5(pppp), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(pppp).

In section B36.5(qqqq), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(qqqq).

In section B36.5(rrrr), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(rrrr).

In section B36.5(ssss), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ssss).

In section B36.5(tttt), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(tttt).

In section B36.5(uuuu), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(uuuu).

In section B36.5(vvvv), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(vvvv).

In section B36.5(wwww), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(wwww).

In section B36.5(xxxx), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(xxxx).

In section B36.5(yyyy), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(yyyy).

In section B36.5(zzzz), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(zzzz).

In section B36.5(aaaaa), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(aaaaa).

In section B36.5(bbbbb), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(bbbbb).

In section B36.5(ccccc), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ccccc).

In section B36.5(ddddd), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ddddd).

In section B36.5(eeeee), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(eeeee).

In section B36.5(fffff), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(fffff).

In section B36.5(ggggg), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ggggg).

In section B36.5(hhhhh), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(hhhhh).

In section B36.5(iiiii), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(iiiii).

In section B36.5(jjjjj), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(jjjjj).

In section B36.5(kkkkk), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(kkkkk).

In section B36.5(lllll), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(lllll).

In section B36.5(mmmmm), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(mmmmm).

In section B36.5(nnnnn), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(nnnnn).

In section B36.5(ooooo), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ooooo).

In section B36.5(ppppp), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ppppp).

In section B36.5(qqqqq), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(qqqqq).

In section B36.5(rrrrr), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(rrrrr).

In section B36.5(sssss), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(sssss).

In section B36.5(ttttt), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ttttt).

In section B36.5(uuuuu), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(uuuuu).

In section B36.5(vvvvv), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(vvvvv).

In section B36.5(wwwww), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(wwwww).

In section B36.5(xxxxx), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(xxxxx).

In section B36.5(yyyyy), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(yyyyy).

In section B36.5(zzzzz), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(zzzzz).

In section B36.5(aaaaaa), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(aaaaaa).

In section B36.5(bbbbbb), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(bbbbbb).

In section B36.5(cccccc), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(cccccc).

In section B36.5(dddddd), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(dddddd).

In section B36.5(eeeeee), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(eeeeee).

In section B36.5(ffffff), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ffffff).

In section B36.5(gggggg), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(gggggg).

In section B36.5(hhhhhh), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(hhhhhh).

In section B36.5(iiiiii), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(iiiiii).

In section B36.5(jjjjjj), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(jjjjjj).

In section B36.5(kkkkkk), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(kkkkkk).

In section B36.5(llllll), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(llllll).

In section B36.5(mmmmmm), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(mmmmmm).

In section B36.5(nnnnnn), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(nnnnnn).

In section B36.5(oooooo), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(oooooo).

In section B36.5(pppppp), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(pppppp).

In section B36.5(qqqqqq), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(qqqqqq).

In section B36.5(rrrrrr), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(rrrrrr).

In section B36.5(ssssss), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ssssss).

In section B36.5(tttttt), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(tttttt).

In section B36.5(uuuuuu), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(uuuuuu).

In section B36.5(vvvvvv), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(vvvvvv).

In section B36.5(wwwwww), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(wwwwww).

In section B36.5(xxxxxx), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(xxxxxx).

In section B36.5(yyyyyy), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(yyyyyy).

In section B36.5(zzzzzz), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(zzzzzz).

In section B36.5(aaaaaaa), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(aaaaaaa).

In section B36.5(bbbbbbb), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(bbbbbbb).

In section B36.5(ccccccc), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ccccccc).

In section B36.5(ddddddd), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(ddddddd).

In section B36.5(eeeeeee), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is operated * * *" to be consistent with the wording of section A36.5(eeeeeee).

In section B36.5(fffffff), the phrase "* * * the airplane is operated * * *" has been changed to "the airplane is

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Sections 36.1(f)(4) and 36.1(f)(6) have been changed to reflect the relocation of the tradeoff provision from current section C36.5(b) to section B36.6.

In section 36.103(a) the reference to the "flight test conditions" of section B36.8 has been changed to "test procedures" to be consistent with the title of section B36.8.

In section B36.4(b), the phrase "* * * obtain a sufficient number * * *" has been changed to "* * * use a sufficient number * * *" since the word "use" more appropriately defines the requirement of this section for a sufficient number of noise measurement points (i.e., locations) to be used in demonstrating the maximum lateral noise level.

The title of section B36.7 has been changed from "Noise certification reference procedures" to "Noise certification reference procedures and conditions" to be consistent with the content of section B36.7.

Section B36.7(b)(3) now contains reference to section B36.7(b)(2) rather than B36.7(b)(1). This change was made because section B36.7(b)(2) is a more appropriate reference to the thrust cutback requirements.

The symbol "EPNL," meaning "Effective perceived noise level adjusted for reference conditions", has been added to section A36.6. This symbol is used in section A36.9.4.3.1.

In order to reflect the section formatting used by ICAO, the ambient noise requirements of proposed sections A36.4.9.11 and A36.3.9.12 have been adopted in this final rule as a part of a new section A36.3.10, "Adjustments for Ambient Noise". This formatting was used by ICAO in the amendment to ICAO Annex 16 that was approved by the ICAO Council on June 27, 2001.

Draft Advisory Circular 36–4C

The FAA made draft Advisory Circular (AC) 36–4C available for public comment and published a notice of availability in the **Federal Register** on August 9, 2000 (65 FR 48794). In the proposed rule, the FAA stated that it intended to publish AC 36–4C concurrently with this final rule. The AIA comments that its review of the draft AC indicates that it encompasses much more explanation and interpretation of the regulatory requirements than the current ICAO Environmental Technical Manual guidance material, which is focused primarily on the use of equivalent procedures. The AIA encourages the FAA to take two important steps regarding AC 36–4C. As a first step, the AIA suggests that there is important work to be done in coordination with manufacturers for buy-in of the document concept before it is published, followed by integration of all sections of the document so that it can be easily used by readers and applicants. Second, the AIA suggests that the FAA recommend to ICAO Working Group 1 that it study the document and consider development of similar internationally accepted guidance material concerning compliance with the ICAO Annex 16 overall noise certification process.

FAA Response

The FAA agrees with the AIA's observation that AC 36–4C encompasses more than the current ICAO Environmental Technical Manual. AC 36–4C was developed to provide comprehensive guidance on implementing the part 36 noise certification standards. In meeting this objective, AC 36–4C covers many more subjects than the ICAO Environmental Technical Manual.

Given that the AIA members constitute a significant segment of the intended users of AC 36–4C, the FAA accepted the assistance of the AIA in editing the draft AC to make it more useful to the intended users. These changes eliminated redundancies and improved the integration of the guidance material with its associated regulatory text. These changes have been incorporated into the final version of AC 36–4C, which is being published concurrently with this final rule.

The FAA agrees with AIA's suggestion that the FAA recommend to ICAO Working Group 1 that it study the document and consider development of similar internationally accepted guidance material concerning compliance with the ICAO Annex 16 overall noise certification process. In fact, ICAO CAEP Working Group 1 has begun development of such a document under its current work program.

Synopsis of the Final Rule

Part 36 contains noise standards for aircraft type and airworthiness certification. Subparts A, B, and C, and the related appendices A, B, and C, of part 36 prescribe noise levels and test procedures for subsonic jet airplanes and subsonic transport category large airplanes, including rules governing the issuance of original, amended, or supplemental type certificates.

This final rule adopts changes to part 36 in three major categories. First, there are substantive changes to technical material, such as a revised method for demonstrating the lateral noise certification level for propeller-driven airplanes. These changes are discussed individually in this preamble. Second, there are many changes to regulatory text that will serve to minimize the language differences between part 36 and JAR 36, while having no substantive effect on the regulatory standards of part 36. These text changes are not specifically discussed in this preamble. Third, there are numerous changes to the section designations of current Appendices A, B, and C of part 36 that will more closely align part and JAR 36 formats. Changes in this category will have no substantive effect on the regulatory standards of part 36. The changes in part 36 section designations are shown in a tabular format that identifies current part 36 sections and the corresponding sections of the revision. This redesignation table appears at the end of the section-by-section discussion.

Section-by-Section Discussion

The following is a section-by-section discussion of the substantive changes to 14 CFR part 36 and its appendices. Throughout the final rule, the term "jet" has been used when referring to turbojet and turbofan engines. This changes the terminology in current part 36, which uses the term "turbojet" when referring to both turbojet and turbofan engines. This change will result in the same term being used in 14 CFR part 36 and JAR 36, when referring to turbojet and turbofan engines. For consistency with part 36, this change in terminology has also been included in the aircraft noise related sections of parts 21 and 91. This change to parts 21 and 91 is discussed in the following section-by-section discussion.

Sections 21.93 and 21.183

Section 21.93(b)(2) and section 21.183(e)(1), which pertain to the part 36 noise certification requirements, are revised to add the term "jet" and retain the term "turbojet powered" when referring to turbojet or turbofan engines. This change is made to reflect the use of the term "jet" in part 36 and does not change the meaning of the term turbojet as it is used in either the noise certification related sections, or other sections of 14 CFR chapter 1.

Section 36.1

This final rule removes section 36.1(d)(3). Amendments 36–10 (43 FR 28406, June 29, 1978) should have removed this section when it redesignated section 36.1(d)(3) as section 36.1(d)(1)(iii).

Section 36.1(f) and its subparagraphs are revised to incorporate changes in terminology, *i.e.*, from "takeoff" to "flyover," "sideline" to "lateral," and "turbojet" to "jet," and the changes to part 36 appendix and section designations that result from this final rule. Several of these changes were inadvertently omitted from the proposed rule, but are necessary to correctly reflect the changes in part 36 formatting and terminology.

Sections 36.1(f)(4) and 36.1(f)(6) are revised to reflect the relocation of the tradeoff provision from current section C36.5(b) to Section B36.6. These changes are necessary to reflect the change in past 36 formatting.

Section 36.2

The context of section 36.2, "Special retroactive requirements" is revised, and the heading of this section is changed to "Requirements as of date of application". As discussed under the Discussion of Comments section of this preamble, this final rule retains and revises section 36.2, rather than removing this section, as proposed. Revised section 36.2 maintains the intent of the proposal (*i.e.*, to base applicability on the date of certification) while addressing the comments submitted by the AIA.

Current section 36.2 requires that the noise certification applicant show compliance with the part 36 requirements that are in effect on the date of certification. This provision was included in part 36 before the FAA had the authority to prevent the issuance of a type certificate for an aircraft design that did not include reasonable noise reduction design practices. The FAA subsequently received this authority under the Noise Control Act of 1972; the retroactive requirement contained in section 36.2 is no longer necessary. Therefore, this final rule revises section 36.2 to specify compliance with the noise certification requirements that are effective on the date of application for the type certificate, amended type certificate, or supplemental type certificate. This change will harmonize the applicability designation of part 36 with the intent of section 1.7 of ICAO Annex 16, Chapter 1. Given the change from Notice No. 00–08 in the manner in which this requirement is implemented, the FAA invites comments on revised section 36.2.

Section 36.6

This final rule updates the incorporation by the reference form the new measurement requirements specified in section A36.3. These specifications are referred to under new section A36.3, which updates requirements for measurement and analysis systems to address the latest standards and equipment technology. Updated addresses for the International Electrotechnical Commission, American National Standards Institute, and FAA Regional Headquarters are also included in section 36.6.

Section 36.7

Section 36.7 is revised to incorporate changes in terminology, *i.e.*, from "takeoff" to "flyover," "sideline" to "lateral," and "turbojet" to "jet". Section 36.7 is also revised to reflect the changes to part 36 appendix and section designations that result from the changes adopted in this final rule. Several of these changes were inadvertently omitted from the proposed rule, but are included in this final rule to correctly reflect the changes in part 36 formatting and terminology.

Sections 36.101 and 36.103

Two sections, 36.101, Noise measurement, and 36.103, Noise evaluation, were combined to become a new section 36.101, Noise measurement and evaluation. New section 36.101 reflects the combination of current Appendix A and Appendix B into revised Appendix A. These changes more closely align part 36 and JAR 36 formats without introducing any substantive changes. For the same reasons, section 36.201 is redesignated as section 36.103.

Subpart C

The text in subpart C has been reincorporated in subpart B and A and the title for subpart C is reserved.

Section 36.301

Section 36.301 is revised by replacing the reference to "Appendix C" with a reference to "Appendix B". This revision reflects the changes in part 36 formatting.

Section 36.1581

Section 36.1581 is revised to incorporate changes in terminology, *i.e.*, from "takeoff" to "flyover," "sideline" to "lateral," and "turbojet" to "jet". Section 36.1581 is also revised to reflect the appendix designation changes. The change in terminology from "takeoff" to "flyover" and from "sideline" to "lateral," and the replacing of the reference to part 36 Appendix C with a reference to Appendix B reflects the changes in part 36 formatting and terminology.

Appendix A—Aircraft Noise Measurement and Evaluation Under § 36.101

Revised Appendix A to part 36, Aircraft Noise Measurement and Evaluation under section 36.101 replaces current Appendices A and B. The revised Appendix A to part 36 was developed to maintain a section format consistent with JAR 36, Appendix A, and with ICAO Annex 16, Appendix 2. The text of JAR 36, Appendix A, mirrors ICAO Annex 16, Appendix 2.

Section A36.1 Introduction

Section A36.1.2 is added to state that the noise certification instructions and procedures are intended to ensure uniform results and to permit comparison between tests of various types of aircraft conducted in different geographical locations.

Section A36.2 Noise Certification Test and Measurement Conditions

Section A36.2 replaces current section A36.1. This new section describes the conditions under which noise certification testing is conducted and the measurement procedures that are required.

The note in section A36.2.1.1 references the guidance material on the use of equivalent procedures contained in Advisory Circular 36–4C, "Noise Standards: Aircraft Type and Airworthiness Certification." Current AC 36–4B, "Noise Certification Handbook," contains guidance material on the use of equivalent procedures. AC 36–4C revises and significantly changes the format and content of the advisory material and is not titled, "Noise Standards: Aircraft Type and Airworthiness Certification." The FAA is issuing new AC 36–4C concurrently with this final rule. The AC 36–4C is referred to as "the current advisory circuit for this part" throughout the regulatory text in this final rule.

Under this final rule, the material in current section A36.1(c)(1) is moved to section A36.2.2.2(a) and revised to remove the word "rain," since rain is included in the term "precipitation."

The material in section A36.1(c)(2) is moved to section A26.2.2.2(b) and the minimum test temperature limit decreased from 36 °F (2.2 °C) to 14 °F (−10 °C). The current 36 °F (2.2 °C) temperature limit is considered unnecessarily restrictive, given that no higher levels of atmospheric absorption, compared with those existing in the current test window, could be encountered by lowering the test day temperature. Under this revised minimum test temperature limit, testing must be conducted in conformance with the operational temperature limit for the noise measuring equipment used.

In Notice No. 00–08, new section A36.2.2.2(c) did not include the current section A36.1(c)(3) provision that permits expanded atmospheric attenuation rates when the dew point

and dry bulb temperatures used for obtaining relative humidity are measured with a device which is accurate to within ±0.5 °C. As explained in Notice No. 00–08, the allowance for expanded atmospheric attenuation rates was not included because it would continue to be permitted as an equivalent procedure. Subsequent to the publication of Notice No. 00–08, atmospheric attenuation rate changes by more than ±1.6 dB/1000 ft (±0.5 dB/100m) over the sound propagation distance. Under this final rule, the minimum layer depth is established as 100 feet (30 meters). Thus, the layer depth would be 100 feet (30 meters) in cases where the atmospheric rate change criteria would limit the layer depth to less than 100 feet (30 meters).

Sections A36.3.5.3 and A36.3.5.4 specify microphone sensitivity requirements only at the midband frequencies. This is a simplification of the current part 36 requirement contained in sections A36.3(c)(2)(ii) and exceed ±1.5 dB. Section A36.3.9.10 also limits the change in windscreen insertion loss calibration to 0.4 dB from the previous calibration.

A36.3.7.6 specifies that the instant in time at which a slow time-weighted sound pressure level is characterized should be 0.75 seconds earlier than the actual readout time. The current requirement specifies that the instant in time at which a sound pressure level is characterized must be the midpoint of the averaging period.

Section A36.3.7.5 specifies a continuous exponential averaging

Section A36.3.9.8 allows the use of sound calibrators other than pistonphones, as specified by current section A36.3(e)(4). Section A36.3.8.1 specifies the class 1L requirements of IEC 60942, entitled "Electroacoustics—Sound calibrators," as the minimum standard for the sound calibrator.

Section A36.3.9.9 adds a requirement for the recording medium (e.g., tape reel) to carry at least a 10-second

17, 1971, by Amendment 36–5 (41 FR 35053, August 19, 1976). The text permitting the use of this provision was retained in part 36 unnecessarily.

Section B36.9(f) is also removed. The text contained in current section B36.9(f) was added to part 36 in 1976 to distinguish between the procedure for determining duration for applications made before and after September 17, 1971. This distinction is no longer

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and dry bulb temperatures used for obtaining relative humidity are measured with a device which is accurate to within ±0.5 °C. As explained in Notice No. 00–08, the allowance for expanded atmospheric attenuation rates was not included because it would continue to be permitted as an equivalent procedure. Subsequent to the publication of Notice No. 00–08, however, the FAA determined that it is more appropriate to retain the allowance for expanded atmospheric attenuation rates as an alternative procedure in the rule text of part 36. Therefore, this allowance is contained in section A36.2.2.2(c) of this final rule.

In addition, the allowance for expanded atmospheric attenuation coefficients has been revised to be consistent with the ICAO Environmental Technical Manual allowance by (1) eliminating the 14 dB/100 meter limit on the allowable extension, (2) requiring the use of atmospheric layering in accordance with the requirements of new section A36.2.2.3, and (3) adding an alternative allowance for cases where the peak noy values at the time of tone-corrected perceived noise level (PNLT) occur at frequencies of less than or equal to 400 hertz (Hz). The effect of this change is a further expansion of the allowable test weather conditions, but with the requirement that atmospheric layering be used.

The requirements to obtain meteorological measurements within "25 minutes" of each noise test measurement as required in current section A36.9(b)(3) is changed to "30 minutes" in section A36.2.2.2(g). Thirty minutes is the established international standard in ICAO Annex 16. The FAA was unable to find a technical reason why the meteorological measurement time was originally set at 25 minutes. Based on technical and application considerations, an increment of 5 minutes does not constitute a substantive difference. No known technical criteria exist to assess this minimal time increment. This change will achieve harmonization by adopting a single international standard.

Current section A36.9(d)(3) is revised and moved to section A36.2.2.3. This final rule changes the method used to establish layer depth to reflect the international standard. Current part 36 does not provide specific criteria for determining layer depth, except to require that it be no greater than 100 feet. The criteria for determining layer depth that is adopted by this final rule is the same as that used to specify the onset of required layering, *i.e.*, under weather conditions where the atmospheric attenuation rate changes by more than ±1.6 dB/1000 ft (±0.5 dB/100m) over the sound propagation distance. Under this final rule, the minimum layer depth is established as 100 feet (30 meters). Thus, the layer depth would be 100 feet (30 meters) in cases where the atmospheric rate change criteria would limit the layer depth to less than 100 feet (30 meters).

Section A36.3 Measurement of Aircraft Noise Received on the Ground

The changes to this section update the requirements for measurement and analysis systems to include the latest standards and equipment technology. These changes were drafted by an international task group having years of knowledge and experience in the noise certification of airplanes. This task group was assembled under Working Group 1 of the ICAO Committee on Aviation Environmental Protection (CAEP) to draft changes that would update the ICAO Annex 16 requirements for measurement and analysis systems. On June 27, 2001, the ICAO Council approved the revision to ICAO Annex 16 that includes the updated requirements.

The primary purpose of the international task group was to address considerations related to the use of digital equipment. Many of these considerations are addressed in the International Electro-Technical Commission (IEC) Standard 61265 and IEC Standard 61260. Accordingly, much of the pertinent text from these standards has been included in the requirements developed by the international task group. These IEC standards also reflect general improvements to instrumentation technology that have occurred over the past decade, although they are not necessarily related to the advent of digital technology. In addition to improvements tied to the IEC standards, several changes that resulted from the work of the task group are linked to general advancements in noise measurement instrumentation.

Revised section A36.3 includes the following specific changes. Current section A36.3 does not include definitions. Section A36.3.1, Definitions, is added to define the terms used in section A36.3. Section A36.3.2, Reference environmental conditions, is added in this final rule to specify the performance of a measurement system.

Section A36.3.3.2 is added and specifies anti-alias requirements for measurement systems that include analog-to-digital signal conversion.

Section A36.3.4.1 adds a requirement that windscreen insertion loss not exceed ±1.5 dB. Section A36.3.9.10 also limits the change in windscreen insertion loss calibration to 0.4 dB from the previous calibration.

Sections A36.3.5.3 and A36.3.5.4 specify microphone sensitivity requirements only at the midband frequencies. This is a simplification of the current part 36 requirement contained in sections A36.3(c)(2)(ii) and A36.3(c)(2)(iii). The new sections also specify more stringent tolerances on microphone sensitivity. Typical microphones that are currently used in part 36 noise certification testing comply with this more stringent microphone sensitivity requirement.

Section A36.3.6.3 adds a tolerance for frequency response of the measurement system.

Section A36.3.6.4 adds a ±0.5 dB tolerance for amplitude fluctuations of a recorded 1 kHz signal on analog tape.

Section A36.3.6.5 adds a tolerance for amplitude linearity, at several specific frequencies, for the measurement system (exclusive of the microphone).

Section A36.3.6.6 requires that the electronic signal level corresponding to the calibration sound pressure level be from 5 db to 30 dB less than the upper boundary of the measurement system level range. This replaces the 10 dB requirement in current part 36, section A36.3(c)(3)(i).

Section A36.3.6.8 adds a requirement for an overload indicator in the recording and reproducing system.

Section A36.3.6.9 allows for measurement system attenuators to operate in known intervals of decibel steps, rather than in equal interval steps, as in current part 36 section A36.3(b)(6).

Section A36.3.7.2(e) adds a requirement that the analyzer operate in real time from 50 Hz through at lease 12 kHz.

Section A36.3.7.3 specifies IEC 61260 class 2 electrical performance requirements as the minimum standard for analyzers. This change updates the specifications for analyzers used in conjunction with part 36 noise certification. Section A36.3.7.3 also includes a note stating that IEC 61260 specifies procedures for testing one-third octave band analysis systems for relative attenuation, anti-aliasing filters, real time operation, level linearity, and filter integrated response (effective bandwidth). The IEC filter bandwidth adjustment method requires that the adjustment be based on more frequencies than are required under current part 36.

Section A36.3.7.4 contains a correction to the slow time-weighting characteristics in current section A36.3(d)(5) (ii) and (iii). Section A36.3.7.6 specifies that the instant in time at which a slow time-weighted sound pressure level is characterized should be 0.75 seconds earlier than the actual readout time. The current requirement specifies that the instant in time at which a sound pressure level is characterized must be the midpoint of the averaging period.

Section A36.3.7.5 specifies a continuous exponential averaging process equation through which simulated slow time-weighted sound pressure levels can be obtained. Section A36.3.7.5 also specifies an equation that results in an approximation of continuous exponential averaging.

Section A36.3.7.7 requires that the analyzer resolution be 0.1 dB or finer. The current requirement, in section A36.3(d)(7) specifies that the amplitude resolution of the analyzer must be at least ±0.25 dB.

Section A36.3.9.1 requires that calibration adjustments be applied to the measured sound levels determined from the output of the analyzer; the current rule permits these calibrations to be applied within the analyzer. As discussed in the disposition of comments, this change is necessary to enable the FAA to determine whether these calibration adjustments have been applied correctly.

Section A36.3.9.3 allows the free-field corrections based on grazing incidence to be applied when the sound incidence angle is within ±30 degrees of grazing incidence.

Section A36.3.9.4 requires that at lease 30 seconds of pink noise be recorded for analog tape recorders; the current section A36.3(e)(4)(ii) requirement is for at lease 15 seconds of pink noise. This change will result in a more accurate pink noise correction and will be the same as the Annex 16 requirement.

Section A36.3.9.6 requires that attenuator accuracy be within 0.1 dB. Section A36.3(b)(6) currently requires that attenuator accuracy be within 0.2 dB. This final rule requires that calibration be checked within six months of each test series, while the current rule does not specify a time period.

Sections A36.3.9.5 and A36.3.9.7 change calibration requirements for the pink noise generator and sound calibrator. This change allow calibration to occur within six months before or after the test instead of requiring it to be within the preceding six months as required by current section A36.3(e)(7).

Section A36.3.9.7 adds a new calibration requirement that limits the change in output of the sound calibrator to not more than 0.2 dB.

Section A36.3.9.8 allows the use of sound calibrators other than pistonphones, as specified by current section A36.3(e)(4). Section A36.3.8.1 specifies the class 1L requirements of IEC 60942, entitled "Electroacoustics—Sound calibrators," as the minimum standard for the sound calibrator.

Section A36.3.9.9 adds a requirement for the recording medium (e.g., tape reel) to carry at least a 10-second duration sound pressure level calibration at its beginning and end. This change more precisely defines the current section A36.3(e)(4) sound pressure level calibration requirement.

Section A36.4 Calculations of Effective Perceived Noise Level From Measured Data

To further harmonize the formats of part 36 and JAR 36, Table B–1, "Perceived Noisiness (NOYs) as a Function of Sound Pressure Level," referenced in current section B36.13(a), is moved to AC 36–4C. The final rule now uses the equation to obtain the values. The noy values contained in Table B–1 can be calculated for the equations contain in section A36.4.7.3.

A minor technical change is made to the Perceived Noise Level (PNL) equation in section A36.4.2.1(c) (current section B36.3(c)). The more exact term 10/log 2 is replacing the rounded-off term 33.22. The difference between PNL values that are determined using the current and changed equations is not expected to be significant.

To harmonize the formats of part 36 and JAR 36, Figure B1, "Perceived noise level as a function of noys", is moved from current section B36.3(c) to AC36–4C. The perceived noise level values contained in figure B1 can be calculated from the equations contained in section A36.4.2.1(c).

Section A36.4.5.2 changes the value of "d" in the equation for the duration correction factor from 1.0 seconds to 0.5 seconds to reflect current standard practice. The same changes are included in section A36.4.5.4 and section A36.6. This change is a text update to reflect the current practice of using 0.5 second data samples, and has no substantive effect.

To harmonize the formats of part 36 and JAR 36, the material in section B36.5(m) addressing methods for removing the effects of tones resulting from ground plane reflections is moved to AC 36–4C.

Current section B36.9(e), which specifies the duration time interval when the value of PNLT(k) at the 10 dB-down points is 90 PNdB or less, is removed. This provision was eliminated for applications made after September 17, 1971, by Amendment 36–5 (41 FR 35053, August 19, 1976). The text permitting the use of this provision was retained in part 36 unnecessarily.

Section B36.9(f) is also removed. The text contained in current section B36.9(f) was added to part 36 in 1976 to distinguish between the procedure for determining duration for applications made before and after September 17, 1971. This distinction is no longer necessary since current section B36.9(e) is removed. The section B36.9(f) requirement for the aircraft testing procedures to include the 10 dB-down points is contained in section A36.2.3.2 of this final rule.

Section A36.5 Data Reporting

Section A36.5.2 requires that the data specified in that section be reported to the FAA in the applicant's noise certification compliance report. While current part 36 does not specifically identify a requirement for the applicant to submit a noise certification compliance report, these reports represent the standard practice that is used by applicants for submitting this information to the FAA. This final rule now requires a report be submitted. Section A36.5.2.5 also identifies the specific airplane configuration items and engine operating parameters that must be reported. Each of these configuration items and parameters can affect airplane noise. The reporting requirement for these items and parameters exists under current section A36.5 which specifies that the aircraft configuration and engine performance parameters relative to noise generation be reported. Further, these configuration items and parameters are also included in the international standard.

Section A36.5.2.5(c) requires that the test airplane's center of gravity be reported to the FAA. Airplane center of gravity is an example of an identifying characteristic of the airplane test configuration, and is an item that could influence measure noise levels. Section A36.5.2.5(d) requires that the airbrake position also be reported. Sections A36.5.2.5(e), (f), and (j), respectively, require reporting of whether the auxiliary power unit (APU) is operating, the status of pneumatic engine bleeds and engine power take-offs, and non-standard airplane test configurations.

Section A36.5.2.5(h)(2) requires reporting of engine performance parameters specifically related to propeller-driven airplanes.

Current section A36.5(d)(3) does not permit an effective perceived noise level (EPNL) to be computed or reported from data from which more than four one-third octave bands in any spectrum

within the 10 dB-down points have been excluded from the EPNL computation. This section is removed since correction (adjustment) methods for removing the effects of ambient noise from airplane noise data must be used in lieu of excluding one-third octave bands. Section A36.3.10.2 will specify the ambient noise level limitations that require corrections

A36.11(a)(1) and (2), is not included in new section A36.9.1. This distinction is no longer relevant given: (1) The evolution of data correction procedures since part 36 was originally promulgated in 1969 and, (2) the need for noise certification levels to reflect airplane noise characteristics as accurately as possible. Prior to any noise certification compliance test, a noise

flight test and (2) the airspeed calculated for the noise certification reference flight procedure. This correction term is added to the duration correction (Δ2) contained in current section A36.11(e). The speed correction term is defined as 10 log (V/V_r), where V is the airplane test speed and V_r is the airplane reference speed. This change specifies the speed correction that is

simplified test procedure is available as an alternative to the current section C36.3(c) method for tests conducted before August 7, 2002, after which it will become the sole method for demonstrating sideline (lateral) noise level compliance.

Current section C36.3(b) is moved to section B36.3(c) and text is added to define the approach measurement point

lateral line. This change will further harmonize part 36 and JAR 36.

Section B36.5 Maximum Noise Levels

The material in current section C36.5 is moved to section B36.5 and revised to include minor format and language changes to harmonize with JAR 36. Amendment 36–15 "Standards Governing the Noise Certification of Aircraft" (53 FR 26360, May 6, 1988)

determined by the minimum safe altitude for cutback initiation, there is no reason to distinguish between propeller-driven and jet airplanes. It is the FAA's understanding that this change will not have a substantive effect in practice.

Since cutback initiation heights greater than 1,500 feet are generally chosen for propeller-driven airplanes and this height is greater than both the

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within the 10 dB-down points have been excluded from the EPNL computation. This section is removed since correction (adjustment) methods for removing the effects of ambient noise from airplane noise data must be used in lieu of excluding one-third octave bands. Section A36.3.10.2 will specify the ambient noise level limitations that require corrections (adjustments) to be made, and also will reference AC 36–4C, which contains a procedure for removing the affects of ambient noise.

Current section A36.5(e)(4), that addresses the use of equivalent procedures, is removed. The key requirement of the section, that the FAA must approve equivalent procedures, is already addressed in section 36.101. Additional information on the use of equivalent procedures is provided in the note contained in section A36.2.1.1.

Section A36.6 Nomenclature: Symbols and Units

Section A36.6, Nomenclature: Symbols and units replaces current section A36.7, symbols and units. Section A36.6 incorporates ICAO Annex 16 symbols and units, while retaining the English units. This change is made to more closely align part 36 with JAR 36. No substantive technical changes are anticipated to result from incorporation of the ICAO Annex 16 symbols and units.

Section A36.7 Sound Attenuation in Air

Currently, atmospheric attenuation rates of sound with distance must use be determined in accordance with Society of Automotive Engineers, Inc. (SAE), Aerospace Recommended Practice (ARP) 866A (SAE ARP 866A), as specified in current section A36.9(c). In this final rule, section A36.7.2 contains the actual formulation (equations) from SAE ARP 866A. These equations are provided in both the International System of Units and the English System of Units. Whereas equations are continuous and provide consistent values, tables and graphs can provide minor differences. Accordingly, the tables are being removed and applicants must use the equation. This change will further harmonize part 36 and JAR 36 and is not expected to result in any substantive difference in attenuation rates.

Section A36.9 Adjustment of Airplane Flight Test Results

The current distinction between allowable/required positive and negative correction procedures, contained in current sections A36.11(a)(1) and (2), is not included in new section A36.9.1. This distinction is no longer relevant given: (1) The evolution of data correction procedures since part 36 was originally promulgated in 1969 and, (2) the need for noise certification levels to reflect airplane noise characteristics as accurately as possible. Prior to any noise certification compliance test, a noise certification applicant is required to identify, and obtain FAA approval of, any planned or anticipated data correction that is not a mandatory correction procedure under part 36.

Current section A36.1(b)(3) is deleted because it is obsolete. This section requires that the corrections prescribed in current section A36.5(d) be made when the height of the ground at a noise measuring station differs from that of the nearest point on the runway by more than 20 feet. A 20-foot height allowance/tolerance could change the final EPNL value by several tenths of a dB under some circumstances. Under current noise certification practices, corrections (adjustments) are made over the sound propagation path from the microphone to airplane height as part of normal data corrections (adjustments). These corrections (adjustments) are specified in current section A36.11 and new section A36.9.

Section A36.9.1.1(d) will require that the effect that airspeed has on source noise be considered with regard to the difference between test day airplane speed and the airplane reference flight profile speed.

The symbols and figures used to described the takeoff and approach profiles in current sections A36.11(b) and (c), are replaced by the JAR 36 symbols and figures that have been incorporated into section A36.9.2. There are no substantive changes to the takeoff and approach profile technical requirements as a result of these changes.

Section A36.9.3.2.1 provides equations that enable data adjustments to be made using either the English System of Units or International System of Units.

The material in current section B36.11(c) will be moved to section A36.9.3.2.2 and revised to specify the adjustment for multiple peak values of PNLT. This adjustment is based upon the difference in corrected PNLT values, rather than upon APNL as in the current part 36. This change more clearly defines the intent of the multiple peak correction.

Under section A36.9.3.3.2 a correction term is added to account for the difference between (1) the measured airspeed during the noise certification flight test and (2) the airspeed calculated for the noise certification reference flight procedure. This correction term is added to the duration correction ($\Delta 2$) contained in current section A36.11(e). The speed correction term is defined as 10 log (V/V_r), where V is the airplane test speed and V_r is the airplane reference speed. This change specifies the speed correction that is required by current section A36.11(f)(1).

Appendix B—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

Appendix B will include the material from current appendix C. This will make Appendix B essentially the same as JAR 36, section 1, subpart B.

Section B36.3 Reference Noise Measurement Points

The material in current section C36.3 is moved to section B36.3 and revised as follows. The term "takeoff" in current section C36.3(a) is replaced with the term "flyover" in section B36.3(b). The term "sideline" in current section C36.3(c) is replaced with "lateral" in section B36.3(a). These terminology changes harmonize the part 36 terminology with that used in JAR 36 and ICAO Annex 16.

Section B36.3(a)(2) will include a simplified test procedure that may be used in determining the sideline (lateral) noise certification level for propeller-driven airplanes. This procedure is also contained in JAR 36 and ICAO Annex 16. For propeller-driven airplanes, it can be difficult to establish the maximum lateral noise level specified under current section C36.3(c) because this noise level may occur at a very low height. There is usually a significant difference in noise levels between the port and starboard sides of a propeller-driven airplane. By measuring full-power noise at a predetermined point (650 meters) below the takeoff flight path, many of the difficulties that arise because of the directional nature of the noise from propeller-driven airplanes when measured at the conventional lateral site will be eliminated. Ground effects that distort measurements will also be reduced.

Under the current requirement, it is difficult to judge the airplane altitude at which the peak noise level occurs, and in the past this has required applicants to conduct as many as 30 flight tests to satisfy certifying authorities, an expensive process. Moreover, the current method for testing propeller-driven airplanes has generally resulted in low confidence in accuracy and repeatability of measurements. The simplified test procedure is available as an alternative to the current section C36.3(c) method for tests conducted before August 7, 2002, after which it will become the sole method for demonstrating sideline (lateral) noise level compliance.

Current section C36.3(b) is moved to section B36.3(c) and text is added to define the approach measurement point relative to the runway threshold. This change will clearly describe the geometric relationship between the test airplane and the ground, and will harmonize part 36 and JAR 36.

Current section A36.1(b)(7), allows (when approved) for the sideline (lateral) noise certification level demonstration for jet airplanes to be based on the assumption that the peak sideline (lateral) noise level occurs at an airplane altitude of 1,000 feet (1,440 feet for Stage 1 or Stage 2 four-engine airplanes). Notice No. 00–08 proposed to move this procedure to the guidance material in AC 36–4C. Subsequent to the publication of Notice No. 00–08, however, the FAA determined that it is more appropriate to retain this procedure in part 36 as an alternative procedure for determining the maximum lateral noise level. This procedure is included in section B36.3(a)(1). In addition, the target altitude and target altitude tolerance requirements of this section are adjusted so that they are now consistent with those of the similar procedure contained in section 2.1.3.2 of the ICAO Environment Technical Manual.

Section B36.4 Test Noise Measurement Points

Most of the requirements of current section A36.1(b)(7) are moved to section B36.4.

Section B36.4(b) requires that, in demonstrating the sidelines (lateral) noise certification level for propeller-driven airplanes, noise measurements be made at symmetrically located noise measurements points on either side of the runway for each and every noise measurement point along the main sideline (lateral) noise measurement line. This change is made because of the asymmetric nature of propeller noise. Part 36 has required simultaneous measurement at one test measurement point opposite the main lateral measurement line to account for the possibility of lateral noise asymmetry. In the case of propeller-driven airplanes, however, whose noise field is known to be asymmetrical, having only one measuring point opposite the main lateral measurement line is not adequate to define the peak lateral noise on the other side of runway from the main lateral line. This change will further harmonize part 36 and JAR 36.

Section B36.5 Maximum Noise Levels

The material in current section C36.5 is moved to section B36.5 and revised to include minor format and language changes to harmonize with JAR 36. Amendment 36–15 "Standards Governing the Noise Certification of Aircraft" (53 FR 26360, May 6, 1988) removed section C36.5(c); the references to section C36.5(c) in current section C36.5(a) should have been removed under that amendment but was not. The reference is removed in this final rule.

In order to further harmonize part 36 and JAR 36, the term "sideline" has been changed to "lateral" in each place that it appears throughout section B36.5. This change in terminology does not affect the noise measurement/analysis procedures or noise limits. Similarly, the term "takeoff" has been changed to "flyover." No change in test procedures should be inferred from this change.

Section B36.6 Trade-offs

The requirements of current section C36.5(b) are moved to section B36.6. The reference to section 367(d)(3)(i)(B), in current section C36.5(b), is changed to section 36.7(d)(1)(ii) in the new section. This section reference should have been changed in 1988 by Amendment 36–15.

Section B36.7 Noise Certification Reference Procedures

The takeoff and approach reference and test limitation in current sections C36.7 and C36.9 are moved to sections B36.7 and B36.8. This material is also revised as follows.

Section B36.7(b)(1) requires the use of "average engine" performance in defining the takeoff thrust for the reference takeoff procedure. Specifying the use of "average engine" performance further harmonizes the part 36 takeoff reference procedure with JAR and ICAO Annex 16, and will eliminate confusion in compliance with the requirement.

Section B36.7(b)(1) also specifies "Takeoff thrust/power" as the maximum available for normal operations given in the performance section of the airplane flight manual for the reference atmospheric conditions given in section B36.7(b)(5).

Currently section C36.7(b)(2) specifies different minimum cutback altitudes for jet and propeller-driven airplanes. Section B36.7(b)(1)(ii) contains the same minimum cutback altitude for all airplanes, which is the altitude specified in current section C36.7(b)(2) for jet airplanes. Since the selection of the minimum cutback altitude is determined by the minimum safe altitude for cutback initiation, there is no reason to distinguish between propeller-driven and jet airplanes. It is the FAA's understanding that this change will not have a substantive effect in practice.

Since cutback initiation heights greater than 1,500 feet are generally chosen for propeller-driven airplanes and this height is greater than both the current and revised part 36 minimum requirements, the FAA has determined that there will be no change in practice.

In this final rule, the requirements of section A36.1(b)(2) are moved to section B36.7(b)(3) and revised to require that, for tests conducted on or after August 7, 2002, the lateral (sideline) noise level be demonstrated using full takeoff power throughout the takeoff flight path. Before that date, the lateral noise level may be demonstrated using the current section A36.1(b)(2) procedure, under which both the takeoff (flyover) and sideline (lateral) noise certification levels are determined using a single reference flight path that may include a thrust cutback. This change reflects the intent of the international standard that the lateral measurement be based on the full-power condition. Since the revised lateral procedure might result in increased stringency, the use of this procedure is optional for tests conducted before August 7, 2002. This change will mainly affect three and four engine airplanes.

The takeoff reference speed requirement specified in current section C36.7(e)(1) is revised to be consistent with the takeoff reference speed contained in JAR 36 and ICAO Annex 16. The all-engine operating climb speed range (V2+10 to V2+20 kts) specified in section B36.7(b)(4) represents the typical range of takeoff initial climb speed seen in normal operation for most airplanes. For some airplanes, this change to part 36 could result in an increase of up to 10 knots in the noise certification reference takeoff speed relative to the current part 36 reference takeoff speed requirements. For the affected airplanes, the increased takeoff speed could result in some noise level reduction at the sideline (lateral) noise measurement point with a resulting increase in noise level at the takeoff (flyover) noise measurement point. The FAA has found the change in takeoff reference speed to be acceptable because of this tradeoff of sideline (lateral) and takeoff (flyover) noise levels, although it might not be a one-to-one tradeoff.

In section B36.7(b)(5) the FA is adding a definition of configuration, which includes specific configuration

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elements, based on certification experience, that can have a effect on source noise. There is no change in takeoff configuration requirement.

Section B36.7(b)(7) defines "average engine" as the average of all the certification compliant engines used during the airplane flight tests up to and during certification when operating within the limitations and according to the procedures given in the Flight Manual.

Current section C36.9(d) requires that all engines must operate at approximately the same power or thrust for approach tests conducted to demonstrate compliance with part 36. In this final rule, this specific requirement is removed, and instead, section A36.9.3.4 will require that source noise adjustments be applied to account for any differences between test and reference conditions, in engine parameters that affect engine noise (e.g., corrected low pressure rotor speed). This change will meet the intent of the current part 36 requirement and also further harmonizes with JAR 36.

Current section C36.9(e)(1), reference approach speed, is revised to incorporate the use of 1–g stall-based approach speeds by basing the approach noise certification reference speed on the reference landing speed (V_{REF}) that is used for the airworthiness certification. In Notice No. 95–17, published on January 18, 1996 (61 FR 1260), the FAA proposed to redefine the reference stall speeds for transport category airplanes as the 1–g stall speed instead of the minimum speed obtained in the stalling maneuver. Notice No. 95–17 proposed that a definition of V_{REF} would be added to 14 CFR part 1. Since a final rule based on Notice No. 95–17 has not been published, the definition of V_{REF} has been included in this final rule. The definition of V_{REF} is the only element of Notice No. 95–17 that has been included in this final rule. In section B36.7(c)(2), V_{REF} is defined as "the speed of the airplane, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings." The change to section C36.9(e)(1) is also consistent with a change to ICAO Annex 16 that was approved by the ICAO Council on June 27, 2001. Current section C36.9(e)(1) is redesignated as section B36.7(c)(2).

Section B36.8 Noise Certification Test Procedures

Current sections A36.1(d)(5) and A36.1(d)(7), which contain limitations on the difference between the test weight and the maximum takeoff/approach weight for which noise certification is requested, are replaced by section B36.8(d). The current limitations help insure the integrity of the final certification results by indirectly limiting the magnitude of the EPNL adjustments that may be applied to the test data in normalizing to the noise certification reference conditions. Section B36.8(d) will directly limit the magnitude of the correction by specifying a limitation on the EPNL adjustment that can be made when correcting between test weight and maximum certification weight.

The current requirements of section A36.5(d)(5) are revised and moved to section B36.8(f). The amounts of adjustment permitted when equivalent test procedures are different from the reference procedures remain unchanged, except that the amended requirements do not specify that tradeoffs are permitted when comparing adjusted levels against the appendix B noise level limits, for the purpose of determined adjustment limits. Several interpretations of the current requirement are possible as to whether this final rule represents a more stringent or less stringent adjustment limitation as compared with the current limitation. The FAA believes that the change to remove the tradeoff provision from the current limitation and base the limitation solely on the difference between the adjusted noise levels and the maximum noise levels in section B36.5 meets the intent of the adjustment limitation, as stated above, and clarifies ambiguity in its interpretation. The change also results in harmonization of the adjustment limitation with that in JAR 36 and ICAO Annex 16.

Section B36.8(g) will revise the test speed tolerance specified in current sections C36.7(e)(1) and C36.9 (e)(3). Current section C36.7(e)(1) specifies that takeoff tests must be conducted at the test day speeds ±3 knots. Current section C36.9(e)(3) specifies that a tolerance of ±3 knots may be used throughout the approach noise testing. Section B36.8(g) will specify that during takeoff, lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within ±3% of the average airspeed between the 10 dB-down points. In the final rule, the instantaneous indicated airspeed is determined from the pilot's airspeed indicator. If the instantaneous indicated airspeed exceeds ±3 kt (±5.5 km/h) of the average airspeed over the 10 dB-down points, and is determined by the FAA representative on the flight deck as the result of atmospheric turbulence, then that flight must be rejected for noise certification purposes.

Appendix G—Noise Requirements for Propeller-Driven Small Airplanes and Commuter Category Airplanes Under Subpart F

Section G36.105 Sensing, Recording, and Reproducing Equipment

To maintain the correct cross reference, this final rule changes the references in paragraph (f) from section A36.3(e) to A36.3.8 and A36.3.9.

Appendix H—Noise Requirements for Helicopters Under Subpart H Section H36.101 Noise Certification Test and Measurement Conditions.

To maintain the correct cross reference, this final rule amends section H36.101(d)(1) by removing the reference to "appendix B" and adding "appendix A."

Section H36.111 Reporting and Correcting Measured Data

To maintain the correct cross reference, this final rule amends section H36.111(c)(3) by removing the reference "A36.3(f)(3)" and adding "A36.3.10.1."

Section H36.201 Noise Evaluation in EPNdB

To maintain the correct cross reference, this final rule amends section H36.201 by: (1) Removing the reference to "appendix B" in paragraph (a) of this section and adding "appendix A," and (2) removing the reference to "B36.5(a)" in paragraph (b) of this section and adding "A36.4.3.1(a)."

Sections 91.801 and 91.851

Section 901.801(a)(1), 91.801(a)(2), 91.801(c), 91.801(d), and 91.851, which are related to the part 36 noise certification requirements, are revised to incorporate the term "jet" in addition to "turbojet" when referring to turbojet or turbofan engines. This change is made to reflect the use of the term "jet" in part 36 and does not change the meaning of the term turbojet as it is used in either the noise certification related sections, or other sections of 14 CFR chapter 1.

REDESIGNATION TABLE FOR APPENDICES A AND B

Cross Reference Table	
Old section	New section
A36.1	A36.1, A36.2
A36.1(a)	A36.1.1, A36.2.1.1
A36.1(b)	A36.2.2
A36.1(b)(1)	A36.2.3.2, B36.3
A36.1(b)(2)	A36.7(b)(3)
A36.1(b)(3)	Deleted
A36.1(b)(4)	A36.2.2.1
A36.1(b)(5)	A36.2.2.4
A36.1(b)(6)	A36.2.2.1

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table	
Old section	New section
A36.1(b)(7)	A36.9.3.5, A36.9.3.5.1, B36.4(b)
A36.1(c)	A36.2.2.2
A36.1(c)(1)	A36.2.2.2(a)
A36.1(c)(2)	A36.2.2.2(b)
A36.1(c)(3)	A36.2.2.2(c) AC 36–4C
A36.1(c)(4)	A36.2.2.2(e)
A36.1(c)(5)	A36.2.2.2(f)
A36.1(d)(1)	B36.8(b), B36.2
A36.1(d)(2)	A36.2.3.1
A36.1(d)(3)	A36.2.3.2, A36.2.3.3
A36.1(d)(4)	B36.7(b), B36.8
A36.1(d)(5)	B36.8(d)
A36.1(d)(6)	B36.7(c), B36.8(e)
A36.1(d)(7)	B36.8.(d)
A36.1(d)(8)	A36.2.3.3
A36.3	A36.3
A36.3(a)	A36.3.3
A36.3(b)	A36.3.3.1
A36.3(c)(2)(i–iv), A36.3(f)(1)	A36.3.5
A36.3(c)(2)(v)	A36.3.4
A36.3(c)(3)	A36.3.6
A36.3(d)	A36.3.7
A36.3(e)(1–6), A36.3(f)(2)	A36.3.9
A36.3(f)(2–4)	A36.3.10.1
A36.3(e)(7)	A36.3.8
A36.5(a)	A36.5.1.1, A36.5.1.2, A36.5.1.3
A36.5(b)(1)	A36.5.2.1
A36.5(b)(2)	A36.5.2.2
A36.5(b)(3)	A36.5.2.3
A36.5(b)(4)	A36.5.2.4
A36.5(b)(5)(i–vi)	A36.5.2.5
A36.5(b)(vii)	A36.5.2.5(i)
A36.5(b)(6)	A36.2.3.2, A36.2.3.3 A36.5.2.5(i)
A36.5(c)	A36.5.3
A36.5(c)(1)	B36.7(a)(5)
A36.5(c)(2)	B36.3(c), B36.7(b)(6), B36.7(c)(1), B36.7(c)(4)
A36.5(d)(1)	A36.5.3.1, A36.9, B36.8(c)
A36.5(d)(2)	A36.9.1
A36.5(d)(2)(i)–(iv)	B36.8(d)
A36.5(d)(3)	A36.3.10.2
A36.5(d)(4)	A36.3.10.2
A36.5(d)(5)	B36.8(f)
A36.5(e)(1)	A36.5.4.1
A36.5(e)(2)	A36.5.4.2
A36.5(e)(3)	A36.5.4.3
A36.5(e)(4)	Deleted
A36.7	A36.6, A36.9.5, A36.9.6
A36.9(a)	A36.9.1.1
A36.9(b)(1)	A36.2.2.4
A36.9(b)(2)	A36.2.2.2(b)
A36.9(b)(3)	A36.2.2.2(g)
A36.9(c)	A36.7
A36.9(d)(1)	A36.9.1, A36.9.1.1
A36.9(d)(2)	A36.2.2.2(d)
A36.9(d)(3)	A36.2.2.3
A36.11(a)	A36.9.1
A36.11(a)(1)	Deleted
A36.11(a)(2)	Deleted
A36.11(a)(3)(i)	A36.9.1, B36.7
A36.11(a)(3)(ii)	A36.9.1.1
A36.11(a)(3)(iii)	A36.9.1.1
A36.11(a)(3)(iv)	A36.9.1.1, A36.9.3.4
A36.11(a)(3)(v)	A36.9.1
A36.11(b)(1)(i–ii)	A36.9.2.1
A36.11(b)(2)	A36.9.3.1, A36.9.4.1
A36.11(b)(3)	A36.9.3.2(a)
A36.11(c)	A36.9.2.2
A36.11(c)(1)	A36.9.3.2(a–c)
A36.11(c)(2)	A36.9.3.2(a)
A36.11(d)(1–3)	A36.9.3, A36.9.3.1, A36.9.3.2.1, A36.9.3.2.1.1, A36.9.3.2.1.2
A36.11(e)(1–2)	A36.9.3.3.1, A36.9.3.3.2
A36.11(f)	B36.4(a), AC 36–4C
A36.11(f)(1)	A36.9.1.2
A36.11(f)(2)	A36.9.1.2
A36.11(f)(2)(i–ii)	A36.9.4
B36.1	A36.1, A36.1.1, A36.4.1.3
B36.1(a)	B36.4.1.3(a)
B36.1(b)	A36.4.1.3(b)
B36.1(c)	A36.4.1.3(c)
B36.1(d)	A36.4.1.3(d)
B36.1(e)	A36.4.1.3(e)
B36.3	A36.4.2.1
B36.3(a)	A36.4.2.1(a)
B36.3(b)	A36.4.2.1(b)
B36.3(c)	A36.4.2.1(c), AC 36–4B
B36.5	A36.4.3.1
B36.5(a)	A36.4.3.1(a)
B36.5(b)	A36.4.3.1(b)
B36.5(c)	A36.4.3.1(c)
B36.5(d)	A36.4.3.1(d)
B36.5(e)	A36.4.3.1(e)
B36.5(f)	A36.4.3.1(f)
B36.5(g)	A36.4.3.1(g)
B36.5(h)	A36.4.3.1(h)
B36.5(i)	A36.4.3.1(i)
B36.5(j)	A36.4.3.1(j)
B36.5(k)	A36.4.3.1(j)
B36.5(l)	A36.4.3.1(j)
B36.5(m)	A36.4.3.1(j), AC 36–4C
B36.5(n)	A36.4.4.2
B36.7	A36.4.4
B36.7(a)	A36.4.4.1, A36.4.4.1 Note 1
B36.7(b)	A36.4.4.1-Note 2
B36.9	A36.4.5.1
B36.9(a)	A36.4.5.2
B36.9(b)	A36.4.5.3
B36.9(c)	A36.4.5.4
B36.9(d)	A36.4.5.5
B36.9(e)	Deleted
B36.9(f)	Deleted
B36.11(a)	A36.4.6
B36.11(b)	Deleted
B36.11(c)	A36.9.3.2.2
B36.13(a)	A36.4.7.1, Table A1 moved to AC 36–4C
B36.13(a)(1), (2), (3)	A36.4.7.2(a–c)
B36.13(b)	A36.4.7.3
B36.13(c)	A36.4.7.4

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table	
Old section	New section
C36.1	B36.1
C36.3(a)	B36.3(b)
C36.3(b)	B36.3.(c)
C36.3(c)	B36.3(a)
C36.5(a)	B36.5
C36.5(a)(1)	B36.5(a)
C36.5(a)(2)	B36.5(b)
C36.5(a)(2)(i)	B36.5(b)(1)
C36.5(a)(2)(ii)	B36.5(b)(2)
C36.5(a)(3)	B36.5(c)
C36.5(a)(3)(i)(A)	B36.5(c)(1)(i)
C36.5(a)(3)(i)(B)	B36.5(c)(1)(ii)
C36.5(a)(3)(i)(C)	B36.5(c)(1)(iii)
C36.5(a)(3)(ii)	B36.5(c)(2)
C36.5(a)(3)(iii)	B36.5(c)(3)
C36.5(b)(1)	B36.5
C36.5(b)(2)	B36.5
C36.5(b)(3)	B36.5
C36.7(a)	B36.7(a)(3)
C36.7(b)	B36.7(b)(1)(i)
C36.7(b)(1)	B36.7(b)(1)(i)
C36.7(b)(2)	B36.7(b)(1)(ii)
C36.7(c)	B36.7(b)(2)
C36.7(d)	B36.7(b)(5)
C36.7(e)(1)	B36.7(b)(4)
C36.7(e)(1) Next to last sentence	B36.8(g)
C36.7(e)(2)	B36.7(b)(4)
C36.7(e)(3)	B36.7(a)(5), A36.9.1
C36.9.(a)	B36.7(a)(3), B36.7(c)(1)
C36.9(b)	B36.7(c)(3) & B36.7(c)(4)
C36.9(c)	B36.7(c)(1), B36.7(c)(3)
C36.9(d)	Deleted
C36.9(e)(1)	B36.7(c)(2)
C36.9(e)(2)	B36.7(c)(2)
C36.9(e)(3)	B36.8(g)

CROSS REFERENCE TABLE

New section	Old section
A36.1	A36.1, B36.1
A36.1.1	A36.1(a), B36.1
A36.1.2	New section
A36.1.3	New section
A36.2	A36.1
A36.2.1	A36.1(a)
A36.2.1.1	A36.1(a)
A36.2.2	A36.1(b)
A36.2.2.1	A36.1(b)(4), A36.1(b)(6)
A36.2.2.2	A36.1(c)(1)
A36.2.2.2(a)	A36.1(c)(2), A36.9(b)(2)
A36.2.2.2(b)	A36.1(c)(3)
B36.2.2.2(c)	A36.9(d)(2)
B36.2.2.2(d)	A36.1(c)(4)
A36.2.2.2(e)	A36.1(c)(5)
A36.2.2.2(f)	A36.9(b)(3)
A36.2.2.2(g)	A36.9(d)(3)
A36.2.2.3	A36.1(b)(5), A36.1(d)
A36.2.2.4	A36.1(d)
A36.2.3	A36.1(d)(2)
A36.2.3.1	

CROSS REFERENCE TABLE—Continued

New section	Old section
A36.2.3.2	A36.1(b)(1), A36.1(d)(3), A36.5(b)(5)
A36.2.3.3	A36.1(d)(8), A36.5(b)(6)
A36.3	A36.3
A36.3.3	A36.3(a), A36.3(b)
A36.3.3.1	A36.3(b)
A36.3.4	A36.3(c)(2)(v)
A36.3.5	A36.3(c)(2)(i–iv), A36.3(f)(1)
A36.3.6	A36.3(c)(3)
A36.3.7	A36.3(d)
A36.3.8	A36.3(e)(7)
A36.3.9	A36.3(e)(1–6), A36.3(f)(2)
A36.3.10.1	A36.3(f)(2–4)
A36.4.1.3	B36.4(a), AC 36–4C
A36.4.1.3(a)	B36.4(a), AC 36–4C
A36.4.1.3(b)	B36.4(a), AC 36–4C
A36.4.1.3(c)	B36.4(a), AC 36–4C
A36.4.1.3(d)	B36.4(a), AC 36–4C
A36.4.1.3(e)	B36.4(a), AC 36–4C
A36.4.2.1	B36.3
A36.4.2.1(a)	B36.3(a)
A36.4.2.1(b)	B36.3(b)
A36.4.2.1(c), AC 36–4B	B36.3(c)
A36.4.3.1	B36.5
A36.4.3.1(a)	B36.5(a)
A36.4.3.1(b)	B36.5(b)
A36.4.3.1(c)	B36.5(c)
A36.4.3.1(d)	B36.5(d)
A36.4.3.1(e)	B36.5(e)
A36.4.3.1(f)	B36.5(f)
A36.4.3.1(g)	B36.5(g)
A36.4.3.1(h)	B36.5(h)
A36.4.3.1(i)	B36.5(i)
A36.4.3.1(j)	B36.5(j)
A36.4.3.1(j)	B36.5(k)
A36.4.3.1(j)	B36.5(l)
A36.4.3.1(j), AC 36–4C	B36.5(m)
A36.4.4.2	B36.5(n)
A36.4.4	B36.7
A36.4.4.1, A36.4.4.1 Note 1	B36.7(a)
A36.4.4.1-Note 2	B36.7(b)
A36.4.5.1	B36.9
A36.4.5.2	B36.9(a)
A36.4.5.3	B36.9(b)
A36.4.5.4	B36.9(c)
A36.4.5.5	B36.9(d)
A36.4.6	B36.11(a)
A36.4.7.1, Table A1 moved to AC 36–4C	B36.13(a)
A36.4.7.2(a–c)	B36.13(a)(1), (2), (3)
A36.4.7.3	B36.13(b)
A36.4.7.4	B36.13(c)
A36.5.1.1, A36.5.1.2, A36.5.1.3	A36.5(a)
A36.5.2.1	A36.5(b)(1)
A36.5.2.2	A36.5(b)(2)
A36.5.2.3	A36.5(b)(3)
A36.5.2.4	A36.5(b)(4)
A36.5.2.5	A36.5(b)(5)(i–vi)
A36.5.2.5(i)	A36.5(b)(vii)
A36.5.3	A36.5(c)
A36.5.4.1	A36.5(e)(1)
A36.5.4.2	A36.5(e)(2)
A36.5.4.3	A36.5(e)(3)
A36.6	A36.7
A36.9	A36.3.3
A36.9.1	A36.3.3, A36.5(d)(1), A36.9(d)(1), A36.11(a), A36.11(a)(3)(i) & A36.11(a)(3)(ii)
A36.9.1.1	A36.9(d)(1)
A36.9.1.2	A36.11(f)(1), A36.11(f)(2)
A36.9.2.1	A36.11(b)(1)(i–ii)
A36.9.2.2	A36.11(c)
A36.9.3	A36.11(d)(1–3)
A36.9.3.1	A36.11(d)(1–3)
A36.9.3.2(a)	A36.11(b)(3)
A36.9.3.2(a–c)	A36.11(c)(1)
A36.9.3.2(a)	A36.11(c)(2)
A36.9.3.2.1	A36.11(d)(1–3)
A36.9.3.2.1.1	A36.11(d)(1–3)
A36.9.3.2.1.2	A36.11(d)(1–3)
A36.9.3.3.1	A36.11(e)(1–2)
A36.9.3.3.2	A36.11(e)(1–2)
A36.9.3.5	A36.1(b)(7)
A36.9.3.5.1	A36.1(b)(7)
A36.9.4	A36.11(f)(2)(i–ii)
A36.9.5	A36.6
A36.9.6	A36.6

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table	
Old section	New section
A36.9.1	A36.5(d)(2), A36.9(d)(1), A36.11(a), A36.11(a)(3)(i) & A36.11(a)(3)(ii)
B36.7(b)(5)	C36.7(d)
B36.7(b)(6)	A36.5(c)(2)
B36.7(b)(7)	New section
B36.7(c)	C36.9
B36.7(c)(1)	C36.9(b)
B36.7(c)(2)	C36.9(e)(1), C36.9(e)(2)
B36.7(c)(3)	C36.9(b)
B36.7(c)(4)	B36.7(c)(1)
B36.8	A36.5(d)(1)
B36.8(b)	A36.1(d)(1)
B36.8(c)	A36.5(d)(1)
B36.8(d)	A36.5(d)(2)(i)–(iv)
B36.8(e)	A36.1(d)(6)
B36.8(f)	A36.5(d)(5)
B36.9	A36.9
B36.9(a)	A36.9(a)
B36.9(b)	A36.9(b)(1), A36.9(b)(2), A36.9(b)(3)
B36.9(c)	A36.9(c)
B36.9(d)	A36.9(d)(1), A36.9(d)(2), A36.9(d)(3)
B36.9(e)	A36.9(d)(1)
B36.9(f)	A36.9(d)(1)
B36.11(a)	A36.11(a)
B36.11(b)	A36.11(b)(1)(i–ii), A36.11(b)(2), A36.11(b)(3)
B36.11(c)	A36.11(c)(1), A36.11(c)(2)
B36.13(a)	A36.13(a)(1), (2), (3)
B36.13(a)(1), (2), (3)	A36.13(a)
B36.13(b)	A36.13(b)
B36.13(c)	A36.13(c)
C36.7(d)	B36.7(b)(5)
A36.5(c)(2)	B36.7(b)(6)
New section	B36.7(b)(7)
C36.9	B36.7(c)
C36.9(b)	B36.7(c)(1), B36.7(c)(4)
C36.9(e)(1), C36.9(e)(2)	B36.7(c)(2)
C36.9(b)	B36.7(c)(3)
Deleted	C36.9(d)
B36.7(c)(2)	C36.9(e)(1)
B36.7(c)(2)	C36.9(e)(2)
B36.8(g)	C36.9(e)(3)

not exceed 12 knots and the crosswind velocity for the airplane does not exceed 7 knots. Section A36.2.2.2(e) of the final rule also specifies that maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB-down time interval. Section A36.2.2.2(e) of ICAO Annex 16, Appendix 2 contains a similar average

followed to develop an appropriate noise certification standard. Accordingly, although the provision is not being adopted, the section reference will be reserved to preserved the ICAO format as much as possible.

Noise Certificates. A note in section 1.2 of ICAO Annex 16, Chapter 1 indicates that documents attesting to noise certification may take the form of a separate noise certificate or a suitable

setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written

CROSS REFERENCE TABLE—Continued

New section	Old section
A36.2.3.2	A36.1(b)(1), A36.1(d)(3), A36.5(b)(5)
A36.2.3.3	A36.1(d)(8), A36.5(b)(6)
A36.3	A36.3
A36.3.1	New
A36.3.2	New
A36.3.3	A36.3(a)
A36.3.3.1	A36.3(b)
A36.3.3.2	New
A36.3.4	A36.3(c)(2)(v)
A36.3.5	A36.3(c)(2)(i–iv), A36.3(f)(1)
A36.3.6	A36.3(c)(3)
A36.3.7	A36.3(d)
A36.3.8	A36.3.(e)(7)
A36.3.9	A36.3(e)(1–6), A36.3(f)(2)
A36.3.10.1	A36.3(f)(2–4)
A36.3.10.2	A36.5(d)(3–4)
A36.4	B36.1
A36.4.1	B36.1
A36.4.1.1	B36.1
A36.4.1.2	B36.1
A36.4.1.3	B36.1
A36.4.2	B36.3
A36.4.2.1	B36.3; AC 36–4C
A36.4.3	B36.5
A36.4.3.1	B36.5(a–m)
A36.4.3.2	B36.5(n)
A36.4.4	B36.7
A36.4.4.1	B36.7 (a) & (b)
A36.4.4.2	B36.5(n)
A36.4.5	B36.9
A36.4.5.1	B36.9
A36.4.5.2	B36.9(a)
A36.4.5.3	B36.9(b)
A36.4.5.4	B36.9(c)
A36.4.5.5	B36.9(d)
A36.4.6	B36.11
A36.4.6	B36.11(a)
A36.4.7	B36.13
A36.4.7.1	B36.13(a)
A36.4.7.2	B36.13(a) (1–3)
A36.4.7.3	B36.13(b)
A36.4.7.4	B36.13(c)
A36.5	A36.5
A36.5.1	A36.5(a)
A36.5.1.1	A36.5(a)
A36.5.1.2	A36.5(a)
A36.5.1.3	A36.5(a)
A36.5.2	A36.5(b)
A36.5.2.1	A36.5(b)(1)
A36.5.2.2	A36.5(b)(2)
A36.5.2.3	A36.5(b)(3)
A36.5.2.4	A36.5(b)(4)
A36.5.2.5	A36.5(b)(5)
A36.5.3	A36.5(c)
A36.5.3.1	A36.5(d)(1)
A36.5.4	A36.5(e)
A36.5.4.1	A36.5(e)(1)
A36.5.4.2	A36.5(e)(2)
A36.5.4.3	A36.5(e)(3)
A36.6	A36.7
A36.7.1–A36.7.3	A36.9(c)
A36.8	New section—Reserved
A36.9	A36.5(d)(1), A36.11

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table

Old section	New section
A36.9.1	A36.5(d)(2), A36.9(d)(1), A36.11(a), A36.11(a)(3)(i) & (v)
A36.9.1.1	A36.9(a), A36.9(d)(1), A36.11(a)(3)(ii–iii), A36.11(a)(3)(iv)
A36.9.1.2	A36.11(f) (1–2)
A36.9.2	A36.11(b) & (c)
A36.9.2.1	A36.11(b)(1)(i–ii)
A36.9.2.2	A36.11(c)
A36.9.3	A36.11
A36.9.3.1	A36.11(a), A36.11(f)(1)
A36.9.3.2(a)	A36.11(b)(3), A36.11(c)(2)
A36.9.3.2.(b)	New section
A36.9.3.2.1	A36.11(d)(1–3)
A36.9.3.2.1.1	A36.11(d)(1)(ii)
A36.9.3.2.1.2	A36.11(d)(1)(ii)
A36.9.3.2.2	A36.11(c)
A36.9.3.3	A36.11(e)
A36.9.3.3.1	A36.11(e)(1)–(2)
A36.9.3.3.2	A36.11(e)
A36.9.3.4	A36.11(a)(3)(iv)
A36.9.3.4.1	A36.11(a)(3)(iv)
A36.9.3.4.2	A36.11(a)(3)(iv)
A36.9.3.5	A36.1(b)(7)
A36.9.3.5.1	A36.1(b)(7)
A36.9.4	A36.11(f)(2) (i–ii)
A36.9.4.1.	A36.11(b)(2), A36.11(f)(2)(i–ii)
A36.9.4.2	A36.11(f)(2)(i–ii)
A36.9.4.2.2	A36.11(f)(2)(i–ii)
A36.9.4.2.3	A36.11(f)(2)(i–ii)
A36.9.4.3	A36.11(f)(2)(i–ii)
A36.9.4.4	A36.11(f)(2)(i–ii)
A36.9.4.4.1	A36.11(f)(2)(i–ii)
A36.9.5	A36.7
A36.9.6	A36.7
B36.1	C36.1
B36.2	A36.1(d)(1)
B36.3(a)	C36.3(c)
B36.3(b)	C36.3(a)
B36.3(c)	A36.5(c)(2), C36.3(b)
B36.4(a)	A36.11(f)
B36.4(b)	A36.1(b)(7)
B36.5	C36.5(a)
B36.5(a)	C36.5(a)(1)
B36.5(b)	C36.5(a)(2)
B36.5(b)(1)	C36.5(a)(2)(i)
B36.5(b)(2)	C36.5(a)(2)(ii)
B36.5(c)	C36.5(a)(3)
B36.5(c)(1)(i)	C36.5(a)(3)(i)(A)
B36.5(c)(1)(ii)	C36.5(a)(3)(i)(B)
B36.5(c)(1)(iii)	C36.5(a)(3)(i)(C)
B36.5(c)(2)	C36.5(a)(3)(ii)
B36.5(c)(3)	C36.5(a)(3)(iii)
B36.6	C36.5(b)(1)–(3)
B36.7(a)(1)	
B36.7(a)(2)	A36.11(a)(3)(i)
B36.7(a)(3)	C36.7(a), C36.9(a)
B36.7(a)(4)	New section—Reserved
B36.7(a)(5)	A36.5(c)(1), C36.7(e)(3)
B36.7(b)(1)	C36.7(b)
B36.7(b)(2)	C36.7(c)
B36.7(b)(3)	A36.1(b)(2)
B36.7(b)(4)	C36.7(e)(1–2)

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table

Old section	New section
B36.7(b)(5)	C36.7(d)
B36.7(b)(6)	A36.5(c)(2)
B36.7(b)(7)	New section
B36.7(c)	C36.9
B36.7(c)	C36.9(a)
B36.7(c)(1)	C36.5(c)(2), C36.9(c)
B36.7(c)(2)	C36.9(e)(1), C36.9(e)(2)
B36.7(c)(3)	C36.9(b–c)
B36.7(c)(4)	C36.5(c)(2)
B36.7(c)(5)	C36.9(b)
B36.8(a)	New section
B36.8(b)	A36.1(d)(1)
B36.8(c)	A36.5(d), A36.11(a)
B36.8(d)	A36.1(d)(2)(i–iv)
B36.8(e)	A36.1(d)(6)
B36.8(f)	A36.5(d)(5)
B36.8(g)	C36.7(e)(1), C36.9(e)(3)

Paperwork Reduction Act

Notice No. 00–08, Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes, contained proposed information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review.

The agency did not receive any comments concerning this collection of information. The collection of information was approved and assigned OMB Control Number 2120–0659.

Compatibility With ICAO Standards

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. The FAA is participating in an effort, sponsored by the ICAO Committee on Aviation Environmental Protection (CAEP) Working Group 1, that is aimed at resolving these differences. Any remaining differences with Annex 16 Recommended Standards and Practices after conclusion of these efforts will be filed with ICAO. Differences will not be filed for those items that are "notes" in Annex 16.

Wind Speed. Section A36.2.2.2(e) of this final rule requires that tests be carried out under atmospheric conditions where the average wind velocity 10 meters above ground does not exceed 12 knots and the crosswind velocity for the airplane does not exceed 7 knots. Section A36.2.2.2(e) of the final rule also specifies that maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB-down time interval. Section A36.2.2.2(e) of ICAO Annex 16, Appendix 2 contains a similar average wind speed limitation, but specifies a maximum windspeed limitation only in cases where an anemometer with a built-in detector time constant of less than 30 seconds is used. The FAA has not agreed to adopt this ICAO Annex 16 provision because it could result in tests being conducted in windspeed conditions that exceed those currently permitted under part 36; based on the information that was available to it, the harmonization working group could not determine the effect that these higher wind conditions might have on the resulting noise levels.

Adjustments to PNL and PNLT. In adjusting measured sound pressure level data to reference conditions, a note in Annex 16, Appendix 2 section 9.3.2.1 suggests that when a sound pressure level value is equal to zero (for example, as a result of applying a background noise correction) the adjusted sound pressure level must be kept equal to zero in the adjustment process. The FAA does not agree with this provision. The FAA has determined that the sound pressure level values should be carried through the adjustment process regardless of whether they are greater than zero, equal to zero, or less than zero. It is entirely possible for a negative or zero sound pressure level value that results from the background noise correction process to become positive when adjusted to account for the difference between the test and reference airplane heights above the noise measurement point.

Design characteristics that requires different reference procedures. Section 3.6.1.4 of ICAO Annex 16, Chapter 3 permits the certificating authority to approve reference procedures that are different from those contained in sections 3.6.2 and 3.6.3 of ICAO Annex 16 when design characteristics of an airplane would prevent flight from being conducted in accordance with sections 3.6.2 and 3.6.3 of ICAO Annex 16. The FAA will not adopt this ICAO Annex 16 provision. The FAA recognizes that there may be a need for changes to the specified reference procedures when part 36 may not be appropriate for a particular airplane. In cases where part 36 is not appropriate, the rulemaking process, which includes a public comment period, would be followed to develop an appropriate noise certification standard. Accordingly, although the provision is not being adopted, the section reference will be reserved to preserved the ICAO format as much as possible.

Noise Certificates. A note in section 1.2 of ICAO Annex 16, Chapter 1 indicates that documents attesting to noise certification may take the form of a separate noise certificate or a suitable statement contained in another document approved by the State of Registry and required by that State to be carried in the aircraft. The FAA—however, is not authorized to issue noise certificates.

The U.S. regulations require that the certification noise levels be included in the Airplane Flight Manual (AFM)/ Rotorcraft Flight Manual (RFM), and an AFM/REM is approved for each carrier/ operator or airplane/rotorcraft model by the FAA. Some U.S. operating regulations, however, such as 14 CFR part 121, allow an operator to create an operations manual that is based on the limitations and performance requirements contained within the FAA-approved AFM. This manual is required to be used by the flight, maintenance, and ground crews of the operators. There is no specific requirement that the entire FAA-approved AFM be carried in the airplane. The operations manual (or Flight Crew Operating Manual) may not contain the noise characteristics page from the FAA-approved AFM depending on how the manual was constructed and whether or not the information contained on the noise characteristics page was deemed of any benefit to the flight or operations crews.

In Notice No. 00–08, the FAA invited comments on the extent of any problems encountered due to the absence of noise compliance substantiation when the Airplane Flight Manual is not on board the airplane. One comment was received on this subject and is included under the Discussion of Comments section of this preamble.

Economic Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will reduce trade barriers by narrowing the difference between United States and Joint Aviation Authority regulations; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

The FAA has placed these analyses in the docket and summarized them below.

Comments

Four parties provided comments in response to the NPRM. Only one party, the Aerospace Industries Association (AIA) made any comment on the costs associated with the proposal and the reference concerned only one of the five broad categories to which AIA addressed its comments. In the category entitled "FAA differences representing additional or dissimilar requirements", AIA lists twelve sections of the NPRM that "either are or can easily be interpreted to be different than those in Annex 16".

The AIA states that "these differences, if maintained, would also make it much more difficult and costly to applicants that might want reciprocal approvals by different certificating authorities". The FAA reviewed the sections in question and in some cases was unable to determine the specific concern that the commenter was raising.

In eight of the sections, the FAA views the minor text differences as serving to clarify part 36 requirements without introducing any additional or dissimilar requirements relative to Annex 16. In the ninth section, the FAA concludes that, rather than adding a

burden, the changed text clarifies that the specified windscreen testing need only be performed under certain conditions and does not view the section as an additional or dissimilar requirement for ICAO Annex 16. The FAA corrected an equation in the tenth section. The FAA has been unable to identify any costs associated with ten of the twelve sections in question and in

The FAA estimates that these software costs will be incurred in the first 3 years of the 10-year period; the present value cost to the industry and the FAA will be $34,200 and $15,200, respectively.

Measurement Costs

Section B36.4(b) will add a special requirement for propeller-driven airplanes that will require the

these projects are conducted among the 15 foreign firms that already comply with these new reporting requirements under JAR 36 or ICAO Annex 16 and thus will not incur additional reporting costs.

Ten projects are conducted from among the 24 domestic firms engaged in flight testing and the FAA estimates that these firms will conduct 100 tests over

certification standards of part 36 and achieving greater harmonization with the JAA regulations.

TOTAL COST OF FINAL CHANGES TO PART 36

	Total cost	Present value
Software Costs:		
Industry	$39,160	$34,250
FAA	17,380	15,200
	56,540	49,450

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burden, the changed text clarifies that the specified windscreen testing need only be performed under certain conditions and does not view the section as an additional or dissimilar requirement for ICAO Annex 16. The FAA corrected an equation in the tenth section. The FAA has been unable to identify any costs associated with ten of the twelve sections in question and in view of the lack of any specific cost data submitted by the commenter the FAA concludes that there are no additional costs associated with these amendments.

The comments on the two remaining sections in question are beyond the scope of this rulemaking. In one case, adoption of the ICAO provision would violate United States administrative procedures and in the second case, the FAA intends to work within the ICAO process to achieve future resolution of the difference.

Analysis of Costs

The FAA has analyzed the expected costs of this regulatory rule for a 10-year period, from 2002 through 2011. As required by the Office of Management and Budget (OMB), the present value of this cost stream was calculated using a discount factor of 7 percent. All costs in this analysis are expressed in 2000 dollars.

The sections of the final rule that will impose costs fall into three categories: (1) Software costs, (2) additional or new measuring provisions, and (3) additional reporting requirements.

Software Costs

Section A36.3.7.6 specifies that the instant in time at which a slow time-weighted sound pressure level is characterized should be 0.75 seconds earlier than the actual readout time. Implementation of this change will require modifying the computer software used by the applicant. The FAA must verify the software change. The estimated time required to make this one-time software change is 40 hours for each applicant. The estimated time required by the FAA to verify correct implementation of the change is 20 hours for each applicant.

Based on internal data, the FAA estimates that 11 applicants will incur this one-time cost. This is significantly less than the number of applicants estimated in the NPRM. The NPRM erroneously included all original equipment manufacturers and supplemental type certificate applicants as being required to make this software change. The estimated cost to the industry is $39,200. The verification cost to the FAA is estimated at $17,400. The FAA estimates that these software costs will be incurred in the first 3 years of the 10-year period; the present value cost to the industry and the FAA will be $34,200 and $15,200, respectively.

Measurement Costs

Section B36.4(b) will add a special requirement for propeller-driven airplanes that will require the placement of symmetrically positioned microphones at each and every test measurement point. However, most applicants already take advantage of FAA-approved equivalent test procedures that require only one set of symmetrical microphones for sideline noise measurements. These equivalent test procedures will be unaffected by this change and most applicants are expected to continue to use them. If more than a two-microphone array were used, however, the cost will be realized as part of the certification test performed under the specifications of JAR 36 or ICAO Annex 16.

Industry sources estimate that there are currently six firms engaged in the noise certification of large propeller-driven airplanes and that all but one are foreign manufacturers that already incur this cost if they are not using the approved equivalent procedure. The domestic firm is a large entity that probably also already incurs this cost under the JAR specifications if it does not use the approved equivalent procedures. Therefore, changing part 36 will not result in increased costs for known applicants.

An applicant choosing to use multiple pairs of microphones, however, could incur additional costs ranging up to an estimated $29,350 per test. The FAA has calculated costs assuming two domestic large-propeller applicants will conduct 4 tests meeting this requirement over the next 10 years. The total cost is estimated to be $117,400, or $83,000 discounted.

Reporting Costs

Section A36.5.2.5 (c through f, h(2), j) adds five new data elements to be reported to the FAA. All of these new reporting requirements are already a part of the international standard. Because most applicants already address these requirements under JAR 36 or ICAO Annex 16, and the data is already reported to the FAA on a voluntary basis, minimal cost impact is expected. Additional labor costs for documenting data not previously reported are estimated to range from $525 to $2,100 per certification.

Based on FAA estimates, 14 noise certification projects involving flight tests are undertaken each year. Four of these projects are conducted among the 15 foreign firms that already comply with these new reporting requirements under JAR 36 or ICAO Annex 16 and thus will not incur additional reporting costs.

Ten projects are conducted from among the 24 domestic firms engaged in flight testing and the FAA estimates that these firms will conduct 100 tests over the next 10 years. The FAA further estimates that some domestic firms will incur additional reporting costs of $1,315 per test, based on the midpoint of the estimated additional labor costs (($525 + $2,100)/2).

Domestic firms with a large international presence are estimated to conduct 40 of the 100 tests to be conducted over the next 10 years, based on the composition of the industry. Because these larger firms already frequently comply with the existing international reporting standard, the FAA estimates that only 10 of the 40 tests to be conducted by these firms will result in the additional reporting costs of $1,315 each, or a total of $13,150. The FAA estimates that of the 60 tests to be conducted by smaller domestic firms, 24 tests will incur the additional reporting costs of $1,315 per test or a total of $31,600 over the next 10 years. Thus, the additional labor costs for reporting the additional information will total approximately $44,700 for these affected firms.

It is possible, however, that some applicants might accrue additional costs. If an applicant is required to invest in new instrumentation or data recording equipment to comply with these requirements, the estimated total reporting costs could increase to between $5,250 and $10,500 per test. One possible scenario could entail the purchase and installation of instrumentation hardware at $4,400, plus the labor cost for adding recording capability, and data recording and analysis at $3,600 for a total of $8,000 of additional cost. The FAA estimates that three domestic firms, one large and two small, could incur this additional cost of $7,960 for each test and that each of these firms will conduct 4 tests for a total of 12 tests over the next 10 years at a total cost of $95,520. Thus, the total additional reporting costs to the industry will be $140,200, or $98,485 discounted, based on the minimal additional reporting costs of $44,700 and $95,520 incurred by the firms requiring additional instrumentation and data recording.

Summary of Increased Costs

The following table summarizes the estimated cost of changing the noise certification standards of part 36 and achieving greater harmonization with the JAA regulations.

TOTAL COST OF FINAL CHANGES TO PART 36

	Total cost	Present value
Software Costs:		
Industry	$39,160	$34,250
FAA	17,380	15,200
Total Software Costs	56,540	49,450
Measurement Costs	117,400	83,000
Reporting Costs	140,200	98,500
Grand Total Costs	314,140	230,950
Total Industry Costs	296,760	215,750
Total FAA Costs	17,380	15,200

Cost Savings

Several of the amendments should result in cost savings to applicants, depending upon the current inventory of an applicant's test equipment and the particular weather circumstances of the flight test. Given the uncertainty in the annual number and duration of flight tests, however, it is difficult to accurately quantify these savings.

For example, Section A36.2.2.2(b) will lower the minimum test temperature from 36 degrees Fahrenheit to 14 degrees Fahrenheit. One of the largest cost elements of the test certification process if the cost associated with airplane down time; by extending the temperature range, down time should be minimized. Down time occurs when the test aircraft, crew, equipment, and technicians are ready to commence testing but testing is delayed or postponed because the weather conditions specified in Section A36.2 are not met.

While airplane noise testing is not normally planned for cold weather, circumstances may dictate that the test be conducted under conditions which could take advantage of this new lower temperature. Under this circumstance assuming various scenarios of daily temperature patterns that could result in reduced hours of airplane down time, an applicant might reduce the total on-site test time of a typical certification flight test conducted under these conditions by 10 to 15 percent.

As an example of the impact of permitting testing to be conducted at a lower temperature, assuming an on-site test time of 5 to 7 days to complete a typical certification flight test under these conditions, the applicant might reduce the total test time between half a day to one full day by testing during a time period when the lower temperature condition prevailed. Assuming a cost factor of $157,200 to $209,700 per day for larger planes and $73,400 to $146,800 per day for smaller airplanes, cost reductions per test made possible by this change in minimum test temperatures could range between approximately $78,600 and $209,700 for larger airplanes and manufacturers and between $36,700 and $146,800 for smaller airplanes and manufacturers. The number of such tests conducted under cold weather conditions might be, at most, one per applicant over a 10-year period Some applicants might nit encounter this situation during a 10-year period.

Based on the size of the firms conducting noise certifications, the FAA estimates that 25 larger applicants will each derive cost savings of $144,100 per test and 14 smaller firms will save $91,700 each per test, based on the mid-points of the estimated savings ranges. Because it is possible that certain applicants may not encounter this situation in the 10-year period, however. the FAA has reduced the number of firms by three, one large and two small. Thus large firms will save $3.46 million ($144,100 × 24) and small firms $1.1 million ($91,700 × 12). The estimated industry cost savings over ten years totals $4.56 million (3.46 + $1.10 million), or $3.2 million discounted.

Amended section B36.3(a) includes a simplified test procedure that may be used in determining the sideline (lateral) noise level for propeller-driven large airplanes. This test procedure allows the full power noise measurement to be obtained at a point (650m) below the takeoff flight path and thus eliminates 40 to 45 fly-bys per test, and between 2 and 8 microphone systems depending on the size of the array used by the applicant. (Many applicants currently use a 2-microphone sideline array.

In addition to the savings resulting from the reduction in the number of fly-bys and the number of microphone systems, further cost savings will result from a reduction in site surveying and field set-up expenses in addition to the analysis and reporting savings that result from fewer fly-bys. The total cost savings of these changes are estimated by industry experts at $200,000 to $350,000 per test for manufacturers of propeller-driven large airplanes. As an example, based on a reduction of 42 fly-bys the midpoint of the estimated range, and an example cost of $6,290 per fly-by, cost savings of $264,180 would be realized.

In addition, assuming a reduction of 4 microphone systems, including surveying, setup, recording analysis, and reporting at an assumed cost factor of $7,340 per system, another $29,360 in savings will be realized for a total estimated savings of $293,540 per test under this example. The FAA estimates that no more than 10 tests and that the derived estimated cost savings will total $2.94 million based on a per test savings of $293,540 or $2.06 million discounted.

Industry sources estimate that cost savings of $26,205 to $52,410 per year for those applicants with considerable certification activity will be realized by the harmonization of testing, data measurement and analysis, reporting and documentation, and other noise certification efficiencies. Industry sources also claim that these cost savings will be achieved by a reduction in the confusion and the multiple interpretations that lead to delays and duplicate effort caused by the existing dual certification standards. The FAA estimates that 10 firms engaged in noise certification activities, each employing 10,000 or more workers, will each achieve cost savings of $39,310 (the midpoint of the estimated savings) or $393,000 annually for the industry. The estimated industry cost savings over ten years totals $3.93 million, or $2.76 million discounted.

The following table summarizes the estimated cost savings of the final rulemaking.

TOTAL COST SAVINGS OF AMENDMENTS TO PART 36

[In millions of dollars]

	B36.22.2 savings	B36.3(a) savings	Efficiency savings	Total savings
Savings	$4.56	$2.94	$3.93	$11.4

appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential affect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact. It will reduce trade barriers by narrowing differences between United States and

The Amendment

In consideration of the foregoing the FAA amends parts 21, 36, and 91 of Title 14 Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21

"B36.5(b)" in its place; and remove the reference to "C36.5(a)(3)" and add "B36.5(c)" in its place; and remove all references to "appendix C" and add "appendix B" in its place;

h. In paragraph (f)(4) remove the reference to "C36.5" and add "B36.5(b)" in its place; remove the reference to "appendix C" and add "appendix B" in its place; and add the words "specified in section B36.6" after "tradeoff

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years totals $3.93 million, or $2.76 million discounted.

The following table summarizes the estimated cost savings of the final rulemaking.

TOTAL COST SAVINGS OF AMENDMENTS TO PART 36

[In millions of dollars]

	B36.22.2 savings	B36.3(a) savings	Efficiency savings	Total savings
Savings	$4.56	$2.94	$3.93	$11.4
Present Value	3.20	2.06	2.76	8.02

The FAA has not been able to quantify other potential savings that may be made possible by the greater efficiencies and flexibility resulting from the uniformity that the final rule provides.

Summary

When this new final rule becomes effective, U.S. noise certification procedures will be nearly uniform with the JAA procedures. This harmonization between the test conditions, procedures, and noise levels necessary to demonstrate compliance with certification requirements for subsonic jet airplanes and subsonic transport category large airplanes will result in significant cost savings without compromising the environmental benefits of the noise certification standards.

This final rule's estimated cost savings, over ten years, (attributable to specific changes to part 36) will be $7.5 million, or $5.26 million discounted., In addition, $3.93 million, $2.76 million discounted, could be derived from overall efficiencies attributable to the harmonization effort in achieving near uniformity of the FAA and JAA standards for a total estimated saving of $11.43 million, $8.,02 million discounted.

The final rule's cost consist of software costs of $56,500, measurement costs of $117,400 and reporting costs of $140,200 for a total of $374,100, or $230,900 discounted.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Adoption of this final rule will impose costs of $314,000 on the FAA and noise certification applicants over the ten year period, of which $241,120 is estimated to be incurred by small applicants. Small firms will incur software costs of $28,480, measurement costs of $117,400, and reporting-related costs of $95,250. This is a conservative estimate because it assumes small firms will elect to use multiple pairs of microphones to conduct tests when most applicants already utilize a less costly equivalent procedure that is FAA-approved.

Small firms are firms employing 1,500 employees or fewer based on Small Business Administration guidelines. A review of firms engaged in noise certification of subsonic jet airplanes and subsonic transport category large airplanes found that 14 firms met the criteria. The FAA assumes that no more than two small firms will elect to use multiple microphone systems to test large-propeller airplanes two times each and each will incur measurement costs of $58,700 for a total cost of $117,400.

Additional reporting costs requiring additional instrumentation and data recording totaling $63,680 over the ten year period will be incurred by two other small applicants or $31,840 each. Additional labor costs for new reporting requirements totaling $31,560 over the 10 year period will be incurred by 6 small firms at a cost to each of these smaller firms over the 10 years period of $5,260. Eight small noise certification firms will incur one-time software costs of $3,560 each. Small firms that incur the software charge and also incur labor costs to report additional data will have an annualized cost of $770. The FAA does not consider these costs to be significant. The highest potential annualize cost, $6,700, will be borne by two firms that incur both the software and reporting costs ($780, annualized) and also elect to use multiple microphones four times each to measure the noise of a large propeller-driven airplane ($5,910 annualized).

The FAA does not have information on the revenues of these two potential small entrants but based on information about two small current manufacturers the revenue from the sale of one of their aircraft ranges from $750,000 to $2.7 million depending on the model. If a new entrant sells only a single aircraft each year, the cost of this final rule will be less than one percent of the lowest price aircraft. Hence, the FAA has determined that the estimated costs of compliance are marginal with this final rule are marginal.

Therefore, the FAA has determined that this final rule will not have a significant economic impact to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where

appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential affect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact. It will reduce trade barriers by narrowing differences between United States and Joint Aviation Authority regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rule does not contain such a mandate. Therefore, the requirements of Title Ii of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA concludes that this final rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the document is not a major regulatory action under the provision of the EPCA.

List of Subjects in 14 CFR Parts 21, 36, and 91

Aircraft, Noise control.

The Amendment

In consideration of the foregoing the FAA amends parts 21, 36, and 91 of Title 14 Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 49 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

§ 21.93 [Amended]

2. In paragraph (b)(2) remove the words "Turbojet powered" and add the words "Jet (Turbojet powered)" in its place.

§ 21.183 [Amended]

3. In paragraph (e)(1) remove the words "turbojet powered" and add the words "jet (turbojet powered)" in its place.

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

4. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11513, 35 FR 4247, 3 CFR 1966–1970 Comp., p. 902.

§ 36.1 [Amended]

5. Amend § 36.1 as follows:

a. In paragraph (a)(1) remove the words "turbojet powered" and add the word "jet" in its place.

b. In paragraph (b) introductory text remove the words "turboject powered" and add the word "jet" in its place; and remove the reference to "appendix C" and add "appendix B" in its place.

c. Remove paragraph (d)(3).

d. In the introductory text of (f) remove the words "turbojet powered" and add the word "jet" in its place.

e. In paragraph (f)(1) remove the reference to "C36.5(a)(2)" and add "B36.5(b)" in ins place; remove the reference to "appendix C" and add "appendix B" in its place; remove the word "takeoff" and add the word "flyover" in its place; and remove the word "sideline" and add the word "lateral" in its place;

f. In paragraph (f)(2) remove the word "takeoff" and add the word "flyover" in its place; and remove the word "sideline" and add the word "lateral" in its place;

g. In paragraph (f)(3) remove the reference to "C36.5(a)(2)" and add "B36.5(b)" in its place; and remove the reference to "C36.5(a)(3)" and add "B36.5(c)" in its place; and remove all references to "appendix C" and add "appendix B" in its place;

h. In paragraph (f)(4) remove the reference to "C36.5" and add "B36.5(b)" in its place; remove the reference to "appendix C" and add "appendix B" in its place; and add the words "specified in section B36.6" after "tradeoff provisions";

i. In paragraph (f)(5) remove the reference to "C36.5(a)(3)" and add "B36.5(c)" in its place; remove the reference to "appendix C" and add "appendix B" in its place;

j. In paragraph (f)(6) remove the reference to "C36.5" and add "B36.5(c)" in its place; remove the reference to "appendix C" and add "appendix B" in its place; and add "appendix B" in its place; and add the words "specified in section B36.6" after "tradeoff provisions";

k. In paragraph (g) remove the word "turbojet" and add the word "jet" in its place.

6. Revise the heading and § 36.2 to read as follows:

§ 36.2 Requirements as of date of application.

(a) Section 21.17 of this chapter notwithstanding, each person who applies for a type certificate for an aircraft covered by this part, must show that the aircraft meets the applicable requirements of this part that are effective on the date of application for that type certificate. When the time interval between the date of application for the type certificate and the issuance of the type certificate exceeds 5 years, the applicant must show that the aircraft meets the applicable requirements of this part that were effective on a date, to be selected by the applicant, not earlier than 5 years before the issue of the type certificate.

(b) Section 21.101(a) of this chapter notwithstanding, each person who applies for an acoustical change to a type design specified in § 21.95(b) of this chapter must show compliance with the applicable requirements of this part that are effective on the date of application for the change in type design. When the time interval between the date of application for the change in type design and the issuance of the amended or supplemental type certificate exceeds 5 years, the applicant must show that the aircraft meets the applicable requirements of this part that were effective on a date, to be selected by the applicant, not earlier than 5 years before the issue of the amended or supplemental type certificate.

(c) If an applicant elects to comply with a standard in this part that was effective after the filing of the application for a type certificate or change to a type design, the election:

(1) Must be approved by the FAA;

(2) Must include standards adopted between the date of application and the date of the election;

(3) May include other standards

(vii) Northwest Mountain Region Headquarters, 1601 Lind Avenue, Southwest, Renton, Washington 98055.

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(ix) Alaskan Region Headquarters, 222 West 7th Avenue, #14, Anchorage, Alaska, 99513.

* * * * *

§ 36.7 [Amended]

the airplane must be measured and evaluated under appendix A of this part or under an approved equivalent procedure.

11. Revise section 36.103 to read as follows:

§ 36.103 Noise Limits.

(a) For subsonic transport category large airplanes and subsonic jet

states the measurement procedures that must be used to measure airplane noise. The procedures that must be used to determine the noise evaluation quantity designated as effective perceived noise level, EPNL, under §§ 36.101 and 36.803 are also stated.

A36.1.2 The instructions and procedures given are intended to ensure uniformity during compliance tests and to permit comparison between tests of various types of airplanes conducted in various geographical locations.

ground and the airplane such that the sound attenuation in the one-third octave band centered on 8 kHz will not be more than 12 dB/100 m unless:

(1) The dew point and dry bulb temperatures are measured with a device which is accurate to ±0.9°F (±0.5°C) and used to obtain relative humidity; in addition layered sections of the atmosphere are used as described in section A36.2.2.3 to compute equivalent weighted sound attenuations in each one-third octave band; or

A36.2.2.4 The airport control tower or another facility must be aproved by the FAA for use as the central location at which measurements of atmospheric parameters are representative of those conditions existing over the geographical area in which noise measurements are made.

A36.2.3 *Flight path measurement.*

A36.2.3.1 The airplane height and lateral position relative to the flight track must be determined by a method independent of normal flight instrumentation such as radar

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(c) If an applicant elects to comply with a standard in this part that was effective after the filing of the application for a type certificate or change to a type design, the election:

(1) Must be approved by the FAA;

(2) Must include standards adopted between the date of application and the date of the election;

(3) May include other standards adopted after the standard elected by the applicant as determined by the FAA.

§ 36.6 [Amended]

7. Amend § 36.6 as follows:

a. Add paragraphs (c)(1)(vi) through (x);

b. Revise paragraphs (d)(1)(i) and (ii), (e)(3)(iii), (e)(3)(vi), (e)(3)(vii), and (e)(3)(ix).

§ 36.6 Special retroactive requirements.

* * * * *

(c) * * *

(1) * * *

(iv) IEC Publication 61094–3, entitled "Measurement Microphones—Part 3: Primary Method for Free-Field Calibration of Laboratory Standard Microphones by the Reciprocity Technique", edition 1.0, dated 1995.

(vii) IEC Publication 61094–4, entitled "Measurement Microphones—Part 4: Specifications for Working Standard Microphones", edition 1.0, dated 1995.

(viii) IEC Publication 61260, entitled "Electroacoustics-Octave-Band and Fractional-Octave-Band filters", edition 1.0, dated 1995.

(ix) IEC Publication 61265, entitled "Instruments for Measurement of Aircraft Nose-Performance Requirements for systems measure one—Third-Octave-Band Sound pressure Levels in Noise Certification of Transport-Category Aeroplanes," edition 1.0, dated 1995.

(x) IEC Publication 60942, entitled "Electroacoustics—Sound Calibrators," edition 2.0, dated 1997.

* * * * *

(d) * * *

(1) * * *

(i) International Electrotechnical Commission, 3, rue de Varembe, Case postale 131, 1211 Geneva 20, Switzerland.

(ii) American National Standard Institute, 11 West 42nd Street, New York City, New York 10036.

(e) * * *

(3) * * *

(iii) Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia, 30337.

* * * * *

(vi) Southwest Region Headquarters, 2601 Meacham Boulevard, Fort Worth, Texas, 76137–4298.

(vii) Northwest Mountain Region Headquarters, 1601 Lind Avenue, Southwest, Renton, Washington 98055.

* * * * *

(ix) Alaskan Region Headquarters, 222 West 7th Avenue, #14, Anchorage, Alaska, 99513.

* * * * *

§ 36.7 [Amended]

8. Amend § 36.7 to read as follows:

a. In the heading of the section and in paragraph (a) remove the words "turbojet powered" and add the word "jet" in its place.

b. In paragraph (b)(1) remove the reference to "Appendices A and B" and add "Appendix A" in its place.

c. In paragraph (b)(2) remove the reference to "C36.5" and add "B36.5" in its place, remove the reference to "C36.7" and add "B36.7" in its place; remove the reference to "C36.9" and add "B36.8" in its place; and remove the reference to "appendix C" in both places it appears and add "appendix B" in its place;

d. In paragraph (c)(1) remove the reference to "C36.5(b)" and add "B36.6" in its place; and remove the reference to "appendix C" and add "appendix B" in its place;

e. In paragraph (c)(2)(ii) remove the words "takeoff and sideline" and add the words "flyover and lateral" in its place;

f. In paragraph (d)(1) introductory text remove the word "turbojet" and add the word "jet" in its place;

g. In paragraph (d)(1)(ii) remove the reference to "C36.5(b)" and add "B36.6" in its place; and remove the reference to "appendix C" and add "appendix B" in its place;

h. In paragraph (d)(1)(iii) remove the words "takeoff and sideline" and add the words "flyover and lateral" in its place;

i. In paragraph (d)(2) introductory text remove the word "turbojet" in both places that it appears and add the word "jet" in its place.

j. In paragraph (d)(2)(ii) remove the words "takeoff and sideline" and add the words "flyover and lateral" in its place.

Subpart B—Transport Category Large Airplanes and Jet Airplanes

9. Revise the heading of Subpart B to read as set forth above.

10. Revise section 36.101 to read as follows:

§ 36.101 Noise measurement and evaluation.

For transport category large airplanes and jet airplanes, the noise generated by the airplane must be measured and evaluated under appendix A of this part or under an approved equivalent procedure.

11. Revise section 36.103 to read as follows:

§ 36.103 Noise Limits.

(a) For subsonic transport category large airplanes and subsonic jet airplanes compliance with this section must be shown with noise levels measured and evaluated as prescribed in appendix A of this part, and demonstrated at the measuring points, and in accordance with the test procedures under section B36.8 (or an approved equivalent procedure), stated under appendix B of this part.

(b) Type certification applications for subsonic transport category large airplanes and all subsonic jet airplanes must show that the noise levels of the airplane are no greater than the Stage 3 noise limits stated in section B36.5(c) of appendix B of this part.

36.201 (Subpart C) [Removed]

12. Remove and reserve subpart C, consisting of section 36.201.

§ 36.301 [Amended]

13. In paragraph (a) of section 36.301 remove the reference to "appendix C" and add "appendix B" in its place.

§ 36.1581 [Amended]

14. Amend § 36.1581 (a)(1) and (d) by removing the words "turbojet powered" and adding the word "jet" in its place; in paragraph (a)(1) remove the reference to "appendix C" and add "appendix B" in its place; and in paragraph (a)(1) remove the words "takeoff, sideline" and add the words "flyover, lateral" in its place.

15. Revise appendix A of part 36 to read as follows:

Appendix A to Part 36—Aircraft Noise Measurement and Evaluation Under § 36.101

Sec.

A36.1 Introduction.
A36.2 Noise certification test and measurement conditions.
A36.3 Measurement of aircraft noise received on the ground.
A36.4 Calculations of effective perceived noise level from measured data.
A36.5 Reporting of data to the FAA.
A36.6 Nomenclature: symbols and units.
A36.7 Sound attenuation in air.
A36.8 [Reserved]
A36.9 Adjustment of airplane flight test results.

Section A36.1 Introduction

A36.1.1 This appendix prescribes the conditions under which airplane noise certification tests must be conducted and

states the measurement procedures that must be used to measure airplane noise. The procedures that must be used to determine the noise evaluation quantity designated as effective perceived noise level, EPNL, under §§ 36.101 and 36.803 are also stated.

A36.1.2 The instructions and procedures given are intended to ensure uniformity during compliance tests and to permit comparison between tests of various types of airplanes conducted in various geographical locations.

A36.1.3 A complete list of symbols and units, the mathematical formulation of perceived noisiness, a procedure for determining atmospheric attenuation of sound, and detailed procedures for correcting noise levels from non-reference to reference conditions are included in this appendix.

Section A36.2 Noise Certification Test and Measurement Conditions

A36.2.1 *General.*

A36.2.1.1 This section prescribes the conditions under which noise certification must be conducted and the measurement procedures that must be used.

Note: Many noise certifications involve only minor changes to the airplane type design. The resulting changes in noise can often be established reliably without resorting to a complete test as outlined in this appendix. For this reason, the FAA permits the use of approved equivalent procedures. There are also equivalent procedures that may be used in full certification tests, in the interest of reducing costs and providing reliable results. Guidance material on the use of equivalent procedures in the noise certification of subsonic jet and propeller-driven large airplanes is provided in the current advisory circular for this part.

A36.2.2 *Test environment.*

A36.2.2.1 Locations for measuring noise from an airplane in flight must be surrounded by relatively flat terrain having no excessive sound absorption characteristics such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas. No obstructions that significantly influence the sound field from the airplane must exist within a conical space above the point on the ground vertically below the microphone, the cone being defined by an axis normal to the ground and by a half-angle 80° from this axis.

Note: Those people carrying out the measurements could themselves constitute such obstruction.

A36.2.2.2 The tests must be carried out under the following atmospheric conditions.

(a) No precipitation;

(b) Ambient air temperature not above 95°F (35°C) and not below 14°F (−10°C), and relative humidity not above 95% and not below 20% over the whole noise path between a point 33 ft (10 m) above the ground and the airplane;

Note: Care should be taken to ensure that the noise measuring, airplane flight path tracking, and meteorological instrumentation are also operated within their specific environmental limitations.

(c) Relative humidity and ambient temperature over the whole noise path between a point 33 ft (10 m) above the ground and the airplane such that the sound attenuation in the one-third octave band centered on 8 kHz will not be more than 12 dB/100 m unless:

(1) The dew point and dry bulb temperatures are measured with a device which is accurate to ±0.9°F (±0.5°C) and used to obtain relative humidity; in addition layered sections of the atmosphere are used as described in section A36.2.2.3 to compute equivalent weighted sound attenuations in each one-third octave band; or

(2) The peak noy values at the time of PNLT, after adjustment to reference conditions, occur at frequencies less than or equal to 400 Hz.;

(d) If the atmospheric absorption coefficients vary over the PNLTM sound propagation path by more than ±1.6 dB/1000 ft (±0.5 dB/100m) in the 3150Hz one-third octave band from the value of the absorption coefficient derived from the meteorological measurement obtained at 33 ft (10 m) above the surface, "layered" sections of the atmosphere must be used as described in section A36.2.2.3 to compute equivalent weighted sound attenuations in each one-third octave band; the FAA will determine whether a sufficient number of layered sections have been used. For each measurement, where multiple layering is not required, equivalent sound attenuations in each one-third octave band must be determined by averaging the atmospheric absorption coefficients for each such band at 33 ft (10 m) above ground level, and at the flight level of the airplane at the time of PNLTM, for each measurement;

(e) Average wind velocity 33 ft (10 m) above ground may not exceed 12 knots and the crosswind velocity for the airplane may not exceed 7 knots. The average wind velocity must be determined using a 30-second averaging period spanning the 10 dB-down time interval. Maximum wind velocity 33 ft (10 m) above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB-down time interval;

(f) No anomalous meteorological or wind conditions that would significantly affect the measured noise levels when the noise is recorded at the measuring points specified by the FAA; and

(g) Meteorological measurements must be obtained within 30 minutes of each noise test measurement; meteorological data must be interpolated to actual times of each noise measurement.

A36.2.2.3 When a multiple layering calculation is required by section A36.2.2.2(c) or A36.2.2.2(d) the atmosphere between the airplane and 33 ft (10 m) above the ground must be divided into layers of equal depth. The depth of the layers must be set to not more than the depth of the narrowest layer across which the variation in the atmospheric absorption coefficient of the 3150 Hz one-third octave band is not greater than ±1.6 dB/1000 ft (±0.5 dB/100m), with a minimum layer depth of 100 ft (30 m). This requirement must be met for the propagation path at PNLTM. The mean of the values of the atmospheric absorption coefficients at the top and bottom of each layer may be used to characterize the absorption properties of each layer.

A36.2.2.4 The airport control tower or another facility must be aproved by the FAA for use as the central location at which measurements of atmospheric parameters are representative of those conditions existing over the geographical area in which noise measurements are made.

A36.2.3 *Flight path measurement.*

A36.2.3.1 The airplane height and lateral position relative to the flight track must be determined by a method independent of normal flight instrumentation such as radar tracking, theodolite triangulation, or photographic scaling techniques, to be approved by the FAA.

A36.2.3.2 The airplane position along the flight path must be related to the noise recorded at the noise measurement locations by means of synchronizing signals over a distance sufficient to assure adequate data during the period that the noise is within 10 dB of the maximum value of PNLT.

A36.2.3.3 Position and performance data required to make the adjustments referred to in section A36.9 of this appendix must be automatically recorded at an approved sampling rate. Measuring equipment must be approved by the FAA.

Section A36.3 Measurement of Airplane Noise Received on the Ground

A36.3.1 *Definitions.*

For the purposes of section A36.3 the following definitions apply:

A36.3.1.1 *Measurement system* means the combination of instruments used for the measurement of sound pressure levels, including a sound calibrator, windscreen, microphone system, signal recording and conditioning devices, and one-third octave band analysis system.

Note: Practical installations may include a number of microphone systems, the outputs from which are recorded simultaneously by a multi-channel recording/analysis device via signal conditioners, as appropriate. For the purpose of this section, each complete measurement channel is considered to be a measurement system to which the requirements apply accordingly.

A36.3.1.2 *Microphone system* means the components of the measurement system which produce an electrical output signal in response to a sound pressure input signal, and which generally include a microphone, a preamplifier, extension cables, and other devices as necessary.

A36.3.1.3 *Sound incidence angle* means in degrees, an angle between the principal axis of the microphone, as defined in IEC 61094–3 and IEC 61094–4, as amended and a line from the sound source to the center of the diaphragm of the microphone.

Note: When the sound incidence angle is 0°, the sound is said to be received at the microphone at "normal (perpendicular) incidence;" when the sound incidence angle is 90°, the sound is said to be received at "grazing incidence."

A36.3.1.4 *Reference direction* means, in degrees, the direction of sound incidence specified by the manufacturer of the microphone, relative to a sound incidence angle of 0°, for which the free-field sensitivity level of the microphone system is within specified tolerance limits.

A36.3.1.5 *Free-field sensitivity of a microphone system* means, in volts per Pascal, for a sinusoidal plane progressive sound wave of specified frequency, at a specified sound incidence angle, the quotient of the root means square voltage at the output of a microphone system and the root mean square sound pressure that would exist at the position of the microphone in its absence.

A36.3.1.6 *Free-field sensitivity level of a microphone system* means, in decibels,

A36.3.1.14 *Level non-linearity* means, in decibels, the level difference measured on any level range, at a stated one-third octave nominal midband frequency, minus the corresponding reference level difference, all input and output signals being relative to the same reference quantity.

A36.3.1.15 *Linear operating range* means, in decibels, for a stated level range and frequency, the range of levels of steady sinusoidal electrical signals applied to the

possible aliases or artifacts of the digitization process will be less than the upper boundary of the linear operating range by at least 50 dB at any frequency less than 12.5 kHz. The sampling rate must be at least 28 kHz. An anti-aliasing filter must be included before the digitization process.

A36.3.4 *Windscreen.*

A36.3.4.1 In the absence of wind and for sinusoidal sounds at grazing incidence, insertion loss caused by the windscreen of a

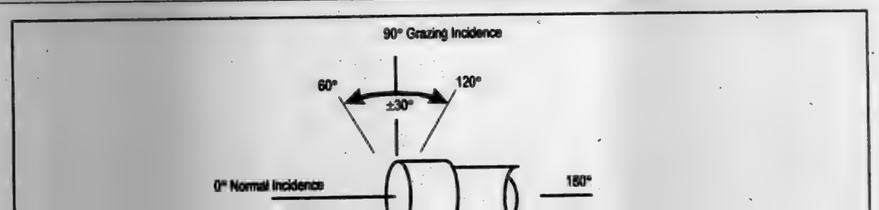

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A36.3.1.5 *Free-field sensitivity of a microphone system* means, in volts per Pascal, for a sinusoidal plane progressive sound wave of specified frequency, at a specified sound incidence angle, the quotient of the root means square voltage at the output of a microphone system and the root mean square sound pressure that would exist at the position of the microphone in its absence.

A36.3.1.6 *Free-field sensitivity level of a microphone system* means, in decibels, twenty times the logarithm to the base ten of the ratio of the free-field sensitivity of a microphone system and the reference sensitivity of one volt per Pascal.

Note: The free-field sensitivity level of a microphone system may be determined by subtracting the sound pressure level (in decibels re 20 μPa) of the sound incident on the microphone from the voltage level (in decibels re 1 V) at the output of the microphone system, and adding 93.98 dB to the result.

A36.3.1.7 *Time-average band sound pressure level* means in decibels, ten times the logarithm to the base ten, of the ratio of the time mean square of the instantaneous sound pressure during a stated time interval and in a specified one-third octave band, to the square of the reference sound pressure of 20 μPa.

A36.3.1.8 *Level range* means, in decibels, an operating range determined by the setting of the controls that are provided in a measurement system for the recording and one-third octave band analysis of a sound pressure signal. The upper boundary associated with any particular level range must be rounded to the nearest decibel.

A36.3.1.9 *Calibration sound pressure level* means, in decibels, the sound pressure level produced, under reference environmental conditions, in the cavity of the coupler of the sound calibrator that is used to determine the overall acoustical sensitivity of a measurement system.

A36.3.1.10 *Reference level range* means, in decibels, the level range for determining the acoustical sensitivity of the measurement system and containing the calibration sound pressure level.

A36.3.1.11 *Calibration check frequency* means, in hertz, the nominal frequency of the sinusoidal sound pressure signal produced by the sound calibrator.

A36.3.1.12 *Level difference* means, in decibels, for any nominal one-third octave midband frequency, the output signal level measured on any level range minus the level of the corresponding electrical input signal.

A36.3.1.13 *Reference level difference* means, in decibels, for a stated frequency, the level difference measured on a level range for an electrical input signal corresponding to the calibration sound pressure level, adjusted as appropriate, for the level range.

A36.3.1.14 *Level non-linearity* means, in decibels, the level difference measured on any level range, at a stated one-third octave nominal midband frequency, minus the corresponding reference level difference, all input and output signals being relative to the same reference quantity.

A36.3.1.15 *Linear operating range* means, in decibels, for a stated level range and frequency, the range of levels of steady sinusoidal electrical signals applied to the input of the entire measurement system, exclusive of the microphone but including the microphone preamplifier and any other signal-conditioning elements that are considered to be part of the microphone system, extending from a lower to an upper boundary, over which the level non-linearity is within specified tolerance limits.

Note: Microphone extension cables as configured in the field need not be included for the linear operating range determination.

A36.3.1.16 *Windscreen insertion loss* means, in decibels, at a stated nominal one-third octave midband frequency, and for a stated sound incidence angel on the inserted microphone, the indicated sound pressure level without the windscreen installed around the microphone minus the sound pressure level with the windscreen installed.

A36.3.2 *Reference environmental conditions.*

A36.3.2.1 The reference environmental conditions for specifying the performance of a measurement system are:

(a) Air temperature 73.4°F (23°C);

(b) Static air pressure 101.325 kPa; and

(c) Relative humidity 50%.

A36.3.3. *General.*

Note: Measurements of aircraft noise that are made using instruments that conform to the specifications of this section will yield one-third octave band sound pressure levels as a function of time. These one-third octave band levels are to be used for the calculation of effective perceived noise level as described in section A36.4.

A36.3.3.1 The measurement system must consist of equipment approved by the FAA and equivalent to the following:

(a) A windscreen (See A36.3.4.);

(b) A microphone system (See A36.3.5):

(c) A recording and reproducing system to store the measured aircraft noise signals for subsequent analysis (see A36.3.6);

(d) A one-third octave band analysis system (see A36.3.7); and

(e) Calibration systems to maintain the acoustical sensitivity of the above systems within specified tolerance limits (see A36.3.8).

A36.3.3.2. For any component of the measurement system that converts an analog signal to digital form, such conversion must be performed so that the levels of any possible aliases or artifacts of the digitization process will be less than the upper boundary of the linear operating range by at least 50 dB at any frequency less than 12.5 kHz. The sampling rate must be at least 28 kHz. An anti-aliasing filter must be included before the digitization process.

A36.3.4 *Windscreen.*

A36.3.4.1 In the absence of wind and for sinusoidal sounds at grazing incidence, insertion loss caused by the windscreen of a stated type installed around the microphone must not exceed ±1.5 dB at nominal one-third octave midband frequencies from 50 Hz to 10 kHz inclusive.

A36.3.5 *Microphone system.*

A36.3.5.1 The microphone system must meet the specifications in sections A36.3.5.2 to A36.3.5.4. Various microphone systems may be approved by the FAA on the basic of demonstrated equivalent overall electroacoustical performance. Where two or more microphone systems of the same type are used, demonstration that at least one system conforms to the specifications in full is sufficient to demonstrate conformance.

Note: An applicant must still calibrate and check each system as required in section A36.3.9.

A36.3.5.2 The microphone must be mounted with the sensing element 4 ft (1.2 m) above the local ground surface and must be oriented for grazing incidence, i.e., with the sensing element substantially in the plane defined by the predicted reference flight path of the aircraft and the measuring station. The microphone mounting arrangement must minimize the interference of the supports with the sound to be measured. Figure A36–1 illustrates sound incidence angles on a microphone.

A36.3.5.3 The free-field sensitivity level of the microphone and preamplifier in the reference direction, at frequencies over at least the range of one-third-octave nominal midband frequencies from 50 Hz to 5 kHz inclusive, must be within ±1.0 dB of that at the calibration check frequency, and within ±2.0 dB for nominal midband frequencies of 6.3 kHz, 8 kHz and 10 kHz.

A36.3.5.4 For sinusoidal sound waves at each one-third octave nominal midband frequency over the range from 50 Hz to 10 kHz inclusive, the free-field sensitivity levels of the microphone system at sound incidence angles of 30°, 60°, 90°, 120° and 150°, must not differ from the free-field sensitivity level at a sound incidence angle of 0° ("normal incidence") by more than the values shown in Table A36–1. The free-field sensitivity level differences at sound incidence angles between any two adjacent sound incidence angles in Table A36–1 must not exceed the tolerance limit for the greater angle.

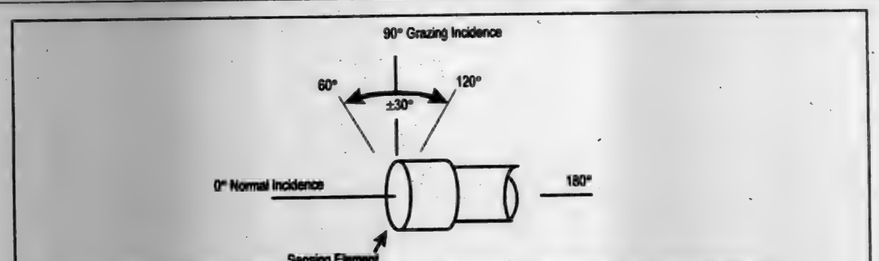

Figure A36-1: Illustration of sound incidence angles on a microphone

Nominal midband frequency kHz	Maximum difference between the free-field sensitivity level of a microphone system at normal incidence and the free-field sensitivity level at specified sound incidence angles dB Sound Incidence angle degrees				
	30	60	90	120	150
0.05 to 1.6	0.5	0.5	1.0	1.0	1.0
2.0	0.5	0.5	1.0	1.0	1.0
2.5	0.5	0.5	1.0	1.5	1.5
3.15	0.5	1.0	1.5	2.0	2.0
4.0	0.5	1.0	2.0	2.5	2.5
5.0	0.5	1.5	2.5	3.0	3.0
6.3	1.0	2.0	3.0	4.0	4.0
8.0	1.5	2.5	4.0	5.5	5.5
10.0	2.0	3.5	5.5	6.5	7.5

Table A36-1 Microphone Directional Response Requirements

A36.3.6 *Recording and reproducing systems.*

A36.3.6.1 A recording and reproducing system, such as a digital or analog magnetic tape recorder, a computer-based system or other permanent data storage device, must be used to store sound pressure signals for subsequent analysis. The sound produced by the aircraft must be recorded in such away that a record of the complete acoustical signal is retained. The recording and reproducing systems must meet the specifications in sections A36.3.6.2 to A36.3.6.9 at the recording speeds and/or data sampling rates used for the noise certification tests. Conformance must be demonstrated for the frequency bandwidths and recording channels selected for the tests.

A36.3.6.2 The recording and reproducing systems must be calibrated as described in section A36.3.9.

(a) For aircraft noise signals for which the high frequency spectral levels decrease rapidly with increasing frequency, appropriate pre-emphasis and complementary de-emphasis networks may be included in the measurement system. If pre-emphasis is included, over the range of nominal one-third octave midband frequencies from 800 Hz to 10 kHz inclusive, the electrical gain provided by the pre-emphasis network must not exceed 20 dB relative to the gain at 800 Hz.

A36.3.6.3 For steady sinusoidal electrical signals applied to the input of the entire measurement system including all parts of the microphone system except the microphone at a selected signal level within 5 dB of that corresponding to the calibration sound pressure level on the reference level range, the time-average signal level indicated by the readout device at any one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be within ±1.5 dB of that at the calibration check frequency. The Frequency response of a measurement system, which includes components that convert analog signals to digital form, must be within ±0.3 dB of the response at 10 kHz over the frequency range from 10 kHz to 11.2 kHz.

Note: Microphone extension cables as configured in the field need not be included for the frequency response determination. This allowance does not eliminate the requirement of including microphone extension cables when performing the pink noise recording in section A36.3.9.5.

A36.3.6.4 For analog tape recordings, the amplitude fluctuations of a 1 kHz sinusoidal signal recorded within 5 dB of the level corresponding to the calibration sound pressure level must not vary by more than ±0.5 dB throughout any reel of the type of magnetic tape used. Conformance to this requirement must be demonstrated using a device that has time-averaging properties equivalent to those of the spectrum analyzer.

A36.3.6.5 For all appropriate level ranges and for steady sinusoidal electrical signals applied to the input of the measurement system, including all parts of the microphone

system except the microphone, at one-third-octave nominal midband frequencies of 50 Hz, 1 kHz and 10 kHz, and the calibration check frequency, if it is not one of these frequencies, the level non-linearity must not exceed ±0.5 dB for a linear operating range of at least 50 dB below the upper boundary of the level range.

Note 1: Level linearity of measurement system components may be tested according to the methods described in IEC 61265 as

A36.3.7.3 The minimum standard for the one-third octave band analysis system is the class 2 electrical performance requirements of IEC 61260 as amended, over the range of one-third octave nominal midband frequencies from 50 Hz through 10 kHz inclusive.

Note: IEC 61260 specifies procedures for testing of one-third octave band analysis systems for relative attenuation, anti-aliasing filters, real time operation, level linearity,

equivalent slow time-weighted sound pressure levels from samples of 0.5s time average sound pressure levels. The equations do not work with data samples where the averaging time differs from 0.5s.

A36.3.76 The instant in time by which a slow time-weighted sound pressure level is characterized must be 0.75s earlier than the actual readout time.

Note: The definition of this instant in time is needed to correlate the recorded noise with

end. Data obtained from analog tape-recorded signals will be accepted as reliable only if level differences in the 10 kHz one-third-octave-band are not more than 0.75 dB for the signals recorded at the beginning and end.

A36.3.9.5 The frequency response of the entire measurement system while deployed in the field during the test series, exclusive of the microphone, must be determined at a level within 5 dB of the level corresponding to the calibration sound pressure level on the level range used during the tests for each one-third octave nominal midband frequency

A36.3.9.10 The free-field insertion loss of the windscreen for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be determined with sinusoidal sound signals at the incidence angles determined to be applicable for correction of directional response effects per section A36.3.9.3. The interval between angles tested must not exceed 30 degrees. For a windscreen that is undamaged and uncontaminated, the insertion loss may be taken from manufacturer's data. Alternatively, within six months of each test

subjective response consists of the following five steps:

(a) The 24 one-third octave bands of sound pressure level are converted to perceived noisiness (noy) using the method described in section A36.4.2.1 (a). The noy values are combined and then converted to instantaneous perceived noise levels, PNL(k).

(b) A tone correction factor C(k) is calculated for each spectrum to account for the subjective response to the presence of spectral irregularities.

(c) The tone correction factor is added to

system except the microphone, at one-third-octave nominal midband frequencies of 50 Hz, 1 kHz and 10 kHz, and the calibration check frequency, if it is not one of these frequencies, the level non-linearity must not exceed ±0.5 dB for a linear operating range of at least 50 dB below the upper boundary of the level range.

Note 1: Level linearity of measurement system components may be tested according to the methods described in IEC 61265 as amended.

Note 2: Microphone extension cables configured in the field need not be included for the level linearity determination.

A36.3.6.6 On the calibration sound pressure level must be at least 5 dB, but no more than 30 dB less than the upper boundary of the level range.

A36.3.6.7 The linear operating ranges on adjacent level ranges must overlap by at least 50 dB minus the change in attenuation introduced by a change in the level range controls.

Note: It is possible for a measurement system to have level range controls that permit attenuation changes of either 10 dB or 1 dB, for example. With 10 dB steps, the minimum overlap required would be 40 dB, and with 1 dB steps the minimum overlap would be 49 dB.

A36.3.6.8 An overload indicator must be included in the recording and reproducing systems so that an overload indication will occur during an overload condition on any relevant level range.

A36.3.6.9 Attenuators included in the measurement system to permit range changes must operate in known intervals of decibel steps.

A36.3.6.7 Analysis systems.

A36.3.7.1 The analysis system must conform to the specifications in sections A36.3.7.2 to A36.3.7.7 for the frequency bandwidths, channel configurations and gain settings used for analysis.

A36.3.7.2 The output of the analysis system must consist of one-third octave band sound pressure levels as a function of time, obtained by processing the noise signals (preferably recorded) through an analysis system with the following characteristics:

(a) A set of 24 one-third octave band filters, or their equivalent, having nominal midband frequencies from 50 Hz to 10 kHz inclusive;

(b) Response and averaging properties in which, in principle, the output from any one-third octave filter band is squared, averaged and displayed or stored as time-averaged sound pressure levels;

(c) The interval between successive sound pressure level samples must be 500 ms ±5 milliseconds(ms) for spectral analysis with or without slow time-weighting, as defined in section A36.3.7.4;

(d) For those analysis systems that do not process the sound pressure signals during the period of time required for readout and/or resetting of the analyzer, the loss of data must not exceed a duration of 5 ms; and

(e) The analysis system must operate in real time from 50 Hz through at least 12 kHz inclusive. This requirement applies to all operating channels of a multi-channel spectral analysis system.

A36.3.7.3 The minimum standard for the one-third octave band analysis system is the class 2 electrical performance requirements of IEC 61260 as amended, over the range of one-third octave nominal midband frequencies from 50 Hz through 10 kHz inclusive.

Note: IEC 61260 specifies procedures for testing of one-third octave band analysis systems for relative attenuation, anti-aliasing filters, real time operation, level linearity, and filter integrated response (effective bandwidth).

A36.3.7.4 When slow time averaging is performed in the analyzer, the response of the one-third octave band analysis system to a sudden onset or interruption of a constant sinusoidal signal at the respective one-third octave nominal midband frequency, must be measured at sampling instants 0.5, 1, 1.5 and 2 seconds(s) after the onset and 0.5 and is after interruption. The rising response must be −4 ±1 dB at 0.5s, −1.75 ±0.75 dB at 1s, −1 ±0.5 dB at 1.5s and −0.5 ±0.5 dB at 2s relative to the steady-state level. The failing response must be such that the sum of the output signal levels, relative to the initial steady-state level, and the corresponding rising response reading is −6.5 ±1 dB, at both 0.5 and 1s. At subsequent times the sum of the rising and failing responses must be −7.5 dB or less. This equates to an exponential averaging process (slow time-weighting) with a nominal 1s time constant (*i.e.*, 2s averaging time).

A36.3.7.5 When the one-third octave band sound pressure levels are determined from the output of the analyzer without slow time-weighting, slow time-weighting must be simulated in the subsequent processing. Simulated slow time-weighted sound pressure levels can be obtained using a continuous exponential averaging process by the following equation:

$$L_s(i,k) = 10 \log [(0.60653)\ 10^{0.1\ L_s[i,\ (k-1)]} + (0.39347)\ 10^{0.1\ L_i\ (i,\ k)}]$$

where $L_s(i,k)$ is the simulated slow time-weighted sound pressure level and $L(i,k)$ is the as-measured 0.5s time average sound press level determined from the output of the analyzer for the k-th instant of time and i-th one-third octave band. For k=1, the slow time-weighted sound pressure $L_s[i, (k-1=0)]$ on the right hand side should be set to 0 dB. An approximation of the continuous exponential averaging is represented by the following equation for a four sample averaging process for $k \geq 4$:

$$L_s(i,k) = 10 \log [(0.13)\ 10^{0.1\ L[i,(k-3)]} + (0.21)\ 10^{0.1\ L[i,\ (k-2)]} + (0.27)\ 10^{0.1\ L[i,\ (k-1)]} + (0.39)\ 10^{0.1\ L[i,\ k]}]$$

where $L_s(i, k)$ is the simulated slow time-weighted sound pressure level and $L(i, k)$ is the as measured 0.5s time average sound pressure level determined from the output of the analyzer for the k-th instant of time and the i-th one-third octave band.

The sum of the weighting factors is 1.0 in the two equations. Sound pressure levels calculated by means of either equation are valid for the sixth and subsequent 0.5s data samples, or for times greater than 2.5s after initiation of data analysis.

Note: The coefficients in the two equations were calculated for use in determining equivalent slow time-weighted sound pressure levels from samples of 0.5s time average sound pressure levels. The equations do not work with data samples where the averaging time differs from 0.5s.

A36.3.76 The instant in time by which a slow time-weighted sound pressure level is characterized must be 0.75s earlier than the actual readout time.

Note: The definition of this instant in time is needed to correlate the recorded noise with the aircraft position when the noise was emitted and takes into account the averaging period of the slow time-weighting. For each 0.5 second data record this instant in time may also be identified as 1.25 seconds after the start of the associated 2 second averaging period.

A36.3.7.7 The resolution of the sound pressure levels, both displayed and stored, must be 0.1 dB or finer.

A36.3.8 *Calibration systems.*

A36.3.8.1 The acoustical sensitivity of the measurement system must be determined using a sound calibrator generating a known sound pressure level at a known frequency. The minimum standard for the sound calibrator is the class 1L requirements of IEC 60942 as amended.

A36.3.9 *Calibration and checking of system.*

A36.3.9.1 Calibration and checking of the measurement system and its constituent components must be carried out to the satisfaction of the FAA by the methods specified in sections A36.3.9.2 through A36.3.9.10. The calibration adjustments, including those for environmental effects on sound calibrator output level, must be reported to the FAA and applied to the measured one-third-octave sound pressure levels determined from the output of the analyzer. Data collected during an overload indication are invalid and may not be used. If the overload condition occurred during recording, the associated test data are invalid, whereas if the overload occurred during analysis, the analysis must be repeated with reduced sensitivity to eliminate the overload.

A36.3.9.2 The free-field frequency response of the microphone system may be determined by use of an electrostatic actuator in combination with manufacturer's data or by tests in an anechoic free-field facility. The correction for frequency response must be determined within 90 days of each test series. The correction for non-uniform frequency response of the microphone system must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.3 When the angles of incidence of sound emitted from the aircraft are within ±30° of razing incidence at the microphone (see Figure A36–1), a single set of free-field corrections based on grazing incidence is considered sufficient for correction of directional response effects. For other cases, the angle of incidence for each 0.5 second sample must be determined and applied for the correction of incidence effects.

A36.3.9.4 For analog magnetic tape recorders, each reel of magnetic tape must carry at least 30 seconds of pink random or pseudo-random noise at its beginning and end. Data obtained from analog tape-recorded signals will be accepted as reliable only if level differences in the 10 kHz one-third-octave-band are not more than 0.75 dB for the signals recorded at the beginning and end.

A36.3.9.5 The frequency response of the entire measurement system while deployed in the field during the test series, exclusive of the microphone, must be determined at a level within 5 dB of the level corresponding to the calibration sound pressure level on the level range used during the tests for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive, utilizing pink random or pseudo-random noise. Within six months of each test series the output of the noise generator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or to an equivalent national standards laboratory as determined by the FAA. Changes in the relative output from the previous calibration at each one-third octave band may not exceed 0.2 dB. The correction for frequency response must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

A36.3.9.6 The performance of switched attenuators in the equipment used during noise certification measurements and calibration must be checked within six months of each test series to ensure that the maximum error does not exceed 0.1 dB.

A36.3.9.7 The sound pressure level produced in the cavity of the coupler of the sound calibrator must be calculated for the test environmental conditions using the manufacturer's supplied information on the influence of atmospheric air pressure and temperature. This sound pressure level is used to establish the acoustical sensitivity of the measurement system. Within six months of each test series the output of the sound calibrator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or to an equivalent national standards laboratory as determined by the FAA. Changes in output from the previous calibration must not exceed 0.2 dB.

A36.3.9.8 Sufficient sound pressure level calibrations must be made during each test day to ensure that the acoustical sensitivity of the measurement system is know at the prevailing environmental conditions corresponding with each test series. The differences between the acoustical sensitivity levels recorded immediately before and immediately after each test series on each day may not exceed 0.5 dB. The 0.5 dB limit applies after any atmospheric pressure corrections have been determined for the calibrator output level. The arithmetic mean of the before and after measurements must be used to represent the acoustical sensitivity level of the measurement system for that test series. The calibration corrections must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.9 Each recording medium, such as a reel, cartridge, cassette, or diskette, must carry a sound pressure level calibration of at least 10 seconds duration at its beginning and end.

A36.3.9.10 The free-field insertion loss of the windscreen for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be determined with sinusoidal sound signals at the incidence angles determined to be applicable for correction of directional response effects per section A36.3.9.3. The interval between angles tested must not exceed 30 degrees. For a windscreen that is undamaged and uncontaminated, the insertion loss may be taken from manufacturer's data. Alternatively, within six months of each test series the insertion loss of the windscreen may be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA. Changes in the insertion loss from the previous calibration at each one-third-octave frequency band must note exceed 0.4 dB. The correction for the free-field insertion loss of the windscreen must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

A36.3.10 Adjustments for ambient noise.

A36.3.10.1 Ambient noise, including both a acoustical background and electrical noise of the measurement system, must be recorded for at least 10 seconds at the measurement points with the system gain set at the levels used for the aircraft noise measurements. Ambient noise must be representative of the acoustical background that exists during the flyover test run. The recorded aircraft noise data is acceptable only if the ambient noise levels, when analyzed in the same way, and quoted in PNL (see A36.4.1.3 (a)), are at least 20 dB below the maximum PNL of the aircraft.

A36.3.10.2 Aircraft sound pressure levels within the 10 dB-down points (see A36.4.5.1) must exceed the mean ambient noise levels determined in section A36.3.10.1 by at least 3 dB in each one-third octave band, or must be adjusted using a method approved by the FAA; one method is described in the current advisory circular for this part.

Section A36.4 Calculation of Effective Perceived Noise Level From Measured Data

A36.4.1 *General.*

A36.4.1.1 The basic element for noise certification criteria is the noise evaluation measure known as effective perceived noise level, EPNL, in units of EPNdB, which is a single number evaluator of the subjective effects of airplane noise on human beings. EPNL consists of instantaneous perceived noise level, PNL, corrected for spectral irregularities, and for duration. The spectral irregularity correction, called "tone correction factor", is made at each time increment for only the maximum tone.

A36.4.1.2 Three basic physical properties of sound pressure must be measured: level, frequency distribution, and time variation. To determine EPNL, the instantaneous sound pressure level in each of the 24 one-third octave bands is required for each 0.5 second increment of time during the airplane noise measurement.

A36.4.1.3 The calculation procedure that uses physical measurements of noise to derive the EPNL evaluation measure of subjective response consists of the following five steps:

(a) The 24 one-third octave bands of sound pressure level are converted to perceived noisiness (noy) using the method described in section A36.4.2.1 (a). The noy values are combined and then converted to instantaneous perceived noise levels, PNL(k).

(b) A tone correction factor C(k) is calculated for each spectrum to account for the subjective response to the presence of spectral irregularities.

(c) The tone correction factor is added to the perceived noise level to obtain tone-corrected perceived noise levels PNLT(k), at each one-half second increment:

$$PNLT(k) = PNL(k) + C(k)$$

The instantaneous values of tone-corrected perceived noise level are derived and the maximum value, PNLTM, is determined.

(d) A duration correction factor, D, is computed by integration under the curve of tone-corrected perceived noise level versus time.

(e) Effective perceived noise level, EPNL, is determined by the algebraic sum of the maximum tone-corrected perceived noise level and the duration correction factor:

$$EPNL = PNLTM + D$$

A36.4.2 *Perceived noise level.*

A36.4.2.1 Instantaneous perceived noise levels, PNL(k), must be calculated from instantaneous one-third octave band sound pressure levels, SPL(i, k) as follows:

(a) Step 1: For each one-third octave band from 50 through 10,000 Hz, convert SPL(i, k) to perceived noisiness n(i, k), by using the mathematical formulation of the noy table given in section A36.4.7.

(b) Step 2: Combine the perceived noisiness values, n(i, k), determined in step 1 by using the following formula:

$$N(k) = n(k) + 0.15\left\{\left[\sum_{i=1}^{24} n(i,k)\right] - n(k)\right\}$$

$$= 0.85\, n(k) + 0.15 \sum_{i=1}^{24} n(i,k)$$

where n(k) is the largest of the 24 values of n(i, k) and N(k) is the total perceived noisiness.

(c) Step 3: Convert the total perceived noisiness, N(k), determined in Step 2 into perceived noise level, PNL(k), using the following formula:

$$PNL(k) = 40.0 + \frac{10}{\log 2} \log N(k)$$

Note: PNL(k) is plotted in the current advisory circular for this part.

A36.4.3 *Correction for spectral irregularities.*

A36.4.3.1 Noise having pronounced spectral irregularities (for example, the maximum discrete frequency components or tones) must be adjusted by the correction factor C(k) calculated as follows:

(a) Step 1: After applying the corrections specified under section A36.3.9, start with the sound pressure level in the 80 Hz one-third octave band (band number 3), calculate

the changes in sound pressure level (or "slopes") in the remainder of the one-third octave bands as follows:

$s(3,k)$=no value

$s(4,k) = SPL(4,k) - SPL(3,k)$

•

•

$s(i,k) = SPL(i,k) - SPL(i-1,k)$

•

•

$s(24,k) = SPL(24,k) - SPL(23,k)$

(b) Step 2: For each one-third octave band from 50 through 10,000 Hz, convert SPL(i, k) to perceived noisiness n(i, k), by using the mathematical formulation of the noy table given in section A36.4.7.

(c) Step 3: Combine the perceived noisiness values, n(i, k), determined in step 2 by using the following formula:

$$N(k) = n(k) + 0.15\left\{\left[\sum_{i=1}^{24} n(i,k)\right] - n(k)\right\}$$

$$= 0.85\, n(k) + 0.15 \sum_{i=1}^{24} n(i,k)$$

where n(k) is the largest of the 24 values of n(i, k) and N(k) is the total perceived noisiness.

(d) Step 4: Convert the total perceived noisiness, N(k), determined in Step 3 into perceived noise level, PNL(k), using the following formula:

$$PNL(k) = 40.0 + \frac{10}{\log 2} \log N(k)$$

Note: PNL(k) is plotted in the current advisory circular for this part.

A36.4.4 *Correction for duration.*

A36.4.4.1 The duration correction, D, is determined by the integration under the curve of tone-corrected perceived noise level versus time. The integration is carried out by the summation of equal time increments of 0.5 second. The duration correction is determined by the number of PNLT values within 10 dB of the maximum PNLT value, PNLTM, as follows:

$$D = 10 \log \left[\sum_{k=1}^{K} 10^{0.1\ PNLT(k)}\right] - PNLTM - 13$$

where K is the number of PNLT values within the 10 dB limit.

A36.4.5 *Calculation procedure.*

A36.4.5.1 The calculation procedure for EPNL is illustrated by the flow chart in Figure A36–2. The 10 dB-down points are determined by subtracting 10 dB from PNLTM and then finding the first PNLT value equal to or greater than this value on each side of PNLTM. The 10 dB-down points are the first PNLT values equal to or greater than PNLTM − 10 dB on each side of PNLTM.

A36.4.5.2 The duration correction, D, is determined by the number of PNLT values within the 10 dB-down points.

A36.4.5.3 The EPNL is calculated by adding the duration correction, D, to the PNLTM.

A36.4.6 *Calculation of tone correction factor.*

A36.4.6.1 The tone correction factor, C(k), is determined by the irregularity of the spectrum. The irregularity is determined by comparing the sound pressure level in each one-third octave band, beginning with the 80 Hz band, with a smooth spectrum established from the sound pressure levels in adjacent bands. The tone correction factor is the largest correction determined for any band.

A36.4.6.2 The tone correction is determined for each one-third octave band from 80 Hz through 5000 Hz. The correction is zero for all bands outside this frequency range.

A36.4.6.3 The tone correction is determined by the following procedure:

(a) Step 1: Calculate the slopes, s(i, k), for each one-third octave band from 50 through 10,000 Hz, as follows:

$s(3,k)$=no value

$s(4,k) = SPL(4,k) - SPL(3,k)$

•

•

$s(i,k) = SPL(i,k) - SPL(i-1,k)$

•

•

$s(24,k) = SPL(24,k) - SPL(23,k)$

(b) Step 2: For encircled sound pressure levels in bands 1 through 23 inclusive, set the new sound pressure level equal to the arithmetic average of the preceding and following sound pressure levels as shown below:

$$SPL'(i,k) = \tfrac{1}{2}[SPL(i-1,k) + SPL(i+1,k)]$$

(3) If the sound pressure level in the highest frequency band (i = 24) is encircled, set the new sound pressure level in that band equal to the original sound pressure levels, SPL'(i, k) = SPL(i, k).

(2) For encircled sound pressure levels in bands 1 through 23 inclusive, set the new sound pressure level equal to the arithmetic average of the preceding and following sound pressure levels as shown below:

$$SPL'(i,k) = \tfrac{1}{2}[SPL(i-1,k) + SPL(i+1,k)]$$

(3) If the sound pressure level in the highest frequency band (i = 24) is encircled, set the new sound pressure level in that band equal to the original sound pressure levels, SPL'(i, k) = SPL(i, k).

$$\bar{s}(i,k) = \tfrac{1}{2}[s'(i,k) + s'(i+1,k) + s'(i+2,k)]$$

(g) Step 7: Compute final one-third octave-band sound pressure levels, SPL" (i,k), by beginning with band number 3 and proceeding to band number 24 as follows:

$SPL''(3,k) = SPL(3,k)$

$SPL''(4,k) = SPL''(3,k) + \bar{s}(3,k)$

•

•

$SPL''(i,k) = SPL''(i-1,k) + \bar{s}(i-1,k)$

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the changes in sound pressure level (or "slopes") in the remainder of the one-third octave bands as follows:

$s(3,k)$=no value

$s(4,k)=SPL(4,k)-SPL(3,k)$

•

•

$s(i,k)=SPL(i,k)-SPL(i-1,k)$

•

•

$s(24,k)=SPL(24,k)-SPL(23,k)$

(b) Step 2: Encircle the value of the slope, s(i, k), where the absolute value of the change in slope is greater than five; that is where:

$|\Delta(i,k)|=|s(i,k)-s(i-1,k)|>5$

(c) Step 3:

(1) If the encircled value of the slope s(i, k) is positive and algebraically greater than the slope s(i − 1, k) encircle SPL(i, k).

(2) If the encircled value of the slope s(i, k) is zero or negative and the slope s(i − 1, k) is positive, encircle SPL(i − 1, k).

(3) For all other cases, no sound pressure level value is to be encircled.

(d) Step 4: Compute new adjusted sound pressure levels SPL'(i, k) as follows:

(1) For non-encircled sound pressure levels, set the new sound pressure levels equal to the original sound pressure levels, SPL'(i, k) = SPL(i, k).

(2) For encircled sound pressure levels in bands 1 through 23 inclusive, set the new sound pressure level equal to the arithmetic average of the preceding and following sound pressure levels as shown below:

$SPL'(i,k)=\frac{1}{2}[SPL(i-1,k)+SPL(i+1,k)]$

(3) If the sound pressure level in the highest frequency band (i = 24) is encircled, set the new sound pressure level in that band equal to:

$SPL'(24,k)=SPL(23,k)+s(23,k)$

(e) Step 5: Recompute new slope s'(i, k), including one for an imaginary 25th band, as follows:

$s'(3,k)=s'(4,k)$

$s'(4,k)=SPL'(4,k)-SPL'(3,k)$

•

•

$s'(i,k)=SPL'(i,k)-SPL'(i-1,k)$

•

•

$s'(24,k)=SPL'(24,k)-SPL'(23,k)$

$s'(25,k)=s'(24,k)$

(f) Step 6: For i, from 3 through 23, compute the arithmetic average of the three adjacent slopes as follows:

$\bar{s}(i,k)=\frac{1}{3}[s'(i,k)+s'(i+1,k)+s'(i+2,k)]$

(g) Step 7: Compute final one-third octave-band sound pressure levels, SPL" (i,k), by beginning with band number 3 and proceeding to band number 24 as follows:

$SPL''(3,k)=SPL(3,k)$

$SPL''(4,k)=SPL''(3,k)+\bar{s}(3,k)$

•

•

$SPL''(i,k)=SPL''(i-1,k)+\bar{s}(i-1,k)$

•

•

$SPL''(24,k)=SPL''(23,k)+\bar{s}(23,k)$

(h) Setp 8: Calculate the differences, F (i,k), between the original sound pressure level and the final background sound pressure level as follows:

$F(i,k)=SPL(i,k)-SPL''(i,k)$

and note only values equal to or greater than 1.5.

(i) Step 9: For each of the relevant one-third octave bands (3 through 24), determine tone correction factors from the sound pressure level differences F (i, k) and Table A36–2.

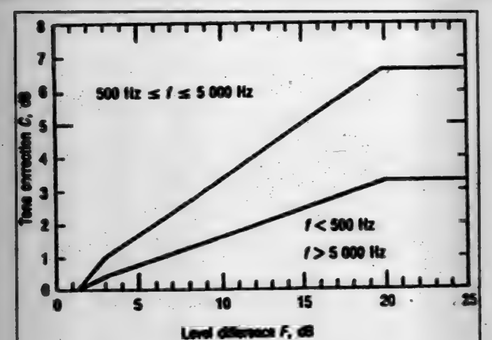

Frequency f, Hz	Level difference F, dB	Tone correction C, dB
$50 \le f < 500$	$1\frac{1}{2}^* \le F < 3$	$F/3 - \frac{1}{2}$
	$3 \le F < 20$	$F/6$
	$20 \le F$	$3\frac{1}{3}$
$500 \le f \le 5\,000$	$1\frac{1}{2}^* \le F < 3$	$2F/3 - 1$
	$3 \le F < 20$	$F/3$
	$20 \le F$	$6\frac{2}{3}$
$5\,000 < f \le 10\,000$	$1\frac{1}{2}^* \le F < 3$	$F/3 - \frac{1}{2}$
	$3 \le F < 20$	F/6
	$20 \le F$	$3\frac{1}{3}$

* See Step 8, A3.1.

Table A36-2. Tone correction factor

(j) Step 10: Designate the largest of the tone correction factors, determined in Step 9, as C(k). (An example of the tone correction procedure is given in the current advisory circular for this part). Tone-corrected perceived noise levels PNLT(k) must be determined by adding the C(k) value to corresponding PNL(k) values; that is:

$PNLT(k)=PNL(k)+C(k)$

For any i-th one-third octave band, at any k-th increment of time, for which the tone correction factor is suspected to result from something other than (or in addition to) an actual tone (or any spectral irregularity other than airplane noise), an additional analysis may be made using a filter with a bandwidth narrower than one-third of an octave. If the narrow band analysis corroborates these suspicions, then a revised value for the background sound pressure level SPL"(i,k), may be determined from the narrow band analysis and used to compute a revised tone correction factor for that particular one-third octave band. Other methods of rejecting spurious tone corrections may be approved.

A36.4.3.2 The tone correction procedure will underestimate EPNL if an important tone is of a frequency such that it is recorded in two adjacent one-third octave bands. An applicant must demonstrate that either:

(a) No important tones are recorded in two adjacent one-third octave bands; or

(b) That if an important tone has occurred, the tone correction has been adjusted to the value it would have had if the tone had been recorded fully in a single one-third octave band.

A36.4.4 Maximum tone-corrected perceived noise level

A36.4.4.1 The maximum tone-corrected perceived noise level, PNLTM, must be the maximum calculated value of the tone-corrected perceived noise level PNLT(k). It must be calculated using the procedure of section A36.4.3. To obtain a satisfactory noise time history, measurements must be made at 0.5 second time intervals.

Note 1: Figure A36–2 is an example of a flyover noise time history where the maximum value is clearly indicated.

Note 2: In the absence of a tone correction factor, PNLTM would equal PNLM.

where d is the duration time defined by the points corresponding to the values PNLTM–10.

A36.4.5.5 If in using the procedures given in section A36.4.5.2, the limits of PNLTM–10 fall between the calculated PNLT(k) values (the usual case), the PNLT(k) values defining the limits of the duration interval must be chosen from the PNLT(k) values closest to PNLTM–10. For those cases with more than one peak value of PNLT(k), the applicable limits must be chosen to yield the

EPNL = PNLTM + D

where PNLTM and D are calculated using the procedures given in sections A36.4.2, A36.4.3, A36.4.4. and A36.4.5.

A36.4.7 *Mathematical formulation of noy tables.*

A36.4.7.1 The relationship between sound pressure level (SPL) and the logarithm of perceived noisiness is illustrated in Figure A36–3 and Table A36–3.

A36.4.7.2 The bases of the mathematical

A36.4.7.3 Calculate noy values using the following equations:

(a)

SPL ≥ SPL (a)

$n = \text{antilog}\{M(c)[SPL - SPL(c)]\}$

(b)

SPL(b) ≤ SPL < SPL(a)

$n = \text{antilog}\{M(b)[SPL - SPL(b)]\}$

(c)

SPL(e) ≤ SPL < SPL(b)

$n = 0.3\ \text{antilog}\{M(e)[SPL - SPL(e)]\}$

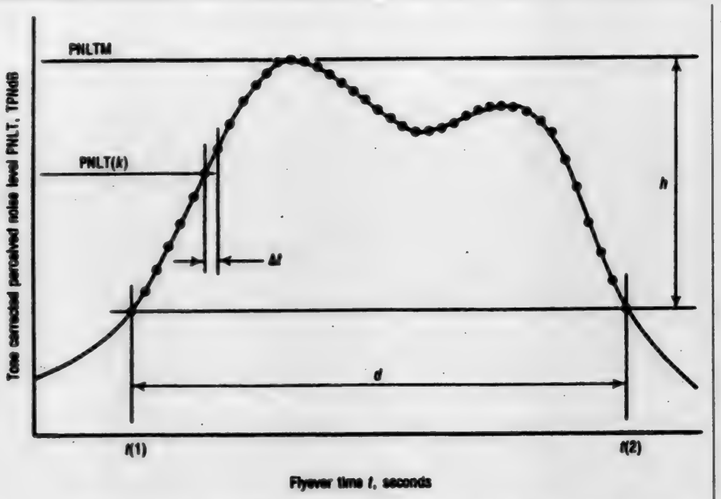

Figure A36-2. Example of perceived noise level corrected for tones as a function of aircraft flyover time

A36.4.4.2 After the value of PNLTM is obtained, the frequency band for the largest tone correction factor is identified for the two preceding and two succeeding 500 ms data samples. This is performed in order to identity the possibility of tone suppression at PNLTM by one-third octave band sharing of that tone. If the value of the tone correction factor C(k) for PNLTM is less than the average value of C(k) for the five consecutive time intervals, the average value of C(k) must be used to compute a new value for PNLTM.

A36.4.5 *Duration correction.*

A36.4.5.1 The duration correction factor D determined by the integration technique is defined by the expression:

$$D = 10 \log \left[\left(\frac{1}{T} \right) \int_{t(1)}^{t(2)} \text{antilog} \frac{PNLT}{10} dt \right] - PNLTM$$

where T is a normalizing time constant, PNLTM is the maximum value of PNLT, t(1) is the first point of time after which PNLT becomes greater than PNLTM–10, and t(2) is the point of time after which PNLT remains constantly less than PNLTM–10.

A36.4.5.2 Since PNLT is calculated from measured values of sound pressure level (SPL), there is no obvious equation for PNLT as a function of time. Consequently, the equation is to be rewritten with a summation sign instead of an integral sign as follows:

$$D = 10 \log \left[\left(\frac{1}{T} \right) \sum_{k=0}^{d/\Delta t} \Delta t . \text{antilog} \frac{PNLT(k)}{10} \right] - PNLTM$$

where Δt is the length of the equal increments of time for which PNLT(k) is calculated and d is the time interval to the nearest 0.5s during which PNLT(k) remains greater or equal to PNLTM–10.

A36.4.5.3 To obtain a satisfactory history of the perceived noise level use one of the following:

(a) Half-Second time intervals for Δt; or

(b) A shorter time interval with approved limits and constants.

A36.4.5.4 The following values for T and Δt must be used in calculating D in the equation given in section A36.4.5.2:

T = 10 s, and

Δt = 0.5s (or the approved sampling time interval).

Using these values, the equation for D becomes:

$$D = 10 \log \left[\sum_{k=0}^{2d} \text{antilog} \frac{PNLT(k)}{10} \right] - PNLTM - 13$$

where d is the duration time defined by the points corresponding to the values PNLTM–10.

A36.4.5.5 If in using the procedures given in section A36.4.5.2, the limits of PNLTM–10 fall between the calculated PNLT(k) values (the usual case), the PNLT(k) values defining the limits of the duration interval must be chosen from the PNLT(k) values closest to PNLTM–10. For those cases with more than one peak value of PNLT(k), the applicable limits must be chosen to yield the largest possible value for the duration time.

A36.4.6 *Effective perceived noise level.*

The total subjective effect of an airplane noise event, designated effective perceived noise level, EPNL, is equal to the algebraic sum of the maximum value of the tone-corrected perceived noise level, PNLTM, and the duration correction D. That is:

EPNL = PNLTM + D

where PNLTM and D are calculated using the procedures given in sections A36.4.2, A36.4.3, A36.4.4. and A36.4.5.

A36.4.7 *Mathematical formulation of noy tables.*

A36.4.7.1 The relationship between sound pressure level (SPL) and the logarithm of perceived noisiness is illustrated in Figure A36–3 and Table A36–3.

A36.4.7.2 The bases of the mathematical formulation are:

(a) The slopes (M(b), M(c), M(d) and M(e)) of the straight lines;

(b) The intercepts (SPL(b) and SPL(c)) of the lines on the SPL axis; and

(c) The coordinates of the discontinuities, SPL(a) and log n(a); SPL(d) and log n = −1.0; and SPL(e) and log n = log (0.3).

A36.4.7.3 Calculate noy values using the following equations:

(a)

SPL ≥ SPL (a)

n = antilog {M(c)[SPL − SPL(c)]}

(b)

SPL(b) ≤ SPL < SPL(a)

n = antilog {M(b)[SPL − SPL(b)]}

(c)

SPL(e) ≤ SPL < SPL(b)

n = 0.3 antilog {M(e)[SPL − SPL(e)]}

(d)

SPL(d) ≤ SPL < SPL(e)

n = 0.1 antilog {M(d)[SPL − SPL(d)]}

A36.4.7.4 Table A36–3 lists the values of the constants necessary to calculate perceived noisiness as a function of sound pressure level.

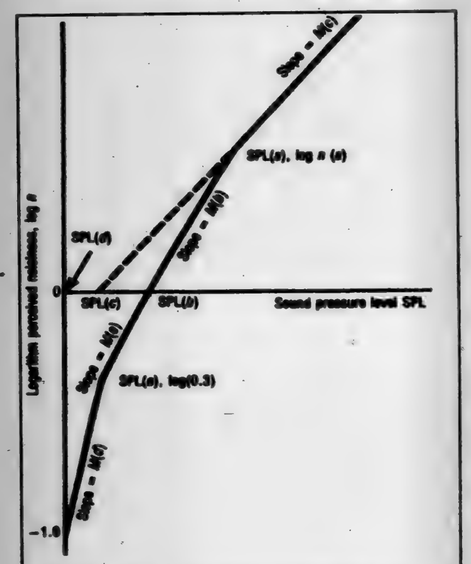

Figure A36-3. Perceived noisiness as a function of sound pressure level

BAND (i)	f HZ	SPL (a)	SPL (b)	SPL (c)	SPL (d)	SPL (e)	M(b)	M(c)	M(d)	M(e)
1	50	91.0	64	52	49	55	0.043478	0.030103	0.079520	0.058098
2	63	85.9	60	51	44	51	0.040570		0.068160	"
3	80	87.3	56	49	39	46	0.036831		"	0.052288
4	100	79.9	53	47	34	42	"		0.059640	0.047534

(f) Status of pneumatic engine bleeds and engine power take-offs for each test run;

(g) Indicated airspeed in knots or kilometers per hour for each test run;

(h) Engine performance data:

(1) For jet airplanes: engine performance in terms of net thrust, engine pressure ratios, jet exhaust temperatures and fan or compressor shaft rotational speeds as determined from airplane instruments and manufacturer's data for each test run;

(2) For propeller-driven airplanes: engine

A36.5.3 *Reporting of noise certification reference conditions.*

A36.5.3.1 Airplane position and performance data and the noise measurements must be corrected to the noise certification reference conditions specified in the relevant sections of appendix B of this part. The applicant must report these conditions, including reference parameters, procedures and configurations.

A36.5.4 *Validity of results.*

(a) Computing the arithmetic average for each flight phase using the values from each microphone point; and

(b) Computing the overall arithmetic average for each reference condition (flyover, lateral or approach) using the values in paragraph (a) of this section and the related 90 percent confidence limits.

A36.5.4.2 For each of the three certification measuring points, the minimum sample size is six. The sample size must be large enough to establish statistically for each

BAND (i)	f HZ	SPL (a)	SPL (b)	SPL (c)	SPL (d)	SPL (e)	M(b)	M(c)	M(d)	M(e)
1	50	91.0	64	52	49	55	0.043478	0.030103	0.079520	0.058098
2	63	85.9	60	51	44	51	0.040570		0.068160	"
3	80	87.3	56	49	39	46	0.036831		"	0.052288
4	100	79.9	53	47	34	42	"		0.059640	0.047534
5	125	79.8	51	46	30	39	0.035336		0.053013	0.043573
6	160	76.0	48	45	27	36	0.033333			"
7	200	74.0	46	43	24	33	"			0.040221
8	250	74.9	44	42	21	30	0.032051			0.037349
9	315	94.6	42	41	18	27	0.030675	0.030103		0.034859
10	400	∞	40	40	16	25	0.030103			
11	500		40	40	16	25				
12	630		40	40	16	25				
13	800		40	40	16	25				
14	1 000		40	40	16	25			0.053013	
15	1 250		38	38	15	23	0.030103		0.059640	0.034859
16	1 600		34	34	12	21	0.029960		0.053013	0.040221
17	2 000		32	32	9	18			"	0.037349
18	2 500		30	30	5	15			0.047712	0.034859
19	3 150		29	29	4	14			"	
20	4 000		29	29	5	14			0.053013	
21	5 000		30	30	6	15			"	0.034859
22	6 300	∞	31	31	10	17	0.029960		0.068160	0.037349
23	8 000	44.3	37	34	17	23	0.042285	0.029960	0.079520	"
24	10 000	50.7	41	37	21	29	"	"	0.059640	0.043573

NOT APPLICABLE

Table A36-3. Constants for mathematically formulated noy values

Section A36.5 Reporting of Data to the FAA

A36.5.1 *General.*

A36.5.1.1 Data representing physical measurements and data used to make corrections to physical measurements must be recorded in an approved permanent form and appended to the record.

A36.5.1.2 All corrections must be reported to and approved by the FAA, including corrections to measurements for equipment response deviations.

A36.5.1.3 Applicants may be required to submit estimates of the individual errors inherent in each of the operations employed in obtaining the final data.

A36.5.2 *Data reporting.*

An applicant is required to submit a noise certification compliance report that includes the following.

A36.5.2.1 The applicant must present measured and corrected sound pressure levels in one-third octave band levels that are obtained with equipment conforming to the standards described in section A36.3 of this appendix.

A36.5.2.2 The applicant must report the make and model of equipment used for measurement and analysis of all acoustic performance and meteorological data.

A36.5.2.3 The applicant must report the following atmospheric environmental data, as measured immediately before, after, or during each test at the observation points prescribed in section A36.2 of this appendix.

(a) Air temperature and relative humidity;

(b) Maximum, minimum and average wind velocities; and

(c) Atmospheric pressure.

A36.5.2.4 The applicant must report conditions of local topography, ground cover, and events that might interfere with sound recordings.

A36.5.2.5 The applicant must report the following:

(a) Type, model and serial numbers (if any) of airplane, engine(s), or propeller(s) (as applicable);

(b) Gross dimensions of airplane and location of engines;

(c) Airplane gross weight for each test run and center of gravity range for each series of test runs;

(d) Airplane configuration such as flap, airbrakes and landing gear positions for each test run;

(e) Whether auxiliary power units (APU), when fitted, are operating for each test run;

(f) Status of pneumatic engine bleeds and engine power take-offs for each test run;

(g) Indicated airspeed in knots or kilometers per hour for each test run;

(h) Engine performance data:

(1) For jet airplanes: engine performance in terms of net thrust, engine pressure ratios, jet exhaust temperatures and fan or compressor shaft rotational speeds as determined from airplane instruments and manufacturer's data for each test run;

(2) For propeller-driven airplanes: engine performance in terms of brake horsepower and residual thrust; or equivalent shaft horsepower; or engine torque and propeller rotational speed; as determined from airplane instruments and manufacturer's data for each test run;

(i) Airplane flight path and ground speed during each test run; and

(j) The applicant must report whether the airplane has any modifications or non-standard equipment likely to affect the noise characteristics of the airplane. The FAA must approve any such modifications or non-standard equipment.

A36.5.3 *Reporting of noise certification reference conditions.*

A36.5.3.1 Airplane position and performance data and the noise measurements must be corrected to the noise certification reference conditions specified in the relevant sections of appendix B of this part. The applicant must report these conditions, including reference parameters, procedures and configurations.

A36.5.4 *Validity of results.*

A36.5.4.1 Three average reference EPNL values and their 90 percent confidence limits must be produced from the test results and reported, each such value being the arithmetical average of the adjusted acoustical measurements for all valid test runs at each measurement point (flyover, lateral, or approach). If more than one acoustic measurement system is used at any single measurement location, the resulting data for each test run must be averaged as a single measurement. The calculation must be performed by:

(a) Computing the arithmetic average for each flight phase using the values from each microphone point; and

(b) Computing the overall arithmetic average for each reference condition (flyover, lateral or approach) using the values in paragraph (a) of this section and the related 90 percent confidence limits.

A36.5.4.2 For each of the three certification measuring points, the minimum sample size is six. The sample size must be large enough to establish statistically for each of the three average noise certification levels a 90 percent confidence limit not exceeding ±1.5 EPNdB. No test result may be omitted from the averaging process unless approved by the FAA.

Note: Permitted methods for calculating the 90 percent confidence interval are shown in the current advisory circular for this part.

A36.5.4.3 The average EPNL figures obtained by the process described in section A36.5.4.1 must be those by which the noise performance of the airplane is assessed against the noise certification criteria.

SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS

Symbol	Unit	Meaning
antilog		Antilogarithm to the base 10.
C(k)	dB	*Tone correction factor.* The factor to be added to PNL(k) to account for the presence of spectral irregularities such as tones at the k-th increment of time.
d	s	*Duration time.* The time interval between the limits of t(1) and t(2) to the nearest 0.5 second.
D	dB	*Duration correction.* The factor to be added to PNLTM to account for the duration of the noise.
EPNL	EPNdB	*Effective perceived noise level.* The value of PNL adjusted for both spectral irregularities and duration of the noise. (The unit EPNdB is used instead of the unit dB).
$EPNL_r$	EPNdB	Effective perceived noise level adjusted for reference conditions.
f(i)	Hz	*Frequency.* The geometrical mean frequency for the i-th one-third octave band.
F (i, k)	dB	*Delta-dB.* The difference between the original sound pressure level and the final background sound pressure level in the i-th one-third octave band at the k-th interval of time. In this case, background sound pressure level means the broadband noise level that would be present in the one-third octave band in the absence of the tone.
h	dB	*dB-down.* The value to be subtracted from PNLTM that defines the duration of the noise.
H	Percent	*Relative humidity.* The ambient atmospheric relative humidity.
i		*Frequency band index.* The numerical indicator that denotes any one of the 24 one-third octave bands with geometrical mean frequencies from 50 to 10,000 Hz.
k		*Time increment index.* The numerical indicator that denotes the number of equal time increments that have elapsed from a reference zero.
Log		Logarithm to the base 10.
log n(a)		*Noy discontinuity coordinate.* The log n value of the intersection point of the straight lines representing the variation of SPL with log n.
M(b), M(c), etc		*Noy inverse slope.* The reciprocals of the slopes of straight lines representing the variation of SPL with log n.
n	noy	The perceived noisiness at the k-th instant of time that occurs in the i-th one-third octave band.
n(k)	noy	*Maximum perceived noisiness.* The maximum value of all of the 24 values of n(i) that occurs at the k-th instant of time.
N(k)	noy	*Total perceived noisiness.* The total perceived noisiness at the k-th instant of time calculated from the 24-instantaneous values of n (i, k).
p(b), p(c), etc		*Noy slope.* The slopes of straight lines representing the variation of SPL with log n.
PNL	PNdB	The perceived noise level at any instant of time. (The unit PNdB is used instead of the unit dB).

SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS—Continued

Symbol	Unit	Meaning
PNL(k)	PNdB	The perceived noise level calculated from the 24 values of SPL (i, k), at the k-th increment of time. (The unit PNdB is used instead of the unit dB).
PNLM	PNdB	*Maximum perceived noise level.* The maximum value of PNL(k). (The unit PNdB is used instead of the unit dB).
PNLT	TPNdB	*Tone-corrected perceived noise level.* The value of PNL adjusted for the spectral irregularities that occur at any instant of time. (The unit TPNdB is used instead of the unit dB).

SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS—Continued

Symbol	Unit	Meaning
μ		Engine noise emission parameter.
μ_r		Reference engine noise emission parameter.
Δ_1	EPNdB	*PNLT correction.* The correction to be added to the EPNL calculated from measured data to account for noise level changes due to differences in atmospheric absorption and noise path length between reference and test conditions.
Δ_2	EPNdB	*Adjustment to duration correction.* The adjustment to be made to the

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SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS—Continued

Symbol	Unit	Meaning
PNL(k)	PNdB	The perceived noise level calculated from the 24 values of SPL (i, k), at the k-th increment of time. (The unit PNdB is used instead of the unit dB).
PNLM	PNdB	*Maximum perceived noise level.* The maximum value of PNL(k). (The unit PNdB is used instead of the unit dB).
PNLT	TPNdB	*Tone-corrected perceived noise level.* The value of PNL adjusted for the spectral irregularities that occur at any instant of time. (The unit TPNdB is used instead of the unit dB).
PNLT(k)	TPNdB	The tone-corrected perceived noise level that occurs at the k-th increment of time. PNLT(k) for the spectral irregularities that occur at the k-th increment of time. (The unit TPNdB is used instead of the unit dB).
PNLTM	TPNdB	*Maximum tone-corrected perceived noise level.* The maximum value of PNLT(k). (The unit TPNdB is used instead of the unit dB).
$PNLT_r$	TPNdB	Tone-corrected perceived noise level adjusted for reference conditions.
s (i, k)	dB	*Slope of sound pressure level.* The change in level between adjacent one-third octave band sound pressure levels at the i-th band for the k-th instant of time.
Δs (i, k)	dB	Change in slope of sound pressure level.
s′ (i, k)	dB	Adjusted slope of sound pressure level. The change in level between adjacent adjusted one-third octave band sound pressure levels at the i-th band for the k-th instant of time.
$\bar{s}$ (i, k)	dB	Average slope of sound pressure level.
SPL	dB re 20 μPa	*Sound pressure level.* The sound pressure level that occurs in a specified frequency range at any instant of time.
SPL(a)	dB re 20 μPa	*Noy discontinuity coordinate.* The SPL value of the intersection point of the straight lines representing the variation of SPL with log n.
SPL(b)	dB re 20 μPa	*Noy intercept.* The intercepts on the SPL-axis of the straight lines representing the variation of SPL with log n.
SPL (c)		
SPL (i, k)	dB re 20 μPa	The sound pressure level at the k-th instant of time that occurs in the i-th one-third octave band.
SPL′ (i, k)	dB re 20 μPa	*Adjusted sound pressure level.* The first approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time.
SPL(i)	dB re 20 μPa	*Maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM.
$SPL(i)_r$	dB re 20 μPa	*Corrected maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM corrected for atmospheric sound absorption.
SPL″ (i, k)	dB re 20 μPa	*Final background sound pressure level.* The second and final approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time.
t	s	*Elapsed time.* The length of time measured from a reference zero.
t(1), t(2)	s	*Time limit.* The beginning and end, respectively, of the noise time history defined by h.
Δt	s	*Time increment.* The equal increments of time for which PNL(k) and PNLT(k) are calculated.
T	s	*Normalizing time constant.* The length of time used as a reference in the integration method for computing duration corrections, where T=10s.
t(°F) (°C)	°F, °C	*Temperature.* The ambient air temperature.
α(i)	dB/1000ft db/100m	*Reference atmospheric absorption.* The atmospheric attenuation of sound that occurs in the i-th one-third octave band at the measured air temperature and relative humidity.
$\alpha(i)_o$	dB/1000ft db/100m	*Reference atmospheric absorption.* The atmospheric attenuation of sound.
A_1	Degrees	First constant climb angle (Gear up, speed of at least V_2+10 kt (V_2+19 km/h), takeoff thrust).
A_2	Degrees	Second constant climb angle (Gear up, speed of at least V_2+10 kt (V_2+19 km/h), after cut-back).
δ	Degrees	*Thrust cutback angles.* The angles defining the points on the takeoff flight path at which thrust reduction is started and ended respectively.
ε		
η	Degrees	Approach angle.
η_r	Degrees	Reference approach angle.
θ	Degrees	*Noise angle (relative to flight path).* The angle between the flight path and noise path. It is identical for both measured and corrected flight paths.
ψ	Degrees	*Noise angle (relative to ground).* The angle between the noise path and the ground. It is identical for both measured and corrected flight paths.

SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS—Continued

Symbol	Unit	Meaning
μ		Engine noise emission parameter.
μ_r		Reference engine noise emission parameter.
Δ_1	EPNdB	*PNLT correction.* The correction to be added to the EPNL calculated from measured data to account for noise level changes due to differences in atmospheric absorption and noise path length between reference and test conditions.
Δ_2	EPNdB	*Adjustment to duration correction.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to the noise duration between reference and test conditions.
Δ_3	EPNdB	*Source noise adjustment.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to differences between reference and test engine operating conditions.

Section A36.7 Sound Attenuation in Air

A36.7.1 The atmospheric attenuation of sound must be determined in accordance with the procedure presented in section A36.7.2.
A36.7.2 The relationship between sound attenuation, frequency, temperature, and humidity is expressed by the following equations.
A36.7.2(a) For calculations using the English System of Units:

$$\alpha(i) = 10^{\left[2.05\log\left(f_0/1000\right)+6.33\times10^{-4}\theta-1.45325\right]} + \eta(\delta)\times10^{\left[\log\left(f_0\right)+4.6833\times10^{-3}\theta-2.4215\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f(0)}}\,10^{\left(\log H-1.97274664+2.288074\times10^{-2}\theta\right)} \times10^{\left(-9.589\times10^{-5}\theta^2+3.0\times10^{-7}\theta^3\right)}$$

where
$\eta(\delta)$ is listed in Table A36–4 and f_0 in Table A36–5;
$\alpha(i)$ is the attenuation coefficient in dB/1000 ft;
θ is the temperature in °F; and
H is the relative humidity, expressed as a percentage.

A36.7.2(b) For calculations using the International System of Units (SI):

$$\alpha(i) = 10^{\left[2.05\log\left(f_0/1000\right)+1.1394\times10^{-3}\theta-1.916984\right]} + \eta(\delta)\times10^{\left[\log\left(f_0\right)+8.42994\times10^{-3}\theta-2.755624\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f_0}}\,10^{\left(\log H-1.328924+3.179768\times10^{-2}\theta\right)} \times10^{\left(-2.173716\times10^{-4}\theta^2+1.7496\times10^{-6}\theta^3\right)}$$

where
$\eta(\delta)$ is listed in Table A36–4 and f_0 in Table A36–5;
$\alpha(i)$ is the attenuation coefficient in dB/100 m;
θ is the temperature in °C; and
H is the relative humidity, expressed as a percentage.

A36.7.3 The values listed in table A36–4 are to be used when calculating the equations listed in section A36.7.2. A term of quadratic interpolation is to be used where necessary.

Section A36.8 [Reserved]

Table A36-4. Values of $\eta(\delta)$

δ	η(δ)	δ	η(δ)
0.00	0.000	2.50	0.450
0.25	0.315	2.80	0.400

(a) When the amount of the adjustment (using the "simplified" method) is greater than 8 dB on flyover, or 4 dB on approach; or

(b) When the resulting final EPNL value on flyover or approach (using the simplified method) is within 1 dB of the limiting noise levels as prescribed in section B36.5 of this part.

A36.9.2 *Flight profiles.*

As described below, flight profiles for both

Note: Figure A36–4 illustrates a typical takeoff profile.

(a) The airplane begins the takeoff roll at point A, lifts off at point B and begins its first climb at a constant angle at point C. Where thrust or power (as appropriate) cut-back is used, it is started at point D and completed at point E. From here, the airplane begins a second climb at a constant angle up to point F, the end of the noise certification takeoff flight path.

(c) The distance AF is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

A36.9.2.2 *Approach Profile.*

Note: Figure A36–5 illustrates a typical approach profile.

(a) The airplane begins its noise certification approach flight path at point G and touches down on the runway at point J, at a distance OJ from the runway threshold.

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Table A36-4. Values of $\eta(\delta)$

δ	$\eta(\delta)$	δ	$\eta(\delta)$
0.00	0.000	2.50	0.450
0.25	0.315	2.80	0.400
0.50	0.700	3.00	0.370
0.60	0.840	3.30	0.330
0.70	0.930	3.60	0.300
0.80	0.975	4.15	0.260
0.90	0.996	4.45	0.245
1.00	1.000	4.80	0.230
1.10	0.970	5.25	0.220
1.20	0.900	5.70	0.210
1.30	0.840	6.05	0.205
1.50	0.750	6.50	0.200
1.70	0.670	7.00	0.200
2.00	0.570	10.00	0.200
2.30	0.495		

Table A36-5. Values of f_0

one-third octave center frequency	f_0 (Hz)	one-third octave center frequency	f_0 (Hz)
50	50	800	800
63	63	1000	1000
80	80	1250	1250
100	100	1600	1600
125	125	2000	2000
160	160	2500	2500
200	200	3150	3150
250	250	4000	4000
315	315	5000	4500
400	400	6300	5600
500	500	8000	7100
630	630	10000	9000

Section A36.9 Adjustment of airplane flight test results.

A36.9.1 When certification test conditions are not identical to reference conditions, appropriate adjustments must be made to the measured noise data using the methods described in this section.

A36.9.1.1 Adjustments to the measured noise values must be made using one of the methods described in sections A36.9.3 and A36.9.4 for differences in the following:

(a) Attenuation of the noise along its path as affected by "inverse square" and atmospheric attenuation

(b) Duration of the noise as affected by the distance and the speed of the airplane relative to the measuring point

(c) Source noise emitted by the engine as affected by the differences between test and reference engine operating conditions

(d) Airplane/engine source noise as affected by differences between test and reference airspeeds. In addition to the effect on duration, the effects of airspeed on component noise sources must be accounted for as follows: for conventional airplane configurations, when differences between test and reference airspeeds exceed 15 knots (28 km/h) true airspeed, test data and/or analysis approved by the FAA must be used to qualify the effects of the airspeed adjustment on resulting certification noise levels.

A36.9.1.2 The "integrated" method of adjustment, described in section A36.9.4, must be used on takeoff or approach under the following conditions:

(a) When the amount of the adjustment (using the "simplified" method) is greater than 8 dB on flyover, or 4 dB on approach; or

(b) When the resulting final EPNL value on flyover or approach (using the simplified method) is within 1 dB of the limiting noise levels as prescribed in section B36.5 of this part.

A36.9.2 *Flight profiles.*

As described below, flight profiles for both test and reference conditions are defined by their geometry relative to the ground, together with the associated airplane speed relative to the ground, and the associated engine control parameter(s) used for determining the noise emission of the airplane.

A36.9.2.1 *Takeoff Profile.*

Note: Figure A36–4 illustrates a typical takeoff profile.

(a) The airplane begins the takeoff roll at point A, lifts off at point B and begins its first climb at a constant angle at point C. Where thrust or power (as appropriate) cut-back is used, it is started at point D and completed at point E. From here, the airplane begins a second climb at a constant angle up to point F, the end of the noise certification takeoff flight path.

(b) Position K_1 is the takeoff noise measuring station and AK_1 is the distance from start of roll to the flyover measuring point. Position K_2 is the lateral noise measuring station, which is located on a line parallel to, and the specified distance from, the runway center line where the noise level during takeoff is greatest.

(c) The distance AF is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

A36.9.2.2 *Approach Profile.*

Note: Figure A36–5 illustrates a typical approach profile.

(a) The airplane begins its noise certification approach flight path at point G and touches down on the runway at point J, at a distance OJ from the runway threshold.

(b) Position K_3 is the approach noise measuring station and K_3O is the distance from the approach noise measurement point to the runway threshold.

(c) The distance GI is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–6:

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; X_rY_r represents the corresponding portion of the reference flight path.

(2) Q represents the airplane's position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. Q_r is the corresponding position on the reference flight path, and K_r the reference measuring station. QK and Q_rK_r are, respectively, the measured

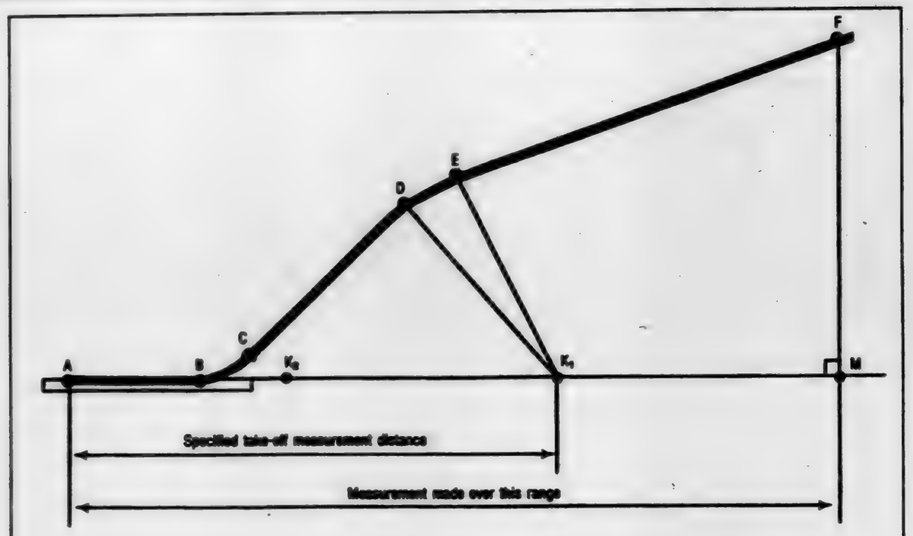

Figure A36-4. Typical Takeoff profile

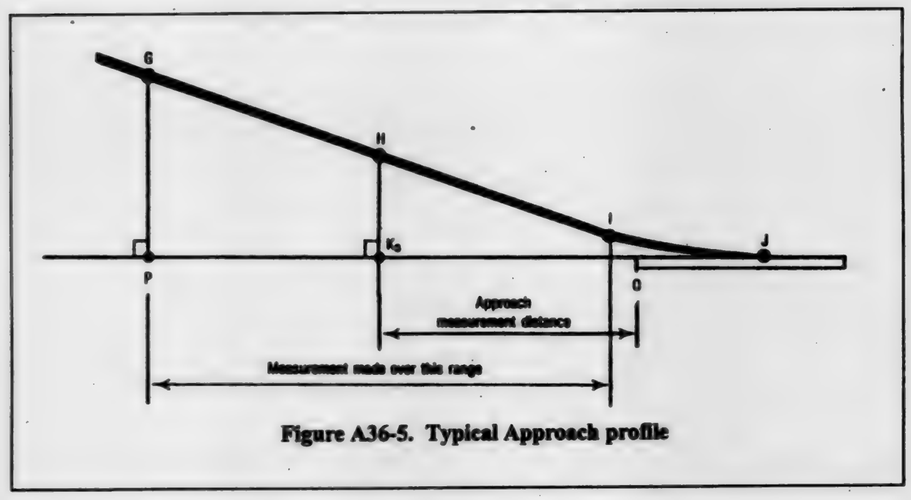

Figure A36-5. Typical Approach profile

The airplane reference point for approach measurements is the instrument landing system (ILS) antenna. If no ILS antenna is installed an alternative reference point must be approved by the FAA.

A36.9.3 *Simplified method of adjustment.*

A36.9.3.1 *General.* As described below, the simplified adjustment method consists of applying adjustments (to the EPNL, which is calculated from the measured data) for the differences between measured and reference conditions at the moment of PNLTM.

A36.9.3.2 *Adjustments to PNL and PNLT.*

(a) The portion of the test flight path and the reference flight path described below, and illustrated in Figure A36–6, include the noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–6:

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; X_rY_r represents the corresponding portion of the reference flight path.

(2) Q represents the airplane's position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. Q_r is the corresponding position on the reference flight path, and K_r the reference measuring station. QK and Q_rK_r are, respectively, the measured

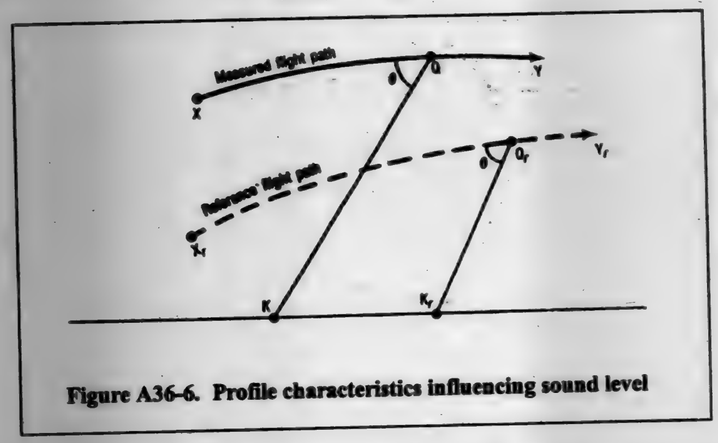

Figure A36-6. Profile characteristics influencing sound level

and reference noise propagation paths, Q_r being determined from the assumption that QK and Q_rK_r form the same angle with their respective flight paths.

(b) The portions of the test flight path and the reference flight path described in paragraph (b)(1) and (2), and illustrated in Figure A36–7(a) and (b), include the noise time history that is relevant to the calculation of lateral EPNL.

(1) In figure A36–7(a), XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of lateral EPNL; in figure AQ36–7(b), X_rY_r represents the corresponding portion of the reference flight path.

(2) Q represents the airplane position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. Q_r is the corresponding position on the reference flight path, and K_r the reference measuring station. QK and Q_rK_r are, respectively, the measured and reference noise propagation paths. In this case K_r is only specified as being on a particular Lateral line; K_r and Q_r are therefore determined from the assumption that QK and Q_rK_r:

(i) Form the same angle θ with their respective flight paths; and

(ii) Form the same angle ψ with the ground.

Note: For the lateral noise measurement, sound propagation is affected not only by inverse square and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle ψ.

A36.9.3.3.2 For the flight path shown in Figure A36–6, the adjustment term is calculated as follows:

$\Delta_2 = -7.5 \log(QK/Q_rK_r) + 10 \log(V/V_r)$

(a) Add Δ_2 arithmetically to the EPNL calculated from the measured data.

A36.9.3.4 *Source noise adjustments.*

A36.9.3.4.1 To account for differences between the parameters affecting engine noise as measured in the certification flight tests, and those calculated or specified in the reference conditions, the source noise adjustment must be calculated and applied. The adjustment is determined from the manufacturer's data approved by the FAA. Typical data used for this adjustment are illustrated in Figure A36–8 that shows a curve of EPNL versus the engine control parameter μ, with the EPNL data being corrected to all the other relevant reference conditions (airplane mass, speed and altitude, air temperature) and for the difference in noise between the test engine and the average engine (as defined in section B36.7(b)(7)). A sufficient number of data points over a range of values of μ_r is required to calculate the source noise adjustments for lateral, flyover and approach noise measurements.

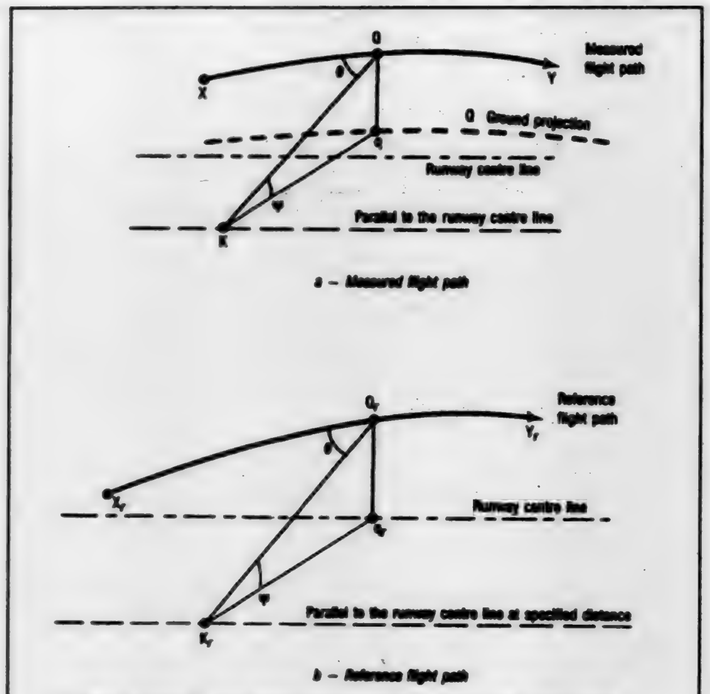

Figure A36-7. Lateral measurement - determination of reference station

A36.9.3.2.1 The one-third octave band levels SPL(i) comprising PNL (the PNL at the moment of PNLTM observed at K) must be adjusted to reference levels SPL(i)$_r$ as follows:

A36.9.3.2.1(a) For calculations using the English System of Units:

$$SPL(i)_r = SPL(i) + 0.001[\alpha(i) - \alpha(i)_0]QK + 0.0001\alpha(i)_0(QK - Q_rK_r) + 20\log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.001[\alpha(i) - \alpha(i)_0]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_0$ are the coefficients for the test and reference atmosphere conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.001\alpha(i)_0(QK - Q_rK_r)$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20\log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the "inverse square" law;

(4) QK and Q_rK_r are measured in feet and $\alpha(i)$ and $\alpha(i)_0$ are expressed in dB/1000 ft.

A36.9.3.2.1(b) For calculations using the International System of Units:

$$SPL(i)_r = SPL(i) + 0.01[\alpha(i) - \alpha(i)_0]QK + 0.01\alpha(i)_0(QK - Q_rK_r) + 20\log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.01[\alpha(i) - \alpha(i)_0]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_0$ are the coefficients for the test and reference atmospheric conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.01\alpha(i)_0(QK - Q_rK_r)$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20\log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the inverse square law;

(4) QK and Q_rK_r are measured in meters and $\alpha(i)$ and $\alpha(i)_0$ are expressed in dB/100 m.

A36.9.3.2.1.1 *PNLT Correction.*

(a) Convert the corrected values, $SPL(i)_r$, to $PNLT_r$;

(b) Calculate the correction term Δ_1 using the following equation:

$$\Delta_1 = PNT_r - PNLTM$$

A36.9.3.2.1.2 Add Δ_1 arithmetically to the EPNL calculated from the measured data.

A36.9.3.2.2 If, during a test flight, several peak values of PNLT that are within 2 dB of PNLTM are observed, the procedure defined in section A36.9.3.2.1 must be applied at each peak, and the adjustment term, calculated according to section A36.9.3.2.1, must be added to each peak to give corresponding adjusted peak values of PNLT. If these peak values exceed the value at the moment of PNLTM, the maximum value of such exceedance must be added as a further adjustment to the EPNL calculated from the measured data.

A36.9.3.3 *Adjustments to duration correction.*

A36.9.3.3.1 Whenever the measured flight paths and/or the ground velocities of the test conditions differ from the reference flight paths and/or the ground velocities of the reference conditions, duration adjustments must be applied to the EPNL values calculated from the measured data. The adjustments must be calculated as described below.

A36.9.3.3.2 For the flight path shown in Figure A36–6, the adjustment term is calculated as follows:

$$\Delta_2 = -7.5\log(QK/Q_rK_r) + 10\log(V/V_r)$$

(a) Add Δ_2 arithmetically to the EPNL calculated from the measured data.

A36.9.3.4 *Source noise adjustments.*

A36.9.3.4.1 To account for differences between the parameters affecting engine noise as measured in the certification flight tests, and those calculated or specified in the reference conditions, the source noise adjustment must be calculated and applied. The adjustment is determined from the manufacturer's data approved by the FAA. Typical data used for this adjustment are illustrated in Figure A36–8 that shows a curve of EPNL versus the engine control parameter μ, with the EPNL data being corrected to all the other relevant reference conditions (airplane mass, speed and altitude, air temperature) and for the difference in noise between the test engine and the average engine (as defined in section B36.7(b)(7)). A sufficient number of data points over a range of values of μ_r is required to calculate the source noise adjustments for lateral, flyover and approach noise measurements.

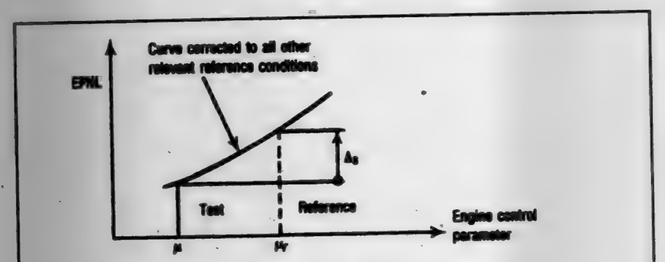

Figure A36-8. Noise thrust correction

A36.9.3.4.2 Calculate adjustment term Δ_3 by subtracting the EPNL value corresponding to the parameter μ from the EPNL value corresponding to the parameter μ_r. Add Δ_3 arithmetically to the EPNL value calculated from the measured data.

A36.9.3.5 *Symmetry adjustments.*

A36.9.3.5.1 A symmetry adjustment to each lateral noise value (determined at the section B36.4(b) measurement points), is to be made as follows:

(a) If the symmetrical measurement point is opposite the point where the highest noise level is obtained on the main lateral measurement line, the certification noise level is the arithmetic mean of the noise levels measured at these two points (see Figure A36–9(a));

(b) If the condition described in paragraph (a) of this section is not met, then it is assumed that the variation of noise with the altitude of the airplane is the same on both sides, there is a constant difference between the lines of noise versus altitude on both sides (see figure A36–9(b)). The certification noise level is the maximum value of the mean between these lines.

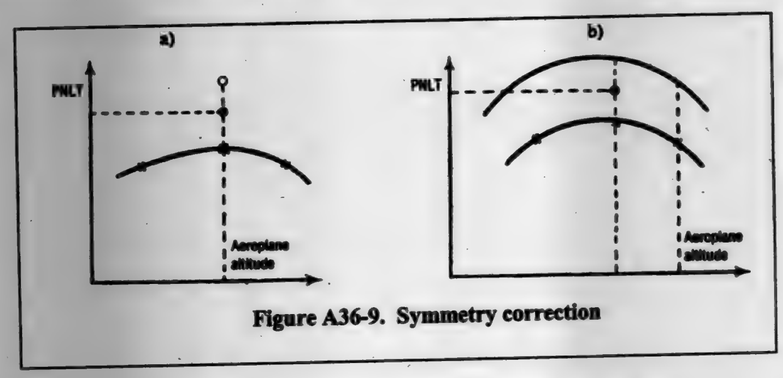

Figure A36-9. Symmetry correction

A36.9.4 *Integrated method of adjustment*

A36.9.4.1 *General.* As described in this section, the integrated adjustment method consists of recomputing under reference conditions points on the PNLT time history corresponding to measured points obtained during the tests, and computing EPNL directly for the new time history obtained in this way. The main principles are described in sections A36.9.4.2 through A36.9.4.4.1.

A36.9.4.2 *PNLT computations.*

(a) The portions of the test flight path and the reference flight path described in paragraph (a)(1) and (2), and illustrated in Figure A36–10, include the noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–10:

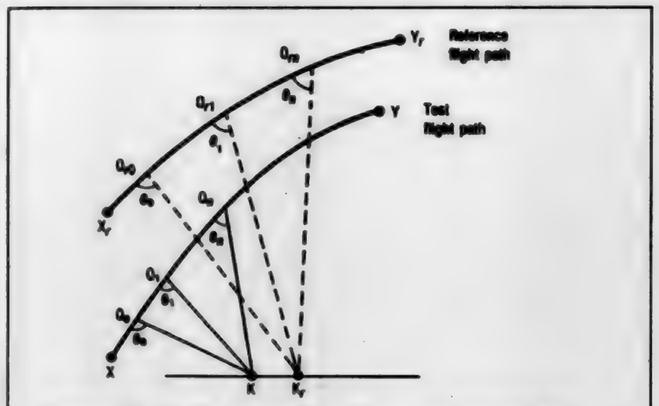

Figure A36-10. Correspondence between measured and reference flight paths for the application of the integrated method of adjustment

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; X_rY_r represents the corresponding reference flight path.

(2) The points Q_0, Q_1, Q_n represent airplane positions on the measured flight path at time t_0, t_1 and t_n respectively. Point Q_1 is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at a time t_1. Point Q_{r1} represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the reference measuring station K_r at time t_{r1}. Q_1K and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths, which in each case form the angle θ_1 with their respective flight paths. Q_{r0} and Q_{rn} are similarly the points on the reference flight path corresponding to Q_0 and Q_n on the measured flight path. Q_0 and Q_n are chosen so that between Q_{r0} and Q_{rn} all values of $PNLT_r$ (computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included.

(b) The portions of the test flight path and the reference flight path described in paragraph (b)(1) and (2), and illustrated *in Figure A36–11(a) and (b),* include the noise time history that is relevant to the calculation of lateral EPNL.

(1) In figure A36–11(a) XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of lateral EPNL; in figure A36–11(b), X_rY_r represents the corresponding portion of the reference flight path.

(2) The points Q_0, Q_1 and Q_n represent airplane positions on the measured flight path at time t_0, t_1 and t_n respectively. Point Q_1 is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at time t_1. The point Q_{r1} represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the measuring station K_r at time t_{r1}. Q_1K and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths Q_{r0} and Q_{rn} are similarly the points on the reference flight path corresponding to Q_0 and Q_n on the measured flight path.

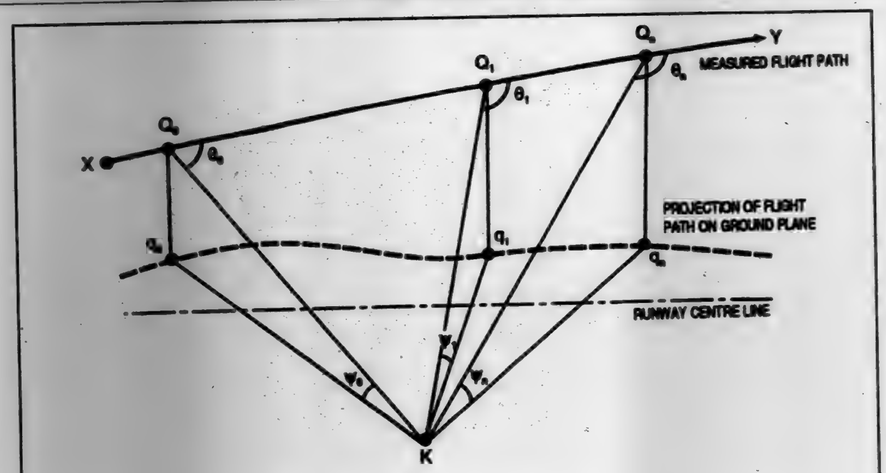

Figure A36-11(a). Measured flight path

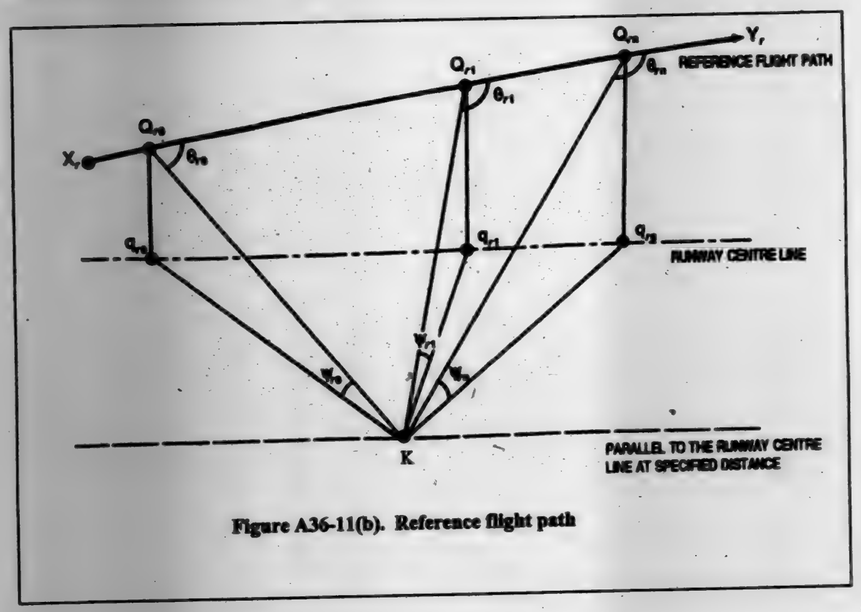

Figure A36-11(b). Reference flight path

Q_0 and Q_n are chosen to that between Q_{r0} and Q_{rn} all values of $PNLT_r$ computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included. In this case K_r is only specified as being on a particular lateral line. The

position of K_r and Q_{r1} are determined from the following requirements.

(i) Q_1K and $Q_{r1}K_r$ form the same angle θ_1 with their respective flight paths; and

(ii) The differences between the angles Ψ_1 and Ψ_{r1} must be minimized using a method, approved by the FAA. The differences between the angles are minimized since, for geometrical reasons, it is generally not possible to choose K_r so that the condition described in paragraph A36.9.4.2(b)(2)(i) is met while at the same time keeping Ψ_1 and

(1) The time taken for the airplane to travel the distance $Q_{r1}Q_{r0}$ at a speed V_r less the time taken for it to travel Q_1Q_0 at V;

(2) The time taken for sound to travel the distance $Q_{r1}K_r - Q_1K$.

Note: For the flight paths described in paragraphs A36.9.4.2(a) and (b), the use of thrust or power cut-back will result in test and reference flight paths at full thrust or power and at cut-back thrust or power. Where the transient region between these thrust or power levels affects the final result,

computed according to the method in section A36.4.2 Values of PNL_r must be computed for times t_0 through t_n.

A36.9.4.2.3 For each value of PNL_{r1}, a tone correction factor C_1 must be determined by analyzing the reference values SPL(i), using the methods of section A36.4.3 of this appendix, and added to PNL_{r1} to yield $PNLT_{r1}$. Using the process described in this paragraph, values of $PNLT_r$ must be computed for times t_0 through t_n.

A36.9.4.3 *Duration correction.*

A36.9.6 FLIGHT PATH DISTANCES—Continued

Distance	Unit	Meaning
OP	Feet (meters)	Approach flight track distance. The distance from the runway threshold to the approach flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded.

16. Appendix B of part 36 is revised to read as follows:

(2) For propeller-driven airplanes: The point on the extended centerline of the

(2) Lateral and approach: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from

position of K_r and Q_{r1} are determined from the following requirements.

(i) Q_1K and $Q_{r1}K_r$ form the same angle θ_1 with their respective flight paths; and

(ii) The differences between the angles Ψ_1 and Ψ_{r1} must be minimized using a method, approved by the FAA. The differences between the angles are minimized since, for geometrical reasons, it is generally not possible to choose K_r so that the condition described in paragraph A36.9.4.2(b)(2)(i) is met while at the same time keeping Ψ_1 and Ψ_{r1} equal.

Note: For the lateral noise measurement, sound propagation is affected not only by "inverse square" and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle Ψ.

A36.9.4.2.1 In paragraphs A36.9.4.2(a)(2) and (b)(2) the time t_{r1} is later (for $Q_{r1}K_r > Q_1K$) separate amounts:

(1) The time taken for the airplane to travel the distance $Q_{r1}Q_0$ at a speed V_r less the time taken for it to travel Q_1Q_0 at V;

(2) The time taken for sound to travel the distance $Q_{r1}K_r - Q_1K$.

Note: For the flight paths described in paragraphs A36.9.4.2(a) and (b), the use of thrust or power cut-back will result in test and reference flight paths at full thrust or power and at cut-back thrust or power. Where the transient region between these thrust or power levels affects the final result, an interpolation must be made between them by an approved method such as that given in the current advisory circular for this part.

A36.9.4.2.2 The measured values of $SPL(i)_1$ must be adjusted to the reference values $SPL(i)_{r1}$ to account for the differences between measured and reference noise path lengths and between measured and reference atmospheric conditions, using the methods of section A36.9.3.2.1 of this appendix. A corresponding value of PNL_{r1} must be computed according to the method in section A36.4.2 Values of PNL_r must be computed for times t_0 through t_e.

A36.9.4.2.3 For each value of PNL_{r1}, a tone correction factor C_1 must be determined by analyzing the reference values SPL(i), using the methods of section A36.4.3 of this appendix, and added to PNL_{r1} to yield $PNLT_{r1}$. Using the process described in this paragraph, values of PNLT, must be computed for times t_0 through t_e.

A36.9.4.3 *Duration correction.*

A36.9.4.3.1 The values of PNLT, corresponding to those of PNLT at each one-half second interval must be plotted against time ($PNLT_{r1}$ at time t_{r1}). The duration correction must then be determined using the method of section A36.4.5.1 of this appendix, to yield $EPNL_r$.

A36.9.4.4 *Source Noise Adjustment.*

A36.9.4.4.1 A source noise adjustment, Δ_3, must be determined using the methods of section A36.9.3.4 of this appendix.

A37.9.5 Flight Path Identification Positions

Position	Description
A	Start of Takeoff roll.
B	Lift-off.
C	Start of first constant climb.
D	Start of thurst reduction.
E	Start of second constant climb.
F	End of noise certification Takeoff flight path.
G	Start of noise certification Approach flight path.
H	Position on Approach path directly above noise measuring station.
I	Start of level-off.
J	Touchdown.
K	Noise measurement point.
K_r	Reference measurement point.
K_1	Flyover noise measurement point.
K_2	Lateral noise measurement point.
K_3	Approach noise measurement point.
M	End of noise certification Takeoff flight track.
O	Threshold of Approach end of runway.
P	Start of noise certification Approach flight track.
Q	Position on measured Takeoff flight path corresponding to apparent PNLTM at station K See section A36.9.3.2.
Q_r	Position on corrected Takeoff flight path corresponding to PNLTM at station K. See section A36.9.3.2.
V	Airplane test speed.
V_r	Airplane reference speed.

A36.9.6 Flight Path Distances

Distance	Unit	Meaning
AB	Feet (meters)	Length of takeoff roll. The distance along the runway between the start of takeoff roll and lift off.
AK	Feet (meters)	Takeoff measurement distance. The distance from the start of roll to the takeoff noise measurement station along the extended center line of the runway.
AM	Feet (meters)	Takeoff flight track distance. The distance from the start of roll to the takeoff flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded.
QK	Feet (meters)	Measured noise path. The distance from the measured airplane position Q to station K.
Q_rK_r	Feet (meters)	Reference noise path. The distance from the reference airplane position Q_r to station K_r.
K_3H	Feet (meters)	Airplane approach height. The height of the airplane above the approach measuring station.
OK_3	Feet (meters)	Approach measurement distance. The distance from the runway threshold to the approach measurement station along the extended center line of the runway.

A36.9.6 Flight Path Distances—Continued

Distance	Unit	Meaning
OP	Feet (meters)	Approach flight track distance. The distance from the runway threshold to the approach flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded.

16. Appendix B of part 36 is revised to read as follows:

Appendix B to Part 36—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

Sec.

B36.1 Noise measurement and evaluation.
B36.2 Noise evaluation metric.
B36.3 Reference noise measurement points.
B36.4 Test noise measurement points.
B36.5 Maximum noise levels.
B36.6 Trade-offs.
B36.7 Noise certification reference procedures and conditions.
B36.8 Noise certification test procedures.

Section B36.1 Noise Measurement and Evaluation

Compliance with this appendix must be shown with noise levels measured and evaluated using the procedures of appendix A of this part, or under approved equivalent procedures.

Section B36.2 Noisé Evaluation Metric

The noise evaluation metric is the effective perceived noise level expressed in EPNdB, as calculated using the procedures of appendix A of this part.

Section B36.3 Reference Noise Measurement Points

When tested using the procedures of this part, except as provided in section B36.6, an airplane may not exceed the noise levels specified in section B36.5 at the following points on level terrain:

(a) Lateral full-power reference noise measurement point:

(1) For jet airplanes: The point on a line parallel to an 1,476 feet (450 m) from the runway centerline, or extended centerline, where the noise level after lift-off is at a maximum during takeoff. For the purpose of showing compliance with Stage 1 or Stage 2 noise limits for an airplane powered by more than three jet engines, the distance from the runway centerline must be 0.35 nautical miles (648 m). For jet airplanes, when approved by the FAA, the maximum lateral noise at takeoff thrust may be assumed to occur at the point (or its approved equivalent) along the extended centerline of the runway where the airplane reaches 985 feet (300 meters) altitude above ground level. A height of 1427 feet (435 meters) may be assumed for State 1 or Stage 2 four engine airplanes. The altitude of the airplane as it passes the noise measurement points must be within +328 to −164 feet (+100 to −50 meters) of the target altitude. For airplanes powered by other than jet engines, the altitude for maximum lateral noise must be determined experimentally.

(2) For propeller-driven airplanes: The point on the extended centerline of the runway above which the airplane, at full takeoff power, reaches a height of 2,133 feet (650 meters). For tests conducted before [the effective date of this final rule], an applicant may use the measurement point specified in section B36.3(a)(1) as an alternative.

(b) Flyover reference noise measurement point: The point on the extended centerline of the runway that is 21,325 feet (6,500 m) from the start of the takeoff roll;

(c) Approach reference noise measurement point: The point on the extended centerline of the runway that is 6,562 feet (2,000 m) from the runway threshold. On level ground, this corresponds to a position that is 394 feet (120 m) vertically below the 3° descent path, which originates at a point on the runway 984 feet (300 m) beyond the threshold.

Section B36.4 Test noise measurement points.

(a) If the test noise measurement points are not located at the reference noise measurement points, any corrections for the difference in position are to be made using the same adjustment procedures as for the differences between test and reference flight paths.

(b) The applicant must use a sufficient number of lateral test noise measurement points to demonstrate to the FAA that the maximum noise level on the appropriate lateral line has been determined. For jet airplanes, simultaneous measurements must be made at one test noise measurement point at its symmetrical point on the other side of the runway. Propeller-driven airplanes have an inherent asymmetry in lateral noise. Therefore, simultaneous measurements must be made at each and every test noise measurement point at its symmetrical position on the opposite side of the runway. The measurement points are considered to be symmetrical if they are longitudinally within 33 feet (±10 meters) of each other.

Section B36.5 Maximum Noise Levels

Except as provided in section B36.6 of this appendix, maximum noise levels, when determined in accordance with the noise evaluation methods of appendix A of this part, may not exceed the following:

(a) For acoustical changes to Stage 1 airplanes, regardless of the number of engines, the noise levels prescribed under § 36.7(c) of this part.

(b) For any Stage 2 airplane regardless of the number of engines:

(1) Flyover: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 5 EPNdB; the limit is 93 EPNdB for a maximum weight of 75,000 pounds or less.

(2) Lateral and approach: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 2 EPNdB; the limit is 102 EPNdB for a maximum weight of 75,000 pounds or less.

(c) For any Stage 3 airplane:

(1) Flyover.

(i) For airplanes with more than 3 engines: 106 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 44,673 pounds or less;

(ii) For airplanes with 3 engines: 104 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 63,177 pounds or less; and

(iii) For airplanes with fewer than 3 engines; 101 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 106,250 pounds or less.

(2) Lateral, regardless of the number of engines: 103 EPNdB for maximum weight of 882,000 pounds or more; for each halving of maximum weight (from 882,000 pounds), reduce the limit by 2.56 EPNdB; the limit is 94 EPNdB for a maximum weight of 77,200 pounds or less.

(3) Approach, regardless of the number of engines: 105 EPNdB for maximum weight of 617,300 pounds or more; for each halving of maximum weight (from 617,300 pounds), reduce the limit by 2.33 EPNdB; the limit is 98 EPNdB for a maximum weight of 77,200 pounds or less.

Section B36.6 Trade-Offs

Except when prohibited by sections 36.7(c)(1) and 36.7(d)(1)(ii), if the maximum noise levels are exceeded at any one or two measurement points, the following conditions must be met:

(a) The sum of the exceedance(s) may not be greater than 3 EPNdB;

(b) Any exceedance at any single point may not be greater than 2 EPNdB, and

(c) Any exceedance(s) must be offset by a corresponding amount at another point or points.

Section B36.7 Noise Certification Reference Procedures and Conditions

(a) General conditions:

(1) All reference procedures must meet the requirements of section 36.3 of this part.

(2) Calculations of airplane performance and flight path must be made using the reference procedures and must be approved by the FAA.

(3) Applicants must use the takeoff and approach reference procedures prescribed in paragraphs (b) and (c) of this section.

(4) [Reserved]

(5) The reference procedures must be determined for the following reference [illegible]. The reference atmosphere is homogeneous in terms of temperature and relative humidity when used for the calculation of atmospheric absorption coefficients.

(i) Sea level atmospheric pressure of 2116 pounds per square foot (101.325 kPa);

(ii) Ambient temperature of 77 °F (25 °C); and

(iii) Relative humidity of 70 percent.

(6) The takeoff reference procedure must be flown with all engines operating at the takeoff thrust determined for the reference conditions in paragraph (b)(5) of this section.

(7) The approach reference procedure must be flown with all engines operating at a thrust determined by the following requirements:

(i) For propeller-driven airplanes, the thrust must result in a stabilized descent on the approach path at a speed of 1.4 V_{SR}, where V_{SR} is the reference stall speed in the landing configuration at the maximum landing weight in normal operation.

(ii) For jet airplanes, the thrust must result in a stabilized descent on the approach path at a speed of V_{APP}, where V_{APP} is the approach speed in the landing configuration at the maximum landing weight in normal operation.

(c) Reference noise measurement procedures. (1) The reference noise measurement procedures must be flown with the airplane in the configuration which produces the highest noise level with normal deployment of aerodynamic control surfaces including lift and drag producing devices, at the weight at which certification is requested. This configuration includes all those items listed in section A36.5.2.5 of appendix A of this part that contribute to the noisiest continuous state at the maximum landing weight in normal operation.

(2) For airplanes with more than four engines, the test day speeds and the acoustic day reference speed are the minimum approved value of V2+35 knots, or the all-engines-operating speed at 35 feet, whichever speed is greater as determined under the regulations constituting the type certification basis of the airplane; this reference speed may not exceed 250 knots. For all airplanes, noise values measured at the test day speeds must be corrected to the acoustic day reference speed.

(3) The takeoff configuration selected by

A36.3.8 and A36.3.9 of Appendix A" in its place.

Appendix H [Amended]

19. Amend appendix H as follows:

a. In paragraph (d)(1) of section H36.101 by removing the reference to "appendix B" and adding "appendix A" in its place;

b. Amend paragraph (c)(3) of section H36.111 of appendix H by removing the reference to "B36.5(a)" and adding "A 6.4.3.1(a)" in its place.

PART 91—GENERAL OPERATING AND FLIGHT RULES

20. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722,

"turbojet" and add the words "jet (turbojet)" in its place.

§ 91.851 [Amended]

22. In the definitions of "Fleet", "Stage 2 airplane", and "Stage 3 airplane" remove the word "turbojet" and add the words "jet (turbojet)" in its place.

Issued in Washington, DC, on June 18,

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(3) Applicants must use the takeoff and approach reference procedures prescribed in paragraphs (b) and (c) of this section.

(4) [Reserved]

(5) The reference procedures must be determined for the following reference [illegible]. The reference atmosphere is homogeneous in terms of temperature and relative humidity when used for the calculation of atmospheric absorption coefficients.

(i) Sea level atmospheric pressure of 2116 pounds per square foot (psf) (1013.25 hPa);

(ii) Ambient sea-level air temperature of 77 °F (25 °C, i.e. ISA+10 °C);

(iii) Relative humidity of 70 per cent;

(iv) Zero wind.

(v) In defining the reference takeoff flight path(s) for the takeoff and lateral noise measurements, the runway gradient is zero.

(b) Takeoff reference procedure:

The takeoff reference flight path is to be calculated using the following:

(1) Average engine takeoff thrust or power must be used from the state of takeoff to the point where at least the following height above runway level is reached. The takeoff thrust/power used must be the maximum available for normal operations given in the performance section of the airplane flight manual under the reference atmospheric conditions given in section B36.7(a)(5).

(i) For Stage 1 airplanes and for Stage 2 airplanes that do not have jet engines with a bypass ratio of 2 or more, the following apply:

(A): For airplanes with more than three jet engines—700 feet (214 meters).

(B): For all other airplanes—1,000 feet (305 meters).

(ii) For Stage 2 airplanes that have jet engines with a bypass ratio of 2 or more and for Stage 3 airplanes, the following apply:

(A): For airplanes with more than three engines—689 feet (210 meters).

(B): For airplanes with three engines—853 feet (260 meters).

(C): For airplanes with fewer than three engines—984 feet (300 meters).

(2) Upon reaching the height specified in paragraph (b)(1) of this section, airplane thrust or power must not be reduced below that required to maintain either of the following, whichever is greater:

(i) A climb gradient of 4 per cent; or

(ii) In the case of multi-engine airplanes, level flight with one engine inoperative.

(3) For the purpose of determining the lateral noise level, the reference flight path must be calculated using full takeoff power throughout the test run without a reduction in thrust or power. For tests conducted before [the effective date of this final rule], a single reference flight path that includes thrust cutback in accordance with paragraph (b)(2) of this section, is an acceptable alternative in determining the lateral noise level.

(4) The takeoff reference speed is the all-engine operating takeoff climb speed selected by the applicant for use in normal operation; this speed must be at least V2+10kt (V2+19km/h) but may not be greater than V2+20kt (V2+37km/h). This speed must be attained as soon as practicable after lift-off and be maintained throughout the takeoff noise certification test. For Concord airplanes, the test day speeds and the acoustic day reference speed are the minimum approved value of V2+35 knots, or the all-engines-operating speed at 35 feet, whichever speed is greater as determined under the regulations constituting the type certification basis of the airplane; this reference speed may not exceed 250 knots. For all airplanes, noise values measured at the test day speeds must be corrected to the acoustic day reference speed.

(5) The takeoff configuration selected by the applicant must be maintained constantly throughout the takeoff reference procedure, except that the landing gear may be retracted. Configuration means the center of gravity position, and the status of the airplane systems that can affect airplane performance or noise. Examples include, the position of lift augmentation devices, whether the APU is operating, and whether air bleeds and engines power take-offs are operating;

(6) The weight of the airplane at the brake release must be the maximum takeoff weight at which the noise certification is requested, which may result in an operating limitation as specified in § 36.1581(d); and

(7) The average engine is defined as the average of all the certification compliant engines used during the airplane flight tests, up to and during certification, when operating within the limitations and according to the procedures given in the Flight Manual. This will determine the relationship of thrust/power to control parameters (e.g., N_1 or EPR). Noise measurements made during certification tests must be corrected using this relationship.

(c) Approach reference procedure:

The approach reference flight path must be calculated using the following:

(1) The airplane is stabilized and following a 3° glide path;

(2) For subsonic airplanes, a steady approach speed of V_{ref} + 10 kts (V_{ref} + 19 km/h) with thrust and power stabilized must be established and maintained over the approach measuring points. V_{ref} is the reference landing speed, which is defined as the speed of the airplanes, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings. For Concorde airplanes, a steady approach speed that is either the landing reference speed + 10 knots or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greater. This speed must be established and maintained over the approach measuring point.

(3) The constant approach configuration used in the airworthiness certification tests, but with the landing gear down, must be maintained throughout the approach reference procedure;

(4) The weight of the airplane at touchdown must be the maximum landing weight permitted in the approach configuration defined in paragraph (c)(3) of this section at which noise certification is requested, except as provided in § 36.1581(d) of this part; and

(5) The most critical configuration must be used; this configuration is defined as that which produces the highest noise level with normal deployment of aerodynamic control surfaces including lift and drag producing devices, at the weight at which certification is requested. This configuration includes all those items listed in section A36.5.2.5 of appendix A of this part that contribute to the noisiest continuous state at the maximum landing weight in normal operation.

Section B36.8 Noise Certification Test Procedures

(a) All test procedures must be approved by the FAA.

(b) The test procedures and noise measurements must be conducted and processed in an approved manner to yield the noise evaluation metric EPNL, in units of EPNdB, as described in appendix A of this part.

(c) Acoustic data must be adjusted to the reference conditions specified in this appendix using the methods described in appendix A of this part. Adjustments for speed and thrust must be made as described in section A36.9 of this part.

(d) If the airplane's weight during the test is different from the weight at which noise certification is requested, the required EPNL adjustment may not exceed 2 EPNdB for each takeoff and 1 EPNdB for each approach. Data approved by the FAA must be used to determine the variation of EPNL with weight for both takeoff and approach test conditions. The necessary EPNL adjustment for variations in approach flight path from the reference flight path must not exceed 2 EPNdB.

(e) For approach, a steady glide path angle of 3° ± 0.5° is acceptable.

(f) If equivalent test procedures different from the reference procedures are used, the test procedures and all methods for adjusting the results to the reference procedures must be approved by the FAA. The adjustments may not exceed 16 EPNdB on takeoff and 8 EPNdB on approach. If the adjustment is more than 8 EPNdB on takeoff, or more than 4 EPNdB on approach, the resulting numbers must be more than 2 EPNdB below the limit noise levels specified in section B36.5.

(g) During takeoff, lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within ±3% of the average airspeed between the 10 dB-down points. This airspeed is determined by the pilot's airspeed indicator. However, if the instantaneous indicated airspeed exceeds ±3 kt (±5.5 km/h) of the average airspeed over the 10 dB-down points, and is determined by the FAA representative on the flight deck to be due to atmospheric turbulence, then the flight so affected must be rejected for noise certification purposes.

Note: Guidance material on the use of equivalent procedures is provided in the current advisory circular for this part.

17. Remove and reserve appendix C of part 36.

Appendix G [Amended]

18. In appendix G, amend paragraph (f) of section G36.105 by removing the reference "paragraph A36.3(e) of Appendix A" and adding "paragraphs A36.3.8 and A36.3.9 of Appendix A" in its place.

Appendix H [Amended]

19. Amend appendix H as follows:

a. In paragraph (d)(1) of section H36.101 by removing the reference to "appendix B" and adding "appendix A" in its place;

b. Amend paragraph (c)(3) of section H36.111 of appendix H by removing the reference "A36.3(f)(3)" and adding "A36.3.10.1" in its place.

c. Amend section H36.201 of appendix H in paragraph (a) introductory text by removing the references to "appendix B" and adding "appendix A" in its place; and in paragraph (b) by removing the reference to "B36.5(a)" and adding "A 6.4.3.1(a)" in its place.

PART 91—GENERAL OPERATING AND FLIGHT RULES

20. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

§ 91.801 [Amended]

21. In paragraphs (a)(1) introductory text, (a)(2), (c), and (d) remove the word "turbojet" and add the words "jet (turbojet)" in its place.

§ 91.851 [Amended]

22. In the definitions of "Fleet", "Stage 2 airplane", and "Stage 3 airplane" remove the word "turbojet" and add the words "jet (turbojet)" in its place.

Issued in Washington, DC, on June 18, 2002.

Jane F. Garvey,

Administrator.

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Part III

Library of Congress

Copyright Office

37 CFR Part 261

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 261

[Docket No. 2000–9 CARP DTRA 1&2]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is adopting rates and terms for the digital performance of sound recordings and ephemeral recordings. The rates and terms will govern the royalty payments for the statutory licenses for nonexempt subscription digital audio transmissions and for the making of ephemeral recordings to facilitate those transmissions for the period October 28, 1998 through December 31, 2002.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Deputy General Counsel, P.O. Box 70977, Washington, DC 20024-0977. Telephone (202) 707-8380. Telefax (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

These proceedings began on November 27, 1998, when the Copyright Office announced a six-month voluntary negotiation period to set rates and terms for the webcasting license and the ephemeral recording license for the first license period covering October 28, 1998–December 31, 2000. 63 FR 6555 (November 27, 1998). During this negotiation period, the Office received petitions to declare controversies concerning royalty rates and terms for the webcasting license and the ephemeral recording license. 64 FR 8576 (February 22, 1999). The Office then announced the initiation of the proceedings to set rates and terms for the webcasting license and the ephemeral recording license. 64 FR 8576 (February 22, 1999). The Office also announced the commencement of a voluntary negotiation period to set rates and terms for the webcasting license and the ephemeral recording license for the second license period covering January 1, 2001–December 31, 2002. 64 FR 8576 (February 22, 1999). The Office received petitions to declare controversies concerning royalty rates and terms for the webcasting license and the ephemeral recording license. 64 FR 8576 (February 22, 1999). The Office then announced the initiation of the proceedings to set rates and terms for the webcasting license and the ephemeral recording license. 64 FR 8576 (February 22, 1999).

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 261

[Docket No. 2000–9 CARP DTRA 1&2]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Librarian of Congress, upon recommendation of the Register of Copyrights, is announcing the determination of the reasonable rates and terms for two compulsory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings.

EFFECTIVE DATE: July 8, 2002.

ADDRESSES: The full text of the public version of the Copyright Arbitration Royalty Panel's report to the Librarian of Congress is available for inspection and copying during normal working hours in the Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540. The report is also posted on the Copyright Office website at *http://www.copyright.gov/carp/webcasting_rates.html*.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

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I. Background

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act ("DPRA"), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly their sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt, noninteractive, digital subscription transmissions. 17 U.S.C. 114(f).

The scope of this license was expanded in 1998 upon passage of the Digital Millennium Copyright Act of 1998 ("DMCA" or "Act"), Public Law 105–304, in order to allow a nonexempt eligible nonsubscription transmission [1] (the "webcasting license") and a nonexempt transmission by a preexisting satellite digital audio radio service to perform publicly a sound recording in accordance with the terms and rates of the statutory license. 17 U.S.C. 114(a). In addition to expanding the section 114 license, the DMCA also created a new statutory license for the making of an "ephemeral recording" of a sound recording by certain transmitting organizations (the "ephemeral recording license"). 17 U.S.C. 112(e). The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for purposes of a later transmission. The new license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord permitted under the exemption set forth in section 112(a). 7 U.S.C. 112(e).

The statutory scheme for establishing reasonable terms and rates is the same for both of the new licenses. The terms and rates for the two new statutory licenses may be determined by voluntary agreement among the affected parties, or if necessary, through compulsory arbitration conducted pursuant to Chapter 8 of the Copyright Act.

In this case, interested parties were unable to negotiate an industry-wide agreement. Therefore, a Copyright Arbitration Royalty Panel ("CARP") was convened to consider proposals from interested parties and, based upon the written record created during this process, to recommend rates and terms for both the webcasting license and the ephemeral recording license.

[1] An "eligible nonsubscription transmission" is a noninteractive, digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made a part of a service that provides audio programming consisting in a whole or in part of performances of sound recordings; the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services.

II. The CARP Proceeding to Set Reasonable Rates and Terms

These proceedings began on November 27, 1998, when the Copyright Office announced a six-month voluntary negotiation period to set rates and terms for the webcasting license and the ephemeral recording license for the first license period covering October 28, 1998–December 31, 2000. 63 FR 6555 (November 27, 1998). During this period, the parties negotiated a number of private agreements in the marketplace, but no industry-wide agreement was reached. Consequently, in accordance with the procedural requirements, the Recording Industry Association of America, Inc. ("RIAA") petitioned the Copyright Office on July 23, 1999, to commence a CARP proceeding to set the rates and terms for these licenses. The Office responded by setting a schedule for the CARP proceeding. See 64 FR 52107 (Sept. 27, 1999).

However, the schedule proved unworkable for the parties. RIAA filed a motion with the Copyright Office on November 23, 1999, requesting a postponement of the date for filing direct cases. It argued that the Office should provide more time for the parties to prepare their cases in light of the complexity of the issues and the record number of new participants. The Office granted this request and held a meeting to clarify the procedural aspects of the proceeding, especially for the new participants, and to discuss a new schedule for the arbitration phase of the process. Order in Docket No. 99–6 CARP DTRA (dated December 22, 1999). In the meantime, the Office commenced the six-month negotiation period for the second license period, covering January 1, 2001–December 31, 2002. 66 FR 2194 (January 13, 2000). Ultimately, the Copyright Office consolidated these two proceedings into a single proceeding in which one CARP would set rates and terms for the two license periods for both the webcasting license and the ephemeral recording license. See Order in Docket Nos. 99–6 CARP DTRA and 2000–3 CARP DTRA 2 (December 4, 2000). The 180-day period for the consolidated proceeding began on July 30, 2001, and on February 20, 2002, the panel submitted its report (the "CARP Report" or "Report"), in which it proposed rates and terms to the Copyright Office. It is the decision of this Panel that is the basis for the Librarian's decision today.[2]

[2] Section 802 (e) of the Copyright Act requires the CARP to report its determination concerning the royalty fee to the Librarian of Congress 180 days after the initiation of a proceeding. In this particular instance, the Panel submitted its report approximately three weeks later than anticipated under this provision due to a suspension of the proceedings during the period November 9, 2001, through December 2, 2001. The Copyright Office granted the suspension at the parties' request in order to allow them to engage in further settlement discussions. At the same time, the Office granted the Panel an additional period of time, commensurate with the suspension period, for hearing evidence and preparing its report. See Order, Docket No. 2000–9 CARP DTRA 1&2 (November 9, 2001). Additional details concerning the earlier procedural aspects of this proceeding are set forth in the CARP Report at pp. 10–18.

A. The Parties

The parties [3] to this proceeding are: (i) The Webcasters,[4] namely, BET.com, Comedy Central, Echo Networks, Inc., Listen.com, Live365.com, MTVi Group, LLC, Myplay, Inc., NetRadio Corporation, Radio Active Media Partners, Inc.; RadioWave.com, Inc., Spinner Networks Inc. and XACT Radio Network LLC; (ii) the FCC-licensed radio Broadcasters,[5] namely, Susquehanna Radio Corporation, Clear Channel Communications Inc., Entercom Communications Corporation, Infinity Broadcasting Corporation, and National Religious Broadcasters Music License Committee (collectively "the Broadcasters"); (iii) the Business Establishment Services,[6] namely, DMX/AEI Music Inc. (also referred to as "Background Music Services"); (iv) American Federation of Television and Radio Artists ("AFTRA");[7] (v) American Federation of Musicians of the United States and Canada ("AFM");[8] (vi) Association For Independent Music ("AFIM");[9] and (vii) Recording Industry Association of America, Inc. ("RIAA").[10] Music Choice, a Business Establishment Service, was initially a party to this proceeding, but on March 26, 2001, it filed a motion to withdraw from the proceeding. Its motion was unopposed and, on May 9, 2001, its motion to withdraw was granted.

[3] At the outset of the proceeding, Webcaster parties also included Coollink Broadcast Network, Everstream, Inc., Incanta, Inc., Launch Media, Inc., MusicMatch, Inc., Univision Online, and Westwind Media.com, Inc., which have since withdrawn or been dismissed from the proceeding. Late in the proceeding, National Public Radio ("NPR") reached a private settlement with RIAA and withdrew prior to the conclusion of the 180-day hearing period. Because RIAA, AFTRA, AFM, and AFIM propose the same rates and take similar positions on most issues, they are sometimes referred to collectively as "RIAA" or "Copyright Owners and Performers" for convenience. Similarly, Webcasters, Broadcasters, and the Business Establishment Services are sometimes referred to collectively as "the Services."

[4] The Webcasters are *Internet* services that each employ a technology known as "streaming," but comprise a range of different business models and music programming.

[5] The Broadcasters are commercial AM or FM radio stations that are licensed by the Federal Communications Commission ("FCC").

[6] The Business Establishment Services, DMX/AEI Music, deliver sound recordings to business establishments for the enjoyment of the establishments' customers. See Knittel W.D.T. 4. DMX/AEI Music is the successor company resulting from a merger between AEI Music Network, Inc. ("AEI") and DMX Music, Inc. ("DMX").

[7] AFTRA, the American Federation of Television and Radio Artists, is a national labor organization representing performers and newspersons. See Tr. 2830 (Himelfarb).

[8] AFM, the American Federation of Musicians, is a labor organization representing professional musicians. See Bradley W.D.T. 1.

[9] AFIM, the Association For Independent Music, is a trade association representing independent record companies, wholesalers, distributors and retailers. See Tr. 2830 (Himelfarb)

[10] RIAA is a trade association representing record companies, including the five "majors" and numerous "independent" labels.

[11] Hereinafter, references to proposed findings of fact and conclusions of law shall be cited as "OFFCK" preceded by the name of the party that submitted the filing followed by the paragraph number. References to written direct testimony shall be cited as "W.D.T." preceded by the last name of the witness and followed by a page number. References to written rebuttal testimony shall be cited as "W.R.T." preceded by the last name of the witness and followed by a page number. References to the transcript shall be cited as "TR." followed by the page number and the last name of the witness.

B. The Position of the Parties at the Commencement of the Proceeding

1. Rates Proposed by Copyright Owners

RIAA proposed rates derived from an analysis of 26 voluntarily negotiated agreements between itself and individual webcasters. RIAA claims that these agreements "involve the same buyer, the same seller, the same right, the same copyrighted works, the same time period and the same medium as those in the marketplace that the CARP must replicate." CARP Report at 26, citing RIAA PFFCL [11] (Introduction at 8). Based upon these agreements, RIAA proposed the following rates for DMCA compliant webcasting services:

(i) For basic "business to consumer" (B2C) webcasting services:

0.4c for each transmission of a sound recording to a single listener, or 15% of the service's gross revenues.

(ii) For "business to business" (B2B) webcasting services, where transmissions are made as part of a service that is syndicated to third-party websites:

0.5c for each transmission of a sound recording to a single listener

(iii) For "listener-influenced" webcasting services:

0.6c for each transmission of a sound recording to a single listener

(iv) Minimum fee (subject to certain qualifications): $5,000 per webcasting service

(v) Ephemeral license fee:

10% of each service's performance royalty fee payable under (i), (ii), or (iii).

For the section 112 license applicable to the business establishment services, the copyright owners proposed a rate set at 10% of gross revenues with a minimum fee of $50,000 a year.

2. Rates Proposed by Services

The proposed rates are set forth in Appendix A of the CARP Report, which is posted on the Copyright Office website at: *http://www.copyright.gov/carp/webcasting_rates_a.pdf*.

The proposed terms of payment may be found in Appendix B of the CARP Report, which is posted on the Copyright Office website at: *http://www.copyright.gov/carp/webcasting_rates_b.pdf*.

Review of the case law applying the APA "arbitrary" standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency action is generally considered to be arbitrary when:

1. It relies on factors that Congress did not intend it to consider;

2. It fails to consider entirely an important aspect of the problem that it

CRT, 720 F.2d 1295 (D.C. Cir. 1983) (*Christian Broadcasting* v. *CRT*); *National Cable Television Ass'n* v. *CRT*, 689 F.2d 1077 (D.C. Cir. 1982) (*NCTA* v. *CRT*); *Recording Indus. Ass'n of America* v. *CRT*, 662 F.2d 1 (D.C. Cir. 1981) (*RIAA* v. *CRT*). As the D.C. Circuit succinctly noted:

> We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must

Librarian reject the proposed rates ($0.14 per performance for Internet-only transmissions and $0.07 per performance for radio retransmissions) for the section 114 license and substitute his own determination (0.07c per performance for both types of transmissions), based upon the Panel's analysis of the hypothetical marketplace, and its reliance upon contractual agreements negotiated in the

services for its use of the ephemeral license at $500 when clear evidence exists in the contractual agreements to establish a much higher range of values for setting the minimum fee. Consequently, the Register evaluated the contracts and proposed a minimum fee consistent with the record evidence. The result is a minimum fee of $10,000 per license pro rated on a monthly basis.

Section 802(f) states that "[i]f the

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(v) Ephemeral license fee:

10% of each service's performance royalty fee payable under (i), (ii), or (iii).

For the section 112 license applicable to the business establishment services, the copyright owners proposed a rate set at 10% of gross revenues with a minimum fee of $50,000 a year.

2. Rates Proposed by Services

Webcasters proposed per-performance and per-hour sound recording performance fees, based upon an economic model, that considered the aggregate fees paid to the three performance rights organizations (ASCAP, BMI, and SESAC) that license the public performances of musical works for radio programs that are broadcast over-the-air by FCC-licensed broadcasters, by 872 radio stations during 2000. From this model, the webcasters derived a per-song and a per-listener hour base rate of 0.02¢ per song and 0.3¢ per hour, respectively. These figures were then adjusted to account for a number of factors, including the promotional value gained by the record companies from the performance of their works. This adjustment resulted in a fee proposal of 0.014¢ per performance or 0.21¢ per hour.

At the end of the proceeding, Webcasters suggested in their proposed findings of fact and conclusions of law an alternative method for calculating royalty fees, namely, a percentage-of-revenue fee structure. Specifically, Webcasters proposed a fee of 3% of a webcaster's gross revenues for all services. The alternative proposal was made with the understanding that the service would be able to elect either option.

Webcasters proposed no additional fee for the making of ephemeral recordings and a minimum fee of $250 per annum for each service operating under the section 114 license.

The Business Establishment Services who need only an ephemeral recording license proposed a flat rate of $10,000 per year for each company.

C. The Panel's Determination of Reasonable Rates and a Minimum Fees

In this proceeding, the Panel had to establish rates and terms of payment for digital transmissions of sound recordings made by noninteractive, nonsubscription services and rates for the making of ephemeral phonorecords made pursuant to the section 112(e) license; either to facilitate those transmissions made or by business establishments which are otherwise exempt from the digital performance right.

The proposed rates are set forth in Appendix A of the CARP Report, which is posted on the Copyright Office website at: *http://www.copyright.gov/carp/webcasting_rates_a.pdf*.

The proposed terms of payment may be found in Appendix B of the CARP Report, which is posted on the Copyright Office website at: *http://www.copyright.gov/carp/webcasting_rates_b.pdf*.

III. The Librarian's Scope of Review of the Panel's Report

The Copyright Royalty Tribunal Reform Act of 1993 (the Reform Act), Pub. L. No. 103–198, 107 Stat. 2304, created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review that result in final orders: one by the Librarian of Congress (Librarian) and a second by the United States Court of Appeals for the District of Columbia Circuit. Section 802(f) of title 17 directs the Librarian on the recommendation of the Register of Copyrights either to accept the decision of the CARP, or to reject it. If the Librarian rejects it, he must substitute his own determination "after full examination of the record created in the arbitration proceeding." 17 U.S.C. 802(f). If the Librarian accepts it, then the determination of the CARP becomes the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that will be subject to review by the Court of Appeals. 17 U.S.C. 802(g).

The review process has been thoroughly discussed in prior recommendations of the Register of Copyrights (Register) concerning rate adjustments and royalty distribution proceedings. See, e.g., Distribution of 1990, 1991, and 1992 Cable Royalties, 61 FR 55653 (1996); Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (October 28, 1997). Nevertheless, the discussion merits repetition because of its importance in reviewing each CARP decision.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP, "unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title." Neither the Reform Act nor its legislative history indicates what is meant specifically by "arbitrary," but there is no reason to conclude that the use of the term is any different from the "arbitrary" standard described in the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A).

Review of the case law applying the APA "arbitrary" standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency action is generally considered to be arbitrary when:

1. It relies on factors that Congress did not intend it to consider;
2. It fails to consider entirely an important aspect of the problem that it was solving;
3. It offers an explanation for its decision that runs counter to the evidence presented before it;
4. It issues a decision that is so implausible that it cannot be explained as a product of agency expertise or a difference of viewpoint;
5. It fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; and
6. Its action entails the unexplained discrimination or disparate treatment of similarly situated parties.

Motor Vehicle Mfrs. Ass'n. State Farm Mutual Auto. Insurance Co., 463 U.S. 29 (1983); *Celcom Communications Corp.* v. *FCC*, 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp.* v. *FAA*, 758 F.2d 685 (D.C. Cir. 1985).

In reviewing the CARP's decision, the Librarian has been guided by these principles and the prior decisions of the District of Columbia Circuit in which the court applied the "arbitrary and capricious" standard of 5 U.S.C. 706(2)(A) to the determinations of the former Copyright Royalty Tribunal (hereinafter "CRT or Tribunal"). See, e.g, *National Cable Tele. Ass'n* v. *CRT*, 724 F.2d 176 (D.C. Cir. 1983) (applying the Administrative Procedure Act's standard authorizing courts to set aside agency action found to be arbitrary, capricious, and abuse of discretion, or otherwise in accordance with law."); see also, *Recording Industry Ass'n of America* v. *CRT*, 662 F.2d 1, 7–9 (D.C. Cir. 1981); *Amusement and Music Operators Ass'n* v. *CRT*, 676 F.2d 1144, 1149–52 (7th Cir.), cert denied, 459 U.S. 907 (1982); *National Ass'n of Broadcasters* v. *CRT*, 675 F.2d 367, 375 n. 8 (D.C. Cir. 1982).

Review of judicial decisions regarding Tribunal actions reveals a consistent theme; while the Tribunal was granted a relatively wide "zone of reasonableness," it was required to articulate clearly the rationale for its award of royalties to each claimant. See *National Ass'n of Broadcasters* v. *CRT*, 772 F.2d 922 (D.C. Cir. 1985), cert. denied, 475 U.S. 1035 (1986) (*NAB* v. *CRT*); *Christian Broadcasting Network* v. *CRT*, 720 F.2d 1295 (D.C. Cir. 1983) (*Christian Broadcasting* v. *CRT*); *National Cable Television Ass'n* v. *CRT*, 689 F.2d 1077 (D.C. Cir. 1982) (*NCTA* v. *CRT*); *Recording Indus. Ass'n of America* v. *CRT*, 662 F.2d 1 (D.C. Cir. 1981) (*RIAA* v. *CRT*). As the D.C. Circuit succinctly noted:

> We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must especially insist that it weigh all the relevant considerations and that it set out its conclusions in a form that permits us to determine whether it has exercised its responsibilities lawfully. * * *
>
> *Christian Broadcasting* v. *CRT*, 720 F.2d at 1319 (D.C. Cir. 1983), quoting *NCTA* v. *CRT*, 689 F.2d at 1091 (D.C. Cir. 1982).

Because the Librarian is reviewing the CARP decision under the same "arbitrary" standard used by the courts to review the Tribunal, he must be presented by the CARP with a rational analysis of its decision, setting forth specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history of the Reform Act which notes that a "clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress." H.R. Rep. No. 103–286, at 13 (1993). This goal cannot be reached by "attempt[ing] to distinguish apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record." *Christian Broadcasting* v. *CRT*, 720 F.2d at 1319.

It is the task of the Register to review the report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination. 17 U.S.C. 802(f).

IV. The CARP Report: Review and Recommendation of the Register of Copyrights

The law gives the Register the responsibility to review the CARP report and make recommendations to the Librarian whether to adopt or reject the Panel's determination. In doing so, she reviews the Panel's report, the parties' post-panel submissions, and the record evidence.

After carefully considering the Panel's report and the record in this proceeding, the Register has concluded that the rates proposed by the Panel for use of the webcasting license do not reflect the rates that a willing buyer and willing seller would agree upon in the marketplace. Therefore, the Register has made a recommendation that the Librarian reject the proposed rates ($0.14 per performance for Internet-only transmissions and $0.07 per performance for radio retransmissions) for the section 114 license and substitute his own determination (0.07c per performance for both types of transmissions), based upon the Panel's analysis of the hypothetical marketplace, and its reliance upon contractual agreements negotiated in the marketplace.

These changes necessitate an adjustment to the proposed rates for non-CPB, noncommercial broadcasters [12] for Internet-only transmissions as well. The adjusted rate for archived programming subsequently transmitted over the Internet, substituted programming and up to two side channels is 0.02¢, reflecting a downward adjustment from the 0.05¢ rate proposed by the Panel. The new rate for all other transmissions made by non-CPB, noncommercial broadcasters is 0.07¢ per performance per listener. Using this methodology, the Register recommends that the Librarian also reject the Panel's determination of a rate for the making of ephemeral recordings by those Licensees operating under the webcasting license. Because the Panel had made an earlier determination not to consider 25 of the 26 contracts submitted by RIAA for the purpose of setting a rate for the webcasting license, it was arbitrary for the Panel to use these same rejected licenses to set the Ephemeral License Fee. See section IV.13 herein for discussion. Consequently, the Register proposes a downward adjustment—from 9% of the performance royalties paid to 8.8%—to the Ephemeral License Fee to remove the effect of the discarded licenses.

In determining the Ephemeral License Fee for Business Establishment Services operating under an exemption to the digital performance right, the CARP considered separate licenses negotiated in the marketplace between individual record companies and these services. Its reliance on these agreements as an adequate benchmark for purposes of setting the rate for the section 112 license was well-founded and supported by the record. Therefore, the Register recommends adopting the Panel's proposal of setting the Ephemeral License Fee for Business Establishment Services at 10% of the service's gross proceeds. However, the Register cannot support the Panel's recommendation to set the minimum fee applicable to these services for its use of the ephemeral license at $500 when clear evidence exists in the contractual agreements to establish a much higher range of values for setting the minimum fee. Consequently, the Register evaluated the contracts and proposed a minimum fee consistent with the record evidence. The result is a minimum fee of $10,000 per license pro rated on a monthly basis.

Section 802(f) states that "[i]f the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 90-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be." During that 90-day period, the Register reviewed the Panel's report and made a recommendation to the Librarian to accept in part and reject in part the Panel's report, for the reasons cited herein. The Librarian accepted this recommendation and, on May 21, 2002, he issued an order rejecting the Panel's determination proposing rates and terms for the webcasting license and the ephemeral recording license. See Order, Docket No. 2000–9 CARP DTRA 1&2 (dated May 21, 2002).

The full review of the Register and her corresponding recommendations are presented herein. Within the limited scope of the Librarian's review of this proceeding, "the Librarian will not second guess a CARP's balance and consideration of the evidence, unless its decision runs completely counter to the evidence presented to it." Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55757 (1997), citing 61 FR 55663 (October 28, 1996) (Distribution of 1990, 1991 and 1992 Cable Royalties). Accordingly, the Register accepts the Panel's weighing of the evidence and will not question findings and conclusions which proceed directly from the arbitrators' consideration of factual evidence. The Register, however, may reject a finding of the Panel where it is clear that its determination is not supported by the evidence in the record.

A. Establishing Appropriate Rates

1. The "Willing Buyer/Willing Seller Standard"

Sections 112(e)(4) and 114(f)(2)(B), of title 17 of the U.S.C., provide that "the copyright arbitration royalty panel shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller," and enumerate two factors that the panel shall consider in making its decisions: (1) The effect of

[12] A non-CPB, noncommercial broadcaster is a Public Broadcasting Entity as defined in 17 U.S.C. 118(g) that is not qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

the use of the sound recordings on the sale of phonorecords, and (2) the relative contributions made by both industries in bringing these works to the public. In applying this standard, the Panel determined that it was to consider the enumerated factors along with all other relevant factors identified by the parties, but that it was not to accord the listed factors special consideration.

response rates in the survey study fell below generally acceptable standards. All in all, the evidence on either side was not persuasive. Consequently, the Panel concluded that, for the time period under consideration, "the net impact of Internet webcasting on record sales [was] indeterminate." Id. at 34.

Broadcasters, however, disagree with the Panel's conclusions. They argue that

considerations, including any significant promotional value of the transmissions, would already have been factored into the agreed upon price. Id. at 35–36. This is not a contested finding.

It is also important at the outset of this review to distinguish the willing buyer/willing seller standard to be used in this proceeding from the standard that applies when setting rates for

willing sellers would agree" in a competitive marketplace.[15] Id. at 25.

The Services take issue with the Panel's analysis of the hypothetical marketplace. They argue that the willing sellers should be considered as a group of hypothetical "competing collectives each offering access to the range of sound recordings required by the Services," and not, as the Panel contends, viewed as individual record

unfair bargaining advantage over the Services because RIAA represented the five major record companies who together owned most of the works. They contend that RIAA used its superior market power to negotiate supra-competitive prices with Services who could not match either RIAA's power in the marketplace or its sophistication in negotiating contracts. Moreover, they utterly reject the Panel's determination

license). Thus, the CARP could only consider negotiated rates for the rights covered by the statutory license that were contained in an agreement between RIAA and a Service with comparable resources and market power.

The only agreement that met these criteria was the Yahoo![17] agreement. The Panel found that both parties to that agreement entered into negotiations in

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the use of the sound recordings on the sale of phonorecords, and (2) the relative contributions made by both industries in bringing these works to the public. In applying this standard, the Panel determined that it was to consider the enumerated factors along with all other relevant factors identified by the parties, but that it was not to accord the listed factors special consideration. Report at 21; see also Final Rule and Order, Rate Adjustment for the Satellite Carrier Compulsory License, Docket No. 96–3 CARP SRA, 62 FR 55742, 55746 (October 28, 1997).

Nevertheless, when the Panel considered the record evidence offered to establish a marketplace rate, it paid close attention to the two factors set forth in the statute. In analyzing the first factor, which focuses on the interplay between webcasting and sales of phonorecords, the panel found that the evidence offered during the proceeding was insufficient to demonstrate whether webcasting promoted or displaced sales of sound recordings. RIAA's evidence to demonstrate that performances of their sound recordings over the Internet displace record sales consisted of unsupported opinion testimony and consequently, the Panel afforded it no weight. Report at 33. Similarly, the Panel rejected the Webcasters' contention that webcasting promoted sales, affording little weight to its empirical studies. It concluded that the Sounddata survey [13] was not useful for purposes of this proceeding because it focused on the promotional value of traditional radio broadcasts and not the promotional value of webcasting. Id. Likewise, the Panel rejected a study by Professor Michael Mazis [14] because the response rates in the survey study fell below generally acceptable standards. All in all, the evidence on either side was not persuasive. Consequently, the Panel concluded that, for the time period under consideration, "the net impact of Internet webcasting on record sales [was] indeterminate." Id. at 34.

Broadcasters, however, disagree with the Panel's conclusions. They argue that the Panel should have made an adjustment for the promotional value of the transmissions, noting that the statute singled out this factor for consideration when setting the rates. Broadcasters Petition at 38. They further contend that the record demonstrates that "the promotional value of radio play should be far and away the most significant factor in determining the fair market value of broadcasters simulcast rates." Id. at 39–40. But all the evidence cited in the record references the interrelationship between radio stations and record companies in the analog world. As noted above, the Panel considered the evidence but did not find it persuasive.

Where the Panel makes a decision based upon its weighing of the evidence, the Register will not disturb its findings and conclusions that proceed directly from the Panel's consideration of the factual evidence. Thus, the Register accepts the Panel's conclusion that performances of sound recordings over the Internet did not significantly stimulate record sales. More importantly, though, the Panel correctly found that promotional value is a factor to be considered in determining rates under the willing buyer/willing seller model, and does not constitute an additional standard or policy consideration to be used after rates are set to adjust a base rate upwards or downwards. Report at 21. Therefore, the effect of any promotional value attributable to a radio retransmission would already be reflected in the rates for these transmissions reached through arms-length negotiations in the marketplace.

As for the second factor, the Panel found that both copyright owners and licensees made significant creative, technological and financial contributions. It concluded, however, that it was not necessary to gauge with specificity the value of these contributions in the case where actual agreements voluntarily negotiated in the marketplace existed, since such considerations, including any significant promotional value of the transmissions, would already have been factored into the agreed upon price. Id. at 35–36. This is not a contested finding.

It is also important at the outset of this review to distinguish the willing buyer/willing seller standard to be used in this proceeding from the standard that applies when setting rates for subscription services that operated under the section 114 license. They are not the same. Section 114(f)(1)(B), governing subscription services, requires a CARP to consider the objectives set forth in section 801(b)(1), as well as rates and terms for comparable types of digital audio transmission services established through voluntary negotiations. See Final Rule and Order, 63 FR 25394, 25399 (May 8, 1998). This standard for setting rates for the subscription services is policy-driven, whereas the standard for setting rates for nonsubscription services set forth in section 114(f)(2)(B) is strictly fair market value—willing buyer/willing seller. Thus, any argument that the two rates should be equal as a matter of law is without merit. See, e.g., Webcasters Petition at 4 (comparing rates set for preexisting subscription services under the policy driven standard with the proposed marketplace rates for nonsubscription services and inferring that the rates should be similar).

2. Hypothetical Marketplace/Actual Marketplace

To set rates based on a willing buyer/willing seller standard, the CARP first had to define the relevant marketplace in which such rates would be set. It determined, and the parties agreed, that the rates should be those that a willing buyer and willing seller would have agreed upon in a hypothetical marketplace that was not constrained by a compulsory license. The CARP then had to define the parameters of the marketplace: the buyers, the sellers, and the product.

In this configuration of the marketplace, the willing buyers are the services which may operate under the webcasting license (DMCA-compliant services), the willing sellers are record companies, and the product consists of a blanket license from each record company which allows use of that company's complete repertoire of sound recordings. Report at 24. Because of the diversity among the buyers and the sellers, the CARP noted that one would expect "a range of negotiated rates," and so interpreted the statutory standard as "the rates to which, absent special circumstances, most willing buyers and willing sellers would agree" in a competitive marketplace.[15] Id. at 25.

The Services take issue with the Panel's analysis of the hypothetical marketplace. They argue that the willing sellers should be considered as a group of hypothetical "competing collectives each offering access to the range of sound recordings required by the Services," and not, as the Panel contends, viewed as individual record companies. Broadcasters Petition at 9; Webcasters Petition at 9–10. It is hard to see, however, how competition would be stimulated in a marketplace where every seller offers the exact same product and where more likely than not, the sellers would act in concert to extract monopolistic prices. Possibly sellers would choose to undercut each other, but at some point the price would stabilize. In any event, the Services failed to explain how such collectives would operate in a competitive marketplace. Consequently, the Register rejects the Webcasters' challenge to the Panel's definition on this point and adopts the Panel's characterization of the relevant marketplace, recognizing that for purposes of this proceeding, the major record companies are represented by a single entity, the RIAA.

Turning next to the actual marketplace in which RIAA negotiated agreements with individual services, the Services voice a number of objections to the Panel's decision to rely on the 26 voluntary agreements offered into evidence by RIAA. Specifically, the Services object to the use of the voluntary agreements because they fail to exhibit a range of negotiated rates among diverse buyers and sellers. Broadcasters Petition at 10; Webcasters Petition at 10. They also question the validity of relying on agreements negotiated during the early stages of a newly emerging industry, noting the Panel's admonition to approach such agreements with caution. Report at 47. The reason for the warning was Dr. Jaffe's [16] stated concern that such licenses "may not reflect fully educated assessments of the nascent businesses' long-term prospects."

The Services also argue that the existence of the antitrust exemption in the statutory license gave RIAA an unfair bargaining advantage over the Services because RIAA represented the five major record companies who together owned most of the works. They contend that RIAA used its superior market power to negotiate supra-competitive prices with Services who could not match either RIAA's power in the marketplace or its sophistication in negotiating contracts. Moreover, they utterly reject the Panel's determination that RIAA's perceived market power was tempered by the existence of the statutory license, which, for purposes of negotiating a fair rate for use of sound recordings, leveled the playing field. Webcasters Petition at 12.

Not surprisingly, RIAA agrees with the Panel on this issue. It maintains that the statutory license offers the Services two clear advantages which more than offset any perceived advantage the RIAA may have had in negotiating a voluntary agreement. First, the license eliminates the usual transaction costs associated with negotiating separate licenses with each of the copyright owners. Second, services may avoid litigation costs associated with setting the rates for a statutory license provided they choose not to participate in the CARP process. RIAA reply at 12.

In essence, both sides articulate valid positions which are supported by the record. RIAA is clearly an established market force with extensive resources and sophistication. In fact, the Panel found that when RIAA negotiated with less sophisticated buyers who could not wait for the outcome of this proceeding, the rates were above-market value, and therefore, not considered by this CARP. Report at 54–56. Nevertheless, it would make no sense for RIAA to take any other position in a marketplace negotiation. Sellers expect to make a profit and will extract from the market what they can, just as buyers will do everything in their power to get the product at the lowest possible price. These are the fundamental principles guiding marketplace negotiations.

Such negotiations, however, were few. For the most part, webcasters chose not to enter into negotiations for voluntary agreements, knowing that they could continue to operate and wait for the CARP to establish a rate. Such actions on the part of the users clearly impeded serious negotiations in the marketplace and support the CARP's observation that the statutory license had a countervailing effect on the negotiation process and limited the ability of RIAA to exert undue marketplace power. See Tr. 9075–77, 9490–94 (Marks) (explaining the difficulties of bringing webcasters to the negotiating table due to the statutory license). Thus, the CARP could only consider negotiated rates for the rights covered by the statutory license that were contained in an agreement between RIAA and a Service with comparable resources and market power.

The only agreement that met these criteria was the Yahoo![17] agreement. The Panel found that both parties to that agreement entered into negotiations in good faith and on equal footing. Moreover, RIAA's negotiating advantage disappeared. RIAA could not extract super-competitive rates because Yahoo! brought comparable resources, sophistication, and market power to the negotiating table.

Moreover, Yahoo! could have continued to operate under the license and wait for the outcome of this proceeding. Yet, Yahoo!, unlike most of the other Services, did not take this course of action. It wanted a negotiated agreement so that it could fully develop its business model based on certainty as to the costs of the use of the sound recordings. Consequently, it had every incentive to negotiate a rate that reflected its perception of the value of the digital performance right in light of its needs and position in the marketplace. Had RIAA insisted upon a super competitive rate, Yahoo! could have walked away and waited for the CARP to set the rates. RIAA Reply at 13. Thus, it was not arbitrary for the Panel to consider the negotiated agreement between Yahoo! and RIAA. It met all the criteria identified by the CARP (discussed above) that characterized the hypothetical marketplace: Yahoo! was a DMCA-compliant Service; RIAA represented the interests of five independent record companies, and the license granted the same rights as those offered under the webcasting and the ephemeral recording licenses.

The Webcasters make one final argument concerning use of licenses negotiated in the marketplace. They fault the Panel for its reliance on a contract for which there was no prior marketplace precedent for setting a rate. Webcasters Petition at 15. Yet, that alone cannot be a reason to reject

[13] Michael Fine is an expert witness for the Webcasters and Broadcasters. He was the chief executive officer to Soundata, SoundScan and Broadcast Data Systems until December 31, 2000, and is now a management consultant to the firms operating these services. He analyzed data collected by these services to determine the promotional effect upon record sales from radio retransmissions and Internet-only transmissions and the displacement effect of record sales due to copying of sound recordings from Internet transmissions. Fine's W.D.T. at 1.

[14] Professor Mazis is a Professor in the Kogod School of Business, American University, who testified on behalf of the Webcasters and Broadcasters. He designed a survey study to analyze usage patterns of people who listen to simulcast of a radio station's over-the-air broadcast programming and transmissions made by services transmitting solely over the Internet. Specifically, the study was designed to measure:

a. The effect listening to transmissions over the Internet had on a listener's music purchases;

b. the extent to which listeners to radio retransmissions are either listeners from the broadcaster's local market or non-local listeners;

c. the amount of time spent listening to programming on the Internet and the proportion of that time spent listening to music programming versus non-music programming; and

d. the reasons why people visit radio station websites and the activities they engage in when they visit these sites. Mazis' W.D.T. at 1–2.

[15] The panel used the same analysis for setting the rates for the ephemeral recording license because the statutory language defining the standard for setting rates for the ephemeral recording license is nearly identical to the standard set forth in section 114.

[16] Adam Jaffe is a Professor of Economics at Brandeis University. He is also the Chair of the Department of Economics and the Chair of the University Intellectual Property Policy Committee. He testified on behalf of the Webcasters and the Broadcasters.

[17] Yahoo! is a streaming service which provides a retransmissions of AM/FM radio stations and programming from other webcaster sites. Report at 61. Yahoo! is also a global Internet communications, commerce and media company, offering comprehensive services to more than 200 million users each month. Content for its features like Yahoo! Finance, Yahoo! News, and Yahoo! Sports, are typically licensed from third parties. Mandelbrot W.D.T. ¶ 3–5.

The Panel was well aware of the many faces of Yahoo! Nevertheless, it found no reason to reject the Yahoo! agreement merely because it offered other business services. See Report at 76, in 53.

consideration of agreements negotiated in the marketplace, albeit at an early stage in the development of the industry. At some point, rates must be set. Such rates then become the baseline for future market negotiations. RIAA recognized an opportunity to participate in this initial phase and moved forward to negotiate contracts with users with the intention of using these contracts to

the-air radio stations paid in 2000 to the performing rights organizations BMI, ASCAP, and SESAC.[19] It combined the fee data with data on listening audiences obtained from Arbitron to generate an average fee paid by an over-the-air broadcaster per "listening hour." From this value, Webcasters calculated a per performance fee by dividing the "listener hour" fee by the average

a. *Fees paid for use of musical works.* The Broadcasters and the Webcasters fault the Panel for disregarding the fees paid for musical works as a viable benchmark. Webcasters Petition at 15, 47. They maintain that Dr. Jaffe's analysis proves that the value of the performance of the sound recording is no higher than the value of the performance of the musical work.

subscription services. It stated, however, that the evidence in that case did not support a conclusion that the value of the sound recording exceeded the value of the musical work. Moreover, and directly to the point, the Register's recommendation in the earlier proceeding concurred with the earlier Panel's determination that the musical works benchmark is NOT determinative of the marketplace value of the

services on the prior decision setting rates for preexisting subscription services.

Moreover, the Panel is not required to justify why the rates it ultimately recommended here are greater than the rates preexisting subscription services pay for use of the musical works. That is merely the result of the analysis of the written record before this Panel, and its decision flows naturally from its

instances questionable. For example, the Panel did not accept the assumptions that a percentage of revenue model could be converted accurately to a per performance metric, or that the buyers and sellers in the two marketplaces are analogous.

Broadcasters assert that they had established that the value of the musical work is higher than the comparable right for sound recording based on the

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consideration of agreements negotiated in the marketplace, albeit at an early stage in the development of the industry. At some point, rates must be set. Such rates then become the baseline for future market negotiations. RIAA recognized an opportunity to participate in this initial phase and moved forward to negotiate contracts with users with the intention of using these contracts to indicate what a willing buyer would pay in the marketplace. However, that was easier said than done. As discussed above, most Webcasters chose not to enter into marketplace agreements, preferring to wait for the outcome of the CARP proceeding in the hope of getting a low rate. Clearly, such resistance to enter into good faith negotiations made it difficult for the copyright owners to gauge the market accurately and find out just what a willing buyer would be willing to pay for the right to transmit a sound recording over the Internet.

3. Benchmarks for Setting Market Rates: Voluntary Agreements vs. Musical Works Fees

The parties offer two very different methods for setting the webcasting rates. RIAA argued that the best evidence of the value of the digital performance right is the actual rates individual services agreed to pay for the right to transmit sound recordings over the Internet. In support of its position, it offered into evidence 26 separate agreements it had negotiated in the marketplace prior to the initiation of the CARP proceeding. The Services take a different approach. They dispute the validity of the contracts as a bases for marketplace rates and offer in their place a theoretical model (the "Jaffe model") predicated on the fees commercial broadcasters pay to use musical works in their over-the-air AM/FM broadcast programs.

The Jaffe model builds on the premise that in the hypothetical marketplace, copyright owners would license their digital performance rights and ephemeral recording rights at a rate no higher than the rates music publishers currently charge over-the-air radio broadcasters for the right to publicly perform their musical works.[18] Report at 28, citing Webcasters PFFCL ¶¶ 276–78; Jaffe W.D.T. 16–19. To find the rate copyright owners would charge under this model, Webcasters calculated a per performance and a per hour rate by using the aggregate fees that 872 over-the-air radio stations paid in 2000 to the performing rights organizations BMI, ASCAP, and SESAC.[19] It combined the fee data with data on listening audiences obtained from Arbitron to generate an average fee paid by an over-the-air broadcaster per "listening hour." From this value, Webcasters calculated a per performance fee by dividing the "listener hour" fee by the average number of songs played per hour by music-intensive format stations. Id. These calculations yielded a per song fee of 0.02¢ or, in the alternative, a per listener hour fee of 0.22¢. For purposes of webcasting, these values were adjusted upward to reflect the fact that, on average, webcasters play 15 songs per hour, as compared to the 11 per-hour played on over-the-air radio. The webcaster per hour rate works out to be 0.3 instead of 0.2¢ per hour.

After carefully considering both approaches, the Panel chose to focus on the RIAA agreements. In rejecting Dr. Jaffe's theoretical model, the panel cited three reasons for its conclusion. First, the Panel expressed strong concern regarding the construct of the model, including: 1. The difficulty in identifying all the factors that must be considered in setting a price, and 2. The inherent error associated with predicating a prediction on a "string of assumptions," especially where the level of confidence in many of the assumptions is not high. Second, the Panel was wary of analogizing the market for the performance of musical works with the market for the performance of sound recordings, finding instead that the two marketplaces are distinct based upon the difference in cost and demand characteristics. And finally, the Panel determined that the Jaffe model was basically unreliable. It could not be used to predict accurately the amount of royalty fees owed to the performing rights societies by a particular radio station. It came to this conclusion after using the model to predict the royalty fees owed by a particular station and comparing that figure to the amount the radio station actually paid. For some radio stations, the model severely underestimated the amount owed to the performing rights societies, thus, drawing into serious question the reliability of the model. Report at 42.

a. *Fees paid for use of musical works.* The Broadcasters and the Webcasters fault the Panel for disregarding the fees paid for musical works as a viable benchmark. Webcasters Petition at 15, 47. They maintain that Dr. Jaffe's analysis proves that the value of the performance of the sound recording is no higher than the value of the performance of the musical work. Webcasters argue that the fees for musical works constitute a valid benchmark because these rates are the result of transactions between willing buyers and willing sellers over a long period of time, in a marketplace that shares economic characteristics with the marketplace for sound recordings. Webcasters Petition at 48. The Broadcasters agree. They maintain that even under the willing buyer/willing seller standard, "the over-the-air musical works license experience * * * has resulted in fees 'to which most willing buyers and willing sellers [have] agree[d]' and constitute 'comparable agreements negotiated over a longer period, which ha[ve] withstood 'the test of time.'" Broadcasters Petition at 45–46, citing Report at 25, 47.

Broadcasters and Webcasters also object to the Panel's characterization of its proposed benchmark as merely a theoretical model. Webcasters Petition at 51. They maintain that Dr. Jaffe's model was much more than a theoretical model because it used actual data from the musical works marketplace to calculate an analogous rate for use of sound recordings in the digital marketplace. Consequently, these Services contend that the Panel gave inadequate consideration to their proposed benchmark and rejected the model out of hand because it was purported to be only a theoretical model based upon a number of untested assumptions. Broadcasters Petition at 18–19; Webcasters Petition at 18–20, 52.

Finally, the Services argue that the statute does not compel the Panel to consider only negotiated agreements. They also contend, that the reliance on the fees paid for use of the musical works in a prior CARP proceeding to establish rates for subscription services operating under the same license required the panel to give more consideration to the musical works benchmark. Broadcaster's Petition at 1–2; Webcasters Petition at 1–2, 15, 17, 47. Webcasters find support for this last argument in an Order of the Copyright Office issued in this proceeding, dated July 18, 2001.

In that order, the Office acknowledged that in 1998 it had adopted the rates paid for musical works fees as a relevant benchmark for setting rates for

[18] A "musical work" is a musical composition, including any words accompanying the music. A "sound recording" is a work that results from the fixation of a series of musical, spoken, or other sounds, other than those accompanying a motion picture or other audiovisual work.

[19] BMI, Inc., American Society for Composers, Authors and Publishers, and SESAC, Inc. are performing rights organizations that represent songwriters, composers and music publishers in all genres of music. These societies offer licenses and collect and distribute royalty fees for the non-dramatic public performances of the copyrighted works of their members.

subscription services. It stated, however, that the evidence in that case did not support a conclusion that the value of the sound recording exceeded the value of the musical work. Moreover, and directly to the point, the Register's recommendation in the earlier proceeding concurred with the earlier Panel's determination that the musical works benchmark is NOT determinative of the marketplace value of the performance right in sound recordings. The relevant passage states: "The question, however, is whether this reference point (the musical works benchmark) is determinative of the marketplace value of the performance in sound recordings; and, as the Panel determined, the answer is no." 63 FR 25394, 25404 (May 8, 1998).

The July 18 Order went on to note that in the subscription service proceeding, "[h]ad there been record evidence to support the opposite conclusion, [namely, that the value of sound recordings exceeds the value of musical works], the outcome might have been different." This statement was an invitation to the parties to provide whatever evidence they could adduce in this proceeding to establish the value of the sound recording. It was not to be read as an absolute determination, that the value of the sound recording in a marketplace unconstrained by a compulsory license is less than the value of the underlying musical work. Instead, the Order stated that "the musical work fees benchmark identified in a previous rate adjustment proceeding as the upper limit on the value of the performance of a sound recording may or may not be adopted as the outer boundary of the "zone of reasonableness" in this proceeding. This is a factual determination to be made by the CARP based upon its analysis of the record evidence in this proceeding."

It is also important to note that in the prior proceeding, the only reason the Register and the Librarian focused on the musical works benchmark was because it was the only evidence that remained probative after an analysis of the Panel's decision. Each of the other benchmarks possessed at least one fatal deficiency and, consequently, each was rejected as a reliable indicator of the value of the performance of a sound recording by a subscription service. Of equal importance is the fact that the musical works benchmark had never been fully developed in the record, nor had any party relied on it to any great extent in making its case to that Panel. Consequently, it was not arbitrary for the Panel to reject the Services' invitation to anchor its decision for setting rates for nonsubecription services on the prior decision setting rates for preexisting subscription services.

Moreover, the Panel is not required to justify why the rates it ultimately recommended here are greater than the rates preexisting subscription services pay for use of the musical works. That is merely the result of the analysis of the written record before this Panel, and its decision flows naturally from its reliance upon contractual agreements negotiated in the relevant marketplace for the right at issue. This difference in the rates is also attributable to the different standards that govern each rate setting proceeding. As discussed previously in section IV.1, the standard for setting rates for subscription services is policy based and not dependent upon market rates. Consequently, it is more likely that the rates set under the different standards will vary markedly, especially when rates are being set for a new right in a nascent industry.

Nevertheless, the Register agrees with the Services on a number of theoretical points. Certainly, the Panel could have utilized Dr. Jaffe's model in making its decision, either alone or in conjunction with the voluntary agreements, provided that it considered the model's deficiencies, and made appropriate adjustments for the fact that the model required reliance on a string of assumptions to perform the conversion of a rate for the public performance of a musical work in an analog environment, into a comparable rate for the public performance of a sound recording in a digital format. *See AMOA v. CRT*, 676 F2d 1144 (7th Cir. 1982). But the fact remains that it was not required by law to do so. The Panel was free to choose any of the benchmarks offered into the record or to rely on each of them to the degree they aided the Panel in reaching its decision. *See, e.g.*, Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting, 43 FR 25068–69 (CRT found voluntary license between BMI, Inc., and the public broadcasters, Public Broadcasting System and National Public Radio, of no assistance in setting rates for use of ASCAP repertoire).

The Register also rejects the Services' contentions that the Panel failed to consider fully Dr. Jaffe's model. *See* Webcasters Petition at 20, 52. The Panel did consider Jaffe's model and concluded that it need not consider alternative benchmarks that are at best analogous when it had actual evidence of marketplace value of the performance of the sound recordings in the record. Report at 42. It also rejected the offer to utilize the model because the underlying assumptions were in many instances questionable. For example, the Panel did not accept the assumptions that a percentage of revenue model could be converted accurately to a per performance metric, or that the buyers and sellers in the two marketplaces are analogous.

Broadcasters assert that they had established that the value of the musical work is higher than the comparable right for sound recording based on the fees paid for use of these works in movies and television programs. Broadcasters Petition at 24. In addition, they offered a study of the fees paid for these rights in twelve foreign countries where the Services claim these rights are valued more or less equally. *Id.* at 24, 49. Because the Panel failed to analyze this information, the Services argue, the Panel's rejection of the musical benchmark was arbitrary.

RIAA responds that the information offered on the fees paid for the public performance of sound recordings fails to establish that in these countries sound recordings are valued according to a "willing buyer/willing seller" standard. RIAA Reply at 20, fn 36. In fact, many of the countries surveyed evidently use an "equitable remuneration" standard, which courts have held not to be equivalent to a fair market value. Because it is not possible to ascertain whether any of the rates offered in the survey of foreign countries represented a fair market rate, or that the rights in these countries are equivalent to the rights under U.S. law, the Panel was not arbitrary in its decision to disregard this evidence. The Register also concludes that the Panel's decision not to consider master use and synchronization licenses for use of musical works and sound recordings in motion pictures and television was not arbitrary. At best, these licenses offered potential benchmarks for evaluating the digital performance right for sound recordings, and they may well have been useful had not actual evidence of marketplace value of the sound recordings existed. In any event, they did not represent better evidence than the voluntary agreements negotiated in the marketplace for the sound recording digital performance right.

b. *Voluntary agreements.* On the other hand, the Panel articulated two affirmative reasons for its focus on the negotiated agreements. First, the statute invites the CARP to consider rates and terms negotiated in the marketplace. Second, the Panel accepted the premise that the existence of actual marketplace agreements pertaining to the same rights for comparable services offers the best evidence of the going rate. Report at 43, citing Jaffe Tr. at 6618.

But in choosing this approach, the Panel did not accept the 26 voluntary agreements at face value. It evaluated the relative bargaining power of the buyers and sellers, scrutinized the negotiating strategy of the parties, considered the timing of the agreements, discounted any agreement that was not implemented, eliminated those where the Service paid little or no royalties or Panel assumed MMM had renewed its agreement in 2001 for the same reasons that led it to accept a higher than market value rate in 1999. RIAA Petition at 32. Webcasters respond that RIAA misrepresents the facts of the renewal. They maintain that MMM renewed the agreement in 2001 based on "many of the same motivating factors" that led to the initial agreement, including its Specifically, the Register concluded that "it was arbitrary for the Panel to rely on a single provision extracted from a complex agreement where the evidence demonstrates that the [rate] provision would not exist but for the entire agreement." Id. at 25402.

The two agreements, however, are not analogous. The primary purpose of the Yahoo! agreement was to set a rate for

but a third-party aggregator—a completely different type of business. Second, they fault the Panel for its failure to follow its own dictate to proceed cautiously when viewing contracts negotiated in a nascent industry for newly created rights. Broadcaster Petition at 14. Similarly, Webcasters fault the Panel for relying exclusively on the Yahoo! agreement because it offers only a single, uniform testimony, he acknowledged that voluntary agreements between a willing buyer and a willing seller would constitute the best evidence of reasonable marketplace value if such agreements were between parties comparable to those using the webcasting license. Tr. 6618 (Jaffe). The Services' argument, of course, is that the Yahoo! agreement is not a comparable agreement for purposes of setting rates Panel's determination that a per performance fee is directly tied to the right being licensed. The Panel also found that it was difficult to establish the proper percentage because business models varied widely in the industry, such that some services made extensive music offerings while others made minimal use of the sound recordings. Report at 37. The final reason and

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But in choosing this approach, the Panel did not accept the 26 voluntary agreements at face value. It evaluated the relative bargaining power of the buyers and sellers, scrutinized the negotiating strategy of the parties, considered the timing of the agreements, discounted any agreement that was not implemented, eliminated those where the Service paid little or no royalties or the Service went out of business, and evaluated the effect of a Service's immediate need for the license on the negotiated rate. See Report at 45–59.[20] Ultimately, it gave little weight to 25 of the 26 agreements for these reasons and because the record demonstrated that the rates in these licenses reflect above-marketplace rates due to the superior bargaining position of RIAA or the licensee's immediate need for a license due to unique circumstances. At best, the Panel concluded that the rates included in these agreements establish an upper limit on the price of the digital performance right, and where included, the right to make ephemeral copies. Report at 59.

RIAA objects to the Panel's decision to reject 25 of the 26 agreements on the grounds that the Panel's criticisms were overbroad. RIAA Petition at 34. Specifically, it claims that the Panel mischaracterized its agreement with *www.com/OnAir* ("OnAir"), arguing that this Licensee paid substantial royalties and its decision to enter into the agreement was not motivated by special circumstances as the CARP claimed. Id. at 31. This observation, however, is not sufficient to overcome the Panel's conclusion in regard to this agreement, especially in light of the testimony of RIAA's own expert witness, Dr. Nagle, who testified the Panel should give no consideration to any agreement with a licensee who cannot survive in the marketplace. Report at 24. Had OnAir continued to operate in the marketplace and renew its license with RIAA, the Panel might have given it more serious consideration. But again, it was not required to do so, especially when the Panel found more probative evidence in the record upon which to rely.

Likewise, RIAA objected to the Panel's decision not to give any weight to the MusicMusicMusic ("MMM") agreement, arguing in this case that the Panel assumed MMM had renewed its agreement in 2001 for the same reasons that led it to accept a higher than market value rate in 1999. RIAA Petition at 32. Webcasters respond that RIAA misrepresents the facts of the renewal. They maintain that MMM renewed the agreement in 2001 based on "many of the same motivating factors" that led to the initial agreement, including its concerns about its long-term relationship with RIAA in other areas. Webcasters Reply at 29. Because the evidence supports a rationale for MMM to accept a higher than marketplace rate, it was not arbitrary for the Panel to decide not to adopt it as an adequate benchmark. The Panel need not rely on the MMM agreement when it had another agreement negotiated in the marketplace that did not suffer from the same perceived shortcomings.

Specifically, the Panel gave significant weight to the one remaining agreement negotiated—the RIAA-Yahoo! agreement—and used it as a starting point for setting the rates for the webcasting license and the ephemeral recordings license. The Panel found this agreement particularly reliable and probative because: (1) Yahoo! was a successful and sophisticated business which, to date, had made well over half of all DMCA-compliant performances; (2) it had comparable resources and bargaining power to those RIAA brought to the table; and (3) the agreement provided for different rates for different types of transmissions. See Report at 64–67; 70. While the first two reasons offer strong support for the Panel's decision to rely upon the Yahoo! agreement, the third reason is questionable in the context of the Yahoo! agreement because the different rates do not actually represent the parties' understanding of the value of the performance right for these types of transmissions. See discussion infra, section IV.5.

Webcasters, however, argue that the Panel's reliance on the Yahoo! agreement was fatal because it selected a single term out of a multifaceted contract. Webcasters at 22–23. Specifically, they maintain that the webcasting rate did not reflect merely the value of the sound recording, but an abundance of trade-offs that met the needs of RIAA and Yahoo!. Id. at 24. Webcasters make this argument because, in a prior CARP proceeding, the Register had refused to adopt a complicated partnership agreement that purportedly included a rate for the digital performance right as a benchmark for setting the statutory rate. See, Rate Setting Proceeding for Subscription Services, 63 FR 25394 (May 8, 1998). Specifically, the Register concluded that "it was arbitrary for the Panel to rely on a single provision extracted from a complex agreement where the evidence demonstrates that the [rate] provision would not exist but for the entire agreement." Id. at 25402.

The two agreements, however, are not analogous. The primary purpose of the Yahoo! agreement was to set a rate for use of sound recordings over the Internet. Thus, the noted trade-offs in this agreement were all directly tied to considerations relating to the value of the performance right, and did not affect its validity as a benchmark. Such was not the case with the subscription services agreement offered into evidence in the prior proceeding, where the performance right component was merely "one of eleven interdependent co-equal agreements which together constituted the partnership agreement between [Digital Cable Radio Associates ("DCR")] and the record companies." Id.

Along these same lines, the Services challenge the Panel's dependence upon a single contract negotiated between a single seller (RIAA) and a single buyer (Yahoo!), especially in light of the Panel's construct of the hypothetical marketplace. Broadcasters Petition at 14; Live365 Petition at 5; Webcasters Petition at 9, 14. These parties argue that under 17 U.S.C. 114(f)(2)(B), the Panel had discretion to consider negotiated agreements only when the agreements were for comparable types of services in comparable circumstances. Webcasters, including Live365, maintain that Yahoo! had a unique position among webcasters and argue that it was manifestly arbitrary for the Panel to set rates based solely on the rates paid by this one webcaster which by its own admissions was not similarly situated with other webcasters. Live365 Petition at 11; Webcasters Petition at 27. Specifically, they contend that Yahoo! had little concern about getting a reasonable rate for Internet-only transmissions so long as the rate for RR transmissions was favorable and it could continue to grow in this arena. Webcasters note that Yahoo!'s main business was the retransmission of radio re-broadcasts, and that over 90% of all transmissions made by Yahoo! fall within this category. Id. at 28. Consequently, Webcasters maintain that the rates set for Internet-only transmissions in the Yahoo! agreement cannot be fairly applicable to Webcasters at large. Id. at 29.

Broadcasters have other complaints with the Panel's approach. First, they object to the use of the Yahoo! contract to set rates for broadcasters when the buyer in that case was not a broadcaster but a third-party aggregator—a completely different type of business. Second, they fault the Panel for its failure to follow its own dictate to proceed cautiously when viewing contracts negotiated in a nascent industry for newly created rights. Broadcaster Petition at 14. Similarly, Webcasters fault the Panel for relying exclusively on the Yahoo! agreement because it offers only a single, uniform rate for each type of transmission, in contrast to the "range of rates," involving "diverse buyers and sellers," that the Panel identified as the hallmark of a willing buyer/willing seller marketplace." Webcasters Petition at 14. Webcasters also contend that the Yahoo! agreement should not have been considered because it, like the Lomasoft-RIAA agreement, had not been renewed. Webcasters Petition at 41.

Moreover, Live365 questions the Panel's reliance on the Yahoo! contract when it had rejected use of a second similar agreement between MusicMatch ("MM") and RIAA because MM had accepted higher than marketplace rates for nearly identical reasons to those that account for the inflation in the Yahoo! rates. MM had wished to settle litigation with RIAA and it received a benefit from the inclusion of a Most Favored Nations (MFN) clause in the contract. Yet, in spite of the similarities, the Panel relied on the Yahoo! agreement and disregarded the second one. Such disparate treatment of similarly situated services is arguably arbitrary. Live365 Petition at 13. A closer examination of the agreements, however, reveals a significant difference between the two contracts which allowed the Panel to disregard the MM agreement for further consideration. Most importantly, the MM agreement contained a MFN clause that [material redacted subject to a protective order]. The Panel reasoned that this provision undermined the usefulness of the agreement to establish a marketplace rate because [material redacted subject to a protective order]. Report at 56–57. Such was not the case with the Yahoo! agreement since the MFN clause only allowed Yahoo! to receive a partial benefit commensurate with [material redacted subject to a protective order]. Report at 62.

The Register concurs and agrees with the Panel's observation that it would be unsound to establish a rate for the statutory license using a rate that itself is subject to change based on the outcome of this proceeding.

The Register also finds the other arguments by the parties unavailing. In spite of their objections, the Services' own expert, Dr. Jaffe, agreed in principle with the Panel's approach. In his testimony, he acknowledged that voluntary agreements between a willing buyer and a willing seller would constitute the best evidence of reasonable marketplace value if such agreements were between parties comparable to those using the webcasting license. Tr. 6618 (Jaffe). The Services' argument, of course, is that the Yahoo! agreement is not a comparable agreement for purposes of setting rates for all webcasters, and this appears to be a valid point. Yahoo!'s business model is somewhat unique. Unlike webcasters that create their own programming, Yahoo! merely offers programming by AM/FM radio stations and other webcasters.

Nevertheless, RIAA offers record evidence that contradicts the Webcasters' assertion that Yahoo! is not a comparable service for purposes of this proceeding, noting that many webcasters affirmatively stated that Yahoo! is a competitor. Moreover, RIAA asserts that the number of the performances made by Yahoo! on its Internet-only channels is roughly equivalent to the number of performances made by the other webcasters in this proceeding and, therefore, Yahoo!'s interest in getting a reasonable rate for its Internet-only stations should be comparable to those of the Webcasters in this proceeding. RIAA reply at 33–34.

Because Yahoo! is engaged in both types of transmissions, it is reasonable to accept this agreement as a basis for setting rates for both types of transmissions. Yahoo! has developed a significant business presence in the marketplace for Internet-only transmissions and understands the marketing and business of Internet-only webcasters. Consequently, allegations that Yahoo! has only a de minimis interest in the webcasting field and is thus less interested in getting a reasonable rate for the right to make digital transmissions are without merit. The question, however, is whether each rate in the Yahoo! agreement reflects the actual value of the particular transmission or whether one must consider both rates in concert to understand the valuation process. For a more detailed discussion on this point, see section IV.5 infra.

4. Alternative Methodology: Percentage-of-Revenue

The Panel also carefully considered and rejected a percentage-of-revenue model for assessing fees and determined that a per performance metric was preferable to a percentage-of-revenue model. A key reason for rejecting the percentage-of-revenue approach was the Panel's determination that a per performance fee is directly tied to the right being licensed. The Panel also found that it was difficult to establish the proper percentage because business models varied widely in the industry, such that some services made extensive music offerings while others made minimal use of the sound recordings. Report at 37. The final reason and perhaps the most critical one for rejecting this model was the fact that many webcasters generate little revenue under their current business models. As the Panel noted, copyright owners should not be "forced to allow extensive use of their property with little or no compensation." Id, citing H.R. Rep. 105–796, at 85–86. Thus, it seemed illogical to set a rate for the statutory license on a percentage-of-revenue basis when in fact a large proportion of the services admit they generate very little revenue, and, therefore, would generate meager royalties even for substantial uses of copyrighted works. Moreover, it is highly unlikely that a willing seller, who negotiates an agreement in the marketplace, would agree to a payment model which itself could not provide adequate compensation for the use of its sound recordings.

Nevertheless, Webcasters and Live365 assert that the Panel acted arbitrarily when it failed to provide a revenue-based royalty option. Webcasters at 54. They maintain that both sides advocated adoption of a percentage-of-revenue option, see RIAA PFFCL, Appendix C; Webcasters PFFCL ¶¶ 283–296, and that it was arbitrary for the Panel to refuse to adopt this approach. See Live365 Petition at 10; see also pg. 11, fn 6. Webcasters also assert that they had made clear that in the event the Panel rejected Jaffe's model, a revenue-based alternative license proposal would be necessary to avoid putting certain webcasters out of business. Webcasters Petition at 56, 60. Moreover, Webcasters reject the Panel's conclusion that the Services' revenue-based fee proposal was untimely. Id.. at 57–60. They maintain that under § 251.43(d) they were allowed to revise their claim or their requested rate "at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law," and that the Panel had no authority to alter this provision by order under § 251.50.[21]

[20] The Panel also considered, and ultimately rejected three offers of corroborating evidence made by RIAA in support of its position that all 26 agreements should be used in setting the royalty rates: (1) License agreements for making [material redacted subject to Protective Order]; (2) prior case law articulating a method for assessing damages in patent infringement cases; and (3) a pricing strategy analysis.

[21] Section 251.50 of the 37 CFR provides that:

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, that no such rules or orders shall amend,

Continued

In reply, RIAA notes that the Webcasters cite no evidence for their assertion that they reasonably believed the Panel would offer a percentage-of-revenue option and counters their timeliness argument by setting forth the timeline regarding the parties's submissions concerning the rates. RIAA Reply at 62. Evidently at the request of the Webcasters, the Panel issued an

consequently, it will not be considered further.

On the other hand, Live365 does make a substantive argument concerning the Panel's decision not to adopt a percentage-of-revenue model. It notes that the current marketplace uses two types of rate structures, a revenue based model and a performance rate structure, and that the revenue based model is better for start-up and smaller

the record contains evidence that a number of webcasters do not expect or intend to earn revenues from their webcasts, see Report at 37; see, e.g., Live365 Petition at 7, maintaining that their use is designed primarily to maintain their over-the-air audience. Because certain Services take this approach, when RIAA did consider using a percentage-of-revenue model, it included a substantial minimum fee

longstanding practice of establishing only one rate schedule for a license.

5. The Yahoo! Rates—Evidence of a Unitary Marketplace Value

The starting point for setting the rates for the webcasting license is the Yahoo! agreement. In that agreement, rates were set for two different time periods. For the initial time period covering the first 1.5 billion performances, Yahoo! agreed

the existence of the rate differential in the Yahoo! agreement to the promotional value enjoyed by the copyright owners from the performance of the sound recordings by broadcasters in their over-the-air programs, and not to promotional value attributable to transmissions made over the Internet. Report at 74–75. Specifically, the Panel found that, "to the extent that Internet simulcasting of over-the-air broadcasts

was nervous about the application of the 150-mile radius exemption to retransmissions made by third-party aggregators, like Yahoo!. Consequently, RIAA maintains that it agreed to a lower rate for radio retransmissions, knowing that its arguments for not exempting these transmissions were weak, and because Yahoo! agreed to pay for each transmission without regard to the exemption. The resulting adjustment for

In reply, RIAA notes that the Webcasters cite no evidence for their assertion that they reasonably believed the Panel would offer a percentage-of-revenue option and counters their timeliness argument by setting forth the timeline regarding the parties's submissions concerning the rates. RIAA Reply at 62. Evidently at the request of the Webcasters, the Panel issued an order setting November 2 as the deadline for submitting revised or new rate proposals, so that parties were fully aware of each other's position and could style their findings of fact and conclusions of law accordingly. Consequently, the Panel found that the Services' later submission including a proposed rate based on percentage-of-revenue in their PFFCL was untimely. Report at 31, citing Order of November 3, 2001.

After considering the arguments now advanced by the Services concerning the Panel's authority to require final submissions on rates prior to the filing of the PFFCLs, the Register finds that the Panel acted in a lawful manner and within its authority. As RIAA points out in its reply, the Panel has authority pursuant to 37 CFR 251.42 to waive or suspend any procedural rule in this proceeding, including the time by which parties must make final submissions regarding proposed rates. What the Panel cannot do is engage in a rulemaking proceeding to amend, supplement, or supersede any of the rules and regulations governing the CARP procedures. See 37 CFR 251.7. Moreover, the language in § 251.43 is somewhat ambiguous as to when a party can make its final rate proposal, lending itself to two interpretations. For this reason alone, it was prudent for the Panel to issue an order clarifying the application of the rule for purposes of this proceeding. In fact, Webcasters had asked for this ruling and cannot be heard at the end of the process to argue against a ruling that they sought and to which they never objected. Consequently, the Panel was not arbitrary when it found the Webcasters' request for a percentage-of-revenue fee structure untimely.

Moreover, the Panel was not arbitrary for failing to adopt a percentage-of-revenues model merely because some parties voiced an expectation that the Panel would offer such a model as an alternative means of payment. This complaint of unmet expectations is not a substantive argument for finding the Panel's decision arbitrary and, consequently, it will not be considered further.

On the other hand, Live365 does make a substantive argument concerning the Panel's decision not to adopt a percentage-of-revenue model. It notes that the current marketplace uses two types of rate structures, a revenue based model and a performance rate structure, and that the revenue based model is better for start-up and smaller webcasters. Live365 Petition at 8. In fact, Live365 points out that many of the agreements that RIAA negotiated with webcasters incorporated this model. Moreover, Live365 maintains that it was arbitrary for the Panel to propose rates that "had the effect of rendering sound recordings substantially more valuable than musical works, even though the CARP acknowledged that it was rendering no opinion on this issue." Live365 Petition at 5, 14–15. In its opinion, this result was arbitrary based upon Yahoo!'s stated perception that the value of the performance right for the musical work is comparable to the value of the performance right for the sound recording. Finally, Live365 argues that rates based upon mere perception, as those negotiated in the Yahoo! agreement, are by their very nature arbitrary and should be disregarded. Id. at 15.

RIAA refutes the Services' claim that the Panel was arbitrary because it failed to offer a percentage-of-revenue model. It argues that the record supports the Panel's conclusion that a percentage-of-revenue model would have been difficult to implement because Services use sound recordings to different degrees—a position taken by the Webcasters' own witness. Specifically, Jaffe questioned the appropriateness of using a percentage-of-revenue model where those percentages were based on the economics driving over-the-air broadcasts. RIAA Reply Petition at 52, citing Tr. 6487, 6488, 12582 (Jaffe). Jaffe also acknowledged that it was difficult to assess what the revenue base should be for such a model given the variation of the business models utilized by the webcasters. RIAA also notes that section 114(f)(2)(B) requires the Panel to consider the quantity and nature of the use of the sound recording and argues that a per performance metric automatically accounts for the amount of use by the various services. RIAA Reply at 59.

RIAA also argues that a basic percentage-of-revenue fee structure would frustrate the purpose of the law because it would deny copyright owners fair compensation for use of their works in those situations where a service generates little or no revenue. Certainly, the record contains evidence that a number of webcasters do not expect or intend to earn revenues from their webcasts, see Report at 37; see, e.g., Live365 Petition at 7, maintaining that their use is designed primarily to maintain their over-the-air audience. Because certain Services take this approach, when RIAA did consider using a percentage-of-revenue model, it included a substantial minimum fee proposal in conjunction with the percentage of fee proposal to address the problems associated with low revenue generating businesses. Specifically, the RIAA proposal required that a Service pay either 15% of revenues or $5,000 per $100,000 of a webcasters' operating costs, whichever is greater. RIAA Reply at 61. In this way, RIAA sought to avoid the anomaly of allowing a business unfettered use of the sound recordings without reasonable compensation to the copyright owners. Id. at 54, 61. This formulation, however, would not have given the webcasters the relief they seek through the adoption of a rate based on a percentage-of-revenues. In fact, under RIAA's percentage-of-revenue formulation, many webcasters, including Live365, would have paid more than they will under the Panel's per performance rate structure.

The Register finds that the Panel's decision not to set a percentage-of-revenue fee option was not arbitrary in light of the record evidence. First, it is clear that the Services' primary position was to seek adoption of a fee based upon performances and not a percentage-of-revenue. Indeed, Dr. Jaffe's model proposed a fee model based on listener hours or number of listener songs, and not a rate based upon percentage-of-revenues, because a royalty based upon actual performances would be directly tied to the nature of the right being licensed. Report at 37; Jaffe W.R.T. at 31. Moreover, because they took this position, Services argued for a low minimum rate that would only cover administrative costs and not the value of the performances themselves—an approach the CARP adopted in its Report.

Moreover, the statute does not require the CARP to offer alternative fee structures, and the Services should not have expected the Panel to do so, especially when the Webcasters never advanced a percentage-of-revenues option in their own case. In fact, there is no precedent in the statutory licensing scheme anywhere in the Copyright Act that would support alternative rates for the same right. Clearly, it cannot be arbitrary for the Panel to choose not to deviate from the

supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

longstanding practice of establishing only one rate schedule for a license.

5. The Yahoo! Rates—Evidence of a Unitary Marketplace Value

The starting point for setting the rates for the webcasting license is the Yahoo! agreement. In that agreement, rates were set for two different time periods. For the initial time period covering the first 1.5 billion performances, Yahoo! agreed to pay one lump sum of $1.25 million. From this information, the Panel calculated a "blended," per performance rate of 0.083¢. This value represents the actual price that Yahoo! paid for each of the first 1.5 billion transmissions without regard to which type of service made the transmission. For the second time period, Yahoo! and RIAA agreed to a differential rate structure. One rate was set for performances in radio retransmissions (RR) (0.05¢ per performance) and another rate was set for transmissions in Internet-only (IO) programming (0.2¢ per performance). These rates were first used in early 2000 and do not apply to the first 1.5 billion performances.

However, the CARP did not accept these differentiated rates at face value. The Panel engaged in a far-ranging inquiry to determine how the parties established the negotiated rates. What it found was that Yahoo! agreed to a higher rate for the IO transmissions in exchange for a lower rate for the RR because this arrangement addressed specific concerns of both parties. In particular, RIAA wished to establish a marketplace precedent for IO transmissions in line with rates it had negotiated in earlier agreements, while Yahoo! sought to negotiate rates which, in the aggregate, yielded a rate it could accept. Consequently, the Panel found the rate for the IO transmissions to be artificially high and, conversely, the rates for the RR to be artificially low. For this reason, it made a downward adjustment to the IO rates and an upward adjustment to the RR rates.

Before making this adjustment, though, the Panel had to consider whether it was reasonable to establish separate rates for the two categories of transmissions. In reaching its decision, the Panel considered two facts, the fact that the Yahoo! agreement provided for two separate rates, and the fact that all parties agreed that performances of sound recordings in over-the-air radio broadcasts promote the sale of records. Report at 74. Based on this finding, the Panel concluded that a willing buyer and a willing seller would agree that the value of the performance right for RR would be considerably lower than for IO transmissions. Moreover, it attributed the existence of the rate differential in the Yahoo! agreement to the promotional value enjoyed by the copyright owners from the performance of the sound recordings by broadcasters in their over-the-air programs, and not to promotional value attributable to transmissions made over the Internet. Report at 74–75. Specifically, the Panel found that, "to the extent that Internet simulcasting of over-the-air broadcasts reaches the same local audience with the same songs and the same DJ support, there is no record basis to conclude that the promotional effect is any less." Report at 75.

This finding, however, did not prompt the Panel to make any further adjustment for promotional value, finding instead that the differential rates in the Yahoo! agreement already reflect "marketplace assessment of the various promotion and substitution effects, along with a myriad of other factors." Report at 87. Primary among these factors were the Most Favored Nations (MFN) clause [22] and the cost savings to Yahoo! in avoiding CARP litigation. The Panel reasoned that Yahoo! was willing to accept somewhat inflated royalty rates in exchange for the costs it saved by not participating in the CARP proceeding, and for the MFN clause which had some indeterminate value for Yahoo!.

RIAA disagrees with the Panel's analysis and these findings. As an initial matter, it maintains that there was no record evidence to support a separate rate for commercial broadcasters. RIAA Broadcaster PFOF 24–52. Second, it argues that the Panel adopted a two-tier rate structure for RR and IO transmissions based on the different rates in the Yahoo! agreement, and its mistaken view of the significance of an exemption in the law for a retransmission of a radio station's broadcast transmission within a 150 mile radius of the radio broadcast transmitter in setting the rate for radio retransmissions.[23] See 17 U.S.C. 114(d)(1)(B).

Although RIAA maintains that in its negotiations with Yahoo! it had argued that the value of the radio retransmission should not be based on the location of the original radio broadcast transmitter, it claims that it was nervous about the application of the 150-mile radius exemption to retransmissions made by third-party aggregators, like Yahoo!. Consequently, RIAA maintains that it agreed to a lower rate for radio retransmissions, knowing that its arguments for not exempting these transmissions were weak, and because Yahoo! agreed to pay for each transmission without regard to the exemption. The resulting adjustment for the 150-mile exemption consisted of a reduction to the base rate, 0.2¢, and reflects the fact that about 70% of all radio retransmissions fall within the 150-mile zone.[24] In addition, RIAA agreed to a further reduction to compensate Yahoo! for any "competitive disadvantage" it faced if commercial broadcasters were found to be totally exempt from the digital performance right under a separate exemption.[25]

The Panel, however, did not credit RIAA's explanation and concluded that this concern over the exemptions, especially the 150-mile exemption, had no bearing on Yahoo!'s negotiations. The Panel steadfastly maintained throughout its report that Yahoo!'s only aim in the negotiation process was to achieve a rate that translated into an acceptable overall level of payment, and that it did not concern itself with the legal consequences of the 150-mile exemption. Report at 66–67. Thus, the Panel characterized RIAA's arguments in regard to the 150-mile exemption to be nothing more than a "red herring" and without effect in the negotiation process. Id. at 85. Consequently, the Panel found that Yahoo! willingly granted RIAA's request for the "whereas clause," relating to the transmissions within the 150-mile radius, because it

[22] The MFN clause in the Yahoo! agreement is discussed in detail in section IV.3, pg. 27.

[23] Section 114(d)(1)(B)(i) of the Copyright Act provides an exemption from the digital performance right for "a retransmission of a nonsubscription broadcast transmission: Provided, That in the case of a retransmission of a radio station's broadcast transmission—(i) the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter."

[24] At the insistence of RIAA, the Yahoo! agreement includes a "whereas" clause which states that approximately 70 percent of Yahoo!'s radio retransmissions are within a 150-mile radius of the originating radio station.

[25] Section 114(d)(1)(A) exempts a "nonsubscription broadcast transmission." Following a lengthy rulemaking proceeding to determine the scope of this exemption, the Copyright Office concluded that the exemption applies only to over-the-air broadcast transmissions and does not include radio retransmissions made over the Internet. 65 FR 77202, December 11, 2000. This decision was upheld when challenged in the United States District Court for the Eastern District of Pennsylvania. See Bonneville Int'l, et al. v. Peters, 153 Supp. 2d 763 (E.D. Pa. 2001). The case is now on appeal to the United States Court of Appeals, Third Circuit.

However, during the negotiation period and prior to the Copyright Office's rulemaking decision and the court's decision, Yahoo! had argued that it would be at a competitive disadvantage if the courts adopted the broadcasters interpretation of section 114(d)(1)(A) and found all transmissions made by FCC-licensed broadcasters (those made over-the-air and those made over the Internet) to be exempt from the digital performance right.

cost Yahoo! nothing. Yahoo!'s perception of the clause, however, did not alter the significance of the "whereas clause" to RIAA, who wanted the provision included in the agreement because it would allow RIAA to argue before this CARP that the 0.05¢ rate for radio retransmissions represents a real rate of 0.2¢, which was discounted to account for the legal uncertainties at the

retransmissions. Ultimately, the Register concludes that they do not and, therefore, the Panel's reliance on these specific rates for IO transmissions and radio retransmissions as a tool for setting the statutory rates is arbitrary. The fundamental flaw in the Panel's analysis, though, is not its acceptance of the Yahoo! agreement as a starting point. Rather, it is the Panel's

promotional effect of radio broadcasts, but said little about the net promotional effect of the Internet—and nothing about the net promotional effect of webcasting." Id. at 33. It went on to say that "for the time period this CARP is addressing, the net impact of Internet webcasting on record sales is indeterminate. Id. at 34. These observations do not support a

primary concern, as characterized by its negotiator, was to negotiate a license agreement under which it would pay 'the lowest amount possible', that "Yahoo! was willing to accept a higher IO rate in exchange for a lower RR rate in order to achieve the lowest overall effective rate for all its transmissions" (emphasis added), and that Yahoo! was pleased to achieve the lowest possible overall rate."); (noting that "the bottom

determination regarding the credibility of a witness. Likewise, the Register and the Librarian may not question findings and conclusions that proceed directly from the arbitrators' consideration of factual evidence in the record. In this instance, the Panel credited Mandelbrot's testimony and his characterization of the negotiation process, specifically concluding that his testimony was credible, and that Yahoo!

were prohibitively high, including a revenue-based royalty set at 15% of a webcaster's gross revenue. Live 365 Petition at 16. It then argues that it was arbitrary for the Panel to make this finding and then propose rates that exceed the rates it deemed to be excessive, and more than the market could bear. Id. To make its point, Live365 uses the Panel's per performance rate and calculates how

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cost Yahoo! nothing. Yahoo!'s perception of the clause, however, did not alter the significance of the "whereas clause" to RIAA, who wanted the provision included in the agreement because it would allow RIAA to argue before this CARP that the 0.05¢ rate for radio retransmissions represents a real rate of 0.2¢, which was discounted to account for the legal uncertainties at the time of the negotiation. Report at 67.

Webcasters had problems with the Panel's analysis, too. It found fault with the Panel's approach to setting rates for webcasting based on the rates in the Yahoo! agreement. Webcasters object to the methodology used by the Panel in calculating the proposed rates, especially the use of an inflated rate as a starting point for setting the rates for IO transmissions. Moreover, they contest the use of any rate for IO transmissions contained in the Yahoo! agreement because Yahoo! had less interest in negotiating a favorable rate for these transmissions, which constituted only 10% of its business. Webcasters Petition at 30–40. Instead, Webcasters argue that Yahoo! agreed to the 0.2¢ rate for IO transmissions only because it obtained a significantly lower rate for its radio retransmissions, and that any number of possible combinations of rates could have been set to achieve Yahoo!'s targeted rate. Because of this, Webcasters argue that the endpoints settled upon in the agreement were patently arbitrary. The Register concurs with the Webcasters' analysis on this point and finds that the Panel's use of the IO rate was arbitrary because of the IO rate, which, in and of itself, did not reflect what the willing buyers and willing sellers had agreed to in the Yahoo! deal.

Another flaw in the Panel's reasoning, according to Webcasters, was its reliance on the 0.083¢ "blended rate" as the lower end of the acceptable range of IO rates. They argue that this rate should not even be considered because it was never negotiated as a performance rate at all. This observation, however, overlooks the fact that Yahoo! actually paid this rate for 1.5 billion performances without regard to the nature of the performances. The fact that the rate was not negotiated as a separate rate for Internet-only transmissions does not diminish its usefulness for purposes of this proceeding. As the Panel asserted throughout this proceeding, it is hard to find better evidence of marketplace value than the price actually paid by a willing buyer in the marketplace.

The question, however, is whether the rates in the Yahoo! agreement represent distinct valuations of Internet-only transmissions and radio retransmissions. Ultimately, the Register concludes that they do not and, therefore, the Panel's reliance on these specific rates for IO transmissions and radio retransmissions as a tool for setting the statutory rates is arbitrary. The fundamental flaw in the Panel's analysis, though, is not its acceptance of the Yahoo! agreement as a starting point. Rather, it is the Panel's determination that the differential rate structure reflects a true distinction in value between Internet-only transmissions and radio retransmissions based upon the promotional value to the record companies and performers due to airplay of their music by local radio stations. The Panel reached this conclusion in spite of the fact that nothing in the record indicates that the parties considered the promotional value of radio retransmissions over the Internet when they negotiated these rates.

RIAA maintains, and the Broadcasters concur, that no evidence exists to support the Panel's determination that Yahoo! and RIAA considered and made adjustments for the promotional value of radio retransmissions. RIAA Reply at 48; Broadcasters Petition at 39. In fact, the Broadcasters argue that it was "'patently' arbitrary for the Panel to conclude that promotional value was a "likely influence" on Yahoo!'s RR rate when the record evidence showed that neither party had ever suggested anything of the kind." Broadcasters Petition at 39. The Register agrees and finds that the Panel's reliance on promotional value to justify the price differential for IO transmissions and radio retransmissions was arbitrary. The Panel's speculative conclusion that "this factor was likely considered by RIAA and Yahoo!, and is evidently reflected in the resulting difference between RR and IO negotiated rates," only serves to undermine the validity of the Panel's final analysis on this point. See Report at 75.

Moreover, the Panel's own earlier findings with regard to the studies offered to show that the Internet has a promotional effect contradicts its later finding concerning the promotional effect derived from radio retransmissions over the Internet. After considering the two studies offered into evidence by the Services, the Panel categorically stated that it "could not conclude with any confidence whether any webcasting service causes a net substitution or net promotion of the sales of phonorecords, or in any way significantly affects the copyright owners' revenue streams." Report at 33–34. It noted that "the Soundata survey presented by Mr. Fine evinced a net promotional effect of radio broadcasts, but said little about the net promotional effect of the Internet—and nothing about the net promotional effect of webcasting." Id. at 33. It went on to say that "for the time period this CARP is addressing, the net impact of Internet webcasting on record sales is indeterminate. Id. at 34. These observations do not support a conclusion that radio retransmissions have a greater impact than IO transmissions on record sales or that either form of transmission has any impact on record sales.

However, the CARP did conclude that "to the extent promotional value influences the rates that willing buyers and willing sellers would agree to, it will be reflected in the agreements that result from those negotiations." Id. But therein lies the problem. As discussed above, RIAA and Yahoo! did not consider promotional value when negotiating the Yahoo! agreement, therefore, its effect cannot be reflected in the IO and RR rates set forth in the Yahoo! agreement.

However, rejection of the CARP's conclusion on this point does not nullify the usefulness of the Yahoo! agreement. The Register accepts the Panel's determination that the Yahoo! agreement yields valuable information about the marketplace rate for transmissions of sound recordings over the Internet, and is a suitable benchmark for setting rates for all the reasons discussed in section IV.3, supra. Moreover, a careful review of the record support's the Panel's further finding that in effect, the real agreement between Yahoo! and RIAA was for a single, unitary rate for the digital performance of a sound recording and not the two separate rates set forth in the agreement—rates, which the Panel found were artificially high (for IO transmissions) and low (for RR).

The Register accepts the CARP's conclusion that the differential rate structure was developed to effectuate particular objectives of the parties, distinct and apart from establishing an actual valuation of the performances. Specifically, the Panel found that RIAA obtained an artificially high IO rate in an attempt to protect its targeted valuation of IO transmissions for use in this proceeding and Yahoo! received an "effective rate" it could accept. Because the record evidence supports this finding, Report at 65, referring to Tr. 11256–57; 11281 (Mandelbrot); Panel Rebuttal Hearing Exhibit 1 at 4; Tr. 11279–81, 11395–96 (Mandelbrot); Tr. 10237–38 (Marks), it was not arbitrary for the Panel to reach this conclusion. Report at 64–65 (noting that "Yahoo!'s primary concern, as characterized by its negotiator, was to negotiate a license agreement under which it would pay 'the lowest amount possible', that "Yahoo! was willing to accept a higher IO rate in exchange for a lower RR rate in order to achieve the lowest overall effective rate for all its transmissions" (emphasis added), and that Yahoo! was pleased to achieve the lowest possible overall rate."); (noting that "the bottom line" combined rate was of paramount importance to Yahoo!). Report at 74. Moreover, Yahoo! maintains that it would not have paid the 0.2 cent rate for the IO transmissions but for the rate it received for radio retransmissions because the two rates, when considered together, yielded an acceptable "effective rate" for all transmissions. The testimony of David Mandelbrot, the Yahoo! representative, is particularly informative on this point.

Question: When you entered into the agreement with the RIAA, just looking at the 0.2 cents per performance rate for Internet-only broadcasting, you didn't consider that an unfair rate, did you?

Answer: Mandelbrot: We considered it a higher rate than we would have paid if we were just negotiating an Internet-only rate. I would say we did not consider it an unfair rate in the totality of the entire agreement, which was that we were getting the 0.05 cent rate for the radio retransmissions.

Mandelbrot Tr. at 11347–11348. This statement supports a finding that Yahoo!, the willing buyer in this case, did not accept the stated IO rate as an accurate reflection of what it would be willing to pay for the right to make those transmissions.

There is also scant evidence to indicate that Yahoo! gave any serious consideration to the effect of the 150-mile exemption for certain radio retransmissions when negotiating the IO and RR rates. Mandelbrot maintained that the exemptions were of little significance to Yahoo!, since it was "looking to use whatever [it] could to get as low a rate as possible." Id. at 11381; see also 11331 (Mandelbrot admits using the ambiguities in the law, even though they thought the arguments in their favor were weak, solely for the purpose of getting "an effective rate that we could live with"). Again it is clear that Yahoo!'s focus was the negotiation of a rate at the lowest possible level that would allow it to conduct business without concerns about copyright violations.

Where such determinations are based on the testimony and evidence found in the record, the Register and the Librarian must accept the Panel's weighing of the evidence and its determination regarding the credibility of a witness. Likewise, the Register and the Librarian may not question findings and conclusions that proceed directly from the arbitrators' consideration of factual evidence in the record. In this instance, the Panel credited Mandelbrot's testimony and his characterization of the negotiation process, specifically concluding that his testimony was credible, and that Yahoo! understood the argument based on the 150-mile exemption had no significant impact on the rates ultimately negotiated.[26] Report at 67. Consequently, we must accept the Panel's assessment on this point, which leads to the conclusion that the "effective rate" achieved through the unique rate structure represents the value these parties placed on the performance of a sound recording, without regard to origin of or the entity making the transmission.

Based upon a modification to the Panel's approach for calculating rates for making transmissions of sound recordings under statutory license that accepts as much of the Panel's reasoning as possible, the base rate for each performance is 0.07¢ (rounded to the nearest hundredth). The methodology for calculating this rate is presented and discussed in full in section IV.8.

6. Are Rates Based on the Yahoo! Agreement Indicative of Marketplace Rates?

Many webcasters, including Live365, maintain that the proposed rates derived from the Yahoo! rates do not reflect what a willing buyer would pay in the marketplace for the right to make these transmissions. Live365 maintains that the Panel incorrectly analyzed the evidence in the record. First, it notes that the Panel itself found that many of the rates in the voluntary agreements were prohibitively high, including a revenue-based royalty set at 15% of a webcaster's gross revenue. Live 365 Petition at 16. It then argues that it was arbitrary for the Panel to make this finding and then propose rates that exceed the rates it deemed to be excessive, and more than the market could bear. Id. To make its point, Live365 uses the Panel's per performance rate and calculates how much certain services would pay for the digital performance right and translates that amount into a percentage of revenue metric. In each of the cited examples, the amount to be paid based on the proposed per performance rate (as expressed as a percentage of revenues) is considerably higher than that that would be required under any of the percentage-of-revenue models proposed by any party at any time. For example, under the Panel's proposed rates, one service would purportedly pay 21% of its gross revenue, a figure which is considerably higher than the 15% of gross revenues contained in many of the voluntary agreements ultimately rejected by the Panel. Based on this observation, Live365 contends that the Panel's proposal runs counter to the evidence and, therefore, it is arbitrary. Id. at 18.

Moreover, Live365 argues that the Panel failed to account for relevant market factors, including how much a webcaster can pay. Id. at 19. Webcasters voice similar concerns, arguing that the adoption of a per performance rate will cause ruin to many webcasters who to date have yet to generate a viable income stream. Webcasters Petition at 60. In place of this structure, webcasters assert that a percentage-of-revenue model must be adopted in order to address the economic situation facing small, independent webcasters. They maintain that those Services that entered into voluntary agreements based on a percentage-of-revenue will remain in business while those operating under the statutory license with its per performance royalties will not. Webcasters Petition at 62–63. In the eyes of the Webcasters, such a result reflects unexplained disparate treatment of similarly situated parties, and requires an adjustment to eliminate this unjust and arbitrary result. Webcasters also argue that the Panel failed to articulate a rational basis for failing to offer an alternative rate structure based on percentage-of-revenue.

In addition, Live365 argues, as do the Broadcasters, that Yahoo! is a substantially different type of business from small start-up webcasters who would be unwilling to pay the same rates as Yahoo! for the use of sound

[26] The Register finds that RIAA's explanation for the rate structure is equally plausible. Certainly, at the time the Yahoo! agreement was being negotiated, the application of the general exemption for a nonsubscription broadcast transmission, 17 U.S.C. 114(d)(1)(A), and the more specialized exemption for radio retransmissions within 150 miles of the radio broadcast transmitter, 17 U.S.C. 114 (d)(1)(B)(I), was in dispute. Thus, it would have been totally rational for the parties to fashion a rate structure that accounted for possibly exempt transmissions. It would have been logical to achieve this end by discounting the unitary rate to reflect the number of exempt transmissions which, in this case, was approximately 70% of all the radio retransmissions.

However, it is not for the Register or the Librarian to choose between two equally plausible explanations of the facts. The law requires that the Librarian accept the Panel's determination unless its conclusions are unsupported by the record. Thus, having found record support for the Panel's conclusion that the 150-mile exemption played no role in the final determination of the negotiated rates, we must accept its finding on this point.

recordings. Thus, it contends that the Yahoo! rates do not reflect what these buyers would be willing to pay in the marketplace. The implication is that these businesses have expended significant monies on start-up costs, including software, infrastructure development, and bandwidth, and having not yet established substantial revenue streams would be unable or

The law requires only that the Panel set rates that would have been negotiated in the marketplace between a willing buyer and a willing seller. It is silent on what effect these rates should have on particular individual services who wish to operate under the license. Thus, the Panel had no obligation to consider the financial health of any particular service when it proposed the

shows that both business models are fundamentally comparable in at least one all-important way: they simulcast AM/FM programs over the Internet to anyone anywhere in the world who chooses to listen. Even accepting the fact that Broadcasters say their fundamental business is to provide programming to their local audiences, the potential for reaching a wider

possible that the cost to stream AM/FM programming would be lower for broadcasters than for third-party aggregators like Yahoo! Id. at 84–85. Had Broadcasters made that argument or similar ones to show that Yahoo! received greater value from its streaming activities, the Panel may well have set a lower rate for Broadcasters who stream their own programming. Id. at 85. But as the Panel observed, it cannot make

by the number of performances ($1.25 million/1.5 billion performances) to get a "blended" rate of 0.083¢ per performance. Report at 63. To determine the "effective rate" for the second period, a calculation must be made to account for the differential IO and RR rates, 0.2¢ and 0.05¢, respectively, set forth in the agreement and the relative proportion of Internet-only transmissions to radio retransmissions.

Determination of this rate, however, is not necessarily the end of the rate-setting process. Webcasters had argued for a downward adjustment to the rates proposed by the Panel to compensate for litigation cost savings and added value due to MFN clause. Such arguments apply with equal force to the unitary rate proposed by the Register. Webcasters Petition at 42–43. The Webcasters' argument is well taken and,

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recordings. Thus, it contends that the Yahoo! rates do not reflect what these buyers would be willing to pay in the marketplace. The implication is that these businesses have expended significant monies on start-up costs, including software, infrastructure development, and bandwidth, and having not yet established substantial revenue streams would be unable or unwilling to pay the same rates. Live365 Petition at 7, 11. Moreover, Live365 argues that the rates set by the Panel thwart Congressional intent "by making Internet performances of sound recordings economically unviable for many webcasters." Live365 Petition at 21.

RIAA takes exception with the Webcasters and Live365 on these issues. It analyzes how much certain webcasters and Live365 pay, as a percentage-of-revenue, for sales and marketing cost, personnel cost and bandwidth. The results show that a company's costs for these services can amount to more than 100 times the amount of a company's revenue, whereas the projected costs of the royalties for transmitting sound recordings for the same time period are no more than 2 times the amount of a company's revenue. RIAA Reply at 57. In all cases, these costs reflect the start up nature of the industry, and not the ultimate make or break point of the business. Thus, a proposed fee that results in royalty payments above the current revenue stream for a webcaster is not atypical or unexpected. Certainly, if that were the measure of the value of these services, then the costs for employment, hardware, and marketing—so essential to establishing and maintaining the business—must also be viewed as excessive and above the fair market value for each of these services. Clearly, that is not the case, nor can one rationally conclude that it should be the case.

Moreover, RIAA notes that the courts have historically upheld rates set by the CRT, even when users have argued that the rates would cause the business to cease certain operations. Where the intent of Congress is to set a rate at fair market value, as in this proceeding, the Panel is not required to consider potential failure of those businesses that cannot compete in the marketplace. See *National Cable Television Ass'n.* v. *CRT*, 724 F.2d 176 (D.C. Cir. 1983) (holding that rates set at fair market value were proper even though cable operators argued that the rates were prohibitively high and would cause them to cease transmission of the distant signals at issue.).

The law requires only that the Panel set rates that would have been negotiated in the marketplace between a willing buyer and a willing seller. It is silent on what effect these rates should have on particular individual services who wish to operate under the license. Thus, the Panel had no obligation to consider the financial health of any particular service when it proposed the rates. It only needed to assure itself that the benchmarks it adopted were indicative of marketplace rates.

7. Should a Different Rate be Established for Commercial Broadcasters Streaming Their Own AM/FM Programming?

Although RIAA had argued that the rate for commercial broadcasters should be the same as the rate for Internet-only webcasters, the Panel did not agree. It did agree, however, that the rate for commercial broadcasters should be the same as the rate adopted for radio retransmissions and that these rates should be based on the Yahoo! agreement.

It noted that the Yahoo! agreement established rates for retransmissions of the same types of radio station signals as those directly streamed by commercial broadcasters. Consequently, it put the burden of proof on the broadcasters to present evidence to distinguish between the direct transmission of their programs over the Internet and the retransmission of the same programming made by a third-party. Broadcasters were unable to offer any compelling evidence on this point. Thus, in the end, the Panel was unable to distinguish between commercial broadcasters and radio retransmisions, stating that "the record was utterly devoid of evidence implying a *higher* rate [for commercial broadcasters] and *insufficient* [evidence] to warrant a lower rate." Report at 84–85. (emphasis in the original).

Nevertheless, Broadcasters are troubled by the Panel's use of the Yahoo! agreement to set rates for broadcasters for two main reasons. First, they argue that Yahoo! represents a substantially different type of business. Second, they maintain that the Panel must make affirmative findings that the businesses are comparable before applying the same rates to both Services. Broadcasters Petition at 26–27.

Indeed, Yahoo! offers a plethora of services, making available hundreds of radio stations, local television stations, video networks, concerts, CD listening programs, Internet-only music channels and educational and entertainment video programs. Id. at 28. Nevertheless, an examination of the record clearly shows that both business models are fundamentally comparable in at least one all-important way: they simulcast AM/FM programs over the Internet to anyone anywhere in the world who chooses to listen. Even accepting the fact that Broadcasters say their fundamental business is to provide programming to their local audiences, the potential for reaching a wider audience cannot be denied. Given that the record indicates that 70% of Yahoo!'s radio retransmissions are to listeners within 150 miles of the originating radio station's transmitter, Yahoo!'s business with respect to radio retransmissions seems to be very similar. Moreover, the fact that Yahoo! offers many additional services is not relevant to this proceeding because the Yahoo! agreement only addressed the rates Yahoo! paid for streaming sound recordings over the Internet. Had the contract been tied to other services offered by Yahoo!, it might well have been inappropriate to use this contract in this context. That is not the case and so it was not arbitrary for the Panel to rely on the Yahoo! contract to set the rate for broadcasters who stream their own programming over the Internet.

Commercial broadcasters then take another approach and argue that they never would have agreed to the rates that Yahoo! paid because their purposes for streaming differ from Yahoo!'s purposes. Commercial broadcasters assert that they began streaming in order to have a presence "in the online world, to maintain the local radio brand, and as a convenience to their regular over-the-air listeners." Broadcasters Petition at 29. They then note that many commercial broadcasters have already ceased streaming because of an increase in costs. They cite this fact as evidence of their assertion that they would only be willing to pay a significantly lower rate than a third-party aggregator like Yahoo! See Broadcasters Petition at 31, fn 25 (offering examples of decisions made by radio stations to cease their streaming operations because of bandwidth fees and dispute over royalty fees between AFTRA and the advertising agencies). They also cite the testimony of David Mandelbrot, who testified that Yahoo! feared broadcasters would be unwilling to absorb the rates Yahoo! negotiated for streaming AM/FM programming. Id. at 32. Based upon this evidence, the Broadcasters and Live365 conclude that the Panel acted in an arbitrary manner in setting the rates that will put many services out of business. Live365 Petition at 15, 18.

However, the Panel did consider the differences between the two business models, speculating that it was entirely

possible that the cost to stream AM/FM programming would be lower for broadcasters than for third-party aggregators like Yahoo! Id. at 84–85. Had Broadcasters made that argument or similar ones to show that Yahoo! received greater value from its streaming activities, the Panel may well have set a lower rate for Broadcasters who stream their own programming. Id. at 85. But as the Panel observed, it cannot make adjustments based on mere speculation. So when the Panel found no record evidence to distinguish these services, it had no reason to offer a separate rate for commercial broadcasters who stream their own AM/FM signal over the Internet. Id. at 84.

Moreover, RIAA points out that Yahoo! never even tried to pass along the costs of the transmissions to the radio stations. Thus, no determination could be made as to whether the broadcasters would have accepted the rate and paid it, or rejected it out of hand. RIAA Reply at 45. RIAA's observation is persuasive, as is the Panel's general observation that the record did not contain any evidence to support a different rate for commercial broadcasters. Thus, the Panel's decision not to set a different rate for commercial broadcasters was not arbitrary.

For these reasons, the Register accepts the Panel's decision not to differentiate between simulcasts made by commercial broadcasters and simulcasts of the same programming made by a third-party aggregator. Accordingly, the rate for commercial broadcasters streaming their over-the-air radio programs on the Internet is the unitary rate gleaned from the Yahoo! agreement.

8. Methodology for Calculating the Statutory Rates for the Webcasting License

a. *Calculation of the unitary rate.* In section IV.5, the Register rejected the Panel's determination that the Yahoo! agreement provided a basis for establishing different rates for Internet-only transmissions and radio retransmissions. Instead, a determination was made that the Yahoo! agreement justified only a single rate applicable to all transmissions, without regard to the source of the transmission. To calculate this unitary rate, it is necessary to determine what Yahoo! paid for the initial 1.5 billion performances, based on the lump sum payment, and what it expected to pay for transmissions after that time.

The first calculation was actually done by the Panel based upon Yahoo!'s agreement to pay RIAA $1.25 million for the first 1.5 billion transmissions made by Yahoo!. It divided the amount paid by the number of performances ($1.25 million/1.5 billion performances) to get a "blended" rate of 0.083¢ per performance. Report at 63. To determine the "effective rate" for the second period, a calculation must be made to account for the differential IO and RR rates, 0.2¢ and 0.05¢, respectively, set forth in the agreement and the relative proportion of Internet-only transmissions to radio retransmissions. This is a simple arithmetic calculation and one that Yahoo! had already performed in order to gauge the actual costs of the performances under the differentiated rate structure. This calculation yielded an "effective" or "blended" rate of 0.065¢ per performance based upon Yahoo!'s expectation that 90% of its transmissions would continue to be radio retransmissions with the remaining 10% being Internet-only transmissions [((9 × 0.05¢) + (1 × 0.2¢))/10]. Report at 63, citing Tr. 11279, 11292 (Mandelbrot), Panel Rebuttal Hearing Exhibit 1 at 7.

Now the question is how to reconcile these values to determine the unitary rate. Although an argument can be made for adopting either value, it makes more sense to use both values and take the average of the two. In this way, the final unitary rate captures the actual value of the performances made in the initial period (for which Yahoo! paid a lump sum for the first 1.5 billion performances) and the projected value of the transmissions at the agreed upon rates for the remainder of the license period; and it falls within the range of acknowledged values of these transmissions. Courts have long acknowledged that rate setting is not an exact science, and all that is necessary is that the rates lie within a "zone of reasonableness." See *National Cable Television Assoc. Inc.* v. *CRT*, 724 F.2d 176, 182 (D.C. Cir. 1983) ("Ratemaking generally "is an intensely practical affair. The Tribunal's work particularly, in both ratemaking and royalty distributions, necessarily involves estimates and approximations. There has never been any pretense that the CRT's rulings rest on precise mathematical calculations; it suffices that they lie within a "zone of reasonableness'"). Thus, the record here supports a "zone of reasonableness" between 0.083¢ and 0.065¢.

Accordingly, the Register recommends that the rate for making an eligible nonsubscription transmission of a sound recording over the Internet under section 114 be set at 0.07 cents per performance, per listener, the midpoint of the "zone of reasonableness."

Determination of this rate, however, is not necessarily the end of the rate-setting process. Webcasters had argued for a downward adjustment to the rates proposed by the Panel to compensate for litigation cost savings and added value due to MFN clause. Such arguments apply with equal force to the unitary rate proposed by the Register. Webcasters Petition at 42–43. The Webcasters' argument is well taken and, based on the record evidence, it is reasonable to assume that the rates in the Yahoo! agreement are slightly higher to account for these two factors. See Report at 68–89. However, there is a problem in making an adjustment to the proposed rate where the record contains no information quantifying the added value of the factors that purportedly resulted in inflated rates. See Report at 29 (discussing lack of record evidence quantifying value of any factor, other than promotional value, that allegedly influenced the negotiated rates). The potential (but apparently unquantifiable) added value attributable to these 2 factors might present a problem if the Register were proposing a rate at the high end of the 0.065¢–0.083¢ range, but because the Register is recommending a rate in middle of the "zone of reasonableness," it is safe to conclude that the recommended rate falls into that zone of reasonableness even taking these factors into account.

Similarly, Broadcasters argued for a downward adjustment of the simulcast rate to account for the promotional value associated with over-the-air broadcasts. Broadcasters Petition at 41. The record, however, does not support this suggestion. Indeed, the Panel did acknowledge that over-the-air radio retransmissions had promotional value, but it concluded that "the net impact *of Internet* webcasting on record sales is indeterminate." Report at 34. This is not to say that webcasting, including simulcasting of over-the-air radio programming, has no promotional value. It only means that the record companies gain similar benefits from both types of transmissions. Consequently, no adjustment is necessary.

b. *The 150-mile exemption.* Under section 114(d)(1)(B)(I), any retransmission of a nonsubscription broadcast transmission is exempt, as a matter of law, from the digital performance right, provided that "the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter." During the course of the negotiations between RIAA and Yahoo!, there was a great deal of uncertainty regarding this

provision and whether it applied to transmissions made over the Internet. See discussion above, section IV.a.5.

As noted above (section IV.a.5.), in its Petition, RIAA argued that during the course of the negotiations between RIAA and Yahoo!, there was a great deal of uncertainly regarding this provision and whether it applied to transmissions made over the Internet. RIAA argued

statutory language, however, does not make clear whether that same Licensee would retain the benefit of the exemption for those transmissions if additional retransmissions of the radio broadcast signal were also made "willfully" or "repeatedly" outside the 150-mile radius.

A critical piece in the analysis is the meaning of the word "retransmission."

the section 114(d)(1)(C)(iv) exemption are eligible for the section 112(e) statutory license for ephemeral recordings in order to facilitate Internet transmissions by business transmission services. Congress's failure to do the same for services operating under the section 114(d)(1)(B) exemption demonstrates that Congress did not contemplate that that exemption would

9. Rates for Other Webcasting Services and Programming

a. *Business to business webcasting services.* Some Services provide specialized Internet radio-like stations to businesses rather than directly to consumers. These business-to-business webcasting services (B2B) are in many respects analogous to business establishment music services [29] and can

that the "value of the performance does not change merely because of the technology of the webcaster or the fact that the sound recording is heard when it is accessed at a third-party website rather than the originating webcaster's website." Webcasters Reply at 57. Moreover, they maintain that RIAA offered no evidence to demonstrate that these transmissions should be valued at a higher rate. In fact, the record

for these services. Again, the Panel found no record support for setting a separate and higher rate for listener-influenced services. It rejected the agreements between RIAA and non-DMCA compliant services because the rates in those agreements were for rights beyond those granted under the statutory license. Nor could the Panel discern from the record evidence which services would be subject to the basic

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provision and whether it applied to transmissions made over the Internet. See discussion above, section IV.a.5.

As noted above (section IV.a.5.), in its Petition, RIAA argued that during the course of the negotiations between RIAA and Yahoo!, there was a great deal of uncertainly regarding this provision and whether it applied to transmissions made over the Internet. RIAA argued that because of this uncertainty, it had been willing to agree to a lower radio retransmission rate. In fact, RIAA pointed out that its chief negotiator had advised its negotiating committee that RIAA's arguments against application of the 150-mile exemption to a retransmitter such as Yahoo! "are not particularly strong." RIAA Petition at 20.

Confronted with the assertions made in RIAA's petition which indicated that RIAA itself had had considerable doubts on the subject at the time of the negotiations, the Register felt compelled to determine whether radio retransmissions over the Internet to recipients within 150 miles of the radio transmitter are, in fact, eligible for the section 114(d)(1)(B) exemption.[27] The Register issued an order on June 5, 2002, asking the parties to brief two legal questions concerning the 150-mile exemption. The first question asked whether a retransmission over the Internet of a radio station's broadcast transmission to a recipient located within 150 miles of the site of the radio broadcast transmitter is an exempt transmission pursuant to 17 U.S.C. 114(d)(1)(B). The second question then queried whether the exemption would still apply to radio retransmissions made within the 150-mile radius by a Licensee, in the case where that same service is simultaneously retransmitting the radio station's broadcast transmission of one or more recipients, located more than 150 miles from the site of the radio broadcaster's transmitter.

Section 114 could be read as allowing a Licensee to take advantage of the exemption for all Internet retransmissions of a radio broadcast to recipients within a 150 mile radius of that radio station's transmitter. The statutory language, however, does not make clear whether that same Licensee would retain the benefit of the exemption for those transmissions if additional retransmissions of the radio broadcast signal were also made "willfully" or "repeatedly" outside the 150-mile radius.

A critical piece in the analysis is the meaning of the word "retransmission." Each retransmission of a radio signal over the Internet may be viewed as a discrete, point-to-point transaction to be considered on its own merit without reference to further retransmissions made by the Licensee. Alternatively, the reference to "willful and repeated" may require consideration of each retransmission, together with all other retransmissions, made by the Licensee to multiple listeners over a period of time, both inside and outside the 150-mile radius.

Having considered the parties' responses, the statutory language and its relationship to section 112, the Register now concludes that the exemption is not applicable to radio retransmissions made over the Internet. While Copyright Owners and Performers offer many arguments in support of their position that radio retransmissions within 150 miles of the radio station's transmitter are not exempt, and while Broadcasters offer many arguments to the contrary, the critical piece of the analysis—and the argument that the Register finds persuasive—is found in the text of section 112(e). This section provides a statutory license for making ephemeral recordings only to "a transmitting organization entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv) or under a statutory license in accordance with section 114(f)." 17 U.S.C. 112(e)(1).

The statutory license for ephemeral recordings in section 112(e) was enacted as part of the same section of the DMCA—section 104—that expanded the section 114 statutory license to include webcasting. The purpose of this ephemeral recording statutory license was to enable business establishment services and services using the new section 114 statutory license for webcasting to make the ephemeral recordings they need to make in order to facilitate their licensed transmissions, and in recognition of the fact that the exemption in section 112(a) permitting the making of a single ephemeral recording might not be adequate. See H.R. Rep. 105–796, at 89–90.

Congress expressly provided in the DMCA amendments that business establishment services operating under the section 114(d)(1)(C)(iv) exemption are eligible for the section 112(e) statutory license for ephemeral recordings in order to facilitate Internet transmissions by business transmission services. Congress's failure to do the same for services operating under the section 114(d)(1)(B) exemption demonstrates that Congress did not contemplate that that exemption would be available to services making retransmissions via the Internet.

Moreover, if section 114(d)(1)(B) were interpreted as providing an exemption for a radio retransmission over the Internet, when that retransmission is to a recipient located within 150 miles of the radio station's transmitter, the Licensee could not make ephemeral recordings to facilitate such an exempt retransmission. This interpretation would put the Licensee in the illogical position of having a right to retransmit the radio signal, but no means of accomplishing the retransmission without negotiating private licenses to make ephemeral recordings to facilitate the exempt transmissions. At the same time, the Licensee could operate under a statutory license for making the ephemeral recordings to facilitate its non-exempt transmissions beyond the 150-mile radius made pursuant to the section 114(f) statutory license. As RIAA points out in its response to the June 5 Order: "Such a result is inconsistent with one of the purposes of the DMCA statutory licenses to create efficient licensing mechanisms for copyright owners and webcasters," citing H.R. Rep. 105–796, at 79–80 (1998). Consequently, the better interpretation of the section 114(d)(1)(B) exemption is to consider all retransmissions of a License in the aggregate, which logically means that no Internet retransmissions are exempt under section 114(d)(1)(B).

Based on the interplay between sections 112 and 114, the better interpretation of the law is that the exemption does not apply to radio retransmissions made over the Internet.[28]

[27] If the Register had concluded that Internet retransmissions to recipients located within the 150-mile radius are exempt, she most likely would have recommended an adjustment of the 0.07¢ per performance rate as applied to radio retransmissions to take into account the record evidence that approximately 70% of radio retransmissions are to recipients located within 150 miles of the radio transmitter. The result would have been a radio retransmission rate of .02¢ per performance, and correspondingly lower rates for radio retransmissions by non-CPB, noncommercial broadcasters.

[28] Copyright Owners argue that the Copyright Office had already decided this issue twice before: (1) In its decision in a rulemaking announced December 11, 2000 that transmissions of a broadcast signal over a digital communications network, such as the Internet, are not exempt from copyright liability under section 114(d)(1)(A), Public Performance of Sound Recordings: Definition of a Service, 65 FR 77292; and (2) in an Order issued July 16, 2001, in which the Office stated that the "Panel must use the "willing seller/willing buyer" standard to set rates for all non-interactive, nonsubscription transmissions made under the section 114 license, including those within 150 miles of the broadcaster's transmitter." (Emphasis added.) The Register made no such decision on either occasion.

9. Rates for Other Webcasting Services and Programming

a. *Business to business webcasting services.* Some Services provide specialized Internet radio-like stations to businesses rather than directly to consumers. These business-to-business webcasting services (B2B) are in many respects analogous to business establishment music services[29] and can provide programming customized to the demographics of the customers of a particular business. Report at 78. For this reason, RIAA had proposed setting a higher rate for business to business webcasting services than for business to consumer (B2C) services. The Panel, however, rejected this suggestion, finding that the evidence did not support a higher rate for B2B services. It found that most of the agreements for such services had rates near or below the predominant rate set for standard Internet-only transmissions. Report at 79. Thus, the Panel concluded that it had "found insufficient evidence to support a separate rate for syndicator services", and set the rate accordingly at 0.14¢ per performance, just as it had for Internet-only performances. Id.

RIAA argues for a premium rate for these Services, because they syndicate their programming through third-party non-entertainment websites. RIAA maintains that these transmissions are outside the scope of the webcasting license, and consequently, services should pay a premium when they make transmissions through non-entertainment websites. RIAA Petition at 50–52. In response, Webcasters argue that the "value of the performance does not change merely because of the technology of the webcaster or the fact that the sound recording is heard when it is accessed at a third-party website rather than the originating webcaster's website." Webcasters Reply at 57. Moreover, they maintain that RIAA offered no evidence to demonstrate that these transmissions should be valued at a higher rate. In fact, the record indicates the opposite. Most of the RIAA voluntary agreements which permit the licensee to distribute its webcasts to third-party websites contain no premium for this practice. Id. at 59.

Thus, based on the weight of the evidence, it was not arbitrary for the Panel to conclude that a separate rate should not be set for syndication services. The Panel is responsible for weighing the evidence and so long as the record supports its decision, the Register will not second-guess the Panel's finding of fact. Nevertheless, this determination does not end the inquiry. RIAA correctly cites section 114(j)(6) of the Copyright Act for the proposition that an eligible nonsubscription transmission does not include those made by a service whose primary purpose is to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events. Thus, in any given case a determination would have to be made to ascertain whether such transmissions are covered under the statutory license. This proceeding, however, is not the appropriate vehicle for such a fact-specific determination. If a court determines that the transmissions made by a particular business-to-business service fall outside the scope of the webcasting license, then those transmissions are acts of copyright infringement unless the service obtains licenses from the copyright owners. In such cases, an infringement action would be the appropriate course of action, rather than the imposition of a premium rate for such transmissions as suggested by RIAA. No rate—premium or otherwise—can be set for a transmission that does not comply with the terms of the license.

b. *Listener-influenced services.* There was also much discussion about listener-influenced services that allow the listener some control over the programming through on-line ratings and skip-through features. RIAA's position first and foremost is that these services do not qualify for the webcasting license. However, RIAA also proposed a much higher rate for these services in the event the Panel discerned a need to set a separate rate for these services. Again, the Panel found no record support for setting a separate and higher rate for listener-influenced services. It rejected the agreements between RIAA and non-DMCA compliant services because the rates in those agreements were for rights beyond those granted under the statutory license. Nor could the Panel discern from the record evidence which services would be subject to the basic webcasting rate as distinguished from the rate for listener-influenced services. Consequently, the Panel decided "that so long as a service complies with, and is deemed eligible for the statutory license, it should not pay a separate rate based upon listener influence." Report at 81.

The Register finds the Panel's analysis to be consistent with the law, and thus accepts the Panel's decision not to set a separate rate for transmissions which might not come within the scope of the license. Again, if transmissions made by a listener-influenced service are determined to be outside the scope of the statutory license, the proper course of action would be for the parties to negotiate a voluntary agreement for these transmissions, or for the copyright owner to file a copyright infringement suit against the service. The Panel has no authority to propose a rate for any transmission which cannot be made lawfully under the statutory license.

c. *Other types of transmissions.* A broadcaster may stream three different types of programming in addition to a simulcast of its AM/FM radio signal: (1) "Archived" (previously aired) radio programming; (2) "side channels" (Internet-only programming); and (3) "substituted programming" (programming that replaces over-the-air programming that has not been licensed for simulcast over the Internet). The question for the Panel was whether such programming is the same or substantially similar to radio retransmissions or Internet-only programming.

In making its decision, the Panel first considered the definition of a "radio retransmission performance." It found that the record failed to provide a coherent and workable definition, rejecting both the definition set forth in the Yahoo! agreement and the one that was included in the defunct settlement agreement between RIAA and the commercial broadcasters. Instead, it adopted the definition of the term provided by Congress in the statute which defines the term as "a further transmission of an initial transmission * * * if it is simultaneous with the initial transmission." See 17 U.S.C. 114(j)(12). Based on this definition, the

[29] See footnote 6, supra, for a description of a Business Establishment Service.

The scope of section 114(d)(1)(B) was not at issue in the December 2000 rulemaking on the status of broadcasters. Likewise, the July 16 Order was in response to Copyright Owners' Motion for Declaratory Ruling Concerning Statutory Standard, in which Copyright Owners argued that one of the Services' witnesses was "in effect" arguing for "an exemption for AM/FM Webcasts within the 150-mile area." However, the testimony in question actually was arguing only that in determining the radio retransmission rate, the CARP should take into account that no royalty is payable on non-internet radio retransmissions within the 150-mile radius because of the promotional value those retransmissions have on record sales. The witness asserted that because "local distribution of exactly the same material via the Internet has identical economic effects," the Panel should exclude from its calculations "recipients of those transmissions who lie within 150 miles of the station's transmitter." Fisher Testimony at ¶ 52. In their opposition to the motion, the Services made no argument that Internet retransmissions are exempt under section 114(d)(1)(B), and the Office made no ruling with respect to the exemption. Thus, until the responses to the June 5, 2002 order were filed, the issue had never been joined, much less decided, on whether radio retransmissions within the 150-mile radius are exempt, and the issue had never been decided.

Panel concluded that a transmission made as part of archived programming, side channels or substituted programming was something other than a radio retransmission and, therefore, not entitled to the lower rate proposed for radio retransmissions. Instead, it agreed with RIAA that the programming was essentially the same as Internet-only programming, and without any

Moreover, the earlier Panel determined that a rate set for a commercial station is an inappropriate benchmark to use when setting a rate for the same right for noncommercial stations because of these economic differences between these businesses. Specifically, it acknowledged that use of a rate set for a commercial broadcaster would

initiate Internet-only programs and do so at a higher cost.

Non-CBP broadcasters argue in their petition to set aside the CARP report, that the Panel failed to set the appropriate rates in two ways. They contend that the Panel ignored the record evidence which clearly established that the noncommercial stations are fundamentally different

future statutory noncommercial rates for use of the musical works. Report at 90. Second, the panel considered rates proposed by Dr. Murdoch, the expert witness for NPR, who at the request of the Panel made an attempt to identify an appropriate rate for noncommercial stations based on the fees currently paid to the PROs. Although she complied with the request of the Panel, she

broadcasters. The Panel also provided a separate rate for archived programming subsequently transmitted over the Internet, substituted programming and up to 2 side channels set at one-third the rate established for Internet-only transmissions. The Panel made this adjustment based on its determination that a noncommercial broadcaster should not be subject to commercial

Webcasters PFFCL ¶ 363. In any event, the Panel set the rate at $500 to cover administrative costs to the copyright owners and access to the sound recordings. It was not arbitrary to impose a minimum fee on the Non-CPB, noncommercial broadcasters that merely covers costs for these rudimentary purposes nor can it be deemed excessive in light of what these entities pay the

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Panel concluded that a transmission made as part of archived programming, side channels or substituted programming was something other than a radio retransmission and, therefore, not entitled to the lower rate proposed for radio retransmissions. Instead, it agreed with RIAA that the programming was essentially the same as Internet-only programming, and without any record evidence to substantiate a different rate, should be subject to the 0.14¢ IO rate.

Broadcasters do not contest the Panel's determination with respect to side channels, and they recommend that the Librarian provide that the side channel rate be set at the webcaster rate expressly without prejudice to reconsideration in a subsequent CARP proceeding. Broadcasters Petition at 56. They do, however, object to the imposition of the rate for IO transmissions on the performances of sound recordings made during the transmission of an archived program or a substituted program. Id. at 55. Broadcasters' arguments no longer have any relevance under the statutory rate structure proposed by the Register, which proposes a single, unitary rate for all transmission. This fact in conjunction with the Panel's observation that the Yahoo! agreement did not differentiate or even recognize these alternative categories supports a determination that no separate rate should be set for these transmissions.

10. Rates for Transmissions Made by Non-CPB, Noncommercial Stations

National Public Radio ("NPR") and the National Religious Broadcasters Music License Committee ("NRBMLC") were the only two representatives of non-commercial stations participating in this proceeding. NPR reached a private settlement with the Copyright Owners during the proceeding and withdrew. In considering what the rate should be for the stations represented by NRBMLC and any other noncommercial station operating under the statutory license, the panel first considered past CARP decisions involving the statutory licenses. It found that a prior CARP had considered and distinguished commercial stations and noncommercial stations on the basis of their financial resources, noting that noncommercial stations depend upon funding from the government, business, and viewers, whereas commercial broadcasters generate a revenue stream through advertising. Report at 89, citing CARP report adopted by Librarian on September 18, 1998, Noncommercial Education Broadcasting Rate Adjustment Proceeding, 63 FR 49823. Moreover, the earlier Panel determined that a rate set for a commercial station is an inappropriate benchmark to use when setting a rate for the same right for noncommercial stations because of these economic differences between these businesses. Specifically, it acknowledged that use of a rate set for a commercial broadcaster would overstate the market value of the performance for a noncommercial station.

Next, the Panel examined RIAA's approach, which focused on the amount the performing rights organizations ("PROs") were awarded in the 1998 Noncommercial Education Broadcasting Rate Adjustment Proceeding for use of their works by noncommercial stations. It adduced that they received ⅕ the amount of the fees paid by the commercial stations. Based on this precedent, RIAA offered the noncommercial stations a rate that corresponds to ⅕ the rate to be paid by commercial broadcasters.[30] The Panel, finding no other evidence in the record to support a different rate, adopted the RIAA proposal for radio retransmissions, and proposed a rate of 0.02¢ per-performance (one-third of the 0.07¢ per performance rate, rounded to the nearest hundredth of a cent) for these transmissions only. Just as with the commercial broadcasters, the Panel found that archived programming subsequently transmitted over the Internet, transmissions of substituted programming, and transmissions of side channels constitute a transmission more akin to an Internet-only event. Consequently, it proposed a per performance rate for noncommercial broadcasters of 0.05¢ (one-third the rate paid by commercial broadcasters and webcasters for IO transmissions) for each sound recording included in these transmissions. This rate, however, is meant to apply only to the first two side channels—and not to additional side channels—in order to avoid the possibility of a noncommercial broadcaster gaining a competitive advantage over the commercial broadcasters and webcasters who initiate Internet-only programs and do so at a higher cost.

Non-CBP broadcasters argue in their petition to set aside the CARP report, that the Panel failed to set the appropriate rates in two ways. They contend that the Panel ignored the record evidence which clearly established that the noncommercial stations are fundamentally different from commercial broadcasters and webcasters, and less viable economically, thus requiring the Panel to establish a lower rate for these stations. They also dispute, like the Webcasters and the commercial broadcasters, the Panel's decision to reject, as a benchmark, the amount of royalty fees these services pay for the use of the underlying musical works in an analog market under a separate compulsory license. Non-CPB Petition at 4. They then calculate a ratio between what a commercial broadcast station pays for use of the musical works in the analog world and what on average the non-CPB stations pay in the same market, based on an estimation of the number of stations, and the amount of royalties the stations paid for use of musical works in their over-the-air broadcasts. From these calculations, they suggest that a noncommercial broadcaster, on average, pays only 1/34th the amount of royalties that a commercial station pays for use of the same musical works and argue for a rate equal to 1/34th the amount that commercial broadcasters will pay. Alternatively, they request a flat rate of $100 per station, see Non-CPB, Noncommercial Broadcasters Reply Petition at 5, and argue that in no case should the rate exceed ⅓ the rate adopted for commercial broadcasters. Non-CPB, Noncommercial Broadcasters Petition at 9.

NRBMLC also turned to the rates for the statutory noncommercial broadcasting license and argued that the rates for the webcasting license should be based upon the rates currently paid to performing rights organizations for use of the musical works in over-the-air programs under this license. The Panel rejected this proposal on a number of grounds. First, it noted that those rates were the subject of prior settlements which stated that the negotiated rates for the noncommercial license were to have no precedential value for future rate setting proceedings for the noncommercial license. In light of this term, the Panel found the rates for the statutory noncommercial license had no relevance to the current proceeding. Not only were the rates for a totally different right, but they apparently have no precedential value for considering future statutory noncommercial rates for use of the musical works. Report at 90. Second, the panel considered rates proposed by Dr. Murdoch, the expert witness for NPR, who at the request of the Panel made an attempt to identify an appropriate rate for noncommercial stations based on the fees currently paid to the PROs. Although she complied with the request of the Panel, she expressed severe reservations about her own conclusions, citing numerous problems with her own calculations. Report at 91. For these reasons, the Panel rejected Murdoch's proposed rates.

RIAA supports the Panel's decision, noting that the non-CPB, noncommercial broadcasters failed to offer any differential rate for this type of service in its direct case or an expert witness who could support their ultimate request for a $100 flat rate. The only witness who testified on behalf of this group was Joe Davis, who works for a commercial broadcaster, and had only anecdotal information concerning noncommercial stations. Because of his lack of expertise in this area, the Panel did not credit his testimony. Such action on the part of the panel is not arbitrary.

Nor was it arbitrary for the Panel to decide not to rely on the statutory rates set for use of the musical works by noncommercial broadcasters. The arbitrators rejected the non-CPB, commercial broadcasters' request to look to these rates because the agreements, at the insistence of the parties to the agreements, are not even considered precedent for setting future rates for the use of the musical works. If anything, it would be arbitrary to rely on these values as a benchmark for setting rates for a completely different category of works when they had no acknowledged value for readjusting the rates for the works to which they do apply. Had the Panel wished to use these rates, it needed at the very least an opportunity to examine the circumstances surrounding the adoption of the "no precedent" clause. It would have also required record evidence to substantiate such bold assertions on the part of the users as the notion that these rates were set at a rate higher than what would have been negotiated in the marketplace. Non-CPB Broadcasters Reply Petition at 7; RIAA Reply at 11. Because of these infirmities, the Register finds the Panel did not act arbitrarily in rejecting the rates set for the section 118 license as a benchmark.

Thus, in the end, the Panel accepted RIAA's proposal to set the rate for noncommercial broadcasters at one-third the rate established for commercial broadcasters. The Panel also provided a separate rate for archived programming subsequently transmitted over the Internet, substituted programming and up to 2 side channels set at one-third the rate established for Internet-only transmissions. The Panel made this adjustment based on its determination that a noncommercial broadcaster should not be subject to commercial rates when streaming programming consistent with the educational mission of the station, over the Internet. Report at 94. However, the Panel imposed a limitation on the use of this reduced rate for Internet-only transmissions to avoid the possibility that a non-CPB broadcaster could use its unique position to essentially become a commercial webcaster.

The Register accepts the Panel's methodology for setting the rate for noncommercial broadcasters. The rates proposed by the Panel, however, must be adjusted to reflect the Register's recommendation to set a unitary rate for both commercial broadcasters and webcasters. Using the proposed base rate of 0.07¢ and reducing this value by two-thirds, the adjusted rate for non-CPB, noncommercial broadcasters is 0.02¢ (one-third of 0.07¢, the base rate for all transmissions, rounded to the nearest hundredth) per performance, per listener. This rate shall apply to a simultaneous retransmission of the non-CPB, noncommercial over-the-air radio programming, archiving programming subsequently transmitted over the Internet, substituted programming, and up to two side channels. The rate for all other Internet-only transmissions is 0.07¢.

One last disputed issue raised by the non-CPB, noncommercial broadcasters is the imposition of the same $500 minimum fee that the CARP set for all other licensees. They argue that a $500 minimum fee far exceeds any reasonable rate that should be imposed on this category of users in light of the financial considerations that distinguish them from the other services. Non-CPB Broadcasters Reply Petition at 10, In support of this position, the users cite Dr. Murdoch's testimony to illustrate that the Internet license for use of SESAC's repertoire is less than $100. But this is not the total amount that a noncommercial station would pay; it would also have to pay fees to BMI and ASCAP in order to license all the works included in the sound recordings covered by the section 114 license. The minimal amount that a webcaster must pay to cover the combined works administered by the three PROs is $673, more than the proposed minimum rate to operate under the section 114 license. Webcasters PFFCL ¶ 363. In any event, the Panel set the rate at $500 to cover administrative costs to the copyright owners and access to the sound recordings. It was not arbitrary to impose a minimum fee on the Non-CPB, noncommercial broadcasters that merely covers costs for these rudimentary purposes nor can it be deemed excessive in light of what these entities pay the PROs for the public performance of musical works.

11. Consideration of Request for Diminished Rates and Long Song Surcharge

RIAA requested a surcharge for songs longer than five minutes. RIAA PFFCL ¶ 210. Its request was denied because the Panel did not find that such a charge was included in most of the relevant license agreements. Report at 105. RIAA, however, argues that the Panel misread the Yahoo! agreement. RIAA Petition at 42. It notes that Yahoo! could estimate the number of performances it made by multiplying its listening hours by a fixed number of performances and that when it did so, the record companies received compensation for [material redacted subject to a protective order] performances, even though Yahoo! may have only played, for example, 5 12-minute classical recordings in an hour. Id. The Yahoo! agreement, however, does not require that it employ the estimation methodology; it merely states that Yahoo! may make this calculation. Thus, there was no probative evidence that the marketplace valued a classical sound recording, or similar sound recordings of longer than average duration, at a different rate. Consequently, it was not arbitrary for the Panel to reject RIAA's suggestion to impose a "long song" surcharge. In any event, it is highly likely that this concern will be addressed for the time period to which these rates apply, since most services will be using the estimation formula for calculating the number of performances which assumes 15 performances for each aggregate tuning hour.[31] See section IV.11, infra.

On the other side, webcasters asked that there be no royalty fee for songs that are less than thirty seconds long, citing technology problems or the use of song-skip functions. Webcasters Petition at 71. The Panel disagreed and saw no

[30] RIAA stated that "the Noncommercial Broadcasters should pay the same royalty rates that apply to Webcasters and commercial broadcasters, which are based on a benchmark derived from marketplace agreements for the same and closely related rights." RIAA PFFCL concerning the Broadcaster Royalty Rate (Jan. 25, 2002) at ¶ 44; but see, Reply of Copyright Owners and Performers to Non-CPB Entities (Dec. 18, 2001) at 3 ("Copyright Owners are willing to accept a rate for Noncommercial Broadcasters that is no less than one-third of the rate paid for commercial broadcasters.").

[31] Nevertheless, RIAA has raised a valid point and future CARPs should carefully consider how to value performances of longer recordings, such as classical music, to ensure that the copyright owner is fully compensated. That being said, no party should assume that a particular approach to the problem is being advocated by the Register for adoption by a future CARP.

need to make any adjustment. It noted that the use of the blended rate from which it calculated the proposed rates was itself based upon figures which already took into account problem performances that had occurred during the initial period. This adjustment was expressly made for the first 1.5 billion transmissions only. Report at 106–107. The Panel chose not to make a similar adjustment for the second period. Id. at 107. Webcasters argue that the Panel's decision is neither arbitrary nor contrary to law.

The Panel did, however, grant the users an exemption for incidental performances, citing the existence of a similar term in the Yahoo! agreement as the basis for its decision. Specifically, the Panel "exclude[d] transmissions or retransmissions that make no more than incidental use of sound recordings, defined as follows: For each channel or station, the aggregate tuning hours of such transmissions during any month may not exceed 1% of the total aggregate tuning hours of that channel or station during that month. For purposes of this exemption, the aggregate tuning hours shall be based on multiplying the licensee's total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of retransmissions of AM and FM radio stations reasonably classified as news, business, talk or sports stations, and 12 performances per hour in the case of all other AM and FM radio stations).

Report at 110.

The Broadcasters object to the Panel's

will, for the immediate future, impose more modest reporting requirements on Services.

In the meantime, for the remainder of the period covered by this proceeding (i.e., through December 31, 2002), Services may estimate the number of performances in accordance with the Panel's formulation. While this is not the perfect solution, it represents a reasonable approximation of the number of performances that will be reported by the Services. Moreover, the Services will be required to report actual performances for the first half of 2002 by August 30, 2002, thereby providing the Copyright Owners with the information necessary to make adjustments to the royalty payments for the second half of 2002 by February 20, 2003. Report at 111.

Webcasters argue that the Panel's decision is arbitrary because it is based on the Yahoo! agreement, which is not a reliable benchmark. Webcasters Petition at 58. They argue that the Yahoo! agreement is not a reliable benchmark because it is not a fully litigated agreement, it is not a willing buyer/willing seller agreement, it is not a fully paid up agreement, it is not a perpetual agreement, it is not a nonexclusive agreement, it is not a worldwide agreement, it is not a fully transferable agreement, it is not a fully sublicensable agreement, it is not a fully royalty free agreement, it is not a fully indemnified agreement, it is not a fully insured agreement, it is not a fully bonded agreement, it is not a fully guaranteed agreement, it is not a fully secured agreement, it is not a fully collateralized agreement, it is not a fully hedged agreement, it is not a fully diversified agreement, it is not a fully liquid agreement, it is not a fully transparent agreement, it is not a fully efficient agreement, it is not a fully optimal agreement, it is not a fully perfect agreement, it is not a fully complete agreement, it is not a fully consistent agreement, it is not a fully coherent agreement, it is not a fully logical agreement, it is not a fully rational agreement, it is not a fully reasonable agreement, it is not a fully fair agreement, it is not a fully just agreement, it is not a fully equitable agreement, it is not a fully moral agreement, it is not a fully ethical agreement, it is not a fully legal agreement, it is not a fully binding agreement, it is not a fully enforceable agreement, it is not a fully valid agreement, it is not a fully effective agreement, it is not a fully efficacious agreement, it is not a fully successful agreement, it is not a fully satisfactory agreement, it is not a fully acceptable agreement, it is not a fully desirable agreement, it is not a fully preferable

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need to make any adjustment. It noted that the use of the blended rate from which it calculated the proposed rates was itself based upon figures which already took into account problem performances that had occurred during the initial period. This adjustment was expressly made for the first 1.5 billion transmissions only. Report at 106–107. The Panel chose not to make a similar adjustment for subsequent performances because the Yahoo! agreement did not provide for such an adjustment.

Likewise, the Panel determined that the use of the skip function provides a benefit to webcasters and it saw no need to penalize copyright owners for the benefit that flowed to the users through a conscious use of a function provided by the service. Moreover, none of the negotiated agreements provided for any reduction in rate for skipped songs. Report at 107. Consequently, the Panel did not provide a lower rate or exemption for truncated performances resulting from use of the skip song function.

The Webcasters object to the Panel's conclusion, maintaining that the Panel failed to adequately explain its decision and consider relevant evidence. See Webccasters Petition at 71. They contend that the Panel should have given more weight to three of the 26 agreements, which provided an exemption for performances less than thirty seconds in duration. Such action, would itself, have been arbitrary. Clearly, the Panel could not rely on these agreements when it had already disregarded them for purposes of establishing the royalty rates.

Moreover, RIAA makes a number of arguments in support of the Panel's decision. First, it notes that the performance of even a portion of a sound recording without a license is an infringement of a copyright owner's rights. As such, there is no *a priori reason* for making 30-seconds-or-fewer performances exempt from royalty obligations. Second, RIAA cites 17 U.S.C. 114(h)(2)(B) to demonstrate that Congress recognized the value of performances of limited duration and the right to license such performances. Specifically, this section exempts copyright owners licensing public performances of sound recordings from the requirement to make these sound recordings available on no less favorable terms or conditions to all bona fide entities, when they are licensing promotional performances of up to 45 seconds in duration. RIAA Reply at 71–75. These arguments support the Panel's decision not to exempt performances of thirty seconds or less, and as such, its decision is neither arbitrary nor contrary to law.

The Panel did, however, grant the users an exemption for incidental performances, citing the existence of a similar term in the Yahoo! agreement as the basis for its decision. Specifically, the Panel "exclude[d] transmissions or retransmissions that make no more than incidental use of sound recordings, including but not limited to, certain performances of brief musical transitions, brief performances during news, talk and sports programming, commercial jingles, and certain background music." Report at 108. This is not a disputed provision.

With the agreement of the parties, the Panel also exempted performances of sound recordings made pursuant to a private license agreement. Id.

The Register notes, however, that the Webcasters' concerns regarding the Panel's determination not to grant its request to impose no royalty on songs less than 30 seconds in duration are ameliorated for the current licensing period. Under the proposed terms of payment, a service may estimate the number of performances for purposes of determining the extent of copyright liability on an "Aggregate Tuning Hour" basis, which calculates payment on the basis of 15 performances per hour.[32] This approach alleviates a Licensee's obligation to account for and pay for each performance, including those that are less than 30 seconds in duration.

12. Methodology for Estimating the Number of Performances

Until each service can account for each performance, and is required to do so, there is a need for a methodology that will allow a service to make a reasonable estimate of the number of performances. Accordingly, the Panel proposes the following procedure:

For the period up to the effective date of the rates and terms prescribed herein, and for 30 days thereafter, the statutory licensee may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the licensee's total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of retransmissions of AM and FM radio stations reasonably classified as news, business, talk or sports stations, and 12 performances per hour in the case of all other AM and FM radio stations).

Report at 110.

The Broadcasters object to the Panel's formulation for estimating the number of performances, arguing that for many program formats, e.g., news, business, talk, or sports stations, the estimate would likely significantly overstate the use of music by these stations. Broadcasters Petition at 57. However, they do not offer an alternative methodology for calculating these performances. Moreover, a mere likelihood of overstating the values in some cases is not enough to undo the Panel's formulation.

Likewise, Webcasters argue that the 30-day cutoff period for using the methodology for estimating the number of performances is arbitrary because there is no record support for this determination. Webcasters Petition at 72. Instead, they propose allowing the Services to employ this methodology through the remainder of the current licensing period, which ends December 31, 2002, since it will be used, in any event, by most Services for purposes of calculating their liability for their past usage of the sound recordings. Id.

What is troubling about this provision is the Panel's determination to require a full accounting of each performance beginning 30 days after the effective date of the order setting the rates and terms. The Report documents that many services are not currently equipped to track or accurately account for each performance, and the Register agrees. In fact, until the issuance of final rules regarding Records of Use, there are no requirements for tracking these performances. Because the Office has yet to establish just how a service will account for its use of the sound recordings, the Register determines that the proposed timeframe for requiring a strict accounting is arbitrary. Instead, the rule shall require that a Service begin accounting for each performance in accordance with the rules and regulations regarding Records of Use 30 days after the effective date of final rules. Those rules shall determine what information needs to be calculated to determine which sound recordings have been performed, how many of such performances occurred, and when and how often such information shall be collected by the Services. Meanwhile, interim rules are being promulgated that

[32] The Webcasters had advocated the use of "Aggregated Tuning Hours" as a way to address their concerns regarding the Panel's decision not to provide a lower rate for partial performances. Webcasters Petition at 71–72. Their argument, however, is not the bases for the Register's recommendation to provide for use of the estimation methodology throughout the license period.

The Register is proposing this course of action in the short term merely to address separate concerns of the Register regarding the logistics involved in reporting the number of performances of sound recordings. This recommendation on the part of the Register should in no way be construed as undermining the Panel's decision that transmissions of sound recordings of less than 30 seconds are compensable.

will, for the immediate future, impose more modest reporting requirements on Services.

In the meantime, for the remainder of the period covered by this proceeding (i.e., through December 31, 2002), Services may estimate the number of performances in accordance with the Panel's formulation. While this is not the perfect solution, it represents a reasonable approximation of the number of performances. And in those cases where a Service believes the formulation overestimates the use of the sound recordings, it has the option of actually counting the number of performances and calculating the royalties accordingly. Certainly, it cannot be seriously argued that a Service would be unduly burdened by undertaking this task. Conversely, if after accounting for each of the performances in the programs which are allowed to use the one performance per hour estimate, the Service finds its programming performs more sound recordings than the approximation, a Service benefits from use of the Panel's methodology.

13. Discount for Promotion and Security

RIAA proposed a 25% discount to any service that includes promotional and security features beyond those required under either the webcasting license or the ephemeral recording license. Because that proposal would exceed the scope of the terms set forth in the law, the Panel declined RIAA's invitation to provide for such discounts within the context of the statutory license. Report at 110. It is clear that the Panel may reject such a proposal, as it did here, because the statutory license does not expressly require that such a rate be established. No party contested the Panel's determination on this issue. Therefore, the Register sees no reason to question the Panel's decision.

14. Ephemeral Recordings for Services Operating Under the Section 114 License

A transmitting organization entitled to make transmissions of sound recordings under the webcasting license may also make a single ephemeral copy of each work to facilitate the transmission under an exemption in the law or it may make multiple copies of these works pursuant to a statutory license. See 17 U.S.C. 112(a) and (e), respectively. In addition to setting rates and terms for the webcasting license, the Panel in this proceeding had the responsibility for setting the rates for the ephemeral recordings. The Office combined these section 112 and section 114 proceedings because the licenses are interrelated and the beneficiaries of the license, just as the users, are in most instances the same for both the webcasting license and the ephemeral recording license. However, there is one group of users of the ephemeral recording license that is exempt from the digital performance right—services which provide transmissions to a business establishment for use by the business establishment within the normal course of its business ("business establishment services").[33] 17 U.S.C. 114(d)(1)(C)(iv).

During the proceeding, the Services argued that these "ephemeral" copies have no economic value apart from the value of the performance they facilitate. Webcasters Petition at 67; Broadcasters Petition at 50. In support of this position, the Services cite with approval a Copyright Office Report which stated that the Office found no rationale for "the imposition of a royalty obligation under a statutory license to make copies that have no independent economic value, and are made solely to enable another use that is permitted under a separate license." Report at 98, citing U.S. Copyright Office, DMCA Section 104 Report at 114, fn 434 (August 2001). The Panel also contended that experts on both sides took this view. Webcasters Petition at 66, citing Jaffe W.D.T. 52–54; Tr. at 6556; Tr. at 2632 (Nagle). Had there been nothing more, the Panel might have agreed with the Services and adopted the Office's position. In construing the statute, however, the Panel found that Congress did not share the Copyright Office's view. Instead, the Panel found that Congress required that a rate be set for the making of ephemeral copies in accordance with the willing buyer/willing seller standard.[34] Report at 98–99.

The Panel utilized the same approach in setting rates for the ephemeral recording license as it had in setting the rates for the webcasting license. Report at 104. It first examined the 26 RIAA agreements for evidence that market participants paid a fee to make ephemeral copies and how much they paid. Of the 26 agreements, fifteen did not contain any rate for the ephemeral license and did not purport to convey this right; two used a percentage of overall revenues; eight used a percentage (calculable to 10%) of the performance royalty fees paid; and one paid a flat rate per use of the license for a year (calculable to 8.8% of the performance royalty fees paid). Id. From this, the Panel identified a range of rates between 8.8% and 10% of the performance fees paid.[35] It then chose to place significant weight on the 8.8% value because it was derived from the information in the Yahoo! agreement to which the Panel has given considerable weight throughout this proceeding. Id. However, the Panel did not rely solely on the Yahoo! agreement in this instance, choosing instead to give minimal weight to the eight other agreements that set the ephemeral rate at 10% of the performance rate, and so rounded the 8.8% value up to 9.0%. Id. Both Webcasters and Broadcasters filed Petitions to Modify in which they object to the Panel's approach to setting the ephemeral rate. They argue that the evidence supports their position that the ephemeral copies have no independent economic value apart from the performances they facilitate. In the alternative, they maintain that the value of the ephemeral copies is included in the royalty fee for the performance of the sound recording. Consequently, they contend that the appropriate way to set the ephemeral rate would be to determine the economic value of the ephemeral copies and reduce the performance rate by that amount. Webcasters Petition at 67; Broadcasters Petition at 51.

Moreover, the Services disagree with the Panel's use and analysis of the voluntary agreements for setting this rate. Specifically, they cite the lack of an ephemeral rate in 15 of the 26 agreements, even though it is clear that these recordings are necessary to effectuate a performance, as evidence of RIAA's view that the making of ephemeral copies had only a de minimis

[33] Business establishment services deliver sound recordings to business establishments for the enjoyment of the establishments' customers. Two such services, AEI, Music Network, Inc. and DMX Music, Inc., participated in these proceedings. These companies merged into a single company during the course of this proceeding. AEI/DMX provides music to more than 120,000 businesses, including Pottery Barn, Abercrombie & Fitch, Red Lobster, and Nordstrom. The rate setting process as it pertains to the business establishment services is discussed in Section IV.14.

[34] The Panel and the Services note that the Register has adopted a policy position regarding the making of ephemeral recordings which attributes no economic value to the making of such recordings when "made solely to enable another use that is permitted under a separate compulsory license." U.S. Copyright Office, DMCA Section 104 Report at 144, fn.434. (August 2001). This statement was made in a different context and has no relevance to the current proceeding. The task of the Register in this proceeding is to determine whether the Panel's determination is arbitrary or contrary to law without regard to the Office's own views on how the law should read to implement policy objectives.

[35] Most of the original 26 license agreements did not grant the right to make ephemeral copies, either because the Service did not realize it needed this right or because the Service had assumed the negotiated rate covered all rights needed to make the digital transmissions. However, that trend did not continue. Licenses that were renewed expressly granted the right to make ephemeral copies for a fee. Report at 50, fn 39.

value. Broadcasters Petition at 52. For this reason, webcasters and broadcasters argue that RIAA placed little value on these copies and implicitly acknowledged that the value of these recordings is at best de minimis. They then criticize the Panel's methodology, asserting that the calculation of the ephemeral rate based upon the rates derived from the Yahoo! agreement for of the 26 licenses "reveals an inconsistent, rather than a consistent, pattern." Report at 100. Moreover, the Panel conceded that these agreements "do not represent evidence which establishes RIAA's proposed rate." Id. at 104. Nevertheless, the Panel granted "very modest effect" to those agreements which have ephemeral rates around 10% to justify its decision to

Moreover, as a policy matter, RIAA contends that use of the lowest value set forth in a single agreement discourages copyright owners from adopting a low minimum fee in a single instance to accommodate special circumstances for a particular service. RIAA Petition at 44–45. Finally, RIAA faults the Panel for justifying its choice by comparing the $500 minimum fee to the amount that the Services pay the performing rights

minimum amounts paid to the performing rights organizations for the blanket license for performing musical works. Together each Service must pay, at the very least, a total of $673 to the three performing rights organizations to cover access to the musical works for use over the Internet and the incremental cost of licensing—the very purposes for which the minimum fee is being set in this proceeding.

Of the services offered by AEI and DMX only those services that transmit musical programs to their customers via cable or satellite in a digital format are eligible for the ephemeral recording license. The Panel referred to this aspect of the business as the "broadcast model" of the service. Through this process, these services make hundreds of thousands, if not millions, of copies of the sound recordings. The law allows

refrain from setting rates tailored to the needs of specific companies. RIAA made the later request because AEI/DMX asserted that its digital database is already covered by preexisting licenses and therefore, it does not need an ephemeral license in order to make these phonorecords. Consequently, AEI/DMX asked the Panel to set a rate to cover only the cache and buffer copies it needed to facilitate its transmissions

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value. Broadcasters Petition at 52. For this reason, webcasters and broadcasters argue that RIAA placed little value on these copies and implicitly acknowledged that the value of these recordings is at best de minimis. They then criticize the Panel's methodology, asserting that the calculation of the ephemeral rate based upon the rates derived from the Yahoo! agreement for a per performance model, totally ignored the fact that Yahoo! agreed to pay a flat fee once it began making payments on a per performance basis, without regard to the number of performances. Webcasters Petition at 69; Broadcasters Petition at 53. Finally, Webcasters object to any use of the non-Yahoo! agreements in calculating this rate because the Panel had already found these agreements to be unreliable for purposes of setting the marketplace rates. Similarly, the Broadcasters question the Panel's reliance on eight of the agreements that it had rejected earlier as "unreliable benchmarks." Id. at 54.

The non-CPB, noncommercial broadcasters adopt the objections to ephemeral recording rate put forth by the commercial broadcasters. Noncommercial Broadcasters Petition at 11.

On the other hand, RIAA supports the Panel's determination in general, noting that the CARP relied primarily on the Yahoo! agreement to calculate the ephemeral rate for webcasters. It maintains, however, that the Panel should have afforded the 25 voluntary agreements more weight and set the rate at 10% of the performance rate in deference to the fact that many RIAA licensees had agreed to a negotiated or effective ephemeral rate of 10%. RIAA Reply at 68. RIAA also challenges the Services' complaints in general, noting that in spite of all the objections to the Panel's determination, the Services fail to offer any evidence regarding an alternative rate.

The Panel's approach in setting the ephemeral rate was not arbitrary. It calculated the rate based on the fees Yahoo! actually paid to RIAA for the right to make ephemeral reproductions. Use of the Yahoo! agreement for this purpose was perfectly logical, and consistent with the general approach taken by the Panel in determining rates for webcasting. What causes concern, however, is the Panel's reliance, even to a small degree, on the ephemeral rates set forth in eight of the 25 voluntary agreements it had previously repudiated. Such action is arbitrary unless the Panel can offer a clear explanation for its actions. It did not do so and, in fact, it stated that its review of the 26 licenses "reveals an inconsistent, rather than a consistent, pattern." Report at 100. Moreover, the Panel conceded that these agreements "do not represent evidence which establishes RIAA's proposed rate." Id. at 104. Nevertheless, the Panel granted "very modest effect" to those agreements which have ephemeral rates around 10% to justify its decision to round the 8.8% effective rate up to 9%. Considering those agreements is clearly arbitrary and, consequently, to the extent the Panel gave any weight to any license agreement other than the Yahoo! agreement, it acted in an arbitrary manner. Accordingly, the rate for the ephemeral license for licensees operating under section 114 should be set at 8.8% of the performance rate.

15. Minimum Fees

The Panel established a minimum fee of $500 for each licensee for use of the webcasting license and the ephemeral recording license. These rates are in line with those negotiated by RIAA and the 26 services with which it reached an agreement. The Panel determined that RIAA would not have negotiated a minimum fee that failed to cover at least its administrative costs and the value of access to all the works up to the cost of the minimum fee. Report at 95. The adoption of the $500 minimum, however, is predicated on the adoption of a per performance rate and not a percentage-of-revenues. The Panel implied that had it decided to adopt a percentage-of-revenue model, the minimum fee would have been more substantial because the Panel would have had to consider more carefully the impact of start-up services with little revenue. Report at 95.

Because the minimum rate is calculated to cover at least the administrative costs of the copyright owners in administering the license and access to the sound recordings, the Panel applied the rate to all webcasting services and made it payable as a non-refundable advance against future royalty fees to be paid during that year, due upon the first monthly payment of each year. Moreover, the Panel offered no proration of the fee, making it due in full for any calendar year in which a service operates under the statutory license. Report at 96.

RIAA objects to the low value for the minimum fee set by the Panel because it fails to take into account the broad range of rates established in the licenses RIAA negotiated in the marketplace.[36] Moreover, as a policy matter, RIAA contends that use of the lowest value set forth in a single agreement discourages copyright owners from adopting a low minimum fee in a single instance to accommodate special circumstances for a particular service. RIAA Petition at 44–45. Finally, RIAA faults the Panel for justifying its choice by comparing the $500 minimum fee to the amount that the Services pay the performing rights organizations (PROs) under a blanket license. RIAA rejects this rationale on two fronts. First, the minimum fee does not approximate the amounts that are paid to the PROs, and second, use of the musical works benchmark has been found by the CARP to be an inappropriate measure for establishing fees in this proceeding.

In response, Broadcasters first note that RIAA never disputed the Panel's understanding for the existence of a minimum fee, or claimed that a higher fee is necessary to achieve the stated purposes of the minimum fee. Namely, the minimum fee is meant to cover the costs of incremental licensing, i.e., the cost to the license administrator of adding another license to the system without regard to the number of performances made by the Licensee, see Webcasters PFFCL ¶ 361, and access to the entire repertoire of sound recordings. Broadcasters Reply at 12–13; Webcasters Reply at 52–53. Moreover, they claim that the minimum fee is in line with the fees paid to the performing rights organizations which can serve as a benchmark for the minimum because "they serve the same purposes that the CARP identified in setting the minimum fees for the statutory license at issue." Broadcasters Reply at 14; Webcasters Reply at 52, 55. The Services, however, do not blindly accept the Panel's proposed fee, arguing first that the record supports a much lower minimum fee. They also strenuously object to RIAA's request for a $5,000 minimum, arguing that such a high minimum would be confiscatory for most users of the license, especially for those radio stations that play little featured music. Broadcasters Reply at 16; Webcasters Reply at 56.

None of these arguments compel the Librarian to reject the proposed $500 minimum. The Panel set a minimum rate to accomplish two purposes, and none of the parties argue that the $500 fee falls outside the "zone of reasonableness" for such rates. If anything, the fee may be viewed as too low, if one takes into account the minimum amounts paid to the performing rights organizations for the blanket license for performing musical works. Together each Service must pay, at the very least, a total of $673 to the three performing rights organizations to cover access to the musical works for use over the Internet and the incremental cost of licensing—the very purposes for which the minimum fee is being set in this proceeding.

Whether to utilize the musical works benchmark was a decision for the Panel and it chose not to do so. This approach was not arbitrary. As it had done throughout this proceeding, the Panel could choose, as it did, to rely on agreements negotiated in the marketplace between willing buyers and willing sellers. Moreover, the Panel could propose any rate consistent with the agreements so long as the proposed rate would cover costs for administering the license and access to the works.[37] For this reason, the Panel examined the agreements offered into evidence by the RIAA and chose the lowest value that RIAA had accepted in a prior agreement. It did so because it assumed that an entity would not agree to a minimum rate that would result in a loss. Had RIAA truly believed that the $500 minimum fee was inadequate to cover at least the administrative costs and the value of access, the Panel reasoned that it would have required a higher fee. This approach is not arbitrary and, consequently, the proposed minimum fee is adopted for the period covered by this proceeding.

16. Ephemeral Recordings for Business Establishment Services ("BES")

a. *Rates for use of the statutory license.* Business establishment services are well-established businesses, which have offered their services for many years. Among the established businesses in this group are AEI Music Network, Inc.,[38] DMX Music, Inc., Muzak, Inc., PlayNetwork, Inc. and Radio Programming and Management Inc. Two of the old guard, AEI and DMX, and one new service, Music Choice, participated in this proceeding. At an early stage of this proceeding, but after filing a direct case, Music Choice withdrew from the proceeding.

Of the services offered by AEI and DMX only those services that transmit musical programs to their customers via cable or satellite in a digital format are eligible for the ephemeral recording license. The Panel referred to this aspect of the business as the "broadcast model" of the service. Through this process, these services make hundreds of thousands, if not millions, of copies of the sound recordings. The law allows these services to perform sound recordings publicly by means of a digital transmission under an exemption in section 114.[39] However, Congress did not exempt these services from copyright liability when making copies of these works in the normal course of their business. Rather, Congress created a statutory license to cover the making of ephemeral recordings by these services. In its proposed findings of fact and conclusions of law, DMX and AEI proposed a flat fee of $10,000 per year[40] for each company for the making of buffer and cache copies, but argued in the alternative for a zero rate. See DMX/AEI PFFCL ¶ 44. In support of the alternative position, DMX/AEI argued that Congress had only envisioned a minimal rate to compensate the copyright owners for the use of ephemeral copies. It also cited the Copyright Office's Section 104 DMCA Study for the proposition that ephemeral recordings have no independent economic value apart from its use to facilitate transmissions. However, as RIAA points out, these businesses have always paid for such copies. Report at 115–116, citing RIAA Reply to DMX/AEI PFFCL ¶¶ 8–12. RIAA asked that rate be set at 10% of gross revenues with a minimum fee of $50,000 a year and asked the Panel to refrain from setting rates tailored to the needs of specific companies. RIAA made the later request because AEI/DMX asserted that its digital database is already covered by preexisting licenses and therefore, it does not need an ephemeral license in order to make these phonorecords. Consequently, AEI/DMX asked the Panel to set a rate to cover only the cache and buffer copies it needed to facilitate its transmissions and to exclude the value of the database copies when setting the rate for the ephemeral license. In fact, AEI/DMX contends that it was arbitrary for the Panel to set a rate "for all ephemeral copies which may be utilized in the operation of a broadcast service" when it had received evidence for setting a rate only for buffer and cache copies. DMX/AEI Petition at 4. It also maintains that the statute contemplates that the Panel set rates according to the needs and desires of the parties. Id. at 8–10.

RIAA disagreed with this approach, asking the panel to establish a technology-neutral rate to cover the making of all copies that a business establishment service may need to make under the license. It also proposed that the CARP rely on license agreements between the copyright owners and Business Establishment Services when fashioning the appropriate rate and not the 26 voluntary licenses considered when setting the webcasting rates.

As an initial matter, the Panel had first to decide which copies and how many are covered by the ephemeral recording license. This is a necessary step in the process, because the statutory license allows a transmitting organization to make and retain no more than a single phonorecord of a sound recording, except as provided "under the terms and conditions as negotiated or arbitrated under the statutory license." Section-by-section analysis of the H.R. 2281 as passed by the United States House of Representatives on August 4, 1998, Committee Print, Serial No. 6, 105th Cong., 2d Sess., p. 61.

Thus, the Panel considered and ultimately rejected DMX/AEI's request for a rate that only covered certain types of ephemeral copies. It did so in large part because it determined that Congress had "intended to create blanket licenses which would afford each licensee all the rights necessary to operate such a service," and noted that in this case, that would include "the right to make any and all ephemeral copies utilized in a broadcast background music service." Report at 118. This interpretation of the law is consistent with the purpose of the section 112 license.

In creating the ephemeral recording license, Congress sought to provide a

[36] According to RIAA, a $5,000 minimum fee is the typical amount paid by users in the marketplace, without regard to whether the royalties are paid on a percentage of revenue base or in accordance with a per performance metric. RIAA Petition at 43.

[37] Had the Panel recommended a royalty based on a percentage-of-revenues, its recommended minimum fee also would have had to serve the function of ensuring that copyright owners receive adequate compensation in cases where a service makes substantial use of copyrighted works but generates little or no revenue.

[38] AEI and DMX were separate business entities at the beginning of this proceeding. During the course of this proceeding, they merged into a single company.

[39] Section 114(d)(1)(iv) provides that:

(d) Limitations on Exclusive Right.—Notwithstanding the provisions of section 106(6)—

(1) Exempt transmissions and retransmission.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

(C) a transmission that comes within any of the following categories—

(iv) a transmission to a business establishment for use in the ordinary course of its business: Provided, That the business recipient does not retransmit the transmission outside of its premises or the immediately surrounding vicinity, and that the transmission does not exceed the second recording performance complement. Nothing in this clause shall limit the scope of the exemption. Nothing in this clause shall limit the scope of the exemption in Clause (ii).

[40] At the beginning of this proceeding, DMX and AEI each filed a separate direct cause in which each company proposed a flat rate of $25,000 for each year (prorated for the October–December 1998 period) covered by these proceedings for use of the section 112 license. Knittel W.D.T. 19; Troxel W.D.T. 15.

way for any licensee or business establishment service to clear all the reproduction rights involved in making digital transmissions of sound recordings under section 114. Congress "intended [this provision] to facilitate efficient transmission technologies, such as the use of phonorecords encoded for optimal performance at different transmission rates or use of different software programs to receive very nature be arbitrary if the rate failed to cover the entire scope of the license. The fact that DMX/AEI has chosen to license the copies in its database through a private agreement and use the statutory license to cover the remaining ephemeral copies would not relieve the Panel of its responsibility to set rates for all ephemeral copies which fall within the scope of the license, including those copies in a DMCA compliant database.

In any case, the starting point for setting the rates for the ephemeral recording license as it applies to business establishment services is the statute. It provides that, as with the rates for the webcasting license, the rates should be those that "most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller." 17 U.S.C. 112 (e)(4). Thus, the Panel turned

rights to the licensee beyond the reproduction and distribution of the sound recording. The Panel was not troubled by this observation, however, because it found that in all cases the right to copy and distribute the works was by far the most important right for which the licensee paid royalties. Moreover, it noted that the rates did not fluctuate through the year even when a service altered its method for delivering

uncertainty whether there was a legal obligation to pay anything for the satellite transmissions they covered, reflect a lower rate does not change the outcome. See Report at 124. As RIAA points out, the rate in one of these agreements was reset at a substantially higher rate once the initial contract with the lower rate expired. RIAA Reply to AEI/DMX at 25, fn 25. Nor is there any reason to reject the Panel's

RIAA argues that a $500 minimum is too low and contradicts the record evidence, citing the existence of significantly higher rates in many of the industry agreements and the lack of any agreement with a minimum as low as $500. RIAA Petition at 46–47. RIAA further contends that the CARP by its own reasoning should set a significantly higher minimum fee where, as here, the ephemeral rate is based on a percentage-

way for any licensee or business establishment service to clear all the reproduction rights involved in making digital transmissions of sound recordings under section 114. Congress "intended [this provision] to facilitate efficient transmission technologies, such as the use of phonorecords encoded for optimal performance at different transmission rates or use of different software programs to receive the transmissions." H.R. Rep. No. 105–796, at 90 (1998). These copies are known as "ephemeral recordings." "The term "ephemeral recording" is a term of art referring to certain phonorecords made for the purpose of facilitating certain transmissions of sound recordings, the reproduction of which phonorecords is privileged by the provisions of section 112." Id. Because the purpose of the license is to facilitate a lawful transmission of a sound recording under a statutory license or exemption, it would appear that the license covers not only the first reproduction of the sound recording on a company's server, but also all intermediate copies needed to facilitate the digital transmission of the sound recording.

The mere fact that the license covers different ephemeral recordings that may be catalogued in different ways does not mean that a separate rate must be set for each category. Had the record supported different rates for different categories of ephemeral recordings, or for different types of business establishment services, it is conceivable that the Panel might have chosen to differentiate among these categories or types of businesses by assigning different rates to each one.[41] See also Order (dated July 16, 2001) (advising Panel that it could set different rates for different business models, provided that the record supported such a decision). Whether such an approach would have been arbitrary would depend upon the findings of the Panel in light of the record evidence and, more importantly, upon whether the proposed rates covered the making of all ephemeral copies needed to facilitate the digital transmission of a sound recording under the section 114 business to business exemption.

The section 112 license is without question for the benefit of all services operating under the business to business exemption and not just DMX/AEI. A rate tailored only to meet the specific needs of a single service would by its very nature be arbitrary if the rate failed to cover the entire scope of the license. The fact that DMX/AEI has chosen to license the copies in its database through a private agreement and use the statutory license to cover the remaining ephemeral copies would not relieve the Panel of its responsibility to set rates for all ephemeral copies which fall within the scope of the license, including those copies in a DMCA compliant database. Other business establishment services using a DMCA-compliant database exist and may choose to meet their copyright liability by operating under the statutory license. See RIAA reply at 18; Report at 116. It is without question that such a service may take advantage of the statutory license without participating in a CARP proceeding.

Once these rates are set, a Service can either operate entirely under the statutory license or, alternatively, the Service may choose to make some ephemeral copies under the statutory license and others under a private agreement. These choices, however, have no bearing on the responsibility of the Panel to establish a rate, or a schedule of rates, that would allow a Service to utilize the license to the full extent of the law.

In fashioning the rate, the Panel considered the arguments put forth by the parties and ultimately rejected DMX/AEI's basic premise that Congress had contemplated a *de minimis* rate to compensate for "leakage" (use of ephemeral copies to make phonorecords for sale) and, its interpretation of what it characterized as the Copyright Office's view that such copies have no independent economic value. This decision was reached after examining the statute and its legislative history and finding nothing that directly supported the "leakage" theory.[42] Moreover, the Panel had already determined that its responsibility was not to give effect to the Copyright Office's view on how the law should change. Instead, it determined that its duty was "to follow the current Congressional mandate set forth in section 112(e)(4) and determine a separate rate for ephemeral copies' based upon the willing buyer/willing seller standard. Report at 98–99. Thus, the Panel rejected AEI/DMX's proposal to set a low rate based upon its finding that these entities have always paid substantial royalties to record companies in exchange for the use of its complete catalogue. Report at 119.

In any case, the starting point for setting the rates for the ephemeral recording license as it applies to business establishment services is the statute. It provides that, as with the rates for the webcasting license, the rates should be those that "most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller." 17 U.S.C. 112 (e)(4). Thus, the Panel turned to actual agreements that have been negotiated in the marketplace to discover how the market values these rights. As discussed previously, the use of rates negotiated in the marketplace is not arbitrary. It eliminates the need to try to value specific economic, competitive, and programming factors because the parties would have already accounted for these considerations during the negotiation process and their impact would be reflected in the negotiated rates.

Both sides seem to agree with the Panel's approach. RIAA had no complaint with the Panel's use of voluntarily negotiated licenses in setting the ephemeral rates for business establishment services. Moreover, DMX/AEI's own counsel acknowledged that marketplace agreements were appropriate benchmarks for establishing the rates for the rate for the section 112 license and conceded that the agreements relied upon were worthy of consideration. Tr. 9577–78 (Sept. 12, 2001). Nevertheless, DMX/AEI did argue that the proposed rate constitutes an undue financial burden that thwarts Congress' intent to facilitate the adoption of new technologies. DMX/AEI Petition at 11.

The question is which agreements should be considered when setting the rates for the ephemeral reproductions. Having found that the business establishment services offer a completely different type of service from webcasting, the Panel rejected DMX/AEI's invitation to use the ephemeral rates negotiated by the webcasters. Report at 121. Instead, the Panel opted to use the license agreements that had been negotiated between individual record companies and background music services[43] as a benchmark for setting the relevant section 112 rates even though, in some instances, the license conveyed some

[41] As RIAA points out, insufficient evidence exited to support his approach and accommodate DMX/AEI's proposal. RIAA reply at 15, citing Panel report at 118–10/9.

[42] RIAA supports the Panel's determinatin, nothing tha the legislative history makes clear that the purpose of the license is "to create fir and efficient licensing mechanisms." RIAA Reply at 20, citing H.R. Conf. Rep. 105–796 at 79–80 (1998).

[43] A background music service is a type of Business Establishment Service that complies and delivers music to business establishments who play the music for the enjoyment of their customers. Among the license agreements considered by the Panel were those negotiated between the major record labels and AEI, DMX, Muzak, Play Network, Inc., and Radio Programming and Management Inc. Report at 123–124.

rights to the licensee beyond the reproduction and distribution of the sound recording. The Panel was not troubled by this observation, however, because it found that in all cases the right to copy and distribute the works was by far the most important right for which the licensee paid royalties. Moreover, it noted that the rates did not fluctuate through the year even when a service altered its method for delivering music. Thus, the Panel used the rates reflected in these licenses to establish a range of rates (10–15% of gross proceeds) for consideration. See Report at 117; see e.g., RIAA Reply to AEI/DMX at 2. From this data, it found that "background music companies and record companies would agree to a royalty of at least 10% of gross proceeds," and set the rate accordingly. Report at 126.

RIAA agrees with the Panel's approach, and that it was appropriate for the Panel not to consider contracts for ephemerals made in the course of webcasting because these businesses are not comparable with Business Establishment Services. They serve different customers and operate under different economic business models with different delivery methods. For example, Business Establishment Services make reproductions of sound recordings and deliver them via cable or satellite for use by the establishment for the enjoyment of their customers. These differences are further underscored by transactions in the marketplace. RIAA notes that within a single license with one business entity, it negotiated a separate rate for webcasting ephemeral copies and a separate rate for ephemeral copies used by the Business Establishment Service. RIAA reply at 24–25. The fact that RIAA negotiated separate rates for the making of ephemeral recordings for different services supports a finding that the businesses are not comparable. Therefore, it was not arbitrary for the Panel to decline to consider the ephemeral rates set forth in the licenses between the webcasters and the record companies when establishing a rate for Business Establishment Services.

Moreover, an examination of the record evidence clearly shows that the 10% of revenues rate set by the Panel is not an arbitrary figure. RIAA Exhibits 9 DR, 10 DR, 11 DR, 12 DR, 13 DR, 14 DR, 26 DR, 27 DR, 28 DR, 60–A DR, 66 DR–X, Knittel Rebuttal Ex. 22; Knittel W.D.T. 14–15. It represents the low end of the range of rates set forth in the agreements between the major record labels and Business Establishment Services. The fact that two agreements, negotiated during a period of uncertainty whether there was a legal obligation to pay anything for the satellite transmissions they covered, reflect a lower rate does not change the outcome. See Report at 124. As RIAA points out, the rate in one of these agreements was reset at a substantially higher rate once the initial contract with the lower rate expired. RIAA Reply to AEI/DMX at 25, fn 25. Nor is there any reason to reject the Panel's determination, as DMX/AEI contends, because the Panel failed to adjust for the promotional value to the record companies or bring these rates into line with those set for Subscription Services in the previous proceeding. As the Panel stated on several occasions, it is unnecessary to adjust a marketplace-negotiated rate for the promotional value that flows to the record companies because that benefit would already be reflected in the contract price, if it were important to the parties.

Likewise, DMX/AEI's second premise for rejecting the Panel's determination must also be discarded. It argued that the Panel set an arbitrarily high rate for Business Establishment Services when compared to the rate set for Subscription Services in an earlier proceeding. DMX/AEI Petition at 19–20. As discussed in a previous section, see section IV.3, rates set for Subscription Services in a prior proceeding are just not comparable to rates under consideration in this proceeding. Marketplace rates for making reproductions of sound recordings for use by a Business Establishment Service have no established relationship to rates set under a totally different standard for the public performance of sound recordings by Subscription Services. There is no established nexus between the industries, the marketplaces in which they operate, or the rights for which the rates are set. To make any adjustments to the ephemeral rate based on the rate for the digital performance rate adopted for the Subscription Services in a previous proceeding would itself be patently arbitrary.

b. Minimum fee. The statute also requires the Panel to set a minimum fee for use of the license. Using the same licenses, it determined that the minimum fee should be $500 a year based on its observation that most, although not all, willing buyers have not agreed to a fee approaching RIAA's proposed rate of $50,000 a year and that some agreements include no minimum fee at all. Because there is no discernable trend in the licenses, the Panel chose to adopt the same fee it proposed for the webcasting licenses because it is calculated to cover at least the administrative costs of the license.

RIAA argues that a $500 minimum is too low and contradicts the record evidence, citing the existence of significantly higher rates in many of the industry agreements and the lack of any agreement with a minimum as low as $500. RIAA Petition at 46–47. RIAA further contends that the CARP by its own reasoning should set a significantly higher minimum fee where, as here, the ephemeral rate is based on a percentage-of-revenue model. Id. at 49. The Copyright Owners are concerned that a low minimum rate will increase "the risk that a service, especially a new one, will make a large number of ephemeral copies and not generate revenues, effectively giving the service a blanket license for free." Id. Consequently, the Copyright Owners ask the Librarian to adopt their proposal and set the minimum fee for use of the ephemeral license at rate no lower than $50,000.

DMX/AEI objects to RIAA's request for a higher minimum fee. It maintains that RIAA requested rate is inconsistent with record evidence, which establishes that either DMX/AEI currently pays [material redacted subject to a protective order] in its direct licensing agreements with the major labels for On-Premises services or that it is disproportionately high when compared with the minimum fees paid by other members of the background music service industry. DMX/AEI Reply at 7. Accordingly, AEI/DMX urges the Librarian not to entertain the RIAA's request.

An examination of the relevant agreements reveals that almost all of these agreements have a substantial minimum fee for the making of ephemeral recordings and that all of those minimum fees are considerably greater than the $500 minimum proposed by the CARP. Consequently, the Panel's decision to adopt a $500 minimum fee when no contract considered by the Panel contained a minimum fee as low as $500 is arbitrary. The minimum fees in the agreements before the CARP were by and large significantly higher than the $500 fee proposed by the CARP and should have served as the guiding principle in setting the minimum fee for the Business Establishment Services, especially in light of the Panel's earlier observation that a percentage of revenue fee requires the establishment of a substantial minimum fee to offset the risk that a start-up Service with little revenue could operate without paying adequate royalty fees for use of the license. Moreover, RIAA notes that each contract before the CARP was between a Business Establishment Service and a single record label. It then makes the argument that "[i]f a business

establishment service is willing to pay a minimum fee [significantly higher than the minimum fee proposed by the Register] for access to just one label's sound recordings, the value of the blanket license to all copyrighted recordings must be higher." RIAA Petition at 46. Based on this evidence, the Panel should have set the minimum fee for the section 112 license as it reasoned that such considerations were "not part of the governing standard for the Panel, nor [were they] a matter on which [the Panel] would have either record evidence or institutional expertise." Consequently, the Panel made no determination pertaining to administrative efficiency, choosing instead to defer to the expertise of the Librarian. Report at 129.

1. Disputed Terms

The parties were unable to reach a consensus with respect to two issues: (1) The incorporation of specific definitions for the terms, "Affiliated," "AM/FM streaming," "Broadcaster," and "Non-Public;" and (2) the designation of an agent for unaffiliated copyright owners.

a. *Definitions.* The Panel carefully considered the utility of incorporating

Agent would then make further distribution of the royalty fees to the two Designated Agents[45] who would then distribute the royalty fees among the Copyright Owners and Performers in accordance with the methodology set forth in the regulations.

The CARP accepted the proposal of the parties to designate a single Receiving Agent, SoundExchange, in

the agent for unaffiliated Copyright Owners, but Copyright Owners and Performers asked the Panel to designate SoundExchange as the agent for those copyright owners.

After carefully considering the role of the Designated Agent for unaffiliated copyright owners and the record evidence, the Panel made a determination to name SoundExchange

and equal control of copyright owner and performer representatives with an interest in maintaining an efficient operation that will distribute the maximum possible license fees, that SoundExchange is a nonprofit organization so that no copyright owner's or artist's royalty share will be diminished by anything other than necessary distribution costs, and that

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establishment service is willing to pay a minimum fee [significantly higher than the minimum fee proposed by the Register] for access to just one label's sound recordings, the value of the blanket license to all copyrighted recordings must be higher." RIAA Petition at 46. Based on this evidence, the Panel should have set the minimum fee for the section 112 license as it applies to Business Service Establishments at a significantly higher level, and it was arbitrary not to have done so.

The Register notes that minimum fees have been as low as $5,000 and as high as the $50,000 minimum proposed by RIAA. The purposes of the minimum fee, however, are to cover the costs of administration and insure an adequate return to the copyright owners based upon the value of the right with respect to the overall fee for use of the license. For these reasons, the Register proposes a minimum fee of $10,000 per Licensee. The fee is at the low end of the range of negotiated minimum fees and is in line with DMX/AEI's own valuation of the license at $10,000 per year. Admittedly this fee appears high when compared with the minimum fee for the eligible nonsubscription services, but it serves to balance the risk associated with setting a statutory fee based upon a percentage of revenues instead of a fee that would charge a specific fee for each reproduction.

17. Effective Period for Proposed Rates

The rates and terms proposed by the parties were the same for each time period under consideration by the Panel. Consequently, the Panel proposed, and the parties agreed, that the same rates and terms would apply to both periods: (1) October 28, 1998 (the effective date of the DMCA) through December 31, 2000; and (2) January 1, 2001, through December 31, 2002. The Register finds that it was not arbitrary for the Panel to propose the same rates and terms for both periods under consideration.

B. Terms

Sections 112(e)(4) and 114((f)(2)(B) require that the CARP propose and the Librarian adopt terms for administering payment for the two statutory licenses. The Panel stated that, as with rates, the standard for setting these terms is what the willing seller and the willing buyer would have negotiated in the marketplace. The Panel did not interpret the standard to include necessarily setting terms that "represent the optimum alternative from the standpoint of administrative convenience and workability." It reasoned that such considerations were "not part of the governing standard for the Panel, nor [were they] a matter on which [the Panel] would have either record evidence or institutional expertise." Consequently, the Panel made no determination pertaining to administrative efficiency, choosing instead to defer to the expertise of the Librarian. Report at 129.

For the most part, the terms proposed by the Panel are those to which all parties to the CARP proceeding have agreed in negotiations. For this reason, the Panel accepted all terms on which the parties agreed, finding that where there was agreement, the terms meet the statutory standard under which these terms must be set. Moreover, the Panel found that there was evidence in the record to support adoption of most of these terms.

The Register is skeptical of the proposition that terms negotiated by parties in the context of a CARP proceeding are necessarily evidence of terms that a willing buyer and a willing seller would have negotiated in the marketplace. Especially when those terms relate to administration of the receipt and distribution of royalties by collectives that are artificial (but necessary) creations of the statutory license process, rather than entities likely to be created in an agreement between a copyright owner and a licensee, the fiction that those terms reflect the reality of the marketplace is difficult to accept.

Not all of the terms recommended by the Panel are terms that the Register would have adopted if her task were to determine the most reasonable terms governing payment of royalties. However, in light of the standard of review, the Register recommends accepting the terms adopted by the Panel except in the relatively few instances where the Panel's decision was either arbitrary or not feasible. See Report at 129 ("we must defer to the expertise of the Librarian the final evaluation of the administrative feasibility of terms which willing buyers and willing sellers would agree to in marketplace negotiations"). The discussion that follows addresses, first, the terms recommended by the Panel that one or more parties have asked the Librarian to reject. Following that discussion, the Register discusses those terms recommended by the Panel that, although they are acceptable to the parties, she proposes to modify or reject, because they are arbitrary or contrary to law.

1. Disputed Terms

The parties were unable to reach a consensus with respect to two issues: (1) The incorporation of specific definitions for the terms, "Affiliated," "AM/FM streaming," "Broadcaster," and "Non-Public;" and (2) the designation of an agent for unaffiliated copyright owners.

a. *Definitions.* The Panel carefully considered the utility of incorporating the proposed terms for Affiliated," "AM/FM streaming," "Broadcaster," and "Non-Public." It decided to reject the webcasters" request to adopt the disputed terms and definitions, noting that the terms were not applicable to the rate structure ultimately adopted by the Panel. The Parties have filed no objection on this point and the Register finds no reason to include a definition of these terms in the regulations.

Notwithstanding the Panel's decision as to these terms, it did incorporate other terms that were necessary for the administration of the license. The proposed definitions for these additional terms are based upon submissions from the parties made at the Panel's request. See, Services' Submission of Definitions; Proposed Definitions of the Recording Industry Association of America, Inc. (Feb. 12, 2002). Again, no party has filed an objection to the Panel's decision to propose additional terms the purpose of which is make the regulatory framework clearer and more functional.

b. *Designated Agent for Unaffiliated Copyright Owners.* Read literally, section 114 appears to require that Services pay the statutory royalties directly to each Copyright Owner. As a practical matter, it would be impractical for a Service to identify, locate and pay each individual Copyright Owner whose works it performed. As a result, in the administration of the predecessor statutory license for noninteractive subscription services, a Collective was appointed to receive and distribute all royalties. The RIAA has served as the Collective for the nonsubscription services.

In this proceeding, the Parties proposed and the CARP agreed to a modification of the single-collective model. Licensees making transmissions of a public performance of a sound recording pursuant to the statutory license in section 114 and/or making ephemeral recordings of these works under the statutory license in section 112(e) would make all payments owed under these licenses to the designated "Receiving Agent." [44] The Receiving

[44] A "Receiving Agent" is the agent designated by the Librarian of Congress through the rate setting process for the collection of the royalty fees from the Licensees operating under the sections 112 and 114 licenses.

Agent would then make further distribution of the royalty fees to the two Designated Agents [45] who would then distribute the royalty fees among the Copyright Owners and Performers in accordance with the methodology set forth in the regulations.

The CARP accepted the proposal of the parties to designate a single Receiving Agent, SoundExchange, in order to maximize administrative efficiencies for the Copyright Owners and Performers, on the one hand, and Licensees, on the other. SoundExchange is a nonprofit organization formed by RIAA for the purpose of administering the sections 112 and 114 statutory licenses. It has over 280 member companies, affiliated with more than 2,000 record labels accounting for over 90% of the sound recordings lawfully sold in the United States. W.D.T. at 4 (Rosen). SoundExchange is governed by a board comprised of representatives of Copyright Owners and Performers and, under a recent reorganization, the Copyright Owners and artists representatives will have equal control over the SoundExchange Board. AFM/AFTRA PFFCL ¶ 6.

In addition to its role as a Receiving Agent, the CARP accepted the Parties' proposal that both SoundExchange and Royalty Logic, Inc. ("RLI") serve as Designated Agents. RLI is a for profit subsidiary of Music Reports, Inc. and was created to offer a competitive alternative to SoundExchange. W.D.T. at 2 (Gertz). The purpose of having two designated agents is to provide Copyright Owners with the option of electing to receive their royalty distribution from either SoundExchange or RLI. The Receiving Agent will allocate royalties to the two Designated Agents based on the Copyright Owner's designation.[46]

However, the parties could not agree on which Designated Agent would distribute funds to Copyright Owners who failed to make an election. The Webcasters proposed that RLI be named the agent for unaffiliated Copyright Owners, but Copyright Owners and Performers asked the Panel to designate SoundExchange as the agent for those copyright owners.

After carefully considering the role of the Designated Agent for unaffiliated copyright owners and the record evidence, the Panel made a determination to name SoundExchange as the Designated Agent for those copyright owners who fail to expressly designate either SoundExchange or RLI as their agent to receive and distribute royalties on their behalf. The primary reason for this designation was the preference expressed by the Copyright Owners and the Performers. The Panel reasoned that the Services had no real stake in deciding this issue because their responsibilities and direct interest end with the payment of the royalty fees to the Receiving Agent. Moreover, AFM and AFTRA, which represent artists who are among the beneficiaries of the license, expressed a strong preference for the designation of SoundExchange as the agent in these instances. The Copyright Owners made this choice based on the non-profit status of SoundExchange, its experience with royalty payments, and the fact that SoundExchange has agreed to a reorganization that gives artists substantial control over its operations. The Panel agreed with the reasons articulated by the Copyright Owners and Performers and found that the probable outcome of a marketplace negotiation would have been the selection of SoundExchange.

Broadcasters contest the Panel's decision to designate SoundExchange as the agent for unaffiliated copyright owners. They assert that there is no record evidence to support the Panel's observation that this was the inevitable outcome of marketplace negotiations, in spite of the actual requests made by Copyright Owners who participated in this proceeding. Broadcasters Petition at 59–60.

The Copyright Owners and Performers disagree, and assert that unlike the Licensees whose only concern is whom to pay and when, copyright owners and performers have a vital interest in how their royalty fees are collected and distributed and have expressed a strong preference for SoundExchange as the designated agent. See RIAA Reply at 81; AFM/AFTRA Reply at 2. Certainly, Performers believe that SoundExchange will make fair and equitable distributions and not deduct additional costs beyond those necessary costs incurred to effectuate a distribution. AFM/AFTRA Reply at 2–3 ("SoundExchange is subject to the joint and equal control of copyright owner and performer representatives with an interest in maintaining an efficient operation that will distribute the maximum possible license fees, that SoundExchange is a nonprofit organization so that no copyright owner's or artist's royalty share will be diminished by anything other than necessary distribution costs, and that SoundExchange is experienced and has demonstrated its commitment to identifying, finding and paying performers during its distribution of Section 114 and 112 subscription service statutory license fees."); see also RIAA Reply at 83.

The CARP's decision to designate SoundExchange as the agent for unaffiliated copyright owners is fully supported by the record evidence and, consequently, it is not arbitrary. First, the fact that Copyright Owners and Performers commend SoundExchange to the Panel is direct evidence of their preference for a non-profit organization that has already invested heavily in a system designed to locate and pay Copyright owners and Performers. It would be arbitrary to ignore their wishes where, in fact, the alternative agent represents primarily broadcasters, television stations, and other Licensees—not Licensors. See AFM/AFTRA PFFCL concerning terms ¶ 13. Second, SoundExchange is a non-profit collective that will deduct only necessary distribution costs. On the other hand, RLI, the entity competing for the agency designation, is a for-profit organization whose acknowledged goal is to make a profit. In fact, RLI has suggested that it needs the designation from the CARP in order to generate enough revenues to make it worthwhile to take on the role of an agent for purposes of making distributions of statutory license royalty fees. See Services Proposed Findings (12/18/01) at ¶ 16. In addition, RLI has been unable to say just how much it expects to deduct as reasonable costs, making it impossible to ascertain whether designation of RLI would be in the best interest of the unaffiliated copyright owners. Third, Performers and Copyright Owners have a direct governance role in the operation of SoundExchange, thereby insuring their interests are not neglected or overshadowed by the interests of the agent. AFM/AFTRA Reply at 4; AFM/AFTRA PFFCL concerning terms ¶ 6. Performers have expressed strong concerns about the designation of an agent who has no mechanism or apparent interest in providing the Copyright Owners and Performers with

[45] A "Designated Agent" is an agent designated by the Librarian of Congress through the same rate setting process who receives royalty fees paid for use of the statutory licenses from the Receiving Agent and makes further distributions of these fees to Copyright Owners and Performers.

[46] The Register is skeptical of the benefit of this two-tier structure, which adds expense and administrative burdens to a process the purpose of which is to make prompt, efficient and fair payments of royalties to Copyright Owners and Performers with a minimum of expense. However, the Register cannot say that the Panel's decision, presumably based on the conclusion that competition among Designated Agents will result in better service to Copyright Owners and Performers, is arbitrary.

a means to voice their concerns. See AFM/AFTRA PFFCL concerning terms ¶ 9 (noting that designation of RLI as the agent for unaffiliated copyright owners would have the undesirable effect of forcing these non-members "into an agency relationship with an entity that not only is not governed by Copyright Owners and Performers, but also is not even required to obtain their guidance

agreement." DMX/AEI Reply at 3. RIAA's proposed definition of "gross proceeds" would include fees generated by equipment rental, maintenance services, advertising of all kinds, and revenues payable to a licensee from any source in connection with the licensee's background music service. Id. at 5. DMX/AEI argues that such a definition is utterly contrary to the normal practice

contemplated by the Panel or by the parties to such agreements. Because the record fails to enumerate the types of revenue that may be received in kind, the Register finds it unwise to include even an illustrative list when there is little evidence of what specific types of revenues should be considered in the calculation of "gross proceeds." Thus, the definition of "gross proceeds" shall

difficult judgments in determining how to allocate royalties. If the Designated Agents had comprehensive information identifying each and every performance transmitted by a Licensee, and each and every Copyright Owner and Performer for each performance, in theory they could pay each Copyright Owner and Performer his or her precise share of royalties. In the real world—or at least

Recordings, 66 FR 38228, 38228 (July 23, 2001).[48]

The Register also proposes that the Librarian adopt a term that provides a Designated Agent with an optional mechanism pursuant to which the Designated Agent may request that the Register provide a written opinion stating whether the Agent's methodology for distributing royalty payments to nonmembers meets the

as permitting a Designated Agent to deduct from the royalty pool any costs of participating in a CARP proceeding. Such activity is beyond the scope of collection and distribution of royalties. Of course, Copyright Owners and Performers may enter into agreements with a Designated Agent permitting such deductions, but a Designated Agent may not make such deductions from royalties due to unaffiliated

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a means to voice their concerns. See AFM/AFTRA PFFCL concerning terms ¶ 9 (noting that designation of RLI as the agent for unaffiliated copyright owners would have the undesirable effect of forcing these non-members "into an agency relationship with an entity that not only is not governed by Copyright Owners and Performers, but also is not even required to obtain their guidance and input regarding policies, procedures or distribution methodologies.").

For all the foregoing reasons, the Register concludes that the CARP was not arbitrary in designating SoundExchange as the agent for unaffiliated copyright owners. Of the four factors considered by the Panel, each weighs in favor of SoundExchange. Of course, any Copyright Owner or Performer can affirmatively choose RLI to act on its behalf as a Designated Agent.

c. *Gross proceeds.* As discussed earlier, the Panel proposed the adoption of a rate for Business Establishment Services making ephemeral recordings under section 112 at 10% of gross proceeds. The Panel recognized the necessity of also formulating a definition of "gross proceeds" in order to make the rate workable. To meet this need, it opted to incorporate, with minor modifications to accommodate the section 112 license, the definition used in many of the background music agreements even though the definition is less than clear on its face as to what constitutes gross proceeds. The lack of specificity, however, did not trouble the Panel because it expected the parties to adopt the understandings within the industry developed during the normal course of dealings.

RIAA does not share the Panel's view. It objects to the proposed definition of "gross proceeds," arguing that the provision fails utterly to define the term in any meaningful way. It also contends that it is arbitrary to rely on industry practices to flesh out the industry's understanding of the term when no record evidence exists about these practices. To remedy this situation, RIAA proposes that the Librarian adopt the definition of "gross proceeds" for a Business Establishment Service that is set forth in the agreement between SoundExchange and MusicMusicMusic ("MMM"). RIAA Exhibit No. 60A. RIAA asserts that this is the only record evidence on this point. RIAA petition at 52–54.

DMX/AEI rejects RIAA's suggestion that the Librarian adopt a definition from an agreement with MMM, "an unsophisticated licensee, who by its own admission is unlikely to pay any significant royalties pursuant to the agreement." DMX/AEI Reply at 3. RIAA's proposed definition of "gross proceeds" would include fees generated by equipment rental, maintenance services, advertising of all kinds, and revenues payable to a licensee from any source in connection with the licensee's background music service. Id. at 5. DMX/AEI argues that such a definition is utterly contrary to the normal practice of using proceeds derived solely from the delivery of copyrighted sound recordings to business establishments.

As a general principle, terms pertaining to a statutory license must be defined with specificity. At first blush, the proposed definition of "gross proceeds" does not appear to meet this standard, merely reciting that a Business Establishment Service must pay a sum equal to ten percent of the licensee's gross proceeds derived from use of the musical programs that are attributable to copyrighted recordings. However, record evidence suggests the definition may be as simple as the CARP's characterization of the term. Barry Knittel,[47] in discussing the promotional funds established for the benefit of the record companies from gross proceeds, stated that the money placed into these accounts comes from the company's gross revenues, and that these revenues are generated from all the billings for music. Tr. 8384 (Knittel). This statement suggests that the determination of what constitutes "gross revenues" is not a mystery and that it is merely the amount the Business Establishment Services receive from their customers for use of the music. This approach, however, does not necessarily appear to capture in-kind payments of goods, free advertising or other similar payments for use of the license. See RIAA Petition at 54.

Consequently, the Register proposes to expand on the CARP's approach and adopt a definition of "gross proceeds" which clarifies that "gross proceeds" shall include all fees and payments from any source, including those made in kind, derived from the use of copyrighted sound recordings to facilitate the transmission of the sound recording pursuant to the section 112 license. See RIAA Exhibit No. 60A DR. (Second Webcasting Performance and Webcasting and Business Establishment Ephemeral Recording License Agreement). The Register finds it necessary to expand upon the proposed definition to avoid any confusion on this point and not as a means to capture additional revenue streams not contemplated by the Panel or by the parties to such agreements. Because the record fails to enumerate the types of revenue that may be received in kind, the Register finds it unwise to include even an illustrative list when there is little evidence of what specific types of revenues should be considered in the calculation of "gross proceeds." Thus, the definition of "gross proceeds" shall be as follows:

"Gross proceeds" shall mean all fees and payments, including those made in kind, received from any source before, during or after the License term which are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public a performance of a sound recording under the limitation on the exclusive rights specified in section 114(d)(1)(c)(iv).

2. Terms Not Disputed by the Parties

a. *Limitation of Liability.* One of the terms proposed by the Parties and adopted by the CARP was that "A Designated Agent shall have no liability for payments made in accordance with this subsection with respect to disputes between or among recipients." The Parties explained that the purpose of this provision was to "mak[e] clear that so long as a Designated Agent complies with the requirements adopted by the Copyright Office for distributing royalties, then a beneficiary of statutory royalties cannot sue such Designated Agent for payments made in accordance with Copyright Office regulations. Any dispute among recipients should be resolved among themselves."

The Register understands the desire of SoundExchange and RLI to insulate themselves from liability in cases where Copyright Owners or Performers dispute the Designated Agent's allocation of royalties. The Copyright Office's experience with distribution proceedings for the statutory licenses for which royalties are initially paid to the Copyright Office provides ample evidence that individual copyright owners and performers often believe they are being paid less than their fair share of statutory license royalties, and it is natural for a Designated Agent to wish to avoid having to defend against such claims.

Moreover, as has become apparent in the course of the pending rulemaking proceeding relating to notice and recordkeeping for the use of sound recordings under the statutory licenses, the information that Licensees will be providing to the Designated Agents about which (and how many) sound recordings they have performed will be far from perfect, and the Designated Agents necessarily will have to make

[47] Barry Knittel, formerly President of AEI Music Markets—Worldwide is now DMX/AEI's Senior Vice President of Business Affairs Worldwide.

difficult judgments in determining how to allocate royalties. If the Designated Agents had comprehensive information identifying each and every performance transmitted by a Licensee, and each and every Copyright Owner and Performer for each performance, in theory they could pay each Copyright Owner and Performer his or her precise share of royalties. In the real world—or at least for the remainder of the period for which this proceeding is setting rates and terms—some Copyright Owners and Performers inevitably will receive less than their precise share of the royalty pool, and others will receive more than their precise share. The Designated Agents should not be held to an impossibly high standard of care.

Unfortunately, neither the CARP nor the Librarian have the power to excuse a Designated Agent (or, for that matter, anyone else) from liability for a breach of a legal obligation. If a Designated Agent has in fact wrongfully withheld or underpaid royalties to a Copyright Owner or Performer, the law may provide a remedy to the Copyright Owner or Performer.

Although the Librarian cannot excuse the Designated Agents from potential liability, he can adopt terms that provide a mechanism that will make claims by disgruntled Copyright Owners or Performers less likely, or at least less viable. The Register therefore recommends that in place of the ultra vires provision excusing the Designated Agents from any liability, the Librarian provide that the Designated Agents must submit to the Copyright Office a detailed description of their methodology for distributing royalty payments to nonmembers. This information will be made available to the public, and any Copyright Owner or Performer who believes the methodology is unfair will have an opportunity to raise an objection with the Designated Agent prior to the distribution, thereby giving the Designated Agent the opportunity to address the problem before the Copyright Owner or Performer has suffered any alleged harm. This provision is modeled on a provision proposed by the parties to the previous CARP proceeding to establish rates and terms for noninteractive subscription services under section 114. See proposed 37 CFR 260.3(a), in Notice of Proposed Rulemaking, Determination of Reasonable Rates and Terms for the Public Performance of Sound Recordings, 66 FR 38226, 38228 (July 23, 2001).[48]

The Register also proposes that the Librarian adopt a term that provides a Designated Agent with an optional mechanism pursuant to which the Designated Agent may request that the Register provide a written opinion stating whether the Agent's methodology for distributing royalty payments to nonmembers meets the requirements of the terms for distribution set forth in the implementing regulations. Although such an opinion by the Register would not be binding on a court evaluating a claim against a Designated Agent, it can be assumed that a court would find the opinion of the Register persuasive.

The Register anticipates that under this scheme, a Designated Agent that acts conscientiously and in good faith in the distribution of royalties will not be found liable to a Copyright Owner or Performer who is dissatisfied with his or her share of the distribution.

b. *Deductions from Royalties for Designated Agent's Costs.* The parties had proposed, and the CARP agreed, that Designated Agents be permitted to deduct from the royalties paid to Copyright Owners and Performers "reasonable costs incurred in the licensing, collection and distribution of the royalties paid by Licensees * * * and a reasonable charge for administration." The Register recommends that the provision permitting deductions for costs incurred in licensing be removed from this provision. See § 261.4(i). Although a Designated Agent may happen to engage in licensing activities, licensing per se is not among the responsibilities of a Designated Agent under the terms of the statutory license. The purpose of the Designated Agent is to receive and distribute the statutory royalty fees. There is no justification for permitting a Designated Agent to deduct costs incurred in licensing activity from the statutory royalties, and the CARP's acquiescence in this term was therefore arbitrary.

There was also a suggestion in testimony presented to the CARP that it would be proper for a Designated Agent to deduct from statutory royalties its costs incurred as a participant in a CARP proceeding. Tr. 11891–11893 (Williams). Nothing in § 261.4(i), including the references to "reasonable costs incurred in the collection and distribution of the royalties paid by Licensees," can properly be construed as permitting a Designated Agent to deduct from the royalty pool any costs of participating in a CARP proceeding. Such activity is beyond the scope of collection and distribution of royalties. Of course, Copyright Owners and Performers may enter into agreements with a Designated Agent permitting such deductions, but a Designated Agent may not make such deductions from royalties due to unaffiliated Copyright Owners and Performers or those who have simply designated a Designated Agent without specifically agreeing to permit such deductions.[49]

c. *Ephemeral Recording.* The Register recommends that a definition of "Ephemeral Recording" be added to the definitions. This definition incorporates by reference the requirements set forth in section 112(e).

In a related provision, the Register has harmonized the language of §§ 261.3(b) and (c) and makes clear that beneficiaries of the statutory license for ephemeral recordings may make any number of ephemeral recordings so long as they are made for the sole purpose of facilitating the statutory licensees permitted transmissions of performances of sound recordings. The regulatory text proposed by the parties and accepted by the Panel provided that for Business Establishment Services, the section 112 royalty shall be paid "[f]or the making of unlimited numbers of ephemeral recordings in the operation of broadcast services pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv)," (emphasis added), but that for webcasters, the section 112 royalty shall be paid "[f]or the making of all ephemeral recordings required to facilitate their internet transmissions."

A literal reading of section 112(e) might lead to the conclusion that the ephemeral recording statutory license permits only the making of a single ephemeral recording, but the statute qualifies that provision by stating "(unless the terms and conditions of the statutory license allow for more)," and the legislative history makes clear that the terms established by the Librarian in this proceeding may include terms permitting the making of additional

[48] A similar provision is recommended with respect to the methodology for allocating royalties among Designated Agents.

[49] The Register is also troubled by the parties permitting a Designated Agent to deduct "a reasonable charge for administration" which is included "to permit a for-profit Designated Agent to make a reasonable profit on royalty collection and distribution on top of the direct expenses that may be incurred in licensing, collection and distribution." Appendix B, p. B–13. But in light of the parties' acceptance and the CARP's adoption of a procedure permitting multiple Designated Agents, including a for-profit Designated Agent, the Register reluctantly cannot conclude that the provision is arbitrary.

ephemeral recordings. H.R.Rep. 105–796, at 89. Therefore, it is appropriate that the terms make clear that statutory licensees may make more than one ephemeral recording to accomplish the purposes of the statutory license.

The reference to "all" ephemeral recordings "required" to facilitate webcasters' transmissions, and the reference to "unlimited" recordings for Business Establishment Services, under current conditions it is administratively unfeasible.

As the parties recognized in their commentary on this provision, "The parties do not know either the payment methodology that will be used to calculate royalties or the types of information that will be reported by Licensees. Such determinations cannot be made before the conclusion of this proceeding and the Notice and accepted by the Panel provide that the Receiving Agent allocate royalty payments to Designated Agents "on a reasonable basis to be agreed among the Receiving Agent and the Designated Agents," and that the Designated Agents distribute royalty payments "on a reasonable basis that values all performances by a Licensee equally." The Panel accepted these terms, but

the Register proposes the addition of § 261.4(l), which would simply provide that in the event of a stalemate, "either the Receiving Agent or a Designated Agent may seek the assistance of the Copyright Office in resolving the dispute."

g. *Choice of Designated Agent by Performers.* A literal reading of the terms recommended by the Panel would permit a Copyright Owner to select the of Copyright Owners and Performers, which could number in the tens of thousands." Appendix B at p. B–24. The commentary suggests that it would be impracticable for a Designated Agent to be subject to audit from individual Performers. Apart from reproducing the Parties' commentary, the Panel offered no observations on this point.

The Register fails to understand how it would be "impracticable" to permit Librarian, since section 802(g) only refers to the decision of the Librarian. Thus, this provision has been interpreted as providing the Librarian with discretion in setting the effective date. Moreover, the courts have held that an agency normally retains considerable discretion to choose an effective date, where, as here, the statute authorizing agency action fails to specify a timetable for effectiveness of

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ephemeral recordings. H.R.Rep. 105–796, at 89. Therefore, it is appropriate that the terms make clear that statutory licensees may make more than one ephemeral recording to accomplish the purposes of the statutory license.

The reference to "all" ephemeral recordings "required" to facilitate webcasters' transmissions, and the reference to "unlimited" recordings for Business Establishment Services" "operation", are arguably inconsistent with each other and somewhat ambiguous. To clarify that the scope of the section 112 statutory license is similar for both types of service, and to more accurately reflect the appropriate scope of that license, the Register recommends that the regulatory language provide, in the case of webcasters, "[f]or the making of *any number* of ephemeral recordings to facilitate the Internet transmission of a sound recording," and in the case of Business Establishment Services, "[f]or the making of *any number* of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption." (Emphasis added).

d. *Definition of "Listener".* The definitions of "Aggregate Tuning Hours" and "Performance" both include references to a "listener" or to "listeners." It is not clear from the text of these definitions whether each person who is hearing a performance is a "listener" even if all the persons hearing the performance are listening to the same machine or device (e.g., two or more persons listening to a performance rendered on a single computer). Clearly the intent is that all persons listening to a performance on a single machine or device constitute, collectively, a single "listener," because "listener" is used here to assist in defining what constitutes a single performance. Indeed, it would be difficult to implement an interpretation that counted all individuals in such circumstances as separate "listeners." Accordingly, the Register recommends including a definition that provides that if more than one person are listening to a transmission made to a single machine or device, those persons collectively constitute a single listener.

e. *Timing of Payment by Receiving Agent to Designated Agent.* The terms proposed by the Parties and accepted by the CARP included a provision requiring that the Receiving Agent pay a Designated Agent its share of any royalty payments received from a Licensee within 20 days after the day on which the Licensee's payment is due. While the Register recognizes that such a provision would, in principle, be unobjectionable, she concludes that under current conditions it is administratively unfeasible.

As the parties recognized in their commentary on this provision, "The parties do not know either the payment methodology that will be used to calculate royalties or the types of information that will be reported by Licensees. Such determinations cannot be made before the conclusion of this proceeding and the Notice and Recordkeeping Proceeding." Appendix B, p. B–10. However, they assumed that the Receiving Agent and the Designated Agent could agree on a "reasonable allocation method" even in the absence of any firm data.

The Register is skeptical. It is apparent at this point in the rulemaking on notice and recordkeeping that obtaining accurate reports of Licensees' use of sound recordings will be difficult, particularly during the first few months. Moreover, the initial reports of use will require reporting on less than a monthly basis, making it impossible in many instances for the Receiving Agent to make any determination whatsoever as to a Designated Agent's allocated share during at least the first month or two in which royalties are paid. Reports on past use of sound recordings (i.e., from October 28, 1998, to the present) will present an even more formidable challenge. It is difficult to imagine that 20 days after the Receiving Agent has received the first royalty payments from Licensees, the Receiving Agent and the Designated Agent will have any reliable information from which they can ascertain how the proceeds should be allocated. The Register therefore recommends that the proposed requirement that payment be made within 20 days of the day on which the Licensee's payment is due be replaced by a requirement that the payment be made "as expeditiously as is reasonably possible," a more flexible term that recognizes the difficulty in establishing a specific deadline. The Register cautions that during the first few months of operation of the system of reporting and or royalty payment, "expeditious" payment under the circumstances may be a matter of many weeks, if not months.

It can reasonably be expected that for future periods governed by future CARPs or negotiated agreements, more stringent requirements of prompt payment will be appropriate. But it must be recognized that in this initial, transitional period, delays will be inevitable.

f. *Allocation of Royalties among Designated Agents and Among Copyright Owners and Performers.* The terms proposed by the Parties and accepted by the Panel provide that the Receiving Agent allocate royalty payments to Designated Agents "on a reasonable basis to be agreed among the Receiving Agent and the Designated Agents," and that the Designated Agents distribute royalty payments "on a reasonable basis that values all performances by a Licensee equally." The Panel accepted these terms, but observed that a "determination of how royalty payments should be apportioned between the Designated Agents cannot be made until the parties know the rate structure adopted by the CARP (in the first instance) and the Librarian of Congress (on review) and the outcome of the Notice and Recordkeeping Proceeding." Appendix B, at p. B–10. Similarly, the Panel remarked that "The terms do not specifically provide how a Designated Agent should allocate royalties among parties entitled to receive such royalties because such allocation will depend upon the rate structure adopted by the CARP (in the first instance) and by the Librarian of Congress (on review) and may be affected by the types of reporting requirements that are adopted by the Copyright Office in the Notice and Record-keeping Proceeding for eligible nonsubscription transmissions and business establishment services." Id., p. B–12.

The Register recommends that the provisions for allocation of royalty payments among Designated Agents and for allocation of royalties among parties entitled to receive such royalties be clarified, making explicit the relationship between the notice and recordkeeping regulations and the allocation of royalties. Each of these provisions should provide that the method of allocation shall be based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances.

The Register has some trepidation about the provision in § 261.4(a), proposed by the Parties and recommended by the CARP, that provides that apportionment among Designated Agents "shall be made on a reasonable basis that uses a methodology that values all performances equally and *is agreed upon* among the Receiving Agent and the Designated Agents." (Emphasis added). The regulation does not provide what happens in the event that the Receiving Agent and the Designated Agents cannot agree on an allocation methodology. One could recommend a provision that gives the ultimate decisionmaking power to one of the parties or to a third party, but instead,

the Register proposes the addition of § 261.4(l), which would simply provide that in the event of a stalemate, "either the Receiving Agent or a Designated Agent may seek the assistance of the Copyright Office in resolving the dispute."

g. *Choice of Designated Agent by Performers.* A literal reading of the terms recommended by the Panel would permit a Copyright Owner to select the Designated Agent of its choice, but would require a Performer to accept the Designated Agent selected by the Copyright Owner; and the Panel's report appears to agree with this interpretation. Report at 132. However, the Report does not articulate any reason for the decision to deprive Performers of the same right to choose that is given to Copyright Owners, and the commentary in Appendix B is silent as well.

As the Panel acknowledged, "Copyright owners and performers, on the other hand, have a direct and vital interest in who distributes royalties to them and how that entity operates" Report at 132 (emphasis added). The Register agrees. It was arbitrary to permit Copyright Owners to make an election that Performers are not permitted to make. The Register can conceive of no reason why Performers should not be given the same choice. Accordingly, the Register recommends that § 261.4 be amended to provide that a Copyright Owner or a Performer may make such an election. See § 261.4(c) of the recommended regulatory text.

The Register has also inserted a housekeeping amendment to provide that for administrative convenience, a Copyright Owner's or Performer's designation of a Designated Agent shall not be effective until 30 days have passed.

h. *Performers' Right to Audit.* The terms proposed by the Parties and accepted by the CARP provided that a Copyright Owner may conduct an audit of a Designated Agent. These provisions also include safeguards to ensure that a Designated Agent is not subjected to more than one audit in a calendar year.

However, the terms do not provide that Performers have a similar right to conduct an audit of a Designated Agent, despite the fact that Performers, like Copyright Owners, depend upon the Designated Agent to make fair and timely royalty payments. The Parties' commentary in Appendix B states that audit rights are limited to Copyright Owners "rather than the entire universe of Copyright Owners and Performers, which could number in the tens of thousands." Appendix B at p. B–24. The commentary suggests that it would be impracticable for a Designated Agent to be subject to audit from individual Performers. Apart from reproducing the Parties' commentary, the Panel offered no observations on this point.

The Register fails to understand how it would be "impracticable" to permit Performers, who depend on a Designated Agent for their royalty payments, to initiate an audit of the Designated Agent when the Copyright Owners may do so. The Designated Agent is given sufficient protection by virtue of the provision that it can be subject to only a single audit in a calendar year, by the provision that the party requesting the audit must bear the presumably considerable costs of the audit, and by the provision that any audit "shall be binding on all Copyright Owners and Performers." [50] The Register, therefore, recommends that the audit provisions be amended to permit not only Copyright Owners, but also Performers, to initiate an audit.

i. *Effective date.* Section 114(f)(4)(C) states that payments in arrears for the performance of sound recordings prior to the setting of a royalty rate are due on a date certain in the month following the month in which the rate is set. The effective date of the rates, however, is not necessarily the date of publication in the **Federal Register**. The Librarian has often set the effective date of a rate several months after the initial announcement of the decision. See Determination of Reasonable Rates and Terms for Subscription Services, 63 FR 25394 (May 8, 1998) (setting the effective date for the rate for subscription services three weeks after the date of publication of the final order in the **Federal Register**); Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (October 28, 1997) (announcing an effective date of January 1, 1998, set to coincide with the next filing period of the statements of account).

Section 802(g) provides that the effective date of the new rates is "as set forth in the decision." 17 U.S.C. 802(g). The Register has interpreted the term "decision" to mean the decision of the Librarian, since section 802(g) only refers to the decision of the Librarian. Thus, this provision has been interpreted as providing the Librarian with discretion in setting the effective date. Moreover, the courts have held that an agency normally retains considerable discretion to choose an effective date, where, as here, the statute authorizing agency action fails to specify a timetable for effectiveness of decisions. *RIAA* v. *CRT*, 662 F.2d. 1, 14 (D.C. Cir. 1981).

In setting an effective date, the Register has considered the impact of the rate on the Licensees and the administrative burden on the Office in promulgating regulations to insure effective administration of the license. Clearly, there will be a burden on many Licensees who, by law, are required to make full payment of all royalties owed for transmissions made since the effective date of the DMCA, October 28, 1998, on or before the 20th day of the month next succeeding the month in which the royalty rate is set. Moreover, the Copyright Office is in the midst of promulgating rules governing records of use that will be used to make distribution of royalty fees in accordance with the terms of payment.

Consequently, the Register proposes an effective date of September 1, 2002, which will require the Licensees to make full payment of the arrears on October 20, 2002. Payment for the month of September shall be due on or before November 14, 2002, the forty-fifth (45th) day after the end of the month on which the rate becomes effective, in accordance with the term proposed by the parties and adopted by the CARP. Similarly, all subsequent payments shall be due on the 45th after the end of each month for which royalties are owed. This payment schedule provides the Licensees with additional time to make the initial payment and any necessary adjustments in their business operations to meet their copyright obligation.

V. Conclusion

Having fully analyzed the record in this proceeding, the submissions of the parties, the Register of Copyrights recommends that the Librarian adopt the statutory rates for the transmission of a sound recording pursuant to section 114, and the making of ephemeral phonorecords pursuant to section 112(e), as set forth below:

[50] It is noteworthy that although the Parties were unwilling to give Performers a right to initiate an audit, they did not hesitate to provide that Performers will be bound by an audit initiated by a Copyright Owner.

SUMMARY OF ROYALTY RATES FOR SECTION 114(F)(2) AND 112(E) STATUTORY LICENSES

Type of DMCA—Complaint service	Performance fee (per performance)	Ephemeral license fees
1. Webcaster and Commercial Broadcaster: All Internet transmissions, including simultaneous internet retransmissions of over-the-air AM or FM radio broadcasts.	0.07¢	8.8% of Performance Fees Due.
2. Non-CPB, Non-Commercial Broadcaster: (a) Simultaneous internet retransmissions of over-the-air AM or FM radio broadcasts.	0.02¢	8.8% of Performance Fees Due.

Agent. The Designated Agent shall make further distribution of those royalty payments to Copyright Owners and Performers that have been identified in § 261.4(c).

Ephemeral Recording is a phonorecord created solely for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C.

(2) A performance of a sound recording for which the service has previously obtained license from the copyright owner of such sound recording; and

(3) An incidental performance that both: (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during

pursuant to 17 U.S.C. 112(e) shall be as follows:

(1) Webcaster and Commercial Broadcaster Performance Royalty. For all Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts, a Webcaster and a Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(2) Non-CPB, Non-Commercial

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SUMMARY OF ROYALTY RATES FOR SECTION 114(F)(2) AND 112(E) STATUTORY LICENSES

Type of DMCA—Complaint service	Performance fee (per performance)	Ephemeral license fees
1. Webcaster and Commercial Broadcaster: All Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts.	0.07¢	8.8% of Performance Fees Due.
2. Non-CPB, Non-Commercial Broadcaster:		
(a) Simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts.	0.02¢	8.8% of Performance Fees Due.
(b) Other Internet transmissions, including up to two side channels of programming consistent with the public broadcasting mission of the station.	0.02¢	8.8% of Performance Fees Due.
(c) Transmissions on any other side channels	0.07¢	8.8% of Performance Fees Due.
3. Business Establishment Service: For digital broadcast transmissions of sound recordings pursuant to 17 U.S.C. 114(d)(1)(C)(iv).	Statutorily Exempt	10% of Gross Proceeds.
4. Minimum Fee:		
(a) Webcasters, commercial broadcasters, and non-CPB, non-commercial broadcasters.	$500 per year for each licensee.	
(b) Business Establishment Services		$10,000

In addition, the Register recommends that the Librarian adopt the terms of payment proposed by the CARP, as modified in the recommendation, and set September 1, 2002, as the effective date for the statutory rates and the terms of payment.

VI. The Order of the Librarian of Congress

Having duly considered the recommendation of the Register of Copyrights regarding the Report of the Copyright Arbitration Royalty Panel in the matter to set rates and terms for Licensees making certain digital performances of sound recordings under section 114(d)(2) and those making ephemeral recordings under section 112(e), the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's decision in part and reject it in part. For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing this order, and amending the rules of the Library and the Copyright Office, announcing the new royalty rates and terms of payment for the sections 112 and 114 statutory licenses.

List of Subjects in 37 CFR Part 261

Copyright, Digital audio transmissions, Performance right, Recordings.

Final Regulation

In consideration of the foregoing, part 261 of 37 CFR is added to read to as follows:

PART 261—RATES AND TERMS FOR ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.

261.1 General.
261.2 Definitions.
261.3 Royalty fees for public performance of sound recordings and for ephemeral recordings.
261.4 Terms for making payment of royalty fees and statements of account.
261.5 Confidential information.
261.6 Verification of statements of account.
261.7 Verification of royalty payments.
261.8 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

§ 261.1 General.

(a) This part 261 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e).

(b) Licensees relying upon the statutory license set forth in 17 U.S.C. 114 shall comply with the requirements of that section and the rates and terms of this part.

(c) Licensees relying upon the statutory license set forth in 17 U.S.C. 112 shall comply with the requirements of that section and the rates and terms of this part.

(d) Notwithstanding the schedule of rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services within the scope of 17 U.S.C. 112 and 114 concerning eligible nonsubscription transmissions shall apply in lieu of the rates and terms of this part.

§ 261.2 Definitions.

For purposes of this part, the following definitions shall apply:

Aggregate Tuning Hours mean the total hours of programming that the Licensee has transmitted over the Internet during the relevant period to all end users within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions. By way of example, if a service transmitted one hour of programming to 10 simultaneous listeners, the service's Aggregate Tuning Hours would equal 10. Likewise, if one listener listened to a service for 10 hours, the service's Aggregate Tuning Hours would equal 10.

Business Establishment Service is a Licensee that is entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that obtains a compulsory license under 17 U.S.C. 112(e) to make ephemeral recordings for the sole purpose of facilitating those exempt transmissions.

Commercial Broadcaster is a Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission to make over-the-air broadcasts, other than a CPB-Affiliated or Non-CPB-Affiliated, Non-Commercial Broadcaster.

Copyright Owner is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

Designated Agent is the agent designated by the Librarian of Congress for the receipt of royalty payments made pursuant to this part from the Receiving Agent. The Designated Agent shall make further distribution of those royalty payments to Copyright Owners and Performers that have been identified in § 261.4(c).

Ephemeral Recording is a phonorecord created solely for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Gross proceeds mean all fees and payments, as used in § 261.3(d), including those made in kind, received from any source before, during or after the License term which are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on the exclusive rights specified in section 114(d)(1)(c)(iv).

Licensee is: (1) A person or entity that has obtained a compulsory license under 17 U.S.C. 112 or 114 and the implementing regulations therefor to make eligible non-subscription transmissions and ephemeral recordings, or

(2) A person or entity entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that has obtained a compulsory license under 17 U.S.C. 112 to make ephemeral recordings.

Listener is a recipient of a transmission of a public performance of a sound recording made by a Licensee or a Business Establishment Service. However, if more than one person is listening to a transmission made to a single machine or device, those persons collectively constitute a single listener.

Non-CPB, Non-Commercial Broadcaster is a Public Broadcasting Entity as defined in 17 U.S.C. 118(g) that is not qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener via a Web Site transmission or retransmission (e.g. the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained license from the copyright owner of such sound recording; and

(3) An incidental performance that both: (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performer means the respective independent administrators identified in 17 U.S.C. 114(g)(2)(A) and (B) and the parties identified in 17 U.S.C. 114(g)(2)(C).

Receiving Agent is the agent designated by the Librarian of Congress for the collection of royalty payments made pursuant to this part by Licensees and the distribution of those royalty payments to Designated Agents, and that has been identified as such in § 261.4(b). The Receiving Agent may also be a Designated Agent.

Side channel is a channel on the Web Site of a Commercial Broadcaster or a Non-CPB, Non-Commercial Broadcaster, which channel transmits eligible non-subscription transmissions that are not simultaneously transmitted over-the-air by the Licensee.

Webcaster is a Licensee, other than a Commercial Broadcaster, Non-CPB, Non-Commercial Broadcaster or Business Establishment Service, that makes eligible non-subscription transmissions of digital audio programming over the Internet through a Web Site.

Web Site is a site located on the World Wide Web that can be located by an end user through a principal Uniform Resource Locator (a "URL"), e.g., www.xxxxx.com.

§ 261.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.

(a) For the period October 28, 1998, through December 31, 2002, royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114(d)(2), and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) shall be as follows:

(1) Webcaster and Commercial Broadcaster Performance Royalty. For all Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts, a Webcaster and a Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(2) Non-CPB, Non-Commercial Broadcaster Performance Royalty.

(i) For simultaneous Internet retransmissions of over-the-air AM or FM broadcasts by the same radio station, a non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(ii) For other Internet transmissions, including up to two side channels of programming consistent with the mission of the station, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(iii) For Internet transmissions on other side channels of programming, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(b) Estimate of Performance. Until December 31, 2002, a Webcaster, Commercial Broadcaster, or Non-CPB, Non-Commercial Broadcaster may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of transmissions or retransmissions of radio station programming reasonably classified as news, business, talk or sports, and 12 performances per hour in the case of transmissions or retransmissions of all other radio station programming).

(c) Webcaster and Broadcaster Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings to facilitate the Internet transmission of a sound recording, each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster shall pay a section 112(e) royalty equal to 8.8% of their total performance royalty.

(d) Business Establishment Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv), a Business Establishment Service shall pay a section 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross

proceeds derived from the use in such service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program.

designation is made, Royalty Logic, Inc. and SoundExchange are designated as Designated Agents to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners.

(c) SoundExchange is the Designated Agent to distribute royalty payments to each Copyright Owner and Performer

is reasonably possible following receipt of the Licensee's royalty payment and statement of account as well as the Licensee's Report of Use of Sound Recordings under Statutory License for the period to which the royalty payment and statement of account pertain, with such allocation to be made on the basis determined as set forth in paragraph (a) of this section. The Receiving Agent and the Designated Agent shall agree on a

Owners and Performers provide the Designated Agent with adequate information necessary to identify the correct recipient for such payments. However, Performers and Copyright Owners may jointly agree with a Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties to Performers and Copyright

(d) Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to, and in the case of paragraphs (d)(3) and (d)(4) of this section shall be provided upon request, subject to resolution of any relevance or burdensomeness concerns and reimbursement of reasonable costs directly incurred in responding to such request, to:

collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

§ 261.6 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by the Designated Agent.

(b) *Frequency of verification.* A Designated Agent may conduct a single

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proceeds derived from the use in such service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program.

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(e) Minimum fee. (1) Each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster licensed to make eligible digital transmissions and/or ephemeral recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall pay a minimum fee of $500 for each calendar year, or part thereof, in which it makes such transmissions or recordings.

(2) Each Business Establishment Service licensed to make ephemeral recordings pursuant to a license under 17 U.S.C. 112(e) shall pay a minimum fee of $10,000 for each calendar year, or part thereof, in which it makes such recordings.

§ 261.4 Terms for making payment of royalty fees and statements of account.

(a) A Licensee shall make the royalty payments due under § 261.3 to the Receiving Agent. If there are more than one Designated Agent representing Copyright Owners or Performers entitled to receive any portion of the royalties paid by the Licensee, the Receiving Agent shall apportion the royalty payments among Designated Agents using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such apportionment shall be made on a reasonable basis that uses a methodology that values all performances equally and is agreed upon among the Receiving Agent and the Designated Agents. Within 30 days of adoption of a methodology for apportioning royalties among Designated Agents, the Receiving Agent shall provide the Register of Copyrights with a detailed description of that methodology.

(b) Until such time as a new designation is made, SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., is designated as the Receiving Agent to receive statements of account and royalty payments from Licensees. Until such time as a new designation is made, Royalty Logic, Inc. and SoundExchange are designated as Designated Agents to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners.

(c) SoundExchange is the Designated Agent to distribute royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners, except when a Copyright Owner or Performer has notified SoundExchange in writing of an election to receive royalties from a particular Designated Agent. With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a particular Designated Agent must be made no later than thirty days prior to the receipt by the Receiving Agent of that royalty payment.

(d) Commencing September 1, 2002, a Licensee shall make any payments due under § 261.3 to the Receiving Agent by the forty-fifth (45th) day after the end of each month for that month. Concurrently with the delivery of payment to the Receiving Agent, a Licensee shall deliver to each Designated Agent a copy of the statement of account for such payment. A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Receiving Agent after the due date. Late fees shall accrue from the due date until payment is received by the Receiving Agent.

(e) A Licensee shall make any payments due under § 261.3 for transmissions made between October 28, 1998, and August 31, 2002, to the Receiving Agent by October 20, 2002.

(f) A Licensee shall submit a monthly statement of account for accompanying royalty payments on a form prepared by the Receiving Agent after full consultation with all Designated Agents. The form shall be made available to the Licensee by the Receiving Agent. A statement of account shall include only such information as is necessary to calculate the accompanying royalty payment. Additional information beyond that which is sufficient to calculate the royalty payments to be paid shall not be required to be included on the statement of account.

(g) The Receiving Agent shall make payments of the allocable share of any royalty payment received from any Licensee under this section to the Designated Agent(s) as expeditiously as is reasonably possible following receipt of the Licensee's royalty payment and statement of account as well as the Licensee's Report of Use of Sound Recordings under Statutory License for the period to which the royalty payment and statement of account pertain, with such allocation to be made on the basis determined as set forth in paragraph (a) of this section. The Receiving Agent and the Designated Agent shall agree on a reasonable basis on the sharing on a pro-rata basis of any incremental costs directly associated with the allocation method. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and a Designated Agent for each calendar year no later than 180 days following the end of each calendar year.

(h) The Designated Agent shall distribute royalty payments on a reasonable basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances; Provided, however, that Copyright Owners and Performers who have designated a particular Designated Agent may agree to allocate their shares of the royalty payments among themselves on an alternative basis.

(i)(1) A Designated Agent shall provide to the Register of Copyrights:

(i) A detailed description of its methodology for distributing royalty payments to Copyright Owners and Performers who have not agreed to an alternative basis for allocating their share of royalty payments (hereinafter, "non-members"), and any amendments thereto, within 30 days of adoption and no later than 60 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a non-member concerning the distribution of royalty payments, within 30 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (i)(1)(ii) of this section, within 60 days of such disposition.

(2) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Agent's methodology for distributing royalty payments to non-members meets the requirements of this section.

(j) A Designated Agent shall distribute such royalty payments directly to the Copyright Owners and Performers, according to the percentages set forth in 17 U.S.C. 114(g)(2), if such Copyright Owners and Performers provide the Designated Agent with adequate information necessary to identify the correct recipient for such payments. However, Performers and Copyright Owners may jointly agree with a Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties to Performers and Copyright Owners consistent with the percentages in 17 U.S.C. 114(g)(2).

(k) A Designated Agent may deduct from the royalties paid to Copyright Owners and Performers reasonable costs incurred in the collection and distribution of the royalties paid by Licensees under § 261.3, and a reasonable charge for administration.

(l) In the event a Designated Agent and a Receiving Agent cannot agree upon a methodology for apportioning royalties pursuant to paragraph (a) of this section, either the Receiving Agent or a Designated Agent may seek the assistance of the Copyright Office in resolving the dispute.

§ 261.5 Confidential Information.

(a) For purposes of this part, "Confidential Information" shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Receiving Agent or a Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) In no event shall the Receiving Agent or Designated Agent(s) use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may report Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any Licensee or group of Licensees cannot directly or indirectly be ascertained or reasonably approximated. All reported aggregated Confidential Information from Licensees within a class of Licensees shall concurrently be made available to all Licensees then in such class. As used in this paragraph, the phrase "class of Licensees" means all Licensees paying fees pursuant to § 261.4(a).

(d) Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to, and in the case of paragraphs (d)(3) and (d)(4) of this section shall be provided upon request, subject to resolution of any relevance or burdensomeness concerns and reimbursement of reasonable costs directly incurred in responding to such request, to:

(1) Those employees, agents, consultants and independent contractors of the Receiving Agent or a Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Receiving Agent or a Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 261.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 261.7;

(3) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(4) In connection with *bona fide* royalty disputes or claims by or among Licensees, the Receiving Agent, Copyright Owners, Performers or the Designated Agent(s), under an appropriate confidentiality agreement or protective order, attorneys, consultants and other authorized agents of the parties to the dispute, arbitration panels or the courts.

(e) The Receiving Agent or Designated Agent(s) and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Receiving Agent or Designated Agent(s) or person.

(f) Books and records of a Licensee, the Receiving Agent and of a Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

§ 261.6 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by the Designated Agent.

(b) *Frequency of verification.* A Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Designated Agent must submit a notice of intent to audit a particular Licensee with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the Designated Agent's notice. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Designated Agents, and all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Designated Agent requesting the verification of royalty payments shall retain the report of the verification for a period of not less than three (3) years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all Designated Agents with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit;

Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an

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Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Licensee shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Licensee and more than $5,000.00.

§ 261.7 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification by any Copyright Owner or Performer of royalty payments made by a Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and a Designated Agent have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or a Performer may conduct a single audit of a Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must submit a notice of intent to audit a particular Designated Agent with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the notice. The notification of intent to audit shall be served at the same time on the Designated Agent to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Designated Agent making the royalty payment shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Designated Agent shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Designated Agent and more than $5,000.00.

§ 261.8 Unclaimed funds.

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of three (3) years from the date of payment. No claim to such payment shall be valid after the expiration of the three (3) year period. After the expiration of this period, the unclaimed funds of the Designated Agent may first be applied to the costs directly attributable to the administration of the royalty payments due such unidentified Copyright Owners and Performers and shall thereafter be allocated on a pro rata basis among the Designated Agents(s) to be used to offset such Designated Agent(s) other costs of collection and distribution of the royalty fees.

Dated: June 20, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–16730 Filed 7–5–02; 8:45 am]

BILLING CODE 1410–33–P

Federal Register

Monday,
July 8, 2002

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: This notice announces closing dates, applicable priorities, and other

limit Part III to the equivalent of no more than the number of pages listed under each applicable priority and in the table at the end of this notice, using the following standards:

- A "page" is 8.5" × 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the

may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for

Special Education—Personnel Preparation to Improve Services and Results for Children With Disabilities [CFDA Number 84.325L]

Purposes of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel—in special education, related services, early intervention, and regular education—to work with children with

Priority

This priority supports individuals—at both the doctoral and postdoctoral levels—to (1) develop or refine their expertise in large-scale research methods; and (2) conduct secondary analyses of the data bases associated with national assessment studies or similar studies that are national in scope.

Postdoctoral fellows must have

direction of collaborating entities, that extend beyond the activities for which funding to these entities has already been provided. The project must also require fellows to conduct their own research using data made available by collaborating entities from large-scale longitudinal studies.

Additional Fiscal Information

(a) In accordance with section 673(i)

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: This notice announces closing dates, applicable priorities, and other information regarding the transmittal of grant applications for FY 2002 competitions under two programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act (IDEA), as amended. The two programs are: (1) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (one priority); and (2) Special Education—Technology and Media Services for Individuals with Disabilities (one priority).

Please note that significant dates for the availability and submission of applications, important fiscal information, and page limits for application narratives are listed in a table following information on individual programs and priorities.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the rulemaking procedures in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in project activities qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

Page Limit

Part III of each application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed under each applicable priority and in the table at the end of this notice, using the following standards:

- A "page" is 8.5" × 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Instructions for Transmittal of Applications

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The two programs in this announcement: Personnel Preparation to Improve Services and Results for Children with Disabilities-CFDA 84.325L, and Technology and Media Services for Individuals with Disabilities-CFDA 84.327L are included in the pilot project. If you are an applicant for a grant under either of the programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Personnel Preparation to Improve Services and Results for Children with Disabilities, and the Technology and Media Services for Individuals with Disabilities programs at:

http://e-grants.ed.gov

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Special Education—Personnel Preparation to Improve Services and Results for Children With Disabilities [CFDA Number 84.325L]

Purposes of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities; and (2) ensure that these personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve these children.

Eligible Applicants: Institutions of higher education (IHEs).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 304; and (c) The selection criteria chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

Priority

Under section 673 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following priority:

Absolute Priority—Interdisciplinary Preservice Programs In Large-Scale Special Education Research (CFDA Number 84.325L)

Background

Building on the momentum of previous reauthorizations of IDEA, as well as the Government Performance and Results Act (GPRA), the 1997 Amendments to IDEA mandated a national assessment of IDEA (section 674(b)). OSEP responded by designing and implementing several child-focused (by age-range) and policy-focused studies that are gathering a large amount of nationally representative evaluative data on all aspects of special education and early intervention. These data can be used to inform policy and practice decisions and improve results for children with disabilities.

The Assistant Secretary is interested in improving research activities by awarding grants to IHEs to establish doctoral training programs that focus on large-scale research methodology in early intervention, special education and related services.

Priority

This priority supports individuals—at both the doctoral and postdoctoral levels—to (1) develop or refine their expertise in large-scale research methods; and (2) conduct secondary analyses of the data bases associated with national assessment studies or similar studies that are national in scope.

Postdoctoral fellows must have completed a doctoral degree in a relevant discipline such as education, psychology, sociology, economics, or statistics.

The first year of the program must, focus on developing the training program. This includes developing the curriculum and syllabus through interdisciplinary and collaborative cooperation with participating agencies, institutions, departments, etc.

Application Information

An applicant under the proposed project must do the following:

(a) Demonstrate the willingness of one or more entities conducting large-scale longitudinal research on special education or early intervention such as that funded by the Department of Education, another Federal agency, or a university to collaborate in providing postdoctoral training.

(b) Include course syllabi that may currently be relevant to the proposed training program. Course syllabi must clearly reflect the incorporation of large-scale research-based curriculum and pedagogy that ordinarily are not part of a traditional doctoral training program.

(c) Describe how it will inform scholarship recipients of their service obligation requirement.

As part of its activities, the proposed project must do the following:

(a) Develop at the doctoral level extensive coursework that reflects current research and pedagogy on large-scale research studies.

(b)(1) Use clear, defensible, data-based methods for evaluating the extent to which recipients of training are prepared to conduct high quality large-scale research; and (2) communicate the results of this evaluation to OSEP in annual performance reports and the final performance report.

(c) Develop among students competencies: (1) In methodological areas such as group research design, sampling or weighting, survey methods, statistical analyses; and (2) in topical areas such as special education law, special education or education policy, economics of human capital, or school finance.

(d) Provide that postsecondary fellows carry out research activities, at the direction of collaborating entities, that extend beyond the activities for which funding to these entities has already been provided. The project must also require fellows to conduct their own research using data made available by collaborating entities from large-scale longitudinal studies.

Additional Fiscal Information

(a) In accordance with section 673(i) of IDEA and 34 CFR 304.20, a grantee must use at least 65 percent of the total requested budget for student scholarships in years two, three, and four or provide sufficient justification for any designation less than 65 percent of the total requested budget for student scholarships.

(b) Because the first year of the project will be for developmental purposes, there will be no student support unless some students are required to participate in program development. Therefore, the grant funds available for the first year will be significantly less than the following three years.

Technology and Media Services for Individuals With Disabilities [CFDA Number 84.327L]

Purposes of Program: To: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

This competition focuses on captioning and video description activities.

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria are chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority

Under section 687 of IDEA and 34 CFR 75.105(c)(3), we consider only

applications that meet the following priority:

Absolute Priority—Television Access (84.327L)

This priority supports cooperative agreements to provide captioning of a variety of types of television programs: (1) National news and public information programs; (2) local news

and the projected dollar amount of that support, if any.

(g) Demonstrate the willingness of program providers or owners of programs to permit and facilitate the description or captioning or both of their programs.

(h) Provide assurances from program providers or owners of programs stating that programs made accessible under

(3) *Spanish Language Programs.* To be funded under this type of programming, a project must caption in Spanish a variety of educational, news, and informational programs—including these types of programs for children—broadcast or cablecast in Spanish.

(4) *Accessible Children's Television Programs.* To be funded under this type of programming, a project must describe

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED

request to the contact number listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–

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applications that meet the following priority:

Absolute Priority—Television Access (84.327L)

This priority supports cooperative agreements to provide captioning of a variety of types of television programs: (1) National news and public information programs; (2) local news and public information programs; (3) Spanish language programs; and (4) accessible children's television programs. For the purpose of this competition, program hours or the costs of captioning associated with those programs that are funded by promotional billboards shall not be considered as an in-kind cost, or a private sector match, for Federal funds.

To be considered for funding under this competition, a project must do the following:

(a) Include criteria for selecting programs that take into account the preference of educators, students, and parents; the diversity of the type of programming available; and the contribution of the programming to the general educational experience of students who have disabilities in the areas of vision or hearing.

(b) Identify and support a consumer advisory group, including parents and educators, that would meet at least annually.

(c) Use the expertise of this consumer advisory group to certify that each program captioned or described with project funds is educational, news, or informational programming.

(d) Identify the extent to which the programming is widely available.

(e) Identify the total number of program hours the project will make accessible and the cost per hour for description or captioning or both.

(f) For each program to be described or captioned or both, identify the source of any private or other public support, and the projected dollar amount of that support, if any.

(g) Demonstrate the willingness of program providers or owners of programs to permit and facilitate the description or captioning or both of their programs.

(h) Provide assurances from program providers or owners of programs stating that programs made accessible under this project will air, and will continue to air, with descriptions or captions or both.

(i) Implement procedures for monitoring the extent to which full accessibility is provided, and use this information to make refinements in project operations.

(j) Identify the anticipated shelf-life and range of distribution of the captioned or described programs that is possible without further costs to the project beyond the initial captioning costs.

An application may address only one type of the following programs —

(1) *National News and Public Information Programs.* To be funded under this type of programming, a project must continue and expand the captioning of national news and 9 public information programs. This is intended to enable persons who are deaf or hard of hearing to have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information.

(2) *Local News and Public Information Programs.* A project funded under this type of programming is expected to increase the capacity of the television captioning industry to respond to demands for accurate real-time captioning. To be funded a project must caption local news and public information programs using the real-time stenographic method preferred by consumers who are deaf or hard of hearing.

(3) *Spanish Language Programs.* To be funded under this type of programming, a project must caption in Spanish a variety of educational, news, and informational programs—including these types of programs for children—broadcast or cablecast in Spanish.

(4) *Accessible Children's Television Programs.* To be funded under this type of programming, a project must describe and caption widely available educational, news, and informational programs for children—including programs suitable for young adults—shown on broadcast, 10 satellite, or cable systems. Captioning must provide a visual representation of the audio portion of the programming while video description must provide a narrative of what takes place visually on the screen.

Competitive Preference Priority

Within the Local News and Public Information Programs segment of this absolute priority, we award under 34 CFR 75.105(c)(2)(i) an additional 20 points to an application from an applicant that —

(a) During FY 2001, was not a grantee or a subcontractor of a grantee under the Technology and Media Services for Individuals with Disabilities program; and

(b) Won't use a subcontractor who was a grantee or a subcontractor of a grantee under this program during FY 2001.

Thus, an applicant meeting this competitive preference could receive a maximum possible score of 120 points.

Fiscal Information

Under this priority, we intend to make one or more awards in each of the four areas of activity identified.

Funds provided under the National News and Public Information Programs segment of this priority may be used to support no more than 50 percent of the captioning costs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 2002

CFDA No. and name	Applications available	Application deadline date	Estimated available funds	Deadline for intergovernmental review	Maximum award (per year)*	Estimated range of awards	Estimated average size of awards	Project period	Page limit**	Estimated number of awards
84.325L Interdisciplinary Preservice Programs in Large-Scale Special Education Research.	07/08/02	08/08/02	$150,000 (year one)	09/30/02	$150,000 (year one)	$130,000–$150,000	$145,000	Up to 48 mos.	30	2
			$500,000 (years two, three & four)		$500,000 (years two, three & four)	$450,000–$500,000	.....	.....	.....	.....
84.327L Television Access	07/08/02	08/08/02		09/30/02				Up to 36 mos.	40	.....
—National News and Public Information Programs.			$250,000		$250,000	$230,000–$250,000	$248,000			6
—Local News and Public Information Programs.			$130,000		$130,000	$100,000–$130,000	$125,000			16
—Spanish Language Programs			$115,000		$115,000	$100,000–$115,000	$113,000			2
—Accessible Children's Television Programs.			$500,000		$500,000	$450,000–$500,000	$480,000			5

* We will reject any application that proposes a budget exceeding the amounts shown for a single budget period of 12 months.

** Please refer to the "Page Limit" requirements under the "General Requirements" section.

Note: The Department is not bound by any estimates in this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8207. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact number listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*

Program Authority: 20 U.S.C. 1405, 1461, 1473 and 1487.

Dated: July 1, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–16959 Filed 7–5–02; 8:45 am]

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Part V

The President

Proclamation 7576—To Provide for the Efficient and Fair Administration of Safeguard Measures on Imports of Certain Steel Products

Executive Order 13269—Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism

Executive Order 13270—Tribal Colleges and Universities

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Presidential Documents

Title 3—

The President

Proclamation 7576 of July 3, 2002

To Provide for the Efficient and Fair Administration of Safeguard Measures on Imports of Certain Steel Products

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Presidential Documents

Title 3—

The President

Proclamation 7576 of July 3, 2002

To Provide for the Efficient and Fair Administration of Safeguard Measures on Imports of Certain Steel Products

By the President of the United States of America

A Proclamation

1. On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), I issued Proclamation 7529, which imposed tariffs and a tariff-rate quota on certain steel products under subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (HTS) (the "safeguard measures") for a period of 3 years plus 1 day.

2. In clause (3) of Proclamation 7529, I excluded imports of certain steel that are the product of World Trade Organization (WTO) member developing countries, as provided in subdivision (d)(i) of U.S. Note 11 to subchapter III of chapter 99 of the HTS (Note 11), from the safeguard measures.

3. In clause (5) of Proclamation 7529, I authorized the United States Trade Representative (USTR), within 120 days after March 5, 2002, to further consider any request for exclusion of a particular product submitted in accordance with the procedures set out in 66 *Fed. Reg.* 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the Annex to Proclamation 7529 to exclude such particular product from the pertinent safeguard measure.

4. Pursuant to section 203(g) of the Trade Act (19 U.S.C. 2253(g)), in order to provide for the efficient and fair administration of the safeguard measures, I have determined that:

(a) the USTR should have authority, as appropriate, to add WTO member developing countries to the list of countries in subdivision (d)(i) of Note 11;

(b) the period provided in clause (5) of Proclamation 7529 should be extended until August 31, 2002; and

(c) requests for exclusion submitted in accordance with the procedures set out in 67 *Fed. Reg.* 19307, 19308 (April 18, 2002); 67 *Fed. Reg.* 35842, 35842–35843 (May 21, 2002); 67 *Fed. Reg.* 38693, 38694 (June 5, 2002) should be treated as having been submitted in accordance with the procedures set out in 66 *Fed. Reg.* 54321, 54322–54323 (October 26, 2001).

5. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuation, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203 and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) The USTR is authorized, upon publication of a notice in the **Federal Register** of his determination that it is appropriate to add WTO member

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developing countries to the list of countries in subdivision (d)(i) of Note 11, to add such countries to that list.

(2) Clause (5) of Proclamation 7529 is amended by deleting the words "Within 120 days after the date of this proclamation" and adding in their place the words "At any time on or before August 31, 2002". Note 11 is amended in subdivision (c), by deleting the date "July 3, 2002" and adding in its place the date "August 31, 2002."

(3) The USTR is authorized to treat requests for exclusion submitted

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Executive Order 13269 of July 3, 2002

Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on

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developing countries to the list of countries in subdivision (d)(i) of Note 11, to add such countries to that list.

(2) Clause (5) of Proclamation 7529 is amended by deleting the words "Within 120 days after the date of this proclamation" and adding in their place the words "At any time on or before August 31, 2002". Note 11 is amended in subdivision (c), by deleting the date "July 3, 2002" and adding in its place the date "August 31, 2002."

(3) The USTR is authorized to treat requests for exclusion submitted in accordance with the procedures set out in 67 *Fed. Reg.* 19307 (April 18, 2002); 67 *Fed. Reg.* 35842 (May 21, 2002); or 67 *Fed. Reg.* 38693 (June 5, 2002) as having been submitted in accordance with the procedures set out in 66 *Fed. Reg.* 54321, 54322–54323 (October 26, 2001).

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2002, and shall continue in effect as provided in subchapter III of chapter 99 of the HTS, unless such actions are earlier expressly reduced, modified, or terminated. Effective at the close of March 21, 2006, or such other date that is 1 year from the close of the safeguard measures, the modifications to the HTS established in this proclamation shall be deleted from the HTS.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

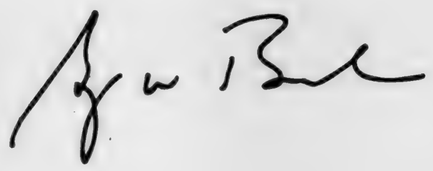

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Presidential Documents

Executive Order 13269 of July 3, 2002

Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) (the "Act"), and solely in order to provide expedited naturalization for aliens and noncitizen nationals serving in an active-duty status in the Armed Forces of the United States during the period of the war against terrorists of global reach, it is hereby ordered as follows:

For the purpose of determining qualification for the exception from the usual requirements for naturalization, I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force the period beginning on September 11, 2001. Such period will be deemed to terminate on a date designated by future Executive Order. Those persons serving honorably in active-duty status in the Armed Forces of the United States, during the period beginning on September 11, 2001, and terminating on the date to be so designated, are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 329 of the Act. Nothing contained in this order is intended to affect, nor does it affect, any other power, right, or obligation of the United States, its agencies, officers, employees, or any other person under Federal law or the law of nations.

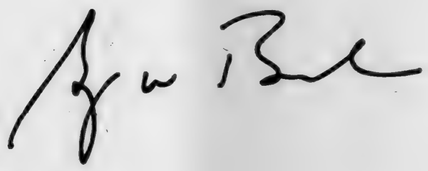

THE WHITE HOUSE,
July 3, 2002.

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Executive Order 13270 of July 3, 2002

Tribal Colleges and Universities

(c) *Functions.* The Board shall provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of this order. The Board also shall provide recommendations to the President, through the Secretary of Education (Secretary), on ways the Federal Government can help tribal colleges:

(1) use long-term development, endowment building, and planning to strengthen institutional viability;

(2) improve financial management and security, obtain private-sector funding support, and expand and complement Federal education initia-

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Executive Order 13270 of July 3, 2002

Tribal Colleges and Universities

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* There is a unique relationship between the United States and Indian tribes, and a special relationship between the United States and Alaska Native entities. It is the policy of the Federal Government that this Nation's commitment to educational excellence and opportunity must extend as well to the tribal colleges and universities (tribal colleges) that serve Indian tribes and Alaska Native entities. The President's Board of Advisors on Tribal Colleges and Universities (the "Board") and the White House Initiative on Tribal Colleges and Universities (WHITCU) established by this order shall ensure that this national policy regarding tribal colleges is carried out with direct accountability at the highest levels of the Federal Government.

Tribal colleges are both integral and essential to their communities. Often they are the only postsecondary institutions within some of our Nation's poorest rural areas. They fulfill a vital role: in maintaining and preserving irreplaceable languages and cultural traditions; in offering a high-quality college education to younger students; and in providing job training and other career-building programs to adults and senior citizens. Tribal colleges provide crucial services in communities that continue to suffer high rates of unemployment and the resulting social and economic distress.

The Federal Government's commitment to tribal colleges is reaffirmed and the private sector can and should contribute to the colleges' educational and cultural missions.

Finally, postsecondary institutions can play a vital role in promoting excellence in early childhood, elementary, and secondary education. The Federal Government will therefore work to implement the innovations and reforms of the No Child Left Behind Act of 2001 (Public Law 107–110) in partnership with tribal colleges and their American Indian and Alaska Native communities.

Sec. 2. *Definition of Tribal Colleges and Universities.* Tribal colleges are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Diné College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, title II (25 U.S.C. 640a note).

Sec. 3. *Board of Advisors.* (a) *Establishment.* There shall be established in the Department of Education a Presidential advisory committee entitled the President's Board of Advisors on Tribal Colleges and Universities (the "Board").

(b) *Membership.* The Board shall consist of not more than 15 members who shall be appointed by the President, one of whom shall be designated by the President as Chair. The Board shall include representatives of tribal colleges and may also include representatives of the higher, early childhood, elementary, and secondary education communities; tribal officials; health, business, and financial institutions; private foundations; and such other persons as the President deems appropriate.

(c) *Functions.* The Board shall provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of this order. The Board also shall provide recommendations to the President, through the Secretary of Education (Secretary), on ways the Federal Government can help tribal colleges:

(1) use long-term development, endowment building, and planning to strengthen institutional viability;

(2) improve financial management and security, obtain private-sector funding support, and expand and complement Federal education initiatives;

(3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors;

(4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) help implement the No Child Left Behind Act of 2001 and meet other high standards of educational achievement.

(d) *Meetings.* The Board shall meet at least annually, at the request of the Secretary, to provide advice and consultation on tribal colleges and relevant Federal and private-sector activities, and to transmit reports and present recommendations.

Sec. 4. *White House Initiative on Tribal Colleges and Universities.* There shall be established in the Department of Education, Office of the Secretary, the White House Initiative on Tribal Colleges and Universities (WHITCU). The WHITCU shall:

(a) provide the staff support for the Board;

(b) assist the Secretary in the role of liaison between the executive branch and tribal colleges; and

(c) serve the Secretary in carrying out the Secretary's responsibilities under this order.

Sec. 5. *Department and Agency Participation.* Each participating executive department and agency (agency), as determined by the Secretary, shall appoint a senior official who is a full-time officer of the Federal Government and who is responsible for management or program administration. The official shall report directly to the agency head, or to the agency head's designee, on agency activity under this order and serve as liaison to the WHITCU. To the extent permitted by law and regulation, each agency shall provide appropriate information as requested by the WHITCU staff pursuant to this order.

Sec. 6. *Three-Year Federal Plan.*

(a) *Content.* Each agency identified by the Secretary shall develop and implement a Three-Year Plan of the agency's efforts to fulfill the purposes of this order. These Three-Year Plans shall include annual performance indicators and appropriate measurable objectives for the agency. Among other relevant issues, the plans shall address how the agency intends to increase the capacity of tribal colleges to compete effectively for any available grants, contracts, cooperative agreements, and any other Federal resources, and to encourage tribal colleges to participate in Federal programs. The plans also may emphasize access to high-quality educational opportunities for economically disadvantaged Indian students, consistent with requirements of the No Child Left Behind Act of 2001; the preservation and revitalization of tribal languages and cultural traditions; and innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs. The agency's performance indicators and objectives should be clearly reflected in the agency's annual budget submission to the Office of Management and Budget. To facilitate the attainment of these performance indicators and objectives, the head of each agency identified by the Secretary, shall provide, as appropriate, technical assistance and information to tribal colleges regarding the program activities of the agency

and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

(b) *Submission.* Each agency shall submit its Three-Year Plan to the WHITCU. In consultation with the Board, the WHITCU shall then review these Three-Year Plans and develop an integrated Three-Year Plan for Assistance to Tribal Colleges, which the Secretary shall review and submit to the President. Agencies may revise their Three-Year Plans within the three-year period.

Sec. 10. *Revocation.* Executive Order 13021 of October 19, 1996, as amended, is revoked.

and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

(b) *Submission.* Each agency shall submit its Three-Year Plan to the WHITCU. In consultation with the Board, the WHITCU shall then review these Three-Year Plans and develop an integrated Three-Year Plan for Assistance to Tribal Colleges, which the Secretary shall review and submit to the President. Agencies may revise their Three-Year Plans within the three-year period.

(c) *Annual Performance Reports.* Each agency shall submit to the WHITCU an Annual Performance Report that measures the agency's performance against the objectives set forth in its Three-Year Plan. In consultation with the Board; the WHITCU shall review and combine Annual Performance Reports into one annual report, which shall be submitted to the Secretary for review, in consultation with the Office of Management and Budget.

Sec. 7. *Private Sector.* In cooperation with the Board, the WHITCU shall encourage the private sector to assist tribal colleges through increased use of such strategies as:

(a) matching funds to support increased endowments;

(b) developing expertise and more effective ways to manage finances, improve information systems, build facilities, and improve course offerings; and

(c) increasing resources for and training of faculty.

Sec. 8. *Termination.* The Board shall terminate 2 years after the date of this order unless the Board is renewed by the President prior to the end of that 2-year period.

Sec. 9. *Administration.* (a) *Compensation.* Members of the Board shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707).

(b) *Funding.* The Board and the WHITCU shall be funded by the Department of Education.

(c) *Administrative Support.* The Department of Education shall provide appropriate administrative services and staff support for the Board and the WHITCU. With the consent of the Department of Education, other agencies participating in the WHITCU shall provide administrative support (including detailees) to the WHITCU consistent with statutory authority. The Board and the WHITCU each shall have a staff and shall be supported at appropriate levels commensurate with that of similar White House Initiative Offices.

(d) *General Provisions.* Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary of Education in accordance with the guidelines issued by the Administrator of General Services.

Sec. 10. *Revocation.* Executive Order 13021 of October 19, 1996, as amended, is revoked.

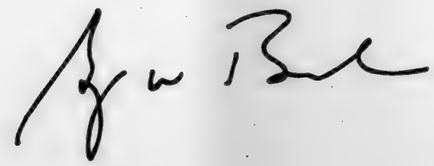

THE WHITE HOUSE,
July 3, 2002.

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This is a continuing list of public bills from the current session of Congress which

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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California; comments due by 7-15-02; published 6-11-02 [FR 02-14675]

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H.R. 327/P.L. 107–198

Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)

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430-End	(869-044-00173-0)	61.00	Oct. 1, 2001
43 Parts:			
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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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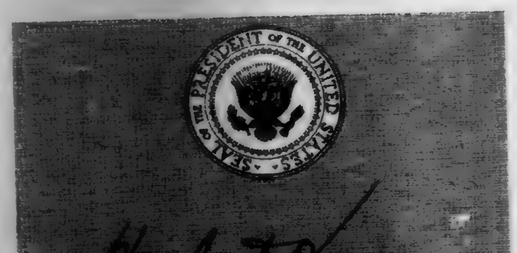

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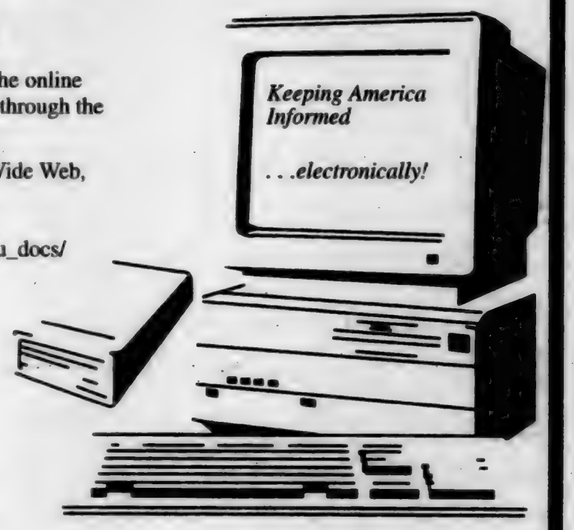

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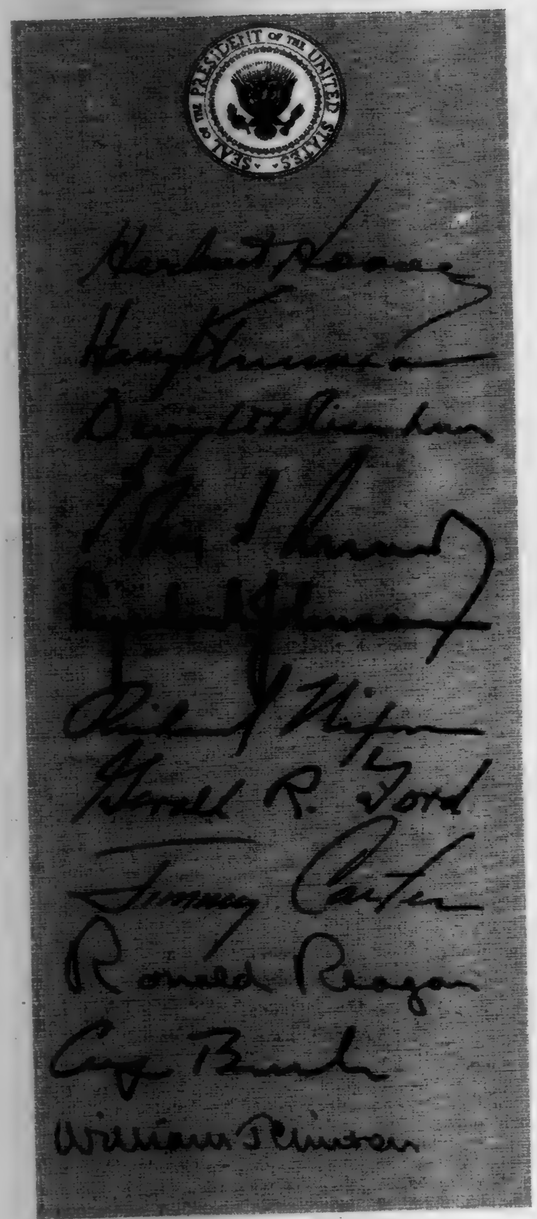

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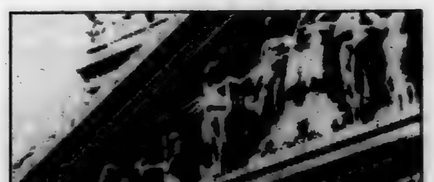

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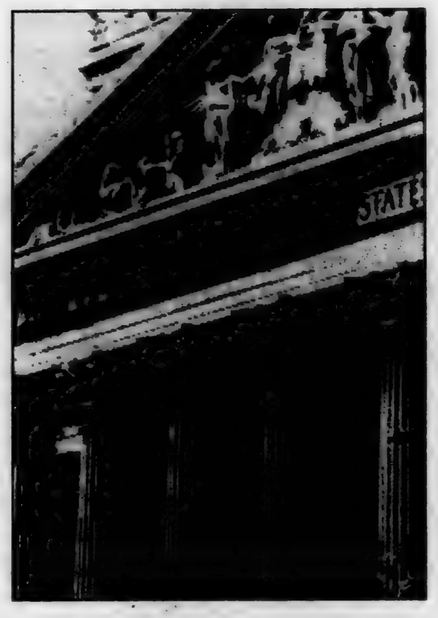

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The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of

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Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–36–AD; Amendment 39–12800; AD 2002–13–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –30, –30F, and –40 Series Airplanes, and Model C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and Model C–9 airplanes, that currently requires an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. That AD also requires modification and reidentification of the attendants' work light assemblies of the aft cabin. This amendment revises the applicability of the existing AD. The actions specified by this AD are intended to prevent chafing of the ground wire against the positive contact of the lamp of the attendants' work light of the aft cabin, and consequent arcing or arcing damage to the wiring of the attendants' work light and transformer of the aft cabin. Such arcing or arcing damage could result in short circuits and consequent smoke and fire in the aft cabin area. The actions of this AD are intended to address the identified unsafe condition.

DATES: Effective August 13, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of August 13, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64133, December 12, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–24–15, amendment 39–12532 (66 FR 64133, December 12, 2001), which is applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes, and Model C–9 airplanes, was published in the **Federal Register** on March 18, 2002 (67 FR 11952). The action proposed to continue to require an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring; and modification and reidentification of the attendants' work light assemblies of the aft cabin; and to revise the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Changes to the Final Rule

Note 3 in the final rule has been revised to more specifically define the general visual inspection.

New subparagraph (c)(2) of this AD has been added to explain that certain alternative methods of compliance that have been approved for AD 2001–24–15, amendment 39–12532, are approved for the corresponding requirements of this AD.

The applicability section of this AD has been revised to more clearly identify the affected airplanes.

The Cost Impact section of the proposed AD incorrectly identified 176 airplanes in the worldwide affected fleet. This figure has been revised in the final rule.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 387 Model DC–9–10, –30, and –40 series airplanes, and Model C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2001–24–15 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane.

This AD adds no new actions or requirements, but only revises the

applicability of the existing AD. Therefore, the estimated cost impact for this AD is unchanged.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12532 (66 FR 64133, December 12, 2001), and by adding a new airworthiness directive (AD), amendment 39–12800, to read as follows:

2002–13–12 McDonnnel Douglas: Amendment 39–12800. Docket 2002–NM–36–AD. Supersedes AD 2001–24–

obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000, was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64133, December 12, 2001).

(3) Copies may be obtained from Boeing

DATES: Effective August 13, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460,

making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that we have corrected the date of the DGAC AD in Note 4 from September 15, 2001 to September 5, 2001 and added "Eurocopter" to paragraph (a) of the AD.

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applicability of the existing AD. Therefore, the estimated cost impact for this AD is unchanged.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12532 (66 FR 64133, December 12, 2001), and by adding a new airworthiness directive (AD), amendment 39–12800, to read as follows:

2002–13–12 McDonnnel Douglas: Amendment 39–12800. Docket 2002–NM–36–AD. Supersedes AD 2001–24–15, Amendment 39–12532.

Applicability: Model DC–9–10, –30, –30F, and –40 series airplanes, and Model C–9 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001; and equipped with an attendants' work light in the aft cabin.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing or arcing damage to the wiring of the attendants' work light of the aft cabin due to chafing of the ground wire against the positive contact of the lamp of the attendants' work light and transformer of the aft cabin, which could result in short circuits and consequent smoke and fire in the aft cabin area, accomplish the following:

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 2001–24–15, amendment 39–12532. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 2001–24–15 have already been accomplished, this AD does not require that those actions be repeated.

Restatement of AD 2001–24–15

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000: Within 1 year after January 16, 2002 (the effective date of AD 2001–24–15), do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000.

(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

New Requirements of This AD

(b) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001: Within 1 year after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2002.

(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

Note 4: Inspections, repairs, modifications, and reidentifications done before the effective date of this AD per McDonnell Douglas Service Bulletin DC9–33–058, dated June 5, 1973; Revision 1, dated November 26, 1975; or Revision 02, dated January 27, 2000; are considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–24–15, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000; and McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 03, dated November 21, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000, was approved previously by the Director of the Federal Register as of January 16, 2002 (66 FR 64133, December 12, 2001).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 13, 2002.

Issued in Renton, Washington, on June 26, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–16677 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–68–AD; Amendment 39–12799; AD 2002–13–11]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for specified Eurocopter France (ECF) model helicopters that requires installing front and side covers to protect the yaw control. This amendment is prompted by a report of a mobile phone falling between the windshield canopy (canopy) and the cabin floor jamming the yaw control pedal. The actions specified by this AD are intended to prevent an object from sliding between the canopy and the cabin floor, loss of yaw control, and subsequent loss of control of the helicopter.

DATES: Effective August 13, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for ECF Model EC120B helicopters was published in the **Federal Register** on February 14, 2002 (67 FR 6886). That action proposed to require installing front and side covers to protect the yaw control.

The Direction General De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on this model helicopter. The DGAC advises of a yaw control jamming caused by an object that slid between the canopy and the cabin floor.

ECF has issued Alert Service Bulletin No. 67A005, dated July 30, 2001 (ASB), which specifies installing a front and side protection on the cabin floor to protect the yaw control. The DGAC classified this ASB as mandatory and issued AD No. 2001–386–007(A), dated September 5, 2001, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that we have corrected the date of the DGAC AD in Note 4 from September 15, 2001 to September 5, 2001 and added "Eurocopter" to paragraph (a) of the AD. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 44 helicopters of U.S. registry and will take 2 work hours per helicopter to accomplish the required actions. The average labor rate is $60 per work hour. Required parts will cost approximately $851 per helicopter. Based on these figures, we estimate the total cost impact of this AD on U.S. operators to be $42,724.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to

be done in accordance with Accomplishment Instructions, paragraph 2.B., Eurocopter Alert Service Bulletin No. 67A005, dated July 30, 2001 (ASB). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel,

25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends; suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct

Issued in Washington, DC on June 28k, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 8, 2002.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 436, Effective Date: August 8, 2002; Final 08/24/2002]

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–13–11 Eurocopter France: Amendment 39–12799. Docket No. 2001–SW–68–AD.

Applicability: Model EC120B helicopters, serial numbers 1001 through 1278, inclusive, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 90 days, unless accomplished previously.

To prevent an object from sliding between the canopy and the cabin floor, loss of yaw control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install front and side covers (protections) to protect the yaw control in accordance with the Accomplishment Instructions, paragraph 2.B., Eurocopter Alert Service Bulletin No. 67A005, dated July 30, 2001 (ASB), except the correct reference to the Aircraft Maintenance Manual in subparagraph 2.B.2 of the ASB is 20–10–00, 3–8. If the helicopter has flight controls at both the pilot and co-pilot stations, front and side protections are required at both stations.

Note 2: Figure 1 of the ASB depicts the right-hand side of the cockpit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) Installing the front and side covers (protections) to protect the yaw control shall be done in accordance with Accomplishment Instructions, paragraph 2.B., Eurocopter Alert Service Bulletin No. 67A005, dated July 30, 2001 (ASB). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 13, 2002.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2001–386–007(A), dated September 5, 2001.

Issued in Fort Worth, Texas, on June 25, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–16678 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30318; Amdt. No. 436]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This amendment adopts miscellaneous amendments to the requirement IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends; suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequency and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on June 28k, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 8, 2002.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 436, Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
§95.1001 Direct Routes—U.S.		
Atlantic Route—A761 Is Added To Read		
Downt, OA FIX	Etoca, AO FIX	31000
Etoca, OA FIX	Foggs, AO FIX	31000
Foggs, OA FIX	Galwy, AO FIX	31000
Galwy, OA FIX	Hanri, AO FIX	31000
Hanri, OA FIX	Perie, AO FIX	31000
Perie, OA FIX	Satly, AO FIX	31000
Satly, OA FIX	Torry, FL FIX	31000
Atlantic Route—R511 Is Added To Read		
Azezu, OA FIX	Cowri, AO FIX	5500
Cowri, OA FIX	Foggs, AO FIX	5500
Foggs, OA FIX	Eltee, AO FIX	5500
Eltee, OA FIX	Odeal, AO FIX	5500
Bahamas Route—G446 Is Added To Read		
Oldey, SC FIX	Perie, AO FIX	2500
Perie, OA FIX	Carps, FL FIX	2500
Carps, FL FIX	Scoby, FL FIX	2500
Scoby, FL FIX	Nucar, BS FIX	2500
Nucar, BS FIX	Omaly, AO FIX	5500
Omaly, OA FIX	Lasee, AO FIX	5500
Lasee, OA FIX	Alute, AO FIX	5500
Alute, OA FIX	Rinny, AO FIX	5500
Rinny, OA FIX	Grand Turks, BS VORTAC	5500
§95.6001 Victor Routes—U.S.		
§95.6013 VOR Federal Airway 13 Is Amended To Read in Part		
Ascot, TX FIX *1300–MOCA	Solon, TX FIX	*4000
§95.6014 VOR Federal Airway 14 Is Amended To Read in Part		
Chisum, NM VORTAC *6000–MOCA	Onsom, NM FIX E BND W BND	*7000 *7500
Onsom, NM FIX *6300–MOCA	Winns, TX FIX	*8000
Winns, TX FIX *5200–MOCA	Flatt, TX FIX	*8000
Flatt, TX FIX	Shalo, TX FIX	5100
§95.6020 VOR Federal Airway 20 Is Amended To Read in Part		
Ascot, TX FIX *1300–MOCA	Solon, TX FIX	*4000
§95.6040 VOR Federal Airway 49 Is Amended To Read in Part		
Vulcan, AL VORTAC *4200–MRA	*Bount, AL FIX	3100
Bount, AL FIX *7000–MRA **2400–MOCA	*Folso, AL FIX	**3100
Folso, AL FIX	Decatur, AL VOR/DME	*3000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 436, Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
*2400–MOCA Elked, AL FIX	Nashville, TN VORTAC	*3500
*2700–MOCA Bowling Green, KY VORTAC	Mystic, KY VOR	2700
§95.6105 VOR Federal Airway 105 Is Amended To Read in Part		

From	To	MEA	MAA
Lee County, FL VORTAC	Dolphin, FL VORTAC	18000	45000
§95.7616 Jet Route No. 616 Is Amended To Read in Part			
Sarasota, FL VORTAC LaBelle, FL VORTAC	LaBelle, FL VORTAC Dolphin, FL VORTAC	18000 18000	45000 45000

From	To	Changeover points	
		Distance	From

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REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 436, Effective Date: August 8, 2002; Final 06/24/2002]

From	To	MEA
*2400–MOCA Elked, AL FIX *2700–MOCA Bowling Green, KY VORTAC	Nashville, TN VORTAC Mystic, KY VOR	*3500 2700
§ 95.6105 VOR Federal Airway 105 is Amended To Read in Part		
Phoenix, AZ VORTAC Karlo, AZ FIX *10000–MOCA	Karlo, AZ FIX Drake, AZ VORTAC	10000 *12000
§ 95.6154 VOR Federal Airway 154 is Amended To Read in Part		
Ocone, GA FIX *1700–MOCA	Savannah, GA VORTAC	*3000
§ 95.6157 VOR Federal Airway 157 is Amended To Read in Part		
Alma, GA VORTAC *1700–MOCA Lotts, GA FIX *1700–MOCA	Lotts, GA FIX Allendale, SC VOR	*4000 *9000
§ 95.6159 VOR Federal Airway 159 is Amended To Read in Part		
Cross City, FL VORTAC	Greenville, FL VORTAC	2000
§ 95.6163 VOR Federal Airway 163 is Amended To Read in Part		
Brownsville, TX VORTAC Manny, TX FIX *1500–MOCA Ascott, TX FIX *1300–MOCA Yenns, TX FIX *2500–MOCA San Antonio, TX VORTAC *2900–MOCA Slimm, TX FIX *3000–MOCA	Manny, TX FIX Ascot, TX FIX Solon, TX FIX San Antonio, TX FIX Slimm, TX FIX Lampasas, TX VORTAC	1500 *5000 *4000 *3000 *3500 *3500
§ 95.6222 VOR Federay Airway 222 is Amended To Read in Part		
Lake Charles, LA VORTAC Lagrange, GA VORTAC	Maxon, LA FIX *Tiroe, GA FIX	2000 2600

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7056 Jet Route No. 56 is Amended To Read in Part			
Wasatch, UT VORTAC	Hayden, CO VOR/DME	25000	45000
§ 95.7058 Jet Route No. 58 is Amended To Read in Part			
Milford, UT VORTAC	Farmington, NM VORTAC	33000	45000
§ 95.7086 Jet Route No. 86 is Amended To Read in Part			
Peach Springs, AZ VORTAC Bavpe, AZ FIX	Bavpe, AZ FIX Winslow, AZ VORTAC	18000 18000	45000 45000
§ 95.7180 Jet Route No. 180 is Amended To Read in Part			
Humble, TX VORTAC Daisetta, TX VORTAC Cidor, LA FIX Fosin, LA FIX Sawmill, LA VOR/DME	Daisetta, TX FIX Cidor, LA FIX Fosin, LA FIX Sawmill, LA VOR/DME Little Rock, AR VORTAC	18000 18000 19000 18000 18000	45000 45000 45000 45000 45000
§ 95.7614 Jet Route No. 614 is Amended To Read in Part			
Sarasota, FL VORTAC	Lee County, FL VORTAC	18000	45000

From	To	MEA	MAA
Lee County, FL VORTAC	Dolphin, FL VORTAC	18000	45000
§ 95.7616 Jet Route No. 616 is Amended To Read in Part			
Sarasota, FL VORTAC LaBelle, FL VORTAC	LaBelle, FL VORTAC Dolphin, FL VORTAC	18000 18000	45000 45000

From	To	Changeover points	
		Distance	From
§ 95.8005 Jet Routes Changeover Points Airway Segment J–56 is Amended To Modify Changeover Point			
Wasatch, UT VORTAC	Hayden. CO VOR/DME	66	Wasatch
J–180 is Amended To Modify Changeover Point			
Sawmill, LA VOR/DME	Little Rock, AR VORTAC	105	Sawmill

[FR Doc. 02–16894 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Delegations of Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule to re-delegate authority formerly delegated to the Directors of the Division of Trading and Markets and the Division of Economic Analysis, and their respective designees, to the respective Directors and their designees of two newly established operating divisions of the Commission: The Division of Market Oversight and the Division of Clearing and Intermediary Oversight. The reorganized divisions will more effectively implement the provisions of the Commodity Futures Modernization Act of 2000.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Harold L. Hardman, Assistant General Counsel or Julian E. Hammar, Attorney, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5120. E-mail: (*hhardman@cftc.gov*) or (*jhammar@cftc.gov*).

SUPPLEMENTARY INFORMATION:

I. Delegations

Congress passed and the President signed into law the Commodity Futures Modernization Act of 2000 ("CFMA"), amending the Commodity Exchange Act.[1] In order to more effectively implement its provisions, the Commission has reorganized its operating divisions. Under the reorganization plan, the Division of Trading and Markets and the Division of Economic Analysis have been reconfigured into two new divisions: The Division of Market Oversight and the Division of Clearing and Intermediary Oversight.

The Commission's rules in Chapter I of Title 17 of the Code of Federal Regulations contain numerous specific delegations of authority from the Commission to the Directors of the Division of Trading and Markets and/or the Division of Economic Analysis, and their respective designees. The Commission effective immediately is adopting new rule 140.100, which provides that all delegations of authority from the Commission to the Directors of the Division of Trading and Markets and/or the Division of Economic Analysis, and their respective designees, as currently set forth in Chapter I of Title 17 of the Code of Federal Regulations, are delegated jointly to the respective Directors of the Division of Market Oversight and the Division of Clearing and Intermediary Oversight, and their respective designees.[2] The conditions of, and limitations upon, the original delegations of authority remain unchanged.

II. Related Matters

Administrative Procedure Act

The Commission has determined that this delegation of authority relates solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[3] The Commission further finds that, because the rules have no adverse effect upon a member of the public, there is good cause to make them effective immediately upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular, sections 2(a) and 8a,[4] as amended by the Commodity Futures Modernization Act of 2000, appendix E of Public Law 106–554, 114 Stat. 2763 (2000), the Commission amends part 140 of title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

2. Part 140 of 17 CFR is amended by adding new § 140.100 to subpart B to read as follows:

[1] The Commodity Exchange Act may be found at 7 U.S.C. 1 *et seq.* (2000) as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 15 of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000, provides that before promulgating a regulation under this Act or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission. This rule governs internal agency organization, procedure, and practice, and therefore the Commission finds that none of the considerations enumerated in Section 15(a)(2) of the Act, as amended, are applicable to this rule.

[3] 5 U.S.C. 553 (1994).

[4] 7 U.S.C. 2(a) and 12a (2000).

§ 140.100 Delegations of authority.

The Commission hereby re-delegates the delegations of authority made to the Directors of the Division of Trading and Markets and/or to the Division of Economic Analysis, and their respective designees, in all instances as they occur throughout this chapter, jointly to the respective Directors of the Division of Market Oversight and the Division of

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C. Toxicology/Safety Assessment of Neotame

approving the general-purpose food use of neotame.

II. Safety Evaluation

A. Chemistry and Intake Considerations of Neotame

Neotame is the common or usual name for the chemical *N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine-1-methyl ester (CAS Reg. No. 165450–17–9). It is synthesized by

reproduction and developmental studies in the rat; teratology studies in the rat and rabbit; and lifetime/carcinogenicity studies in the rat and mouse. The genotoxicity of neotame, its metabolites, and decomposition products, are also evaluated in several tests using both in vitro and in vivo assay systems. Extensive metabolism and pharmacokinetic measurements were carried out in all animal species studied. The clinical (human) studies

absorption of neotame approaches 100 percent in healthy male and female subjects when administered following an overnight fast and at dose levels ranging from one to five times the 90th percentile EDI. Individual absorption levels range from 68 to 126 percent (Ref. 5).

b. *Elimination, distribution, and potential tissue accumulation of neotame.* The agency estimates that approximately 40 percent of the

during which dietary neotame was fed at 0 (control), 100, 300, or 1,000 mg/kg bw/d, rats were sacrificed and in vitro assays performed on isolated liver microsomal pellets. The agency concludes that, when compared against a positive control (phenobarbital, a known enzyme inducer), neotame does not induce P–450 microsomal mixed function oxidase metabolizing enzymes at any dose level administered during the in vivo phase

§ 140.100 Delegations of authority.

The Commission hereby re-delegates the delegations of authority made to the Directors of the Division of Trading and Markets and/or to the Division of Economic Analysis, and their respective designees, in all instances as they occur throughout this chapter, jointly to the respective Directors of the Division of Market Oversight and the Division of Clearing and Intermediary Oversight, and their respective designees.

Issued in Washington, DC, on July 2, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17179 Filed 7–8–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket Nos. 98F–0052 and 99F–0187]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Neotame

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of neotame as a nonnutritive sweetener in food. This action is in response to two petitions filed by Monsanto Co., which subsequently sold the rights to the petitions to the NutraSweet Co.

DATES: This rule is effective July 9, 2002. Submit objections and requests for a hearing by August 8, 2002. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 172.829, as of July 9, 2002.

ADDRESSES: Submit written objections and requests for a hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3106.

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I. Introduction

FDA published notices in the **Federal Register** on February 10, 1998, and February 8, 1999 (63 FR 6762 and 64 FR 6100, respectively), announcing that food additive petitions, FAP 8A4580 and FAP 9A4643, had been filed by Monsanto Co., Skokie, IL 60077. The petitions propose amending the food additive regulations to provide for the safe use of neotame as a nonnutritive sweetener for tabletop use (FAP 8A4580) and for general-purpose use in food (FAP 9A4643) where standards of identity do not preclude such use. Subsequently, the rights to the petitions were sold to the NutraSweet Co., 699 North Wheeling Rd., suite 103, Mount Prospect, IL 60056. This document grants the petitions via a regulation approving the general-purpose food use of neotame.

II. Safety Evaluation

A. Chemistry and Intake Considerations of Neotame

Neotame is the common or usual name for the chemical *N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine-1-methyl ester (CAS Reg. No.165450–17–9). It is synthesized by reductive *N*-alkylation of L-phenylalanine-L-α-aspartyl methyl ester with 3,3-dimethylbutyraldehyde. According to the petitioner, neotame has a sweetening potency that is approximately 7,000 to 13,000 times that of sucrose, depending on its food application (Refs. 1 and 2).

The peptidyl linkage in neotame is stabilized by the *N*-alkyl substituent and is resistant to hydrolysis under typical use and storage conditions. Additionally, the *N*-alkyl substituent effectively prevents the common dipeptide cyclization reaction that results in the formation of a diketopiperazine derivative. The data from stability studies submitted by the petitioner show that the degradation of neotame in aqueous solutions is pH-, time-, and temperature-dependent. Based upon data from these stability studies on neotame, the agency concludes that minor decomposition of neotame could occur in neotame-containing foods only when stored under conditions that are not considered typical for a commercial product (Refs. 1 and 2).

The agency has determined the estimated daily intake (EDI) at the 90th percentile for neotame as a general-purpose sweetener to be 0.10 milligram per kilogram (mg/kg) body weight per day (bw/d) for consumers of all ages (eaters only) and 0.17 mg/kg bw/d for 2 to 5 year olds (eaters only). The corresponding mean intakes are 0.04 mg/kg bw/d and 0.05 mg/kg bw/d, respectively (Refs. 2 and 3).

B. Nature and Extent of Neotame Safety Studies Database

In support of the safety of neotame, the petitioner submitted, within the two petitions, a combined total of 113 preclinical, clinical, and special studies, plus an additional 32 exploratory and screening studies in Food Master File No. 575. All pivotal preclinical studies were conducted in compliance with FDA's "good laboratory practice" regulations in 21 CFR part 58.

The preclinical (animal) studies include short-term, subchronic, and chronic dietary toxicity tests in the rat, mouse, and dog; multi-generation reproduction and developmental studies in the rat; teratology studies in the rat and rabbit; and lifetime/carcinogenicity studies in the rat and mouse. The genotoxicity of neotame, its metabolites, and decomposition products, are also evaluated in several tests using both in vitro and in vivo assay systems. Extensive metabolism and pharmacokinetic measurements were carried out in all animal species studied. The clinical (human) studies tested the response/acceptance to orally administered neotame in both men and women during short-term (e.g., acute, single-dosing) and longer-term (e.g., up to 13 weeks, repeat-dosing) periods. Pharmacokinetic (PK) measurements also were carried out in a number of these studies (Ref. 4).

Additionally, the petitioner provided three position papers in response to FDA questions. These position papers address: (1) The potential behavioral and neurotoxic effects of neotame, (2) the significance of elevated serum (hepatic) alkaline phosphatase activity in neotame-treated dogs as a measure of toxicity, and (3) body weight gain decrement in mice ingesting neotame. The key aspects of these position papers are discussed, as appropriate.

C. Toxicology/Safety Assessment of Neotame

1. Metabolism and Pharmacokinetics of Neotame

As a component of the toxicological testing program on neotame, the petitioner conducted an extensive series of metabolism and PK studies. These studies were designed to assess: (1) The absorption of neotame; (2) the elimination, distribution, and potential tissue accumulation of neotame; (3) the effects of neotame on drug metabolizing enzymes; and (4) the metabolites of neotame in rodents (rats and mice), dogs, rabbits, and humans.

a. *Absorption of neotame.* In all species studied, including humans, the agency finds that the absorption of ingested neotame occurs almost entirely in the small intestine. In the animal studies, the absorption of neotame was determined under fasting conditions using a dose level that was approximately 150 times greater than the 90th percentile estimated daily intake (EDI) of neotame for humans. Under these conditions, the amount of administered dose absorbed is reported to range from 18 to 38 percent in the rat, 15 to 44 percent in the rabbit, and 40 to 51 percent in the dog. These studies also indicate that, when mixed with the diet, the absorption of neotame is reduced. In the human clinical studies, the absorption of neotame approaches 100 percent in healthy male and female subjects when administered following an overnight fast and at dose levels ranging from one to five times the 90th percentile EDI. Individual absorption levels range from 68 to 126 percent (Ref. 5).

b. *Elimination, distribution, and potential tissue accumulation of neotame.* The agency estimates that approximately 40 percent of the systemic elimination of ingested neotame and metabolites occurs via the urine, and the remainder is eliminated via the fecal route. In a whole-body radiography study in the rat, following a gavaged dose of radiolabled neotame and serial sacrifice at timed intervals, post-dosing, the highest levels of radioactivity are associated with the intestinal tract, the liver, and the kidney. At final sampling, no residual radioactivity is detected in peripheral tissues, with some residual activity associated with the intestinal tract. No organs or tissues, including the brain, eye, and skin, concentrate or store radiolabled neotame or its metabolites.

Further evidence for the lack of accumulation of neotame at expected levels of human intake is found in the analysis of PK parameters evaluated during a 13-week dog study. In dogs consuming dietary neotame at dose levels of 1,200 to 2,000 mg/kg bw/d, there is an indication of saturation of an elimination pathway that could lead to possible accumulation. However, these levels are at least 10,000 times greater than the 90th percentile EDI (0.1 mg/kg bw/d) of neotame for humans. This effect is not seen in dogs from the next lower treatment group (600 mg/kg bw/d), a level approximately 6,000 times above the 90th percentile EDI. Based on these findings, the agency concludes there is no concern for possible accumulation of neotame or its metabolites at expected human intake levels (Refs. 4 and 5).

c. *Effect of neotame on drug metabolizing enzymes.* The rat is generally considered an appropriate animal model to assess the effects of xenobiotics on phase I (i.e., cytochrome P–450 or mixed-function amine oxidase microsomal enzyme systems[1]) and phase II (i.e., conjugation or biotransformation reactions involving glucuronidation, sulfation, acetylation, or glutathione-S- transferase reactions) metabolism. Following a 14-day period during which dietary neotame was fed at 0 (control), 100, 300, or 1,000 mg/kg bw/d, rats were sacrificed and in vitro assays performed on isolated liver microsomal pellets. The agency concludes that, when compared against a positive control (phenobarbital, a known enzyme inducer), neotame does not induce P–450 microsomal mixed function oxidase metabolizing enzymes at any dose level administered during the in vivo phase of the study. In evaluating the effects of neotame on phase II metabolism, the agency notes that livers from rats in the 1,000 mg/kg bw/d treatment group show a statistically significant depression in phase II metabolism endpoints. However, at the next lower dose of 300 mg/kg bw/d, which is approximately 3,000 times the 90th percentile EDI for neotame for humans, there are no effects on these same endpoints (Ref. 5).

d. *Metabolites of neotame.* The initial step in the metabolism of neotame in rats, dogs, rabbits, and humans is de-esterification to *N*-[*N*-(3,3–dimethylbutyl)-L-α-aspartyl]-L-phenylalanine (DMB-Asp-Phe, coded in the petition as NC–00751) by Ca^{++}-dependent pancreatic esterases or after absorption by plasma esterases. De-esterification of neotame is similar in all species studied, including humans, although in the rat and rabbit this conversion occurs at a faster rate than in the dog and human. The de-esterified metabolite (NC–00751) is rapidly cleared from the plasma and excreted via the bile duct or in urine (Ref. 5). A small percentage of NC–00751 may undergo peptide-bond hydrolysis to form metabolites of dimethylbutylaspartate. The 3,3-dimethylbutyl portion of DMB-Asp-Phe is then oxidized to 3,3-dimethyl-butyric acid. This is followed by conjugation with glucuronic acid or with carnitine (a minor pathway).

Methanol release results from the de-esterification of neotame and occurs more rapidly in the rat and rabbit than in the dog and human. The agency concludes that at the 90th percentile EDI for neotame, exposure to resultant methanol will be insignificant, i.e., not more than 0.008 mg/kg bw/d. This exposure level is of no toxicological concern because humans are exposed to much greater levels of methanol intake from their daily diets (Refs. 4 and 5).

Based on neotame metabolism studies in the rat and dog, FDA concludes that some intestinal microvillar peptidase activity occurs in the gut, which results in the formation of other minor plasma metabolites of neotame, including phenylalanine (Ref. 5). Further review indicates that approximately 13 to 17

[1] Sipes, I. G. and Gandolfi, A. J., "Biotransformation of Toxicants," chapter 4, pp. 88–109, in Casarett and Doull's Toxicology: *The Basic Science of Poisons*, 4th ed., edited by M. O. Amdur, J. Doul, and C. D. Klaassen, McGraw Hill, Inc., 1993.

percent of the total available phenylalanine in the ingested neotame is released into the plasma after absorption; the remainder is eliminated in feces and urine as DMB-Asp-Phe. The agency has estimated the amount of phenylalanine presented to the body from the ingestion of neotame. The phenylalanine content of neotame is 44 percent by weight. Given that the 90th percentile neotame EDI for a 60 kg adult

the petitioner. During its review, the agency determined that certain studies were more important than others to a regulatory decision on neotame. This determination was based on the nature of the endpoints investigated in these studies (i.e., reproductive and developmental effects, long-term exposure, chronic toxicity, carcinogenic potential, and human tolerance), and on specific issues presented by these

group. No effects are noted on motor activity in F1 females at any dose level.

With regard to results from the swim-maze tests that were conducted in F1 offspring at approximately 24 to 28 days of age, both the petitioner and the agency conclude that there is a statistically significant increase in mean swimming time (an indicator of reduced performance) to the "correct" arm of the Y-maze in F1 males from the 1,000 mg/kg bw/d group. Specifically,

that is relevant to the agency's overall safety assessment of neotame and are not discussed further.

With regard to the "key" animal studies, the petitioner states in its position paper that these studies incorporated clinical observations/testing enhancements as "effective procedures for detecting neurotoxic effects." During the ante mortem phase of the animal studies, these enhancements included detailed

from the 200 mg/kg bw/d dose group and in both sexes at the 800 mg/kg bw/d dose group. Other effects noted were statistically significant dose-related increases in absolute liver weights and in relative liver weights (liver to brain weight ratio) in female dogs in the 200 and 800 mg/kg bw/d dose groups. There was no evidence of histopathological changes in the liver, brain, sciatic nerve, and spinal cord or in other organs or tissues examined from neotame-treated

liver in both sexes and at all dose levels appears normal on histopathological examination. In this 52-week dog study, FDA establishes a no observed effect level (NOEL) of 60 mg/kg bw/d, based on liver effects (e.g., serum (hepatic) alkaline phosphatase and relative liver weights) as the most sensitive endpoints (Refs. 4 and 10).

c. *A 104-week mouse carcinogenicity study—body weight gain decrement effect.* CD–1 mice were fed neotame-

percent of the total available phenylalanine in the ingested neotame is released into the plasma after absorption; the remainder is eliminated in feces and urine as DMB-Asp-Pho. The agency has estimated the amount of phenylalanine presented to the body from the ingestion of neotame. The phenylalanine content of neotame is 44 percent by weight. Given that the 90th percentile neotame EDI for a 60 kg adult is 0.10 mg/kg bw/d or 6 mg/d, and for a 2 to 5 year old (20 kg) child is 0.17 mg/kg bw/d or 3.4 mg/d, the estimated 90th percentile phenylalanine intake is 2.6 mg and 1.5 mg, respectively.

The agency notes that, for healthy adults, the daily dietary intake of phenylalanine may range from 2.5 to 10 grams per person per day (g/p/d), while that for a phenylketonuric (PKU) homozygous child (20 kg) may range from 0.4 to 0.6 g/p/d (Koch and Wenz[2]). Thus, the amount of phenylalanine from the 90th percentile intake of neotame is trivial compared to that from the normal adult diet. Even for the PKU homozygous child, the incremental amount of phenylalanine intake that can be expected from neotame is insignificant, i.e., equivalent to no more than 0.3 to 0.4 percent of the daily phenylalanine intake of the PKU homozygous child (Ref. 5). The agency concludes that the potential intake of phenylalanine that may result from use of neotame as a general-purpose sweetener does not pose any safety concern (Refs. 4 and 5).

Based on reviews of the metabolism and pharmacokinetic studies on neotame, the agency concludes that the metabolism of neotame is qualitatively similar across all species studied. Furthermore, there is no evidence that, at expected levels of intake, neotame or its metabolites will accumulate in the body or that ingestion of neotame will have any adverse effect in the body on Phase I and II metabolism. The metabolites of neotame are well characterized, and the potential intakes of metabolites, such as methanol and phenylalanine, are of no toxicological consequence. Therefore, the agency's review of the metabolism and pharmacokinetic studies of neotame does not raise any safety concerns (Refs. 4 and 5).

2. Critical Toxicology Studies and Issues

FDA reviewed all studies and supplemental information submitted by the petitioner. During its review, the agency determined that certain studies were more important than others to a regulatory decision on neotame. This determination was based on the nature of the endpoints investigated in these studies (i.e., reproductive and developmental effects, long-term exposure, chronic toxicity, carcinogenic potential, and human tolerance), and on specific issues presented by these studies. The critical studies and issues presented by the studies are: (1) The 2-generation reproduction study in rats—neurotoxicity and behavioral effects, (2) the chronic (52-week) dog study—toxicological significance of increased serum (hepatic) alkaline phosphatase levels, (3) the 104-week mouse carcinogenicity study—body weight gain decrement effect, (4) the 104-week rat carcinogenicity study—body weight gain decrement effect at all dose levels tested, (5) the chronic (52-week) rat feeding study—body weight gain decrement effect, and (6) the human clinical trials—human tolerance to neotame.

a. *A 2-generation reproduction study in the rat—neurotoxicity and behavioral effects.* Reproductive performance and fertility were assessed over two generations in CD (cesarean derived) rats fed diets containing neotame at levels of 0 (control), 100, 300, or 1,000 mg/kg bw/d. Each treatment group consisted of 28 males and 28 females. Animals were mated, the resultant offspring weaned, and the F1 generation animals selected and allowed to mature for 10 weeks and then mated. The F2 litters were terminated, post-weaning. Under the conditions of this study, the agency concludes that neotame has no effects on the reproduction or fertility of rats exposed to neotame at levels up to 1,000 mg/kg bw/d for two generations. Nor are there any treatment effects on measures of physical development, e.g., pinna unfolding, hair growth, tooth eruption, or eye opening (Refs. 4 and 6).

The 2-generation study included tests of motor activity and cognitive function. General motor activity was measured in F1 offspring by counting breaks in a pair of infrared light beams over a 12-hour period, while cognitive function was assessed by recording swim times up to 60 seconds maximally in six consecutive trials per animal in a water-filled Y-maze (Ref. 7). While the petitioner concludes there were no significant treatment effects on motor activity in F1 male and female offspring, the agency's analyses of pertinent data show a statistically significant reduction in motor activity among F1 males from the 1,000 mg/kg bw/d neotame treatment group. No effects are noted on motor activity in F1 females at any dose level.

With regard to results from the swim-maze tests that were conducted in F1 offspring at approximately 24 to 28 days of age, both the petitioner and the agency conclude that there is a statistically significant increase in mean swimming time (an indicator of reduced performance) to the "correct" arm of the Y-maze in F1 males from the 1,000 mg/kg bw/d group. Specifically, this increased swim time is noted in two of six trials in the F1 males from the high dose group. While an increase in swim time is also noted for one of six trials in F1 males from the 300 mg/kg bw/d dose group, this singular observation is not accompanied by any other indication of treatment-related behavioral changes and therefore is not considered to be indicative of a biologically relevant effect. As with motor activity, there are no effects on cognitive performance (as measured by swim maze times) noted in F1 female offspring from any treatment group.

The F1 offspring from the 2-generation reproduction study also were subjected to specific tests that measured the development of auditory and visual responses. The agency's evaluation of results on auditory startle, pupil closure, and visual placing show no treatment-related effects in F1 males or females at any level of neotame tested.

The finding of statistically significant effects on two separate behavioral tests (i.e., motor activity and swim maze times) in F1 males from the 1,000 mg/kg bw/d dose group supports the conclusion that this dose is an effect level. Based on the findings from the studies of motor activity and cognitive function, the agency considers the 300 mg/kg bw/d dose to be a no observed adverse effect level (NOAEL) for these endpoints (Refs. 4 and 7).

Early in its evaluation of the neotame safety database, the agency determined that the petitioner should provide a more specific assessment addressing the potential neurotoxicity and behavioral effects of neotame. In response to the agency's request, the petitioner submitted a position paper entitled "Neotame Does Not Cause Any Behavioral or Neurotoxic Effects" (Ref. 8). This document contains summaries and discussions of data and information from two principal sources. The first involves several "key" preclinical studies (12 in all) and 4 clinical studies from the neotame studies database. The second source of information discussed in the position paper is a series of 20 publications that are primarily related to aspartame. Collectively, these 20 publications provide little information

[2] Koch, R. and Wenz E. J., "Aspartame Ingestion by Phenylketonuric Heterozygous and Homozygous Individuals," chapter 30, pp. 593–603, in *Physiology and Biochemistry*, edited by Stegink, L. D. and L. J. Filer, Jr., 1984.

that is relevant to the agency's overall safety assessment of neotame and are not discussed further.

With regard to the "key" animal studies, the petitioner states in its position paper that these studies incorporated clinical observations/testing enhancements as "effective procedures for detecting neurotoxic effects." During the ante mortem phase of the animal studies, these enhancements included detailed physical, behavioral, and clinical observations to detect signs of neurological disorder, behavioral abnormality, physiological dysfunction, and other signs of nervous system toxicity. Post mortem enhancements included extensive histopathological evaluations of brain, spinal cord, and peripheral nerves.

FDA has reviewed thoroughly all of the preclinical and clinical studies discussed in the position paper. With the exception of the 2-generation rat reproduction study in which statistically significant decreases in motor activity and statistically significant increases in swim times are observed in F1 offspring males at 1,000 mg/kg bw/d, the preclinical studies do not show behavioral or neurotoxic effects associated with the ingestion of neotame.

Based on available preclinical and clinical information from the neotame studies database, the agency concludes that there is no concern for potential neurotoxic or behavioral effects in humans from the ingestion of neotame as a general-purpose sweetener in foods. This conclusion is reinforced further by the NOAEL of 300 mg/kg bw/d established for motor activity and cognitive performance in F1 males from the 2-generation reproduction study, a dose level that is at least 3,000 times greater than the 90th percentile EDI of 0.1 mg/kg bw/d (Refs. 4 and 7).

b. *Chronic (52-week) dog study—toxicological significance of elevated serum (hepatic) alkaline phosphatase.* Beagle dogs were fed diets containing neotame at levels of 0 (control), 20, 60, 200, or 800 mg/kg bw/d over a 52-week period. Detailed data were collected on animal survival, growth, food intake, clinical chemistries, hematology, urinalyses, and gross organ pathology and histopathology. At the conclusion of the study, a limited number of dogs from the neotame treatment groups were placed on a control diet for an additional 4-week "reversibility period." During the agency's review of this study, a question arose about the toxicological significance of increased serum alkaline phosphatase (ALP) levels (of hepatic origin) noted in female dogs from the 200 mg/kg bw/d dose group and in both sexes at the 800 mg/kg bw/d dose group. Other effects noted were statistically significant dose-related increases in absolute liver weights and in relative liver weights (liver to brain weight ratio) in female dogs in the 200 and 800 mg/kg bw/d dose groups. There was no evidence of histopathological changes in the liver, brain, sciatic nerve, and spinal cord or in other organs or tissues examined from neotame-treated dogs.

Because elevated serum ALP levels had also been observed in shorter duration studies (2-week and 13-week) in dogs ingesting neotame containing diets, the agency requested that the petitioner provide further clarification on this matter. In its response, the petitioner submitted a position paper entitled "Increases in Serum Alkaline Phosphatase in the Dog Are Not Associated with Target Organ Toxicity," together with several publications related to hepatotoxicity and serum ALP activity (Ref. 9). In this position paper, the petitioner reasons that the increased serum ALP levels observed in neotame-treated dogs are not due to a hepatotoxic response, but to a "nonspecific, physiological response" to the high doses of neotame.

FDA conducted further statistical analyses on the liver weight parameters mentioned previously. Based on these analyses, the agency concludes that the means for these liver effects from the 200 and 800 mg/kg bw/d dose groups are statistically significantly higher than the means for the 0 (control), 20, and 60 mg/kg bw/d treatment groups. Furthermore, there are no statistically significant differences between the 0 (control), 20, and 60 mg/kg bw/d dose group means for any of the liver weight parameters that were evaluated.

From the review of the data from the 52-week dog study and the supplemental information submitted by the petitioner in its position paper, the agency concludes that the changes in serum ALP levels are most likely due to a nontoxic response to the higher levels (200 and 800 mg/kg bw/d) of administered neotame. This conclusion is based on the following: (1) There are no significant effects from neotame on other liver enzymes (e.g., alanine aminotransferase, aspartate aminotransferase, gamma glutamyl transferase), (2) serum albumin levels are not decreased in neotame-treated dogs (a decrease would have been an indicator of chronic liver toxicity), (3) serum bilirubin levels are normal in both sexes at high doses of neotame (an increase would have been seen if cholestasis was occurring), and (4) the liver in both sexes and at all dose levels appears normal on histopathological examination. In this 52-week dog study, FDA establishes a no observed effect level (NOEL) of 60 mg/kg bw/d, based on liver effects (e.g., serum (hepatic) alkaline phosphatase and relative liver weights) as the most sensitive endpoints (Refs. 4 and 10).

c. *A 104-week mouse carcinogenicity study—body weight gain decrement effect.* CD–1 mice were fed neotame-containing diets for 104 weeks at levels of 0 (control), 50, 400, 2,000, or 4,000 mg/kg bw/d. Based on an evaluation of the histopathological data from this carcinogenicity study, FDA concludes that, under the conditions of the study, doses of neotame up to 4,000 mg/kg bw/d administered to male and female CD–1 mice for up to 2 years did not induce neoplastic lesions (Ref. 11).

Although there was no evidence of carcinogenicity in mice exposed to neotame for 104 weeks, during the agency's review of other endpoints, we noted negative effects on body weight gain (and thus body weight) in both sexes. In light of only small decreases in cumulative food consumption, the agency was concerned about the potential toxicological significance of the decrease in body weight gain. In response to the agency's request for further clarification on this issue, the petitioner submitted a position paper entitled "In the Mouse Carcinogenicity Study With Neotame Small Changes in Body Weight Gain at Some Intervals in Female Mice at 50 mg/kg bw Relative to Controls Are Due to a Decrease in Food Consumption" (Ref. 12). In its analysis, the petitioner states that the mouse is not a reliable model for determining the relationship between body weight gain and food consumption. Reasons cited include the small differences in body weight gain over a lifetime in mice, both in absolute terms and in proportion to initial body weights at the start of a study, and well-known difficulties in obtaining accurate measures of food intake for mice (e.g., mice frequently spill food from their food cups and contaminate their food with feces and urine). The petitioner reiterated its belief that the body weight gain decrements noted in mice during the 104-week study were due to a small but consistent reduction in food consumption which is attributable to poor diet palatability and should not be viewed as a toxicological response to neotame.

In further evaluation of this body gain weight decrement issue, FDA subjected the data on body weight, body weight gain, and adjusted (for neotame content)

food intake to extensive statistical evaluation. Using an analysis of covariance model and pair-wise dose comparisons of body weights and body weight gain, the agency notes statistically significant effects for the 400, 2,000, and 4,000 mg/kg bw/d dose groups. Based on these analyses, the agency concludes that the body weight gain decrement effect in both male and female mice in the three highest dose groups do not fully explain the magnitude of the differences in body weight and body weight gain observed in these animals at week 52 and thereafter up to week 104. In view of the significant body weight gain decrement effect observed in all neotame treatment groups during the 104-week rat carcinogenicity study, a NOEL cannot be established. Lacking a suitable explanation for this effect based on decreased food intake (as argued by

in male rats from the 30, 100, 300, and 1,000 mg/kg bw/d neotame treatment groups, while somewhat lower than controls, are not statistically different. As noted in the 104-week carcinogenicity study, female rats in the 52-week dietary study were more sensitive to body weight gain decrement effects than males.

FDA performed a detailed analysis of the results from the 52-week dietary rat

headache is comparable for the treated and control groups and is not considered to be associated with neotame intake. Results from ancillary pharmacokinetic measurements in several of the clinical trials do not raise any safety concerns. In the trial with Type II diabetic subjects, no adverse effects are noted in any of the subjects. Under the conditions of that trial, the agency concludes that the ingestion of

Based on reviews of these clinical trials, the agency concludes that the ingestion of neotame at levels up to 1.5 mg/kg bw/d (15 times the 90th percentile EDI) for a period as long as 13 weeks is well tolerated by healthy male and female subjects. The agency also concludes that in the study with Type II diabetic subjects, the intake of neotame at levels up to 1.5 mg/kg bw/d does not have significant effects on

D. Estimating an Acceptable Daily Intake for Neotame

In determining an acceptable daily intake (ADI) for a new food additive, the agency relies on a comprehensive evaluation of all relevant studies and information submitted by the petitioner. As the agency's evaluation of the neotame safety studies database progressed, four studies with attendant issues emerged as having the greatest

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food intake to extensive statistical evaluation. Using an analysis of covariance model and pair-wise dose comparisons of body weights and body weight gain, the agency notes statistically significant effects for the 400, 2,000, and 4,000 mg/kg bw/d dose groups. Based on these analyses, the agency concludes that the body weight gain decrement effect in both male and female mice in the three highest dose groups is not accounted for by the small decreases in food consumption. However, in the 50 mg/kg bw/d treatment group, the effects on body weight and body weight gain are not statistically different from controls. Based on the detailed statistical evaluation of data pertinent to the body weight gain decrement noted in the 104-week dietary carcinogenicity study in mice, the agency establishes a NOEL of 50 mg/kg bw/d for this endpoint (Refs. 4 and 10).

d. *A 104-week rat carcinogenicity study—body weight gain decrement effect at all dose levels tested.* A 104-week rat carcinogenicity study (with an in utero phase) was conducted during which neotame was fed at 0 (control), 50, 500, or 1,000 mg/kg bw/d. Based on a thorough evaluation of the histopathological data from this carcinogenicity study, FDA concludes there is no evidence of neotame-induced neoplastic lesions in rats ingesting diets containing neotame at levels up to 1,000 mg/kg bw/d for 104 weeks (Ref. 11).

During its review of the 104-week rat carcinogenicity study, the agency noted effects on body weight gain (and thus body weight) in both sexes of neotame-treated rats at all dose levels tested. Statistically significant decreases in cumulative body weight gains were observed at various intervals throughout the study. At week interval 0 to 52, cumulative body weight gains were 9 to 11 percent less and 13 to 19 percent less, respectively, in neotame-treated male and female rats, than in control animals. Similar effects were noted at week intervals 0 to 78 and 0 to 104, i.e., cumulative body weight gains ranging from 10 to 13 percent less in treated males and 17 to 20 percent less in treated females. In reporting this information, the petitioner suggests that the lower body weights and lower body weight gains among neotame-treated rats can be attributed to reduced food intake due to reduced palatability of the diets containing neotame.

The agency, however, based on an analysis of the food intake data, concludes that the decreases in adjusted (for neotame content) food intake among the neotame-treated rats are small and do not fully explain the magnitude of the differences in body weight and body weight gain observed in these animals at week 52 and thereafter up to week 104. In view of the significant body weight gain decrement effect observed in all neotame treatment groups during the 104-week rat carcinogenicity study, a NOEL cannot be established. Lacking a suitable explanation for this effect based on decreased food intake (as argued by the petitioner), the agency considered the body weight gain decrement effect unresolved by the 104-week rat study (Refs. 4 and 10).

e. *Chronic (52-week) rat feeding study—body weight gain decrement effect.* In order to resolve the body weight gain decrement issue in rats, the agency carried out a thorough analysis of data from a 52-week rat feeding study. This study employed a wide range of neotame dose levels, two of which were below the lowest dose tested in the 104-week rat carcinogenicity study (as discussed in section II.C.2.d of this document). The results of this analysis are presented in the following paragraphs.

In the chronic (52-week) rat feeding study (with an in utero phase) rats received neotame at 0 (control), 10, 30, 100, 300, or 1,000 mg/kg bw/d. Except for body weight and body weight gain, there were no statistically significant treatment-related effects of neotame during this 52-week feeding study. With respect to both body weight and body weight gain, female rats appear to be more sensitive than males.

In regard to body weight, at the end of the 52-week study, body weights in females from the 100, 300, and 1,000 mg/kg bw/d groups were statistically significantly lower than those of control female rats. However, the body weights of females from the 10 and 30 mg/kg bw/d groups were not statistically different from control females. Among males, only the 100 mg/kg bw/d group had statistically significant body weight differences from control male rats.

As for cumulative body weight gains during the 0 to 52-week interval, statistically significant decreases are noted in treated females, compared to controls, only from the 300 and 1,000 mg/kg bw/d treatment groups. While the body weight gains in females from the 100 mg/kg bw/d are lower than in control female rats, this difference is not statistically significant. Compared with controls, there are no significant differences in cumulative body weight gains in females from the two lowest treatment groups (10 and 30 mg/kg bw/d) for the 0 to 52-week interval. Cumulative body weight gains in male rats from the 30, 100, 300, and 1,000 mg/kg bw/d neotame treatment groups, while somewhat lower than controls, are not statistically different. As noted in the 104-week carcinogenicity study, female rats in the 52-week dietary study were more sensitive to body weight gain decrement effects than males.

FDA performed a detailed analysis of the results from the 52-week dietary rat study and concludes that this study provides an adequate basis to assess the body weight gain decrement effect noted in the 104-week carcinogenicity rat study for four reasons. First, the range of neotame dose levels studied in the 52-week study is comparable to the doses tested in the 104-week study. Second, in each study, the female rat is more sensitive. Third, a parallel comparison of the 52-week study and the first 52 weeks of the carcinogenicity study shows that the body weight gain decrement effect was of a similar order of magnitude in both studies. Fourth, the magnitude of decrease in body weight gain occurring during week interval 0 to 52 in the 104-week study does not worsen during the last half of the study. These observations add strength to the utility of the 52-week dietary rat study in resolving any concern about the body weight gain decrement effect and in establishing a NOEL of 30 mg/kg bw/d for this endpoint (Refs. 4 and 10).

f. *Clinical studies assessments—human tolerance to neotame.* The petitioner submitted the results of six human clinical trials that investigated the ingestion of neotame under varied conditions, including acute-single exposure, acute-repeat exposure, and short-term (2-week) and longer-term (13-week) daily exposure. Five of these trials employed healthy adult subjects, while one trial evaluated non-insulin dependent diabetes mellitus (Type II diabetic) adult subjects. In each of these trials, subject tolerance to neotame intake was determined by physical examinations, vital signs, electrocardiograms, routine clinical laboratory measurements (e.g., hematology, clinical chemistries, and urinalysis), and self-assessments of adverse experiences.

The levels of neotame administered in these clinical trials ranged from 1 to 15 times the 90th percentile EDI level of 0.1 mg/kg bw/d or 6 mg per person per day (mg/p/d).

The agency concludes that in all six trials there are no treatment-related effects reported for any of the parameters examined. Although headache was the most frequently noted adverse experience, the incidence of headache is comparable for the treated and control groups and is not considered to be associated with neotame intake. Results from ancillary pharmacokinetic measurements in several of the clinical trials do not raise any safety concerns. In the trial with Type II diabetic subjects, no adverse effects are noted in any of the subjects. Under the conditions of that trial, the agency concludes that the ingestion of neotame at levels up to 1.5 mg/kg bw/d does not produce significant changes in either fasting-state glucose or insulin levels in Type II diabetic subjects.

Based on reviews of these clinical trials, the agency concludes that the ingestion of neotame at levels up to 1.5 mg/kg bw/d (15 times the 90th percentile EDI) for a period as long as 13 weeks is well tolerated by healthy male and female subjects. The agency also concludes that in the study with Type II diabetic subjects, the intake of neotame at levels up to 1.5 mg/kg bw/d does not have significant effects on fasting plasma glucose or insulin levels in study subjects (Refs. 4 and 13).

D. Estimating an Acceptable Daily Intake for Neotame

In determining an acceptable daily intake (ADI) for a new food additive, the agency relies on a comprehensive evaluation of all relevant studies and information submitted by the petitioner. As the agency's evaluation of the neotame safety studies database progressed, four studies with attendant issues emerged as having the greatest impact in reaching a safety decision; these studies are highlighted in table 1 of this document.

TABLE 1.—SUMMARY OF STUDY DATA PERTINENT TO ESTABLISHING AN ACCEPTABLE DAILY INTAKE VALUE FOR NEOTAME

Study Information	Pivotal Endpoint	NOEL (mg/kg bw/d)	Safety Factor[A]	ADI (mg/p/d)
2-Generation Reproduction (Rat)	Motor Activity and Cognitive Function in F1 Males	(300)[B]	1,000	18
52-week (Dog)	Serum (Hepatic) ALP Levels and Relative Liver Weights in Females	60	100	36
104-week (Mouse)	Body Weight Gain Decrement in Both Sexes	50	100	30
52-week (Rat)	Body Weight Gain Decrement in Females	30	100	18

[A] Safety factors typically applied by the agency in establishing an ADI based on effects from a reproductive toxicity study or from a chronic study are 1000 and 100, respectively.
[B] The value reported is the NOAEL as discussed in Section II.C.2.a of this document.

Based on the NOAEL or NOEL identified for the most sensitive endpoint in each of the four studies, ADI values were determined ranging from a high of 36 mg/p/d to a low of 18 mg/p/d. In taking a conservative approach, the agency concludes that the appropriate ADI for neotame is 18 mg/p/d (Ref. 4). This level is three times higher than the 90th percentile EDI for neotame of 6 mg/p/d.

III. Comments

Thirty comments were submitted to FDA's Dockets Management Branch in response to the filing of the two neotame food additive petitions (25 for FAP 8A4580 and 5 for FAP 9A4643). The issues raised in the comments are identified and grouped into the following subject categories.

Aspartame

The majority of the comments compared neotame to aspartame. In these comparisons, the comments assumed that neotame produces the same metabolic breakdown products as aspartame and thus would be responsible for the same health effects they allege to be associated with aspartame, which is the subject of a food additive regulation (21 CFR 172.804). In response to these comments, FDA points out that neotame is chemically and metabolically different (see section II.A of this document and Ref. 1, and section II.C.1 of this document, respectively) from aspartame even though they are structurally related. Therefore, the comments' assertions about neotame are without basis. Because the comments do not provide the agency with any information regarding the safety of neotame, they will not be discussed further.

Estimated Daily Intake

Several comments objected to the tabletop use petition on the basis that the petitioner's EDI for neotame is inaccurate, implying that it is too low. In determining an EDI, FDA makes projections based on the amount of the additive proposed for use in particular foods and on data regarding the consumption levels of these particular foods, commonly using the 90th percentile as a measure of high chronic exposure. The agency concludes that the 90th percentile EDI calculated for neotame, as discussed in section II.A of this document, accurately reflects the exposure to neotame as a general-purpose sweetener in all foods (except for meats and poultry), including tabletop use (Ref. 2).

One comment noted that the petitioner assumes that neotame will replace 50 percent of aspartame's current applications and argued that this assumption may be limited unduly and not sufficiently conservative. FDA agrees with the comment on this point, and disagrees with the petitioner's use of the 50 percent replacement factor in their estimation of exposure to neotame. The agency conservatively assumes that this new sweetener will replace all existing uses of aspartame (Ref. 14) and uses this estimate in its safety evaluation.

No Observed Effect Level, Body Weight, and Body Weight Gain Effects

One comment stated that there is no NOEL established by the 104-week rat carcinogenicity study for neotame, because all doses show adverse effects on growth. The comment also asserted that the data contained in this study do not support the petitioner's explanation that decreases in body weights in the treated rats are due to reduced palatability of the neotame-containing diets. In addition, the comment indicated that the petitioner did not supply any gavage, pair-feeding, or dietary restriction studies to prove that the body weight gain decrements are due to palatability and not toxicity. The comment also claimed that a safe usage level for neotame cannot be determined from the safety database provided in the neotame food additive petitions.

FDA agrees that a NOEL cannot be established based on the 104-week rat carcinogenicity study, in view of the body weight gain (decrement) effect. The agency also notes that, while neotame may have had some influence

on diet palatability, the decreases in food intake (adjusted for neotame content) among neotame-treated rats of both sexes in the 104-week study are too small to explain the magnitude of the body weight gain decrement that occurred in rats from the neotame treatment groups (see section II.C.2.d of this document and Refs. 4 and 10). FDA disagrees, however, about the necessity for additional testing requested by the comment to resolve the body weight gain decrement issue. While the proposed studies might address mechanistic relationships between food consumption and weight gain, the agency believes that they will not provide meaningful data to explain the magnitude of differences in body weight and body weight gain in neotame-treated rats from the 104-week study in view of the small decreases in food consumption noted in these animals. In addition, FDA believes that a safe usage level for neotame can be established from the database provided by the petitioner. As discussed in section II.C.2.e of this document, the results in the 52-week rat dietary toxicity study provide a strong scientific basis to resolve concerns over the body weight gain decrement effect (Refs. 4, 10, and 15). Based on the 52-week rat study and using body weight gain decrement as the most sensitive endpoint for toxicity, the agency is able to establish a NOEL for neotame of 30 mg/kg bw/d. From this NOEL, FDA derives an ADI for neotame of 18 mg/p/d (see table 1 in section II.D of this document and Ref. 4).

Serum Alkaline Phosphatase and Liver Toxicity

Several comments expressed concerns regarding potentially adverse effects of neotame based on changes observed in serum ALP levels in dogs consuming high doses of neotame (i.e., 200 mg/kg bw/d and higher) in both 13-week and 52-week feeding studies. Additional comments suggested that neotame is hepatotoxic, as evidenced by effects on other endpoints, such as changes in absolute and/or relative liver weight, changes in serum cholesterol and triglycerides, and neotame-related cholestasis.

The agency notes that most of these comments focused on effects observed in the 13-week dog study. In its review of the subchronic (13-week) dog study, the agency observed the liver effects referenced in the comments (Ref. 16). Ordinarily, in the absence of a longer duration study, the agency would have given more weight to the results of the 13-week dog study. However, a chronic (52-week) dog study was also submitted in support of the safety of neotame, and that study provides for a more complete manifestation of the target organ toxicity in neotame-treated dogs.

While the agency considers the 13-week dog study useful for obtaining preliminary toxicological information (i.e., identification of target organs) and for determining the appropriate range of doses of neotame that would be fed in the 52-week dog study, the 52-week study provides a stronger basis for assessing the potential chronic toxicity of neotame in the dog. Because the results from this longer-term study supersede those of the 13-week study and because all of the effects noted in the shorter-term study occurred at levels of exposure well above the NOEL established by the 52-week study, the agency concludes that no further discussion is needed in response to issues raised in comments concerning the 13-week dog study.

Several comments asserted that elevated serum ALP levels observed in the neotame-treated dogs in the 52-week dog study indicate liver toxicity. As discussed in section II.C.2.b of this document, FDA recognizes that in the 52-week dog study elevated serum ALP levels are observed in both sexes of dogs from as early as 13 weeks until the end of the study at neotame dose levels of 200 and 800 mg/kg bw/d. However, the agency disagrees with comments that these elevated serum ALP levels are evidence of hepatic toxicity. While an increase in serum ALP may be an indicator of liver toxicity, such a conclusion cannot be substantiated in the absence of additional corroborative changes. Specifically, hepatic damage may result in increased levels of other liver enzymes, such as alanine aminotransferase, aspartate aminotransferase, or gamma glutamyl transferase. None of these liver enzymes was elevated in the neotame-treated dogs. Also, a decrease in blood albumin levels may indicate chronic liver toxicity. Blood albumin levels in dogs from all neotame dose groups were normal and comparable to control values. Furthermore, an elevation in serum bilirubin indicates cholestasis; serum bilirubin levels were unaffected by neotame treatment.

Increased cholesterol levels are another indication of altered liver function. Plasma cholesterol and triglyceride levels in dogs from the 52-week study, although somewhat variable, were well within the normal range for dogs and unaffected by neotame treatment. Additionally, histopathological examinations of livers from dogs from the neotame-treated groups did not reveal any evidence of necrosis, blockage of bile flow, or any other abnormalities that were not detected in control animals. Collectively, these observations support the agency's conclusion that data from the 52-week study do not show evidence of hepatic toxicity in dogs administered neotame (Refs. 4, 17, and 18).

Several comments asserted that neotame-related liver toxicity is not reversible, as is implied by the petitioner, based primarily on the increases in both serum ALP levels and relative liver weights in the dog studies. The agency concludes that the reversibility of these effects is not relevant to a safety decision regarding chronic ingestion of neotame. While FDA agrees, as noted in section II.C.2.b of this document, that increases in serum ALP levels and relative liver weights occur in dogs from the 200 and 800 mg/kg bw/d neotame groups in the 52-week study, neither of these parameters is affected at the lower levels tested (20 or 60 mg/kg bw/d). By considering serum ALP and relative liver weights as the most sensitive endpoints of potential neotame toxicity, the agency determines for the 52-week dog study that 60 mg/kg bw/d is an appropriate NOEL (Refs. 4, 10, and 17).

Liver as a Target Organ for Neotame Toxicity

One comment emphasized the importance of the liver in animal growth and glucose homeostasis. This comment asserted, based on analyses of the neotame safety studies database, that neotame affects growth in both rats and dogs, and appears to affect glucose homeostasis in persons with diabetes. Based upon these findings, along with the elevated serum ALP levels in neotame-treated dogs and the structure of neotame, the comment concluded that it was important to rule out the liver as a target organ.

In regard to the effect of neotame on body weight gain in the rat, the agency has established a NOEL of 30 mg/kg bw/d, based on the 52-week rat feeding study, as summarized in section II.C.2.e of this document. We discuss our analyses of the 52-week rat feeding study and our resolution of the body weight gain effect in more detail in Refs. 10 and 15.

In regard to the effect of neotame on body weight and body weight gain in the 52-week dog feeding study, the effect occurred only in male dogs and only in the highest neotame dose group (i.e., 800 mg/kg bw/d) during weeks 1 to 5 and 7 to 8 (Ref. 18). At all other dose levels tested (i.e., 20, 60, and 200 mg/kg bw/d), there were no statistically significant effects on body weight or body weight gain in either sex. Furthermore, as discussed in section II.C.2.b of this document, the agency relies on more sensitive endpoints, i.e., serum ALP levels and relative liver weights, for establishing a NOEL for neotame from the 52-week dog study.

The agency also disagrees with the comment's assertion that neotame appears to affect glucose homeostasis in persons with diabetes. We explain our basis for concluding that neotame does not appear to affect glucose homeostasis in persons with diabetes later in this document, in the discussion entitled "Type II Diabetes Study."

As for changes in serum ALP levels, the agency does not consider these to be a manifestation of hepatic toxicity in the 52-week dog study. Our reasons for discounting the toxicological significance of the changes in serum ALP are discussed previously (see section II.C.2.b of this document and the fourth subject category in section III "Serum Alkaline Phosphatase and Liver Toxicity").

The comment asserted that "[t]he structure of neotame suggests that the metabolic formation of nitrosamines by gut microflora is possible as well as formation in some food products." The agency acknowledges that a number of nitrosamine compounds are potent hepatotoxins and hepatocarcinogens. The agency also recognizes that neotame contains a secondary amine that could hypothetically form nitrosoneotame in the presence of a nitrosating agent. However, there is no scientific evidence presented in this comment to demonstrate that the presence of neotame in food leads to the formation of nitrosoneotame either through chemical reaction in food products or by metabolic processes in the gut upon ingestion (Ref. 14). Furthermore, the petitioner addressed this issue using many maximizing assumptions concerning the formation and potency of the hypothetical nitrosoneotame. In particular, the petitioner assumed that nitrosoneotame would be formed and that it would be as potent a carcinogen as dimethylnitrosamine. Based on this scenario, the petitioner concluded that the amounts of nitrosamine that could be formed would be extremely small, that any hypothetical risk would be trivial, and that additional analyses were not necessary. After evaluating the petitioner's reasoning, FDA agrees with this conclusion (Refs. 1 and 14). Furthermore, as noted in sections II.C.2.c and II.C.2.d of this document, there is no evidence of chronic liver toxicity or pre-neoplastic or neoplastic liver lesions in lifetime carcinogenicity feeding studies in rats and mice ingesting neotame in amounts up to 1,000 mg/kg bw/d and 4,000 mg/kg bw/d, respectively. Thus, the agency concludes that the hypothetical formation of nitrosamine compounds from neotame poses no safety concerns.

Finally, the agency recognizes that one cannot absolutely rule out the liver as a target organ for the toxic effects of neotame when it is ingested at exaggerated dose levels. However, as discussed in the agency's response to this comment, and elsewhere in this document, the agency concludes that at expected levels of dietary intake of neotame there is no concern for potential toxic effects to the liver.

Systemic Exposure/Body Weight Gain

One comment stated that "[t]he long-term studies conducted in the dog species show definite signs of toxicity which, through close inspection of the pharmacokinetic data generated in the study and specific PK metabolism studies, is shown to be related to systemic exposure of the parent compound." Subsequently, the comment referred to "a non-linear increase in systemic exposure of the parent compound and its metabolite over the dose range studied." The comment asserted that this nonlinear increase in systemic exposure to the parent compound and its metabolite is related to decreases in body weight gain in the dog.

In response, the agency notes that the analysis of PK parameters (i.e., area under the curve, and maximum concentration) discussed in the comment is based on data from the 13-week dog study, which the agency does not consider to be a long-term study as claimed in the comment. In the agency's review of this study (Ref. 16), decreased body weight gains were observed in dogs of both sexes at dietary neotame intakes of 600 and 2,000 mg/kg bw/d (the 2,000 mg/kg bw/d dose level was reduced on day 15 to 1,200 mg/kg bw/d for the remainder of the 13-week study). These extremely high dose levels are 6,000 to 20,000 times greater than the 90th percentile EDI for neotame. At lower levels of neotame intake (i.e., 60 and 200 mg/kg bw/d), there were no effects on body weight gain in either sex. In considering the PK parameters derived from blood concentration data from the dogs fed these lower levels of neotame, the agency concludes (Ref. 19) that there was no evidence of increased systemic exposure to neotame or its metabolites. (It should be noted that PK measurements in the dog were evaluated only in the 13-week subchronic study.)

Moreover, as mentioned in Refs. 4, 10, and 17, a chronic (52-week) neotame dog feeding study was conducted. Because of its longer duration, the 52-week study is more definitive than the subchronic (13-week) dog study for assessing the toxicity of neotame. In the 52-week dog study, decreased body weight gains were noted only at the highest dose tested (800 mg/kg bw/d) and not at any of the lower dose levels (20, 60, and 200 mg/kg bw/d).

Bile Salt Metabolism and Excretion

One comment pointed out that neotame produced discolored feces (white and gray) at the highest doses tested (200 and 800 mg/kg bw/d) in the 52-week dog study. This comment suggested that the change in fecal color was due to neotame's effect on bile salt metabolism and excretion. The agency agrees that dogs from the 800 mg/kg bw/d treatment group frequently excreted gray or white feces. However, there were only two incidences of gray feces from animals in the 200 mg/kg bw/d treatment group (a female on day 322 and a male on day 328), and no changes in appearance of feces from dogs in the 20 or 60 mg/kg bw/d treatment groups. There was also one incident of white feces observed for a female in the control group on day 70 of the study. Based on this evidence, as well as information in section II.C.2.e of this document, the agency concludes that there is no evidence to support a correlation between fecal color and liver toxicity in dogs fed neotame-containing diets during the 52-week study (Ref. 20).

Developmental (Teratology) Studies

One comment claimed that the dose levels of neotame tested in the definitive rabbit developmental (teratology) study were too low. The agency disagrees. FDA's evaluation of this study shows that there are statistically significant decreases in feed consumption and maternal body weights during the gestation period. Thus, the highest dose in the study (500 mg/kg bw/d) was sufficient to achieve maternal toxicity (Refs. 4 and 6). In addition, FDA notes that this study satisfies dose selection criteria recommended in the agency's Redbook guidelines (Ref. 21).

Another comment raised concern over post-implantation effects of neotame based on a maternal toxicity range-finding study in the rabbit. Because of the study's limitations, the agency does not share this concern. While a range-finding study may aid in identifying a compound's potential target organ effects, the primary objective of such a study is to establish appropriate dose levels to be further evaluated in a more definitive toxicity study. In the study in question, the agency notes that only six animals were used in each dose group, too few for an adequate assessment of

the developmental (teratogenic) potential of a compound (Ref. 21). In the definitive rabbit developmental (teratology) study, a total of 25 mated females were assigned to the control and high-dose groups, and 20 each in the low- and mid-dose groups (Ref. 6). This larger number of animals allows for a more accurate assessment of the teratogenic potential of neotame in the rabbit as well as increasing the

the study followed the Redbook guidelines. Additionally, the agency finds no dose-dependent effects on post-implantation data when this study's treated and concurrent control groups are compared (Refs. 6 and 21).

In further response to this comment, the agency concludes that the manner in which the comment has analyzed the data from the rabbit developmental study is incorrect. More specifically, the

decreases in both feed intake and body weight gain, at the 500 mg/kg bw/d dose level. Furthermore, there is an appropriate NOEL for these effects (Refs. 6 and 21).

This comment also suggested that decreases in food intake and maternal body weight gain noted in the dams from the 500 mg/kg bw/d dose group were due to (tissue) accumulation of neotame. Based on a review of the PK

trial, FDA concludes that the study was well-executed, irrespective of previously noted design limitations (Ref. 23).

The agency disagrees with the comment's conclusion that results from the trial with Type II diabetic subjects are strongly suggestive of a treatment-related effect of neotame on glucose control. FDA performed a detailed evaluation of the study data on fasting glucose pharmacodynamic parameters

body weight of 20 kg is reported to range from 0.4 to 0.6 g/p/d or 400 to 600 mg/p/d (Ref. 5).

Using a conservative approach (Refs. 4 and 5), the agency calculates that the amount of phenylalanine exposure expected from the 90th percentile intake (0.1 mg/kg bw/d) of neotame (Ref. 2) by a 60 kg adult is 2.64 mg/p/d. FDA finds this amount of exposure trivial in contrast to that expected from the normal adult diet. For the PKU

this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

the developmental (teratogenic) potential of a compound (Ref. 21). In the definitive rabbit developmental (teratology) study, a total of 25 mated females were assigned to the control and high-dose groups, and 20 each in the low- and mid-dose groups (Ref. 6). This larger number of animals allows for a more accurate assessment of the teratogenic potential of neotame in the rabbit as well as increasing the statistical power of the study. In the definitive rabbit teratology study, there were no significant dose-dependent, post-implantation effects due to neotame treatment.

One comment argued that neotame-induced effects on post-implantation loss, fetal size, and limb development in rabbits in the teratology study may be masked by the quality of the study and the high background incidence of these effects. The comment disagreed with the petitioner's interpretation of the data on post-implantation and other fetal observations. In particular, the comment asserted that the petitioner's interpretation of data was scientifically flawed because the petitioner made comparisons between treatment groups and the concurrent control group whose incidence percentages, according to the comment, were higher than those incidence percentages typically seen in historical control data.

FDA disagrees with this assessment. By using concurrent control animals, the study avoided the inherent variability that may be introduced into data analyses when historical control data are used in place of concurrent control data. Potential sources of variability from the use of historical control data include: (1) Differences in animal husbandry and animal room environment, (2) differences in diet compositions, (3) differences in times of study conduct, (4) differences in the sources of nutrients in animal diets, (5) differences in skills and experience of technicians or scientists, and (6) genetic drifts, as discussed in Haseman et al., 1989[3] and Roe, 1994.[4] Therefore, the agency concludes that, within the definitive rabbit study, in the absence of compelling evidence to the contrary, it is more appropriate to compare results between treated and concurrent control animals than to compare results between treated animals and historical control data. The agency also notes that the study followed the Redbook guidelines. Additionally, the agency finds no dose-dependent effects on post-implantation data when this study's treated and concurrent control groups are compared (Refs. 6 and 21).

In further response to this comment, the agency concludes that the manner in which the comment has analyzed the data from the rabbit developmental study is incorrect. More specifically, the comment compared control and treated groups on a per-fetus, rather than on a per-litter incidence basis. As recognized by authoritative sources[5 6 7] the maternal animal, not the developing organism, is randomly and independently assigned to control and treatment groups during the gestation period. Therefore, the analyses of effects should be reported as incidence-per-litter or as number and percent of litters with particular endpoints. Because the comment's analysis is based on inappropriate per-fetus comparisons, its conclusions are inherently flawed. Furthermore, the agency finds that the comparisons between the concurrent control and treated groups, on a percent per-litter basis, show no treatment-related effects on the litter incidence of any fetal endpoint examined in the rabbit developmental (teratology) study (Refs. 6 and 21).

One comment focused on the dosimetric and pharmacokinetic aspects of the rabbit developmental (teratology) study. The comment asserted that if a higher dose level, e.g., 1,000 mg/kg bw/d, rather than 500 mg/kg bw/d, had been used as the top dose in this definitive study, higher systemic exposure and greater toxicity would have occurred in the neotame-treated rabbits. As noted earlier with regard to the levels of neotame tested in this study, the agency finds that overall study design and dose selection were sufficient to achieve maternal toxicity. FDA believes that it is irrelevant if greater toxicity were to occur at a higher dose level than the highest dose used in the rabbit developmental (teratology) study. The highest dose used was sufficient to achieve maternal toxicity, based on statistically significant decreases in both feed intake and body weight gain, at the 500 mg/kg bw/d dose level. Furthermore, there is an appropriate NOEL for these effects (Refs. 6 and 21).

This comment also suggested that decreases in food intake and maternal body weight gain noted in the dams from the 500 mg/kg bw/d dose group were due to (tissue) accumulation of neotame. Based on a review of the PK data from the definitive rabbit developmental study, the agency concludes that these data do not suggest that bioaccumulation of neotame or its metabolites would occur even at a dose level of 500 mg/kg bw/d (Ref. 22). With regard to a possible relationship between (tissue) accumulation of neotame and decreases in feed intake and maternal body weight gain, the agency finds that a mechanistic explanation is unnecessary for an adequate evaluation of the study because the agency has determined an appropriate NOEL for these effects. As noted previously in section II.C.1.b of this document, based on the evaluation of other neotame feeding studies in the rat and dog, FDA concludes that there is no concern for the potential bioaccumulation of neotame or its metabolites at expected human intake levels.

Type II Diabetes Study

One comment criticized several aspects of the Type II diabetes study. The comment stated that the design of this study was not adequate to detect small differences resulting from neotame treatment in the parameters examined. It cited the following inadequacies: Limited statistical power, parameters measured only under the quiescent metabolic condition of extended fasting, short duration, and no meal test. Despite these deficiencies, the comment recommended inclusion of the Type II diabetes study in the safety evaluation, because no other studies in the neotame safety database investigated the effects of neotame on glucose homeostasis in patients or animals with diabetes. Finally, the comment concluded that results from the Type II diabetes study were strongly suggestive of a treatment-related effect of neotame on fasting glucose control.

FDA agrees that although the experimental design of the Type II diabetes study limits its utility for assessing the potential effects of neotame on glucose homeostasis in Type II diabetics, it should be included in the safety evaluation of neotame (Ref. 23). Based on findings obtained during a directed clinical investigator site inspection and audit of study records at the facility responsible for this clinical trial, FDA concludes that the study was well-executed, irrespective of previously noted design limitations (Ref. 23).

The agency disagrees with the comment's conclusion that results from the trial with Type II diabetic subjects are strongly suggestive of a treatment-related effect of neotame on glucose control. FDA performed a detailed evaluation of the study data on fasting glucose pharmacodynamic parameters including: (1) Area under the effect curve, (2) area under curve, (3) percent perturbation, and (4) normal variations in glucose concentrations. Based on these analyses, the agency finds that under the conditions of the study, there were no significant changes in these parameters in study subjects that are attributable to neotame (Ref. 23). Overall, FDA concludes that under the conditions of the Type II diabetic study, blood glucose concentrations in Type II diabetic subjects following neotame treatment (at levels ranging from 5 to 15 times the 90th percentile EDI of 0.1 mg/kg bw/d) are comparable to those in the same subjects when given a placebo, and that any changes noted are within the normal range of variation and not the result of neotame treatment (Ref. 23).

Methanol and Phenylalanine Formation

Several comments expressed concern that harmful levels of methanol and phenylalanine may result from ingesting neotame-containing foods and beverages. FDA disagrees with these comments. Methanol release results from the de-esterification of neotame, which occurs more rapidly in the rat and rabbit than in the dog and human (see section II.C.1.d of this document). The agency concludes that, at the 90th percentile EDI of neotame, the resultant exposure to methanol would be extremely low, approximately 0.008 mg/kg bw/d (Ref. 5). Humans are exposed to much higher levels of methanol intake from their daily diet. For example, the methanol content of fruit juices ranges from 64 mg/liter (L) in orange juice to 326 mg/L in apricot juice. In contrast, the methanol content of neotame-sweetened carbonated beverages is estimated to be 1.37 mg/L.

Similarly, FDA concludes that the potential intake of phenylalanine from the use of neotame will be extremely low in comparison to that present in the daily diet. Based upon data cited by Koch and Wenz, 1984 (see footnote 2 in section II.C.1.d of this document), the agency notes that the daily dietary intake of phenylalanine for a healthy individual may range from 2.5 to 10 g/p/d. The daily intake of phenylalanine for a PKU homozygous child with a body weight of 20 kg is reported to range from 0.4 to 0.6 g/p/d or 400 to 600 mg/p/d (Ref. 5).

Using a conservative approach (Refs. 4 and 5), the agency calculates that the amount of phenylalanine exposure expected from the 90th percentile intake (0.1 mg/kg bw/d) of neotame (Ref. 2) by a 60 kg adult is 2.64 mg/p/d. FDA finds this amount of exposure trivial in contrast to that expected from the normal adult diet. For the PKU homozygous child, the additional phenylalanine intake expected from the 90th percentile ingestion of neotame (i.e., 0.17 mg/kg bw/d) (Ref. 3) by a 20 kg individual is 1.50 mg/p/d, an incremental amount that is equivalent to no more than 0.3 to 0.4 percent of the PKU homozygous child's normal daily phenylalanine intake. From these conservative estimates, the agency concludes that the potential intake of phenylalanine that may result from use of neotame as a general-purpose sweetener does not pose any safety concern (Refs. 4 and 5).

IV. Conclusion

The agency has evaluated all the data and other information submitted by the petitioner in support of the safe use of neotame as a general-purpose sweetener and concludes that there is a reasonable certainty that no harm will result from the use of neotame as proposed. In accordance with a memorandum of understanding (MOU) between the Food Safety and Inspection Service (FSIS), United States Department of Agriculture, and FDA (65 FR 51758, August 25, 2000), a restriction from use "in meat and poultry" appears in the neotame regulation. This restriction is required when the petitioner does not specify whether the food additive is intended for such use. At this time, FSIS has not made a determination on the use of neotame in or on meat or poultry. Therefore, FDA concludes that the food additive regulations should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**), and you may review them between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, March 31, 1998.
2. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, August 12, 1999; addendum memorandum to the August 12, 1999, memorandum from DiNovi, Division of Biotechnology and GRAS Notification Review, to Anderson, Division of Petition Review, February 28, 2002.
3. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, December 14, 2000.
4. Memorandum from Biddle, Lin, Whiteside, Division of Health Effects. Evaluation, to Anderson, Division of Product Policy, January 31, 2001; addendum memorandum to the January 31, 2001, memorandum from Whiteside, Division of Petition Review, to Anderson, Division of Petition Review, February 28, 2002.
5. Memorandum from Bleiberg, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 31, 2001; addendum memorandum to the January 31, 2001, memorandum from Biddle, Division of Petition Review, to Anderson, Division of Petition Review, February 28, 2002.
6. Memorandum from Welsh, Scientific Support Branch, to Anderson, Division of Product Policy, January 31, 2001.
7. Memorandum from Mattia, Scientific Support Branch, to Anderson, Division of Product Policy, January 31, 2001; addendum memorandum to the January 31, 2001, memorandum from Biddle, Division of Petition Review, to Anderson, Division of Petition Review, April 12, 2002.
8. Position paper from The NutraSweet Co., "Neotame Does Not Cause Any Behavioral or Neurotoxic Effects."
9. Position paper from The NutraSweet Co., "Increases in Serum Alkaline Phosphatase in

[3] Haseman, J. K., Huff, J. E., Rao, G. N., and Eustis, S. L., "Sources of Variability in Rodent Carcinogenicity," *Fundamental and Applied Toxicology*, vol. 12(4), pp. 793–804, 1989.

[4] Roe, F. J. C., "Historical Histopathological Control Data for Laboratory Rodents: Valuable Treasure or Worthless Trash?" *Laboratory Animals*, vol. 28(2), pp. 148–154, (London), 1994.

[5] FDA, "Guidelines for Developmental Toxicity Studies," chapter IV.C.b, section III.D, *Redbook 2000 Toxicology Principles for the Safety of Food Ingredients* (http://www.cfsan.fda.gov/~redbook/redivc96.html).

[6] Tyl, R. W. and M. C. Marr, "Developmental Toxicity Testing-Methodology," chapter 7, pp. 217, *Handbook of Developmental Toxicology*, edited by R. D. Hood, CRC Press, New York, NY, 1997.

[7] Kimmel, C. A. and G. L. Kimmel, "Principles of Developmental Toxicity Risk Assessment," chapter 21, pp. 671–672, *Handbook of Developmental Toxicology*, edited by R. D. Hood, CRC Press, New York, NY, 1997.

the Dog Are Not Associated With Target Organ Toxicity."

10. Memorandum from Whiteside, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 21, 2001.
11. Memorandum of Conference from the Center for Food Safety and Applied Nutrition—Cancer Assessment Committee, August 16, 2000.
12. Position paper from The NutraSweet Co., " In the Mouse Carcinogenicity Study with Neotame Small Changes in Body Weight Gain at Some Intervals in Female Mice at

a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the

20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC 20001.

(1) Assay for neotame, not less than 97.0 percent and not more than 102.0 percent on a dry basis.

(2) Free dipeptide acid (*N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine), not more than 1.5 percent.

(3) Other related substances, not more

that were published in the **Federal Register** on Friday, May 31, 2002 (67 FR 38000) that affect corporations filing consolidated returns.

DATES: This correction is effective May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Marie Milnes-Vasquez, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

SUMMARY: The Department of Defense published a final rule in the **Federal Register** of Tuesday, June 25, 2002 (67 FR 42717) on Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services. This document makes an administrative correction to that document.

DATES: This final rule is effective July 25, 2002, except § 199.4(e)(21) is

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Deerfield Beach Super Boat Race. This event will be held from 10 a.m. to 4 p.m. on July 14, 2002. This rule is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 10 a.m. on July 14, 2002 until 4 p.m. on July 15, 2002.

the Dog Are Not Associated With Target Organ Toxicity."

10. Memorandum from Whiteside, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 21, 2001.

11. Memorandum of Conference from the Center for Food Safety and Applied Nutrition—Cancer Assessment Committee, August 16, 2000.

12. Position paper from The NutraSweet Co., " In the Mouse Carcinogenicity Study with Neotame Small Changes in Body Weight Gain at Some Intervals in Female Mice at 50 mg/kg bw Relative to Controls are Due to a Decrease in Food Consumption."

13. Memorandum from Chen, Scientific Support Branch, to Anderson, Division of Product Policy, July 19, 2000.

14. Memorandum from DiNovi, Division of Product Manufacture and Use, Chemistry Review Team, to Anderson, Division of Product Policy, January 10, 2001.

15. Memorandum from Whiteside, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 31, 2001.

16. Memorandum from Ikeda, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, May 28, 1999.

17. Memorandum from Ikeda, Division of Health Effects Evaluation, to Biddle, Division of Health Effects Evaluation, January 31, 2001.

18. Memorandum from Ikeda, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, June 16, 2000; addendum memorandum to the June 16, 2000, memorandum from Whiteside, Division of Petition Review, to Anderson, Division of Petition Review, February 28, 2002.

19. Memorandum from Bleiberg, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, February 5, 2001.

20. Memorandum from Ikeda, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, February 5, 2001.

21. Memorandum from Shackleford, Division of Heath Effects Evaluation, to Anderson, Division of Product Policy, February 12, 2001.

22. Memorandum from Roth, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, February 28, 2001.

23. Memorandum from Park, Roth, and Klontz, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, January 30, 2001.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (see **ADDRESSES**) written objections by August 8, 2002. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.829 is added to subpart I to read as follows:

§ 172.829 Neotame.

(a) Neotame is the chemical *N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine-1-methyl ester (CAS Reg. No. 165450–17–9).

(b) Neotame meets the following specifications when it is tested according to the methods described or referenced in the document entitled "Specifications and Analytical Methods for Neotame" dated April 3, 2001, by the NutraSweet Co., 699 North Wheeling Rd., Mount Prospect, IL 60056. The Director of the Office of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., rm. 1C–100, College Park, MD 20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC 20001.

(1) Assay for neotame, not less than 97.0 percent and not more than 102.0 percent on a dry basis.

(2) Free dipeptide acid (*N*-[*N*-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine), not more than 1.5 percent.

(3) Other related substances, not more than 2.0 percent.

(4) Lead, not more than 2.0 milligrams per kilogram.

(5) Water, not more than 5.0 percent.

(6) Residue on ignition, not more than 0.2 percent

(7) Specific rotation, determined at 20 °C $[\alpha]_D$: -40.0° to 43.4° calculated on a dry basis.

(c) The food additive neotame may be safely used as a sweetening agent and flavor enhancer in foods generally, except in meat and poultry, in accordance with current good manufacturing practice, in an amount not to exceed that reasonably required to accomplish the intended technical effect, in foods for which standards of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act do not preclude such use.

(d) When neotame is used as a sugar substitute tablet, L-leucine may be used as a lubricant in the manufacture of tablets at a level not to exceed 3.5 percent of the weight of the tablet.

(e) If the food containing the additive purports to be or is represented to be for special dietary use, it shall be labeled in compliance with part 105 of this chapter.

Dated: July 2, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17202 Filed 7–5–02; 10:41 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8997]

RIN 1545–BA76

Carryback of Consolidated Net Operating Losses To Separate Return Years; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on Friday, May 31, 2002 (67 FR 38000) that affect corporations filing consolidated returns.

DATES: This correction is effective May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Marie Milnes-Vasquez, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under sections 1502 and 172 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8997), that were the subject of FR Doc. 02–13576, is corrected as follows:

1. On page 38001, column 3, in the preamble under the paragraph heading "Background", third full paragraph, line 5, the language "elections are made on a year-by-basis." is corrected to read "elections are made on a year-by-year basis.".

2. On page 38002, column 1, in the preamble under the paragraph heading "Special Analyses", first paragraph, lines 22 and 23, the language "to 5 USC 553(b)(B) and delayed effective date is not required pursuant to 5 USC" is corrected to read "to 5 U.S.C. 553(b)(3)(B) and delayed effective date is not required pursuant to 5 U.S.C.".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–17019 Filed 7–8–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA28

TRICARE; Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; administrative correction.

SUMMARY: The Department of Defense published a final rule in the **Federal Register** of Tuesday, June 25, 2002 (67 FR 42717) on Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services. This document makes an administrative correction to that document.

DATES: This final rule is effective July 25, 2002, except § 199.4(e)(21) is effective August 12, 2002.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, (TMA) telephone (303) 676–3627.

SUPPLEMENTARY INFORMATION: An interim final rule on Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers was published on Thursday, June 13, 2002 (67 FR 40597) added a new § 199.4(e)(21) on home health services. A final rule on Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services was published on June 25, 2002 (67 FR 42717) also added a new § 199.4(e)(21) on Pulmonary rehabilitation. This document corrects the paragraph designation.

In FR Doc 02–15913 published on June 25, 2002 (67 FR 41721) make the following correction: On page 41721, in the second column, redesignate paragraph (e)(21) as paragraph (e)(22).

Dated: June 27, 2002.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17035 Filed 7–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–02–013]

RIN 2115–AE46

Special Local Regulations; Deerfield Beach Super Boat Race, Deerfield Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Deerfield Beach Super Boat Race. This event will be held from 10 a.m. to 4 p.m. on July 14, 2002. This rule is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 10 a.m. on July 14, 2002 until 4 p.m. on July 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket are part of docket CGD07–02–013 and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, FL, between the hours of 7:30 a.m. and 3 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC V. Sorensen, Coast Guard Group Miami, FL at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public because there will be numerous spectator craft in the area.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

On May 7, 1998, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 25187), seeking comments on the establishment of permanent special local regulations for the Deerfield Beach Super Boat Race. No comments were received during the comment period. On June 26, 1998, the Coast Guard published a final rule in the **Federal Register** (63 FR 34813) creating the permanent special local regulations in 33 CFR 100.733. The published rule is effective on the third Sunday in July.

However, this year the third Sunday in July will put the race the weekend before the mini-lobster season. The race organizers are moving the race date up one week this year to avoid conflict with vessels and people preparing for the mini-lobster season.

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high-speed power boat race that will take place on July 14, 2002 in the Alantic Ocean off Deerfield Beach, Florida. Approximately 35 race boats, ranging in length from 24 to 50 feet, will participate in the event. There will also be approximately 200 spectator craft. The race boats will be competing

a significant economic impact on a substantial number of small entities because small entities will be able to transit around the regulated area and entry into the regulated area is prohibited for only 6 hours on the day of the event.

A regulated area encompasses all waters within a box established by joining the following points:

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a

participant persons and vessels is prohibited unless authorized by the Coast Guard Patrol Commander. After the completion of scheduled races and the departure of participants from the regulated area, traffic may resume normal operations at the discretion of the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may also permit traffic to resume normal operations between scheduled racing

a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Milo Ortiz, U.S. Coast Guard Marine Safety Office Valdez, Alaska, at (907) 835–7205.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard published a final rule in the **Federal Register** on August

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high-speed power boat race that will take place on July 14, 2002 in the Alantic Ocean off Deerfield Beach, Florida. Approximately 35 race boats, ranging in length from 24 to 50 feet, will participate in the event. There will also be approximately 200 spectator craft. The race boats will be competing at high speeds with numerous spectator craft in the area, creating a hazard in the navigable waterways. These regulations will create a regulated area offshore of Deerfield Beach that will only allow participant vessels to enter and establish a spectator craft area.

The permanent special local regulations in 33 CFR § 100.733 have been in place since 1998. The rule is effective on the third Sunday in July. However, this year the third Sunday in July will put the race the weekend before the mini-lobster season. The race organizers are moving the race date this year to avoid conflict with vessels and people preparing for the mini-lobster season.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of Department of Transportation is unnecessary because vessels will be able to transit around the regulated area and entry into the regulated area is prohibited for only 6 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities will be able to transit around the regulated area and entry into the regulated area is prohibited for only 6 hours on the day of the event.

A regulated area encompasses all waters within a box established by joining the following points:

Corner point 1: 26°19.7′N–080°04.4′W
Corner point 2: 26°19.7′N–080°03.7′W
Corner point 3: 26°15.7′N–080°04.1′W
Corner point 4: 26°15.7′N–080°04.9′W

A spectator area is established in the vicinity of the regulated area for spectator traffic and encompasses all waters within a box established by joining the following points:

Corner point 1: 26°15.7′N–080°03.9′W
Corner point 2: 26°15.7′N–080°04.1′W
Corner point 3: 26°19.7′N–080°03.7′W
Corner point 4: 26°19.7′N–080°03.5′W

All coordinates reference Datum NAD: 83.

Entry into the regulated area by non-participant persons or vessel is prohibited unless authorized by the Coast Guard Patrol Commander. After the completion of scheduled races and the departure of participants from the regulated area, traffic may resume normal operations at the discretion of the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may also permit traffic to resume normal operations between scheduled racing events.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(h), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100–MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 10 a.m. on July 14, 2002 until 4 p.m. on July 15, 2002, add temporary § 100.35T–07–013 to read as follows:

§ 100.35T–07–013 Annual Deerfield Beach Super Boat Race; Deerfield Beach, Florida.

(a) *Regulated area.* (1) A regulated area encompasses all waters within a box established by joining the following points:

Corner point 1: 26°19.7′N–080°04.4′W
Corner point 2: 26°19.7′N–080°03.7′W
Corner point 3: 26°15.7′N–080°04.1′W
Corner point 4: 26°15.7′N–080°04.9′W

(2) A spectator area is established in the vicinity of the regulated area for spectator traffic and encompasses all waters within a box established by joining the following points:

Corner point 1: 26°15.7′N–080°03.9′W
Corner point 2: 26°15.7′N–080°04.1′W
Corner point 3: 26°19.7′N–080°03.7′W
Corner point 4: 26°19.7′N–080°03.5′W

All coordinates reference Datum NAD: 83.

(b) *Special local regulations.* (1) Entry into the regulated area by non-participant persons and vessels is prohibited unless authorized by the Coast Guard Patrol Commander. After the completion of scheduled races and the departure of participants from the regulated area, traffic may resume normal operations at the discretion of the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may also permit traffic to resume normal operations between scheduled racing events.

(c) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Group Miami.

(d) *Dates.* This rule will be enforced from 10 a.m. to 4 p.m. on July 14, 2002. If the event is postponed on July 14, it will be enforced from 10 a.m. to 4 p.m. on July 15, 2002.

Dated: June 27, 2002.

J. W. Stark,

Captain, Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 02–17096 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–010]

RIN 2115–AA97

Safety Zone; Ammunition Island, Port Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: The Coast Guard is correcting the coordinates in a final rule for a safety zone encompassing Ammunition Island in Port Valdez, Alaska, that was published in the **Federal Register** on August 17, 1987 and amended on June 30, 1998. We are making this correction because of an incorrect position that was attributed to Ammunition Island and published in the final rule. This correction changes the coordinates of Ammunition Island to latitude 61°07′28″ N, longitude 146°18′29″ W.

DATES: Effective on June 21, 2002.

ADDRESSES: The public docket for this rulemaking is maintained by Coast Guard Marine Safety Office Valdez, P.O. Box 486, Valdez, Alaska 99686. Materials in the public docket are available for inspection or copying at Coast Guard Marine Safety Office Valdez. Normal office hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Milo Ortiz, U.S. Coast Guard Marine Safety Office Valdez, Alaska, at (907) 835–7205.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard published a final rule in the **Federal Register** on August 17, 1987, (52 FR 30671) establishing a safety zone for the waters within 1330 yards of Ammunition Island, latitude 61°07′5″ N, longitude 146°18′ W, (NAD 83) and the vessel moored or anchored at Ammunition Island, Port Valdez, Alaska (33 CFR 165.1703). The zone is needed to protect the safety of persons and vessels operating in the vicinity during ammunition and explosives loading and offloading operations.

Need for Correction

It was recently discovered that the listed position for Ammunition Island was incorrect. The Coast Guard is correcting the listed position for Ammunition Island to latitude 61°07′28″ N, 146°18′29″ W (NAD 83).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Accordingly, 33 CFR part 165 is corrected to make the following correcting amendments:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. In § 165.1703 revise paragraph (a) to read as follows:

§ 165.1703 Ammunition Island, Port Valdez, Alaska.

(a) *Location.* The waters within the following boundaries is a safety zone—the area within a radius of 1330 yards of Ammunition Island, centered on latitude 61°07′28″ N, longitude 146°18′29″ W, (NAD 83) and the vessel moored or anchored at Ammunition Island.

* * * * *

Dated: June 21, 2002.

P.M. Coleman,

Commander, Coast Guard, Captain of the Port Prince William Sound, Alaska.

[FR Doc. 02–17099 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H–FRL–7241–8]

RIN 2050–AE88

Correction of Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities

SUPPLEMENTARY INFORMATION: *Outline of This Document:* The contents of this preamble are listed in the following outline:

I. Introduction
A. Who Potentially Will Be Affected by this Final Rule?
B. What are the Reporting Requirements Under CERCLA and EPCRA?
C. What is the Purpose of this Rule?
D. Why is EPA Making These Changes in

preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. What Are the Reporting Requirements Under CERCLA and EPCRA?

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and table of hazardous substances. We also are revising regulatory text to make it more concise, conform more closely to statutory language, and eliminate text that is redundant or legally obsolete. All of these changes are editorial and do not affect any substantive aspects of the CERCLA release reporting program.

Because these corrections are editorial, EPA does not anticipate that any costs will be associated with this rulemaking. Rather, we expect that these be defined when the term is first used (such as "RQ" and "RCRA"). For these reasons, EPA is removing and reserving 40 CFR 302.2.

B. Revisions to 40 CFR 302.3 (Definitions)

The definition of "release" in 40 CFR 302.3 was, at the time we codified it in the CFR in 1985, the same as the statutory definition of this term in CERCLA section 101(22). The

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H–FRL–7241–8]

RIN 2050–AE88

Correction of Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or "the Agency") is correcting errors and removing obsolete or redundant language in regulations regarding notification requirements for releases of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Consistent with ongoing regulatory reinvention initiatives within the Agency, EPA has reviewed the CERCLA release reporting regulations and has identified several categories of errors, including: typographical errors in the table of CERCLA hazardous substances; definitions made legally obsolete because of changes in CERCLA's statutory provisions; and redundant or unnecessary information.

DATES: This rule is effective on September 9, 2002, unless EPA receives written adverse comments by August 8, 2002. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: *Comments:* Interested parties may submit an original and two copies of comments referencing docket number 102RQ–CORRECT to (1) if using regular U.S. Postal Service mail: Docket Coordinator, Superfund Docket Office, (Mail Code 5201G), U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or (2) if using special delivery such as overnight express service: Superfund Docket Office, Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

Release Notification: The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

Docket: You may inspect copies of materials relevant to this rulemaking at the U.S. EPA Superfund Docket Office, located at Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 102RQ–CORRECT]. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703/603–9232. You may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost $0.15 per page. The Docket Office will mail copies of materials to you if you are located outside the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/412–3323). For information on specific aspects of the rule, contact Lynn Beasley of the Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Beasley's e-mail address is *beasley.lynn@epa.gov* and her telephone number is 703/603–9086.

SUPPLEMENTARY INFORMATION: *Outline of This Document:* The contents of this preamble are listed in the following outline:

I. Introduction
A. Who Potentially Will Be Affected by this Final Rule?
B. What are the Reporting Requirements Under CERCLA and EPCRA?
C. What is the Purpose of this Rule?
D. Why is EPA Making These Changes in a Final Rule, Without Prior Opportunity for Comment?
II. Corrections and Other Changes Made to 40 CFR Part 302 in Today's Rulemaking
A. Revisions to 40 CFR 302.2 (Abbreviations)
B. Revisions to 40 CFR 302.3 (Definitions)
C. Revisions to 40 CFR 302.5 (Determination of Reportable Quantities)
D. Revisions to 40 CFR 302.6 (Notification Requirements)
E. Revisions to 40 CFR 302.7 (Penalties)
F. Revisions to 40 CFR 302.8 (Continuous Releases)
G. Revisions to 40 CFR 302.4 (Designation of Hazardous Substances)
1. Formatting Changes to Table 302.4 a. Regulatory Synonyms Column
b. Statutory RQ Column c. Final RQ Category Column
2. Revisions to the Note Preceding Table 302.4
3. Corrections to Errors in Table 302.4
a. What Corrections Are Being Made to Entries for Individual Substances?
b. What Corrections Are Being Made to Entries for F- and K-Waste Streams?
c. What Corrections Are Being Made to Footnotes in Table 302.4?
d. Why Are Other Errors in Table 302.4 Not Addressed in Today's Rule?
H. Revisions to Appendix A of 40 CFR 302.4
III. Administrative Requirements

I. Introduction

A. Who Potentially Will Be Affected by This Final Rule?

This final rule may affect the following entities: (1) Persons in charge of vessels or facilities that may release CERCLA hazardous substances into the environment; and (2) entities that plan for or respond to such releases.

POTENTIALLY AFFECTED ENTITIES

Type of entity	Examples of affected entities
Industry	Manufacturers, handlers, transporters, and other users of CERCLA hazardous substances.
State, Local, or Tribal Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government	National Response Center, and any Federal agency that may release or respond to releases of these substances.

EPA does not intend for this table to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other entities not listed in the table may also be affected. You can determine whether your organization is affected by examining the changes being made to 40 CFR part 302. If you have questions about the applicability of this action to a particular entity, consult the contact names and phone numbers listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. What Are the Reporting Requirements Under CERCLA and EPCRA?

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA by reference to various Federal environmental statutes.

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its reportable quantity (RQ) must immediately notify the National Response Center (NRC) of the release. A release is reportable if an RQ or more is released within a 24-hour period (see 40 CFR 302.6). In addition to the reporting requirements under CERCLA section 103, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, requires owners or operators of certain facilities to report releases of extremely hazardous substances and CERCLA hazardous substances to State and local authorities (see 40 CFR 355.40). After the release of a hazardous substance in a quantity equal to or greater than its RQ, facility owners or operators must immediately notify the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and the State emergency response commission of any State likely to be affected by the release.

Section 102(b) of CERCLA establishes RQs of one pound ("statutory RQs") for releases of most CERCLA hazardous substances. Under section 102(a) of CERCLA, the Administrator of EPA has the authority to adjust these RQs by regulation ("adjusted RQs"). The list of CERCLA hazardous substances and RQs is codified in Table 302.4 of 40 CFR 302.4.

C. What Is the Purpose of This Rule?

EPA and other Federal agencies periodically review the regulations they administer to identify those rules that are obsolete or unduly burdensome. For example, on June 29, 1995, EPA published a final rule (60 FR 33912) eliminating a number of legally obsolete regulations. Now we are taking another step in the ongoing review of our rules. EPA has reviewed 40 CFR part 302 and is correcting typographical errors in the table of hazardous substances. We also are revising regulatory text to make it more concise, conform more closely to statutory language, and eliminate text that is redundant or legally obsolete. All of these changes are editorial and do not affect any substantive aspects of the CERCLA release reporting program.

Because these corrections are editorial, EPA does not anticipate that any costs will be associated with this rulemaking. Rather, we expect that these corrections will serve to reduce confusion among the regulated community and government authorities about release reporting regulations contained in 40 CFR part 302 and, therefore, reduce the burden of complying with these regulations.

D. Why Is EPA Making These Changes in a Final Rule, Without Prior Opportunity for Comment?

EPA is publishing this rule without prior proposal because we view these changes as noncontroversial amendments and anticipate no adverse comment. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure is impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the removals and revisions contained in this final rule are editorial and do not affect any substantive aspects of the CERCLA release reporting program. Thus, notice and public comment procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B). For the same reason, EPA has also determined that it has good cause under 5 U.S.C. 553(d) to make the rule effective upon publication.

II. Corrections and Other Changes Made to 40 CFR Part 302 in Today's Rulemaking

The following section describes the specific corrections that EPA is making to 40 CFR part 302 in today's rulemaking.

A. Revisions to 40 CFR 302.2 (Abbreviations)

EPA believes that listing abbreviations in 40 CFR 302.2 is unnecessary, because these terms: (1) Are defined elsewhere in 40 CFR part 302 (as is the case with "CASRN" and "kg"); (2) are not used in this CFR part (as in the case of "lb" for pound); or (3) would more appropriately be defined when the term is first used (such as "RQ" and "RCRA"). For these reasons, EPA is removing and reserving 40 CFR 302.2.

B. Revisions to 40 CFR 302.3 (Definitions)

The definition of "release" in 40 CFR 302.3 was, at the time we codified it in the CFR in 1985, the same as the statutory definition of this term in CERCLA section 101(22). The Superfund Amendments and Reauthorization Act of 1986 (SARA), however, changed the statutory definition; for this reason, we are revising the definition of "release" in 40 CFR 302.3 to reflect these amendments, which included language regarding abandonment or discarding of containers. EPA proposed this change in a July 19, 1988, proposed rule (53 FR 27268) and did not receive any adverse comments on this issue.

In addition, the definition of "reportable quantity" in 40 CFR 302.3 is being changed to add the abbreviation "(RQ)" so that the term is defined when first used in 40 CFR part 302.

C. Revisions to 40 CFR 302.5 (Determination of Reportable Quantities)

Section 302.5(b) refers to toxicity identified in the Resource Conservation and Recovery Act (RCRA) regulations at 40 CFR 261.24. In 1990, EPA revised 40 CFR 261.24 as well as Table 302.4 to delete references to the terms "extraction procedure" and "EP" toxicity. To be consistent with these changes, EPA is revising paragraph (b) of 40 CFR 302.5 to delete references to "EP" toxicity.

D. Revisions to 40 CFR 302.6 (Notification Requirements)

An additional Washington phone number ((202) 267–2675), a facsimile number ((202) 267–2165), and a telex number (892427) are being added to the list of National Response Center (NRC) phone numbers in paragraph (a) of 40 CFR 302.6.

E. Revisions to 40 CFR 302.7 (Penalties)

The penalty description in 40 CFR 302.7(a)(3) was, at the time we codified it in the CFR in 1985, consistent with the penalty provisions in CERCLA section 103(b). In 1986, however, SARA changed CERCLA section 103(b) to include language regarding submission of false information. EPA proposed this change in the July 19, 1988 proposed rule and did not receive any adverse comments on this issue. Thus, EPA is revising paragraph (a)(3) of 40 CFR

302.7 to conform to the revised language of CERCLA section 103(b).

F. Revisions to 40 CFR 302.8 (Continuous Releases)

The reference to paragraph (a) in 40 CFR 302.8(e)(1)(iv)(H) and 40 CFR 302.8(f)(4)(viii) is incorrect, and is being changed to reference paragraph (b).

G. Revisions to 40 CFR 302.4 (Designation of Hazardous Substances)

1. Formatting Changes to Table 302.4

a. Regulatory Synonyms Column

Because the synonyms are all listed alphabetically in the Hazardous Substance column, and because Appendix A provides a per-substance grouping of all these synonyms, the Regulatory Synonyms column includes only unnecessary duplicative information. Therefore, EPA is deleting this column from Table 302.4 in today's final rule.

b. Statutory RQ Column c. Final RQ Category Column

The RQ in pounds. Today, the category is a source of errors and confusion. For example, prior to today's rulemaking, the category for six substances was incorrectly listed as X, even though the RQs are 10, 100, or 1000 pounds. EPA is deleting the Category column from Table 302.4 in today's final rule.

2. Revisions to the Note Preceding Table 302.4

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
Acetic acid, (2,4,5-trichlorophenoxy) ..... Pentachlorophenol Phenol, pentachloro- Phenol, 2,3,4,6-tetrachloro- Phenol, 2,4,5-trichloro- Phenol, 2,4,6-trichloro- Silvex (2,4,5-TP) 2,4,5-T	RCRA "U" waste numbers are no longer associated with these substances in the RCRA regulations at 40 CFR part 261; rather, each of the RCRA waste numbers for these substances has been replaced with the following note: "See F027." Conforming changes are being made to these entries in Table 302.4.

302.7 to conform to the revised language of CERCLA section 103(b).

F. Revisions to 40 CFR 302.8 (Continuous Releases)

The reference to paragraph (a) in 40 CFR 302.8(e)(1)(iv)(H) and 40 CFR 302.8(f)(4)(viii) is incorrect, and is being changed to reference paragraph (b).

G. Revisions to 40 CFR 302.4 (Designation of Hazardous Substances)

Because corrections and other changes to Table 302.4 that are described below are numerous and pervasive, we are reprinting Table 302.4 in its entirety in today's rule. We hope that this reprint of Table 302.4 will prove to be a useful resource for the public and the regulated community until such time as the revised volume of 40 CFR part 302 that contains these changes is published. Amendatory instruction 5 in today's direct final rule accounts for the removal of the previous version of Table 302.4, and its replacement with the version published in today's final rule.

1. Formatting Changes to Table 302.4

Three columns in Table 302.4 of 40 CFR 302.4 contain information that is duplicated elsewhere in the table or is no longer relevant to the listing of hazardous substances and reportable quantities. For this reason, EPA is deleting these columns from Table 302.4 in today's rulemaking.

We believe that deleting these columns will serve to: (1) Simplify the table and reduce confusion among the regulated community and government authorities about its use; (2) reduce the number of typographical and other errors that are introduced into the table; and (3) allow the table to be printed in a "portrait" rather than "landscape" format, resulting in a reduction in the number of CFR pages. A description of each of the columns identified for deletion is included below.

a. Regulatory Synonyms Column

EPA lists substances in Table 302.4 by the names used in certain other environmental statutes (e.g., RCRA, the CWA, or the Clean Air Act (CAA)) or in their implementing regulations. When the substance is known by different names in different regulatory programs, EPA lists these names as separate entries in Table 302.4's Hazardous Substance column. In addition, Appendix A to Table 302.4 lists these synonyms together, by Chemical Abstracts Service Registry Number (CASRN).

Because the synonyms are all listed alphabetically in the Hazardous Substance column, and because Appendix A provides a per-substance grouping of all these synonyms, the Regulatory Synonyms column includes only unnecessary duplicative information. Therefore, EPA is deleting this column from Table 302.4 in today's final rule.

b. Statutory RQ Column

When Table 302.4 was first published in the **Federal Register** in 1985, the Statutory RQ column served a useful purpose because (1) CWA hazardous substances generally had different statutory RQs than other CERCLA hazardous substances; and (2) the Agency had not yet adjusted many of the statutory RQs for these substances.

Today, however, all of the statutory RQs for the CWA hazardous substances have been adjusted and, for any new substance added to Table 302.4, the statutory RQ is always one pound. When new substances are added to the list, footnote "##" is added to the Final RQ Pounds column indicating that the substance has a one-pound statutory RQ; thus, the Statutory RQ column provides only redundant or obsolete information. In addition, this column can be a source of errors; for example, at least seven substances have had incorrect information in the Statutory RQ column. EPA is deleting the Statutory RQ column from Table 302.4 in today's final rule.

c. Final RQ Category Column

The "Final RQ Category" column was used in Table 302.4 in the first CERCLA reporting program final rule on April 4, 1985, because members of the regulated community were familiar with a similar association between letter categories and numerical RQs (X = 1 pound, A = 10 pounds, B = 100 pounds, etc.) in the Clean Water Act (CWA) hazardous substance regulations (40 CFR part 117). The CWA categories, however, correspond to ranges of aquatic toxicity, while the CERCLA categories are simply another way of expressing the RQ value. EPA originally proposed the CWA categories (A, B, C, and D) in 1975, based on the hazardous material classification system for a 1973 international convention. A 1978 final rule for CWA RQs added another category (X).

The Category column provides little or no useful information on the CERCLA list of hazardous substances in Table 302.4, because the next column gives the RQ in pounds. Today, the category is a source of errors and confusion. For example, prior to today's rulemaking, the category for six substances was incorrectly listed as X, even though the RQs are 10, 100, or 1000 pounds. EPA is deleting the Category column from Table 302.4 in today's final rule.

2. Revisions to the Note Preceding Table 302.4

Because EPA is removing the Regulatory Synonyms, Statutory Code, and Final RQ Category columns from Table 302.4 in today's rulemaking, we are revising the note that precedes Table 302.4 to remove references to these columns. The revised note will also identify Appendix A to Section 302.4 as a source for identifying regulatory synonyms of substances that appear on the CERCLA list of hazardous substances.

3. Corrections to Errors in Table 302.4

EPA has identified other errors in Table 302.4. The majority of these errors are either typographical or the result of inadvertent omissions; the scope of what is regulated and how it is regulated will not change. Therefore, these corrections qualify for the "good cause" exemption as "minor or technical amendments."

a. What Corrections Are Being Made to Entries for Individual Substances?

The most commonly found errors in Table 302.4 are inadvertent discrepancies between an individual hazardous substance name that appears on the CERCLA list and the same name as it appears in other statutes (i.e., RCRA section 3001, CWA sections 307 and 311, and CAA section 112) and their implementing regulations. In today's rule, EPA is making corrections to the hazardous substance names of a number of CERCLA entries to make them consistent with names that appear in these other regulatory lists. Many of these corrections are simple and involve, for example, the deletion of an unnecessary hyphen or the addition of parentheses. In addition, to help make each entry more readable, we are changing all of the CASRNs listed in Table 302.4 to include hyphens in the appropriate places (e.g., changing "50000" to "50–00–0" for formaldehyde). Other types of corrections to Table 302.4 included in today's rule that require more explanation are described below.

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
Acetic acid, (2,4,5-trichlorophenoxy) Pentachlorophenol Phenol, pentachloro- Phenol, 2,3,4,6-tetrachloro- Phenol, 2,4,5-trichloro- Phenol, 2,4,6-trichloro- Silvex (2,4,5-TP) 2,4,5-T 2,4,5-T acid 2,3,4,6-Tetrachlorophenol 2,4,5-TP acid	RCRA "U" waste numbers are no longer associated with these substances in the RCRA regulations at 40 CFR part 261; rather, each of the RCRA waste numbers for these substances has been replaced with the following note: "See F027." Conforming changes are being made to these entries in Table 302.4.
2,4,5-Trichlorophenol 2,4,6-Trichlorophenol	Each of these substances is listed twice in Table 302.4. We are removing the duplicative entries from Table 302.4 in today's rule. In addition, because these substances appear in CAA section 112, a "3" is being added to the statutory code column for these entries in Table 302.4. Also, "U" waste numbers are no longer associated with these substances and have been replaced with: "See F027."
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	To be consistent with RCRA regulations, the spelling of this substance name is being changed in Table 302.4 to "Propanoic acid, 2-(2,4,5-trichlorophenoxy)." In addition, RCRA waste number "U233" is no longer associated with this substance and has been replaced with: "See F027."
Arsenic acid H3AsO4 Arsenic acid	"Arsenic acid" with CASRN 1327–52–2 is not listed in RCRA, the CAA, the CWA, or their implementing regulations. Thus, the entry for "Arsenic acid" is being deleted from Table 302.4. In addition, CASRN 1327–52–2 is being deleted from the "Arsenic acid H3AsO4" listing. Arsenic acid H3AsO4 with CASRN 7778–39–4 remains listed in Table 302.4.
Cyanogen bromide(CN)Br Cyanogen bromide	"Cyanogen bromide" is not listed in RCRA, the CAA, the CWA, or their implementing regulations, although its synonym "Cyanogen bromide(CN)Br" is listed in the RCRA regulations. Thus, the entry for "Cyanogen bromide" is being deleted from Table 302.4.
Aroclors PCBs POLYCHLORINATED BIPHENYLS	Aroclors 1016, 1221, 1232, 1242, 1248, 1254, and 1260 are listed as separate entries in Table 302.4. These seven aroclors also appear indented beneath the entries for "Aroclors," "PCBs," and "POLYCHLORINATED BIPHENYLS." The duplicative indented entries for the seven aroclors are being deleted. In addition, conforming changes are being made to the Appendix A entries for these seven aroclors.
Bis(2-ethylhexyl) phthalate	This substance is listed in the CAA, but a "3" was never added to the statutory code column. A "3" is being added to the column in today's rule.
Calcium cyanide Copper cyanide Cyanogen chloride Hydrogen sulfide Nickel carbonyl Nickel cyanide Potassium cyanide Selenium sulfide Silver cyanide Sodium cyanide Thallium (I) chloride Zinc cyanide Zinc phosphide	Each of these substances is listed twice (once with a chemical formula and once without the formula) in the RCRA or CWA regulations and in Table 302.4. In the interest of avoiding duplicative entries in Table 302.4, the non-formula entries for these substances are being removed in today's rule.
1,10-(1,2-Phenylene)pyrene Methyl chloroformate Muscimol Tetrachloroethene Benzene, hydroxy- Benzo [j,k] fluorene 1,2-Benzphenanthrene Camphene, octachloro- 4-Chloro-m-cresol 1,4-Diethylenedioxide Hexachlorocyclohexane (gamma isomer) Trichloroethene	These synonyms are not listed in RCRA, the CAA, the CWA, or their implementing regulations and are being removed from Table 302.4 and Appendix A in today's rule. Other names for these same substances remain listed in Table 302.4 and Appendix A.
Carbaryl Carbofuran Mercaptodimethur Mexacarbate Propoxur (Baygon) Triethylamine	These six substances appear in Table 302.4 by virtue of their listing on the Clean Water Act or Clean Air Act. In a February 9, 1995 final rule (60 FR 7824), EPA added a number of synonyms to the RCRA regulations for these substances. To be consistent, the synonyms for these substances are being added to Table 302.4 and Appendix A in today's rule. In addition, a "4" is being added to the statutory code column for these entries in Table 302.4.

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4—Continued

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%.	The RCRA regulations include two listings for this substance: (1) One when present at concentrations greater than 0.3% (P001); and (2) another when present at concentrations of 0.3% or less (U248). Only the first currently appears on Table 302.4. This entry is being deleted from Table 302.4 and replaced with an entry that covers both RCRA listings, as follows: "2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts" In addition to "P001," "U248" is being added to this entry as an additional RCRA waste number.

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4—Continued

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	To be consistent with the listing for this substance in the RCRA regulations, the words "& salts" are being added to the end of this entry.
Creosote	Because the RCRA regulations do not list a CASRN for this listing, CASRN 8001589 is being removed from 302.4 and replaced with "N.A."
Cyanides (soluble salts and complexes) not otherwise specified.	Because the RCRA regulations do not list a CASRN for this listing, CASRN 57125 is being removed from 302.4 and replaced with "N.A."
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-,(S)-	To be consistent with the listing for this substance in the RCRA regulations, the words "& salts" are being added to the end of this entry.

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4—Continued

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%.	The RCRA regulations include two listings for this substance: (1) One when present at concentrations greater than 0.3% (P001); and (2) another when present at concentrations of 0.3% or less (U248). Only the first currently appears on Table 302.4. This entry is being deleted from Table 302.4 and replaced with an entry that covers both RCRA listings, as follows: "2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts" In addition to "P001," "U248" is being added to this entry as an additional RCRA waste number.
Warfarin, & salts, when present at concentrations greater than 0.3%.	The RCRA regulations include two listings for this substance: (1) One when present at concentrations greater than 0.3% (P001); and (2) another when present at concentrations of 0.3% or less (U248). Only the first currently appears on Table 302.4. This entry is being deleted from Table 302.4 and replaced with an entry that covers both RCRA listings, as follows: "Warfarin, & salts" In addition to "P001," "U248" is being added to this entry as an additional RCRA waste number.
Zinc phosphide Zn3P2, when present at concentrations greater than 10%.	The RCRA regulations include two listings for this substance: (1) One when present at concentrations greater than 10% (P122); and (2) another when present at concentrations of 10% or less (U249). Only the first currently appears on Table 302.4. This entry is being deleted from Table 302.4 and replaced with an entry that covers both RCRA listings, as follows: "Zinc phosphide Zn3P2" In addition to "P122," "U249" is being added to this entry as an additional RCRA waste number.
Beryllium powder	Prior to 1994, the Table listed Beryllium (from the CAA), BERYLLIUM AND COMPOUNDS (from the CWA), and Beryllium dust (from the RCRA regulations). On June 20, 1994, EPA changed the term Beryllium dust to Beryllium powder in 40 CFR part 261 (RCRA). At the same time, this change was also made in Table 302.4 and Appendix A, but the listing for Beryllium was removed inadvertently. The listing for Beryllium is being restored in Table 302.4 in today's rule.
Methane, bromo-	Although synonyms for bromomethane (e.g., methane, bromo-) appear in Table 302.4, "Bromomethane" does not appear as a separate listing in the hazardous substance column in Table 302.4. However, bromomethane is listed in section 112 of the CAA. Thus, a new entry for the synonym "Bromomethane" is being added.
Dichloromethyl ether	Although a synonym (dichloromethyl ether) for bis(chloromethyl) ether appears in Table 302.4, "Bis(chloromethyl) ether" does not appear as a separate listing. However, this chemical name is included in section 112 of the CAA. Thus, a new entry for the synonym "Bis(chloromethyl) ether" is being added.
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	Two entries for "CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)" appear in Table 302.4: (1) one with no CASRN and no RQ; and (2) another entry with CASRN 57749 and an RQ of one pound. In a June 12, 1995 final rule, EPA intended to remove the first entry and replace it with the second one; however, the first entry was never removed. The first entry with no CASRN or RQ is being removed in today's rule.
m-, o-, and p-isomers for Benzene, dimethyl and Cresylic acid.	CAA section 112 lists individual isomers for Cresol and Xylenes, but not for these synonyms. To be consistent with the underlying source lists, entries for the m-, o-, and p-isomers that were indented beneath the entries for Benzene, dimethyl and Cresylic acid are being deleted from Table 302.4.
Multi Source Leachate	In a June 1, 1990 final rule (55 FR 22720), EPA erroneously listed waste stream F039 on Table 302.4 as "Multi Source Leachate" alphabetically listed under the letter "M." In today's rule, EPA is deleting the entry for "Multi Source Leachate" and adding the correct entry for "F039" to Table 302.4, immediately following the entry for waste stream F038.
Bromoform	This substance is listed in the CAA, but a "3" was never added to the Statutory Code column. A "3" is being added to the column in today's rule.
1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha, 8alpha,.	A correction to this listing is needed because of a typesetting mistake; the entry should end with "8abeta)-." This final portion was inadvertantly moved to the beginning of the next entry on Table 302.4. Other minor editorial corrections are also being made.
8abeta)-1,4,5,8-Dimethanonaphthalene,1,2,3,4, 10,10-hexachloro-1,4,4a,5,8,8a-hexahydro,(1alpha,4alpha,4abeta,5abeta,8beta,.	Again, corrections are needed because of a typesetting mistake; the entry should begin with "1,4,5 . . ." and should end with "8abeta)-."
8abeta)-2,7:3,6-Dimethanonaphth [2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta, 2aalpha,3beta,6beta,.	Again, corrections are needed because of a typesetting mistake.
6aalpha,7beta,7aalpha)-2,7:3,6-Dimethanonaphth[2,3-b] oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta,2abeta,3alpha, 6alpha,.	Again, corrections are needed because of a typesetting mistake. In addition, the words "& metabolites" are being added to the end of the entry to be consistent with the entry for this substance in the RCRA regulations.
6abeta,7beta,7aalpha)-Dimethoate	Again, corrections are needed because of a typesetting mistake.

TABLE 1.—CORRECTIONS TO ENTRIES FOR INDIVIDUAL SUBSTANCES IN TABLE 302.4—Continued

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	To be consistent with the listing for this substance in the RCRA regulations, the words "& salts" are being added to the end of this entry.
Creosote	Because the RCRA regulations do not list a CASRN for this listing, CASRN 8001589 is being removed from 302.4 and replaced with "N.A."
Cyanides (soluble salts and complexes) not otherwise specified.	Because the RCRA regulations do not list a CASRN for this listing, CASRN 57125 is being removed from 302.4 and replaced with "N.A."
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-,(S)-	To be consistent with the listing for this substance in the RCRA regulations, the words "& salts" are being added to the end of this entry.
Strychnidin-10-one	To be consistent with the listing for this substance in the RCRA regulations, the words "& salts" are being added to the end of this entry.

b. What Corrections Are Being Made to Entries for the F- and K-Waste Streams?

The most commonly found errors in the entries for hazardous waste streams (i.e., F- and K-waste streams) in Table 302.4 are inadvertent discrepancies between the waste stream description that appears on the CERCLA list and the description for the same waste stream as it appears in the RCRA regulations at 40 CFR 261.31 and 261.32. In the years since Table 302.4 was first published in the CFR in 1985, EPA has amended the descriptions of several waste streams in the RCRA regulations, but did not make conforming changes to these entries in 40 CFR 302.4. EPA does not intend to retain two different descriptions of the same waste stream in the RCRA and CERCLA regulations; thus, we are removing obsolete descriptions of certain waste streams from Table 302.4 and replacing them with the current descriptions from 40 CFR part 261. Some of these corrections are simple; other types of corrections that require more explanation are described below.

TABLE 2.—CORRECTIONS TO ENTRIES FOR F- AND K-WASTE STREAMS IN TABLE 302.4

Current entry in Table 302.4 of 40 CFR 302.4	Change needed to correct error
F024 * * * Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.32).	To be consistent with the listing for this waste stream in the RCRA regulations, the waste stream description in Table 302.4 should be changed to read as follows: "F024 * * * Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.31 or 261.32)."
K069 * * * Emission control dust/sludge from secondary lead smelting	40 CFR 261.32 contains a note about an administrative stay for K069. To be consistent, the following note will be added to the end of this entry in Table 302.4: "(NOTE: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the **Federal Register**.)"
K083 * * * Distillation bottoms from aniline extraction	To be consistent with the listing for this waste stream in the RCRA regulations, the word "extraction" should be changed to read "production."
K117 * * * Wastewater from the reaction vent gas scrubber in the production of ethylene bromide via bromination of ethene.	To be consistent with the listing for this waste stream in the RCRA regulations, the word "reaction" should be changed to "reactor" and the word "bromide" should be changed to "dibromide."
K118 * * * Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide.	To be consistent with the listing for this waste stream in the RCRA regulation, the word "absorbent" should be changed to "adsorbent" and "via bromination of ethene" should be added to the end of the entry.
K131 * * * Wastewater from the reactor and spent sulfuric acid from the acid dryer in the production of methyl bromide.	To be consistent with the listing for this waste stream in the RCRA regulations, "in the production" should be changed to read "from the production."
K132 * * * Spent absorbent and wastewater solids from the production of methyl bromide.	To be consistent with the listing for this waste stream in the RCRA regulations, the word "separator" should be added between "wastewater" and "solids."
K141 * * * Process related from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations.).	To be consistent with the listing for this waste stream in the RCRA regulations, the waste stream description in Table 302.4 should be changed to read as follows: "K141 * * * Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations)."

c. What Corrections Are Being Made to Footnotes in Table 302.4?

Because EPA is removing three columns from Table 302.4, two footnotes to the table have to be changed. Footnote "1*," which "indicates that the 1-pound RQ is a CERCLA statutory RQ," only appears in the Statutory RQ column. Because this column is being removed from Table

example, the hazardous waste descriptions for F003, F004, and F005 need to be changed to be consistent with the descriptions for these wastes as they appear in the RCRA regulations. However, these waste description changes may necessitate a change in the RQs for these waste streams. Changing the RQ for these wastes would be more appropriately addressed in a notice and comment rulemaking. Although more

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H. Revisions to Appendix A of 40 CFR 302.4

On June 12, 1995 (60 FR 30926), EPA published a final rule that, among other things, added 47 individual CAA hazardous air pollutants to Table 302.4

significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the

supported by a brief statement. 5 U.S.C. 808(2).

As stated previously (see Section I.D of today's preamble), EPA has made a good cause finding for this final rule and established an effective date of September 9, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

(1) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(3) Release of source, byproduct, or special nuclear material from a nuclear

c. What Corrections Are Being Made to Footnotes in Table 302.4?

Because EPA is removing three columns from Table 302.4, two footnotes to the table have to be changed. Footnote "1*," which "indicates that the 1-pound RQ is a CERCLA statutory RQ," only appears in the Statutory RQ column. Because this column is being removed from Table 302.4, footnote "1*" also should be removed. In addition, footnote "##" is being revised to clarify that statutory RQs are set at one pound.

In addition, information contained in footnotes "1," "2," "3," and "4" is repetitive of information included in the note that precedes Table 302.4. Thus, these four footnotes are being removed in today's rule. Footnote "†" is being revised to indicate that the statutory sources are defined by 1, 2, 3, and 4, as described in the note that precedes Table 302.4.

d. Why Are Other Errors in Table 302.4 Not Addressed in Today's Rule?

It is important to note that EPA is aware of additional errors in Table 302.4 that are not addressed in today's rulemaking. Because these errors appear to be more than just typographical in nature, we believe that correcting them in a final rule without notice and comment may be inappropriate. For example, the hazardous waste descriptions for F003, F004, and F005 need to be changed to be consistent with the descriptions for these wastes as they appear in the RCRA regulations. However, these waste description changes may necessitate a change in the RQs for these waste streams. Changing the RQ for these wastes would be more appropriately addressed in a notice and comment rulemaking. Although more study of these and other errors is needed, EPA may propose to make additional error corrections in a future rulemaking. EPA is soliciting information from the public identifying any additional errors in Table 302.4 not covered in today's rulemaking and how such errors should be corrected. Comments received that identify such additional errors will not be considered adverse comments on today's rulemaking; rather, these comments may be considered by the Agency in any future error correction rule.

To submit such comments, send an original and two copies of comments referencing docket number 102 RQ–CORRECT to (1) if using regular U.S. Postal Service mail: Docket Coordinator, Superfund Docket Office, (Mail Code 5201G), U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or (2) if using special delivery such as overnight express service: Superfund Docket Office, Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

H. Revisions to Appendix A of 40 CFR 302.4

On June 12, 1995 (60 FR 30926), EPA published a final rule that, among other things, added 47 individual CAA hazardous air pollutants to Table 302.4 and adjusted their statutory one-pound RQs. In the same rule, EPA intended to add these 47 substances to, and revise several related entries in, Appendix A to Table 302.4. Unfortunately, the table containing these Appendix A additions and revisions was inadvertently left out of the version of the rule that was published in the **Federal Register**.

Although several correction notices were developed immediately after publication of the rule, the Appendix A corrections were not included among them. EPA is making the Appendix A corrections for the June 12, 1995 final rule in today's rulemaking.

In addition, several other corrections are being made to typographical errors in Appendix A, as indicated in the table below. Many of these corrections are necessary to be consistent with corresponding changes to Table 302.4 that were described previously in this preamble.

TABLE 3.—CORRECTIONS TO ENTRIES IN APPENDIX A TO 40 CFR 302.4

Current entry in Appendix A to 40 CFR 302.4	Change needed to correct error
Appendix A:	
1,2,3-Trichloropropane (CASRN 96–18–4)	These substances do not appear in Table 302.4 and are being removed from Appendix A.
Diphenylamine (CASRN 122–39–4)	
n-2,3&-Dichloropropanol (CASRN 616–23–9)	
1,10-(1,2-Phenylene)pyrene (CASRN 193–39–5)	As noted previously, this synonym is no longer listed in the RCRA regulations and is being removed from Table 302.4 and Appendix A. Another name for this same substance ("Indeno(1,2,3-cd)pyrene") remains listed in Appendix A.
CAS #108101	The synonym "Hexone," which already appears in Table 302.4, is being added to this entry in Appendix A.
Arsenic Acid H_3As0_4 (CASRN 1327522)	As described in Table 1, these CASRNs are removed from Table 302.4 and, thus, also are being removed from Appendix A.
Creosote (CASRN 8001589)	
Cyanides (soluble salts and complexes) not otherwise specified (CASRN 57125)	
CAS #492808	The second chemical name listed should be "Benzenamine, 4,4'-carbonimidoylbis (N,N- dimethyl-." The rest of the entry, "(N,N-D,methyl-)-," is incorrect and is being removed in today's rule.

Amendatory instruction 7, which immediately precedes appendix A to 40 CFR 302.4 in today's direct final rule, accounts for the addition of the corrected entries for all of these listings, and amendatory instruction 6 accounts for the removal of the previously listed entries that contain errors.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Section I.D of today's preamble), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not

significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2).

As stated previously (see Section I.D of today's preamble), EPA has made a good cause finding for this final rule and established an effective date of September 9, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 28, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, Chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.2 is removed and reserved.

§ 302.2 [Removed and Reserved]

3. Section 302.3 is amended by revising the definitions for "Release" and "Reportable quantity" to read as follows:

§ 302.3 Definitions.

* * * * *

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

(1) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or for the purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(4) The normal application of fertilizer;

Reportable quantity ("RQ") means that quantity, as set forth in this part, the release of which requires notification pursuant to this part;

* * * * *

4. Section 302.4 is amended by revising the note that precedes Table 302.4 and by revising table 302.4 to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

Note: The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(2) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is section 3001 of the Resource Conservation and Recovery Act (RCRA). The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The "Pounds (kg)" column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms. Appendix A to § 302.4, which lists CERCLA hazardous substances in sequential order by CASRN, provides a per-substance grouping of regulatory synonyms (i.e., names by which each hazardous substance is identified in other statutes and their implementing regulations).

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Acenaphthene	83–32–9	2		100 (45.4)
Acenaphthylene	208–96–8	2		5000 (2270)
Acetaldehyde	75–07–0	1,3,4	U001	1000 (454)
Acetaldehyde, chloro-	107–20–	4	P023	1000 (454)
Acetic acid	75–87–6	4	U034	5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Amyl acetate	628–63–7	1		5000 (2270)
iso-Amyl acetate	123–92–2			
sec-Amyl acetate	626–38–0			
tert-Amyl acetate	625–16–1			
Aniline	62–53–3	1,3,4	U012	5000 (2270)
o-Anisidine	90–04–0	3		100 (45.4)
Antimony	7440–36–0	1		5000 (2270)
Antimony compounds, N.O.S.		1		5000 (2270)
Antimony pentachloride	7647–18–9	1		1000 (454)
Antimony potassium tartrate	28300–74–5	1		100 (45.4)
Antimony tribromide	7789–61–9	1		1000 (454)
Antimony trichloride	10025–91–9	1		1000 (454)
Antimony trifluoride	7783–56–4	1		1000 (454)
Antimony trioxide	1309–64–4	1		5000 (2270)
Aqueous ammonia	1336–21–6	1		1000 (454)
Aroclor	11096–82–5	1,3,4		1 (0.454)
Arsenic	7440–38–2	1,3,4		1 (0.454)
Arsenic compounds, N.O.S.		1,3,4		1 (0.454)
Arsenic disulfide	1303–32–8	1,3,4		1 (0.454)
Arsenic pentoxide	1303–28–2	1,3,4		1 (0.454)
Arsenic trichloride	7784–34–1	1,3,4		1 (0.454)
Arsenic trioxide	1327–53–3	1,3,4		1 (0.454)
Arsenic trisulfide	1303–33–9	1,3,4		1 (0.454)
Arsenic, dimethyl-	75–60–5	1,3,4		1 (0.454)
Arsenic, dimethyl-, sodium salt	124–65–2	1,3,4		1 (0.454)
Arsenic, monomethyl-	74–38–2	1,3,4		1 (0.454)
Arsenic, monomethyl-, sodium salt	2163–80–6	1,3,4		1 (0.454)
Arsenic, monomethyl-, zinc salt	10067–70–6	1,3,4		1 (0.454)
Arsenous acid	13464–58–9	1,3,4		1 (0.454)
Arsine, diethyl-	692–42–2	1,3,4		1 (0.454)
Arsine, ethyldichloro-	598–14–1	1,3,4		1 (0.454)
Arsine, phenyldichloro-	696–28–6	1,3,4		1 (0.454)
Asbestos	1332–21–4	1,3,4		1 (0.454)
Auramine	492–80–8	1,3,4	U014	100 (45.4)
Azaserine	115–02–6	1,3,4	U015	1 (0.454)
Azinphos-ethyl	2642–71–9	1,3,4		100 (45.4)
Azinphos-methyl	86–50–0	1,3,4		1 (0.454)
Barium	7440–39–3	1		1000 (454)
Barium compounds, N.O.S.		1		1000 (454)
Barium cyanide	542–62–1	1	P013	10 (4.54)
Bendiocarb	22781–23–3	1,3,4		100 (45.4)
Bendiocarb phenol	22961–82–6	1,3,4		5000 (2270)
Benomyl	17804–35–2	1,3,4		10 (4.54)
Benz[a]anthracene	56–55–3	1,3,4		10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	57–97–6	1,3,4		10 (4.54)
Benzal chloride	98–87–3	1,3,4	U017	5000 (2270)
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950–58–5	1,3,4		5000 (2270)
Benzamide, N-(1,1-dimethyl-2-propynyl)-	127–79–7	1,3,4		5000 (2270)
Benzene	71–43–2	1,3,4	U019	10 (4.54)
Benzene, (1-methylethyl)-	98–82–8	1,3,4	U055	5000 (2270)
Benzene, (chloromethyl)-	100–44–7	1,3,4	U030	100 (45.4)
Benzene, 1,2,4,5-tetrachloro-	95–94–3	1,3,4	U207	5000 (2270)
Benzene, 1,2-dichloro-	95–50–1	1,3,4	U070	100 (45.4)
Benzene, 1,3-dichloro-	541–73–1	1,3,4	U071	100 (45.4)
Benzene, 1,4-dichloro-	106–46–7	1,3,4	U072	100 (45.4)
Benzene, 1-methyl-2-nitro-	88–72–2	1,3,4	U181	5000 (2270)
Benzene, 1-methyl-3-nitro-	99–08–1	1,3,4	U231	5000 (2270)
Benzene, 1-methyl-4-nitro-	99–99–0	1,3,4	U171	5000 (2270)
Benzene, 2-methoxy-	9–63–8	1,3,4		5000 (2270)
Benzene, 2-methoxy-1-nitro-	91–23–6	1,3,4		5000 (2270)
Benzene, 4-methoxy-1-nitro-	100–17–4	1,3,4		5000 (2270)
Benzene, dimethyl-	1330–20–7	1,3,4	U239	100 (45.4)
Benzene, hexachloro-	118–74–1	1,3,4	U127	10 (4.54)
Benzene, hexahydro-	110–82–7	1,3,4	U056	1000 (454)
Benzene, nitro-	98–95–3	1,3,4	U169	1000 (454)
Benzene, pentachloro-	608–93–5	1,3,4		10 (4.54)
Benzene, pentachloronitro-	82–68–8	1,3,4		100 (45.4)
Benzene, pentamethyl-	700–12–9	1,3,4		5000 (2270)
Benzene, pentyl-	538–68–1	1,3,4		5000 (2270)
Benzene, sec-butyl-	135–98–8	1,3,4		5000 (2270)
Benzene, tert-butyl-	98–06–6	1,3,4		5000 (2270)
Benzenamine	62–53–3	1,3,4	U012	5000 (2270)
Benzenamine, 2,4,5-trimethyl-	137–17–7	1,3,4		5000 (2270)
Benzenamine, 2,4-dimethyl-	95–68–1	1,3,4		5000 (2270)
Benzenamine, 2,4-dimethyl-, hydrochloride	21436–97–5	1,3,4		5000 (2270)
Benzenamine, 2-methoxy-	90–04–0	3		100 (45.4)
Benzenamine, 2-methyl-	95–53–4	1,3,4		5000 (2270)
Benzenamine, 2-methyl-, hydrochloride	636–21–5	1,3,4		5000 (2270)
Benzenamine, 3-(trifluoromethyl)-	98–16–8	1,3,4		5000 (2270)
Benzenamine, 4-chloro-	106–47–8	1,3,4		5000 (2270)
Benzenamine, 4-methoxy-	104–94–9	1,3,4		5000 (2270)
Benzenamine, 4-nitro-	100–01–6	1,3,4		5000 (2270)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60–11–7	1,3,4		10 (4.54)
Benzenamine, N-methyl-	100–61–8	1,3,4		5000 (2270)
Benzenamine, N-nitroso-N-phenyl-	86–30–6	1,3,4		100 (45.4)
Benzenamine, 2-methyl-, hydrochloride	636–21–5	1,3,4		5000 (2270)
Benzenamine, 3-(trifluoromethyl)-	98–16–8	1,3,4		5000 (2270)
Benzenamine, 4-chloro-	106–47–8	1,3,4		5000 (2270)
Benzenamine, 4-methoxy-	104–94–9	1,3,4		5000 (2270)
Benzenamine, 4-nitro-	100–01–6	1,3,4		5000 (2270)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60–11–7	1,3,4		10 (4.54)
Benzenamine, N-methyl-	100–61–8	1,3,4		5000 (2270)
Benzenamine, N-nitroso-N-phenyl-	86–30–6	1,3,4		100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Acenaphthene	83-32-9	2		100 (45.4)
Acenaphthylene	208-96-8	2		5000 (2270)
Acetaldehyde	75-07-0	1,3,4	U001	1000 (454)
Acetaldehyde, chloro-	107-20-	4	P023	1000 (454)
Acetaldehyde, trichloro-	75-87-6	4	U034	5000 (2270)
Acetamide	60-35-5	3		100 (45.4)
Acetamide, N-(aminothioxomethyl)-	591-08-2	4	P002	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	62-44-2	4	U187	100 (45.4)
Acetamide, N-9H-fluoren-2-yl-	53-96-3	3,4	U005	1 (0.454)
Acetamide, 2-fluoro-	6417-640-19-7	4	P057	100 (45.4)
Acetic acid	64-19-7	1		5000 (2270)
Acetic acid, (2,4-dichlorophenoxy)-, salts & esters	94-75-7	1,3,4	U240	100 (45.4)
Acetic acid, ethyl ester	141-78-6	4	U112	5000 (2270)
Acetic acid, fluoro-, sodium salt	62-74-8	4	P058	10 (4.54)
Acetic acid, lead(2+) salt	301-04-2	1,4	U144	10 (4.54)
Acetic acid, thallium(1+) salt	563-68-8	4	U214	100 (45.4)
Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5	1,4	See F027	1000 (454)
Acetic anhydride	108-24-7	1		5000 (2270)
Acetone	67-64-1	4	U002	5000 (2270)
Acetone cyanohydrin	75-86-5	1,4	P069	10 (4.54)
Acetonitrile	75-05-8	3,4	U003	5000 (2270)
Acetophenone	98-86-2	3,4	U004	5000 (2270)
2-Acetylaminofluorene	53-96-3	3,4	U005	1 (0.454)
Acetyl bromide	506-96-7	1		5000 (2270)
Acetyl chloride	75-36-5	1,4	U006	5000 (2270)
1-Acetyl-2-thiourea	591-08-2	4	P002	1000 (454)
Acrolein	107-02-8	1,2,3,4	P003	1 (0.454)
Acrylamide	79-06-1	3,4	U007	5000 (2270)
Acrylic acid	79-10-7	3,4	U008	5000 (2270)
Acrylonitrile	107-13-1	1,2,3,4	U009	100 (45.4)
Adipic acid	124-04-9	1		5000 (2270)
Aldicarb	116-06-3	4	P070	1 (0.454)
Aldrin	309-00-2	1,2,4	P004	1 (0.454)
Allyl alcohol	107-18-6	1,4	P005	100 (45.4)
Allyl chloride	107-05-1	1,3		1000 (454)
Aluminum phosphide	20859-73-8	4	P006	100 (45.4)
Aluminum sulfate	10043-01-3	1		5000 (2270)
4-Aminobiphenyl	92-67-1	3		1 (0.454)
5-(Aminomethyl)-3-isoxazolol	2763-96-4	4	P007	1000 (454)
4-Aminopyridine	504-24-5	4	P008	1000 (454)
Amitrole	61-82-5	4	U011	10 (4.54)
Ammonia	7664-41-7	1		100 (45.4)
Ammonium acetate	631-61-8	1		5000 (2270)
Ammonium benzoate	1863-63-4	1		5000 (2270)
Ammonium bicarbonate	1066-33-7	1		5000 (2270)
Ammonium bichromate	7789-09-5	1		10 (4.54)
Ammonium bifluoride	1341-49-7	1		100 (45.4)
Ammonium bisulfite	10192-30-0	1		5000 (2270)
Ammonium carbamate	1111-78-0	1		5000 (2270)
Ammonium carbonate	506-87-6	1		5000 (2270)
Ammonium chloride	12125-02-9	1		5000 (2270)
Ammonium chromate	7788-98-9	1		10 (4.54)
Ammonium citrate, dibasic	3012-65-5	1		5000 (2270)
Ammonium fluoborate	13826-83-0	1		5000 (2270)
Ammonium fluoride	12125-01-8	1		100 (45.4)
Ammonium hydroxide	1336-21-6	1		1000 (454)
Ammonium oxalate	6009-70-7	1		5000 (2270)
	5972-73-6			
	14258-49-2			
Ammonium picrate	131-74-8	4	P009	10 (4.54)
Ammonium silicofluoride	16919-19-0	1		1000 (454)
Ammonium sulfamate	7773-06-0	1		5000 (2270)
Ammonium sulfide	12135-76-1	1		100 (45.4)
Ammonium sulfite	10196-04-0	1		5000 (2270)
Ammonium tartrate	14307-43-8	1		5000 (2270)
	3164-29-2			
Ammonium thiocyanate	1762-95-4	1		5000 (2270)
Ammonium vanadate	7803-55-6	4	P119	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Amyl acetate	628-63-7	1		5000 (2270)
iso-Amyl acetate	123-92-2			
sec-Amyl acetate	626-38-0			
tert-Amyl acetate	625-16-1			
Aniline	62-53-3	1,3,4	U012	5000 (2270)
o-Anisidine	90-04-0	3		100 (45.4)
Anthracene	120-12-7	2		5000 (2270)
Antimony††	7440-36-0	2		5000 (2270)
ANTIMONY AND COMPOUNDS	N.A.	2,3		**
Antimony Compounds	N.A.	2,3		**
Antimony pentachloride	7647-18-9	1		1000 (454)
Antimony potassium tartrate	28300-74-5	1		100 (45.4)
Antimony tribromide	7789-61-9	1		1000 (454)
Antimony trichloride	10025-91-9	1		1000 (454)
Antimony trifluoride	7783-56-4	1		1000 (454)
Antimony trioxide	1309-64-4	1		1000 (454)
Argentate(1-), bis(cyano-C)-, potassium	506-61-6	4	P099	1 (0.454)
Aroclor 1016	12674-11-2	1,2,3		1 (0.454)
Aroclor 1221	11104-28-2	1,2,3		1 (0.454)
Aroclor 1232	11141-16-5	1,2,3		1 (0.454)
Aroclor 1242	53469-21-9	1,2,3		1 (0.454)
Aroclor 1248	12672-29-6	1,2,3		1 (0.454)
Aroclor 1254	11097-69-1	1,2,3		1 (0.454)
†Aroclor 1260	11096-82-5	1,2,3		1 (0.454)
Aroclors	1336-36-3	1,2,3		1 (0.454)
Arsenic††	7440-38-2	2,3		1 (0.454)
Arsenic acid H3AsO4	7778-39-4	4	P010	1 (0.454)
ARSENIC AND COMPOUNDS	N.A.	2,3		**
Arsenic Compounds (inorganic including arsine)	N.A.	2,3		**
Arsenic disulfide	1303-32-8	1		1 (0.454)
Arsenic oxide As2O3	1327-53-3	1,4	P012	1 (0.454)
Arsenic oxide As2O5	1303-28-2	1,4	P011	1 (0.454)
Arsenic pentoxide	1303-28-2	1,4	P011	1 (0.454)
Arsenic trichloride	7784-34-1	1		1 (0.454)
Arsenic trioxide	1327-53-3	1,4	P012	1 (0.454)
Arsenic trisulfide	1303-33-9	1		1 (0.454)
Arsine, diethyl-	692-42-2	4	P038	1 (0.454)
Arsinic acid, dimethyl-	75-60-5	4	U136	1 (0.454)
Arsonous dichloride, phenyl-	696-28-6	4	P036	1 (0.454)
Asbestos†††	1332-21-4	2,3		1 (0.454)
Auramine	492-80-8	4	U014	100 (45.4)
Azaserine	115-02-6	4	U015	1 (0.454)
Aziridine	151-56-4	3,4	P054	1 (0.454)
Aziridine, 2-methyl-	75-55-8	3,4	P067	1 (0.454)
Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b- hexahydro-8a-methoxy-5- methyl-,[1aS- (1aalpha,8beta,8aalpha, 8balpha)]-	50-07-7	4	U010	10 (4.54)
Barium cyanide	542-62-1	1,4	P013	10 (4.54)
Benz[j]acesanthrylene, 1,2-dihydro-3-methyl-	56-49-5	4	U157	10 (4.54)
Benz[c]acridine	225-51-4	4	U016	100 (45.4)
Benzal chloride	98-87-3	4	U017	5000 (2270)
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-58-5 propynyl)-	23950-58-5	4	U192	5000 (2270)
Benz[a]anthracene	56-55-3	2,4	U018	10 (4.54)
1,2-Benzanthracene	56-55-3	2,4	U018	10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	57-97-6	4	U094	1 (0.454)
Benzenamine	62-53-3	1,3,4	U012	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N dimethyl-	492-80-8	4	U014	100 (45.4)
Benzenamine, 4-chloro-	106-47-8	4	P024	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165-93-3	4	U049	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7	3,4	U093	10 (4.54)
Benzenamine, 2-methyl-	95-53-4	3,4	U328	100 (45.4)
Benzenamine, 4-methyl-	106-49-0	4	U353	100 (45.4)
Benzenamine, 4,4'-methylenebis [2-chloro-	101-14-4	3,4	U158	10 (4.54)
Benzenamine, 2-methyl-,hydrochloride	636-21-5	4	U222	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	99-55-8	4	U181	100 (45.4)
Benzenamine, 4-nitro-	100-01-6	4	P077	5000 (2270)
Benzene*	71-43-2	1,2,3,4	U019	10 (4.54)
Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)- α-hydroxy-, ethyl ester	510-15-6	3,4	U038	10 (4.54)
Benzene, 1-bromo-4-phenoxy-	101-55-3	2,4	U030	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Benzenebutanoic acid, 4-[bis(2- chloroethyl)amino]-	305-03-3	4	U035	10 (4.54)
Benzene, chloro-	108-90-7	1,2,3,4	U037	100 (45.4)
Benzene, (chloromethyl)-	100-44-7	1,3,4	P028	100 (45.4)
Benzenediamine, ar-methyl-	95-80-7	3,4	U221	10 (4.54)
	496-72- 0			

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
BERYLLIUM AND COMPOUNDS	N.A.	2,3		**
Beryllium chloride	7787-47-5	1		1 (0.454)
Beryllium compounds	N.A.	2,3		**
Beryllium fluoride	7787-49-7	1		1 (0.454)
Beryllium nitrate	13597-99-4	1		1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Benzenebutanoic acid, 4-[bis(2- chloroethyl)amino]-	305-03-3	4	U035	10 (4.54)
Benzene, chloro-	108-90-7	1,2,3,4	U037	100 (45.4)
Benzene, (chloromethyl)-	100-44-7	1,3,4	P028	100 (45.4)
Benzenediamine, ar-methyl-	95-80-7	3,4	U221	10 (4.54)
	496-72- 0			
	823-40- 5			
	25376- 45-8			
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	2,3,4	U028	100 (45.4)
1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	1,2,3,4	U069	10 (4.54)
1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	2,4	U088	1000 (454)
1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	2,3,4	U102	5000 (2270)
1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	2,4	U107	5000 (2270)
Benzene, 1,2-dichloro-	95-50-1	1,2,4	U070	100 (45.4)
Benzene, 1,3-dichloro-	541-73-1	2,4	U071	100 (45.4)
Benzene, 1,4-dichloro-	106-46-7	1,2,3,4	U072	100 (45.4)
Benzene, 1,1'-(2,2-dichloroethylidene) bis[4-chloro-	72-54-8	1,2,4	U060	1 (0.454)
Benzene, (dichloromethyl)-	98-87-3	4	U017	5000 (2270)
Benzene, 1,3-diisocyanatomethyl-	91-08-7	3,4	U223	100 (45.4)
	584-84-9			
	26471-62-5			
Benzene, dimethyl-	1330-20-7	1,3,4	U239	100 (45.4)
1,3-Benzenediol	108-46-3	1,4	U201	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methyl amino)ethyl]-	51-43-4	4	P042	1000 (454)
Benzeneethanamine, alpha,alpha-dimethyl-	122-09-8	4	P046	5000 (2270)
Benzene, hexachloro-	118-74-1	2,3,4	U127	10 (4.54)
Benzene, hexahydro-	110-82-7	1,4	U056	1000 (454)
Benzene, methyl-	108-88-3	1,2,3,4	U220	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	121-14-2	1,2,3,4	U105	10 (4.54)
Benzene, 2-methyl-1,3-dinitro-	606-20-2	1,2,4	U106	100 (45.4)
Benzene, (1-methylethyl)-	98-82-8	3,4	U055	5000 (2270)
Benzene, nitro-	98-95-3	1,2,3,4	U169	1000 (454)
Benzene, pentachloro-	608-93-5	4	U183	10 (4.54)
Benzene, pentachloronitro-	82-68-8	3,4	U185	100 (45.4)
Benzenesulfonic acid chloride	98-09-9	4	U020	100 (45.4)
Benzenesulfonyl chloride	98-09-9	4	U020	100 (45.4)
Benzene,1,2,4,5-tetrachloro-	95-94-3	4	U207	5000 (2270)
Benzenethiol	108-98-5	4	P014	100 (45.4)
Benzene,1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-	50-29-3	1,2,4	U061	1 (0.454)
Benzene,1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-	72-43-5	1,3,4	U247	1 (0.454)
Benzene, (trichloromethyl)-	98-07-7	3,4	U023	10 (4.54)
Benzene, 1,3,5-trinitro-	99-35-4	4	U234	10 (4.54)
Benzidine	92-87-5	2,3,4	U021	1 (0.454)
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts	81-07-2	4	U202	100 (45.4)
Benzo[a]anthracene	56-55-3	2,4	U018	10 (4.54)
1,3-Benzodioxole, 5-(1-propenyl)-1	120-58-1	4	U141	100 (45.4)
1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	4	U203	100 (45.4)
1,3-Benzodioxole, 5-propyl-	94-58-6	4	U090	10 (4.54)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)	22961-82-6	4	U364	##
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	22781-23-3	4	U278	##
Benzo[b]fluoranthene	205-99-2	2		1 (0.454)
Benzo(k)fluoranthene	207-08-9	2		5000 (2270)
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol)	1563-38-8	4	U367	##
7-Benzofuranol, 2,3-dihydro-2,2- dimethyl-, methylcarbamate	1563-66-2	1,4	P127	10 (4.54)
Benzoic acid	65-85-0	1		5000 (2270)
Benzoic acid, 2-hydroxy-, compd. with (3aS- cis)-1,2,3,3a,8,8a- hexahydro-1,3a,8- trimethylpyrrolo [2,3- b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57-64-7	4	P188	##
Benzonitrile	100-47-0	1	—	5000 (2270)
Benzo[rst]pentaphene	189-55-9	4	U064	10 (4.54)
Benzo[ghi]perylene	191-24-2	—	—	5000 (2270)
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo- 1-phenylbutyl)-, & salts	81-81-2	4	P001	100 (45.4)
			U248	
Benzo[a]pyrene	50-32-8	2,4	U022	1 (0.454)
3,4-Benzopyrene	50-32-8	2,4	U022	1 (0.454)
p-Benzoquinone	106-51-4	3,4	U197	10 (4.54)
Benzotrichloride	98-07-7	3,4	U023	10 (4.54)
Benzoyl chloride	98-88-4	1	—	1000 (454)
Benzyl chloride	100-44-7	1,3,4	P028	100 (45.4)
Beryllium ††	7440-41-7	2,3,4	P015	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
BERYLLIUM AND COMPOUNDS	N.A.	2,3		**
Beryllium chloride	7787-47-5	1		1 (0.454)
Beryllium compounds	N.A.	2,3		**
Beryllium fluoride	7787-49-7	1		1 (0.454)
Beryllium nitrate	13597-99-4	1		1 (0.454)
	7787-55-5			
Beryllium powder ††	7440-41-7	2,3,4	P015	10 (4.54)
alpha-BHC	319-84-6	2		10 (4.54)
beta-BHC	319-85-7	2		1 (0.454)
delta-BHC	319-86-8	2		1 (0.454)
gamma-BHC	58-89-9	1,2,3,4	U129	1 (0.454)
2,2'-Bioxirane	1464-53-5	4	U085	10 (4.54)
Biphenyl	92-52-4	3		100 (45.4)
[1,1'-Biphenyl]-4,4'-diamine	92-87-5	2,3,4	U021	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-	91-94-1	2,3,4	U073	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-	119-90-4	3,4	U091	100 (45.4)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethyl-	119-93-7	3,4	U095	10 (4.54)
Bis(2-chloroethoxy) methane	111-91-1	2,4	U024	1000 (454)
Bis(2-chloroethyl) ether	111-44-4	2,3,4	U025	10 (4.54)
Bis(chloromethyl) ether	542-88-1	2,3,4	P016	10 (4.54)
Bis(2-ethylhexyl) phthalate	117-81-7	3,4	U028	100 (45.4)
Bromoacetone	598-31-2	4	P017	1000 (454)
Bromoform	75-25-2	2,3,4	U225	100 (45.4)
Bromomethane	74-83-9	2,3,4	U029	1000 (454)
4-Bromophenyl phenyl ether	101-55-3	2,4	U030	100 (45.4)
Brucine	357-57-3	4	P018	100 (45.4)
1,3-Butadiene	106-99-0	3		10 (4.54)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	2,3,4	U128	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	924-16-3	4	U172	10 (4.54)
1-Butanol	71-36-3	4	U031	5000 (2270)
2-Butanone	78-93-3	3,4	U159	5000 (2270)
2-Butanone, 3,3-dimethyl-1(methylthio)-, O-[(methylamino)carbonyl] oxime	39196-18-4	4	P045	100 (45.4)
2-Butanone peroxide	1338-23-4	4	U160	10 (4.54)
2-Butenal	123-73-9	1,4	U053	100 (45.4)
	4170-30-3			
2-Butene, 1,4-dichloro-	764-41-0	4	U074	1 (0.454)
2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3- methyl-1-oxobutoxy] methyl]-2,3, 5,7a-tetrahydro- 1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z), 7(2S*,3R*),7aalpha]]-	303-34-4	4	U143	10 (4.54)
Butyl acetate	123-86-4	1		5000 (2270)
iso-Butyl acetate	110-19-0			
sec-Butyl acetate	105-46-4			
tert-Butyl acetate	540-88-5			
n-Butyl alcohol	71-36-3	4	U031	5000 (2270)
Butylamine	109-73-9	1		1000 (454)
iso-Butylamine	78-81-9			
sec-Butylamine	513-49-5			
	13952-84-6			
tert-Butylamine	75-64-9			
Butyl benzyl phthalate	85-68-7	2		100 (45.4)
n-Butyl phthalate	84-74-2	1,2,3,4	U069	10 (4.54)
Butyric acid	107-92-6	1		5000 (2270)
iso-Butyric acid	79-31-2			
Cacodylic acid	75-60-5	4	U136	1 (0.454)
Cadmium ††	7440-43-9	2		10 (4.54)
Cadmium acetate	543-90-8	1		10 (4.54)
CADMIUM AND COMPOUNDS	N.A.	2,3		**
Cadmium bromide	7789-42-6	1		10 (4.54)
Cadmium chloride	10108-64-2	1		10 (4.54)
Cadmium compounds	N.A.	2,3		**
Calcium arsenate	7778-44-1	1		1 (0.454)
Calcium arsenite	52740-16-6	1		1 (0.454)
Calcium carbide	75-20-7	1		10 (4.54)
Calcium chromate	13765-19-0	1,4	U032	10 (4.54)
Calcium cyanamide	156-62-7	3		1000 (454)
Calcium cyanide Ca(CN)2	592-01-8	1,4	P021	10 (4.54)
Calcium dodecylbenzenesulfonate	26264-06-2	1		1000 (454)
Calcium hypochlorite	7778-54-3	1		10 (4.54)
Captan	133-06-2	1,3		10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	10605-21-7	4	U372	##
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl).	17804-35-2	4	U271	##
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)	101-27-9	4	U280	##
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	644-64-4	4	P192	##
Carbamic acid, ethyl ester	51-79-6	4	U238	##
Carbamic acid, methyl-, 3-(methylthio)propanal O-[(methylamino) carbonyl] oxime	16752-77-5	4	P197	##
Carbamic acid, methyl-, O-(2,3-dihydro-2,2-dimethyl-7-benzofuranyl) ester	1563-66-2	4	U367	##
Carbamic acid, methyl-, O-[(2,4-dimethyl-1,3-dithiolan-2-yl) methylene]amino-	26419-73-8	4	P185	##
Carbamic chloride, dimethyl-	79-44-7	4	U097	##
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303-16-4	4	U062	##
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888-80-9	4	U387	##
Carbofuran	1563-66-2	1		10 (4.54)
Carbon disulfide	75-15-0	1,3,4	P022	100 (45.4)
Carbon oxyfluoride	353-50-4	2,3,4	U033	10 (4.54)
Carbonic dichloride	75-44-5	2,3,4	P095	10 (4.54)
Carbonochloridic acid, methyl ester	79-22-1	4	U156	##
Carbonochloridic acid, 2-propenyl ester	2937-50-0	4	U238	##
Carbonochloridic acid, propyl ester	109-61-5	4	U280	##
Carbonochloridic acid, trichloromethyl ester	503-38-8	4	U211	##
Carbonochloridic acid, trichloromethyl ester	503-38-8	4	P189	##
Carbonochloridic acid, 2,2,2-trichloro-1-methylethyl ester	4525-77-4	4	U168	##
Carbonochloridic acid, 1,1,2-trichloro-2-propenyl ester	1885-14-9	4	U168	##
Carbonochloridic acid, 1,1,2-trichloro-2-propenyl ester	1885-14-9	4	P189	##
Carbonochloridic acid, 1,2,2-trichloro-1-methylethyl ester	4525-77-4	4	P189	##
Carbonochloridic acid, 1,2,2-trichloro-1-methylethyl ester	4525-77-4	4	U168

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	10605–21–7	4	U372	##
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl).	17804–35–2	4	U271	##
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)	101–27–9	4	U280	##
Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285–14–8	4	P189	##
Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644–64–4	4	P191	##
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119–38–0	4	P192	##
Carbamic acid, ethyl ester	51–79–6	3,4	U238	100 (45.4)
Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1129–41–5	4	P190	##
Carbamic acid, methylnitroso-, ethyl ester	615–53–2	4	U178	1 (0.454)
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)] bis-, dimethyl ester (Thiophanate-methyl).	23564–05–8	4	U409	##
Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	122–42–9	4	U373	##
Carbamic chloride, dimethyl-	79–44–7	3,4	U097	1 (0.454)
Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters	111–54–6	4	U114	5000 (2270)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2- propenyl) ester	2303–16–4	4	U062	100 (45.4)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2- propenyl) ester (Triallate).	2303–17–5	4	U389	##
Carbamothioic acid, dipropyl-, S - (phenylmethyl) ester (Prosulfocarb)	52888–80–9	4	U387	##
Carbaryl	63–25–2	1,3,4	U279	100 (45.4)
Carbofuran	1563–66–2	1,4	P127	10 (4.54)
Carbon disulfide	75–15–0	1,3,4	P022	100 (45.4)
Carbonic acid, dithallium(1+) salt	6533–73–9	4	U215	100 (45.4)
Carbonic dichloride	75–44–5	1,3,4	P095	10 (4.54)
Carbonic difluoride	353–50–4	4	U033	1000 (454)
Carbonochloridic acid, methyl ester	79–22–1	4	U156	1000 (454)
Carbon oxyfluoride	353–50–4	4	U033	1000 (454)
Carbon tetrachloride	56–23–5	1,2,3,4	U211	10 (4.54)
Carbonyl sulfide	463–58–1	3		100 (45.4)
Catechol	120–80–9	3		100 (45.4)
Chloral	75–87–6	4	U034	5000 (2270)
Chloramben	133–90–4	3		100 (45.4)
Chlorambucil	305–03–3	4	U035	10 (4.54)
Chlordane	57–74–9	1,2,3,4	U036	1 (0.454)
Chlordane, alpha & gamma isomers	57–74–9	1,2,3,4	U036	1 (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	57–74–9	1,2,3,4	U036	1 (0.454)
CHLORINATED BENZENES	N.A.	2		**
Chlorinated camphene	8001–35–2	1,2,3,4	P123	1 (0.454)
CHLORINATED ETHANES	N.A.	2		**
CHLORINATED NAPHTHALENE	N.A.	2		**
CHLORINATED PHENOLS	N.A.	2		**
Chlorine	7782–50–5	1,3		10 (4.54)
Chlornaphazine	494–03–1	4	U026	100 (45.4)
Chloroacetaldehyde	107–20–0	4	P023	1000 (454)
Chloroacetic acid	79–11–8	3		100 (45.4)
2-Chloroacetophenone	532–27–4	3		100 (45.4)
CHLOROALKYL ETHERS	N.A.	2		**
p-Chloroaniline	106–47–8	4	P024	1000 (454)
Chlorobenzene	108–90–7	1,2,3,4	U037	100 (45.4)
Chlorobenzilate	510–15–6	3,4	U038	10 (4.54)
p-Chloro-m-cresol	59–50–7	2,4	U039	5000 (2270)
Chlorodibromomethane	124–48–1	2		100 (45.4)
1-Chloro-2,3-epoxypropane	106–89–8	1,3,4	U041	100 (45.4)
Chloroethane	75–00–3	2,3		100 (45.4)
2-Chloroethyl vinyl ether	110–75–8	2,4	U042	1000 (454)
Chloroform	67–66–3	1,2,3,4	U044	10 (4.54)
Chloromethane	74–87–3	2,3,4	U045	100 (45.4)
Chloromethyl methyl ether	107–30–2	3,4	U046	10 (4.54)
beta-Chloronaphthalene	91–58–7	2,4	U047	5000 (2270)
2-Chloronaphthalene	91–58–7	2,4	U047	5000 (2270)
2-Chlorophenol	95–57–8	2,4	U048	100 (45.4)
o-Chlorophenol	95–57–8	2,4	U048	100 (45.4)
4-Chlorophenyl phenyl ether	7005–72–3	2		5000 (2270)
1-(o-Chlorophenyl)thiourea	5344–82–1	4	P026	100 (45.4)
Chloroprene	126–99–8	3		100 (45.4)
3-Chloropropionitrile	542–76–7	4	P027	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Chlorosulfonic acid	7790–94–5	1		1000 (454)
4-Chloro-o-toluidine, hydrochloride	3165–93–3	4	U049	100 (45.4)
Chlorpyrifos	2921–88–2	1		1 (0.454)
Chromic acetate	1066–30–4	1		1000 (454)
Chromic acid	11115–74–5	1		10 (4.54)
	7738–94–5			
Chromic acid H2CrO4, calcium salt	13765–19–0	1,4	U032	10 (4.54)
Chromic sulfate	10101–53–8	1		1000 (454)
Chromium ††	7440–47–3	2		5000 (2270)
CHROMIUM AND COMPOUNDS	N.A.	2,3		**
Chromium Compounds	N.A.	2,3		**
Chromous chloride	10049–05–5	1		1000 (454)
Chrysene	218–01–9	2,4	U050	100 (45.4)
Cobalt Compounds	N.A.	3		**
Cobaltous bromide	7789–43–7	1		1000 (454)
Cobaltous formate	544–18–3	1		1000 (454)
Cobaltous sulfamate	14017–41–5	1		1000 (454)
Coke Oven Emissions	N.A.	3		1 (0.454)
Copper ††	7440–50–8	2		5000 (2270)
COPPER AND COMPOUNDS	N.A.	2		**
Copper cyanide Cu(CN)	544–92–3	4	P029	10 (4.54)
Coumaphos	56–72–4	1		10 (4.54)
Creosote	N.A.	4	U051	1 (0.454)
Cresol (cresylic acid)	1319–77–3	1,3,4	U052	100 (45.4)
m-Cresol	108–39–4	3		100 (45.4)
o-Cresol	95–48–7	3		100 (45.4)
p-Cresol	106–44–5	3		100 (45.4)
Cresols (isomers and mixture)	1319–77–3	1,3,4	U052	100 (45.4)
Cresylic acid (isomers and mixture)	1319–77–3	1,3,4	U052	100 (45.4)
Crotonaldehyde	123–73–9	1,4	U053	100 (45.4)
	4170–30–3			
Cumene	98–82–8	3,4	U055	5000 (2270)
Cupric acetate	142–71–2	1		100 (45.4)
Cupric acetoarsenite	12002–03–8	1		1 (0.454)
Cupric chloride	7447–39–4	1		10 (4.54)
Cupric nitrate	3251–23–8	1		100 (45.4)
Cupric oxalate	589366–3	1		100 (45.4)
Cupric sulfate	7758–98–7	1		10 (4.54)
Cupric sulfate, ammoniated	10380–29–7	1		100 (45.4)
Cupric tartrate	815–82–7	1		100 (45.4)
Cyanide Compounds	N.A.	2,3		**
CYANIDES	N.A.	2,3		**
Cyanides (soluble salts and complexes) not otherwise specified	N.A.	4	P030	10 (4.54)
Cyanogen	460–19–5	4	P031	100 (45.4)
Cyanogen bromide (CN)Br	506–68–3	4	U246	1000 (454)
Cyanogen chloride (CN)Cl	506–77–4	1,4	P033	10 (4.54)
2,5-Cyclohexadiene-1,4-dione	106–51–4	3,4	U197	10 (4.54)
Cyclohexane	110–82–7	1,4	U056	1000 (454)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2α, 3β, 4α, 5α, 6β)	58–89–9	1,2,3,4	U129	1 (0.454)
Cyclohexanone	108–94–1	4	U057	5000 (2270)
2-Cyclohexyl-4,6-dinitrophenol	131–89–5	4	P034	100 (45.4)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77–47–4	1,2,3,4	U130	10 (4.54)
Cyclophosphamide	50–18–0	4	U058	10 (4.54)
2,4-D Acid	94–75–7	1,3,4	U240	100 (45.4)
2,4-D Ester	94–11–1	1		100 (45.4)
	94–79–1			
	94–80–4			
	1320–18–9			
	1928–38–7			
	1928–61–6			
	1929–73–3			
	2971–38–2			
	25168–26–7			
	53467–11–1			
2,4-D, salts and esters	94–75–7	1,3,4	U240	100 (45.4)
Daunomycin	20830–81–3	4	U059	10 (4.54)
DDD	72–54–8	1,2,4	U060	1 (0.454)
4,4'-DDD	72–54–8	1,2,4	U060	1 (0.454)
DDE ♭	72–55–9	2		1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
DDE ♭	3547–04–4	3		5000 (2270)
4,4'-DDE	72–55–9	2		1 (0.454)
DDT	50–29–3	1,2,4	U061	1 (0.454)
4,4'-DDT	50–29–3	1,2,4	U061	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
O,O-Diethyl O-pyrazinyl phosphorothioate	297–97–2	4	P040	100 (45.4)
Diethylstilbestrol	56–53–1	4	U089	1 (0.454)
Diethyl sulfate	64–67–5	3		10 (4.54)
Dihydrosafrole	94–58–6	4	U090	10 (4.54)
Diisopropylfluorophosphate (DFP)	55–91–4	4	P043	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
DDE [b]	3547-04-4	3		5000 (2270)
4,4'-DDE	72-55-9	2		1 (0.454)
DDT	50-29-3	1,2,4	U061	1 (0.454)
4,4'-DDT	50-29-3	1,2,4	U061	1 (0.454)
DDT AND METABOLITES	N.A.	2		**
DEHP	117-81-7	2,3,4	U028	100 (45.4)
Diallate	2303-16-4	4	U062	100 (45.4)
Diazinon	333-41-5	1		1 (0.454)
Diazomethane	334-88-3	3		100 (45.4)
Dibenz[a,h]anthracene	53-70-3	2,4	U063	1 (0.454)
1,2:5,6-Dibenzanthracene	53-70-3	2,4	U063	1 (0.454)
Dibenzo[a,h]anthracene	53-70-3	2,4	U063	1 (0.454)
Dibenzofuran	132-64-9	3		100 (45.4)
Dibenzo[a,i]pyrene	189-55-9	4	U064	10 (4.54)
1,2-Dibromo-3-chloropropane	96-12-8	3,4	U066	1 (0.454)
Dibromoethane	106-93-4	1,3,4	U067	1 (0.454)
Dibutyl phthalate	84-74-2	1,2,3,4	U069	10 (4.54)
Di-n-butyl phthalate	84-74-2	1,2,3,4	U069	10 (4.54)
Dicamba	1918-00-9	1		1000 (454)
Dichlobenil	1194-1-65-6	1		100 (45.4)
Dichlone	117-80-6	1		1 (0.454)
Dichlorobenzene	25321-22-6	1		100 (45.4)
1,2-Dichlorobenzene	95-50-1	1,2,4	U070	100 (45.4)
1,3-Dichlorobenzene	541-73-1	2,4	U071	100 (45.4)
1,4-Dichlorobenzene	106-46-7	1,2,3,4	U072	100 (45.4)
m-Dichlorobenzene	541-73-1	2,4	U071	100 (45.4)
o-Dichlorobenzene	95-50-1	1,2,4	U070	100 (45.4)
p-Dichlorobenzene	106-46-7	1,2,3,4	U072	100 (45.4)
DICHLOROBENZIDINE	N.A.	2		**
3,3'-Dichlorobenzidine	91-94-1	2,3,4	U073	1 (0.454)
Dichlorobromomethane	75-27-4	2		5000 (2270)
1,4-Dichloro-2-butene	764-41-0	4	U074	1 (0.454)
Dichlorodifluoromethane	75-71-8	4	U075	5000 (2270)
1,1-Dichloroethane	75-34-3	2,3,4	U076	1000 (454)
1,2-Dichloroethane	107-06-2	1,2,3,4	U077	100 (45.4)
1,1-Dichloroethylene	75-35-4	1,2,3,4	U078	100 (45.4)
1,2-Dichloroethylene	156-60-5	2,4	U079	1000 (454)
Dichloroethyl ether	111-44-4	2,3,4	U025	10 (4.54)
Dichloroisopropyl ether	108-60-1	2,4	U027	1000 (454)
Dichloromethane	75-09-2	2,3,4	U080	1000 (454)
Dichloromethoxyethane	111-91-1	2,4	U024	1000 (454)
Dichloromethyl ether	542-88-1	2,3,4	P016	10 (4.54)
2,4-Dichlorophenol	120-83-2	2,4	U081	100 (45.4)
2,6-Dichlorophenol	87-65-0	4	U082	100 (45.4)
Dichlorophenylarsine	696-28-6	4	P036	1 (0.454)
Dichloropropane	26638-19-7	1		1000 (454)
1,1-Dichloropropane	78-99-9			
1,3-Dichloropropane	142-28-9			
1,2-Dichloropropane	78-87-5	1,2,3,4	U083	1000 (454)
Dichloropropane—Dichloropropene (mixture)	8003-19-8	1		100 (45.4)
Dichloropropene	26952-23-8	1		100 (45.4)
2,3-Dichloropropene	78-88-6			
1,3-Dichloropropene	542-75-6	1,2,3,4	U084	100 (45.4)
2,2-Dichloropropionic acid	75-99-0	1		5000 (2270)
Dichlorvos	62-73-7	1,3		10 (4.54)
Dicofol	115-32-2	1		10 (4.54)
Dieldrin	60-57-1	1,2,4	P037	1 (0.454)
1,2:3,4-Diepoxybutane	1464-53-5	4	U085	10 (4.54)
Diethanolamine	111-42-2	3		100 (45.4)
Diethylamine	109-89-7	1		100 (45.4)
N,N-Diethylaniline	91-66-7	3		1000 (454)
Diethylarsine	692-42-2	4	P038	1 (0.454)
1,4-Diethyleneoxide	123-91-1	3,4	U108	100 (45.4)
Diethylhexyl phthalate	117-81-7	2,3,4	U028	100 (45.4)
N,N'-Diethylhydrazine	1615-80-1	4	U086	10 (4.54)
O,O-Diethyl S-methyl dithiophosphate	3288-58-2	4	U087	5000 (2270)
Diethyl-p-nitrophenyl phosphate	311-45-5	4	P041	100 (45.4)
Diethyl phthalate	84-66-2	2,4	U088	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
O,O-Diethyl O-pyrazinyl phosphorothioate	297-97-2	4	P040	100 (45.4)
Diethylstilbestrol	56-53-1	4	U089	1 (0.454)
Diethyl sulfate	64-67-5	3		10 (4.54)
Dihydrosafrole	94-58-6	4	U090	10 (4.54)
Diisopropylfluorophosphate (DFP)	55-91-4	4	P043	100 (45.4)
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha, 8alpha,8abeta)-.	309-00-2	1,2,4	P004	1 (0.454)
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro- 1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta, 5beta,8beta,8abeta)-.	465-73-6	4	P060	1 (0.454)
2,7:3,6-Dimethanonaphth[2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta, 2aalpha,3beta,6beta,6aalpha, 7beta,7aalpha)-.	60-57-1	1,2,4	P037	1 (0.454)
2,7:3,6-Dimethanonaphth[2, 3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta, 2abeta,3alpha,6alpha, 6abeta,7beta,7aalpha)-, & metabolites.	72-20-8	1,2,4	P051	1 (0.454)
Dimethoate	60-51-5	4	P044	10 (4.54)
3,3'-Dimethoxybenzidine	119-90-4	3,4	U091	100 (45.4)
Dimethylamine	124-40-3	1,4	U092	1000 (454)
Dimethyl aminoazobenzene	60-11-7	3,4	U093	10 (4.54)
p-Dimethylaminoazobenzene	60-11-7	3,4	U093	10 (4.54)
N,N-Dimethylaniline	121-69-7	3		100 (45.4)
7,12-Dimethylbenz[a]anthracene	57-97-6	4	U094	1 (0.454)
3,3'-Dimethylbenzidine	119-93-7	3,4	U095	10 (4.54)
alpha,alpha-Dimethylbenzylhydroperoxide	80-15-9	4	U096	10 (4.54)
Dimethylcarbamoyl chloride	79-44-7	3,4	U097	1 (0.454)
Dimethylformamide	68-12-2	3		100 (45.4)
1,1-Dimethylhydrazine	57-14-7	3,4	U098	10 (4.54)
1,2-Dimethylhydrazine	540-73-8	4	U099	1 (0.454)
alpha,alpha-Dimethylphenethylamine	122-09-8	4	P046	5000 (2270)
2,4-Dimethylphenol	105-67-9	2,4	U101	100 (45.4)
Dimethyl phthalate	131-11-3	2,3,4	U102	5000 (2270)
Dimethyl sulfate	77-78-1	3,4	U103	100 (45.4)
Dinitrobenzene (mixed)	25154-54-5	1		100 (45.4)
m-Dinitrobenzene	99-65-0			
o-Dinitrobenzene	528-29-0			
p-Dinitrobenzene	100-25-4			
4,6-Dinitro-o-cresol, and salts	534-52-1	2,3,4	P047	10 (4.54)
Dinitrophenol	25550-58-7	1		10 (4.54)
2,5-Dinitrophenol	329-71-5			
2,6-Dinitrophenol	573-56-8			
2,4-Dinitrophenol	51-28-5	1,2,3,4	P048	10 (4.54)
Dinitrotoluene	25321-14-6	1,2		10 (4.54)
3,4-Dinitrotoluene	610-39-9			
2,4-Dinitrotoluene	121-14-2	1,2,3,4	U105	10 (4.54)
2,6-Dinitrotoluene	606-20-2	1,2,4	U106	100 (45.4)
Dinoseb	88-85-7	4	P020	1000 (454)
Di-n-octyl phthalate	117-84-0	2,4	U107	5000 (2270)
1,4-Dioxane	123-91-1	3,4	U108	100 (45.4)
DIPHENYLHYDRAZINE	N.A.	2		**
1,2-Diphenylhydrazine	122-66-7	2,3,4	U109	10 (4.54)
Diphosphoramide, octamethyl-	152-16-9	4	P085	100 (45.4)
Diphosphoric acid, tetraethyl ester	107-49-3	1,4	P111	10 (4.54)
Dipropylamine	142-84-7	4	U110	5000 (2270)
Di-n-propylnitrosamine	621-64-7	2,4	U111	10 (4.54)[d]
Diquat	85-00-7	1		1000 (454)
	2764-72-9			
Disulfoton	298-04-4	1,4	P039	1 (0.454)
Dithiobiuret	541-53-7	4	P049	100 (45.4)
1,3-Dithiolane-2- carboxaldehyde, 2,4- dimethyl-O- [(methylamino)carbonyl] oxime (Tirpate).	26419-73-8	4	P185	##
Diuron	330-54-1	1		100 (45.4)
Dodecylbenzenesulfonic acid	27176-87-0	1		1000 (454)
Endosulfan	115-29-7	1,2,4	P050	1 (0.454)
alpha-Endosulfan	959-98-8	2		1 (0.454)
beta-Endosulfan	33213-65-9	2		1 (0.454)
ENDOSULFAN AND METABOLITES	N.A.	2		**
Endosulfan sulfate	1031-07-8	2		1 (0.454)
Endothall	145-73-3	4	P088	1000 (454)
Endrin	72-20-8	1,2,4	P051	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Endrin aldehyde	7421-93-4	2		1 (0.454)
ENDRIN AND METABOLITES	N.A.	2		**
Endrin, & metabolites	72-20-8	1,2,4	P051	1 (0.454)
Epichlorohydrin	106-89-8	1,3,4	U041	100 (45.4)
Epinephrine	51-43-4	4	P042	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Ferric sulfate	10028-22-5	1		1000 (454)
Ferrous ammonium sulfate	10045-89-3	1		1000 (454)
Ferrous chloride	7758-94-3	1		100 (45.4)
Ferrous sulfate	7720-78-7	1		1000 (454)
	7782-63-0			
Fine mineral fibers[c]	N.A.	3		**

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Endrin aldehyde	7421–93–4	2		1 (0.454)
ENDRIN AND METABOLITES	N.A.	2		**
Endrin, & metabolites	72–20–8	1,2,4	P051	1 (0.454)
Epichlorohydrin	106–89–8	1,3,4	U041	100 (45.4)
Epinephrine	51–43–4	4	P042	1000 (454)
1,2-Epoxybutane	106–88–7	3		100 (45.4)
Ethanal	75–07–0	1,3,4	U001	1000 (454)
Ethanamine, N,N-diethyl-	121–44–8	1,3,4	U404	5000 (2270)
Ethanamine, N-ethyl-N-nitroso-	55–18–5	4	U174	1 (0.454)
1,2-Ethanediamine, N,N-dimethyl-N'-2- pyridinyl-N'-(2- thienylmethyl)-	91–80–5	4	U155	5000 (2270)
Ethane, 1,2-dibromo-	106–93–4	1,3,4	U067	1 (0.454)
Ethane, 1,1-dichloro-	75–34–3	2,3,4	U076	1000 (454)
Ethane, 1,2-dichloro-	107–06–2	1,2,3,4	U077	100 (45.4)
Ethanedinitrile	460–19–5	4	P031	100 (45.4)
Ethane, hexachloro-	67–72–1	2,3,4	U131	100 (45.4)
Ethane, 1,1'-[methylenebis(oxy)]bis[2- chloro-	111–91–1	2,4	U024	1000 (454)
Ethane, 1,1'-oxybis-	60–29–7	4	U117	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111–44–4	2,3,4	U025	10 (4.54)
Ethane, pentachloro-	76–01–7	4	U184	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	630–20–6	4	U208	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	79–34–5	2,3,4	U209	100 (45.4)
Ethanethioamide	62–55–5	4	U218	10 (4.54)
Ethane, 1,1,1-trichloro-	71–55–6	2,3,4	U226	1000 (454)
Ethane, 1,1,2-trichloro-	79–00–5	2,3,4	U227	100 (45.4)
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213).	30558–43–1	4	U394	##
Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).	23135–22–0	4	P194	##
Ethanimidothioic acid, N-[[(methylamino) carbonyl]oxy]-, methyl ester	16752–77–5	4	P066	100 (45.4)
Ethanimidothioic acid, N,N'[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester (Thiodicarb).	59669–26–0	4	U410	##
Ethanol, 2-ethoxy-	110–80–5	4	U359	1000 (454)
Ethanol, 2,2'-(nitrosoimino)bis-	1116–54–7	4	U173	1 (0.454)
Ethanol, 2,2'-oxybis-, dicarbamate (Diethylene glycol, dicarbamate)	5952–26–1	4	U395	##
Ethanone, 1-phenyl-	98–86–2	3,4	U004	5000 (2270)
Ethene, chloro-	75–01–4	2,3,4	U043	1 (0.454)
Ethene, (2-chloroethoxy)-	110–75–8	2,4	U042	1000 (454)
Ethene, 1,1-dichloro-	75–35–4	1,2,3,4	U078	100 (45.4)
Ethene, 1,2-dichloro-(E)	156–60–5	2,4	U079	1000 (454)
Ethene, tetrachloro-	127–18–4	2,3,4	U210	100 (45.4)
Ethene, trichloro-	79–01–6	1,2,3,4	U228	100 (45.4)
Ethion	563–12–2	1		10 (4.54)
Ethyl acetate	141–78–6	4	U112	5000 (2270)
Ethyl acrylate	140–88–5	3,4	U113	1000 (454)
Ethylbenzene	100–41–4	1,2,3		1000 (454)
Ethyl carbamate	51–79–6	3,4	U238	100 (45.4)
Ethyl chloride	75–00–3	2,3		100 (45.4)
Ethyl cyanide	107–12–0	4	P101	10 (4.54)
Ethylenebisdithiocarbamic acid, salts & esters	111–54–6	4	U114	5000 (2270)
Ethylenediamine	107–15–3	1		5000 (2270)
Ethylenediamine-tetraacetic acid (EDTA)	60–00–4	1		5000 (2270)
Ethylene dibromide	106–93–4	1,3,4	U067	1 (0.454)
Ethylene dichloride	107–06–2	1,2,3,4	U077	100 (45.4)
Ethylene glycol	107–21–1	3	—	5000 (2270)
Ethylene glycol monoethyl ether	110–80–5	4	U359	1000 (454)
Ethylene oxide	75–21–8	3,4	U115	10 (4.54)
Ethylenethiourea	96–45–7	3,4	U116	10 (4.54)
Ethylenimine	151–56–4	3,4	P054	1 (0.454)
Ethyl ether	60–29–7	4	U117	100 (45.4)
Ethylidene dichloride	75–34–3	2,3,4	U076	1000 (454)
Ethyl methacrylate	97–63–2	4	U118	1000 (454)
Ethyl methanesulfonate	62–50–0	4	U119	1 (0.454)
Famphur	52–85–7	4	P097	1000 (454)
Ferric ammonium citrate	1185–57–5	1		1000 (454)
Ferric ammonium oxalate	2944–67–4	1		1000 (454)
	55488–87–4			
Ferric chloride	7705–08–0	1		1000 (454)
Ferric fluoride	7783–50–8	1		100 (45.4)
Ferric nitrate	10421–48–4	1		1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Ferric sulfate	10028–22–5	1		1000 (454)
Ferrous ammonium sulfate	10045–89–3	1		1000 (454)
Ferrous chloride	7758–94–3	1		100 (45.4)
Ferrous sulfate	7720–78–7	1		1000 (454)
	7782– 63–0			
Fine mineral fibers[c]	N.A.	3		**
Fluoranthene	206–44–0	2,4	U120	100 (45.4)
Fluorene	86–73–7	2		5000 (2270)
Fluorine	7782–41–4	4	P056	10 (4.54)
Fluoroacetamide	640–19–7	4	P057	100 (45.4)
Fluoroacetic acid, sodium salt	62–74–8	4	P058	10 (4.54)
Formaldehyde	50–00–0	1,3,4	U122	100 (45.4)
Formic acid	64–18–6	1,4	U123	5000 (2270)
Fulminic acid, mercury(2+)salt	628–86–4	4	P065	10 (4.54)
Fumaric acid	110–17–8	1		5000 (2270)
Furan	110–00–9	4	U124	100 (45.4)
2-Furancarboxaldehyde	98–01–1	1,4	U125	5000 (2270)
2,5-Furandione	108–31–6	1,3,4	U147	5000 (2270)
Furan, tetrahydro-	109–99–9	4	U213	1000 (454)
Furfural	98–01–1	1,4	U125	5000 (2270)
Furfuran	110–00–9	4	U124	100 (45.4)
Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-,D-	18883–66–4	4	U206	1 (0.454)
D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-	18883–66–4	4	U206	1 (0.454)
Glycidylaldehyde	765–34–4	4	U126	10 (4.54)
Glycol ethers[d]	N.A.	3		**
Guanidine, N-methyl-N'-nitro-N-nitroso-	70–25–7	4	U163	10 (4.54)
Guthion	86–50–0	1		1 (0.454)
HALOETHERS	N.A.	2		**
HALOMETHANES	N.A.	2		**
Heptachlor	76–44–8	1,2,3,4	P059	1 (0.454)
HEPTACHLOR AND METABOLITES	N.A.	2		**
Heptachlor epoxide	1024–57–3	2		1 (0.454)
Hexachlorobenzene	118–74–1	2,3,4	U127	10 (4.54)
Hexachlorobutadiene	87–68–3	2,3,4	U128	1 (0.454)
HEXACHLOROCYCLOHEXANE (all isomers)	608–73–1	2		**
Hexachlorocyclopentadiene	77–47–4	1,2,3,4	U130	10 (4.54)
Hexachloroethane	67–72–1	2,3,4	U131	100 (45.4)
Hexachlorophene	70–30–4	4	U132	100 (45.4)
Hexachloropropene	1888–71–7	4	U243	1000 (454)
Hexaethyl tetraphosphate	757–58–4	4	P062	100 (45.4)
Hexamethylene-1,6–diisocyanate	822–06–0	3		100 (45.4)
Hexamethylphosphoramide	680–31–9	3		1 (0.454)
Hexane	110–54–3	3		5000 (2270)
Hexone	108–10–1	3,4	U161	5000 (2270)
Hydrazine	302–01–2	3,4	U133	1 (0.454)
Hydrazinecarbothioamide	79–19–6	4	P116	100 (45.4)
Hydrazine, 1,2-diethyl-	1615–80–1	4	U086	10 (4.54)
Hydrazine, 1,1-dimethyl-	57–14–7	3,4	U098	10 (4.54)
Hydrazine, 1,2-dimethyl-	540–73–8	4	U099	1 (0.454)
Hydrazine, 1,2-diphenyl-	122–66–7	2,3,4	U109	10 (4.54)
Hydrazine, methyl-	60–34–4	3,4	P068	10 (4.54)
Hydrochloric acid	7647–01–0	1,3		5000 (2270)
Hydrocyanic acid	74–90–8	1,4	P063	10 (4.54)
Hydrofluoric acid	7664–39–3	1,3,4	U134	100 (45.4)
Hydrogen chloride	7647–01–0	1,3		5000 (2270)
Hydrogen cyanide	74–90–8	1,4	P063	10 (4.54)
Hydrogen fluoride	7664–39–3	1,3,4	U134	100 (45.4)
Hydrogen phosphide	7803–51–2	3,4	P096	100 (45.4)
Hydrogen sulfide H2S	7783–06–4	1,4	U135	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	80–15–9	4	U096	10 (4.54)
Hydroquinone	123–31–9	3		100 (45.4)
2-Imidazolidinethione	96–45–7	3,4	U116	10 (4.54)
Indeno(1,2,3-cd)pyrene	193–39–5	2,4	U137	100 (45.4)
Iodomethane	74–88–4	3,4	U138	100 (45.4)
1,3-Isobenzofurandione	85–44–9	3,4	U190	5000 (2270)
Isobutyl alcohol	78–83–1	4	U140	5000 (2270)
Isodrin	465–73–6	4	P060	1 (0.454)
Isophorone	78–59–1	2,3		5000 (2270)
Isoprene	78–79–5	1		100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Isopropanolamine dodecylbenzenesulfonate	42504–46–1	1		1000 (454)
Isosafrole	120–58–1	4	U141	100 (45.4)
3(2H)-Isoxazoione, 5-(aminomethyl)-	2763–96–4	4	P007	1000 (454)
Kepone	143–50–0	1,4	U142	1 (0.454)
Lasiocarpine	303–34–4	4	U143	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Methane, tetranitro-	509–14–8	4	P112	10 (4.54)
Methanethiol	74–93–1	1,4	U153	100 (45.4)
Methane, tribromo-	75–25–2	2,3,4	U225	100 (45.4)
Methane, trichloro-	67–66–3	1,2,3,4	U044	10 (4.54)
Methane, trichlorofluoro-	75–69–4	4	U121	5000 (2270)
Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-	23422–53–9	4	P198	##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Isopropanolamine dodecylbenzenesulfonate	42504–46–1	1		1000 (454)
Isosafrole	120–58–1	4	U141	100 (45.4)
3(2H)-Isoxazolone, 5-(aminomethyl)-	2763–96–4	4	P007	1000 (454)
Kepone	143–50–0	1,4	U142	1 (0.454)
Lasiocarpine	303–34–4	4	U143	10 (4.54)
Lead‡‡	7439–92–1	2		10 (4.54)
Lead acetate	301–04–2	1,4	U144	10 (4.54)
LEAD AND COMPOUNDS	N.A.	2,3		**
Lead arsenate	7784–40–9	1		1 (0.454)
	7645–25–2			
	10102–48–4			
Lead, bis(acetato-O)tetrahydroxytri-	1335–32–6	4	U146	10 (4.54)
Lead chloride	7758–95–4	1		10 (4.54)
Lead compounds	N.A.	2,3		**
Lead fluoborate	13814–96–5	1		10 (4.54)
Lead fluoride	7783–46–2	1		10 (4.54)
Lead iodide	10101–63–0	1		10 (4.54)
Lead nitrate	10099–74–8	1		10 (4.54)
Lead phosphate	7446–27–7	4	U145	10 (4.54)
Lead stearate	1072–35–1	1		10 (4.54)
	7428–48–0			
	52652–59–2			
	56189–09–4			
Lead subacetate	1335–32–6	4	U146	10 (4.54)
Lead sulfate	7446–14–2	1		10 (4.54)
	15739–80–7			
Lead sulfide	1314–87–0	1		10 (4.54)
Lead thiocyanate	592–87–0	1		10 (4.54)
Lindane	58–89–9	1,2,3,4	U129	1 (0.454)
Lindane (all isomers)	58–89–9	1,2,3,4	U129	1 (0.454)
Lithium chromate	14307–35–8	1		10 (4.54)
Malathion	121–75–5	1		100 (45.4)
Maleic acid	110–16–7	1		5000 (2270)
Maleic anhydride	108–31–6	1,3,4	U147	5000 (2270)
Maleic hydrazide	123–33–1	4	U148	5000 (2270)
Malononitrile	109–77–3	4	U149	1000 (454)
Manganese, bis(dimethylcarbamodithioato-S,S')-Manganese dimethyldithiocarbamate).	15339–36–3	4	P196	##
Manganese Compounds	N.A.	3		**
MDI	101–68–8	3		5000 (2270)
MEK	78–93–3	3,4	U159	5000 (2270)
Melphalan	148–82–3	4	U150	1 (0.454)
Mercaptodimethur	2032–65–7	1,4	P199	10 (4.54)
Mercuric cyanide	592–04–1	1		1(0.454)
Mercuric nitrate	10045–94–0	1		10 (4.54)
Mercuric sulfate	7783–35–9	1		10 (4.54)
Mercuric thiocyanate	592–85–8	1		10 (4.54)
Mercurous nitrate	10415–75–5	1		10 (4.54)
Mercury	7782–86–7	2,3,4	U151	1 (0.454)
	7439–97–6			
MERCURY AND COMPOUNDS	N.A.	2,3		**
Mercury, (acetato-O)phenyl-	62–38–4	4	P092	100 (45.4)
Mercury Compounds	N.A.	2,3		**
Mercury fulminate	628–86–4	4	P065	10 (4.54)
Methacrylonitrile	126–98–7	4	U152	1000 (454)
Methanamine, N-methyl-	124–40–3	1,4	U092	1000 (454)
Methanamine, N-methyl-N-nitroso-	62–75–9	2,3,4	P082	10 (4.54)
Methane, bromo-	74–83–9	2,3,4	U029	1000 (454)
Methane, chloro-	74–87–3	2,3,4	U045	100 (45.4)
Methane, chloromethoxy-	107–30–2	3,4	U046	10 (4.54)
Methane, dibromo-	74–95–3	4	U068	1000 (454)
Methane, dichloro-	75–09–2	2,3,4	U080	1000 (454)
Methane, dichlorodifluoro-	75–71–8	4	U075	5000 (2270)
Methane, iodo-	74–88–4	3,4	U138	100 (45.4)
Methane, isocyanato-	624–83–9	3,4	P064	10 (4.54)
Methane, oxybis(chloro-	542–88–1	2,3,4	P016	10 (4.54)
Methanesulfenyl chloride, trichloro-	594–42–3	4	P118	100 (45.4)
Methanesulfonic acid, ethyl ester	62–50–0	4	U119	1 (0.454)
Methane, tetrachloro-	56–23–5	1,2,3,4	U211	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Methane, tetranitro-	509–14–8	4	P112	10 (4.54)
Methanethiol	74–93–1	1,4	U153	100 (45.4)
Methane, tribromo-	75–25–2	2,3,4	U225	100 (45.4)
Methane, trichloro-	67–66–3	1,2,3,4	U044	10 (4.54)
Methane, trichlorofluoro-	75–69–4	4	U121	5000 (2270)
Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	23422–53–9	4	P198	##
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate).	17702–57–7	4	P197	##
6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide.	115–29–7	1,2,4	P050	1 (0.454)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76–44–8	1,2,3,4	P059	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro- 2,3,3a,4,7,7a-hexahydro—	57–74–9	1,2,3,4	U036	1 (0.454)
Methanol	67–56–1	3,4	U154	5000 (2270)
Methapyrilene	91–80–5	4	U155	5000 (2270)
1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-.	143–50–0	1,4	U142	1 (0.454)
Methiocarb	2032–65–7	1,4	P199	10 (4.54)
Methomyl	16752–77–5	4	P066	100 (45.4)
Methoxychlor	72–43–5	1,3,4	U247	1 (0.454)
Methyl alcohol	67–56–1	3,4	U154	5000 (2270)
2-Methyl aziridine	75–55–8	3,4	P067	1 (0.454)
Methyl bromide	74–83–9	2,3,4	U029	1000 (454)
1-Methylbutadiene	504–60–9	4	U186	100 (45.4)
Methyl chloride	74–87–3	2,3,4	U045	100 (45.4)
Methyl chlorocarbonate	79–22–1	4	U156	1000 (454)
Methyl chloroform	71–55–6	2,3,4	U226	1000 (454)
3-Methylcholanthrene	56–49–5	4	U157	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	101–14–4	3,4	U158	10 (4.54)
Methylene bromide	74–95–3	4	U068	1000 (454)
Methylene chloride	75–09–2	2,3,4	U080	1000 (454)
4,4'-Methylenedianiline	101–77–9	3		10 (4.54)
Methylene diphenyl diisocyanate	101–68–8	3		5000 (2270)
Methyl ethyl ketone	78–93–3	3,4	U159	5000 (2270)
Methyl ethyl ketone peroxide	1338–23–4	4	U160	10 (4.54)
Methyl hydrazine	60–34–4	3,4	P068	10 (4.54)
Methyl iodide	74–88–4	3,4	U138	100 (45.4)
Methyl isobutyl ketone	108–10–1	3,4	U161	5000 (2270)
Methyl isocyanate	624–83–9	3,4	P064	10 (4.54)
2-Methyllactonitrile	75–86–5	1,4	P069	10 (4.54)
Methyl mercaptan	74–93–1	1,4	U153	100 (45.4)
Methyl methacrylate	80–62–6	1,3,4	U162	1000 (454)
Methyl parathion	298–00–0	1,4	P071	100 (45.4)
4-Methyl-2-pentanone	108–10–1	3,4	U161	5000 (2270)
Methyl tert-butyl ether	1634–04–4	3		1000 (454)
Methylthiouracil	56–04–2	4	U164	10 (4.54)
Mevinphos	7786–34–7	1		10 (4.54)
Mexacarbate	315–18–4	1,4	P128	1000 (454)
Mitomycin C	50–07–7	4	U010	10 (4.54)
MNNG	70–25–7	4	U163	10 (4.54)
Monoethylamine	75–04–7	1		100 (45.4)
Monomethylamine	74–89–5	1		100 (45.4)
Naled	300–76–5	1		10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-.	20830–81–3	4	U059	10 (4.54)
1-Naphthalenamine	134–32–7	4	U167	100 (45.4)
2-Naphthalenamine	91–59–8	4	U168	10 (4.54)
Naphthalenamine, N,N'-bis(2-chloroethyl)-	494–03–1	4	U026	100 (45.4)
Naphthalene	91–20–3	1,2,3,4	U165	100 (45.4)
Naphthalene, 2-chloro-	91–58–7	2,4	U047	5000 (2270)
1,4-Naphthalenedione	130–15–4	4	U166	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3‡-[(3,3‡-dimethyl-(1,1‡-biphenyl)-4,4‡-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	72–57–1	4	U236	10 (4.54)
1-Naphthalenol, methylcarbamate	63–25–2	1,3,4	U279	100 (45.4)
Naphthenic acid	1338–24–5	1		100 (45.4)
1,4-Naphthoquinone	130–15–4	4	U166	5000 (2270)
alpha-Naphthylamine	134–32–7	4	U167	100 (45.4)
beta-Naphthylamine	91–59–8	4	U168	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
alpha-Naphthylthiourea	86–88–4	4	P072	100 (45.4)
Nickel‡‡	7440–02–0	2		100 (45.4)
Nickel ammonium sulfate	15699–18–0	1		100 (45.4)
NICKEL AND COMPOUNDS	N.A.	2,3		**
Nickel carbonyl Ni(CO)4, (T-4)-	13463–39–3	4	P073	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
1,3-Pentadiene	504–60–9	4	U186	100 (45.4)
Perchloroethylene	127–18–4	2,3,4	U210	100 (45.4)
Phenacetin	62–44–2	4	U187	100 (45.4)
Phenanthrene	85–01–8	2		5000 (2270)
Phenol	108–95–2	1,2,3,4	U188	1000 (454)
Phenol, 2-chloro-	95–57–8	2,4	U048	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
alpha-Naphthylthiourea	86–88–4	4	P072	100 (45.4)
Nickel‡‡	7440–02–0	2		100 (45.4)
Nickel ammonium sulfate	15699–18–0	1		100 (45.4)
NICKEL AND COMPOUNDS	N.A.	2,3		**
Nickel carbonyl Ni(CO)4, (T-4)-	13463–39–3	4	P073	10 (4.54)
Nickel chloride	7718–54–9	1		100 (45.4)
	37211–05–5			
Nickel compounds	N.A.	2,3		**
Nickel cyanide Ni(CN)2	557–19–7	4	P074	10 (4.54)
Nickel hydroxide	12054–48–7	1		10 (4.54)
Nickel nitrate	14216–75–2	1		100 (45.4)
Nickel sulfate	7786–81–4	1		100 (45.4)
Nicotine, & salts	54–11–5	4	P075	100 (45.4)
Nitric acid	7697–37–2	1		1000 (454)
Nitric acid, thallium (1+) salt	10102–45–1	4	U217	100 (45.4)
Nitric oxide	10102–43–9	4	P076	10 (4.54)
p-Nitroaniline	100–01–6	4	P077	5000 (2270)
Nitrobenzene	98–95–3	1,2,3,4	U169	1000 (454)
4-Nitrobiphenyl	92–93–3	3		10 (4.54)
Nitrogen dioxide	10102–44–0	1,4	P078	10 (4.54)
	10544–72–6			
Nitrogen oxide NO	10102–43–9	4	P076	10 (4.54)
Nitrogen oxide NO2	10102–44–0	1,4	P078	10 (4.54)
	10544–72–6			
Nitroglycerine	55–63–0	4	P081	10 (4.54)
Nitrophenol (mixed)	25154–55–6	1		100 (45.4)
m-Nitrophenol	554–84–7			
o-Nitrophenol	88–75–5	1,2		100 (45.4)
p-Nitrophenol	100–02–7	1,2,3,4	U170	100 (45.4)
2-Nitrophenol	88–75–5	1,2		100 (45.4)
4-Nitrophenol	100–02–7	1,2,3,4	U170	100 (45.4)
NITROPHENOLS	N.A.	2		**
2-Nitropropane	79–46–9	3,4	U171	10 (4.54)
NITROSAMINES	N.A.	2		**
N-Nitrosodi-n-butylamine	924–16–3	4	U172	10 (4.54)
N-Nitrosodiethanolamine	1116–54–7	4	U173	1 (0.454)
N-Nitrosodiethylamine	55–18–5	4	U174	1 (0.454)
N-Nitrosodimethylamine	62–75–9	2,3,4	P082	10 (4.54)
N-Nitrosodiphenylamine	86–30–6	2		100 (45.4)
N-Nitroso-N-ethylurea	759–73–9	4	U176	1 (0.454)
N-Nitroso-N-methylurea	684–93–5	3,4	U177	1 (0.454)
N-Nitroso-N-methylurethane	615–53–2	4	U178	1 (0.454)
N-Nitrosomethylvinylamine	4549–40–0	4	P084	10 (4.54)
N-Nitrosomorpholine	59–89–2	3		1 (0.454)
N-Nitrosopiperidine	100–75–4	4	U179	10 (4.54)
N-Nitrosopyrrolidine	930–55–2	4	U180	1 (0.454)
Nitrotoluene	1321–12–6	1		1000 (454)
m-Nitrotoluene	99–08–1			
o-Nitrotoluene	88–72–2			
p-Nitrotoluene	99–99–0			
5-Nitro-o-toluidine	99–55–8	4	U181	100 (45.4)
Octamethylpyrophosphoramide	152–16–9	4	P085	100 (45.4)
Osmium oxide OsO4, (T–4)–	20816–12–0	4	P087	1000 (454)
Osmium tetroxide	20816–12–0	4	P087	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145–73–3	4	P088	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1120–71–4	3,4	U193	10 (4.54)
2H-1,3,2-Oxazaphosphorin-2–amine, N,N- bis(2-chloroethyl)tetrahydro-, 2-oxide	50–18–0	4	U058	10 (4.54)
Oxirane	75–21–8	3,4	U115	10 (4.54)
Oxiranecarboxyaldehyde	765–34–4	4	U126	10 (4.54)
Oxirane, (chloromethyl)-	106–89–8	1,3,4	U041	100 (45.4)
Paraformaldehyde	30525–89–4	1		1000 (454)
Paraldehyde	123–63–7	4	U182	1000 (454)
Parathion	56–38–2	1,3,4	P089	10 (4.54)
PCBs	1336–36–3	1,2,3		1 (0.454)
PCNB	82–68–8	3,4	U185	100 (45.4)
Pentachlorobenzene	608–93–5	4	U183	10 (4.54)
Pentachloroethane	76–01–7	4	U184	10 (4.54)
Pentachloronitrobenzene	82–68–8	3,4	U185	100 (45.4)
Pentachlorophenol	87–86–5	1,2,3,4	See F027	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
1,3-Pentadiene	504–60–9	4	U186	100 (45.4)
Perchloroethylene	127–18–4	2,3,4	U210	100 (45.4)
Phenacetin	62–44–2	4	U187	100 (45.4)
Phenanthrene	85–01–8	2		5000 (2270)
Phenol	108–95–2	1,2,3,4	U188	1000 (454)
Phenol, 2-chloro-	95–57–8	2,4	U048	100 (45.4)
Phenol, 4-chloro-3-methyl-	59–50–7	2,4	U039	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	131–89–5	4	P034	100 (45.4)
Phenol, 2,4-dichloro-	120–83–2	2,4	U081	100 (45.4)
Phenol, 2,6-dichloro-	87–65–0	4	U082	100 (45.4)
Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	56–53–1	4	U089	1 (0.454)
Phenol, 2,4-dimethyl-	105–67–9	2,4	U101	100 (45.4)
Phenol, 4-(dimethylamino)-3,5-dimethyl-, 4 methylcarbamate (ester)	315–18–4	1,4	P128	1000 (454)
Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	2032–65–7	1,4	P199	10 (4.54)
Phenol, 2,4-dinitro-	51–28–5	1,2,3,4	P048	10 (4.54)
Phenol, methyl-	1319–77–3	1,3,4	U052	100 (45.4)
Phenol, 2-methyl-4,6-dinitro-, & salts	534–52–1	2,3,4	P047	10 (4.54)
Phenol, 2,2'-methylenebis[3,4,6- trichloro-	70–30–4	4	U132	100 (45.4)
Phenol, 2-(1-methylethoxy)-, methylcarbamate	114–26–1	3,4	U411	100 (45.4)
Phenol, 3-(1-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate)	64–00–6	4	P202	##
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	2631-37-0	4	P201	##
Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88–85–7	4	P020	1000 (454)
Phenol, 4-nitro-	100–02–7	1,2,3,4	U170	100 (45.4)
Phenol, pentachloro-	87–86–5	1,2,3,4	See F027	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	58–90–2	4	See F027	10 (4.54)
Phenol, 2,4,5-trichloro-	95–95–4	1,3,4	See F027	10 (4.54)
Phenol, 2,4,6-trichloro-	88–06–2	1,2,3,4	See F027	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	131–74–8	4	P009	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	148–82–3	4	U150	1 (0.454)
p-Phenylenediamine	106–50–3	3		5000 (2270)
Phenylmercury acetate	62–38–4	4	P092	100 (45.4)
Phenylthiourea	103–85–5	4	P093	100 (45.4)
Phorate	298–02–2	4	P094	10 (4.54)
Phosgene	75–44–5	1,3,4	P095	10 (4.54)
Phosphine	7803–51–2	3,4	P096	100 (45.4)
Phosphoric acid	7664–38–2	1		5000 (2270)
Phosphoric acid, diethyl 4-nitrophenyl ester	311–45–5	4	P041	100 (45.4)
Phosphoric acid, lead(2+) salt (2:3)	7446–27–7	4	U145	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	298–04–4	1,4	P039	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	298–02–2	4	P094	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288-58-2	4	U087	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	60–51–5	4	P044	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	55–91–4	4	P043	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56–38–2	1,3,4	P089	10 (4.54)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297–97–2	4	P040	100 (45.4)
Phosphorothioic acid, O-[4-[(dimethylamino) sulfonyl]phenyl] O,O-dimethyl ester	52–85–7	4	P097	1000 (454)
Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	298–00–0	1,4	P071	100 (45.4)
Phosphorus	7723–14–0	1,3		1 (0.454)
Phosphorus oxychloride	10025–87–3	1		1000 (454)
Phosphorus pentasulfide	1314–80–3	1,4	U189	100 (45.4)
Phosphorus sulfide	1314–80–3	1,4	U189	100 (45.4)
Phosphorus trichloride	7719–12–2	1		1000 (454)
PHTHALATE ESTERS	N.A.	2		**
Phthalic anhydride	85–44–9	3,4	U190	5000 (2270)
2-Picoline	109–06–8	4	U191	5000 (2270)
Piperidine, 1-nitroso-	100–75–4	4	U179	10 (4.54)
Plumbane, tetraethyl-	78–00–2	1,4	P110	10 (4.54)
POLYCHLORINATED BIPHENYLS	1336–36–3	1,2,3		1 (0.454)
Polycyclic Organic Matter*	N.A.	3		**
POLYNUCLEAR AROMATIC HYDROCARBONS	N.A.	2		**
Potassium arsenate	7784–41–0	1		1 (0.454)
Potassium arsenite	10124–50–2	1		1 (0.454)
Potassium bichromate	7778–50–9	1		10 (4.54)
Potassium chromate	7789–00–6	1		10 (4.54)
Potassium cyanide K(CN)	151–50–8	1,4	P098	10 (4.54)
Potassium hydroxide	1310–58–3	1		1000 (454)
Potassium permanganate	7722–64–7	1		100 (45.4)
Potassium silver cyanide	506–61–6	4	P099	1 (0.454)
Pronamide	23950–58–5	4	U192	5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646–88–4	4	P203	##
Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116–06–3	4	P070	1 (0.454)
1-Propanamine	107–10–8	4	U194	5000 (2270)
1-Propanamine, N-propyl-	142–84–7	4	U110	5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
SELENIUM AND COMPOUNDS	N.A.	2,3		**
Selenium Compounds	N.A.	2,3		**
Selenium dioxide	7446–08–4	1,4	U204	10 (4.54)
Selenium oxide	7446–08–4	1,4	U204	10 (4.54)
Selenium sulfide SeS2	7488–56–4	4	U205	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646–88–4	4	P203	##
Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116–06–3	4	P070	1 (0.454)
1-Propanamine	107–10–8	4	U194	5000 (2270)
1-Propanamine, N-propyl-	142–84–7	4	U110	5000 (2270)
1-Propanamine, N-nitroso-N-propyl-	621–64–7	2,4	U111	10 (4.54)
Propane, 1,2-dibromo-3-chloro-	96–12–8	3,4	U066	1 (0.454)
Propane, 1,2-dichloro-	78–87–5	1,2,3,4	U083	1000 (454)
Propanedinitrile	109–77–3	4	U149	1000 (454)
Propanenitrile	107–12–0	4	P101	10 (4.54)
Propanenitrile, 3-chloro-	542–76–7	4	P027	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	75–86–5	1,4	P069	10 (4.54)
Propane, 2-nitro-	79–46–9	3,4	U171	10 (4.54)
Propane, 2,2'-oxybis[2-chloro-	108–60–1	2,4	U027	1000 (454)
1,3-Propane sultone	1120–71–4	3,4	U193	10 (4.54)
1,2,3-Propanetriol, trinitrate	55–63–0	4	P081	10 (4.54)
Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93–72–1	1,4	See F027	100 (45.4)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126–72–7	4	U235	10 (4.54)
1-Propanol, 2-methyl-	78–83–1	4	U140	5000 (2270)
2-Propanone	67–64–1	4	U002	5000 (2270)
2-Propanone, 1-bromo-	598–31–2	4	P017	1000 (454)
Propargite	2312–35–8	1		10 (4.54)
Propargyl alcohol	107–19–7	4	P102	1000 (454)
2-Propenal	107–02–8	1,2,3,4	P003	1 (0.454)
2-Propenamide	79–06–1	3,4	U007	5000 (2270)
1-Propene, 1,3-dichloro-	542–75–6	1,2,3,4	U084	100 (45.4)
1-Propene, 1,1,2,3,3,3-hexachloro-	1888–71–7	4	U243	1000 (454)
2-Propenenitrile	107–13–1	1,2,3,4	U009	100 (45.4)
2-Propenenitrile, 2-methyl-	126–98–7	4	U152	1000 (454)
2-Propenoic acid	79–10–7	3,4	U008	5000 (2270)
2-Propenoic acid, ethyl ester	140–88–5	3,4	U113	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	97–63–2	4	U118	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	80–62–6	1,3,4	U162	1000 (454)
2-Propen-1-ol	107–18–6	1,4	P005	100 (45.4)
beta-Propiolactone	57–57–8	3		10 (4.54)
Propionaldehyde	123–38–6	3	1000 (454)	
Propionic acid	79–09–4	1		5000 (2270)
Propionic anhydride	123–62–6	1		5000 (2270)
Propoxur (Baygon)	114–26–1	3,4	U411	100 (45.4)
n-Propylamine	107–10–8	4	U194	5000 (2270)
Propylene dichloride	78–87–5	1,2,3,4	U083	1000 (454)
Propylene oxide	75–56–9	1,3		100 (45.4)
1,2-Propylenimine	75–55–8	3,4	P067	1 (0.454)
2-Propyn-1-ol	107–19–7	4	P102	1000 (454)
Pyrene	129–00–0	2		5000 (2270)
Pyrethrins	121–29–9	1		1 (0.454)
	121–21–1			
	8003–34–7			
3,6-Pyridazinedione, 1,2-dihydro-	123–33–1	4	U148	5000 (2270)
4-Pyridinamine	504–24–5	4	P008	1000 (454)
Pyridine	110–86–1	4	U196	1000 (454)
Pyridine, 2-methyl-	109–06–8	4	U191	5000 (2270)
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts	54–11–5	4	P075	100 (45.4)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2- chloroethyl)amino]-	66–75–1	4	U237	10 (4.54)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56–04–2	4	U164	10 (4.54)
Pyrrolidine, 1-nitroso-	930–55–2	4	U180	1 (0.454)
Pyrrolo[2,3-b] indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine).	57–47–6	4	P204	##
Quinoline	91–22–5	1,3		5000 (2270)
Quinone	106–51–4	3,4	U197	10 (4.54)
Quintobenzene	82–68–8	3,4	U185	100 (45.4)
Radionuclides (including radon)	N.A.	3		§
Reserpine	50–55–5	4	U200	5000 (2270)
Resorcinol	108–46–3	1,4	U201	5000 (2270)
Saccharin, & salts	81–07–2	4	U202	100 (45.4)
Safrole	94–59–7	4	U203	100 (45.4)
Selenious acid	7783–00–8	4	U204	10 (4.54)
Selenious acid, dithallium (1+) salt	12039–52–0	4	P114	1000 (454)
Selenium††	7782–49–2	2		100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
SELENIUM AND COMPOUNDS	N.A.	2,3		**
Selenium Compounds	N.A.	2,3		**
Selenium dioxide	7446–08–4	1,4	U204	10 (4.54)
Selenium oxide	7446–08–4	1,4	U204	10 (4.54)
Selenium sulfide SeS2	7488–56–4	4	U205	10 (4.54)
Selenourea	630–10–4	4	P103	1000 (454)
L-Serine, diazoacetate (ester)	115–02–6	4	U015	1 (0.454)
Silver††	7440–22–4	2		1000 (454)
SILVER AND COMPOUNDS	N.A.	2		**
Silver cyanide Ag(CN)	506–64–9	4	P104	1 (0.454)
Silver nitrate	7761–88–8	1		1 (0.454)
Silvex (2,4,5-TP)	93–72–1	1,4	See F027	100 (45.4)
Sodium	7440–23–5	1		10 (4.54)
Sodium arsenate	7631–89–2	1		1 (0.454)
Sodium arsenite	7784–46–5	1		1 (0.454)
Sodium azide	26628–22–8	4	P105	1000 (454)
Sodium bichromate	10588–01–9	1		10 (4.54)
Sodium bifluoride	1333–83–1	1		100 (45.4)
Sodium bisulfite	7631–90–5	1		5000 (2270)
Sodium chromate	7775–11–3	1		10 (4.54)
Sodium cyanide Na(CN)	143–33–9	1,4	P106	10 (4.54)
Sodium dodecylbenzenesulfonate	25155–30–0	1		1000 (454)
Sodium fluoride	7681–49–4	1		1000 (454)
Sodium hydrosulfide	16721–80–5	1		5000 (2270)
Sodium hydroxide	1310–73–2	1		1000 (454)
Sodium hypochlorite	7681–52–9	1		100 (45.4)
	10022–70–5			
Sodium methylate	124–41–4	1		1000 (454)
Sodium nitrite	7632–00–0	1		100 (45.4)
Sodium phosphate, dibasic	7558–79–4	1		5000 (2270)
	10039–32–4			
	10140–65–5			
Sodium phosphate, tribasic	7601–54–9	1		5000 (2270)
	7758–29–4			
	7785–84–4			
	10101–89–0			
	10124–56–8			
	10361–89–4			
Sodium selenite	7782–82–3	1		100 (45.4)
	10102–18–8			
Streptozotocin	18883–66–4	4	U206	1 (0.454)
Strontium chromate	7789–06–2	1		10 (4.54)
Strychnidin-10-one, & salts	57–24–9	1,4	P108	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	357–57–3	4	P018	100 (45.4)
Strychnine, & salts	57–24–9	1,4	P108	10 (4.54)
Styrene	100–42–5	1,3		1000 (454)
Styrene oxide	96–09–3	3		100 (45.4)
Sulfuric acid	7664–93–9	1		1000 (454)
	8014–95–7			
Sulfuric acid, dimethyl ester	77–78–1	3,4	U103	100 (45.4)
Sulfuric acid, dithallium (1+) salt	7446–18–6	1,4	P115	100 (45.4)
	10031–59–1			
Sulfur monochloride	12771–08–3	1		1000 (454)
Sulfur phosphide	1314–80–3	1,4	U189	100 (45.4)
2,4,5-T	93–76–5	1,4	See F027	1000 (454)
2,4,5-T acid	93–76–5	1,4	See F027	1000 (454)
2,4,5-T amines	2008–46–0	1		5000 (2270)
	1319–72–8			
	3813–14–7			
	6369–96–6			
	6369–97–7			
2,4,5-T esters	93–79–8	1		1000 (454)
	1928–47–8			
	2545–59–7			
	25168–15–4			
	61792–07–2			
2,4,5-T salts	13560–99–1	1		1000 (454)
TCDD	1746–01–6	2,3		1 (0.454)
TDE	72–54–8	1,2,4	U060	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
1,2,4,5-Tetrachlorobenzene	95–94–3	4	U207	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	2,3		1 (0.454)
1,1,1,2-Tetrachloroethane	630–20–6	4	U208	100 (45.4)
1,1,2,2-Tetrachloroethane	79–34–5	2,3,4	U209	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
2,3,5-Trichlorophenol	933–78–8			
2,3,6-Trichlorophenol	933–75–5			
3,4,5-Trichlorophenol	609–19–8			
2,4,5-Trichlorophenol	95–95–4	1,3,4	See F027	10 (4.54)
2,4,6-Trichlorophenol	88–06–2	1,2,3,4	See F027	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
1,2,4,5-Tetrachlorobenzene	95–94–3	4	U207	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	2,3		1 (0.454)
1,1,1,2-Tetrachloroethane	630–20–6	4	U208	100 (45.4)
1,1,2,2-Tetrachloroethane	79–34–5	2,3,4	U209	100 (45.4)
Tetrachloroethylene	127–18–4	2,3,4	U210	100 (45.4)
2,3,4,6-Tetrachlorophenol	58–90–2	4	See F027	10 (4.54)
Tetraethyl pyrophosphate	107–49–3	1,4	P111	10 (4.54)
Tetraethyl lead	78–00–2	1,4	P110	10 (4.54)
Tetraethyldithiopyrophosphate	3689–24–5	4	P109	100 (45.4)
Tetrahydrofuran	109–99–9	4	U213	1000 (454)
Tetranitromethane	509–14–8	4	P112	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	757–58–4	4	P062	100 (45.4)
Thallic oxide	1314–32–5	4	P113	100 (45.4)
Thallium ††	7440–28–0	2		1000 (454)
THALLIUM AND COMPOUNDS	N.A.	2		**
Thallium (I) acetate	563–68–8	4	U214	100 (45.4)
Thallium (I) carbonate	6533–73–9	4	U215	100 (45.4)
Thallium chloride TlCl	7791–12–0	4	U216	100 (45.4)
Thallium (I) nitrate	10102–45–1	4	U217	100 (45.4)
Thallium oxide Tl2O3	1314–32–5	4	P113	100 (45.4)
Thallium (I) selenite	12039–52–0	4	P114	1000 (454)
Thallium (I) sulfate	7446–18–6	1,4	P115	100 (45.4)
	10031–59–1			
Thioacetamide	62–55–5	4	U218	10 (4.54)
Thiodiphosphoric acid, tetraethyl ester	3689–24–5	4	P109	100 (45.4)
Thiofanox	39196–18–4	4	P045	100 (45.4)
Thioimidodicarbonic diamide [(H2N)C(S)] 2NH	541–53–7	4	P049	100 (45.4)
Thiomethanol	74–93–1	1,4	U153	100 (45.4)
Thioperoxydicarbonic diamide [(H2N)C(S)] 2S2, tetramethyl-	137–26–8	4	U244	10 (4.54)
Thiophenol	108–98–5	4	P014	100 (45.4)
Thiosemicarbazide	79–19–6	4	P116	100 (45.4)
Thiourea	62–56–6	4	U219	10 (4.54)
Thiourea, (2-chlorophenyl)-	5344–82–1	4	P026	100 (45.4)
Thiourea, 1-naphthalenyl-	86–88–4	4	P072	100 (45.4)
Thiourea, phenyl-	103–85–5	4	P093	100 (45.4)
Thiram	137–26–8	4	U244	10 (4.54)
Titanium tetrachloride	7550–45–0	3		1,2,41000 (454)
Toluene	108–88–3	1,2,3,4	U220	1000 (454)
Toluenediamine	95–80–7	3,4	U221	10 (4.54)
	496–72–0			
	823–40–5			
	25376–45–8			
2,4-Toluene diamine	95–80–7	3,4	U221	10 (4.54)
	496–72–0			
	823–40–5			
	25376–45–8			
Toluene diisocyanate	91–08–7	3,4	U223	100 (45.4)
	584–84–9			
	26471–62–5			
2,4-Toluene diisocyanate	91–08–7	3,4	U223	100 (45.4)
	584–84–9			
	26471–62–5			
o-Toluidine	95–53–4	3,4	U328	100 (45.4)
p-Toluidine	106–49–0	4	U353	100 (45.4)
o-Toluidine hydrochloride	636–21–5	4	U222	100 (45.4)
Toxaphene	8001–35–2	1,2,3,4	P123	1 (0.454)
2,4,5-TP acid	93–72–1	1,4	See F027	100 (45.4)
2,4,5-TP esters	32534–95–5	1		100 (45.4)
1H-1,2,4-Triazol-3-amine	61–82–5	4	U011	10 (4.54)
Trichlorfon	52–68–6	1		100 (45.4)
1,2,4-Trichlorobenzene	120–82–1	2,3		100 (45.4)
1,1,1-Trichloroethane	71–55–6	2,3,4	U226	1000 (454)
1,1,2-Trichloroethane	79–00–5	2,3,4	U227	100 (45.4)
Trichloroethylene	79–01–6	1,2,3,4	U228	100 (45.4)
Trichloromethanesulfenyl chloride	594–42–3	4	P118	100 (45.4)
Trichloromonofluoromethane	75–69–4	4	U121	5000 (2270)
Trichlorophenol	25167–82–2	1		10 (4.54)
2,3,4-Trichlorophenol	15950–66–0			

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
2,3,5-Trichlorophenol	933–78–8			
2,3,6-Trichlorophenol	933–75–5			
3,4,5-Trichlorophenol	609–19–8			
2,4,5-Trichlorophenol	95–95–4	1,3,4	See F027	10 (4.54)
2,4,6-Trichlorophenol	88–06–2	1,2,3,4	See F027	10 (4.54)
Triethanolamine dodecylbenzenesulfonate	27323–41–7	1		1000 (454)
Triethylamine	121–44–8	1,3,4	U404	5000 (2270)
Trifluralin	1582–09–8	3		10 (4.54)
Trimethylamine	75–50–3	1		100 (45.4)
2,2,4-Trimethylpentane	540–84–1	3		1000 (454)
1,3,5-Trinitrobenzene	99–35–4	4	U234	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	123–63–7	4	U182	1000 (454)
Tris(2,3-dibromopropyl) phosphate	126–72–7	4	U235	10 (4.54)
Trypan blue	72–57–1	4	U236	10 (4.54)
Unlisted Hazardous Wastes Characteristic of Corrosivity	N.A.	4	D002	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Ignitability	N.A.	4	D001	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Reactivity	N.A.	4	D003	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Toxicity:				
Arsenic (D004)	N.A.	4	D004	1 (0.454)
Barium (D005)	N.A.	4	D005	1000 (454)
Benzene (D018)	N.A.	1,2,3,4	D018	10 (4.54)
Cadmium (D006)	N.A.	4	D006	10 (4.54)
Carbon tetrachloride (D019)	N.A.	1,2,4	D019	10 (4.54)
Chlordane (D020)	N.A.	1,2,4	D020	1 (0.454)
Chlorobenzene (D021)	N.A.	1,2,4	D021	100 (45.4)
Chloroform (D022)	N.A.	1,2,4	D022	10 (4.54)
Chromium (D007)	N.A.	4	D007	10 (4.54)
o-Cresol (D023)	N.A.	4	D023	100 (45.4)
m-Cresol (D024)	N.A.	4	D024	100 (45.4)
p-Cresol (D025)	N.A.	4	D025	100 (45.4)
Cresol (D026)	N.A.	4	D026	100 (45.4)
2,4-D (D016)	N.A.	1,4	D016	100 (45.4)
1,4-Dichlorobenzene (D027)	N.A.	1,2,4	D027	100 (45.4)
1,2-Dichloroethane (D028)	N.A.	1,2,4	D028	100 (45.4)
1,1-Dichloroethylene (D029)	N.A.	1,2,4	D029	100 (45.4)
2,4-Dinitrotoluene (D030)	N.A.	1,2,4	D030	10 (4.54)
Endrin (D012)	N.A.	1,4	D012	1 (0.454)
Heptachlor (and epoxide) (D031)	N.A.	1,2,4	D031	1 (0.454)
Hexachlorobenzene (D032)	N.A.	2,4	D032	10 (4.54)
Hexachlorobutadiene (D033)	N.A.	2,4	D033	1 (0.454)
Hexachloroethane (D034)	N.A.	2,4	D034	100 (45.4)
Lead (D008)	N.A.	4	D008	10 (4.54)
Lindane (D013)	N.A.	1,4	D013	1 (0.454)
Mercury (D009)	N.A.	4	D009	1 (0.454)
Methoxychlor (D014)	N.A.	1,4	D014	1 (0.454)
Methyl ethyl ketone (D035)	N.A.	4	D035	5000 (2270)
Nitrobenzene (D036)	N.A.	1,2,4	D036	1000 (454)
Pentachlorophenol (D037)	N.A.	1,2,4	D037	10 (4.54)
Pyridine (D038)	N.A.	4	D038	1000 (454)
Selenium (D010)	N.A.	4	D010	10 (4.54)
Silver (D011)	N.A.	4	D011	1 (0.454)
Tetrachloroethylene (D039)	N.A.	2,4	D039	100 (45.4)
Toxaphene (D015)	N.A.	1,4	D015	1 (0.454)
Trichloroethylene (D040)	N.A.	1,2,4	D040	100 (45.4)
2,4,5-Trichlorophenol (D041)	N.A.	1,4	D041	10 (4.54)
2,4,6-Trichlorophenol (D042)	N.A.	1,2,4	D042	10 (4.54)
2,4,5-TP (D017)	N.A.	1,4	D017	100 (45.4)
Vinyl chloride (D043)	N.A.	2,3,4	D043	1 (0.454)
Uracil mustard	66–75–1	4	U237	10 (4.54)
Uranyl acetate	541–09–3	1		100 (45.4)
Uranyl nitrate	10102–06–4	1		100 (45.4)
	36478–76–9			
Urea, N-ethyl-N-nitroso-	759–73–9	4	U176	1 (0.454)
Urea, N-methyl-N-nitroso-	684–93–5	3,4	U177	1 (0.454)
Urethane	51–79–6	3,4	U238	100 (45.4)
Vanadic acid, ammonium salt	7803–55–6	4	P119	1000 (454)
Vanadium oxide V2O5	1314–62–1	1,4	P120	1000 (454)
Vanadium pentoxide	1314–62–1	1,4	P120	1000 (454)
Vanadyl sulfate	27774–13–6	1		1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Vinyl acetate	108–05–4	1,3		5000 (2270)
Vinyl acetate monomer	108–05–4	1,3		5000 (2270)
Vinylamine, N-methyl-N-nitroso-	4549–40–0	4	P084	10 (4.54)
Vinyl bromide	593–60–2	3		100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents.				
(a) Xylene	1330–20–7			1000 (454)
(b) Acetone	67–64–1			5000 (2270)
(c) Ethyl acetate	141–78–6			5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Vinyl acetate	108–05–4	1,3		5000 (2270)
Vinyl acetate monomer	108–05–4	1,3		5000 (2270)
Vinylamine, N-methyl-N-nitroso-	4549–40–0	4	P084	10 (4.54)
Vinyl bromide	593–60–2	3		100 (45.4)
Vinyl chloride	75–01–4	2,3,4	U043	1 (0.454)
Vinylidene chloride	75–35–4	1,2,3,4	U078	100 (45.4)
Warfarin, & salts	81–81–2	4	P001, U248	100 (45.4)
Xylene	1330–20–7	1,3,4	U239	100 (45.4)
m-Xylene	108–38–3	3		1000 (454)
o-Xylene	95–47–6	3		1000 (454)
p-Xylene	106–42–3	3		100 (45.4)
Xylene (mixed)	1330–20–7	1,3,4	U239	100 (45.4)
Xylenes (isomers and mixture)	1330–20–7	1,3,4	U239	100 (45.4)
Xylenol	1300–71–6	1		1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta,16beta,17alpha, 18beta,20alpha)	50–55–54	4	U200	5000 (2270)
Zinc ††	7440–66–6	2		1000 (454) **
ZINC AND COMPOUNDS	N.A.	2		**
Zinc acetate	557–34–6	1		1000 (454)
Zinc ammonium chloride	52628–25–8	1		1000 (454)
	14639–97–5			
	14639–98–6			
Zinc, bis(dimethylcarbamodithioato-S,S')-, (Ziram)	137–30–4	4	P205	##
Zinc borate	1332–07–6	1		1000 (454)
Zinc bromide	7699–45–8	1		1000 (454)
Zinc carbonate	3486–35–9	1		1000 (454)
Zinc chloride	7646–85–7	1		1000 (454)
Zinc cyanide Zn(CN)2	557–21–1	1,4	P121	10 (4.54)
Zinc fluoride	7783–49–5	1		1000 (454)
Zinc formate	557–41–5	1		1000 (454)
Zinc hydrosulfite	7779–86–4	1		1000 (454)
Zinc nitrate	7779–88–6	1		1000 (454)
Zinc phenolsulfonate	127–82–2	1		5000 (2270)
Zinc phosphide Zn3P2	1314–84–7	1,4	P122, U249	100 (45.4)
Zinc silicofluoride	16871–71–9	1		5000 (2270)
Zinc sulfate	7733–02–0	1		1000 (454)
Zirconium nitrate	13746–89–9	1		5000 (2270)
Zirconium potassium fluoride	16923–95–8	1		1000 (454)
Zirconium sulfate	14644–61–2	1		5000 (2270)
Zirconium tetrachloride	10026–11–6	1		5000 (2270)
F001		4	F001	10 (4.54)
The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the halogenated solvents listed below or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.				
(a) Tetrachloroethylene	127–18–4	2,3,4	U210	100 (45.4)
(b) Trichloroethylene	79–01–6	1,2,3,4	U228	100 (45.4)
(c) Methylene chloride	75–09–2	2,3,4	U080	1000 (454)
(d) 1,1,1-Trichloroethane	71–55–6	2,3,4	U226	1000 (454)
(e) Carbon tetrachloride	56–23–5	1,2,3,4	U211	10 (4.54)
(f) Chlorinated fluorocarbons	N.A.			5000 (2270)
F002		4	F002	10 (4.54)
The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the halogenated solvents listed below or those solvents listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.				
(a) Tetrachloroethylene	127–18–4	2,3,4	U210	100 (45.4)
(b) Methylene chloride	75–09–2	2,3,4	U080	1000 (454)
(c) Trichloroethylene	79–01–6	1,2,3,4	U228	100 (45.4)
(d) 1,1,1-Trichloroethane	71–55–6	2,3,4	U226	1000 (454)
(e) Chlorobenzene	108–90–7	1,2,3,4	U037	100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1			5000 (2270)
(g) o-Dichlorobenzene	95–50–1	1,2,4	U070	100 (45.4)
(h) Trichlorofluoromethane	75–69–4	4	U121	5000 (2270)
(i) 1,1,2-Trichloroethane	79–00–5	2,3,4	U227	100 (45.4)
F003		4	F003	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents.				
(a) Xylene	1330–20–7			1000 (454)
(b) Acetone	67–64–1			5000 (2270)
(c) Ethyl acetate	141–78–6			5000 (2270)
(d) Ethylbenzene	100–41–4			1000 (454)
(e) Ethyl ether	60–29–7			100 (45.4)
(f) Methyl isobutyl ketone	108–10–1			5000 (2270)
(g) n-Butyl alcohol	71–36–3			5000 (2270)
(h) Cyclohexanone	108–94–1			5000 (2270)
(i) Methanol	67–56–1			5000 (2270)
F004		4	F004	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:				
(a) Cresols/Cresylic acid	1319–77–3	1,3,4	U052	100 (45.4)
(b) Nitrobenzene	98–95–3	1,2,3,4	U169	1000 (454)
F005		4	F005	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:				
(a) Toluene	108–88–3	1,2,3,4	U220	1000 (454)
(b) Methyl ethyl ketone	78–93–3	3,4	U159	5000 (2270)
(c) Carbon disulfide	75–15–0	1,3,4	P022	100 (45.4)
(d) Isobutanol	78–83–1	4	U140	5000 (2270)
(e) Pyridine	110–86–1	4	U196	1000 (454)
F006		4	F006	10 (4.54)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum, (2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbon steel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etching and milling of aluminum.				
F007		4	F007	10 (4.54)
Spent cyanide plating bath solutions from electroplating operations.				
F008		4	F008	10 (4.54)
Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.				
F009		4	F009	10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.				
F010		4	F010	10 (4.54)
Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.				
F011		4	F011	10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.				
F012		4	F012	10 (4.54)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.				
F019		4	F019	10 (4.54)
Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.				
F020		4	F020	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.)				
F021		4	F021	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol or of intermediates used to produce its derivatives.				
F022		4	F022	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
F023		4	F023	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or a				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to those generated in oil/water/solids separators; tanks and impoundments; ditches and				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
F023		4	F023	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or a component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.)				
F024		4	F024	1 (0.454)
Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.31 or 261.32.)				
F025		4	F025	1 (0.454)
Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.				
F026		4	F026	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.				
F027		4	F027	1 (0.454)
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5- trichlorophenol as the sole component.)				
F028		4	F028	1 (0.454)
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.				
F032		4	F032	1 (0.454)
Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with §261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.				
F034		4	F034	1 (0.454)
Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.				
F035		4	F035	1 (0.454)
Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.				
F037		4	F037	1 (0.454)
Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under §261.4(a)(12)(i), if those residuals are to be disposed of.				
F038		4	F038	1 (0.454)
Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.				
F039		4	F039	1 (0.454)
Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of 40 CFR part 261. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.)				
K001		4	K001	1 (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.				
K002		4	K002	10 (4.54)
Wastewater treatment sludge from the production of chrome yellow and orange pigments.				
K003		4	K003	10 (4.54)
Wastewater treatment sludge from the production of molybdate orange pigments.				
K004		4	K004	10 (4.54)
Wastewater treatment sludge from the production of zinc yellow pigments.				
K005		4	K005	10 (4.54)
Wastewater treatment sludge from the production of chrome green pigments.				
K006		4	K006	10 (4.54)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).				
K007		4	K007	10 (4.54)
Wastewater treatment sludge from the production of iron blue pigments.				
K008		4	K008	10 (4.54)
Oven residue from the production of chrome oxide green pigments.				
K009		4	K009	10 (4.54)
Distillation bottoms from the production of acetaldehyde from ethylene.				
K010		4	K010	10 (4.54)
Distillation side cuts from the production of acetaldehyde from ethylene.				
K011		4	K011	10 (4.54)
Bottom stream from the wastewater stripper in the production of acrylonitrile.				
K013		4	K013	10 (4.54)
Bottom stream from the acetonitrile column in the production of acrylonitrile.				
K014		4	K014	5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile.				
K015		4	K015	10 (4.54)
Still bottoms from the distillation of benzyl chloride.				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
K016		4	K016	1 (0.454)
Heavy ends or distillation residues from the production of carbon tetrachloride.				
K017		4	K017	10 (4.54)
Heavy ends (still bottoms) from the purification column in the production of				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Wastewater treatment sludges from the manufacturing and processing of explosives.				
K045		4	K045	10 (4.54)
Spent carbon from the treatment of wastewater containing explosives.				
K046		4	K046	10 (4.54)

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TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
K016 Heavy ends or distillation residues from the production of carbon tetrachloride.		4	K016	1 (0.454)
K017 Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.		4	K017	10 (4.54)
K018 Heavy ends from the fractionation column in ethyl chloride production.		4	K018	1 (0.454)
K019 Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.		4	K019	1 (0.454)
K020 Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.		4	K020	1 (0.454)
K021 Aqueous spent antimony catalyst waste from fluoromethanes production.		4	K021	10 (4.54)
K022 Distillation bottom tars from the production of phenol/acetone from cumene.		4	K022	1 (0.454)
K023 Distillation light ends from the production of phthalic anhydride from naphthalene.		4	K023	5000 (2270)
K024 Distillation bottoms from the production of phthalic anhydride from naphthalene.		4	K024	5000 (2270)
K025 Distillation bottoms from the production of nitrobenzene by the nitration of benzene.		4	K025	10 (4.54)
K026 Stripping still tails from the production of methyl ethyl pyridines.		4	K026	1000 (454)
K027 Centrifuge and distillation residues from toluene diisocyanate production.		4	K027	10 (4.54)
K028 Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.		4	K028	1 (0.454)
K029 Waste from the product steam stripper in the production of 1,1,1- trichloroethans.		4	K029	1 (0.454)
K030 Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.		4	K030	1 (0.454)
K031 By-product salts generated in the production of MSMA and cacodylic acid.		4	K031	1 (0.454)
K032 Wastewater treatment sludge from the production of chlordane.		4	K032	10 (4.54)
K033 Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.		4	K033	10 (4.54)
K034 Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.		4	K034	10 (4.54)
K035 Wastewater treatment sludges generated in the production of creosote.		4	K035	1 (0.454)
K036 Still bottoms from toluene reclamation distillation in the production of disulfoton.		4	K036	1 (0.454)
K037 Wastewater treatment sludges from the production of disulfoton.		4	K037	1 (0.454)
K038 Wastewater from the washing and stripping of phorate production.		4	K038	10 (4.54)
K039 Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.		4	K039	10 (4.54)
K040 Wastewater treatment sludge from the production of phorate.		4	K040	10 (4.54)
K041 Wastewater treatment sludge from the production of toxaphene.		4	K041	1 (0.454)
K042 Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.		4	K042	10 (4.54)
K043 2,6-Dichlorophenol waste from the production of 2,4-D.		4	K043	10 (4.54)
K044 Wastewater treatment sludges from the manufacturing and processing of explosives.		4	K044	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
K045 Spent carbon from the treatment of wastewater containing explosives.		4	K045	10 (4.54)
K046 Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.		4	K046	10 (4.54)
K047 Pink/red water from TNT operations.		4	K047	10 (4.54)
K048 Dissolved air flotation (DAF) float from the petroleum refining industry.		4	K048	10 (4.54)
K049 Slop oil emulsion solids from the petroleum refining industry.		4	K049	10 (4.54)
K050 Heat exchanger bundle cleaning sludge from the petroleum refining industry.		4	K050	10 (4.54)
K051 API separator sludge from the petroleum refining industry.		4	K051	10 (4.54)
K052 Tank bottoms (leaded) from the petroleum refining industry.		4	K052	10 (4.54)
K060 Ammonia still lime sludge from coking operations.		4	K060	1 (0.454)
K061 Emission control dust/sludge from the primary production of steel in electric furnaces.		4	K061	10 (4.54)
K062 Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).		4	K062	10 (4.54)
K064 Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.		4	K064	10 (4.54)
K065 Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.		4	K065	10 (4.54)
K066 Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.		4	K066	10 (4.54)
K069 Emission control dust/sludge from secondary lead smelting. (Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting the stay, EPA will publish a notice of the action in the **Federal Register**.)		4	K069	10 (4.54)
K071 Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.		4	K071	.1 (0.454)
K073 Chlorinated hydrocarbon waste from the purification step of the diaphragm cellprocess using graphite anodes in chlorine production.		4	K073	10 (4.54)
K083 Distillation bottoms from aniline production.		4	K083	100 (45.4)
K084 Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		4	K084	1 (0.454)
K085 Distillation or fractionation column bottoms from the production of chlorobenzenes.		4	K085	10 (4.54)
K086 Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.		4	K086	10 (4.54)
K087 Decanter tank tar sludge from coking operations.		4	K087	100 (45.4)
K088 Spent potliners from primary aluminum reduction.		4	K088	10 (4.54)
K090 Emission control dust or sludge from ferrochromiumsilicon production.		4	K090	10 (4.54)
K091 Emission control dust or sludge from ferrochromium production.		4	K091	10 (4.54)
K093		4	K093	5000 (2270)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Distillation light ends from the production of phthalic anhydride from ortho-xylene.				
K094 Distillation bottoms from the production of phthalic anhydride from ortho-xylene.		4	K094	5000 (2270)
K095		4	K095	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.				
K118 Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.		4	K118	1 (0.454)
K122		4	K122	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Distillation light ends from the production of phthalic anhydride from ortho-xylene. K094		4	K094	5000 (2270)
Distillation bottoms from the production of phthalic anhydride from ortho-xylene. K095		4	K095	100 (45.4)
Distillation bottoms from the production of 1,1,1-trichloroethane. K096		4	K096	100 (45.4)
Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane. K097		4	K097	1 (0.454)
Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane. K098		4	K098	1 (0.454)
Untreated process wastewater from the production of toxaphene. K099		4	K099	10 (4.54)
Untreated wastewater from the production of 2,4-D. K100		4	K100	10 (4.54)
Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. K101		4	K101	1 (0.454)
Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. K102		4	K102	1 (0.454)
Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. K103		4	K103	100 (45.4)
Process residues from aniline extraction from the production of aniline. K104		4	K104	10 (4.54)
Combined wastewater streams generated from nitrobenzene/aniline production. K105		4	K105	10 (4.54)
Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes. K106		4	K106	1 (0.454)
Wastewater treatment sludge from the mercury cell process in chlorine production. K107		4	K107	10 (4.54)
Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines. K108		4	K108	10 (4.54)
Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1- dimethylhydrazine (UDMH) from carboxylic acid hydrazides. K109		4	K109	10 (4.54)
Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. K110		4	K110	10 (4.54)
Condensed column overheads from intermediate separation from the production of 1,1- dimethylhydrazine (UDMH) from carboxylic acid hydrazides. K111		4	K111	10 (4.54)
Product washwaters from the production of dinitrotoluene via nitration of toluene. K112		4	K112	10 (4.54)
Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene. K113		4	K113	10 (4.54)
Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. K114		4	K114	10 (4.54)
Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. K115		4	K115	10 (4.54)
Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. K116		4	K116	10 (4.54)
Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine. K117		4	K117	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene. K118		4	K118	1 (0.454)
Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. K123		4	K123	10 (4.54)
Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts. K124		4	K124	10 (4.54)
Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts. K125		4	K125	10 (4.54)
Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts. K126		4	K126	10 (4.54)
Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts. K131		4	K131	100 (45.4)
Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide. K132		4	K132	1000 (454)
Spent absorbent and wastewater separator solids from the production of methyl bromide. K136		4	K136	1 (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. K141		4	K141	1 (0.454)
Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations). K142		4	K142	1 (0.454)
Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal. K143		4	K143	1 (0.454)
Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by- products produced from coal. K144		4	K144	1 (0.454)
Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal. K145		4	K145	1 (0.454)
Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal. K147		4	K147	1 (0.454)
Tar storage tank residues from coal tar refining. K148		4	K148	1 (0.454)
Residues from coal tar distillation, including, but not limited to, still bottoms. K149		4	K149	10 (4.54)
Distillation bottoms from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. [This waste does not include still bottoms from the distillation of benzyl chloride.] K150		4	K150	10 (4.54)
Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. K151		4	K151	10 (4.54)
Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of waste-waters from the production of alpha-(or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. K156		4	K156	##
Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
K157 Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufac-		4	K157	##

95476, 95487, 96184, 98873, 100447, 101144, 106423, 106445, 106503, 106934, 108101, 108383, 108394, 108952, 110758, 111444, 111546, 111911, 116063, 119904, 119937, 120581, 121448, 122394, 123911, 126998, 127184, 143339, 143500, 148823, 151508, 151564, 189559, 193395, 206440, 218019, 298022, 298044, 303344, 309002, 315184, 465736, 492808, 506616, 506649, 506683, 532274, 540841, 542881, 544923, 557197, 557211, 592018, 593602, 606202, 680319, 684935, 822060, 1314847, 1319773, 1330207, 1563662, 1582098, 1634044, 2032657, 17804352, 18883664, 20816120, 20830813, 23135220, 39196184, and 53469219.

b. adding the following entries: 50293, 52857, 54115, 55630, 55914, 57249, 57578, 57976, 58899, 59507, 59892, 60117, 60355, 63252, 64675, 68122, 72208, 72548, 74931, 79016, 79118, 79221, 81072, 81812, 88857, 90040, 91667, 91941, 92524, 92671, 92875, 92933, 93721, 93765, 94757, 95476, 132649, 133904, 143339, 143500, 148823, 151508, 151564, 156627, 189559, 193395, 206440, 218019, 298022, 298044, 303344, 309002, 315184, 334883, 463581, 465736, 492808, 506616, 506649, 506683, 506774, 532274, 540841, 542881, 544923, 557197, 557211, 592018, 593602, 606202, 680319, 684935,

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
K157		4	K157	##
Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K158		4	K158	##
Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K159		4	K159	##
Organics from the treatment of thiocarbamate wastes.				
K161		4	K161	##
Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This does not include K125 or K126.)				
K169[f]		4	K169	10 (4.54)
Crude oil storage tank sediment from petroleum refining operations.				
K170[f]		4	K170	1 (0.454)
Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations.				
K171[f]		4	K171	1 (0.454)
Spent hydrotreating catalyst from petroleum refining operations. (This listing does not include inert support media.)				
K172[f]		4	K172	1 (0.454)
Spent hydrorefining catalyst from petroleum refining operations. (This listing does not include inert support media.)				
K174[f]		4	K174	1 (0.454)
K175[f]		4	K175	1 (0.454)
K176		4	K176	1 (0.454)
Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide)				
K177		4	K177	5,000 (2270)
Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide)				
K178		4	K178	1 (0.454)
Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride ilmenite process				

† Indicates the statutory source defined by 1,2,3, and 4, as described in the note preceding Table 302.4.

†† No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is larger than 100 micrometers (0.004 inches).

††† The RQ for asbestos is limited to friable forms only.

The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory one-pound RQ applies.

§ The adjusted RQs for radionuclides may be found in Appendix B to this table.

** Indicates that no RQ is being assigned to the generic or broad class.

a Benzene was already a CERCLA hazardous substance prior to the CAA Amendments of 1990 and received an adjusted 10-pound RQ based on potential carcinogenicity in an August 14, 1989, final rule (54 FR 33418). The CAA Amendments specify that "benzene (including benzene from gasoline)" is a hazardous air pollutant and, thus, a CERCLA hazardous substance.

b The CAA Amendments of 1990 list DDE (3547–04–4) as a CAA hazardous air pollutant. The CAS number, 3547–04–4, is for the chemical, p,p'dichlorodiphenylethane. DDE or p,p'-dichlorodiphenyldichloroethylene, CAS number 72–55–9, is already listed in Table 302.4 with a final RQ of 1 pound. The substance identified by the CAS number 3547–04–4 has been evaluated and listed as DDE to be consistent with the CAA section 112 listing, as amended.

c Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

d Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where:
n = 1, 2, or 3;
R = alkyl C7 or less; or
R = phenyl or alkyl substituted phenyl;
R' = H or alkyl C7 or less; or
OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

e Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

f See 40 CFR 302.6(b)(1) for application of the mixture rule to this hazardous waste.

5. Appendix A to § 302.4 is amended by:

a. removing the following entries: 50293, 52857, 54115, 55630, 55914, 57125, 57249, 57976, 58899, 59507, 60117, 63252, 72208, 72548, 74931, 79016, 79221, 81072, 81812, 88857, 91941, 92875, 93721, 93765, 94757, 95476, 95487, 96184, 98873, 100447, 101144, 106423, 106445, 106503, 106934, 108101, 108383, 108394, 108952, 110758, 111444, 111546, 111911, 116063, 119904, 119937, 120581, 121448, 122394, 123911, 126998, 127184, 143339, 143500, 148823, 151508, 151564, 189559, 193395, 206440, 218019, 298022, 298044, 303344, 309002, 315184, 465736, 492808, 506616, 506649, 506683, 506774, 542881, 544923, 557197, 557211, 592018, 606202, 616239, 684935, 1314847, 1319773, 1327522, 1330207, 1563662, 2032657, 2763964, 7440417, 7488564, 7778394, 7783064, 7791120, 8001352, 8001589, 11096825, 11097691, 11104282, 11141165, 12039520, 12672296, 12674112, 13463393, 16752775, 17804352, 18883664, 20816120, 20830813, 23135220, 39196184, and 53469219.

b. adding the following entries: 50293, 52857, 54115, 55630, 55914, 57249, 57578, 57976, 58899, 59507, 59892, 60117, 60355, 63252, 64675, 68122, 72208, 72548, 74931, 79016, 79118, 79221, 81072, 81812, 88857, 90040, 91667, 91941, 92524, 92671, 92875, 92933, 93721, 93765, 94757, 95476, 95487, 96093, 98873, 100447, 101144, 101688, 101779, 106423, 106445, 106503, 106887, 106934, 106990, 107211, 108101, 108383, 108394, 108952, 110543, 110758, 111422, 111444, 111546, 111911, 114261, 116063, 119904, 119937, 120581, 120809, 121448, 121697, 123319, 123386, 123911, 126998, 127184, 132649, 133904, 143339, 143500, 148823, 151508, 151564, 156627, 189559, 193395, 206440, 218019, 298022, 298044, 303344, 309002, 315184, 334883, 463581, 465736, 492808, 506616, 506649, 506683, 506774, 532274, 540841, 542881, 544923, 557197, 557211, 592018, 593602, 606202, 680319, 684935, 822060, 1314847, 1319773, 1330207, 1563662, 1582098, 1634044, 2032657, 2763964, 3547044, 7440417, 7488564, 7550450, 7778394, 7783064, 7791120, 8001352, 11096825, 11097691, 11104282, 11141165, 12039520, 12672296, 12674112, 13463393, 16752775, 17804352, 18883664, 20816120, 20830813, 23135220, 39196184, and 53469219.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous Substance
50293	Benzene, 1,1'-(2,2,2- trichloroethylidene)bis[4-chloro-. DDT. 4,4'-DDT.
52857	Famphur. Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester.
54115	Nicotine, & salts. Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts.
55630	Nitroglycerine. 1,2,3-Propanetriol, trinitrate.
55914	Diisopropylfluorophosphate (DFP). Phosphorofluororidic acid, bis(1-methylethyl) ester.
57249	Strychnidin-10-one, & salts. Strychnine, & salts.
57578	beta-Propiolactone.
57976	Benz[a]anthracene, 7,12-dimethyl-. 7,12-Dimethylbenz[a]anthracene.
58899	γ-BHC. Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α,5α,6β)-. Lindane. Lindane (all isomers).
59507	p-Chloro-m-cresol. Phenol, 4-chloro-3-methyl-.
59892	N-Nitrosomorpholine.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
60117	Benzenamine, N,N-dimethyl-4-(phenylazo)-. Dimethyl aminoazobenzene. p-Dimethylaminoazobenzene.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
92671	4-Aminobiphenyl.
92875	Benzidine. [1,1'-Biphenyl]-4,4'-diamine.
92933	4-Nitrobiphenyl.
93765	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-. Silvex (2,4,5-TP). 2,4,5-TP acid. Acetic acid, (2,4,5-trichlorophenoxy)-.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
60117	Benzenamine, N,N-dimethyl-4-(phenylazo)-. Dimethyl aminoazobenzene. p-Dimethylaminoazobenzene.
60355	Acetamide.
63252	Carbaryl. 1-Naphthalenol, methylcarbamate.
64675	Diethyl sulfate.
68122	Dimethylformamide.
72208	Endrin. Endrin, & metabolites. 2,7:3,6-Dimethanonaphth[2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha, 6alpha,6abeta,7beta,7aalpha)-, & metabolites.
72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-. DDD. TDE. 4,4'-DDD.
74931	Methanethiol. Methyl mercaptan. Thiomethanol.
79016	Ethene, trichloro-. Trichloroethylene.
79118	Chloroacetic acid.
79221	Carbonochloridic acid, methyl ester. Methyl chlorocarbonate.
81072	Saccharin, & salts. 1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts.
81812	Warfarin, & salts. 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts.
88857	Dinoseb. Phenol, 2-(1-methylpropyl)-4,6-dinitro-.
90040	o-Anisidine.
91667	N,N-Diethylaniline.
91941	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-. 3,3'-Dichlorobenzidine.
92524	Biphenyl.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
92671	4-Aminobiphenyl.
92875	Benzidine. [1,1'-Biphenyl]-4,4'-diamine.
92933	4-Nitrobiphenyl.
93765	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-. Silvex (2,4,5-TP). 2,4,5-TP acid. Acetic acid, (2,4,5-trichlorophenoxy)-. 2,4,5-T. 2,4,5-T acid.
94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D Acid. 2,4-D, salts and esters.
95476	o-Xylene.
95487	o-Cresol.
96093	Styrene oxide.
98873	Benzal chloride. Benzene, (dichloromethyl)-.
100447	Benzene, (chloromethyl)-. Benzyl chloride.
101144	Benzenamine, 4,4'-methylenebis[2-chloro-. 4,4'-Methylenebis(2-chloroaniline).
101688	MDI. Methylene diphenyl diisocyanate.
101779	4,4'-Methylenedianiline.
106423	p-Xylene.
106445	p-Cresol.
106503	p-Phenylenediamine.
106887	1,2-Epoxybutane.
106934	Dibromoethane. Ethane, 1,2-dibromo-. Ethylene dibromide.
106990	1,3-Butadiene.
107211	Ethylene glycol.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
108101	Hexone. Methyl isobutyl ketone. 4-Methyl-2-pentanone.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
126998	Chloroprene.
127184	Ethene, tertrachloro-. Perchloroethylene. Tetrachloroethylene.

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APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
108101	Hexone. Methyl isobutyl ketone. 4-Methyl-2-pentanone.
108383	m-Xylene.
108394	m-Cresol.
108952	Phenol.
110543	Hexane.
110758	Ethene, (2-chloroethoxy)-. 2-Chloroethyl vinyl ether.
111422	Diethanolamine.
111444	Bis(2-chloroethyl) ether. Dichloroethyl ether. Ethane, 1,1'-oxybis[2-chloro-.
111546	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters. Ethylenebisdithiocarbamic acid, salts & esters.
111911	Bis(2-chloroethoxy) methane. Dichloromethoxyethane. Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-.
114261	Phenol, 2-(1-methylethoxy)-, methylcarbamate. Propoxur (Baygon).
116063	Aldicarb. Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime.
119904	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-. 3,3'-Dimethoxybenzidine.
119937	[1,1'-Biphenyl]-4,4'-diamine,3,3'- dimethyl-. 3,3'-Dimethylbenzidine.
120581	Isosafrole. 1,3-Benzodioxole, 5-(1-propenyl)-.
120809	Catechol.
121448	Ethanamine, N,N-diethyl-. Triethylamine.
121697	N,N-Dimethylaniline.
123319	Hydroquinone.
123386	Propionaldehyde.
123911	1,4-Diethyleneoxide. 1,4-Dioxane.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
126998	Chloroprene.
127184	Ethene, tertrachloro-. Perchloroethylene. Tetrachloroethylene.
132649	Dibenzofuran.
133904	Chloramben.
143339	Sodium cyanide Na(CN).
143500	Kepone. 1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one,1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-.
148823	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-.
	Melphalan.
151508	Potassium cyanide K(CN).
151564	Aziridine. Ethylenimine.
156627	Calcium cyanamide.
189559	Benzo[rst]pentaphene. Dibenzo[a,i]pyrene.
193395	Indeno(1,2,3-cd)pyrene.
206440	Fluoranthene.
218019	Chrysene.
298022	Phorate. Phosphorodithioic acid, O,O-diethyl S-[(ethylthio) methyl] ester.
298044	Disulfoton. Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester.
303344	Lasiocarpine. 2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*), 7aalpha]]-.
309002	Aldrin. 1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha, 8abeta)-.
315184	Mexacarbate. Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester).

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
334883	Diazomethane.
463581	Carbonyl sulfide.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
1319773	Cresol (cresylic acid). Cresols (isomers and mixture). Cresylic acid (isomers and mixture). Phenol, methyl-.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
334883	Diazomethane.
463581	Carbonyl sulfide.
465736	Isodrin. 1,4:5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta, 8abeta)-.
492808	Auramine. Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-.
506616	Argentate(1-), bis(cyano-C)-, potassium. Potassium silver cyanide.
506649	Silver cyanide Ag(CN).
506683	Cyanogen bromide (CN)Br.
506774	Cyanogen chloride (CN)Cl.
532274	2-Chloroacetophenone.
540841	2,2,4-Trimethylpentane.
542881	Bis(chloromethyl)ether. Dichloromethyl ether. Methane, oxybis(chloro-.
544923	Copper cyanide Cu(CN).
557197	Nickel cyanide $Ni(CN)_2$.
557211	Zinc cyanide $Zn(CN)_2$.
592018	Calcium cyanide $Ca(CN)_2$.
593602	Vinyl bromide.
606202	Benzene, 2-methyl-1,3-dinitro-. 2,6-Dinitrotoluene.
680319	Hexamethylphosphoramide.
684935	N-Nitroso-N-methylurea. Urea, N-methyl-N-nitroso-.
822060	Hexamethylene-1,6-diisocyanate.
1314847	Zinc phosphide Zn_3P_2.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
1319773	Cresol (cresylic acid). Cresols (isomers and mixture). Cresylic acid (isomers and mixture). Phenol, methyl-.
1330207	Benzene, dimethyl-. Xylene. Xylene (mixed). Xylenes (isomers and mixture).
1563662	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate. Carbofuran.
1582098	Trifluralin.
1634044	Methyl tert-butyl ether.
2032657	Mercaptodimethur. Methiocarb. Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate.
2763964	3(2H)-Isoxazolone, 5-(aminomethyl)-. 5-(Aminomethyl)-3-isoxazolol.
3547044	DDE.
7440417	Beryllium. Beryllium powder.
7488564	Selenium sulfide SeS_2.
7550450	Titanium tetrachloride.
7778394	Arsenic acid H_3AsO_4.
7783064	Hydrogen sulfide H_2S.
7791120	Thallium chloride TlCl.
8001352	Chlorinated camphene. Toxaphene.
11096825	Aroclor 1260.
11097691	Aroclor 1254.
11104282	Aroclor 1221.
11141165	Aroclor 1232.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
12039520	Selenious acid, dithallium(1+) salt. Thallium (I) selenite.

or who submits in such a notification any information which he knows to be false or misleading shall be subject to all of the sanctions, including criminal penalties, set forth in section 103(b) of the Act.

* * * * *

9. Section 302.8 is amended by revising paragraphs (e)(1)(iv)(H) and (f)(4)(viii) to read as follows:

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799. This is not a toll-free number. This final rule may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION:

AmeriCorps grants and operate AmeriCorps programs.

Elimination of "Six Month Rule"

Five commenters wrote in support of eliminating the "six month rule." The final rule, thus, eliminates a requirement under which grantees could not select any prospective AmeriCorps member who is or was previously employed by a prospective

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
12039520	Selenious acid, dithallium(1+) salt. Thallium (I) selenite.
12672296	Aroclor 1248.
12674112	Aroclor 1016.
13463393	Nickel carbonyl $Ni(CO)_4$, (T–4)-.
16752775	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester. Methomyl.
17804352	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl).
18883664	D-Glucose, 2-deoxy-2[[(methylnitrosoamino)-carbonyl]amino]-. Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-. Streptozotocin.
20816120	Osmium oxide OsO_4, (T–4)-. Osmium tetroxide.
20830813	Daunomycin. 5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-.
23135220	Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).
39196184	Thiofanox. 2-Butanone, 3,3-dimethyl-1-(methylthio)-,O-[(methylamino)carbonyl] oxime.
53469219	Aroclor 1242.

6. Section 302.5 is amended by revising paragraph (b) to read as follows:

§ 302.5 Determination of reportable quantities.

* * * * *

(b) *Unlisted hazardous substances.* Unlisted hazardous substances designated by 40 CFR 302.4(b) have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes which exhibit toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit toxicity have the reportable quantities listed in Table 302.4 for the contaminant on which the characteristic of toxicity is based. The reportable quantity applies to the waste itself, not merely to the toxic contaminant. If an unlisted hazardous waste exhibits toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Table 302.4 for those contaminants. If an unlisted hazardous waste exhibits the characteristic of toxicity and one or more of the other characteristics referenced in 40 CFR 302.4(b), the reportable quantity for that waste shall be the lowest of the applicable reportable quantities.

7. Section 302.6 is amended by revising paragraph (a) to read as follows:

§ 302.6 Notification requirements.

(a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center ((800) 424–8802; in Washington, DC (202) 426–2675 or (202) 267–2675; the facsimile number is (202) 267–2165; and the telex number is 892427).

* * * * *

8. Section 302.7 is amended by revising paragraph (a)(3) to read as follows:

§ 302.7 Penalties.

(a) * * *

(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he or she has knowledge of such release or who submits in such a notification any information which he knows to be false or misleading shall be subject to all of the sanctions, including criminal penalties, set forth in section 103(b) of the Act.

* * * * *

9. Section 302.8 is amended by revising paragraphs (e)(1)(iv)(H) and (f)(4)(viii) to read as follows:

§ 302.8 Continuous releases.

* * * * *

(e) * * *

(1) * * *

(iv) * * *

(H) A signed statement that the hazardous substance release(s) described is(are) continuous and stable in quantity and rate under the definitions in paragraph (b) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

(f) * * *

(4) * * *

(viii) A signed statement that the hazardous substance release(s) is(are) continuous and stable in quantity and rate under the definitions in paragraph (b) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

* * * * *

[FR Doc. 02–16866 Filed 7–8–02; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2520, 2521, 2522, 2524, 2525, 2526, 2528, and 2550

RIN 3045–AA32

AmeriCorps Grant Regulations

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") is amending several provisions relating to the AmeriCorps national service program, including requirements for AmeriCorps grants and rules on how AmeriCorps members may use the AmeriCorps education award. This final rule will eliminate several unnecessary and burdensome requirements in the AmeriCorps grants program, and conform the Corporation's regulations to changes in law.

DATES: The amendments are effective August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799. This is not a toll-free number. This final rule may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support service performed by AmeriCorps members. In addition, the Corporation, through the National Service Trust, provides education awards and certain interest payments to AmeriCorps members who successfully complete a term of service in an approved national service position.

The Corporation published a proposed rule on March 26, 2002 (67 FR 13738) with the goal of eliminating several unnecessary and burdensome requirements in the AmeriCorps grants program, and conforming the Corporation's regulations to changes in law.

Discussion of the Final Rule

The Corporation received comments from nine individuals and organizations in response to the proposed rule. As a general matter, only one of the comments the Corporation received resulted in a change to the proposed rule. Consequently, other than § 2520.30, the final rule is identical to the proposed rule as published on March 26, 2002.

Flexibility in Types of AmeriCorps Activities

One commenter specifically approved of the Corporation's proposal to broaden the circumstances under which AmeriCorps members may engage in activities that provide an indirect benefit to their community. The Corporation may approve such activities with respect to disaster relief, homeland defense, and other compelling community needs.

Eligibility of Religious Organizations for AmeriCorps Grants

Two commenters specifically endorsed the Corporation's references to religious organizations in several lists of types of organizations eligible to apply for AmeriCorps grants. A basic purpose of these amendments is to clarify that religious organizations are eligible on the same basis as any other private nonprofit organization to apply for AmeriCorps grants and operate AmeriCorps programs.

Elimination of "Six Month Rule"

Five commenters wrote in support of eliminating the "six month rule." The final rule, thus, eliminates a requirement under which grantees could not select any prospective AmeriCorps member who is or was previously employed by a prospective project sponsor within six months of the member's enrollment in the program. The commenters agreed that there are more effective and efficient ways to ensure that grantees are complying with rules against displacement, without imposing a blanket "six month rule." By continuing to require grantees to show how a proposed project will address unmet needs and by enforcing existing rules against displacement, the Corporation can ensure that any former employees enrolled as AmeriCorps members will perform service that goes well beyond—in both degree and kind—their former job duties.

Use of Education Award for Educational Courses Offered by Title IV Institutions of Higher Education

Three commenters supported the Corporation's expansion of the use of the education award to allow AmeriCorps members to use their education award to pay any current educational expenses at institutions of higher education that have entered into program participation agreements with the U.S. Department of Education under Title IV of the Higher Education Act (HEA).

Refunds to the National Service Trust

The Corporation received no comments relating to the proposed rule on refunds to the National Service Trust.

Declaration Sufficient Documentation of Member's Attainment of High School Diploma

Three commenters specifically supported the Corporation's proposal to allow self-declaration as sufficient documentation of a member's attainment of a high school diploma or its equivalent. The final rule provides that an individual's written declaration under penalty of law is sufficient to establish this element of eligibility without additional documentation.

One commenter suggested that the Corporation replace the current regulations relating to documentation of citizenship, nationality, and lawful permanent resident alien status by authorizing grantees to use the I–9 to document eligibility for AmeriCorps.

The I–9—the Immigration and Naturalization Service's Employment Eligibility Verification Form—is not, however, an appropriate basis for determining eligibility for AmeriCorps. To be eligible to serve in AmeriCorps, an individual must be a United States citizen, a United States National, or a lawful permanent resident of the United States. The categories of eligibility on

2520.30 is essentially a definition of what we consider to be using Corporation assistance. To the extent that an individual participates in activities outside the parameters of that definition, those activities would not be considered to be funded using Corporation assistance and, consequently, would not be prohibited. Nonetheless, the Corporation believes

Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by

exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2520

Grant programs—social programs, Volunteers.

program authorized and funded under subtitle C of the National and Community Service Act of 1990, as amended. (NCSA) (42 U.S.C. 12501 *et seq.*) It does not include demonstration programs, or other AmeriCorps programs, funded under subtitle H of the NCSA.

* * * * *

PART 2520—GENERAL PROVISIONS:

provision of service that does provide a direct benefit to the community in which the service is performed, or if the Corporation approves such activities in connection with disaster relief, homeland defense, or other compelling community needs.

5. Revise § 2520.30 to read as follows:

§ 2520.30 What activities are prohibited in AmeriCorps subtitle C programs?

The I–9—the Immigration and Naturalization Service's Employment Eligibility Verification Form—is not, however, an appropriate basis for determining eligibility for AmeriCorps. To be eligible to serve in AmeriCorps, an individual must be a United States citizen, a United States National, or a lawful permanent resident of the United States. The categories of eligibility on the I–9 are far more numerous than the categories of eligibility for AmeriCorps. Simply having authorization to work in the United States is not sufficient to show eligibility for AmeriCorps, and using the I–9 to establish eligibility could result in ineligible individuals enrolling in AmeriCorps.

Clarification of Statutory List of Prohibited Activities

One commenter suggested changes to part 2520.30, specifically with respect to the regulation as it relates to religious organizations. This commenter suggested that the Corporation modify subsection (g) in the proposed rule by adding to it the standard from subsection (h)(5), such that the end of that section would read "...unless Corporation assistance is not used to support those religious activities." The commenter believed that this addition would allow religious organizations, and their employees and representatives actually performing public service, to "legally and practically participate in Corporation programs." In addition, this commenter opined that the terms "activities associated with the AmeriCorps program or the Corporation" and "any form of religious proselytization" should be clarified.

Addressing the two latter comments first, the Corporation is amending the proposed rule to clarify that it applies to activities "supported by the AmeriCorps program or the Corporation." In addition, the Corporation has added a subsection to make clear that AmeriCorps members may voluntarily take part in any of the prohibited activities on their own time.

With respect to clarifying the phrase "any form of religious proselytization," the Corporation notes that the phrase uses the same words as section 132 of the National and Community Service Act. We believe that using the precise statutory language is appropriate here. Furthermore, we note that an individual may engage in such activities on his or her own time.

With respect to the commenter's first suggestion, the Corporation believes that the proposed rule already applies the standard that the commenter seeks to reinforce by adding the proposed language. The first sentence of part 2520.30 is essentially a definition of what we consider to be using Corporation assistance. To the extent that an individual participates in activities outside the parameters of that definition, those activities would not be considered to be funded using Corporation assistance and, consequently, would not be prohibited. Nonetheless, the Corporation believes that the changes it is making to the proposed rule, as described above, further reinforce the distinction between activities funded using Corporation assistance and those not.

Elimination of Obsolete References to Palau

The Corporation received no comments regarding eliminating references to Palau, which became independent on October 1, 1994 and is no longer eligible as a U.S. Territory for AmeriCorps grants.

Eligibility of Territories for Administrative Funds

The Corporation received no comments regarding its inclusion of the territories as entities eligible to apply for grants under this section, in order to comply with the NCSA.

Definition of Institution of Higher Education

The Corporation received no comments regarding the proposal to amend the regulations to conform with the statutory amendments to the National and Community Service Act of 1990, as amended.

Other

One commenter suggested that the Corporation allow members to serve for 3 years in AmeriCorps (presumably AmeriCorps*State and *National) rather than 2 years. Another commenter suggested that the Corporation allow agencies to host more than two cycles of grant funding; reduce the minimum number of FTE for a program to be eligible; make the education award and living allowance non-taxable income; remove the tax burden for student loan interest payments; and allow the education award to be transferable to family members. All of these suggestions were outside the scope of the proposed rule, and several were outside the Corporation's statutory authority. Consequently, the Corporation is not responding to these comments at this time.

Executive Order 12866

The Corporation has determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). If the Corporation proposes to modify any of the forms used in connection with determining eligibility of individuals for payments from the National Service Trust, the Corporation will comply with clearance procedures as provided under the Paperwork Reduction Act.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2520

Grant programs—social programs, Volunteers.

45 CFR Part 2521

Grant programs—social programs, Volunteers.

45 CFR Part 2522

Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2524

Grant programs—social programs, Technical assistance, Volunteers.

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2526

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2550

Administrative practice and procedure, Grant programs—social programs.

For the reasons stated in the preamble, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2510.20 by revising the definition of "Institution of higher education," and by adding the definition "Subtitle C program" in alphabetical order to read as follows:

§ 2510.20 Definitions.

* * * * *

Institution of higher education. The term *institution of higher education* has the same meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

* * * * *

Subtitle C program. The term *subtitle C program* means an AmeriCorps program authorized and funded under subtitle C of the National and Community Service Act of 1990, as amended. (NCSA) (42 U.S.C. 12501 *et seq.*) It does not include demonstration programs, or other AmeriCorps programs, funded under subtitle H of the NCSA.

* * * * *

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

1. Revise the heading of part 2520 to read as set forth above.

2. The authority citation for part 2520 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

3. Revise § 252.10 to read as follows:

§ 2520.10 What is the purpose of the AmeriCorps subtitle C program described in parts 2520 through 2524 of this chapter?

The purpose of the AmeriCorps subtitle C program is to provide financial assistance under subtitle C of the National and Community Service Act to support AmeriCorps programs that address educational, public safety, human, or environmental needs through national and community service, and to provide AmeriCorps education awards to participants in such programs.

4. Revise § 2520.20 to read as follows:

§ 2520.20 What types of service activities are allowed for AmeriCorps subtitle C programs supported under parts 2520 through 2524 of this chapter?

(a) Except as provided in paragraph (b) of this section, the service must either provide a direct benefit to the community where it is performed, or involve the supervision of participants or volunteers whose service provides a direct benefit to the community where it is performed. Moreover, the approved AmeriCorps activities must result in a specific identifiable service or improvement that otherwise would not be provided and that does not duplicate the routine functions of workers or displace paid employees. Programs must develop service opportunities that are appropriate to the skill levels of participants and that provide a demonstrable, identifiable benefit that the community values.

(b) In certain circumstances, some activities may not provide a direct benefit to the communities in which the service is performed. Such activities may include, but are not limited to, clerical work and research. However, a participant may engage in such activities only if the performance of the activity is incidental to the program's provision of service that does provide a direct benefit to the community in which the service is performed, or if the Corporation approves such activities in connection with disaster relief, homeland defense, or other compelling community needs.

5. Revise § 2520.30 to read as follows:

§ 2520.30 What activities are prohibited in AmeriCorps subtitle C programs?

(a) While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation, staff and members may not engage in the following activities:

(1) Attempting to influence legislation;

(2) Organizing or engaging in protests, petitions, boycotts, or strikes;

(3) Assisting, promoting, or deterring union organizing;

(4) Impairing existing contracts for services or collective bargaining agreements;

(5) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(6) Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

(7) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(8) Providing a direct benefit to—

(i) A business organized for profit;

(ii) A labor union;

(iii) A partisan political organization;

(iv) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and

(v) An organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support those religious activities; and

(9) Such other activities as the Corporation may prohibit.

(b) Individuals may exercise their rights as private citizens and may

participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. * * *

* * * * *

5. Amend § 2521.30 by revising the section heading, the introductory text, paragraph (b)(1), footnote 1 to paragraph (b)(1), and the first sentence of paragraph (b)(3) to read as follows:

meet certain minimum program requirements. * * *

* * * * *

3. Amend § 2522.200 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e) respectively, adding a new paragraph (b), and revising the heading of the newly designated paragraph (e) to read as follows:

§ 2525.20 Definitions.

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance, or other costs attributable to an educational course offered by an institution of higher education that has in effect a program participation agreement under Title IV of the Higher Education Act, for a period of enrollment that begins after

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

* * * * *

(c) *Written declaration regarding high school diploma sufficient for disbursement.* For purposes of disbursing an education award, if an individual provides a written declaration under penalty of law that he or she meets the requirements in

of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance or other educational expenses attributable to a course offered by the institution;

* * * * *

4. Amend § 2528.50 by revising paragraph (a) to read as follows:

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participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

1. Revise the heading of part 2521 to read as set forth above.

2. The authority citation for part 2521 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

3. Amend § 2521.10 by revising the section heading and paragraph (a) to read as follows:

§ 2521.10 Who may apply to receive an AmeriCorps subtitle C grant?

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education are eligible to apply for AmeriCorps subtitle C grants. However, the fifty States, the District of Columbia and Puerto Rico must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to part 2550 of this chapter in order to be eligible.

* * * * *

4. Amend § 2521.20 as follows:

a. By revising the section heading, paragraph (a)(2)(ii) and the first sentence of paragraph (b)(2)(ii);

b. Removing paragraph (c); and

c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d) respectively.

The revisions read as follows:

§ 2521.20 What types of AmeriCorps subtitle C program grants are available for award?

* * * * *

(a) * * *

(2) * * *

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for planning grants.

* * * * *

(b) * * *

(2) * * *

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. * * *

* * * * *

5. Amend § 2521.30 by revising the section heading, the introductory text, paragraph (b)(1), footnote 1 to paragraph (b)(1), and the first sentence of paragraph (b)(3) to read as follows:

§ 2521.30 How will AmeriCorps subtitle C program grants be awarded?

In any fiscal year, the Corporation will award AmeriCorps subtitle C program grants as follows:

* * * * *

(b) * * *

(1) One percent of available funds will be distributed to the U.S. Territories [1] that have applications approved by the Corporation according to a population-based formula.[2]

* * * * *

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b) (1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), institutions of higher education, and Federal agencies. * * *

* * * * *

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2522.100 by revising the section heading and the first sentence of the introductory text, removing the period at the end of the penultimate sentence of paragraph (g)(1) and adding a semicolon in its place, and removing the last sentence of paragraph (g)(1) to read as follows:

§ 2522.100 What are the minimum requirements that AmeriCorps subtitle C grantees must meet?

Although a wide range of programs may be eligible to apply for and receive support from the Corporation, all AmeriCorps subtitle C programs must meet certain minimum program requirements. * * *

* * * * *

3. Amend § 2522.200 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e) respectively, adding a new paragraph (b), and revising the heading of the newly designated paragraph (e) to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

* * * * *

(b) *Written declaration regarding high school diploma sufficient for enrollment.* For purposes of enrollment, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (a) of this section relating to high school education, a program need not obtain additional documentation of that fact.

* * * * *

(e) *Secondary documentation of citizenship or immigration status.* * * *

* * * * *

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

1. The authority citation for part 2524 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2524.10 by revising paragraph (a) introductory text to read as follows:

§ 2524.10 For what purposes will technical assistance and training funds be made available?

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, religious organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

* * * * *

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2525.20 by revising the definition "Current educational expenses" and by adding the definitions "Educational expenses" and "Period of enrollment" in alphabetical order to read as follows:

[1] The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory's population to the population of all such territories multiplied by the amount of the one percent set-aside.

§ 2525.20 Definitions.

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance, or other costs attributable to an educational course offered by an institution of higher education that has in effect a program participation agreement under Title IV of the Higher Education Act, for a period of enrollment that begins after an individual enrolls in an approved national service position.

* * * * *

Educational expenses at a Title IV institution of higher education. The term *educational expenses* means—

(1) Cost of attendance as determined by the institution; or

(2) Other costs at a title IV institution of higher education attributable to a non-title IV educational course as follows:

(i) Tuition and fees normally assessed a student for a course or program of study by the institution, including costs for rental or purchase of any books or supplies required of all students in the same course of study;

(ii) For a student engaged in a course of study by correspondence, only tuition and fees and, if required, books, and supplies;

(iii) For a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(iv) For a student engaged in a work experience under a cooperative education program or course, an allowance for reasonable costs associated with such employment (as determined by the institution).

* * * * *

Period of enrollment. Period of enrollment means the period that the title IV institution has established for which institutional charges are generally assessed (i.e., length of the student's course, program, or academic year.)

* * * * *

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

1. The authority citation for part 2526 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2526.10 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively, and adding a new paragraph (c) to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

* * * * *

(c) *Written declaration regarding high school diploma sufficient for disbursement.* For purposes of disbursing an education award, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (b) of this section relating to high school education, no additional documentation is needed.

* * * * *

PART 2528—USING AN EDUCATION AWARD

1. The authority citation for part 2528 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Amend § 2528.10 by revising paragraph (a)(2) to read as follows:

§ 2528.10 For what purposes may an education award be used?

(a) * * *

(2) To pay all or part of the current educational expenses at an institution of higher education in accordance with §§ 2528.30 through 2528.50;

* * * * *

3. Amend § 2528.30 by revising the section heading, paragraph (a) introductory text, and paragraphs (a)(2)(iii), (a)(2)(iv), and (a)(2)(v) to read as follows:

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current educational expenses at an institution of higher education, the Corporation must receive—

* * * * *

(2) * * *

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution of higher education will ensure an appropriate refund to the Corporation of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to the Corporation of the unused portion of the education award;

(iv) Individuals using education awards to pay for the current educational expenses at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance or other educational expenses attributable to a course offered by the institution;

* * * * *

4. Amend § 2528.50 by revising paragraph (a) to read as follows:

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, an institution of higher education that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation in an amount determined under that institution's published refund requirements.

(2) If an institution for higher education does not have a published refund policy, the institution must provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

5. Amend § 2528.60 by revising paragraph (a)(2)(iii) to read as follows:

§ 2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?

(a) * * *

(2) * * *

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the school-to-work program will ensure an appropriate refund to the Corporation of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

6. Amend § 2528.70 by revising paragraph (a) to read as follows:

§ 2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise

fails to complete a period of enrollment, an approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation determined under that program's published refund policy.

(2) If a school-to-work program does not have a published refund policy, the program must provide a pro-rata refund

ACTION: Final rule.

SUMMARY: This document makes conforming edits to service-specific competitive bidding rules and portions of the part 1 general competitive bidding rules in accordance with the authority delegated by the Commission. These conforming edits further the Wireless Telecommunication Bureau's ("Bureau") continuing efforts to streamline its procedures in accordance with the Commission's biennial regulatory review obligations set forth at section 11(a) of the Communications Act of 1934, as amended, and the recommendations contained in the *2000 Biennial Staff Report*. In addition to making these conforming edits, the Bureau also adopts uniform language stating this proposition in all services subject to competitive bidding and modifies the following service-specific rules: §§ 21.950; 22.201; 22.228; 22.960; 24.301; 24.701; 25.401; 27.201; 27.501(a); 27.701; 73.3572(e)(2), (f); 73.5000(a); 80.1251; 90.801; 90.901; 90.1001; 90.1101; 95.816(a); 100.71; 101.537; 101.1101; 101.1201; and

made the majority of the changes contemplated by its prior orders. Therefore, the Commission recognized that it was appropriate to commence the next step in the process, *i.e.*, eliminating service-specific competitive bidding rules from the CFR that have either been superseded by or are redundant with the part 1 general competitive bidding rules. Accordingly, the Commission delegated to the Bureau the authority to make

part 1 competitive bidding rules. The Bureau adopts uniform language stating this proposition in all services subject to competitive bidding and modifies the following service-specific rules: §§ 21.950; 22.201; 22.228; 22.960; 24.301; 24.701; 25.401; 27.201; 27.501(a); 27.701; 73.3572(e)(2), (f); 73.5000(a); 80.1251; 90.801; 90.901; 90.1001; 90.1101; 95.816(a); 100.71; 101.537; 101.1101; 101.1201; and

Section 1.2105 sets forth the information and certifications that applicants must provide to participate in an auction. This section also prohibits applicants from communicating with each other about bids, bidding strategies, or settlements if the applicants are bidding on licenses in the same geographic area unless applicants are members of bidding arrangements identified on a bidder's

fails to complete a period of enrollment, an approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation determined under that program's published refund policy.

(2) If a school-to-work program does not have a published refund policy, the program must provide a pro-rata refund to the Corporation of the unused portion of the education award.

* * * * *

PART 2550—REQUIREMENTS AND GENERAL PROVISION FOR STATE COMMISSIONS, ALTERNATIVE ADMINISTRATIVE ENTITIES AND TRANSITIONAL ENTITIES

1. The authority citation for part 2550 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2550.10 by revising paragraph (c) to read as follows:

§ 2550.10 What is the purpose of this part?

* * * * *

(c) The Corporation will distribute grants of between $125,000 and $750,000 to States to cover the Federal share of operating the State Commissions, AAEs, or Transitional Entities.

* * * * *

3. Amend § 2550.20 by revising paragraph (k) to read as follows:

§ 2550.20 Definitions.

* * * * *

(k) *State.* As used in this part, the term State refers to each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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Dated: July 2, 2002.

Gary Kowalczyk,

Director of Planning and Program Integration.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101

[DA 02–847]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes conforming edits to service-specific competitive bidding rules and portions of the part 1 general competitive bidding rules in accordance with the authority delegated by the Commission. These conforming edits further the Wireless Telecommunication Bureau's ("Bureau") continuing efforts to streamline its procedures in accordance with the Commission's biennial regulatory review obligations. In addition to making these conforming edits, the Bureau also exercises its delegated authority to make certain ministerial conforming amendments, including edits to correct competitive bidding provisions that were inadvertently altered or deleted. The intended effect of this action is to eliminate approximately 66 pages of redundant or unnecessary rules from the Code of Federal Regulations.

DATES: Effective August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Francis Gutierrez or Robert Krinsky of the Auctions and Industry Analysis Division at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Competitive Bidding Order* adopted and released on April 11, 2002. After release of the order, the Bureau released three errata which made minor corrections to the order. The first two errata were incorporated into the version of the *Competitive Bidding Order* published in the FCC Record (17 FCC Rcd 6534 (WTB 2002)). The third erratum was released on June 14, 2002, DA 02–1414. All three errata have been incorporated in the text of the rules accompanying this **Federal Register** summary. The full text of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. These documents may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. Introduction

1. In the *Competitive Bidding Order,* the Wireless Telecommunications Bureau ("Bureau") makes conforming edits to service-specific competitive bidding rules and portions of the part 1 general competitive bidding rules in accordance with the authority delegated by the Commission in the *Part 1 Fifth Report and Order,* 65 FR 52323 (August 29, 2000). These conforming edits further the Bureau's continuing efforts to streamline its procedures in accordance with the Commission's biennial regulatory review obligations set forth at section 11(a) of the Communications Act of 1934, as amended, and the recommendations contained in the *2000 Biennial Staff Report.* In addition to making these conforming edits, the Bureau also exercises its delegated authority to make certain ministerial conforming amendments, including edits to correct competitive bidding provisions that were inadvertently altered or deleted by the *Part 1 Third Report and Order,* 63 FR 2315 (January 15, 1998), and the *Competitive Bidding Sixth Report and Order,* 60 FR 37786 (July 21, 1995). The Bureau also removes service-specific provisions that are redundant with the Bureau's delegated authority to conduct auctions. The effect of today's action is to eliminate approximately 66 pages of redundant or unnecessary rules from the Code of Federal Regulations ("CFR").

II. Background

2. In the *Competitive Bidding Second Report and Order,* 59 FR 22980 (May 4, 1994), by amending part 1 of the Commission's rules to add a new subpart Q, the Commission established general competitive bidding rules that would apply to a variety of spectrum based services licensed by the Commission. In establishing these rules, the Commission intended that the general competitive bidding rules would apply to a particular service unless it adopted service-specific rules that varied from the part 1 general competitive bidding rules. Subsequently, the Commission adopted competitive bidding rules for a number of services. A consequence of the adoption of these service-specific competitive bidding rules was an unnecessary variation in procedures across services. Additionally, portions of the part 1 general competitive bidding rules were repeated almost verbatim in the service-specific competitive bidding rules. Accordingly, in 1997, based upon its experience with the competitive bidding process, the Commission initiated the part 1 proceeding to establish a uniform set of provisions for all services subject to competitive bidding, eliminate unnecessary rules, and provide for a more consistent and efficient licensing process.

3. In the *Part 1 Fifth Report and Order,* the most recent comprehensive Order in the part 1 proceeding, the Commission determined that it had

made the majority of the changes contemplated by its prior orders. Therefore, the Commission recognized that it was appropriate to commence the next step in the process, *i.e.,* eliminating service-specific competitive bidding rules from the CFR that have either been superseded by or are redundant with the part 1 general competitive bidding rules. Accordingly, the Commission delegated to the Bureau the authority to make conforming edits to the CFR consistent with the part 1 proceeding.

III. Discussion

4. Pursuant to our delegated authority, the *Competitive Bidding Order* identifies and removes service-specific competitive bidding rules that have been superseded or made redundant by the part 1 general competitive bidding rules. In those instances in which service-specific departures from the part 1 general competitive bidding rules were tailored for a particular service, the Bureau retains such rules. In addition, pursuant to the Bureau's delegated authority to make ministerial conforming edits to Commission rules, the Bureau restores and revises certain rule sections that were inadvertently altered, deleted, or misstated.

5. As explained, the Bureau modifies or removes service-specific competitive bidding rules in the following areas: (i) Scope of service-specific competitive bidding rules; (ii) competitive bidding design options; (iii) competitive bidding mechanisms; (iv) bidding application and certification procedures, and prohibition of collusion; (v) submission of upfront payments; (vi) submission of down and full payments, and filing of long-form applications; (vii) procedures for filing petitions to deny against long-form applications; (viii) license grant, denial, default, and disqualification; (ix) designated entities; (x) unjust enrichment in license assignment or transfer of control; (xi) ownership disclosure requirements for short- and long-form applications; and (xii) definitions. Also, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed or modified.

6. *Scope of service-specific competitive bidding rules.* Each set of service-specific competitive bidding rules contains a provision that provides that the general competitive bidding rules set forth at part 1, subpart Q of the Commission's rules apply unless the service-specific rules indicate otherwise. This means that service-specific competitive bidding rules are necessary only to specify departures from or supplemental procedures to the part 1 competitive bidding rules. The Bureau adopts uniform language stating this proposition in all services subject to competitive bidding and modifies the following service-specific rules: §§ 21.950; 22.201; 22.228; 22.960; 24.301; 24.701; 25.401; 27.201; 27.501(a); 27.701; 73.3572(e)(2), (f); 73.5000(a); 80.1251; 90.801; 90.901; 90.1001; 90.1101; 95.816(a); 100.71; 101.537; 101.1101; 101.1201; and 101.1317.

7. *Competitive bidding design options.* Section 1.2103 of the Commission's rules outlines the general competitive bidding design options (or the different competitive bidding methodologies) for services or classes of services subject to competitive bidding. These competitive bidding design options include: simultaneous multiple-round auctions (using remote or on-site electronic bidding); sequential multiple-round auctions (using either oral ascending or remote and/or on-site electronic bidding); sequential or simultaneous single-round auctions (using either sealed paper or remote and/or on-site electronic bidding); combinatorial (package/contingent) bidding auctions; and real-time bidding in all electronic auction designs. The following service-specific rules, which are redundant with all or part of § 1.2103, are removed: §§ 21.951(a)–(a)(1); 22.203; 22.961; 24.702; 90.802; 90.902; 90.1003; 100.72; 101.1102; and 101.1202.

8. *Competitive bidding mechanisms.* Section 1.2104 of the Commission's rules describes the mechanisms used to implement the Commission's competitive bidding design provisions. This rule also sets forth the treatment of bid withdrawal, down and full payment default, and bidder disqualification. The following service-specific rules redundant with all or part of the competitive bidding design mechanism provisions of § 1.2104 are modified or removed: §§ 21.951(a)(2)–(c); 22.205; 22.962; 25.402; 27.202; 73.5001; 90.803; 90.903(c)–(f); 90.1005; 90.1015(b); 100.73; 101.1103; and 101.1203. Also, the following service-specific rules, which conflict or are redundant with all or part of the bid withdrawal, down or full payment default, and disqualification payment rules of § 1.2104, are removed: §§ 21.959(a)–(b); 22.207; 22.215(b); 22.963; 24.704; 27.203; 73.5004(a); 90.805; 90.905; 90.1007; 100.74; and 100.78(b).

9. *Bidding application and certification procedures; prohibition of collusion.* Section 1.2105 of the Commission's rules describes the short-form application ("FCC Form 175") and certification procedures and the prohibition against applicant collusion. Section 1.2105 sets forth the information and certifications that applicants must provide to participate in an auction. This section also prohibits applicants from communicating with each other about bids, bidding strategies, or settlements if the applicants are bidding on licenses in the same geographic area unless applicants are members of bidding arrangements identified on a bidder's short-form application. This prohibition period commences at the short-form application filing deadline and concludes at the post-auction down payment deadline. The following service-specific rules, which are redundant with all or part of the part 1 short-form application and certification procedures in § 1.2105, are removed in whole or in part: §§ 21.952; 22.209; 22.227; 22.964; 24.709(a)(4)–(5); 27.204(a)–(b); 90.806; 90.906; 90.1009; 100.75; 101.531(a); 101.1104; and 101.1204. Also, the following service-specific rules, which are redundant with all or part of the prohibition on collusion in § 1.2105, are modified or removed in whole or in part: §§ 21.953; 25.405; 27.204(c); and 100.79.

10. *Submission of upfront payments.* Section 1.2106 of the Commission's rules describes the procedures for submitting upfront payments, i.e., the sums an applicant that complies with the short-form application requirements tenders to the Commission before an auction in order to be qualified to bid. The following service-specific rules, which conflict or are redundant with all or part of § 1.2106 of the Commission's rules, are removed in whole or in part: §§ 21.954; 22.211(a); 22.965(a); 24.706(a), (c); 24.711(a)(1); 24.716(a)(1); 27.205; 73.5003(a); 90.807(a); 90.907(a); 90.1011(a); 100.76(a); 101.1105(a); and 101.1205(a).

11. *Submission of down and full payments, and filing of long-form applications.* Section 1.2107 of the Commission's rules describes the procedures for submitting down and full payments and filing the long-form application ("FCC Form 601"). The Bureau recognizes that other licensing bureaus may use different FCC Forms for their long-form application. The down payment is the sum that the winning bidder(s) must tender to the Commission after the auction closes to bring its total deposit(s) up to twenty (20) percent of its high bid(s). This payment assures the Commission that the winning bidder is able to tender the full amount of its bid when it later comes due. Unless otherwise specified by public notice, the down payment must be made within ten (10) business days after the winning bidder is notified

that it is the high bidder for a license(s). The Commission relies upon the long-form application to determine whether the winning bidder is qualified to be a licensee. The long-form application must be submitted within ten (10) business days after the winning bidder is notified that it is the high bidder. After submission of the down payment and long-form application, the winning

90.809(a); 90.909(a)–(b); 90.1015; and 100.78(a).

14. *Designated entities.* Section 1.2110 of the Commission's rules sets forth certain provisions applicable to designated entities—small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. This section also provides the eligibility criteria for

specific rules, which are redundant with all or part of § 1.2111 of the Commission's rules, are modified or removed in whole or in part: §§ 21.960(b)(5)(i)–(ii), (d)(1); 22.217(b); 24.711(c); 24.712(c); 24.714(c); 24.716(d); 24.717(c); 27.15(c); 27.209(d); 73.5009(a); 90.810(b); 90.812(b); 90.813(c), (d)(2)(i); 90.910(b); 90.911(c); 90.1017(b); 95.823(c)(1); 101.56(i); 101.535(a)(1), (c); 101.1107(e);

the following service-specific rules because they conflict or are redundant with § 1.2110(c)(3) of the Commission's rules, the part 1 definition for "businesses owned by members of minority groups and/or women": §§ 24.709(g); 24.720(i); 90.814(e)–(f); and 90.815(e). The Bureau removes the following service-specific rules in whole or in part because they conflict or are redundant with § 1.2110(n) of the

IV. Ordering Clause

19. Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's rules are amended in accordance with the foregoing *Competitive Bidding Order* and as set forth and becomes effective August 8, 2002. This action is taken pursuant to the authority delegated by the Commission in the *Part 1 Fifth Report and Order,* 47 U.S.C. 155(c), and 47 CFR

affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business. An applicant seeking status as a small business must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of

that it is the high bidder for a license(s). The Commission relies upon the long-form application to determine whether the winning bidder is qualified to be a licensee. The long-form application must be submitted within ten (10) business days after the winning bidder is notified that it is the high bidder. After submission of the down payment and long-form application, the winning bidder must submit the full payment due on the license(s) within ten (10) business days of notification that the license(s) is ready for grant, unless it qualifies to make installment payments. If the winning bidder fails to make the full payment within this time period, it is afforded an additional ten (10) day period to make full payment, provided that it also pays a late fee equal to five (5) percent of the amount due. The following service-specific rules, which conflict or are redundant with all or part of § 1.2107 of the Commission's rules, are modified or removed in whole or in part: §§ 21.955(a), (c); 21.958; 22.211(b); 22.213; 22.965(b); 24.706(b); 24.711(a)(2); 24.716(a)(2); 25.404(a), (b); 27.206; 73.3573(f)(5)(i); 73.5003(b)–(c); 74.1233(d)(5)(i); 90.807(b); 90.808; 90.907(b); 90.908; 90.1011(b); 90.1013; 100.76(b); 101.531; 101.1105(b); 101.1205(b); and 101.1206.

12. *Procedures for filing petitions to deny against long-form applications.* Section 1.2108 of the Commission's rules describes the timing and procedures for filing petitions to deny a winning bidder's long-form application. The period for filing a petition to deny commences after the Commission releases a public notice announcing that a long-form application has been accepted for filing. Section 1.2108 also provides that the length of time to file a petition to deny may vary on a service-specific basis, but cannot exceed ten (10) days. The following service-specific rules, which conflict or are redundant with all or part of § 1.2108 of the Commission's rules, are modified or removed: §§ 21.957; 90.1025(a); 101.1110; and 101.1207.

13. *License grant, denial, default, and disqualification.* Section 1.2109 of the Commission's rules addresses the consequences for a winning bidder that fails to timely make a down payment or full payment on its winning bid(s), withdraws its bid(s) after the auction has closed, violates the federal antitrust laws, or is otherwise found unqualified to be a licensee. The following service-specific rules, which conflict or are redundant with all or part of § 1.2109 of the Commission's rules, are modified or removed: §§ 21.959(c)–(e); 22.207; 22.215; 22.967; 24.708; 24.711(a)(2); 24.716(a)(2); 25.406; 27.208; 73.5004; 90.809(a); 90.909(a)–(b); 90.1015; and 100.78(a).

14. *Designated entities.* Section 1.2110 of the Commission's rules sets forth certain provisions applicable to designated entities—small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. This section also provides the eligibility criteria for small businesses, defines terms specific to designated entities, and addresses bidding credits and other financial incentives available to certain designated entities. The following service-specific rules, which are redundant with certain portions of § 1.2110 of the Commission's rules, are removed: §§ 21.955(b); 24.321(a)(7); 24.716(c); 27.210(b)(3)(ii), (c); 27.502(a)(7); 90.812(a); and 101.538(a)(8). The Bureau also modifies or removes the following service-specific rules in whole or in part because they conflict or are redundant with § 1.2110(b) of the Commission's rules, the part 1 eligibility criteria for small business status: §§ 21.961(b)(2); 22.223(b)(2)–(4); 24.321(a)(3)–(5); 24.709(a)(2); 24.720(b)(3)–(4); 27.210(b)(3); 27.502(a)(3)–(5); 80.1252(b)(3)–(4); 90.814(b)(2); 90.912(b)(3); 90.1021(b)(3); 90.1103(b)(3)–(4); 95.816(c)(3)–(4); 101.538(a)(5)–(6); and 101.1209(b)(2). The Bureau modifies the following servico-specific rules by changing the term "controlling principal" to "controlling interest" to conform the rules with the Commission's general competitive bidding rules: §§ 90.912(b)(1)–(2); 90.913(a)(1); 90.1021(b)(1)–(2); 90.1023(a)(1); 101.1109(a)(1); and 101.1112(b)–(e). Additionally, the Bureau modifies or removes the following service-specific rules in whole or in part because they conflict or are redundant with certain portions of § 1.2110(c)(2) of the Commission's rules, the part 1 definition of "controlling interest': §§ 22.223(e); 22.225(e); 24.321(b); 27.502(b); 80.1252(c); 90.814(g); 90.1103(c); 95.816(d); and 101.538(b). The Bureau also modifies § 24.709 to clarify its applicability to existing licensees.

15. *Assignment or transfer of control: unjust enrichment.* Section 1.2111 of the Commission's rules contains the procedures and reporting requirements for assigning or transferring licenses. This section also contains the rules for partitioning a license and disaggregating spectrum, including the related matters of unjust enrichment, bidding credits, installment payments, the length of the license term, and construction requirements. The following service-specific rules, which are redundant with all or part of § 1.2111 of the Commission's rules, are modified or removed in whole or in part: §§ 21.960(b)(5)(i)–(ii), (d)(1); 22.217(b); 24.711(c); 24.712(c); 24.714(c); 24.716(d); 24.717(c); 27.15(c); 27.209(d); 73.5009(a); 90.810(b); 90.812(b); 90.813(c), (d)(2)(i); 90.910(b); 90.911(c); 90.1017(b); 95.823(c)(1); 101.56(i); 101.535(a)(1), (c); 101.1107(e); 101.1208(b); 101.1319(c); and 101.1323(c).

16. *Ownership disclosure requirements for short- and long-form applications.* Section 1.2112 of the Commission's rules contains the Commission's ownership disclosure requirements for both the short-form application, which is a pre-requisite to participation in an auction, and the long-form application, which is filed by the winning bidder(s) to assist the Commission in determining whether the winning bidder is qualified to be a licensee. The Bureau modifies or removes §§ 22.225(b), 90.815(a)–(b), 90.913(a)–(b), 90.1023(a)–(b), and 101.1109(a)–(b) because these service-specific rules are redundant with the ownership disclosure requirements set forth in § 1.2112 of the Commission's rules. The Bureau also modifies § 73.5009(b) to indicate that the ownership disclosure requirements found at § 1.2112(a) do not apply to the assignment or transfer of licenses or construction permits in the broadcast services subject to competitive bidding.

17. *Definitions.* Section 1.2110 of the Commission's rules provides uniform definitions for "affiliate," "audits," "businesses owned by members of minority groups and/or women," "controlling interests," "eligibility for small business provisions," "gross revenues," and "rural telephone company." The Bureau modifies or removes the following rules in whole or in part because they conflict or are redundant with § 1.2110(c)(5) of the Commission's rules, the part 1 definition of "affiliate": §§ 21.961(d); 22.223(d); 22.225(e); 24.709(g); 24.720(l); 27.210(d); 90.814(h); 90.815(e); 90.912(d); 90.913(d)(3); 90.1021(d); 90.1023(e); 90.1323(e); 101.1112(h); and 101.1209(e). The Bureau modifies the definition of "audits" in § 1.2110(m) to clarify that all applicants and licensees claiming designated entity status are subject to audits. Accordingly, the following service-specific rules, which are redundant with § 1.2110(m) of the Commission's rules, are removed: §§ 21.960(g); 22.225(d); 24.709(d); 90.815(d); 90.913(d); 90.1023(d); and 101.1109(d). The Bureau also removes the following service-specific rules because they conflict or are redundant with § 1.2110(c)(3) of the Commission's rules, the part 1 definition for "businesses owned by members of minority groups and/or women": §§ 24.709(g); 24.720(i); 90.814(e)–(f); and 90.815(e). The Bureau removes the following service-specific rules in whole or in part because they conflict or are redundant with § 1.2110(n) of the Commission's rules, the part 1 definition of "gross revenues": §§ 21.961(c); 22.223(c); 22.225(e); 24.709(g); 24.720(f); 27.210(c); 90.814(d); 90.815(e); 90.912(c); 90.913(d)(3); 90.1021(c); 90.1023(e); 90.1323(e); 101.1112(g); and 101.1209(d). The Bureau also modifies or removes the following service-specific rules in whole or in part because they are redundant with § 1.2110(c)(4) of the Commission's rules, the part 1 definition of "rural telephone company": §§ 24.720(e); 90.814(c); and 101.1209(c). The Bureau also adds a definition of "total assets" to § 1.2110 of the Commission's rules to address the circumstances in which "total assets" information is relevant to the determination of whether an applicant (or licensee) is eligible for status as an entrepreneur. Accordingly, the Bureau deletes the redundant portions of the following service-specific rules that pertain to "total assets": §§ 24.709(g); 24.720(g); and 90.815(e).

18. *Technical/ministerial edits to Commission rules.* As a result of the conforming edits made in this Order, some of the service-specific competitive bidding rules refer to sections of the part 1 general competitive bidding rules that have been removed or modified. Accordingly, the Bureau modifies the following rules to eliminate or correct references to rules that have been removed or modified: §§ 1.2107(e); 1.2110(f)(3)(ii)(B), (f)(3)(iii)–(iv), (vii); 21.956(b)(3); 21.960(b)(4); 22.223(b)(3); 24.321(c)(1); 24.709; 24.711(b)–(b)(2); 24.712(a)–(b); 24.714(d)(1), (d)(2)(i), (iii), (d)(3)(i), (ii); 24.716(b)–(b)(2); 24.717(a)–(b); 24.720(b)(5), (c)(2), (j)(2), (k)(4), (n)(3)–(4); 27.15(d)–(e); 73.3571(h)(4)(i); 73.3573(f)(5)(ii); 73.5005(a); 73.5006(d); 80.1252(d); 90.705; 90.813(d)(2)(ii)–(iv), (3)(ii), (e), (f); 90.814(a)(3); 90.910(a); 90.1017(a); 90.1025(b); 90.1103(d); 95.816(e); 95.823(c)(2), (c)(2)(iii), (c)(3); 101.538(c); and 101.1319(b). Finally, the Bureau corrects errors in the following rules pursuant to its delegated authority under § 0.331(d) to make ministerial conforming edits: §§ 22.227; 24.711(b)(3)–(5); 73.5009; 90.809(b); 90.813(a); 90.909(c); 90.913(a); 95.816(f); and 101.538(a)(7).

IV. Ordering Clause

19. Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's rules are amended in accordance with the foregoing *Competitive Bidding Order* and as set forth and becomes effective August 8, 2002. This action is taken pursuant to the authority delegated by the Commission in the *Part 1 Fifth Report and Order*, 47 U.S.C. 155(c), and 47 CFR 0.131(c) and 0.331(d).

List of Subjects

47 CFR Parts 1 and 27

Communications common carriers.

47 CFR Parts 21, 22, 24, 25, 73, 74, 80, 90, 95, 100, and 101

Communications equipment.

Federal Communications Commission.

Kathleen O'Brien Ham,

Deputy Chief, Wireless Telecommunications Bureau.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Amend § 1.2107 by revising paragraph (e) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(e) A winning bidder that seeks a bidding credit to serve a qualifying tribal land, as defined in § 1.2110(f)(3)(i), within a particular market must indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market.

* * * * *

3. Amend § 1.2110 by revising paragraphs (b) introductory text, (b)(1), (f)(3)(ii)(B), (f)(3)(iii), (f)(3)(iv), (f)(3)(vii), and (m)(1) and adding new paragraph (o) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) Eligibility for small business and entrepreneur provisions.

(1) *Size attribution.* (i) The gross revenues of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business. An applicant seeking status as a small business must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of the previous three years.

(ii) If applicable, the total assets of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of the previous two years.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) In addition, within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the buildout requirements set forth in § 1.2110(f)(vi) and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(iii) *Bidding credit formula.* Subject to the applicable bidding credit limit set forth in § 1.2110(f)(3)(iv), the bidding credit shall equal three hundred thousand (300,000) dollars for the first two hundred (200) square miles (518 square kilometers) of qualifying tribal land, and fifteen hundred (1500) dollars for each additional square mile (2.590 square kilometers) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) *Bidding credit limit.* If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the

maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed twenty-five (25) percent of the high bid.

* * * * *

(vii) *Performance penalties.* If a recipient of a bidding credit under this section fails to provide the post-construction certification required by § 1.2110(f)(3)(vi), then it shall repay the bidding credit amount in its entirety

§ 21.954 Submission of upfront payments.

Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(c).

§ 21.955 [Removed and Reserved]

8. Remove and reserve § 21.955.

9. Amend § 21.956 by revising paragraph (b)(3) to read as follows:

installment financing under this subsection seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of

percent to lower the cost of its winning bid.

21. Amend § 22.223 by removing paragraphs (b)(2), (b)(4), (c), (d) and (e), redesignating paragraph (b)(3) as (b)(2) and by revising newly redesignated paragraph (b)(2) to read as follows:

§ 22.223 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

to receive for agreeing to withdraw an application or petition to deny will be limited by the provisions set forth in § 1.935 of this chapter.

24. Revise § 22.228 to read as follows:

§ 22.228 Cellular rural service area licenses subject to competitive bidding.

Mutually exclusive initial applications for Cellular Rural Service Area licenses are subject to competitive bidding. The general competitive

businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of

maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed twenty-five (25) percent of the high bid.

* * * * *

(vii) *Performance penalties.* If a recipient of a bidding credit under this section fails to provide the post-construction certification required by § 1.2110(f)(3)(vi), then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license.

* * * * *

(m) * * *

(1) Applicants and licensees claiming eligibility shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

* * * * *

(o) *Total assets.* Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recently audited financial statements or certified by the applicant's chief financial offer or its equivalent if the applicant does not otherwise use audited financial statements.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

4. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

5. Revise § 21.950 to read as follows:

§ 21.950 MDS subject to competitive bidding.

Mutually exclusive initial applications for MDS licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 21.951 through § 21.953 [Removed and Reserved]

6. Remove and reserve § 21.951 through § 21.953.

7. Revise § 21.954 to read as follows:

§ 21.954 Submission of upfront payments.

Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(c).

§ 21.955 [Removed and Reserved]

8. Remove and reserve § 21.955.

9. Amend § 21.956 by revising paragraph (b)(3) to read as follows:

§ 21.956 Filing of long-form applications or statements of intention.

* * * * *

(b) * * *

(3) An exhibit complying with §§ 1.2110(j) of this chapter and 21.960(e), if the winning bidder submitting the long-from application or statement of intention claims status as a designated entity.

* * * * *

10. Revise § 21.957 to read as follows:

§ 21.957 Comments on statements of intention.

In addition to the provisions of § 21.30, parties wishing to comment or oppose the issuance of a BTA authorization in connection with the filing of a statement of intention by a winning bidder must do so prior to the Commission's issuance of the BTA authorization.

11. Revise § 21.958 to read as follows:

§ 21.958 Issuance of BTA licenses.

A winning bidder who submitted a long-form application for an MDS station license within its BTA service area pursuant to § 21.956(a) will receive its BTA authorization concurrent with the grant of its MDS conditional station license within its BTA service area. A winning bidder who submitted a statement of intention with regard to its BTA service area pursuant to § 21.956(a) will receive its BTA authorization following the Commission's review of its statement of intention. The Commission will issue a BTA authorization to a winning bidder within ten (10) business days following notification of receipt of full payment of the amount of the winning bid.

§ 21.959 [Removed and Reserved]

12. Remove and reserve § 21.959.

13. Amend § 21.960 by revising paragraph (b)(5) and removing paragraphs (d)(1), (d)(2) and (g) to read as follows:

§ 21.960 Designated entity provisions for MDS.

* * * * *

(b) * * *

(5) Unjust enrichment. If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

* * * * *

§ 21.961 [Amended]

14. Amend § 21.961 by removing paragraphs (b)(2), (c) and (d) and by redesignating paragraph (b)(3) as (b)(2).

PART 22—PUBLIC MOBILE SERVICES

15. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

16. Revise § 22.201 to read as follows:

§ 22.201 Paging geographic area authorizations are subject to competitive bidding.

Mutually exclusive initial applications for paging geographic area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart and part 90 of this chapter.

§ 22.203 through § 22.211 [Removed and Reserved]

17. Remove and reserve § 22.203 and § 22.211.

18. Revise § 22.213 to read as follows:

§ 22.213 Filing of long-form applications.

After an auction, the Commission will not accept long form applications for paging geographic authorizations from anyone other than the auction winners and parties seeking partitioned authorizations pursuant to agreements with auction winners under § 22.221.

§ 22.215 [Removed and Reserved]

19. Remove and reserve § 22.215.

20. Revise § 22.217 to read as follows:

§ 22.217 Bidding credit for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(i) may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business or consortium of small businesses as defined in § 22.223(b)(1)(ii) may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid.

21. Amend § 22.223 by removing paragraphs (b)(2), (b)(4), (c), (d) and (e), redesignating paragraph (b)(3) as (b)(2) and by revising newly redesignated paragraph (b)(2) to read as follows:

§ 22.223 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

(2) A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business in paragraph (b)(1)(i) or (b)(1)(ii) of this section. Each individual member must establish its eligibility as a small business, as defined in this section.

22. Revise § 22.225 to read as follows:

§ 22.225 Certifications, disclosures, records maintenance, and definitions.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required by part 1, subpart Q of this chapter, each applicant for a paging license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its FCC Form 175: the identity of the applicant's controlling interest and affiliates, and, if a consortium of small businesses, the members of the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish small businesses under § 22.223. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(c) *Definitions.* The terms small business and consortium of small businesses used in this section are defined in § 22.223.

23. Revise § 22.227 to read as follows:

§ 22.227 Petitions to deny and limitations on settlements.

(a) Procedures regarding petitions to deny long-form applications in the paging service will be governed by § 1.939 of this chapter.

(b) The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or petition to deny will be limited by the provisions set forth in § 1.935 of this chapter.

24. Revise § 22.228 to read as follows:

§ 22.228 Cellular rural service area licenses subject to competitive bidding.

Mutually exclusive initial applications for Cellular Rural Service Area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

25. Revise § 22.960 to read as follows:

§ 22.960 Cellular unserved area radiotelephone licenses subject to competitive bidding.

Mutually exclusive initial applications for cellular unserved area Phase I and Phase II licenses filed after July 26, 1993 are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§§ 22.961 through 22.967 [Removed and Reserved]

26. Remove and reserve §§ 22.961 through 22.967.

PART 24—PERSONAL COMMUNICATIONS SERVICES

27. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

28. Revise § 24.301 to read as follows:

§ 24.301 Narrowband PCS subject to competitive bidding.

Mutually exclusive initial applications for narrowband PCS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

29. Revise § 24.321 to read as follows:

§ 24.321 Designated entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $ 40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $ 15 million for the preceding three years.

(3) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(b) *Bidding credits.* (1) After August 7, 2000, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

(2)(i) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on nationwide licenses on Channel 5, Channel 8, and Channel 11 prior to August 7, 2000 will be eligible for a twenty-five (25) percent bidding credit.

(ii) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on regional licenses on Channel 13 and Channel 17 prior to August 7, 2000 will be eligible for a forty (40) percent bidding credit.

(c) *Installment payments.* Small businesses, including small businesses owned by members of minority groups and women, that are winning bidders on any regional license prior to August 7, 2000 will be eligible to pay the full amount of their winning bids in installments over the term of the license pursuant to the terms set forth in § 1.2110(g) of this chapter.

30. Revise § 24.701 to read as follows:

§ 24.701 Broadband PCS subject to competitive bidding.

Mutually exclusive initial applications for broadband PCS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 24.702 [Removed and Reserved]

31. Remove and reserve § 24.702.

§ 24.704 [Removed and Reserved]

32. Remove and reserve § 24.704.

§ 24.706 [Removed and Reserved]

33. Remove and reserve § 24.706.

§ 24.708 [Removed and Reserved]

34. Remove and reserve § 24.708.

35. Revise § 24.709 to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C or F.

(A) For Tier 1 BTAs, one of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz);

(B) For Tier 2 BTAs, two of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz; 1900–1905 MHz paired with 1980–1985 MHz) and all 15 MHz C block licenses.

(ii) Notwithstanding the provisions of paragraph (a)(4)(i) of this section, any C block license for operation on spectrum

FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998), will not be eligible to apply for such disaggregated spectrum until 2 years from the start of the reauction of that spectrum.

(B) Applicants that surrendered to the Commission any of their frequency block C licenses, as provided in

corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(iv) *49.9 Percent equity exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(*A*) Such person or entity, together with its affiliates, does not hold any other interest in the applicant (or licensee) or its affiliates;

(*B*) Such person or entity, together with its affiliates, is not a member of the same *control group* as the applicant (or licensee) or its affiliates;

(*C*) The applicant (or licensee) or its affiliates, does not have any other interest in the person or entity or its affiliates; and

(*D*) The person or entity, together with its affiliates, is not a member of the same *control group* as any other person or entity that holds an interest in the applicant (or licensee) or its affiliates.

(v) *Exception for certain noncontrolling interests.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(*A*) Such person or entity, together with its affiliates, does not hold any other interest in the applicant (or licensee) or its affiliates;

(*B*) Such person or entity, together with its affiliates, is not a member of the same *control group* as the applicant (or licensee) or its affiliates (other than as a member of the same *control group* as a *rural telephone company* whose service area does not overlap the licensee's service area);

(*C*) The applicant (or licensee) or its affiliates, does not have any other interest in the person or entity or its affiliates (other than an interest in a *rural telephone company* whose service area does not overlap the licensee's service area); and

(*D*) The person or entity, together with its affiliates, is not a member of the same *control group* as any other person or entity that holds an interest in the applicant (or licensee) or its affiliates (other than a person or entity that is a member of the same *control group* as a *rural telephone company* whose service area does not overlap the licensee's service area).

(vi) *Exception for investment by certain rural telephone companies.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(*A*) Such person or entity, together with its affiliates, does not hold any other interest in the applicant (or licensee) or its affiliates;

(*B*) Such person or entity, together with its affiliates, is not a member of the same *control group* as the applicant (or licensee) or its affiliates (other than as a member of the same *control group* as a *rural telephone company* whose service area does not overlap the licensee's service area);

(*C*) The applicant (or licensee) or its affiliates, does not have any other interest in the person or entity or its affiliates (other than an interest in a *rural telephone company* whose service area does not overlap the licensee's service area); and

(*D*) The person or entity, together with its affiliates, is not a member of the same *control group* as any other person or entity that holds an interest in the applicant (or licensee) or its affiliates (other than a person or entity that is a member of the same *control group* as a *rural telephone company* whose service area does not overlap the licensee's service area).

(vii) *Exception for certain qualifying

§ 24.704 [Removed and Reserved]

32. Remove and reserve § 24.704.

§ 24.706 [Removed and Reserved]

33. Remove and reserve § 24.706.

§ 24.708 [Removed and Reserved]

34. Remove and reserve § 24.708.

35. Revise § 24.709 to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C or F.

(a) *General rule for licenses offered for closed bidding.* (1) No application is acceptable for filing and no license shall be granted to a winning bidder in closed bidding for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have had gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) Any licensee awarded a license won in closed bidding pursuant to the eligibility requirements of this section (or pursuant to § 24.839(a)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development, or expanded service shall not be considered.

(3) Tiers. (i) For purposes of determining spectrum to which the eligibility requirements of this section are applicable, the BTA service areas (see § 24.202(b)) are divided into two tiers according to their population as follows:

(A) *Tier 1:* BTA service areas with population equal to or greater than 2.5 million;

(B) *Tier 2:* BTA service areas with population less than 2.5 million.

(ii) For Auction No. 35, the population of individual BTA service areas will be based on the 1990 census. For auctions beginning after the start of Auction No. 35, the population of individual BTA service areas will be based on the most recent available decennial census.

(4) Application of eligibility requirements. (i) The following categories of licenses will be subject to closed bidding pursuant to the eligibility requirements of this section in auctions that begin after the effective date of this paragraph.

(A) For Tier 1 BTAs, one of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz);

(B) For Tier 2 BTAs, two of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz; 1900–1905 MHz paired with 1980–1985 MHz) and all 15 MHz C block licenses.

(ii) Notwithstanding the provisions of paragraph (a)(4)(i) of this section, any C block license for operation on spectrum that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section.

(5) Special rule for licensees disaggregating or returning certain spectrum in frequency block C.

(i) In addition to entities qualifying for closed bidding under paragraph (a)(1) of this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reauction for frequency block C, which began on July 3, 1996, will be eligible to bid for C block licenses offered in closed bidding in any reauction of frequency block C spectrum that begins within two years of March 23, 1999.

(ii) In cases of merger, acquisition, or other business combination of entities, where each of the entities is eligible to bid for C block licenses offered in closed bidding in any reauction of C block spectrum on the basis of the eligibility exception set forth in paragraph (a)(5)(i) of this section, the resulting entity will also be eligible for the exception specified in paragraph (a)(5)(i) of this section.

(iii) In cases of merger, acquisition, or other business combination of entities, where one or more of the entities are ineligible for the exception set forth in paragraph (a)(5)(i) of this section, the resulting entity will not be eligible pursuant to paragraph (a)(5)(i) of this section unless an eligible entity possesses *de jure* and *de facto* control over the resulting entity.

(iv) The following restrictions will apply for any reauction of frequency block C spectrum conducted after March 24, 1998:

(A) Applicants that elected to disaggregate and surrender to the Commission 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97–82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998), will not be eligible to apply for such disaggregated spectrum until 2 years from the start of the reauction of that spectrum.

(B) Applicants that surrendered to the Commission any of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97–82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses if they elected to apply a credit of 70% of the down payment they made on those licenses toward the prepayment of licenses they did not surrender.

(b) *Exceptions to general rule.*

(1) *Scope.* The following provisions apply to licenses acquired in Auctions No. 5, 10, 11 or 22, or pursuant to § 24.839(a)(2) or (a)(3) prior to October 30, 2000.

(i) *Small business consortia.* Where an applicant (or licensee) is a consortium of small businesses, the gross revenues and total assets of each small business shall not be aggregated.

(ii) *Publicly-traded corporations.* Where an applicant (or licensee) is a publicly traded corporation with widely dispersed voting power, the gross revenues and total assets of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered.

(iii) *25 Percent equity exception.* The gross revenues and total assets of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(A) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(B) Except as provided in paragraph (b)(1)(v) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(C) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(1)(v) of this section, and, if the applicant (or licensee) is a

corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(iv) *49.9 Percent equity exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(A) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(B) Except as provided in paragraph (b)(1)(vi) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(C) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(1)(vi) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(v) *Control group minimum 25 percent equity requirement.* In order to be eligible to exclude gross revenues and total assets of persons or entities identified in paragraph (b)(1)(iii) of this section, and applicant (or licensee) must comply with the following requirements:

(A) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(1)(v)(B) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) control group must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(*1*) At least 15 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(*2*) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have de facto control of the control group and of the applicant;

(*3*) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with § 24.720(i)(1):

(*i*) *Institutional Investors;*

(*ii*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group;*

(*iii*) Individuals that are members of the applicant's (or licensee's) management; or

(*iv*) *Qualifying investors*, as specified in § 24.720(i)(4).

(*4*) Following termination of the three-year period specified in paragraph (b)(1)(v)(A) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(1)(v)(A)(*1*) of this section. The restrictions specified in paragraphs (b)(1)(v)(A)(*3*)(*i*) through (b)(1)(v)(A)(*3*)(*iv*) of this section no longer apply to the remaining equity after termination of such three-year period.

(B) At the election of an applicant (or licensee) whose *control group's* sole member is a preexisting entity, the 25 percent minimum equity requirements set forth in paragraph (b)(1)(v)(A) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held in *qualifying investors*, and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors*, or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(1)(v)(A) of this section.

(vi) *Control group minimum 50.1 percent equity requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(1)(iv) of this section, an applicant (or licensee) must comply with the following requirements:

(A) Except for an applicant (or licenses) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(1)(vi)(B) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(*1*) At least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(*2*) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(*3*) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(1)(vi)(A)(*1*) of this section, or by any of the following entities which may not comply with § 24.720(i)(1):

(*i*) *Institutional investors*, either unconditionally or in the form of stock options;

(*ii*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options;

(*iii*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(*iv*) *Qualifying investors*, as specified in § 24.720(i)(4).

(*4*) Following termination of the three-year period specified in paragraph (b)(1)(vi)(A) of this section, *qualifying investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(1)(vi)(A)(*1*) of this section. The restrictions specified in paragraph (b)(1)(vi)(A)(*3*)(*i*) through (b)(1)(vi)(A)(*3*)(*iv*) of this section no longer apply to the remaining equity after termination of such three-year period.

(B) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 50.1 percent minimum equity requirements set forth in paragraph (b)(1)(vi)(A) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors*, or noncontrolling existing investors in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent

of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(1)(vi)(A) of this section.

(vii) *Calculation of certain interests.* Except as provided in paragraphs (b)(1)(v) and (b)(1)(vi) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be

disclosures required by part 1, subpart Q of this chapter, each applicant to participate in closed bidding for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit

block C or F shall in an exhibit to its long-form application:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: The applicant; the applicant's *affiliates*, the applicant's *control group* members; the applicant's attributable investors; and *affiliates* of its attributable investors;

widely dispersed voting power, qualifying investor, and small business used in this section are defined in § 24.720.

36. Revise § 24.711 to read as follows:

§ 24.711 Installment payments for licenses for frequency Block C.

Installment payments. Each eligible licensee of frequency Block C may pay the remaining 90 percent of the net

begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* The unjust enrichment provisions of § 1.2111(d)

(iii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents, which shall be marked

of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(1)(vi)(A) of this section.

(vii) *Calculation of certain interests.* Except as provided in paragraphs (b)(1)(v) and (b)(1)(vi) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the *nonattributable equity* requirements in paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) of this section.

(viii) *Aggregation of affiliate interests.* Persons or entities that hold interest in an applicant (or licensee) that are affiliates of each other or have an identify of interests identified in § 1.2110(c)(5)(iii) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the nonattributable equity requirements in paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) of this section.

Example 1 for paragraph (b)(1)(viii). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person.

Example 2 for paragraph (b)(1)(viii). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(2) *The following provisions apply to licenses acquired pursuant to § 24.839(a)(2) or (a)(3) on or after October 30, 2000.* In addition to the eligibility requirements set forth at 24.709(a) and (b), applicants and/or licensees seeking to acquire C and/or F block licenses pursuant to 24.839(a)(2) or (a)(3) will be subject to the controlling interest standard in 1.2110(c)(2) of this chapter for purposes of determining unjust enrichment payment obligations. See § 1.2111 of this chapter.

(c) *Short-form and long-form applications: Certifications and disclosure.*

(1) *Short-form application.* In addition to certifications and disclosures required by part 1, subpart Q of this chapter, each applicant to participate in closed bidding for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

(i) *For all applicants:* The applicant's gross revenues and total assets, computed in accordance with paragraphs (a) of this section and § 1.2110(b)(1) through (b)(2) of this chapter.

(ii) For all applicants that participated in Auction Nos. 5, 10, 11, and/or 22:

(A) The identity of each member of the applicant's *control group*, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is claiming status as a *business owned by members of minority groups and/or women;*

(C) The status of each *control group* member that is an *institutional investor*, an *existing investor*, and/or a member of the applicant's management;

(D) The identify of each *affiliate* of the applicant and each affiliate of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section;

(E) A certification that the applicant's sole *control group* member is a *preexisting entity*, if the applicant makes the election in either paragraph (b)(1)(v)(B) or (b)(1)(vi)(B)of this section; and

(F) For an applicant that is a *publicly traded corporation with widely disbursed voting power:*

(*1*) A certified statement that such applicant complies with the requirements of the definition of *publicly traded corporation with widely disbursed voting power* set forth in § 24.720(h);

(*2*) The identify of each *affiliate* of the applicant.

(iii) For each applicant claiming status as a *small business consortium*, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

(2) *Long-form application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C or F shall in an exhibit to its long-form application:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: The applicant; the applicant's *affiliates*, the applicant's *control group* members; the applicant's attributable investors; and *affiliates* of its attributable investors;

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency block C or frequency block F and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(iii) List and summarize any investor protection agreements and identify specifically any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(3) *Records maintenance.* All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section or under the definitions *of small business and/or business owned by members of minority groups and/or women.* Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Definitions.* The terms consortium of small businesses, control group, existing investor, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with

widely dispersed voting power, qualifying investor, and small business used in this section are defined in § 24.720.

36. Revise § 24.711 to read as follows:

§ 24.711 Installment payments for licenses for frequency Block C.

Installment payments. Each eligible licensee of frequency Block C may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(f) of this chapter and under the following terms:

(a) For an eligible licensee with gross revenues exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and § 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(o) of this chapter), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(b) For an eligible licensee with gross revenues not exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and § 24.709(b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(c) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

37. Revise 24.712 to read as follows:

§ 24.712 Bidding credits for licenses won for frequency Block C.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(3) may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* The unjust enrichment provisions of § 1.2111(d) and (e)(2) of this chapter shall not apply with respect to licenses acquired in either the auction for frequency block C that began on December 18, 1995, or the reauction of block C spectrum that began on July 3, 1996.

38. Amend § 24.714 by removing paragraph (c), redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e) and revising newly redesignated paragraphs (c)(1), (c)(2)(i), (c)(2)(iii), (c)(3)(i), and (c)(3)(ii) to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum

* * * * *

(c) * * *

(1) *Apportioning the balance on installment payment plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to §§ 1.2110(g) of this chapter or 24.716, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) * * *

(i) When a winning bidder elects to pay for its license through an installment payment plan, and partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan or elects not to pay its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest shall be apportioned according to § 24.714(c)(1)).

* * * * *

(iii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents, which shall be marked "superseded" and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. The Bureau will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

* * * * *

(3) * * *

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligations, as calculated according to § 24.714(c)(1).

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

* * * * *

39. Revise § 24.716 to read as follows:

§ 24.716 Installment payments for licenses for frequency Block F.

Installment Payments. Each eligible licensee of frequency Block F may pay the remaining 80 percent of the net auction price for the license in installment payments pursuant to § 1.2110(g) of this chapter and under the following terms:

(a) For an eligible licensee with gross revenues exceeding $75 million

businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

41. Revise § 24.720 to read as follows:

§ 24.720 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 24.709 through

which individually satisfies the definitions in paragraphs (b) and (c) of this section.

(e) *Institutional Investor.* An *institutional investor* is an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a–3(a), including within such definition any entity that would otherwise meet the definition of

receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and

(4) That, for other types of businesses, the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to the amount of equity held in the business.

qualifying investor under paragraph (i)(1) of this section, who is (or holds an interest in) a member of the applicant's (or licensee's) *control group* and who is a *member of a minority group* or a woman and a United States citizen.

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b)(1)(v) and (b)(1)(vi), where such equity interests are not held directly in the applicant, interests held by qualifying investors or

set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 25.402 [Removed and Reserved]

44. Remove and reserve § 25.402.

45. Revise § 25.404 to read as follows:

§ 25.404 Submission of down payment and filing of long-form applications.

A high bidder that meets its down payment obligations in a timely manner must, within thirty (30) business days

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§ 24.716 Installment payments for licenses for frequency Block F.

Installment Payments. Each eligible licensee of frequency Block F may pay the remaining 80 percent of the net auction price for the license in installment payments pursuant to § 1.2110(g) of this chapter and under the following terms:

(a) For an eligible licensee with gross revenues exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and, when applicable, § 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(o) of this chapter), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license;

(b) For an eligible licensee with gross revenues not exceeding $75 million (calculated in accordance with § 1.2110(b) of this chapter and, when applicable, § 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(o) of this chapter), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term; or

(c) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

40. Revise § 24.717 to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(3) may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

41. Revise § 24.720 to read as follows:

§ 24.720 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 24.709 through 24.717, unless otherwise specified in those sections.

(b) *Small business; very small business; consortia.*

(1) A *small business* is an entity that, together with its *affiliates* and persons or entities that hold interest in such entity and their *affiliates*, has average annual *gross revenues* that are not more than $40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its *affiliates* and persons or entities that hold interests in such entity and their *affiliates*, has average annual *gross revenues* that are not more than $15 million for the preceding three years.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *small business* in paragraph (b)(1) of this section.

(4) A *very small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *very small business* in paragraph (b)(2) of this section.

(c) *Business Owned by Members of Minority Groups and/or Women. A business owned by members of minority groups and/or women* is an entity:

(1) In which the *qualifying investor* members of an applicant's *control group* are members of minority groups and/or women who are United States citizens; and

(2) That complies with the requirements of §§ 24.709(b)(1)(iii) and (b)(1)(v) or § 24.709(b)(1)(iv) and (b)(vi).

(d) *Small Business Owned by Members of Minority Groups and/or Women: Consortium of Small Businesses Owned by Members of Minority and/or Women.* A Small business owned by members of minority groups and/or women is an entity that meets the definitions in both paragraphs (b) and (c) of this section. A *consortium of small businesses owned by members of minority groups and/or women* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definitions in paragraphs (b) and (c) of this section.

(e) *Institutional Investor.* An *institutional investor* is an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a–3(a), including within such definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. 80a–3(a) but is excluded by the exemptions set forth in 15 U.S.C. 80a–3(b) and (c), without regard to whether such entity is an issuer of securities; provided that, if such investment company is owned, in whole or in part, by other entities, such investment company, such other entities and the *affiliates* of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities.

(f) *Nonattributable Equity.* (1) *Nonattributable equity* shall mean:

(i) For corporations, voting stock or non-voting stock that includes no more than twenty-five percent of the total voting equity, including the right to vote such stock through a voting trust or other arrangement;

(ii) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(2) For purposes of assessing compliance with the equity limits in §§ 24.709 (b)(1)(iii)(A) and (b)(1)(iv)(A), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(g) *Control Group.* A *control group* is an entity, or a group of individuals or entities, that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, bylaws, agreements and any other relevant documents (and amendments thereto) provide:

(1) That the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation;

(2) That the entity and/or its members receive at least 50.1 percent of the annual distribution or any dividends paid on the voting stock of a corporation;

(3) That, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and

(4) That, for other types of businesses, the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to the amount of equity held in the business.

Note to Paragraph (g): Voting control does not always assure *de facto* control, such as for example, when the voting stock of the control group is widely dispersed (see e.g., § 1.2110(c)(5)(ii)(C) of this chapter).

(h) *Publicly Traded Corporation with Widely Dispersed Voting Power.* A publicly traded corporation with widely dispersed voting power is a business entity organized under the laws of the United States:

(1) Whose shares, debt, or other ownership interests are traded on an organized securities exchange within the United States;

(2) In which no person:

(i) Owns more than 15 percent of the equity; or

(ii) Possesses, directly or indirectly, through the ownership of voting securities, by contract or otherwise, the power to control the election of more than 15 percent of the members of the board of directors or other governing body of such publicly traded corporation; and

(3) Over which no person other than the management and members of the board of directors or other governing body of such publicly traded corporation, in their capacities as such, has *de facto* control.

(4) The term *person* shall be defined as in section 13(d) of the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78(m)), and shall also include investors that are commonly controlled under the indicia of control set forth in the definition of affiliate in § 1.2110(c)(5) of the Commission's rules.

(i) *Qualifying Investor; Qualifying Minority and/or Woman Investor.*

(1) A *qualifying investor* is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

(2) A *qualifying minority and/or woman investor* is a person who is a *qualifying investor* under paragraph (i)(1) of this section, who is (or holds an interest in) a member of the applicant's (or licensee's) *control group* and who is a *member of a minority group* or a woman and a United States citizen.

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b)(1)(v) and (b)(1)(vi), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of § 24.709 (b)(1)(v)(A)(*3*) and (b)(1)(vi)(A)(*3*), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a).

(j) *Preexisting entity; Existing investor.* A *preexisting entity* is an entity that was operating and earning revenues for at least two years prior to December 31, 1994. An *existing investor* is a person or entity that was an owner of record of a preexisting entity's equity as of November 10, 1994, and any person or entity acquiring *de minimis* equity holdings in a *preexisting entity* after that date.

Note to Paragraph (j): In applying the term *existing investor* to *de minimis* interests in preexisting entities obtained or increased after November 10, 1994, the Commission will scrutinize any significant restructuring of the *preexisting entity* that occurs after that date and will presume that any change of equity that is five percent or less of the *preexisting entity's* total equity is *de minimis*. The burden is on the applicant (or licensee) to demonstrate that changes that exceed five percent are not significant.

PART 25—SATELLITE COMMUNICATIONS

42. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

43. Revise § 25.401 to read as follows:

§ 25.401 Satellite DARS applications subject to competitive bidding.

Mutually exclusive initial applications for DARS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 25.402 [Removed and Reserved]

44. Remove and reserve § 25.402.

45. Revise § 25.404 to read as follows:

§ 25.404 Submission of down payment and filing of long-form applications.

A high bidder that meets its down payment obligations in a timely manner must, within thirty (30) business days after being notified that it is a high bidder, submit an amendment to its pending application to provide the information required by § 25.144.

§ 25.405 through § 25.406 [Removed and Reserved]

46. Remove and reserve § 25.405 through § 25.406.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

47. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

48. Amend § 27.15 by removing paragraph (c) and redesignating paragraphs (d) and (e) as (c) and (d).

49. Revise § 27.201 to read as follows:

§ 27.201 WCS in the 2305–2320 MHz and 2345–2360 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for WCS licenses in the 2305–2320 MHz and 2345–2360 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.202 through § 27.206 [Removed and Reserved]

50. Remove and reserve § 27.202 through § 27.206.

§ 27.208 [Removed and Reserved]

51. Remove and reserve § 27.208.

§ 27.209 [Amended]

52. Amend § 27.209 by removing paragraph (d).

53. Revise § 27.210 to read as follows:

§ 27.210 Definitions

(a) *Scope.* The definitions in this section apply to § 27.209, unless otherwise specified in those sections.

(b) *Small Business; Very Small Business; Consortia.*

(1) A *small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than $40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than $15 million for the preceding three years.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, the personal

§ 27.701 698–746 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 698–746 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

PART 73—RADIO BROADCAST

translator; analog television; low power television; television translator; Instructional Television Fixed Service (ITFS); and Class A television. Mutually exclusive applications for minor modifications of Class A television and television broadcast are also subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

67. Revise § 73.5009 to read as follows:

stations may be filed at any time, unless restricted by the FCC, and will be processed on a "first-come/first-served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast an applicant is qualified, a public notice will be issued announcing that the broadcast construction permit(s) or ITFS license(s) is ready to be granted, upon full payment of the balance of the winning bid(s). See 47 CFR 73.5003. Construction of broadcast stations or ITFS facilities shall not commence until the grant of such permit or license to the winning bidder.

U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

71. Revise § 80.1251 to read as follows:

§ 80.1251 Maritime communications subject to competitive bidding.

Mutually exclusive initial applications for VPCSA licenses and AMTS coast station licenses are subject

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annual gross revenues that are not more than $40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than $15 million for the preceding three years.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, the personal net worth of an applicant and its affiliates is not included in the applicant's gross revenues.

(4) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section or each of which satisfies the definition in paragraph (b)(2) of this section. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

54. Amend § 27.501 by revising paragraph (a) to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

(a) Mutually exclusive initial applications for licenses in the 746–764 MHz and 776–794 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

* * * * *

55. Revise § 27.502 to read as follows:

§ 27.502 Designated entities.

Eligibility for small business provisions.

(a) A *small business* is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(b) A *very small business* is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(c) A *consortium of small businesses* (or a *consortium of very small businesses*) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section).

56. Revise § 27.701 to read as follows:

§ 27.701 698–746 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 698–746 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

PART 73—RADIO BROADCAST SERVICES

57. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

58. Amend § 73.3571 by revising paragraph (h)(4)(i) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(h) * * *

(4)(i) The auction will be held pursuant to the procedures set forth in §§ 1.2101 *et seq.* and 73.5000 *et seq.* Subsequent to the auction, the FCC will release a Public Notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be subject to the provisions of § 1.2107 of this chapter regarding down payments and will be required to submit the appropriate down payment within 10 business days of the Public Notice. Pursuant to § 1.2107 of this chapter and § 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the Public Notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

* * * * *

59. Amend § 73.3572 by revising paragraphs (e) and (f) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translator and TV booster station applications.

* * * * *

(e) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized stations and major modifications in the facilities of Class A TV stations.

(f) Applications for minor modification of Class A TV, low power TV, TV translator and TV booster stations may be filed at any time, unless restricted by the FCC, and will be processed on a "first-come/first-served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application.

* * * * *

60. Amend § 73.3573 by revising paragraph (f)(5)(i) and (f)(5)(ii) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(f) * * *

(5) * * *

(i) Pursuant to § 1.2107 of this chapter and § 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

(ii) These applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the winning bidder's long-form application, a Public Notice will be issued announcing that the construction permit is ready to be granted. Each winning bidder shall pay the balance of its winning bid in a lump sum within 10 business days after release of the Public Notice, as set forth in § 1.2109(a) of this chapter and § 73.5003. Construction permits will be granted by the Commission following the receipt of the full payment.

* * * * *

61. Amend § 73.5000 by revising paragraph (a) to read as follows:

§ 73.5000 Services subject to competitive bidding.

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM translator; analog television; low power television; television translator; Instructional Television Fixed Service (ITFS); and Class A television. Mutually exclusive applications for minor modifications of Class A television and television broadcast are also subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in part 73 or part 74 of this chapter.

* * * * *

§ 73.5001 [Removed and Reserved]

62. Remove and reserve § 73.5001.

63. Revise § 73.5003 to read as follows:

§ 73.5003 Submission of full payments.

If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. Broadcast construction permits and ITFS licenses will be granted by the Commission following the receipt of full payment.

§ 73.5004 [Removed and Reserved]

64. Remove and reserve § 73.5004.

65. Amend § 73.5005 by revising paragraph (a) to read as follows:

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, each winning bidder must submit an appropriate long-form application (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by 47 CFR 1.2107(d) (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) (concerning designated entity status, if applicable); and § 1.2112 (a) and (b) (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

* * * * *

66. Amend § 73.5006 by revising paragraph (d) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications

* * * * *

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, a public notice will be issued announcing that the broadcast construction permit(s) or ITFS license(s) is ready to be granted, upon full payment of the balance of the winning bid(s). See 47 CFR 73.5003. Construction of broadcast stations or ITFS facilities shall not commence until the grant of such permit or license to the winning bidder.

67. Revise § 73.5009 to read as follows:

§ 73.5009 Assignment or transfer of control.

(a) The unjust enrichment provisions found at §§ 1.2111(b) through (e) of this chapter shall not apply to applicants seeking approval of a transfer of control or assignment of a broadcast construction permit or license within three years of receiving such permit or license by means of competitive bidding.

(b) The ownership disclosure requirements found at § 1.2112(a) of this chapter shall not apply to an applicant seeking consent to assign or transfer control of a broadcast construction permit or license awarded by competitive bidding.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

68. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

69. Amend § 74.1233 by revising paragraph (d)(5)(i) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(d) * * *

(5)(i) Pursuant to § 1.2107 of this chapter, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005 of this chapter.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

70. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

71. Revise § 80.1251 to read as follows:

§ 80.1251 Maritime communications subject to competitive bidding.

Mutually exclusive initial applications for VPCSA licenses and AMTS coast station licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

72. Amend § 80.1252 by removing paragraph (b)(4), redesignating paragraphs (b)(5) and (d) as paragraphs (b)(3) and (c), and revising newly redesignated paragraph (c) to read as follows:

§ 80.1252 Designated entities.

* * * * *

(c) A winning bidder that qualifies as a small business or consortium of small businesses as defined in § 80.1252(b)(1) or § 80.1252(b)(3) may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or consortium of very small businesses as defined in § 80.1252(b)(2) or § 80.1252(b)(3) may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

73. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

74. Amend § 90.705 by revising the first sentence to read as follows:

§ 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with §§ 1.2105 and 1.2107 of this chapter. * * *

75. Revise § 90.801 to read as follows:

§ 90.801 900 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for 900 MHz SMR service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.802 through § 90.803 [Removed and Reserved]

76. Remove and reserve § 90.802 through § 90.803.

§ 90.805 through § 90.806 [Removed and Reserved]

77. Remove and reserve § 90.805 through § 90.806.

78. Revise § 90.807 to read as follows:

§ 90.807 Submission of upfront payments.

its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case

(3) *Parties qualified for installment payment plans.*

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to paragraph (d)(1) of this section.

(ii) Each party will be required, as a

85. Revise § 90.815 to read as follows:

§ 90.815 Certifications, disclosures, records maintenance, and definitions.

(a) *Short-Form Applications: certifications and disclosure.* Each applicant for an MTA license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its short-form application (Form 175): The identity of the

through V will be auctioned by the following Regions:

(i) Region 1 (Northeast): The Northeast Region consists of the following MTAs: Boston-Providence, Buffalo-Rochester, New York, Philadelphia, and Pittsburgh.

(ii) Region 2 (South): The South Region consists of the following MTAs: Atlanta, Charlotte-Greensboro-Greenville-Raleigh, Jacksonville,

§ 90.911 [Amended]

92. Amend § 90.911 by removing paragraph (c) and redesignating paragraphs (d), (e), (f) and (g) as (c), (d), (e) and (f).

93. Amend § 90.912 by removing paragraphs (b)(3), (c) and (d), redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4) and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 90.802 through § 90.803 [Removed and Reserved]

76. Remove and reserve § 90.802 through § 90.803.

§ 90.805 through § 90.806 [Removed and Reserved]

77. Remove and reserve § 90.805 through § 90.806.

78. Revise § 90.807 to read as follows:

§ 90.807 Submission of upfront payments.

Each bidder in the 900 MHz SMR auction will be required to submit an upfront payment of $0.02 per MHz per pop, for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid.

§ 90.808 [Removed and Reserved]

79. Remove and reserve § 90.808.

80. Revise § 90.809 to read as follows:

§ 90.809 License grants.

MTA licenses pursued through competitive bidding will be granted pursuant to the requirements specified in § 1.945 of this chapter.

81. Revise § 90.810 to read as follows:

§ 90.810 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in § 90.814(b)(1)(i), may use a bidding credit of 15 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B. A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in § 90.814(b)(1)(ii), may use a bidding credit of 10 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B.

§ 90.812 [Removed and Reserved]

82. Remove and reserve § 90.812.

83. Amend § 90.813 by removing paragraph (c), redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), and by revising paragraph (a) and newly redesignated paragraph (c) to read as follows:

§ 90.813 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

* * * * *

(c) *Installment payments*—(1) *Apportioning the balance on installment payment plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to § 90.812, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) *Parties not qualified for installment payment plans.*

(i) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in a rescission of the grant of the partial assignment application.

(ii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents which shall be marked "superseded" and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. The Bureau will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

(iii) A default on the licensee's payment obligation will only affect the licensee's portion of the market.

(3) *Parties qualified for installment payment plans.*

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to paragraph (d)(1) of this section.

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remaining portion of the balance due pursuant to an installment payment plan.

* * * * *

84. Amend § 90.814 by removing paragraphs (b)(2), (c), (d), (e), (f), (g), and (h), redesignating paragraph (b)(3) as (b)(2), and by revising newly redesignated paragraph (b)(2) to read as follows:

§ 90.814 Definitions.

* * * * * * *

(b) * * *

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies either definition of a small business in paragraph (b)(1) of this section. In a consortium of small businesses, each individual member must establish its eligibility as a small business, as defined in this section.

85. Revise § 90.815 to read as follows:

§ 90.815 Certifications, disclosures, records maintenance, and definitions.

(a) *Short-Form Applications: certifications and disclosure.* Each applicant for an MTA license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its short-form application (Form 175): The identity of the applicant's affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, and, if a consortium of small businesses, the members in the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any documents necessary to establish eligibility as a small business and/or consortium of small businesses under § 90.814. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(c) *Definitions.* The terms affiliate, business owned by members of minority groups and/or women, consortium of small businesses, gross revenues, members of minority groups, nonattributable equity, small business and total assets used in this section are defined in § 90.814.

86. Revise § 90.901 to read as follows:

§ 90.901 900 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for 800 MHz band licenses in Spectrum Blocks A through V are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.902 [Removed and Reserved]

87. Remove and reserve § 90.903.

88. Revise § 90.903 to read as follows:

§ 90.903 Competitive bidding mechanisms.

(a) *Sequencing.* The Wireless Telecommunications Bureau will establish and may vary the sequence in which 800 MHz SMR licenses for Spectrum Blocks A through V will be auctioned.

(b) *Grouping.* (1) All EA licenses for Spectrum Blocks A through V will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative method of grouping these licenses for auction.

(2) *Spectrum blocks D through V.* All EA licenses for Spectrum Blocks D through V will be auctioned by the following Regions:

(i) Region 1 (Northeast): The Northeast Region consists of the following MTAs: Boston-Providence, Buffalo-Rochester, New York, Philadelphia, and Pittsburgh.

(ii) Region 2 (South): The South Region consists of the following MTAs: Atlanta, Charlotte-Greensboro-Greenville-Raleigh, Jacksonville, Knoxville, Louisville-Lexington-Evansville, Nashville, Miami-Fort Lauderdale, Richmond-Norfolk, Tampa-St. Petersburg-Orlando, and Washington-Baltimore; and, Puerto Rico and United States Virgin Islands.

(iii) Region 3 (Midwest): The Midwest Region consists of the following MTAs: Chicago, Cincinnati-Dayton, Cleveland, Columbus, Des Moines-Quad Cities, Detroit, Indianapolis, Milwaukee, Minneapolis-St. Paul, and Omaha.

(iv) Region 4 (Central): The Central Region consists of the following MTAs: Birmingham, Dallas-Fort Worth, Denver, El Paso-Albuquerque, Houston, Kansas City, Little Rock, Memphis-Jackson, New Orleans-Baton Rouge, Oklahoma City, San Antonio, St. Louis, Tulsa, and Wichita.

(v) Region 5 (West): The West Region consists of the following MTAs: Honolulu, Los Angeles-San Diego, Phoenix, Portland, Salt Lake City, San Francisco-Oakland-San Jose, Seattle (including Alaska), and Spokane-Billings; and, American Samoa, Guam, and the Northern Mariana Islands.

§ 90.905 through § 90.908 [Removed and Reserved]

89. Remove and reserve § 90.905 through § 90.908.

90. Revise § 90.909 to read as follows:

§ 90.909 License grants.

EA licenses pursued through competitive bidding procedures will be granted pursuant to the requirements specified in § 1.945 of this chapter.

91. Revise § 90.910 to read as follows:

§ 90.910 Bidding credits.

A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in §§ 90.912(b)(2) and (b)(4), may use a bidding credit of 35 percent to lower the cost of its winning bid on Spectrum Blocks A through V. A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in §§ 90.912(b)(1) or (b)(3), may use a bidding credit of 25 percent to lower the cost of its winning bid on Spectrum Blocks A through V.

§ 90.911 [Amended]

92. Amend § 90.911 by removing paragraph (c) and redesignating paragraphs (d), (e), (f) and (g) as (c), (d), (e) and (f).

93. Amend § 90.912 by removing paragraphs (b)(3), (c) and (d), redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4) and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 90.912 Definitions.

* * * * *

(b) * * *

(1) A *small business* is an entity that together with its affiliates and controlling interests, has average gross revenues that do not exceed $15 million for the three preceding years; or

(2) A *very small business* is an entity that together with its affiliates and controlling interests, has average gross revenues that do not exceed $3 million for the three preceding years.

* * * * *

94. Revise § 90.913 to read as follows:

§ 90.913 Certifications, disclosures, records maintenance, and definitions.

(a) *Short-form applications: certifications and disclosure.* Each applicant for an EA license which qualifies as a small business or consortium of small businesses under § 90.912(b) shall append as an exhibit to its short-form application (FCC Form 175): The identity of the applicant's affiliates and controlling principals, and, if a consortium of small businesses (or a consortium of very small businesses), the members of the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses or very small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any document necessary to establish eligibility as a small business, very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.912. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(c) *Definitions.* The terms small business, very small business, consortium of small businesses, and consortium of very small businesses used in this section are defined in § 90.912.

95. Revise § 90.1001 to read as follows:

§ 90.1001 220 MHz service subject to competitive bidding.

Mutually exclusive initial applications for 200 MHz geographic

area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.1003 through § 90.1015 [Removed and Reserved]

96. Remove and reserve § 90.1003 through § 90.1015.

(b) *Records maintenance.* All winning bidders qualifying as small businesses or very small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business or very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.1021.

PART 95—PERSONAL RADIO SERVICES

103. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

104. Amend § 95.816 by removing paragraphs (c)(3), (c)(4), and (d), redesignating paragraphs (c)(5), (e), and(f) as paragraphs (c)(3), (d), and (e),

rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

* * * * *

PART 100—DIRECT BROADCAST SATELLITE SERVICE

§ 101.537 24 GHz band subject to competitive bidding.

Mutually exclusive initial applications for 24 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

115. Amend § 101.538 by removing paragraphs (a)(5), (a)(6), (a)(8), and (b), and redesignating paragraphs (a)(7) and

118. Revise § 101.1107 to read as follows:

§ 101.1107 Bidding credits for very small businesses, small businesses and entrepreneurs.

(a) A winning bidder that qualifies as a very small business or a consortium of very small businesses pursuant to § 101.1112 may use a bidding credit of 45 percent to lower the cost of its winning bid.

area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.1003 through § 90.1015 [Removed and Reserved]

96. Remove and reserve § 90.1003 through § 90.1015.

97. Revise § 90.1017 to read as follows:

§ 90.1017 Bidding credits for small businesses and very small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in §§ 90.1021(b)(1) or 90.1021(b)(3), may use a bidding credit of 25 percent to lower the cost of its winning bid. A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in §§ 90.1021(b)(2) or 90.1021(b)(3), may use a bidding credit of 35 percent to lower the cost of its winning bid.

98. Amend § 90.1021, by removing paragraphs (b)(3), (c) and (d), redesignating paragraph (b)(4) as paragraph (b)(3) and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 90.1021 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

(1) A *small business* is an entity that, together with its affiliates and controlling interests, has average gross revenues that are not more than $15 million for the preceding three years.

(2) A *very small business* is an entity that, together with its affiliates and controlling interests, has average gross revenues that are not more than $3 million for the preceding three years.

* * * * *

99. Revise § 90.1023 to read as follows:

§ 90.1023 Certifications, disclosures, and records maintenance.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for a 220 MHz service geographic area license which qualifies as a small business, very small business, consortium of small businesses, or consortium of very small businesses, shall append the following information as an exhibit to its FCC Form 175: the identity of the applicant's affiliates and controlling interests, and, if a consortium of small businesses (or consortium of very small businesses), the members of the joint venture.

(b) *Records maintenance.* All winning bidders qualifying as small businesses or very small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business or very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.1021. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(c) *Definitions.* The terms affiliate, small business, very small business, consortium of small businesses (or consortium of very small businesses), and gross revenues used in this section are defined in § 90.1021.

100. Revise § 90.1025 to read as follows:

§ 90.1025 Limitations on settlements.

The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or a petition to deny will be limited by the provisions set forth in § 1.2105(c) of this chapter.

101. Revise § 90.1101 to read as follows:

§ 90.1101 Location and Monitoring Service subject to competitive bidding.

Mutually exclusive initial applications for multilateration Location and Monitoring Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

102. Amend § 90.1103 by removing paragraphs (b)(3), (b)(4), and (c), redesignating paragraphs (b)(5) and (d) as paragraphs (b)(3) and (c), and revising newly redesignated paragraph (c) to read as follows:

§ 90.1103 Designated entities.

* * * * *

(c) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in paragraphs (b)(1) or (b)(3) of this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small businesses or a consortium of very small businesses as defined in paragraph (b)(2) or (b)(3) of this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

PART 95—PERSONAL RADIO SERVICES

103. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

104. Amend § 95.816 by removing paragraphs (c)(3), (c)(4), and (d), redesignating paragraphs (c)(5), (e), and(f) as paragraphs (c)(3), (d), and (e), revising paragraph (a) and newly redesignated paragraphs (d) and (e) to read as follows:

§ 95.816 Competitive bidding proceedings.

(a) Mutually exclusive initial applications for 218–219 MHz Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

* * * * *

(d) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this subsection may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this subsection may use the bidding credit specified in accordance with § 1.2110(f)(2)(i) of this chapter.

(e) Winning bidders in Auction No. 2, which took place on July 28–29, 1994, that, at the time of auction, met the qualifications under the Commission's rules then in effect, for small business status will receive a twenty-five percent bidding credit pursuant to Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99–239 (released September 10, 1999).

105. Amend § 95.823 by removing paragraph (c)(1), redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2), and revising newly redesignated paragraph (c)(1)(iii) to read as follows:

§ 95.823 Geographic partitioning and spectrum disaggregation.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(ii) * * *

(iii) The partitionor or disaggregator shall be permitted to continue to pay its pro rata share of the outstanding balance and, if applicable, shall receive loan documents evidencing the partitioning and disaggregation. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

* * * * *

PART 100—DIRECT BROADCAST SATELLITE SERVICE

106. The authority citation for part 100 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 335, 309 and 554.

107. Revise § 100.71 to read as follows:

§ 100.71 DBS subject to competitive bidding.

Mutually exclusive initial applications for DBS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 100.72 through § 100.76 [Removed and Reserved]

108. Remove and reserve § 100.72 through § 100.76.

§ 100.78 through § 100.79 [Removed and Reserved]

109. Remove and reserve § 100.78 through §100.79.

PART 101—FIXED MICROWAVE SERVICES

110. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

111. Amend § 101.56 by revising paragraph (i) to read as follows:

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

* * * * *

(i) Licensees, including those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

§ 101.531 [Removed and Reserved]

112. Remove and reserve § 101.531.

§ 101.535 [Amended]

113. Amend § 101.535 by removing paragraphs (a)(1) and (c), redesignating paragraphs (a)(2), (a)(3), (d), and (e) as (a)(1), (a)(2), (c), and (d).

114. Revise § 101.537 to read as follows:

§ 101.537 24 GHz band subject to competitive bidding.

Mutually exclusive initial applications for 24 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

115. Amend § 101.538 by removing paragraphs (a)(5), (a)(6), (a)(8), and (b), and redesignating paragraphs (a)(7) and (c) as paragraphs (a)(5) and (b), and revising newly redesignated paragraphs (a)(5) and (b) to read as follows:

§ 101.538 Designated entities.

(a) * * *

(5) A consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) or (a)(3) of this section. Where an applicant or licensee is a consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs, the gross revenues of each very small business, small business, or entrepreneur shall not be aggregated.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

116. Revise § 101.1101 to read as follows:

§ 101.1101 LMDS service subject to competitive bidding.

Mutually exclusive initial applications for LMDS licenses are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1102 through § 101.1105 [Removed and Reserved]

117. Remove and reserve § 101.1102 through § 101.1105.

118. Revise § 101.1107 to read as follows:

§ 101.1107 Bidding credits for very small businesses, small businesses and entrepreneurs.

(a) A winning bidder that qualifies as a very small business or a consortium of very small businesses pursuant to § 101.1112 may use a bidding credit of 45 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a small business or a consortium of small businesses pursuant to § 101.1112 may use a bidding credit of 35 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs pursuant to § 101.1112 may use a bidding credit of 25 percent to lower the cost of its winning bid.

(d) The bidding credits referenced in paragraphs (a), (b) and (c) of this section are not cumulative.

119. Revise § 101.1109 to read as follows:

§ 101.1109 Certifications, disclosures, and records maintenance.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for an LMDS license which qualifies as a very small business, small business or entrepreneurs pursuant to § 101.1112 shall append the following information as an exhibit to its short-form applications (FCC Form 175): The identities of the applicant's affiliates and controlling interests.

(b) *Records maintenance.* All winning bidders qualifying as very small businesses, small businesses or entrepreneurs shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any document necessary to establish eligibility as a very small business, small business or entrepreneur. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

§ 101.1110 [Removed and Reserved]

120. Remove and reserve § 101.1110.

121. Revise § 101.1112 to read as follows:

§ 101.1112 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1101 through 101.1112, unless otherwise specified in those sections.

(b) *Very small business.* A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15

§ 101.1208 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, as

paragraphs (d) and (e) as paragraphs (c) and (d).

[FR Doc. 02–16096 Filed 7–8–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

Lower 700 MHz Band out-of-band emission ("OOBE") limit and decision in the *Lower 700 MHz R&O* to adopt a uniform maximum power limit of 50 kW effective radiated power ("ERP") for services operating on the Lower 700 MHz Band; (3) denies the petition for reconsideration of the Office of the Chief Technology Officer, Government of the District of Columbia ("OCTO"), which argues that public safety users

five blocks across different service areas for geographic area licensing: two 6-megahertz blocks of contiguous unpaired spectrum, as well as two 12-megahertz blocks of paired spectrum, were to be assigned over six Economic Area Groupings ("EAGs"); a remaining 12 megahertz block of paired spectrum (710–716 MHz and 740–746 MHz) was designated for licensing over 734 Metropolitan Statistical Areas ("MSAs")

4. In determining the optimum initial scope of licenses for the Lower 700 MHz Band, the Commission maintained its commitment to several spectrum management policies, including the statutory mandate to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum and participate in the provision of spectrum-based services. The MO&O

§ 101.1112 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1101 through 101.1112, unless otherwise specified in those sections.

(b) *Very small business.* A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.

(c) *Small business.* A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than $15 million but not more than $40 million.

(d) *Entrepreneur.* An entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than $40 million but not more than $75 million.

(e) For purposes of determining whether an entity meets the definition of very small business, small business or entrepreneur, the gross revenues of the applicant, its affiliates and controlling interests shall be considered on a cumulative basis and aggregated.

(f) *Consortium.* A consortium of very small businesses, small businesses or entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a very small business, small business or entrepreneur. Each individual member must establish its eligibility as a very small business, small business or entrepreneur. Where an applicant (or licensee) is a consortium of very small businesses, small businesses or entrepreneurs, the gross revenues of each business shall not be aggregated.

122. Revise § 101.1201 to read as follows:

§ 101.1201 38.6–40.0 GHz subject to competitive bidding.

Mutually exclusive initial applications for 38.6–40.0 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1202 through § 101.1207 [Removed and Reserved]

123. Remove and reserve § 101.1202 through § 101.1207.

124. Revise § 101.1208 to read as follows:

§ 101.1208 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in § 101.1209(b)(1)(ii), may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

125. Amend § 101.1209 by removing paragraphs (b)(2), (c), (d), and (e), and redesignating paragraph (b)(3) as (b)(2), and revising newly redesignated paragraph (b)(2) to read as follows:

§ 101.1209 Definitions.

* * * * *

(b) * * *

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) of this section.

126. Revise § 101.1317 to read as follows:

§ 101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.

Mutually exclusive initial applications for licenses in the portions of the MAS bands licensed on a geographic area basis are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

127. Amend § 101.1319 by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 101.1319 Competitive bidding provisions.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses, may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

§ 101.1323 [Amended]

128. Amend § 101.1323 by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

[FR Doc. 02–16096 Filed 7–8–02; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

[GN Docket No. 01–74; FCC 02–185]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for reconsideration filed by eight parties. The Commission affirms its prior decisions regarding issues relating to the transition to DTV service and the rules for auctioning and licensing of new services on the 698–746 MHz spectrum band (Lower 700 MHz Band), which has been reallocated pursuant to statutory requirements. The Commission takes these actions to promote the transition to DTV, meet its statutory mandate to reclaim and license this spectrum by competitive bidding, and enable the flexible use of the Lower 700 MHz Band for a wide range of new services.

DATES: Effective June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order (MO&O)*, FCC 02–185, in GN Docket No. 01–74, adopted on June 14, 2002, and released on June 14, 2002. The full text of this *MO&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text may also be downloaded at: *http://www.fcc.gov*.

Synopsis of MO&O

In the *MO&O*, the Commission: (1) Affirms the band plan and geographic license areas adopted in the *Report and Order (Lower 700 MHz R&O)* (67 FR 5491, February 6, 2002); (2) affirms the Lower 700 MHz Band out-of-band emission ("OOBE") limit and decision in the *Lower 700 MHz R&O* to adopt a uniform maximum power limit of 50 kW effective radiated power ("ERP") for services operating on the Lower 700 MHz Band; (3) denies the petition for reconsideration of the Office of the Chief Technology Officer, Government of the District of Columbia ("OCTO"), which argues that public safety users should be permitted to obtain Lower 700 MHz band licenses under the "public safety radio services" auction exemption found at section 309(j)(2)(A) of the Communications Act, as amended ("Communications Act" or "Act"); (4) affirms the decision in the *Lower 700 MHz R&O* to dismiss all pending petitions for NTSC channel allotments in the Lower 700 MHz Band; (5) clarifies that broadcast stations clearing from Channels 59–69 in connection with voluntary band clearing arrangements may seek a modified NTSC or DTV channel allotment on Channels 52–58; (6) affirms the decision in the *Lower 700 MHz R&O* not to authorize additional new NTSC construction permits in the Lower 700 MHz Band and to open a 45-day window, during which such pending applications could be modified, either (a) to provide analog or digital television service in the core channels (2–51), or (b) to provide digital television service in Channels 52–58; and (7) affirms the decision of the Mass Media Bureau (now the Media Bureau) adopted pursuant to the *Lower 700 MHz R&O* providing that, where multiple applicants have filed for a single NTSC allotment in the Lower 700 MHz Band, they must file a petition for rulemaking proposing a single replacement channel to which all applicants agree to modify their applications.

I. Background

1. In the *Lower 700 MHz R&O*, the Commission reallocated the spectrum in the Lower 700 MHz Band to flexible use by fixed, mobile and new broadcast services, as well as incumbent broadcast services during their transition to DTV. The Commission established technical criteria designed to protect incumbent television operations in the band during the DTV transition period, and adopted a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58.

2. The Commission also adopted service rules required for use of the Lower 700 MHz Band by fixed, mobile, and broadcast services. The Commission divided the Lower 700 MHz Band into five blocks across different service areas for geographic area licensing: two 6-megahertz blocks of contiguous unpaired spectrum, as well as two 12-megahertz blocks of paired spectrum, were to be assigned over six Economic Area Groupings ("EAGs"); a remaining 12 megahertz block of paired spectrum (710–716 MHz and 740–746 MHz) was designated for licensing over 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). The Commission decided that all operations in the Lower 700 MHz Band would be generally regulated under the framework of part 27's technical, licensing, and operating rules. However, in order to permit both wireless services and certain new broadcast operations in the Lower 700 MHz Band, the Commission adopted maximum power limits for the Lower 700 MHz Band that would permit 50 kW ERP transmissions under certain conditions. The Commission declined to restrict any of the spectrum in the Lower 700 MHz Band exclusively to public safety or private radio services, but noted that its flexible use allocation under part 27 permits fixed and mobile wireless uses for private, internal radio communications.

II. Discussion

A. Service Rules

1. Band Plan and Geographic Scope of Licenses

3. In petitions for reconsideration/clarification, Spectrum Exchange Group, LLC and Allen & Company ("Spectrum Exchange/Allen") and Spectrum Clearing Alliance ("SCA") claim that the Commission should reconsider the plan for assignment of spectrum within the Lower 700 MHz Band, in particular the use of MSAs/RSAs to license Block C. In the *MO&O*, the Commission decides not to alter the band plan or geographic service areas that were adopted in the *Lower 700 MHz R&O*, including the assignment of MSA/RSA license areas to Block C currently occupied by TV Channels 54 and 59. Based on the Commission's consideration of the arguments raised on reconsideration and the factors previously considered in the *Lower 700 MHz R&O*, the Commission reaffirms that the band plan adopted in that order represents the best approach for achieving the Commission's policy objectives for the Lower 700 MHz Band. Thus, the Commission denies the petitions for reconsideration/clarification that raise issues regarding the band plan and geographic scope of Lower 700 MHz Band licenses.

4. In determining the optimum initial scope of licenses for the Lower 700 MHz Band, the Commission maintained its commitment to several spectrum management policies, including the statutory mandate to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum and participate in the provision of spectrum-based services. The MO&O states that a primary result of this process was a band plan that assigned the majority of spectrum over large service areas defined by EAGs. According to the Commission, this approach is consistent with the Commission's decision in the Upper 700 MHz Band proceeding to assign the majority of commercial spectrum in the Upper 700 MHz Band over EAGs. As the Commission noted in the Upper 700 MHz Band proceeding, large geographic areas such as EAGs offer several advantages. The MO&O states that large areas provide optimum opportunity to aggregate spectrum, which may be particularly useful for services that require nationwide footprints. It states that large geographic areas also make it easier for providers to take advantage of economies of scale, allowing existing technologies to grow and new technologies to develop. The Commission notes that large geographic areas also reduce the potential transaction costs to both auction participants seeking adjoining smaller geographic areas and carriers seeking to consolidate such areas post-auction. Finally, the Commission states that these large areas may help address problems due to incumbent TV stations. Because of these advantages associated with the assignment of larger licensing areas, the Commission designated the bulk of Lower 700 MHz Band spectrum as EAGs.

5. Nevertheless, based on the record, the statutory mandate of section 309(j) of the Communications Act, and a desire to promote opportunities for a wide variety of applicants in the provision of spectrum-based services in the Lower 700 MHz Band, the Commission also sought to define a band plan that afforded meaningful opportunities to the interested parties seeking licenses with smaller initial geographic scope. Because the Commission decided to assign only one 12 megahertz block of paired spectrum over MSAs/RSAs, the MO&O states that it is of consequential significance to such parties whether that block is assigned to spectrum with high incumbency, potential for interference, or other obstructions to use. Given the

lack of any significant difference in the relative incumbency levels on Blocks A, B, and C, the Commission focused on factors such as band plan architecture and adjacent channel interference in selecting the various license block assignments.

6. Given these considerations in the *Lower 700 MHz R&O*, the Commission finds its assignment of MSAs/RSAs to Block C to be in the public interest. Of such aggregation may permit licensees greater flexibility to engineer their systems around Channel 51 DTV operations by the use of measures such as internal guard bands. Accordingly, compared to Block C, the Commission finds that adjacent channel protection requirements may limit the usability of Block A as a stand-alone block.

8. The Commission rejects Spectrum Exchange/Allen's proposal to rearrange clearing agreement. The *MO&O* states that this potential exists for new licensees on Channels 58 and 59, as well as commercial and guard band licensees in the Upper 700 MHz Band. In particular, the Commission explains that there originally was no expectation that Lower 700 MHz licensees would contribute to Upper 700 MHz band-clearing efforts. According to the Commission, at the time the Upper 700

located within 75 km. The *MO&O* explains that this requirement provides adjacent channel licensees, including licensees on 746–747 MHz, the opportunity to adopt measures to mitigate interference. Finally, by meeting the limits of § 27.53(f) of the Commission's rules on the power of any emission outside a licensee's frequency band(s), which would include any OOBE on 746–747 MHz, the *MO&O* that because of the Commission's rule, which places a particular PFD limit on above-1 KW ERP systems in the Lower 700 MHz Band, licensees will operate with antennas and antenna configurations that might put the full 3000 microwatts per square meter PFD on the ground in the vicinity of the transmitter and, therefore, cause excessively high out-of-band emissions into 746–747 MHz guard band handsets. designed simply to place a limit on energy produced by high-powered systems in the Lower 700 MHz band, will not cause any greater out-of-band interference to occur to guard band receivers from commercial systems operating in Lower 700 MHz Band than could occur from commercial systems operating in the Upper 700 MHz Band.

16. The petitioner also claims that the use of antenna down tilting and

lack of any significant difference in the relative incumbency levels on Blocks A, B, and C, the Commission focused on factors such as band plan architecture and adjacent channel interference in selecting the various license block assignments.

6. Given these considerations in the *Lower 700 MHz R&O*, the Commission finds its assignment of MSAs/RSAs to Block C to be in the public interest. Of the three paired 12-megahertz blocks, the *MO&O* states that Block B would have been the most suitable to meet the spectrum needs of the many parties interested in acquiring additional spectrum to complement existing networks of a local or smaller scale. However, the *MO&O* states that the use of MSAs/RSAs for Block B would have conflicted with another Commission goal that of making it possible to aggregate 24 megahertz of paired spectrum within the same EAG. As the Commission recognizes in the *MO&O* and in the *Lower 700 MHz R&O*, the ability to aggregate spectrum may offer important benefits. In order to provide additional opportunities for firms seeking to aggregate paired spectrum within the same EAG, the Commission had to designate either Blocks A and B or Blocks B and C as the EAG blocks. The *MO&O* states that using Block B for MSA/RSA licenses would result in the two EAG blocks being split, frustrating this objective. Thus, according to the Commission, the alternative locations for MSA/RSA licenses were Block A or Block C. Given these alternatives, the Commission finds Block C to be the best choice to meet its specific objective for the Lower 700 MHz Band to provide opportunities for provision of services by rural telephone companies, small businesses, and/or other entities seeking spectrum licenses of smaller geographic scope.

7. The Commission does not view the alternative, Block A, to be sufficient to meet its objectives. Compared to Blocks B through E, the *MO&O* states that Block A may pose the most burdens for new licensees seeking to offer services while protecting DTV operations on Channel 51. Unlike these other blocks, the Commission finds that Block A licensees will have to meet additional part 27 adjacent channel interference obligations involving these DTV operations on Channel 51, which are in the TV core and are therefore of a permanent nature. The *MO&O* states that these permanent DTV operations on Channel 51 underscore the advantages of licensing Channel 52 across EAGs, as these large geographic areas match and can be aggregated with those used for Block B. According to the Commission, such aggregation may permit licensees greater flexibility to engineer their systems around Channel 51 DTV operations by the use of measures such as internal guard bands. Accordingly, compared to Block C, the Commission finds that adjacent channel protection requirements may limit the usability of Block A as a stand-alone block.

8. The Commission rejects Spectrum Exchange/Allen's proposal to rearrange the Lower 700 MHz Band licensing arrangement and/or band plan. The Commission finds that their alternative proposals will not preserve the equitable distribution of licenses. In particular, the Commission does not accept the suggestion that an unpaired block should be assigned to the current Channel 52 spectrum instead of to Channels 55 and 56. The Commission does not find adequate support to change the existing separation between segments of the 12 megahertz paired blocks that were adopted in the Lower 700 MHz R&O. The *MO&O* states that the separation between the blocks that the Commission adopted in the Lower 700 MHz R&O is consistent with the band plan adopted in the Upper 700 MHz Band, and is appropriate for many two-way technologies to operate. According to the Commission, locating the 6-megahertz unpaired licenses at the center of the band plan maintains this separation.

9. The Commission finds that the spectrum policy objectives for the Lower 700 MHz Band are a balancing of a number of factors. According to the Commission, petitioners' specific arguments regarding the potential for Channel 59 "free-riders" to hinder band-clearing efforts on Channels 59–69 are outweighed by other considerations in the Lower 700 MHz band plan. While the Commission identified the early clearing of incumbents as an Upper 700 MHz Band consideration that would also be important in the Lower 700 MHz Band, the *MO&O* states that it does not follow that removing potential obstacles to band clearing on Channel 59 should be the overriding objective of the Commission's service rules for the Lower 700 MHz Band. Rather, the Commission finds that the aforementioned advantages of the band plan for a wide variety of applicants and spectrum-based services outweigh the potential that the band plan may present some obstacles to clearing Channel 59. The Commission notes that under the Commission's voluntary band-clearing policy, there has always been the potential for certain new licensees to benefit from the early clearing of a Channel 59–69 incumbent without being a party to the particular band-clearing agreement. The *MO&O* states that this potential exists for new licensees on Channels 58 and 59, as well as commercial and guard band licensees in the Upper 700 MHz Band. In particular, the Commission explains that there originally was no expectation that Lower 700 MHz licensees would contribute to Upper 700 MHz band-clearing efforts. According to the Commission, at the time the Upper 700 MHz band-clearing rules were adopted, it was assumed that Channels 52–59 would be auctioned later than Channels 60–69. Thus, the *MO&O* states that placing MSA/RSA licensees on Block C does not make band clearing more costly or difficult for petitioners than originally conceived.

2. Power and Out-of-Band Emission Limits

10. In a petition for reconsideration, Access Spectrum, LLC ("Access Spectrum") requests that the Commission reconsider permitting licensees on TV Channels 57–59 to operate base stations at a power level of up to 50 kW ERP. In the *MO&O* the Commission declines to adopt petitioner's proposal to reduce the power limits in the upper portions of the Lower 700 MHz Band. In the Lower 700 MHz R&O, the Commission devoted considerable discussion to the possibility of harmful interference from 50 kW ERP operations to systems on adjacent channels operating at lower power levels. Contrary to the statements of the petitioner and other commenting parties, the Commission evaluated fully the potential impact of 50 kW transmissions on operations in the Upper 700 MHz Band, including users of spectrum licensed to guard band managers on 746–747 MHz.

11. To address the potential for adjacent channel interference resulting from operations on the Lower 700 MHz Band, the Commission adopted general rules that protect all adjacent channel licensees, whether they are operating in the Lower 700 MHz Band or in the lower portion of the Upper 700 MHz Band. As the *MO&O* states, by its very compliance with the power flux density ("PFD") limit in § 27.55(b), a Block A, B, and/or C Lower 700 MHz licensee operating at 50 kW protects mobile receivers operating on 746–747 MHz from desensitization or front-end overload because they will experience PFD levels that are no greater than the PFD levels that could occur from stations operating at 1 kW ERP or less.

12. The *MO&O* states that licensees operating at power levels that exceed 1 kW are required to notify all licensees authorized on adjacent blocks that are located within 75 km. The *MO&O* explains that this requirement provides adjacent channel licensees, including licensees on 746–747 MHz, the opportunity to adopt measures to mitigate interference. Finally, by meeting the limits of § 27.53(f) of the Commission's rules on the power of any emission outside a licensee's frequency band(s), which would include any OOBE on 746–747 MHz, the *MO&O* states that a Block A, B, and/or C Lower 700 MHz licensee operating at up to 50 kW will protect mobile and base receive stations on 746–747 MHz from harmful interference that could arise due to out-of-band emissions.

13. Petitioner claims that transmitters operating at 50 kW will produce high levels of interference to mobile and portable receivers in the 746–747 MHz guard band and that the PFD limit established in the *Lower 700 MHz R&O* is inadequate to protect receivers in the guard band from being overwhelmed. However, on the basis of petitioner's own calculations referenced in the *Lower 700 MHz R&O*, the Commission determined that the interference environment of mobile and portable receivers in adjacent bands, such as the 746–747 MHz guard band, would be not substantially changed with 50 kW ERP stations operating under the conditions of the PFD limit adopted in the *Lower 700 MHz R&O*. To protect adjacent channel mobile receivers from overload conditions, the Commission concluded that it is only necessary that 50 kW transmitters produce radio fields on the ground that are no greater than what would occur from commercial land mobile systems operating at power levels of 1 kW or less. Thus, the Commission adopted § 27.55(b) of the Commission's rules, which established a PFD limit for Lower 700 MHz Band stations operating up to 50 kW. The *MO&O* states that § 27.55(b) ensures that the interference environment for mobile and portable receivers operating on spectrum adjacent to 50 kW ERP transmitters is substantially the same as what it would be for mobile and portable receivers operating on spectrum adjacent to 1 kW ERP transmitters.

14. In support of Access Spectrum's petition, Motorola, Inc. ("Motorola") filed an engineering analysis purporting to demonstrate that the PFD limit does not adequately protect adjacent channel licensees in the guard band. The Commission disagrees with Motorola's finding that there is a discontinuity in the provisions of its rules that affects systems operating below 1 kW differently from those operating at higher power levels. Motorola suggests that because of the Commission's rule, which places a particular PFD limit on above-1 KW ERP systems in the Lower 700 MHz Band, licensees will operate with antennas and antenna configurations that might put the full 3000 microwatts per square meter PFD on the ground in the vicinity of the transmitter and, therefore, cause excessively high out-of-band emissions into 746–747 MHz guard band handsets. According to the *MO&O*, Motorola's claimed large discontinuity in the level of out-of-band emissions produced when licensees operate at power levels above 1 kW suggests a sudden, large increase in emissions automatically occurring when a licensee operating at 1 kW ERP increases its power level to just above 1 kW ERP. According to the *MO&O*, this assertion, however, is groundless. The Commission explains that its 3000-microwatt per square meter rule merely places a limit on the energy a licensee operating above 1 kW can put on the ground 1 km away. In the course of operating at such power levels, and designing their systems to not exceed the 3000 mw/sq m limit, the *MO&O* states that if a licensee employs a particular antenna and/or an antenna configuration in an effort to actually reach this rather generous PFD limit, there would, as Motorola contends, be greater out-of-band emissions into guard band receivers than the Commission may have anticipated when it adopted its 43 + 10log P OOBE standard. However, the *MO&O* explains that it is far more likely that licensees designing commercial systems operating at power levels just above and just below 1 KW ERP will employ virtually the same antennas and antenna configurations, which, according to Motorola, would produce a much more modest 140 mw/sq m PFD level. Thus, the *MO&O* states that a licensee operating at a power level above 1 kW ERP will produce no greater emissions into guard band receivers than a licensee operating below 1 kW ERP—*i.e.*, there would be no sudden increase or discontinuity in emissions occurring from systems that choose to operate at power levels above 1 kW ERP.

15. The Commission states that it should also be noted that commercial licensees operating in the Upper 700 MHz Band, *e.g.*, the 747–752 megahertz license immediately above the guard band, could design systems that produce that same PFD level and thus create the same out-of-band emissions into guard band receivers that concern Motorola with regard to Lower 700 MHz Band systems. According to the *MO&O*, the Commission's rule, which is designed simply to place a limit on energy produced by high-powered systems in the Lower 700 MHz band, will not cause any greater out-of-band interference to occur to guard band receivers from commercial systems operating in Lower 700 MHz Band than could occur from commercial systems operating in the Upper 700 MHz Band.

16. The petitioner also claims that the use of antenna down tilting and improved filtering is inadequate to mitigate interference for users of the guard band utilizing portable handsets. From this observation, the petitioner concludes that the Commission failed to address the circumstances that will be faced by guard band users operating mobile or portable receivers and that the Commission's conclusions regarding interference mitigation are therefore baseless. As the petitioner recognizes, however, the Commission explains in the *MO&O* that antenna down tilting and filtering are measures that it suggested may be applied to base station receiving receivers, not mobiles or portables. Because of the potential interference scenarios involving base-to-base interference (i.e., scenarios that the adoption of a PFD limit on the ground would not address), the Commission provided a table demonstrating how a licensee could mitigate potential base-to-base interference from 50 kW transmissions by use of a selective antenna pattern or down tilting of its base receive antenna. The *MO&O* states that protection of mobiles and portables is already ensured by the PFD limitation of 3000 microwatts per square meter on the ground. Thus, the Commission squarely addressed and mitigated the potential impact to adjacent channel mobiles on 746–747 MHz by the adoption of § 27.55(c).

17. The Commission disagrees with the petitioner's supposition that the notification requirement placed on licensees that intend to operate base or fixed stations in excess of 1 kW ERP provides no practical benefit for users of the 746–747 guard band. The *MO&O* states that the petitioner's position relies on a misunderstanding that the notification requirement is intended to solve a base-to-mobile interference potential. As stated in the *MO&O*, the potential interference to mobile and portable receivers on the 746–747 MHz guard band is addressed by the PFD limitation of 3000 mw/sq m on the ground. As explained in the *Lower 700 MHz R&O*, the Commission states that the notification requirement is a means to implement the mitigation measures cited by the Commission to address the potential for base-to-base interference from 50 kW ERP operations.

18. Access Spectrum finally contends that the OOBE limit established in the *Lower 700 MHz R&O* should be significantly greater in order to mitigate adjacent channel interference caused by high power base station operations on license blocks occupying TV channels 57–59. In the *MO&O*, the Commission disagrees. According to the Commission, the OOBE limit will result in the identical out-of-band emission

section 309(j)(2)(A) competitive bidding exemption applies to public safety radio service eligibles that seek to acquire licenses on the Lower 700 MHz Band. In previous rulemakings, the Commission examined the scope of section 309(j)(2)(A)'s exemption for public safety radio services, and concluded that the public safety radio services exemption applies to spectrum for particular services, rather than operates." In contrast to section 309(j)(2)(C)'s NCE exemption specifically at issue in *NPR*, the Commission states that the public safety radio services exemption in section 309(j)(2)(A) does not refer to the ultimate recipient of the license. Rather, the *MO&O* states that it specifically refers to "public safety radio services" used by public safety entities, and not to public safety stations or licensees

24. For similar reasons, the Commission decides on its own motion, that NCEs are not eligible to apply for initial licenses for new services in the Lower 700 MHz Band. The *MO&O* states that, in arriving at this decision, the Commission does not reach the issue of whether the section 309(j)(2)(C) exemption applies to mutually exclusive license applications for new services in the Lower 700 MHz Band.

connection with voluntary band-clearing arrangements that would result in the clearing of a Channel 59–69 station. As stated in the *MO&O*, the Commission adopted a policy in the Upper 700 MHz proceeding not to prohibit three-way band-clearing agreements pursuant to which a station might relocate temporarily into Channels 52–58. In so doing, the Commission observed that this

would be permitted to move into that allotment, except with the agreement of the new 700 MHz licensee. Thus, the *MO&O* states that a new 700 MHz licensee would not be liable for multiple payments to clear a single allotment. Further, the *MO&O* states that this policy is entirely voluntary. The Commission finds that there are possible uses for this spectrum that would allow new Lower 700 MHz

18. Access Spectrum finally contends that the OOBE limit established in the *Lower 700 MHz R&O* should be significantly greater in order to mitigate adjacent channel interference caused by high power base station operations on license blocks occupying TV channels 57–59. In the *MO&O*, the Commission disagrees. According to the Commission, the OOBE limit will result in the identical out-of-band emission level for 1 kW transmitters as for 50 kW transmitters (*i.e.*, producing the absolute power of −43 dBw, or 50 microwatts, out of the transmitter). The *MO&O* states that the protection afforded adjacent channel receivers is independent of the maximum power allowed for Lower 700 MHz Band operations, finding that the requirement proposed by petitioner is unnecessary.

19. In sum, the Commission does not agree with the petitioner that the technical rules jeopardize users of the 746–747 MHz guard band. After full consideration of the arguments made by petitioner, and the commenters supporting its petition, the Commission will not alter the OOBE limit or maximum power limit of 50 kW ERP for any operations in the Lower 700 MHz Band. The Commission also leaves intact the related mitigation requirements that were adopted in the *Lower 700 MHz R&O* as reasonable measures to maintain the flexibility provided by the higher power limit, while mitigating the risk that any interference from stations operating in excess of 1 kW ERP will occur.

3. Applicability of Statutory Exemptions From Auction

20. In a petition for reconsideration or clarification, OCTO asks that the Commission confirm that the part 27 service rules that have been amended in the *Lower 700 MHz R&O* permit public safety eligibles to apply to provide private, internal communications services in the spectrum without participating in an auction. In the *MO&O*, the Commission denies OCTO's petition. The Commission did not designate any portion of the band to "public safety radio services" in the *Lower 700 MHz R&O*. Instead, the Commission allocated the entire band for flexible use by fixed, mobile, and broadcast services. Thus, the *MO&O* states that this band is not subject to the "public safety radio services" auction exemption found at section 309(j)(2)(A) of the Act.

21. OCTO argues that, because the *Lower 700 MHz R&O* permits private internal uses and public safety eligibles such as OCTO who have historically used private internal systems, the section 309(j)(2)(A) competitive bidding exemption applies to public safety radio service eligibles that seek to acquire licenses on the Lower 700 MHz Band. In previous rulemakings, the Commission examined the scope of section 309(j)(2)(A)'s exemption for public safety radio services, and concluded that the public safety radio services exemption applies to spectrum for particular services, rather than individual users of spectrum. Thus, the *MO&O* explains that the rules for a particular service determine whether spectrum is designated for public safety radio services exclusively, and the *MO&O* states that part 27 rules do not define any portion of the Lower 700 MHz spectrum as "public safety radio services" band. In developing service rules in this proceeding, the Commission relied on the record which demonstrated demand for commercial wireless and broadcast services in the Lower 700 MHz Band. According to the *MO&O*, these service rules reflect established Commission policy that favors flexibility of use as well as the Commission's experience in allocating spectrum, predictions about future demands and technologies, and statutory and other public interest considerations. To the extent that public safety users desire spectrum in a particular band, the Commission encourages them to participate in the service rule proceedings to help craft rules conducive to public safety needs. The *MO&O* states that public safety users, such as OCTO, may apply for unassigned spectrum in the Lower 700 MHz Band pursuant to the Commission's established section 337 procedures, or apply for designated public safety spectrum.

22. In the *MO&O*, the Commission finds that *National Public Radio, Inc.* v. *FCC (NPR)* (254 F.3d 226 (D.C.Cir.2001)) does not alter its determination that the public radio services exemption in section 309(j)(2)(A) does not apply to spectrum to be auctioned in the Lower 700 MHz Band. The *MO&O* states that in *NPR*, the court held that the section 309(j)(2)(C) exemption from competitive bidding for non-commercial educational broadcasters ("NCEs") exempts NCEs from participating in auctions for any broadcasting spectrum, whether or not the spectrum has been reserved for noncommercial educational use. The *MO&O* states that, because section 309(j)(2)(C) specifically exempts NCE "stations," the court concluded that the NCE exemption "is based on the nature of the station that ultimately receives the license, not on the part of the spectrum in which the station operates." In contrast to section 309(j)(2)(C)'s NCE exemption specifically at issue in *NPR*, the Commission states that the public safety radio services exemption in section 309(j)(2)(A) does not refer to the ultimate recipient of the license. Rather, the *MO&O* states that it specifically refers to "public safety radio services" used by public safety entities, and not to public safety stations or licensees themselves. Thus, the Commission has previously found that the NCE exemption addressed in *NPR* is not analogous to the application of the section 309(j)(2)(A) exemption, as OCTO claims. The Commission therefore believes that the plain language analysis used in *NPR* supports the Commission's interpretation of section 309(j)(2)(A) in the *MO&O*.

23. The *MO&O* states that the interpretation of the public safety radio services exemption is also consistent with the Commission's obligations to auction and manage the Lower 700 MHz Band. Section 309(j)(14) of the Communications Act requires the Commission to reclaim and assign the Lower 700 MHz Band by competitive bidding. Thus, the Commission finds that allowing public safety entities to acquire spectrum in the band under the section 309(j)(2)(A) exemption would undermine Congress' intent to auction this spectrum. Under section 309(j)(3) of the Act, in using competitive bidding to assign licenses the Commission must seek to promote a number of competing objectives such as: promoting the introduction and deployment of new technologies and services for the public; encouraging economic opportunity and competition; and allowing time for interested parties to develop their business plans. The *MO&O* states that once Congress has determined that a band should be licensed through competitive bidding, allowing public safety eligibles to override that designation under the section 309(j)(2)(A) exemption would undermine Congress' directive and the Commission's auction authority. Because the approach advocated by OCTO would make spectrum freely available to public safety radio service eligibles on demand, the Commission explains that it and other potential applicants would not know in advance which licenses would be available at auction. According to the *MO&O*, such uncertainty would cause delays in the deployment of new spectrum-based services and would frustrate the statutory objectives of reclaiming the spectrum and subjecting it to competitive bidding.

24. For similar reasons, the Commission decides on its own motion, that NCEs are not eligible to apply for initial licenses for new services in the Lower 700 MHz Band. The *MO&O* states that, in arriving at this decision, the Commission does not reach the issue of whether the section 309(j)(2)(C) exemption applies to mutually exclusive license applications for new services in the Lower 700 MHz Band. The *MO&O* states that prohibiting NCE broadcasters from acquiring spectrum in this band under the section 309(j)(2)(C) exemption is necessary to implement the Commission's decisions to establish flexible mixed use licenses assigned by competitive bidding. By taking a flexible use approach and using competitive bidding, the Commission established a market-based approach that allows the spectrum to be employed for a full range of allocated services, so long as such operations comply with part 27's technical requirements. The Commission recognized recently that the restriction the Commission adopts would be consistent with the statutory language, as interpreted by the court in the *NPR* case. The Commission believes that this approach as applied to new services in the Lower 700 MHz Band will eliminate uncertainties about the outcome of the competitive bidding process and promote the Commission's goals of assigning these licenses expeditiously and promoting the intensive and efficient use of this spectrum. The Commission's decision does not in any way prejudge the outcome that will be taken in MM Docket No. 95–31. In this regard, the Commission notes that the Lower 700 MHz band is flexible mixed use spectrum, and very different considerations apply to conventional broadcast licenses regulated under parts 73 and 74 that are the subject of that proceeding. In arriving at a decision in that proceeding, the Commission intends to ensure that NCE broadcasters will continue to have adequate access to broadcast spectrum.

B. DTV Transition Issues

1. Temporary Relocation of Analog Stations to Channels 52–58 To Facilitate Band Clearing

25. SCA seeks clarification that the Commission's decision in the *Lower 700 MHz R&O* does not prohibit proposals to relocate analog stations to channels 52–58 in connection with Upper 700 MHz band-clearing agreements. Pursuant to the Commission's band-clearing policy, the Commission will entertain proposals to temporarily relocate analog operations to Channel 52–58 in connection with voluntary band-clearing arrangements that would result in the clearing of a Channel 59–69 station. As stated in the *MO&O*, the Commission adopted a policy in the Upper 700 MHz proceeding not to prohibit three-way band-clearing agreements pursuant to which a station might relocate temporarily into Channels 52–58. In so doing, the Commission observed that this alternative could provide necessary flexibility to incumbents on Channels 59–69 to enter into early clearing arrangements. The Commission has consistently recognized that extending flexibility to Channel 59–69 broadcasters to enter into voluntary arrangements for the early clearing of the Upper 700 MHz bands may make this spectrum available more quickly for new public safety and other services and promote the transition of analog television licensees to digital television service.

26. Contrary to Council Tree Communications, LLC's ("Council Tree's") suggestion, the Commission does not believe that this policy presents significant uncertainties for potential bidders for licenses in the Lower 700 MHz band. The *MO&O* states that an analog broadcaster that seeks to move temporarily into this band must move into an existing Channel 52–58 allotment because the Commission has previously determined that it will not create new allotments in the Upper or Lower 700 MHz bands. Thus, as the Commission pointed out in the Upper 700 MHz proceeding, the *MO&O* states that such temporary moves will not increase the number of stations that will have to be cleared from Channels 52–58, but merely replace one station on those channels with another. For this reason, the Commission states that potential new 700 MHz licensees should be able to determine prior to the auctions the number of incumbent broadcast operations that may exist in (and adjacent to) the geographic areas and frequency bands that they are interested in serving.

27. The Commission also disagrees with Council Tree's argument that some broadcasters might be able to obtain excessive payments from new 700 MHz licensees in exchange for early band clearing. The *MO&O* states that the Commission's voluntary band-clearing policy merely permits bidders and broadcasters to negotiate for the economic value of early clearing. According to the Commission, once a particular allotment is cleared, the allotment would become part of the relevant 700 MHz license (or licenses), and no incumbent broadcast operation would be permitted to move into that allotment, except with the agreement of the new 700 MHz licensee. Thus, the *MO&O* states that a new 700 MHz licensee would not be liable for multiple payments to clear a single allotment. Further, the *MO&O* states that this policy is entirely voluntary. The Commission finds that there are possible uses for this spectrum that would allow new Lower 700 MHz licensees to begin operating immediately, subject to the requirement that they protect incumbent TV and DTV facilities from harmful interference. According to the Commission, such licensees would have full use of the licensed spectrum at the end of the DTV transition period in each market, at which time all incumbent broadcasters will be required to vacate the 700 MHz bands. In addition, the *MO&O* states that market forces should act to keep the total amount of all clearing payments at a reasonable level both because the interests of broadcasters and bidders in these negotiations are not congruent and because bidders that participate in band-clearing arrangements will have to outbid other wireless entities which may be willing to hold licenses for encumbered spectrum. When it extended this flexibility to Upper 700 MHz band-clearing broadcasters, the Commission explicitly recognized that, because relocations from Channels 59–69 to Channels 52–58 would be interim in nature, such moves could result in duplicative costs for broadcasters, additional disruption to viewers, and other inefficiencies. However, the Commission observed that the benefits of such an arrangement may well be substantial, and that a broadcaster will have considered the costs in its individual situation before voluntarily agreeing to move into Channels 52–58 with the knowledge that it will subsequently be obligated to vacate that allotment. Consistent with the Commission's policy regarding the early voluntary clearing of the 700 MHz bands, the Commission will consider any such public interest issues in its review of regulatory requests filed in connection with such voluntary clearing agreements.

2. Pending NTSC Petitions and Applications

28. In the *MO&O*, the Commission affirms its decision in the *Lower 700 MHz R&O* to (1) dismiss pending petitions for new NTSC channel allotments on channels 52–59, but permit such petitioners to refile new DTV allotment petitions on a core channel, subject to meeting DTV

spacing requirements; and (2) permit entities with pending applications to modify their filings to provide analog or digital service in the core or digital service on channels 52–58.

29. Univision Television Group, Inc. ("Univision") requests that the Commission exclude it from the category of applicants who must amend their applications to specify an in-core

As the Commission noted in the *Lower 700 MHz R&O*, digital deployment in the Lower 700 MHz Band will introduce new digital service and could promote the acquisition of digital equipment by consumers. Moreover, according to the *MO&O*, new service providers in the band may be able to co-exist more easily with digital television stations because such stations operate with less power.

The Commission did not deprive Pappas/Iberia of their ability to have their settlement proposals considered using the same procedures as used for all other similarly situated applicants. Because Pappas/Iberia can effectuate their settlement agreements by specifying either digital service in channels 2–58 or NTSC service in the core, the Commission states that the

spectrum for use by new DTV stations and to avoid prolonging the DTV transition. The Commission finds that grant of the relief requested by KM would hinder the DTV transition in that the uncertainty created by the filing of allotment modification petitions for different channels by mutually exclusive applicants would frustrate the efforts of parties seeking new or modified DTV allotments.

the Lower 700 MHz Band was scheduled to commence on June 19, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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spacing requirements; and (2) permit entities with pending applications to modify their filings to provide analog or digital service in the core or digital service on channels 52–58.

29. Univision Television Group, Inc. ("Univision") requests that the Commission exclude it from the category of applicants who must amend their applications to specify an in-core channel or DTV operation, or face dismissal. According to the *MO&O*, Univision was the winning bidder in FCC Auction No. 80 (July 2000) for NTSC Channel 52 at Blanco, Texas. In the alternative, Univision asks that the Commission grant its pending petition for rulemaking (filed March 8, 2002) proposing to substitute NTSC Channel 17 for NTSC Channel 52 ("Petition"). In the *MO&O*, the Commission requires the Media Bureau to work with Univision to expedite the allotment process. In addressing Univision's Petition, the Commission directs the Media Bureau to consider waiver of the applicable land mobile distance separation criterion for the site proposed in Univision's petition for rulemaking based on the record in that proceeding. According to the *MO&O*, such wavier relief, if granted, should be conditioned on Univision agreeing to (1) accept interference from current and future 488–494 MHz land mobile facilities operating from base stations located within 50 miles of the Houston reference point and mobile units operating within 30 miles of their associated base stations and (2) not radiate a signal in the Houston area where land mobile operation is permitted with a field strength greater than that permitted by a full-power TV station that meets the co-channel distance separation criteria (341.1 km).

30. Two other petitioners, Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC ("Pappas/Iberia") and WB Television Network ("WB"), argue that the decision to permit NTSC applicants to provide digital service in the Lower 700 MHz Band will not ensure the recovery of this spectrum because DTV operations will encumber this spectrum just as much as NTSC operations. WB also argues that limiting new Lower 700 MHz Band stations to DTV service would not further the transition to DTV. The *MO&O* states that the Commission disagrees. The Commission continues to believe that authorizing new NTSC allotments or stations in the Lower 700 MHz Band is inconsistent with the 1997 Budget Act mandate to reclaim this spectrum for new services, and to facilitate the transition to digital television service. As the Commission noted in the *Lower 700 MHz R&O*, digital deployment in the Lower 700 MHz Band will introduce new digital service and could promote the acquisition of digital equipment by consumers. Moreover, according to the *MO&O*, new service providers in the band may be able to co-exist more easily with digital television stations because such stations operate with less power than most analog stations and are more resistant to interference. In addition, the *MO&O* states that this approach can avoid the complications that could arise with requiring licensees to convert their NTSC operations to digital relatively soon after they commence operations.

31. The Commission also disagrees with Pappas/Iberia's and WB's argument that the grant of additional requests for NTSC allotments and stations in the band would constitute a negligible increase and would have a low overall impact on the Lower 700 MHz Band. The *MO&O* states that, while not all of the 57 requests for new NTSC stations and allotments pending at the time the Commission released the *Lower 700 MHz R&O* could have been granted, there are approximately 100 NTSC stations in the band and, even assuming that only ten of them were granted, the number of NTSC stations in the band would increase by approximately ten percent. According to the Commission, such an increase would not be de minimis and could substantially increase the burden on new licensees to protect incumbents particularly because NTSC stations are more susceptible to interference.

32. Pappas/Iberia argue that the *Lower 700 MHz R&O* conflicts with section 309(l)(3) of the Act, which directs the Commission to waive any provisions of its regulations necessary to permit settlements between mutually exclusive applicants for commercial television stations during the 180-day period beginning on the date of enactment of the 1997 Budget Act. Pappas/Iberia claim that they may not be able to effectuate their settlement agreements, and that they have been deprived of due process. The *MO&O* states that the Commission disagrees. According to the *MO&O*, neither the plain language of section 309(l)(3) nor its legislative history suggests that Congress intended to limit the Commission's ability to require modification of settlement agreements. The *MO&O* states that it is well established that the filing of an application with the FCC creates no vested rights in the applicant, and that the Commission may make midstream rule adjustments, even though it disrupts expectations and alters the competitive balance among applicants. The Commission did not deprive Pappas/Iberia of their ability to have their settlement proposals considered using the same procedures as used for all other similarly situated applicants. Because Pappas/Iberia can effectuate their settlement agreements by specifying either digital service in channels 2–58 or NTSC service in the core, the Commission states that the *Lower 700 MHz R&O* does not conflict with section 309(l)(3) of the Act.

33. Pappas/Iberia also argue that the Commission's decision not to grant additional NTSC facilities in the Lower 700 MHz Band constitutes an unjustified departure from the Commission's first local service policy. In the *Lower 700 MHz R&O*, the Commission acknowledged that several commenters, including Pappas and WB, identified the potential benefits of first local service. The Commission, however, weighed competing policy considerations and found that not granting additional NTSC facilities in the Lower 700 MHz Band would further the 1997 Budget Act mandate to recover spectrum in the band. The *MO&O* also states that the *Lower 700 MHz Band R&O* did not foreclose the ability of applicants for NTSC stations in the band to provide first local television service: the order afforded applicants an opportunity to amend their applications to specify digital operations in channels 2–58 or analog service in the core.

3. Mutually Exclusive Applications

34. KM Communications, Inc. ("KM") filed a petition for reconsideration or clarification in which it requested that the Commission overturn the Media Bureau's requirement that all pending mutually exclusive applicants for NTSC allotments in the Lower 700 MHz Band join in any petition or amendment to petition for rulemaking to substitute an alternate channel. The Commission denies KM's petition. The *MO&O* states that KM does not cite any case law, statute, rule, or FCC policy in support of its arguments. According to the Commission, it is not aware of any. The Commission has previously stated that elimination of vacant NTSC allotments would help it achieve its goals of full accommodation, replication and spectrum recovery. The Commission stated that in some areas a DTV channel could not be accommodated unless the unused NTSC allotments were eliminated and, in other areas, the presence of unused NTSC allotments would crowd the expected service areas of DTV allotments. The Commission therefore eliminated all vacant NTSC allotments. The Commission's decision was founded on the need to preserve

spectrum for use by new DTV stations and to avoid prolonging the DTV transition. The Commission finds that grant of the relief requested by KM would hinder the DTV transition in that the uncertainty created by the filing of allotment modification petitions for different channels by mutually exclusive applicants would frustrate the efforts of parties seeking new or modified DTV allotments.

Procedural Matters

35. The *MO&O* states that alternative formats (computer diskette, large print, audiocassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at *mcontee@fcc.gov*. According to the Commission, the *MO&O* can also be downloaded at *http://www.fcc.gov/cgb/dro/*.

Ordering Clauses

36. Pursuant to sections 1, 2, 4(i), 5(c), 7, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 405, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 405, 614 and 615, the Commission takes this action.

37. The *MO&O* concludes that the Petitions for Reconsideration filed by Access Spectrum, LLC, Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC, Spectrum Exchange Group, LLC and Allen & Company, WB Television Network, and Univision Television Group, Inc. are denied; that the Petitions for Reconsideration or Clarification filed by KM Communications, Inc., and Office of the Chief Technology Officer, Government of the District of Columbia are denied; and that the Petition for Clarification or Reconsideration filed by Spectrum Clearing Alliance is granted, to the extent indicated above, and is otherwise denied.

38. On the Commission's own motion, pursuant to sections 1.106 and 1.108 of the Commission's rules, 47 CFR 1.106, 1.108, the eligibility to apply for new services in the Lower 700 MHz Band is modified to the extent indicated in Section III.A.3 of the *MO&O*.

39. The Commission orders that its determinations are effective immediately upon release of the *MO&O*. The Commission states that good cause exists for the Commission's determinations to take effect immediately because, at the time the *MO&O* was released, Auction No. 44 for the Lower 700 MHz Band was scheduled to commence on June 19, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17176 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[IB Docket No. 00–231, FCC 02–154]

2000 Biennial Regulatory Review; International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends several of the Commission's rules regarding the provision of international telecommunications service. This document also clarifies the intent of certain rules and eliminates certain rules that are no longer necessary. This proceeding is part of the Commission's year 2000 biennial regulatory review. The rule changes will remove unnecessary burdens on the public and the agency.

DATES: Effective August 8, 2002 except for §§ 43.61, 63.10(d), 63.18(e)(3), 63.19(a) and (b), 63.20(a), and 63.24(e) and (f) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements on or before September 9, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Jeanette_I._Thornton@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1499. For additional information concerning the information collections contained in this Order contact Judith Boley Herman at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 02–154, released on June 10, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–02–154A1.pdf*. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893, Fax: 202–863–2898, e-mail qualexint@aol.com. This Order contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the proposed information collections contained in this proceeding.

Summary of Report and Order

1. On November 13, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) (65 FR 79795, December 20, 2000), to determine whether it should amend and clarify several of its rules relating to international telecommunications services. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the pubic interest. The Commission solicited comments on all of the proposals and tentative conclusions contained in the NPRM.

2. On May 22, 2002, the Commission adopted a Report and Order (Order) in this proceeding. The Commission

amended several of its rules regarding the provision of international telecommunications service. In addition, the Commission amended several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. The rule changes will remove unnecessary burdens from both the public and the Commission.

requirement whereby carriers must provide affected customers with 60 days notice of a planned discontinuance, reduction or impairment of service and file with the Commission a copy of the notification. The Commission, however, exempted CMRS carriers from the procedures for discontinuances of international services

6. The Commission clarified its rules regarding attribution of indirect

clarified this requirement. The Commission declined to expand the reach of § 63.21(i) to commonly controlled subsidiaries. The Commission concluded that once a Bell Operating Company receives section 271 authority to provide InterLATA service in one state in its region it does not need to amend its section 214 international authorization when it

convenience, and necessity. The information collections are necessary to maintain effective oversight of U.S. international carriers generally. The notification requirements will ensure that the Commission's records accurately reflect the identity of every authorized carrier as well as other needed information.

10. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility

Section 214 of the Act, regardless of whether the carrier is a small entity.

13. The Order adopts changes to the rules regarding assignments and transfers of control of international section 214 authorizations. In particular the Order consolidates the rules into one rule section, and it revises the rules for *pro forma* transfers and assignments to be more consistent with those procedures currently used for other

carriers subject to the rule, and it removes the burdensome prior notification procedure for certain carriers while protecting customers from abrupt discontinuances of service. We do not believe that this change will impose any significant economic impact on small entities.

16. The Order clarifies other rules and eliminates rules that are no longer necessary, duplicative, or obsolete. In

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amended several of its rules regarding the provision of international telecommunications service. In addition, the Commission amended several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. The rule changes will remove unnecessary burdens from both the public and the Commission.

3. The Commission adopted changes to its rules regarding assignments and transfers of control of international section 214 authorizations. The Commission consolidated several rule sections and revised the rules for *pro forma* transfers and assignments to be more consistent with those procedures used for other service authorizations, particularly commercial mobile radio services (CMRS). The Order permits a case-by-case determination of whether a transfer of control or assignment is substantial or *pro forma* in nature based on the guidance set forth in previous Commission decisions. The Order will treat a change from less than 50 percent ownership to 50 percent or more ownership as a transfer of control. For a *pro forma* transfer or assignment of control, a carrier will be required to notify the Commission of the new ownership structure within 30 days after the change. Licensees will be required to file a notification with the Commission within 30 days after consummation of a *pro forma* assignment or transfer of control. The Commission added definitions and explanatory language on assignments and transfers of control as well as procedures to be followed in the event of an involuntary assignment or transfer of control. The Commission concluded that these changes will allow greater flexibility to applicants in structuring transactions and will provide greater clarity to authorized international carriers regarding assignments and transfers of controls.

4. The Commission adopted its tentative conclusion that it is no longer necessary to apply the settlement rate benchmarks condition to section 214 authorizations to provide facilities-based international private line service. The Commission determined that the application of this condition to facilities-based private line service is not necessary to prevent carriers from evading the condition as it applies to facilities-based switched services.

5. The Commission modified its rules to relieve international carriers of the requirement to seek prior approval for discontinuance of service, except where such carriers possess market power on the U.S. end of the route. The Commission retained its notification requirement whereby carriers must provide affected customers with 60 days notice of a planned discontinuance, reduction or impairment of service and file with the Commission a copy of the notification. The Commission, however, exempted CMRS carriers from the procedures for discontinuances of international services

6. The Commission clarified its rules regarding attribution of indirect ownership interests in U.S. and foreign carriers. In addition, the Order eliminated the rule which requires dominant carriers to notify the Commission if they convey transmission capacity on submarine cables to another U.S. carrier. Because the time period has expired, the Commission deleted the requirement that certain foreign-owner carriers file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the United States in 1988, 1989, and 1990. Further, the Commission clarified its rulest that a facilities-based carrier may provide service over U.S. facilities that are not subject to authorization by the Commission, as long as those facilities are not on the Commission's "Exclusion List for International Section 214 Authorizations" (Exclusion List). Also, the Commission removed from § 63.22(b) the general reference to a list of countries in the Exclusion List.

7. The Order also removes duplicative notes contained in § 63.18. The Order deleted the obsolete language that required U.S. international carriers to file applications to supplement already-authorized facilities. In addition, the Order amended § 63.10(d) and 63.53(b) to eliminate the requirement that certain documents be submitted on computer diskettes because the Commission permits electronic filing.

8. The Commission exempted CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers. The Commission declined the commenters' request to eliminate the quarterly traffic and revenue data reporting requirements for carriers that meet certain traffic thresholds. The Commission did not consider Verizon's request to change the affiliation notification procedures because Verizon's request was addressed in a previous decision. Although the Commission did not eliminate the requirement that carriers inform the Commission of their interlocking directorates with foreign carriers, it clarified this requirement. The Commission declined to expand the reach of § 63.21(i) to commonly controlled subsidiaries. The Commission concluded that once a Bell Operating Company receives section 271 authority to provide InterLATA service in one state in its region it does not need to amend its section 214 international authorization when it gains section 271 authority for additional states.

Procedural Matters

9. *Paperwork Reduction Act.* The Order contained new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 9, 2002. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Amendment of Parts 43 and 63 of the Commission's Rules for International Telecommunications Services (IB Docket No. 00–231).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 149.

Number of Responses: 190.

Frequency of Response: On Occasion. Third party disclosure.

Total Annual Burden: 263 burden hours.

Total Annual Costs: $72,000.

Needs and Uses: The information will be used by the Commission staff in carrying out its duties under the Communications Act. The information collections are necessary to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary to maintain effective oversight of U.S. international carriers generally. The notification requirements will ensure that the Commission's records accurately reflect the identity of every authorized carrier as well as other needed information.

10. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). An Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. *See 2000 Biennial Regulatory Review*, IB Docket 00–231 (65 FR 79795, December 20, 2000). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received on the IRFA.

11. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. The Commission identified a number of rules that could be modified or eliminated in light of competition in international telecommunications services. The Commission also identified a number of rules that could be clarified to make it easier for practitioners and other members of the public to understand and follow those rules. Commenters not only supported the proposals contained in the NPRM, but they requested changes to several other rules.

12. We believe that these changes are in the public interest and will remove unnecessary burdens on the public and the Commission. The rules and policies contained in the Order will benefit all carriers providing international common carrier service pursuant to Section 214 of the Act, regardless of whether the carrier is a small entity.

13. The Order adopts changes to the rules regarding assignments and transfers of control of international section 214 authorizations. In particular the Order consolidates the rules into one rule section, and it revises the rules for *pro forma* transfers and assignments to be more consistent with those procedures currently used for other service authorizations, particularly commercial mobile radio services (CMRS). The changes will eliminate confusion over our rules regarding assignments and transfers of control. Also, the rules will provide greater flexibility for all applicants, including small entities, in structuring transactions. The modifications to the rules eliminate filing requirements on small entities and, therefore, do not pose a significant economic impact on such entities.

14. The Order also removes the benchmark condition applicable to section 214 authorizations that provide facilities-based international private line service. The Commission adopted this condition for facilities-based switched service to affiliated markets to address the potential for a carrier to engage in a predatory price squeeze. We believe the condition is no longer necessary to prevent carriers from evading the condition as it applies to facilities-based switched service. We find that this condition is burdensome to carriers and could prevent the development of innovative services. We believe that removal of this specific condition will be in the public interest, and it will not impose a significant economic impact on small entities.

15. The Order also relieves international carriers of the requirement to seek prior approval for discontinuance of service, except where such carriers possess market power on the U.S. end of the route. The Order retains a notification requirement to provide customers with sufficient time to obtain an alternative service provider before service is discontinued. The Commission, however, exempted CMRS carriers from the procedures for discontinuances of international services. Currently the rules require prior notification of discontinuances of service by U.S. carriers regulated as dominant. We do not believe that the dominant and nondominant classification should be used in determining criteria for requiring prior approval. Rather, the Commission believes that prior approval should be required only for carriers possessing market power on the U.S. end of the route. This modification clarifies the carriers subject to the rule, and it removes the burdensome prior notification procedure for certain carriers while protecting customers from abrupt discontinuances of service. We do not believe that this change will impose any significant economic impact on small entities.

16. The Order clarifies other rules and eliminates rules that are no longer necessary, duplicative, or obsolete. In addition, the Order eliminates many procedural burdens placed on all entities. The measures contained in the Order are administrative and procedural changes designed to further streamline and simplify the rules for international telecommunications carriers, and there will be no significant impact imposed on small entities.

17. Therefore, we certify that none of the requirements of the Order will have a significant economic impact on a substantial number of small entities.

18. *Report to Congress:* The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Order and this Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration and will be published in the **Federal Register**, 5 U.S.C. 605(b).

Ordering Clauses

19. Pursuant to the authority contained in sections 1, 4, 11, 214, 218, 219, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 214, 218, 219, 220, 403, this Report and Order in IB Docket No. 00–231 is hereby adopted.

20. Parts 43 and 63 of the Commission's rules are amended as set forth in the Rule Changes. These amendments and policy changes set forth in this Report and Order shall be effective August 8, 2002, except for §§ 43.61, 63.10(d), 63.18(e)(3), 63.19(a) and (b), 63.20(a), and 63.24(e) and (f) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

21. The Commission's Consumer Information and Government Affairs Bureau, Reference Information Center, shall send a copy of this order, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 43 and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 43 and 63 as follows:

PART 43—REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154, 211, 219, 220, 403, and 408, unless otherwise noted.

2. Section 43.61 is amended by revising paragraph (a) to read as follows:

§ 43.61 Reports to be filed by common carriers engaged in providing international communications services.

(a) Each carrier that is subject to the accounting requirements of part 32 of this chapter and that provides international communications services shall file with the Commission an original and six copies of a report containing the following information for each calendar year. Carriers that are not subject to the accounting requirements of part 32 of this chapter are not required to file the report.

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OR IMPAIRMENT OF SERVICE BY CARRIERS; AND GRANTS OF RECOGNITION

3. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

5. Section 63.09 is amended by revising Note 2 to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

* * * * *

Note 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their parents, and so on up the chain of ownership, in applying the 10 percent benchmark. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest) and A's interest would be 18 percent (30 percent of X's 60 percent interest in Y). However, if X owns 50 percent or more of Y, X is deemed to own all of Y for purposes of this calculation, and X's interest in "carrier" would be 26 percent and A's interest would be 30 percent. Carriers may rebut the presumption of control by non-controlling shareholders that own 10 percent or more of a carrier's stock. Carriers may request a declaratory ruling that a particular shareholder is not in control of the carrier. Carriers may also request a declaratory ruling that a particular shareholder that owns less than 10 percent of a carrier's stock is in control of the carrier. Carriers may

List of Subjects in 47 CFR Parts 43 and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 43 and 63 as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. Section 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not required to file reports pursuant to this paragraph. For purposes of this paragraph, *affiliated* and *foreign carrier* are defined in § 63.09 of this chapter.

§ 43.81 [Removed].

3. Remove § 43.81.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

5. Section 63.09 is amended by revising Note 2 to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

* * * * *

Note 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30 x 0.26 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

6. Section 63.10 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall also file one copy of these reports with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide switched facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96–261. See FCC 97–280 (rel. Aug. 18, 1997) (available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at *http://www.fcc.gov*).

7. Section 63.17 is amended by revising paragraph (b)(4) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) * * *

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(3).

8. Section 63.18 is amended by removing paragraph (e)(3), redesignating paragraph (e)(4) as paragraph (e)(3), revising newly redesignated paragraph (e)(3) and paragraph (g), and by adding a Note to paragraph (h) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) * * *

(3) *Other authorizations.* If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) and (e)(2) of this section, the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(3) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(h) * * *

Note to Paragraph (h): Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30 x 0.26 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

* * * * *

9. Section 63.19 is revised to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) With the exception of those international carriers described in paragraphs (b) and (c) of this section, any international carrier that seeks to discontinue, reduce or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.601:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 60 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

(2) The carrier shall file with this Commission a copy of the notification on or after the date on which notice has been given to all affected customers.

(b) The following procedures shall apply to any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500.

(c) Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section.

10. Section 63.20 is amended by revising paragraph (a) to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

(a) Unless otherwise specified the Commission shall be furnished with an original and five copies of applications filed for international facilities and services under Section 214 of the Communications Act of 1934, as amended. Upon request by the Commission, additional copies of the application shall be furnished. Each application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

* * * * *

§ 63.21 [Amended]

11. Section 63.21 is amended by removing paragraph (h) and redesignating paragraphs (i) and (j) as paragraphs (h) and (i).

12. Section 63.22 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(3).

(b) The carrier may provide service using half-circuits on any U.S. common carrier and non-common carrier facilities that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list. The exclusion list is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib*.

(c) Specific authority under § 63.18(e)(3) is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

* * * * *

13. Section 63.23 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.23 Resale-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(3):

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(3).

* * * * *

14. Section 63.24 is revised to read as follows:

§ 63.24 Assignments and transfers of control.

(a) *General.* Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.

(b) *Assignments.* For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(c) *Transfers of control.* For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. In all other

Note 2 to Paragraph (d): If a transaction is one of the types listed further, the transaction is presumptively pro forma and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; Assignment from a corporation to its individual stockholders

of a pro forma assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.

(2) A pro forma assignee or carrier that is subject to a pro forma transfer of control shall file a notification with the Commission no later than 30 days after the assignment or transfer is completed. The notification may be made by letter

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020325067–2161–02; I.D. 060901B]

RIN 0648–AP49

To report a sea turtle mortality in the pelagic longline fishery, please call 800–858–0624. To report an interaction with a listed whale in the shark gillnet fishery, please call 305–862–2850.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the

longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. Information from the NOAA Fisheries' Southeast Fisheries Science Center's February 2001 Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western

(c) *Transfers of control.* For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in the Note to this paragraph (c).

Note to Paragraph (c): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

(d) *Pro forma assignments and transfers of control.* Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or pro forma. Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to this paragraph (d). The types of transactions listed in Note 2 to this paragraph (d) shall be considered presumptively pro forma and prior approval from the Commission need not be sought.

Note 1 to Paragraph (d): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

Note 2 to Paragraph (d): If a transaction is one of the types listed further, the transaction is presumptively pro forma and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity); Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or Assignment of less than a controlling interest in a partnership.

(e) *Applications for substantial transactions.* (1) In the case of an assignment or transfer of control shall of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include the information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of § 63.18 is required only for the transferee/assignee. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.

(3) The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(4) An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification may be made by letter (sending an original and five copies to the Office of the Secretary) and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) *Notifications for non-substantial or pro forma transactions.* (1) In the case of a pro forma assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.

(2) A pro forma assignee or carrier that is subject to a pro forma transfer of control shall file a notification with the Commission no later than 30 days after the assignment or transfer is completed. The notification may be made by letter (sending an original and five copies to the Office of the Secretary). The notification must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee;

(ii) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, does not result in a change in the actual controlling party.

(3) A single letter may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted.

(4) Upon release of a public notice granting a pro forma assignment or transfer of control, petitions for reconsideration under § 1.106 of this chapter or applications for review under § 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under this paragraph (f).

(g) *Involuntary assignments or transfers of control.* In the case of an involuntary assignment or transfer of control to: a bankruptcy trustee appointed under involuntary bankruptcy; an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or, in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

§ 63.53 [Amended]

15. Section 63.53 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020325067–2161–02; I.D. 060901B]

RIN 0648–AP49

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Shark Gillnet Fishery; Sea Turtle and Whale Protection Measures

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements measures required by the June 14, 2001, Biological Opinion (BiOp) on Atlantic highly migratory species (HMS) fisheries. In the HMS pelagic longline fishery, NOAA Fisheries is closing the northeast distant statistical reporting (NED) area, requiring the length of any gangion to be 10 percent longer than the length of any floatline if the total length of any gangion plus the total length of any floatline is less than 100 meters, and prohibiting vessels from having hooks on board other than corrodible, non- stainless steel hooks. In the HMS shark gillnet fishery, both the observer and vessel operator must look for whales, the vessel operator must contact NOAA Fisheries if a listed whale is taken, and shark gillnet fishermen must conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals from their gear. This final rule also requires all HMS bottom and pelagic longline vessels to post sea turtle handling and release guidelines in the wheelhouse. The intent of these actions is to reduce the incidental catch and post-release mortality of sea turtles and other protected species in HMS fisheries.

DATES: Effective July 9, 2002, except for the amendments to § 635.5 and § 635.21 paragraphs (d)(3)(iv), (d)(3)(v) and (d)(3)(vi) which are effective August 8, 2002 and § 635.21 paragraph (c)(5)(iii)(B) which is effective October 7, 2002.

ADDRESSES: For copies of the Final Environmental Impact Statement/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/ RIR/FRFA), contact Tyson Kade at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Margo Schulze-Haugen at 301–713–2347 or fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635. The management of Atlantic HMS fisheries is also subject to the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

Sea Turtle Bycatch Reduction

NOAA Fisheries is required to address the fishery-related takes of sea turtles that are listed as threatened or endangered under the ESA. Although a high percentage of hooked sea turtles are released alive, NOAA Fisheries remains concerned about serious injuries to sea turtles taken by pelagic longline gear. Longline fisheries generally affect sea turtles by entangling or hooking them in fishing gear. Sea turtles that become entangled in longline gear may drown when they are forcibly submerged or they may be injured by the entangling lines. Turtles that are hooked by longline gear can be injured or killed, depending on whether they are hooked internally or externally. In addition to these immediate effects, as discussed in the BiOp, trailing longline gear can have long-term effects on a turtle's ability to swim, forage, migrate, and breed, although these long-term effects are difficult to monitor and measure. From 1992 to 1999, NOAA Fisheries estimates that the Atlantic pelagic longline fishery interacted with an average of 795 leatherback and 986 loggerhead sea turtles annually with an average annual estimate of 11 leatherback and 8 loggerhead mortalities. As explained in the BiOp, based on available data, NOAA Fisheries expects that 27 percent of loggerhead sea turtles hooked in the beak or mouth, 42 percent of loggerhead sea turtles that ingested hooks, and 27 percent of the leatherback sea turtles hooked in their flippers will die.

In a BiOp prepared under section 7 of the ESA, completed June 14, 2001, NOAA Fisheries concluded that operation of the U.S. Atlantic pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. Information from the NOAA Fisheries' Southeast Fisheries Science Center's February 2001 Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western North Atlantic is incorporated in the BiOp's analysis. The BiOp estimates that a 55–percent reduction in bycatch mortality from the Atlantic pelagic longline fishery is necessary to remove jeopardy to these two species. It is anticipated that this level of reduction can be achieved by implementing an area closure and by modifying the manner in which pelagic longline gear is deployed. The BiOp also requires several other measures to be implemented in the bottom and pelagic longline and shark gillnet fisheries to reduce bycatch of with sea turtles, whales, and other protected species.

Pelagic Longline Fishery

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target sharks, swordfish, bigeye tuna, or yellowfin tuna.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and protected species, including threatened and endangered sea turtles. The bycatch of protected species (sea turtles, marine mammals, or seabirds) may significantly impair the recovery of these species. Consistent with national standard 9 of the Magnuson-Stevens Act, NOAA Fisheries has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery.

Area Closure

The NED area has the highest incidental take rate of sea turtles by the U.S. Atlantic pelagic longline fleet. This regulation will close the NED area to vessels that have been issued, or are required to have, Federal HMS limited access permits and use pelagic longline

gear. The closed area is bounded by the following coordinates: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long. This closure comprises an area of 2,631,000 square nautical miles (nm²), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast,

the guidelines for the safe handling of sea turtles captured in a longline interaction. This measure will allow vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is hooked or entangled. NOAA Fisheries previously distributed the guidelines via mail to all HMS bottom and pelagic longline permit holders and announced this requirement in an emergency rule

lengths from floatlines, the effect of blue-dyed bait on target catch and sea turtle interactions, and the effectiveness of dipnets, line clippers, and dehooking devices. Eight vessels participated, making 186 sets, between August and November. During the course of the experimental fishery, 142 loggerhead and 77 leatherback sea turtles were incidentally captured and no turtles were released dead. NOAA Fisheries

Sighting and Reporting Whales

This action requires that both the vessel operator of all vessels issued Federal Atlantic shark limited access permits and that fish for Atlantic sharks with a shark gillnet (as defined by 50 CFR 229.2) and, in cases where an observer is on board, the observer, are responsible for sighting whales. The vessel operator is responsible for contacting the Southeast Regional Office

accomplish a 10–percent increase in pelagic stage juvenile loggerhead sea turtle survivorship in the entire North Atlantic basin by imposing a 55–percent reduction in sea turtle interactions by U.S. pelagic longline fishermen alone.

Response: Currently, NOAA Fisheries is in litigation concerning the BiOp and the resulting regulations and a court decision is pending. NOAA Fisheries believes that the BiOp and

restrictions do not provide the benefits anticipated in the biological opinion.

Response: NOAA Fisheries will evaluate the efficacy of the bycatch and bycatch reduction measures implemented in this action as well as the efficacy of measures already in place as the data become available for statistical analyses. If these and other measures are found to be insufficient, NOAA Fisheries will take appropriate

gear. The closed area is bounded by the following coordinates: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long. This closure comprises an area of 2,631,000 square nautical miles (nm²), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast, travel to this area on a seasonal basis, from June to October. The BiOp estimates that this closure would reduce loggerhead and leatherback sea turtle interactions by 67 and 58 percent, respectively, based on logbook data and 51 and 49 percent, respectively, based on estimated extrapolated take levels derived from observer and logbook data in 1999.

Gear Modifications

In addition to the closure, NOAA Fisheries is implementing several gear modifications designed to reduce the mortality rate of captured sea turtles year-round and in all fishing areas. All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are required to deploy the gear so that hooked or entangled turtles have sufficient slack line to reach the surface and avoid drowning. Specifically, for pelagic longline sets in which the combined depth of any floatline plus any gangion is 100 meters or less, the length of any gangion must be at least 10 percent longer than the length of any floatline. For sets in which the combined depth is over 100 meters, the requirement does not apply.

All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are prohibited from having on board hooks other than corrodible, non-stainless steel hooks. NOAA Fisheries expects to hold a workshop by the end of 2002 to assess the impacts of corrodible hooks on sea turtles. Currently, this measure is believed to reduce the post-release mortality of sea turtles by either causing the fishing line to fall off or causing the hook to fall out earlier than might occur if it were made of stainless steel. NOAA Fisheries does not expect this management measure to have a significant impact on the catch rates of target species because many pelagic longline fishermen already use non-stainless steel hooks.

Finally, all Atlantic vessels that use bottom or pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are required to post inside the wheelhouse the guidelines for the safe handling of sea turtles captured in a longline interaction. This measure will allow vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is hooked or entangled. NOAA Fisheries previously distributed the guidelines via mail to all HMS bottom and pelagic longline permit holders and announced this requirement in an emergency rule (66 FR 36711, July 13, 2001) and the availability of the guidelines via the fax network in September 2001. The document is available for downloading from the Internet at: *http://www.nmfs.noaa.gov/sfa/hmspg.html*, or NOAA Fisheries can be contacted to request a copy (see **ADDRESSES**).

Reporting

Based on one of the terms and conditions (TC) of the BiOp, this rule requires that the captains of all vessels that have pelagic longline gear on board and have been issued, or are required to have, Federal HMS limited access permits report any turtles that are dead when they are captured or that die during capture to the Southeast Fisheries Science Center (SEFSC) Observer Program at a number designated by NOAA Fisheries (see **ADDRESSES**) within 48 hours of returning to port. NOAA Fisheries expects that this regulation will provide a better assessment of the number of lethal sea turtle takes during pelagic longline operations. This should result in more accurate management decisions involving fishery interactions with these species.

Experimental Fishery

Consistent with the BiOp, NOAA Fisheries expects to continue a research program, in consultation and cooperation with the domestic pelagic longline fleet, to develop and evaluate the efficacy of new technologies and changes in fishing practices to reduce sea turtle interactions. The experimental fishery uses a limited number of qualifying commercial fishing vessels as cooperative research platforms in the NED area. The approved research plan for the experimental fishery, as stated in the BiOp, complies with four conditions: the sea turtle target mortality reduction is 55 percent, the duration is no more than 3 years, all measures that are tested must be exportable to international fleets, and the level of mortality reduction may be achieved through reducing take rates or improving post-release survival for captured sea turtles.

In 2001, the experiment evaluated the effect of gangions placed two gangion lengths from floatlines, the effect of blue-dyed bait on target catch and sea turtle interactions, and the effectiveness of dipnets, line clippers, and dehooking devices. Eight vessels participated, making 186 sets, between August and November. During the course of the experimental fishery, 142 loggerhead and 77 leatherback sea turtles were incidentally captured and no turtles were released dead. NOAA Fisheries analyzed the data to determine if the tested measures reduced the incidental capture of sea turtles by a statistically significant amount. Measures to reduce post-release mortality continue to be examined and will be made available upon completion of this research. The blue-dyed bait parameter decreased the catch of loggerheads by 9.5 percent and increased the catch of leatherbacks by 45 percent. Neither value is statistically significant. In examining the gangion placement provision, the treatment sections of the gear (with gangions placed 20 fathoms from floatlines) did not display a statistically significant reduction in the number of loggerhead and leatherback sea turtle interactions compared to the control sections of the gear (with a gangion located under a floatline). The treatment section of the gear recorded a statistically insignificant increase in the number of leatherback interactions and had no significant effect on loggerhead interactions. These results led to the conclusion that the measures tested in 2001 were not successful in reducing interactions between sea turtles and pelagic longline gear. The 2002 NED experiment is expected to commence in July 2002.

Atlantic Shark Gillnet Fishery

Gillnet fishing for sharks occurs primarily in the waters off the coasts of Georgia and Florida. The fishery is comprised of 4 to 11 vessels that engage in nearshore fishing trips that typically last less than 18 hours. Legislation in South Carolina, Georgia, and Florida has prohibited the use of commercial gillnets in state waters, causing these vessels to operate further offshore in waters under Federal jurisdiction. Historically, eight shark species made up over 99 percent of sharks caught, including: blacknose, Atlantic sharpnose, blacktip, finetooth, scalloped hammerhead, bonnethead, spinner, and great hammerhead sharks. The June 14, 2001, BiOp contains several TCs that NOAA Fisheries must implement to reduce interactions with and mortalities of sea turtles and whales in the HMS shark gillnet fishery. The two requirements addressed by this final rule are discussed below.

Sighting and Reporting Whales

This action requires that both the vessel operator of all vessels issued Federal Atlantic shark limited access permits and that fish for Atlantic sharks with a shark gillnet (as defined by 50 CFR 229.2) and, in cases where an observer is on board, the observer, are responsible for sighting whales. The vessel operator is responsible for contacting the Southeast Regional Office (SERO) of NOAA Fisheries at a number designated by NOAA Fisheries (see **ADDRESSES**) and ceasing fishing in the event of a listed whale being taken in the drift gillnet/strikenet gear. By having two people responsible for sighting whales, NOAA Fisheries hopes that the animals can be spotted prior to any fishery interaction occurring.

Checking Gear

In the shark gillnet fishery, it is customary for fishermen to inspect the length of the net every 0.5 to 2 hours to check the net and the catch. This regulation requires the fishermen to conduct these net checks to look for and remove any sea turtles and marine mammals found during these checks. While using the gear for strikenetting, the fishermen are exempt from this requirement due to the limited soak time. As the average soak time for the drift gillnets in this fishery is 5.6 to 7.5 hours, this measure is expected to reduce the mortality level of incidentally captured protected species.

Changes From the Proposed Rule

The primary difference between the proposed rule and this action is that the proposed alternative requiring vessel operators using pelagic longline gear to set gangions two gangions lengths away from floatlines is not being made final. Results from the 2001 experimental fishery in the NED area determined that this alternative is not effective in reducing interactions with loggerhead and leatherback sea turtles. NOAA Fisheries presents an analysis of the impacts of not selecting this alternative in the FSEIS.

Response to Comments

NOAA Fisheries received numerous comments during the comment period on the April 10, 2002, proposed rule. Comments are summarized here together with responses.

Biological Opinion

Comment 1: The jeopardy finding of the June 14, 2001, BiOp is fundamentally flawed and treats the Atlantic pelagic longline fishery unequally compared to other domestic and international fisheries by trying to accomplish a 10–percent increase in pelagic stage juvenile loggerhead sea turtle survivorship in the entire North Atlantic basin by imposing a 55–percent reduction in sea turtle interactions by U.S. pelagic longline fishermen alone.

Response: Currently, NOAA Fisheries is in litigation concerning the BiOp and the resulting regulations and a court decision is pending. NOAA Fisheries believes that the BiOp and implementing regulations incorporate the best available scientific information concerning sea turtle populations and the HMS fisheries and do not impose an unfair burden on U.S. fishermen.

Comment 2: NOAA Fisheries should attempt to quantify or account for the reductions in sea turtle mortality that have resulted from the requirement to possess and use dipnets and line clippers.

Response: Efforts are underway to examine the post-release status of sea turtles incidentally captured in the pelagic longline fishery. The BiOp provides estimated mortality rates for sea turtles ranging from 27 to 42 percent depending on where the sea turtles were hooked. The 2001 NED experimental fishery included a pilot program to assess the post-release mortality of loggerhead sea turtles and additional studies are scheduled for 2002. These analyses should provide greater insights into the reductions in mortality gained by the use of dipnets and line clippers.

Comment 3: NOAA Fisheries should apply a moratorium on pelagic longline, gillnet, and other fishing gears that interact with sea turtles in the Atlantic Ocean to improve the turtles' chances for survival.

Response: While the HMS BiOp concluded that the operation of the Atlantic pelagic longline fishery jeopardizes the continued existence of loggerhead and leatherback sea turtles, a reduction in mortality of 55–percent would avoid jeopardy. NOAA Fisheries can achieve this reduction in mortality without implementing a moratorium on pelagic longline gear. Regarding shark gillnet and other fishing gears, the HMS BiOp found that these activities may adversely affect but are not likely to jeopardize sea turtles, whales, and other protected species, and consequently, identified several measures to reduce mortality without the need for a moratorium of those gears. This action implements those measures; therefore, a moratorium of shark gillnet and other fishing gear is not warranted at this time.

Comment 4: NOAA Fisheries should reinitiate consultation and consider more protective measures if gear restrictions do not provide the benefits anticipated in the biological opinion.

Response: NOAA Fisheries will evaluate the efficacy of the bycatch and bycatch reduction measures implemented in this action as well as the efficacy of measures already in place as the data become available for statistical analyses. If these and other measures are found to be insufficient, NOAA Fisheries will take appropriate action.

Comment 5: The United States must take action to increase the visibility of sea turtle conservation on an international scale with the goal of reducing international sea turtle interactions.

Response: The International Bycatch Reduction Task Force is organizing a meeting in late 2002 to address international sea turtle concerns. Also, the experiments being conducted in the NED area are intended to develop pelagic longline gear and/or fishing modifications to reduce sea turtle takes that can be transferred to international pelagic longline fleets.

Comment 6: Sea turtle populations are increasing.

Response: Trend information on loggerhead sea turtles demonstrates that the Florida subpopulation is increasing, but that the northern subpopulation, which has a large number of males, is relatively small and is either stable or declining. For leatherback sea turtles, there have been increases in the number of nests on some of the smaller nesting beaches, but the largest nesting beach has had a 15–percent decline in nests in recent years indicating a declining population.

Pelagic Longline Fishery

NED Area Closure

Comment 7: NOAA Fisheries should not close the NED area. It is unreasonable to close 2.6 million square nautical miles of the Atlantic Ocean when data show that the turtle interactions occur in a relatively small portion of the NED area and only during certain months.

Response: Based on the dynamic nature of ocean systems and the migratory nature of marine wildlife, closed areas have to be large to ensure they achieve the goal in reducing bycatch and bycatch mortality. NOAA Fisheries is aware that turtle interactions occur in a portion of the NED area; however, those interactions occur where and when pelagic longline fishing has occurred. Closing only that portion of the NED area where and when pelagic longline fishing has occurred could result in continued or

increased takes of turtles in the remaining open area of the NED area if fishermen move there. Additionally, closing only part of the NED area could decrease human safety at sea if fishermen move into unfamiliar fishing areas even further offshore than the areas currently fished or fish during other times of year when weather conditions are poor.

same outcome as that suggested by the comment.

Comment 10: NED boats cannot simply go fish elsewhere as NOAA Fisheries predicts and remain profitable. Other coastal fishing areas are overcrowded, have competition with coastal longliners, and have gear conflicts with stationary lobster and crab gear.

the NED area closure, there is no assurance that it will ever be reevaluated.

Response: The NED area is closed to achieve most of the required 55–percent reduction mandated by the HMS BiOp. The experimental fishery in the NED area is designed to develop effective sea turtle bycatch reduction measures so that an area closure will not be

impacts of the final actions. NOAA Fisheries believes that the measure will have a positive effect on sea turtle survival although no quantitative estimate is available at this time.

Comment 18: NOAA Fisheries should implement the requirement for gangions to be longer than floatlines.

Response: NOAA Fisheries is implementing this requirement.

Comment 19: NOAA Fisheries needs

Response: The 2001 NED area experimental fishery included a pilot study that involved the deployment of 16 PSAT (pop-off satellite) tags on loggerhead sea turtles caught in the Atlantic pelagic longline fishery. This study is scheduled to continue during the next 2 years of the experimental fishery and should effectively address the issues concerning sea turtle post-release survival following interactions

Comment 27: NOAA Fisheries should consider the impact of gear modifications on other species besides sea turtles prior to exporting them to international fisheries.

Response: The impact of gear modifications on other species will be considered prior to promulgating regulations implementing measures for the pelagic longline fishery for species besides sea turtles and prior to

increased takes of turtles in the remaining open area of the NED area if fishermen move there. Additionally, closing only part of the NED area could decrease human safety at sea if fishermen move into unfamiliar fishing areas even further offshore than the areas currently fished or fish during other times of year when weather conditions are poor.

Comment 8: By closing the NED, the most productive swordfish fishing grounds available to U.S. fishermen, NOAA Fisheries will create a situation in which foreign flag fleets supplant the U.S. fleet and will likely result in more sea turtles being killed because international fleets do not follow careful sea turtle handling and release guidelines like U.S. fishermen.

Response: NOAA Fisheries is conducting an experimental fishery in the NED area using vessels of the U.S. pelagic longline fleet to test various gear configurations. The goal of the experiment is to develop pelagic longline gear and/or fishing modifications to reduce sea turtles bycatch and bycatch mortality sufficiently so that the NED area can be reopened and the technology exported to the international pelagic longline fleets. In the event that no such gear or fishing modifications are developed and the NED area remains closed to the U.S. pelagic longline fleet, NOAA Fisheries is aware that international fleets may increase fishing effort in the NED area. Regardless of the results of the NED area experiment, NOAA Fisheries intends to pursue international sea turtle conservation agreements and measures.

Comment 9: NOAA Fisheries should close the NED area to conventional pelagic longline gear but keep it open to fishermen who voluntarily agree to test new and innovative fishing techniques.

Response: NOAA Fisheries supports cooperative research with fishermen to develop pelagic longline gear and/or fishing modifications to reduce sea turtle interactions and is conducting an experimental fishery in the NED area using vessels of the U.S. pelagic longline fleet. That experimental fishery began in 2001 and will continue through 2003. After that time, NOAA Fisheries will evaluate the results of the experimental fishery and determine if the NED area can be reopened to pelagic longline vessels using modified fishing techniques, determine if further research is necessary and take appropriate action to conduct that research, or determine if no further research is warranted. NOAA Fisheries believes that the final action to close the NED area while also conducting the experimental fishery is essentially the same outcome as that suggested by the comment.

Comment 10: NED boats cannot simply go fish elsewhere as NOAA Fisheries predicts and remain profitable. Other coastal fishing areas are overcrowded, have competition with coastal longliners, and have gear conflicts with stationary lobster and crab gear.

Response: NOAA Fisheries is aware that not all other fishing areas are likely to be as profitable as the NED area for pelagic longline vessels that typically fished in the NED area. However, data available to NOAA Fisheries indicate that other areas, such as the Caribbean area, can be as profitable as the NED area. Additionally, data available to NOAA Fisheries indicate that NED vessels already fish in other areas, including the Caribbean, during winter months; thus, switching locations is not prohibitive for NED vessels. Also, in the short term, NED vessels can volunteer to participate in the NED experimental fishery. Participating in the NED experimental fishery can be profitable for these vessels in the short-term, and, in the worst case scenario, will allow these vessels time to plan their course of action if the experimental fishery does not produce results that would allow NOAA Fisheries to reopen the NED area.

Comment 11: Closing the NED area after closing the Florida Straits and Charleston Bump will direct increased effort into smaller and smaller areas and will increase regulatory discards that could result in more time and area closures.

Response: NOAA Fisheries intends to analyze the impacts of the time and area closures in the Florida east coast, Charleston Bump, and DeSoto Canyon as well as the NED area closure implemented by the emergency rule as the data become available for statistical analyses. NOAA Fisheries will take appropriate action at that time to address bycatch in the remaining open areas in light of effort redistribution as warranted.

Comment 12: Closing the NED area will prevent U.S. fishermen from enjoying the fruits of their hard-earned success in reversing the decline of swordfish.

Response: U.S. fishermen may fish for and land swordfish in U.S. waters under its quota from the International Commission for the Conservation of Atlantic Tunas and, as swordfish stocks recover, U.S. fishermen can reasonably expect to enjoy the benefits of a sustainable swordfish fishery.

Comment 13: Without the establishment of a sunset provision for the NED area closure, there is no assurance that it will ever be reevaluated.

Response: The NED area is closed to achieve most of the required 55–percent reduction mandated by the HMS BiOp. The experimental fishery in the NED area is designed to develop effective sea turtle bycatch reduction measures so that an area closure will not be necessary and the NED area can be reopened. Additionally, NOAA Fisheries intends to analyze the impact of all time and area closures implemented for HMS fishermen as data become available. Based on these analyses, NOAA Fisheries will modify any closures, as appropriate.

Comment 14: NOAA Fisheries must close the NED area to fishing by the U.S. pelagic longline fleet to ensure that it meets its legal obligations under the ESA and avoid jeopardy by reducing sea turtle bycatch. This closure would have the additional benefit of reducing the incidence of blue shark discards by U.S. fishermen.

Response: NOAA Fisheries is implementing such as closure.

Other Alternatives

Comment 15: The 2001 NED area experiment found that the gangion placement relative to floatlines shows a negative effect. NOAA Fisheries should rescind this requirement on the entire U.S. fleet at this time.

Response: NOAA Fisheries is not implementing that requirement.

Comment 16: NOAA Fisheries should implement the alternative to prohibit setting gangions in close proximity to floatlines as the measure is projected to reduce the take of loggerhead and leatherback sea turtles by 22 and 24 percent, respectively.

Response: The 2001 experimental fishery in the NED area demonstrated that this measure is not effective in reducing the incidental capture of sea turtles and may increase the interaction rate with leatherback sea turtles. Accordingly, NOAA Fisheries is not implementing that requirement.

Comment 17: NOAA Fisheries must analyze and quantify the benefits and drawbacks of the proposal to have gangion lengths be 110 percent of floatline length, including the economic impact of reduced target catch. This proposed alternative may have minimal effect on sea turtle survival as ocean currents or turtle movements could tangle the line.

Response: The economic impacts of the final actions are analyzed in the FSEIS. Additionally, the FSEIS provides the best available information concerning the effectiveness and impacts of the final actions. NOAA Fisheries believes that the measure will have a positive effect on sea turtle survival although no quantitative estimate is available at this time.

Comment 18: NOAA Fisheries should implement the requirement for gangions to be longer than floatlines.

Response: NOAA Fisheries is implementing this requirement.

Comment 19: NOAA Fisheries needs to make a decision concerning the corrodible hook criteria and determine a policy for their implementation and extend it to all bycatch species and all HMS hook and line fisheries to increase post-release survival. The hooks should be used experimentally before being adopted on a larger scale.

Response: The current standard for corrodible hooks is that they be composed of non-stainless steel. NOAA Fisheries believes that many pelagic longline fishermen already use non-stainless steel hooks so that this measure should result in little change in costs or fishing practices while providing benefits to sea turtles although no quantitative estimates are available at this time. Therefore, NOAA Fisheries believes that finalizing this measure for the Atlantic pelagic longline fleet at this time is warranted. NOAA Fisheries may revise this standard at a future date as additional information becomes available. NOAA Fisheries intends to host a conference by the end of 2002 with sea turtle biologists and veterinarians to examine this issue.

Comment 20: Fishermen using other fishing gears are known to interact with sea turtles and should also be required to possess and use specific handling instructions for reference during their sea turtle interactions.

Response: NOAA Fisheries intends to develop fishery-specific sea turtle handling and release guidelines. At that time, NOAA Fisheries will take the appropriate action to ensure their distribution and use.

Comment 21: NOAA Fisheries should require posting of sea turtle handling and release guidelines in the wheelhouse.

Response: NOAA Fisheries is implementing a measure that will require guidelines to be posted in the wheelhouse of all pelagic and bottom HMS longline vessels.

Comment 22: NOAA Fisheries needs to address several issues concerning sea turtle post-release survival, including differences in gear interactions between fisheries and oceans, tag reliability, and creating a strategy for research using the Atlantic pelagic longline fleet.

Response: The 2001 NED area experimental fishery included a pilot study that involved the deployment of 16 PSAT (pop-off satellite) tags on loggerhead sea turtles caught in the Atlantic pelagic longline fishery. This study is scheduled to continue during the next 2 years of the experimental fishery and should effectively address the issues concerning sea turtle post-release survival following interactions with Atlantic pelagic longline gear.

Comment 23: NOAA Fisheries should increase the level of observer coverage in the pelagic longline and shark gillnet fisheries to better monitor interactions with protected species.

Response: Observer coverage is an important way to monitor fishery interactions with protected species. NOAA Fisheries has determined the level of observer coverage necessary in the pelagic longline and shark gillnet fisheries to produce statistically rigorous estimates of protected species interactions and is implementing those coverage levels.

Comment 24: NOAA Fisheries should implement a measure requiring pelagic longline vessels to carry a dehooking device on board.

Response: NOAA Fisheries believes that additional information concerning what types and techniques are optimal to reduce harm to sea turtles is needed before implementing such a measure. Several designs were tested in the 2001 NED experimental fishery and will continue to be tested in the 2002 NED area experimental fishery. NOAA Fisheries will take appropriate action based on the results of the experiment.

Comment 25: NOAA Fisheries should implement the timely reporting of sea turtle mortalities and the proper release of incidentally caught turtles, which are important factors in assessing and reducing sea turtle mortality in the pelagic longline fishery.

Response: NOAA Fisheries is implementing a measure that requires HMS fishermen with pelagic longline on board to report lethal turtle takes within 48 hours of returning to port.

NED Experiment

Comment 26: NOAA Fisheries should not forgo the collection of data that may help the bycatch reduction of other incidentally caught species when conducting research to mitigate the impact of pelagic longline gear on sea turtles.

Response: Data are being collected that will permit the analysis of the impacts of the measures tested in the NED area experimental fishery on other incidentally caught species.

Comment 27: NOAA Fisheries should consider the impact of gear modifications on other species besides sea turtles prior to exporting them to international fisheries.

Response: The impact of gear modifications on other species will be considered prior to promulgating regulations implementing measures for the pelagic longline fishery for species besides sea turtles and prior to exporting successful sea turtle take reduction measures to international fisheries.

Comment 28: NOAA Fisheries should implement any additional measures found to be effective during the ongoing sea turtle research, however more attention should be paid to other protective measures such as time or area closures.

Response: NOAA Fisheries intends to implement measures found to be effective in reducing sea turtle bycatch and bycatch mortality in the NED area experiment, including time or area closures, as appropriate.

Comment 29: NOAA Fisheries should continue to experiment with gear modifications that would reduce the mortality of sea turtles and implement new rules in response to new data about their effectiveness.

Response: NOAA Fisheries will continue to conduct such experiments.

Comment 30: NOAA Fisheries should foster cooperation with the industry through truly cooperative research based on real science.

Response: NOAA Fisheries believes that the NED area experimental fishery is an example of cooperative research based on sound science.

Shark Gillnet Fishery

Comment 31: The requirement for shark gillnet fishermen to contact NOAA Fisheries and cease fishing in the event of a listed whale being taken will neither protect listed whales nor reduce the bycatch of these animals.

Response: According to the BiOp, the major known sources of anthropogenic mortality and injury to listed whales include entanglement in commercial fishing gear and ship strikes. However, many of the reports of whale mortality cannot be attributed to a particular source. While to date, there has not been a confirmed interaction with a listed whale in the shark gillnet fishery, NMFS believes that it is appropriate to implement regulations that will enhance the response to an interaction with a listed whale and prevent a subsequent interaction by requiring the vessel to cease fishing immediately.

Comment 32: NOAA Fisheries should prohibit gillnet sets within a 5 nautical

mile radius of any sighted listed whale or, if the gear is already set, the removal of that gear from the water.

Response: NOAA Fisheries believes that current regulations under the Atlantic Large Whale Take Reduction Plan are adequate. Current regulations require shark gillnet fishermen to fish for sharks with a strikenet during times that right, humpback, fin or minke

provide additional coverage outside the right whale calving season (not required statistically) are needed to provide additional observer coverage in other fisheries. NOAA Fisheries will maintain 100–percent observer coverage in this fishery during right whale calving season.

Comment 36: In addition to the preferred alternatives (requiring

protected species bycatch mortality data in the future as data on the efficacy of this requirement become available and will re-evaluate a requirement to conduct net checks continuously or other gear restrictions in this fishery if protected species bycatch mortality is not reduced.

Enforcement

Comment 39: NOAA Fisheries should

to enforce a use prohibition if the vessel is allowed to have both corrodible non-stainless steel and non-corrodible stainless steel hooks on board.

Response: NOAA Fisheries has modified the final action to prohibit vessels from having hooks on board other than corrodible, non-stainless steel hooks when pelagic longline gear is on board.

Comment 44: The proposed definition

impacts on participants in the pelagic longline fishery, these alternatives either do not reduce bycatch to the extent required by the BiOp or are not supported by sufficient data to support implementation. Initial data concerning the alternative requiring circle hooks indicates that they may significantly reduce post-release mortality of sea turtles; however, more information is needed concerning impacts on target

other required measures in the BiOp. NOAA Fisheries is not making final the part of the rule that implemented the component of the RPA specifying gangion placement. This requirement appeared to result in an unchanged number of interactions with loggerheads and an apparent increase in interactions with leatherbacks. Preliminary logbook data, which is inconclusive in the absence of analysis in conjunction with

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mile radius of any sighted listed whale or, if the gear is already set, the removal of that gear from the water.

Response: NOAA Fisheries believes that current regulations under the Atlantic Large Whale Take Reduction Plan are adequate. Current regulations require shark gillnet fishermen to fish for sharks with a strikenet during times that right, humpback, fin or minke whales are present, require that no nets be set under limited visibility, prohibit setting of nets within three nautical miles of a whale, and require that gear be removed immediately from the water if a whale moves within 3 nautical miles of the gear.

Comment 33: NOAA Fisheries should implement regulations that would prevent gillnet fishing if a listed whale were taken for the rest of the season or until whales are no longer sighted in that area based on seven consecutive sighting surveys.

Response: NOAA Fisheries believes that current regulations under the Atlantic Large Whale Take Reduction Plan are adequate. Additionally, NOAA Fisheries has the authority under the Endangered Species Act to implement temporary closures to reduce takes or potential takes, as appropriate.

Comment 34: The net check provision will likely offer little conservation benefit for marine mammals and sea turtles unless it is coupled with disentanglement response training.

Response: The net check provision will require the shark gillnet fishermen to check their nets every 0.5 to 2 hours which should reduce the mortality of any incidentally captured protected species. Disentanglement training was provided to fishermen in this fishery although attendance was low. NOAA Fisheries may pursue additional disentanglement training for shark gillnet fishermen in the future. Additionally, the requirement to notify NOAA Fisheries if a whale is taken will allow personnel trained in disentangling these animals to respond.

Comment 35: NOAA Fisheries should maintain 100–percent observer coverage in the shark gillnet fishery due to the bycatch problems associated with this gear.

Response: Recently, the necessary level of observer coverage was statistically determined to be 53–percent outside right whale calving season and 100–percent coverage during right whale calving season. A statistically significant level of observer coverage would yield comparable results to 100- percent coverage. Additionally, given its limited resources, NOAA Fisheries believes that the resources that would be required to provide additional coverage outside the right whale calving season (not required statistically) are needed to provide additional observer coverage in other fisheries. NOAA Fisheries will maintain 100–percent observer coverage in this fishery during right whale calving season.

Comment 36: In addition to the preferred alternatives (requiring immediate reporting if a listed whale is taken; making the observer and vessel operator responsible for looking for whales; and frequent net checks), NOAA Fisheries should require fishermen to remove finfish bycatch in addition to protected species during net checks in the shark gillnet fishery.

Response: While NOAA Fisheries agrees that the preferred alternatives are appropriate for this fishery, NOAA Fisheries is concerned that requiring the removal of finfish bycatch may delay the completion of the net checks and could increase the bycatch mortality of any incidentally captured protected species. However, NOAA Fisheries encourages shark gillnet fishermen to remove finfish bycatch as quickly and with as minimal injury as practicable.

Comment 37: The size and low income of the shark gillnet fishery may not justify the high cost of the 100–percent observer coverage required during the right whale calving season compared to other observer needs.

Response: NOAA Fisheries is aware that observer coverage costs for this fishery are high relative to the number of participants in this and other fisheries. NOAA Fisheries is considering the use of vessel monitoring systems to decrease observer coverage costs for this fishery. The issue of vessel monitoring systems is currently in litigation and NOAA Fisheries is waiting for a decision from the court.

Comment 38: Shark gillnet fishermen should be required to check their nets continuously while deployed due to the numerous interactions with sea turtles and marine mammals. The 0.5 to 2 hour period between checking nets will result in unacceptably high sea turtle and marine mammal mortality. If the fishery cannot demonstrate that the gear can be fished cleanly, that gear should be prohibited for HMS species due to high bycatch of protected species.

Response: At this time, NOAA Fisheries believes that requiring net checks every 0.5 to 2 hours is sufficient to reduce protected species bycatch mortality. Currently, the average soak time for drift gillnets is 5.6 to 7.5 hours. Thus, drift gillnet fishermen will have to check the net between 3 and 15 times during an average soak. However, NOAA Fisheries intends to review protected species bycatch mortality data in the future as data on the efficacy of this requirement become available and will re-evaluate a requirement to conduct net checks continuously or other gear restrictions in this fishery if protected species bycatch mortality is not reduced.

Enforcement

Comment 39: NOAA Fisheries should implement vessel monitoring systems to improve the enforceability of the closed areas. This would be less disruptive and less costly for the fishermen and the Coast Guard.

Response: This matter is currently in litigation. NOAA Fisheries is waiting for a decision from the Court.

Comment 40: Enforcement of the gangion length provision will be difficult at sea. NOAA Fisheries should consider developing criteria to provide guidance in this matter (for example, specify how many gangions would need to meet the 110–percent requirement to verify compliance).

Response: NOAA Fisheries will work with enforcement agents to develop guidance to enhance the enforceability of this measure.

Comment 41: Enforcement of the gangion placement provision will be difficult because the gear can slide on the mainline due to a variety of reasons.

Response: As this measure was found to be ineffective in reducing sea turtle bycatch in the NED area experimental fishery, NOAA Fisheries is not implementing the gangion placement requirement in this final action.

Comment 42: NOAA Fisheries should consider a requirement that vessels fishing with bottom longline gear in an area closed to pelagic gear should not be allowed to possess pelagic species (i.e., tuna and sharks) and conversely, require that vessels fishing with pelagic gear not be allowed to have bottom species on board (i.e., some shark species) to increase enforcement.

Response: The time and area closures currently in place for pelagic longline fishermen were designed to reduce bycatch in the pelagic longline fishery and do not apply to bottom longline fishermen. Thus, extending any closure to bottom longline fishermen would require NOAA Fisheries to conduct the appropriate analyses and rulemaking. However, NOAA Fisheries will discuss this comment with the NOAA Fisheries Office of Law Enforcement and consider its management implications.

Comment 43: NOAA Fisheries should prohibit possession of non-corrodible stainless steel hooks, not use of non-corrodible stainless steel hooks, because it would be difficult for the Coast Guard to enforce a use prohibition if the vessel is allowed to have both corrodible non-stainless steel and non-corrodible stainless steel hooks on board.

Response: NOAA Fisheries has modified the final action to prohibit vessels from having hooks on board other than corrodible, non-stainless steel hooks when pelagic longline gear is on board.

Comment 44: The proposed definition of corrodible hooks as non-stainless steel would be enforceable at sea.

Response: NOAA Fisheries has implemented this provision.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NOAA Fisheries has prepared a final regulatory flexibility analysis (FRFA) that examines the impacts of the selected alternatives, discussed previously in this document. It assumes that distant water fishermen, during the time they would otherwise be pelagic longline fishing in the NED area, will instead: (1) make longline sets in other areas or (2) exit commercial fishing. As of October 2001, there were 320 directed and incidental swordfish permit holders under the limited access system. In 2000, only 199 fishermen actively participated in the pelagic longline fishery according to logbook reports. Since 1997, an average of 15 vessels have fished each year in the NED area. These vessels have traditionally landed approximately 20 percent of all domestically caught Atlantic swordfish and have been the most economically viable vessels in the fleet. However, due to the size and cost of operation of these vessels, NOAA Fisheries feels that it may not be as economical to fish in other areas of the Atlantic Ocean and thus, these 15 vessels would be significantly impacted due to the NED closure. The other selected alternatives regarding the pelagic longline fishery are not expected to have significant economic effects.

The other alternatives considered for the pelagic longline fishery include: taking no action; other gear modifications, such as requiring dehooking devices, requiring hooks to be set deeper in the water column, requiring the use of blue-dyed bait, requiring the use of mackerel as bait, requiring the use of stealth gear, and requiring the use of circle hooks; and a ban on pelagic longline fishing by U.S. vessels in the Atlantic Ocean. While the no action alternative and most of the gear modification alternatives are not expected to have significant economic impacts on participants in the pelagic longline fishery, these alternatives either do not reduce bycatch to the extent required by the BiOp or are not supported by sufficient data to support implementation. Initial data concerning the alternative requiring circle hooks indicates that they may significantly reduce post-release mortality of sea turtles; however, more information is needed concerning impacts on target catch and appropriate hook size. In addition, there would be an economic cost associated with this alternative if fishing vessels were required to switch to circle hooks. While a complete ban on longline fishing would reduce bycatch to a greater extent than the NED time-area closure, the lost value of commercial seafood products and the adverse impacts on fishery participants and fishing communities would impose greater costs than the final action. Thus, there are no alternatives available at this time that would minimize the economic impacts on the approximately 15 NED area vessels and reduce sea turtle interactions as required under the ESA and national standard 9 of the Magnuson-Stevens Act. The RIR/FRFA provides further discussion of the economic effects of all the alternatives considered for the pelagic longline fishery.

The two selected alternatives for the shark gillnet fishery will affect a small number of vessels, approximately 4 to 11, based on NOAA Fisheries records. The measure to contact NOAA Fisheries and cease fishing following the take of a listed whale species could have an economic impact as the vessel is required to terminate fishing operations for that trip. The requirement for shark drift gillnet fishermen to check their nets every 0.5 to 2 hours could increase the cost per trip slightly based on the amount of fuel consumed. However, NOAA Fisheries does not expect these impacts to be significant.

Of the alternatives that are not selected for the shark gillnet fishery, taking no action will not impose an economic impact. However, prohibiting drift gillnet gear in the shark fishery and requiring vessels to fish in a strikenet fashion using spotter planes could impose a significant negative effect upon the vessels in the shark gillnet fishery.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The final rule is consistent with the ESA. The June 14, 2001, BiOp found that the fishery was likely to jeopardize loggerhead and leatherback sea turtles. The final rule implements the RPA, with the exception of one part, and the other required measures in the BiOp. NOAA Fisheries is not making final the part of the rule that implemented the component of the RPA specifying gangion placement. This requirement appeared to result in an unchanged number of interactions with loggerheads and an apparent increase in interactions with leatherbacks. Preliminary logbook data, which is inconclusive in the absence of analysis in conjunction with observer data, indicate that the level of incidental take of loggerheads is below that anticipated in the incidental take statement of the BiOp. Preliminary logbook data, collected during the time that the gangion placement requirement was in effect, indicate that the level of take of leatherbacks may or may not be exceeded. Accordingly, although NOAA Fisheries will reevaluate this conclusion upon completion of the analysis of incidental take based on both logbook and observer data, at this time NOAA Fisheries determines that the fishery with this final rule is not likely to jeopardize sea turtles. NOAA Fisheries' Office of Protected Resources concurred with this determination on July 1, 2002. In this final rule, NOAA Fisheries is also finalizing measures that would decrease the impacts of other HMS fisheries on sea turtle and whale populations.

NOAA Fisheries has determined that these regulations will be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Eleven of the 12 states that replied to the letter regarding compliance of the proposed rule with the Coastal Zone Management Act found NOAA Fisheries' proposed actions to be consistent with their coastal zone management programs. The State of Georgia objects to the consistency determination due to the continuing operation of the shark gillnet fishery in Federal waters impacting resources shared by adjacent state waters. NOAA Fisheries shares the State of Georgia's concern regarding the impact of the shark gillnet fishery on sea turtles, marine mammals, and sport fish. However, data currently available do not indicate high bycatch and bycatch mortality of protected species and other finfish in this fishery. Because the incidental capture of endangered species in the shark gillnet fishery is regulated under the ESA and the BiOp did not conclude that continuation of the shark gillnet fishery would jeopardize any endangered or threatened resources, NOAA Fisheries is

not prohibiting the use of this gear at this time. This finding is consistent with national standard 2 which requires that management measures be based on the best scientific information available and with the conclusions of the BiOp. Thus, NOAA Fisheries finds that the final regulations promulgated in this rulemaking are consistent with Georgia's Coastal Zone Management

placement and other bycatch reduction measures identified in the BiOp. Data from this experiment were required for this rulemaking, but were not available in final format until mid-April, 2002. As a result of this data, this final rule relieves vessels from the gangion placement measure imposed under the emergency rule. Given the availability of the 2001 experimental fishery data, the

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

* * * * * *

Net check refers to a visual inspection of a shark gillnet where the vessel operator transits the length of the gear and inspects it either with a spotlight or by pulling up the gear.

(3) Operators of all vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must post inside the wheelhouse the sea turtle handling and release guidelines provided by NOAA Fisheries.

whales. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required in § 635.5(a)(5).

(vi) Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals.

* * * * *

5. In § 635.71, paragraphs (a)(36) and

SUPPLEMENTARY INFORMATION:

Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE Multispecies DAS fished and a

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not prohibiting the use of this gear at this time. This finding is consistent with national standard 2 which requires that management measures be based on the best scientific information available and with the conclusions of the BiOp. Thus, NOAA Fisheries finds that the final regulations promulgated in this rulemaking are consistent with Georgia's Coastal Zone Management Program to the maximum extent practicable.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This action contains new collection-of-information requirements subject to the PRA and which have been approved under OMB control number 0648–0452. The requirements for pelagic longline vessel operators to report a sea turtle mortality within 48 hours of returning to port and for shark gillnet operators to report interactions with listed whale species are estimated to take 5 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA Fisheries (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA Fisheries, finds good cause to waive the 30–day delay in effectiveness for certain turtle mitigation measures for the Atlantic longline fishery. A waiver of the delay in effectiveness for the final rule is needed for the requirements concerning the NED area closure, gangion length, and posting the sea turtle handling and release guidelines to ensure the uninterrupted protection of sea turtles in the fishery following the expiration of an emergency rule extension (66 FR 64378) on July 8, 2002. The emergency rule and its extension imposed requirements, including a gangion placement measure, that were part of the RPA and other required measures in the BiOp. In late November 2001, NMFS completed an experiment in the NED area that tested gangion placement and other bycatch reduction measures identified in the BiOp. Data from this experiment were required for this rulemaking, but were not available in final format until mid-April, 2002. As a result of this data, this final rule relieves vessels from the gangion placement measure imposed under the emergency rule. Given the availability of the 2001 experimental fishery data, the need for public comment periods on the proposed and final rules and draft and final environmental impact statements, and the July 8, 2002, expiration date of the emergency rule extension, good cause exists for a waiver of the 30–day delay in effectiveness for the above-referenced requirements. All sea turtle and marine mammal mitigation measures in this final rule not previously implemented by the emergency rule extension will take effect 30 days or more from the publication of this rule.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 2, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, new definitions for "Bottom longline," "Corrodible hook," "Floatline," "Gangion," "Net check," and "Northeast distant closed area" are added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom.

* * * * *

Corrodible Hook means a fishing hook composed of any material other than stainless steel.

* * * * *

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

* * * * *

Net check refers to a visual inspection of a shark gillnet where the vessel operator transits the length of the gear and inspects it either with a spotlight or by pulling up the gear.

* * * * *

Northeast Distant closed area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

* * * * *

3. In § 635.5, paragraphs (a)(4) and (5) are added to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(4) *Pelagic longline sea turtle reporting.* The operators of vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, and tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to report any sea turtles that are dead when they are captured or that die during capture to the NOAA Fisheries Southeast Fisheries Science Center Observer Program, at a number designated by NOAA Fisheries, within 48 hours of returning to port, in addition to submitting all other reporting forms required by this part and 50 CFR parts 223 and 224.

(5) *Shark gillnet whale reporting.* The vessel operators of vessels that are shark gillnetting, as defined by 50 CFR 229.2, and that have been issued, or are required to have, shark directed or incidental limited access permits for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to contact the NOAA Fisheries Southeast Regional Office, at a number designated by NOAA Fisheries, if a listed whale is taken, in addition to submitting all other reporting forms required by this part and 50 CFR part 229.

* * * * *

4. In § 635.21, paragraphs (a)(3), (c)(5)(iii), (d)(3)(v), and (d)(3)(vi) are added and paragraphs (c)(2) and (d)(3)(iv) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(3) Operators of all vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must post inside the wheelhouse the sea turtle handling and release guidelines provided by NOAA Fisheries.

* * * * *

(c) * * *

(2) If pelagic longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calender year;

(ii) In the Charleston Bump closed area from March 1 through April 30, 2001, and from February 1 through April 30 each calender year thereafter;

(iii) In the East Florida Coast closed area at any time beginning at 12:01 a.m. on March 1, 2001;

(iv) In the DeSoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000;

(v) In the Northeast Distant closed area at any time beginning at 12:01 a.m. on July 9, 2002.

* * * * *

(5) * * *

(iii) *Gear modifications.* The following measures are required of vessel operators to reduce the incidental capture and mortality of sea turtles:

(A) *Gangion length.* The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Corrodible hooks.* Vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must only have corrodible hooks on board.

* * * * *

(d) * * *

(3) * * *

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to the vessel at one end, except during net checks.

(v) Both the observer and vessel operator are responsible for sighting whales. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NOAA Fisheries as required in § 635.5(a)(5).

(vi) Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals.

* * * * *

5. In § 635.71, paragraphs (a)(36) and (37) are added to read as follows:

§ 635.71 Prohibitions.

(a) * * *

(36) Fish with bottom or pelagic longline and shark gillnet gear for HMS without adhering to the gear operation and deployment restrictions required in 50 CFR 635.21.

(37) Fail to report to NOAA Fisheries, at the number designated by NOAA Fisheries, the incidental capture of listed whales with shark gillnet gear and sea turtle mortalities associated with pelagic longline gear as required by 50 CFR 635.5.

* * * * *

[FR Doc. 02–17104 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010313064–1064–01; I.D. 070102E]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Commercial Haddock Harvest

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of removal of haddock daily trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is suspending the haddock daily trip limit for the groundfish fishery. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2002 fishing year under the restrictive daily trip limit. This action is intended to allow fisherman to catch more of the haddock TAC, without exceeding it.

DATES: Effective July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Policy Analyst, 978–281–9347.

SUPPLEMENTARY INFORMATION:

Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE Multispecies DAS fished and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator has projected that less than 75 percent of the haddock TAC will be harvested in the fishing year, the trip limit may be adjusted. Further, this section stipulates that NMFS will publish a notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

The Regional Administrator has projected that less than 75 percent of the 2002 fishing year haddock TAC will be harvested by April 30, 2003, and has therefore determined that suspending the daily haddock trip limit through April 30, 2003, while retaining the 30,000–lb (13,608–kg) and 50,000–lb (22,680–kg) per trip possession limits, for May 1–September 30, 2002, and October 1, 2002 - April 30, 2003, respectively, will provide the industry with the opportunity to harvest at least 75 percent of the TAC for the 2002 fishing year. In order to prevent the TAC from being exceeded, the Regional Administrator may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17102 Filed 7–3–02; 12:53 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 131
Tuesday, July 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested

DATES: Written comments must be submitted on or before September 9, 2002.

ADDRESSES: Please submit written

entry. (For a discussion of the Lautenberg category, see the section below "What is the Lautenberg Amendment?" See also, 8 CFR 245.7)

This rule, by contrast, covers aliens who are not eligible to adjust to LPR status under either of the above provisions. This rule is intended to benefit aliens whose relatives have died or emigrated or never formed a qualifying relationship with the alien, 5,000 cap if the applications are granted on appeal. The Department's regulations concerning the 5,000 limit are at 8 CFR 245.21(m). The Department recommends that eligible aliens submit their applications as soon as possible after the final rule is promulgated in order to maximize their likelihood of getting a space within the 5,000 limit.

When Can Aliens File for Adjustment of

(Pub. L. 101–167) (the Lautenberg Amendment).

What Is the Lautenberg Amendment?

The Lautenberg Amendment is a means for aliens from certain nations (including Vietnam, Cambodia, and Laos) who have been denied refugee status but who are nevertheless granted a Public Interest Parole into the United States to adjust status to LPR. The

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Proposed Rules

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, and 245

[INS No. 2124–01; AG Order No. 2596–2002]

RIN 1115–AG14

Adjustment of Status for Certain Aliens From Vietnam, Cambodia, and Laos in the United States; Waiver of Criminal Grounds of Inadmissibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice (Department) regulations to provide for the adjustment of status to that of lawful permanent resident for certain aliens from Vietnam, Cambodia, and Laos. On November 6, 2000, Public Law 106–429, the Foreign Operations Appropriations Act of 2001, was signed into law. Section 586 of Public Law 106–429 provides for the adjustment of status for certain aliens from Vietnam, Cambodia, and Laos. Eligible applicants must have been physically present in the United States both prior to and on October 1, 1997, and inspected and paroled into the United States before October 1, 1997, either from Vietnam under the Orderly Departure Program, from a refugee camp in East Asia, or from a displaced persons camp administered by the United Nations in Thailand. This rule proposes to add regulations governing eligibility, evidence, and application and adjudication procedures, and also to add a new section in the regulations that lists the types of evidence an alien may use to demonstrate his or her physical presence in the United States on a specific date. Finally, this rule proposes a general amendment to the regulatory standards for waivers of the criminal grounds of inadmissibility under section 212(h) of the Act.

DATES: Written comments must be submitted on or before September 9, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS number 2124–01 on your correspondence. Comments may also be submitted to the Service electronically at this address: *insreg@usdoj.gov*. When submitting comments electronically please include INS No. 2124–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Service, contact Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, Telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is Section 568 of Public Law 106–429?

On November 6, 2000, the President signed Public Law 106–429, the Foreign Operations Appropriations Act of 2001. Section 586 of Public Law 106–429 provides for adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos.

Why Is This Rule a Proposed Rule?

The Department of Justice (Department) is issuing this rule as a proposed rule in order to ensure that all aliens eligible for benefits under section 586 of Public law 106–429 have an equal opportunity to obtain those benefits. Section (a)(1) of Public Law 106–429 sets forth a time-limited application period (3 years from the date the rule is promulgated) and section (d) limits the number of total adjustments. The Department believes it is necessary to solicit comments on the regulations implementing this law prior to making the regulations effective. The Department seeks comments on all aspects of the proposed regulations, including, but not limited to, criteria for eligibility, evidentiary standards, counting methodology, application procedures, and appeal rights. After the Department has reviewed the comments, the regulations will be finalized via a final rule published in the **Federal Register**, and the application period will begin.

Who Is Eligible To Adjust Status to That of Lawful Permanent Resident Under Section 586 of Public Law 106–429?

The Department's proposed regulations will codify the eligibility requirements for adjustment of status under section 586 of Public Law 106–429 at 8 CFR 245.21(a). To be eligible, an alien must demonstrate that he or she:

(1) Is a citizen or native of Vietnam, Cambodia, or Laos;

(2) Was inspected and paroled into the United States before October 1, 1997;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Was paroled into the United States:

- From Vietnam under the auspices of the Orderly Departure Program (ODP);
- From a refugee camp in East Asia; or
- From a displaced persons camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand.

(5) Applies for adjustment of status under section 586 of Public Law 106–429 during the period beginning on the "effective date" specified when this proposed rule is published as a final rule, and ending 3 years from the effective date, and pays all appropriate fees; and

(6) Is otherwise eligible to receive an immigrant visa and otherwise admissible to the United States for permanent residence except for those grounds of inadmissibility that do not apply or that are waived.

What Is the Process of Adjustment of Status for Refugees?

The adjustment process for refugees is simple: One year after the alien has entered the United States as a refugee, he or she can apply to adjust status to lawful permanent resident (LPR) (see also 8 CFR 209.1). For those qualified aliens who have been denied refugee status but who fall into the Lautenberg category and are paroled into the United States as such, the process is similar—they can apply for LPR one year after

entry. (For a discussion of the Lautenberg category, see the section below "What is the Lautenberg Amendment?" See also, 8 CFR 245.7)

This rule, by contrast, covers aliens who are not eligible to adjust to LPR status under either of the above provisions. This rule is intended to benefit aliens whose relatives have died or emigrated or never formed a qualifying relationship with the alien, those aliens paroled into the United States who have no relatives (such as former employees of the United States government), and those who were never formally denied refugee status. For the vast majority of the rule's beneficiaries, there is no route to adjustment other than this provision.

Is There a Limit on the Number of Adjustments Under Section 586 of Public Law 106–429?

Yes, under section 586 of Public Law 106–429, the Attorney General has the authority to adjust the status of 5,000 aliens. Generally, the Department will adjudicate applications in the order in which they are submitted. The Service will assign a number to every application properly filed. The number will be assigned in ascending order, according to the filing date, except that, as discussed below, the Service will assign a number only if and when a necessary waiver is granted.

In the exercise of its discretion, the Service will adjudicate applications that do not require adjudication of a waiver to overcome any criminal, fraud, immigration violator, citizenship ineligibility, or illegal voting grounds of inadmissibility before those adjustment applications that do require such a waiver adjudication. These grounds of inadmissibility are identified in § 245.21(m)(3). The Department is of the view that applicants who seek waivers of such grounds have, by definition, violated the law in some way and are requesting the Attorney General to use his discretion to excuse that violation. Such applicants are not entitled to be given the same priority as those who have not engaged in conduct that would render them inadmissible to the United States and, accordingly, the Service will assign a priority to such applications according to the date that the requested waivers are granted, if that is the result rather than the filing date of the application for adjustment.

Each alien granted adjustment of status under section 586 will count toward the 5,000 limit. The Service will monitor the total number of approvals in order to ensure that all applications pending appeal that are placed earlier in the queue could be approved within the 5,000 cap if the applications are granted on appeal. The Department's regulations concerning the 5,000 limit are at 8 CFR 245.21(m). The Department recommends that eligible aliens submit their applications as soon as possible after the final rule is promulgated in order to maximize their likelihood of getting a space within the 5,000 limit.

When Can Aliens File for Adjustment of Status Under Section 586 of Public Law 106–429?

Aliens may apply during the 3-year application period, which commences on the effective date of any final regulations promulgated pursuant to section 586 of Public Law 106–429. Applications received prior to the beginning of the application period will be rejected and returned to the applicant. The Department's proposed regulations regarding the application period are at 8 CFR 245.21(b)(1).

What Was the Orderly Departure Program (ODP)?

The ODP originated in 1979 under the initiative of the UNHCR in order to provide a safe, legal alternative to dangerous departures by boat, or over land, from Vietnam. Individuals who sought to leave Vietnam registered with the ODP office, situated in Bangkok, Thailand, where a case file was opened. Individuals, and close family members, were assigned tracking numbers, known as IV files. The first legal departure from Vietnam via the ODP was in December 1980.

Within the ODP, there were three subprograms: (1) The Regular Subprogram, which was reserved for applicants seeking family reunification and other individuals who demonstrated close connections with United States policies and programs prior to 1975; (2) the Reeducation Detainee Subprogram (which came to be known as the HO subprogram); and (3) the Amerasian Subprogram, for individuals who were fathered by Americans.

As a humanitarian response to an increasing demand for emigration from Vietnam, it was Service policy to offer Public Interest Parole to certain classes of applicants from within the ODP, including those who had been denied refugee status and those who were the beneficiaries of non-current relative visa petitions.

Many such parolees were ineligible, subsequent to arrival in the United States, to adjust their status under the provisions of section 599E of the Foreign Operations, Export Financing, and Related Appropriations Act of 1990 (Pub. L. 101–167) (the Lautenberg Amendment).

What Is the Lautenberg Amendment?

The Lautenberg Amendment is a means for aliens from certain nations (including Vietnam, Cambodia, and Laos) who have been denied refugee status but who are nevertheless granted a Public Interest Parole into the United States to adjust status to LPR. The beneficiaries of section 586 do not fall into this category because they were never considered for, and thus never denied, refugee status.

Parole status is technically a grant of entry into the United States and is different than admission. Aliens who have been admitted to a specific immigrant or nonimmigrant status (LPR, Refugee, H–1B, etc) may only be removed if the Service meets its burden of proof to show that the alien is deportable. In contrast, an alien in parole status is still technically facing admission, and if the Service places such an alien in removal proceedings, the burden of proof lies with the alien to show admissibility.

The Lautenberg Amendment specifically authorized individuals to apply for adjustment of status 1 year after arrival in the United States as a parolee. However, the language of the Lautenberg Amendment limited the ability to apply for adjustment to those individuals who had been paroled subsequent to a denial of refugee status. Therefore, individuals who were paroled as the beneficiary of a non-current relative visa petition could not apply for adjustment of status until a visa number became available. Additionally, dependent family members were paroled in the interest of maintaining family unity. These latter individuals have been left in a virtual indefinite parolee status because they were not beneficiaries of a specific relative visa petition.

The policy of offering Public Interest Parole ceased on September 30, 1994, although individuals previously authorized parole continued to travel to the United States after the date of cessation.

How Do Applicants Demonstrate That They Were Paroled Under the Auspices of the ODP?

Persons eligible for the benefits of section 586 of Public Law 106–429 because they were paroled under the auspices of the ODP may locate their assigned tracking number, the IV file number, in several places. The number appears on the parole authorization letter, the transportation letter, or the Form I–94, Arrival-Departure Record,

issued to them. If the applicant no longer has any of these documents, the Department has a complete database for all individuals processed under the ODP and can verify an applicant's claim if requested in writing along with the Form I–485.

Verifying the alien's claim that he or she entered the United States under the auspices of the ODP should not add a

adjustment of status under section 586 of Public Law 106–429.

What Grounds of Inadmissibility May Be Waived When Applying for Adjustment of Status Under Section 586 of Public Law 106–429?

Section 586(c) of Public Law 106–429 authorizes the Attorney General to waive the grounds of inadmissibility found at section 212(a)(1) of the Act

lawful permanent resident with the social and humane considerations presented to determine if the grant of relief appears to be in the best interests of the United States. *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996) (involving a waiver under section 212(h)(1)(B) of the Act). Establishment of extreme hardship and eligibility for a waiver requiring a showing of such hardship does not create an entitlement

Does an Applicant Have To Demonstrate That He or She Was Physically Present in the United States Prior to October 1, 1997?

Yes, however an eligible applicant will be able to meet this requirement when he or she demonstrates that he or she was paroled into the United States via one of the three qualifying programs. The documentation demonstrating that the applicant was paroled into the

physical presence for adjustment of status under section 586 of Public Law 106–429. The Department is also soliciting comments on what type of evidence can be best used to demonstrate an alien's physical presence in the United States for a specific date (in this case October 1, 1997).

Are the Dependents of Aliens Eligible To Adjust Status Under Section 586 of

United States. The Department notes that, depending on the alien's circumstances and the charges brought, the immigration proceedings may have an effect on the alien's admissibility. If an alien is found inadmissible on a ground that cannot be waived, the alien will not be eligible for adjustment of status under section 586.

In order to maintain control of the adjudication of applicants under the

issued to them. If the applicant no longer has any of these documents, the Department has a complete database for all individuals processed under the ODP and can verify an applicant's claim if requested in writing along with the Form I–485.

Verifying the alien's claim that he or she entered the United States under the auspices of the ODP should not add a significant time period to the total time it takes to adjudicate the application. There is no fee for making this request if it is made as part of the application for benefits under this provision.

How Do Applicants Demonstrate That They Were Paroled From a Refugee Camp in East Asia?

Applicants who were paroled under different auspices than the ODP will have an identifiable United States Refugee Program (USRP) file number. That file number is prefaced with the first initial of the country of first asylum, *e.g.*, TXXXXXX = Thailand; SXXXXXX = Singapore; IXXXXXX = Indonesia, and so forth. The number appears on the Form I–94 issued to them.

How Do Applicants Demonstrate That They Were Paroled From a Displaced Persons Camp in Thailand That Was Administered by the UNHCR?

This category comprises primarily Cambodian nationals who were initially in camps along the Thai-Cambodian border. These individuals should have a unique USRP file number representing Thailand, *i.e.*, TXXXXXX. Additionally, applicants from displaced persons camps would normally have the designation of HP–1, HP–2, or HP–3 on the Form I–94, or elsewhere in the Alien file ("A" file). The "A" number and "HP" designation appear on the Form I–94 issued to them.

If the applicant no longer has his or her Form I–94, he or she may request the Department to do a search of its files to determine whether that alien ever received either number or designation in writing along with the Form I–485.

What Grounds of Inadmissibility Do Not Apply When Applying for Adjustment of Status Under Section 586 of Public Law 106–429?

The grounds of inadmissibility found at section 212(a)(4) of the Immigration and Nationality Act (Act), relating to public charge; (a)(5), relating to labor certification requirements and certifications for foreign healthcare workers; (a)(7)(A), relating to visa and travel documents; and (a)(9), relating to prior removals and unlawful presence, do not apply to applicants for adjustment of status under section 586 of Public Law 106–429.

What Grounds of Inadmissibility May Be Waived When Applying for Adjustment of Status Under Section 586 of Public Law 106–429?

Section 586(c) of Public Law 106–429 authorizes the Attorney General to waive the grounds of inadmissibility found at section 212(a)(1) of the Act, relating to health; (a)(6)(B), (a)(6)(C), and (a)(6)(F), relating to failure to attend removal proceedings, misrepresentation, and document fraud violations, respectively; (a)(8)(A), relating to citizenship ineligibilities; and (a)(10)(B) and (a)(10)(D), relating to guardians of helpless aliens and unlawful voting. This waiver may be granted by the Attorney General (or by the Service as the Attorney General's delegate), in the exercise of his discretion, to prevent extreme hardship to the applicant, or to his or her United States citizen or lawful permanent resident spouse, parent, son, or daughter.

In addition to section 586(c), an individual seeking to adjust status under Public Law 106–429 may apply for any other immigrant waiver authorized under section 212 of the Act, if eligible. When a showing of extreme hardship is required for a waiver under any provision of section 212 of the Act, that hardship must be to one or more of the applicant's United States citizen or lawful permanent resident family members specified in that provision.

In some cases, the section 212 waiver supplements the provisions of section 586(c), while in others, such as criminal cases, section 212(h) of the Act is the exclusive means of relief. For example, individuals who are inadmissible on any of the medical grounds of section 212(a)(1)(A) of the Act have the option of applying for a waiver under section 212(g)(1),(2), or (3) of the Act, as applicable. Those individuals who are not eligible to apply under section 212(g) of the Act may apply for a waiver under section 586(c) of Public Law 106–429, if they can establish the requisite extreme hardship. In contrast, the waiver provision of section 586(c) does not include any of the criminal grounds of section 212(a)(2) of the Act; however, section 212(h) of the Act authorizes a waiver in limited cases.

It is important to note that waivers of inadmissibility are granted in the discretion of the Attorney General. The Board of Immigration Appeals has held that, in assessing whether an applicant has met the burden that a waiver is warranted in the exercise of discretion, the adjudicator must balance adverse factors evidencing inadmissibility as a lawful permanent resident with the social and humane considerations presented to determine if the grant of relief appears to be in the best interests of the United States. *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996) (involving a waiver under section 212(h)(1)(B) of the Act). Establishment of extreme hardship and eligibility for a waiver requiring a showing of such hardship does not create an entitlement to the relief sought. *Id.*; *Matter of Cervantes-Gonzalez*, Int. Dec. 3380 (BIA 1999). Extreme hardship, once established, is but one favorable discretionary factor to be considered. *Id.*

Most recently, in the context of a case involving a waiver of a criminal ground of inadmissibility under section 209(c) of the Act, the Attorney General determined that favorable discretion should not be exercised for waivers involving violent or dangerous individuals, except in extraordinary circumstances. Extraordinary circumstances include situations where the alien has established exceptional and extremely unusual hardship, or situations where there are overriding national security or foreign policy considerations. Nevertheless, depending on the gravity of the underlying offense, the equities presented in such extraordinary circumstances may still be insufficient. *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

In view of these considerations, this proposed rule amends 8 CFR 212.7 to provide a general rule that the Service will exercise discretion in favor of the applicant in section 212(h) waiver cases that involve violent or dangerous crimes only in extraordinary circumstances. Moreover, depending on the nature and severity of the underlying offense to be waived, the Attorney General retains the discretion to determine that the mere existence of extraordinary circumstances is insufficient to warrant the grant of a waiver.

How Does an Individual Apply for the Waiver?

In order to obtain a waiver of one or more grounds of inadmissibility, an applicant must file Form I–601, Application for Waiver of Grounds of Excludability, with the Form I–485, Application to Register Permanent Residence or Adjust Status. As mentioned previously under the heading, "Is there a limit on the number of adjustments under section 586 of Public Law 106–429?", the Department may give preference to those applicants who do not need a waiver of inadmissibility over certain applicants who do.

Does an Applicant Have To Demonstrate That He or She Was Physically Present in the United States Prior to October 1, 1997?

Yes, however an eligible applicant will be able to meet this requirement when he or she demonstrates that he or she was paroled into the United States via one of the three qualifying programs. The documentation demonstrating that the applicant was paroled into the United States via one of the three qualifying programs will contain a date. If the date of the alien's parole was prior to October 1, 1997, the Department will consider the applicant to have met the requirement that the applicant was physically present in the United States prior to October 1, 1997.

How Can an Applicant Demonstrate That He or She Was Physically Present in the United States on October 1, 1997?

Applicants for adjustment of status under section 586 of Public Law 106–429 must submit, at the time they file the application for adjustment of status, evidence that they were physically present in the United States on October 1, 1997.

The Act is silent as to the methods by which an applicant may demonstrate his or her physical presence in the United States on that date. Increasingly, adjustment of status provisions of the immigration laws are enacted with the requirement that applicants demonstrate their physical presence in the United States on a specific date (most recently, for example, the amendments to section 245(i) of the Act). The Department believes it is appropriate at this time to codify a single regulatory standard for demonstrating an alien's physical presence on a particular date. This is similar to the common standard for evidence, testimony, signature, and other requirements applicable to a wide range of applications and petitions. This rule adds a new § 245.22 that would provide guidance to aliens who need to demonstrate physical presence in the United States on any specific date (cross-referenced in proposed § 245.21(g)(2)). This new section regarding evidence largely corresponds to the existing regulations at 8 CFR 245.15(i) for aliens who must demonstrate physical presence on a specific date for purposes of the Haitian Refugee Immigrant Fairness Act of 1998, section 902 of Division A of Public Law 105–277 (HRIFA). The rule incorporates, in part, the forms of documentation accepted for HRIFA applicants regarding physical presence (8 CFR 245.15(i) and (j)(2)) and adopts them as examples of possible proof of physical presence for adjustment of status under section 586 of Public Law 106–429. The Department is also soliciting comments on what type of evidence can be best used to demonstrate an alien's physical presence in the United States for a specific date (in this case October 1, 1997).

Are the Dependents of Aliens Eligible To Adjust Status Under Section 586 of Public Law 106–429 Eligible To Adjust Status?

Section 586 of Public law 106–429 does not provide for the derivative adjustment of status for the spouse and children of aliens who adjust status under this law. To obtain lawful permanent resident status under this law, the spouse or child must be eligible under the terms of this law in his or her own right, and must apply on his or her own behalf. To the extent possible, the Service will adjudicate applications from family members at the same time.

If an alien who adjusts status to that of lawful permanent resident (LPR) under section 586 of Public Law 106–429 has an alien spouse, child, or unmarried son or daughter who is not eligible in his or her own right, the LPR may file Form I–130, Petition for Alien Relative, to begin the regular immigration process for the spouse, child, or unmarried son or daughter.

Where and How Do Eligible Aliens File for Adjustment of Status Under Section 586 of Public Law 106–429?

When the regulations are effective and the 3-year application period begins, the Service will provide aliens eligible to adjust status to that of lawful permanent resident under section 586 of Public Law 106–429 with an address for the filing of Form I–485.

Applicants must be physically present in the United States, and must submit the associated filing fee, currently $255 ($160 for applicants under 14 years of age), or request that the fee be waived pursuant to 8 CFR 103.7(c). Applicants ages 14 through 79 must also submit a $50 fingerprinting fee. Under Part 2, question h of Form I–485, applicants must write "INDOCHINESE PAROLEE P.L. 106–429" to indicate that they are applying based on this provision.

Is an Alien Currently in Proceedings Eligible To Apply?

An alien in proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 may apply directly to the Service. In order to be eligible, however, an applicant for adjustment of status must be otherwise admissible to the United States. The Department notes that, depending on the alien's circumstances and the charges brought, the immigration proceedings may have an effect on the alien's admissibility. If an alien is found inadmissible on a ground that cannot be waived, the alien will not be eligible for adjustment of status under section 586.

In order to maintain control of the adjudication of applicants under the 5,000 limit, this rule provides that the Service will adjudicate all of these cases, not the immigration judges, or the Board of Immigration Appeals. Accordingly, an alien who is currently in proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106–429 should contact Service counsel to request Service consent to the filing of a joint motion for administrative closure of the immigration proceedings while any application filed is pending with the Service. The Service will exercise its discretion on a case-by-case basis in determining whether to join in motions for administrative closure.

Is an Alien Who Already Is the Subject of a Final Order of Removal, Deportation, or Exclusion Eligible To Apply Under Section 586 of Public Law 106–429?

An alien with a final order of removal, deportation, or exclusion who is eligible for adjustment of status under section 586 of Public Law 106–429 is not precluded from filing an application for adjustment of status with the Service. In order to be eligible, however, an applicant for adjustment of status must be otherwise admissible to the United States, and the Department notes that many aliens who are the subject of a final order of exclusion, deportation, or removal will be unable to satisfy that requirement. Only those aliens who have been found removable under circumstances that establish an alien's inadmissibility on a ground that may be waived under section 586 of Public Law 106–429 would be eligible for adjustment under this provision.

Moreover, this rule contains a substantial general constraint on the exercise of discretion to grant waivers under section 212(h) of the Act relating to violent or dangerous crimes and provides that aliens who require a waiver of criminal and certain other grounds of inadmissibility may be accorded a priority date only as of the date of the granting of the necessary waivers, rather than the date of the filing of the application.

Accordingly, this section does not automatically stay the order of removal, deportation, or exclusion. An eligible

alien may request that the district director with jurisdiction over his or her place of residence grant a stay of removal for the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6. Only the Service may grant such a stay relating to an application for adjustment of status under this section.

If the Service approves the

alien had previously been granted a waiver of any applicable grounds of inadmissibility before departing from the United States. Such an alien would need to obtain advance parole in addition to obtaining the necessary waivers of inadmissibility.

What Documentation Will Be Issued if the Adjustment of Status Application Is Approved?

in the adjustment queue, with respect to the 5,000 limit on total adjustments under section 586 of Public Law 106–429. In other words, the Service will reserve space within the 5,000 limit on adjustments under section 586 of Public Law 106–429 for appellants who would have been able to adjust within the 5,000 limit had their applications been approved during the initial Service adjudication.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this

(2) Title of Form/Collection: Application requirements for the adjustment of status under section 586 of Public Law 106–429.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No form number, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief

12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1(f)(3)(iii)(C) is amended by adding the phrase "or section 586 of Public Law 106–429" immediately after "October 28, 1977".

**PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN

alien may request that the district director with jurisdiction over his or her place of residence grant a stay of removal for the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6. Only the Service may grant such a stay relating to an application for adjustment of status under this section.

If the Service approves the application for adjustment of status, the Service shall provide notice to the immigration judge or the Board. The filing of such notice will constitute the automatic re-opening of the alien's immigration proceedings, vacating the final removal order and terminating the re-opened proceedings.

How Can Applicants for Adjustment of Status Under Section 586 of Public Law 106–429 Obtain Employment Authorization While Their Application for Adjustment of Status Is Pending?

Applicants may obtain employment authorization based on their pending Form I–485 by submitting Form I–765, Application for Employment Authorization, and the $120 application fee unless the fee is waived. An applicant may submit Form I–765 simultaneously with the Form I–485 or at any time while the Form I–485 is pending. If the Service approves Form I–765, the applicant will be issued an employment authorization document.

Will an Applicant Filing an Application for Adjustment of Status Under Section 586 of Public Law 106–429 With the Service Be Required To Appear for an Interview?

The Service may require applicants for adjustment of status to appear for an interview, in the exercise of discretion.

Can an Applicant Travel Outside the United States While the Application Is Pending?

This rule does not prevent applicants with pending applications for adjustment of status from traveling abroad while their application is pending. However, in order to be eligible to lawfully re-enter the United States and avoid the abandonment of the application for adjustment of status, the Department will require that the alien obtain advance permission to travel (known as advance parole) from the Service prior to departing the United States. To obtain advance parole, applicants need to submit Form I–131, Application for a Travel Document, along with the $110 filing fee.

However, the Department notes that, if an alien under a final order of removal leaves the country, that would constitute a self-deportation unless the alien had previously been granted a waiver of any applicable grounds of inadmissibility before departing from the United States. Such an alien would need to obtain advance parole in addition to obtaining the necessary waivers of inadmissibility.

What Documentation Will Be Issued if the Adjustment of Status Application Is Approved?

After processing of the Form I–485 is completed, the Service will mail a notice of the decision to the applicant. If the application has been approved, the Service will issue a notice of approval instructing an alien to go to a local INS office to fill out Form I–89, which collects the necessary information to produce the Form I–551. To obtain temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the adjustment of status application. If the applicant is not in possession of an unexpired passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting the Alien Documentation, Identification, and Telecommunication System specifications described on Form M–378 so that the Service may prepare and issue alternate temporary evidence of lawful permanent residence status.

What Date Will Be Recorded as the "Record of Permanent Residence" for Aliens Granted Lawful Permanent Resident Status Under Section 586 of Public Law 106–429?

Upon the approval of an application for adjustment of status, the Service will record the alien's admission for lawful permanent residence as of the date of the alien's inspection and parole before October 1, 1997, under the ODP, from a refugee camp in East Asia, or from a displaced persons camp administered by UNHCR in Thailand.

If the Service Denies an Alien's Application for Adjustment of Status Under Section 586 of Public Law 106–429, Is There an Appeal?

Yes, the alien may appeal to the Administrative Appeals Office when the Service denies an application. Procedures are contained in 8 CFR 103.3(a)(2).

When an alien appeals the denial of his or her application to adjust status under section 586 of Public Law 106–429, he or she will retain the same spot in the adjustment queue, with respect to the 5,000 limit on total adjustments under section 586 of Public Law 106–429. In other words, the Service will reserve space within the 5,000 limit on adjustments under section 586 of Public Law 106–429 for appellants who would have been able to adjust within the 5,000 limit had their applications been approved during the initial Service adjudication.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect certain individuals from Vietnam, Cambodia, and Laos by implementing the adjustment of status provisions of section 586 of Public Law 106–429. This rule will have no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement (Form I–485) contained in this rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this information collection is 1115–0053.

This proposed rule permits certain aliens from Vietnam, Cambodia, and Laos to adjust status. In addition to the evidence required by Form I–485, this rule at § 245.21(g)(2) requires applicants to demonstrate that they were physically present in the United States on October 1, 1997 by supplying the evidence outlined in § 245.22. This additional documentation is considered an information collection.

Written comments are encouraged and will be accepted until September 9, 2002. Your comments should address one or more of the following four points:

(1) Evaluating whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, utility, and clarity of the information to be collected; and

(4) Minimizing the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: New

(2) Title of Form/Collection: Application requirements for the adjustment of status under section 586 of Public Law 106–429.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No form number, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Individuals. Section 586 of Public Law 106–429 allows certain aliens from Vietnam, Cambodia, and Laos to adjust status to lawful permanent resident. The information collection is necessary in order for the Service to make a determination that the eligibility requirements and conditions are met regarding the alien.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,000 respondents at 30 minutes per response.

(6) An estimate of the total of public burden (in hours) associated with the collection: Approximately 2,500 burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street, NW., Room 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202)514–3241.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1(f)(3)(iii)(C) is amended by adding the phrase "or section 586 of Public Law 106–429" immediately after "October 28, 1977".

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

4. Section 212.7 is amended by adding paragraph (d) to read as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

* * * * *

(d) *Criminal grounds of inadmissibility involving violent or dangerous crimes.* The Service, in general, will exercise discretion not to grant waivers of the criminal grounds of inadmissibility involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of status adjustment would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

5. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

6. Section 245.15(i) is revised to read as follows:

§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

* * * * *

(i) *Evidence of presence in the United States on December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing the alien's presence in the United States on December 31, 1995. Such evidence may consist of the evidence listed in § 245.22.

* * * * *

7. Section 245.21 is added to read as follows:

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Pub. L. 106–429).

(a) *Eligibility.* The Service may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States during the period beginning on October 1, 1997, and ending on September 30, 1997, under the Orderly Departure Program (ODP), from a refugee camp in East Asia, or from a displaced persons camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(2) Applied for adjustment of status to that of a lawful permanent resident before April 1, 2000;

(3) Is admissible to the United States as an immigrant at the time of examination for adjustment of status;

(4) Is not described in section 241(a)(5) of the Act; and

(5) Is not described in section 212(a)(3)(A), (B), (C), or (E) of the Act.

(b) *Application.* An application for adjustment of status under this section must be submitted on Form I–485, Application to Register Permanent Residence or Adjust Status, and must be accompanied by evidence establishing eligibility as provided in paragraph (g) of this section; two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I–693 and vaccination supplement) specified in § 245.5; and, if needed, an application for waiver of grounds of inadmissibility (Form I–601).

(c) *Interview.* The applicant may be interviewed by an immigration officer.

(d) *Decision.* The decision whether to grant the application for adjustment of status is within the discretion of the Service. The applicant has the burden of proving eligibility for the benefit sought.

(1) If the Service approves the application, the Service will record the alien's admission for lawful permanent residence as of the date of the alien's inspection and parole before October 1, 1997, under the ODP, from a refugee camp in East Asia, or from a displaced persons camp administered by UNHCR in Thailand.

(2) If the Service denies the application, the Service will provide the applicant with a written notice of the decision and the reasons for denial. The applicant may appeal the decision to the Administrative Appeals Office (AAO) pursuant to 8 CFR 103.3. There is no administrative appeal from a decision of the AAO.

(3) An immigration judge or the Board may not grant a motion to re-open or stay in connection with an application under this section.

(4) If the Service approves the application, the approval will constitute the automatic re-opening of the alien's immigration proceedings, vacating of

in Service files and the applicant may submit an affidavit to that effect in lieu of actual documentation.

(h) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may submit Form I–765, Application for Employment Authorization, along with the application fee listed in 8 CFR

limit. The Service will assign a number, ascending chronologically by filing date, to all applications properly filed in accordance with paragraphs (b) and (g) of this section. Except as described in paragraph (m)(3) of this section, the Service will adjudicate applications in that order until it reaches 5,000 approvals under this part. Applications initially denied but pending on appeal will retain their place in the queue by

(2) Form I–862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I–221, Order to Show Cause, issued by the Service on or prior to the

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7. Section 245.21 is added to read as follows:

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Pub. L. 106–429).

(a) *Eligibility.* The Service may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States before October 1, 1997;

(2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Files an application for adjustment of status in accordance with paragraph (b) of this section during the 3-year application period; and

(5) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) *Applying for benefits under section 586 of Public Law 106–429.*

(1) *Application period.* The application period lasts from the effective date when this rule is published as a final rule until 3 years from the effective date. The Service will accept applications received after the end of the application period, but only if the 5,000 limit on adjustments has not been reached prior to the end of the 3-year application period, and the application bears an official postmark dated on or before the final day of the application period. Postmarks will be evaluated in the following manner:

(i) If the postmark is illegible or missing, the Service will consider the application to be timely filed if it is received on or before 3 business days after the end of the application period.

(ii) In all instances, the burden of proof is on the applicant to establish timely filing of an application.

(2) *Application.* An alien must be physically present in the United States to apply for adjustment of status under section 586 of Public Law 106–429. An applicant must submit Form I–485, Application to Register Permanent Residence or Adjust Status, along with the appropriate application fee contained in § 103.7(b)(1) of this chapter. Applicants who are 14 through 79 must also submit the fingerprinting service fee provided for in § 103.7(b)(1) of this chapter. Each application filed must be accompanied by evidence establishing eligibility as provided in paragraph (g) of this section; two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I–693 and vaccination supplement) specified in § 245.5; and, if needed, an application for waiver of inadmissibility. Under Part 2, question h of Form I–485, applicants must write "INDOCHINESE PAROLEE P.L. 106–429". Applications must be sent to: INS Nebraska Service Center, PO Box 87485, Lincoln NE 68501–7485.

(c) *Applications from aliens in immigration proceedings.* An alien in pending immigration proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b)(2) of this section. An immigration judge or the Board of Immigration Appeals Board may not adjudicate applications for adjustment of status under this section. An alien who is currently in immigration proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106–429 may contact Service counsel after filing their application to request the consent of the Service to the filing of a joint motion for administrative closure. Unless the Service consents to such a motion, the immigration judge or the Board may not defer or dismiss the proceeding in connection with section 586 of Public Law 106–429.

(d) *Applications from aliens with final orders of removal, deportation or exclusion.* An alien with a final order of removal, deportation, or exclusion who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b) of this section.

(1) An application under this section does not automatically stay the order of removal, deportation, or exclusion. An alien who is eligible for adjustment of status under section 586 of Public Law 106–429 may request that the district director with jurisdiction over the alien grant a stay of removal during the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6.

(2) The Service in general will exercise its discretion not to grant a stay of removal, deportation or exclusion with respect to an alien who is inadmissible on any of the grounds specified in paragraph (m)(3) of this section, unless there is substantial reason to believe that the Service will grant the necessary waivers of inadmissibiilty.

(3) An immigration judge or the Board may not grant a motion to re-open or stay in connection with an application under this section.

(4) If the Service approves the application, the approval will constitute the automatic re-opening of the alien's immigration proceedings, vacating of the final order of removal, deportation, or exclusion, and termination of the reopened proceedings.

(e) *Grounds of inadmissibility that do not apply.* In making a determination of whether or not an applicant is otherwise eligible for admission to the United States for lawful permanent residence under the provisions of section 586 of Public Law 106–429, the grounds of inadmissibility under sections 212(a)(4), (a)(5), (a)(7)(A), and (a)(9) of the Act shall not apply.

(f) *Waiver of grounds of inadmissibility.* In connection with an application for adjustment of status under this section, the alien may apply for a waiver of the grounds of inadmissibility under sections 212(a)(1), (a)(6)(B), (a)(6)(C), (a)(6)(F), (a)(8)(A), (a)(10)(B), and (a)(10)(D) of the Act as provided in section 586(a) of Public Law 106–429, if the alien demonstrates that a waiver is necessary to prevent extreme hardship to the alien, or to the alien's spouse, parent, son or daughter who is a U.S. citizen or an alien lawfully admitted for permanent residence. In addition, the alien may apply for any other waiver of inadmissibility under section 212 of the Act, if eligible. In order to obtain a waiver for any of these grounds, an applicant must submit Form I–601, Application for Waiver of Grounds of Excludability, with the application for adjustment.

(g) *Evidence.* Applicants must submit evidence that demonstrates they are eligible for adjustment of status under section 586 of Public Law 106–429. Such evidence shall include the following:

(1) A birth certificate or other record of birth;

(2) Documentation to establish that the applicant was physically present in the United States on October 1, 1997, under the standards set forth in § 245.22.

(3) A copy of the applicant's Arrival-Departure Record (Form I–94) or other evidence that the alien was inspected or paroled into the United States prior to October 1, 1997, from one of the three programs listed in paragraph (a)(2) of this section. Subject to verification, documentation pertaining to paragraph (a)(2) of this section is already contained in Service files and the applicant may submit an affidavit to that effect in lieu of actual documentation.

(h) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may submit Form I–765, Application for Employment Authorization, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves the application for employment authorization, the applicant will be issued an employment authorization document.

(i) *Travel while an application to adjust status is pending.* An alien may travel abroad while an application to adjust status is pending. Applicants must obtain advance parole in order to avoid the abandonment of their application to adjust status. An applicant may obtain advance parole by filing Form I–131, Application for a Travel Document, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves Form I–131, the alien will be issued Form I–512, Authorization for the Parole of an Alien into the United States. Aliens granted advance parole will still be subject to inspection at a Port-of-Entry.

(j) *Approval and date of admission as a lawful permanent resident.* When the Service approves an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified in writing of the Service's decision. In addition, the record of the alien's admission as a lawful permanent resident will be recorded as of the date of the alien's inspection and parole into the United States, as described in paragraph (a)(1) of this section.

(k) *Notice of denial.* When the Service denies an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified of the decision in writing.

(l) *Administrative review.* An alien whose application for adjustment of status under section 586 of Public Law 106–429 is denied by the Service may appeal the decision to the Administrative Appeals Office in accordance with 8 CFR 103.3(a)(2).

(m) *Number of adjustments permitted under this section*—(1) *Limit.* No more than 5,000 aliens may have their status adjusted to that of a lawful permanent resident under section 586 of Public Law 106–429.

(2) *Counting procedures.* Each alien granted adjustment of status under this section will count towards the 5,000 limit. The Service will assign a number, ascending chronologically by filing date, to all applications properly filed in accordance with paragraphs (b) and (g) of this section. Except as described in paragraph (m)(3) of this section, the Service will adjudicate applications in that order until it reaches 5,000 approvals under this part. Applications initially denied but pending on appeal will retain their place in the queue by virtue of their number, pending the Service's adjudication of the appeal.

(3) *Applications submitted with a request for the waiver of a ground of inadmissibility.* In the discretion of the Service, applications that do not require adjudication of a waiver of inadmissibility under section 212(a)(2), (a)(6)(B), (a)(6)(F), (a)(8)(A), or (a)(10)(D) of the Act may be approved and assigned numbers within the 5,000 limit before those applications that do require a waiver of inadmissibility under any of those provisions. Applications requiring a waiver of any of those provisions will be assigned a number chronologically by the date of approval of the necessary waivers rather than the date of filing of the application.

8. Section 245.22 is added to read as follows:

§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.

(a) *Evidence.* Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where more specific regulations or instructions for the form(s) relating to a particular adjustment of status provision have been issued, such regulations or instructions for the form(s) are controlling to the extent that they conflict with this section and must be followed.

(b) *The number of documents.* If no one document establishes the alien's physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to, and after that date.

(c) *Service-issued documentation.* To demonstrate physical presence on a specific date, the alien may submit Service-issued documentation. Examples of acceptable Service documentation include, but are not limited to, photocopies of:

(1) Form I–94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) Form I–862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I–221, Order to Show Cause, issued by the Service on or prior to the required date, placing the applicant in deportation proceedings under sections 242 or 242A (redesignated as section 238) of the Act (as in effect prior to April 1, 1997); or

(5) Any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to the required date which establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

(d) *Government-issued documentation.* To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(1) A state driver's license;

(2) A state identification card;

(3) A county or municipal hospital record;

(4) A public college or public school transcript;

(5) Income tax records;

(6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(7) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return,

property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX and

Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002-NM–114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 series airplane operating under 14 CFR part 135 experienced a rapid depressurization event at 41,000 feet. The flightcrew donned their oxygen masks and initiated an emergency descent. The flightcrew noted that the oxygen masks were not providing adequate oxygen. The flightcrew leveled off at 10,000 feet and noted that the cabin altitude was 8,000 feet. The flightcrew then descended to 8,000 feet and landed the airplane. The flightcrew reported that the oxygen masks were not providing adequate oxygen. Investigation revealed that the oxygen masks were not providing adequate oxygen because the oxygen flow rate was insufficient. The oxygen flow rate was insufficient because the oxygen regulator was set to the wrong setting. The oxygen regulator was set to the wrong setting because the flightcrew did not follow the procedures in the airplane flight manual (AFM) for donning the oxygen masks. The flightcrew did not follow the procedures in the AFM for donning the oxygen masks because the AFM procedures do not provide adequate guidance for donning the oxygen masks. The AFM procedures do not provide adequate guidance for donning the oxygen masks because the AFM procedures do not address the possibility that the flightcrew may not be able to don the oxygen masks before the cabin altitude warning sounds. The AFM procedures do not address the possibility that the flightcrew may not be able to don the oxygen masks before the cabin altitude warning sounds

property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

(e) *Copies of records.* It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application. If the alien is not in possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, State, or local government agency, the type of document and the date on which it was issued.

(f) *Other relevant document(s) and evaluation of evidence.* The adjudicator will consider any other relevant document(s) as well as evaluate all evidence submitted, on a case-by-case basis. The Service may require an interview when necessary.

(g) *Accuracy of documentation.* In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority.

Dated: July 2, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–17117 Filed 7–8–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes. This proposal would require revising the airplane flight manual to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 8, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–114–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM–114-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002-NM–114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 series airplane operating under 14 CFR 135 departed Orlando International Airport en route to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes reported that the windows of the Model 35 series airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 series airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 series airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin altitude aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35/36 series airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Model 35A and 36A series airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew.

A review of the emergency procedures in the AFM for Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes revealed that the procedures for the flightcrew to don emergency oxygen masks is not the first and immediate step, but rather the second step when the warning horn sounds. Therefore, these airplanes may be subject to the same unsafe condition described above.

Explanation of Relevant Service Information

The manufacturer has issued Revision No. 17, dated July 25, 2000, to the Israel Aircraft Industries Astra SPX Airplane Flight Manual (AFM), and Temporary Revision (TR) No. 12, dated October 18, 2001, to the Israel Aircraft Industries Astra AFM. These revisions advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alarm to prevent incapacitation of the flightcrew due to lack of oxygen. Incorporation of the AFM revisions is intended to adequately address the identified unsafe condition. The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, classified the Astra SPX AFM revision as mandatory and issued Israeli airworthiness directive 21–00–11–18, dated November 27, 2000, to ensure the continued airworthiness of those airplanes in Israel.

U.S. Type Certification of the Airplane

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the Emergency Procedures section of the AFMs to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert.

Differences Between Proposed AD and Israeli Airworthiness Directive

Israeli airworthiness directive 21–00–11–18 applies only to Model Astra SPX series airplanes. The CAAI has advised us that they plan to issue a similar airworthiness directive on the Model 1125 Westwind Astra series airplanes. Since the Model 1125 Westwind Astra series airplanes are also subject to the identified unsafe condition, we have also included those airplane models in the applicability of this proposed AD.

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action"

under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

DATES: Comments must be received by August 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or

400 and 737–500 series airplanes are identical to those installed on certain Model 737–300 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–25–1430, dated February 22, 2001, which describes procedures for replacing the

These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of

under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket 2002–NM–114–AD.

Applicability: All Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 1 month after the effective date of this AD, revise the Emergency Procedures section of the FAA-approved AFM to include the following information; and operate the airplane in accordance with those procedures.

(1) For Model Astra SPX series airplanes: Include page II–2 of Israel Aircraft Industries Astra SPX AFM, Revision No. 17, dated July 25, 2000.

(2) For Model 1125 Westwind Astra series airplanes: Include Temporary Revision (TR) No. 12 of the Israel Aircraft Industries Astra AFM, dated October 18, 2001. This may be accomplished by inserting a copy of TR No. 12 into the AFM. When the TR has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided the information contained in the general revision is identical to that specified in TR No. 12.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: The subject of this AD is addressed in Israeli airworthiness directive 21–00–11–18, dated November 27, 2000.

Issued in Renton, Washington, on June 28, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17080 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–88–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require replacement of the hinge assemblies on certain escape slide compartments of the forward doors with new, stronger hinge assemblies. This action is necessary to prevent forward door escape slides from falling out of their compartments into the airplane interior and inflating, which could impede an evacuation in the event of emergency. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–88–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–88–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of an incident on a Boeing Model 737–300 series airplane in which a forward door escape slide fell out of its compartment and inflated inside the passenger compartment of the airplane. Other operators have reported incidents in which the forward door escape slides dropped out of their ostensibly secured compartments. Investigation has revealed that the soft aluminum hinge assemblies on Model 737–300, –400, and –500 series airplanes are susceptible to deformation. A deformed hinge assembly could allow the escape slide to fall out of its compartment into the interior of the airplane. The released slide, which would automatically inflate, could impede an evacuation in the event of an emergency.

Airplanes Similar to Model 737–300 Series Airplanes

The hinge assemblies on certain escape slide compartments of the forward doors on certain Model 737–400 and 737–500 series airplanes are identical to those installed on certain Model 737–300 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–25–1430, dated February 22, 2001, which describes procedures for replacing the hinge assemblies on the stowage compartments for the forward door escape slides with new, stronger hinge assemblies. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Related Rulemaking

AD 96–18–04, amendment 39–9728 (61 FR 45878, August 30, 1996), requires accomplishment of the actions specified in Boeing Service Bulletin 737–25A1221 and Air Cruisers Service Bulletin 103–25–19. Those service bulletins are also cited in Boeing Service Bulletin 737–25–1430 as "concurrent requirements." Because those "concurrent" actions are required by AD 96–18–04, they are not included in this proposed AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Boeing Service Bulletin 737–25–1430, described previously.

Cost Impact

There are approximately 1,974 airplanes of the affected design in the worldwide fleet. The FAA estimates that 793 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $671 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $770,003, or $971 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–88–AD.

Applicability: Model 737–300, –400, and –500 series airplanes; certificated in any category; as listed in Boeing Service Bulletin 737–25–1430, dated February 22, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–164754–01]

RIN 1545–BA44

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and

respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26

Section 163(h) disallows a deduction for personal interest paid or accrued during the taxable year for taxpayers other than corporations. For purposes of section 163(h), personal interest is any interest other than the following: interest paid or accrued on indebtedness properly allocable to a trade or business; any investment interest within the meaning of section 163(d); any interest which is taken into account under

under a below-market loan depend on the relationship between the borrower and the lender and whether the loan is characterized as a demand loan or a term loan. For example, in the case of a compensation-related below-market loan within the meaning of section 7872(c)(1)(B), the imputed payments are treated as payments of compensation.

Section 7872 generally provides that, in the case of any below-market loan

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent forward door escape slides from falling out of their compartments into the airplane interior and inflating, which could impede an evacuation in the event of emergency, accomplish the following:

Hinge Assembly Replacement

(a) Within 24 months after the effective date of this AD, replace the hinge assemblies on the escape slide stowage compartments of the forward doors with new, stronger hinge assemblies, in accordance with Boeing Service Bulletin 737–25–1430, dated February 22, 2001.

Spare Parts

(b) As of the effective date of this AD, no person may install a hinge assembly, part number 65C30431–6 or 65C30431–7, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17081 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–164754–01]

RIN 1545–BA44

Split-Dollar Life Insurance Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the income, employment, and gift taxation of split-dollar life insurance arrangements. The proposed regulations will provide needed guidance to persons who enter into split-dollar life insurance arrangements. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by October 7, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for October 23, 2002, must be received by October 9, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–164754–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–164754–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the section 61 regulations, please contact Elizabeth Kaye at (202) 622–4920; concerning the section 83 regulations, please contact Erinn Madden at (202) 622–6030; concerning the section 301 regulations, please contact Krishna Vallabhaneni at (202) 622–7550; concerning the section 7872 regulations, please contact Rebecca Asta at (202) 622–3940; and concerning the application of these regulations to the Federal gift tax, please contact Lane Damazo at (202) 622–3090. To be placed on the attendance list for the hearing, please contact LaNita M. Vandyke at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by September 9, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.7872–15(d)(2)(ii) and (j)(3)(ii). These collections of information are required by the IRS to verify consistent treatment by the borrower and lender of split-dollar loans with nonrecourse or contingent payments. In addition, in the case of a split-dollar loan that provides for nonrecourse payments, the collections of information are required to obtain a benefit. The likely respondents are parties entering into split-dollar loans with nonrecourse or contingent payments.

Estimated total annual reporting and/or recordkeeping burden: 32,500 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 17 minutes.

Estimated number of respondents and/or recordkeepers: 115,000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

1. Current Law

Section 61 provides that gross income includes all income from whatever source derived. Section 1.61–2(d) describes the taxation of premiums paid by an employer or service recipient for life insurance on the life of an employee or independent contractor if the proceeds of the life insurance are payable to the beneficiary of the employee.

Section 83 provides rules for taxing a transfer of property in connection with the performance of services. Generally, if property is transferred to any person other than the service recipient in connection with the performance of services, the excess of the fair market value of such property (determined without regard to lapse restrictions) over the amount paid for such property is included in the gross income of the service provider in the first taxable year in which the service provider's rights in such property are either transferable or not subject to a substantial risk of forfeiture, whichever is applicable. Under § 1.83–1(a)(2), the cost of life insurance protection under a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection generally is taxable under section 61 and the regulations thereunder during the period such contract is substantially nonvested (that is, prior to the time when rights to the contract are either transferable or not subject to a substantial risk of forfeiture). The cost of such life insurance protection is the reasonable net premium cost, as determined by the Commissioner, of the current life insurance protection (as defined in § 1.72–16(b)(3)) provided by such contract. Under § 1.83–3(e), in the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered property.

Section 163(h) disallows a deduction for personal interest paid or accrued during the taxable year for taxpayers other than corporations. For purposes of section 163(h), personal interest is any interest other than the following: interest paid or accrued on indebtedness properly allocable to a trade or business; any investment interest within the meaning of section 163(d); any interest which is taken into account under section 469 in computing passive income or loss; any qualified residence interest; any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment is in effect; and any interest allowable for deduction under section 221 (relating to interest on education loans).

Section 264(a)(1) provides that no deduction is allowed for premiums on any life insurance policy if the taxpayer is directly or indirectly a beneficiary under the policy. Section 264(a)(2) provides that no deduction is allowed, except as provided in section 264(e), for any interest paid or accrued on indebtedness with respect to a life insurance policy owned by the taxpayer and covering the life of any individual.

Section 301 provides that distributions of property made by a corporation to a shareholder with respect to its stock may constitute a dividend includible in the gross income of the shareholder.

Sections 163(e) and 1271 through 1275 provide rules for the treatment of original issue discount (OID) on debt instruments. In general, the holder and the issuer of a debt instrument take the OID into account as it accrues on the basis of the debt instrument's yield to maturity.

Section 7872 provides rules for certain direct and indirect below-market loans enumerated in section 7872(c)(1). The legislative history of section 7872 states that the term *loan* is to be interpreted broadly for purposes of section 7872, potentially encompassing "any transfer of money that provides the transferor with a right to repayment." H.R. Rep. 98–861, 98th Cong., 2d Sess. 1018 (1984). In general, section 7872 recharacterizes a below-market loan (a loan in which the interest rate charged is less than the applicable Federal rate (AFR)) as an arm's-length transaction in which the lender makes a loan to the borrower at the AFR, coupled with a payment or payments to the borrower sufficient to fund all or part of the interest that the borrower is treated as paying on that loan. The amount, timing, and characterization of the imputed payments to the borrower under a below-market loan depend on the relationship between the borrower and the lender and whether the loan is characterized as a demand loan or a term loan. For example, in the case of a compensation-related below-market loan within the meaning of section 7872(c)(1)(B), the imputed payments are treated as payments of compensation.

Section 7872 generally provides that, in the case of any below-market loan that is a gift or demand loan subject to section 7872, forgone interest is treated as transferred from the lender to the borrower and retransferred from the borrower to the lender as interest on the last day of the calendar year for each year the loan is outstanding.

Section 7872 generally provides that, in the case of any below-market loan that is a term loan subject to section 7872, the lender is treated as having transferred, on the day the loan is made, an amount equal to the excess of the amount loaned over the present value of all payments which are required to be made under the terms of the loan. This amount is treated as retransferred by the borrower to the lender as OID over the term of the loan.

Rev. Rul. 64–328 (1964–2 C.B. 11) and Rev. Rul. 66–110 (1966–1 C.B. 12) address the Federal income tax treatment of a split-dollar life insurance arrangement under which an employer and an employee join in the purchase of a life insurance contract on the life of the employee and provide for the allocation of policy benefits. The rulings conclude that all economic benefits provided by the employer to the employee under such an arrangement are taxed to the employee. Thus, under the rulings, the employee generally must include in compensation income for each taxable year during which the arrangement remains in effect (i) the annual cost of the life insurance protection provided to the employee, reduced by any payments made by the employee for such life insurance protection, (ii) any policy owner dividends or similar distributions provided to the employee under the life insurance contract (including any dividends, as described in Rev. Rul. 66–110, used to provide additional policy benefits), and (iii) any other economic benefits provided to the employee under the arrangement. Neither ruling distinguishes, for tax purposes, between an arrangement in which the employer owns the life insurance contract (as in a so-called endorsement arrangement) and an arrangement in which the employee owns the contract (as in a so-called collateral assignment arrangement).

Rev. Rul. 79–50 (1979–1 C.B. 138) provides that, in a split-dollar life insurance arrangement similar to the one described in Rev. Rul. 64–328 between a corporation and a shareholder, the shareholder must include in income the value of the insurance protection in excess of the premiums paid by the shareholder, and must treat such amounts as provided in

Notice 2002–8 also describes the anticipated proposed regulations on split-dollar life insurance arrangements. The notice states that the rules would require taxation of a split-dollar life insurance arrangement under one of two mutually exclusive regimes: an economic benefit regime and a loan regime.

2. Overview of the Proposed Regulations

A special rule applies in the case of an arrangement entered into in connection with the performance of services. Under this special rule, a split-dollar life insurance arrangement is any arrangement (whether or not described in the general rule) between an owner and a non-owner of a life insurance contract under which the employer or service recipient pays, directly or indirectly, all or any portion of the

arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donee is not the owner of the life insurance contract.

Under the loan regime (generally set forth in § 1.7872–15 of the proposed regulations), the non-owner of the life insurance contract is treated as loaning premium payments to the owner of the contract. Except for specified arrangements, the loan regime applies to

indebtedness constituted a payment for services in an employment situation).

Owners and Non-Owners

The proposed regulations provide rules for determining the owner and the non-owner of the life insurance contract. The owner is the person named as the policy owner. If two or more persons are designated as the policy owners, the first-named person

interest in such contract (other than a life insurance company acting solely in its capacity as issuer of a life insurance contract). For example, an employee whose spouse is designated by the employer as the beneficiary of a life insurance contract that is owned by the employer would have an indirect interest in the contract and, therefore, would be treated as a non-owner.

3. Taxation Under the Economic Benefit

Rev. Rul. 79–50 (1979–1 C.B. 138) provides that, in a split-dollar life insurance arrangement similar to the one described in Rev. Rul. 64–328 between a corporation and a shareholder, the shareholder must include in income the value of the insurance protection in excess of the premiums paid by the shareholder, and must treat such amounts as provided in section 301(c).

Notice 2001–10 (2001–1 C.B. 459) set forth rules for the taxation of split-dollar life insurance arrangements in which the employee has an interest in the cash surrender value of the life insurance contract (so-called equity split-dollar life insurance arrangements). Notice 2001–10 generally provided, under specified conditions, for the taxation of equity split-dollar life insurance arrangements under either the rules of sections 61 and 83 or the rules of section 7872.

Notice 2002–8 (2002–4 I.R.B. 398), which revoked Notice 2001–10, provides guidance with respect to split-dollar life insurance arrangements entered into before the date final regulations concerning such arrangements are published in the **Federal Register**. The notice indicates that taxpayers may treat current life insurance protection provided under such an arrangement as an economic benefit and that the IRS will not treat the arrangement as having been terminated if the parties continue to treat and report the value of the current life insurance protection in that manner. Notice 2002–8 provides that, alternatively, the parties may treat the premiums or other payments as loans from the sponsor of the arrangement (typically, the employer) to the other party. In these cases, the IRS will not challenge a taxpayer's reasonable efforts to comply with the requirements of sections 1271 through 1275 and section 7872. In addition, all payments by the sponsor from the inception of the arrangement (reduced by any repayments to the sponsor) before the first taxable year in which the payments are treated as loans must be treated as loans entered into at the beginning of such first taxable year.[1]

Notice 2002–8 also describes the anticipated proposed regulations on split-dollar life insurance arrangements. The notice states that the rules would require taxation of a split-dollar life insurance arrangement under one of two mutually exclusive regimes: an economic benefit regime and a loan regime.

2. Overview of the Proposed Regulations

These proposed regulations provide guidance on the taxation of split-dollar life insurance arrangements, including equity split-dollar life insurance arrangements. The proposed regulations apply for purposes of Federal income, employment, and gift taxes. For example, the proposed regulations apply to a split-dollar life insurance arrangement between an employer and an employee, between a corporation and a shareholder, and between a donor and a donee.

Definition of Split-Dollar Life Insurance Arrangement

The proposed regulations generally define a split-dollar life insurance arrangement as any arrangement (that is not part of a group term life insurance plan described in section 79) between an owner of a life insurance contract and a non-owner of the contract under which either party to the arrangement pays all or part of the premiums, and one of the parties paying the premiums is entitled to recover (either conditionally or unconditionally) all or any portion of those premiums and such recovery is to be made from, or is secured by, the proceeds of the contract. This definition is intended to apply broadly and will cover an arrangement, for example, under which the non-owner of a contract provides funds directly to the owner of the contract with which the owner pays premiums, as long as the non-owner is entitled to recover (either conditionally or unconditionally) all or a portion of the funds from the contract proceeds (for example, death benefits) or has an interest in the contract to secure the right of recovery. In addition, the amount to be recovered by the party paying the premiums need not be determined by reference to the amount of those premiums. The definition is not intended to cover the purchase of an insurance contract in which the only parties to the arrangement are the policy owner and the life insurance company acting only in its capacity as issuer of the contract.

A special rule applies in the case of an arrangement entered into in connection with the performance of services. Under this special rule, a split-dollar life insurance arrangement is any arrangement (whether or not described in the general rule) between an owner and a non-owner of a life insurance contract under which the employer or service recipient pays, directly or indirectly, all or any portion of the premiums and the beneficiary of all or any portion of the death benefit is designated by the employee or service provider or is any person whom the employee or service provider would reasonably be expected to name as beneficiary. (Like the general rule, this special rule does not apply to any arrangement covered by section 79.) This special rule also applies to arrangements between a corporation and another person in that person's capacity as a shareholder in the corporation under which the corporation pays, directly or indirectly, all or any portion of the premiums and the beneficiary of all or a portion of the death benefit is a person designated by, or would be reasonably expected to be designated by, the shareholder. As in the case of the general definition, the special rule is not intended to cover the purchase of an insurance contract in which the only parties to the arrangement are the policy owner and the life insurance company acting only in its capacity as issuer of the contract.

Mutually Exclusive Regimes

As indicated in Notice 2002–8, the proposed regulations provide two mutually exclusive regimes for taxing split-dollar life insurance arrangements. A split-dollar life insurance arrangement (as defined in the proposed regulations) is taxed under either the economic benefit regime or the loan regime. The proposed regulations provide rules that determine which tax regime applies to a split-dollar life insurance arrangement.

Under the economic benefit regime (generally set forth in § 1.61–22 of the proposed regulations), the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract. The economic benefit regime generally will govern the taxation of endorsement arrangements. In addition, a special rule requires the economic benefit regime to apply (and the loan regime not to apply) to any split-dollar life insurance arrangement if (i) the arrangement is entered into in connection with the performance of services, and the employee or service provider is not the owner of the life insurance contract, or (ii) the

[1] Notice 2002–8 also provides that an employer and employee may continue to use the P.S. 58 rates set forth in Rev. Rul. 55–747 (1955–2 C.B. 228), which was revoked by Notice 2001–10, only with respect to split-dollar life insurance arrangements entered into before January 28, 2002, in which a contractual arrangement between the employer and employee provides that the P.S. 58 rates will be used to determine the value of the current life insurance protection provided to the employee (or to the employee and one or more additional persons). Taxpayers may not use the P.S. 58 rates for "reverse" split-dollar life insurance arrangements or for split-dollar life insurance arrangements outside of the compensatory context.

arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donee is not the owner of the life insurance contract.

Under the loan regime (generally set forth in § 1.7872–15 of the proposed regulations), the non-owner of the life insurance contract is treated as loaning premium payments to the owner of the contract. Except for specified arrangements, the loan regime applies to any split-dollar loan (as defined in the proposed regulations). The loan regime generally will govern the taxation of collateral assignment arrangements.

Thus, in contrast to Rev. Rul. 64–328 and Rev. Rul. 66–110, the proposed regulations generally provide substantially different tax consequences to the parties depending on which party owns the life insurance contract.

The proposed regulations also require both the owner and the non-owner of a life insurance contract that is part of a split-dollar life insurance arrangement (as defined either in the general rule or the special rule) to fully and consistently account for all amounts under the arrangement under the rules of either § 1.61–22 or § 1.7872–15.

For purposes of both the general rule and the special rule, unless the non-owner's payments are certain payments made in consideration for economic benefits, general Federal income, employment, and gift tax principles apply to the arrangement. For example, if an employer pays premiums on a contract owned by an employee and the payments are not split-dollar loans under § 1.7872–15, the employee must include the full amount of the payments in gross income at the time they are paid by the employer to the extent that the employee's rights to the life insurance contract are substantially vested. Also, to the extent an owner's repayment obligation is waived, cancelled, or forgiven at any time under an arrangement that prior to the cancellation of indebtedness was treated as a split-dollar loan, the owner and non-owner must account for the amount waived, cancelled, or forgiven in accordance with the relationship between the parties. Thus, if the arrangement were in a compensatory context, the owner of the contract (the employee) and the non-owner (the employer) would account for the amount as compensation. *See OKC Corp. and Subsidiaries* v. *Commissioner*, 82 T.C. 638 (1984) (whether the cancellation of a debt is ordinary income to the debtor depends upon the nature of the payment); *Newmark* v. *Commissioner*, 311 F.2d 913 (2d Cir. 1962) (discharge of indebtedness constituted a payment for services in an employment situation).

Owners and Non-Owners

The proposed regulations provide rules for determining the owner and the non-owner of the life insurance contract. The owner is the person named as the policy owner. If two or more persons are designated as the policy owners, the first-named person generally is treated as the owner of the entire contract. However, if two or more persons are named as the policy owners and each such person has an undivided interest in every right and benefit of the contract, those persons are treated as owners of separate contracts. For example, if an employer and an employee jointly own a life insurance contract and share equally in all rights and benefits under the contract, they are treated as owning two separate contracts (and, ordinarily, neither contract would be treated as part of a split-dollar life insurance arrangement).

The general rule that the person named as the policy owner is treated as the owner of the life insurance contract is subject to two exceptions involving situations in which the only benefits available under the split-dollar life insurance arrangement would be the value of current life insurance protection (that is, so-called non-equity arrangements). Under the first exception, an employer or service recipient is treated as the owner of the contract under a split-dollar life insurance arrangement that is entered into in connection with the performance of services if, at all times, the only economic benefits available to the employee or service provider under the arrangement would be the value of current life insurance protection. Similarly, a donor is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into between a donor and a donee (for example, a life insurance trust) if, at all times, the only economic benefits available to the donee under the arrangement would be the value of current life insurance protection. The proposed regulations reserve on the issue of the consequences of a modification to these arrangements (for example, such as subsequently providing the employee or donee with an interest in the cash value of the life insurance contract). The IRS and the Treasury Department request comments on the rule the final regulations should adopt regarding the consequences of modifying these arrangements.

The non-owner is any person other than the owner of the life insurance contract having any direct or indirect interest in such contract (other than a life insurance company acting solely in its capacity as issuer of a life insurance contract). For example, an employee whose spouse is designated by the employer as the beneficiary of a life insurance contract that is owned by the employer would have an indirect interest in the contract and, therefore, would be treated as a non-owner.

3. Taxation Under the Economic Benefit Regime

a. In General

Section 1.61–22(d) provides that, as a general rule for split-dollar life insurance arrangements that are taxed under the economic benefit regime, the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract, and those economic benefits must be accounted for fully and consistently by both the owner and the non-owner. The value of the economic benefits, reduced by any consideration paid by the non-owner to the owner, is treated as transferred from the owner to the non-owner. The tax consequences of that transfer will depend on the relationship between the owner and the non-owner. Thus, the transfer may constitute a payment of compensation, a distribution under section 301, a gift, or a transfer having a different tax character.

Non-Equity Split-Dollar Life Insurance Arrangements

Under a non-equity split-dollar life insurance arrangement, the owner is treated as providing current life insurance protection (including paid-up additions) to the non-owner. The amount of the current life insurance protection provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the total amount payable to the owner under the split-dollar life insurance arrangement. The total amount payable to the owner is increased by the amount of any outstanding policy loan. The cost of the current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin. For example, assume that employer R is the owner of a $1,000,000 life insurance contract that is part of a split-dollar life insurance arrangement between R and employee E. Under the arrangement, R pays all of the $10,000 annual premiums and is entitled to receive the greater of its

premiums or the cash surrender value of the contract when the arrangement terminates or E dies. Assume that through year 10 of the arrangement R has paid $100,000 of premiums and that in year 10 the cost of term insurance for E is $1.00 for $1,000 of insurance and the cash surrender value of the contract is $200,000. Under § 1.61–22, in year 10, E must include in compensation income

standard nonqualified deferred compensation arrangement and more like that of an employee who obtains an interest in a specific asset of the employer (such as where the employer makes an outright purchase of a life insurance contract for the benefit of the employee). The employer's right to a return of its premiums, which characterizes most equity split-dollar

premium or other consideration for the contract).

b. Taxation of Amounts Received Under the Life Insurance Contract

Any amount received under the life insurance contract (other than an amount received by reason of death) and provided, directly or indirectly, to the non-owner is treated as though paid by the insurance company to the owner

22(f), any amount paid to a beneficiary (other than the owner) by reason of the death of the insured is excludable from the beneficiary's gross income under section 101(a) as an amount received under a life insurance contract. This result applies only to the extent that such amount is allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of

were the arrangement a non-equity split-dollar life insurance arrangement, and (iii) any consideration paid by the non-owner for all economic benefits reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to economic benefits provided to the non-owner were the arrangement a non-equity split-dollar life insurance arrangement. However, clauses (ii) and

account by the transferee (excluding the amount of those benefits that was excludable from the transferee's gross income at the time of receipt) or paid for by the transferee.

After a transfer of an entire life insurance contract, the transferee becomes the owner for Federal income, employment, and gift tax purposes, including for purposes of the split-dollar life insurance rules. Thus, if the

premiums or the cash surrender value of the contract when the arrangement terminates or E dies. Assume that through year 10 of the arrangement R has paid $100,000 of premiums and that in year 10 the cost of term insurance for E is $1.00 for $1,000 of insurance and the cash surrender value of the contract is $200,000. Under § 1.61–22, in year 10, E must include in compensation income $800 ($1,000,000—$200,000, or $800,000 payable to R, multiplied by .001 (E's premium rate factor)). If, however, E paid $300 of the premium, E would include $500 in compensation income.

The Treasury Department and the IRS request comments on whether there is a need for more specific guidance in computing the cost of a death benefit that varies during the course of a taxable year. Comments are requested concerning, for example, whether a convention requiring the amount of the death benefit to be recomputed on a quarterly or semi-annual basis would properly balance the accurate computation of the death benefit against compliance and administrative burdens.

Equity Split-Dollar Life Insurance Arrangements

Under § 1.61–22(d)(3), the owner and the non-owner also must account fully and consistently for any right in, or benefit of, a life insurance contract provided to the non-owner under an equity split-dollar life insurance arrangement. For example, in a compensatory context in which the contract is owned by the employer, the employee must include in gross income the value of any interest in the cash surrender value of the contract provided to the employee during a taxable year.

This result is consistent with the conclusion in Rev. Rul. 66–110 that an employee must include in gross income the value of all economic benefits provided under a split-dollar life insurance arrangement. More broadly, this result is consistent with the fact that a non-owner who has an interest in the cash surrender value of a life insurance contract under an equity split-dollar life insurance arrangement is in a better economic position than a non-owner who has no such interest under a non-equity arrangement.

In general, a mere unfunded, unsecured promise to pay money in the future—as in a standard nonqualified deferred compensation plan covering an employee—does not result in current income. However, a non-owner's interest in a life insurance contract under an equity split-dollar life insurance arrangement is less like that of an employee covered under a standard nonqualified deferred compensation arrangement and more like that of an employee who obtains an interest in a specific asset of the employer (such as where the employer makes an outright purchase of a life insurance contract for the benefit of the employee). The employer's right to a return of its premiums, which characterizes most equity split-dollar life insurance arrangements, affects only the valuation of the employee's interest under the arrangement and, therefore, the amount of the employee's current income.

Specific guidance regarding valuation of economic benefits under an equity split-dollar life insurance arrangement is reserved in § 1.61–22, pending comments from interested parties concerning an appropriate valuation methodology and views on whether such a methodology should be adopted as a substantive rule or as a safe harbor. Any proposal for a specific methodology should be objective and administrable. One potential approach for valuation might involve subtracting from current premium payments made by the contract owner the net present value of the amount to be repaid to the owner in the future.

Other Tax Consequences

Because § 1.61–22(c) treats one party to the split-dollar life insurance arrangement as the owner of the entire contract, the non-owner has no investment in the contract under section 72(e). Thus, no amount paid by the non-owner under a split-dollar life insurance arrangement, whether or not designated as a premium, and no amount included in the non-owner's gross income as an economic benefit, is treated as investment in the contract under section 72(e)(6) for the non-owner. However, as described below, special rules apply in the case of a transfer of the contract from the owner to the non-owner.

Any premium paid by the owner is included in the owner's investment in the contract under section 72(e)(6). However, no premium payment and no economic benefit includible in the non-owner's gross income is deductible by the owner (except as otherwise provided under section 83 when the contract is transferred to the non-owner and the transfer is taxable in accordance with the rules of that section). Any amount paid by the non-owner to the owner for any economic benefit is included in the owner's gross income. Such amount is also included in the owner's investment in the contract (but only to the extent not otherwise so included by reason of having been paid by the owner as a premium or other consideration for the contract).

b. Taxation of Amounts Received Under the Life Insurance Contract

Any amount received under the life insurance contract (other than an amount received by reason of death) and provided, directly or indirectly, to the non-owner is treated as though paid by the insurance company to the owner and then by the owner to the non-owner. This rule applies to a policy owner dividend, the proceeds of a specified policy loan (as defined in § 1.61–22(e)), a withdrawal, or the proceeds of a partial surrender. The owner is taxed on the amount in accordance with the rules of section 72. The non-owner (and the owner for gift tax and employment tax purposes) must take the amount into account as a payment of compensation, a distribution under section 301, a gift, or other transfer depending on the non-owner's relationship to the owner. However, the amount that must be taken into account is reduced by the sum of (i) the value of all economic benefits actually taken into account by the non-owner (and the owner for gift tax and employment tax purposes) reduced (but not below zero) by the amounts that would have been taken into account were the arrangement a non-equity split-dollar life insurance arrangement and (ii) any consideration paid by the non-owner for all economic benefits reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to economic benefits provided to the non-owner were the arrangement a non-equity split-dollar life insurance arrangement. However, the preceding sentence applies only to the extent such economic benefits were not previously used to reduce an earlier amount received under the contract.

The same result applies in the case of a specified policy loan. A policy loan is a specified policy loan to the extent (i) the proceeds of the loan are distributed directly from the insurance company to the non-owner; (ii) a reasonable person would not expect that the loan will be repaid by the non-owner; or (iii) the non-owner's obligation to repay the loan to the owner is satisfied, or is capable of being satisfied, upon repayment by either party to the insurance company. Because the employee is not the owner of the contract, the specified policy loan will not be treated as a loan to the employee but as a loan to the employer (the owner of the contract), followed by a payment of cash compensation from the employer to the employee.

Amounts received by reason of death are treated differently. Under § 1.61–22(f), any amount paid to a beneficiary (other than the owner) by reason of the death of the insured is excludable from the beneficiary's gross income under section 101(a) as an amount received under a life insurance contract. This result applies only to the extent that such amount is allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account under the rules set forth in § 1.61–22. Amounts received by a non-owner in its capacity as a lender are generally not amounts received by reason of the death of the insured under section 101(a). Cf. Rev. Rul. 70–254 (1970–1 C.B. 31).

c. Transfer of Life Insurance Contract to the Non-Owner

Section 1.61–22(g) provides rules for the transfer of a life insurance contract (or an undivided interest therein) from the owner to the non-owner. Consistent with the general rule for determining ownership, § 1.61–22(g) provides that a transfer of a life insurance contract (or an undivided interest therein) underlying a split-dollar life insurance arrangement occurs on the date that the non-owner becomes the owner of the entire contract (or the undivided interest therein). Thus, a transfer of the contract does not occur merely because the cash surrender value of the contract exceeds the premiums paid by the owner or the amount ultimately repayable to the owner on termination of the arrangement or the death of the insured. In addition, there is no transfer of the contract if the owner merely endorses a percentage of the cash surrender value of the contract (or similar rights in the contract) to the non-owner. Unless and until ownership of the contract is formally changed, the owner will continue to be treated as the owner for all Federal income, employment, and gift tax purposes.

At the time of a transfer, there generally must be taken into account for Federal income, employment, and gift tax purposes the excess of the fair market value of the life insurance contract (or the undivided interest therein) transferred to the non-owner (transferee) over the sum of (i) the amount the transferee pays to the owner (transferor) to obtain the contract (or the undivided interest therein), (ii) the value of all economic benefits actually taken into account by the non-owner (and the owner for gift tax and employment tax purposes) reduced (but not below zero) by the amounts that would have been taken into account were the arrangement a non-equity split-dollar life insurance arrangement, and (iii) any consideration paid by the non-owner for all economic benefits reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to economic benefits provided to the non-owner were the arrangement a non-equity split-dollar life insurance arrangement. However, clauses (ii) and (iii) of the preceding sentence apply only to the extent those economic benefits were not previously used to reduce an earlier amount received under the contract. For this purpose, the fair market value of the life insurance contract is the cash surrender value and the value of all other rights under the contract (including any supplemental agreements, whether or not guaranteed), other than the value of the current life insurance protection. For example, the fair market value of the contract includes the value of a guaranteed right to an above-market rate of return (to the extent not already reflected in the cash surrender value).

In a transfer subject to section 83, fair market value is determined disregarding any lapse restrictions. In addition, the timing of the transferee's inclusion is determined under the rules of section 83. Therefore, a transfer will not give rise to gross income until the transferee's rights to the contract (or undivided interest in the contract) are substantially vested (unless the transferee makes a section 83(b) election). Section 1.83–6(a)(5) of the proposed regulations allows the service recipient's deduction at that time.

Under the general rule, the amount treated as consideration paid to acquire the contract under section 72(g)(1) equals the greater of the fair market value of the contract or the sum of the amount the transferee pays to obtain the contract plus the amount of unrecovered economic benefits previously taken into account or paid for by the transferee. Thus, these amounts become the transferee's investment in the contract under section 72(e) immediately after the transfer.

In the case of a transfer between a donor and a donee, the amount treated as consideration paid by the transferee to acquire the contract under section 72(g)(1) to determine the transferee's investment in the contract under section 72(e) immediately after the transfer is the sum of (i) the amount the transferee pays to obtain the contract, (ii) the aggregate of premiums or other consideration paid or deemed to have been paid by the transferor, and (iii) the amount of unrecovered economic benefits previously either taken into account by the transferee (excluding the amount of those benefits that was excludable from the transferee's gross income at the time of receipt) or paid for by the transferee.

After a transfer of an entire life insurance contract, the transferee becomes the owner for Federal income, employment, and gift tax purposes, including for purposes of the split-dollar life insurance rules. Thus, if the transferor pays premiums after the transfer, the payment of those premiums may be includible in the transferee's gross income if the payments are not split-dollar loans under § 1.7872–15. After the transfer of an undivided interest in a life insurance contract, the transferee is treated as the new owner of a separate contract for all purposes. However, if a transfer of a life insurance contract or an undivided interest in the contract is made in connection with the performance of services and the transfer is not yet taxable under section 83 (because rights to the contract or the undivided interest are substantially nonvested and no section 83(b) election is made), the transferor continues to be treated as the owner of the contract.

4. Taxation Under the Loan Regime

a. In General

Under § 1.7872–15, a payment made pursuant to a split-dollar life insurance arrangement is a split-dollar loan and the owner and non-owner are treated, respectively, as borrower and lender if (i) the payment is made either directly or indirectly by the non-owner to the owner; (ii) the payment is a loan under general principles of Federal tax law or, if not a loan under general principles of Federal tax law, a reasonable person would expect the payment to be repaid in full to the non-owner (whether with or without interest); and (iii) the repayment is to be made from, or is secured by, either the policy's death benefit proceeds or its cash surrender value. The Treasury Department and the IRS recognize that, in the earlier years during which a split-dollar life insurance arrangement is in effect, policy surrender and load charges may significantly reduce the policy's cash surrender value, resulting in under-collateralization of a non-owner's right to be repaid its premium payments. Nevertheless, so long as a reasonable person would expect the payment to be repaid in full, the payment is a split-dollar loan under § 1.7872–15. The Treasury Department and the IRS believe that Congress generally intended that section 7872 would govern the treatment of an arrangement the substance of which is a loan from one

party to another and that there was no congressional intent to make section 7872 inapplicable to split-dollar life insurance arrangements if the arrangements are, in substance, loans.

If a payment on a split-dollar loan is nonrecourse to the borrower and the loan does not otherwise provide for contingent payments, § 1.7872–15 treats the loan as a split-dollar loan that provides for contingent payments unless not enumerated in section 7872(c)(1)(A), (B), or (C) is treated as a significant-effect loan under section 7872(c)(1)(E). However, if the effect of a split-dollar loan is attributable to the relationship between the lender or borrower and an indirect participant (for example, when a split-dollar loan is made from an employer to the child of an employee), the below-market split-dollar loan is restructured as two or more successive

used for purposes of the preceding sentence must be appropriate for the loan's term (short-term, mid-term, or long-term) and the compounding period used in computing the present value.

With respect to a below-market split-dollar term loan, the amount of the imputed transfer by the lender to the borrower is the excess of the amount loaned over the imputed loan amount. In general, a split-dollar term loan is

the yield of the split-dollar loan. This yield is then used to determine the accruals of interest (OID) on the loan and to determine whether the loan is a below-market loan for purposes of section 7872 and § 1.7872–15. For example, a split-dollar loan providing for contingent payments is treated as a below-market split-dollar loan if the yield based on the projected payment schedule is less than the appropriate

and principal on each split-dollar loan in the order in which the loans were made, and applying payments pro-rata on all existing split-dollar loan balances.

5. Transfer Tax Treatment of Split-Dollar Life Insurance Arrangements

The proposed regulations will apply for gift tax purposes in situations involving private split-dollar life insurance arrangements. Thus, if, under the proposed regulations, an irrevocable

trust equal to the cost of the current life insurance protection provided to the trust less any premium amount paid by the trustee. On the other hand, if the donor or the donor's estate is entitled to receive an amount equal to the *lesser* of the aggregate premiums paid by the donor, or the cash surrender value of the contract, the amount of the donor's gift to the trust upon the payment of a premium equals the value of the economic benefits attributable to the

party to another and that there was no congressional intent to make section 7872 inapplicable to split-dollar life insurance arrangements if the arrangements are, in substance, loans.

If a payment on a split-dollar loan is nonrecourse to the borrower and the loan does not otherwise provide for contingent payments, § 1.7872–15 treats the loan as a split-dollar loan that provides for contingent payments unless the parties to the split-dollar life insurance arrangement provide a written representation with respect to the loan to which the payment relates. In general, unless the parties represent that a reasonable person would expect that all payments under the loan will be made, the loan will be treated as a loan that provides for contingent payments. This written representation requirement is intended to help ensure that the parties to the arrangement treat the payments consistently.

If a split-dollar loan does not provide for sufficient interest, the loan is a below-market split-dollar loan subject to section 7872 and § 1.7872–15. If the split-dollar loan provides for sufficient interest, then, except as provided in § 1.7872–15, the loan is subject to the general rules for debt instruments (including the rules for OID). In general, interest on a split-dollar loan is not deductible by the borrower under sections 264 and 163(h). Section 1.7872–15 provides special rules for split-dollar loans that provide for certain variable rates of interest, contingent interest payments, and lender or borrower options. Section 1.7872–15 also provides rules for split-dollar loans on which stated interest is subsequently waived, cancelled, or forgiven by the lender, and for below-market split-dollar loans with indirect participants.

b. Treatment of Below-Market Split-Dollar Loans

If a split-dollar loan is a below-market loan, then, in general, the loan is recharacterized as a loan with interest at the AFR, coupled with an imputed transfer by the lender to the borrower. The timing, amount, and characterization of the imputed transfers between the lender and borrower of the loan will depend upon the relationship between the lender and the borrower (for example, the imputed transfer is generally characterized as a compensation payment if the lender is the borrower's employer), and whether the loan is a demand loan or a term loan.

For purposes of § 1.7872–15, a below-market split-dollar loan made from a lender to a borrower with a relationship not enumerated in section 7872(c)(1)(A), (B), or (C) is treated as a significant-effect loan under section 7872(c)(1)(E). However, if the effect of a split-dollar loan is attributable to the relationship between the lender or borrower and an indirect participant (for example, when a split-dollar loan is made from an employer to the child of an employee), the below-market split-dollar loan is restructured as two or more successive below-market loans. Any deduction allowable to the indirect participant under section 163(d) for investment interest deemed paid is limited to the amount of investment interest deemed received by the indirect participant.

Split-Dollar Demand Loans

A split-dollar demand loan is any split-dollar loan that is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand). Each calendar year that a split-dollar demand loan is outstanding, the loan is tested to determine if the loan provides for sufficient interest. A split-dollar demand loan provides for sufficient interest for the calendar year if the rate (based on annual compounding) at which interest accrues on the loan's adjusted issue price during the year is no lower than the blended annual rate for the year. The use of an annual rate, rather than a semiannual rate, provides a simplified method to determine whether a split-dollar loan provides for sufficient interest and, if the split-dollar loan is below-market, to compute the loan's forgone interest.

In the case of a below-market split-dollar demand loan, the amount of forgone interest for a calendar year is the excess of (i) the amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price at the appropriate AFR and were payable annually over (ii) any interest that accrues on the loan during the year. In general, this excess amount is treated as transferred by the lender to the borrower and retransferred as interest by the borrower to the lender at the end of each calendar year that the loan remains outstanding.

Split-Dollar Term Loans

A split-dollar term loan is any loan that is not a split-dollar demand loan. A split-dollar term loan does not provide for sufficient interest if the amount loaned exceeds the imputed loan amount, which is the present value of all payments due under the loan, determined as of the date the loan is made, using a discount rate equal to the AFR in effect on that date. The AFR used for purposes of the preceding sentence must be appropriate for the loan's term (short-term, mid-term, or long-term) and the compounding period used in computing the present value.

With respect to a below-market split-dollar term loan, the amount of the imputed transfer by the lender to the borrower is the excess of the amount loaned over the imputed loan amount. In general, a split-dollar term loan is treated as having OID equal to the amount of the imputed transfer, in addition to any other OID on the loan (determined without regard to § 1.7872–15).

The term of a split-dollar term loan generally is the term stated in the split-dollar life insurance arrangement. However, special rules apply if the loan is subject to certain borrower or lender options. For purposes of determining a loan's term, the borrower or the lender is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield.

Special rules also are provided for split-dollar term loans payable upon the death of an individual, certain split-dollar term loans that are conditioned on the future performance of substantial services by an individual, and gift split-dollar term loans. Under § 1.7872–15, these split-dollar loans are split-dollar term loans for purposes of determining whether the loan provides for sufficient interest. However, if the loan does not provide for sufficient interest when the loan is made, forgone interest is determined on the loan annually similar to a split-dollar demand loan. The rate used to determine the amount of forgone interest each year is the AFR based on the term of the loan rather than the blended annual rate. A below-market gift split-dollar term loan is treated as a term loan for gift tax purposes.

c. Loans That Provide for Contingent Payments

A split-dollar loan that provides for one or more contingent payments is accounted for by the parties under the contingent split-dollar method, a method similar to the noncontingent bond method described in § 1.1275–4(b). Under this method, the lender prepares a projected payment schedule that includes all of the noncontingent payments and a projected payment for each contingent payment. Any contingent payment provided for under the terms of a split-dollar loan is projected to resolve to its lowest possible value. However, the projected payment schedule must produce a yield that is not less than zero. The projected payment schedule is used to determine the yield of the split-dollar loan. This yield is then used to determine the accruals of interest (OID) on the loan and to determine whether the loan is a below-market loan for purposes of section 7872 and § 1.7872–15. For example, a split-dollar loan providing for contingent payments is treated as a below-market split-dollar loan if the yield based on the projected payment schedule is less than the appropriate AFR.

If, when a contingency resolves, the actual amount of a contingent payment is different than the projected payment, appropriate adjustments are made by the parties to reflect the difference when the contingency resolves. For example, if a contingent split-dollar loan was treated as a below-market split-dollar loan based on the projected payment schedule and the actual yield on the loan turns out to be greater than the appropriate AFR when the contingency resolves, the parties will take appropriate adjustments into account for any prior imputed transfers under section 7872 and § 1.7872–15 at that time.

d. Split-Dollar Loans With Stated Interest That Is Subsequently Waived, Cancelled or Forgiven

If a split-dollar loan provides for stated interest that is subsequently waived, cancelled or forgiven, appropriate adjustments are made by the parties to reflect the difference between the interest payable at the stated rate and the interest actually paid by the borrower at that time. An adjustment (for example, an imputed transfer of compensation) may have consequences for the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) if the adjustment represents wages to the borrower.

e. Payment Ordering Rules

Payments made by a borrower to a lender pursuant to a split-dollar life insurance arrangement are applied in the following order: to accrued but unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued; to principal on the outstanding split-dollar loans in the order in which the loans were made; to payments of amounts previously paid by the lender pursuant to the split-dollar life insurance arrangement that were not reasonably expected to be repaid; and to any other payment with respect to a split-dollar life insurance arrangement. Comments are requested on this rule and other alternative rules, which include applying payments to both the accrued but unpaid interest and principal on each split-dollar loan in the order in which the loans were made, and applying payments pro-rata on all existing split-dollar loan balances.

5. Transfer Tax Treatment of Split-Dollar Life Insurance Arrangements

The proposed regulations will apply for gift tax purposes in situations involving private split-dollar life insurance arrangements. Thus, if, under the proposed regulations, an irrevocable insurance trust is the owner of the life insurance contract underlying the split-dollar life insurance arrangement, and a reasonable person would expect that the donor, or the donor's estate, will recover an amount equal to the donor's premium payments, those premium payments are treated as loans made by the donor to the trust and are subject to § 1.7872–15. In such a case, payment of a premium by the donor is treated as a split-dollar loan to the trust in the amount of the premium payment. If the loan is repayable upon the death of the donor, the term of the loan is the donor's life expectancy determined under the appropriate table under § 1.72–9 as of the date of the payment and the value of the gift is the amount of the premium payment less the present value (determined under section 7872 and § 1.7872–15) of the donor's right to receive repayment. If, however, the donor makes premium payments that are not split-dollar loans, then the premium payments are governed by general gift tax principles. In such a case, with each premium payment, the donor is treated as making a gift to the trust equal to the amount of that payment.

Different rules apply, however, if the donor is treated under § 1.61–22(c) as the owner of the life insurance contract underlying the split-dollar life insurance arrangement and the donor is entitled to recover (either conditionally or unconditionally) all or any portion of the premium payments and such recovery is to be made from, or is secured by, the proceeds of the life insurance contract. Under these circumstances, the donor is treated as making a gift of economic benefits to the irrevocable insurance trust when the donor makes any premium payment on the life insurance contract. For example, assume that under the terms of the split-dollar life insurance arrangement, on termination of the arrangement or the donor's death, the donor or donor's estate is entitled to receive an amount equal to the *greater* of the aggregate premiums paid by the donor or the cash surrender value of the contract. In this case, each time the donor pays a premium, the donor makes a gift to the trust equal to the cost of the current life insurance protection provided to the trust less any premium amount paid by the trustee. On the other hand, if the donor or the donor's estate is entitled to receive an amount equal to the *lesser* of the aggregate premiums paid by the donor, or the cash surrender value of the contract, the amount of the donor's gift to the trust upon the payment of a premium equals the value of the economic benefits attributable to the trust's entire interest in the contract (reduced by any consideration the trustee paid for the interest).

As discussed earlier, § 1.61–22(c) treats the donor as the owner of a life insurance contract even if the donee is named as the policy owner if, under the split-dollar life insurance arrangement, the only amount that would be treated as a transfer by gift by the donor under the arrangement would be the value of current life insurance protection. However, any amount paid by a donee, directly or indirectly, to the donor for such current life insurance protection would generally be included in the donor's gross income.

Similarly, if the donor is the owner of the life insurance contract that is part of the split-dollar life insurance arrangement, amounts received by the irrevocable insurance trust (either directly or indirectly) under the contract (for example, as a policy owner dividend or proceeds of a specified policy loan) are treated as gifts by the donor to the irrevocable insurance trust as provided in § 1.61–22(e). The donor must also treat as a gift to the trust the amount set forth in § 1.61–22(g) upon the transfer of the life insurance contract (or undivided interest therein) from the donor to the trust.

The gift tax consequences of the transfer of an interest in a life insurance contract to a third party will continue to be determined under established gift tax principles notwithstanding who is treated as the owner of the life insurance contract under the proposed regulations. See, for example, Rev. Rul. 81–198 (1981–2 C.B. 188). Similarly, for estate tax purposes, regardless of who is treated as the owner of a life insurance contract under these proposed regulations, the inclusion of the policy proceeds in a decedent's gross estate will continue to be determined under section 2042. Thus, the policy proceeds will be included in the decedent's gross estate under section 2042(1) if receivable by the decedent's executor, or under section 2042(2) if the policy proceeds are receivable by a beneficiary other than the decedent's estate and the decedent possessed any incidents of ownership with respect to the policy.

6. Other Applications of These Regulations

The proposed regulations provide for conforming changes to the definition of wages under sections 3121(a), 3231(e), 3306(b), and 3401(a) and self-employment income under section 1402(a). The rules also apply for purposes of characterizing distributions from a corporation to a shareholder with respect to life insurance contracts under section 301. See Rev. Rul. 61–274 (1961–2 C.B. 60).

Proposed Effective Date

These regulations are proposed to apply to arrangements entered into after the date these regulations are published as final regulations in the Federal Register. For purposes of these proposed regulations, a material modification of an arrangement after the date these regulations are published as final regulations in the Federal Register is treated as the entering into of a new arrangement. For example, a material modification includes the addition of a substantial benefit, the payment of a substantial premium, or the exercise of a material right under the arrangement. However, a change in the beneficiary under the life insurance contract is not a material modification. Similarly, a change in the ownership of the life insurance contract is not a material modification if the new owner is not related to the old owner. In addition, a material modification includes an exchange of an insurance policy in a transaction described in section 1035. Taxpayers may rely on these rules if the only material modification to the arrangement after that date is an exchange of an insurance policy qualifying for nonrecognition treatment under section 1035.

Taxpayers are reminded that Notice 2002–8 provides guidance with respect to arrangements entered into before the effective date of these regulations.

In addition, taxpayers may rely on these proposed regulations for the purpose of applying section 7872 to split-dollar life insurance arrangements entered into after September 17, 2001, and before the effective date of these regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Robin R. Jones, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 602 are proposed to be amended as follows:

transferred by the employer or service recipient to the employee or independent contractor under § 1.61–22(g). * * *

* * * * * *

Par. 3. Section 1.61–22 is added to read as follows:

§ 1.61–22 Taxation of split-dollar life insurance arrangements.

(a) *Scope*—(1) *In general.* This section provides rules for the taxation of a split-dollar life insurance arrangement between an owner and a non-owner of a life insurance contract that satisfies the following criteria—

(i) Either party to the arrangement pays, directly or indirectly, all or any portion of the premiums on the life insurance contract, including a payment by means of a loan to the other party that is secured by the life insurance contract;

(ii) At least one of the parties to the arrangement paying premiums under paragraph (a)(1)(i) of this section is paying premiums in connection with the performance of services; and

(iii) The arrangement is not part of a group-term life insurance plan described in section 79(d)(2).

(2) *Split-dollar life insurance arrangement.* For purposes of this section, a split-dollar life insurance arrangement is an arrangement described in paragraph (a)(1) of this section between the owner of a life insurance contract and a non-owner of the life insurance contract. Whether an arrangement between an owner and a non-owner of a life insurance contract is a split-dollar life insurance arrangement is determined without regard to whether the non-owner has any economic benefit in the life insurance contract. Whether an arrangement between an owner and a non-owner of a life insurance contract is a split-dollar life insurance arrangement is determined without regard to whether the arrangement is entered into directly between the owner and the non-owner or indirectly (for example, through a trust, corporation, partnership, or other entity).

(3) *Examples.* The following examples illustrate the rules of paragraph (a)(2) of this section:

Example 1. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are sufficient to cause Employer to recover the premiums Employer pays under the contract. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is a split-dollar life insurance arrangement.

Example 2. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are not sufficient to cause Employer to recover the premiums Employer pays under the contract. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is a split-dollar life insurance arrangement.

Example 3. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are sufficient to cause Employer to recover the premiums Employer pays under the contract. Employee is not performing services in connection with the arrangement. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is not a split-dollar life insurance arrangement.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Owner of a life insurance contract.* The owner of a life insurance contract is the person that is listed as the owner of the contract in the records of the life insurance company. However, a person that has all of the incidents of ownership in a contract, and no other person has any of the incidents of ownership in the contract, is the owner of the contract even if the person is not listed as the owner of the contract in the records of the life insurance company. For purposes of the preceding sentence, the incidents of ownership in a contract are the rights to the economic benefits of the contract, such as the power to cause the beneficiary to change, and the power to surrender or cancel the contract. A person has the power to cause the beneficiary to change if the person alone or in conjunction with another person may change the beneficiary, or revoke a change in the beneficiary, under the contract. A person has the power to surrender or cancel the contract if the person alone or in conjunction with another person may surrender or cancel the contract, obtain a loan under the contract, or pledge the contract as collateral for a loan.

(2) *Non-owner of a life insurance contract.* A non-owner of a life insurance contract is any person that is not the owner of the contract.

(3) *Premium.* A premium is any payment made by the owner of a life insurance contract, other than a payment that is properly characterized as a loan under generally applicable Federal tax principles.

(4) *Life insurance contract.* A life insurance contract is a contract that is treated as a life insurance contract under section 7702.

(5) *Life insurance company.* A life insurance company is a company that is taxed as a life insurance company under section 801.

(6) *Related person.* A person is related to another person if the relationship between the two persons would result in the attribution of stock ownership between the two persons under section 318(a), applied without regard to section 318(a)(4).

(7) *Donor.* The donor is the person that is treated as making a gift to the trust under the rules of paragraph (e)(3) of this section.

(8) *Donee.* The donee is the person that is treated as receiving a gift from the donor under the rules of paragraph (e)(3) of this section.

(c) *Taxation of split-dollar life insurance arrangements.* The taxation of a split-dollar life insurance arrangement depends on which party to the arrangement is the owner of the life insurance contract. Paragraph (d) of this section provides rules for the taxation of a split-dollar life insurance arrangement if the owner of the life insurance contract is also the provider of all or any portion of the premiums. Paragraph (e) of this section provides rules for the taxation of a split-dollar life insurance arrangement if the owner of the life insurance contract is also the recipient of all or any portion of the premiums.

(d) *Owner of the life insurance contract is the provider of all or any portion of the premiums.* If the owner of the life insurance contract is the provider of all or any portion of the premiums, the arrangement is treated as a loan from the non-owner to the owner. The owner is treated as owning the life insurance contract and as having borrowed the premium payments. The owner is subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. The owner is also subject to the rules of section 163 and § 1.163–8T with respect to the loan. The non-owner is not subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. The non-owner is not subject to the rules of section 163 and § 1.163–8T with respect to the loan. The non-owner is not subject to the rules of section 264 with respect to the premium payments.

(e) *Non-owner of the life insurance contract is the provider of all or any portion of the premiums.* If the non-owner of the life insurance contract is the provider of all or any portion of the premiums, the arrangement is treated as a transfer of property by the non-owner to the owner. The owner is treated as owning the life insurance contract and as having received the premium payments. The owner is subject to the rules of section 7872 and § 1.7872–15 with respect to the transfer. The owner is also subject to the rules of section 163 and § 1.163–8T with respect to the transfer. The non-owner is not subject to the rules of section 7872 and § 1.7872–15 with respect to the transfer. The non-owner is not subject to the rules of section 163 and § 1.163–8T with respect to the transfer. The non-owner is not subject to the rules of section 264 with respect to the premium payments.

(1) *Amount of the transfer.* The amount of the transfer is the amount of the premium payments.

(2) *Timing of the transfer.* The transfer occurs on the date the premium payments are made.

(3) *Character of the transfer.* The transfer is treated as a gift by the non-owner to the owner.

(4) *Subsequent transfers.* Subsequent transfers of property between the owner and the non-owner with respect to the arrangement are treated as gifts by the owner to the non-owner or by the non-owner to the owner.

(f) *Examples.* The following examples illustrate the rules of this section:

Example 1. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are sufficient to cause Employer to recover the premiums Employer pays under the contract. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is a split-dollar life insurance arrangement. Under paragraph (d) of this section, Employer is treated as owning the contract and as having loaned the premium payments to Employee. Employee is subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employee is also subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employer is not subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 264 with respect to the premium payments.

Example 2. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are not sufficient to cause Employer to recover the premiums Employer pays under the contract. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is a split-dollar life insurance arrangement. Under paragraph (d) of this section, Employer is treated as owning the contract and as having loaned the premium payments to Employee. Employee is subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employee is also subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employer is not subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 264 with respect to the premium payments.

Example 3. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are sufficient to cause Employer to recover the premiums Employer pays under the contract. Employee is not performing services in connection with the arrangement. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is not a split-dollar life insurance arrangement.

Example 4. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are sufficient to cause Employer to recover the premiums Employer pays under the contract. Employee is performing services in connection with the arrangement. Employee is a shareholder of Employer. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is a split-dollar life insurance arrangement. Under paragraph (d) of this section, Employer is treated as owning the contract and as having loaned the premium payments to Employee. Employee is subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employee is also subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employer is not subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 264 with respect to the premium payments. Because Employee is a shareholder of Employer, the premium payments may be treated as distributions to Employee under section 301.

Example 5. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are not sufficient to cause Employer to recover the premiums Employer pays under the contract. Employee is performing services in connection with the arrangement. Employee is a shareholder of Employer. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is a split-dollar life insurance arrangement. Under paragraph (d) of this section, Employer is treated as owning the contract and as having loaned the premium payments to Employee. Employee is subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employee is also subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employer is not subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 264 with respect to the premium payments. Because Employee is a shareholder of Employer, the premium payments may be treated as distributions to Employee under section 301.

Example 6. Employer owns a life insurance contract on Employee's life. Employer pays all of the premiums on the contract. Employee's beneficiary is entitled to receive $50,000 of the proceeds of the contract upon Employee's death. Employer is entitled to receive the remainder of the proceeds. Employee pays Employer $5,000 per year for the economic benefit provided to Employee. Employee's payments are sufficient to cause Employer to recover the premiums Employer pays under the contract. Employee is performing services in connection with the arrangement. Employee is a shareholder of Employer. Under paragraph (a)(2) of this section, the arrangement between Employer and Employee is a split-dollar life insurance arrangement. Under paragraph (d) of this section, Employer is treated as owning the contract and as having loaned the premium payments to Employee. Employee is subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employee is also subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 7872 and § 1.7872–15 with respect to the loan. Employer is not subject to the rules of section 163 and § 1.163–8T with respect to the loan. Employer is not subject to the rules of section 264 with respect to the premium payments. Because Employee is a shareholder of Employer, the premium payments may be treated as distributions to Employee under section 301.

6. Other Applications of These Regulations

The proposed regulations provide for conforming changes to the definition of wages under sections 3121(a), 3231(e), 3306(b), and 3401(a) and self-employment income under section 1402(a). The rules also apply for purposes of characterizing distributions from a corporation to a shareholder under section 301.

7. Revenue Rulings To Become Obsolete

Concurrent with the publication of final regulations relating to split-dollar life insurance arrangements in the **Federal Register**, the IRS will obsolete the following revenue rulings with respect to split-dollar life insurance arrangements entered into *after* the date the final regulations are published in the **Federal Register**: Rev. Rul. 64–328 (1964–2 C.B. 11); Rev. Rul. 66–110 (1966–1 C.B. 12); Rev. Rul. 78–420 (1978–2 C.B. 68) (with respect to income tax consequences); Rev. Rul. 79–50 (1979–1 C.B. 138); and Rev. Rul. 81–198 (1981–2 C.B. 188) (with respect to income tax consequences). Taxpayers entering into split-dollar life insurance arrangements on or before the date of publication of the final regulations may continue to rely on these revenue rulings to the extent described in Notice 2002–8.

The Treasury Department and the IRS request comments concerning whether any other revenue rulings or guidance published in the Internal Revenue Bulletin should be reconsidered in connection with the publication of final regulations relating to split-dollar life insurance arrangements in the **Federal Register**.

Proposed Effective Date

These proposed regulations are proposed to apply to any split-dollar life insurance arrangement entered into after the date these regulations are published as final regulations in the **Federal Register**. In addition, under the proposed regulations, an arrangement entered into on or before the date final regulations are published in the **Federal Register** and that is materially modified after that date is treated as a new arrangement entered into on the date of the modification. Comments are requested regarding whether certain material modifications should be disregarded in determining whether an arrangement is treated as a new arrangement for purposes of the effective date rule. For example, comments are requested whether an arrangement entered into on or before the effective date should be subject to these rules if the only material modification to the arrangement after that date is an exchange of an insurance policy qualifying for nonrecognition treatment under section 1035.

Taxpayers are reminded that Notice 2002–8 provides guidance with respect to arrangements entered into before the effective date of these regulations.

In addition, taxpayers may rely on these proposed regulations for the treatment of any split-dollar life insurance arrangement entered into on or before the date final regulations are published in the **Federal Register** provided that all parties to the split-dollar life insurance arrangement treat the arrangement consistently. Thus, for example, an owner and a non-owner of a life insurance contract that is part of a split-dollar life insurance arrangement may not rely on these proposed regulations if one party treats the arrangement as subject to the economic benefit rules of § 1.61–22 and the other party treats the arrangement as subject to the loan rules of § 1.7872–15. Moreover, parties to an equity split-dollar life insurance arrangement subject to the economic benefit regime may rely on these proposed regulations only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if the arrangement were a non-equity split-dollar life insurance arrangement (determined using the Table 2001 rates in Notice 2002–8), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It is hereby certified that the collection of information requirements in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations merely require a taxpayer to prepare a written representation that contains minimal information (if the loan provides for nonrecourse payments) or a projected payment schedule (if the loan provides for contingent payments). In addition, the preparation of these documents should take no more than .28 hours per taxpayer. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 23, 2002, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 9, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Rebecca Asta of the Office of Associate Chief Counsel (Financial Institutions and Products), Lane Damazo of the Office of Associate Chief Counsel (Passthroughs and Special Industries), Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting), Erinn Madden of the Office of Associate Chief Counsel (Tax-Exempt and Governmental Entities), and Krishna Vallabhaneni of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.7872–15 also issued under 26 U.S.C. 1275 and 7872. * * *

Par. 2. Section 1.61–2 is amended by:
1. Redesignating paragraphs (d)(2)(ii)(*a*) and (*b*) as paragraphs (d)(2)(ii)(A) and (B), respectively.
2. Adding two sentences immediately following the second sentence in newly designated paragraph (d)(2)(ii)(A).
The additions read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

* * * * *
(d) * * *
(2) * * *
(ii)(A) *Cost of life insurance on the life of the employee.* * * * For example, if an employee or independent contractor is the owner (as defined in § 1.61–22(c)(1)) of a life insurance contract and the payments under such contract are not split-dollar loans under § 1.7872–15(b)(1), the employee or independent contractor must include in income the amount of any such payments by the employer or service recipient with respect to such contract during any year to the extent that the employee's or independent contractor's rights to the life insurance contract are substantially vested (within the meaning of § 1.83–3(b)). This result is the same regardless of whether the employee or independent contractor had at all times been the owner of the life insurance contract or the contract previously had been owned by the employer or service recipient as part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) and had been transferred by the employer or service recipient to the employee or independent contractor under § 1.61–22(g). * * *
* * * * *

Par. 3. Section 1.61–22 is added to read as follows:

§ 1.61–22 Taxation of split-dollar life insurance arrangements.

(a) *Scope*—(1) *In general.* This section provides rules for the taxation of a split-dollar life insurance arrangement for purposes of the income tax, the gift tax, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and the Self-Employment Contributions Act of 1954 (SECA). For the Collection of Income Tax at Source on Wages, this section also provides rules for the taxation of a split-dollar life insurance arrangement, other than a payment under a split-dollar life insurance arrangement that is a split-dollar loan under § 1.7872–15(b)(1). In general, a split-dollar life insurance arrangement (as defined in paragraph (b) of this section) is subject to the rules of either paragraphs (d) through (g) of this section or § 1.7872–15. For rules to determine which rules apply to a split-dollar life insurance arrangement, see paragraph (b)(3) of this section.

(2) *Overview.* Paragraph (b) of this section defines a split-dollar life insurance arrangement and provides rules to determine whether an arrangement is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. Paragraph (c) of this section defines certain other terms. Paragraph (d) of this section sets forth rules for the taxation of economic benefits provided under a split-dollar life insurance arrangement. Paragraph (e) of this section sets forth rules for the taxation of amounts received under a life insurance contract that is part of a split-dollar life insurance arrangement. Paragraph (f) of this section provides rules for additional tax consequences of a split-dollar life insurance arrangement, including the treatment of death benefits. Paragraph (g) of this section provides rules for the transfer of a life insurance contract (or an undivided interest in the contract) that is part of a split-dollar life insurance arrangement. Paragraph (h) of this section provides examples illustrating the application of this section. Paragraph (j) of this section provides the effective date of this section.

(b) *Split-dollar life insurance arrangement*— (1) *In general.* A split-dollar life insurance arrangement is any arrangement between an owner and a non-owner of a life insurance contract that satisfies the following criteria—

(i) Either party to the arrangement pays, directly or indirectly, all or any portion of the premiums on the life insurance contract, including a payment by means of a loan to the other party that is secured by the life insurance contract;

(ii) At least one of the parties to the arrangement paying premiums under paragraph (b)(1)(i) of this section is entitled to recover (either conditionally or unconditionally) all or any portion of those premiums and such recovery is to be made from, or is secured by, the proceeds of the life insurance contract; and

(iii) The arrangement is not part of a group-term life insurance plan described in section 79.

(2) *Special rule*—(i) *In general.* Any arrangement between an owner and a non-owner of a life insurance contract is treated as a split-dollar life insurance arrangement (regardless of whether the criteria of paragraph (b)(1) of this section are satisfied) if the arrangement is described in paragraph (b)(2)(ii) or (iii) of this section.

(ii) *Compensatory arrangements.* An arrangement is described in this paragraph (b)(2)(ii) if the following criteria are satisfied—

(A) The arrangement is entered into in connection with the performance of services and is not part of a group-term life insurance plan described in section 79;

(B) The employer or service recipient pays, directly or indirectly, all or any portion of the premiums; and

(C) The beneficiary of all or any portion of the death benefit is designated by the employee or service provider or is any person whom the employee or service provider would reasonably be expected to designate as the beneficiary.

(iii) *Shareholder arrangements.* An arrangement is described in this paragraph (b)(2)(iii) if the following criteria are satisfied—

(A) The arrangement is entered into between a corporation and another person in that person's capacity as a shareholder in the corporation;

(B) The corporation pays, directly or indirectly, all or any portion of the premiums; and

(C) The beneficiary of all or any portion of the death benefit is designated by the shareholder or is any person whom the shareholder would reasonably be expected to designate as the beneficiary.

(3) *Determination of whether this section or § 1.7872–15 applies to a split-*

dollar life insurance arrangement—(i) *Split-dollar life insurance arrangements involving split-dollar loans under § 1.7872–15.* Except as provided in paragraph (b)(3)(ii) of this section, paragraphs (d) through (g) of this section do not apply to any split-dollar loan as defined in § 1.7872–15(b)(1). Section 1.7872–15 applies to any such loan. See paragraph (b)(5) of this section for the

example, as compensation in the case of an employee-employer relationship).

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Owner*—(i) *In general.* With respect to a life insurance contract, the person named as the policy owner of such contract generally is the owner of such contract. If two or more persons are named as policy owners of a life

percentage interest in each right and benefit under the contract.

(5) *Employment tax.* The term employment tax means the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), the Self-Employment Contributions Act of 1954 (SECA), and the Collection of Income Tax at Source on Wages.

permitted in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(3) *Equity split-dollar life insurance arrangements*—(i) *In general.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section other than an arrangement described in paragraph (d)(2) of this section, any right in, or benefit of, a life insurance

described in this paragraph (e)(3) is equal to the excess of—

(i) The amount treated as received by the owner under paragraph (e)(1) of this section; over

(ii) The amount of all economic benefits described in paragraph (d)(3) of this section actually taken into account under paragraph (d)(1) of this section by the transferee (and the transferor for gift tax and employment tax purposes)

which was paid by the non-owner, or the value of which the non-owner actually took into account pursuant to paragraph (d) of this section.

(3) *To owner.* Any premium paid by an owner under a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section is included in the owner's investment in the contract under section 72(e)(6). No premium or amount

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dollar life insurance arrangement—(i) *Split-dollar life insurance arrangements involving split-dollar loans under § 1.7872–15.* Except as provided in paragraph (b)(3)(ii) of this section, paragraphs (d) through (g) of this section do not apply to any split-dollar loan as defined in § 1.7872–15(b)(1). Section 1.7872–15 applies to any such loan. See paragraph (b)(5) of this section for the treatment of payments made by a non-owner under a split-dollar life insurance arrangement that are not split-dollar loans.

(ii) *Exceptions.* Paragraphs (d) through (g) of this section apply (and § 1.7872–15 does not apply) to any split-dollar life insurance arrangement if—

(A) The arrangement is entered into in connection with the performance of services, and the employee or service provider is not the owner of the life insurance contract (or is not treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*1*) of this section); or

(B) The arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donee is not the owner of the life insurance contract (or is not treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*2*) of this section).

(4) *Consistency requirement.* Both the owner and the non-owner of a life insurance contract that is part of a split-dollar life insurance arrangement described in paragraph (b)(1) or (2) of this section must fully and consistently account for all amounts under the arrangement under paragraph (b)(5) of this section, paragraphs (d) through (g) of this section, or under § 1.7872–15.

(5) *Non-owner payments that are not split-dollar loans.* If a non-owner of a life insurance contract makes premium payments (directly or indirectly) under a split-dollar life insurance arrangement, and the payments are neither split-dollar loans nor consideration for economic benefits described in paragraph (d) of this section, then neither the rules of paragraphs (d) through (g) of this section nor the rules in § 1.7872–15 apply to such payments. Instead, general income tax, employment tax, and gift tax principles apply to the premium payments. See, for example, § 1.61–2(d)(2)(ii)(A).

(6) *Waiver, cancellation, or forgiveness.* If a repayment obligation described in § 1.7872–15(a)(2) is waived, cancelled, or forgiven at any time, then the parties must take the amount waived, cancelled, or forgiven into account in accordance with the relationships between the parties (for example, as compensation in the case of an employee-employer relationship).

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Owner*—(i) *In general.* With respect to a life insurance contract, the person named as the policy owner of such contract generally is the owner of such contract. If two or more persons are named as policy owners of a life insurance contract and each person has all the incidents of ownership with respect to an undivided interest in the contract, each person is treated as the owner of a separate contract to the extent of such person's undivided interest. If two or more persons are named as policy owners of a life insurance contract but each person does not have all the incidents of ownership with respect to an undivided interest in the contract, the person who is the first-named policy owner is treated as the owner of the entire contract.

(ii) *Special rule for certain arrangements*—(A) *In general.* Notwithstanding paragraph (c)(1)(i) of this section—

(*1*) An employer or service recipient is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into in connection with the performance of services if, at all times, the arrangement is described in paragraph (d)(2) of this section; and

(*2*) A donor is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into between a donor and a donee (for example, a life insurance trust) if, at all times, the arrangement is described in paragraph (d)(2) of this section.

(B) *Modifications.* [Reserved]

(iii) *Attribution rules.* [Reserved]

(2) *Non-owner.* With respect to a life insurance contract, a non-owner is any person (other than the owner of such contract) that has any direct or indirect interest in such contract (but not including a life insurance company acting only in its capacity as the issuer of a life insurance contract).

(3) *Transfer of entire contract or undivided interest therein.* A transfer of the ownership of a life insurance contract (or an undivided interest in such contract) that is part of a split-dollar life insurance arrangement occurs on the date that a non-owner becomes the owner (within the meaning of paragraph (c)(1) of this section) of the entire contract or of an undivided interest in the contract.

(4) *Undivided interest.* An undivided interest in a life insurance contract consists of an identical fractional or percentage interest in each right and benefit under the contract.

(5) *Employment tax.* The term employment tax means the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), the Self-Employment Contributions Act of 1954 (SECA), and the Collection of Income Tax at Source on Wages.

(d) *Economic benefits provided under a split-dollar life insurance arrangement*—(1) *In general.* Under a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the life insurance contract. Those economic benefits must be accounted for fully and consistently by both the owner and the non-owner pursuant to the rules of this paragraph (d). The value of the economic benefits, reduced by any consideration paid by the non-owner to the owner, is treated as transferred from the owner to the non-owner. Depending on the relationship between the owner and the non-owner, the economic benefits may constitute a payment of compensation, a distribution under section 301, a gift, or a transfer having a different tax character. Further, depending on the relationship between or among a non-owner and one or more other persons, the economic benefits may be treated as provided from the owner to the non-owner and as separately provided from the non-owner to such other person or persons (for example, as a payment of compensation from an employer to an employee and as a gift from the employee to the employee's children).

(2) *Non-equity split-dollar life insurance arrangements.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section under which the only economic benefit provided to the non-owner is current life insurance protection (including paid-up additions thereto), the amount of the current life insurance protection provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the total amount payable to the owner under the split-dollar life insurance arrangement. The total amount payable to the owner is increased by the amount of any outstanding policy loan. The cost of the current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(3) *Equity split-dollar life insurance arrangements*—(i) *In general.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section other than an arrangement described in paragraph (d)(2) of this section, any right in, or benefit of, a life insurance contract (including, but not limited to, an interest in the cash surrender value) provided during a taxable year to a non-owner under a split-dollar life insurance arrangement is an economic benefit for purposes of this paragraph (d).

(ii) *Valuation of economic benefits.* [Reserved]

(e) *Amounts received under the contract*—(1) *In general.* Except as otherwise provided in paragraph (f)(2)(ii) of this section, any amount received under a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section (including, but not limited to, a policy owner dividend, proceeds of a specified policy loan described in paragraph (e)(2) of this section, or the proceeds of a withdrawal from or partial surrender of the life insurance contract) is treated, to the extent provided directly or indirectly to a non-owner of the life insurance contract, as though such amount had been paid to the owner of the life insurance contract and then paid by the owner to the non-owner who is a party to the split-dollar life insurance arrangement. The amount received is taxable to the owner in accordance with the rules of section 72. The non-owner (and the owner for gift tax and employment tax purposes) must take the amount described in paragraph (e)(3) of this section into account as a payment of compensation, a distribution under section 301, a gift, or other transfer depending on the relationship between the owner and the non-owner.

(2) *Specified policy loan.* A policy loan is a specified policy loan to the extent—

(i) The proceeds of the loan are distributed directly from the insurance company to the non-owner;

(ii) A reasonable person would not expect that the loan will be repaid by the non-owner; or

(iii) The non-owner's obligation to repay the loan to the owner is satisfied or is capable of being satisfied upon repayment by either party to the insurance company.

(3) *Amount required to be taken into account.* With respect to a non-owner (and the owner for gift tax and employment tax purposes), the amount described in this paragraph (e)(3) is equal to the excess of—

(i) The amount treated as received by the owner under paragraph (e)(1) of this section; over

(ii) The amount of all economic benefits described in paragraph (d)(3) of this section actually taken into account under paragraph (d)(1) of this section by the transferee (and the transferor for gift tax and employment tax purposes) reduced (but not below zero) by any amounts that would have been taken into account under paragraph (d)(1) of this section if paragraph (d)(2) of this section were applicable to the arrangement plus any consideration paid by the non-owner for all economic benefits described in paragraph (d)(3) of this section reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to amounts described in paragraph (d)(2) of this section if paragraph (d)(2) of this section were applicable to the arrangement. The amount determined under the preceding sentence applies only to the extent that neither this paragraph (e)(3)(ii) nor paragraph (g)(1)(ii) of this section previously has applied to such economic benefits.

(f) *Other tax consequences*—(1) *Introduction.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, this paragraph (f) sets forth other tax consequences to the owner and non-owner of a life insurance contract that is part of the arrangement for the period prior to the transfer (as defined in paragraph (c)(3) of this section) of the contract (or an undivided interest therein) from the owner to the non-owner. See paragraph (g) of this section and § 1.83–6(a)(5) for tax consequences upon the transfer of the contract (or an undivided interest therein).

(2) *To non-owner*—(i) *In general.* A non-owner does not receive any investment in the contract under section 72(e)(6) with respect to a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section.

(ii) *Death proceeds to beneficiary (other than the owner).* Any amount paid to a beneficiary (other than the owner) by reason of the death of the insured is excluded from gross income by such beneficiary under section 101(a) as an amount received under a life insurance contract to the extent such amount is allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account pursuant to paragraph (d) of this section.

(3) *To owner.* Any premium paid by an owner under a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section is included in the owner's investment in the contract under section 72(e)(6). No premium or amount described in paragraph (d) of this section is deductible by the owner (except as otherwise provided in § 1.83–6(a)(5)). Any amount paid by a non-owner, directly or indirectly, to the owner of the life insurance contract for current life insurance protection or for any other economic benefit under the life insurance contract is included in the owner's gross income and is included in the owner's investment in the life insurance contract for purposes of section 72(e)(6) (but only to the extent not otherwise so included by reason of having been paid by the owner as a premium or other consideration for the contract).

(g) *Transfer of entire contract or undivided interest therein*—(1) *In general.* Upon a transfer within the meaning of paragraph (c)(3) of this section of a life insurance contract (or an undivided interest therein) to a non-owner (transferee), the transferee (and the owner (transferor) for gift tax and employment tax purposes) takes into account the excess of the fair market value of the life insurance contract (or the undivided interest therein) transferred to the transferee at that time over the sum of—

(i) The amount the transferee pays to the transferor to obtain the contract (or the undivided interest therein); and

(ii) The amount of all economic benefits described in paragraph (d)(3) of this section actually taken into account under paragraph (d)(1) of this section by the transferee (and the transferor for gift tax and employment tax purposes) reduced (but not below zero) by any amounts that would have been taken into account under paragraph (d)(1) of this section if paragraph (d)(2) of this section were applicable to the arrangement plus any consideration paid by the non-owner for all economic benefits described in paragraph (d)(3) of this section reduced (but not below zero) by any consideration paid by the non-owner that would have been allocable to amounts described in paragraph (d)(2) of this section if paragraph (d)(2) of this section were applicable to the arrangement. The amount determined under the preceding sentence applies only to the extent that neither paragraph (e)(3)(ii) of this

section nor this paragraph (g)(1)(ii) previously has applied to such economic benefits.

(2) *Determination of fair market value.* For purposes of paragraph (g)(1) of this section, the fair market value of a life insurance contract is the cash surrender value and the value of all other rights under such contract (including any supplemental agreements thereto and whether or not amounts determined under paragraphs (g)(1)(i) and (ii) of this section.

(B) *Transfers between a donor and a donee.* In the case of a transfer of a contract between a donor and a donee, the amount treated as consideration paid by the transferee to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment amounts were excludable from E's gross income at the time of receipt.

(iii) *No investment in the contract for current life insurance protection.* No amount allocable to current life insurance protection provided to the transferee (the cost of which was paid by the transferee or the value of which was provided to the transferee) is treated as consideration paid to acquire

insurance contract, as required by paragraph (d)(3) of this section.

Example 3. (i) The facts are the same as in *Example 1* except that in year 5, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or one-half the cash surrender value of the contract.

(ii) In year 5 (and subsequent years), the arrangement is described in paragraph (d)(3) economic benefits granted during the year, as required by paragraph (d)(3) of this section over the $500 premium payments paid by E. In year 5, E must also include in gross income as compensation the excess, if any, of the $500 distributed to E from the proceeds of the policy owner dividend over the amount determined under paragraph (e)(3)(ii) of this section.

(iii) R must include in income the premiums paid by E during the years the split-dollar life insurance arrangement is in

requirements in paragraph (j)(2)(ii) of this section.

(ii) *Equity split-dollar life insurance arrangements.* Parties to an arrangement described in paragraph (d)(3) of this section may rely on this section only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if paragraph (d)(2) of this section were

section nor this paragraph (g)(1)(ii) previously has applied to such economic benefits.

(2) *Determination of fair market value.* For purposes of paragraph (g)(1) of this section, the fair market value of a life insurance contract is the cash surrender value and the value of all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than the value of current life insurance protection.

(3) *Exception for certain transfers in connection with the performance of services.* To the extent the ownership of a life insurance contract (or undivided interest in such contract) is transferred in connection with the performance of services, paragraph (g)(1) of this section does not apply until such contract (or undivided interest in such contract) is taxable under section 83. For purposes of paragraph (g)(1) of this section, fair market value is determined disregarding any lapse restrictions and at the time the transfer of such contract (or undivided interest in such contract) is taxable under section 83.

(4) *Treatment of non-owner after transfer*—(i) *In general.* After a transfer of an entire life insurance contract (except when such transfer is in connection with the performance of services and the transfer is not yet taxable under section 83), the person who previously had been the non-owner is treated as the owner of such contract for all purposes, including for purposes of paragraph (b) of this section and for purposes of § 1.61–2(d)(2)(ii)(A). After the transfer of an undivided interest in a life insurance contract (or, if later, at the time such transfer is taxable under section 83), the person who previously had been the non-owner is treated as the owner of a separate contract consisting of that interest for all purposes, including for purposes of paragraph (b) of this section and for purposes of § 1.61–2(d)(2)(ii)(A). However, such person will continue to be treated as a non-owner with respect to any undivided interest in the contract not so transferred (or not yet taxable under section 83).

(ii) *Investment in the contract after transfer*—(A) *In general.* The amount treated as consideration paid to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer (or, if later, at the time such transfer is taxable under section 83) equals the greater of the fair market value of the contract or the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section.

(B) *Transfers between a donor and a donee.* In the case of a transfer of a contract between a donor and a donee, the amount treated as consideration paid by the transferee to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer equals the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section except that—

(*1*) The amount determined under paragraph (g)(1)(i) of this section includes the aggregate of premiums or other consideration paid or deemed to have been paid by the transferor; and

(*2*) The amount of all economic benefits determined under paragraph (g)(1)(ii) of this section actually taken into account by the transferee does not include such benefits to the extent such benefits were excludable from the transferee's gross income at the time of receipt.

(C) *Transfers of an undivided interest in a contract.* If a portion of a contract is transferred to the transferee, then the amount to be included as consideration paid to acquire the contract is determined by multiplying the amount determined under paragraph (g)(4)(ii)(A) of this section (as modified by paragraph (g)(4)(ii)(B) of this section, if the transfer is between a donor and a donee) by a fraction, the numerator of which is the fair market value of the portion transferred and the denominator of which is the fair market value of the entire contract.

(D) *Example.* The following example illustrates the rules of this paragraph (g)(4)(ii):

Example. (i) In year 1, donor D and donee E enter into a split-dollar life insurance arrangement as defined in paragraph (b)(1) of this section. D is the owner of the life insurance contract under paragraph (c)(1) of this section. The life insurance contract is not a modified endowment contract as defined in section 7702A. In year 5, D gratuitously transfers the contract, within the meaning of paragraph (c)(3) of this section, to E. At the time of the transfer, the fair market value of the contract is $200,000 and D had paid $50,000 in premiums under the arrangement. In addition, at the time of the transfer, E had previously received $80,000 of benefits described in paragraph (d)(3) of this section, which were excludable from E's gross income under section 102.

(ii) E's investment in the contract is $50,000, consisting of the $50,000 of premiums paid by D. The $80,000 of benefits described in paragraph (d)(3) of this section that E received is not included in E's investment in the contract because such amounts were excludable from E's gross income at the time of receipt.

(iii) *No investment in the contract for current life insurance protection.* No amount allocable to current life insurance protection provided to the transferee (the cost of which was paid by the transferee or the value of which was provided to the transferee) is treated as consideration paid to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer.

(h) *Examples.* The following examples illustrate the rules of this section. Except as otherwise provided, each of the examples assumes that the employer (R) is the owner (as defined in paragraph (c)(1) of this section) of a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, that the life insurance contract is not a modified endowment contract under section 7702A, that the compensation paid to the employee (E) is reasonable, and that E makes no premium payments. The examples are as follows:

Example 1. (i) In year 1, R purchases a life insurance contract on the life of E. R is named as the policy owner of the contract. R and E enter into an arrangement under which R will pay all the premiums on the life insurance contract until the termination of the arrangement or E's death. Upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or the cash surrender value of the contract. The balance of the death benefit will be paid to a beneficiary designated by E.

(ii) Because R is designated as the policy owner, R is the owner of the contract under paragraph (c)(1) of this section. E is a non-owner of the contract. Under the arrangement between R and E, a portion of the death benefit is payable to a beneficiary designated by E. The arrangement is a split-dollar life insurance arrangement under paragraph (b)(1) or (2) of this section. For each year that the split-dollar life insurance arrangement is in effect, the arrangement is described in paragraph (d)(2) of this section and E must include in income the value of current life insurance protection, as required by paragraph (d)(2) of this section.

Example 2. (i) The facts are the same as in *Example 1* except that, upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums or the cash surrender value of the contract.

(ii) For each year that the split-dollar life insurance arrangement is in effect, the arrangement is described in paragraph (d)(3) of this section and E must include in gross income the value of the economic benefit attributable to E's interest in the life insurance contract, as required by paragraph (d)(3) of this section. Because the modification made by R and E in year 5 does not involve the transfer (within the meaning of paragraph (c)(3) of this section) of an undivided interest in the life insurance contract from R to E, the modification is not a transfer for purposes of paragraph (g) of this section.

Example 4. (i) The facts are the same as in *Example 2* except that in year 7, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R will be paid the lesser of 80 percent of the aggregate premiums or the cash surrender value of the contract.

(ii) The arrangement is described in paragraph (d)(3) of this section. In year 7 (and in subsequent years), E must include in gross income the value of the increased economic benefits described in paragraph (d)(3) of this section resulting from the contract modification under which E obtains rights to a larger amount of the cash value of the contract (attributable to the fact that R will forgo the right to recover 20 percent of the premiums R pays).

Example 5. (i) The facts are the same as in *Example 3* except that in year 7, E is designated as the policy owner. At that time, E's rights to the contract are substantially vested as defined in § 1.83–3(b).

(ii) In year 7, R is treated as having made a transfer (within the meaning of paragraph (c)(3) of this section) of the life insurance contract to E. E must include in gross income the amount determined under paragraph (g)(1) of this section.

(iii) After the transfer of the contract to E, E is the owner of the contract and any premium payments by R will be included in E's income under paragraph (b)(5) of this section and § 1.61–2(d)(2)(ii)(A) (unless R's payments are split-dollar loans as defined in § 1.7872–15(b)(1)).

Example 6. (i) In year 1, E and R enter into a split-dollar life insurance arrangement as defined in paragraph (b)(2) of this section. Under the arrangement, R is required to make annual premium payments of $10,000 and E is required to make annual premium payments of $500. In year 5, a $500 policy owner dividend payable to E is declared by the insurance company. E directs the insurance company to use the $500 as E's premium payment for year 5.

(ii) For each year the arrangement is in effect, the arrangement is described in paragraph (d)(3) of this section and E must include in gross income the value of the economic benefits granted during the year, as required by paragraph (d)(3) of this section over the $500 premium payments paid by E. In year 5, E must also include in gross income as compensation the excess, if any, of the $500 distributed to E from the proceeds of the policy owner dividend over the amount determined under paragraph (e)(3)(ii) of this section.

(iii) R must include in income the premiums paid by E during the years the split-dollar life insurance arrangement is in effect, including the $500 of the premium E paid in year 5 with proceeds of the policy owner dividend. R's investment in the contract is increased in an amount equal to the premiums paid by E, including the $500 of the premium paid by E in year 5 from the proceeds of the policy owner dividend. In year 5, R is treated as receiving a $500 distribution under the contract, which is taxed pursuant to section 72.

Example 7. (i) The facts are the same as in *Example 2* except that in year 10, E withdraws $100,000 from the cash value of the contract.

(ii) In year 10, R is treated as receiving a $100,000 distribution from the insurance company. This amount is treated as an amount received by R under the contract and taxed pursuant to section 72. This amount reduces R's investment in the contract under section 72(e). R is treated as paying the $100,000 to E as cash compensation, and E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

Example 8. (i) The facts are the same as in *Example 7* except E receives the proceeds of a $100,000 specified policy loan directly from the insurance company.

(ii) The transfer of the proceeds of the specified policy loan to E is treated as a loan by the insurance company to R. Under the rules of section 72(e), the $100,000 loan is not included in R's income and does not reduce R's investment in the contract. R is treated as paying the $100,000 of loan proceeds to E as cash compensation. E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

(i) [Reserved]

(j) *Effective date*—(1) *General rule.* This section applies to any split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section) entered into after the date the final regulations are published in the **Federal Register**.

(2) *Early reliance*—(i) *General rule.* Taxpayers may rely on this section for the treatment of any split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section) entered into on or before the date described in paragraph (j)(1) of this section, provided that all taxpayers who are parties to the arrangement treat the arrangement consistently under this section and, in the case of an arrangement described in paragraph (d)(3) of this section, also satisfy the requirements in paragraph (j)(2)(ii) of this section.

(ii) *Equity split-dollar life insurance arrangements.* Parties to an arrangement described in paragraph (d)(3) of this section may rely on this section only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if paragraph (d)(2) of this section were applicable to the arrangement (determined using the life insurance premium factor designated in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

(3) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (j)(1) of this section that is materially modified after the date set forth in paragraph (j)(1) of this section is treated as a new arrangement entered into on the date of the modification.

Par. 4. Section 1.83–1 is amended by:

1. Removing the second sentence of paragraph (a)(2).

2. Adding a sentence at the end of paragraph (a)(2).

The addition reads as follows:

§ 1.83–1 Property transferred in connection with the performance of services.

(a) * * *

(2) *Life insurance.* * * * For the taxation of life insurance protection under a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)), see § 1.61–22.

* * * * *

Par. 5. Section 1.83–3 is amended by:

1. Adding a sentence at the end of paragraph (a)(1).

2. Revising the penultimate sentence in paragraph (e).

The addition and revision read as follows:

§ 1.83–3 Meaning and use of certain terms.

(a) * * * (1) * * * For special rules applying to the transfer of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)), see § 1.61–22(g).

* * * * *

(e) * * * In the case of a transfer of a contract, or any undivided interest therein, providing death benefit protection (including a life insurance contract, retirement contract, or

endowment contract) after the date the final regulations are published in the **Federal Register**, the cash surrender value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section.

* * *

Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

(C) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (a)(5)(ii)(A) of this section that is materially modified after

interest therein, is transferred (within the meaning of § 1.61–22(c)(3)) to the shareholder.

(4) *Effective date*—(i) *General rule.* This paragraph (q) applies to split-dollar and other life insurance arrangements entered into after the date the final regulations are published in the **Federal Register**.

(ii) *Early reliance*—(A) *General rule.* Taxpayers may rely on this paragraph

instruments (including the rules for original issue discount (OID) under sections 1271 through 1275 and the regulations thereunder). If a split-dollar loan is a below-market loan, then, except as provided in this section, the loan is governed by section 7872 and the regulations thereunder. The timing, amount, and characterization of the imputed transfers between the lender and borrower of a below-market split-

(a)(2)(i) of this section, each premium payment is a loan for Federal tax purposes.

Example 2. (i) Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement and the employer makes premium payments on this policy. The employer is entitled to be repaid 80 percent of each premium payment, and the repayments are secured by the policy. Under paragraph (a)(2)(ii) of this section, the taxation of 20 percent of each premium payment is governed by § 1.61–22(b)(5). If there is a reasonable expectation that the

nonrecourse to the borrower, the payment is a contingent payment for purposes of this section. See paragraph (j) of this section for the treatment of a split-dollar loan that provides for one or more contingent payments.

(2) *Exception for certain loans with respect to which the parties to the split-dollar life insurance arrangement make a representation*—(i) *Requirements.* An otherwise noncontingent payment on a split-dollar loan that is nonrecourse to

endowment contract) after the date the final regulations are published in the **Federal Register**, the cash surrender value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section.

* * *

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Par. 6. Section 1.83–6 is amended as follows:

1. Redesignating paragraph (a)(5) as paragraph (a)(6).

2. Adding a new paragraph (a)(5).

The addition reads as follows:

§ 1.83–6 Deduction by employer.

(a) * * *

(5) *Transfer of life insurance contract (or an undivided interest therein)*—(i) *General rule.* In the case of a transfer of a life insurance contract (or an undivided interest therein) described in § 1.61–22(c)(3) in connection with the performance of services, a deduction is allowable under paragraph (a)(1) of this section to the person for whom the services were performed. The amount of the deduction, if allowable, is equal to the sum of the amount included as compensation in the gross income of the service provider under § 1.61–22(g)(1) and the amount determined under § 1.61–22(g)(1)(ii).

(ii) *Effective date*—(A) *General rule.* Paragraph (a)(5)(i) of this section applies to any split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) entered into after the date the final regulations are published in the **Federal Register**.

(B) *Early reliance*—(*1*) *General rule.* Taxpayers may rely on this paragraph (a)(5) for the treatment of any split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) entered into on or before the date described in paragraph (a)(5)(ii)(A) of this section, provided that all taxpayers who are parties to the arrangement treat the arrangement consistently under § 1.61–22(d) through (g) and, in the case of an arrangement described in § 1.61–22(d)(3), also satisfy the requirements in paragraph (a)(5)(ii)(B)(*2*) of this section.

(*2*) *Equity split-dollar life insurance arrangements.* Parties to an arrangement described in § 1.61–22(d)(3) may rely on this paragraph (a)(5) only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if § 1.61–22(d)(2) were applicable to the arrangement (determined using the life insurance premium factor designated in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

(C) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (a)(5)(ii)(A) of this section that is materially modified after the date set forth in paragraph (a)(5)(ii)(A) of this section is treated as a new arrangement entered into on the date of the modification.

* * * * *

Par. 7. In § 1.301–1, paragraph (q) is added to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(q) *Split-dollar and other life insurance arrangements*—(1) *Split-dollar life insurance arrangements*—(i) *Distribution of economic benefits.* The provision by a corporation to its shareholder pursuant to a split-dollar life insurance arrangement, as defined in § 1.61–22(b)(1) or (2), of economic benefits described in § 1.61–22(d) or of amounts described in § 1.61–22(e) is treated as a distribution of property, the amount of which is determined under § 1.61–22(d) and (e), respectively.

(ii) *Distribution of entire contract or undivided interest therein.* A transfer (within the meaning of § 1.61–22(c)(3)) of the ownership of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement is a distribution of property, the amount of which is determined pursuant to § 1.61–22(g)(1) and (2).

(2) *Other life insurance arrangements.* A payment by a corporation on behalf of a shareholder of premiums on a life insurance contract or an undivided interest therein that is owned by the shareholder constitutes a distribution of property, even if such payment is not part of a split-dollar life insurance arrangement under § 1.61–22(b).

(3) *When distribution is made*—(i) *In general.* Except as provided in paragraph (q)(3)(ii) of this section, paragraph (b) of this section shall apply to determine when a distribution described in paragraph (q)(1) or (2) of this section is taken into account by a shareholder.

(ii) *Exception.* Notwithstanding paragraph (b) of this section, a distribution described in paragraph (q)(1)(ii) of this section shall be treated as made by a corporation to its shareholder at the time that the life insurance contract, or an undivided interest therein, is transferred (within the meaning of § 1.61–22(c)(3)) to the shareholder.

(4) *Effective date*—(i) *General rule.* This paragraph (q) applies to split-dollar and other life insurance arrangements entered into after the date the final regulations are published in the **Federal Register**.

(ii) *Early reliance*—(A) *General rule.* Taxpayers may rely on this paragraph (q) for the treatment of any split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) entered into on or before the date described in paragraph (q)(4)(i) of this section, provided that all taxpayers who are parties to the arrangement treat the arrangement consistently under § 1.61–22(d) through (g) and, in the case of an arrangement described in § 1.61–22(d)(3), also satisfy the requirements in paragraph (q)(4)(ii)(B) of this section.

(B) *Equity split-dollar life insurance arrangements.* Parties to an arrangement described in § 1.61–22(d)(3) may rely on this paragraph (q) only if the value of all economic benefits taken into account by the parties exceeds the value of the economic benefits the parties would have taken into account if § 1.61–22(d)(2) were applicable to the arrangement (determined using the life insurance premium factor designated in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)), thereby reflecting the fact that such an arrangement provides the non-owner with economic benefits that are more valuable than current life insurance protection.

(iii) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (q)(4)(i) of this section that is materially modified after the date set forth in paragraph (q)(4)(i) of this section is treated as a new arrangement entered into on the date of the modification.

Par. 8. Section 1.1402(a)–18 is added to read as follows:

§ 1.1402(a)–18 Split-dollar life insurance arrangements.

See § 1.61–22 for rules relating to the treatment of split-dollar life insurance arrangements.

Par. 9. Section 1.7872–15 is added to read as follows:

§ 1.7872–15 Split-dollar loans.

(a) *General rules*—(1) *Introduction.* This section applies to split-dollar loans as defined in paragraph (b)(1) of this section. If a split-dollar loan is not a below-market loan, then, except as provided in this section, the loan is governed by the general rules for debt

instruments (including the rules for original issue discount (OID) under sections 1271 through 1275 and the regulations thereunder). If a split-dollar loan is a below-market loan, then, except as provided in this section, the loan is governed by section 7872 and the regulations thereunder. The timing, amount, and characterization of the imputed transfers between the lender and borrower of a below-market split-dollar loan depend upon the relationship between the parties and upon whether the loan is a demand loan or a term loan. For additional rules relating to the treatment of split-dollar life insurance arrangements, see § 1.61–22.

(2) *Loan treatment*—(i) *General rule.* A payment made pursuant to a split-dollar life insurance arrangement is treated as a loan for Federal tax purposes, and the owner and non-owner are treated, respectively, as the borrower and the lender, if—

(A) The payment is made either directly or indirectly by the non-owner to the owner (including a premium payment made by the non-owner directly to the insurance company with respect to the policy held by the owner);

(B) The payment is a loan under general principles of Federal tax law or, if it is not a loan under general principles of Federal tax law, a reasonable person would expect the payment to be repaid in full to the non-owner (whether with or without interest); and

(C) The repayment is to be made from, or is secured by, either the policy's death benefit proceeds or its cash surrender value.

(ii) *Payments that are only partially repayable.* For purposes of § 1.61–22 and this section, if a non-owner makes a payment pursuant to a split-dollar life insurance arrangement and the non-owner is entitled to repayment of some but not all of the payment, the payment is treated as two payments: one that is repayable and one that is not. Thus, paragraph (a)(2)(i) of this section refers to the repayable payment.

(iii) *Treatment of payments that are not split-dollar loans.* See § 1.61–22(b)(5) for the treatment of payments by a non-owner that are not split-dollar loans.

(iv) *Examples.* The provisions of this paragraph (a)(2) are illustrated by the following examples:

Example 1. Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement, the employer makes premium payments on this policy, there is a reasonable expectation that the payments will be repaid, and the repayments are secured by the policy. Under paragraph (a)(2)(i) of this section, each premium payment is a loan for Federal tax purposes.

Example 2. (i) Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement and the employer makes premium payments on this policy. The employer is entitled to be repaid 80 percent of each premium payment, and the repayments are secured by the policy. Under paragraph (a)(2)(ii) of this section, the taxation of 20 percent of each premium payment is governed by § 1.61–22(b)(5). If there is a reasonable expectation that the remaining 80 percent of a payment will be repaid in full, then, under paragraph (a)(2)(i) of this section, the 80 percent is a loan for Federal tax purposes.

(ii) If less than 80 percent of a premium payment is reasonably expected to be repaid, then this paragraph (a)(2) does not cause any of the payment to be a loan for Federal tax purposes. If the payment is not a loan under general principles of Federal tax law, the entire premium payment is governed by § 1.61–22(b)(5).

(3) *No de minimis exceptions.* For purposes of this section, section 7872 is applied to a split-dollar loan without regard to the de minimis exceptions in section 7872(c)(2) and (3).

(b) *Definitions.* For purposes of this section, the terms *split-dollar life insurance arrangement*, *owner*, and *non-owner* have the same meanings as provided in § 1.61–22(b) and (c). In addition, the following definitions apply for purposes of this section:

(1) A *split-dollar loan* is a loan described in paragraph (a)(2)(i) of this section.

(2) A *split-dollar demand loan* is any split-dollar loan that is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand).

(3) A *split-dollar term loan* is any split-dollar loan other than a split-dollar demand loan. See paragraph (e)(5) of this section for special rules regarding certain split-dollar term loans payable on the death of an individual, certain split-dollar term loans conditioned on the future performance of substantial services by an individual, and gift split-dollar term loans.

(c) *Interest deductions for split-dollar loans.* The borrower may not deduct any qualified stated interest, OID, or imputed interest on a split-dollar loan. See sections 163(h) and 264(a). In certain circumstances, an indirect participant may be allowed to deduct qualified stated interest, OID, or imputed interest on a deemed loan. See paragraph (e)(2)(iii) of this section (relating to indirect loans).

(d) *Treatment of split-dollar loans providing for nonrecourse payments—(1) In general.* Except as provided in paragraph (d)(2) of this section, if a payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this section. See paragraph (j) of this section for the treatment of a split-dollar loan that provides for one or more contingent payments.

(2) *Exception for certain loans with respect to which the parties to the split-dollar life insurance arrangement make a representation*—(i) *Requirements.* An otherwise noncontingent payment on a split-dollar loan that is nonrecourse to the borrower is not a contingent payment under this section if the following requirements are satisfied—

(A) The split-dollar loan provides for interest payable at a stated rate that is either a fixed rate or a variable rate described in paragraph (g) of this section; and

(B) The parties to the split-dollar life insurance arrangement represent in writing that a reasonable person would expect that all payments under the loan will be made.

(ii) *Time and manner for providing written representation.* The Commissioner may prescribe the time and manner for providing the written representation required by paragraph (d)(2)(i)(B) of this section. Until the Commissioner prescribes otherwise, the written representation that is required by paragraph (d)(2)(i)(B) of this section must meet the requirements of this paragraph (d)(2)(ii). Both the borrower and the lender must sign the representation not later than the last day (including extensions) for filing the Federal income tax return of the borrower or lender, whichever is earlier, for the taxable year in which the lender makes the first split-dollar loan under the split-dollar life insurance arrangement. This representation must include the names, addresses, and taxpayer identification numbers of the borrower, lender, and any indirect participants. Unless otherwise stated therein, this representation applies to all subsequent split-dollar loans made pursuant to the split-dollar life insurance arrangement. Each party should retain an original of the representation as part of its books and records and should attach a copy of this representation to its Federal income tax return for any taxable year in which the lender makes a loan to which the representation applies.

(e) *Below-market split-dollar loans*—(1) *Scope*—(i) *In general.* This paragraph (e) applies to below-market split-dollar loans enumerated under section 7872(c)(1), which include gift loans, compensation-related loans, and corporation-shareholder loans. The characterization of a split-dollar loan under section 7872(c)(1) and of the

imputed transfers under section 7872(a)(1) and (b)(1) depends upon the relationship between the lender and the borrower or the lender, borrower, and any indirect participant. For example, if the lender is the borrower's employer, the split-dollar loan is generally a compensation-related loan, and any imputed transfer from the lender to the borrower is generally a payment of employee to the employee's child. In appropriate circumstances, section 7872(d)(1) may limit the interest that accrues on a deemed loan for Federal income tax purposes. For loan arrangements between husband and wife, see section 7872(f)(7).

(iii) *Limitations on investment interest for purposes of section 163(d).* For purposes of section 163(d), the imputed

interest, rules for the calculation and treatment of forgone interest on these loans. See paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing for sufficient interest.* Each calendar year that a split-dollar demand loan is outstanding, the loan is tested to determine if the loan provides for sufficient interest. A split-dollar

lender and the borrower, as transferred and retransferred on the last day of the borrower's final taxable year.

(*3*) *Exception for repayment of below-market split-dollar loan.* Any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the day the split-dollar loan is repaid in full.

(4) *Split-dollar term loans*—(i) *In general.* Except as provided in

stated maturity date, then the rules of this paragraph (e)(4)(iii)(B)(*1*) determine the term of the loan. For purposes of determining a split-dollar loan's term, the borrower is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. Similarly, the lender is projected to exercise or not exercise an option or combination of options in a manner that minimizes the

variable rates of interest), the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (g)(3)(ii) of this section.

(D) *Split-dollar loans payable upon the death of an individual.* If a split-dollar term loan is described in paragraph (e)(5)(ii)(A) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph

imputed transfers under section 7872(a)(1) and (b)(1) depends upon the relationship between the lender and the borrower or the lender, borrower, and any indirect participant. For example, if the lender is the borrower's employer, the split-dollar loan is generally a compensation-related loan, and any imputed transfer from the lender to the borrower is generally a payment of compensation. The loans covered by this paragraph (e) include indirect loans between the parties. See paragraph (e)(2) of this section for the treatment of certain indirect split-dollar loans. See paragraph (f) of this section for the treatment of any stated interest or OID on split-dollar loans. See paragraph (j) of this section for additional rules that apply to a split-dollar loan that provides for one or more contingent payments.

(ii) *Significant-effect split-dollar loans.* If a direct or indirect below-market split-dollar loan is not enumerated in section 7872(c)(1)(A), (B), or (C), the loan is a significant-effect loan under section 7872(c)(1)(E).

(2) *Indirect split-dollar loans*—(i) *In general.* If, based on all the facts and circumstances, including the relationship between the borrower or lender and some third person (the indirect participant), the effect of a below-market split-dollar loan is to transfer value from the lender to the indirect participant and from the indirect participant to the borrower, then the below-market split-dollar loan is restructured as two or more successive below-market loans (the deemed loans) as provided in this paragraph (e)(2). The transfers of value described in the preceding sentence include (but are not limited to) a gift, compensation, a capital contribution, and a distribution under section 301 (or, in the case of an S corporation, under section 1368). The deemed loans are—

(A) A deemed below-market split-dollar loan made by the lender to the indirect participant; and

(B) A deemed below-market split-dollar loan made by the indirect participant to the borrower.

(ii) *Application.* Each deemed loan is treated as having the same provisions as the original loan between the lender and borrower, and section 7872 is applied to each deemed loan. Thus, for example, if, under a split-dollar life insurance arrangement, an employer (lender) makes an interest-free split-dollar loan to an employee's child (borrower), the loan is generally restructured as a deemed compensation-related below-market split-dollar loan from the lender to the employee (the indirect participant) and a second deemed gift below-market split-dollar loan from the employee to the employee's child. In appropriate circumstances, section 7872(d)(1) may limit the interest that accrues on a deemed loan for Federal income tax purposes. For loan arrangements between husband and wife, see section 7872(f)(7).

(iii) *Limitations on investment interest for purposes of section 163(d).* For purposes of section 163(d), the imputed interest from the indirect participant to the lender that is taken into account by the indirect participant under this paragraph (e)(2) is not investment interest to the extent of the excess, if any, of—

(A) The imputed interest from the indirect participant to the lender that is taken into account by the indirect participant; over

(B) The imputed interest to the indirect participant from the borrower that is recognized by the indirect participant.

(iv) *Example.* The provisions of this paragraph (e)(2) are illustrated by the following example:

Example. (i) On January 1, 2009, Employer *X* and Individual *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. *A* is the child of B, an employee of *X*. On January 1, 2009, *X* makes a $30,000 premium payment, repayable upon demand without interest. Repayment of the premium payment is fully recourse to *A*. The payment is a below-market split-dollar demand loan. *A*'s net investment income for 2009 is $1,100, and there are no other outstanding loans between *A* and *B*. Assume that the blended annual rate for 2009 is 5 percent, compounded annually.

(ii) Based on the relationships among the parties, the effect of the below-market split-dollar loan from *X* to *A* is to transfer value from *X* to *B* and then to transfer value from *B* to *A*. Under paragraph (e)(2) of this section, the below-market split-dollar loan from *X* to *A* is restructured as two deemed below-market split-dollar demand loans: a compensation-related below-market split-dollar loan between *X* and *B* and a gift below-market split-dollar loan between *B* and *A*. Each of the deemed loans has the same terms and conditions as the original loan.

(iii) Under paragraph (e)(3) of this section, the amount of forgone interest deemed paid to *B* by *A* in 2009 is $1,500 ([$30,000 x 0.05]—0). Under section 7872(d)(1), however, the amount of forgone interest deemed paid to *B* by *A* is limited to $1,100 (*A*'s net investment income for the year). Under paragraph (e)(2)(iii) of this section, *B*'s deduction under section 163(d) in 2009 for interest deemed paid on *B*'s deemed loan from *X* is limited to $1,100 (the interest deemed received from *A*).

(3) *Split-dollar demand loans*—(i) *In general.* This paragraph (e)(3) provides rules for testing split-dollar demand loans for sufficient interest, and, if the loans do not provide for sufficient interest, rules for the calculation and treatment of forgone interest on these loans. See paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing for sufficient interest.* Each calendar year that a split-dollar demand loan is outstanding, the loan is tested to determine if the loan provides for sufficient interest. A split-dollar demand loan provides for sufficient interest for the calendar year if the rate (based on annual compounding) at which interest accrues on the loan's adjusted issue price during the year is no lower than the blended annual rate for the year. (The Internal Revenue Service publishes the blended annual rate in the Internal Revenue Bulletin in July of each year (see § 601.601(d)(2)(ii) of this chapter).) If the loan does not provide for sufficient interest, the loan is a below-market split-dollar demand loan for that calendar year. See paragraph (e)(3)(iii) of this section to determine the amount and treatment of forgone interest for each calendar year the loan is below-market.

(iii) *Imputations*—(A) *Amount of forgone interest.* For each calendar year, the amount of forgone interest on a split-dollar demand loan is treated as transferred by the lender to the borrower and as retransferred as interest by the borrower to the lender. This amount is the excess of—

(*1*) The amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price at the AFR (determined in paragraph (e)(3)(ii) of this section) and were payable annually on the day referred to in paragraph (e)(3)(iii)(B) of this section; over

(*2*) Any interest that accrues on the loan during the year.

(B) *Timing of transfers of forgone interest*—(*1*) *In general.* Except as provided in paragraphs (e)(3)(iii)(B)(*2*) and (*3*) of this section, the forgone interest (as determined under paragraph (e)(3)(iii)(A) of this section) that is attributable to a calendar year is treated as transferred by the lender to the borrower (and retransferred as interest by the borrower to the lender) on the last day of the calendar year and is accounted for by each party to the split-dollar loan in a manner consistent with that party's method of accounting.

(*2*) *Exception for death, liquidation, or termination of the borrower.* In the taxable year in which the borrower dies (in the case of borrower who is a natural person) or is liquidated or otherwise terminated (in the case of a borrower other than a natural person), any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the last day of the borrower's final taxable year.

(*3*) *Exception for repayment of below-market split-dollar loan.* Any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the day the split-dollar loan is repaid in full.

(4) *Split-dollar term loans*—(i) *In general.* Except as provided in paragraph (e)(5) of this section, this paragraph (e)(4) provides rules for testing split-dollar term loans for sufficient interest and, if the loans do not provide for sufficient interest, rules for imputing payments on these loans. See paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing a split-dollar term loan for sufficient interest.* A split-dollar term loan is tested on the day the loan is made to determine if the loan provides for sufficient interest. A split-dollar term loan provides for sufficient interest if the imputed loan amount equals or exceeds the amount loaned. The imputed loan amount is the present value of all payments due under the loan, determined as of the date the loan is made, using a discount rate equal to the AFR in effect on that date. The AFR used for purposes of the preceding sentence must be appropriate for the loan's term (short-term, mid-term, or long-term) and for the compounding period used in computing the present value. See section 1274(d)(1). If the split-dollar loan does not provide for sufficient interest, the loan is a below-market split-dollar term loan subject to paragraph (e)(4)(iv) of this section.

(iii) *Determining loan term.* This paragraph (e)(4)(iii) provides rules to determine the term of a split-dollar term loan for purposes of paragraph (e)(4)(ii) of this section. The term of the loan determined under this paragraph (e)(4)(iii) (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(A) *In general.* Except as provided in paragraph (e)(4)(iii)(B), (C), (D) or (E) of this section, the term of a split-dollar term loan is based on the period from the date the loan is made until the loan's stated maturity date.

(B) *Special rules for certain options*—(*1*) *Payment schedule that minimizes yield.* If a split-dollar term loan is subject to unconditional options that are exercisable at one or more times during the term of the loan and that, if exercised, would require full payment of the loan on a date other than the stated maturity date, then the rules of this paragraph (e)(4)(iii)(B)(*1*) determine the term of the loan. For purposes of determining a split-dollar loan's term, the borrower is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. Similarly, the lender is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. If different projected patterns of exercise or non-exercise produce the same minimum yield, the parties are projected to exercise or not exercise an option or combination of options in a manner that produces the longest term.

(*2*) *Change in circumstances.* If the borrower (or lender) does or does not exercise the option as projected under paragraph (e)(4)(iii)(B)(*1*) of this section, the split-dollar loan is treated as retired and reissued on the date the option is or is not exercised. The amount for which the loan is deemed to be retired and reissued is the loan's adjusted issue price on that date. The reissued loan must be retested using the appropriate AFR in effect on the date of reissuance to determine whether it is a below-market loan.

(*3*) *Examples.* The following examples illustrate the rules of this paragraph (e)(4)(iii)(B):

Example 1. Employee *B* issues a 10-year split-dollar term loan to Employer *Y*. B has the right to prepay the loan at the end of year 5. Interest is payable on the split-dollar loan at 1 percent for the first 5 years and at 10 percent for the remaining 5 years. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 5-year split-dollar term loan from *Y* to *B*, with interest payable at 1 percent.

Example 2. The facts are the same as the facts in *Example 1*, except that *B* does not in fact prepay the split-dollar loan at the end of year 5. Under paragraph (e)(4)(iii)(B)(*2*) of this section, the first loan is treated as retired at the end of year 5 and a new 5-year split-dollar term loan is issued at that time, with interest payable at 10 percent.

Example 3. Employee *A* issues a 10-year split-dollar term loan on which the lender, Employer *X*, has the right to demand payment at the end of year 2. Interest is payable on the split-dollar loan at 7 percent each year that the loan is outstanding. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 10-year split-dollar term loan because the exercise of *X*'s put option would not reduce the yield of the loan (the yield of the loan is 7 percent, compounded annually, whether or not *X* demands payment).

(C) *Split-dollar term loans providing for certain variable rates of interest.* If a split-dollar term loan is subject to paragraph (g) of this section (a split-dollar loan that provides for certain variable rates of interest), the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (g)(3)(ii) of this section.

(D) *Split-dollar loans payable upon the death of an individual.* If a split-dollar term loan is described in paragraph (e)(5)(ii)(A) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(E) *Split-dollar loans conditioned on the future performance of substantial services by an individual.* If a split-dollar term loan is described in paragraph (e)(5)(iii)(A)(*1*) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(iv) *Timing and amount of imputed transfer in connection with below-market split-dollar term loans.* If a split-dollar term loan is a below-market loan, then the rules applicable to below-market term loans under section 7872 apply. In general, the loan is recharacterized as consisting of two portions: an imputed loan amount (as defined in paragraph (e)(4)(ii) of this section) and an imputed transfer from the lender to the borrower. The imputed transfer occurs at the time the loan is made (for example, when the lender makes a premium payment on a life insurance policy) and is equal to the excess described in paragraph (e)(4)(ii) of this section.

(v) *Amount treated as OID.* In the case of any below-market split-dollar term loan described in this paragraph (e)(4), for purposes of applying sections 1271 through 1275 and the regulations thereunder, the issue price of the loan is the amount determined under § 1.1273–2, reduced by the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section. Thus, the loan is generally treated as having OID in an amount equal to the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section, in addition to any other OID on the loan (determined without regard to section 7872(b)(2)(A) or this paragraph (e)(4)).

(vi) *Example.* The provisions of this paragraph (e)(4) are illustrated by the following example:

Example. (i) On July 1, 2009, Corporation *Z* and Shareholder *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. On July 1, 2009, *Z* makes a $100,000 premium payment, repayable without interest in 15 years. Repayment of the premium payment is fully

recourse to *A*. The premium payment is a split-dollar term loan. Assume the long-term AFR (based on annual compounding) at the time the loan is made is 7 percent.

(ii) Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. This loan is a below-market split-dollar term loan because the imputed loan amount

AFR (based on annual compounding) appropriate for the loan's term for the month in which the loan is made. See paragraph (e)(5)(ii)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(ii)(B) of this section, the term of a split-dollar loan payable on the death of an individual (including the death of the last survivor of a group

loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the AFR used in the determination of

paragraph (e)(5)(iv)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(iv)(B) of this section, the term of a gift split-dollar term loan is the term determined under paragraph (e)(4)(iii) of this section.

(D) *Limited application for gift split-dollar term loans.* The rules of paragraph (e)(5)(iv)(B) of this section

(vi) *Example.* The provisions of this paragraph (e)(5) are illustrated by the following example:

Example. (i) On January 1, 2009, Corporation *Y* and Shareholder *B*, a 65 year-old male, enter into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* makes a $100,000 premium payment, repayable, without interest, from the death benefits of the underlying contract upon *B*'s

loan. See paragraph (h) of this section for a subsequent waiver, cancellation, or forgiveness of stated interest on a split-dollar loan.

(2) *Term, payment schedule, and yield.* The term of a split-dollar term loan determined under paragraph (e)(4)(iii) of this section (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and

recourse to *A*. The premium payment is a split-dollar term loan. Assume the long-term AFR (based on annual compounding) at the time the loan is made is 7 percent.

(ii) Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. This loan is a below-market split-dollar term loan because the imputed loan amount of $36,244.60 (the present value of the amount required to be repaid to *Z*) is less than the amount loaned ($100,000).

(iii) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the date that the loan is made, *Z* is treated as transferring to *A* $63,755.40 (the excess of $100,000 (amount loaned) over $36,244.60 (imputed loan amount)). Under section 7872 and paragraph (e)(1)(i) of this section, *Z* is treated as making a section 301 distribution to *A* on July 1, 2009, of $63,755.40. *Z* must take into account as OID an amount equal to the imputed transfer. See § 1.1272–1 for the treatment of OID.

(5) *Special rules for certain split-dollar term loans*—(i) *In general.* This paragraph (e)(5) provides rules for split-dollar loans payable on the death of an individual, split-dollar loans conditioned on the future performance of substantial services by an individual, and gift term loans. These split-dollar loans are split-dollar term loans for purposes of determining whether the loan provides for sufficient interest. If, however, the loan is a below-market split-dollar loan, then, except as provided in paragraph (e)(5)(v) of this section, forgone interest is determined annually, similar to a demand loan, but using an AFR that is appropriate for the loan's term and that is determined when the loan is issued.

(ii) *Split-dollar loans payable not later than the death of an individual*—(A) *Applicability.* This paragraph (e)(5)(ii) applies to a split-dollar term loan payable not later than the death of an individual.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(ii)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan, and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan, and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the AFR used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term for the month in which the loan is made. See paragraph (e)(5)(ii)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(ii)(B) of this section, the term of a split-dollar loan payable on the death of an individual (including the death of the last survivor of a group of individuals) is the life expectancy as determined under the appropriate table in § 1.72–9 on the day the loan is made. If a split-dollar loan is payable on the earlier of the individual's death or another term determined under paragraph (e)(4)(iii) of this section, the term of the loan is whichever term is shorter.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(ii)(A) of this section remains outstanding longer than the term determined under paragraph (e)(5)(ii)(C) of this section because the individual outlived his or her life expectancy, the split-dollar loan is treated as retired and reissued as a split-dollar demand loan at that time for the loan's adjusted issue price on that date. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of determining forgone interest under paragraph (e)(5)(ii)(B) of this section, the appropriate AFR for the reissued loan is the AFR determined under (e)(5)(ii)(B) of this section on the day the loan was originally made.

(iii) *Split-dollar loans conditioned on the future performance of substantial services by an individual*—(A) *Applicability—(1) In general.* This paragraph (e)(5)(iii) applies to a split-dollar term loan if the benefits of the interest arrangements of the loan are not transferable and are conditioned on the future performance of substantial services (within the meaning of section 83) by an individual.

(*2*) *Exception.* Notwithstanding paragraph (e)(5)(iii)(A)(*1*) of this section, this paragraph (e)(5)(iii) does not apply to a split-dollar loan described in paragraph (e)(5)(v)(A) of this section (regarding a split-dollar loan that is payable on the later of a term certain and the date on which the condition to perform substantial future services by an individual ends).

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. Except as provided in paragraph (e)(5)(iii)(D) of this section, if the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the AFR used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term for the month in which the loan is made. See paragraph (e)(5)(iii)(C) of this section to determine the loan's term.

(C) *Term of loan.* The term of a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is based on the period from the date the loan is made until the loan's stated maturity date. However, if a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section does not have a stated maturity date, the term of the loan is presumed to be seven years.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section remains outstanding longer than the term determined under paragraph (e)(5)(iii)(C) of this section because of the continued performance of substantial services, the split-dollar loan is treated as retired and reissued as a split-dollar demand loan at that time for the loan's adjusted issue price on that date. The loan is retested at that time to determine whether the loan provides for sufficient interest.

(iv) *Gift split-dollar term loans*—(A) *Applicability.* This paragraph (e)(5)(iv) applies to gift split-dollar term loans.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iv)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the AFR used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term for the month in which the loan is made. See paragraph (e)(5)(iii)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(iv)(B) of this section, the term of a gift split-dollar term loan is the term determined under paragraph (e)(4)(iii) of this section.

(D) *Limited application for gift split-dollar term loans.* The rules of paragraph (e)(5)(iv)(B) of this section apply to a gift split-dollar term loan only for Federal income tax purposes. For purposes of chapter 12 of the Internal Revenue Code (relating to the gift tax), gift below-market split-dollar term loans are treated as term loans under section 7872(b) and paragraph (e)(4) of this section. See section 7872(d)(2).

(v) *Split-dollar loans payable on the later of a term certain and another specified date*—(A) *Applicability.* This paragraph (e)(5)(v) applies to any split-dollar term loan payable upon the later of a term certain or—

(*1*) The death of an individual; or

(*2*) For a loan described in paragraph (e)(5)(iii)(A)(*1*) of this section, the date on which the condition to perform substantial future services by an individual ends.

(B) *Treatment of loan*—(*1*) *In general.* A split-dollar loan described in paragraph (e)(5)(v)(A) of this section is a split-dollar term loan, subject to paragraph (e)(4) of this section.

(*2*) *Term of the loan.* The term of a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is the term certain.

(*3*) *Appropriate AFR.* The appropriate AFR for a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is based on a term of the longer of the term certain or the loan's expected term as determined under either paragraph (e)(5)(ii) or (iii) of this section, whichever is applicable.

(C) *Retirement and reissuance.* If a split-dollar loan described in paragraph (e)(5)(v)(A) of this section remains outstanding longer than the term certain, the split-dollar loan is treated as retired and reissued at the end of the term certain for the loan's adjusted issue price on that date. The reissued loan is subject to paragraph (e)(5)(ii) or (iii) of this section, whichever is applicable. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of paragraph (e)(3)(iii) of this section, the appropriate AFR for the reissued loan is the AFR determined under paragraph (e)(5)(v)(B)(3) of this section on the day the loan was originally made.

(vi) *Example.* The provisions of this paragraph (e)(5) are illustrated by the following example:

Example. (i) On January 1, 2009, Corporation *Y* and Shareholder *B*, a 65 year-old male, enter into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* makes a $100,000 premium payment, repayable, without interest, from the death benefits of the underlying contract upon *B*'s death. The premium payment is a split-dollar term loan. Repayment of the premium payment is fully recourse to *B*. Assume the long-term AFR (based on annual compounding) at the time of the loan is 7 percent. Both *Y* and *B* use the calendar year as their taxable years.

(ii) Based on Table 1 in § 1.72–9, the expected term of the loan is 15 years. Under paragraph (e)(5)(ii)(C) of this section, the long-term AFR (based on annual compounding) is the appropriate test rate. Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. Under paragraph (e)(5)(ii)(B) of this section, this loan is a below-market split-dollar term loan because the imputed loan amount of $36,244.60 (the present value of the amount required to be repaid to *Y*) is less than the amount loaned ($100,000).

(iii) Under paragraph (e)(5)(ii)(B) of this section, the amount of forgone interest for 2009 (and each subsequent full calendar year that the loan remains outstanding) is $7,000, which is the amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price ($100,000) at the long-term AFR (7 percent, compounded annually). Under section 7872 and paragraph (e)(1)(i) of this section, on December 31, 2009, *Y* is treated as making a section 301 distribution to *B* of $7,000. In addition, *Y* has $7,000 of imputed interest income for 2009.

(f) *Treatment of stated interest and OID for split-dollar loans*—(1) *In general.* If a split-dollar loan provides for stated interest or OID, the loan is subject to this paragraph (f), regardless of whether the split-dollar loan has sufficient interest. Except as provided in paragraphs (f)(2), (g), and (j) of this section, split-dollar loans are subject to the same Internal Revenue Code and regulatory provisions for stated interest and OID as other loans. For example, the lender of a split-dollar loan that provides for stated interest must account for any qualified stated interest (as defined in § 1.1273–1(c)) under its regular method of accounting (for example, an accrual method or the cash receipts and disbursements method). See § 1.446–2 to determine the amount of qualified stated interest that accrues during an accrual period. In addition, the lender must account under § 1.1272–1 for any OID on a split-dollar loan. See paragraph (h) of this section for a subsequent waiver, cancellation, or forgiveness of stated interest on a split-dollar loan.

(2) *Term, payment schedule, and yield.* The term of a split-dollar term loan determined under paragraph (e)(4)(iii) of this section (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(g) *Certain variable rates of interest*—(1) *In general.* This paragraph (g) provides rules for a split-dollar loan that provides for certain variable rates of interest. If this paragraph (g) does not apply to a variable rate split-dollar loan, the loan is subject to the rules for split-dollar loans providing for one or more contingent payments in paragraph (j) of this section.

(2) *Applicability*—(i) *In general.* Except as provided in paragraph (g)(2)(ii) of this section, this paragraph (g) applies to a split-dollar loan that is a variable rate debt instrument (within the meaning of § 1.1275–5) and that provides for stated interest at a qualified floating rate (or rates).

(ii) *Interest rate restrictions.* This paragraph (g) does not apply to a split-dollar loan if, as a result of interest rate restrictions (such as an interest rate cap), the expected yield of the loan taking the restrictions into account is significantly less than the expected yield of the loan without regard to the restrictions. Conversely, if reasonably symmetric interest rate caps and floors or reasonably symmetric governors are fixed throughout the term of the loan, these restrictions generally do not prevent this paragraph (g) from applying to the loan.

(3) *Testing for sufficient interest*—(i) *Demand loan.* For purposes of paragraph (e)(3)(ii) of this section (regarding testing a split-dollar demand loan for sufficient interest), a split-dollar demand loan is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified floating rate as of the beginning of the calendar year that contains the last day of the accrual period.

(ii) *Term loan.* For purposes of paragraph (e)(4)(ii) of this section (regarding testing a split-dollar term loan for sufficient interest), a split-dollar term loan subject to this paragraph (g) is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified

floating rate on the date the split-dollar term loan is made. The term of a split-dollar loan that is subject to this paragraph (g)(3)(ii) is determined using the rules in § 1.1274–4(c)(2). For example, if the loan provides for interest at a qualified floating rate that adjusts at varying intervals, the term of the loan is determined by reference to the longest interval between interest adjustment

loaned of $100,000. Therefore, the loan is not a below-market split-dollar term loan, and interest on the loan is taken into account under paragraph (f) of this section.

(h) *Adjustments for interest paid at less than the stated rate*—(1) *In general.* To the extent required by this paragraph (h), if accrued but unpaid interest on a split-dollar loan is subsequently waived, cancelled, or forgiven by the lender, the

the interest actually paid allocable to that year; plus

(ii) For each year that the split-dollar demand loan was outstanding in which the loan was not a below-market split-dollar demand loan, the excess, if any, of the amount of interest payable at the appropriate AFR used for purposes of imputation for that year over the interest actually paid allocable to that year.

(4) *Examples.* The provisions of this

of this section, *Y* was required to accrue compound interest of 7 percent each year the loan remained outstanding. *B*, however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(1)(i) of this section, a portion of the waived interest may be treated as if, on December 31, 2010, it had in fact been paid to *Y* and was then retransferred by *Y* to *B*. The amount of interest deemed transferred to *Y* and retransferred to *B* equals the excess, if any,

incidental (within the meaning of § 1.1275–2(h)).

(iv) *Exceptions for certain split-dollar loans.* This paragraph (j) does not apply to a split-dollar loan described in § 1.1272–1(d) (certain debt instruments that provide for a fixed yield) or a split-dollar loan described in paragraph (g) of this section (relating to split-dollar loans providing for certain variable rates of interest).

indirect participant as described in paragraph (e)(2) of this section. The lender's projected payment schedule is used by the lender, the borrower, and any indirect participant to compute interest accruals and adjustments.

(iii) *Negative adjustments.* If the issuer of a split-dollar loan is not allowed to deduct interest or OID (for example, because of section 163(h) or 264), then the issuer is not required to

floating rate on the date the split-dollar term loan is made. The term of a split-dollar loan that is subject to this paragraph (g)(3)(ii) is determined using the rules in § 1.1274–4(c)(2). For example, if the loan provides for interest at a qualified floating rate that adjusts at varying intervals, the term of the loan is determined by reference to the longest interval between interest adjustment dates. See paragraph (e)(5) of this section for special rules relating to certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual.

(4) *Interest accruals and imputed transfers.* For purposes of paragraphs (e) and (f) of this section, the projected fixed rate or rates determined under paragraph (g)(3) of this section are used for purposes of determining the accrual of interest each period and the amount of any imputed transfers. Appropriate adjustments are made to the interest accruals and any imputed transfers to take into account any difference between the projected fixed rate and the actual rate.

(5) *Example.* The provisions of this paragraph (g) are illustrated by the following example:

Example. (i) On January 1, 2010, Employer *V* and Employee *F* enter into a split-dollar life insurance arrangement under which *F* is named as the policy owner. On January 1, 2010, *V* makes a $100,000 premium payment, repayable in 15 years. The premium payment is a split-dollar term loan. Under the arrangement between the parties, interest is payable on the split-dollar loan each year on January 1, starting January 1, 2011, at a rate equal to the value of 1-year LIBOR as of the payment date. The short-term AFR (based on annual compounding) at the time of the loan is 7 percent. Repayment of both the premium payment and the interest due thereon is nonrecourse to *F*. However, the parties made a representation under paragraph (d)(2) of this section. Assume that the value of 1-year LIBOR on January 1, 2010, is 8 percent, compounded annually.

(ii) The loan is subject to this paragraph (g) because the loan is a variable rate debt instrument that bears interest at a qualified floating rate. Because the interest rate is reset each year, under paragraph (g)(3)(ii) of this section, the short-term AFR (based on annual compounding) is the appropriate test rate used to determine whether the loan provides for sufficient interest. Moreover, under paragraph (g)(3)(ii) of this section, to determine whether the loan provides for sufficient interest, the loan is treated as if it provided for a fixed rate of interest equal to 8 percent, compounded annually. Based on a discount rate of 7 percent, compounded annually (the short-term AFR), the present value of the payments under the loan is $109,107.91. The loan provides for sufficient interest because the loan's imputed loan amount of $109,107.91 (the present value of the payments) is more than the amount loaned of $100,000. Therefore, the loan is not a below-market split-dollar term loan, and interest on the loan is taken into account under paragraph (f) of this section.

(h) *Adjustments for interest paid at less than the stated rate*—(1) *In general.* To the extent required by this paragraph (h), if accrued but unpaid interest on a split-dollar loan is subsequently waived, cancelled, or forgiven by the lender, the waiver, cancellation, or forgiveness is treated as if, on that date, the interest had in fact been paid to the lender and then retransferred by the lender to the borrower. To determine the characterization of any retransferred amount, see paragraph (e)(1)(i) of this section. For purposes of this paragraph (h), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is determined under paragraph (h)(2) or (3) of this section. See § 1.61–22(b)(6) for the treatment of amounts other than interest on a split-dollar loan that are waived, cancelled, or forgiven by the lender. For purposes of this paragraph (h), a split-dollar term loan described in paragraph (e)(5) of this section (for example, a split-dollar term loan payable not later than the death of an individual) is subject to the rules of paragraph (h)(3) of this section.

(2) *Split-dollar term loans.* In the case of a split-dollar term loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is determined as follows:

(i) If the loan's stated rate is less than or equal to the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess of the amount of interest payable at the stated rate over the interest actually paid.

(ii) If the loan's stated rate is greater than the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess, if any, of the amount of interest payable at the AFR over the interest actually paid.

(3) *Split-dollar demand loans.* In the case of a split-dollar demand loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is equal to the aggregate of—

(i) For each year that the split-dollar demand loan was outstanding in which the loan was a below-market split-dollar demand loan, the excess of the amount of interest payable at the stated rate over the interest actually paid allocable to that year; plus

(ii) For each year that the split-dollar demand loan was outstanding in which the loan was not a below-market split-dollar demand loan, the excess, if any, of the amount of interest payable at the appropriate AFR used for purposes of imputation for that year over the interest actually paid allocable to that year.

(4) *Examples.* The provisions of this paragraph (h) are illustrated by the following examples:

Example 1. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on December 31, 2011, with interest of 5 percent, compounded annually. The premium payment is a split-dollar term loan. Assume the short-term AFR (based on annual compounding) at the time the loan was made was 5 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B*. On December 31, 2011, *Y* is repaid $100,000 but *Y* waives the remainder due on the loan ($15,762.50). Both *Y* and *B* use the calendar year as their taxable years.

(ii) When the split-dollar loan was made, the loan was not a below-market loan under paragraph (e)(4)(ii) of this section. Under paragraph (f) of this section, *Y* was required to accrue compound interest of 5 percent each year the loan remained outstanding. *B*, however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(2) of this section, the waived amount is treated as if, on December 31, 2011, it had in fact been paid to *Y* and was then retransferred by *Y* to *B*. The amount deemed transferred to *Y* and retransferred to *B* equals the excess of the amount of interest payable at the stated rate ($15,762.50) over the interest actually paid ($0), or $15,762.50. Because of the employment relationship between *Y* and *B*, this retransferred amount is treated as compensation paid by *Y* to *B*.

Example 2. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which B is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on the demand of *Y*, with interest of 7 percent, compounded annually. The premium payment is a split-dollar demand loan. Assume the blended annual rate (based on annual compounding) in 2009 was 5 percent and in 2010 was 6 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B*. On December 31, 2010, *Y* demands repayment and is repaid its $100,000 premium payment in full; however, *Y* waives all interest due on the loan. Both Y and B use the calendar year as their taxable years.

(ii) For each year that the split-dollar demand loan was outstanding, the loan was not a below-market loan under paragraph (e)(3)(ii) of this section. Under paragraph (f) of this section, *Y* was required to accrue compound interest of 7 percent each year the loan remained outstanding. *B*, however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(1)(i) of this section, a portion of the waived interest may be treated as if, on December 31, 2010, it had in fact been paid to *Y* and was then retransferred by *Y* to *B*. The amount of interest deemed transferred to *Y* and retransferred to *B* equals the excess, if any, of the amount of interest payable at the blended annual rate for each year the loan is outstanding over the interest actually paid with respect to that year. For 2009, the interest payable at the blended annual rate is $5,000 ($100,000 × 0.05). For 2010, the interest payable at the blended annual rate is $6,000 ($100,000 × 0.06). Therefore, the amount of interest deemed transferred to *Y* and retransferred to B equals $11,000. Because of the employment relationship between *Y* and *B*, this retransferred amount is treated as compensation paid by *Y* to *B*.

(i) [Reserved]

(j) *Split-dollar loans that provide for contingent payments*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this paragraph (j) provides rules for a split-dollar loan that provides for one or more contingent payments. This paragraph (j), rather than § 1.1275–4, applies to split-dollar loans that provide for one or more contingent payments.

(2) *Exceptions*—(i) *Certain contingencies.* For purposes of this section, a split-dollar loan does not provide for contingent payments merely because—

(A) The loan provides for options described in paragraph (e)(4)(iii)(B) of this section (for example, certain call options, put options, and options to extend); or

(B) The loan is described in paragraph (e)(5) of this section (relating to certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual).

(ii) *Insolvency and default.* For purposes of this section, a payment is not contingent merely because of the possibility of impairment by insolvency, default, or similar circumstances. However, if any payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this paragraph (j) unless the parties to the arrangement make the written representation provided for in paragraph (d)(2) of this section.

(iii) *Remote and incidental contingencies.* For purposes of this section, a payment is not a contingent payment merely because of a contingency that, as of the date the split-dollar loan is made, is either remote or incidental (within the meaning of § 1.1275–2(h)).

(iv) *Exceptions for certain split-dollar loans.* This paragraph (j) does not apply to a split-dollar loan described in § 1.1272–1(d) (certain debt instruments that provide for a fixed yield) or a split-dollar loan described in paragraph (g) of this section (relating to split-dollar loans providing for certain variable rates of interest).

(3) *Contingent split-dollar method*—(i) *In general.* If a split-dollar loan provides for one or more contingent payments, then the parties account for the loan under the contingent split-dollar method. In general, except as provided in this paragraph (j), this method is the same as the noncontingent bond method described in § 1.1275–4(b).

(ii) *Projected payment schedule*—(A) *Determination of schedule.* No comparable yield is required to be determined. The projected payment schedule for the loan includes all noncontingent payments and a projected payment for each contingent payment. The projected payment for a contingent payment is the lowest possible value of the payment. The projected payment schedule, however, must produce a yield that is not less than zero. If the projected payment schedule produces a negative yield, the schedule must be reasonably adjusted to produce a yield of zero.

(B) *Split-dollar term loans payable upon the death of an individual.* If a split-dollar term loan described in paragraph (e)(5)(ii)(A) or (v)(A)(*1*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(C) *Certain split-dollar term loans conditioned on the future performance of substantial services by an individual.* If a split-dollar term loan described in paragraph (e)(5)(iii)(A)(*1*) or (v)(A)(*2*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(D) *Demand loans.* If a split-dollar demand loan provides for one or more contingent payments, the projected payment schedule is determined based on a reasonable assumption as to when the lender will demand repayment.

(E) *Borrower/lender consistency.* Contrary to § 1.1275–4(b)(4)(iv), the lender rather than the borrower is required to determine the projected payment schedule and to provide the schedule to the borrower and to any indirect participant as described in paragraph (e)(2) of this section. The lender's projected payment schedule is used by the lender, the borrower, and any indirect participant to compute interest accruals and adjustments.

(iii) *Negative adjustments.* If the issuer of a split-dollar loan is not allowed to deduct interest or OID (for example, because of section 163(h) or 264), then the issuer is not required to include in income any negative adjustment carryforward determined under § 1.1275–4(b)(6)(iii)(C) on the loan, except to the extent that at maturity the total payments made over the life of the loan are less than the issue price of the loan.

(4) *Application of section 7872*—(i) *Determination of below-market status.* The yield based on the projected payment schedule determined under paragraph (j)(3) of this section is used to determine whether the loan is a below-market split-dollar loan under paragraph (e) of this section.

(ii) *Adjustment upon the resolution of a contingent payment.* To the extent that interest has accrued under section 7872 on a split-dollar loan and the interest would not have accrued under this paragraph (j) in the absence of section 7872, the lender is not required to recognize income under § 1.1275–4(b) for a positive adjustment and the borrower is not treated as having interest expense for a positive adjustment. To the same extent, there is a reversal of the tax consequences imposed under paragraph (e) of this section for the prior imputed transfer from the lender to the borrower. This reversal is taken into account in determining adjusted gross income.

(5) *Examples.* The following examples illustrate the rules of this paragraph (j). For purposes of this paragraph (j)(5), assume that the contingent payments are neither remote nor incidental. The examples are as follows:

Example 1. (i) On January 1, 2010, Employer *T* and Employee *G* enter into a split-dollar life insurance arrangement under which *G* is named as the policy owner. On January 1, 2010, *T* makes a $100,000 premium payment. On December 31, 2013, *T* will be repaid an amount equal to the premium payment plus an amount based on the increase, if any, in the price of a specified commodity for the period the loan is outstanding. The premium payment is a split-dollar term loan. Repayment of both the premium payment and the interest due thereon is recourse to *G*. Assume that the appropriate AFR for this loan, based on annual compounding, is 7 percent. Both *T* and *G* use the calendar year as their taxable years.

(ii) Under this paragraph (j), the split-dollar loan between *T* and *G* provides for a

contingent payment. Therefore, the loan is subject to the contingent split-dollar method. Under this method, the projected payment schedule for the loan provides for a noncontingent payment of $100,000 and a projected payment of $0 for the contingent payment (because it is the lowest possible value of the payment) on December 31, 2013.

(iii) Based on the projected payment schedule and a discount rate of 7 percent, compounded annually (the appropriate AFR), the present value of the payments under the loan is $100,000. Therefore, the loan is not a below-market split-dollar term loan, and interest on the loan is taken into account under paragraph (f) of this section.

(iv) Under paragraph (f) of this section, *T* must include in income, and *G* is entitled to deduct, $23,710.48 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* and *T* take these reversals into account in determining adjusted gross income. Under the contingent split-dollar method, *T* must include in income $3,289.52 ($23,710.48 − $20,420.96) and *G* is entitled to deduct $3,289.52 ($23,710.48 − $20,420.96) to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* and *T* take these reversals into account in determining adjusted gross income.

Example 2. (i) On January 1, 2010, Employer *V* and Employee *F* enter into a split-dollar life insurance arrangement under which *F* is named as the policy owner. On January 1, 2010, *V* makes a $100,000 premium payment, repayable in 15 years. The premium payment is a split-dollar term loan. Under the arrangement between the parties, interest is payable on the split-dollar loan each year on January 1, starting January 1, 2011, at a rate equal to the value of 1-year LIBOR as of the payment date. The short-term AFR (based on annual compounding) at the time of the loan is 7 percent. Repayment of both the premium payment and the interest due thereon is nonrecourse to *F*. However, the parties made a representation under paragraph (d)(2) of this section. Assume that the value of 1-year LIBOR on January 1, 2010, is 8 percent, compounded annually.

(ii) The loan is subject to this paragraph (j) because the loan provides for one or more contingent payments. Under paragraph (j)(3)(ii)(A) of this section, the projected payment schedule for the loan consists of a noncontingent payment of $100,000 on December 31, 2013, and a projected payment of $0 on December 31, 2013. Based on this projected payment schedule and a discount rate of 7 percent, compounded annually (the appropriate AFR), the present value of the payments under the loan is $100,000. Therefore, the loan is not a below-market split-dollar term loan, and interest on the loan is taken into account under paragraph (f) of this section.

(iii) Under paragraph (f) of this section, *V* must include in income, and *F* is entitled to deduct, $23,710.48 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*V*'s prior deduction for imputed compensation deemed paid to *F* and *F*'s prior inclusion of this amount). *F* and *V* take these reversals into account in determining adjusted gross income. Under the contingent split-dollar method, *V* must include in income $3,289.52 ($23,710.48 − $20,420.96) and *F* is entitled to deduct $3,289.52 ($23,710.48 − $20,420.96) to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*V*'s prior deduction for imputed compensation deemed paid to *F* and *F*'s prior inclusion of this amount). *F* and *V* take these reversals into account in determining adjusted gross income.

(k) *Coordination with section 83.* If property is transferred in connection with the performance of services and a split-dollar loan is made to the person performing the services or to the person who owns the property, then the parties to the split-dollar loan must take into account the rules of section 83 and the regulations thereunder in addition to the rules of this section.

(l) *Coordination with section 7872.* If a split-dollar loan is a below-market loan, then the rules of section 7872 apply in addition to the rules of this section. See paragraph (e)(4)(ii) of this section for the treatment of a split-dollar loan that is a below-market loan.

(m) *Coordination with section 1274.* If a split-dollar loan is a debt instrument to which section 1274 applies, then the rules of section 1274 apply in addition to the rules of this section.

(n) *Effective dates*—(1) *In general.* Except as provided in paragraph (n)(2) of this section, this section applies to any split-dollar loan entered into on or after September 17, 2003, and to any split-dollar loan entered into before September 17, 2003, that is materially modified after that date.

(2) *Split-dollar loans entered into before September 17, 2003.* For split-dollar loans entered into before September 17, 2003, the rules of this section apply to taxable years ending on or after September 17, 2003, but only if the taxpayers who are parties to the split-dollar loan described in paragraph (b)(1) of this section treat the arrangement consistently under this section.

(3) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (n)(1) of this section that is materially modified after the date set forth in paragraph (n)(1) of this section is treated as a new arrangement entered into on the date of the material modification.

treatment of split-dollar life insurance arrangements.

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

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BILLING CODE 4830–01–P

contingent payment. Therefore, the loan is subject to the contingent split-dollar method. Under this method, the projected payment under the loan provides for a noncontingent payment of $100,000 and a projected payment of $0 for the contingent payment (because it is the lowest possible value of the payment) on December 31, 2013.

(iii) Based on the projected payment schedule and a discount rate of 7 percent, compounded annually (the appropriate AFR), the present value of the payments under the loan is $76,289.52. Under paragraphs (e)(4) and (j)(4)(i) of this section, the loan does not provide for sufficient interest because the loan's imputed loan amount of $76,289.52 (the present value of the payments) is less than the amount loaned of $100,000. Therefore, the loan is a below-market split-dollar loan and the loan is recharacterized as consisting of two portions: an imputed loan amount of $76,289.52 and an imputed transfer of $23,710.48 (amount loaned of $100,000 minus the imputed loan amount of $76,289.52).

(iv) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the date the loan is made, *T* is treated as transferring to *G* $23,710.48 (the imputed transfer) as compensation. In addition, *T* must take into account as OID an amount equal to the imputed transfer. See § 1.1272–1 for the treatment of OID.

Example 2. (i) Assume, in addition to the facts in *Example 1*, that on December 31, 2013, *T* receives $115,000 (its premium payment of $100,000 plus $15,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $15,000 positive adjustment ($15,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, *T* must include in income, and *G* is entitled to deduct, $15,000 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* takes the reversal into account in determining adjusted gross income. That is, the $15,000 is an "above-the-line" deduction, whether or not *G* itemizes deductions.

Example 3. (i) Assume the same facts as in *Example 2*, except that on December 31, 2013, *T* receives $127,000 (its premium payment of $100,000 plus $27,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $27,000 positive adjustment ($27,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest of $23,710.48 under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include $23,710.48 of the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, in 2013, *T* must include in income, and *G* is entitled to deduct, $23,710.48 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* and *T* take these reversals into account in determining adjusted gross income. Under the contingent split-dollar method, *T* must include in income $3,289.52 upon resolution of the contingency ($27,000 positive adjustment minus $23,710.48).

(k) *Payment ordering rule.* For purposes of this section, a payment made by the borrower pursuant to a split-dollar life insurance arrangement is applied to all direct and indirect split-dollar loans in the following order—

(1) A payment of interest to the extent of accrued but unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued;

(2) A payment of principal on the outstanding split-dollar loans in the order in which the loans were made;

(3) A payment of amounts previously paid by a non-owner pursuant to a split-dollar life insurance arrangement that were not reasonably expected to be repaid by the owner; and

(4) Any other payment with respect to a split-dollar life insurance arrangement, other than a payment taken into account under paragraphs (k)(1), (2), and (3) of this section.

(l) [Reserved]

(m) *Repayments received by a lender.* Any amount received by a lender under a life insurance contract that is part of a split-dollar life insurance arrangement is treated as though the amount had been paid to the borrower and then paid by the borrower to the lender. Any amount treated as received by the borrower under this paragraph (m) is subject to other provisions of the Internal Revenue Code as applicable (for example, sections 72 and 101(a)). The lender must take the amount into account as a payment received with respect to a split-dollar loan, in accordance with paragraph (k) of this section. No amount received by a lender with respect to a split-dollar loan is treated as an amount received by reason of the death of the insured.

(n) *Effective date*—(1) *General rule.* This section applies to any split-dollar life insurance arrangement entered into after the date the final regulations are published in the **Federal Register**.

(2) *Early reliance.* Taxpayers may rely on this section for the treatment of any split-dollar life insurance arrangement entered into on or before the date described in paragraph (n)(1) of this section, provided that all taxpayers who are parties to a split-dollar loan described in paragraph (b)(1) of this section treat the arrangement consistently under this section.

(3) *Modified arrangements treated as new arrangements.* An arrangement entered into on or before the date set forth in paragraph (n)(1) of this section that is materially modified after the date set forth in paragraph (n)(1) of this section is treated as a new arrangement entered into on the date of the modification.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 10. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 11. In § 31.3121(a)–1, paragraph (k) is added to read as follows:

§ 31.3121(a)–1 Wages.

* * * * * *

(k) *Split-dollar life insurance arrangements.* Except as otherwise provided under section 3121(v), see § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

Par. 12. In § 31.3231(e)–1, paragraph (a)(6) is added to read as follows:

§ 31.3231(e)–1 Compensation.

(a) * * *

(6) *Split-dollar life insurance arrangements.* See § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

* * * * * *

Par. 13. In § 31.3306(b)–1, paragraph (l) is added to read as follows:

§ 31.3306(b)–1 Wages.

* * * * * *

(l) *Split-dollar life insurance arrangements.* Except as otherwise provided under section 3306(r), see § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

Par. 14. In § 31.3401(a)–1, paragraph (b)(15) is added to read as follows:

§ 31.3401(a)–1 Wages.

* * * * * *

(b) * * *

(15) *Split-dollar life insurance arrangements.* See § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

* * * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–17042 Filed 7–3–02; 9:53 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 947]

RIN: 1512–AC62

Establishment of the Oak Knoll District Viticultural Area (2002R–046P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is proposing the establishment of the "Oak Knoll District" viticultural area in Napa County, California. This action is in response to a petition submitted by the Oak Knoll District Committee.

DATES: Written comments must be received by September 9, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 947). See the "Public Participation" section of this notice for alternative means of commenting.

Copies of the petition, the proposed regulation, the appropriate maps, and any written comments received will be available for public inspection by appointment during normal business hours at the ATF Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890.

FOR FURTHER INFORMATION CONTACT: Joanne Brady, Specialist, Regulations Division (Philadelphia, PA), Bureau of Alcohol, Tobacco and Firearms, The Curtis Center, Suite 875, Independence Square West, Philadelphia, PA 19106; telephone 215–597–5288 or e-mail *JCBrady@phila.atf.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

Section 4.25a(e)(1) of title 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Oak Knoll District Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition from the Oak Knoll District Committee proposing a new American viticultural area to be called "Oak Knoll District." As part of its petition, the Committee also submitted reports from historian Charles L. Sullivan and Dr. Deborah L. Elliott-Fisk, a professor at the University of California, Davis, in support of its claims.

The proposed viticultural area is located in the southern end of the Napa Valley in Napa County, California. It includes approximately 9,940 acres, of which 4,040 are plantable to vines. The proposed area would abut the Mt. Veeder viticultural area to the west and the Yountville viticultural area to the north, and would lie entirely within the Napa Valley viticultural area.

Evidence That the Name of the Area is Locally or Nationally Known

According to the Oak Knoll District Committee, the name of the proposed viticultural area is based on both present and historical evidence. The proposed area is the site of the historic Oak Knoll Ranch, which dates from the early days of American settlement in the Napa Valley. The petitioner also provided other examples of the use of the name "Oak Knoll District" or "Oak Knoll" within the proposed area: the area's former school district was known as the Oak Knoll District, a historic train station was called Oak Knoll Station, and the Oak Knoll Inn and Oak Knoll Cellars vineyard were established within the proposed area.

According to the report submitted by Mr. Charles L. Sullivan, Joseph W. Osborne brought the first fine vinifera varieties to the Napa Valley. His ranch, the Oak Knoll Ranch, became famous when it was named California's best-cultivated farm by the State Agricultural Society in 1854 and 1856. Mr. Sullivan also notes that, according to a local newspaper's extensive article on the Oak Knoll estate in 1886, it was called "the richest gem in California's golden crown" and "one of the fairest spots in California's loveliest valley."

Mr. Sullivan's report noted that in 1886, the Eshcol Ranch Winery was established on what may have been the Oak Knoll Ranch property. The petition contends that the purchase of the Eshcol estate by the Trefethen family in 1968, and the establishment of Trefethen Vineyards, began to transform Oak Knoll into a world-class wine grape growing area.

The petitioner also supplied evidence in the form of articles from various publications and trade magazines that make reference to the "Oak Knoll District." An excerpt from the Lifestyle section of the August/September 1999 issue of "Wine News" magazine states that the Trefethens bought the 600-acre walnut, wheat, grape, and prune ranch in the "Oak Knoll District of Napa" in 1968.

An article from the May 1999 "Inside Napa Valley, a Visitor's Guide," states that the "Yountville, Stag's Leap and Oak Knoll districts near Yountville contain some of the most renown[ed] wineries of Napa Valley." An article from the July 16, 1997, Los Angeles Times states, "Trefethen's 600 acres of vines are in the (not yet legally

designated) Oak Knoll District at the cool southern end of Napa Valley, not far from the city of Napa. Over the years, Trefethen's Chardonnays have consistently displayed a distinctive Oak Knoll character." The petition also notes that Oak Knoll Avenue traverses the proposed viticultural area from Highway 29 on its western side to the Silverado Trail on its eastern side.

have favored the planting of Chardonnay and, to some extent, Pinot Noir as two cooler climate varietals; yet Cabernet Sauvignon and Merlot also do exceptionally well with the proper viticultural management.

Professor Elliott-Fisk also notes that the uniform climate across the proposed area is due to the broad, flat valley floor topography. Along the western and

Proposed Boundaries

According to the petitioner, two United States Geological Survey Quadrangle maps (7.5 Minute Series) show the boundaries of the proposed Oak Knoll District viticultural area. The list of maps and the area's proposed boundaries are described in the text of the proposed rule shown below.

Public Participation

proposed rule on the ATF Internet web site at *http://www.atf.treas.gov*.

Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request in writing to the Director within the 60-day comment period. The Director reserves the right to determine, however, in light of all circumstances, whether a public hearing will be held.

from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has determined that this proposed regulation is not a significant

the city of Napa on the Napa, CA quadrangle map;

(2) Proceed easterly along Trancas Road until it meets the Napa River;

(3) Proceed southerly along the Napa River approximately 3,500 feet to its confluence with Milliken Creek;

(4) Continue northerly up Milliken Creek to its intersection with Monticello Road;

(5) Then proceed westerly along Monticello Road to its intersection with

designated) Oak Knoll District at the cool southern end of Napa Valley, not far from the city of Napa. Over the years, Trefethen's Chardonnays have consistently displayed a distinctive Oak Knoll character." The petition also notes that Oak Knoll Avenue traverses the proposed viticultural area from Highway 29 on its western side to the Silverado Trail on its eastern side.

The petitioner has requested the name "Oak Knoll District" because the petitioner believes it will identify the proposed area more clearly. The petitioner also believes it eliminates any possible confusion with a winery in Oregon named Oak Knoll. Further, the petitioner noted that just as "District" is used as part of the Stags Leap District and Spring Mountain District viticultural areas within the Napa Valley, the full name indicates an area rather than the name of an existing winery.

Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area Are As Specified in the Application

In his report, Mr. Sullivan states the northern boundary of the proposed Oak Knoll District of Napa Valley is the same as the southern boundary of the Yountville viticultural area, and that the Mt. Veeder viticultural area boundary line to Redwood Road defines part of its western boundary. In her climate and soil report, Professor Deborah L. Elliott-Fisk states the proposed southern boundary of the Oak Knoll District approximates the southern edge of the Dry Creek alluvial fan. She concludes that the most logical west-east line to follow for this boundary is Redwood Road, which becomes Trancas Road to the east of Highway 29. Professor Elliott-Fisk also states that the proposed area's logical eastern boundary is the Silverado Trail.

Evidence Relating to the Geographical Features Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

Professor Elliott-Fisk states that, outside of the Los Carneros viticultural area, the proposed Oak Knoll District is one of the coolest vineyard regions in the Napa Valley viticultural area, with a long, cool growing season for grapevines of approximately eight months.

According to Professor Elliott-Fisk, the Amerine and Winkler classification system rates this area as a Region I to a cool Region II climate in any given year. She notes the low degree day totals have favored the planting of Chardonnay and, to some extent, Pinot Noir as two cooler climate varietals; yet Cabernet Sauvignon and Merlot also do exceptionally well with the proper viticultural management.

Professor Elliott-Fisk also notes that the uniform climate across the proposed area is due to the broad, flat valley floor topography. Along the western and eastern edges of the proposed area, small pockets of an even cooler climate are found in the immediate Napa River floodplain and in the small, first-order stream tributaries on the lower foothill slopes.

Professor Elliott-Fisk also states that the proximity of this area to San Pablo Bay results in a maritime influence, with cool breezes coming off the bay. Coastal fog is also common in the mornings, especially in the summer. The region is classified as sub-humid and receives approximately 28 to 30 inches of precipitation in a normal year. Annual precipitation can reach 60 inches in an abnormally wet year.

Soils

According to the reports and studies cited by Dr. Elliott-Fisk, the soils in the proposed Oak Knoll District are "more uniform than in other approved Napa Valley viticultural areas, due principally to the dominance of the large Dry Creek alluvial fan." Dr. Elliott-Fisk notes that across the large Dry Creek fan, soils include the fine, gravelly clay loam, silt loam, and loam soils. Dr. Elliott-Fisk states in her report that the proposed southern boundary approximates the southern edge of the Dry Creek alluvial fan. Alluvial deposits from Dry Creek and the Napa River have largely buried the Diablo clays and Haire clay loams within the proposed Oak Knoll District of Napa Valley viticultural area. This contrasts with the area to the south of the proposed viticultural area, Napa City and Los Carneros, where Diablo and Haire soils are common at the surface, as are Yolo and Clear Lake clay soils. The Yolo soils are less well drained, with higher percentages of organic matter, both of which promote vine vigor.

The bedrock, seen in the hillsides along the western edge of the proposed Oak Knoll District, is diverse and primarily volcanic in origin. The West Napa Fault Zone runs along the base of these hills. Serpentine, sandstone, and shale are occasionally found on the hillsides. Towards the toeslope, unusual clay-rich soils are found in many colors, including green, red, yellow, gray and black.

Proposed Boundaries

According to the petitioner, two United States Geological Survey Quadrangle maps (7.5 Minute Series) show the boundaries of the proposed Oak Knoll District viticultural area. The list of maps and the area's proposed boundaries are described in the text of the proposed rule shown below.

Public Participation

Comments Sought

ATF requests comments from all interested persons. ATF is particularly interested in comments concerning the appropriateness of the name "Oak Knoll District" for this proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Submitting Comments

By mail: Written comments should be mailed to ATF at the address listed in the **ADDRESSES** section above.

By fax: Comments may be submitted by facsimile transmission to 215–597–7003, provided the comments:

(1) Are legible;
(2) Are 8½" × 11" in size;
(3) Contain a written signature; and
(4) Are three pages or less in length.

This limitation is necessary to assure reasonable public access to the equipment. Comments sent by fax in excess of three pages will not be accepted. Receipt of fax transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

By e-mail: Comments may be submitted by e-mail to *nprm@atfhq/treas.gov*. E-mail comments must:

(1) Contain your name, mailing address, and e-mail address;
(2) Reference this notice number; and
(3) Be legible when printed.

We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals.

By on-line form: Comments may also be submitted using the comment form provided with the online copy of this proposed rule on the ATF Internet web site at *http://www.atf.treas.gov*.

Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request in writing to the Director within the 60-day comment period. The Director reserves the right to determine, however, in light of all circumstances, whether a public hearing will be held.

Reviewing Comments

Copies of the petition, the proposed regulation, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. For an appointment, call 202–927–7890. To obtain copies of the comments (at 20 cents per page), contact the ATF librarian in writing at the address above.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library or through FOIA requests, as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/*, select "Regulations," this notice, and then click on the "view comments" link.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

ATF certifies that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is Joanne Brady, Regulations Division (Philadelphia), Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.161 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.161 Oak Knoll District

(a) *Name.* The name of the viticultural area described in this section is "Oak Knoll District".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Oak Knoll District viticultural area are the following United States Geological Survey Quadrangle maps (7.5 Minute Series):

(1) Napa, California, 1951 (Photo revised 1980); and
(2) Yountville, California, 1951 (Photo revised 1968).

(c) *Boundaries.* The Oak Knoll District viticultural area is located entirely within Napa County, California. The boundaries of the Oak Knoll District viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Beginning at the intersection of State Highway 29 and Trancas Road in the city of Napa on the Napa, CA quadrangle map;
(2) Proceed easterly along Trancas Road until it meets the Napa River;
(3) Proceed southerly along the Napa River approximately 3,500 feet to its confluence with Milliken Creek;
(4) Continue northerly up Milliken Creek to its intersection with Monticello Road;
(5) Then proceed westerly along Monticello Road to its intersection with Silverado Trail;
(6) Then proceed northerly and then northeasterly along Silverado Trail to its intersection with an unimproved dirt road located approximately 1,300 feet north of the intersection of Silverado Trail and Oak Knoll Avenue;
(7) From that point, proceed west in a straight line to the confluence of Dry Creek and the Napa River;
(8) Then proceed northwesterly along Dry Creek onto the Yountville map to the fork in the creek; then northwesterly along the north fork of Dry Creek to its intersection with the easterly end of the light-duty road labeled Ragatz Lane;
(9) Proceed southwesterly along Ragatz Lane to the west side of State Highway 29;
(10) Then proceed southerly along the west side of State Highway 29 for 982 feet to a point marking the easterly extension of the northern boundary of Napa County Assessor's parcel number 034–170–015 (marked in part by a fence along the southern edge of the orchard shown along the west side of State Highway 29 just above the bottom of the Yountville map);
(11) Then proceed westerly for 3,550 feet along the northern boundary of Napa County Assessor's parcel number 034–170–015 and its westerly extension to the dividing line between Range 5 West and Range 4 West on the Napa, CA map;
(12) Then proceed southwest in a straight line to the peak marked with an elevation of 564 feet; then south-southwest in a straight line to the peak marked with an elevation of 835 feet;
(13) Then proceed southwest in a straight line approximately 1,300 feet to the reservoir gauging station located on Dry Creek; then proceed west in a straight line across Dry Creek to the 400 foot contour line;
(14) Proceed along the 400-foot contour line in a generally southeasterly direction to its intersection with the line dividing Range 5 West and Range 4 West; then proceed south along that dividing line approximately 2,400 feet to the center of Redwood Road;
(15) Then proceed southerly and then easterly along Redwood Road to the point of beginning at Highway 29.

Signed: May 17, 2002.
Bradley A. Buckles,
Director.
[FR Doc. 02–16972 Filed 7–8–02; 8:45 am]
BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received before or on August 8, 2002.

ADDRESSES: *Comments:* Interested parties may submit an original and two copies of comments referencing docket number 102RQ-CORRECT to (1) if using regular U.S. Postal Service mail: Docket

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–12643]

RIN 2127–AC66

facsimile (202) 366–3820, electronic mail *omatheke@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

1. ATA and Grabowsky Petitions

On April 6, 1987, a private individual, Mr. Ralph Grabowsky, petitioned for rulemaking to establish a brake block standard for motor vehicles and equipment, covering stability, friction,

the J661 performance ratings on the edge of the block.

Based on its evaluations of the J661a test procedures, the trucking industry concluded that the levels of repeatability and reproducibility of the SAE standards were unacceptably low. Additionally, the trucking industry determined that the test procedure was not realistic since it did not use a full-scale brake block or other full-scale

torque and brake input torque are recorded for each stop from the time the specified air pressure is reached until the brake stops. The SAE J1802 brake effectiveness rating is a calculated, non-dimensional quantity that relates the average output torque determined in the procedure, to the average input torque. In order to make the friction ratings available to end users, SAE J1801 specifies that the actual normal

Signed: May 17, 2002.
Bradley A. Buckles,
Director.
[FR Doc. 02–16972 Filed 7–8–02; 8:45 am]
BILLING CODE 4910–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H–FRL–7241–7]

RIN 2050–AE68

Correction of Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to correct errors and remove obsolete or redundant language in regulations regarding notification requirements for releases of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA has reviewed the CERCLA release reporting regulations and has identified several categories of errors, including: typographical errors in the table of CERCLA hazardous substances; definitions made legally obsolete because of changes in CERCLA's statutory provisions; and redundant or unnecessary information that could be removed from the regulations to simplify these regulations and reduce potential confusion.

In the Rules and Regulations section of today's **Federal Register**, EPA is approving this action as a direct final rule without a prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval of this action is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is anticipated in relation to this rule. If EPA receives adverse written comments on one or more distinct amendments, paragraphs, or sections of the direct final rule, EPA will withdraw the distinct amendments, paragraphs, or sections for which the adverse comment was received by publishing a timely withdrawal in the **Federal Register**. All adverse public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received before or on August 8, 2002.

ADDRESSES: *Comments:* Interested parties may submit an original and two copies of comments referencing docket number 102RQ-CORRECT to (1) if using regular U.S. Postal Service mail: Docket Coordinator, Superfund Docket Office, (Mail Code 5201G), U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or (2) if using special delivery such as overnight express service: Superfund Docket Office, Crystal Gateway One, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

It would also be helpful, although not mandatory, to include an electronic copy of your comments by diskette or Internet e-mail. For more information, see the "Electronic Submission of Comments" portion of the **SUPPLEMENTARY INFORMATION** section of EPA's direct final rule published in today's **Federal Register**.

Docket: Copies of public comments and other materials supporting EPA's decision to correct typographical errors and remove obsolete language from 40 CFR Part 302 may be examined at the U.S. EPA Superfund Docket Office, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia 22202 [Docket Number 102RQ-CORRECT]. Docket hours are 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please call (703) 603–9232 for an appointment. You may copy a maximum of 100 pages from any regulatory docket at no charge; additional copies cost 15 cents per page. The Docket Office will mail copies of materials to you if you are located outside the Washington, DC metropolitan area.

FOR FURTHER INFORMATION: Contact Ms. Lynn Beasley of the Office of Emergency and Remedial Response (5204G), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by phone at (703) 603–9086, or by e-mail at *beasley.lynn@epa.gov*.

Dated: June 28, 2002.
Christine Todd Whitman,
Administrator.
[FR Doc. 02–16873 Filed 7–8–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–12643]

RIN 2127–AC66

Federal Motor Vehicle Safety Standards: Air Brake Systems

ACTION: Termination of rulemaking.

SUMMARY: Brake blocks, also known as brake linings, are sacrificial components of brake systems. Composed of friction material, they are pressed against brake drums or brake rotors when a vehicle's brakes are activated. The composition and characteristics of brake blocks may vary considerably. This variation has a direct impact on brake performance and vehicle stopping distances. NHTSA received two petitions for rulemaking requesting issuance of standards for brake blocks, one from the American Trucking Associations (ATA) and the other from a private individual, Mr. Ralph Grabowsky. In March 1989, NHTSA granted the ATA petition and partially granted and partially denied Mr. Grabowsky's petition, agreeing to consider beginning rulemaking to develop a standard for marking, identifying and rating the effectiveness of heavy truck brake blocks. After granting these petitions, the agency initiated a number of studies to determine the feasibility of developing effectiveness ratings for heavy truck brake blocks. After examining the data developed from its research as well examining voluntary standards for heavy truck brake blocks, NHTSA has determined that it is unlikely that a suitable test procedure for comparing and rating brake blocks can be developed with currently available test equipment and procedures. Accordingly, the agency is terminating this rulemaking action.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Samuel Daniel Jr., Office of Crash Avoidance Standards, NPS–22, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–4921, facsimile (202) 366–4329, electronic mail *sdaniel@nhtsa.dot.gov*.

For legal issues: Mr. Otto G. Matheke, III, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail *omatheke@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

1. ATA and Grabowsky Petitions

On April 6, 1987, a private individual, Mr. Ralph Grabowsky, petitioned for rulemaking to establish a brake block standard for motor vehicles and equipment, covering stability, friction, fade, proper identification and wear. On August 11, 1987, the American Trucking Associations (ATA) petitioned for a standard that would require rating the effectiveness (coefficient of friction) of all heavy truck brake blocks, and to have that rating permanently marked on the block. In March 1989, NHTSA granted the ATA petition and that portion of the Grabowsky petition concerning the friction rating and identification of brake blocks for heavy-duty vehicles. The agency indicated that it was planning research investigations in the subject area and that information derived from those investigations would be used to help determine whether a notice of proposed rulemaking would be issued. NHTSA explained its denial of the other portions of the Grabowsky petition in a notice published in the **Federal Register** on July 11, 1989 (54 FR 29067).

The ATA petition indicated that the trucking industry believed that voluntary brake block effectiveness rating standards then in place were inadequate and that a federal standard would improve heavy truck stability and braking performance. The Grabowsky petition stated that a new federal standard for brake blocks would reduce deaths, injuries and economic losses resulting from traffic accidents.

2. SAE Test Procedures

At the time the petitions were granted, NHTSA did not have any standard governing the rating and marking of brake blocks. Several voluntary standards were in place. The Society of Automotive Engineers (SAE) recommended practice for rating heavy-duty vehicle brake block performance, SAE Recommended Practice J661a—*Brake Block Quality Control Test Procedure* was one such standard. The SAE also had a recommended practice for marking heavy vehicle brake blocks with performance data based on the results from the J661a procedure. This SAE Recommended Practice, J866—*Friction Coefficient System For Brake Blocks*, designated the normal temperature and high temperature performance of given block material, and specified procedures for printing the J661 performance ratings on the edge of the block.

Based on its evaluations of the J661a test procedures, the trucking industry concluded that the levels of repeatability and reproducibility of the SAE standards were unacceptably low. Additionally, the trucking industry determined that the test procedure was not realistic since it did not use a full-scale brake block or other full-scale heavy-duty vehicle brake hardware. The J866 specifications and ratings were also deemed unacceptable. According to ATA, a given SAE J866 rating covered such a wide range of brake block performance that vehicle brake balance problems were possible using blocks with the same rating. In addition, the J866 procedure for marking the blocks did not result in permanent markings. As a result, vehicle operators and maintenance personnel often could not identify the performance ratings on in-service blocks.

Since the SAE recommended practices for testing brake block effectiveness and the procedure for marking the blocks with an effectiveness value were unacceptable to the industry, the SAE initiated the development of new procedures in the mid-1980s. At that time, the SAE Brake Committee, Brake Effectiveness Task Force, initiated development of a new procedure for evaluation of the effectiveness of heavy vehicle brake blocks, SAE Recommended Practice J1802—*Brake Block Effectiveness Rating*. The SAE began development of a new specification for rating the effectiveness of brake blocks and permanently labeling the blocks with information concerning the effectiveness (torque output), SAE J1801, *Brake Effectiveness Marking for Brake Blocks*.

The SAE J1802 test procedure is a dynamometer test procedure to be used to compare frictional properties of brake blocks. The test conditions specify a reference full-scale air brake assembly of 16.5 in. X 7.0 in. that utilizes S-cam actuation. The test is initiated with a burnish procedure requiring 200 stops with a 9.8 ft/sec^2 deceleration and with an initial brake temperature of 392° F for each stop. The burnish procedure is followed by the normal temperature test for brake effectiveness, which specifies stops at brake chamber pressures of 10, 15, 20, 25, 30, 35, 40, 45, and 50 psi, with an initial brake temperature for each stop of 212° F. A high temperature test for brake effectiveness is conducted after the normal temperature test, using the same procedure as the normal temperature test with the exception of initial brake temperature, which is 572° F. for each stop. The brake output torque and brake input torque are recorded for each stop from the time the specified air pressure is reached until the brake stops. The SAE J1802 brake effectiveness rating is a calculated, non-dimensional quantity that relates the average output torque determined in the procedure, to the average input torque. In order to make the friction ratings available to end users, SAE J1801 specifies that the actual normal temperature and high temperature brake effectiveness values obtained from J1802 testing be engraved to a depth of 0.2 mm on one side or edge of the brake block (block).

3. Agency Efforts To Develop A Rating

In 1990, NHTSA began working with SAE and the Heavy-duty Brake Manufacturers Council (HDBMC) in the development and evaluation of SAE J1801 and J1802 and the development of possible improvements to them. In that year, dynamometer testing to an early version of J1802, was conducted by three different test facilities using their own funds (Greening Labs, Link Engineering, and Vehicle Research and Test Center). The testing produced significantly different effectiveness ratings for brake blocks that were manufactured to have essentially the same performance characteristics. It could not be determined from this testing whether the differences in effectiveness ratings were due to the variations in actual block performance, differences in test fixtures, or differences in the dynamometers at each facility.

In order to determine the cause of the significant differences in the ratings of brake block effectiveness produced by the three facilities, a round-robin series of brake block testing was conducted. Nine organizations with brake dynamometer testing facilities, including the agency's Vehicle Research and Test Center (VRTC), volunteered to participate in the project using their own funds. For this testing, which was conducted in 1991–1992, a single test fixture that included a brake drum and brake blocks was tested at each facility. After completion of testing at one facility, the brake assembly and brake blocks were forwarded to another of the participating facilities. The primary purpose of this series of tests was to determine the variability of the test results due to differences in the dynamometers at each facility. The test results revealed a small (10–15%) variation in test results that could be attributed to the differences in the dynamometers at each facility.

Based on the results of the single fixture testing results, VRTC conducted

a second series of voluntary round-robin testing in 1992 and 1993 to evaluate the repeatability and reproducibility of the J1802 test procedure. Six brake testing facilities participated in this test series, which involved determining the normal and high temperature brake effectiveness ratings for three brake block materials using the J1802 test procedure. Each facility was supplied

In 1996, NHTSA initiated a project aimed at developing a brake block rating scheme that could be used to provide information to consumers about the effectiveness of heavy truck brake blocks. A one-year feasibility project was conducted at VRTC, which developed several effectiveness test components and test procedures that were different from those in SAE J1802.

characteristics were minimal. The two fixtures were then used to test two different sets of brake blocks from two different manufacturers. To eliminate potential sources of variation in the test results, the testing was conducted with the same operator and dynamometer. A limited number of tests indicated that the test fixtures, which were used in previous SAE J1802 testing, did not contribute significantly to the 10.2%

high for a federal brake block effectiveness rating. Agency efforts made in 1994 and 1995 to reduce this variability were unsuccessful. Further efforts to develop a reliable test procedure, including the 1996 VRTC alternative test scheme study, the VRTC "S-cam brake comparison study" and the UMTRI "S-cam brake computer sensitivity study" have not reduced this unacceptably high level of variability.

and Drum Brake Blocks for Power-Driven Vehicles and Their Trailers." In general, replacement blocks for heavy trucks, buses, and trailers may be evaluated by installing the blocks on a vehicle for which they are designed and conducting portions of the brake testing specified in ECE Regulation 13, "Uniform Provisions Concerning the Approval of Vehicle Categories M, N, and O With Regard to Braking."

(ECE R90) test procedures and performance requirements as suitable for application in the U.S. The full-scale vehicle test using older model vehicles equipped with new replacement parts is costly and time-consuming. In addition, this testing only assesses brake block performance in a specific vehicle. To date, test procedures and compliance requirements for the dynamometer test and the rolling bench test in Europe

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a second series of voluntary round-robin testing in 1992 and 1993 to evaluate the repeatability and reproducibility of the J1802 test procedure. Six brake testing facilities participated in this test series, which involved determining the normal and high temperature brake effectiveness ratings for three brake block materials using the J1802 test procedure. Each facility was supplied with a brake drum and several sets of blocks. The blocks supplied to each facility by a given manufacturer were from the same batch or block manufacturing cycle. Although the entire test series was not completed by all participants, sufficient data were produced for the agency to determine that there was as much as a 50% variation of the effectiveness ratings for the same brake block material when tested at different facilities, and a 20% variation in the effectiveness ratings for the same block material during different tests at the same facility.

The first round-robin test series indicated that the differences in the test facility dynamometers resulted in as much a 10–15% difference in brake block effectiveness values. The increased variation in effectiveness ratings experienced in the second round-robin was attributed to other test parameters such as test fixture, the method of brake assembly installation on the test fixture, and the brake preparation (brake burnishing and brake block grinding).

Additional SAE J1802 research was conducted in 1993–1994 by VRTC with the coordination from HDBMC. These tests were conducted to study the effects of block burnishing and pre-test grinding procedures on the variability in effectiveness demonstrated in the second round-robin test series. The results indicated that neither the burnishing nor grinding of the blocks eliminated variability in brake effectiveness ratings. The pattern of large variations in the SAE J1802 effectiveness ratings from one test facility to the other was unaffected when different burnishing and grinding techniques were used to prepare the blocks for testing.

The 1990–1994 testing by VRTC and other brake test facilities led NHTSA to believe that the SAE J1802 test procedure lacked the repeatability and reproducibility that is needed for federal safety standards. The agency further concluded that the problems were not minor, and considerable time and resources would likely be necessary to solve them. For these reasons, NHTSA decided in 1994 against incorporating the SAE J1802 test procedures into the federal brake performance requirements.

In 1996, NHTSA initiated a project aimed at developing a brake block rating scheme that could be used to provide information to consumers about the effectiveness of heavy truck brake blocks. A one-year feasibility project was conducted at VRTC, which developed several effectiveness test components and test procedures that were different from those in SAE J1802. These differences included variations in burnish cycles, the number of effectiveness stops, and block pre-cutting profiles. New test fixture components and effectiveness test procedures were used to test one original equipment brake block and several aftermarket blocks. Although the VRTC-developed fixture and procedure were successful in eliminating some of the effectiveness variability experienced with SAE J1802, the modified procedure still resulted in considerable variation in block effectiveness. There was a 20–30% variation in effectiveness rating results when a single brake block was tested 10 consecutive times with the new brake components and modified procedures. VRTC then evaluated the variability that might result from using different brake blocks. An original equipment block and two aftermarket brake blocks recommended as replacement blocks were tested. The variability of the effectiveness rating for the original equipment block was about 10%. The variability of the test results for the two aftermarket replacement blocks was 18–25% for one block and 8–25% for the other.

In 1997, NHTSA reviewed the previous J1802 evaluation projects and the NHTSA 1996 research project designed to develop an improved rating procedure for heavy-duty brake block torque effectiveness. The agency decided to examine the SAE J1802 procedure further and determine what, if any modifications would be required to improve the consistency of the test results. A VRTC project, entitled "S-Cam Brake Effectiveness Comparison Using Two Fixtures and Two Block Types on a Single Inertia Dynamometer," examined the effect of using two different test fixtures on the SAE J1802 brake effectiveness ratings. The project was initiated in 1998 and the draft final report was circulated for comment within the agency in January 2000. Measurements were taken on several components of the two SAE J1802 test fixtures including the S-cam profile, the chamber force-displacement calibrations, and brake spider position. VRTC determined that the measured differences in these brake fixture dimensions and performance characteristics were minimal. The two fixtures were then used to test two different sets of brake blocks from two different manufacturers. To eliminate potential sources of variation in the test results, the testing was conducted with the same operator and dynamometer. A limited number of tests indicated that the test fixtures, which were used in previous SAE J1802 testing, did not contribute significantly to the 10.2% variation in effectiveness ratings. Results from previous SAE J1802 testing indicated the existence of several potential causes for variation in block effectiveness ratings including the dynamometer, operator, test set-up procedures, and brake block and/or brake drum material differences.

A computer study funded by the Federal Highway Administration (FHWA) examined the effect of several S-cam type brake parameters on the brake output torque (effectiveness). This computer simulation study, conducted by the University of Michigan Transportation Research Institute (UMTRI), and completed in 1999, found that small variations in the test fixtures could cause significant changes in brake output torque. The study further stated that the brake equilibrium reached during burnish could be disturbed when brake actuation pressure is above or below the burnish pressure. This non-equilibrium condition, caused by differential block wear between the leading and trailing block at equilibrium, may result in the instability of the brake effectiveness ratings experienced in the SAE J1802 testing. The study concluded by recommending that the computer model be extended to include block wear properties to further examine the SAE J1802 brake effectiveness variations.

B. Discussion

As discussed above, NHTSA, FHWA, SAE, and ATA have conducted research over the past 10 years to develop test devices and repeatable, reliable, and reproducible test procedures suitable for the development of heavy vehicle brake block performance ratings. Much of the research activity has focused on the SAE J1802 procedure, which was originally developed in the mid-1980s. Testing conducted in accordance with the SAE J1802 procedures from 1990 through 1994 resulted in brake block effectiveness ratings that vary by up to 50% when a given block is tested at different facilities. Even when a given brake block was subjected to repeat testing at the same facility, test results varied by as much as 20 percent. This level of variability may be acceptable for some applications, but is unacceptably high for a federal brake block effectiveness rating. Agency efforts made in 1994 and 1995 to reduce this variability were unsuccessful. Further efforts to develop a reliable test procedure, including the 1996 VRTC alternative test scheme study, the VRTC "S-cam brake comparison study" and the UMTRI "S-cam brake computer sensitivity study" have not reduced this unacceptably high level of variability.

Although SAE J1802 was published in 1993, the research conducted by NHTSA and the other test facilities has consistently indicated that the procedure is not highly accurate at measuring brake block torque output. Consequently, very few brake blocks are marked according to the marking procedure specified in SAE J1801. Resistance to use of the J1802 rating and the J1801 markings is based on the belief that the J1802 ratings suffer from high variability in test results and are not a good predictor of brake block effectiveness.

As a result of the slow progress of SAE J1802 development, the ATA Maintenance Council developed a Recommended Practice (RP) for rating the torque capacity of replacement brake blocks and issued this practice, RP 628, in 1995. The RP 628 uses the dynamometer test procedure in Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems* to ensure that replacement brake blocks meet the same requirements as brake blocks for new vehicles. The Maintenance Council and the SAE periodically publish a list of blocks that meet all the FMVSS No. 121 dynamometer test performance requirements. The publications also include the brake output torque measured during a 40-psi constant-brake-chamber-pressure stop to allow comparison of the torque output capacity (effectiveness) of different brake blocks. It was recognized that this procedure had a number of shortcomings and was intended to be an interim procedure. However, RP628 is currently the procedure used most often by brake block manufacturers to evaluate the torque output performance of heavy vehicle, domestic blocks.

Although the Economic Commission for Europe (ECE) has developed a brake block standard, this standard does not provide much guidance for developing a standard suitable for conditions in the U.S. The ECE has procedures for evaluating the torque output performance of replacement brake blocks for powered vehicles and trailers, which are contained in ECE Regulation No. 90 (R90), "Uniform Provisions Concerning the Approval of Replacement Brake Block Assemblies and Drum Brake Blocks for Power-Driven Vehicles and Their Trailers." In general, replacement blocks for heavy trucks, buses, and trailers may be evaluated by installing the blocks on a vehicle for which they are designed and conducting portions of the brake testing specified in ECE Regulation 13, "Uniform Provisions Concerning the Approval of Vehicle Categories M, N, and O With Regard to Braking." Replacement blocks are approved for use only on the type of vehicle tested if the ECE R13 performance requirements are met. Replacement blocks may also be tested for approval either through an inertia dynamometer test procedure or a rolling bench test. If the dynamometer test or the rolling bench test is used to obtain approval for replacement blocks, original equipment blocks for the same type of vehicles must also be tested with the dynamometer or rolling bench procedure. Approval of the replacement blocks is based on a comparison between the test results of the replacement blocks and the original equipment blocks.

To date, none of the ECE member countries or Japan has voluntarily adopted the R90 procedures and requirements for heavy truck, bus, or trailer replacement brake blocks. The ECE R90 requirements were scheduled to become effective in all European Economic Commission (EEC) member countries, in the form of EEC Directive 98/12, in the mid-2000s. There are several issues surrounding the implementation of ECE Directive 98/12 for heavy trucks and trailers that are currently being addressed. According to EEC Directive 98/12 (ECE R90), brake blocks for heavy vehicles are to be packaged in full axle sets (brake blocks for left and right side wheels in the same package). These packages must be handled mechanically due to their weight and consequently, transportation and handling of these packages will be difficult unless there are some adjustments to the packaging requirements. Additionally, the European friction material manufacturers do not generally assemble the blocks to the brake shoes. As a result, mismatching of shoe-block attachment hardware (rivets and rivet bore sizing) is also an issue. As noted, the regulation requires that the performance of replacement blocks be compared to the performance of original equipment blocks if the dynamometer or rolling bench tests are used for approval. The specific tests and compliance requirements for these tests have not been finalized to date.

As previously stated, the agency does not consider the EEC Directive 98/12 (ECE R90) test procedures and performance requirements as suitable for application in the U.S. The full-scale vehicle test using older model vehicles equipped with new replacement parts is costly and time-consuming. In addition, this testing only assesses brake block performance in a specific vehicle. To date, test procedures and compliance requirements for the dynamometer test and the rolling bench test in Europe have not been finalized. We have asked the European governments and industry, at the ECE meetings of the Working Party on Brakes and Running Gear (GRRF), for any research data, tests, or other findings that they may have, which could assist NHTSA in developing an acceptable test for brake block effectiveness. They indicated that they did not have any such data.

In considering whether to commence a rulemaking action in this case, NHTSA notes that the continuing difficulties encountered in developing an acceptable brake block effectiveness test indicate that an acceptable test is elusive. Further, in deciding whether to continue this effort, and to expend agency resources in furtherance of this effort, the agency must also consider the safety problem to be addressed by a brake block effectiveness standard and whether other means are available to address that problem. ATA's petition for rulemaking indicated that heavy vehicle wheel lockup and the resultant potential for instability was one of the primary concerns it sought to have the agency address through a brake block effectiveness rule. In theory, using brake blocks with a similar effectiveness on each axle can reduce the risk of instability in situations where brake blocks with different friction characteristics would cause braked wheels to decelerate at different rates. Wheel lockup can have a severe impact on vehicle control and stability, particularly in heavy trucks and truck-trailer combinations under slippery roadway conditions.

NHTSA believes that there are safety benefits that would be associated with the issuance of a heavy vehicle brake block performance rating standard, although we are not aware of any study that has quantified these benefits. As a result, the agency does not believe the research in this area should be terminated, although the current problems will not be readily solved based on the experience of the past 10–12 years. The agency wants to be clear on the fact that only the rulemaking activities are being terminated, not the research. In fact, as proposed by the Senate, the agency's fiscal year 2002 budget includes $300,000.00 for

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research into brake lining friction. A reliable rating system would allow vehicle users to select brake blocks with similar wear and performance characteristics. A reliable rating system would also allow users to select a block appropriate for the expected use of the vehicle. However, the most recently completed research projects indicate that considerably more research is required to improve the reliability of

Issued on: July 3, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17193 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before July 24, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on EFP Proposal." Comments may also be sent

and their habitat, specifically in Closed Area I. Data from the five observed trips in Closed Area I from the 2000 tuna purse seine experimental fishery did not show any bycatch of demersal species. These sets occurred in depths ranging from 55 to 86 fm. In 2001, EFPs were issued to all five vessels authorized to fish for bluefin tuna with purse seine gear. During this experiment, four trips were made into Closed Area I. On a

Proposed EFP

The proposed EFP would exempt five purse seine vessels fishing for giant Atlantic bluefin tuna under 50 CFR part 635 from the gear restrictions of Closed Area I, as described at 50 CFR 648.81(a). Similar to the 2000 and 2001 purse seine experimental fisheries in Closed Area I, no more than five vessels would be authorized to participate. The experimental fishery would begin on

a revised Finding of No Significant Impact Statement.

EFPs would be issued to the five participating vessels to exempt them from the restrictions of Closed Area I of the Multispecies FMP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on

research into brake lining friction. A reliable rating system would allow vehicle users to select brake blocks with similar wear and performance characteristics. A reliable rating system would also allow users to select a block appropriate for the expected use of the vehicle. However, the most recently completed research projects indicate that considerably more research is required to improve the reliability of existing test procedures or to develop another acceptable procedure.

Further, the agency notes that heavy truck stability under braking has been addressed by a means other than a brake block effectiveness rating standard. In March 1995, the agency issued final rules requiring antilock brake systems (ABS) on heavy-duty vehicles including air braked truck tractors, trucks and buses, and hydraulically braked trucks and buses (60 FR 13216, March 10, 1995). The rule became effective for air-braked truck tractors in March 1997. For air-braked trailers, single unit trucks and buses, the requirements for ABS became effective in March 1998. The ABS requirements for hydraulically-braked trucks and buses became effective in March 1999. NHTSA believes that the ABS requirements will significantly reduce wheel lockup and the resultant potential for vehicle instability. ABS reduces the vehicle instability that results from brake imbalance because it modulates the brake torque to prevent lockup at each wheel or axle where it is installed. ABS does not address or alleviate all safety concerns related to differential brake block performance such as stopping distance performance. However, the ABS requirement improves vehicle stability during braking, which is the primary concern expressed by ATA in the original petition.

Due to the substantial technical obstacles that still remain in regard to development of a test procedure and the advent of ABS requirements that, in part, address the safety need that would be met by a brake block effectiveness rating, NHTSA has determined that further rulemaking action on the Grabowsky and ATA petitions is unwarranted. However the agency does not believe that research and evaluation of a dynamometer-based procedure for evaluating the torque output of heavy vehicle brake blocks should be terminated.

C. Agency Determination

For the reasons stated above, NHTSA is terminating this rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: July 3, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17193 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 062102B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast Multispecies Fishery Management Plan (Multispecies FMP) and the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (Highly Migratory Species (HMS) FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the East Coast Tuna Association that would allow five purse seine vessels to fish for giant Atlantic bluefin tuna (*Thunnus thynnus*) in Northeast multispecies year-round Closed Area I, where use of purse seine gear is currently prohibited. The purpose of the study is to collect information regarding bycatch of—and interactions of purse seine gear with—groundfish species, other species, and marine mammals, and to record contact with the ocean bottom or with any Essential Fish Habitat (EFH). The results of this EFP would allow NMFS and the New England Fishery Management Council (Council) to evaluate the feasibility of allowing purse seine gear in Closed Area I as an exempted gear on a permanent basis.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before July 24, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on EFP Proposal." Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment and the Regulatory Impact Review (EA/RIR) are available from the Northeast Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, phone: 978–281–9103, fax: 978–281–9135, email: allison.ferreira@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

The Georges Bank and Southern New England (GB/SNE) multispecies year-round closed areas were established under the Multispecies FMP to provide protection to concentrations of regulated multispecies, particularly cod, haddock, and yellowtail flounder. Consequently, all fishing in these year-round closed areas was prohibited, with a few exceptions. The only exceptions allowing access to the closed areas were fishing activities known to have a very low incidence of multispecies bycatch. For example, pelagic midwater trawl gear was determined to have a negligible catch of regulated multispecies because the gear fishes well off the ocean floor. As a result, it is an allowed gear in the GB/SNE multispecies closed areas.

Purse seine gear is typically used to target pelagic species such as herring, mackerel, and tuna that are concentrated at or near the surface of the ocean. This type of gear is not designed or intended to fish for species at or near the ocean floor, and is typically considered to have very little interaction with bottom-dwelling species such as groundfish. Observer data from the 1996 tuna purse seine fishery, the last year the fishery carried full-time observers, documented a small catch of regulated groundfish, other demersal species, and bottom debris (i.e., sponges and empty shells) in 20 out of 39 observed sets. Out of these 20 sets, only 4 occurred inside Closed Area I, in depths ranging from 28 to 35 fathoms (fm). In 2000, EFPs were issued to four purse seine vessels to collect information on the interaction between purse seine gear and demersal species and their habitat, specifically in Closed Area I. Data from the five observed trips in Closed Area I from the 2000 tuna purse seine experimental fishery did not show any bycatch of demersal species. These sets occurred in depths ranging from 55 to 86 fm. In 2001, EFPs were issued to all five vessels authorized to fish for bluefin tuna with purse seine gear. During this experiment, four trips were made into Closed Area I. On a single trip, one of the participating vessels made three sets inside Closed Area I in depths ranging from 40 to 60 fm. Bluefin tuna were caught on only one of these three sets, totaling 82 bluefin tuna for the trip and for the 2001 experimental fishery as a whole.

During the 2000 experimental fishery, participating vessels were required to fish in locations where the water depth was greater than 30 fathoms, or where the depth of the water was greater than the depth of the net at its deepest point, or modify the net in use by this vessel so that its depth was less than the depth of the water in order to avoid adverse impacts to EFH. For the 2001 experimental fishery, the applicant indicated that the gear could be fished in such a way that it would not come in contact with the bottom, regardless of the depth of the net or water. The applicant also stated that due to the currents and tides in Closed Area I, the net would never extend below the sea surface to the full extent of its height. Therefore, the applicant requested that the depth restrictions implemented for the 2000 experimental fishery be removed, stating that the incentive to protect the purse seine gear from interactions with the ocean floor would result in careful attention to keep the gear off the bottom. In light of the information provided by the applicant, the depth restrictions of the 2000 experimental fishery were waived for the 2001 fishery. Because the results of the 2001 fishery indicate that there were no interactions between the gear and bottom habitat, NMFS does not intend to implement depth requirements for the 2002 experimental fishery.

Due to lingering questions concerning the degree of interactions between purse seine gear used in this fishery and its interactions with regulated groundfish species, a third experimental fishery has been requested. The Council is considering an exemption for tuna purse seine gear within all groundfish closed areas as part of Amendment 13 to the Multispecies FMP. Information collected through this experimental fishery would be used in development of Amendment 13.

Proposed EFP

The proposed EFP would exempt five purse seine vessels fishing for giant Atlantic bluefin tuna under 50 CFR part 635 from the gear restrictions of Closed Area I, as described at 50 CFR 648.81(a). Similar to the 2000 and 2001 purse seine experimental fisheries in Closed Area I, no more than five vessels would be authorized to participate. The experimental fishery would begin on August 15, 2002, and continue until the five vessels have achieved their individual fishing quotas, or the end of the 2002 calendar year, whichever occurs first. Although these individual quotas may be taken through the end of the 2002 fishing year (December 31, 2002), they are typically taken by the middle of October. Because the bluefin tuna fishery takes place throughout the waters off New England, and the concentrations of fish often move between areas, it is likely that the fishery would take place within Closed Area I for only a few weeks.

Unlike the 2000 and 2001 experimental fisheries, observers will not be required for the proposed 2002 experimental fishery. As a result, the vessel captains will be required to collect information on bottom depth, depth of net, mesh size used, location of set, information on any bycatch species, any interactions between the net and the bottom, and any incidental take of marine mammals or protected species. Any multispecies that are captured during fishing activities will be required to be discarded.

Environmental Assessments (EAs) that analyzed the impacts of the experimental tuna purse seine fishery on the human environment were prepared for the 2000 and 2001 experimental fisheries. These EAs concluded that the activities that were conducted under the EFP are consistent with the goals and objectives of the Multispecies FMP, are consistent with the HMS FMP, and will have no significant environmental impacts. The EAs also considered the impacts of the EFP activities on EFH, marine mammals, and protected species and found that the experimental tuna purse seine fishery will have no significant impact to EFH, marine mammals, or protected species. A EA was prepared for the 2001 experimental fishery and a Supplement to the EA has been prepared for the 2002 experimental fishery. This supplement incorporates the results of the 2001 experimental fishery, discusses minor changes to the experimental fishery for 2002, addresses the cumulative impacts of the proposed 2002 experimental fishery, and provides a revised Finding of No Significant Impact Statement.

EFPs would be issued to the five participating vessels to exempt them from the restrictions of Closed Area I of the Multispecies FMP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17155 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 060502A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit (EFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a request for an EFP to harvest horseshoe crabs; request for comments..

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, is considering issuing an EFP to Limuli Laboratories to conduct a second year of an experimental fishing operation otherwise restricted by regulations prohibiting the harvest of horseshoe crabs in the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve) located 3 nautical miles (nm) seaward of the mouth of Delaware Bay. NMFS is considering issuing an EFP for the harvest of 10,000 horseshoe crabs for biomedical purposes and requiring as a condition of the EFP the collection of data related to the status of Delaware Bay horseshoe crabs within the Reserve. Therefore, this document invites comments on the issuance of an EFP to Limuli Laboratories.

DATES: Comments on this action must be received on or before July 24, 2002.

ADDRESSES: Written comments should be sent to John H. Dunnigan, Director, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal." Comments may also be sent via facsimile (fax) to (301) 713-0596. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Tom

NMFS manages horseshoe crabs in the exclusive economic zone in close cooperation with the Commission. The Commission's Horseshoe Crab Management Board met on April 21, 2000, and recommended that biomedical companies with a history of collecting horseshoe crabs in the Reserve be given an exemption to continue their historic levels of

NMFS, the Commission and to the State of New Jersey.

Results of Previous Year's EFP

On April 11, 2001, Limuli Laboratories (Limuli) submitted an EFP application to collect horseshoe crabs for biomedical and data collection purposes from the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve), and subsequently submitted a supplement

possession of horseshoe crabs on a vessel with a trawl or dredge aboard in the same Reserve.

Limuli Laboratories of Cape May Court House, in cooperation with the State of New Jersey's Division of Fish and Wildlife, submitted an application for an EFP on May 31, 2002, and a supplement on June 6, 2002. NMFS has made a preliminary determination that the subject EFP contains all the required

Also as part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS is considering a requirement that the EFP holder provide information on sex ratio and daily numbers, and tag 10 percent of the horseshoe crabs harvested. Also, the EFP holder may be required to examine at least 200 horseshoe crabs for:

a. Morphometric data, by sex–e.g.

Tuesday, July 23, 2002

Following introductions, the Council will consider approval of initial action on Framework Adjustment 2 to the Monkfish Fishery Management Plan (FMP). The action would implement the measures contained in NMFS's spring 2002 monkfish emergency rule, including a revision to the overfishing reference point that defines the maximum fishing mortality rate

Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal." Comments may also be sent via facsimile (fax) to (301) 713-0596. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Fishery Biologist, (301) 713–2334.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow a Regional Administrator or the Director of the Office of Sustainable Fisheries to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up and/or hazardous removal purposes, the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of the fishery management plan are not compromised, and issuance of the EFP is beneficial to the management of the species.

The Reserve was established on February 5, 2001 (66 FR 8906), to provide protection for the Atlantic coast stock of horseshoe crabs, and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab. The final rule prohibited fishing for horseshoe crabs in the Reserve and the possession of horseshoe crabs on a vessel with a trawl or dredge aboard while in the Reserve. The rule did not allow for any biomedical harvest or the collection of fishery dependent data. However, in the comments and responses section, NMFS stated that it would consider issuing EFPs for the biomedical harvest of horseshoe crabs from the Reserve.

The biomedical industry collects horseshoe crabs, removes approximately 30 percent of their blood, and returns them alive to the water. Approximately 10 percent do not survive the bleeding process. The blood contains a reagent called Limulus Amebocyte Lysate (LAL) that is used to test injectable drugs and medical devices for bacteria and bacterial by-products. Presently, there is no alternative to LAL derived from the horseshoe crab.

NMFS manages horseshoe crabs in the exclusive economic zone in close cooperation with the Commission. The Commission's Horseshoe Crab Management Board met on April 21, 2000, and recommended that biomedical companies with a history of collecting horseshoe crabs in the Reserve be given an exemption to continue their historic levels of collection not to exceed a combined harvest total of 10,000 crabs annually. The Commission's Horseshoe Crab Plan Review Team has reported that biomedical harvest of up to 10,000 horseshoe crabs should be allowed to continue in the Reserve given that the resulting mortality should be only about 1,000 horseshoe crabs (10 percent mortality during bleeding process). Also, the Commission's Horseshoe Crab Stock Assessment Committee Chairman recommended that, in order to protect the Delaware Bay horseshoe crab population from over-harvest or excessive collection mortality, no more than a maximum of 20,000 horseshoe crabs should be collected for biomedical purposes from the Reserve. In addition to the direct mortality of horseshoe crabs that are bled, it can be expected that more than 20,000 horseshoe crabs will be trawled up and examined for LAL processing. This is because horseshoe crab trawl catches usually include varied sizes of horseshoe crabs and large female horseshoe crabs are the ones selected for LAL processing. The unharvested horseshoe crabs are released at sea with some unknown amount of mortality, but this mortality is expected to be negligible.

Collection of horseshoe crabs for biomedical purposes from the Reserve is necessary because of the low numbers of horseshoe crabs found in other areas along the New Jersey Coast from July through October and in light of the critical role horseshoe crab blood plays in proper health care. In conjunction with the biomedical harvest, NMFS is considering requiring that scientific data be collected from the horseshoe crabs taken in the Reserve as a condition of receiving an EFP. Since the Reserve was established on February 5, 2001, the only fishery data from this area were collected under an EFP issued to Limuli Laboratories on September 28, 2001, which allowed collections until October 31, 2001. Further data are needed to improve the understanding of the horseshoe crab population in the Delaware Bay area and to better manage the horseshoe crab resource under the cooperative state/Federal management program. The information collected through the EFP will be provided to NMFS, the Commission and to the State of New Jersey.

Results of Previous Year's EFP

On April 11, 2001, Limuli Laboratories (Limuli) submitted an EFP application to collect horseshoe crabs for biomedical and data collection purposes from the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve), and subsequently submitted a supplement on July 9, 2001. An EFP was issued to Limuli on September 28, 2001, which allowed them to collect horseshoe crabs until October 31, 2001, in the Reserve. To complete the study proposed in the EFP application, Limuli needed to collect from August through October. The study was modified and conducted with some limitations because of the late start. Limuli Laboratory is operated seasonally and was closed down in mid-September; therefore, the horseshoe crabs collected during the EFP study were not bled for manufacture of LAL, but were used for data collection purposes. A total of 250 horseshoe crabs were collected and examined (133 females and 117 males) from the Reserve on three dates, October 12th, 24th, and 29th, 2001. The specimens were sexed, measured, aged, tagged and released. The horseshoe crabs were aged in 4 categories using Dr. Schuster's criteria of aging by appearance: first year or virgin, young, medium and old age. When separated into age categories, 62 percent were classified as young animals. The majority of the horseshoe crabs had encrusting slipper shells on their shells. The collected crabs were active with only one crab dying during the trawling process. Thirty percent of the horseshoe crabs showed sign of healed injuries/deformities and 3 percent had new injuries. Only one of the new injuries appeared life threatening. More females had injuries than males; 40 versus 25 percent. After tagging was performed, horseshoe crabs were released at the water's edge at Highs Beach, New Jersey. One added benefit of the study was an opportunity to photographically document the condition of horseshoe crabs (15 females and 15 males) after collection by the trawl, which is the primary method used to capture horseshoe crabs for the manufacture of LAL.

Proposed EFP

Limuli proposes to conduct a second year of the study using the same means and methods used during year one.

The proposed EFP would exempt one commercial vessel from regulations at 50 CFR 697.7(e), which prohibit fishing for horseshoe crabs in the Reserve described in § 697.23(f)(1) and prohibit possession of horseshoe crabs on a vessel with a trawl or dredge aboard in the same Reserve.

Limuli Laboratories of Cape May Court House, in cooperation with the State of New Jersey's Division of Fish and Wildlife, submitted an application for an EFP on May 31, 2002, and a supplement on June 6, 2002. NMFS has made a preliminary determination that the subject EFP contains all the required information and warrants further consideration. NMFS has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Federal horseshoe crab regulations and the Commission's Horseshoe Crab ISFMP.

The regulations at 50 CFR 600.745(b)(3)(v) authorize NMFS to attach terms and conditions to the EFP consistent with the purpose of the exempted fishery, the objectives of the horseshoe crab regulations and fisheries management plan, and other applicable law. NMFS is considering terms and conditions such as:

(1) Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 per day and to a total of no more than 10,000 per year;

(2) Requiring collection under an EFP to take place over a total of approximately 20 days during the months of July, August, September, and October. Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve during July through October;

(3) Requiring a 5 and one-half inch flounder net to be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

(4) Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

(5) Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5 p.m. to aid law enforcement. NMFS also is considering a requirement that the State of New Jersey Law Enforcement be notified daily when and where the collection will take place; and

(6) Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into Lower Delaware Bay.

Also as part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS is considering a requirement that the EFP holder provide information on sex ratio and daily numbers, and tag 10 percent of the horseshoe crabs harvested. Also, the EFP holder may be required to examine at least 200 horseshoe crabs for:

a. Morphometric data, by sex–e.g. interocular (I/O) distance and weight, and

b. Level of activity, as measured by a response or by distance traveled after release on a beach.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17044 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 070102F]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting notification.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on July 23 through 25, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday July 23, 24, and 25, 2002. The meeting will begin at 8:30 a.m. on Tuesday and at 8 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 1230 Congress Street, Portland, ME 04102; telephone (207) 774–5611. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, July 23, 2002

Following introductions, the Council will consider approval of initial action on Framework Adjustment 2 to the Monkfish Fishery Management Plan (FMP). The action would implement the measures contained in NMFS's spring 2002 monkfish emergency rule, including a revision to the overfishing reference point that defines the maximum fishing mortality rate threshold, and allows for calculations that would adjust the days at sea (DAS) allocations and/or trip limits to achieve the monkfish catch targets in Fishing Year 2003. The Council also will consider and approve management alternatives for inclusion in Amendment 2 to the FMP, for purposes of analysis in the associated Draft Supplemental Environmental Impact Statement (DSEIS). Issues to be considered may include, but are not limited to: revisions to the overfishing definition reference points; adjustments to the DAS program; a management program for a deepwater directed monkfish fishery; individual vessel quotas or DAS allocations; permit qualification criteria; and management measures for vessels fishing for monkfish only south of 38 degrees N. Following a noontime break, the Scallop Committee will recommend approval of initial action on the annual framework adjustment to the Sea Scallop FMP (Framework Adjustment 15). The Council will identify management alternatives for inclusion in the framework. These may include, but are not limited to, an adjustment to the 2003 scallop vessel DAS allocations and continued controls on scallop harvests in the Virginia Beach and Hudson Canyon areas of the Mid-Atlantic. The Council also is scheduled to vote on final approval of the herring specifications to be recommended to NMFS for 2003. This will occur following a review of the 2001 Herring Stock Assessment and Fishery Evaluation (SAFE) Report and a presentation on the recommendations of the Herring Plan Development Team, and the Herring Oversight Committee and its Advisory Panel concerning the specification of optimum yield, levels of domestic annual harvest and processing, including at-sea processing, border transfer, and the amount of herring that may be made available in 2003 to foreign joint venture processing (JVP and IWP) and foreign directed fishing (TALFF), if any. In addition, NMFS will consult with the Council concerning industry requests for an inseason increase to the 2002 specifications for JVP and IWP. The Skate Committee will

review and seek Council approval of the revised sections of the Draft Skate FMP/Environmental Impacts Statement being prepared for resubmission to NMFS. Following this agenda item, the Council will provide a brief opportunity for comments from the public on issues that are not otherwise listed on the agenda, but relevant to Council business. The day will conclude with reports on recent activities from the Council

the Habitat Committee's recommendations on measures to minimize the impacts of groundfish fishing on Essential Fish Habitat. The remainder of the day and the entire next day will be devoted to consideration of issues associated with the development of Amendment 13 to the Northeast Multispecies FMP. The Council will select alternatives for inclusion in a

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on certain framework adjustments to a fishery management plan. Documents pertaining to framework adjustments are available for public review 7 days prior

Notices

Federal Register

Vol. 67, No. 131

Tuesday, July 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and

settlement policies and procedures and to the identification of and settlement of outstanding claims. Collection of outstanding debts owed to FSA or to CCC can be effected by installment

the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the

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review and seek Council approval of the revised sections of the Draft Skate FMP/Environmental Impacts Statement being prepared for resubmission to NMFS. Following this agenda item, the Council will provide a brief opportunity for comments from the public on issues that are not otherwise listed on the agenda, but relevant to Council business. The day will conclude with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission.

Wednesday, July 24 and Thursday, July 25 2002

The Council meeting will re-convene on Wednesday with a presentation from NMFS staff on the Gear Effects Workshop held in October, 2001 and continue with Council consideration of the Habitat Committee's recommendations on measures to minimize the impacts of groundfish fishing on Essential Fish Habitat. The remainder of the day and the entire next day will be devoted to consideration of issues associated with the development of Amendment 13 to the Northeast Multispecies FMP. The Council will select alternatives for inclusion in a Draft SEIS. The discussion will include incorporation of U.S./Canada Sharing Agreement into Amendment 13.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on certain framework adjustments to a fishery management plan. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 3, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17156 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 131
Tuesday, July 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation Request for Reinstatement of an Approval for an Information Collection

AGENCY: Farm Service Agency and the Commodity Credit Corporation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) to request a reinstatement for an information collection previously approved in support of the FSA and CCC Debt Settlement Policies and Procedures regulations. Provisions in the Federal Agriculture Improvement and Reform Act of 1996 and in the Debt Collection Improvement Act of 1996 have resulted in a decrease in burden hours for information collection under the FSA and CCC Debt Settlement Polices and Procedures program.

DATES: Comments on this notice must be received on or before September 9, 2002 to be assured consideration.

Additional Information: Thomas F. Harris II, Claims Specialist, Financial Management Division, Farm Service Agency, USDA, STOP 0581, P.O. Box 2415, Washington, DC 20013–2415; telephone (703) 305–1439.

SUPPLEMENTARY INFORMATION:

Title: Debt Settlement Policies and Procedures.

OMB Control Number: 0560–0146.

Type of Request: Reinstatement of Approval for an Information Collection.

Abstract: The information collected under the Office of Management and Budget (OMB) Number 0560–0146, as identified above, is needed to enable FSA and CCC to effectively administer the regulations at 7 CFR 792 (FSA) and 7 CFR 1403 (CCC) relating to debt settlement policies and procedures and to the identification of and settlement of outstanding claims. Collection of outstanding debts owed to FSA or to CCC can be effected by installment payments if a debtor furnishes satisfactory evidence of inability to pay a claim in full, and if the debtor specifically requests for an installment agreement. Part of the requirement is that the debtor furnish this request in writing and with a financial statement or other information that would disclose a debtor's assets and liabilities. This information is required in order to evaluate any proposed plan. Such documentation requests furnished by the debtor are also used in the other collection tools employed by both FSA and CCC in managing debt settlement policies and procedures. If an installment agreement is approved, then a Promissory Note (CCC–279), or an approved alternative promissory note format, must be executed between the debtor and the FSA/CCC representative(s). The Debt Collection Improvement Act of 1996 requires the head of an agency to take all appropriate steps to collect delinquent debts before discharging such debts. These steps require the employment of these information collection forms and formats which have been successfully used for the past several years and which have become familiar tools for both the agency employees and for the producer. Thus, forms and formats already exist and are in use. Having to develop and introduce new forms and formats into the market place would add additional burdens and costs to both the producer and to the agency in the handling of the claim settlement and collection processes and would create additional burdens not called for under the Debt Collection Improvement Act of 1996.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 30 minutes per response.

Respondents: Producers participating in FSA and CCC programs.

Estimated Number of Respondents: 250.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 125 hours.

Topics for comment include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Thomas F. Harris II, Claims Specialist, Financial Management Division, Farm Service Agency, USDA, STOP 0581, 1400 Independence Ave., SW., Washington, DC 20250–0581; telephone (703) 305–1439. Copies of the information collection may be obtained from Thomas F. Harris II at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on June 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–17123 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Tobacco Marketing Quota Referendum Ballot

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection associated with

Tobacco Marketing Quota Referendum Ballot. This information collection is necessary for tobacco farmers and other eligible persons to vote on favoring or opposing the marketing quotas for any kind of tobacco.

DATES: Comments about this notice must be received in writing on or before September 9, 2002 to be assured of consideration. Comments received after that date will be considered to the

a referendum is held. The FSA County Committee tabulates the votes and the final count is used to determine whether or not a national marketing quota will be established annually for the certain kinds of tobacco. If the information is not collected, the requirements of the 1938 Act will not be met and FSA would have no way to determine whether tobacco farmers want to continue the national marketing quotas

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet on Tuesday, July 30, 2002 at the Central Oregon Intergovernmental Council building, main conference room, 2363 SW. Glacier Place, Redmond, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Committee

speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st

If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the differences between the export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT:

review of the antidumping duty order on hundreds of PRC TRBs exporters. The petitioner revised its request on July 10, 2001. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 23, 2001 (66 FR 38252).

On August 6, 2001, Chin Jun Industrial Ltd. ("Chin Jun") reported that it had no shipments of subject merchandise to the United States during

Tobacco Marketing Quota Referendum Ballot. This information collection is necessary for tobacco farmers and other eligible persons to vote on favoring or opposing the marketing quotas for any kind of tobacco.

DATES: Comments about this notice must be received in writing on or before September 9, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750–S, STOP 0514, Washington, DC 20250–0514. Comments may be submitted via facsimile to (202) 720–0549 or by e-mail to: *tob_comments@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202) 720–2715 and *ann_wortham@wdc.usda.gov.* The public may inspect comments received and the copies of the forms at Tobacco and Peanuts Division, FSA, 1400 Independence Avenue, SW., Room 5750-S, during normal business hours. Visitors are encouraged to call ahead to (202) 720–7413 to facilitate entry to the building. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Tobacco Marketing Quota Referenda Ballot.

OMB Control Number: 0560–0182.

Form Number: MQ–5.

Type of Request: Extension with Revision of a Currently Approved Information Collection.

Abstract: This information collection is used by the Farm Service Agency (FSA) in administering the national tobacco marketing quota program; specifically, the Agricultural Adjustment Act of 1938 (the 1938 Act) requires that national tobacco marketing quotas be established each year only if tobacco producers favor it for the next three years. FSA County offices collect information from the voters by mailing them a Ballot Form or polling them at certain places. The Ballot Form (MQ5) contains a question of favoring the marketing quotas for a certain kind of tobacco with "YES" or "NO" answer to the question. Eligible to vote are tobacco allotment and quota owners and growers who share in the risk of producing the kind of tobacco for which a referendum is held. The FSA County Committee tabulates the votes and the final count is used to determine whether or not a national marketing quota will be established annually for the certain kinds of tobacco. If the information is not collected, the requirements of the 1938 Act will not be met and FSA would have no way to determine whether tobacco farmers want to continue the national marketing quotas and the price support program. FSA would lack the necessary information to administer the national tobacco marketing quotas.

Estimate of Annual Burden: 5 minutes.

Type of Respondents: Tobacco farmers who are eligible to vote in a referendum.

Estimated Annual Number of Respondents: 155,000.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 13,000 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on June 28, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–17122 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet on Tuesday, July 30, 2002 at the Central Oregon Intergovernmental Council building, main conference room, 2363 SW. Glacier Place, Redmond, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Committee members will review projects proposed and make recommendations under Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Deschutes and Ochoco National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Leslie Weldon, Designated Federal Official, USDA, Deschutes National Forest, 1645 Highway 20 East, Bend, Oregon 97701, 541–383–5512.

Dated: June 24, 2002.

Leslie A.C. Weldon,

Forest Supervisor, Deschutes National Forest.

[FR Doc. 02–17157 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Thursday, July 18, 2002 at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 NW. Vancouver Avenue, Stevenson, Washington. The meeting will begin at 9 a.m. and continue until 5 p.m. The purpose of the meeting is to:

(1) Review and recommend for funding Title II projects for fiscal year 2003.

(2) Provide for a Public Open Forum.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides an opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (2) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: July 1, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–17158 Filed 7–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2000–2001 administrative review, partial rescission of the review, and notice of intent to revoke order in part.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 2000, through May 31, 2001. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we preliminarily find that only Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory qualifies for revocation. Accordingly, we preliminarily determine to revoke the order with respect to the subject merchandise produced and exported by Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory, but not with respect to the subject merchandise produced and exported by the other two companies.

If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the differences between the export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, S. Anthony Grasso, or Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0116, (202) 482–3853, or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April 2001).

Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). The Department notified interested parties of the opportunity to request an administrative review of this order on June 11, 2001 (66 FR 31203). On June 28, 2001, Zhejiang Machinery Import & Export Corp. ("ZMC") requested an administrative review, and also requested that the Department revoke the antidumping duty order as it pertains to that company. On June 29, 2001, Wanxiang Group Corporation ("Wanxiang"), China National Machinery Import & Export Corporation ("CMC"), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory ("Hailin"), Luoyang Bearing Corporation (Group) ("Luoyang"), and Weihai Machinery Holding (Group) Co., Ltd. ("Weihai") also requested administrative reviews. Hailin, Weihai, and Wanxiang also requested that the Department revoke the antidumping duty order as it pertains to them. Also on June 29, 2001, the petitioner, The Timken Company, requested that the Department conduct an administrative review of the antidumping duty order on hundreds of PRC TRBs exporters. The petitioner revised its request on July 10, 2001. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 23, 2001 (66 FR 38252).

On August 6, 2001, Chin Jun Industrial Ltd. ("Chin Jun") reported that it had no shipments of subject merchandise to the United States during the period of review ("POR"), June 1, 2000, through May 31, 2001. In accordance with 19 CFR 351.213(d)(3), we preliminarily conclude that there were no shipments from Chin Jun to the United States during the POR and are preliminarily rescinding the review with respect to this company. However, prior to issuing the final results, we will confirm with the Customs Service that Chin Jun had no shipments during the POR.

On August 14, 2001, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the "Separate Rates Determination" section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation.

We received responses to the questionnaire in September and October 2001 from the following seven companies: Liaoning MEC Group Co. Ltd. ("Liaoning"), CMC, ZMC, Wanxiang, Hailin, Weihai, and Luoyang. With respect to Liaoning, on September 21, 2001, we rejected Liaoning's Section A questionnaire response because neither the petitioner nor Liaoning had requested an administrative review and we did not consider Liaoning to be a respondent in the instant proceeding. The petitioner submitted comments on the remaining questionnaire responses in November 2001. We sent out supplemental questionnaires to CMC, ZMC, Wanxiang, Hailin, Weihai, and Luoyang in November and December 2001, and January, March, and April 2002, and received responses to these supplemental questionnaires in December 2001 and January, March, April, and May 2002.

On April 4, 2002, Weihai withdrew its request for a review. The petitioner did not request a review for Weihai. While Weihai's rescission request was made more than 90 days after initiation, 19 CFR 351.213(d)(1) provides that the Department may extend this deadline, and it is the Department's practice to do so where it poses no undue burden on the parties or on the Department. Therefore, in accordance with 19 CFR

section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled

companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. The evidence in question consists of, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Additionally, we have preliminarily determined that companies which did

necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will

well as the remaining sales made by CMC, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the FOB or CIF prices to unaffiliated purchasers,

Under the FOP methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). See the October 19, 2001, Memorandum to John Brinkmann from Jeff May

On April 4, 2002, Weihai withdrew its request for a review. The petitioner did not request a review for Weihai. While Weihai's rescission request was made more than 90 days after initiation, 19 CFR 351.213(d)(1) provides that the Department may extend this deadline, and it is the Department's practice to do so where it poses no undue burden on the parties or on the Department. Therefore, in accordance with 19 CFR 351.213(d)(1), we have rescinded the review with respect to Weihai. For a complete discussion of this decision *see* the Memorandum from Team to Susan Kuhbach, "Partial Rescission of Review," dated May 20, 2002.

Scope of the Order

Merchandise covered by this order includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, in May 2002, we verified information provided by Hailin using standard verification procedures, including onsite inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRBs industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes:

1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that CMC, Luoyang, Hailin, Wanxiang, and ZMC, should receive separate rates (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) ("*TRBs XIII*")). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. The evidence in question consists of, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Additionally, we have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. *See* the "Use of Facts Otherwise Available" section, below.

Use of Facts Otherwise Available

We preliminarily determine that companies that did not respond to our requests for information did not cooperate to the best of their abilities. Thus, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for such companies.

Companies that did not respond to the questionnaire: Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference that is adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the investigation, a previous administrative review, or any other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information with independent sources reasonably at its disposal. The Statement of Administrative Action provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expenses resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review that did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–1997 review (*Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998)), represents the highest overall margin for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances or documentation indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated.

As noted in the "Separate Rates Determination" section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Thus, they are viewed as part of the PRC-wide entity. Accordingly, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

Export Price and Constructed Export Price

For certain sales made by CMC to the United States, we used constructed export price ("CEP") in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by other respondents, as well as the remaining sales made by CMC, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the FOB or CIF prices to unaffiliated purchasers, as appropriate. From these prices we deducted amounts, where appropriate, for foreign inland freight, international freight, and marine insurance. We valued the deductions for foreign inland freight using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the "Normal Value" section of this notice, below.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight values for all U.S. sales made by that company.

We calculated CEP based on the delivered and duty paid prices from CMC's U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for foreign inland freight, international freight, marine insurance, U.S. inland freight, and customs duties. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses and indirect selling expenses, including inventory carrying costs. In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production ("FOP") methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). See the October 19, 2001, Memorandum to John Brinkmann from Jeff May "Tapered Roller Bearings from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection," and the July 1, 2002, Memorandum to Susan Kuhbach "Selection of a Surrogate Country and Steel Value Sources" ("*Steel Values Memorandum*") for a further discussion of our surrogate selection. (Both memoranda are on file in the Department's Central Records Unit, which is located in Room B–099 of the main Department building ("CRU").)

We used publicly available information on Indian imports and exports to India to value the various factors. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price index ("WPI") published by the International Monetary Fund.

Pursuant to the Department's FOP methodology, we valued each respondent's reported factors of production by multiplying them by the values described below. For a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results," dated July 1, 2002, which is on file in the Department's CRU.

1. **Steel Inputs**. For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs XIII* and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of New Shipper Reviews, 67 FR 10665 (March 8, 2002) ("*TRBs 2000 NSR*"), we used an adjusted weighted-average of Japanese export values to India from the Japanese Harmonized Schedule ("HS") category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. We used this same value for the hot-rolled steel bar used in the production of spacers. For cold-rolled steel rods used in the production of rollers and for cold-rolled steel sheet used in the production of cages, we used Indian import data under Indian tariff subheadings 7228.5009 and 7209.1600, respectively, obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II - Imports*. For

further discussion of selection of steel value sources, *see* the *Steel Values Memorandum*.

As in previous administrative reviews in this proceeding, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, spacers, and rollers, we also excluded as necessary from Indian HS category 7204.2909. Scrap recovered from the production of cages was valued using import data from Indian HS category 7204.4100.

2. **Labor**. 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet website at www.ia.ita.doc.gov/wages.

3. **Overhead, SG&A Expenses, and**

shipments within India which were also used in *Bulk Aspirin from the PRC*. For inland freight expenses incurred by boat, we used August 1993 shipping freight data used in *Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 31143 (May 16, 2000). We inflated these inland shipping rates to the POR using the Indian WPI.

Pursuant to 19 CFR 351.222(e)(1), Hailin, Wanxiang, and ZMC requested revocation of the antidumping duty order as it pertains to them. As noted above, Weihai also requested revocation of the antidumping duty order, in part, on this same basis. However, as we are rescinding this review with respect to Weihai, as discussed above, no further analysis is required with respect to partial revocation of the antidumping duty order as it pertains to Weihai.

reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that Hailin, subsequent to the revocation, sold the subject merchandise at less than NV. Finally, based on our examination of the sales data submitted by Hailin (see Hailin's July 1, 2002, preliminary results calculation memorandum, which is on file in the Department's CRU, for our commercial quantities analysis with

each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess,

further discussion of selection of steel value sources, *see* the *Steel Values Memorandum*.

As in previous administrative reviews in this proceeding, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, spacers, and rollers, we also excluded as necessary imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs XIII*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) and *Sigma Corporation v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

Certain producers in this review purchased steel used to make TRBs or TRB parts from market economy suppliers and paid for the steel with market economy currency. In accordance with 19 CFR 351.408(c)(1), we generally valued these steel inputs using the actual price reported for directly imported inputs from a market economy. However, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination to Revoke Order in Part*, 66 FR 11562 (February 26, 2001) (collectively, "*TRBs XII*") and *TRBs XIII*, we found a reasonable basis to believe or suspect that certain market economy steel inputs purchased by PRC TRBs manufacturers and used to manufacture TRBs were subsidized. Consistent with our treatment of subsidized inputs in *TRBs XII* and *TRBs XIII*, we have not used the actual prices paid by PRC producers of TRBs for steel which we have continuing reason to believe or suspect is subsidized. Instead, we relied on surrogate values. (*See* individual company calculation memoranda for a more detailed company-specific discussion of this issue.)

We valued scrap recovered from the production of cups, cones, rollers, and spacers using Indian import statistics from Indian HS category 7204.2909. Scrap recovered from the production of cages was valued using import data from Indian HS category 7204.4100.

2. **Labor**. 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet website at www.ia.ita.doc.gov/wages.

3. **Overhead, SG&A Expenses, and Profit**. For factory overhead, we used information obtained from the fiscal year 2000–2001 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general, and administrative expenses as percentages of direct inputs and applied these ratios to each producer's direct input costs. These expenses were calculated exclusive of labor and electricity, but included employer provident funds and welfare expenses not reflected in the Department's regressed wage rate. This is consistent with the methodology we utilized in *TRBs XIII* and *TRBs 2000 NSR*. For profit, we totaled the reported profit before taxes for the five Indian bearing producers and divided by the total calculated cost of production ("COP") of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. **Packing**. Consistent with our methodology in prior reviews (*see, e.g., TRBs XIII*), we calculated packing costs as a percentage of COP for each respondent based on company-specific information submitted in previous reviews. This ratio was applied to each respondent's COP for the current review.

5. **Electricity**. We calculated our surrogate value for electricity based on electricity rate data from the *Energy Data Directory and Yearbook (1999/2000)* published by Tata Energy Research Institute. We calculated a simple average of the rates for the "industrial" category listed for 19 Indian states or electricity boards. We adjusted the electricity value to the POR using the Reserve Bank of India electricity-specific price index.

6. **Foreign Inland Freight**. We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) ("*Bulk Aspirin from the PRC*") and in past TRBs reviews (*see, e.g., TRBs XIII* and *TRBs 2000 NSR*). We valued rail freight using two November 1999 rate quotes for domestic bearing quality steel shipments within India which were also used in *Bulk Aspirin from the PRC*. For inland freight expenses incurred by boat, we used August 1993 shipping freight data used in *Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 31143 (May 16, 2000). We inflated these inland shipping rates to the POR using the Indian WPI.

7. **Ocean Freight**. We calculated a value for ocean freight based on December 2000 rate quotes from Maersk Sealand, Inc. Because this information is contemporaneous with the POR, no adjustments were necessary.

8. **Marine Insurance**. Consistent with *TRBs XIII* and *TRBs 2000 NSR*, we calculated a value for marine insurance based on the CIF value of shipped TRBs based on a rate obtained by the Department through queries made directly to an international marine insurance provider. We adjusted this marine insurance rate to the POR using the U.S. purchase price index.

9. **Brokerage and Handling**. We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, inter alia, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

Pursuant to 19 CFR 351.222(e)(1), Hailin, Wanxiang, and ZMC requested revocation of the antidumping duty order as it pertains to them. As noted above, Weihai also requested revocation of the antidumping duty order, in part, on this same basis. However, as we are rescinding this review with respect to Weihai, as discussed above, no further analysis is required with respect to partial revocation of the antidumping duty order as it pertains to Weihai.

According to 19 CFR 351.222(b)(2), upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.

With respect to ZMC, as noted below, we preliminarily find that a dumping margin exists for ZMC in the instant review. Moreover, in *TRBs XII*, ZMC was found to have made sales below NV. Because ZMC does not have three consecutive years of sales at not less than NV, we preliminarily find that ZMC does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

As for Wanxiang, in *TRBs XII* and *TRBs XIII*, we determined that Wanxiang did not qualify for revocation because it did not sell the subject merchandise in the United States in commercial quantities in each of the three years underlying its request for revocation, specifically *TRBs XII*. In the instant review, based on our previous determination that Wanxiang did not make sales in commercial quantities during at least one of the three years forming the basis of the revocation request, *TRBs XII*, we do not need to examine whether Wanxiang made sales in commercial quantities in either of the other two years underlying Wanxiang's request for revocation. Thus, because Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request, we preliminarily find that Wanxiang does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

Finally, with respect to Hailin, Hailin sold the subject merchandise at not less than NV for a period of at least three consecutive years. Hailin has also agreed in writing to the immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that Hailin, subsequent to the revocation, sold the subject merchandise at less than NV. Finally, based on our examination of the sales data submitted by Hailin (see Hailin's July 1, 2002, preliminary results calculation memorandum, which is on file in the Department's CRU, for our commercial quantities analysis with respect to this data), we preliminarily determine that Hailin sold the subject merchandise in the United States in commercial quantities in each of the three years cited by Hailin to support its request for revocation. Therefore, based on the above facts, and absent evidence on the record that the continued application of the antidumping order is otherwise necessary to offset dumping from Hailin, we preliminarily determine that Hailin qualifies for revocation of the order on TRBs pursuant to 19 CFR 351.222(b)(2), and that the order with respect to merchandise produced and exported by Hailin should be revoked.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage
China National Machinery Import & Export Corporation	0.67
Wanxiang Group Corporation	0.00
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing Corporation (Group)	0.05 (*de minimis*)
Zhejiang Machinery Import & Export Corp.	0.55
PRC-wide rate	33.18

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. To calculate the amount of duties to be assessed with respect to EP sales, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's/customer's entries during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit

requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review

400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 27th day of June 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–17031 Filed 7–8–02; 8:45 am]

Now, therefore, the Board hereby grants authority for subzone status at the power generation turbine components repair/manufacturing plant of Mitsubishi Power Systems, Inc., located in Orlando, Florida (Subzone 42A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of June 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–17032 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1)

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330.

SUPPLEMENTARY INFORMATION:

Statute and Regulations:

requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration

[FR Doc. 02–17033 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1235]

Expansion of Foreign-Trade Zone 143, Sacramento, California Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, submitted an application to the Board for authority to expand FTZ 143 to include a new site (Site 4) at the McClellan Park (the former McClellan Air Force Base) in the San Francisco Customs port of entry area (FTZ Docket 2–2002; filed 1/7/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 1959, 1/15/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 143 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 27th day of June 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–17031 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No.1234]

Grant of Authority for Subzone Status, Mitsubishi Power Systems, Inc. (Power Generation Turbine Components), Orlando, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Orlando Aviation Authority, grantee of Foreign-Trade Zone 42, has made application for authority to establish special-purpose subzone status at the power generation turbine components repair/manufacturing plant of Mitsubishi Power Systems, Inc., located in Orlando, Florida (FTZ Docket 45–2001, filed 1–6–2001);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 57032, 11–14–2001); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the power generation turbine components repair/manufacturing plant of Mitsubishi Power Systems, Inc., located in Orlando, Florida (Subzone 42A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of July, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 02–17030 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1236]

Expansion of Foreign-Trade Zone 35, Philadelphia, Pennsylvania Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Philadelphia Regional Port Authority, grantee of Foreign-Trade Zone 35, submitted an application to the Board for authority to expand FTZ status to a site (66 acres) at the Fort Washington Exposition Center located in Fort Washington, Pennsylvania (Site 9), adjacent to the Philadelphia Customs port of entry (FTZ Docket 35–2001; filed 8/28/01);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 46599, 9/6/01) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 35 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of June 2002.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–17032 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems, Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 24 & 25, 2002, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Business and Security on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 24

Public Session

1. Comments or presentations by the public.
2. Presentation on encryption in network management software.
3. Presentation on changes to the mass-market encryption regulation.
4. Discussion of GAO report on advances in China's semiconductor industry.

July 24 & 25

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: July 3, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–17094 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Final Results of Expedited Sunset Review: Certain Concrete Reinforcing Bars from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Certain Concrete Reinforcing Bars from Turkey.

SUMMARY: On March 1, 2002, the Department of Commerce ("the Department") published the notice of initiation of a five-year sunset review of the antidumping duty order on reinforcing bars ("REBAR") from Turkey, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited sunset review of this antidumping duty order. As a result of this review, the Department finds that revocation of the antidumping order would be likely lead to continuation or recurrence of dumping at the levels indicated in the "*Final Results of Review*" section of this notice.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330.

SUPPLEMENTARY INFORMATION:

Statute and Regulations:

This review is conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 ("*Sunset Regulations*") and in 19 CFR Part 351 (2001) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope of Review:

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed REBAR rolled from billet steel, rail steel, axle steel, or low- alloy steel. It excludes: (i) plain round REBAR, (ii) REBAR that a processor has further worked or fabricated, and (iii) all coated REBAR. Deformed REBAR is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Background:

On March 1, 2002, the Department published the notice of initiation of the five-year sunset review of the antidumping duty order on REBAR from Turkey in accordance with section 751(c)(6)(A)(i) of the Tariff Act of 1930.[2] On March 18, 2002, the Department received a Notice of Intent to Participate on behalf of Ameristeel Corporation, Commercial Metals Company, Birmingham Steel Corporation, and Nucor Corporation (collectively, "the domestic interested parties") as

[1] *Notice of Initiation of Five Year "Sunset" Reviews*, 67 FR 9439 (March 1, 2002).

[2] *Notice of Initiation of Five Year "Sunset" Reviews*, 67 FR 9439 (March 1, 2002).

specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claim interested party status as a domestic producer of REBAR.[3]

On April 8, 2002, the Department received a complete substantive response from the domestic interested parties, as specified in the *Sunset Regulations* under section 351.218(d)(3)(i).[4]

Analysis of Comments Received:

All issues raised by the domestic interested parties to this sunset review are addressed in the *Issues and Decision Memorandum* ("*Decision Memorandum*") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 1, 2002, and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading "July 2002." The paper copy and electronic version of the Decision

sunset reviews is set forth in the Department's Policy Bulletin 98:3 *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope of Review

The product covered by this antidumping duty order are brake rotors order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.50.10 of the Harmonized Tariff Schedule of the

2002, the Department notified the International Trade Commission ("Commission") that we were conducting an expedited sunset review (120 - day) of the antidumping duty order.

Analysis of Comments Received

All issues raised by the domestic interested parties to this sunset review are addressed in the *Issues and Decision*

specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claim interested party status as a domestic producer of REBAR.[3]

On April 8, 2002, the Department received a complete substantive response from the domestic interested parties, as specified in the *Sunset Regulations* under section 351.218(d)(3)(i).[4]

The Department did not receive a substantive response from any respondent interested party in this proceeding. Consequently, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C), the Department conducted an expedited (120 - day) sunset review of this order.

Analysis of Comments Received:

All issues raised by the domestic interested parties to this sunset review are addressed in the *Issues and Decision Memorandum* (*"Decision Memorandum"*) from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 1, 2002, which is adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading "July 2002." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review:

We determine that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producers/exporter	Weighted-Average Margin (percent)
Colakoglu Metalurji A.S. or Colakoglu Dis Ticaret (Colakoglu)	9.84
Ekinciler Demir Celik or Ekinciler Dis Ticaret (Ekinciler)	18.68
Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)	18.54
Izmir Demir Celik Sanayi A.S. (IDC)	41.80
Izmir Metalurji Fabrikasi Turk A.S. (Metas)	30.16
All Others	16.06

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17194 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

[3] Ameristeel was one of the two petitioners in the original investigation. Ameristeel has participated in all administrative reviews conducted by the Department since the issuance of this antidumping duty order. The domestic interested parties note they are participants in the Department's third administrative review.

[4] On March 28, 2002, the Department received request from domestic interested parties for extension of time limits to file a substantive response in this proceeding. The Department granted the extension to the domestic interested parties and all participants eligible to file responses until April 8, 2002.

[1] *Notice of Initiation of Five Year "Sunset" Reviews*, 67 FR 9439 (March 1, 2002).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Final Results of Expedited Sunset Review: Brake Rotors from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Brake Rotors from the People's Republic of China.

SUMMARY: On March 1, 2002, the Department of Commerce ("the Department") published the notice of initiation of a five-year sunset review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review of this antidumping duty order. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the *"Final Results of Review"* section of this notice.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations:

This review is conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*), and in 19 CFR Part 351 (2001) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope of Review

The product covered by this antidumping duty order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in the order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.50.10 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Background

On March 1, 2002, the Department published the notice of initiation the five-year sunset review of the antidumping duty order on brake rotors from the PRC in accordance with section 751(c) of the Act.[2] On March 18, 2002 the Department received a Notice of Intent to Participate on behalf of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (collectively, "the domestic interested parties")[3] as specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.

On April 1, 2002, the Department received a complete substantive response from the domestic interested parties, as specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the proceeding. Consequently, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C), on April 10, 2002, the Department notified the International Trade Commission ("Commission") that we were conducting an expedited sunset review (120 - day) of the antidumping duty order.

Analysis of Comments Received

All issues raised by the domestic interested parties to this sunset review are addressed in the *Issues and Decision Memorandum* (*"Decision Memorandum"*) from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 1, 2002, which is adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading "July 2002." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on brake rotors from the PRC would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Exporter/Manufacturer/Producers	Weighted-Average Margin (percent)
China National Automotive Industry Import & Export Corporation ("CAIEC") and Shandong Laizhou CAPCO Industry ("Laizhou CAPCO") / CAIEC and Laizhou CAPCO	Excluded
Shenyang Honbase Machinery Co., Ltd. ("Shenyang Honbase") and Lai Zhou Luyuan Automobile Fittings Co., Ltd. ("Laizhou Luyuan")	Excluded
China National Machinery and Equipment Import & Export ("Xinjiang") Corporation, Ltd. ("Xinjiang")/ Zibo Botai Manufacturing Co., Ltd. ("Zibo")	Excluded
Yantai Import & Export Corporation ("Yantai")	3.56
Southwest Technical Import & Export Corporation ("Southwest"),Yangtze Machinery Corporation, and MMB International, Inc.	16.07
Hebei Metals and Minerals Import & Export Corporation ("Hebei")	8.51
Jilin Provincial Machinery & Equipment Import & Export Corporation ("Jilin")	8.51
Shandong Jiuyang Enterprise Corporation ("Jiuyang")	8.51
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation ("Longjing")	8.51
Qingdao Metals, Minerals & Machinery Import & Export Corporation ("Qingdao")	8.51
Shanxi Machinery and Equipment Import & Export Corporation ("Shanxi")	8.51
Xianghe Zichen Casting Corporation, Ltd ("Xianghe")	8.51

[2] *Antidumping and Countervailing Duties: Five Year Reviews*, (67 FR 9439) March 1, 2002

[3] Although the Coalition's membership has changed, current members include: Dana Corporation, Brake and Chassis Division (formerly Brake Parts, Inc.); and Federal Mogul Corporation (successor to Wagner Brake Corporation/Moog and Waupaca foundry, Inc.). Brake Parts, Inc. and Wagner Brakes have undergone corporate reorganization and are now known as Dana Corporation and Federal Mogul, Inc.

Exporter/Manufacturer/Producers	Weighted-Average Margin (percent)
Yenhere Corporation ("Yenhere")	8.51
All Others	43.32

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the

Scope of Order

The products covered by this order are imports of IQF whole or broken red raspberries from Chile, with or without

exported by Exportadora Frucol and Comercial Fruticola, which received zero and de minimis final margins, respectively. For all producers and

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Iron Construction Castings From Canada

AGENCY: Import Administration,

Canada covering the period March 1, 1999 through February 29, 2000 (99–00 administrative review). Canada Pipe was the sole respondent in the 99–00 administrative review. On May 10, 2002, Canada Pipe submitted a written request that the Department clarify for the U.S. Customs Service (possibly in the context of a changed circumstances review) that the weighted-average

Pipe continues to use these foundry names, or references thereto, on sales and Customs entry documentation, U.S. Customs has continued to apply the antidumping duty deposit rates assigned to these foundries in prior segments of this proceeding to entries of Canada Pipe's subject merchandise.

Thus, in accordance with section 751(b) of the Act and sections 351.216 and 351.221(a) of the Department's

Exporter/Manufacturer/Producers	Weighted-Average Margin (percent)
Yenhere Corporation ("Yenhere")	8.51
All Others	43.32

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A.Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17195 Filed 7–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Antidumping Duty Order: IQF Red Raspberries From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Cole Kyle or Blanche Ziv, (202) 482–1503 or (202) 482–4207, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2001).

Scope of Order

The products covered by this order are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the order excludes fresh red raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this order is classifiable under section 0811.20.2020 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(d) of the Act, the Department published its final determination that IQF red raspberries from Chile are being, or are likely to be, sold in the United States at less than fair value ("LTFV"). *See Notice of Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 35790 (May 21, 2002). Subsequently, the Department amended its final determination of the antidumping duty investigation of IQF red raspberries from Chile to correct a ministerial error in the final margin calculation for one respondent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 40270 (June 12, 2002). On July 2, 2002, the International Trade Commission notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from Chile.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of IQF red raspberries from Chile, except for subject merchandise produced and exported by Exportadora Frucol and Comercial Fruticola, which received zero and de minimis final margins, respectively. For all producers and exporters, with the exception of Exportadora Frucol and Comercial Fruticola, antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after December 31, 2001, the date on which the Department published its notice of affirmative preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: IQF Red Raspberries From Chile*, 66 FR 67510 (December 31, 2001).

On or after the date of publication of this notice in the **Federal Register**, Customs Service officers must require, at the same time that importers deposit estimated normal customs duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter/Manfacturer	Weighted-average margin percentage
Comercial Fruticola	(1)
Exportadora Frucol	(1)
Fruticola Olmue	6.33
All Others	6.33

[1] Excluded.

This notice constitutes the antidumping duty order with respect to IQF red raspberries from Chile, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Department building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: July 3, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17199 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Iron Construction Castings From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on iron construction castings from Canada. Based on this information, we preliminarily determine that the Laperle foundry, Grand Mere foundry, and Bibby Ste Croix foundry, which were owned by various legal entities named as respondents in prior segments of this proceeding, are now all part of the Bibby Ste-Croix Division of Canada Pipe Company, Ltd. (Canada Pipe) and that the merchandise from these foundries should receive the same antidumping duty rate as the rate applied to Canada Pipe Company, Ltd. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2002).

Background

On April 12, 2001, the Department published in the **Federal Register** (66 FR 18900) the final results of the antidumping duty administrative review on iron construction castings from Canada covering the period March 1, 1999 through February 29, 2000 (99–00 administrative review). Canada Pipe was the sole respondent in the 99–00 administrative review. On May 10, 2002, Canada Pipe submitted a written request that the Department clarify for the U.S. Customs Service (possibly in the context of a changed circumstances review) that the weighted-average margin calculated in the 99–00 administrative review applies to Canada Pipe's unincorporated plants (or foundries) that have "Bibby Ste-Croix," "Laperle," "Grand Mere," or simply "Bibby" in their names.

Scope of Review

The merchandise covered by this review consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item number 7325.10.0010. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

Initiation and Preliminary Results of Review

In its May 10, 2002 submission to the Department, Canada Pipe explained that questions have arisen on the part of the U.S. Customs Service (U.S. Customs) as to whether subject merchandise produced by certain Canada Pipe foundries is entitled to the antidumping margin calculated for Canada Pipe in the 99–00 administrative review. Specifically, questions arose regarding Canada Pipe's foundries that have "Bibby," "Bibby Ste-Croix," "Laperle," or "Grand Mere" in their names because these foundries were owned by entities that had received individual antidumping duty margins in prior segments of the proceeding on iron construction castings from Canada. In its May 10, 2002 submission, Canada Pipe notes that it did not start producing the subject merchandise until April 1997, when it acquired the assets and trademarks of these castings foundries from an unrelated entity. Further, Canada Pipe notes that during the 99–00 administrative review, it operated these foundries, Fonderie Bibby Ste-Croix, Fonderie Laperle, and Fonderie Grand Mere,[1] as unincorporated foundries within its Bibby Ste-Croix Division. However, because Canada Pipe continues to use these foundry names, or references thereto, on sales and Customs entry documentation, U.S. Customs has continued to apply the antidumping duty deposit rates assigned to these foundries in prior segments of this proceeding to entries of Canada Pipe's subject merchandise.

Thus, in accordance with section 751(b) of the Act and sections 351.216 and 351.221(a) of the Department's regulations, the Department is initiating a changed circumstances review to determine whether the unincorporated Bibby Ste-Croix, Laperle, and Grand Mere foundries identified as part of Canada Pipe's Bibby Ste-Croix Division are the foundries that were owned by various legal entities named as respondents in prior segments of this proceeding and whether Canada Pipe was the legal entity that owned these foundries during the 99–00 administrative review.

Canada Pipe has presented evidence to establish a prima facie case supporting its status as the sole owner of the Laperle, Grand Mere and Bibby Ste Croix foundries that were involved in a number of segments of this proceeding prior to the 99–00 administrative review. Moreover, the Department has examined the record of all of the proceeding segments prior to the 99–00 administrative review and found evidence which supports the information that Canada Pipe submitted in its May 20, 2002 request for this changed circumstances review. Finally, the Department notes that its examination of Canada Pipe during the 99–00 administrative review encompassed the entire company, including the Bibby Ste-Croix Division and all of its heavy castings foundries, Bibby Ste-Croix, Laperle, and Grand Mere—(*i.e.*, the Canadian Pipe dumping margin calculated in that review was based on the combined sales of all of these foundries). As a consequence, we find that it is appropriate to issue the preliminary results of our review in combination with the notice of initiation of the changed circumstances review in accordance with section 351.221(c)(3)(ii) of the Department's regulations. Because the evidence indicates that Canada Pipe is the sole owner of the unincorporated Bibby Ste Croix Division, we preliminarily determine that Canada Pipe's Bibby Ste Croix Division and its Bibby Ste Croix Foundry, Laperle Foundry, Grand Mere Foundry should be given the same antidumping duty treatment as Canada Pipe, including Canada Pipe's 3.84 percent antidumping duty cash deposit rate established in the 99–00 administrative review based on

[1] These are the Canadian French versions of the foundry names.

production and sales by all of these foundries. For further discussion of this issue, see the memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, regarding Iron Constructing Castings from Canada: Changed Circumstances Review.

Because the Department reviewed sales of Canada Pipe, including its Bibby Ste Croix Division, in the 99–00 administrative review, the cash deposit

Republic of China were made below normal value during the period November 23, 1999 through May 31, 2001. If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to

Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc., ("the petitioners"), requested that, in addition to the above-mentioned requests, the Department conduct an administrative review of the antidumping order for Xian Yang Fuan Juice Co., Ltd. ("Xian Yang"), Changsha Industrial Products & Minerals Import and Export Co., Ltd. ("Changsha"), and

and received responses to these supplemental questionnaires in March 2002. In April and May 2002, the Department issued supplemental questionnaires to and received responses from Shandong.

On May 1, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department extended the time limit for the completion of the preliminary results in this case by an additional 60 days (*i.e.*, until no later than July 1,

cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC NFAJC industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of

People's Republic of China on Industrial Enterprises Owned by the Whole People" ("Industrial Enterprises Law"). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of *de jure* control. (*See, e.g., Notice of Preliminary Determination of Sales at*

production and sales by all of these foundries. For further discussion of this issue, see the memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, regarding Iron Constructing Castings from Canada: Changed Circumstances Review.

Because the Department reviewed sales of Canada Pipe, including its Bibby Ste Croix Division, in the 99–00 administrative review, the cash deposit rate from that review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 12, 2001, the date of publication of the final results in the 99–00 administrative review. This deposit rate shall remain in effect until publication of the final results of the next relevant administrative review.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 14 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.209. The Department will publish the final results of the changed circumstances review including the results of its analysis of any issues raised in any such comments.

This initiation of review, preliminary results of review, and notice are in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: June 24, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17200 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 1999–2001 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of 1999–2001 Administrative Review, Partial Rescission of Review.

SUMMARY: We preliminarily determine that sales of certain non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period November 23, 1999 through May 31, 2001. If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (April 2001).

Background

On June 5, 2000, the Department published in the **Federal Register** (65 FR 35606) the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China ("PRC"). On June 11, 2001, the Department notified interested parties of the opportunity to request an administrative review of this order (66 FR 31203). On June 21, 2001, Shaanxi Gold Peter Natural Drink Co., Ltd. ("Gold Peter") requested an administrative review. On June 22, 2001, Qingdao Nannan Foods Co., Ltd. ("Nannan"), Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng"), Shaanxi Hengxing Fruit Juice Co., Ltd. ("Hengxing"), Shaanxi Machinery and Equipment Import and Export Corporation ("SAAME"), Shandong ZhongLu Juice Group Co., Ltd. ("ZhongLu"), Xian Asia Qin Fruit Co., Ltd. ("Xian Asia"), and Yantai Oriental Juice Co., Ltd. ("Oriental") (collectively "Nannan *et al.*") also requested administrative reviews. On June 28, 2001, Sanmenxia Lakeside Fruit Juice Co., Ltd. ("Lakeside") requested an administrative review. On June 29, 2001, Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc., ("the petitioners"), requested that, in addition to the above-mentioned requests, the Department conduct an administrative review of the antidumping order for Xian Yang Fuan Juice Co., Ltd. ("Xian Yang"), Changsha Industrial Products & Minerals Import and Export Co., Ltd. ("Changsha"), and Shandong Foodstuffs Import and Export Corporation ("Shandong"). In accordance with 19 CFR 351.221(b)(1), on July 23, 2001, we published a notice of initiation of this antidumping duty administrative review (66 FR 38252).

On November 14, 2001, the Department sent a letter to the Chinese Chamber of Commerce for the Import and Export of Foodstuffs, Native Produce & Animal By-Products ("China Chamber"), with a copy to the Embassy of the PRC in the United States, requesting that the China Chamber forward the questionnaire to the companies named in the initiation notice.

On December 18, 2001, Xian Yang reported that it had no shipments of subject merchandise to the United States during the November 23, 1999, through May 31, 2001, period of review ("POR"). See *"Partial Rescission"* section, below. In December 2001 and January 2002, we received responses to the questionnaire from the following companies: Gold Peter, Haisheng, Hengxing, Lakeside, Nannan, Oriental, SAAME, Xian Asia, and ZhongLu. Shandong's response was received by the Department in March 2002. Changsha did not respond to the Department's original questionnaire. See *"Use of Fact Otherwise Available"* section, below.

In December 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from Nannan *et al.* on February 11, 2002, and from Lakeside on February 12, 2002. The petitioners provided surrogate value information to the Department on March 5, 2002.

On February 7, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department found that it was not practicable to complete the review in the time allotted, and extended the time limit for the completion of the preliminary results in this case by 60 days (i.e., until no later than May 1, 2002) (67 FR 5788).

In February and March 2002, we sent out supplemental questionnaires to Gold Peter, Lakeside, and Nannan *et al.*, and received responses to these supplemental questionnaires in March 2002. In April and May 2002, the Department issued supplemental questionnaires to and received responses from Shandong.

On May 1, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department extended the time limit for the completion of the preliminary results in this case by an additional 60 days, (*i.e.*, until no later than July 1, 2002) (67 FR 21633).

Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate ("NFAJC"). Certain NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Xian Yang, which reported that it made no shipments of subject merchandise during this POR. We examined shipment data furnished by the Customs Service and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from Xian Yang during the POR.

Verification

As provided in section 782(i) of the Act, in May 2002 we verified information provided by Haisheng, Hengxing, and Xian Asia using standard verification procedures, including onsite inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC NFAJC industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*"Sparklers"*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*"Silicon Carbide"*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies.

The ten participating respondents have placed a number of documents on the record to demonstrate absence of *de jure* government control, including "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law"), "Company Law of the PRC" ("Company Law"), the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" ("Administrative Regulations"), the "Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures" ("Joint Ventures Law"), and the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People" ("Industrial Enterprises Law"). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of *de jure* control. (*See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) (*"Mushrooms"*)). We have no new information in this proceeding which would cause us to reconsider this determination.

The Company Law is designed to meet the PRC's needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of *de jure* control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies.

In keeping with the Company Law, the Administrative Regulations safeguard social and economic order, as well as establishing an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of *de jure* control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies.

The Joint Ventures Law states that Chinese and foreign parties shall share earnings and bear risks jointly. An analysis of the Joint Ventures Law by the Department further indicates lack of de jure control for Oriental, Xian Asia, and ZhongLu, those respondents actually subject to this law.

The Industrial Enterprises Law provides that enterprises owned by "the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. As in prior PRC cases, the Department has analyzed the Industrial Enterprises Law and found that this law establishes mechanisms for private control of companies, which indicates an absence of *de jure* control. *See Pure Magnesium from the People's Republic off China:*

Final Results of New Shipper Review, 63 FR 3085, 3086 (January 21, 1998).

According to the respondents, NFAJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that NFAJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Changsha did not submit a response to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily

(January 17, 1997) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 61 FR 36551, 36552 (July 4, 1996)). Because the PRC entity provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an

From the People's Republic of China, 64 FR 61581, 61584 (November 12, 1999); *Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China*, 64 FR 39115 (July 21, 1999); and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 33295 (May 23, 2000) (for a more detailed discussion, *see Preliminary*

that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This procedure generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department

the United States prior to importation into the United States and because the CEP methodology was not warranted by other circumstances.

We calculated EP based on the CIF, C&F, CFR, FOB, and delivered prices to unaffiliated purchasers, as appropriate. In accordance with section 772(c) of the Act, we deducted from these prices, where appropriate, amounts for foreign inland freight, foreign brokerage and

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Final Results of New Shipper Review, 63 FR 3085, 3086 (January 21, 1998).

According to the respondents, NFAJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that NFAJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producers/exporters have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers and without government interference.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of the respondents.

Absence of *De Facto* Control

De facto absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; 4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589).

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Mushrooms*, 63 FR at 72255). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department has reviewed the record in this case and notes that each respondent: (1) establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; (4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions; and (5) does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Changsha did not submit a response to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily determine that Changsha did not establish its entitlement to a separate rate in this review and, therefore, is presumed to be part of the PRC NME entity and, as such, is subject to the PRC country-wide rate. *See* the *"Use of Facts Otherwise Available"* section, below.

PRC-Wide Rate and Use of Facts Otherwise Available

As noted above, Changsha is appropriately considered part of the PRC-wide entity. This entity did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC entity did not respond to the Department's questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate (*see, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 40609~~40610~~40610–40611 (June 30, 2000)); *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655 (January 17, 1997) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 61 FR 36551, 36552 (July 4, 1996)). Because the PRC entity provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less-than-fair-value ("LTFV") investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." On November 14, 2001, the Department transmitted its questionnaire to Changsha via priority mail. We confirmed with the delivery company that this transmission was received and signed for by Changsha personnel on November 19, 2001. Changsha did not submit a response to our questionnaire by the deadline established for such submissions. On March 27, 2002, the Department wrote to Changsha via e-mail asking whether the company had received the November 14, 2001, questionnaire, and whether it had, in fact, decided not to comply with our requests for information. On March 31, 2002, the Department made a similar inquiry via facsimile. The Department received no responses from Changsha personnel to either the e-mail or the facsimile. Therefore, we determine that the PRC entity failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance with Department practice (*see, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999); *Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China*, 64 FR 39115 (July 21, 1999); and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 33295 (May 23, 2000) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China*, 64 FR 39115 (July 21, 1999)), as adverse facts available, we have preliminarily assigned to the PRC entity (which includes Changsha) the PRC-wide rate of 51.74 percent, which is the PRC-wide rate established in the LTFV investigation (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China*, 65 FR 19873 (April 13, 2000) ("*Final Determination*")) and the highest dumping margin determined in any segment of this proceeding. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value (*id.*). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This procedure generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). We have determined that there is no evidence on the record which would render the application of the petition margin inappropriate. Therefore, we consider the petition information relevant for this proceeding.

Furthermore, in the underlying LTFV investigation, we established the reliability of the petition margin (see Final Determination). As there is no information on the record of this review that demonstrates that the petition rate is not reliable for use as the adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for the PRC- wide rate to be applied in this review to exports of subject merchandise by the PRC entity (which includes Changsha).

Export Price and Constructed Export Price

For certain sales made by Haisheng, ZhongLu, Oriental, and Xian Asia, and all sales made by Shandong to the United States, we used constructed export price ("CEP") in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by nine of the participating respondents (excluding Shandong, and including certain sales made by Haisheng, Oriental, Xian Asia, and ZhongLu), we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not warranted by other circumstances.

We calculated EP based on the CIF, C&F, CFR, FOB, and delivered prices to unaffiliated purchasers, as appropriate. In accordance with section 772(c) of the Act, we deducted from these prices, where appropriate, amounts for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), and U.S. warehousing. We valued the deductions for foreign inland freight and brokerage and handling using surrogate data, which were based on Indian freight costs. (We selected India as the surrogate country for the reasons explained in the *"Normal Value"* section of this notice, below.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate value data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight or marine insurance was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight or marine insurance values for all U.S. sales made by that company. *See* 19 CFR 351.408(c)(1).

We calculated CEP based on the ex-dock (PRC), ex-dock (USA), CIF, DDP (delivered duty paid), and delivered prices from Haisheng, ZhongLu, Oriental, Shandong and Xian Asia's U.S. subsidiaries to unaffiliated customers. In accordance with section 772(c) of the Act, we deducted from the starting price for CEP amounts for foreign inland freight, foreign inland insurance, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), U.S. brokerage and handling expense, U.S. freight forwarder fee, and U.S. warehousing expense.

In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: commissions, warranties, outside laboratory testing fees, drum relabeling expenses, credit expenses, indirect selling expenses (including inventory carrying costs), and other direct selling expenses. In accordance with section 772(d)(3) of the Act, we also deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no

on information in two articles from *The Tribune*, an Indian news source. These articles describe the price charged to the Himachal Pradesh Horticulture Produce Marketing and Processing Corporation ("the HPMC"), a state-owned fruit processing company, for apples procured under the Government of India's price support scheme for apple growers, as well as the prices obtained for the remaining apples (*i.e.*, apples

bolts, steel bands, steel clips, styrofoam padding, adhesive tape, nails, and cardboard boxes using Indian import statistics from the period January 2000 through May 2001. We converted values from a per kilogram to a per piece basis, where necessary.

For steel drums, we could not find a reliable Indian value. Therefore, we used a 1994 Indonesian price and inflated it using the Indonesian WPI.

April 2000 study published by the University of Georgia.

Preliminary Results of the Review

We preliminary determine that the following dumping margins exist for the period November 23, 1999, through May 31, 2001:

Exporter/manfacturer	Weighted-average margin percentage
Changsha Industrial Products & Minerals Import and Export Co., Ltd. (included in the PRC entity)	51.74
Qingdao Nannan Foods Co., Ltd.	0.00
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
Shaanxi Gold Peter Natural Drink Co., Ltd.	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with section 773(c) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate on the basis of the criteria set out in sections 773(c)(2)(B) and 773(c)(4) of the Act, and in 19 CFR 351.408(b). *See* the December 26, 2001, Memorandum to Susan Kuhbach from Jeff May "1st Administrative Review of Non-Frozen Apple Juice Concentrate from the People's Republic of China," ("Surrogate Country Memo") for a further discussion of our surrogate selection, which is on file in the Department's Central Records Unit in Room B–099 of the main Department building ("CRU"). *See also* the July 1, 2002, Memorandum to Susan Kuhbach from Team, "Significant Production of Comparable Merchandise," which is also on file in the CRU.

We used publicly available information from India to value the various factors. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price indices ("WPI") published by the International Monetary Fund.

Pursuant to the Department's factors-of-production methodology as provided in section 773(c) of the Act and 19 CFR 351.408(c), we valued the respondents' reported factors of production by multiplying them by the following values (for a complete description of the factor values used, see the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results," dated July 1, 2002, which is on file in the CRU):

Juice Apples: We have preliminarily valued juice apples at the weighted average price paid for culled or processing grade apples in India, based on information in two articles from *The Tribune*, an Indian news source. These articles describe the price charged to the Himachal Pradesh Horticulture Produce Marketing and Processing Corporation ("the HPMC"), a state-owned fruit processing company, for apples procured under the Government of India's price support scheme for apple growers, as well as the prices obtained for the remaining apples (*i.e.*, apples that are not processed by the HPMC and are sold at auction). According to these articles, the HPMC pays rupees 2.25 per kilo for the apples it processes. The prices for the remaining apples ranged from rupees 0.6 to 2.50 per kilo. We weighted the prices paid by the HPMC and the average auction prices by the amounts of apples procured by the HPMC and the amounts sold at auction, respectively, with the result that the value of juice apples was rupees 1.34 per kilo. Because of the wide range of prices reported for auctioned apples, and because the information in the articles is not sufficiently detailed to allow us to know the amounts sold at the various prices, we are inviting parties to submit additional information regarding the prices of juice apples in India.

Processing Agents: We valued pectinex enzyme, amylase enzyme, bentonite, diatomite, gelatin, silica gel, and activated carbon using the *Monthly Statistics of the Foreign Trade of India, Volume II: Imports* ("Indian import statistics") for the period January 2000 through May 2001.

Labor: Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website.

Electricity and Coal: To value electricity, we used electricity rate data from the *Energy Data Directory &Yearbook (1999/2000)*. We determined that the most contemporaneous information on the record for coal could be derived from Indian import statistics. Prices for goods vary over time, and therefore contemporaneity is significant to our selection of an appropriate surrogate value. Therefore, we based the value of coal on Indian import statistics.

Factory Overhead, SG&A, and Profit: We derived ratios for factory overhead, SG&A, and profit, using 2000–01 data from the audited financial statements of Himalayan Vegefruit Ltd., identified in the investigation as an Indian producer of products the same as, and similar to, the subject merchandise.

Packing Materials: We calculated values for aseptic bags, plastic liners, labels, wood bins, steel corners, steel bolts, steel bands, steel clips, styrofoam padding, adhesive tape, nails, and cardboard boxes using Indian import statistics from the period January 2000 through May 2001. We converted values from a per kilogram to a per piece basis, where necessary.

For steel drums, we could not find a reliable Indian value. Therefore, we used a 1994 Indonesian price and inflated it using the Indonesian WPI.

Inland Freight Rates: To value truck freight rates, we used a July 2000 newspaper article from the *Indian Express Newspaper*. With regard to rail freight, we based our calculation on a price quote from the Northern Railway. We calculated an average per kilometer per metric ton rate.

International Freight: We used rates collected from the Federal Maritime Commission's Automated Tariff Filing Information ("AFTI") database. Where an individual PRC producer/exporter used a market-economy shipper and paid for the shipping in a market-economy currency, and could provide the complete documentation of the transaction, we calculated an average price for shipping paid by that producer/exporter.

Marine Insurance: We used a June 1998 price quote from a U.S. insurance provider, as we have in past PRC cases. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–97 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part*, 63 FR 63842 (November 17, 1998).

Brokerage and Handling: We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

By-products: Certain respondents reported by-products resulting from production of the subject merchandise. For those respondents that reported their production of apple essence/aroma and/or apple pomace, we have offset the cost of materials with a by-product credit. The value for apple essence/aroma was calculated as a simple average of the various prices reported at the July 1999 ITC hearing and 1999 price quotes provided to the Department by two U.S. brokers of food products. Apple pomace was valued using an April 2000 study published by the University of Georgia.

Preliminary Results of the Review

We preliminary determine that the following dumping margins exist for the period November 23, 1999, through May 31, 2001:

Exporter/manfacturer	Weighted-average margin percentage
Changsha Industrial Products & Minerals Import and Export Co., Ltd. (included in the PRC entity)	51.74
Qingdao Nannan Foods Co., Ltd.	0.00
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
Shaanxi Gold Peter Natural Drink Co., Ltd.	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
Shaanxi Hengxing Fruit Juice Co. Ltd.	0.00
Shaanxi Machinery & Equipment Import & Export Corporation	0.00
Shandong Foodstuffs Import and Export Corporation	0.00
Shandong ZhongLu Juice Group Co. Ltd.	0.00
Xian Asia Qin Fruit Co., Ltd.	0.00
Yantai Oriental Juice Co., Ltd.	0.00
PRC-wide rate	51.74

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Furthermore, as discussed in 19 CFR 351.309(d)(2), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters (including Changsha), the rate will be the PRC country-wide rate, which is 51.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

DATED: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17196 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results and rescission in part of antidumping duty administrative review.

SUMMARY: In response to a request from respondent Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and from Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge ("petitioners"), the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. Specifically, the petitioners requested that the Department conduct the administrative review for Ta Chen Stainless Pipe Co., Ltd., Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang Feng"), and Tru-Flow Industrial Co., Ltd. ("Tru-Flow"). This review covers Ta Chen, a manufacturer and exporter of the subject merchandise and Liang Feng and Tru-Flow, manufacturers of the subject merchandise. The period of review ("POR") is June 1, 2000 through May 31, 2001. With regard to Ta Chen, we preliminarily determine that sales have been made below normal value ("NV"). With regard to Liang Feng and Tru-Flow, we are preliminarily rescinding this review based on record evidence supporting the conclusion that there

were no entries into the United States of subject merchandise during the POR. For a discussion of the preliminary rescission as to Liang Feng and Tru-Flow, see the "Preliminary Rescission of Review in Part" section of this notice.

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta

Department conduct an administrative review of Ta Chen, Liang Feng and Tru-Flow for the period of June 1, 2000 through May 31, 2001. On July 23, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 2000 through May 31, 2001. *See Notice of Initiation of Antidumping or Countervailing Duty Administrative Reviews and Requests for Revocation in*

Department requested that Ta Chen resubmit its U.S. sales database to incorporate one of the minor corrections from verification. Ta Chen submitted the revised U.S. sales database on June 14, 2002. On June 13, 2002, the Department asked Ta Chen an additional supplemental question regarding clarification of a specific home market sales observation.

Additionally, the Department sent

2001, the Department conducted a Customs inquiry and determined to its satisfaction on the record that there were no entries of subject merchandise during the POR. *See* the June 28, 2002 Memorandum to the File. *See Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final*

Verification

As provided in section 782(i) of the Act, from May 20–23, 2002, the Department verified sales, cost and production information of Ta Chen's U.S. affiliate, Ta Chen International (CA) Corp., using standard verification procedures, including an examination of relevant sales, financial and production records, and selection of original documentation containing relevant

were destined for sale by Ta Chen in the U.S. market. However, section 771(16) of the Act defines "foreign like product" to be "(t)he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Thus, consistent with the Department's past practice, we have restricted the matching of products which Ta Chen has identified with certainty that it

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were no entries into the United States of subject merchandise during the POR. For a discussion of the preliminary rescission as to Liang Feng and Tru-Flow, see the "Preliminary Rescission of Review in Part" section of this notice.

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen's merchandise during the period of review, in accordance with the Department's regulations (19 CFR 351.106 and 351.212(b)). The preliminary results are listed below in the section titled "Preliminary Results of Review."

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Ryan or James C. Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0961 and (202) 482–0159, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan*, 58 FR 33250 (June 16, 1993). On June 11, 2001, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan covering the period June 1, 2000 through May 31, 2001. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 66 FR 31203 (June 11, 2001). On June 29, 2001, respondent, Ta Chen requested that the Department conduct an administrative for the period of June 1, 2000 to May 31, 2001. Additionally, on June 29, 2001, the petitioners requested that the Department conduct an administrative review of Ta Chen, Liang Feng and Tru-Flow for the period of June 1, 2000 through May 31, 2001. On July 23, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 2000 through May 31, 2001. *See Notice of Initiation of Antidumping or Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 38252 (July 23, 2001).

On July 25, 2001, the Department issued its antidumping questionnaire to Ta Chen, Liang Feng and Tru-Flow. On July 30, 2001, Liang Feng reported that it had no sales, entries or shipments of subject merchandise to the United States during the POR. Additionally, on July 31, 2001, Tru-Flow reported that it had no sales, entries or shipment of subject merchandise to the United States during the POR. On August 6, 2001, the petitioners opposed Liang Feng's and Tru-Flow's statements from their July 30 and July 31 letters, respectively.

On August 15, 2001, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review ("POR") in its response to Section A of the Department's questionnaire. On September 7, 2001, Ta Chen submitted its response to Sections B, C, and D of the Department's questionnaire. On August 28, 2001, the Department issued to Ta Chen a supplemental questionnaire to Section A of the Department's questionnaire, for which Ta Chen submitted its response on September 25, 2001. On January 8, 2002, the Department issued to Ta Chen a supplemental questionnaire to Sections B, C, and D of the Department's questionnaire. On January 29, 2002, Ta Chen submitted its response to this supplemental questionnaire. On April 23, 2002, the Department issued to Ta Chen the second supplemental questionnaire to Sections A–D of the Department's questionnaire. On May 13, 2002, Ta Chen submitted its response to the second supplemental questionnaire for Sections A–D of the Department's questionnaire. On May 17, 2002, the Department asked Ta Chen to submit various pages that were missing from the exhibits in the May 13, 2002 submission. On May 17, 2002, Ta Chen submitted two sets of information, one of which contained the missing exhibit pages the Department requested. The larger submission Ta Chen submitted was additional information it claimed was inadvertently omitted from its response to the Department's second Sections A–D supplemental questionnaire. On June 12, 2002, the Department requested that Ta Chen resubmit its U.S. sales database to incorporate one of the minor corrections from verification. Ta Chen submitted the revised U.S. sales database on June 14, 2002. On June 13, 2002, the Department asked Ta Chen an additional supplemental question regarding clarification of a specific home market sales observation.

Additionally, the Department sent questionnaires to two of Ta Chen's subcontractors on January 28, 2002, to which they responded on February 18, 2002. On April 25, 2002, the Department issued a supplemental questionnaire to the same two subcontractors. They sent in their responses on May 23, 2002.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for conducting an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On January 22, 2002, the Department extended the time limits for these preliminary results by 120 days to June 29, 2002 in accordance with the Act. However, because June 29, 2002 falls on a weekend, the Department stated it would release its preliminary results on July 1, 2002. *See Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, 67 FR 2856 (January 22, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Preliminary Rescission of Review in Part

The Department preliminarily finds that Liang Feng and Tru-Flow had no entries during the POR. Thus, the Department is preliminarily rescinding this review.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explained this practice in the preamble to the Department's regulations. *See Antidumping Duties; Countervailing Duties* 62 FR 27296, 27317 (May 19, 1997) ("Preamble").

In July of 2001, both Liang Feng and Tru Flow provided letters on the record stating that they had no sales of subject merchandise during the POR. *See* Liang Feng's letter dated July 30, 2001 and Tru Flow's letter dated July 31, 2001. To confirm their statements, on August 14, 2001, the Department conducted a Customs inquiry and determined to its satisfaction on the record that there were no entries of subject merchandise during the POR. *See* the June 28, 2002 Memorandum to the File. *See Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610, (April 10, 2001).

Therefore, pursuant to 19 CFR 351.213(d)(3), the Department is preliminarily rescinding this review as to Liang Feng and Tru Flow because we find that there were no entries of subject merchandise during the POR.

Scope of the Review

The products subject to this administrative review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Period of Review

The POR for this administrative review is June 1, 2000 through May 31, 2001.

Verification

As provided in section 782(i) of the Act, from May 20–23, 2002, the Department verified sales, cost and production information of Ta Chen's U.S. affiliate, Ta Chen International (CA) Corp., using standard verification procedures, including an examination of relevant sales, financial and production records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Central Records Unit ("CRU") located in room 1870 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC. For changes to Ta Chen's expenses based on verification findings, *see* "Facts Available" section below.

Product Comparison

In accordance with section 771(16) of the Act, we considered all pipe fittings produced by Ta Chen, covered by the description in the "Scope of Review" section of this notice and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to pipe fittings sold in the United States. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, seam, grade, size and schedule.

As in the 1999–2000 administrative review ("99/00 review"), the record shows that Ta Chen both purchased from, and entered into tolling arrangements with, two unaffiliated Taiwanese manufacturers of subject merchandise. *See* Ta Chen's August 15, 2001 Section A questionnaire response at 2. Also, as in the 99/00 review there is no evidence on the record that either manufacturer had knowledge that the subject merchandise would be sold into the United States market. *See* both subcontractors' questionnaire responses dated February 19, 2002 and their supplemental responses dated May 23, 2002. According to Ta Chen's August 15, 2001 Section A response, for subcontracted fittings, it labels itself as the manufacturer. Regarding these sales for which Ta Chen can identify with certainty which of the two unaffiliated Taiwanese companies was the producer, we have preliminarily determined that it is not appropriate to extract such sales from Ta Chen's U.S. sales database because we have no evidence on the record that the unaffiliated producers had knowledge that their subject fittings were destined for sale by Ta Chen in the U.S. market. However, section 771(16) of the Act defines "foreign like product" to be "(t)he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Thus, consistent with the Department's past practice, we have restricted the matching of products which Ta Chen has identified with certainty that it purchased from a particular unaffiliated producer and resold in the U.S. market, to identical or similar products purchased by Ta Chen from the same unaffiliated producer and resold in the home market. Finally, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics or to constructed value ("CV"), as appropriate.

Date of Sale

The Department's regulations state that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If Commerce can establish "a different date (that) better reflects the date on which the exporter or producer establishes the material terms of sale," Commerce may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale in both the home market and U.S. market. *See* Ta Chen's Sections B and C responses. (September 10, 2001). Moreover, Ta Chen did not indicate any industry practice which would warrant the use of a date other than invoice date in determining date of sale.

Accordingly, as we have no information demonstrating that another date is more appropriate, we preliminarily based date of sale on invoice date recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise in accordance with 19 CFR 351.401(i).

Fair Value Comparisons

To determine whether sales of subject merchandise by Ta Chen to the United States were made at prices below normal value ("NV"), we compared, where appropriate, the constructed export price ("CEP") to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to

the monthly weight-averaged NV of the foreign like product where there were sales at prices above the cost of production ("COP"), as discussed in the "Cost of Production Analysis" section below. For a further discussion of the EP sales reclassification to CEP, see below.

Export Price/Constructed Export Price

Section 772(a) of the Act defines export price as "the price at which the including inventory carrying costs, which related to commercial activity in the United States. With respect to inventory carrying costs, we note that certain of Ta Chen's sales do not enter TCI's inventory prior to shipment to U.S. customers, but are shipped directly to the end user. Therefore, we removed the cost of goods sold for those sales used in the calculation of Ta Chen's reported inventory turnover ratio. We proceeding,[1] we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3)

costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT

insurance and packing for shipment to the United States. TCI handles the remaining selling functions for U.S. sales, such as: Communicating with U.S. customers; handling customer orders; dealing with U.S. Customs duties, brokerage, inland freight and U.S. warehousing; taking seller's risk; and, incurring inventory carrying costs on the water and ocean freight. Accordingly, for these U.S. sales, we preliminarily find that Ta Chen

the monthly weight-averaged NV of the foreign like product where there were sales at prices above the cost of production ("COP"), as discussed in the "Cost of Production Analysis" section below. For a further discussion of the EP sales reclassification to CEP, see below.

Export Price/Constructed Export Price

Section 772(a) of the Act defines export price as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. * * *" Section 772(b) of the Act defines constructed export price as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. * * *"

Consistent with recent past reviews, all of the sales at issue are being considered CEP sales because the sale to the first unaffiliated customer was made between Ta Chen International (CA) Corp. ("TCI"), located in the United States, and the unaffiliated customer in the United States. *See Analysis Memorandum for Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of the 2000–2001 Administrative Review of Certain Stainless Steel Butt-weld Pipe Fittings from Taiwan* (July 1, 2002) ("Analysis Memo"). *See also* Sections B–D supplemental questionnaire response (January 29, 2002). TCI takes title to subject merchandise, invoices the U.S. customer, and receives payment from the U.S. customer. In addition, TCI incurs seller's risk, relays orders and price requests from the U.S. customer to Ta Chen, and pays for U.S. Customs brokerage charges, U.S. antidumping duties, ocean freight and U.S. inland freight. *See* Section A Supplemental Questionnaire Response (September 5, 2001).

Having determined such sales are CEP, we calculated the price of Ta Chen's sales based on CEP in accordance with section 772(b) of the Act. We calculated CEP based on FOB or delivered prices to unaffiliated purchasers in the United States and, where appropriate, we deducted discounts. In addition, in accordance with section 772(d)(1), the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. With respect to inventory carrying costs, we note that certain of Ta Chen's sales do not enter TCI's inventory prior to shipment to U.S. customers, but are shipped directly to the end user. Therefore, we removed the cost of goods sold for those sales used in the calculation of Ta Chen's reported inventory turnover ratio. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. We also deducted U.S. freight cost that TCI incurred when moving merchandise among its warehouses, in addition to freight expenses that TCI incurred on behalf of a customer returning merchandise. Finally, where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. In addition, Ta Chen stated that the home market is viable since sales to the home market are more than five percent by quantity of sales in the United States. *See* Section A questionnaire response (August 15, 2001) at 3. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we preliminarily determine that the home market was viable. We, therefore, based NV on home market sales.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production in the most-recently completed segment of this proceeding,[1] we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weight-averaged COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weight-averaged COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average

[1] *See Notice of Final Results in the Antidumping Duty Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan*, 66 FR 66899, (December 21, 2001).

costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weight-averaged home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production ("COP"), we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(b)(1) of the Act, where there were no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In reviewing a respondent's request for a LOT adjustment, we examine all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing differences in selling functions, we determine whether LOT's identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997).

Ta Chen reported one LOT in the home market based on two channels of distribution: trading companies and end-users. We examined the reported selling functions and found that Ta Chen's selling functions to its home market customers, regardless of channel of distribution, include inventory maintenance, technical services, packing, after-sales services, freight and delivery arrangements, general selling functions, some research and development, and customer service. *See* Ta Chen's September 25, 2002 Section A supplemental questionnaire response at 7–9. We, therefore, preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

Because Ta Chen reported that all of its U.S. CEP sales are made through TCI, Ta Chen is claiming that there is only one LOT in the U.S. market for its constructed export price sales and we preliminarily agree with Ta Chen that its U.S. sales constitute a single LOT. We examined the reported selling functions and found that Ta Chen's selling functions for sales to TCI include order processing, payment of marine insurance and packing for shipment to the United States. TCI handles the remaining selling functions for U.S. sales, such as: Communicating with U.S. customers; handling customer orders; dealing with U.S. Customs duties, brokerage, inland freight and U.S. warehousing; taking seller's risk; and, incurring inventory carrying costs on the water and ocean freight. Accordingly, for these U.S. sales, we preliminarily find that Ta Chen performed fewer selling functions than it did in the home market. Ta Chen requested a CEP offset due to differences in level of trade between its home market and U.S. sales (*see* Ta Chen's August 15, 2001 Section A questionnaire response). When, as here, the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, the Department's practice is to adjust NV to account for this difference. However, we were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Therefore, we applied a CEP offset to the NV–CEP comparisons, in accordance with section 773(a)(7)(B) of the Act.

Facts Available

We preliminarily determine that the use of facts available is appropriate for two elements of Ta Chen's dumping margin calculation. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this case, at the verification of TCI from May 20–23, 2002, TCI presented as a minor correction a very small number of previously unreported U.S. sales from one of its U.S. warehouses. The information TCI supplied to the Department included the POR warehouse expenses, the total sales value, the total weight in kilograms and the total number of pieces. *See U.S. Verification Report of Ta Chen International (CA) Corp.: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan* (July 1, 2002) at page 2 and Exhibit 1.

Consistent with section 776(a)(2)(B) of the Act, we have preliminarily

determined that the use of partial facts available is warranted for these unreported U.S. sales. This U.S. sales information should have been reported in respondent's questionnaire responses. By failing to report the information until verification, respondent prevented the Department from gathering and verifying further information that was necessary to calculate an actual margin for those

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weight-averaged dumping margin exists for the period June 1, 2000 through May 31, 2001: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

	Weight-averaged

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company,

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils From Taiwan.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from Taiwan in response to requests

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

(YUSCO), Marlene Hewitt (Tung Mung); or Bob Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243, (202) 482–2667, (202) 482–1382, (202) 482–1385 or (202) 482–3434, respectively.

response, we would be forced to apply facts available, as directed by section 776(a) of the Act. On October 19, 2001, Tung Mung submitted a letter responding that it would no longer be participating in this administrative review.

On October 4, 2001, YUSCO submitted its Section A questionnaire response. On November 13, 2001, YUSCO submitted its Sections B

determined that the use of partial facts available is warranted for these unreported U.S. sales. This U.S. sales information should have been reported in respondent's questionnaire responses. By failing to report the information until verification, respondent prevented the Department from gathering and verifying further information that was necessary to calculate an actual margin for those sales. Therefore, the Department finds it necessary to apply partial facts available for these sales. As facts available, the Department applied the average positive margin to the total value of the sales that TCI failed to report. *See* Analysis Memo.

Also, at verification, the Department found that in TCI's POR third country export sales of subject merchandise, it had included some sales to a location that is considered a U.S. territory. Because this location is a U.S. territory, the Department considers sales to that territory as U.S. sales. Consistent with section 776(a)(2)(B) of the Act, we preliminarily determine that use of partial facts available is warranted, because respondent failed to report the U.S. sales information in the form or manner requested. As with the above mentioned unreported U.S. sales, the Department has applied the average positive margin to the total sales value of the unreported sales to the U.S. territory. *See* the proprietary version of the Analysis Memo for the identification of the U.S. territory.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as published by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined, as a general matter, that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1996) and *Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434, March 8, 1996. As indicated in these precedents, the benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weight-averaged dumping margin exists for the period June 1, 2000 through May 31, 2001: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

Producer/manufacturer/exporter	Weight-averaged margin (in percent)
Ta Chen	2.63

The Department will disclose to any party to the proceeding, within five days of publication of this notice, the calculations performed (19 CFR 351.224(b)). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on diskette. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company, will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 51.01 percent.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17201 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils From Taiwan.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from Taiwan in response to requests from respondents Yieh United Steel Corporation ("YUSCO"), Tung Mung Development Co., Ltd. ("Tung Mung") and Chia Far Industrial Factory Co., Ltd. ("Chia Far"), and petitioners[1] who requested a review of YUSCO, Tung Mung, and Ta Chen Stainless Pipe Company Ltd. ("Ta Chen"), Chia Far and any of their affiliates in accordance with 19 CFR 351.213. This review covers imports of subject merchandise from YUSCO, Tung Mung, Ta Chen, and Chia Far. The period of review ("POR") is July 1, 2000 through June 30, 2001.

Our preliminary results of review indicate that Chia Far has sold subject merchandise at less than normal value ("NV") during the POR and that YUSCO did not make any sales below normal value during the POR. Additionally, Tung Mung did not participate in this review. Therefore, we are applying an adverse facts available ("AFA") rate to all sales and entries of Tung Mung's subject merchandise during the POR. Lastly, we have preliminarily determined to rescind the review with respect to Ta Chen, because the evidence on the record indicates that it had no shipments of subject merchandise to the United States during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Chia Far's and Tung Mung's merchandise during the POR, in accordance with the Department's regulations found at 19 CFR 351.106 and 351.212(b).

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (Ta Chen); Cheryl Werner (Chia Far); Mesbah Motamed (YUSCO), Marlene Hewitt (Tung Mung); or Bob Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243, (202) 482–2667, (202) 482–1382, (202) 482–1385 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended the ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On July 2, 2001, the Department published in the Federal Register a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 66 FR 34910 (July 2, 2001), as corrected, 66 FR 38455 (July 24, 2001). On July 30, 2001, YUSCO, Tung Mung and Chia Far, producers and exporters of subject merchandise during the POR, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping order covering the period July 1, 2000 through June 30, 2001. On July 31, 2001, petitioners requested a review of YUSCO, Tung Mung, Ta Chen, and Chia Far and its affiliates in accordance with 19 CFR 351.213(b). On August 20, 2001, the Department published in the Federal Register a notice of initiation of administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001).

On August 30, 2001, the Department issued questionnaires to YUSCO, Tung Mung, Chia Far and Ta Chen. On September 20, 2001, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the POR, and requested an exemption from answering the questionnaire. On October 17, 2001, we sent a letter to Tung Mung explaining that we had not received its questionnaire response, and that, in the absence of a complete questionnaire response, we would be forced to apply facts available, as directed by section 776(a) of the Act. On October 19, 2001, Tung Mung submitted a letter responding that it would no longer be participating in this administrative review.

On October 4, 2001, YUSCO submitted its Section A questionnaire response. On November 13, 2001, YUSCO submitted its Sections B through D questionnaire response. On March 22, 2002, we issued a supplemental Sections A through C questionnaire to YUSCO and on April 4, 2002, we issued a supplemental Section D questionnaire to YUSCO. On April 16, 2002, YUSCO submitted its supplemental Sections A through C questionnaire response and on April 19, 2002, YUSCO submitted its supplemental Section D questionnaire response. On April 26, 2002, we issued a second supplemental Sections A through D questionnaire to YUSCO. On May 6, 2002, YUSCO submitted its second supplemental Sections A through D questionnaire response.

On October 4, 2001, Chia Far submitted its Section A questionnaire response. On October 29, 2001, Chia Far submitted its Sections B and C questionnaire responses. We issued a supplemental Section A through C questionnaire to Chia Far on January 3, 2002. On January 4, 2002, Chia Far submitted its Section D questionnaire response. On January 31, 2002, Chia Far submitted its supplemental Sections A through C questionnaire response. On March 13, 2002, we issued a supplemental Section D questionnaire to Chia Far. On April 5, 2002, we issued a second supplemental Sections A through C questionnaire to Chia Far. On April 5, 2002, Chia Far submitted its supplemental Section D questionnaire response. On April 22, 2002, we issued a second supplemental Section D questionnaire to Chia Far. On April 22, 2002, Chia Far submitted its second supplemental Sections A through C questionnaire response, and on May 3, 2002, submitted its second supplemental Section D questionnaire response.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On March 6, 2002, the Department extended the time limit for the preliminary results in this review to July 1, 2002. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of*

[1] Allegheny Ludlum, AK Steel Corporation—(formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

Antidumping Duty Administrative Review, 67 FR 10134 (March 6, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information provided by YUSCO from May 13, 2002 to May 21, 2002,

7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15,

valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of

percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy

more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and

comply with requests for information. *See also* the Statement of Administrative Action to the URAA, H. Doc. 103–316 (1994) at 870 ("*SAA*") (further discussing the application of adverse facts available).

For the preliminary results of review, in accordance with section 776(a)(2) of the Act, we have determined that the use of facts available is appropriate for Tung Mung. We confirmed that Tung Mung received the Department's

Antidumping Duty Administrative Review, 67 FR 10134 (March 6, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information provided by YUSCO from May 13, 2002 to May 21, 2002, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. We verified sales and cost information provided by Chia Far from May 22, 2002 to May 31, 2002. In addition, we verified the constructed export price ("CEP") sales information provided by Chia Far on behalf of Lucky Medsup, Inc. ("Lucky Medsup"), its affiliated reseller in the United States, from June 13, 2002 to June 14, 2002. Our verification results are outlined in the public version of the verification reports and are on file in the Central Records Unit ("CRU") located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81 , 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department also determined that certain specialty stainless steel products were excluded from the scope of the investigation and the subsequent order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[6]

Partial Rescission of Review

As noted above, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the POR. The Department subsequently contacted the U.S. Customs Service, had Customs do an inquiry into Ta Chen's exports to the United States during the POR, and reviewed Customs' data. There is no evidence on the record which indicates that Ta Chen made exports of subject merchandise during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Ta Chen. *See e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (Oct. 14, 1997).

Facts Available ("FA")

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* the Statement of Administrative Action to the URAA, H. Doc. 103–316 (1994) at 870 ("*SAA*") (further discussing the application of adverse facts available).

For the preliminary results of review, in accordance with section 776(a)(2) of the Act, we have determined that the use of facts available is appropriate for Tung Mung. We confirmed that Tung Mung received the Department's questionnaire. Pursuant to section 782(d) of the Act, after the Department did not receive a response to its first communication to Tung Mung, it followed up with a letter informing Tung Mung of the potential results if it chose not to cooperate further in the administration of the review. *See Letter to Tung Mung from DOC re: Non-response to Questionnaire*, dated October 17, 2001. In a letter dated October 19, 2001, Tung Mung responded that it was declining to respond to the questionnaire or participate in the administrative review. Because Tung Mung failed to provide any information on the record for this administrative review, we have no alternative but to apply total facts available to Tung Mung.

As noted above, in selecting facts otherwise available, pursuant to section 776(b) of the Act, the Department may use an adverse inference if the Department finds that an interested party, such as Tung Mung, failed to cooperate by not acting to the best of its ability to comply with requests for information. Tung Mung has not acted to the best of its ability in this administrative review, failing to cooperate in any way with the Department. Consistent with Department's practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, as adverse facts available, we have applied a margin based on the highest appropriate margin from this or any prior segment of the proceeding. *See Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review*, 65 FR 77567 (December 12, 2000).

The Department notes that while the highest margin calculated during this or any prior segment of the proceeding is 34.95 percent, this margin represents a combined rate applied in a channel transaction in the investigation of this proceeding based on middleman dumping by Ta Chen. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Taiwan*, 64 FR 30592 (June 8, 1999) ("SSSS Investigation").

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Where circumstances indicate that a particular margin is not appropriate as adverse facts available, the Department will disregard the margin and determine another, more appropriate one as facts available. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available *Comment 28*. Nothing on the record of this instant administrative review calls into question the reliability of this rate. Furthermore, with respect to the relevance aspect of corroboration, the Department has determined that there is no evidence on the record which would render the application of this margin inappropriate. Therefore, we consider the margin relevant to this proceeding as well. Thus, we find that the rate of

importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the after importation, by Lucky Medsup, Chia Far's affiliated reseller, to an unaffiliated purchaser in the United States. We based CEP on the packed prices to the first unaffiliated purchaser in the United States. We made deductions for movement expenses including: foreign inland freight from the plant to the port of exportation, international freight, marine insurance, brokerage and handling, container

Normal Value

1. Home Market Viability

For YUSCO and Chia Far, we compared the aggregate volume of home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Taiwan was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form

comparisons to the next most similar model. Certain of YUSCO's affiliated home market customers did not pass the arm's length test. Therefore, we have considered the downstream sales from these customers to the first unaffiliated customer.

3. Cost of Production ("COP") Analysis

YUSCO

Because the Department determined

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Where circumstances indicate that a particular margin is not appropriate as adverse facts available, the Department will disregard the margin and determine another, more appropriate one as facts available. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). Because the middleman dumping calculated margin would be inappropriate, given that the record does not indicate that any of Tung Mung's exports to the United States during the POR involved a middleman, the Department has applied the highest margin from any segment of the proceeding for a producer's direct exports to the U.S. without middleman dumping, which is 21.10 percent.

The rate of 21.10 percent, was applied in the first administrative review for another respondent and constitutes secondary information. Section 776(c) of the Act requires the Department, to the extent practicable, to corroborate secondary information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As noted in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, there are no independent sources from which the Department can derive calculated dumping margins. Therefore, unlike other types of information such as input costs or selling expenses, the only source of dumping margins is the calculated dumping margins from previous administrative determinations.

The Department corroborated the information used to establish the 21.10 percent rate in the first administrative review, finding the information to be both reliable and relevant. *See Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682, (February 13, 2002) and accompanying *Issues and Decision Memorandum* at *Comment 28*. Nothing on the record of this instant administrative review calls into question the reliability of this rate. Furthermore, with respect to the relevance aspect of corroboration, the Department has determined that there is no evidence on the record which would render the application of this margin inappropriate. Therefore, we consider the margin relevant to this proceeding as well. Thus, we find that the rate of 21.0 percent from the first administrative review is sufficiently corroborated for purposes of this current administrative review.

Normal Value Comparisons

To determine whether respondent's sales of subject merchandise from Taiwan to the United States were made at less than normal value, we compared the export price ("EP") and CEP, as appropriate, to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the description in the "Scope of the Review" section of this notice, *supra*, and sold by YUSCO and Chia Far in the home market during the POR to be foreign like product for the purpose of determining appropriate product comparisons to SSSS products sold in the United States. We have relied on nine product characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: grade, hot or cold-rolled, gauge, surface finish, metallic coating, non-metallic coating, width, temper, and edge. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the August 30, 2001 antidumping duty questionnaire and instructions, or to constructed value ("CV"), as appropriate. We made corrections to reported U.S. and home market sales data based on the Department's findings at verification, as appropriate.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

YUSCO

For purposes of this administrative review, YUSCO classified its sales as EP sales, stating that "(it) sold subject merchandise directly to an unaffiliated importer in the United States during the POR." Therefore, we are using EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by YUSCO to an unaffiliated purchaser in the United States. We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions for inland freight (from YUSCO's plant to the port of export), international freight, marine insurance, container handling fees, certification handling fees, brokerage and handling, imputed credit, and packing in accordance with section 772(c) of the Act. We made no changes or corrections to the U.S. sales information reported by YUSCO as a result of our verification findings in the calculation of YUSCO's dumping margin.

Chia Far

For purposes of this review, Chia Far has classified its sales as either EP or CEP sales. We are using EP as defined in section 772(a) of the Act for sales of subject merchandise that were sold, prior to importation, outside the United States by Chia Far to an unaffiliated purchaser in the United States. We based EP on the packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses including: foreign inland freight from the plant to port of exportation, brokerage and handling, international ocean freight, marine insurance, container handling charges, harbor construction fees. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

We are using CEP as defined in section 772(a) of the Act for sales of subject merchandise that were sold,

after importation, by Lucky Medsup, Chia Far's affiliated reseller, to an unaffiliated purchaser in the United States. We based CEP on the packed prices to the first unaffiliated purchaser in the United States. We made deductions for movement expenses including: foreign inland freight from the plant to the port of exportation, international freight, marine insurance, brokerage and handling, container handling charges, harbor construction fees, other U.S. transportation expenses and U.S. duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses.

We made adjustments to Chia Far's reported inventory carrying costs to exclude expenses attributed to the time period between the date of shipment and the date of arrival in the United States. *See, Analysis for the Preliminary Results of Review for Stainless Steel Strip in Coils From Taiwan-Chia Far Industrial Factory Co., Ltd.* (July 1, 2002) ("*Chia Far Preliminary Analysis Memo*") and *Verification of Sales and Cost for Chia Far Industrial Factory Co., Ltd. in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan* (July 1, 2002) ("*Chia Far Verification Report*"). In addition, we revised the U.S. sales listing, based on our findings at verification, to account for CEP sales made by Lucky Medsup during the POR of subject merchandise which was rejected by the customer and re-sold after the POR. *See Chia Far Preliminary Analysis Memo* (July 1, 2002) and *Verification of CEP Sales Made by Lucky Medsup, Inc in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan* ("*Chia Far CEP Verification Report*") (July 1, 2002).

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

1. Home Market Viability

For YUSCO and Chia Far, we compared the aggregate volume of home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Taiwan was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of home market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise for both companies, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the home market sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Taiwan, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the CEP or NV sales, as appropriate.

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value ("CV") Comparisons" sections of this notice.

2. Arm's-Length Test

YUSCO reported that it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing, but including the alloy surcharge. Where prices to the affiliated party were on average 99.5 percent or more of the price to the affiliated party, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. Certain of YUSCO's affiliated home market customers did not pass the arm's length test. Therefore, we have considered the downstream sales from these customers to the first unaffiliated customer.

3. Cost of Production ("COP") Analysis

YUSCO

Because the Department determined that YUSCO made sales in the home market at prices below the cost of producing the subject merchandise in the previous administrative review of YUSCO and therefore excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that YUSCO made sales in the home market at prices below the cost of producing the merchandise in this administrative review. See section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry to determine whether YUSCO made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act.

Chia Far

Because we found that Chia Far did not act to the best of its ability in providing information to the Department in the previous administrative review of Chia Far, we applied total adverse facts available, which included a finding on that basis that Chia Far's sales were made below cost. The application of total adverse facts available applies to all claims on the record, including claims of below-cost sales. Thus, we discounted all of Chia Far's home market sales in the previous review. Section 773(b)(2)(A)(ii) of the Act states that if the Department has disregarded sales in a previous review because of a finding that those sales were made below cost, the Department will have reasonable grounds to believe or suspect that sales were made below cost. As a result, the Department initiated a cost of production inquiry to determine whether Chia Far made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of YUSCO's and Chia Far's cost of materials and fabrication for the foreign like product, plus amounts for home

market selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. We relied on the COP data submitted by YUSCO in its original and supplemental cost questionnaire responses. For the preliminary results of review, we revised the COP information submitted by Chia Far as follows: 1) We revised G&A expense to exclude

of the Act. As a result, we disregarded such below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. Based on this test, we disregarded below-cost sales from our analysis for YUSCO and Chia Far. For those sales of subject merchandise for which there were no comparable home market sales in the ordinary course of

matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV.

We adjusted YUSCO's reported inventory carrying costs and credit expenses to account for an error in the short-term interest rate discovered at verification. *See, Verification of Sales and Cost for Yieh United Steel*

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from

In the present review, neither YUSCO nor Chia Far requested a LOT adjustment. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

(Chia Far stated that both were insignificant and therefore reported as indirect selling expenses), as well as price negotiation and customer communication, sample analysis, and after-sale processing at the customer's request. Therefore, based on Chia Far's selling functions performed for each type of customer, we preliminarily determine that there is one LOT in the home market.

market selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. We relied on the COP data submitted by YUSCO in its original and supplemental cost questionnaire responses. For the preliminary results of review, we revised the COP information submitted by Chia Far as follows: 1) We revised G&A expense to exclude unrealized foreign exchange-rate and translation gains and losses; and 2) we revised interest expenses to exclude dividend income as an offset to interest expense. *See Chia Far Preliminary Analysis Memo* (July 1, 2002) and *Chia Far Verification Report* (July 1, 2002).

We made no changes to the COP information provided to conduct the cost test.

B. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COP for YUSCO and Chia Far, adjusted where appropriate, to their home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in accordance with section 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the extended period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. As a result, we disregarded such below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. Based on this test, we disregarded below-cost sales from our analysis for YUSCO and Chia Far. For those sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade, we compared EP or CEP to CV, in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated YUSCO's and Chia Far's constructed value ("CV") based on the sum of their cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by YUSCO and Chia Far in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

YUSCO

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on the home market prices to unaffiliated home market customers. Where appropriate, we deducted rebates, warranty expenses, and movement expenses (*e.g.*, inland freight from plant to customer) in accordance with section 773(a)(6)(B) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV.

We adjusted YUSCO's reported inventory carrying costs and credit expenses to account for an error in the short-term interest rate discovered at verification. *See, Verification of Sales and Cost for Yieh United Steel Corporation in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan* ("*YUSCO Verification Report*"), dated July 1, 2002 and *Analysis for the Preliminary Results of Review for Stainless Steel Strip in Coils From Taiwan- Yieh United Steel Corporation* ("*YUSCO Preliminary Analysis Memo*"), dated July 1, 2002. Additionally, we discovered at verification that YUSCO could not support the reported date of payment for downstream sales of its affiliate, Yieh Mau Corporation ("Yieh Mau"). Therefore, pursuant to section 776(a), as partial facts available, we have assigned to Yieh Mau's downstream sales a weighted-average payment date derived from YUSCO's sales to unaffiliated customers, and adjusted Yieh Mau's reported credit expenses accordingly. *See YUSCO Verification Report* and *YUSCO Analysis Memo*. We recalculated credit expenses for those YUSCO sales with missing payment and shipment dates. For sales with missing payment dates, the Department set the date of payment as July 1, 2002, the date of the preliminary results. *See* YUSCO Analysis Memo. Additionally, we recalculated credit expenses for those YUSCO sales with missing shipment dates. For missing shipment dates, the Department set the shipment date as invoice date because invoice most closely approximates shipment date. *See* YUSCO Analysis Memo.

Chia Far

For those product comparisons for which there were sales at prices above the COP, we based NV on the prices to unaffiliated purchasers in the home market. Where appropriate, we deducted movement expenses and direct selling expenses, and added U.S. direct selling expenses (credit) in accordance with section 773(a)(6)(B) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from YUSCO and Chia Far about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by YUSCO and Chia Far for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar.

In the present review, neither YUSCO nor Chia Far requested a LOT adjustment. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

YUSCO

In the home market ("HM"), YUSCO reported one level of trade. *See November 13, 2001 Questionnaire Response from YUSCO*, at B–25. YUSCO sold through one channel of distribution in the HM. For these HM customers, YUSCO provided the following selling functions: inland freight, warranty services, and technical advice. Because there is only one sales channel involving similar functions for all sales, we preliminarily determine that there is one LOT in the home market.

For the U.S. market, YUSCO reported one level of trade. *See November 13, 2001 Questionnaire Response from YUSCO*, at C–21–22. YUSCO sold through one channel of distribution in the U.S. market: to an unaffiliated local distributor. For U.S. sales, YUSCO provided the following selling functions: arranging freight and delivery; invoicing; and packing. YUSCO did not incur any expenses in the United States for its U.S. sales. Because there is only one sales channel in the United States, we preliminarily determine that there is one LOT in the United States.

Based on our analysis of the selling functions performed for sales in the HM and U.S. market, we preliminarily determine that the sales in the HM and U.S. market were made at the same LOT. Despite the existence of certain additional selling functions (*i.e.*, general consultation of technical advise and warranty services) performed by YUSCO for its HM sales, no significant difference exists in the selling functions performed in the HM and U.S. market. Therefore, a LOT adjustment is not warranted.

Chia Far

For its home market sales, Chia Far reported one channel of distribution, direct sales from inventory, and two customer categories, unaffiliated end users and unaffiliated distributors. For HM sales to both distributors and end-users, Chia Far performed many of the same major selling functions, including arranging freight and delivery, general technical and quality claim assistance (Chia Far stated that both were insignificant and therefore reported as indirect selling expenses), as well as price negotiation and customer communication, sample analysis, and after-sale processing at the customer's request. Therefore, based on Chia Far's selling functions performed for each type of customer, we preliminarily determine that there is one LOT in the home market.

For its U.S. sales, Chia Far reported two channels of distribution: EP sales made to order; and CEP sales made to order; and one customer category: unaffiliated distributors for both EP sales and CEP sales. Chia Far sold directly to unaffiliated distributors and, for its CEP sales, sold through Lucky Medsup, an affiliated U.S. company, which then sold to unaffiliated distributors in the United States. We examined the claimed selling functions performed by Chia Far for all U.S. sales. Chia Far provided the same level of the following services for both its sales made directly to the unaffiliated U.S. customer (EP sales) and sales made to Lucky Medsup (CEP sales) in the United States: arranging inland freight to the port and delivery, packing, processing inquiries and purchase orders, invoicing, and extending credit. For EP sales, Chia Far provided additional services including international freight, marine insurance, and banking charges.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between Chia Far and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. Chia Far did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, Chia Far provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller Lucky Medsup as it provided for its home market sales, including price negotiation and customer communication, sample analysis, and inland freight. Based on our analysis of the channels of

distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that Chia Far's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need

margin exists for the period July 1, 2000 through June 30, 2001:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM TAIWAN

Manufacturer/exporter/reseller	Margin (percent)
YUSCO	0.00
Chia Far	1.01

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) the cash

with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17198 Filed 7–8–02; 8:45 am]

30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, January, 22, 2002 (67 FR 4236). The Department's preliminary results are currently due on September 2, 2002.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the

Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–024.

Applicant: Massachusetts Institute of Technology, Gas Turbine Laboratory, 31–265, 77 Massachusetts Avenue, Cambridge, MA 02139–4307.

Instrument: Universal 5 Axis High Speed Machining Center, Model UCP 600.

Manufacturer: Mikron, Switzerland.

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distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that Chia Far's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

For EP sales in the U.S. market, Chia Far provided the same level of the following services for both EP and NV sales: price negotiation and customer communication; processing of customer order; and inland freight. For EP sales, Chia Far did not provide sample analysis during this review, however, this was only a minor difference. Furthermore, Chia Far provided additional services including international freight, marine insurance, and banking charges. Based on our analysis of the selling functions performed for sales in the HM and EP sales in the U.S. market described above, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2000 through June 30, 2001:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM TAIWAN

Manufacturer/exporter/reseller	Margin (percent)
YUSCO	0.00
Chia Far	1.01
Tung Mung	21.10

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to 751(a)(3)(A) of the Act.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above *de minimis*, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 21.10 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17198 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits of the preliminary results of the antidumping duty administrative review of stainless steel wire rod ("SSWR") from India. This review covers the period December 1, 2000 through November 30, 2001.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On January 29, 2002, we published a notice of initiation of a review of SSWR from India covering the period December 1, 2000 through November 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, January, 22, 2002 (67 FR 4236). The Department's preliminary results are currently due on September 2, 2002.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245–day period to issue its preliminary results by 120 days. Completion of the preliminary results of this review within the 245–day period is not practicable for the following reasons:

- The review involves four companies, a large number of transactions and complex adjustments.
- All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 60 days until November 1, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: July 1, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–17197 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–024.

Applicant: Massachusetts Institute of Technology, Gas Turbine Laboratory, 31–265, 77 Massachusetts Avenue, Cambridge, MA 02139–4307.

Instrument: Universal 5 Axis High Speed Machining Center, Model UCP 600.

Manufacturer: Mikron, Switzerland.

Intended Use: The instrument is intended to be used to study electromechanics at micron to millimeter scale; micro fluid and structural mechanics; micro rotor dynamics and air bearing fluid flow. Micro motor/generator torque and efficiency versus speed, micro turbomachinery pressure, rise flow capacity and efficiency, micro rotor precession and whirl onset, microbearing load capacity and stability will be investigated. Micro motor/generator, jet engines and rocket turbopumps will be spun to high speed (over 1 million rpm) during which their electrical performance, pressure rise versus flow characteristics, efficiency, and rotor motion will be measured by optical techniques and micro-sensors. The instrument will also be used for educational purposes in two graduate level courses: (1) Aircraft Gas Turbine Structures and (2) Aircraft Gas Turbine Design.

Application accepted by Commissioner of Customs: June 13, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–17029 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 2002 through March 31, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Salkeld, Office of AD/CVD Enforcement VI, Group II,

government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period January 1, 2002 through March 31, 2002.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant

held September 9–13, 2002. One public meeting will be held during the week. The public meeting will be on Monday, September 9, 2002 from 3:30 to 5 p.m., at the Michigan Library and Historical Center, Lake Superior Room, 1st Floor, 717 West Allegan, Lansing, Michigan.

The Alaska Coastal Management Program evaluation site visit will be from September 9–16, 2002. One public

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Notification Requirements for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork

at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

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foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 2002 through March 31, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Salkeld, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period January 1, 2002 through March 31, 2002.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 28, 2002

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross Subsidy ($/lb)[1]	Net[2] Subsidy ($/lb)
Austria	European Union Restitution Payments	$ 0.11	$ 0.11
Belgium	EU Restitution Payments	$ 0.01	$ 0.01
Canada	Export Assistance on Certain Types of Cheese	$ 0.22	$ 0.22
Denmark	EU Restitution Payments	$ 0.06	$ 0.06
Finland	EU Restitution Payments	$ 0.13	$ 0.13
France	EU Restitution Payments	$ 0.10	$ 0.10
Germany	EU Restitution Payments	$ 0.06	$ 0.06
Greece	EU Restitution Payments	$0.00	$0.00
Ireland	EU Restitution Payments	$ 0.06	$ 0.06
Italy	EU Restitution Payments	$ 0.04	$ 0.04
Luxembourg	EU Restitution Payments	$0.07	$0.07
Netherlands	EU Restitution Payments	$ 0.04	$ 0.04
Norway	Indirect (Milk) Subsidy	$ 0.28	$ 0.28
	Consumer Subsidy	$ 0.13	$ 0.13
Total		$0.41	$0.41
Portugal	EU Restitution Payments	$ 0.04	$ 0.04
Spain	EU Restitution Payments	$ 0.02	$ 0.02
Switzerland	Deficiency Payments	$ 0.06	$ 0.06
U.K.	EU Restitution Payments	$ 0.04	$ 0.04

[1]Defined in 19 U.S.C. 1677(5).
[2]Defined in 19 U.S.C. 1677(6).

[FR Doc. 02–17028 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Michigan Coastal Management Program and the Alaska Coastal Management Program.

These Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visit for these evaluations, and the date, local time, and location of the public meeting during the site visit.

The Michigan Coastal Management Program evaluation site visit will be held September 9–13, 2002. One public meeting will be held during the week. The public meeting will be on Monday, September 9, 2002 from 3:30 to 5 p.m., at the Michigan Library and Historical Center, Lake Superior Room, 1st Floor, 717 West Allegan, Lansing, Michigan.

The Alaska Coastal Management Program evaluation site visit will be from September 9–16, 2002. One public meeting will beheld during the week. The public meeting will be a coast-wide public meeting held Thursday, September 12, 2002 from 7 to 9:30 p.m., via teleconference on the Alaska Legislative Teleconference Network. OCRM Evaluation staff will be at the Anchorage Legislative Information Office, at 716 W 4th Avenue, Suite 200, Anchorage. Teleconference connections will be provided to Legislative Information Offices in: Ketchikan, Sitka, Juneau, Cordova, Valdez, Homer, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow. Written or oral comments will be accepted, and a person does not need to attend the teleconference to submit written comments.

Copies of Michigan's and Alaska's most recent performance reports, as well as OCRM's notification and supplemental request letters to the States, are available upon request form OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 120th floor, Silver Spring, Maryland 20910. When each evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 215.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.)

Dated: June 28, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–16981 Filed 7–8–02; 8:45 am]

BILLING CODE 3510–08–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Notification Requirements for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget, of information collection requirements in a coal and woodburning appliance rule.

The rule, codified at 16 CFR part 1406, requires manufacturers and importers of certain coal and woodburning appliances to provide safety information to consumers on labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined. The requirements to provide copies of labels and instructions to the Commission have been in effect since May 16, 1984. For this reason, the information burden imposed by this rule is limited to manufacturers and importers introducing new products or models, or making changes to labels, instructions, or information previously provided to the Commission. The purposes of the reporting requirements in part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the rule, and to assist the Commission in determining the extent to which manufacturers and importers comply with the requirements in part 1406. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than September 9, 2002.

ADDRESSES: Written comments should be captioned "Notification Requirements for Coal and Wood Burning Stoves" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there may be up to about 5 firms required to annually submit labeling and other information. The staff further estimates that the average number of hours per respondent is three per year, for a total of about 15 hours of annual burden (5 × 3 = 15).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: July 2, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–17038 Filed 7–8–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–29]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a

section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–29 with attached transmittal and policy justification.

Dated: July 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 JUN 2002
In reply refer to:
I-02/007138

The Honorable J. Dennis Hastert

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section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–29 with attached transmittal and policy justification.

Dated: July 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 JUN 2002
In reply refer to:
I-02/007138

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-29 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Bahrain for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Bahrain

POLICY JUSTIFICATION

Bahrain – AN/TPS-59(V)3 3-Dimensional Land Based Radar

The Government of Bahrain has requested a possible sale of one AN/TPS-59(V)3 3-dimensional land based radar, one Air Defense Communication Platform, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $40 million.

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Transmittal No. 02-29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Bahrain

(ii) **Total Estimated Value:**

Major Defense Equipment*	$29 million
Other	$11 million
TOTAL	$40 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** one AN/TPS-59(V)3 3-dimensional land based radar, one Air Defense Communication Platform, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support

(iv) **Military Department:** Navy (LAH)

(v) **Prior Related Cases, if any:** None

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None.

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex under separate cover.

(viii) **Date Report Delivered to Congress:** 26 JUN 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain – AN/TPS-59(V)3 3-Dimensional Land Based Radar

The Government of Bahrain has requested a possible sale of one AN/TPS-59(V)3 3-dimensional land based radar, one Air Defense Communication Platform, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of radar will provide more responsive and timely information for air defense operations. It would greatly simplify the projection of U.S. military forces during regional contingency operations by enhancing the deployment of 3-dimensional land based radar capabilities.

This proposed radar may be used for airborne early warning and defense in conjunction with the HAWK missile defense system that is already in place in Bahrain.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation of Syracuse, New York. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require a U.S. contractor representative for one year representing varying technical skills and training in Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–17048 Filed 7–8–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defence Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–31 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 JUN 2002
In reply refer to:
I-02/007332

Transmittal No. 02-31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Canada

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 JUN 2002
In reply refer to:
I-02/007332

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-31, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Canada for defense articles and services estimated to cost $19 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Canada

(ii) Total Estimated Value:

Major Defense Equipment*	$17 million
Other	$ 2 million
TOTAL	$19 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 12 SM-2 Block IIIA STANDARD missiles, 12 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support

(iv) Military Department: Navy (AOL)

(v) Prior Related Cases, if any:
FMS case AJY - $36 million – 30Sep88
FMS case AKT - $11 million – 02Oct87

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 25 JUN 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION (U)

Canada – SM-2 Block IIIA STANDARD Missiles

The Government of Canada has requested a possible sale of 12 SM-2 Block IIIA STANDARD missiles, 12 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics

Transmittal No. 02-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

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POLICY JUSTIFICATION (U)

Canada – SM-2 Block IIIA STANDARD Missiles

The Government of Canada has requested a possible sale of 12 SM-2 Block IIIA STANDARD missiles, 12 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $19 million.

This proposed sale would contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and furthering weapon system standardization and interoperability with U.S. forces.

The Canadian Navy requires these defense articles to provide Anti-Aircraft Warfare (AAW) System capability. The evolution of the AAW threat in littoral nations mandates this defense capability. The Canadian Navy intends to use the defense articles on their Destroyer Class surface ships to safely operate the SM-2 Block STANDARD missiles for self-defense against air and cruise missile threat in Canada and the NATO theater community. Canada, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA STANDARD is a surfaced-launched guided missile. It is operational and deployed on cruisers and destroyers for use against air and surface threats (aircraft, missiles, and ships). The Guidance System employs a continuous-wave radar link for homing to a target. Steering Control Unit and roll commands from the adaptive Auto-pilot Battery Unit system provides flight stability via four aft mounted control surfaces. Propulsion is provided by a solid propellant Dual Thrust Rocket Motor that is an integral part of the missile airframe. The Target Detecting Device is a complex fuse with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds. The telemeter unit transmits missile performance data to ground station to be analyzed for accuracy of missile/target scenario.

2. The SM-2 Block IIIA is classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. The parametric documents, missile handling procedures, general performance data, firing guidance, dynamics information, flight analysis procedures, missile log books, propulsion data sheets, and Shore Activity Maintenance Data Sheets of the STANDARD missile documentation are classified up to Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–17049 Filed 7–8–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Services (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2002 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards, and other actions related to management of the SES cadre.

EFFECTIVE DATE: July 1, 2002.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, STE 2533, Fort Belvoir, Virginia, 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Karon Webb, SES Program Manager, HQC Human Resources Office, Defense Logistics Agency, Department of Defense, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 1-year term, which begins on July 1, 2002.

PRB Chair: Maj Gen Mary Saunders, USAF, Vice Director, DLA.

Members: Mr. Frank Lotts, Deputy Director, Logistics Operations, Ms. Phyllis Campbell, Deputy Commander,

Defense Distribution Center, Dr. Linda Furiga, Comptroller.

Radm Raymond A. Archer III,
SC, USN, Vice Director, Defense Logistics Agency.
[FR Doc. 02–17040 Filed 7–8–02; 8:45 am]
BILLING CODE 3620–01–M

Recordkeeping burden. OMB invites public comment.

Dated: July 2, 2002.

John D. Tressler,
Leader, Regulatory Information Management, Office of the Chief, Information, Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17066 Filed 7–8–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.038, 84.033, and 84.007]

2002-2003 Award Year Deadline Dates

What does an institution submit?	Where does this institution submit this?	What is the deadline for submission?
1. A request for a waiver of the FWS Community	The FWS Community Service Waiver request must be signed and submitted by:	August 9, 2002

Defense Distribution Center, Dr. Linda Furiga, Comptroller.

Radm Raymond A. Archer III,

SC, USN, Vice Director, Defense Logistics Agency.

[FR Doc. 02–17040 Filed 7–8–02; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 2, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief, Information, Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 9.

Abstract: Section 509 of the Rehabilitation Act of 1973 as amended (Act), and its implementing Federal Regulations at 34 CFR part 381, require the PAIR grantees to submit an application to the Rehabilitation Services Administration (RSA) Commissioner in order to receive assistance under Section 509 of the Act. The Act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the Act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*)

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2026. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17066 Filed 7–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.038, 84.033, and 84.007]

Notice of the 2002–2003 Award Year Deadline Dates for Campus-Based Institutions

SUMMARY: The Secretary announces the 2002–2003 award year deadline dates for institutions to submit various funding and waiver requests and documents under the campus-based programs.

SUPPLEMENTARY INFORMATION: The deadlines provided in this notice are for requesting funding or waivers for the three programs that are collectively known as the campus-based programs. The three programs are the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs.

The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their cost of education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for the cost of their education and to involve the students in community service activities.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of Title IV of the Higher Education Act of 1965, as amended.

Throughout the year, we will provide additional information regarding the individual deadline dates listed in this notice via the Information for Financial Aid Professionals (IFAP) web site: *http://www.ifap.ed.gov*

Deadline Dates: The following table provides the deadline dates for the campus-based programs for the 2002–2003 award year. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

BILLING CODE 4000–01–U

2002-2003 Award Year Deadline Dates

What does an institution submit?	Where does this institution submit this?	What is the deadline for submission?
1. A request for a waiver of the FWS Community Service Expenditure Requirements for the 2002-2003 award year.	The FWS Community Service Waiver request must be signed and submitted by: FAX to: Pamela Wills at (202) 275-3476 or Hand delivery (in person or by commercial courier) to: FWS CS Administrator U.S. Department of Education Campus-Based Operations 830 First Street, NE Room 61D4 Washington, DC 20002 or Mail to: The same above address for hand delivery, except use Zip Code 20202-5453.	August 9, 2002
2. The Campus-Based Reallocation Form designated for the return of 2001-2002 campus-based funds.	The Reallocation Form must be submitted electronically and is located in the "Setup" section of the FISAP on the Internet at: www.cbfisap.sfa.ed.gov	August 23, 2002
3. The 2001-2002 Fiscal Operations Report and 2003-2004 Application to Participate (FISAP).	The FISAP is located on the Internet at the following site: www.cbfisap.sfa.ed.gov The FISAP form must be submitted electronically	October 1, 2002

	via the Internet. The combined signature page must be signed and submitted by hand delivery or mail to: The FISAP Administrator INDUS Corporation 1953 Gallows Road, Suite	

Proof of Delivery of Request and Supporting Documents Submissions Delivered by Mail

If you submit documents by mail when appliable, we accept as proof of mailing one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legible dated U.S. Postal Service postmark.

Governmentwide requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Director of Campus-Based Operations at (202) 377–3174 or via Internet: *Richard.Coppage@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call

Administration (DOE/NNSA) is amending the Record of Decision (ROD) for the *Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico,* DOE/EIS–0293 (Conveyance and Transfer EIS) to reflect changes in the need to retain certain portions of land tracts withheld earlier due to

	via the Internet. The combined signature page must be signed and submitted by hand delivery or mail to: The FISAP Administrator INDUS Corporation 1953 Gallows Road, Suite 300 Vienna, VA 22182.	
4. A request for a waiver of the 2003-2004 award year penalty for the under-use of 2001-2002 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Internet at: www.cbfisap.sfa.ed.gov	February 14, 2003
5. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2003-2004 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the "Setup" section of the FISAP on the Internet at: www.cbfisap.sfa.ed.gov The application and agreement must be signed and submitted by: Hand delivery (in person or by commercial courier) to: The Work-Colleges Program Campus-Based Operations U.S. Department of Education 830 First Street, NE Room 61J1 Washington, DC 20002 or Mail to: The same above address for hand delivery except use Zip Code 20202-5453.	March 14, 2003

BILLING CODE 4000-01-C

Proof of Delivery of Request and Supporting Documents Submissions Delivered by Mail

If you submit documents by mail when appliable, we accept as proof of mailing one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legible dated U.S. Postal Service postmark.

(3) Other proof of mailing or delivery acceptable to the Secretary.

We do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. Institutions should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. Institutions are encouraged to use certified mail.

Submissions Delivered By Hand

If you submit documents by hand when applicable, either in person or by commercial courier, we accept hand deliveries between 8 a.m. and 5 p.m., Eastern time, Monday through Friday except Federal Holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in a specific "Dear Partner" letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Student Financial Aid Handbook.

Applicable Regulations: The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Director of Campus-Based Operations at (202) 377–3174 or via Internet: *Richard.Coppage@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: July 3, 2002.

Candace M. Kane,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. 02–17205 Filed 7–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The U.S. Department of Energy's National Nuclear Security Administration (DOE/NNSA) is amending the Record of Decision (ROD) for the *Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico*, DOE/EIS–0293 (Conveyance and Transfer EIS) to reflect changes in the need to retain certain portions of land tracts withheld earlier due to potential national security mission requirements for health and safety buffer areas relating to on-going and future operations. Specifically, DOE/NNSA has reassessed its need for certain portions of tracts to serve as health and safety buffer areas after: (1) Ceasing its tritium activities at Los Alamos National Laboratory's (LANL's) Technical Area 21 (TA–21); and (2) further refinement of its contemplated proton radiograph project at TAs –53 and –72. DOE/NNSA would no longer need to retain an 8-acre portion located at the western end of the Airport Tract for this purpose. Additionally, two portions of the White Rock Y Tract comprising about 74 acres of highway easement are no longer required as health and safety buffer areas.

FOR FURTHER INFORMATION CONTACT: For further information concerning the conveyance or transfer of land tracts or this amended ROD, contact Elizabeth Withers, NEPA Compliance Officer, Office of Los Alamos Site Operations, National Nuclear Security Administration, 528 35th Street, Los Alamos, NM 87004, 505–667–8690.

For further information concerning DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–4600, or leave a message at 1–800–472–2756.

Additional information regarding the DOE NEPA process and activities is also available on the Internet through the NEPA home page at *http://tis.eh.doe.gov/nepa*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Requirements for Action

LANL is one of several national security laboratories that supports DOE/NNSA's responsibilities for national security, energy resources, environmental quality, and science. Located in north-central New Mexico, LANL is about 60 miles (97 kilometers) north-northeast of Albuquerque, and

about 25 miles (40 kilometers) northwest of Santa Fe. The small communities of Los Alamos townsite, White Rock, Pajarito Acres, the Royal Crest Mobile Home Park, and San Ildefonso Pueblo are located in the immediate vicinity of LANL. LANL occupies an area of approximately 27,832 acres (11,272 hectares), or approximately 43 square miles (111 square kilometers). DOE also has

results of the Environmental Restoration Report review and the final Conveyance and Transfer EIS (Combined Data Report, January 2000); and preparing a plan for conveying or transferring land according to the allocation agreement of parcels for Congress (Conveyance and Transfer Plan, April 2000). The Act further states that the Secretary must, to the maximum extent practicable, conduct any needed environmental

Tract, operational requirements of two existing facilities within TA–21 necessitate the retention of surrounding areas as security, health, and safety buffer areas. Engagement in a future project to construct and operate a proton radiography facility at LANL could result in an expanded security, health, and safety buffer area(s) being required that may intrude upon one or more of the tracts under consideration for

human health and safety to facilitate the transfer of the remaining portions of tracts.

A. Need for Existing Facilities at TA–21

In 2000, TA–21 Tract housed both the Tritium Systems Test Assembly (TSTA) and the Tritium Sciences and Fabrication Facility (TSFF) and both of these facilities were scheduled to continue operation past the year 2007. These two research facilities were

portions of the tract are located adjacent to the highway interchange area and total about 74 acres; one 54-acre tract portion is located to the west along State Road 502 and one 20-acre tract portion is located to the south along State Road 4. DOE has resolved that these two portions of the White Rock Y Tract are very unlikely to be needed for the purpose of serving as future health and safety buffers as long as provisions are

hectares) acres, including the highway exchange and areas east of it, because of the potential national security mission need for the remainder of the tract. At this time, the DOE/NNSA will convey an approximately 54-acre parcel of the White Rock Y Tract comprised of the State Road 502 easement, and an approximately 20-acre parcel of the White Rock Y Tract comprised of the State Road 4 easement, both of which abut the highway exchange and eastern

about 25 miles (40 kilometers) northwest of Santa Fe. The small communities of Los Alamos townsite, White Rock, Pajarito Acres, the Royal Crest Mobile Home Park, and San Ildefonso Pueblo are located in the immediate vicinity of LANL. LANL occupies an area of approximately 27,832 acres (11,272 hectares), or approximately 43 square miles (111 square kilometers). DOE also has administrative control over other properties and land within Los Alamos County that total about 915 acres (371 hectares).

On November 26, 1997, Congress passed Public Law 105–119, the *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Fiscal Year 1998* ("the Act"). Section 632 of the Act (42 U.S.C. 2391) directs the Secretary of Energy (the Secretary) to convey to the Incorporated County of Los Alamos, New Mexico, or to the designee of the County, and transfer to the Department of the Interior, in trust for the San Ildefonso Pueblo, parcels of land under the jurisdictional administrative control of the Secretary at or in the vicinity of LANL. Such parcels, or tracts, of land must meet suitability criteria established by the Act. The purpose of the conveyances and transfers is to fulfill the obligations of the United States with respect to Los Alamos, New Mexico, under sections 91 and 94 of the Atomic Energy Community Act of 1955 (AECA) (42 U.S.C. 2391, 2394). Upon the completion of the conveyance or transfer, the Secretary of Energy shall make no further financial assistance payments with respect to LANL under the AECA.

The Act sets forth the criteria, processes, and dates by which the tracts will be selected, titles to the tracts reviewed, environmental issues evaluated, and decisions made as to the allocation of the tracts between the two recipients. DOE's responsibilities under the Act include identifying potentially suitable tracts of land according to criteria set forth in the law (Land Transfer Report, April 1998); conducting a title search on each tract of land (Title Report, September 1998); identifying any environmental restoration and remediation that would be needed for each tract of land (Environmental Restoration Report, August 1999); conducting *National Environmental Policy Act of 1969* (NEPA) review of the proposed conveyance or transfer of the land tracts (the Conveyance and Transfer EIS, October 1999, distributed in January 2000); reporting to Congress on the results of the Environmental Restoration Report review and the final Conveyance and Transfer EIS (Combined Data Report, January 2000); and preparing a plan for conveying or transferring land according to the allocation agreement of parcels for Congress (Conveyance and Transfer Plan, April 2000). The Act further states that the Secretary must, to the maximum extent practicable, conduct any needed environmental restoration or remediation activities within 10 years of enactment (by November 26, 2007), and convey and transfer the tracts meeting the suitability criteria. Under the Act, DOE had no role in the designation of recipients nor how the parcels of land will be allocated between the recipients. As specified in Public Law 105–119, the actual disposition of each tract, or portion of a tract, would be subject to DOE's need for the individual tract, or a portion of the tract, to meet a national security mission support function, which could range from either direct or indirect activity involvement. Additionally, the disposition of each tract, or portion of a tract, would be subject to DOE's completion of any necessary environmental restoration or remediation required.

B. Previous Decision on the Conveyance and Transfer Actions

In the ROD for the Conveyance and Transfer EIS (65 FR, Number 54, Page 14952, March 20, 2000), DOE stated its decision to convey and transfer each of the ten subject tracts, either in whole or in part, by November 26, 2007. DOE's decision, consistent with the Preferred Alternative analyzed in the Conveyance and Transfer EIS, was to convey or transfer seven tracts in whole and three tracts (the Airport, TA–21 and White Rock Y Tracts) in part.

Two of the tracts, the Airport Tract and the White Rock Y Tract, would be partially transferred because of potential national security mission needs identified by DOE prior to the issuance of the ROD that require the retention of portions of these tracts. While both of the suitability criteria were considered in the formulation of the Preferred Alternative, the national security mission support criteria led DOE to the recognition that portions of the White Rock Y and the Airport Tracts may not be available for conveyance or transfer within the 10-year period specified by Public Law 105–119. This is due to operational requirements of existing and potential facilities within TA–21 and at TAs 53 and 72 located nearby, and the need for surrounding areas to be retained as security, health, and safety buffer areas. In the case of the Airport Tract, operational requirements of two existing facilities within TA–21 necessitate the retention of surrounding areas as security, health, and safety buffer areas. Engagement in a future project to construct and operate a proton radiography facility at LANL could result in an expanded security, health, and safety buffer area(s) being required that may intrude upon one or more of the tracts under consideration for disposal. Because the White Rock Y Tract is the nearest subject tract to one of the LANL locations that will likely be evaluated for the proton radiography project, DOE reduced this tract to a partial status for disposition in the 2000 ROD. In the ROD, DOE stated its intention to evaluate these existing and future projects and facility operational needs to determine whether to continue to retain portions of these two tracts. DOE stated in the ROD that it would make every effort to minimize the portions of the tracts it retains and only retain essential areas and convey or transfer the remainder of the tracts.

The Airport Tract consists of about 205 acres (83 hectares). Located east of the Los Alamos townsite, it is close to the East Gate Business Park. The Los Alamos Airport is located on part of the tract, while other portions of the tract are undeveloped. The White Rock Y Tract consists of about 540 acres (219 hectares). It is undeveloped and is portions of the tract are associated with the major transportation routes connecting Los Alamos with northern New Mexico. In January 2000, the two land recipients identified by the Act determined that: (1) The Airport Tract would be conveyed to the Incorporated County of Los Alamos; and, (2) the White Rock Y Tract would be divided between the Incorporated County of Los Alamos and the Secretary of the Interior, in trust for the Pueblo of San Ildefonso, with the highway easement area of that tract to be conveyed to the New Mexico Highway Department as the Incorporated County of Los Alamos's designee.

II. Need To Change the Conveyance and Transfer Portions of Tracts Retained

The original 2000 ROD for the Conveyance and Transfer EIS stated that for the tracts that were conveyed in part, DOE would continue to resolve outstanding national security mission support issues on the remaining portions of the tracts so that conveyance or transfer of those portions could occur before the end of the 2007 deadline stated in the Act. DOE could include deed restrictions, notices, and similar land use controls as deemed appropriate and necessary that are protective of human health and safety to facilitate the transfer of the remaining portions of tracts.

A. Need for Existing Facilities at TA–21

In 2000, TA–21 Tract housed both the Tritium Systems Test Assembly (TSTA) and the Tritium Sciences and Fabrication Facility (TSFF) and both of these facilities were scheduled to continue operation past the year 2007. These two research facilities were identified as being needed for the national security mission and there were no formal plans to relocate them at that time. However, DOE was even then in the early stages of assessing the feasibility of relocating these operations to another facility within LANL. Over the past 24 months, DOE/NNSA has reviewed both its long-term continued need for the TSTA facility and the feasibility of relocating the TSFF tritium operations away from TA–21 to other tritium operations facilities at LANL. DOE/NNSA has concluded that the operation of the TSTA per se is no longer needed long term and may be discontinued. The nuclear material inventory of the TA–21 facilities has been reduced according to these plans. The discontinuance of the TSTA facility operations and removal of the TSFF facility operations, together with removal of TA–21 offices and assorted storage support facilities, would allow the facility and all of TA–21 to be completely decommissioned, decontaminated and demolished. It is unlikely however that all three of these steps in the dismantling of the technical area could occur before 2007. In the near term, however, DOE has determined that about an 8-acre portion of the Airport Tract at the western end of that tract (and situated to the northwest of TA21 and lying south of East Road) that had been retained for the purpose of serving as a health and safety buffer for the TA–21 TSTA and TSFF operations is no longer required for that purpose. This partial tract can now be conveyed.

B. Need for Future Facility at TA–53and TA–72

In a similar fashion, preliminary planning for the advanced proton radiography facility project has proceeded since March 2000. Expectations for operations at such a facility have been refined, as have the needs for siting such a facility within the TA–53 and TA–72 area. This has resulted in the reconsideration of the potential need for retaining two portions of the White Rock Y Tract that contain stretches of public roadways along State Road 502 and State Road 4. The two portions of the tract are located adjacent to the highway interchange area and total about 74 acres; one 54-acre tract portion is located to the west along State Road 502 and one 20-acre tract portion is located to the south along State Road 4. DOE has resolved that these two portions of the White Rock Y Tract are very unlikely to be needed for the purpose of serving as future health and safety buffers as long as provisions are made in the transfer documents to provide for access to the TAs–53 and –72. These portions of the tract can now be conveyed.

III. Amended Decisions

DOE/NNSA is modifying its decision on conveyance and transfer of certain land tracts at LANL as stated in the following paragraphs. Should DOE/NNSA=s no longer need portions of these and other tracts for national security mission support needs, DOE/NNSA will again reassess the retainment of partial tract areas and amend the Record of Decision, as needed.

- *The Airport Tract* consists of about 205 acres (83 hectares), east of the Los Alamos townsite and near the East Gate Business Park. The Los Alamos Airport is located on the northern part of the tract, while other portions of the tract are undeveloped.

Portions of the Airport Tract will continue to be needed to serve as health and safety buffer areas for the tritium activities while they continue within TA–21. In March 2000, DOE decided to convey or transfer part of the tract, approximately 110 acres North of East Road. With the shutdown of its tritium activities at TA–21, DOE/NNSA will now convey an additional approximately 8-acre portion of the Airport Tract.

- *The White Rock Y Tract* consists of about 540 acres (219 hectares). It is undeveloped and is associated with the major transportation routes connecting Los Alamos with northern New Mexico. Portions of the White Rock Y Tract may be needed to serve as health and safety buffer areas for proposed LANL activities occurring elsewhere, such as the proposed proton radiography project, in support of the national security mission. In the Conveyance and Transfer EIS discussion of the Preferred Alternative, DOE identified the potential partial transfer of the White Rock Y Tract due to the developing proton radiography project, and the tract was considered as one of the tracts that would be conveyed in whole or in part by 2007. In the March 2000 Record of Decision, DOE decided to convey or transfer only approximately 125 (50 hectares) acres, including the highway exchange and areas east of it, because of the potential national security mission need for the remainder of the tract. At this time, the DOE/NNSA will convey an approximately 54-acre parcel of the White Rock Y Tract comprised of the State Road 502 easement, and an approximately 20-acre parcel of the White Rock Y Tract comprised of the State Road 4 easement, both of which abut the highway exchange and eastern area previously identified for conveyance and transfer.

Issued in Washington, DC, on June 26, 2002.

John Gordon,

Administrator, National Nuclear Security Administration.

[FR Doc. 02–17120 Filed 7–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–270]

Application for Presidential Permit: Lake Erie Link Limited Liability Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Lake Erie Link Limited Liability Company ("LEL LLC") has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the United States border with Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 8, 2002.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Pell (Program Office) 202–586–3362 (or by electronic mail to: *Jerry.Pell@hq.doe.gov)* or Michael T. Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On June 18, 2002, LEL LLC filed an application with the Office of Fossil

Energy (FE) of the Department of Energy (DOE) for a Presidential permit. The proposed LEL Project would consist of up to three underwater High Voltage Direct Current (HVDC) transmission systems under Lake Erie, each with a transfer capability of 325 megawatts (MW). The LEL Project would connect the control areas of the Ontario Independent Electricity Market Operator (IMO) with the control area of the comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities constructed pursuant to Presidential permits to provide access across the affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Also, participation in the NEPA process does not create party

July 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17168 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

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Energy (FE) of the Department of Energy (DOE) for a Presidential permit. The proposed LEL Project would consist of up to three underwater High Voltage Direct Current (HVDC) transmission systems under Lake Erie, each with a transfer capability of 325 megawatts (MW). The LEL Project would connect the control areas of the Ontario Independent Electricity Market Operator (IMO) with the control area of the Pennsylvania-New Jersey-Maryland Interconnection (PJM). In Ontario, the LEL Project would connect to the 230,000-volt (230-kV) bulk power system at the Nanticoke switchyard. In the U.S., the LEL Project would connect to the 345-kV bulk power system at the Erie West substation in Springfield Township, Pennsylvania.

The stated purpose of the LEL Project is to develop a fully controllable, bi-directional, electric transmission interconnection with a total transfer capability of up to 975 MW between Ontario and the U.S. Each of the HVDC transmission systems would consist of several miles of buried land-based HVDC cables, approximately 68 miles (109 kilometers (km)) of cable buried underwater in Lake Erie, and converter terminal facilities in Ontario and Pennsylvania.

The proposed LEL Project is exclusively a transmission system interconnection. The proposed project neither includes construction of any generation facilities in either country, nor is it dedicated or directly connected to any particular generation facility in either country. LEL LLC would sell the rights to transmit electricity over the LEL Project through an "open season" bidding process that has been approved in the Federal Energy Regulatory Commission's (FERC) LEL Project Authorization of February 13, 2002, Docket No. ER02–406–0002. LEL LLC states that it would not own or take title to any electric energy transmitted over the LEL Project.

Although LEL LLC's application to FERC contemplated a possible separate cable system constructed to Ohio, that option is not part of this application. LEL LLC represents that it has postponed further study of the Ohio cable system pending the results of the open season process. This Application proposes to construct cable systems exclusively to Pennsylvania.

Since the restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities constructed pursuant to Presidential permits to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the Federal Power Act and articulated in FERC Order No. 888, as amended ("Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities"). In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with § 385.211 or § 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Michael D. Ernst, on behalf of Lake Erie Link LLC, 110 Turnpike Road, Suite 300, Westborough, MA 01581–2864, and with George H. Williams, Jr., Cameron McKenna LLP, 2175 K Street, NW., Washington, DC 20037–1809.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969 (NEPA). DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

The NEPA compliance process is a cooperative, non-adversarial, process involving members of the public, state and tribal governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Also, participation in the NEPA process does not create party status in this proceeding. Notice of upcoming NEPA activities and information on how the public can participate in those activities will appear in the **Federal Register**.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menu.

Issued in Washington, DC, on July 2, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–17121 Filed 7–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–358–000]

Dominion Transmission, Inc.; Notice of Termination of Gathering Service

July 2, 2002.

Take notice that on June 7, 2001, Dominion Transmission Inc.(DTI) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided on specified uncertificated lines in Indiana County, Pennsylvania. DTI states that the uncertificated lines are being sold to Dominion Exploration and Production.

DTI states further that copies of this filing have been mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17170 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–364–000]

Dominion Transmission, Inc.; Notice of Termination of Gathering Service

July 2, 2002.

Take notice that on June 4, 2001, Dominion Transmission Inc.(DTI) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided on a specified uncertificated line in Barbour County, West Virginia. DTI states that the uncertificated line and attached well are being sold to Lone Pine Operating Company, Inc.

DTI states further that copies of this filing have been mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17171 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–218–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

July 2, 2002.

Take notice that on June 27, 2002, East Tennessee Natural Gas Company (East Tennessee) submitted workpapers relating to its annual cashout report for the November 2000 through October 2001 period pursuant to Rate Schedules LMS-MA and LMS-PA of its FERC Gas Tariff. The purpose of this filing is to comply with the Commission's order issued on June 12, 2002 in Docket No. RP02–218.

East Tennessee states that copies of the filing were mailed to each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17168 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–368–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 2, 2002.

Take notice that on June 24, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2002:

Second Revised Sheet No. 5
First Revised Sheet No. 54
First Revised Sheet No. 64
First Revised Sheet No. 73
First Revised Sheet No. 410
First Revised Sheet No. 411
First Revised Sheet No. 415
First Revised Sheet No. 416
Original Sheet No. 416A

Midwestern is proposing revised tariff sheets to revise and update the form of Exhibit A of Midwestern's Firm Gas Transportation Agreement and to add an Exhibit A to the form of the Interruptible Gas Transportation Agreement in order to clearly state the terms of a transportation agreement without necessitating that agreements be filed as non-conforming agreements. In addition, Midwestern proposes to revise provisions in its tariff to allow the Company and shipper to mutually agree to a negotiated Fuel Retention and Loss Quantity percentage. Midwestern states that it is at risk for the recovery of the gas used for its system operations and lost and unaccounted for gas. Midwestern states that this proposal does not impact or increase the cost to the other shippers for fuel and loss and unaccounted gas. Any transportation agreements that contain a negotiated Fuel Retention and Loss Quantity percentage will be indicated on the list of Negotiated Rates Agreements and filed with the Commission.

Midwestern states that the proposed changes will provide more flexibility and greater ease for shippers to contract for transportation service.

Midwestern states that copies of this filing have been sent to all of

Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17169 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17167 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1755–001]

New England Power Pool

July 2, 2002.

Take notice that on June 24, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted in the above-captioned docket a supplemental filing amending its May 7, 2002 filing which requested that the Robert E. McLaughlin Trust (the Trust) be accepted for membership in NEPOOL. The supplemental filing requests that

5. New England Power Pool

[Docket No. ER02–1755–001]

Take notice that on June 24, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted in the above-captioned docket a supplemental filing amending its May 7, 2002 filing which requested that the Robert E. McLaughlin Trust (the Trust) be accepted for membership in NEPOOL. The supplemental filing requests that

and FPL Energy Green Mountain, LLC (FPLE Green Mountain) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application requesting all necessary authorizations under section 203 of the Federal Power Act for the sale by American National Wind Power, Inc. to FPLE Green Mountain of American National Wind Power, Inc.'s interest (indirectly through an affiliate) in a 10.4 MW wind-powered electric generating

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Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17172 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–064]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 2, 2002.

Take notice that on June 25, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 26P.02, to be effective June 25, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17167 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–332–001]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

July 2, 2002.

Take notice that on June 27, 2002, Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Revised Sheet No. 61. Petal requests that this sheet be made effective June 1, 2002.

Petal submits this filing in compliance with the Commission's Order issued on May 30, 2002, directing Petal to revise its notification procedures for Rate Schedule AVS.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17169 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–369–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 2, 2002.

Take notice that on June 25, 2002, Texas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 2002:

Fifth Revised Sheet No. 146
Fifth Revised Sheet No. 234

Texas Gas states that this filing is being submitted pursuant to Commission Order No. 637, in which the Commission revised 18 CFR 250.16(b)(1) to no longer require that pipelines maintain a complete list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates within the pipeline's tariff.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17173 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–81–000, et al.]

Baconton Power LLC, et al.; Electric Rate and Corporate Regulation Filings

July 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Baconton Power LLC

[Docket No. EC02–81–000]

Take notice that on June 26, 2002, Baconton Power LLC (Baconton), filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to sections 203 of the Federal Power Act, 16 U.S.C. 824b and part 33 of the Commission's regulations, 18 CFR part 33. Baconton requests authorization for an upstream restructuring of ownership of Baconton that will result in an indirect transfer control over Baconton and its jurisdictional facilities. Baconton also notifies the Commission regarding a change in the conditions existing at the time the Commission approved its market-based rate authority.

Comment Date: July 17, 2002.

2. American National Wind Power, Inc. and FPL Energy Green Mountain, LLC

[Docket No. EC02–82–000]

Take notice that on June 26, 2002, American National Wind Power, Inc. and FPL Energy Green Mountain, LLC (FPLE Green Mountain) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application requesting all necessary authorizations under section 203 of the Federal Power Act for the sale by American National Wind Power, Inc. to FPLE Green Mountain of American National Wind Power, Inc.'s interest (indirectly through an affiliate) in a 10.4 MW wind-powered electric generating facility in Somerset County, Pennsylvania and a power sales contract.

Comment Date: July 17, 2002.

3. Sithe Energies, Inc.

[Docket No. EC02–83–000]

Take notice that on June 26, 2002, Sithe Energies, Inc. (Sithe) and Exelon Generation Company, LLC (Exelon Generation) (collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission), a joint application under section 203 of the Federal Power Act, requesting all authorizations necessary to transfer an indirect interest in certain jurisdictional facilities from Sithe to Exelon Generation. Sithe is engaged primarily, through various subsidiaries, in the development and operation of non-utility generation facilities. Exelon Generation is a public utility which owns and operates electric generating facilities and engaged in wholesale power and energy marketing and trading operations in the United States. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: August 26, 2002.

4. SOWEGA Power LLC

[Docket Nos. EC02–84–000 and ER99–3427–001]

Take notice that on June 26, 2002, SOWEGA Power LLC (SOWEGA), filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to sections 203 of the Federal Power Act, 16 U.S.C. 824b and part 33 of the Commission's regulations, 18 CFR part 33. SOWEGA requests authorization for an upstream restructuring of ownership of SOWEGA Energy Resources, LLC (SER), SOWEGA's parent, that will result in an indirect transfer control over SOWEGA and its jurisdictional facilities. SOWEGA also informs the Commission of a change in the facts relied upon in granting its market-based rate authority as a result of the upstream change in control

Comment Date: July 17, 2002.

5. New England Power Pool

[Docket No. ER02–1755–001]

Take notice that on June 24, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted in the above-captioned docket a supplemental filing amending its May 7, 2002 filing which requested that the Robert E. McLaughlin Trust (the Trust) be accepted for membership in NEPOOL. The supplemental filing requests that the May 7 filing be amended to reflect the request that the Trust be accepted for membership in NEPOOL as a Governance Only End User.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service list in the above-captioned docket.

Comment Date: July 15, 2002.

6. Southern California Edison Company

[Docket No. ER02–2136–000]

Take notice that on June 21, 2002, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of the Transmission Service Agreement between SCE and PacifiCorp (collectively, Parties) and all supplements thereto.

Comment Date: July 12, 2002.

7. Rowan County Power, LLC

[Docket No. ER02–2137–000]

Take notice that on June 21, 2002, Rowan County Power, LLC (Rowan County) tendered for filing an executed Service Agreement between Rowan County and the following eligible buyer, Progress Ventures, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Rowan County's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Rowan County requests an effective date of May 21, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: July 12, 2002.

8. PECO Energy Company

[Docket No. ER02–2138–000]

Take notice that on June 21, 2002 PECO Energy Company (PECO) submitted for filing a third Construction Agreement between PECO and Old Dominion Electric Cooperative (ODEC) related to the Rock Springs Electric Generation Facility, designated as Service Agreement 683 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1, to be effective on June 10, 2002.

Copies of this filing were served on ODEC and PJM.

Comment Date: July 12, 2002.

9. Ameren Services Company

[Docket No. ER02–2139–000]

Take notice that on June 21, 2002 , Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Illinois Power. ASC asserts that the purpose of the Agreement is to replace the Agreement in Docket No. ER 02–889–000 with a revised Agreement.

Comment Date: July 12, 2002.

10. Millennium Power Partners, L.P.

[Docket No. ER02–2140–000]

Take notice that on June 21, 2002, Millennium Power Partners, L.P. (Millennium) tendered for filing a Power Purchase Agreement for power sales (Agreement) with PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Millennium will sell electric wholesale services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment Date: July 12, 2002.

11. Xcel Energy Services, Inc.

[Docket No. ER02–2141–000]

Take notice that on June 24, 2002, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Master Power Purchase and Sale Agreement between Southwestern and Colorado Springs Utilities (Colorado Springs), which is in accordance with Southwestern's Rate Schedule for Market-Based Power Sales (Southwestern FERC Electric Tariff, Second Revised Volume No. 3).

XES requests that this agreement become effective on June 12, 2002.

Comment Date: July 15, 2002.

12. Powerroots, LLC.

[Docket No. ER02–2142–000]

Take notice that on June 24, 2002, Powerroots, LLC. (Powerroots) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Powerroots Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Powerroots intends to engage in wholesale electric power and energy purchases and sales as a marketer. Powerroots is not in the business of generating or transmitting electric power.

Comment Date: July 15, 2002.

13. Duke Electric Transmission

[Docket No. ER02–2143–000]

Take notice that on June 24, 2002, Duke Electric Transmission (Duke) a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement with PG&E Energy Trading-Power L.P., for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on May 16, 2002. Duke states that this filing is in accordance with part 35 of the Commission's Regulations, 18 CFR part 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: July 15, 2002.

14. Duke Electric Transmission

[Docket No. ER02–2144–000]

Take notice that on June 24, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement with PG&E Energy Trading-Power L.P., for Non-Firm Transmission Service under Duke's Open Access to become effective on May 15, 2002. Duke states that this filing is in accordance with part 35 of the Commission's Regulations, 18 CFR part 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: July 15, 2002.

15. Entergy Services, Inc.

[Docket No. ER02–2145–000]

Take notice that on June 24, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and PG&E Energy Trading—Power, L.P.

Comment Date: July 15, 2002.

16. Entergy Services, Inc.

[Docket No. ER02–2146–000]

Take notice that on June 24, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Select Energy, Inc.

Comment Date: July 15, 2002.

17. Southern California Edison Company

[Docket No. ER02–2147–000]

Take notice that on June 25, 2002, Southern California Edison Company (SCE) tendered for filing revisions to the Amended and Restated Radial Lines Agreement (Agreement) between SCE and AES Huntington Beach L.L.C. (AES).

The revisions to the Agreement reflect the replacement of one set of failed Coupling Capacitor Voltage Transformers (CCVTs) installed on the Ellis No. 2 Line at the Huntington Beach Substation and installation of new CCVTs, which are planned to be in service by December 31, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California and AES.

Comment Date: July 16, 2002.

18. Southern California Edison Company

[Docket No. ER02–2148–000]

Take notice that on June 25, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and Whitewater Energy Corporation (Whitewater)the Industry Urban Development Agency (Industry).

The Letter Agreement specifies the terms and conditions under which SCE will provide pre-interconnection activities including provides for engineering, design, procurement, and preparation of specifications necessary for SCE to perform the engineering, design, procurement, and preparation of specifications necessary for the interconnection facilities and distribution circuit extension required to provide Distribution Service to Industry by September 30, 2002. engineering, design, and procurement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: July 16, 2002.

19. Virginia Electric and Power Company

[Docket No. ER02–2149–000]

Take notice that on June 25, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement by Virginia Electric and Power Company to EnergyUSA-TPC Corp. designated as Service Agreement No. 19 under the Company's Wholesale Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6, effective on June 15, 2000. The Company respectfully requests an effective date of June 1, 2002, as requested by the customer.

Copies of the filing were served upon EnergyUSA-TPC Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: July 16, 2002.

20. Allegeny Energy Service Corporation on behalf of Buchanan Generation, LLC

[Docket No. ER02–2150–000]

Take notice that on June 25, 2002, Allegheny Energy Service Corporation on behalf of Buchanan Generation, LLC (Buchanan) filed Service Agreement No. 1 to add one (1) new Customer to the Market Rate Tariff under which Buchanan offers generation services. Buchanan proposes to make service available as of June 11, 2002 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Customer.

Comment Date: July 16, 2002.

21. Just Energy Ohio, LLC

[Docket No. ER02–2151–000]

Take notice that on June 25, 2002, Just Energy Ohio, LLC (Just Energy Ohio) petitioned the Federal Energy Regulatory Commission (Commission), for acceptance of Just Energy Ohio Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Just Energy Ohio intends to engage in wholesale electric power and energy purchases and sales as a marketer. Just Energy Ohio is not in the business of generating or transmitting electric power. Just Energy Ohio sells electricity to customers in various deregulated states.

Comment Date: July 16, 2002.

22. MidAmerican Energy Company

[Docket No. ER02–2152–000]

Take notice that on June 25, 2002, MidAmerican Energy Company (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement under Wholesale Market-Based Rate Tariff providing for Sales of Capacity and Energy and Resale of Transmission Rights between MidAmerican and Aquila Energy Marketing Corporation. MidAmerican seeks an effective date of December 1, 2000.

Comment Date: July 16, 2002.

23. ISO New England Inc.

[Docket No. ER02–2153–000]

Take notice that on June 27, 2002, ISO New England Inc. (ISO) made a filing under Section 205 of the Federal Power Act of changes to its Capital Funding Tariff. The ISO requests that the changes to the Capital Funding Tariff be allowed to go into effect on August 1, 2002.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool (NEPOOL), as well as on the governors and utility regulatory agencies of the six New England States, and NECPUC. Participants were also served with the entire filing electronically. The entire filing is posted on the ISO's website (*www.iso-ne.com*).

Comment Date: July 11, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17174 Filed 7–8ndash;02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions to Intervene, and Protests

July 2, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: License Surrender for the Fort Halifax Project.

b. *Project No*: 2552–058.

c. *Date Filed*: June 20, 2002.

d. *Applicant*: FPL Energy Maine Hydro LLC (FPL).

e. *Name of Project*: Fort Halifax.

f. *Location*: The project is located on the Sebasticook River, in Kennebec County, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact*: F. Allen Wiley, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, ME 04330, (207) 623–8413.

i. *FERC Contact*: Any questions on this notice should be addressed to either Mrs. Jean Potvin at (202) 219–0022, or e-mail address: *jean.potvin@ferc.gov* or Mr. Robert Fletcher at (202) 219–1206, or e-mail address: *robert.fletcher@ferc.gov*.

j. *Deadline for filing comments and or motions*: August 5, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426. Please include the project number (P–2552–058) on any comments or motions filed.

k. *Description of Request*: FPL proposes to surrender the license for the Fort Halifax Project. As part of its request, FPL proposes to remove a 72-foot section of the spillway to provide permanent fish passage. The remainder of the dam will remain intact. The partial removal of the dam will result in a lowering of the Fort Halifax impoundment directly upstream of the dam by as much as 25 feet. The partial dam removal will make an additional 5.2 miles of riverine habitat available to anadromous fish using the Kennebec River drainage system.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–000]

Enogex, Inc.; Notice of Technical Conference

July 2, 2002.

208–0415 or *lawrence.greenfield@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17164 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0037 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office

please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

(202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17165 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–000]

Enogex, Inc.; Notice of Technical Conference

July 2, 2002.

Take notice that a technical conference will be held on Friday, July 12, 2002, at 9 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17166 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO-PJM-SPP Single Market Design Forum Meeting

July 2, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on July 11, 2002, members of its staff will attend the meeting of the MISO-PJM-SPP Single Market Design Forum meeting, concerning the development of a joint and common wholesale energy market for the Midwest Independent Transmission System Operator, Inc. (MISO), PJM Interconnection (PJM) and Southwest Power Pool, Inc. (SPP) regions. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by MISO, PJM and SPP, and will be held on July 11, 2002, 10 a.m. at the Minneapolis Airport Marriot, 2020 East 79th Street, Bloomington, MN 55425. This meeting is open to the public. The meeting may discuss matters at issue in Docket No. RM01–12–000, Electricity Market Design and Structure.

For more information, contact Mike Gahagan, Vice President, Chief Information Officer & Chief Strategic Officer, Midwest Independent Transmission System Operator, Inc. at (317) 249–5450, or Lawrence R. Greenfield, Senior Counsel, Federal Energy Regulatory Commission at (202) 208–0415 or *lawrence.greenfield@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17164 Filed 7–8–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0037; FRL–7187–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22 2002 to June 22, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

DATES: Comments identified by the docket ID number OPPT–2002–0037 and the specific PMN number, must be received on or before August 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0037 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations'," Regulations and Proposed Rules, and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0037. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0037 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0037 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 22 2002 to June 22, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The

"S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0714	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylene-diamine, 2-methyl-1,5-pentanediamine and fatty amines
P–02–0715	05/29/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with fatty amines

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0714	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylene-diamine, 2-methyl-1,5-pentanediamine and fatty amines
P–02–0715	05/29/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with fatty amines

"S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0698	05/22/02	08/20/02	Dow Corning Corporation	(G) Adhesive	(G) Treated metal oxide
P–02–0699	05/22/02	08/20/02	CBI	(G) Open non-dispersive use	(G) Substituted aminophenyl substituted heteropolycycle, salt
P–02–0700	05/23/02	08/21/02	3M Company	(G) Protective coating	(G) Fluorochemmical acrylate polymer
P–02–0701	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-methyl-2-propenoate] and 2-(phosphonooxy) ethyl 2-methyl-2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, sodium salts
P–02–0702	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-methyl-2-propenoate] and 2-(phosphonooxy) ethyl 2-methyl-2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, ammonium salts
P–02–0703	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-propenoate] and 2-(phosphonooxy) ethyl 2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, sodium salts
P–02–0704	05/23/02	08/21/02	CBI	(S) Pigment dispersant	(S) 2-propenoic acid, 2-methyl-, polymer with phosphinicobis(oxy-2,1-ethanediyl) bis[2-propenoate] and 2-(phosphonooxy) ethyl 2-propenoate, peroxydisulfuric acid ([(ho)s(o)2]2o2) disodium salt-initiated, ammonium salts
P–02–0705	05/24/02	08/22/02	International specialty products	(S) Component of coatings for digital printing paper	(S) Sulfuric acid, diethyl ester, compound with nu-[3-(dimethylamino)propyl]-2-methyl-2-propenamide polymer with 1-ethenyl-2-pyrrolidinone, sulfate
P–02–0706	05/28/02	08/26/02	Piedmont Chemical Industries I, LLC	(S) Dyeing assistant for polyester	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, esters with polyethylene-polypropylene glycol
P–02–0707	05/28/02	08/26/02	Ciba Specialty Chemicals Corporation	(S) Photoacid generator for resists in semiconductor and display manufacturing	(G) Camphorsulfonate
P–02–0708	05/28/02	08/26/02	Cytec Industries Inc.	(G) Crosslinking agent (substance a and b)	(G) Multifunctional polycarbodiimide (substance a and b)
P–02–0709	05/28/02	08/26/02	Cytec Industries Inc.	(G) Crosslinking agent (substance a and b)	(G) Multifunctional polycarbodiimide (substance a and b)
P–02–0710	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine and fatty amines
P–02–0711	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with, ethylenediamine, 2-methyl-1,5-pentanediamine and fatty amines
P–02–0712	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with 2-methyl-1,5-pentanediamine and fatty amines
P–02–0713	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine and fatty amines

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0714	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, 2-methyl-1,5-pentanediamine and fatty amines
P–02–0715	05/28/02	08/26/02	CBI	(G) Gellant	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with fatty amines and 2-methyl-1,5-pentanediamine
P–02–0722	05/29/02	08/27/02	CBI	(G) Destructive use	(G) Halogenated titanium amide
P–02–0723	05/29/02	08/27/02	CBI	(G) Destructive use	(G) Halogenated titanium amide
P–02–0724	05/30/02	08/28/02	CBI	(G) Nickel and nikel alloy electroplating complex	(G) Alkiyamine metal complexes
P–02–0729	05/31/02	08/29/02	Solutia Inc.	(S) Resin for industrial paints	(G) Acrylic copolymer
P–02–0730	05/31/02	08/29/02	CBI	(G) Chemical intermediate	(G) Polytertiaryamine glycol
P–02–0731	06/04/02	09/02/02	CBI	(G) Raw material used to manufacture processing aid	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, reaction products with polyethylenepolyamines
P–02–0732	06/04/02	09/02/02	GE Silicones	(S) Intermediate	(G) Alkyl hydride silicone
P–02–0733	06/04/02	09/02/02	GE Silicones	(G) Formulation additive	(G) Alkyl silicone
P–02–0734	06/04/02	09/02/02	GE Silicones	(G) Formulation additive	(G) Crosslinked alkyl silicone
P–02–0735	06/04/02	09/02/02	CBI	(S) Resin for spray applied coatings	(G) Acid functional polyester resin amine salted
P–02–0736	06/04/02	09/02/02	CBI	(S) Coating for synthetic polymers.	(G) Aqueous dispersion of a polyester based aliphatic polyurethane.
P–02–0737	06/04/02	09/02/02	CBI	(G) Colorant for coating compositions	(G) Naphthalenesulfonic acid derivative
P–02–0738	06/05/02	09/03/02	CBI	(G) Adhesive for open, non-dispersive use	(G) Polymer of castor oil, alkylene ether glycol and isophorone diisocyanate
P–02–0739	06/05/02	09/03/02	CBI	(G) Inhibitor	(G) Amine salt
P–02–0740	06/05/02	09/03/02	CBI	(G) Sealant additive	(G) Polyether isocyanate
P–02–0741	06/06/02	09/04/02	Dic Imaging Products USA, Inc.	(G) Charge enhancing additive	(S) Piperazine, polymer with 1,6-dichlorohexane*
P–02–0742	06/04/02	09/02/02	CBI	(G) Component of a plastic disc.	(G) Polyurethane
P–02–0743	06/07/02	09/05/02	Eastman Kodak Company	(S) Adhesion promoter for paints	(G) Modified polyolefin
P–02–0744	06/07/02	09/05/02	CBI	(G) Dyestuff	(G) Lithium salt of azo bridged acid
P–02–0745	06/10/02	09/08/02	CBI	(G) Open, non-dispersive (chelating agent)	(G) Aqueous solution of iminodisuccinic acid ammonium salt
P–02–0746	06/10/02	09/08/02	E.I. Dupont de Nemours and Company, Inc.	(G) Extruded parts and films	(G) Aromatic - aliphatic polyamide
P–02–0747	06/10/02	09/08/02	CBI	(G) Film additive	(G) Amine polymer salt
P–02–0748	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Thermoplastic polymer additive (open, non-dispersive use)	(S) Heptacyclo[11.11.1.13, 11.15,21.17, 19.19,17.115,23] dodecasiloxane, dodecaphenyl-
P–02–0749	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Thermoplastic polymer additive (open, non-dispersive use)	(S) Pentacyclo[9.5.1.13, 9.15,15.17,13]octasiloxane, octakis(2-methylpropyl)-
P–02–0750	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Polymer additive (open, non-dispersive)	(S) Pentacyclo[9.5.1.13, 9.15,15.17, 13]octasiloxane, octamethyl-
P–02–0751	06/10/02	09/08/02	Hybrid Plastics, Inc.	(G) Polymer additive (open, non-dispersive)	(S) Pentacyclo[9.5.1.13, 9.15,15.17, 13]octasiloxane, octaphenyl-
P–02–0752	06/10/02	09/08/02	E.I. Dupont de Nemours and Company, Inc.	(S) Isolated intermediate	(G) Salt of aromatic acids and aliphatic amine
P–02–0753	06/11/02	09/09/02	Ciba Specialty Chemicals Corporation	(S) Photoresist for electronics industry; color filter resist for manufacturing of color filters	(G) Oxime ester
P–02–0754	06/11/02	09/09/02	Solutia Inc.	(S) Cross-linker for industrial coatings	(G) Amine modified epoxy resin
P–02–0755	06/11/02	09/09/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of oxirane, mono[(C_{12}–C_{14}-alkoxy)methyl] derivative and alkyamine
P–02–0756	06/11/02	09/09/02	Solutia Inc.	(S) Cross-linker for industrial coatings	(G) Amine modified epoxy resin
P–02–0757	06/11/02	09/09/02	CBI	(G) An open non-dispersive use	(G) Rosin modified phenolic resin

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0758	06/12/02	09/10/02	Loctite Corporation	(S) A component of adhesive formulations for general industrial bonding applications	(S) Poly(oxy-1,4-butanediyl), alpha-[[[3,3,5-trimethyl-5-[[[[[[[[[3,3,5-trimethyl-5-[[[[2-[(2-methyl-1-oxo-2-propenyl)oxy [ethoxy]carbonyl]amino]methyl] cyclohexyl]amino]carbonyl]

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0784	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0785	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0786	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0787	06/21/02	09/19/02	CBI	(G) Component of coating with	(G) Epoxy functional styrenated meth-

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0758	06/12/02	09/10/02	Loctite Corporation	(S) A component of adhesive formulations for general industrial bonding applications	(S) Poly(oxy-1,4-butanediyl), alpha-[[[3,3,5-trimethyl-5-[[[[[[[[[3,3,5-trimethyl-5-[[[[2-[(2-methyl-1-oxo-2-propenyl)oxy [ethoxy]carbonyl]amino]methyl] cyclohexyl]amino]carbonyl] oxy]methyl]tricyclodecyl] methoxy]carbonyl]amino]methyl] cyclohexyl[amino]carbonyl]-omega-[[[[3,3,5-trimethyl-5- [[[[[[[[3,3,5-trimethyl-5-[[[[2- [(2-methyl-1-oxo-2-propenyl)oxy]ethoxy] carbonyl]amino]methyl]cyclohexyl] amino]carbonyl]oxy]methyl] tricyclodecyl]methoxy] carbonyl]amino]methyl] cyclohexyl]amino]carbonyl]oxy]-
P–02–0759	06/12/02	09/10/02	The Dow Chemical Company	(G) Thin film dielectric layers for microelectronic applications	(G) Silsesquioxane, siloxane
P–02–0760	06/11/02	09/09/02	CBI	(G) All purpose cleaner and paint remover	(G) Hydroxal fatty acids esters
P–02–0761	06/14/02	09/12/02	Ethox Chemicals, LLC	(S) Pariffin wax additive	(S) Octadecanoic acid, 2-[[2,2-bis[[(1-oxooctadecyl) oxy]methyl]butoxy]methyl]- 2-ethyl-1,3-prop anediyl ester
P–02–0762	06/14/02	09/12/02	CBI	(G) Open, non-dispersive (binder in coatings applications)	(G) Polyester polyol
P–02–0763	06/14/02	09/12/02	Ashland Inc.	(G) Open, dipersive-used in reinforced molding operations	(G) Unsaturated polyester
P–02–0764	06/14/02	09/12/02	The Dow Chemical Company	(G) Coating	(G) Aspartic ester
P–02–0765	06/12/02	09/10/02	CBI	(G) Lubricant, for oil fields.	(G) Alkyl phosphate ester
P–02–0766	06/14/02	09/12/02	CBI	(S) Flame retardant for plastic articles	(G) Polyphosphoric acids, amine salt
P–02–0767	06/14/02	09/12/02	CBI	(G) Component of odorant compositions for highly dispersive applications	(G) Substituted alkene
P–02–0768	06/17/02	09/15/02	IFS Industries, Inc.	(S) Panel assembly	(G) Isocyanate terminated hot melt polyurethane adhesive
P–02–0769	06/17/02	09/15/02	IFS Industries, Inc.	(S) Panel assembly	(G) Isocyanate terminated hot melt polyurethane adhesive
P–02–0770	06/17/02	09/15/02	IFS Industries, Inc.	(S) Panel assembly	(G) Isocyanate terminated hot melt polyurethane adhesive
P–02–0771	06/17/02	09/15/02	CBI	(S) Resin for inks; resins for coatings and adhesives	(G) Polyether polyurethane
P–02–0772	06/18/02	09/16/02	Cognis Corporation	(G) Surfactant	(S) D-glucopyranose, oligomeric, 2-ethylhexyl glycosides
P–02–0773	06/18/02	09/16/02	Warner-Jenkinson Company, Inc.	(G) Intermediate	(G) Remazolamine
P–02–0774	06/18/02	09/16/02	Danisco USA Inc.	(S) Plasticizer for pvc + other plastics/films; colorant carrier for plastics; dye dispersant for hot melt inks	(S) Octadecanoic acid, 12-(acetyloxy)-, 2,3-bis(acetyloxy)propyl ester(9ci)
P–02–0775	06/20/02	09/18/02	The Dow Chemical Company	(G) Binder for recycled plastic and rubber	(G) 1,1′methylenebis[diisocyanato] benzene, polyetherpolyol polymer
P–02–0776	06/20/02	09/18/02	CBI	(G) Chemical intermediate	(G) Alkoxylated aromatic aldehyde
P–02–0777	06/20/02	09/18/02	CBI	(G) Chemical intermediate	(G) Alkoxylated aromatic aldehyde
P–02–0778	06/20/02	09/18/02	R. T. Vanderbilt Company, Inc.	(S) Antioxidant/anti-wear additive for lubricants	(G) Dialkyl dithiocarbamate ester
P–02–0779	06/20/02	09/18/02	R. T. Vanderbilt Company, Inc.	(S) Antioxidant/anti-wear additive for lubricants	(G) Dialkyl dithiocarbamate ester
P–02–0780	06/20/02	09/18/02	R. T. Vanderbilt Company, Inc.	(S) Antioxidant/anti-wear additive for lubricants	(G) Dialkyl dithiocarbamate ester
P–02–0781	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0782	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0783	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore

I. 87 PREMANUFACTURE NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0784	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0785	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0786	06/20/02	09/18/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0787	06/21/02	09/19/02	CBI	(G) Component of coating with open use	(G) Epoxy functional styrenated methacrylate
P–02–0788	06/21/02	09/19/02	CBI	(S) Industrial uv coatings and inks	(G) Urethane acrylate ester
P–02–0789	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0790	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0791	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0792	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0793	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin
P–02–0794	06/21/02	09/19/02	The Dow Chemical Company	(S) Ultraviolet curable binder for overprint varnish; ultraviolet curable binder for inks; ultraviolet curable binder for wood coatings	(G) Ultraviolet-curable resin

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 05/22/02 TO 06/22/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0007	06/20/02	08/04/02	ITW Devcon	(G) Oil resistant industrial coating	(G) Isocyanati-terminated polyurethane prepolymer
T–02–0008	06/21/02	08/05/02	CBI	(G) Cleaning hydrotrope	(G) Monoalkyl quaternary ammonium salt

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 44 NOTICES OF COMMENCEMENT FROM: 05/22/02 TO 06/22/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0173	05/31/02	05/06/02	(S) Tridecene
P–00–0377	06/14/02	05/16/02	(G) Fluoroolefin copolymer
P–00–0419	06/04/02	04/18/02	(G) Polycarbonate polyester
P–00–1117	06/19/02	05/29/02	(G) Alkenyl keto acid
P–00–1165	06/18/02	05/15/02	(G) Fluoropolyether derivative
P–01–0075	06/14/02	06/11/02	(G) Substituted benzofuranone
P–01–0590	05/24/02	10/03/01	(G) Substituted amido benzoic acid ester
P–01–0622	06/11/02	05/16/02	(G) Substituted ppvs (poly-p-phenylen-vinylens)

III. 44 NOTICES OF COMMENCEMENT FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0727	06/20/02	05/20/02	(G) Modified acrylic resin
P–01–0920	06/14/02	05/15/02	(G) Polymer ester of mono and dibasic acids
P–01–0923	06/18/02	06/10/02	(G) Cycloalkyl acetate
P–01–0924	05/30/02	05/03/02	(G) Carbo cyclic oxime
P–01–0928	06/20/02	06/10/02	(G) Alkoxysilane
P–02–0063	05/24/02	04/26/02	(S) Cyclohexanecarboxylic acid, 1,4-dimethyl-, methyl ester (cis and trans); cyclohexanecarboxylic acid, 1,3-dimethyl-, methyl ester (cis and trans)

SUPPLEMENTARY INFORMATION: On May 20, 2002, CEQ established a NEPA Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; interagency and intergovernmental collaboration including joint-lead processes; programmatic analyses and subsequent tiered documents; and adaptive management. In addition, the NEPA

A. *Technology, Information Management, and Information Security:* The NEPA Task Force will explore opportunities for utilizing information management technologies to enhance the effectiveness and efficiency of the NEPA process. Specific examples of innovative technical approaches to the assessment and communication of potential environmental impacts are sought. Examples include use of

concerning the use of tools (e.g., concerns about broad public access)?

7. What factors should be considered in balancing public involvement and information security?

B. *Federal and Inter-governmental Collaboration:* The NEPA Task Force will identify current best practices with regard to collaboration among Federal agencies and on an inter-governmental basis with Tribal, State and local governing entities in developing

III. 44 NOTICES OF COMMENCEMENT FROM: 05/22/02 TO 06/22/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0727	06/20/02	05/20/02	(G) Modified acrylic resin
P–01–0920	06/14/02	05/15/02	(G) Polymer ester of mono and dibasic acids
P–01–0923	06/18/02	06/10/02	(G) Cycloalkyl acetate
P–01–0924	05/30/02	05/03/02	(G) Carbo cyclic oxime
P–01–0928	06/20/02	06/10/02	(G) Alkoxysilane
P–02–0063	05/24/02	04/26/02	(S) Cyclohexanecarboxylic acid, 1,4-dimethyl-, methyl ester (cis and trans); cyclohexanecarboxylic acid, 1,3-dimethyl-, methyl ester (cis and trans)
P–02–0101	06/11/02	05/08/02	(G) Substituted pyridinedicarboxylic acid
P–02–0126	06/14/02	05/09/02	(G) Polymer ester of mono and dibasic acids
P–02–0136	06/19/02	06/05/02	(G) Polyester polyurethane
P–02–0142	05/23/02	05/10/02	(G) Urethane acrylate
P–02–0149	06/17/02	05/16/02	(G) Alkyl octanal
P–02–0171	06/21/02	05/29/02	(G) Organophosphorous salt
P–02–0173	06/05/02	05/07/02	(S) N-ethyl-n-(3-methylphenyl) propionamide
P–02–0194	05/28/02	05/04/02	(G) Aliphatic urethane
P–02–0195	06/10/02	05/23/02	(G) Fluorochemical urethane
P–02–0204	05/30/02	05/17/02	(G) Polyurethane resin dispersion
P–02–0206	05/30/02	05/17/02	(G) Polyurethane resin despersion
P–02–0208	06/06/02	05/20/02	(G) Siloxane polyol ester
P–02–0237	06/11/02	05/24/02	(G) Acrylic polymer
P–02–0243	06/14/02	05/17/02	(G) Isocyanate terminated urethane polymer
P–02–0255	06/04/02	05/02/02	(G) Polyester polyether isocyanate
P–02–0261	05/30/02	05/10/02	(G) Piperidinol
P–02–0269	06/04/02	05/16/02	(S) Carbonic acid, dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0293	05/30/02	05/17/02	(G) Acrylic polymer
P–02–0321	06/05/02	05/17/02	(G) Ethoxy alkene
P–02–0323	05/24/02	05/09/02	(G) Modified fatty acid ester
P–02–0325	06/07/02	05/06/02	(G) Polyurethane prepolymer
P–02–0330	05/29/02	05/07/02	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–02–0346	06/10/02	05/22/02	(G) Alkyd resin
P–02–0347	06/03/02	05/13/02	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, esters with high-boiling C_{6-10} alkene hydroformylation products
P–02–0372	06/04/02	05/21/02	(G) Bifunctional reactive azo dye
P–02–0375	06/04/02	05/21/02	(G) Bifunctional reactive azo dye
P–02–0405	06/18/02	06/11/02	(G) Polyester-type polyurethane
P–98–0393	05/30/02	05/13/02	(G) Aqueous polyurethane dispersion
P–99–1037	06/13/02	06/10/02	(G) Alkylphenol mannich
P–99–1163	06/06/02	05/07/02	(S) Palladium(2-), tetraamine-, [sp-4-1]-, carbonate (1:2)

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 2, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–17191 Filed 7–8–02; 8:45 am]

BILLING CODE 6560–50–S

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

AGENCY: Council on Environmental Quality.

ACTION: Notice and request for comments.

SUMMARY: The Council on Environmental Quality (CEQ) has formed a National Environmental Policy Act (NEPA) task force (Task Force) composed of representatives from a variety of Federal agencies. The purpose of the NEPA Task Force is to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. Federal agencies' planning and decision-making processes (analyses conducted and documents produced) using NEPA can obtain higher levels of efficiency, clarity and ease of management through the improved use of existing authorities; better information management; improved interagency and intergovernmental collaboration; and the use of new technologies. CEQ invites comments on the proposed nature and scope of NEPA Task Force activities identified in this notice and solicits examples of effective NEPA implementation practices to develop a publication of case studies including examples of best practices.

DATES: Written comments should be submitted on or before August 23, 2002.

ADDRESSES: Electronic or facsimile comments are preferred because federal offices experience intermittent mail delays from security screening. Electronic written comments can be sent to the NEPA Task Force through the NEPA Task Force link on the CEQ web site at *http://www.whitehouse.gov/ceq.* Written comments may be faxed to the NEPA Task Force at (801) 517–1021. Written comments may also be submitted to the NEPA Task Force, P.O. Box 221150, Salt Lake City, UT 84122. Public comments received by the NEPA Task Force will be available via the NEPA Task Force link on the CEQ web site at *http://www.whitehouse.gov/ceq.* after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon at (202) 456–5432.

SUPPLEMENTARY INFORMATION: On May 20, 2002, CEQ established a NEPA Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; interagency and intergovernmental collaboration including joint-lead processes; programmatic analyses and subsequent tiered documents; and adaptive management. In addition, the NEPA Task Force will look at other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and implementation practices that would benefit other agencies. CEQ envisions the information gained and disseminated by the NEPA Task Force will help federal agencies update their practices and procedures and better integrate NEPA into federal agency decision making. At the end of six months, the NEPA Task Force will prepare a publication highlighting case studies and any best practices that prove worthy of broad dissemination. Additionally, the NEPA Task Force will make recommendations to CEQ regarding potential guidance and potential regulatory changes based upon the information collected. Any regulatory changes would require public notice and comment and be published in the **Federal Register.**

To further the work of the NEPA Task Force, CEQ requests public input on certain aspects of Federal agencies' implementation of the National Environmental Policy Act. To make the best use of comments and further refine the initial topic areas on which the Task Force will focus, please respond to the following questions to help the NEPA Task Force identify current best practices and specific opportunities to enhance the NEPA process. If you are submitting a proposed case study or best practice, please provide a short description of the case or practice and how it responded to the relevant questions below. If you are sending attachments or supporting documents with your comment, please send a hard copy of the documents or an e-mail with them directly attached to ensure delivery and receipt. While URL and web-site links are helpful, please provide the information in your comment and do not rely on URL and web-site links alone. To facilitate managing the comments, please identify the question number(s) to which you are responding in study areas A through F below.

A. *Technology, Information Management, and Information Security:* The NEPA Task Force will explore opportunities for utilizing information management technologies to enhance the effectiveness and efficiency of the NEPA process. Specific examples of innovative technical approaches to the assessment and communication of potential environmental impacts are sought. Examples include use of geographic information system (GIS) software, document creation and comment management systems. The handling of sensitive infrastructure and operational information will be reviewed. The Task Force seeks your input on this topic and requests responses to the following questions.

1. Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses? The information may include scientific and statistical information in printed or electronic form. Examples include but are not limited to species or wetlands inventories, air quality data, field surveys, predictive models, and trend analyses.

2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?

3. Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific? Please describe any protocols or standardization efforts that you feel should be utilized in the development and maintenance of these systems.

4. What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems?

5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD–ROM, web-site, public meeting, radio, television)? Explain the basis for your preferences.

6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision making (e.g., web sites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of tools (e.g., concerns about broad public access)?

7. What factors should be considered in balancing public involvement and information security?

B. *Federal and Inter-governmental Collaboration:* The NEPA Task Force will identify current best practices with regard to collaboration among Federal agencies and on an inter-governmental basis with Tribal, State and local governing entities in developing environmental analyses and participating in the NEPA process. The Task Force seeks your input on this topic and requests responses to the following questions (when answering the following questions, please indicate your role and experiences with NEPA).

1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide example(s) and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles. Such examples may include, but are not limited to, differences in agencies' policies, funding limitations, and public perceptions.

2. What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?

3. What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

C. *Programmatic Analysis and Tiering:* Opportunities to facilitate timely planning and decision-making to reduce or eliminate redundant and duplicative analyses through the use of programmatic and tiered analyses will be explored. To date, Federal agencies have used programmatic analyses to address a range of issues from facility and land use planning to broad categories of actions, or to sequencing or staging actions. All of these analyses may have subsequent tiered analyses. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of the analyses, and the efficiencies realized by the analysis or in subsequent tiers.

2. Please provide examples of how programmatic analyses have been used to develop, maintain and strengthen

environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses. Examples of an environmental management system may include but are not limited to systems certified under ISO 14001 (further information on ISO 14001 can be found on the Web at *http://es.epa.gov/partners/iso/iso.html).*

1. What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?

2. What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?

3. Are improvements needed in the process that agencies use to establish a new categorical exclusion? If so, please

stations will not be subject to random inspections conducted by the FCC's District Offices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17034 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 24,

(12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank and the offices of the Board of

environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses. Examples of an environmental management system may include but are not limited to systems certified under ISO 14001 (further information on ISO 14001 can be found on the Web at *http://es.epa.gov/partners/iso/iso.html).*

D. *Adaptive Management/Monitoring and Evaluation Plans:* The CEQ report, "The National Environmental Policy Act: A study of Its Effectiveness After Twenty-five Years", recognized that by incorporating adaptive management into their NEPA analyses, agencies can move beyond simple compliance and better target environmental improvement. An adaptive environmental management approach can respond to uncertainty and the limits of knowledge and experience in making decisions. Such an approach allows for approval of an action with uncertain outcomes by establishing performance-based environmental parameters or outcomes and monitoring to ensure that they are achieved. When those parameters or outcomes are not met, corrective changes would be triggered, for instance to ensure that significant environmental degradation does not occur. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What factors are considered when deciding to use an adaptive management approach?

2. How can environmental impact analyses be structured to consider adaptive management?

3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses?

4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

E. *Categorical Exclusions:* Agencies can identify categories of actions that do not individually or cumulatively have a significant effect on the human environment and which, therefore, do not require preparation of an Environmental Assessment or an Environmental Impact Statement. The NEPA Task Force will consider the bases and process for establishing categorical exclusions. The Task Force seeks your input on this topic and requests responses to the following questions.

1. What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?

2. What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?

3. Are improvements needed in the process that agencies use to establish a new categorical exclusion? If so, please describe them.

F. *Additional Areas for Consideration:* In addition to the topics described above, the NEPA Task Force will consider comments on NEPA practices that would improve and modernize NEPA implementation.

For example, the NEPA Task Force requests public comment on the appropriate utility of and structure of format for environmental assessment documents.

The Nepa Task Force will use the information and comments it receives to identify, evaluate, and make recommendations on improving NEPA implementation and to prepare case studies that include examples of best practices.

Public comments are requested by August 23, 2002.

Dated: July 2, 2002.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 02–17082 Filed 7–8–02; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 1, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0713.

Title: Alternative Broadcast Inspection Program (ABIP) Compliance Notification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions.

Number of Respondents: 50 respondents; 2,500 responses.

Estimated Time Per Response: .084 hours (5 minutes).

Total Annual Burden: 250 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Needs and Uses: The FCC's Enforcement Bureau formed the ABIP in response to the downsizing of the field offices, and feedback from broadcast station licensees. Entities, usually state broadcast associations, conduct inspections of broadcast stations on a voluntary basis and notify the local FCC District Office, in writing via letter or electronic mail, of those stations that pass the ABIP inspection. This information is used by FCC staff to determine overall compliance with FCC rules, and determine which broadcast stations will not be subject to random inspections conducted by the FCC's District Offices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17034 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Wayne A. Stroup, Garrison, North Dakota; to acquire voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

Board of Governors of the Federal Reserve System, July 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17069 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 24, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. F. Kemper Freeman, Jr., Betty J. Freeman, Suzanne L. McQuaid, Amy C. Schreck, Bellevue Square Managers I Limited Partnership, and Bellevue Square Managers, Inc., all of Bellevue, Washington; to acquire ownership of 15.85 percent of First Mutual Bancshares, Inc., Bellevue, Washington, and thereby indirectly acquire First Mutual Bank, Bellevue, Washington.

Board of Governors of the Federal Reserve System, July 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17184 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. GB&T Bancshares, Inc., Gainesville, Georgia; to acquire 100 percent of the voting shares of Hometown Bank of Villa Rica, Villa Rica, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Aviston Financial Corporation, Trenton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Aviston Bancorp, Inc., Aviston, Illinois, and thereby indirectly acquire State Bank of Aviston, Aviston, Illinois.

C. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Hazen Bancorporation, Inc., Hazen, North Dakota; to acquire 15.5 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

2. McIntosh County Bank Holding Company, Inc., Ashley, North Dakota; to acquire 30.9 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

3. Wishek Bancorporation, Inc., Hazen, North Dakota; to acquire 30.9 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

Board of Governors of the Federal Reserve System, July 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17068 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on July 11–12, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Correction.

SUMMARY: This correction notice

in areas identified as priorities in the Agency's current strategic plan which can be viewed at *http://www.AHRQ.gov/about/stratpln.htm.* This plan describes the framework that the Agency will use to guide the development and implementation of budget proposals for Fiscal Years 2004 and 2005 as well as decisions on resource allocations for research, translation (including tool development), dissemination, and

or via e-mail. Responses to this request should be submitted to: Kathie Kendrick, Planning Officer, Agency for Healthcare Research and Quality, 2101 E. Jefferson Street, Suite 600, Rockville, Maryland 20852, *kkendrick@AHRQ.gov.*

In order to facilitate the handling of submissions, please include full information about the person submitting the recommendation: (a) Name, (b) title, (c) organization, (d) mailing address, (e)

providers, plans, purchasers and policymakers, provide access to high quality, cost-effective services; be accountable and responsive to consumers and purchasers; and improve health status and quality of life.

Wide variations in practice patterns, quality, and outcomes continue, and a gap persists between what we know and the care that we deliver. It is clear today that AHRQ now has knowledge of what

clinicians and health system managers face every day is knowing what the right thing is, when the right time is, and what the right way is. Patients and their families are also confronted with making choices about treatments and care settings with little information on the relative quality, risks, and benefits of the options available to them. Policy makers, at all levels, also need quality information to support their

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. United Community Bankshares of Florida, Inc., Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank of Mid-Florida, Lake Mary, Florida.

2. United Community Bankshares of Florida, Inc., Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of United Heritage Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, July 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17185 Filed 7–8–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on July 11–12, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Correction.

SUMMARY: This correction notice changes the time of the public comments at the President's Council on Bioethics' fifth meeting from 3 pm ET, on Thursday, July 11, 2002 to 11:30 am ET, on Friday, July 12, 2002.

DATES: The meeting will take place Thursday, July 11, 2002, from 8:30 am to 4:45 pm ET, and Friday, July 12, 2002, from 8:30 am to 12:15 pm ET.

ADDRESSES: Ritz-Carlton, Washington, DC, 1150 22nd Street, NW., Washington, DC 20037.

PUBLIC COMMENTS: The meeting agenda will be posted at *http://www.bioethics.gov*. Written statements may be submitted by members of the public for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications, (tel. 202/296–4669 or e-mail *info@bioethics.gov*). Persons wishing to comment in person may do so during the hour set aside for this purpose beginning at 11:30 am ET, on Friday, July 12, 2002. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit *http://www.bioethics.gov*.

Dated: June 28, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–17041 Filed 7–8–02; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Planning Ideas

AGENCY: Agency for Healthcare Research and Quality, HHS

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites recommendations for future initiatives in areas identified as priorities in the Agency's current strategic plan which can be viewed at *http://www.AHRQ.gov/about/stratpln.htm*. This plan describes the framework that the Agency will use to guide the development and implementation of budget proposals for Fiscal Years 2004 and 2005 as well as decisions on resource allocations for research, translation (including tool development), dissemination, and evaluation activities that will facilitate the implementation of research findings at all levels of the health care system.

Nature of Recommendations

AHRQ encourages written suggestions from users of AHRQ research information and stakeholders for future Agency activities. Submissions should provide the following:

- A description of the focus of the activity and its alignment with Agency priorities;
- The gap addressed by the proposal;
- The population addressed by the activity;
- An indication of the health care issues that are of most concern for the proponent (of the activity);
- Background information to help AHRQ assess the urgency of the need for the results of the proposed projects (*i.e.*, realizing that projects undertaken by the Agency will take a year [minimally] to begin, what is the magnitude of the problem addressed, how soon could the results be implemented, and what change would be anticipated);
- An estimate of the budget required to adequately address the proposed activity;
- Potential partners for the Agency; and
- A description of the desired end product(s) (research knowledge; information; tools such as instruments for measurements, databases, informatics, and other applications that can be used to assess and improve care; or systems intervention) and how the product could be used in the health care system.

One of the criteria that will be used in prioritizing suggestions submitted will be the extend to which customers and stakeholders can point to examples of how prior results of the Agency's work have been used to improve health care as well as the impact of this use on quality, outcomes, costs, use or access.

DATES: The responses to this request will be accepted on an ongoing basis.

ADDRESSES: Submissions should be brief (no more than three pages) and may be in the form of a letter, preferably with an electronic file in a standard word processing format on a 3½ floppy disk, or via e-mail. Responses to this request should be submitted to: Kathie Kendrick, Planning Officer, Agency for Healthcare Research and Quality, 2101 E. Jefferson Street, Suite 600, Rockville, Maryland 20852, *kkendrick@AHRQ.gov*.

In order to facilitate the handling of submissions, please include full information about the person submitting the recommendation: (a) Name, (b) title, (c) organization, (d) mailing address, (e) telephone number, and (f) e-mail address. Please do not use acronyms. Electronic submissions are also encouraged to *kkendrick@AHRQ.gov*.

All responses will be available for public inspection at AHRQ's Immediate Office of the Director, weekdays between 8:30 a.m. and 5 p.m. AHRQ will not respond to individual responses, but will consider all nominations in selecting topics. Arrangements for reviewing the submissions may be made by calling (301) 594–7196. Responses may also be accessed two weeks after receipt by the Agency through AHRQ's Electronic FOIA Reading Room also on AHRQ's web site.

AHRQ routinely publishes new research interests, policies, and initiatives in the **Federal Register** (see GPO Access web site *http://www.access.gpo.gov/su_docs/aces/aces140.html*) and the NIH Guide for Grants and Contracts (see Funding Opportunities through AHRQ's web site *http://www.AHRQ.gov*). The budget priorities for each fiscal year published in the President's budget for the Department of Health and Human Services. Following is the web site: *http://www.hhs.gov/progorg/asmb/budget/fy2000.html*.

FOR FURTHER INFORMATION CONTACT: Additional information about AHRQ can be accessed on the AHRQ web site (*www.ahrq.gov*). The AHRQ strategic plan is available at *http://www.AHRQ.gov/about/stratpln.htm*. Information about topic nomination can be obtained by contacting: Kathie Kendrick, Planning Officer, Immediate Officer of the Director, 2101 E. Jefferson St., Suite 600, Rockville, Maryland 20852; telephone (301) 594–7196; E-mail address: *kkendrick@AHRQ.gov*.

SUPPLEMENTARY INFORMATION:

Background

The mission of AHRQ is to support, conduct, and disseminate research that improves access to care as well as the outcomes, quality, cost, and utilization of health care services. The Agency sponsors and conducts health care research that helps the American health care system, which includes patients, providers, plans, purchasers and policymakers, provide access to high quality, cost-effective services; be accountable and responsive to consumers and purchasers; and improve health status and quality of life.

Wide variations in practice patterns, quality, and outcomes continue, and a gap persists between what we know and the care that we deliver. It is clear today that AHRQ now has knowledge of what can be improved and can commit to a significant investment in promoting the adoption and use of research findings. This commitment also focuses on being able to demonstrate that the potential benefits demonstrated by the research are actually achieved in daily practice. This must be done while continuing to support new research on priority health issues and the development of new tools, so that in the future this knowledge and the new tools based on research findings can be translated and implemented to produce improved health care.

AHRQ Strategic Goals

The Agency has identified three strategic goals, each of which will contribute to improving the quality of health for all Americans.

1. Support Improvements in Health Outcomes

The field of health outcomes research studies the end results of the structure and processes of health care on the health and well-being of patients and populations. (Institute of Medicine, 1996) A unique characteristic of this research is the incorporation of the consumer's or patient's perspective in the assessment of effectiveness. Policymakers in the public and private sectors are also concerned with the end results of their investments in health care, whether at the individual, community, or population level.

AHRQ has a particular interest in outcomes research related to conditions that are common, expensive, and/or for which significant variations in practice or opportunities for improvement have been demonstrated. Also important is research linking types of delivery systems or processes by which care is provided with their effects on outcomes as well as research on clinical preventive services that may prevent premature death and disability in the United States.

2. Strengthen Quality Measurement and Improvement

At its most basic level, high quality health care is doing the right thing, at the right time, in the right way, for the right person. The challenge that clinicians and health system managers face every day is knowing what the right thing is, when the right time is, and what the right way is. Patients and their families are also confronted with making choices about treatments and care settings with little information on the relative quality, risks, and benefits of the options available to them. Policy makers, at all levels, also need quality information to support their deliberations. AHRQ has developed and tested measures of quality and studied the best ways to collect, compare, and communicate these data. The Agency will also focus on research that determines the most effective way to improve health care quality. This includes how to promote the use of information on quality through a variety of strategies such as determining effective ways to disseminate the information and illustrating the impact that the use of quality information can have on the provision and financing of health care.

3. Identify Strategies To Improve Access, Foster Appropriate Use, and Reduce Unnecessary Expenditures

Adequate access to health care services continues to be a challenge for many Americans. This is particularly so for the poor, the uninsured, members of minority groups, rural residents, and other vulnerable populations. In addition, the changing organization and financing of care has raised new questions about access to a range of health services, including emergency and specialty care. At the same time, examples of inappropriate use of care, including overutilization and misuse of services, continue to be documented. The increasing portion of our Nation's resources devoted to health care expenditures remains a concern. The continued growth in public spending for Medicare and Medicaid, in particular, raises important questions about the care delivered to the elderly, poor, children, and people with disabilities. Together, these factors require concerted attention to the determinants of access, use, and expenditures as well as effective strategies to improve access, contain costs, and assure appropriate and timely use of effective services.

Priority Populations

In addition to the strategic research goals, certain population groups warrant a special focus from AHRQ and the health services research community: Racial and ethnic minorities, women, children, the elderly, low-income populations, people living in rural areas, and people living with chronic illnesses and/or disabilities. These are

all groups for whom public policy struggles to find effective solutions to improve health care. Health services research has consistently documents the persistent, and at times great, disparities in health status and access to appropriate health care services for certain groups, notably racial and ethnic minorities and low income families and children. Gender-based differences in access, quality, and outcomes are also

personally identifiable health care information without injury or disclosure to individuals. This training will directly address the growing concerns about the privacy of health care information.

Types of AHRQ Activities in Support of the Goals

Producing meaningful contributions to the Nation and to research on health

4. Evaluation

Knowledge development is a continuous process. It includes a feedback loop that depends on evaluation of the research's utility to the end user and impact on health care. In order to assess the ultimate outcomes of AHRQ research, the Agency is placing increased emphasis on the evaluation of the impact and usefulness of Agency-

Dated: June 10, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17063 Filed 7–8–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and

Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members

outcomes both in childhood (e.g., anxiety, depression, self-harming behavior, Post Traumatic Stress Disorder (PTSD), verbal and physical aggression, poor academic achievement, and low self-esteem) as well as in adulthood (e.g., anxiety, depression, self-harming behavior, substance abuse, PTSD, and high risk sexual behavior).

The goal of preventing child maltreatment requires a comprehensive approach that focuses on all forms of

all groups for whom public policy struggles to find effective solutions to improve health care. Health services research has consistently documents the persistent, and at times great, disparities in health status and access to appropriate health care services for certain groups, notably racial and ethnic minorities and low income families and children. Gender-based differences in access, quality, and outcomes are also widespread, but whether these differences should be eliminated or are appropriate is not well understood. Despite the dramatic changes occurring in the organization and financing of children's health services, the knowledge base for guiding these changes or assessing their impact is less well developed than that for adults. Health care issues that exist for the elderly and for people with chronic illnesses and disabilities also require attention. Health services research should do a better job of bringing science-based information to bear on these disparities so that the health of these groups is enhanced.

Career Development

AHRQ invests in the training and career development of health services researchers to address the research, analytic and improvement needs of the changing health care system. Areas of focus include: (1) Training that is designed to reflect and incorporate evolving innovations in data systems and research tools so that the researchers of the future not only identify and address significant research questions, but also employ cutting edge methodological, analytic, and data handing techniques, including appropriate privacy and confidentiality safeguards; (2) carrier development that allows new investigators to obtain additional, concentrated research experience to facilities the transition from a trainee or fellow status to that of an independent investigator with an established area of research expertise and demonstrated productivity; (3) training that provides a solid foundation in general health services research methods and concepts within a multi-disciplinary environment with special emphasis placed on the unique needs of the identified population groups, i.e., minority populations and children. As part of this initiative, AHRQ is interested in recruiting Historically Black Colleges and Universities and Hispanic Service Institutions to apply independently or in partnership with other institutions, to develop programs to train health care research investigators; and (4) training that focuses on conducting research using personally identifiable health care information without injury or disclosure to individuals. This training will directly address the growing concerns about the privacy of health care information.

Types of AHRQ Activities in Support of the Goals

Producing meaningful contributions to the Nation and to research on health care requires continuous activity focused on iterative improvements in priority setting, on developing research initiatives, and on research products and processes. The following research cycle describes the processes AHRQ uses to conduct its ongoing activities in order to make the most productive use of its resources.

1. Needs Assessment

AHRQ conducts needs assessments through a variety of mechanisms including expert meetings, conferences, and consultations with stakeholders and customers of its reach, publishing notices for comment in the **Federal Register**, as well as regular meeting with its National Advisory Council and government leaders. The results of these assessments are used to determine and prioritize information needs.

2. Knowledge Creation

AHRQ supports and conducts research to produce the next generation of knowledge needed to improve the health care system. Building on the last 12 years of investment in outcomes and health care research, AHRQ will focus on national priority areas for which much remains unknown.

3. Translation and Dissemination

Simply producing knowledge is not sufficient; findings must be useful and made widely available to practitioners, patients, and other decision makers. In order to accelerate the pace of quality improvement, the focus must be on closing the gap between what we know and what we do. The Agency will systematically identify priority areas for improving care through integrating findings into practice and will determine the most effective ways of doing this. Additionally, AHRQ will continue to synthesize and translate knowledge into products and tools based on research findings that support its customers in problem-solving and decision making. It will then actively disseminate the knowledge, products, and tools to appropriate audiences. Effective dissemination involves forming partnerships with other organizations and leveraging resources.

4. Evaluation

Knowledge development is a continuous process. It includes a feedback loop that depends on evaluation of the research's utility to the end user and impact on health care. In order to assess the ultimate outcomes of AHRQ research, the Agency is placing increased emphasis on the evaluation of the impact and usefulness of Agency-supported work in health care settings and policymaking. The evaluation activities will include a variety of projects, from smaller, short-term projects that assess process, outputs, and interim outcomes to larger, retrospective projects that assess the ultimate outcomes/impact of AHRQ activities on the health care system.

AHRQ Customers

The AHRQ research agenda is designed to be responsive to the needs of its customers/stakeholders and what they value in health care. These include consumers and patients; clinicians and other providers; institutions; plans; purchasers; and policymakers in all sectors (e.g., Federal, State, and local governments; voluntary associations; international organizations; and foundations). All of these customers require evidence-based information to inform health policy decisions. Health policy choices in this context represent three general levels of decision making: (1) Clinical Policy Decisions—Information is used every day by clinicians, consumers, patients, and health care institutions to make choices about what works, for whom, when, and at what cost; (2) Health Care System Policy Decision—Health plan and system administrators and policymakers are confronted daily by choices on how to improve the health care system's ability to provide access to and deliver high-quality, high-value care; (3) Public Policy Decisions—Information is used by policymakers to expand their capability to monitor and evaluate the impact of system changes on outcomes, quality, access, cost, and use of health care and to devise policies designed to improve the performance of the system. These decisions include those made by Federal, State, and local policymakers and those that affect the entire population or certain segments of the public.

In summary, AHRQ seeks suggestions for agency activities within the framework of priorities set out in the AHRQ strategic plan, goals, activities, and customers, as described above.

Dated: June 10, 2002.
Carolyn M. Clancy,
Acting Director.
[FR Doc. 02–17063 Filed 7–8–02; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ).
ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.
DATES: The meeting will be held on Friday, July 26, from 8:30 a.m. to 4 p.m. and is open to the public.
ADDRESSES: The meeting will be held at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 800, Washington, DC, 20201.
FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at (301) 594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144 no later than July 22, 2002.

Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 2101 E. Jefferson Street, Suite 400, Rockville, Maryland, 20852. Her phone number is (301) 594–1846. Minutes will be available after August 30, 2002.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II Agenda

On Friday, July 26, 2002, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairwoman. The Acting Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include discussions on research efforts with respect to health care costs, health information technology, and quality of care, and prevention. The official agenda will be available on AHRQ's website at *www.ahrq.gov* no later than July 8, 2002. The meeting will adjourn at 4 p.m.

Dated: June 27, 2002.
Carolyn M. Clancy,
Acting Director.
[FR Doc. 02–17064 Filed 7–8–02; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02124]

Collaborative Efforts to Prevent Child Sexual Abuse; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the project, "Collaborative Efforts to Prevent Child Sexual Abuse (CSA)". This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

Background

Approximately one million children in the United States annually are identified by child protective services as victims of maltreatment. Additionally, in 1999, over 88,000 substantiated or indicated cases of child sexual abuse were identified by the Administration on Children, Youth and Families. Child sexual abuse is associated with negative outcomes both in childhood (e.g., anxiety, depression, self-harming behavior, Post Traumatic Stress Disorder (PTSD), verbal and physical aggression, poor academic achievement, and low self-esteem) as well as in adulthood (e.g., anxiety, depression, self-harming behavior, substance abuse, PTSD, and high risk sexual behavior).

The goal of preventing child maltreatment requires a comprehensive approach that focuses on all forms of maltreatment including child sexual abuse. Whereas programs to prevent child physical abuse, emotional abuse, and neglect have focused their efforts on preventing perpetration, nearly all child sexual abuse prevention programs have focused on preventing victimization by teaching children personal safety skills. Some have argued that these children-focused programs are predicated on the belief that children can prevent their own sexual abuse. No matter what the basis, the victimization prevention programs are deeply entrenched (i.e. many schools, churches, and social organizations that deal with young children have them) and perpetration/offender based prevention programs are practically nonexistent.

A more comprehensive approach to the issue of child sexual abuse is the introduction of more perpetration/offender based prevention programs to complement the victimization prevention programs already in place. This announcement intends to support projects that utilize already existing infrastructures in order to broaden the prevention efforts. In every state, there are existing organizations whose mission is the prevention of child maltreatment or the prevention of sexual violence among adult women. In addition, there are organizations in the country that focus on the prevention of child sexual abuse perpetration. In the proposed project, the expertise of these agencies will be brought to bear on the issue of moving the field toward preventing perpetration.

The purpose of this program is to create statewide prevention collaboratives to promote the development and implementation of child sexual abuse prevention programs that focus on adult or community responsibility and response in the prevention of perpetration, rather than focusing solely on the prevention of victimization.

For the purposes of this announcement, a "prevention collaborative" includes efforts that are broadly defined and involves a partnership that combines the expertise of child abuse prevention, sexual abuse prevention and public health agencies/

organizations. In addition, the definition of child sexual abuse used for this project comes from the American Professional Society on the Abuse of Children (APSAC) Handbook on Child Maltreatment (2nd edition, 2002). The definition is as follows, "Child Sexual abuse involves any sexual activity with a child where consent is not or cannot be given. This includes sexual contact

$150,000 to $250,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the

2. CDC Activities

a. Provide technical assistance and consultation, if requested, on all aspects of recipient activities, including:
(1) Development of the baseline statewide inventory of child sexual abuse prevention programs.
(2) Perpetrator-focused prevention
(3) Cross-site evaluation
b. Facilitate the cross-site evaluation

The application must be received by 5 p.m Eastern Time August 19, 2002. Submit the application to: Technical Information Management—PA02124, Procurement and Grants Office, Centers for Disease Control and Prevention 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern

description of their linkages with and role in support for local level efforts.

c. Their history and a description of their capacity to provide leadership in involving other agencies with statewide reach to carry out the objectives of this project.

d. Their organizational capacity to realize the objectives of the cooperative agreement.

3. Applicant's Plan for Implementing

Appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among the involved agencies/organizations.

b. A staffing plan for the project, noting existing staff as well as additional staffing needs. The

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organizations. In addition, the definition of child sexual abuse used for this project comes from the American Professional Society on the Abuse of Children (APSAC) Handbook on Child Maltreatment (2nd edition, 2002). The definition is as follows, "Child Sexual abuse involves any sexual activity with a child where consent is not or cannot be given. This includes sexual contact that is accomplished by force or threat of force, regardless of the age of the participants, and all sexual contact between an adult and a child, regardless of whether there is deception or the child understands the sexual nature of the activity. Sexual contact between an older and a younger child also can be abusive if there is a significant disparity in age, development, or size, rendering the younger child incapable of giving informed consent. The sexually abusive acts may include sexual penetration, sexual touching, or non-contact sexual acts such as exposure or voyeurism."

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Reduce the Risk of Child Maltreatment.

B. Eligible Applicants

Assistance will be provided only to:

(1) The health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments; or

(2) An agency or organization with state-wide reach and expertise in the primary and/or secondary prevention of child maltreatment or sexual assault prevention. These agencies/organizations could be governmental or non-governmental.

Only one application per state will be funded. State-level agencies and organizations are encouraged to collaborate in the submission of a single state application.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $400,000 is available in FY 2002 to fund approximately 2 awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Preference will be given to applications that demonstrate that this project will be a collaborative effort involving state level entities (e.g., state public health agencies, other state governmental agencies, state level not-for-profit organizations) with expertise in child maltreatment prevention, sexual violence prevention and public health approaches to prevention.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop and conduct a baseline statewide inventory of child sexual abuse prevention programs including information on number of programs, intended audience, content, and resources devoted to programs.

b. Identify stakeholders, programs and institutions that should be involved in promoting programs that support adult or community responsibility and response to prevent perpetration.

c. Identify a perpetrator/offender-focused prevention program to be piloted in each state.

d. Implement and evaluate the chosen program in as many settings as possible.

e. Complete a follow-up statewide inventory of child sexual abuse programs.

f. Collaborate with other cooperative agreement recipients, CDC, and a CDC-selected evaluation contractor in the development of core components for the statewide inventory, perpetrator-focused prevention programs, and cross-site evaluation.

g. Attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients (two staff members; two meetings per year in Atlanta; two days per meeting).

h. Submit required reports on time.

2. CDC Activities

a. Provide technical assistance and consultation, if requested, on all aspects of recipient activities, including:

(1) Development of the baseline statewide inventory of child sexual abuse prevention programs.

(2) Perpetrator-focused prevention

(3) Cross-site evaluation

b. Facilitate the cross-site evaluation in collaboration with cooperative agreement recipients.

c. Facilitate the technical assistance and planning meetings (two meetings per year in Atlanta, two days per meeting).

d. Review evaluation information for presentation and publication.

E. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The proposal narrative should be no more than 15 pages, double-spaced, printed on one side, with one-inch margins and unreduced font.

The narrative should consist of at minimum:

1. Applicant Organization History, Description and Capacity
2. Applicant's Plan for Implementing this Cooperative Agreement
3. Applicant's Management and Staffing
4. Collaboration
5. Measures of Effectiveness
6. Budget

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification Form
Indirect Costs Rate agreement (if applicable)
Narrative

The application must be received by 5 p.m Eastern Time August 19, 2002. Submit the application to: Technical Information Management—PA02124, Procurement and Grants Office, Centers for Disease Control and Prevention 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Measures of Effectiveness (not rated)

The extent to which the applicant has provided measures of effectiveness.

2. Applicant Organization History, Description and Capacity (20 points)

The extent to which the applicant has documented:

a. Their history as well as their current ability to provide a leadership function in statewide efforts to prevent child abuse, sexual violence, or public health prevention.

b. Their history and capacity in providing leadership and guidance to local level efforts, including a clear description of their linkages with and role in support for local level efforts.

c. Their history and a description of their capacity to provide leadership in involving other agencies with statewide reach to carry out the objectives of this project.

d. Their organizational capacity to realize the objectives of the cooperative agreement.

3. Applicant's Plan for Implementing this Cooperative Agreement (35 points)

The extent to which the applicants work plan and timetable includes:

a. The identification of state level agencies/institutions/organizations to be named as members of the prevention collaborative, including a description of the areas of expertise covered by each; the specific roles and responsibilities of each in implementing this cooperative agreement; methods for making decisions; etc.

b. Memorandum of agreement and understanding or letters of support from these organizations as an appendix, and the extent to which these letters indicate that the applicant and the other collaborating organizations have established a "working partnership" which specifies the active roles each will have in the project.

c. Plans for baseline and follow-up statewide inventories of child sexual abuse prevention programs.

d. A description of the process used (or to be used) in identifying a perpetrator/offender-focused CSA prevention project for implementation (i.e., what evidence will be used to make this decision).

e. Plans to implement the pilot prevention program in as many settings as possible throughout the state, including a description of pilot site selection criteria.

f. Plans to evaluate the pilot prevention program including measures of effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures should be objective/quantifiable and measure the intended outcome.

g. Plans to train and support staff regarding the responsibilities of this cooperative agreement, and the availability of staff and facilities to carry out this cooperative agreement.

4. Applicant's Management and Staffing (20 points)

The extent to which the applicant has included:

a. Their management operation, structure and/or organization. An organizational chart of the applicant's organization should be included as an Appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among the involved agencies/organizations.

b. A staffing plan for the project, noting existing staff as well as additional staffing needs. The responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position should be included. The specific staff positions within the other involved state level agencies, both in-kind and funded, should be described.

c. Resumes and/or position descriptions (i.e. for and in-kind and proposed positions to be funded under this cooperative agreement) should be included as an appendix. This should include the use of consultants, as appropriate, from the identified perpetrator focused program.

d. A continuation plan in the event that key staff leave the project, how new staff will be smoothly integrated into the project, and assurances that resources will be available when needed for this project

e. Previous experience of project staff to submit required reports on time

5. Collaboration (25 Points)

The extent to which the applicant:

a. Demonstrates an ability to identify and engage various stakeholders in past projects, and thus, its capacity to identify stakeholders that should be involved in promoting, implementing and evaluating programs that support adult or community responsibility and response to prevent CSA perpetration.

b. A willingness to collaborate with other cooperative agreement recipients and CDC in the development of core components for the statewide inventory, perpetrator/offender-focused prevention programs, and cross-site evaluation.

c. A willingness to attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients (two staff members, two meetings per year in Atlanta, two days per meeting).

6. Proposed Budget Justification (Not Scored)

The extent to which the applicant's budget includes funds to participate in the CDC required meetings (two staff members, two meetings per year in Atlanta, 2 days per meeting) and includes sufficient funding to support national consultants and program

materials directed at perpetrator based CSA prevention.

The applicant should provide a detailed budget request and complete line-item justification of all proposed operating expenses consistent with the stated activities under this program announcement. Applicants should be precise about the purpose of each budget item and should itemize

241, 247b, and 280b–280b–3], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then

(1) To assess the prevalence of, and monitor trends in STDs, TB, and HIV risk behaviors among MSM in clinics serving a substantial number of HIV positive MSM, and;

(2) To enhance local prevention services for these populations.

Recent outbreaks of STDs and TB among MSM, many of whom are HIV positive, have identified substantial

years (funding estimates may change). Project areas are expected to sustain these projects beyond the period for which funding is provided.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by quality of quarterly data submitted and availability of funds.

Funding is viewed as money for an activity that is expected to continue, in

c. Provide STD testing data (optimally for chlamydia, gonorrhea, and syphilis) for at least 25 consecutive HIV-positive MSM per month. If a single facility does not have this many entrants or clinic visits per month, the recipient may identify additional facilities that would participate in providing the required sample size.

d. Each participating facility must conduct tuberculin skin tests (TSTs),

the application and shall be an element of the evaluation.

2. CDC Activities

a. Conduct one site visit to each funded project for technical assistance.

b. Provide technical assistance, if requested, in the design and conduct of the project.

c. As needed, assist in designing a data management system and as needed

materials directed at perpetrator based CSA prevention.

The applicant should provide a detailed budget request and complete line-item justification of all proposed operating expenses consistent with the stated activities under this program announcement. Applicants should be precise about the purpose of each budget item and should itemize calculations wherever appropriate. The use of the sample budget included in the application kit is encouraged. These funds should not be used to supplant existing efforts.

7. The extent to which the applicant adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of the following:

1. Annual progress reports will be submitted as part of the grantee's continuation application. The progress report will include a data requirement that demonstrates measures of effectiveness. Specific guidance will be provided for the content of the progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301,317,and 391–394 of the Public Health Service Act, [42 U.S.C. 241, 247b, and 280b–280b–3], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: James Masone, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2736, Email address: *JMasone@cdc.gov*.

For program technical assistance, contact: Janet Saul, PhD, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE, Mailstop K60, Atlanta, GA 30341–1125, Telephone number: (770) 488–4733, Email address: *jsaul@cdc.gov*.

Dated: June 6, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17113 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02184]

Monitoring Trends in Prevalence of Sexually Transmitted Disease (STD), Tuberculosis (TB), and Humans Immunodeficiency Virus (HIV) Risk Behaviors Among Men Who Have Sex With Men (MSM); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a competitive cooperative agreement for Monitoring Trends in Prevalence of STDs, TB, and HIV Risk Behaviors among (MSM) in facilities providing health services to this population. This program addresses the "Healthy People 2010" focus area(s) of STD, HIV, and Immunization and Infectious Diseases.

Objectives

The objectives for this program are:

(1) To assess the prevalence of, and monitor trends in STDs, TB, and HIV risk behaviors among MSM in clinics serving a substantial number of HIV positive MSM, and;

(2) To enhance local prevention services for these populations.

Recent outbreaks of STDs and TB among MSM, many of whom are HIV positive, have identified substantial weaknesses in STD and TB surveillance and control efforts and the need for preventive efforts among this population. Prevention of STDs and HIV in this population is critical to preventing STD, TB, and HIV transmission.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention: (1) Improve STD and TB surveillance and control efforts among the MSM population; and (2) Improve HIV and STD prevention programs and continuity of care in the MSM population.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 317 and 317E of the PHS Act, 42 U.S.C. 247b and 247b–6. The Catalog of Federal Domestic Assistance number 93.977.

C. Eligible Applicants

Limited Competition: Funding is limited to state and local governments that received funding under prior announcements.

Assistance will be provided only to project areas which received FY 1999, 2000, or 2001 Competitive Supplemental Funds For Comprehensive STD Prevention Systems for "Monitoring Trends in Prevalence of STDs, TB, and HIV Risk Behaviors among MSM," Program Announcement 99000. Prior supplemental award recipients are uniquely qualified because they have an established prevalence monitoring project currently in place for STDs, TB, and HIV risk behaviors among MSM. Applicants should review section J. "Where to Obtain Additional Information" on page 21 of this program announcement.

D. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund up to six awards. It is expected that the average award will be $45,000, ranging from $30,000 to $60,000. The awards will begin on or before September 30, 2002. Awards will be made for a 12-month budget period within a project period of up to three

years (funding estimates may change). Project areas are expected to sustain these projects beyond the period for which funding is provided.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by quality of quarterly data submitted and availability of funds.

Funding is viewed as money for an activity that is expected to continue, in full or in part, beyond the project period using other local or CDC funds.

1. Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds must be used to improve the collection, management, and reporting of data and, if needed, to supplement prevention activities at participating facilities. Funds may not be used to provide medical care or for pharmaceuticals.

2. Recipient Financial Participation

Recipient financial participation is required for this program in accordance with this program announcement. Recipients will be required to provide 1:3 matching funds (i.e., $1 of new state or local, public or private resources for each $3 of federal resources awarded). New resources may include newly identified funds or newly identified in-kind resources. Matching funds may be used to support laboratory testing or personnel but may not be used for pharmaceuticals.

3. Funding Preferences

Funds may be awarded as to achieve geographical diversity.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Assess which HIV-care facilities in the project area perform routine STD screening. Preferably, facilities will be chosen where routine screening is conducted.

b. Collaborate with one or more facilities serving a total of approximately 25 different HIV-positive MSM per month. These may be primary care clinics, HIV clinics, managed care organizations, or other sites providing primary care services.

c. Provide STD testing data (optimally for chlamydia, gonorrhea, and syphilis) for at least 25 consecutive HIV-positive MSM per month. If a single facility does not have this many entrants or clinic visits per month, the recipient may identify additional facilities that would participate in providing the required sample size.

d. Each participating facility must conduct tuberculin skin tests (TSTs), placed using the Mantoux method, for MSM with HIV infection. For HIV-positive MSM tested for TB, information on history of prior TB disease, prior TST status, TST results, follow-up for TST-positive patients (chest X-ray results, therapy) is required.

e. For each person examined or tested, participating facilities must collect the following core data elements in a standardized format: date of visit, unique patient identification number, sex, age or date of birth, race/ethnicity, zip code or census tract of residence, gender of sex partners, STD symptoms, exam findings, and STD laboratory results (chlamydia, gonorrhea, and syphilis).

f. In addition, collecting the following HIV risk behavior and clinical data (for the last 30 days) is preferable, but not required: Self-identified sexual orientation; number of male and female sex partners; type of sex (oral/anal/vaginal); condom use with various types of sex; whether the person has anonymous sex; number of new sex partners; sex with a known HIV-infected partner; CD4 count; viral load; if currently on HAART therapy; and illicit drug use.

g. *Data management:* Data should be computerized, in line-listed format to facilitate local analyses and reported quarterly to CDC. Demonstrated capacity to organize, manage, and clean data.

h. *Data analysis and dissemination:* Demonstrated capacity to analyze data and disseminate findings to public health officials and community planning groups.

i. Commitment to and plan for long-term sustainability of the project.

j. Integrated involvement in this project by local STD, TB, and HIV/AIDS communicable disease surveillance units.

k. Electronically transmit data to CDC on a quarterly basis.

l. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of the evaluation.

2. CDC Activities

a. Conduct one site visit to each funded project for technical assistance.

b. Provide technical assistance, if requested, in the design and conduct of the project.

c. As needed, assist in designing a data management system and as needed assist in designing data analyses to help guide STD and TB prevention and intervention activities.

F. Content

Letter of Intent (LOI)

An LOI is required for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two double-spaced pages, printed on one side, with one-inch margins, and unreduced fonts. Your letter of intent will be used only as an indicator of the number of applications CDC will receive and will assist CDC staff in preparing and coordinating the review process. Therefore, your letter of intent should state your plans to submit an application.

Use the information in the Program Requirements, Other Requirements, Evaluation Criteria, and this section to develop the application content. Describe your project plan, and budget as outlined below. Then review the evaluation criteria listed below. Your application will be evaluated on the criteria listed, so it is important to organize your application by these criteria. Applicants may submit more than one proposal, but the average award will be $45,000.

The narrative should be no more than ten double-spaced pages, and printed on one side with one-inch margins, unreduced fonts, and a number on each page. Applications with more than ten double-spaced pages will be returned and not reviewed. Please attach a budget with narrative and calculations to support all proposed amounts. Please provide only attachments or appendices that are directly relevant to this request for funding. The table, budget and attachments/appendices are not included in the count for the ten page limit.

Project Plan

Describe your project plan and include a time frame for implementation. Indicate what services will be provided and what medical and risk behavior data will be collected and provided to the local health department and to CDC. Describe the difficulties, if

any, in putting data in the standardized format Describe what changes, if any, would be made to the current system, with respect to collection and management of data and provision of medical services. If you cannot examine or test all HIV-positive MSM at participating facilities, describe to whom services would be offered, and explain how you would quantify acceptance of services. Briefly mention

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)

1. Adequacy of Study Participants (20 Points)

The extent to which the number of HIV positive MSM who will be routinely examined and tested and among whom data will be collected at the participating facilities meets or exceeds the requirement of 25 per month. (Provide letters of support from each participating facility documenting

6. Project Assessment and Support (10 Points)

Provide letters of support from each participating facility. Describe how an assessment of STD testing in HIV-care facilities in the project area was performed, and provide evidence that facilities are chosen where routine STD screening is conducted.

7. Project Sustainability (10 Points)

program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements

Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Radiation and Energy-Related Research Grants, Program Announcement OH–02–002.

Times and Dates: 8 a.m.–8:30 a.m., July 22, 2002 (Open), 8:40 a.m.–5 p.m., July 22, 2002 (Closed), 8 a.m.–5 p.m., July 23, 2002 (Closed).

Place: Brazilian Court Hotel, 301

any, in putting data in the standardized format Describe what changes, if any, would be made to the current system, with respect to collection and management of data and provision of medical services. If you cannot examine or test all HIV-positive MSM at participating facilities, describe to whom services would be offered, and explain how you would quantify acceptance of services. Briefly mention how you will disseminate the findings from this project and how this project will contribute to local planning for prevention of STDs, HIV infection, and tuberculosis.

Budget

Provide a justified budget for use of CDC funds. Describe any other STD-related projects funded by CDC that are currently in place or which will be implemented in the same facilities; describe any overlap with this project.

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds.

a. Submit a line-item itemized budget with narrative justification and any other information to demonstrate that the request for CDC assistance is consistent with the purpose and objectives of this cooperative agreement program;

b. Describe any other STD-related projects funded by CDC that are currently in place or which will be implemented in the same facilities; describe any overlap with this project.

c. For contracts, include the name of the person or firm to receive the contract, itemized budget with narrative justification, the method of selection, the period of performance, method of accountability, and a description of the contracted service requested.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 12,2002 submit the original and two copies of your letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428) and, if applicable, the Optional Form 310, "Protection of Human Subjects Assurance Identification/Certification/ Declaration". Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

The application must be received on or before August 5, 2002. Submit your application to the: Technical Information Management Section, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 P.M. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Services or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Adequacy of Study Participants (20 Points)

The extent to which the number of HIV positive MSM who will be routinely examined and tested and among whom data will be collected at the participating facilities meets or exceeds the requirement of 25 per month. (Provide letters of support from each participating facility documenting the ability to do this); and Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

A. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Data Interpretation and Management (15 Points)

Demonstrated ability to manage, clean, and submit data in a timely way as demonstrated by previous involvement in similar projects.

3. Adequacy of Facility Data Collection Activities (15 Points)

The extent to which STD testing is prpvided at the facility(ies) and the standard data elements are routinely collected [ie. date of visit, sex, date of birth, race/ethnicity, zip code or census tract of residence, gender of sex partners, STD symptoms, exam findings, and STD laboratory results (chlamydia, gonorrhea, and syphilis).

4. Routine Data Collection (10 Points)

Extent to which the suggested data elements are routinely collected, including previous HIV test results, CD4 count, viral load, and behavioral risk variables (e.g., number of sex partners, type of sex [oral/anal].

5. Program Capacity (10 Points)

Evidence that TB testing is routinely provided for HIV-positive MSM at the facility(ies) and that the data elements for HIV-positive MSM (ie. history of prior TB, prior TST status, TST results, and follow-up chest X-ray results, and therapy) are routinely collected.

6. Project Assessment and Support (10 Points)

Provide letters of support from each participating facility. Describe how an assessment of STD testing in HIV-care facilities in the project area was performed, and provide evidence that facilities are chosen where routine STD screening is conducted.

7. Project Sustainability (10 Points)

Potential sustainability of project, as determined by the extent to which current project activities have been integrated with existing program activities, and local program support for the proposed project so that it may be continued Without federal funding beyond the project period.

8. Data Analysis and Dissemination (5 Points)

Demonstrated ability to analyze data and disseminate findings to public health officials and community planning groups.

9. Collaboration (5 Points)

Extent of participation by STD, TB, and HIV/AIDS communicable disease surveillance units, as indicated by letters of support.

10. Budget (Reviewed, But Not Scored)

The extent to which the itemized budget for conducting the project is reasonable and well justified.

11. Human Subjects (Not Scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable). Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness).
2. Financial status report, no more than 90 days after the end of the budget period, and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Gladys T. Gissentanna, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770)488–2753, Email address: *gcg4@cdc.gov.*

For program technical assistance, contact: Catherine McLean, MD, Division of STD Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, MS E02, Atlanta, GA 30333, Telephone: (404)639–8467, Email: *cvm9@cdc.gov.*

Dated: July 2, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17160 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Radiation and Energy-Related Research Grants, Program Announcement OH–02–002

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Radiation and Energy-Related Research Grants, Program Announcement OH–02–002.

Times and Dates: 8 a.m.–8:30 a.m., July 22, 2002 (Open), 8:40 a.m.–5 p.m., July 22, 2002 (Closed), 8 a.m.–5 p.m., July 23, 2002 (Closed).

Place: Brazilian Court Hotel, 301 Australian Avenue, Palm Beach, Florida 33480.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–002.

This notice is being published less than fifteen days prior to meeting dates due to administrative oversight.

Contact Person for More Information: Pervis Major, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, telephone (304) 285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17111 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Implementing Hazardous Substance Training for Emergency Responders, Announcement Number: OH–02–009

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Implementing Hazardous

Substance Training for Emergency Responders, RFA OH–02–009.

Times and Dates: 8 a.m.–8:30 a.m., July 24, 2002 (Open); 8:40 a.m.–5 p.m., July 24, 2002 (Closed).

Place: Brazilian Court Hotel, 301 Australian Avenue, Palm Beach, FL 33480, phone (561) 655–7740.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–009.

This notice is being published less than fifteen days prior to meeting dates due to administrative oversight.

Contact Person for More Information: Pervis Major, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, telephone (304) 285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17112 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Traumatic Injury Biomechanics Research, Program Announcement 02040, Violence-Related Injury Prevention Research, Program Announcement 02041, and Dissemination Research of Effective Interventions, Program Announcement 02126

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Traumatic Injury Biomechanics Research, Program Announcement 02040, Violence-Related Injury Prevention Research, Program Announcement 02041, and Dissemination Research of Effective Interventions, Program Announcement 02126.

Times and Dates: 8 a.m.–8:30 a.m., July 28, 2002 (Open), 8:40 a.m.–5 p.m., July 28, 2002 (Closed), 8 a.m.–5 p.m., July 29, 2002 (Closed).

Place: Brazilian Court Hotel, 301 Australian Avenue, Palm Beach, FL 33480, phone (561) 655–7740.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: Agenda items include a budget update, recent awards, discussion of the review process and panelists responsibilities, and review of grant applications. Beginning at 7 p.m., July 28, through 4:30 p.m., July 29, the Committee will review individual research grant applications submitted in response to Program Announcements #02040, Violence-Related Injury Prevention Research; #02041, Traumatic Injury Biomechanics Research; #02126, Dissemination Research of Effective

information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements contained in existing FDA regulations regarding the general administrative procedures for a person to petition the Commissioner of Food and Drugs (the Commissioner) to issue, amend, or revoke a rule; file a

(2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of

Substance Training for Emergency Responders, RFA OH–02–009.

Times and Dates: 8 a.m.–8:30 a.m., July 24, 2002 (Open); 8:40 a.m.–5 p.m., July 24, 2002 (Closed).

Place: Brazilian Court Hotel, 301 Australian Avenue, Palm Beach, FL 33480, phone (561) 655–7740.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–009.

Contact Person for More Information: Roger Rosa, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 751H Hubert Humphrey Building, Washington, DC 20201, telephone (202) 205–7856.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17159 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement #02151]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A Research Study To Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Research Study to Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults, Program Announcement #02151.

Times and Dates: 6: p.m.–6:30 p.m., July 28, 2002 (Open); 6:30 p.m.–8 p.m., July 28, 2002 (Closed); 9 a.m.–5 p.m., July 29, 2002 (Closed).

Place: The Westin Hotel (Atlanta Airport) 4736 Best Road, Atlanta, GA 30337. Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02151.

Contact Person for More Information: Dr. Ann Dellinger, Epidemiologist, National Center for Injury Prevention and Control, CDC, 2495 Flowers Road, Atlanta, Georgia 30341; (770) 488–4811.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17161 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement # 02123]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Multi-Level Parent Training Effectiveness Trial, Program Announcement #02072, and Parenting Program Attrition and Compliance Efficacy Trial

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Multi-Level Parent Training Effectiveness Trial, Program Announcement #02072, and Parenting Program Attrition and Compliance Efficacy Trial, Program Announcement #02123.

Times and Dates: 6 p.m.–6:30 p.m., July 28, 2002 (Open); 6:30 p.m.–8 p.m., July 28, 2002 (Closed); 8:30 a.m.–5 p.m., July 29, 2002 (Closed).

Place: The Westin Hotel (Atlanta Airport), 4736 Best Road, Atlanta, GA 30337, Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02072 & PA# 02123.

Contact Person for More Information: Dr. Joanne Klevens, Epidemiologist, National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia 30341; (770) 488–4330.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, , Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17162 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 6:30 p.m.–9:30 p.m., July 28, 2002. 8 a.m.–4:30 p.m., July 29, 2002.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 6:30 p.m.–7 p.m., July 28, 2002. *Closed:* 7 p.m.–9:30 p.m., July 28, 2002, through 4:30 p.m., July 29, 2002.

Purpose: This committee is charged with providing advice and guidance to the Secretary of Health and Human Services and the Director, CDC, regarding the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control and supports injury control research centers.

Matters to be Discussed: Agenda items include a budget update, recent awards, discussion of the review process and panelists responsibilities, and review of grant applications. Beginning at 7 p.m., July 28, through 4:30 p.m., July 29, the Committee will review individual research grant applications submitted in response to Program Announcements #02040, Violence-Related Injury Prevention Research; #02041, Traumatic Injury Biomechanics Research; #02126, Dissemination Research of Effective Interventions to Prevent Unintentional Injuries; and #02127, Acute Care, Rehabilitation and Disability Prevention Research; and discuss an injury control research center grant application. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Acting Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Acting Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–1658.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: July 1, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17163 Filed 7–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0281]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements contained in existing FDA regulations regarding the general administrative procedures for a person to petition the Commissioner of Food and Drugs (the Commissioner) to issue, amend, or revoke a rule; file a petition for an administrative reconsideration or an administrative stay of action; and request an advisory opinion from the Commissioner.

DATES: Submit written or electronic comments on the collection of information by September 9, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions—21 CFR Part 10 (OMB Control No. 0910–0183)—Extension

The Administrative Procedures Act (5 U.S.C. 553(e)) provides that every agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20) (submission of documents to the Dockets Management Branch), a citizen petition requesting the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, non-for profit institutions and businesses or other for-profit institutions or groups.

Section 10.33 (21 CFR 10.33) issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under § 10.25 (21 CFR 10.25) (initiation of administrative proceedings). A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in

the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit

effective date of any administrative action.

Such a petition must: (1) Identify the decision involved, (2) state the action requested—including the length of time for which a stay is requested, and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant

of documents to the Dockets Management Branch), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and, a full statement of the facts and legal

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or by electronic mail at *Wayne_Eddins@hud.gov*.

the Section 202 and Section 811 Capital Advance Programs. A thorough evaluation of an Owner's capabilities is critical to protect the Government's financial interest, and to mitigate any possibility of fraud, waste, and mismanagement of public funds.

Agency form numbers, if applicable: HUD–2476A, HUD–90163CA/–64CA/–65CA/–66CA/–67CA/–70CA/–71CA/–77CA, 91372A–CA, and 92004–F

Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building. Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC

the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit instructions who are requesting from the Commissioner a reconsideration of a matter.

Section 10.35 (21 CFR 10.35) issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), the Commissioner to stay the effective date of any administrative action.

Such a petition must: (1) Identify the decision involved, (2) state the action requested—including the length of time for which a stay is requested, and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action.

Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action.

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and, a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

FDA estimates the burden of this collection of information as follows:

TABLE 1.— ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	150	3	450	12	5,400
10.33	10	1	10	10	100
10.35	13	1	13	10	130
10.85	3	1	3	16	48
Total					5,678

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information is based on agency records and experience over the past 3 years. Agency personnel handling the petitions for § 10.30 estimate 150 (citizen petitions) received by the agency annually, each requiring an average of 12 hours preparation time. Agency personnel handling the petitions for § 10.33 (administrative reconsideration of an action) estimate 10 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.35 (administrative stay of an action) estimate 13 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.85 (advisory opinions) estimate 3 requests are received by the agency annually, each requiring an average of 16 hours preparation time.

Dated: June 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17077 Filed 7–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health (NIH), the authorities under Public Law 107–84, Muscular Dystrophy Community Assistance, Research and Education Amendments (MD–CARE) Act, Part A, Title IV, Section 404E(d) of the Public Health Service Act, as amended, to establish the Muscular Dystrophy Coordinating Committee.

I reserve to myself the authority to appoint members of the Coordinating Committee, including the Chair of the Coordinating Committee.

This delegation shall be exercised in accordance with the Department's applicable policies, procedures, guidelines and regulations. In addition, I ratify and affirm any actions taken by the NIH Director or his subordinates which involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

The delegation is effective upon date of signature.

Dated: June 26, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–17129 Filed 7–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–27]

Notice of Proposed Information Collection: Comment Request; Capital Advance Program Requirements for Section 202 Housing for the Elderly, and Section 811 Housing for Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or by electronic mail at *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: William Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1994 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information: (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Capital Advance Program Requirements for Section 202 Housing for the Elderly, and Section 811 Housing for Persons with Disabilities.

OMB Control Number, if applicable: 2502–0470.

Description of the need for the information and proposed use: This submission, for which the Department is requesting clearance, is to permit the continued processing of all Sections 202 and 811 capital advance projects that have not yet been finally closed. The submission includes processing of the application for firm commitment to final closing of the capital advance. The information collection is needed to assist HUD in determining the Owner's eligibility and capacity to finalize the development of a housing project under the Section 202 and Section 811 Capital Advance Programs. A thorough evaluation of an Owner's capabilities is critical to protect the Government's financial interest, and to mitigate any possibility of fraud, waste, and mismanagement of public funds.

Agency form numbers, if applicable: HUD–2476A, HUD–90163CA/–64CA/–65CA/–66CA/–67CA/–70CA/–71CA/–77CA, 91372A–CA, and 92004–F (VA26–8497A).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 3,485, the number of respondents is 260 generating 260 annual responses, the frequency of response is on occasion, and the amount of time per response varies from 30 minutes to 6 hours.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17050 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–28]

Notice of Proposed Information Collection: Comment Request; Deed-in-Lieu of Foreclosure (Corporate Mortgagors or Mortgagors Owning More Than One Property)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Deed-in-Lieu of Foreclosure (Corporate Mortgagors or Mortgagors Owning More than One Property).

OMB Control Number, if applicable: 2502–0301.

Description of the need for the information and proposed use: Mortgagees must obtain written consent from the National Servicing Center to accept a deed-in-lieu of foreclosure when the mortgagor is a corporate mortgagor or a mortgagor owns more than one property. Mortgagees must provide HUD with specific information. HUD uses this information collection to review specific requirements in assessing the validity of accepting a deed-in-lieu of foreclosure.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and

hours of response: The estimated total number of hours needed to prepare the information collection is 300, the number of respondents is 600 generating 600 annual responses, the frequency of response is on occasion, and the numbers of hours per response is 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17049 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–29]

Notice of Proposed Information Collection: Comment Request; Mortgagee's Certificate

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–31]

Notice of Proposed Information Collection: Comment Request; Delinquent Loan Reports

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Delinquent Loan Reports.

OMB Control Number, if applicable: 2502–0060.

Description of the need for the information and proposed use: Mortgagees are required by 24 CFR 203.332 to report once each month all HUD insured single family mortgages that have become 90 or more days

hours of response: The estimated total number of hours needed to prepare the information collection is 300, the number of respondents is 600 generating 600 annual responses, the frequency of response is on occasion, and the numbers of hours per response is 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17051 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–29]

Notice of Proposed Information Collection: Comment Request; Procedures for Appealing Section 8 Rent Adjustments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Procedures for Appealing Section 8 Rent Adjustments.

OMB Control Number, if applicable: 2502–0446.

Description of the need for the information and proposed use: Title II of the National Housing Act requires that the Department of Housing and Urban Development (HUD) regulate rents for certain cooperative and subsidized rental projects. Under this legislation, HUD is charged with the responsibility of determining the method of rent adjustments and facilitating these adjustments. Because rent adjustments are considered benefits to project owners, HUD must also provide some means for owners to appeal the decisions made by the Department of Contract Administrator. This appeal process, and the information collection included as part of the process, play an important role in preventing costly litigation and ensuring the accuracy of the overall rent adjustment process.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 2,500, the number of respondents is 1,250 generating 1,250 annual responses, the frequency of response is on occasion, and the number of hours per response average 2 hours.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17052 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–30]

Notice of Proposed Information Collection: Comment Request; Assistance Payment Contract—Notice of (1) Termination, (2) Suspension, or (3) Reinstatement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assistance Payment Contract—Notice of (1) Termination, (2) Suspension, or (3) Reinstatement.

OMB Control Number, if applicable: 2502–0094.

Description of the need for the information and proposed use: This information collection documents for review and audit each Section 235 mortgage serviced by lenders, where HUD financial assistance to qualified low- and moderate-income families is terminated, suspended, and/or reinstated.

Agency form numbers, if applicable: HUD–93114.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 3,900, the number of respondents is 300 generating 7,800 annual responses, the frequency of response is on occasion, and the number of hours per response is 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 28, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17054 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–31]

Notice of Proposed Information Collection: Comment Request; Delinquent Loan Reports

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Delinquent Loan Reports.

OMB Control Number, if applicable: 2502–0060.

Description of the need for the information and proposed use: Mortgagees are required by 24 CFR 203.332 to report once each month all HUD insured single family mortgages that have become 90 or more days delinquent. Mortgagees are also required to give notice to the Secretary of all accounts where the first legal action required to initiate foreclosure has begun. These reports are accomplished by reporting the accounts to HUD via the electronic equivalent (Electronic Data Interchange (EDI) or FHA Connection). The mortgagees are also required to submit a quarterly summary on the 30–60–90 day delinquencies for their respective portfolios.

Agency form numbers, if applicable: HUD–92068A & HUD 92068C.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of annual hours needed to prepare the information collection is 4,200; the number of respondents is 600 generating approximately 9,600 annual responses; the frequency of response is monthly and quarterly; and the estimated time needed to prepare the response varies from 15 minutes to 30 minutes.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 2, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–17055 Filed 7–8–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–04]

Notice of Proposed Information Collection for Public Comment: Customer Survey of Households Living in Federally Assisted Units

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department of soliciting public comments on the subject proposal.

DATES: *Comment Due Date: September* 9, 2002.

ADDRESSES: *Comment Due Date:* September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Customer Survey of Households Living in Federally Assisted Units.

OMB Control Number, if applicable: 2528–0208.

Description of the need for the information and proposed use: The survey will be used to assess customer ratings of the condition of housing assisted through Federal programs, including the Section 8, FHA, and public housing programs. This survey helps HUD focus its monitoring and technical assistance resources on property owners and housing authorities whose performance

DATES: Written data, comments or requests must be received by August 8, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication

for the purpose of enhancement of the survival of the species.

PRT–037014

Applicant: Duke University, Durham, NC.

The applicant requests a permit to import biological samples and salvaged specimens from Brown hyena (*Parahyaena brunnea*) collected in the wild in Namibia, for scientific research.

Permit Type: Take for scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 250.

Summary of Activity to be Authorized: The applicant requests a permit to conduct passive hydrophone listening to sounds made by manatees and playback vocalizations using a boat at idle speed in the waters of Florida

PRT–672624

Applicant: U.S.G.S., Biological Resources Division, Santa Cruz, CA.

Permit Type: scientific research.

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*); 50.

Summary of Activity to be Authorized: The applicant requests an amendment to the permit to increase the

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department of soliciting public comments on the subject proposal.

DATES: *Comment Due Date: September 9, 2002.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Barbara Haley, 202–708–5537, ext. 5708 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Customer Survey of Households Living in Federally Assisted Units.

OMB Control Number: 2528–0170 (exp. 09/30/02).

Description of the Need for the Information and Proposed Use: HUD developed and tested a cost-effective mail survey instrument for assessing the condition of housing units assisted through HUD programs. The pilot survey, which elicited renters' ratings of their housing, provided high levels of agreement with independent condition ratings by professional inspectors. HUD implements the survey as an ongoing tool to assess customer ratings of the condition of housing assisted through Federal programs, including the Section 8, FHA, and public housing programs. This survey helps HUD focus its monitoring and technical assistance resources on property owners and housing authorities whose performance most need improvement. It also provides policy and program managers with valid measures for tracking assisted housing conditions over time and across programs.

Agency Form Numbers: None.

Members of the Affected Public: Households residing in Federally-assisted housing, including FHA assisted-housing, public housing, or units receiving assistance from the Section 8 Housing Choice Voucher Program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected by an periodic mail survey of 267,000 of the 4.7 million households who live in housing units assisted through Federal programs. Based on the first year of data collection, a 62 percent response rate is expected. The survey will take approximately 15 minutes to complete. This means a total of 41,385 hours of response time annually for the information collection.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 28, 2002.

Lawrence L. Thompson,

General Deputy, Assistant Secretary for Policy Development Research.

[FR Doc. 02–17056 Filed 7–08–02; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 8, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–057903

Applicant: R.M Bohart Museum of Entomology, University of California, Davis, CA.

The applicant request a permit to export and re-import non-living museum specimens of endangered and threatened species of animals previously accessioned into the applicant's collection for scientific research. This notification covers activities conducted by the applicant for a five-year period.

PRT–056392

Applicant: Jerry Mills, Carrollton, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–058598

Applicant: Lance Burrow, Georgetown, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–037014

Applicant: Duke University, Durham, NC.

The applicant requests a permit to import biological samples and salvaged specimens from Brown hyena (*Parahyaena brunnea*) collected in the wild in Namibia, for scientific research. This notification covers activities conducted by the applicant over a five year period.

Marine Mammals and Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and the regulations governing marine mammals (50 CFR Part 18) and endangered species (50 CFR part 17). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–038448

Applicant: Iskande L.V. Larkin, University of Florida, Gainesville, FL.

Permit Type: scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 6 females.

Summary of Activity to be Authorized: The applicant requests an amendment and extension to her permit to study the reproductive physiology and indicators of stress by taking and using urine, fecal, blood, and vaginal smear samples from 4 captive-held females to measure steroid and protein reproductive hormone concentrations and glucocorticosteroids. No animals from the wild will be used.

Source of Marine Mammals: 4 captive females as identified by the USFWS, Jacksonville, FL, Fish and Wildlife Office.

Period of Activity: Until 12/31/2003.

PRT–051709

Applicant: University of South Florida, College of Marine Science, St. Petersburg, FL.

Permit Type: Take for scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 250.

Summary of Activity to be Authorized: The applicant requests a permit to conduct passive hydrophone listening to sounds made by manatees and playback vocalizations using a boat at idle speed in the waters of Florida (Sarasota Bay, Matlacha Canals, Crystal River area).

Source of Marine Mammals: wild animals in the waters of Florida.

Period of Activity: Up to 5 years, if issued.

PRT–837923

Applicant: New College of the University of South Florida, Division of Social Sciences, St. Petersburg, FL.

Permit Type: Take for scientific research.

Name and Number of Animals: Florida manatee (*Trichechus manatus*), 12.

Summary of Activity to be Authorized: The applicant requests an amendment to permit to conduct studies evaluating the ability of manatees to detect chemical compounds (2 animals), and auditory responses (up to 10 animals).

Source of Marine Mammals: Captive held animals.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–672624

Applicant: U.S.G.S., Biological Resources Division, Santa Cruz, CA.

Permit Type: scientific research.

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*); 50.

Summary of Activity to be Authorized: The applicant requests an amendment to the permit to increase the number of animals (from 30 to 50) to be implanted with time-depth recorders.

Source of Marine Mammals: entire range of Southern sea otters in California.

Period of Activity: Up to 2/2/2006.

PRT–046081

Applicant: U.S. Fish and Wildlife Service, Marine Mammal Management, Anchorage, AK.

Permit Type: scientific research.

Name and Number of Animals: polar bear (*Ursus maritimus*); Variable.

Summary of Activity to be Authorized: The applicant requests an amendment to the permit to authorize the paint marking of individual animals for identification purposes to be used in the study of resource utilization.

Source of Marine Mammals: Free ranging.

Period of Activity: Up to five years if authorized.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–058909

Applicant: K. James Malady, III, Bennington, VT.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–054887

Applicant: William Jardel, Palmer, AK.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted prior to May 31, 2000, from the M'Clintock Channel polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: June 28, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–17065 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces the availability of the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula for review and comment. This plan addresses the recovery needs of 12 plant species: Arctostaphylos franciscana (Franciscan manzanita), Arctostaphylos montana ssp. ravenii (Presidio manzanita), Arctostaphylos hookeri ssp. ravenii (Ravenii manzanita), Arctostaphylos hookeri ssp. montana (Montara manzanita), Arctostaphylos imbricata (San Bruno Mountain manzanita), Arctostaphylos montaraensis (Montara manzanita), Arctostaphylos pallida (pallid manzanita), Arctostaphylos tomentosa ssp. bracteosa (Franciscan manzanita), Chorizanthe cuspidata var. cuspidata (San Francisco Bay spineflower), Chorizanthe cuspidata var. villosa (woolly-headed spineflower), Lessingia germanorum (San Francisco lessingia), and Pentachaeta bellidiflora (white-rayed pentachaeta). All of these species are endemic to the northern San Francisco Peninsula, and are threatened by habitat loss, adverse alteration of ecological processes, and the invasion of non-native plant species. The Draft Recovery Plan includes specific recovery objectives and criteria for the species, and identifies actions necessary to achieve recovery.

DATES: Comments on the Draft Recovery Plan must be received on or before September 9, 2002.

ADDRESSES: Persons wishing to review the Draft Recovery Plan may obtain a copy by contacting the Fish and Wildlife Service, Ecological Services, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825–1846. Requests for copies may be made by telephone at 916/414–6600 or by facsimile at 916/414–6712. Documents will be available for public inspection by appointment during normal business hours at the above address. Written comments and materials regarding the Draft Recovery Plan should be addressed to the Field Supervisor, Ecological Services, Sacramento Fish and Wildlife Office, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The comment period for the public review of the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula has previously been extended for 60 days to address public concern that the plan had been

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 02–17070 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 22, 2002. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning

Monroe County

United Congregational Church of Irondequoit, 644 Titus Ave., Rochester, 02000822

OREGON

Benton County

College Hill West Historic District, Roughly bounded by NW Johnson, Polk, Arnold and 36th, Corvallis, 02000827

Josephine County

Golden Historic District, 3482 Coyote Creek

Dated: June 28, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–17065 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Second Extension of the Comment Period for the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Second extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a second extension of the comment period for public review of the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula for an additional 60 days. The first extended comment period closed on May 6, 2002. We are extending the comment period for a second time in response to a specific request from the National Park Service, Golden Gate National Recreation Area (GGNRA), to allow additional time for public review of this draft recovery plan that includes the endangered San Francisco lessingia (*Lessingia germanorum;* lessingia) and the Raven's manzanita (*Arctostaphylos hookeri* ssp. *ravenii;* manzanita). The portion of the plan dealing with the manzanita is a revision of the 1984 Raven's Manzanita Recovery Plan. Additional species of concern that will benefit from recovery actions taken for these plants are also discussed in the draft recovery plan. The draft plan includes recovery criteria and measures for the lessingia and manzanita.

DATES: Comments on the draft recovery plan must be received on or before September 9, 2002.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California (telephone 916–414–6600). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above Sacramento address.

FOR FURTHER INFORMATION CONTACT: Chris Nagano or Kyle Merriam, Endangered Species Division, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The comment period for the public review of the Draft Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula has previously been extended for 60 days to address public concern that the plan had been difficult to obtain as a result of the government-wide restriction of internet access. This extended comment period closed on May 6, 2002. On April 19, 2002, we received a request from the GGNRA, to extend the comment period for an additional 60 days. GGNRA asserted they required additional time to review the plan due to its complexity, and to the relevance of the plan to activities within the GGNRA. Based on this request, we determined to extend the comment period a second time for public review of the draft recovery plan.

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for conservation of the species, establish recovery criteria for downlisting or delisting species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The lessingia and manzanita are restricted to the San Francisco peninsula in San Francisco County, California. The lessingia, an annual herb in the aster family, is restricted to coastal sand deposits. The manzanita, a rare evergreen creeping shrub in the heath family, was historically restricted to a few scattered serpentine outcrops. Habitat loss, adverse alteration of ecological processes, and the invasion of non-native plant species threatens the lessingia. The manzanita has also been threatened by habitat loss, and the primary current threats include the invasion of non-native vegetation and fungal pathogens. The draft recovery plan also makes reference to several other federally listed species which are ecologically associated with the lessingia and manzanita, but which are treated comprehensively in other recovery plans. These species are the beach layia (*Layia carnosa*), the Presidio clarkia (*Clarkia franciscana*), the Marin dwarf-flax (*Hesperolinon congestum*), the Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), and the bay checkerspot butterfly (*Euphydryas editha bayensis*). In addition, 16 plant species of concern and 17 plant species of local or regional conservation significance are considered in this recovery plan.

The draft recovery plan stresses re-establishing dynamic persistent populations of the lessingia and manzanita within plant communities which have been restored to as "self-sustaining" as possible within urban wildland reserves. Specific recovery actions for the lessingia focus on the restoration and management of large dynamic mosaics of coastal dune areas supporting shifting populations within the species' narrow historic range. Recovery of the manzanita may include, but may not be limited to, the strategy of the 1984 Raven's Manzanita Recovery Plan, which emphasized the stabilization of the single remaining genetic individual. The draft plan also recommends re-establishing multiple sexually reproducing populations of manzanita in association with its historically associated species of local serpentine outcrops. The objectives of this recovery plan are to delist the lessingia and to downlist the manzanita through implementation of a variety of recovery measures including (1) protection and restoration of a series of ecological reserves (often with mixed recreational and conservation park land uses); (2) promotion of population increases of the lessingia and manzanita within these sites, or reintroduction of them to restored sites; (3) management of protected sites, especially the extensive eradication or suppression of invasive dominant non-native vegetation; (4) research; and (5) public participation, outreach, and education.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 02–17070 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP02–0182]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) will meet on July 22, 2002, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275.

FOR FURTHER INFORMATION CONTACT: Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

SUPPLEMENTARY INFORMATION: The meeting will start at 8 a.m. and adjourn about 3 p.m. Topics on the meeting agenda include:

Proposed land exchange
Status of Juniper Dunes access
Cooperative Watershed Management
Future RAC meeting dates.

The entire meeting is open to the public. Information to be distributed to Council members is requested in written format 10 days prior to the Council meeting date. Public comment is scheduled for 10 a.m. to 12 noon.

Dated: June 17, 2002.

Karen Slater,

Group Manager, Intergovernmental Affairs, Bureau of Land Management.

[FR Doc. 02–17215 Filed 7–3–02; 4:37 pm]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 22, 2002. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by July 24, 2002.

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

ALASKA

Matanuska-Susitna Borough-Census Area

Talkeetna Airstrip, Roughly fron First St. S down D St. to the Susitna R., Talkeetna, 02000814

MICHIGAN

Kent County

Monroe Avenue Water Filtration Plant, 1430 Monroe Ave. NW, Grand Rapids, 02000815

MISSOURI

Buchanan County

Dewey Avenue—West Rosine Historic District, (St. Joseph MPS) Roughly bound by Prospect Ave., Auguste St., Dewey Avenue and West Rosine St., St. Joseph, 02000816

Krug Park Place Historic District, (St. Joseph MPS (AD)), Roughly bounded by St. Joseph Ave., Myrtle St., Clark St., and Magnolia Ave., St. Joseph, 02000817

Patee Town Historic District, (St. Joseph MPS), Roughly bounded by Penn St., S. 11th St., Lafayette St. and S. 15th St., St. Joseph, 02000818

NEVADA

Clark County

LDS Moapa Stake Office Building, 161 W. Virginia St., Overton, 02000819

Lincoln County

1938 Lincoln County Courthouse, 1 Main St., Pioche, 02000820

NEW YORK

Columbia County

St. Peter's Presbyterian Church and Spencertown Cemetery, Cty. Rte. 7, at NY 203, Spencertown, 02000821

Monroe County

United Congregational Church of Irondequoit, 644 Titus Ave., Rochester, 02000822

OREGON

Benton County

College Hill West Historic District, Roughly bounded by NW Johnson, Polk, Arnold and 36th, Corvallis, 02000827

Josephine County

Golden Historic District, 3482 Coyote Creek Rd., Wolf Creek, 02000825

Multnomah County

Balfour—Gutherie Building, 733 SW Oak St., Portland, 02000824

Cobbs, Frank J. and Maude Louise, Estate, 2424 SW Montgomery Dr., Portland, 02000826

TENNESSEE

Davidson County

Pearl High School, 613 17th Ave. N, Nashville, 02000828

TEXAS

Cherokee County

Perkins, James I. and Myrta Blake, House, 303 E. 5th St., Rusk, 02000823

VERMONT

Rutland County

Aldrichville Mill Village Historic Archeological District, Green Mountain National Forest, Wallingford, 02000829

A request for REMOVAL has been made for the following resources:

TENNESSEE

Loudon County

Lenoir Cotton Mill, Depot St. Lenoir City, 75001767

Rutherford County

Brown's Mill, SE of Lascassas on Brown's Mill Rd., Lascassas vicinity, 78002628

Crichlow Grammar School and Cox., E.C., Memorial Gym, 400 N. Maple St. And 105 Olive St., Murfreesboro, 92001685

[FR Doc. 02–17092 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Georgia Department of Natural Resources, Atlanta, GA, and in the Possession of the Antonio J. Waring Archaeological Laboratory, State University of West Georgia, Carrollton, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Georgia Department of Natural Resources, Atlanta, GA, and in the possession of the Antonio J. Waring Archaeological Laboratory, State University of West Georgia, Carrollton, GA.

This notice has been sent to officials of the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma.

In 1977, human remains representing a minimum of eight individuals were removed from the Hanna site (16RR4), Rockdale County, GA, during archeological excavations conducted by the Georgia Department of Natural Resources, Atlanta, GA, and the Antonio J. Waring Archaeological Laboratory, State University of West Georgia, Carrollton, GA. No known individuals were identified. The 1,000 associated funerary objects are 1 lot of ceramic sherds, 1 lot of lithic debitage, 1 lot of lithic tools, 1 lot of faunal bone, 1 lot of charcoal, 1 lot of daub, 1 lot of fired clay, 1 lot of shell, 1 lot of botanical material, 1 lot of soil samples, 1 lot of flotation samples, 1 lot of fire-cracked rock, 1 lot of ceramic vessel fragments, 1 lot of ceramic pipe fragments, 1 lot of ceramic figurine fragments, 1 lot of ceramic disc fragments, 1 lot of ceramic bead fragments, 1 lot of ceramic spindle whorl fragments, 1 lot of ceramic net weight fragments, 1 lot of ceramic ball fragments, 1 lot of ceramic effigy fragments, 1 lot of ceramic rattle fragments, 1 lot of ceramic tool fragments, 1 lot of ceramic sherd scrapers, 1 lot of ceramic sherd abraders, 1 lot of ceramic sherd drills, 1 lot of ceramic sherd gorgets, 1 lot of ceramic sherd pendants, 1 lot of ceramic sherd beads, 1 lot of ceramic sherd spindle whorls, 1 lot of ceramic sherd net weights, 1 lot of ceramic sherd balls, 1 lot of ceramic sherd effigies, 1 lot of ceramic sherd rattles, 1 lot of ceramic sherd tools

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Georgia Department of Natural Resources, Atlanta, GA, and in the possession of the Antonio J. Waring Archaeological Laboratory, State University of West Georgia, Carrollton, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Georgia Department of Natural Resources and Antonio J. Waring Archaeological Laboratory, State University of West Georgia professional staff in consultation with representatives of the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma.

In 1954, human remains representing a minimum of one individual were removed from New Echota (9GO42), Gordon County, GA, by Georgia Historical Commission staff. In 1972, the Georgia General Assembly dissolved the Commission and assigned its properties, including human remains from New Echota, to the newly created Georgia Department of Natural Resources. No known individual was identified. No associated funerary objects are present.

The excavations were conducted by the Georgia Historical Commission to prepare a reconstruction of the town of New Echota, which had been the capital of the Cherokee Nation from 1825 to 1836. The human remains were recovered from a residence within the town limits. The remains have been identified as Cherokee because of their association with the historically-documented Cherokee capital.

Based on the above-mentioned information, officials of the Georgia Department of Natural Resources have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Georgia Department of Natural Resources also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma.

This notice has been sent to officials of the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact David Crass, NAGPRA Coordinator, Georgia State Parks and Historic Sites, Suite 1352, 205 Butler Street SE, Atlanta, GA 30334, telephone (404) 656-9344, before August 8, 2002. Repatriation of the human remains to the Cherokee Nation, Oklahoma, Eastern Band of Cherokee Indians of North Carolina, and United Keetoowah Band of Cherokee Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 9, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17088 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, Army Corps of Engineers, Vicksburg District, Vicksburg, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of completion of an inventory of human remains in the possession of the U.S. Department of Defense, Army Corps of Engineers, Vicksburg District, Vicksburg, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by professional staff of the National Museum of Natural History, Smithsonian Institution, Washington, D.C., and Coastal Environments, Inc., Baton Rouge, LA, under contract to the Army Corps of Engineers, Vicksburg District, in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In 1977, human remains representing a minimum of eight individuals were removed from the Hanna site (16RR4), Red River Parish, LA, by New World Research, Inc., prior to construction of the Red River Waterway project. In 1982, control of the collections that resulted from these excavations during the Red River Waterway project was transferred from the Army Corps of Engineers, New Orleans District to the Vicksburg District. No known individuals were identified. No funerary objects are present.

Based on radiocarbon dates, these burials are dated to A.D. 1000-1300. Archeological and geographic evidence indicate that during this time period, the Hanna site was occupied by the Caddo people, who are represented today by the Caddo Indian Tribe of Oklahoma.

Based on the above-mentioned information, officials of the Army Corps of Engineers' Vicksburg District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the Army Corps of Engineers' Vicksburg District also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; Quapaw Tribe of Indians, Oklahoma; and Tunica-Biloxi Indian Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Mr. James Wojtala, Environmental Analysis Section, Environmental and Economic Analysis Branch, Planning, Programs, and Project Management Division, Vicksburg District, U.S. Army Corps of Engineers, 4155 Clay Street, Vicksburg, MS 39183-3435, telephone (601) 631-5428, before August 8, 2002. Repatriation of the human remains to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: May 1, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17087 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM, that meet the definition of "sacred objects" and "objects of cultural patrimony" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 11 objects are 2 Katsina mask nosepieces, a Katsina mask horn piece, a mask fragment, a textile belt, a basket bowl (Paho-inpi), a ceramic bowl, a kickstone, and 3 prayer sticks.

In 1967, the two Katsina mask nosepieces (catalogue numbers 67.47.2 and 67.47.3), the Katsina mask horn piece (67.47.4), the kickstone (67.47.5), and a prayer stick (67.47.10) were donated by Florence Ellis to the Maxwell Museum of Anthropology. Museum records indicate that the cultural items were found buried in an abandoned house in Walpi, NM, in 1966 by a Hopi man who subsequently gave or sold them to Mary Ewing, who then sold them to Florence Ellis. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies these cultural items as sacred and substantiates the claim that they are needed by traditional religious leaders, and that they are of such central importance to the tribe that they could not have been alienated by an individual.

In 1969, two prayer sticks consisting of a wood branch with feathers and string attached (catalogue numbers 69.66.28 and 69.66.29) were donated by Florence Ellis to the Maxwell Museum of Anthropology. Museum records indicate that these two cultural items were found on Hopi land. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies these cultural items as sacred and substantiates the claim that they are needed by traditional religious leaders, and that they are of such central importance to the tribe that they could not have been alienated by an individual.

In 1970, a shallow ceramic bowl with black on orange design (catalogue number 70.39.17) was donated by Florence Ellis to the Maxwell Museum of Anthropology. Museum records indicate that the bowl was taken from Second Mesa, Hopi. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

In 1978, a coiled basket prayer feather bowl (Paho-inpi) (catalogue number 78.43.1) was donated by Helene Warren to the Maxwell Museum of Anthropology. Museum records indicate that the basket was found in a cave on Hopi land. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

In 1955, the upper part of a mask made of painted wool, felt, and hide was donated by B.M. Dutton to the Maxwell Museum of Anthropology. Museum records indicate that the mask part was collected by Mr. R. Plummer in the 1880s from Hopi land. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

In 1979, a painted canvas belt was donated by Mark Hooper to the Maxwell Museum of Anthropology. Museum records indicate that the belt came from Hopi land and that it is used in the snake dance. During consultation with the Hopi Tribe of Arizona, on behalf of the Society Priests, information was provided that identifies this cultural item as sacred and substantiates the claim that it is needed by traditional religious leaders, and that it is of such central importance to the tribe that it could not have been alienated by an individual.

Based on the above-mentioned information, officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(3), these 11 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Maxwell Museum of Anthropology, University of New Mexico also have determined that, pursuant to 43 CFR 10.2 (d)(4), these 11 cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these sacred objects and objects of cultural patrimony and the Hopi Tribe of Arizona.

This notice has been sent to officials of the Hopi Tribe of Arizona and the Hopi Cultural Preservation Office. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects and objects of cultural patrimony should contact Kathryn Klein, Curator of Ethnology, Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM 87131-1201, telephone (505) 277-1936, before August 8, 2002. Repatriation of these sacred objects and objects of cultural patrimony to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: May 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17083 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Franklin Pierce College, Rindge, NH; Manchester Historical Association, Manchester, NH; New Hampshire Division of Historical

Abenaki Family Alliance (a nonfederally recognized Indian group), Dawnland Alliance (a nonfederally recognized Indian group), Southern New England Abenaki Council (a nonfederally recognized Indian group), and four intertribal Indian groups, including the New Hampshire Intertribal Native American Council, the Laconia Indian Historical Association, the Boldwing Clan, and the Greater

of Maine, and Pleasant Point Reservation of the Passamaquoddy Tribe) and the Wampanoag Confederation (representing the Wampanoag Tribe of Gay Head [Aquinnah], Mashpee Wampanoag Tribe, and Assonet Band of the Wampanoag); document the concurrence of the Wabanaki Confederacy and the Wampanoag Confederation with the proposed

The Smyth site is in Concord, NH, on a terrace above the Merrimack River. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Smyth site during a salvage excavation and were curated at Franklin Pierce College until 1997 when they were transferred to the New Hampshire Division of Historical Resources. On the basis of stratigraphic and archeological

New Hampshire, all nonfederally recognized Indian groups.

In the 1950s, human remains representing a minimum of one individual were donated by Clyde Berry as part of the Berry Collection to the Manchester Historical Association. No known individual was identified. The four associated funerary objects are three small animal bones and a bone awl. The human remains and associated funerary objects were transferred in

Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1984, human remains representing a minimum of one individual were donated to the New Hampshire Division of Historical Resources by the Museum at Fort No. 4, Charlestown, NH. No

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Franklin Pierce College, Rindge, NH; Manchester Historical Association, Manchester, NH; New Hampshire Division of Historical Resources, Concord, NH; and University of New Hampshire, Durham, NH; and in the Possession of the New Hampshire Division of Historical Resources, Concord, NH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of Franklin Pierce College, Rindge, NH; Manchester Historical Association, Manchester, NH; New Hampshire Division of Historical Resources, Concord, NH; and University of New Hampshire, Durham, NH (cited below as the four museums); and in the possession of the New Hampshire Division of Historical Resources, Concord, NH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by professional staff and consultants of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, in consultation with representatives of the Penobscot Tribe of Maine, Wabanaki Tribes of Maine Intertribal Repatriation Committee, the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), Abenaki Nation of New Hampshire (a nonfederally recognized group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), First Nation of New Hampshire (a nonfederally recognized Indian group affiliated with the National Federation of the Republic of the Sovereign Abenaki Nation), Abenaki Family Alliance (a nonfederally recognized Indian group), Dawnland Alliance (a nonfederally recognized Indian group), Southern New England Abenaki Council (a nonfederally recognized Indian group), and four intertribal Indian groups, including the New Hampshire Intertribal Native American Council, the Laconia Indian Historical Association, the Boldwing Clan, and the Greater Lowell Indian Cultural Association.

New Hampshire Division of Historical Resources, acting on behalf of the four museums, has determined that the human remains reported in this notice cannot be affiliated with an Indian tribe as defined in NAGPRA, 43 CFR 10.2 (b)(2), and are considered culturally unidentifiable. Until final promulgation of Section 10.11 of NAGPRA regulations, the Native American Graves Protection and Repatriation Review Committee is responsible for recommending to the Secretary of the Interior specific actions for the disposition of culturally unidentifiable human remains, according to NAGPRA, 43 CFR 10.10 (g). In March 1999, the New Hampshire Division of Historical Resources, acting on behalf of the four museums, presented a disposition proposal to the NAGPRA Review Committee to repatriate 17 culturally unidentifiable human remains from 11 locations in New Hampshire to the Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), representing a coalition of Western Abenaki groups, including the Abenaki Nation of New Hampshire (a nonfederally recognized Indian group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), and the First Nation of New Hampshire (a nonfederally recognized Indian group). The proposal was considered by the review committee at its May 1999 meeting.

The review committee recommended disposition of the human remains to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, contingent upon the museum's meeting four requirements. On January 11, 2000, the Departmental Consulting Archeologist, writing on behalf of the Secretary of the Interior, to the New Hampshire Division of Historical Resources asked that the museum distribute the inventory of culturally unidentifiable human remains to the Wabanaki Confederacy (representing the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe, Penobscot Tribe of Maine, and Pleasant Point Reservation of the Passamaquoddy Tribe) and the Wampanoag Confederation (representing the Wampanoag Tribe of Gay Head [Aquinnah], Mashpee Wampanoag Tribe, and Assonet Band of the Wampanoag); document the concurrence of the Wabanaki Confederacy and the Wampanoag Confederation with the proposed disposition; publish a Notice of Inventory Completion in the Federal Register; and consider documentation compiled as part of the inventory process as public information, and available for education and scientific uses. The New Hampshire Division of Historical Resources, on behalf of the four museums, documented in a November 14, 2001, letter to the review committee that three of the requirements had been met, noting that the fourth requirement would be met with the publication of this Notice of Inventory Completion.

In 1967, human remains representing a minimum of one individual were removed from the Hunter site during excavations by Howard Sargent of Franklin Pierce College for the New Hampshire State Highway Department. The Hunter site is in Claremont, NH, on the Sugar River near its confluence with the Connecticut River. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Hunter site and were curated at Franklin Pierce College until 1996 when they were transferred to the New Hampshire Division of Historical Resources for curation. On the basis of stratigraphic and archeological context, the human remains have been dated to the Middle or Late Woodland period (A.D. 1-1500). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1968, human remains representing a minimum of two individuals were removed from the Smyth site during excavations by Howard Sargent of Franklin Pierce College for the New Hampshire State Highway Department.

The Smyth site is in Concord, NH, on a terrace above the Merrimack River. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Smyth site during a salvage excavation and were curated at Franklin Pierce College until 1997 when they were transferred to the New Hampshire Division of Historical Resources. On the basis of stratigraphic and archeological context, the human remains have been dated to the Woodland period (1000 B.C.-A.D. 1500). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1971, human remains representing a minimum of one individual were donated by Clyde Berry to the Manchester Historical Association. No known individual was identified. The six associated funerary objects are one small bag of ocher, one small bag of charcoal, one small bag of lithic flakes, one small bag of animal bone, one small bag of turtle shell, and one small bag of fragmentary bone tools. The human remains and associated funerary objects were transferred in 1999 to the New Hampshire Division of Historical Resources for curation.

Museum documentation indicates that these human remains (Berry Collection number 4256) are of a cremated individual from a grave with ocher-stained soil that was exposed by WPA workers in the 1930s during road construction on a terrace above the Merrimack River in Manchester, NH. The radiocarbon date from associated charcoal is 8490 +/- 60 B.P. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In the 1950s, human remains representing a minimum of one individual were donated by Clyde Berry as part of the Berry Collection to the Manchester Historical Association. No known individual was identified. The four associated funerary objects are three small animal bones and a bone awl. The human remains and associated funerary objects were transferred in 1999 to the New Hampshire Division of Historical Resources for curation.

Museum documentation indicates that these human remains (Berry Collection number 3745) were recovered at Amoskeag on the west bank of the Merrimack River in Manchester, NH, by a workman digging a utility trench at an unknown date. Based on the condition of the bone, the burial is considered to be from the Woodland period (2000 B.C.-A.D.1500). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1971, human remains representing a minimum of one individual were donated by Clyde Berry to the Manchester Historical Association. No known individual was identified. No associated funerary objects are present. These human remains were transferred in 1999 to the New Hampshire Division of Historical Resources for curation.

Museum documentation indicates that these human remains (Berry Collection number 3566) were found by Francis K. Berry in 1938 and removed by James W. House in 1939 from a locale known as ≥the Narrows≥ on the Merrimack River in Bedford, NH. The age of the burial is undetermined but has been determined to be Native American on the basis of its recovery in context with other Native American archeological material of Archaic and Woodland age. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1984, human remains representing a minimum of one individual were donated to the New Hampshire Division of Historical Resources by the Museum at Fort No. 4, Charlestown, NH. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were found by a local collector and donated to the Museum at Fort No. 4. There are no records of either the discovery or the donation, but the identification card made at the time of the donation labeled the human remains as ≥Late Woodland period≥ (A.D. 1000-1500). Information obtained recently indicates the human remains were collected from an eroding bank of the Connecticut River just upstream from the Museum at Fort No. 4, Charlestown, NH. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1982, human remains representing a minimum of one individual were donated to the New Hampshire Division of Historical Resources by the Police Department of Concord, NH. The human remains were recovered in 1974 during construction of a parking lot in Concord, NH, and were investigated as Concord Police Case 1439C. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains belong to the Late Woodland/Historic period (circa A.D. 1000-present). The burial has been determined to be Native American on the basis of its recovery in context with other Native American archeological materials. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the

Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1994, human remains representing a minimum of one individual were removed from a site near the New

University, Cambridge, MA, identified the bone as human while conducting an osteological analysis for the excavators. At this time, the bone and the stone pavement and stone pyramid, which were associated with the bones, were identified as features of a cremation burial. The radiocarbon date from associated charcoal is 5155 +/- 190 B.P. Archeological, historical, and ethnographic sources, along with oral

New Hampshire. The human remains were transferred in 1999 to the New Hampshire Division of Historical Resources for curation. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Seabrook Marsh site in Seabrook, NH, during an archeological survey of New Hampshire's Atlantic

This notice has been sent to the Penobscot Tribe of Maine, Wabanaki Confederacy, the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), Abenaki Nation of New Hampshire (a nonfederally recognized Indian group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), and First

notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

The National Park Service published a Notice of Inventory Completion in the **Federal Register** of February 27, 2002,

stone; and 10 flotation and pollen samples.

(Paragraph 62) Between 1982 and 1983, during a legally authorized survey undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of one individual were recovered from the surface of site AZ AA:7:15(ASM), at the base of the Picacho Mountains in Pima County, AZ. No known individual was identified.

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Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1994, human remains representing a minimum of one individual were removed from a site near the New Hampshire Technical Institute in Concord, NH, by Dr. Thomas Hemmings of the New Hampshire Division of Public Works and were placed with the New Hampshire Division of Historical Resources the same year. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from flood deposits of the Historic period (post-A.D. 1500) by Dr. Hemmings during pre-construction research for the New Hampshire Division of Public Works on the Merrimack River flood plain at the New Hampshire Technical Institute in Concord, NH. The burial has been determined to be Native American on the basis of its recovery in context with other Native American archeological materials. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1984, human remains representing a minimum of one individual were removed from the Beaver Brook site during excavations by Dr. David Starbuck and Dennis Howe, and were placed with the New Hampshire Division of Historical Resources in 1985. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed by Dr. David Starbuck and Dennis Howe, independent researchers, during an archeological study of the Beaver Brook site on the flood plain of the Merrimack River in Concord, NH. The site was not identified as a cremation burial at the time that the bones were removed. Later, staff of the a Museum of Archeology and Ethnology, Harvard University, Cambridge, MA, identified the bone as human while conducting an osteological analysis for the excavators. At this time, the bone and the stone pavement and stone pyramid, which were associated with the bones, were identified as features of a cremation burial. The radiocarbon date from associated charcoal is 5155 +/- 190 B.P. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1975, human remains representing a minimum of four individuals were removed from the Rocks Road site during excavations by Dr. Charles Bolian of the University of New Hampshire. The human remains were transferred to the New Hampshire Division of Historical Resources for curation in 1999. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that these human remains were removed from the Rocks Road site (also known as the Seabrook Station site) during a pre-construction archeological project for the Seabrook Station nuclear power plant in Seabrook, NH, on the Atlantic coast. A radiocarbon date from associated charcoal is 650 B.P. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Eastern Abenaki and Wampanoag appear also to have cultural ties to coastal New Hampshire in the Historic period. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

In 1975, human remains representing a minimum of three individuals were removed from the Seabrook Marsh site in Seabrook, NH, by Dr. Charles Bolian and Brian Robinson of the University of New Hampshire. The human remains were transferred in 1999 to the New Hampshire Division of Historical Resources for curation. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were removed from the Seabrook Marsh site in Seabrook, NH, during an archeological survey of New Hampshire's Atlantic seacoast. The site is dated to the Late Archaic period (4000-2000 B.C.) based on radiocarbon dating. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (4000-2000 B.C.) through the Historic period (post-A.D. 1500). The Eastern Abenaki and Wampanoag appear also to have cultural ties to coastal New Hampshire in the Historic period. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire, all nonfederally recognized Indian groups.

Based on the above-mentioned information, officials of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 17 individuals of Native American ancestry. Officials of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 10 associated funerary objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the New Hampshire Division of Historical Resources, acting on behalf of the four museums, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), representing a coalition of Western Abenaki groups, including the Abenaki Nation of New Hampshire (a nonfederally recognized Indian group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), and the First Nation of New Hampshire (a nonfederally recognized Indian group).

This notice has been sent to the Penobscot Tribe of Maine, Wabanaki Confederacy, the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), Abenaki Nation of New Hampshire (a nonfederally recognized Indian group), Cowasuck Band of the Pennacook-Abenaki People (a nonfederally recognized Indian group), and First Nation of New Hampshire (a nonfederally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains, should contact Richard Boisvert, Deputy State Archeologist, New Hampshire Division of Historical Resources, P.O. Box 2043, Concord, NH 03302-2043, telephone (603) 271-6628, before August 8, 2002. Repatriation of the human remains to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, may begin after that date if no additional claimants come forward.

Dated: April 10, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17090 Filed 7–8–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the Control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

The National Park Service published a Notice of Inventory Completion in the **Federal Register** of February 27, 2002, concerning human remains and associated funerary objects recovered from sites in Arizona. In a review of Bureau of Reclamation, Central Arizona Project Repository collections, the presence of 3 additional individuals and 63 additional associated funerary objects was revealed. This notice corrects the number of human remains and associated funerary objects reported in the February 27, 2002, notice.

In the **Federal Register** of February 27, 2002, in FR Doc. 02-4580, page 8996-9002, paragraphs 40, 42, 62, 64, 66, 68, 70, and 86 are corrected by substituting the following paragraphs:

(Paragraph 40) In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing 55 individuals were recovered from the Brady Wash Site, NA18003(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individuals were identified. The 294 associated funerary objects are 29 whole and reconstructable vessels (19 bowls, 6 jars, and 4 scoops); 1 partial perforated sherd disk; 1 figurine fragment; 63 bags of sherds; 1 schist anvil; 3 stone beads; 1 mano fragment; 1 stone lip/nose plug; 2 projectile points; 33 bags of chipped stone; 7 bags of worked shell (including 50 shell disk beads, 78 whole *Olivella* shell beads, 1 *Glycymeris* shell ring, and 1 worked shell fragment); 3 bags of unworked shell fragments; 4 bags of worked faunal bone (including 3 worked fragments, 2 broken tools, and 1 awl tip); 29 bags of unworked faunal bone; and 116 flotation, pollen, macrobotanical, and raw material samples.

(Paragraph 42) In 1985, during legally authorized data recovery efforts undertaken by the Museum of Northern Arizona for the Bureau of Reclamation, human remains representing eight individuals were recovered from the Picacho Pass site, NA18030(MNA), at the base of the Picacho Mountains in Pinal County, AZ. No known individuals were identified. The 33 associated funerary objects are 5 ceramic vessels (3 bowls, 1 jar, and 1 cup); 9 bags of sherds; 1 stone disk bead; 3 projectile points; 5 bags of chipped stone; and 10 flotation and pollen samples.

(Paragraph 62) Between 1982 and 1983, during a legally authorized survey undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of one individual were recovered from the surface of site AZ AA:7:15(ASM), at the base of the Picacho Mountains in Pima County, AZ. No known individual was identified. The 18 associated funerary objects are 8 bags of sherds, 3 projectile points, 4 bags of chipped stone, and 3 bags of unworked faunal bone.

(Paragraph 64) In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing a minimum of 61 individuals were recovered from the Los Rectangulos site, AZ AA:6:3(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 369 associated funerary objects are 56 complete or reconstructable ceramic vessels (1 scoop, 1 mug, 20 jars, 32 bowls, and 2 indeterminate); 2 sherd pendants; 2 worked sherds; 1 worked sherd spindle whorl; 77 bags of sherds; 1 polishing stone; 1 stone bead; 2 ground stone artifacts; 9 ground stone fragments; 10 projectile points; 59 bags of chipped stone; 25 bags of worked shell (including 16 shell beads, 1 shell tinkler, 2 shell pendants, 5 shell bracelet fragments, and 3 whole worked *Glycymeris* shells); 9 bags of unworked shell fragments; 2 bags of worked faunal bone (including 2 bone awls); 13 bags of unworked faunal bone fragments; and 100 flotation, pollen, soil, macrobotanical and radiocarbon samples.

(Paragraph 66) In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation human remains representing a minimum of 13 individuals were recovered from the Gecko site, AZ AA:6:25(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 103 associated funerary objects are 9 complete or reconstructable ceramic vessels (7 bowls and 2 jars); 15 bags of sherds; 1 turquoise pendant; 1 stone bead; 8 bags of chipped stone; 4 bags of worked shell (including 2 complete shell bracelets, 2 complete shell pendants/earrings, and 2 shell beads); 1 bag of unworked shell fragments; 2 bags of worked faunal bone (including 3 bone awls); 1 bag of unworked faunal fragments; and 61 flotation, pollen, radiocarbon, and macrobotanical samples.

(Paragraph 68) In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing a minimum of five individuals were recovered from the Hotts Hawk site, AZ AA:6:31(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 35 associated

Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley,

Tribes of the Grande Ronde Community of Oregon.

This notice has been sent to officials of the Confederated Tribes of the Grande Ronde Community of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of

Reopening Record

In October 2001, the Commission made negligibility determinations in antidumping investigations regarding wire rod imports from Egypt, South Africa and Venezuela, and terminated those investigations pursuant to statute. The Commission's determinations were appealed to the U.S. Court of International Trade (CIT). On June 20, 2002, the CIT issued an opinion

the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigation must be served on all other parties who may

(Paragraph 68) In 1988, during legally authorized data recovery efforts by Northland Research for the Bureau of Reclamation, human remains representing a minimum of five individuals were recovered from the Hotts Hawk site, AZ AA:6:31(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 35 associated funerary objects are 8 complete and reconstructable ceramic vessels (6 bowls and 2 jars); 1 ceramic spindle whorl/bead; 1 unfired clay disk; 7 bags of sherds; 3 bags of chipped stone; 1 bag of worked shell (including 2 shell pendants/earrings); and 14 flotation and pollen samples.

(Paragraph 70) In 1984, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation, human remains representing one individual were recovered from the Crip site, AZ AA:2:69(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individual was identified. The 49 associated funerary objects are 14 bags of sherds; 2 mano fragments; 1 polishing stone fragment; 7 bags of chipped stone; 2 bags of worked shell (including 1 bracelet fragment and 1 fragment of worked shell); 2 bags of unworked shell; 4 bags of unworked faunal bone fragments; and 17 flotation, radiocarbon, and macrobotanical samples.

(Paragraph 86) Based on the above-mentioned information, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 483 individuals of Native American ancestry. Officials of the Bureau of Reclamation also have determined that the 3,269 items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; Fort Mohave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact in writing Jon Czaplicki or Bruce Ellis, Bureau of Reclamation, Phoenix Area Office, P.O. Box 81169, Phoenix, AZ 85069-1169, telephone (602) 216-3862, before August 8, 2002. Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: May 22, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-17086 Filed 7-8-02; 8:45 am]

BILLING CODE 4310-70-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

.This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Grande Ronde Community of Oregon.

At an unknown date before 1901, human remains representing at least one individual were recovered from a grave in an unknown location on the south bank near the mouth of the Chetco River, Chetco, Curry County, OR, by P.E. Goddard. Around 1901, these human remains were donated to the Phoebe A. Hearst Museum of Anthropology by Mrs. P.A. Hearst. No known individual was identified. No associated funerary objects are present.

It is probable that this unknown location is Cidxu, an historic Chetco village, where Mr. Goddard is known to have excavated. The Athabascan inhabitants of Cidxu were removed to the reservation of the Confederated Tribes of the Grande Ronde Community of Oregon , where descendants of this community continue to reside.

Based on the above-mentioned information, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Confederated Tribes of the Grande Ronde Community of Oregon.

This notice has been sent to officials of the Confederated Tribes of the Grande Ronde Community of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before August 8, 2002. Repatriation of the human remains to the Confederated Tribes of the Grande Ronde Community of Oregon may begin after that date if no additional claimants come forward.

Dated: May 24, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-17084 Filed 7-8-02; 8:45 am]

BILLING CODE 4310-70-S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-417-421 and 731-TA-953-963 (Preliminary), (Remand as to Egypt, South Africa and Venezuela)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Mexico, Moldova, South Africa, Ukraine and Venezuela, Trinidad and Tobago, Turkey, Taiwan; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U. S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its preliminary antidumping investigations Nos. 731-TA-955, 960 and 963 (Preliminary).

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202-205-3193 or Karen V. Driscoll, Office of General Counsel, telephone 202-205-3092, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*.

SUPPLEMENTARY INFORMATION:

Reopening Record

In October 2001, the Commission made negligibility determinations in antidumping investigations regarding wire rod imports from Egypt, South Africa and Venezuela, and terminated those investigations pursuant to statute. The Commission's determinations were appealed to the U.S. Court of International Trade (CIT). On June 20, 2002, the CIT issued an opinion requiring the Commission to reconsider its terminations given the modified scope of investigations issued by the Department of Commerce ("Commerce") on April 10, 2002 (67 FR 17,384). The Commission was given until August 2, 2002, or 43 days, in which to comply with the Court's remand order and issue remand determinations.

In order to assist it in making its determinations on remand, the Commission is reopening the record on remand in these investigations to include in the record the modified scope issued by Commerce in April, 2002, and to obtain import data corresponding to that modified scope of investigations regarding subject wire rod imports from all sources. The record in these proceedings will encompass the material from the record of the original preliminary investigations, information and import data submitted to and gathered by Commission staff during the remand proceedings, and Commerce's modified April 10, 2002 scope (67 FR 17,384).

Participation in the Proceedings

Due to the strict time constraints in this remand proceeding, and the limited nature of the remand, only those parties to the original administrative proceedings may participate in the Commission's remand proceedings. No additional filings with the Commission will be necessary for these parties to participate in these remand proceedings.

Nature of the Remand Proceedings

On July 12, 2002, the Commission will make available to parties who may participate in the remand proceedings, information that has been gathered by or submitted to the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before July 16, 2002 on whether any new information received affects the Commission's negligibility determinations in these investigations. These comments should not exceed ten double-spaced typewritten pages.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigation must be served on all other parties who may participate in the remand investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to the above-referenced parties, as appropriate, under the administrative protective order ("APO") in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02-17153 Filed 7-8-02; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-943 (Final)]

Circular Welded Non-Alloy Steel Pipe From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-948 (Final)]

Individually Quick Frozen Red Raspberries From Chile

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Chile of individually quick frozen red raspberries, provided for in subheading 0811.20.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On May 1, 2002, a petition was filed with the Commission and Commerce by the Coalition for Fair Raspberry Imports and its individual members, Curtis Packing Co., Sunnyside, WA; Meyer Packing Co., Silverton, OR; and Northwest Berry Co., Salem, OR, alleging that an industry in the United States is materially injured by reason of LTFV imports of individually quick frozen red raspberries from Chile. Accordingly, effective May 1, 2002, the Commission instituted antidumping investigation No. 731-TA-948 (Final) (67 FR 30,888, May 8, 2002). The schedule for the investigation was modified to reflect the postponement of Commerce's final determination. 67 FR 41,928, June 20, 2002.

Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on May 8, 2002 (67 FR 30,888). The hearing was held in Washington, DC, on June 18, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 2, 2002. The views of the Commission are contained in USITC Publication 3524 (June 2002), entitled Individually Quick Frozen Red Raspberries from Chile: Investigation No. 731-TA-948 (Final).

Issued: July 2, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-17059 Filed 7-8-02; 8:45 am]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-443]

U.S.-Singapore FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of a public hearing.

SUMMARY: Following receipt on June 25, 2002, of a request from the United States Trade Representative (USTR), the Commission has instituted investigation No. 332-443, U.S.-Singapore FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The Commission will provide advice as to the probable economic effects on the economy as a whole of eliminating tariffs on certain agricultural products that may be considered in connection with the negotiation of a free trade agreement between the United States and Singapore.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Project Leader Peter Fuller (202-205-3233 or *peter.fuller@usitc.gov*) or Deputy Project Leader Jeffrey Kitchen (202-205-3263 or *jeffrey.kitchen@usitc.gov*) for information specific to this investigation. For information on legal aspects of the investigation, contact William Gearhart of the Office of the General Counsel (202-205-3091 or *william.gearhart@usitc.gov*). The media should contact Peg O'Laughlin, Public Affairs Officer (202-205-1819 or *peg.olaughlin@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205-1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public/*.

SUPPLEMENTARY INFORMATION:

Background

As requested by USTR, the Commission will provide advice as to the probable economic effects on the economy as a whole of eliminating tariffs on certain agricultural products that may be considered in connection with the negotiation of a free trade agreement between the United States and Singapore. The Commission will provide its advice in a report to be submitted to USTR by December 31, 2002.

Public Hearing

A public hearing in connection with this investigation will be held at the Commission's offices in Washington, DC, beginning at 9:30 a.m. on September 10, 2002. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file with the Secretary, no later than 5:15 p.m. on August 20, 2002, a letter indicating their intention to appear at the hearing. Persons wishing to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation should submit 14 copies of their statements to the Secretary no later than 5:15 p.m. on September 17, 2002. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting

the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 24, 2001, following receipt of a petition filed with the Commission and Commerce on behalf of Allied Tube & Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; LTV Copperweld, Youngstown, OH; Northwest Pipe Co., Portland, OR; Western Tube & Conduit Corp., Long Beach, CA; Century Tube Corp., Pine Bluff, AR; Laclede Steel Co., St. Louis, MO; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Wheatland Tube Co., Wheatland, PA; and the United Steelworkers of America, AFL–CIO. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of circular welded non-alloy steel pipe from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 29, 2002 (67 FR 4283). The hearing was held in Washington, DC, on May 17, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 2, 2002. The views of the Commission are contained in USITC Publication 3523 (July 2002), entitled Circular Welded Non-Alloy Steel Pipe from China: Investigation No. 731–TA–943 (Final).

Issued: July 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17124 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–948 (Final)]

Individually Quick Frozen Red Raspberries From Chile

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Chile of individually quick frozen ("IQF") red raspberries,[3] provided for in subheading 0811.20.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 31, 2001, following receipt of a petition filed with the Commission and Commerce by the IQF Red Raspberry Fair Trade Committee, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of IQF red raspberries from Chile were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 1, 2002 (67 FR 4994). The hearing was held in Washington, DC, on May 23, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 2, 2002. The views of the Commission are contained in USITC Publication 3524 (June 2002), entitled Individually Quick Frozen Red Raspberries from Chile: Investigation No. 731–TA–948 (Final).

Issued: July 2, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17059 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Jennifer A. Hillman dissenting.

[3] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as IQF red raspberries, whole or broken, from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (e.g., organic or not), the size of the container in which packed, or the method of packing. The scope of the petition excludes fresh red raspberries and block frozen red raspberries (i.e., puree, straight pack, juice stock, and juice concantrate).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–442]

U.S.-Chile FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products

AGENCY: International Trade Commission.

ACTION: Institution of investigation and invitation for written submissions.

SUMMARY: Following receipt of a request on June 19, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–442, U.S.-Chile FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Background: As requested by USTR, the Commission will assess the probable economic effects on the economy as a whole of eliminating tariffs on certain agricultural products from Chile. A list of the products covered in this investigation may be obtained electronically form EDIS–ON–LINE, or from the Office of the Secretary at 202–205–2000. The Commission plans to submit its report by September 19, 2002. USTR indicated that portions of the report will be classified as "Confidential."

EFFECTIVE DATE: July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Jonathan Coleman, Project Leader (202–205–3465 or *JColeman@usitc.gov*) or William Lipovsky, Chief Animal and Forest Products Branch (202–205–3330 or *Lipovsky@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *wgearhart@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public/*.

Written Submissions: The Commission does not plan to hold a public hearing in connection with this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on July 19, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact of the Office of the Secretary at 202–205–2000.

List of Subjects

Chile, tariffs, and trade.

Issued: July 2, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17060 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–443]

U.S.-Singapore FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products

AGENCY: International Trade Commission.

ACTION: Institution of investigation and invitation for written submissions.

EFFECTIVE DATE: July 2, 2002.

SUMMARY: Following receipt of a request on June 19, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–443, U.S.-Singapore FTA: Probable Economic Effects on the Economy as a Whole of Eliminating Tariffs on Certain Agricultural Products, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Background: As requested by USTR, the Commission will assess the probable economic effects on the economy as a whole of eliminating tariffs on certain agricultural products from Singapore. A list of the products covered in this investigation may be obtained electronically from EDIS–ON–LINE, or from the Office of the Secretary at 202–205–2000. The Commission plans to submit its report by September 19, 2002. USTR indicated that portions of the report will be classified as "Confidential."

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Jonathan Coleman, Project Leader (202–205–3465 or *JColeman@usitc.gov*) or William Lipovsky, Chief Animal and Forest Products Branch (202–205–3330 or *Lipovsky@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *wgearhart@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public/*.

Written Submissions: The Commission does not plan to hold a public hearing in connection with this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on July 19, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Singapore, tariffs, and trade.

Issued: July 2, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17058 Filed 7–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment

assistance for workers (TA–W) issued during the period of June 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,198; Starlo Fashions, North Bergen, NJ

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,058; Elsevier Science Formerly Harcourt Health Sciences, Typesetting Department, Philadelphia, PA: February 1, 2001.

TA–W–41,038; Murray, Inc., McKenzie, TN: February 7, 2001.

TA–W–41,036; Wiggins Lumber Co., Wiggins, MS: November 16, 2000.

TA–W–41,025; Bombardier Transportation (Holdings), USA, Inc., Pittsburgh, PA: February 6, 2001.

TA–W–40,977; La La Imports, LP, El

TA–W–41,253; Metso Minerals Industries, Inc., Formerly Svedala Industries, Birmingham, AL: February 12, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II,

NAFTA–TAA–06084; Pohlman Foundry Co., Inc., Buffalo, NY

NAFTA–TAA–06012; Dayton Pattern, Inc., Dayton, OH

NAFTA–TAA–05935; Metso Minerals Industries, Inc., Formerly Svedala Industries, Birmingham, AL

NAFTA–TAA–05889; Trailmobile Trailer, LLC, Charleston, IL

NAFTA–TAA–05875; C.G. Bretting Manufacturing Corp., Inc., Ashland,

International Ltd, Dallas, OR: January 31, 2001.

NAFTA–TAA–06082; Pleatz LLC, New York, NY: August 10, 2001.

NAFTA–TAA–05614; Emerson Electronic Connector and Components Co., Waseca, MN: November 29, 2000.

NAFTA–TAA–05679; Biokyowa, Inc., A Subsidiary of Kyowa Hakko Kogyo, Ltd, Cape Girardeau, MO: December

assistance for workers (TA–W) issued during the period of June 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,953; R.R. Donnelley and Sons Co., Premedia Div., Lynchburg, VA
TA–W–40,643; Robbins Hardwood Flooring, Inc., Witt Plant, Warren, AR
TA–W–41,119; A.D.A. Machinery Corp., Warren, OH
TA–W–41,125; Dillon Yarn Corp., Dillon, SC
TA–W–41,261; Dayton Pattern, Inc., Dayton, OH
TA–W–41,319; Groupe Carbone Lorraine, Astro Cosmos Metallurgical, Inc., Wooster, OH
TA–W–40,723; F.C. Meyer Packaging Co., Franklin Carton Div., A Div. Of Mafcote Industries, Inc., St. Louis, MO
TA–W–40,755; Crompton Corp., Formerly Known as Uniforyal Chemical Div., Naugatuck, CT
TA–W–40,944; Zeeland Chemical Div., of Cambrex Corp., Zeeland, MI
TA–W–40,290 & A; Cascade Tissue Group, Formerly Plainwell Tissue, Pittston Township, PA and Ranson, PA
TA–W–41,062; Palmetto Loom Reed Co., Greenville, SC
TA–W–41,107; Trinity Industries, Plant 40, Girard, OH
TA–W–41,275; F.H. Stoltze Land and Lumber Co., Stoltze Aspen Mills Div., Siguird, UT

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,198; Starlo Fashions, North Bergen, NJ

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,177; Dana Corp., Victor Reinz Div., Robinson, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,146; Scottsboro Aluminum LLC, Scottsboro, AL
TA–W–40,668; Ram Fabricating Corp., Athens, TN
TA–W–39,839; BMP America, Inc., A Subsidiary of Andrew Industries, Ltd, Portland, OR
TA–W–41,012; Sensormatic Electronics Corp., Boca Raton, FL
TA–W–41,035; Imerys Pigments and Additives Group, Dry Branch, GA
TA–W–40,707; AG Simpson Automotive Systems, Sterling Heights, MI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,546; Classic Knitting Mills, Inc., Greensboro, NC: May 6, 2001.
TA–W–41,326; U.S. Electrical Motors, Philadelphia, MS: March 11, 2002.
TA–W–40,544; Tyco Printed Circuit Group, A Div. Of Tyco International Ltd, Dallas, OR: December 17, 2000.
TA–W–41,337 & A; Quantum Corp., DLT & Storage Systems Group, Colorado Springs, CO and Shrewsbury, MA: May 19, 2002.
TA–W–40,352; Barker Microfarads, Inc., Hillsville, VA: October 26, 2000.
TA–W–40,079 & A; Zilog, Inc., Probe Manufacturing, Nampa, ID and Mod III Manufacturing, Nampa, ID: August 31, 2001.
TA–W–41,355; Fourply, Inc., Plywood Div., Grants Pass, OR: March 8, 2001.
TA–W–40,327; Meadwestvaco, Rumford, ME: March 22, 2001.
TA–W–41,156; London Harness and Cable, Trenton, NJ: January 13, 2001.
TA–W–41,114; Tyco Electronics, Stockton, CA: March 6, 2001.
TA–W–41,093; Greenwood Mills, Durst Plant, Greenwood, SC: December 18, 2000.
TA–W–41,067; SCP Global Technologies, Inc., Boise, ID: February 1, 2001.
TA–W–41,058; Elsevier Science Formerly Harcourt Health Sciences, Typesetting Department, Philadelphia, PA: February 1, 2001.
TA–W–41,038; Murray, Inc., McKenzie, TN: February 7, 2001.
TA–W–41,036; Wiggins Lumber Co., Wiggins, MS: November 16, 2000.
TA–W–41,025; Bombardier Transportation (Holdings), USA, Inc., Pittsburgh, PA: February 6, 2001.
TA–W–40,977; La La Imports, LP, El Paso, TX: January 4, 2001.
TA–W–40,925; BH Electronics, Inc., Marshall, MN: January 29, 2001.
TA–W–40,918; Fellows Corp., A Div. Of Goldman Industries Group, North Springfield, VT: January 21, 2001.
TA–W–40,871; TRW Aeronautical Systems, Lucas Aerospace, Aurora, OH: December 7, 2000.
TA–W–40,764; Fit Rite Headwear, Inc., Wilkes Barre, PA: October 30, 2000.
TA–W–40,578; Graphic Arts, Inc., Philadelphia, PA: November 27, 2000.
TA–W–40,171; Valmont Industries and Herman Schwabe, Inc., Hazelton, PA: September 18, 2000.
TA–W–40,711; Carolina Glove Co., Wilkes Plant, Conover, NC: January 9, 2001.
TA–W–40,675; Titan Plastics Group, Formerly Plastic Engineered Components, Formerly Golden Triangle Plastic, El Paso Division, El Paso TX: December 17, 2000.
TA–W–40,615; Emerson Electronic Connector and Components Co., Waseca, MN: November 29, 2000.
TA–W–39,904; Tiffany Lincoln Textiles, New York, NY: August 13, 2000.
TA–W–39,677 & A; Concord Fabrics, Inc., Knitted Fabrics Div., Milledgeville, GA and Concord House Div., New York, NY: July 6, 2000.
TA–W–41,117; Canto Tool Corp., Meadville, PA: February 8, 2001.
TA–W–41,047; C.G. Bretting Manufacturing Corp., Inc., Ashland, WI: February 14, 2001.
TA–W–40,987; Globe Metallurgical, Inc., Niagara Falls, NY: February 26, 2001.
TA–W–40,969; Paramount Headwear, Inc., Bourbon, MO: October 9, 2001.
TA–W–40,877; ESP/Jocassee Trading Co., Easley, SC: September 24, 2000.
TA–W–40,826; Lee Mah Electronics, Inc., San Francisco, CA: November 30, 2000.
TA–W–41,492; Keystone Tool and Machine, Inc., Carlisle, PA: April 16, 2001.
TA–W–41,304; Alcatel, Optical Fiber Div., Claremont, NC: March 6, 2001.
TA–W–41,317; Metso Minerals Industries, Inc., Formerly Svedala Industries, Appleton, WI: March 4, 2001.
TA–W–41,221; Walls Industries, Inc., Cleburne, TX: March 11, 2001.

TA–W–41,253; Metso Minerals Industries, Inc., Formerly Svedala Industries, Birmingham, AL: February 12, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06197; PW Pipe, Hillsboro, OR
NAFTA–TAA–06145; Execumold, Inc., (Currently located at Fairview, Pennsylvania), Erie, PA
NAFTA–TAA–06137; Keystone Tool and Machine, Inc., Carlisle, PA
NAFTA–TAA–06093; RHO Industries, Inc., Buffalo, NY
NAFTA–TAA–06084; Pohlman Foundry Co., Inc., Buffalo, NY
NAFTA–TAA–06012; Dayton Pattern, Inc., Dayton, OH
NAFTA–TAA–05935; Metso Minerals Industries, Inc., Formerly Svedala Industries, Birmingham, AL
NAFTA–TAA–05889; Trailmobile Trailer, LLC, Charleston, IL
NAFTA–TAA–05875; C.G. Bretting Manufacturing Corp., Inc., Ashland, WI
NAFTA–TAA–05837; Canto Tool Corp., Meadville, PA
NAFTA–TAA–05823; Lee Mah Electronics, Inc., San Francisco, CA
NAFTA–TAA–05821; BH Electronics, Marshall, MN
NAFTA–TAA–05797; Englehard Corp., McIntyre, GA
NAFTA–TAA–05771; Dillon Yarn Corp., Dillon, SC
NAFTA–TAA–05743; Zeeland Chemical, Div. of Cambrex Corp., Zeeland, MI
NAFTA–TAA–05690; Titan Plastics Group, Formerly Plastic Engineered Components, Formerly Golden Triangle Plastic, El Paso Div., El Paso, TX
NAFTA–TAA–5680; F.C. Meyer Packaging Co., Franklin Carton Div., a Div. of Mafcote Industries, Inc., St. Louis, MO
NAFTA–TAA–05413 & A; Cascade Tissue Group, Formerly Plainwell Tissue, Pittston Township, PA and Ranson, PA
NAFTA–TAA–05108; Ryan Engineering and Design Co., Inc., Pellston, MI
NAFTA–TAA–5277 & A; Zilog, Inc., Probe Manufacturing, Nampa, ID and Mod III Manufacturing, Nampa, ID
NAFTA–TAA–05528; Robbins Hardwood Flooring, Inc., Witt Plant, Warren, AR
NAFTA–TAA–05777; R.R. Donnelley and Sons Co., Premedia Div., Lynchburg, VA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–05816; Mitel Networks Corp., Network Access Solutions, Ogdensburg, NY

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05780; AG Simpson Automotive Systems, Sterling Heights, MI: January 23, 2001
NAFTA–TAA–05857; Tyco Printed Circuit Group, A Div. Of Tyco International Ltd, Dallas, OR: January 31, 2001.
NAFTA–TAA–06082; Pleatz LLC, New York, NY: August 10, 2001.
NAFTA–TAA–05614; Emerson Electronic Connector and Components Co., Waseca, MN: November 29, 2000.
NAFTA–TAA–05679; Biokyowa, Inc., A Subsidiary of Kyowa Hakko Kogyo, Ltd, Cape Girardeau, MO: December 12, 2000.
NAFTA–TAA–05774; Xpectra, Inc., Santa Cruz Div., Santa Cruz, CA: January 2, 2001.
NAFTA–TAA–5936; Metso Minerals Industries, Inc., Formerly Svedala Industries, Appleton, WI: March 4, 2001.
NAFTA–TAA–05973; Xerox Corp., Electronics Delivery Unit, El Segundo, CA: March 11, 2001.
NAFTA–TAA–06040; Warnaco, Calvin Klein Jeans Div., Nesquehoning, PA: March 28, 2001.
NAFTA–TAA–06065; American Tramways, Inc., A Div. Of Doppelmayr CTEC, Inc., Watertown, NY: October 1, 2000.
NAFTA–TAA–06086; Scapa Tapes North America, A Div. Of Scapa Group PLC, Watertown, NY: July 30, 2000.
NAFTA–TAA–06116; Signal Transformer Co., Inc., Inwood, NY: November 9, 2000.
NAFTA–TAA–06146; Springs Window Fashions, LP, Montgomery, PA: April 12, 2001.
NAFTA–TAA–06186; Emerson Process Management, Rosemount Analytical, Inc., Anaheim, CA: May 10, 2001.
NAFTA–TAA–06192; LNP Engineering Plastics, Inc., Santa Ana, CA: May 7, 2001.
NAFTA–TAA–06229; Insilco Technologies, ITG Global, Hiddenite, NC: May 13, 2001.

I hereby certify that the aforementioned determinations were issued during the month of June, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 2, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17146 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,438]

Alliance Machine Co., Division of Reunion Industries, Inc., Alliance, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 6, 2002 in response to a petition filed by a company official on behalf of workers at Alliance Machine Co., Division of Reunion Industries, Inc., Alliance, Ohio.

The petitioning group of workers is covered by an active certification (TA–W–40,544) which remains in effect. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17147 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,779]

Bulk Lift International, Carpentersville, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 30, 2002 in response to a petition filed by a company official on behalf of workers at Bulk Lift International, Carpentersville, Illinois.

The petitioning group of workers is covered by an active certification (TA–W–40,544) which remains in effect. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17148 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,779]

Bulk Lift International, Carpentersville, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 30, 2002 in response to a petition filed by a company official on behalf of workers at Bulk Lift International, Carpentersville, Illinois.

The petitioning group of workers is covered by an active certification (TA–W–40,544) which remains in effect. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17149 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,779]

Elk Rapids Engineering, Elk Rapids, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 30, 2002 in response to a petition filed by a company official on behalf of workers at Elk Rapids Engineering, Elk Rapids, Michigan.

The petitioning group of workers is covered by an active certification (TA–W–40,544) which remains in effect. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17150 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,779]

Elk Rapids Engineering, Elk Rapids, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 30, 2002 in response to a petition filed by a company official on behalf of workers at Elk Rapids Engineering, Elk Rapids, Michigan was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the customers increased their imports of articles produced by the workers' firm during the relevant period.

The petitioner alleges that the subject plant has been affected by increased imports of articles produced by the subject plant. The petitioner also alleges that the subject plant has been affected by a shift in production to Mexico.

The Department contacted the company regarding a label attached and labels referenced in the petitioner's request for reconsideration. The company indicated that some of the products produced by the subject plant have been intermittently imported, but the amount of each type of product imported was negligible during the relevant period.

The Department contacted the company regarding the petitioner's allegation that there was a shift in production to Mexico. The company indicated that there was no shift in production to Mexico during the relevant period.

The petitioner has not supplied any additional information or arguments that would support reconsideration of the Department's prior decision. Accordingly, the application is denied.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17151 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,438]

Alliance Machine Co., Division of Reunion Industries, Inc., Alliance, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 29, 2002 in response to a petition filed on the same date on behalf of workers at Alliance Machine Company, Division of Reunion Industries, Inc., Alliance, Ohio.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17139 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,255]

American Greetings Corp., Corbin, KY Notice of Negative Determination Regarding Application for Reconsideration

By application received on June 6, 2002 and June 7, 2002, a worker and the Teamsters, Local 89, respectively, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 13, 2002, and published in the **Federal Register** on June 4, 2002 (67 FR 38521).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of American Greetings Corporation, Corbin, Kentucky was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Increased imports did contribute importantly to worker separations. The denial was based on Corbin, Kentucky production of printed greeting card sheets being consolidated with another American Greetings Corporation domestic production facility. The company did not import printed greeting card sheets during the relevant period.

The petitioners allege that American Greetings Corporation has been forced to restructure the company in order to cut costs, which resulted in lost jobs at the Corbin plant over a three year period, leading to the final closing of the subject plant. The petitioners further allege that the jobs lost at the Corbin plant is the result of American Greetings moving manufacturing production (candles, party goods, print greeting cards) from the Corbin plant to China, Mexico, Taiwan and Hong Kong. A copy of a label attached to the petitioner(s) request depicts that a product produced in China was imported directly to American Greetings Corp., Corbin, Kentucky.

A review of the initial decision and recent clarification by the company indicate there was no decline in the firm's customer base. Any declines in plant sales or production (party goods, gift wrap and bows, candles, printed greeting card sheets) are due to shifts in plant production to other domestic locations. That is, virtually all plant production was shifted to other domestic sources, except for a small portion of printed greeting card sheets that were ordered from a foreign source and scheduled to enter the United States beyond the relevant period of the investigation. In any event, the amount of printed greeting card sheets to be imported is relatively low and would not be considered a major contributing factor to the layoffs at the subject firm.

Further review and contact with the company shows that the preponderance in the declines in employment at the subject plant is related to other factors unrelated to imported products "like or directly competitive" with what the subject plant produced. That is, internet card competition and cost cutting measures such as the elimination of some high cost product lines and the consolidation of subject plant production to other affiliated domestic locations to cut costs are the dominant factors leading to the layoffs at the subject plant.

The Department contacted the company regarding a label attached and labels referenced in the petitioner's request for reconsideration. The company indicated that some of the products produced by the subject plant have been intermittently imported, but the amount of each type of product imported was negligible during the relevant period.

In a further allegation by the petitioner, it is indicated that the subject plant candle production was shifted to China and imported back to the United States. The company indicated candles imported back to the United States were negligible during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17147 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,586]

Buehler Motor, Inc, Kinston, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 17, 2002, in response to a petition filed by a company official on behalf of workers at Buehler Motor, Inc., Kinston, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17140 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,779]

Bulk Lift International, Carpentersville, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002 in response to a worker petition, which was filed, by the Union of Needletrades, Industrial and Textile Workers, Chicago and Central States Joint Board on behalf of workers at Bulk Lift International, Carpentersville, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17134 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,320]

Elk Rapids Engineering, a Division of Star Cutter Company, Elk Rapids, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 16, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 7, 2002, and published in the **Federal Register** on May 17, 2002 (67 FR 35140).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Elk Rapids Engineering, Elk Rapids, Michigan was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported CNC controlled machine tools while decreasing their purchases from the subject firm. The subject firm did not import CNC controlled machine tools.

The petitioner believes that their company as well as the entire machine tool industry in the United States has been significantly affected by increased imports of machine tools. The petitioner attempts to support this claim by providing a transcript of testimony given by the Association for Manufacturing Technology before the Committee on Small Business, U.S. House of Representatives on April 24, 2002. The petitioner also indicates that customers are spending less and importing more machine tools during the relevant period. The petitioner further attached a summary of U.S. Machine-Tool Orders depicting significant declines in orders during the last few years.

A review of the data supplied by the petitioner depicts industry wide data that is not specific to the products produced at the subject plant. The Department of Labor examines the direct impact of imports that are "like or directly competitive" with what the subject plant produced and if imports "contributed importantly" to the layoffs at the subject plant. The investigation revealed that imports of the product produced at the subject plant did not "contribute importantly" to the layoffs at the subject plant. The U.S. Machine-Tool Order data supplied by the petitioner depicts declines in U.S. machine-tool orders during the last few years. U.S. machine tool orders include those for the export market, as well as the domestic market. Thus a reduced demand for U.S. machine tools (depicted by orders) does not reflect a definitive increase in imports. Examination of industry data in which the subject firm's products are categorized shows that U.S. imports of products like or directly competitive with what the subject firm produced declined in 2001 over 2000.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17143 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,309]

Firestone Tube Co., a Division of Bridgestone/Firestone North American Tire, LLC, Subsidiary of Bridgestone Corp., Russellville, AR; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 14, 2002, the United Steelworkers of America, Local 884 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 18, 2002, and published in the **Federal Register** on May 2, 2002 (67 FR 22114).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Firestone Tube Company, a division of Bridgestone/Firestone North American Tire, LLC, a subsidiary of Bridgestone Corp., Russellville, Arkansas was denied because criterion (2) was not met. Sales and production at the subject firm increased during the relevant period.

The petitioner alleges that plant production declined during the relevant

period and attempts to illustrate these declines in production by supplying plant statistics of cure sets (molds used in the production of tubes) to attempt to show that production of tubes at the subject plant declined during the relevant period.

A review of the initial decision shows that plant sales and production increased from January through

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17142 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,878]

JTD, Inc., Tigard, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 4, 2002, in response

firm applied a corrosion-resistant zinc coating on cold rolled steel coil substrate produced by the customer. The official further indicates that the closure of the customer facility at the same location as the subject firm is the reason for the closure of the subject plant. The company official further indicated that the sole customer was certified for TAA under TA–W–38,362.

Clarification by the company and

Hidalgo, Inc., Hidalgo, Playas, New Mexico.

The petition has been deemed invalid. There are three signatúres on the petition, but no petitioner information was provided which includes name, address, telephone, and the date of separation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Standard Corporation, Integrated Logistics, Wilmington, North Carolina (TA–W–39,282), Leland, North Carolina (TA–W–39,382A), Kinston, North Carolina (TA–W–39,282B), Grifton, North Carolina (TA–W–39,282C), Charleston, South Carolina (TA–W–39,282D) and Moncks Corner, South Carolina (TA–W–39,282E)

period and attempts to illustrate these declines in production by supplying plant statistics of cure sets (molds used in the production of tubes) to attempt to show that production of tubes at the subject plant declined during the relevant period.

A review of the initial decision shows that plant sales and production increased from January through September 2001 over the corresponding 2000 period. During the initial investigation the company reported declines in plant sales and production in the year 2000 over the 1999 period. However, due to the reported decline in sales and production during the year 2000, although not noted in the TAA decision, the U.S. Department of Labor conducted a survey of the major declining customers of the subject firm regarding their purchases of automobile inner tubes for the 1999, 2000 and the January through November 2001 period over the corresponding 2000 period. The survey is conducted to test if customer imports of like or directly competitive products as produced at the subject firm "contributed importantly" to the worker separations of the workers' firm. None of the customers reported importing inner tubes during the relevant period.

The United Steel Workers of America, Local 884 further alleges that the company is importing tubes from Korea and China to the Russellville, Arkansas plant and then sells the tubes to customers.

Further review of company data supplied during the initial investigation, shows that the company imported a grouping of small tubes, most of which the plant was unable to produce. The reported imports of these tubes were relatively stable during the relevant period. The amount of company tube imports like or directly competitive with what the subject firm produced was also relatively low, therefore imports like or directly competitive with what the subject plant produced did not contribute importantly to the layoffs at the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17142 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,774]

Frederic Goldman, Inc., Casting Division, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002, in response to a worker petition, which was filed by the company on behalf of workers at Frederic Goldman, Inc., Casting Division, New York, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17145 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,434]

Notice of Termination of Investigation; Goodrich Corp., Spencer, WV

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 29, 2002, in response to a petition filed by a company official on behalf of workers at Goodrich Corporation, Spencer, West Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17148 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,878]

JTD, Inc., Tigard, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 4, 2002, in response to a petition filed by a company official on behalf of workers at JTD, Incorporated, Tigard, Oregon.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17135 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,529]

L–S Electro-Galvanizing Co., Cleveland, OH; Notice of Revised Determination on Reconsideration

By letter of May 23, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 22, 2002 based on the finding that imports of corrosion-resistant zinc coated cold rolled steel coils did not contribute importantly to worker separations at the Cleveland plant. The denial notice was published in the **Federal Register** on May 2, 2002 (67 FR 22112).

To support the request for reconsideration, the company official provided clarification concerning the relationship between the subject firm and their sole customer. The company official indicated that their sole customer was a majority owner (Joint Venture) of L–S Electro-Galvanizing Company (LSE), Cleveland, Ohio and that the subject firm was in direct support of that operation. The subject firm applied a corrosion-resistant zinc coating on cold rolled steel coil substrate produced by the customer. The official further indicates that the closure of the customer facility at the same location as the subject firm is the reason for the closure of the subject plant. The company official further indicated that the sole customer was certified for TAA under TA–W–38,362.

Clarification by the company and review of the initial investigation show that the subject firm was in direct support of a TAA certified facility (TA–W–38,362, LTV Steel Company, Inc., Cleveland, Ohio) that had a majority controlling interest in the subject firm's operation. Since the workers of the subject firm were in direct support of the affiliated TAA certified facility, they meet all eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at L–S Electro-Galvanizing Company, Cleveland, Ohio, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of L–S Electro-Galvanizing Company, Cleveland, Ohio, who became totally or partially separated from employment on or after December 3, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 20th day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17144 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,020]

Phelps Dodge Hidalgo Inc., Playas, NM; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2002, in response to a petition filed by the company on behalf of workers at Phelps Dodge Hidalgo, Inc., Hidalgo, Playas, New Mexico.

The petition has been deemed invalid. There are three signatures on the petition, but no petitioner information was provided which includes name, address, telephone, and the date of separation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of June, 2002.

Curtis K. Kooser,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17136 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,282, Wilmington, NC, TA–W–39,282A, Leland, NC, TA–W–39,282B, Kinston, NC, TA–W–39,282C, Grifton, NC, TA–W–39,282D, Charleston, SC, TA–W–39,282E, Moncks Corner, SC]

Standard Corporation, Integrated Logistics; Notice of Negative Determination Regarding Application for Reconsideration

By application dated on April 18, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Standard Corporation, Integrated Logistics, Wilmington, North Carolina (TA–W–39,282), Leland, North Carolina (TA–W–39,382A), Kinston, North Carolina (TA–W–39,282B), Grifton, North Carolina (TA–W–39,282C), Charleston, South Carolina (TA–W–39,282D) and Moncks Corner, South Carolina (TA–W–39,282E) was signed on March 5, 2002, and published in the **Federal Register** on March 20, 2002 (67 FR 13012).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Standard Corporation, Integrated Logistics, Wilmington, North Carolina (TA–W–39,282), Leland, North Carolina (TA–W–39,382A), Kinston, North Carolina (TA–W–39,282B), Grifton, North Carolina (TA–W–39,282C), Charleston, South Carolina (TA–W–39,282D) and Moncks Corner, South Carolina (TA–W–39,282E) engaged in activities related to providing distribution and warehousing services for an unaffiliated customer that produces polyester fibers. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

In the request for reconsideration, the company indicated that Standard Corporation workers play a vital role in the manufacturing of polyester fibers for Dupont. The petitioner indicated that once the polyester fibers are released from the Dupont Corporation production area, the product is then transported through an in-line conveyor system to the Standard Corporation work area. Standard Corporation associates off-load the polyester fiber and perform the packaging, quality checks, as well as, transport the product to a designated staging area within the Dupont Manufacturing plant.

The new data supplied by the petitioner show that the subject plant workers performed services that are a stage beyond the production performed at the unaffiliated, certified TAA Dupont Corporation, Polyester Enterprise, (Wilmington, North Carolina, TA–W–39,743, Kinston, North Carolina, TA–W–39,743A and Charleston, South Carolina, TA–W–39,743B) plants. Therefore, as indicated in the initial decision, workers do not produce an article within the meaning of section 222(3) of the Trade Act of 1974, is correct.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17141 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the

TA–W–41,272; Amdocs, Inc., Hillsboro, OR

TA–W–40,846; Praxair, Inc., Niagara Falls, NY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,467; I.C. Isaac and Co., Inc., New York, NY

TA–W–40,840; Bradley Scott Clothes, Fall River, MA: October 26, 2000.

TA–W–41,233; Associated Garments LLP, Miami, FL: February 19, 2001.

TA–W–41,285; United States Enrichment Corp. (USEC), Portsmouth Gaseous Diffusion Plant, Piketon, OH: June 16, 2002.

TA–W–41,276; GBC Office Products Group, Ashland, MS: March 6, 2001.

TA–W–40,840; Bradley Scott Clothes, Fall River, MA: October 26, 2000.

TA–W–41,233; Associated Garments LLP, Miami, FL: February 19, 2001.

TA–W–41,285; United States Enrichment Corp. (USEC), Portsmouth Gaseous Diffusion Plant, Piketon, OH: June 16, 2002.

TA–W–41,276; GBC Office Products Group, Ashland, MS: March 6, 2001.

NAFTA–TAA–06205; ZF-Meritor, LLC, Meritor Clutch Co., Maxton, NC

NAFTA–TAA–05955; Swanson Erie Corp., Assembly Systems, Erie, PA

NAFTA–TAA–05981; Truman Logging, Inc., Rexford, MT

NAFTA–TAA–05853; Tri-Way Manufacturing, Inc., El Paso, TX

NAFTA–TAA–05835; Pabst Brewing Co., Lehigh Valley Plant, Fogelsville, PA

NAFTA–TAA–05949; Schaeff, Inc., A Subsidiary of Terex, Sioux City, IA

issued during the month of June, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 3, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,167; Tri-Way Manufacturing, Inc., El Paso, TX
TA–W–41,268; Truman Logging, Inc., Rexford, MT
TA–W–41,186; Swanson Erie Corp., Assembly Systems, Erie, PA
TA–W–40,150; Tyco Electronics, Global Application Tooling Div., A Subsidiary of Tyco Electronics Ltd, Mt. Sidney, VA
TA–W–41,316; Quality Components, Klamath Falls, OR
TA–W–41,259; Fibermark, Inc., Rochester, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–41,272; Amdocs, Inc., Hillsboro, OR
TA–W–40,846; Praxair, Inc., Niagara Falls, NY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,467; I.C. Isaac and Co., Inc., New York, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,569; ZF-Meritor, LLC, Meritor Clutch Co., Maxton, NC
TA–W–41,178; Pabst Brewing Co., Lehigh Valley Plant, Fogelsville, PA
TA–W–41,302; Motorola, Inc., Arlington Heights, IL
TA–W–41,032; Bard Manufacturing Co., Bryan, OH: "All workers engaged in employment related to the production of finished full units are denied eligibility to apply for adjustment assistance"

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,032; Bard Manufacturing Co., Bryan, OH: "All workers engaged in employment related to the production of air conditioning coils who became separated on or after January 10, 2001.
TA–W–41,108; Cedar Hill Manufacturing, Inc., Ansonville, NC: February 25, 2001.
TA–W–41,116; Standard Fusee Corp., d/b/a Orion Safety Products, South Beloit, IL: February 19, 2001.
TA–W–41,122; Cer-Tek, Inc., El Paso, TX: March 25, 2001.
TA–W–41,244; Turbon, Jetfill Div., Houston, TX: June 1, 2000.
TA–W–41,279; Levolor Kirsch Window Fashions, Newell Rubbermaid Div., Shamokin, PA: March 12, 2001.
TA–W–41,007; Emerson Appliance Motors, Exford, MS: January 8, 2001.
TA–W–41,009; Washington Frontier Juice, Prosser, WA: January 31, 2001.
TA–W–41,293; Pittsburgh Tool Steel, Inc., Monaca, PA: October 8, 2000.
TA–W–40,341; Meadowcraft, Inc., Somerton, AZ: November 1, 2000.
TA–W–40,526 and A; HMG Intermark Worldwide Manufacturing, Inc., Plant R–1, Reading, PA and Plant R–5, Reading, PA: October 23, 2000.
TA–W–40,840; Bradley Scott Clothes, Fall River, MA: October 26, 2000.
TA–W–41,233; Associated Garments LLP, Miami, FL: February 19, 2001.
TA–W–41,285; United States Enrichment Corp. (USEC), Portsmouth Gaseous Diffusion Plant, Piketon, OH: June 16, 2002.
TA–W–41,276; GBC Office Products Group, Ashland, MS: March 6, 2001.
TA–W–41,179; Pemco, Inc., Sheboygan, WI: February 14, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06205; ZF-Meritor, LLC, Meritor Clutch Co., Maxton, NC
NAFTA–TAA–05955; Swanson Erie Corp., Assembly Systems, Erie, PA
NAFTA–TAA–05981; Truman Logging, Inc., Rexford, MT
NAFTA–TAA–05853; Tri-Way Manufacturing, Inc., El Paso, TX
NAFTA–TAA–05835; Pabst Brewing Co., Lehigh Valley Plant, Fogelsville, PA
NAFTA–TAA–05949; Schaeff, Inc., A Subsidiary of Terex, Sioux City, IA
NAFTA–TAA–06196; Bemis Manufacturing Co., Crandon Div., Crandon, WI
NAFTA–TAA–05974; Quality Components, Inc., Klamath Falls, OR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–05783; Maska U.S., Inc., A Subsidiary of The Hockey Co., Williston, VT
NAFTA–TAA–05764; J. Dashew, Inc., Baltimore, MD

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06187; Honeywell International Garett Engine Boosting (Formerly Doing Business as Allied Signal), Garrett Engine Boosting Systems, Torrance, CA: April 14, 2002.
NAFTA–TAA–06113; Crossroad Knitting, Inc., Claudville, VA: April 15, 2001.
NAFTA–TAA–06107; Modine Manufacturing Co., Emporia Facility, Emporia, KS: January 16, 2001.
NAFTA–TAA–06102 & A; Harris Welco, Plastics Departmentm Kings Mountain, NC and Personnel Services Unlimited, Kings Mountain, NC (Employed in the Plastics Department, Harris Welco, Kings Mountain, NC): April 22, 2001.
NAFTA–TAA–06063; Celestica, Inc., Westminster, CO: March 29, 2001.
NAFTA–TAA–05978; Fourply, Inc., Plywood Div., Grans Pass, OR: March 8, 2001.
NAFTA–TAA–5964; Levolor Kirsch Window Fashions, Newell Rubbermaid Div., Shamokin, PA: March 12, 2001.
NAFTA–TAA–05914; Cedar Hill Manufacturing, Inc., Ansonville, NC: February 15, 2001.

I hereby certify that the aforementioned determinations were issued during the month of June, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 3, 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17138 Filed 7–8–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,024]

Whisper Jet Inc., Sanford, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2002, in response to a petition filed by a company official on behalf of workers at Whisper Jet, Inc., Sanford, Florida.

The petitioner submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of June, 2002.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–17137 Filed 7–8–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05773]

Superior Milling, Inc., Watersmeet, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 29, 2002, the employees requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 18, 2002, and was published in the **Federal Register** on May 2, 2002 (67 FR 22115).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of rough green lumber at Superior Milling, Inc, Watersmeet, Michigan was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no increased company imports of rough green lumber from Mexico or Canada, nor did the subject firm shift production from the subject plant to Mexico or Canada. A survey of customers conducted by the Department of Labor revealed that customers did not increase their import purchase of products like or directly competitive with those produced at the Watersmeet plant from Canada or Mexico during the relevant period.

The petitioner alleges that some customers of the subject plant imported rough green lumber during the relevant period. The petitioner also specifies which customers they believe are importing rough green lumber and thus impacting the subject plant.

A review of the initial investigation and the corresponding survey results conducted during the investigation shows that the company supplied a customer list that accounted for greater than 85% of the subject plant's sales for the years 2000 and 2001. Extrapolating the provided customer list sales from subject plant sales shows that the unreported customers as a group increased their purchases from the subject firm during the relevant period.

During the initial investigation the Department of Labor surveyed the reported declining customers of the subject firm regarding their purchases of rough green lumber during the relevant period (2000 and 2001). The survey revealed that none of the respondents increased their imports of rough green lumber from Canada or Mexico during the relevant period.

The petitioner further alleges that a major customer imported a sizeable amount of flooring stock from Canada and believes that those imports

adversely affected the profitability of the Superior Milling.

Imports of flooring stock from Canada by the major customer is not "like or directly competitive" with articles produced by the firm and therefore is not a relevant factor in meeting the eligibility requirement of section 250 of the Trade Act.

Conclusion

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

3. Buck Mountain Coal Company

[Docket No. M–2002–048–C]

removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its No. 1 Mine (I.D. No. 15–17547) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency

adversely affected the profitability of the Superior Milling.

Imports of flooring stock from Canada by the major customer is not "like or directly competitive" with articles produced by the firm and therefore is not a relevant factor in meeting the eligibility requirement of section 250 of the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 21st day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–17149 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Local Area Unemployment Statistics (LAUS) Program." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before September 9, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS has been charged by Congress (29 USC Chapters 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Employment Security Agencies (SESAs).

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Investment Act and the Public Works and Economic Development Act, among others.

The estimates also are used in economic analysis by public agencies and private industry, and for State and area funding allocations and eligibility determinations according to legal and administrative requirements. Implementation of current policy and legislative authorities could not be accomplished without collection of the data.

The reports and manual covered by this request are integral parts of the LAUS program insofar as they insure and/or measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

The BLS is revising the information collection request that makes up the LAUS program.

All aspects of the program are automated. All data are entered directly into BLS-provided systems.

The BLS, as part of its responsibility to develop concepts and methods by which SESAs prepare estimates under the LAUS program, developed a manual for use by the SESAs. The manual explains the conceptual framework for the State and area estimates of employment and unemployment, specifies the procedures to be used, provides input information, and discusses the theoretical and empirical basis for each procedure. This manual is updated on a regular schedule.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Affected Public: State government.

Total Respondents: 52.

Frequency: Monthly and Annually.

Total Responses: 87,300.

Average Time Per Response: 1.60 hours.

Estimated Total Burden Hours: 139,680 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 28th day of June, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–17150 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Peabody Coal Company

[Docket No. M–2002–046–C]

Peabody Coal Company, 1970 Barrett Court, P. O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray system) to its Gibraltar Highwall Mine (I.D. No. 15–17495) located in Muhlenberg County, Kentucky. The petitioner requests a modification of the existing standard to permit an alternative method for conducting functional tests of its complete deluge-type water system. The petitioner proposes to conduct these tests on a weekly basis instead of annually. The petitioner states that the existing standard will not allow the system to be functionally tested weekly because the dust covers could be blown off and to return the water spray system safely for compliance with the existing standard, the belt would have to be de-energized, locked and tagged, and the dust cover would have to be replaced, which would take approximately 30 minutes per belt drive. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard since any restrictions to the spray system otherwise prevented by the blow-off dust covers would be recognized during the weekly functional test and promptly corrected. The petitioner has requested that this petition be withdrawn due to the mine being worked out and ceasing operations.

2. Husky Coal Company, Inc.

[Docket No. M–2002–047–C]

Husky Coal Company, Inc., P.O. Box 3311, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 and 30 CFR 18.41(f) (Permissible electric face equipment; maintenance) to its No. 12 Mine (I.D. No. 15–16974) located in Pike County, Kentucky. The petitioner proposes to use a permanently installed, spring-loaded device on mobile battery-powered machine plug connectors in lieu of a padlock to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Buck Mountain Coal Company

[Docket No. M–2002–048–C]

Buck Mountain Coal Company, 11 S. Pine Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.381 (Escapeways; anthracite mines) to its Buck Mountain Slope Mine (I.D. No. 36–01962) located in Schuylkill County, Pennsylvania. The petitioner proposes to establish two separate and distinct travelable passageways designated as escapeways continuous from each working section to a point within the mine at the intersection of these two escapeways with an existing rock tunnel and maintain one means of ingress/egress from this point to approximately 900 feet to the surface. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Peabody Coal Company

[Docket No. M–2002–049–C]

Peabody Coal Company, 202 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324–1233 has filed a petition to modify the application of 30 CFR 75.901 (Protection of low- and medium-voltage three-phase circuits used underground) to its Highland Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner proposes to use a 480-volt, three-phase diesel powered generator to move equipment using specific procedures outlined in this petition. The petitioner states that specific hands on training will be provided to all qualified persons on the proper testing procedures to be utilized and incorporate this training in its part 48 training plans and in the annual refresher training plans for the mine and submit the proposed revisions for its part 48 training plan to the Coal Mine Safety and Health District Manager. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Bubber Coal Company, Inc.

[Docket No. M–2002–050–C]

Bubber Coal Company, Inc., P.O. Box 43, Kite, Kentucky 41653 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its No. 1 Mine (I.D. No. 15–17547) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, 23rd Floor, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 8, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 2nd day of July, 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–17112 Filed 7–8–02; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before August 8, 2002, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. J. Zieher, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechheim at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the

Dated: July 1, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–17039 Filed 7–8–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

involve any physical or chemical work which could damage or change the integrity of the radioactive sealed sources. If a commodity is determined to be damaged upon receipt with the potential for leakage of the radioactive sealed source, it will be repackaged appropriately, without any processing, and sent to an appropriate waste disposal facility.

The isotopes to be received will

Environmental Impacts of the Proposed Action

NRC staff reviewed the proposed consolidation and recycle activities, the licensed radiation protection program, and the potential for release of radioactive materials from the Service Facility. The work practices and safety criteria are specified in the Army's application so that operational activities will meet the 10 CFR Part 20 radiation

Assessment, Finding of No Significant Impact, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC, Region III, 801 Warrenville Road, Lisle, Illinois 60532.

SUPPLEMENTARY INFORMATION: The EA is available for review at NRC's Electronic Reading Room, on the NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html*. The accession [file] number for this document is

Tennessee, and to increase the ^{235}U possession limit. This action is part of the Blended Low-Enriched Uranium (BLEU) project described below. The other related future activities which were considered to contribute to the environmental impacts for this project are: construction and operation of an Oxide Conversion Building (OCB), construction and operation of a new Effluent Processing Building (EPB), and relocation of downblending operations

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 16, 2002 (67 FR 18638 and 18639). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Generic clearance for user satisfaction research on Internet sites.

OMB number: 3095–NEW.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals and households.

Estimated number of respondents: 4,000.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 333 hours.

Abstract: This is a request for a three-year generic clearance to conduct user satisfaction research for our Internet sites. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Dated: July 1, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–17039 Filed 7–8–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36000]

Environmental Assessment and Finding of No Significant Impact for a New Byproduct Material License Requested by the U.S. Army Contaminated Equipment Retrograde Team Field Service Facility, Rock Island Arsenal, Rock Island, IL; Notice of Availability

Environmental Assessment Summary

The U.S. Nuclear Regulatory Commission is considering issuing a new Byproduct Material License Number 12–00722–15 to the Department of the Army to authorize the collection of unwanted Army commodities containing radiological sources, and preparation of these sources for shipment and proper disposal using the Army Contaminated Equipment Retrograde Team Field Services Facility (ACERTSF) located in Rock Island, Illinois.

This Environmental Assessment (EA) reviewed the potential environmental impacts associated with the proposed activities outlined in the Department of the Army's April 10, 2002, license application. The EA considered the licensee's proposed radiation protection program, and the types, quantities, the physical forms of the radioactive materials to be received, processed, stored and shipped by the Army at its proposed location. The EA included evaluation of the building, adjoining grounds, security, fire protection, and engineering controls used to ensure the safe use of licensed materials.

Proposed Action

The ACERTSF proposes to receive unwanted DoD commodities containing radiological sources, consolidate the sources into U.S. Department of Transportation (DOT) approved shipping containers, and ship the consolidated sources to an NRC approved disposal facility, or to another authorized NRC or Agreement State licensee for reuse.

The Service Facility will process radioactive sealed sources or commodities containing radioactive material in solid, non-dispersible form. The consolidation process will not involve any physical or chemical work which could damage or change the integrity of the radioactive sealed sources. If a commodity is determined to be damaged upon receipt with the potential for leakage of the radioactive sealed source, it will be repackaged appropriately, without any processing, and sent to an appropriate waste disposal facility.

The isotopes to be received will include americium-241, carbon-14, cesium-137, lead-210, nickel-63, promethium-147, cobalt-60, strontium-90, thorium (natural and alloyed with magnesium), uranium (depleted), special nuclear material (check sources only) and sealed sources in gaseous form i.e. hydrogen 3 and krypton 85. The radioactive sealed sources have been evaluated and registered with the NRC pursuant to 10 CFR Part 32, § 32.210, Registration of product information. Additionally, ACERTSF management has established maximum possession limits for each isotope, such that an Emergency Plan pursuant to 10 CFR Part 30, § 30.72 Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release, is not required. The Army also does not intend to store radioactive material for long periods of time. The Army has committed to make shipments of material after repackaging, approximately every 180 days.

Need for Proposed Action

The Army request will:

- Reduce personnel and transportation costs associated with the retrieval of the sealed sources, from temporary job-sites throughout the U.S. or U.S. military bases in other countries;
- Reduce the disposal cost, since the use of each DOT shipping container can be maximized by filling each container to capacity rather than putting one device/sealed source in it for disposal;
- Conserve limited land disposal resources;
- Ensure that the personnel retrieving the sealed sources and devices are specifically authorized to perform these activities, and that they have the most current and highest level of radiological training;
- Ensure that processing of the radioactive materials will be done in a specially designed facility, rather than at temporary job-sites and foreign US military bases; and
- Reduce the turn around time for receipt of reports of leak tests performed on radioactive sources, to verify their acceptability for receipt or transfer.

Environmental Impacts of the Proposed Action

NRC staff reviewed the proposed consolidation and recycle activities, the licensed radiation protection program, and the potential for release of radioactive materials from the Service Facility. The work practices and safety criteria are specified in the Army's application so that operational activities will meet the 10 CFR Part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed Part 20 requirements and are as low as reasonably achievable.

The EA also addressed other Non-radiological impacts, such as transportation, air quality, noise, environmental justice, and endangered species.

Alternatives to the Proposed Action

The alternatives, and the associated impacts and conclusions, are discussed in the EA. These included: no action; contracting with private vendors; and, the proposed action.

Conclusions

Based on the NRC staff evaluation of the licensee's April 10, 2002 license application, for the Rock Island Arsenal facility, as documented in the EA, the staff has determined that the proposed activities can be accomplished in compliance with NRC's public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the issuance of the license will not result in a significant adverse impact on the public health and safety or the environment.

Agencies and Individuals Contacted

NRC staff consulted with the Illinois Department of Nuclear Safety.

Finding of No Significant Impact

Based upon the analysis documented in the EA, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

The NRC Notice of Opportunity for a Hearing will consider all written comments received before July 31, 2002. Comments received after July 31, 2002, may be considered if time permits. Comments should be addressed to the contact listed below.

ADDRESSES: The document U.S. Army Contaminated Equipment Retrograde Team Field Service Facility, Rock Island, Illinois, Environmental Assessment, Finding of No Significant Impact, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC, Region III, 801 Warrenville Road, Lisle, Illinois 60532.

SUPPLEMENTARY INFORMATION: The EA is available for review at NRC's Electronic Reading Room, on the NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html*. The accession [file] number for this document is ML021790380. The NRC Project Manager for this action is Mr. George McCann. Mr. McCann can be reached at (630) 829–9856 at the following address: U.S. Nuclear Regulatory Commission, 801 Warrenville Rd., Lisle, Illinois 60532–4351.

Dated at Lisle, Illinois this 28th day of June, 2002.

For the Nuclear Regulatory Commission.

Bruce L. Jorgensen,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 02–17119 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Nuclear Fuel Services, Inc., Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building at the Nuclear Fuel Services site in Erwin, Tennessee, and has prepared an Environmental Assessment in support of this action. The accession number for the Environmental Assessment is ML021790068.

Summary of Environmental Assessment

Identification of the Proposed Action

The proposed action currently before the U.S. Nuclear Regulatory Commission (NRC) is to allow the licensee to construct and operate a Low-Enriched Uranyl Nitrate Storage Building (UNB) at the Nuclear Fuel Services, Inc. (NFS) site in Erwin, Tennessee, and to increase the ^{235}U possession limit. This action is part of the Blended Low-Enriched Uranium (BLEU) project described below. The other related future activities which were considered to contribute to the environmental impacts for this project are: construction and operation of an Oxide Conversion Building (OCB), construction and operation of a new Effluent Processing Building (EPB), and relocation of downblending operations within the NFS protected area in a BLEU Preparation Facility (BPF).

On March 4, 2002, NRC issued a notice of intent to prepare an environmental assessment (EA) for amendment of Special Nuclear Material (SNM) License No. SNM–124 for NFS. To avoid segmentation of the environmental review, NFS has submitted environmental documentation for three proposed license amendments, which will impact the site over the next few years.

The Environmental Assessment (EA) for these actions does not serve as authorization for any proposed activities, rather it assesses the environmental impacts of the actions. As each amendment application is submitted, the NRC staff will perform a separate safety evaluation, which will be the basis for the approval or denial of the application. As part of the safety evaluation, the NRC will perform an environmental review. If the review indicates that this EA appropriately and adequately assesses the environmental effects of the proposed action, then no further assessment will be performed. However, if the environmental review indicates that this EA does not evaluate fully the environmental effects, another EA [or environmental impact statement (EIS)] will be prepared in accordance with the National Environmental Policy Act (NEPA).

Need for the Proposed Action

The Blended Low Enriched Uranium (BLEU) Project is part of a Department of Energy (DOE) program to reduce stockpiles of surplus high enriched uranium (HEU) through re-use or disposal as radioactive waste. Re-use as low enriched uranium (LEU) is considered the favorable option by the DOE because (1) weapons grade material is converted to a form unsuitable for nuclear weapons (addressing a proliferation concern), (2) the product can be used for peaceful purposes, and (3) the commercial value of the surplus material can be recovered. An additional benefit of re-use is avoidance of unnecessary use of limited radioactive waste disposal space. Framatome ANP Inc. has contracted

with NFS to downblend surplus HEU material to a LEU nitrate and to convert the LEU to an oxide form. The NFS LEU oxide product is expected to be fabricated into commercial reactor fuel at a separate facility, for use in a Tennessee Valley Authority (TVA) nuclear power reactor; however, the NFS proposed action is limited to the production of LEU oxide, receipt and storage of LEU nitrate, down blending of

of material, and the processing, will be similar to what is already licensed at the site. NFS is committed to keeping doses as low as reasonable achievable (ALARA) by maintaining a radiation protection program that minimizes radiation exposures and releases of radioactive material to the environment. In order to accomplish this, NFS has procedures for working with radioactive materials and monitoring programs to

monitoring programs, as required under the NPDES permit. No impact on NPDES permit limits is anticipated with respect to operations at the proposed BLEU Complex or downblending at the BPF. Surface water runoff from the proposed action will generally flow to the northwest across the proposed BLEU Complex. This runoff will drain to culverts at the northwest boundary of the NFS site, and then empty into

groundwater) will be proposed in a forthcoming license amendment request for the BLEU Project. For groundwater monitoring, NFS has indicated a minimum of one upgradient and three downgradient wells will be installed in the vicinity of the proposed BLEU Complex. NRC review of the proposed environmental monitoring program to determine compliance with 10 CFR part 20 requirements provides assurance that

The evaluation of potential accidents is carried out at a general level of detail in the EA to establish that the proposed processes, as described by NFS, will function safely with no significant adverse impacts to safety or the environment. A more detailed evaluation of the proposed processes will be carried out by the NFS in its integrated safety analysis, summaries of which will be submitted in the forthcoming BLEU Project license

operations were evaluated during the NRC review.

Primary hazards associated with the operation of the BLEU Project facilities involve: spill of chemical and or radioactive material in the building, leak in a storage tank or supply piping, release of gaseous and particulate effluents (chemical and/or radioactive materials) due to a malfunction of the process off gas treatment system, and upset in the control of process

with NFS to downblend surplus HEU material to a LEU nitrate and to convert the LEU to an oxide form. The NFS LEU oxide product is expected to be fabricated into commercial reactor fuel at a separate facility, for use in a Tennessee Valley Authority (TVA) nuclear power reactor; however, the NFS proposed action is limited to the production of LEU oxide, receipt and storage of LEU nitrate, down blending of HEU to LEU, and conversion of LEU nitrate to LEU oxide.

Environmental Impacts of the Proposed Action

For the proposed license amendments, construction and processing operations will result in the release of low levels of chemical and radioactive constituents to the environment. Under accident conditions, higher concentrations of materials could be released to the environment over a short period of time.

Normal Operations

Radiological impacts from the proposed BLEU Project operations include release of small quantities of radioactive material to the atmosphere and surface water. Radionuclides that may be released include isotopes and some daughter products of the actinide elements uranium, thorium, plutonium, americium, actinium, and lesser quantities of fission products including technetium, cesium, and strontium. Based on source material properties and processing information, NFS has estimated the quantities of airborne and liquid effluents and used this information to estimate doses to the maximally exposed individual. While some effluents for the proposed action are increasing in relation to current releases, the total annual dose estimate for the maximally exposed individual from all planned effluents is 0.022 mSv (2.2 mrem). This result is well below the annual public dose limit of 1 mSv (100 mrem) in 10 CFR Part 20 and the 0.1 mSv (10 mrem) ALARA constraint. The estimated dose for a number of radionuclides is conservative, because the analysis assumed no pollution controls were in place.

Solid wastes generated by BLEU Project operations will be packaged into drums or boxes. Each container will be assayed for uranium content to verify that storage, shipment, and disposal requirements are met.

The potential for increase in dose to workers at NFS due to the BLEU project was evaluated. Operation of the BPF, OCB and UNB is not expected to increase the dose to workers at the NFS facility, because the types and quantity of material, and the processing, will be similar to what is already licensed at the site. NFS is committed to keeping doses as low as reasonable achievable (ALARA) by maintaining a radiation protection program that minimizes radiation exposures and releases of radioactive material to the environment. In order to accomplish this, NFS has procedures for working with radioactive materials and monitoring programs to determine the doses received by employees.

Impacts from non-radiological contaminants to air, surface water, and groundwater were also assessed. Air quality is protected by enforcing emission limits and maintenance requirements for pollution control equipment, as required by several operating permits issued by the Tennessee Air Pollution Control Board, Department of Environment and Conservation. The primary non-radiological emissions are expected to include nitrogen oxides, hydrogen and ammonia. Normal emissions of gaseous effluents from the new processes are not expected to have a significant impact on offsite non-radiological air quality, because the estimated concentrations at the nearest site boundary are below the State of Tennessee primary air quality standards, with the exception of nitrogen oxides. For nitrogen oxides, NFS will exceed the current allowable limit; however, NFS is requesting modification to the existing air pollution control permit for the main stack. Modification of the permit is required because of changes in material input from the BPF and installation of additional process and ventilation equipment. This modified permit for the main stack has not been issued as of this EA; however, NRC expects that the State, under its authority to regulate air quality, will continue to set permit levels to limit environmental impacts from NFS effluents.

The proposed BPF and BLEU Complex are expected to produce liquid effluents. BPF waste streams will be sent to the NFS wastewater treatment facility and discharged into the Nolichucky River in accordance with the National Pollutant Discharge Elimination System (NPDES) permit and NRC radiological effluent limits in 10 CFR part 20. This liquid effluent will consist of raffinate, condensate, scrubber waste solution, and sodium hydroxide. The basic and acidic waste streams will be treated using precipitation and ion exchange processes.

Surface water quality is expected to be protected from future site activities by enforcing release limits and monitoring programs, as required under the NPDES permit. No impact on NPDES permit limits is anticipated with respect to operations at the proposed BLEU Complex or downblending at the BPF. Surface water runoff from the proposed action will generally flow to the northwest across the proposed BLEU Complex. This runoff will drain to culverts at the northwest boundary of the NFS site, and then empty into Martin Creek. A storm water construction permit will be obtained from the Tennessee Department of Environment and Conservation prior to any construction activities that would disturb the land. Erosion and sediment control measures (e.g., straw bales and silt fences) will be employed to mitigate surface runoff into the drainage ditches and Martin Creek, thus reducing the impacts to surface water during the construction of the proposed BLEU Complex. Sluice gates will be installed at collection points within the proposed BLEU Complex for containment of any hazardous spills during the lifetime of BLEU operations.

Previous operation of the plant has resulted in localized chemical and radiological contamination of groundwater, including beneath the BPF. Groundwater monitoring conducted by NFS indicates that plumes of uranium, tetrachloroethylene, trichloroethylene, 1,2-dichloroethylene, and vinyl chloride, from past operations, could migrate offsite in the direction of the Nolichucky River. To address potential environmental impacts from this contamination, NFS has removed much of the source contamination through extensive remediation projects including excavation of contaminated areas in the North Site. In addition, NFS is decommissioning the Radiological Burial Ground and the North Site to remove more of the source of this contamination. NFS also is working with the Tennessee Department of Environment and Conservation and the U. S. Environmental Protection Agency to design remedial strategies and to investigate the off-site extent of existing plumes.

The addition of the BLEU Complex will expand the physical site of the Erwin plant. Current environmental monitoring stations do not provide adequate coverage of the expanded site area. In addition, the current monitoring program lacks adequate coverage for groundwater in the vicinity of the proposed BLEU Complex. NFS plans to expand the existing environmental monitoring program to cover the BLEU Complex. Additional monitoring locations (e.g., air, vegetation, soil,

groundwater) will be proposed in a forthcoming license amendment request for the BLEU Project. For groundwater monitoring, NFS has indicated a minimum of one upgradient and three downgradient wells will be installed in the vicinity of the proposed BLEU Complex. NRC review of the proposed environmental monitoring program to determine compliance with 10 CFR part 20 requirements provides assurance that an adequate program will be in place prior to making a decision on the license amendments.

For normal operations, the proposed action will not discharge any effluents to the groundwater; therefore, no adverse impacts to groundwater are expected. Accidental releases of contaminants to groundwater appear unlikely due to design and control measures implemented by NFS.

A field investigation was conducted on the proposed BLEU complex site to determine the absence or presence of rare, threatened, or endangered plants. The survey focused primarily on the twenty federally listed threatened and endangered plants, but the State of Tennessee listing of rare and endangered vascular plants was also used for this survey. The results of the survey were that none of the plants on the federal or state lists were found to be present on this site; and the proposed actions on this site are not likely to adversely affect state and federally listed rare, threatened, or endangered plant species.

Unicoi County, the area in which the NFS site is located, contains one Federally Endangered mussel species, Appalachian elktoe (Alasmidonta raveneliana) near the confluence of the Nolichucky River and South Indian Creek. Because this is upstream of the confluence of the Nolichucky River and Martin Creek and the NFS site, no impact is expected on this species. No other threatened or endangered species listed on the Federal or State Threatened or Endangered Species List for the Region of Interest are known to potentially reside on the NFS site.

No impacts are expected on land use, biotic resources, socioeconomic resources, or cultural resources.

Accident Conditions

The conversion of HEU materials to low-enriched uranium dioxide at the BLEU Project will require the handling, processing, and storage of radioactive material and hazardous chemicals. An uncontrolled release of these materials from accidents could pose a risk to the environment as well as to workers and public health and safety.

The evaluation of potential accidents is carried out at a general level of detail in the EA to establish that the proposed processes, as described by NFS, will function safely with no significant adverse impacts to safety or the environment. A more detailed evaluation of the proposed processes will be carried out by the NFS in its integrated safety analysis, summaries of which will be submitted in the forthcoming BLEU Project license amendment requests.

The dissolution and downblending of HEU feed materials to low-enriched uranyl nitrate (UN) solution will be carried out in the BLEU Processing Facility. Remaining operations will be performed in the BLEU Complex area. This will include the storage of low-enriched UN solution in the UNB followed by further processing into uranium dioxide powder in the OCB, and treatment of the liquid effluent stream from the OCB in the EPB.

The primary chemicals used in the dissolution and downblending processes taking place in the BPF are: Nitric acid (70 percent solution); hydrogen peroxide (30 percent solution); sodium hydroxide (30 percent solution); sodium nitrate (45 percent solution); barium oxide (BaO); tributyl phosphate [$(C_4H_9)_3PO_4$]; normal paraffin fluid (Nopar 12 fluid); sodium carbonate (Na_2CO_3). The radioactive feed materials used include HEU/aluminum alloy, HEU metal (buttons), and natural uranium oxide. Reaction products and intermediates include sodium diuranate and UN solutions.

The main chemicals to be used and stored in the BLEU Complex are: low-enriched UN solution, anhydrous ammonia, aqueous ammonia (23 percent solution), nitric acid (50 percent solution), nitric acid (7 percent solution), liquid nitrogen, sodium hydroxide (50 percent solution), liquified petroleum gas (propane), and diesel fuel.

Many of the proposed process operations are patterned after existing NRC licensed processes, so operational experience and history build confidence that operations can be executed safely. Proposed process operations, such as the downblending of high-enriched UN to low-enriched UN, liquid-liquid extraction to purify UN solution, and HEU storage are very similar to corresponding processes licensed under NRC License SNM–124. The LEU solution will be converted to uranium dioxide powder in the OCB using the Framatome ANP Inc. process that is authorized by NRC License SNM–1227. Potential hazards associated with new operations were evaluated during the NRC review.

Primary hazards associated with the operation of the BLEU Project facilities involve: spill of chemical and or radioactive material in the building, leak in a storage tank or supply piping, release of gaseous and particulate effluents (chemical and/or radioactive materials) due to a malfunction of the process off gas treatment system, and upset in the control of process parameters leading to undesirable reactions and release of hazardous or explosive compounds such as hydrogen, hydrogen peroxide, ammonia, nitrogen oxides, nitric acid vapors. The loss of control of the process may include release of radioactive materials and nuclear criticality. These accidents can potentially impact worker safety, public health and safety, and the environment.

Primary controls relied upon to guard against inadvertent nuclear criticality in processing operations include concentration limits and use of favorable geometry process vessels. Measures to ensure chemical safety and safe handling of radioactive materials include the following:

- Tanks will be bermed for spill control and isolation
- Tanks will be equipped with level control for overfill protection
- Process off gases will be treated through scrubbers and HEPA filters prior to stack discharge
- Process parameters will be controlled, and concentrations of hazardous or explosive chemicals will be maintained at safe levels. For example, sodium nitrate will be used in the HEU aluminum alloy dissolution process to minimize the formation of hydrogen, and air will be used in the dissolver to dilute the small quantities of hydrogen formed to safe levels

Based on the information furnished in the NFS reports and summarized above, the safety controls to be employed in the processes for the BLEU Project appear to be sufficient to ensure planned processing will be safe.

Cumulative Impacts

The Studsvick Facility is located adjacent to the NFS property, just south of the proposed BLEU complex. This facility is licensed by the state to process radioactive wastes. Due to the proximity of the two facilities, the staff evaluated cumulative radiological impacts from air effluents, liquid effluents, and direct radiation. The annual average of NFS effluent data from 1996 through 2000 and the most recent effluent data (CY2000) from the operations at Studsvick adequately characterize the impacts from current

operations. Foreseeable future impacts of the BLEU Project (including BLEU Preparation facility, additional Waste Water Treatment Facility effluents and BLEU Complex effluents) were also considered.

Future impacts from air emissions from NFS operations are estimated using environmental monitoring data from 1996 through 2000. The air emissions estimate for Studsvick, Inc., is

sites), the monitoring program ensures that this dose will not exceed regulatory limits. Both facilities have successfully demonstrated compliance in the past. Due to the nature of the materials in the BLEU complex, direct radiation is not expected to increase as a result of this project.

Agencies and Persons Consulted

The following agencies were

publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to

For the U.S. Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–17118 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

control of radioactive materials (e.g., NRC and licensee programs for source control, the General License Program, Orphan Sources, NMED, International activities, etc.)

H. *1:30–2:30 p.m.: Agreement State Programs* (Open)—The Director, Office of State and Tribal Programs (OSTP) will discuss the NRC Agreement State Oversight Program (Integrated Materials Performance Evaluation Program).

by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

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operations. Foreseeable future impacts of the BLEU Project (including BLEU Preparation facility, additional Waste Water Treatment Facility effluents and BLEU Complex effluents) were also considered.

Future impacts from air emissions from NFS operations are estimated using environmental monitoring data from 1996 through 2000. The air emissions estimate for Studsvick, Inc., is based on year 2000 data. To bound the impacts, the baseline dose from NFS operations and current estimates of doses attributable to Studsvick are added to the foreseeable future impacts of BLEU Project operations. Though it is not likely that the same individual is the maximally-exposed individual for each of the facilities, the sum of these doses are considered to bound future impacts.

As demonstrated in semi-annual effluent reports, current liquid releases from the NFS site are well within the regulatory limits listed in 10 CFR part 20. NFS has provided conservatively-derived estimates of future discharges from the BLEU Project which were estimated using NCRP 123. The dose from these effluents, which are dominated by contributions from the solvent extraction raffinate at the BLEU preparation facility, when added to existing effluents, remain within regulatory limits.

The staff evaluated cumulative impacts to the sewer system of combined NFS, BLEU Project and Studsvick by estimating bounding concentrations that would be present in individual streams. NFS estimated the discharge from the BLEU Complex to be 6,300 gallons per day. This daily discharge volume was used to convert estimated quantities of annual discharges from the BLEU Complex (in units of curies) in terms of liquid concentration. Concentration values for Studsvick were also obtained from a year 2000 inspection report.

The bounding contributions from either NFS baseline operations or future BLEU operations are used to compare against the 10 CFR part 20, appendix B sewer discharge limits. These impacts, along with the discharge fractions from Studsvick operations, are summed for comparison using the unity rule. The value of 0.059 is considerably less than 1, which indicates that sewer discharges will remain a low cumulative impact.

Direct radiation monitoring data are available for both Studsvick, Inc. and NFS operations. Both licensees and the State of Tennessee Department of Environment and Conservation monitor direct radiation. Because the direct radiation monitored at the fenceline is a cumulative value (dose from both sites), the monitoring program ensures that this dose will not exceed regulatory limits. Both facilities have successfully demonstrated compliance in the past. Due to the nature of the materials in the BLEU complex, direct radiation is not expected to increase as a result of this project.

Agencies and Persons Consulted

The following agencies were consulted during the preparation of the EA:

- Tennessee Historical Commission, Division of Archaeology
- U.S. Fish and Wildlife Service, and
- State of Tennessee, Department of Environment and Conservation, Division of Radiological Health.

Conclusion

The NRC has concluded that the proposed action to construct and operate the UNB at the NFS site will not result in significant impact to human health or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment, as summarized above, related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), accession number ML021790068. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin Tennessee, 37650–9718; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Micheal Lesar, Chief, Rules Review and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 28th day of June, 2002.

For the U.S. Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–17118 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 136th meeting on July 23–25, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, July 23, 2002

A. *12:30–12:40 p.m.: Opening Statement*—(Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *12:40–3:15 p.m.: Yucca Mountain Review Plan, Revision 2* (Open)—The Committee will hear presentations from industry and government representatives on the proposed plan. In addition it will discuss the elements of a letter report.

C. *3:30–6 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Long-Term Behavior of Waste Packages
- Igneous Activity Considerations
- High-Level Waste Performance Assessment Sensitivity Studies

Wednesday, July 24, 2002

D. *8:30–8:35 a.m.: Opening Statement* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

E. *8:35–9:40 a.m.: Greater-than-Class C (GTCC)* (Open)—The Committee will be briefed by a DOE representative on GTCC related activities.

F. *9:40–11 a.m.: Source Control—A State Perspective* (Open)—The Committee will be briefed by representatives from Illinois and Texas on the materials and radiation control programs in their states.

G. *11:15–12:30 p.m.: Source Control—NRC Activities* (Open)—The Committee will receive an oversight of the technical issues of the NRC program for the control of radioactive materials (e.g., NRC and licensee programs for source control, the General License Program, Orphan Sources, NMED, International activities, etc.)

H. *1:30–2:30 p.m.: Agreement State Programs* (Open)—The Director, Office of State and Tribal Programs (OSTP) will discuss the NRC Agreement State Oversight Program (Integrated Materials Performance Evaluation Program).

I. *2:30–3:30 p.m.: Materials/Waste Issues Related to Advanced Reactors* (Open)—The Committee will receive an information briefing by NRC staff representatives on materials and waste considerations associated with advanced reactors.

J. *3:45–6 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- GTCC/Source Control
- Long-Term Behavior of Waste Packages
- Igneous Activity Considerations
- High-Level Waste Performance Assessment Sensitivity Studies

Thursday, July 25, 2002

K. *8:30–8:35 a.m.: Opening Statement* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

L. *8:35–2:45 p.m.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports noted in Item K.

M. *2:45–3 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public; electronic recordings will be permitted only during those portions of the meeting that are open to the public; and questions may be asked by members of the Committee, its consultants, staff, and the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 4 P.M. EDT, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW*.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: July 2, 2002.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–17116 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 8, 15, 22, 29, August 5, 12, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 8, 2002

Wednesday, July 10, 2002

9:25 a.m.

Affirmation Session (Public Meeting) (If needed).

9:30 a.m.

Briefing on License Renewal Program and Power Uprate Review Activities (Public Meeting) (Contacts: Noel Dudley, 301–415–1154, for license renewal program; Mohammed Shuaibi, 301–415–2859, for power uprate review activities).

This meeting will be webcast live at

receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 3, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–17288 Filed 7–5–02; 11:25 am]

BILLING CODE 7590–01–M

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene

hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date.

Affirmation Session (Public Meeting) (If needed).

9:30 a.m.

Briefing on License Renewal Program and Power Uprate Review Activities (Public Meeting) (Contacts: Noel Dudley, 301–415–1154, for license renewal program; Mohammed Shuaibi, 301–415–2859, for power uprate review activities).

This meeting will be webcast live at the Web address *www.nrc.gov*.

2 p.m.

Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address *www.nrc.gov*.

Week of July 15, 2002—Tentative

Thursday, July 18, 2002

1:55 p.m.

Affirmation Session (Public Meeting) (If needed).

Week of July 22, 2002—Tentative

There are no meetings scheduled for the Week of July 22, 2002.

Week of July 29, 2002—Tentative

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m.

Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703).

This meeting will be webcast live at the Web address *www.nrc.gov*.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 3, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–17288 Filed 7–5–02; 11:25 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 14, 2002 through June 27, 2002. The last biweekly notice was published on June 25, 2002 (67 FR 42814).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 25, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

[1] The most recent version of Title 10 of the CODE OF FEDERAL REGULATIONS, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest .

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

Consumers Energy Company, Docket No. 50–155, Big Rock Point Nuclear Plant, Charlevoix, County, Michigan

Date of amendment request: June 11, 2002.

Description of amendment request: The amendment request changes the Defueled Technical Specifications by adding applicability statements to the requirements for storage and inspection

2. Create the possibility of a new or different kind of accident from any other accident previously evaluated.

The requested amendment involves the addition of applicability statements that will have the effect of making a program requirement associated with the SFP inapplicable when the SFP is no longer used for irradiated fuel storage. The corresponding program requirements are adequately specified in applicable license documents. The elimination of this program requirement following complete removal of irradiated fuel

the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes do not have an impact on the acceptance criteria for any design-basis accident described in the respective MP2 or MP3 Updated Final Safety Analysis Report (UFSAR).

The changes have no impact on plant equipment operation. Since the changes

respective MP2 or MP3 UFSAR and do not impact the consequences of accidents previously evaluated. Therefore, the proposed changes will not result in a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

probability or consequences of an accident previously evaluated. The proposed extension to the Type A testing intervals cannot increase the probability of an accident previously evaluated since extension of the intervals is not a physical plant modification that could alter the probability of accident occurrence, nor is it an activity or modification by itself that could lead to equipment failure or accident initiation. The proposed extension to the Type A testing intervals does not result in a significant increase in the consequences of an accident as documented in NUREG–1493. The NUREG

generically, the design containment leakage rate contributes about 0.1 percent of the overall risk and that decreasing the Type A testing frequency would have a minimal effect on this risk, since 95 percent of the Type A detectable leakage paths would already be detected by Type B and Type C testing. Similar proposed changes have been previously reviewed and approved by the NRC, and they are applicable to Catawba and McGuire.

Based upon the preceding discussion, Duke Energy Corporation has concluded that the proposed amendments do not involve a

Consumers Energy Company, Docket No. 50–155, Big Rock Point Nuclear Plant, Charlevoix, County, Michigan

Date of amendment request: June 11, 2002.

Description of amendment request: The amendment request changes the Defueled Technical Specifications by adding applicability statements to the requirements for storage and inspection of spent fuel and for the program requirements for spent fuel pool water chemistry.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment involves the addition of applicability statements to the program and activity requirements for the storage and inspection of spent fuel activities and requirements and the SFP [spent fuel pool] water chemistry. These applicability statements make requirements applicable whenever irradiated fuel is stored in the SFP. Once irradiated fuel has been completely removed from the SFP and transferred to a certified dry fuel storage container under a general 10 CFR Part 72 license, these program requirements for the SFP are no longer necessary. The program requirements consist of the specification, establishment, implementation, and maintenance of fuel configuration, fuel cooling, and water chemistry for the SFP to minimize the potential effects of decay heat and corrosion.

The corresponding program requirements for fuel storage in dry containers are specified in the container's certificate of conformance and safety analysis report. The corresponding program requirements currently include:

1. Analysis of fuel assemblies to determine maximum temperatures within the fuel assemblies to the temperature at the edge of the assemblies,

2. Design of passive heat removal components to remove heat via convection, conduction, and radiation, and

3. Specifications for canister vacuum drying pressure and helium backfill pressure that would ensure that a sufficiently inert environment is produced within the canister to inhibit corrosion.

The program requirements associated with fuel storage in the SFP do not contribute to accident prevention or mitigation following the complete removal of irradiated fuel. The corresponding program features for fuel storage in dry storage containers are specified and containers are specified and controlled under other applicable license documents. These changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any other accident previously evaluated.

The requested amendment involves the addition of applicability statements that will have the effect of making a program requirement associated with the SFP inapplicable when the SFP is no longer used for irradiated fuel storage. The corresponding program requirements are adequately specified in applicable license documents. The elimination of this program requirement following complete removal of irradiated fuel from the SFP does not result in any new or different accident initiators from those already assumed in accidents previously evaluated, nor does it exacerbate any such accidents. Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The safety margins produced as a result of the specification of program requirements for fuel storage in the SFP are adequately maintained in corresponding program requirements associated with fuel storage in dry storage containers. These corresponding program requirements are specified in the dry storage container's certificate of compliance and safety analysis report. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's significant hazards analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Mikelonis, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Robert A. Gramm.

Dominion Nuclear Connecticut, Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: May 13, 2002.

Description of amendment request: The proposed amendment modifies the Millstone Nuclear Power Station, Unit No. 2 (MP2) and Unit No. 3 (MP3) Technical Specifications (TSs) to change selected MP2 and MP3 radiological-related TSs. These changes are due to the revision to Part 20 of Title 10 of the Code of Federal Regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes do not have an impact on the acceptance criteria for any design-basis accident described in the respective MP2 or MP3 Updated Final Safety Analysis Report (UFSAR).

The changes have no impact on plant equipment operation. Since the changes are administrative or editorial in nature they cannot affect the likelihood or consequences of accidents. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to the Occupational Radiation Exposure Report, Radioactive Effluent Controls Program, and High Radiation Area Specifications in accordance with TSTF travelers 152, 258, and 308 will have no effect on plant operation. Since the proposed changes are solely administrative or editorial in nature, they do not affect plant operation in any way.

The proposed changes do not involve a physical alteration of the plant or change the plant configuration (no new or different type of equipment will be installed). The proposed changes do not require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Since the proposed changes are solely administrative or editorial changes to the TSs, they do not affect plant operation in any way. The proposed changes to each unit's TSs will revise them to reflect the requirements of the current 10 CFR Part 20, standardize terminology, provide clearer guidance, clarify inconsistencies, remove extraneous information, and result in minor format changes that will not result in any technical changes to current requirements.

The proposed changes have no effect on any safety analyses assumptions and therefore do not impact any margins of safety. The proposed changes do not impact any acceptance criteria for the design-basis accidents described in the

respective MP2 or MP3 UFSAR and do not impact the consequences of accidents previously evaluated. Therefore, the proposed changes will not result in a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, CT 06385.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 29, 2002.

Description of amendment request: The amendments would revise the Technical Specifications 5.5.2 to allow, on a one-time basis, extension of the interval governing the conduct of containment integrated leak rate test (ILRT) from ten to fifteen years. The amendments represent a one-time exception to the ten-year frequency of the performance-based Type A tests as delineated by Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program," September 1995. The amendments will allow conduct of each respective unit's ILRT within fifteen years from the last ILRT performed for each unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in these proposed amendments against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed extension to the Type A testing intervals cannot increase the probability of an accident previously evaluated since extension of the intervals is not a physical plant modification that could alter the probability of accident occurrence, nor is it an activity or modification by itself that could lead to equipment failure or accident initiation. The proposed extension to the Type A testing intervals does not result in a significant increase in the consequences of an accident as documented in NUREG–1493. The NUREG notes that very few potential containment leakage paths are not identified by Type B and Type C tests. It concludes that reducing the Type A testing frequency to once per twenty years leads to an imperceptible increase in risk.

Catawba and McGuire provide a high degree of assurance through testing and inspection that the containments will not degrade in a manner detectable only by Type A testing. Recent Type A tests for the Catawba and McGuire units identified containment leakage within acceptance criteria, indicating a very leak tight containment. Inspections required by the ASME Code are also performed in order to identify indications of containment degradation that could affect leak tightness. Separately, Type B and Type C testing, required by TS [Technical Specifications], identify any containment opening from design penetrations, such as valves, that would otherwise be detected by a Type A test. These factors establish that an extension to the Type A test intervals will not represent a significant increase in the consequences of an accident.

Second Standard

The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revisions to the Catawba and McGuire TS add a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A test intervals does not create the possibility of a new or different type of accident since there are no physical changes being made to the plants and there are no changes to the operation of the plants that could introduce a new failure mode.

Third Standard

The proposed amendments will not involve a significant reduction in a margin of safety. The proposed revisions to the Catawba and McGuire TS add a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A test intervals will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing intervals found that a twenty-year interval resulted in an imperceptable increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent of the overall risk and that decreasing the Type A testing frequency would have a minimal effect on this risk, since 95 percent of the Type A detectable leakage paths would already be detected by Type B and Type C testing. Similar proposed changes have been previously reviewed and approved by the NRC, and they are applicable to Catawba and McGuire.

Based upon the preceding discussion, Duke Energy Corporation has concluded that the proposed amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002.

Description of amendment request: The proposed change will revise Appendix 3B and Section 6.2.1.2 of the Updated Safety Analysis Report pertaining to the method of analysis. The proposed change will replace the current vendor THREED code for room pressure-temperature analyses due to High Energy Line Breaks (HELB) with GOTHIC (Generation of Thermal-Hydraulic Information for Containments). The proposed change will allow Entergy Operations, Inc. (EOI) to update the analysis and to evaluate additional changes to the plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with these proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: The proposed change involves no increase in the probability of the accidents previously evaluated since no physical change to the plant will be made. The change of the High Energy Line Break (HELB) analysis method does not affect the probability of the analyzed event occurring.

The line break locations have not been affected and remain as originally designed.

This submittal is required due to the change of HELB analysis code from the vendor code THREED to the modern industry standard analysis code GOTHIC. This is a change in the methodology for determining the effects of the mass and energy release in the plant as a result of currently postulated events. The change in the evaluation methodology has been benchmarked and reviewed to confirm the results remain

the HELB analyses. The use of the GOTHIC code has been approved for pressure/temperature responses analysis at various other plants including Joseph M. Farley Nuclear Plant, Units 1 and 2, and Waterford [Steam Electric Station, Unit] 3.

The results with the revised methods will be used to show that safety equipment meets the EQ requirements. The peak temperatures and pressures in the HELB GOTHIC benchmark model are within the existing EDC [environmental design criteria]

processes for the implementation of certain regulatory requirements. The requested changes will simplify the IP1 TSs to facilitate the IP2 transition to the Improved TSs. The IP1 TSs will be reformatted, reordered and repaginated for consistency and clarity. ENO also proposes that certain changes supersede requirements of the "Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility"[2] (the

affect the design or operation of any plant structure, system, or component.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

This change to TS 1.0 does not affect a design function for or the operation of any plant structure, system, or component. The change does not affect the method of ENO's compliance with any regulation.

The effectiveness of ENO's compliance with 10 CFR 20 is not adversely affected by this change or the change to the section for sealed sources. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The proposed TS change involves the location of routine and event reporting requirements. However, other IP2 TS provisions mandate effective compliance with reporting requirements. In addition, this change does not affect a design function or the operation of any plant structure, system,

assumptions of the prior Safety Evaluation and Environmental Assessment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

In its Safety Evaluation and Environmental Assessment for its January 31, 1996, Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility, the NRC evaluated the acceptability of the

The line break locations have not been affected and remain as originally designed.

This submittal is required due to the change of HELB analysis code from the vendor code THREED to the modern industry standard analysis code GOTHIC. This is a change in the methodology for determining the effects of the mass and energy release in the plant as a result of currently postulated events. The change in the evaluation methodology has been benchmarked and reviewed to confirm the results remain consistent with the current analysis. The changes to the model used for the additional analysis allow the use of new, more physically realistic models for Containment and Auxiliary Building pressure/temperature responses and will demonstrate continued qualification of the equipment in these buildings. Mass and energy releases for some cases have also been recalculated to credit pipe friction, which was only credited for certain cases previously.

With these new results the equipment has been reviewed and remains qualified per current programs established at RBS [River Bend Station]. Therefore, the plant will continue to function as designed and thus there will be no impact on consequences.

2. Will the operation of the facility in accordance with these proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No physical change to the plant will be made. The HELB locations were identified by reviewing all the possible break locations in each Auxiliary and Containment Building volume containing high-energy lines. The locations of the breaks remain the same as the previous HELB analyses. The HELB analyses have been evaluated for the current plant configuration. The new HELB analysis has been benchmarked against the previous accepted methods and found to correlate with the previous analysis. Therefore the results can be used to predict plant responses to events. The proposed change uses improved methods for mass and energy release calculation and pressure / temperature responses to determine the EQ [equipment qualification] qualification envelopes. Therefore, no new or different interaction would be created.

3. Will the operation of the facility in accordance with these proposed changes involve a significant reduction in a margin of safety?

Response: The operation of the facility in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The GOTHIC code has been successfully benchmarked versus the vendor THREED code, which was used in the original design calculations. The HELB analysis results with the benchmarking GOTHIC model are consistent with the THREED results. Therefore, the use of GOTHIC code will not involve a reduction in an identified margin of safety. Given that GOTHIC code is an improved methodology and it has been extensively qualified against the solved analytical problems and testing results, the use of GOTHIC code will produce more accurate pressure/temperature responses for the HELB analyses. The use of the GOTHIC code has been approved for pressure/temperature responses analysis at various other plants including Joseph M. Farley Nuclear Plant, Units 1 and 2, and Waterford [Steam Electric Station, Unit] 3.

The results with the revised methods will be used to show that safety equipment meets the EQ requirements. The peak temperatures and pressures in the HELB GOTHIC benchmark model are within the existing EDC [environmental design criteria] envelopes. Therefore, the pressure/temperature responses from the HELB benchmark analyses have no impact on the equipment qualification.

The methodology in the original design calculations is very conservative. The mass and energy releases without crediting friction introduce excessive amount of high-energy fluid into the break rooms, which is unrealistic. Some HELB calculations have credited both the frictional flows and the additional zone to eliminate excessive conservatism in the pressure/temperature responses. There is no reduction in a margin of safety and the design room differential pressure limits continue to be [met].

The use of this method by EOI RBS is consistent with the guidance given in NRC [U.S. Nuclear Regulatory Commission] Generic Letter 83–11 and Supplement 1, addressing the performance of safety analyses by licensees. EOI has implemented this guidance for the GOTHIC methodology consistent with the intended application. The GOTHIC methodology has been verified and validated by the software vendor. In addition, this methodology is controlled by EOI procedures and under the EOI quality assurance program. This includes EOI and RBS specific verification and validation of this application of GOTHIC and review of the calculations performed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc. (ENO), Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1, Buchanan, New York

Date of application for amendment: May 30, 2002.

Description of amendment request: **The proposed changes will modify the Indian Point Generating Station, Unit 1 (IP1), Technical Specifications (TSs) and Provisional Operating License No. DPR–5. IP1 is completely enclosed within the protected area for Indian Point Nuclear Generating Station, Unit 2 (IP2). IP1 depends on the IP2 TSs and processes for the implementation of certain regulatory requirements. The requested changes will simplify the IP1 TSs to facilitate the IP2 transition to the Improved TSs. The IP1 TSs will be reformatted, reordered and repaginated for consistency and clarity. ENO also proposes that certain changes supersede requirements of the "Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility" [2] (the Order) to ensure compliance with the current requirements of 10 CFR Part 50.59, "Changes, tests, and experiments." and 10 CFR Part 50.82, "Termination of license," for evaluating whether changes can be made to IP1 without NRC approval.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

The NSB [Nuclear Services Building] sewage effluent line radiation monitor is not required to function to mitigate any postulated accident. The design or operation of the radiation monitor on the existing sewage effluent discharge line will not be changed by deleting operability and surveillance requirements for the NSB sewage effluent radiation monitor from the IP1 TS. The nuclear services building sewage effluent line is neither an accident initiator nor mitigator.

The other proposed changes do not result in a change to the design or operation of any plant structure, system or component. Therefore any assumptions of the operability or performance of any structure, system or component in accident evaluations are unchanged.

The proposed fire protection TS 2.11 involves deleting requirements from the IP1 TS that are solely applicable to IP2. Any assumptions of the operability or performance of any structure, system or component in IP2 accident evaluations, including the Fire Plan, are unchanged. Therefore, there is no increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed TS change involves the deletion of operability and surveillance requirements for radioactive effluent monitoring of the NSB sewage effluent from the IP1 TS. The proposed TS changes do not affect the design or operation of any plant structure, system, or component.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

This change to TS 1.0 does not affect a design function for or the operation of any plant structure, system, or component. The change does not affect the method of ENO's compliance with any regulation.

The proposed TS change involving IP1 TS 2.11 statement governs the protection of IP2 safe shutdown systems from fire. Effective protection of IP2 safe shutdown systems from fire is mandated by IP2 License Condition 2.K. The effectiveness of ENO compliance with IP2 License Condition 2.K is not affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The proposed changes to TS sections 3.1 and 3.2 involve eliminating the duplication of requirements in the IP1 TS and incorporating the requirements by reference to the IP2 TS. A single ENO organization operates both IP1 and IP2. The effective organizational requirements to ensure compliance with all ENO IP1 and IP2 site requirements are mandated by the IP2 TS. The effectiveness of ENO's safety management of the Indian Point site is not affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The proposed TS change to sections 4.1 and 5.2 involves eliminating the reference in the IP1 TS to the specific applicable section number of the IP2 TS. A single organization operates both IP1 and IP2. The applicable IP2 TS is obvious by the activity title. The effectiveness of ENO's safety management of the Indian Point site is not affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

Effective compliance with the 10CFR20 requirements for radiation protection and monitoring radioactive effluent releases is mandated by other IP1 and IP2 TS and license provisions. The effectiveness of ENO compliance with 10CFR20 requirements is not adversely affected by the elimination of TS requirements for the radiation protection plan and radioactive effluent monitoring on the nuclear services building sewage effluent line.

The proposed TS change involves requirements for the site Meteorological Monitoring and Radiological Environmental Monitoring programs. However, IP2 TS provisions mandate effective compliance for meteorological and radiological environmental monitoring. The effectiveness of ENO compliance with 10CFR50.47, 10CFR100, and 10CFR20 requirements is not adversely affected by this change. In addition, this change does not affect a design function or the operation of any plant structure, system, or component. IP2 TS provisions mandate effective compliance with requirements for radiation protection. The effectiveness of ENO's compliance with 10 CFR 20 is not adversely affected by this change or the change to the section for sealed sources. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The proposed TS change involves the location of routine and event reporting requirements. However, other IP2 TS provisions mandate effective compliance with reporting requirements. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

The effectiveness of ENO's compliance with 10CFR50.59 is not adversely affected by the clarification and relocation of the applicability of the FSAR [Final Safety Analysis Report]. In addition, this change does not affect a design function or the operation of any plant structure, system, or component.

Therefore, the change does not result in a change to any of the safety analyses or any margin of safety.

ENO also requests that the expiration date of IP1 Provisional Operating License No. DPR–5 be changed from "midnight, October 14, 2002," to "midnight, September 28, 2013," the current expiration date for Facility Operating License No. DPR–26 for IP2.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

In its Safety Evaluation and Environmental Assessment for its January 31, 1996, Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility, the NRC evaluated the acceptability of the possession-only license and safety issues related to SAFSTOR of Indian Point Nuclear Generating Unit No. 1 until September 28, 2013. The requested change does not involve any activity that could change the assumptions of the prior Safety Evaluation and Environmental Assessment.

Therefore, the proposed license amendment does not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

In its Safety Evaluation and Environmental Assessment for its January 31, 1996, Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility, the NRC evaluated the acceptability of the possession-only license and safety issues related to SAFSTOR of Indian Point Nuclear Generating Unit No. 1 until September 28, 2013. The requested change does not involve any activity that could change the assumptions of the prior Safety Evaluation and Environmental Assessment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

In its Safety Evaluation and Environmental Assessment for its January 31, 1996, Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility, the NRC evaluated the acceptability of the possession-only license and safety issues related to SAFSTOR of Indian Point Nuclear Generating Unit No. 1 until September 28, 2013. The requested change does not involve any activity that could change the assumptions of the prior Safety Evaluation and Environmental Assessment.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. John Fulton, Assistant General Consul, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 30, 2002.

Description of amendment request: **The proposed amendment would revise the Facility Operating License and Technical Specifications (TSs) to increase the licensed core thermal power level to 3067.4 megawatts (MWt), which is a 1.4% increase above the currently authorized power level of 3025 MWt. The proposed power uprate involves the improvement in the core power uncertainty allowance originally required for the emergency core cooling system (ECCS) evaluations performed in accordance with Appendix K, "ECCS Evaluation Models," to Part 50 of Title 10 of the Code of Federal Regulations. In addition, changes would be made in TS Sections 2.2, 3.3, 3.4, 3.7, and the applicable TS Bases would be revised to account for the change in power level.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

[2] U.S. Nuclear Regulatory Commission (NRC) letter to Consolidated Edison, "Order to Authorize Decommissioning and Amendment No. 45 to License No. DPR–5 for Indian Point Unit 1 (TAC No. M59664)," dated January 31, 1996.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The evaluations associated with this proposed change to core power level have demonstrated that all applicable acceptance criteria for plant systems, components, and analyses (including the Final Safety Analysis Report Chapter 14 safety analyses) will continue to be met for the proposed 1.4% increase in IP3 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or

The evaluations associated with this proposed change show that all applicable acceptance criteria for plant systems, components, and analyses (including FSAR Chapter 14 safety analyses) will continue to be met for this proposed 1.4% increase in IP3 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Pressurizer water level is an assumed initial condition for certain accident analyses. Plant initial conditions are not accident initiators and do not have an effect on the probability of the accident occurring.

Specification requirement for Mode 1 (Power Operation) or Mode 2 (Plant Startup) and therefore does not affect the assumptions or results of these accident analyses. The margin for RCS design pressure demonstrated by these analysis results is not being reduced. The proposed change only applies to the pressurizer level limit in Mode 3 (Hot Standby) when there is substantially lower thermal energy available to cause rapid expansion of reactor coolant and an insurge to the pressurizer. Protection of the RCS

Irradiated Fuel and Core Alterations." The proposed amendment would also relocate the requirements in TS 3.7.13, "Fuel Storage Building Emergency Ventilation System," and TS 3.3.8, "Fuel Storage Building Emergency Ventilation System Actuation Instrumentation," to the licensee-controlled Technical Requirements Manual.

Basis for proposed no significant

specifications enforce, the presence of 23 feet of water over the irradiated fuel while fuel movement activities are being performed. The analysis also takes credit for, and the technical specification bases enforce a fuel decay time of at least 84 hours. In addition, administrative controls are put in place to provide for closure of containment openings in the event of a[n] FHA. Use of an alternate analysis method does not affect fuel parameters or the equipment used to handle the fuel. The proposed changes to the technical specifications reflect assumptions

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The evaluations associated with this proposed change to core power level have demonstrated that all applicable acceptance criteria for plant systems, components, and analyses (including the Final Safety Analysis Report Chapter 14 safety analyses) will continue to be met for the proposed 1.4% increase in licensed core thermal power for IP3 [Indian Point Unit 3]. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or the operational performance of any potentially affected system, component or analysis. Therefore, the probability of an accident previously evaluated is not affected by this change. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its intended safety function. Further, the radiological dose evaluations in support of this power uprate effort show that the current FSAR [Final Safety Analysis Report] Chapter 14 radiological analyses are unaffected, and that the current dose analyses of record bound plant operation with the subject increase in licensed core thermal power level.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The evaluations of this proposed amendment show that all applicable acceptance criteria for plant systems, components, and analyses (including FSAR Chapter 14 safety analyses) will continue to be met for the proposed 1.4% power increase in IP3 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or analyses. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its safety function. Furthermore, the conditions associated with the subject increase in core thermal power will neither cause initiation of any accident, nor create any new credible limiting single failure. The power uprate does not result in changing the status of events previously deemed to be non-credible being made credible. Additionally, no new operating modes are proposed for the plant as a result of this requested change.

Therefore, the subject increase in core thermal power level will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The evaluations associated with this proposed change show that all applicable acceptance criteria for plant systems, components, and analyses (including FSAR Chapter 14 safety analyses) will continue to be met for this proposed 1.4% increase in IP3 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or analysis. The subject power uprate will not adversely affect the ability of any safety-related system to meet its intended safety function. For example, most IP3 analyses already add a 2% uncertainty allowance to the nominal power level to account solely for power measurement uncertainty. These analyses have not been revised for the 1.4% uprate power level conditions because the sum of increased core power level (1.4%) and the improved power measurement accuracy (uncertainty less than 0.6%) is already bounded by the currently analyzed 2% uncertainty allowance.

Therefore, the subject increase in core thermal power will not involve a reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 3, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4.9, "Pressurizer," to increase the pressurizer water level limit when the plant is in Mode 3 (Hot Standby). The current pressurizer water level limit is applicable for Modes 1, 2, and 3, and will remain unchanged for Modes 1 and 2. The proposed amendment would also revise TS 3.8.4, "DC Sources—Operating," to remove the notes that refer to the one-time amendment allowing the online replacement of station batteries 31 and 32. The notes are no longer applicable since the batteries have been replaced.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Pressurizer water level is an assumed initial condition for certain accident analyses. Plant initial conditions are not accident initiators and do not have an effect on the probability of the accident occurring. The proposed change only revises the specified limit on water level in the pressurizer, so that this change would not affect accident probability.

The specific accidents for which pressurizer water level is an assumed initial condition are a loss of load and a loss of normal feedwater. The limiting accident analysis results occur at full power conditions when the available core thermal power is maximized. The proposed change does not affect the specified pressurizer level limit at any power level from zero to full power. That is, the pressurizer level limit is not being changed in Modes 1 and 2. The proposed change does revise the specified pressurizer water level limit in Mode 3 (Hot Standby) but this does not affect accident analysis results because the limiting analyses will remain those that are postulated to occur in Mode 1 with the plant at full power.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve physical changes to existing plant equipment or the installation of any new equipment. The design of the pressurizer, the pressurizer level control system and the pressurizer safety valves is not being changed and the ability of these systems, structures, and components to perform their design or safety functions is not being affected. The proposed change revises the specified limit on pressurizer water level in Mode 3 (Hot Standby) to allow operators greater flexibility in performing a plant cooldown. The method used in performing the plant cooldown is not being changed. This proposed change does not create new failure modes or malfunctions of plant equipment nor is there a new credible failure mechanism.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Pressurizer level is an initial condition assumed in certain accident analyses involving an insurge in the pressurizer and an increasing reactor coolant system (RCS) pressure. These analyses demonstrate that the design pressure for the RCS is not exceeded for the limiting analyses based on the plant at full power. The proposed change does not affect the existing Technical Specification requirement for Mode 1 (Power Operation) or Mode 2 (Plant Startup) and therefore does not affect the assumptions or results of these accident analyses. The margin for RCS design pressure demonstrated by these analysis results is not being reduced. The proposed change only applies to the pressurizer level limit in Mode 3 (Hot Standby) when there is substantially lower thermal energy available to cause rapid expansion of reactor coolant and an insurge to the pressurizer. Protection of the RCS pressure boundary is still maintained by the pressurizer safety valves, which are not being modified by the proposed change in pressurizer water level.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 5, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to implement the alternate source term methodology for the fuel-handling accident analysis. Specifically, the proposed amendment would revise TS 3.9.3, "Containment Penetrations," to: (1) Permit the equipment hatch opening and the personnel air lock doors to be capable of being closed during movement of irradiated fuel, (2) allow use of administrative controls for unisolating containment penetrations during movement of irradiated fuel, (3) delete the containment purge and containment pressure relief requirements and associated surveillances with the reactor subcritical for less than 550 hours, and (4) eliminate the TS applicability "during core alterations." In this regard, the proposed amendment would adopt TS Task Force (TSTF) Standard TS Change Travelers TSTF–68, "Containment Personnel Airlock Doors Open During Fuel Movement," TSTF–312, "Administratively Control Containment Penetrations," and, in part, TSTF–51, "Revise Containment Requirements During Handling Irradiated Fuel and Core Alterations." The proposed amendment would also relocate the requirements in TS 3.7.13, "Fuel Storage Building Emergency Ventilation System," and TS 3.3.8, "Fuel Storage Building Emergency Ventilation System Actuation Instrumentation," to the licensee-controlled Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the reanalysis of a fuel handing accident (FHA) in containment and in the fuel storage building. The new analysis, based on the Alternate Source Term (AST) in accordance with 10 CFR [Code of Federal Regulations] 50.67, will replace the existing analysis based on methodologies and acceptance criteria in place when Indian Point 3 was originally licensed. As a result of the new analysis, changes to the Technical Specifications are proposed which take credit for the new analysis results.

The proposed changes to the technical specifications modify requirements regarding containment closure during movement of irradiated fuel assemblies in containment and relocate requirements for the fuel storage building emergency ventilation system from the technical specifications to a licensee controlled document. The proposed changes do not involve physical modifications to plant equipment and do not change the operational methods or procedures used for moving irradiated fuel assemblies. As such, there are no accident initiators affected by the proposed amendment. The revised requirements apply only when the plant is in a refueling condition (Mode 6), and specifically only when irradiated fuel is being moved. Previously evaluated accidents with the plant in other conditions ranging from cold shutdown (Mode 5) through power operation (Mode 1) are not affected. The AST methodology is used to evaluate a[n] FHA that is postulated to occur during fuel movement activities in the containment building and the fuel storage building. The analysis follows the guidance of the NRC Regulatory Guide 1.183 and uses the acceptance criteria of the NRC Standard Review Plan (NUREG 0800) for offsite doses and General Design Criteria 19 for control room personnel. The analysis demonstrates that the dose consequences meet regulatory acceptance criteria. The accident analysis conservatively assumes that the containment building and the fuel storage building, including ventilation filtration systems for those building[s] does not diminish or delay the assumed fission product release. The analysis does take credit for, and technical specifications enforce, the presence of 23 feet of water over the irradiated fuel while fuel movement activities are being performed. The analysis also takes credit for, and the technical specification bases enforce a fuel decay time of at least 84 hours. In addition, administrative controls are put in place to provide for closure of containment openings in the event of a[n] FHA. Use of an alternate analysis method does not affect fuel parameters or the equipment used to handle the fuel. The proposed changes to the technical specifications reflect assumptions made in the analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves the use of an alternate analysis methodology for the evaluation of the dose consequences from a[n] FHA that is postulated to occur in either the containment building or the fuel storage building (FSB). The analysis demonstrates that containment closure conditions and operation of the containment purge filtration system are not required to maintain dose consequence within regulatory limits following a postulated FHA in containment. Therefore the new analysis supports proposed changes to requirements for containment closure during movement of irradiated fuel assemblies in containment. The analysis results also demonstrate that operation of the fuel storage building emergency ventilation system is not required to maintain dose consequences within regulatory limits following a postulated FHA in the FSB. The containment closure components (e.g., equipment hatch, personnel airlock doors, and various containment penetrations) and filtration systems are not accident initiators. The proposed changes do not involve the addition of new systems or components nor do they involve the modification of existing plant systems. The proposed changes do not affect the way in which a[n] FHA is postulated to occur.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The existing dose analysis methodology and assumptions demonstrates that the dose consequences of a[n] FHA are within regulatory limits for whole body and thyroid doses as established in 10 CFR 100. The alternate dose analysis methodology and assumptions also demonstrates that the dose consequences of a[n] FHA are within regulatory limits. The limits applicable to the alternate analysis are established in 10 CFR 50.67 in conjunction with the TEDE (total effective dose equivalent) acceptance directed in Regulatory Guide 1.183. The acceptance criteria for both dose analysis methods have been developed for the

purpose of evaluating design basis accidents to demonstrate adequate protection of public health and safety. An acceptable margin of safety is inherent in both types of acceptance criteria.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

same FHA [fuel handling accident] source activity previously accepted in the design-basis FHA analysis. The same source activity is used with the guidance in the Regulatory Guide 1.183, Appendix B and the passive release/transport path, which does not take the dose mitigation credit of engineered safeguards including secondary containment and CREVAS [Control Room Emergency Ventilation] Systems.

Therefore, this proposed amendment does not involve a significant increase in the

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: May 24, 2002.

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing changes to the Peach Bottom Atomic Power Station,

meet their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. All of the NSSS/BOP interface systems will continue to perform their intended design functions. The safety relief valves and containment isolation valves meet design sizing requirements at the uprated power level.

Because the integrity of the plant will not be affected by operation at the uprated condition, it is concluded that all structures,

methods that have either been reviewed and approved by the NRC, or that are in compliance with regulatory review guidance and standards.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

anticipated operational occurrences. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not

purpose of evaluating design basis accidents to demonstrate adequate protection of public health and safety. An acceptable margin of safety is inherent in both types of acceptance criteria.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendment would change the requirements associated with handling irradiated fuel and performing core alterations. Specifically, the changes would eliminate operability requirements for secondary containment when handling recently irradiated fuel and during core alterations. The amendment would also revise the requirements associated with equipment whose performance is not credited in the new calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed TS [Technical Specifications] changes do not modify the design or operation of equipment used to move spent fuel or to perform core alterations. Because the equipment affected by the change is not an initiator to any previously analyzed accident, the proposed change cannot increase the probability of any previously analyzed accident.

The conservative re-analysis of the fuel handling accident concludes that radiological consequences are within the acceptance criteria in Regulatory Guide 1.183 and 10 CFR 50.67. The results of the core alteration events, other than the fuel handling accident, remain unchanged from the original design-basis, which showed that these events do not result in fuel cladding damage or radioactive release. The radiological analysis uses the same FHA [fuel handling accident] source activity previously accepted in the design-basis FHA analysis. The same source activity is used with the guidance in the Regulatory Guide 1.183, Appendix B and the passive release/transport path, which does not take the dose mitigation credit of engineered safeguards including secondary containment and CREVAS [Control Room Emergency Ventilation] Systems.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed post-FHA activity transport path is passive in nature and it does not take the credit of dose mitigation functions previously credited in the design-basis FHA analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does not involve a significant reduction in [a] margin of safety?

Response: No.

The proposed changes revise the FitzPatrick TS to establish operational conditions where specific activities represent situations during which significant radioactive releases can be postulated. These new operational conditions are consistent with the proposed design-basis accident analysis and are established such that the radiological consequences are less than the regulatory allowable limits. Safety margins and analytical conservatisms are retained to ensure that the analysis adequately bounds all postulated event scenarios. The selected assumptions and release models provide an appropriate and prudent safety margin against unpredicted events in the course of an accident and compensates for large uncertainties in facility parameters, accident progression, radioactive material transport and atmospheric dispersion. The proposed TS applicability statements continue to ensure that the TEDE [Total Effective Dose Equivalent] at the control room and the exclusion area and low population zone boundaries are below the corresponding regulatory allowable limits in 10 CFR 50.67(b)(2).

Therefore, these changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: May 24, 2002.

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing changes to the Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS), Operating Licenses and Technical Specifications associated with an increase in the licensed power level. The changes involve a proposed 1.62 percent increase in the licensed reactor core thermal power level (an increase in reactor power level from 3,458 megawatts thermal to 3,514 megawatts thermal). These changes result from increased accuracy of the feedwater flow and temperature measurements to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation. This results in a more accurate determination of reactor core thermal power level. The basis for this change is consistent with the revision, issued in June 2000, to Appendix K to Part 50 of Title 10 of the Code of Federal Regulations, allowing operating reactor licensees to use an uncertainty factor of less than 2 percent of rated reactor thermal power in analyses of postulated design-basis loss-of-coolant accidents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The comprehensive analytical efforts performed to support the proposed uprate conditions included a review and evaluation of all components and systems that could be affected by this change. Evaluation of accident analyses confirmed the effects of the proposed uprate are bounded by the current dose analyses. All systems will function as designed, and all performance requirements for these systems have been evaluated and found acceptable.

The primary loop components (reactor vessel, reactor internals, control rod drive housings, piping and supports, recirculation pumps, etc.) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components.

All of the [Nuclear Steam Supply System] NSSS systems will still perform their intended design functions during normal and accident conditions. The balance of plant [(BOP)] systems and components continue to meet their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. All of the NSSS/BOP interface systems will continue to perform their intended design functions. The safety relief valves and containment isolation valves meet design sizing requirements at the uprated power level.

Because the integrity of the plant will not be affected by operation at the uprated condition, it is concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the core thermal power uncertainty measurement allows most of the current safety analyses to be used, with small changes to the core operating limits, to support operation at a core power of 3514 megawatts thermal (MWt). Other analyses performed at a nominal power level have either been evaluated or re-performed for the 1.62% increased power level. The results demonstrate that the applicable analysis acceptance criteria continue to be met at the 1.62% uprate conditions. As such, all PBAPS Updated Final Safety Analysis Report (UFSAR) Chapter 14 accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. Those analyses performed to assess the effects of mass and energy releases remain valid. The source terms used to assess radiological consequences have been reviewed and determined to bound operation at the 1.62% uprated condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the required acceptance criteria. As appropriate, all evaluations have been performed using methods that have either been reviewed and approved by the NRC, or that are in compliance with regulatory review guidance and standards.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: May 30, 2002.

Description of amendment request: The proposed change revises the safety limit minimum critical power ratio for Unit 1 Cycle 18 for two loop operation and single loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Quad Cities Nuclear Power Station (QCNPS), Unit 1, Cycle 18 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revises the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for QCNPS, Unit 1, Cycle 18.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation.

This will ensure that the fuel design safety criteria (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences) are met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 13, 2002.

Description of amendment request: The amendment would revise the Improved Technical Specifications (ITS) 3.3.8 and associated bases, "Emergency Diesel Generator (EDG) Loss of Power

The proposed change corrects a typographical error, clarifies the wording of Bases Section B 3.3.8 for Actions D.1 and D.2, and revises the required Completion Time to place the plant in MODE 5. The revised Completion Time will allow the plant to be shutdown in an orderly fashion without challenging plant systems or plant cooldown limits. The proposed change does not change the design or operation of the EDG LOPS, and does not impact the ability of the EDG LOPS to perform its design functions. Thus, the proposed amendment will not result in a

Register on December 27, 2001 (66 FR 66949) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal**

consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 29, 2002.

Description of amendment request: The proposed amendment would revise TS 3.8.1, "AC Sources—Operating," to allow portions of Surveillance Requirement (SR) 3.8.1.5 to be

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The standby emergency power sources are primarily a support system for systems required to be operable for accident mitigation. SR 3.8.1.5 demonstrates the standby emergency power source operation, during a loss of offsite power actuation test signal in conjunction with an ESF actuation signal. Performing the surveillance in Mode 1, 2, 3, or 4 will require an assessment to

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 13, 2002.

Description of amendment request: The amendment would revise the Improved Technical Specifications (ITS) 3.3.8 and associated bases, "Emergency Diesel Generator (EDG) Loss of Power Start (LOPS)," by changing the completion time for required action D.2 from 12 to 36 hours. The amendment also corrects a typographical error in ITS 3.3.8 and clarifies the discussion in Bases Section B 3.3.8 for Actions D.1 and D.2 to recognize the applicability of ITS 3.3.8 in MODES 5 and 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed license amendment revises the Required Time to place the plant in MODE 5 if an inoperable loss of voltage Function for the emergency diesel generator (EDG) loss of power start (LOPS) cannot be restored to OPERABLE status, corrects a typographical error in the Section Number of ITS 3.3.8, and clarifies the wording of ITS Bases Section B 3.3.8 for Action D.1 and D.2 regarding the applicability of the specification during MODES 5 and 6.

The EDG LOPS is intended to protect engineered safeguards equipment from damage due to sustained undervoltage conditions, and to ensure rapid restoration of power to the engineered safeguards electrical buses in the event of a loss of offsite power. The EDG LOPS is not an initiator of any design basis accident. The design functions of the EDG LOPS and the initial conditions for accidents that require an EDG LOPS will not be affected by the change. Therefore, the change will not increase the probability or consequences of an accident previously evaluated.

(2) Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment involves no changes to the design functions or operation of the EDG LOPS. Editorial corrections, clarification of the wording in Bases Section B 3.3.8, or changing the Required Completion Time for placing the plant in MODE 5 when an inoperable loss of voltage function cannot be restored will not introduce any new failure mechanisms, malfunctions or accident initiators. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in the margin of safety.

The proposed change corrects a typographical error, clarifies the wording of Bases Section B 3.3.8 for Actions D.1 and D.2, and revises the required Completion Time to place the plant in MODE 5. The revised Completion Time will allow the plant to be shutdown in an orderly fashion without challenging plant systems or plant cooldown limits. The proposed change does not change the design or operation of the EDG LOPS, and does not impact the ability of the EDG LOPS to perform its design functions. Thus, the proposed amendment will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Acting Section Chief: Kahtan N. Jabbour.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendments would delete requirements from the Technical Specifications (TSs) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. However, lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means, or is of little use in the assessment and mitigation of accident conditions.

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the NSHC determination in its application dated June 7, 2002. The NSHC determination is restated below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in [a] margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 29, 2002.

Description of amendment request: The proposed amendment would revise TS 3.8.1, "AC Sources—Operating," to allow portions of Surveillance Requirement (SR) 3.8.1.5 to be performed with the units in Mode 1, 2, 3 or 4. This proposed amendment is consistent with changes made to NUREG–1431, Standard Technical Specifications, Westinghouse Plants, by Technical Specification Task Force (TSTF) Traveler, TSTF–283, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The standby emergency power sources are primarily a support system for systems required to be operable for accident mitigation. SR 3.8.1.5 demonstrates the standby emergency power source operation, during a loss of offsite power actuation test signal in conjunction with an Engineering Safeguards Feature (ESF) actuation signal. The proposed amendment only changes the allowed operating Modes in which portions of this surveillance may be performed. Performing portions of the surveillance in Mode 1, 2, 3, or 4 will require an assessment to determine that plant safety is maintained or will be enhanced.

Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. These changes do not introduce any new or different normal operation or accident initiators. Performing the surveillance in Mode 1, 2, 3, or 4 will require an assessment to determine that plant safety is maintained or will be enhanced.

Equipment important to safety will continue to operate as designed. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The standby emergency power sources are primarily a support system for systems required to be operable for accident mitigation. SR 3.8.1.5 demonstrates the standby emergency power source operation, during a loss of offsite power actuation test signal in conjunction with an ESF actuation signal. Performing the surveillance in Mode 1, 2, 3, or 4 will require an assessment to determine that plant safety is maintained or will be enhanced. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other structures, systems or components (SSCs) important to safety. Therefore, allowing a portion of the surveillance to be performed in Mode 1, 2, 3, or 4, will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 22, 2002.

Description of amendment request: The proposed amendment revises Technical Specifications (TSs) 3/4.3.5, allowing the automatic operation of the atmospheric steam relief valves during Mode 2 to maintain secondary side pressure at or below an indicated steam generator pressure of 1225 psig during startup and shutdown of the reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change only provides another method of controlling the SG PORVs [steam generator power-operated relief valves] under specified operating conditions. The operating conditions in Specification 3/4.3.5 remain unchanged. No change is required to plant design since the proposed method of control is already part of the plant's configuration. The proposed method of control is the same method of control

normally required by the specification in Modes 1 and 2. The proposed method of control will not impact the accident analysis assumptions or results. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The probability or consequences of accidents previously evaluated in the UFSAR [updated final safety analysis report] are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no additional challenges to fission product

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 24, 2002.

Description of amendment request:

provide protection against rod withdrawal errors, and peak fuel energy depositions will remain below the 170 cal/gm threshold criterion defined in the Technical Specifications Bases. Therefore, the proposed change does not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed changes to the plant involve limited changes to protective circuitry, but do not involve any plant hardware changes that could introduce any new failure modes. The changes will not affect non-MSLRM scram and isolation functions. In addition, the MSLRMs will remain active for other trip/isolation functions, and these monitors will still alarm in the control room to alert operators to off-normal conditions.

inspections. The proposed amendment would also correct several grammatical errors.

Date of publication of individual notice in ***Federal Register:*** June 25, 2002 (67 FR 42806).

Expiration date of individual notice: July 25, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has

normally required by the specification in Modes 1 and 2. The proposed method of control will not impact the accident analysis assumptions or results. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed method of controlling the SG PORVs is the same method that these valves are controlled in Modes 1 and 2 by the specification under normal conditions. The proposed change will allow the setpoint of these valves to be adjusted to support startup and shutdown activities. The adjustment of the setpoint is restricted so that the accident analysis is not impacted. No change to the design of the valves or plant configuration is required to implement the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change that will allow for an additional method of controlling the SG PORVs during startup and shutdown activities is consistent with the operating restrictions for the current method of valve control. The accident analysis assumptions and results will remain unaffected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 23, 2002.

Description of amendment request: **The proposed amendment revises the near-end of life (EOL) Moderator Temperature Coefficient (MTC) Surveillance Requirements by placing a set of conditions on core operation.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability or consequences of accidents previously evaluated in the UFSAR [updated final safety analysis report] are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no additional challenges to fission product barrier integrity. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no affect on the availability, operability, or performance of the safety-related systems and components. A change to a surveillance requirement is proposed, but the limiting conditions for operation required by the Technical Specifications are not changed.

The Technical Specifications Bases are founded in part on the ability of the regulatory criteria to be satisfied assuming the limiting conditions for operation are met for the various systems. Conformance to the regulatory criteria for operation with the conditional exemption from the near-EOL MTC measurement is demonstrated and the regulatory limits are not exceeded. Therefore, the margin of safety as defined in the TS [technical specification] is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 24, 2002.

Description of amendment request: **The proposed amendments would allow Mode 2 (startup) operation with two, rather than three, intermediate range monitor channels per trip system.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The intermediate range monitors (IRMs) monitor neutron flux levels in the reactor core during startup. The IRM detectors are capable of generating a trip signal during a continuous rod withdrawal error in the startup range. However, the IRMs perform no function related to the probability of occurrence of a previously evaluated accident. Also, the IRM trip signal is not necessary to mitigate the limiting control rod withdrawal error. The limiting case assumes the trip signal is generated from the safety-related average power range monitor (APRM). Therefore, the consequences of this previously evaluated abnormal operating transient are not increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change reduces the number of required operable IRM channels per trip system from three to two. However, the manner in which the actuation logic functions and the systems respond are unaffected by the proposed change. Furthermore, the IRMs will continue to perform their design function of core monitoring during startup and mitigating nonlimiting transient events postulated to occur during startup. Therefore, the proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The Bases for Units 1 and 2 Technical Specification Table 3.3.1.1–1 state the "IRMs are capable of generating trip signals that can be used to prevent fuel damage resulting from abnormal operating transients in the intermediate power (startup) range." The proposed change ensures the IRMs will still effectively mitigate these events. The most significant source of reactivity change is due to a control rod withdrawal error. With the proposed change, the IRMs will continue to

provide protection against rod withdrawal errors, and peak fuel energy depositions will remain below the 170 cal/gm threshold criterion defined in the Technical Specifications Bases. Therefore, the proposed change does not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 19, 2002, as supplemented on June 3, 2002.

Description of amendment request: The proposed Technical Specification changes involve the removal of the existing scram function and Group 1 isolation valve closure functions of the Main Steam Line Radiation Monitors (MSLRM). An explicit requirement for periodic functional test and calibration of the MSLRM is added to maintain operability of the mechanical vacuum pump (MVP) isolation function. This proposed no significant hazards consideration determination replaces in its entirety the notice published in the **Federal Register** on May 14, 2002 (67 FR 34495).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram and Group 1 isolation functions of the MSLRMs do not serve as initiators for any of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR). The MSLRM scram function is not credited in the UFSAR, and the Group 1 isolation trip function of the MSLRMs was only assumed in one design-basis event which was the control rod drop accident. Because these functions are not initiators of accidents, their removal does not increase the probability of occurrence of previously evaluated accidents.

There is no accident analysis that relies on the high radiation scram of the reactor protection system and its removal has no impact on the consequences of accidents previously evaluated. The results of the control rod drop accident analysis remain within approved guidelines, thus any potential increase in consequences would not be considered significant.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed changes to the plant involve limited changes to protective circuitry, but do not involve any plant hardware changes that could introduce any new failure modes. The changes will not affect non-MSLRM scram and isolation functions. In addition, the MSLRMs will remain active for other trip/isolation functions, and these monitors will still alarm in the control room to alert operators to off-normal conditions.

Therefore, the removal of the Group 1 isolation valve closure and scram functions of the MSLRMs does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change involves the elimination of the scram and Group I isolation signal from the MSLRMs. Operation under the proposed change will not change any plant operation parameters, nor any protective system setpoints other than removal of these functions. The effects of the control rod drop accident without the MSLRM scram and isolation signal results in doses which remain well within 10 CFR Part 100, "Reactor Site Criteria," limits.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 13, 2002.

Brief description of amendment request: The proposed amendment would revise Technical Specifications Section 4.13.A, "Inspection Requirements," to allow the use of the optimum eddy current probe size when performing steam generator tube inspections. The proposed amendment would also correct several grammatical errors.

Date of publication of individual notice in ***Federal Register:*** June 25, 2002 (67 FR 42806).

Expiration date of individual notice: July 25, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: April 17, 2001.

Brief description of amendment: The amendment makes editorial and administrative corrections to Technical Specifications (TS) Section 3.3,

"Instrumentation," and eliminates minor discrepancies between TS Section 3.3 and other plant licensing basis documents.

Date of issuance: June 25, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 152.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66463). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2002.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: February 21, 2002.

Brief description of amendment: The amendment authorizes changes to the Updated Final Safety Analysis Report

Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: June 27, 2002.

Effective date: June 27, 2002.

Amendment No.: 212.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 14, 2002.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 18, 2002.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 18, 2001, as supplemented by letters dated January 30, and March 1, 2002.

Brief description of amendment: The amendment revises (1) the reference point for reactor vessel level instrumentation specifications to use instrument "zero" instead of "top of active fuel;" (2) simplifies the safety limits and limiting safety system settings to eliminate specifications that are

"Instrumentation," and eliminates minor discrepancies between TS Section 3.3 and other plant licensing basis documents.

Date of issuance: June 25, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 152.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66463). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 2002.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: December 13, 2001.

Brief description of amendments: The amendments revise Item d of TS 5.5.11, "Ventilation Filter Testing Program (VFTP)," to lower the maximum allowable differential pressure across the engineered safety features ventilation systems units when tested at the specified system flow rates.

Date of issuance: June 18, 2002.

Effective date: June 18, 2002, and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: Unit 1–142, Unit 2–142, Unit 3–142.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5325). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: November 19, 2001, as supplemented March 27, 2002

Brief description of amendment: The amendment revises Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of the Unit 2 steam generators.

Date of issuance: June 27, 2002.

Effective date: As of the date of issuance to be implemented following the Unit 2 refueling and steam generator replacement outage in spring 2003.

Amendment No.: 230.

Renewed License No. DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12599).

The March 27, 2002, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2002.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: February 21, 2002.

Brief description of amendment: The amendment authorizes changes to the Updated Final Safety Analysis Report (UFSAR) and the Technical Requirements Manual to eliminate the chlorine detection function from the control center heating, ventilation and air conditioning system. Changes to the UFSAR are subject to the requirements of 10 CFR 50.59; however, the changes were submitted to the Nuclear Regulatory Commission for review and approval since they involve the elimination of an automatic action.

Date of issuance: June 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 147.

Facility Operating License No. NPF–43: Amendment revises the UFSAR and TRM.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18643). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2002.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 24, 2001.

Brief description of amendment: The amendment deletes License Condition 2.C.(11), which required inspection of the low-pressure turbine discs during the second refueling outage and specified that the frequency of subsequent inspections should be in accordance with the turbine manufacturer's recommendations. License Condition 2.C.(11) is no longer applicable to Fermi 2.

Date of issuance: June 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 148.

Facility Operating License No. NPF–43: Amendment revises the License.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64288). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: June 21, 2000, as supplemented by letters dated April 30 and May 20, 2002.

Brief description of amendments: The amendments authorize changes to the Updated Final Safety Analysis Report Section 10.4.7, "Emergency Feedwater System."

Date of Issuance: June 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 325/325/326.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments authorized changes to the UFSAR.

Date of initial notice in ***Federal Register:*** July 26, 2000 (65 FR 46008). The supplement dated April 30 and May 20, 2002, provided clarifying information that did not change the scope of the June 21, 2000, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: April 16, 2001, as supplemented by letters dated November 8, 2001, and February 11, 2002.

Brief description of amendment: The amendment authorizes the licensee to modify the Final Safety Analysis Report (FSAR) to allow an unisolable drain line between the reactor core isolation cooling and the control rod drive/condensate pump rooms and identify the pump room doors and penetration seals that are not watertight. In addition, the change documents the minimum acceptable safe shutdown equipment.

Date of issuance: June 19, 2002.

Effective date: June 19, 2002, and shall be implemented in the next periodic update to the FSAR in accordance with 10 CFR 50.71(e).

Amendment No.: 176.

Facility Operating License No. NPF–21: The amendment revises the FSAR.

Date of initial notice in ***Federal Register:*** May 16, 2001 (66 FR 27175). The November 8, 2001 and February 11, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 11, 2002.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed Surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: June 27, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 212.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34485). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 13, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: June 10, 2002.

Effective date: As of the date of issuance and shall be implemented in conjunction with the implementation of Amendment No. 215.

Amendment No.: 217.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21287). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 1, 2001.

Brief description of amendments: These amendments revise Limerick Generating Station's Units 1 and 2 Technical Specifications by deleting Section 6.4, "Training."

Date of issuance: June 14, 2002.

Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 160/122.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 14, 2002.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 18, 2002.

Brief description of amendment: The proposed amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: June 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 203.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34487). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2002.

No significant hazards consideration comments received: No.

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: February 8, 2002.

Brief description of amendment request: The amendment would replace referenced control requirements for access to high radiation areas with the actual requirements of 10 CFR Part 20, and would replace the existing Three Mile Island Nuclear Station, Unit 2, Technical Specifications (TS) Section 6.11 with the wording contained in Three Mile Island Nuclear Station, Unit 1, TS Section 6.12.

Date of issuance: June 27, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 58.

Facility Operating License No. DPR–73: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15623). The Commission's related evaluation of the amendment is contained in a safety evaluation dated June 27, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 18, 2001, as supplemented by letters dated January 30, and March 1, 2002.

Brief description of amendment: The amendment revises (1) the reference point for reactor vessel level instrumentation specifications to use instrument "zero" instead of "top of active fuel;" (2) simplifies the safety limits and limiting safety system settings to eliminate specifications that are unnecessary, outdated, or redundant to other Technical Specifications (TSs); (3) changes the reactor coolant system pressure safety limit from 1335 psig to 1332 psig to correct a minor calculation error; and (4) makes corresponding TS Bases changes.

Date of issuance: June 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 128.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38764). The supplements dated January 30 and March 1, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: January 10, 2002.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: June 19, 2002.

Effective date: June 19, 2002, shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–153; Unit 2–153.

Facilit Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10014). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: May 22, 2002, as supplemented by letters dated June 10, and June 14, 2002.

Brief description of amendment: This amendment revises Technical Specification requirements for Feedwater Control Valves and Associated Bypass Valves and allowed for the extended out-of-service time for one or more FIVs. In addition, a footnote which allowed a one-time extension for Condition A Completion Time, has been deleted because it is no longer applicable.

Date of issuance: June 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: NPF–67, Amendment

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the pilot revenue sharing program filed for immediate effectiveness on March 25, 2002.[3] Under the CSE's program for trading Nasdaq NM securities, member transactions in Nasdaq National Market securities ("Nasdaq NM Securities") and to establish a revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is below. Additions are in italics, and deletions are in brackets.

Chapter XI

Trading Rules

proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to

notice is hereby given that on April 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. PCX submitted Amendment No. 1 to the proposed rule change on June 11, 2002.[3] The Commission is publishing this

No significant hazards consideration comments received: No.

Southern California Edison Company, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: May 22, 2002, as supplemented by letters dated June 10, and June 14, 2002.

Brief description of amendment: This amendment revises Technical Specification (TS) TS 5.5.2.11.f.1.b, "Steam Generator (SG) Tube Surveillance Program," to more clearly delineate the scope of the SG tube inspection required in the tubesheet region. This TS change will apply only to Cycle 12 (Unit 2) and Cycle 11 (Unit 3) operations.

Date of issuance: June 17, 2002.

Effective date: June 17, 2002, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2—189 ; Unit 3—180.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (67 FR 38150 dated May 31, 2002). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 1, 2002, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of California and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 17, 2002. The June 10, and June 14, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 25, 2002, as supplemented by the letter dated April 23, 2002.

Brief description of amendments: The proposed change revised the Technical Specification (TS) 3.7.3, "Feedwater Isolation Valves (FIVs) and Associated Bypass Valves," to adopt the NUREG–1431, "Standard Technical Specifications for Westinghouse Plants," Revision 2 version of the specification. The requirements of revised TS 3.7.3 added, among other things, operability and suitable surveillance requirements for Feedwater Control Valves and Associated Bypass Valves and allowed for the extended out-of-service time for one or more FIVs. In addition, a footnote which allowed a one-time extension for Condition A Completion Time, has been deleted because it is no longer applicable.

Date of issuance: June 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: NPF–87, Amendment No. 97 and NPF–89, Amendment No. 97.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34492). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 20, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of July 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–16956 Filed 7–8–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46147; File No. SR–CSE–2002–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Extending a Pilot Revenue Sharing Program for Trading in Nasdaq National Market Securities

June 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot related to a fee schedule for transactions in Nasdaq National Market securities ("Nasdaq NM Securities") and to establish a revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is below. Additions are in italics, and deletions are in brackets.

Chapter XI

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees (No Change to Text)

* * * * *

(e)*(1)* (No Change to Text)

(2) Tape "C" Transactions. Tape "C" Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges ("UTP"). Members will be charged a per share fee for Nasdaq securities based upon the following schedule:

Number of Shares Traded (In a single day)	*Fee Per Share*
0–5 million	*$0.001*
5 million one plus+	*$0.000025*

* * * * *

(l) [Tape "C" Transactions. Tape "C" Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges ("UTP"). Members will be charged $.001 per share per side ($1.00/1000 shares), with a maximum charge of $37.50 per firm per side, for Tape C Transactions.]

[Tape "C" Transaction Credit. Members will receive a 75 percent pro rata credit on revenue generated by transactions in Tape "C" securities.

[(l)]*(m)* (No Change in Text)

[(m)]*(n)* (No Change in Text)

[(n)]*(o)* (No change in Text)

[(o)]*(p)* (No change to text).

[(p)]*(q)* (No change to text)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the pilot revenue sharing program filed for immediate effectiveness on March 25, 2002.[3] Under the CSE's program for trading Nasdaq NM securities, member firms will receive a 75 percent revenue (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by member trading activity. The pilot program will expire August 30, 2002, if not renewed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] generally, and section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal also is consistent with Section 6(b)(4) of the Act[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] as establishing or changing a due, fee, or other charge paid solely by members of the CSE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–2002–06 and should be submitted by July 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17130 Filed 7–8–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 45642 (March 26, 2002), 67 FR 15436 (April 1, 2002) (File No. SR–CSE–2002–03).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46128; File No. SR–PCX–2002–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Maintenance of Books and Records

June 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. PCX submitted Amendment No. 1 to the proposed rule change on June 11, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes new rules, PCX Rule 4.20 and 4.21, in order to codify the existing obligations of Members and Member Organizations to keep and preserve books and records. The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

Books and Records

Rule 4.20*(a)* [Reserved.] *Each Member and Member Organization must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 and the rules and regulations thereunder (including any interpretation relating thereto) as though such Members or Member Organization were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act. No Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an Exchange investigation.*

Commentary:

.01 The following Exchange Rules contain specific requirements with regard to the maintenance, retention and furnishing of books, records and other information: Rules 1.16, 2.1, 2.4, 2.6, 2.7, 2.8, 2.10, 2.11, 2.12, 2.15, 2.18, 4.9, 4.10, 4.20, 4.21, 4.25, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.39, 6.41, 6.46, 6.68, 6.69, 9.2, 9.17 and 9.18. The foregoing list is not intended to be exhaustive and Members and Member Organizations must comply with applicable record keeping and reporting requirements regardless of whether they

[1] In Amendment No. 1, the Exchange: (1) stated that the proposed rule change was being filed pursuant to Section 19(b)(2) of the Act and requested accelerated effectiveness; (2) revised typographical errors in the proposed rule text; (3) added the parenthetical (including any interpretation relating thereto) to proposed PCX Rule 4.20(a); and (4) clarified that the phrase "contra organization" in proposed PCX Rule 4.20(b) is an industry term of art that also means counter party. *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 10, 2002 ("Amendment No. 1"). PCX further clarified that the phrase "contra organization" refers to the clearing firm. Telephone call between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Jennifer Lewis, Attorney, Division, Commission, on June 19, 2002.

member [an entity] that is also a member of the Options Clearing Corporation.

(b) Each such Member or Member Organization which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. These records must include the audit trail data

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange rules obligate Members and Member Organizations to make, keep current, and preserve certain books and records.[4] In addition, the Exchange relies on the Commission's

clearing firm's clearance account may utilize those clearance account records to satisfy this record keeping requirement provided that: (i) the Member Organization clearing firm complies with the provisions of Rules 17a–3(b)(2)[7] and 17a–4(i)[8] of the Act; (ii) the Member or Member Organization maintains those clearance account records pertaining to the daily activity and total position in each series of

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

SMALL BUSINESS ADMINISTRATION

Federal and State Technology Partnership Program to Provide Outreach and Technical Assistance to Small Technology-Based Businesses Interested in Becoming Involved or Presently Involved in Federal R & D Programs

AGENCY: Small Business Administration.

ACTION: Program Announcement No.

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other information: Rules 1.16, 2.1, 2.4, 2.6, 2.7, 2.8, 2.10, 2.11, 2.12, 2.15, 2.18, 4.9, 4.10, 4.20, 4.21, 4.25, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.39, 6.41, 6.46, 6.68, 6.69, 9.2, 9.17 and 9.18. The foregoing list is not intended to be exhaustive and Members and Member Organizations must comply with applicable record keeping and reporting requirements regardless of whether they are listed here.

* * * * *

Daily Position Statements

Rule 4.20(b) Each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the DTCC or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. Each Member or Member Organization must promptly report any differences to the contra organization. A Member or Member Organization who processes transactions through the Member or Member Organization's clearing firm's clearance account may utilize those clearance account records to satisfy this record keeping requirement provided that: (i) the Member Organization clearing firm complies with the provisions of SEC Rules 17a–3(b)(2) and 17a–4(i); (ii) the Member or Member Organization maintains those clearance account records pertaining to the daily activity and total position in each series of options; and (iii) the Member or Member Organization reconciles any discrepancies between the clearance account records and any financial reports that the Member or Member Organization is required to maintain pursuant to Rule 4.20(a). Each Member and Member Organization must maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

Error Accounts

Rule 4.21*(a)* Each Member or Member Organization [whose principal business is] *which conducts business* as a floor broker on the Exchange and who is not self-clearing must establish and maintain an account with a clearing member of the Exchange, for the sole purpose of carrying positions resulting from bona fide errors made in the course of its floor brokerage business. With respect to options floor brokers only, such an account for option transactions must be maintained with *a clearing member* [an entity] that is also a member of the Options Clearing Corporation.

(b) Each such Member or Member Organization which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. These records must include the audit trail data elements prescribed below:

(1) name or identifying symbol of the security;

(2) number of shares or quantity of security;

(3) transaction price;

(4) time of trade execution;

(5) executing broker badge number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

(6) executing broker badge number, or alpha symbol as may be used from time to time, of the contra side to the contract;

(7) clearing firm number, or alpha symbol as may be used from time to time, in regard to its side of the contract;

(8) clearing firm number, or alpha symbol as may be used from time to time, in regard to the contra side of the contract;

(9) designation of whether the account for which the order was executed was that of a Member or Member Organization;

(10) the nature and amount of the error;

(11) the Member or Member Organization that cleared the error trade on the Member's or Member Organization's behalf;

(12) an explanation of the means by which the Member or Member Organization resolved the error;

(13) the aggregate amount of liability that the Member or Member Organization incurred and: (i) had outstanding as of the time each such error trade entry was recorded or (ii) had cleared by other Members or Member Organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange rules obligate Members and Member Organizations to make, keep current, and preserve certain books and records.[4] In addition, the Exchange relies on the Commission's comprehensive books and records rules, Rule 17a–3 [5] and Rule 17a–4 [6] of the Act, as the basis of its authority to require Members and Member Organizations to maintain and retain books and records not covered under the Exchange's express rules.

The Exchange now proposes to adopt a new rule to codify books and records requirement and to make clear to Members and Member Organizations that the Commission's comprehensive books and records rule applies to all Members and Member Organizations. The Exchange also proposes to codify its policies with respect to maintenance of daily position statements and error account information.

As proposed, the new rule would require all Members and Member Organizations to make, keep current, and preserve such books and records as the Exchange may prescribe and as those that may be prescribed by the Act and the rules and regulations thereunder (including any interpretation relating thereto). The proposed rule further provides that no Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the PCX rules or as may be requested in connection with an Exchange investigation.

With respect to maintaining daily position statements, the proposed rule provides that each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the DTCC or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. The proposed rule provides that a Member or Member Organization who processes transactions through the Member or Member Organization's clearing firm's clearance account may utilize those clearance account records to satisfy this record keeping requirement provided that: (i) the Member Organization clearing firm complies with the provisions of Rules 17a–3(b)(2) [7] and 17a–4(i) [8] of the Act; (ii) the Member or Member Organization maintains those clearance account records pertaining to the daily activity and total position in each series of options; and (iii) the Member or Member Organization reconciles any discrepancies between the clearance account records and any financial reports that the Member or Member Organization is required to maintain. As proposed, each Member and Member Organization would be required to maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

Regarding error accounts, the proposed rule provides that each Member or Member Organization which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. The proposed rule would also require that the error account records include certain audit trail data elements including, for example, name of the security, quantity and the nature and amount of the error.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[4] *See, e.g.*, PCX Rule 2.4 (Restrictions on Member Activities); PCX Rule 2.10 (Customer Statements); PCX Rule 4.25 (Supervision—Written Procedures); and PCX Rule 6.14 (General Comparison and Clearance Rules).

[5] 17 CFR 240.17a–3.

[6] 17 CFR 240.17a–4.

[7] 17 CFR 240.17a–3(b)(2).

[8] 17 CFR 240.17a–4(i).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–26 and should be submitted by July 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17131 Filed 7–8–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Federal and State Technology Partnership Program to Provide Outreach and Technical Assistance to Small Technology-Based Businesses Interested in Becoming Involved or Presently Involved in Federal R & D Programs

AGENCY: Small Business Administration.

ACTION: Program Announcement No. FAST–02–R–0002 technical amendment.

SUMMARY: A technical amendment to the U.S. Small Business Administration (SBA) Program Announcement No. FAST–02–0002. The amendment is being issued to address errors in the original document. Corrections pertain to the cover letter to prospective applicants; Section V, Glossary of Terms; Section VI, Program Overview, Items L, P and S; Section VII, Organization and Staff Qualifications.

Letter to Prospective Applicants

Current: Federal and State Technology Transfer Partnership Program.

Correction: Delete the word Transfer in the Subject line.

Section V—Glossary of Terms—Page 7

Current: Socially and economically disadvantaged.

Correction: Socially and economically disadvantaged (minority-owned).

Section VI—Item L—Page 10

Current: XXXXXXX.

Correction: Delete and replace XXXXX * * * with July 25, 2002.

Section VI—Item P—Page 12

Current: Applicants receiving scores of 70 or greater will than be submitted to the second tier Committee for final review and selection. Applications for new and incumbent applicants will undergo a second level "joint" review by program officials representing the SBA, Department of Defense and National Science Foundation.

Correction: Delete current sentences and replace with—(Last sentence, first paragraph) Scores for both new and incumbent applicants will then be compiled and ranked. (First sentence, second paragraph) Proposals that meet the baseline score of 90 will be forwarded to the second tier evaluation panel for review and funding recommendation.

Applications for new and incumbent applicants with a score of 90 or above will undergo a second level "joint" review by program officials representing

the SBA, Department of Defense and National Science Foundation.

Section VII—Organizational and Staff Qualifications (New and Incumbent Applicants Pages 18 and 22 Paras. 4 and 2 Respectively)

Current: This position must be created/assigned to a qualified individual within or to be hired by the recipient organization and a minimum

oversight and administration, to better provide services to the target community, the applicant must provide a narrative justification substantiating the need to subcontract more than 49% of the project in both the technical and cost portions of the FAST proposal. In any case, no more than 70% of the project may be subcontracted, and the applicant must document that adequate and qualified staff and systems in-

Submissions by electronic mail: *FR0020@ustr.gov* (written comments); and *FR0021@ustr.gov* (notice of testimony and testimony). See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comment or the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Director of

services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. Persons submitting written comments should list one or more of these categories on the first page of the comments, in order to identify the commitments discussed therein.

Written comments must be received no later than noon, Tuesday, September

information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Persons submitting written comments by mail or express delivery service should provide 20 copies.

Written comments, notices of

effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

the SBA, Department of Defense and National Science Foundation.

Section VII—Organizational and Staff Qualifications (New and Incumbent Applicants Pages 18 and 22 Paras. 4 and 2 Respectively)

Current: This position must be created/assigned to a qualified individual within or to be hired by the recipient organization and a minimum of 60% of this individual's time must be committed solely to the oversight and administration of the FAST project.

Correction: Delete 60% and replace with 'This position must be created/assigned to a qualified individual within or to be hired by the recipient organization and the applicant must specify the amount of time this individual will commit to the oversight and administration of the FAST project. The applicant must also justify the adequacy of such time commitment to the proper administration of the FAST grant/award.

Section VI, Item S—Page 13. Para. 1 and 2

Current: The Project Director must be a full-time employee of the recipient and must devote a minimum of 60% of his/her time to the conduct and management of this project.

Correction: Delete current sentence and replace with—The Project Director must be a full/part-time employee of the recipient. The applicant must specify the amount of time this individual will commit to the project including project oversight and administration thereof. The applicant must also justify the adequacy of such time commitment to the proper administration of the FAST grant/award.

Current: The recipient should do 51% of the work required for this effort. A minimum of 51% of the proposed time and effort in terms of project cost shall be conducted through use of the applicant's internal resources. An applicant must document that at least 51% of both qualified staff and systems necessary to perform the proposed work effort are in-residence at the time of award.

Correction: The recipient should do 51% of the work required for this effort. A minimum of 51% of the proposed time and effort in terms of project cost should be conducted through use of the applicants internal resources. To facilitate more effective geographic coverage for the proposed project, the applicant may need to subcontract more than 49% of the work required for this effort. If the applicant finds that more than 49% of the project needs to be subcontracted, excluding project oversight and administration, to better provide services to the target community, the applicant must provide a narrative justification substantiating the need to subcontract more than 49% of the project in both the technical and cost portions of the FAST proposal. In any case, no more than 70% of the project may be subcontracted, and the applicant must document that adequate and qualified staff and systems in-residence are in place at the time of award to perform the proposed work effort.

All other terms and conditions in this announcement remain the same.

DATES: The application period will be from June 10, 2002 until July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Cherina Hunter, (202) 205–7344 or Mina Bookhard (202) 205–7080.

Maurice Swinton,

Assistant Administrator, SBA Office of Technology.

[FR Doc. 02–17108 Filed 7–8–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests comments on China's compliance with the commitments it made in connection with its accession to the World Trade Organization (WTO). In addition, the Trade Policy Staff Committee (TPSC) will conduct a public hearing concerning China's compliance with these commitments.

DATES: Written comments are due by noon, Tuesday, September 10, 2002. A hearing will be held in Washington, DC, on Wednesday, September 18, 2002. Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Thursday, September 5, 2002.

ADDRESSES: Submissions by mail or express delivery: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: China WTO, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

Submissions by electronic mail: *FR0020@ustr.gov* (written comments); and *FR0021@ustr.gov* (notice of testimony and testimony). See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comment or the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Director of Monitoring and Enforcement for China, (202) 395–3900, or David Weller, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION:

1. Background

China formally became a member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), the USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing the report, USTR is hereby soliciting public comment.

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO Agreement. The Protocol and Working Party Report can be found on the Department of Commerce webpage, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm*, or on the WTO website, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property enforcement); (f) services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. Persons submitting written comments should list one or more of these categories on the first page of the comments, in order to identify the commitments discussed therein.

Written comments must be received no later than noon, Tuesday, September 10, 2002. Comments may be submitted by mail, express delivery service, or e-mail (to *FR0020@ustr.gov*). It is strongly recommended that comments submitted by mail or express delivery service also be sent by e-mail.

A hearing will be held on Wednesday, September 18, 2002, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Thursday, September 5, 2002. Requests should be made by e-mail (to *FR0021@ustr.gov*). The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. Notifications must be accompanied by a copy of the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Chairman and the interagency panel.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons making submissions by e-mail should use the following subject line: "China WTO" followed by (as appropriate) "Written Comments", "Notice of Testimony", or "Testimony". Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the characters "P–". The "P–" or "BC–" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Persons submitting written comments by mail or express delivery service should provide 20 copies.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–17186 Filed 7–8–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12692]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALEMAR.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-Build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12692. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ALEMAR. *Owner:* Alemar, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Tonnage: 41 Tons Gross, 37 Tons Net; Length: 53.5 feet."

(3) Intended use for vessel, including

without calibrating its test apparatus. RSPA has determined that, between September of 1998 and October of 2001, BKC Industries, Inc. (BKC) apparently marked and certified an undetermined number of cylinders and/or tube trailers as having been properly tested in accordance with the Hazardous Materials Regulations (HMR), when the cylinders and/or tube trailers were tested using equipment that was not

date between August 1998 and October 2001 should consider the cylinder unsafe and not fill the cylinder unless the cylinder is first properly retested by a DOT-authorized retest facility. Filled cylinders should be vented or otherwise safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Under

or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34224, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* ALEMAR. *Owner:* Alemar, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Tonnage: 41 Tons Gross, 37 Tons Net; Length: 53.5 feet."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Coastwise yacht charters from New York City to Cutler, Maine for up to four (4) people per charter."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* Tan Shui, Taipei, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There should be little or no effect on other vessel operators. Most Commercial operators of similar sized vessels in New England offer daily "head boat" charters. Alemar is available only for fully crewed and provisioned charters for a minimum of seven days."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This vessel has been maintained exclusively by U.S. shipyards. In the fall of 2001 a major refit took place at the Hinckley Company, Southwest Harbor, Maine at a cost of $135,000. Previous works was performed at Little Harbor Yachts, Portsmouth, Rhode Island and Osprey Marine, Maryland. New sails were built at North Sails, Portsmouth, Rhode Island. Further, to my knowledge, no U.S. shipyards is building similar sailing vessels that Alemar would compete with for business."

Dated: July 2, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17177 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12693]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TAKE FIVE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-Build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12693. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* TAKE FIVE. *Owner:* John R. Miller Enterprises, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "55'1", Gross Tons 40, Capacity 8".

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Recreational Charter use in Southern Florida."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1998. *Place of construction:* Italy.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver should not have any impact on * * * other commercial passenger operators. We are only using this vessel for private, recreational charters and personal use."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver should not have any impact on * * * US Shipyards * * *"

Dated: July 2, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17178 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–07]

Safety Advisory: Retesting of Cylinders Without Calibration of Test Equipment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA is investigating BKC Industries, Inc., 2117 Will Suitt Road, Creedmoor, NC 27522 for the marking of DOT cylinders and/or tube trailers without calibrating its test apparatus. RSPA has determined that, between September of 1998 and October of 2001, BKC Industries, Inc. (BKC) apparently marked and certified an undetermined number of cylinders and/or tube trailers as having been properly tested in accordance with the Hazardous Materials Regulations (HMR), when the cylinders and/or tube trailers were tested using equipment that was not properly calibrated.

Part of performing a proper hydrostatic retest as set forth in the HMR is the calibration process. A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous materials.

FOR FURTHER INFORMATION CONTACT: Terrell Hinds, Hazardous Materials Enforcement Specialist, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 1701 Columbia Avenue, Suite 520, College Park, GA 30337, Telephone: (404) 305–6120, Fax: (404) 305–6125.

SUPPLEMENTARY INFORMATION: Through its inspection of BKC, RSPA has determined that BKC apparently marked an undetermined number of cylinders as having been properly tested in accordance with the HMR, when the test apparatus was not calibrated properly. During the inspection, RSPA discovered that the test cylinder that appeared on BKC Industries' test reports was not physically in the BKC facility. Therefore, this cylinder could not have been used to calibrate the test equipment.

The cylinders in question are stamped with the following RIN: D236. The marking appears in the following pattern:

D2
M Y
63

M is the month of retest (*e.g.* 08), and y is the year of retest (*e.g.* 01).

Anyone who has a cylinder or tube trailer that has been serviced by BKC Industries, Inc. and that is marked with RIN D236 and stamped with a retest date between August 1998 and October 2001 should consider the cylinder unsafe and not fill the cylinder unless the cylinder is first properly retested by a DOT-authorized retest facility. Filled cylinders should be vented or otherwise safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Under no circumstances should a cylinder and/or tube trailer described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

It is further recommended that persons finding or possessing a cylinder and or tube/trailer described in this safety advisory contact Mr. Hinds for additional information.

Issued in Washington, DC, on July 2, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Material Safety.

[FR Doc. 02–17093 Filed 7–8–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34224]

Indiana Southern Railroad, Inc—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a written trackage rights agreement entered into between NSR and Indiana Southern Railroad, Inc. (ISRR), has agreed to grant non-exclusive local trackage rights to ISRR over NSR's rail line between a point near Newburgh, IN, milepost 0.0, and Lynnville Mine, IN, milepost 21.9, a distance of approximately 21.9 miles.

The transaction was scheduled to be consummated on or shortly after July 1, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow ISRR to enhance service for certain shippers and provide more efficient and economical routings and service for their traffic.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34224, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at "*http://WWW.STB.DOT.GOV.*"

Decided: July 1, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–16991 Filed 7–8–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0253]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0253."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0253" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

OMB Control Number: 2900–0253.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8736a is used to collect the necessary information to nominate and recommend lenders' employees for approval as credit underwriters. The information is used to determine the applicant's qualifications to underwrite VA guaranteed loans.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,700 hours.

Estimated Average Burden Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 235.

a. Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

b. School Attendance Report, VA Form 21–674b.

OMB Control Number: 2900–0049.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–674 and 21–674c are used to collect the necessary

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0568]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

Title: Submission of School Catalog to the State Approving Agency.

OMB Control Number: 2900–0568.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Accredited educational institutions, with the exceptions of elementary and secondary schools, must submit a copy of their catalog to the

Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0253" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

OMB Control Number: 2900–0253.

Type of Review: Extension of a currently approved collection.

Abstract: Standards established by VA require that a lender have a qualified underwriter review all loans to be closed on an automatic basis to determine that the loan meets VA's credit underwriting standards. To determine if the lender's nominee is qualified to make such a determination, VA Form 26–8736a is used to evaluate the underwriter's experience. The form is completed by the lender and the lender's nominee for underwriting and submitted to VA for approval.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 2002, at pages 19807–19808.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: June 26, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service

[FR Doc. 02–17125 Filed 7–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0576]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.gov*. Please refer to "OMB Control No. 2900–0576."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0576" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Affirmation of Enrollment Agreement—Correspondence Course (Under Chapters 20, 32, & 35, Title 38 U.S.C., Section 903 of PL 96–342, or Chapter 1606, Title 10, U.S.C.

OMB Control Number: 2900–0576.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA is required to pay educational benefits for correspondence training under Chapters 20, 32, & 35, Title 38 U.S.C., Section 903 of PL 96–342, or Chapter 1606, Title 10, U.S.C. When a claimant enrolls in a correspondence training course, he or she must sign VA Form 22–1999c and submit the form to the correspondence school to affirm the enrollment agreement contract. The correspondence school's certifying official attaches an enrollment certification to VA Form 22–1999c and submits both forms to VA for processing. Without this information, VA could not determine if the claimant has been informed of the 10-day reflection period required by law and whether or not to pay education benefits for correspondence training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 22, 2002, at pages 19623–19624.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,700 hours.

Estimated Average Burden Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 235.

Dated: June 21, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–17126 Filed 7–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0049."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0049" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title:

a. Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

b. School Attendance Report, VA Form 21–674b.

OMB Control Number: 2900–0049.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–674 and 21–674c are used to collect the necessary information to determine entitlement to compensation and pension benefits for a child between the ages of 18 and 23 attending school. VA Form 21–674b is used to confirm the school attendance of a child for whom VA compensation or pension benefits are being received.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2002, at pages 18305–18306.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,792 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 177,500.

Dated: June 26, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–17127 Filed 7–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0568]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 8, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0568."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0568" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Submission of School Catalog to the State Approving Agency.

OMB Control Number: 2900–0568.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Accredited educational institutions, with the exceptions of elementary and secondary schools, must submit a copy of their catalog to the State approving agency when applying for approval of a new course. State approval agencies use the catalogs to determine what courses can be approved for VA training. Without this information, the State approving agency cannot determine what courses could be approved.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 22, 2002, at pages 19622—19623.

Affected Public: Not-for-profit institutions, business or other for-profit.

Estimated Annual Burden: 1,900 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,600.

Dated: June 26, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–17128 Filed 7–8–02; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7214–7]

RIN 2060–AG29

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for the rubber tire manufacturing source category. The rubber tire manufacturing source category includes facilities that manufacture new pneumatic tires, tire tread, and retreaded tires. The NESHAP implements section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet the hazardous air pollutant (HAP) emission standards reflecting the application of the maximum achievable control technology (MACT). The HAP emitted by rubber tire manufacturing facilities include organic HAP, such as benzene, toluene, xylene, styrene, methyl isobutyl ketone, and hexane. Exposure to these substances has been demonstrated to cause adverse health effects including chronic health disorders (e.g., polyneuropathy, degenerative lesions of the nasal cavity) and acute health disorders (*e.g.*, respiratory irritation, headaches).

EFFECTIVE DATE: July 9, 2002.

ADDRESSES: *Docket.* All information considered by the EPA in developing this rulemaking, including public comments on the proposed rule and other information developed by the EPA or State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing this rule, contact Mr. Anthony Wayne, Policy, Planning and Standards Group, Emission Standards Division (C439–04), U.S. EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5439; fax number (919) 541–

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's final rule was listed on July 16, 1992 (57 FR 31576). Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP. For major sources, MACT standards are to be promulgated by November 15, 2000 (40 CFR 63.1). The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. Area sources are sources that are not major sources.

B. What Is the Purpose of This Regulatory Action?

The purpose of this action is to promulgate NESHAP for the rubber tire manufacturing source category. The MACT floor cannot be less stringent that the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

We proposed NESHAP for this source category on December 20, 2000 (65 FR 80268). The proposed NESHAP would implement section 112(d) of the CAA by requiring all major sources to meet the HAP emission standards reflecting the application of MACT. The HAP emitted by rubber tire manufacturing facilities include organic HAP, such as benzene, toluene, xylene, styrene, methyl isobutyl ketone, and hexane. Exposure to these substances has been demonstrated to cause adverse health effects including chronic health disorders (e.g., polyneuropathy, degenerative lesions of the nasal cavity) and acute health disorders (*e.g.*, respiratory irritation, headaches). The proposed rule and public comments were solicited at proposal.

We received 19 public comment letters on the proposed rule. The commenters represent the following affiliations: Rubber tire manufacturers (4 companies), industrial trade associations (5), and one State and local agency association. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7214–7]

RIN 2060–AG29

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at rubber tire manufacturing facilities. The EPA has identified rubber tire manufacturing facilities as major sources of hazardous air pollutants (HAP) emissions. These standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all such major sources to meet HAP emission standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that will be controlled with this action include toluene and hexane. These HAP are associated with a variety of adverse health effects including chronic health disorders (e.g., polyneuropathy, degenerative lesions of the nasal cavity) and acute health disorders (e.g., respiratory irritation, headaches).

EFFECTIVE DATE: July 9, 2002.

ADDRESSES: *Docket.* All information considered by the EPA in developing this rulemaking, including public comments on the proposed rule and other information developed by the EPA in addressing those comments since proposal, is located in Public Docket No. A–97–14 at the following address: Air and Radiation Docket and Information Center (6102), U.S. EPA, 401 M Street, SW., Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Materials related to this rulemaking are available upon request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4400. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing this rule, contact Mr. Anthony Wayne, Policy, Planning and Standards Group, Emission Standards Division (C439–04), U.S. EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5439; fax number (919) 541–0942; electronic mail address: *wayne.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before September 9, 2002. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC[a]	NAICS[b]	Regulated entities
Industry	3011 7534 2296	326211 326212 314992	Rubber tire manufacturing facilities.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.5981 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

Outline. The information in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used In the Development of NESHAP?
C. How Did the Public Participate in Developing the Rule?
II. Summary of the Final Rule
III. Significant Comments and Changes Since Proposal
A. What Sources Are Subject to the Rule?
B. How Did We Determine MACT?
C. Can EPA Provide a Universal Certification Compliance Alternative?
D. What Role Should EPA Method 311 Play in Compliance Determinations?
E. How Should the Tire Cord Compliance Requirements Address Potential Mixing Reactions?
F. What Data Requirements Should Sources Using Continuous Parameter Monitoring Systems Meet?
G. Is Compliance Based on Daily Recordkeeping Needed?
H. Has EPA Properly Considered the Cost Impacts of the Rule?
I. What Other Changes Has EPA Made for the Final Rule?
J. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?
IV. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13045 -Protection of Children from Environmental Health Risks and Safety Risks
C. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13132—Federalism
E. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's final rule was listed on July 16, 1992 (57 FR 31576). Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 10 tons per year (tons/yr) or more of any one HAP or 25 tons/yr or more of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent that the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements.

C. How Did the Public Participate in Developing the Rule?

Prior to proposal, we met with industry representatives and State regulatory authorities several times to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on October 18, 2000 (65 FR 62414). The preamble to the proposed rule discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received 19 public comment letters on the proposed rule. The commenters represent the following affiliations: Rubber tire manufacturers (4 companies), industrial trade associations (5), and one State and local agency association. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in docket A–97–14. All of the comments have been carefully considered, and, where appropriate, changes have been made for the final rule.

II. Summary of Final Rule

The rule will apply to existing, new and reconstructed rubber tire manufacturing facilities that are major sources of HAP emissions standing alone or are major sources due to collocation with other facilities that emit HAP. We have subcategorized the rubber tire manufacturing source category into the following four subcategories of affected sources:

- Rubber processing
- Tire production
- Tire cord production
- Puncture sealant application.

Table 1 summarizes the emission limit options for the tire production, tire cord production, and puncture sealant application affected sources. There are no emission limits or other requirements associated with rubber processing affected sources.

TABLE 1.—EMISSION LIMIT OPTIONS FOR AFFECTED SOURCES

Affected source	Pollutant	Limit[a]
Existing, new or reconstructed tire production facility—Option 1.	Selected organic HAP (See Table 16 of final rule).	Emissions must not exceed 1,000 grams per megagram (2 pounds per ton) of the total cements and solvents used.
	All other organic HAP	Emissions must not exceed 10,000 grams per megagram (20 pounds per ton) of the total cements and solvents used.
Existing, new or reconstructed tire production facility—Option 2.	All organic HAP	Emissions must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber used.
Existing tire cord production facility—Option 1	All organic HAP	Emissions must not exceed 280 grams per megagram (0.56 pounds per ton) of fabric processed.
New or reconstructed tire cord production facility—Option 1.	All organic HAP	Emissions must not exceed 220 grams per megagram (0.43 pounds per ton) of fabric processed.
Existing, new or reconstructed tire cord production facility—Option 2.	Selected organic HAP (See Table 16 of final rule).	Emissions must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total coatings used.
	All other organic HAP	Emissions must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total coatings used.

TABLE 1.—EMISSION LIMIT OPTIONS FOR AFFECTED SOURCES—Continued

Affected source	Pollutant	Limit[a]
New or reconstructed puncture sealant application booth—Option 1.	All organic HAP (measured as volatile organic compounds (VOC)).	Reduce spray booth emissions by at least 95 percent.
Existing puncture sealant application booth—Option 1	All organic HAP (measured as VOC).	Reduce spray booth emissions by at least 86 percent.
Existing, new or reconstructed puncture sealant application booth—Option 2.	Selected organic HAP (See Table 16 of final rule).	Emissions must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total puncture sealants used.

significant differences in production techniques or in the types of tires being made. Our original conclusion to include retreading in the tire production subcategory, therefore, has not changed under this subsequent analysis.

Evaluation of the tire production MACT floor database identified retreading operations at sources that also manufactured new tires. The HAP emissions associated with these

Where it is not, the other NESHAP would apply. Any facility with potential overlapping applicability would have to determine which NESHAP apply to the facility by the compliance date of the first applicable NESHAP.

4. Research and Development Operations

We have also determined that research and development (R&D)

provided by a commenter to further evaluate the applicability of a specific HVLC technology to rubber processing operations. The technology is a hybrid system that incorporates a rotary concentrator with conventional oxidation (emission reduction) technology. The concentrator provides a mechanism to concentrate low organic concentration gas streams in order to make destruction or removal, for

TABLE 1.—EMISSION LIMIT OPTIONS FOR AFFECTED SOURCES—Continued

Affected source	Pollutant	Limit[a]
New or reconstructed puncture sealant application booth—Option 1.	All organic HAP (measured as volatile organic compounds (VOC)).	Reduce spray booth emissions by at least 95 percent.
Existing puncture sealant application booth—Option 1	All organic HAP (measured as VOC).	Reduce spray booth emissions by at least 86 percent.
Existing, new or reconstructed puncture sealant application booth—Option 2.	Selected organic HAP (See Table 16 of final rule).	Emissions must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total puncture sealants used.
	All other organic HAP	Emissions must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total puncture sealants used.

[a] Emission limits are expressed as monthly average emission limits except for: (1) Tire production affected sources that comply by demonstrating that the cements and solvents that they use comply with the emission limit for every purchase; and (2) puncture sealant application affected sources that comply by meeting the overall control efficiency option which requires such sources to meet the emission reduction limit on a 3-hour average.

The final rule also establishes operating limits for puncture sealant application affected sources that are complying with the overall control efficiency standards (*i.e.*, 86 percent emission reduction or 95 percent emission reduction). The operating limits are established on a source-specific basis. Once established, sources must maintain specified control device and capture system operating parameter(s) within the range(s) established during the performance test and according to the source's monitoring plan.

The final rule requires demonstrations of initial and ongoing compliance with the emission limitations. The specific requirements vary according to the affected source and the compliance alternative selected by that source. The final rule also establishes compliance dates, as well as provisions for performance testing, monitoring, recordkeeping, and reporting.

III. Significant Comments and Changes Since Proposal

This section includes discussion of significant comments on the proposed rule, particularly where we have made changes for the final rule to address those comments. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "Technical Document for Promulgation of Standards, National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing, Comment and Response Summary" (hereafter called the "response to comments document") in docket A–97–14. The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Sources Are Subject to the Rule?

We received several comments raising questions on the applicability of the rule to specific sources at rubber tire manufacturing facilities. We have clarified the applicability provisions in the final rule. This section describes in more detail how the rule applies to various operations at rubber tire manufacturing facilities.

1. Tire Bladders

The final rule applies to manufacturers of rubber tires and components integral to rubber tires, as well as tire cord producers and puncture sealant operations. One commenter suggested that EPA clarify that tire bladders used in the manufacturing process are not "components integral to rubber tires." We agree that tire bladders are not integral components in a tire because they are used in an intermediate production process and are not found in the final product. Their manufacture does not involve the use of cements or solvents. Therefore, the final rule reflects this exclusion in § 63.5981.

2. Tire Retread Operations

Based on public comments, we reconsidered whether to include tire retread manufacturing operations in the source category definition. At the time of proposal, no major tire retread manufacturing sources were identified that would be subject to the rubber tire manufacturing rule. However, to the extent that these facilities use cements and solvents in producing retread tires, and they are a major source (standing alone or due to collocation), they would have been subject to the proposed version of the rule because of similarities in the solvents, cements, and adhesives used and the process used to build tires. In evaluating comments on this topic, we reconsidered information regarding the potential for HAP emissions from retreading operations, the applicability of the proposed rule, and the appropriateness of the tire production MACT floor for retreading operations.

In both "new" tire production and retread tire production, tire building stations are used to create the pre-cured or pre-vulcanized tire. Several tire components can be combined for a virgin tire versus only two to three components for a retread tire. In the latter case, the carcass has been constructed eliminating those component steps in tire building for the retreader. The vulcanizing and curing of both the retread and the "green" tire are identical in their use of tire molds, the time for curing, the temperatures, and the pressures. These parameters are set in order to meet the tire safety and longevity specifications of the industry.

The HAP emissions associated with sidewall cementing, tread end cementing, tire building and retread tire building all use similar cement and solvent formulations. Specifically, the main component of the cements and solvents used by both new and retread manufacturers are hexane and toluene. The primary purpose of these cements and solvents is as a temporary aid to ensure that the rubber compound surface remains "tacky" during tire building. However, several tire manufacturers and retreaders have reformulated or eliminated the use of these toxic compounds in their operations, while presumably still achieving the desired performance characteristics.

Our review and evaluation of the tire building methods, tire building machinery, solvent and cement usage and application, and vulcanizing and curing processes for both new and retread tire operations has not indicated significant differences in production techniques or in the types of tires being made. Our original conclusion to include retreading in the tire production subcategory, therefore, has not changed under this subsequent analysis.

Evaluation of the tire production MACT floor database identified retreading operations at sources that also manufactured new tires. The HAP emissions associated with these facilities were minor in comparison to the overall facility emissions, and compliance with the MACT standards is anticipated using the facility-wide standards that have been established for the industry. Therefore, emissions associated with the retreading operations at facilities included in the Rubber Manufacturers Association's (RMA's) database are included in the overall emissions reported from the RMA and the individual companies.

In addition, EPA examined the 1996 National Toxics Inventory (NTI) data, which revealed only three potential stand-alone major source facilities for retreading in the U.S. The primary pollutants reported were hexane and toluene. The 1996 NTI reported that HAP emissions from these sources ranged from 8 to 16 tons per year. Subsequent contacts with the permitting agencies for these sources revealed that the facilities have significantly reduced or eliminated HAP emissions. This analysis demonstrates the ability of retread facilities to substantially reduce or eliminate their HAP emissions.

In conclusion, we believe that tread is an integral component of tires, and retread manufacturers should be subject to the emission standards for tire producers to the extent that they use cements and solvents.

3. Fabric Coating Operations

The final rule clarifies the potential overlapping applicability of MACT standards for tire manufacturers who own and operate cord-treating facilities that produce tire cord as well as other fabric products, such as belts and hoses. For example, currently we are developing the fabric printing, coating, and dyeing NESHAP, which will potentially address the same cord coating operations as today's rubber tire manufacturing rule. In order to minimize potentially redundant requirements at these types of facilities, we have included in the final rule an exemption for coating activities where the primary product is a Web substrate other than tire cord, and the activities are regulated by another NESHAP. In other words, where tire cord is the primary product, the rubber tire manufacturing NESHAP would apply. Where it is not, the other NESHAP would apply. Any facility with potential overlapping applicability would have to determine which NESHAP apply to the facility by the compliance date of the first applicable NESHAP.

4. Research and Development Operations

We have also determined that research and development (R&D) operations should not be subject to the rubber tire manufacturing rule. At proposal, we included them in the definition of HAP emission sources. However, we now believe that excluding them is more consistent with our statements in an advanced notice of proposed rulemaking in which we suggested that R&D operations should be listed as a separate source category (62 FR 25877) because including R&D operations in a rule governing manufacturing operations would be problematic. We are not aware of any stand-alone major R&D facilities. In fact, R&D is focused on development of rubber compounds, which should involve minimal solvent use. For these reasons and because R&D operations were not necessarily addressed in the MACT floor determination, the final rule exempts R&D facilities as defined in section 112(c)(7) of the CAA. An R&D facility is one "whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner." *See* CAA section 112(c)(7).

B. How Did We Determine MACT?

1. Rubber Processing MACT

Commenters said we did not provide data to support our conclusion that add-on control devices for rubber processing emissions are feasible but unreasonably expensive. According to the commenters, we should have considered the use of high-volume low-concentration (HVLC) technologies, which are available, proven, and cost-effective.

At proposal, we considered beyond-the-floor control options in establishing MACT for the rubber processing source category based on regenerative incineration. We concluded that the costs of these controls, more than $200,000 per ton of HAP controlled, were too high to require them as the basis of the standard. However, in considering public comments on the proposed rule, we reviewed information provided by a commenter to further evaluate the applicability of a specific HVLC technology to rubber processing operations. The technology is a hybrid system that incorporates a rotary concentrator with conventional oxidation (emission reduction) technology. The concentrator provides a mechanism to concentrate low organic concentration gas streams in order to make destruction or removal, for example, with a following oxidizer, a more cost-effective control technique.

As described in the response to comments document, our analysis showed that using the HVLC technology at a model facility would cost approximately $40,000 dollars per ton of emission reduction. While this is an improvement relative to the original cost impact, it is still too high to be considered a beyond-the-floor technology for existing and new facilities. Therefore, we have not revised the original MACT determination for this subcategory.

2. Tire Production MACT

Several commenters said the two emission limit options proposed for the tire production subcategory are not equivalent, because Option 2 (production-based option) is more stringent than Option 1 (HAP-constituent option). They said these options should be equivalent because, otherwise, Option 2 represents a beyond-the-floor requirement. At a minimum, they thought that Option 2 should be based on the average emissions of the five best-performing sources.

We disagree with these comments. As described in the proposal preamble, Option 1 represents the MACT floor and MACT. We developed Option 2 to represent a second form of the emission limit expressed in mass of HAP emitted per mass of rubber processed. Option 2 must be at least as stringent as Option 1, but is not required to be equivalent. Because the use of Option 2 is not required, it is not a beyond-the-floor requirement. Instead, it provides sources flexibility in how they meet the emission limit.

Commenters also said the proposal failed to set an emission limit with a meaningful control technology option, because the allowable emission levels in Options 1 and 2 effectively rule out control devices as a significant compliance option due to achievable capture efficiency rates in the tire production industry. This is important, commenters said, because reformulation is not an option in all cases due to the need for extensive equipment modification, modernization, and

facility reconfiguration as well as the high costs associated with such changes (likely exceeding $50 to $100 million per plant according to commenters).

A central fact in our response to these issues is that Option 1 is based on the MACT floor determination for tire production affected sources. Based on data provided by the RMA, we determined that emissions from these sources meeting the overall control efficiency compliance option are subject to operating limits based on a 3-hour averaging period. Tire producers, tire cord producers, and puncture sealant applicators choosing to comply with one of the monthly average compliance options have a month in which to ensure that deviations from control device monitoring parameters do not affect their overall compliance status. In summary, we believe the final rule is for existing sources. The new source standard is on a single facility, which is operating a carbon absorber with a removal efficiency of 86 percent. According to commenters, we failed to conduct a beyond-the-floor analysis that includes the cost and technical feasibility to support our determination.

We determined the new source MACT floor by looking at similar sources in tire manufacturing industry. However, the reference test method for measuring the HAP content of tire manufacturing cements, solvents, coatings, and puncture sealants will be EPA Method 311. This is an established method that is appropriate for measuring the types of HAP used in these materials.

The final rule, therefore, does not require a Method 311 test for HAP content, nor does it require you to test every shipment of materials you receive formulations used in such operations contain less than 0.1 percent of those HAP specified in Table 16 of the proposed rule and less than 1 percent of all other HAP, and that this change would encourage pollution prevention.

We agree that providing a similar HAP-constituent option for tire cord producers and puncture sealant operations would encourage pollution the mixing process. Alternatively, you could sample the coating mixture to verify HAP content. However, based on comments, it appears that the issue of reactive coatings is significant for tire cord production. We are concerned, however, that the commenters' solution to only address post-mixing HAP would ignore potential fugitive emission losses from mixers.

In the final rule, we have assumed that you will base your material balance

facility reconfiguration as well as the high costs associated with such changes (likely exceeding $50 to $100 million per plant according to commenters).

A central fact in our response to these issues is that Option 1 is based on the MACT floor determination for tire production affected sources. Based on data provided by the RMA, we determined that emissions from these sources are controlled primarily through pollution prevention measures such as reformulation or other changes in process operations, which reduce or eliminate HAP. In fact, of the 41 reported existing tire production facilities, 11 reported no potential for HAP emissions from cement or solvent use above the Superfund Amendments and Reauthorization Act (SARA) de minimis reporting threshold limitations for HAP-containing compounds. No additional information in support of subcategorizing the source category was provided by the industry. Because we did not identify any basis for further subcategorizing tire production sources, this level of performance represents MACT for all tire production affected sources.

Despite a MACT floor determination based on pollution prevention, the proposed emission limits were crafted to allow the use of add-on control technologies as a compliance option because we recognized that some existing facilities currently use them to control a portion of their emissions. We also wanted to allow all sources the flexibility to use add-on controls, as long as the MACT floor requirements were met, if they found them more attractive than pollution prevention measures in reducing emissions from certain operations. We believe the result is a meaningful control technology option. While most facilities would have to achieve some increased level of pollution prevention to comply with the final rule, they would have the option to use add-on controls on any of the emission sources at the facility to provide additional needed reductions. Assuming sources used add-on controls on all of the available emission sources, the additional pollution prevention reductions to meet the emission limits would range from 0 to 54 percent, with 27 percent as the average reduction. Given the tremendous strides in pollution prevention already achieved by the industry, we believe the NESHAP limits are achievable and that the control technology option is viable.

3. Puncture Sealant MACT

Commenters said we overreached in establishing a standard for new sources that is more stringent than the standard for existing sources. The new source standard is on a single facility, which is operating a carbon absorber with a removal efficiency of 86 percent. According to commenters, we failed to conduct a beyond-the-floor analysis that includes the cost and technical feasibility to support our determination.

We determined the new source MACT floor by looking at similar sources in other industries and found that their carbon absorbers are achieving better performance than that at the one existing puncture sealant source. Industries that emit VOC have extensive experience in using pollution control technologies to control the gaseous pollutants. Carbon adsorption can typically achieve greater than 90 percent efficiencies with inlet gaseous pollutant concentrations greater than a few hundred parts per million by volume (ppmv). At concentrations greater than 1000 ppmv, efficiencies can exceed 95 percent. The existing puncture sealant facility shows an inlet stream concentration of at least 1,400 ppmv. Use of combustion technologies, even at low pollutant concentrations (less than 100 ppmv), can generally achieve 90 to 95 percent destruction efficiency. At higher concentrations, destruction efficiencies of 95 to 98 percent are achieved. Therefore, we believe that control devices at new facilities should be able to should be able to achieve at least 95 percent efficiency.

Because commenters raised cost concerns, we compared the cost of installing an 86-percent efficient control device to the cost of a 95-percent efficient control device at a new facility. Because the driving factor in the cost analysis is the airflow rate of the inlet stream, it actually costs less to install a 95-percent efficient carbon adsorber than an 86-percent efficient one. This is because both units would have the same total annual cost in the absence of recovery credits, but the more efficient device would achieve greater product recovery, which reduces the annual operating cost. Therefore, even if the standard for new sources were considered a beyond-the-floor standard, the MACT determination would be the same.

C. Can EPA Provide a Universal Certification Compliance Alternative?

Commenters asked us to develop an alternative standard (and associated compliance procedures) for tire cord production and/or puncture sealant operations that would be analogous to the "HAP constituent option" (Option 1) for tire production sources. They said we should allow tire cord and puncture sealant facilities to certify annually that formulations used in such operations contain less than 0.1 percent of those HAP specified in Table 16 of the proposed rule and less than 1 percent of all other HAP, and that this change would encourage pollution prevention.

We agree that providing a similar HAP-constituent option for tire cord producers and puncture sealant operations would encourage pollution prevention. Demonstrating compliance with a HAP-constituent option would require additional emission reductions beyond those required by the MACT, but since its use would be optional, it would not constitute a beyond-the-floor requirement. However, we believe that its use should be limited to a monthly compliance alternative, reserving the annual alternative to the purchase of cements and solvents. Most, if not all, tire cord manufacturers and puncture sealant application facilities mix their coatings and puncture sealants on-site, which would require the use of the monthly compliance demonstration. We have written the final rule to add these compliance options.

D. What Role Should EPA Method 311 Play in Compliance Determinations?

Commenters requested several clarifications regarding the role that EPA Method 311 (found in Appendix A of 40 CFR part 63) (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph) should play in ongoing compliance determinations. For example, is an individual Method 311 test required to verify the HAP content for every batch of solvent or cement? Must the compliance demonstration determine the precise HAP content of the tested material, or can the de minimis reporting threshold discussed in the proposed rule (0.1 percent for certain listed HAP and 1.0 percent for other HAP) suffice? Can the tire manufacturing facility owner or operator rely on information provided by suppliers regarding the HAP content of materials? Can formulation data (material safety data sheets (MSDS) and certificates of compliance) be used in lieu of Method 311 testing? Commenters stated that use of the MSDS and other data to screen products for HAP content will eliminate testing of hundreds of non-HAP containing materials.

We reviewed the use of Method 311 in other recent coating standards we have proposed or promulgated. In order to be consistent with these standards and minimize the need for individual facilities to apply for approval of alternative methods, we have added flexibility to the process of certifying HAP contents of materials used in the tire manufacturing industry. However, the reference test method for measuring the HAP content of tire manufacturing cements, solvents, coatings, and puncture sealants will be EPA Method 311. This is an established method that is appropriate for measuring the types of HAP used in these materials.

The final rule, therefore, does not require a Method 311 test for HAP content, nor does it require you to test every shipment of materials you receive. You will be responsible for verifying, by any reasonable means such as periodic testing or manufacturer's certification, the HAP content (at least above the de minimis thresholds) of materials used at the facility. We may require you to conduct a test at any time using EPA Method 311 (or any approved alternative method) to confirm the HAP content reported in the compliance reports. If there is any inconsistency between the results of the EPA Method 311 test and any other means of determining HAP content, the Method 311 results will govern.

E. How Should the Tire Cord Compliance Requirements Address Potential Mixing Reactions?

Commenters raised the issue of how to treat emissions from tire cord mixing operations in compliance determinations when reactions during mixing may affect emissions. For example, at what point in the mixing process should Method 311 samples (or other analytical means) be taken? If the analysis is based on the coating after it is mixed, reacted, and aged, the results will not account for the HAP emitted from or converted by the mixing process. However, if the analysis is based on coating collected from the mix tank after the addition of all the chemicals, but prior to subsequent processing, the analysis could overestimate the overall HAP emissions from the affected source. This is because tire cord coatings ("dip formulations") commonly react during the mixing and storage operations. During these reactions, a HAP such as formaldehyde cross-links the polymers contained in the dip formulation. After this cross-linking reaction occurs, the chemical is unavailable to be released as an air emission during subsequent processing steps. For formaldehyde, the chemical conversion rate typically equals or exceeds 99 percent.

At proposal, we assumed that the amount of HAP used in the tire cord production process would equal the amount of HAP emitted. We assumed you would document your material balances using records of the HAP contents of raw materials delivered to the mixing process. Alternatively, you could sample the coating mixture to verify HAP content. However, based on comments, it appears that the issue of reactive coatings is significant for tire cord production. We are concerned, however, that the commenters' solution to only address post-mixing HAP would ignore potential fugitive emission losses from mixers.

In the final rule, we have assumed that you will base your material balance on the assumption that 100 percent of the HAP added to a coating mixture is emitted. However, you will be allowed to account for HAP "losses" resulting from chemical reactions, *e.g.*, curing or post-application reactions. You can calculate these losses based on the conversion rates of the individual coating formulations, chemistry demonstrations, or other demonstrations that are verifiable to the approving agency. You may than use the revised value in your compliance demonstration. We have written the final rule to add these provisions.

F. What Data Requirements Should Sources Using Continuous Parameter Monitoring Systems Meet?

1. Deviations

Commenters noted that proposed § 63.5990, which requires facilities to be in compliance with the MACT standards at all times regardless of whether a source is using control equipment to comply, fails to recognize that several factors make it almost inevitable that the source's emissions will exceed the standards at times. Instead, sources should be given a chance to quickly correct a deviation from their operating parameter limits before a violation is registered. This encourages quick action and is appropriate because emissions may be underneath the regulatory limit even though the parameter limit is exceeded.

The monitoring provisions in the final rule are structured to require a source to establish an individual operating limit (or operating parameter value) based on a site-specific performance test. Once established, the source should have the ability to operate as far as desired and/or necessary on the compliance side of the operating parameter.

The length of the averaging time for the associated emission limit is another variable that affects the likelihood of deviations. For example, cases in which the monitoring data are used to demonstrate instantaneous compliance are more likely to create the exceedances suggested by the commenters. This is not the case in the final rule. Puncture sealant affected sources meeting the overall control efficiency compliance option are subject to operating limits based on a 3-hour averaging period. Tire producers, tire cord producers, and puncture sealant applicators choosing to comply with one of the monthly average compliance options have a month in which to ensure that deviations from control device monitoring parameters do not affect their overall compliance status. In summary, we believe the final rule is based on parameters and averaging times that allow a conscientious operator to remain in compliance with the standards. Therefore, we have not made the changes suggested by commenters.

2. Startups, Shutdowns, and Malfunctions

Commenters were concerned that Table 17 to proposed subpart XXXX indicates that the 40 CFR part 63, subpart A, General Provisions requirements regarding startups, shutdowns, and malfunctions (§§ 63.6(e)(3) and (f)(1)) do not apply to sources that choose to use control devices to comply with the standards. One commenter cited precedents regarding the need for "achievable" standards and argued that the final rule should be written to indicate that these sections do apply to facilities complying through the use of control devices.

We agree that puncture sealant affected sources that are subject to operating limits should be allowed to use the startup, shutdown, and malfunction provisions, and have corrected this oversight for the final rule. We separately considered whether to extend these provisions to tire production, tire cord production, and puncture sealant affected sources complying with the monthly average compliance options because compliance with the monitored parameter is only a trigger that determines whether the source can use the established emission reductions of the capture and control system in the compliance demonstration. Because the overall compliance demonstration is based on a month's worth of data, we considered whether the startup, shutdown, and malfunction provisions were needed to ensure an achievable standard. We determined that for sources relying heavily on the use of control equipment to meet the overall emission limit, the inability to exclude periods of startups, shutdowns, and malfunctions from the compliance demonstration could increase their risk of failing to comply with the emission limit. Therefore, we have written the final rule to add the startup, shutdown, and malfunction

provisions for sources complying with the standards through control devices.

3. Minimum Data Collection Requirements

Commenters said the proposal fails to allow for the loss of even minimal amounts of test or monitoring data when sources are complying by using add-on control devices. They suggested adding provisions similar to those found in the

on or downstream of the last control device);

- Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and
- Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

The plan must also address the

at the point of use. However, upon consideration, we agree that a monthly system of cement, solvent, and coating use is sufficient to demonstrate compliance with the emission limitations. Therefore, we have written the final rule to implement a monthly system. This change simplifies the compliance equations and should reduce recordkeeping burden without compromising compliance assurance.

reformulation costs on a facility-specific basis. (See the response to comments document for more details.) Based on these assumptions, total annual control costs to all tire producers combined could be as high as $35 million. Even considering impacts based on these more conservative (higher end of range) assumptions, the final rule will not trigger the $100 million criterion used by the Office of Management and

and solvents, fabric processed, tire cord, *etc.*).

- Other minor changes to correct editorial and minor technical errors in the proposal package.

J. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?

The final rule will eliminate approximately 983 megagrams per year (Mg/yr) (1,084 tons/yr) (52 percent) of

the final rule will not reduce HAP or other emissions from baseline emissions levels at this facility.

The final rule encourages the adoption of pollution prevention measures. As a result, we believe that most manufacturers will adopt these measures and expect minimal, if any, increases in energy consumption, and minimal reductions in water pollution and solid waste.

provisions for sources complying with the standards through control devices.

3. Minimum Data Collection Requirements

Commenters said the proposal fails to allow for the loss of even minimal amounts of test or monitoring data when sources are complying by using add-on control devices. They suggested adding provisions similar to those found in the municipal waste combuster MACT standards issued under section 129 of the CAA.

We have therefore written the final rule to provide information on these minimum data requirements. We agree that the proposed rule, by being silent on minimum data requirements, could have caused confusion for compliance demonstrations. The tradeoff to consider in adding these requirements is that the monitoring system should be optimized to limit occurrences when data collection is jeopardized because of system faults and failures. Therefore, we have clarified in the final rule the establishment of reasonable minimum data collection requirements, implemented through the use of a site-specific monitoring plan designed to optimize system performance.

The final rule requires you, for each operating parameter you monitor, to install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the following requirements:

- Operate CPMS at all times the process is operating;
- Collect data from at least four equally spaced periods each hour;
- For at least 75 percent of the hours in an operating day, have valid data (as defined in the site-specific monitoring plan) for at least four equally spaced periods each hour;
- For each hour of valid data from at least four equally spaced periods, calculate the hourly average value using all valid data;
- Calculate the daily average using all of the hourly averages; and
- Record the results for each inspection, calibration, and validation check as specified in the site-specific monitoring plan.

For each monitoring system required, you must develop and submit for approval a site-specific monitoring plan that addresses the following requirements:

- Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);
- Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and
- Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

The plan must also address the following ongoing procedures:

- Ongoing operation and maintenance procedures in accordance with the general requirements of 40 CFR 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.5990;
- Ongoing data quality assurance procedures in accordance with the general requirements of 40 CFR 63.8(d); and
- Ongoing recordkeeping and reporting procedures in accordance the general requirements of 40 CFR 63.10(c) and (e)(1) and (2)(i).

G. Is Compliance Based on Daily Recordkeeping Needed?

Commenters recommended specifying that monthly average compliance demonstrations should be based on monthly inventory and usage records, instead of daily ones, for several reasons:

- The proposal to require daily records of many parameters (control devices are the exception) is inconsistent with the requirement for a monthly average, is very burdensome, and would not serve any environmental purpose.
- Use of monthly data would eliminate the need for proposed equation 3 of § 63.5997(b)(3) of proposed subpart XXXX.
- Monthly records are consistent with other MACT standards, and it would be arbitrary and capricious to single out the tire manufacturing standards for daily recordkeeping when it is unnecessary to show compliance with a monthly averaging period, and other similar standards require only monthly recordkeeping.
- Monitoring the flow of cements and solvents through the plant's central dispensing area on a monthly basis is less burdensome than on a daily basis.
- The accuracy of a monthly system is significantly better than individual measurements of hundreds of containers on a daily basis.

We believe the commenters have overstated the need for complex recordkeeping systems to implement the rule as proposed. For example, we believe sources could monitor daily flow of cements and solvents through one or two central locations instead of at the point of use. However, upon consideration, we agree that a monthly system of cement, solvent, and coating use is sufficient to demonstrate compliance with the emission limitations. Therefore, we have written the final rule to implement a monthly system. This change simplifies the compliance equations and should reduce recordkeeping burden without compromising compliance assurance.

H. Has EPA Properly Considered the Cost Impacts of the Rule?

Commenters felt we underestimated the cost impacts of the proposed rule by failing to incorporate significant costs associated with creating systems to track daily material usage. They suggested that monthly recordkeeping would be more economical, could be more easily maintained, and would still demonstrate compliance with the standards.

We believe that the commenters misinterpreted the proposed recordkeeping requirements to require tracking cement, solvent, and coating use at every single step in the process. Instead, we believe facilities should be able to monitor a limited number of central locations (*e.g.*, amount of coating leaving mix area, amount of solvent distributed from storage), and thereby avoid significant costs. However, as described above, we have determined that monthly recordkeeping will be sufficient to demonstrate compliance with the emission limitations and have written the final rule to allow it.

Commenters also were concerned that we presented the proposed rule as a nonsignificant regulatory action, when it may force technology developments that are not incorporated into the analysis presented. Commenters said reformulation is not an option in every case, and the lack of a meaningful control technology option will force significant technology upgrades to comply with the standards. According to one commenter, this type of modernization costs $50 to $100 million per plant, and these types of costs are not reflected in the impacts analysis of the proposed rule.

As earlier described, we believe the rule contains a viable emission control technology option. In addition to the cost estimate prepared for the final rule, we also conducted a theoretical cost analysis using more conservative (*i.e.*, high-end) assumptions regarding the level of reformulation and the probable capture efficiencies. That analysis maximized the number of sources installing add-on control devices, reduced add-on control capture efficiencies, and determined solvent reformulation costs on a facility-specific basis. (See the response to comments document for more details.) Based on these assumptions, total annual control costs to all tire producers combined could be as high as $35 million. Even considering impacts based on these more conservative (higher end of range) assumptions, the final rule will not trigger the $100 million criterion used by the Office of Management and Budget (OMB), let alone approach the estimate provided by one commenter of $50 to $100 million per plant to meet the emission limits.

I. What Other Changes Has EPA Made for the Final Rule?

We have made several other changes for the final rule. These changes include the following:

- Changes to the compliance equations to clarify them, address the addition of new compliance options, make them consistent with monthly recordkeeping, and fix errors.
- Revisions or additions to clarify applicability in definitions (cements and solvents, fabric processed, tire cord, *etc.*).
- Other minor changes to correct editorial and minor technical errors in the proposal package.

J. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?

The final rule will eliminate approximately 983 megagrams per year (Mg/yr) (1,084 tons/yr) (52 percent) of the baseline annual HAP emissions from this industry. For the tire production source subcategory, we estimate that the final rule will reduce HAP emissions by approximately 949 Mg/yr (1,047 tons/yr). For the tire cord production source subcategory, we estimate that the final rule will reduce HAP emissions by approximately 34 Mg/yr (37 tons/yr). We also estimate that the final rule will reduce emissions of VOC by the same amount.

For the one existing puncture sealant application affected source, we are not requiring different emissions control than what is currently done. Therefore, the final rule will not reduce HAP or other emissions from baseline emissions levels at this facility.

The final rule encourages the adoption of pollution prevention measures. As a result, we believe that most manufacturers will adopt these measures and expect minimal, if any, increases in energy consumption, and minimal reductions in water pollution and solid waste.

Actual compliance costs will depend on each source's existing cement, solvent, and coating formulations and control equipment, and the modifications made to comply with the final rule. Table 2 shows the total annual costs for affected sources to comply with the final rule. These costs include the estimated costs of reformulating cements, solvents, and coatings or installation of add-on control devices, as well as monitoring, reporting, and recordkeeping costs.

TABLE 2.—TOTAL ANNUAL COSTS OF THE RUBBER TIRE MANUFACTURING RULE FOR TIRE PRODUCTION, TIRE CORD PRODUCTION, AND PUNCTURE SEALANT APPLICATION

Annual costs	Tire production/puncture sealant application [a]	Tire cord	
Control	$21,359,000	$2,477,000	
Monitoring	1,161,000	193,000	
Recordkeeping and reporting average	597,000	105,000	
Total nationwide costs	23,117,000	2,775,000	=$25,892,000

[a] Puncture sealant monitoring and reporting recordkeeping costs are included in the tire production costs.

The economic impact analysis (EIA) provides an estimate of the anticipated regulatory impacts of the rule for rubber tire manufacturing. The information collected for this rule from rubber tire manufacturers indicates that there are 14 companies potentially affected by the rule. States with the largest concentration of facilities are Alabama, Illinois, North Carolina, South Carolina, and Ohio. None of the facilities manufacturing rubber tires are owned by companies that are classified as small businesses.

In general, the economic impacts of the rule are expected to be minimal. A market price increase of less than 1 percent, or $0.03 per tire, is projected. Domestic producer pre-tax earnings are projected to decrease by $14 million, or 1.2 percent. The EIA estimates that domestic tire output will decline by 154,000 tires (0.05 percent), while imports will increase by 24,000 tires (0.05 percent), resulting in a net decline of 130,000 tires, or 0.04 percent.

The value of a regulatory action is traditionally measured by the change in economic welfare that it generates. The final rule's welfare impacts, or the social costs required to achieve environmental improvements, will extend to tire consumers and producers alike. The social costs for existing sources are projected to be approximately $24 million.

IV. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health

Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

D. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in

promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code (which ranges from 500 to 1,000 employees for the rubber tire manufacturing industry); (2) a small governmental jurisdiction that is a government of a city, county, town,

of information (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to total 12,807 labor hours per year at a total annual cost of $701,337. This estimate includes notifications, a performance test and report for sources using control devices to comply with the regulation, semiannual compliance reports, annual compliance certifications, records of cements and solvents composition, records of cements and solvents use,

unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

I. National Technology Transfer and

Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

C. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because no tribal governments own or operate a rubber tire manufacturing facility. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to rubber tire manufacturers and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to this final rule.

Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with State and local officials in developing this final rule. No concerns were raised by these officials during this consultation.

E. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this rule for any year has been estimated to be less than $26 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this final rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code (which ranges from 500 to 1,000 employees for the rubber tire manufacturing industry); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. We have determined that none of the 43 facilities expected to be subject to the final rule are small entities.

H. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1982.01), and a copy may be obtained from Ms. Sandy Farmer by mail at the U:S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The final information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart, Confidentiality of Business Information.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to total 12,807 labor hours per year at a total annual cost of $701,337. This estimate includes notifications, a performance test and report for sources using control devices to comply with the regulation, semiannual compliance reports, annual compliance certifications, records of cements and solvents composition, records of cements and solvents use, records of HAP use, and records of any required parameter monitoring.

The total estimated annual and capital monitoring, inspection, reporting and recordkeeping (MIRR) costs for existing and new major sources to comply with the final standards when an affected source opts to comply via the use of add-on control equipment are determined based on the estimated capital costs of equipment required for MIRR activities. For the rubber tire manufacturing industry, the total estimated installed capital costs of this equipment is $2.9 million for existing major sources and $569,558 for new major sources. Annualized capital MIRR costs for existing and new major sources to comply with the final standards through the use of add-on controls were estimated to be $1.6 million and $220,386, respectively.

The total annual estimated operating and maintenance costs (O&M) were calculated based on: (1) The estimated storage, filing, photocopying, and postage costs for the estimated total annual responses associated with the provisions of the rubber tire rule; and (2) the O&M costs for the equipment required for compliance with these standards. The total storage, filing, photocopying, and postage cost per response was $20.67, for an annual estimated average of $1,778.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, section 12(d) 15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when we do not use available and applicable VCS.

This rulemaking involves technical standards. We are citing the following methods in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A of 40 CFR part 60, appendix A; EPA Methods 204 and 204A–F of 40 CFR part 51, appendix M; and EPA Method 311 of 40 CFR part 63, appendix A. Consistent with the NTTAA, we conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A–F, and 311. The search and review results have been documented and are placed in the docket (A–97–14) for this rule.

Five voluntary consensus standards: ASTM D1979–97, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are already incorporated by reference in EPA Method 311.

The search for emissions measurement procedures identified 14 other VCS. We determined that 11 of these 14 VCS identified for measuring emissions of HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, we do not intend to adopt these VCS. The reasons for the determinations of these 11 VCS are discussed below.

The VCS ASTM D3154–91 "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," is an impractical

alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of this rulemaking because it lacks in quality control and quality assurance requirements. Specifically, ASTM D3154–91 (1995) does not include the following: (1) Proof that openings of standard pitot tubes have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, that they are calibrated during the test or that the calibration is verified; and (3) sufficient recording intervals (digital and analog recorders, only).

Two VCS, EN 12619:1999 "Stationary Source Emissions-Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality-Determination of Total Nonmethane Organic Compounds-Cryogenic monitoring in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

Emission Limits for Tire Cord Production Affected Sources
63.5986 What emission limits must I meet for tire cord production affected sources?
63.5987 What are my alternatives for meeting the emission limits for tire cord production affected sources?
Emission Limitations for Puncture Sealant Application Affected Sources
63.5988 What emission limitations must I meet for puncture sealant application with the emission limits for tire production affected sources?
63.6004 How do I demonstrate continuous compliance with the emission limits for tire production affected sources?
Continuous Compliance Requirements for Tire Cord Production Affected Sources
63.6005 How do I monitor and collect data to demonstrate continuous compliance with the emission limits for tire cord production affected sources?
Limits for Tire Production Affected Sources
Table 11 to Subpart XXXX of Part 63—Minimum Data for Continuous Compliance with the Emission Limits for Tire Cord Production Affected Sources
Table 12 to Subpart XXXX of Part 63—Continuous Compliance with the Emission Limits for Tire Cord Production Affected Sources
Table 13 to Subpart XXXX of Part 63—Minimum Data for Continuous Compliance

alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of this rulemaking because it lacks in quality control and quality assurance requirements. Specifically, ASTM D3154–91 (1995) does not include the following: (1) Proof that openings of standard pitot tubes have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The VCS ISO 10780:1994, "Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in this rulemaking. This standard, ISO 10780:1994, recommends the use of L-shaped pitots, which historically have not been recommended because the S-type design has large openings which are less likely to plug up with dust.

The VCS ASTM D3464–96 (2001), "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of this rulemaking primarily because applicability specifications are not clearly defined, *e.g.*, range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit our ability to make a definitive comparison of the method in these areas.

Two very similar standards, ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," and ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," are impractical alternatives to EPA Method 3A for the purposes of this rulemaking because they lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders, in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

Two VCS, EN 12619:1999 "Stationary Source Emissions-Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality-Determination of Total Nonmethane Organic Compounds-Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm carbon for EN 12619 and 10 ppm carbon for ISO 14965. Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Four VCS are impractical alternatives to EPA test methods for the purposes of this rulemaking because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3796–90 (Reapproved 1996), "Standard Practice for Calibration of Type S Pitot Tubes," for EPA Method 2; ASME C00031 or PTC 19–10–1981—Part 10, "Flue and Exhaust Gas Analyses," for EPA Method 3; CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Method 3A; and ASTM E337–84 (Reapproved 1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4.

Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A.

Sections 63.5993, 63.5994, 63.5997, and 63.6000 to subpart XXXX list the EPA testing methods in the final rule. Under 40 CFR 63.8 of subpart A of the General Provisions, a source may apply to obtain permission to use alternative monitoring in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on July 9, 2002.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Rubber tire manufacturing.

Dated: May 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart XXXX to read as follows:

Subpart XXXX—National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

Sec.

What This Subpart Covers

63.5980 What is the purpose of this subpart?
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63.5982 What parts of my facility does this subpart cover?
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Emission Limits for Tire Production Affected Sources

63.5984 What emission limits must I meet for tire production affected sources?
63.5985 What are my alternatives for meeting the emission limits for tire production affected sources?

Emission Limits for Tire Cord Production Affected Sources

63.5986 What emission limits must I meet for tire cord production affected sources?
63.5987 What are my alternatives for meeting the emission limits for tire cord production affected sources?

Emission Limitations for Puncture Sealant Application Affected Sources

63.5988 What emission limitations must I meet for puncture sealant application affected sources?
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Testing and Initial Compliance Requirements for Tire Cord Production Affected Sources

63.5997 How do I conduct tests and procedures for tire cord production affected sources?
63.5998 What are my monitoring installation, operation, and maintenance requirements?
63.5999 How do I demonstrate initial compliance with the emission limits for tire cord production affected sources?

Testing and Initial Compliance Requirements for Puncture Sealant Application Affected Sources

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Continuous Compliance Requirements for Tire Cord Production Affected Sources

63.6005 How do I monitor and collect data to demonstrate continuous compliance with the emission limits for tire cord production affected sources?
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Continuous Compliance Requirements for Puncture Sealant Application Affected Sources

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Subpart XXXX—National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

What This Subpart Covers

§ 63.5980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for rubber tire manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.5981 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions.

(1) Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires, the production of tire cord, and the application of puncture sealant. Components of rubber tires include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, tire cord and liners. Other components often associated with rubber tires but not integral to the tire, such as wheels, inner tubes, tire bladders, and valve stems, are not components of rubber tires or tire cord and are not subject to this subpart.

(2) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or

any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) You are not subject to this subpart if the affected source at your rubber tire manufacturing facility meets either of the conditions described in paragraph (b)(1) or (2) of this section.

(1) You own or operate a tire cord production affected source, but the

the extent cements and solvents are used; cement house operations; marking operations; calendar operations, to the extent solvents are used; tire striping operations; tire repair operations; slab dip operations; other tire building operations, to the extent that cements and solvents are used; and balance pad operations.

(2) The tire cord production affected

A of this part. Some of the notifications must be submitted before the date you are required to comply with the emission limitations in this subpart.

Emission Limits for Tire Production Affected Sources

§ 63.5984 What emission limits must I meet for tire production affected sources?

You must meet each emission limit in

Emission Limitations for Puncture Sealant Application Affected Sources

§ 63.5988 What emission limitations must I meet for puncture sealant application affected sources?

(a) You must meet each emission limit in either option 1 or option 2 of Table 3 to this subpart that applies to you.

(b) If you use an add-on control device to meet the emission limits in Table 3 to this subpart, you must also operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) During the period between the compliance date specified for your source in § 63.5983 and the date upon which continuous compliance monitoring systems (CMS) have been installed and validated and any applicable operating limits have been

demonstration or performance test within 180 calendar days after the compliance date that is specified for your new or reconstructed affected source in § 63.5983(a). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(b) If you have an existing affected source, you must conduct each required initial compliance demonstration or

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any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) You are not subject to this subpart if the affected source at your rubber tire manufacturing facility meets either of the conditions described in paragraph (b)(1) or (2) of this section.

(1) You own or operate a tire cord production affected source, but the primary product produced at the affected source is determined to be subject to another subpart under this part 63 as of the effective date of that subpart (publication date of the final rule) or startup of the source, whichever is later. In this case, you must determine which subpart applies to your source and you must be in compliance with the applicable subpart by the compliance date of that subpart. The primary product is the product that is produced for the greatest operating time over a 5-year period, based on expected utilization for the 5 years following the compliance date or following initial startup of the source, whichever is later.

(2) Your rubber tire manufacturing affected source is a research and development facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

§ 63.5982 What parts of my facility does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at facilities engaged in the manufacture of rubber tires or their components.

(b) The affected sources are defined in paragraph (b)(1) of this section (tire production), paragraph (b)(2) of this section (tire cord production), paragraph (b)(3) of this section (puncture sealant application), and paragraph (b)(4) of this section (rubber processing).

(1) The tire production affected source is the collection of all processes that use or process cements and solvents as defined in § 63.6015, located at any rubber tire manufacturing facility. It includes, but is not limited to: Storage and mixing vessels and the transfer equipment containing cements and/or solvents; wastewater handling and treatment operations; tread and cement operations; tire painting operations; ink and finish operations; undertread cement operations; process equipment cleaning materials; bead cementing operations; tire building operations; green tire spray operations; extruding, to the extent cements and solvents are used; cement house operations; marking operations; calendar operations, to the extent solvents are used; tire striping operations; tire repair operations; slab dip operations; other tire building operations, to the extent that cements and solvents are used; and balance pad operations.

(2) The tire cord production affected source is the collection of all processes engaged in the production of tire cord. It includes, but is not limited to: dipping operations, drying ovens, heat-set ovens, bulk storage tanks, mixing facilities, general facility vents, air pollution control devices, and warehouse storage vents.

(3) The puncture sealant application affected source is the puncture sealant application booth operation used to apply puncture sealant to finished tires.

(4) The rubber processing affected source is the collection of all rubber mixing processes (e.g., banburys and associated drop mills) that either mix compounds or warm rubber compound before the compound is processed into components of rubber tires. The mixed rubber compound itself is also included in the rubber processing affected source. There are no emission limitations or other requirements for the rubber processing affected source.

(c) An affected source is a new affected source if construction of the affected source commenced after October 18, 2000, and it met the applicability criteria of § 63.5981 at the time construction commenced.

(d) An affected source is reconstructed if it meets the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.5983 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, except as provided in §§ 63.5982(b)(4) and 63.5981(b)(1), you must comply with the emission limitations for new and reconstructed sources in this subpart upon startup.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than July 11, 2005.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the affected source(s) must be in compliance with existing source emission limitations no later than 3 years after the date on which the area source became a major source.

(d) You must meet the notification requirements in § 63.6009 according to the schedule in § 63.6009 and in subpart A of this part. Some of the notifications must be submitted before the date you are required to comply with the emission limitations in this subpart.

Emission Limits for Tire Production Affected Sources

§ 63.5984 What emission limits must I meet for tire production affected sources?

You must meet each emission limit in either option 1 or option 2 of Table 1 to this subpart that applies to you.

§ 63.5985 What are my alternatives for meeting the emission limits for tire production affected sources?

You must use one of the compliance alternatives in paragraphs (a) through (c) of this section to meet either of the emission limits in § 63.5984.

(a) *Purchase alternative.* Use only cements and solvents that, as purchased, contain no more HAP than allowed by the emission limits in Table 1 to this subpart, option 1 (HAP constituent option).

(b) *Monthly average alternative, without using an add-on control device.* Use cements and solvents in such a way that the monthly average HAP emissions do not exceed the emission limits in Table 1 to this subpart, option 1 or option 2.

(c) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions so that the monthly average HAP emissions do not exceed the emission limits in Table 1 to this subpart, option 1 or option 2.

Emission Limits for Tire Cord Production Affected Sources

§ 63.5986 What emission limits must I meet for tire cord production affected sources?

You must meet each emission limit in either option 1 or option 2 of Table 2 to this subpart that applies to you.

§ 63.5987 What are my alternatives for meeting the emission limits for tire cord production affected sources?

You must use one of the compliance alternatives in paragraph (a) or (b) of this section to meet the emission limits in § 63.5986.

(a) *Monthly average alternative, without using an add-on control device.* Use coatings in such a way that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart.

(b) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions so that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart.

Emission Limitations for Puncture Sealant Application Affected Sources

§ 63.5988 What emission limitations must I meet for puncture sealant application affected sources?

(a) You must meet each emission limit in either option 1 or option 2 of Table 3 to this subpart that applies to you.

(b) If you use an add-on control device to meet the emission limits in Table 3 to this subpart, you must also meet each operating limit in Table 4 to this subpart that applies to you.

§ 63.5989 What are my alternatives for meeting the emission limitations for puncture sealant application affected sources?

You must use one of the compliance alternatives in paragraphs (a) through (d) of this section to meet the emission limitations in § 63.5988.

(a) *Overall control efficiency alternative.* Use an emissions capture system and control device and demonstrate that the application booth emissions meet the emission limits in Table 3 to this subpart, option 1a or 1b, and the control device and capture system meet the operating limits in Table 4 to this subpart.

(b) *Permanent total enclosure and control device efficiency alternative.* Use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51, appendix M. Demonstrate that the control device meets the emission limits in Table 3 to this subpart, option 1a or 1b. You must also show that the control device and capture system meet the operating limits in Table 4 to this subpart.

(c) *Monthly average alternative, without using an add-on control device.* Use puncture sealants in such a way that the monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2.

(d) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions so that monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2.

General Compliance Requirements

§ 63.5990 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the applicable emission limitations specified in Tables 1 through 4 to this subpart at all times, except during periods of startup, shutdown, and malfunction if you are using a control device to comply with an emission limit.

(b) Except as provided in § 63.5982(b)(4), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) During the period between the compliance date specified for your source in § 63.5983 and the date upon which continuous compliance monitoring systems (CMS) have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emission control equipment.

(d) For each affected source that complies with the emission limits in Tables 1 through 3 to this subpart using a control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

(e) For each monitoring system required in this section, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements in paragraphs (e)(1) through (3) of this section as follows:

(1) Installation of the CMS sampling probe or other interface at a measurement location relative to each affected process unit so that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(f) In your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (f)(1) through (3) of this section as follows:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8), and this section;

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

General Testing and Initial Compliance Requirements

§ 63.5991 By what date must I conduct an initial compliance demonstration or performance test?

(a) If you have a new or reconstructed affected source, you must conduct each required initial compliance demonstration or performance test within 180 calendar days after the compliance date that is specified for your new or reconstructed affected source in § 63.5983(a). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(b) If you have an existing affected source, you must conduct each required initial compliance demonstration or performance test no later than the compliance date that is specified for your existing affected source in § 63.5983(b). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(c) If you commenced construction or reconstruction between October 18, 2000 and July 9, 2002, you must demonstrate initial compliance with either the proposed emission limitations or the promulgated emission limitations no later than January 6, 2003, or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between October 18, 2000 and July 9, 2002, and you chose to comply with the proposed emission limitation when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated emission limitation no later than January 5, 2006, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.5992 When must I conduct subsequent performance tests?

If you use a control system (add-on control device and capture system) to meet the emission limitations, you must also conduct a performance test at least once every 5 years following your initial compliance demonstration to verify control system performance and reestablish operating parameters or operating limits for control systems used to comply with the emissions limits.

§ 63.5993 What performance tests and other procedures must I use?

(a) If you use a control system to meet the emission limitations, you must conduct each performance test in Table 5 to this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions specified in Table 5 to this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(1), unless otherwise specified in the test method. Each test run must last at least 1 hour.

(e) If you are complying with the emission limitations using a control system, you must also conduct performance tests according to the requirements in paragraphs (e)(1)

Testing and Initial Compliance Requirements for Tire Production Affected Sources

§ 63.5994 How do I conduct tests and procedures for tire production affected sources?

(a) *Methods to determine the mass percent of HAP in cements and solvents.* To determine the HAP content in the cements and solvents used at your tire

(b) *Methods to demonstrate compliance with the HAP constituent emission limits in Table 1 to this subpart (option 1).* Use the method in paragraph (b)(1) of this section to demonstrate initial and continuous compliance with the applicable emission limits for tire production affected sources using the compliance alternative described in § 63.5985(a), purchase alternative. Use the equations

processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TMASS_j$=total mass of cement and solvent j used in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by

(c) *Methods to demonstrate compliance with the production-based emission limits in Table 1 to this subpart, option 2.* Use the methods and equations in paragraphs (c)(1) through (6) of this section to demonstrate initial and continuous compliance with the production-based emission limits for tire production affected sources using the compliance alternatives described in § 63.5985(b) and (c).

not exceed the HAP emission limit in Table 1 to this subpart, option 2. Equation 3 follows:

$$E_{month} = \frac{\sum_{i=1}^{n} (HAP_i)(TMASS_i)}{RMASS} \quad \text{(Eq. 3.)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of rubber used month, grams per megagram.

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(1), unless otherwise specified in the test method. Each test run must last at least 1 hour.

(e) If you are complying with the emission limitations using a control system, you must also conduct performance tests according to the requirements in paragraphs (e)(1) through (3) of this section as they apply to you.

(1) *Determining capture efficiency of permanent or temporary total enclosure.* Determine the capture efficiency of a capture system by using one of the procedures in Table 5 to this subpart.

(2) *Determining capture efficiency of an alternative method.* As an alternative to constructing a permanent or temporary total enclosure, you may determine the capture efficiency using any capture efficiency protocol and test methods if the data satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach in appendix A to subpart KK of this part.

(3) *Determining efficiency of an add-on control device.* Use Table 5 to this subpart to select the test methods for determining the efficiency of an add-on control device.

Testing and Initial Compliance Requirements for Tire Production Affected Sources

§ 63.5994 How do I conduct tests and procedures for tire production affected sources?

(a) *Methods to determine the mass percent of HAP in cements and solvents.* To determine the HAP content in the cements and solvents used at your tire production affected source, use EPA Method 311 of appendix A of this part, an approved alternative method, or any other reasonable means for determining the HAP content of your cements and solvents. Other reasonable means include, but are not limited to: a material safety data sheet (MSDS), provided it contains appropriate information; a certified product data sheet (CPDS); or a manufacturer's hazardous air pollutant data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(b) *Methods to demonstrate compliance with the HAP constituent emission limits in Table 1 to this subpart (option 1).* Use the method in paragraph (b)(1) of this section to demonstrate initial and continuous compliance with the applicable emission limits for tire production affected sources using the compliance alternative described in § 63.5985(a), purchase alternative. Use the equations in paragraphs (b)(2) and (3) of this section to demonstrate initial and continuous compliance with the emission limits for tire production affected sources using the monthly average compliance alternatives described in § 63.5985(b) and (c).

(1) Determine the mass percent of each HAP in each cement and solvent according to the procedures in paragraph (a) of this section.

(2) Use Equation 1 of this section to calculate the HAP emission rate for each monthly operating period when complying by using cements and solvents without using an add-on control device so that the monthly average HAP emissions do not exceed the HAP constituent emission limits in Table 1 to this subpart, option 1. Equation 1 follows:

$$E_{month} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TMASS_i)\right)(10^6)}{\sum_{i=1}^{n} TMASS_i} \quad \text{(Eq. 1)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass cements and solvents from all cements and solvents used in tire production per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section.

$TMASS_i$=total mass of cement and solvent i used in the month, grams.

n=number of cements and solvents used in the month.

(3) Use Equation 2 of this section to calculate the HAP emission rate for each monthly period when complying by using a control device to reduce HAP emissions so that the monthly average HAP emissions do not exceed the HAP constituent emission limits in Table 1 to this subpart (option 1). Equation 2 follows:

$$E_{month} = \frac{\left\{\sum_{i=1}^{n}(HAP_i)(TMASS_i) + \sum_{j=1}^{m}(HAP_j)(TMASS_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TMASS_k)\right\}(10^6)}{\sum_{i=1}^{n} TMASS_i + \sum_{j=1}^{m} TMASS_j + \sum_{k=1}^{p} TMASS_k} \quad \text{(Eq. 2)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass cements and solvents from all cements and solvents used in tire production per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section for cements and solvents used in the month in processes that are not routed to a control device.

$TMASS_i$=total mass of cement and solvent i used in the month in processes that are not routed to a control device, grams.

n=number of cements and solvents used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of the specific HAP in cement and solvent j, as purchased, determined in accordance with paragraph (a) of this section, for cements and solvents used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TMASS_j$=total mass of cement and solvent j used in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of cements and solvents used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP in cement and solvent k, as purchased, for cements and solvents used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TMASS_k$=total mass of cement and solvent k used in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of coments and solvents used in the month that are routed to a control device during all non-control operating days.

(4) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(c) *Methods to demonstrate compliance with the production-based emission limits in Table 1 to this subpart, option 2.* Use the methods and equations in paragraphs (c)(1) through (6) of this section to demonstrate initial and continuous compliance with the production-based emission limits for tire production affected sources using the compliance alternatives described in § 63.5985(b) and (c).

(1) *Methods to determine the mass percent of each HAP in cements and solvents.* Determine the mass percent of all HAP in cements and solvents using the applicable methods specified in paragraph (a) of this section.

(2) *Quantity of rubber used.* Determine your quantity of rubber used (megagrams) by accounting for the total mass of mixed rubber compound that is delivered to the tire production operation.

(3) *Compliance without use of an add-on control device.* If you do not use an add-on control device to meet the emission limits, use Equation 3 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of rubber used, using the quantity of rubber used per month (megagrams), as determined in paragraph (c)(2) of this section so that the monthly average HAP emission does not exceed the HAP emission limit in Table 1 to this subpart, option 2. Equation 3 follows:

$$E_{month} = \frac{\sum_{i=1}^{n}(HAP_i)(TMASS_i)}{RMASS} \quad \text{(Eq. 3.)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of rubber used month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section.

$TMASS_i$=total mass of cement and solvent i used in the month, grams.

n=number of cements and solvents used in the month.

RMASS=total mass of rubber used per month, megagrams.

(4) *Compliance with use of an add-on control device.* If you use a control device to meet the emission limits, use Equation 4 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of rubber used, using the quantity of rubber used per month (megagrams), as determined in paragraph (c)(2) of this section so that the monthly average HAP emission does not exceed the HAP emission limit in Table 1 to this subpart, option 2. Equation 4 follows:

$$E_{month} = \frac{\sum_{i=1}^{n}(HAP_i)(TMASS_i) + \sum_{j=1}^{m}(HAP_j)(TMASS_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TMASS_k)}{RMASS} \quad \text{(Eq. 4)}$$

Where:

E_{month}=mass of all HAP emitted per total mass rubber used per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section for cements and solvents used in the month in processes that are not routed to a control device.

$TMASS_i$=total mass of cement and solvent i used in the month in processes that are not routed to a control device, grams.

n=number of cements and solvents used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of all HAP in cement and solvent j, as purchased, determined in accordance with paragraph (a) of this section, for cements and solvents used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TMASS_j$=total mass of cement and solvent j used in the month in processes that are routed to a control device during all operating days.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of cements and solvents used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP in cement and solvent k, as purchased, for cements and solvents used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TMASS_k$=total mass of cement and solvent k used in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of cements and solvents used in the month that are routed to a control device during all non-control operating days.

RMASS=total mass of rubber used per month, megagrams.

(5) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(d) *Specific compliance demonstration requirements for tire production affected sources.* (1) Conduct any required compliance demonstration according to the requirements in § 63.5993.

(2) If you are demonstrating compliance with the HAP constituent option in Table 1 to this subpart, option 1, conduct the compliance demonstration using cements and solvents that are representative of cements and solvents typically used at your tire production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 to this subpart.

(e) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equations 2 and 4 of this

section for HAP emissions reduced using a control system, you must meet the requirements in paragraphs (e)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream

valid data (as defined in your site-specific monitoring plan) for at least four equally spaced periods each hour.

(4) For each hour that you have valid data from at least four equally spaced periods, you must calculate the hourly average valuo using all valid data.

(5) You must calculate the daily average using all of the hourly averages calculated according to paragraph (a)(3) of this section for the 24-hour period.

(1) Use a device that has an accuracy of ±10 percent or better.

(2) Use a device that is capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle.

(d) For any other control device, or for other capture systems, ensure that the CPMS is operated according to a monitoring plan submitted to the Administrator with the compliance

coating used at your tire cord production affected source, use EPA Method 311 of appendix A of this part, an approved alternative method, or any other reasonable means for determining the HAP content of your coatings. Other reasonable means include, but are not limited to: an MSDS, provided it contains appropriate information; a CPDS; or a manufacturer's HAP data sheet. You are not required to test the materials that you use, but the

demonstrations that are verifiable to the approving agency. Use the revised value in your compliance demonstration in the relevant equations in paragraph (b) of this section.

(b) *Methods to determine compliance with the emission limits in Table 2 to this subpart, option 1.* Use the equations in this paragraph (b) to demonstrate initial and continuous compliance with the emission limits for tire cord production sources using the

$$E_{month} = \frac{\sum_{i=1}^{n}(HAP_i)(TCOAT_i)}{TFAB} \quad \text{(Eq. 1)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of fabric processed in the month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in the coating i, prior to curing and including any application station dilution, determined in accordance with

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section for HAP emissions reduced using a control system, you must meet the requirements in paragraphs (e)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the natural draft openings (NDO) in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDO have not changed, that there are no new NDO, and that a HAP emission source has not been moved closer to an NDO since the last compliance demonstration was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameters within the operating range established during the compliance demonstration.

(f) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

§ 63.5995 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.5994(e)(1) to monitor, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) according to the requirements in § 63.5990(e) and (f) and in paragraphs (a)(1) through (6) of this section.

(1) You must operate your CPMS at all times that the process is operating.

(2) You must collect data from at least four equally spaced periods each hour.

(3) For at least 75 percent of the hours in an operating day, you must have valid data (as defined in your site-specific monitoring plan) for at least four equally spaced periods each hour.

(4) For each hour that you have valid data from at least four equally spaced periods, you must calculate the hourly average value using all valid data.

(5) You must calculate the daily average using all of the hourly averages calculated according to paragraph (a)(3) of this section for the 24-hour period.

(6) You must record the results for each inspection, calibration, and validation check as specified in your site-specific monitoring plan.

(b) For each temperature monitoring device, you must meet the requirements in paragraphs (a) and (b)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a non-cryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2 degrees centigrade or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2 degrees centigrade or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20 degrees Fahrenheit.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed near the process temperature sensor must yield a reading within 16.7 degrees centigrade of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each integrating regeneration stream flow monitoring device associated with a carbon adsorber, you must meet the requirements in paragraphs (a) and (c)(1) and (2) of this section.

(1) Use a device that has an accuracy of ±10 percent or better.

(2) Use a device that is capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle.

(d) For any other control device, or for other capture systems, ensure that the CPMS is operated according to a monitoring plan submitted to the Administrator with the compliance status report required by § 63.9(h). The monitoring plan must meet the requirements in paragraphs (a) and (d)(1) through (3) of this section. Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

(e) For each pressure differential monitoring device, you must meet the requirements in paragraphs (a) and (e)(1) and (2) of this section.

(1) Conduct a quarterly EPA Method 2 procedure (found in 40 CFR part 60, appendix A) on the applicable NDOs and use the results to calibrate the pressure monitor if the difference in results are greater than 10 percent.

(2) Inspect the NDO monthly to ensure that their size has not changed, that there are no new NDO, and that no HAP sources have been moved closer to the NDO than when the last performance test was conducted.

§ 63.5996 How do I demonstrate initial compliance with the emission limits for tire production affected sources?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 6 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

Testing and Initial Compliance Requirements for Tire Cord Production Affected Sources

§ 63.5997 How do I conduct tests and procedures for tire cord production affected sources?

(a) *Methods to determine the mass percent of each HAP in coatings.* (1) To determine the HAP content in the coating used at your tire cord production affected source, use EPA Method 311 of appendix A of this part, an approved alternative method, or any other reasonable means for determining the HAP content of your coatings. Other reasonable means include, but are not limited to: an MSDS, provided it contains appropriate information; a CPDS; or a manufacturer's HAP data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(2) Unless you demonstrate otherwise, the HAP content analysis must be based on coatings prior to any cross-linking reactions, *i.e.*, curing. However, you may account for differences in HAP emissions resulting from chemical reactions based on the conversion rates of the individual coating formulations, chemistry demonstrations, or other demonstrations that are verifiable to the approving agency. Use the revised value in your compliance demonstration in the relevant equations in paragraph (b) of this section.

(b) *Methods to determine compliance with the emission limits in Table 2 to this subpart, option 1.* Use the equations in this paragraph (b) to demonstrate initial and continuous compliance with the emission limits for tire cord production sources using the compliance alternatives described in § 63.5987(a) and (b).

(1) *Determine mass percent of HAP.* Determine the mass percent of all HAP in each coating according to the procedures in paragraph (a) of this section.

(2) *Compliance without use of an add-on control device.* If you do not use an add-on control device to meet the emission limits, use Equation 1 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of fabric processed at the tire cord production source to show that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart, option 1. Equation 1 follows:

$$E_{month} = \frac{\sum_{i=1}^{n}(HAP_i)(TCOAT_i)}{TFAB} \quad \text{(Eq. 1)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of fabric processed in the month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in the coating i, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are not routed to a control device, grams.

n=number of coatings used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of all HAP in coating j, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TCOAT_j$=total mass of coating j made and used for application to fabric at the facility in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of coatings used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of all HAP in coating k, prior to curing and including any application station dilution, for coatings used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TCOAT_k$=total mass of coating k made and used for application to fabric at the facility in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of coatings used in the month that are routed to a control device during all non-control operating days.

TFAB=total mass of fabric processed in the month, megagrams.

(3) *Compliance with use of an add-on control device.* If you use a control device to meet the emission limits, use Equation 2 of this section to calculate the monthly HAP emission rate in grams of HAP emitted per megagram of fabric processed to show that the monthly average HAP emissions do not exceed the HAP emission limit in Table 2 of this subpart, option 1. Equation 2 follows:

$$E_{month} = \frac{\sum_{i=1}^{n}(HAP_i)(TCOAT_i) + \sum_{j=1}^{m}(HAP_j)(TCOAT_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TCOAT_k)}{TFAB} \quad \text{(Eq. 2)}$$

Where:

E_{month}=mass of all HAP emitted per total mass of fabric processed in the month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of all HAP in coating i, prior to curing and including any application stations dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are not routed to a control device.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are not routed to a control device, grams.

n=number of coatings used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of all HAP in coating j, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TCOAT_j$=total mass of coating j made and used for application to fabric at the facility in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of coatings used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of all HAP in coating k, prior to curing and including any application station dilution, for coatings used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TCOAT_k$=total mass of coating k made and used for application to fabric at the facility in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of coatings used in the month that are routed to a control device during all non-control operating days.

TFAB=total mass of fabric processed in the month, megagrams.

(4) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(c) *Methods to determine compliance with the emission limits in Table 2 of this subpart, option 2.* Use the equations in this paragraph (c) to demonstrate initial and continuous compliance with the emission limits for tire cord production sources using the compliance alternatives described in § 63.5987(a) and (b).

(1) Determine the mass percent of each HAP in each coating according to the procedures in paragraph (a) of this section.

(2) Use Equation 3 of this section to calculate the monthly average HAP emission rate when complying by using coatings without using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart, option 2. Equation 3 follows:

$$E_{month} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TCOAT_i)\right)(10^6)}{\sum_{i=1}^{n}TCOAT_i} \quad \text{(Eq. 3)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of coatings from all coatings to curing and including any application station dilution, determined in accordance with paragraph (a) of this section.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are not routed to a control device, grams.

(3) Use Equation 4 of this section to calculate the monthly average HAP emission rate when complying by using

§ 63.5998 How do I demonstrate initial compliance with the emission limits for tire cord production affected sources?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 7 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

emission limitations in Table 3 to this subpart. Use the methods and equations in paragraph (b) of this section to demonstrate initial and continuous compliance with the overall control efficiency compliance alternatives described in § 63.5989(a) and (b). Use the methods and equations in paragraphs (c) through (g) of this section to demonstrate initial and continuous compliance with the HAP constituent

(1) You must also meet the requirements in paragraphs (b)(1)(i) and (ii) of this section.

(i) Conduct the performance test using a puncture sealant with an average mass percent HAP content that is representative of the puncture sealants typically used at your puncture sealant application affected source.

(ii) Establish all applicable operating limit ranges that correspond to the control system efficiency as described in

$$E_{month} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TCOAT_i)\right)(10^6)}{\sum_{i=1}^{n} TCOAT_i} \quad \text{(Eq. 3)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of coatings from all coatings made and used in tire cord fabric production per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in the coating i, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month, grams.

n=number of coatings used in the month.

(3) Use Equation 4 of this section to calculate the monthly average HAP emission rate when complying by using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 2 to this subpart, option 2. Equation 4 follows:

$$E_{month} = \frac{\left\{\sum_{i=1}^{n}(HAP_i)(TCOAT_i) + \sum_{j=1}^{m}(HAP_j)(TCOAT_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TMASS_k)\right\}(10^6)}{\sum_{i=1}^{n} TCOAT_i + \sum_{j=1}^{m} TCOAT_j + \sum_{k=1}^{p} TCOAT_k} \quad \text{(Eq. 4)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of coatings from all coatings made and used in tire cord fabric production per month, grams per megagram,

HAP_i=mass percent, expressed as a decimal, of the specific HAP in coating i, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are not routed to a control device.

$TCOAT_i$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are not routed to a control device, grams.

n=number of coatings used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of the specific HAP in coating j, prior to curing and including any application station dilution, determined in accordance with paragraph (a) of this section, for coatings used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TCOAT_j$=total mass of coating j made and used for application to fabric at the facility in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of coatings used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP in coating k, prior to curing and including any application station dilution, for coatings used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TCOAT_k$=total mass of coating i made and used for application to fabric at the facility in the month in processes that are routed to a control device during all non-control operating days, grams.

p = number of coatings used in the month that are routed to a control device during all non-control operating days.

(4) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(d) *Specific compliance demonstration requirements for tire cord production affected sources.* (1) Conduct any required compliance demonstrations according to the requirements in § 63.5993.

(2) Conduct the compliance demonstration using coatings with average mass percent HAP content that are representative of the coatings typically used at your tire cord production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 to this subpart.

(e) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equations 2 and 4 of this section for HAP emissions reduced using a control system, you must meet the requirements in paragraphs (e)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, continuously monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the NDO in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDO have not changed, that there are no new NDO, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameter within the operating range established during the compliance demonstration.

(f) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

§ 63.5998 What are my monitoring installation, operation, and maintenance requirements?

For each operating parameter that you are required by § 63.5997(e)(1) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

§ 63.5999 How do I demonstrate initial compliance with the emission limits for tire cord production affected sources?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 7 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

Testing and Initial Compliance Requirements for Puncture Sealant Application Affected Sources

§ 63.6000 How do I conduct tests and procedures for puncture sealant application affected sources?

(a) *Methods to determine compliance with the puncture sealant application emission limitations in Table 3 to this subpart.* Use the methods and equations in paragraph (b) of this section to demonstrate initial and continuous compliance with the overall control efficiency compliance alternatives described in § 63.5989(a) and (b). Use the methods and equations in paragraphs (c) through (g) of this section to demonstrate initial and continuous compliance with the HAP constituent compliance alternative described in § 63.5989(c) and (d).

(b) *Methods to determine compliance with the emission limits in Table 3 to this subpart, option 1.* Follow the test procedures described in § 63.5993 to determine the overall control efficiency of your system.

$$R = \frac{(F)(E)}{100} \quad \text{(Eq. 1)}$$

Where:

R=overall control system efficiency, percent.

F=capture efficiency of the capture system on add-on control device, percent, determined during the performance test.

E=control efficiency of add-on control device k, percent, determined during the performance test.

(3) Monitor the established operating limits as appropriate.

(i) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle.

(iii) For each control device used other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the NDO in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDO have not changed, that there are no new NDO, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(vi) Maintain the operating parameter within the operating range established during the performance test.

(c) *Methods to determine the mass percent of each HAP in puncture sealants.* To determine the HAP content in the puncture sealant used at your puncture sealant application affected source, use EPA Method 311 of appendix A of 40 CFR part 63, an approved alternative method, or any other reasonable means for determining the HAP content of your puncture sealants. Other reasonable means include, but are not limited to: an MSDS, provided it contains appropriate information; a CPDS; or a manufacturer's hazardous air pollutant data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(d) *Methods to determine compliance with the emission limits in Table 3 to this subpart, option 2.* Use the equations in this paragraph (d) to demonstrate initial and continuous compliance with the HAP constituent emission limits for puncture sealant application affected sources using the compliance alternatives described in § 63.5989(c) and (d).

(1) Use Equation 2 of this section to calculate the monthly average HAP emission rate when complying by using puncture sealants without using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2. Equation 2 follows:

$$E_{month} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TPSEAL_i)\right)(10^6)}{\sum_{i=1}^{n} TPSEAL_i} \quad \text{(Eq. 2)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of puncture sealants from all puncture sealants used at the puncture

sealant affected source per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in puncture sealant i, including any application booth dilution, determined in accordance with paragraph (c) of this section.

$TPSEAL_i$=total mass of puncture sealant i used in the month, grams.

n=number of puncture sealants used in the month.

(2) Use Equation 3 of this section to calculate the monthly average HAP emission rate when complying by using puncture sealants by using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2. Equation 3 follows:

$$\left\{\sum_{i=1}^{n}(HAP_i)(TPSEAL_i) + \sum_{j=1}^{m}(HAP_j)(TPSEAL_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TPSEAL_k)\right\}(10^6)$$

(Eq. 3)

§ 63.6004 How do I demonstrate continuous compliance with the emission limits for tire production affected sources?

(a) You must demonstrate continuous compliance with each applicable limit in Table 1 to this subpart using the methods specified in Table 10 to this subpart.

(b) You must report each instance in which you did not meet an emission limit in Table 1 to this subpart. You must also report each instance in which you did not meet an emission limit in Table 2 to this subpart using the methods specified in Table 12 to this subpart.

(b) You must report each instance in which you did not meet an applicable emission limit in Table 2 to this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 12 to this subpart. These instances are deviations from the emission limits in this subpart. The deviations must be reported in

you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or

sealant affected source per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in puncture sealant i, including any application booth dilution, determined in accordance with paragraph (c) of this section.

$TPSEAL_i$=total mass of puncture sealant i used in the month, grams.

n=number of puncture sealants used in the month.

(2) Use Equation 3 of this section to calculate the monthly average HAP emission rate when complying by using puncture sealants by using an add-on control device to show that the monthly average HAP emissions do not exceed the emission limits in Table 3 to this subpart, option 2. Equation 3 follows:

$$E_{month} = \frac{\left\{\sum_{i=1}^{n}(HAP_i)(TPSEAL_i) + \sum_{j=1}^{m}(HAP_j)(TPSEAL_j)\left(1-\frac{EFF}{100}\right) + \sum_{k=1}^{p}(HAP_k)(TPSEAL_k)\right\}(10^6)}{\sum_{i=1}^{n}TPSEAL_i + \sum_{j=1}^{m}TPSEAL_j + \sum_{k=1}^{p}TPSEAL_k} \quad \text{(Eq. 3)}$$

Where:

E_{month}=mass of the specific HAP emitted per total mass of puncture sealants used at the puncture sealant affected source per month, grams per megagram.

HAP_i=mass percent, expressed as a decimal, of the specific HAP in puncture sealant i, including any application booth dilution, determined in accordance with paragraph (c) of this section for puncture sealants used in the month in processes that are not routed to a control device.

$TPSEAL_i$=total mass of puncture sealant i used in the month in processes that are not routed to a control device, gram.

n=number of puncture sealants used in the month in processes that are not routed to a control device.

HAP_j=mass percent, expressed as a decimal, of the specific HAP, in puncture sealant j, including any application booth dilution, determined in accordance with paragraph (c) of this section, for puncture sealants used in the month in processes that are routed to a control device during operating days, which are defined as days when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TPSEAL_j$=total mass of puncture sealant j used in the month in processes that are routed to a control device during all operating days, grams.

EFF=efficiency of the control system determined during the performance test (capture system efficiency multiplied by the control device efficiency), percent.

m=number of puncture sealants used in the month that are routed to a control device during all operating days.

HAP_k=mass percent, expressed as a decimal, of the specific HAP, in puncture sealant k, including any application booth dilution, for puncture sealants used in the month in processes that are routed to a control device during non-control operating days, which are defined as days when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TPSEAL_k$=total mass of total mass of puncture sealant k used in the month in processes that are routed to a control device during all non-control operating days, grams.

p=number of puncture sealants used in the month that are routed to a control device during all non-control operating days.

(3) Each monthly calculation is a compliance demonstration for the purpose of this subpart.

(e) *Specific compliance demonstration requirements for puncture sealant application affected sources.* (1) Conduct any required compliance demonstrations according to the requirements in § 63.5993.

(2) Conduct the compliance demonstration using a puncture sealant with average mass percent HAP content that is representative of the puncture sealants typically used at your puncture sealant application affected source.

(3) Establish an operating range that corresponds to the appropriate control efficiency described in Table 5 to this subpart.

(f) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equation 3 of this section for HAP emissions reduced using a control system, you must monitor the established operating parameters as appropriate and meet the requirements in paragraph (b)(3) of this section.

(g) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

§ 63.6001 What are my monitoring installation, operation, and maintenance requirements?

For each operating limit that you are required by § 63.6000(b)(3) to monitor or each operating parameter that you are required by § 63.6000(f) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

§ 63.6002 How do I demonstrate initial compliance with the emission limits for puncture sealant application affected sources?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 8 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

Continuous Compliance Requirements for Tire Production Affected Sources

§ 63.6003 How do I monitor and collect data to demonstrate continuous compliance with the emission limits for tire production affected sources?

(a) You must monitor and collect data as specified in Table 9 to this subpart.

(b) Except for periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) while the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) In data average calculations and calculations used to report emission or operating levels, you may not use data recorded during periods of monitoring malfunctions or associated repairs, or recorded during required quality assurance or control activities. Such data may not be used in fulfilling any applicable minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.6004 How do I demonstrate continuous compliance with the emission limits for tire production affected sources?

(a) You must demonstrate continuous compliance with each applicable limit in Table 1 to this subpart using the methods specified in Table 10 to this subpart.

(b) You must report each instance in which you did not meet an emission limit in Table 1 to this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 10 to this subpart. These instances are deviations from the emission limits in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

(c) You also must meet the following requirements if you are complying with the purchase alternative for tire production sources described in § 63.5985(a):

(1) If, after you submit the Notification of Compliance Status, you use a cement or solvent for which you have not previously verified percent HAP mass using the methods in § 63.5994(a), you must verify that each cement and solvent used in the affected source meets the emission limit, using any of the methods in § 63.5994(a).

(2) You must update the list of all the cements and solvents used at the affected source.

(3) With the compliance report for the reporting period during which you used the new cement or solvent, you must submit the updated list of all cements and solvents and a statement certifying that, as purchased, each cement and solvent used at the affected source during the reporting period met the emission limits in Table 1 to this subpart.

Continuous Compliance Requirements for Tire Cord Production Affected Sources

§ 63.6005 How do I monitor and collect data to demonstrate continuous compliance with the emission limits for tire cord production affected sources?

(a) You must monitor and collect data to demonstrate continuous compliance with the emission limits for tire cord production affected sources as specified in Table 11 to this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

§ 63.6006 How do I demonstrate continuous compliance with the emission limits for tire cord production affected sources?

(a) You must demonstrate continuous compliance with each applicable emission limit in Table 2 to this subpart using the methods specified in Table 12 to this subpart.

(b) You must report each instance in which you did not meet an applicable emission limit in Table 2 to this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 12 to this subpart. These instances are deviations from the emission limits in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

Continuous Compliance Requirements for Puncture Sealant Application Affected Sources

§ 63.6007 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?

(a) You must monitor and collect data to demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources as specified in Table 13 to this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

§ 63.6008 How do I demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?

(a) You must demonstrate continuous compliance with each applicable emission limitation in Tables 3 and 4 to this subpart using the methods specified in Table 14 to this subpart.

(b) You must report each instance in which you did not meet an applicable emission limit in Table 3 to this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 14 to this subpart. These instances are deviations from the emission limits in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

Notifications, Reports, and Records

§ 63.6009 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7 (b) and (c), 63.8(f) (4) and (6), and 63.9 (b) through (e) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before July 9, 2002, you must submit an Initial Notification not later than November 6, 2002.

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after July 9, 2002, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 5 through 8 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). The Notification must contain the information listed in Table 15 to this subpart for compliance reports. The Notification of Compliance Status must be submitted according to the following schedules, as appropriate:

(1) For each initial compliance demonstration required in Tables 6 through 8 to this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 6 through 8 to this subpart that includes a performance test conducted according to the requirements in Table 5 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(f) For each tire production affected source, the Notification of Compliance Status must also identify the emission limit option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(g) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), the Notification of Compliance Status must also include the information listed in paragraphs (g)(1) and (2) of this section.

(1) A list of each cement and solvent, as purchased, that is used at the affected source and the manufacturer or supplier of each.

(2) The individual HAP content (percent by mass) of each cement and solvent that is used.

(h) For each tire production or tire cord production affected source using a control device, the Notification of Compliance Status must also include the information in paragraphs (h) (1) and (2) of this section for each operating

parameter in §§ 63.5994(e)(1) and 63.5997(e)(1) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (e.g., average secondary chamber firebox temperature over the period of the performance test was 1,500 degrees Fahrenheit).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to specified for your affected source in § 63.5983.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date

solvent that, as purchased, was not included in the list submitted with the Notification of Compliance Status in § 63.6009(g), an updated list of all cements and solvents used, as purchased, at the affected source. You must also include a statement certifying that each cement and solvent, as purchased, that was used at the affected source during the reporting period met the HAP constituent limits (option 1) in

(f) Upon notification to the Administrator that a tire production affected source has eliminated or reformulated cement and solvent so that the source can demonstrate compliance using the purchase alternative in § 63.5985(a), future compliance reports for this affected source may be submitted annually.

(g) If acceptable to both the Administrator and you, you may submit

Other Requirements and Information

§ 63.6013 What parts of the General Provisions apply to me?

Table 17 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.6014 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency, or a

including cements, solvents, and mixtures used as process aids. Cements and solvents include, but are not limited to, tread end cements, undertread cements, bead cements, tire building cements and solvents, green tire spray, blemish repair paints, side wall protective paints, marking inks, materials used to process equipment, and slab dip mixtures. Cements and solvents do not include coatings or process aids used in tire cord

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parameter in §§ 63.5994(e)(1) and 63.5997(e)(1) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (e.g., average secondary chamber firebox temperature over the period of the performance test was 1,500 degrees Fahrenheit).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limits in Tables 1 and 2 to this subpart.

(i) For each puncture sealant application affected source using a control device, the Notification of Compliance Status must include the information in paragraphs (i)(1) and (2) of this section for each operating limit in § 63.6000(b)(3) and each operating parameter in § 63.6000(f).

(1) The operating limit or operating parameter value averaged over the full period of the performance test.

(2) The operating limit or operating parameter range within which HAP emissions are reduced to the levels corresponding to meeting the applicable emission limitations in Table 3 to this subpart.

(j) For each tire cord production affected source required to assess the predominant use for coating web substrates as required by § 63.5981(b), you must submit a notice of the results of the reassessment within 30 days of completing the reassessment. The notice shall specify whether this subpart XXXX is still the applicable subpart and, if it is not, which part 63 subpart is applicable.

§ 63.6010 What reports must I submit and when?

(a) You must submit each applicable report in Table 15 to this subpart.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 15 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5983 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5983.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting subparts pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain information specified in paragraphs (c)(1) through (10) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit or operating limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the operating parameter monitoring systems or CPMS were out-of-control during the reporting period.

(7) For each tire production affected source, the emission limit option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(8) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), and for each annual reporting period during which you use a cement and solvent that, as purchased, was not included in the list submitted with the Notification of Compliance Status in § 63.6009(g), an updated list of all cements and solvents used, as purchased, at the affected source. You must also include a statement certifying that each cement and solvent, as purchased, that was used at the affected source during the reporting period met the HAP constituent limits (option 1) in Table 1 to this subpart.

(9) For each tire cord production affected source, the emission limit option in § 63.5986 and the compliance alternative in § 63.5987 that you have chosen to meet.

(10) For each puncture sealant application affected source, the emission limit option in § 63.5988 and the compliance alternative in § 63.5989 that you have chosen to meet.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report (pursuant to Table 10 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) which includes all required information concerning deviations from any emission limitation (including any operating limit) or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) Upon notification to the Administrator that a tire production affected source has eliminated or reformulated cement and solvent so that the source can demonstrate compliance using the purchase alternative in § 63.5985(a), future compliance reports for this affected source may be submitted annually.

(g) If acceptable to both the Administrator and you, you may submit reports and notifications electronically.

§ 63.6011 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(3) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(b) For each tire production affected source, you must keep the records specified in Table 9 to this subpart to show continuous compliance with each emission limit that applies to you.

(c) For each tire cord production affected source, you must keep the records specified in Table 11 to this subpart to show continuous compliance with each emission limit that applies to you.

(d) For each puncture sealant application affected source, you must keep the records specified in Table 13 to this subpart to show continuous compliance with each emission limit that applies to you.

§ 63.6012 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.6013 What parts of the General Provisions apply to me?

Table 17 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.6014 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.5981 through 63.5984, 63.5986, and 63.5988.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.6015 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act and in § 63.2, the General Provisions. The following are additional definitions of terms used in this subpart:

As purchased means the condition of a cement and solvent as delivered to the facility, prior to any mixing, blending, or dilution.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that conveys these emissions to a control device.

Cements and solvents means the collection of all organic chemicals, mixtures of chemicals, and compounds used in the production of rubber tires, including cements, solvents, and mixtures used as process aids. Cements and solvents include, but are not limited to, tread end cements, undertread cements, bead cements, tire building cements and solvents, green tire spray, blemish repair paints, side wall protective paints, marking inks, materials used to process equipment, and slab dip mixtures. Cements and solvents do not include coatings or process aids used in tire cord production, puncture sealant application, rubber processing, or materials used to construct, repair, or maintain process equipment, or chemicals and compounds that are not used in the tire production process such as materials used in routine janitorial or facility grounds maintenance, office supplies (e.g., dry-erase markers, correction fluid), architectural paint, or any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution to and use by the general public.

Coating means a compound or mixture of compounds that is applied to a fabric substrate in the tire cord production operation that allows the fabric to be prepared (e.g., by heating, setting, curing) for incorporation into a rubber tire.

Components of rubber tires means any piece or part used in the manufacture of rubber tires that becomes an integral portion of the rubber tire when manufacture is complete and includes mixed rubber compounds, sidewalls, tread, tire beads, and liners. Other components often associated with rubber tires such as wheels, valve stems, tire bladders and inner tubes are not considered components of rubber tires for the purposes of these standards. Tire cord and puncture sealant, although components of rubber tires, are considered as separate affected sources in these standards and are defined separately.

Control device means a combustion device, recovery device, recapture device, or any combination of these devices used for recovering or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators (oxidizers), flares, boilers, and process heaters.

Control system efficiency means the percent of total volatile organic compound emissions, as measured by EPA Method 25 or 25A (40 CFR part 60, appendix A), recovered or destroyed by a control device multiplied by the percent of total volatile organic compound emissions, as measured by

Method 25 or 25A, that are captured and conveyed to the control device.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice

components of rubber tires are manufactured. For the purposes of this definition, mixed rubber compound refers to the compound that leaves the rubber mixing process (e.g., banburys) and is then processed into components from which rubber tires are manufactured.

Monthly operating period means the period in the Notification of Compliance Status report comprised of the number of operating days in the month

Rubber means the sum of the materials (for example, natural rubber, synthetic rubber, carbon black, oils, sulfur) that are combined in specific formulations for the sole purpose of making rubber tires or components of rubber tires.

Rubber mixing means the physical process of combining materials for use in rubber tire manufacturing to make mixed rubber compound using the collection of banburys and associated

As stated in § 63.5988(a), you must comply with the emission limits for puncture sealant application affected sources in the following table:

TABLE 3 TO SUBPART XXXX OF PART 63.—EMISSION LIMITS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For each . . .	You must meet the following emission limit.
1. Option 1.a (percent reduction option)—Existing puncture sealant application spray booth.	Reduce spray booth HAP (measured as volatile organic compounds (VOC)) emissions by at least 86 percent by weight.
2. Option 1.b (percent reduction option)—New or reconstructed puncture sealant application	Reduce spray booth HAP (measured as VOC) emissions by at least 95 percent by weight.

Method 25 or 25A, that are captured and conveyed to the control device.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

Fabric processed means the amount of fabric coated and finished for use in subsequent product manufacturing.

Mixed rubber compound means the material, commonly referred to as rubber, from which rubber tires and components of rubber tires are manufactured. For the purposes of this definition, mixed rubber compound refers to the compound that leaves the rubber mixing process (*e.g.*, banburys) and is then processed into components from which rubber tires are manufactured.

Monthly operating period means the period in the Notification of Compliance Status report comprised of the number of operating days in the month.

Operating day means the period defined in the Notification of Compliance Status report. It may be from midnight to midnight or a portion of a 24-hour period.

Process aid means a solvent, mixture, or cement used to facilitate or assist in tire component identification; component storage; tire building; tire curing; and tire repair, finishing, and identification.

Puncture sealant means a mixture that may include, but is not limited to, solvent constituents, mixed rubber compound, and process oil that is applied to the inner liner of a finished tire for the purpose of sealing any future hole which might occur in the tread when an object penetrates the tire.

Responsible official means responsible official as defined in 40 CFR 70.2.

Rubber means the sum of the materials (for example, natural rubber, synthetic rubber, carbon black, oils, sulfur) that are combined in specific formulations for the sole purpose of making rubber tires or components of rubber tires.

Rubber mixing means the physical process of combining materials for use in rubber tire manufacturing to make mixed rubber compound using the collection of banburys and associated drop mills.

Rubber tire means a continuous solid or pneumatic cushion typically encircling a wheel and usually consisting, when pneumatic, of an external rubber covering.

Rubber used means the total mass of mixed rubber compound delivered to the tire production operations in a tire manufacturing facility (*e.g.*, the collection of warm-up mills, extruders, calendars, tire building, or other tire component and tire manufacturing equipment).

Tire cord means any fabric (*e.g.*, polyester, cotton) that is treated with a coating mixture that allows the fabric to more readily accept impregnation with rubber to become an integral part of a rubber tire.

Tables to Subpart XXXX of Part 63

As stated in §63.5984, you must comply with the emission limits for each new, reconstructed, or existing tire production affected source in the following table:

TABLE 1 TO SUBPART XXXX OF PART 63.—EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For each . . .	You must meet the following emission limits.
1. Option 1—HAP constituent option	a. Emissions of each HAP in Table 16 to this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total cements and solvents used at the tire production affected source, and b. Emissions of each HAP not in Table 16 to this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total cements and solvents used at the tire production affected source.
2. Option 2—production-based option	Emissions of HAP must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber used at the tire production affected source.

As stated in §63.5986, you must comply with the emission limits for tire cord production affected sources in the following table:

TABLE 2 TO SUBPART XXXX OF PART 63.—EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For each . . .	You must meet the following emission limits.
1. Option 1.a (production-based option)—Existing tire cord production affected source.	Emissions must not exceed 280 grams HAP per megagram (0.56 pounds per ton) of fabric processed at the tire cord production affected source.
2. Option 1.b (production-based option)—New or reconstructed tire cord production affected source.	Emissions must not exceed 220 grams HAP per megagram (0.43 pounds per ton) of fabric processed at the tire cord production affected source.
3. Option 2 (HAP constituent option)—Existing, new or reconstructed tire cord production affected source.	a. Emissions of each HAP in Table 16 to this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total coatings used at the tire cord production affected source, and b. Emissions of each HAP not in Table 16 to this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total coatings used at the tire cord production affected source.

As stated in §63.5988(a), you must comply with the emission limits for puncture sealant application affected sources in the following table:

TABLE 3 TO SUBPART XXXX OF PART 63.—EMISSION LIMITS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For each . . .	You must meet the following emission limit.
1. Option 1.a (percent reduction option)—Existing puncture sealant application spray booth.	Reduce spray booth HAP (measured as volatile organic compounds (VOC)) emissions by at least 86 percent by weight.
2. Option 1.b (percent reduction option)—New or reconstructed puncture sealant application spray booth.	Reduce spray booth HAP (measured as VOC) emissions by at least 95 percent by weight.
3. Option 2 (HAP constituent option) Existing, new or reconstructed puncture sealant application spray booth.	a. Emissions of each HAP in Table 16 to this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total puncture sealants used at the puncture sealant affected source, and b. Emissions of each HAP not in Table 16 to this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total puncture sealants used at the puncture sealant affected source.

As stated in §63.5988(b), you must comply with the operating limits for puncture sealant application affected sources in the following table unless you are meeting Option 2 (HAP constituent option) limits in Table 3 to this subpart:

TABLE 4 TO SUBPART XXXX OF PART 63.—OPERATING LIMITS FOR PUNCTURE SEALANT APPLICATION CONTROL DEVICES

For each . . .	You must . . .
1. Thermal oxidizer to which puncture sealant application spray booth emissions are ducted.	Maintain the daily average firebox secondary chamber temperature within the operating range established during the performance test.
2. Carbon adsorber (regenerative) to which puncture sealant application spray booth emissions are ducted.	a. Maintain the total regeneration mass, volumetric flow, and carbon bed temperature at the operating range established during the performance test. b. Reestablish the carbon bed temperature to the levels established during the performance test within 15 minutes of each cooling cycle.
3. Other type of control device to which puncture sealant application spray booth emissions are ducted.	Maintain your operating parameter(s) within the range(s) established during the performance test and according to your monitoring plan.
4. Permanent total enclosure capture system	a. Maintain the face velocity across any NDO at least at the levels established during the performance test. b. Maintain the size of NDO, the number of NDO, and their proximity to HAP emission sources consistent with the parameters established during the performance test.
5. Other capture system	Maintain the operating parameters within the range(s) established during the performance test and according to your monitoring plan.

As stated in §63.5993, you must comply with the requirements for performance tests in the following table:

TABLE 5 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

If you are using . . .	You must . . .	Using . . .	According to the following requirements . . .
1. A thermal oxidizer.	a. Measure total HAP emissions, determine destruction efficiency of the control device, and establish a site-specific firebox secondary chamber temperature limit at which the emission limit that applies to the affected source is achieved.	i. Method 25 or 25A performance test and data from the temperature monitoring system.	(1). Measure total HAP emissions and determine the destruction efficiency of the control device using Method 25 (40 CFR part 60, appendix A). You may use Method 25A (40 CFR part 60, appendix A) if: an exhaust gas volatile organic matter concentration of 50 parts per million (ppmv) or less is required to comply with the standard; the volatile organic matter concentration at the inlet to the control system and the required level of control are such that exhaust volatile organic matter concentrations are 50 ppmv or less; or because of the high efficiency of the control device exhaust, is 50 ppmv or less, regardless of the inlet concentration. (2). Collect firebox secondary chamber temperature data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average firebox temperature over the 3-hour performance test by computing the average of all of the 15-minute reading.

TABLE 5 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

If you are using . . .	You must . . .	Using . . .	According to the following requirements . . .
2. A carbon adsorber (regenerative).	a. Measure total organic HAP emissions, establish the total regeneration mass or volumetric flow, and establish the temperature of the carbon bed within 15 minutes of completing any	i. Method 25 or Method 25A performance test and data from the carbon bed temperature monitoring device.	(1). Measure total HAP emissions using Method 25. You may use Method 25A, if an exhaust gas volatile organic matter concentration of 50 ppmv or less; or because of the high efficiency of the control device, exhaust is 50 ppmv or less is required to comply with the standard; the volatile organic matter concentration (VOMC) at the inlet to the control system and the required level of control are such that exhaust VOMCs are 50 ppmv or less; or because of the high efficiency of the control device, exhaust is 50

TABLE 6 TO SUBPART XXXX OF PART 62.—INITIAL COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the purchase compliance alternative in §63.5985(a).	The HAP constituent option in Table 1 to this subpart, option 1.	You demonstrate for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 to this subpart, option 1, determined according to the procedures in §63.5994(a) and (b)(1).
2. Sources complying with the	The HAP constituent option in	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in

TABLE 5 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

If you are using . . .	You must . . .	Using . . .	According to the following requirements . . .
2. A carbon adsorber (regenerative).	a. Measure total organic HAP emissions, establish the total regeneration mass or volumetric flow, and establish the temperature of the carbon bed within 15 minutes of completing any cooling cycles. The total regeneration mass, volumetric flow, and carbon bed temperature must be those at which the emission limit that applies to the affected source is achieved.	i. Method 25 or Method 25A performance test and data from the carbon bed temperature monitoring device.	(1). Measure total HAP emissions using Method 25. You may use Method 25A, if an exhaust gas volatile organic matter concentration of 50 ppmv or less; or because of the high efficiency of the control device, exhaust is 50 ppmv or less is required to comply with the standard; the volatile organic matter concentration (VOMC) at the inlet to the control system and the required level of control are such that exhaust VOMCs are 50 ppmv or less; or because of the high efficiency of the control device, exhaust is 50 ppmv or less, regardless of the inlet concentration. (2). Collect carbon bed total regeneration mass or volumetric flow for each carbon bed regeneration cycle during the performance test. (3). Record the maximum carbon bed temperature data for each carbon bed regeneration cycle during the performance test. (4). Record the carbon bed temperature within 15 minutes of each cooling cycle during the performance test. (5). Determine the average total regeneration mass or the volumetric flow over the 3-hour performance test by computing the average of all of the readings. (6). Determine the average maximum carbon bed temperature over the 3-hour performance test by computing the average of all of the readings. (7). Determine the average carbon bed temperature within 15 minutes of the cooling cycle over the 3-hour performance test.
3. Any control device other than a thermal oxidizer or carbon adsorber.	Determine control device efficiency and establish operating parameter limits with which you will demonstrate continuous compliance with the emission limit that applies to the affected source.	EPA-approved methods and data from the continuous parameter monitoring system.	Conduct the performance test according to the site-specific plan submitted according to §63.7(c)(2)(i).
4. All control devices.	a. Select sampling ports' location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A.	Locate sampling sites at the inlet and outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	
	c. Conduct gas analysis	Method 3, 3A, or 3B of 40 CFR part 60 appendix A.	
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	
5. A permenent total enclosure (PTE).	Measure the face velocity across natural draft openings and document the design features of the enclosure.	Method 204 of CFR part 51, appendix M.	Capture efficiency is assumed to be 100 percent if the criteria are met
6. Temporary total enclosure (TTE).	Construct a temporarily installed enclosure that allows you to determine the efficiency of your capture system and establish operating parameter limits.	Method 204 and the appropriate combination of Methods 204A–204F of 40 CFR part 51, appendix M.	

As stated in §63.5996, you must show initial compliance with the emission limits for tire production affected sources according to the following table:

TABLE 6 TO SUBPART XXXX OF PART 62.—INITIAL COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the purchase compliance alternative in §63.5985(a).	The HAP constituent option in Table 1 to this subpart, option 1.	You demonstrate for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 to this subpart, option 1, determined according to the procedures in §63.5994(a) and (b)(1).
2. Sources complying with the monthly average compliance alternative without using a control device in §63.5985(b).	The HAP constituent option in Table 1 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in §63.5994(a) and (b)(2).
3. Sources complying with the monthly average compliance alternative using a control device in §63.5985(c).	The HAP constituent option in Table 1 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in §63.5994(a), (b)(3) and (4), and (d) through (f).
4. Sources complying with the monthly average compliance alternative without use of a control device in §63.5985(b).	The production-based option in Table 1 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in §63.5994(c)(1) through (3).
5. Sources complying with the monthly average compliance alternative using a control device in §63.5985(c).	The production-based option in Table 1 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in §63.5994(c)(1) and (2), (4) and (5), and (d) through (f).

As stated in §63.5999, you must show initial compliance with the emission limits for tire cord production affected sources according to the following table:

TABLE 7 TO SUBPART XXXX OF PART 63.—INITIAL COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the monthly average alternative without using an add-on control device according to §63.5987(a).	The production-based option in Table 2 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the procedures in §63.5997(a), (b)(1) and (2).
2. Sources complying with the monthly average alternative using an add-on control device according to §63.5987(b).	The production-based option in Table 2 to this subpart, option 1.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the procedures in §63.5997(a), (b)(1) and (3) through (4), and (d) through (f).
3. Sources complying with the monthly average alternative without using an add-on control device according to §63.5987(a).	The HAP constituent option in Table 2 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in §63.5997(a) and (c)(1) and (2).
4. Sources complying with the monthly average alternative using an add-on control device according to §63.5987(b).	The HAP constituent option in Table 2 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in §63.5997(c)(1) and (3) through (4), and (d) through (f).

As stated in §63.6002, you must show initial compliance with the emission limits for puncture sealant application affected sources according to the following table:

TABLE 8 TO SUBPART XXXX OF PART 63.—INITIAL COMPLIANCE WITH THE EMISSION

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the overall control efficiency alternative in §63.5989(a).	The percent reduction option in Table 3 to this subpart, option 1.	You demonstrate that you conducted the performance tests, determined the overall efficiency of your control system, demonstrated that the applicable limits in Table 3 to this subpart, option 1, have been achieved, and established the operating limits in Table 4 of this subpart for your equipment according to the applicable procedures in §63.6000(b).
2. Sources complying with the per-	The percent reduction option in	You demonstrate that you conducted the performance tests, deter-

TABLE 10 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative without using a control device according to §63.5985(b).	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in §63.5994(a) and (b)(2).
3. Sources complying with the monthly average compliance alternative using a control device	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the ap-

TABLE 8 TO SUBPART XXXX OF PART 63.—INITIAL COMPLIANCE WITH THE EMISSION

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the overall control efficiency alternative in §63.5989(a).	The percent reduction option in Table 3 to this subpart, option 1.	You demonstrate that you conducted the performance tests, determined the overall efficiency of your control system, demonstrated that the applicable limits in Table 3 to this subpart, option 1, have been achieved, and established the operating limits in Table 4 of this subpart for your equipment according to the applicable procedures in §63.6000(b).
2. Sources complying with the permanent total enclosure and control device efficiency alternative in §63.5989(b).	The percent reduction option in Table 3 to this subpart, option 1.	You demonstrate that you conducted the performance tests, determined the individual efficiencies of your capture and control systems, demonstrated that the applicable limits in Table 3 to this subpart, option 1, have been achieved, and established the operating limits in Table 4 of this subpart for your equipment according to the applicable procedures in §63.6000(b).
3. Sources complying with the monthly average alternative in §63.5989(c) without using an add-on control device.	The HAP constituent option in Table 3 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in §63.6000(c) and (d)(1).
4. Sources complying with the HAP constituent alternative in §63.5989(d) by using an add-on control device.	The HAP constituent option in Table 3 to this subpart, option 2.	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in §63.6000(c), (d)(2) and (3), and (e) through (f).

As stated in §63.6003, you must maintain minimum data to show continuous compliance with the emission limits for tire production affected sources according to the following table:

TABLE 9 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with purchase compliance alternative in §63.5985(a) that are meeting the HAP constituent emission limit (option 1) in Table 1 to this subpart.	a. A list of each cement and solvent as purchased and the manufacturer or supplier of each. b. A record of Method 311 (40 CFR part 60, appendix A), or approved alternative method, test results indicating the mass percent of each HAP for each cement and solvent as purchased.
2. Sources complying with the monthly average compliance alternative without using a control device according to §63.5985(b) that are meeting emission limits in Table 1 to this subpart.	a. A record of Method 311, or approved alternative method, test results, indicating the mass percent of each HAP for each cement and solvent, as purchased. b. The mass of each cement and solvent used each monthly operating period. c. The total mass of rubber used each monthly operating period (if complying with the production-based emission limit, option 2, in Table 1 to this subpart). d. All data and calculations used to determine the monthly average mass percent for each HAP for each monthly operating period. e. Monthly averages of emissions in the appropriate emission limit format.
3. Sources complying with the monthly average compliance alternative using a control device according to §63.5985(c) that are meeting emission limits in Table 1 to this subpart.	a. The same information as sources complying with the monthly average alternative without using a control device. b. Records of operating parameter values for each operating parameter that applies to you.

As stated in §63.6004, you must show continuous compliance with the emission limits for tire production affected sources according to the following table:

TABLE 10 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Sources complying with purchase compliance alternative in §63.5985(a).	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 to this subpart, option 1, determined according to the procedures in §63.5994(a) and (b)(1).

TABLE 10 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative without using a control device according to §63.5985(b).	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in §63.5994(a) and (b)(2).
3. Sources complying with the monthly average compliance alternative using a control device according to §63.5985(c).	The HAP constituent option in Table 1 to this subpart, option 1.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 1, determined according to the applicable procedures in §63.5994(a), (b)(3) and (4), and (d) through (f).
4. Sources complying with the monthly average compliance alternative without using a control device according to §63.5985(b).	The production-based option in Table 1 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in §63.5994(c)(1) through (3).
5. Sources complying with the monthly average compliance alternative using a control device according to §63.5985(c).	The production-based option in Table 1 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 to this subpart, option 2, determined according to the applicable procedures in §63.5994(c)(1) and (2), (4) and (5), and (d) through (f).

As stated in §63.6005, you must maintain minimum data to show continuous compliance with the emission limits for tire cord production affected sources according to the following table:

TABLE 11 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with the monthly average alternative without using an add-on control device according to §63.5987(a) that are meeting emission limits in Table 2 to this subpart.	a. A record of Method 311 (40 CFR part 63, appendix A), or approved alternative method, test results, indicating the mass percent of each HAP for coating used. b. The mass of each coating used each monthly operating period. c. The total mass of fabric processed each monthly operating period (if complying with the production-based option in Table 2 to this subpart, option 1). d. All data and calculations used to determine the monthly average mass percent for each HAP for each monthly operating period. e. Monthly averages of emissions in the appropriate emission emission limit format.
2. Sources complying with the monthly average alternative using an add-on control device according to §63.5987(b) that are meeting emission limits in Table 2 to this subpart.	a. The same information as sources complying with the monthly average alternative without using a control device. b. Records of operating parameter values for each operating parameter that applies to you.

As stated in §63.6006, you must show continuous compliance with the emission limits for tire cord production affected sources according to the following table:

TABLE 12 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Sources complying with the monthly average compliance alternative without using an add-on control device according to §63.5987(a).	In Table 2 to this subpart	a. Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the applicable procedures in §63.5997(a) and (b)(1) and (2). b. Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in §63.5997(a) and (c)(1) and (2).

TABLE 12 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative using an add-on control device according to §63.5987(b).	In Table 2 to this subpart	a. Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the applicable procedures in §63.5997(a), (b)(1) and (3) through (4), and (d) through (f). b. Demonstrating that the monthly HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits

TABLE 13 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES—Continued

For . . .	You must maintain . . .
7. Sources complying with the monthly average alternative using an add-on control device according to §63.5988(a) that are meeting the HAP constituent emission limits in Table 3 to this subpart, option 2.	a. The same information as sources complying with the monthly average alternative that are not using a control device. b. Records of operating parameter values for each operating parameter that applies to you.

As stated in §63.6008, you must show continuous compliance with the emission limitations for puncture sealant application

TABLE 12 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative using an add-on control device according to §63.5987(b).	In Table 2 to this subpart	a. Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 to this subpart, option 1, determined according to the applicable procedures in §63.5997(a), (b)(1) and (3) through (4), and (d) through (f). b. Demonstrating that the monthly HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 2 to this subpart, option 2, determined according to the applicable procedures in §63.5997(c)(1) and (3) through (4), and (d) through (f).

As stated in §63.6007, you must maintain minimum data to show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 13 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with the control efficiency alternatives in §63.5989(a) or (b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using a thermal oxidizer to reduce HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of the secondary chamber firebox temperature for 100 percent of the hours during which the process was operated.
2. Sources complying with the control efficiency alternatives in §63.5989(a) or (b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using a carbon adsorber to reduce HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of the total regeneration stream mass or volumetric flow for each regeneration cycle for 100 percent of the hours during which the process was operated, and a record of the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle for 100 percent of the hours during which the process was operated.
3. Sources complying with the control efficiency alternatives in §63.5989(a) or (b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using any other type of control device to which puncture sealant application spray booth HAP emissions are ducted so that they do not exceed the operating limits in Table 4 to this subpart.	Records of operating parameter values for each operating parameter that applies to you.
4. Sources complying with the permanent total enclosure compliance alternative in §63.5989(b) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using a permanent total enclosure capture system to capture HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of the face velocity across any NDO, the size of NDO, the number of NDO, and their proximity to HAP emission sources.
5. Sources complying with the overall control efficiency alternative in §63.5989(a) that are meeting the percent reduction emission limits in Table 3 to this subpart, option 1, using any other capture system to capture HAP emissions so that they do not exceed the operating limits in Table 4 to this subpart.	Records of operating parameter values for each operating parameter that applies to you.
6. Sources complying with the monthly average alternative without using an add-on control device according to §63.5988(a) that are meeting the HAP constituent emission limits in Table 3 to this subpart, option 2.	a. A record of Method 311 (40 CFR part 63, appendix A), or approved alternative method, test results, indicating the mass percent of each HAP for puncture sealant used. b. The mass of each puncture sealant used each monthly operating period. c. All data and calculations used to determine the monthly average mass percent for each HAP for each monthly operating period. d. Monthly averages of emissions in the appropriate emission limit format.

TABLE 13 TO SUBPART XXXX OF PART 63.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES—Continued

For . . .	You must maintain . . .
7. Sources complying with the monthly average alternative using an add-on control device according to §63.5988(a) that are meeting the HAP constituent emission limits in Table 3 to this subpart, option 2.	a. The same information as sources complying with the monthly average alternative that are not using a control device. b. Records of operating parameter values for each operating parameter that applies to you.

As stated in §63.6008, you must show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 14 TO SUBPART XXXX OF PART 63.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For . . .	You must demonstrate continuous compliance by . . .
1. Each carbon adsorber used to comply with the operating limits in Table 4 to this subpart.	a. Monitoring and recording every 15 minutes the total regeneration stream mass or volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle, and b. Maintaining the total regeneration stream mass or volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle within the operating levels established during your performance test.
2. Each thermal oxidizer used to comply with operating limits in Table 4 to this subpart.	a. Continuously monitoring and recording the firebox temperature every 15 minutes, and b. Maintaining the daily average firebox temperature within the operating level established during your performance test.
3. Other "add-on" control or capture system hardware used to comply with the operating limits in Table 4 to this subpart.	Continuously monitoring and recording specified parameters identified through compliance testing and identified in the Notification of Compliance Status report.
4. Sources complying with the monthly average compliance alternative without using an add-on control device according to §63.5989(c) that are meeting the HAP constituent emission limits in Table 3 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in §63.6000(c) and (d)(1).
5. Sources complying with the monthly average compliance alternative by using an add-on control device according to §63.5989(d) that are the HAP constituent emission limits in Table 3 to this subpart, option 2.	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the HAP constituent emission limits in Table 3 to this subpart, option 2, determined according to the applicable procedures in §63.6000(c), (d)(2) and (3), and (e) through (g).

As stated in §63.6010, you must submit each report that applies to you according to the following table:

TABLE 15 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CPMS was out-of-control as specified in §63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.	Semiannually according to the requirements in §63.6010(b), unless you meet the requirements for annual reporting in §63.6010(f).
	b. If you have a deviation from any emission limitation during the reporting period at an affected source where you are not using a CPMS, the report must contain the information in §63.6010(d). If the deviation occurred at a source where you are using a CMPS or if there were periods during which the CPMS were out-of-control as specified in §63.8(c)(7), the report must contain the information required by §63.5990(f)(3).	Semiannually according to the requirements in §63.6010(b), unless you meet the requirements for annual reporting in §63.6010(f).
	c. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in §63.10(d)(5)(i).	Semiannually according to the requirements in §63.6010(b), unless you meet the requirements for annual reporting in §63.6010(f).

TABLE 15 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n)	The report must contain . . .	You must submit the report . . .
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan..	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in §63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative reporting arrangements, as specified in §63.9(i).

TABLE 16 TO SUBPART XXXX OF PART 63.—SELECTED HAZARDOUS AIR POLLUTANTS—Continued

CAS No.	Selected hazardous air pollutants
542881	Bis(chloromethyl)ether
680319	Hexamethylphosphoramide
684935	N-Nitroso-N-methylurea
1120714	1,3-Propane sultone
1332214	Asbestos
1336363	Polychlorinated biphenyls (Aroclors)
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
8001352	Toxaphene (chlorinated camphene)

TABLE 15 TO SUBPART XXXX OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n)	The report must contain . . .	You must submit the report . . .
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan..	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in §63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§63.10(d)(5)(ii)).

You must use the information listed in the following table to determine which emission limit in the HAP constituent options in Tables 1 through 3 to this subpart is applicable to you:

TABLE 16 TO SUBPART XXXX OF PART 63.—SELECTED HAZARDOUS AIR POLLUTANTS

CAS No.	Selected hazardous air pollutants
50000	Formaldehyde
51796	Ethyl carbamate (Urethane)
53963	2-Acetylaminofluorene
56235	Carbon tetrachloride
57147	1,1-Dimethyl hydrazine
57578	beta-Propiolactone
58899	Lindane (all isomers)
59892	N-Nitrosomorpholine
60117	Dimethyl aminoazobenzene
62759	N-Nitrosodimethylamine
64675	Diethyl sulfate
67663	Chloroform
67721	Hexachloroethane
71432	Benzene (including benzene from gasoline)
75014	Vinyl chloride
75070	Acetaldehyde
75092	Methylene chloride (Dichloromethane)
75218	Ethylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
75569	Propylene oxide
77781	Dimethyl sulfate
79061	Acrylamide
79447	Dimethyl carbamoyl chloride
79469	2-Nitropropane
88062	2,4,6-Trichlorophenol
91941	3,3-Dichlorobenzidene
92671	4-Aminobiphenyl
92875	Benzidine
95534	o-Toluidine
95807	2,4-Toluene diamine
96128	1,2-Dibromo-3-chloropropane
96457	Ethylene thiourea
98077	Benzotrichloride
101144	4,4-Methylene bis(2-chloroaniline)
101779	4,4-Methylenedianiline
106467	1,4-Dichlorobenzene(p)
106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
106934	Ethylene dibromide (Dibromoethane)
106990	1,3-Butadiene
107062	Ethylene dichloride (1,2-Dichloroethane)
107131	Acrylonitrile
107302	Chloromethyl methyl ether
117817	Bis(2-ethylhexyl)phthalate (DEHP)
118741	Hexachlorobenzene
119904	3,3-Dimethoxybenzidine
119937	3,3-Dimethyl benzidine
122667	1,2-Diphenylhydrazine
123911	1,4-Dioxane (1,4-Diethyleneoxide)
127184	Tetrachloroethylene (Perchloroethylene)
140885	Ethyl acrylate
302012	Hydrazine
542756	1,3-Dichloropropene

TABLE 16 TO SUBPART XXXX OF PART 63.—SELECTED HAZARDOUS AIR POLLUTANTS—Continued

CAS No.	Selected hazardous air pollutants
542881	Bis(chloromethyl)ether
680319	Hexamethylphosphoramide
684935	N-Nitroso-N-methylurea
1120714	1,3-Propane sultone
1332214	Asbestos
1336363	Polychlorinated biphenyls (Aroclors)
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
8001352	Toxaphene (chlorinated camphene)
	Arsenic Compounds
	Chromium Compounds
	Coke Oven Emissions

As stated in §63.6013, you must comply with the applicable General Provisions (GP) requirements according to the following table:

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes	Yes.
§63.2	Definitions	Definitions for part 63 standards	Yes	Yes.
§63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes	Yes.
§63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention; severability.	Yes	Yes.
§63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes	Yes.
§63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes	Yes.
§63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§63.6(b)(6)	[Reserved]			
§63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.		No	No.
§63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§63.6(c)(3)–(4)	[Reserved]			
§63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes	Yes.
§63.6(d)	[Reserved]			

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	No.
§63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes	Yes.
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes	No.
§63.6(f)(1)	Compliance Except During SSM.		Yes	No.
§63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test; operation and maintenance plans; records; inspection.	Yes	Yes.
§63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§63.6(h)	Opacity/Visible Emission (VE) Standards.		No	No.
§63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.
§63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes	Yes.
§63.7(a)(1)–(2)	Performance Test Dates		No	No.
§63.7(a)(3)	CAA section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	No.
§63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes	No.
§63.7(b)(2)	Notification of Rescheduling.	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes	No.
§63.7(c)	Quality Assurance/Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: test plan approval procedures; performance audit requirements; and internal and external quality assurance procedures for testing.	Yes	No.
§63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	No.
§63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes	No.
§63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes	No.
§63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; and conditions when data from an additional test run can be used.	Yes	No.
§63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	No.
§63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status report; and keep data for 5 years.	Yes	No.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	No.
§63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes	Yes.
§63.8(a)(2)	Performance Specifications.	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes	No.
§63.8(a)(3)	[Reserved]			
§63.8(a)(4)	Monitoring with Flares		No	No.
§63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.
§63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Applies as modified by §63.5990(e) and (f).	No.
§63.8(c)(1)(i)	Routine and Predictable SSM.		No	No.
§63.8(c)(1)(ii)	SSM not in SSMP		No	No.
§63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes	Yes.
§63.8(c)(2)–(3)	Monitoring System Installation.	Must install to get representative emission and parameter measurements; must verify operational status before or at performance test.	Yes	No.
§63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.		Applies as modified by §63.5990(f).	No.
§63.8(c)(5)	Continuous Opacity Monitoring Systems (COMS) Minimum Procedures.		No	No.
§63.8(c)(6)	CMS Requirements		Applies as modified by §63.5990(e).	No.
§63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes	No.
§63.8(d)	CMS Quality Control		Applies as modified by §63.5990(e) and (f).	No.
§63.8(e)	CMS Performance Evaluation.		No	No.
§63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.8(f)(6)	Alternative to Relative Accuracy Test.		No	No.
§63.8(g)	Data Reduction		Applies as modified by	No.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.10(c)	Records		No	No.
§63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.8(f)(6)	Alternative to Relative Accuracy Test.		No	No.
§63.8(g)	Data Reduction		Applies as modified by §63.5990(f).	No.
§63.9(a)	Notification Requirements	Applicability and state delegation	Yes	Yes.
§63.9(b)(1)-(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup; and contents of each.	Yes	Yes.
§63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes	Yes.
§63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes	No.
§63.9(f)	Notification of VE/Opacity Test.	No	No.	
§63.9(g)	Additional Notifications When Using CMS.	No	No.	
§63.9(h)	Notification of Compliance Status.	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes	Yes.
§63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes	Yes.
§63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; and keep for 5 years..	Yes	Yes.
§63.10(b)(2)(i)-(iv)	Records related to Start-up, Shutdown, and Malfunction..	Yes	No.	
§63.10(b)(2)(vi) and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control; calibration checks; adjustments, maintenance.	Yes	No.
§63.10(b)(2) (vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and visible emission observation results; and measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§63.10(b)(2) (xii)	Records	Records when under waiver	Yes	Yes.
§63.10(b)(2) (xiii)	Records		No	No.
§63.10(b)(2) (xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes	Yes.
§63.10(b)(3)	Records	Applicability determinations	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§63.10(c)	Records		No	No.
§63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes	Yes.
§63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes	No.
§63.10(d)(3)	Reporting Opacity or VE Observations.		No	No.
§63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.		Yes	No.
§63.10(e)	Additional CMS Reports		No	No.
§63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes	Yes.
§63.11	Flares		No	No.
§63.12	Delegation	State authority to enforce standards	Yes	Yes.
§63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes	Yes.
§63.14	Incorporation by Reference.	Test methods incorporated by reference	Yes	Yes.
§63.15	Availability of Information	Public and confidential information	Yes	Yes.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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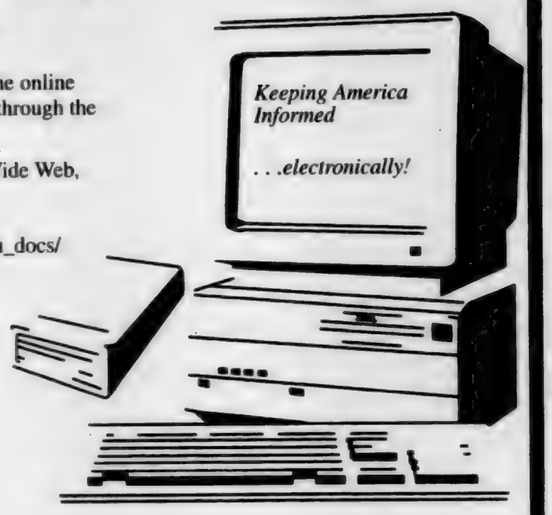

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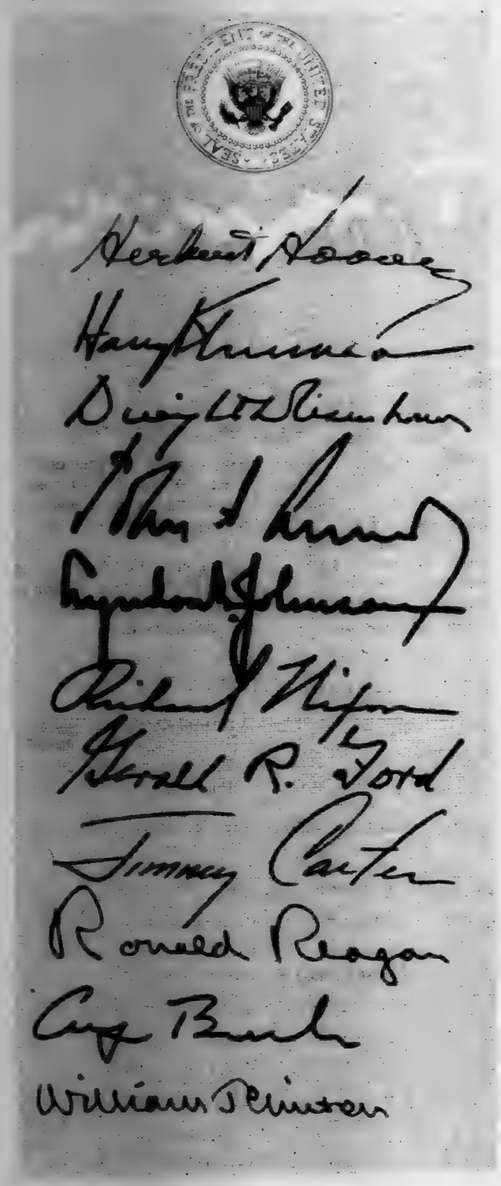

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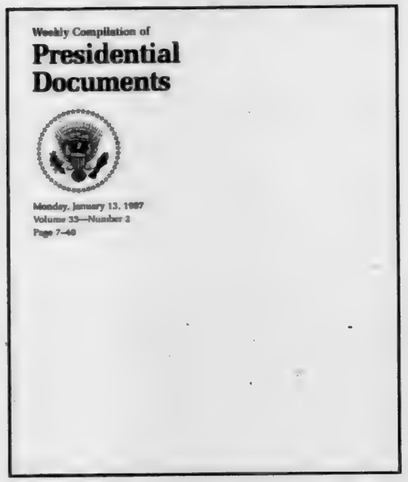

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under

or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM224. Comments may be inspected in the Rules Docket

a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM224; Special Conditions No. 25–205–SC]

Special Conditions: Boeing Model 737–79U IGW (BBJ, S/N: 29441) Airplane; Certification of Cooktops

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 737–79U IGW airplane (BBJ Serial Number 29441). This airplane, as modified by Schwartz Engineering Company, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for addressing the potential hazards that may be introduced by cooktops. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 28, 2002. Comments must be received on or before August 9, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM224, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM224. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background Information

On June 1, 2001, Schwartz Engineering Company, 116 Kestrel Drive, Spring Branch, Texas 78070, applied for a supplemental type certificate (STC) to modify a Boeing Model 737–79U IGW airplane (BBJ serial number 29441). The Model 737–79U IGW is one of the Boeing Business Jet (BBJ) variants of Model 737 airplanes. It is a large transport category airplane powered by two CFM 56 engines, with a maximum takeoff weight of 171,000 pounds. The modified 737–79U IGW airplane (BBJ serial number 29441) operates with a 2-pilot crew, up to 2 flight attendants, and can hold up to 11 passengers.

The modification incorporates the installation of an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are therefore issued.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Schwartz Engineering Company must show that the Boeing Model 737–79U IGW airplane (BBJ serial number 29441), as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A16WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate Data Sheet No. A16WE are part 25, as amended by Amendments 25–1 through 25–77, with reversions to earlier Amendments, voluntary compliance to later Amendments, special conditions, equivalent safety findings, and exemptions listed in the type certificate data sheet.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25 as amended) do not

contain adequate or appropriate safety standards for the Boeing Model 737–79U IGW airplane (BBJ serial number 29441) modified by Schwartz Engineering Company because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, this Boeing Model 737–79U IGW airplane (BBJ serial number 29441) will incorporate the following novel or unusual design feature: Installation of an electrically heated cooktop.

Discussion

Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are therefore issued.

Cooktops are used to heat food and beverages. Cooktops are electrically heated surfaces, which are controlled by thermostats. Cooktops are typically installed in galleys, which are located in the passenger cabin. Cooktops are used by passengers and crew members during flight and ground operations. Cooktops are used to heat food and beverages. Cooktops are electrically heated surfaces, which are controlled by thermostats. Cooktops are typically installed in galleys, which are located in the passenger cabin. Cooktops are used by passengers and crew members during flight and ground operations.

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contain adequate or appropriate safety standards for the Boeing Model 737–79U IGW airplane (BBJ serial number 29441) modified by Schwartz Engineering Company because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, this Boeing Model 737–79U IGW airplane (BBJ serial number 29441) must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Schwartz Engineering Company apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the modification of the Boeing Model 737–79U IGW airplane (BBJ serial number 29441) will include installation of a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards represented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food, which may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious passenger and airplane safety implications if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. The use of an open flame cooktop (for example natural gas) is beyond the scope of these special conditions and would require separate rulemaking action. The requirements identified in these special conditions are in addition to those considerations identified in Advisory Circular (AC) 25–10, "Guidance for Installation of Miscellaneous Non-required Electrical Equipment," and those in AC 25–17, "Transport Airplane Cabin Interiors Crashworthiness Handbook." The intent of these special conditions is to provide a level of safety that is consistent with that on similar airplanes without cooktops.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–79U IGW airplane (BBJ serial number 29441) modified by Schwartz Engineering Company. Should Schwartz Engineering Company apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 737–79U IGW airplane (BBJ serial number 29441) modified by Schwartz Engineering Company. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 737–79U IGW airplane (BBJ serial number 29441) modified by Schwartz Engineering Company:

Cooktop Installations With Electrically-Powered Burners

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents (soups or sauces, for example) from the effects of flight loads and turbulence.

(a) Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop.

(b) Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable.

(c) Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (that is, power on any burner) during taxi, takeoff, and landing (TTL).

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop caused by materials or grease inadvertently coming in contact with the burners.

Note: Two acceptable means of complying with this requirement are as follows:

- Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended (this would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered). In addition, a fire detector must be installed in the vicinity of the cooktop, which provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. A fire on or around the cooktop must not block access to the extinguisher. One of the fire extinguishers required by § 25.851 may be used to satisfy this requirement if the total complement of extinguishers can be evenly distributed throughout the cabin. If this is not possible, then the extinguisher in the galley area would be additional.

or

- An automatic, thermally-activated fire suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of Part III of Appendix F of part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils. These procedures and time intervals must be included in the Instructions for Continued Airworthiness (ICA). The ventilation system ducting must be protected by a flame arrestor.

Note: The applicant may find additional useful information in "Air Conditioning Systems for Subsonic Airplanes," Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, dated August 1, 1991.

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to airplane corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

10. A readily deployable cover must be provided to cover the cooktop during taxi, takeoff, and landing (TT&L) operation. The deployment of the cover must automatically shut off power to the cooktop.

Issued in Renton, Washington, on June 28, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17375 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–46–AD; Amendment 39–12801; AD 2002–14–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L and AS332L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) helicopters that requires adding a supplement to the Limitations section of the applicable Rotorcraft Flight Manual (RFM) for helicopters with "SEFA" skis installed. This amendment is prompted by the need to limit the taxi and Vne speed of those helicopters with skis. The actions specified by this AD are intended to prevent structural failure of a ski and subsequent loss of control of the helicopter.

DATES: Effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for ECF Model AS332L and AS332L1 helicopters was published in the **Federal Register** on February 6, 2002 (67 FR 5526). That action proposed to require adding the limitations contained in SUP.10.14, Ski Installation, to the Limitations section of the RFM, requiring certain speed limitations for helicopters with skis installed.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332L and AS332L1 helicopters equipped with "SEFA" skis. ECF issued Supplement, SUP.10.14, Ski Installation, Normal Revision 2, Issue 2, dated June 2001 to the applicable RFM. The DGAC classified these RFM supplements as mandatory and issued AD No. 2001–316–079(A), dated July 25, 2001. The DGAC advises incorporating the Ski Installation Supplement into the applicable RFM before the next flight and complying with the Vne and the maximum taxiing speed limitations to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 3 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 minutes per helicopter to add the flight manual supplement, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket at the Federal Aviation Administration (FAA)

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 2, 2002, the FAA

List of Subjects in 14 CFR Part 72

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In Consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS;

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–03]

Modifications of Class E Airspace; Jackson, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

OH, to accommodate aircraft executing instrument flight procedures into and out of James A. Rhodes Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant

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"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket at the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–14–01 Eurocopter France: Amendment 39–12801. Docket No. 2001–SW–46–AD.

Applicability: Model AS332L and AS332L1 helicopters, with "SEFA" skis installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To prevent structural failure of a ski and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the next flight with skis installed, add the limitations contained in SUP.10.14, Ski Installation, Normal Revision 2, Issue 2, dated June 2001 to the Limitations section of the applicable Rotorcraft Flight Manual.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on August 14, 2002.

Note 3: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD 2001–316–079(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on June 27, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–17245 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 02–AGL–01]

Establishment of Class D Airspace; Marquette, MI; Modification of Class E Airspace; Marquette, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Marquette, MI, and modifies Class E airspace at Marquette, MI. The opening of a Federal Contract Tower is being planned for the Sawyer International Airport. Class D airspace is required during the hours the control tower is operating. Sawyer International Airport is served by Federal Aviation Regulations Part 121 (14 CFR part 121) air carrier operations. During periods when the control tower is closed, controlled airspace extending upward from the surface is needed to contain aircraft executing instrument flight procedures and provide a safer operating environment. This action establishes Class D airspace, and modifies Class E airspace for Sawyer International Airport.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 2, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class D and modify Class E airspace at Marquette, MI (67 FR 15502). The proposal was to establish Class D airspace, and modify Class E airspace, to support the operation of a Federal Contract Tower, and to provide a safer operating environment after the tower is closed. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from the surface of the earth in paragraph 6002, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace and modifies Class E airspace at Marquette, MI, to support the operation of a Federal Contract Tower, and to provide a safer operating environment after the tower is closed. The areas will be depicted on appropriations aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 72

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In Consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

AGL MI D Marquette, MI [New]

Marquette, Sawyer International Airport, MI (Lat. 46°21'13" N., long. 87°23'45" W.)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.6-mile radius of the Sawyer International Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continually published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the Surface of the earth.

* * * * *

AGL MI E2 Marquette, MI [Revised]

Marquette, Sawyer International Airport, MI (Lat. 46°21'13" N., long. 87°23'45" W.)

That airspace extending upward from the surface within a 4.6-mile radius of the Sawyer International Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continually published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on June 19, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–17372 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–03]

Modifications of Class E Airspace; Jackson, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Jackson, OH. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 01, and an RNAV SIAP to RWY 19 have been developed for James A. Rhodes Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for James A. Rhodes Airport.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 2, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Jackson, OH. (67 FR 15503). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Jackson, OH, to accommodate aircraft executing instrument flight procedures into and out of James A. Rhodes Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Jackson, OH [Revised]

Jackson, James A. Rhodes Airport, OH (Lat. 38°58'53" N., long. 82°34'41" W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the James A. Rhodes Airport.

* * * * *

Issued in Des Plaines, Illinois on June 19, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–17368 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–02]

Establishment of Class D Airspace; Tecumseh, MI; Modification of Class E Airspace; Tecumseh, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Tecumseh, MI, and modifies Class E airspace at Tecumseh, MI. The opening of a Federal Contract Tower is being planned for the Tecumseh, Meyers-Divers' Airport. Class D airspace is required during the hours the control tower is operating. Tecumseh, Meyers-Divers' Airport is served by Federal Aviation Regulations Part 121 (14 CFR part 121) air carrier operations. During periods when the control tower is closed, controlled airspace extending upward from the surface is needed to contain aircraft executing instrument flight procedures and provide a safer operating environment. This action establishes Class D airspace, and modifies Class E airspace for Tecumseh, Meyers-Divers' Airport.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 2, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class D and modify Class E airspace at Tecumseh, MI (67 FR 15504). The proposal was to establish Class D airspace, and modify Class E airspace, to support the operation of a Federal Contract Tower, and to provide a safer operating environment after the tower is closed. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from the surface of the earth in paragraph 6002, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace and modifies Class E airspace at Tecumseh, MI, to support the operation of a Federal Contract Tower, and to provide a safer operating environment after the tower is closed. The areas will be depicted on appropriations aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Tecumseh, MI [Revised]

Tecumseh, Meyers-Divers' Airport, MI (Lat. 42°01'20" N., long. 83°56'21" W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Meyers-Divers' Airport.

* * * * *

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 719, 720, and 722

[Docket No. 020625156–2156–01]

RIN 0694–AC71

Technical Amendments to Reflect Change in Name of Office of Chief Counsel for Export Administration

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to reflect the change in name of the Office of Chief Counsel for Export Administration to the Office of Chief Counsel for Industry and Security. This rule is technical in nature and does not change any substantive provisions of the EAR.

DATES: This rule is effective July 10, 2002.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–2440, Fax: (202) 482–3322, E-mail: scook@bis.doc.gov. For questions on the Office of Chief Counsel for Industry and Security, at (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Savings Provision

This rule constitutes notice that all references to the Office of Chief Counsel for Export Administration or Chief Counsel for Export Administration in any documents, statements, or other communications, in any form or media, read "Office of Chief Counsel for Industry and Security".

PART 720—DENIAL OF EXPORT PRIVILEGES

6. The authority citation for part 720 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 720.3 [Amended]

Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 719

Administrative practice and procedure, Chemicals, Exports, Imports, Penalties, Violations.

15 CFR Part 720

Administrative practice and procedure, Exports, Penalties,

Issued in Des Plaines, Illinois on June 19, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–17368 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 02–AGL–02]

Modification of Class E Airspace; Tecumseh, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Tecumseh, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13, and an RNAV SIAP to RWY 31 have been developed for Tecumseh Products Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace at Meyers-Divers' Airport by adding a radius of controlled airspace around Tecumseh Products Airport.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 2, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Tecumseh, MI (67 FR 15504) The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airpspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9j dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Tecumseh, MI, to accommodate aircraft executing instrument flight procedures into and out of Tecumseh Products Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7300.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Tecumseh, MI [Revised]

Tecumseh, Meyers-Divers' Airport, MI
(Lat. 42°01'30" N., long. 83°56'21" W.)
Tecumseh, Tecumseh Products Airport, MI
(Lat. 42°01'06" N., long. 83°52'42" W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Meyers-Divers' Airport, and within a 6.4-mile radius of the Tecumseh Products Airport, excluding that airspace within the Adrian, Lenanwee County Airport, MI, and the Detroit, MI, Class E Airspace areas.

* * * * *

Issued in Des Plaines, Illinois on June 19, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–17369 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 700, 719, 720, 766

[Docket No. 020417087–2150–02]

RIN 0694–XX21

Industry and Security Programs

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On April 18, 2002, the Bureau of Export Administration changed its name to the Bureau of Industry and Security, and made conforming changes in its regulations (67 FR 20630, April 26, 2002). Consistent with that change, effective May 17, 2002, the names of the "Office of Chief Counsel for Export Administration" and the "Chief Counsel for Export Administration" were changed to the "Office of Chief Counsel for Industry and Security" and the "Chief Counsel for Industry and Security," respectively. This rule makes appropriate conforming changes in chapter VII of title 15 of the Code of Federal Regulations to reflect these additional name changes.

DATES: This rule is effective as of May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Klason, Office of Chief Counsel for Industry and Security, at (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Savings Provision

This rule constitutes notice that all references to the Office of Chief Counsel for Export Administration or Chief Counsel for Export Administration in any documents, statements, or other communications, in any form or media, and whether made before, on, or after the effective date of this rule, shall be deemed to be references to the Office of Chief Counsel for Industry and Security or Chief Counsel for Industry and Security, respectively. Any actions undertaken in the name of or on behalf of the Office of Chief Counsel for Export Administration or Chief Counsel for Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Office of Chief Counsel for Industry and Security or the Chief Counsel for Industry and Security, respectively.

Rulemaking Requirements

1. This final rule has been determined to be exempt from review for purposes of Executive Order 12866.

2. This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

3. This rule does not contain policies with Federalism implications as the term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(B). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable.

List of Subjects

15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 719

Administrative practice and procedure, Chemicals, Exports, Imports, Penalties, Violations.

15 CFR Part 720

Administrative practice and procedure, Exports, Penalties, Violations.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Foreign trade, Law enforcement, Penalties.

For the reasons set forth in the preamble, 15 CFR chapter VII is amended as set forth below:

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

1. The authority citation for part 700 continues to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061 *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp., p. 901; Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp., p. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp., p. 585.

§ 700.72 [Amended]

2. In § 700.72(b) revise "Chief Counsel for Export Administration" to read "Chief Counsel for Industry and Security".

PART 719—ENFORCEMENT

3. The authority citation for part 719 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13128, 64 FR 36703.

4. In § 719.1(b), revise the definition of "Office of Chief Counsel" to read as follows:

§ 719.1 Scope and definitions.

* * * * *

(b) * * *

Office of Chief Counsel. The Office of Chief Counsel for Industry and Security, United States Department of Commerce.

* * * * *

§ 719.8 [Amended]

5. In § 719.8(b) revise "Office of Chief Counsel for Export Administration" to read "Office of Chief Counsel for Industry and Security".

PART 720—DENIAL OF EXPORT PRIVILEGES

6. The authority citation for part 720 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 720.3 [Amended]

7. In § 720.3(c) revise "Office of Chief Counsel for Export Administration" to read "Office of Chief Counsel for Industry and Security".

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

8. The authority citation for part 766 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

§ 766.4 [Amended]

9. In § 766.4 revise "Office of Chief Counsel for Export Administration" to read "Office of Chief Counsel for Industry and Security".

§ 766.5 [Amended]

10. In § 766.5(b) revise "Chief Counsel for Export Administration" to read "Chief Counsel for Industry and Security".

Dated: June 25, 2002.

Kenneth I. Juster,

Under Secretary for Industry and Security.

[FR Doc. 02–17154 Filed 7–9–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF TRANSPORTATION

33 CFR Part 100

[CGD07–02–087]

RIN 2115–AE46

Special Local Regulations; Beaufort Water Festival July 12th Fireworks Display, Beaufort River, Beaufort, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Beaufort River July 12th Fireworks Display, on the Beaufort River, Beaufort, SC. This rule creates a regulated area around the fireworks display. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 9 p.m. until 10 p.m. on July 12, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–02–049 and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St., Charleston, SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Martinez, Coast Guard Group

still be able to transit the waterway around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal

(d) *Dates.* This rule is effective from 9 p.m. until 10 p.m. on July 12, 2002.

Dated: June 27, 2002.

J.W. Stark,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 02–17097 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION

Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–02–049 and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St., Charleston, SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Martinez, Coast Guard Group Charleston at (843) 724–7632.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger associated with the aerial fireworks for the Beaufort Water Festival July 12th Fireworks Display on the Beaufort River, Beaufort, SC. The event sponsor expects approximately 120 spectator craft to observe the show. The fireworks barge will be located in approximate position 32°25.593′ N, 080°40.292′ W (NAD 83). This rule creates a regulated area that will prohibit non-participant persons and vessels from entering the regulated area during the event without the permission of the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because it minimally impacts navigation. The regulated area will only be in effect for one hour, vessels will still be able to transit the waterway around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant under their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Beaufort River from 9 p.m. to 10 p.m. on July 12, 2002. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it minimally impacts navigation. The rule will only be in effect for one hour, vessels will still be able to transit the waterway around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 9 p.m. until 10 p.m. on July 12, 2002, add temporary § 100.35T–07–087 to read as follows:

§ 100.35T–07–087 Beaufort Water Festival July 12th Fireworks Display, Beaufort River, Beaufort, SC.

(a) *Regulated area.* A regulated area is established for the waters in Beaufort River, Beaufort, SC encompassing a 175-yard radius around a barge located in approximate position 32° 25.593′ N, 080° 40.292′ W. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited, unless expressly authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This rule is effective from 9 p.m. until 10 p.m. on July 12, 2002.

Dated: June 27, 2002.

J.W. Stark,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 02–17097 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MI79–01–7288a; FRL–7242–8]

Designation of Areas for Air Quality Planning Purposes; Deletion of Total Suspended Particulate Designations in Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action EPA is deleting Michigan attainment status designations (attainment, unclassifiable and nonattainment) affected by the original national ambient air quality standards (NAAQS) for particulate matter measured as total suspended particulate (TSP). On June 3, 1993 EPA published a final rulemaking action revising the prevention of significant deterioration (PSD) particulate matter increments, so that the increments are measured in terms of particulate matter with an aerodynamic diameter less than 10 microns (PM). Section 107(d)(4)(B) of the Clean Air Act (Act) authorizes EPA to eliminate all area TSP designations once the increments for PM become effective. The June 3, 1993 document, which became effective on June 3, 1994, also established the method by which EPA deletes such TSP designations.

DATES: This "direct final" rule is effective September 9, 2002, unless EPA receives written adverse or critical comments by August 9, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

A. What Action Is EPA Taking?
B. What Is the Background for This Action?
C. Why Can We Approve This Request?

A. What Action Is EPA Taking?

We are deleting from the list of area designations in 40 CFR part 81, all of the designations for TSP in the state of Michigan (§ 81.323). Area designations which indicate the attainment status of each affected area with respect to the PM NAAQS already exist, and the TSP area designations are no longer needed.

B. What Is the Background for This Action?

In 1971, EPA promulgated primary and secondary NAAQS for particulate matter to be measured as TSP. Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying the attainment status designations (attainment, unclassifiable and nonattainment) for TSP areas in the state. In 1978, EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as "section 107 areas"), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements of air quality PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, States must ensure that emissions from major stationary sources are controlled sufficiently by applying the best available control technology. Also, it must be shown that such controlled emissions from the new or modified source will not cause or contribute to air pollution that violates the NAAQS. Moreover, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond

prescribed maximum allowable increases in pollutant concentrations, referred to as "increments."

On July 1, 1987 (52 FR 242634), EPA revised the particulate matter NAAQS, replacing the TSP indicator with the PM indicator. On the same date, EPA promulgated final regulations under 40 CFR part 51 for State implementation of the revised NAAQS (52 FR 24672). In the preamble to that action, EPA

and the PSD regulations contained in 40 CFR 52.21 (the Federal PSD program) govern the review and approval of permits to construct and operate major stationary sources in Michigan, EPA is taking action to delete all TSP area designations in the state of Michigan.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments.

Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have

Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

§ 81.323 [Amended]

2. In § 81.323 *Michigan*, delete the table (including the title line) entitled "Michigan—TSP".

[FR Doc. 02–17240 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section(AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson

prescribed maximum allowable increases in pollutant concentrations, referred to as "increments."

On July 1, 1987 (52 FR 242634), EPA revised the particulate matter NAAQS, replacing the TSP indicator with the PM indicator. On the same date, EPA promulgated final regulations under 40 CFR part 51 for State implementation of the revised NAAQS (52 FR 24672). In the preamble to that action, EPA announced that, because of the importance of the section 107 area designations to the applicability of the TSP increments, it would retain the TSP designations beyond the date on which EPA approves a State's revised PM State Implementation Plan (SIP). This would protect the applicability of the TSP increments until a PM increment system could be established.

The 1990 Amendments to the Act contained several pertinent provisions relating to or affecting the TSP area designations. Under section 107(d)(4)(B) of the amended Act, Congress established by operation of law the first nonattainment area designations for PM, and mandated that areas not initially defined as nonattainment are considered to be unclassifiable. Moreover, section 107(d)(4)(B) provided that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated prior to the date of enactment of the 1990 Amendments shall remain in effect for purposes of implementing the maximum allowable concentrations of particulate matter (measured in terms of TSP) increments until the Administrator determines that such designation is no longer necessary for that purpose.

C. Why Can We Approve This Request?

On June 3, 1993 (58 FR 31622), under the authority of section 166(f) of the Act, EPA published the final rulemaking replacing the TSP increments with equivalent PM increments. As a result, the PSD increments and NAAQS will be measured by the same indicator. As stated at 58 FR 31635, for States already having delegated authority to implement the Federal PSD regulations "EPA will eliminate the TSP designations when the PM increments become effective under § 52.21 on June 3, 1994." The EPA has delegated to the state of Michigan the authority to implement the PSD program. The delegation agreement provides for automatic adoption of the revised PM increments once the increments become effective.

Final Action

Because TSP designations are no longer necessary, as described above, and the PSD regulations contained in 40 CFR 52.21 (the Federal PSD program) govern the review and approval of permits to construct and operate major stationary sources in Michigan, EPA is taking action to delete all TSP area designations in the state of Michigan.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective September 9, 2002 without further notice unless we receive relevant adverse written comments by August 9, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 9, 2002.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 24, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Accordingly, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

§ 81.323 [Amended]

2. In § 81.323 *Michigan*, delete the table (including the title line) entitled "Michigan—TSP".

[FR Doc. 02–17240 Filed 7–9–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MN71–7296a; FRL–7242–6]

Designation of Areas for Air Quality Planning Purposes; Deletion of Total Suspended Particulate Designations in Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action EPA is deleting Minnesota attainment status designations (attainment, unclassifiable and nonattainment) affected by the original national ambient air quality standards (NAAQS) for particulate matter measured as total suspended particulate (TSP). On June 3, 1993 EPA published a final rulemaking action revising the prevention of significant deterioration (PSD) particulate matter increments, so that the increments are measured in terms of particulate matter with an aerodynamic diameter less than 10 microns (PM). Section 107(d)(4)(B) of the Clean Air Act (Act) authorizes EPA to eliminate all area TSP designations once the increments for PM become effective. The June 3, 1993 document, which became effective on June 3, 1994, also established the method by which EPA deletes such TSP designations.

DATES: This "direct final" rule is effective September 9, 2002, unless EPA receives written adverse or critical comments by August 9, 2002. If adverse comments are received, EPA will publish a timely withdrawl of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section(AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

A. What Action Is EPA Taking?
B. What Is the Background for This Action?
C. Why Is This Action Approvable?

A. What Action Is EPA Taking?

We are deleting from the list of area designations in 40 CFR part 81, all of the designations for TSP in the state of Minnesota (§ 81.324). Area designations which indicate the attainment status of each affected area with respect to the PM NAAQS already exist, and the TSP area designations are no longer needed.

B. What Is the Background for This Action?

In 1971, EPA promulgated primary and secondary NAAQS for particulate matter to be measured as TSP. Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying the attainment status designations (attainment, unclassifiable and nonattainment) for TSP areas in the state. In 1978, EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as "section 107 areas"), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements of air quality PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, States must ensure that emissions from major stationary sources are controlled sufficiently by applying the best available control technology. Also, it must be shown that such controlled emissions from the new or modified source will not cause or contribute to air pollution that violates the NAAQS. Moreover, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable

[illegible] pollutant concentrations, referred to as "increments."

On July 1, 1987 (52 FR 242634), EPA revised the particulate matter NAAQS, replacing the TSP indicator with the PM indicator. On the same date, EPA promulgated final regulations under 40 CFR part 51 for State implementation of the revised NAAQS (52 FR 24672). In the preamble to that action, EPA announced that, because of the

CFR 52.21 (the Federal PSD program) govern the review and approval of permits to construct and operate major stationary sources in Minnesota, EPA is taking action to delete all TSP area designations in the state of Minnesota.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section

between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states,

order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0047; FRL–7180–4]

Oxadixyl; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufac-

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...pollutant concentrations, referred to as "increments."

On July 1, 1987 (52 FR 242634), EPA revised the particulate matter NAAQS, replacing the TSP indicator with the PM indicator. On the same date, EPA promulgated final regulations under 40 CFR part 51 for State implementation of the revised NAAQS (52 FR 24672). In the preamble to that action, EPA announced that, because of the importance of the section 107 area designations to the applicability of the TSP increments, it would retain the TSP designations beyond the date on which EPA approves a State's revised PM State Implementation Plan (SIP). This would protect the applicability of the TSP increments until a PM increment system could be established.

The 1990 Amendments to the Act contained several pertinent provisions relating to or affecting the TSP area designations. Under section 107(d)(4)(B) of the amended Act, Congress established by operation of law the first nonattainment area designations for PM, and mandated that areas not initially defined as nonattainment are considered to be unclassifiable. Moreover, section 107(d)(4)(B) provided that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated prior to the date of enactment of the 1990 Amendments shall remain in effect for purposes of implementing the maximum allowable concentrations of particulate matter (measured in terms of TSP) increments until the Administrator determines that such designation is no longer necessary for that purpose.

C. Why Is This Action Approvable?

On June 3, 1993 (58 FR 31622), under the authority of section 166(f) of the Act, EPA published the final rulemaking replacing the TSP increments with equivalent PM increments. As a result, the PSD increments and NAAQS will be measured by the same indicator. As stated at 58 FR 31635, for States already having delegated authority to implement the Federal PSD regulations "EPA will eliminate the TSP designations when the PM increments become effective under § 52.21 on June 3, 1994." The EPA has delegated to the state of Minnesota the authority to implement the PSD program. The delegation agreement provides for automatic adoption of the revised PM increments once the increments become effective.

Final Action

Because TSP designations are no longer necessary, as described above, and the PSD regulations contained in 40 CFR 52.21 (the Federal PSD program) govern the review and approval of permits to construct and operate major stationary sources in Minnesota, EPA is taking action to delete all TSP area designations in the state of Minnesota.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective September 9, 2002 without further notice unless we receive relevant adverse written comments by August 9, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 9, 2002.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 26, 2002.

Norman Niedergang,

Acting Regional Administrator, Region 5.

Accordingly, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

§ 81.324 [Amended]

2. In § 81.324 *Minnesota*, delete the table (including the title line) entitled "Minnesota—TSP".

[FR Doc. 02–17241 Filed 7–9–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0047; FRL–7180–4]

Oxadixyl; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes all tolerances for the combined residues of the fungicide oxadixyl and its desmethyl metabolite. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 14 tolerances which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: This regulation is effective July 10, 2002; however, the tolerance revocations will not occur until the date specified in the regulatory text. Objections and requests for hearings, identified by docket ID number OPP–2002–0047, must be received by EPA on or before September 9, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0047 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0047. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public

version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number

Federal Register a cancellation order for all oxadixyl product registrations effective September 27, 2001. Although the manufacture of oxadixyl products ended years ago and the registrants know of no products in channels of trade, the cancellation order allowed a period of 1 year from September 27, 2001, to permit all sale and distribution of existing stocks (except for the purposes of shipping such stocks for

the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to

all oxadixyl tolerances, which count as 14 reassessments toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum

on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI

described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0047, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You

version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes the FFDCA tolerances for the combined residues of oxadixyl and its desmethyl metabolite in or on specified commodities listed in the regulatory text because oxadixyl is no longer registered under FIFRA for uses on those commodities. The tolerances revoked with an expiration/revocation date by this final rule are not needed after the expiration date to cover the combined residues of oxadixyl and its desmethyl metabolite in or on domestically treated commodities or commodities treated outside but imported into the United States. While all sale and distribution of existing stocks of oxadixyl (except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal) is permitted until September 27, 2002, no oxadixyl use on those specified commodities within the United States is expected after the spring of 2003, and no one commented that there was a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

In the **Federal Register** of February 6, 2002 (67 FR 5548) (FRL–6817–4), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the February 6, 2002 proposal invited public comment for consideration and for support of tolerance retention under FFDCA standards. No comments were received by the Agency.

On November 1, 2001 (66 FR 55158) (FRL–6808–4), EPA published in the **Federal Register** a cancellation order for all oxadixyl product registrations effective September 27, 2001. Although the manufacture of oxadixyl products ended years ago and the registrants know of no products in channels of trade, the cancellation order allowed a period of 1 year from September 27, 2001, to permit all sale and distribution of existing stocks (except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal). The Agency believes that existing stocks of oxadixyl will be exhausted by the spring of 2003. Because no active registrations exist and because no comments expressed a need to retain these tolerances for import purposes, EPA is revoking all tolerances in 40 CFR 180.456 for the combined residues of oxadixyl and its desmethyl metabolite, with an expiration/revocation date of September 27, 2003. The Agency believes that this date allows sufficient time for any oxadixyl-treated food commodities to pass through the channels of trade.

For FQPA reassessment purposes, EPA counts "Grass, forage, fodder and hay, group" as 3 tolerances (grass, forage; grass, fodder; and grass, hay) and a total of 14 tolerances as reassessed. In the interim, before the tolerance expires and to conform to current Agency practice, EPA is revising tolerance commodity terminology names in 40 CFR 180.456 as follows: for "Brassica (cole) leafy vegetables group" to "vegetable, brassica, leafy, group"; "cereal grains group (except wheat)" to "grain, cereal, group, except wheat"; "cotton seed" to "cotton, undelinted seed"; "cucurbit vegetables group" to "vegetable, cucurbit, group"; "fruiting vegetables (except cucurbits) group" to "vegetable, fruiting, group"; "leafy vegetables (except Brassica vegetables) group" to "vegetable, leafy, except brassica, group"; "nongrass animal feeds (forage, fodder, straw, and hay) group" to "animal feed, nongrass, group"; "peas" to "pea"; "root and tuber vegetables group" to "vegetable, root and tuber, group"; "soybeans" to "soybean"; and "sunflower seed" to "sunflower, seed."

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

EPA is revoking the tolerances for oxadixyl with an expiration/revocation date of September 27, 2003. EPA believes that by this date all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation will have been exhausted and that there is ample time for any treated food commodities to clear trade channels. Therefore, EPA believes the revocation/expiration dates in this document are reasonable.

Any commodities listed in the regulatory text of this document that are treated with the pesticide subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August 2006. As of June 25, 2002, EPA has reassessed over 5,140 tolerances. The oxadixyl tolerance depicted as "Grass, forage, fodder and hay, group" is counted as three tolerances because at the start of FQPA, the Agency's Tolerance Index System listed grass, forage; grass, fodder; and grass, hay tolerances for oxadixyl. In this rule, EPA is revoking all oxadixyl tolerances, which count as 14 reassessments toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0047 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 9, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0047, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from*

responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies

Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

Commodity	Parts per million	Expiration/Revocation Date
Vegetable, leafy, except brassica, group	0.1	9/27/03
Vegetable, root and tuber, group	0.1	9/27/03

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.*

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are

Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with oxadixyl. Furthermore, for the pesticide named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 12, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.456 is revised to read as follows:

§ 180.456 Oxadixyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide oxadixyl [2-methoxy-N-(2-oxo-1,3-oxazolidin-3-yl)-acet-2′,6′-xylidide] and its desmethyl (M-3) metabolite (2-hydroxy-N-(2-oxo-1,3-oxazolidin-3-yl)-acet-2′,6′-xylidide), calculated as oxadixyl in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Animal feed, nongrass, group	0.1	9/27/03
Cotton, undelinted seed	0.1	9/27/03
Grain, cereal, group, except wheat	0.1	9/27/03
Grass, forage, fodder and hay, group	0.1	9/27/03
Pea	0.1	9/27/03
Soybean	0.1	9/27/03
Sunflower, seed	0.1	9/27/03
Vegetable, brassica, leafy, group	0.1	9/27/03
Vegetable, cucurbit, group	0.1	9/27/03
Vegetable, fruiting, group	0.1	9/27/03

Commodity	Parts per million	Expiration/Revocation Date
Vegetable, leafy, except brassica, group	0.1	9/27/03
Vegetable, root and tuber, group	0.1	9/27/03

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–16859 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0113; FRL–7183–2]

Halosulfuron; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of halosulfuron in or on tomato. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tomato. This regulation establishes a maximum permissible level for residues of halosulfuron in this food commodity. The tolerance will expire and is revoked on June 30, 2005.

DATES: This regulation is effective July 10, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0113, must be received on or before September 9, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0113 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; e-mail address: Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0113. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305—5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the herbicide halosulfuron, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, in or on tomato at 0.05 part per million (ppm). This tolerance will expire and is revoked on June 30, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all

June 19, 2002] Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing the tolerances for halosulfuron in or on tomato.

with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2005, under FFDCA section 408(l)(5), residues of the pesticide not in

consistent with section 408(b)(2), for a time-limited tolerance for residues of halosulfuron in or on tomato at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the

Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues and 100 percent crop-treated for all commodities.

ii. *Chronic exposure.*In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA

for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of the Reference dose (%RfD) or percent of

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Recently, EPA has received objections to a tolerance it established for halosulfuron on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to establish the emergency exemption tolerance for halosulfuron in or on tomato while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and the extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing this tolerance at this time. First, the objections proceeding is not near to conclusion. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has just initiated a 60 day public comment period on them. [67 FR 41628-41635, June 19, 2002] Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing the tolerances for halosulfuron in or on tomato.

III. Emergency Exemption for Halosulfuron on Tomato and FFDCA Tolerances

Yellow (*Cyperus esculentus*) and purple nutsedge (*Cyperus rotundus*) are very difficult to control warm season, perennial weeds that reproduce by seeds and nutlets. They have high reproductive potential and can be very competitive with tomatoes during crop establishment. In addition to crop competition nutsedge plants can penetrate the plastic mulch used in tomato culture destroying the plastic and allowing entrance of other pest species.

Halosulfuron will allow preemergence or post emergence applications to control emerged nutsedge plants before they can flower or form nutlets to propagate themselves. It can be used in the plant rows or between the plant rows. The alternative chemicals consist of methyl bromide whose production is being phased out, metam sodium, pebulate, and napropamide. The last three chemicals can only be applied preplant incorporated or preemergence and do not provide season long control of nutsedge. Cultivation and hand weeding only help to further distribute the plants and nutlets. Deep plowing can provide suppression the first time it is used but subsequent plowing operations bring the old tubers back up to germinate. The states of Florida and Georgia claim that yield losses of tomatoes due to purple and yellow nutsedge infestations can be as high as 20 to 30% compared to the next best alternative.

EPA has authorized under FIFRA section 18 the use of halosulfuron on tomato for control of purple and yellow nutsedge in Florida and Georgia. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of halosulfuron in or on tomato. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2005, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tomato after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether halosulfuron meets EPA's registration requirements for use on tomato or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of halosulfuron by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Florida and Georgia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for halosulfuron, contact the Agency's Registration Division at the address provided under FOR FURTHER INFORMATION CONTACT.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of halosulfuron and to make a determination on aggregate exposure,

consistent with section 408(b)(2), for a time-limited tolerance for residues of halosulfuron in or on tomato at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by halosulfuron-methyl are discussed in Unit II.A. of the final rule on halosulfuron-methyl pesticide tolerances published in the **Federal Register** for September 29, 2000 (65 FR 58424) (FRL–6746–2). A summary of the toxicological dose and endpoints for halosulfuron-methyl for use in this human risk assessment is discussed in Unit III.B. of the final rule on halosulfuron-methyl pesticide tolerances published in the **Federal Register** of December 26, 2001 (66 FR 66333) (FRL–6816–8).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.479) for the residues of halosulfuron, in or on a variety of raw agricultural commodities. The established tolerances include tree nuts (crop group 14); pistachio nutmeat; almond hulls; sugarcane; corn (sweet, kernel+cob with husks removed, field grain, fodder, forage, pop); rice (grain, straw); and cotton (gin by-products and undelinted seed). Additionally, tolerances are established (40 CFR 180.479(a)(1)) for residues of halosulfuron-methyl and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid (also referred to as CSA, expressed as parent equivalents) at 0.1 ppm in or on meat by-products of cattle, goats, hogs, horses and sheep. Risk assessments were conducted by EPA to assess dietary exposures from halosulfuron in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues and 100 percent crop-treated for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100 percent crop-treated for all commodities.

iii. *Cancer.* Halosulfuron is classified as a "Not Likely" human carcinogen. Therefore, risk assessments to assess cancer risk were not completed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for halosulfuron in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of halosulfuron.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of the Reference dose (%RfD) or percent of population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to halosulfuron they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of halosulfuron for acute exposures are estimated to be 8.3 parts per billion (ppb) for surface water and 0.065 ppb for ground water. The EECs for chronic exposures are estimated to be 1.7 ppb for surface water and 0.065 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Halosulfuron is currently registered for use on the following residential non-dietary sites: Residential turfgrass and landscaped areas.

Short- and intermediate-term exposure may occur for residential handlers and for postapplication activities. Exposure for adults is expected for handler and postapplication exposure. Residential post-application dermal and oral exposure is expected for infants and children. Adults may be exposed through skin contact with treated surfaces (dermal exposure), while children may be exposed through skin contact as well as orally, through hand-to-mouth exposure and through object-to-mouth exposure (putting grass in their mouth). Exposure estimates for adult handlers' and children's postapplication exposure to halosulfuron-methyl are based on the Agency's Draft Standard Operating Procedures for Residential Exposure Assessments (12/18/1997) and its interim revisions, and data from the review of Outdoor Residential Exposure

Task Force Chemical Handler Exposure Studies. Chronic exposures for the residential uses are not expected based on the use pattern.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative

be reduced to 1X. The decision is based upon the following reasons: There was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to halosulfuron-methyl. In the prenatal developmental toxicity studies in rats and rabbits and the 2-generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of

allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HALOSULFURON

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13 years and older	0.5	<1%	8.3	0.065	15,000
All infants (< 1 year old)	0.5	1%	8.3	0.065	5,000
Children	0.5	<1%	8.3	0.065	5,000

2. *Chronic risk.* Using the exposure

and children. There are no residential

halosulfuron in drinking water, after

Task Force Chemical Handler Exposure Studies. Chronic exposures for the residential uses are not expected based on the use pattern.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether halosulfuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, halosulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that halosulfuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Conclusion.* There is a complete toxicity database for halosulfuron and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that the 10X FQPA Safety factor for enhanced sensitivity to infants and children can be reduced to 1X. The decision is based upon the following reasons: There was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to halosulfuron-methyl. In the prenatal developmental toxicity studies in rats and rabbits and the 2-generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

The Agency determined that the requirement of a developmental neurotoxicity study in rats did not warrant an application of additional safety factors because: (1) The alterations observed in the fetal nervous system occurred in only one species (in rats and not in rabbits); (2) the fetal effects which will be investigated in the required developmental neurotoxicity study were seen only at a dose of 750 mg/kg/day which is close to the Limit-Dose (1,000 mg/kg/day); (3) there was no evidence of clinical signs of neurotoxicity, brain weight changes, or neuropathology in the subchronic or chronic studies in rats; (4) the developmental neurotoxicity study is required only as confirmatory data to understand what the effect is at a high exposure (dose) level; (5) exposure assessments do not indicate a concern for potential risk to infants and children based on the results of the field trial studies and the very low application rate (~ 0.06 lbs. active ingredient per acre). Detectable residues are not expected in foods. Consequently, there is no concern that the level of 750 mg/kg/day would be approached.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the population adusted dose (PAD)) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to halosulfuron in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of halosulfuron on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to halosulfuron will occupy 1% or less of the aPAD for all population subgroups in DEEM® including females 13 years and older, infants and children. In addition, despite the potential for acute dietary exposure to halosulfuron in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of halosulfuron in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HALOSULFURON

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13 years and older	0.5	<1%	8.3	0.065	15,000
All infants (< 1 year old)	0.5	1%	8.3	0.065	5,000
Children	0.5	<1%	8.3	0.065	5,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to halosulfuron from food will utilize less than 1% of the chronic population adjusted dose (cPAD) for all population subgroups in DEEM® including the U.S. population, infants and children. There are no residential uses for halosulfuron that result in chronic residential exposure to halosulfuron. Based on the use pattern, chronic residential exposure to residues of halosulfuron is not expected. In addition, despite the potential for chronic dietary exposure to halosulfuron in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of halosulfuron in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO HALOSULFURON

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.1	<1%	1.7	0.065	3,500
All infants (<1 year old)	0.1	<1%	1.7	0.065	1,000
Children	0.1	<1%	1.7	0.065	1,000

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for halosulfuron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 4,500 for adults for both handler and postapplication exposures and 2,800 for infants and children for dermal and incidental oral exposures. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of halosulfuron in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO HALOSULFURON

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	4,500	100	1.7	0.065	17,000
Infants	2,800	100	1.7	0.065	4,800
Children	2,800	100	1.7	0.065	4,800

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for halosulfuron.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,700 for adults and 1,100 for infants and children. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of halosulfuron in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE- TERM EXPOSURE TO HALOSULFURON

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. Population	1,700	100	1.7	0.065	3,300
Infants	1,100	100	1.7	0.065	910
Children	1,100	100	1.7	0.065	910

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since

relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE- TERM EXPOSURE TO HALOSULFURON

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. Population	1,700	100	1.7	0.065	3,300
Infants	1,100	100	1.7	0.065	910
Children	1,100	100	1.7	0.065	910

5. *Aggregate cancer risk for U.S. population.* Halosulfuron is classified as a "Not Likely" human carcinogen. Therefore, risk assessments to assess cancer risk were not completed.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to halosulfuron residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican maximum residue limits, for residues of halosulfuron in or on tomatoes, therefore harmonization is not an issue.

C. Conditions

A maximum of 0.094 pounds halosulfuron may be applied per acre per season. A total of 2 applications per season may be made. The preharvest interval (PHI) is 30 days.

VI. Conclusion

Therefore, the tolerance is established for residues of halosulfuron, methyl 5-[(4,6- dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, in or on tomato at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0113 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 9, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–2002–0113, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the [tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. In § 180.479, paragraph (b) is amended by revising the text and by alphabetically adding an entry for "Tomato" to the table to read as follows:

§ 180.479 Halosulfuron; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of halosulfuron, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-

methyl-1H-pyrazole-4-carboxylate, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA in or on the following commodities:

Commodity	Parts per million	Expiration/ revocation date
* * *	* *	*
Tomato	0.05	6/30/05

Washington, DC 20460; telephone number: (703) 308–9366; e-mail address: Pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any

chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable

these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether mesotrione meets EPA's registration requirements for use on

endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is

methyl-1H-pyrazole-4-carboxylate, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA in or on the following commodities:

Commodity	Parts per million	Expiration/ revocation date
* *	* *	*
Tomato	0.05	6/30/05

* * * * *

[FR Doc. 02–17266 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0117; FRL–7184–2]

Mesotrione; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on sweet corn and sweet corn forage and stover. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sweet corn. This regulation establishes maximum permissible levels for residues of mesotrione in these food commodities. The tolerances will expire and are revoked on June 30, 2004.

DATES: This regulation is effective July 10, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0117, must be received on or before September 9, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0117 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366; e-mail address: Pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**"—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0117. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the herbicide mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on sweet corn, sweet corn forage, and sweet corn stover at 0.01, 0.50, and 2.0 part per million (ppm), respectively. These tolerances will expire and are revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Mesotrione on Sweet Corn and FFDCA Tolerances

Due to an unusually warm winter, a non-routine and urgent situation has occurred in Wisconsin due to volunteer potatoes. EPA has authorized under FIFRA section 18 the use of mesotrione on sweet corn for control of volunteer potatoes in Wisconsin. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of mesotrione in or on sweet corn. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sweet corn, sweet corn forage, and sweet corn fodder after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether mesotrione meets EPA's registration requirements for use on sweet corn or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of mesotrione by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Wisconsin to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for mesotrione on sweet corn, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of mesotrione and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on sweet corn, sweet corn forage, and sweet corn stover at 0.01, 0.50, and 2.0 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for mesotrione used for human risk assessment is shown in the following - Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR MESOTRIONE FOR USE IN HUMAN RISK ASSESSMENT[1]

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary all populations	Not applicable	Not applicable	No appropriate study available.
Chronic dietary all populations	LOAEL= 2.1 mg/kg/day UF = 300 Chronic RfD = 0.007 mg/kg/day	FQPA SF = 10X cPAD = chronic RfD FQPA SF = 0.0007 mg/kg/day	Reproduction Study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia

[1] HED has revised the definitions used in its human health risk assessments to describe occupational and residential exposure durations (Memo, M. Stasikowski, 04-JUN-2001, "Changes in the Definition of Exposure Durations for Occupational/Residential Risk Assessments Performed in the Health Effects Division"). The new exposure durations are as follows: 1. short-term, defined as lasting from 1 day to 1 month; 2. intermediate-term, defined as lasting from 1 to 6 months; 3. long-term, defined as lasting longer than 6 months. The toxicity endpoints originally selected for the short- (1–7 days) and intermediate-term (1 week to several months) incidental oral and the short- (1–7 days), intermediate- (1 week - several months) and long-term (several months - lifetime) dermal and inhalation endpoints are also applicable for the new exposure duration definitions for these routes of exposure.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been recently

general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The

indoor pest control, termiticides, and flea and tick control on pets).

Mesotrione is not registered for use on any sites that would result in residential

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR MESOTRIONE FOR USE IN HUMAN RISK ASSESSMENT[1]

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary all populations	Not applicable	Not applicable	No appropriate study available.
Chronic dietary all populations	LOAEL= 2.1 mg/kg/day UF = 300 Chronic RfD = 0.007 mg/kg/day	FQPA SF = 10X cPAD = chronic RfD FQPA SF = 0.0007 mg/kg/day	Reproduction Study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia in F_1 and F_{2a} offspring and ocular discharge in F_1 pups.
Short-Term[1] Incidental Oral (1–7 days) (Residential)	NOAEL = 100 mg/kg/day	LOC for MOE = 1000 (Residential)	Developmental Toxicity Study - rat Maternal LOAEL = 300 mg/kg/day based upon decreased body weight gains during treatment and decreased food consumption.
Intermediate-Term[1] Incidental Oral (7 days - several months) (Residential)	LOAEL = 2.1 mg/kg/day	LOC for MOE = 3000 (Residential)	Reproduction Study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia in F_1 and F_{2a} offspring and ocular discharge in F_1 pups.
Short-Term[1] dermal (1–7 days) (Occupational/Residential)	Oral study LOAEL = 100 mg/kg/day (dermal-absorption rate = 25%)	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential)	Developmental toxicity study - rat Developmental LOAEL = 100 mg/kg/day based upon delays in skeletal ossification and changes in manus/pes ossification assessments.
Intermediate-Term[1] Dermal (1 week - several months) (Occupational/Residential)	Oral study LOAEL = 2.1 mg/kg/day (dermal- absorption rate = 25%).	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential).	Reproduction Study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia in F_1 and F_{2a} offspring and ocular discharge in F1 pups.
Long-Term[1] Dermal (several months - lifetime)(Occupational/Residential)	Oral study LOAEL = 2.1 mg/kg/day (dermal- absorption rate = 25%).	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential).	Reproduction Study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia in F_1 and F_{2a} offspring and ocular discharge in F_1 pups.
Short-Term 1 Inhalation (1-7 days) (Occupational/Residential)	Oral study LOAEL = 100 mg/kg/day (inhalation-absorption rate = 100%)	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential).	Developmental Toxicity Study - rat Developmental LOAEL = 100 mg/kg/day based upon delays in skeletal ossification and changes in manus/pes ossification assessments.
Intermediate-Term 1 Inhalation (1 week - several months)(Occupational/Residential)	Oral study LOAEL = 2.1 mg/kg/day (inhalation-absorption rate = 100%)	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential).	Reproduction Study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia in F_1 and F_{2a} offspring and ocular discharge in F_1 pups.
Long-Term 1 Inhalation (several months - lifetime) (Occupational/Residential)	Oral study LOAEL = 2.1 mg/kg/day (inhalation-absorption rate = 100%)	LOC for MOE = 300 (Occupational) LOC for MOE = 3,000 (Residential).	Reproduction Study - mouse Offspring LOAEL = 2.1 mg/kg/day based upon tyrosinemia in F_1 and F_{2a} offspring and ocular discharge in F_1 pups.
Cancer (oral, dermal, inhalation)	"not likely"	Not Applicable	Acceptable oral rat and mouse carcinogenicity studies; no evidence of carcinogenic or mutagenic potential.

UF = uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern.

[1] HED has revised the definitions used in its human health risk assessments to describe occupational and residential exposure durations (Memo, M. Stasikowski, 04-JUN-2001, "Changes in the Definition of Exposure Durations for Occupational/Residential Risk Assessments Performed in the Health Effects Division"). The new exposure durations are as follows: 1. short-term, defined as lasting from 1 day to 1 month; 2. intermediate-term, defined as lasting from 1 to 6 months; 3. long-term, defined as lasting longer than 6 months. The toxicity endpoints originally selected for the short- (1–7 days) and intermediate-term (1 week to several months) incidental oral and the short- (1–7 days), intermediate- (1 week - several months) and long-term (several months - lifetime) dermal and inhalation endpoints are also applicable for the new exposure duration definitions for these routes of exposure.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been recently established (40 CFR 180.571) for the residues of mesotrione, in or on field corn forage, grain, and stover. Risk assessments were conducted by EPA to assess dietary exposures from mesotrione in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No appropriate study available show any acute dietary effects of concern.

ii. *Chronic exposure.*In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992– nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Residue levels are at the recommended tolerances for field and sweet corn, and 100% of the crop is treated with mesotrione. The %cPAD for the general U.S. population is 2.1% and for the most sensitive population subgroups, Children (1–6 years old), is 5%.

iii. *Cancer.* Acceptable oral rat and mouse carcinogenicity studies showed no evidence of carcinogenic or mutagenic potential.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for mesotrione in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of mesotrione.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use EECs from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to mesotrione they are further discussed in the aggregate risk sections below.

Based on the GENEEC (Version 1.2) and SCI-GROW models the EECs of mesotrione for acute exposures are estimated to be 20 parts per billion (ppb) for surface water and 0.15 ppb for ground water. The EECs for chronic exposures are estimated to be 13 ppb for surface water and 0.15 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Mesotrione is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether mesotrione has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, mesotrione does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that mesotrione has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is quantitative evidence of increased susceptibility demonstrated in the oral prenatal developmental toxicity studies in rats, mice, and rabbits.

Delayed ossification was seen in the fetuses at doses below those at which maternal toxic effects were noted. Maternal toxic effects in the rat were decreased body weight gain during treatment and decreased food consumption and in the rabbit, abortions and GI effects.

5. *Conclusion.* The FQPA safety factor (10X) is retained in assessing the risk posed because there is quantitative to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of mesotrione on drinking water as a part of the aggregate risk assessment process.

hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made.

number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account

Delayed ossification was seen in the fetuses at doses below those at which maternal toxic effects were noted. Maternal toxic effects in the rat were decreased body weight gain during treatment and decreased food consumption and in the rabbit, abortions and GI effects.

5. *Conclusion.* The FQPA safety factor (10X) is retained in assessing the riak posed because there is quantitative evidence of increased susceptibility of the young exposed to mesotrione in the prenatal developmental toxicity studies in mice, rats, and rabbits and in the multi-generation reproduction study in mice, there is qualitative evidence of increased susceptibility of the young exposed to mesotrione in the multi-generation reproduction study in rats; and a Developmental Neurotoxicity Study is required to assess the effects of tyrosinemia on the developing nervous system exposed to mesotrione.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA's Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to mesotrione in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of mesotrione on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Acute doses and endpoints were not selected for the general U.S. population (including infants and children) or the females (13–50 years old) population subgroup for mesotrione; therefore, an acute dietary exposure analysis was not performed.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to mesotrione from food will utilize 2.1% of the cPAD for the U.S. population, 4.4% of the cPAD for all infants < 1 year old and 5% of the cPAD for children (1–6 years old). There are no residential uses for mesotrione that result in chronic residential exposure to mesotrione. In addition, despite the potential for chronic dietary exposure to mesotrione in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of mesotrione in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO MESOTRIONE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0007	2.1	4.3	0.15	24
All infants	0.0007	4.4	4.3	0.15	6.7
Children (1–6) years old)	0.0007	5.0	4.3	0.15	6.6
Females (13–50 years old)	0.0007	1.5	4.3	0.15	21

3. *Aggregate cancer risk for U.S. population.* Based on the lack of carcinogenic response in rats and mice and the lack of mutagenic effects, and that there are no data in the literature or SAR information to indicate carcinogenic potential, no cancer risk is posed.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to mesotrione residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high pressure liquid chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levels for mesotrione residues; thus, harmonization is not an issue at this time.

VI. Conclusion

Therefore, tolerances are established for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on sweet corn, sweet corn forage, and sweet corn fodder at 0.01, 0.50, and 2.0 ppm, respectively.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a

hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0117 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 9, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket ID number OPP—2002-0117, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the

requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Commodity		Parts per million
Corn, sweet, stover	2.0	06/30/04

* * * * *

[FR Doc. 02–17265 Filed 7–9–02; 8:45 am]

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The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This

1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.571 is amended by revising paragraph (b) to read as follows:

§ 180.571 Mesotrione; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in connection with use of the herbicide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances will expire on the dates specified in the table.

Commodity		Parts per million
Corn, sweet, kernel plus cob with husks removed	0.01	06/30/04
Corn, sweet, forage	0.50	06/30/04
Corn, sweet, stover	2.0	06/30/04

* * * * *

[FR Doc. 02–17265 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Administrator has resolved many appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Alabama: Autauga, Elmore, Lowndes, & Montgomery (FEMA Docket No. D–7521).	City of Montgomery	Jan. 15, 2002, Jan. 22, 2002, *The Montgomery Advertiser.*	The Honorable Bobby N. Bright, Mayor of the City of Montgomery, P.O. Box 1111, Montgomery, Alabama 36101–1111.	Apr. 23, 2002 ...	010174 F
Connecticut: Fairfield (FEMA Docket No. D–7521).	Town of Greenwich	Feb. 11, 2002, Feb. 18, 2002, *Greenwich Times.*	Mr. Richard Bergstresser, First Selectman for the Town of Greenwich, 101 Field Point Road, Greenwich, Connecticut 06830.	Feb. 4, 2002	090006 C
Florida: Pinellas (FEMA Docket No. D–7521).	City of St. Petersburg.	Nov. 14, 2001, Nov. 21, 2001, *St. Petersburg Times.*	The Honorable Rick Baker, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731–2842.	Nov. 7, 2001	125148 B&C
Leon (FEMA Docket No. D–7521).	City of Tallahassee	Jan. 16, 2002, Jan. 23, 2002, *Tallahassee Democrat.*	The Honorable Scott Maddox, Mayor of the City of Tallahassee, City Hall, 300 South Adams Street, Tallahassee, Florida 32301–1731.	Apr. 24, 2002 ...	120144 D
Manatee (FEMA Docket No. D–7521).	Unincorporated Areas.	Jan. 15, 2002, Jan. 21, 2002, *Sarasota Herald Tribune.*	Mr. Ernie Padgett, County Administrator, 1112 Manatee Avenue West, P.O. Box 1000, Bradenton, Florida 34206.	Jan. 7, 2002	120153 C
Orange (FEMA Docket No. D–7521).	Unincorporated Areas.	Jan. 16, 2002, Jan. 23, 2002, *The Orlando Sentinel.*	Dr. M. Krishnamurthy, P.E., Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, Florida 32839–9205.	Apr. 24, 2002 ...	120179 E
Georgia: Harris (FEMA Docket No. D–7521).	Unincorporated Areas.	Jan. 2, 2002, Jan. 9, 2002, *Harris County Journal.*	Ms. Carol Silva, Harris County Manager, P.O. Box 365, Hamilton, Georgia 31811.	Dec. 26, 2001 ..	130038 A
Indiana: Noble (FEMA Docket No. D–7521).	Unincorporated Areas.	Feb. 5, 2002, Feb. 12, 2002 *The Sun-News.*	Mr. Mark Pankap, President of the Noble County Board of Commissioners, Noble County Courthouse, 101 North Orange Street, Albion, Indiana 46701.	May 14, 2002 ...	180183 B
Mississippi: Forrest and Lamar (FEMA Docket No. D–7521).	City of Hattiesburg ..	Jan. 24, 2002, Jan. 30, 2002, *Hattiesburg American.*	The Honorable J. Ed Morgan, Mayor of the City of Hattiesburg, P.O. Box 1898, Hattiesburg, Mississippi 39403.	Jan. 16, 2002 ...	280053 C
North Carolina: Nash and Edgecomb (FEMA Docket No. D–7521).	City of Rocky Mount	Jan. 25, 2002, Feb. 1, 2002, *Rocky Mount Telegram.*	Mr. Stephen W. Raper, Rocky Mount City Manager, P.O. Box 1180, Rocky Mount, North Carolina 27802–1180.	May 3, 2002	370082 C
Pennsylvania:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Carbon (FEMA Docket No. D–7521).	Township of Lower Towamensing.	Dec. 28, 2001, Jan. 4, 2002, *Times News.*	Mr. Glen Hahn, Chairman, Township of Lower Towamensing Board of Supervisors, 595 Hahns Dairy Road, Palmerton, Pennsylvania 18701.	Apr. 5, 2002	421455 A
Carbon (FEMA Docket No. D–7521).	Borough of Palmerton.	Dec. 28, 2001, Jan. 4, 2002, *Times News.*	Mr. John Vignone, Borough of Palmerton Council President, 443 Delaware Avenue, Palmerton, Pennsylvania 18701.	Apr. 5, 2002	420253 A
South Carolina: Richland (FEMA Docket No. D–7521).	Unincorporated Areas.	Dec. 26, 2001, Jan. 2, 2002, *The State Newspaper.*	Mr. T. Cary McSwain, Richland County Administrator, P.O. Box 192, 2020 Hampton Street, Columbia, South	Dec. 19, 2001 ..	450170 G

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
At East Wilson Street	*301
Cypress Creek:	
Approximately 1,700 feet upstream of Hodgesville Road	*227

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Unnamed Tributary to Beulah Creek:	
At the confluence with Beulah Creek	*276
Approximately 340 feet up-	

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Carbon (FEMA Docket No. D–7521).	Township of Lower Towamensing.	Dec. 28, 2001, Jan. 4, 2002, *Times News.*	Mr. Glen Hahn, Chairman, Township of Lower Towamensing Board of Supervisors, 595 Hahns Dairy Road, Palmerton, Pennsylvania 18701.	Apr. 5, 2002	421455 A
Carbon (FEMA Docket No. D–7521).	Borough of Palmerton.	Dec. 28, 2001, Jan. 4, 2002, *Times News.*	Mr. John Vignone, Borough of Palmerton Council President, 443 Delaware Avenue, Palmerton, Pennsylvania 18701.	Apr. 5, 2002	420253 A
South Carolina: Richland (FEMA Docket No. D–7521).	Unincorporated Areas.	Dec. 26, 2001, Jan. 2, 2002, *The State Newspaper.*	Mr. T. Cary McSwain, Richland County Administrator, P.O. Box 192, 2020 Hampton Street, Columbia, South Carolina 29202.	Dec. 19, 2001 ..	450170 G
Tennessee: Sumner and Davidson (FEMA Docket No. D–7521).	City of Goodlettsville	Dec. 27, 2001, Jan. 3, 2002, *The Tennessean.*	The Honorable Bobby T. Jones, Mayor of the City of Goodlettsville, City Hall, 105 South Main Street, Goodlettsville, Tennessee 37072.	Apr. 4, 2002	470287 C
McNairy (FEMA Docket No. D–7521).	Unincorporated Areas.	Jan. 16, 2002, Jan. 23, 2002, *Independent Appeal.*	Mr. Mike Smith, McNairy County Executive, McNairy County Courthouse, 170 West Court Avenue, Selmer, Tennessee 38375.	Apr. 24, 2002 ...	470127 D
Shelby (FEMA Docket No. D–7521).	Unincorporated Areas.	Jan. 18, 2002, Jan. 25, 2002, *Daily News.*	The Honorable Jim Rout, Mayor of Shelby County, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	Apr. 26, 2002 ...	470214 E
Virginia: Prince William (FEMA Docket No. D–7521).	Unincorporated Areas.	Feb. 7, 2002, Feb. 14, 2002, *Potomac News.*	Mr. Craig Gerhart, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	May 16, 2002 ...	510119 D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")
Dated: July 2, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–17277 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Director, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
ALABAMA	
Cowarts (Town), Houston County (FEMA Docket No. D–7307)	
Crawford Creek:	
Approximately 1,325 feet downstream of Omusee Road	*228
Just upstream of Omusee Road	*233
Maps available for inspection at the Cowarts Town Hall, 800 Jester Street, Cowarts, Alabama.	
Dothan (City), Houston County (FEMA Docket No. D–7307)	
Rock Creek:	
Approximately 50 feet upstream of the confluence with Little Choctawhatchee River	*228
At Murray Road	*312
Beaver Creek Tributary 1:	
Approximately 300 feet downstream of Honeysuckle Road	*270
Approximately 100 feet upstream of State Route 52	*305
Poplar Spring Branch:	
At the confluence with Omusee Creek	*216
At a point approximately 300 feet upstream of U.S. Route 84	*283
Rocky Branch:	
Approximately 150 feet upstream of the confluence with Omusee Creek	*231
At East Wilson Street	*301
Cypress Creek:	
Approximately 1,700 feet upstream of Hodgesville Road	*227
Approximately 60 miles upstream of East Coe Dairy Road	*291
Beulah Creek:	
Approximately 1,500 feet upstream of the confluence with Omusee Creek	*233
Approximately 1.04 miles upstream of Headland Avenue	*276
Omusee Creek:	
Approximately 50 feet upstream of the confluence of Golf Creek	*208
Approximately 0.33 mile upstream of Old Kinsey Road	*230
Golf Creek:	
At the confluence with Omusee Creek	*208
At Prevatt Road	*264
Crawford Creek:	
At the confluence with Golf Creek	*208
Approximately 1,325 feet downstream of Omusee Road	*228
Cypress Creek Tributary 1:	
At the confluence with Cypress Creek	*250
Approximately 1,500 feet upstream of Cottonwood Road	*281
Cypress Creek Tributary 2:	
Just upstream of Third Avenue	*240
Just upstream of dirt trail	*296
Chipola Creek:	
At Fuller Road	*240
Just upstream of Taylor Road	*282
Chipola Creek Tributary:	
At the confluence with Chipola Creek	*266
Approximately 0.41 mile upstream of Bruner Road	*284
Beaver Creek Tributary 2:	
Approximately 250 feet upstream from the confluence with Beaver Creek	*223
Approximately 530 feet upstream of most upstream dam	*249
Beaver Creek Tributary 3:	
At the confluence with Beaver Creek Tributary 2	*247
Just downstream of Enterprise Highway	*298
Harrison Mill Creek:	
Approximately 0.37 mile upstream of the confluence with Little Choctawhatchee River	*205
Approximately 0.5 mile upstream of Bethlehem Road	*224
Cooper Creek:	
Approximately 1,725 feet upstream of Lucy Grade Road	*205
Approximately 190 feet upstream of Fowler Road	*219
Unnamed Tributary to Beulah Creek:	
At the confluence with Beulah Creek	*276
Approximately 340 feet upstream of the confluence with Beulah Creek	*277
Maps available for inspection at the Dothan City Hall, 126 North St. Andrews, Dothan, Alabama.	
Houston County (Unincorporated Areas) (FEMA Docket No. D–7307)	
Rocky Branch:	
At the confluence with Omusee Creek	*231
Approximately 150 feet upstream of confluence with Omusee Creek	*231
Chipola Creek:	
Approximately 300 feet downstream of South Park Avenue	*250
Approximately 1,275 feet upstream of Bruner Road	*261
Golf Creek:	
At the confluence of Omusee Creek	*208
At the confluence of Crawford Creek	*208
Cypress Creek Tributary 2:	
At the confluence of Cypress Creek	*238
Approximately 450 feet upstream of Reservoir Outlet	*270
Cooper Creek:	
At confluence with Cowarts Creek	*192
Approximately 2,000 feet upstream of Lucy Grade Road	*205
Beaver Creek Tributary 2:	
At the confluence of Beaver Creek	*223
Approximately 250 feet upstream of the confluence of Beaver Creek	*223
Omusee Creek:	
Approximately 1,580 feet downstream of Watson Bridge Road	*207
At the confluence of Beulah Creek and Burdeshaw Mill Creek	*233
Crawford Creek:	
At the confluence of Golf Creek	*208
Approximately 1,175 feet upstream of State Route 52	*227
Cypress Creek:	
Approximately 525 feet downstream of Hodgesville Road	*223
Approximately 350 feet downstream of confluence of Cypress Creek Tributary 1	*250
Maps available for inspection at the Houston County Emergency Management Agency, 114 North Oats Street, Dothan, Alabama.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Taylor (Town), Houston County (FEMA Docket No. D–7307)	
Choctawhatchee Bay:	
Intersection of Arizona Drive and Hughes Street Northeast	*8
Approximately 800 feet south of the intersection of Sleepy Hollow Road and Miracle Strip Parkway	*9
Approximately 520 feet south of the intersection of Venus Court and Santa Rosa Boulevard	*9
Choctawhatchee Bay:	
At intersection of 13th Street and Arizona Drive Northeast	*9
Maps available for inspection at the Taylor Town Hall, 1490 Hughes Street Northeast, Taylor, Florida.	
Unincorporated Areas of Houston County (FEMA Docket No. D–7307)	
Rocky Branch:	
At the confluence with Omusee Creek	*231
Approximately 150 feet upstream of confluence with Omusee Creek	*231
Chipola Creek:	
Approximately 300 feet downstream of South Park Avenue	*250
Approximately 1,275 feet upstream of Bruner Road	*261
Golf Creek:	
At the confluence of Omusee Creek	*208
At the confluence of Crawford Creek	*208
Cypress Creek Tributary 2:	
At the confluence of Cypress Creek	*238
Approximately 450 feet upstream of Reservoir Outlet	*270
Cooper Creek:	
At confluence with Cowarts Creek	*192
Approximately 2,000 feet upstream of Lucy Grade Road	*205
Beaver Creek Tributary 2:	
At the confluence of Beaver Creek	*223
Approximately 250 feet upstream of the confluence of Beaver Creek	*223
Omusee Creek:	
Approximately 1,580 feet downstream of Watson Bridge Road	*207
At the confluence of Beulah Creek and Burdeshaw Mill Creek	*233
Crawford Creek:	
At the confluence of Golf Creek	*208
Approximately 1,175 feet upstream of State Route 52	*227
Cypress Creek:	
Approximately 525 feet downstream of Hodgesville Road	*223
Approximately 350 feet downstream of confluence of Cypress Creek Tributary 1	*250
Maps available for inspection at the Houston County Emergency Management Agency, 114 North Oats Street, Dothan, Alabama.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
At intersection of Venus Court and Santa Rosa Boulevard	*9
Choctawhatchee Bay:	
At intersection of 13th Street and Arizona Drive Northeast	*9
Maps available for inspection at the City of Port St. Joe Chamber of Commerce Office, 105 West 4th Street, Port St. Joe, Florida.	
At the confluence with Unnamed Creek	*594
Approximately 0.6 mile upstream of the confluence with Unnamed Creek	*636
Unnamed Tributary to Beulah Creek:	
At the confluence with Beulah Creek	*276
Approximately 340 feet upstream of the confluence with Beulah Creek	*277
Maps available for inspection at the Dothan City Hall, 126 North St. Andrews, Dothan, Alabama.	
Houston County (Unincorporated Areas) (FEMA Docket No. D–7307)	
Rocky Branch:	
At the confluence with Omusee Creek	*231
Approximately 150 feet upstream of confluence with Omusee Creek	*231
Chipola Creek:	
Approximately 300 feet downstream of South Park Avenue	*250
Approximately 1,275 feet upstream of Bruner Road	*261
Golf Creek:	
At the confluence of Omusee Creek	*208
At the confluence of Crawford Creek	*208
Cypress Creek Tributary 2:	
At the confluence of Cypress Creek	*238
Approximately 450 feet upstream of Reservoir Outlet	*270
Cooper Creek:	
At confluence with Cowarts Creek	*192
Approximately 2,000 feet upstream of Lucy Grade Road	*205
Beaver Creek Tributary 2:	
At the confluence of Beaver Creek	*223
Approximately 250 feet upstream of the confluence of Beaver Creek	*223
Omusee Creek:	
Approximately 1,580 feet downstream of Watson Bridge Road	*207
At the confluence of Beulah Creek and Burdeshaw Mill Creek	*233
Crawford Creek:	
At the confluence of Golf Creek	*208
Approximately 1,175 feet upstream of State Route 52	*227
Cypress Creek:	
Approximately 525 feet downstream of Hodgesville Road	*223
Approximately 350 feet downstream of confluence of Cypress Creek Tributary 1	*250
Maps available for inspection at the Houston County Emergency Management Agency, 114 North Oats Street, Dothan, Alabama.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Taylor (Town), Houston County (FEMA Docket No. D–7307)	
Chipola Creek:	
Approximately 30 feet downstream of Fuller Road	*236
Approximately 100 feet upstream of Fuller Road	*236
Maps available for inspection at the Taylor Town Hall, 1469 South County Road 59, Taylor, Alabama.	
FLORIDA	
Cinco Bayou (Town), Okaloosa County (FEMA Docket No. D–7283)	
Choctawhatchee Bay (along Cinco Bayou):	
Approximately 400 feet north of Opp Road and Opp Boulevard	*8
Approximately 800 feet northeast of the intersection of Troy Street Northeast and Yacht Club Drive Northeast at the shoreline	*12
Maps available for inspection at the Town Hall, 10 Yacht Club Drive, Fort Walton Beach, Florida.	
Destin (City), Okaloosa County (FEMA Docket No. D–7283)	
Choctawhatchee Bay:	
Approximately 350 feet north of Harbor Lane and Indian Trail Drive intersection	*7
Approximately 900 feet west of the intersection of Calhoun Avenue and Zerbe Street	*10
Gulf of Mexico:	
At intersection of Lagoon Drive and Moreno Point Road	*9
Approximately 800 feet south of Miracle Strip Parkway and Airport Road	*16
Maps available for inspection at the Destin City Hall, Community Development Department, 4200 Two Trees Road, Destin, Florida.	
Fort Walton Beach (City), Okaloosa County (FEMA Docket No. D–7283)	
Santa Rosa Sound:	
At intersection of 1st Street Southwest and 4th Avenue Southwest	*8
Approximately 1,000 feet south of intersection of Hood Avenue Southeast and Brooks Street Southeast	*11
Choctawhatchee Bay:	
Intersection of Arizona Drive and Hughes Street Northeast	*8
Approximately 600 feet northeast of intersection of Bay Drive Northeast and Hollywood Boulevard Northeast	*12
Choctawhatchee Bay (along Garnier Bayou):	
Approximately 400 feet northeast of intersection of Martin Place Northwest and Vaughn Street Northwest	*8
Approximately 300 feet southeast of intersection of Bradley Drive and Beach View Drive	*12
Choctawhatchee Bay (along Garnier Bayou):	
Approximately 250 feet northeast of intersection of Sherwood Road and Mooney Road	*8
Approximately 300 feet east of intersection of Marshall Drive and Beach View Drive	*12
Maps available for inspection at 107 Miracle Strip Parkway, Fort Walton Beach, Florida.	
Gulf County (Unincorporated Areas) (FEMA Docket Nos. D–7500, D–7508, and D–7295)	
Gulf of Mexico:	
Along the coast of the Gulf of Mexico approximately 1,000 feet north of Eagle Harbor	*12
Along the Gulf of Mexico shoreline, approximately 2,000 feet west of Indian Pass	*14
St. Joseph Bay:	
Approximately 1,500 feet inland from St. Joseph Bay, along the shoreline of St. Joseph Bay	*8
Along the St. Joseph Bay shoreline, approximately 3 miles southeast of Pig Island	*11
Indian Lagoon:	
Along the shoreline of Indian Lagoon, approximately 1,000 feet west of Indian Pass	*9
Approximately 500 feet west of Indian Pass	*10
Maps available for inspection at Gulf County Courthouse, 1000 Cecil G. Costin, Sr., Boulevard, Room 302, Port St. Joe, Florida.	
Mary Esther (City), Okaloosa County (FEMA Docket No. D–7283)	
Santa Rosa Sound:	
Approximately 800 feet south of the intersection of Sleepy Hollow Road and Miracle Strip Parkway	*9
Approximately 520 feet south of intersection of Royal Palm Drive and Miracle Strip Parkway	*11
Maps available for inspection at 195 Christobal Road North, Mary Esther, Florida.	
Niceville (City), Okaloosa County (FEMA Docket No. D–7283)	
Choctawhatchee Bay:	
At intersection of Bayshore Drive and Weeden Island Drive	*7
Approximately 600 feet southeast of intersection of Bayshore Drive and 7th Street	*10
Swift Creek:	
Approximately 100 feet downstream of State Route 20	*7
Approximately 2,400 feet upstream of State Route 20	*7
Turkey Creek:	
Approximately 100 feet downstream of State Route 85	*7
Approximately 1,700 feet upstream of State Route 85	*7
Choctawhatchee Bay (along Boggy Bayou):	
Approximately 750 feet west of intersection of Meigs Street and Bayshore Drive	*9
Approximately 100 feet north of intersection of 31st Street and Bayshore Drive	*7
Choctawhatchee Bay (along Rocky Bayou):	
Approximately 400 feet southeast of intersection of 11st Street and Baha Vista Drive	*10
At intersection of 11th Street and Baha Vista Drive	*7
Maps available for inspection at 208 North Partin Drive, Niceville, Florida.	
Okaloosa County (Unincorporated Areas) (FEMA Docket No. D–7283)	
Gulf of Mexico:	
Intersection of Santa Rosa Boulevard and Siebert Drive	*9
Approximately 500 feet south of intersection of Abalone Court and Caviar Drive	*16
Santa Rosa Sound:	
Approximately 800 feet east of intersection of Woodland Avenue and Miracle Strip Parkway	*8
Approximately 1,000 feet south of intersection of Miracle Strip Parkway and Green Drive	*12

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
At intersection of Venus Court and Santa Rosa Boulevard	*9
Choctawhatchee Bay:	
At intersection of 13th Street South and Tamarck Avenue	*7
Approximately 400 feet south of Wenoma Way and Cherokee Road intersection	*12
Choctawhatchee Bay (along Cinco Bayou):	
Approximately 400 feet south of intersection of Valeria Street and Russell Boulevard	*8
Approximately 500 feet southeast of intersection of Bradley Drive and Beach View Drive	*12
Choctawhatchee Bay (along Garnier Bayou):	
At intersection of Eglin Parkway and Beach View Drive	*9
Approximately 600 feet southeast of intersection of 2nd Avenue and Beach View Drive	*12
Choctawhatchee Bay (along Boggy Bayou):	
Approximately 150 feet south of intersection of Bayshore Drive and Palm Boulevard	*7
Approximately 1,250 feet west of intersection of Bayshore Drive and Palm Boulevard	*10
Choctawhatchee Bay (along Rocky Bayou):	
Approximately 150 feet east of intersection of Capri Cove Road and Lido Cove Road	*7
Approximately 500 feet west of intersection of Marina Cove Road and Yacht Club Drive	*10
Lightwood Knot Creek:	
Mouth at Garnier Bayou	*8
2,250 feet upstream of State Road 189	*8
Maps available for inspection at 1804 Lewis Turner Boulevard, Suite 200, Fort Walton Beach, Florida	
Port St. Joe (City), Gulf County (FEMA Docket Nos. D–7508, and D–7295)	
St. Joseph Bay:	
Intersection of 11th Street and Palmer Boulevard	*8
Approximately 250 feet west of intersection of Constitution Drive and 14th Street	*12
At intersection of 16th Street and Long Avenue	*8
Shallow Flooding:	
Approximately 425 feet southeast of intersection of Fourth Street and Woodward Avenue	*8
Maps available for inspection at the City of Port St. Joe Chamber of Commerce Office, 105 West 4th Street, Port St. Joe, Florida.	
Shalimar (Town), Okaloosa County (FEMA Docket No. D–7283)	
Choctawhatchee Bay:	
At northeast corner of intersection of Eglin Parkway and Gardner Drive	*8
Approximately 1,300 feet southwest of the intersection of Old Ferry Road and Gardner Drive	*12
Choctawhatchee Bay (along Garnier Bayou):	
Approximately 100 feet east of the intersection of Plew Avenue and Shalimar Drive	*8
Approximately 600 feet west of the intersection of Gardner Drive and Clifford Drive	*12
Maps available for inspection at #2 Cherokee Road, Shalimar, Florida.	
Valparaiso (City), Okaloosa County (FEMA Docket No. D–7283)	
Choctawhatchee Bay:	
Approximately 200 feet south of intersection of Florida Avenue and Grand View Avenue	*7
Approximately 1,000 feet east of intersection of Jasmine Avenue and Louisiana Avenue	*10
Choctawhatchee Bay (along Boggy Bayou):	
Approximately 500 feet north of the intersection of Bayshore Drive and John Sims Parkway	*7
Approximately 1,250 feet northeast of the intersection of Grand View Avenue and Tennessee Avenue	*10
Maps available for inspection at the City Hall, 465 Valparaiso Parkway, Valparaiso, Florida.	
ILLINOIS	
Carbon Cliff (Village), Rock Island County (FEMA Docket No. D–7524)	
Unnamed Creek:	
Approximately 1,750 feet upstream of the Chicago, Rock Island and Pacific Railroad	*577
Approximately 560 feet upstream of the confluence of Tributary 3 to Unnamed Creek	*657
Tributary 1 to Unnamed Creek:	
At the confluence with Unnamed Creek	*594
Approximately 0.6 mile upstream of the confluence with Unnamed Creek	*636
Tributary 2 to Unnamed Creek:	
At the confluence with Unnamed Creek	*622
Approximately 960 feet upstream of the confluence with Unnamed Creek	*640
Tributary 3 to Unnamed Creek:	
At the confluence with Unnamed Creek	*650
Approximately 800 feet upstream of the confluence with Unnamed Creek	*662
Shallow Flooding Area:	
Approximately 400 feet southeast of intersection of 1st Avenue and 5th Street	#1
Approximately 200 feet southwest of intersection of 1st Avenue and 5th Street	#1
Maps available for inspection at the Carbon Cliff Village Hall, 106 First Avenue, Carbon Cliff, Illinois.	
Rock Island (City), Rock Island County (FEMA Docket No. D–7512)	
Mississippi River:	
At confluence of rock River	*564
Approximately 2,100 feet upstream of confluence with Rock River	*564
Rock River:	
At the confluence with Mississippi River	*564
Approximately 0.55 mile downstream of Chicago, Rock Island, and Pacific Railroad	*564
North Channel Rock River:	
At confluence with Rock River	*564
Approximately 1,650 feet upstream of confluence with Rock River	*564
Old Channel Mill Creek:	
At Interstate 280	*563
Approximately 1,280 feet upstream of Interstate 280	*563
Maps available for inspection at the City Hall, 1528 3rd Avenue, Rock Island, Illinois.	
Rock Island County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Shaffer Creek:	
At the confluence with Rock Riber	*573
Approximately 900 feet upstream of East 3rd Avenue	*579
Maps available for inspection at the Rock Island County Building, 1504 3rd Avenue, Rock Island, Illinois.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Silvis (City), Rock Island County (FEMA Docket No. D–7512)	
Maps available for inspection at Everson Borough Building, Brown Street, Everson, Pennsylvania.	
Maps available for inspection at the City of Chattanooga City Hall Annex, 101 East 11th Street, Room 44, Chat-	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 1,640 feet upstream of most upstream crossing of Pattens Branch Road	*521
Goodlettsville Outlet Ditch:	
Approximately 250 feet upstream of confluence with Middle Creek	*1,670
Approximately 0.9 mile upstream of confluence with	
Approximately 1,060 feet upstream of Long Hollow Pike	*490
Cumberland River:	
At the downstream county	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) ♦Elevation in feet (NAVD)
Silvis (City), Rock Island County (FEMA Docket No. D–7512)	
Unnamed Creek:	
Approximately 165 feet upstream of the dam	*650
Approximately 525 feet upstream of the dam	*650
Maps available for inspection at the Silvis City Inspector's Office, 1032 1st Avenue, Silvis, Illinois.	
INDIANA	
Hamilton (Town), DeKalb and Steuben Counties (FEMA Docket No. D–7524)	
Fish Creek:	
Approximately 2,750 feet downstream of Bailfountain Road	*888
Approximately 740 feet upstream of South Wayne Street	*891
Maps available for inspection at the Hamilton Town Hall, 7750 South Wayne Street, Hamilton, Indiana.	
OHIO	
Niles (City), Trumbull County (FEMA Docket No. D–7512)	
Meander Creek:	
Approximately 0.6 mile upstream of CSX Transportation	*862
Approximately 50 feet upstream of corporate limits	*862
Maps available for inspection at the Niles Building and Zoning Department, 34 West State Street, Niles, Ohio.	
PENNSYLVANIA	
Bullskin (Township), Fayette County (FEMA Docket No. D–7524)	
Jacobs Creek:	
At the downstream corporate limits	*1,037
At a point approximately 250 feet upstream of State Route 31	*1,142
Maps available for inspection at the Bullskin Township Municipal Building, 178 Shenandoah Road, Connellsville, Pennsylvania.	
Everson (Borough), Fayette County) FEMA Docket No. D–7524)	
Jacobs Creek:	
Approximately 2,400 feet downstream of 5th Avenue	*1,025
Upstream corporate limits	*1,029
Maps available for inspection at Everson Borough Building, Brown Street, Everson, Pennsylvania.	
Upper Tyrone (Township), Fayette County (FEMA Docket No. D–7524)	
Jacobs Creek:	
At State Route 819	*1,020
At upstream corporate limits	*1,037
Stauffer Run:	
At confluence with Jacobs Creek	*1,030
At upstream corporate limits	*1,031
Maps available for inspection at the Upper Tyrone Township Building, 259 Montgomery Road, Scottdale, Pennsylvania.	
TENNESSEE	
Chattanooga (City), Hamilton County (FEMA Docket No. 7512)	
North Chickamauga Creek:	
At confluence with the Tennessee River	*660
Approximately 200 feet downstream to Thrasher Pike	*682
Tennessee River:	
Approximately 1,625 feet downstream of Shoal Creek	*650
Just downstream of Chickamauga Dam	*660
Mountain Creek:	
At the confluence with the Tennessee River	*652
Approximately 1,109 feet upstream of the Norfolk Southern Railway	*652
Lookout Creek:	
At the confluence with Tennessee River	*654
Approximately 160 feet upstream of the confluence of Black Creek	*654
Black Creek:	
At the confluence with Lookout Creek	*654
At downstream side of Norfolk Southern Railway (first crossing)	*654.
Shallow Flooding Areas:	
In the vicinity of the Tennessee River, south of Cherokee Boulevard	*656
Stringers Branch:	
At the confluence with Mountain Creek	*652
At Signal Mountain Road	*652
Chattanooga Creek:	
Approximately 850 feet downstream of Market Street	*655
At downstream side of 2nd crossing of Norfolk Southern Railway	*655
Maps available for inspection at the City of Chattanooga City Hall Annex, 101 East 11th Street, Room 44, Chattanooga, Tennessee.	
Collegedale (City), Hamilton County (FEMA Docket No. D–7512)	
Wolftever Creek Tributary:	
At the confluence with Wolftever Creek	*761
Approximately 950 feet upstream of Bill Reed Road	*790
Wolftever Creek:	
At the confluence of Wolftever Creek Tributary	*761
Approximately 400 feet upstream of Ringgold-Ooltawah Road	*766
Maps available for inspection at the City of Collegedale Public Safety Director's Office, 4910 Swinyar Drive, Collegedale, Tennessee.	
East Ridge (City), Hamilton County (FEMA Docket No. D–7512)	
Spring Creek:	
At Interstate 75	*679
At Spring Creek Road	*679
South Chickamauga Creek:	
Approximately 800 feet downstream of 4th crossing of Louisville and Nashville Railroad	*678
At upstream state boundary	*689
Maps available for inspection at the Building Department, 1517 Tombras Avenue, East Ridge, Tennessee.	
Gallatin (City), Summer County (FEMA Docket No. D–7522)	
Cumberland River:	
Approximately 1 mile downstream of the Gallatin Stream Plant gage	*453
Approximately 3.0 miles downstream of the Gallatin Stream Plant gage	*453
Maps available for inspection at the Gallatin City Hall, 132 West Main Street, Gallatin, Tennessee.	
Goodlettsville (City), Davidson and Sumner Counties (FEMA Docket No. D–7524)	
Slaters Creek:	
At the confluence with Mansker Creek	*452
Approximately 1,640 feet upstream of Long Drive	*475
Pattens Branch:	
At the confluence with Madison Creek	*466

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) ♦Elevation in feet (NAVD)
Approximately 1,640 feet upstream of most upstream crossing of Pattens Branch Road	*521
Goodlettsville Outlet Ditch:	
At the confluence with Mansker Creek	*437
At the downstream side of Old Long Hollow Pike	*437
Madison Creek:	
At the confluence with Mansker Creek	*432
Approximately 1.51 miles upstream of Pattens Branch	*535
Mansker Creek:	
At the confluence of Madison Creek	*432
Approximately 1,450 feet upstream of the most upstream crossing of U.S. Route 41	*485
Willis Branch:	
At the confluence with Madison Creek	*432
Approximately 0.12 mile upstream of the confluence with Madison Creek	*432
Maps available for inspection at the Goodlettsville City Hall, 105 South Main Street, Goodlettsville, Tennessee.	
Hamilton County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Rogers Branch:	
At confluence with Wolftever Creek	*687
At Access/Montain View Road	*748
Rogers Branch Tributary:	
At confluence with Rogers Branch	*719
Approximately 550 feet upstream of Interstate 85	*742
Wolfever Creek:	
At the confluence with Wolftever Creek Tributary	*761
Approximately 350 feet upstream of the confluence of Wolftever Creeks Tributary	*761
Wolftever Creek Tributary:	
At the confluence of Wolftever Creek	*761
Approximately 2,200 feet upstream of Bill Reed Road	*795
Little Soddy Creek:	
At the City of Soddy-Daisy corporate limits	*820
Approximately 120 feet upstream of the City of Soddy-Daisy corporate limits	*823
Lookout Creek:	
Approximately 135 feet downstream of the Norfolk Southern Railway	*654
Approximately 525 feet upstream of Cummings Highway	*654
Tennessee River:	
At the county boundary	*646
At the confluence of Shoal Creek	*650
Fruedenberg Creek:	
Approximately 250 feet upstream of confluence with Middle Creek	*1,670
Approximately 0.9 mile upstream of confluence with Middle Creek	*1,777
Lick Branch:	
At confluence with North Chickamauga Creek	*670
Approximately 50 feet downstream of Thrasher Pike	*676
Lick Branch Tributary 1:	
At confluence with Lick Branch	*670
Approximately 100 feet downstream of Thrasher Pike	*683
Lick Branch Tributary 2:	
At confluence with Lick Branch	*670
Approximately 50 feet downstream of Thrasher Pike	*675
Lick Branch Tributary 3:	
At confluence with Lick Branch	*670
Approximately 50 feet downstream of Thrasher Pike	*680
Middle Creek:	
Approximately 1,100 feet downstream of Edwards Point Road	*1,634
Approximately 50 feet downstream of Timesville Road	*1,718
North Chickamauga Creek:	
At the upstream side of Lower Mill Road	*669
Approximately 1 mile upstream of Dayton Pike	*753
Possum Creek:	
At Lee Pike	*687
Approximately 1.4 miles upstream of Black Valley Road	*862
Sale Creek:	
At the confluence with the Tennessee River	*688
Approximately 1,580 feet upstream of the confluence with the Tennessee River	*688
Maps available for inspection at the Regional Planning Agency, County Courthouse, Room 208, Chattanooga, Tennessee.	
Henderson (City), Sumner County (FEMA Docket No. D–7522	
Drakes Creek:	
Approximately 0.4 mile upstream of U.S. Route 31E	*452
Approximately 1,200 feet upstream of Long Hollow Pike	*518
Unnamed Tributary 5:	
Approximately 50 feet upstream of Buchanan Circle	*507
Approximately 0.4 mile upstream of Buchanan Circle	*523
Station Camp Creek:	
Approximately 1,430 feet upstream of Station Camp Creek Road	*456
Approximately 1,060 feet upstream of Long Hollow Pike	*490
Cumberland River:	
At the downstream county boundary	*432
At the downstream side of Old Hickory Dam	*432
Center Point Branch:	
At the confluence with Mansker Creek	*432
Approximately 1,750 feet upstream of Hickory Lane	*437
Madison Creek:	
At the confluence with Mansker Creek	*432
Approximately 250 feet downstream of Long Hollow Pike	*443
Mansker Creek:	
At the confluence with Cumberland River	*432
At the confluence of Madison Creek	*432
Maps available for inspection at the Henderson City Hall, One Executive Park Drive, Henderson, Tennessee.	
Metropolitan Government of Nashville and Davidson County (FEMA Docket No. D–7524).	
Mansker Creek:	
Upstream side of the most downstream crossing of U.S. Route 41	*452
At a point approximately 1.14 miles upstream of Old Shiloh Road	*584
Lumsley Fork:	
At the confluence with Mansker Creek	*453
At a point approximately 211 feet upstream of the confluence with Mansker Creek	*454
Maps available for inspection at the Metropolitan Government of Nashville and Davidson County Public Works, 720 South 5th Street, Nashville, Tennessee.	
Millersville (City), Summer County (FEMA Docket No. D–7522)	
Slaters Creek:	
Just upstream of Long Drive	*471
Approximately 1,140 feet upstream of the most upstream crossing of Interstate 65	*582
East Fork Slaters Creek:	
At the confluence with Slaters Creek	*506
Approximately 0.81 mile upstream of Pole Hill Road	*563
Mansker Creek:	
Approximately 1,450 feet upstream of the most upstream crossing of U.S. Route 41	*485

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) ♦Elevation in feet (NAVD)
Approximately 1.1 miles upstream of Old Shiloh Road	*584
Maps available for inspection at the Millersville City Hall,	
Approximately 2,500 feet downstream of Harrison Lane	*684
Approximately 1,325 feet upstream of Card Road	*741
At the confluence with Honey Run Creek	*743
Approximately 0.74 mile upstream of the confluence with Honey Run Creek	*769

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) ♦Elevation in feet (NAVD)
Maps available for inspection at the Sheboygan County Planning and Resources Department, 508 New York Avenue, Sheboygan, Wis-	
At a point approximately 1.1 miles upstream of Heide Cooper Road	*1,141
South Fork Little Cacapon River:	

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 1.1 miles upstream of Old Shiloh Road	*584
Maps available for inspection at the Millersville City Hall, 1246 Louisville Highway, Millersville, Tennessee.	
Portland (City), Sumner County (FEMA Docket No. D–7522)	
Donoho Branch:	
Approximately 106 feet downstream of College Street	*794
Approximately 0.3 mile upstream of State Route 52	*805
Portland Channel:	
Approximately 1,900 feet downstream of Victor Reiter Parkway	*787
Approximately 0.5 mile upstream of Morningside Drive	*794
Maps available for inspection at the Portland City Hall, 100 South Russel Street, Portland, Tennessee.	
Red Bank (City), Hamilton County (FEMA Docket No. D–7512)	
Stringers Branch:	
Approximately 400 feet downstream of Signal Mountain Road	*652
At Barker Road	*785
Maps available for inspection at the Red Bank City Hall, 3117 Dayton Boulevard, Red Bank, Tennessee.	
Signal Mountain (Town), Hamilton County (FEMA Docket No. D–7512)	
Middle Creek:	
At Edwards Point Road	*1,641
Approximately 850 feet upstream of Middle Creek Road	*1,675
Frudenberg Creek:	
At confluence with Middle Creek	*1,667
Approximately 0.9 mile upstream of confluence with Middle Creek	*1,774
Maps available for inspection at the Building Inspector's Office, 1111 Ridgeway Avenue, Signal Mountain, Tennessee.	
Soddy-Daisy (City), Hamilton County (FEMA Docket No. D–7512)	
North Chickamauga Creek:	
Approximately 200 feet downstream of Thrasher Pike	*682
Approximately 1 mile upstream of Dayton Pike	*753
Poe Branch:	
Approximately 2,500 feet downstream of Harrison Lane	*684
Approximately 1,325 feet upstream of Card Road	*741
Soddy Creek:	
Approximately 50 feet upstream of the Norfolk Southern Railway	*748
Approximately 740 feet upstream of the Norfolk Southern Railway	*758
Maps available for inspection at the City Hall Office, 9835 Dayton Pike, Soddy-Daisy, Tennessee.	
Summer County (Unincorporated Areas) (FEMA Docket No. D-7522)	
Albright Creek:	
Approximately 50 feet downstream of Willmore Road	*454
Just downstream of Willmore Road	*454
Arterburn Branch:	
At the confluence with Honey Run Creek	*743
Approximately 0.74 mile upstream of the confluence with Honey Run Creek	*769
Jones Branch:	
Approximately 0.67 mile upstream of Tyree Springs Road	*804
Approximately 0.69 mile upstream of Tyree Springs Road	*805
Hogan Branch:	
At the confluence with Drakes Creek	*545
Approximately 1.3 miles upstream of Hogan Branch Road	*621
Drakes Creek:	
Approximately 1,200 feet upstream of Long Hollow Pike	*518
Approximately 0.5 miles upstream of Shell Road	*562
Honey Run Creek:	
Approximately 180 feet upstream of U.S. Route 31 West and State Route 41	*714
At the confluence of Jones Branch and Arberburn Branch	*743
Station Camp Creek:	
Approximately 840 feet upstream of Long Hollow Pike	*490
Approximately 1,060 feet upstream of Long Hollow Pike	*490
Maps available for inspection at the Sumner County Building Planner's Office, 355 North Belvedere Drive, Room 102, Gallatin, Tennessee.	
White House (City), Summer County (FEMA Docket No. D–7522)	
Arterburn Branch:	
At the confluence with Honey Run Creek	*743
Approximately 0.74 mile upstream of the confluence with Honey Run Creek	*769
Jones Branch:	
At the confluence with Honey Run Creek	*743
Approximately 0.7 mile upstream of Tyree Springs Road	*805
Honey Run Creek:	
Approximately 450 feet downstream of U.S. Route 31 West	*712
At the confluence of Jones Branch and Arterburn Branch	*743
Maps available for inspection at the White House Codes Department, 105 College Street, White House, Tennessee.	
WISCONSIN	
Sheboygan (City), Sheboygan County (FEMA Docket No. D-7504)	
Lake Michigan:	
At point approximately 200 feet east of the intersection of Michigan Avenue and Broughton Drive	*590
Approximately 900 feet northeast of the intersection of Indiana Avenue and South Seventh Street	#1
Approximately 1,000 feet northeast of the intersection of North Avenue and North Fifth Street	*587
Maps available for inspection at the Sheboygan City Hall, 828 Center Avenue, Sheboygan, Wisconsin.	
Sheboygan County (Unincorporated Areas) (FEMA Docket No. D–7504)	
Lake Michigan:	
A point approximately 0.8 mile southeast of the intersection of County Trunk Highway KK and Moennig Road	*590
Approximately 1,000 feet east of the intersection of Vaness Road and Pine Beach Road	*587
A point approximately 250 feet east of the intersection of South Pine Beach Road and Stokdyke-Ingelse Road	#1
At the intersection of DeWitt Road and Teronde Beach Road	*584

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Maps available for inspection at the Sheboygan County Planning and Resources Department, 508 New York Avenue, Sheboygan, Wisconsin.	
WEST VIRGINIA	
Capon Bridge (Town), Hampshire County (FEMA Docket No. D–7502)	
Dillons Run:	
At the confluence with the Cacapon River	*814
At a point approximately 2,600 feet upstream of the confluence with the Cacapon River	*814
Cacapon River:	
At a point approximately 2,450 feet downstream of U.S. Route 50	*811
At a point approximately 4,350 feet upstream of U.S. Route 50	*817
Maps available for inspection at the Capon Bridge Town Building, Route 50 East, Capon Bridge, West Virginia.	
Hampshire County (Unincorporated Areas) (FEMA Docket No. D–7502)	
Cacapon River:	
At a point approximately 1.6 miles downstream of U.S. Route 50	*807
At a point approximately 1.9 miles upstream of U.S. Route 50	*820
Big Run:	
At the confluence with the South Branch Potomac River	*680
At a point approximately 475 feet upstream of Grassy Lick Road	*1,057
Dillons Run:	
At a point approximately 2,600 feet upstream of the confluence with the Cacapon River	*814
At a point approximately 2,850 feet upstream of the confluence with the Cacapon River	*814
Green Spring Run:	
At the confluence with North Branch Potomac River	*535
At a point approximately 4.2 miles upstream of Green Spring Valley Road	*649
Little Cacapon River:	
At a point approximately 1.1 miles downstream of Little Cacapon Road	*977
At upstream side of Little Cacapon Road	*1,011
North Fork Little Cacapon River:	
At confluence with Little Cacapon River	*1,011
At a point approximately 1.1 miles upstream of Heide Cooper Road	*1,141
South Fork Little Cacapon River:	
At confluence with Little Cacapon River	*1,011
At a point approximately 1.9 miles up-stream of U.S. Route 50	*1,129
Mill Branch:	
At confluence with Cacapon River	*818
At a point approximately 2.5 miles upstream of U.S. Route 50	*949
North River:	
At a point approximately 7.2 miles downstream of U.S. Route 50	*822
At a point approximately 3.3 miles upstream of U.S. Route 50	*906
South Branch Potomac River:	
Upstream side of the Baltimore & Ohio Railroad bridge	*559
Approximately 2.84 miles upstream of confluence of Big Run	*686
Maps available for inspection at the Hampshire County Courthouse, 66 North High Street, Romney, West Virginia 26757.	
Romney (Town), Hampshire County (FEMA Docket No. D–7502)	
Big Run:	
At a point approximately 225 feet downstream of State Route 28	*738
At a point approximately 0.8 mile upstream of State Route 28	*838
Maps available for inspection at the Romney Town Building, 340 East Main Street, Romney, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 2, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–17269 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determination

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer for each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E. chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified based flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days . The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104 and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the

address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
PENNSYLVANIA	
(Westmoreland County) township of East Hun-	

Dated: July 2, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–17270 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL COMMUNICATIONS COMMISSION

frequency (RF) devices to modify the limits on the amount of RF energy that is permitted to be conducted onto alternating current (AC) power lines. These limits protect against interference to licensed radio services operating below 30 MHz. The rule changes adopted herein harmonize our domestic requirements with the international standards developed by the International Electrotechnical Commission (IEC), International Special

requested on whether voltage and current limits on RF signals placed on the AC power line could be employed by CCS devices as an optional method of demonstrating compliance with the radiated limits outside of the AM broadcast band.

4. The *Report and Order* adopted changes to the rules for power line conducted emissions to make them more effective in controlling interference to communications services

standards and would not create an additional testing burden on manufacturers of such equipment. Pending the adoption of new rules based on the international work, our existing requirements for carrier current systems continue to apply to all such devices.

Harmonization with IEC/CISPR Conducted Emission Limits

6. The Commission observed that

address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environment Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and Recordkeeping requirements

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
PENNSYLVANIA	
(Westmoreland County) township of East Huntingdon, Borough of Scottdale, Township of Mt. Pleasant (FEMA Docket No. D–7526)	
Jacobs Creek:	
At State Route 819	*1,020
A point approximately 0.82 mile upstream of State Route 982	*1,288
Borough of Scottdale (FEMA Docket No. D–7526)	
Stauffer Run:	
Approximately 340 feet upstream of confluence with Jacobs Creek (Lower Reach)	*1,031
Approximately 1,100 feet upstream of State Route 819	*1,039
Township of Mt. Pleasant (FEMA Docket No. D–7526)	
Laurel Run:	
At the confluence with Jacobs Creek	*1,219
Approximately 1,530 feet upstream of Jacobs Creek	*1,244
Township of East Hungingdon, Township of Mt Pleasant (FEMA Docket No. D–7526)	
Shupe Run:	
At the confluence with Jacobs Creek	*1,040
Approximately 42 feet downstream of the CONRAIL bridge	*1,046
Borough of Scottdale	
Maps available for inspection at the Scottdale Borough Municipal Building 10 Mount Pleasant Road, Scottdale, Pennsylvania.	
Township of Mt. Pleasant	
Maps available for inspection at the Mt. Pleasant Township Building, Poker Road, Mammoth, Pennsylvania.	
Township of East Huntingdon	
Maps available for inspection at the East Huntingdon Township Building, Route 981, Alverton, Pennsylvania.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 2, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–17270 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 18

[ET Docket 98–80; FCC 02–157]

Conducted Emission Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's rules for Radio Frequency (RF) devices to modify the limits on the amount of RF energy that is permitted to be conducted onto alternating current (AC) power lines. These limits protect against interference to licensed radio services operating below 30 MHz. The rule changes also harmonize our domestic requirements with the international standards developed by the International Electrotechnical Commission, International Special Committee on Radio Interference. The Commission believes that such harmonization will benefit consumers and manufacturers by providing better interference protection to licensed radio services as well as promoting a global marketplace for RF devices.

DATES: Effective August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577, TTY (202) 418–2989, e-mail: awride@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 98–80, FCC 02–157, adopted May 23, 2002 and released May 30, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It is also available on the Commission's internet site at *www.fcc.gov*. The complete text of this document also may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* email, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554.

Summary of Report and Order

1. The Commission is amending parts 15 and 18 of the rules for radio

frequency (RF) devices to modify the limits on the amount of RF energy that is permitted to be conducted onto alternating current (AC) power lines. These limits protect against interference to licensed radio services operating below 30 MHz. The rule changes adopted herein harmonize our domestic requirements with the international standards developed by the International Electrotechnical Commission (IEC), International Special Committee on Radio Interference (CISPR). We believe that such harmonization will benefit consumers and manufacturers by providing better interference protection to licensed radio services as well as promoting a global marketplace for RF devices

2. In the *Notice of Proposed Rule Making* (NPRM), 64 FR 62159, November 16, 1999, the Commission proposed several changes to its regulations for line conducted emissions from parts 15 and 18 devices. It proposed to amend the conducted emission limits for such equipment to make them generally consistent with the international standards specified in IEC/CISPR Publications 11 and 22. The differences between the limits in the rules and the CISPR limits are discussed, in the *NPRM*. The CISPR limits, including the limits on conducted emissions below 450 kHz, would be applied to all part 15 devices, to all induction cooking ranges and ultrasonic equipment operating under part 18, and to all consumer part 18 devices, including microwave ovens. The Commission proposed to provide a transition period of one year for all new part 15 and 18 devices subsequently authorized under a grant of Certification, a Declaration of Conformity, or Verification. It also proposed to require all products, imported or manufactured three years after the effective date of the new rules, to comply with these standards.

3. In addition to the changes to the conducted emission limits, the Commission proposed an alternative measurement procedure for part 15 intentional radiators operating below 30 MHz, e.g., carrier current systems (CCS), which would permit a demonstration of compliance with applicable radiated emission limits instead of conducted limits. The Commission also proposed to clarify § 15.109(e) of its rules to require measurements of radiated emissions below 30 MHz for part 15 unintentional radiators only when the length of the connecting cable carrying the RF signal is either at least one-fourth of the wavelength of the center frequency of the signal, or is of unknown length. Comments were also requested on whether voltage and current limits on RF signals placed on the AC power line could be employed by CCS devices as an optional method of demonstrating compliance with the radiated limits outside of the AM broadcast band.

4. The *Report and Order* adopted changes to the rules for power line conducted emissions to make them more effective in controlling interference to communications services and to reduce the burden of these regulations. Specifically, we are amending the conducted emission limits to make them consistent with international CISPR standards. We are also adopting conducted emission limits for part 18 consumer products, such as microwave ovens, that are currently subject only to radiated emission limits. These limits are consistent with the requirements that already exist for certain types of ISM consumer products, such as ultrasonic denture and jewelry cleaners. Finally, we are establishing transition provisions for implementing the new CISPR limits. Harmonizing our rules with international standards will allow manufacturers to produce products for distribution in several markets without any modification, thus reducing costs. This harmonization will be particularly beneficial to small business entities that have limited resources to maintain separate product lines in order to ensure compliance with region or country-specific requirements. Moreover, this will enhance the value of Mutual Recognition Agreements (MRA) for U.S. manufacturers, thereby promoting the growth and international expansion of U.S. industries.

5. The proposal for an alternative measurement procedure for intentional radiators operating on frequencies below 30 MHz and the request for comments to improve the existing testing methodologies and requirements for intentional RF signals transmitted on power lines drew a number of observations and suggestions. We note that there is substantial development under way of new broadband delivery systems that use power line communication technologies. We also note that the IEC/CISPR I committee has established a Task Group to develop limits and methods of measurements for these new technologies. Therefore, in order to allow for a better informed and more complete decision, we are deferring to a further proceeding the consideration of new limits and measurement procedures for CCS devices. We intend to monitor these activities to ensure that future proposed test procedures and limits are harmonized with international standards and would not create an additional testing burden on manufacturers of such equipment. Pending the adoption of new rules based on the international work, our existing requirements for carrier current systems continue to apply to all such devices.

Harmonization with IEC/CISPR Conducted Emission Limits

6. The Commission observed that considerable work has been done to develop conducted emission standards within the CISPR. Notably, CISPR has developed standards for information technology equipment under CISPR Publication 22, and for industrial, scientific and medical (ISM) equipment under CISPR Publication 11. The Commission also noted that there appears to be growing support by both governments and industry for the harmonization of emission standards internationally to promote trade and competition. Harmonized standards can improve economies of scale and thereby reduce costs, to the benefit of consumers. Harmonized standards also tend to reduce testing costs for products marketed internationally.

Harmonization with CISPR Publication 22 Limits

7. The Commission therefore proposed to apply the limits of CISPR Publication 22 to all Part 15 devices that are currently subject to line conducted emission limits. The Commission noted that the existing part 15 limits are based on quasi-peak measurements, but allow a correction for broadband emissions in order to take into account averaging factors. On the other hand, CISPR Publication 22 specifies separate limits for quasi-peak and average measurements. Adjustments for broadband emissions have already been incorporated into the CISPR limits; therefore, the CISPR quasi-peak limit values are less restrictive than the limits currently in the rules. After taking these factors into account, the CISPR emission limits are slightly more stringent than the current rules below 5 MHz and are approximately equivalent to the current rules above 5 MHz. The Commission noted that, for many years, part 15 has provided the option of complying with either the limits in the rules or the CISPR 22 limits. Due to this practice, many manufacturers' products already comply with the CISPR limits. Therefore, the use of a single set of limits would simplify the rules and promote harmonization, without generally causing an undue burden on manufacturers.

8. The Commission continues to believe that the harmonization of our conducted emission limits in part 15 with the limits in CISPR 22 will foster trade and facilitate the growth of U.S. businesses by reducing costs for manufacturers and consumers. The Commission is adopting the CISPR 22 conducted emission limits for all part 15 equipment that are currently subject to the conducted emissions requirements.

extending the limits to frequencies below 450 kHz is warranted to protect existing, new, and expanded future uses for this region of the spectrum. While there are several types of radio systems operating below 450 kHz, we are particularly concerned about the potential for harmful interference to licensed radio services that are employed for applications involving safety of life and property, such as the

promote a global market and harmonization of requirements, which will benefit manufacturers and consumers. Accordingly, we are adopting the conducted emission limits in CISPR 11 for part 18 ultrasonic equipment and induction cooking ranges, and for part 18 consumer devices.

14. We further note that CISPR 11 specifies the use of a 50 μH/50 Ohm

extending the transition period for a modest amount of time would not pose serious risks of new interference. Therefore, the Commission will provide an additional one year of transition period for new product models beyond that proposed in the NPRM. Accordingly, we are adopting transition provisions for compliance of part 15 and part 18 devices with the new conducted emission limits as follows: the rules will

rules.[4] The Commission anticipates that such harmonization will provide better interference protection to licensed radio services as well as promoting a global marketplace for RF devices, thereby reducing costs for manufacturers and consumers. Most manufacturers are already performing testing to the requirements of the international standards on products sold in the U.S. that are also marketed in regions that

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

21. The Commission has not developed a definition of small entities applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of small entity is the definition under the SBA rules

8. The Commission continues to believe that the harmonization of our conducted emission limits in part 15 with the limits in CISPR 22 will foster trade and facilitate the growth of U.S. businesses by reducing costs for manufacturers and consumers. The Commission is adopting the CISPR 22 conducted emission limits for all part 15 equipment that are currently subject to the conducted emissions requirements. See 47 CFR 15.107 and 15.207.

9. We also note that the international CISPR line conducted emission standards include separate limits for equipment used in business/industrial (Class A) and residential (Class B) environments. Such an approach is appropriate, because it takes into account the different characteristics affecting interference in each environment, such as the wider separation distances between equipment which occur in business and commercial environments. We believe that the international standards strike a reasonable balance between the need to establish standards to control interference to broadcasting services in the under 30 MHz region of the spectrum, and the need to avoid placing unnecessary constraints on RF devices and ISM equipment. Therefore, we are retaining the definitions of Class A and Class B digital devices, currently specified in the Commission's rules, as necessary in the public interest.

10. In the NPRM, we remarked that the rules exempt incidental radiators and certain digital equipment from the line conducted emission limits. In particular, exemption from specific emission limits is provided for incidental radiators such as electric motors, hair dryers, washing machines, etc.; digital devices used exclusively as an electronic control of power system used by a public utility or an industrial plant; digital devices used exclusively as industrial, commercial, or medical test equipment; digital devices used in appliances; and specialized medical digital devices. Given the large numbers of incidental radiators that would be affected and the overall lack of interference complaints from such devices, mandatory emission limits are not warranted for these devices. We further find no information or evidence in the record that warrants removing or modifying the existing exemptions at this time. Accordingly, we will retain the exemptions in 47 CFR 15.103, as necessary in the public interest.

11. Harmonization of our rules with the CISPR 22 rules will extend the conducted emission limits from the existing lowest frequency of 450 kHz down to 150 kHz. We find that extending the limits to frequencies below 450 kHz is warranted to protect existing, new, and expanded future uses for this region of the spectrum. While there are several types of radio systems operating below 450 kHz, we are particularly concerned about the potential for harmful interference to licensed radio services that are employed for applications involving safety of life and property, such as the Differential Global Positioning System (DGPS). Several governmental entities, such as the Department of Transportation (DOT), US Coast Guard (USCG) and the Federal Railroad Administration (FRA), are using or planning to deploy navigational systems using DGPS with frequencies between 285 and 325 kHz. Therefore, the Commission believes that the adoption of conducted requirements below 450 kHz will not only provide the benefits of international harmonization, but will protect radio services used by systems providing navigation to safety-of-life transportation operations at sea, in the air, and on land.

Harmonization with CISPR Publication 11 Limits

12. Our existing rules for conducted emission limits for part 18 cover the frequency range from 10 kHz to 30 MHz. See 47 CFR 18.307. The CISPR Publication 11 specifies conducted emission limits from 9 kHz to 30 MHz. In the *NPRM*, we proposed to harmonize the limits in Part 18 with those specified in CISPR 11. The current limits in part 18 are based on average measurements, except those for RF lighting equipment. CISPR 11 specifies separate limits for quasi-peak and average measurements. The CISPR 11 limit values are somewhat comparable to the FCC limits over the frequency range from 150 kHz to 30 MHz. The Commission indicated that, given the international nature of the marketplace, the use of a single set of limits would simplify the rules and promote harmonization, without causing undue burden to manufacturers.

13. The harmonization of our conducted emission limits in part 18 with the limits in CISPR 11 will foster trade, facilitate growth and international expansion of U.S. businesses and reduce costs, to the benefit of manufacturers and consumers. The Commission believes that the adoption of conducted emission limits for all consumer ISM equipment, including microwave ovens, will promote consistency and uniformity with regard to the treatment of these products. We note that the adoption of the CISPR rules in this proceeding is not based on a response to interference issues, but rather, to promote a global market and harmonization of requirements, which will benefit manufacturers and consumers. Accordingly, we are adopting the conducted emission limits in CISPR 11 for part 18 ultrasonic equipment and induction cooking ranges, and for part 18 consumer devices.

14. We further note that CISPR 11 specifies the use of a 50 µH/50 Ohm LISN, which is a Line Impedance Stabilization Network (LISN), an artificial AC power line network that provides a specified load impedance in a given frequency range. It is used to isolate the equipment from the AC supply and to facilitate measurements, for part 18 ultrasonic and induction cooking equipment rather than the 5 µH/50 Ohm LISN previous specified in the rules. CISPR 11 refers to CISPR 16:1999, Figure 7a, for the impedance curve of the LISN to be used in carrying out the measurements against the specified limits. Accordingly, we are modifying the rules to require a 50 µH/50 Ohm LISN with this impedance curve to be used in determining compliance with part 18 conducted emission limits for ultrasonic and induction cooking equipment.

Transition Provisions

15. In the *NPRM*, the Commission proposed to require that all newly authorized part 15 and 18 devices be subject to the new line conducted regulations effective one year from the date of publication of the Report and Order in the **Federal Register**. It also proposed that these new regulations would apply to all part 15 and 18 devices that are imported or manufactured on or after three years from the date of publication of the Report and Order in the **Federal Register**, regardless of when the products were initially authorized. The Commission expressed its belief that most affected products would be redesigned within this three-year time frame in the course of normal product cycles and that compliance with this proposal therefore would not cause an unreasonable burden on industry.

16. While it appears that complying with the new line conducted emission rules will not pose a significant burden on many, if not most, manufacturers, given that they have already modified their products to allow them to trade in Canada and Europe, there are cases where the new rules will have an impact. Inasmuch as there is no evidence of interference problems from part 15 and part 18 devices that comply with the existing line conducted emission limits, we also believe that

extending the transition period for a modest amount of time would not pose serious risks of new interference. Therefore, the Commission will provide an additional one year of transition period for new product models beyond that proposed in the NPRM. Accordingly, we are adopting transition provisions for compliance of part 15 and part 18 devices with the new conducted emission limits as follows: the rules will apply to all new products authorized under parts 15 and 18 of the rules on or after two years from the date of publication of this Report and Order in the **Federal Register** and will apply to all existing products authorized under parts 15 and 18 of the rules that are manufactured or imported on or after three years from that date.

Final Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM), 1998 Biennial Regulatory Review—Conducted Emissions Limits Below 30 MHz for Equipment Regulated under Parts 15 and 18 of the Commission's Rules.[2] The Commission sought written public comment on the proposals in the NPRM, including comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

18. By this action, the Commission amends parts 15 and 18 of the rules for radio frequency (RF) devices regarding the amount of RF energy that is permitted to be conducted onto the alternating current (AC) power lines. The purpose of the present limits is to protect against interference to radio services operating below 30 MHz. By the rules adopted herein, these limits are harmonized by incorporating the limits of the international standards developed by the International Electrotechnical Commission (IEC), International Special Committee on Radio Interference (CISPR) into the rules.[4] The Commission anticipates that such harmonization will provide better interference protection to licensed radio services as well as promoting a global marketplace for RF devices, thereby reducing costs for manufacturers and consumers. Most manufacturers are already performing testing to the requirements of the international standards on products sold in the U.S. that are also marketed in regions that have adopted the CISPR standards. Therefore, testing to these limits does not represent a significant burden. Harmonization of our rules with the international standards will allow the same product to be manufactured and marketed without modifications in several countries, thereby enabling economies of scale, which would reduce costs. The comments overwhelmingly support our harmonization action.

B. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

19. There were comments on the NPRM, but there were no specific comments addressing small business issues in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, herein adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.[7] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

21. The Commission has not developed a definition of small entities applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[9] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[10] We believe that many of the companies that manufacture RF equipment may qualify as small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

22. Although a large number of Part 15 and Part 18 radio frequency devices are already required to be authorized under the Commission's Certification, Declaration of Conformity, or Verification procedures as a prerequisite to marketing and importation, the adopted rules add a slight amount of new testing and reporting requirements, as explained further:

(a) Microwave ovens are already subject to radiated emission limits in the existing rules.[11] The adopted rules would require microwave ovens and consumer ISM equipment (other than RF lights, induction ranges and ultrasonic equipment) to comply with conducted emission limits.[12]

(b) Induction ranges and ultrasonic equipment are already subject to part 18 conducted emission limits, but with the adopted rules, the low frequency range now starts at 9 kHz instead of the previous 10 kHz.[13]

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] See 1998 Biennial Regulatory Review—Conducted Emission Limits Below 30 MHz for Equipment Regulated under Parts 15 and 18 of the Commission's Rules, ET Docket No. 98–80, Notice of Proposed Rule Making, 14 FCC Rcd 18180 (1999) at 16.

[3] See 5 U.S.C. 604.

[4] The International Special Committee on Radio Interference (CISPR) was established in 1934 by a group of international organizations to address radio interference. CISPR is a non-governmental group composed of National Committees of the International Electrotechnical Commission (IEC), as well as numerous international organizations. The IEC is the international standards and conformity assessment body for all fields of electrotechnology.

[5] See 5 U.S.C. 603(b)(3) and 604(a)(3).

[6] See 5 U.S.C. 601(6).

[7] See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[8] See 15 U.S.C. 632 (1996).

[9] See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663. See also the North American Industry Classification System Codes (NAICS) Code 334220.

[10] See U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663. See also the North American Industry Classification System Codes (NAICS) Code 334220.

[11] See 47 CFR 18.305.

[12] See 47 CFR 18.307. See also, the discussion in ¶ 22 of the R&O.

[13] See discussion in ¶ 23 of the R&O.

(c) Under the adopted rules, measurements for conducted emissions must be made with instrumentation containing both a quasi-peak and an average reading detector.[14]

(d) Under the adopted rules, conducted emissions from part 15 equipment must be measured down to 150 kHz instead of the previous 450 kHz, and measurements must be made with instrumentation containing both a

products marketed internationally by small businesses. Harmonization of mandatory standards will further benefit small business entities by allowing them to make better use of human and financial resources currently dedicated to maintaining regulatory compliance for products intended for export to separate countries.

26. The Commission originally proposed, in the *NPRM*, a transition

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 15 and 18 as follows:

Frequency of emission (MHz)	Conducted limit (dBµV)	
	Quasi-peak	Average
0.15–0.5	66 to 56*	56 to 46*
0.5–5	56	46
5–30	60	50

*Decreases with the logarithm of the frequency.

(b) For a Class A digital device that is

Frequency of emission (MHz)	Conducted limit (dBµV)	
	Quasi-peak	Average
0.15–0.5	66 to 56*	56 to 46*
0.5–5	56	46
5–30	60	50

*Decreases with the logarithm of the frequency.

(b) * * *

(2) For all other carrier current

Frequency of emission (MHz)	Conducted limit (dBµV)	
	Quasi-peak	Average
0.009–0.05	110	—
0.05–0.15	90–80*	—
0.15–0.5	66 to 56*	56 to 46*
0.5–5	56	46
5–30	60	50

*Decreases with the logarithm of the frequency.

(b) All other part 18 consumer

(c) Under the adopted rules, measurements for conducted emissions must be made with instrumentation containing both a quasi-peak and an average reading detector.[14]

(d) Under the adopted rules, conducted emissions from part 15 equipment must be measured down to 150 kHz instead of the previous 450 kHz, and measurements must be made with instrumentation containing both a quasi-peak and an average reading detector as well.[15]

23. This slightly increased amount of testing is not a significant burden and will be offset by economies of scale, because harmonization of requirements will allow the same product to be manufactured and marketed without modifications in several countries, thus reducing costs. Furthermore, most part 15 equipment manufacturers already have the option to either comply with CISPR 22 limits or the FCC limits. The adoption of a single set of limits would simplify compliance with the requirements. The harmonization of our rules with international standards will reduce costs for all manufacturers, but it is particularly beneficial to small business entities that will not have to ...intain separate product lines in order to ensure their compliance with region-or country-specific regulatory requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[16]

25. The Commission is modifying its rules to harmonize with the international standards developed by the IEC/CISPR. Harmonized requirements improve economies of scale by allowing the same product design to be manufactured without modifications for sale in various countries and thereby reduce costs for products marketed internationally by small businesses. Harmonization of mandatory standards will further benefit small business entities by allowing them to make better use of human and financial resources currently dedicated to maintaining regulatory compliance for products intended for export to separate countries.

26. The Commission originally proposed, in the *NPRM*, a transition period under which the regulations adopted in this proceeding would become effective, for all entities subject to the adopted rules, one year from the date of publication of a Report and Order in the **Federal Register**, for all part 15 and 18 devices subsequently authorized under a grant of Certification, a Declaration of Conformity, or Verification. However, to reduce the burden on small entities within the field of entities subject to the rules, we are adopting a longer transition period, up to two years, for new products, and a transition period of three years for all existing products that continue to be manufactured or imported.[17]

Report to Congress

27. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[18] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

28. Pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r), parts 15 and 18 of the Commission's Rules and Regulations ARE AMENDED.

29. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 15

Communications equipment, Radio.

47 CFR Part 18

Household appliances, Radio, Scientific equipment.

[14] See discussion in ¶¶ 12 and 18 of the R&O.
[15] See discussion in ¶¶ 20–21 of the R&O.
[16] See 5 U.S.C. 603(c)(1)–(c)(4).
[17] See discussion in ¶¶ 24–25 of the R&O.
[18] See 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 15 and 18 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 366, and 544A.

2. Section 15.37 is amended by adding paragraph (j), to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(j) All radio frequency devices that are authorized under the certification, verification or declaration of conformity procedures on or after July 12, 2004 shall comply with the conducted limits specified in § 15.107 or § 15.207 as appropriate. All radio frequency devices that are manufactured or imported on or after July 11, 2005 shall comply with the conducted limits specified in § 15.107 or § 15.207, as appropriate. Equipment authorized, imported or manufactured prior to these dates shall comply with the conducted limits specified in § 15.107 or § 15.207, as appropriate, or with the conducted limits that were in effect immediately prior to September 9, 2002.

3. Section 15.107 is amended by revising paragraphs (a), (b), and (c)(2), by removing paragraphs (d) and (e) and by redesignating paragraph (f) as paragraph (d), to read as follows:

§ 15.107 Conducted limits.

(a) Except for Class A digital devices, for equipment that is designed to be connected to the public utility (AC) power line, the radio frequency voltage that is conducted back onto the AC power line on any frequency or frequencies within the band 150 kHz to 30 MHz shall not exceed the limits in the following table, as measured using a 50 μH/50 ohms line impedance stabilization network (LISN). Compliance with the provisions of this paragraph shall be based on the measurement of the radio frequency voltage between each power line and ground at the power terminal. The lower limit applies at the band edges.

Frequency of emission (MHz)	Conducted limit (dBμV)	
	Quasi-peak	Average
0.15–0.5	66 to 56*	56 to 46*
0.5–5	56	46
5–30	60	50

*Decreases with the logarithm of the frequency.

(b) For a Class A digital device that is designed to be connected to the public utility (AC) power line, the radio frequency voltage that is conducted back onto the AC power line on any frequency or frequencies within the band 150 kHz to 30 MHz shall not exceed the limits in the following table, as measured using a 50 μH/50 ohms LISN. Compliance with the provisions of this paragraph shall be based on the measurement of the radio frequency voltage between each power line and ground at the power terminal. The lower limit applies at the boundary between the frequency ranges.

Frequency of emission (MHz)	Conducted limit (dBμV)	
	Quasi-peak	Average
0.15–0.5	79	66
0.5–30	73	60

(c) * * *

(2) For all other carrier current systems: 1000 μV within the frequency band 535–1705 kHz, as measured using a 50 μH/50 ohms LISN.

* * * * *

4. Section 15.207 is amended by revising paragraph (a), removing paragraph (b), redesignating paragraphs (c) and (d) as (b) and (c), respectively, and by revising newly designated paragraph (b)(2), to read as follows:

§ 15.207 Conducted limits.

(a) Except as shown in paragraphs (b) and (c) of this section, for an intentional radiator that is designed to be connected to the public utility (AC) power line, the radio frequency voltage that is conducted back onto the AC power line on any frequency or frequencies, within the band 150 kHz to 30 MHz, shall not exceed the limits in the following table, as measured using a 50 μH/50 ohms line impedance stabilization network (LISN). Compliance with the provisions of this paragraph shall be based on the measurement of the radio frequency voltage between each power line and ground at the power terminal. The lower limit applies at the boundary between the frequency ranges.

Frequency of emission (MHz)	Conducted limit (dBμV)	
	Quasi-peak	Average
0.15–0.5	66 to 56*	56 to 46*
0.5–5	56	46
5–30	60	50

*Decreases with the logarithm of the frequency.

(b) * * *

(2) For all other carrier current systems: 1000 μV within the frequency band 535–1705 kHz, as measured using a 50 μH/50 ohms LISN.

* * * * *

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

5. The authority citation for Part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

6. Section 18.123 is added to Subpart A to read as follows:

§ 18.123 Transition provisions for compliance with the rules.

Consumer ISM devices, induction cooking ranges and ultrasonic equipment that are authorized under the certification, verification or declaration of conformity procedures on or after July 12, 2004 shall comply with the conducted limits specified in § 18.307. All such devices that are manufactured or imported on or after July 11, 2005 shall comply with the conducted limits specified in § 18.307. Equipment authorized, imported or manufactured prior to these dates shall comply with the conducted limits specified in § 18.307 or with the conducted limits that were in effect immediately prior to September 9, 2002.

7. Section 18.307 is amended by revising the introductory paragraph, paragraphs (a) and (b), removing the Notes at the end of the section and adding paragraphs (d) through (g) to read as follows:

§ 18.307 Conducted limits.

For the following equipment, when designed to be connected to the public utility (AC) power line the radio frequency voltage that is conducted back onto the AC power line on any frequency or frequencies shall not exceed the limits in the following tables. Compliance with the provisions of this paragraph shall be based on the measurement of the radio frequency voltage between each power line and ground at the power terminal using a 50 μH/50 ohms line impedance stabilization network (LISN).

(a) All Induction cooking ranges and ultrasonic equipment:

Frequency of emission (MHz)	Conducted limit (dBμV)	
	Quasi-peak	Average
0.009–0.05	110	—
0.05–0.15	90–80*	—
0.15–0.5	66 to 56*	56 to 46*
0.5–5	56	46
5–30	60	50

*Decreases with the logarithm of the frequency.

(b) All other part 18 consumer devices:

Frequency of emission (MHz)	Conducted limit (dBμV)	
	Quasi-peak	Average
0.15–0.5	66 to 56*	56 to 46*
0.5–5	56	46
5–30	60	50

*Decreases with the logarithm of the frequency.

* * * * *

(d) If testing with a quasi-peak detector demonstrates that the equipment complies with the average limits specified in the appropriate table in this section, additional testing to demonstrate compliance using an average detector is not required.

(e) These conduction limits shall apply only outside of the frequency bands specified in § 18.301.

(f) For ultrasonic equipment, compliance with the conducted limits shall preclude the need to show compliance with the field strength limits below 30 MHz unless requested by the Commission.

(g) The tighter limits shall apply at the boundary between two frequency ranges.

[FR Doc. 02–17264 Filed 7–9–02; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–2062–02; I. D. 121701A]

RIN 0648–AP69

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures and 2002 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries off Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; correction, and request for comments.

SUMMARY: This document corrects an emergency interim rule implementing Steller sea lion protection measures and 2002 harvest specifications for the Alaska groundfish fishery. These corrections are needed to afford Atka mackerel fishery participants an additional opportunity to register for the

fisheries in the Aleutian Islands subarea and that vessels would be provided the opportunity to participate in the A and/or B season HLA directed fisheries.

January 15, 2002, is specified in the regulations as the cut off date for registering to participate in the HLA directed fishery. This date was intended to ensure that registration was received in time to perform the lottery for vessel platoon assignments and to notify

This correction has been determined to be not significant for purposes of Executive Order 12866.

Consistent with the National Environmental Policy Act (NEPA), NMFS prepared an environmental assessment (EA) for the total allowable catch specifications portion of the January 8, 2002, emergency interim rule. NMFS also prepared a supplemental environmental impact statement (SEIS)

habitat in any manner not previously evaluated in prior consultations.

By this action, NMFS is correcting the Steller sea lion protection measures which have been in effect since January 1, 2002, for the BSAI and GOA. This correction clarifies the requirements for registration in the Atka mackerel HLA directed fishery for the B season starting September 1, 2002. Registration for this fishery must be completed by August 1, 2002. To allow NMFS to conduct the

Atka mackerel in the HLA, as defined in § 679.2, are required to register with NMFS. To register, the vessel owner or operator must provide information required by § 679.4(b)(5)(vii) for an endorsement to the vessel's Federal fishery permit issued under § 679.4.

(*1*) To participate in the A season HLA fishery, registration information must be received by NMFS, Restricted Access Management Program, by 4:30

Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the Eastern Aleutian District was established as 3,201 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated

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ACTION: Emergency interim rule; correction, and request for comments.

SUMMARY: This document corrects an emergency interim rule implementing Steller sea lion protection measures and 2002 harvest specifications for the Alaska groundfish fishery. These corrections are needed to afford Atka mackerel fishery participants an additional opportunity to register for the 2002 B season harvest limit area fishery in the Aleutian Islands subarea.

DATES: Effective July 10, 2002. Comments must be received on or before 5 p.m., A.l.t., August 9, 2002.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Supplemental Environmental Impact Statement on Steller Sea Lion Protection Measures in the Federal Groundfish Fisheries Off Alaska (SEIS), including the 2001 biological opinion and regulatory impact review, and the Environmental Assessment (EA) for the Total Allowable Catch for the Year 2002 Alaska Groundfish Fisheries may be obtained from the same address. The SEIS and EA are also available on the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, NMFS, 907–586–7228 or e-mail at *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The emergency interim rule published January 8, 2002 (67 FR 956), amended and corrected May 1, 2002, (67 FR 21600) and extended May 16, 2002 (67 FR 34860), implements Steller sea lion protection measures and final 2002 harvest specifications for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA). As published, the final rule contains errors regarding the registration process for the Atka mackerel harvest limit area (HLA) directed fishery in the Aleutian Islands subarea. This document corrects these errors.

Corrections

This action implements a registration process for the 2002 B season harvest limit area (HLA) directed fishery for Atka mackerel. The Council and NMFS intended that two separate lottery processes would be used, one for each of the A and B season Atka mackerel fisheries in the Aleutian Islands subarea and that vessels would be provided the opportunity to participate in the A and/or B season HLA directed fisheries.

January 15, 2002, is specified in the regulations as the cut off date for registering to participate in the HLA directed fishery. This date was intended to ensure that registration was received in time to perform the lottery for vessel platoon assignments and to notify participants of the results before the A season began on January 20. As the regulatory text is currently written, vessels that were not registered by January 15, 2002, would be excluded from participating in both the A and B season HLA directed fishery. The emergency rule did not address the timing or process for the B season lottery. This omission is being corrected by this action.

In order to conduct a B season lottery for the HLA directed fishery and provide all vessels the opportunity to participate, vessels maintaining their Atka mackerel Federal fisheries permit (FFP) endorsement through July 31 will be entered in the lottery to participate in the B season fishery. Vessels that were not used in the A season Atka mackerel HLA directed fishery but that register under § 679.4(b)(5)(vii) by 4:30 p.m., A. l. t., August 1, 2002, may participate in the lottery for the B season HLA directed fishery, which begins September 1, 2002.

Under § 679.7(a)(19), vessels participating in an HLA directed fishery are restricted from other groundfish fishing during the first directed fishery assignment in the season. If the owner of a vessel that was used in the A season HLA directed fishery wishes to participate in a directed fishery for other groundfish species during the B season HLA directed fishery, the owner must have the FFP amended to remove the Atka mackerel HLA directed fishery endorsement before August 1, 2002. Otherwise, the vessel will be entered into the HLA directed fishery lottery and assigned a platoon for the Atka mackerel B season fishery.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this correction is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this correction is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

This correction has been determined to be not significant for purposes of Executive Order 12866.

Consistent with the National Environmental Policy Act (NEPA), NMFS prepared an environmental assessment (EA) for the total allowable catch specifications portion of the January 8, 2002, emergency interim rule. NMFS also prepared a supplemental environmental impact statement (SEIS) for the Steller sea lion protection measures; a notice of availability of the draft SEIS was published in the **Federal Register** on August 31, 2001 (66 FR 45984). Comments were received and responded to in the final SEIS and the final document was issued November 23, 2001 (66 FR 58734). The final SEIS and EA are available from NMFS (see **ADDRESSES**). Based on a comparison of the effects of the other alternatives in the SEIS, NMFS determined that this action meets the Endangered Species Act (ESA) requirements for Steller sea lion protection and environmental protection without providing extreme economic hardship that was anticipated from the most environmentally desirable alternative. Potential adverse impacts on marine mammals resulting from fishing activities conducted under the emergency interim rule (67 FR 956, January 8, 2002) are discussed in the EA and final SEIS. The correction in this action is within the scope of these NEPA analyses.

A formal section 7 consultation under the ESA was initiated for the emergency interim rule (67 FR 956, January 8, 2002) under the FMPs for the groundfish fisheries of the BSAI and the GOA. In a biological opinion dated October 17, 2001, the Director of the Office of Protected Resources determined that fishing activities conducted under the Steller sea lion protection measures implemented by the emergency interim rule (67 FR 956, January 8, 2002) are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. In a memorandum dated December 11, 2001, from the Office of Protected Resources to the Office of Sustainable Fisheries, biological opinions dated December 22, 1999, and December 23, 1999, were extended for 1 year from January 1, 2002, for purposes of the harvest specifications implemented by the January 8, 2002 emergency interim rule. This correction is consistent with the objectives for Steller sea lion protection measures implemented in 2002, the ESA, and other applicable laws, and will not affect listed species or critical habitat in any manner not previously evaluated in prior consultations.

By this action, NMFS is correcting the Steller sea lion protection measures which have been in effect since January 1, 2002, for the BSAI and GOA. This correction clarifies the requirements for registration in the Atka mackerel HLA directed fishery for the B season starting September 1, 2002. Registration for this fishery must be completed by August 1, 2002, to allow NMFS to conduct the lottery and to notify participants of results before the start of the fishery. Because delay in implementing this correction would unnecessarily limit opportunity for participation in the Atka mackerel HLA directed fishery, it is impracticable to provide prior notice and an opportunity for public comment and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3). For the same reasons, a delay in the effective date is hereby waived pursuant to 5 U.S.C. 553(d)(3). Because prior notice and opportunity for public comment are not required for this correction to the emergency interim rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*are not applicable. Therefore, a regulatory flexibility analysis has not been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 1, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

2. In § 679.20, paragraphs (a)(8)(iii) and (a)(8)(iii)(A) are revised to read as follows:

§ 679.20 General limitations.

* * * * * *

(a) * * *

(8) * * *

(iii) *Platoon management of Atka mackerel harvest limit area directed fishing* (applicable through December 31, 2002)—(A) *Registration.* All vessels using trawl gear for directed fishing for Atka mackerel in the HLA, as defined in § 679.2, are required to register with NMFS. To register, the vessel owner or operator must provide information required by § 679.4(b)(5)(vii) for an endorsement to the vessel's Federal fishery permit issued under § 679.4.

(*1*) To participate in the A season HLA fishery, registration information must be received by NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., on the first working day following January 15, 2002.

(*2*) To participate in the B season HLA fishery,

(*i*) The vessel must be registered for the A season HLA fishery and must be registered for the HLA fishery through August 1, 2002, or

(*ii*) Registration information for the HLA fishery must be received by NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., August 1, 2002.

* * * * * *

[FR Doc. 02–17045 Filed 7–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 070502A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 7, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the Eastern Aleutian District was established as 3,201 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,951 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2002 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the 2002 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17329 Filed 7–5–02; 2:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 132
Wednesday, July 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the

Dated: July 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17329 Filed 7–5–02; 2:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 132
Wednesday, July 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–8C1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to General Electric Company CF34–8C1 turbofan engines, that would require revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program would be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual, or establish an acceptable alternate method of record keeping. This proposal is prompted by the need to require enhanced inspection of selected critical life-limited parts of CF34–8C1 turbofan engines at each piece-part exposure. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by September 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7146; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A recent FAA study analyzing 15 years of accident data for transport category airplanes identified several failure mode root causes that can result in serious safety hazards to transport category airplanes. That study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that initiated and propagated to failure. Cracks can originate from causes such as unintended excessive stress from original design or they may initiate from stresses induced from material flaws, handling damage, or damage from machining operations. Failure of rotating parts presents a significant safety hazard to the airplanes by releasing high-energy fragments that could injure passengers or crew by penetrating the cabin, damaging flight control surfaces, severing flammable fluid lines, or otherwise compromising the airworthiness of the airplane.

Intervention Strategy

The FAA has developed an intervention strategy to significantly reduce uncontained engine failures. The intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. The intervention strategy involves enhanced, nondestructive inspections of the rotating parts that could most likely result in a safety hazard to the airplane in the event of a fracture.

Future Rulemaking

The need for additional rule making is also being considered by the FAA. Future AD's may be issued introducing additional intervention strategies to further reduce or eliminate uncontained engine failures.

Safety Critical Parts and Inspection Methods

Properly focused enhanced inspections require identifying the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The FAA, with the

For engines or engine modules that are approved for return to service by an authorized FAA-certificated entity and that are acquired by an operator after the effective date of the proposed AD, the mandatory enhanced inspections would not be required until the next piece-part opportunity. For example, there is no need for an operator to disassemble to piece-part level an engine or module returned to service by an FAA-

work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Using average shop visitation rates, 5 engines are expected to be affected per year. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $22,500 per year.

Regulatory Analysis

This proposed rule does not have

CF34–8C1 turbofan engines. These engines are installed on, but not limited to Bombardier Aerospace CRJ700 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the manufacturer's Engine Manual (EM), GEK 105091 and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the parts listed in the following Table 805 at each piece-part opportunity in accordance with the instructions provided in the applicable

Safety Critical Parts and Inspection Methods

Properly focused enhanced inspections require identifying the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The FAA, with the close cooperation of the engine manufacturers, has completed a detailed analysis identifying the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high-energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. As a result of this proposed AD, the inspections currently recommended by the manufacturer will become mandatory for those parts listed in the compliance section. Furthermore, the FAA intends that additional mandatory enhanced inspections resulting from this proposed AD will serve as an adjunct to the existing inspections. The FAA has determined that the enhanced inspections will significantly improve the probability of crack detection while the parts are disassembled during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Engine Manual.

Part 121 Operators

This proposed AD would allow for 14 CFR part 121 air carriers having an FAA-approved continuous airworthiness maintenance program, and for entities that these air carriers use to do this maintenance, to verify performance of the enhanced inspections. This is done by retaining the maintenance records that include the inspections resulting from this proposed AD. However, these records must include the date and signature of the person performing the maintenance action. These records would be retained with the maintenance records of the part, engine module, or engine until the inspection is repeated. This will establish a method of record preservation and retrieval typical to those in existing continuous airworthiness maintenance programs. Instructions would be included in an air carrier's maintenance manual providing procedures for implementation and integration of this record preservation and retrieval system into the air carrier's record keeping system.

For engines or engine modules that are approved for return to service by an authorized FAA-certificated entity and that are acquired by an operator after the effective date of the proposed AD, the mandatory enhanced inspections would not be required until the next piece-part opportunity. For example, there is no need for an operator to disassemble to piece-part level an engine or module returned to service by an FAA-certificated facility simply because that engine or module was previously operated by an entity not required to comply with the proposed AD. Furthermore, the FAA intends for operators to perform the proposed enhanced inspections of these parts at the next piece-part opportunity following the initial acquisition, installation, and removal of the part following the effective date of the proposed AD. For piece parts that have not been approved for return to service before the effective date of the proposed AD, the FAA does intend that the mandatory enhanced inspections required by the proposed AD be performed before such parts are approved for return to service. Piece parts that have been approved for return to service before the effective date of the proposed AD could be installed; however, enhanced inspection would be required at the next piece-part opportunity.

Proposed Actions

This proposal would require, within the next 30 days after the effective date of the proposed AD, revisions to the Time Limits Section (TLS) in the GE CF34–8C1 Turbofan Engine Manual, and, for air carriers, revisions to the approved continuous airworthiness maintenance program. GE, the manufacturer of CF34–8C1 turbofan engines used on 14 CFR part 25 airplanes, has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from the proposed AD would be conducted at piece-part opportunity, as defined below in the compliance section, rather than specific time inspection intervals.

Economic Analysis

There are approximately 26 engines of the affected design in the worldwide fleet. The FAA estimates that 26 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 75 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Using average shop visitation rates, 5 engines are expected to be affected per year. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $22,500 per year.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 2002–NE–13–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF34–8C1 turbofan engines. These engines are installed on, but not limited to Bombardier Aerospace CRJ700 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the manufacturer's Engine Manual (EM), GEK 105091 and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the parts listed in the following Table 805 at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

TABLE 805.—MANDATORY INSPECTION REQUIREMENTS

Part Nomenclature	Manual/Chapter Section/Subject	Mandatory Inspection
Fan Disk	72–21–15, INSPECTION	All areas (FPI),[1], Bores (ECI).[2]
Fan Drive Shaft	72–22–00, INSPECTION	All areas (FPI).[1]
Stage 1 High Pressure Turbine (HPT) Rotor Disk.	72–51–06, INSPECTION	All areas (FPI)[1], Bores (ECI)[2], Boltholes (ECI)[2], Air Holes (ECI).[2]
HPT Rotor Outer Torque Coupling	72–51–10, INSPECTION	All areas (FPI)[1], Bores (ECI).[2]
Stage 2 HPT Rotor Disk	72–51–14, INSPECTION	All areas (FPI)[1], Bores (ECI).[2]
HPT Shaft	72–51–03, INSPECTION	All areas (FPI).[1]
Stage 1 and Stage 2 High Pressure Compressor (HPC) Rotor Blisks.	72–33–01, INSPECTION	All areas (FPI).[1]
HPC Forward Shaft	72–33–02, INSPECTION	All areas (FPI).[1]
Stage 3 HPC Rotor Blisk	72–33–03, INSPECTION	All areas (FPI).[1]
HPC Aft Shaft Spool	72–33–05, INSPECTION	All areas (FPI).[1]
HPC Discharge Rotating Seal	72–33–08, INSPECTION	All areas (FPI).[1]
Stage 3 Low Pressure Turbine (LPT) Rotor Disk.	72–57–10, INSPECTION	All areas (FPI).[1]
Stage 4 LPT Rotor Disk	72–57–16, INSPECTION	All areas (FPI).[1]
Rear LPT Shaft	72–57–23, INSPECTION	All areas (FPI).[1]
Stage 5 LPT Rotor Disk	72–57–20, INSPECTION	All areas (FPI).[1]
Stage 6 LPT Rotor Disk	72–57–28, INSPECTION	All areas (FPI).[1]

[1] FPI = Fluorescent Penetrant Inspection Method
[2] ECI = Eddy Current Inspection Method

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered at "piece-part opportunity", when it is completely disassembled in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLS of the GE CF34–8C1 EM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) must maintain records of the mandatory inspections that result from revising the CF34 Engine Maintenance Program and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)). However, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34–8C1 Engine Manual.

Issued in Burlington, Massachusetts, on July 1, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–17297 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. FMC–4200, FMC–5000, and

files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; telephone: (319) 295–2512; facsimile: (319) 295–5064. You may also view this information at the Rules Docket at the

Ontario. A change in the flight management computer (FMC) had been made to the original flight plan changing the altitude constraint to 8,000 feet—11,000 feet. However, the flight management system (FMS) retained the altitude constraint of the original flight plan of 10,000 feet—14,000 feet. The pilot was unaware of this situation occurring, which resulted in the descent of the airplane to proceed beyond the

—The unsafe condition referenced in this document exists or could develop on type design aircraft that incorporate a Rockwell Collins FMC–4200, FMC–5000, or FMC–6000 flight management computer;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to

What would this proposed AD require? This proposed AD would require you to have the FMC modified to allow the FMS to accept new information when changing an existing procedure or flight plan.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that 700 affected Rockwell Collins FMC–

management computers could be installed on airplanes in the U.S. registry. Some airplanes have more than one unit installed.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed modification:

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. FMC–4200, FMC–5000, and FMC–6000 Flight Management Computers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Rockwell Collins, Inc. (Rockwell Collins) FMC–4200, FMC–5000, and FMC–6000 flight management computers (FMC) that are installed on airplanes. This proposed AD would require you to have the FMC modified to correct a problem with the flight management system (FMS) accepting new information when an existing procedure or flight plan is changed. This proposed AD is the result of a report that an aircraft proceeded beyond the published altitude constraint on an arrival procedure. The actions specified by this proposed AD are intended to prevent the FMC from retaining and displaying original altitude constraints when an edit or a replacement is made to a procedure or flight plan that shares a waypoint with another procedure or an airway, and there is an altitude constraint on the shared waypoint. Such a condition could cause the pilot to fly the airplane out of the range of the correct altitude constraint. This condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 6, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–13–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; telephone: (319) 295–2512; facsimile: (319) 295–5064. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407. E-mail address: *Roger.Souter@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–13–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA received a report of an incident that occurred during a flight arriving in Toronto, Ontario. A change in the flight management computer (FMC) had been made to the original flight plan changing the altitude constraint to 8,000 feet—11,000 feet. However, the flight management system (FMS) retained the altitude constraint of the original flight plan of 10,000 feet—14,000 feet. The pilot was unaware of this situation occurring, which resulted in the descent of the airplane to proceed beyond the published altitude constraint on the arrival procedure.

When the FMC is operating correctly and a change is made, the FMS allows the pilot to delete information associated with a procedure or flight plan by deleting the procedure or by replacing the procedure.

Rockwell Collins FMC–4200, FMC–5000, and FMC–6000 flight management computers could be installed on, but not limited to, the following aircraft:

—Raytheon Model Beechjet 400A and Model 400T (T–1A) airplanes;
—Bombardier Model CL–600–2B19 Regional Jet Series 100 airplanes; and
—Bombardier Model CL–600–2B16 (variant CL–604) airplanes.

What are the consequences if the condition is not corrected? As described above, such erroneous altitude constraints retained by the FMS could cause the pilot to fly the airplane out of the range of the correct altitude constraint. This condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

Is there service information that applies to this subject? Rockwell Collins has issued the following service bulletins:

—Service Bulletin 15, Revision No. 1 (FMC–4200/5000/6000–34–15), dated November 15, 2000;
—Service Bulletin 502 (FMC–3000/4200–34–502), dated February 17, 2000;
—Service Bulletin 504, Revision No. 1 (FMC–4200/6000–34–504), dated March 26, 2001; and
—Service Bulletin 507 (FMC–6000–34–507), dated April 4, 2001.

What are the provisions of this service information? These service bulletins include procedures for modifying the FMC software in order to resolve the select altitude problem.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on type design aircraft that incorporate a Rockwell Collins FMC–4200, FMC–5000, or FMC–6000 flight management computer;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to have the FMC modified to allow the FMS to accept new information when changing an existing procedure or flight plan.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that 700 affected Rockwell Collins FMC–4200, FMC–5000, and FMC–6000 flight management computers could be installed on airplanes in the U.S. registry. Some airplanes have more than one unit installed.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per FMC unit
4 workhours per FMC unit × $60 per hour = $240	$500 per FMC unit	$740

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is "within the next 24 calendar months after the effective date of this AD, unless already accomplished."

Why is the proposed compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this proposed AD is presented in calendar time instead of hours TIS because the condition exists regardless of airplane operation. The FMS retention of invalid altitude constraint information could occur regardless of the number of times and hours the airplane was operated. For these reasons, FAA has determined that a compliance based on calendar time should be utilized in this proposed AD in order to ensure that the unsafe condition is addressed in a reasonable time period on all airplanes that have an affected Rockwell FMC–4200, FMC–5000, or FMC–6000 flight management computer installed.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Rockwell Collins, Inc.: Docket No. 2000–CE–13–AD.

(a) *What airplanes are affected by this AD?* This AD affects Rockwell Collins FMC–4200, FMC–500, and FMC–6000 flight management computers (FMC) that are installed on, but not limited to, the following aircraft that are certificated in any category:

(1) Raytheon Model Beechjet 400A and Model 400T (T–1A) airplanes;

(2) Bombardier Model CL–600–2B19 Regional Jet Series 100 airplanes; and

(3) Bombardier Model CL–600–2B16 (variant CL–604) airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft equipped with one of the affected FMCs must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the FMC from retaining original information when an edit is made to a procedure or flight plan. Such a condition could cause the pilot to fly the airplane out of the range of the correct altitude constraint. This condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Modify the flight management computer	Within the next 24 calendar months after the effective date of this AD.	Use the applicable service information as specified in paragraph (e) of this AD.
(2) Do not install, on any aircraft, an affected FMC that has not been modified as required by paragraph (d)(1) of this AD.	As of the effective date of this AD	Not applicable.

(e) *What service information do I use to accomplish the procedures required in paragraph (d)(1) of this AD?* The service bulletins required to accomplish these actions are as follows:

FMC affected	Applicable service bulletin
FMC–4200	Rockwell Collins Service Bulletin 502 (FMC–3000/4200–34–502), dated February 17, 2000, or Rockwell Collins Service Bulletin 504, Revision No. 1 (FMC–4200/6000–34–504), dated March 26, 2001.
FMC–5000	Rockwell Collins Service Bulletin 15, Revision No. 1 (FMC–4200/5000/6000–34–15), dated November 15, 2000.
FMC–6000	Rockwell Collins Service Bulletin 504, Revision No. 1 (FMC–4200/6000–34–504), dated March 26, 2001, or Rockwell Collins Service Bulletin 507 (FMC–6000–34–507), dated April 4, 2001.

FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received reports of the flange between the fan duct case and the fan exit guide vane case separating due to fan blade fracture events on PW

approximately $5,200 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $4,343,090.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship

impact resistance, part numbers 805919 or 815377. These engines are installed on, but not limited to McDonnell Douglas MD–80 and series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

FMC affected	Applicable service bulletin
FMC–4200	Rockwell Collins Service Bulletin 502 (FMC–3000/4200–34–502), dated February 17, 2000, or Rockwell Collins Service Bulletin 504, Revision No. 1 (FMC–4200/6000–34–504), dated March 26, 2001.
FMC–5000	Rockwell Collins Service Bulletin 15, Revision No. 1 (FMC–4200/5000/6000–34–15), dated November 15, 2000.
FMC–6000	Rockwell Collins Service Bulletin 504, Revision No. 1 (FMC–4200/6000–34–504), dated March 26, 2001, or Rockwell Collins Service Bulletin 507 (FMC–6000–34–507), dated April 4, 2001.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407. E-mail address: *Roger.Souter@faa.gov*.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 3, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17307 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT8D–200 series turbofan engines. This proposal would require the installation of stops on the fan exit guide vane case. This proposal is prompted by reports of the flange between the fan duct case and the fan exit guide vane case separating due to a fan blade fracture event. The actions specified by the proposed AD are intended to prevent the flange between the fan duct case and the fan exit guide vane case from separating due to a fan blade failure. Separations of that flange could result in damage to the airplane.

DATES: Comments must be received by September 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–11–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received reports of the flange between the fan duct case and the fan exit guide vane case separating due to fan blade fracture events on PW JT8D–209, –217, –217A, –217C, and "219 series turbofan engines. This proposal would require a one-time installation of stops on engines that do not incorporate a fan exit guide vane case and fan duct assembly with improved durability and impact resistance, part number 805919 or 815377. This proposal is prompted by a number of reports of fan case flange separation, one of which occurred in July 2001 when a JT8D powered MD–80 was required to make an emergency landing after experiencing a fan blade fracture, resulting in fan case flange separation and high aircraft vibrations. The actions specified by the proposed AD are intended to prevent the flange between the fan duct case and the fan exit guide vane case from separating due to a fan blade failure. This condition, if not corrected, could result in damage to the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of PW JT8D–200 Series Service Bulletin No. 6100, Revision 2 dated December 9, 1998. That SB describes the procedures for installing stops on the fan exit guide vane case, to restrict axial separation of the case in the event of a case fracture.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT8D–209, –217, –217A, –217C, and "219 series turbofan engines, the proposed AD would require installation of stops on the fan exit guide vane case at the next shop visit in accordance with PW SB No. 6100, Revision 2, dated December 9, 1998.

Economic Analysis

There are approximately 1,346 PW JT8D–200 series engines of the affected design in the worldwide fleet. The FAA estimates that 821 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 1.5 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,200 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $4,343,090.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 2002–NE–11–AD.

Applicability

This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines that do not incorporate the fan exit guide vane case and fan duct assembly with improved durability and impact resistance, part numbers 805919 or 815377. These engines are installed on, but not limited to McDonnell Douglas MD–80 and series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required, unless already done.

To prevent the flange between the fan duct and the fan exit guide vane from separating due to a fan blade failure, which could result in damage to the airplane, do the following:

Installation of Hardware

(a) At the next shop visit after the effective date of this AD, install stops on the fan exit guide vane case in accordance with paragraphs 2.A. through 2.C.(1) of the Accomplishment Instructions of PW JT8D–200 Series SB No. 6100, Revision 2, dated December 9, 1998.

Definitions

(b) For the purposes of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool at a maintenance facility that is capable of compliance with the instructions of this AD, regardless of other planned maintenance.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on July 1, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–17296 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the

procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

AGL OH E5 Circleville, OH [Revised]

Circleville, Pickaway County Airport, OH
(Lat. 39°30'50" N., long. 82°58'56" W.)
Chillicothe, Ross County Airport, OH
(Lat. 39°26'29"N., long. 83°01'21" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Pickaway County Memorial Airport, and within a 9.1-mile radius of Ross County Airport, excluding that airspace within the Waverly, OH Class E Airspace area.

2. On page 38040, column 2, in the preamble under the caption **ADDRESSES:**, line 2, the language "CC:ITA:RU (REG–102740–02), room" is corrected to read "CC:ITA:RU (REG–123305–02), room".

3. On page 38040, column 2, in the preamble under the caption **ADDRESSES:**, lines 7 and 8, the language "between the hours of 8 a.m. and 6 p.m. to CC:ITA:RU (REG–102740–02)," is corrected to read "between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–123305–02),".

issued a researcher identification card. The current time period that these cards are valid is three years. Many of NARA's researchers are short-time visitors to one or more of its facilities. Over 90 percent of the respondents complete the application on a one-time basis for a specific research project. NARA proposes to reduce the valid time period to one year to increase NARA's ability to contact researchers if necessary and to ensure better protection of NARA's

Issued in Burlington, Massachusetts, on July 1, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–17296 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–08]

Proposed Modification of Class E Airspace; Circleville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Circleville, OH. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 23, has been developed for Ross County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the area of the existing controlled airspace at Pickaway County Memorial Airport, by adding a radius of controlled airspace around Ross County Airport.

DATES: Comments must be received on or before August 24, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 02–AGL–08, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AGL–08." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Circleville, OH, by adding a radius of controlled airspace around the Ross County Airport, thus increasing the existing Class E airspace area for Pickaway County Memorial Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Circleville, OH [Revised]

Circleville, Pickaway County Airport, OH
(Lat. 39°30'58" N., long. 82°58'56" W.)
Chillicothe, Ross County Airport, OH
(Lat. 39°26'29"N., long. 83°01'21" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Pickaway County Memorial Airport, and within a 9.1-mile radius of Ross County Airport, excluding that airspace within the Waverly, OH Class E Airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 19, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–17370 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123305–02]

Loss Limitation Rules; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to proposed rulemaking.

SUMMARY: This document contains a correction to REG–123305–02, which was published in the **Federal Register** on Friday, May 31, 2002 (67 FR 38040), relating to loss limitation rules.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under sections 337 and 1502 of the Internal Revenue Code.

Need for Correction

As published, REG–123305–02 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–123305–02), which is the subject of FR Doc. 02–13575, is corrected as follows:

1. On page 38040, column 1, line four of the heading, the regulation number "[REG–102305–02]" is corrected to read "[REG–123305–02]".

2. On page 38040, column 2, in the preamble under the caption **ADDRESSES:**, line 2, the language "CC:ITA:RU (REG–102740–02), room" is corrected to read "CC:ITA:RU (REG–123305–02), room".

3. On page 38040, column 2, in the preamble under the caption **ADDRESSES:**, lines 7 and 8, the language "between the hours of 8 a.m. and 6 p.m. to CC:ITA:RU (REG–102740–02)," is corrected to read "between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–123305–02),".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–17333 Filed 7–9–02; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AB14

Researcher Identification Cards

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to revise the general regulations concerning availability of records and donated historical materials to change the time period researcher identification cards are valid. NARA proposes to reduce the valid time period to increase NARA's ability to obtain accurate address and telephone information. This will allow NARA to contact researchers if necessary and will ensure better protection of NARA's holdings, buildings, personnel, and the public. This proposed rule will affect individuals who do research in archival materials at NARA facilities.

DATES: Comments are due by September 9, 2002.

ADDRESSES: Comments must be sent to Regulation Comment Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0319. You may also comment via the Internet to *comments@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps on 301–837–1801 or fax 301–837–0319, or *comments@nara.gov*.

SUPPLEMENTARY INFORMATION: Individuals who conduct research in original archival materials at NARA facilities must complete a researcher application form in person and be issued a researcher identification card. The current time period that these cards are valid is three years. Many of NARA's researchers are short-time visitors to one or more of its facilities. Over 90 percent of the respondents complete the application on a one-time basis for a specific research project. NARA proposes to reduce the valid time period to one year to increase NARA's ability to contact researchers if necessary and to ensure better protection of NARA's holdings, buildings, personnel, and the public. The information collection in § 1254.6, researcher identification application form, is subject to the Paperwork Reduction Act. The Office of Management and Budget (OMB) has assigned 3095–0016 as the control number for this information collection.

Please submit Internet comments within the body of your email message or as an attachment. Please also include "Attn: 3095–AB14" and your name and return address in your Internet message. If you do not receive notification that we have received your Internet message, contact the Regulation Comment Desk at 301–837–1801.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities because it applies only to individuals. This proposed rule has no federalism or tribalism implications.

List of Subjects in 36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics.

For the reasons set forth in the preamble, NARA proposes to amend part 1254 of title 36 of the CFR as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Revise § 1254.6(a) to read as follows:

§ 1254.6 Researcher identification card.

(a) An identification card is issued to each person whose application is approved to use records other than microfilm. Cards are valid for 1 year and may be renewed upon application.

Cards issued at one NARA facility are valid at each facility, except as described in paragraph (b) of this section. They are not transferable and must be presented if requested by a guard or research room attendant.

* * * * *

Dated: July 1, 2002.

John W. Carlin,

Archivist of the United States.

that certain reports and applications required from operators of new or modified sources shall be submitted to the State of South Dakota (41 FR 17549). Copies of the **Federal Register** notices are enclosed for your convenience.

EPA is approving South Dakota's request for NSPS delegation for all areas within the State except for land within formal Indian reservations located within or abutting the State of South Dakota, including the: Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lake Traverse Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation, any land held in trust by the United States for an Indian tribe; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of South Dakota delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312–6005.

Sincerely yours,

Jack W. McGraw,

Acting Regional Administrator.

Enclosures.

cc: Steve Pirner, Secretary, Department of

Cards issued at one NARA facility are valid at each facility, except as described in paragraph (b) of this section. They are not transferable and must be presented if requested by a guard or research room attendant.

* * * * *

Dated: July 1, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–17291 Filed 7–9–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[SIP No. SD–001–0015; FRL–7243–8]

Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and announcement of South Dakota NSPS delegation.

SUMMARY: On June 30, 2000, the State of South Dakota submitted a request for delegation of the New Source Performance Standards (NSPS) and requested that the NSPS be removed from the State Implementation Plan (SIP). Through this **Federal Register** notice, EPA is announcing that on April 2, 2002 we delegated to the State of South Dakota the authority to implement and enforce the NSPS program.

Since the State has been delegated the authority to implement and enforce the NSPS program, we are proposing to remove the NSPS sections from the SIP. EPA is also proposing updates to the NSPS "Delegation Status of New Source Performance Standards" table.

These actions are being taken under sections 110 and 111 of the Clean Air Act. Other parts of the June 30, 2000 submittal will be acted on in a separate notice.

DATES: Written comments must be received on or before August 9, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski , EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we" or "our" is used means EPA.

I. Announcment of South Dakota NSPS Delegation

EPA is announcing that on April 2, 2002, pursuant to section 111(c) of the Clean Air Act, the Agency delegated the authority to the State of South Dakota to implement and enforce the NSPS program for all areas within the State except for lands located within formal Indian reservations within or abutting the State of South Dakota, including the: Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation, any land held in trust by the United States for an Indian tribe; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

A. January 25, 2002, Letter of Delegation

Chapter 74:36:07 is the rule that the State uses to implement our NSPS promulgated at 40 CFR part 60. On January 25, 2002, we issued a letter delegating the authority to implement and enforce the NSPS. The categories of new stationary sources covered by this delegation are as follows: NSPS subparts A, D, Da, Db, Dc, Ea, XX, AAA, SSS and WWW in 40 CFR part 60, as in effect on July 1, 1999; NSPS subparts Eb, Ec, Kb, and OOO in 40 CFR part 60, as in effect on July 1, 1998; NSPS subparts F, VV, NNN, and RRR, in 40 CFR part 60, as in effect on July 1, 1996; and NSPS subparts E, I, K, Ka, O, Y, DD, GG, HH, LL, QQ, RR, JJJ and UUU as in effect on July 1, 1995.

The January 25, 2002 letter of delegation to the State follows:

Honorable Bill Janklow,
Governor of South Dakota, State Capitol, Pierre, South Dakota 57501

Dear Governor Janklow: On June 30, 2000 the State submitted revisions to the New Source Performance Standards (NSPS) rules in the Administrative Rules of South Dakota (ARSD) 75:36:07. Specifically, the State revised its NSPS to update the citation of the incorporated Federal NSPS, as appropriate. In addition, the State requested that the NSPS chapter, ARSD 75:36:07, which had been approved into the South Dakota State Implementation Plan (SIP), be removed from the SIP and delegated to the State.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of South Dakota and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of South Dakota. Therefore, pursuant to section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of South Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of South Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR part 60. The categories of new stationary sources covered by this delegation are NSPS subparts A, D, Da, Db, Dc, Ea, XX, AAA, SSS and WWW in 40 CFR part 60, as in effect on July 1, 1999; NSPS subparts Eb, Ec, Kb, and OOO in 40 CFR part 60, as in effect on July 1, 1998; NSPS subparts F, VV, NNN, and RRR, as in effect on July 1, 1996; and NSPS subparts E, I, K, Ka, O, Y, DD, GG, HH, LL, QQ, RR, JJJ and UUU as in effect on July 1, 1995.

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR part 60 that cannot be delegated to the State of South Dakota.

(C) As 40 CFR part 60 is updated, South Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of March 25, 1976, to the Honorable Richard F. Kneip, then Governor of South Dakota, except that condition 3, relating to Federal facilities, was voided by the Clean Air Act Amendments of 1977. Please also note that EPA retains concurrent enforcement authority as stated in condition 1. In addition, if at any time there is a conflict between a State and Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 6. EPA published its March 25, 1976 delegation letter in the notices section of the April 27, 1976 **Federal Register** (41 FR 17500), along with an associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of South Dakota (41 FR 17549). Copies of the **Federal Register** notices are enclosed for your convenience.

EPA is approving South Dakota's request for NSPS delegation for all areas within the State except for land within formal Indian reservations located within or abutting the State of South Dakota, including the: Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation, any land held in trust by the United States for an Indian tribe; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of South Dakota will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312–6005.

Sincerely yours,

Jack W. McGraw,
Acting Regional Administrator.

Enclosures.

cc: Steve Pirner, Secretary, Department of Environment and Natural Resources.

Enclosure to Letter Delegating NSPS in 40 CFR part 60, to the State of South Dakota

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR Subparts	Section(s)
A	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da	60.45a.
Db	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc	60.48c(a)(4).
Ec	60.56c(i), 60.8
J	60.105(a)(13)(iii) and 60.106(i)(12).
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O	60.153(e).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3) and 60.335(a).
VV	60.482–1(c)(2) and 60.484.
WW	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX	60.502(e)(6)
AAA	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB	60.543(c)(2)(ii)(B).
DDD	60.562–2(c).
GGG	60.592(c).
III	60.613(e).
JJJ	60.623.
KKK	60.634.
NNN	60.663(e).
QQQ	60.694.
RRR	60.703(e).
SSS	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW	60.754(a)(5).

B. State's Response to January 25, 2002 Letter

On February 5, 2002, Charles McGuigan, South Dakota Assistant Attorney General, sent a letter to EPA regarding our January 25, 2002 NSPS delegation letter. The February 5, 2002 letter, sent on behalf of the Office of the Attorney General and the Department of Environment and Natural Resources, objected to EPA's approval of South Dakota's NSPS delegation for all areas within the State except for land within formal Indian reservations, "any land held in trust by the United States for an Indian tribe" and any other areas which are "Indian Country" defined by 18 U.S.C. 1151." Specifically, the State disagreed that all tribal trust lands in South Dakota are within the definition of Indian country. Additionally, the State's February 5, 2002 letter indicated that "to the extent that your letter exceeds the definition of Indian country as determined by the Eighth Circuit Court of Appeals, South Dakota objects to your delegation letter."

C. EPA's Response to the State's February 5, 2002 letter

On February 25, 2002, we responded to the State's February 5, 2002 letter indicating that since the State's February 5, 2002 letter was an objection to the NSPS delegation, the State was not delegated the authority to implement and enforce the NSPS regulations at that time and that EPA would address the delegation in a future letter.

In an April 2, 2002 letter to the State, EPA explained that tribal trust lands are Indian country as defined at 18 U.S.C. 1151 under the Clear Air Act and federal Indian law and that we properly excluded tribal trust and other Indian country lands from the delegation. In the April 2, 2002 letter, EPA again delegated the NSPS program to the State. The April 2, 2002 letter is as follows:

Mr. Steven M. Pirner
Secretary, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501,

Re: *South Dakota New Source Performance Standards*

Dear Secretary Pirner: On June 30, 2000 the State of South Dakota requested delegation of new New Source Performance Standards (NSPS) rules under the Clean Air Act ("CAA" or "Act"). On January 25, 2002, EPA delegated authority to the State, pursuant to section 111(c) of the Act, to implement and enforce the NSPS program for all areas within the State except for formal Indian reservations, any land held in trust by the United States for an Indian tribe and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Several industry groups and the State of Michigan challenged EPA's Tribal Authority Rule in the U.S. Court of Appeals for the District of Columbia. *Arizona Public Service Company* v. *EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied sub nom., Michigan* v. *EPA*, 532 U.S. 970 (2001). One of the issues addressed by the D.C. Circuit was whether EPA properly construed the term "reservation" to include tribal trust lands and Pueblos.[2] The Court described both EPA's position that "reservation" includes tribal trust lands and Pueblos and EPA's Rulemaking, upheld EPA's position that the term "reservation" under the CAA includes tribal trust lands outside of formal reservations. The United States Supreme Court denied the petition for certiorari, thus leaving the D.C. Circuit decision intact. The State of South Dakota is bound to follow the decision of the Court in this matter and may not now challenge the very issue which has already been litigated on the merits in the D.C. Circuit and upon which EPA has already prevailed.

(10th Cir. 1980) ("lands held in trust by the United States for the Tribes are Indian country within the meaning of § 1151(a)"); *Santa Rosa Band of Indians* v. *Kings County*, 532, F.2d 655, 666 (9th Cir. 1975) (tribal trust lands held to be Indian country).

South Dakota relies on *United States* v. *Stands*, 105 F.3d 1565, 1572 (8th Cir. 1997), *cert. denied*, 522 U.S. 841 (1997) to support its proposition that, "[i]n the Eighth Circuit trust lands are Indian country only when they are within the boundaries of an Indian Reservation, qualify as a dependent Indian

Acting Regional Administrator.

cc: Mr. Charles D. McGuigan, Assistant Attorney General

II. Proposed Rule

EPA is proposing to update the table in 40 CFR 60.4(c), entitled "Delegation Status of New Source Performance Standards [(NSPS for Region VIII]", to indicate that the 40 CFR part 60 NSPS are now delegated to the State of South Dakota.

In addition, EPA is proposing to proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or

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Re: *South Dakota New Source Performance Standards*

Dear Secretary Pirner: On June 30, 2000 the State of South Dakota requested delegation of new New Source Performance Standards (NSPS) rules under the Clean Air Act ("CAA" or "Act"). On January 25, 2002, EPA delegated authority to the State, pursuant to section 111(c) of the Act, to implement and enforce the NSPS program for all areas within the State except for formal Indian reservations, any land held in trust by the United States for an Indian tribe and any other areas which are Indian country within the meaning of 18 U.S.C. 1151. The State's Office of the Attorney General sent a letter to EPA on February 5, 2002 objecting to the Agency's decision to exclude from the State's program "any land held in trust by the United States for an Indian tribe." EPA responded on February 25, 2002 that due to the State's objection, the authority to implement and enforce the NSPS regulations was not currently delegated and that EPA would address the State's concern in future correspondence.

EPA has determined that it is appropriate to maintain the exclusionary language cited in the January 25, 2002 delegation of the South Dakota NSPS program because tribal trust lands are reservations under the CAA and Indian country under 18 U.S.C. 1151 and are thus properly excluded from the Section 111(c) delegation. The following is a discussion of the legal basis for EPA's position that lands held in trust for a tribe which are located outside the boundaries of a formally-designated Indian reservation are within the definition of "reservation" under the CAA and are Indian country under 18 U.S.C. 1151.

I. The Court of Appeals for the District of Columbia Has Upheld EPA's Position That Tribal Trust Lands are Within the Definition of "Reservation" Under the CAA.

On February 12, 1998, EPA promulgated a rule entitled, "Indian Tribes: Air Quality Planning and Management" ("Tribal Authority Rule" or "TAR"), 63 FR 7254 (Feb. 12, 1998). The Tribal Authority Rule set forth EPA's position that for purposes of Clean Air Act programs, the term "reservation," in addition to formally designated Indian reservations, also includes trust lands that have been validly set apart for the use of a tribe even though the land has not been formally designated as a reservation. 63 FR at 7257–58. Under Section 307(b)(1) of the CAA, parties challenging the Tribal Authority Rule were required to raise their objections to the U.S. Court of Appeals for the DC Circuit within sixty days of EPA's final rulemaking decision.[1]

Several industry groups and the State of Michigan challenged EPA's Tribal Authority Rule in the U.S. Court of Appeals for the District of Columbia. *Arizona Public Service Company* v. *EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied sub nom., Michigan* v. *EPA*, 532 U.S. 970 (2001). One of the issues addressed by the D.C. Circuit was whether EPA properly construed the term "reservation" to include tribal trust lands and Pueblos.[2] The Court described both EPA's position that "reservation" includes tribal trust lands and Pueblos and EPA's decision that case-by-case determinations of whether lands fall within the Act's definition of "reservation" will be reserved for types of lands other than tribal trust lands and Pueblos. *Id.* at 1285,1294.

The D.C. Circuit noted that the CAA does not define "reservation" for the purposes of tribal regulation. In determining that the statute itself is ambiguous, the Court found support for EPA's position in both the plain meaning of the word "reservation" and the context in which the term is used.[3] The Court then held that EPA reasonably interpreted the term "reservation" to include formal reservations, Pueblos and tribal trust lands:

> In light of the ample precedent treating trust land as reservation land in other contexts, and the canon of statutory interpretation calling for statutes to be interpreted favorably towards Native American nations, we cannot condemn as unreasonable EPA's interpretation of "reservations" to include Pueblos and tribal trust land.

Id. at 1294.

The D.C. Circuit, which is the Court with the exclusive jurisdiction to review the Agency's national Tribal Authority Rulemaking, upheld EPA's position that the term "reservation" under the CAA includes tribal trust lands outside of formal reservations. The United States Supreme Court denied the petition for certiorari, thus leaving the D.C. Circuit decision intact. The State of South Dakota is bound to follow the decision of the Court in this matter and may not now challenge the very issue which has already been litigated on the merits in the D.C. Circuit and upon which EPA has already prevailed.

II. Federal Indian Law Supports EPA's Position That Lands Held in Trust by the United States for an Indian Tribe are Indian Country

The body of federal Indian law provides overwhelming support for EPA's position that tribal trust lands located outside of the boundaries of formal reservations are Indian country as defined at 18 U.S.C. 1151. The United States Supreme Court has addressed this issue on several occasions, consistently finding that tribal trust lands are Indian country. See, *Oklahoma Tax Commission* v. *Sac and Fox Nation*, 508 U.S. 114, 123 (1993) (Oklahoma argued that while it did not have authority to tax tribal members on the reservation, the State had jurisdiction to tax a tribal store located on trust land outside the reservation. The Court rejected the State's argument, stating, "we have never drawn the distinction Oklahoma urged." The Court also noted, "Congress has defined Indian country broadly to include formal and informal reservations * * *" (emphasis added)); *Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991) (the Court held that tribal trust land "is validly set apart and thus qualifies as reservation for tribal immunity purposes."); *United States* v. *John*, 437 U.S. 634, 649 (1978) (finding "no apparent reason" why lands held in trust should not be considered a "reservation" under 18 U.S.C. 1151(a)). *See also, United States* v. *McGowan*, 302 U.S. 535 (1938).

Aside from the D.C. Circuit *Arizona Public Service* case, there are numerous other Circuit Court decisions confirming that tribal trust lands located outside of formal reservations are Indian country under 18 U.S.C. 1151(a) or (b). See, *HRI, Inc.* v. *EPA*, 198 F.3d 1224, 1249–54 (10th Cir. 2000) (tribal trust land is Indian country under 18 U.S.C. 1151(a) and may qualify under 1151(b) as well); *United States* v. *Roberts*, 185 F.3d 1125, 1131 (10th Cir. 1999), *cert. denied*, 529 U.S. 1108 (2000) ("official "reservation" status is not dispositive and lands owned by the federal government in trust for Indian tribes are Indian country pursuant to 18 U.S.C. 1151"); *Buzzard* v. *Oklahoma Tax Commission*, 992 F.2d 1073, 1076 (10th Cir. 1993) (lands held in trust by the federal government for a tribe are Indian country); *United States* v. *Azure*, 801 F.2d 336, 339 (8th Cir. 1986) (tribal trust land is Indian country under either § 1151(a) as a "*de facto*" reservation or § 1151 (b) as a dependent Indian community); *United States* v. *Sohappy*, 770 F.2d 816, 822–23 (9th Cir. 1985) (tribal trust land is "reservation" land under § 1151(a)); *Cheyenne-Arapaho Tribe of Oklahoma* v. *Oklahoma*, 618 F.2d 665, 668 (10th Cir. 1980) ("lands held in trust by the United States for the Tribes are Indian country within the meaning of § 1151(a)"); *Santa Rosa Band of Indians* v. *Kings County*, 532, F.2d 655, 666 (9th Cir. 1975) (tribal trust lands held to be Indian country).

South Dakota relies on *United States* v. *Stands*, 105 F.3d 1565, 1572 (8th Cir. 1997), *cert. denied*, 522 U.S. 841 (1997) to support its proposition that, "[i]n the Eighth Circuit trust lands are Indian country only when they are within the boundaries of an Indian Reservation, qualify as a dependent Indian community, or are an allotment, the Indian title to which has not been extinguished. If trust lands do not fall within one of these three categories, it is not Indian country."

The *Stands* Court itself rejects this argument, noting, "[i]n some circumstances, off-reservation tribal trust land may be considered Indian country. *See, e.g., United Stated* v. *Azure*, 801 F.2d 336, 338–39 (8th Cir. 1986) (tribal trust land could be considered de facto reservation or dependent Indian community)." *Id.* at 1571 n. 3. In the *Azure* case, the Court held that the tribal trust lands located outside of the boundaries of the Turtle Mountain Indian Reservation were de facto reservation lands and Indian country under 1151(a). The Court noted that the lands could also be considered dependent Indian community under 1151(b).

Furthermore, the *Stands* case involved individual allotted lands and the issue of whether the allotted lands were Indian country under 18 U.S.C. 1151(c). The Court specifically stated that the case did not involve the issue of whether tribal trust lands are Indian country under 18 U.S.C. 1151 (a) or (b). "The government has not argued that Azure or similar cases apply here." *Id.* Thus, the Court's statement that "tribal trust land beyond the boundaries of a reservation is ordinarily not Indian country" is dicta with regard to 18 U.S.C. 1151 (a) and (b) since the issue was not directly before the Court.

Thus, the overwhelming Supreme Court and Circuit Court precedent supports EPA's position that tribal trust lands located outside of formal reservations are Indian country as defined at 18 U.S.C. 1151, and the holding in *Stands*, which did not involve an analysis of whether tribal trust lands are Indian country under sections 1151(a) or (b) is not to the contrary.

In conclusion, pursuant to section 111(c) of the Clean Air Act, EPA hereby delegates its authority to the State of South Dakota to implement and enforce the NSPS program as described in our January 25, 2002 approval with regard to all areas within the State except for lands located within formal Indian reservations within or abutting the State of South Dakota, including the: Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation; any land held in trust by the United States for an Indian tribe; and any other areas which are Indian country within the meaning of 18 U.S.C. 1151.

Sincerely,
Jack W. McGraw
Acting Regional Administrator.

cc: Mr. Charles D. McGuigan, Assistant Attorney General

II. Proposed Rule

EPA is proposing to update the table in 40 CFR 60.4(c), entitled "Delegation Status of New Source Performance Standards [(NSPS for Region VIII]", to indicate that the 40 CFR part 60 NSPS are now delegated to the State of South Dakota.

In addition, EPA is proposing to remove the NSPS from the SIP. In its January 30, 2000 submittal, the State requested that the NSPS be removed from the SIP. Since the State has been delegated the authority for the implementation and enforcement of the NSPS in 40 CFR part 60, we are proposing to remove the following sections from the South Dakota SIP: 74:36:07:01, 74:36:07:02, 74:36:07:03, 74:36:07:04, 74:36:07:05, 74:36:07:06, 74:36:07:07, 74:36:07:07.01, 74:36:07:09, 74:36:07:10, 74:36:07:12, 74:36:07:13, 74:36:07:14, 74:36:07:15, 74:36:07:16, 74:36:07:17, 74:36:07:18, 74:36:07:19, 74:36:07:20, 74:36:07:21, 74:36:07:22, 74:36:07:23, 74:36:07:24, 74:36:07:25, 74:36:07:26, 74:36:07:27, 74:36:07:28, 74:36:07:31, 74:36:07:32, 74:36:07:33, and 74:36:07:43.

EPA is soliciting public comments on the proposed revisions to 40 CFR 60.4(c) table and the removal of the NSPS from the South Dakota SIP. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments within thirty (30) days of publication of this notice to the EPA Regional office listed in the *ADDRESSES* section of this document.

A. Administrative Requirements for Proposed Rule

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, the proposed rule is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed rule merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead,

[1] EPA notes that South Dakota did in fact comment on the Tribal Authority Rule on November 22, 1994. While the State objected to the Agency's position that the CAA is a delegation of federal authority to tribes approved by EPA to administer CAA programs over all air resources within a reservation, the State did not object to EPA's position that the definition of "reservation" includes tribal trust lands which have not been formally designated as a reservation. Having failed to petition for review of this issue in the manner required by section 307(b)(1) of the Act, South Dakota may not now challenge EPA's position that the definition of "reservation" includes trust lands that have been validly set apart for the use of a tribe even though the land has not been formally designated as a reservation.

[2] The Tribal Authority Rule set forth EPA's position that for CAA programs there are at least two categories of lands which, although not formally designated as reservations, nonetheless qualify as "reservation" lands: Pueblos and tribal trust lands. EPA also stated that it will consider on a case-by-case basis whether types of lands "other than Pueblos and tribal trust lands may be considered 'reservations' under Federal Indian law even though they are not formally designated as such." 63 FR at 7258. In other words, EPA's position as set forth in the TAR, is that Pueblos and tribal trust lands outside of formally designated reservations are validly set apart for the use of tribes and fall within the definition of "reservation" under the CAA; thus the Agency will not engage in a case-by-case analysis to determine the status of these lands.

[3] With regard to the plain meaning of the term, the Court stated, "[t]he dictionary defines 'reservation' to be a 'tract of public land set aside for a particular purpose (as schools, forest, or the use of Indians).' WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1930 (1993). This definition surely encompasses both trust lands and formally designated reservations." *Id.* at 1293. The Court also noted that a different statutory definition of "reservation" found at 25 U.S.C. 465 (1994) is not an exclusive definition and that "If Congress had wanted to limit the term "reservation" as petitioners suggest, Congress could have done so. Indeed, Congress on many occasions has defined 'reservation' in terms of other statutes." *Id.*

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Grains, Graphic arts industry: publication rotogravure printing, Household appliances, Incinerators, Intergovernmental relations, Iron, Lead, Lime manufacturing plants, Metallic mineral processing plants, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Petroleum refineries, Phosphate, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfuric acid plants, Urethane, Waste treatment and disposal, Zinc.

Dated: June 28, 2002.
Robert E. Roberts,
Regional Administrator, Region VIII.

[FR Doc. 02–17202 Filed 7–9–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7532]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Base (1% annual-chance) flood elevations and modified base flood elevations are proposed for each community listed below. The purpose of this proposed rule is to seek comments on these proposed flood elevations.

DATES: Comments are to be submitted on or before October 8, 2002.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for each community listed below is available for inspection at the community's map repository. Send comments to the Chief Executive Officer of each community listed below. The mailing address for each Chief Executive Officer is also listed below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Zinc.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 1, 2002.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 02–17358 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MI79–01–7288b; FRL–7242–9]

Designation of Areas for Air Quality Planning Purposes; Deletion of Total Suspended Particulate Designations in Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to delete from the lists contained in 40 CFR part 81 the attainment status designations (attainment, unclassifiable and nonattainment) for Michigan affected by the original national ambient air quality standards for particulate matter measured as total suspended particulate (TSP). In accordance with section 107(d)(3)(B) of the Clean Air Act, the Administrator has determined that the selected area designations for TSP are no longer necessary for implementing the requirements for prevention of significant deterioration of air quality for particulate matter. In the final rules section of this **Federal Register**, we are deleting the TSP area designations for Michigan as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 9, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: June 24, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–17239 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MN71–7296b; FRL–7242–7]

Designation of Areas for Air Quality Planning Purposes; Deletion of Total Suspended Particulate Designations in Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to delete from the lists contained in 40 CFR part 81 the attainment status designations (attainment, unclassifiable and nonattainment) for Minnesota affected by the original national ambient air quality standards for particulate matter measured as total suspended particulate (TSP). In accordance with section 107(d)(3)(B) of the Clean Air Act, the Administrator has determined that the selected area designations for TSP are no longer necessary for implementing the requirements for prevention of significant deterioration of air quality for particulate matter. In the final rules section of this **Federal Register**, we are deleting the TSP area designations for Minnesota as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse written comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 9, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328

SUPPLEMENTARY INFORMATION: For additional information, see the Direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: June 26, 2002.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 02–17242 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7532]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) *Elevation in feet (NAVD)	
				Existing	Modified
Florida	St. Johns County (Unincorporated Areas).	Flora Branch	At the upstream side of Race Track Road	*9	*6
			Approximately 3,160 feet upstream of Flora Branch Boulevard.	None	*17
		Kendall Creek	Approximately 4,700 feet upstream of confluence with St. Johns River.	*11	*10
			Approximately 1,000 feet upstream of Roberts Road.	*24	*25
		Cunningham Creek	Approximately 4,500 feet upstream of confluence with St. Johns River.	*6	*7
			Approximately 2 miles upstream of Flora Branch Boulevard.	*22	*21
		Kentucky Branch	Approximately 1,000 feet upstream of State Road 13.	*7	*6
			Approximately 4,400 feet upstream of confluence with Kentucky Branch Tributary.	*23	*24

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) *Elevation in feet (NAVD)	
				Existing	Modified
		Kentucky Branch	At confluence with Kentucky Branch Tributary	*8	*7
			At upstream side of Greenbriar Road	*19	*18
		Moultrie Creek	At the upstream side of U.S. Route 1	*9	*8
			At downstream side of Route 214	*33	*31
		Moultrie Creek	Approximately 1,200 feet upstream of confluence with Moultrie Creek.	*9	*8

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) *Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the St. Johns County Administration Building, Building Department, 4020 Lewis Speedway, St. Augustine, Florida.					
Send comments to Mr. Ben Adams, Jr., St. Johns County Administrator, 4020 Lewis Speedway, P.O. Drawer 349, St. Augustine, Florida 32085–0349.					
Florida	St. Augustine Beach	Atlantic Ocean	Approximately 600 feet east of 16th	*14	*17

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) *Elevation in feet (NAVD)	
				Existing	Modified
		Kentucky Branch	At confluence with Kentucky Branch	*8	*7
		Tributary	At upstream side of Greenbriar Road	*19	*18
		Moultrie Creek	At the upstream side of U.S. Route 1	*9	*8
			At downstream side of Route 214	*33	*31
		Moultrie Creek	Approximately 1,200 feet upstream of confluence with Moultrie Creek.	*9	*8
		Tributary No. 1	Approximately 80 feet upstream of Lewis Point Road.	*25	*26
		Moultrie Creek	At confluence with Moultrie Creek	*9	*8
		Tributary No. 3	Approximately 200 feet upstream of Willow Walk Place.	*21	*22
		Moultrie Creek	At confluence with Moultrie Creek	*9	*8
		Tributary No. 4	Approximately 80 feet upstream of State Route 207.	*36	*37
		Orange Grove	Approximately 600 feet upstream of State Road 13N.	*15	*14
		Branch	Approximately 1.8 miles upstream of State Road 13N.	*27	*25
		Petty Branch	Approximately 200 feet upstream of State Road 13.	*7	*6
			Approximately 1.9 miles downstream of State Road 13.	None	*27
		St. Johns River	Approximately 200 feet downstream of State Road 13N.	*7	*6
		Tributary No. 2	At downstream side of Remington Forest Drive.	*10	*9
		St. Johns River	Approximately 500 feet downstream of Grove Bluff Road.	*6	*7
		Tributary No. 1	Approximately 125 feet upstream of State Road 13N.	None	*16
		St. Johns River	Approximately 2,350 feet upstream of confluence with St. Johns River.	*7	*8
		Tributary No. 5	Approximately 0.7 mile upstream of State Road 13.	None	*17
		St. Johns River	Approximately 575 feet downstream of State Road 13.	*7	*6
		Tributary No. 3	Approximately 800 feet upstream of unnamed road.	*22	*21
		St. Johns River	Approximately 75 feet upstream of confluence with St. Johns River Tributary No. 3, Branch No. 1.	*13	*14
		Tributary No. 3, Branch No. 2.	Approximately 1,825 feet upstream of confluence with St. Johns River Tributary No. 3, Branch No. 1.	*24	*23
		St. Johns River	Approximately 1,950 feet upstream of confluence with St. Johns River.	*7	*6
		Tributary No. 4	Approximately 0.6 mile upstream of State Road 13.	None	*24
		Sixmile Creek	Approximately 3.5 miles upstream with St. Johns River.	*6	*7
			At confluence with Turnbull Creek	None	*15
		Turnbull Creek	At confluence with Sixmile Creek	None	*15
			At upstream side of Interstate 95	None	*30
		Durbin Creek	At upstream side of Race Track Road	None	*12
			Approximately 280 feet upstream of U.S. Highway 1.	None	*15
		Mill Creek #2	Approximately 1,600 feet upstream of confluence with Sixmile Creek.	None	*6
			Approximately 0.8 mile upstream of State Road 16.	None	*26
		Red House Branch	At confluence with San Sebastian River	None	*10
			Approximately 100 feet upstream of Chicken Farm Road.	*28	*27
		Atlantic Ocean	Approximately 800 feet east of intersection of Hildago Road and Costanero Road.	None	*13
			Approximately 500 feet east of intersection of Country Route 210 and Ponte Vedra Boulevard.	*14	*17

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) *Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the St. Johns County Administration Building, Building Department, 4020 Lewis Speedway, St. Augustine, Florida.					
Send comments to Mr. Ben Adams, Jr., St. Johns County Administrator, 4020 Lewis Speedway, P.O. Drawer 349, St. Augustine, Florida 32085–0349.					
Florida	St. Augustine Beach (City), St. Johns County.	Atlantic Ocean	Approximately 600 feet east of 16th Street and A1A Beach Boulevard.	*14	*17
			Approximately 600 feet southeast of A1A and Pope Road.	*9	*13
			Approximately 600 feet northeast of 16th Street and A1A Beach Boulevard.	None	*1
Maps available for inspection at the St. Augustine City Hall, 2200 A1A South, St. Augustine Beach, Florida.					
Send comments to Mr. Max Royle, City of St. Augustine Beach Manager, 2200 A1A South, St. Augustine Beach, Florida 32080.					
New Jersey	Bernardsville (Borough), Somerset County.	Indian Grave Brook	At confluence with Passaic River	*298	*303
			Approximately 475 feet upstream Washington Corner Road.	*596	*597
		Tributary K	At confluence with Indian Grave Brook	*450	*456
			Approximately 1,672 feet upstream of Washington Corner Road.	*562	*565
		Passaic River	At downstream corporate limit	*298	*303
			Approximately 4,940 feet above downstream corporate limits.	*374	*375
		Mine Brook	Approximately 0.05 mile upstream Mill Street.	*396	*397
			At dam	*435	*436
		Tributary MB	Approximately 0.06 mile upstream of confluence with Mine Brook.	*415	*416
			Approximately 0.02 mile downstream Thompson Road bridge.	*434	*435
Maps available for inspection at the Bernardsville Borough Hall, Office of the Borough Clerk, 166 Mine Brook Road, Bernardsville, New Jersey.					
Send comments to The Honorable Jay Parsons, Mayor of the Borough of Bernardsville, Municipal Building, Bernardsville, New Jersey 07924.					
Pennsylvania	Tinicum (Township), Bucks County.	Delaware River	Approximately 0.25 mile upstream of Uhlerstown Hill Road.	*126	*127
			Approximately 1.17 miles downstream of Upper Black Eddy Bridge.	*135	*134
		Delaware River	At confluence with the Delaware River	*127	*128
		Overland Flow	At divergence from the Delaware River	*135	*133
Maps available for inspection at the Tinicum Municipal Building, 163 Municipal Road, Pipersville, Pennsylvania.					
Send comments to Mr. Gary Pearson, Chairperson of the Township of Tinicum Board of Supervisors, 163 Municipal Road, Pipersville, Pennsylvania 18947.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 2, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–17276 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7534]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C

community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these

regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Ponding Areas	Approximately 0.78 mile upstream of Illinois Central Railroad crossing.	None	*396	Village of New Athens.
	Between Illinois Terminal Railroad and Camp Jackson Road.	*406	*404	Village of Cahokia.
	Approximately 20 feet south of the intersection of Fox Meadow Lane and Paris Ave-	*409	*404	Village of Cahokia.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
ILLINOIS				
St. Clair County (Unincorporated Areas)				
Silver Creek	Approximately 12,000 feet upstream of the confluence with Kaskaskia River.	*397	*396	St. Clair County (Unincorporated Areas), City of Mascoutah, City of Lebanon.
	Approximately 1.25 miles upstream of Lebanon Loyett Road.	*454	*451	
Hog River	At the confluence with Silver Creek	*422	*418	St. Clair County (Unincorporated Areas), City of Mascoutah.
	Just upstream of Union Street	*422	*418	
Loop Creek	At the confluence with Silver Creek	*422	*418	St. Clair County (Unincorporated Areas).
	Approximately 1.5 miles upstream of confluence with Silver Creek.	*422	*421	
Little Silver Creek	At the confluence with Silver Creek	*432	*429	St. Clair County (Unincorporated Areas).
	Approximately 1,500 feet upstream of confluence with Silver Creek.	*433	*432	
Ogles Creek	At the confluence with Silver Creek	*451	*449	St. Clair County (Unincorporated Areas), City of Fairview Heights.
	Approximately 265 feet upstream of Old Collinsville Road.	*550	*551	
Wolf Branch	Approximately 1,700 feet upstream of confluence with Richland Creek.	*501	*500	St. Clair County (Unincorporated Areas), Village of Swansea.
	Approximately 920 feet upstream of unnamed road.	None	*538	
Schoenberger Creek	Approximately at North 89th Street	None	*437	City of Belleville, City of Fairview Heights, City of East St. Louis.
	Approximately 1,500 feet upstream of State Route 161.	None	*482	
Kaskaskia River	At downstream corporate limits of Village of New Athens.	None	*395	Village of New Athens.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.78 mile upstream of Illinois Central Railroad crossing.	None	*396	Village of New Athens.
Ponding Areas	Between Illinois Terminal Railroad and Camp Jackson Road.	*406	*404	Village of Cahokia.
	Approximately 20 feet south of the intersection of Fox Meadow Lane and Paris Avenue.	*409	*404	Village of Cahokia.
	At intersection of Sterling Place and Bermuda Avenue.	None	*422	Village of Caseyville.
	At intersection of Countryside Drive and Acorde Drive.	*419	*422	Village of Caseyville.
	North of Harding Ditch, west of Black Lane	*415	*418	Village of Caseyville.
	Approximately 1,000 feet northwest of intersection with Interstate Route 64 and State Route 157.	None	*422	Village of Caseyville.
	Between Interstate 255 and State Route 157.	*410	*411	Village of Alorton.
	Approximately 600 feet southeast of the intersection of Pocket Road and State Route 15 and Missouri Avenue.	None	*411	Village of Alorton.
	At the intersection of Lake Drive and East Side Levee and Sanitary Canal District.	*411	*414	City of Centreville.
	At the intersection of Belleview Avenue and North 80th Street.	None	*414	City of Centreville.
	Approximately 1,000 feet west of the intersection of State Route 15 (New Missouri Avenue and Harding Ditch).	None	*411	City of Centreville.
	Approximately 1,000 feet west of Collinsville Road.	None	*403	Village of Fairmont City.
	Approximately 700 feet east of the intersection of St. Clair Avenue and Louisville and Nashville Railroad.	None	*417	Village of Washington Park.
	Approximately 300 feet south of the intersection of St. Clair Avenue and Louisville and Nashville Railroad.	None	*414	Village of Washington Park, City of East St. Louis.
	Approximately 500 feet north of the intersection of St. Clair Avenue and Louisville and Nashville Railroad.	None	*414	Village of Washington Park, City of East St. Louis.
	Approximately 500 feet northwest of intersection of Summit Avenue and Michigan Avenue.	*413	*414	City of East St. Louis.
	Approximately 300 feet northeast of the intersection of Louisville and Nashville Railroad and Kings Highway (State Route 50).	None	*415	City of East St. Louis.
	Approximately 400 feet east of Ohio Avenue and North 62nd Street.	*412	*414	City of East St. Louis.
	Intersection of Marybelle Avenue and North 70th Street.	*417	*418	City of East St. Louis.
	Approximately 500 feet southwest of intersection of State Street and Terrace Drive.	*411	*414	City of East St. Louis.
	Approximately 600 feet south of intersection of St. Clair Avenue and North 47th Street.	*411	*414	City of East St. Louis.
	North of Cahokia Canal, west of Madison Road east of Industrial Avenue.	None	*407	St. Clair County (Unincorporated Areas).
	Approximately 1,000 feet west of the intersection of Collinsville Road and Cookson Road.	None	*403	St. Clair County (Unincorporated Areas).
	At intersection of Site Road and Park Road	*410	*411	St. Clair County (Unincorporated Areas).
	Approximately 400 feet east of intersection of Pocket Road and Site Road.	None	*411	St. Clair County (Unincorporated Areas).
	At intersection of Park Drive and Major Street.	*416	*418	St. Clair County (Unincorporated Areas).
	Approximately 800 feet west of intersection of Stowers Road and Bernia Street.	None	*421	St. Clair County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	At intersection of Watts Street and Brinson Drive.	*415	*418	St. Clair County (Unincorporated Areas).
	Approximately 0.5 mile east of intersection of Watts Street and Brinson Drive.	None	*418	St. Clair County (Unincorporated Areas), Village of Washington Park.
	At intersection of Caseyville Road and Bunkum Road.	*419	*422	St. Clair County (Unincorporated Areas), Village of Washington Park.
	Approximately 1,000 feet west of intersection of Caseyville Road and Bunkum Road.	*419	*422	St. Clair County (Unincorporated Areas), Village of Washington Park.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at the New Athens Village Hall, 905 Spotsylvania Street, New Athens, Illinois.
Send comments to Mr. Dennis Breithaupt, New Athens Village President, 905 Spotsylvania Street, New Athens, Illinois 62264.

St. Clair County (Unincorporated Areas)

Maps available for inspection at the St. Clair County Department of Building and Zoning, 10 Public Square, Belleville, Illinois.
Send comments to Mr. John Baricevic, Chairman of the St. Clair County Board, 10 Public Square, Belleville, Illinois 62220–1623.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	At intersection of Watts Street and Brinson Drive.	*415	*418	St. Clair County (Unincorporated Areas).
	Approximately 0.5 mile east of intersection of Watts Street and Brinson Drive.	None	*418	St. Clair County (Unincorporated Areas), Village of Washington Park.
	At intersection of Caseyville Road and Bunkum Road.	*419	*422	St. Clair County (Unincorporated Areas), Village of Washington Park.
	At intersection of North 82nd Street and Bunkum Road.	None	*422	St. Clair County (Unincorporated Areas), Village of Washington Park.
	At intersection of Rock Springs Road and McKinley Avenue.	None	*422	St. Clair County (Unincorporated Areas), Village of Washington Park.
	North of Old Cahokia Canal and south of County Road boundary.	None	*415	St. Clair County (Unincorporated Areas), Village of Washington Park.
	Approximately 1,000 feet northeast of the intersection of Mullins Creek Road and Prairie du Pont Creed.	None	*418	St. Clair County (Unincorporated Areas).
	South of Cahokia Canal, north of CSX Transportation and southwest of Old Cahokia Canal.	None	*403	St. Clair County (Unincorporated Areas).
	Approximately 1,000 feet east of the intersection of Rock Springs Road and St. Clair Avenue.	None	*415	St. Clair County (Unincorporated Areas).
	Approximately 750 feet west of the intersection of Lake Drive and North 88th Street.	None	*414	St. Clair County (Unincorporated Areas).
	Approximately 400 feet south of the intersection of U.S. Route 255 (County Route 3).	*401	*404	St. Clair County (Unincorporated Areas).
Ponding Areas (along Harding Ditch).	Approximately 700 feet southeast of the intersection of State Route 157 and Carol Street.	*410	*411	St. Clair County (Unincorporated Areas).

Addresses

Village of Alorton

Maps available for inspection at the Alorton Village Hall, 4821 Bond Avenue, Alorton, Illinois.

Send comments to The Honorable Carolyn Williams, Mayor of the Village of Alorton, 4821 Bond Avenue, Alorton, Illinois 62207.

City of Belleville

Maps available for inspection at the Belleville Department of Economic Development & Planning, 101 South Illinois Street, Belleville, Illinois.

Send comments to The Honorable Mark A. Kern, Mayor of the City of Belleville, 101 South Illinois Street, Belleville, Illinois 62220.

Village of Cahokia

Maps available for inspection at the Cahokia Code Enforcement Department, 201 West 4th Street, Cahokia, Illinois.

Send comments to The Honorable Danita Reed, Mayor of the Village of Cahokia, 103 Main Street, Illinois 62206.

Village of Caseyville

Maps available for inspection at the Caseyville Village Hall, 10 West Morris Street, Caseyville, Illinois.

Send comments to The Honorable George C. Chance, Mayor of the Village of Caseyville, 10 West Morris Street, Caseyville, Illinois 62232.

City of Centreville

Maps available for inspection at the Centreville City Hall, 5800 Bond Avenue, Centreville, Illinois.

Send comments to The Honorable Frankie Seaberry, Mayor of the City of Centreville, 5800 Bond Avenue, Centreville, Illinois 62207.

City of East St. Louis

Maps available for inspection at the East St. Louis Municipal Building, 301 River Park Drive, East St. Louis, Illinois.

Send comments to The Honorable Debra Powell. Mayor of the City of East St. Louis, 301 River Park Drive, East St. Louis, Illinois 62201.

Village of Fairmont City

Maps available for inspection at the Fairmont City Village Hall, 2601 North 41st Street, Fairmont City, Illinois.

Send comments to Mr. Alex Bregen, Fairmont City Village President, 2601 North 41st Street, Fairmont City, Illinois 62201.

City of Fairview Heights

Mae for inspection at the City of Fairview Heights Municipal Building, 10025 Bunkum Road, Fairview Heights, Illinois.

Send comments to The Honorable Gail D. Mitchell, Mayor of the City of Fairview Heights, 10025 Bunkum Road, Fairview Heights, Illinois 62208.

City of Lebanon

Maps available for inspection at the Lebanon City Hall, 312 West St. Louis Street, Lebanon, Illinois.

Send comments to The Honorable Matthew Berberich, Mayor of the City of Lebanon, 312 West St. Louis Street, Lebanon, Illinois 62254.

City of Mascoutah

Maps available for inspection at the Mascoutah City Hall, #3 West Main Street, Mascoutah, Illinois.

Send comments to The Honorable Gerald E. Daugherty, Mayor of the City of Mascoutah, #3 West Main Street, Mascoutah, Illinois 62258.

Village of New Athens

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at the New Athens Village Hall, 905 Spotsylvania Street, New Athens, Illinois.

Send comments to Mr. Dennis Breithaupt, New Athens Village President, 905 Spotsylvania Street, New Athens, Illinois 62264.

St. Clair County (Unincorporated Areas)

Maps available for inspection at the St. Clair County Department of Building and Zoning, 10 Public Square, Belleville, Illinois.

Send comments to Mr. John Baricevic, Chairman of the St. Clair County Board, 10 Public Square, Belleville, Illinois 62220–1623.

Village of Swansea

Maps available for inspection at the Swansea Government Center, 1400 North Illinois Street, Swansea, Illinois.

Send comments to Mr. Michael S. Buehlhorn, President of the Village of Swansea Board of Trustees, 1400 North Illinois Street, Swansea, Illinois 62226.

Village of Washington Park

Maps available for inspection at the Washington Park Village Hall, 5216 North Park Drive, Washington Park, Illinois.

Send comments to The Honorable Sherman Sorrell, Mayor of the Village of Washington Park, 5218 North Park Drive, Washington Park, Illinois 62204.

For further information please contact the Map Assistance Center toll free at: 1–877–FEMA–MAP (1–877–336–2627).

INDIANA

Adams County (Unincorporated Areas)

Yellow Creek	At the confluence with St. Marys River	None	*790	Adams County (Unincorporated Areas)
	Approximately 1,750 feet upstream of Norfolk & Western Railroad.	None	*790	
Blue Creek	At the confluence with St. Marys River	None	*793	Adams County (Unincorporated Areas)
	At U.S. Route 27	None	*836	
St. Marys River	At South County Line Road	None	*751	Adams County (Unincorporated Areas), City of Decatur
	At the upstream state boundary	None	*794	

Addresses

Adams County (Unincorporated Areas)

Maps available for inspection at the Office of the Adams County Board of Commissioners, 313 West Jefferson, Room 251, Decatur, Indiana.

Send comments to Mr. Steve Bauman, President of the Adams County Board of Commissioners, 313 West Jefferson, Room 251, Decatur, Indiana 46733.

City of Decatur

Maps available for inspection at the Decatur City Hall, 225 West Monroe Street, Decatur, Indiana.

Send comments to The Honorable Fred R. Isch, Mayor of the City of Decatur, 225 West Monroe Street, Decatur, Indiana 46733.

INDIANA

Allen County (Unincorporated Areas)

Cedar Creek	Approximately 0.5 mile upstream of State Route 1.	*778	*779	Allen County (Unincorporated Areas), Town of Leo-Cedarville
	Approximately 790 feet downstream of North County Line Road.	*815	*816	
Little Cedar Creek	At the confluence with Cedar Creek	*811	*812	Allen County (Unincorporated Areas)
	Approximately 0.41 mile upstream of Fitch Road.	*818	*819	
Maumee River	At a point approximately 0.3 mile downstream of Scipio Road.	*726	*725	Allen County (Unincorporated Areas)
	At a point approximately 0.2 mile downstream of Bruick Road.	*746	*745	
St. Joseph River	At a point approximately 0.85 mile upstream of Halter Road.	*780	*779	Allen County (Unincorporated Areas), City of Fort Wayne
	Approximately 0.2 mile upstream of Roth Road.	*787	*788	
St. Marys River	Approximately 530 feet upstream of Hoagland Road.	*774	*775	Allen County (Unincorporated Areas)
	Approximately 0.5 mile upstream of Hoagland Road.	*774	*775	
Fairfield/Harber Ditch	Approximately 0.1 mile upstream of Norfolk Southern Railway.	*764	*763	Allen County (Unincorporated Areas), City of Fort Wayne
	Approximately 0.26 mile upstream of Lower Huntington Road.	*774	*773	

Addresses

Allen County (Unincorporated Areas)

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at the Allen County Planning Service Department, 1 East Main Street, Room 630, City/County Building, Fort Wayne, Indiana.

Send comments to Ms. Linda K. Bloom, President of the Allen County Board of Commissioners, 1 East Main Street, Room 200, City/County Building, Fort Wayne, Indiana 46802.

City of Fort Wayne

estimated that 70 percent of the suitable habitat for this species within its known range had been lost to development or agriculture (63 FR 54938). Since 1998, additional habitat has been lost to development (e.g., urban, commercial, industrial, and residential) and agriculture (e.g., grazing, farming). On June 13, 2001, we published a rule in the **Federal Register** (66 FR 32052) proposing to designate approximately 2,685 hectares (6,630 acres) of land in

designate critical habitat, will be available for inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Copies of the draft economic analysis are available on the Internet at "*http://carlsbad.fws.gov*" or by writing to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

References Cited

final determination is made to issue the EFP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before July 25, 2002.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at the Allen County Planning Service Department, 1 East Main Street, Room 630, City/County Building, Fort Wayne, Indiana.

Send comments to Ms. Linda K. Bloom, President of the Allen County Board of Commissioners, 1 East Main Street, Room 200, City/County Building, Fort Wayne, Indiana 46802.

City of Fort Wayne

Maps available for inspection at the Fort Wayne Planning Department, 1 Main Street, 8th Floor, City/County Building, Fort Wayne, Indiana.

Send comments to The Honorable Graham Richard, Mayor of the City of Fort Wayne, 1 Main Street, Room 900, City/County Building, Fort Wayne, Indiana 46802–1804.

Town of Leo-Cedarville

Maps available for inspection at the Leo-Cedarville Town Office, 14435 State Road One, Leo, Indiana.

Send comments to Ms. Jann Linn, President of the Leo-Cedarville Town Council, P.O. Box 408, Leo, Indiana 46765.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 2, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–17271 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH00

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for *Deinandra conjugens* (Otay tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for *Deinandra conjugens* (Otay tarplant). We are also providing notice of the reopening of the comment period to allow for all interested parties to submit written comments on the draft economic analysis, and the proposed designation. Comments previously received need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final rule.

DATES: The original public comment period on the critical habitat proposal closed on August 13, 2001. The comment period is reopened and we will accept comments until August 9, 2002. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760–431–9440; facsimile 760–431–5902).

SUPPLEMENTARY INFORMATION:

Background

Deinandra conjugens (Otay tarplant) was known as *Hemizonia conjugens* when it was listed on October 13, 1998 (63 FR 54938). Since then, studies analyzing plant and flower morphology and genetic information prompted Baldwin (1999) to revise the Madiinae (tarplants), a tribe in the Asteraceae (sunflower family), and to reclassify several species into new or different genera. As a result, *Deinandra conjugens* is now the accepted scientific name for *Hemizonia conjugens*. This taxonomic change does not alter the limits or definition of *D. conjugens*. Because this taxonomic change was published and is generally accepted by the scientific community, we have proposed to change the name of *H. conjugens* to *D. conjugens* in 50 CFR 17.12(h) in our proposed critical habitat designation, and will use *D. conjugens* in this notice.

Deinandra conjugens was first described by David D. Keck (1958) as *Hemizonia conjugens* based on a specimen collected by L.R. Abrams in 1903 from river bottom land in the Otay Valley area of San Diego County, California. *Deinandra conjugens* is a glandular, aromatic annual of the Sunflower Family (Asteraceae). It has a branching stem that generally ranges from 5 to 25 centimeters (2 to 10 inches) in height with deep green or gray-green leaves covered with soft, shaggy hairs. The yellow flower heads are composed of 8 to 10 ray flowers and 13 to 21 disk flowers with hairless or sparingly downy corollas (fused petals). The phyllaries (small bracts associated with the flower heads) are ridged and have short-stalked glands and large, stalkless, flat glands near the margins. *Deinandra conjugens* occurs within the range of *D. fasciculata* [=*Hemizonia fasciculata*] (fasciculated tarplant) and *D. paniculata* [=*H. paniculata*] (San Diego tarplant). *Deinandra conjugens* can be distinguished from other members of the genus by its ridged phyllaries, black anthers (part of flower that produces pollen), and by the number of disk and ray flowers.

Based on information from herbarium records at the San Diego Natural History Museum (SDNHM) and CNDDB (2000) records, *Deinandra conjugens* has a narrow geographic distribution. The Service published a final rule on October 13, 1998, listing the species as threatened pursuant to the Endangered Species Act, as amended (Act). Additional information received after the listing indicates that the historical range for *D. conjugens* in San Diego County, California, is from the Mexican border north to Spring Valley and Paradise Valley, a distance of about 24 kilometers (km) (15 miles (mi)), and from Interstate Highway 805 east to Otay Lakes Reservoir, a distance of about 13 km (8 mi). Further, based on these museum and database records, the elevational range for *D. conjugens* appears to be between 25 and 300 meters (m) (80 and 1,000 feet (ft)).

At the time the species was listed as threatened pursuant to the Act, we estimated that 70 percent of the suitable habitat for this species within its known range had been lost to development or agriculture (63 FR 54938). Since 1998, additional habitat has been lost to development (e.g., urban, commercial, industrial, and residential) and agriculture (e.g., grazing, farming). On June 13, 2001, we published a rule in the **Federal Register** (66 FR 32052) proposing to designate approximately 2,685 hectares (6,630 acres) of land in San Diego County, California, as critical habitat for *Deinandra conjugens* pursuant to the Act.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for *Deinandra conjugens* and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above mailing and internet address (see **ADDRESSES** section). We will accept written comments during this reopened comment period. The current comment period on this proposal and draft economic analysis closes on August 9, 2002.

Public Comments Solicited

We will accept written comments and information during this comment period. If you wish to comment, you may submit written comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

(2) You may send comments by electronic mail (e-mail) to: *deco@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please include "Attn: Otay tarplant" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at telephone number 760–431–9440.

(3) You may hand-deliver comments to our Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Copies of the draft economic analysis are available on the Internet at "*http://carlsbad.fws.gov*" or by writing to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

References Cited

A complete list of all references cited in this notice is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Daniel R. Brown (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 16, 2002.

Craig Manson,

Assistant Secretary for Fish Wildlife and Parks.

[FR Doc. 02–17344 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 070102B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before July 25, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Codend Selectivity EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION: NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one commercial vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the Northeast (NE) multispecies days-at-sea (DAS) notification requirements at 50 CFR 648.10(c) and 648.82(a); the Gulf of Maine (GOM) Rolling Closures specified at 50 CFR 648.81; and the NE multispecies minimum mesh size requirements specified for the GOM Regulated Mesh Area at 50 CFR 648.80, for 5 days of at-sea gear testing.

This application for an EFP was submitted by the University of New Hampshire (UNH) Cooperative Extension for research funded through the Northeast Consortium. The applicant proposes to design, develop and test a hydrodynamic trawl-net codend outer ≥cover≥ for use in future, long-term, fishing trawl-net codend selectivity studies in the GOM not to exceed 5 days of at-sea trials. Floats, weights and kites would be positioned outside of the codend to hold a small-mesh net that surrounds the codend. The objective of the research is to develop a design and methodology for collecting fish that would otherwise escape from the codend of a trawl net. This would enable the researchers to quantify the amount of fish that escape and are retained by the codend. The researchers will use alternate tows both with and without the ≥cover≥ to evaluate any differences in fish retention. Also, underwater video

technology will be employed to observe the codend, the ≥cover,≥ and the fish escaping from the codend.

UNH researchers would be aboard the vessel at all times during the experimental work. All undersized fish and/or protected species would be returned to the sea as quickly as possible after measurement and examination. Legal-sized fish that otherwise would have to be discarded amounts of undersized, regulated fish species may sometimes be caught and discarded, despite the use of legal-sized mesh. The successful development of a codend ≥cover≥ would facilitate future, long-term, mesh selectivity studies to determine appropriate codend mesh sizes and shapes in the GOM that reduce the catch of undersized fish, yet still retain legal-sized fish. Improved selectivity of trawl nets could ultimately

this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

Notices

Federal Register

Vol. 67, No. 132

Wednesday, July 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

Dated: July 2, 2002.

Edward C. Cole,

Forest Supervisor, Lassen National Forest.

[FR Doc. 02–17305 Filed 7–9–02; 8:45 am]

BILLING CODE 3410–11–M

portions of sections 2–10, and 15–18, Boise Meridian. It is located entirely within the 6,922-acre Middle Lick subwatershed, and a small portion (4,237 acres) of the Upper Lick

technology will be employed to observe the codend, the ≥cover,≥ and the fish escaping from the codend.

UNH researchers would be aboard the vessel at all times during the experimental work. All undersized fish and/or protected species would be returned to the sea as quickly as possible after measurement and examination. Legal-sized fish that otherwise would have to be discarded would be allowed to be retained and sold. The participating vessel would be required to report all landings in its Vessel Trip Report.This experimental work is important because large amounts of undersized, regulated fish species may sometimes be caught and discarded, despite the use of legal-sized mesh. The successful development of a codend ≥cover≥ would facilitate future, long-term, mesh selectivity studies to determine appropriate codend mesh sizes and shapes in the GOM that reduce the catch of undersized fish, yet still retain legal-sized fish. Improved selectivity of trawl nets could ultimately provide for additional conservation of overfished species, such as GOM cod.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17332 Filed 7–9–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 132
Wednesday, July 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Herger-Feinstein Quincy Library Forest Recovery Plan Amendment

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare a final supplemental environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Lassen National Forest, Plumas National Forest, and Tahoe National Forest will prepare a supplemental environmental impact statement (EIS) in response to a recent United States District Court Decision in *Californians for Alternatives to Toxics* v. *Michael Dombeck No. Civ.* S–00–605 LKK/PAN. This supplemental EIS will address maintenance of defensible fuels profile zones (DFPZs) in the Herger-Feinstein Quincy Library Forest Recovery Act Pilot Project Area.

The Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register**/Vol 66, No. 15, page 42625 on Tuesday, August 14, 2001. The Notice announced that a supplemental draft environmental impact statement was expected to be available for public review and comment in October 2001, and a final environmental impact statement in January 2002. The Notice of Availability of the Draft Supplement was published in the **Federal Register**/Vol 66, No. 194, page 51036 on Friday, October 5, 2001. The Final Supplement is now expected to be available in October 2002.

FOR FURTHER INFORMATION CONTACT: Theresa Frolli, Team Leader, USDA Forest Service, Lassen National Forest, 2550 Riverside Dr. Susanville, CA 97130. Phone number (530) 257–2151.

Dated: July 2, 2002.

Edward C. Cole,

Forest Supervisor, Lassen National Forest.

[FR Doc. 02–17305 Filed 7–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho; Lick Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare the Lick Timber Sale environmental impact statement (EIS). The proposed action in the EIS is to reduce fuels, manage forest vegetation, enhance northern Idaho ground squirrel (NIDGS) habitat, and manage roads. The EIS will analyze the effects of the proposed action and alternatives. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision. The Payette National Forest invites written comments and suggestions on the scope of the analysis and the issues to address.

DATES: Comments must be received in writing by August 12, 2002.

ADDRESSES: Send written comments to Faye L. Krueger, Council District Ranger at P.O. Box 567, Council, Idaho, 83612. Faxes should be sent to 208–253–0109 and e-mails to *fkrueger@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Sam Feider, Team Leader, at the above address, or phone at (208) 253–0100.

SUPPLEMENTARY INFORMATION: The analysis area is about 25 air miles north-northwest of Council, Idaho, in Adams County. The area can be reached by taking Forest Road #002 (Council-Cuprum Road) to Forest Road #143 (Lick Creek Road). The project area consists of National Forest System lands located in Township 20N, Range 2W, in all or portions of sections 9, 10, 15–17, 20–23, and 26–35, Boise Meridian and in Township 19N, Range 2W, in all or portions of sections 2–10, and 15–18, Boise Meridian. It is located entirely within the 6,922-acre Middle Lick subwatershed, and a small portion (4,237 acres) of the Upper Lick subwatershed. The proposed action will be in compliance with the Payette National Forest Land and Resource Management Plan (Forest Plan of 1988), as amended), which provides overall guidance for management of this area.

Purpose and Need for Action

The purpose and need for the proposed action is to: (1) Improve timber stand growth and yield, (2) Reduce the incidence and hazard of insect and disease in timbered stands through harvest and salvage, (3) Reduce the risk of wildland fire to forestland, investments, adjacent private lands, and facilities, (4) Reduce the potential of sediment delivery to Lick Creek and its tributaries from roads, and eliminate roads unneeded for future management, and (5) Enhance suitable habitat for northern Idaho ground squirrels to meet habitat management and recovery plan goals. The proposal has four main objectives it would achieve. It would: (1) Reduce the risk of extreme fire behavior (crown fire) in the Upper Lick Creek and Middle Lick drainages. This in turn would: (a) Reduce the risk that wildfire would damage and/or destroy tree plantations in the project area, thereby maintaining past investments; (b) protect private land investments; (c) provide an area that would allow firefighters to safely suppress an escaped wildfire; and (d) provide a foundation to expand future fuels reduction activities into other portions of the Bear Watershed. (2) Reduce overstocked timber stands and plantations through timber harvest and thinning. This in turn would: (a) improve seral tree species health and decrease opportunities for insect and disease outbreaks, (b) improve tree growth by reducing the competition between trees for sunlight, moisture, and nutrients, (c) reforest with seral tree species, and (d) contribute to the Council District's portion of the Payette National Forest allowable sale quantity. (3) Enhance northern Idaho ground squirrel habitat to facilitate population recovery, and (4) Design a transportation system that responds to human access needs while reducing impacts and improving watershed conditions for

hydrologic function, soil productivity, and fisheries and wildlife habitat. This in turn would: (a) improve the hydrologic function and productivity on soils committed to roads that may no longer be needed for future management, (b) reduce current and potential sediment delivery to streams from roads, especially within Riparian Conservation Areas (RCAs), (c) reduce overall road densities, especially in pine or Douglas-fir. (b) Reintroduce fire following thinning to rejuvenate the herbaceous vegetation. (c) Install temporary fencing around the area to exclude cattle and hasten recovery. (4) Manage Roads—(a) Construct 4.0 miles of new roads (close following project implementation), and decommission 26.6 miles of existing roads (8.9 miles of classified roads and 17.7 miles of non-classified roads). (b) Close year-round

meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016,

Idaho for a business meeting. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Randy Swick, McCall District Ranger and Designated Federal Officer, at (208) 634–0400.

SUPPLEMENTARY INFORMATION: The business meeting on July 25th, begins at 10:30 a.m., at the American Legion Hall, Cascade, Idaho. Agenda topics will

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Intertie Project; Notice of Availability of a Final Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a final environmental impact statement.

alternative technologies and the no-action alternative.

Notices of availability of the DEIS were published in the **Federal Register** on October 3, 2001 (66 FR 50396) by RUS and on October 5, 2001 (66 FR 51036) by EPA. The 60-day comment period on the DEIS ended on December 5, 2001.

As required by Title XI of Alaska National Interest Lands Conservation Act, public hearings were held on the

hydrologic function, soil productivity, and fisheries and wildlife habitat. This in turn would: (a) improve the hydrologic function and productivity on soils committed to roads that may no longer be needed for future management, (b) reduce current and potential sediment delivery to streams from roads, especially within Riparian Conservation Areas (RCAs), (c) reduce overall road densities, especially in landslide prone areas and riparian habitat conservation areas to improve geomorphic integrity and water quality integrity, (d) reduce or improve stream crossings to decrease the "hydrologic connectivity" between roads and streams, (e) improve fish passage at road crossings, (f) avoid management activities that have the potential to increase stream temperatures in Wildhorse River; a downstream 303(d) listed Waterbody, (g) avoid additional cumulative impacts to the Snake River; a downstream 303(d) listed Waterbody, and (h) manage open road densities to maintain the Forest Plan Elk Habitat Effectiveness (EHE) rating in Issue Reporting Area (IRA) 117 to Forest Plan Standards. Within IRA 118, manage open road densities to Forest Plan Standards that occur within the Lick Project Area (approximately ⅓ of IRA 118 overlaps the project area).

Proposed Action

The Proposed Action would reduce fuels, manage forest vegetation, enhance NIDGS habitat, and manage roads. (1) Reduce Fuels—Use mechanical thinning and harvesting, and prescribed fire treatments on approximately 1,200 acres. (2) Manage Forest Vegetation—(a) Use ground-based, skyline, and helicopter yarding systems to harvest timber on approximately 1,438 acres. The harvest prescriptions would encompass 163 acres of reserve tree (retain 3–10 healthy seral trees per acre), 51 acres of shelterwood seed-cut (retain 10–15 healthy seral trees per acre), 999 acres of commercial thin/sanitation salvage, and an additional 233 acres of precommercial thin. Reforestation treatments would include 260 acres, of which approximately 171 acres would require plantation fencing. (b) Reduce generated fuels and/or prepare sites for planting by underburning or piling and burning of logging slash. (3) Enhance Northern Idaho Ground Squirrel Habitat—(a) Use mechanical thinning and prescribed fire on about 225 acres to restore suitable NIDGS habitat to historical conditions. Within the Lick Creek corridor, shade-tolerant conifer tree species (grand fir and to some extent Douglas-fir) would be thinned, while retaining the large, old ponderosa pine or Douglas-fir. (b) Reintroduce fire following thinning to rejuvenate the herbaceous vegetation. (c) Install temporary fencing around the area to exclude cattle and hasten recovery. (4) Manage Roads—(a) Construct 4.0 miles of new roads (close following project implementation), and decommission 26.6 miles of existing roads (8.9 miles of classified roads and 17.7 miles of non-classified roads). (b) Close year-round approximately 12.9 miles of road that are currently open year-round and/or seasonally.

Responsible Official

The responsible official is the Forest Supervisor of the Payette National Forest.

Scoping Process

Public notices have been placed in local and regional newspapers. A public meeting is anticipated to occur following issuance of the draft EIS. The meeting will be announced in the Payette National Forest's newspaper of record, the Idaho Statesman, Boise, Idaho.

Preliminary Issues

The proposed action may generate six preliminary issues. [We pay for Federal Register notices, and long ones get expensive. We rarely get comments about issue background statements appearing in Federal Register notices. I would abbreviate and save govt. money as follows.] (1) Effects on Water Quality. (2) Effects on Fisheries (3) Effects on Wildlife Habitat. (4) Effects on Noxious Weeds. (5) Effects on Recreation. (6) Effects of Road Construction and Decommissioning.

Design features for the Proposed Action will help reduce or eliminate other possible impacts (visual resource, heritage resources, water quality, soils, fisheries, wildlife, etc.).

Early Notice of Importance of Public Participation in Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 3, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–17302 Filed 7–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Cascade, ID Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Thursday, July 25, 2002 in Cascade, Idaho for a business meeting. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Randy Swick, McCall District Ranger and Designated Federal Officer, at (208) 634–0400.

SUPPLEMENTARY INFORMATION: The business meeting on July 25th, begins at 10:30 a.m., at the American Legion Hall, Cascade, Idaho. Agenda topics will include review and approval of project proposals, and an open public forum.

Dated: July 1, 2002.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 02–17220 Filed 7–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, Idaho, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, July 25, 2002 (The date of June 25, 2002 for this meeting, published on July 2, 2002, was incorrect) in Elk City, Idaho for a business meeting. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

SUPPLEMENTARY INFORMATION: The business meeting on July 25 begins at 2 p.m., at the Elk City Forest Service Ranger Station, Elk City, Idaho. Agenda topics will include review FY03 work plans. A public forum will begin at 3 p.m. (PST).

Dated: July 1, 2002.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 02–17252 Filed 7–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Intertie Project; Notice of Availability of a Final Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a final environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has released for public review the Final Environmental Impact Statement (FEIS) for the Southern Intertie Project. The project, being proposed by the Intertie Participants Group (IPG), is the construction of a 138 kilovolt (kV) transmission line between the Kenai Peninsula and Anchorage, Alaska. The RUS is the lead Federal agency in the environmental review process. The U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (USACE) are serving as cooperating agencies.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, USDA Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1784, fax (202) 720–0820. The E-mail address is: *lwolfe@rus.usda.gov*.

SUPPLEMENTARY INFORMATION: The IPG has proposed a new 138 kV transmission line in order to improve the overall Railbelt electrical system reliability and energy transfer capabilities between the Kenai Peninsula and Anchorage. The IPG proposed alternative, the Enstar Route, would connect the Soldotna Substation on the Kenai Peninsula with the International Substation in Anchorage. This alternative would parallel the Enstar Pipeline through the Kenai National Wildlife Refuge (KNWR). The environmentally preferred alternative, the Tesoro Route, would connect the Bernice Lake Substation on the Kenai Peninsula with the Pt. Woronzof Substation in Anchorage. This alternative would parallel the Tesoro Pipeline from the Captain Cook State Recreational Area to Pt. Possession. The Draft Environmental Impact Statement (DEIS) analyzed the potential impacts of constructing and operating a 138 kV transmission line along both the Enstar and Tesoro Routes. The DEIS also evaluated a number of routing alternatives and related system improvements between the proposed substation connections, in addition to alternative technologies and the no-action alternative.

Notices of availability of the DEIS were published in the **Federal Register** on October 3, 2001 (66 FR 50396) by RUS and on October 5, 2001 (66 FR 51036) by EPA. The 60-day comment period on the DEIS ended on December 5, 2001.

As required by Title XI of Alaska National Interest Lands Conservation Act, public hearings were held on the DEIS in the District of Colombia on October 30, 2001, and within the State of Alaska, in Anchorage, on November 13, 2001, and in Soldotna, on November 14, 2001.

Public testimony at the three hearings was received from 12 persons. During the 60-day comment period, a total of 102 different comment letters were received from Federal, State, and municipal agencies, businesses, native corporations, non-profit organizations, and individuals. Two of the letters were e-mail form letters signed by 158 and 907 individuals, respectively, and one letter was in petition format with 12 signatures. The actual number of commentors was 1,174.

The FEIS incorporates information received on the DEIS and consists of two volumes. Volume I consists of an expanded Project Summary, responses to comments, including copies of the original correspondence, supplemental information, and corrections to the DEIS. The USFWS Compatibility Determination and the USACE Draft Evaluation of the Section 404(b)(1) Permit Application are appended to this volume. Volume II consists of the mitigation plan that was developed to either eliminate or minimize impacts associated with the construction and operation the proposed project utilizing either the Enstar or Tesoro Routes.

Copies of the FEIS have been sent to agencies, organizations, and individuals that received the DEIS. Additional copies of the FEIS are available for public review at the following public libraries in Anchorage: Z.J. Loussac Public Library; Chugiak-Eagle Public Library; Gerrish (Girdwood) Branch Library; Mountain View Branch Library; Muldoon Branch Library; and the Samson-Dimond Public Library. Copies will also be available for review at the following libraries on the Kenai Peninsula: Hope Community Library; Cooper Landing Community Library; Soldotna Public Library; and Kenai Community Library. In Washington, DC, copies are available for review at RUS offices. The FEIS is available online at *http://www.usda.gov/rus/water/ees/eis.htm*.

The FEIS is an informational document only. The purpose of the FEIS is to provide the public and decision makers' information on the potential environmental effects of the alternatives under consideration. The RUS, along with the USFWS and USACE, will consider information contained in the FEIS in rendering their respective decisions, which will be published in each agency's respective Record of

Frequency: Three times per year, during summer, fall and spring sessions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

Background

washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

successive review periods from October 1, 1993, through September 30, 2000, we determined that Hangzhou and its predecessor, ZWG, merited a separate rate. We found, in each review, an absence of government control, both in law and in fact, with respect to Hangzhou's export activities according to the criteria identified in *Sparklers*, and an absence of government control with respect to the additional criteria

773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country factors-of-production prices to determine NV, section 773(c)(4) of the Act requires that the Department use values from a market economy (surrogate) country that 1) is at a level of economic development comparable to that of the PRC, and 2) is a significant producer of comparable merchandise.

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The FEIS is an informational document only. The purpose of the FEIS is to provide the public and decision makers' information on the potential environmental effects of the alternatives under consideration. The RUS, along with the USFWS and USACE, will consider information contained in the FEIS in rendering their respective decisions, which will be published in each agency's respective Record of Decision (ROD). A copy of the RUS ROD will be available online at the previously identified web site. A notice of availability of the ROD will be published in the **Federal Register** and in local Alaska newspapers.

Dated: July 1, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–17326 Filed 7–9–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary.

Title: DOC Postsecondary Internship Program Intern Evaluation Survey.

Form Number(s): CD–577.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 75.

Number of Respondents: 150.

Average Hours Per Response: 30 minutes.

Needs and Uses: The Office of Executive Budgeting and Assistance Management (OEBAM) manages the U.S. Department of Commerce (DOC) Postsecondary Internship Program. The program is competitively awarded and funded by cooperative agreements with the purpose of providing experiential training opportunities for postsecondary students at DOC and other partner federal agencies. The program is administered through a partnership between DOC and non-profit and/or educational institutions. The information collected from the survey will assist in program improvements and implement performance measures for strategic planning.

Affected Public: Individuals or households, not-for-profit institutions.

Frequency: Three times per year, during summer, fall and spring sessions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by July 25, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 3, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17267 Filed 7–9–02; 8:45 am]

BILLING CODE 3510–BV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: We preliminarily find that helical spring lock washers from the People's Republic of China are not being sold in the United States below normal value by the Hangzhou Spring Washer Plant (also known as Zhejiang Wanxin Group, Ltd.). Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 10, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Hastings, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3464.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

Background

On October 19, 1993, the Department published the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) (58 FR 53914). The Department notified interested parties of the opportunity to request an administrative review of this order on October 1, 2001 (66 FR 49923). The petitioner, Shakeproof Assembly Components Division of Illinois Tool Works, Inc., requested that the Department conduct an administrative review of Hangzhou Spring Washer Plant (also known as Zhejiang Wanxin Group Co. Ltd. (ZWG)), the predecessor firm to Hang Zhou Spring Washer Co., Ltd. (collectively Hangzhou), on October 30, 2001. The notice of initiation of this administrative review was published on November 21, 2001 (66 FR 58432).

On February 15, 2002, the petitioner timely requested verification for "good cause" pursuant to 19 CFR 351.307(b)(iv). On March 8, 2002, Hangzhou responded to the Department's January 4, 2002, questionnaire. The Department, on April 18, 2002, provided parties with an opportunity to submit information regarding appropriate surrogate values. On May 9, 2002, both petitioner and Hangzhou submitted surrogate value comments. The Department issued a supplemental questionnaire to Hangzhou on June 3, 2002. Hangzhou submitted its supplemental questionnaire responses on June 17, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

This review covers the period October 1, 2000, through September 30, 2001.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economy countries (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and, 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, 4) whether each exporter has autonomy from the government regarding the selection of management. (*See Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589.)

In each of the previous administrative reviews of the antidumping duty order on HSLWs from the PRC, covering successive review periods from October 1, 1993, through September 30, 2000, we determined that Hangzhou and its predecessor, ZWG, merited a separate rate. We found, in each review, an absence of government control, both in law and in fact, with respect to Hangzhou's export activities according to the criteria identified in *Sparklers*, and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. During this period of review (POR), we have no evidence of any change in either the *Sparklers* or *Silicon Carbide* criteria. Therefore, we have assigned Hangzhou a separate rate.

Export Price

Because Hangzhou sold the subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the FOB price to unaffiliated purchasers. From this price, we deducted amounts for foreign inland freight, and brokerage and handling pursuant to section 772(c)(2)(A) of the Act. We valued these deductions using surrogate values. We selected India as the primary surrogate country for the reasons explained in the "Normal Value" section of this notice.

Normal Value

The Department has determined the PRC to be an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC HSLW industry is a market-oriented industry and, consequently, we have no basis to determine that the information in this review would permit the calculation of normal value (NV) using PRC prices or costs. Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Therefore, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country factors-of-production prices to determine NV, section 773(c)(4) of the Act requires that the Department use values from a market economy (surrogate) country that 1) is at a level of economic development comparable to that of the PRC, and 2) is a significant producer of comparable merchandise. We have determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are market economy countries at a comparable level of economic development to that of the PRC. (*See* Memorandum to Susan Kuhbach from Jeff May, dated April 11, 2002, "Eighth Administrative Review for Certain Helical Spring Lock Washers from the People's Republic of China," which is available in the Public File in the Central Records Unit in the main Commerce Building (CRU)). In addition, India and Indonesia are significant producers of comparable merchandise. The regulations at 19 CFR 351.408(c)(2) state that the Secretary normally will value all factors in a single surrogate country (emphasis added). However, when a FOP value from the primary surrogate country is aberrational or unreliable, we may use a publicly available value from another appropriate surrogate country. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Result s of 1998–1999 Administrative Review, and Determination Not To Revoke Order in Part*, 66 FR 1953, (January 10, 2001), and the accompanying *Decision Memorandum* at Comment 10, which is available in the Public File of the CRU. As in the investigation and seven previous reviews, we have chosen India as the primary surrogate country. We have used Indian prices to value the factors of production except where 1) a meaningful amount of the factor was purchased from a market economy supplier and paid for in a market economy currency, or 2) the Indian price for a factor was aberrational and unreliable.

We selected, where possible, publicly available values from India which were: (1) average non-export values; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and, (4) tax-exclusive. We valued the factors of production as follows:

• A meaningful amount of the input carbon steel wire rod was purchased from the United Kingdom, a market economy supplier, and paid for in a

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market economy currency. Pursuant to 19 CFR 351.408(c)(1), we valued this factor using the price paid to the market economy supplier. Thus, for carbon steel wire rod values, we used the average cost per metric ton of carbon steel wire rod imported from the United Kingdom by Hangzhou during the POR. We made adjustments to account for the freight costs incurred between the port and Hangzhou.

• To value the scrap steel sold by Hangzhou, we used per kilogram values obtained from the *Monthly Statistics of the Foreign Trade of India - Imports* (*MSFTI*) as a by-product offset.

• To value hydrochloric acid used in both the production and plating processes, we used per kilogram values for imports into Indonesia obtained from the Indonesian *Badan Pusat Stastisik*. We rejected the Indian import values as we did in the most recent review because the values were aberrational. *See Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of the Antidumping Duty Administrative Review*, 67 FR 8520 (February 25, 2002) (*HSLWs–7*).

• To value other chemicals used in the production and plating processes of HSLWs, we used per kilogram import values obtained from *MSFTI* and the Indian publication *Chemical Weekly*. We adjusted these values, where appropriate, to reflect inflation using the Wholesale Price Index (WPI) as reported in the *International Financial Statistics* published by the International Monetary Fund (IMF). We also adjusted these values to account for freight costs incurred between the supplier and Hangzhou.

• To value coal, we used a per kilogram value obtained from the *MFSTI*. We adjusted this value to reflect inflation using the WPI published by the IMF. We also made adjustments to account for freight costs incurred between the supplier and Hangzhou.

• To value electricity, we used the electricity price data from *Energy Data Directory and Yearbook (1999/2000)* published by the Tata Energy Research Institute. We adjusted the value to reflect inflation using the electricity sector-specific inflation index published in the *Reserve Bank of India (RBI) Bulletin*.

• To value water, we used the *Second Water Utilities Data Book for the Asian and Pacific Region* published by the Asian Development Bank in 1997. We adjusted the value to reflect inflation using the WPI published by the IMF.

• For labor, we used the regression-based wage rate for the PRC in "Expected Wages of Selected NME Countries," located on the Internet at http://ia.ita.doc.gov.wages/99wages/htm. Because of the variability of wage rates in countries with similar per capita gross domestic products (GDP), 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. The source for the regression wage rates is "Expected Wages of Selected NME Countries - 1999 Income Data," *Year Book of Labour Statistics 1999*, International Labour Office, (Geneva: 2000).

• For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from the January, 1997 *RBI Bulletin* for the Indian industry group "Processing and Manufacturing: Metals, Chemicals, and Products Thereof." From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs, SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture), and the profit rate as a percentage of the cost of manufacture plus SG&A.

• For packing materials, we used the per kilogram values obtained from the *MFSTI*. Where necessary, we adjusted these values to reflect inflation using the WPI published by the IMF. We also made adjustments to account for freight costs incurred between the PRC supplier and Hangzhou.

• To value foreign brokerage and handling, we used information reported in the *New Shipper Review for Stainless Steel Wire Rod from India*, 66 FR 27629 (May 18, 2001). See Meltroll Engineering Pvt. Ltd.'s submission dated September 12, 1999. We adjusted this value to reflect inflation using the WPI published by the IMF.

• To value truck freight, we used November 1999 price quotes which were obtained by the Department in India and used in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) (*Bulk Aspirin from the PRC*) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the PRC; Final Results of 1999–2000 Administrative Review, Partial Rescission of the Review , and Determination Not to Revoke the Order in Part*, 66 FR 57420 (November 15, 2001) (*TRBs–13*).

• To value rail freight, we used November 1999 rail freight price quotes obtained by the Department and used in *Bulk Aspirin from the PRC and TRBs–13*.

• To value shipping freight, we used a rate reported in a July 14, 1997, letter from the Inland Waterways of India which was used in *HSLWs–7*. We adjusted the rate to reflect inflation using the WPI published by the IMF.

For a complete description of the factor values used, see "Memorandum to File: Factor Values Used for the Preliminary Results of the Eighth Administrative Review," dated July 3, 2002 (Factors Memorandum), a public version of which is available in the Public File of the CRU.

Verification

Because the Department verified Hangzhou's information in the 6th administrative review for the POR from October 1, 1998, through September 30, 1999, we are not, absent a showing of good cause, statutorily required to verify Hangzhou's response in this review. (*See* Section 782(i)(3)(B) of the Act and 19 CFR 351.307(b)(iv)). The focus of petitioner's alleged "good cause" verification request is on Hangzhou's importation of steel from a market economy country that is used in the production of the subject merchandise. Hangzhou, however, provided the requested information regarding its steel purchases from a market economy supplier in its June 17, 2002, supplemental response. When verifications were conducted in previous reviews, we examined and verified the accuracy of Hangzhou's steel import information. Essentially, the petitioner makes the same arguments for a "good cause" verification that it has made in the past when the Department has conducted verifications of Hangzhou's steel imports. Petitioner has not presented any information to the Department for purposes of this review that causes us to question the validity of the information Hangzhou has submitted regarding its purchase of steel from a market economy supplier. Therefore, the Department has determined that the petitioner has not shown "good cause" to verify Hangzhou's information in this review.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time Period	Margin (percent)
Hang Zhou Spring Washer Co. Ltd./. Zhejiang Wanxin. Group Co., Ltd	10/1/00–9/30/01	0

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. If these preliminary results are adopted in our final results, we will direct Customs to liquidate the entries made during the POR without regard to antidumping duties. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following cash deposit rates will be effective upon publication of the final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for Hangzhou, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and, (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

Pursuant to 19 CFR 351.24, the Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of any public announcement, or, if there is no public announcement, within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the date of publication of this notice (*See* 19 CFR 351.310). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (see below). According to 19 CFR 351.309, interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such briefs or hearing, within 120 days of publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 3, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17353 Filed 7–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062802B]

Marine Mammals; File No. 738–1454–04

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Ms. Carole Conway, Genomic Variation Laboratory, Department of Animal Science, Meyer Hall, University of California, Davis, CA 95616–3322, has been issued a minor amendment to scientific research Permit No. 738–1454–03.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing endangered and threatened marine species(50 CFR parts 222–226).

This amendment extends the expiration date for the importation and exportation of blue whale (*Balaenoptera musculus*) samples from June 30, 2002, to May 31, 2003.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 28, 2002.

Jill Lewandowski,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–17331 Filed 7–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel & Readiness).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following

proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the

qualification period." This qualification period begins on the date of retirement and ends on the date the retired member would have attained 20 years of creditable service for retirement purposes. This information collection is needed to provide certification of a member's full-time public and/or community service employment by a registered public or community service

certified forms to DMDC. Once final validation has been completed, the DMDC will transmit the data to either the Defense Finance and Accounting Service (DFAS) or the Coast Guard Finance Center for update of final pay information files. The forms will be maintained by the DMDC for a period of 5 years after the last day of the enhanced retirement qualification

clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 9, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0071]

Federal Acquisition Regulation;

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated

proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 9, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), (Force Management Policy/Military Personnel Policy/Compensation), ATTN: Lt Col Bob Rennicker, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection information, please write to the above address or call 703–697–3793.

Title, Associated Form, and OMB Control Number: Validation of Public or Community Service Employment Performed by Retired Personnel Retired Under the Temporary Early Retirement Authority (TERA) for Increased Retirement Compensation, DD Form 2676, OMB Number 0704–0357.

Needs and Uses: This information collection requirement is necessary to validate the public service or community service of military members who retired under the Temporary Early Retirement Authority. The Military Services and the Coast Guard had the authority until December 31, 2001, to permit early retirement for selected Service personnel with more than 15, but less than 20 years of service. All of these members who retired under Section 4403(a) before the completion of at least 20 years of active duty service may take employment in public or community service, making them eligible for increased early retirement compensation. A retiree may receive service credit for all qualifying periods of employment by a registered public or community service organization during the "enhanced requirement qualification period." This qualification period begins on the date of retirement and ends on the date the retired member would have attained 20 years of creditable service for retirement purposes. This information collection is needed to provide certification of a member's full-time public and/or community service employment by a registered public or community service organization and to recompute the member's retired pay for all qualifying periods of employment.

Affected Public: Individuals; business or other for-profit institutions; and not-for-profit institutions.

Annual Burden Hours: 126.

Number of Respondents: 756.

Responses per Respondents: 1.

Average Burden per Response: 10 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collection is used by all Service personnel retiring early who are potentially eligible for increased retirement compensation from employment with public or community service organizations and employers who are registered public or community service organizations.

During retirement processing conducted by the Services, personnel were advised of the certification process for public or community service employment within the enhanced retirement qualification period. When public or community service employment is found with a registered employing organization, the DD Form 2676, "Validation of Public or Community Service Employment," is completed by both the retiree and the employer. Employers certify full-time, paid employment (full-time employment is defined by the organization concerned, but is typically at least 33 hours per week or 143 hours per month, including paid holidays and paid periods of leave or vacation). The retired personnel then complete their portion of the form and mail the validation form to the Defense Manpower and Data Center (DMDC) for review and processing in a data base designed for this program. To continue to receive credit, retired personnel employed in public or community service organizations submit the completed certified forms to DMDC annually on the anniversary of their retirement date. After the information is processed, DMDC will send retired personnel a statement of their certification account. At the end of the enhanced qualification period, retired personnel submit final completed certified forms to DMDC. Once final validation has been completed, the DMDC will transmit the data to either the Defense Finance and Accounting Service (DFAS) or the Coast Guard Finance Center for update of final pay information files. The forms will be maintained by the DMDC for a period of 5 years after the last day of the enhanced retirement qualification period. When retired personnel reach age 62, the Finance Centers will recomputed retirement benefits, adding whatever public or community service employment was validated during the enhanced retirement qualification period.

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17260 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0107]

Federal Acquisition Regulation; Submission for OMB Review; Notice of Radioactive Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning notice of radioactive materials. A request for public comments was published at 67 FR 6235, February 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 9, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA (202) 202–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

Respondents: 500.

Responses Per Respondent: 5.

Annual Responses: 2,500.

Hours Per Response: 1.

Total Burden Hours: 2,500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated: July 3, 2002.

Jerry Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–17348 Filed 7–9–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0071]

Federal Acquisition Regulation; Submission for OMB Review; Price Redetermination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0071).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning price redetermination. A request for public comments was published in the **Federal Register** at 67 FR 18178 on April 15, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 9, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

Respondents: 3,500.

Responses Per Respondent: 2.

Annual Responses: 7,000.

Hours Per Response: 1.

Total Burden Hours: 7,000.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: July 2, 2002.

Jerry Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–17349 Filed 7–9–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142]

Federal Acquisition Regulation; Information Collection; Past Performance Information

AGENCIES: Department of Defense (DOD), General ServicesAdministration (GSA), and National Aeronautics and SpaceAdministration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17256 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–08–M

U.S.C. 553b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17257 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17258 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17259 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

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ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning past performance information. The clearance currently expires on August 31, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 9, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

B. Annual Reporting Burden

Respondents: 150,000.
Responses Per Respondent: 4.
Annual Responses: 600,000.
Hours Per Response: 2.
Total Burden Hours: 1,200,000.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: July 3, 2002.

Jerry Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–17350 Filed 7–9–02; 8:45 am]

BILLING CODE 6820–EP

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, August 6, 2002.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia .

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. this opt-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17256 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–06–M

Change of Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, July 25, 2002.

ADDRESSES: The meeting will be held at the Seaside Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. the microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17257 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, July 23, 2002.

ADDRESSES: The meeting will be held at Palisades Institutes for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17258 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, July 24, 2002.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories, The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 3, 2002.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17259 Filed 7–9–02; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).
Date(s) of Meeting: 14–25 July 2002.
Times(s) of Meeting: 0900–1700.
Place: Irvine, California.

1. AGENDA: The Army Science Board FY02 Summer Study on "Ensuring the Financial Viability of the Objective Force" is holding a 2002 Summer Study Report Writing Session. The Session will be held at the Arnold and Mabel Beckman Center of the National Academies of Sciences and Engineering in Irvine, CA. The Session will begin at 0900 hours on July 14, 2002 and will end at approximately 1700 hours on July 25, 2002. For further information/registration, please contact the Army Science Board—703–604–7461.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 02–17459 Filed 7–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; JT USA, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to JT USA, Inc. a revocable, non-assignable, exclusive license to practice in the United States, the Government-owned invention described in U.S. Patent No. 6,145,441, entitled "Frangible Payload Dispensing Projectile," issued November 14, 2000, Navy Case No. 78,561.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Coastal Systems Station, Dahlgren Div, NSWC, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646, fax (850)

DEPARTMENT OF ENERGY

Interim Management of Nuclear Materials

AGENCY: Department of Energy.

ACTION: Supplemental record of decision.

SUMMARY: On December 12, 1995, the U.S. Department of Energy (DOE) issued a Record of Decision (ROD) and Notice

Room 2418, Aiken, South Carolina 29802, (800) 881–7292. Internet: *drew.grainger@srs.gov*.

For further information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

IMNM RODs include decisions to undertake stabilization and processing actions for all ten nuclear material types categorized as "Candidates for Stabilization" and "Programmatic." DOE decided to continue existing actions for the "Stable" nuclear material category.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives [60 FR 65300,

often by several orders of magnitude, applicable standards and existing regulatory permits for the SRS facilities. DOE expects minimal impacts from any of these releases. Similarly, for any of the IMNM EIS alternatives, potential transuranic waste, mixed hazardous waste, and low-level solid waste generated would be handled by existing waste management (treatment, storage, and disposal) facilities at the SRS.

subsequent sludge batch, thereby bypassing the Tank Farm.

For that portion of the H-Canyon plutonium solutions managed under this approach, implementation of the Processing and Storage for Vitrification in the Defense Waste Processing Facility alternative would avoid the impacts of processing the solutions through HB-Line, and the impacts of the subsequent packaging and storage of the resultant

ADDRESSES: Written objections are to be filed with Coastal Systems Station, Dahlgren Div, NSWC, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646, fax (850) 235–5497, or E-Mail at *gilbertha@ncsc.navy.mil*.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 25, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–17254 Filed 7–9–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; SeliCor, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to SeliCor, Inc., a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent No. 6,094,599 issued 25 July 2000, entitled "RF Diathermy and Faradic Muscle Stimulation"; in the field of Body-Friendly Radio-Frequency (RF) warming devices.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: June 20, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–17253 Filed 7–9–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Interim Management of Nuclear Materials

AGENCY: Department of Energy.

ACTION: Supplemental record of decision.

SUMMARY: On December 12, 1995, the U.S. Department of Energy (DOE) issued a Record of Decision (ROD) and Notice of Preferred Alternatives, 60 FR 65300 (December 19, 1995), for the final environmental impact statement, Interim Management of Nuclear Materials (IMNM EIS) (DOE/EIS–0220, October 1995), at the Savannah River Site (SRS), Aiken, South Carolina. As part of that ROD, DOE decided to stabilize plutonium-239 solutions stored in H-Canyon by one of three methods: processing to metal in FB-Line, processing to oxide in H-Area facilities, or vitrification in F-Canyon. In that same ROD, the Department announced that "a subsequent Record of Decision will be issued to specify the final strategy for stabilizing the plutonium-239 solutions" (60 FR 65302). DOE issued a Supplemental ROD on September 6, 1996 (61 FR 48474, September 13, 1996), selecting the Process to Metal alternative for managing the H-Canyon plutonium-239 solutions. DOE subsequently amended this decision (62 FR 61099, November 14, 1997) and instead selected the Process to Oxide alternative for managing these solutions.

Now, after further review of stabilization costs, schedules, and program requirements, DOE has decided to implement the Processing and Storage for Vitrification in the Defense Waste Processing Facility alternative as well as the Process to Oxide alternative previously selected for the management of the H-Canyon plutonium solutions. The environmental impacts of the newly-selected alternative were analyzed in the IMNM EIS. This alternative includes the transfer of the solutions to the SRS high-level waste (HLW) system, vitrification of the liquid HLW in the Defense Waste Processing Facility, and storage of the resultant canisters in appropriate waste storage facilities at the SRS pending disposal in a geologic repository.

FOR FURTHER INFORMATION: For further information on the interim management of nuclear materials at the SRS, to receive a copy of the final IMNM EIS or the IMNM ROD(s), contact: Andrew R. Grainger, National Environmental Policy Act (NEPA) Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 730B, Room 2418, Aiken, South Carolina 29802, (800) 881–7292. Internet: *drew.grainger@srs.gov*.

For further information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

NEPA Reviews and Decisions

The U.S. Department of Energy (DOE) prepared a final environmental impact statement, Interim Management of Nuclear Materials (IMNM EIS) (DOE/EIS–0220, October 1995), in accordance with the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations implementing NEPA, and DOE implementing procedures. The IMNM EIS assessed the potential environmental impacts of actions necessary to safely manage nuclear materials at the SRS, near Aiken, South Carolina, until decisions on their future use or ultimate disposition are made and implemented. The IMNM EIS grouped the nuclear materials at the SRS into three categories: Stable, Programmatic (three material types), and Candidates for Stabilization (seven material types). Some of the "Programmatic" and all of the "Candidates for Stabilization" materials could have presented environmental, safety and health vulnerabilities in their then-current storage condition. For materials that could present environmental, safety, or health vulnerabilities within approximately 10 years of the NEPA analysis (performed in 1995), the implementation of the IMNM EIS action alternatives would allow safe storage of plutonium and uranium materials pending decisions and actions on the ultimate disposition of the materials.

The IMNM EIS analyzed several alternatives, including the No Action alternative (Continued Storage), for the interim management of eleven (11) types of nuclear materials at the SRS. All of the alternatives, except No Action, would support DOE's objective of removing nuclear materials from vulnerable conditions and from vulnerable facilities in preparation for facility decontamination and decommissioning. For ten of these material types (all but Stable), DOE evaluated the impacts of the Processing for Storage and Vitrification in the Defense Waste Processing Facility alternative. The previously-issued

IMNM RODs include decisions to undertake stabilization and processing actions for all ten nuclear material types categorized as "Candidates for Stabilization" and "Programmatic." DOE decided to continue existing actions for the "Stable" nuclear material category.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives [60 FR 65300, published December 19, 1995], on the interim management of several categories of nuclear materials at the SRS. As part of that ROD, DOE decided to stabilize plutonium-239 solutions stored in H-Canyon by one of three methods: processing to metal in FB-Line, processing to oxide, or by vitrification in F-Canyon. In that same ROD, DOE announced that a subsequent ROD would be issued to select a final strategy for managing these solutions. Accordingly, DOE issued a Supplemental ROD on September 6, 1996 (61 FR 48474, September 13, 1996), selecting the Process to Metal alternative for managing the H-Canyon plutonium-239 solutions. DOE subsequently amended this decision (62 FR 61099, November 14, 1997) and instead selected the Process to Oxide alternative for managing these solutions.

Potential Environmental Impacts

The IMNM EIS analyzed potential impacts of alternatives for managing all SRS nuclear materials, both those materials that were expected to present environment, safety, or health vulnerabilities, as well as those determined to be stable. Summaries of potential impacts from the alternatives are presented in the IMNM EIS, Table 2–2 through Table 2–12 (pp. 2–48 through 2–58).

The IMNM EIS indicated that there would be minimal environmental impacts from the implementation of any alternative (including stabilization in the Defense Waste Processing Facility) in the areas of geologic, ecological, cultural, aesthetic and scenic resources, noise, and land use. Impacts in these areas would be limited because facility modifications or construction of new facilities would occur within existing buildings or industrialized portions of the SRS. The existing SRS workforce would support any construction projects and other activities required to implement any of the alternatives, and thus negligible socioeconomic impacts would be expected from implementing any of the alternatives.

Emissions of hazardous air pollutants and releases of hazardous liquid effluents from any of the alternatives would be very small and well within, often by several orders of magnitude, applicable standards and existing regulatory permits for the SRS facilities. DOE expects minimal impacts from any of these releases. Similarly, for any of the IMNM EIS alternatives, potential transuranic waste, mixed hazardous waste, and low-level solid waste generated would be handled by existing waste management (treatment, storage, and disposal) facilities at the SRS.

Processing for Storage and Vitrification in the Defense Waste Processing Facility

While the IMNM EIS indicates that potential environmental impacts from any of the nuclear material management alternatives are small, those management alternatives requiring the processing of nuclear material through the large chemical separations facilities (F- or H-Canyon and FB- or HB-Line), or processing plutonium materials for vitrification in the Defense Waste Processing Facility, would have the greatest environmental impacts during the time that dissolving, processing or conversion activities are underway, as compared to the time when these facilities are merely storing nuclear materials. The plutonium within the H-Canyon plutonium solutions had already been dissolved and transferred to storage tanks at the time the IMNM EIS was prepared. The impacts of storage of these solutions were fully evaluated in the IMNM EIS.

The IMNM EIS describes several technical challenges that would have to be overcome in order to stabilize plutonium solutions using the HLW system and the Defense Waste Processing Facility. Since the preparation of the IMNM EIS, technical and operational developments have led DOE to reassess this alternative for the H-Canyon plutonium solutions. As a result, DOE has determined that the two primary challenges described in the IMNM EIS, prevention of nuclear criticality for significant quantities of plutonium solutions, and management of the solutions in the SRS Tank Farm, have now been overcome. Specifically, the reassessment indicates that: (1) Gadolinium is a suitable alternate neutron poison for quantities of plutonium of a criticality concern; (2) gadolinium is compatible with the existing Canyon and HLW processes; (3) very little dilution is expected to be required, so that there would be only a slight increase in the number of waste canisters required to be produced at the Defense Waste Processing Facility; and (4) the transferred plutonium solution could be sent directly from H-Canyon to the Defense Waste Processing Facility feed tank and vitrified with the subsequent sludge batch, thereby bypassing the Tank Farm.

For that portion of the H-Canyon plutonium solutions managed under this approach, implementation of the Processing and Storage for Vitrification in the Defense Waste Processing Facility alternative would avoid the impacts of processing the solutions through HB-Line, and the impacts of the subsequent packaging and storage of the resultant plutonium oxide. Additionally, by vitrifying the plutonium in HLW canisters at the Defense Waste Processing Facility, the plutonium would be stabilized in a form suitable for ultimate disposition in a geologic repository. In the IMNM EIS, DOE evaluated the impacts of the Processing and Storage for Vitrification in the Defense Waste Processing Facility for the H-Canyon plutonium solutions, and found the potential impacts to be similar to the impacts of the Process to Metal or the Process to Oxide alternatives.

Environmentally Preferable Alternative

The IMNM EIS indicated that while certain management alternatives are expected to result in lower environmental impacts than others, a single alternative was rarely estimated to have lower impacts for all environmental factors evaluated by DOE. The health effects from any of the alternatives are all low and well within regulatory limits. In its December 1995 ROD (60 FR 65300), DOE indicated that the environmentally preferable alternative for the H-Canyon plutonium solutions was the "Vitrification (F-Canyon)" alternative. This alternative would have involved use of equipment that would have been installed in a portion of F-Canyon for vitrification of certain programmatic material. However, DOE subsequently cancelled this project (66 FR 55166, November 1, 2001) due to project cost growth and schedule extension. Of the remaining alternatives, DOE believes that the Process to Oxide alternative is the environmentally preferable alternative for the H-Canyon plutonium solutions. The Process to Oxide alternative would result in the smallest health effects and less HLW, low-level radioactive waste, and saltstone waste, although it would result in greater volumes of transuranic and mixed waste than the Processing for Storage and Vitrification in the Defense Waste Processing Facility alternative.

Decision

After review of plutonium stabilization costs, facility operation schedules, and programmatic requirements, including preparation of

material for disposition, DOE is supplementing its November 1997 Supplemental ROD (62 FR 61099) in regard to stabilization of plutonium solutions stored in H-Canyon. DOE will stabilize these solutions using either the Processing and Storage for Vitrification in the Defense Waste Processing Facility alternative, as described and evaluated in the IMNM EIS, or the previously selected Process to Oxide alternative.

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6 p.m. Opening Remarks and Updates

6:15 p.m. Conceptual Design Education Center

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental

- Principles for relating cost and risk to priority
- The effects of funding instability and the five-year funding approach
- INEEL Contractor's responsibilities for community development and planned workforce restructuring
- Several specific initiatives listed on the INEEL Strategic Plan, including the National Security Strategies, the

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection

the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the

material for disposition, DOE is supplementing its November 1997 Supplemental ROD (62 FR 61099) in regard to stabilization of plutonium solutions stored in H-Canyon. DOE will stabilize these solutions using either the Processing and Storage for Vitrification in the Defense Waste Processing Facility alternative, as described and evaluated in the IMNM EIS, or the previously selected Process to Oxide alternative. Under the newly-selected alternative, the solutions will be transferred to the HLW system prior to vitrification with HLW in the Defense Waste Processing Facility.

Using both of these methods will allow DOE to optimize the use of the HB-Line Phase II facility for plutonium-239 and neptunium-237 stabilization. Implementation of this additional management method will reduce the amount of plutonium that would need to be processed to meet the plutonium storage standard (DOE–STD–3013), reduce vault storage space requirements for plutonium and the associated storage container, lower vault surveillance and maintenance costs, and enable the plutonium to be ultimately disposed of in a geologic repository. There is no programmatic need for the plutonium contained in these solutions.

Issued at Washington, DC, June 26, 2002.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 02–17283 Filed 7–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, July 13, 2002, 6 p.m.–9 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Hamilton, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6 p.m. Opening Remarks and Updates

6:15 p.m. Conceptual Design Education Center

7:15 p.m. Draft Report on Public Records Feasibility Study

8:15 p.m. Fernald Performance Management Plan

8:45 p.m. Public Comment

9 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on July 3, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–17284 Filed 7–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Tuesday, July 16, 2002—8 a.m.–6 p.m.,
Wednesday, July 17, 2002—8 a.m.–5 p.m.

Public participation sessions will be held on:

Tuesday, July 16, 2002—12:15–12:30 p.m, 5:45–6 p.m.
Wednesday, July 17, 2002—11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *http://www.ida.net/users/cab/.*)

- State of Idaho and Environmental Protection Agency reactions to the Baseline Risk Assessment and Remedial Investigation for Waste Area Group 7
- Final Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement
- Status report on the cleanup at the Test Area North (including the V tanks)

- Principles for relating cost and risk to priority
- The effects of funding instability and the five-year funding approach
- INEEL Contractor's responsibilities for community development and planned workforce restructuring
- Several specific initiatives listed on the INEEL Strategic Plan, including the National Security Strategies, the Western Regional Fossil Energy Test Facility, the Energy Security Strategies, and whole crop utilization
- The site wide air permit
- Approach and status at Pit 9
- Potential topics for future consideration

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC on July 3, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–17286 Filed 7–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension with revisions under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by August 9, 2002. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (BAllen@omb.eop.gov) is recommended. The mailing address is 726 Jackson Place N.W., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: A copy of the materials submitted to OMB is available at *http://www.eia.doe.gov/cneaf/electricity/page/form_417/form_417.html.* Requests for additional information should be directed to Herbert Miller. To ensure timely receipt of any comments sent to EIA, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. Mr. Miller's mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form EIA–417, "Electric Emergency Incident and Disturbance Report"
2. Energy Assessment/Office of Emergency Management
3. OMB Number 1901–0288
4. Revision and three-year approval requested—The EIA–417 was previously submitted to OMB in March 2002. That request was withdrawn in May to allow additional time for consultations and refinement of the information collection.

Changes to the information collection from the earlier request are:

(a) Who must respond—this section on the form and instructions was changed so that electric utilities would file the form if an incident occurs. The reporting obligation for the utilities that handle reliability authority functions was reduced. All electric utilities, including those that operate Control Area Operator functions and Reliability Authority (RA) functions, will be required to supply information. RA's will not be required to file the number of customers lost and amount of power lost when the incidents occur.

(b) Confidentiality—There will be a pledge of confidentiality for all information supplied on Schedule II and any attachments filed with Schedule II.

(c) For the Preliminary Report (Schedule I), reporting of estimates and "unknown at this time" have been added for many categories.

(d) For the reporting of 50,000 customers or more lost during an outage, it has been clarified that the outage must last longer than an hour.

(e) An option has been granted to permit utilities to file reports of suspected malicious or intentional incidents (physical or cyber/computer/telecom) directly from the divisions in the utilities to the Department.

5. Mandatory
6. Form EIA–417 collects information on electric emergency incidents and disturbances for DOE's use in fulfilling its overall national security and other

energy management responsibilities. The information will also be used by DOE for analytical purposes. All electric utilities, including those that operate Control Area Operator functions and Reliability Authority functions, will be required to supply information when an incident or disturbance meets a reporting threshold.

2. San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Investigation of Practices of the California Independent System Operator and the California Power Exchange, Public Meeting in San Diego, California, Reliant Energy Power

Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company) (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd), and Illinois Power Company (Illinois Power), filed a Memorandum Of Understanding Among And Between PJM Interconnection, L.L.C., National Grid USA, And Participants In The

change in status with respect to each entity's authority to engage in wholesale sales of capacity, energy, and ancillary services at market-based rates with respect to the acquisition by Exelon Generation Company, LLC, of all of the membership interests of Sithe New England Holdings, LLC, and the stock of Sithe AOG Holding # 1, Inc., and Sithe AOG Holding # 2, Inc.

Comment Date: July 17, 2002.

9. Illinois Power Company

[Docket No. ER02–2155–000]

Take notice that on June 26, 2002, Illinois Power Company (Illinois Power), filed a Second Revised Service Agreement for Network Integration Transmission Service with MidAmerican Energy Company.

Illinois Power requests an effective date of June 1, 2002 for the Agreement

13. Illinois Power Company

[Docket No. ER02–2159–000]

Take notice that on June 26, 2002, Illinois Power Company (Illinois Power), filed a Network Integration Transmission Service Agreement with The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc.

Illinois Power requests an effective date of June 1, 2002 for the Agreement

energy management responsibilities. The information will also be used by DOE for analytical purposes. All electric utilities, including those that operate Control Area Operator functions and Reliability Authority functions, will be required to supply information when an incident or disturbance meets a reporting threshold.

7. Business or other for-profit; State, local or tribal government

8. 7,310 hours (3330 respondents × 2.215 hours per response) annually. This burden estimate includes time for training personnel on the reporting requirements.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, July 3, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–17285 Filed 7–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–86–000, et al.]

The AES Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 2, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The AES Corporation, AES Capital Funding, LLC, AES NewEnergy, Inc., Constellation Energy Group, Inc., CEG Acquisition, LLC

[Docket No. EC02–86–000]

Take notice that on June 27, 2002, The AES Corporation, AES Capital Funding, LLC, AES NewEnergy, Inc., Constellation Energy Group, Inc., and CEG Acquisition, LLC tendered for filing with the Federal Energy Regulatory Commission a Joint Application for Expedited Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (2000).

Comment Date: July 18, 2002.

2. San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Investigation of Practices of the California Independent System Operator and the California Power Exchange, Public Meeting in San Diego, California, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C. v. California Independent System Operator Corporation, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Californians for Renewable Energy, Inc. (CARE) v. Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

[Docket Nos. EL00–95–063, EL00–98–052, EL00–107–011, EL00–97–005, EL00–104–010, EL01–1–011, EL01–2–005, and EL01–68–015]

Take notice that on June 24, 2002, the California Independent System Operator Corporation (ISO) submitted a compliance report as required by the Commission's May 15, 2002 "Order Accepting in Part and Rejecting in Part Compliance Filing," 99 FERC ¶ 61,158, issued in the above-referenced dockets. The ISO states that it has served the filing upon all entities that are on the official service lists for the above-referenced dockets.

Comment Date: July 15, 2002.

3. Alliance Companies, et al. and National Grid USA

[Docket No. EL02–65–006]

Take notice that on June 25, 2002, American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company) (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd), and Illinois Power Company (Illinois Power), filed a Memorandum Of Understanding Among And Between PJM Interconnection, L.L.C., National Grid USA, And Participants In The Independent Transmission Company (MOU), including Attachments A and B. The filing is intended to supplement the information provided in the reports filed by AEP, ComEd and Illinois Power on May 28, 2002 in this proceedings.

Comment Date: July 12, 2002.

4. Cleco Power LLC, Dalton Utilities, Entergy Services, Inc., Georgia Transmission Corporation, MEAG Power, Sam Rayburn G&T Electric Coop., Inc., South Carolina Public Service Authority, South Mississippi Electric Power Association, Southern Companies Services, Inc., Tallahassee, City of

[Docket No. EL02–101–000]

Take notice that on June 27, 2002, Cleco Power LLC, Dalton Utilities, Entergy Services, Inc., Georgia Transmission Corporation, MEAG Power, Sam Rayburn G&T Electric Coop., Inc., South Carolina Public Service Authority, South Mississippi Electric Power Association, Southern Companies Services, Inc. and the City of Tallahassee, Florida, tendered for filing with the Federal Energy Regulatory Commission (Commission), a Petition for Declaratory Order pursuant to Rule 207 of the Commission's Rules of practice and procedure (18 CFR 385.207). The Petition for Declaratory order concerns the proposed SeTrans RTO.

Comment Date: July 29, 2002.

5. Sithe Edgar, LLC, Sithe New Boston, LLC, Sithe New Boston, LLC, Sithe Framingham, LLC, Sithe West Medway, LLC, Sithe Wyman, LLC, Sithe Mystic, LLC, Sithe Mystic Development LLC, Sithe Power Marketing, LP, Sithe Fore River Development, LLC, Exelon Generation Company, LLC, PECO Energy Company, Commonwealth Edison Company, Exelon Energy Company, AmerGen Energy Company, LLC, AmerGen Vermont, LLC, Unicom Power Marketing, Inc.

[Docket Nos. ER00–3691–003, ER01–42–003, ER99–2404–002, ER02–41–002, ER00–3251–004, ER96–641–001, ER98–1734–005, ER01–1919–001, ER99–754–007, ER00–1030–004, and ER97–3954–015]

Take notice that on June 26, 2002, the captioned utilities filed a notification of change in status with respect to each entity's authority to engage in wholesale sales of capacity, energy, and ancillary services at market-based rates with respect to the acquisition by Exelon Generation Company, LLC, of all of the membership interests of Sithe New England Holdings, LLC, and the stock of Sithe AOG Holding # 1, Inc., and Sithe AOG Holding # 2, Inc.

Comment Date: July 17, 2002.

6. Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP (collectively the Wildflower Entities")

[Docket No. ER02–763–002]

Take notice that on June 26, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) submitted their filing in compliance with the directives of the Commission in a letter order dated June 11, 2002 in the above-captioned dockets.

Comment Date: July 17, 2002.

7. Nevada Power Company

[Docket No. ER02–1402–001]

Take notice that on June 26, 2002, Nevada Power Company tendered for filing its compliance filing making the changes to the executed Interconnection and Operation Agreement between Nevada Power Company and Reliant Entergy Bighorn, LLC required by the Commission's May 23rd letter order in this docket.

Comment Date: July 17, 2002.

8. New England Power Pool

[Docket No. ER02–2154–000]

Take notice that on June 26, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include FPL Energy Seabrook, LLC (FPLE Seabrook), and to terminate the membership of The New Power Company (NewPower). The Participants Committee requests an effective date for commencement of participation in NEPOOL by FPLE Seabrook as of the closing date of the sale of the Seabrook Nuclear Generating Station (the "Station") from the Joint Selling Owners of the Station and a June 1, 2002 effective date for the termination of NewPower.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: July 17, 2002.

9. Illinois Power Company

[Docket No. ER02–2155–000]

Take notice that on June 26, 2002, Illinois Power Company (Illinois Power), filed a Second Revised Service Agreement for Network Integration Transmission Service with MidAmerican Energy Company.

Illinois Power requests an effective date of June 1, 2002 for the Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has mailed a copy of the filing to the Transmission Customer.

Comment Date: July 17, 2002.

10. Illinois Power Company

[Docket No. ER02–2156–000]

Take notice that on June 26, 2002, Illinois Power Company (Illinois Power), filed a First Revised Service Agreement for Network Integration Transmission Service with Illinois Municipal Electric Agency.

Illinois Power requests an effective date of June 1, 2002 for the Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has mailed a copy of the filing to the Transmission Customer.

Comment Date: July 17, 2002.

11. Illinois Power Company

[Docket No. ER02–2157–000]

Take notice that on June 26, 2002, Illinois Power Company (Illinois Power), filed a Fifth Revised Network Integration Transmission Service Agreement with Dynegy Power Marketing, Inc.

Illinois Power requests an effective date of June 1, 2002 for the Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has mailed a copy of the filing to the Transmission Customer.

Comment Date: July 17, 2002.

12. Illinois Power Company

[Docket No. ER02–2158–000]

Take notice that on June 26, 2002, Illinois Power Company (Illinois Power), filed a Firm Short-Term Point-to-Point Transmission Service Agreement and a Non-Firm Point-to-Point Transmission Service Agreement entered into with Northern States Power Company.

Illinois Power requests an effective date of June 1, 2002 for the Agreements and seeks a waiver of the Commission's notice requirement. Illinois Power has mailed a copy of the filing to the Transmission Customer.

Comment Date: July 17, 2002.

13. Illinois Power Company

[Docket No. ER02–2159–000]

Take notice that on June 26, 2002, Illinois Power Company (Illinois Power), filed a Network Integration Transmission Service Agreement with The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc.

Illinois Power requests an effective date of June 1, 2002 for the Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has mailed a copy of the filing to the customer.

Comment Date: July 17, 2002.

14. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–2160–000]

Take notice that on June 26, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed First Revised Service Agreement No. 70 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply continues to requests a waiver of notice requirements to maintain the effective date of April 16, 2000 for First Revised Service Agreement No. 70 for service to First Energy Solutions Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment Date: July 17, 2002.

15. Boston Edison Company

[Docket No. ER02–2161–000]

Take notice that on June 26, 2002, Boston Edison Company (Boston Edison) tendered for filing an executed Interconnection Agreement between Boston Edison and the Town of Norwood Municipal Light Department. Boston Edison requests an effective date of the Agreement of May 27, 2002.

Comment Date: July 17, 2002.

16. BP West Coast Products

[Docket No. ER02–2162–000]

Take notice that on June 26, 2002, BP West Coast Products LLC (BP West Coast) submitted for filing a notice of cancellation pursuant to 18 CFR 35.15 to reflect the cancellation of its FERC Electric Tariff, Original Volume No. 1,

with a proposed effective date of June 21, 2002.

Comment Date: July 17, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a limited partnership engaged directly and exclusively in the business of owning and operating an approximately 30 MW wind-powered generation facility located in Culberson County, Texas. Electric energy produced by the facility

filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. SOWEGA owns two 50 MW (nominal summer rating) dual fuel, simple cycle, combustion turbines located in northeast Mitchell County, south of Albany, Georgia on a 34 acre site approximately one mile northeast of

Supplemental Agreement to the Interconnection Agreement between IPL and PSI. The proposed Seventh Amendment provided for the addition of a new interconnection point and a new metering point. However, the proposed Seventh Amendment did not conform with the Commission's requirements regarding the designation of electric rate schedules. Therefore, Cinergy submits the Tenth

Company, LLC (Attala energy) pursuant to which Attala will sell electric wholesale services to Attala Energy at market-based rates according to its FERC Electric Tariff, original Volume No. 1.

Comment Date: July 17, 2002.

11. Pennsylvania Windfarms, Inc.

[Docket No. ER02–2166–000]

Take notice that on June 26, 2002,

Agreement No. 22 to Aquila's Market Based Power Sales Tariff (Aquila FERC Electric Tariff No. 28). The service agreement is a Master Power Purchase and Sale Agreement Confirmation between Aquila and its affiliate Aquila Merchant Services, Inc.

Comment Date: July 17, 2002.

16. Public Service Company of New Mexico

with a proposed effective date of June 21, 2002.

Comment Date: July 17, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17203 Filed 7–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–159–000, et al.]

Delaware Mountain Wind Farm, LP, et al.; Electric Rate and Corporate Regulation Filings

July 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Delaware Mountain Wind Farm, LP

[Docket No. EG02–159–000]

Take notice that on June 26, 2002, Delaware Mountain Wind Farm, LP (the Applicant), with its principal office at National Windpower plc, Riverside House, Meadowbank Furlong Road, Bourne End, Bucks UK—SL8 5AJ, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a limited partnership engaged directly and exclusively in the business of owning and operating an approximately 30 MW wind-powered generation facility located in Culberson County, Texas. Electric energy produced by the facility will be sold at wholesale.

Comment Date: July 24, 2002.

2. Pennsylvania Windfarms, Inc.

[Docket No. EG02–160–000]

Take notice that on June 26, 2002, Pennsylvania Windfarms, Inc. (the Applicant), with its principal office at National Windpower plc, Riverside House, Meadowbank Furlong Road, Bourne End, Bucks UK—SL8 5AJ, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware corporation engaged directly and exclusively in the business of owning and operating an approximately 10.4 MW wind-powered generation facility located in Somerset County, Pennsylvania. Electric energy produced by the facility will be sold at wholesale.

Comment Date: July 24, 2002.

3. Baconton Power LLC

[Docket No. EG02–161–000]

Take notice that on June 26, 2002, Baconton Power LLC , 1499 38th Blvd. N.W., Cairo, Georgia 30093, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Baconton Power LLC owns four 50 MW (nominal summer rating) dual fuel, simple cycle, combustion turbines located in northeast Mitchell County, south of Albany, Georgia on a 34 acre site approximately one mile northeast of Georgia State Highway 93. Baconton Power LLC previously has been determined to be an EWG but seeks a new determination as a result of certain upstream changes in the ownership of Baconton Power LLC.

Comment Date: July 24, 2002

4. SOWEGA Power LLC

[Docket No. EG02–162–000]

Take notice that on June 26, 2002, SOWEGA Power LLC (SOWEGA), 1499 38th Blvd. N.W., Cairo, Georgia 30093, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. SOWEGA owns two 50 MW (nominal summer rating) dual fuel, simple cycle, combustion turbines located in northeast Mitchell County, south of Albany, Georgia on a 34 acre site approximately one mile northeast of Georgia State Highway 93. SOWEGA previously has been determined to be an EWG but seeks a new determination as a result of certain upstream changes in the ownership of SOWEGA's parent, SOWEGA Energy Resources, LLC.

The notification discloses that upstream ownership interests in SOWEGA's parent, SOWEGA Energy Resources LLC (SER) will change as a result of an internal restructuring involving two of SER's owners. SOWEGA states that these upstream changes in ownership do not alter the continued eligibility of SOWEGA for status as an exempt wholesale generator.

Comment Date: July 24, 2002.

5. State of California v. British Columbia Power Exchange Corp., et al.

[Docket No. EL02–71–002]

Take notice that on June 27, 2002, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance filing in accordance with the Order on Complaint issued on May 31, 2002 in the above-captioned proceeding.

Comment Date: July 29, 2002.

6. DTE East China, LLC

[Docket No. ER02–1599–001]

Take notice that on June 27, 2002, DTE East China, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) under Section 205 of the Federal Power Act revised tariff sheets to sell capacity and energy at negotiated rates up to a cost-based ceiling in compliance with the Commission's June 13, 2002 order in the above-captioned docket.

Comment Date: July 18, 2002.

7. Psi Energy, Inc.

[Docket No. ER02–1666–001]

Take notice that on June 27, 2002, Cinergy Services, Inc. (Cinergy), as agent for PSI Energy, Inc. (PSI), tendered for filing the Tenth Supplemental Agreement to the Interconnection Agreement between Indianapolis Power & Light Company (IPL) and PSI.

On April 26, 2002, Cinergy, as agent for PSI, submitted in this Docket the Seventh Amendment to the Ninth Supplemental Agreement to the Interconnection Agreement between IPL and PSI. The proposed Seventh Amendment provided for the addition of a new interconnection point and a new metering point. However, the proposed Seventh Amendment did not conform with the Commission's requirements regarding the designation of electric rate schedules. Therefore, Cinergy submits the Tenth Supplemental Interconnection Agreement which incorporates the proposed Seventh Amendment, replaces the Ninth Supplemental Interconnection Agreement in its entirety and complies with the numbering provisions of Order 614.

Cinergy states that it has served a copy of the filing upon the Indiana Utility Regulatory Commission and Indianapolis Power & Light Company. Consistent with the April 26, 2002 filing in this Docket, Cinergy respectfully requests an effective date of May 1, 2002.

Comment Date: July 18, 2002.

8. California Independent System Operator Corporation

[Docket No. ER02–2163–000]

Take notice that on June 26, 2002, the California Independent System Operator Corporation (ISO) tendered for filing First Revised Service Agreement No. 368 under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Point Arguello Pipeline Company (Point Arguello). The ISO has revised the PGA to update Schedule 1 of the PGA. The ISO requests that the revised PGA be made effective as of June 6, 2002.

The ISO states that this filing has been served on all entities that are on the official service list for Docket No. ER01–1953–000.

Comment Date: July 17, 2002.

9. Maine Public Service Company

[Docket No. ER02–2164–000]

Take notice that on June 26, 2002, Maine Public Service Company (Maine Public) submitted for filing an executed Service Agreement for Network Integration Transmission Service under Maine Public's open access transmission tariff with Eastern Maine Electric Cooperative, Inc.

Comment Date: July 17, 2002.

10. Attala Generating Company, LLC

[Docket No. ER02–2165–00]

Take notice that on June 26, 2002, Attala Generating Company, LLC (Attala) tendered for filing a Power Purchase Agreement for power sales (Agreement) with Attala Energy Company, LLC (Attala energy) pursuant to which Attala will sell electric wholesale services to Attala Energy at market-based rates according to its FERC Electric Tariff, original Volume No. 1.

Comment Date: July 17, 2002.

11. Pennsylvania Windfarms, Inc.

[Docket No. ER02–2166–000]

Take notice that on June 26, 2002, Pennsylvania Windfarms, Inc. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: July 17, 2002.

12. Baconton Power LLC

[Docket No. ER02–2167–000]

Take notice that on June 26, 2002, Baconton Power LLC tendered for filing a Second Amended and Restated Common Bus Common Ownership Agreement with SOWEGA Power LLC. This rate schedule is designated as Second Revised Baconton FERC Rate Schedule No. 1.

Comment Date: July 17, 2002.

13. SOWEGA Power LLC

[Docket No. ER02–2168–000]

Take notice that on June 26, 2002, SOWEGA Power LLC tendered for filing a Second Amended and Restated Common Bus Common Ownership Agreement with Baconton Power LLC. This rate schedule is designated as Second Revised SOWEGA FERC Rate Schedule No. 3.

Comment Date: July 17, 2002.

14. Baconton Power LLC

[Docket No. ER02–2169–000]

Take notice that on June 26, 2002, Baconton Power LLC (Baconton) filed a notice of termination of the First Revised Service Agreement No. 1 under Baconton's FERC Electric Tariff, Volume No. 1, the Amended and Restated Tolling Agreement between Baconton and Coral Power, L.L.C. (Coral). Baconton requests that the termination be made effective on the date Baconton and Coral enter into a new tolling agreement.

Comment Date: July 17, 2002.

15. Aquila, Inc.

[Docket No. ER02–2170–000]

Take notice that on June 26, 2002, Aquila, Inc. d/b/a Aquila Networks-MPS (Aquila), filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, 16 USC 824d, and Part 35 of the Commission's regulations, Service Agreement No. 22 to Aquila's Market Based Power Sales Tariff (Aquila FERC Electric Tariff No. 28). The service agreement is a Master Power Purchase and Sale Agreement Confirmation between Aquila and its affiliate Aquila Merchant Services, Inc.

Comment Date: July 17, 2002.

16. Public Service Company of New Mexico

[Docket No. ER02–2171–000]

Take notice that on June 28, 2002, Public Service Company of New Mexico (PNM) submitted for filing an executed amended and restated control area services agreement with Texas-New Mexico Power Company (TNMP), under the terms of PNM's Open Access Transmission Tariff. The agreement updates provisions of an existing control area services agreement between PNM and TNMP. PNM requests June 1, 2002, as the effective date for the agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to TNMP, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: July 19, 2002.

17. Auburndale Peaker Energy Center, L.L.C.

[Docket No. ER02–2172–000]

Take notice that on June 27, 2002, Auburndale Peaker Energy Center, L.L.C. filed an executed power marketing agreement under which it will make wholesale sales of capacity and electric energy to Calpine Energy Services, L.P. at market-based rates.

Comment Date: July 18, 2002.

18. Entergy Services, Inc.

[Docket No. ER02–2173–000]

Take notice that on June 27, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Louisiana and Occidental Chemical Corporation.

Comment Date: July 18, 2002.

19. Progress Energy, Inc. on behalf of MPC Generating, LLC

[Docket No. ER02–2174–000]

Take notice that on June 27, 2002, MPC Generating, LLC (MPC) tendered for filing an executed Service Agreement between MPC and the following eligible buyer, Progress Ventures, Inc. Service to this eligible buyer will be in accordance with the

terms and conditions of MPC's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

MPC requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the Georgia Public Service Commission.

Comment Date: July 18, 2002.

20. Sierra Pacific Power Company

[Docket No. ER02–2175–000]

Take notice that on June 28, 2002, Sierra Pacific Power Company (Sierra) tendered for filing an Electric Service Agreement (ESA) between Sierra and Pershing County Electric Utility, which serves the Humboldt River Ranches, a residential development located in rural Western Nevada. The ESA is being filed at the request of Sierra and Pershing County.

Sierra has requested that the Commission accept the ESA and permit service in accordance therewith effective January 15, 2002.

Comment Date: July 18, 2002.

21. Southern Company Energy Marketing L.P.

[Docket No. ER02–2176–000]

Take notice that on June 28, 2002, Southern Company Energy Marketing L.P. (Southern Company) tendered for filing the Generator Balancing Service Agreement by and between Duke Energy Trading and Marketing, LLC (Duke) and Southern Companies (the Service Agreement) under Southern Companies' Generator Balancing Service Tariff (FERC Electric Tariff, First Revised Volume No. 9). The Service Agreement supplies Duke with unscheduled energy in connection with

All of the sheets being filed are to become effective January 1, 1999. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: July 29, 2002

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the

Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be

provide Novus Consulting Group access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Novus Consulting Group will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until

terms and conditions of MPC's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

MPC requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the Georgia Public Service Commission.

Comment Date: July 18, 2002.

20. Ameren Services Company

[Docket No. ER02–2176–000]

Take notice that on June 27, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and Edgar Electric Cooperative Association d/b/a EnerStar Power Corp. (EnerStar). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to EnerStar pursuant to Ameren's Open Access Tariff.

Comment Date: July 18, 2002.

21. South Point Energy Center, LLC

[Docket No.ER02–2177–000]

Take notice that on June 27, 2002, South Point Energy Center, LLC filed a Notice of Cancellation of the Direct Power Transaction Confirmation under its market-based rate schedule in the above-referenced docket number, filed on August 20, 2001.

Comment Date: July 18, 2002.

22. Ameren Services Company

[Docket No.ER02–2179–000]

Take notice that on June 27, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service between ASC and Wisconsin Electric Power Company, Weststar Energy and Constellation Power Source (6) (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 18, 2002.

23. Sierra Pacific Power Company

[Docket No. ER02–2180–000]

Take notice that on June 27, 2002, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 205 of the Federal Power Act, an executed Electric Service Agreement (ESA) between Sierra and Pershing County. Under the ESA Sierra will provide wholesale electric service to the Pershing County Electric Utility, which serves the Humboldt River Ranches, a residential development located in rural Western Nevada. The ESA is being filed at the request of Sierra and Pershing County.

Sierra has requested that the Commission accept the ESA and permit service in accordance therewith effective January 15, 2002.

Comment Date: July 18, 2002.

24. Duquesne Light Company

[Docket No. ER02–2181–000]

Take notice that on June 27, 2002, Duquesne Light Company (DLC) filed a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement for Transmission Service dated June 1, 2002 with Orion Power Midwest, L.P. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Orion Midwest, L.P. as a customer under the Tariff. DLC requests an effective date of June 1, 2002 for the Service Agreement.

Comment Date: July 18, 2002.

25. Southern Company Services, Inc.

[Docket No. ER02–2182–000]

Take notice that on June 27, 2002, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Balancing Service Agreement by and between Duke Energy Trading and Marketing, LLC (Duke) and Southern Companies (the Service Agreement) under Southern Companies' Generator Balancing Service Tariff (FERC Electric Tariff, First Revised Volume No. 9). The Service Agreement supplies Duke with unscheduled energy in connection with sales from Duke Energy Sandersville LLC's electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement (No. 9) is dated as of June 5, 2002, and shall terminate upon twelve months prior written notice of either party.

Comment Date: July 18, 2002.

26. Southern Company Services, Inc.

[Docket No. ER02–2183–000]

Take notice that on June 27, 2002, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Balancing Service Agreement by and between Duke Energy Trading and Marketing, LLC (Duke) and Southern Companies (the Service Agreement) under Southern Companies' Generator Balancing Service Tariff (FERC Electric Tariff, First Revised Volume No. 9). The Service Agreement supplies Duke with unscheduled energy in connection with sales from Duke Energy Murray LLC's electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement (No. 8) is dated as of June 5, 2002, and shall terminate upon twelve months prior written notice of either party.

Comment Date: July 18, 2002.

27. WPS Resources Operating Companies

[Docket No. ER02–2184–000]

Take notice that on June 27, 2002, the WPS Resources Operating Companies, on behalf of Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPS Resources) tendered for filing a notice of cancellation and revised service agreement cover sheets (Cancellation Documents) to terminate service agreements between WPS Resources and its customers. The Cancellation Documents are being filed because WPS Resources is no longer providing service under the service agreements.

WPS Resources respectfully requests that the Commission allow the Cancellation Documents to become effective on June 28, 2002, the day after filing. Copies of the filing were served upon all customers under the WPS Resources open access transmission tariff, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: July 18, 2002

28. Consumers Energy Company

[Docket No. OA96–77–002]

Take notice that on June 27, 2002, Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission), the following substitute tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the March 27, 2002 order issued in this proceeding. They are being filed to correct certain errors in the original compliance filing dated May 13, 2002.

Substitute First Revised Sheet Nos. 87 and 89
and Substitute Second
Revised Sheet Nos. 86, 88 and 115.

All of the sheets being filed are to become effective January 1, 1999. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: July 29, 2002

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17364 Filed 7–9–02; 8:45 am]

BILLING CODE 5717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–2002–0019; FRL–7185–5]

Access to Confidential Business Information by Novus Consulting Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Novus Consulting Group of Manassas, VA access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data submitted to EPA under all sections of TSCA occurred as a result of an approved waiver dated May 21, 2002, which requested granting Novus Consulting Group immediate access to all sections of TSCA CBI.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. What Action is the Agency Taking?

Under contract number GS–35F–4120D, Novus Consulting Group of 7221 Gateway Court, Manassas, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in conducting a disaster recovery assessment of the OPPT systems operation and back-up storage process. They will also be reviewing the current process in place for recovering information stored and backed up on the Administrative and CBI LAN.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–4120D, Novus Consulting Group will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

Novus Consulting Group's personnel was given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide Novus Consulting Group access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Novus Consulting Group will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until September 30, 2002.

Novus Consulting Group personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: July 1, 2002.

Allan A. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–17192 Filed 7–9–02; 8:45 am]

BILLING CODE 8560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7243–4]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Cytec Industries, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on no migration petition reissuance.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Cytec Industries, Inc. (Cytec) for five Class I injection wells located at Westwego, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Cytec, of the specific restricted hazardous wastes identified in the exemption, into Class I hazardous waste injection wells Nos. 93–07 WD 1, 93–07 WD 2, 93–07 WD 3, 98–13 WD 4B, and 93–07 WD 5, until

June 30, 2016, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued May 1, 2002. The public comment period closed on June 17, 2002. No comments were received. This decision constitutes

The meeting is open to the public, but seating is limited. For further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: June 26, 2002.

Maryann Froehlich,

Deputy Comptroller.

[FR Doc. 02–17237 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, potentially affect you if you produce, manufacture, use, consume, work with, or import pesticide chemical substances that may have an effect that is cumulative to an effect of a pesticide, or substances found in sources of drinking

open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How Can I Request to Participate in this Meeting?

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on this meeting's topics. The

develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of FACA to advise it on establishing a program to carry out

The objectives of the October 2001 meeting (Docket OPPT–42212D) were for EPA to provide:

1. An overview of EPA's Endocrine Disruptor Program.

2. Background information on test protocol validation and approaches.

3. For the EDMVS to develop a clear understanding of their scope, purpose, and operating procedures.

4. For the EDMVS and the EDSP to determine the next steps

June 30, 2016, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued May 1, 2002. The public comment period closed on June 17, 2002. No comments were received. This decision constitutes final Agency action.

DATES: This action is effective as of June 27, 2002.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Miguel I. Flores,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 02–17243 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7243–6]

Notice of Open Meeting, Environmental Financial Advisory Board, August 19–20, 2002

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in San Francisco, California on August 19–20, 2002. The meeting will be held at the Bankers Club, Bank of America Building, in the Pacific Room. The Monday, August 19 session will run from 9 a.m. to 5 p.m. and the August 20 session will begin at 8:30 a.m. and end at 11:30 am.

EFAB is chartered with providing analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to discuss progress with work products under EFAB's current strategic action agenda and to develop an action agenda to direct the Board's ongoing and new activities. Environmental financing topics expected to be discussed include: cost-effective environmental management; international and energy initiatives; superfund and brownfields initiatives; and public finance issues.

The meeting is open to the public, but seating is limited. For further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: June 26, 2002.

Maryann Froehlich,

Deputy Comptroller.

[FR Doc. 02–17237 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0029; FRL–7186–7]

Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Endocrine Disruptor Methods Validation Subcommittee (EDMVS), a subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT), a Federal Advisory Committee, on July 23–24, 2002. The EDMVS will provide technical advice on screening and testing methods for the Endocrine Disruptor Screening Program (EDSP). This meeting, as with all EDMVS meetings, is open to the public. Seating is on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Jane Smith at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting, so appropriate arrangements can be made.

DATES: The meeting will be held on July 23, 2002, from 9 a.m. to 5:45 p.m. and July 24, from 8:30 a.m. to 12:30 p.m. (eastern daylight time).

ADDRESSES: The meeting will be held at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC. The telephone number for RESOLVE is: (202) 944–2300. The nearest Metro stop is Foggy Bottom.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8476; fax number: (202) 564–8483; e-mail address: smith.jane-scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, potentially affect you if you produce, manufacture, use, consume, work with, or import pesticide chemical substances that may have an effect that is cumulative to an effect of a pesticide, or substances found in sources of drinking water. To determine whether you or your business may be affected by this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Public Law 104–170), 21 U.S.C. 346A(p), and amendments to The Safe Drinking Water Act (Public Law 104–182), 42 U.S.C. 300j-17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page search for "Endocrine Disruptor" which will take you to the OSCP Endocrine Disruptor web site. You can also look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A list of the EDMVS members and meeting materials are available at: http://www.epa.gov/scipoly/oscpendo/edmvs.htm, and in the public Docket.

2. *In person.* The Agency has established an official record for this meeting under docket ID number OPPT–2002–0029. The official record consists of the documents specifically referenced in this notice, any public comments received, and other information related to Endocrine Disruptor Method Validation, including any information claimed as Confidential Business Information (CBI). The public version of the official record is available for inspection in the TSCA Nonconfidential Information Center, North East Mall, Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is

open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How Can I Request to Participate in this Meeting?

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on this meeting's topics. The EDMVS will have a brief period available during the meeting for public comment. It is the policy of the EDMVS to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVS expects that public statements presented at its meetings will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

You may submit a request to participate in the meeting by e-mail, telephone, fax, or in person. We would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, we cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before July 16, 2002. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0029 in the subject line on the first page of your request.

1. *Electronically.* You may submit your request electronically by e-mail to Jane Smith at: smith.jane-scott@epa.gov or to the docket at: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPPT–2000–0029.

2. *By telephone or fax.* Contact Jane Smith, by telephone at (202) 564–8476 or by fax number at (202) 564–8483.

3. *In person or by courier.* You may deliver a request to: OPPT Docket Control Office, North East Mall, Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Docket Office is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Office is (202) 260–7099.

II. Background

A. History

In 1996, through enactment of the Food Quality Protection Act, which amended the Federal Food, Drug, and Cosmetic Act, Congress directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of FACA to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier 1 Screens) and tests (Tier 2 Tests) for determining whether a chemical substance may have an effect similar to that produced by naturally occurring hormones. EPA adopted almost all of EDSTAC's recommendations in the Program that it developed, the Endocrine Disruptor Screening Program (EDSP), to carry out Congress' directive. EDSTAC also recognized that there currently are no validated test systems for determining whether a chemical may have an effect in humans that is similar to an effect produced by naturally occurring hormones. Consequently, EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with, and adhering to the principles of the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM). EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD), Endocrine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest. To ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA recently chartered the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). EDMVS provides independent advice and recommendations to the Agency through NACEPT, on scientific and technical issues related to validation of the EDSP Tier I screens and Tier II tests, including advice on ways to reduce animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate. More information is available on the website: http://www.epa.gov/scipoly/oscpendo/edmvs.htm.

B. Previous Meeting

The EDMVS has met four times since its establishment in September 2001. The objectives of the October 2001 meeting (Docket OPPT–42212D) were for EPA to provide:

1. An overview of EPA's Endocrine Disruptor Program.
2. Background information on test protocol validation and approaches.
3. For the EDMVS to develop a clear understanding of their scope, purpose, and operating procedures.
4. For the EDMVS and the EDSP to determine the next steps.

The objectives of the December 2001 meeting (Docket OPPT–42212E) were for the EDMVS to provide input and advice on:

1. The EDMV'S mission statement and work plan.
2. The *in utero* through lactation assay detailed review paper.
3. The pubertal assay study design for the multi-dose and chemical array protocols.
4. The mammalian 1-generation study design.

The objectives of the March 2002 meeting (Docket OPPT–42212F) were for the EDMVS to provide input and advice on:

1. EDSP's implementation process and practical aspects of validation; the *in utero* through lactation assay protocol.
2. The fish reproduction assay detailed review paper.
3. Special studies on fathead minnow assays, vitellogenin assay, and avian dosing protocol.
4. The aromatase detailed review paper.
5. A proposed standard suite of chemicals for testing in the Tier 1 screening assay.
6. EDSP presenting the current efforts related to evaluating the relevance of animal data to human health.
7. EPA's approach to addressing low dose issues.

The objectives of the June 2002 teleconference/meeting (docket ID number OPPT–2002–0029) was for the EDMVS to provide input and advice on the steroidogenesis detailed review paper.

III. Meeting Objectives for the July 2002 Meeting

The draft objectives of the July 2002 meeting docket ID number OPPT–2002–0029 is for the EDMVS to provide input and advice on:

1. The pubertals - special study: restricted feeding.
2. The mammalian 2-generation PTU special study (Tier II).
3. The amphibian metamorphosis detailed review paper (Tier I).
4. The invertebrate detailed review paper (Tier II).

5. For the EDSP to provide information on:

- Criteria for screens - review of EDSTAC recommendations.
- The ICCVAM-NICEATM expert panel meeting on *in vitro* ER/AR assays.
- An update on core chemicals selected by EDSP.
- General dose setting issues. (Tentative)

discussion of the following: (a) Proposed projects for SAB action in FY2003; (b) Executive Committee Structure; and (c) a briefing on a proposed consultation on data reproducibility as a feature of information disseminated by the Agency.

FOR FURTHER INFORMATION: The agenda for the meeting will be posted on the

Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their

that you identify docket ID number OPP–2002–0120 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740 and e-mail address: giles-parker.cynthia@epa.gov.

action under docket ID number OPP–2002–0120. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well

may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI.

5. For the EDSP to provide information on:

- Criteria for screens - review of EDSTAC recommendations.
- The ICCVAM-NICEATM expert panel meeting on *in vitro* ER/AR assays.
- An update on core chemicals selected by EDSP.
- General dose setting issues.

(Tentative)

List of Subjects

Environmental protection, Endocrine disruptor screening program, Endocrine disruptors.

Dated: July 2, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–17309 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7243–7]

EPA Science Advisory Board Notification of a Change in Public Advisory Committee Meeting of the SAB Executive Committee; Cancellation and Re-scheduling

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the meeting of the U.S. EPA Science Advisory Board (SAB) Executive Committee scheduled for July 16–17, 2002, and previously announced in 67 FR 41722, June 19, 2002, has been cancelled.. It will be re-scheduled at a later date. Instead, a Teleconference meeting of the Executive Committee will take place as noted below.

1. Executive Committee of the EPA Science Advisory Board—July 16, 2002—Teleconference Meeting

The Executive Committee (EC) of the U.S. EPA Science Advisory Board (SAB) will meet via public teleconference on Tuesday, July 16, 2002. The meeting will be hosted out of in a publicly accessible conference call convened in the SAB Conference Room (Room 6013, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004). The meeting will begin at 11 a.m. and adjourn no later than 2 pm Eastern Time. This meeting is open to the public; however, seating is limited and available on a first come basis. Information on how to access the meeting via conference call is available from Ms. Diana Pozun (see contact information below).

Purpose of the Meeting—To discuss matters of Board business, including discussion of the following: (a) Proposed projects for SAB action in FY2003; (b) Executive Committee Structure; and (c) a briefing on a proposed consultation on data reproducibility as a feature of information disseminated by the Agency.

FOR FURTHER INFORMATION: The agenda for the meeting will be posted on the SAB Website (*http://www.epa.gov/sab*) no later than one week prior to the meeting. Members of the public wishing a written agenda or roster of the EC may obtain these from the SAB website, or from Ms. Diana Pozun, Program Specialist, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4533; fax at (202) 501–0323; or via e-mail at *pozun.diana@epa.gov*. Any member of the public wishing further information concerning this meeting must contact Mr. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0323; or via e-mail at *flaak.robert@epa.gov*.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2001 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 28, 2002.

Vanessa T. Vu,

Director, EPA Science Advisory Board.

[FR Doc. 02–17236 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0120; FRL–7185–2]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0120, must be received on or before August 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0120 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740 and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0120. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0120 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), OPP, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0120. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the esfimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 264–AOG. *Applicant*: Aventis CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 *Product name*: Fenamidone Technical. *Active ingredient*: Fenamidone (5*S*)-3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl 3-phenylamino)-4*H*-imidazol-4-

CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0137. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

II. Registration Applications

EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0119 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 264–AOG. *Applicant*: Aventis CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 *Product name*: Fenamidone Technical. *Active ingredient*: Fenamidone (5*S*)-3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl 3-phenylamino)-4*H*-imidazol-4-one at 98.5%. *Proposed classification/Use*: None. A foliar fungicide to control activity on late blight (*phytophotora infestans*), early blight (*Alternaria solani*) and downy mildew diseases of potato, tomato, onion, and other vegetable crops.

2. *File Symbol*: 264–AOL. *Applicant*: Aventis CropScience. *Product name*: Reason 500 SC Fungicide. *Active ingredient*: Fenamidone (5*S*)-3,5-dihydro-5-methyl-2-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-4*H*-imidazol-4-one at 44.4%. *Proposed classification/Use*: None. A foliar fungicide to control activity on late blight (*phytophotora infestans*), early blight (*Alternaria solani*) and downy mildew diseases of potato, tomato, onion, and other vegetable crops.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 27, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–17189 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0137; FRL–7186–3]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0137, must be received on or before August 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0137 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Adam Heyward, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6422 and e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0137. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0137 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0137. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient not Included in any Previously Registered Products

1. *File Symbol*: 241–UEN. *Applicant*: BASF Corporation, 26 Davis Drive, PO Box 13528, Research Triangle Park, NC 27709–3528. *Product name*: Cu-HDO - Bis (*N*- Cyclohexyldiazeniumdioxy)-Copper. *Active ingredient*: Bis (*N*-cyclohexyldiazeniumdioxy)-copper (Cu-HDO) at 97%. *Proposed classification/Use*: None. Manufacturing use product for use in the formulation of wood protection end-use products.

2. *File Symbol*: 71406–E. *Applicant*: BASF Corporation. *Product name*: Wolmanit CX - 10. *Active ingredient*: Bis (*N*-cyclohexyldiazeniumdioxy)-copper(Cu-HDO) at 3.5%. *Proposed classification/Use*: None. End use product for use as a wood preservative against wood destroying fungi and insects.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 26, 2002.

Jack E. Housenger,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 02–17188 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0119; FRL–7184–5]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0119, must be received on or before August 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0119 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6502 and e-mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up

the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0119. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0119. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 279–GEAU. *Applicant*:

to publish notice of the proposed settlement in the **Federal Register** for a thirty (30) day public comment period. EPA will consider public comments on section VII of the AOC for thirty days. EPA may withhold consent to all or part of section VII of the AOC if comments received disclose facts or considerations which indicate that section VII of the AOC is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to the State Emergency Response Commission ("SERC") and to provide the name of an emergency contact to the Local Emergency Planning Committee ("LEPC") for eleven facilities. Respondents failed to submit Material Safety Data Sheets ("MSDS") or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for twenty-three facilities in violation of EPCRA section 311, 42 U.S.C. 11021. For twenty-three

the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0119. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0119 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), OPP, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0119. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 279–GEAU. *Applicant*: FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103. *Product name*: F1785 GH 50 WG Insecticide. Insecticide. *Active ingredient*: Flonicamid at 50%. *Proposed classification/Use*: None. For greenhouse use.

2. *File Symbol*: 71512–T. *Applicant*: ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Product name*: Technical Flonicamid Insecticide. Insecticide. *Active ingredient*: Flonicamid at 98.4%. *Proposed classification/Use*: None. For manufacturing use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 25, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–17190 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7244–4]

Northside Drive Superfund Site/ Atlanta, GA; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Atlantic Steel and NL Industries, Inc. (Respondents) entered into an Administrative Order on Consent (AOC) with the Environmental Protection Agency (EPA), whereby the Respondents agreed to perform response activities at the Northside Drive Superfund Site (Site) located in Atlanta, Georgia. Section VII of the AOC provides for the reimbursement of EPA's past and future response costs by the Respondents. Under the terms of the AOC, section VII is subject to section 122(i) of CERCLA, which requires EPA to publish notice of the proposed settlement in the Federal Register for a thirty (30) day public comment period. EPA will consider public comments on section VII of the AOC for thirty days. EPA may withhold consent to all or part of section VII of the AOC if comments received disclose facts or considerations which indicate that section VII of the AOC is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: June 13, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–17315 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7244–3]

Zellwood Groundwater Superfund Site/ Zellwood, FL; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Industrial Container Services, LLC and Industrial Container Services—FL, LLC (Settling Respondent) entered into a Prospective Purchaser Agreement (PPA) with the Environmental Protection Agency (EPA), whereby the Respondent, in exchange for the United States' covenant not to sue, agrees to pay EPA the fair market value of the property that is the subject of the PPA and further agrees to establish and maintain financial security in order to guarantee performance of the work set forth in the September 17, 2001 remedial design/ remedial action (RD/RA) consent decree for the Zellwood Groundwater Superfund Site (Site) located in Zellwood, Orange County, Florida. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Ray Strickland at the above address within 30 days of the date of publication.

Dated: June 26, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–17316 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7244–2; CWA–HQ–2002–6002; EPCRA–HQ–2002–6002; RCRA–HQ–2002–6002; CAA–HQ–2002–6002]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Dobson Cellular Systems, Inc. and American Cellular Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with Dobson Cellular Systems, Inc. and American Cellular Corporation ("Respondents") to resolve violations of the Clean Water Act ("CWA"), Emergency Planning and Community Right-to-Know Act ("EPCRA"), Resource Conservation and Recovery Act ("RCRA"), and Clean Air Act ("CAA") and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and proposed final order, and providing an opportunity for interested persons to comment on the CWA portions of this consent agreement, in accordance with CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

Respondents failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for four facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations.

Respondents failed to file an emergency planning notification with the State Emergency Response Commission ("SERC") and to provide the name of an emergency contact to the Local Emergency Planning Committee ("LEPC") for eleven facilities. Respondents failed to submit Material Safety Data Sheets ("MSDS") or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for twenty-three facilities in violation of EPCRA section 311, 42 U.S.C. 11021. For twenty-three facilities, Respondents failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

Respondents failed to notify the implementing agency of the existence of an Underground Storage Tank ("UST") at four facilities in violation of RCRA section 9002(a)(1), 42 U.S.C. 6991a(a)(1). At four facilities, Respondents failed to comply with UST system upgrade requirements in violation of RCRA section 9003, 42 U.S.C. 6991b. Respondents failed to notify the implementing agency of closure at one facility in violation of RCRA section 9003, 42 U.S.C. 6991b. EPA, as authorized by RCRA section 9006, 42 U.S.C. 6991e, has assessed a civil penalty for these violations.

Respondents failed to obtain the appropriate operating permits or exemptions at three facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan ("SIP") requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations.

DATES: Comments are due on or before August 9, 2002.

ADDRESSES: Mail written comments to the Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–2002–019, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2201A, Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 9.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Submit comments electronically to *docket.oeca@epa.gov.*

Electronic comments may be filed online at many Federal Depository Libraries.

The consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Persons interested in

disclosed that for four facilities they had failed to notify the implementing agency of the existence of UST systems, in violations of RCRA section 9002, 42 U.S.C. 6991a Respondents disclosed that for four facilities they had failed to notify the implementing agency of the existence of an UST in violation of RCRA section 9002(a)(1), 42 U.S.C. 6991a(a)(1). Respondents disclosed that at four facilities they had failed to

CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is August 9, 2002. All comments will be transferred to the Environmental

impaired waters before development of a Total Maximum Daily Load (TMDL) and trading to meet TMDLs. While the focus is on nutrients and sediment, the policy also discusses the potential for trading other pollutants under certain circumstances.

The proposed policy is available for review at *http://www.epa.gov/owow/watershed/trading.htm*

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 2, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

Electronic comments may be filed online at many Federal Depository Libraries.

The consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Persons interested in reviewing these materials must make arrangements in advance by calling the docket clerk at 202–564–2444. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Philip Milton, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–5029; fax: (202) 564–0010; e-mail: *milton.philip@epa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Copies: Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the **Federal Register**—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

I. Background

Dobson Cellular Systems, Inc., a telecommunications company incorporated in the State of Oklahoma and American Cellular Corporation, a telecommunications company incorporated in the State of Delaware, disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for four facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR Part 112. Respondents disclosed that for eleven facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA sections 302–303, 42 U.S.C. 11002–11003. Respondents further disclosed that for twenty-three facilities they had failed to submit MSDSs or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and that for twenty-three facilities had failed to submit an Emergency and Hazardous Chemical Inventory to the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022. Respondents disclosed that for four facilities they had failed to notify the implementing agency of the existence of UST systems, in violations of RCRA section 9002, 42 U.S.C. 6991a Respondents disclosed that for four facilities they had failed to notify the implementing agency of the existence of an UST in violation of RCRA section 9002(a)(1), 42 U.S.C. 6991a(a)(1). Respondents disclosed that at four facilities they had failed to comply with UST system upgrade requirements in violation of RCRA section 9003, 42 U.S.C. 6991b. Respondents disclosed that for one facility they had failed to notify the implementing agency of closure in violation of RCRA section 9003, 42 U.S.C. 6991b. Respondents disclosed that for three facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators.

EPA determined that Respondents met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA waived the gravity based penalty ($677,735) and proposed a settlement penalty amount of nine thousand, eight hundred and forty-three dollars ($9,843). Of this amount, $7,319 is attributable to the EPCRA violations; $1,309 is attributable to the RCRA violations; $1,062 is attributable to the CWA violations; and $153 is attributable to CAA violations. This is the amount of the economic benefit gained by Respondents, attributable to their delayed compliance with the CWA, EPCRA, RCRA, and CAA regulations. Respondents have agreed to pay this amount. EPA and Respondents negotiated and reached an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on July 2, 2002 (*In Re: Dobson Cellular Systems, Inc. and American Cellular Corporation* Docket Nos. CWA—HQ–2002–6002, EPCRA–HQ–2002–6002, RCRA–HQ–2002–6002, CAA–HQ–2002–6002). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed a Class II civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is August 9, 2002. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: July 3, 2002.

Rosemarie A. Kelley,

Acting Director, Multimedia Enforcement Division, , Office of Enforcement and Compliance Assurance.

[FR Doc. 02–17310 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7243–3]

Water Quality Trading Policy; Proposed Policy; Re-Opening Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment; re-opening of comment period.

SUMMARY: On May 15, 2002, the U.S. Environmental Protection Agency's (EPA's) invited public comment on its proposed Policy on Water Quality Trading ("proposed policy"). Today's action extends the due date for comments to July 15, 2002. The purpose of the proposed policy is to signal EPA support for soundly designed water quality trading programs developed by States and Tribes. Another purpose is to propose program components that EPA believes are appropriate for trading programs to be soundly designed and to operate successfully. In addition, the proposed policy is intended to address issues left open and limitations encountered implementing projects under EPA's January 1996 Effluent Trading Policy and May 1996 draft Framework for Watershed-Based Trading (EPA 800–R–96–001).

Water quality trading is a voluntary incentive-based approach to more efficiently protect and restore the nation's waters. The proposed policy addresses trading to maintain water quality in unimpaired waters, trading in impaired waters before development of a Total Maximum Daily Load (TMDL) and trading to meet TMDLs. While the focus is on nutrients and sediment, the policy also discusses the potential for trading other pollutants under certain circumstances.

The proposed policy is available for review at *http://www.epa.gov/owow/watershed/trading.htm*

DATES: The Agency requests comments on the proposed policy posted at *http://www.epa.gov.owow/watershed/trading.htm*. Comments must be received or post-marked by midnight on Monday, July 15, 2002.

ADDRESSES: The proposed policy is available for review at *http://www.epa.gov/owow/watershed/trading.htm*. Please send an original and three copies of your written comments and enclosures to W–02–07 Comment Clerk, Water Docket (MC4101), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–02–07. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Hand deliveries should be delivered to: EPA's Water Docket at 401 M Street, SW., Room EB57, Washington, DC 20460.

The record for this proposed policy has been established under docket number W–02–07, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M St SW., Washington, DC 20460. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: David Batchelor, EPA, Office of Water, (202) 564–5764, *batchelor.david@epa.gov*. or Lynda Hall Wynn, EPA, Office of Water, (202) 564–0472, *wynn.lynda@epa.gov*.

Dated: July 2, 2002.

Elisabeth LaRos,

Director, Water Policy Staff, Office of Water.

[FR Doc. 02–17238 Filed 7–9–02; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 11, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- June 6, 2002 (Open and Closed).

B. Reports

- FCS Building Association's Quarterly Report.
- Corporate Approvals.
- Farm Credit Financial Partners, Inc.
- Farm Credit System 2001 Results for Young, Beginning and Small Farmer Lending Program.
- Conditions and Trends in the Sacramento Field Office Portfolio.
- The Canadian Financial System.
- Farm Credit Canada.

Dated: July 5, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–17341 Filed 7–5–02; 4:23 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 2, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Wireless Customer Service Evaluation.

Form No.: N/A.

Type of Review: New collection.

Respondents: Individuals or households, business or other for-profit,

not-for-profit institutions and state, local or tribal government.

Number of Respondents: 582.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 146 hours.

Total Annual Cost: N/A.

Needs and Uses: The Wireless Telecommunications Bureau used the text of this document, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. In addition, the complete text, including attachments, may be retrieved from the FCC's website at www.fcc.gov. The *Auction of Multichannel Video Distribution and Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making,* (modified by Erratum, DA 98–419 (rel. Mar. 2, 1998), 63 FR 770 (January 7, 1998); Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and*

serves as a municipal securities dealer must file Form MDS–4 or MSD–5, as applicable, to permit an employee to become associated or to terminate the association with the municipal securities dealer. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: July 3, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–17268 Filed 7–9–02; 8:45 am]

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–17359 Filed 7–8–02; 10:37 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1420–DR]

not-for-profit institutions and state, local or tribal government.

Number of Respondents: 582.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 146 hours.

Total Annual Cost: N/A.

Needs and Uses: The Wireless Telecommunications Bureau need the information gathered by these evaluations to determine whether its website delivers a clear and consistent user interface that provides straightforward, timely access to FCC information. The information will be used to assess whether we are meeting the customer's needs and our goals for providing superior service to the public.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17263 Filed 7–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1258]

Auction of Multichannel Video Distribution and Data Service Licenses Notice of Auction Scheduled for February 12, 2003

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an auction of Multichannel Video Distribution and Data Service ("MVDDS") licenses, which is scheduled to begin on February 12, 2003.

DATES: The auction of MVDDS licenses is scheduled to begin on February 12, 2003. The auction seminar is scheduled for December 11, 2002. The short-form application deadline is December 20, 2002. The upfront payment deadline is January 17, 2003. The mock auction is scheduled for February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Auction questions: Brian Carter, (202) 418–0660 or e-mail *bcarter@fcc.gov*. Service rules questions: Jennifer Burton, (202) 418–0680 or e-mail *jburton@fcc.gov*. Media may contact Meribeth McCarrick at (202) 418–0654 for questions.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction of Multichannel Video Distribution and Data Service Licenses Public Notice* released May 24, 2002. The complete text of this document, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. In addition, the complete text, including attachments, may be retrieved from the FCC's website at www.fcc.gov. The *Auction of Multichannel Video Distribution and Data Service Licenses Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

By this Public Notice, the Wireless Telecommunications Bureau announces an auction of MVDDS licenses to begin on February 12, 2003. This auction will include 354 Component Economic Area licenses for operation on frequencies 12.2–12.7 GHz. A preliminary list of licenses available for auction is included as Attachment A, of the *Auction of Multichannel Video Distribution and Data Service Licenses Public Notice*. Future public notices will seek comment on specific terms and conditions for this auction. The key dates are as follows:

Auction Seminar: December 11, 2002.
Short Form Deadline: December 20, 2002.
(FCC 175 Application).
Upfront Payment Deadline: January 17, 2003.
Mock Auction: February 7, 2003.
Auction Begins: February 12, 2003.

For further clarification, please refer to Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *Memorandum Opinion and Order and Second Report and Order*, FCC 02–116, ET Docket No. 98–206 (rel. May 23, 2002). *See also* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97–82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 62 FR 13570 (March 21, 1997); Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Third Report and Order and Second Further Notice of Proposed Rule Making*, (modified by Erratum, DA 98–419 (rel. Mar. 2, 1998), 63 FR 770 (January 7, 1998); Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 65 FR 5447 (October 29, 2001); Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Seventh Report and Order*, 66 FR 5447 (October 29, 2001); Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Eighth Report and Order*, 67 FR 16647 (April 8, 2002).

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–17175 Filed 7–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

OMB Number: 3064–0022.

Form Number: MSD–4; MSD–5.

Annual Burden:

Estimated annual number of respondents: 75.

Estimated time per response: 1 hour.

Total annual burden hours: 75 hours.

Expiration Date of OMB Clearance: August 31, 2002.

SUPPLEMENTARY INFORMATION: An insured state nonmember bank which serves as a municipal securities dealer must file Form MDS–4 or MSD–5, as applicable, to permit an employee to become associated or to terminate the association with the municipal securities dealer. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064–0027.

Annual Burden:

Estimated annual number of respondents: 18.

Estimated time per response: .42 hours.

Total annual burden hours: 7.56 hours.

Expiration Date of OMB Clearance: August 31, 2002.

SUPPLEMENTARY INFORMATION: An insured nonmember bank or a subsidiary of such a bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided by 12 CFR 341.5.

3. *Type of Review:* Renewal of a currently approved collection.

Title: Summary of Deposits.

OMB Number: 3064–0061.

Annual Burden:

Estimated annual number of respondents: 6,000.

Estimated time per response: 3 hours.

Total annual burden hours: 18,000 hours.

Expiration Date of OMB Clearance: August 31, 2002.

SUPPLEMENTARY INFORMATION: The Summary of Deposits annual survey obtains data about the amount of deposits held at each office of all banks with branches in the United States. The survey data provides a basis for measuring the competitive impact of bank mergers and has additional use in banking research.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before August 9, 2002 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: July 3, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–17268 Filed 7–9–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Friday, July 12, 2002, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Rule to Create 12 CFR part 313—Procedures for the Collection of Corporate Debt.

Memorandum and resolution re: Final Statement of Policy on Bank Merger Transactions.

Discussion Agenda:

Memorandum and resolution re: Notice of Proposed Rulemaking to Amend Part 303—Insurance of State Banks Chartered as Limited Liability Companies.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: July 5, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–17359 Filed 7–8–02; 10:37 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1420–DR]

Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa, (FEMA–1420–DR), dated June 19, 2002, and related determinations.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 19, 2002:

Des Moines, Henry, Lee, and Louisa Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17281 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Becker County for Individual Assistance (already designated for Public Assistance).

Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17282 Filed 7–9–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

Sinolines, FMC Agreement No. 011807 (the "SNL/HASCO Agreement"). Under that agreement, the parties propose to share space on five vessels in a weekly service between U.S. Pacific ports and ports in Asia. It has been represented by filing counsel that Sinolines also proposes to time charter to HASCO one vessel to be deployed under the agreement. This latter aspect of the parties' cooperative working

requested additional information from HASCO and Sinolines in response to questions transmitted to filing counsel pursuant to the Commission's rules at 46 CFR 535.606(e), so as to elicit evidence sufficient to determine whether HASCO qualifies as an ocean common carrier and hence, whether the proposed agreement may become effective under section 4 of the Shipping Act as an agreement "by or among" two

Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 2328NF.

Name: Ross Freight Company, Inc.

Address: 732 West 9th Street, Suite 206, San Pedro, CA 90731.

Date Revoked: June 6, 2002.

Reason: Failed to maintain valid bonds.

License Number: 3555N.

Name: Thomas Griffin International,

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Clearwater County for Individual and Public Assistance.
Kittson County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.

[FR Doc. 02–17279 Filed 7–9–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Becker County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.

[FR Doc. 02–17280 Filed 7–9–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 28, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.

[FR Doc. 02–17282 Filed 7–9–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 201137.

Title: Port Manatee Cargo Inducement Agreement.

Parties: Manatee County Port Authority, The Seatrade Group.

Synopsis: The agreement establishes special wharfage rates for fruits and vegetables unloaded by the Seatrade Group at the port authority's facilities.

Dated: July 5, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 02–17313 Filed 7–9–02; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–09; FMC Agreement No. 011807]

Ocean Common Carrier Status of Shanghai Hai Hua Shipping Co., LTD. (HASCO) and SNL/HASCO Cross Space Charter and Sailing Agreement; Notice of Investigation and Hearing, Request for Additional Information and Order To Show Cause

Notice is given that, on June 27, 2002, the Federal Maritime Commission ("Commission") served an Order of Investigation and Hearing, Request for Additional Information and Order to Show Cause on Shanghai Hai Hua Shipping Co. Ltd. dba HASCO ("HASCO") and Sinotrans Container Lines Co. Ltd. dba Sinolines ("Sinolines").

On May 29, 2002, counsel filed a Cross Space Charter and Sailing Agreement between HASCO and Sinolines, FMC Agreement No. 011807 (the "SNL/HASCO Agreement"). Under that agreement, the parties propose to share space on five vessels in a weekly service between U.S. Pacific ports and ports in Asia. It has been represented by filing counsel that Sinolines also proposes to time charter to HASCO one vessel to be deployed under the agreement. This latter aspect of the parties' cooperative working arrangement, *i.e.*, the authorities and conditions under which Sinolines will sub-charter one vessel to HASCO, is not defined in the filed agreement.

Under Section 4 of the Shipping Act of 1984 ("Shipping Act"), only agreements which are between or among ocean common carriers may be filed with the Commission pursuant to section 5 of the Shipping Act. Section 6(b) of the Shipping Act provides that the Commission shall reject any filed agreement that, after preliminary review, it finds does not meet the requirements of section 5 of the Shipping Act. See also, 46 CFR 535.401(c) and 535.601.

It appears that HASCO may not be operating any vessels in the trades for which it has published a tariff, and that HASCO will not have commenced operating any vessel(s) prior to the effective date of the SNL/HASCO Cross Space Charter and Sailing Agreement. It also appears that HASCO does not anticipate operating any vessel or vessels in the U.S. trades independent of those operations to be furnished in conjunction with its agreement partner pursuant to the SNL/HASCO Agreement.

HASCO's status as an ocean common carrier potentially has significant regulatory implications for the parties to the SNL/HASCO Agreement. In addition to providing HASCO with status as a VOCC for purposes of entering into agreements and service contracts, this arrangement may enable HASCO to avoid other regulatory requirements including those applicable generally to non-vessel-operating common carriers ("NVOCCs").

Under sections 4, 5 and 6 of the Shipping Act, the Commission has a duty to carefully examine not only the substantive lawfulness of the SNL/HASCO Agreement but also HASCO's eligibility as an ocean common carrier, as defined in section 3(16) of the Shipping Act, to enter into such an agreement. Under section 6(d) of the Shipping Act, the Commission may request additional information from the parties to an agreement in order to determine whether the agreement meets the requirements of sections 5 and 6 of the Shipping Act. The Commission has requested additional information from HASCO and Sinolines in response to questions transmitted to filing counsel pursuant to the Commission's rules at 46 CFR 535.606(e), so as to elicit evidence sufficient to determine whether HASCO qualifies as an ocean common carrier and hence, whether the proposed agreement may become effective under section 4 of the Shipping Act as an agreement "by or among" two ocean common carriers. By this action pursuant to section 6(c)(2) of the Shipping Act, 46 U.S.C. app. 1705, and 46 CFR 535.606(b), the effective date of the subject agreement modification may be delayed until 45 days after the Commission has received the parties' responses.

The Commission therefore has instituted this investigation to determine whether HASCO is an ocean common carrier; whether the SNL/HASCO Agreement should be disapproved if it is found that HASCO is not an ocean common carrier; whether the SNL/HASCO Agreement should be disapproved if it is found that the agreement, as filed, does not meet the requirements of 46 CFR 535.103(g); to show cause why HASCO's tariff No. 017636–001 should not be cancelled; and to show cause why HASCO should not be ordered to cease and desist doing business as a common carrier until such time as it provides proof to the Commission that it publishes and maintains a valid tariff as an non-vessel-operating common carrier and maintains a bond and resident agent as required by section 19 of the Shipping Act and Commission regulations.

The full text of the Commission's Order is available on its website at *http://www.fmc.gov*. Any person having an interest in participating in this proceeding may a file petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 02–17330 Filed 7–9–02; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 2328NF.
Name: Ross Freight Company, Inc.
Address: 732 West 9th Street, Suite 206, San Pedro, CA 90731.
Date Revoked: June 6, 2002.
Reason: Failed to maintain valid bonds.

License Number: 3555N.
Name: Thomas Griffin International, Inc.
Address: 1411 N. Westshore Blvd., Suite 315, Tampa, FL 33607.
Date Revoked: May 2, 2002.
Reason: Failed to maintain a valid bond.

Ronald D. Murphy,
Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–17314 Filed 7–9–02; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than August 5, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Swann BancShares, Inc., Wedowee, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Wedowee, Wedowee, Alabama.

reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the proposed information requirements should be sent to Gary Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Ave., NW., H–576, Washington, DC 20580, (202) 326–2753.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal

disclosure requirements, for a total of 13,425 hours (179 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974. Thus the "burden " of compliance has declined over time. Moreover, comments provided to the FTC indicate that a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term

to them would result in marginal incremental expense.

2. The Amplifier Rule, 16 CFR Part 432 (Control Number: 3084–0105)

The Amplifier Rule assists consumers by standardizing the measurement and disclosure of power output and other performance characteristics of amplifiers in stereos and other home entertainment equipment. The Rule also

600 burden hours for disclosures and testing.

Estimated annual cost burden: $19,000, rounded to the nearest thousand (solely relating to labor costs).

Based on recent Bureau of Labor Statistics, the average hourly compensation for electronics engineers is about $32, and the average hourly compensation for marketing, advertising and public relations managers is about

indicated or the offices of the Board of Governors not later than August 5, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Swann BancShares, Inc., Wedowee, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Wedowee, Wedowee, Alabama.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Marquette Financial Companies, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of CBA Bancshares, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Community Bank of Arizona, N.A., Wickenburg, Arizona.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First York Ban Corp., York, Nebraska; to acquire and additional 0.4 percent, for a total of 22.28 percent, of the voting shares of NebraskaLand Financial Services, Inc., York, Nebraska; and thereby indirectly acquire additional voting shares of NebraskaLand National Bank, North Platte, Nebraska.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. UCBH Holdings, Inc., San Francisco, California; to acquire 25 percent of the voting shares of Bank of Canton of California, San Francisco, California.

Board of Governors of the Federal Reserve System, July 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17355 Filed 7–9–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 9 a.m., Friday, July 12, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

Status: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated; July 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17354 Filed 7–5–02; 4:34 pm]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in four Commission rules and one category of administrative activities. The FTC is seeking public comments on its proposal to extend through August 31, 2005 the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in these information collection items.

DATES: Comments must be filed by August 9, 2002.

ADDRESSES: Send written comments to the Office of information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission (comments in electronic form should be sent to *oira__docket@omb.eop.gov*), and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to *pra@ftc.gov*). All comments should be identified as responding to this notice, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the proposed information requirements should be sent to Gary Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Ave., NW., H–576, Washington, DC 20580, (202) 326–2753.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On April 30, 2002, the FTC sought comment of the information collection requirements associated with the instant information collection terms. See 67 21243. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for these items.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCHII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *pra@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

The relevant information collection requirements are as follows:

1. The Negative Option Rule, 16 CFR Part 425 (Control Number: 3084–0104)

The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers ship merchandise such as books, compact discs or tapes automatically to the subscribers, and bill them for the merchandise if consumers do not expressly reject the merchandise within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such "negative option" plans.

Estimated annual hours burden: 14,000 total burden hours, rounded to the nearest thousand (all disclosure-related).

Staff estimates that approximately 179 existing clubs require annually about 75 hours each to comply with the Rule's

disclosure requirements, for a total of 13,425 hours (179 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974. Thus the "burden " of compliance has declined over time. Moreover, comments provided to the FTC indicate that a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 5 new clubs come into being each year. These clubs require approximately 120 hours to comply with the Rule, including start up-time. Thus, cumulative PRA burden for new clubs is about 600 hours. Combined with the estimated burden for established clubs, total burden is 14,025 hours or 14,000, rounded to the nearest thousand.

Estimated annual cost burden: $385,000, rounded to the nearest thousand (solely related to labor costs).

Based on recent Bureau of Labor Statistics, the average compensation for advertising managers is approximately $30 per hour. Compensation for clerical personnel is approximately $10 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform associated tasks (e.g., placing advertisements and responding to inquires about offerings or prices), the total cost to the industry for the Rule's paperwork requirements would be approximately $384,700. [(65 hours managerial time × 179 existing negative option plans × $30 per hour) + (10 hours clerical time × 179 existing negative option plus × $10 per hour) + (115 hours managerial time × 5 new negative option plans × $30 per hour) + (10 hours clerical time × 5 new negative option plans × $10).]

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are de minimis. Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposed few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the materials that a prospective subscriber sends to the seller to solicit enrollment in a negative option plan. Because printing and distribution expenditures are incurred regardless of the Rule to market the product, adding the required disclosures to them would result in marginal incremental expense.

2. The Amplifier Rule, 16 CFR Part 432 (Control Number: 3084–0105)

The Amplifier Rule assists consumers by standardizing the measurement and disclosure of power output and other performance characteristics of amplifiers in stereos and other home entertainment equipment. The Rule also specifies the test conditions necessary to make the disclosures that the Rule requires.

Estimated annual hours burden: 600 hours (300 disclosure-related hours; 300 testing-related hours).

The Rule's provisions require affected entities to test the power output of amplifiers in accordance with specified FTC protocol. Approximately 300 new amplifiers and receivers come on the market each year. Since high fidelity manufacturers routinely conduct performance tests as part of any new product development, the Rule imposes incremental costs only to the extent that the FTC protocol is more time-consuming than alternative testing procedures. Specifically, a warm up ("precondition") period that the Rule requires before measurements are taken may add approximately one hour to the time testing entails. Thus, staff estimates that the Rule imposes approximately 300 hours (1 hour × 300 new products) of added testing burden annually.

The Rule requires disclosures if an advertisement makes a power output claim. Assuming that ten advertisements per magazine are placed each month in ten existing magazines featuring audio equipment advertisements, staff estimates that approximately 1,200 magazines advertisements annually would be required to carry the FTC disclosures. The cost of these disclosures is limited to the time needed to draft and review the language pertaining to power output specifications. Because this Rule became effective in 1974, and because members of the industry are familiar with its requirements, compliance is less burdensome today. Accordingly, staff estimates the time involved for this task to be a maximum of ¼ hour per advertisement, for a total burden of 300 hours.[1] The total annual burden impose by the Rule is therefore approximately 600 burden hours for disclosures and testing.

Estimated annual cost burden: $19,000, rounded to the nearest thousand (solely relating to labor costs).

Based on recent Bureau of Labor Statistics, the average hourly compensation for electronics engineers is about $32, and the average hourly compensation for marketing, advertising and public relations managers is about $30. Generally, electronics engineers perform the testing of amplifiers and receivers (300 hours × $32 = $9,600), and marketing, advertising or public relations managers prepare advertisements (including required disclosures) (300 hours × $30 = $9,000). Based on this information, staff estimates industry labor costs associated with the Rule of approximate $19,000 per year, rounded to the nearest thousand.

The Rule imposes no capital or other non labor costs because its requirements are incidental to testing and advertising done in the ordinary course of business.

3. The Franchise Rule, 16 CFR Part 436 (Control Number: 3084–0107)

The Franchise Rule requires franchisors and franchise brokers to furnish to prospective investors a disclosure document that provides information relating to the franchisor, the franchisor's business, and the nature of the proposed franchise relationship, as well as additional information about any claims concerning actual or potential sales, income, or profits for a prospective franchisee ("earnings claims"). Franchisors must also preserve the information that forms a reasonable basis for such claims. The Rule is designed to help protect potential investors from fraudulent claims.

The Rule's required disclosure document provides franchisees with information on twenty broad-ranging subjects that affect franchisors and the nature of the proposed franchise relationship. This includes not only generally available information, such as the official name and address and principal place of business of the franchisor, but also less commonly available information such as, among other things, the previous 5 years business experience of each of a franchisor's current directors and executive officers and whether any of these individuals has been convicted of a felony or embezzlement, or has filed in bankruptcy or been adjudged bankrupt during the previous 7 years. All information in the disclosure statement must be updated and revised according to the express time requirements set forth in the Rule.

[1] Staff has reduced this amount from prior PRA estimates to reflect recent amendments to the Rule. 65 FR 81232 (Dec. 22, 2000). The amendments eliminated 3 of 4 disclosures that were required in media advertising (eliminated were disclosures of total rated harmonic distortion and the associated power bandwidth and impedance ratings).

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 5,000 American [illegible] systems, consisting of 2 500 business format franchises and 2,500 business opportunity sellers, with perhaps about 10% of that total reflecting an equal amount of new and

Accordingly, staff's estimate of the labor costs attributed to those tasks are as follows: (500 new franchisors × $250 per hour × 30 hours per franchisor) + (4,500 established franchisors × $250 per hour × 3 hours per franchisor) = $7,125,000.

Staff anticipates that recordkeeping would be performed by clerical staff at approximately $10 per hour. At 5,000 hours per year for all affected entities, this would amount to a total cost of

thousand (366,095 disclosure hours and 305 hours for testing and recordkeeping).

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotion materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation

per installer is sufficient to cover required disclosures in advertisements and other promotional materials, Thus, the burden for this requirement is approximately 1,500 hours per year (1,500 installers × 1 hour). In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per

insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is de minimus. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rules imposes a total of 366,331 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours

enforcement exception" to the PRA,[2] any burden associated with those that do not is de minimis. For example, over the last decade, the Commission has received only one application for an exemption under the Fair Debt Collection Practices Act provisions. Staff has estimated that such a submission can be completed well within 50 hours. Applications and notices to the Commission contained in

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 5,000 American franchise systems, consisting of 2,500 business format franchises and 2,500 business opportunity sellers, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.

Staff has calculated burden based on the above estimates. Some franchisors, however, for various reasons, are not covered by the Rule in certain situations (e.g., when a franchisee buys bona fide inventory but pays no franchisor fees). Moreover, fifteen states have franchise disclosure laws similar to the Rule. These states use a disclosure document format known as the Uniform Franchise Offering Circular ("UFOC"). In order to ease compliance burdens on the franchisor, the Commission has authorized use of the UFOC in lieu of its own disclosure format to satisfy the Rule's disclosure requirements. Staff estimates that about 95 percent of all franchisors use the UFOC format. When that format is used, the franchisor is not required to prepare an additional federal disclosure document. The burden hours stated below reflects staff's estimate of the incremental burden that the Franchise Rule may impose beyond information requirements imposed by states and/or followed by franchisors who use the UFOC.

Estimated annual hours burden: 34,000 hours, rounded up to the next thousand (28,500 disclosure hours + 5,000 recordkeeping hours).

Staff estimates that the 500 or so new franchisors require approximately 30 hours each to develop a Rule-complaint disclosure document. Staff additionally estimates that the remaining 4,500 established franchisors require no more than approximately 3 hours each to update the disclosure document. The combined cumulative burden is 28,500 hours.

The franchisor may require additional recordkeeping of information pertaining to the sale of franchises in non-registration states. At most, franchisors would require an additional hour of recordkeeping per year. This yields a cumulative total of 5,000 hours per year for affected entities.

Estimated annual cost burden: $19,952,000 ($7,175,000 in labor costs; $12,777,000 in capital or other non-labor costs).

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff assumes that an attorney likely would prepare or update the disclosure document. Accordingly, staff's estimate of the labor costs attributed to those tasks are as follows: (500 new franchisors × $250 per hour × 30 hours per franchisor) + (4,500 established franchisors × $250 per hour × 3 hours per franchisor) = $7,125,000.

Staff anticipates that recordkeeping would be performed by clerical staff at approximately $10 per hour. At 5,000 hours per year for all affected entities, this would amount to a total cost of $50,000. Thus, combined labor costs for recordkeeping and disclosure is approximately $7,175,000.

Franchisors must also incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. Staff estimates that 2,500 business format and product franchisors print and mail 100 disclosure documents per year at a cost of $35 per document. Staff further estimates that another 2,500 business opportunity sellers print and mail 100 documents per year at a cost of $15 per document, for a total cost of $12,500,000.

The franchisor also must provide and disseminate an FTC cover sheet that identifies the franchisor, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Although some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of "collection of information" under the PRA, *see* 5 CFR 1320.3(c)(2), there are residual costs to print and mail these cover sheets, including within them the presentation of related information beyond the supplied text. Staff estimates that 5,000 franchisors complete and disseminate 100 cover sheets per year at a cost of approximately $.55 per cover sheet, or a total cost of approximately $277,000.

4. R-value Rule, 16 CFR Part 460 (Control Number: 3084–0109).

The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated annual hours burden: 366,000 hours, rounded to the nearest thousand (366,095 disclosure hours and 305 hours for testing and recordkeeping).

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotion materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,500 installers who sell home insulation; (3) 130,000 new home builders/sellers of site-built homes and approximately 7,000 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. The test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. The total annual testing burden is therefore approximately 30 hours (15 manufacturers × 2 hours per test).

Staff further estimates that most manufacturers require an average of approximately 20 hours per year with regard to third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers × 20 hours) + (6 manufacturers × 80 hours).]

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirements, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 835,000 retrofit insulations are installed by approximately 1,500 installers per year and, thus, the related annual burden total is approximately 27,833 hours (835,000 sales transactions × 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,500 hours per year (1,500 installers × 1 hour). In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per year per installer—for a total of approximately 125 hours (1,500 installers × 5 minutes).

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than one minute per sales transaction is required to comply with this requirement, for a total annual burden of approximately 283,333 hours (1.7 million new home sales × 1 minute). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records regardless of the R-value Rule, staff believes that the one minute covering disclosures would also encompass this recordkeeping element.

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims, and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is de minimis. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rules imposes a total of 366,331 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 125 recordkeeping and 29,333 disclosure hours for installers; 283,333 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. Rounded to the nearest thousand, the total burden is 366,000 burden hours.

Estimated annual cost burden: $7,290,030 (solely related to labor costs).

The total annual labor costs for the Rule's information collection requirements is $7,290,030, derived as follows: $600 for testing, based on 30 hours manufacturers (30 hours × $20 per hour skilled technical personnel); $2,750 for complying with the recordkeeping requirements of the Rule, based on 275 hours (275 hours × $10 per hour for clerical personnel); $33,360 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $10 per hour for clerical personnel); and $7,253,320 for compliance by installers, new home (362,666 hours × $20 per hour for sales persons).

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

5. FTC Administrative Activities (Control Number: 3084–0047)

This category consists of: (a) applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); and (b) the FTC's Consumer Response Center.

Estimated annual hours burden: 78,000 hours, rounded to the nearest thousand.

Most applications to the Commission generally fall within the "law enforcement exception" to the PRA,[2] any burden associated with those that do not is de minimis. For example, over the last decade, the Commission has received only one application for an exemption under the Fair Debt Collection Practices Act provisions. Staff has estimated that such a submission can be completed well within 50 hours. Applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice) are also infrequent and difficult to quantify. Nonetheless, in order to cover any potential "collections of information" for which separate clearance has not been sought, staff is projecting 125 hours as its estimate of the time needed to submit any applicable responses.[3]

The FTC's Bureau of Consumer Protection ("BCP") uses various telephone complaint hotlines and, alternatively, three different online consumer complaint forms to handle consumer grievances: (1) the general *www.ftc.gov* complaint form (for other than identify theft complaints); (2) the www.consumer.gov "Know Fraud" complaint form (essentially another way to access complaint form #1); and (3) the "Identity Theft On-Line Complaint Form."[4] The forms' completion is wholly voluntary. To gauge the effectiveness of the overall program, BCP employs a customer satisfaction survey. Each consumer surveyed is asked several questions chosen from a staff-prepared list. The questions are designed to elicit information from consumers about the overall effectiveness of the call center.

[2] The "law enforcement" exception to the PRA excludes most items in this subcategory because they involve collecting information during the conduct of a Federal investigation, civil action, or administrative action directed against a specific party. *See* 44 U.S.C. 3518(c)(1); 5 CFR 1320.4(a)(2).

[3] This includes Commission Rule of Practice 4.11(e), 16 CFR 4.11(e), which establishes procedures for agency review of outside requests for Commission employee testimony, through compulsory process or otherwise, in cases or matters to which the agency is not a party. The rule requires that a person who seeks such testimony submit a statement is support of the request. Staff estimates that agency personnel receive roughly 2 such requests per month or 24 per year, and conservatively estimates that it would require up to 2 hours to prepare the statement, for a cumulative total of 24 hours.

[4] The burden calculations for these online options also include related variations, which comprise the same basic "collection of information": (1) Spanish language versions also available at *www.ftc.gov*, (2) the *www.econsumer.gov* complaints form, but only with regard to complaints from U.S. or foreign consumers regarding U.S. companies, and (3) the FTC's planned *www.sentinel.mil* link for consumer complaints from U.S. military personnel as part of a joint initiative with the Department of Defense.

Burden estimates for these BCP programs are as follows:

Annual hours burden:

Activity	# Respondents	# Minutes/activity	Total hours
Miscell. and fraud-related consumer complaints (phone) *	325,000	4.5	24,375
Miscell. and fraud-related consumer complaints (online) **	105,000	5.0	8,750
IDT complaints (phone) *	300,000	8	40,000
IDT complaints (online) **	32,000	7.5	4,000
Consumer Satisfaction Questionnaire	9,000	4.0	600

notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/10/2002			
20020302	L–3 Communications Holdings, Inc.	PerkinElmer, Inc	PerkinElmer Detection Systems, Inc. (California) PerkinElmer Detection Systems, Inc. (Delaware)

Burden estimates for these BCP programs are as follows:

Annual hours burden:

Activity	# Respondents	# Minutes/activity	Total hours
Miscell. and fraud-related consumer complaints (phone) *	325,000	4.5	24,375
Miscell. and fraud-related consumer complaints (online) **	105,000	5.0	8,750
IDT complaints (phone) *	300,000	8	40,000
IDT complaints (online) **	32,000	7.5	4,000
Consumer Satisfaction Questionnaire	9,000	4.0	600
Totals	771,000		77,725

* Number of consumer calls calculated by projecting over the 3-year clearance period sought 5% annual growth and a telephone contractor response rate of 95% (contracted level of service) with regard to consumers who call the toll free lines and opt to talk to a counselor.
** Number of online collections projected from number of consumers who use the FTC's online complaint forms noted in the text above and in footnote 4. These figures also assume 5% annual growth over the 3-year clearance period requested.

Annual cost burden:

The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

William E. Kovacic,
General Counsel.
[FR Doc. 02–17324 Filed 7–9–02; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Transfer of Delegations of Authority To Disclose Certain Nonpublic Information to Foreign Law Enforcement Agencies and Delegation of Authority To Sign Confidentiality Agreements With Certain Foreign Agencies

AGENCY: Federal Trade Commission.

ACTION: Transfer of delegation of authority and delegation of authority.

SUMMARY: The Commission has delegated authority to share information with certain law enforcement agencies in Canada, Australia and the United Kingdom to the Associate Director for International Consumer Protection. The Commission has also delegated to the Associate Director for International Consumer Protection authority to execute confidentiality agreements with certain foreign agencies, a condition of their being granted access to nonpublic databases. The delegation includes authority previously delegated to the Associate Director for Planning and Information, and all delegations are subject to confidentiality laws and rules.

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Michael L. Shore, Attorney, International Division of Consumer Protection, 202 326–2708, *mshore@ftc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has transferred from the Associate Director for Planning and Information to the Associate Director for International Consumer Protection its prior delegations of authority to disclose: (1) to Canadian law enforcement agencies, information regarding consumer protection investigations involving Canadian businesses or consumers (65 FR 64950–02 (Oct. 31, 2000)); (2) to the Australian Competition and Consumer Commission, information regarding consumer protection investigations involving Australian businesses or consumers (65 FR 64950–02 (Oct. 31, 2000)); (3) to Australian law enforcement agencies, information contained in the Consumer Sentinel database of consumer complaints and law enforcement information (67 FR 4260–04 (Jan. 29, 2002)); and (4) to the United Kingdom Office of Fair Trading and the United Kingdom Directorate for Trade and Industry information regarding consumer protection investigations involving U.K. businesses or consumers (65 FR 67011–02 (Nov. 8, 2000)). With respect to Canadian law enforcement agencies, the Associate Director for International Consumer Protection can redelegate this authority to individual Regional Directors on specific cases and projects as appropriate. In addition, the Commission has delegated to the Associate Director for International Consumer Protection the authority to execute econsumer.gov confidentiality agreements with consumer protection authorities from current or future International Marketing Supervision Network (IMSN) member countries, and to execute Consumer Sentinel confidentiality agreements with any foreign law enforcement agency whose access has been authorized or is authorized in the future by the Commission or by the Commission's delegate, including without limitation Canadian and Australian law enforcement agencies.

This delegated authority does not apply to competition-related investigations. When exercising its delegated authority, staff will require from the relevant foreign law enforcement agency assurances of confidentiality. Disclosures shall be made only to the extent consistent with limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and the Commission Rule 4.10(d), 16 CFR 4.10(d), and with the Commission's enforcement policies and other important interests. Where the subject matter of the information to be shared raises significant policy concerns, staff shall notify the Commission before disclosing such information.

By direction of the Commission.

Donald S. Clark,
Secretary.
[FR Doc. 02–17325 Filed 7–9–02; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that

notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/10/2002			
20020302	L–3 Communications Holdings, Inc.	PerkinElmer, Inc	PerkinElmer Detection Systems, Inc. (California) PerkinElmer Detection Systems, Inc. (Delaware)
20020761	Telephone and Data Systems, Inc. Voting Trust.	PrimeCo Wireless Communications LLC.	PrimeCo Wireless Communications LLC.
20020812	TEPPCO Partners, L.P	Burlington Resources Inc	Burlington Resources Inc.
20020818	Sanmina-SCI Corporation	Siemens Aktiengesellschaft	Siemens Aktiengesellschaft.
20020820	Stephen A. Wynn	Wynn Resorts, Inc	Wynn Resorts, Inc.
20020821	Aruze Corp.	Wynn Resorts, Inc	Wynn Resorts, Inc.
20020823	Royal Bank of Canada	Barclays Bank PLC	Barclays Bank PLC.
20020825	Bingham Dana LLP	McCutchen, Doyle, Brown & Enersen, LLP.	McCutchen, Doyle, Brown & Enersen, LLP.
20020827	Chittranjan K. Thakkar and Saloni Thakkar.	Computer Sciences.Corporation	Computer Sciences Corporation.
20020834	Stronach Trust	The Midpointe Trust	Lone Star Race Park, Ltd.
Transactions Granted Early Termination—06/12/2002			
20020798	SBC Communications Inc	SpectraSite Holdings, Inc	CA/NV Tower Holdings, LLc
Transactions Granted Early Termination—06/13/2002			
20020804	ENSCO International Incorporated.	Chiles Offshore Inc	Chiles Offshore Inc.
20020822	Citigroup Inc	Golden State Bancorp Inc	Auto One Acceptance Corporation. CalFed Investments. First Nationwide Mortgage Corporation.
20020839	Mr. Paris Mouratoglou	Investeringsselskabet Energy Holding A/S.	enXco, Inc.
Transactions Granted Early Termination—06/14/2002			
20020776	Hilb, Rogal and Hamilton Company.	Hobbs Group, LLC	Hobbs Group, LLC.
20020789	Pactiv Corporation	Philip Kamins	Winkler Forming, Inc.
20020831	J.P. Morgan Chase & Co	MasterCard Incorporated	MasterCard Incorporated.
20020843	Wendy's International, Inc	Fresh Enterprises, Inc	Fresh Enterprises, Inc.
20020844	Trident II, L.P	Citigroup Inc	Commercial Insurance Resources, Inc.
20020847	REMEC, Inc	Spectrian Corporation	Spectrian Corporation.
20020848	California Physicians' Service	Lifeguard, Inc	Lifeguard, Inc.
20020854	William E. Simon & Sons Private Equity Partners, L.P.	CFP Group, Inc	Custom Food Products, Inc.
20020855	Tier Technologies, Inc	Comerica Incorporated	Official Payments Corporation.
Transactions Granted Early Termination—06/18/2002			
20020836	The Goldman Sachs Group, Inc	Walter N. Frank & Co., LLC	Walter N. Frank & Co., LLC.
20020837	Anthem, Inc	Trigon Healthcare, Inc	Trigon Healthcare, Inc.
20020867	Openwave Systems Inc	SignalSoft Corporation	SignalSoft Corporation.
20020870	PwCC Limited	Pricewaterhouse Coopers LLP	PWCC LO.
Transactions Granted Early Termination—06/19/2002			
20020830	ABRY Partners IV, L.P	Hughes Holding, Inc	Hughes Holding, Inc.
20020849	Citigroup Inc	MasterCard Incorporated	MasterCard Incorporated.
Transactions Granted Early Termination—06/20/2002			
20020826	General Electric Company	American United Mutual Insurance Holding Company.	American United Life Insurance Company. AUL Long Term Care Solutions, Inc. AUL Reinsurance Management Services (Canada), Ltd. AUL Reinsurance Management Services, LLC.
20020850	Key Energy Services, Inc	Q Services, Inc	Q Services, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Director on the Commission.

Donald S. Clark,
Secretary.
[FR Doc. 02–17323 Filed 7–9–02; 8:45 am]

applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA. To support the provisions outlined in the FFMIA, the JFMIP is

orders for additional copies of this volume with their account representatives at the Government Printing Office (GPO).

This notice is not intended to solicit orders from the general public for single copies or small order of this volume. GPO will offer volume V for sale to the general public at a later time.

Rider orders for Volume V should be placed on a Standard Form 1 and

Purpose

The purpose of the meeting is to provide the NCVHS Work Group on Quality with expert opinion and information about the adequacy of existing health data systems for supporting quality measurement at the individual practitioner level and to identify needed improvements in existing data and data collection mechanisms. The scope of interest includes administrative data, vital records data, medical records data and survey data. At the meeting, an invited panel

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 9 a.m. 1–4 p.m., July 24, 2002.

Place: Hotel Monaco, 225 North Wabash, Chicago, IL 60601.

Status: Open.

Purpose: At this meeting the Workgroup on the National Health Information Infrastructure will hold a hearing to explore standards issues related to personal health and population health issues, and attend to

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/*, where further information will be posted

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Director on the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–17323 Filed 7–9–02; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

[Document No. JFMIP–SR–02–03]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft entitled "Non-Income Tax Revenue System Requirements," dated July 2002. The draft is the first Federal Financial Management System Requirements (FFMSR) document to address standard financial requirements for Federal non-income tax revenue systems. The document is intended to assist agencies when developing, improving or evaluating revenue systems. It provides the baseline functionality that agency systems must have to support agency missions and comply with laws and regulations. When issued in final, the document will augment the existing body of FFMSR that define financial system functional requirements which are used in evaluating compliance with the Federal Financial Management Improvement Act (FFMIA) of 1996.

DATES: Comments are due by September 13, 2002.

ADDRESSES: Copies of the exposure draft have been mailed to senior financial officials and chief information officers, together with a transmittal memo listing items of interest for which JFMIP is soliciting feedback. The Exposure Draft and transmittal memo are available on the JFMIP Web site: *WWW.JFMIP.GOV*. Responses should be addressed to JFMIP, 1990 K Street, NW., Suite 430, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Daniel Costello, (202) 219–0542 or *daniel.costello@gsa.gov*.

SUPPLEMENTARY INFORMATION: The FFMIA of 1996 mandated that agencies implement and maintain systems that comply substantially with FFMSR, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA. To support the provisions outlined in the FFMIA, the JFMIP is updating obsolete requirements documents and publishing additional requirements documents. Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final document will be mailed to agency financial officials, chief information officers, and others, and will be available on the JFMIP Web site.

An open house is scheduled for August 8, 2002, from 1 to 3 pm in the OPM main auditorium, located at 1900 E Street NW., to provide additional information on the Exposure Draft. The name, organization, telephone number, and e-mail address for attendees should be e-mailed to *daniel.costello@gsa.gov* or faxed to 202–219–0549.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 02–17204 Filed 7–9–02; 8:45 am]

BILLING CODE 1610–02–M

GENERAL ACCOUNTING OFFICE

Opportunity To "Ride" Printing Order for Volume V of GAO's Principles of Federal Appropriations Law

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: GAO is publishing Volume V of Principles of Federal Appropriations Law, second edition—known as "The Red Book." Agencies may now place advance (rider) orders for copies of this volume with GPO.

DATES: Rider order must be received by GPO no later than August 1, 2002.

SUPPLEMENTARY INFORMATION: The General Accounting Office (GAO) will shortly publish volume V of Principles of Federal Appropriations Law, second edition—also known as "The Red Book." Volume V consists of a comprehensive index and tables of authority covering all of the preceding four volumes. Volume V completes the second edition of GAO's Principles of Federal Appropriations Law.

GAO will provide one copy of this volume to the heads of federal agencies. Agencies may place advance (rider) orders for additional copies of this volume with their account representatives at the Government Printing Office (GPO).

This notice is not intended to solicit orders from the general public for single copies or small order of this volume. GPO will offer volume V for sale to the general public at a later time.

Rider orders for Volume V should be placed on a Standard Form 1 and should specify GAO Requisition No. 200061. Agency orders for Volume V must be received by GPO no later than August 1, 2002. Rider requisitions for Volume V will not be accepted after this date, and additional copies will have to be purchased from the Superintendent of Documents. All rider requisitions must be submitted to GPO through each agency's Washington, DC. headquarters printing procurement office. We are advised that GPO will return all requisitions sent directly from field or regional offices.

In compiling your agency's total order, GAO suggests that you take into consideration the needs of legal offices, finance offices, contracting offices, libraries, Inspector General offices, field and regional offices, and any other elements of your agency that might use this publication.

Unlike the previous four volumes of this series, Volume V of Principles of Federal Appropriations Law will be printed in the "perfect-bound" format. Consequently, it will not require a binder.

(Authority: 31 U.S.C. 717, 719, 3511, 3526–29.)

Dated: July 3, 2002.

Anthony Gamboa,

General Counsel, United States General Accounting Office.

[FR Doc. 02–17336 Filed 7–9–02; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations—Working Group on Quality.

Time and Date: 9 a.m.–4 p.m., July 25, 2002.

Place: Hotel Monaco, 225 North Wabash, Chicago, IL, (312) 960–8500.

Status: Open.

Purpose

The purpose of the meeting is to provide the NCVHS Work Group on Quality with expert opinion and information about the adequacy of existing health data systems for supporting quality measurement at the individual practitioner level and to identify needed improvements in existing data and data collection mechanisms. The scope of interest includes administrative data, vital records data, medical records data and survey data. At the meeting, an invited panel of experts will provide their perspectives on these issues.

In addition, the Work Group will hear from invited panels of experts about topic areas to be included in the National Healthcare Quality Report, including the Preliminary Measure Set for the report now under development within the Agency for Healthcare Research and Quality. The AHRQ Preliminary Measure Set will be available on the AHRQ website after July 12. The Institute of Medicine has recommended a framework and criteria for selecting measures for the National Healthcare Quality Report, and AHRQ has prepared a draft list of proposed topic areas and measures to be included. Information about the AHRQ Preliminary Measure Set may be obtained by contacting: Ed Kelly, Ph.D., Senior Service Fellow, National Healthcare Quality Report, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Boulevard, Suite 200, Rockville, MD 20852, *ekelly@ahrq.gov*

FOR FURTHER INFORMATION CONTACT: Substantive program information as well as summaries of meetings and a roster of NCVHS Committee members may be obtained from Stanely Edinger Ph.D., Lead Staff Person for the NCVHS Subcommittee on Special Populations, Working Group on Quality, Agency for Healthcare Research and Quality, 6011 East Jefferson Street, Suite 200, #106, Rockville, MD 20852, telephone (301) 594–1598; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Dated: July 3, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–17292 Filed 7–9–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 9 a.m. 1–4 p.m., July 24, 2002.

Place: Hotel Monaco, 225 North Wabash, Chicago, IL 60601.

Status: Open.

Purpose: At this meeting the Workgroup on the National Health Information Infrastructure will hold a hearing to explore standards issues related to personal health and population health issues, and attend to other business as required.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 260–2552, or Majorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where an agenda for the meeting will be posted when available.

Dated: July 2, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–17293 Filed 7–9–02; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee.

Time and Date: 8 a.m.–4:30 p.m., July 26, 2002

Place: Hotel Monaco, 225 North Wabash, Chicago, IL 60601.

Status: Open.

Purpose: This meeting of the Executive Subcommittee will be held for Committee work planning purposes. The Subcommittee will plan future Committee meetings and review work plans for 2002 and early 2003. Strategic planning will include organizing and integrating agenda issues across priorities, reviewing the efficiency and effectiveness of the current Committee structure and meeting schedule, and positioning the Committee to address new and emerging topics.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/*, where further information will be posted when available.

Dated: July 2, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–17294 Filed 7–9–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–68]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Reader Evaluations of Public Health Assessments and Other Products (OMB No. 0923–0016)—Reinstatement with changes—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Reauthorization Act (SARA), to assess the health impacts of hazardous waste sites, to provide health information and to conduct health education activities. The principal audiences for these products are health professionals at the federal, state, and local levels, staff in public libraries and repositories, interested private sector organizations and groups, and members of the public.

In order to make ATSDR products more useful to clients and partners requesting ATSDR health consultations and exposure investigations within 1 month following delivery of product or service. The survey collects information on (a) affiliation of users, (b) timeliness and effectiveness of these products, and (c) practical utility of these products.

The reader evaluation surveys provide important feedback that enables ATSDR staff to maintain the utility, integrity

1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Catherine Lorraine, Office of Policy, Planning, and Legislation (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION: In the

Dated: July 3, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17275 Filed 7–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and

Proposed Project

Reader Evaluations of Public Health Assessments and Other Products (OMB No. 0923–0016)—Reinstatement with changes—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to perform health assessments for each facility on the National Priorities List and for releases or facilities where individuals have been exposed to a hazardous substance. In addition, ATSDR provides consultations on health issues relating to exposure to hazardous or toxic substances to officials at the Environmental Protection Agency (EPA), and state and local government. The principal audiences for these products are health professionals at the federal, state, and local levels, staff in public libraries and repositories, interested private sector organizations and groups, and members of the public.

In order to make ATSDR products such as health assessments, consultations, exposure investigations, and fact sheets timely and relevant, ATSDR staff developed a survey questionnaire (OMB 0923–0016) to get readers' opinions and evaluations. The survey will be inserted and mailed in each public health assessment. In addition, electronic surveys will be sent to clients and partners requesting ATSDR health consultations and exposure investigations within 1 month following delivery of product or service. The survey collects information on (a) affiliation of users, (b) timeliness and effectiveness of these products, and (c) practical utility of these products.

The reader evaluation surveys provide important feedback that enables ATSDR staff to maintain the utility, integrity and standards of its products. Gathering client feedback ensures that appropriate information is included in these documents and assists in maintaining medical and scientific usefulness. The information will be used to maintain customer satisfaction with these products. There is no cost to respondents.

Respondents	Number of respondents	Responses/ respondent	Average burden/ response (in hours)	Total burden (in hours)
Community member reviewing public health assessments	130	1	15/60	32.5
Environmental regulatory official requesting health consultations	210	1	15/60	52.5
Community member requesting health consultations	50	1	15/60	12.5
Community member reviewing public health fact sheets	750	1	15/60	187.5
Total				285

Dated: July 3, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–17295 Filed 7–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: National Center for Prevention of Childhood Agricultural Injury, Program Announcement Number: OH–02–006

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): National Center for Prevention of Childhood Agricultural Injury, Program Announcement Number: OH–02–006.

Times and Dates: 7:30 p.m.–9 p.m., August 4, 2002 (Open), 8 a.m.–6 p.m., August 5, 2002 (Closed), 8 a.m.–10 a.m., August 6, 2002 (Closed).

Place: National Children's Center For Rural Agricultural Health and Safety, 1000 North Oak Avenue, Marshfield, WI 54449, phone (888) 924–7233.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–006.

Contact Person for More Information: Price Connor, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE, Atlanta, GA 30333, telephone (404) 498–2511. The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17303 Filed 7–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0209]

Request for Comment on First Amendment Issues

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 13, 2002, the comment period for original comments and is extending to October 28, 2002, the comment period for responses to those comments relating to FDA's Request for Comment on First Amendment Issues published in the **Federal Register** of May 16, 2002 (67 FR 34942). The agency is taking this action in response to requests for an extension.

DATES: Submit written or electronic comments on the Request for Comment on First Amendment Issues by September 13, 2002, and submit written or electronic responses to those comments by October 28, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Catherine Lorraine, Office of Policy, Planning, and Legislation (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 2002 (67 FR 34942), FDA published a document entitled "Request for Comment on First Amendment Issues." In this document FDA asked the public to comment on a number of questions to help ensure that the agency's regulations, guidances, policies, and practices continue to comply with the governing First Amendment case law. Recent case law has emphasized the need for not imposing unnecessary restrictions on speech. The document also stated the agency's wish to learn what empirical evidence exists concerning, among other things, the effect of commercial speech on the public health.

The agency received three letters requesting that the agency extend the comment period for 60 days until September 30, 2002, for the submission of comments and until November 13, 2002, for the submission of responses to the comments. The three requests cited the need for additional time because of the complexity and importance of the subject matter to be commented on. The requests also stated an extension was needed to enable consultation with a variety of individuals, including social science and other experts, as well as business partners. One request pointed out that summer vacation schedules would make this consultation even more difficult. FDA has determined that it is appropriate to grant these requests. However, FDA believes that an additional 45 days will be sufficient time to allow for the consultations discussed and the preparation of comments.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the document requesting comment on First Amendment issues by September 13, 2002, and responses to comments by October 28, 2002. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and responses to comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 3, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17275 Filed 7–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the fiscal year 2001 annual report for the following Health Resources and Services Administration's Federal advisory committee has been filed with the Library of Congress:

Health Professions and Nurse Education Special Emphasis Panel

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, James Madison Memorial Building, Room 133, Independence Avenue, SE., between 1st and 2nd Streets, Washington, DC.

Copies may be obtained from: Ms. Theresa Derville, Acting Director, Office of Peer Review, Bureau of Health Professions, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone 301–443–6339.

Dated: July 2, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–17352 Filed 7–9–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ACEVEDO, IVETTE MIAMI, FL	07/18/2002
AGUILAR, JOEL MAZARIEGOS POMONA, CA	07/18/2002
ALVAREZ, MARIO JUNCOS, PR	07/18/2002
AREVALO, MARIO WEST COVINA, CA	07/18/2002
ATKINS, NICHOLAS C ST CHARLES, IL	07/18/2002
BARRETO, GUILLERMO JOSE SAN DIEGO, CA	07/18/2002
BELL-WISDOM, GLORIA FAY ROLLA, MO	07/18/2002
BOBO, PHILLIP K TUSCALOOSA, AL	07/18/2002
BOBO, PHILLIP K TUSCALOOSA, AL	07/18/2002
BOGINSKY, JULYA NEW YORK, NY	07/18/2002
BRENNER, STEPHEN ROSLYN, NY	07/18/2002
BRIOSO, LUIS ALBERTO BELLE GLADE, FL	07/18/2002
BRUSO, ROBERT ST CLOUD, FL	07/18/2002
BRYANT, YOLANDA KAY HOUSTON, TX	07/18/2002
CABRERA, MARTHA MIAMI, FL	07/18/2002
CABRERA-MARES, LAURA MIAMI, FL	07/18/2002
CABRERA-MEDRANO, BEATRIZ MIAMI, FL	07/18/2002
CAMPO, JACK MIAMI, FL	07/18/2002
CARLOW, SHELLI DAVIE, FL	07/18/2002
CHILDRESS, LARRY JOE HOUSTON, TX	07/18/2002
DEFANA, DANIEL MIAMI, FL	07/18/2002
DELATORRE, DORIS E ST PETERSBURG, FL	07/18/2002
DOGGETTE, CARL N MONTGOMERY, AL	07/18/2002
DUBIN, GARY I BEVERLY HILLS, CA	07/18/2002
DYSART, DEBORAH LYLE BRYAN, TX	07/18/2002
EM, PORNN	07/18/2002

Subject, city, state	Effective date
PERRIS, CA FEDERGREEN, WARREN ROSS JENSEN BEACH, FL	07/18/2002
FERRER, BONIFACIO H BRECKSVILLE, OH	07/18/2002
FINE GOLD HEALTH CENTER, INC	07/18/2002
PEPPER PIKE, OH ORTEGA, VICTOR SAN JUAN, PR	07/18/2002
PETERS, ALICE DAYTON, TX	07/18/2002
PETRILLO, HENRY J NEW PORT RICHEY, FL	07/18/2002
PINKOFF, LAWRENCE D	07/18/2002
PITTSBURGH, PA SPEKTOR, JOSEPH WOODCLIFF LAKE, NJ	07/18/2002
WIRTH, RANDOLPH E LANSING, MI	07/18/2002
FELONY CONTROL SUBSTANCES CONVICTION	

Subject, city, state	Effective date
NOWATA, OK HANN, MALINA LYNN SPOKANE, WA	07/18/2002
HARVEY, JERRY WAYNE DEWEY, OK	07/18/2002
HENDERSON, CATHERINE RENA KOSCIUSKO, MS	07/18/2002
HICKS, BYRON ST PAUL, MN	07/18/2002
APARICIO, FRANCES C PIRTLEVILLE, AZ	07/18/2002
APPLEMAN, MICHAEL A MINNEAPOLIS, MN	07/18/2002
ARTIS, TYSHAUN THORTON HOT SPRINGS, AR	07/18/2002
BAGGETT, CHARLES LYNN LIVE OAK, CA	07/18/2002
PEMBROKE PINES, FL DAVIS, MARCY S DELRAY BEACH, FL	07/18/2002
DAVIS, DORA JO CARBON HILL, AL	07/18/2002
DENNISON, AMY CAROL FOUSHEE LOUISVILLE, KY	07/18/2002
DOVE, JOSEPH F	07/18/2002

Subject, city, state	Effective date
PERRIS, CA	
FEDERGREEN, WARREN ROSS	07/18/2002
JENSEN BEACH, FL	
FERRER, BONIFACIO H	07/18/2002
BRECKSVILLE, OH	
FINE GOLD HEALTH CENTER, INC	07/18/2002
GLENDALE, CA	
FRAGA, EDUARDO	07/18/2002
HOMESTEAD, FL	
GALIOTO, SALVATORE J	07/18/2002
WILMETTE, IL	
GALLANT, ROBERT E	07/18/2002
LEXINGTON, KY	
GARCIGA, ACELIA	07/18/2002
HIALEAH, FL	
GEVORKIAN, GRIGOR	07/18/2002
LONG BEACH, CA	
GRAFFREE, TYRONE	07/18/2002
PLYMOUTH, WI	
GRAY, CARLA JO	07/18/2002
GRAND JUNCTION, CO	
GUTIERREZ, JUAN B	07/18/2002
CORAL SPRINGS, FL	
GYULNAZARYAN, SVETLANA MISHAYE	07/18/2002
SANGER, CA	
HINOJOSA, JORGE ALFONSO	07/18/2002
CHULA VISTA, CA	
HURST, JOHN M	07/18/2002
HARRISBURG, PA	
JEMINI, DAVID	07/18/2002
FAIRTON, NJ	
JEMINI, JACK	07/18/2002
EGLIN AFB, FL	
JETER, NINA L	07/18/2002
MARYVILLE, WA	
JONAH, YUKO U	07/18/2002
DENVER, CO	
KELLER MEDICAL SERVICE, INC	07/18/2002
FORREST CITY, AR	
KHAN, ABDUL H	07/18/2002
TARPON SPRINGS, FL	
KNIGHT, SHIRLEY B	07/18/2002
TARBORO, NC	
LOPEZ, GLADYS	07/18/2002
MIAMI BEACH, FL	
MALONEY, RITA I	07/18/2002
RONAN, MT	
MARKAVA TRANSPORTATION CO, INC	07/18/2002
SUFFERN, NY	
MASSA, ALFRED N	07/18/2002
WHITE DEER, VA	
MAXWELL, KENDRA	07/18/2002
ONTARIO, CA	
MCCLEARY, COLLEEN R	07/18/2002
LACEY, WA	
MCGOVERN'S AMBULANCE SERVICE	04/16/2002
PORT CHARLOTTE, FL	
MCGUIRE, MARK	07/18/2002
LEXINGTON, KY	
MEDEMA, DIANE L	07/18/2002
IRVING, NY	
MITTAL, BRIJ	07/18/2002
OTISVILLE, NY	
MURRAY, GAYLAN WADE	07/18/2002
MEMPHIS, TN	
NORTON, JAMES MICHAEL	07/18/2002
COLEMAN, FL	
NOVAK, STEVEN A	07/18/2002
PEPPER PIKE, OH	
ORTEGA, VICTOR	07/18/2002
SAN JUAN, PR	
PETERS, ALICE	07/18/2002
DAYTON, TX	
PETRILLO, HENRY J	07/18/2002
NEW PORT RICHEY, FL	
PINKOFF, LAWRENCE D	07/18/2002
HOLLYWOOD, FL	
POOT, MAGALY	07/18/2002
MIAMI, FL	
REDFERN, RONALD ORVILLE	07/18/2002
PLANTATION, FL	
ROBERT, ALFREDO	07/18/2002
MIAMI, FL	
ROGUE, ILIANA	07/18/2002
MIAMI, FL	
ROSENSWEET, MARTIN I	07/18/2002
FORT DIX, NJ	
RUIZ, ROSARIO	04/10/2001
MIAMI, FL	
SANCHEZ, LAURA SUE	07/18/2002
APPLE VALLEY, CA	
SARKISSIAN, SHUSHAN	07/18/2002
LOS ANGELES, CA	
SHIELDS, JOHN C	07/18/2002
PITTSBURGH, PA	
SOUTHARD, PATRICIA ANN	07/18/2002
ALDERSON, WV	
STOVER, ROBIN R	07/18/2002
LARGO, FL	
SUMMERLIN, JOANN	07/18/2002
ZOLFO SPRINGS, FL	
SWILLING, DAWN	07/18/2002
COLEMAN, FL	
SYCHAK, NICHOLAS A	07/18/2002
MORGANTOWN, WV	
TAPANES, DAYSI C	07/18/2002
HIALEAH, FL	
TENNANT, FORREST S JR	07/18/2002
WEST COVINA, CA	
VERONA, ALICIA	07/18/2002
MIAMI, FL	
WEINBERG, JOSEPH	07/18/2002
SUFFERN, NY	
WILLIAMS-KELLY, JOYCE	07/18/2002
FREEPORT, NY	
WOLICKI, ELIAV ISRAEL	07/18/2002
NEW HEMPSTEAD, NY	
WOODARD, MALCOLM S	07/18/2002
HOPKINSVILLE, KY	
YUVIENCO, SIMON	07/18/2002
PAMPLONA (PH) 3522,	
ZUZO, ELLEN	07/18/2002
LOS ANGELES, CA	

FELONY CONVICTION FOR HEALTH CARE FRAUD

ASEMANI, GHAFOUR B	07/18/2002
ELLICOTT CITY, MD	
FRAWLEY, MARK A	07/18/2002
COOPERSBURG, PA	
JAGGERS, KIMBERLEE ELIZABETH	07/18/2002
COLEMAN, FL	
JOHNSON, VIOLA	07/18/2002
NASHVILLE, TN	
KARPIN, LEONARDO G	07/18/2002
MEDFORD, NJ	
LONG, MARIE B	07/18/2002
PIKEVILLE, TN	
OSTROSKY, ROBERT F	07/18/2002
PITTSBURGH, PA	
SPEKTOR, JOSEPH	07/18/2002
WOODCLIFF LAKE, NJ	
WIRTH, RANDOLPH	07/18/2002
E LANSING, MI	

FELONY CONTROL SUBSTANCES CONVICTION

CHANDLER, SIDNEY MINTHORN	07/18/2002
AUBURN, AL	
CLARK, JOY JANELL	07/18/2002
CEDAR HILLS, UT	
DUCKWORTH, DEREK EDWARD	07/18/2002
TOLEDO, OH	
GARSOW, LORI KIM	07/18/2002
GRAND RAPIDS, MN	
GUANOJUATO, ERIC	07/18/2002
PINE BLUFF, AR	
GUIDO, JAMES N	07/18/2002
FLATWOODS, KY	
KADER, MITCHELL EDWIN	07/18/2002
IRVINE, CA	
KLOTZ, LINN ROBERT	07/18/2002
ORLANDO, FL	
MEDINA, ALICIA ERLINDA	07/18/2002
HIGHLAND, CA	
PAPPEL, PAMELA JEANNE	07/18/2002
GRAND JUNCTN, CO	
RUTTER-WASSOM, DIANE JOY	07/18/2002
FT COLLINS, CO	
SMITH FOSS, BRENDA L	07/18/2002
WAGONER, OK	
SOKOL, JENNIFER CLARE	07/18/2002
MARION, IA	
TORE, JOSEPH A	07/18/2002
TOLEDO, OH	
WIGINTON, CAROLYN C	07/18/2002
SHAWNEE, OK	
WOODWARD, MICHAEL H	07/18/2002
RHINECLIFF, NY	
WRIGHT, VALERIE H	07/18/2002
JACKSONVILLE, FL	

PATIENT ABUSE/NEGLECT CONVICTIONS

BARTOW, SUSANA	07/18/2002
SALEM, NY	
BLAKENEY, LISA HOUSTON	07/18/2002
ALVARADO, TX	
BOND, GLORIA J	07/18/2002
BROKEN BOW, OK	
BURNETT, MILAN CAPRICE	07/18/2002
COFFEYVILLE, KS	
CANSLOR, FLORA ANN	07/18/2002
CLARKSDALE, MS	
DAVIS, CAROLYN	07/18/2002
GRANDFIELD, OK	
EDDY, FREEMAN	07/18/2002
PARKER, AZ	
FINANCIAL SECURITY, INC	07/18/2002
OURAY, CO	
GABUS, JOSEPH THOMAS	07/18/2002
HUNTSVILLE, TX	
GLASER, VICTORIA MARIA	07/18/2002
RENSSELAER, NY	
GREEN, KENNETH S III	07/18/2002
LA JOLLA, CA	
GRIFFIN, ERICA	07/18/2002
D'LO, MS	
HALCOMB, DUSTY ALLEN	07/18/2002

Subject, city, state	Effective date
NOWATA, OK	
HANN, MALINA LYNN	07/18/2002
SPOKANE, WA	
HARVEY, JERRY WAYNE	07/18/2002
DEWEY, OK	
HENDERSON, CATHERINE RENA	07/18/2002
KOSCIUSKO, MS	
HICKS, BYRON	07/18/2002
PRENTISS, MS	
KEATON, TIMOTHY CLYDE	07/18/2002
MOREHEAD, KY	
KIM, DAE HYUN	07/18/2002
SANTA MARIA, CA	
MCQUEEN, NANCY E	07/18/2002
CONWAY, SC	
PAULOS, GEORGE M	07/18/2002
CONWAY, AR	
PITTMAN, BRENDA WALKER	07/18/2002
PRENTISS, MS	
SALANGO, REBECCA	07/18/2002
CARSON, CA	
SANDERS, RUTH HELEN	07/18/2002
HOT SPRINGS, AR	
SELPH, JOHN H	07/18/2002
VANCOUVER, WA	
STALNAKER, SHEILA B	07/18/2002
SULLIVAN, IL	
SUMMLEARS, EMMA	07/18/2002
HOLLY SPRINGS, MS	
TOMLINSON, JUNE MONICA	07/18/2002
EUCLID, OH	
TRAVIS, MICHAEL A	07/18/2002
NASHVILLE, TN	
WOODS, VONDA	07/18/2002
OXFORD, MS	
WRIGHT, CHRYSTAL ANNETTE	07/18/2002
SOMERSET, KY	

CONVICTION FOR HEALTH CARE FRAUD

CIPOLLA, JOHN A	07/18/2002
CRANSTON, RI	
MARCELJA, EVELYN GLAZER	07/18/2002
STONEHAM, MA	
MCINTOSH, YVETTE SIMONE	07/18/2002
DETROIT, MI	
SMITH, DARRON TERRY	07/18/2002
PROVO, UT	

CONVICTION-OBSTRUCTION OF AN INVESTIGATION

MCCLEAN, EDWARD	7/18/2002
MARLTON, NJ	

CONTROLLED SUBSTANCE CONVICTIONS

LINI, MEGAN NOREEN	7/18/2002
SAN DIEGO, CA	

LICENSE REVOCATION/SUSPENSION/ SURRENDERED

ABAIR, DARLENE A	07/18/2002
WILLIAMSTOWN, VT	
ABROMS, PHILLIP L	07/18/2002
FLORENCE, AL	
ADAMS-SMITH, PAMELA	07/18/2002
BOGUE CHITTO, MS	
ANDERSON, THERESA JANE	07/18/2002
ST PAUL, MN	
APARICIO, FRANCES C	07/18/2002
PIRTLEVILLE, AZ	
APPLEMAN, MICHAEL A	07/18/2002
MINNEAPOLIS, MN	
ARTIS, TYSHAUN THORTON	07/18/2002
HOT SPRINGS, AR	
BAGGETT, CHARLES LYNN	07/18/2002
LIVE OAK, CA	
BARRERA, A RODOLFO JOSE	07/18/2002
MIAMI, FL	
BASS, MITZI LUCILLE	07/18/2002
TERRELL, TX	
BAULER, GEORGE JAMES	07/18/2002
WICHITA, KS	
BEASLEY, ANGELIA MARIE	07/18/2002
BLYTHEVILLE, AR	
BEATTY, NIANNE HATHHORN	07/18/2002
AUSTIN, TX	
BECK, BETTY L	07/18/2002
LITTLE ROCK, AR	
BELL, JIMMIE MACK	07/18/2002
BELTON, TX	
BENTLEY, EARLE L III	07/18/2002
RICHLAND, MS	
BOLDEN, JACQUELINE	07/18/2002
GREENVILLE, MS	
BOWE, JUDITH MAE	07/18/2002
WALKER, MN	
BOWMAN, MARCELLA E STAPLETON	07/18/2002
INDEPENDENCE, KY	
BRANNON, DONYA S	07/18/2002
OCEAN SPRINGS, MS	
BROADNAX, DENISE CHARLENE	07/18/2002
CASTRO VALLEY, CA	
BROOMFIELD, SHIRLEY ANN	07/18/2002
LOS ANGELES, CA	
BROWN, JAMES M	07/18/2002
HENDERSONVILLE, TN	
BRUNSON, VALERIE MICHELLE	07/18/2002
BIRMINGHAM, AL	
CALLAHAN, JACKIE LYNN	07/18/2002
HOUSTON, TX	
CARPENTER, THOMAS JAMES	07/18/2002
BELLA VISTA, CA	
CARPENTER, ROBERT	07/18/2002
SAN FRANCISCO, CA	
CECH, STEPHEN A	07/18/2002
BAKERSFIELD, CA	
CHAMBERS, DELORA GAYE TAYLOR	07/18/2002
AMITY, AR	
CHO, LEELAND PHILIP	07/18/2002
ANCHORAGE, AK	
CLAIR, MICHAEL JEROME	07/18/2002
ORLANDO, FL	
CLARK, HEATHER L	07/18/2002
ANDALUSIA, AL	
CLARK, MARVARAI	07/18/2002
LUCEDALE, MS	
COMRIE, SHIRLEY M	07/18/2002
TRENTON, NJ	
CONSTANTINO, LISA	07/18/2002
SAN FRANCISCO, CA	
CONTRERAS, MICAEL ANTHONY	07/18/2002
STOCKTON, CA	
CUARTAS, ANNA	07/18/2002
PEMBROKE PINES, FL	
DAVIS, MARCY S	07/18/2002
DELRAY BEACH, FL	
DAVIS, DORA JO	07/18/2002
CARBON HILL, AL	
DENNISON, AMY CAROL FOUSHEE	07/18/2002
LOUISVILLE, KY	
DOVE, JOSEPH F	07/18/2002
JOELTON, TN	
EADDY, PAMELA DIANE	07/18/2002
LONG BEACH, CA	
EKSTEROWICZ, DEBORAH	07/18/2002
MT EPHRAIM, NJ	
EWING, JOYCELYN	07/18/2002
MONTICELLO, MS	
EYE, PAULA M	07/18/2002
CHILLICOTHE, MO	
FANNING, KELLY L	07/18/2002
NARRAGANSETT, RI	
FARAH, MINA	07/18/2002
RICHMOND HILL, NY	
FARMER, SHERRI LYNN	07/18/2002
JACKSONS GAP, AL	
FEDER, ROBERT DEAN	07/18/2002
CHICO, CA	
FISCHER, MARIE TENBARGE	07/18/2002
EVANSVILLE, IN	
FISHER, BLAISE N	07/18/2002
DORCHESTER, MA	
FORRESTER, RON P JR	07/18/2002
ROCKFORD, IL	
FOWLER, EDWARD ANDREW	07/18/2002
JACKSONVILLE, NC	
FRANKLIN, TERESA JO	07/18/2002
COON RAPIDS, MN	
FRAYSIER, KAREN K	07/18/2002
GRAY, TN	
FRAZIER, ALEXANDER GORDON	07/18/2002
ASHTABULA, OH	
FUREY, DANIEL MARLOW	07/18/2002
ST ALBANS, NY	
GADSON, SHEILA DENISE	07/18/2002
HUNTSVILLE, AL	
GARDNER, JAMES DONALD	07/18/2002
FRESNO, CA	
GELORMINO, CHRISTOPHER JAMES	07/18/2002
SANTA ROSA, CA	
GILLIAM, MELISSA SUE	07/18/2002
PORTER, TX	
GOLDWATER, EDWARD G	07/18/2002
PHOENIX, AZ	
GRAY, LENA MARIE	07/18/2002
LAFAYETTE, IN	
GRAY, RALPH C	07/18/2002
ELIZABETH CITY, VA	
GREENE, LESLIE H SMITH	07/18/2002
EPPING, NH	
GREENE, CHARLENE ADELE	07/18/2002
LONG BEACH, CA	
GUDKNECHT, CECILIA ANN	07/18/2002
CATHEDRAL CITY, CA	
GULLEY, LOIS MARIE	07/18/2002
STOCKTON, CA	
HALL, JOSEPH I	07/18/2002
CLEVELAND, TN	
HAMILTON, JAMES RALPH JR	07/18/2002
CLANTON, AL	
HARNER, LAURA PIERCY	07/18/2002
NEW RIVER, AZ	
HIPP, KAREN	07/18/2002

Subject, city, state	Effective date
GRENADA, MS	
HOFFMAN, JOSEPHINE A	07/18/2002
WORCESTER, MA	
HOLBROOK, JAMES K	07/18/2002
MOREHEAD, KY	
HOLDER, REA ANN	07/18/2002
AZLE, TX	
HOLDRIDGE, CHARLOTTE	
CAMBRIDGE, MN	
MARDIS, JOSEPH S	07/18/2002
GRENADA, MS	
MARIANO, LENI	07/18/2002
MILL CREEK, WA	
MCCOLLEY, RHONDA K	07/18/2002
DIAMONDHEAD, MS	
MCGRATH, JAMES JOHN	07/18/2002
TUCSON, AZ	
PLEASANTON, CA	
RAYMO, VIRGINIA A	07/18/2002
ENOSBURG FALLS, VT	
REDLAND DRUGS, INC	07/18/2002
MIAMI, FL	
REULE, JEREMY KARL	07/18/2002
RIVER FALLS, WI	
RILEY, JILL KATHLEEN	07/18/2002
N LITTLE ROCK, AR	

Subject, city, state	Effective date
MOBILE, AL	
UFFMAN, VICCI KENSLEY	07/18/2002
LEXINGTON, KY	
VAN MEERVELD, BRIDGET	07/18/2002
BELVIDERE, IL	
VIDEAU, WANDA	07/18/2002
AVONDALE, LA	
VILLANUEVA, LUCITO	07/18/2002
WARRENTON, OR	

OWNED/CONTROLLED BY CONVICTED ENTITIES

ALPHA OMEGA HEALTH CARE MGMT	07/18/2002
COLEMAN, FL	
AUBURNDALE HEALTH CARE	

Dated: July 2, 2002.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–17250 Filed 7–9–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subject, city, state	Effective date
GRENADA, MS	
HOFFMAN, JOSEPHINE A	07/18/2002
WORCESTER, MA	
HOLBROOK, JAMES K	07/18/2002
MOREHEAD, KY	
HOLDER, REA ANN	07/18/2002
AZLE, TX	
HOLDRIDGE, CHARLOTTE ANNE	07/18/2002
DADEVILLE, AL	
HOLLINS, CAMELLIA ROSE	07/18/2002
MINNEAPOLIS, MN	
HUCKABY, WINSTON JR	07/18/2002
PASADENA, TX	
HUNEYCUTT, CAROLINE ANN	07/18/2002
HUNTSVILLE, AL	
HUNKIN, JENNIFER MAY	07/18/2002
MCALLEN, TX	
HUNSICKER, MARILYN	07/18/2002
GALLUP, NM	
IANNELLI, MICHAEL G	07/18/2002
W WARWICK, RI	
IRONS, SHERRY L	07/18/2002
PASCOAG, RI	
JACKSON, SAMUEL S	07/18/2002
NASHVILLE, TN	
JENKINS, BARBARA ROWE	07/18/2002
PINE BLUFF, AR	
JOHNSON, GAYE PRESTON	07/18/2002
BALLINGER, TX	
JOHNSON, JILL OLIVIA ELIOT	07/18/2002
OWENSBORO, KY	
JOHNSTON, HEATHER OAKLEY	07/18/2002
NEW BRIGHTEN, PA	
JONES, JEREMY P	07/18/2002
MESA, AZ	
KEECH, DEBRA JANE	07/18/2002
STILLWATER, MN	
KIM, CHIN HO	07/18/2002
LOS ANGELES, CA	
KING, JESSE ROBERT	07/18/2002
FOUNTAIN VALLEY, CA	
KING, DANIEL LEE	07/18/2002
NAPA, CA	
KOGAN, ELEONORA	07/18/2002
KNOXVILLE, TN	
KONRAD–PIALA, JULIA DIANE	07/18/2002
RAMONA, CA	
LAMOUREUX, MELISSA S	07/18/2002
WOONSOCKET, RI	
LANG, JULIE A	07/18/2002
FOSTER, RI	
LANIER, JUDY ANN	07/18/2002
GLADEWATER, TX	
LATHAM, KATHY RUSSELL	07/18/2002
IVANHOE, TX	
LAWRENCE, JADAH RASHIDAH	07/18/2002
CHICAGO, IL	
LEE, SUN KUN	07/18/2002
LA MIRADA, CA	
LOWE, THERESA YVONNE	07/18/2002
ARLINGTON, TX	
MAAS, MARK JAMES	07/18/2002
LICKING, MO	
MACGREGOR, SHARON ELOUISE	07/18/2002
WOODLAND, CA	
MADISON, MARCIA ELLEN	07/18/2002
CAMBRIDGE, MN	
MARDIS, JOSEPH S	07/18/2002
GRENADA, MS	
MARIANO, LENI	07/18/2002
MILL CREEK, WA	
MCCOLLEY, RHONDA K	07/18/2002
DIAMONDHEAD, MS	
MCGRATH, JAMES JOHN	07/18/2002
TUCSON, AZ	
MCGUIRE, JOAN ANN	07/18/2002
HACKENSACK, MN	
MIKE, SANDRA JO	07/18/2002
SAN FRANCISCO, CA	
MONTAYRE, PATERNO E	07/18/2002
SPRING HILL, FL	
MONTGOMERY, CARTIUS LYONE	07/18/2002
HALEYVILLE, AL	
MOORE, ROBERT FRANKLIN	07/18/2002
LORAIN, OH	
MURRAY, BETHANY SUZANNE	07/18/2002
NICEVILLE, FL	
MYERS, MARY	07/18/2002
LUFKIN, TX	
NELSON, MARY LOUISE	07/18/2002
ONYX, CA	
NIELSEN, SKOTT NIELSJORGEN	07/18/2002
DULUTH, MN	
NOVICK, JAMES STEPHEN	07/18/2002
GLENDALE, CA	
O'DELL, LAWRENCE WAYNE	07/18/2002
SPRINGFIELD, OR	
ODEN, KELLY ANN	07/18/2002
GLENCOE, AL	
OSBORNE, LINDA S	07/18/2002
POULTNEY, VT	
PALAZZO, DOROTHY B	07/18/2002
W WARWICK, RI	
PAPWORTH, SUSAN L	07/18/2002
SALT LAKE CITY, UT	
PAQUETTE, BRUCE	07/18/2002
LAKE WORTH, FL	
PATTERSON, PAULETTE	07/18/2002
COLLINS, MS	
PEABODY, JAMES PAUL	07/18/2002
MESA, AZ	
PEARSON, DONALD EUGENE	07/18/2002
SAN DIMAS, CA	
PETLOCK, GERALD A	07/18/2002
DALY CITY, CA	
PIERCE, JOHN	07/18/2002
NEW ORLEANS, LA	
PITTS, VESTA LEE	07/18/2002
PLAINVIEW, TX	
PRATT, WAYNE PAUL	07/18/2002
ROCKLEDGE, FL	
PREUITT, KIMBERLY	07/18/2002
OXFORD, MS	
PRUETT, JUDY KATHLEEN	07/18/2002
SLIDELL, TX	
PUNCHARD, KEISHA	07/18/2002
WINNSBORO, LA	
QUARTARONE, KEVIN FRANK	07/18/2002
N MIAMI BCH, FL	
RATHBUN, TERRY COLEMAN	07/18/2002
DOWNINGTOWN, PA	
RATHER, ROBERT WILLIAM	07/18/2002
VALLEJO, CA	
RAVANERA, RUDOLPHO	07/18/2002
S SAN FRANCISCO, CA	
RAVENTOS, MICHAEL	07/18/2002
PLEASANTON, CA	
RAYMO, VIRGINIA A	07/18/2002
ENOSBURG FALLS, VT	
REDLAND DRUGS, INC	07/18/2002
MIAMI, FL	
REULE, JEREMY KARL	07/18/2002
RIVER FALLS, WI	
RILEY, JILL KATHLEEN	07/18/2002
N LITTLE ROCK, AR	
ROBINSON, COLLEEN BONNIE	07/18/2002
CRESCENT CITY, CA	
ROBINSON, STACY GIBSON	07/18/2002
INDIANOLA, MS	
ROBINSON–PURVIS, LORA ANN	07/18/2002
JACKSON, MS	
RODGERS, ROCHELL	07/18/2002
CANTON, MS	
RUSH, MELANIE ANN	07/18/2002
KENTON, OH	
RUSSO, THERESA M	07/18/2002
S CHATHAM, MA	
RUST, BOBBI JO	07/18/2002
SPRINGFIELD, MO	
SALTER, DAVID EARL	07/18/2002
HAYWARD, CA	
SAMADANI, SEPEHR	07/18/2002
LOS ANGELES, CA	
SANTANA, NANCY	07/18/2002
TUCSON, AZ	
SAWYER, STARLA S	07/18/2002
YUMA, AZ	
SAWYER, STEPHANIE LYNN	07/18/2002
JASPER, AL	
SCHIPANI, MICHAEL L	07/18/2002
PITTSBURGH, PA	
SCHNEIDER, HARVEY G	07/18/2002
SHARON, MA	
SCHNUCH, FREDERICK HUBERT	07/18/2002
VENTURA, CA	
SCHOBER, MARY KIM	07/18/2002
BURLINGTON, VT	
SCHOLZ, LINDA L	07/18/2002
PAWTUCKET, RI	
SERMCHIEF, CHAIYARAT	07/18/2002
FREDERICKTOWN, MO	
SISK, KATHLEEN	07/18/2002
WESTHOPE, ND	
SMARS, GUNNAR ANDERS	07/18/2002
REDLANDS, CA	
SMITH, ROBYN GREER	07/18/2002
AUSTIN, TX	
SOBH, FADI AHMAD	07/18/2002
DEARBORN, MI	
SOLOMON, BENJAMIN	07/18/2002
PEMBROKE PINE, FL	
SPALDING, STACY	07/18/2002
PEARL, MS	
SPRAGUE, THOMAS B	07/18/2002
OAKDALE, CA	
STORM, BEVERLY J	07/18/2002
FLUSHING, MI	
TAVAROZZI, LAURIE ANN	07/18/2002
WARWICK, RI	
TAYLOR, DONNA M	07/18/2002
COLUMBUS, OH	
TETERS, TERRY R	07/18/2002
ELK GROVE VILLAGE, IL	
THACKER, BRANDY KAY	07/18/2002
ROCKVILLE, IN	
THOMAS, ALESIA LAVERNE	07/18/2002
MOBILE, AL	
UFFMAN, VICCI KENSLEY	07/18/2002
LEXINGTON, KY	
VAN MEERVELD, BRIDGET	07/18/2002
BELVIDERE, IL	
VIDEAU, WANDA	07/18/2002
AVONDALE, LA	
VILLANUEVA, LUCITO	07/18/2002
AMERICAN CANYON, CA	
WALKER, PAMELA	07/18/2002
LAMBERT, MS	
WALSH, LINDA S	07/18/2002
MUNCIE, IN	
WASCHER, ARTWEN A	07/18/2002
LAS VEGAS, NV	
WEBB, LINDA	07/18/2002
GREENVILLE, MS	
WEBER, ROBERT FRANCIS	07/18/2002
DULUTH, MN	
WELLS, MARILYN	07/18/2002
PHOENIX, AZ	
WENNER, JEFFREY A	07/18/2002
PORT HUERERE, CA	
WERTH-MOORE, ADRIEN RAY	07/18/2002
SAN LEANDRO, CA	
WESLEY, TRACY	07/18/2002
BEREA, KY	
WESTMORELAND, VICKIE JEAN	07/18/2002
WELLINGTON, TX	
WHITE, CYNTHIA	07/18/2002
SHANNON, MS	
WILLIAMS, MELISSA V	07/18/2002
WATAGA, IL	
WINKEL, CAROL ESTHER	07/18/2002
MINNEAPOLIS, MN	
WINSTON, JEFF WAYNE	07/18/2002
PARAGOULD, AR	
WOODARD, LINDA LU	07/18/2002
WEATHERFORD, TX	
WYNN, JUDY DIANE	07/18/2002
CLEBURNE, TX	
YOUNG, JOSEPH D	07/18/2002
SAN LUIS OBISPO, CA	
ZIEMSKI, LINDA LEE	07/18/2002
DULUTH, MN	

FEDERAL/STATE EXCLUSION/ SUSPENSION

BENSON, LESLIE K	07/18/2002
SAN CLEMENTE, CA	
PALMER, LUCKETT M	07/18/2002
LOS ANGELES, CA	

FRAUD/KICKBACKS

COOPER, KAREN	07/18/2002
EAGLE POINT, OR	
KUEBLER, WALTER J	01/01/2002
BOWLING GREEN, KY	
MCGOVERN, DANA	04/16/2002
PORT CHARLOTTE, FL	
MCGUIRE, KAY F	01/31/2002
WARRENTON, OR	
ONETO, CLARENCE M (LARRY)	06/15/2002
COOKEVILLE, TN	
TERRANOVA, MARK DANTE	07/18/2002
WARRENTON, OR	

OWNED/CONTROLLED BY CONVICTED ENTITIES

ALPHA OMEGA HEALTH CARE MGMT	07/18/2002
COLEMAN, FL	
AUBURNDALE HEALTH CARE INSTITU	07/18/2002
COLEMAN, FL	
BOWLING GREEN HEALTH CARE CORP	07/18/2002
COLEMAN, FL	
DOCTOR CENTER MEDICAL	07/18/2002
MIAMI, FL	
G & G MANAGEMENT, INC	07/18/2002
MIAMI, FL	
GAH CHIROPRACTIC CTR, P C	07/18/2002
ANAHEIM, CA	
GRAND ACUPRESSURE, CLINIC	07/18/2002
WALNUT, CA	
HEALTH CLINIC MANAGEMENT, INC	07/18/2002
MIAMI, FL	
INFU TRENDS, INC	07/18/2002
HOLLYWOOD, FL	
IV PHARMACEUTICAL WHOLESALERS	07/18/2002
HOLLYWOOD, FL	
L G M D INVESTMENT CO, LTD	07/18/2002
MIAMI, FL	
LA MESA MEDICAL ASSOC, INC	07/18/2002
LA MESA, CA	
LIBRA MEDICAL, INC	07/18/2002
BELLE GLADE, FL	
LJ HOME HEALTH SERVICES, INC	07/18/2002
MAPLEWOOD, MN	
M & R EQUIPMENT, INC	07/18/2002
MIAMI, FL	
M E V ENTERPRISE, INC	07/18/2002
MIAMI BEACH, FL	
PRIME QUALITY MEDICAL SVCS	07/18/2002
BELLE GLADE, FL	
S SCOTT LASTER, DDS, INC, P C	07/18/2002
INOLA, OK	
Z & R SERVICES, INC	07/18/2002
MIAMI, FL	

DEFAULT ON HEAL LOAN

ANDERSON, RUSSELL NOEL	05/28/2002
LAS VEGAS, NV	
BASTECKI, ALLEN R	07/18/2002
AMES, IA	
SAINT-PHARD, GUERCY	06/04/2002
TAMPA, FL	
TIMOTHY D LUCEY, LTD	07/18/2002
NEWBURGH, NY	
VERDELL, CLARENCE R	05/20/2002
VOORHEES, NJ	

Dated: July 2, 2002.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–17250 Filed 7–9–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: July 29–30, 2002.

Time: 9 a.m. to 4 p.m.

Agenda: Cancer Issues of the Northwest Tribes.

Place: Cultural Center, Yakama Indian Nation, Yakima, WA.

Contact Person: Maureen O. Wilson, PhD., Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/pcp/pcp.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17223 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (01) Review of Program Project.

Date: August 6, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (02) Review of Program Project.

Date: August 7, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (03) Review of Program Project.

Date: August 8, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (04) Review of Program Project.

Date: August 9, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (05) Review of Program Project.

Date: August 12, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (06) Review of Program Project.

Date: August 13, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (07) Review of Program Project.

Date: August 14, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (08) Review of Program Project.

Date: August 15, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (09) Review of Program Project.

Date: August 16, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (10) Review of Program Project.

Date: August 19, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (11) Review of Program Project.

Date: August 20, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (12) Review of Program Project.

Date: August 21, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (13) Review of Program Project.

Date: August 22, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (14) Review of Program Project.

Date: August 23, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (15) Review of Program Project.

Date: August 26, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (16) Review of Program Project.

Date: August 27, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (17) Review of Program Project.

Date: August 28, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (18) Review of Program Project.

Date: August 29, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (19) Review of Program Project.

Date: August 30, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (20) Review of Program Project.

Date: September 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (21) Review of Program Project.

Date: September 4, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (22) Review of Program Project.

Date: September 5, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (23) Review of Program Project.

Date: September 6, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (24) Review of Program Project.

Date: September 9, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (25) Review of Program Project.

Date: September 10, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (26) Review of Program Project.

Date: September 11, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (27) Review of Program Project.

Date: September 12, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (28) Review of Program Project.

Date: September 13, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (29) Review of Program Project.

Date: September 16, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (30) Review of Program Project.

Date: September 17, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (31) Review of Program Project.

Date: September 18, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (32) Review of Program Project.

Date: September 19, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (33) Review of Program Project.

Date: September 20, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (34) Review of Program Project.

Date: September 23, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (35) Review of Program Project.

Date: September 24, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (36) Review of Program Project.

Date: September 25, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (37) Review of Program Project.

Date: September 26, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (38) Review of Program Project.

Date: September 27, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (39) Review of Program Project.

Date: September 30, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (40) Review of Program Project.

Date: October 1, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (41) Review of Program Project.

Date: October 2, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (42) Review of Program Project.

Date: October 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (43) Review of Program Project.

Date: October 4, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (44) Review of Program Project.

Date: October 7, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (45) Review of Program Project.

Date: October 8, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (46) Review of Program Project.

Date: October 9, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (47) Review of Program Project.

Date: October 10, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (48) Review of Program Project.

Date: October 11, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (49) Review of Program Project.

Date: October 15, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (50) Review of Program Project.

Date: October 16, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (51) Review of Program Project.

Date: October 17, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (52) Review of Program Project.

Date: October 18, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (53) Review of Program Project.

Date: October 21, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (54) Review of Program Project.

Date: October 22, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Name of Committee: National Eye Institute Special Emphasis Panel, ZEY1 VSN–M (55) Review

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel Jointly Sponsored NIH Predoctoral Training Program in the Neurosciences.

Date: August 8, 2002.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Anne E. Schaffner, PhD., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–451–2020.

Name of Committee: National Eye Institute Special Emphasis Panel NEI Institutional and Professional School Training Grant Applications.

Date: August 8, 2002.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Anne E. Schaffner, PhD., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17232 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, "NEI Clinical Research Review Committee".

Date: July 31, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PHD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17233 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Innovative Partnerships in Type 1 Diabetes Research.

Date: August 4–5, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Small Clinical Research Grants in Digestive Diseases and Nutrition.

Date: August 9, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Carolyn Miles, PhD., Scientific Research Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 27, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17221 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Mentored Clinical Investigator Applications Review.

Date: July 24, 2002.

Time: 3 p.m to 4:30 p.m.

Agenda: to review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 754, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Environmental Approaches to the Prevention of Obesity.

Date: August 27–28, 2002.

Time: 8 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Linthicum, MD 21090.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 27, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17222 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Anesthesiology Special Emphasis Panel.

Date: August 5–6, 2002.

Time: 8 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Mayfair, 2303 North Mayfair Road, Milwaukee, WI 53226

Contact Person: Laura K. Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, 301–594–3998, moenl@nigms.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17224 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, ZGM1 GBD–6 (01) Review of Program Project.

Date: August 6, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Room 1AS13, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17225 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Environmental Justice: Partnerships to Address Ethical Challenges in Environmental Health (RFA ES–02–005).

Date: July 31–August 2, 2002.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Leroy Worth, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, worth@niehs.nih.gov

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, National Criminal Justice Drug Treatment Services Research System–B.

Date: August 1, 2002.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547 Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–88, Review of R44 Grants.

Date: August 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–86, Review of R44 Grants.

Date: August 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17228 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Program Project.

Date: August 5–6, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ethelrena Chapman, PhD, Scientific Review Administrator, Review Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Natcher Building, Room 5AS–37, Bethesda, MD 20892–6500, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17229 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Leroy Worth, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17226 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, National Criminal Justice Drug Treatment Services Research System–A.

Date: July 31–August 1, 2002.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes on Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547 Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, National Criminal Justice Drug Treatment Services Research System–B.

Date: August 1, 2002.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes on Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547 Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17227 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–86, Review of R13 Grants.

Date: July 26, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–88, Review of R44 Grants.

Date: July 29, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–82, Review of R13

Date: August 15, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–81, Review of R13 Grants.

Date: August 20, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 02–85, Review of R44 Grants.

Date: August 22, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17228 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Small Grants (R03).

Date: July 29–30, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institute of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17229 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Contract–RFP–NIH–NIAMS–BAA–02–05 Pilot and Feasibility Trials for Osteoporosis.

Date: July 10, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and, Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institute of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17230 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, "Early Childhood Education and School Readiness Planning, Grants".

Date: August 1–2, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17231 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALY (01).

Date: July 24, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ellen, K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892. (301) 435–0681. *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EI (02).

Date: July 25, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. 301–435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MDCN–3 (01) Neuro-PPG.

Date: July 26, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 1 (02) S: Special Topics: Radioimmunotherapy.

Date: July 30, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. 3014350902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–IFCN–5–01: Member Conflict Panel: Pain.

Date: July 31, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. 3014350902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 1 (02) S: Special Topics: Radioimmunotherapy.

Date: July 31, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 1 (02) S: Special Topics: Radioimmunotherapy.

Date: August 1, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17232 Filed 7–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary announces the following proposed collection and solicits comments on the information collection requirements. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any suggestions for reducing this burden.

DATES: Comments must be received on or before September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed collection by name and should be sent to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALY (01).
Date: July 24, 2002.
Time: 11:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, F05 F31 Fellowships.
Date: July 25–26, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025, *addisonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–D (11).
Date: July 25–26, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MEDB (03).
Date: July 25, 2002.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Alec S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892. (301) 435–1740.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–1 (04) Ethical Issues in Human Studies.
Date: July 25, 2002.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen, K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892. (301) 435–0681. *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EI (02).
Date: July 25, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. (301) 435–3566. *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB (05).
Date: July 25–26, 2002.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Eileen W Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892. (301) 435–1179. *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (07) OBM2 Study Section Conflicts.
Date: July 26, 2002.
Time: 7:30 a.m. to 8:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBCB (1) Chemistry/Biophysics Program Project Panel.
Date: July 26, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892. (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG 1 SNEM 2 (03) S—Ethics.
Date: July 26, 2002.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. 301–435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MDCN–3 (01) Neuro-PPG.
Date: July 26, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892. (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–IFCN–5–04: Member Conflict Panel: Career Development Awards.
Date: July 29, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALY (02).
Date: July 29, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152. *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7(10) Neurosciences—SBIR/STTR.
Date: July 30, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVA (02) BRP: Cardiac Ischemia.
Date: July 30, 2002.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 1 (02) S: Special Topics: Radioimmunotherapy.
Date: July 30, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892. (301) 435–1213. *yangsh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC (01).
Date: July 30, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892. (301) 435–1211.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 FO8 (01).
Date: July 30, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892. (301) 435–1047. *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (03) SMB Study Section Conflicts.
Date: July 30, 2002.
Time: 1:30 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BBBP–5 Member Reviews in Depression and Suicidality.
Date: July 30, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. 3014350902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–IFCN–5–01: Member Conflict Panel: Pain.
Date: July 31, 2002.
Time: 1 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, NSC 7844, Bethesda, MD 20892. (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN1 (5): Member Conflict: Olfactory/Chemosensory Neurobiology.
Date: July 31, 2002.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. (301) 435–1247. *eskayr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 2, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–17234 Filed 7–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4740–N–05]

Notice of Proposed Information Collection: Comment Request; Request for Release of Documents: ACH Debit Authorization; Master Agreements for Servicer's P&I Custodial Account; and Servicer's Escrow Account and Custodial Account

AGENCY: Office of President of Government National Mortgage Association (Ginnie Mae), HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Program Operations, Department of Housing & Urban Development, 451–7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submitted submission of responses.

This Notice also lists the following information:

Title of Proposal: (1) Request for Release of Documents; (2) ACH Debit Authorization; (3) Master Agreements for Servicer's P&I Custodial Account; and (4) Servicer's Escrow Account and Custodial Account.

OMB Control Number, if applicable: 2503–0017.

Description of the Need for the Information and Proposed Use

Form 11708 provides issuers access to the documents held by the document custodian. Forms 11709 and 11720 provide evidence to Ginnie Mae that the issuer has executed an agreement with

a financial institution to maintain the principal, interest, and escrow funds used to pay securities holders. Form 11709–A authorizes Ginnie Mae's Central Paying and Transfer Agent (CPTA) and the Ginnie Mae Depository to make Automated Clearing House (ACH) debits against an issuer's central principal and interest account at the bank referenced on the form. The CPTA is authorized to initiate ACH debits against the central P&I custodial account at the bank referenced on the form for monthly P&I payments and prepayment penalties on multifamily loans due in connection with all book-entry and for monthly P&I payment and guaranty fees due in connection with all Ginnie Mae II pools and loan packages. The Ginnie Mae Depository is authorized to initiate ACH debits against the central P&I custodial account at the bank referenced on the form for monthly P&I payments and prepayment penalties on multifamily loans due in connection with all book-entry

Agency form numbers, if applicable: HUD Form 11708, 11709, 11709–A, 11715, and 11720.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the Total Number of Hours Needed To Prepare the Information Collection, Including Number of Respondents, Frequency of

Reporting of Matching Program: In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report are being provided to the Committee on

Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default. The SBA will provide HUD with debtor files contained in its system of records entitled, Loan Case File, SBA 075. HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's HUD/DEPT–2 system of records. SBA's data contain

Dated: July 3, 2002.
Karen S. Jackson,
General Deputy Chief Information Officer.
[FR Doc. 02–17218 Filed 7–9–02; 8:45 am]
BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

a financial institution to maintain the principal, interest, and escrow funds used to pay securities holders. Form 11709–A authorizes Ginnie Mae's Central Paying and Transfer Agent (CPTA) and the Ginnie Mae Depository to make Automated Clearing House (ACH) debits against an issuer's central principal and interest account at the bank referenced on the form. The CPTA is authorized to initiate ACH debits against the issuer's central principal and interest custodial account at the bank referenced on the form for monthly guaranty fees due in connection with all Ginnie Mae I pools and loan packages, and for monthly P&I payment and guaranty fees due in connection with all Ginnie Mae II pools and loan packages. The Ginnie Mae Depository is authorized to initiate ACH debits against the central P&I custodial account at the bank referenced on the form for monthly P&I payments and prepayment penalties on multifamily loans due in connection with all book-entry securities backed by Ginnie Mae I pools. Form 11715 provides the name of the document custodian institution holding the issuer's documents on behalf of Ginnie Mae.

Agency form numbers, if applicable: HUD Form 11708, 11709, 11709–A, 11715, and 11720.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the Total Number of Hours Needed To Prepare the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response

Estimates of the hour burden of collecting information for the forms area as follows:

HUD forms	Number of respondents	Frequency of responses	Total of responses	Hrs. per response	Total hours
17708	2,966.47	1	2,966.47	.2	593.29
11709	297	1	297	.03	8.91
11709–A	297	1	297	.25	74.25
11715	297	1	297	.25	74.25
11720	297	1	297	.2	59.4
Annual Total	4,154.47	5	4,154.47	.93	810.10

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 27, 2002.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 02–17219 Filed 7–9–02; 8:45 am]

BILLING CODE 4210–55–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–20]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program—HUD and the Small Business Administration (SBA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the SBA to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with SBA's debtor files. In addition to HUD's data, the CAIVRS database includes delinquent debt information from the Departments of Education, Veterans Affairs, Justice and the United States Department of Agriculture. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or SBA direct or guaranteed loans.

Before rating a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the SBA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin 30 days after publication of this notice in the **Federal Register** unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: August 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

For Privacy Act Information and for Further Information from Recipient Agency Contact: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P8001, Washington, DC 20410, telephone number (202) 708–2374 or FAX (202) 708–3135. [These are not toll-free numbers.]

For Further Information from Source Agency Contact: Walter Intlekfer, Deputy Director, Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416, telephone number (202) 205–7543. [This is not a toll-free number.]

Reporting of Matching Program: In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The matching program will be conducted pursuant to Pub. L. 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circular A–129 (Revised January 1993), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives To Be Met By the Matching Program: The matching program will allow SBA access to a system which permits prescreening of applicants for loans owed or guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to SBA debtor data for prescreening purposes.

Records To Be Matched: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default. The SBA will provide HUD with debtor files contained in its system of records entitled, Loan Case File, SBA 075. HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's HUD/DEPT–2 system of records. SBA's data contain information on individuals who have defaulted on their guaranteed loans. The SBA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for SBA's data.

Notice Procedures: HUD and the SBA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the SBA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of Records/Individuals Involved: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: Former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match: Matching is expected to begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: July 3, 2002.

Karen S. Jackson,

General Deputy Chief Information Officer.

[FR Doc. 02–17218 Filed 7–9–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Programmatic Safe Harbor Agreement for the Hawaiian Goose on the Island of Molokai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a programmatic Safe Harbor Agreement (programmatic Agreement) between DOFAW and the Service. The programmatic Agreement and permit application are available for public comment.

The proposed programmatic Agreement allows for the protection of habitat for the endangered Hawaiian goose or nene (*Branta sandvicensis*) that may occupy or breed on private lands following the reintroduction of nene to Molokai in 2001 through the previously approved "Safe Harbor Agreement for the Reintroduction of the Nene to Puu O Hoku Ranch, Island of Molokai." The proposed programmatic Agreement allows individual landowners to enroll in the program through a Certificate of Inclusion and Cooperative Agreement. The proposed duration of the Programmatic Agreement is 30 years; the proposed duration of the permit is 50 years.

The proposed permit would allow enrolled landowners to return to baseline conditions established in the Cooperative Agreement. We expect this Programmatic Agreement to result in a net conservation benefit by aiding and supporting the restoration of nene to the Island of Molokai.

The Service has made a preliminary determination that the proposed Programmatic Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969. We explain the basis for this determination in an Environmental Action Statement,

which also is available for public review.

We request comments from the public on the permit application, Agreement, and Environmental Action Statement. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be

management actions in the Cooperative Agreement.

We anticipate that this Programmatic Agreement will result in the following benefits: (1) Increased probability that nene will expand their range onto lands outside of Puu O Hoku Ranch; (2) increased number of nene in the wild (anticipated up to 125 individuals on enrolled properties); (3) increased

Endangered Species Act to DOFAW for take of nene incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: June 19, 2002.

Rowan W. Gould,

in the Report of Assessment at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted within 30 days of the date of this Notice.

ADDRESSES: Comments on the Plan should be sent to: Marilyn Danks, Trustee Coordinator, Minnesota Department of Natural Resources, Division of Ecological Services, 500 Lafayette Road, St. Paul, MN 55155–

You may also request copies of the Plan by sending e-mail to the above address.

Dated: July 1, 2002.

Marvin E. Moriarty,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 02–17251 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. In addition, minutes and other information concerning the CCNCA Advisory Council, can be obtained from the CCNCA website at: *http://www.co.blm.gov/cocanplan/* which will be updated following each

which also is available for public review.

We request comments from the public on the permit application, Agreement, and Environmental Action Statement. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before August 9, 2002.

ADDRESSES: Comments should be addressed to Mr. Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850; facsimile 808–541–3470.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Shultz at the above address or telephone 808–541–3441.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the office named above. You also may make an appointment to view the documents at the above address during normal business hours.

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Endangered Species Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with DOFAW to develop a programmatic Safe Harbor Agreement for the protection of habitat for the endangered Hawaiian goose or nene on the Island of Molokai, Hawaii. Under this Agreement, individual landowners enrolled in the program and/or DOFAW will: (1) Report the presence or absence of nene on their lands to DOFAW; (2) allow access to covered lands for management and monitoring of nene; (3) implement a program to control predators; (4) agree not to disturb nene nests until after the birds have hatched their eggs; (5) assist DOFAW with preparation of their annual report; and (6) identify other management actions in the Cooperative Agreement.

We anticipate that this Programmatic Agreement will result in the following benefits: (1) Increased probability that nene will expand their range onto lands outside of Puu O Hoku Ranch; (2) increased number of nene in the wild (anticipated up to 125 individuals on enrolled properties); (3) increased ability to monitor distribution, abundance, and reproductive success of Molokai's nene population; and (4) increased predator control in areas utilized by nene will address a key threat to nene.

Consistent with Safe Harbor policy, we propose to issue a permit to DOFAW authorizing them to enroll landowners (Cooperators) with Certificates of Inclusion under the Federal permit and State permit when Cooperators sign individual Cooperative Agreements that describe actions that will be taken to benefit nene. Thus, the Cooperators will be authorized for incidental take of nene and their progeny, which occur on the enrolled lands, as a result of lawful activities on enrolled lands, as long as baseline conditions are maintained and terms of the Cooperative Agreement are implemented. These activities may include, but are not limited to: (1) Driving vehicles; (2) building or fence construction; (3) grazing of livestock; (4) gardening; (5) forestry; (6) hunting; (7) farming; (8) mowing; and (9) cultivation of agricultural crops. We expect that the maximum level of incidental take authorized under this programmatic Agreement will never be realized. We anticipate that any nene taken when the proposed Programmatic Agreement expires will not be injured or harmed, but will be relocated, with permission from landowners, to other suitable lands. Therefore, the cumulative impact of this Programmatic Agreement and the activities it covers, which are facilitated by the allowable incidental take, will provide a net conservation benefit to nene.

We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the programmatic Safe Harbor Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to DOFAW for take of nene incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: June 19, 2002.

Rowan W. Gould,

Deputy Regional Director, Region 1.

[FR Doc. 02–17296 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Assessment Plan for the Natural Resource Damage Assessment at the St. Louis River Interlake/Duluth Tar Superfund Site

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that the document titled "Assessment Plan for the Natural Resource Damage Assessment at the St. Louis River Interlake/Duluth Tar Superfund Site, Draft 6/24/02" ("the Plan") will be available for public review and comment on the date of publication in the Federal Register. The U.S. Departments of the Interior (Fish and Wildlife Service, Bureau of Indian Affairs) and Commerce (National Oceanic and Atmospheric Administration), the State of Minnesota (Minnesota Department of Natural Resources, Minnesota Pollution Control Agency), the Fond du Lac Band of Lake Superior Chippewa, and the 1854 Authority (representing the Bois Forte Band and Grand Portage Band of Lake Superior Chippewa) are trustees for natural resources ("trustees") considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR part 11. The public review of the Plan announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan can be requested from the address listed below. All written comments will be considered by the trustees and included in the Report of Assessment at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted within 30 days of the date of this Notice.

ADDRESSES: Comments on the Plan should be sent to: Marilyn Danks, Trustee Coordinator, Minnesota Department of Natural Resources, Division of Ecological Services, 500 Lafayette Road, St. Paul, MN 55155–4025.

Requests for copies of the Plan may be made to the Trustee Coordinator at the address listed above. The Trustee Coordinator will provide copies of all comments to all trustees.

You may also submit requests for copies of the Plan, and comments on the Plan, by sending electronic mail (e-mail) to: *marilyn.danks@dnr.state.mn.us* See **SUPPLEMENTARY INFORMATION** for information about electronic mailing and access.

FOR FURTHER INFORMATION CONTACT:

Case Management and Logistical Information: Dave Warburton, 612–725–3548 (x203).

Technical Information: Annette Trowbridge, 612–725–3548 (x202).

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from suspected injuries to natural resources in and near the Lower St. Louis River that have been exposed to hazardous substances released by industrial activity at the St. Louis River Interlake/Duluth Tar Superfund Site. The trustees suspect this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Clean Water Act, as amended, in order to determine the appropriate type and extent of resource restoration. The Plan addresses the trustees' overall assessment approach, and utilizes both existing data as well as additional data to be collected as described in study in workplans attached to the Plan. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities. Restoration of natural resources will be proposed by the trustees following the assessment.

You may submit comments on the Plan by sending electronic mail (e-mail) to: *marily.danks@dnr.state.mn.us.* Do not use any special characters or forms of encryption in your e-mail. The trustees also accept comments in WordPerfect and Word versions as attachments to the e-mail or on disk. You may also request copies of the Plan by sending e-mail to the above address.

Dated: July 1, 2002.

Marvin E. Moriarty,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 02–17251 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–01–134–1610–241A]

Notice of Colorado Canyons National Conservation Area Advisory Council Meeting Venue Change

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council meeting change.

SUMMARY: Beginning on August 8, 2002 the Colorado Canyons National Conservation Area (CCNCA) Advisory Council will change the venue for its monthly meetings. For the remainder of calendar year 2002, the CCNCA Advisory Council will meet at the Mesa County Courthouse, in the Mesa County Multipurpose Room, 544 Rood Avenue, Grand Junction, Colorado. All meetings begin at 3:00 p.m.

DATES: The meetings are held on the second Thursday of each month throughout calendar year 2002. The change of venue will occur on August 8, 2002.

ADDRESSES: For further information or to provide written comments, please contact Greg Gnesios, Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3049; e-mail Gregory_Gnesios@co.blm.gov.

SUPPLEMENTARY INFORMATION: The CCNCA Advisory Council will meet on August 8, September 13, October 10, November 14 and December 12, 2002 in the Mesa County Courthouse Multipurpose room, 544 Rood Avenue, Grand Junction, CO. All meetings begin at 3 p.m.. Previous meetings this year were held at White Hall, 300 N. 6th Street, Grand Junction, Colorado.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. In addition, minutes and other information concerning the CCNCA Advisory Council, can be obtained from the CCNCA website at: *http://www.co.blm.gov/cocanplan/* which will be updated following each Advisory Council meeting.

Dated: June 18, 2002.

Greg Gnesios,

Colorado Canyons National Conservation Area Manager.

[FR Doc. 02–17346 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–01–134–1610–241A]

Colorado Canyons National Conservation Area Advisory Council Field Trips

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Colorado Canyons National Conservation Area Advisory Council field trips.

SUMMARY: The Colorado Canyons National Conservation Area (CCNCA) Advisory Council will conduct field trips into the CCNCA on July 23 and 26; August 3, 17 and 31; and September 7 and 21, 2002. All participants will meet at the BLM Office located at 2815 H Road, Grand Junction, Colorado at 8 a.m. except on August 3, 2002, when participants will meet at the BLM Office at 7:30 a.m.

DATES: The trips will be conducted on July 23 and July 26; August 3, 17, and 31; and September 7 and 21, 2002.

ADDRESSES: For further information or to provide written comments, please contact Greg Gnesios, Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; telephone (970) 244–3049 or e-mail *Gregory_Gnesios@co.blm.gov.*

SUPPLEMENTARY INFORMATION: The CCNCA Advisory Council will accompany field personnel from the Grand Junction Bureau of Land Management Office on informational trips into the Colorado Canyons National Conservation Area and the Black Ridge Canyons Wilderness. The trips will allow Advisory Council members to familiarize themselves with the CCNCA, analyze relevant issues, and cross-feed information on concerns identified to date through public scoping, working groups, and Advisory Council meetings.

On Friday July 26, 2002, all participants will meet at the BLM Office located at 2815 H Road, Grand Junction, Colorado 81501, before 8 a.m. Departure from the BLM office will be at 8 a.m. The groups will tour the Wilderness Front Country, Rabbit Valley, and Mack

SUMMARY: The October 21 and 22, 2002, Steens Mountain Advisory Council (SMAC) meeting, previously scheduled to be held at the Bureau of Land Management (BLM), Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, has been moved to the Holiday Inn Express, 20615 Grandview Drive, Bend, Oregon 97701. The original **Federal Register** notice announcing the

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; TXNM 100505]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease TXNM 100505 for

Management is proposing to reinstate the lease effective March 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 19, 2001:

The plat, representing the dependent resurvey of a portion of the south boundary of Township 24 North, Range

These plats were prepared to meet certain administrative needs of the Bureau of Land Management and the City of Mesquite, Nevada.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on September 27, 2001:

The plat, in three (3) sheets, representing the dependent resurvey of a portion of the south boundary (First

identified to date through public scoping, working groups, and Advisory Council meetings.

On Friday July 26, 2002, all participants will meet at the BLM Office located at 2815 H Road, Grand Junction, Colorado 81501, before 8 a.m. Departure from the BLM office will be at 8 a.m. The groups will tour the Wilderness Front Country, Rabbit Valley, and Mack Ridge areas of the CCNCA.

On Saturday, August 3, 2002, all participants will meet at the BLM Office located at 2815 H Road, Grand Junction, Colorado 81501, before 7:30 a.m. Groups will depart from the BLM office at 7:30 a.m. and will tour the Colorado River Corridor, starting at the Loma Boat Launch and ending in Westwater, Utah.

On Saturday, August 17, 2002, all participants will meet at the BLM Office located at 2815 H Road, Grand Junction, Colorado 81501, before 8 a.m. Groups will depart from the BLM office at 8 a.m. The groups will tour the Glade Park area and the Wilderness.

The remaining dates of July 23, August 31 and September 7 and 21, 2002, will be used to address other issues as appropriate. All participants will meet at the BLM Office located at 2815 H Road, Grand Junction, Colorado 81501, before 8 a.m. Groups will depart from the BLM office at 8 a.m.

Topics of discussion on all trips will include travel management, recreation, land health assessments, use authorizations, natural resource management, wilderness stewardship, education, cultural resources, wildlife, partnerships, interpretation, adaptive management, and socioeconomics. All tours will be open to the public. For information on the field trips contact Jane Ross at (970) 244–3027, 2815 H Road, Grand Junction, Colorado 81506, or e-mail to *Jane_Ross@blm.gov*.

Dated: June 5, 2002.

Gene S. Arnesen,

Acting Colorado Canyons National Conservation Area Manager.

[FR Doc. 02–17347 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1610–PG; G–02–0223]

Location Change for Steens Mountain Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Change of meeting location for the Steens Mountain Advisory Council.

SUMMARY: The October 21 and 22, 2002, Steens Mountain Advisory Council (SMAC) meeting, previously scheduled to be held at the Bureau of Land Management (BLM), Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, has been moved to the Holiday Inn Express, 20615 Grandview Drive, Bend, Oregon 97701. The original **Federal Register** notice announcing the meeting was published on December 5, 2001, page number 63249. The meeting session will begin the first day at 8 a.m., local time, and will end at 5 p.m., local time. The second day will begin at 8 a.m., local time, and will end at approximately 3 p.m., local time. The entire meeting is open to the public. Public comment is scheduled for 11 a.m. to 11:30 a.m., local time, both days of the meeting session.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SMAC may be obtained from Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, (541) 573–4433, or *Rhonda_Karges@or.blm.gov* or from the following web site *http://www.or.blm.gov/Steens*.

Dated: May 7, 2002.

Miles R. Brown,

Andrews Resource Area Field Manager.

[FR Doc. 02–17342 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; NMNM 103876]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 103876 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 2002, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: June 6, 2002.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 02–17337 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01); (NMNM 102038)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 102038 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 2002, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: June 6, 2002.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 02–17338 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; TXNM 100505]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease TXNM 100505 for lands in Kleberg County, Texas, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 2002, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16 2/3 percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: May 30, 2002.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 02–17339 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–02–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 19, 2001:

The plat, representing the dependent resurvey of a portion of the south boundary of Township 24 North, Range 49 East; and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 1, Township 23 ½ North, Range 49 East, Mount Diablo Meridian, Nevada, under Group No. 778, was accepted April 17, 2001.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on August 2, 2001:

The supplemental plat, showing amended lottings in sec. 23, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 24, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 26, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 27, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 28, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 30, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 31, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 32, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

The supplemental plat, showing amended lottings in sec. 33, Township 13 South, Range 70 East, Mount Diablo Meridian, Nevada, was accepted July 31, 2001.

These plats were prepared to meet certain administrative needs of the Bureau of Land Management and the City of Mesquite, Nevada.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on September 27, 2001:

The plat, in three (3) sheets, representing the dependent resurvey of a portion of the south boundary (First Standard Parallel South), the east, west, and north boundaries and a portion of the subdivisional lines, and the subdivision of certain sections, Township 4 South, Range 66 East, Mount Diablo Meridian, Nevada, was accepted September 25, 2001.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

4. The Supplemental Plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on October 4, 2001:

The supplemental plat, showing the subdivision of lot 13, section 16, Township 19 South, Range 61 East, Mount Diablo Meridian, Nevada, was accepted October 2, 2001.

The supplemental plat, showing the subdivision of lot 18, section 18, Township 19 South, Range 62 East, Mount Diablo Meridian, Nevada, was accepted October 2, 2001.

These plats were prepared to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on October 4, 2001:

The plat, representing the dependent resurvey a portion of the north boundary, a portion of the subdivisional lines and Mineral Survey No. 2114, and the subdivision of sections 5, 7 and 8, Township 4 South, Range 67 East, Mount Diablo Meridian, Nevada, was accepted October 2, 2001.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

6. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on November 29, 2001:

The supplemental plat, showing amended lottings in the NE1/4NE1/4 sec. 6, Township 14 North, Range 20 East, Mount Diablo Meridian, Nevada, was accepted November 27, 2001.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

7. The Plat of Survey of the following described lands were officially filed at

the Nevada State Office, Reno, Nevada on December 20, 2001:

The plat, representing the dependent resurvey of a portion of the south boundary, a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 31, Township 18 North, Range 39 East, Mount Diablo Meridian, Nevada, was accepted December 18, 2001.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the further subdivision of section 34, the metes-and-bounds survey of Tracts 37, 38, 39, and 40, and the metes-and-bounds survey of Lot 7 in section 34, Township 19 North, Range 20 East, Mount Diablo Meridian, Nevada, under Group No. 741, was accepted June 11, 2002.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of section 34, Township 19 North, Range 20 East, Mount Diablo Meridian, Nevada, under Group No. 741, was accepted June 11, 2002.

These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 20, 2002.

Robert M. Scruggs,

Chief Cadastral Surveyor, Nevada.

General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: July 3, 2002.

By order of the Commission.

accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

In its previous notice, the

INTERNATIONAL TRADE COMMISSION

[USITC SE–SE–02–019]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 17, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone:

the Nevada State Office, Reno, Nevada on December 20, 2001:

The plat, representing the dependent resurvey of a portion of the south boundary, a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 31, Township 18 North, Range 39 East, Mount Diablo Meridian, Nevada, was accepted December 18, 2001.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

8. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: February 6, 2002.

David J. Clark,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 02–17343 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–02–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION: 1. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on June 13, 2002:

The plat, in three (3) sheets, representing the corrective dependent resurvey and dependent resurvey of a portion of the south boundary, the corrective dependent resurvey and dependent resurvey of a portion the subdivisional lines, the dependent resurvey of a portion of section 34, the further subdivision of section 34, the metes-and-bounds survey of Tracts 37, 38, 39, and 40, and the metes-and-bounds survey of Lot 7 in section 34, Township 19 North, Range 20 East, Mount Diablo Meridian, Nevada, under Group No. 741, was accepted June 11, 2002.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of section 25, and a metes-and-bounds survey in section 25, Township 12 North, Range 20 East, Mount Diablo Meridian, Nevada, under Group No. 801, was accepted June 11, 2002.

Theses surveys were executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plats of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on the first business day after thirty (30) days from the publication of this notice: The plat representing the survey of the south boundary, a portion of the west boundary and a portion of the subdivisional lines of Township 15 North, Range 33 East, Mount Diablo Meridian, Nevada, under Group No. 793, was accepted June 18, 2002.

The plat representing the survey of a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of section 32, Township 15 North, Range 34 East, Mount Diablo Meridian, Nevada, under Group No. 793, was accepted June 18, 2002.

The plat, in four (4) sheets, representing the dependent resurvey of portions of Mineral Survey Nos. 3630, 3927 and 4184, the survey of a portion of the subdivisional lines and the subdivision of certain sections, Township 16 North, Range 34 East, Mount Diablo Meridian, Nevada, under Group No. 793, was accepted June 18, 2002.

These surveys were executed to meet certain administrative needs of the Department of the Navy.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, these lands are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to official filing of the Plats of Survey described in paragraph 2, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 20, 2002.

Robert M. Scruggs,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 02–17345 Filed 7–9–02; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–429 and 731–TA–1011 (Preliminary)]

Certain Cooked, Peeled, and Individually Quick Frozen Coldwater Pink Shrimp From Canada

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in countervailing duty and antidumping investigations.

SUMMARY: On July 1, 2002, the Department of Commerce and the Commission received a letter from petitioners in the subject investigations (the Oregon Trawl Commission, Astoria, OR; the Shrimp Producers Marketing Cooperative, Newport, OR; the Fishermen's Marketing Association, Eureka, CA; the Coos Bay Trawlers Association, Coos Bay, OR; and Bay Ocean Seafood Co., Garibaldi, OR) withdrawing the petition. Commerce has not initiated investigations as provided for in sections 702(c) and 732(c) of the Tariff Act of 1930 (19 U.S.C. § 1671a(c) and 1673a(c)). Accordingly, the Commission gives notice that its countervailing duty and antidumping investigations concerning certain cooked, peeled, and individually quick frozen coldwater pink shrimp from Canada (investigations Nos. 701–TA–429 and 731–TA–1011 (Preliminary)) are discontinued.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: July 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17335 Filed 7–9–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final) (Reconsideration) (Remand)]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Notice of scheduling of additional procedures in remand proceedings.

SUMMARY: On April 11, 2002, the Commission issued a notice of scheduling of the court-ordered remand of its reconsideration proceedings pertaining to countervailing duty investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela, and antidumping investigations Nos. 731–TA–566–570 and 731–TA–641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela (67 FR 18663 (April 16, 2002)). That notice specified the procedures the Commission would follow in the remand proceedings. The notice indicated the scheduling of some procedures would be announced at a later date. This notice provides a schedule of those remaining procedures.

EFFECTIVE DATE: July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

In its previous notice, the Commission provided scheduling information through the filing of the posthearing brief. Additional scheduling information for the remand proceedings is provided below.

Staff Report

The staff report in the remand proceedings will be placed in the nonpublic record on July 22, 2002, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's Rules of Practice and Procedure.

Written Submissions

On July 25, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 30, 2002, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of title VII of the Tariff Act of 1930 as amended.

By order of the Commission.

Issued: July 5, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17340 Filed 7–9–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–SE–02–019]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 17, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–744 (Review) (Brake Rotors from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 29, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 8, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17485 Filed 7–8–02; 3:22 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new; mental health and community safety initiative equipment and training progress report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 31, page 6944 on February 14, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, 725 17th Street, NW., Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and/or suggestions can also be directed to the Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

The purpose of this notice is to allow for an additional 30 days for public comment until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of Form/Collection:* Mental Health and Community Safety Initiative Equipment and Training Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal governments. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 10 responses. The estimated amount of time required for the average respondent to respond is: 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 2, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–17289 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day Notice of Information Collection Under Review; New; COPS in School/Safe Schools Healthy Students Annual Report

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5614 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* COPS in Schools/Safe Schools Healthy Students Annual Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Awardees of the COPS in Schools/Safe Schools Healthy Students Grant Programs. *Other:* None. *Abstract:* COPS in Schools/Safe Schools Healthy Students Annual Report is a survey instrument that the COPS Office uses to monitor the community policing activities of the COPS in Schools hiring grant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of agencies that are eligible to receive and complete the COPS in Schools/Safe Schools Healthy Students Annual Report is 2,800. The estimated amount of time required for the average respondent to complete and return the form is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The hours associated with this information collection is 1,400 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 2, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–17290 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Betteroads Asphalt Corporation*, No. 02–1548(DRD), was lodged with the United States District Court for the District of Puerto Rico on April 9, 2002. This proposed Consent Decree concerns a complaint filed by the United States against Betteroads Asphalt Corporation ("Defendant") under the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for the unauthorized discharge of pollutants into waters of the United States on the Rio Grande de Añasco, at the Municipality of Añasco, Puerto Rico

The proposed Consent Decree, among other things, (1) enjoins the Defendant from taking any actions that would discharge dredged or fill material into waters of the United States except in compliance with the provisions of the Clean Water Act and its implementing regulations, (2) requires the Defendant to pay civil penalties in the amount of $100,000.00; and (3) requires the Defendant to make an additional donation of $75,000.00 to the Fundacion para la Conservacion de la Paloma Sabanera, Inc. (Foundation for the Conservation of the Sabanera Pigeon).

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Angeline Purdy, Trial Attorney, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986. All comments must refer to *United States* v. *Betteroads Asphalt Corporation*, Department of Justice Reference No. 90–5–1–4–16212.

The proposed Consent Decree is on file at the Clerk's Office, United States District Court for the District of Puerto Rico at Frederico Degetau Federal Building, 150 Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, and may be examined there to the extent allowed by the rules of the Clerk's Office. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/.enrd/open.html.*

Mary F. Edgar,

Assistant Chief, Environmental Defense Section, Environmental & Natural Resources Division.

[FR Doc. 02–17362 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *Madonna* v. *United States Army Corps of Engineers*, United States District Court for the Central District of California, CV 01–07515 and *United States* v. *Madonna*, United States District Court for the Central District of California, CV 02–00092, was lodged with the United States District Court for the Central District of California on June 27, 2002. This proposed Consent Decree concerns a compliant filed by Alex Madonna, dba Madonna Construction Co., against the United States Army Corps of Engineers, pursuant to the Clean Water Act and the Administrative Procedure Act to obtain injunctive relief from the Corps for failing to comply with applicable procedures for suspending and revoking Plaintiff's Clean Water Act permit. The proposed Consent Decree also concerns a complaint filed by the United States against Alex Madonna, dba Madonna Construction Co., pursuant to section 404 of the Clean Water Act to obtain injunctive relief and impose civil penalties against Madonna for unlawfully discharging dredged or fill material into waters of the United States.

The proposed Consent Decree prohibits Madonna from discharging any pollutant into waters of the United States on or adjacent to the Froom Ranch and Boysen Ranch Sites in San Luis Obisqo, unless such discharge complies with the provisions of the CWA and its implementing regulations. The proposed Consent Decree requires the creation of 10.2 acres of wetlands and the payment of $15,000 in civil penalties.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Pamela S. Tonglao, Trial Attorney, United States Department of Justice, Environmental and Natural Resources Division, P.O. Box 23986, Washington DC 20026–3986, and refer to *Madonna* v. *Corps.* DJ# 90–5–1–4–16481.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Central District of California, 312 North Spring Street, Los Angles, California 90012. In addition, the proposed Consent Decree my be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/enrd-home.heml.*

Stephen Samuels,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 02–17363 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 15, 2002, Ansys Technologies, Inc., 25200 Commercentre Drive, Lake Forest, California 92630, made application by renewal to the Drug Enforcement Administration (DEA) for registration as

a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 9, 2002.

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17211 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17212 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a

1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21

a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances to produce standards and controls for in-vitro diagnostic drug testing systems.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 9, 2002.

Dated: June 18, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17206 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 25, 2001, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture tetrahydrocannabinols for sale to their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 9, 2002.

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17208 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 27, 2002, and published in the **Federal Register** on April 10, 2002, (67 FR 17468), Cody Laboratories, Inc., 331 33rd Street, Cody, Wyoming 82414, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Hydromorphone (9150)	II
Fentanyl (9801)	II

The firms plans to bulk manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Cody Laboratories to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cody Laboratories to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17212 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 2, 2001, and published in the **Federal Register** on October 11, 2001, (66 FR 51970), Noramco Inc., 1400 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Fentanyl (9801)	II

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. on a regular basis to ensure that the company's registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17213 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 5, 2002, Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 9, 2002.

Dated: June 18, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17207 Filed 7–10–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 5, 2002, Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Cocaine (9041)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances to manufacture diagnostic products for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17210 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 11, 2002, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17209 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–02–1]

Application for a Permanent Variance From American Boiler and Chimney Co. and Oak Park Chimney Corp.; Notice of Correction and Extension of Comment Period

obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal**

collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of a

SUMMARY: The purpose of this notice is to announce additions to the labor surplus area list for Fiscal Year (FY) 2002. Three areas are added to the list under the exceptional circumstances criteria: Coos County, New Hampshire; Essex County, Vermont, and Putnam County, Illinois. Coos County, New Hampshire and Essex County, Vermont are effective April 1, 2002. Putnam

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–02–1]

Application for a Permanent Variance From American Boiler and Chimney Co. and Oak Park Chimney Corp.; Notice of Correction and Extension of Comment Period

Send requests for a hearing to Ms.Veneta E. Chatmon, Office of Information and Consumer Affairs, Room N–3649, OSHA, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

FOR FURTHER INFORMATION CONTACT: For information about this notice or the previous **Federal Register** notice containing the variance application

Dated: June 24, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–17209 Filed 7–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 1, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: FECA Medical Report Forms, Claim for Compensation.

OMB Number: 1215–0103.

Affected Public: Business or other for-profit; Individuals or households; and Federal Government.

Frequency: As Needed.

Number of Respondents: 286,010.

Number of Annual Responses: 286,010.

Estimated Response Times and Total Burden Hours:

Form No.	Number of respondents	Average minutes per response	Total burden hours
CA–7	400	13	87
CA–16B	130,000	5	10,833
CA–17B	60,000	5	5,000
CA–20	65,000	5	5,417
CA–1090	200	10	33
CA–1303	2,000	20	6667
CA–1305	10	20	3
CA–1331	200	5	17
CA–1332	200	30	100
QCM Letters	1,000	5	83
OWCP–5A	7,000	15	1,750
OWCP–5B	5,000	15	1,250
OWCP–5C	15,000	15	3,750
Burden Totals	286,010	163	28,990

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $105,824.00.

Description: The Office of Workers' Compensation Programs administers the Federal Employees' Compensation Act (5 U.S.C. 8101, *et seq*). The statute provides for continuation of benefits for wage loss and/or for permanent impairment to a scheduled member, arising out of a work related injury or disease. The Act outlines the elements of pay which are to be included in an individual's pay rate, and sets forth various other criteria for determining eligibility to and the amount of benefits, including augmentation of basic compensation for individuals with qualifying dependents; a requirement to report any earnings during a period that compensation is claimed; a prohibition against concurrent receipt of FECA benefits and benefits from OPM or certain VA benefits; and a mandate that money collected from a liable third party found responsible for the injury for which compensation has been paid be applied to benefits paid or payable. The CA 7 is used to claim compensation and the other forms in this clearance collect medical information necessary to determine entitlement to benefits under the FECA. Without the requested information, an eligible beneficiary could be denied benefits, or benefits could be authorized at an incorrect rate, resulting in an underpayment or overpayment of compensation.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–17320 Filed 7–9–02; 8:45 am]

BILLING CODE 4510–CH–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582

ACTION: Notice of additions to the labor surplus area list.

DATE: June 3, 2002.

SUMMARY: The purpose of this notice is to announce additions to the labor surplus area list for Fiscal Year (FY) 2002. Three areas are added to the list under the exceptional circumstances criteria: Coos County, New Hampshire; Essex County, Vermont, and Putnam County, Illinois. Coos County, New Hampshire and Essex County, Vermont are effective April 1, 2002. Putnam County, Illinois is effective June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Gay Gilbert, Division Chief, U.S. Employment Service, Employment and Training Administration, 200 Constitution Avenue, NW., Room C4512, Washington, DC 20210. Telephone: (202) 693–3046.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. These regulations require the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. These regulations also provide for the designation as a labor surplus area under exceptional circumstances criteria. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing additions to the annual list of labor surplus areas for FY 2002.

Eligible labor surplus areas	Civil jurisdictions included
Illinois: Putnam County	Putnam County.
New Hampshire: Coos County.	Coos County.
Vermont: Essex County	Essex County.

For the convenience of the public, the Labor Surplus Area list is posted on the Internet at the following addresses: *www.doleta.gov* and *www.usworkforce.org*.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 02–17322 Filed 7–9–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–02–1]

Application for a Permanent Variance From American Boiler and Chimney Co. and Oak Park Chimney Corp.; Notice of Correction and Extension of Comment Period

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of correction and of an extension of the period for submitting comments and hearing requests.

SUMMARY: On May 23, 2002, the Occupational Safety and Health Administration (*e.g.*, "OSHA" or "the Agency") published in the **Federal Register** a notice of an application for a permanent variance submitted by the American Boiler and Chimney Co. and Oak Park Chimney Corp. (67 FR 36263). Today, OSHA is correcting information that it published in that notice under the sections for addresses and further information. In addition, the Agency is extending the period for submitting comments and hearing requests by 30 days to allow interested parties an opportunity to resubmit their comments and hearing requests, as well as to send additional comments or to submit an initial hearing request if they wish to do so.

DATES: Interested parties must submit their written comments and hearing requests by August 9, 2002.

ADDRESSES: You may submit three copies of your written comments to the OSHA Docket Office, Docket No. V–02–01, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You do not have to send OSHA a hard copy of your faxed comments.

You may submit comments electronically through OSHA's Homepage at *http://ecomments.osha.gov/*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies of the material to the OSHA Docket Office at the above address. When submitting such material to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, subject, and docket number so that we can attach them to your electronic comments.

Send requests for a hearing to Ms.Veneta E. Chatmon, Office of Information and Consumer Affairs, Room N–3649, OSHA, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

FOR FURTHER INFORMATION CONTACT: For information about this notice or the previous **Federal Register** notice containing the variance application contact Ms. Maryann S. Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2110; fax (202) 693–1644. You can obtain additional copies of this notice or the previous **Federal Register** notice containing the variance application from the Office of Publications, Room N–3101, OSHA, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1888. For electronic copies of this notice contact OSHA on its Webpage at *http://www.osha.gov*, and select "Federal Register," "Date of Publication," and then "2002."

SUPPLEMENTARY INFORMATION: On May 23, 2002, OSHA published in the **Federal Register** a notice of an application for a permanent variance submitted by the American Boiler and Chimney Co. and Oak Park Chimney Corp. (67 FR 36263). That notice contained erroneous information regarding the docket number, the room number for sending comments, the number of copies required, the fax number for sending comments, and the name of the individual to contact for further information.

This notice provides the correct information in the sections titled **ADDRESSES** and **FOR FURTHER INFORMATION**. In addition, the Agency is extending the period for submitting comments and hearing requests by 30 days to allow interested parties an opportunity to resubmit their comments and hearing requests, as well as to send additional comments or to submit a hearing request if they wish to do so.

Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 29 CFR part 1905.

Signed at Washington, DC on July 1, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–17321 Filed 7–9–02; 8:45 am]

BILLING CODE 4510–30–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

Time and Date: 8:30 a.m., August 19, 2002.

Place: On board MISSISSIPPI V at Old Ferry Landing, Tiptonville, TN.

Status: Open to the public.

Place: On board MISSISSIPPI V at Cenac Towing Company, Houma, LA.

Status: Open to the public.

Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current

reactor or to load fuel into the reactor vessel.

2.0 Request/Action

Section 140.11(a)(4), Part 140 Title 10 of the Code of Federal Regulations (10 CFR) requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain liability insurance of $200 million and to participate in a secondary insurance pool.

The NRC staff concluded, based on an environmental assessment, that no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no

support the exemption request and concluded that the exemption only involves changes to indemnity insurance.

The NRC staff concluded, based on an environmental assessment, that no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no

permanently shutdown and defueled plant.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 140.8, the exemption from the participation in the private liability insurance pool is authorized by law, will not present an undue risk to the public health and safety, and is

Signed at Washington, DC on July 1, 2002.
John L. Henshaw,
Assistant Secretary of Labor.
[FR Doc. 02–17321 Filed 7–9–02; 8:45 am]
BILLING CODE 4510–35–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS:
Mississippi River Commission.
Time and Date: 4:30 p.m., August 12, 2002.
Place: On board MISSISSIPPI V at City Front, Marquette, IA.
Status: Open to the public.
Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Paul District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
Time and Date: 3:30 p.m., August 13, 2002.
Place: On board MISSISSIPPI V at Oneida Landing, Davenport, IA.
Status: Open to the public.
Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Rock Island District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
Time and Date: 9:30 a.m., August 15, 2002.
Place: On board MISSISSIPPI V at Melvin Price Locks and Dam, Alton, IL.
Status: Open to the public.
Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
Time and Date: 8:30 a.m., August 19, 2002.
Place: On board MISSISSIPPI V at Old Ferry Landing, Tiptonville, TN.
Status: Open to the public.
Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi river and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
Time and Date: 8:30 a.m., August 20, 2002.
Place: On board MISSISSIPPI V at Tom Sawyer Park, West Memphis, AR.
Status: Open to the public.
Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
Time and Date: 10:30 a.m., August 21, 2002.
Place: On board MISSISSIPPI V at Lake Providence Port, Lake Providence, LA.
Status: Open to the public.
Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
Time and Date: 9:30 a.m., August 23, 2002.
Place: On board MISSISSIPPI V at Cenac Towing Company, Houma, LA.
Status: Open to the public.
Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Timothy S. Gambrell,
Executive Assistant, Mississippi River Commission.
[FR Doc. 02–17476 Filed 7–8–02; 2:02 pm]
BILLING CODE 3710–GX–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–10]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Unit 1; Exemption

1.0 Background

The Exelon Generation Company (EGC), or the licensee, is the holder of Facility Operating License No. DPR–2, which authorizes operation of the Dresden Nuclear Power Station (DNPS), Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

DNPS, Unit 1, is located approximately 50 miles southwest of Chicago in Grundy County, Illinois. DNPS, Unit 1, was shut down in October 1978. On July 23, 1986, NRC issued Amendment No. 36 to License DRP–2 for DNPS, Unit 1, changing the license to possess-but-not-operate status. The licensee at that time, Commonwealth Edison, informed the NRC that it had decided to permanently cease operations at DNPS, Unit 1, and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82, upon docketing of the certifications in August 31, 1984, the facility operating license no longer authorizes the licensee to operate the reactor or to load fuel into the reactor vessel.

2.0 Request/Action

Section 140.11(a)(4), Part 140 Title 10 of the Code of Federal Regulations (10 CFR) requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain liability insurance of $200 million and to participate in a secondary insurance pool.

EGC requested to be exempted from participation in the secondary insurance pool based on the permanently defueled status of DNPS, Unit 1. Subpart, Part 140.11(a)(4), applies to applicants for and holders of licenses issued pursuant to 10 CFR Part 50.

The NRC may grant exemptions from the requirements of 10 CFR Part 140 of the regulations which, pursuant to 10 CFR 140.8, are authorized by law and are otherwise in the public interest. The underlying purpose of Section 140.11 is to provide sufficient liability insurance to ensure funding for claims resulting from a nuclear incident or a precautionary evacuation.

3.0 Discussion

On December 18, 2001, EGC requested an exemption from the financial protection requirement limits of 10 CFR 140.11(a)(4). The exemption would allow EGC to withdraw from participation in the secondary insurance pool based on the permanently defueled status, with all spent fuel removed from the spent fuel pool of DNPS, Unit 1. By letter received on February 13, 2002, the licensee notified the NRC that as of January 15, 2002, the DNPS, Unit 1, spent fuel storage pool no longer contains spent fuel assemblies.

The DNPS, Unit 1, spent fuel assemblies were either relocated to the DNPS, Unit 3, spent fuel pool or were loaded into dry cask storage containers and relocated to the independent spent fuel storage installation (ISFSI).

The financial protection limits of 10 CFR 140.11 were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. In a permanently shutdown and defueled reactor facility, the reactor will never again be operated, thus eliminating the possibility of accidents involving the reactor. Because DNPS, Unit 1, no longer contributes as great a risk as does an operating reactor plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. The NRC staff examined the licensee's rationale to support the exemption request and concluded that the exemption only involves changes to indemnity insurance.

The NRC staff concluded, based on an environmental assessment, that no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

SECY 96–256, "Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11," dated January 17, 1997, states that, in a staff requirements memorandum dated July 13, 1993, the Commission approved staff recommendations to allow licensees that have permanently shut down to withdraw from secondary financial protection. SECY 96–256, also addressed a petition, PRM–50–57, requesting that the requirement for offsite primary and secondary liability coverages required under 10 CFR 140.11(a)(4) be reduced or, preferably, eliminated for shutdown reactors when no nuclear fuel is on the reactor site.

SECY 96–256 defines several configurations for permanently shutdown reactors. A reactor in configuration 3 is a reactor that is permanently shutdown with no spent fuel either in the reactor or the spent fuel pool. This configuration also includes the fact that all spent fuel has been removed to an offsite or onsite dry storage ISFSI and that the remaining radioactive inventory depends on the decommissioning status and includes liquid radwaste, activated reactor components, and contaminated structural materials.

EGC requested elimination of the secondary insurance liability. However, the primary offsite liability insurance coverage requirement of 10 CFR 140.11(a)(4) will remain unchanged. The NRC staff determined that the offsite cleanup costs of an accident considered to be the most costly for a permanently defueled reactor with spent fuel removed from the spent fuel pool would be negligible. Thus, participation in the secondary insurance pool for offsite financial protection should not be required for a facility in that condition.

Based upon SECY 96–256 and the current status of DNPS, Unit 1, the NRC staff concludes that participation in the secondary insurance pool for off site financial protection pursuant to 10 CFR 140.11(a)(4) is not required for a permanently shutdown and defueled plant.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 140.8, the exemption from the participation in the private liability insurance pool is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants EGC an exemption from the requirements of 10 CFR 140.11(a)(4) for DNPS, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 39446 dated June 7, 2002).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of July, 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,
Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.
[FR Doc. 02–17287 Filed 7–9–02; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Reinstatement Without Change; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.
Reinstatement without Change
Form N–8b–4, SEC File No. 270–180, OMB Control No. 3235–0247

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for reinstatement without change and approval.

Form N–8b–4—Registration Statement of Face-Amount Certificate Companies

Form N–8b–4 is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8b–4

requires disclosure about the organization of a face-amount certificate company, its business and policies, its investment in securities, its certificates issued, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

the respondent to maintain, for an annual burden of 64 minutes per respondent. All records subject to the rule must be retained for the term of employment plus 3 years. The Commission estimates that the total annual cost to submitting entities is approximately $196,850. This figure reflects estimated costs of labor and storage of records.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Nevada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On June 28, 2002, the Board of Directors ("Board") of the Issuer

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order[1] ("Prior Order") that permits a portion of a portfolio of certain registered investment companies ("Unaffiliated Portion") advised by a subadviser ("Unaffiliated Subadviser") to engage in certain principal and brokerage transactions with an affiliated person of another subadviser to the same portfolio. The requested order would

request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: SAAMCo and the Funds, SunAmerica Center, 733 Third Avenue, New York, New York 10017–3204; American Century, American Century Tower, 4500 Main Street, Kansas City, Missouri 64111; Berger, 210 University Blvd., Suite 800, Denver,

requires disclosure about the organization of a face-amount certificate company, its business and policies, its investment in securities, its certificates issued, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act of 1940.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately 1 annual filing on Form N–8b–4. The Commission estimates that each registrant filing a Form N–8b–4 would spend 171 hours in preparing and filing the Form and that the total hour burden for all Form N–8b–4 filings would be 171 hours. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8b–4 is mandatory. The information provided on Form N–8b–4 will not be kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 28, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17247 Filed 7–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 17f–2(d) SEC File No. 270–36 OMB Control No. 3235–0028

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(d) was adopted on March 16, 1976, and was last amended on November 18, 1982. Paragraph (d) of the rule (i) requires that records produced pursuant to the fingerprinting requirements of section 17(f)(2) of the Securities Exchange Act of 1934 ("Exchange Act") be maintained, (ii) permits the designating examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and to maintain records required to be kept by this rule, and (iii) permits the required records to be maintained on microfilm.

The general purposes for Rule 17f–2 are: (i) To identify security risk personnel; (ii) to provide criminal record information so that employers can make fully informed employment decisions; and (iii) to deter persons with criminal records from seeking employment or association with covered entities.

Retention of fingerprint records, as required under paragraph (d) of the rule, enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprint are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 9,468 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 32 new records per year, which takes approximately 2 minutes per record for the respondent to maintain, for an annual burden of 64 minutes per respondent. All records subject to the rule must be retained for the term of employment plus 3 years. The Commission estimates that the total annual cost to submitting entities is approximately $196,850. This figure reflects estimated costs of labor and storage of records.

Written comments are invited on: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: June 28, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17248 Filed 7–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–15587]

Issuer Delisting: Notice of Application To Withdrawal From Listing and Registration on the American Stock Exchange LLC (Med Diversified, Inc., Common Stock, $.001 par value)

July 3, 2002.

Med Diversified, Inc., a Nevada Corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Nevada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On June 28, 2002, the Board of Directors ("Board") of the Issuer unanimously approved a resolution to withdraw the Issuer's Security from listing on the Amex. The Issuer stated that the Board took such action because the Issuer was unable to meet the Amex's listing requirements given the financial performance for its most recently ended fiscal year. The Issuer advised the Exchange that it intends to seek quotation of its Security on the OTC Bulletin Board.

Any interested person may, on or before July 24, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–17246 Filed 7–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25548; 812–11930]

SunAmerica Asset Management Corp., et al.; Notice of Application

July 3, 2002.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 12(d)(3) of the Act.

[3] 17 CFR 200.30–3(a)(1).

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order[1] ("Prior Order") that permits a portion of a portfolio of certain registered investment companies ("Unaffiliated Portion") advised by a subadviser ("Unaffiliated Subadviser") to engage in certain principal and brokerage transactions with an affiliated person of another subadviser to the same portfolio. The requested order would permit an Unaffiliated Portion that is advised by an Unaffiliated Subadviser to purchase securities issued by the other subadviser or an affiliated person of the other subadviser within the limits rule 12d3–1 under the Act.

Applicants: SunAmerica Asset Management Corp. ("SAAMCo"); SunAmerica Style Select Series, Inc. ("Style Select") and Seasons Series Trust ("Seasons" and together with Style Select, the "Funds"); American Century Investment Management, Inc. ("American Century"); Berger Financial Group, LLC ("Berger"); Credit Suisse Asset Management, LLC ("CSAM"), Deutsche Asset Management, Inc. ("DAMI"); Dresdner RCM Global Investment LLC ("Dresdner"); Janus Capital Management LLC ("Janus"); Jennison Associates, LLC ("Jennison"); Marisco Capital Management, LLC ("Marisco"); Massachusetts Financial Services Company ("MFSC"); Morgan Stanley Investments L.P. ("Morgan Stanley"); State Street Research & Management Company ("State Street") and T. Rowe Price Associates, Inc. ("T. Rowe Price") (each of American Century, Berger, CSAM, DAMI, Dresdner, Janus, Marisco, Morgan Stanley, State Street, and T. Rowe Price, an "Affiliated Subadviser").

FILING DATES: The application was filed on January 6, 2000 and amended on June 4, 2002. In addition, a letter was submitted on July 2, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 29, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: SAAMCo and the Funds, SunAmerica Center, 733 Third Avenue, New York, New York 10017–3204; American Century, American Century Tower, 4500 Main Street, Kansas City, Missouri 64111; Berger, 210 University Blvd., Suite 800, Denver, Colorado 80206; CSAM, 466 Lexington Ave., New York, New York 10017; DAMI, 280 Park Ave., New York, New York 10017; Dresdner, Four Embarcadero Center, San Francisco California 94111; Janus, 100 Fillmore Street, Denver, Colorado 80206–4923; Jennison, 466 Lexington Ave., New York, New York 10017; Marisco, 1200 17th Street, Suite 1300, Denver, Colorado 80202; MFSC, 500 Boylston Street, Boston, Massachusetts 02116; Morgan Stanley, 1 Tower Bridge, West Conshohoken Pennsylvania 19428–0868; State Street, One Financial Center, Boston, Massachusetts 02111–2690; and T. Rowe-Price, 100 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Special Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Funds are open-end management investment companies registered under the Act. Style Select consists of twelve separate portfolios (the "Style Select Portfolios"), each of which is advised by SAAMCo and several investment subadvisers. Seasons consists of nineteen separate portfolios, sixteen of which are advised by SAAMCo and several investment subadvisers (the "Seasons Portfolios," collectively with the Style Select Portfolios, the "Portfolios").

2. SAAMCo is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). SAAMCo selects the subadvisers for the Style Select and Seasons Portfolios (the "Subadvisers"), provides various administrative services, and supervises the Portfolios' daily business affairs, subject to oversight by the board of directors or trustees of each Fund.

[1] SunAmerican Asset Management Co., et al., Investment Company Act Release Nos. 23094 (Mar. 31, 1998) (notice) and 23161 (Apr. 29, 1998) (order).

SAAMCo also directly advises portions of five Style Select Portfolios and nine of the Seasons Portfolios.[2] Subadvisers for the Style Select and Seasons Portfolios include American Century, Berger, CSAM, DAMI, Dresdner, Janus, Marisco, Morgan Stanley, State Street, and T. Rowe Price.

3. Applicants request relief to permit an Unaffiliated Portion of a Portfolio to purchase securities issued by an Affiliated Issuer will permit the Unaffiliated Portion to take advantage of advantageous investment opportunities.

Applicants' Conditions

Applicants agree that the requested order amending the Prior Order will be subject to the following conditions:

1. Each Portfolio that relies on the

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46148; File No. SR–Amex–2002–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Odd-Lots in Nasdaq Securities

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (i) by the Exchange or (ii) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq

less, market and executable limit orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest $.01. When the national best displayed bid is higher than the offer by more than $.05, an odd-lot order will not receive automatic execution and is to be executed manually at the time a locked or crossed

SAAMCo also directly advises portions of five Style Select Portfolios and nine of the Seasons Portfolios.[2] Subadvisers for the Style Select and Seasons Portfolios include American Century, Berger, CSAM, DAMI, Dresdner, Janus, Marisco, Morgan Stanley, State Street, and T. Rowe Price.

3. Applicants request relief to permit an Unaffiliated Portion of a Portfolio that is managed by an Unaffiliated Subadviser to acquire equity or debt securities issued by a Subadviser to another portion of the Portfolio (the Subadviser, an "Affiliated Subadviser," the portion, "Affiliated Portion"), or an affiliated person of the Affiliated Subadviser engaged in securities-related activities ("Affiliated Issuer"), within the limits of rule 12d3–1 under the Act. The requested relief would apply only where an Affiliated Issuer is deemed to be an affiliated person or an affiliated person of an affiliated person of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Portfolio.

4. Applicants state that the advisory contract with each of the Subadvisers to the Portfolios assigns the Subadviser responsibility to manage a discrete portion of the respective Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. SAAMCo does not dictate or influence investment or brokerage allocation decisions, or have the contractual right to do so, with respect to the Portfolios (except for those portions directly advised by SAAMCo). Each Subadviser to a Portfolio is compensated based on a percentage of the value of assets allocated to that Subadviser. For two Style Select Portfolios, SAAMCo also pays from its own resources, an additional $100,000 to the Subadviser for each Portfolio with the highest total return for its portion of the Portfolio for each calendar year.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, "securities-related activities"). Rule 12d3–1 under the Act exempts from the prohibition of section 12(d)(3) purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), prohibits the acquisition of a security issued by the investment company's investment adviser, promoter, or principal underwriter, or any affiliated person of the investment adviser, promoter, or principal underwriter.

2. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

3. Applicants state that an Affiliated Issuer would be a Subadviser or an affiliated person of a Subadviser. As an investment adviser to a portion of a Portfolio, a Subadviser is deemed to be an investment adviser to the entire Portfolio. Thus, applicants state that a purchase by an Unaffiliated Portion of securities issued by an Affiliated Issuer would not meet rule 12d3–1(c) and that applicants are therefore unable to rely on the rule.

4. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. For the reasons stated below, applicants believe that the terms of the proposed transactions meet the standards of section 6(c).

5. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion to purchase securities issued by an Affiliated Issuer within the limits of rule 12d3–1. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between an Unaffiliated Subadviser (and the Unaffiliated Portion) and an Affiliated Issuer. Applicants submit that each Subadviser acts independently of the other Subadvisers in managing the assets allocated to its portion of the Portfolio. Applicants also state that permitting an Unaffiliated Portion to purchase securities issued by an Affiliated Issuer will permit the Unaffiliated Portion to take advantage of advantageous investment opportunities.

Applicants' Conditions

Applicants agree that the requested order amending the Prior Order will be subject to the following conditions:

1. Each Portfolio that relies on the order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated consistent with the manner described in the application.

2. Each Portfolio will comply with rule 12d3–1, except paragraph (c) of that rule solely with respect to purchases by an Unaffiliated Portion of securities issued by an Affiliated Issuer that would be prohibited by rule 12d3–1(c) solely because the Affiliated Issuer is an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, to an Affiliated Portion of the Portfolio.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of any Unaffiliated Subadviser except that SAAMCo may pay from its own resources an amount to the Subadviser for each Portfolio with the highest total return for its portion of the Portfolio for each calendar year.

5. No Affiliated Subadviser (except by virtue of serving as a Subadviser to a discrete portion of a Portfolio), Affiliated Issuer, or Affiliated Broker-Dealer will be an affiliated person, or a second-tier affiliate, of SAAMCo, any Unaffiliated Subadviser, or any principal underwriter, promoter, officer, trustee, or employee of the Portfolio.

6. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Broker-Dealer, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–17327 Filed 7–9–02; 8:45 am]

BILLING CODE 8010–01–P

[2] The terms "Unaffiliated Subadviser" and "Unaffiliated Portion" include SAAMCo and the discrete portion of a Portfolio directly advised by SAAMCo, respectively, provided that SAAMCo manages its portion of the Portfolio independently of the portions managed by the other Subadvisers to the Portfolio, and SAAMCo does not control or influence any other Subadviser's investment decisions.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46148; File No. SR–Amex–2002–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Odd-Lots in Nasdaq Securities

June 28, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 118 (Trading in Nasdaq National Market Securities) and Rule 205 (Manner of Executing Odd-Lot Orders) to describe odd-lot execution procedures applicable to trading Nasdaq Market securities. These procedures are proposed to be implemented on a six-month pilot program basis. The text of the proposed rule change is below. Proposed new language is in italics.

Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.

(j) *Odd-Lot Orders—Odd lot orders in Nasdaq National Market securities shall be executed in the following manner:*

(i) *Market and Executable Limit Orders—A market or executable limit order shall receive automatic execution, unless otherwise provided herein, at the price of the adjusted national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File.*

All market and executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round—lot or Part of Round Lot (PRL) transaction on the Exchange.

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (i) by the Exchange or (ii) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (A) the (bid or offer) is no more than 25 cents above the bid (or below the offer), respectively, disseminated by the Exchange, (B) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (c) the quotation does not result in a locked or crossed market, (D) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (E) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1.

(ii) *Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types—Unless otherwise provided herein, non-executable limit, stop, and stop limit orders shall be executed in accordance with Rule 205, Parts A(2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C(1).*

(iii) *Non-Regular Way Trades—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C(2).*

(iv) *Locked and Crossed Market Conditions*

(a) *For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (i.e., the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.*

(b) *Crossed Market Condition—When a crossed market condition exists (i.e., bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by $.05 or less, market and executable limit orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest $.01. When the national best displayed bid is higher than the offer by more than $.05, an odd-lot order will not receive automatic execution and is to be executed manually at the time a locked or crossed market condition no longer exists, in accordance with subparagraph (i) of this paragraph (j).*

(v) *No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).*

(vi) *Odd-lot orders in Nasdaq National Market securities are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.*

Manner of Executing Odd-Lot Orders

Rule 205

Commentary

.01 through .04 No change.

.05 *Odd-lot orders in Nasdaq National Market securities shall be executed in accordance with Rule 118(j).*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has filed a proposed rule change to permit trading of Nasdaq National Market securities pursuant to unlisted trading privileges.[3] The Exchange proposes to add new paragraph (j) to proposed Rule 118 to describe procedures applicable to the execution of odd-lot orders. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45365 (January 30, 2001), 67 FR 5626 (February 6, 2002)(SR–Amex–2001–106).

Exchange currently is modifying its existing system in order to provide automatic execution of market and executable limit orders in Nasdaq National Market securities of less than 100 shares in a manner generally consistent with procedures set forth in Amex Rule 205. Round lot orders (*e.g.*, 100 shares) and Part of Round Lot ("PRL") orders (*e.g.*, 175 shares) will not be subject to automatic execution. The Exchange will be implementing specific procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in Nasdaq securities when the national best bid and offer is in a locked market condition (*i.e.*, bid is equal to offer) or a crossed market condition (*i.e.*, bid is higher than offer). Odd-lot orders will be executed automatically at the locked market price or at the mean of the bid and offer prices in a crossed market. Odd-lot orders will be executed manually and will not be automatically executed.

Locked and Crossed Market Conditions

The Exchange will be implementing specific procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in Nasdaq securities when the national best bid and offer is in a locked market condition (*i.e.*, bid is

equal to offer) or a crossed market condition (*i.e.*, bid is higher than offer). Odd-lot orders will be executed automatically at the locked market price or at the mean of the bid and offer prices in a crossed market. Odd-lot orders will be executed manually and will not be automatically executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17132 Filed 7–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Assisted Execution System; and (2) modified and extended the transaction credit pilot program for InterMarket trades through December 31, 2002.

On June 28, 2002, the CSE filed with the Commission SR–CSE–2002–06. The proposed rule change extended a pilot revenue sharing program for trading Nasdaq National Market securities through August 30, 2002.[5]

On June 28, 2002, the PCX filed SR–

It is therefore ordered, pursuant to section 19(b)(3)(C) of the Act,[12] that File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37 be, and they hereby are, summarily abrogated. If the self-regulatory organizations choose to re-file the proposed rule changes, they must do so pursuant to sections 19(b)(1)[13] and 19(b)(2) of the Act.[14]

By the Commission.

Exchange currently is modifying its existing system in order to provide automatic execution of market and executable limit orders in Nasdaq National Market securities of less than 100 shares in a manner generally consistent with procedures set forth in Amex Rule 205. Round lot orders (*e.g.*, 100 shares) and Part of Round Lot ("PRL") orders (*e.g.*, 175 shares) will not be subject to automatic execution. The Exchange proposes to implement these procedures on a six-month pilot program basis.

Market and executable odd-lot limit orders to buy (sell) will be executed at the price of the qualified national best offer (bid) at the time the order is received at the trading post or through the Amex Order File (AOF). Market and executable limit orders entered before the opening of trading in Nasdaq securities on the Exchange will receive an execution at the price of the first reported round-lot or PRL on the Amex.

For purposes of this provision, the qualified national best bid or offer is the highest bid and lowest offer disseminated by the Amex or by another market center that is a participant in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. The bid or offer of such other market center will be considered in determining the qualified national best bid or offer only if it meets the conditions specified in proposed Rule 118(j)(i), including that the best bid or offer is no more than 25 cents away from Amex's displayed bid or offer; the quotation conforms to Amex Rule 127 ("Minimum Price Variations"), that is, the bid or offer must be in a one cent increment; the quotation does not result in a locked or crossed market; the market center is not experiencing operational or system problems affecting quotation dissemination; and members of the other market center disseminating the quotations are not relieved of their obligations with respect to their quotations pursuant to the "unusual market" exception of Rule 11Ac1–1. These exceptions are similar to those applied to execution of odd-lots in Amex-listed securities under Rule 205, Commentary .04.

Procedures for the execution of non-executable limit orders, stop orders, stop limit orders, other order types, orders filled after the close and non-regular way trades will be similar to existing odd-lot execution procedures under Amex Rule 205A(2)–A(4), B and C. Such orders will be processed manually and will not be automatically executed.

Locked and Crossed Market Conditions

The Exchange will be implementing specific procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in Nasdaq securities when the national best bid and offer is in a locked market condition (*i.e.*, bid is equal to the offer) or a crossed market condition (*i.e.*, bid is higher than the offer). If a locked market exists, market orders and executable buy and sell limit orders will be executed at the same price as the locked price. If a crossed market exists, and the bid is higher than the offer by $.05 or less, market and executable limit orders will be executed at the mean of the crossed bid and offer. If the mean is less than $.01, the execution will be rounded up to the nearest $.01.

Examples:

BBO is $10.04 to $10.00
Market odd lot order to buy or sell arrives
Execute at $10.02

BBO is $10.05 to $10.00
Market odd lot order to buy or sell arrives
Execute at $10.03 ($10.025 is rounded to $10.03)

If a crossed market exists and the bid is higher than the offer by more than $.05, then an odd-lot order will not be automatically executed, but will be executed manually in accordance with proposed Rule 118(j)(i) (*i.e.*, filled at the price of the next unlocked and uncrossed qualified national bid or offer).

The Exchange also proposes to add new Commentary .05 to Rule 205 to reference Rule 118(j) odd-lot procedures.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–56 and should be submitted by July 25, 2002.

[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–17132 Filed 7–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 46159/July 2, 2002]

In the Matter of: The National Association of Securities Dealers, Incorporated, (File Nos. SR–NASD–2002–61 and SR–NASD–2002–68); The Cincinnati Stock Exchange, Incorporated, (File No. SR–CSE–2002–06); and The Pacific Exchange, Incorporated, (File No. SR–PCX–2002–37); Order of Summary Abrogation

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),[1] is summarily abrogating certain proposed rule changes of The National Association of Securities Dealers, Incorporated ("NASD"), The Cincinnati Stock Exchange, Incorporated ("CSE"), and The Pacific Exchange, Incorporated ("PCX").

On May 3, 2002, the NASD, through its subsidiary, The Nasdaq Stock Market ("Nasdaq"), filed SR–NASD–2002–61.[2] The proposed rule change (1) instituted a fee for the regulatory services provided in connection with the operation of The Nasdaq Stock Market; (2) expanded the market data revenue available for sharing with members under NASD Rule 7010(a)(2) by eliminating the deduction for the cost of regulatory services provided by NASD Regulation, Incorporated and increased the percentage of eligible revenue that is shared; and (3) extended the pilot period with respect to which market data revenue sharing is available through December 31, 2002.[3]

On June 13, 2002, the NASD, through its subsidiary, Nasdaq, filed with the Commission SR–NASD–2002–68.[4] The proposed rule change (1) modified the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System and Nasdaq's Computer Assisted Execution System; and (2) modified and extended the transaction credit pilot program for InterMarket trades through December 31, 2002.

On June 28, 2002, the CSE filed with the Commission SR-CSE–2002–06. The proposed rule change extended a pilot revenue sharing program for trading Nasdaq National Market securities through August 30, 2002.[5]

On June 28, 2002, the PCX filed SR–PCX–2002–37, which extended a pilot program for sharing market data revenue with ETP Holders and Sponsored Participants on the Archipelago Exchange. The proposal extended the pilot through August 30, 2002.

Each of these filings was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[6]

Pursuant to section 19(b)(3)(C) of the Act,[7] at any time within 60 days of the date of filing a proposed rule change pursuant to section 19(b)(1) of the Act,[8] the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of section 19(b)(1) of the Act[9] and reviewed in accordance with section 19(b)(2) of the Act,[10] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Commission believes that the above-referenced proposed rule changes raise serious questions as to whether they are consistent with the Act and with the protection of investors. These questions include, among other things, the effect of market data rebates on the accuracy of market data and on the regulatory functions of self-regulatory organizations.

Accordingly, the Commission believes that the procedures provided by section 19(b)(2) of the Act[11] will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

It is therefore ordered, pursuant to section 19(b)(3)(C) of the Act,[12] that File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37 be, and they hereby are, summarily abrogated. If the self-regulatory organizations choose to re-file the proposed rule changes, they must do so pursuant to sections 19(b)(1)[13] and 19(b)(2) of the Act.[14]

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–17249 Filed 7–9–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(3)(C).
[2] *See* Securities Exchange Act Release No. 45916 (May 10, 2002).
[3] This pilot, which was effective on filing, replaced the pilot filed in SR–NASD–2002–17.
[4] *See* Securities Exchange Act Release No. 46153 (July 1, 2002).
[5] *See* Securities Exchange Act Release No. 46147 (June 28, 2002).
[6] 15 U.S.C. 78s(b)(3)(A).
[7] 15 U.S.C. 78s(b)(3)(C).
[8] 15 U.S.C. 78s(b)(1).
[9] *Id.*
[10] 15 U.S.C. 78s(b)(2).
[11] *Id.*
[12] 15 U.S.C. 78s(b)(3)(C).
[13] 15 U.S.C. 78s(b)(1).
[14] 15 U.S.C. 78s(b)(2).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3425, Amdt. #2]

State of Iowa; Disaster Loan Areas

In accordance with a notice received from the Federal Emergency Management Agency, dated July 1, 2002, the above numbered declaration is hereby amended to include Des Moines, Henry, Lee and Louisa Counties in the State of Iowa as disaster areas due to damages caused by severe storms and flooding beginning on June 3, 2002 and continuing through June 25, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Jefferson and Van Buren Counties in Iowa; Hancock, Henderson and Mercer Counties in Illinois; and Clark County in Missouri. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Missouri is 9Q4800.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 18, 2002, and for economic injury the deadline is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–17262 Filed 7–9–02; 8:45 am].

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3423, Amdt. #2]

State of Minnesota; Disaster Loan Area

In accordance with notices received from the Federal Emergency Management Agency, dated June 28 and July 1, 2002, the above-numbered Declaration is hereby amended to establish the incident period for this

its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

applying for Social Security benefits. The respondents are applicants for one or more Social Security benefits who need to establish their dates of birth as a factor of entitlement or U.S. citizenship as a factor of payment.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 38,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 19,000 hours.

5. *Request for Reconsideration—Disability Cessation—0960–0349.* Form SSA–789 collects information used by

- Water supply
- Sanitation
- Primary education
- Landmine action, education and awareness

The list is not intended to be exclusive or binding, and NGA remains open to considering a broad range of humanitarian-related NGO activities and innovative projects. Projects in Iraq must be consistent with any applicable

The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of life for Iraqi people. (25 points)

Organization Profiles—Where coalition partners are proposed, the applicant describes the rationale for the collaboration, each partner agency's respective role, and how the coalition

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3423, Amdt. #2]

State of Minnesota; Disaster Loan Area

In accordance with notices received from the Federal Emergency Management Agency, dated June 28 and July 1, 2002, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on June 9, 2002 and continuing through June 28, 2002. The declaration is also amended to include Becker and Clearwater Counties in the State of Minnesota as disaster areas due to damages caused by severe storms, flooding and tornadoes beginning on June 9, 2002 and continuing through June 28, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Hubbard, Otter Tail and Wadena Counties in Minnesota. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 13, 2002 and for economic injury the deadline is March 14, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–17261 Filed 7–9–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses: (OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503; (SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Disability Report—Adult—0960–0579. The Social Security Act requires claimants to furnish medical and other evidence to prove they are disabled. Applicants for disability benefits will complete form SSA–3368. The information will be used, in conjunction with other evidence, by State DDSs to develop medical evidence, to assess the alleged disability, and to make a disability determination. The respondents are applicants for title II and title XVI disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 2,116,667.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 2,116,667 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–0454, or by writing to the address listed above.

1. *Statement Regarding Date of Birth and Citizenship—0960–0016.* The Social Security Administration (SSA) collects information on Form SSA–702 when preferred or other evidence is not available to prove age for an individual applying for Social Security benefits. The respondents are applicants for one or more Social Security benefits who need to establish their dates of birth as a factor of entitlement or U.S. citizenship as a factor of payment.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 200 hours.

2. *Self-Employment/Corporate Officer Questionnaire—0960–0487.* Form SSA–4184 is used by SSA to develop earnings and corroborate a claimant's allegations regarding retirement when the claimant is self-employed or a corporate officer. The information collected is used to determine the benefit amount. The respondents are self-employed individuals and corporate officers.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 6,667 hours.

3. *Disability Report Update—0960–0511.* Form SSA–455 or SSA–455–OCR–SM is used by SSA to collect information when the continuing disability review (CDR) diary of a recipient of SSA-administered benefits, based on disability, has matured or there is an indication of possible medical improvement (e.g., a report of return to work or a physician's clearance for work). The information collected from beneficiaries is reviewed by technicians, including specialists in the evaluation of work and earnings and in disability adjudication, to determine if a full medical CDR should be processed or deferred to a later date. The respondents are recipients of benefits, based on disability, under titles II and/or XVI of the Social Security Act, as amended.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 702,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 175,500 hours.

4. *Farm Arrangement Questionnaire—0960–0064.* SSA needs the information collected on Form SSA–7157–F4 to determine if farm rental income may be considered self-employment income for Social Security coverage purposes. The respondents are individuals alleging self-employment income from renting land for farming activities.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 38,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 19,000 hours.

5. *Request for Reconsideration—Disability Cessation—0960–0349.* Form SSA–789 collects information used by SSA to schedule disability hearings and to develop additional evidence/information for claimants whose disability is found to have ceased, not to have existed, or is no longer disabling. The information will also be used to determine if an interpreter is needed for the disability hearing. The respondents are claimants under titles II & XVI of the Social Security Act who wish to request reconsideration of disability cessation.

Type of Request: Revision of an OMB-approved Information Collection.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 12–15 minutes.

Estimated Annual Burden: 10,290 hours.

Dated: June 28, 2002.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–17211 Filed 7–9–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4062]

Bureau of Near Eastern Affairs; Humanitarian Assistance Program

AGENCY: Department of State.

ACTION: Notice.

Introduction

The Office of Northern Gulf Affairs (NGA) announces an open competition for proposals for humanitarian assistance projects in Iraq (southern, central or northern) and for Iraqi refugees in neighboring countries. Multiple awards may be made from this announcement. Proposals may address any area or sector within a broad range of humanitarian relief to Iraqi people, including, but not limited to, the following:

- Medical care, health services, and health education
- Relief to internally displaced persons or refugees
- Relief supplies
- Shelter/housing
- Water supply
- Sanitation
- Primary education
- Landmine action, education and awareness

The list is not intended to be exclusive or binding, and NGA remains open to considering a broad range of humanitarian-related NGO activities and innovative projects. Projects in Iraq must be consistent with any applicable UN resolutions.

Purpose

The purpose of this humanitarian assistance program is to respond to urgent humanitarian needs of people in Iraq, Iraqi refugees, and internally displaced persons. The primary objective is to provide relief and access to basic, life-sustaining resources in ways that meet internationally accepted standards of care in such areas as public health, medical care and services, shelter/housing, water supply, sanitation, education, and other areas.

Eligible Applicants

Eligible applicants include all non-governmental and non-profit organizations.

Legislative Authority

This program is authorized by Section 575 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (FOAA)(P.L. 106–429).

Availability of Funds

The funding level for this program is $6,600,000. It is anticipated that at least 5 awards will be made ranging from $500,000 to $3.5 million. The Grants Officer reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

Review Criteria

Eligible applications will be competitively evaluated according to the following criteria:

Results or Benefits Expected—The applicant clearly describes the results and benefits to be achieved. The applicant identifies how improvement will be measured on key indicators and provides milestones indicating progress. Proposed outcomes are tangible and achievable within the grant project period. (30 points)

Approach—The applicant must demonstrate that its strategy and plan are likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of life for Iraqi people. (25 points)

Organization Profiles—Where coalition partners are proposed, the applicant describes the rationale for the collaboration, each partner agency's respective role, and how the coalition will enhance the accomplishment of the project goals. In all cases, the applicant describes planning consultation efforts undertaken. The proposed coalition is appropriate with respective roles and financial responsibilities delineated. Evidence of commitment of coalition partners in implementing the activities is demonstrated, i.e., by letters or the terms of the signed agreement among participants. The applicant or coalition partners provide documented experience in performing the proposed services as well as adequate gender balance and constituent representation on the proposed project's advisory board. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Individual organization staff including volunteers are well-qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. (25 points)

Budget and Budget Justification—The budget and narrative justification are reasonable in relation to the proposed activities and anticipated results and the plan for services is realistic. (20 points)

Application/Proposal Submission and Deadline

An application (Standard Form 424) with an original signature and two clearly identified copies is required. The application form (Standard Form 424) and instructions can be obtained from either:

(1) the following Web sites:
http://www.whitehouse.gov/omb/grants/#forms
http://www.usaid.gov/procurement bus opp/procurement/forms/SF–424/

(2) Anna Mary Portz, Grants Officer, U.S. Department of State, NEA/NGA, Room 4241, 2201 C Street NW., Washington, DC 20520, telephone (202) 647–6111, fax (202) 736–4464, e-mail *portzam,@state.gov.*

Application materials must be submitted to the U.S. Department of

State, Anna Mary Portz, Grants Officer, NEA/NGA, Room 4241, 2201 C Street NW., Washington, DC 20520 on or before close of business (4:30 p.m. EST) August 1, 2002. Due to delays in regular mail delivery to the State Department, applicants are strongly encouraged to hand-carry or use couriers to deliver applications to NEA/NGA, between the hours of 8:30–4:30 p.m., to the attention

resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the

estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. The

definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. *Justification:* Specify general categories of supplies and their costs. Show

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33.17–1, Fire Prevention

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

State, Anna Mary Portz, Grants Officer, NEA/NGA, Room 4241, 2201 C Street NW., Washington, DC 20520 on or before close of business (4:30 p.m. EST) August 1, 2002. Due to delays in regular mail delivery to the State Department, applicants are strongly encouraged to hand-carry or use couriers to deliver applications to NEA/NGA, between the hours of 8:30–4:30 p.m., to the attention of Anna Mary Portz. Express or overnight mail services may also be used, though applicants are cautioned that express/overnight mail services do not always deliver as agreed and other delays may occur until regular mail delivery is resumed.

Applicants must also provide an electronic copy of the proposal by e-mail to Anna Mary Portz, Grants Officer at e-mail address *portzam@state.gov*). Proposals must be submitted in both hard copy and by e-mail; proposals submitted only by e-mail, or only in hard copy, will not be considered. The Grants Officer must be aware that the proposal is on its way, or the package risks being considered late or turned away by Diplomatic Security.

Applications submitted by e-mail and either (1) mail (including express mail or overnight mail services), or (2) hand-carried by applicant couriers or by other representatives of the applicant, shall be considered as meeting an announced deadline if they are received on or before close of business (4:30 p.m. est) August 1, 2002.

Late Applications

Applications received after the closing date and time will be classified as late.

Applications which do not meet the criteria above are considered late applications. NGA shall notify each late applicant that its application will not be considered in the current competition.

General Instructions for Preparing a Full Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

Length of Applications

Each application narrative should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. Each page should be numbered sequentially, including the attachments or appendices. This limitation of 25 pages plus the SF 424 should be considered as a maximum, and not necessarily a goal.

Introduction

NGA is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Applicants shall prepare the project description statement in accordance with the following instructions.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports, documentation of experience in the program area, and other pertinent information.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets, sub-grant, or contract budgets for each program component, phase, location, or activity to provide clarification. Provide line item detail and detailed calculations for each budget object class identified. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. The following guidelines are for preparing the budget and budget justification.

Personnel

Description: Costs of employee salaries and wages. *Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. *Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). *Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above. *Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. *Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc.

Justification: Attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, and administrative costs. *Justification:* Provide computations, a narrative description and a justification for each cost under this category.

Total Direct Charges, Total Indirect Charges, Total Project Costs: Self explanatory.

Reporting Requirement

Quarterly progress and financial reports are required for all funded projects. Final reports will be due 90 days after end of project period.

Where To Obtain Additional Information

Questions regarding this Request for Proposals should be directed to Anna Mary Portz, Grants Officer, Department of State, NEA/NGA, Room 4241, 2201 C Street NW., Washington, DC, 20520, telephone (202) 647–5281, fax (202) 736–4464, e-mail portzam,@state.gov.

Dated: July 3, 2002.

Ryan Crocker,

Acting Assistant Secretary, Bureau of Near Eastern Affairs, Department of State.

[FR Doc. 02–17328 Filed 7–9–02; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33.17–1, Fire Prevention

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 33.17–1 Fire Prevention. This AC sets forth acceptable methods of compliance that may be used to demonstrate compliance with the fire prevention requirements under Title 14 Code of Federal Regulations (14 CFR), part 33. Section 33.17 is the primary section addressed in this AC, although other sections of part 33 that address fire prevention may also be applicable. Other related parts and sections are listed in AC 20–135, Powerplant Installation and Propulsion System Component Fire Protection Methods, Standards and Criteria Appendix 1. This AC is intended to provide guidance relating to these requirements, and is considered a supplement to AC 20–135.

DATES: Advisory Circular 33.17–1 was issued by the Assistant Manager, Engine & Propeller Directorate, ANE–100 on June 28, 2002.

How To Obtain Copies: A paper copy of AC 33.17–1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at "*http://www.faa.gov/*", at the link titled "Regulatory/Advisory" select "Advisory Circulars" then select "Regulation & Certification Advisory Circulars"

Issued in Burlington, Massachusetts, on June 28, 2002.

Francis Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–17374 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Guidance Material for 14 CFR 33.28, Reciprocating Engines, Electrical and Electronic Engine Control Systems

AGENCY: Federal Aviation Administration, DOT.

showing compliance with § 33.28 that addresses these issues.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on July 3, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–17379 Filed 7–9–02; 8:45 am]

requires the air taxi to identify the aircraft it will use in its operation so that the FAA can assure that liability insurance exists for the aircraft. Also, airworthiness checks take place on the aircraft before the carrier is allowed to operate.

Estimated Annual Burden Hours: An estimated 1,026 hours annually.

2. *Title:* Enhanced Security Procedures at Certain Airports.

DATES: The meeting will be held on July 30–August 1, 2002 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

update
- Review action list
- Closing Session (Make Assignments, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons

Meeting)
- Presentations/Discussions
- Subgroup 4 (Database Exchange Format)
- Resolution of Action Items
- Feature catalogue review

—Aerodrome database
—Terrain database
—Obstacle database

- September 17:
- Subgroup 4 (Continue previous day activities)

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Guidance Material for 14 CFR 33.28, Reciprocating Engines, Electrical and Electronic Engine Control Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed Advisory Circular (AC) Number 33.28–2, Guidance Material For 14 CFR § 33.28, Reciprocating Engines, Electrical And Electronic Engine Control Systems.

DATES: Comments must be received on or before September 18, 2002.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Mark Rumizen, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Mark Rumizen, Engine and Propeller Standards Staff, ANE–110, at the above address; telephone: (781) 238–7113; fax: (781) 238–7199; e-mail: *mark.rumizen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl*. The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all communications received by the closing date before issuing the final AC.

Background

Electrical and Electronic Engine Control (EEC) technology was initially applied to turbine engines designed for large transport aircraft applications. Therefore, the information and guidance for showing compliance with § 33.28 provided by the FAA was oriented toward these applications. However, the increasing use of EEC systems in reciprocating piston engines has created a need for guidance specifically for reciprocating engines. This AC provides a means, but not the only means, of showing compliance with § 33.28 that addresses these issues.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on July 3, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–17378 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the two Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICRs describe the nature of the information collections and the expected burden. The Federal Register Notices with a 60-day comment period soliciting comments on the following collections of information were published on March 28, 2002 on page 14999.

DATES: Comments must be submitted on or before August 9, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Exemptions for Air Taxi and Commuter Air Carrier Operations.
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0633.
Forms(s): OST Form 4507.
Affected Public: A total of 2,059 air carriers.
Abstract: The information collected is used to determine whether or not an air taxi operation meets the Department's criteria for an operating authorization under 14 CFR Part 298. OST Form 4507 requires the air taxi to identify the aircraft it will use in its operation so that the FAA can assure that liability insurance exists for the aircraft. Also, airworthiness checks take place on the aircraft before the carrier is allowed to operate.
Estimated Annual Burden Hours: An estimated 1,026 hours annually.

2. *Title:* Enhanced Security Procedures at Certain Airports, Washington, DC Area.
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0677.
Forms(S): NA.
Affected Public: A total of 444 aircraft operators.
Abstract: This rule established security measures and air traffic control procedures that permit three Maryland airports (Potomac, Hyde, and College Park) to resume normal flight operations, small business operations and private pilot operations at each of these locations.
Estimated Annual Burden Hours: An estimated 8,269 hours annually.
Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued in Washington, DC, on July 1, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–17365 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200: Modular Avionics

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200: Modular Avionics (MA).

DATES: The meeting will be held on July 30–August 1, 2002 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 200 meeting. The agenda will include:

- July 30:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Summary of Previous Meeting)
  - Organize Working Groups (WG) and procedures; Email exploder/ reflector & web workspace
  - Review open action items
  - Discuss standing working papers
  - Report on other groups and committees
  - (SC–135) DO–160/ED–14 Update
  - ARINC 653
  - Aircraft System-Safety Assessment (SAE S–18)
  - Update on Victoria project progress and tasks
  - Review process and procedures for joint activities
  - Discuss proposed Terms of Reference (TOR) alignment for WG–60 and SC–200
- July 31:
- Combined Session: SC–200/WG–60
  - Assessment of objectives and TOR
  - Review standing working papers. Discuss and comment on:
  - "Definition of essential/key characteristics of MA"
  - "MA Novelties"
  - "Glossary of terms"
  - Discuss and review concept of "incremental certification"
  - Review structure and arrangement:
  - Agreement of sub group co-chairs
  - Discuss working methods
  - Discuss structure and form of deliverables
  - Review preliminary proposals for document working outline
  - Update on Joint Aviation Authority (JAA) and FAA policy development
  - August 1:
  - Agree on results of joint session
  - Propose, review and approval of timescales for deliverables against the TORs
  - Agree on working papers planned for future plenary agreement
  - Allocate tasks and work plan update
  - Review action list
  - Closing Session (Make Assignments, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 3, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–17366 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held September 16–20, 2002 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Service de l'Information Aeronautique (SAI) 8, avenue Roland Garros, B.P. 245, 33698 Bordeaux Merignac, FRANCE

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9330; fax 9202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- September 16:
  - Opening Plenary Session 9welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, review Summary of Previous Meeting)
  - Presentations/Discussions
  - Subgroup 4 (Database Exchange Format)
  - Resolution of Action Items
  - Feature catalogue review
  —Aerodrome database
  —Terrain database
  —Obstacle database
- September 17:
  - Subgroup 4 (Continue previous day activities)
- September 18:
  - Subgroup 4 (Continue previous day activities)
  - Metadata Review
- September 19:
  Subgroup 4 (Continue previous day activities)
  - Quality specific requirements
  - Discuss application schemes
- September 20:
  - Closing Plenary Session (Summary of Subgroup 4, Assign Tasks, Other Business, Date and place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 3, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–17367 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Gainesville Regional Airport, Gainesville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gainesville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part

158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 9, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024. and Taxiway A1 and Taxiway B; Acquisition of Land for Noise Purposes; Rehabilitation/Stregnthening of Aircraft Aprons; Installation of Airport Perimeter Fencing; Rehabilitate Medium Intensity Runway Lights for Runway 10/ 28, Rehabilitate Medium Intensity Taxiway Lights for Taxiways C and E, Installation of Runway Visual Range Equipment and Rehabilitation of Airfield Guidance Signs; Update Airport address: Alan Wiechmann, Manager; Denver Airports Distract Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming

SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington, on June 28, 2002.

David A. Field,

Manager, Planning, Programming and

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (02–05–C–00–HDN) to impose and use a PFC at the Yampa Valley Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 28, 2002, the FAA determined that the application to

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2002–12566]

Notice of Request for Clearance of a New Information Collection: Effectiveness of Design-Build Contracting Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 9, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Crider, Director of Aviation of the Gainesville-Alachua County Regional Airport Authority at the following address: Gainesville-Alachua County Regional Airport Authority, 3880 N.E. 39th Avenue, Suite A, Gainesville, Florida 32609.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Gainesville-Alachua County Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Richard Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, 407–812–6331, Extension 19. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gainesville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 2, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Gainesville-Alachua County Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 17, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–02–C–00–GNV.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2003.

Proposed charge expiration date: February 1, 2011.

Total estimate net PFC revenue: $4,637,954.

Brief description of proposed project(s): Rehabilitate Runway 10/28 and Taxiway A1 and Taxiway B; Acquisition of Land for Noise Purposes; Rehabilitation/Stregnthening of Aircraft Aprons; Installation of Airport Perimeter Fencing; Rehabilitate Medium Intensity Runway Lights for Runway 10/28, Rehabilitate Medium Intensity Taxiway Lights for Taxiways C and E, Installation of Runway Visual Range Equipment and Rehabilitation of Airfield Guidance Signs; Update Airport Master Plan and Perform Environmental Assessment for the Extension of Runway 6/24; Rehabilitate Airfield Drainage Between Runway 10/28 and Taxiway E; Terminal Renovation to accommodate the addition of two Passenger Loading Bridges; and Passenger Facility Charge Administration Costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gainesville-Alachua County Regional Airport Authority.

Issued in Orlando, FL on July 2, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 02–17373 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–08–C–00–JAC) To Impose and To Use a Passenger Facility Charge (PFC) at the Jackson Hole Airport, Submitted by the Jackson Hole Airport Board, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 9, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports Distract Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (02–08–C–00–JAC) to impose and use a PFC at the Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 28, 2002, the FAA determined that the application to impose and use a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 1, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: December 1, 2002.

Proposed charge expiration date: November 1, 2004.

Total requested for use approval: $953,023.00.

Brief description of proposed project: Aircraft parking apron expansion, security improvements, friction measuring equipment, snow removal equipment, and terminal design.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington, on June 28, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–17377 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–05–C–00–HDN) To Impose and To Use a Passenger Facility Charge (PFC) at The Yampa Valley Regional Airport, Submitted by The County of Routt, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Impose and use a PFC at the Yampa Valley Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 9, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Parker, Aviation Director, at the following address: Yampa Valley Regional Airport, P.O. Box 1060, 11005 RCR 51A, Hayden, Colorado 81639.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Yampa Valley Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (02–05–C–00–HDN) to impose and use a PFC at the Yampa Valley Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 28, 2002, the FAA determined that the application to impose and use a PFC submitted by the County of Routt, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: November 1, 2002.

Proposed charge expiration date: February 1, 2005.

Total requested for use approval: $1,052,470.00.

Brief description of proposed projects: Construction of Taxiway B, Runway 10/28 Rehabilitation, ADA Improvements, Security Upgrades, Land Acquisition, and Snow Renewal Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yampa Valley Regional Airport.

Issued in Renton, Washington on June 28, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–17376 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2002–12566]

Notice of Request for Clearance of a New Information Collection: Effectiveness of Design-Build Contracting Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget's (OMB) approval for a new information collection involving responses to a questionnaire concerning design-build projects. The information to be collected will be used to analyze the effectiveness of design-build contracting procedures.

DATES: Comments must be submitted on or before September 9, 2002.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, (202) 366–1562, Office of Program Administration, Federal Highway Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590. Office hours are from 7:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Effectiveness of Design-Build Contracting Procedures.

Background: Section 1307 of the Transportation Equity Act for the 21st Century (TEA–21, Public Law 105–178, 112 Stat. 107 (1998)) amends 23 U.S.C. 112 to allow the design-build contracting method after the FHWA promulgates a regulation prescribing the Secretary's approval criteria and procedures on qualified projects. Section 1307(f) of the TEA–21 also requires the FHWA to report to Congress on the effectiveness of design-build

contracting by June 9, 2003. The report must address:

(a) An assessment of the effect of design-build contracting on project quality, project cost, and timeliness of project delivery;

(b) Recommendations on the appropriate level of design for design-build procurements;

(c) An assessment of the impact of design-build contracting on small

Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Authority: The Transportation Equity Act for the 21st Century, (Public Law 105–178), section 1307 and 49 CFR 1.48.

Issued on: June 26, 2002.

James R. Kabel,

Chief, Management Programs and Analysis

exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34217, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Marilyn L.

TSA's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 9, 2002. A comment to

than 60 seats or (2) a scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area. The further requirement to conduct an audit only applies to air carriers and foreign air carriers that collect September 11th Security Fees from more than 50,000 passengers

year for the general information collection and 133 respondents for the audit-related collection.

Summary of the Collection of Information: For purposes of collecting funds to pay for the costs of providing civil aviation security services as described in 49 U.S.C. 44940, air carriers and foreign air carriers will be required to track passenger

contracting by June 9, 2003. The report must address:

(a) An assessment of the effect of design-build contracting on project quality, project cost, and timeliness of project delivery;

(b) Recommendations on the appropriate level of design for design-build procurements;

(c) An assessment of the impact of design-build contracting on small businesses;

(d) Assessment of the subjectivity used in design-build contracting; and

(e) Such recommendations concerning design-build contracting procedures as the Secretary determines to be appropriate.

Respondents: The FHWA will survey and interview an appropriate sample of contracting agencies and industry representatives who have experience with the design-build project delivery method. The respondents to the survey will be approximately 25 State Departments of Transportation, several local public agencies and a limited number of industry representatives who have experience with the design-build project delivery method.

Estimated Average Burden Per Response: The estimated average burden per response is two hours.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 200 hours.

Frequency: This is a one-time survey.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Access: Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Authority: The Transportation Equity Act for the 21st Century, (Public Law 105–178), section 1307 and 49 CFR 1.48.

Issued on: June 26, 2002.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 02–17312 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34217]

Hennepin County Regional Railroad Authority—Acquisition Exemption—Soo Line Railroad Company

Hennepin County Regional Railroad Authority (Authority), a noncarrier and political subdivision of the State of Minnesota, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Soo Line Railroad Company (Soo) 330 feet of railroad right-of-way and trackage (known as the Hopkins Line),[1] extending from Soo milepost 428.38 ± Engineering Station 381.90 (at or near former Chicago and North Western Transportation Company (CNW) milepost 16.3) to at or near former CNW milepost 16.2 where it connects with Authority's Kenilworth Route in St. Louis Park, MN. Authority states that a third party, Twin Cities and Western Railway Company (TC&W), will operate over the line.[2]

The transaction was expected to be consummated on or shortly after June 20, 2002 (15 days after the removal of the section 106 historic preservation condition imposed in STB AB–57 (Sub No. 52X). *See Soo Line Railroad Company—Abandonment Exemption—In Hennepin County, MN*, STB AB–57 (Sub–No. 52X) (STB served June 5, 2002).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34217, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Marilyn J. Maloney, 300 South Sixth Street, Minneapolis, MN 55487.

Board decisions and notices are available on our website at "http://www.stb.dot.gov."

Decided: July 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–17109 Filed 7–9–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Sale Property will connect several abandoned rail lines owned by the Authority to each other and to an active rail corridor owned by the Authority known as the Kenilworth Route. The Authority acquired each of these lines for future transportation uses, including, without limitation, rail, bicycle and foot travel. Closing on the Sale Property will allow completion of a trail system known as the Midtown Greenway on the Authority's Depression Line.

[2] Anticipated rail operations by a third party would be subject to the Board's approval or exemption. As of this date no filing has been made at the Board.

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2001–11120].

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Transportation Security Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of the information collection and the expected burden and requests approval of forms to be used for data collection. The **Federal Register** Notice with an Emergency notice soliciting comments on the following collection of information was published on January 31, 2002 (67 FR 4866).

Comments: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: Desk Officer for the Transportation Security Administration. Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of TSA, including whether the information will have practical utility; the accuracy of TSA's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 9, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Steven Cohen, Office of the Chief Counsel, Transportation Security Administration, Department of Transportation at (202) 493–1216. 400 Seventh Street (TSA–5), SW., GSA room 5002, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Imposition and Collection of Passenger Civil Aviation Security Service Fees.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2110–0001

Forms: September 11th Security Fees Quarterly Report Form (paper and online submission versions).

Frequency: On December 31, 2001, the Transportation Security Administration published an interim final rule imposing a security service fee (September 11th Security Fee) at 66 FR 67698. Imposition of this fee began February 1, 2002. Approximately 195 air carriers and foreign air carriers are expected to collect and remit the September 11th Security Fee. Each of these carriers are then responsible for (1) establishing and maintaining an accounting system to account for the September 11th Security Fees that are imposed, collected, refunded and remitted and (2) reporting this information to the Transportation Security Administration, U.S. Department of Transportation, on a quarterly basis. We further estimate that approximately 133 air carriers and foreign air carriers will also have to conduct an annual audit of their September 11th Security Fee activities and accounts.

Affected Public: The collection requirement applies to any direct air carrier or foreign air carrier providing air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States, on either (1) a scheduled passenger or public charter operation with an aircraft having passenger seating configuration of more than 60 seats or (2) a scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area. The further requirement to conduct an audit only applies to air carriers and foreign air carriers that collect September 11th Security Fees from more than 50,000 passengers annually.

Abstract: To pay for the costs of providing civil aviation security services as described in 49 U.S.C. § 44940, a uniform fee is imposed on passengers of air carriers and foreign air carriers providing air transportation, foreign air transportation, and intrastate transportation originating at airports in the United States. Approximately 195 air carriers and foreign air carriers are required to submit quarterly reports to TSA. In addition, the approximately 133 air carriers and foreign air carriers that collect the September 11th Security Fee from more than 50,000 passengers annually must conduct an audit of their fee collection and accounts and will have additional record keeping burdens.

Estimated Annual Burden Hours: Using the above estimate of 195 carriers a year who may have to submit quarterly reports, with an estimated 1 hour of preparation to collect and provide the information, at an assumed rate of $20 an hour, the annual estimated cost of collecting and preparing the information necessary for 780 quarterly reports is $15,600. Adding in a postage cost of $288.60 (780 reports at a cost of 37 cents to mail each one), we estimate that it will cost $15,888.60 a year to prepare and submit the information necessary to satisfy the general information collection requirement. Air carriers and foreign air carriers who will also have to conduct audits of their September 11th Security Fee activities and accounts will have an additional record-keeping burden. Using the above estimate of 133 carriers a year who may have to conduct audits, with an estimated 20 hours of preparation per audit, at an assumed rate of $150 an hour, the estimated cost of these audits is about $399,000 annually. The total estimated cost of preparing and submitting quarterly reports and conducting audits is $414,888.60 and the total estimated burden hours are 3,440. However, we believe the actual burden will be lower because TSA is providing a mechanism for the electronic submission of quarterly reports, which will reduce compliance time and costs.

Number of Respondents: We estimate that there will be 195 respondents per year for the general information collection and 133 respondents for the audit-related collection.

Summary of the Collection of Information: For purposes of collecting funds to pay for the costs of providing civil aviation security services as described in 49 U.S.C. 44940, air carriers and foreign air carriers will be required to track passenger emplanements involved in air transportation sold for flights originating at airports in the United States if the enplanement is on either (1) a scheduled passenger or public charter passenger operation with an aircraft having passenger seating configuration of more than 60 seats or (2) a scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area. These air carriers must submit quarterly reports on the total September 11th Security Fees imposed, collected, refunded and remitted for each month of the quarter.

Additionally, each air carrier and foreign air carrier that collects September 11th Security Fees from more than 50,000 passengers annually must provide for an audit at least annually of its September 11th Security Fee activities and accounts. The accountant conducting such an audit must include in it an opinion on whether (1) the direct air carrier's or foreign air carrier's procedures for collecting, holding, and remitting the fees are fair and reasonable; and (2) whether the quarterly reports fairly represent the net transactions in the security service fee accounts.

Issued on: July 5, 2002.

Robert Gardner,

Associate Under Secretary for Finance and Administration/CFO, Transportation Security Administration, Department of Transportation.

[FR Doc. 02–17351 Filed 7–9–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Terminations: American and Foreign Insurance Company, American Interstate Insurance Company, Commercial Insurance Company of Newark, New Jersey; Globe Indemnity Company, Grain

Dated: June 30, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Service Division, Financial Management Service.

[FR Doc. 02–17216 Filed 7–9–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–041–86 and INTL–655–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The IRS, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–43, Determination of Substitute Agent for a Consolidated Group.

DATES: Written comments should be received on or before September 9,

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 112,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Terminations: American and Foreign Insurance Company, American Interstate Insurance Company, Commercial Insurance Company of Newark, New Jersey; Globe Indemnity Company, Grain Dealers Mutual Insurance Company, National-Ben Franklin Insurance Company of Illinois, Royal Indemnity Company; Royal Insurance Company of America, Safeguard Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 29 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above-named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as acceptable sureties on Federal bonds are terminated effective June 30, 2002.

The Companies were last listed as acceptable sureties on Federal bonds at 66 FR starting on page 35024, July 2, 2001.

With respect to any bonds currently in force with above listed Companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the 2001 Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 30, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Service Division, Financial Management Service.

[FR Doc. 02–17216 Filed 7–9–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106010–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106010–98 (TD 8901), Qualified Lessee Construction Allowances for Short-Term Leases (§ 1.110–1).

DATES: Written comments should be received on or before September 9, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Lessee Construction Allowances for Short-Term Leases.

OMB Number: 1545–1661.

Regulation Project Number: REG–106010–98.

Abstract: The regulations provide guidance with respect to § 110, which provides a safe harbor whereby it will be assumed that a construction allowance provided by a lessor to a lessee is used to construct or improve lessor property when long-term property is constructed or improved and used pursuant to a short-term lease. The regulations ensures that both the lessee and lessor consistently treat the property subject to the construction allowance as nonresidential real property owned by the lessor.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Average Time Per Respondent: 1 hour.

Estimated Total Annual Reporting Burden: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 3, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17334 Filed 7–9–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–941–86 and INTL–655–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–941–86, and temporary regulation, INTL–655–87 (TD 8178), Passive Foreign Investment Companies (§§ 1.1294–1T and 1.1297–3T).

DATES: Written comments should be received on or before September 9, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Foreign Investment Companies.

OMB Number: 1545–1028.

Regulation Project Number: INTL–941–86 (Notice of Proposed Rulemaking); INTL–655–87 (Temporary regulation).

Abstract: These regulations specify how United States persons who are shareholders of passive foreign investment companies (PFICs) make elections with respect to their PFIC stock.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 275,000.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 112,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 3, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17356 Filed 7–9–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–43, Determination of Substitute Agent for a Consolidated Group.

DATES: Written comments should be received on or before September 9, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Determination of Substitute Agent for a Consolidated Group.

OMB Number: 1545–1793.

Revenue Procedure Number: Revenue Procedure 2002–43.

Abstract: Revenue Procedure 2002–43 provides any instructions that apply to any designation of a substitute agent, notification of the existence of a default substitute agent, a request for the designation of a substitute agent, and request for replacement of a previously designated substitute agent. The instructions also provide for the automatic approval of requests by a terminating common parent to designate its qualifying successor as a substitute agent.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200

Estimated Average Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 3, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17357 Filed 7–9–02; 8:45 am]

Federal Register

Wednesday,
July 10, 2002

in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 3, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–17357 Filed 7–9–02; 8:45 am]

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Federal Register

Wednesday,
July 10, 2002

Part II

National Aeronautics and Space Administration

14 CFR Parts 1260 and 1274

NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements with Commercial Firms and Implementation of Section 319 of Public Law 106–391, Buy American Encouragement; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

RIN 2700–AC44

NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements with Commercial Firms and Implementation of Section 319 of

simply unavoidable. Some recognition of the risks and liability issues associated with some of these projects is reflected in recent legislation (section 431 of Public Law 105–276), which provides for NASA indemnification of the developers of experimental aerospace vehicles performing under Cooperative Agreements. This rewrite of NASA's Grant and Cooperative

List of Subjects in 14 CFR Parts 1260 and 1274

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

Subpart 1274.3—Administration

1274.301 Delegation of administration.
1274.302 Transfers, novations, and change of name agreements.

Subpart 1274.4—Property

1274.401 Government furnished property.
1274.402 Contractor acquired property.

Subpart 1274.5—Procurement Standards

1274.501 Purpose of procurement standards.
1274.926 Clean Air-Water Pollution Control Acts.
1274.927 Debarment and suspension and Drug-Free Workplace.
1274.928 Foreign national employee investigative requirements.
1274.929 Restrictions on lobbying.
1274.930 Travel and transportation.
1274.931 Electronic funds transfer payment methods.
1274.932 Retention and examination of records.
1274.933 Summary of recipient reporting.

result from the cooperative agreement project.

(b) Cooperative agreements (in areas or research relevant to NASA's mission) are ordinarily entered into with commercial firms to—

(1) Support research and development;

(2) Provide technology transfer from the Government to the recipient; or

(3) Develop a capability among U.S. firms to potentially enhance U.S.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

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NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements with Commercial Firms and Implementation of Section 319 of Public Law 106–391, Buy American Encouragement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule, which adopts with changes the proposed rule published in the **Federal Register** on October 29, 2001. This final rule revises Section D, Cooperative Agreements with Commercial Firms, to clarify current management policies, incorporate process improvements, conform to recent changes in legislation, and institute risk management as part of source selection. This final rule also implements Section 319, Buy American encouragement, of the NASA Authorization Act of 2000.

EFFECTIVE DATE: July 10, 2002.

FOR FURTHER INFORMATION CONTACT: Rita Svarcas, Procurement Analyst, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20546–0001, (202) 358–0464, or e-mail: *rsvarcas@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule provides a comprehensive revision to NASA grant and cooperative agreement policies codified at 14 CFR 1274, Grants and Cooperative Agreements with Commercial Firms. The revision was initiated by NASA as part of the Agency's effort to re-engineer its processes for awarding and administering grants and cooperative agreements. Changes are chiefly aimed at clarifying NASA policies for publication of requirements, evaluating and selecting proposals, and implementation of a process for managing the performance risks associated with certain types of cooperative agreements with commercial firms. Scientific breakthroughs based on NASA or NASA mission related projects have greatly benefited the American society, and the world as a whole. In realizing these successes, NASA's technological pursuits involve research and experimental projects, where risks are simply unavoidable. Some recognition of the risks and liability issues associated with some of these projects is reflected in recent legislation (section 431 of Public Law 105–276), which provides for NASA indemnification of the developers of experimental aerospace vehicles performing under Cooperative Agreements. This rewrite of NASA's Grant and Cooperative Agreement Handbook, implements a process that requires early identification, assessment, and management by NASA and the Recipient, of risk and safety issues associated with a given research project.

Additionally, the proposed rule promulgated the requirements of Section 319, "Buy American Encouragement," of the NASA Authorization Act of 2000 (Public Law 106–391) for recipients of non-profit grants and cooperative agreements.

This final rule, adopts with changes the proposed rule published in the **Federal Register** (66 FR 54468) on October 29, 2001. No comments were received from industry. Comments were received from NASA field installations. All comments were considered in formulation of this final rule. Changes made in this final rule clarify existing requirements, correct references, reorganize material for clarity, and provide updated Uniform Resource Locator (URL) addresses. No comments were received on the change to 14 CFR 1260 implementing Section 319 of NASA's Authorization Act of 2000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule primarily clarifies existing requirements and refocusing attention on risk management.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Parts 1260 and 1274

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

Accordingly, 14 CFR Chapter V is amended as follows:

1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2374 (c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

§ 1260.20 [Amended]

2. In section 1260.20, amend paragraphs (a), (d), (e), (f), and (h) by removing "1260.38" and adding "1260.39" in its place.

3. Add § 1260.39 to read as follows:

§ 1260.39 Buy American encouragement.

Buy American Encouragement

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(a) As stated in Section 319 of Public Law 106–391, the NASA Authorization Act of 2000, Recipients are encouraged to purchase only American-made equipment and products.

(b) The Recipient will observe property standards and provisions set forth in 1260.131 through 1260.137.

[End of Provision]

4. Revise Part 1274 to read as follows:

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

Subpart 1274.1—General

Sec.
1274.101 Purpose.
1274.102 Scope.
1274.103 Definitions.
1274.104 Effect on other issuances.
1274.105 Review requirements.
1274.106 Deviations.
1274.107 Publication of requirements.

Subpart 1274.2—Pre-Award Requirements

1274.201 Purpose.
1274.202 Methods of award.
1274.203 Solicitations/Cooperative Agreement Notices.
1274.204 Costs and payments.
1274.205 Consortia as recipients.
1274.206 Metric Conversion Act.
1274.207 Extended agreements.
1274.208 Intellectual property.
1274.209 Evaluation and selection.
1274.210 Unsolicited proposals.
1274.211 Award procedures.
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1274.213 Distribution of cooperative agreements.
1274.214 Inquiries and release of information.

Subpart 1274.3—Administration

1274.301 Delegation of administration.
1274.302 Transfers, novations, and change of name agreements.

Subpart 1274.4—Property

1274.401 Government furnished property.
1274.402 Contractor acquired property.

Subpart 1274.5—Procurement Standards

1274.501 Purpose of procurement standards.
1274.502 Recipient responsibilities.
1274.503 Codes of conduct.
1274.504 Competition.
1274.505 Procurement procedures.
1274.506 Cost and price analysis.
1274.507 Procurement records.
1274.508 Contract administration.
1274.509 Contract provisions.
1274.510 Subcontracts.

Subpart 1274.6—Reports and Records

1274.601 Retention and access requirements for records.

Subpart 1274.7—Suspension or Termination

1274.701 Suspension or termination.

Subpart 1274.8—Post-Award/Administrative Requirements

1274.801 Adjustments to performance costs.
1274.802 Modifications.
1274.803 Closeout procedures.
1274.804 Subsequent adjustments and continuing responsibilities.

Subpart 1274.9—Other Provisions and Special Conditions

1274.901 Other provisions and special conditions.
1274.902 Purpose.
1274.903 Responsibilities.
1274.904 Resource sharing requirements.
1274.905 Rights in data.
1274.906 Designation of new technology representative and patent representative.
1274.907 Disputes.
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1274.909 Term of agreement.
1274.910 Authority.
1274.911 Patent rights.
1274.912 Patent rights—retention by the recipient (large business).
1274.913 Patent rights—retention by the recipient (small business).
1274.914 Requests for waiver of rights—large business.
1274.915 Restrictions on sale or transfer of technology to foreign firms or institutions.
1274.916 Liability and risk of loss.
1274.917 Additional funds.
1274.918 Incremental funding.
1274.919 Cost principles and accounting standards.
1274.920 Responsibilities of the NASA Technical Officer.
1274.921 Publications and reports: non-proprietary research results.
1274.922 Suspension or termination.
1274.923 Equipment and other property.
1274.924 Civil rights.
1274.925 Subcontracts.
1274.926 Clean Air-Water Pollution Control Acts.
1274.927 Debarment and suspension and Drug-Free Workplace.
1274.928 Foreign national employee investigative requirements.
1274.929 Restrictions on lobbying.
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1274.934 Safety.
1274.935 Security classification requirements.
1274.936 Breach of safety or security.
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1274.938 Modifications.
1274.939 Application of Federal, State, and Local laws and regulations.
1274.940 Changes in recipient's membership.
1274.941 Insurance and indemnification.
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Appendix to Part 1274—Listing of Exhibits

Exhibit A to Part 1274—Contract provisions
Exhibit B to Part 1274—Reports

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

Subpart 1274.1—General

§ 1274.101 Purpose.

The following policy guidelines establish uniform requirements for NASA cooperative agreements awarded to commercial firms.

§ 1274.102 Scope.

(a) The business relationship between NASA and the recipient of a cooperative agreement differs from the relationship that exists between NASA and the recipient of a grant. Under the auspices of a grant, there is very little involvement and interaction between NASA and the grantee (other than a few administrative, funding, and reporting requirements, or in some cases matching of funds).

Under a cooperative agreement, because of its substantial involvement, NASA assumes a higher degree of responsibility for the technical performance outcomes and associated financial costs of research activities. In some cooperative agreement projects, NASA may be required to indemnify the recipient (to the extent authorized by Congress). While the principal purpose of NASA's involvement and commitment of resources is to stimulate or support research activity, a major incentive for involvement by commercial firms (particularly where costs are shared) is the profit potential from marketable products expected to result from the cooperative agreement project.

(b) Cooperative agreements (in areas or research relevant to NASA's mission) are ordinarily entered into with commercial firms to—

(1) Support research and development;

(2) Provide technology transfer from the Government to the recipient; or

(3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness.

(c) Projects that normally result in a cooperative agreement award to a commercial entity are projects that:

(1) Are not intended for the direct benefit of NASA;

(2) Are expected to benefit the general public;

(3) Require substantial cost sharing; and

(4) Have commercial applications and profit generating potential.

(d) The principal purpose of cooperative agreements is to stimulate research to benefit the general public through the criteria stated in paragraphs (a) through (c) of this section. Since all research activities must be within NASA's authorized expenditure of appropriations, there may be instances where NASA can derive incidental use or benefits while preserving the principal purpose of the cooperative agreement. However, a careful balance must be established and maintained in the cooperative agreement's technical and business objectives, so that the principal purpose of the project serves to benefit the general public (i.e., technology will transfer from the Government to the public and the commercial partner expects a marketable product to result). If a cooperative agreement is awarded when the proper award instrument should have been a contract (because the primary purpose of the award is for the direct benefit of NASA), the cooperative agreement award can be protested. Thus, before pursuing any incidental benefits that materialize under a cooperative agreement, NASA Centers should ensure that the advice of legal counsel is obtained.

§ 1274.103 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Agreement officer. A Government employee (usually a Contracting Officer or Grant Officer) who has been delegated the authority to negotiate, award, or administer the cooperative agreement. Most often Contracting Officers are delegated this authority for the more complex cooperative agreement projects.

Assistant Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The cash invested in a given program or project by the Federal Government and/or recipient. The recipient's cash contributions may include money contributed by third parties.

Closeout. The process by which

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Days. Calendar days, unless otherwise indicated.

General purpose equipment. Equipment which is usable for other than research, medical, scientific, or

Subcontracting dollar threshold. The dollar amount of the cooperative agreement subject to the small business subcontracting policies (includes small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority

described in paragraph (b) of this section, shall evidence concurrence by the cognizant Center Procurement Officer. These review requirements also apply where an unsolicited proposal is received from a commercial firm (or from a team of recipients where one of more team members is a commercial firm), and the planned award document is a cooperative agreement.

(b) The notification shall be

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)).

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or Center may proceed with release of the

agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been re quested previously, and, if so, circumstances of the previous request(s); and

(5) A copy of legal counsel's concurrence or comments.

§ 1274.107 Publication of requirements.

Cooperative agreements may result from recipient proposals submitted in

Assistant Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The cash invested in a given program or project by the Federal Government and/or recipient. The recipient's cash contributions may include money contributed by third parties.

Closeout. The process by which NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

Commercial item. The definition in FAR 2.101 is applicable.

Consortium. A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms that normally compete for commercial or Government business or may be made up of firms that perform complementary functions in a given industry.

Cooperative agreement. As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This Part 1274 covers only cooperative agreements with commercial firms where resource sharing is involved. Cooperative agreements with other types of organizations are covered by 14 CFR Part 1260.

Cooperative agreement notice (CAN). Publication on Federal Business Opportunities (FedBizOpps) or NASA Acquisition Internet Service (NAIS) websites advertising the solicitation of competitive proposals for the award of a cooperative agreement.

Cost sharing. Arrangement whereby the Government and the recipient share the funding requirements of a program or project at an agreed upon ratio or percentage (normally 50/50). Normally, the Government's payment of its share of the costs is contingent upon the accomplishment of tangible milestones (preferred method). Any payment arrangement that is based on a method other than the accomplishment of tangible milestones (e.g., a reimbursable arrangement where NASA pays a share of incurred costs, regardless of the accomplishment of tangible milestones) must be approved through the deviation process discussed in 1274.106.

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Days. Calendar days, unless otherwise indicated.

General purpose equipment. Equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

Government furnished equipment. Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a recipient and equipment procured by the recipient with Government funds under a cooperative agreement. In most cases, Government furnished equipment will be counted as part of the Government's in-kind or non-cash contributions to the cooperative agreement for the purpose of determining the share ratio.

Incremental funding. A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

Non-cash or in-kind contributions. May be in the form of personnel resources (where cost accounting methods allow accumulation of such costs), real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program. Costs incurred by NASA to provide the services of one of its support contractors to perform part of NASA's requirements under a cooperative agreement shall be included as part of NASA's cost share, and will be counted as an in-kind contribution to the cooperative agreement.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, including sole proprietor, partnership, corporation, or a consortium of business entities.

Resource contributions. The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

Subcontracting dollar threshold. The dollar amount of the cooperative agreement subject to the small business subcontracting policies (includes small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions). For cooperative agreements, the dollar threshold to which the small business subcontracting policies apply, is established by the total amount of NASA's cash contributions.

Suspension. An action by NASA or the recipient that temporarily discontinues efforts under an award, pending corrective action or pending a decision to terminate the award.

Technical officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement. A Contracting Officer's Technical Representative may serve as a Technical Officer.

Termination. The cancellation of a cooperative agreement in whole or in part, by either party at any time prior to the date of completion.

§ 1274.104 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1274.106.

§ 1274.105 Review requirements.

(a) Once the decision is made by a Headquarters program office or Center procurement personnel, to pursue the Cooperative Agreement Notice (CAN) process, for which the total NASA resources to be expended equal or exceed $10 million (cash plus non-cash contributions), a notification shall immediately be provided to the Assistant Administrator for Procurement (Code HS). The notification(s) shall be forwarded by the cognizant Headquarters program office or the Center procurement office (as applicable). For any CAN where NASA's *cash* contributions are expected to equal or exceed $10 million, Headquarters program office or Center procurement personnel shall also notify the Assistant Administrator for Small and Disadvantaged Business Utilization (Code K). All such notifications, as described in paragraph (b) of this section, shall evidence concurrence by the cognizant Center Procurement Officer. These review requirements also apply where an unsolicited proposal is received from a commercial firm (or from a team of recipients where one of more team members is a commercial firm), and the planned award document is a cooperative agreement.

(b) The notification shall be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: *can@hq.nasa.gov*. The notification must include the following information, as a minimum—

(1) Identification of the cognizant Center and program office;

(2) Description of the proposed program for which proposals are to be solicited;

(3) Rationale for decision to use a CAN rather than other types of solicitations;

(4) The amount of Government funding to be available for award(s);

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN;

(6) The percentage of cost-sharing to be required;

(7) Tentative schedule for release of CAN and award of cooperative agreements;

(8) If the term of the cooperative agreement is anticipated to exceed 3 years and/or if the Government cash contribution is expected to exceed $20M, address anticipated changes, if any, to the provisions (see § 1274.207); and

(9) If the cooperative agreement is for programs/projects that provide aerospace products or capabilities, (e.g., provision of space and aeronautics systems, flight and ground systems, technologies and operations), a statement that the requirements of NASA Policy Directive (NPD) 7120.4 and NASA Policy Guidance (NPG) 7120.5 have been met. This affirmative statement will include a specific reference to the signed Program Commitment Agreement.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer and the Office of Small and Disadvantaged Business Utilization, within five (5) working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described,

(2) Whether Code HS will require review and approval of the CAN before its issuance,

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)).

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or Center may proceed with release of the CAN and award of the cooperative agreements as described.

(e) Before issuance, each field-generated CAN shall be approved by the installation director or designee, with the concurrence of the procurement officer. Each Headquarters generated CAN shall be approved by the cognizant Program Associate Administrator or designee, with concurrence of the Headquarters Offices of General Counsel (Code GK), External Relations (Code I), Safety & Mission Assurance (Code Q), and Procurement (Code HS).

§ 1274.106 Deviations.

(a) The Assistant Administrator for Procurement may grant exceptions for classes of, or individual cooperative agreements and deviations from the requirements of this Regulation when exceptions are not prohibited by statute.

(b) A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

(2) When a provision is set forth in this regulation, but not prescribed for use verbatim, and the installation substitutes a provision which is inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this regulation, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) Requests for authority to deviate from this regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum—

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought;

(2) Detailed rationale for the request, including any pertinent background information;

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been re quested previously, and, if so, circumstances of the previous request(s); and

(5) A copy of legal counsel's concurrence or comments.

§ 1274.107 Publication of requirements.

Cooperative agreements may result from recipient proposals submitted in response to the publication of a NASA Research Announcement (NRA), a Cooperative Agreement Notice (CAN), or other Broad Agency Announcement (BAA). BAA's, NRA's and CAN's are normally promulgated through publicly accessible Government-wide announcements such as those published under the Federal Business Opportunities (FedBizOpps), and/or the NASA Acquisition Internet Service (NAIS). Prior to publicizing the CAN, see § 1274.105.

Subpart 1274.2—Pre-Award Requirements

§ 1274.201 Purpose.

This subpart provides pre-award guidance, prescribes forms and instructions, and addresses other pre-award matters.

§ 1274.202 Methods of award.

(a) *Competitive agreements.* Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible.

(b) *Awards using other than competitive procedures.* Solicitations for award of a Cooperative Agreement shall not be issued to, nor negotiations conducted with a single source unless—

(1) Use of such actions is documented in writing; and

(2) Concurrence and approvals are obtained. The dollar thresholds will be determined by the total value of the resources committed to the Cooperative Agreement (cash and quantifiable in-kind contributions).

§ 1274.203 Solicitations/cooperative agreement notices.

(a) Agreement officers should use every effort to issue draft pre-award cooperative agreement information. Any draft documentation released for comment shall contain all factors/subfactors. Draft documents should be as close to the final product as possible. Draft Cooperative Agreement Notices (CAN's) or Cooperative Agreements (CA) should include terms and conditions, special requirements and expected cash and non-cash (in-kind) contributions.

(1) Publication of draft documentation may serve to prevent unnecessary expenditure of resources and unproductive time that may be spent by NASA and potential recipients. Release of draft documentation also serves to assist NASA in refining program objectives and requirements, and maximizes the quality of research proposals submitted for formal evaluation and source selection.

of work in response to NASA project objectives, NASA shall have final approval of the acceptability of the statement of work.

(d) Where performance-based milestone payments are planned, the potential recipient should be encouraged to suggest in its statement of work (which incorporates the project goals and objectives), or elsewhere in its proposal, terms and/or performance

Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments."

(ii) The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(iii) The allowability of costs incurred

cash as well as cash contributions to the most practicable extent possible. Where quantifiable, NASA will include in the calculation of the Government's cost share, non-cash or in-kind contributions, which includes the value of equipment, personnel, and facilities. Costs incurred by NASA to provide the services of one or more support contractors to perform part of NASA's requirements under a cooperative

which completes NASA's financial responsibilities under the agreement.

(2) Fixed payments on a cooperative agreement are made by NASA based on the accomplishment by the recipient of predetermined tangible milestones. Any arrangement where payments are made on a basis other than accomplished tangible milestones must be approved in accordance with the requirements of § 1274.106 Deviations.

every 60 to 90 days appears to be most workable. Partial or interim milestone payments may not be made.

(4) The final milestone payment should be structured so that the associated payment is large enough to provide incentive to the recipient to complete its responsibilities under the cooperative agreement. Alternatively, funds may be reserved for disbursement after completion of the effort.

(1) Publication of draft documentation may serve to prevent unnecessary expenditure of resources and unproductive time that may be spent by NASA and potential recipients. Release of draft documentation also serves to assist NASA in refining program objectives and requirements, and maximizes the quality of research proposals submitted for formal evaluation and source selection.

(2) During the information gathering process, comments may be invited from potential recipients on all aspects of the draft documentation, including the requirements, schedules, proposal instructions and evaluation approaches. Potential recipients should be specifically requested to identify unnecessary or inefficient requirements. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the CA.

(3) Agreement officers should include in the award schedule adequate time for the process to include industry review and comments, and NASA's evaluation and disposition of comments received.

(4) When providing draft documents for comment, the draft CAN shall advise interested parties that any issued draft documentation shall not be considered as a solicitation for award, and that NASA is not requesting proposals in response to the draft publication.

(5) Whenever feasible, agreement officers should include a summary of the disposition of significant comments when issuing the final CAN and/or CA.

(b) The evaluation section of the CAN shall notify potential recipients of the relative importance of factors, and any subfactors or other criteria that will be evaluated during the selection process.

(c) For its research projects, NASA may publish the expected project goals and objectives in terms of "What" the commercial recipient is expected to accomplish. The commercial recipient may be required to submit a proposed statement of work with its proposal stating "How" the recipient will accomplish the task(s). Depending on its importance to the success of the project, for some projects the recipient's statement of work may be included as an evaluation criterion for award. In these instances, the requirement for submission of the recipient's statement of work will be clearly identified as a subfactor or criterion that will be evaluated, and its relative weight or ranking in relation to other evaluation criteria shall be stated. In all cases, where the recipient submits a statement of work in response to NASA project objectives, NASA shall have final approval of the acceptability of the statement of work.

(d) Where performance-based milestone payments are planned, the potential recipient should be encouraged to suggest in its statement of work (which incorporates the project goals and objectives), or elsewhere in its proposal, terms and/or performance events upon which milestone payments can be negotiated.

(e) The CAN should provide a description and value for any quantifiable non-cash or in-kind Government resources (personnel, equipment, facilities, etc.), in addition to any cash funds that will be offered by the Government as part of its contributions to the cooperative agreement. As part of its proposal package, the recipient may also identify additional non-cash or in-kind resources it wishes NASA to contribute. The recipient shall verify the suitability of the requested resource(s) to the work to be performed under the cooperative agreement. Any additional verifiable and suitable non-cash or in-kind resources requested, shall be added to NASA's shared cost of performing the cooperative agreement, and may require increased cash or in-kind contributions from the recipient to meet its percentage of the cost share.

(f) To protect the integrity of the competitive process, upon release of the formal CAN the agreement officer shall direct that all personnel associated with the source selection refrain from communicating with prospective recipients and to refer all inquiries to the agreement officer or other authorized representative. The notification to potential recipients may be sent in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition. It is not intended that all communication with potential recipients be terminated. Agreement officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

§ 1274.204 Costs and payments.

(a) *Cost allowability.* (1) Cooperative agreements awarded to commercial firms are subject to the cost accounting standards and principles of 48 CFR Chapter 99, as implemented by FAR Parts 30 and 31.

(2) If the recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows:

(i) Allowability of costs incurred by state, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments."

(ii) The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(iii) The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions."

(iv) The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(3) A recipient's method for accounting for the expenditure of funds must be consistent with generally accepted accounting principles.

(b) *Cost sharing.* (1) Given the mutually beneficial nature of, in particular, potential commercially marketable products expected to result from the research activities of the cooperative agreement, resource contributions are required from the recipient. The commercial recipient is expected to contribute at least 50 percent of the total resources necessary to accomplish the cooperative agreement effort. Recipient contributions may be cash, non-cash (in-kind) or both. Acceptable non-cash or in-kind resources include such items as equipment, facilities, labor, office space, etc. In determining the incentive to the recipient to share costs, agreement officers must consider a variety of factors. For example, while the future profitability of intellectual property may serve as an incentive for involvement of the commercial firm in the cooperative agreement, the actual or imputed value of such items as patent rights, data rights, trade secrets, etc., included in intellectual property is generally not considered a reliable source for computation of the recipient's contributions.

(2) In most cases these costs are not readily quantifiable. Thus, although the value of intellectual property rights should be factored into the incentive for the recipient to share at least 50 percent of costs, intellectual property rights do not serve as quantifiable amounts to determine the equitable dollar amounts of costs to be shared.

(3) As is expected from the commercial partner, the Government's cost share should reflect certain non-cash as well as cash contributions to the most practicable extent possible. Where quantifiable, NASA will include in the calculation of the Government's cost share, non-cash or in-kind contributions, which includes the value of equipment, personnel, and facilities. Costs incurred by NASA to provide the services of one or more support contractors to perform part of NASA's requirements under a cooperative agreement will be counted as part of NASA's in-kind contributions. This approach is also supported by the initiative to implement full cost accounting methods within the Federal Government.

(4) When other Government agencies act as partners along with NASA (e.g., Department of Defense or Federal Aviation Administration), the resources contributed by any Government agency shall be counted as part of the Government's total cost share under the cooperative agreement.

(5) For every cooperative agreement, there should be evidence of the recipient's strong commitment and self-interest in the success of the research project. A very strong indicator of a recipient's self-interest is the willingness to commit to a meaningful level of cost sharing (i.e., 50 percent). Before considering whether it is impracticable for the recipient to share at least 50% of the performance costs, agreement officers should also consider whether other factors exist that demonstrate the recipient's financial stake or self-interest in the success of the cooperative agreement.

(6) In cases where a contribution of less than 50 percent is anticipated from the commercial recipient, approval of the Assistant Administrator for Procurement (Code HS) is required prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50 percent is warranted.

(7) Once accepted for application to costs shared under the cooperative agreement, cash and in-kind contributions including Independent Research and Development (IR&D) costs, may not be included as contributions for any other federally assisted project or program.

(c) *Fixed funding.* (1) Cooperative agreements are funded by NASA through the disbursement of agreed upon fixed payment amounts to the recipient. NASA makes disbursement of funds to the recipient as "Milestone payments" discussed in paragraph (d) of this section. If the recipient achieves the final milestone, final payment is made, which completes NASA's financial responsibilities under the agreement.

(2) Fixed payments on a cooperative agreement are made by NASA based on the accomplishment by the recipient of predetermined tangible milestones. Any arrangement where payments are made on a basis other than accomplished tangible milestones must be approved in accordance with the requirements of § 1274.106 Deviations.

(3) If the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding is limited to milestone payments already made plus NASA's share of costs incurred to meet commitments of the recipient, which had in the judgment of NASA become firm prior to the effective date of termination. In no event, however, shall the amount of NASA's share of these additional costs exceed the amount of the next scheduled milestone payment.

(d) *Milestone obligations and payments.* Agreement officers, technical officers, accounting and finance officials, and all other responsible NASA personnel shall ensure that funds for milestone payments are obligated, billed and expended in accordance with the guidance set forth by the NASA Financial Management Manual (FMM 9000).

(1) There must always be sufficient funds obligated to cover the next milestone payment. In addition, funds must be made available (but not necessarily obligated) to cover all milestone payments expected to be made during the current fiscal year of performance.

(2) Disbursement of funds to the recipient is based on the achievement of milestones or performance-related benchmarks. The milestone must represent the accomplishment of verifiable, significant event(s) and may not be based upon the mere passage of time or the performance of a particular level of effort. The Government technical officer must verify to and advise the agreement officer that each milestone has been achieved prior to authorizing the corresponding payment.

(3) The amount of funds to be disbursed by NASA in recognition of the achievement of milestones ("milestone payments") shall be established consistent with the ratio of resource sharing agreed upon under the cooperative agreement (see paragraph (e)(2) of this section). While the schedule for milestone achievement must reflect the project being undertaken, the frequency should not be greater than one payment per month. For many projects, scheduling milestones to be accomplished about every 60 to 90 days appears to be most workable. Partial or interim milestone payments may not be made.

(4) The final milestone payment should be structured so that the associated payment is large enough to provide incentive to the recipient to complete its responsibilities under the cooperative agreement. Alternatively, funds may be reserved for disbursement after completion of the effort.

(e) *Incremental funding.* Whenever the period of performance for the cooperative agreement crosses fiscal years, the agreement shall be incrementally funded using appropriations from different fiscal years. In other circumstances, incremental funding may be appropriate. The total amount of funds obligated during the course of a fiscal year must be sufficient to cover the Government's share of the costs anticipated to be incurred by the recipient during that fiscal year. NASA may allot funds to an agreement at various times during a fiscal year in anticipation of the occurrence of costs. However, there must always be sufficient funds obligated to cover all milestone payments expected to be made during the current fiscal year.

(f) *Profit applicability.* Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the recipient's consortium and not subcontractors.

(g) *Independent Research and Development (IR&D) costs.* When determining the applicable dollar amounts or reasonableness of proposed IR&D costs to be included as part of the recipient's cost share, agreement officers should seek assistance from DCAA or the cognizant audit agency.

(1) In accordance with FAR 31.205–18(e), IR&D costs may include costs contributed by contractors in performing cooperative research and development agreements or similar arrangements, entered into under sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42.U.S.C. 2473(c)(5) and (6)). IR&D costs incurred by a contractor pursuant to these types of cooperative agreements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(2) IR&D costs (or an agreed upon portion of IR&D costs) incurred by the recipient's organization and deemed by NASA as the same type of research being undertaken by the cooperative agreement between NASA and the recipient may serve as part of the recipient's contribution of shared costs under the cooperative agreement. When considering the use of IR&D costs as part

(13) The firm that is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, and address employee policy or other personnel issues.

(d) The consortium's charter or by-laws may be substituted for the Articles

(1) Other than small business or nonprofit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) *Inventions.* There are five situations in which inventions may arise under a cooperative agreement—

(1) Recipient Inventions;

(2) Subcontractor Inventions;

(3) NASA Inventions;

subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business recipient can (see paragraph (d)(1) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are

applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the recipient. This exception does not change that. The exception does authorize the recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of

Recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with the recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever

(2) IR&D costs (or an agreed upon portion of IR&D costs) incurred by the recipient's organization and deemed by NASA as the same type of research being undertaken by the cooperative agreement between NASA and the recipient may serve as part of the recipient's contribution of shared costs under the cooperative agreement. When considering the use of IR&D costs as part of the recipient's cost share, the IR&D costs offered by the recipient shall meet the requirements of FAR 31.205–18. Any IR&D costs incurred in a prior period, and offered as part of the recipient's cost share shall meet the criteria established by FAR 31.205–18(d), Deferred IR&D Costs.

§ 1274.205 Consortia as recipients.

(a) The use of consortia as recipients for cooperative agreements is encouraged. Such arrangements tend to bring a broader range of capabilities and resources to the cooperative agreement. In addition, consortium members can better share the projects financial costs (e.g., the 50 percent recipient's cost share or other costs of performance).

(b) NASA enters into an agreement with only one entity (as identified by the consortium members). (Also see § 1274.940.) The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(c) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. The Articles of Collaboration must designate a lead firm to represent the consortium and authority to sign on the consortium's behalf. It should also address to the extent appropriate—

(1) Commitments of financial, personnel, facilities and other resources;
(2) A detailed milestone chart of consortium activities;
(3) Accounting requirements;
(4) Subcontracting procedures;
(5) Disputes;
(6) Term of the agreement;
(7) Insurance and liability issues;
(8) Internal and external reporting requirements;
(9) Management structure of the consortium;
(10) Obligations of organizations withdrawing from the consortia;
(11) Allocation of data and patent rights among the consortia members
(12) Agreements, if any, to share existing technology and data;
(13) The firm that is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, and address employee policy or other personnel issues.

(d) The consortium's charter or by-laws may be substituted for the Articles of Collaboration only if they are inclusive of all of the required information.

(e) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process. Articles of Collaboration do not become part of the resulting cooperative agreement.

§ 1274.206 Metric Conversion Act.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. NASA's policy with respect to the metric measurement system is stated in NPD 8010.2, Use of the Metric System of Measurement in NASA Programs.

§ 1274.207 Extended agreements.

(a) Multiple year cooperative agreements are encouraged, but normally they should span no more than three years.

(b) The provisions set forth in § 1274.901 are generally considered appropriate for agreements not exceeding 3 years and/or a Government cash contribution not exceeding $20M. For cooperative agreements expected to be longer than 3 years and/or involve Government cash contributions exceeding $20M, consideration should be given to provisions which place additional restrictions on the recipient in terms of validating performance and accounting for funds expended.

§ 1274.208 Intellectual property.

(a) *Intellectual property rights.* A cooperative agreement covers the disposition of rights to intellectual property between NASA and the recipient. If the recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) *Rights in patents.* Patent rights clauses are required by statute and regulation. The clauses exist for recipients of the agreement whether they are—

(1) Other than small business or nonprofit organizations (generally referred to as large businesses) or
(2) Small businesses or nonprofit organizations.

(c) *Inventions.* There are five situations in which inventions may arise under a cooperative agreement—

(1) Recipient Inventions;
(2) Subcontractor Inventions;
(3) NASA Inventions;
(4) NASA Support Contractor Inventions; and
(5) Joint Inventions with Recipient.

(d) *Recipient inventions.* (1) A recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business recipient initially vests with NASA. The recipient may request a waiver under the NASA Patent Waiver Regulations to obtain title to inventions made under the agreement. Such a request may be made in advance of the agreement (or 30 days thereafter) for all inventions made under the agreement. Alternatively, requests may be made on a case-by-case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(2) A recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term "nonprofit organization" is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code. The Government obtains an irrevocable, nonexclusive, royalty-free license.

(e) *Subcontractor inventions*—(1) *Large business.* If a recipient enters into a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the agreement to be performed in the United States, its possessions, or Puerto Rico, section 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The

subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business recipient can (see paragraph (d)(1) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the recipient, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(2) *Non-profit organization or small business.* In the event the recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under the agreement, the requirements of 35 U.S.C. 200 et seq. regarding "Patent Rights in Inventions Made With Federal Assistance," apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(3) *Work outside the United States.* If the recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(4) Notwithstanding paragraphs (e)(1), (2), and (3) of this section, and in recognition of the recipient's substantial contribution, the recipient is authorized, subject to rights of NASA set forth elsewhere in the agreement, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the recipient may deem necessary; or

(ii) If unable to reach agreement pursuant to paragraph (e)(4)(i) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the recipient. This exception does not change that. The exception does authorize the recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(f) *NASA inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an agreement. Upon timely request, NASA will use its best efforts to a grant recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(g) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under an agreement since the rights obtained by a NASA support contractor could work against the rights needed by the recipient. In the event NASA support contractors are tasked by NASA to work under the agreement and inventions are made by support contractor employees, the support contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, upon timely request, NASA will use its best efforts to grant the recipient first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(h) *Joint inventions.* (1) NASA and the recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of Recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with the recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the recipient as authorized by 35 U.S.C. 202(e). The agreement officer negotiating the agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(2) NASA support contractors may be joint inventors. If a NASA support contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA support contractor inventions (see paragraph (g) of this section). The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a recipient employee, the NASA support contractor and recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the Recipient.

(i) *Licenses to recipient(s).* (1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, all recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the

recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each recipient subject invention, it is only equitable that the recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) Once a recipient has exercised its rights in the area of invention and patent rights.

(i) *Data rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering,

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled "Publication and Reports: Non-Proprietary Research Results." Any such agreement on the publication of results

restrictions on communications between NASA and the recipient. In addition, there is no requirement for the development and publication of formal evaluation or source selection criteria.

(c) *Communications during competitive awards.* As discussed in § 1274.203(c), when a competitive source selection process will be followed to select the recipient, an appropriate level of care shall be taken

developing a capability among U.S. firms, identification of potential markets, appropriateness of business risks.

(f) *Proposal evaluation.* The proposals shall be evaluated in accordance with the criteria published in the CAN. Proposals selected for award will be supported by documentation as described in 1274.211(b). When evaluation results in a proposal not

verified to the extent practicable from the recipient or any associated team members, from which proposed contributions will be made.

(3) If the recipient's proposed contributions include application of IR&D costs, see § 1274.204(g).

(i) *Awards to foreign governments and firms.* (1) An award may not be made to a foreign government. However, if selected as the best available source, an

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recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each recipient subject invention, it is only equitable that the recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) Once a recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the recipient, is published in the Federal Register, providing the public opportunity for filing written objections for 60 days.

(j) *Preference for United States manufacture.* Despite any other provision, the recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. "Manufactured substantially in the United States" means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. In making this determination, only the product and its components shall be considered. The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty whether or not a duty-free entry certificate is issued. Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.101(a) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the recipient as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Assistant Administrator for Procurement (Code HS) upon a showing by the recipient that under the circumstances domestic manufacture is not commercially feasible.

(k) *Space Act agreements.* Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act Agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(l) *Data rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, agreement officers for the Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (i.e., depending on the technology, two to five years after production of the data) may be established after which the data first produced by the recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas must be covered.

(4) For data, including software, first produced by the recipient under the agreement, the recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled "Publication and Reports: Non-Proprietary Research Results." Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) Section 1274.905(b)(3) requires the recipient to provide NASA a government purpose license for data first produced by the Recipient that constitutes trade secrets or confidential business or financial information. NASA and the recipient shall determine the scope of this license at the time of award of the cooperative agreement. In addition to the purposes given as examples in § 1274.905(b)(3), the license should provide NASA the right to use this data under a separate cooperative agreement or contract issued to a party other than the recipient for the purpose of continuing the project in the event the cooperative agreement is terminated by either party.

(7) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.209 Evaluation and selection.

(a) *Factor development.* The agreement officer, along with the NASA evaluation team has discretion to determine the relevant evaluation criteria based upon the project requirements, and the goals and objectives of the cooperative agreement.

(b) *Communications during non-competitive awards.* For cooperative agreements awarded non-competitively (see § 1274.202(b)), there are no

restrictions on communications between NASA and the recipient. In addition, there is no requirement for the development and publication of formal evaluation or source selection criteria.

(c) *Communications during competitive awards.* As discussed in § 1274.203(c), when a competitive source selection process will be followed to select the recipient, an appropriate level of care shall be taken by NASA personnel in order to protect the integrity of the source selection process. Therefore, upon release of the formal cooperative agreement notice (CAN), the agreement officer shall direct all procurement personnel associated with the source selection to refrain from communicating with prospective recipients and that all inquiries be referred to the agreement officer, or other authorized representative.

(d) *Selection factors and subfactors.* (1) At a minimum, the selection process for the competitive award of cooperative agreements to commercial entities shall include evaluation of potential recipients' proposals for merit and relevance to NASA's mission requirements through their responses to the publication of NASA evaluation factors. The evaluation factors should include technical and management capabilities (mission suitability), past performance, and proposed costs (including proposed cost share).

(2) For programs that may involve potentially hazardous operations related to flight, and/or mission critical ground systems, NASA's selection factors and subfactors shall provide for evaluation of the recipient's proposed approach to managing risk (e.g., technology being applied or developed, technical complexity, performance specifications and tolerances, delivery schedule, etc.).

(3) As part of the evaluation process, the factors, subfactors, or other criteria should be tailored to properly address the requirements of the cooperative agreement.

(e) *Other factors and subfactors.* Other factors and subfactors may include—

(1) The composition or appropriateness of the business relationship of proposed team members or consortium, articles of collaboration, participation of an appropriate mix of small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, and women-owned business concerns, as well as non-profits and educational institutions, including historically black colleges and universities and minority institutions).

(2) Other considerations may include enhancing U.S. competitiveness, developing a capability among U.S. firms, identification of potential markets, appropriateness of business risks.

(f) *Proposal evaluation.* The proposals shall be evaluated in accordance with the criteria published in the CAN. Proposals selected for award will be supported by documentation as described in 1274.211(b). When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(g) *Technical evaluation.* The technical evaluation of proposals may include peer reviews. Because the business sense of a cooperative agreement proposal is critical to its success, NASA may reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions.

(h) *Cost/price evaluation.* (1) Prior to award of a cooperative agreement, agreement officers shall ensure that proposed costs are accurate and reasonable. In order to do so, cost and pricing data may be required. The level of cost and pricing data to be requested shall be commensurate with the analysis necessary to reach agreement on overall proposed project costs. The evaluation of costs shall lead to the determination and verification of total project costs to be shared by NASA and the recipient, as well as establishment of NASA's milestone payment schedule based on its 50 percent cost share. The guidance at FAR 15.4 and NFS 1815.4 can assist in determining whether cost and pricing data are necessary and the level of analysis required. While competition may be present (i.e., more than one proposal is received), in most cases companies are proposing competing technologies and varying approaches that reflect very different methods (and accompanying costs) to satisfy NASA's project objectives. Consequently, this type of competitive environment is very different from an environment where competitive proposals are submitted in response to a request for proposals leading to award of a contract for relatively well-defined program or project requirements.

(2) During evaluation of the cost proposal, the agreement officer, along with other NASA evaluation team members and/or pricing support personnel, shall determine the reasonableness of the overall proposed project costs, including verifying the value of the recipient's proposed non-cash and in-kind contributions. Commitments should be obtained and verified to the extent practicable from the recipient or any associated team members, from which proposed contributions will be made.

(3) If the recipient's proposed contributions include application of IR&D costs, see § 1274.204(g).

(i) *Awards to foreign governments and firms.* (1) An award may not be made to a foreign government. However, if selected as the best available source, an award may be made to a foreign firm. If a proposal is selected from a foreign firm sponsored by their respective government agency, or from entities considered quasi-governmental, approval must be obtained from Headquarters, Program Operations Division (Code HS). Such requests must include detailed rationale for the selection, to include the funding source of the foreign participant. The approval of the Assistant Administrator for Procurement is required to exclude foreign firms from submitting proposals. Award to a foreign firm shall be on a no-exchange-of-funds basis (see NPD 1360.2).

(2) The Office of External Affairs (Code I), shall be notified prior to any announcement of intent to award to a foreign firm. Additionally, pursuant to section 126 of Pub. L. 106–391, as part of the evaluation of costs and benefits of entering into an obligation to conduct a space mission in which a foreign entity will participate as a supplier of the spacecraft, spacecraft system, or launch system, NASA shall solicit comment on the potential impact of such participation, through notice published in the FedBizOpps or NAIS.

(j) *Safe-guarding proposals.* Competitive proposal information shall be protected in accordance with FAR 15.207, Handling proposals and information. Unsolicited proposals shall be protected in accordance with FAR 15.608, Prohibitions, and FAR 15.609, Limited use of data.

(1) Evaluation team members, the source selection authority, and agreement officers are responsible for protecting sensitive information on the award of a grant or cooperative agreement and for determining who is authorized to receive such information. Sensitive information includes: information contained in proposals; information prepared for NASA's evaluation of proposals; the rankings of proposals for an award; reports and evaluations of source selection panels, boards, or advisory councils; and other information deemed sensitive by the source selection authority or by the agreement officer.

(2) No sensitive information shall be disclosed to persons not on the

evaluation team or evaluation panel, unless the Selecting Official or the agreement officer has approved disclosure based upon an unequivocal "need-to-know" and the individual receiving the information has signed a Non-Disclosure Certificate. All attendees at formal source selection presentations and briefings shall be required to sign an Attendance Roster and a Disclosure Certificate. The

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(b) For each unsolicited proposal selected for award, the cognizant technical office will prepare and furnish to the Agreement Officer, a justification for acceptance of an unsolicited proposal (JAUP). The JAUP shall be submitted for the approval of the

§ 1274.211 Award procedures.

(a) In accordance with NFS 1805.303–71(a)(3), the NASA Administrator shall be notified at least five (5) workdays prior to a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the agreement may be of significant interest to Headquarters.

(b) For awards that are the result of a competitive source selection, the

§ 1274.212 Document format and numbering.

(a) *Formats.* Agreement officers shall use NF 1687A (available via the Internet at *https://extranet.hq.nasa.gov/nef/user/form_search.cfm),* with minimum modification, as the standard cooperative agreement cover page for the award of all cooperative agreements.

(b) *Cooperative agreement numbering system.* Cooperative agreement

delegate responsibilities to the NASA Technical Officer.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) *Transfer of cooperative agreements.* Novation is the only means by which a cooperative agreement may be transferred from one recipient to another.

(b) *Novation and change of name.* NASA legal counsel shall review, for

in accordance with the requirements of FAR Subpart 44.3 and NFS 1844.3.

(b) Sections 1274.502 through 1274.510 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and

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evaluation team or evaluation panel, unless the Selecting Official or the agreement officer has approved disclosure based upon an unequivocal "need-to-know" and the individual receiving the information has signed a Non-Disclosure Certificate. All attendees at formal source selection presentations and briefings shall be required to sign an Attendance Roster and a Disclosure Certificate. The attendance rosters and certificates shall be maintained in official files for a minimum of six months after award.

(3) The improper disclosure of sensitive information could result in criminal prosecution or an adverse action.

(k) *Controls on the use of outside evaluators.* The use of outside evaluators shall be approved in accordance with NFS 1815.207–70(b). A cover sheet with the following legend shall be affixed to data provided to outside evaluators:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with.

(l) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NPD 1490.1. The Agreement Officer will be advised in writing of the results of the ICPMO review.

§ 1274.210 Unsolicited proposals.

(a) For a proposal to be considered a valid unsolicited proposal, the submission must—

(1) Be innovative and unique;

(2) Be independently originated and developed by the recipient;

(3) Be prepared without Government supervision, endorsement, direction or direct Government involvement;

(4) Include sufficient technical and cost detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(b) For each unsolicited proposal selected for award, the cognizant technical office will prepare and furnish to the Agreement Officer, a justification for acceptance of an unsolicited proposal (JAUP). The JAUP shall be submitted for the approval of the agreement officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(2) Overall scientific or technical merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(5) Current, open solicitations under which the unsolicited proposal could be evaluated.

(c) Unsolicited proposals shall be handled in accordance with NFS 1815.606, "Agency Procedures".

(d) Unsolicited proposals from foreign sources are subject to NPD 1360.2, "Development of International Cooperation in Space and Aeronautics Programs".

(e) There is no requirement for a public announcement of the award of a cooperative agreement. In addition, there is no requirement for announcement of awards resulting from unsolicited proposals. However, in those instances where a public announcement is planned and the award is the result of an unsolicited proposal, in addition to the requirements of NFS 1805.303–71(a)(3), NASA personnel must take measures that ensure protection of the data and intellectual property rights of submitters of unsolicited proposals as provided by FAR 5.202(a)(8).

(f) Additional information regarding unsolicited proposals is available in the handbook entitled, "Guidance for the Preparation and Submission of Unsolicited Proposals", which is available on the NASA Acquisition Internet Service Website at: *http://ec.msfc.nasa.gov/hq/library/unSolProp.html.*

§ 1274.211 Award procedures.

(a) In accordance with NFS 1805.303–71(a)(3), the NASA Administrator shall be notified at least five (5) workdays prior to a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the agreement may be of significant interest to Headquarters.

(b) For awards that are the result of a competitive source selection, the technical officer will prepare and furnish to the agreement officer a signed selection statement based on the selection criteria stated in the solicitation.

(1) *Bilateral award.* All cooperative agreements shall be awarded on a bilateral basis.

(2) *Consortium awards.* If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(c) *Central Contractor Registration (CCR).* Prior to implementation of the Integrated Financial Management (IFM) System at each center, all grant and cooperative agreement recipients are required to register in the Department of Defense (DOD) Central Contractor Registration (CCR) database. Registration is required in order to obtain a Commercial and Government Entity (CAGE) code, which will be used as a grant and cooperative agreement identification number for the new system. The agreement officer shall verify that the prospective awardee is registered in the CCR database using the DUNS number or, if applicable, the DUNS+4 number, via the Internet at *http://www.ccr2000.com* or by calling toll free: 888–227–2423, commercial: 616–961–5757.

(d) *Certifications, Disclosures, and Assurances.* (1) Agreement officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a cooperative agreement.

(2) Each new proposal shall include a certification for debarment and suspension under the requirements of 14 CFR 1265.510 and 1260.117.

(3) Each new proposal for an award exceeding $100,000 shall include a certification, and a disclosure form (SF LLL) if required, on Lobbying under the requirements of 14 CFR 1271.110 and 1260.117.

(4) Unless a copy is on file at the NASA center, recipients must furnish an assurance on NASA Form (NF) 1206 on compliance with Civil Rights statutes specified in 14 CFR parts 1250 through 1253.

§ 1274.212 Document format and numbering.

(a) *Formats.* Agreement officers shall use NF 1687A (available via the Internet at *https://extranet.hq.nasa.gov/nef/user/form_search.cfm),* with minimum modification, as the standard cooperative agreement cover page for the award of all cooperative agreements.

(b) *Cooperative agreement numbering system.* Cooperative agreement numbering may be changed once the Integrated Financial Management (IFM) is implemented. Until IFM is implemented, cooperative agreement numbering shall conform to NFS 1804.7102, except that a NCC prefix will be used in lieu of the NAS prefix. Along with the prefix NCC, a one or two digit Center Identification Number, and a sequence number of up to five digits will be used. Inclusive of the prefix and fiscal year, the total number of characters, digits, and spaces cannot exceed 11.

§ 1274.213 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative agreement officer when delegation has been made (particularly when administrative functions are delegated to DOD or another agency), NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076, and any other appropriate recipient. Copies of the statement of work, contained in the recipient's proposal and accepted by NASA, will be provided to the administrative agreement officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

§ 1274.214 Inquiries and release of information.

NASA personnel shall follow the procedures established in NFS 1805.402 prior to releasing information to the news media or the general public. The procedures established by NFS 1805.403 shall be followed when responding to inquiries from members of Congress.

Subpart 1274.3—Administration

§ 1274.301 Delegation of administration.

Cooperative agreements may be administered by the awarding activity or the awarding activity may obtain additional administration services in accordance with the procedures provided by NFS 1842.202. NASA Form 1678, NASA Technical Officer Delegation for Cooperative Agreements with Commercial Firms, will be used to delegate responsibilities to the NASA Technical Officer.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) *Transfer of cooperative agreements.* Novation is the only means by which a cooperative agreement may be transferred from one recipient to another.

(b) *Novation and change of name.* NASA legal counsel shall review, for legal sufficiency, all novation agreements or change of name agreements of the recipient, prior to formal execution by the agreement officer.

Subpart § 1274.4—Property

§ 1274.401 Government furnished property.

Property or equipment owned by the Government that will be used in the performance of a cooperative agreement shall be included as part of the Government's percentage (usually 50 percent) of shared costs. In most cases the property or equipment will be categorized as non-cash contributions. Agreement officers may use the procedures promulgated by FAR Subpart 45.2, as guidelines to calculate the value of the property or equipment.

§ 1274.402 Contractor acquired property.

As provided in § 1274.923(c), title to property acquired with government funds vests in the government. Under a cost shared cooperative agreement, joint ownership of property equal to the cost-sharing ratio will result if the parties make no specific arrangements regarding such property. The disposition of acquired property should be addressed in the cooperative agreement at the time of award. The cooperative agreement may provide that all such property be contributed by the recipient as a non-cash contribution. A reasonable dollar value must be specified and adequately supported. In this case, title will vest in the recipient. Alternatively, NASA and the recipient may include in the cooperative agreement any other appropriate arrangement for the disposition of acquired property upon completion of the effort.

Subpart 1274.5—Procurement Standards

§ 1274.501 Purpose of procurement standards.

(a) The procurement standards stated in §§ 1274.502 through 1274.510, may not apply to or may supplement the procedures of a commercial recipient that has a purchasing system approved in accordance with the requirements of FAR Subpart 44.3 and NFS 1844.3.

(b) Sections 1274.502 through 1274.510 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders.

§ 1274.502 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to NASA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 1274.503 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 1274.504 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and

free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business,

bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in NASA's implementation of this subpart.

(2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is

(a) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall

one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

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free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall normally be excluded from competing for such procurements, unless conflicts or apparent conflicts of interest issues have been resolved. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 1274.505 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide at a minimum, that the conditions in paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured.

In competitive procurements, such a description shall not contain features that unduly restrict competition.

(ii) Requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable. Recipients of NASA awards shall take all of the following steps to further this goal.

(1) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts.

(2) Consider in the contract process whether firms competing for larger contracts intend to subcontract with these businesses and institutions.

(3) Encourage contracting with consortiums or teams of these businesses and institutions when a contract is too large for one of these firms to handle individually.

(4) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 14 CFR part 1265, the implementation of Executive Orders 12549 and 12689, Debarment and Suspension.

(e) Recipients shall, on request, make available for NASA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in NASA's implementation of this subpart.

(2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product.

(4) The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold.

§ 1274.506 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicies, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 1274.507 Procurement records.

Procurement records and files for purchases in excess of the simplified acquisition threshold shall include the following at a minimum:

(a) Basis for contractor selection.

(b) Justification for lack of competition when competitive bids or offers are not obtained.

(c) Basis for award cost or price.

§ 1274.508 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow-up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 1274.509 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(d) For Construction and facility improvements, except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, NASA may accept the bonding policy and requirements of the recipient, provided NASA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described in this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety companies doing business with the United States."

§ 1274.510 Subcontracts.

Recipients (individual firms or consortia) are not authorized to issue grants or cooperative agreements to subrecipients. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the recipient's consortium and not subcontractors. All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Exhibit A to this part, as applicable and may be subject to approval requirements cited in § 1274.925.

Subpart 1274.6—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This subpart sets forth requirements for record retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) *Indirect cost rate proposals, cost allocations plans, etc.*, applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to NASA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period)

covered by the proposal, plan, or other computation.

Subpart 1274.7—Suspension or Termination

§ 1274.701 Suspension or termination.

(a) *Suspension.* NASA or the recipient may suspend the cooperative agreement for a mutually agreeable period of time, if an assessment is required to

milestone payments. Funding for any work required beyond the initial funding level of the cooperative agreement, shall require submission by the recipient of a detailed proposal to the agreement officer. Prior to execution of a modification increasing NASA's initial cost share or funding levels, detailed cost analysis techniques may be applied, which may include requests for

§ 1274.932, may be incorporated by reference in an enclosure to each cooperative agreement. For inclusion of provisions in subcontracts, see Exhibit A of this part, and § 1274.925.

§ 1274.902 Purpose.

Purpose

July 2002

The purpose of this cooperative agreement

agreement, "NASA" shall also mean "Federal Government".

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a_____ (NASA)—_____ (Recipient) basis.
Criteria and procedures for the allowability and
allocability of cash and

(2) *Background Data.* In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's

is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

covered by the proposal, plan, or other computation.

Subpart 1274.7—Suspension or Termination

§ 1274.701 Suspension or termination.

(a) *Suspension.* NASA or the recipient may suspend the cooperative agreement for a mutually agreeable period of time, if an assessment is required to determine whether the agreement should be terminated.

(b) *Termination.* (1) A cooperative agreement provides both NASA and the recipient the ability to terminate the Agreement if it is in their best interests to do so, by giving the other party prior written notice. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

(2) NASA may, for example, terminate the Agreement if the recipient is not making anticipated technical progress, if the recipient materially changes the objectives of the agreement, or if appropriated funds are not available to support the program.

(3) Similarly, the recipient may terminate the agreement if, for example, technical progress is not being made, if the commercial recipient shifts its technical emphasis, or if other technological advances have made the effort obsolete.

(4) If the cooperative agreement is terminated by either NASA or the recipient and NASA elects to continue the project with a party other than the recipient, the right of the government to use data first produced by either NASA or the recipient in the performance of this agreement is covered by 1274.905(b). See § 1274.208(l)(6) to assure that appropriate language is contained in § 1274.905(b).

Subpart 1274.8—Post-Award/ Administrative Requirements

§ 1274.801 Adjustments to performance costs.

In order to accomplish program objectives, there may be occasions where additional contributions (cash and/or in-kind contributions) by NASA and the recipient beyond the initial agreement may be needed. There may also be occasions where actual costs of NASA and the recipient may be less than initially agreed. In cases where program costs are adjusted, prior to execution of a modification to the agreement, mutual agreement between NASA and the recipient shall also be reached on the corresponding changes in program requirements such as schedule, work statements and milestone payments. Funding for any work required beyond the initial funding level of the cooperative agreement, shall require submission by the recipient of a detailed proposal to the agreement officer. Prior to execution of a modification increasing NASA's initial cost share or funding levels, detailed cost analysis techniques may be applied, which may include requests for audits services and/or application of other pricing support techniques. Any adjustments or modifications that result in a change to the performance costs of the cooperative agreement shall continue to maintain the share ratio requirements (normally 50/50) stated in § 1274.204(b).

§ 1274.802 Modifications.

Modifications to the cooperative agreement in particular, modifications that affect funding, milestone payments, program schedule and statement of work requirements shall be executed on a bilateral basis.

§ 1274.803 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the recipient.

(b) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 1274.923.

§ 1274.804 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in § 1274.932.

(b) Government Furnished and Contractor Acquired Property requirements in §§ 1274.401 and 1274.402.

(c) Records retention as required in § 1274.601.

Subpart 1274.9—Other Provisions and Special Conditions

§ 1274.901 Other provisions and special conditions.

Where applicable, the provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements with commercial firms. When included, the provisions at § 1274.902 through § 1274.909 and the provisions at § 1274.933 through § 1274.942 are to be incorporated in full text substantially as stated in this regulation. When required, the provisions at § 1274.910 through § 1274.932, may be incorporated by reference in an enclosure to each cooperative agreement. For inclusion of provisions in subcontracts, see Exhibit A of this part, and § 1274.925.

§ 1274.902 Purpose.

Purpose

July 2002

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to_____. This cooperative agreement will advance the technology developments and research which have been performed on_____. The specific objective is to_____. This work will culminate in_____.

[End of Provision]

§ 1274.903 Responsibilities.

Responsibilities

July 2002

(a) This Cooperative Agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) NASA Responsibilities. The following NASA responsibilities are hereby set forth effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities	Start Date	End Date

(c) Recipient Responsibilities. The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated_____, attached hereto (or Statement of Work dated_____, attached hereto). The following responsibilities are hereby set forth effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities	Start Date	End Date

(d) Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement.

(e) Unless the Cooperative Agreement is terminated by the parties, end date can only be changed by execution of a bilateral modification.

[End of Provision]

§ 1274.904 Resource sharing requirements.

Resource Sharing Requirements

July 2002

Where NASA and other Government agencies are involved in the cooperative

agreement, "NASA" shall also mean "Federal Government".

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a_____ (NASA)—_____ (Recipient) basis.

Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by FAR Parts 30 and 31, and NFS Parts 1830 and 1831.

(b) The Recipient's share shall not be charged to the Government under this Agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to FAR 31.205–18(e).

[End of Provision]

§ 1274.905 Rights in data.

As noted in § 1274.208(l)(1), the following provision assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of provisions may be appropriate. The Agreement Officer is expected to complete and/or select the appropriate bracketed language under the provision for those paragraphs dealing with data first produced under the cooperative agreement. In addition, the Agreement Officer may, in consultation with the Center's Patent or Intellectual Property Counsel, tailor the provision to fit the particular circumstances of the program and/or the recipient's need to protect specific proprietary information.

Rights in Data

July 2002

(a) Definitions.

"Data," means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) Data categories.

(1) *General.* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.

(2) *Background Data.* In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) *Data first produced by Recipient.* In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of [insert "two" to "five"] years after development of the data and be disclosed and used by ["NASA" or "the Government," as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of ["NASA" or "the Government" as appropriate] during that period. In order that ["NASA" or the "Government", as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA.* As to data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ( ) years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires. Use of this data under a separate cooperative agreement or contract issued to a party other than the Recipient for the purpose of continuing the project in the event this cooperative agreement is terminated by either party shall constitute a government purpose.

(5) *Copyright.* (i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this section, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) *Oral and visual information.* If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) *Disclaimer of liability.* Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of data.* Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower tier agreements.* The Recipient shall include this provision, suitably modified to identify the parties, in all

subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

[End of Provision]

§ 1274.906 Designation of New Technology Representative and Patent Representative.

Designation of New Technology Representative and Patent Representative

July 2002

(b) The aggrieved party may submit a written request for a decision to the Center Ombudsman, who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at

(viii) Any other information or documentation required by the cooperative agreement.

(ix) Taxpayer identification number (TIN).

(x) While not required, the recipient is strongly encouraged to assign an identification number to each invoice.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent

entered into pursuant to the authority of 42 U.S.C. 2451, *et seq.* (the Space Act).

[End of Provision]

§ 1274.911 Patent rights.

Patent Rights

July 2002

(a) Definitions. (1) *Administrator* means the Administrator or Deputy Administrator of NASA.

(2) *Invention* means any invention or

Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) *Allocation of principal rights.*—(1) *Recipient Inventions.* For other than Small Business Firm or Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)" provision applies. For Small Business Firm and Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)" provision applies.

subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) *Joint NASA and Recipient Inventions.* NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and

subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

[End of Provision]

§ 1274.906 Designation of New Technology Representative and Patent Representative.

Designation of New Technology Representative and Patent Representative

July 2002

(a) For purposes of administration of the clause of this cooperative agreement entitled "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Agreement Officer to administer such clause:

Title	Office code	Address
New Technology Representative		
Patent Representative		

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" clause or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" clause, unless otherwise authorized or directed by the Agreement Officer. The respective responsibilities and authorities of the above-named representatives are set forth in NFS 1827.305–370.

[End of Provision]

§ 1274.907 Disputes.

Disputes

July 2002

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the Center Ombudsman, who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at the same time. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after receiving this notification that a decision has been requested. The Dispute Resolution Official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position.

[End of Provision]

§ 1274.908 Milestone payments.

Milestone Payments

July 2002

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for payments may be based upon the Recipient's completion of specific tasks, submission of specified reports, or whatever is appropriate.]

Date	Payment Milestone	Amount

(c) Upon submission by the recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the Agreement Officer shall authorize payment. Payment shall be made within 30 calendar days after receipt of proper invoice. Payment shall be considered as being made on the date of electronic funds transfer. A proper invoice must include the following:

(i) Name and address of the recipient.

(ii) Invoice date (The Recipient is encouraged to date invoices as close as possible to the date of the mailing or transmission).

(iii) Cooperative agreement number.

(iv) Description, milestone, and extended price of efforts/tasks performed.

(v) Payment terms.

(vi) Name and address of Recipient official to whom payment is to be sent. (Must be the same as that in the cooperative agreement or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of the person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the cooperative agreement.

(ix) Taxpayer identification number (TIN).

(x) While not required, the recipient is strongly encouraged to assign an identification number to each invoice.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent of the Agreement Officer.

(e) The recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) Unless approved by the Agreement Officer, all preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) (i) If the Recipient is authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to:

[Insert the mailing address for submission of cost vouchers]

(ii) If the Recipient is not authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to the Agreement Officer for certification.

(iii) Copies of the recipient's invoice should be submitted to the following offices:

(A) Copy 1—NASA Agreement Officer.

(B) Copy 2—Auditor.

(C) Copy 3—Contract administration office.

(D) Copy 4—Project management office.

(E) Copy 5—Other recipients as designated by the Agreement Officer.

[End of Provision]

§ 1274.909 Term of agreement.

Term of Agreement

July 2002

(a) The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Requests for approval for no-cost extensions must be forwarded to the NASA Agreement Officer no later than ten days prior to the expiration of the award to be considered.

(b) Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

[End of Provision]

§ 1274.910 Authority.

Authority

July 2002

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451, *et seq.* (the Space Act).

[End of Provision]

§ 1274.911 Patent rights.

Patent Rights

July 2002

(a) Definitions. (1) *Administrator* means the Administrator or Deputy Administrator of NASA.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(3) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Recipient* means:

(i) The signatory Recipient party or parties or;

(ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) *Small Business Firm* means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject Invention* means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(9) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) *Allocation of principal rights.*—(1) *Recipient Inventions.* For other than Small Business Firm or Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)" provision applies. For Small Business Firm and Nonprofit organization Recipients, the "PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)" provision applies.

(2) *NASA Inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this section. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) *NASA Contractor Inventions.* In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, the recipient will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR Part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) *Joint NASA and Recipient Inventions.* NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this section.

(ii) For small business firms and nonprofit organization, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) *Minimum rights reserved by the Government.* Any license or assignment granted Recipient pursuant to paragraphs (b)(2), (b)(3), or (b)(4) of this section will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Assistant Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property

upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for

(8) *Subject invention,* as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq*).

(9) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or

regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245,

license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a

promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Agreement Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Agreement Officer) from the date of the Agreement, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are

with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Recipient—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a

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upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

[End of Provision]

§ 1274.912 Patent rights—retention by the recipient (large business).

Patent Rights—Retention by the Recipient (Large Business)

July 2002

(a) *Definitions.*

(1) *Administrator,* as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Invention,* as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) *Made,* as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization,* as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application,* as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Reportable item,* as used in this clause, means any invention, discovery, improvement, or innovation of the Recipient, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) *Small business firm,* as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject invention,* as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq*).

(9) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with Federal Acquisition Regulation 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) *Allocation of principal rights—*(1) *Presumption of title.*

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Agreement Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this section. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this section is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the Agreement or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this section or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) *Minimum rights reserved by the Government.* (1) With respect to each Recipient subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Recipient.* (1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Recipient subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this section. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 3, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.112, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Agreement Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Agreement Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the Agreement under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Agreement Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Agreement Officer) from the date of the Agreement, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this section have been followed.

(ii) A final report, within three months after completion of the work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Agreement Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to 48 CFR (FAR) 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Agreement Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this cooperative agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this section; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Agreement Officer learns of an unreported Recipient invention that the Agreement Officer believes may be a subject inventions, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Agreement Officer, the Recipient shall—

(i) Include this Clause Patent Rights—Retention by the Recipient—(Large Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Recipient—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Agreement Officer.

(3) The Recipient shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Agreement Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause of paragraph (g)(1)(i) or (1)(ii) of this section, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances.* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed

subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may

[End of Provision]

§ 1274.913 Patent rights—retention by the recipient (small business).

Patent Rights—Retention by the Recipient (Small Business)

July 2002

(a) *Definitions.*

(1) *Invention,* as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under

and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Recipient.*

specified in paragraph (c) of this section, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this section; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this section, but prior to its receipt of

(f) *Recipient action to protect the Government's interest.* (1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and,

(ii) convey title to the Federal agency when requested under paragraph (d) of this section and to enable the Government to obtain patent protection throughout the world in

(i) Include this clause (Patent Rights—Retention by the Recipient (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization; and

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Recipient (Large Business).

(2) In the event of a refusal by a

subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 3). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Assistant Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

[End of Provision]

§ 1274.913 Patent rights—retention by the recipient (small business).

Patent Rights—Retention by the Recipient (Small Business)

July 2002

(a) *Definitions.*

(1) *Invention,* as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) *Made,* as used in this clause, when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) *Nonprofit organization,* as used in this clause, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application,* as used in this clause, means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm,* as used in this clause, means a small business concern as defined at Section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.901 through 121.911 will be used.

(6) *Subject invention,* as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(7) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) *Allocation of principal rights.* The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Recipient.*

(1) The Recipient will disclose each subject invention to NASA within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this section may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Recipient will convey to NASA, upon written request, title to any subject invention—

(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this section, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this section; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this section, but prior to its receipt of the written request of the Federal agency, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Recipient and protection of the Recipient right to file.*

(1) The Recipient will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph (c) of this section. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and 14 CFR Subpart 1245.1, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Recipient action to protect the Government's interest.* (1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and,

(ii) convey title to the Federal agency when requested under paragraph (d) of this section and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this section, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this section. The Recipient shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention the following statement, "This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention."

(5) The Recipient shall provide the Agreement Officer the following:

(i) A listing every 12 months (or such longer period as the Agreement Officer may specify) from the date of the Agreement, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the Agreement listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Recipient has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by the Agreement Officer, the Recipient shall—

(i) Include this clause (Patent Rights—Retention by the Recipient (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization; and

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Recipient (Large Business).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Agreement Officer.

(3) The Recipient shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Agreement Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this section, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontractor, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to—

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract office:

(A) *Exceptional circumstances.* A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed

subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this section has not been obtained or waived or

information describing a "subject invention" for which the Recipient has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the Agreement Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent

the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Agreement Officer of the Administrator's determination. The Agreement Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made

Liability and Risk of Loss

July 2002

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities,

allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of

subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition.* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR part 1245, subpart 3). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) *Reporting on utilization of subject inventions.* The Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this section. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Recipient.

(i) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Assistant Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this section has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for Agreements with nonprofit organizations.* If the Recipient is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary functions the management of inventions; *provided,* that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Recipient could take reasonable steps to more effectively implement the requirements of this paragraph.

(l) *Documentation submissions.* A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the cooperative agreement. If any reports contain information describing a "subject invention" for which the Recipient has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the Agreement Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Recipient has applied for patents.

[End of Provision]

§ 1274.914 Requests for waiver of rights—large business.

Requests for Waiver of Rights—Large Business

July 2002

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA agreement, contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the agreement, contract or subcontract, or within 30 days after execution by the selected Recipient. In addition, waiver of rights to an identified invention made and reported under a agreement, contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific Section or Sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to agreement execution, must be submitted to the Agreement Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a agreement will be forwarded by the Contracting or Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Agreement Officer of the Administrator's determination. The Agreement Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the agreement. In the latter event, the petitioner will be so notified by the Agreement Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

[End of Provision]

§ 1274.915 Restrictions on sale or transfer of technology to foreign firms or institutions.

Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

July 2002

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers include:

(1) Sales of products or components,

(2) Licenses of software or documentation related to sales of products or components, or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Agreement Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

[End of Provision]

§ 1274.916 Liability and risk of loss.

The following provision is applicable to all cooperative agreements with commercial firms, except programs or projects that are subject to Section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

Liability and Risk of Loss

July 2002

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

[End of Provision]

§ 1274.917 Additional funds.

Additional Funds

July 2002

Pursuant to this Agreement, NASA is providing a fixed amount of funding for activities to be undertaken under the terms of this cooperative agreement. NASA is under no obligation to provide additional funds. Under no circumstances shall the Recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement.

[End of Provision]

§ 1274.918 Incremental funding.

Incremental Funding

July 2002

(a) Of the award amount indicated on the cover page of this Agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA may supplement the Agreement, as required, until it is fully funded. Any work beyond the funding limit will be at the recipient's risk.

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.

[End of Provision]

§ 1274.919 Cost principles and accounting standards.

Cost Principles and Accounting Standards

July 2002

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled "Resource Sharing Requirements") shall be governed by the FAR cost principles implemented by FAR Parts 30, 31, and 48 CFR part 99. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.")

[End of Provision]

§ 1274.920 Responsibilities of the NASA technical officer.

Responsibilities of the NASA Technical Officer

July 2002

(a) The NASA Agreement Officer and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Agreement Officer shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the terms and conditions of this cooperative agreement. In the event of perceived interference, dispute resolution procedures apply as set forth in 1274.907.

[End of Provision]

§ 1274.921 Publications and reports: non-proprietary research results.

The requirements set forth under this provision may be modified by the Agreement Officer based on specific report needs for the particular grant or cooperative agreement.

Publications and Reports: Non-Proprietary Research Results

July 2002

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement shall contain a statement which acknowledges NASA's support and identifies the cooperative

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the

contained in the reports in entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. A final report is required within 30 days after expiration of the agreement.

(g) As of the date of this rewrite, process changes have been made to facilitate electronic submission of NF 1018. Recipients may use the procedures established by NASA

[End of Provision]

§ 1274.926 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts

July 2002

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Agreement Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any

Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, Code I, approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is

the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for

Publications and Reports: Non-Proprietary Research Results

July 2002

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.

(c) Prior approval by the NASA Technical Officer is required only where the Recipient requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. The Recipient shall submit the following technical reports:

(1) A progress report for every year of the cooperative agreement (except the final year). Each report is due 60 days before the anniversary date of the cooperative agreement and shall describe research accomplished during the report period.

(2) A summary of research is due by 90 days after the expiration date of the cooperative agreement, regardless of whether or not support is continued under another cooperative agreement. This report is intended to summarize the entire research accomplished during the duration of the cooperative agreement.

(e) Progress reports and summaries of research shall display the following on the first page:

(1) Title of the cooperative agreement.

(2) Type of report.

(3) Period covered by the report.

(4) Name and address of the Recipient's organization.

(5) Cooperative agreement number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—Agreement Officer.

(2) Copy—Technical Officer

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Parkway Center, Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076.

[End of Provision]

§ 1274.922 Suspension or termination.

Suspension or Termination

July 2002

(a) This cooperative agreement may be suspended or terminated in whole or in part by the Recipient or by NASA after consultation with the other party. With prior written notice, NASA may terminate the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program.

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.

[End of Provision]

§ 1274.923 Equipment and other property.

Equipment and Other Property

July 2002

(a) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.

(b) Contractor acquired equipment or property used in performance of the Cooperative Agreement shall be controlled in accordance with 48 CFR (FAR) 45.6.

(c) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603. The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the cooperative agreement. Under a shared cost arrangement, the Government and the Recipient have joint ownership of acquired property in accordance with the cost share ratio. Jointly owned property shall be disposed of as agreed to by the parties.

(d) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government prior to completion of the work) will remain with the Government.

(e) The Recipient shall establish and maintain property management standards for Government property and otherwise manage such property as set forth in 48 CFR (FAR) 45.5 and 48 CFR (NFS) 1845.5.

(f) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. Negative reports (i.e. no reportable property) are required. The information contained in the reports in entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. A final report is required within 30 days after expiration of the agreement.

(g) As of the date of this rewrite, process changes have been made to facilitate electronic submission of NF 1018. Recipients may use the procedures established by NASA Procurement Notice (PN) 97–64, issued on August 9, 2001.

[End of Provision]

§ 1274.924 Civil rights.

Civil Rights

July 2002

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, 1252 and 1253).

[End of Provision]

§ 1274.925 Subcontracts.

Subcontracts

July 2002

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Agreement Officer consent is required for subcontracts over[dollar threshold inserted by Agreement Officer] and/or subcontracts for [critical systems, subsystems, components, or services inserted by Agreement Officer and Cognizant NASA Project Office]_____.

(c) If not submitted by the Recipient and accepted by NASA in the original proposal. The Recipient shall provide the following information to the Agreement Officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(d) The Recipient shall utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable.

(e) All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the Recipient's consortium and not subcontractors.

[End of Provision]

§ 1274.926 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts

July 2002

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Agreement Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a cooperative agreement in excess of $100,000, the Recipient—

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.* as amended by Public Law 91–604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Public Law 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the cooperative agreement; and

(c) Agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of $100,000, and to take such action as the Contracting or Grant Officer may direct to enforce such criteria and requirements.

[End of Provision]

§ 1274.927 Debarment and suspension and drug-free workplace.

Debarment and Suspension and Drug-Free Workplace

July 2002

NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government-wide Debarment and Suspension (Nonprocurement) and 14 CFR part 1267, Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.

[End of Provision]

§ 1274.928 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements

July 2002

(a) The Recipient shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, Code I, approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the cooperative agreement requires a foreign national to be given access immediately, the Technical Officer may submit an escort request to the Installation's Chief of Security.

[End of Provision]

§ 1274.929 Restrictions on lobbying.

Restrictions on Lobbying

July 2002

This award is subject to the provisions of 14 CFR part 1271 "New Restrictions on Lobbying."

[End of Provision]

§ 1274.930 Travel and transportation.

Travel and Transportation

July 2002

(a) For travel funded by the government under this agreement, section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires the Recipient to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.

[End of Provision]

§ 1274.931 Electronic funds transfer payment methods.

Electronic Funds Transfer Payment Methods

July 2002

Payments under this cooperative agreement will be made by the Government by electronic funds transfer through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Agreement Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Recipient is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

(e) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

[End of Provision]

§ 1274.932 Retention and examination of records.

Retention and Examination of Records

July 2002

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this cooperative agreement shall be retained for a period of 3 years, except that records for nonexpendable property acquired with cooperative agreement funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and

records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this clause shall apply to any subcontractor performing substantive work under this cooperative agreement.

[End of Provision]

§ 1274.933 Summary of recipient reporting responsibilities.

Summary of Recipient Reporting Responsibilities

July 2002

This cooperative agreement requires the recipient to submit a number of reports. These reporting requirements are summarized below. In the event of a conflict between this provision and other provisions of the cooperative agreement requiring reporting, the other provisions take precedence.

[The Agreement Officer may add/delete reporting requirements as appropriate.]

Report	Frequency	Reference

[End of Provision]

§ 1274.935 Security classification requirements.

Security Classification Requirements

July 2002

Performance under this Cooperative Agreement will involve access to and/or generation of classified information, work in a secure area, or both, up to the level of *[insert the applicable security clearance level]*. Federal Acquisition Regulation clause

breach to the Agreement Officer. If directed by the Agreement Officer, the Recipient shall conduct its own investigation and report the results to the Government. The Recipient shall cooperate with the Government investigation, if conducted.

[End of Provision]

§ 1274.937 Security requirements for unclassified information technology resources.

Security Requirements for Unclassified Information Technology Resources

award of this cooperative agreement and in compliance with the requirements stated in this provision. The plan, as approved by the Agreement Officer, shall be incorporated into the cooperative agreement as a compliance document.

(d)(1) Recipient personnel requiring privileged access or limited privileged access to systems operated by the Recipient for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2)

records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this clause shall apply to any subcontractor performing substantive work under this cooperative agreement.

[End of Provision]

§ 1274.933 Summary of recipient reporting responsibilities.

Summary of Recipient Reporting Responsibilities

July 2002

This cooperative agreement requires the recipient to submit a number of reports.

These reporting requirements are summarized below. In the event of a conflict between this provision and other provisions of the cooperative agreement requiring reporting, the other provisions take precedence.

[The Agreement Officer may add/delete reporting requirements as appropriate.]

Report	Frequency	Reference
Report of Joint NASA/Recipient Inventions	As required	1274.911 Patent Rights (Paragraph (b)(4))
Interim Report of Reportable Items	Every 12 months	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(i))
Final Report of Reportable Items	3 months after completion	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(ii))
Disclosure of Subject Inventions	Within 2 months after inventor discloses it to Recipient.	1274.912 Patent Rights Retention by the Recipient (Large Business) (Paragraph (e)(2)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(1))
Election of Title to a Subject Invention	1 year after disclosure of the subject invention if a statutory bar exists, otherwise within 2 years.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(2))
Listing of Subject Inventions	Every 12 months from the date of the agreement.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(5)(i))
Subject Inventions Final Report	Prior to close-out of the agreement	1274.913 Retention by the Recipient (Small Business) (Paragraph (f)(5)(ii))
Notification of Decision to Forego Patent Protection.	30 days before expiration of the response period.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(3))
Notification of a Subcontract Award	Promptly upon award of a subcontract	1274.912 Patent Rights—Retention by the Recipient (Large Business)(Paragraph (g)(3)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (g)(3))
Utilization of Subject Invention	Annually	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (h))
Notice of Proposed Transfer of Technology	Prior to transferring technology to foreign firm or institution.	1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (Paragraph (b))
Progress Report	60 days prior to the anniversary date of the agreement (except final year).	1274.921 Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(1))
Summary of Research	90 days after completion of agreement	1274.921 Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(2))
NASA Form 1018 Property in the Custody of Contractors.	Annually by October 31	1274.923 Equipment and Other Property (Paragraph (f))
NASA Form 1018 Property in the Custody of Contractors.	60 days after expiration date of agreement	1274.923 Equipment and Other Property (Paragraph (f))

§ 1274.934 Safety.

Safety

July 2002

NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this cooperative agreement. The recipient shall comply with all applicable federal, state, and local laws relating to safety. The Recipient shall maintain a record of, and will notify the NASA Agreement Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property. The Recipient will immediately (within one workday) advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this cooperative agreement involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Recipient. Compliance with this provision by subcontractors shall be the responsibility of the Recipient.

[End of Provision]

§ 1274.935 Security classification requirements.

Security Classification Requirements

July 2002

Performance under this Cooperative Agreement will involve access to and/or generation of classified information, work in a secure area, or both, up to the level of *[insert the applicable security clearance level]*. Federal Acquisition Regulation clause 52.204–2 shall apply to this Agreement and DD Form 254, Contract Security Classification Specification Attachment _____ *[Insert the attachment number of the DD Form 254]*.

[End of Provision]

§ 1274.936 Breach of safety or security.

Breach of Safety or Security

July 2002

Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: The public; astronauts and pilots; the NASA workforce (including contractor employees working on NASA contracts); and high-value equipment and property. A major breach of safety by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Agreement. A major breach of safety must be related directly to the work on the Agreement. A major breach of safety is an act or omission of the Recipient that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(a) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Cooperative Agreement. A major breach of security may occur on or off Government installations, but must be related directly to the work on the Cooperative Agreement. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(b) In the event of a major breach of safety or security, the Recipient shall report the breach to the Agreement Officer. If directed by the Agreement Officer, the Recipient shall conduct its own investigation and report the results to the Government. The Recipient shall cooperate with the Government investigation, if conducted.

[End of Provision]

§ 1274.937 Security requirements for unclassified information technology resources.

Security Requirements for Unclassified Information Technology Resources

July 2002

(a) The Recipient shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Recipient for NASA, regardless of location. This provision is applicable to all or any part of the cooperative agreement that includes information technology resources or services in which the Recipient must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the Recipient's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The Recipient shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this cooperative agreement. The plan shall describe those parts of the cooperative agreement to which this provision applies. The Recipient's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and

(3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within ____ days after cooperative agreement award, the Recipient shall submit for NASA approval an IT Security Plan. This plan must be consistent with and further detail the approach contained in the Recipient's proposal that resulted in the award of this cooperative agreement and in compliance with the requirements stated in this provision. The plan, as approved by the Agreement Officer, shall be incorporated into the cooperative agreement as a compliance document.

(d)(1) Recipient personnel requiring privileged access or limited privileged access to systems operated by the Recipient for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this provision. Those Recipient personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this provision, unless Recipient screening in accordance with paragraph (d)(4) is approved. The Recipient shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after cooperative agreement award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT–1 has the highest level of risk):

(i) IT–1—Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT–2—Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of "level 1" data whose cost to replace exceeds one million dollars.

(iii) IT–3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Recipient for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT–1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions;

(ii) IT–2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT–3: NASA Form 531, Name Check, and FC 258.

(4) The Agreement Officer may allow the Recipient to conduct its own screening of

individuals requiring privileged access or limited privileged access provided the Recipient can demonstrate that the procedures used by the Recipient are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of Recipient personnel may be waived by the Agreement Officer for those individuals who have previously been screened for equivalent access by NASA or by another Federal agency. Equivalent access is defined as access to sensitive but unclassified information technology resources or services in which the Recipient must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(i) Computer control of spacecraft, satellites, or aircraft or their payloads;

(ii) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the Recipient's copy be corrupted; and

(iii) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(e) The Recipient shall fill out and submit NASA Form 531, Name Check, and FC 258 for each individual requiring screening under this agreement. The Recipient shall submit the forms to the Agreement Officer or designee.

(f) The Agreement Officer may waive the requirement for screening for those individuals who have previously been screened for equivalent access by NASA or by another Federal agency. Equivalent access is defined as access to sensitive but unclassified information technology resources or services in which the Recipient must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the Recipient's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(g) The Recipient shall ensure that its employees, in performance of the contract, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3.7. The Recipient may also use web-based training available from NASA to meet this requirement.

(h) The Recipient shall afford NASA, including the Office of Inspector General, access to the Recipient's and subcontractor's facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of information technology systems operated on behalf of NASA, and to preserve evidence of computer crime.

(i) The Recipient shall incorporate this provision in all subcontracts and other agreements with Recipient employees or Recipient contractors that perform work under this cooperative agreement.

[End of Provision]

(2) No later than 30 days before each launch; and

(3) Within 7 days after a request by the Agreement Officer.

Moreover, the Recipient shall promptly notify the Agreement Officer of any termination, or of any change to the terms or conditions of an insurance policy or policies for which proof of insurance was provided.

(e) *Notification of Claims.* The Recipient shall—

(1) Promptly notify the Agreement Officer of any third-party claim or suit against the Recipient or any subcontractor that arises out of or relates to performance of the Project;

(2) Promptly furnish to the Agreement Officer copies of all pertinent papers received by the Recipient with respect to such claims or suits;

(3) Promptly notify the Agreement Officer of any accident or incident arising out of performance of the Project that results in—

(i) A fatality;

(ii) Bodily injury to three or more persons;

(iii) Damage to property in excess of $25,000; or

(iv) Damage to property of the Government in excess of $1,000; and

(4) Furnish to the Agreement Officer a copy of any report submitted to any Federal agency or court concerning such accident or incident.

(f) *Waiver of Liability.* The Recipient waives all claims against the Government for any loss, damage, injury, or death sustained by the Recipient in connection with the performance of this Cooperative Agreement, except for—

(1) Willful misconduct or lack of good faith by the Government's managerial personnel;

(2) Claims by third parties for which the Government is responsible; and

(3) Claims for which the Government is responsible under another contract or agreement.

(g) *Government Property.* The Recipient shall not acquire, construct, or provide Government property under this Cooperative Agreement.

(h) *Liability for Use of Government Property.* If Government property is lost, damaged, or destroyed while in the possession of the Recipient, the Recipient shall restore or replace the property to the Government's satisfaction. Alternatively, with the Agreement Officer's written consent, the Recipient may settle the liability by paying the Government the property's fair market value on the date of the loss, damage, or destruction.

(i) *Limitation of Liability.* The Government's liability for property damage, personal injury, or death resulting from performance of this Cooperative Agreement is governed by the Federal Tort Claims Act (28 U.S.C. 2671 *et seq.*).

(j) *Mutual Waiver of Claims.* The Government and the Recipient waive all claims against each other for damages, personal injury, death, or loss sustained by their employees or property in connection with launch services, except for claims arising from willful misconduct or lack of good faith on the part of their managerial personnel. This waiver shall not apply to claims for which the Government is responsible under another contract or agreement.

(k) *Flow-down.* The Recipient shall flow down the substance of this provision to all subcontracts and other agreements with Recipient employees or Recipient contractors that perform work under this cooperative agreement.

[End of Provision]

§ 1274.939 Export control.

Export Control

July 2002

(a) The Recipient shall comply with all applicable United States export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799, in the performance of this cooperative agreement. In the absence of available license exemptions/exceptions, the Recipient shall be responsible for obtaining the appropriate licenses or other approvals, if required, before exporting or re-exporting any property (including equipment, technical data, or software) or providing any service or technical data (or software) to any foreign person or destination. The Recipient shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in performance of the cooperative agreement, including foreign persons employed by the Recipient or subcontractors.

(b) The Recipient shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(c) The Recipient shall be responsible for ensuring that its employees are informed of and comply with all export control laws and regulations.

(d) The Recipient shall be responsible for the control of foreign persons who are employed by the Recipient or any subcontractor in accordance with all applicable export control laws and regulations.

(e) The Recipient shall not disclose, transfer, or permit access to any foreign person for any purpose whatsoever, whether or not the foreign person is employed or engaged by the Recipient or a subcontractor, without prior approval or authorization by the Agreement Officer.

(f) The Recipient shall not disclose details of the design, development, production, or manufacture of any defense article.

[End of Provision]

Appendix to Part 1274—Listing of Exhibits

Exhibit A to Part 1274—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water

individuals requiring privileged access or limited privileged access provided the Recipient can demonstrate that the procedures used by the Recipient are equivalant to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of Recipient personnel may be waived by the Agreement Officer for those individuals who have proof of—

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Recipient, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Agreement Officer under paragraph (d)(4) of this provision.

(e) The Recipient shall ensure that its employees, in performance of the cooperative agreement, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The Recipient may use web-based training available from NASA to meet this requirement.

(f) The Recipient shall afford NASA, including the Office of Inspector General, access to the Recipient's, subcontractors' or subawardees' facilities, installations, operations, documentation, databases and personnel used in performance of the cooperative agreement. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Recipient shall incorporate the substance of this clause in all subcontracts or subagreements that meet the conditions in paragraph (a) of this provision.

[End of Provision]

§ 1274.938 Modifications.

Modifications

July 2002

During the term of this agreement and in the interest of achieving program objectives, the parties may agree to changes that affect the responsibility statements, milestones, or other provisions of this agreement. Any changes to this agreement will be accomplished by a written bilateral modification.

[End of Provision]

§ 1274.939 Application of Federal, State, and Local laws and regulations.

Application of Federal, State, and Local Laws and Regulations

July 2002

(a) *Federal Laws and Regulations.* This Cooperative Agreement shall be governed by the Federal Laws, regulations, policies, and related administrative practices applicable to this Cooperative Agreement on the date the Agreement is executed. The Recipient understands that such Federal laws, regulations, policies, and related administrative practices may be modified from time to time. The Recipient agrees to consider modifying this Agreement to be governed by those later modified Federal laws, regulations, policies, and related administrative practices that directly affect performance of the Project.

(b) *State or Territorial Law and Local Law.* Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Cooperative Agreement shall require the Recipient to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Cooperative Agreement violate any applicable State or territorial law, or if compliance with the provisions of the Agreement would require the Recipient to violate any applicable State or territorial law, the Recipient agrees to notify the Government (NASA) immediately in writing in order that the Government and the Recipient may make appropriate arrangements to proceed with the Project as soon as possible.

(c) *Changed Conditions of Performance (Including Litigation).* The Recipient agrees to notify the Government (NASA) immediately of any change in State or local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Cooperative Agreement. In addition, the Recipient agrees to notify the Government (NASA) immediately of any decision pertaining to the Recipient's conduct of litigation that may affect the Government's interests in the Project or the Government's administration or enforcement of applicable Federal laws or regulations. Before the Recipient may name the Government as a party to litigation for any reason, the Recipient agrees to inform the Government; this proviso applies to any type of litigation whatsoever, in any forum.

(d) *No Government Obligations to Third Parties.* Absent the Government's express written consent, and notwithstanding any concurrence by the Government in or approval of the award of any Agreement of the Recipient (third party contract) or subcontract of the Recipient (third party subcontract) or the solicitation thereof, the Government shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person(s).

[End of Provision]

§ 1274.940 Changes in recipient's membership.

Changes in Recipient's Membership

July 2002

The Recipient shall notify the cognizant Agreement Officer within seven (7) days of any change in the corporate membership (ownership) structure of the Recipient, including the addition or withdrawal of any of the Recipient's affiliated members (e.g., Consortium Member). If NASA reasonably determines that any change in the corporate membership (ownership) of Recipient will conflict with NASA's objectives for the _____ Project or any statutory or regulatory restriction applicable to the agency, NASA may terminate this Agreement after giving the Agreement Recipient at least ninety (90) days prior written notice of such perceived conflict and a reasonable opportunity to cure such conflict.

[End of Provision]

§ 1274.941 Insurance and Indemnification.

The following provision is applicable to all cooperative agreements with commercial firms that involve programs or projects that are subject to Section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

Insurance and Indemnification

July 2002

(a) *General.* The Recipient has applied, under the provisions of Section 431 of Public Law 105–276 (Section 431), for indemnification by the Government against certain third party damage claims that might arise under the Agreement. Under Section 431, a necessary prerequisite to, and consideration for, the Government's granting such indemnification is the Recipient's obtaining insurance against an initial increment of such damages arising from certain third party claims. This provision sets forth the requirements for this insurance prerequisite to a Government grant of indemnification.

(b) *Definitions.* The definitions at 14 CFR 1266, Cross-Waivers and Indemnification, apply to this provision.

(c) *Insurance.* The Recipient shall obtain, as part of its financial contribution, insurance that meets the following parameters:

(1) The insurance policy or policies shall insure against damages incurred by third parties arising from covered activities;

(2) The amount of insurance applicable to each launch shall be [Amount to be inserted by the contracting officer]. The Government may subsequently increase the amount of insurance the Recipient is required to maintain to qualify for indemnification, for one or more launches, and the Recipient shall pay the additional cost of such increases from its financial contribution; and

(3) The insurance policy or policies shall name the parties and their related entities, and the employees of the parties and their related entities, as named insureds.

Nothing in this provision precludes the Recipient from obtaining, at no cost to the Government, such other insurance as the Recipient determines advisable to protect its business interests.

(d) *Proof of Insurance.* The Recipient shall provide proof of insurance that meets the parameters in paragraph (c) of this provision and that is acceptable to the Agreement Officer:

(1) Within 30/60 days after the execution of the modification adding this provision to the Agreement;

(2) No later than 30 days before each launch; and

(3) Within 7 days after a request by the Agreement Officer.

Moreover, the Recipient shall promptly notify the Agreement Officer of any termination, or of any change to the terms or conditions of an insurance policy or policies for which proof of insurance was provided.

(e) *Notification of Claims.* The Recipient shall—

(1) Promptly notify the Agreement Officer of any third party claim or suit against the Recipient, one of its related entities, any employee of the Recipient or its related entities, or any insurer of the Recipient for damages resulting from covered activities;

(2) Furnish evidence or proof of any such claim, suit or damages, in the form required by NASA; and

(3) Immediately furnish to NASA, or its designee, copies of all information received by the Recipient, or by any related entity, employee or insurer that is pertinent to such claim, suit or damages.

(f) *NASA Concurrence in Settlements.* NASA shall concur or not concur in each settlement of a third party claim by the Recipient's insurer(s). For purposes of determining the amount of indemnification under this cooperative agreement. Adjudicated claims shall be deemed concurred in by NASA.

[End of Provision]

§ 1274.942 Export licenses.

Export Licenses

July 2002

(a) The Recipient shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799, in the performance of this Cooperative Agreement. In the absence of available license exemptions/exceptions, the Recipient shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Recipient shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Cooperative Agreement, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Recipient shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Recipient shall be responsible for ensuring that the requirements of this provision apply to its subcontractors.

(e) The Recipient may request, in writing, that the Agreement Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Agreement Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[End of Provision]

Appendix to Part 1274—Listing of Exhibits

Exhibit A to Part 1274—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts in excess of $50,000 for construction or repair awarded by Recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each recipient or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement—

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended —Contracts, other than contracts for commercial items, of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C.1352)—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (E.O.s 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Exhibit B to Part 1274—Reports

1. Individual Procurement Action Report (NASA Form 507)

The Agreement Officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

2. Property Reporting.

As provided in paragraph (f) of § 1274.923, an annual NASA Form (NF) 1018, NASA Property in the Custody of Contractors, will be submitted by October 31 of each year. Negative annual reports are required. A final

report is required within 30 days after expiration of the agreement (also see paragraph (g) of 1274.923 for electronic submission guidance).

3. Disclosure of Lobbying Activities (SFLLL)

(a) Agreement Officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions imple mented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

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Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 573 et al.
Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 574, 576, 579

[Docket No. NHTSA 2001–8677; Notice 3]

RIN 2127–AI25

Reporting of Information and

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• *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.

• *Property damage.* These

years for tires and child restraint systems).

A manufacturer or brand name owner of tires will not have to report any information other than information relating to incidents involving deaths for limited production tires and other tires exempted from the Uniform Tire Quality Grading Standards pursuant to 49 CFR 575.104(c)(1). In addition, tire manufacturers need only report incidents involving deaths for tires

final rule (those documents currently required under 49 CFR 573.8), will be due not later than 5 working days after the end of the month in which they are generated by the manufacturer, beginning with April 2003.

To help NHTSA identify trends that could indicate potential safety problems, manufacturers will be required, on a one-time basis, to report the number of warranty claims or adjustments and the number of field

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 574, 576, 579

[Docket No. NHTSA 2001–8677; Notice 3]

RIN 2127–AI25

Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts a regulation that will implement the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to report information and to submit documents about customer satisfaction campaigns and other activities and events that may assist NHTSA to promptly identify defects related to motor vehicle safety.

We are also adopting amendments to NHTSA's general and tire recordkeeping regulations to assure that manufacturers retain relevant information.

The final rule also moves certain existing provisions of NHTSA's regulations to other parts of the Code of Federal Regulations.

DATES: *Effective Date:* The effective date of this final rule is August 9, 2002. *Applicability Dates:* Various provisions of this final rule are applicable on the dates stated in the regulatory text. See 49 CFR 579.28. *Petitions for Reconsideration:* Petitions for reconsideration of the final rule must be received not later than August 26, 2002.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

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I. Summary of the Final Rule

In our notice of proposed rulemaking (NPRM) (66 FR 66190), we proposed to divide manufacturers of motor vehicles and motor vehicle equipment into two groups with different responsibilities for reporting information that could indicate the existence of potential safety-related defects. There was no opposition to this approach, and we are adopting it.

The first group consists of larger manufacturers of motor vehicles, and all manufacturers of child restraint systems and tires. In general, the larger vehicle manufacturers must report separately on four categories of vehicles (if they produced, imported, offered for sale, or sold 500 or more of a category annually in the United States): light vehicles, medium-heavy vehicles and all buses, trailers, and motorcycles.

- *Deaths.* These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in foreign countries that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.

- *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.
- *Property damage.* These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that occurred in the United States that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.
- *Consumer complaints.* These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems that occurred in the United States. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims, as discussed below.
- *Warranty claims information.* These manufacturers must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they receive that are related to problems with certain specified components and systems that occurred in the United States. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.
- *Field reports.* These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems that occurred in the United States. In addition, manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers.
- *Production.* These manufacturers must report the number of vehicles, child restraint systems, and tires, by make, model, and model year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).

These manufacturers must separately report the numbers identified above for each model and model year, as the rule defines it (ten years for vehicles and five years for tires and child restraint systems).

A manufacturer or brand name owner of tires will not have to report any information other than information relating to incidents involving deaths for limited production tires and other tires exempted from the Uniform Tire Quality Grading Standards pursuant to 49 CFR 575.104(c)(1). In addition, tire manufacturers need only report incidents involving deaths for tires other than passenger car tires, light truck tires, or motorcycle tires. (Manufacturers should note these exclusions in reviewing the reporting requirements under this rule, as we may not repeat it in all instances in which it may apply).

The second group of manufacturers consists of all other manufacturers of motor vehicles and motor vehicle equipment, i.e., vehicle manufacturers insofar as they produced, imported, or sold in the United States fewer than 500 light vehicles, medium-heavy vehicles (including buses), motorcycles, or trailers annually, manufacturers of original motor vehicle equipment and manufacturers of replacement motor vehicle equipment other than child restraint systems and tires. These manufacturers must report the same information about incidents involving deaths as the first category, but are not required to report any other information.

In addition, all vehicle and equipment manufacturers in both groups must provide copies of all documents sent or made available to more than one dealer, distributor, owner, purchaser, lessor or lessee, in the United States with respect to customer satisfaction campaigns, consumer advisories, recalls, or other activities involving the repair or replacement of vehicles or equipment.

Reports must be submitted electronically, in specified formats. The components and systems on which reporting is required will vary, depending on the type of product involved. Documents such as consumer advisories must be submitted electronically or in hard copy.

With respect to the information required to be submitted under this rule, there will be four reporting periods each calendar year of three months each. The first such report will cover the second calendar quarter of 2003. Reports, including copies of field reports, will be due not later than 30 days after the end of a calendar quarter, except for the final three calendar quarters of 2003, when we are allowing a period of 60 days after the end of the calendar quarter. Documents other than field reports that are required to be submitted under this final rule (those documents currently required under 49 CFR 573.8), will be due not later than 5 working days after the end of the month in which they are generated by the manufacturer, beginning with April 2003.

To help NHTSA identify trends that could indicate potential safety problems, manufacturers will be required, on a one-time basis, to report the number of warranty claims or adjustments and the number of field reports for each calendar quarter during the three-year period from April 1, 2000 through March 31, 2003, the date preceding the beginning of the first reporting period that is established by the final rule, April 1, 2003. Submission of copies of field reports is not required under this one-time provision.

The early warning reporting requirements will comprise Subpart C of a new 49 CFR Part 579. Following final rulemaking, the foreign defect reporting requirements proposed on October 11, 2001 (66 FR 51907) will comprise Subpart B of Part 579. This rule adopts a Subpart A containing general requirements that will apply to both Subparts B and C, except where otherwise stated.

We are also adopting amendments that extend the recordkeeping requirements of 49 CFR Part 576 to child restraint system and tire manufacturers:

- These manufacturers will now be required to maintain the same types of records that manufacturers of vehicles have been required to keep under 49 CFR Part 576.
- Manufacturers of tires will also be required to retain for five years records of purchasers of tires they manufacture. Manufacturers of motor vehicles will be required to retain for five years records of tires on each vehicle manufactured and the purchaser of each vehicle. Currently, 49 CFR Part 574 requires that these records be retained for three years.

In addition, the record retention requirements have been expanded to require all manufacturers to retain, for five years, the underlying records on which the information they provide NHTSA under the early warning rule is based. (For manufacturers of equipment other than tires and child restraint systems, this is limited to records related to incidents referred to in claims and notices involving deaths.)

The early warning final rule, the final rule pertaining to foreign defect campaigns, and current 49 CFR 573.8 will be codified in 49 CFR Part 579 (2002). Part 573 is being amended to include the provisions of current Part 579 (2001) with respect to defect and noncompliance responsibility. These are

reflected in amendments to the scope, purpose, and definitions of Part 573, and the addition of the substantive requirements of existing Section 579.5 as a new Section 573.5.

The final rule is effective August 9, 2002. The first quarterly reporting period for early warning information begins on April 1, 2003. Quarterly reports for calendar 2003 will not be due until two months following the end

that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States and which concerns—

(i) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment; or

(ii) customer satisfaction campaigns, consumer advisories, recalls, or other activity

States. The December 21, 2001 early warning rule NPRM stated that the definitions proposed in Subpart A of that NPRM would apply to the rule regarding notification of foreign safety campaigns.

In response to the NPRM on the early warning rule, we received comments from a variety of sources. Motor vehicle manufacturers and associated trade organizations who commented were

III. Manufacturers That Will Be Covered by the New Reporting Requirements

A. Scope of the Term "manufacturer"

The proposed rule dealt primarily with the information that would be provided to NHTSA. Most of the information to be provided involved activities and events related to motor vehicle safety in vehicles and

Further, at proposed Section 579.4, we stated that the term "manufacturer" is used as defined in 49 U.S.C. 30102; however, for purposes of Part 579, it also "includes any parent corporation of the manufacturer, any subsidiary or affiliate of the manufacturer, any subsidiary or affiliate of any parent corporation of the manufacturer, and any legal counsel retained by the manufacturer."

importer as its reporting entity but failed to assure that the importer was provided with the information required to be reported. *See id.* at 66194.

In addition, in the preamble to the NPRM, at Section III.D, we explained that we proposed to deem information (such as claims-related information) that is initially received by representatives of the manufacturer (such as their registered agents and outside counsel) to be in the possession of the

reflected in amendments to the scope, purpose, and definitions of Part 573, and the addition of the substantive requirements of existing Section 579.5 as a new Section 573.5.

The final rule is effective August 9, 2002. The first quarterly reporting period for early warning information begins on April 1, 2003. Quarterly reports for calendar 2003 will not be due until two months following the end of the quarter, (e.g., the first quarterly report will be due on August 31, 2003). Thereafter, beginning with the first quarter of calendar 2004, information is due 30 days following the end of the reporting period. The one-time report of historical information will be due September 30, 2003, approximately 90 days following the end of the first reporting period. The documents that are required to be submitted on a monthly basis will be due five days after the end of the month in which they are generated, beginning with April 2003.

II. Background: The TREAD Act (Public Law 106–414)

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act was enacted on November 1, 2000, Public Law 106–414.

The TREAD Act amends 49 U.S.C. 30166 to add a new subsection (m), Early warning reporting requirements. This subsection provides for NHTSA to require manufacturers of motor vehicles and motor vehicle equipment to submit information, periodically or upon NHTSA's request, that includes claims for deaths and serious injuries, property damage data, communications to customers and others, information on incidents resulting in fatalities or serious injuries from possible defects in vehicles or equipment in the United States or in identical or substantially similar vehicles or equipment in a foreign country, and other information that may assist NHTSA in identifying potential safety-related defects.

Sections 30166(m)(3), (4), and (5) address, respectively, the elements to be reported, the handling and utilization of reported information, and periodic review and update of the final rule.

The crux of the early warning provisions is Section 30166(m)(3), which states:

> (3) Reporting elements.
>
> (A) *Warranty and claims data.* As part of the final rule * * * the Secretary [of Transportation] shall require manufacturers of motor vehicles and motor vehicle equipment to report, periodically or upon request by the Secretary, information which is received by the manufacturer derived from foreign and domestic sources to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States and which concerns—
>
> (i) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment; or
>
> (ii) customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.
>
> (B) Other data. As part of the final rule * * *, the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.
>
> (C) Reporting of possible defects. The manufacturer of a motor vehicle or motor vehicle equipment shall report to the Secretary, in such manner as the Secretary establishes by regulation, all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the United States, or in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

The Secretary has delegated to the NHTSA Administrator the authority to carry out 49 U.S.C. Chapter 301 (49 CFR 1.50(a)).

On January 22, 2001, we issued an advance notice of proposed rulemaking (ANPRM) to discuss and to solicit comments on the ways in which NHTSA may best implement these statutory provisions (66 FR 6532). After considering the many comments provided in response to the ANPRM, we followed this with a notice of proposed rulemaking (NPRM), published on December 21, 2001 (66 FR 66190).

On October 11, 2001, we issued a separate NPRM that would implement another provision of the TREAD Act, adding Section 30166(l) to Title 49 (66 FR 51907). Subsection (l) also applies to manufacturers of motor vehicles and motor vehicle equipment; it requires them to notify us of safety recalls and other safety campaigns that they conduct outside the United States, or are ordered by a foreign government to conduct abroad, on vehicles and equipment identical or substantially similar to those sold in the United States. The December 21, 2001 early warning rule NPRM stated that the definitions proposed in Subpart A of that NPRM would apply to the rule regarding notification of foreign safety campaigns.

In response to the NPRM on the early warning rule, we received comments from a variety of sources. Motor vehicle manufacturers and associated trade organizations who commented were Ford Motor Company (Ford), the Truck Manufacturers Association (TMA), the Association of International Automobile Manufacturers, Inc. (AIAM), the Recreational Vehicle Industry Association (RVIA), Harley-Davidson Motor Company (Harley-Davidson), Nissan North America, Inc. (Nissan), Volkswagen of America, Inc. (for itself, Volkswagen AG and Audi AG) (Volkswagen), American Honda Motor Company (Honda), the Motorcycle Industry Council (MIC), Blue Bird Body Company (Blue Bird), General Motors Corporation (GM), Gillig Corporation (Gillig), Spartan Motors Chassis, Inc. (Spartan), Porsche Cars North America, Inc. (Porsche), Fleetwood Enterprises, Inc., (Fleetwood), Utilimaster Corporation (Utilimaster), and the Alliance of Automobile Manufacturers (the Alliance). The tire industry was represented by the Rubber Manufacturers Association (RMA). The Juvenile Products Manufacturers Association (JPMA) represented the child restraint system industry. Other motor vehicle equipment manufacturers and associated trade organizations who commented were the American Motorcyclist Association (AMA), Johnson Controls (Johnson), the Waste Equipment Technology Association (Wastec), the Specialty Equipment Market Association (SEMA), the National Truck Equipment Association (NTEA), the Motor and Equipment Manufacturers Association (MEMA) for itself and the Original Equipment Suppliers Association, the National Automobile Dealers Association (NADA), Delphi Automotive Systems, LLC (Delphi), Webb Wheel Products, Inc. (Webb), and Bendix Commercial Vehicle Systems, LLC (Bendix). We also received comments from Public Citizen (PC), Consumers Union (CU), and a number of individuals concerned about a reference in the NPRM to motorcycle apparel.

These comments have provided us with numerous insights in developing this final rule. This completes the first phase of our early warning rulemaking. Consistent with Section 30166(m)(5), we will periodically review the final rule and consider possible amendments.

III. Manufacturers That Will Be Covered by the New Reporting Requirements

A. Scope of the Term "manufacturer"

The proposed rule dealt primarily with the information that would be provided to NHTSA. Most of the information to be provided involved activities and events related to motor vehicle safety in vehicles and equipment in the United States; some information would be required with regard to some claims related to deaths in foreign countries involving motor vehicles or equipment that are identical or "substantially similar" to vehicles or equipment that are sold in the United States.

The NPRM addressed who was obligated to provide the information required under the proposed rule. We recognized that the information identified in the proposed rule could be maintained within various sub-entities of a multinational corporation. To assure that we received the information and to preclude non-reporting on the basis that the information was held by an entity not covered by the regulation, we proposed to define the covered entity—the manufacturer—inclusively to include corporate parents, subsidiaries and affiliates. Under this formulation, the information identified in the proposed rule would have to be submitted to NHTSA regardless of where it was maintained in a multinational corporation with numerous subsidiaries. At the same time, as a practical matter, we wrote the reporting obligations such that they would most likely be carried out by the entity that has traditionally reported to NHTSA.

In particular, in the NPRM, at Section 579.3(a) ("Application"), we stated "This part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all vehicles and equipment that have been offered for sale, sold, or leased by the manufacturer, any parent corporation of the manufacturer, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation of the manufacturer." In subsection (b), we stated that "[i]n the case of any report required under this part, compliance by either the fabricating manufacturer or the importer of the motor vehicle or motor vehicle equipment shall be considered compliance by both." [1]

Further, at proposed Section 579.4, we stated that the term "manufacturer" is used as defined in 49 U.S.C. 30102; however, for purposes of Part 579, it also "includes any parent corporation of the manufacturer, any subsidiary or affiliate of the manufacturer, any subsidiary or affiliate of any parent corporation of the manufacturer, and any legal counsel retained by the manufacturer."

In the NPRM, we stated that the TREAD Act expanded manufacturers' responsibilities with respect to foreign events and activities and thus has extraterritorial effect. As we noted, in its comments on the ANPRM, the Alliance recognized that the TREAD Act was clearly written by Congress to apply to persons and activities outside the United States, and that the rule could reasonably require reports from foreign companies manufacturing vehicles for sale in the United States as long as the reports related to issues that could arise in those vehicles. Under the NPRM, foreign entities would be required to provide the same information as we would require for domestic manufacturers, but only with respect to vehicles and equipment that they sell in the United States and to incidents involving death outside the United States that involve identical or substantially similar motor vehicles or equipment. *See* 66 FR at 66193–66194. We explained that, in view of both the definition of manufacturer and the specific provisions of Section 30166(m), we believed that the agency has authority to require a report from the entity that maintains the information, from the fabricating manufacturer, and from the importer of the vehicle or equipment, but that we were proposing to require reporting only by either the fabricating manufacturer or by the importer, because this was consistent with current reporting under 49 CFR Part 573 and with our recent proposals for reporting of safety recalls and other safety campaigns in foreign countries, pursuant to 49 U.S.C. 30166(l). *See* 66 FR at 66193–66194. And we observed that a multinational corporation must adopt practices to ensure that all relevant information on matters for which reports are required is made available to that corporation's designated reporting entity, so that the designated entity timely provides the information to NHTSA. We stated that a multinational corporation would be violating the law if it designated its U.S. importer as its reporting entity but failed to assure that the importer was provided with the information required to be reported. *See id.* at 66194.

In addition, in the preamble to the NPRM, at Section III.D, we explained that we proposed to deem information (such as claims-related information) that is initially received by representatives of the manufacturer (such as their registered agents and outside counsel) to be in the possession of the manufacturer, and thus to require each manufacturer to ensure that entities it has the ability to control furnish it with the information covered by this rule so that the manufacturer may make a full and timely report to NHTSA. However, we also stated explicitly that we were not proposing to require such representatives to report directly to NHTSA. *See* 66 FR at 66194.

Many manufacturers and trade associations commented on various aspects of the scope of "manufacturer," particularly with respect to subsidiaries and affiliates (including law firms). These commenters included AIAM, the Alliance, Delphi, Ford, GM, Harley-Davidson, Honda, Bendix, MEMA, Nissan, RMA, TMA, Volkswagen, and Webb. Ford, GM, Nissan, and Volkswagen also stated that they supported the Alliance's comments; Honda also stated that it supported AIAM's comments. The comments are discussed by issue, below.

1. Proposed Requirements for Reporting About Events in Foreign Countries

Foreign manufacturers that manufacture vehicles or equipment for sale in the United States have long been subject to the reach of the American legal and regulatory system. They are subject to the requirement that they certify that all their vehicles or equipment imported into the United States comply with applicable Federal motor vehicle safety standards. 49 U.S.C. 30115. They are subject to recall provisions. 49 U.S.C. 30117–120. They have been required to provide to NHTSA copies of all notices, bulletins, and other communications to more than one U.S. distributor, dealer, or purchaser regarding defects. 49 U.S.C. 30166(f) and 49 CFR 573.8. They are subject to record keeping and reporting provisions. 49 U.S.C. 30166 and 49 CFR Part 576. The Vehicle Safety Act requires such manufacturers to appoint agents for the service of process in actions involving this agency (49 U.S.C. 30164; see 49 U.S.C. 30102(a)(5)(A)). Both foreign and domestic manufacturers also appoint registered agents for the service of judicial process in general; these may be, but are not

[1] The text of proposed subsection (b) directly parallels the existing Code of Federal Regulations provision that governs the responsibilities of fabricating manufacturers and importers with respect to the filing of reports informing NHTSA of defective and noncompliant motor vehicles and motor vehicle equipment and of the progress of recall campaigns. *See* 49 CFR 573.3(b).

required to be, the same agents who register with NHTSA. Furthermore, foreign manufacturers that have U.S. subsidiaries do not rely exclusively on their American subsidiaries to conduct business before this agency. Rather, both Asian and European manufacturers have routinely participated in meetings at NHTSA headquarters in defects investigations, and even appear in

creates a sufficient nexus to the United States.

As we indicated in the preamble to the NPRM (*see* 66 FR at 66193), we dealt with the nexus issue in the provisions governing the substance of the reports, rather than in the definition or "application" sections. However, to put this matter to rest, in response to the comments from the Alliance and others,

recalls, foreign deaths, or other TREAD Act categories was in the possession of a subsidiary that was not a manufacturer, assembler, or importer for resale, as referred to above, there would be no legal obligation to report such TREAD Act-related information to NHTSA.

We disagree with this assertion. Our proposal to include the parent and subsidiaries and affiliates within the

headquartered abroad, with one or more U.S. subsidiaries.[2] Similarly, the major tire producers are multinational corporations. Bridgestone/Firestone and Michelin are headquartered abroad, with U.S. and other subsidiaries.

Safety-related information could be maintained in a variety of locations by a variety of corporate parents and subsidiaries. For example, consider a recall in Venezuela conducted by a

Congress to more expressly legislate NHTSA's authority.

The commenters' views are even narrower than, and not consistent with, the definition of manufacturer in Section 30102(a)(5). Under that section manufacturer means a person—(A) manufacturing or assembling motor vehicles or equipment or (B) importing them for resale. To give meaning to all words, particularly the word

Also, our approach to requiring information from multinational organizations is consistent with case law in which in a multinational corporate context, foreign parent, subsidiary and affiliate corporations of a party corporation have been required to provide information in litigation. *E.g., In re Richardson-Merrell, Inc.* (Bendectin Product Liability Litigation), 97 F.R.D. 481 (S.D. Ohio 1983) (compelling

required to be, the same agents who register with NHTSA. Furthermore, foreign manufacturers that have U.S. subsidiaries do not rely exclusively on their American subsidiaries to conduct business before this agency. Rather, both Asian and European manufacturers have routinely participated in meetings at NHTSA headquarters in defects investigations, and even appear in litigation involving this agency.

As acknowledged by the Alliance in its comments on the ANPRM, the TREAD Act was clearly intended by the Congress to apply extraterritorially. The Alliance stated that this creates a "whole new body of law and potential regulation" in the area of gathering and reporting of information from persons overseas on their overseas activities.

In the NPRM, we focused primarily on information involving events or activities in the United States and to a lesser degree on certain foreign claims involving vehicles and equipment that are identical or substantially similar to those sold in the United States. As noted above, we proposed, at Section 579.3(a) and Section 579.4(a), to adopt a single, broad definition of manufacturer to assure that we received this information, be it in the possession of a domestic or foreign component of the manufacturer.

Several commenters, including the Alliance, Nissan, VW, and AIAM, objected to the breadth of our proposed definition of manufacturer. The Alliance and Nissan asserted that the proposed definition impermissibly failed to articulate a nexus between the covered manufacturers and the United States, and that in the absence of such a nexus, the proposed definition amounted to an attempt to assert extraterritorial jurisdiction in violation of international law. VW stated that NHTSA appeared to have recognized in the preamble to the NPRM that reporting obligations must be limited to foreign entities that manufacture vehicles or equipment for export to the U.S. (citing 66 FR 66193), but that NHTSA had failed to incorporate this recognition into the proposed regulatory text.

In our opinion, the proposed regulations were based upon and incorporated an adequate nexus to the United States. In addition to addressing events and acts in the United States, consistent with the TREAD Act, we required the submission of relatively limited information about claims for deaths in foreign motor vehicles that are "substantially similar" to vehicles that are sold in the United States. The substantial similarity of those foreign vehicles to their American counterparts creates a sufficient nexus to the United States.

As we indicated in the preamble to the NPRM (*see* 66 FR at 66193), we dealt with the nexus issue in the provisions governing the substance of the reports, rather than in the definition or "application" sections. However, to put this matter to rest, in response to the comments from the Alliance and others, we have decided to modify proposed Section 579.3(a), Application, by inserting, after the word "leased," the phrase "in the United States" and by inserting, at the very end, with respect to vehicles and equipment offered for sale, sold or leased in foreign countries, the phrase "substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States." This will not make a substantive change in what we proposed.

We note further that we did not receive any comments on this aspect of the NPRM from any other branch or office of the U.S. government or from any foreign government.

2. Assertion that extending the definition of "manufacturer" to include subsidiaries and affiliates exceeds our statutory authority

Some commenters challenged the breadth of coverage of proposed Sections 579.3(a) and 579.4(a) based on the assertion that we lack statutory authority to include subsidiaries and affiliates within the definition of "manufacturer." They contended that our proposal to do so violates congressional intent to limit the early warning requirements to those entities that fall within the literal Safety Act definition of the term—a person manufacturing or assembling vehicles or equipment, or importing same for resale (49 U.S.C. 30102(a)(5)(A), (B)). This position was presented in the abstract, without any presentation of where the parent companies' headquarters, importing and exporting subsidiaries, and assembly operation subsidiaries are located, and without any showing whether or how, under their view of the proper definition of manufacturer, NHTSA would be assured of receiving information specifically covered by section 3 of the TREAD Act; e.g., information on foreign safety recalls and other foreign safety campaigns and information on incidents in foreign countries involving fatalities alleged or proven to be caused by a possible defect in a motor vehicle that is identical or substantially similar to one offered for sale in the United States. *See* 49 U.S.C. 30166(l),(m)(3)(C). Implicit in their view was that, if information on foreign recalls, foreign deaths, or other TREAD Act categories was in the possession of a subsidiary that was not a manufacturer, assembler, or importer for resale, as referred to above, there would be no legal obligation to report such TREAD Act-related information to NHTSA.

We disagree with this assertion. Our proposal to include the parent and subsidiaries and affiliates within the term "manufacturer" was derived from our authority to implement 49 U.S.C. 30166(l) and (m). These sections invest NHTSA with substantive rulemaking authority and require that we exercise it. One element of this authority to issue substantive rules is the ability to construe the statute. This includes interpreting statutory provisions, such as the definition of "manufacturer." Moreover, our interpretation is entirely consistent with congressional intent. The manifest intent was that NHTSA have the information to assist in promptly identifying safety-related defects. In contrast, under the industry commenters' position, multinational companies would not have to report foreign recall and early warning information if it was not held by entities that fit squarely into their definition of manufacturer—the assembler or the importer for resale. This is inconsistent with the TREAD Act.

The TREAD Act was enacted in the context of substantial numbers of deaths that occurred in the United States after defect-related deaths had occurred in South America and the Middle East. The multinational corporations that made and sold the vehicle (Ford Explorer) and equipment (Firestone tires) were aware of assertions that their products had caused these deaths and had conducted safety campaigns in foreign countries. They had not informed NHTSA of these matters and NHTSA was not aware of them until after it opened a formal defect investigation in the spring of 2000. Congress sought to correct this reporting deficiency, among other things.

Congress was aware that the vehicle and tire industries are comprised of multinational corporations, most of which have their principal place of business abroad, with numerous operations and subsidiaries around the world. With increased globalization and efforts to lower labor costs, this includes assembly operations in numerous countries. Of the larger light vehicle manufacturers, only two (GM and Ford) are based domestically, and they have numerous international subsidiaries. The remainder, including Honda, Nissan, Toyota, Volkswagen, DaimlerChrysler AG, and BMW, are

headquartered abroad, with one or more U.S. subsidiaries.[2] Similarly, the major tire producers are multinational corporations. Bridgestone/Firestone and Michelin are headquartered abroad, with U.S. and other subsidiaries.

Safety-related information could be maintained in a variety of locations by a variety of corporate parents and subsidiaries. For example, consider a recall in Venezuela conducted by a multinational corporation based in Europe of vehicles that are substantially similar to those that are assembled by a subsidiary in Mexico and imported by a U.S. subsidiary. Information on that foreign recall ordinarily would not have been directed to these assembling and importing subsidiaries. To interpret the legislation as applying only to assemblers and importers would be to eviscerate the TREAD Act, as it would amount to acceptance of non-reporting. In enacting the TREAD Act, Congress did not differentiate based on corporate structure and location. Congress likewise did not expect us to do so.

Moreover, while the TREAD legislation was being formulated, Jacques Nasser, then the CEO of Ford and as the representative of the automobile industry, agreed that the industry would notify NHTSA of recalls in foreign countries involving vehicles sold in the United States. S. Rep. No. 106–423 at 2–3. Also, the Alliance member companies (BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volkswagen, and Volvo) sent a letter to NHTSA in which they committed to report to NHTSA their safety recalls and other safety campaigns that are conducted in a foreign country on a vehicle or component part that is also offered for sale in the United States. They did not limit this commitment to recalls and campaigns documented in the hands of corporate entities that are assemblers of the products or U.S.-based subsidiaries that are importers. In light of Mr. Nasser's statement and the Alliance members' commitment, which did not suggest a narrow meaning of the word manufacturer, there was no need for the Congress to more expressly legislate NHTSA's authority.

The commenters' views are even narrower than, and not consistent with, the definition of manufacturer in Section 30102(a)(5). Under that section manufacturer means a person—(A) manufacturing or assembling motor vehicles or equipment or (B) importing them for resale. To give meaning to all words, particularly the word manufacturing, manufacturer must be broader than mere assemblers and importers. The term manufacturer includes an enterprise. *See* American Heritage Dictionary (4th ed.)(manufacturer is "a person, an enterprise, or an entity that manufactures something."). This is consistent with our longstanding interpretation of the Vehicle Safety Act, which, in the course of numerous amendments, Congress has not rejected. For example, under 49 U.S.C. 30115, a "manufacturer" must certify that the vehicle complies with standards. Under our implementing regulations, the term manufacturer covers more than the assembler or importer. Under 49 CFR 567.4(g)(1)(i), for example, if a vehicle is assembled by a corporation that is controlled by another corporation that assumes responsibility for conformity with the standards, the name of the controlling corporation may be used as the manufacturer, even though it is not the assembler. See NHTSA interpretation of October 13, 1981 regarding PACCAR. This would allow, for example, parent Volkswagen of Germany to certify vehicles made by a Mexican subsidiary and imported into the U.S., DaimlerChrysler AG of Germany to certify M Class sport utility vehicles (SUVs) assembled by a subsidiary in Alabama, and Isuzu Motors Ltd. (of Japan) to certify Isuzu Rodeos assembled in Indiana. The commenters' position on the meaning of manufacturer is inconsistent with 49 CFR 567.4(g)(1)(i).

The enterprise view of a manufacturer is consistent with recent case law. *See Daimler-Benz Aktiengesellschaft* v. *Olson*, 21 S.W. 3d 707; 2000 Tex. App. LEXIS 3985 (2000), *cert. den. sub nom. DaimlerChrysler* v. *Olson*, _S.Ct._, 70 U.S.L.W. 3707 (2002) (rejecting allegation by Daimler-Benz that the court lacked jurisdiction over it because it is a German corporation not doing business in Texas, and stating that "[o]ur review of this evidence shows Daimler-Benz as a company devoted to selling its cars worldwide. To achieve this goal, Daimler-Benz has established subsidiaries in important markets around the globe * * *" 21 S.W.3d at 722–723).

Also, our approach to requiring information from multinational organizations is consistent with case law in which in a multinational corporate context, foreign parent, subsidiary and affiliate corporations of a party corporation have been required to provide information in litigation. *E.g., In re Richardson-Merrell, Inc.* (Bendectin Product Liability Litigation), 97 F.R.D. 481 (S.D. Ohio 1983) (compelling discovery from multinational drug manufacturer's domestic and foreign subsidiaries). Courts have applied a broad, multifaceted view of control sufficient to compel responses to discovery. For example, courts have held that subsidiary and affiliate corporations responsible for the sale of products in the United States have sufficient control over their parent's documents in order to be compelled to produce them. *See, Cooper Industries, Inc.* v. *British Aerospace, Inc.*, 102 F.R.D. 918 (S.D. N.Y. 1984) (ordering defendant that distributed and serviced airplanes in the U.S. and was a wholly owned corporate affiliate of plane manufacturer British Aerospace Public Limited Co. to produce documents believed to be in its British affiliate's files); *Afros S.p.A.* v. *Krauss-Maffei Corp.*, 113 F.R.D. 127 (D. Del. 1986) (ordering subsidiary to produce German parent corporation's documents where subsidiary was a wholly owned sales arm of parent and operating as exclusive seller of parent's products in the U.S.); *Ferber* v. *Sharp Electronics Corp.*, 1984 U.S. Dist. LEXIS 24861, *8, 40 Fed. R. Serv. 2d 950 (S.D.N.Y. 1984) (requiring wholly owned subsidiary of Japanese corporation that acted as parent's U.S. distributor and seller with respect to calculators that allegedly infringed patent to produce information held by parent); *In re Uranium Antitrust Litigation*, 480 F. Supp. 1138, 1153 (N.D. Ill. 1979) (party not required to have actual managerial power over the foreign corporation, but rather that there be a close coordination between them); *see also, Camden Iron and Metal, Inc.* v. *Marubeni America Corp.*, 138 F.R.D. 438 (D.N.J. 1991) (requiring U.S. based subsidiary corporation to produce Japanese parent's documents where parent had participated in negotiations over contract which became subject of present litigation) citing, *Gerling Int'l Ins Co.* v. *Commissioner of Internal Revenue*, 839 F.2d 131 (3d Cir. 1988); *Uniden America Corp.* v. *Ericsson Inc.*, 181 F.R.D. 302, 307 (M.D. N.C. 1998) (ordering party corporation to produce responsive records of sister, non-party corporation where companies were owned by same parent, which had

[2] For example, Toyota Motor Corporation is the Japanese parent. Its U.S. sales arm is Toyota Motor Sales U.S.A., Inc. Its public relations are under Toyota Motor North America, Inc. Toyota Motor Manufacturing, North America, Inc. oversees manufacturing companies in North America. Toyota Camrys and Avalons are assembled by Toyota Motor Manufacturing, Kentucky, Inc. Toyota pickup trucks are assembled by Toyota Motor Manufacturing, Indiana, Inc. Toyota Motor Manufacturing Canada Inc. in Ontario assembles Corollas, which are imported. Toyota's agent is Toyota Technical Center, U.S.A., Inc., which also submits certificates of conformity under the Clean Air Act.

power over them, shared information regularly, and sister corporation had provided party corporation documents to assist in present litigation); *Alimenta* v. *Anheuser-Busch Co.*, 99 F.R.D. 309, 313 (N.D. Ga. 1983) (sister corporations acted Aas one" in transaction); *Soletanche and Rodio, Inc.* v. *Brown & Lambrecht Earth Movers, Inc.*, 99 F.R.D. 269, 272 (N.D. Ill. 1983) (requiring

burdens that the proposed reporting rule would place on them, their subsidiaries, and their affiliates. We did not propose to require a vehicle manufacturer to search the records of its automobile-financing subsidiary for information responsive to the early warning requirements. Also, we did not propose to require reporting by such entities. However, if a vehicle manufacturer

information in sufficient time for the reporting entity to submit it NHTSA in a timely manner. *See* 66 FR at 66194 and proposed 49 CFR Section 579.3(b). "In the case of any report required under this part, compliance by either the fabricating manufacturer or the importer of the motor vehicle or motor vehicle equipment shall be considered compliance by both." We thought that this provision would eliminate

under the rule. Reports may be submitted by Toyota as to Toyotas, and GM as to Chevrolets or Geos. Alternatively, Toyota, GM, or NUMMI may report as to all such vehicles.

The situation is similar with respect to vehicles manufactured under production agreements. For example, assume that Isuzu received consumer complaints about a brake problem in Rodeo vehicles and Honda received

relationship, each company may report early warning information to us separately without duplication, or one or the other may report on behalf of both (we would prefer a combined report, regardless of which entity actually submits it).

The next such situation involves foreign subsidiaries of U.S. corporations that manufacture vehicles that are sold in the U.S. For example, GM owns Saab

generation Mondeo, which was manufactured and sold in the U.K., is substantially similar to the Ford Contour and Mercury Mystique, which recently were sold in the U.S. Likewise, assume that the U.K. Vauxhall Omega and the German Opel Omega are substantially similar to the Cadillac Catera, which GM previously sold in the U.S. The assembler is a foreign company. Information about the

power over them, shared information regularly, and sister corporation had provided party corporation documents to assist in present litigation); *Alimenta* v. *Anheuser-Busch Co.*, 99 F.R.D. 309, 313 (N.D. Ga. 1983) (sister corporations acted Aas one" in transaction); *Soletanche and Rodio, Inc.* v. *Brown & Lambrecht Earth Movers, Inc.*, 99 F.R.D. 269, 272 (N.D. Ill. 1983) (requiring production of foreign parent's documents in patent infringement case where French, non-party, corporate parent had potential benefit in wholly owned, American subsidiary's winning offensive litigation); *First Nat'l City Bank* v. *I.R.S.*, 271 F.2d 616, 618 (2d Cir. 1959) (upholding subpoena requiring New York City bank to produce records located in its office in Panama).

Finally, our approach to requiring a multinational corporate enterprise to provide reports is consistent with the current regulatory practice of some agencies regarding reporting on foreign and domestic safety-related matters by multinational corporations. *See, e.g.*, Food and Drug Administration (FDA) rules regarding post-marketing reporting of adverse events following FDA approval (21 CFR 314.80) and reporting adverse events associated with investigational new drugs awaiting FDA approval (21 CFR 312.32); EPA Office of Pesticide Programs, PRN 98–3 (*www.epa.gov/opppmsd1/PR Notices/index*).

To make our conclusions clear, we are defining "manufacturer" in Section 579.4(c), where other terms used in the early warning rule are defined.

3. Nexus to the Motor Vehicle Industry

Another frequent comment was that the proposal to include subsidiaries and affiliates lacked the required nexus to the automotive industry. The Alliance asserted that the proposal would impose reporting requirements on unrelated subsidiaries (such as insurance providers, financing providers, or car rental companies) as well as on companies that have established limited business relationships with each other. GM stated that it was unnecessary and unduly burdensome to require reporting by some 1,000 unrelated subsidiary corporations that apparently would be required to report consumer complaints or notices of deaths or injuries if reported to an employee. Nissan characterized the proposed inclusion of subsidiaries and affiliates as arbitrary and capricious, and commented that the proposal would likely trigger undesirable reporting requirements that were unintended by Congress.

We believe that the industry commenters have exaggerated the burdens that the proposed reporting rule would place on them, their subsidiaries, and their affiliates. We did not propose to require a vehicle manufacturer to search the records of its automobile-financing subsidiary for information responsive to the early warning requirements. Also, we did not propose to require reporting by such entities. However, if a vehicle manufacturer decided for any reason to move the location where it receives or stores relevant vehicle safety-related records, including its information management system, to such a subsidiary or affiliate, then the early warning rule would require a search of that subsidiary's or affiliate's records.

Thus, Honda Power Equipment Manufacturing, Inc., which makes lawn mowers and related equipment, would not have to search its records or report, even though it is a subsidiary of American Honda Motor Co., Inc. General Motors Corporation would not have to search the records of General Motors Acceptance Corporation (GMAC) if the manufacturer in the usual course of business does not keep early warning information in the files of the automobile-financing subsidiary. However, if GM decided to change its current practice and store relevant safety information in the files of GMAC, GM would be required to search that subsidiary's records when preparing its early warning reports.

To further clarify matters, we have decided to add a new Section 579.3(c), which specifies that, in obtaining the information to be submitted under the early warning rule, manufacturers, including parents, subsidiaries, and affiliates, need only review information and systems where information responsive to Subpart C of Part 579 is kept in the usual course of business. This clarification, which incorporates language from Rule 34 of the Federal Rules of Civil Procedure, will eliminate questions of unintended and unnecessary burdens of reporting on affiliates and subsidiaries that are not involved in the areas for which reporting is required.

4. Duplicate Reporting

A number of commenters complained that the proposed rule would likely result in duplicate reporting of the same events by more than one entity and thus and cause the early warning information we receive to be inaccurate. As we made clear in the NPRM, duplicate reporting was not required. We proposed to allow reporting by either fabricating manufacturers or importers, so long as the multinational corporation assures the reporting entity is provided with information in sufficient time for the reporting entity to submit it NHTSA in a timely manner. *See* 66 FR at 66194 and proposed 49 CFR Section 579.3(b). "In the case of any report required under this part, compliance by either the fabricating manufacturer or the importer of the motor vehicle or motor vehicle equipment shall be considered compliance by both." We thought that this provision would eliminate duplicate reporting from separate elements of a multinational corporation.

The comments did not discuss this provision directly, but instead, addressed the subject of duplicate reporting more generally. Nevertheless, we have considered this provision further in light of those comments. We believe that there was considerable flexibility under the proposed rule. We address situations involving complex structures and multinational corporations below, to explain that duplicate reporting is not required and to provide guidance on allowed reporting mechanisms.

Some situations involve joint ventures and production agreements. In a joint venture, two manufacturers of motor vehicles establish a separate corporation whose products each of the manufacturers sells under its own brand name. In the production agreement, one manufacturer agrees to produce vehicles for another under the second manufacturer's brand name. An example of a joint venture is New United Motor Manufacturing Inc. (NUMMI), owned jointly by GM and Toyota, which produced the Toyota Corolla and the Geo Prizm. Examples of production agreements are those between Ford and Nissan in which Ford produced the Nissan Quest as well as the Mercury Villager, and between Isuzu and Honda, under which Isuzu produced the Isuzu Rodeo as well as the Honda Passport. A term used for a vehicle such as the Passport is a "re-badged vehicle." In either case, the agency's certification regulation requires NUMMI and Ford or Isuzu, as the "actual assembler of the vehicle," to certify compliance of the vehicles they fabricate, even if sold by another company. *See* 49 CFR 567.4(g)(1).

As indicated in the Alliance's comment, NUMMI is strictly a fabricator, with no sales outlets or repair facilities of its own. Instead, its products are sold through Toyota and Chevrolet dealerships. The Alliance feared that the proposed rule might oblige Toyota to report on claims and complaints received by GM about GM vehicles, and GM to report on those received by Toyota about Toyota vehicles. Such duplicate reporting is not required

under the rule. Reports may be submitted by Toyota as to Toyotas, and GM as to Chevrolets or Geos. Alternatively, Toyota, GM, or NUMMI may report as to all such vehicles.

The situation is similar with respect to vehicles manufactured under production agreements. For example, assume that Isuzu received consumer complaints about a brake problem in Rodeo vehicles and Honda received complaints about the problem in Passport vehicles. Both Isuzu and Honda may report to us the information that they possess about the vehicles under their own brand names, or the assembler (Isuzu) may report fully for both companies. Honda is not excused from reporting the complaint and other relevant information in its information systems about the Passport on the theory that Honda is not the assembler or importer of the vehicles.

Although the likelihood is that the brand name owners, rather than the fabricator (if other than a brand name owner), will receive consumer contacts about these vehicles, and that the tire brand name owner will be contacted rather than the tire fabricator, we have decided to add a provision to Section 579.3(b), similar to Section 573.3(b), that permits an election between the fabricator and the brand name owner with respect to early warning reporting for vehicles and equipment. We are adding a definition of "brand name owner" to the Terminology section of the rule, to mean "a person that markets a motor vehicle or motor vehicle equipment under its own trade name whether or not it is the fabricator or importer of the vehicle." (This is similar to the definition of "new tire brand name owner" in 49 CFR 574.3(c)(3)). If the fabricator is the reporting entity, it must identify each company that is a brand name owner covered by the report (*see* new Section 579.28(h)), and every identified company must provide its information to the fabricator in a sufficiently timely fashion to permit the reporting company to file timely and accurate reports. The obverse is also true; i.e., if a brand name owner is reporting for itself, it must identify each fabricating manufacturer covered by the report.

Another scenario involves a situation where the domestic subsidiary of a foreign corporation assembles a vehicle that also is assembled abroad and imported. For example, in some years, Toyota manufactured some Corolla vehicles in Japan that it exported to the United States and an American subsidiary manufactured other Corollas in the United States. Under our rule, due to the parent-subsidiary relationship, each company may report early warning information to us separately without duplication, or one or the other may report on behalf of both (we would prefer a combined report, regardless of which entity actually submits it).

The next such situation involves foreign subsidiaries of U.S. corporations that manufacture vehicles that are sold in the U.S. For example, GM owns Saab of Sweden. Ford owns Volvo, Jaguar, Land Rover, and Aston Martin. This rule does not regulate corporate structure, and it does not matter whether the U.S. importer of these brands is a subsidiary of the foreign corporation or of the U.S. parent (or some other entity). We understand that consumer contacts about U.S. activities and events involving these vehicles are reported to addressees in the United States, whereas communications about foreign events involving the same or substantially similar vehicles are sent to addressees abroad. We had assumed that ordinarily the domestic parent or domestic subsidiary or subsidiaries (separate ones for, e.g., Volvo and Jaguar) would have the records about the domestic activities and events and would report to us about both the domestic and the foreign events after having obtained relevant information from the records maintained by the foreign entity. We are not requiring duplicate reports and are not requiring separate reports from the foreign entities, either limited to the foreign events, or including both foreign and domestic events. Moreover, the time may come when brands such as these are assembled by new subsidiaries in foreign countries, which would add another entity to the mix. We have decided to permit an election for parents and subsidiaries, similar to that proposed for fabricators and importers in proposed Section 579.3, and subject to the same provisos with respect to timeliness and completeness of reporting.

Finally, we consider foreign vehicles that are not exported to the U.S. but that are substantially similar to vehicles sold in the U.S. For example, Ford of the U.K. and Vauxhall Motor Co. Ltd. (owned by GM) [3] manufacture cars for the U.K. market. Although at present, these cars generally are not exported to the U.S., some of the U.K. models are substantially similar to domestic models (our decision with respect to defining "substantially similar" is discussed below). Assume, for example, the first-generation Mondeo, which was manufactured and sold in the U.K., is substantially similar to the Ford Contour and Mercury Mystique, which recently were sold in the U.S. Likewise, assume that the U.K. Vauxhall Omega and the German Opel Omega are substantially similar to the Cadillac Catera, which GM previously sold in the U.S. The assembler is a foreign company. Information about the Mondeo in the files of Ford of the U.K., and information about the Omega in the files of Vauxhall or Opel, is likely in Europe. There is no importer of the vehicle into the U.S. Nonetheless, we would allow Ford (U.S.) [4] and GM (U.S.) to obtain and report information about covered claims for deaths in the Mondeo or the Omega from the files in the U.K. or Germany. If there were such full reporting, we would not want duplicate reporting by a foreign company. To address this scenario, we will allow reporting of claims involving deaths in foreign countries by either the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer or brand name owner of the motor vehicle or motor vehicle equipment, and that shall be considered compliance by all persons. Thus, Section 579.3(b) will read as follows:

(b) In the case of any report required under subpart C of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment shall be considered compliance by all persons.

We believe that the modifications we are announcing today with respect to the definition of manufacturer will resolve any other potential problems related to duplicate reporting and will facilitate reporting in a manner that avoids duplicate reporting.

5. Suggestion to Require a "control relationship" Between Manufacturers and Covered Subsidiaries and Affiliates

Several commenters (including the Alliance, Nissan, Honda, Bendix, and MEMA) suggested that it was not appropriate to impose reporting requirements on corporate affiliates or impute to manufacturer information in the possession of affiliates over whom the manufacturer does not have a controlling interest. More constructively, Harley-Davidson stated that it would strive to accumulate early

[3] The GM website (*www.gm.com*) under "contact us" refers in its pull down menu to Vauxhalls, as well as Holdens (manufactured in Australia) and Saabs.

[4] Ford's website (*www.ford.com*) reflects its world wide operations. It has a link that states "find your local website from over 120 countries."

warning reporting information from companies it does not control and would report such information if it learned of it, but might not be able to compel it from such entities.

The manufacturers did not provide concrete examples. Multinational vehicle manufacturers, in general, own all or substantial parts of vehicle manufacturing, importing, and sales subsidiaries. For example, Nissan Motor corporations. Securities and Exchange Commission regulation 17 CFR 230.405; *see also*, 17 CFR 240.10b–18(a)(1). We have adopted this definition.

To the extent that further interpretation of these matters is needed, we will address them in the context of concrete facts in the exercise of program administration and discretion.

As indicated earlier in this preamble, them by the manufacturer that retained them; that it would be unduly burdensome for outside counsel to be required to search their records periodically for such information; and that the requirement to divulge such information might pose ethical problems or conflicts of interest for lawyers or otherwise violate proscriptions against divulging privileged information or require

preamble, it did not appear in the proposed regulatory text.

Many commenters challenged our statements regarding constructive possession, arguing that we lack statutory authority to interpret the term "possession" in 49 U.S.C. 30166(m)(4)(B) and claiming that they cannot require entities that they do not control to provide them with information. We disagree. As discussed

that may assist in the identification of safety-related defects. We must decide which manufacturers of motor vehicles would be required to submit reports under this rule, and whether different reporting requirements should apply to various categories of manufacturers. Section 30166(m)(3) does not exempt any manufacturer of motor vehicles from its coverage. On the other hand, it provides substantial discretion to the

offers for sale, imports, or sells, in the United States, fewer than 500 vehicles of each specified category in the year of the reporting period and in each of the two calendar years preceding the reporting period. This exclusion will apply to most manufacturers of multistage vehicles and alterers since the vast majority of them manufacture or sell fewer than 500 vehicles annually.

We are also excluding registered importers (RIs) of vehicles not originally

warning reporting information from companies it does not control and would report such information if it learned of it, but might not be able to compel it from such entities.

The manufacturers did not provide concrete examples. Multinational vehicle manufacturers, in general, own all or substantial parts of vehicle manufacturing, importing, and sales subsidiaries. For example, Nissan Motor Co., Ltd. (Japan) owns one hundred percent of Nissan North America, Inc. Honda Motor Co., Ltd. owns American Honda Motor Co., Inc., a subsidiary of which, Honda of America Mfg., Inc., assembles Hondas in Marysville, Ohio. Volkswagen AG owns VW of America. DaimlerChrysler AG owns DaimlerChrysler Corp. (manufacturer of Chrysler, Dodge, and Jepp vehicles), Mercedes-Benz USA, Inc. (importer of Mercedes-Benz passenger cars, formerly known as Mercedes-Benz of North America, Inc.), and Mercedes-Benz U.S. International, Inc. (assembler of M Class SUVs in Alabama). However, there are other situations where there is partial ownership. For example, Ford owns a substantial portion of Mazda Motor Corp. and DaimlerChrysler A.G. of Mitsubishi Motors Corp.

MEMA proposed a "bright line test" in which reporting requirements would be imposed only in situations in which the manufacturer has an equity ownership of at least 50 percent in the affiliate or subsidiary. MEMA did not state the basis for its proposed "50% ownership" test. We do not see any reason to adopt a "50% ownership" test in the context of early warning reporting. It is entirely possible to for one entity effectively to control another with an ownership share of far less than 50 percent. It is too difficult to generalize as to the percentage of ownership that is required for the ability to control. Moreover, there may be multiple corporations above one another in a hierarchy and the multinational corporation may not be structured in a strictly vertical mode; there may be horizontal relationships. The concept of control is adequately addressed by the terms we used. For example, a parent corporation is defined in Black's Law Dictionary "as a corporation that has a controlling interest in another corporation." A subsidiary corporation is defined as a "corporation in which the parent corporation has a controlling share." *Ibid.* An affiliate of or person affiliated with a specified person means a person that directly, or indirectly through one or more intermediates, controls or is controlled by, or is under common control with, the person specified. Ordinarily, the persons are corporations. Securities and Exchange Commission regulation 17 CFR 230.405; *see also*, 17 CFR 240.10b–18(a)(1). We have adopted this definition.

To the extent that further interpretation of these matters is needed, we will address them in the context of concrete facts in the exercise of program administration and discretion.

As indicated earlier in this preamble, we have decided to permit joint venture manufacturers, rebadging manufacturers, and others to elect a reporter. As a practical matter, this flexible approach will enable reporting requirements to be met without resolution of control issues. Based on our experience with reporting of noncompliances and defects under section 573.3, we believe that this approach is workable.

6. Proposed Application to Outside Legal Counsel

We proposed in the NPRM to include within the term manufacturer "any legal counsel retained by the manufacturer." *See* proposed Section 579.4(a). However, we did not propose to require reporting by outside counsel to manufacturers. *See* 66 FR 66194.

Our proposal to include legal counsel in the definition resulted primarily from our perception that certain "minimum specificity" information that is a precondition to reporting claims for death or injury may not be found in manufacturers' information systems. Initial claims may be very limited in detail, and it is possible that claims will not be "perfected" until outside counsel have become involved. To report, manufacturers will need information necessary to satisfy our "minimum specificity" requirement, such as the model year of the vehicle involved in a claim. Manufacturers may need to obtain this factual information from their outside counsel after those counsel receive that information.

The provision of this type of fundamental information would not violate the attorney-client privilege or present other ethical dilemmas to outside counsel. We are seeking only basic factual allegations.

Many commenters objected to our proposal to include retained legal counsel in the definition of manufacturer, and none supported it. The negative commenters included the Alliance, Nissan, Ford, GM, AIAM, Webb, Harley-Davidson, and RMA. Essentially, they asserted that inclusion of legal counsel in the definition was unnecessary because, in virtually all cases, basic relevant information known to outside counsel was made known to them by the manufacturer that retained them; that it would be unduly burdensome for outside counsel to be required to search their records periodically for such information; and that the requirement to divulge such information might pose ethical problems or conflicts of interest for lawyers or otherwise violate proscriptions against divulging privileged information or require disclosure of attorney's work product. Specifically, Nissan observed that, if the agency is concerned about abuse of claims of privilege, it could deal with this potential problem by cautioning against improper privilege claims rather than by redefining the term "manufacturer." Ford requested that the term manufacturer be modified to exclude documents contained in litigation files.

We do not agree that the proposal would impose the sorts of burdens referred to by the commenters. However, to clarify the matter, we are adding a sentence to Section 579.28(d) to specify that in situations involving a claim for death or injury where the manufacturer does not possess all the information required for "minimum specificity," and the matter is being handled by outside counsel, the manufacturer must attempt to obtain the missing information from the outside counsel. In light of this adjustment, we are eliminating outside counsel from the definition of manufacturer contained in Section 579.4(c). Where the corporate manufacturer has the information, which the Alliance claims is virtually always the case, there will be no obligation to inquire and no burden. In view of this modification, we believe that it is unnecessary to address separately the concerns raised by Nissan and Ford.

7. Constructive Notice of Information Received by Agents

In the preamble to the NPRM, we stated that we proposed to deem information that is received initially by representatives of manufacturers (such as their registered agents and outside counsel) to be information in the constructive possession of the manufacturer, and to require each manufacturer to ensure that entities it has the ability to control furnish it with relevant early warning information so that the manufacturer could make a complete and timely report to NHTSA. We also stated that we did not propose to require the representatives to report directly to NHTSA. *See* 66 FR 66194; *see also id.* at 66213—66214. However, while we addressed this subject in the

preamble, it did not appear in the proposed regulatory text.

Many commenters challenged our statements regarding constructive possession, arguing that we lack statutory authority to interpret the term "possession" in 49 U.S.C. 30166(m)(4)(B) and claiming that they cannot require entities that they do not control to provide them with information. We disagree. As discussed above, by virtue of our authority to conduct substantive rulemaking to implement the early warning reporting requirements, we are empowered to interpret statutory terms and promulgate a rule containing our interpretation.

The Vehicle Safety Act itself provides at Section 30164 for foreign manufacturers to appoint agents for the service of notices and process in administrative and judicial proceedings, and specifically states that "service on the agent is deemed to be service on the manufacturer." *Id.* at 30164(b). Likewise, a common requirement under state law is the appointment of registered agents, and corporations are deemed to be served upon service on the registered agent. Therefore, we have concluded that, as in Section 30164(b), it is appropriate to impute the information contained in such claims to the manufacturer who is served via the appointed agent. Accordingly, in this final rule, we are adding a specification (Section 579.28(e)) stating that receipt of a claim by an agent of a manufacturer registered under State law or designated under the Vehicle Safety Act by a manufacturer offering vehicles or equipment for import shall be deemed received by the manufacturer. However, upon further consideration, we have concluded that it is not necessary to refer to the concept of constructive possession in the terminology or application sections of this rule. The provisions of this rule that require reporting of information in the possession of manufacturers and their subsidiaries, parents, and affiliates with respect to vehicles and equipment that they offer for sale in the United States and foreign vehicles or equipment that are substantially similar to such vehicles or equipment will suffice to ensure that we receive relevant early warning information from appropriate sources.

B. Manufacturers of Motor Vehicles

The TREAD Act provides for the agency to require manufacturers of motor vehicles [5] to submit information that may assist in the identification of safety-related defects. We must decide which manufacturers of motor vehicles would be required to submit reports under this rule, and whether different reporting requirements should apply to various categories of manufacturers. Section 30166(m)(3) does not exempt any manufacturer of motor vehicles from its coverage. On the other hand, it provides substantial discretion to the agency. The word "may" is used at several points in the statute. In addition, the agency's ability to use the information submitted is a statutory concern.

One of the threshold questions in this rulemaking is whether the agency should exercise its discretion to defer the imposition of some or all potential early warning reporting requirements on some classes of manufacturers. The early warning regulation will be a new regulation, and inevitably the agency and regulated entities will face some issues in implementing it. It would be counterproductive to require the submission of more information than we could beneficially review or to impose impracticable requirements, particularly on small manufacturers. We have concluded that we should phase in the early warning reporting requirements and that, for the most part, it would be appropriate to focus first on larger volume manufacturers and on information regarding incidents and activities in the United States, as contrasted to those occurring in foreign countries.

Vehicles produced in small quantities have a smaller overall impact upon safety than large production vehicles, as we have frequently noted in providing temporary exemptions from one of more of the Federal motor vehicle safety standards under 49 U.S.C. 30113. Although we would not expect the volume of reports from any individual small volume manufacturer to be overwhelming if we were to require comprehensive reporting by smaller manufacturers, there would be some burden on them. More important, our interactions with, and review of submissions by, the large number of small manufacturers would divert the agency's resources from reports submitted by high volume manufacturers involving potential safety defects that could affect a far greater number of vehicles and thus have a greater impact on safety.

The final rule excludes from most of the reporting requirements any vehicle manufacturer that manufactures for sale, offers for sale, imports, or sells, in the United States, fewer than 500 vehicles of each specified category in the year of the reporting period and in each of the two calendar years preceding the reporting period. This exclusion will apply to most manufacturers of multistage vehicles and alterers since the vast majority of them manufacture or sell fewer than 500 vehicles annually.

We are also excluding registered importers (RIs) of vehicles not originally manufactured to comply with Federal motor vehicle safety standards from most of the reporting requirements. RIs ordinarily would not have information that would be useful because most import limited numbers of vehicles, most of which are manufactured by companies who generally report to us, and the owners of most of these vehicles probably would not report problems to the RI.

However, these small-volume manufacturers and RIs are not exempt from the requirements, addressed below, to report to us certain specified information regarding incidents involving death(s) occurring in the United States that are identified in claims against and received by the manufacturer or that are identified in notices sent to the manufacturer where the notice alleges or proves that a death was caused by a possible defect in the manufacturer's vehicle, together with information on deaths occurring in foreign countries that are identified in claims against the manufacturer involving a vehicle that is identical or substantially similar to a vehicle that the manufacturer has offered for sale in the United States. With respect to all such reported deaths, all manufacturers will have to provide certain information regarding the underlying incident, as described in greater detail below. All manufacturers will also have to provide copies of documents related to customer satisfaction campaigns, consumer advisories, recalls, and other safety activities under new Section 579.5. As discussed in Section III.A.4 above, duplicate reporting is not required. The commenters on the NPRM did not object to the concept of limited reporting by small-volume vehicle manufacturers.

For those motor vehicle manufacturers that are not excluded from full reporting based on low levels of sales in the United States, we are establishing separate reporting requirements based on the category of vehicle produced. We proposed five categories of vehicles: light vehicles, medium-heavy vehicles, buses, motorcycles, and trailers. In the final rule, we are adopting four; the final rule combines the proposed categories of

[5] The term "motor vehicle" is a broad one. The statutory definition of "motor vehicle" (49 U.S.C. 30102(a)(6)) has been the subject of numerous interpretations since 1966.

medium-heavy vehicles and buses into one category. Each category has components and systems that distinguish it from the other three categories, and which may develop safety-related problems unique to that category. Therefore, we shall require different information regarding each category of vehicle, which will help to reduce the burdensomeness of the rule.

Under the rule, a light vehicle is any manufacturers of more than 500 vehicles will be "small businesses" under the SBA criteria. However, that does not in itself provide a basis for exempting them from the more comprehensive reporting requirements. We have conducted investigations into alleged defects in products manufactured by relatively small businesses that have led to safety recalls and we believé that it is appropriate to early warning reporting information that may assist in the identification of safety-related defects. "Motor vehicle equipment" is defined in 49 U.S.C. 30102(a)(7), and consists of "original equipment" (OE) and "replacement equipment." These two terms are currently defined in 49 CFR 579.4. We are not changing the definitions, but we are simplifying the previous language in new Section 579.4(c) to make it more

require, such as claims alleging failures of their products. For this reason, we did not propose to totally exempt OEMs from early warning reporting.

We tentatively decided for the NPRM that most meaningful information about possible defects is more likely to come to the attention of the vehicle manufacturer earlier than it would to the OEM. However, we wanted to be certain that we obtain information

2. Replacement Equipment

Replacement equipment comprises an even broader universe of parts than OE. It includes all motor vehicle equipment other than OE. Not only does the term have the literal meaning of equipment that is intended to replace OE, it also includes accessory equipment and "off-vehicle equipment" that is not part of a motor vehicle, such as jacks and most child restraints. Manufacturers of

risk of accident, injury, or death." We have not, and we do not intend to, prescribe standards or requirements for motorcycle apparel other than protective headgear, which has long been subject to FMVSS No. 218. The proposed rule would not, and the final rule does not, control motorcycle clothing. It is extremely unlikely that any such apparel would be the subject of a claim involving a death.

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medium-heavy vehicles and buses into one category. Each category has components and systems that distinguish it from the other three categories, and which may develop safety-related problems unique to that category. Therefore, we shall require different information regarding each category of vehicle, which will help to reduce the burdensomeness of the rule.

Under the rule, a light vehicle is any motor vehicle, except a bus, trailer, or motorcycle, with a gross vehicle weight rating (GVWR) of 10,000 lbs. or less. Medium-heavy vehicles include trucks and multipurpose passenger vehicles with a GVWR over 10,000 lbs., and buses regardless of GVWR (including school buses). Trailers are separately categorized regardless of GVWR. Motorcycles include any two- or three-wheeled vehicle meeting the definition of motorcycle in 49 CFR 571.3(b).

We asked for comments on whether an annual aggregate production, importation, or sales of 500 vehicles in the United States is an appropriate figure upon which to base this distinction, whether a manufacturer's eligibility for these lesser reporting requirements should be determined based upon its production in the two calendar years preceding the report or whether a shorter, longer, or different period would be appropriate, and whether small-volume vehicle manufacturers should be required to provide other data and information in addition to that relating to deaths.

RVIA commented that recreational vehicle (RV) manufacturers should be exempt from all early warning reporting, or, at most, only those requirements that are adopted for manufacturers of fewer than 500 motor vehicles. NTEA, Gillig, and WASTEC commented that the threshold should be 10,000 vehicles per year, the same as that governing eligibility to apply for temporary exemptions under Part 555 on grounds that compliance would cause substantial economic hardship, which they did not demonstrate, or, alternatively, 2,500 vehicles per year, the same as that governing eligibility to apply under Part 555 for other kinds of temporary exemptions. The rationale for these suggestions is that many companies producing multi-stage trucks and RVs in quantities greater than 500 are nevertheless "small businesses" by the criteria of the Small Business Administration (SBA) (13 CFR 121.201 (2000)).

We have considered these comments and have concluded that the 500 units is an appropriate demarcation point between larger and smaller manufacturers. We recognize that some manufacturers of more than 500 vehicles will be "small businesses" under the SBA criteria. However, that does not in itself provide a basis for exempting them from the more comprehensive reporting requirements. We have conducted investigations into alleged defects in products manufactured by relatively small businesses that have led to safety recalls and we believe that it is appropriate to obtain full early warning information from companies producing 500 or more vehicles. If experience shows that we do not get valuable information from relatively small vehicle manufacturers, we can and will adjust the threshold in the future.

We also received comments on our proposed five categories of vehicles. Utilimaster commented that it, like other delivery van producers, manufactures vehicles in both the over and under 10,000 lb. GVWR categories. It commented that "commercial delivery vans under 10,000 lbs. GVWR have little in common with cars, sport utility vehicles and pickup trucks," and should not be in the same reporting category as these vehicles. It believed that if the final rule is adopted as proposed, it would be difficult to try to conform the company's internal records systems and reporting obligations to the discrete systems and component codes and differences in parts specified in the light and medium-heavy reporting categories. It argued that "there should be only one set of failure codes and related numerical reporting."

The use of GVWR to delineate the applicability of requirements adopted by NHTSA, other Federal agencies, and state governments is a common practice that has stood the test of time. In any event, the coding of systems and components and related numerical reporting for light and medium-heavy vehicles are very similar, as is discussed below. In our view, this similarity will avoid, or at least minimize, any problems that companies such as Utilimaster might have had.

RVIA also argued that reporting should be limited to the chassis portion of a RV and exclude living quarters. We disagree. If we adopted such a limitation, fires that arose in the living quarters would not be reported. We note that the Vehicle Safety Act provides that "motor vehicle safety" includes "nonoperational safety of a motor vehicle." 49 U.S.C. 30102(a)(8).

C. Manufacturers of Motor Vehicle Equipment

The TREAD Act also provides for the agency to require manufacturers of motor vehicle equipment to submit early warning reporting information that may assist in the identification of safety-related defects. "Motor vehicle equipment" is defined in 49 U.S.C. 30102(a)(7), and consists of "original equipment" (OE) and "replacement equipment." These two terms are currently defined in 49 CFR 579.4. We are not changing the definitions, but we are simplifying the previous language in new Section 579.4(c) to make it more readable.

1. Original Equipment

There are approximately 10,000 to 14,000 individual items of OE in a contemporary passenger car. Some are fabricated by the vehicle manufacturer, some by independent parts manufacturers, and some parts are incorporated into systems or modules assembled by various suppliers. There is a growing trend to packaging individual parts into a single unit, or module. For example, a steering wheel assembly may include an air bag, horn control, turn signal control, wiper control, ignition switch, cruise control, lighting controls, as well as associated wiring. Many of these units are assembled by a supplier, often with components from various manufacturers. Each of these fabricators or assemblers is also a manufacturer of motor vehicle equipment.

When a component or module installed as OE on a vehicle fails, generally vehicle owners will complain or file a claim with the entity that has manufactured and warranted the vehicle, rather than the assembler of the module or the manufacturers of the individual parts, who in most instances are unknown to the vehicle owner. In view of this, in their comments to the ANPRM, the Alliance, Ford, and AIAM specifically supported exclusion of OE manufacturers (OEMs) from early warning reporting requirements. OEMs, however, are not exempt from defect reporting requirements. Pursuant to 49 CFR 573.3(f), if an OEM sells an item of OE to more than one vehicle manufacturer and a defect or noncompliance is decided to exist in that OE, the OEM is required to notify us (as are the manufacturers of the vehicles in which the OE is installed). If the defective OE is used in the vehicles of only one vehicle manufacturer, the OEM may notify us on behalf of both itself and the vehicle manufacturer (Section 573.3(e)) in either case, the OEM may also be the party remedying the safety defect or the noncompliance). Thus, OEMs can and do make determinations that OE contains safety-related defects, and they will have some information of the type that the TREAD Act authorizes us to require, such as claims alleging failures of their products. For this reason, we did not propose to totally exempt OEMs from early warning reporting.

We tentatively decided for the NPRM that most meaningful information about possible defects is more likely to come to the attention of the vehicle manufacturer earlier than it would to the OEM. However, we wanted to be certain that we obtain information regarding deaths attributed to OE. Accordingly, in the NPRM, we proposed that OEMs be exempt from all reporting requirements regarding OE they manufacture, except for reporting to us regarding deaths in the same manner as small volume vehicle manufacturers, discussed above. Of course, the vehicle manufacturer would be required to report fully in its capacity as a vehicle manufacturer, even if the vehicle manufacturer believed that the problem was the responsibility of the OEM.

NTEA suggested that, in the case of work-related equipment that is installed as original equipment, defects or alleged defects only be reported if they are "germane to the operation of the motor vehicle." It gave, as an example, defects occurring in the operation or design of work-producing equipment such as a ladder or crane. Because such a defect "has nothing to do with the safe operation of the vehicle," it should not have to be reported to NHTSA." We disagree. As noted above, the statutory term "motor vehicle safety" includes "nonoperational safety of a motor vehicle." There are certain work-performing items of equipment whose failure can have serious safety consequences. For example, a dump truck's dump body hydraulic control valve may malfunction while the truck is moving and the dump body move up, scattering materials on the roadway and blocking the driver's rearward view of the road. Such a malfunction could lead to a death, yet under the NTEA approach, it would not be reported to NHTSA because the control valve does not relate to the operation of the dump truck as a motor vehicle. Also, a falling crane could hit a vehicle or create a dangerous distraction. It is not possible to define for the many types of specialty trucks and vehicles what work-performing equipment should not be included; any attempt to exclude an item of equipment will inevitably lead to confusion as to what should be reported. In any event, in view of the limited reporting required, NTEA has not shown that including the rule would impose much of a burden.

2. Replacement Equipment

Replacement equipment comprises an even broader universe of parts than OE. It includes all motor vehicle equipment other than OE. Not only does the term have the literal meaning of equipment that is intended to replace OE, it also includes accessory equipment and "off-vehicle equipment" that is not part of a motor vehicle, such as jacks and most child restraints. Manufacturers of replacement equipment are within the scope of the early warning reporting provisions of the statute.

Some replacement equipment items are critically important from a safety perspective, while others have less of a safety nexus. Child restraints and tires are critical safety items. Therefore, we proposed that all manufacturers of child restraints and tires be required to provide the full range of information and documents proposed.

There is a large number of manufacturers of other types of replacement equipment. Much of this equipment is imported by or for auto parts houses such as J.C. Whitney, retailers such as Pep Boys, or general merchandisers. An importer for resale is considered a manufacturer under the statute. *See* 49 U.S.C. 30102(a)(5)(B). A large universe of entities would be subject to multiple requirements if we were to fully apply early warning reporting requirements to all fabricators and importers of replacement equipment.

Therefore, at least for purposes of this initial rulemaking, we proposed that, as with smaller volume vehicle manufacturers and original equipment manufacturers, manufacturers of other types of replacement equipment only be required to report to us claims regarding deaths and in notices regarding deaths allegedly due to possible defects in their products. We are adopting our proposal. However, we may revisit these limitations under our periodic review of the rule.

In the preamble to the NPRM, we cited retroreflective motorcycle rider apparel as an example of off-road motor vehicle equipment. The Motorcycle Rider Foundation posted a notice on its website urging readers to "Fight NHTSA's Bid For Clothing Control!," claiming that "NHTSA has no statutory authority for this power grab." Contrary to the Foundation's claim, "motor vehicle equipment" has been defined by statute (currently 49 U.S.C. 30102(a)(7)(C)) since 1966 to include "any * * * apparel * * * that is not a * * * part * * * of a motor vehicle and is * * * intended to be used only to safeguard * * * highway users against risk of accident, injury, or death." We have not, and we do not intend to, prescribe standards or requirements for motorcycle apparel other than protective headgear, which has long been subject to FMVSS No. 218. The proposed rule would not, and the final rule does not, control motorcycle clothing. It is extremely unlikely that any such apparel would be the subject of a claim involving a death.

3. Tires

Tires, of course, are essential items of motor vehicle equipment, and tire manufacturers have the duty to conduct notification and remedy campaigns and to address defective or noncompliant tires, whether sold in the aftermarket or installed on new vehicles (*see* current 49 CFR 579.5(b)). Tire brand name owners (e.g., house brands) are also considered manufacturers (49 U.S.C. 30102(b)(1)(E)) and have the same defect and noncompliance reporting requirements as the actual fabricators of the tires (49 CFR 573.3(d)). We proposed that tire brand name owners be required to report, as well as tire manufacturers.

RMA asked that the final rule clarify that, where the tire brand owner is not the fabricating manufacturer, only the tire brand owner need report. We concur with this suggestion; the type of information and data we are seeking for early warning purposes is not likely to be received by the fabricating manufacturer when tires are marketed under the name of the tire brand owner. Accordingly, as adopted, Section 579.3(b) reads in pertinent part: "In the case of any report required under this part, compliance by either the fabricating manufacturer * * * or brand name owner of the * * * motor vehicle equipment shall be considered compliance by all persons."

4. Definition of "Equipment"

We proposed to retain the existing definitions of Part 579 for "original equipment" and "replacement equipment," in slightly edited form. These definitions of original equipment and replacement equipment are based on 49 CFR 579.4 (as it appears in 49 CFR Parts 400–999, revised as of October 1, 2001) and are many years old. We are adopting them as proposed.

The definition of "original equipment" includes "equipment installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer." Harley-Davidson observed that it has more than 2,000 suppliers and stated some items manufactured as original equipment or replacement parts for its motorcycles may find their way into the production

of other motorcycle brands or the general stream of commerce. Harley-Davidson also observed that its catalog runs several hundred pages with thousands of separate replacement and custom parts. It expressed the belief that NHTSA would not want production reports on each and every one of these, and that it would not make sense to submit reports on these items unless [illegible]

which are alleged or proven to have been caused by a possible defect in the manufacturer's vehicle or equipment in the United States, or in a foreign country when the possible defect is in a vehicle or equipment identical or substantially similar to that sold in the United States.

A. Production Information

For each reporting period, we trucks. Therefore, we have concluded that, in addition to identifying the make and model of a vehicle, manufacturers of light vehicles must also indicate the type classification of the vehicle as defined in Section 571.3(b) (i.e., passenger car, multipurpose passenger vehicle, or truck) that appears on the vehicle's label pursuant to Section 567.4(g)(7) certifying compliance with all applicable FMVSS. Manufacturers

Act, the term "claim" must be construed broadly and provided some examples.

We researched the definition of claim, considered comments received in response to the ANPRM, and considered our investigatory experience with requests for claims information when we issued the NPRM.

As noted in the NPRM, case law provides interpretations of the word "claim" in various contexts. In a Federal [illegible] settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document initiating a claim.

The proposed definition of claim addressed the nature of a reportable claim and the subject matter that was proposed by PC would not be necessary for early warning screening. The date the complaint was filed and the eventual disposition of the matter are not important to NHTSA for early warning purposes. NHTSA is concerned with the incident and using the basic information about the incident to identify a potential defect trend, not the outcome of litigation, which often occurs years later.

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of other motorcycle brands or the general stream of commerce. Harley-Davidson also observed that its catalog runs several hundred pages with thousands of separate replacement and custom parts. It expressed the belief that NHTSA would not want production reports on each and every one of these, and that it would not make sense to submit reports on these items unless claims involving them were actually received. Accordingly, the comment recommended that a manufacturer not be required to list all production in its reports, or report at all except when a reportable incident has occurred.

We believe that the proposed rule was clear. Any manufacturer of motorcycles, original motorcycle equipment, and motorcycle replacement equipment is responsible for reporting incidents involving deaths based on claims it receives and on notices it receives alleging a defect in its product. But it is only with respect to motorcycles themselves that the manufacturer is responsible for reporting additional and specific categories of information to NHTSA under Section 579.23. Also, the motorcycle manufacturer is not responsible for reporting regarding equipment that is not original equipment, that is to say, equipment installed by a dealer without the manufacturer's express authorization.

With regard to replacement equipment, under the rule, manufacturers of replacement equipment are required to report any claims or notices of death allegedly due to a defect. In its role as a manufacturer of replacement equipment, Harley-Davidson would not have to report an incident unless it receives a claim or notice. *See* Section 579.27.

IV. Information That Must Be Reported

Section 30166(m)(3)(A) provides for NHTSA to require manufacturers to report information which concerns data on "claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment," and on "customer satisfaction campaigns, consumer advisories, recalls or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment." Section 30166(m)(3)(B) authorizes us to require manufacturers to report other "such information" that may assist in the identification of safety defects. Finally, Section 30166(m)(3)(C) provides for reporting of incidents, of which the manufacturer receives actual notice, involving deaths or serious injuries which are alleged or proven to have been caused by a possible defect in the manufacturer's vehicle or equipment in the United States, or in a foreign country when the possible defect is in a vehicle or equipment identical or substantially similar to that sold in the United States.

A. Production Information

For each reporting period, we proposed to require manufacturers that manufactured for sale, offered for sale, imported, or sold in the United States 500 or more vehicles of specified categories, and all manufacturers of child restraint systems and tires, to provide information on the volume of production of their products. Production numbers are needed because the agency's trend analyses frequently are normalized to rates, such as the number of claims per unit of production. We proposed to require these manufacturers to submit the following information with respect to each model and model year of vehicle manufactured in the calendar year of the reporting period and the nine model years prior to the earliest model year of the reporting period, including models no longer in production: the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the current model year production to the end of the reporting period, and the total model year production for all model years for which production has ceased. *See* 66 FR 66194.

Under the NPRM, for each model of vehicles that are manufactured with more than one type of fuel system, and for each model of medium-heavy vehicles with more than one type of service brake system, the information required by this subsection would have been reported separately. In the final rule, this distinction between types of fuel systems has not been adopted for light vehicles, and applies only to medium-heavy vehicles including buses. The final rule distinguishes between gasoline powered, diesel powered, and other. The distinction between types of service brake systems (hydraulic and air) applies to medium-heavy vehicles including buses, and trailers.

In its analysis of potential defects, ODI has found it useful to compare problems in similar types of vehicles. The reporting category of "light vehicles" covers more types of vehicles than are defined in 49 CFR 571.3(b). For example, "light vehicle" includes passenger cars, various types of multipurpose passenger vehicles (e.g., minivans, vans, SUVs), and some trucks. Therefore, we have concluded that, in addition to identifying the make and model of a vehicle, manufacturers of light vehicles must also indicate the type classification of the vehicle as defined in Section 571.3(b) (i.e., passenger car, multipurpose passenger vehicle, or truck) that appears on the vehicle's label pursuant to Section 567.4(g)(7) certifying compliance with all applicable FMVSS. Manufacturers would also report production data for incomplete light vehicles. An "incomplete light vehicle" is an incomplete vehicle as defined by Section 568.3 which, when completed, will be a light vehicle. For similar reasons, we are requiring each light vehicle manufacturer to identify the "platform" of the vehicle, using its own nomenclature, as discussed in Section IV.H.1.

Similar considerations apply to child restraint systems. Therefore, we are requiring manufacturers of those products to indicate the "type" of child restraint system in their production reports. We are establishing three separate categories, as follows: "Rear-facing infant seat" means a child restraint system that positions a child to face in the direction opposite to the normal direction of travel of the motor vehicle and is designed to hold children up to 20 pounds; "Booster seat" means, as defined in S4 of FMVSS No. 213, "either a backless child restraint system or a belt-positioning seat;" and "Other" encompasses all other child restraint systems not included in the first two categories.

We recognize that manufacturers of medium-heavy trucks, buses, and trailers generally do not specify "model years" for their products. For purposes of this rule, to avoid confusion, we are defining the term "model year" for those vehicles to mean the year the vehicle was produced if no model year has been assigned to it. For equipment, "model year" will mean the calendar year the item was produced. We are using the term "produced" rather than "manufactured" to make it clear that we are not referring to the year a product was imported into the United States.

With respect to tires and child restraint systems, production data would only need to be submitted for a period of five years (i.e., the year of the reporting period and the four previous years). The ten-year period would still apply to vehicle manufacturers.

B. Definition of "Claim"

Section 30166(m)(3)(A) refers to claims data. The ANPRM stated that, in order to achieve the goals of the TREAD

Act, the term "claim" must be construed broadly and provided some examples.

We researched the definition of claim, considered comments received in response to the ANPRM, and considered our investigatory experience with requests for claims information when we issued the NPRM.

As noted in the NPRM, case law provides interpretations of the word "claim" in various contexts. In a Federal law context, "'claim' is something more than mere notice of an accident and an injury. The term 'claim' contemplates, in general usage, a demand for payment or relief." *Avril* v. *U.S.*, 461 F.2d 1090, 1091 (9th Cir. 1972). See also, *Conoco, Inc.* v. *United States*, 39 Env't. Rep. Cas. (BNA) 1541 (N.D. La. 1994)(written request for compensation for damages or costs); 31 U.S.C. 3729(c) (claim involves request for demand for money or property).

State case law also provides a definition of the word "claim." For example, *Fireman's Fund Insurance Co.* v. *The Superior Court of Los Angeles County*, 65 Cal. App. 4th 1205, 1216 (1997), noted that a claim encompasses more than a suit:

> "claim" can be any number of things, none of which rise to the formal level of a suit—it may be a demand for payment communicated in a letter, or a document filed to protect an injured party's right to sue a governmental entity, or the document used to initiate a wide variety of administrative proceedings.

Other state law cases have further addressed the meaning of "claim." *Safeco Surplus Lines Co.* v. *Employer's Reinsurance Corp.*, 11 Cal. App. 4th 1403, 1407 (1992), held that a "claim" is "the assertion, demand or challenge of something as a right; the assertion of a liability to the party making it do some service or pay a sum of money." *Phoenix Ins. Co.* v. *Sukut Construction Co.*, 136 Cal. App. 3d 673, 677 (1982), stated that "a claim both in its ordinary meaning and as interpreted by the courts, is a demand for something as a right, or as due and a formal lawsuit is not required before a claim is made."

We explained that the definition of claim should be broad, and meet our needs under the TREAD Act. We proposed the following definition for claim (at 66 FR 66195–96):

> A written request or demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire. Claim includes but is not limited to a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document stating a claim.

The proposed definition of claim addressed the nature of a reportable claim and the subject matter that was covered. This was set forth in one definition to simplify matters and avoid to the extent possible complex definitional structures. First, a reportable claim would be a written request or demand for relief, including money or other compensation, assumption of expenditures, or equitable relief. It would include, but not be limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim would exist regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. Finally, the existence of a claim could not be conditioned on the receipt of anything beyond the document stating a claim. The last two sentences of our proposal were designed to assure that all relevant claims are provided to us. This would preclude attempts, similar to those that have been made by some manufacturers in our investigations, to evade reporting claims by conditioning them on receipt of parts, or their own assessments of the merits of claims. Second, as to the subject matter, we referred to a motor vehicle crash, accident, component or system failure, and a fire, as these are events that have safety implications. The proposed definition would exclude, for example, events with which the rule is not concerned, such as injuries in manufacturers' factories. Finally, the definition did not address what the claim must involve, allege or contain, as those matters are not parts of a definition of a claim. They are addressed below, as are warranties.

PC, CU, the Alliance, AIAM, Nissan, Honda, JPMA, RMA, and Harley-Davidson provided comments on this definition.

PC expressed approval of the proposed definition, with the caveat that the agency should also require the submission of basic information concerning lawsuits, such as the date the complaint was filed, the alleged injury, and the eventual disposition of the case. The additional information proposed by PC would not be necessary for early warning screening. The date the complaint was filed and the eventual disposition of the matter are not important to NHTSA for early warning purposes. NHTSA is concerned with the incident and using the basic information about the incident to identify a potential defect trend, not the outcome of litigation, which often occurs years later.

The Alliance recommended an alternative definition for a claim. It suggested a claim means:

> a written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or fire originating in a motor vehicle, that is sent to the manufacturer from the claimant or his/her authorized representative. Claim includes a demand in the absence of a lawsuit, an assertion or notice of litigation, or a subrogation request.

In support of its definition, the Alliance commented, and RMA concurred, that the definition of "claim" must specify more clearly that a claim must be in writing, regardless of whether it is a "request" or a "demand." Furthermore, the Alliance stated that the definition should limit fire-related claims to those allegedly originating in a motor vehicle, to avoid the need to report claims related to fires in factories or offices of a manufacturer. The Alliance suggested that the definition must clarify that the claim must originate outside the company by the claimant or the claimant's authorized representative. The Alliance added that some of the types of activities included in NHTSA's proposed definition seemed inappropriate, such as "settlement," or "covenant not to sue," which is not a claim and will not be processed or coded as a claim by the manufacturer's ordinary claims-processing functions. It noted that a "claim" precedes a "settlement" or "covenant not to sue," so it saw no need to include those terms in the definition. Finally, the Alliance submitted that a class action suit should be reported as one claim, rather than per member, because there is no way to ascertain the size of the class.

Harley-Davidson observed that the proposed definition of "claim," unlike the proposed definition of "warranty claim," is not necessarily limited to claims presented to the manufacturer, and should be revised accordingly.

JPMA requested the agency clarify that manufacturers need not report requests for free replacement components, such as harness clips,

broken in collisions where the claim does not allege or suggest that the broken component had anything to do with the injuries sustained in the collision.

We have carefully considered these comments. The Alliance and RMA suggested that NHTSA clarify that the claim be made in writing. The proposal defines a claim in part as "a written request or demand for relief." The

should be reported as presenting a separate claim.

We have considered cross-claims and third-party claims. A manufacturer would not need to report any claim, including a cross-claim, if it had already reported a claim involving the incident. However, it would have to report a third-party claim against it if it had not previously reported the incident. This would assure that we receive the

that these types of claims do not have to be reported to NHTSA under the early warning rule and are adding an exclusion to the definition of "claim" to reflect this. The reason is that these claims do not relate to the safety of a motor vehicle that is or may be operated. They would not aid in spotting a defect trend and are not the basis of past Vehicle Safety Act recalls.

JPMA, which represents child

C. Definition of "Notice"

Section 30166(m)(3)(C) provides for the reporting of "all incidents of which the manufacturer receives actual notice," involving fatalities or serious injuries that are alleged or proven to have been caused by a possible defect in its products. The term "actual notice" is extremely broad. To avoid impractical requirements, we proposed to require reporting of incidents of which a

concerned as to what actions taken by a manufacturer can transform a mere article into a reportable notice.

Several commenters submitted alternate proposals for the definition of notice. The Alliance suggested that notice be defined as a written communication sent to a manufacturer alleging that a defect in a motor vehicle or item of motor vehicle equipment by that manufacturer caused an injury or fatality to the person originating the

Several manufacturers expressed concern that they would have to review and scan every news medium for reports discussing their products. This does not follow from a fair reading of the preamble to the NPRM. As we stated, newspaper articles and other media reports would only be reported when sent to the manufacturer by an owner or in situations where the manufacturer itself acknowledges, through its actions, that it received notice of the actual

broken in collisions where the claim does not allege or suggest that the broken component had anything to do with the injuries sustained in the collision.

We have carefully considered these comments. The Alliance and RMA suggested that NHTSA clarify that the claim be made in writing. The proposal defines a claim in part as "a written request or demand for relief." The Alliance asked whether a "demand" also has to be in writing, asserting that some may conclude that only a "request" has to be in writing. We meant that "written" applies to and modifies both requests and demands, but since there appears to be some confusion as to our intent we are adding "written" before "demand."

The Alliance, RMA and Harley-Davidson also suggested that a claim must be one that is sent to the manufacturer from the claimant or the claimant's authorized representative. As noted in the definitions of claim from cases cited above, transmission of the claim is not part of the definition of claim. We believe that it is implicit that a claim would not have to be reported if it had not been received by the manufacturer or its registered agent. Nonetheless, we are adding to the reporting requirements the element that the claim must be one that is received by the manufacturer.

A third suggestion submitted by the Alliance is for NHTSA to delete the terms such as "settlement," or "covenant not to sue," because a manufacturer would have to receive a claim prior to these types of activities being undertaken. We disagree with this assertion. A settlement agreement or a covenant not to sue may have been preceded by only an oral demand upon the manufacturer. Oral demands need not be reported. Thus, the exclusion of settlements or covenants not to sue could result in underreporting.

The Alliance also suggested that a class action suit be counted as one claim because it is impossible to determine the size of the class. We agree in part with this comment. Rarely are class action suits brought where the claims are based on fatalities or injuries. In any event, for such class actions, each separate class action suit would be considered as a single claim, at a minimum. However, if a class action suit against a manufacturer does identify specific persons (excluding John and Jane Does) who died or were injured, the manufacturer should report on each of these claims separately. Similarly, in instances where there is a class action involving property damage, each identified class representative should be reported as presenting a separate claim.

We have considered cross-claims and third-party claims. A manufacturer would not need to report any claim, including a cross-claim, if it had already reported a claim involving the incident. However, it would have to report a third-party claim against it if it had not previously reported the incident. This would assure that we receive the information about the incident underlying the claim. For example, the original defendant might be an automotive dealership that third-partied the manufacturer as a defendant to a suit.

The vehicle manufacturers also raised comments on whether claims arising out of some fires should be reported. The Alliance commented that the inclusion of "fire" in the definition could be construed as covering claims received by a manufacturer related to fires that did not originate in motor vehicles. The intent of NHTSA's proposed definition was that the fire must relate to a motor vehicle or item of motor vehicle equipment; we did not intend to require reports on office or factory fires. Nonetheless, to clarify reporting of claims due to a fire, we are modifying the proposal to specify that it includes fires originating in or from a motor vehicle or a substance that leaked from a motor vehicle. This would cover, for example, fires from gasoline that spilled in a crash.

We also received comments on environmental claims. In general, NHTSA does not address issues involving alleged injury due to long-term environmental exposure. However, there can be overlaps between vehicle safety and environmental issues, and therefore we are not excluding all environmentally-related claims. For example, a vehicle fuel-release problem may be cognizable under the Clean Air Act, tort law, and the Vehicle Safety Act. Unfortunately, the comments we received on this issue lacked detail and did not suggest how to exclude irrelevant claims, although some examples were provided. For example, Nissan and the Alliance stated that exposure to asbestos in brake linings could lead to a claim related to environmental exposure. We are also aware of issues related to emissions of volatile organic compounds from vehicle interiors and of end-of-life environmental claims such as those related to disposal. This could include claims associated with the disposal of tires, batteries and mercury-containing components, as well as other vehicle residuals such as in junkyard operations (e.g., incineration). We have decided that these types of claims do not have to be reported to NHTSA under the early warning rule and are adding an exclusion to the definition of "claim" to reflect this. The reason is that these claims do not relate to the safety of a motor vehicle that is or may be operated. They would not aid in spotting a defect trend and are not the basis of past Vehicle Safety Act recalls.

JPMA, which represents child restraint manufacturers, commented that NHTSA should clarify that manufacturers of this equipment need not report requests for free replacement components, such as harness clips, broken in collisions where the claim does not allege or suggest that the broken component had anything to do with deaths or injuries or property damage. This comment is not consistent with the structure of the rule. Under the rule, manufacturers are required to report claims in the absence of an allegation of a specific failure of a component or causation. As discussed in the NPRM, many claims do not include specific allegations, but merely include general allegations of product failure. This is a type of information that NHTSA is seeking to help it identify defect trends. We believe that by requiring the reporting of all claims that fall within the definition, NHTSA will capture the information most likely to identify a potential defect trend. Of course, if the consumer's request was not related to a crash, such as a statement that a component was lost and the consumer requested a free replacement, the manufacturer would not report that request.

Therefore, based upon the foregoing we are defining "claim" as:

A written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire originating in or from a motor vehicle or a substance that leaked from a motor vehicle. Claim includes, but is not limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document(s) stating a claim. Claim does not include demands related to asbestos exposure, to emissions of volatile organic compounds from vehicle interiors, or to end-of-life disposal of vehicles, parts or components of vehicles, equipment, or parts or components of equipment.

C. Definition of "Notice"

Section 30166(m)(3)(C) provides for the reporting of "all incidents of which the manufacturer receives actual notice," involving fatalities or serious injuries that are alleged or proven to have been caused by a possible defect in its products. The term "actual notice" is extremely broad. To avoid impractical requirements, we proposed to require reporting of incidents of which a manufacturer receives or obtains documentation (e.g., in written or electronic formats). 66 FR 66196. We tried to avoid overlapping the definition of claim, which, as noted above, includes a written request or written demand for relief. In this context, we proposed to define "notice" in the context of an applicable incident to mean "a document received by or prepared by a manufacturer that does not include a demand for relief." This would include, for example, a letter advising a manufacturer of a crash in which there was a death or injury and an allegation of a defect in the vehicle where there was no claim for monetary or other relief. In the preamble to the proposed rule, we noted that newspaper articles or other media reports would not, in themselves, constitute "notice," unless either they were provided to the manufacturer, such as by an owner, or actions taken by the manufacturer reflect that it had received notice of the incidents in question.

The Alliance, Nissan, MEMA, PC, Bendix, and RMA provided comments. PC agreed with NHTSA's proposed definition.

The manufacturer commenters (Alliance, Nissan, MEMA, Bendix, and RMA) argued that the proposed definition of "notice" was too broad and over inclusive. More particularly, Nissan and RMA stated that the language "prepared by the manufacturer" was a concern. RMA observed that the agency did not provide examples of what type of document "prepared by the manufacturer" would be included within the definition of "notice," and recommended that this category be eliminated in the absence of further guidance and clarification on the issue. Thus, RMA recommended that the definition of "notice" be "a document received by a manufacturer that does not include a demand for relief."

All the manufacturers complained that the proposed definition would be construed to include all newspaper articles and media reports discussing the manufacturer and asserted that this would impose a tremendous burden on the manufacturers. Nissan was concerned as to what actions taken by a manufacturer can transform a mere article into a reportable notice.

Several commenters submitted alternate proposals for the definition of notice. The Alliance suggested that notice be defined as a written communication sent to a manufacturer alleging that a defect in a motor vehicle or item of motor vehicle equipment by that manufacturer caused an injury or fatality to the person originating the communication or to the person on whose behalf the notice is sent, but that does not request relief from the manufacturer. Notice does not include newspaper articles, publicly available Internet bulletin board postings or other materials in the public domain.

Nissan recommended that the definition of notice exclude situations where a manufacturer would have to report on "actions" in connection with media reports and be limited to those that, on their face, are presented to manufacturers for the purposes of notifying them of a potential vehicle defect. MEMA suggested that "notice" be defined as "a document received by a manufacturer that (a) does not include a demand for relief, and (b) does not consist of unconfirmed media or other unconfirmed reports."

Finally, Bendix suggested that requests for information that manufacturers receive from other government agencies, such as the NTSB, should be excluded from the definition of notice. We have considered these comments and have modified the proposed definition of "notice" to reflect them.

The Alliance recommended without explanation that the definition of notice include an element of death or injury. This was not included in MEMA's suggested definition. We are not adopting the Alliance's proposal. The definition of notice characterizes the essential nature of the notice. The elements that must to be set forth in the notice to trigger reporting are separate from the definition and are addressed under the regulatory requirements.

Next, under the definition in the NPRM, a document "prepared by a manufacturer" that does not include a demand for relief would be a "notice." As noted above, several commenters expressed concern over the potential breadth of the language "prepared by the manufacturer." In consideration of these comments, we are not adopting this phrase as part of the final definition. Before adopting such a requirement, we need to consider further the obligations that such a requirement would impose and the associated burdens.

Several manufacturers expressed concern that they would have to review and scan every news medium for reports discussing their products. This does not follow from a fair reading of the preamble to the NPRM. As we stated, newspaper articles and other media reports would only be reported when sent to the manufacturer by an owner or in situations where the manufacturer itself acknowledges, through its actions, that it received notice of the actual incident that was the subject of the media report. Furthermore, under the proposed rule, to trigger reporting, notices of death and injury had to allege or prove that the fatality or injury was caused by a possible defect in the manufacturer's vehicle or equipment and the vehicle had to be identified with minimal specificity.

Nonetheless, to reduce burdens that might be associated with review of newspaper articles, the definition of "notice" in the final rule requires reporting only of letters and other documents sent to the manufacturer (including those sent in electronic form) that on their face include the elements of the rule regarding notices of deaths and injuries, without regard to the content of any enclosed or attached newspaper article. This is expressed in the final rule by the phrase "other than a media article." In general, newspaper articles do not have the required elements for reporting, including an allegation of a death or injury alleged or proven to have been caused by a defect, and minimal specificity regarding the vehicle or equipment. We believe that this resolution will result in very little unreported information and that it will reduce burdens associated with the asserted need to review newspapers or magazines for articles that may involve reportable incidents. This approach is similar to the first part of MEMA's proposed definition. However, we believe the definition suggested by the Alliance is too narrow. The Alliance would limit reporting of notices to those sent to a manufacturer by a customer or his/her representative. We would want reporting of notices by others, such as an injured non-owner passenger or eyewitness, and reporting where the legal status of a person as a representative is not specified, as it might not be in a letter written by a non-attorney.

Finally, we agree with Bendix that requests for information from other government agencies would generally not constitute a "notice." However, we will not exempt all communications from such agencies, since they could relate to a problem that the agency or one of its employees had with a vehicle

or an item of equipment. This is most obvious with respect to communications from the General Services Administration, which manages many Federal vehicles, but also can apply to other agencies. To avoid unnecessary burdens, however, we will exempt communications from NHTSA, since we would already have the information included in such a communication.

Therefore, "notice" is defined in the

of the lack of information in the comment, we have no basis to modify our proposed definition. Adoption of such a suggestion could result in underreporting of claims of death.

RMA commented that, for a tire, the minimal information required should be the "manufacturer, tire line, tire size, and tire identification number (TIN)." According to RMA:

the term "tire line" is the preferred term

sport-utility vehicles built on a similar frame, since the submission of more narrowly defined data sets provides enhanced analytical capabilities, the vehicles are subject to different uses and stresses, and the vehicles have numerous different components. We would receive separate reports for identical vehicles of different "makes" (such as Chevrolet and GMC pickups, or Ford Taurus and Mercury Sable

that occurred in the United States that is identified in a notice (as defined above) in which it is alleged or proven that the fatality was caused in whole or in part by a possible defect in such manufacturer's vehicle or equipment, received during each reporting period, if the product is identified with minimal specificity. Information about incidents referred to in such notices would be combined with information about claims involving deaths on the same

identify most duplicate reports by considering the date of the incident and the location. Thus, there is no need to require manufacturers to submit the names of persons who died in the incidents.

Delphi also recommended that a means be provided for a manufacturer to update information that it previously submitted. For example, a manufacturer may receive notice of a death during a reporting period and subsequently

costs anticipated for the collection, categorization, translation, and analysis of foreign data, it had "decided not to require at this time any information about incidents that occur in foreign countries except for those based on claims involving deaths." *See* preamble at p. 66215. The agency further explained in the preamble that because the assertion of a defect or malfunction is implicit in most "claims," "for early warning reporting purposes, a claim

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or an item of equipment. This is most obvious with respect to communications from the General Services Administration, which manages many Federal vehicles, but also can apply to other agencies. To avoid unnecessary burdens, however, we will exempt communications from NHTSA, since we would already have the information included in such a communication.

Therefore, "notice" is defined in the final rule as "a document, other than a media article, that does not include a demand for relief and that a manufacturer receives from a person other than NHTSA."

D. Identification of the Product in Claims and Notices

To be covered by these early warning requirements, a claim or notice, as well as other matters addressed below, would have to identify the vehicle or equipment item involved in at least a minimal way. Otherwise, it would not be possible to identify what vehicle or equipment was involved, and the information would not help us to identify potential defects. In the context of identification, we proposed to use the term "minimal specificity" and to define it to mean "(a) for a vehicle, the make, model and model year, (b) for a child seat, the model (either the model name or model number), (c) for a tire, the model and size, and (d) for other motor vehicle equipment, if there is a model or family of models identified on the item of equipment, the model name or model number."

We proposed to define "model year" for this and all other early warning reporting purposes, for vehicles, to include the year that a vehicle was manufactured if the manufacturer has not assigned a model year to the vehicle covered by the report. For equipment, we proposed that "model" mean the name that its manufacturer uses to designate it. " Model year" would mean the calendar year in which the equipment was manufactured.

We asked for comments on the clarity and inclusiveness of these proposed definitions.

Johnson asked the agency to confirm that an incident involving an item of equipment need not be reported by its manufacturer unless the manufacturer has knowledge of the assembly part number or the component part number of the equipment item involved. The comment did not elaborate on why model name or model number would be inadequate and why an equipment item would have to be identified with this level of specificity for its manufacturer to comply with the proposed early warning reporting requirements. In view of the lack of information in the comment, we have no basis to modify our proposed definition. Adoption of such a suggestion could result in underreporting of claims of death.

RMA commented that, for a tire, the minimal information required should be the "manufacturer, tire line, tire size, and tire identification number (TIN)." According to RMA:

> the term "tire line" is the preferred term used by the tire manufacturers to designate their products, and, in most cases, is synonymous with the term "tire model." The "tire line" name appears on the tire sidewall and is readily identifiable by consumers. Examples of "tire line" names are: Grabber AP, Discover A/T, Scorpion A/S, Firehawk LH, Energy MXV4 and Wrangler HT.

Accordingly, NHTSA will adopt the RMA recommendation to use the term "tire line" rather than "model," and to define it as "the entire name used by a tire manufacturer to designate a tire product, including all prefixes and suffixes as they appear on the sidewall of the tire."

RMA asserted that that a reporting manufacturer should verify that it was, in fact, the manufacturer of the tire and that tire line, size, and TIN are needed for a precise identification of the tire. We disagree with respect to the TIN. To require a TIN would result in underreporting. If a tire is involved in a death, for early warning purposes it is sufficient that we know the tire manufacturer, tire line, and tire size, whereas the TIN may not be known at the time that the manufacturer initially receives the claim or notice. Timeliness is of the essence. Thus, we have decided that minimal specificity for tires is the manufacturer, tire line, and tire size.

With regard to claims, notices, and other reporting obligations discussed below, for vehicles, we proposed to define "model" to mean "a name that a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type." "Make," in turn, would mean "a name that a manufacturer applies to a group of vehicles." The proposed definition of "make" was identical to the definition of "make" used in 49 CFR Part 565, *Vehicle Identification Number Requirements* (*see* Section 565.3(g)). The proposed definition of "model" is the definition the VIN regulation uses for "[vehicle] line" (*see* Section 565.3(f)). We requested comments on this approach and how our definition may achieve it. We did not receive any.

Our objective is to obtain reports by commonly-understood designations. For example, manufacturers must submit separate reports for pickup trucks and sport-utility vehicles built on a similar frame, since the submission of more narrowly defined data sets provides enhanced analytical capabilities, the vehicles are subject to different uses and stresses, and the vehicles have numerous different components. We would receive separate reports for identical vehicles of different "makes" (such as Chevrolet and GMC pickups, or Ford Taurus and Mercury Sable passenger cars). In addition, manufacturers would submit separate reports for different basic models of pickup trucks, such as the Ford F–150, F–250, and F–350, but within each such model, they would not submit separate reports for two-door and four-door versions, or versions with different engines, transmissions, or trim packages. Moreover, manufacturers would not report separately for two-wheel drive and four-wheel drive versions of the same vehicle, since this distinction is normally not critical in an early warning context.

If an otherwise covered claim or notice as initially received by the manufacturer does not identify the allegedly defective product with minimal specificity but a subsequent communication does, it would become a covered claim or notice at the time of the subsequent communication, and the manufacturer would be required to report it in its next report to NHTSA. *See* Section 579.28(d).

E. Claims and Notices Involving Death

1. Whether to Define Death

We did not propose to define death or fatality because we did not believe that it is necessary or appropriate to do so. Our reason was simple: the subject matter of this category of information is claims involving deaths and notices of incidents involving fatalities. As we explained, proof of death is not necessary, nor does it matter when death occurred.

2. Claims Involving Death

We proposed that every manufacturer be required to report certain information about each incident involving a death identified in claims it received during each reporting period, if the claim identified the product with minimal specificity. This would apply to claims regarding fatal incidents in foreign countries as well as the United States. We will discuss the comments related to this issue in the next section.

3. Notices Involving Death

We also proposed that manufacturers be required to report similar information about each incident involving a death

that occurred in the United States that is identified in a notice (as defined above) in which it is alleged or proven that the fatality was caused in whole or in part by a possible defect in such manufacturer's vehicle or equipment, received during each reporting period, if the product is identified with minimal specificity. Information about incidents referred to in such notices would be combined with information about claims involving deaths on the same report, which would be submitted in electronic form, as discussed below.

CU, the Alliance, Nissan, AIAM, and Delphi commented on our proposals with respect to incidents involving death. CU supported the proposal as written. The Alliance requested clarification on the reporting of incidents involving a death in another manufacturer's vehicle, or the death of a pedestrian. The remaining commenters expressed concern that the proposed requirements could result in the submission of reports on the same incident by more than one manufacturer, or could burden manufacturers with the need to update reports in the event that a person initially reported as injured later dies.

Delphi expressed concern with possible duplication in the reporting requirements. Its comment noted that, under its interpretation of the proposed rules, it is possible that both the vehicle manufacturer and the manufacturer of a system or component used in the vehicle could report the same incident to NHTSA. Delphi recommended that the database have a key-relational column that could be used to identify redundancy. Delphi asserted that the name of the person who died is the only information that would be generally available for this purpose. Accordingly, it suggested that the agency acquire and maintain that information but not make it public.

While we recognize that there is a possibility of redundancy (i.e., that an incident involving a death could be reported by a vehicle manufacturer and a supplier), we believe that it is vitally important that we maximize the information about such incidents that is presented to us. Also, reports by a component manufacturer could be of importance either to the vehicle manufacturer or NHTSA in detecting potential defects when the same component is used in the vehicles of another manufacturer that has not yet received claims and notices involving deaths and injuries. As reported by the Alliance, the total number of claims received by its members (plus Honda) in 2000 for both death and injury was 9,200. It is likely that we will be able to identify most duplicate reports by considering the date of the incident and the location. Thus, there is no need to require manufacturers to submit the names of persons who died in the incidents.

Delphi also recommended that a means be provided for a manufacturer to update information that it previously submitted. For example, a manufacturer may receive notice of a death during a reporting period and subsequently receive notice of another death attributable to the same incident. Delphi suggested that the process for updating this type of information be defined. As discussed in Section IV.O, below, we have decided to limit the amount of required updating of information about incidents previously reported to us.

The Alliance asked NHTSA to clarify how a manufacturer should handle claims or notices identifying incidents involving a death (or injury) in another manufacturer's vehicle, or the death (or injury) of a pedestrian. The comment explained that this may occur, for example, in cases where the claim alleges that the striking vehicle, in which no death or injury occurred, had brake failure. The Alliance recommended that the manufacturer should report these incidents to NHTSA, even though it may result in some overcounting if the manufacturer of the other vehicle involved submits a report on the same incident. We agree.

Nissan stated that the proposed rule contained an omission in that it did not expressly limit the reporting of incidents involving deaths in foreign countries to those alleging that the death was caused by a possible defect in the manufacturer's product. As noted in the NPRM's preamble, this approach to reporting was intentional. Under the proposed rule, manufacturers would be required to report incidents involving one or more deaths or injuries occurring in the United States that are identified in claims against the manufacturer or in notices to the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. *See*, e.g., proposed Section 579.11(b). The condition that there be an allegation or proof that the death was caused by a possible defect applied to notices but not to claims. For incidents involving one or more deaths occurring in foreign countries, a manufacturer would only need to report claims against it involving its product or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States, but not notices of such deaths. *Id.* The agency explained in the preamble of the NPRM that because of problems and costs anticipated for the collection, categorization, translation, and analysis of foreign data, it had "decided not to require at this time any information about incidents that occur in foreign countries except for those based on claims involving deaths." *See* preamble at p. 66215. The agency further explained in the preamble that because the assertion of a defect or malfunction is implicit in most "claims," "for early warning reporting purposes, a claim need not specifically allege or describe a defect." *See* preamble at p. 66199. For those reasons, as well as the realization that causation may not be required under foreign legal systems, the agency will not limit the reporting of incidents involving deaths in foreign countries identified in claims to those specifically alleging that a death was caused by a possible defect in the manufacturer's product.

4. Information About Deaths

We proposed that the information about deaths to be reported would contain, for each incident, the make, model, and model year of the vehicle or equipment, the date of the incident, the number of deaths that occurred in the incident, the name of the State in the United States or the foreign country in which the incident occurred, and the identification of each component or system that allegedly contributed to the incident or the death reported. We are adopting this proposal and adding a requirement to report the VIN of the vehicle, or the TIN of the tire, as applicable. The VIN is needed to allow us to fully identify the vehicle in question and compare it to relevant peers and to utilize other relevant information that may be available (e.g., FARS data). The TIN is needed to confirm related information about the tire in question.

We are also limiting the number of components or systems that need to be identified to five. It is unlikely that any claim or notice would identify more than five components or systems as having contributed to an incident. If the incident involved fire or rollover, these events are included in the limitation of five.

However, given the large and varying universe of motor vehicle equipment, manufacturers of original equipment and of replacement equipment other than tires and child restraint systems would describe the systems or components involved in their own words, based on the claim or notice. We proposed this approach to make reporting by these manufacturers simpler than it would otherwise be if they had to use designations with which

they are not familiar. We are adopting this approach.

F. Claims and Notices Involving Injuries

1. The Definition of "Injury"

The preamble of the NPRM identified an assortment of problems encountered by the agency in considering whether to define "serious injury," and stated that in view of those problems, "we are

non-physical injuries, such as emotional distress, loss of consortium, and long-term environmental exposure. They asserted that these claims do not add any value to spotting a defect trend.

We do not agree with Honda's suggestion that serious injury be defined as "one that normally requires treatment by medical professionals." This definition is vague. Honda's definition would require us to define what

damages. In these instances, where there were general allegations, unless it performed continued monitoring of claims (which most manufacturers resisted on grounds of burden), a manufacturer would be unable to distinguish between a claim alleging a physical injury and a claim alleging a non-physical injury.

Furthermore, if we were to embark on an exclusion of "non-physical injury

caused by a possible defect in the product. For these manufacturers, the report would be combined with the reporting of incidents involving fatalities and include the same types of information. This would limit the number of reports and avoid duplication that could be associated with separate reports of deaths and injuries stemming from the same incident. We are adopting this approach for the reasons discussed

is involved should have to be confirmed before an incident would have to be reported. We rejected this suggestion, since the litigation process is lengthy, and it may be months or years before the involvement of a component is confirmed, if at all. The vast majority of cases settle without findings and of those that do not, many may not identify the defective component in jury resolutions. Also, the earlier that

the United States, and we are adopting the proposed provisions.

H. Identical or Substantially Similar Motor Vehicles or Equipment.

Under Section 30166(m)(3)(C), manufacturers of vehicles or equipment must report:

> * * * incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or

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they are not familiar. We are adopting this approach.

F. Claims and Notices Involving Injuries

1. The Definition of "Injury"

The preamble of the NPRM identified an assortment of problems encountered by the agency in considering whether to define "serious injury," and stated that in view of those problems, "we are proposing to require certain categories of manufacturers to report each incident in which persons are injured in the United States that is identified in a claim or notice alleging or proving that the injury was caused by a defect in the manufacturer's product, if the claim or notice identifies the product with minimal specificity." 66 FR 66198. The NPRM noted that even though pertinent statutory provisions at 49 U.S.C. 30166(m)(3)(A) and (C) make reference to "serious injury," the agency is authorized under Section 30166(m)(3)(B) to require the reporting of claims and notices involving all injuries. The proposed rule would require manufacturers to submit "[a] report on each incident involving one or more deaths or injuries occurring in the United States that is identified in claim(s) against the manufacturer or in notice(s) to the manufacturer alleging or proving that the death or injury was caused by a possible defect in the manufacturer's [product] * * *"

The Alliance, AIAM, Nissan, Honda, MIC, Spartan, Utilimaster, JPMA, and CU provided comments.

Notwithstanding NHTSA's explanation of its reasons for requiring reports of incidents involving all injuries as opposed to serious injuries, several manufacturers (Honda, Utilimaster, and Spartan) continued to argue that NHTSA should develop a clear, easy-to-apply definition to limit the reporting of serious injury claims. Honda contended that Congress recognized the potential pitfalls of mandating the collection of too much data by specifying the data to be collected in TREAD Act (Section 3(b)(m)(3)(a)(i)) as "data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment." As an alternative, Honda proposed to define serious injury as "one that normally requires treatment by medical professionals," to reduce the analytical skill level necessary to categorize injuries.

Several manufacturers (the Alliance, AIAM, Nissan and Honda) commented that NHTSA should exclude claims for non-physical injuries, such as emotional distress, loss of consortium, and long-term environmental exposure. They asserted that these claims do not add any value to spotting a defect trend.

We do not agree with Honda's suggestion that serious injury be defined as "one that normally requires treatment by medical professionals." This definition is vague. Honda's definition would require us to define what "normally requires treatment by medical professionals," a daunting task for the vast array of potential injuries. Honda did not define "normally requires," "treatment," or "medical professionals." Honda's suggestion raises the concerns we addressed in the NPRM concerning an objective definition of "serious injury" in the context of the AIS system. NHTSA chose not to define "serious injury" because of difficulties in objectively defining "serious injury," concern about manufacturers' delays in reporting the information as a result of the need to assess seriousness in the absence of necessary information, and the need for subjective determinations on the part of the manufacturers. We also wanted to ease manufacturers' fears that their decisions would be second-guessed and reduce the burden on them that continued monitoring to consider newly received information would require. In addition, Honda's suggestion would require manufacturers to hire expert staff to make assessments.

The concern expressed most often by industry commenters in regard to reporting on claims and notices involving injuries is that the definition of injury should exclude non-physical injuries such as emotional distress and injuries related to environmental conditions. In our view, practical considerations dictate that distinguishing between physical and non-physical injuries is not appropriate in the context of early warning reporting. In many cases, claims for injury are not very specific as to the type of injury alleged. Most states have very liberal pleading requirements for stating a cause of action in a complaint initiating a lawsuit. Some merely require that the complaint allege a general cause of action and that as a result the plaintiff sustained injury. Some states, such as California, use generic pleading forms for certain types of causes of action, such as motor vehicle accidents, general negligence, and product liability. These pleading forms do not require that a claimant indicate the precise or detailed type of injury. Instead, the claimant merely checks a box that indicates whether he or she is claiming compensatory damages. In these instances, where there were general allegations, unless it performed continued monitoring of claims (which most manufacturers resisted on grounds of burden), a manufacturer would be unable to distinguish between a claim alleging a physical injury and a claim alleging a non-physical injury.

Furthermore, if we were to embark on an exclusion of "non-physical injury claims," we would have to define the term. This is ill advised for the same reasons set forth above regarding the reasons why we chose not to define "serious injury;" e.g., reporting delays, subjective determinations of manufacturers, second-guessing manufacturer decisions, easing burdens, etc.

We have considered the commenters' concern that reporting incidents involving non-physical injuries may indicate the existence of a defect trend when there is none. However, the comments have not demonstrated that non-physical injuries would necessarily not be indicative of a defect trend. At a minimum, we believe the reporting of some non-physical injuries may be desirable under the early warning rule. Consider for example a situation where an inadvertent air bag deployment did not cause physical injury but there is an alleged emotional injury. The inadvertent air bag deployment would be of interest to NHTSA since it could lead to physical injuries in other incidents. In another instance, a tire tread might separate, causing the driver to lose control of the vehicle and go off the road. The only injury may be an alleged emotional injury that is brought to the attention of the tire manufacturer through a claim. If we followed the suggestion of some commenters, these matters could go unreported. However, these claims are important to NHTSA because they may be indicative of a vehicle or component problem.

Several manufacturers raised concerns regarding claims related to environmental exposure to toxic substances, such as asbestos. We have addressed those concerns in our discussion of the definition of "claim."

2. Reporting of Incidents in Which Persons Were Injured, Based on Claims and Notices

We proposed to require manufacturers (other than those covered by proposed Section 579.28) to report each incident in which one or more persons are injured in the United States that is identified in a claim or notice, if the product was identified with minimal specificity and, as to notices, it was alleged or proved that the injury was

caused by a possible defect in the product. For these manufacturers, the report would be combined with the reporting of incidents involving fatalities and include the same types of information. This would limit the number of reports and avoid duplication that could be associated with separate reports of deaths and injuries stemming from the same incident. We are adopting this approach for the reasons discussed above.

G. Other Possible Conditions on Reporting of Deaths and Injuries

In the NPRM, we recognized that some commenters to the ANPRM suggested that, to be covered under the reporting provisions, a claim or notice must also specifically allege that the fatality or injury was caused by a possible defect. The allegation of a defect is not statutorily required under Section 30166(m)(3)(A) or (B). Moreover, such a limitation would lead to under-reporting. In a lawsuit, which is one type of a claim, a defect need not be alleged if the pleading requirements of the relevant jurisdiction do not require such an averment. For example, in some states such as California, the claim/pleading requirements for complaints do not require the plaintiff to allege the existence of a defect. Moreover, with respect to claims, the assertion of a defect is implicit, since ordinarily there would otherwise be no reason to make the claim. Therefore, we proposed that, for early warning reporting purposes, a claim need not specifically allege or describe a defect. It is enough if the claim contains information indicating that a death or injury has allegedly occurred, and it is alleged or proven that the manufacturer's product is responsible.

Different considerations apply to those incidents of which the manufacturer receives notice that does not amount to a claim, since Section 30166(m)(3)(C) provides for reports of incidents of which the manufacturer receives notice which involve fatalities which are alleged or proven to be caused by a possible defect. Thus, for such notices, we proposed to require an allegation of a defect. Otherwise, the manufacturer would be required to report incidents as to which no one believes that the manufacturer's product contributed to the death or injury; e.g., a fatal crash due to high speed or drunk driving. However, an allegation of defect would not have to identify the specific component or system that allegedly led to the incident.

In the NPRM, we addressed the suggestion by some manufacturers that the allegation that a vehicle component is involved should have to be confirmed before an incident would have to be reported. We rejected this suggestion, since the litigation process is lengthy, and it may be months or years before the involvement of a component is confirmed, if at all. The vast majority of cases settle without findings and of those that do not, many may not identify the defective component in jury resolutions. Also, the earlier that information arrives at the agency, the earlier we will be able to determine whether a formal investigation needs to be opened.

We also addressed the suggestion by some manufacturers that the reportable incidents be limited to failures of or problems with certain vehicle systems. As discussed in the preamble to the NPRM and below, we believe that this approach is appropriate for certain types of information. However, while deaths and injuries are relatively rare, they are so significant that we want our information to be as complete as possible. Therefore, we proposed to require reporting of all deaths and injuries in the United States based on claims and notices, regardless of the implicated components.

Section 30166(m)(3)(A) refers to claims "derived from foreign and domestic sources." In the same vein, in addition to incidents in the United States, Section 30166(m)(3)(C) refers to the reporting of certain incidents of which the manufacturer receives actual notice that occur in a foreign country, when the vehicle or equipment is identical or substantially similar to products offered for sale in the United States. Thus, the TREAD Act reflects Congressional intent that manufacturers submit information involving foreign deaths. In an effort to minimize the burdens associated with gathering information about incidents in foreign countries simply involving notice, in this phase of rulemaking we proposed to require only reporting of such claims involving fatalities occurring in a foreign country. See, for example, proposed Section 579.21(b)(1). We did not propose to require reports about incidents in foreign countries that resulted in non-fatal injuries. In light of the anticipated robustness of the domestic data, we did not believe that our early warning capabilities would be adversely affected. We recognize that the final rule will require manufacturers including their subsidiaries and affiliates to review foreign information bases, but believe the seriousness of fatalities associated with potential defects warrants this requirement. No comments objected to the proposal to report on claims involving death outside the United States, and we are adopting the proposed provisions.

H. Identical or Substantially Similar Motor Vehicles or Equipment.

Under Section 30166(m)(3)(C), manufacturers of vehicles or equipment must report:

> * * * incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment * * * in a foreign country when the possible defect is *in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.* (emphasis added)

For the reasons discussed in the preamble to the NPRM, we conclude that "identical" vehicles and equipment are at least substantially similar, and therefore there is no need to define that term. There were no comments in response to this proposal, and we are adopting it here.

1. Substantially Similar Motor Vehicles

We expect that there will be a limited number of reports involving substantially similar vehicles because the question only arises in the context of reporting claims for deaths occurring outside the United States. Our communications with manufacturers lead us to conclude that such claims are far fewer in foreign countries than in the United States. Thus, the burden associated with reporting such claims should not be large.

In the Foreign Defect Reporting NPRM, we discussed at length the issue of "substantially similar motor vehicles" and proposed that motor vehicles would be substantially similar to each other if one or more of five criteria were met. *See* 66 FR 51907 at 911–913. We tentatively determined that four of these criteria would be appropriate for Early Warning Reporting as well, and incorporated our views on these criteria by reference in the NPRM. *See* 66 FR 66190 at 199–200. The fifth criterion, relating to safety recall campaigns was inappropriate for early warning purposes where no campaign had been conducted, and was not proposed. Instead, we developed a new criterion, that a vehicle uses the same vehicle platform as a vehicle sold in the United States. Thus, we proposed that motor vehicles would be substantially similar for early warning purposes, as follows:

(1) A motor vehicle sold or in use outside the United States is identical or substantially

similar to a motor vehicle sold or offered for sale in the United States if—

(i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;

(ii) Such a vehicle is listed in Appendix A to part 593 of this chapter or determined to be eligible for importation into the United States in any agency decision issued between amendments to Appendix A to part 593;

(iii) Such a vehicle is manufactured in the United States for sale in a foreign country;

adequate direction to manufacturers. An example would be the Cadillac Catera, which used the same vehicle platform as the Opel Omega, or the Jaguar S-Class, which shares a platform with the Lincoln LS. We specifically requested comment on our view that foreign and U.S. vehicles would be substantially similar for reporting under Section 30166(m) if they shared a platform. We did not propose a definition for

and some medium-heavy vehicles, categories (i) and (iii) would not be redundant, contrary to the assertions of the Alliance. In any event, to the extent they are redundant, they would not add to the "inclusiveness" of the definition.

Category (i) specifies that a vehicle sold or in use outside the United States will be deemed substantially similar to one sold in the United States if it has been sold in Canada or has been

considered "substantially similar" within the meaning of 49 U.S.C. 30141(a)(1)(A)(i), we are modifying category (ii) to clarify that a substantially similar vehicle "is listed in the VSP or VSA columns of Appendix A to part 593" (note that each relevant vehicle decision notice under Part 593 amends Appendix A even though the revised Appendix is published only once a year). Reference to the Part 593

vehicle's outer skin. In view of the above we are adopting, as a criterion, category (v) as proposed. For clarity, we are adopting the following definition of "platform," as

> the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be

qualify for this category would also qualify under at least one of the other four categories that we are adopting. The final rule, then, omits proposed category (iv) (proposed category (v) becomes (iv) under the final rule).

If a manufacturer has ceased to export any certified vehicles to the United States (such as Alfa Romeo), its early warning reporting obligations will also cease after ten years (i.e., assuming that Alfa Romeo exported no certified

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similar to a motor vehicle sold or offered for sale in the United States if—

(i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;

(ii) Such a vehicle is listed in Appendix A to part 593 of this chapter or determined to be eligible for importation into the United States in any agency decision issued between amendments to Appendix A to part 593;

(iii) Such a vehicle is manufactured in the United States for sale in a foreign country;

(iv) Such a vehicle is a counterpart of a vehicle sold or offered for sale in the United States; or

(v) Such a vehicle uses the same vehicle platform as a vehicle sold or offered for sale in the United States.

As noted above, our approach addressed both identical and substantially similar motor vehicles of all types and sizes ranging from small motorcycles to heavy trucks and trailers. It included five alternate criteria. No one alone was sufficient. Some were more straightforward and required less factual information than others. Some would apply more broadly than others. At least one might not apply to certain types of vehicles. Collectively, they would cover the range of vehicles and extend coverage beyond identical vehicles to a range of substantially similar vehicles.

The first three criteria are self-explanatory and are addressed in the Foreign Defect Reporting NPRM. With respect to the fourth criterion, the preamble of that NPRM did not directly explain what we meant by a "counterpart" vehicle. However, by example, a discussion appearing on page 51912 provided an explanation of what, in our view, would be counterpart vehicles: "An example would be Ford Explorers assembled outside the United States, such as those assembled in Venezuela." We added that "We would appreciate comments on whether this latter class of vehicles needs to be defined with greater specificity," warning that that "in our view the term substantially similar sweeps with a broad brush and is not to be defeated by persons bent on finding or inventing distinctions to evade reporting." We proposed a definition of "counterpart vehicle" for early warning: "a vehicle made in a foreign country that is equivalent to one made in the United States except that it may have a different name, labeling, driver side restraints, lighting or wheels/tires, or metric system measurements." *See* 66 FR 66200.

As for the fifth criterion, we tentatively concluded that platform-based reporting would be consistent with the breadth of early warning reporting, yet specific enough to provide adequate direction to manufacturers. An example would be the Cadillac Catera, which used the same vehicle platform as the Opel Omega, or the Jaguar S-Class, which shares a platform with the Lincoln LS. We specifically requested comment on our view that foreign and U.S. vehicles would be substantially similar for reporting under Section 30166(m) if they shared a platform. We did not propose a definition for "platform." We invited commenters to suggest a definition if they believed that a definition of this term was necessary. No commenter suggested a definition.

Nissan, AIAM, the Alliance, and GM provided their views on the issue of how to define "substantially similar." The Alliance commented that "substantially similar" is relevant only for identifying vehicles for which fatalities must be tracked and reported on a world-wide basis, and concluded that the definition proposed is overly-inclusive of vehicles that have no nexus to the United States. In its view, only a single definition is needed, and the most appropriate definition is one based on vehicle platform, category (v). To that, it would add that the vehicle must also have the same body shell, except for the number of doors. Thus, the Alliance would define a substantially similar vehicle as one that "uses the same platform and body shell (except for the number of doors) as a vehicle sold or offered for sale in the United States." Alliance members Nissan and GM agreed with the Alliance comment and supported a platform-based approach.

The Alliance commented further that, if NHTSA adopted the Alliance's modified definition of category (v), categories (i) and (iii) would be redundant.

NHTSA disagrees with the Alliance and supporting comments. In our view, such a definition would be under-inclusive. A platform-based definition alone falls short for several reasons. First, other criteria are more certain in their application (when applicable). They do not depend on the meaning of the word "platform." While the term platform is commonly used for some types of light and medium-heavy vehicles, it does not have a universal accepted definition. The fact that the Alliance suggested a single platform-based criterion yet failed to respond to our request for a definition suggests that it recognizes the difficulty of prescribing a universal definition.

In addition, the term platform does not apply to numerous types of vehicles. For example, because motorcycles are not built on what are commonly called platforms as the term is used with light and some medium-heavy vehicles, categories (i) and (iii) would not be redundant, contrary to the assertions of the Alliance. In any event, to the extent they are redundant, they would not add to the "inclusiveness" of the definition.

Category (i) specifies that a vehicle sold or in use outside the United States will be deemed substantially similar to one sold in the United States if it has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards (CMVSS). For example, a Ford Expedition certified as complying with the CMVSS and used in Saudi Arabia is substantially similar to a Ford Expedition sold in the United States, because of the near identicality of the CMVSS with the FMVSS. Category (iii) specifies that a vehicle sold or in use outside the United States will be deemed substantially similar to one sold in the United States if it is manufactured in the United States for sale in a foreign country. This is because (to the best of our knowledge, and the comments did not show otherwise) there are no makes and models of motor vehicles manufactured in the United States and sold outside the United States that are not also sold in the United States.

As for category (ii) vehicles, the Alliance incorporated by reference its comments on "substantially similar" submitted in response to the Foreign Defect NPRM. In those comments, the Alliance stated that reliance on the list of "gray market" vehicles in Appendix A of Part 593 was not appropriate as an automatic definition of "substantially similar" because the sole purpose of the Appendix is to list the foreign vehicles that can be readily modified to comply with the FMVSS; "Using this list to cover vehicles outside the U.S. that are not modified is not appropriate." On the contrary, we find it most appropriate. In order to be listed in the Appendix, NHTSA is required to have decided that a gray market vehicle is eligible for importation into the United States on one of two bases. The first basis, which covers all but a few vehicles on the list, is that the vehicle is "substantially similar to a motor vehicle originally manufactured for import into and sale in the United States." See 49 U.S.C. 30141(a)(1)(A)(i). These vehicles are listed in the VSA or VSP columns of Appendix A. If there is no substantially similar vehicle, NHTSA must decide that the safety features of the vehicle comply, or are capable of being modified to comply, with the FMVSS. These approved vehicles are listed in the VCP column of the Appendix. Because these vehicles are not considered "substantially similar" within the meaning of 49 U.S.C. 30141(a)(1)(A)(i), we are modifying category (ii) to clarify that a substantially similar vehicle "is listed in the VSP or VSA columns of Appendix A to part 593" (note that each relevant vehicle decision notice under Part 593 amends Appendix A even though the revised Appendix is published only once a year). Reference to the Part 593 list should, in fact, make it easier for a manufacturer to determine if a vehicle that is the subject of a foreign death claim is substantially similar to one sold in the United States; if it is listed as a VSP or a VSA, the manufacturer will not have to consider whether the vehicle qualifies under another category.

In sum, our intent in categories (i) through (iii) is to capture vehicles that are identical or substantially similar in significant respects of design and safety-related parts to vehicles that are sold in the United States.

We next consider the qualifying phrase "and body shell (except for the number of doors)" in the Alliance's suggested platform-based definition of substantially similar vehicle. According to Automotive News, "a platform is typically defined as the basic structure of a vehicle. Different vehicles built off the same platform commonly share several structural elements, such as the floorpan, door pillars, and subframes." A commonly-used platform in recent production has been the "C/K" series upon which GM has built numerous models including the Cadillac Escalade, the Chevrolet Silverado, Suburban, and Tahoe, and the GMC Sierra, Suburban, Yukon/Denali and Yukon XL vehicles (Source: 2000 *Market Data Book*, Automotive News, May 2000, p. 20; no similar information provided in 2001 or 2002 editions of *Market Data Book*). The Silverado and Sierra vehicles are pickup trucks, with bodies intended primarily for carrying cargo. The other models are sport utility vehicles (SUVs) and have bodies intended primarily for carrying passengers. Thus, there is no common body shell though the platform is common. Historically, both pickup truck and SUV vehicles built on this GM platform have many common components such as brakes and airbags. Most recalls involving the pickups have also covered the SUVs. Yet, C/K SUV vehicles would not be substantially similar to the C/K pickup trucks under the Alliance's restrictive criterion because they do not have the same bodies. However, as noted in Automotive World (September 1999), a platform includes the majority of the floor pan and engine compartment and is a unit that has no impact on the vehicle's outer skin. In view of the above we are adopting, as a criterion, category (v) as proposed. For clarity, we are adopting the following definition of "platform," as

the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be considered to have a common platform regardless of whether such vehicles are of the same type, are of the same make, or are sold by the same manufacturer.

Examples of vehicles sharing a common platform are the Chrysler Group's Plymouth, Dodge, and Chrysler minivans, the Volkswagen Golf and Beetle and Audi A3 and TT passenger cars, and Toyota Camry vehicles (including Toyota Camry and Avalon passenger cars, Toyota Sienna minivans, Toyota Highlander SUVs, Lexus ES 300 passenger cars, and Lexus RX 300 SUVs).

TMA pointed out that manufacturers of medium-heavy vehicles, buses, and trailers generally do not use the term "platform" to describe their products. Nor do manufacturers of motorcycles. The terminology used by manufacturers is not determinative in this context. In addition to reporting on the basis of a structure that a manufacturer designates as a platform, we expect these manufacturers to report foreign deaths involving vehicles built with a structure similar to those used in the United States. To guard against possible underreporting of such incidents, we are including the word "chassis" in the definition of "platform" in this rule.

We note that category (v) will have an extraterritorial application. For example, we understand that Volkswagen uses a common platform for some of its range of Volkswagen, Audi, Seat, and Skoda passenger cars. Although the latter two marques are not certified for sale in the United States, some models may be "substantially similar" to Volkswagen and Audi models built on a common platform and sold in the United States.

As for category (iv), the Alliance stated that it did not know what it means for a vehicle to be "equivalent" to one manufactured for sale in the United States; two vehicles could be dissimilar in the structural and performance attributes that should matter for reporting requirements. AIAM had a similar criticism of category (iv), and urged NHTSA to adopt a "simple, objective definition." We have reviewed these comments, and believe that any vehicle that might qualify for this category would also qualify under at least one of the other four categories that we are adopting. The final rule, then, omits proposed category (iv) (proposed category (v) becomes (iv) under the final rule).

If a manufacturer has ceased to export any certified vehicles to the United States (such as Alfa Romeo), its early warning reporting obligations will also cease after ten years (i.e., assuming that Alfa Romeo exported no certified vehicles to the United States after the 1995 model year, its early warning reporting obligation would terminate in 2005).

2. Substantially Similar Motor Vehicle Equipment Other Than Tires

We also proposed that:

An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, regardless of whether the part numbers are identical.

We commented in the preamble to the NPRM that the breadth provided by this definition seemed necessary given the nature of claims, which often do not identify particular problematic components. Thus, we would regard foreign child restraint systems as substantially similar (if not identical) to U.S. child restraint systems if they incorporate one or more parts that are used in models of child restraints offered for sale in the U.S., regardless of whether the restraints are designed for children of different sizes than those sold in the U.S. and regardless of whether they share the same model number or name. For example, if buckles, tether hooks, anchorages, or straps are common throughout a manufacturer's range of models, the child restraints would be substantially similar even though the buckles, hooks, anchorages, or straps might be used on a variety of add-on, backless, belt positioning, rear-facing or booster seats produced by the manufacturer.

In light of the foregoing, we requested comments on the appropriate formulation of test(s) for determining whether foreign motor vehicle equipment is substantially similar to U.S. equipment.

JPMA generally supported the proposed definition but asked that the preamble and the final rule make clear that "the reporting requirement applies only when the same component or system that gave rise or contributed to the fatality is used in foreign and U.S. models manufactured by that

manufacturer." Otherwise, the definition would give rise to two problems. We shall discuss each asserted problem separately.

The first problem as JMPA sees it is that "absent clarification, the reporting obligation could be construed to apply to foreign child restraints incorporating common components with U.S. child restraints manufactured by another, unrelated manufacturer with whom the only commonality is a single type of fastener that neither failed nor contributed to the incident, are the components or equipment substantially similar? It would be our view that they are not." For the reasons expressed in the paragraph above, the equipment incorporating the fasteners would be substantially similar for early warning reporting unless the claim specifically identified a non-common component as

receive very few reports of claims from equipment manufacturers involving foreign deaths.

We are therefore adopting as new Section 579.4(d)(2):

An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the

materials, irrespective of plant of manufacture or tire line name.

We have added the word "similar" before "ply and belt construction and materials" to assure that minor differences in dimensions, construction, or materials would not allow tire manufacturers to avoid reporting of foreign claims involving deaths.

I. Claims Involving Property Damage

manufacturer's warranty), since such incidents would likely be picked up under other categories. Nissan's comment also noted that the proposed definition does not address damage to one system caused by another system under normal use, and whether or not the damage occurred within the warranty period. The company recommended that the proposed definition of "property damage claim"

safety systems (brakes, steering, occupant restraint, fuel) and that the reporting requirement should apply only to claims submitted to the manufacturer in writing. Spartan provided no rationale for its recommendation that the category should be limited to the number of such incidents involving a limited number of safety-related systems. For each of the covered vehicle classes, the NPRM listed separate systems and components

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manufacturer." Otherwise, the definition would give rise to two problems. We shall discuss each asserted problem separately.

The first problem as JMPA sees it is that "absent clarification, the reporting obligation could be construed to apply to foreign child restraints incorporating common components with U.S. child restraints manufactured by another, unrelated manufacturer with whom the foreign manufacturer shares a supplier." JPMA observes that "Since the manufacturer of the foreign child restraint may not even know that the model shares components with U.S. models manufactured by unrelated companies, it cannot be NHTSA's intention to hold manufacturers responsible for information they do not possess." That is correct.

The second problem, according to JPMA, is that

> without clarification that a report is required only when a fatality is associated with the same component as one used on a model sold by that manufacturer in the U.S., the reporting requirement could result in fatality reports that have no reasonable chance of predicting possible defect trends in the U.S. because they involve components that are not common to U.S. models.

JPMA thus raises the possibility that a manufacturer will report a fatality attributable to a component other than one that makes two child restraint systems "identical or substantially similar."

In this situation, we would read the word "equipment" both as the completed item of motor vehicle equipment and as each individual component that comprises the item. The statute provides for a report "when the possible defect is in * * * motor vehicle equipment that is identical or substantially similar * * *" The child restraint systems are identical or substantially similar equipment because they share a common component. We will not relieve the manufacturer of reporting because the claim may not identify the problematic component; the identification of the component will result in delay and may be disputed. We have decided, however, that a claim would not have to be reported if it specifically identifies a non-common component as the defect. Although this issue was raised by an equipment manufacturer, it applies equally to vehicles. Thus, new Section 579.28(g) applies to all manufacturers.

MIC commented that, "as proposed, equipment that has one or more components or systems that are the same regardless of whether the part numbers are identical is considered substantially similar." It asked "if the only commonality is a single type of fastener that neither failed nor contributed to the incident, are the components or equipment substantially similar? It would be our view that they are not." For the reasons expressed in the paragraph above, the equipment incorporating the fasteners would be substantially similar for early warning reporting unless the claim specifically identified a non-common component as the source of the failure.

MEMA stated that the definition should not only be component or system specific, but application specific as well. It cited a remark in the Foreign Defect NPRM preamble to the effect that a bolt with a given part number may perform in substantially different ways depending on how and where it is used, as well as citing a comment by Breed to the ANPRM that a component may be used in a variety of applications but fail in only one. MEMA recommended adopting application language to the definition:

> An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system has the same application requirements in vehicles sold or offered for sale in the United States, regardless of whether the part numbers are identical.

AIAM recommended as a definition "equipment that is identical, except for labeling, markings, or such features as displayed metric vs. U.S. units of measure, and performs the same function in the respective vehicles."

The issue raised by MEMA and AIAM is analogous to that raised by JPMA, but instead of a defect occurring in a non-common component, it posits a defect occurring in a common component not used in a common manner. As such, it does not address the issue raised by JPMA. Further, it appears to restrict the definition to on-vehicle original and replacement equipment, and not to include equipment that is not part of a motor vehicle such as child restraints.

If two items of equipment utilize the same component but that component is not used to perform the same function, the failure of the component in one context might have no bearing on the likelihood of its failure in the other context. However, it might not be clear at the time the claim is filed whether the component is performing the same function or not. Therefore, we are reluctant to add this exemption. We emphasize, however, that we expect to receive very few reports of claims from equipment manufacturers involving foreign deaths.

We are therefore adopting as new Section 579.4(d)(2):

> An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical.

3. Substantially Similar Tires

We proposed that:

> A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same model and size designation, or if it is identical in design except for the model name.

RMA was the sole commenter on the proposed definition. In its opinion, NHTSA's definition would include tires that are, in fact, substantially different. It noted that two tires of the same tire line and with the same size designation could include tires constructed of different materials. One tire could have a casing made of steel carcass plies, while another's might be of fabric carcass plies. RMA argued that comparisons between these tires, for early warning reporting, would be meaningless, and stated that "construction" is the factor that would best aid in early warning. "Construction" to RMA means "the same number of plies and belts, ply and belt construction and materials, placement of components, and component materials." RMA proposed the following definition:

> A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range (for light truck tires) and construction irrespective of plant of manufacture or tire line name.

NHTSA has decided to follow RMA's recommendation in part. We are integrating the definition of "construction" into the text, so that the regulation (Section 579.4(d)) reads as follows:

> (3) A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component

> materials, irrespective of plant of manufacture or tire line name.

We have added the word "similar" before "ply and belt construction and materials" to assure that minor differences in dimensions, construction, or materials would not allow tire manufacturers to avoid reporting of foreign claims involving deaths.

I. Claims Involving Property Damage

Section 30166(m)(3)(A)(i) provides for reporting of "aggregate statistical data on property damage" from alleged defects in the manufacturer's products.

1. Definition of "property damage"

In the preamble to the NPRM, we discussed the proposed definitions of property damage recommended by commenters on the ANPRM. On the basis of our own review and these comments, we proposed to require only reporting of claims information and not reporting of incidents involving only property damage of which a manufacturer receives notice. *See* 66 FR 66200.

For purposes of this rule, we proposed that property damage means "physical injury to tangible property." Our proposed definition of "property damage claim" would include damage to the vehicle or other tangible property, but exclude equipment failure and matters solely involving warranty repairs. For example, if the brakes failed and there were no physical consequences other than the need to repair the brake system, there would be no property damage. If there was a brake failure and the vehicle hit an object, there could be property damage to the vehicle or object or both. Accordingly, "property damage claim" would mean:

> A claim for property damage, excluding that part of a claim, if any, pertaining solely to damage to a component or system of a vehicle or an item of equipment itself based on the alleged failure or malfunction of the component, system, or item, and further excluding matters addressed under warranty.

Comments were submitted by the Alliance, Nissan, VW, AIAM, the JPMA, RMA, TMA, Spartan, Utilimaster, and CU.

Nissan stated that the proposed definition of property damage claim was overly inclusive and potentially difficult to understand. The comment argued that the proposed definition did not exclude claims pertaining solely to damage to a component or system of a vehicle based on the alleged failure. Similarly, Spartan recommended that the category be redefined to exclude allegations of simple failure or breakage of a component (such as mechanical breakdown typically covered by a manufacturer's warranty), since such incidents would likely be picked up under other categories. Nissan's comment also noted that the proposed definition does not address damage to one system caused by another system under normal use, and whether or not the damage occurred within the warranty period. The company recommended that the proposed definition of "property damage claim" be modified to read: "a claim that a part, component or system failure led to crash damage or body damage to a vehicle or damage to the property of a third party."

We do not understand Nissan's assertion that the proposed definition does not exclude claims pertaining solely to damage to a component or system of a vehicle based on its alleged failure or Spartan's suggestion that such matters be excluded, because we believe that they are excluded. Nissan also commented that the proposed definition does not address damage to one system caused by another system under normal use, but it does. Damage is excluded from property damage claims if the damaged component, system, or equipment item has damaged itself, but not beyond that.

CU expressed concern that a loophole in the reporting requirement will be created if the definition of property damage does not include damage to the vehicle component itself. For example, if the brakes failed after the vehicle warranty had expired and there is no physical damage to the vehicle other than the need to repair the brakes, NHTSA would have no way of knowing about this incident. With regard to CU's comment, the agency notes that the NPRM stated its intention to include in the definition of property damage "damage to the vehicle or other tangible property, but exclude equipment failure and matters solely involving warranty repairs." *See* p. 66201. The preamble elaborated on this by stating: "For example, if the brakes failed and there were no physical consequences other than the need to repair the brake system, there would be no property damage." *Id.* The "loophole" identified by CU was therefore an intentional part of the proposed rule, which assures that property damage claims are not diluted by matters involving worn out parts without other consequences. Of course, these matters would normally be reported to us as complaints, and sometimes as warranty claims.

Spartan recommended that the category be limited to incidents involving a collision, tire failure, or fire occurring in the United States in which a defect is alleged in one of the critical safety systems (brakes, steering, occupant restraint, fuel) and that the reporting requirement should apply only to claims submitted to the manufacturer in writing. Spartan provided no rationale for its recommendation that the category should be limited to the number of such incidents involving a limited number of safety-related systems. For each of the covered vehicle classes, the NPRM listed separate systems and components the alleged failure of which would trigger the reporting requirements. As the agency explained, in selecting these systems and components, it "attempted to identify, for each category of vehicle, for child restraint systems, and for tires, those systems and components whose failures are most likely to lead to safety recalls." *See* preamble at p. 66207. Spartan has not explained why this approach should be abandoned in favor of one that would require, for all vehicle classes, reports on only brake, steering, occupant restraint, and fuel system failures. Finally, because the term "claim" would be defined in the proposed rule as "a written request or demand for relief," Spartan's recommendation that the reporting requirement should apply only to property damage claims submitted to the manufacturer in writing has already been addressed in the proposal.

The Alliance recommended that the proposed definition of "property damage" be modified to read: "(1) physical damage, including damage by fire, to tangible property of a third party caused by a collision or an alleged failure or malfunction of a component, system or item, or (2) body or fire damage to a vehicle caused by an alleged failure or malfunction of a component, system or item."

The Alliance's recommended changes would introduce elements of causation into determinations whether to report. This information might not be presented in a claim and, thus, the Alliance's formulation could result in under-reporting. *See* 66 FR 66195, 66199. Moreover, in the NPRM, the reporting requirement was based on the term "property damage claim," which is defined separately from and incorporated the definition of "property damage." Because the proposed definition of "property damage claim" contains language linking the reportable claims to those alleging malfunctions of components or systems, or to specific events, it would be redundant if this qualification were also to be included in the definition of "property damage," as the Alliance has proposed. Finally, if the Alliance's recommended changes were adopted, physical damage to the

property of a third party caused by means other than a collision or an alleged failure or malfunction of a component or system or to specific events, and physical damage to a vehicle, other than body or fire damage, would not be reportable. The Alliance provided no justification for the changes it recommended in the proposed definition or reasons why those limiting changes should be adopted. Moreover, it

"is too low to avoid sweeping in minor matters NHTSA seeks to avoid." The comment stated that the threshold should be raised to $5,000 to provide the agency with meaningful data on significant incidents. Spartan also recommended that a dollar threshold be set (at perhaps $2,500) to limit the reporting of minor claims.

With respect to claims involving tires, the NPRM noted that "[t]ire manufacturers have historically kept

may revisit the issue in a future rulemaking.

With regard to property damage claims involving tires, the RMA stated that it would not object to the proposed definition if it were interpreted to mean a claim for monetary compensation in excess of the value of the tire. The agency notes that under the proposed definition, a tire manufacturer would not be required to report a property damage claim relating solely to damage

complaint and then to limit reporting to safety-related aspects of vehicles, tires, and child restraint systems. The facets of the definition included expressions of dissatisfaction with a product or its performance, and an assertion of a defect or that an event was caused by a defect. Based on our past experience during defect investigations, we did not believe that it would be appropriate to simply require reporting of "safety-related" problems, since manufacturers

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property of a third party caused by means other than a collision or an alleged failure or malfunction of a component or system or to specific events, and physical damage to a vehicle, other than body or fire damage, would not be reportable. The Alliance provided no justification for the changes it recommended in the proposed definition or reasons why those limiting changes should be adopted. Moreover, it did not show how the changes would help effectuate the purposes of the early warning reporting rules.

RMA stated that it did not object to the definition if it can be interpreted to mean "* * * a claim for monetary compensation in excess of the value of the tire." Nevertheless, it urged NHTSA to adopt a separate definition for clarity, to read as follows:

> A claim for property damage for motor vehicle equipment means a claim for property damage, excluding that part of a claim, if any, pertaining solely to damage to the item of motor vehicle equipment itself, based on the alleged failure or malfunction of the item of motor vehicle equipment, and further excluding matters under warranty.

RMA did not explain why a separate definition was needed. We note once more that the definition proposed in the NPRM would exclude claims pertaining solely to damage to an equipment item based on the alleged failure or malfunction of that item. Creating a separate definition for equipment items may increase the burden for manufacturers by requiring analysis of individual claims to ascertain whether they alleged the failure or malfunction of an equipment item itself, as opposed to the failure or malfunction of a "component, system, or item." We further note that eliminating the reference to vehicle components and systems could increase the reporting burden on manufacturers by narrowing the scope of claims excluded by definition. In light of these circumstances, we do not believe that there is a need to separately define "property damage claim" for motor vehicle equipment items, and will retain the reference to vehicle components and systems within the definition we are adopting.

The property damage information that we will require manufacturers to submit is limited to the number of claims involving a limited number of systems or components, fire, and rollover (to be discussed later). Thus, the information to be submitted will be "aggregate statistical data." Therefore, we do not see a need for a separate regulatory definition of this term.

Finally, as noted above, the proposed definition expressly excludes "matters addressed under warranty." Nissan faults the agency for failing to address whether or not the damage occurred within the warranty period. The reason for this exclusion was simple; it was to eliminate a burden that would amount to double counting. So long as the matter is covered by warranty (including an extended warranty or good will program conducted by the manufacturer, as addressed below), it will be subject to being reported to the agency as a warranty claim. If the incident leading to a claim occurs beyond the warranty period (including the terms of any applicable extended warranty or good will program), and thus is not covered by warranty, it must be reported as a property damage claim if the elements for such reporting are met.

For the reasons discussed above, we are adopting the definition of "property damage claim" that we proposed.

2. Reporting of Property Damage Claims; Whether To Establish Dollar-Value Thresholds

Unlike reporting of claims and notices of incidents involving deaths and injuries, which are required even in the absence of information identifying underlying systems or components, we will require reporting of property damage claims only when one or more specified vehicle components or systems has been identified as giving rise to the incident or damage, or there was a fire (originating in or from a vehicle or a substance that leaked from a vehicle) or rollover. We concluded that adding a category such as "other" would not provide us with usable information. These components and systems were selected based upon their connection to safety recalls in the past, as described in Section IV.N below. They vary depending on the type of vehicle or equipment that is the subject of the report.

If the incident that allegedly led to the property damage also resulted in a death or injury, the manufacturer need only report the incident as one involving a death or injury, and it will not be required to report the incident under the property damage requirement. However, if several separate property damage claims are filed arising out of the same incident (e.g., because a vehicle damaged property owned by several individuals), each claim must be included in the report.

Reports of property damage claims will be submitted in the same manner as the number of consumer complaints, warranty claims, and field reports, discussed later. The information will be reported separately for each make, model, and model year and would be submitted in electronic form, as discussed in Section VI below. Manufacturers are not required to submit documents reflecting the extent of the property damage or the details of the incident that allegedly led to the damage. (As discussed below, we can require the submission of such documents or information in a separate request if we decide that further detail is needed.)

With respect to manufacturers of motor vehicle equipment, we proposed to require only manufacturers of tires to report property damage information, noting that it is extremely unlikely that a child restraint system would contribute to significant property damage.

The preamble to the NPRM stated that the agency was proposing "that a vehicle manufacturer need not include in its report property damage claims that are for $1,000 or less, on the ground that this would exclude minor matters and reduce reporting burdens." See preamble at 66201. However, the proposed regulatory text in the NPRM did not include a dollar-value threshold for reporting. The NPRM requested comments on whether it is appropriate to establish such an exclusion, and if so, what the level should be. *Id.*

The Alliance stated that there should be a threshold to filter claims. The comment stated that the threshold should be $2,500 to filter out the minor fender bender type accidents, and that NHTSA should periodically raise the threshold to consistently filter minor claims. AIAM also recommended a $2,500 threshold to exclude minor claims, and stated that NHTSA should consider periodic review of the threshold to account for inflation and other relevant changed circumstances. Volkswagen also supported a $2,500 threshold to exclude de minimis claims. Nissan stated that the threshold amount should be higher than $1,000.

TMA stated that the threshold for reporting property damage claims needs to be related to the purchase price of the vehicle rather than a fixed price for all vehicles. The comment observed that a $1,000 threshold would not be appropriate for medium and heavy-duty trucks, which often cost in excess of $100,000. The comment recommended a $5,000 threshold for these vehicles. The comment also recommended that the reporting threshold not be relegated to the preamble of the final rule, but instead be incorporated into the regulatory text.

Utilimaster also stated that the proposed $1,000 threshold for the submission of property damage claims is too low to avoid sweeping in minor matters NHTSA seeks to avoid." The comment stated that the threshold should be raised to $5,000 to provide the agency with meaningful data on significant incidents. Spartan also recommended that a dollar threshold be set (at perhaps $2,500) to limit the reporting of minor claims.

With respect to claims involving tires, the NPRM noted that "[t]ire manufacturers have historically kept records of all property damage claims, without regard for the amount of the claim, and that this information has proven to be very valuable in identifying potential tire defects." *See* preamble at p. 66201. As a consequence, the agency stated that it was "proposing to require tire manufacturers to report all property damage claims, regardless of the amount of the claim." *Id.* As noted above, the RMA stated that it would not object to the proposed definition if it were interpreted to mean a claim for monetary compensation in excess of the value of the tire.

AIAM commented that according to insurance industry data, approximately half of all physical loss payments by insurers are for $1,000 or less. After accounting for the common $500 deductible, the actual median damage loss is $1,500. Accordingly, AIAM recommended that NHTSA select a higher threshold, specifically $2,500, and that that threshold be stated in the definition of "property damage claim."

After thoroughly considering the comments, we have concluded that we should not adopt any dollar-value threshold for the reporting of the number of property damage claims, and note that no such criterion is imposed by the TREAD Act. Although the final rule will result in a higher number of property damage claims being reported to the agency than there would have been under the proposed threshold of $1,000, manufacturers will be relieved of the burden to evaluate property damage claims to determine whether the dollar-value threshold had been met. This could entail a considerably greater commitment of resources than if the manufacturer were simply required to report the raw number of property damage claims it received. Many claims do not include a dollar value, so if a dollar-value threshold were established, the follow-up on and reporting of such claims or those that referred to damage in other than dollar terms would have to be addressed. This also resolves the knotty issues of whether we should establish different dollar-value thresholds for different types of vehicles such as motorcycles and heavy trucks, and how we should do so. However, we may revisit the issue in a future rulemaking.

With regard to property damage claims involving tires, the RMA stated that it would not object to the proposed definition if it were interpreted to mean a claim for monetary compensation in excess of the value of the tire. The agency notes that under the proposed definition, a tire manufacturer would not be required to report a property damage claim relating solely to damage to a tire that is based on the alleged failure or malfunction of the tire. Moreover, any claim for damage to the tire itself is likely to be handled within the manufacturer's adjustment program, and as such, would not be separately reportable to the agency as a property damage claim.

Tire manufacturers have historically kept records of all property damage claims, without regard for the amount of the claim, and this information has proven to be very valuable in identifying potential tire defects. For these reasons, we proposed, and will require, that tire manufacturers report all property damage claims, regardless of the amount of the claim.

J. Consumer Complaints

We proposed to require submission of information about certain "consumer complaints" as "other data" under Section 30166(m)(3)(B).

1. Definition of "consumer complaint"

In the NPRM we proposed a definition of "consumer complaint" that included relevant matters and did not overlap with our proposed definition of "claim." We proposed to define "consumer complaint" as follows:

> a communication of any kind made by a consumer (or other person) to a manufacturer expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but not including a claim of any kind or a notice involving a fatality or injury.

We explained that the term "a communication of any kind" would primarily include communications that are written but it would also include oral complaints, such as made through a telephone call, that a manufacturer memorializes in a document, including an electronic information system. Our proposed definition would also include communications in which the owner of a vehicle or item of equipment that is subject to a defect or noncompliance recall asserted that the remedy failed to correct the defect or noncompliance.

Our approach was to set forth a multifaceted definition of consumer complaint and then to limit reporting to safety-related aspects of vehicles, tires, and child restraint systems. The facets of the definition included expressions of dissatisfaction with a product or its performance, and an assertion of a defect or that an event was caused by a defect. Based on our past experience during defect investigations, we did not believe that it would be appropriate to simply require reporting of "safety-related" problems, since manufacturers often have a narrower view of what constitutes a safety-related problem than we do. As we explained, we would reduce the likelihood of reporting consumer complaints about non-safety matters by listing the specific safety-related components and systems with respect to which complaints must be reported. Finally, the primary distinction between a "consumer complaint" and a "claim" is that the former would not seek monetary or other relief.

Ten comments were submitted on the proposed definition of "consumer complaint." These were from AIAM, the Alliance, GM, CU, Volkswagen, Nissan, NADA, JPMA, Spartan, and Utilimaster. CU favored the proposed requirement for the collection of consumer complaint information. The remaining comments were either opposed to the collection of this category of information in its entirety, or opposed the collection of certain types of information within the proposed definition.

2. The Rationale for Requiring Reports of Consumer Complaints

As we have explained, over the years, NHTSA's Office of Defects Investigation (ODI) has made productive use of consumer complaints to manufacturers in its investigations of alleged defects. The problem experience of owners or operators in the real-world use of their vehicles and equipment, as reflected in their communications to manufacturers, has indicated failures of components and systems that can have an impact on safety. While a given level of complaints regarding some components or systems may not indicate the existence of a defect, a higher level might. (This level would vary, depending on the component or system involved.) Because we have no way to measure directly, or to count, all failures in the field, the frequency of consumer complaints (which complement warranty claims and field reports) can provide valuable indications of possible safety problems warranting further investigation. Consumer complaints were discussed in the Congressional hearings that led to the TREAD Act. See,

e.g., Firestone Tire Recall: Hearing before the Subcommittee on Telecommunications, Trade and Consumer Protection and the Subcommittee on Oversight and Investigations of the House Committee on Commerce, (H. Rpt.106–165; September 6, 2000) (Statement of Dr. Sue Bailey, Administrator, NHTSA).

After reviewing the comments received on the ANPRM and assessing

(unsuccessfully) to the manufacturer. Although there is no single threshold of consumer complaints about a particular component or system that will automatically trigger a defect investigation, it is likely that if it were aware of a relatively large number of consumer complaints to a manufacturer, ODI might well open investigations earlier. To the extent that such an investigation led to a recall, opening it

line, plant, and date of production. We have received such data in response to information requests issued during our defect investigations and find that these data are far superior than that contained in complaints.

We therefore proposed to require larger motor vehicle manufacturers, and all child restraint system manufacturers, to report the number of consumer complaints that the manufacturers have

manufacturers would be required to provide under the proposed rule, especially since manufacturers would not be given the opportunity to rebut those numbers. Nissan expressed the opinion that consumer complaints are often subjective, not technically precise, and difficult to code for the purpose of providing the agency with meaningful early warning information because they are generally not linked to identifiable

consumers are less likely to complain to NHTSA about non-safety-related problems. GM commented that if NHTSA were to eliminate the need for manufacturers to report on consumer complaints, it could still obtain this information from vehicle owner's questionnaires (VOQs) that are submitted to the agency.

As stated in the NPRM, ODI's experience has shown that consumers

"claim" is erroneous. In both the NPRM and the final rule a "claim" is limited to a written communication seeking some form of relief from the manufacturer. Thus, a "claim" is considerably narrower than the proposed definition of "consumer complaint," which would encompass "a communication of any kind * * * expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual

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After reviewing the comments received on the ANPRM and assessing the value of consumer complaints to an early warning system, we proposed requiring manufacturers of 500 or more vehicles as well as all child restraint system manufacturers to provide aggregated consumer complaint information to us on a periodic basis, but not to require copies of such complaints. NHTSA relies heavily on consumer complaint information in initiating and conducting defect investigations. More than 75 percent of the investigations conducted by ODI are opened on the basis of complaints that we receive from individual consumers, or that are furnished to us by interested third parties, such as consumer groups, police departments, State vehicle inspectors, and school bus and other fleets.

After it opens investigations, ODI routinely asks manufacturers to provide information and copies of consumer complaints on the "subject defect;" also, ODI often asks manufacturers to update complaint information during the course of the investigation. This sort of information is very valuable in evaluating whether a defect related to motor vehicle safety exists in a given vehicle or equipment item. Since our first litigated defects enforcement case, *United States* v. *General Motors Corp.*, 518 F.2d 420, 438 (D.C. Cir. 1975), which held that a *prima facie* case of defect can be made by showing a significant, "non de minimis number" of failures of a critical part that is expected to last for the life of the vehicle, the federal courts have recognized that consumer complaints can be a valuable source of evidence of the existence of a safety-related defect in motor vehicles.

ODI's experience has shown that consumers are more likely to report a problem to the manufacturer than to NHTSA. Historically, the number of consumer complaints to the manufacturer (either directly or through dealers) that NHTSA obtains after opening a defect investigation usually exceeds by a substantial amount the number of complaints that NHTSA had received directly from consumers prior to opening the investigation. Also, many consumers do not complain to NHTSA until after they have complained (unsuccessfully) to the manufacturer. Although there is no single threshold of consumer complaints about a particular component or system that will automatically trigger a defect investigation, it is likely that if it were aware of a relatively large number of consumer complaints to a manufacturer, ODI might well open investigations earlier. To the extent that such an investigation led to a recall, opening it earlier would likely have led to corrective action at an earlier date and the avoidance of some additional incidents.

Consumer complaints to child restraint system manufacturers have also consistently far outnumbered those to NHTSA about particular problems. For example, in November 1996, ODI opened an investigation into the breakage of harness release buttons in certain infant car seats. ODI had received four consumer complaints when it opened the investigation. After writing to the manufacturer and requesting complaint information, ODI learned that the company had received 328 complaints about the harness release button in those seats. Similarly, in May 1998, ODI opened an investigation of harness buckle failure in infant car seats on the basis of two consumer complaints. After writing to the manufacturer, ODI learned in July 1998, only two months later, that the company had received 92 complaints. Both of these investigations led to corrective action by the manufacturers.

We believe that NHTSA's ability to identify potential defects in a timely manner, and to identify and understand emerging defect trends, would be greatly strengthened if the agency were to receive information about consumer complaints relatively shortly after the manufacturer does. At present, ODI's decisions as to which products should be investigated are often based on limited information from consumers.

We did not propose to require tire manufacturers to report the number of consumer complaints. We had concluded, from our experience with conducting tire investigations, that consumer complaints to tire manufacturers generally do not contain useful information for analysis of the alleged problem. For example, tire complaints do not consistently have full information describing the tire model, size, and date of manufacture. Without this identification, an analysis of failure rates and trends is not possible. Far more useful for analysis of potential defect trends is the tire manufacturer's adjustment (warranty) and claims data. The adjustment and claims data contain complete identification of the tire make, line, plant, and date of production. We have received such data in response to information requests issued during our defect investigations and find that these data are far superior than that contained in complaints.

We therefore proposed to require larger motor vehicle manufacturers, and all child restraint system manufacturers, to report the number of consumer complaints that the manufacturers have received about designated components and systems of their vehicles or equipment during each reporting period. Vehicle manufacturers would also report complaints about fire. The designated components and systems would be the same as those on which property damage claims are reported.

We did not propose to require reporting of consumer complaints from outside the United States at this time. We observed that there are a number of issues related to foreign complaints, such as manufacturer review of potentially large numbers of complaints in foreign languages and NHTSA follow-up use, which dictate against requiring reporting, at least for the present.

In commenting on the NPRM, a number of commenters repeated their comments on the ANPRM, which we had previously rejected. AIAM expressed the opinion that consumer complaints are not valuable; i.e., that they should be excluded from the reporting rule on the basis that they do not provide objective information regarding vehicle safety performance and that they would be expected to provide little, if any, useful information for an early warning reporting system. The organization contended that the overwhelming majority of the complaints received by its members do not relate to safety information, and that the need to filter this material to provide the agency with safety-related information would place an unreasonable burden on manufacturers. The Alliance also questioned the value of consumer complaints in identifying a defect trend. It contended that consumer complaints are not technically reliable because they are based on the subjective observation of a problem by a consumer, and are collected by personnel who lack sufficient technical training or knowledge to translate the information provided by consumers into meaningful or accurate component or system codes.

Several manufacturers offered similar comments. Volkswagen questioned the reliability of consumer complaints to establish the existence of a defect trend. The comment urged the agency to exercise caution in drawing any conclusions from the raw, unfiltered consumer complaint numbers that

manufacturers would be required to provide under the proposed rule, especially since manufacturers would not be given the opportunity to rebut those numbers. Nissan expressed the opinion that consumer complaints are often subjective, not technically precise, and difficult to code for the purpose of providing the agency with meaningful early warning information because they are generally not linked to identifiable components or systems, and are not received by technical personnel. Spartan observed that consumer complaints could cover a large volume of material that does not affect safety, and are often of questionable validity, requiring extensive screening to identify useful information at a considerable expense to the manufacturers. The comment contended that what useful information there is in this category is likely to overlap one of the other reporting categories.

The comments that questioned the value of consumer complaints in identifying potential defect trends did not address the justifications set forth in the NPRM that we have summarized above. Significantly, none of the comments on the NPRM refuted the rationale in the NPRM. As far as the agency is concerned, the utility of consumer complaints for early warning purposes is not diminished by the fact that they are based on the observations of vehicle users as opposed to persons with technical training or experience. Such observations are often what first alerts the agency to the possible existence of a safety-related defect, especially when warranty coverage is not or no longer available. As such, consumer complaints about safety-related systems and components constitute an essential part of the proposed early warning reporting system. If the agency were to overlook consumer complaints in anticipation of receiving a more technically developed analysis of a potential safety problem from a manufacturer, an entire mechanism for early warning would be eliminated.

NADA asserted that NHTSA has no need to obtain consumer complaint information from manufacturers as it has direct access to this kind of information from complaints made to the agency's Website and to the Auto Safety Hotline. AIAM also noted that NHTSA already receives consumer complaint information as militating against the need for manufacturers to submit this information to the agency. AIAM contended that the agency's database is a better source of early warning information than the manufacturer's database because consumers are less likely to complain to NHTSA about non-safety-related problems. GM commented that if NHTSA were to eliminate the need for manufacturers to report on consumer complaints, it could still obtain this information from vehicle owner's questionnaires (VOQs) that are submitted to the agency.

As stated in the NPRM, ODI's experience has shown that consumers are more likely to report a problem to the manufacturer than to NHTSA, and that many consumers do not complain to NHTSA until after they have complained unsuccessfully to the manufacturer. *See* NPRM at p. 66203. The NPRM further noted that we have observed that the number of consumer complaints to the manufacturer usually exceeds by a substantial margin the number of complaints made directly to the agency before the investigation is opened. *Id.* The agency observed in the NPRM that its "ability to identify potential defects in a timely manner, and to identify and understand emerging defect trends, would be greatly strengthened if the agency were to receive information about consumer complaints relatively shortly after the manufacturer does." *Id.* For these reasons, although the agency will continue to receive complaints through the agency's website and the Auto Safety Hotline, manufacturer complaint data will provide a valuable additional tool for assessing whether a potential safety-related defect exists.

Other comments questioned the need for consumer complaints to be separately reported to the agency, on the basis that the information in this category would duplicate that in other categories manufacturers would be obligated to report. GM contended that because the proposed rules define the term "claim" so broadly, requiring the separate reporting of consumer complaints is unnecessary, and increases the chances of duplicate reporting. GM observed that a single incident could involve a consumer complaint, a warranty claim, and a lawsuit, all of which would be required to be reported under the proposed rule. The Alliance also observed that the consumer complaint database is likely to have redundancies with other information in other databases. As a consequence, the comment suggested the agency could establish the early warning rule without requiring the reporting of consumer complaint information, and adopt this requirement at a later date if still had a need for the information.

GM's contention about the overlapping breadth of the definition of "claim" is erroneous. In both the NPRM and the final rule a "claim" is limited to a written communication seeking some form of relief from the manufacturer. Thus, a "claim" is considerably narrower than the proposed definition of "consumer complaint," which would encompass "a communication of any kind * * * expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product." Moreover, the proposed definition explicitly excluded claims, to avoid double counting.

The agency is unwilling to adopt the recommendation that the complaint must allege a safety-related defect, as this would unduly limit the reporting of consumer complaint information that NHTSA is seeking to collect through the early warning reporting rule. As stated in the NPRM, based on its past experience with defect investigations, the agency does not "believe that would be appropriate to simply require reporting of 'safety-related' problems, since manufacturers often have a much more narrow view of what constitutes a safety-related problem that we do." *See* preamble at 66202. If the term "consumer complaint" were limited to complaints specifically alleging a safety-related defect, communications expressing dissatisfaction with a product or relating that the product did not perform in a satisfactory manner would not necessarily be reported to the agency. Such communications may be equally indicative of a potential safety-related defect as ones specifically alleging the existence of such a defect.

If we were to adopt such a restrictive definition for the term "consumer complaint," we would deprive ourselves of information that could be of considerable value in identifying a defect trend. Moreover, by adopting such a definition, the process of reviewing consumer complaint information to respond to the reporting requirement would be transformed for manufacturers into little more than a search for specific phrases such as "safety-related defect" in the communications they receive, and equip them with the means to potentially evade the reporting of legitimate complaints. However, we note that reporting would only be required if the communication expressing dissatisfaction related to unsatisfactory performance, related to any actual or potential defect, or any event that allegedly was caused by any actual or potential defect in a product. Also, it

must relate to one of the reporting areas (e.g., service brakes). Thus, contrary to the suggestions of a commenter, consumer complaints on stain resistance alone are not to be reported.

The Alliance and JPMA recommended that the proposed definition of "consumer complaint" be changed to eliminate any reference to those expressing "general dissatisfaction" with a product. JPMA

of consumer complaint information, it should limit the reporting requirement to complaints that are made to the manufacturer's office designated to handle consumer complaints. Nissan observed that this would assure that manufacturers do not have to poll every employee on a quarterly basis who might have heard from a friend, neighbor or stranger about some dissatisfaction with a product that might

ANPRM said that manufacturers should be required to report only about components for which they are responsible, rather than about all components in a vehicle about which they may have received complaints. Since the final rule only requires reporting from manufacturers of 500 or more vehicles per year (other than incidents involving fatalities), it is likely that few NTEA members will have to

information would be separately reported. Thereafter, in its comments, JPMA recommended that child restraint manufacturers be allowed to combine the reporting of consumer complaints and warranty claims because most of these manufacturers routinely treat both categories of information the same, and therefore capture it in a single database that cannot reasonably be segregated. To avoid the need to impose an additional

equipment by a manufacturer, distributor, or dealer to a buyer or lessee that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time (including any extensions of such specified period of time), or any undertaking in writing in connection with the sale or lease by a manufacturer, distributor, or dealer of a motor vehicle or item of motor vehicle equipment to refund, repair, replace, or take other remedial action

Finally, the Alliance argued that the reference to "dealers and distributors" should be deleted because they do not have the authority to alter the terms of a manufacturer's warranty. This would clarify that repairs under independently provided service contracts are not reportable. Similar comments were made by NADA, Nissan, Harley-Davidson and MIC. Nissan added that reporting activities under a warranty

must relate to one of the reporting areas (e.g., service brakes). Thus, contrary to the suggestions of a commenter, consumer complaints on stain resistance alone are not to be reported.

The Alliance and JPMA recommended that the proposed definition of "consumer complaint" be changed to eliminate any reference to those expressing "general dissatisfaction" with a product. JPMA contended that including complaints such as these would distort the data because they would have to include everything from complaints about the shell or pad color, the comfort of the handle, stain resistance of the fabric, or other general consumer complaints that involve one of the reportable categories, but can have no possible bearing on a possible defect trend. The Alliance recommended that if the consumer complaint reporting requirement is retained, it should be limited to complaints addressing a problem with a motor vehicle. Similarly, Utilimaster asked the agency to clarify, either in the preamble of the final rule or in its regulatory text, that mere suggestions for product improvements, without reference to a current product deficiency, will not be considered reportable consumer complaints. The company noted that many of the consumer complaints that it reviews do not relate to safety issues or concerns, and that the submission of this type of information would "clutter the agency's data bank with irrelevant material."

The thrust of these comments is unclear, as they appear to address, at least in substantial part, matters on which reporting would not have been required under the NPRM. As the agency noted in the NPRM, the fact that manufacturers would only need to report consumer complaints relating to specific safety-related components, systems or events (e.g., fire) will assure that only potential safety-related problems are included in numerical reports to the agency. *See* preamble at 66202. This does not include shell or pad color or similar matters. With regard to Utilimaster's comment, we note that the proposed definition of consumer complaint would not encompass communications suggesting a product improvement that do not refer to a product deficiency. For example, a communication that a third seat in a minivan should fold down as opposed to being capable of being removed would not have to be reported. Accordingly, there is no need to modify the proposed definition in response to that comment.

GM and Nissan commented that if NHTSA were to require the submission of consumer complaint information, it should limit the reporting requirement to complaints that are made to the manufacturer's office designated to handle consumer complaints. Nissan observed that this would assure that manufacturers do not have to poll every employee on a quarterly basis who might have heard from a friend, neighbor or stranger about some dissatisfaction with a product that might fall within the proposed definition. GM contended that the proposed reporting requirement would be unworkable if it required a manufacturer to memorialize every consumer contact with any of its employees.

The agency is accepting the recommendation by GM and Nissan that it limit the areas in which a manufacturer must search in ascertaining the number of complaints it has received. In our view, this includes communications addressed to the office designated in an owner's manual, written communications to the corporation that in the ordinary course are routed to the office that ordinarily processes complaints, oral communications to offices, such as consumer relations telephone lines, that ordinarily receive complaints, and electronic communications to the corporation's web site or to its general e-mail address/account that ordinarily receives complaints, and, of course, all complaints actually received by the office that handles such complaints. We have, accordingly, modified the proposed definition of "consumer complaint" to specify that the reportable communications are those made "to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer website that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit of the manufacturer that receives consumer inquiries or complaints, including telephonic complaints * * *." The agency wishes to emphasize that this definition encompasses written complaints addressed to the manufacturer generally or to an officer of the company (e.g., to "XYZ Company" or to "President" or to the president by name) and telephonic complaints that, in the normal course of business, are directed or routed to the office that receives consumer inquiries or complaints. If we find that this modification leads to abuses by manufacturers, we will take appropriate action in the future.

NTEA, representing final stage manufacturers, in its comment to the ANPRM said that manufacturers should be required to report only about components for which they are responsible, rather than about all components in a vehicle about which they may have received complaints. Since the final rule only requires reporting from manufacturers of 500 or more vehicles per year (other than incidents involving fatalities), it is likely that few NTEA members will have to submit consumer complaint information. However, for these that are covered, we note that the issue of which manufacturer's product is "responsible" often is disputed and is not determinative for early warning purposes. Moreover, the final stage manufacturer is often the only entity with which an owner deals. For example, a consumer who experiences a fuel leak in a vehicle is more likely to complain to the manufacturer of the completed vehicle than to the manufacturer of the chassis. To assure that important information is submitted, we are adopting our proposal to require that each vehicle manufacturer covered by the regulation report on all consumer complaints (and other specified information) that it receives.

Separate questions arise with respect to child restraint systems. We proposed "to require * * * all child restraint system manufacturers, to report the number of consumer complaints that the manufacturers have received about designated components and systems of their * * * equipment during each reporting period." *See* NPRM at p. 66203. We also stated that we were proposing to require "all child seat * * * manufacturers to report aggregated warranty claims data from the U.S. on certain specified components and systems." See p. 66205. The implication of these statements was that child restraint system manufacturers, like other manufacturers subject to the proposed reporting requirements, would separately report consumer complaint and warranty claims data. Despite the preamble statements, text that would require the submission of consumer complaint and warranty claims data was inadvertently omitted from the proposed regulatory text of Section 579.26, specifying the reporting requirements for manufacturers of child restraint systems.

After JPMA brought this discrepancy to our attention, we orally confirmed that the preamble statements proposing to require child restraint system manufacturers to submit both consumer complaint and warranty claims data reflected the agency's intent, and that the agency contemplated that this

information would be separately reported. Thereafter, in its comments, JPMA recommended that child restraint manufacturers be allowed to combine the reporting of consumer complaints and warranty claims because most of these manufacturers routinely treat both categories of information the same, and therefore capture it in a single database that cannot reasonably be segregated. To avoid the need to impose an additional sorting burden on child restraint system manufacturers, we are requiring reporting on the combined number of consumer complaints and warranty claims that they receive. Accordingly, for manufacturers of child restraint systems, we are modifying the text of proposed Section 579.26 (Section 579.25 in the final rule) by designating proposed paragraph (c) as paragraph (d), and adding a new paragraph (c) covering the submission of the combined number of consumer complaints and warranty claims.

K. Warranty Claims Information

We proposed to require submission of information about certain "warranty claims" as "other data" under Section 30166(m)(3)(B).

1. Definitions of "warranty," "warranty claim," and "warranty adjustment"

We proposed definitions of warranty and warranty claim. After reviewing various definitions of "warranty," and comments on the issue, we proposed a definition of warranty based on the definition of written warranty in the Moss-Magnuson Act, 15 U.S.C. 2301(6), to which manufacturers are subject. Under that Act, a "written warranty" means:

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

We tailored that definition to the subject matter at issue and proposed to define "warranty" as:

Any written affirmation of fact or written promise made in connection with the sale or lease of a motor vehicle or motor vehicle equipment by a manufacturer, distributor, or dealer to a buyer or lessee that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time (including any extensions of such specified period of time), or any undertaking in writing in connection with the sale or lease by a manufacturer, distributor, or dealer of a motor vehicle or item of motor vehicle equipment to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

The normal practice is for dealers to perform the repair or to provide the replacement and then to submit a claim for reimbursement to the manufacturer. Accordingly, we proposed that "warranty claim" means "any claim presented to a manufacturer for payment pursuant to a warranty program, extended warranty program, or good will."

The Alliance, NADA, Honda, RMA, MIC, Nissan, RVIA, Harley-Davidson, and Spartan provided comments on this issue.

The Alliance commented that the term "warranty" is a term of art that has significance for other statutes and regulations, so that it is important not to include in the definition factors that are not part of a manufacturer's existing warranty system, and it recommended three changes to NHTSA's proposed definition.

First, it asserted that the definition needs to specify that a warranty is provided by a manufacturer "without separate consideration" in order to capture what is considered to be a "warranty" in the ordinary course of business, and to exclude certain "insurance-type" products that can be purchased separately by an owner. This could reduce the number of warranty claims manufacturers must report, as it would appear to limit warranty reporting to the basic warranty offered with the vehicle, rather than include the optional warranties offered on motor vehicles and motor vehicle equipment. The Alliance was concerned with "insurance type" products that can be sold separately.

Second, the Alliance contended that the portion of NHTSA's proposed definition referring to "repair, refund, or replace" should be deleted because it is unclear and appears to include remedial activity, which the Alliance asserted is not part of the warranty process. It asserted that including reports on safety or emissions recall activity would contaminate the system and devalue its ability to predict possible defect trends.

Finally, the Alliance argued that the reference to "dealers and distributors" should be deleted because they do not have the authority to alter the terms of a manufacturer's warranty. This would clarify that repairs under independently provided service contracts are not reportable. Similar comments were made by NADA, Nissan, Harley-Davidson and MIC. Nissan added that reporting activities under a warranty offered by someone other than a "manufacturer" would not be appropriate and would create confusion and unnecessary complications. Harley-Davidson stated that a warranty claim based upon a warranty representation or extended service plan offered by a person other than entities over which the manufacturer has control should be excluded. In sum, the manufacturers argued that only those warranties authorized and offered by a manufacturer should be reported.

Thus, the Alliance suggested an alternate definition for "warranty:"

Any written affirmation of fact or written promise provided without separate consideration in connection with the sale or lease of a motor vehicle or motor vehicle equipment by a manufacturer to a buyer or lessee that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time (including any extensions of such specified period of time), but does not include any written materials related to a notification and remedy campaign conducted in accordance with Parts 573 and 579.5 of this Chapter.

As for the Alliance's first point, in our view, NHTSA's proposed definition already excludes third-party "insurance type" products. The definition states that the warranty has to be made "by the manufacturer." Unless a manufacturer (including one of its subsidiaries or affiliates) has provided such products, it will not have to report on them. Furthermore, we see no difference between a warranty that is offered without separate consideration and one that does. We realize that there are warranties offered by the manufacturer for an additional price that offer more coverage than a basic warranty. Information on claims under such supplemental warranties would be valuable to NHTSA in spotting a potential defect.

The Alliance's second point concerns the latter part of our proposed definition of "warranty" which would include:

Any undertaking in writing in connection with the sale or lease by a manufacturer, distributor, or dealer of a motor vehicle or item of motor vehicle equipment to refund,

repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

This language, with only minor alterations to tailor it to the Vehicle Safety Act, was taken from the language of the Moss-Magnuson Act's definition of "warranty." As stated in the preamble to the NPRM, we believe that most manufacturers should be familiar with

reimbursement for payment or other restitution to a consumer, pursuant to a warranty program offered by the manufacturer.

2. Reports Involving Warranty Claims

In the ANPRM, we indicated that we believed that information about warranty claims can often provide relevant information that indicates the possible existence of a safety defect.

and good will. We proposed to define "good will" as "the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty." This can occur because the terms of the warranty have expired, or the issue is outside the terms of the warranty, for example, when the

The Alliance did not support reporting good will claims processed outside the normal warranty system, such as by direct check reimbursement, because the burden to manually account for and report these claims would outweigh the value of this data. The Alliance would exclude vehicle buy-backs under state lemon laws from good will claims. Spartan raised burden issues as well.

The Alliance also suggested a definition for good will, which was "the

claims regardless where they are processed within the company. We are adopting our proposed definition of "good will," adding the further clarification that the repair or replacement is one that is not covered by a safety recall. Thus, "good will" means:

the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the

for suggesting this additional reporting requirement, but it subsequently explained that this category would be used in instances where no specific tire failure was involved, such as for the three non-failed tires on a vehicle where the customer insisted on replacing all four tires when only one had failed.

We do not believe that data concerning tires with no failure condition or with cosmetic, ride, or wear concerns will be useful to the early

repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking. '

This language, with only minor alterations to tailor it to the Vehicle Safety Act, was taken from the language of the Moss-Magnuson Act's definition of "warranty." As stated in the preamble to the NPRM, we believe that most manufacturers should be familiar with this definition because of the Moss-Magnuson Act's applicability to their warranties. As a result, we disagree with the Alliance's assertion that this is unclear. The Alliance offers no basis for disputing the clarity of the second half of the definition of "warranty" that we proposed.

We agree with the Alliance that it would not be appropriate to report recall work that is accounted for under a manufacturer's warranty system. Manufacturers should remove those claims that relate only to work performed under a recall campaign that has been reported to NHTSA under 49 U.S.C. 30118 and 49 CFR Part 573 (or performed pursuant to emissions-related recalls under the Clean Air Act).

As for the Alliance's third point, we agree that manufacturer-provided warranties are distinguishable from other service-oriented products offered by dealers. A manufacturer is the person responsible for its warranty on its products. Reimbursement under a service contract offered by a dealer or a distributor not backed up by a manufacturer need not be reported to NHTSA. Accordingly, the final definition of "warranty" contains no reference to distributors or dealers.

RMA suggested that tire manufacturers should be required to report "warranty adjustments," rather than warranty claims, to more accurately reflect the tire industry's practices and terminology. "Warranty adjustments" would be defined to mean "payment or other restitution made by a tire manufacturer to a consumer, or to a dealer in reimbursement for payment or other restitution made to a consumer, pursuant to a warranty program, extended warranty program, or good will. In RMA's view, "When NHTSA seeks warranty information from tire manufacturers, the data it seeks and reviews is "warranty adjustment" data in our terminology, not 'warranty claim' data as defined in the NPRM." We believe that RMA's comment is valid, and we are defining "warranty adjustment" as follows:

> Any payment or other restitution, such as, but not limited to, replacement, repair, credit, or cash refund, made by a tire manufacturer to a consumer, or to a dealer in reimbursement for payment or other restitution to a consumer, pursuant to a warranty program offered by the manufacturer.

2. Reports Involving Warranty Claims

In the ANPRM, we indicated that we believed that information about warranty claims can often provide relevant information that indicates the possible existence of a safety defect. Manufacturers commented on this. After reviewing these comments and assessing the value of warranty claims data to the early identification of possible safety defects, we discussed in some detail in the preamble to the NPRM how, in the past, warranty information has helped us to detect defects. We have often found warranty claims to be more valuable than customer complaints because the customer has identified a problem, a repair facility (often a manufacturer-franchised dealer) has performed a repair, and the manufacturer has paid for some of or all the repair. This information is valuable to NHTSA as an early warning tool in assessing whether a defect potentially exists. The principal limit on the value is that after the expiration of the warranty (often three years or 36,000 miles), this information is no longer generated. However, at times these programs are extended when there are problems with the product and at times manufacturers also pay for repairs under "good will" programs. We have found that "good will" actions provide valuable information in that manufacturers may choose to address a perceived problem by extending or liberalizing the terms of a warranty rather than by conducting a full recall, or by formally extending the warranty period. In order to aid in the early discovery of potential defects, the agency believes that the number of good will claims should be reported along with more "traditional" warranty claims.

The NPRM would have required manufacturers of 500 or more vehicles annually and all child restraint system and tire manufacturers to report aggregated warranty claims data from the United States on certain specified components or systems and fire (as described below). We proposed defining "warranty claim" as "any claim presented to a manufacturer for payment pursuant to a warranty program, an extended warranty program, or good will." Thus, warranty claim reporting would comprise the number of repairs and/or replacements performed free of charge under warranties, as well as those under formal or informal extended warranties and good will. We proposed to define "good will" as "the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty." This can occur because the terms of the warranty have expired, or the issue is outside the terms of the warranty, for example, when the manufacturer pays or participates in voluntary buy-backs and Lemon Law buy-backs of vehicles or motor vehicle equipment.

One suggestion made in the comments was that manufacturers should only report on warranty claims that were paid by the manufacturer. We agree with this suggestion. Manufacturers receive some incomplete warranty claims and do not pay them. They generally do not retain information on warranty claims that are presented to them and not paid. Thus, unpaid warranty claims would not be within a manufacturer's database and a manufacturer cannot report information that it does not have. Furthermore, the TREAD Act precludes NHTSA from requiring manufacturers to maintain or submit records respecting information not in their possession. *See* 49 U.S.C. 30166(m)(4)(B). Since some manufacturers do not keep records on unpaid warranty claims, NHTSA is constrained from requiring them to do so. To address this issue, the final rule defines "warranty claim" as "any claim paid by a manufacturer, including provision of a credit, pursuant to a warranty program, an extended warranty program, or good will."

The Alliance, Nissan, and Spartan commented on the inclusion of good will in warranty claims. The Alliance noted that NHTSA would receive a substantial number of good will claims in warranty claims reports because many Alliance members use their warranty systems to process them and had no objection to reporting good will claims that are processed along with warranty claims through the warranty system. Spartan generally opposed reporting certain good will claims because, in its view, good will claims are not good indicators of a problem with a motor vehicle; it contended that claims processed for good will or "customer satisfaction" would not provide NHTSA with an accurate indication of the condition that necessitated the repair. It observed that a high percentage of claims it received for these purposes are based on factors involving subjectivity or customer perception, and when investigated, often result in no problem being found.

The Alliance did not support reporting good will claims processed outside the normal warranty system, such as by direct check reimbursement, because the burden to manually account for and report these claims would outweigh the value of this data. The Alliance would exclude vehicle buy-backs under state lemon laws from good will claims. Spartan raised burden issues as well.

The Alliance also suggested a definition for good will, which was "the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, any part of which is paid for by the manufacturer through its warranty administration system, when the repair or replacement is not covered under warranty."

The Alliance's and Nissan's recommendation of limiting good will claims to those processed through a manufacturer's warranty administration system would exclude good will claims based on direct check reimbursement from a manufacturer to an owner not tracked within a manufacturer's warranty administration system and good will claims paid by manufacturers that provide payments and credits to dealers and others but do not record good will claims in their warranty systems. Good will claims not administered through a company's warranty system provide information as valuable as good will claims that are administered through that process. We desire to capture as many good will claims as possible to ensure we have a complete database from which to identify potential defects.

ODI's experience indicates that most manufacturers capture good will claims within their warranty systems. It appears to us, therefore, that the burden of capturing outside good will claims will be limited. Furthermore, all companies must have some means to track their good will claims for financial tracking purposes. Consequently, even if the good will claims are not in a warranty administration system, ordinarily they would be in another computerized system that could be accessed and reviewed without significant difficulty. If they were not entered and maintained in a manner that would provide minimal specificity, they would not be reported. We cannot estimate the burden of such review, since the Alliance did not provide any information about which companies possess good will payments outside their regular warranty system or the number or percentage of such "outside" claims.

Therefore, based upon the foregoing we believe that the definition of "good will" should include all good will claims regardless where they are processed within the company. We are adopting our proposed definition of "good will," adding the further clarification that the repair or replacement is one that is not covered by a safety recall. Thus, "good will" means:

> the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.

Several manufacturers suggested that NHTSA should clarify that it does not expect manufacturers to report lawsuits or claims for breach of warranty. We agree that the rule should be clarified to exclude lawsuits or claims for breach of warranty. As noted above, we are defining "warranty claim" as "any claim paid by a manufacturer * * *." Thus, the definition does not include unpaid claims such as lawsuits or claims for breach of warranty. However, if a lawsuit or claim for breach of warranty is resolved with a monetary payment, it would become a "warranty claim" under our definition, and would have to be reported.

RVIA suggested that we establish a threshold number or percentage of claims relating to a particular critical system on a given model before any reporting is required. We discussed this concept in the ANPRM, but rejected it because we believe we may lose early information in the early warning stages and do not have the capability to set such thresholds.

RMA stated that not all good will claims will be captured in the categories that tire manufacturers must report on. Therefore, in order to capture all good will claims, RMA proposed the term "customer satisfaction condition" to capture those good will claims that do not fit within the categories prescribed by NHTSA. RMA suggested that:

> Tire conditions reported in the category "customer satisfaction condition" would include any tire not meeting customer expectations due to adverse operating conditions, cosmetic conditions, ride conditions, wear conditions, customer abuse, conditions not directly related to the tire (e.g. valve lead, bent rim), and the like.

RMA asserted that this category would cover all warranted and non-warranted (good will) adjustment conditions not included in the four component categories: tread, sidewall, bead, and other. Thus, RMA requested NHTSA to add this category to tire manufacturers' reporting obligation for warranty adjustment data. The RMA comments did not provide a clear basis for suggesting this additional reporting requirement, but it subsequently explained that this category would be used in instances where no specific tire failure was involved, such as for the three non-failed tires on a vehicle where the customer insisted on replacing all four tires when only one had failed.

We do not believe that data concerning tires with no failure condition or with cosmetic, ride, or wear concerns will be useful to the early detection of safety-related tire defects. Therefore, the "customer satisfaction condition" will not be adopted in the final rule. However, we emphasize that tire failure conditions attributed to "adverse operating conditions" or "customer abuse" should be counted in the appropriate category set forth in the rule. For example, to the extent that tire tread failures are attributed to road hazards or under-inflation in a manufacturer's warranty adjustment system, the incidents should still be counted under the tire "tread" component code.

L. Field Reports

As part of its defect investigations, ODI regularly requires manufacturers to provide "field reports" about alleged defects. These include communications received by a manufacturer from the manufacturer's staff, a dealer, an authorized service center, or others, regarding an alleged problem in or dissatisfaction with a product in use. They are usually prepared by someone with technical expertise. There are far fewer field reports than consumer complaints, although practices resulting in the generation of field reports vary widely among manufacturers. Field reports are not specifically mentioned in the TREAD Act, but were addressed in the ANPRM. In the NPRM, we proposed to require submission of the number of field reports, and the submission of certain categories of such reports, as "other data" under Section 30166(m)(3)(B).

1. Definition of "field report"

The ANPRM asked for comments on an appropriate definition of "field report." Two broad themes cut across industry responses. First, respondents stressed the importance of clearly and precisely defining the term "field report." The Alliance requested that the term be defined as technical reports by technical staff involving one or more incidents in the field involving a covered vehicle system on a vehicle that had been sold. According to other respondents, the term has numerous meanings within the medium and heavy-duty truck industry as well as

among equipment manufacturers and is not well defined across the tire industry. We were told that the trailer industry, for example, does not use the term "field reports."

The second broad theme in the comments by manufacturers was a recommendation to limit the number and types of field reports to be reported to us. The Alliance would limit it to certain technical reports about an

year. Such reports often contain data on multiple incidents involving vehicles used by delivery companies (e.g., FedEx, UPS), rental companies, trucking companies, police departments, and school districts. Fleet vehicles generally accumulate greater miles over a given period of time than non-commercial vehicles and therefore can serve as a valuable source of predictive information for early warning purposes.

The Alliance, NADA, RMA, MIC, Ford, GM, Harley-Davidson, and Utilimaster provided comments on these issues.

The Alliance argued that the definition should be limited to reports about incidents that occur "in the field," which, in its view, is generally understood "to mean incidents involving vehicles in use by consumers and the public." Absent this

proposed definition, which covered the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced by that manufacturer. Also, the MIC formulation does not include the phrase "regardless of whether verified or assessed to be lacking in merit." It is important that the scope of the definition be set forth inclusively

manufacturers on a routine and standard basis, pursuant to numerous information requests. These industry comments misconstrue what was covered by the proposal. For example, "field report" was not intended to (and, in our view, did not) cover every dealer-to-manufacturer communication. "Field report" did not cover routine parts requisitions, marketing, dealer operation and relationship issues, company personnel matters or consumer

product exclusion. Furthermore, Ford argued that even if it were only required to report numbers, rather than produce hard copies of field reports in its litigation files, the reporting of these numbers would hamper the ability of car manufacturers to evaluate product liability cases and prepare for trial, since it would reveal case strategy and trial preparation information that would not be disclosed in the litigation itself. We disagree with Ford's assertion.

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among equipment manufacturers and is not well defined across the tire industry. We were told that the trailer industry, for example, does not use the term "field reports."

The second broad theme in the comments by manufacturers was a recommendation to limit the number and types of field reports to be reported to us. The Alliance would limit it to certain technical reports about an incident (or several similar incidents) that are prepared by technical representatives. The Alliance would exclude unverified reports regarding customer complaints that are passed through to the manufacturer without any technical analysis. Commenters in the tire industry and the heavy trucking industry indicated that many of the communications they refer to as field reports deal with sales, marketing and customer satisfaction programs, which they would exclude. We agreed with this.

In the NPRM, we concluded that the Alliance's suggested restriction of the definition to "technical reports" that are prepared by "technical" employees was not feasible. It would require a definition of "technical" and "technical report" and difficult, if not impossible, assessments of whether the author was a technical employee and whether the content amounted to a technical report, which could result in delays, under-reporting, and unnecessary burdens.

There was considerable discussion about whether we should require the reporting of field reports prepared by a dealer's technicians. The Alliance recommended including both types of reports in an early warning system. Some manufacturers, however, felt that reporting of dealer reports should not be required. We believe that it is important for us to receive information about such dealer reports received by manufacturers regarding potential defects because they are a valuable source of relevant information. Indeed, they are one of the primary bases upon which manufacturers become aware of potential defects in their products. We therefore proposed to require reporting of the cumulative number of field reports prepared both by manufacturers' employees or representatives and by dealers, including their employees, involving specified systems and components.

We also proposed to include in our definition of "field report" any document received by a manufacturer that was prepared by a person owning or representing one or more fleets of vehicles. For these purposes, a fleet would be defined as more than ten vehicles of the same model and model year. Such reports often contain data on multiple incidents involving vehicles used by delivery companies (e.g., FedEx, UPS), rental companies, trucking companies, police departments, and school districts. Fleet vehicles generally accumulate greater miles over a given period of time than non-commercial vehicles and therefore can serve as a valuable source of predictive information for early warning purposes. Most commenters did not dispute this. The few that did (Nissan and TMA) likened fleet reports to customer complaints. They did not demonstrate that fleet vehicles are not subject to extensive use. Therefore we are adopting it as proposed.

Other definitional issues raised by commenters were whether field reports should be limited to written communication and to "non-privileged" documents. Under the NPRM, reporting would be required with regard to documented communications (e.g., those in writing, entered electronically, or otherwise converted into a document in the broadest sense of the word). With respect to the issue of privilege, we recognized that a field report truly prepared in anticipation of litigation could be considered as work product, and thus ordinarily be exempt from production in litigation. We believed that the existence of any such reports should be indicated to us, even though privileged and work product documents would not have to be submitted.

We agreed that reports relating to sales, marketing, and dealer-manufacturer relations were not within the definition of field report.

Finally, in addition to proposing that manufacturers report the number of field reports, we proposed that manufacturers would have to submit copies of field reports prepared by their employees and representatives and by fleets. However, manufacturers would not have to submit copies of field reports prepared by dealers or dealer employees.

On the basis of these considerations, we proposed the following definition for "field report:"

> A communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or by an entity that owns or operates a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced by that manufacturer, regardless of whether the problem is verified or assessed to be lacking in merit.

The Alliance, NADA, RMA, MIC, Ford, GM, Harley-Davidson, and Utilimaster provided comments on these issues.

The Alliance argued that the definition should be limited to reports about incidents that occur "in the field," which, in its view, is generally understood "to mean incidents involving vehicles in use by consumers and the public." Absent this clarification, the proposed definition could be viewed as requiring reporting of incidents involving pre-production prototypes, or results of pre-production consumer evaluation clinics. Harley-Davidson had a similar comment.

The Alliance also commented that the definition should state that subsequent internal correspondence about the field incident is not reportable as another "field report." NHTSA should also state, according to the Alliance, that "field report" does not include a contact from a dealer seeking technical assistance from the manufacturer in conducting a repair. For these reasons, the Alliance suggested that "field report" be defined as:

> (a) A non-privileged technical report prepared by a manufacturer's technical staff involving (b) a single incident in the field or several similar incidents in the field, (c) a covered vehicle system, and (d) a vehicle (or vehicles) that has been sold to a purchaser for purposes other than resale.

We agree with the comment by the Alliance and Harley-Davidson that it is not our intent to include reports involving prototype vehicles and equipment within the ambit of field reports, and are adding the phrase "produced for sale," which we find clearer than "in the field." As for the Alliance's other recommendations, while "internal correspondence" might not fit within the definition of "field report," there can be, and often will be, multiple field reports about a particular incident. The information contained in such subsequent reports can be very valuable in ascertaining whether a possible defect exists. As for contact from a dealer seeking technical assistance in a repair, reports on diagnostics would be included within the definition, but a document reflecting the manufacturer's assistance after the diagnosis when the dealer's question is how to perform a repair would not.

MIC suggested that NHTSA define "field reports" "to include communications received by a manufacturer from the manufacturer's technical staff, a dealer, and authorized service center, or others, regarding an alleged problem in or dissatisfaction with a product in use." This is not as clear or as comprehensive as the NPRM

proposed definition, which covered the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced by that manufacturer. Also, the MIC formulation does not include the phrase "regardless of whether verified or assessed to be lacking in merit." It is important that the scope of the definition be set forth inclusively and that a manufacturer not be allowed to avoid reporting by denying an underlying assertion. In the NPRM, we noted that we were reluctant to limit the definition to include only "technical" or "technical reports" because it would require us to define those terms and require an assessment whether the author was a technical employee and whether the content was a technical report, which could result in delays, under-reporting, and unnecessary burdens. *See* 66 FR 66205. With regard to the MIC comment, the term "technical staff" would be equally problematic, as it is not defined. In any case, there is no need to include the term, since the MIC comment would include reports from "others."

Other industry commenters asserted generally that the proposed definition of "field report" was overbroad and would include irrelevant and highly sensitive information of no value to early warning. The commenters expressed concern over the scope of information that would be considered a "field report" under the proposed definition. The comments suggested a belief that field reports would include dealer issues, personnel information, commercially sensitive information, proprietary information, privileged and non-privileged litigation materials and work product. For instance, NADA emphasized that the definition should not be construed to cover such dealer-to-manufacturer communications such as technician assistance, electronic vehicle reprogramming, service or parts sales/marketing, customer satisfaction reports, etc. RMA added that the field reports received by the tire industry are more like consumer complaints and contended that the agency has already recognized that consumer complaints are unreliable in judging or predicting tire performance; the comment asserted that the reporting of field reports would be overly burdensome to members of the tire industry, and of little or no benefit to the agency.

The definition of field report that we proposed was intended to capture the basic concept of field reports utilized by ODI for many years. In the course of defects investigations, ODI has obtained information on field reports from manufacturers on a routine and standard basis, pursuant to numerous information requests. These industry comments misconstrue what was covered by the proposal. For example, "field report" was not intended to (and, in our view, did not) cover every dealer-to-manufacturer communication. "Field report" did not cover routine parts requisitions, marketing, dealer operation and relationship issues, company personnel matters or consumer complaints (which are addressed elsewhere in the rule), and would not include requests for previously-distributed technical support documents, such as instructions on installations of specified parts. "Field report" also would not include requests for guidance on how to efficiently perform routine maintenance on difficult-to-access components, or simple requests for towing (without more). As provided by the proposed rule, we would require reporting on the numbers of field reports involving failure, malfunction, lack of durability, or other performance problems for the categories set forth. The comments have not demonstrated that this is inappropriate. With regard to the comment reflecting the belief that field reports would include dealer and personnel issues, we note that dealer-manufacturer issues that do not involve defined problems with vehicles are outside the definition of field report. We have included reports prepared by manufacturers' representatives because manufacturers' representatives in the field often are not employees of the manufacturers in a strict legal sense.

The Alliance argued that reports generated by employees and representatives of a manufacturer that have performed product evaluations or operated "company-owned"' vehicles for personal use should not be considered as field reports. However, such reports often describe a problem or malfunction and can provide valuable information regarding possible defects. In fact, many manufacturers use them for that very purpose. Therefore, we have decided that if such reports relate to vehicles that were produced for sale, they are encompassed within the definition of field report.

Some manufacturers expressed concern that the production of field reports would require a costly and burdensome review of litigation files and compromise the work product exclusion. Ford and GM asserted that under the proposed definition of field reports, they would be required to produce hard copies of draft and final documents in their litigation files, which would intrude upon the work product exclusion. Furthermore, Ford argued that even if it were only required to report numbers, rather than produce hard copies of field reports in its litigation files, the reporting of these numbers would hamper the ability of car manufacturers to evaluate product liability cases and prepare for trial, since it would reveal case strategy and trial preparation information that would not be disclosed in the litigation itself. We disagree with Ford's assertion. Ford's assertion overstates the NPRM's coverage of litigation documents. Documents created for litigation, such as expert reports, are often not created by a manufacturer's employee or representative. Nevertheless, although we do not believe that the proposed definition would cause the range of problems asserted by Ford and GM, we are concerned about inhibiting the manufacturers' ability to consult with outside counsel. Therefore, we are specifying in the final rule that a field report "does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint and relates to the vehicle, component, or system at issue in the litigation."

Accordingly, the final rule defines "field report" as

> A communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or by an entity that owns or operates a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the vehicle, component or system at issue in the litigation.

2. Reporting and Submission of Field Reports

We proposed that the number of field reports involving specified components and systems from all sources be reported to us, and that NHTSA be provided with copies of all field reports from sources other than dealers.

With respect to numbers, we proposed that manufacturers of 500 or more motor vehicles and all manufacturers of child restraint systems and tires report the number of field reports originating in the United States regarding the same components and systems as they would be required to report for property damage claims,

consumer complaints, and warranty claims, as specified in the regulation. As with these categories of information, reporting would be done separately for each model and model year, for the ten previous model years. Consumer complaints that were merely forwarded to the manufacturer by the dealer without any comment or assessment would not have to be reported as field reports, but they would have to be

assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment that is originated by an employee or representative of the manufacturer * * *."

The Alliance also objected to our proposal to require redaction of field reports. We proposed to require manufacturers to provide two copies of

reports are more like consumer complaints, it would appear that the information that might be gained from such reports would be of limited value in detecting safety problems in tires. If a safety problem is developing in a line of tires, we believe that the problem is more likely to be detected through an increase in warranty adjustments than through field reports, which are better suited to detecting emerging problems

motor vehicles or items of motor vehicle equipment" (we will use the term "campaign" at times hereafter collectively to refer to all such actions by the manufacturer). As we stated in the ANPRM, this new section is broader than 49 CFR 573.8 (2001)(which implements Section 30166(f)), which requires a manufacturer to provide copies of communications to more than

pertain to or are being undertaken because of a defect or a safety-related concern.

In our view, this requirement is similar to although somewhat broader than the notices, bulletins, and other communications that for years have been required to be submitted by 49 CFR 573.8 (2001). Under Section 573.8, a manufacturer might argue that a condition that was the subject of a

information (sales promotions, financials, etc.), normal service and repair information, tools and equipment information, etc. should not be covered." NADA would also limit the information to "safety-related issues," commenting that "Clearly, 'campaign' communications involving radio tuning features or leather seating color fade should not have to be reported."

We acknowledged the breadth of the

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consumer complaints, and warranty claims, as specified in the regulation. As with these categories of information, reporting would be done separately for each model and model year, for the ten previous model years. Consumer complaints that were merely forwarded to the manufacturer by the dealer without any comment or assessment would not have to be reported as field reports, but they would have to be reported as consumer complaints.

The proposal to submit copies of some field reports occasioned several comments. Under the NPRM, we proposed to require manufacturers to provide the number of field reports covering only certain vehicle systems or components, and fire. On the other hand, manufacturers would have to provide copies of all field reports that are generated by employees or representatives of the manufacturer or by representatives of fleets of the manufacturers' vehicles (but not from their dealers).

The Alliance objected to the breadth of the proposed document submittal, asserting that this would result in over 45,000 field reports provided to NHTSA from its members alone. The Alliance asked that any requirement that field reports be submitted be restricted to those covering the components and systems for which numbers reporting will be required. We are accepting this suggestion, and are adding language to paragraph (d) of Sections 579.21–579.25 to address this point.

The NPRM proposed to require manufacturers to submit copies of field reports that are generated by employees or representatives of the manufacturer or by representatives of fleets of the manufacturer's vehicles. The NPRM would not require copies of reports that are prepared by dealers or their employees. This reflects an effort to focus on what are now, in general, the more technically rich documents (i.e., the manufacturer—as opposed to dealer—generated documents) and to reduce burdens. Documents in which a manufacturer's representative or employee raises or analyzes a potential problem have often been valuable to ODI in identifying a defect. To clarify matters, the final rule adds language to paragraph (d) of Sections 579.21–579.25 to clarify that manufacturers are required to submit documents assessing possible problems and are not required to submit documents regarding non-safety related issues such as marketing, personnel information, dealer information, and issues such as dealer technician and roadside assistance calls. Thus, the only field reports that are to be submitted are those that contain "an assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment that is originated by an employee or representative of the manufacturer * * *."

The Alliance also objected to our proposal to require redaction of field reports. We proposed to require manufacturers to provide two copies of each field report covered by the submission requirements: one complete copy and one from which all personal information about individuals has been redacted. After reviewing the comments, we have decided not to adopt such a requirement. To the extent that redaction is needed, it will be performed by the agency.

Comments raised concerns about commercially sensitive and proprietary information. Utilimaster complained that competitors might use the information submitted to NHTSA against one another to gain a competitive edge. However, manufacturers can request confidentiality for information submitted to NHTSA pursuant to our regulation entitled *Confidential Business Information*, 49 CFR Part 512. Competitive harm is a basis for granting a request for confidentiality.

RMA argued that the field reports received by the tire industry are more like consumer complaints and contended that the agency has already recognized that consumer complaints are unreliable in judging or predicting tire performance. Its comment also asserted that the reporting of field reports would be overly burdensome to members of the tire industry, claiming that "there is no system available to "search out" such a wide variety of documents, let alone place them in appropriate categories (tread, bead, sidewall, other)," and concluding that "assuming that a practical and reliable system could be designed, it would be very expensive to implement." RMA asked that tire manufacturers be excluded from the requirement to report numbers of field reports.

We disagree with RMA's comment that the agency has deemed consumer complaints unreliable, and that field reports would be of little or no benefit to the agency, as we discussed earlier in this document. However, we have reconsidered our tentative conclusion, as expressed in the NPRM, that tire manufacturers should be required to report numbers of field reports to NHTSA (the NPRM had already proposed to exclude tire manufacturers from providing copies of field reports). On the basis that tire industry field reports are more like consumer complaints, it would appear that the information that might be gained from such reports would be of limited value in detecting safety problems in tires. If a safety problem is developing in a line of tires, we believe that the problem is more likely to be detected through an increase in warranty adjustments than through field reports, which are better suited to detecting emerging problems in motor vehicles. Accordingly, the final rule does not require tire manufacturers to submit either numbers or copies of field reports.

In sum, we are convinced of the utility of field reports as indicators of potential safety defects, and that the definition, as modified and clarified, is properly scoped. Therefore, we are revising proposed paragraph (d) in each of Sections 579.21 and 579.22 to read as follows:

> * * * a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing an assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

These sections relate to field reports for passenger cars and medium-heavy vehicles including buses. Paragraph (d) of Sections 579.23 and 579.24 relating to field reports for motorcycles and trailers reads identically except that rollovers are not included. Paragraph (d) of Section 579.25 relating to field reports for child restraint systems reads identically except that neither fires nor rollover are included.

M. Customer Satisfaction Campaigns, Consumer Advisories, Recalls, or Other Activities Involving the Repair or Replacement of Motor Vehicles or Motor Vehicle Equipment

This aspect of the early warning proposed rule related to documentation that all manufacturers of motor vehicles and motor vehicle equipment would have to submit under proposed Section 579.5(b).

This requirement is based upon Section 30166(m)(3)(A)(ii), which provides for submission of information (derived from foreign and domestic sources) that concerns "customer satisfactign campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of

motor vehicles or items of motor vehicle equipment" (we will use the term "campaign" at times hereafter collectively to refer to all such actions by the manufacturer). As we stated in the ANPRM, this new section is broader than 49 CFR 573.8 (2001)(which implements Section 30166(f)), which requires a manufacturer to provide copies of communications to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser regarding "any defect" including "any failure or malfunction beyond normal deterioration in use, or any flaw or unintended deviation from design specifications, whether or not such defect is safety related."

In the NPRM, we proposed to define the phrase "customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment," to mean:

> Any communication by a manufacturer to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, or owner, whether in writing or by electronic means, relating to (1) repair, replacement, or modification of a vehicle, component of a vehicle or item of equipment, or a component thereof (2) the manner in which a vehicle or equipment is to be maintained or operated, or (3) advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

We included communications related to operation and maintenance because they may relate to a potential defect. For example, a warning sent to owners not to turn on the wipers when the windshield has snow on it may indicate a wiper defect.

The proposed definition would not include routine marketing documents or documents relating to surveys of owner satisfaction. It would include all notifications, product improvement or technical service bulletins, advisories, and other communications regarding the subject matter that are issued to, or made available to, more than one vehicle or equipment dealer, distributor, lessor, lessee, other manufacturer or owner involving any systems or components in the vehicle or equipment, not merely the specified components for which reports must be submitted regarding property damage claims, consumer complaints, warranty claims, or field reports. This would include any category of information relating to the replacement or repair of a vehicle or vehicle component, or the way a vehicle or vehicle equipment item is to be maintained or operated, whether or not there has been any determination by the manufacturer that these actions pertain to or are being undertaken because of a defect or a safety-related concern.

In our view, this requirement is similar to although somewhat broader than the notices, bulletins, and other communications that for years have been required to be submitted by 49 CFR 573.8 (2001). Under Section 573.8, a manufacturer might argue that a condition that was the subject of a communication to dealers or others did not rise to the level of a "defect" or "malfunction," and that it therefore did not have to provide copies of such a communication to NHTSA. Under early warning reporting, it would have to provide these related notices regardless of whether a "defect" potentially was indicated.

Nevertheless, because of these similarities, we proposed to implement this aspect of early warning reporting by including it in the same section as current Section 573.8, which is being moved to a new Section 579.5. This new Section 579.5 would also apply to all manufacturers of vehicles and equipment, which are currently required to submit copies of similar communications to NHTSA on a monthly basis. We anticipate that there will be relatively few documents covered by this proposal that would not have been covered under Section 573.8. We also proposed to require a cover letter for each monthly submission of documents required to be submitted under proposed Section 579.5 that identifies each communication in the submission by name or subject matter and date.

If a communication falls within the category described in both Section 579.5(a) and Section 579.5(b), it will only have to be submitted once.

MEMA, SEMA, the Alliance, AIAM, NADA, and Utilimaster commented on the proposed definition. All asserted that the definition is too broad.

The Alliance stated that the information that NHTSA obtains under the existing Sections 573.5(c)(9) and 573.8 should be sufficient and would be "* * * virtually all of the information proposed to be required by the proposed Part 579.5." NADA is also concerned that the definition is overly broad, noting that "the purpose of Section 30166(m)(3)(A)(ii) of the TREAD Act was to require manufacturers to report on service or repair 'campaign' activities beyond those falling within Section 30166(f), not to require every day-to-day manufacturer-dealer service/repair/ and parts communication." NADA suggested that the definition be restricted to "campaigns" and that "non-'Campaign' communications involving business information (sales promotions, financials, etc.), normal service and repair information, tools and equipment information, etc. should not be covered." NADA would also limit the information to "safety-related issues," commenting that "Clearly, 'campaign' communications involving radio tuning features or leather seating color fade should not have to be reported."

We acknowledged the breadth of the definition in both the ANPRM and NPRM (*see* p. 66206), saying that "* * * this new section is broader than 49 CFR 573.8 (2001) (which implements Section 30166(f) * * *." However, we also stated that "the proposed definition would not include routine marketing documents or documents relating to surveys of owner satisfaction." *See* p. 66207.

The first part of the definition, covering repair or replacement of a vehicle or equipment was derived from 49 U.S.C. 30166(m)(3)(A)(ii).

The second part of the definition, "the manner in which a vehicle or equipment is to be maintained or operated," could, as acknowledged in the preamble, cover a number of issues that are not necessarily safety-related. The Alliance, AIAM, Utilimaster, SEMA, and MEMA commented that this might require manufacturers to submit communications on a wide variety of topics that have no safety-related relationship. Utilimaster asserted that instructions to the owners either at delivery of the vehicle such as in an owner's manual or in a follow-up communication, should be omitted. It believes that the agency would become "* * * an instructional manual repository requiring storage facilities of heroic proportions * * *." We agree with a concern expressed in the comment. We do not view the routine provision of instructional documents with new products as a "communication" of the kind that would assist in the identification of defects relating to motor vehicle safety. Ordinarily, manufacturers do not knowingly produce defective products and instruct owners in how to avoid triggering the defect. What may be important to safety under the rule are post-sale advisories sent to owners that may run counter to the instructions initially given, such as a change in recommended tire pressures, or a shortened maintenance schedule. MEMA recommended that "the manner in which a vehicle or equipment is to be maintained and operated" be revised to address only post-sale conditions and have the following inserted: "(excluding materials such as promotional information, operating instructions, or

owner's manuals which accompany the vehicle or equipment at the time of first sale)." We agree with the thrust of this recommendation.

SEMA and MEMA are concerned that equipment manufacturers would have to report many communications that would be of virtually no value. To address this, we are modifying the second part of the definition to apply to

In identifying these vehicle systems and components, we requested the Volpe National Transportation Systems Center (Volpe) to conduct an analysis of past defect recalls. For each category of vehicle, Volpe looked at, among others, the total number of defect recalls associated with various vehicle-specific systems and components, the number of vehicles covered by those recalls, the number of recalls influenced by ODI protection, and curtains that deploy in a crash), seat belts including anchorages and other related components, structure (other than latches), seats, engine speed control including cruise control, latches (door, hood, hatch), tires, wheels, trailer hitches and related attachments, engine exhaust system, the number of incidents in which there was a fire, and, for incidents of death only, if another system or component is allegedly

these proposed systems and components.

With respect to reporting of incidents involving deaths and injuries, if the component or system identified in the claim or notice is other than a component or system for which reporting is specified, the manufacturer will enter the code "98." If the component or system is not specified in the claim or notice (i.e., is unknown to

systems overlap. While we recognize that the three areas are related, we believe they are more properly subdivided into discrete categories that can be analyzed separately. Otherwise, unusual problems in one area might be masked by normal problem experience in the other areas.

02. "Suspension System" means

> all components and hardware associated with a vehicle suspension system, including

the parking brake has been placed in a separate category.

As discussed above, manufacturers of medium-heavy vehicles, buses, and trailers must subdivide their reports on service brake system issues into "hydraulic" and "air" brake systems. Code 03 should be used to refer to hydraulic service brakes on these vehicles and all service brake reports on light vehicles and motorcycles. Code 04

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owner's manuals which accompany the vehicle or equipment at the time of first sale)." We agree with the thrust of this recommendation.

SEMA and MEMA are concerned that equipment manufacturers would have to report many communications that would be of virtually no value. To address this, we are modifying the second part of the definition to apply to only those equipment manufacturers who produce child restraint systems. Instead of the phrase "the manner in which a vehicle or equipment is to be operated," that we proposed, we are adopting the phrase "the manner in which a vehicle or child restraint is to be operated."

No one commented specifically about the third part of the definition, the phrase "advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment," and we are retaining it in the final definition.

For the reasons stated above, the final rule contains the following definition of "customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment:"

> any communication by a manufacturer to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, or owner, whether in writing or by electronic means, relating to repair, replacement, or modification of a vehicle, component of a vehicle, item of equipment, or a component thereof, the manner in which a vehicle or child restraint system is to be maintained or operated (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale), or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

N. Components and Systems Covered by Reports.

As discussed in Section III.B above, we proposed five discrete vehicle categories, and are adopting four of them in the final rule, having consolidated buses with medium-heavy vehicles. We attempted to identify, for each category of vehicle, for child restraint systems, and for tires, those systems and components whose failures are most likely to lead to safety recalls. These are the systems and components on which it is most important that we obtain timely information regarding failures, as compared to failures that are not related to safety or those that rarely, if ever, lead to safety recalls.

In identifying these vehicle systems and components, we requested the Volpe National Transportation Systems Center (Volpe) to conduct an analysis of past defect recalls. For each category of vehicle, Volpe looked at, among others, the total number of defect recalls associated with various vehicle-specific systems and components, the number of vehicles covered by those recalls, the number of recalls influenced by ODI investigations, and the number of recalled vehicles influenced by ODI investigations.

The study provided information on different components and systems implicated in recalls for light vehicles, medium-heavy vehicles, buses, motorcycles, and trailers. A copy of the study, which includes a description of the methodology, is in the docket. The underlying data are in NHTSA's DIMS II database, the relevant portions of which can be searched by the public through the NHTSA website. The components and systems are identified below as part of the discussion on reporting requirements.

For light vehicles, we proposed to require manufacturers to separately report the number of problems/incidents related to steering, suspension, service brakes, parking brakes, engine and engine cooling system, fuel system, power train, electrical system, lighting, visual systems, climate control system including defroster, airbags (including but not limited to frontal, side, head protection, and curtains that deploy in a crash), seat belts (including anchorages and other related components), structure (other than latches), seats, engine speed control including throttle and cruise control, integrated child restraint systems, latches (door, hood, hatch), tires, wheels, trailer hitches and related attachments, and the number of incidents in which there was a fire. For incidents of death and injury only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice, the incident would be included, and "other" would be specified.

For medium-heavy vehicles and for buses/school buses, we proposed to require manufacturers to separately report the number of problems/incidents relating to steering, suspension, service brakes, parking brake, engine and engine cooling system, fuel system, power train, electrical system, lighting, visual systems, climate control system including defroster, airbags (including but not limited to frontal, side, head protection, and curtains that deploy in a crash), seat belts including anchorages and other related components, structure (other than latches), seats, engine speed control including cruise control, latches (door, hood, hatch), tires, wheels, trailer hitches and related attachments, engine exhaust system, the number of incidents in which there was a fire, and, for incidents of death only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice. Because manufacturers of medium-heavy vehicles and buses would be required to report problems with the same identified components, we have decided to consolidate them into a single category.

In the final rule, we have decided to reduce the burden upon light vehicle manufacturers by not requiring separate reports involving integrated child seat systems (which are now included in the definition of seats), or by requiring reporting on trailer hitches and climate control systems. We are also not requiring medium-heavy vehicle and bus manufacturers to report on climate control systems. As discussed below, however, both types of manufacturers will have to separately report incidents, etc., involving rollover.

For trailers, we proposed to require manufacturers to separately report the number of problems/incidents relating to suspension, service brakes, parking brakes, electrical system, lighting/horns/alarms, climate control systems (including fuel systems in camping/travel trailers), structure (other than latches), latches, tires, wheels, trailer hitches and related attachments, the number of incidents in which there was a fire, and, for incidents of death only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice. In the final rule, we are retaining all these proposed systems and components except for climate control systems.

Finally, for motorcycles, we proposed to require manufacturers to separately report the number of problems/incidents relating to steering, suspension, service brakes, engine and engine cooling system, fuel system, power train, electrical system, lighting, structure, engine speed control (including throttle and cruise control), wheels, tires, the number of incidents in which there was a fire, and, for incidents of death only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice. In the final rule, we are retaining all

these proposed systems and components.

With respect to reporting of incidents involving deaths and injuries, if the component or system identified in the claim or notice is other than a component or system for which reporting is specified, the manufacturer will enter the code "98." If the component or system is not specified in the claim or notice (i.e., is unknown to the manufacturer), the manufacturer shall use the code "99." (Other code numbers are discussed later.)

For incidents involving deaths and/or injuries, we have added a column with the heading of "ID." Manufacturers must identify each separate incident with a unique, consecutive number. This will allow both ODI and the manufacturer to readily identify and refer to a specific incident. This will be particularly useful in those rare cases in which a manufacturer needs to update the incident report (as discussed below).

We proposed definitions for many of the systems and components for which reporting would be required. While we believed that these definitions were straight forward and self-explanatory, we requested comments on their accuracy and completeness. In some instances, we did not propose definitions because the need for a definition had not been clear, based on the ANPRM. However, in light of the comments on the NPRM requesting greater specificity, we are setting forth definitions for each category for which reporting will be required. In some cases, these are based on definitions recommended by the Alliance in its comments.

01. We did not propose a definition for "Steering System" in the NPRM. For the final rule, we have defined "Steering System" to mean

> all steering control system components, including the steering system mechanism and its associated hardware, the steering wheel, steering column, steering shaft, linkages, joints (including tie-rod ends), steering dampeners, and power steering assist systems. This term includes a steering control system as defined by FMVSS No. 203 and any subsystem or component of a steering control system, including those components defined in FMVSS No. 204. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This definition generally follows the language suggested by the Alliance. It should be noted that the Alliance recommended joining steering, suspension, and wheels together in a single category, believing that the systems overlap. While we recognize that the three areas are related, we believe they are more properly subdivided into discrete categories that can be analyzed separately. Otherwise, unusual problems in one area might be masked by normal problem experience in the other areas.

02. "Suspension System" means

> all components and hardware associated with a vehicle suspension system, including the associated control arms, steering knuckles, spindles, joints, bushings, ball joints, springs, shock absorbers, stabilizer (anti sway) bars, and bearings that are designed to minimize the impact on the vehicle chassis of shocks from road surface irregularities that may be transmitted through the wheels, and to provide stability when the vehicle is being operated through a range of speed, load, and dynamic conditions. The term also includes all electronic control systems and mechanisms for active suspension control, as well as all associated components such as switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.) and mounting elements (such as brackets, fasteners, etc.).

This is essentially the definition that we proposed. Our definition as adopted incorporates the Alliance recommendation, except that, as noted above, we have divided steering, suspension, and wheels into three separate categories. We have also expanded this definition slightly to include electronic control systems and mechanisms for active suspension control, as well as all associated components such as switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

03, 04. We did not propose a definition of "Service Brake System" in the NPRM. After reviewing the Alliance's suggested definition, we have decided that this term will mean

> all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135. This term also includes systems and devices for automatic control of the brake system such as antilock braking, traction control, stability control, and enhanced braking. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This definition is similar to that suggested by the Alliance, except that the parking brake has been placed in a separate category.

As discussed above, manufacturers of medium-heavy vehicles, buses, and trailers must subdivide their reports on service brake system issues into "hydraulic" and "air" brake systems. Code 03 should be used to refer to hydraulic service brakes on these vehicles and all service brake reports on light vehicles and motorcycles. Code 04 should be used to refer to air service brake systems on medium-heavy vehicles, buses, and trailers utilizing air service brakes or air-over-hydraulic brake systems. If a medium-heavy vehicle, bus, or trailer has a type of service brake system not readily categorized as an "air" or "hydraulic" brake system (e.g., electric brakes), the manufacturer should indicate hydraulic service brakes on its report (Code 03).

05. We are adopting the definition we proposed for "Parking Brake," with certain revisions recommended by the Alliance. "Parking Brake" means

> a mechanism installed in a motor vehicle which is designed to prevent the movement of a stationary motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This term does not include automatic transmission interlock components or pawls. Those components are part of the power train, which is addressed separately. Contrary to the Alliance's suggestion, we believe that the function and performance of the parking brake is sufficiently distinct to warrant separate reporting, even though certain elements of the service brake system may be shared by the parking brake. Where there is doubt, the manufacturer should attribute the incident to the vehicle's service brake system.

06. We did not propose a definition for "Engine and Engine Cooling." The Alliance contended that the category is unneeded because incidents that would be reported under it would be reported under other categories. The Alliance asserted, however, that if this were to be maintained as a separate category, the definition needs to clarify where the fuel system ends and the engine begins. To do so, we are defining "Engine and Engine Cooling" to mean

> the component (e.g., motor) providing motive power to a vehicle, and include the exhaust system (including the exhaust emission system), the engine control unit, engine lubrication system, and the underhood cooling system for that engine. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

07, 08, 09. We did not propose a definition for "Fuel System" in the NPRM. However, we have developed a definition based on the Alliance's recommendation. "Fuel System" means

> all components used to receive and store fuel, and to transfer fuel between the vehicle's fuel storage, engine, or fuel emission systems. This term includes, but is not limited to, the fuel tank and filler cap,

fasteners, etc.)." Therefore, "Electrical System" means

> any electrical or electronic component of a motor vehicle that is not included in one of the other enumerated reporting categories, and specifically includes the battery, battery cables, alternator, fuses, and main body wiring harnesses of the motor vehicle and the ignition system, including the ignition switch and starter motor. The term also includes all associated switches, control units, connective

investigations and recalls, and problems in this area should be reported.

14. We did not propose a definition for "Air Bags," but have provided one here for clarity. The definition incorporates the definition suggested by the Alliance, but is somewhat broader. We did not intend to limit the specific definition to relate only to "Air Bags," but also to address all automatic safety

The Alliance did not believe a separate category for "structure" was necessary. However, we believe that it is important to obtain information about problems with a vehicle's structure, since many other systems and components attach to the structure.

17. We are adopting a definition of "Latch" to mean

> a latching, locking, or linking system of a motor vehicle and all its components fitted

The Alliance recommended incorporating the "Wheel" component with "Steering" and "Suspension," but, as discussed above, we believe that it is more appropriate to separate these categories.

21. We did not propose a definition of "Trailer Hitch." By "Trailer Hitch" we mean

> all coupling systems, devices, and components thereof, designed to join or

thrown off from a burning substance. *See The American Heritage Dictionary.* Each of these conditions is indicative of a fire or a potential fire. The type of sparking for which the Alliance provided examples generally occurs as a part of normal vehicle operation and is generally not visible to the driver or passengers. We deem it highly unlikely that this type of spark will be reported to the manufacturer. Therefore, in the final rule, we are defining fire much as

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07, 08, 09. We did not propose a definition for "Fuel System" in the NPRM. However, we have developed a definition based on the Alliance's recommendation. "Fuel System" means

all components used to receive and store fuel, and to transfer fuel between the vehicle's fuel storage, engine, or fuel emission systems. This term includes, but is not limited to, the fuel tank and filler cap, neck, and pipe, along with associated piping, hoses, and clamps, the fuel pump, fuel lines, connectors from the fuel tank to the engine, the fuel injection/carburetion system (including the fuel injector rails and injectors), and the fuel vapor recovery system(s), canister(s), and vent lines. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

For medium-heavy vehicles and buses, manufacturers must report separately for vehicles powered by gasoline (07), diesel (08), and other (09) types of fuel. For light vehicles and motorcycles, all fuel system reports shall be coded as 07.

10. We are defining "Power Train" to mean

the components or systems of a motor vehicle which transfer motive power from the engine to the wheels, including the transmission (manual and automatic), gear selection devices and associated linkages, clutch, constant velocity joints, transfer case, driveline, differential(s), and all driven axle assemblies. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This was essentially the definition we proposed. The Alliance agreed with it, but suggested adding the clarifying exclusion that it "does not include any component of the suspension or steering system." We believe that this is unnecessary, as neither the suspension nor the steering system "transfer motive power from the engine to the wheels." For consistency with other definitions, as discussed above, we are adding a reference to "all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.)."

11. We did not propose a definition of "Electrical System." We are adopting the definition suggested by the Alliance, except that we are adding a specific reference to the ignition system, and, for consistency, a reference to "all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.)." Therefore, "Electrical System" means

any electrical or electronic component of a motor vehicle that is not included in one of the other enumerated reporting categories, and specifically includes the battery, battery cables, alternator, fuses, and main body wiring harnesses of the motor vehicle and the ignition system, including the ignition switch and starter motor. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

12. We did not propose a definition of "Exterior Lighting" in the NPRM. For clarity, we are defining "Exterior Lighting" to mean

all the exterior lamps (including any interior-mounted center highmounted stop lamp if mounted in the interior of a vehicle), lenses, reflective systems, and associated components of a motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

The Alliance recommended not including a category regarding lighting as a separate component/system and was concerned about how, if included, "lighting" would be distinguished from "Electrical System." This definition addresses the questions posed by the Alliance. Compare with Item 11 above.

13. We proposed a definition of "Visual Systems" which we are calling "Visibility" in the final rule. Visibility means

the systems and components of a motor vehicle through which a driver views the surroundings of the vehicle including windshield, side windows, back window, and rear view mirrors, and systems and components used to wash and wipe windshields and back windows. This term includes those vehicular systems and components that can affect the ability of the driver to clearly see the roadway and surrounding area, such as the systems and components identified in FMVSS No. 103, 104, and 111. This term also includes the defogger/defroster system, the heater core, blower fan, windshield wiper systems, mirrors, windows and glazing material, heads-up display (HUD) systems, and exterior view-based television systems, but does not include exterior lighting systems which are defined under "Lighting." The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

The Alliance suggested that it was not necessary to establish this as a separate code. However, the components and systems covered under this definition, encompassing wipers, washers, and defrosters as well as the windows, have often been the subject of defect investigations and recalls, and problems in this area should be reported.

14. We did not propose a definition for "Air Bags," but have provided one here for clarity. The definition incorporates the definition suggested by the Alliance, but is somewhat broader. We did not intend to limit the specific definition to relate only to "Air Bags," but also to address all automatic safety restraint systems. Therefore, for purposes of this rule, "Air Bags" means

an air bag or other automatic occupant restraint device (other than a "seat belt" as defined in this subpart) installed in a motor vehicle that restrains an occupant in the event of a vehicle crash without requiring any action on the part of the occupant to obtain the benefit of the restraint. This term includes inflatable restraints (front and side air bags), knee bolsters, and any other automatic restraining device that may be developed that does not include a restraining belt or harness. This term also includes all air bag-related components, such as the inflator assembly, air bag module, control module, crash sensors, and all hardware and software associated with the air bag. This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

15. We did not propose a definition for "Seat Belts," but one is now provided for clarity. We have incorporated the definition suggested by the Alliance. "Seat Belts" means

any belt system, other than an air bag, that may or may not require the occupant to latch, fasten, or secure the components of the seat belt/webbing based restraint system to ready its use for protection of the occupant in the event of a vehicle crash. This term includes the webbing, buckle, anchorage, retractor, belt pretensioner devices, load limiters, and all components, hardware and software associated with a non-automatic seat belt system addressed by FMVSS Nos. 209 or 210. This term also includes integrated child restraint systems in vehicles, and includes any device (and all components of that device) installed in a motor vehicle in accordance with FMVSS No. 213, which is designed for use as a safety restraint device for a child too small to use a vehicle's seat belts. This term includes all vehicle components installed in accordance with FMVSS No. 225. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

16. We are adopting a definition of "Structure," as

any part of a motor vehicle that serves to maintain the shape and size of the vehicle, including the frame, the floorpan, the body, bumpers, doors, tailgate, hatchback, trunk lid, hood, and roof. The term also includes all associated mounting elements (such as brackets, fasteners, etc.)

The Alliance did not believe a separate category for "structure" was necessary. However, we believe that it is important to obtain information about problems with a vehicle's structure, since many other systems and components attach to the structure.

17. We are adopting a definition of "Latch" to mean

a latching, locking, or linking system of a motor vehicle and all its components fitted to a vehicle's exterior doors, rear hatch, liftgate, tailgate, trunk, or hood. This term includes, but is not limited to, devices for the remote operation of a latching device such as remote release cables (and associated components), electric release devices, or wireless control release devices, and includes all components covered in FMVSS No. 206. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

As a modification of the definition we proposed, we have added "locking" and "linking" to "latching," since latching systems, as a general rule, include linking and locking components. As modified, this definition incorporates the recommendations made by the Alliance.

18. We are adopting the definition we proposed for "Vehicle Speed Control," which means

the systems and components of a motor vehicle that control vehicle speed, either by command of the operator or by automatic control, including, but not limited to, the accelerator pedal, linkages, cables, springs, speed control devices (such as cruise control) and speed limiting devices. This term includes, but is not limited to, the items addressed by FMVSS No. 124, and includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

19. We did not propose a definition of tire, but are adopting one in the final rule. "Tire" means

an item of motor vehicle equipment intended to interface between the road and a motor vehicle. The term includes all the tires of the vehicle, including the spare tire. This term also includes tire valves, tubes, and tire pressure monitoring and regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

20. We did not propose a definition of "Wheel" in the NPRM. For clarity, we are defining the term "Wheel" to mean

the assembly or component of a motor vehicle to which a tire is mounted. The term includes any item of motor vehicle equipment used to attach the wheel to the vehicle, including inner cap nuts and the wheel studs, bolts, and nuts.

The Alliance recommended incorporating the "Wheel" component with "Steering" and "Suspension," but, as discussed above, we believe that it is more appropriate to separate these categories.

21. We did not propose a definition of "Trailer Hitch." By "Trailer Hitch" we mean

all coupling systems, devices, and components thereof, designed to join or connect any two motor vehicles. This system also includes any associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

We are requiring reports on trailer hitches only for medium-heavy vehicles/buses and trailers, even though some light vehicles contain such hitches. Manufacturers of light vehicles and motorcycles are not required to report on trailer hitches because most of the hitches for these vehicles are installed by dealers or installed by the owner as an aftermarket add-on. As such, they are equipment items. No commenter addressed this component.

22. We did not propose to define "Seats." By "Seats," we mean

all components of a motor vehicle that are subject to FMVSS Nos. 202, 207, and S9 of 209, including all electrical and electronic components within the seat that are related to seat positioning, heating, and cooling. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This definition is based on the definition provided by the Alliance.

23. The Alliance did not agree with our proposed definition of "fire," and suggested that "fire" be defined as "a rapid, persistent chemical change that releases heat and light and is accompanied by flame, especially the exothermic oxidation of a combustible substance." We had proposed that "fire" be defined as "combustion of any material in a vehicle as evidenced by, but not limited to, flame, smoke, sparks, or smoldering." The Alliance commented that "sparks" are the normal byproduct of any rotating electrical component and which occur in normal vehicle operation, such as the working of a starter motor. Moreover, the definition would include complaints of "smoke," and "smoldering," which the Alliance does not believe need to be tracked for early warning purposes. We are retaining these words. Smoke commonly results from burning. We construe "smoldering" as burning with little smoke and no flames. We construe "sparks" as incandescent particles thrown off from a burning substance. *See The American Heritage Dictionary.* Each of these conditions is indicative of a fire or a potential fire. The type of sparking for which the Alliance provided examples generally occurs as a part of normal vehicle operation and is generally not visible to the driver or passengers. We deem it highly unlikely that this type of spark will be reported to the manufacturer. Therefore, in the final rule, we are defining fire much as we proposed it, except that we are adding "or burning" after "combustion." "Fire" means "combustion or burning of any material in a vehicle as evidence by, but not limited to, flame, smoke, sparks, or smoldering."

24. We have decided to add an additional reporting category, "rollover." The failure of various components can lead to a rollover, so none of the other specified systems and components is likely to capture all claims, notices, complaints, etc. about rollover. (Moreover, some claims of rollover assert that the overall design of the vehicle in question is defective, without referring to any particular system or component.) Also, it is noteworthy that one major impetus for the early warning provisions in the TREAD Act was the lack of information available to NHTSA about incidents, including fatal crashes, involving rollover after a tire tread separation. To avoid corrupting the data, we are limiting this category to single-vehicle crashes. Moreover, it will apply only to light vehicle and medium-heavy vehicles including buses.

Although NHTSA has not previously defined "rollover," FMVSS No. 301, *Fuel System Integrity*, includes a static rollover test (S6.4) in which a vehicle is rotated on its longitudinal axis to successive increments of 90 degrees. This forms the basis for our defining "rollover" for this rule as "a single-vehicle crash in which a vehicle rotates on its longitudinal axis to at least 90 degrees, regardless of whether it comes to rest on its wheels." This will encompass situations in which a vehicle rolls over on its side as well as those in which it rolls over on its roof.

With regard to child restraint systems, ODI conducted a review to identify the components whose failures have led to most of the recalls. Based on this review, which has been placed in the docket, we proposed to require manufacturers to separately report the number of problems/incidents relating to the buckle and restraint harness, handle, seat shell, and base. We proposed definitions for these components, except for the handle.

JPMA commented that the term "pads" (restraint pads) and "padding" were used in two of our proposed definitions, and asked that these terms be stricken since these components are rarely associated with a safety risk and are often the subject of complaints unrelated to safety. We agree with JPMA, and the final definitions do not include these terms. Our own review of the term "shield" shows that it appears

claim reporting forms. Upon further consideration, and in order to use a term familiar to both NHTSA and the industry, RMA will use the term "tire type code" on these forms. This corresponds to the third grouping of identification requirements as specified in 49 CFR 574.5(c), and, therefore, no further identification is needed in this rule.

Finally, we are adopting RMA's

which total annual production of the same design and size is 15,000 or less. RMA did not comment on this. After further consideration, we have decided that simply establishing a 15,0900 tire threshold would raise too many difficult issues that would require additional interpretation. We will accomplish the same objective, however, by simply referencing the "Application" provisions of the UTQGS, 49 CFR

discovered information. However, some information that may not be known to the manufacturer at the time of the initial report is so vital that we need to receive it if it subsequently becomes available. If a manufacturer indicates in its initial report that no system or component has been identified in a claim or notice and later becomes aware that a specified system or component allegedly contributed to the incident,

systems and tire manufactured on or after January 1, 1998. Each report would identify the alleged system or component related to the claim, incident, etc., as would the reports for the current reporting period.

We requested comment on whether the time frame for the proposal is appropriate, and whether we should exclude historical data for deaths and injuries. Many commenters objected to

March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicles designated as 2004 models), for child restraint systems manufactured on or after April 1, 1998, and for tires manufactured on or after April 1, 1998. The manufacturers generally did not object to providing warranty data, and we believe that field reports will provide the richest data. We emphasize

JPMA commented that the term "pads" (restraint pads) and "padding" were used in two of our proposed definitions, and asked that these terms be stricken since these components are rarely associated with a safety risk and are often the subject of complaints unrelated to safety. We agree with JPMA, and the final definitions do not include these terms. Our own review of the term "shield" shows that it appears in the definitions of both "buckle and restraint harness" and "seat shell." As only one is necessary, we are including "shield" in the definition of "buckle and restraint harness" and specifically excluding it from "seat shell."

With respect to tires, we proposed to follow the suggestions of RMA in its comments, and by and large the final rule does so. Fatality and injury reporting will include the information required of manufacturers of other products, and will also include the damage claimed, the vehicle make, model and model year, the tire size, the tire line, and the TIN.

We specifically requested RMA to provide its comments on appropriate definitions of the terms "bead," "common green," "tire line," "sidewall," "SKU," and "serial code", and it did so. We have adopted those suggestions.

"Bead" is defined as

> all the materials in a tire below the sidewalls in the rim contact area, including bead rubber components, the bead bundle and rubber coating if present, the body ply and its turn-up including the rubber coating, rubber, fabric, or metallic bead reinforcing materials, and the inner-liner rubber under the bead area.

The proposed definition of "common green" has been modified to read as follows:

> Tires that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.

"Tire line" is defined as "the entire name used by a tire manufacturer to designate a tire product, including all prefixes and suffixes as they appear on the sidewall of the tire."

The term "sidewall" includes "The sidewall rubber components, the body ply and its coating rubber under the side areas, and the inner-liner rubber under the body ply in the side area."

"SKU (Stock Keeping Unit)" is defined as "the alpha-numeric or numeric designation assigned by a manufacturer to a tire product."

We also asked for a definition of "serial code," a term RMA used on its draft warranty and property damage claim reporting forms. Upon further consideration, and in order to use a term familiar to both NHTSA and the industry, RMA will use the term "tire type code" on these forms. This corresponds to the third grouping of identification requirements as specified in 49 CFR 574.5(c), and, therefore, no further identification is needed in this rule.

Finally, we are adopting RMA's recommended definition for "tread" or "crown." That term means:

> All materials in the tread area of the tire, including the rubber that makes up the tread, the subbase rubber, when present, between the tread base and the top of the belts, the belt material, either steel and/or fabric, and the rubber coating of the same, including any rubber inserts, the body ply and its coating rubber under the tread area of the tire; and the inner-liner rubber under the tread.

For property damage claims and warranty adjustments, we proposed to require tire manufacturers to separately report the number of problems/incidents relating to tread, sidewall, and bead. For incidents involving death, if another component is allegedly involved, or if the component is not specified in the claim, the incident will still have to be reported.

RMA proposed a format for submitting data concerning total tire production, warranty production, number of property damage claims and number of adjustments. This sample format is shown on the document filed in the docket, NHTSA 2001–8677–102, Attachment B–2. NHTSA accepts this suggestion from RMA for submitting production, property damage claims, and warranty adjustment data. However, we do not want tire manufacturers to submit adjustment rate and property damage rate data as shown on the RMA sample format. Therefore, the template that will be adopted for tire manufacturers to submit data will be congruent with the RMA suggestion, but will not include rate data.

RMA also suggested that we require tire manufacturers to provide a list of "common green" tires. This is needed so that we are aware of various tire lines, including house brands, that are of identical construction, so we can get a fuller picture as to the failure experiences of relevant tires. We have therefore added a new Section 579.26(d) to require submission of such a list with each quarterly report.

Consistent with the approach taken in connection with the Uniform Tire Quality Grading Standards (UTQGS), 49 CFR 575.104, we did not propose to require reporting of warranty adjustments, property damage claims, and field reports with respect to tires for which total annual production of the same design and size is 15,000 or less. RMA did not comment on this. After further consideration, we have decided that simply establishing a 15,0900 tire threshold would raise too many difficult issues that would require additional interpretation. We will accomplish the same objective, however, by simply referencing the "Application" provisions of the UTQGS, 49 CFR 575.104(c)(1), which contain an exception for, among other things, "limited production tires" as defined in Section 575.104(c)(2).

RMA also commented that the early warning proposed rule would cover tires for all motor vehicles, but that "the obligation to submit early warning information for non-passenger and light truck tires presents a host of issues not addressed in the NPRM, requiring further information from the industry." In separate comments submitted to the docket (Comment NHTSA 01–8677–101), RMA addressed an early warning reporting system for these tires, "which suggests that, at the very least, the implementation of the early warning reporting requirements for these tires be delayed for at least one year." As an example, RMA referred to "medium radial truck tires," and commented that this category comprises new and retreaded tires (which may have a different manufacturer from the tire casing). Warranty periods for these tires vary according to contract terms, and the tires are professionally serviced. RMA would exclude these tires from all reporting except for incidents of death.

We concur with RMA's view that this segment of the tire industry requires further study, which may warrant regulation for early warning purposes in a manner that differs from that accorded tires for other motor vehicles. Accordingly, we are adopting the RMA recommendation to only require full reporting under Section 579.26(a) and (c) for passenger car tires, light truck tires, and motorcycle tires. However, reports about incidents involving deaths must be submitted for all tires.

O. Updating of Information

Several commenters addressed the issue of whether NHTSA will require updating of reports of incidents involving death or injury if there are changed circumstances or if the manufacturer was not aware of certain relevant information at the time the report was initially submitted to us. We are adopting Section 579.28(f) to address this issue. We recognize the burden associated with tracking the progress of claims and litigation to identify a broad range of newly

discovered information. However, some information that may not be known to the manufacturer at the time of the initial report is so vital that we need to receive it if it subsequently becomes available. If a manufacturer indicates in its initial report that no system or component has been identified in a claim or notice and later becomes aware that a specified system or component allegedly contributed to the incident, the manufacturer must submit a supplemental report regarding that incident in the report covering the reporting period in which the information was obtained.

In addition, if a vehicle manufacturer is not aware of the VIN, or a tire manufacturer is not aware of the TIN, at the time the incident is originally reported to us, the manufacturer must submit a supplemental report regarding that incident in the report covering the reporting period in which the VIN or TIN is identified. No other updating will be required. For example, if a manufacturer has reported an incident to us involving an injury and the injured person later dies, we will not require a supplemental report. This last scenario was specifically identified by several commenters as possibly creating a significant burden.

P. One-Time Reporting of Historical Information

In the NPRM, we expressed concern that, as early warning reporting begins, receipt by NHTSA of information from the first several reporting periods would not provide sufficient information to allow us to identify safety defect trends unless we could compare it to similar information about earlier periods. To maximize the usefulness of the data from the onset of reporting, we want to "seed" our data base with historical data rather than merely letting it accumulate from the time of the initial report. Therefore, we proposed that, no later than the date that a manufacturer must submit its first reports under the final rule, which we expected to be April 30, 2003, each manufacturer would also submit, on a one-time basis, corresponding reports reflecting the same information required by paragraphs (a) and (c) in each of proposed Sections 579.21 through 579.27, providing information on production and on the numbers of property damage claims, consumer complaints, warranty claims, and field reports, as applicable, that it received in each calendar quarter from January 1, 2000, to December 31, 2002, for each model and model year vehicle manufactured in model years 1994 through 2003, and for child restraint systems and tire manufactured on or after January 1, 1998. Each report would identify the alleged system or component related to the claim, incident, etc., as would the reports for the current reporting period.

We requested comment on whether the time frame for the proposal is appropriate, and whether we should exclude historical data for deaths and injuries. Many commenters objected to this proposal on the grounds that it would be excessively burdensome. A discussion of these comments and our estimate of the burdens of several alternative approaches is contained in the Final Regulatory Evaluation (FRE) for this rulemaking, which has been placed in the docket. We note, however, that some manufacturers erroneously believed that we had proposed to require submission of copies of the older field reports. We had not done so.

RMA objected to the proposal that tire manufacturers provide data, on a quarterly basis, for a period commencing January 1, 1998. It suggested yearly production information beginning with that date, and commented that "for property damage claims and warranty adjustments, an accumulation of all claims and adjustments received in years 2000 through 2002 should be reported for each tire line and size for each year of production." In our view, yearly data are not sufficient, since the purpose of obtaining this historical data is to allow us to make comparisons with currently quarterly information submitted in the first several years of this program. And simply dividing the yearly totals by four is not adequate, since there are often seasonal differences, particularly for tires.

We have thoroughly considered the comments on this issue and, in order to minimize the burden upon manufacturers, have decided to significantly reduce the amount of historical information to be submitted under this provision. We will not require the submission of the numbers of historical consumer complaints (which the commenters deemed most burdensome) or property damage claims. In addition, in response to requests from several commenters, we have delayed the date for submission of this information so that it is due one month after the initial quarterly report (i.e., on September 30, 2003).

The final rule requires that a manufacturer shall file 12 separate reports, providing information on the number of warranty claims or adjustments, and the number of field reports that it received in each of the 12 calendar quarters from April 1, 2000 to March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicles designated as 2004 models), for child restraint systems manufactured on or after April 1, 1998, and for tires manufactured on or after April 1, 1998. The manufacturers generally did not object to providing warranty data, and we believe that field reports will provide the richest data. We emphasize again that copies of these older field reports need not be submitted.

V. When Information Must Be Reported

Section 30166(m)(3)(A) and (B) state that the information covered by those paragraphs shall be reported "periodically or upon request" by NHTSA. Section 30166(m)(3)(C) states that the information covered by that paragraph shall be reported "in such manner as [NHTSA] establishes by regulation." The ANPRM and NPRM discussed several possibilities.

A. Periodically

The statute authorizes us to require periodic reporting of information related to the early warning of defects. In the ANPRM, we discussed the options of reporting on bases of "information-as-received," monthly, and quarterly, depending upon the gravity of the information involved (e.g., we suggested the possibility that information about deaths allegedly caused by safety defects might justify a more frequent period of reporting than other types of information). Commenters generally objected to reporting information "as received." There was no objection to reporting on a quarterly basis, the same as is required for defect campaign reporting under 49 CFR 573.6.

In the NPRM, we tentatively concluded that, with respect to statistical reports, an "as received" or even monthly basis would impose too great a burden and would be unlikely to provide significant timeliness benefits. A quarterly reporting period appeared to be more appropriate. We noted that the burden upon manufacturers would be lessened if a common reporting date were adopted for the submission of all statistical early warning information that we will require "periodically." However, the NPRM requested comments on whether we should require reporting six times per year.

In the NPRM, we proposed that virtually all the early warning information, including copies of required field reports, be submitted to us not later than the 30th day of the calendar month following the end of the reporting period. We believed that 30 days would be sufficient to compile this

information, but we requested comments on whether a shorter or longer period would be appropriate. We also proposed that all communications that would be required by Section 579.5 (those presently required by 49 CFR 573.8 and those that would be covered by the early warning rule, i.e., communications relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity

first reporting period to the second quarter of 2003.

We also believe that it is reasonable to require reports to be submitted not later than 30 days after the end of each calendar quarter. After all, the entire point of these rules is to obtain early warning information, and we want to minimize any unnecessary delays in our review of this information. However, so that both manufacturers and NHTSA

after the end of the first quarter covered by the rule, which will be September 30, 2003. This will allow manufacturers to spread their workload and to devote their full attention to preparing their reports for the first regular reporting period, which will be August 31, 2003.

VI. The Manner and Form in Which Information Will Be Reported

Section 30166(m)(4)(A)(iii) requires

an identification number and a password by submitting a written request to ODI.

Alternatively, for data files smaller than the size limit of the DOT Internet e-mail server, currently five megabytes, manufacturers may submit their data as an attachment to an e-mail message, sent to *odi.ewr@nhtsa.dot.gov*. The e-mail system will provide a return receipt. There is, however, a risk that

technology (IT) point-of-contact persons (a primary contact and a back-up contact), who will be responsible for resolving issues with data submissions as they come up from time to time.

The Alliance and RMA requested the opportunity to discuss details related to the submission of the early warning data, the reporting format, the means for submitting data, and other technical details to ensure smooth

safety defects, such as consumer complaints to NHTSA and documents received from manufacturers under current 49 CFR 573.8. That is to say, we will review the available data and information to determine whether potentially problematic trends are developing in the vehicles, equipment items, components, and systems for which information has been provided. As noted earlier, if we identify matters

information, but we requested comments on whether a shorter or longer period would be appropriate. We also proposed that all communications that would be required by Section 579.5 (those presently required by 49 CFR 573.8 and those that would be covered by the early warning rule, i.e., communications relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment) be submitted to us monthly, within 5 working days of the end of the month, as is currently required for submissions under Section 573.8.

Several commenters asked for more time before the reporting requirements would take effect. For example, the Alliance suggested that the first reporting quarter should be one year after the final rule (including any possible modifications adopted pursuant to petitions for reconsideration) is issued.

RMA commented that tire manufacturers ought to be permitted to report within 60 days after the last day of the quarterly reporting period rather than 30 days. RMA noted that production may come from numerous plant locations, property damage claims from specific files which may not be in one location, and warranty adjustments from totally different files. The manufacturer must then compile the data and load it into a program or programs that will compare the information and match the data to the appropriate tire line and size. According to RMA, "this process will take many weeks." To require submission of data within 30 days "will represent an unreasonable burden on the tire industry." RMA stated that in the third quarter of calendar year 2001, its tire manufacturer members "collectively received almost 450,000 warranty adjustments and property damage claims, representing over 100,000 different stock keeping units (SKUs)." Some other commenters asked for 45 days to submit the reports, while others believed that 30 days was sufficient (particularly if they did not have to submit historical data on the same date).

After reviewing these comments, we have decided to adopt the quarterly reporting that we proposed.

While we believe that most manufacturers will be able to have systems in place to accumulate and store the information required to be submitted under this rule within six months, in order to accommodate those manufacturers that may be less prepared, we have decided to defer the first reporting period to the second quarter of 2003.

We also believe that it is reasonable to require reports to be submitted not later than 30 days after the end of each calendar quarter. After all, the entire point of these rules is to obtain early warning information, and we want to minimize any unnecessary delays in our review of this information. However, so that both manufacturers and NHTSA may become accustomed to the collation, transmission, and storage of data, the first three reports (i.e., those for the final three calendar quarters of 2003) will be due two months after the end of the reporting period. Thus, the reports for the quarters that end June 30, September 30, and December 31, 2003, will be due, respectively, not later than August 31 and December 1, 2003 (November 30, 2003, being a Sunday), and February 29, 2004. Thereafter, reports will be due within 30 days of the end of the reporting period; the report for the first quarter of 2004 that ends on March 31 will be due not later than April 30, 2004. Copies of other documents that must be transmitted to NHTSA (relating to customer satisfaction campaigns, etc., as described in Section 579.5(b)), will be due within 5 working days after the end of each month beginning with April 2003.

B. Upon NHTSA's Request

The TREAD Act also requires all manufacturers to provide information within the scope of the early warning provision when we request it. Such a requirement complements our pre-TREAD authority to request safety-related information as part of our investigations. Under this new authority, the information need only relate to preliminary investigative activities and need only be of such a nature that it may assist us in the identification of safety-related defects. Thus, we plan to request additional information from manufacturers if the information in the periodic reports suggests that there may be a possible problem. These inquiries would not be formal investigations, such as Preliminary Evaluations and Engineering Analyses now conducted by ODI.

C. One-Time Historical Report

We had proposed in the NPRM that this historical data would be due on the date that the first quarterly report was due, which we tentatively assumed would be April 30, 2003. However, to reduce the burden on manufacturers, we have decided to establish the due date for that submission as three months after the end of the first quarter covered by the rule, which will be September 30, 2003. This will allow manufacturers to spread their workload and to devote their full attention to preparing their reports for the first regular reporting period, which will be August 31, 2003.

VI. The Manner and Form in Which Information Will Be Reported

Section 30166(m)(4)(A)(iii) requires us to specify "the manner and form of reporting [early warning] information including in electronic form."

In the ANPRM, we discussed the possibility of using spreadsheets in a specified format with separate reports of the numbers of various categories of information (e.g., claims/notices of deaths and injuries, consumer complaints, warranty claims, field reports) along with other information (such as production volumes) by make, model, model year, and by component (we would specify which components). We would then be able to utilize a computer to identify aggregate numbers, rates (using production data), or unusual trends in each of these categories. This would obviate the need for manufacturers to provide us with their warranty or claims codes or to make significant revisions to their current coding procedures.

RMA suggested that we simply state that information shall be formatted by a manufacturer in a format approved by NHTSA. However, RMA's suggestion might result in requests by a large number of manufacturers for approval of their own specific formats, taxing NHTSA's resources that will be devoted to the early warning program and to the development of ODI's new data management system.

NHTSA is adopting two alternative methods for manufacturers to submit their periodic reports, using specified templates that are consistent with Microsoft Excel spreadsheets. These templates will be available on the NHTSA website, *www.nhtsa.dot.gov*. The most efficient method, and the one we prefer that manufacturers use, is over the Internet directly to ODI's secure data repository. NHTSA will establish a link on its web site to a data repository suitable for containing these data. After obtaining a secure password from the agency, manufacturers would be able to use that link to "push" their report to the NHTSA repository. Upon receipt of the data, an acknowledgement will be returned to the submitter, noting the date and time of the submission. To protect unauthorized submissions and to protect the data, the repository will utilize a highly secure server. Manufacturers will be required to obtain an identification number and a password by submitting a written request to ODI.

Alternatively, for data files smaller than the size limit of the DOT Internet e-mail server, currently five megabytes, manufacturers may submit their data as an attachment to an e-mail message, sent to *odi.ewr@nhtsa.dot.gov*. The e-mail system will provide a return receipt. There is, however, a risk that this method will not result in the data actually arriving at the appropriate office in NHTSA, since e-mail servers may be unreliable in handling large attachments, both within DOT and within the manufacturers' own systems. The preferred method, based on security considerations, ease of use, and reliability, is the web site link described above.

Any electronic image provided by a manufacturer must have no less than 200 and no more than 300 dpi (dots per inch) resolution.

In the NPRM, we had proposed to allow submission of information on CD/ROMs. However, we have been advised that the radiation used on mail to the DOT Headquarters building to protect against anthrax contamination can destroy information on CD/ROMs. Therefore, we cannot allow this method to be used.

For small manufacturers, which only need to submit minimal amounts of data, we are establishing an interactive form reachable through a link on our web site that may be filled out by manual data entry by the submitter. This method will require completing a form for each incident, with fields for each of the required data elements. A manufacturer ID and a secure password will be needed for these reports as well, to prevent the data from being corrupted.

Paper documents, computer printouts, or similar non-electronic submissions of this data will not be acceptable.

With respect to copies of communications submitted under Section 579.5 and copies of field reports submitted under paragraph (d) of various sections, we prefer receiving the documents in electronic form using any state-of-the-art, commercially available, non-proprietary graphic compression protocol, through the Internet link to the ODI data repository or via e-mail. However, to accommodate small businesses, we will also accept paper copies of those documents mailed in the same manner as is currently used under current Section 573.8.

Manufacturers will have to provide ODI with the name and contact information (phone number, address, e-mail address, etc.) of two information technology (IT) point-of-contact persons (a primary contact and a back-up contact), who will be responsible for resolving issues with data submissions as they come up from time to time.

The Alliance and RMA requested the opportunity to discuss details related to the submission of the early warning data, the reporting format, the means for submitting data, and other technical details to ensure smooth implementation of the reporting process. NHTSA supports this approach. NHTSA staff and its contractor's staff met with Alliance representatives on April 9, 2002, and with RMA representatives on May 17, 2002, to discuss IT issues associated with early warning reporting. Also, after receiving an invitation from Ford for NHTSA to visit its facility, representatives of NHTSA and its contractor traveled to Dearborn to discuss Ford's existing data retrieval and analysis system for early detection of potential safety defects.

After the final rule is published but before the first reporting period, NHTSA will conduct a public meeting at the DOT headquarters in Washington to discuss data transmission methods and protocols. Interested persons, particularly the manufacturers' IT staff members, will be invited to discuss technical issues in an open forum to resolve any issues related to the submission of data. We also plan to conduct several trial runs with the cooperation of various manufacturers to assure that the process will run smoothly.

VII. How NHTSA Plans To Handle and Utilize Early Warning Information

A. Review and Use of Information

Section 30166(m)(4)(A)(i) and (ii) require that our early warning rule specify how the information reported to us will be used. Those paragraphs provide:

(A) *[NHTSA's] specifications.* In requiring the reporting of any information requested by [NHTSA] under this subsection, [NHTSA] shall specify in the final rule * * *

(i) how [early warning] information will be reviewed and utilized to assist in the identification of defects related to motor vehicle safety; [and]

(ii) the systems and processes [that NHTSA] will employ or establish to review and utilize such information.

We will comply with the statutory provision by explaining in this document, as we did in the NPRM, that we intend to consider pre-investigation information received under Section 30166(m) in the same manner as we currently treat other information that is now available to us about possible safety defects, such as consumer complaints to NHTSA and documents received from manufacturers under current 49 CFR 573.8. That is to say, we will review the available data and information to determine whether potentially problematic trends are developing in the vehicles, equipment items, components, and systems for which information has been provided. As noted earlier, if we identify matters that might possibly suggest the existence of a safety defect, we plan to seek additional clarifying information from the manufacturer in question, and from other sources, to help us to decide whether to open a formal defect investigation. In the NPRM, we commented that if we decided to change this approach, we would discuss any such changes in the final rule.

Referring to a report of the Inspector General of the Department of Transportation (Review of the Office of Defects Investigation, NHTSA, Report No. MH–2002–071, Jan. 3, 2002), RMA suggested that if NHTSA intends to establish procedures for determining whether to open a formal investigation or pursue other enforcement action based on its review of early warning reporting data, the agency should conduct a separate notice and comment rulemaking. We note that NHTSA already has a regulation covering its defect investigations (49 CFR Part 554, Standards Enforcement and Defects Investigation) and does not foresee any change in its investigatory procedures that would require an amendment.

We are developing an enhanced data warehouse and data processing system called ARTEMIS—Advanced Retrieval (Tire, Equipment, Motor vehicles) Information System. ARTEMIS will provide for centralized storage of information, include a document management system, use data analysis tools, and facilitate the provision of appropriate information to the public. We expect to have a fully functional system by the fall of 2002, although modifications will likely be made throughout the remainder of 2002 in preparation for the receipt of early warning information beginning in 2003.

Once the data are received, NHTSA will review the information for a given quarter to insure compliance with the requirements. In addition, as the data become available, historical trends will be evaluated and tracked. The tracking of the various submissions will be, in part, through statistical control mechanisms. The data provided by the manufacturers will be compared with other information available to NHTSA, including its existing databases. As necessary, supplemental information

will be requested from a manufacturer to expand on the routine early warning submissions.[6]

B. Information in the Possession of the Manufacturer

Section 30166(m)(4)(B) provides as follows:

(B) Information in possession of manufacturer. The [early warning] regulations may not require a manufacturer

Section 576.8 sets forth the meaning of "malfunctions that may be related to motor vehicle safety," which include with respect to a motor vehicle:

* * * any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causative factor in, or aggravate, an accident or an injury to a person.

systems. Most major manufacturers already have a log or database of information about the categories for which early warning reporting would be required that is comprehensive and regularly updated. In this case, the burden associated with the rule would not be substantial. At most, such manufacturers would have to add several data elements and/or reorganize existing data elements such as the

costs associated with the NPRM were published in a notice published on June 25, 2002 pursuant to the Paperwork Reduction Act (67 FR 42843).

NHTSA's Final Regulatory Evaluation (FRE) (June 2002), which is in the docket, discusses benefits and costs associated with the final rule. A benefit from NHTSA's receipt of the early warning information is that NHTSA investigations will be opened sooner. As a result, recalls will be initiated earlier,

consumer complaints. In addition, we postponed the first reporting period for three months, extended the reporting dates for reports covering 2003, merged warranty and complaint reporting for child restraint system manufacturers at their request, expanded the exemption from most reporting for limited production tires by referring to the applicability section of the UTQGS, reduced the need to consult with outside legal counsel, withdrew the

partial information on the numbers of such businesses, but we are as yet unable to determine the total number of "small businesses" in this category. Accordingly, we intend to continue our review of the industry to determine the number of such manufacturers who may be "small businesses" but required by the final rule to report in full. By mid-2005, we will have completed this review and expect to have received sufficient reports from these "small

will be requested from a manufacturer to expand on the routine early warning submissions.[6]

B. Information in the Possession of the Manufacturer

Section 30166(m)(4)(B) provides as follows:

> (B) Information in possession of manufacturer. The [early warning] regulations may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.

The information that we are requiring manufacturers to submit to us is in their possession, or will be under the recordkeeping requirements that we are adopting. For example, if a manufacturer (as broadly defined in this rule) does not have "possession" of a complaint, it obviously cannot (and would not have to) report to us about such a document. However, we want to emphasize that we will not tolerate any attempts by manufacturers to utilize this provision to avoid reporting by improperly evading receipt of, or failing to obtain, maintain, and retain relevant records.

Pursuant to 49 CFR Part 576, *Record Retention*, we have required manufacturers of motor vehicles to retain for a period of five years from the date of generation or acquisition "complaints, reports, and other records concerning motor vehicle malfunctions that may be related to motor vehicle safety" (49 CFR 576.1). These are described with great specificity in 49 CFR 576.6:

> Records to be maintained by manufacturers * * * include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under or claims made under warranties; service reports or similar documents, including electronic transmissions; from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

Section 576.8 sets forth the meaning of "malfunctions that may be related to motor vehicle safety," which include with respect to a motor vehicle:

> * * * any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causative factor in, or aggravate, an accident or an injury to a person.

Thus, manufacturers of motor vehicles, by virtue of complying with Part 576, already have in their possession the types of information that will have to be reported under this rule.[7]

C. The Requirements Are Not Unduly Burdensome

Section 30166(m)(4)(D), Burdensome requirements, requires that the final rule:

> shall not impose requirements unduly burdensome to a manufacturer or a motor vehicle or motor vehicle equipment, taking into account the manufacturer's cost of complying with such requirements and [NHTSA's] ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.

The ANPRM gave manufacturers a general idea of the types of data and information that they may be required to submit under a final rule. This allowed them to make a tentative assessment of the burdens that an early warning reporting rule may entail. Some manufacturers and other commenters addressed these issues. The agency's Preliminary Regulatory Evaluation (PRE), which estimated costs to manufacturers and which was placed in the docket when the NPRM was published, took these comments into consideration. We anticipated that the additional detail in the NPRM and the PRE would allow manufacturers to make a more accurate assessment of potential compliance burdens and to identify them with specificity. The agency has tried to reduce the burden to the extent possible while still fulfilling the intent of the TREAD Act.

There was no significant disagreement with the statement in the PRE that there is unlikely to be a significant burden associated with the actual reporting of information. Rather, the burden on each manufacturer will depend on the extent to which that manufacturer must revise and/or supplement its current information management and retention systems. Most major manufacturers already have a log or database of information about the categories for which early warning reporting would be required that is comprehensive and regularly updated. In this case, the burden associated with the rule would not be substantial. At most, such manufacturers would have to add several data elements and/or reorganize existing data elements such as the identification of components involved in claims, and add a process for dealing with foreign claims related to deaths.

In the NPRM, we significantly reduced the burden on manufacturers of vehicles and equipment from the levels that could have been required under the TREAD Act. First, other than requiring reports about incidents involving deaths based on claims and notices, which do not need to be maintained in a complex computer system, and campaign documents, we did not propose to require small vehicle manufacturers, original equipment manufacturers, and replacement equipment manufacturers, (other than manufacturers of child restraint systems and tires) to submit periodic early warning reports. Second, we did not propose to require at this time any information about incidents that occur in foreign countries except for those based on claims involving deaths.

We also considered requiring information for all systems and components of a vehicle, instead of those specified in Section IV.N above. We believed that the reduced number of components on which reporting is required would reduce reporting costs.

The PRE estimated the number of claims, warranty claims, customer complaints, field reports, etc. for each of the following groups of manufacturers: light vehicles, medium and heavy trucks, buses, trailers, motorcycles, tires, and child restraint systems. It estimated the costs of setting up computer systems to handle the reporting requirements and the types of skills and labor hours needed to provide the proposed information. Similar estimates were made for each of the other groups of manufacturers. Cumulative costs for the other groups were significantly higher, since they included many more manufacturers, and many of those manufacturers are not as computerized today as the light vehicle manufacturers. Manufacturers contested most of our estimates.

Based on comments filed in response to the NPRM and on supplemental comments filed by the Alliance on May 3, 2002, we revised our estimates of the burdens associated with this rulemaking. Revised estimates for the

[6] This notice does not establish rules governing disclosure or confidentiality of information submitted pursuant to the early warning rule. The agency has published proposed amendments to 49 CFR Part 512, *Confidential Business Information* (67 FR 21198, April 30, 2002) and, as appropriate, in the course of that rulemaking will consider issues related to confidentiality and disclosure.

[7] As proposed in the NPRM, we are amending Part 576 to require similar retention of records by manufacturers of child restraint systems and tires. See discussion below.

costs associated with the NPRM were published in a notice published on June 25, 2002 pursuant to the Paperwork Reduction Act (67 FR 42843).

NHTSA's Final Regulatory Evaluation (FRE) (June 2002), which is in the docket, discusses benefits and costs associated with the final rule. A benefit from NHTSA's receipt of the early warning information is that NHTSA investigations will be opened sooner. As a result, recalls will be initiated earlier, defective vehicles and equipment will be taken off the roads sooner, and fewer injuries and fatalities, and less property damage, will occur. We expect that the analysis of the information will result in increased numbers of investigations and recalls, both by the manufacturers voluntarily and by NHTSA. However, the agency cannot quantify the benefits in terms of reduced fatalities, injuries, or property damage. The agency estimates that total manufacturers' recall costs could be reduced by $9 million per year because they will identify defective parts earlier, correct the deficiencies in ongoing production and avoid recall costs in the future. This is based on initiation of an average recall (manufacturer voluntary recall and NHTSA-influenced) three months earlier for those recalled vehicles that are still in production when the recall occurs and for which some recalled vehicles are three or more years old, and assumes an average recall cost of $100 per vehicle.

The FRE estimates the total first year costs (including computer start-up costs, three years of limited historical data (i.e., warranty claims and field reports), and the four quarterly reports in the first year of submission) for the final rule will be about $70 million, and recurring annual costs will be about $1.72 million.

In summary, there are safety benefits associated with this final rule; however, we were unable to quantify them. There are start-up costs in the first year of the final rule of $70 million that are offset somewhat by economic benefits to manufacturers of $9 million per year. However, in the second and subsequent years, we estimate that benefits to the manufacturers of $9 million per year will outweigh the annual on-going costs of $1.72 million per year.

Apart from quantifiable costs, we emphasize that in this final rule we have significantly reduced many other burdens on manufacturers that had been proposed in the NPRM. Primary among these is the substantial reduction (over 50 percent) in the amount of historical reporting that will be required, since we will not require reporting of historical numbers of property damage claims and consumer complaints. In addition, we postponed the first reporting period for three months, extended the reporting dates for reports covering 2003, merged warranty and complaint reporting for child restraint system manufacturers at their request, expanded the exemption from most reporting for limited production tires by referring to the applicability section of the UTQGS, reduced the need to consult with outside legal counsel, withdrew the proposal to require manufacturers to redact personal identifiers from field reports, and provided for only limited updating of incident reports predicated on claims and notices involving deaths and injuries, rather than requiring repetitive checking to see if additional information becomes available. In addition, we significantly reduced the proposed record keeping requirements, primarily by retaining the existing five-year period rather than the ten years that we had proposed.

D. Periodic Review

Under section 30166(m)(5), NHTSA must specify in the final rule "procedures for the periodic review and update of such rule." Once the final early warning rule is in effect, we anticipate that our experience will indicate areas where the regulation ought to be amended, to add or delete information required, and to modify our information-gathering procedures. We would then make internal adjustments where called for, or propose appropriate modifications to the final rule. This would be an on-going process of evaluation. We plan to commence the initial review of the rule within two years after the initial reports are received, that is to say, the summer of 2005. Subsequently, we plan to review our defect information-gathering procedures at least once every five years.

Although this final rule was preceded by an ANPRM and NPRM, we have received little comment on the impacts the final rule will have on manufacturers who are considered to be "small businesses" by the Small Business Administration (SBA) (e.g., trailer manufacturers who employ no more than 500 persons, and all other vehicle manufacturers who employ no more than 1,000 persons). While we have attempted to reduce the reporting burden on manufacturers who produce a limited number of vehicles a year, choosing 500 vehicles as an appropriate threshold, SBA has commented that there are manufacturers who produce more than 500 vehicles a year but who nevertheless are "small businesses" as defined by the SBA. SBA provided partial information on the numbers of such businesses, but we are as yet unable to determine the total number of "small businesses" in this category. Accordingly, we intend to continue our review of the industry to determine the number of such manufacturers who may be "small businesses" but required by the final rule to report in full. By mid-2005, we will have completed this review and expect to have received sufficient reports from these "small business" manufacturers to evaluate their assistance in detecting potential defects in their motor vehicles. We expect that this evaluation, in turn, will allow us to determine whether the threshold of 500 vehicles a year is appropriate or whether it should be modified.

VIII. Extension of Recordkeeping Requirements To Include Manufacturers of Child Restraint Systems and Tires

Our principal record keeping regulation is 49 CFR Part 576, *Record Retention*. The current regulation applies only to motor vehicle manufacturers and requires them to keep certain records for a period of five years.

A colloquy on the floor of the House with respect to Section 30166(m)(4)(B) addressed the need to preserve relevant records to assure that the goals of the TREAD Act are achieved:

> Mr. Markey: Concern has been expressed that this provision not become a loophole for unscrupulous manufacturers who might be willing to destroy a record in order to demonstrate that it is no longer in its possession. Would [Mr. Tauzin] agree that it is in [NHTSA's] discretion to require a manufacturer to maintain records that are in fact in the manufacturer's possession and that it would be a violation of such a requirement to destroy such a record?
>
> Mr. Tauzin: The gentleman is again correct.

As we discussed in Section VII above, we proposed to amend Part 576 to assure that documents covered by the early warning regulation are kept for an appropriate length of time after a manufacturer acquires or generates them.

Part 576 currently applies only to vehicle manufacturers, while the TREAD Act covers manufacturers of motor vehicle equipment as well. We proposed to extend the applicability of Part 576 to those equipment manufacturers from whom we will require full reporting, i.e., manufacturers of child restraint systems and of tires. We asked for comments on whether record retention requirements should also be expanded to include

manufacturers of replacement equipment other than child restraint systems and tires and manufacturers of original equipment.

Until the TREAD Act, the requirement that a remedy for safety defects and noncompliances be provided without charge did not apply if a vehicle or child restraint system was bought by the first purchaser more than eight calendar years, or a tire, including an original than the model year of any motor vehicle or child restraint system that is the subject of the document.

Thirteen comments were submitted concerning the proposed changes in the record retention requirements. These were from Nissan, the Alliance, JPMA, RMA, Harley-Davidson, Bendix, Johnson, Ford, Utilimaster, AIAM, CU, MEMA, and GM. CU supported the proposal. Most of the remaining

Section 576.5(c), and in the first portion of proposed Section 576.5(d), relating to retention of the underlying records on which the information reported under the early warning rule is based. For smaller vehicle manufacturers and for manufacturers of equipment other than tires and child restraint systems, this would only apply to records related to claims and notices involving deaths. For

comments are mooted by the fact that we are not adopting our proposal.

JPMA recommended that the agency adopt a five-year record retention requirement for child restraint system manufacturers, as opposed to the ten-year requirement proposed in the NPRM, on the basis that this duration is close to the recommended life of the product, and reasonably balances the costs of record retention with the goal of

involving death or injury, and, as applicable depending on the type of product manufactured, property damage claims, warranty claims, consumer complaints, and field reports). This should eliminate any confusion as to the length of time that any given record must be retained.

Section 576.5(d), as proposed, would have created an exception from the five-year record retention requirement for property damage claims, warranty

noted that a substantial number of vehicle parts and equipment manufacturers are small businesses, and that applying the record retention requirement to those manufacturers would add an unnecessary cost burden. Accordingly, MEMA supports extending these requirements only to those equipment manufacturers from whom the agency would require full reporting (i.e., tire and child restraint system manufacturers). It recommended that

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manufacturers of replacement equipment other than child restraint systems and tires and manufacturers of original equipment.

Until the TREAD Act, the requirement that a remedy for safety defects and noncompliances be provided without charge did not apply if a vehicle or child restraint system was bought by the first purchaser more than eight calendar years, or a tire, including an original equipment tire, was bought by the first purchaser more than three calendar years, before the determination that a defect or noncompliance existed. (Section 30120(g)(1)). Section 4 of the TREAD Act amended Section 30120(g)(1) to extend the free remedy period to ten years for vehicles and most replacement equipment including child restraint systems, and to five years for tires.

Currently, 49 CFR 576.5 requires manufacturers of motor vehicles to retain the records specified in 49 CFR 576.6 for a period of five years from the date they were acquired or generated by the manufacturer. The purpose of Part 576 is:

> * * * to preserve records that are needed for the proper investigation, and adjudication or other disposition, of possible defects related to motor vehicle safety and instances of nonconformity to the motor vehicle safety standards and associated regulations (49 CFR 576.2).

Towards this end, we tentatively concluded that records that may be pertinent to possible defects and noncompliances should be retained by a manufacturer of motor vehicles for the period during which the manufacturer is required to provide a remedy without charge. Thus, we proposed amending Section 576.5 to extend the record retention period from five years to ten years for the records specified in Section 576.6. Given that manufacturers of child restraint systems and tires are also required by statute to remedy defects and noncompliances without charge, and that they are also covered by the TREAD Act's early warning reporting requirements, we tentatively decided that manufacturers of child restraint systems and tires should be required to retain records for ten and five years, respectively. Thus, our proposed Section 576.5(d), read as follows:

> (d) Each manufacturer of motor vehicles, child restraint systems, and tires shall retain each property damage claim, warranty claim, consumer complaint, and field report received from an authorized dealer of such manufacturer, for a period of five calendar years from the date the manufacturer acquires it, but need not retain it when the calendar year is or becomes ten years greater than the model year of any motor vehicle or child restraint system that is the subject of the document.

Thirteen comments were submitted concerning the proposed changes in the record retention requirements. These were from Nissan, the Alliance, JPMA, RMA, Harley-Davidson, Bendix, Johnson, Ford, Utilimaster, AIAM, CU, MEMA, and GM. CU supported the proposal. Most of the remaining comments either questioned the reasonableness of the proposal or contended that various aspects of the proposal were inconsistent or confusing. In addition, some noted that the proposal did not specify a limit on the retention of records relating to incidents involving injury or death or limit the retention requirements to records located in the United States or pertaining to vehicles offered for sale in the United States.

A number of comments (Alliance, Nissan, Ford, GM) questioned the need for the agency to extend the current five-year record retention requirement to ten years for most categories of information that would be covered by the early warning reporting rules. These comments generally asserted that there is no reasonable justification for changes to existing requirements for a document to be retained for five years from the date that it was created, and that those requirements provide the agency with enough information to fully investigate any potential safety defects. In its comment, GM contended that there is nothing in the TREAD Act that would require an extension of the record retention period. Ford stated that defect investigations are unlikely to resolve reports of incidents that happened more than five years ago. AIAM observed that it is difficult to imagine that six to ten-year old records will contain information on an alleged problem that is not already present in data available for the most recent five years.

The agency has reevaluated the need for manufacturers to retain records that are more than five years old. We have concluded that our investigative needs, addressed to date by section 576.5 *et seq.*, have been adequately met by the existing requirement for manufacturers to retain complaints, reports, and other records for five years concerning malfunctions that may be related to motof vehicle safety. Accordingly, we have decided not to require that the records described in proposed Section 576.6 be retained for ten years. The agency is instead retaining the existing five-year retention period for those records.

We are adopting and slightly revising the requirement set forth in proposed Section 576.5(c), and in the first portion of proposed Section 576.5(d), relating to retention of the underlying records on which the information reported under the early warning rule is based. For smaller vehicle manufacturers and for manufacturers of equipment other than tires and child restraint systems, this would only apply to records related to these incidents that are referred to in claims and notices involving deaths. For other manufacturers, this would be the underlying records supporting the aggregate numbers of property damage claims, consumer complaints, warranty claims, and field reports that will be reported to NHTSA under paragraph (c) of Sections 579.21–579.26, as applicable. This will not add a significant burden, since most of these documents already were covered by existing Part 576. As discussed below, the retention period for these records will be five years from the date they are generated or acquired.

Proposed Section 576.5(e) would have required motor vehicle, child restraint system, and tire manufacturers to retain, for a period of one year, field reports from one of their employees or representatives or from the owners or operators of ten or more vehicles of the same make, model, and model year that they have manufactured, and a copy of each document reported to NHTSA for a customer satisfaction campaign, consumer advisory, and recall (other than those submitted pursuant to 49 CFR Parts 573 and 577). Because the covered manufacturers will be required to furnish all these documents to NHTSA, the agency has decided that there is no need for the manufacturers also to be required to retain copies of the documents within their own possession for one year. Therefore, we are not adopting the requirements proposed in Section 576.5(e). We are instead adopting language that expressly states that manufacturers are not required to retain copies of any document submitted to NHTSA under 49 CFR Parts 573 and 577 (which specify requirements for notifying the agency and owners of defects and noncompliances) and any document submitted under the early warning reporting requirements of Part 579. *See* Section 576.5(c).

We note that some comments (Alliance, JPMA, Ford) contended that NHTSA had not estimated the costs associated with doubling the record retention period, and had not demonstrated that the benefits that the agency could derive from increasing the retention period would outweigh the burden that increase would impose on affected manufacturers. However, these comments are mooted by the fact that we are not adopting our proposal.

JPMA recommended that the agency adopt a five-year record retention requirement for child restraint system manufacturers, as opposed to the ten-year requirement proposed in the NPRM, on the basis that this duration is close to the recommended life of the product, and reasonably balances the costs of record retention with the goal of having a reasonable amount of information available to assist NHTSA in defect investigations. JPMA noted that record retention requirements would be imposed on child restraint system manufacturers for the first time. Thus, our final rule is in accord with the views of the representative of the child restraint system manufacturers.

RMA recommended that the proposed regulations be modified to require tire manufacturers to retain information for a period no longer than the five-year period succeeding the date of manufacture of the product identified in a property damage claim, warranty adjustment, or fatality or injury claim or notice. The comment does not explain why the retention period should run from the production date of the tire, as opposed to the date on which the record was acquired, as it does for motor vehicle and child restraint system manufacturers. To maintain consistency with those requirements, the agency believes that the retention period for records pertaining to tires should run for a period of five years from the date on which the record was acquired, and not from the date on which the tire was manufactured.

Our decision not to impose a ten-year record requirement also addresses a number of comments (Nissan, Alliance, AIAM, Harley-Davidson) which contended that the proposed regulatory language for Section 576.5 is confusing. These comments observed that paragraph (a) of this section would impose a ten-year retention period for the category of records described in Section 576.6, and that this description is broad enough to encompass the property damage claims, warranty claims, consumer complaints, and field reports for which a five-year retention period was proposed in paragraph (d) of the section, and the field reports for which a one-year retention period would be prescribed in paragraph (e). As noted above, the agency is leaving the existing five-year retention requirement for these records in place. We are also adopting a five-year retention requirement for the records that underlie the information reported to us under the early warning reporting requirements (claims and notices involving death or injury, and, as applicable depending on the type of product manufactured, property damage claims, warranty claims, consumer complaints, and field reports). This should eliminate any confusion as to the length of time that any given record must be retained.

Section 576.5(d), as proposed, would have created an exception from the five-year record retention requirement for property damage claims, warranty claims, consumer complaints and authorized dealers' field reports "when the calendar year is or becomes ten years greater than the model year of any motor vehicle or child restraint system that is the subject of the document." Aside from RMA's comment, noted above, the only other comment that addressed this provision was from GM, which stated that it did not understand why the agency would want to create such an exception from current record retention requirements. NHTSA has reassessed the need for the proposed exception in light of this comment, and the absence of any other comment concerning it from manufacturers who would be subject to the proposed record retention requirements. The agency has accordingly not incorporated the exception into Section 576.5(d).

Several comments were received regarding proposed Section 576.5(c), which stated: "Each manufacturer of motor vehicles, original equipment, and replacement equipment shall retain each claim or notice related to an incident involving a death or injury." Most of these (Nissan, AIAM , Alliance, Bendix, Utilimaster, and Harley-Davidson) observed that the proposed language specifies no limit for the retention of claims and notices involving death or injury. The Alliance contended that such an indefinite retention period is inconsistent with OMB regulations requiring agencies to establish maximum retention periods.

The agency recognizes that it inadvertently omitted a time period for retention of these documents. Accordingly, we will add language clarifying that the retention period for all records underlying the early warning submissions is five years from the date the record is generated or acquired. This will make the retention period for such claims and notices involving deaths or injuries consistent with that for all other categories of records covered by the retention requirements.

MEMA agreed with the proposal not to extend most record retention requirements to original and replacement equipment manufacturers, except for manufacturers of tires and child restraint systems. The comment noted that a substantial number of vehicle parts and equipment manufacturers are small businesses, and that applying the record retention requirement to those manufacturers would add an unnecessary cost burden. Accordingly, MEMA supports extending these requirements only to those equipment manufacturers from whom the agency would require full reporting (i.e., tire and child restraint system manufacturers). It recommended that proposed Section 576.5(c) be amended to clarify that it would only apply to motor vehicle, tire, and child restraint system manufacturers. MEMA (and Johnson) noted that absent such an amendment, proposed Section 576.5(c) would be inconsistent with the proposed sections on "Scope" (576.1) and "Application" (576.3) of Part 576.

We acknowledge the inconsistency. However, we are addressing it by revising the language of Sections 576.1 and 576.3, rather than by allowing equipment manufacturers to destroy documents related to incidents involving claims for deaths attributed to their products. These documents could be very relevant to agency defect investigations. Moreover, the burden of retaining them is exceedingly slight; there are likely to be very few claims and notices received by these manufacturers. Thus, under new Section 576.5(b), the requirement to retain documents related to incidents involving deaths reported to us for five years applies to *all* vehicle and equipment manufacturers.

The Alliance and Nissan observed that as proposed, the record retention requirements would not be limited to documents related to vehicles offered for sale in the United States. The comments asserted that there must be a nexus to the United States for the record retention requirements. Johnson submitted similar comments. We decline to expressly limit the retention requirements to records located within the United States. The agency notes in this regard that the early warning reporting rules will require reports of each incident involving one or more death(s) occurring in a foreign country that is identified in claim(s) against the manufacturer involving the manufacturer's product, if that product is identical or substantially similar to a product that the manufacturer has offered for sale in the United States." *See*, e.g., Section 579.21(b)(1). A manufacturer's ability to provide follow-up information if requested would be diminished if the agency were to expressly limit the record retention requirement to records located in the United States. Similarly, the purposes of

the rule and the agency's ability to conduct effective defect investigations would be undermined if we were to limit the record retention requirements to documents related to vehicles offered for sale in the United States.

Finally, we have reviewed our regulation on tire record keeping, 49 CFR Part 574. Section 574.6(d) and Section 574.10 require, respectively, tire manufacturers and motor vehicle

substantive requirements of former Section 579.5 as a new Section 573.5, with other sections of Part 573 renumbered accordingly.

X. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory

Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000

economic impact on a substantial number of small entities. Information on the number of small businesses manufacturing relevant equipment or vehicles currently sold in the United States, by product category, is presented below.

1. *Passenger cars and light trucks, including vans, SUV's and pickups.* There are 16 major manufacturers of passenger cars and light trucks,

are many manufacturers of original and replacement equipment (other than manufacturers of child restraint systems and tires) that are small businesses, these manufacturers will have a reporting obligation under this regulation limited to incidents of death involving their products. These are expected to be rare. Thus, this rule will have only a slight impact on these manufacturers.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not

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the rule and the agency's ability to conduct effective defect investigations would be undermined if we were to limit the record retention requirements to documents related to vehicles offered for sale in the United States.

Finally, we have reviewed our regulation on tire record keeping, 49 CFR Part 574. Section 574.6(d) and Section 574.10 require, respectively, tire manufacturers and motor vehicle manufacturers to maintain records of new tires they produce, and tires on new vehicles and the names and addresses of the first purchaser of the vehicles for not less than three years after the date of purchase. In light of the statutory amendment increasing the period from three to five years for free remedy of tires, and our conforming change to Part 576, we proposed adopting conforming amendments to Sections 574.6(d) and 574.10 under which these records will also be held for five years. There were no comments on the proposal, and Sections 574.6(d) and 574.10 are being adopted as proposed.

IX. Administrative Amendments to 49 CFR Part 573 To Accommodate Final Rules Implementing 49 U.S.C. Sections 30166(l) and (m)

For many years, we have required manufacturers to furnish us with a copy of all notices, bulletins, other communications including warranty and policy extension communiques and product improvement bulletins regarding defects, whether or not safety related (49 CFR 573.8). Currently, this requirement is located in our regulation on defect and noncompliance reporting, 49 CFR Part 573. Given our adoption of a new regulation, Part 579 *Reporting of Information and Communications About Potential Defects*, it seems appropriate to transfer the subject matter of Section 573.8 to Part 579. We proposed a Section 579.5(a) which is identical to Section 573.8. There were no comments on that proposal. The final rule achieves the transfer with the removal of Section 573.8 and the adoption of Section 579.5(a).

There currently exists a regulation at 49 CFR Part 579, *Defect and Noncompliance Responsibility* (2001). This regulation sets forth the responsibilities of various types of manufacturers for safety-related defects and noncompliances. As such, we feel that it would be appropriate for its specifications to be moved to Part 573. Accordingly, we are also amending Part 573 to incorporate these specifications as part of this rulemaking document. These are reflected in amendments to the scope, purpose, and definitions of Part 573, and the addition of the substantive requirements of former Section 579.5 as a new Section 573.5, with other sections of Part 573 renumbered accordingly.

X. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking under Executive Order 12866 the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be significant by the Office of Management and Budget under Executive Order 12866 because of congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for this rulemaking and filed in the docket. This action does not impose requirements on the design or production of motor vehicles or motor vehicle equipment; it only requires reporting of information in the possession of the manufacturer.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing many of the safety systems for which reporting will be required, steering, suspension, brakes, engines and power trains, or electrical system, or other motor vehicle parts not mentioned specifically in this paragraph, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, lighting, motor vehicle seating and interior trim packages, alterers and second-stage manufacturers, or re-tread tires the firm must have less than 500 employees to be classified as a small business.

In Section VII.D, *Periodic Review*, above, we noted that there is some uncertainty about the number of small businesses who may be subject to reporting requirements beyond incidents involving death. Below we estimate that there could be as few as 15 or as many as hundreds that produce more than 500 vehicles. Because of the uncertainty, we are conducting a review of this industry to determine how many small businesses would be subject to more extensive reporting, which is expected to be completed by mid-2005.

There may also be some uncertainty about the impacts. In our view, the more extensive reporting required of these small businesses will not impose a cost burden on them that is significantly different from the burden on those producing fewer than 500 vehicles. The costs of reporting are directly related to the volume of reportable communications submitted to manufacturers. Even though some small businesses would be reporting on more categories of information and at more frequent intervals, the total number of reportable communications would probably be low enough that the company would be able to use its existing computers with commercially available software to prepare its reports, without having to invest in a new computer system. However, we will want to confirm this as part of our review.

Based on the best information available to us at this time, I certify that this final rule will not have a significant economic impact on a substantial number of small entities. Information on the number of small businesses manufacturing relevant equipment or vehicles currently sold in the United States, by product category, is presented below.

1. *Passenger cars and light trucks, including vans, SUV's and pickups.* There are 16 major manufacturers of passenger cars and light trucks, including vans, SUV's and pickups sold in the United States. All are large businesses by the definition of having more than 1,000 employees. In addition, NHTSA knows of four small manufacturers of (complete) motor vehicles in the United States accounting for less than 1 percent of U.S. production, and in addition, several hundred small enterprises that modified or completed unfinished vehicles, of which many were van converters.

2. *Medium and heavy trucks.* NHTSA believes there are 12 manufacturers of medium and heavy trucks sold in the United States. All are large businesses with more than 1,000 employees.

3. *Buses.* NHTSA believes there are 19 bus manufacturers, of which 14 are small manufacturers with less than 1,000 employees.

4. *Motorcycles.* Based on docket comments, there are 12 motorcycle or moped manufacturers. We identified 2 motorcycle manufacturers as small businesses with less than 500 employees.

5. *Trailers.* We estimate that there are 8 large trailer manufacturers and hundreds of small businesses that manufacture trailers (boat trailers, U-haul type trailers, horse trailers, landscape, tree, and yard care equipment trailers, motorcycle/all-terrain vehicle trailers, cars-in tow trailers, and work-performing equipment trailers, e.g., compressors, signs, lights/generators, leaf collecting/mulch, roof and road tar heating).

6. *Tires.* NHTSA believes there are 10 tire manufacturers, which are all large businesses. The International Tire and Rubber Association website indicates that there are approximately 1,126 retread tire plants in the United States, of which approximately 95 percent are owned/operated by small businesses with less than 500 employees.

7. *Child restraint systems.* Available information on child restraint system manufacturers yields a total of 10 independent enterprises, of which 3 have less than 500 employees and qualify as small businesses.

8. *Manufacturers of original equipment and manufacturers of replacement equipment other than child restraint systems and tires.* While there are many manufacturers of original and replacement equipment (other than manufacturers of child restraint systems and tires) that are small businesses, these manufacturers will have a reporting obligation under this regulation limited to incidents of death involving their products. These are expected to be rare. Thus, this rule will have only a slight impact on these manufacturers.

The agency has decided to limit the impact on small businesses by excluding from most of the reporting requirements any vehicle manufacturer that produces fewer than 500 vehicles a year, by category of vehicle. This exclusion will apply to many of the small businesses discussed above. We will also exclude registered importers (the vehicles imported by registered importers generally comprise a mixed fleet fabricated by more than a single company). However, these smaller-volume manufacturers will not be exempt from the requirements to report to us claims submitted against them for death, and to report notices of fatalities that are alleged or proven to have been caused by possible defects in their vehicles in the United States. We suspect there will be very few reports per year from manufacturers that produce fewer than 500 vehicles per year.

Executive Order 13132 (Federalism). Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not adopted a standardized form for reporting information, we will be requiring manufacturers to submit information utilizing specified templates. The provisions of this rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. We have requested and received emergency clearance from OMB for the information collection required by this rule. The clearance number is 2127–0616, expiration date September 30, 2002. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments are due by August 26, 2002. We request that comments relating to the Paperwork Reduction Act be directed to that notice.

Data Quality Guidelines

The information that NHTSA is mandated to collect may be made available to the public via the agency's website. The distribution of such data via the agency's website may constitute "information dissemination" as that term is defined under the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies ("Information Quality Guidelines") issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and prepared, in draft form, by the Department of Transportation (DOT) (67 FR 21319, Apr. 30. 2002). DOT's final Guidelines will be issued by October 1, 2002.

If a determination were made that the public distribution of the early warning data constituted information dissemination and was, therefore, subject to the OMB/DOT Information Quality Guidelines, then the agency would review the information prior to distribution to ascertain its utility, objectivity, and integrity (collectively, "quality"). Under the Guidelines, any affected person who believed that the

information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards prescribed under part 571 of this chapter, and

(3) Providing quarterly reports on defect and noncompliance notification campaigns.

4. Section 573.2 is revised to read as follows:

§ 573.5 Defect and noncompliance responsibility.

(a) Each manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in any item of original equipment.

(b) Each manufacturer of an item of replacement equipment shall be responsible for any safety-related defect

malfunctions that may be related to motor vehicle safety.

14. Section 576.3 is revised to read as follows:

§ 576.3 Application.

This part applies to all manufacturers of motor vehicles, with respect to all records generated or acquired on or after August 16, 1969, and to all manufacturers of motor vehicle

including communications transmitted electronically.

18. Part 579 is revised to read as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

Subpart A—General

Sec.

and copies of communications about defects and noncompliances under 49 U.S.C. 30166(f).

§ 579.2 Purpose.

The purpose of this part is to enhance motor vehicle safety by specifying information and documents that manufacturers of motor vehicles and motor vehicle equipment must provide to NHTSA with respect to possible safety-related defects and

information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

List of Subjects

49 CFR Part 573

Motor vehicle equipment, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Tires.

49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

49 CFR Part 576

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

1. Part 573 heading is revised to read as set forth above.

2. The authority citation for part 573 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

3. Section 573.1 is revised to read as follows:

§ 573.1 Scope.

This part:

(a) Sets forth the responsibilities under 49 U.S.C. 30117–30120 of manufacturers of motor vehicles and motor vehicle equipment with respect to safety-related defects and noncompliances with Federal motor vehicle safety standards in motor vehicles and items of motor vehicle equipment; and

(b) Specifies requirements for—

(1) Manufacturers to maintain lists of purchasers and owners notified of defective and noncomplying motor vehicles and motor vehicle original and replacement equipment,

(2) Reporting to the National Highway Traffic Safety Administration (NHTSA) defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards prescribed under part 571 of this chapter, and

(3) Providing quarterly reports on defect and noncompliance notification campaigns.

4. Section 573.2 is revised to read as follows:

§ 573.2 Purposes.

The purposes of this part are:

(a) To facilitate the notification of owners of defective and noncomplying motor vehicles and items of motor vehicle equipment, and the remedy of such defects and noncompliances, by equitably apportioning the responsibility for safety-related defects and noncompliances with Federal motor vehicle safety standards among manufacturers of motor vehicles and motor vehicle equipment; and

(b) To inform NHTSA of defective and noncomplying motor vehicles and items of motor vehicle equipment, and to obtain information for NHTSA on the adequacy of manufacturers' defect and noncompliance notification campaigns, on corrective action, on owner response, and to compare the defect incidence rate among different groups of vehicles.

5. Section 573.4 is amended by adding in alphabetical order definitions for Original equipment and Replacement equipment to read as follows:

§ 573.4 Definitions.

* * * * *

Original equipment means an item of motor vehicle equipment (other than a tire) that was installed in or on a motor vehicle at the time of its delivery to the first purchaser if the item of equipment was installed on or in the motor vehicle at the time of its delivery to a dealer or distributor for distribution, or was installed by the dealer or distributor with the express authorizations of the motor vehicle manufacturer.

* * * * * *

Replacement equipment means motor vehicle equipment other than original equipment as defined in this section, and tires.

§ 573.6 [Removed]

6. Section 573.8 is removed.

§§ 573.5 through 573.7 [Redesignated as §§ 573.6 through 573.8]

7. Sections 573.5 through 573.7 are redesignated as §§ 573.6 through 573.8 respectively.

8. New § 573.5 is added to read as follows:

§ 573.5 Defect and noncompliance responsibility.

(a) Each manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in any item of original equipment.

(b) Each manufacturer of an item of replacement equipment shall be responsible for any safety-related defect or any noncompliance determined to exist in the equipment.

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

9. The authority citation for part 574 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

10. Section 574.7(d) preceding the graphic is revised to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

* * * * *

(d) The information that is specified in paragraph (a)(4) of this section and recorded on registration forms submitted to a tire manufacturer or its designee shall be maintained for a period of not less than five years from the date on which the information is recorded by the manufacturer or its designee.

* * * * *

11. Section 574.10 is amended by revising the last sentence to read as follows:

§ 574.10 Requirements for motor vehicle manufacturers.

* * * These records shall be maintained for a period of not less than 5 years from the date of sale of the vehicle to the first purchaser for purposes other than resale.

PART 576—RECORD RETENTION

12. The authority citation for part 576 is revised to read as follows:

Authority: 49 U.S.C. 322(a), 30117, 30120(g), 30141–30147; delegation of authority at 49 CFR 1.50.

13. Section 576.1 is revised to read as follows:

§ 576.1 Scope.

This part establishes requirements for the retention by manufacturers of motor vehicles and of motor vehicle equipment, of claims, complaints, reports, and other records concerning alleged and proven motor vehicle or motor vehicle equipment defects and

malfunctions that may be related to motor vehicle safety.

14. Section 576.3 is revised to read as follows:

§ 576.3 Application.

This part applies to all manufacturers of motor vehicles, with respect to all records generated or acquired on or after August 16, 1969, and to all manufacturers of motor vehicle equipment, with respect to all records in their possession, generated or acquired on or after August 9, 2002.

15. Section 576.4 is revised to read as follows:

§ 576.4 Definitions.

All terms in this part that are defined in 49 U.S.C. 30102 and part 579 of this chapter are used as defined therein.

16. Section 576.5 is revised to read as follows:

§ 576.5 Basic requirements.

(a) Each manufacturer of motor vehicles, child restraint systems, and tires shall retain, as specified in § 576.7 of this part, all records described in § 576.6 of this part for a period of five calendar years from the date on which they were generated or acquired by the manufacturer.

(b) Each manufacturer of motor vehicles and motor vehicle equipment shall retain, as specified in § 576.7 of this part, all the underlying records on which the information reported under part 579 of this chapter is based, for a period of five calendar years from the date on which they were generated or acquired by the manufacturer, except as provided in paragraph (c) of this section.

(c) Manufacturers need not retain copies of documents transmitted to NHTSA pursuant to parts 573, 577, and 579 of this chapter.

17. Section 576.6 is revised to read as follows:

§ 576.6 Records.

Records to be maintained by manufacturers under this part include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under warranties; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

18. Part 579 is revised to read as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

Subpart A—General

Sec.
579.1 Scope.
579.2 Purpose.
579.3 Application.
579.4 Terminology.
579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.
579.6 Address for submitting reports and other information.
579.7–579.10 [Reserved]

Subpart B—Reporting of Defects in Motor Vehicles and Motor Vehicle Equipment in Countries Other Than the United States

579.11–579.20 [Reserved]

Subpart C—Reporting of Early Warning Information

579.21 Reporting requirements for manufacturers of 500 or more light vehicles annually.
579.22 Reporting requirements for manufacturers of 500 or more medium-heavy vehicles and buses annually.
579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.
579.24 Reporting requirements for manufacturers of 500 or more trailers annually.
579.25 Reporting requirements for manufacturers of child restraint systems.
579.26 Reporting requirements for manufacturers of tires.
579.27 Reporting requirements for manufacturers of fewer than 500 vehicles annually, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.
579.28 Due date of reports and other miscellaneous provisions.
579.29 Manner of reporting.

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

§ 579.1 Scope.

This part sets forth requirements for reporting information and submitting documents that may help identify defects related to motor vehicle safety and noncompliances with Federal motor vehicle safety standards, including reports of foreign safety recalls and other safety-related campaigns conducted outside the United States under 49 U.S.C. 30166(l), early warning information under 49 U.S.C. 30166(m), and copies of communications about defects and noncompliances under 49 U.S.C. 30166(f).

§ 579.2 Purpose.

The purpose of this part is to enhance motor vehicle safety by specifying information and documents that manufacturers of motor vehicles and motor vehicle equipment must provide to NHTSA with respect to possible safety-related defects and noncompliances in their products.

§ 579.3 Application.

(a) This part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States.

(b) In the case of any report required under subpart C of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment, shall be considered compliance by all persons.

(c) With regard to any information required to be reported under subpart C of this part, an entity covered under paragraph (a) of this section need only review information and systems where information responsive to subpart C of this part is kept in the usual course of business.

§ 579.4 Terminology.

(a) *Statutory terms.* The terms *dealer, defect, distributor, motor vehicle, motor vehicle equipment,* and *State* are used as defined in 49 U.S.C. 30102.

(b) *Regulatory terms.* The term *Vehicle Identification Number (VIN)* is used as defined in § 565.3(o) of this chapter. The terms *bus, Gross Vehicle Weight Rating (GVWR), motorcycle, multipurpose passenger vehicle, passenger car, trailer,* and *truck* are used as defined in § 571.3(b) of this chapter.

The term *Booster seat* is used as defined in S4 of § 571.213 of this chapter. The term *Tire Identification Number (TIN)* is the "tire identification number" described in § 574.5 of this chapter. The term *Limited production tire* is used as defined in § 575.104(c)(2) of this chapter.

(c) *Other terms.* The following terms apply to this part:

Administrator means the

the belt webbing, buckles, buckle release mechanism, belt adjusters, belt positioning devices, and shields.

Child restraint system means any system that meets, or is offered for sale in the United States as meeting, any definition in S4 of § 571.213 of this chapter, or that is offered for sale as a child restraint system in a foreign country.

Claim means a written request or

Customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment means any communication by a manufacturer to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, or owner, whether in writing or by electronic means, relating to repair, replacement, or modification

of equipment was installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer.

(2) *Replacement equipment* means motor vehicle equipment other than original equipment, and tires.

Exterior lighting mean all the exterior lamps (including any interior-mounted center highmounted stop lamp if mounted in the interior of a vehicle),

labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.

Incomplete light vehicle means an incomplete vehicle as defined in § 568.3 of this chapter which, when completed, will be a light vehicle.

Integrated child restraint system

which have a degree of commonality in construction, such as body, chassis or cab type. For equipment, it means the name that its manufacturer uses to designate it.

Model year means the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured; if a year is not so designated, it means the year the vehicle

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The term *Booster seat* is used as defined in S4 of § 571.213 of this chapter. The term *Tire Identification Number (TIN)* is the "tire identification number" described in § 574.5 of this chapter. The term *Limited production tire* is used as defined in § 575.104(c)(2) of this chapter.

(c) *Other terms.* The following terms apply to this part:

Administrator means the Administrator of the National Highway Traffic Safety Administration (NHTSA), or the Administrator's delegate.

Affiliate means, in the context of an affiliate of or person affiliated with a specified person, a person that directly, or indirectly through one or more intermediates, controls or is controlled by, or is under common control with, the person specified. The term person usually is a corporation.

Air bag means an air bag or other automatic occupant restraint device (other than a "seat belt" as defined in this subpart) installed in a motor vehicle that restrains an occupant in the event of a vehicle crash without requiring any action on the part of the occupant to obtain the benefit of the restraint. This term includes inflatable restraints (front and side air bags), knee bolsters, and any other automatic restraining device that may be developed that does not include a restraining belt or harness. This term also includes all air bag-related components, such as the inflator assembly, air bag module, control module, crash sensors and all hardware and software associated with the air bag. This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Base means the detachable bottom portion of a child restraint system that may remain in the vehicle to provide a base for securing the system to a seat in a motor vehicle.

Bead means all the materials in a tire below the sidewalls in the rim contact area, including bead rubber components, the bead bundle and rubber coating if present, the body ply and its turn-up including the rubber coating, rubber, fabric, or metallic reinforcing materials, and the inner-liner rubber under the bead area.

Brand name owner means a person that markets a motor vehicle or motor vehicle equipment under its own trade name whether or not it is the fabricator or importer of the vehicle or equipment.

Buckle and restraint harness means the components of a child restraint system that are intended to restrain a child seated in such a system, including the belt webbing, buckles, buckle release mechanism, belt adjusters, belt positioning devices, and shields.

Child restraint system means any system that meets, or is offered for sale in the United States as meeting, any definition in S4 of § 571.213 of this chapter, or that is offered for sale as a child restraint system in a foreign country.

Claim means a written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire originating in or from a motor vehicle or a substance that leaked from a motor vehicle. Claim includes, but is not limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document(s) stating a claim. Claim does not include demands related to asbestos exposure, to emissions of volatile organic compounds from vehicle interiors, or to end-of-life disposal of vehicles, parts or components of vehicles, equipment, or parts or components of equipment.

Common green tires means tires that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.

Consumer complaint means a communication of any kind made by a consumer (or other person) to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer website that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit within the manufacturer that receives consumer inquiries or complaints, including telephonic complaints, expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but not including a claim of any kind or a notice involving a fatality or injury.

Customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment means any communication by a manufacturer to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, or owner, whether in writing or by electronic means, relating to repair, replacement, or modification of a vehicle, component of a vehicle, item of equipment, or a component thereof, the manner in which a vehicle or child restraint system is to be maintained or operated (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

Dealer field report means a field report from a dealer or authorized service facility of a manufacturer of motor vehicles or motor vehicle equipment.

Electrical system means any electrical or electronic component of a motor vehicle that is not included in one of the other reporting categories enumerated in subpart C of this part, and specifically includes the battery, battery cables, alternator, fuses, and main body wiring harnesses of the motor vehicle and the ignition system, including the ignition switch and starter motor. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Engine and engine cooling means the component (e.g., motor) of a motor vehicle providing motive power to the vehicle, and includes the exhaust system (including the exhaust emission system), the engine control unit, engine lubrication system, and the underhood cooling system for that engine. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Equipment comprises original and replacement equipment: (1) *Original equipment* means an item of motor vehicle equipment (other than a tire) that was installed in or on a motor vehicle at the time of its delivery to the first purchaser if the item of equipment was installed on or in the motor vehicle at the time of its delivery to a dealer or distributor for distribution; or the item of equipment was installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer.

(2) *Replacement equipment* means motor vehicle equipment other than original equipment, and tires.

Exterior lighting mean all the exterior lamps (including any interior-mounted center highmounted stop lamp if mounted in the interior of a vehicle), lenses, reflectors, and associated equipment of a motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or by an entity that owns or operates a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle, component, or system at issue in the litigation.

Fire means combustion or burning of any material in a vehicle as evidenced by, but not limited to, flame, smoke, sparks, or smoldering.

Fleet means more than ten motor vehicles of the same make, model, and model year.

Fuel system means all components of a motor vehicle used to receive and store fuel, and to transfer fuel between the vehicle's fuel storage, engine, or fuel emission systems. This term includes, but is not limited to, the fuel tank and filler cap, neck, and pipe, along with associated piping, hoses, and clamps, the fuel pump, fuel lines, connectors from the fuel tank to the engine, the fuel injection/carburetion system (including fuel injector rails and injectors), and the fuel vapor recovery system(s), canister(s), and vent lines. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Good will means the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.

Incomplete light vehicle means an incomplete vehicle as defined in § 568.3 of this chapter which, when completed, will be a light vehicle.

Integrated child restraint system means a factory-installed built-in child restraint system as defined in S4 of § 571.213 of this chapter and includes any factory-authorized built-in child restraint system.

Latch means a latching, locking, or linking system of a motor vehicle and all its components fitted to a vehicle's exterior doors, rear hatch, liftgate, tailgate, trunk, or hood. This term also includes, but is not limited to, devices for the remote operation of a latching device such as remote release cables (and associated components), electric release devices, or wireless control release devices, and includes all components covered in FMVSS No. 206. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Light vehicle means any motor vehicle, except a bus, motorcycle, or trailer, with a GVWR of 10,000 lbs or less.

Make means a name that a manufacturer applies to a group of vehicles.

Manufacturer means a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This term includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such a person.

Medium-heavy vehicle means any motor vehicle, except a trailer, with a GVWR greater than 10,000 lbs.

Minimal specificity means:

(1) for a vehicle, the make, model, and model year,

(2) for a child seat, the manufacturer and the model (either the model name or model number),

(3) for a tire, the manufacturer, tire line, and tire size, and

(4) for other motor vehicle equipment, the manufacturer and, if there is a model or family of models identified on the item of equipment, the model name or model number.

Model means a name that a manufacturer of motor vehicles applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type. For equipment, it means the name that its manufacturer uses to designate it.

Model year means the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured; if a year is not so designated, it means the year the vehicle was produced. For equipment, it means the year that the item was produced.

Notice means a document, other than a media article, that does not include a demand for relief, and that a manufacturer receives from a person other than NHTSA.

Parking brake means a mechanism installed in a motor vehicle which is designed to prevent the movement of a stationary motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Platform means the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be considered to have a common platform regardless of whether such vehicles are of the same type, are of the same make, or are sold by the same manufacturer.

Power train means the components or systems of a motor vehicle which transfer motive power from the engine to the wheels, including the transmission (manual and automatic), gear selection devices and associated linkages, clutch, constant velocity joints, transfer case, driveline, differential(s), and all driven axle assemblies. This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Property damage means physical injury to tangible property.

Property damage claim means a claim for property damage, excluding that part of a claim, if any, pertaining solely to damage to a component or system of a vehicle or an item of equipment itself based on the alleged failure or malfunction of the component, system, or item, and further excluding matters addressed under warranty.

Rear-facing infant seat means a child restraint system that positions a child to face in the direction opposite to the

normal direction of travel of the motor vehicle.

Reporting period means a calendar quarter of a year, unless otherwise stated.

Rollover means a single-vehicle crash in which a motor vehicle rotates on its longitudinal axis to at least 90 degrees, regardless of whether it comes to rest on its wheels.

Seats means all components of a

calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135. This term also includes systems and devices for automatic control of the brake system such as antilock braking, traction control, stability control, and enhanced braking. The term includes all associated switches, control units,

control, as well as all associated components such as switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Tire means an item of motor vehicle equipment intended to interface between the road and a motor vehicle. The term includes all the tires of a vehicle, including the spare tire. This

associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Visibility means the systems and components of a motor vehicle through which a driver views the surroundings of the vehicle including windshield, side windows, back window, and rear view mirrors, and systems and

costs or expenses for work performed to remedy a safety-related defect or noncompliance reported to NHTSA under part 573 of this chapter, or in connection with an emissions-related recall under the Clean Air Act.

Wheel means the assembly or component of a motor vehicle to which a tire is mounted. The term includes any item of motor vehicle equipment used to attach the wheel to the vehicle,

required to be submitted pursuant to § 573.5(c)(9) of this chapter, sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications),

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normal direction of travel of the motor vehicle.

Reporting period means a calendar quarter of a year, unless otherwise stated.

Rollover means a single-vehicle crash in which a motor vehicle rotates on its longitudinal axis to at least 90 degrees, regardless of whether it comes to rest on its wheels.

Seats means all components of a motor vehicle that are subject to FMVSS Nos. 202, 207, and S9 of 209, including all electrical and electronic components within the seat that are related to seat positioning, heating, and cooling. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Seat belts means any belt system, other than an air bag, that may or may not require the occupant to latch, fasten, or secure the components of the seat belt/webbing based restraint system to ready its use for protection of the occupant in the event of a vehicle crash. This term includes the webbing, buckle, anchorage, retractor, belt pretensioner devices, load limiters, and all components, hardware and software associated with an automatic or manual seat belt system addressed by FMVSS No. 209 or 210. This term also includes integrated child restraint systems in vehicles, and includes any device (and all components of that device), installed in a motor vehicle in accordance with FMVSS No. 213, which is designed for use as a safety restraint device for a child too small to use a vehicle's seat belts. This term includes all vehicle components installed in accordance with FMVSS No. 225. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Seat shell means the portion of a child restraint system that provides the structural shape, form and support for the system, and for other components of the system such as belt attachment points, and anchorage points to allow the system to be secured to a passenger seat in a motor vehicle, but not including a shield.

Service brake system means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135. This term also includes systems and devices for automatic control of the brake system such as antilock braking, traction control, stability control, and enhanced braking. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Sidewall means the area of a tire between the tread and the bead area, including the sidewall rubber components, the body ply and its coating rubber under the side area, and the inner-liner rubber under the body ply in the side area.

SKU (Stock Keeping Unit) means the alpha-numeric designation assigned by a manufacturer to a tire product.

Steering system means all steering control system components, including the steering system mechanism and its associated hardware, the steering wheel, steering column, steering shaft, linkages, joints (including tie-rod ends), steering dampeners, and power steering assist systems. This term includes a steering control system as defined by FMVSS No. 203 and any subsystem or component of a steering control system, including those components defined in FMVSS No. 204. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Structure means any part of a motor vehicle that serves to maintain the shape and size of the vehicle, including the frame, the floorpan, the body, bumpers, doors, tailgate, hatchback, trunk lid, hood, and roof. The term also includes all associated mounting elements (such as brackets, fasteners, etc.).

Suspension system means all components and hardware associated with a motor vehicle suspension system, including the associated control arms, steering knuckles, spindles, joints, bushings, ball joints, springs, shock absorbers, stabilizer (anti sway) bars, and bearings that are designed to minimize the impact on the vehicle chassis of shocks from road surface irregularities that may be transmitted through the wheels, and to provide stability when the vehicle is being operated through a range of speed, load, and dynamic conditions. The term also includes all electronic control systems and mechanisms for active suspension control, as well as all associated components such as switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Tire means an item of motor vehicle equipment intended to interface between the road and a motor vehicle. The term includes all the tires of a vehicle, including the spare tire. This term also includes the tire inflation valves, tubes, and tire pressure monitoring and regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Tire line means the entire name used by a tire manufacturer to designate a tire product including all prefixes and suffixes as they appear on the sidewall of a tire.

Trailer hitch means all coupling systems, devices, and components thereof, designed to join or connect any two motor vehicles. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Tread (also known as crown) means all materials in the tread area of a tire including the rubber that makes up the tread, the sub-base rubber, when present, between the tread base and the top of the belts, the belt material, either steel and/or fabric, and the rubber coating of the same including any rubber inserts, the body ply and its coating rubber under the tread area of the tire, and the inner-liner rubber under the tread.

Type means, in the context of a light vehicle, a vehicle certified by its manufacturer pursuant to § 567.4(g)(7) of this chapter as a passenger car, multipurpose passenger vehicle, or truck, or a vehicle identified by its manufacturer as an incomplete vehicle pursuant to § 568.4 of this chapter. In the context of a child restraint system, it means the category of child restraint system selected from one of the following: rear-facing infant seat, booster seat, or other.

Vehicle speed control means the systems and components of a motor vehicle that control vehicle speed either by command of the operator or by automatic control, including, but not limited, to the accelerator pedal, linkages, cables, springs, speed control devices (such as cruise control) and speed limiting devices. This term includes, but is not limited to the items addressed by FMVSS No. 124 and all

associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Visibility means the systems and components of a motor vehicle through which a driver views the surroundings of the vehicle including windshield, side windows, back window, and rear view mirrors, and systems and components used to wash and wipe windshields and back windows. This term includes those vehicular systems and components that can affect the ability of the driver to clearly see the roadway and surrounding area, such as the systems and components identified in FMVSS Nos. 103, 104, and 111. This term also includes the defogger/defroster system, the heater core, blower fan, windshield wiper systems, mirrors, windows and glazing material, heads-up display (HUD) systems, and exterior view-based television systems, but does not include exterior lighting systems which are defined under "Lighting." This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Warranty means any written affirmation of fact or written promise made in connection with the sale or lease of a motor vehicle or motor vehicle equipment by a manufacturer to a buyer or lessee that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time (including any extensions of such specified period of time), or any undertaking in writing in connection with the sale or lease by a manufacturer of a motor vehicle or item of motor vehicle equipment to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

Warranty adjustment means any payment or other restitution, such as, but not limited to, replacement, repair, credit, or cash refund, made by a tire manufacturer to a consumer or to a dealer, in reimbursement for payment or other restitution to a consumer, pursuant to a warranty program offered by the manufacturer.

Warranty claim means any claim paid by a manufacturer, including provision of a credit, pursuant to a warranty program, an extended warranty program, or good will. It does not include claims for reimbursement for costs or expenses for work performed to remedy a safety-related defect or noncompliance reported to NHTSA under part 573 of this chapter, or in connection with an emissions-related recall under the Clean Air Act.

Wheel means the assembly or component of a motor vehicle to which a tire is mounted. The term includes any item of motor vehicle equipment used to attach the wheel to the vehicle, including inner cap nuts and the wheel studs, bolts, and nuts.

(d) *Terms related to foreign claims.* For purposes of subpart C of this part:

(1) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if—

(i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;

(ii) Such a vehicle is listed in the VSP or VSA columns of Appendix A to part 593 of this chapter;

(iii) Such a vehicle is manufactured in the United States for sale in a foreign country; or

(iv) Such a vehicle uses the same vehicle platform as a vehicle sold or offered for sale in the United States.

(2) An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical.

(3) A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component materials, irrespective of plant of manufacture or tire line.

§ 579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.

(a) Each manufacturer shall furnish to NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax, or other electronic means and including warranty and policy extension communiques and product improvement bulletins) other than those required to be submitted pursuant to § 573.5(c)(9) of this chapter, sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related.

(b) Each manufacturer shall furnish to NHTSA a copy of each communication relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment, that the manufacturer issued to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, owner, or purchaser, in the United States.

(c) If a notice or communication is required to be submitted under both paragraphs (a) and (b) of this section, it need only be submitted once.

(d) Each copy shall be in readable form and shall be submitted not more than five working days after the end of the month in which it was issued. Each submission shall be accompanied by a document identifying each communication in the submission by name or subject matter and date.

§ 579.6 Address for submitting reports and other information.

Information, reports, and documents required to be submitted to NHTSA pursuant to this part, if submitted by mail, must be addressed to the Associate Administrator for Enforcement, National Highway Traffic Safety Administration (NHTSA), 400 7th Street, SW., Washington, D.C. 20590. Information, documents, and reports that are submitted to NHTSA's early warning data repository shall be submitted in accordance with § 579.29 of this part. Submissions must be made by a means that permits the sender to verify that the report was in fact received by NHTSA and the day it was received by NHTSA.

§§ 579.7–579.10 [Reserved]

Subpart B—Reporting of Defects in Motor Vehicles and Motor Vehicle Equipment in Countries Other Than the United States

§§ 579.11–579.20 [Reserved]

Subpart C—Reporting of Early Warning Information

make, within each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the vehicle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign

any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by

vehicles and buses less than ten calendar years old at the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible

components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire or rollover indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or

production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all motorcycles less than ten calendar years old as of the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries

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§§ 579.7–579.10 [Reserved]

Subpart B—Reporting of Defects in Motor Vehicles and Motor Vehicle Equipment in Countries Other Than the United States

§§ 579.11–579.20 [Reserved]

Subpart C—Reporting of Early Warning Information

§ 579.21 Reporting requirements for manufacturers of 500 or more light vehicles annually.

For each reporting period, a manufacturer whose aggregate number of light vehicles manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during each of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of light vehicle manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, the platform, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all light vehicles less than ten calendar years old at the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's vehicle, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's vehicle, if that vehicle is identical or substantially similar to a vehicle that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on light vehicles and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the vehicle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 steering system, 02 suspension system, 03 service brake system, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, 10 power train, 11 electrical system, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 22 seats, 23 fire, 24 rollover, 98 where a system or component not covered by categories 01 through 22 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire or rollover indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire or rollover.

(d) *Copies of field reports.* For all light vehicles less than ten calendar years old as of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

§ 579.22 Reporting requirements for manufacturers of 500 or more medium-heavy vehicles and buses annually.

For each reporting period, a manufacturer whose aggregate number of medium-heavy vehicles and buses manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of medium-heavy vehicle and bus manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased. For each model that is manufactured and available with more than one type of fuel system (i.e., gasoline, diesel, or other (including vehicles that can be operated using more than one type of fuel, such as gasoline and compressed natural gas)), the information required by this subsection shall be reported separately by each of the three fuel system types. For each model that is manufactured and available with more than one type of service brake system (i.e., hydraulic or air), the information required by this subsection shall be reported by each of the two brake types. If the service brake system in a vehicle is not readily characterized as either hydraulic or air, the vehicle shall be considered to have hydraulic service brakes.

(b) *Information on incidents involving death or injury.* For all medium-heavy vehicles and buses less than ten calendar years old at the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's vehicle, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's vehicle, if that vehicle is identical or substantially similar to a vehicle that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on medium-heavy vehicles and buses and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the medium-heavy vehicle or bus, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 steering system, 02 suspension system, 03 service brake system, hydraulic, 04 service brake system, air, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, gasoline, 08 fuel system, diesel, 09 fuel system, other, 10 power train, 11 electrical, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 21 trailer hitch, 22 seats, 23 fire, 24 rollover, 98 where a system or component not covered by categories 01 through 22 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire or rollover indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire or rollover.

(d) *Copies of field reports.* For all medium-heavy vehicles and buses less than ten calendar years old as of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

For each reporting period, a manufacturer whose aggregate number of motorcycles manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of motorcycle manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all motorcycles less than ten calendar years old as of the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's motorcycle, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's motorcycle, if that motorcycle is identical or substantially similar to a motorcycle that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on motorcycles and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the motorcycle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the motorcycle that allegedly contributed to the incident, and whether the incident involved a fire, coded as follows: 01 steering, 02 suspension, 03 service brake system, 06 engine and engine cooling, 07 fuel system, 10 power train, 11 electrical, 12 exterior lighting, 16 structure,18 vehicle speed control, 19 tires, 20 wheels, 23 fire, 98 where a system or component not covered by categories 01 through 20 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field

reports which involve the systems and components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire indicated by the code. If an underlying property damage

reporting period, the make, the model, the production year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total calendar year production for each calendar year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all child restraint

51 through 54 in paragraph (b)(2) of this section. Each such report shall state, separately by each such code, the number of such consumer complaints and warranty claims, or field reports, respectively, that involves the systems or components indicated by the code. If an underlying consumer complaint and warranty claim, or field report, involves more than one such code, each shall be counted separately in the report with no

plant where manufactured, whether the tire is approved for use as original equipment on a motor vehicle, if so, the make, model, and model year of each vehicle for which it is approved, the production year, the cumulative warranty production, and the cumulative total production through the end of the reporting period.

(b) *Information on incidents involving death or injury.* (1) A report on each incident involving one or more deaths

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reports which involve the systems and components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire.

(d) *Copies of field reports.* For all motorcycles less than ten years old as of the date of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the components identified in paragraph (b)(2) of this section, or fire, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

For each reporting period, a manufacturer whose aggregate number of trailers manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information with respect to each make, model and model year of trailer manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased. For each model that is manufactured and available with more than one type of service brake system (i.e., hydraulic or air), the information required by this subsection shall be reported by each of the two brake types. If the service brake system in a trailer is not readily characterized as either hydraulic or air, the trailer shall be considered to have hydraulic service brakes.

(b) *Information on incidents involving death or injury.* For all trailers less than ten calendar years old as of the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's trailer, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's trailer, if that trailer is identical or substantially similar to a trailer that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on trailers and organized such that incidents are reported alphabetically by make, with each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the trailer, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the trailer that allegedly contributed to the incident, and whether the incident involved a fire, coded as follows: 02 suspension, 03 service brake system, hydraulic, 04 service brake system, air, 05 parking brake, 11 electrical, 12 exterior lighting, 16 structure, 17 latch, 19 tires, 20 wheels, 21 trailer hitch, 23 fire, 98 where a system or component not covered by categories 02 through 21 is specified in the claim or notice, and 99 where no system or component of the trailer is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 02 through 21 in paragraph (b)(2) of this section, or a fire (code 23). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire.

(d) *Copies of field reports.* For all trailers less than ten calendar years old as of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, with each make alphabetically by model, and within each model chronologically by model year.

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

For each reporting period, a manufacturer who has manufactured for sale, offered for sale, imported, or sold child restraint systems in the United States shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and production year of child restraint system manufactured during the reporting period and the four production years prior to the earliest production year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the production year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total calendar year production for each calendar year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all child restraint systems less than five calendar years old as of the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's child restraint system, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's child restraint system, if the child restraint system is identical or substantially similar to a child restraint system that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on child restraint systems and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by production year.

(2) For each such incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, and production year of the child restraint system, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, and each system or component of the child restraint system that allegedly contributed to the incident, coded as follows: 51 buckle and restraint harness, 52 seat shell, 53 handle, 54 base, 98 where a system or component not covered by categories 51 through 54 is specified in the claim or notice, and 99 where no system or component of the child restraint system is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report.

(c) *Numbers of consumer complaints and warranty claims, and field reports.* Separate reports on the numbers of those consumer complaints and warranty claims, and field reports, which involve the systems and components that are specified in codes 51 through 54 in paragraph (b)(2) of this section. Each such report shall state, separately by each such code, the number of such consumer complaints and warranty claims, or field reports, respectively, that involves the systems or components indicated by the code. If an underlying consumer complaint and warranty claim, or field report, involves more than one such code, each shall be counted separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes.

(d) *Copies of field reports.* For all child restraint systems less than five years old as of the beginning of the reporting period, a copy of each field report (other than a dealer field report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of the child restraint system (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during the reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by production year.

§ 579.26 Reporting requirements for manufacturers of tires.

For each reporting period, a manufacturer (including a brand name owner) who has manufactured for sale, offered for sale, imported, or sold tires in the United States shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the earliest model year in the reporting period including tire lines no longer in production. For tires that are limited production tires or are otherwise exempted from the Uniform Tire Quality Grading Standards by § 575.104(c)(1) of this chapter, or are not passenger car tires, light truck tires, or motorcycle tires, the manufacturer need report only information on incidents involving a death, as specified in paragraph (b) of this section.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the tire line, the tire size, the tire type code, the SKU, the plant where manufactured, whether the tire is approved for use as original equipment on a motor vehicle, if so, the make, model, and model year of each vehicle for which it is approved, the production year, the cumulative warranty production, and the cumulative total production through the end of the reporting period.

(b) *Information on incidents involving death or injury.* (1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's tire, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's tire, if that tire is identical or substantially similar to a tire that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on tires and organized such that incidents are reported alphabetically by tire line, within each tire line by tire size, and within each tire size chronologically by production year.

(2) For each such incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the tire line, size, and production year of the tire, the TIN, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, the make, model, and model year of the vehicle on which the tire was installed, and each component of the tire that allegedly contributed to the incident, coded as follows: 71 tread, 72 sidewall, 73 bead, 98 where a component not covered by categories 71 through 73 is specified in the claim or notice, and 99 where no component of the tire is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report.

(c) *Numbers of property damage claims and warranty adjustments.* Separate reports on the numbers of those property damage claims and warranty adjustments which involve the components that are specified in codes 71 through 73, and 98, in paragraph (b)(2) of this section. Each such report shall state, separately by each such code, the numbers of such property damage claims and warranty adjustments, respectively, that involve the components indicated by the code.

If an underlying property damage claim or warranty adjustment involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes.

(d) *Common green tire reporting.* With each quarterly report, each

(c) For each incident described in paragraph (b) of this section, the manufacturer shall separately report the make, model, and model year of the vehicle or equipment, the VIN (for vehicles only), the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred,

through 2003 (including any vehicle designated as a 2004 model), for child restraint systems manufactured on or after April 1, 1998, and for tires manufactured on or after April 1, 1998. Each report shall include production data, as specified in paragraph (a) of §§ 579.21 through 579.26 of this part and shall identify the alleged system or component covered by warranty claim, warranty adjustment, or field report, as

the claim or notice that led to the report, and the manufacturer becomes aware during a subsequent calendar quarter that one or more of the specified systems or components allegedly contributed to the incident, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the involved specified system(s) or component(s) is (are) identified.

(i) *Abbreviations.* Whenever a manufacturer is required to identify a State in which an incident occurred, the manufacturer shall use the two-letter abbreviations established by the United States Postal Service (e.g., AZ for Arizona). Whenever a manufacturer is required to identify a foreign country in which an incident occurred, the manufacturer shall use the English-language name of the country in non-

filling out an interactive form on NHTSA's early warning website.

(b) *Submission of documents.* A copy of each document required under paragraph (d) of §§ 579.21 through 579.26 of this part may be submitted in digital form using a graphic compression protocol, approved by NHTSA, to the NHTSA data repository, or as an attachment to an e-mail message, as specified in paragraph (a)(1)

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If an underlying property damage claim or warranty adjustment involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes.

(d) *Common green tire reporting.* With each quarterly report, each manufacturer of tires shall provide NHTSA with a list of common green tires. For each specific common green tire grouping, the list shall provide all relevant tire lines, tire type codes, SKU numbers, plant where manufactured, brand names, and brand name owners.

§ 579.27 Reporting requirements for manufacturers of fewer than 500 vehicles annually, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

(a) *Applicability.* This section applies to all manufacturers of motor vehicles that are not required to file a report pursuant to §§ 579.21 through 579.24 of this part, to all manufacturers of original equipment, to all manufacturers of replacement equipment other than manufacturers of tires and child restraint systems, and to registered importers registered under 49 U.S.C. 30141(c).

(b) *Information on incidents involving deaths.* For each reporting period, a manufacturer to which this section applies shall submit a report, pertaining to vehicles and/or equipment manufactured or sold during the calendar year of the reporting period and the nine calendar years prior to the reporting period (four calendar years for equipment), including models no longer in production, on each incident involving one or more deaths occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death was caused by a possible defect in the manufacturer's vehicle or equipment, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's vehicle or equipment, if it is identical or substantially similar to a vehicle or item of equipment that the manufacturer has offered for sale in the United States. The report shall be organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(c) For each incident described in paragraph (b) of this section, the manufacturer shall separately report the make, model, and model year of the vehicle or equipment, the VIN (for vehicles only), the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle or equipment that allegedly contributed to the incident, and whether the incident involved a fire or rollover, as follows:

(1) For light vehicles, the system or component involved, and the existence of a fire or rollover, shall be identified and coded as specified in § 579.21(b)(2) of this part.

(2) For medium-heavy vehicles and buses, the system or component involved, and the existence of a fire or rollover, shall be identified and coded as specified in § 579.22(b)(2) of this part.

(3) For motorcycles, the system or component involved, and the existence of a fire, shall be identified and coded as specified in § 579.23(b)(2) of this part.

(4) For trailers, the system or component involved, and the existence of a fire, shall be identified and coded as specified in § 579.24(b)(2) of this part.

(5) For original and replacement equipment, a written identification of each component of the equipment that was allegedly involved, and whether there was a fire, in the manufacturer's own words.

§ 579.28 Due date of reports and other miscellaneous provisions.

(a) *Initial submission of reports.* The first calendar quarter for which reports are required under §§ 579.21 through 579.27 of this part is the second calendar quarter of 2003.

(b) *Due date of reports.* Each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 30 days after the last day of the reporting period. Notwithstanding the prior sentence, the due date for reports covering all calendar quarters in 2003 shall be 60 days after the last day of the reporting period.

(c) *One-time reporting of historical information.* No later than September 30, 2003, each manufacturer covered by §§ 579.21 through 579.26 of this part shall file separate reports, providing information on the numbers of warranty claims or warranty adjustments and field reports that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicle designated as a 2004 model), for child restraint systems manufactured on or after April 1, 1998, and for tires manufactured on or after April 1, 1998. Each report shall include production data, as specified in paragraph (a) of §§ 579.21 through 579.26 of this part and shall identify the alleged system or component covered by warranty claim, warranty adjustment, or field report, as specified in paragraph (c) of §§ 579.21 through 579.26 of this part.

(d) *Minimal specificity.* A claim or notice involving death, a claim or notice involving injury, a claim involving property damage, a consumer complaint, a warranty claim or warranty adjustment, or a field report need not be reported if it does not identify the vehicle or equipment with minimal specificity. If a manufacturer initially receives a claim, notice, complaint, warranty claim, warranty adjustment, or field report in which the vehicle or equipment is not identified with minimal specificity and subsequently obtains information that provides the requisite information needed to identify the product with minimal specificity, the claim, etc. shall be deemed to have been received when the additional information is received. If a manufacturer receives a claim or notice involving death or injury in which the vehicle or equipment is not identified with minimal specificity and the matter is being handled by legal counsel retained by the manufacturer, the manufacturer shall attempt to obtain the missing minimal specificity information from such counsel.

(e) *Claims received by registered agents.* A claim received by any registered agent of a manufacturer under the laws of any State, or the agent that any manufacturer offering motor vehicles or motor vehicle equipment for import has designated pursuant to 49 U.S.C. 30164(a), shall be deemed received by the manufacturer.

(f) *Updating of information required in reports.* (1) Except as specified in this subsection, a manufacturer need not update its reports under this subpart.

(2) With respect to each report of an incident submitted under paragraph (b) of §§ 579.21 through 579.26 of this part:

(i) If a vehicle manufacturer is not aware of the VIN, or a tire manufacturer is not aware of the TIN, at the time the incident is initially reported, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the VIN or TIN is identified.

(ii) If a manufacturer indicated code 99 in its report because a system or component had not been identified in the claim or notice that led to the report, and the manufacturer becomes aware during a subsequent calendar quarter that one or more of the specified systems or components allegedly contributed to the incident, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the involved specified system(s) or component(s) is (are) identified.

(iii) If one or more systems or components is identified in a manufacturer's report of an incident, the manufacturer need not submit an updated report to reflect additional systems or components allegedly involved in the incident that it becomes aware of in a subsequent reporting period.

(iv) If the report is of an incident involving an injury and an injured person dies after a manufacturer has reported the injury to NHTSA, the manufacturer need not submit an updated report to NHTSA reflecting that death.

(g) *When a report involving a death is not required.* A report on incident(s) involving one or more deaths occurring in a foreign country that is identified in claim(s) against a manufacturer of motor vehicles or motor vehicle equipment involving a vehicle or equipment that is identical or substantially similar to equipment that the manufacturer has offered for sale in the United States need not be furnished if the claim specifically alleges that the death was caused by a possible defect in a component other than one that is common to the vehicle or equipment that the manufacturer has offered for sale in the United States.

(h) *Reporting on behalf of other manufacturers.* Whenever a fabricating manufacturer or importer submits a report on behalf of one or more other manufacturers (including a brand name owner), as authorized under § 579.3(b) of this part, the submitting manufacturer must identify each such other manufacturer. Whenever a brand name owner submits a report on its own behalf, it must identify the fabricating manufacturer of each separate product on which it is reporting.

(i) *Abbreviations.* Whenever a manufacturer is required to identify a State in which an incident occurred, the manufacturer shall use the two-letter abbreviations established by the United States Postal Service (e.g., AZ for Arizona). Whenever a manufacturer is required to identify a foreign country in which an incident occurred, the manufacturer shall use the English-language name of the country in non-abbreviated form.

(j) *Claims of confidentiality.* If a manufacturer claims that any of the information, data, or documents that it submits is entitled to confidential treatment, it must make such claim in accordance with part 512 of this chapter.

(k) *Additional related information that NHTSA may request.* In addition to information required periodically under this subpart, NHTSA may request other information that may help identify a defect related to motor vehicle safety.

(l) *Use of the plural.* As used in this part, the plural includes the singular and the singular includes the plural to bring within the scope of reporting that which might otherwise be construed to be without the scope.

§ 579.29 Manner of reporting.

(a) *Submission of reports.* (1) Except as provided in this paragraph, each report required under paragraphs (a) through (c) of §§ 579.21 through 579.26 of this part must be submitted to NHTSA's early warning data repository identified on NHTSA's Internet homepage (*www.nhtsa.dot.gov*). A manufacturer must use templates provided at the early warning website, also identified on NHTSA's homepage, for submitting reports. For data files smaller than the size limit of the Internet e-mail server of the Department of Transportation, a manufacturer may submit a report as an attachment to an e-mail message to *odi.ewr@nhtsa.dot.gov*, using the same templates.

(2) Each report required under § 579.27 of this part may be submitted to NHTSA's early warning data repository as specified in paragraph (a)(1) of this section or by manually filling out an interactive form on NHTSA's early warning website.

(b) *Submission of documents.* A copy of each document required under paragraph (d) of §§ 579.21 through 579.26 of this part may be submitted in digital form using a graphic compression protocol, approved by NHTSA, to the NHTSA data repository, or as an attachment to an e-mail message, as specified in paragraph (a)(1) of this section. Any digital image provided by a manufacturer shall be not less than 200 or more than 300 dpi (dots per inch) resolution. Such documents may also be submitted in paper form.

(c) *Designation of manufacturer contacts.* Not later than 30 days prior to the date of its first quarterly submission, each manufacturer must provide the names, office telephone numbers, postal and street mailing addresses, and electronic mail addresses of two employees (one primary and one back-up) whom NHTSA may contact for resolving issues that may arise concerning the submission of information and documents required by this part.

(d) *Manufacturer reporting identification and password.* Not later than 30 days prior to the date of its first quarterly submission, each manufacturer must request a manufacturer identification number and a password.

(e) *Graphic compression protocol.* Not later than 30 days prior to the date of its first quarterly submission, each manufacturer which wishes to submit a copy of a document in digital form, as provided in paragraph (b) of this section, must obtain approval from NHTSA for the use of such protocol.

(f) Information and requests submitted under paragraphs (c), (d), and (e) of this section shall be provided in writing to the Director, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: July 3, 2002.

Jeffrey W. Runge,

Administrator

[FR Doc. 02–17103 Filed 7–3–02; 4:21 pm]

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Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7243–9]

RIN 2060–AH82

National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for polyvinyl chloride and copolymers production. The final rule implements section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet hazardous air pollutant (HAP) emission standards reflecting the application of the maximum achievable control technology (MACT). The HAP emitted by polyvinyl chloride and copolymers production facilities that will be controlled by the MACT standards are vinyl chloride, hydrogen chloride, and chlorinated dioxins and furans. The MACT standards will protect air quality and promote the public health by reducing emissions of the HAP listed above. The MACT standards will also reduce emissions of volatile organic compounds (VOC) that contribute to ozone formation. The MACT standards will implement section 112(d) of the CAA in a manner that is consistent with the National Technology Transfer and Advancement Act. The MACT standards will also require sources to comply with the standards, to demonstrate compliance with the standards, and to report and keep records to show compliance with the standards.

EFFECTIVE DATE: July 10, 2002.

ADDRESSES: Docket No. A–99–40 contains supporting information used in developing these MACT standards. All dockets are located at the U.S. EPA, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460, and may be likely would result in no additional HAP emissions reductions.

EFFECTIVE DATE: July 10, 2002.

ADDRESSES: Docket No. A–99–40 contains supporting information used in developing these MACT standards. All dockets are located at the U.S. EPA, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460, and may be standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of

account that some State permits require lower quarterly and annual average RVCM limits based upon the resins being produced. We attributed the RVCM stripping rates as a function of the resin design specifications and properties rather than the performance of stripping technology.

In order to respond to comments that we had not determined a stringent enough floor for RVCM, we collected additional information, specifically to for particular resin characteristics. More specifically, we considered segregating the sources based upon the resins each source produced. While each source seemed to specialize in the production of particular resin types, it was uncommon for any source to produce one type of resin exclusively during the course of any calendar quarter. While our focus was on the prominent RVCM differences between suspension and dispersion resins, some of the other

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7243–9]

RIN 2060–AH82

National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for the Polyvinyl Chloride (PVC) and Copolymers Production source category. These NESHAP require that PVC and copolymers production facilities, which already must comply with the existing Vinyl Chloride NESHAP, continue to comply with that existing NESHAP. This rule reflects EPA's determination that the hazardous air pollutants (HAP) control level resulting from compliance with the existing Vinyl Chloride NESHAP already reflects the application of maximum achievable control technology (MACT) and, thus, meets the requirements of section 112(d) of the Clean Air Act (CAA), except for equipment leaks at new sources, for the PVC and Copolymers Production source category. For equipment leaks, new sources must comply with the most current technology standards in the Generic MACT rule. By requiring compliance with the Vinyl Chloride NESHAP, the EPA is promoting regulatory consistency and eliminating the costs that would be incurred by enforcing a new set of standards that likely would result in no additional HAP emissions reductions.

EFFECTIVE DATE: July 10, 2002.

ADDRESSES: Docket No. A–99–40 contains supporting information used in developing these MACT standards. All dockets are located at the U.S. EPA, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing the NESHAP, contact Warren Johnson, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5124, *johnson.warren@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Comments

The NESHAP for this source category were proposed on December 8, 2000 (65 FR 76958). The comment letters received on the proposal are available in Docket No. A–99–40, along with a summary of the comment letters and EPA's responses to the comments. In response to the public comments, EPA adjusted the final NESHAP where appropriate.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or final rules at *http://www.epa.gov/ttn/oarpg/t3pfpr.html*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of affected entities
Industry	325211	2821	Facilities that polymerize vinyl chloride monomer to produce polyvinyl chloride and/or copolymer products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.211 of the rule. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 9, 2002. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final NESHAP may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline

The information presented in this preamble is organized as follows:

I. What Are the Environmental, Energy and Economic Impacts?
II. What Changes and Clarifications did we Make Since Proposal?
  A. Rule Applicability
  B. MACT Floor Determination
  C. Clarifications
III. How did we Respond to Significant comments?
  A. Rule Applicability
  B. MACT Floor Determination
  C. Recordkeeping and Reporting
IV. Administrative Requirements
  A. Executive Order 12866, Regulatory Planning and Review
  B. Executive Order 13132, Federalism
  C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
  D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  E. Unfunded Mandates Reform Act
  F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  G. Paperwork Reduction Act
  H. National Technology Transfer and Advancement Act of 1995
  I. Congressional Review Act
  J. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

I. What Are the Environmental, Energy, and Economic Impacts?

The nationwide environmental and cost impacts for today's final rule are the same as for the proposed rule, which had no environmental, energy or economic impacts anticipated beyond the current requirements of 40 CFR part 61, subpart F, which are already in effect.

As a result of today's action, new sources in this source category must comply with 40 CFR part 63, subpart UU, instead of 40 CFR part 61, subpart V, for leak detection and repair (LDAR), which are the standards to which existing sources must comply. Although more comprehensive, 40 CFR part 63, subpart UU, is also more flexible and for new sources would be no more costly, and perhaps less costly, than 40 CFR part 61, subpart V. In addition, we do not anticipate the construction of any new sources within the next 5 years.

II. What Changes and Clarifications Did We Make Since Proposal?

A. Rule Applicability

In the final rule, we have added language to explicitly clarify that only facilities in vinyl chloride service are affected, and language that specifically excludes research and development (R&D) facilities from the applicability.

B. MACT Floor Determination

After considering comments and collecting additional information, we have concluded that the floor determination we made at proposal is the most appropriate basis for MACT for this source category.

In reiterating our floor determination, we took into consideration that some plants are capable of stripping the residual vinyl chloride monomer (RVCM) from their resins to a greater degree than others. We also took into account that some State permits require lower quarterly and annual average RVCM limits based upon the resins being produced. We attributed the RVCM stripping rates as a function of the resin design specifications and properties rather than the performance of stripping technology.

In order to respond to comments that we had not determined a stringent enough floor for RVCM, we collected additional information, specifically to try to consider other ways to determine the floor. Traditionally in MACT standards, control performance is measured as a fixed removal or destruction efficiency associated with the specific technology applied. The most stringent control performance often translates easily to a floor level of control when it exists at five or more facilities. We knew this was not the case with applying stripping technology to reduce RVCM, but wanted to better understand the correlation between the stripping efficiencies and the resins being produced to see if there was a way to come up with a daily RVCM limit based on actual performance rather than using the part 61 NESHAP as the basis for the floor.

We began by trying to base best stripper performance on the lowest RVCM daily average numbers, but found that the lowest numbers (generally less than 10 parts per million (ppm)) are specifically tied to the producers of primarily suspension pipe grade resins. Although these facilities also produce smaller quantities of other PVC resins, they are able to keep their low daily averages because their output is generally greater than 80 percent pipe grade resins. At the other end of the spectrum, facilities producing primarily copolymer resins or blending resins, while using identical stripping technology, would not physically be able to meet these RVCM numbers. We believe that most of the industry, particularly the smaller specialty resin manufacturing facilities, would be adversely affected commercially because they would not be able to produce all the products they do now if we were to set limits that were based solely on the achievable RVCM in pipe grade resins. In particular, some copolymer, specialty and blending resins could get eliminated from the market place.

We then considered segregating the facilities by resins type and identifying the best performers within each group of facilities. However, there is variation in the resin characteristics within each resin type, and just about all of the 28 facilities produce a wide array of resins which change to meet market demands for particular resin characteristics. More specifically, we considered segregating the sources based upon the resins each source produced. While each source seemed to specialize in the production of particular resin types, it was uncommon for any source to produce one type of resin exclusively during the course of any calendar quarter. While our focus was on the prominent RVCM differences between suspension and dispersion resins, some of the other resin types we considered in this segregation of sources included low fusion suspension resins, blending resins, micro suspension resins, emulsion resins, and copolymer resins. We found that, even after segregating the sources by primary resin type produced, the desired resin characteristics still have a greater influence on the RVCM than the stripper technology.

We also considered adding quarterly limits in addition to the daily RVCM limits of the part 61 NESHAP because the commenters suggested that sources were achieving quarterly limits more stringent than the daily limits in the part 61 NESHAP. In order to do this, we took into account those copolymer and blending resins most difficult to strip. The resulting quarterly averages were around 1,500 ppm for dispersion resins other than latex and around 250 ppm for all other resins. But, by requiring these as quarterly limits, we in essence would simply require that facilities continue to operate as they do now, under the part 61 NESHAP, and in adding a quarterly limit, we create another reporting and recordkeeping burden with no commensurate HAP emissions reductions. In addition, since we did not have information on every facility in the category, we also ran the risk of inadvertently eliminating the production of some resins by setting too restrictive a quarterly limit.

What we found in the additional information collected since proposal reinforced our conclusion that since wide variations can occur even in normal operations, the operators at these facilities must maintain a conservative operation, keeping the RVCM as low as possible without sheering the product resin by overly stripping in order to comply with the existing NESHAP. This is MACT for this source cateogry, and it is the performance level necessary to control RVCM to a maximum degree while also keeping enough flexibility in the rule to allow for the production of the wide range of resins being manufactured at these facilities.

The most recent data show that, even among facilities with the lowest RVCM

numbers, facilities still have episodes of nearly 400 ppm as a daily average at normal operations. The part 61 NESHAP have daily not to exceed limits for RVCM of 400 ppm (2,000 ppm for dispersion, non-latex resins). From this, we conclude that the part 61 NESHAP still best represent the MACT floor for this source category.

We also reconsidered other HAP and emissions control steps of the resin manufacturing process. This is also consistent with the part 61 NESHAP which makes this distinction by defining applicable process equipment as being in vinyl chloride service.

Regarding the standards for equipment leaks, however, we agree with commenters' observations that "HON-like" requirements are practiced by one newly constructed source. Those equipment are those that are in vinyl chloride service.

Commenters also expressed concerns over massive re-certification requirements or duplication of reports and records for sources already complying with the part 61 NESHAP that might be implied by the promulgation of the part 63 NESHAP unless otherwise clarified. Although we added no new language to the rule to clarify this, we want to clarify that the part 63 NESHAP do not require sources

B. MACT Floor Determination

Comment: Many comments we received endorsed the proposed MACT floor determination and resulting levels of stringency. However, two commenters challenged our floor approach and questioned whether we considered all available data. These two quarterly RVCM numbers, around 10 ppm or lower, because these resins are the easiest to strip, being comprised of larger size, more porous and stable particles. Conversely, the manufacturers of primarily copolymer and blend resins consistently had higher quarterly numbers, around 250 ppm and lower, since these resins do not strip out of the resin characteristics as easily. With this knowledge, we considered introducing measure of stripper performance, unless you are only making one type of resin. Each of the facilities we reviewed produces multiple types of resins, each with unique characteristics and all employ stripper technology.

In regard to the standards for LDAR, however, we agree with the commenters' observations that "HON-like" requirements are practiced by one newly constructed source, and that

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numbers, facilities still have episodes of nearly 400 ppm as a daily average at normal operations. The part 61 NESHAP have daily not to exceed limits for RVCM of 400 ppm (2,000 ppm for dispersion, non-latex resins). From this, we conclude that the part 61 NESHAP still best represent the MACT floor for this source category.

We also reconsidered other HAP besides vinyl chloride monomer (VCM) in the process, but have not found a floor for control that exists beyond the part 61 NESHAP. Currently, all HAP in this source category exist as feed stock to the polymerization process or solvents used for cleaning process equipment. Outside of the RVCM limits in the product and equipment leak definition, the driving factor in this source category for level of HAP control nationwide is the part 61 NESHAP limit on VCM. This limit requires that VCM emissions must be less than 10 ppm before equipment can be opened or the process can be vented to the atmosphere. The process equipment centers around a reactor where the VCM is polymerized. This reactor and associated equipment remain closed, unless there is a reason to open them, and unspent VCM feed stock is either recovered and returned to the process or incinerated following the batch process. Likewise, other HAP present in the reactor either remain in the product after stripping or get stripped out and are either sent back to the process or incinerated. The floor level of control currently applied is driven by the presence of VCM, so by using VCM as a surrogate for all HAP from the reactor, we are controlling at the existing MACT floor.

Arguably, there are outside activities which may introduce HAP mechanically to the PVC and copolymer resins following their manufacture in the reactor and before they leave the plant location. We consider these later material introductions or milling to be outside the source category description provided in the 1992 source category document to support the listing notice. The PVC and copolymer reactor process is a chemical manufacturing process in which the PVC and copolymer resins are created chemically from feed stocks. This is distinctly different than the mechanical mixing or milling of these resins with other materials, which sometimes follows PVC and copolymer manufacturing processes at a facility. We simply considered these follow-on operations to be outside the scope of PVC and copolymer manufacturing process equipment since they are separate mechanical operations that follow the chemical reaction, recovery and emissions control steps of the resin manufacturing process. This is also consistent with the part 61 NESHAP which makes this distinction by defining applicable process equipment as being in vinyl chloride service.

Regarding the standards for equipment leaks, however, we agree with commenters' observations that "HON-like" requirements are practiced by one newly constructed source. Those requirements represent the most technologically advanced LDAR for this category. And, while this does not pose a floor for existing sources, we believe this does reflect MACT for new sources. We believe that new sources should be constructed with the latest technology in mind, and that these requirements would pose no new burdens, since, while the "HON-like" requirements are more comprehensive, they are also more flexible in allowing monitoring to be relaxed where not warranted. For this reason, we also see the "HON-like" LDAR requirements as a fitting alternative for existing sources, if they elect to use them. Hence, we have added language to the final rule that requires new sources to comply with the LDAR requirements in 40 CFR part 63, subpart UU, National Emission Standards for Equipment Leaks—Control Level 2 Standards, and allows existing sources to use these requirements as an alternative to the requirements in 40 CFR part 61, subpart V, Nation Emission Standard for Equipment Leaks (Fugitive Emission Sources). New sources that meet, or existing sources opting to meet, all the requirements of 40 CFR part 63, subpart UU, to comply with MACT are henceforth not required to meet any of the requirements in 40 CFR part 61, subpart V, since both of these subparts address the same emissions types and complying with both sets of requirements would be redundant. For consistency, the compliance schedule set forth in 40 CFR part 61, subpart F, will continue to apply for new and existing sources as the referencing subpart, regardless of whether a source is meeting the requirements of 40 CFR part 61, subpart V, or part 63, subpart UU, to comply with MACT LDAR.

C. Clarifications

After considering comments on using a table to specify which of the general provisions apply, we decided to keep the general provisions paragraphs unchanged from what was proposed. As written, these paragraphs make up only a few lines of rule text. And, although a table might make this rule appear more consistent with other MACT rules, a table here could add complexity to what is now very simple text.

Commenters also expressed concerns over massive re-certification requirements or duplication of reports and records for sources already complying with the part 61 NESHAP that might be implied by the promulgation of the part 63 NESHAP unless otherwise clarified. Although we added no new language to the rule to clarify this, we want to clarify that the part 63 NESHAP do not require sources that are already in compliance with the part 61 NESHAP to re-certify their compliance status or create duplicate records or reports to demonstrate compliance with the part 63 NESHAP.

III. How Did We Respond to Significant Comments?

This section presents a summary of our responses to significant public comments received on the proposed rule. A comprehensive summary of public comments and responses can be found in the document entitled "Public Comments and EPA Responses to the Proposed NESHAP for Polyvinyl Chloride and Copolymers Production" (Docket No. A–99–40).

A. Rule Applicability

Comment: One commenter requested that we consider adding a provision to exclude facilities from the applicability that manufacture polyvinyl chloride and related copolymers for R&D purposes only.

Response: Although we believe that we sufficiently addressed this in 40 CFR 63.212(c) of the proposal by referencing the exclusion for R&D facilities in 40 CFR 61.60(b), we agree that a simpler exclusion in the final rule would be more clear and consistent with other MACT standards. So, we have added this exclusion language in the rule in the place of the former reference to 40 CFR 61.60(b).

Comment: Several commenters asked that we define the intended scope of the source definition, specifically as to whether the rule would affect activities and equipment that were not in vinyl chloride service as defined in 40 CFR 61.61(l). These commenters requested that we specifically state in the rule that the source includes all activities and equipment in vinyl chloride service, to be consistent with the part 61 NESHAP, if that is what we intended.

Response: Although we believe that we sufficiently addressed this by making a broad reference to the definitions in the part 61 NESHAP, we agree that a more specific phrase in the definition of source would be helpful. So, we have added language to the source definition in 40 CFR 63.212(b) to clarify that the affected activities and equipment are those that are in vinyl chloride service.

B. MACT Floor Determination

Comment: Many comments we received endorsed the proposed MACT floor determination and resulting levels of stringency. However, two commenters challenged our floor approach and questioned whether we considered all available data. These two commenters specifically pointed to lower quarterly RVCM averages consistently achieved by some facilities, the use of "HON-like" LDAR at one newly constructed facility, and challenged our not identifying a best-performing five facilities in the category on which to base MACT.

Response: We actually had considered much of these data and the lower RVCM numbers at proposal, and for the same reasons we set out in the proposal, we believe that the proposed determination is sound. We did, however, gather additional information to further study the relationships between the RVCM numbers and stripper performance across the industry. In responding to comments, our general approach was to see if additional information could support a decision to either lower the existing daily RVCM limits, or enhance these limits with additional quarterly limits as a way to effectively reduce HAP emissions. We reviewed a sampling of compliance reports which sources had submitted to State authorities in Delaware, Louisiana and Texas between May 1998 and February 2001 which portrayed the general description of the resins being produced with both the daily and quarterly RVCM performance of each facility. We also studied further the effects of resin characteristics on stripping technology performance.

We found that the stripping of RVCM from the product is most tied to the characteristics of the product being manufactured, more specifically the size, porosity, hardness and stability of the product particles. Smaller, less porous, and harder or less stable particles are more difficult to strip than larger and more porous particles, making each grade of resin somewhat unique in stripping capabilities. This makes the stringency less dependent upon the stripping technology and more dependent on product and process knowledge. As we looked closer into the relative performance of stripping different resin grades, we found that the facilities were consistently stripping the respective resins to the best of their abilities. Specifically, we found that the manufacturers of primarily suspension pipe grade resins consistently had lower quarterly RVCM numbers, around 10 ppm or lower, because these resins are the easiest to strip, being comprised of larger size, more porous and stable particles. Conversely, the manufacturers of primarily copolymer and blend resins consistently had higher quarterly numbers, around 250 ppm and lower, since these resins do not strip out of the resin characteristics as easily. With this knowledge, we considered introducing quarterly average limits (in addition to the daily RVCM limits required by the existing NESHAP) based upon the type of resin being manufactured at a particular facility, but decided that this is not realistic for two reasons. First, even the facilities which primarily produce the suspension pipe grade occasionally produce other resins. And, since these RVCM limits would be averaged across the facility, setting these quarterly limits could directly impact their ability to produce certain grades of resin and still comply with the MACT standards. Second, based on what we found in the existing quarterly reports, we realized that to codify best stripping performance as a step function of each resin type's design characteristics would simply mirror the level of performance that the industry is already achieving under the part 61 NESHAP. In practice, this codification would require additional reporting and recordkeeping with no commensurate reduction in HAP emissions.

As for identifying the best-performing five facilities, the commenters related performance of the strippers directly to low quarterly RVCM numbers. If you only consider the data from one or two States, low RVCM numbers may appear to be a direct performance indicator due to a narrower representation of resin manufacturing. But, we considered the industry as a whole, on a national scale, taking into account resins that are not manufactured in all States and recognizing that the same technology was being applied across the category. Arguably, since performance is relative to resin characteristics, some of the better performers might actually be manufacturers of resins that are more difficult to strip, even though their RVCM daily averages are higher than others. From what we could determine from the data available, the manufacturers of those resins are applying the technology to the maximum degree for each of the respective resins that they produce in order to avoid compliance violations under the part 61 NESHAP. The resulting variability in RVCM numbers averaged daily is a function of the resin characteristics and not a reasonable measure of stripper performance, unless you are only making one type of resin. Each of the facilities we reviewed produces multiple types of resins, each with unique characteristics and all employ stripper technology.

In regard to the standards for LDAR, however, we agree with the commenters' observations that "HON-like" requirements are practiced by one newly constructed source, and that these requirements represent the most technologically advanced LDAR for this category. We believe this reflects MACT for new sources and believe that new sources should be constructed with the latest technology in mind. We also see the "HON-like" LDAR requirements as a fitting alternative for existing sources, if they elect to use it.

Comment: Two commenters contended that we overlooked the control of some HAP related to PVC and copolymers production in the proposal.

Response: Although we considered other HAP besides VCM at proposal, we gathered more information to see if there were HAP in the process that were better controlled than what the part 61 NESHAP required. This also raised a clarity question about what was included in the process, similar to the comments we received asking us to clarify whether or not we intended to only include activities and equipment in vinyl chloride service. For activities and equipment that are in vinyl chloride service, we reconsidered the HAP in the process. We concluded that there were no more stringent control requirements than those of the part 61 NESHAP. We considered HAP that are introduced by activities and equipment that were not in vinyl chloride service to be outside the scope of the PVC and copolymers source category, consistent with the way we have distinguished between process units in other MACT standards and consistent with the part 61 NESHAP.

C. Recordkeeping and Reporting

Comment: While commenters generally agreed with us that the compliance date for existing sources could become immediately effective upon publication, if having the same requirements as the part 61 NESHAP, several commenters expressed concern over whether publication of the part 63 rule would trigger new testing and re-certification requirements, and duplication of records and reports in absence of other guidance. Their comments also expressed concern over the need for additional lead time if such testing, re-certification and reports and records would be necessary for demonstrating compliance.

Response: It is not our intent to create new testing, re-certification, reports and recordkeeping burdens for sources that have already demonstrated sustained compliance with the part 61 NESHAP. Although we have not added specific language to the part 63 rule in this regard, we expect that any documentation necessary for demonstrating compliance with the part 61 NESHAP would be satisfactory for

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between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance Order 13175. Thus, Executive Order 13175 does not apply to the rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an

than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must

owned and operated and is not dominant in its field.

Pursuant to the provisions of 5 U.S.C. 605(b), we have determined that the final rule will not have a significant economic impact on a substantial number of small entities. We have determined, following discussions with State and industry representatives, that the scope of today's rule includes no small entities as defined above. After

standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Since this final rule does not include any new technical standards

Response: It is not our intent to create new testing, re-certification, reports and recordkeeping burdens for sources that have already demonstrated sustained compliance with the part 61 NESHAP. Although we have not added specific language to the part 63 rule in this regard, we expect that any documentation necessary for demonstrating compliance with the part 61 NESHAP would be satisfactory for demonstrating compliance with the part 63 rule.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the NESHAP. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the NESHAP.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based solely on technology performance. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There are no cost burdens introduced by today's rule. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Pursuant to the provisions of 5 U.S.C. 605(b), we have determined that the final rule will not have a significant economic impact on a substantial number of small entities. We have determined, following discussions with State and industry representatives, that the scope of today's rule includes no small entities as defined above. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 61, subpart F (Vinyl Chloride NESHAP) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0071. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 186.08), and a copy may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr.*

Today's NESHAP (*i.e.*, 40 CFR part 63, subpart J) require that PVC and copolymers production facilities continue to comply with 40 CFR part 61, subpart F. In addition, new sources must comply with 40 CFR part 63, subpart UU, instead of 40 CFR part 61, subpart V, for LDAR. Although more comprehensive, 40 CFR part 63, subpart UU, is also more flexible and for new sources would be no more burdensome, and perhaps less burdensome, than 40 CFR part 61, subpart V, which are the standards to which the existing sources must currently comply. Therefore, today's NESHAP add no additional information collection burden. Consequently, no ICR has been prepared for today's NESHAP.

H. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Since this final rule does not include any new technical standards requirements, EPA is not adopting any voluntary consensus standards in this action.

Under § 63.7(f) of 40 CFR part 63 subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any existing EPA testing method requirements.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2) and, therefore, will be effective on July 10, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of

the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart J to read as follows:

Subpart J—National Emission Standards

equipment and activities in vinyl chloride service necessary to produce PVC and copolymers. This subpart applies to the PVC and copolymers production operations that meet the applicability criteria at 40 CFR 61.60(a)(3) of this chapter.

(c) An affected source is a new affected source if you commenced construction or reconstruction of the affected source after July 10, 2002.

(1) Where 40 CFR part 61, subpart F, references 40 CFR part 61, subpart V, a new source must comply with the provisions of 40 CFR part 63, subpart UU, instead of the provisions of 40 CFR part 61, subpart V.

(2) Where 40 CFR part 61, subpart F, references 40 CFR part 61, subpart V, an existing source must comply with either the provisions of 40 CFR part 63, subpart UU, or the provisions of 40 CFR

delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under 40 CFR 61.13(h) of this chapter and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under 40 CFR 61.14(g) of this chapter and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under 40 CFR 61.10 of this chapter and as defined in § 63.90.

§ 63.217 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act; 40 CFR 61.02 of this chapter, the NESHAP General Provisions; 40 CFR 61.61 of this chapter, the Vinyl Chloride NESHAP; and, § 63.2, in regard to terms used in §§ 63.1 and 63.5.

[FR Doc. 02–17361 Filed 7–9–02; 8:45 am]

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the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart J to read as follows:

Subpart J—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

What This Subpart Covers

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Standards and Compliance Requirements

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63.217 What definitions apply to this subpart?

Subpart J—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

What This Subpart Covers

§ 63.210 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for polyvinyl chloride (PVC) and copolymers production.

§ 63.211 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a PVC plant, as defined in 40 CFR 61.61(c) of this chapter, that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions.

(b) You are a major source of HAP emissions if you own or operate a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

§ 63.212 What parts of my facility does this subpart cover?

(a) This subpart applies to each new or existing affected source at PVC and copolymers production operations.

(b) The affected source subject to this subpart is the collection of all equipment and activities in vinyl chloride service necessary to produce PVC and copolymers. This subpart applies to the PVC and copolymers production operations that meet the applicability criteria at 40 CFR 61.60(a)(3) of this chapter.

(c) An affected source is a new affected source if you commenced construction or reconstruction of the affected source after July 10, 2002.

(d) An affected source is existing if it is not new.

(e) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act.

§ 63.213 When do I have to comply with this subpart?

(a) If you have a new affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section:

(1) If you startup your affected source before July 10, 2002, then you must comply with the standards in this subpart no later than July 10, 2002.

(2) If you startup your affected source after July 10, 2002, then you must comply with the standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must be in compliance with the standards in this subpart by July 10, 2002.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) An area source that meets the criteria of a new affected source as specified at § 63.212(d) must be in compliance with this subpart upon becoming a major source.

(2) An area source that meets the criteria of an existing affected source as specified at § 63.212(e) must be in compliance with this subpart upon becoming a major source.

Standards and Compliance Requirements

§ 63.214 What are the requirements I must comply with?

(a) You must meet all the requirements in 40 CFR part 61, subpart F of this chapter, as they pertain to processes that manufacture polymerized vinyl chloride, except as specified in paragraphs (a)(1) and (2) of this section. These requirements include the emission standards and compliance, testing, monitoring, notification, recordkeeping, and reporting requirements.

(1) Where 40 CFR part 61, subpart F, references 40 CFR part 61, subpart V, a new source must comply with the provisions of 40 CFR part 63, subpart UU, instead of the provisions of 40 CFR part 61, subpart V.

(2) Where 40 CFR part 61, subpart F, references 40 CFR part 61, subpart V, an existing source must comply with either the provisions of 40 CFR part 63, subpart UU, or the provisions of 40 CFR part 61, subpart V.

(b) Sources that comply with all of the provisions of 40 CFR part 63, subpart UU, are not required to meet any of the provisions of 40 CFR part 61, subpart V.

Other Requirements and Information

§ 63.215 What General Provisions apply to me?

(a) All the provisions in 40 CFR part 61, subpart A of this chapter, apply to this subpart.

(b) The provisions in subpart A of this part also apply to this subpart as specified in (b)(1) through (3) of this section.

(1) The general applicability provisions in § 63.1(a)(1) through (8) and (13) through (14).

(2) The specific applicability provisions in § 63.1(b) through (e) except for the reference to § 63.10 for recordkeeping procedures.

(3) The construction and reconstruction provisions in § 63.5 except for the references to § 63.6 for compliance procedures and the references to § 63.9 for notification procedures.

§ 63.216 Who administers this subpart?

(a) This subpart can be administered by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the primary authority to administer and enforce this subpart. You should contact your EPA Regional Office to find out if the authority to implement and enforce this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the Administrator of EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.211, 63.212 and 63.214 under 40 CFR 61.12(d) of this chapter. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under 40 CFR 61.13(h) of this chapter and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under 40 CFR 61.14(g) of this chapter and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under 40 CFR 61.10 of this chapter and as defined in § 63.90.

§ 63.217 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act; 40 CFR 61.02 of this chapter, the NESHAP General Provisions; 40 CFR 61.61 of this chapter, the Vinyl Chloride NESHAP; and, § 63.2, in regard to terms used in §§ 63.1 and 63.5.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 0551–AA61

Administrative Regulations for the Freedom of Information Act

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Foreign Agricultural Service is issuing administrative guidelines to govern the availability of records under the Freedom of Information Act (FOIA).

EFFECTIVE DATE: July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Donald Washington, FOIA Officer, Foreign Agricultural Service, at (202) 720–3101.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has not retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Regulatory Flexibility Act

The FAS Administrator certifies that this rule will not have a significant economic impact on substantial number of small entities. This rule implements the Freedom of Information Act, as statute concerning the release of Federal Government records, and does not economically impact the private sector.

Paperwork Reduction Act

USDA certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Effective Date

Because this regulation involves agency management, FAS is not required to publish a notice of proposed rulemaking and the regulation may be effective upon publication.

Background

This regulation constitutes the Foreign Agricultural Service's compliance with the directive in 7 CFR 1.3 that each agency of the Department of Agriculture publish specified information regarding the availability of records under the Freedom of Information Act (FOIA).

List of Subjects in 7 CFR Part 1520

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, part 1520 of 7 CFR is revised to read as follows:

PART 1520—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
1520.1 General statements.
1520.2 Location and hours.
1520.3 Indexes/Record Systems.
1520.4 Agency FOIA Officer.
1520.5 Agency Appeal Official.
1520.6 Other information.

Authority: 5 U.S.C. 552

§ 1520.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture 7 CFR, part 1—Administrative Regulations, Subpart A—Official Records, § 1.3, Agency Implementing Regulations, for the Freedom of Information Act (5 U.S.C. 552). The Secretary's Regulations, as implemented by the regulations in this part govern the availability of records of the Foreign Agricultural Service (FAS) to the public.

§ 1520.2 Location and hours.

Members of the public should contact the FAS FOIA Officer to arrange a place and time to review documents. Contact the U.S. Department of Agriculture, Foreign Agriculture Service, Public Affairs Division, 1400 Independence Avenue SW., Washington, DC 20250–1004. The office will be open from 8:30 a.m. to 5 p.m. Monday through Friday, except national holidays, Tel.: 202–720–3448, Fax: 202–720–1727.

§ 1520.3 Indexes/Record systems.

5 U.S.C. 552(a)(2) required that each agency publish or otherwise make available a current index of all materials for public inspection and copying. The Foreign Agricultural Service maintains the following record systems. FAS regulations, manuals, and notices; attache reports; general publications; and statements of policy and procedures for various FAS programs. Copies of the FAS index may be obtained free of charge by contacting the office specified in § 1520.2.

§ 1520.4 Agency FOIA Officer.

Requests for records shall be made to the Freedom of Information Officer, Public Affairs Division, Foreign Agricultural Service, Ag Box 1004, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1004. Tel.: 202–720–3448, Fax: 202–720–1727.

§ 1520.5 Agency Appeal Official.

Any person whose request under § 1520.4 is denied shall have the right to appeal such a denial. For appeals, write to the following official and mark your letters "FOIA Appeal": Administrator, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–1004, Attn: FOIA Appeal.

§ 1520.6 Other information.

Many documents are available to the public without having to file an FOIA request. These include press releases, speeches, congressional testimony, program regulations, and some letters and memoranda. Some of this information can be found on the FAS web site, www.fas.uda.gov. Also, the FAS annual FOIA report is available on the agency's web site at www.fas.usda.gov. Click on FOIA at the bottom of the page. To request a paper copy of the FAS FOAI annual report, write to: Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Ag Box 1004,

Washington, DC 20250–1004, Attn: Freedom on Information Officer.

Dated: July 3, 2002.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 02–17452 Filed 7–10–02; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–042–2]

Rinderpest and Foot-and-Mouth Disease; Addition of Austria to List of Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding Austria to the list of regions where bovine spongiform encephalopathy exists because the disease had been detected in a native-born animal in that region. Austria had already been listed as a region where foot-and-mouth disease exists. The interim rule was necessary to update the disease status of Austria regarding BSE.

Comments on the interim rule were required to be received on or before May 20, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE

for using either a visual or dye-penetrant inspection to satisfy the repetitive inspection requirement. This amendment is prompted by the need to correct the shaft part number and increase the area of inspection, as well as add additional affected shaft P/N's. The actions specified by this AD are intended to detect fatigue cracks in the shaft that could lead to shaft failure and subsequent loss of control of the

inspections, and replacing the shaft before the next flight if any crack is found.

The FAA has determined that AD 99–12–01 contained an error in the applicable shaft P/N–P/N L623M100S 101 should have been stated as P/N L623M1003 101. Also, the FAA has determined that additional shaft P/N's should have been included in the AD and that operators should have an

Washington, DC 20250–1004, Attn: Freedom on Information Officer.

Dated: July 3, 2002.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 02–17452 Filed 7–10–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–131–2]

Change in Disease Status of Finland Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding Finland to the list of regions where bovine spongiform encephalopathy exists because the disease had been detected in a native-born animal in that region. Finland had already been listed among the regions that presents an undue risk of introducing bovine spongiform encephalopathy into the United States, so the effect of the interim rule was a continued restriction on the importation of ruminants, meat, meat products, and certain other products of ruminants that have been in Finland. The interim rule was necessary in order to update the disease status of Finland regarding bovine spongiform encephalopathy.

EFFECTIVE DATE: The interim rule became effective on December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 7, 2001, and published in the **Federal Register** on March 20, 2002 (67 FR 12831–12832, Docket No. 01–131–1), we amended the regulations in 9 CFR part 94 by adding Finland to the list of regions where bovine spongiform encephalopathy (BSE) exists. Finland had previously been listed in § 94.18(a)(2) as a region that presents an undue risk of introducing BSE into the United States. However, due to the detection of BSE in a native-born animal in that region, the interim rule was necessary to update the disease status of Finland regarding BSE.

Comments on the interim rule were required to be received on or before May 20, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 67 FR 12831–12832 on March 20, 2002.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 5th day of July 2002.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–17433 Filed 7–10–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–004–2]

Change in Disease Status of Austria Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding Austria to the list of regions where bovine spongiform encephalopathy exists because the disease had been detected in a native-born animal in that region. Austria had already been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States, so the effect of the interim rule was a continued restriction on the importation of ruminants, meat, meat products, and certain other products of ruminants that have been in Austria. The interim rule was necessary in order to update the disease status of Austria regarding bovine spongiform encephalopathy.

EFFECTIVE DATE: The interim rule became effective on December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 13, 2001, and published in the **Federal Register** on March 20, 2002 (67 FR 12833–12834, Docket No. 02–004–1), we amended the regulations in 9 CFR part 94 by adding Austria to the list of regions where bovine spongiform encephalopathy (BSE) exists. Austria had previously been listed in § 94.18(a)(2) as a region that presents an undue risk of introducing BSE into the United States. However, due to the detection of BSE in a native-born animal in that region, the interim rule was necessary to update the disease status of Austria regarding BSE.

Comments on the interim rule were required to be received on or before May 20, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 67 FR 12833–12834 on March 20, 2002.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 5th day of July, 2002.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–17434 Filed 7–10–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–15–AD; Amendment 39–12817; AD 2002–14–17]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter Deutschland GmbH (ECD) (Eurocopter) Model EC135 helicopters, that currently requires initial and repetitive visual inspections and a one-time dye-penetrant inspection of a certain main rotor hub shaft (shaft) for cracks, and replacement of any cracked shafts. This amendment requires the same actions as the existing AD, but corrects the shaft part number (P/N) in the current AD, includes additional P/N's, increases the area of inspection from a 40mm area to a 50mm area of the shaft, and provides an option for using either a visual or dye-penetrant inspection to satisfy the repetitive inspection requirement. This amendment is prompted by the need to correct the shaft part number and increase the area of inspection, as well as add additional affected shaft P/N's. The actions specified by this AD are intended to detect fatigue cracks in the shaft that could lead to shaft failure and subsequent loss of control of the helicopter.

DATES: Effective July 26, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On July 1, 1999, the FAA published emergency AD 99–12–01, issued on May 27, 1999, as Amendment 39–11217 (64 FR 35559), to require initial and repetitive visual inspections and a one-time dye-penetrant inspection of the shaft for cracks, and replacing the shaft if a crack is found. That action was prompted by the discovery of fatigue cracks on the shaft of this model helicopter. That condition, if not corrected, could result in shaft failure and subsequent loss of control of the helicopter.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on Eurocopter Model EC135 helicopters. The LBA advises that, following a recent test run, cracks have been found on a shaft.

Since the issuance of AD 99–12–01, the manufacturer has released Eurocopter Alert Service Bulletin EC135–62A–004, Revision 3, dated November 10, 2000, that increases the area of the shaft to be inspected from 40mm to 50mm. The LBA classified this alert service bulletin as mandatory and issued AD 1999–185/4, dated October 18, 2001, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany. That AD requires initial and repetitive visual inspections or dye-penetrant inspections, and replacing the shaft before the next flight if any crack is found.

The FAA has determined that AD 99–12–01 contained an error in the applicable shaft P/N–P/N L623M100S 101 should have been stated as P/N L623M1003 101. Also, the FAA has determined that additional shaft P/N's should have been included in the AD and that operators should have an option with regard to the repetitive inspections of either conducting a visual inspection at intervals not to exceed 15 hours time-in-service (TIS) or a dye-penetrant inspection at intervals not to exceed 100 hours TIS.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model EC135 helicopters of the same type design, this AD supersedes AD 99–12–01 to require an initial visual inspection, and either repetitive visual inspections or repetitive dye-penetrant inspections of the shaft for a crack, and replacement of any cracked shafts. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, an initial visual inspection of the shaft for cracks and replacement of any cracked shaft is required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 40 helicopters will be affected by this AD, that it will take approximately 0.5 work hours to accomplish the visual inspections, 1 work hour per helicopter to accomplish the dye-penetrant inspection, and 16 work hours to replace a shaft, if necessary; and that the average labor rate is $60 per work hour. Required parts will cost approximately $39,000

per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $561,120, assuming one visual inspection and 200 dye-penetrant inspections per helicopter and that only 2 shafts need replacing.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–15–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11217 (64 FR 35559, July 1, 1999), and by adding a new airworthiness directive (AD), Amendment 39–12817, to read as follows:

AD 2002–14–17 Eurocopter Deutschland

⚠ Inspect marked area i.a.w. crack inspection procedure described.

1 Main Rotor Hub–Shaft

per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $561,120, assuming one visual inspection and 200 dye-penetrant inspections per helicopter and that only 2 shafts need replacing.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–15–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11217 (64 FR 35559, July 1, 1999), and by adding a new airworthiness directive (AD), Amendment 39–12817, to read as follows:

AD 2002–14–17 Eurocopter Deutschland GMBH: Amendment 39–12817. Docket No. 2002–SW–15–AD. Supersedes AD 99–12–01, Amendment 39–11217, Docket No. 99–SW–38–AD.

Applicability: Model EC135 helicopters, with main rotor hub shaft (shaft) assemblies, part numbers L623M1003 101, L623M1003 102, L623M1003 103, L623M1003 104, L623M1003 105, L623M1003 106, or L623F1003 107, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect fatigue cracks in the shaft that could lead to shaft failure and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, clean and visually inspect the shaft for cracks in the area as shown in the following Figure 1:

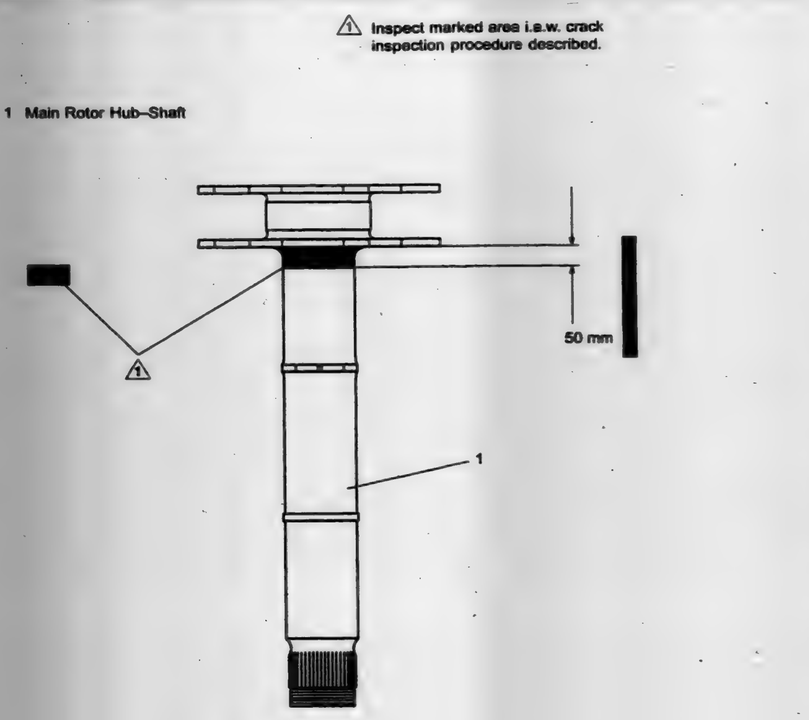

Crack inspection on main rotor hub–shaft
Figure 1

BILLING CODE 4910–13–C

(b) Within 10 hours time-in-service (TIS) after accomplishing the visual inspection required by paragraph (a) of this AD, clean and dye-penetrant inspect the shaft for cracks in the area as shown in Figure 1 of this AD.

(c) Thereafter, visually inspect the shaft for cracks in accordance with paragraph (a) of this AD at intervals not to exceed 15 hours TIS, or dye-penetrant inspect the shaft for cracks in accordance with paragraph (b) of this AD at intervals not to exceed 100 hours TIS.

Note 2: Eurocopter Alert Service Bulletin EC135–62A–004, Revision 3, dated November 10, 2000, pertains to the subject of this AD.

(d) If a crack is discovered during any shaft inspections, remove the shaft and replace it with an airworthy shaft.

(e) Report any cracked shaft within 5 calendar days to the Rotorcraft Standards Staff, Rotorcraft Directorate, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on July 26, 2002.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 1999–185/4, dated October 18, 2001.

Issued in Fort Worth, Texas, on July 3, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–17300 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committee: Change of Name and Function; Technical Amendment

AGENCY: Food and Drug Administration, an immediately effective regulation. Such notice and procedures are unnecessary and are not in the public interest, because the final rule is merely codifying the new name and expanded function of the advisory committee reflect the current committee charter.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for BioScience Division of Milk Specialties Co.

DATES: This rule is effective July 11, 2002.

Firm name and address	Drug labeler code
BioScience Division of Milk Specialties Co., 1902 Tennyson Lane, Madison, WI 53704	032761

(2) * * *

Drug labeler code	Firm name and address

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committee: Change of Name and Function; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the standing advisory committees' regulations to change the name and function of the Drug Abuse Advisory Committee. This action is being taken to reflect changes made to the charter for this advisory committee.

DATES: This rule is effective July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Theresa Green, Committee Management Officer (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: FDA is announcing that the name of the Drug Abuse Advisory Committee, which was established on May 31, 1978, has been changed. The agency decided that the name "Drug Safety and Risk Management Advisory Committee" would more accurately describe the subject areas for which the committee is responsible. The mandate of the committee is being expanded to include drug specific risk management and medication errors, educational campaigns and risk communication messages, and advice on potential drug name changes to reduce potential medication errors. The committee reviews and evaluates data on risk management plans, provides active surveillance methodologies, trademark studies, methodologies for risk management communication, and related issues.

The Drug Abuse Advisory Committee name was changed and its functions expanded in the charter renewal dated May 31, 2002. FDA is revising 21 CFR 14.100(c)(7) to reflect these changes.

Publication of this final rule constitutes a final action on this change under the Administrative Procedure Act. Under 5 U.S.C. 553(b)(B) and (d) and 21 CFR 10.40(d) and (e), the agency finds good cause to dispense with notice and public procedure and to proceed to an immediately effective regulation. Such notice and procedures are unnecessary and are not in the public interest, because the final rule is merely codifying the new name and expanded function of the advisory committee reflect the current committee charter.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. Section 14.100 is amended by revising the heading of paragraph (c)(7) and paragraph (c)(7)(ii) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) * * *

(7) *Drug Safety and Risk Management Advisory Committee.*

* * * * *

(ii) Function: Reviews and evaluates data on risk management plans, provides active surveillance methodologies, trademark studies, methodologies for risk management communication, and related issues.

* * * * *

Dated: July 5, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17401 Filed 7–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for BioScience Division of Milk Specialties Co.

DATES: This rule is effective July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: BioScience Division of Milk Specialties Co., Illinois and Water Sts., P.O. Box 278, Dundee, IL 60118, has informed FDA of a change of sponsor's address to 1902 Tennyson Lane, Madison, WI 53704. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "BioScience Division of Milk Specialties Co." and in the table in paragraph (c)(2) by revising the entry for "032761" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
BioScience Division of Milk Specialties Co., 1902 Tennyson Lane, Madison, WI 53704	032761

(2) * * *

Drug labeler code	Firm name and address
032761	BioScience Division of Milk Specialties Co., 1902 Tennyson Lane, Madison, WI 53704

Dated: May 28, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–17405 Filed 7–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia and Upjohn Co. The supplemental NADA provides for injection of ceftiofur hydrochloride suspension in cattle for the treatment of acute metritis.

DATES: This rule is effective July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7572, e-mail: cburnste@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed a supplemental application to NADA 140–890 that provides for use of EXCENEL (ceftiofur hydrochloride) RTU Sterile Suspension by intramuscular or subcutaneous injection in cattle for the treatment of acute metritis (0 to 14 days post partum) associated with bacterial organisms susceptible to ceftiofur. The supplemental NADA is approved as of February 8, 2002, and the regulations are amended in § 522.314 (21 CFR 522.314) to reflect the approval. The basis of approval is discussed in the freedom of information summary. Section 522.314 is also being revised to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental application approval qualifies for 3 years of marketing exclusivity beginning February 8, 2002, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplemental application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.314 is amended by revising the section heading, and paragraphs (a), (d)(1)(i), (d)(1)(iii), and (d)(2) to read as follows:

§ 522.314 Ceftiofur hydrochloride.

(a) *Specifications.* Each milliliter of suspension contains ceftiofur hydrochloride equivalent to 50 milligrams (mg) of ceftiofur.

* * * * *

(d) * * *

(1) * * *

(i) *Amount.* 3 to 5 mg per kilogram (/kg) of body weight by intramuscular injection. Treatment should be repeated at 24-hour intervals for a total of 3 consecutive days.

* * * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cattle*—(i) *Dosage.* 1.1 to 2.2 mg/kg of body weight by intramuscular or subcutaneous injection, at 24-hour intervals for 3 to 5 consecutive days. For bovine respiratory disease, 2.2 mg/kg of body weight may be administered twice at a 48-hour interval. For acute metritis, administer 2.2 mg/kg of body weight daily for 5 consecutive days.

(ii) *Indications for use.* For treatment of bovine respiratory disease (BRD, shipping fever, pneumonia) associated with *Mannheimia* spp. (*Pasteurella haemolytica*), *P. multocida*, and *Haemophilus somnus*; acute bovine interdigital necrobacillosis (foot rot, pododermatitis) associated with

Fusobacterium necrophorum and *Bacteroides melaninogenicus*; and acute metritis (0 to 14 days post partum) associated with bacteria susceptible to ceftiofur.

(iii) *Limitations.* Do not slaughter treated cattle for 48 hours (2 days) after last treatment. A withdrawal period has not been established in preruminating calves. Do not use in calves to be

553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–037 is added to read as follows:

Fusobacterium necrophorum and *Bacteroides melaninogenicus*; and acute metritis (0 to 14 days post partum) associated with bacteria susceptible to ceftiofur.

(iii) *Limitations.* Do not slaughter treated cattle for 48 hours (2 days) after last treatment. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 26, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–17404 Filed 7–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–038]

RIN 2115–AA97

Safety Zone; Lake Huron, Harbor Beach, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Harbor Beach Fireworks on July 20, 21, 2002. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake Huron.

DATES: This temporary final rule is effective from 10 p.m. on July 20, 2002 until 11 p.m. on July 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–038] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U. S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

The safety zone will encompass all waters of Lake Huron surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°51′00″ N, 082°38′15″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander. The Patrol Commander may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone is only in effect from 10 p.m. until 11 p.m. on the days of the event and vessel traffic is allowed to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of Lake Huron by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–037 is added to read as follows:

§ 165.T09–037 Safety Zone; Lake Huron, Harbor Beach, MI.

(a) *Location.* The safety zone will encompass all waters of Lake Huron surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°51′00″ N, 082°38′15″ W (NAD 83).

(b) *Enforcement periods.* This temporary final rule will be enforced from 10 p.m. until 11 p.m. on July 20, 2002 and July 21, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other general requirements.

Dated: June 30, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–17381 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington–02–009]

RIN 2115–AA97

Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 355.5 and ending at mile 356.5, extending the entire width of the river. This safety zone is needed to provide for the safety of participating vessels and mariners during the Portsmouth Powerboat Races. With the exception of participating vessels and mariners, all other vessels and persons are prohibited from transiting within this safety zone

unless authorized by the Captain of the Port, Huntington or his designated representative.

DATES: This rule is effective from 9 a.m. on July 20, 2002 until 7 p.m. on July 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Huntington–02–009] and are available

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 160.5; 49 CFR 1.46.

2. From 9 a.m. on July 20, 2002 until 7 p.m. on July 21, 2002 a new temporary § 165.T08–065 is added to read as follows:

§ 165.T08–065 Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, Ohio.

(a) *Location.* The following area is a

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Washington, Seattle, Washington. The Coast Guard is taking this action to safeguard the participants and spectators from the safety hazards associated with the Seafair Blue Angels Performance. Entry into this zone is prohibited unless authorized by the

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unless authorized by the Captain of the Port, Huntington or his designated representative.

DATES: This rule is effective from 9 a.m. on July 20, 2002 until 7 p.m. on July 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Huntington–02–009] and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Avenue, Huntington, West Virginia, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Rick Leffler, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to provide for the safety of participating vessels and mariners.

Background and Purpose

The Captain of the Port Huntington, is establishing a safety zone from miles 355.5 to 356.5 on the Ohio River, extending the entire width of the river. This safety zone is necessary to ensure the safety of participating vessels and mariners during the Portsmouth Powerboat Races. Participating vessels are vessels registered with race officials to participate in the Portsmouth Powerboat Races. They include race boats, rescue boats, tow boats and picket boats associated with the race. With the exception of participating vessels and mariners of the Portsmouth Powerboat Races, all other vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port, Huntington or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit portions of the Ohio River from miles 355.5 to 356.5, from 9 a.m. to 7 p.m. on July 20 and 21, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. There will be breaks provided every three hours during the races. During these breaks the waterway will be cleared and traffic will be allowed to pass through the zone as directed by the Coast Guard Patrol Commander. Notification of the safety zone and break periods will be made to the marine community by broadcast notice to mariners and event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Rick Leffler, Marine Safety Office Huntington at (304) 529–5524.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we so discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 160.5; 49 CFR 1.46.

2. From 9 a.m. on July 20, 2002 until 7 p.m. on July 21, 2002 a new temporary § 165.T08–065 is added to read as follows:

§ 165.T08–065 Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, Ohio.

(a) *Location.* The following area is a safety zone: the waters of the Ohio River from miles 355.5 to 356.5, extending the entire width of the river.

(b) *Enforcement period.* This section will be enforced from 9 a.m. to 7 p.m. on July 20, 2002 and from 9 a.m. to 7 p.m. on July 21, 2002.

(c) *Definitions. Participating Vessels* are vessels registered with race officials to participate in the Portsmouth Powerboat Races. They include race boats, rescue boats, tow boats and picket boats associated with the race.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or his designated representative.

(2) Participating vessels are authorized entry within the zone.

(3) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or his designated representative. They may be contacted via VHF–FM Channel 13 or 16 or via telephone at (304) 529–5524.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 28, 2002.

L.D. Stroh,

Commander, U.S. Coast Guard, Captain of the Port Huntington.

[FR Doc. 02–17379 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–008]

RIN 2115–AA97

Safety Zone; Seafair Blue Angels Performance, Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Washington, Seattle, Washington. The Coast Guard is taking this action to safeguard the participants and spectators from the safety hazards associated with the Seafair Blue Angels Performance. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 8:30 a.m. on August 1, 2002 until 3 p.m. on August 4, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–02–008 and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Alisa Praskovich, c/o Captain of the Port Puget Sound, at (206) 217–6231.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this rule and good cause exists for making it effective without publication of an NPRM in the **Federal Register**. The air show poses several dangers to the public including excessive noise and objects falling from any accidents. Accordingly, prompt regulatory action is needed in order to provide for the safety of spectators and participants during the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. Temporary rules of similar size and duration have been in place for the past several years and have not generated significant controversy.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the waters of Lake Washington, Seattle, Washington, for the Seafair Blue Angels Performance. The Coast Guard has determined it is necessary to close the area in the vicinity of the air show in order to minimize the dangers that low-flying aircraft present to persons and vessels. These dangers include, but are not limited to excessive noise and the risk of falling objects from any accidents associated with low flying aircraft. In the event that aircraft require emergency assistance, rescuers must have

immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other

this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191;

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–016]

RIN 2115–AA97

Safety and Security Zone; Boston and Salem Harbors, MA

notice and comment the temporary rule was therefore extended on March 15, 2002, making it effective until June 30, 2002.

Subsequently, a supplemental notice of proposed rulemaking (SNPRM), which addressed comments received on the previous NPRM and proposed safety and security zones in the same three areas but amended in size, was published in the **Federal Register** (67

immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass an area near the middle of Lake Washington, not frequented by commercial navigation. The rule is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the Blue Angels to fly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of Lake Washington during the time this rule is in effect. The zone will not have a significant economic impact due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph(34)(g) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion" is provided for temporary safety zones of less than one week in duration. This rule establishes a temporary safety zone of limited duration that will be within the one-week timeframe.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From 8:30 a.m. on August 1 until 3 p.m. on August 4, 2002, a temporary § 165.T13–005 is added to read as follows:

§ 165.T13–005 Safety Zone; Seafair Blue Angels Performance, Seattle, WA.

(a) *Location.* The following is a safety zone: All waters of Lake Washington, Washington State, enclosed by the following points: The northwest corner of Faben Point at 47°35′34.5″ N, 122°15′13″ W; thence to 47°35′48″ N, 122°15′45″ W; thence to 47°36′02.1″ N, 122°15′50.2″ W; thence to 47°35′56.6″ N, 122°16′29.2″ W; thence to 47°35′42″ N, 122°16′24″ W; thence to the east side of the entrance to the west highrise of the Interstate 90 bridge; thence easterly along the south side of the bridge to a point 1130 yards east of the western terminus of the bridge; thence southerly to a point in Andrews Bay at 47°33′06″ N, 122°15′32″ W; thence northeast along the shoreline of Bailey Peninsula to its northeast point at 47°33′44″ N, 122°15′04″ W; thence easterly along the east-west line drawn tangent to Bailey Peninsula; thence northerly along the shore of Mercer Island to the point of origin.[Datum: NAD 1983]

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in the zone except for participants in the event, supporting personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement period.* This section will be enforced from 8:30 a.m. until 3 p.m. (PDT) on August 1, 2, 3 and 4, 2002.

Dated: June 12, 2002.

M.R. Moore,

Captain, Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 02–17473 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–016]

RIN 2115–AA97

Safety and Security Zone; Boston and Salem Harbors, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety and security zones around PG & E Power Plant Terminal Wharf, Salem, MA, Black Falcon Terminal, Boston, MA and Coast Guard Integrated Support Command (ISC), Boston, MA. The safety and security zones will close certain waters around these facilities in Boston and Salem Harbors. The safety and security zones prohibit entry into or movement within portions of Boston and Salem Harbors and are needed to ensure public safety and prevent sabotage or terrorist acts.

DATES: Effective July 1, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 27, 2002 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 8915), proposing to establish three permanent safety and security zones, and to make previously established safety and security zones around the Distrigas Liquefied Natural Gas Facility in Everett, MA effective for an additional period. That NPRM provided for a short comment period, which would have allowed the zones to become effective on March 16, 2002. This short comment period was intended to prevent any lapse in protective measures provided by the temporary rule, which originally established the zones around Black Falcon Terminal, PG & E Power Plant Terminal Wharf, Salem, MA, and Coast Guard Integrated Support Command (ISC) Boston, MA. The comment period for that proposed rule did not allow adequate time for public comment. In order to provide adequate time for notice and comment the temporary rule was therefore extended on March 15, 2002, making it effective until June 30, 2002.

Subsequently, a supplemental notice of proposed rulemaking (SNPRM), which addressed comments received on the previous NPRM and proposed safety and security zones in the same three areas but amended in size, was published in the **Federal Register** (67 FR 20937) on April 29, 2002. The comment period for that SNPRM expired on May 29, 2002. The Coast Guard is now proceeding to implement a final rule taking into account all comments received.

Good cause exists for making this rule effective less than 30 days after **Federal Register** publication. Delay in the effective date of this regulation would be contrary to public interest. The Black Falcon Terminal, the PG & E Power Plant Terminal Wharf Salem, MA, and Coast Guard ISC Boston, MA present possible targets of terrorist attack, due to their stature as strategic and critical infrastructure, as well as their potential for large personnel casualties if struck by a terrorist incident. A July 1, 2002 effective date for this regulation is necessary to prevent the lapse in the effective date of the temporary regulations above, which would leave persons at these facilities, and the public and surrounding communities vulnerable to sabotage or other subversive acts, accidents, or other events of a similar nature.

Background and Purpose

In light of terrorist attacks on New York City and Washington DC on September 11, 2001 three pairs of safety and security zones, each pair of safety and security zones having identical parameters, are being established to safeguard the Black Falcon Terminal, the PG & E Power Plant Terminal Wharf Salem, MA, and Coast Guard ISC Boston, MA, persons at these facilities, and the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. These facilities present possible targets of terrorist attack, due to their stature as strategic and critical infrastructure, as well as their potential for large personnel casualties if subject to a terrorist attack. These permanent safety and security zones prohibit entry into or movement within three specified areas.

The first area encompasses all waters within 150 yards off the bow and stern and 100 yards abeam of any vessel moored at the Massachusetts Port Authority Black Falcon Terminal. The second area encompasses all waters of

Boston Harbor within 100 feet of the Coast Guard Integrated Support Command (ISC) Boston piers. The third area encompasses all waters of Salem Harbor within a 250-yard radius of the center point of the PG & E Power Plant Terminal Wharf located at 42° 31.33′ N, 070° 52.67′ W when a vessel is moored there.

No person or vessel may enter or remain in the prescribed safety and U.S. Coast Guard ISC in Boston, MA extends only 100 feet from the pier. The zones around the Salem Terminal Wharf and Black Falcon Terminal are only in effect when vessels are located at the facilities. Vessel visits to Salem Terminal Wharf are infrequent, an average of three vessel visits per month. Vessel visits to Black Falcon typically last 12 to 24 hours, occur once or twice a week, and are seasonal between April

The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect

these zones is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of the Port or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement

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Boston Harbor within 100 feet of the Coast Guard Integrated Support Command (ISC) Boston piers. The third area encompasses all waters of Salem Harbor within a 250-yard radius of the center point of the PG & E Power Plant Terminal Wharf located at 42° 31.33′ N, 070° 52.67′ W when a vessel is moored there.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions.

Discussion of Comments and Changes to the Proposed Rule

The Coast Guard received 4 comments from the public regarding this proposal. All comments received were considered in the development of this final rule. Comments were received from maritime industry stakeholders. In light of the comments received and evaluations conducted, we feel changes to the zones' parameters as outlined in the SNPRM were unnecessary. The comments and reasoning for not making changes to the SNPRM are addressed below.

Comment: These zones will cause economic impacts upon local fishermen and close fishing grounds in Boston and Salem Harbors.

Response: All 4 comments received were from commercial lobstermen, stating they had concerns this proposal would close traditional fishing grounds in Boston and Salem Harbors and cause negative impacts on their business. As defined in the SNPRM and here, the Coast Guard feels these safety and security zones will not significantly impact commercial fishing in Boston and Salem Harbor. The zone around the U.S. Coast Guard ISC in Boston, MA extends only 100 feet from the pier. The zones around the Salem Terminal Wharf and Black Falcon Terminal are only in effect when vessels are located at the facilities. Vessel visits to Salem Terminal Wharf are infrequent, an average of three vessel visits per month. Vessel visits to Black Falcon typically last 12 to 24 hours, occur once or twice a week, and are seasonal between April and November. These zones were greatly reduced in size when proposed in the SNPRM from their original sizes as listed in 66 FR 49280, under which they were originally published after the events of September 11, 2002. Considering the minimal times that the Salem Terminal Wharf and Black Falcon Terminal zones will be in effect, and the minimal areas they encompass, the impacts of this regulation will be minimal on local fishermen and the rest of the maritime community. The necessity of protecting these entities outweighs the temporary negligible impacts they impose on fishermen.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule will impose zero mandatory costs. The effect of this rule will not be significant for several reasons: there is ample room for vessels to navigate around the zones in Boston and Salem Harbors, the Salem Terminal Wharf and Black Falcon Terminal zones will only be in effect when vessels are moored at the respective piers, and notifications of the enactment of the Salem Terminal Wharf and Black Falcon Terminal zones will be made to the local maritime community through Local Notice to Mariners and have already been made through a public outreach campaign.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or conduct commercial fishing operations in portions of Boston and Salem Harbor. These sections of Boston and Salem Harbor do not restrict passenger and commuter vessel routes, do not unduly restrict recreational boat traffic, and are so small they would have a negligible impact on the commercial fishing industry. For these and the reasons enumerated in the **Regulatory Evaluation** section above, these safety and security zones will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call Lieutenant Dave Sherry, Marine Safety Office Boston, at (617) 223–3030. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.116 to read as follows:

§ 165.116 Safety and Security Zones; Salem and Boston Harbors, Massachusetts.

(a) *Location.* The following areas are permanent safety and security zones:

(1) *Reserved Channel, Boston Harbor.* All waters of Boston Harbor within one hundred fifty (150) yards off the bow and stern and one hundred (100) yards abeam of any vessel moored at the Massachusetts Port Authority Black Falcon Terminal;

(2) *Boston Inner Harbor.* All waters of Boston Harbor within one hundred (100) feet of the Coast Guard Integrated Support Command (ISC) Boston piers and;

(3) *Salem Harbor.* All waters of Salem Harbor within a two-hundred and fifty (250) yard radius of the center point of the PG & E Power Plant Terminal Wharf, Salem, MA, located at 42°31.33′ N, 070°52.67′ W when a vessel is moored at this pier. All coordinates are North American Datum 1983.

(b) *Effective date.* This section becomes effective July 1, 2002.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of the Port or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters or land area within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: June 27, 2002.

B.M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–17380 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–50; GA–53; GA–56; GA–58; GA–59–200230(a); FRL–7244–5]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Georgia through the Georgia Environmental Protection Division (GAEPD) on December 6, 1999, March 21, 2000, January 4, 2001, August 21, 2001, and December 28, 2001. These revisions pertain to Rules for Air Quality Control and Rules for Enhanced Inspection and Maintenance.

DATES: This direct final rule is effective September 9, 2002, without further notice, unless EPA receives adverse comment by August 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Scott Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural

in vehicles failing the I/M test receiving more effective repairs, especially those with excessive nitrogen oxide emissions. The minimum waiver expenditure will be adjusted yearly in accordance with EPA requirements.

Description of Revisions Submitted on March 21, 2000

Chapter 391–3–1: Rules For Air Quality Control

Procedures" are being amended and paragraph (7) is being added to clarify and add to the requirements for inspectors to perform emissions inspections.

Rule 391–3–20–.05 paragraph (1) and subparagraphs (2)(a), (2)(b)3. and (2)(c), relating to "Emission Standards" are being amended to correct terms, synchronize the gray market test standards with other gray market

Rule 391–3–20–.19 paragraph (2), relating to "Management Contractor" is being amended to clarify access to inspection data.

Rule 391–3–20–.21 subparagraphs (2) and (3), relating to "Inspection Fees" are being amended to clarify the emission inspection fee and the program administration fee.

Rule 391–3–20–.22 paragraph (2), relating to "Enforcement" is being

Chapter 391–3–20: Rules for Enhanced Inspection and Maintenance (I/M)

Rule 391–3–20–.01, paragraphs (y), (ii), and (jj) thereof, relating to "Definitions" are being amended to modify definitions related to enhanced emission testing.

Rule 391–3–20–.03, paragraphs (1), (4), and (9) thereof, relating to "Covered Vehicles; Exemptions" are being amended to exempt "antique vehicles"

Rule 391–3–20–.21, paragraph (3) thereof, relating to "Program Administration Fees" is being amended to update the current administrative fee structure and to remove reference to the expired effective date.

Description of Revisions Submitted On December 28, 2001

Chapter 391–3–1: Rules For Air Quality Control

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott Martin 404–562–9036. E-mail: *martin.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 1999, March 21, 2000, January 4, 2001, August 21, 2001, and December 28, 2001, the GAEPD submitted revisions to the Georgia SIP. These revisions pertain to Chapter 391–3–1 Rules for Air Quality Control and Chapter 391–3–20 Enhanced Inspection and Maintenance. The revisions are described below.

II. Analysis of State's Submittal

Description of Revisions Submitted on December 6, 1999

Chapter 391–3–20: Rules for Enhanced Inspection and Maintenance (I/M)

On December 6, 1999, the Georgia Environmental Protection Division (EPD) submitted a request to revise the enhanced I/M program in the Atlanta, Georgia ozone nonattainment area as described in the State Implementation Plan (SIP). The revisions were to the Georgia "Rules for Enhanced Inspection and Maintenance", Chapter 391–3–20. The primary changes to the rules were the following: (1) The minimum expenditure required to obtain a repair waiver was raised to the Federally mandated level of $450 plus an adjustment based upon the change in the Consumer Price Index since 1989; (2) County tax and tag personnel were authorized to process I/M exemptions, extensions, and waivers; and (3) the need for windshield stickers was repealed. There were other minor changes made to the program, including administrative and procedural amendments that will have no impact upon the emission reduction of the program.

The primary change, the increase in the minimum waiver expenditure, is in accordance with the specifications EPA established for enhanced I/M programs in the November 5, 1992 **Federal Register**. This increased limit will result in vehicles failing the I/M test receiving more effective repairs, especially those with excessive nitrogen oxide emissions. The minimum waiver expenditure will be adjusted yearly in accordance with EPA requirements.

Description of Revisions Submitted on March 21, 2000

Chapter 391–3–1: Rules For Air Quality Control

Rule 391–3–1.01(pp) "Modification" is being revised to clarify that routine maintenance, repair, and replacement; an increase of production; an increase in the hours of operation; and the use of alternative fuel or raw material may not be a modification.

Rule 391–3–1.01(llll) "Volatile Organic Compound (VOC)" is being revised to add volatile methyl siloxanes and parachlorobenzotriflouride to the list of exempt VOC's in accordance with EPA's definition of VOC.

Chapter 391–3–1.03: Permits

Rule 391–3–1–.03(2)(i) is being amended to allow the public and EPA notification and review of a permit application to begin upon receipt of a permit application rather than upon completion of a draft permit.

Description of Revisions Submitted on January 4, 2001

Chapter 391–3–1: Rules For Air Quality Control

Rule 391–3–1.01(nnnn) "Procedures for Testing and Monitoring Sources of Air Pollutants" is being revised to reflect a new revision date of September 20, 2000.

Rule 391–3–1–.02(2)(zz) "Gasoline Dispensing Facilities—Stage II" is being revised to provide an exemption for Stage II requirements for all dispensers used exclusively for the fueling or refueling of vehicles equipped with onroad vapor recovery (ORVR) equipment, as ORVR fully displaces the need for Stage II vapor recovery.

Chapter 391–3–20: Rules for Enhanced Inspection and Maintenance (I/M)

Rule 391–3–20–.01, relating to "Definitions" is being amended to add, delete, and modify definitions related to enhanced emission testing, and to renumber the definitions.

Rule 391–3–20–.03 paragraphs (8) and (9), relating to "Covered Vehicles; Exemptions" are being amended to clarify the grandfather status of gray market, kit cars, hot rods, senior citizens, and antique or collector car or truck exemptions.

Rule 391–3–20–.04 paragraphs (1) and (2), relating to "Emission Inspection Procedures" are being amended and paragraph (7) is being added to clarify and add to the requirements for inspectors to perform emissions inspections.

Rule 391–3–20–.05 paragraph (1) and subparagraphs (2)(a), (2)(b)3. and (2)(c), relating to "Emission Standards" are being amended to correct terms, synchronize the gray market test standards with other gray market requirements, and to clarify the fuel cap test requirements.

Rule 391–3–20–.07 paragraph (4), relating to "Inspection System Specifications" is being amended to clarify the fuel cap testing requirements.

Rule 391–3–20–.08 subparagraphs (2)(b) and (2)(c), relating to "Quality Control and Equipment Calibration Procedures" are being amended to change a reference concerning data transmission line requirements and to change the data file refresh requirement for mobile test systems.

Rule 391–3–20–.09 subparagraphs (2)(a), (2)(i), (2)(j) and (2)(l), relating to "Inspection Station Requirements" are being amended to add to the information requirements for a station application, clarify data transmission line requirements, amend how administrative fees are paid, and to clarify the requirement for posting business hours.

Rule 391–3–20–.11 paragraphs (4), (6) and (9), relating to "Inspector Qualifications and Certification" are being amended to clarify the requirements for inspector identification and to clarify the responsibility for inspections.

Rule 391–3–20–.12 paragraphs (1) through (5), relating to "Schedule for Emission Tests" are being amended to correct the term of an emission inspection and clarify the valid life of a certificate of emissions inspection.

Rule 391–3–20–.13 subparagraphs (1)(i), (2)(a) and (2)(b) and paragraph (3), relating to "Certification of Emissions Inspection" are being amended to clarify authority for issuing information and forms.

Rule 391–3–20–.15 paragraph (4), relating to "Repairs and Retests" is being amended and paragraph (7) is being added to clarify reinspection requirements and to provide for verification of a re-inspected vehicle.

Rule 391–3–20–.17 subparagraph (2)(a)1. and paragraph (3), relating to "Waivers" are being amended to update the repair waiver cost for test year 2001 and clarify the valid life of a waiver.

Rule 391–3–20–.18 paragraphs (1) and (2), relating to "Sale of Vehicles" are being amended to clarify vehicle sale requirements.

Rule 391–3–20–.19 paragraph (2), relating to "Management Contractor" is being amended to clarify access to inspection data.

Rule 391–3–20–.21 subparagraphs (2) and (3), relating to "Inspection Fees" are being amended to clarify the emission inspection fee and the program administration fee.

Rule 391–3–20–.22 paragraph (2), relating to "Enforcement" is being amended to clarify the terms of revocation for certificates of authorization and inspector licenses.

Description of Revisions Submitted On August 21, 2001

Chapter 391–3–1: Rules For Air Quality Control

Rule 391–3–1–.01, Definitions, is being amended. The definition of the *Procedures For Testing And Monitoring Sources of Air Pollutants* (PTM) is being changed to reflect a new revision date of May 1, 2001.

Rule 391–3–1–.02, subparagraph (2)(bbb)2., relating to "Reid Vapor Pressure" is being amended. To codify the Reid Vapor Pressure (RVP) testing tolerance resultant from reproducibility errors associated with the test methodology.

Rule 391–3–1–.02, subparagraph (2)(bbb)3., relating to "Sulfur Content" is being amended to provide for a maximum, seasonal per-gallon-cap on sulfur content in 2004 and beyond, and to codify the sulfur testing tolerances resultant from reproducibility errors associated with the test methodology.

Rule 391–3–1–.03, subparagraph (6)(i) thereof relating to "Exemptions" is being amended. The emissions level at which facilities are exempt from permitting and at which facilities may defer permit amendments for modifications is being increased.

Rule 391–3–1–.03, subparagraph (8)(c)12. thereof relating to "Offsets" is being amended. This addition will serve to clarify some current EPD policy regarding the generation of offsets by putting the policy directly into the applicable rule.

Rule 391–3–1–.03, subparagraphs (13)(d) and (13)(f) thereof relating to "Emission Reduction Credits" are being amended. These revisions will provide the Director with the authority to revoke Emission Reduction Credits or otherwise reduce their value in circumstances where a source that has proposed to generate and bank a certain emission reduction fails to achieve the reduction in practice.

Chapter 391–3–20: Rules for Enhanced Inspection and Maintenance (I/M)

Rule 391–3–20–.01, paragraphs (y), (ii), and (jj) thereof, relating to "Definitions" are being amended to modify definitions related to enhanced emission testing.

Rule 391–3–20–.03, paragraphs (1), (4), and (9) thereof, relating to "Covered Vehicles; Exemptions" are being amended to exempt "antique vehicles" in the covered vehicles category and to remove an outdated reference.

Rule 391–3–20–.04, subparagraph (2)(b) thereof, relating to "Emission Inspection Procedures" is being amended to establish criteria for using the 2-speed idle test on newer vehicles when OBD testing begins.

Rule 391–3–20–.05, paragraph (4) thereof, relating to "Emission Standards" is being amended to establish the "pass" criteria for the OBD system check on newer vehicles.

Rule 391–3–20–.06, paragraphs (3), (4), and (7) thereof, relating to "On-Road Testing" are being amended to clarify terms and to provide EPD the opportunity to witness reinspection of vehicles identified as high polluters.

Rule 391–3–20–.07, subparagraphs (1)(c) and (d) thereof, relating to "Inspection Equipment System Specifications" are being amended to include the requirement for station owners to procure OBD hardware and software.

Rule 391–3–20–.09, subparagraph (2)(h)4. thereof, relating to "Inspection Station Requirements" is being amended to update the reference to "information" on repair facilities.

Rule 391–3–20–.12, paragraph (2) thereof, relating to "Schedules for Emissions Tests" is being amended to remove an outdated reference.

Rule 391–3–20–.13, subparagraph (2)(c) thereof, relating to "Certificate of Emissions Inspection" is being amended to update the reference to "information" on repair facilities.

Rule 391–3–20–.15, paragraphs (4) and (7) thereof, relating to "Repairs and Retests" are being amended to clarify when a partial reinspection is allowed and to establish reinspection criteria for the OBD test.

Rule 391–3–20–.16, paragraphs (1) and (2) thereof, relating to "Extensions, Reciprocal Tests" are being amended to clarify eligibility for an extension and clarify requirements for reciprocal tests.

Rule 391–3–20–.20, paragraph (1) thereof, relating to "Referee Program" is being amended to clarify EPD's authority to request a referee test and clarify and extend the time period in which a referee test can be requested.

Rule 391–3–20–.21, paragraph (3) thereof, relating to "Program Administration Fees" is being amended to update the current administrative fee structure and to remove reference to the expired effective date.

Description of Revisions Submitted On December 28, 2001

Chapter 391–3–1: Rules For Air Quality Control

Rule 391–3–1–.01, relating to "Definitions" is being amended. The definition of the *Procedures For Testing And Monitoring Sources of Air Pollutants* (PTM) is being changed to reflect a new revision date of September 20, 2001.

Rule 391–3–1–.02, subparagraph (2)(rr) thereof, relating to "Gasoline Dispensing Facilities—Stage I" is being amended to provide for appropriate testing in accordance with changes in the California Air Resources Board (CARB) Stage I vapor recovery program which the present rule references; to revise the definition of a "Gasoline dispensing facility"; to revise the definition of "Division approved" in accordance with the CARB changes; to clarify the exemptions afforded to certain gasoline facilities; to specifically require documentation and reporting of testing required for Stage I vapor recovery systems; to correct typographical errors.

Rule 391–3–1–.02, subparagraph (2)(ss) thereof, relating to "Gasoline Transport Vehicles and Vapor Collection Systems" is being amended to provide for more consistent and reproducible documentation of all tests and repairs effected on transport vehicles regulated under this rule.

Rule 391–3–1–.02, subparagraph (2)(zz) thereof, relating to "Gasoline Dispensing Facilities—Stage II" is being amended to provide for appropriate testing in accordance with changes in the California Air Resources Board (CARB) Stage II vapor recovery program which the present rule references; to correct a reference to federal onboard refueling vapor recovery (ORVR); to revise the definition of "Approved Stage II vapor recovery system" in accordance with the CARB changes; to clarify the exemptions afforded to certain gasoline facilities; to correct typographical errors.

Rule 391–3–1–.02, subparagraph (2)(ooo) thereof, relating to "Heavy-Duty Diesel Engine Requirements" is being added to enable EPD to opt into the California Air Resources Board (CARB) rules for new Heavy Duty Diesel Engines (HDDE's) pursuant to section 177 of the Federal Clean Air Act (Act). The proposed rule would bar the sale/

lease or the import of any new HDDE's in Georgia that are not certified by CARB to meet the emission standards of its HDDE rules.

Rule 391–3–1–.03, subparagraph (8)(c)6. thereof, relating to "Permit Requirements" is being amended to clarify the existing EPD policy regarding offsets. This revision compliments the revision described below to Rule 391–3–1–.03(8)(c)12.

Rule 391–3–1–.03, subparagraph (13)(d) thereof, relating to "Emission Reduction Credits" is being amended to provide the Director with the authority to revoke Emission Reduction Credits or otherwise reduce their value in circumstances where a source that has proposed to generate and bank a certain emission reduction fails to achieve the reduction in practice.

Rule 391–3–1–.03, subparagraph (13)(f) thereof, relating to "Emission Reduction Credits" is being amended to provide the Director authority for denying an inspector's Certificate.

Rule 391–3–20–.13, subparagraphs (1)(b), (n), (o) and (p) thereof, relating to "Certificate of Emissions Inspection" are being amended and/or added to clarify requirements.

Rule 391–3–20–.15, paragraph (2) thereof, relating to "Repairs and Retests" is being amended to clarify procedures and requirements for

Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the

the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

Dated: June 26, 2002.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

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lease or the import of any new HDDE's in Georgia that are not certified by CARB to meet the emission standards of its HDDE rules.

Rule 391–3–1–.03, subparagraph (8)(c)6. thereof, relating to "Permit Requirements" is being amended to clarify the existing EPD policy regarding offsets. This revision compliments the revision described below to Rule 391–3–1–.03(8)(c)12.

Rule 391–3–1–.03, subparagraph (8)(c)12. thereof, relating to "Offsets" is being amended to eliminate a potential disagreement between the offset requirements in Rule 391–3–1–.03(8)(c) and the emissions reduction credits requirements in Rule 391–3–1–.03(13)(c).

Chapter 391–3–20: Rules for Enhanced Inspection and Maintenance (I/M)

Rule 391–3–20–.01, paragraphs (b), (p), (s) and (y) thereof, relating to "Definitions" are being amended to modify definitions related to enhanced emission testing.

Rule 391–3–20–.04, paragraphs (2) and (8) thereof, relating to "Emission Inspection Procedures" are being amended to establish criteria for inspections of newer vehicles when On-Board Diagnostics (OBD) testing begins; to address new fuel cap testing procedures; and to address electronic transmission of emission tests to the Management Contractor's database.

Rule 391–3–20–.05, paragraphs (2) and (4) thereof, relating to "Emission Standards" are being amended to address new fuel cap testing procedures and to clarify the "pass" criteria for the OBD system test on newer vehicles.

Rule 391–3–20–.07, paragraphs (1) and (4) thereof, relating to "Inspection Equipment System Specifications" are being amended to include the requirement for station owners to procure OBD hardware and software and to require current fuel cap adapter application guide.

Rule 391–3–20–.09, subparagraphs (2)(e) and (i) thereof, relating to "Inspection Station Requirements" are being amended to clarify requirements for inspection station owners.

Rule 391–3–20–.10, paragraph (7) thereof, relating to "Certificate of Authorization" is being added to provide the Director authority to deny an inspection station's Certificate of Authorization.

Rule 391–3–20–.11, paragraphs (1), (4) and (6) thereof, relating to "Inspector Qualifications and Certification" are being amended, and paragraph (11) added to clarify the required training for the different emission test; to update the requirements for Inspector ID cards; and to provide the Director authority for denying an inspector's Certificate.

Rule 391–3–20–.13, subparagraphs (1)(b), (n), (o) and (p) thereof, relating to "Certificate of Emissions Inspection" are being amended and/or added to clarify requirements.

Rule 391–3–20–.15, paragraph (2) thereof, relating to "Repairs and Retests" is being amended to clarify procedures and requirements for motorist emission repair forms.

Rule 391–3–20–.17, paragraph (2) thereof, relating to "Waivers" is being amended to update the repair waiver cost for test year 2002.

Rule 391–3–20–.22, subparagraph (2)(b) thereof, relating to "Enforcement" is being amended to establish a requirement for relinquishing the Inspector ID cards.

III. Final Action

EPA is approving the aforementioned changes to the Georgia SIP because they are consistent with the Clean Air Act and Agency requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 9, 2002, without further notice unless the Agency receives adverse comments by August 12, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 9, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2002.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. a. In the table in § 52.570(c), the following entries are revised: 391–3–1–.01; 391–3–1–.02(2)(rr); 391–3–1–.02(2)(ss); 391–3–1–.02(2)(zz); 391–3–1–.02(2)(bbb); 391–3–1–.03; 391–3–20.

b. In the table in § 52.570(c), the following entries are added: 391–3–1–.02(2)(ooo)

The additions and revisions read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
391–3–1–.01	Definitions	12/26/01	7/11/02	
. . .	. . .	. . .	. . .	. . .
391–3–1–.02(2)(rr)	Gasoline Dispensing Facility—Stage 1	12/26/01	7/11/02	
391–3–1–.02(2)(ss)	Gasoline Transport Vehicles and Vapor Collection Systems.	12/26/01	7/11/02	
. . .	. . .	. . .	. . .	. . .
391–3–1–.02(2)(zz)	Gasoline Dispensing Facilities—Stage II	12/26/01	7/11/02	
. . .	. . .	. . .	. . .	. . .
391–3–1–.02(2)(bbb)	Gasoline Marketing	7/18/01	7/11/02	
. . .	. . .	. . .	. . .	. . .
391–3–1–.02(2)(ooo)	Heavy-Duty Diesel Engine Requirements	12/26/01	7/11/02	
. . .	. . .	. . .	. . .	. . .
391–3–1–.03	Permits	12/26/01	7/11/02	
. . .	. . .	. . .	. . .	. . .
391–3–20	Enhanced Inspection and Maintenance	12/26/01	7/11/02	
. . .	. . .	. . .	. . .	. . .

* * * * *

[FR Doc. 02–17318 Filed 7–10–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

I. Background

On November 17, 1999, the GAEPD submitted revisions to the Georgia SIP pertaining to William L. Bonnell's Air Quality Permit No. 3354–038–6686–O. This permit is a nitrogen oxide reasonably available control technology (NO_X RACT) permit. Conditions 17–30 were approved by the EPA on March 18, 1999 (*see* 64 FR 13348). In today's

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead,

* * * * *

[FR Doc. 02–17318 Filed 7–10–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–49–200232(a); FRL–7244–7]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division (GAEPD) on November 17, 1999. The revision pertains to William L. Bonnell's Air Quality Permit. This permit revision went through a thirty day comment period and was the subject of a public hearing on September 8, 1999. No comments were received on the permit revisions. The revised permit became State effective on October 7, 1999.

DATES: This direct final rule is effective September 9, 2002, without further notice, unless EPA receives adverse comment by August 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Scott Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott Martin 404–562–9036. E-mail: *martin.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 17, 1999, the GAEPD submitted revisions to the Georgia SIP pertaining to William L. Bonnell's Air Quality Permit No. 3354–038–6686–O. This permit is a nitrogen oxide reasonably available control technology (NO_X RACT) permit. Conditions 17–30 were approved by the EPA on March 18, 1999 (*see* 64 FR 13348). In today's action EPA is approving revisions to conditions 17 and 22, and the addition of new conditions 31 and 32.

II. Analysis of State's Submittal

The revised conditions read as follows:

#17. The Permittee shall burn natural gas exclusively for all fuel burning equipment covered by this Permit during the months of May through September of each year, except during times of interruption of the natural gas supply or during emergency conditions. During such times, the Permittee may burn liquid propane gas (LPG) as an alternative fuel.

#22. The Permittee shall conduct, or cause to be conducted, on an annual basis, on the No. 5 furnace, burner tunings to optimize the burner fuel/air ratio and to establish the optimum operating point which generates the greatest decrease in NO_X concentration (corrected to 3 percent oxygen) while maintaining a safe level of carbon monoxide (CO) in the exhaust gases.

The new conditions read as follows:

#31. The Permittee shall not operate the No. 6 furnace at an excess air of greater than 10 percent.

#32. The Permittee shall retain records of all LPG burned during the months of May through September. Said records shall include the date, gallons burned, and the reason for LPG as opposed to natural gas. The records shall be kept in a log suitable for inspection and/or submittal to the Division, and shall be maintained for 5 years from the date of creation.

III. Final Action

EPA is approving the aforementioned changes to the Georgia SIP because they are consistent with the Clean Air Act and Agency requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 9, 2002, without further notice unless the Agency receives adverse comments by August 12, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 9, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 28, 2002.

Winston A. Smith,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. a. In the table in § 52.570(d), the following entries are revised: William L. Bonnell Co.

The revision reads as follows:

§ 52.570 Identification of plan.

* * * * *

(d) * * *

EPA APPROVED GEORGIA SOURCE—SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Comments
William L. Bonnell	3354–038–O conditions 17 through 32	10/7/99	07/11/02 [and FR Cite].	

[FR Doc. 02–17455 Filed 7–10–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[F–2002–AIRF–FFFF; FRL–7227–9]

RIN 2050–AE91

Municipal Solid Waste Landfill Location Restrictions for Airport Safety

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the location restriction requirements in the criteria for municipal solid waste landfills (MSWLFs). EPA is amending this provision in order to incorporate new landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act). The Ford Act siting restrictions apply to specified smaller public airports to address the potential hazard that birds attracted to MSWLFs may pose to aircraft operations. Today's amendment does not affect existing MSWLFs.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to this rule in the event the public chooses to file adverse comments. In that event, we will address all public comments in a subsequent final rule based on the proposed rule; and, we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: This direct final rule is effective on October 9, 2002, without further notice, unless EPA receives adverse comment by August 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: This section provides addresses regarding: (1) Where and in what form you should submit responses to today's direct final rule and (2) where you can view public comments responding to this rule. Please reference RCRA Docket No. F–2002–AIRF–FFFF in your comments. You may submit your comments (1) in hard copy (paper) either by mail or by hand or (2) using

- Electronic Submissions: Via the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by RCRA Docket No. F–2002–AIRF–FFFF. You must provide your electronic submissions as ASCII files; and, you must avoid the use of special characters and any form of encryption.

See the **SUPPLEMENTARY INFORMATION** section for information about where and

Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–338–1348; e-mail: *<moorcones.mary@epamail.epa.gov>*.

Some information about this rule can also be accessed via the Internet at:

VI. Why Today's Rule is Direct Final Promulgation Without Prior Proposal
VII. Applicability of Relevant Statutes and Executive Orders to Today's Rule
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

military aircraft reported strikes with wildlife from 1990 to 1999 (FAA AC No. 150/5200–34).

III. Description of Current Regulations Before Today's Action

40 CFR 258.10 sets forth location restrictions for MSWLFs to address airport safety. Section 258.10(a) and (c) contain requirements for new MSWLFs, existing MSWLFs and lateral expansions of landfills that are located

A. Landfills to Which the New Restrictions Apply

The new six (6) mile restriction only applies to new MSWLFs constructed or established after April 5, 2000. "Construct a MSWLF" is defined as in Appendix 1 of the FAA AC No. 150/5200–34 as "excavate or grade land, or raise structures, to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting

ADDRESSES: This section provides addresses regarding: (1) Where and in what form you should submit responses to today's direct final rule and (2) where you can view public comments responding to this rule. Please reference RCRA Docket No. F–2002–AIRF–FFFF in your comments. You may submit your comments (1) in hard copy (paper) either by mail or by hand or (2) using electronic mail, as follows:

- Mail: Submit an original and two hard copies to the RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Deliveries: Submit an original and two hard copies to the RCRA Information Center (RIC), Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia 22202.
- Electronic Submissions: Via the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by RCRA Docket No. F–2002–AIRF–FFFF. You must provide your electronic submissions as ASCII files; and, you must avoid the use of special characters and any form of encryption.

See the **SUPPLEMENTARY INFORMATION** section for information about where and how you can view the docket for this rule, including electronic access to some of the information such as the docket index and supporting documents.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703–412–9810 or TDD 703–412–3323 (hearing impaired).

For information on specific aspects of this rule, contact Mary T. Moorcones, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–338–1348; e-mail: *<moorcones.mary@epamail.epa.gov>*.

Some information about this rule can also be accessed via the Internet at: *<http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm>*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are public or private individuals or groups seeking to construct or establish new municipal solid waste landfills (MSWLFs) near specified airports after April 5, 2000. Affected categories and entities include the following:

Category	Examples of regulated entities
Federal Government	Agencies constructing or establishing new MSWLFs within six miles of a public airport.
State, Local and Tribal Government	Governments constructing or establishing new MSWLFs within six miles of a public airport.

The table above is not intended to be exhaustive but rather to provide examples of entities likely to be regulated by this action. To determine whether your facility would be impacted by this action, you should carefully examine the applicability criteria in the rule. If you have questions regarding the applicability of this action to a particular facility, please contact Mary T. Moorcones, U.S. Environmental Protection Agency, Office of Solid Waste (5305W), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–338–1348; e-mail: *<moorcones.mary@epamail.epa.gov>*. Entities considering construction or establishment of a new MSWLF also should contact the Federal Aviation Administration (FAA) to determine if an airport within six statute miles of the new MSWLF meets the criteria established by FAA to comply with the statute. The FAA can be contacted at the FAA's Office of Airport Safety and Standards, Airport Safety and Certification Branch, at 800–842–8736, Ext. 73085 or via e-mail at *<WebmasterARP@faa.gov>*.

Acronyms

The full names for the acronyms used in this document are:

Acronym	Definition
AC	Federal Aviation Administration Advisory Circular 150/5200–34, together with its Appendix 1, dated August 26, 2000.
CFR	The United States Code of Federal Regulations.
EPA	The United States Environmental Protection Agency.
FAA	The United States Federal Aviation Administration.
Ford Act	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.
MSWLF	Municipal Solid Waste Landfill.
NTTA	National Technology and Transfer Act of 1995.
OMB	The United States Office of Management and Budget.
RCRA	The Resource Conservation and Recovery Act.
RIC	Resource Conservation and Recovery Act Information Center.
UMRA	Unfunded Mandates Reform Act of 1995.
U.S.	United States.
U.S.C.	United States Code.

Where To Find and View Information About This Rule

All documents in the docket for this rulemaking, including public comments, are available for review in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review the docket materials in person, we recommend that the public make an appointment by calling 703–603–9230. The public can hard copy a maximum of 100 pages from the docket at no charge. Additional copies cost $0.15/page.

You can access the Index to the docket and the supporting documents electronically on the Internet at: *<http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm>*. If you access the information electronically, you can download or print copies free of charge.

Preamble

Outline

I. Legal Authority for Today's Direct Final Rule
II. Why We Are Amending the MSWLF Location Restrictions for Airport Safety
III. Description of Current Regulations Before Today's Action
IV. Description of Today's Amendment to MSWLF Location Restrictions for Airport Safety Criteria for MSWLFs
A. Landfills to Which the New Restrictions Apply
B. Exemptions to the Limitations
V. How the States and Tribes Implement This Rule
VI. Why Today's Rule is Direct Final Promulgation Without Prior Proposal
VII. Applicability of Relevant Statutes and Executive Orders to Today's Rule
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer & Advancement Act of 1995
I. Executive Order 12898: Environmental Justice
J. Executive Order 13211: Energy Effects
K. Congressional Review Act

I. Legal Authority for Today's Direct Final Rule

The EPA is promulgating this rule under Sections 1008(a), 2002 (general rule making authority), and 4004 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6907(a), 6912, 6944.

II. Why We Are Amending the MSWLF Location Restrictions for Airport Safety

On April 5, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Public Law 106–181. Section 503 of the Ford Act includes a provision limiting the "construction or establishment" of municipal solid waste landfills (MSWLFs) within six miles of certain smaller public airports. The FAA issued guidance regarding the requirements of the Ford Act in FAA Advisory Circular (AC) 150/5200–34 (August 26, 2000). Today's rule incorporates the statutory requirement into EPA's Criteria for Municipal Solid Waste Landfills, 40 CFR part 258. Specifically, we are amending the location restriction requirements pertaining to airport safety found in § 258.10 of the criteria by adding this new location restriction to the existing location restrictions.

Section 503 of the Ford Act was enacted to address the potential hazard posed to aircraft by birds attracted to landfills. According to the Federal Aviation Administration (FAA), an estimated 87 percent of the collisions between wildlife and civil aircraft occurred on or near airports when aircraft were less than 2,000 feet above ground level. Collisions with wildlife at these altitudes are especially dangerous because aircraft pilots have minimal time to recover. Databases managed by the FAA and the United States Air Force show that more than 54,000 civil and military aircraft reported strikes with wildlife from 1990 to 1999 (FAA AC No. 150/5200–34).

III. Description of Current Regulations Before Today's Action

40 CFR 258.10 sets forth location restrictions for MSWLFs to address airport safety. Section 258.10(a) and (c) contain requirements for new MSWLFs, existing MSWLFs and lateral expansions of landfills that are located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 of any airport runway used only by piston-type aircraft. Owners or operators of such landfills are required to (1) demonstrate that the MSWLFs are designed and operated so as not to "pose a bird hazard to aircraft," (2) place a copy of the demonstration in the MSWLF operating record, and (3) notify the State Director that it has been placed in the operating file. "State Director" is defined as "the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities."

Section 258.10(b) applies to new MSWLFs and lateral expansions proposed to be constructed within a five-mile radius of the end of any airport runway used by turbojet or piston-type aircraft. For such proposed new MSWLFs and lateral expansions, the owner or operator must notify the affected airport and the FAA.

Section 258.10(d) defines "airport" to mean a "public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities." This subsection also defines "bird hazard."

IV. Description of Today's Amendment to MSWLF Location Restrictions for Airport Safety

Today's direct final rule adds a new paragraph (e) to § 258.10 that incorporates the location restrictions enacted in Section 503 of the Ford Act prohibiting construction or establishment of a new MSWLF within six miles of a "public airport." A "public airport" is one that: (1) Has received grants under the Airport and Airway Improvement Act of 1982, as amended (chapter 471, 49 U.S.C. 47101, et seq.) and (2) is primarily served by general aviation aircraft and regularly scheduled air carrier operations that use aircraft designed for 60 passengers or less. Today's direct final rule applies to MSWLFs (as defined in 40 CFR 257.3 through 257.8) that receive putrescible waste (as defined in 40 CFR 257.3 through 257.8).

A. Landfills to Which the New Restrictions Apply

The new six (6) mile restriction only applies to new MSWLFs constructed or established after April 5, 2000. "Construct a MSWLF" is defined as in Appendix 1 of the FAA AC No. 150/5200–34 as "excavate or grade land, or raise structures, to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting authority." "Establish a MSWLF" is defined in Appendix 1 of the AC as a MSWLF that "receives[s] the first load of putrescible waste on site for placement in a prepared municipal solid waste landfill."

To determine whether an airport in the vicinity of a proposed MSWLF is an airport that is subject to the Ford Act, the landfill owner or operator should contact the FAA. As the FAA guidance indicates, those airports covered by the Ford Act do not fall into a classification or category that has been established by the FAA or other legislation. See FAA AC No. 150/5200–34, section 8. If the airport in question does not meet the definition in the Ford Act, then today's rule does not apply to the proposed landfill. If the airport in question meets the Ford Act definition, then the proposed landfill must be located at least six miles from the airport. The AC also provides guidance for determining whether a new MSWLF falls within the six mile range. The six mile distance is to be measured from "the closest point of the airport property boundary to the closest point of the MSWLF property boundary. (FAA AC No. 150/5200–34, section 9.)

B. Exemptions to the Limitations

The six mile siting limitation does not apply to: (1) A MSWLF where construction or establishment began on or before April 5, 2000; (2) an existing MSWLF that received putrescible waste on or before April 5, 2000; (3) an existing MSWLF (constructed or established before April 5, 2000) that is expanded or modified after April 5, 2000; or (4) MSWLFs in the State of Alaska. In addition, the aviation agency of the state in which the airport is located can request an exemption from the six mile limitation from the FAA for a new MSWLF. Section 10 of FAA AC No. 150/5200–34 sets out the procedure for applying for an exemption.

New MSWLFs that are not subject to the six mile siting limitation, including those in the State of Alaska, continue to be subject to the landfill siting criteria at 40 CFR 258(a)–(d).

V. How the States and Tribes Implement This Rule

EPA recognizes that today's rule and the language in the Ford Act are more stringent than the existing § 258.10 location restrictions, because the boundary for newly constructed or established MSWLFs is moved from five to six miles from certain airports. However, EPA does not deem this timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. A comment will be considered adverse if it: (1) Is negative and addresses the basis or purpose of priorities, or legal mandates. Indeed, today's direct final rule codifies a legal mandate that enhances public safety and is more protective of wildlife than doing nothing.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally

statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments—either in the aggregate or to the private sector—of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a

submit an ICR to OMB for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because there are no information collection requirements associated with today's direct final rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure

governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

This direct final rule does not have

V. How the States and Tribes Implement This Rule

EPA recognizes that today's rule and the language in the Ford Act are more stringent than the existing § 258.10 location restrictions, because the boundary for newly constructed or established MSWLFs is moved from five to six miles from certain airports. However, EPA does not deem this change to be significant. This provision concerns only new MSWLFs constructed or established after April 5, 2001; and, EPA does not expect many new landfills to be constructed, and expects fewer still to be located in the vicinity of an airport defined in section 503 of the Ford Act. In addition, EPA notes that the statutory restriction in section 503 of the Ford Act applies to such new MSWLFs regardless of whether EPA incorporates its terms into the MSWLF criteria. Therefore states are not required to amend permit programs which have been determined to be adequate under 40 CFR part 239. States however have the option to amend statutory or regulatory definitions pursuant to today's direct final rule. If a state chooses to amend its permit program pursuant to today's action, the state must notify the Regional Administration of the modification as provided by 40 CFR 239.12. Today's amendments are directly applicable to landfills in states without an approved permit program under part 239 and in Indian Country. We also encourage tribes to adopt today's amendments into their programs.

VI. Why Today's Rule Is Direct Final Promulgation Without Prior Proposal

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment because it simply incorporates the legislative directive of the Ford Act. EPA is making this change in order to eliminate potential confusion between the new requirements under the Ford Act and the MSWLF criteria, promulgated in 1991 pursuant to the Resource Conservation and Recovery Act (RCRA).

However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the location restrictions' provision of the MSWLF criteria in the event adverse comments are received. This final rule will be effective on October 9, 2002, without further notice unless we receive adverse comment on the direct final rule by August 12, 2002. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. A comment will be considered adverse if it: (1) Is negative and addresses the basis or purpose of the direct final rule; (2) suggests that the rule should not be adopted or offers facts or data contrary to the basis upon which EPA relied in issuing the direct final rule; (3) recommends changes that suggest that the rule without these changes would be inappropriate; and (4) is germane. A comment is not adverse if it: (1) Is not clearly related to the subject of the rule and/or (2) supports the rule or is irrelevant to the rule (e.g., a comment addressing an aspect of the program not considered in the rule).

VII. Applicability of Relevant Statutes and Executive Orders to Today's Rule

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. Executive Order 12866 defines a significant regulatory action as one that is likely to result in actions that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Today's rule, deals only with siting of future individual MSWLFs after the statute's passage, does not have an adverse impact on the economy, the environment, the public, or governments. Similarly, it neither interferes with other agencies nor impacts other programs, the President's priorities, or legal mandates. Indeed, today's direct final rule codifies a legal mandate that enhances public safety and is more protective of wildlife than doing nothing.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The regulatory flexibility analysis is not required if the head of an agency certifies that the rule will not have a significant adverse impact on a substantial number of small entities. If the agency certifies that there is no such impact, the agency must provide a statement of the factual basis for the certification.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

The following discussion explains EPA's factual basis for our certification that the rule will not have a significant adverse impact on a substantial number of small entities. This direct final rule does not impact any existing MSWLFs, only future construction and establishment of MSWLFs begun after the date of the enactment of the statute (April 5, 2000). There will be no added costs to those entities involved in establishing or constructing new MSWLFs because this direct final rule will not increase the requirements for landfills begun on or before the enactment of the statute; it will only affect their location. Similarly, it will not increase requirements for existing landfills, regardless of size. As a result, today's direct final rule will not impose significant new burdens on small entities. Therefore, for the reasons stated above, the EPA certifies that the rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments—either in the aggregate or to the private sector—of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule. The above requirements of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed (under Section 203 of the UMRA) a small government agency plan. The plan must provide for: (1) Notifying potentially affected small governments; (2) enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates; and (3) informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule does not contain any federal mandates that are covered under the regulatory provision of Title II of the UMRA that apply to state, local, or tribal governments or the private sector. The rule does not impose any additional enforceable duty on any state, local, or tribal governments or on the private sector. Thus, today's direct final rule is not subject to the requirements of Sections 202 and 205 of UMRA.

D. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires the federal government (and thus EPA) to minimize the paperwork burden resulting from any collection of information by or for the federal government. Under 44 U.S.C. 3501 *et seq.*, EPA must submit a request to collect the information, together with a copy of the rule, to the Office of Management and Budget (OMB) in those cases where EPA is collecting information in a notice of proposed or final rule making. EPA does not plan to submit an ICR to OMB for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because there are no information collection requirements associated with today's direct final rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." The phrase, "policies that have federalism implications," is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Today's direct final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The direct final rule does not impose any requirements, implementation duties, enforcement duties, monitoring requirements, or reporting requirements on states. Thus, Executive Order 13132 does not apply to this direct final rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development or regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

This direct final rule does not have tribal implications, as specified in Executive Order 13175. Today's action incorporates requirements that are already in effect pursuant to the Ford Act. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and must explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This direct final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action, i.e., hazards to aircraft from birds attracted to municipal solid waste landfills, present a disproportionate risk to children.

H. National Technology Transfer and Advancement Act of 1995

Section 2(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the EPA decides not

to use available and applicable voluntary consensus standards.

Today's direct final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

EPA has undertaken to incorporate environmental justice into its policies

days after it is published in the **Federal Register**.

Accordingly, EPA submitted a report containing today's direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. Although this rule is not a "major rule" as defined by 5 determines that such exemption would have no adverse impact on aviation safety;

(2) The new MSWLF unit is to be constructed or established in the State of Alaska; or

(3) The new MSWLF unit is a lateral expansion of an existing MSWLF unit constructed or established as of April 5, 2000.

[FR Doc. 02–16994 Filed 7–10–02; 8:45 am]

956, January 8, 2002, and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the West Yakutat District will be reached before the end of the fishing season or year. Therefore, the Regional Administrator is establishing a directed fishing

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 070802B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch

Pacific ocean perch in the Central Regulatory Area will be reached before the end of the fishing season or year. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,220 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed

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to use available and applicable voluntary consensus standards.

Today's direct final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

EPA has undertaken to incorporate environmental justice into its policies and programs through: (1) Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"; (2) EPA's April 1995, "Environmental Justice Strategy, Office of Solid Waste and Emergency Response Environmental Justice Task Force Action Agenda Report"; and (3) the National Environmental Justice Advisory Council. EPA is committed to addressing environmental justice concerns, and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure: (1) That no segment of the population—regardless of race, color, national origin, or income—bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities; and (2) that all people live in clean and sustainable communities. The EPA believes that today's direct final rule, which conforms the language in 40 CFR 258.10 to the Ford Act, has no adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. These standards would not affect the location of any MSWLF other than to prohibit the location of MSWLFs within six miles of a public airport as defined in the direct final rule.

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" because it is not a significant regulatory action under Executive Order 12866.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to the U.S. Senate, the U.S. House of Representatives, and to the Comptroller General of the United States. Additionally, under Section 804, a major rule cannot take effect until 60 days after it is published in the **Federal Register**.

Accordingly, EPA submitted a report containing today's direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. Although this rule is not a "major rule" as defined by 5 U.S.C. 804(2), this rule will be effective October 9, 2002, unless EPA publishes a withdrawal in the **Federal Register**.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 31, 2002.

Christine Todd Whitman,

Administrator.

For the reasons discussed in the preamble, title 40 Chapter 1 of the Code of Federal Regulations, is amended as follows:

PART 258—[AMENDED]

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c);

2. Section 258.10 is amended by adding paragraph (e) to read as follows:

§ 258.10 Airport safety.

* * * * *

(e) A new MSWLF unit that receives putrescible waste shall not be constructed or established after April 5, 2000 within six (6) miles of a public airport that has received federal grant funds under 49 U.S.C. 47101 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for sixty (60) passengers or less. The Federal Aviation Administration has issued guidance which includes criteria for determining when an airport is covered and has identified those airports meeting the criteria. Anyone considering construction or establishment of a new MSWLF within six (6) miles of a public airport should contact the Federal Aviation Administration. This paragraph (e) does not apply to a new MSWLF unit if:

(1) The state aviation agency of the state in which the airport is located requests that the Administrator of the Federal Aviation Administration exempt the landfill from the application of this paragraph (e), and the Federal Aviation Administration Administrator determines that such exemption would have no adverse impact on aviation safety;

(2) The new MSWLF unit is to be constructed or established in the State of Alaska; or

(3) The new MSWLF unit is a lateral expansion of an existing MSWLF unit constructed or established as of April 5, 2000.

[FR Doc. 02–16994 Filed 7–10–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 070802A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the West Yakutat District was established as 780 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR

956, January 8, 2002, and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the West Yakutat District will be reached before the end of the fishing season or year. Therefore, the Regional Administrator is establishing a directed fishing allowance of 750 mt, and is setting aside the remaining 30 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17460 Filed 7–8–02; 3:48 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 070802B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the Central Regulatory Area was established as 8,220 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the Central Regulatory Area will be reached before the end of the fishing season or year. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,220 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17461 Filed 7–8–02; 3:48 pm]

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Proposed Rules

Federal Register
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Thursday, July 11, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the

by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–023–3, Regulatory Analysis and Development,

(APHIS), U.S. Department of Agriculture (USDA or the Department), will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other

described above to matthew.a.rhoads@aphis.usda.gov. Please write "Public Hearing Registration" in the subject line of your e-mail. Advance registration for either hearing must be received by 3 p.m. on Friday, August 16, 2002.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER**

importation can be authorized without risk, and the criteria of paragraph (f) of this section are met with regard to those certain insects, provided that all other injurious insects that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator.

Until recently, clementines from

clementines were traced back to a shipment of clementines that were imported from Spain into Newark, NJ, on a different sea vessel than the shipment that produced the North Carolina and Maryland interceptions.

After the third Medfly interception, on December 5, 2001, APHIS notified the Government of Spain that it was suspending the importation of clementines based on interceptions of live Medfly larvae in Spanish

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Proposed Rules

Federal Register
Vol. 67, No. 133
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 02–023–3]

RIN 0579–AB40

Importation of Clementines From Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of clementines from Spain to resume if the clementines are cold treated en route to the United States, and provided that other pre-treatment and post-treatment requirements are met. These requirements would include provisions that the clementines be grown in accordance with a Mediterranean fruit fly management program established by the Government of Spain, that the clementines be subject to an inspection regimen that includes fruit cutting prior to, and after, cold treatment, and that the clementines meet other conditions designed to protect against the introduction of the Mediterranean fruit fly into the United States. We are proposing this action based on our finding that the restrictions described in this proposed rule will reduce the risk of introduction of Mediterranean fruit fly and other plant pests associated with the importation of clementines from Spain.

DATES: We will consider all comments that we receive on or before September 9, 2002. We will also consider comments made at public hearings to be held in Oxnard, CA, on August 20, 2002; and in Lake Alfred, FL, on August 22, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–023–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–023–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–023–3" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

Public hearings regarding this rule will be held at the following locations:

1. Oxnard, CA: Radisson Hotel, 600 Esplanade Drive, Oxnard, CA.

2. Lake Alfred, FL: University of Florida Experiment Station, Ben Hill Griffin Hall, 700 Experiment Station Road, Lake Alfred, FL.

FOR FURTHER INFORMATION CONTACT: Mr. I. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Public Hearings

We are advising the public that we are hosting two public hearings on this proposed rule and on the documents that support it. The first public hearing will be held in Oxnard, CA, on Tuesday, August 20, 2002. The second public hearing will be held in Lake Alfred, FL, on Thursday, August 22, 2002.

A representative of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA or the Department), will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

The public hearings will begin at 9 a.m. and are scheduled to end at 4:30 p.m., local time. The presiding officer may limit the time for each presentation so that all interested persons appearing at each hearing have an opportunity to participate. Each hearing may be terminated at any time if all persons desiring to speak have been heard.

Registration for the hearings may be accomplished by registering with the presiding officer between 8:30 a.m. and 9 a.m. on the day of the hearing. Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. Those who wish to form a panel to present their views will be asked to provide the name of each member of the panel and the organizations the panel members represent.

Persons or panels wishing to speak at one or both of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734–8138. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, (2) the registrant's name and organization, and, if registering for a panel, (3) the name of each member of the panel and the organization each panel member represents. Persons wishing to register by e-mail must send an e-mail with the same information described above to matthew.a.rhoads@aphis.usda.gov. Please write "Public Hearing Registration" in the subject line of your e-mail. Advance registration for either hearing must be received by 3 p.m. on Friday, August 16, 2002.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The regulations in "Subpart Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations do not contain any specific administrative instructions regarding the importation of clementines (*Citrus reticulata*) from Spain. However, until recently, the Animal and Plant Health Inspection Service (APHIS) authorized the importation of clementines from Spain under the regulations in § 319.56–2(e)(2). The regulations in § 319.56–2(e) provide that any fruit or vegetable, except those restricted to certain countries and districts by special quarantine and other regulations or orders now in force and by any restrictive order as may hereafter be promulgated, may be imported from any country under a permit issued in accordance with this subpart and upon compliance with the regulations in this subpart, if the U.S. Department of Agriculture, after reviewing evidence presented to it, is satisfied that the fruit or vegetable either:

(1) Is not attacked in the country of origin by injurious insects, including fruit and melon flies (Tephritidae);

(2) Has been treated or is to be treated for all injurious insects that attack it in the country of origin, in accordance with conditions and procedures that may be prescribed by the Administrator;

(3) Is imported from a definite area or district in the country of origin that is free from all injurious insects that attack the fruit or vegetable, its importation can be authorized without risk, and its importation is in compliance with the criteria of paragraph (f) of this section; or

(4) Is imported from a definite area or district of the country of origin that is free from certain injurious insects that attack the fruit or vegetable, its importation can be authorized without risk, and the criteria of paragraph (f) of this section are met with regard to those certain insects, provided that all other injurious insects that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator.

Until recently, clementines from Spain have been imported under permit, provided that they were cold treated for the Mediterranean fruit fly (*Ceratitis capitata*) (Medfly) in accordance with the treatment listed in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1. The treatment listed in the PPQ Treatment Manual for clementines from Spain requires fruit to be held at temperatures from 32 °F to 36 °F according to the following schedule:

Temperature	Exposure period (days)
32 °F or below	10
33 °F or below	11
34 °F or below	12
35 °F or below	14
36 °F or below	16

Clementines imported from Spain were not required to meet any additional treatment requirements in order to be imported into the United States, but were subject to inspection at the port of entry.

On November 20 and 27, 2001, live Medfly larvae were intercepted in clementines from Spain that were purchased by consumers from food stores in North Carolina and Maryland. On November 30, 2001, APHIS notified the Government of Spain that it was suspending the importation of clementines pending an investigation into the cause of the infestations. In the course of its investigation, APHIS traced the infested fruit from both locations to a single sea vessel importing clementines from Spain into Philadelphia, PA.

Based on the findings of the investigation, on December 4, 2001, APHIS notified the Government of Spain that imports of clementines could resume on December 5, 2001, as we believed that the infested fruit likely were the product of improper application of cold treatment on the vessel in which they were imported. However, later that same day, APHIS inspectors intercepted live Medfly larvae in Spanish clementines during a market inspection in Louisiana. The clementines were traced back to a shipment of clementines that were imported from Spain into Newark, NJ, on a different sea vessel than the shipment that produced the North Carolina and Maryland interceptions.

After the third Medfly interception, on December 5, 2001, APHIS notified the Government of Spain that it was suspending the importation of clementines based on interceptions of live Medfly larvae in Spanish clementines that were transported to the United States in two separate sea vessels. Beginning December 5, 2001, all shipments of clementines from Spain were refused entry into the United States. APHIS also announced restrictions on the marketing of Spanish clementines that had already been released into domestic commerce. Under those new restrictions, Spanish clementines could only be sold in northeastern U.S. States where Medfly host material was not prevalent at that time of year. Clementines distributed in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, Nevada, New Mexico, Oklahoma, Oregon, Puerto Rico, South Carolina, Tennessee, Texas, and Washington were required to be removed from retail shelves, and had to be destroyed or shipped to northeastern States.

After we adopted those restrictions on clementines from Spain, APHIS was notified by the California Department of Food and Agriculture (CDFA) that CDFA inspectors had intercepted live Medfly larvae in imported Spanish clementines on five occasions in three California cities between December 3 and December 7. On December 11, 2001, after the restrictions on Spanish clementines had been put in place, APHIS inspectors intercepted additional live Medfly larvae in imported Spanish clementines that were being held at Port Elizabeth, NJ.

The number of Medfly interceptions in Spanish clementines in such a short period of time in November and December 2001 was very uncharacteristic given the history of clementine imports from Spain. The U.S. Department of Agriculture (USDA) has allowed the importation of clementines from Spain since 1985. Prior to November and December 2001, there had never been multiple confirmed finds of Medflies in fruit of any kind that had been legally imported into the mainland United States from any source. Additional problems pertaining to the importation of clementines have been reported in the past (*i.e.*, consumer submissions to APHIS of (1) clementines with dead

Medfly larvae that were reported to be alive when they were found and (2) fruits that may not have been subject to treatment), but even those unconfirmed events consisted of only one or two fruits per year.

In order to get a better sense of what factors contributed to the survival of Medfly larvae in clementines that were imported from Spain, APHIS initiated a

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the ddissemination of a plant pest or noxious weed within the United States.

The Secretary has determined that it

Internet site at: http://www.aphis.usda.gov/oa/clementine/index.html. Copies are also available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

APHIS's risk management analysis evaluates the potential of remedial measures employed in this proposed rule to reduce the risk that Medflies could be imported into the United States from Spain. As part of our

management is shown in appendix 1 of the risk management analysis.

As stated above, the risk management analysis considers the risk that Medflies could be introduced into the United States via Spanish clementines. We only consider Medflies in this analysis because we have conducted a review of the pests known to infest clementines in Spain, and have found that all other pests except Medflies are readily

Proposed Requirements

As discussed in detail below, the remedial measures contained in this proposed rule are intended: (1) To prevent high Medfly infestation levels of the sort that occurred in 2001 through the use of fruit fly trapping, bait treatment procedures, and record keeping requirements, (2) to permit the detection of high levels of Medfly

to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services could be continued. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Government of Spain or its designated representative or held on account until needed.

These requirements regarding the

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Medfly larvae that were reported to be alive when they were found and (2) fruits that may not have been subject to treatment), but even those unconfirmed events consisted of only one or two fruits per year.

In order to get a better sense of what factors contributed to the survival of Medfly larvae in clementines that were imported from Spain, APHIS initiated a review of the Spanish clementine import program and the cold treatment protocol in general. As part of this review, an APHIS team visited Spain in mid-December 2001. The review team noted that there may have been an overwhelming presence of Medfly larvae in Spanish clementines during the early part of the 2001–2002 production season. The review team concluded that the following conditions in clementine production areas may have contributed to the overwhelming larval presence:

- Unseasonably warm weather conditions;
- Above average fruit fly populations;
- High host susceptibility of the early season clementine varieties;
- Low trap densities and inadequate bait spray applications; and
- Lack of fruit cutting activities to adequately monitor larval populations.

APHIS believes, based on the available evidence, that there are two possible explanations for the survival of Medfly larvae in imported Spanish clementines during the 2001–2002 shipping season. One is that despite the assumed mortality rate of the cold treatment (99.9968 percent), any small or partial failure in the application of the cold treatment could have allowed Medflies to survive in clementines imported from Spain due to the above average levels of Medflies in the growing areas in Spain. Alternately, it is possible that the level of Medfly infestation in imported clementines simply overwhelmed the capabilities of the cold treatment process, even if the treatment was properly applied.

In order to address this problem, since December 5, 2001, APHIS has prohibited the importation of clementines from Spain while it considers alternate approaches to mitigating the Medfly risk posed by clementines from Spain.

Determination by the Secretary

In this document, APHIS is proposing to allow the importation of clementines from Spain to resume, but only under additional conditions that we believe will prevent the introduction of Medfly into the United States in clementines imported from Spain.

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the ddissemination of a plant pest or noxious weed within the United States.

The Secretary has determined that it is not necessary to prohibit the importation of clementines from Spain in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the finding that the application of the remedial measures contained in this proposed rule will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The factors considered in arriving at this determination include: (1) The conclusions of a risk management analysis, "Risk mitigation for Mediterranean fruit flies with special emphasis on risk reduction for commercial imports of clementines (several varieties of Citrus reticulata) from Spain" (Revised July 5, 2002) (referred to elsewhere in this document as "risk management analysis"), (2) the findings of a review of the existing cold treatment for clementines from Spain, "Evaluation of cold storage treatment against Mediterranean Fruit Fly, *Ceratitis capitata* (Wiedemann) (Diptera:Tephritidae)" (May 2, 2002) (referred to elsewhere in this document as "cold treatment evaluation"), and (3) the findings of USDA technical experts.

Risk Management Analysis

On April 16, 2002, we published a notice in the **Federal Register** (67 FR 18578–18579, Docket No. 02–023–1) in which we announced the availability of the risk management analysis and appendices. On May 24, 2002, we published another notice in the **Federal Register** (67 FR 36560–36561, Docket No. 02–023–2) in which we extended the comment period on the risk management analysis and appendices until June 14, 2002. Based on comments we received in response to those notices, we have made changes to the risk management analysis. Those changes are described in section X of the risk management analysis. APHIS will continue to accept comments on the risk management analysis and the other documents supporting this proposed rule throughout the comment period for the proposed rule. The revised risk management analysis and appendices can be viewed on the APHIS Internet site at: http://www.aphis.usda.gov/oa/clementine/index.html. Copies are also available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

APHIS's risk management analysis evaluates the potential of remedial measures employed in this proposed rule to reduce the risk that Medflies could be imported into the United States from Spain. As part of our analysis of the risks posed by the importation of clementines from Spain, we identify critical control points in the safeguarding system which assure that risks are minimized and are subject to verification and monitoring by regulatory personnel. Identification of these critical control points permits the risk assessor to focus on those components of a system that are key to the overall effectiveness of the system.

This approach is similar to a type of risk management approach used by the Food and Drug Administration (FDA) and USDA's Food Safety and Inspection Service, called a Hazard Analysis and Critical Control Point (HACCP) analysis. HACCP analyses have been found to provide an effective and rational means of assuring food safety from harvest to consumption. Preventing problems from occurring is the paramount goal underlying any HACCP system, and seven basic principles are employed in the development of HACCP plans that meet the stated goal. These principles include hazard analysis, critical control point identification, establishing critical limits, monitoring procedures, corrective actions, verification procedures, and record keeping and documentation. Using a HACCP approach, if a deviation occurs indicating that control has been lost, the deviation is detected and appropriate steps are taken to reestablish control in a timely manner to assure that potentially hazardous products do not reach the consumer.

For the purposes of our risk management analysis, APHIS has applied the HACCP approach to the analysis of phytosanitary measures; i.e., we consider the critical control points employed by HACCP approaches as being equivalent to critical control points employed in the area of phytosanitary safety. We emphasize that our application of the HACCP approach does not represent a departure from existing guidelines for the phytosanitary risk analysis, but rather, is a refinement that reflects more emphasis on certain risk mitigating elements of a set of phytosanitary measures (e.g., the critical control points). A more detailed description of how HACCP principles can be applied to phytosanitary risk management is shown in appendix 1 of the risk management analysis.

As stated above, the risk management analysis considers the risk that Medflies could be introduced into the United States via Spanish clementines. We only consider Medflies in this analysis because we have conducted a review of the pests known to infest clementines in Spain, and have found that all other pests except Medflies are readily detectable by visual inspection, and therefore do not require additional risk mitigation. This pest list review is documented in appendix 4 of the risk management analysis. The information provided in the risk management analysis and its appendices meets applicable risk analysis standards adopted by the International Plant Protection Convention.

The risk management analysis, among other things, notes that two elements (critical control points) are fundamental to the successful reduction of risks associated with the importation of clementines from Spain:

1. The limitation of the population of Medflies in clementine production areas in Spain such that the proportion of infested fruit is no greater than 1.5 percent.
2. The application of cold treatment such that a Probit 9 level of quarantine security is approximated.[1]

The risk management analysis concludes that the risk of Medfly introduction via Spanish clementines would be significantly reduced if cold treatment is applied to fruit that have been subject to the proposed Medfly population reduction measures, rather than if fruit is simply subject to cold treatment alone. With this in mind, we have drafted a revised regulatory approach for the importation of clementines from Spain that would allow the underlying goals of both elements to be met if imports of clementines from Spain resume. The phytosanitary measures employed in the regulatory approach described in this document would also provide additional safeguards resulting in risk reductions that further diminish the potential effects of uncertainties and variability inherent in the commodity import system.

[1] A system that ensures at least 99.9968 percent mortality of target pests provides Probit 9 quarantine security, Probit 9 quarantine security allows for a survival rate of no more than 0.0032 percent of target pests. The risk management analysis does not assume that cold treatment alone provides a defined level of quarantine security (i.e., probit 9 quarantine security). Rather, the analysis considers other risk-mitigating measures as necessary to ensure that cold treatment has the potential to provide approximately a probit 9 level of quarantine security.

Proposed Requirements

As discussed in detail below, the remedial measures contained in this proposed rule are intended: (1) To prevent high Medfly infestation levels of the sort that occurred in 2001 through the use of fruit fly trapping, bait treatment procedures, and record keeping requirements, (2) to permit the detection of high levels of Medfly infestation through pre-shipment inspection procedures, and (3) to prevent the introduction of Medflies into the United States through modified cold treatment and post-shipment inspection procedures.

We are proposing to add a new § 319.56–2jj, "Administrative instructions; conditions governing the importation of clementines from Spain," to the regulations. Section 319.56–2jj would list the conditions under which the importation of clementines from Spain into the United States could resume. Those conditions are described in detail below.

Trust Fund Agreement

Paragraph (a) of proposed § 319.56–2jj specifies that clementines will only be allowed to be imported into the United States from Spain if the Government of Spain or its designated representative (*e.g.*, an association of exporters of Spanish clementines) enters into a trust fund agreement with APHIS before each clementine shipping season. The agreement would require the Government of Spain or its designated representative to pay in advance all costs that APHIS expects to incur through its involvement in those elements of the proposed Spanish clementine regulations that must take place in Spain. The requirements regarding activities in Spain can be found in paragraphs (b) through (g) of proposed § 319.56–2jj.

Costs that would have to be paid in advance include administrative expenses incurred in conducting the required services in Spain and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The regulations and trust fund agreement would require that the Government of Spain or its designated representative deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement would further require the Government of Spain or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services could be continued. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Government of Spain or its designated representative or held on account until needed.

These requirements regarding the trust fund agreement would be necessary to ensure that APHIS is able to cover all costs resulting from its participation in the approval of clementines for export to the United States.

Mediterranean Fruit Fly Management Program

Paragraph (b) of proposed § 319.56–2jj specifies that persons who produce clementines in Spain for export to the United States must be registered with the Government of Spain and that they enter into the Government of Spain's Mediterranean fruit fly management program.

The Government of Spain's Mediterranean fruit fly management program is a new program that was designed to reduce the presence of Medflies in areas that produce clementines for export to the United States to levels that are conducive to successful treatment of the fruit (i.e., a target infestation rate of 1.5 percent or less). Under paragraph (c) of proposed § 319.56–2jj, the Government of Spain's Mediterranean fruit fly management program would be required to contain certain fruit fly trapping and recordkeeping requirements, and program operations in general would have to be approved by APHIS as adequate to ensure that the areas where clementines are produced for export to the United States indeed do have low infestation rates. The proposed regulations would also require that clementine producers allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Mediterranean fruit fly management program.

Specifically, the regulations and the Mediterranean fruit fly management program would require that, in areas where clementines are produced for export to the United States, fruit fly traps be placed in preferred Medfly host plants at least 6 weeks prior to the harvest of the clementines. This requirement would ensure that growers in Spain are able to determine the extent of the presence of Medflies in clementine production areas, so that appropriate control methods could be applied prior to harvest of fruit.

In addition, bait treatments using malathion, spinosad, or another pesticide approved by APHIS would have to be applied in the production areas at a rate appropriate to maintain the level of infestation of clementines by Medflies at 1.5 percent or less. This proposed requirement would help ensure that the majority (98.5 percent) of fruit intended for exportation to the United States is not infested with

that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The lot number would have to end with the letters "US," and the labeling would have to be large enough to clearly display the required information and be located on the side of cartons to facilitate inspection by APHIS.

shipments of fruit from the same orchard during the same shipping season, that orchard would be removed from the export program for the remainder of that shipping season.

Rates of Pre-Treatment Sampling

For the first clementine shipping season that occurs under the regulations described in this proposed rule, inspectors would cut 200 randomly

If the sample size for a given season is—	. . . and the rejection rate during that season is—	. . . then the sample size for the next season is—
	>5 percent	200

[1] According to hypergeometric sampling rates, this sample size provides a 95 percent chance of finding one or more infested fruit when the infestation rate (percent of fruit infested) in the shipment sampled is 3 percent.
[2] According to hypergeometric sampling rates, this sample size provides a 90 percent chance of finding one or or infested fruit when the infestation rate (percent of fruit infested) in the shipment sampled is 3 percent.

In addition, bait treatments using malathion, spinosad, or another pesticide approved by APHIS would have to be applied in the production areas at a rate appropriate to maintain the level of infestation of clementines by Medflies at 1.5 percent or less. This proposed requirement would help ensure that the majority (98.5 percent) of fruit intended for exportation to the United States is not infested with Medfly larvae prior to cold treatment and that the Spanish Medfly management program reduces populations of Medflies to levels that allow for effective cold treatment of fruits exported to the United States.

In addition, the proposed regulations would require that the Government of Spain or its designated representative keep records that document all fruit fly trapping and control activities that are conducted under the Government of Spain's Medfly management program. All trapping and control records kept by the Government of Spain or its designated representative would have to be made available to APHIS upon request. APHIS would require access to these records in order to verify that clementine production areas in Spain meet the requirements of the Government of Spain's Medfly management program and APHIS regulations.

Phytosanitary Certificates

Under paragraph (d) of proposed § 319.56–2jj, clementines from Spain would have to be accompanied by a phytosanitary certificate that states that the clementines meet the conditions of the Government of Spain's Mediterranean fruit fly management program and applicable APHIS regulations. This requirement would provide APHIS with the Government of Spain's assurance that imported clementines have been grown under conditions designed to reduce the level of infestation of the fruit by Medflies.

Labeling

Paragraph (e) of proposed § 319.56–2jj specifies that cartons in which clementines are packed would be required to be labeled with a lot number that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The lot number would have to end with the letters "US," and the labeling would have to be large enough to clearly display the required information and be located on the side of cartons to facilitate inspection by APHIS.

Pre-Treatment Sampling

Clementines that are produced under the Government of Spain's Medfly management program should have low levels (i.e., 1.5 percent or less) of infestation with Medflies prior to cold treatment. In order to ensure that the efficacy of the cold treatment is not undermined by high levels of infestation, paragraph (f) of proposed § 319.56–2jj would require that, prior to beginning cold treatment of a shipment of clementines, APHIS inspectors will cut and inspect a designated number of fruit that are randomly selected from throughout the shipment. A shipment could include as little as one shipping container of clementines (approximately 166,000 fruit) or could be a bulk shipment of approximately 972,000 clementines (a maximum of 120 pallets, with each pallet containing approximately 8,100 fruit). A shipment is basically a group of fruit from one packinghouse that is presented for inspection by APHIS. A shipment from a single packinghouse could include fruit from many different orchards.

If inspectors find a single live Medfly in any stage of development during an inspection, the entire shipment of clementines would be rejected. While a single Medfly interception in a shipment of Spanish clementines may not be proof that the shipment is highly infested, such a detection provides a statistical basis by which to infer that fruit could be 1.5 percent infested or more. Conversely, if no Medflies are intercepted during an inspection of a shipment of fruit, there is a statistical basis upon which to assume that the fruit sampled is less than 1.5 percent infested.

Further, if a live Medfly in any stage of development is found in any two shipments of fruit from the same orchard during the same shipping season, that orchard would be removed from the export program for the remainder of that shipping season.

Rates of Pre-Treatment Sampling

For the first clementine shipping season that occurs under the regulations described in this proposed rule, inspectors would cut 200 randomly selected fruit per shipment. We chose 200 as a sample size because, according to hypergeometric sampling rates, this sample size provides a 95 percent chance of finding one or more infested fruit when the infestation rate (percent of fruit infested) in the shipment sampled is 1.5 percent, provided that the size of the shipment sampled falls within the range described earlier in this document (between one container and 120 pallets). Since the regulations would require shipments in which Medflies are detected to be rejected, we are confident that only clementines with very low levels of infestation with Medflies would proceed to the next step in the import process.

The proposed regulations also contain provisions that would allow the sample size for pre-treatment fruit cutting to be adjusted for subsequent shipping seasons based on the number of rejections of shipments that occur during the previous shipping season. For the purposes of this proposed rule, a shipping season would include the period beginning approximately in mid-September and ending approximately in late February of the next calendar year. This is to say that if our experience with fruit cutting suggests that the majority of Spanish clementines presented for exportation to the United States are not infested with Medflies, we would decrease the number of fruit that need to be cut and inspected. Conversely, the sample size could be returned to higher levels if the number of rejections of shipments rose above a specified percentage of the shipments. The sample size adjustments and their triggers are shown in the following table:

If the sample size for a given season is—	. . . and the rejection rate during that season is—	. . . then the sample size for the next season is—
200	≤5 percent	[1] 100
	>5 percent	200
100	≤2 percent	[2] 76
	>2 percent but ≤5 percent	100
	>5 percent	200
76	≤2 percent	76
	>2 percent but ≤5 percent	100
	>5 percent	200

If the sample size for a given season is—	. . . and the rejection rate during that season is—	. . . then the sample size for the next season is—
	>5 percent	200

[1] According to hypergeometric sampling rates, this sample size provides a 95 percent chance of finding one or more infested fruit when the infestation rate (percent of fruit infested) in the shipment sampled is 3 percent.

[2] According to hypergeometric sampling rates, this sample size provides a 90 percent chance of finding one or or infested fruit when the infestation rate (percent of fruit infested) in the shipment sampled is 3 percent.

These potential changes in the sample size for shipments of clementines that have not yet been cold treated would provide for responsive changes in inspection protocols based on the success Spanish growers and exporters have in maintaining low Medfly infestation levels in clementines, as indicated by Medfly interceptions during fruit cutting. However, if APHIS determines that fruit presented for inspection and treatment appear to be highly infested during a shipping season in which 100 or 76 fruit are cut per shipment, APHIS would reserve the right to increase the required sample size during the shipping season. At no time would more than 200 fruit be required to be cut, but the sample size could be raised to that level at APHIS's discretion, depending on the number of Medfly interceptions.

The sample rates described above are each designed to ensure that, prior to cold treatment, APHIS can ensure that the level of Medfly infestation in clementines is sufficiently low to provide for effective treatment of the fruits.

Cold Treatment

Cold treatment of imported fruit is often conducted while the vessel carrying the fruit is en route to the United States, as cold treatment requires several days to cause mortality of target pests. Clementines from Spain are typically held in a refrigerated hold of cargo ship or in a refrigerated shipping container, and records are kept during transit to verify that the treatment for Medfly is successfully completed.

As stated earlier in this document, after the interceptions of Medflies in clementines from Spain in December 2001, APHIS undertook a review of activities associated with the production and treatment of Spanish clementines. As part of this review, APHIS is sponsoring additional research on the application of cold treatments for imported fruits and vegetables. In addition, APHIS asked a panel composed of APHIS regulatory personnel and USDA technical experts on fruit flies to conduct a review of available scientific literature related to the efficacy of the cold treatment for Medfly described earlier in this document, with the intention of using the panel's findings as guidelines on the future application of cold treatment. The panel found that the existing cold treatment schedule, while providing a very high level of Medfly mortality, does not provide Probit 9 level quarantine security in all cases. The panel also found that the high numbers of larvae present during the early part of the 2001–2002 growing season overwhelmed the ability of the cold treatment to provide quarantine security, and concluded that the present cold treatment schedule is insufficient for controlling high larval populations of Medflies and may result in Medfly survivors. The panel's findings are corroborated by an additional quantitative USDA analysis, "*Quantitative Analysis of Available Data on the Efficacy of Cold Treatment Against Mediterranean Fruit Fly Larvae*" (July 5, 2002).

Based on its review of the available scientific literature and of all factors involved in quarantine cold treatments against Medfly eggs and larvae, the panel recommended increasing the length of the required cold treatment at each temperature by 2 days. The cold treatment evaluation and the quantitative analysis referred to above can be viewed on the APHIS Internet site at: *http://www.aphis.usda.gov/oa/clementine/index.html*. Copies are also available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the panel's recommendation, we are proposing to amend the PPQ Treatment Manual by revising the Medfly treatment listed for clementines from Spain.[2]

The revised treatment schedule would require clementines from Spain to be held at temperatures from 32 °F to 36 °F according to the following schedule:

Temperature	Exposure period (days)
32 °F or below	12
33 °F or below	13
34 °F or below	14
35 °F or below	16
36 °F or below	18

There should be no effect on fruit quality due to the increased holding times, based on anecdotal information from New Zealand's Ministry of Agriculture and Forestry.

In conjunction with this revised treatment protocol, the proposed rule would require that, upon arrival of clementines at a port of entry into the United States, APHIS inspectors will examine the cold treatment data for each shipment[3] to ensure that the cold treatment was successfully completed. If the cold treatment has not been successfully completed, the shipment would be held until appropriate remedial actions have been implemented.

Appropriate remedial actions would depend on the circumstances of the treatment failure, but could include retreatment, extension of treatment, destruction, disposal, or reexportation of fruit. For instance, if the treatment records for a vessel reveal that a single cargo hold did not maintain the appropriate cold treatment temperature during the first 2 days of a 13-day treatment, inspectors could require that the fruit in that hold be held at the appropriate temperature for an additional 2 days prior to allowing the fruit to be removed from the vessel and inspected. In the event that temperature is not maintained during the middle of the treatment period, an inspector could allow the fruit to be containerized and retreated according to the appropriate treatment schedule prior to release into domestic commerce. Alternately, the inspector could allow the shipment to be reexported to a country that does not require treatment of fruits for Medflies, or the fruit could be destroyed or disposed of according to certain conditions.

[2] The current cold treatment used for clementines from Spain is also applicable to a number of other commodities imported from several different countries. We are only proposing to amend the cold treatment for clementines from Spain in this document, and we intend to make changes to the treatments for the other commodities in a separate rulemaking.

[3] Cold treatment records and data must be made available to APHIS under § 319.56–2d(b)(3)(i).

Port of Entry Sampling

Under paragraph (h) of proposed § 319.56–2jj, clementines imported from Spain would be subject to inspection by an inspector at the port of entry into the United States. This includes inspection for hitchhiking pests that could be present in shipments of clementines, in addition to fruit cutting inspections for Medflies.

fruit cutting reveals infestation of clementines with Medflies, and APHIS determines that the infestation is limited to fruit imported in a specific cold treatment hold or container in the vessel, APHIS could require that the infested fruit be reexported or destroyed. If APHIS is unable to link the infestation to a particular treatment hold or container, an inspector could refuse entry of the clementines and require

12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603.

importers, wholesalers, and retail consumers, respectively, and approximately $50,000 in gains to U.S. taxpayers and fruit and vegetable producers in the United States arising from improved Medfly management.

Clementine Market

Clementines are not grown domestically in significant quantities; therefore, U.S. consumption during the last 15 years (Spell 2002) has depended

did not estimate a substitution rate. We estimated the rate of substitution using a linear relationship between tangerine prices received by U.S. producers, a constant, wholesale tangerine consumption, and U.S. clementine imports. Although the coefficient estimate on clementine imports from Spain was negative, indicating clementines and tangerines may be substitutes, the coefficient estimate was

U.S. tangerine producers in the current analysis. However, if U.S. demand for clementines continues to grow under the proposed rule and clementines substitute for domestically produced tangerines, then the proposed rule would lead to downward pressure on tangerine prices and profit losses for U.S. tangerine producers.

Costs Associated With the Proposed Rule

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Port of Entry Sampling

Under paragraph (h) of proposed § 319.56–2jj, clementines imported from Spain would be subject to inspection by an inspector at the port of entry into the United States. This includes inspection for hitchhiking pests that could be present in shipments of clementines, in addition to fruit cutting inspections for Medflies.

In order to ensure that the proposed cold treatment, in combination with other proposed requirements, is working correctly, APHIS inspectors would cut and inspect randomly selected fruit at a sampling rate determined by the Administrator. The number of fruit to be cut could be adjusted based on the historical success of the treatment.

For the first clementine shipping season that occurs under the regulations described in this proposed rule, APHIS would cut 1,500 randomly selected fruit per shipload or 150 randomly selected fruit per shipping container.[4] We chose these particular sample sizes because, according to hypergeometric sampling rates, they provide a 95 percent chance of finding one or more infested fruit when (1) the infestation rate (percent of fruit infested) in the shipload sampled is 0.2 percent, or (2) the infestation rate (percent of fruit infested) in the shipping container sampled is 2.0 percent.

For future shipping seasons, APHIS may reduce the amount of fruit to be cut at the port of entry as our confidence in the effectiveness of the cold treatment increases. However, if inspectors detect a single live Medfly in any stage of development in a shipment of Spanish clementines, the shipment of clementines would be held until an investigation is completed and appropriate remedial actions have been implemented. Further, regardless of the level of inspection applied at that time, any further inspections would be subject to increased rates of inspection not to exceed 1,500 randomly selected fruit per shipload or 150 randomly selected fruit per shipping container, and inspections would remain at that level until APHIS is able to determine the cause of infestation and apply appropriate remedial measures.

Appropriate remedial actions would depend on the circumstances of the infestation, but could include retreatment, destruction, disposal, or reexportation of fruit. For instance, if fruit cutting reveals infestation of clementines with Medflies, and APHIS determines that the infestation is limited to fruit imported in a specific cold treatment hold or container in the vessel, APHIS could require that the infested fruit be reexported or destroyed. If APHIS is unable to link the infestation to a particular treatment hold or container, an inspector could refuse entry of the clementines and require them to be reexported or destroyed. Furthermore, if APHIS determines at any time that the required cold treatment or other safeguards contained in the proposed regulations are not protecting against the introduction of Medflies into the United States, APHIS may suspend the importation of clementines from Spain and conduct an investigation into the cause of the deficiency.

Definitions

Paragraph (i) of proposed § 319.56–2jj would clarify that, as stated earlier in this document, for the purposes of the proposed regulations, a shipping season would be considered to include the period beginning approximately in mid-September and ending approximately in late February of the next calendar year.

Limited Distribution

We are considering instituting a limited distribution plan that would delay the entry of Spanish clementines into citrus-producing areas in the United States for up to 1 full shipping season. This would mean that clementines could not be distributed in or imported into California, Arizona, Texas, Florida, Louisiana, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam, and American Samoa as an additional precaution against the introduction of Medflies into those areas, whose citrus industry could be severely harmed if Medflies were introduced into commercial production areas. This delay would provide an opportunity for the efficacy of the proposed regulations to be demonstrated under actual production and distribution conditions for 1 full shipping season before Spanish clementine imports would be allowed to enter citrus-producing areas of the United States. We invite the public to submit information demonstrating whether or not this confidence-building measure is warranted.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. See the full analysis for the complete list of references used in this document. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at *http://www.aphis.usda.gov/oa/clementine/index.html*.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

Summary of Economic Analysis

Our analysis estimates expected benefits and costs associated with lifting the ban on the importation of Spanish clementines by the beginning of the next shipping season (mid-September 2002). Expected benefits and costs are estimated relative to the current ban and relative to the previous import program. Benefits and costs are estimated relative to the ban, because the ban is currently in effect. Benefits and costs are estimated relative to the previous import program, because this provides a useful benchmark for measuring relative benefits and costs. Potential benefits associated with lifting the ban include increased profits for importers and wholesalers and increased clementine supplies for retail consumers in the United States. Potential costs include eradication and other expenses that might be borne by taxpayers and fruit and vegetable producers in the United States in the event live Medflies are introduced.

Under the most likely scenario examined in the analysis, expected welfare gains relative to the current ban are approximately $210 million for marketing season 2002, which includes $120, $60, and $30 million in estimated welfare gains for importers, wholesalers, and retail consumers, respectively, with practically no increase in expected costs to U.S. taxpayers and fruit and vegetable producers. In addition, under the most likely scenario, expected welfare gains relative to the previous import program are over $26 million for marketing season 2002. This includes $15, $8, and $4 million in relative gains for importers, wholesalers, and retail consumers, respectively, and approximately $50,000 in gains to U.S. taxpayers and fruit and vegetable producers in the United States arising from improved Medfly management.

[4] A shipload could contain approximately 2,509 metric tons of clementines—equivalent to approximately 22.6 million fruit at a rate of 9,000 fruit per metric ton. As stated earlier in this document, a shipping container could contain approximately 166,000 fruit.

Clementine Market

Clementines are not grown domestically in significant quantities; therefore, U.S. consumption during the last 15 years (Snell 2002) has depended on imports from Spain, which contributed 90 percent of total U.S. imports during 1996–2000 (FAS 2002). Between 1991 and 2000, Spain's annual production of clementines averaged slightly over 1.1 million metric tons. During 1991–2000, Spain exported most of its clementines to Germany, France, the United Kingdom, and the Netherlands; however, exports to the United States grew 45 percent per year during this period, even though clementine production in Spain grew only 2 percent per year (FAS 1996–2001, MAPA 1999). The phenomenal growth in exports to the United States has been due to increased demand, leading to high import prices in the United States relative to import prices in the rest of the world. During 1989–2000, prices offered by U.S. importers averaged 20 percent higher than prices offered by all other importing countries, providing incentives sufficient for exporters to ship an average annual 6 percent of total exports to the United States in 1999 and 2000.

Spain exports clementines to the United States during mid-September to late February. Morocco, Italy, and Israel also export clementines to the United States during this marketing period; however, during 1996–2000, only 2 and 0.1 percent of U.S. clementine imports were from Morocco and Italy, respectively, and during 1998–2000, only 0.4 percent of U.S. clementine imports were from Israel. This suggests that exporters in these countries have not established export market infrastructures sufficient to allow for massive increases in shipments to the United States in the short run. In addition, clementines from these countries are typically of lower quality as reflected in lower average prices paid by U.S. importers. As a result, it is assumed that exports from Morocco, Italy, and Israel will not be able to fill the void left by the ban on Spanish clementines in the short run.

It is unclear whether clementine imports and domestically produced tangerines (*Citrus reticulata*) may be substitutes. Pollack and Perez (2001) have suggested that the two types of citrus may be substitutes; however, they did not estimate a substitution rate. We estimated the rate of substitution using a linear relationship between tangerine prices received by U.S. producers, a constant, wholesale tangerine consumption, and U.S. clementine imports. Although the coefficient estimate on clementine imports from Spain was negative, indicating clementines and tangerines may be substitutes, the coefficient estimate was not statistically different from zero. As a result, it is not clear whether clementines and tangerines are substitutes. Because only 12 annual observations were available, we request information and data from the public relevant to the estimation of the rate of substitution between domestically produced tangerines and Spanish clementine imports. In addition, we request information and data from the public relevant to the estimation of the rate of substitution between other domestically produced citrus fruit and Spanish clementine imports. In particular, we are interested in weekly or monthly price and quantity data for the relevant markets (Spanish clementine and domestically produced tangerines and other citrus fruits) during the clementine marketing season, mid-September to late February.

In addition, there are differences between Spanish clementines and domestically produced tangerines, which may be important to U.S. consumers. In particular, clementine imports are seedless and are packaged in small wooden boxes; whereas domestically produced tangerines are generally not seedless and are marketed in bulk quantities. Tangerine wholesalers are apparently considering alternative marketing strategies based on the clementine model; however, it is not clear if or when wholesalers will adopt this marketing strategy (Pollack 2002). Moreover, consumption of domestically produced tangerines (233,147 metric tons) was almost three times higher than consumption of clementines (83,631 metric tons) in the United States in 2000. Finally, the proposed rule would permit the re-entry of Spanish clementines which, until the ban in the fall of 2001, have been imported into the United States for 15 years.

Because it is not clear if tangerines substitute for clementines in the aggregate, more domestically produced tangerines are consumed in the United States relative to clementines, and clementines from Spain have been imported historically the proposed rule would likely not have a significant impact on U.S. tangerine producers. As a result, we do not estimate impacts associated with the proposed rule on U.S. tangerine producers in the current analysis. However, if U.S. demand for clementines continues to grow under the proposed rule and clementines substitute for domestically produced tangerines, then the proposed rule would lead to downward pressure on tangerine prices and profit losses for U.S. tangerine producers.

Costs Associated With the Proposed Rule

Additional costs include direct cost increases for local and federal governments in Spain, exporters in Spain, and Spanish clementine producers associated with producing and exporting clementines to the United States. We assume that Spanish clementine export supply is perfectly inelastic with respect to U.S. import prices and, as a result, that marginal production and export costs associated with the proposed rule borne directly by Spanish parties are not passed on to U.S. importers, wholesalers, and retail consumers. The assumption of perfectly inelastic supply is appropriate for a short-run analysis such as this and does not substantially affect the results of the analysis. Cost increases also include potential reductions in clementine import levels due to rejections of clementine shipments in Spain and in the United States in the event APHIS inspectors detect live Medflies in fruit inspections. Because rejected shipments must be diverted to other markets, clementine import quantities may be reduced leading to reductions in the economic benefits received by U.S. importers, wholesalers, and consumers. Finally, cost increases also include potential costs associated with the introduction of live Medflies into the United States.

Note that initial export quantities are referred to as "designated" in the analysis. This is because not all of the clementines initially designated for export to the United States will be exported to the United States. Some fruit will be cut and discarded in Spain and in the United States, and some of the quantities inspected (inspectional units) might be rejected and therefore not allowed to be exported to the United States. Increases in clementine production costs associated with the mandatory Medfly management program in Spain include purchases of additional traps for producers, purchases of baits for the traps, monitoring and recordkeeping costs, additional bait spray costs, additional cold treatment costs, and trust fund expenses. These additional costs will likely be borne by the Government of Spain, local governments, and

exporters. It is assumed that production decisions and designated export quantities will not be affected by these additional costs.

Total trap and bait expenses for Spanish growers are estimated to be very small (less than $1,000) for the first year, or 0.0013 percent of the average value of Spanish clementine exports to the United States for 1999 and 2000 ($78.69 million, FAS 2002), the majority

wholesalers and lost consumer benefits in the United States. Fruit will be cut in Spain at a rate of 200 clementines per inspectional unit, which might range in size from one 40-foot container (166,050 clementines) to 5.85 forty-foot container equivalents (972,000 clementines). Losses will include fruit that is cut and discarded, a relatively small cost that declines with inspectional unit size. Losses may also include rejections of

previous import program amounted to nearly $50,000 (0.06 percent of average export value for 1999 and 2000).

Calculation of Benefits and Costs

Expected benefits and costs associated with the proposed rule vary with the amount of clementines imported into the United States and the proportion of clementines infested with Medflies in Spain (infestation rate). Because prices

examine a maximum quantity for designated exports based on the average annual rate of growth of imports during 1989–2001, at approximately 39 percent.

Benefits to importers, wholesalers, and retail consumers associated with the proposed rule are estimated using areas under demand curves bounded by prices paid, assuming wholesalers purchase all clementines purchased by

no increase in expected costs to U.S. taxpayers and fruit and vegetable producers.

Estimated net welfare effects relative to the previous import program are approximately $26 million under the most likely designated export quantity scenario. In this case, importers, wholesalers, and retail consumers are expected to be better off under the proposed rule, because the expected

importers and wholesalers in the United States relative to the current ban, and the proposed rule will likely not have a significant negative impact on a substantial number of small importers relative to the previous import program.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on

exporters. It is assumed that production decisions and designated export quantities will not be affected by these additional costs.

Total trap and bait expenses for Spanish growers are estimated to be very small (less than $1,000) for the first year, or 0.0013 percent of the average value of Spanish clementine exports to the United States for 1999 and 2000 ($78.69 million, FAS 2002), the majority of which will be spent on traps that can typically be used for several years. As a result, additional trap and bait expenses will represent very minor increases in fixed and variable costs, respectively, which will likely not affect production decisions regardless of who pays for them. Annual trust fund expenses for the Government of Spain or its agent are estimated to be at least $90,000, including 16.15 percent administrative overhead (West 2002). These costs represent a more substantial increase in fixed costs, 0.1144 percent of average export value for 1999 and 2000. However, because the increase in fixed costs is small relative to the value of exports, we assume that production decisions and designated export quantities will not be affected.

The additional 2 days of cold treatment may add anywhere between $92,000 and $128,000 in annual expenses for all exporters (0.1627 percent of average export value for 1999 and 2000); however, because this also represents a minor fraction of the total value of exports, we assume that designated export quantities are not affected by these cost increases. We were unable to estimate additional costs associated with monitoring and recordkeeping in Spanish groves, which producers will be required to pay; however, these costs may be low as well, because the auditing agencies responsible for monitoring and recordkeeping are already in place for the U.S. Food and Drug Administration's pesticide residue program. It is not clear if or by how much annual bait sprays and spray costs may increase; however, these costs may be borne entirely by federal and local governments in Spain and therefore not affect production decisions or initial designated export quantities.

Fruit cutting and rejection of inspectional units in Spain and in the United States will reduce U.S. clementine imports by approximately 0.0069 percent, because it is assumed in the analysis that exporters do not adjust initial designated export quantities to the United States in the event inspectional units are rejected. Therefore, these costs are measured in terms of lost revenues for importers and wholesalers and lost consumer benefits in the United States. Fruit will be cut in Spain at a rate of 200 clementines per inspectional unit, which might range in size from one 40-foot container (166,050 clementines) to 5.85 forty-foot container equivalents (972,000 clementines). Losses will include fruit that is cut and discarded, a relatively small cost that declines with inspectional unit size. Losses may also include rejections of inspectional units, where the rejection rate will depend on the proportion of fruit that is infested with Medflies (the infestation rate), the sample rate, and inspectional unit size.

Expected costs associated with potential Medfly introductions are based on estimated import levels and the infestation rate. For a given infestation rate, the expected number of introductions per year is given by the number of forty-foot container equivalents imported multiplied by the probability a typical container will lead to an introduction. The introduction probability is given by the probability that mating pairs (adult male and female Medflies) survive the export process and are delivered to an area suitable for the development of their offspring. We use the methods discussed in APHIS (2002) to estimate the introduction probability.

Expected costs associated with potential Medfly introductions are given by the product of the expected number of introductions and an estimate of the cost of one introduction. The mean cost of eradicating the last six Medfly introductions is $10.93 million in 2000 dollars (APHIS 1999). We use this as the estimate of U.S. taxpayer costs associated with a Medfly introduction. Additional costs borne by U.S. producers during an introduction (e.g. additional field sprays, post-harvest treatments, fruit losses, post-harvest fruit losses, and loss of export markets) are estimated at approximately $3 million per introduction. Expected Medfly introduction cost estimates under the proposed rule are calculated for the range of designated export quantities examined in the analysis. Under the most likely infestation rate examined in the analysis, expected costs associated with Medfly introductions are almost non-existent for each designated export quantity (1.12e–07 percent of average export value for 1999 and 2000). This is because the probability of a Medfly introduction per forty-foot container equivalent is extremely low (1.31e–12). For purposes of comparison with the previous import program, a calculation was also made of the expected Medfly introduction cost estimate under the previous import program. The expected cost under the previous import program amounted to nearly $50,000 (0.06 percent of average export value for 1999 and 2000).

Calculation of Benefits and Costs

Expected benefits and costs associated with the proposed rule vary with the amount of clementines imported into the United States and the proportion of clementines infested with Medflies in Spain (infestation rate). Because prices offered by U.S. importers are typically 20 percent higher than prices offered in the rest of the world, because the proposed rule provides significant incentives for Spanish growers to manage Medfly populations effectively, and because exporters will be able to choose clementines from regions in Spain with relatively low Medfly population levels the infestation rate will likely be low for marketing season 2002. In the risk mitigation analysis for the proposed rule, APHIS (2002) simulated infestation rates under the proposed rule and under the previous import program. We base the most likely infestation rates examined in the analysis on their simulation results.

Benefits and costs are estimated for a range of likely designated export quantities for marketing season 2002, under the assumption that export supply is perfectly inelastic with respect to U.S. prices. We examine a minimum quantity based on the import quantity for marketing season 2000 (83,631 metric tons), a most likely quantity based on the rate of growth in imports between marketing seasons 1999 and 2000 (90,032 metric tons), and a maximum quantity based on the average annual rate of import growth from 1989–2000 (116,406 metric tons). The minimum level is examined because costs associated with the proposed rule may reduce the designated export quantity. It is assumed, however, that the impact will not be so large as to diminish designated exports below the 2000 import quantity, because exporters will likely attempt to maintain established export market infrastructures.

There was a significant increase in U.S. clementine imports from Spain between 1998 and 1999 that may have been due, in part, to the establishment of market infrastructures in 1999. It is not clear what effect the proposed rule may have on the future development of this infrastructure; however, for the short run we assume that the most likely scenario involves no change from 2000 levels. As a result, our most likely quantity for designated exports in 2002 is based on the rate of growth in U.S. imports between 1999 and 2000, approximately 7.65 percent. Finally, we examine a maximum quantity for designated exports based on the average annual rate of growth of imports during 1989–2001, at approximately 39 percent.

Benefits to importers, wholesalers, and retail consumers associated with the proposed rule are estimated using areas under demand curves bounded by prices paid, assuming wholesalers purchase all clementines purchased by importers and retail consumers purchase all clementines purchased by wholesalers. Demand curves for each sector have not been estimated in the literature, and available data were not sufficient to estimate precisely demand curves for any of the sectors. Therefore, an iterative procedure is used to specify linear demand curves for each sector to obtain approximate measures of economic welfare. A detailed discussion of the methodology for estimating demand curves can be found in the economic analysis accompanying the proposed rule.

For marketing season 2000, estimates of gross revenues minus payments on clementines for importers and wholesalers in the United States are approximately $105 million and $53 million, respectively. The estimate for retail consumer benefits in 2000 is an additional $26 million. Benefits associated with lifting the ban under the proposed rule for marketing season 2002 are estimated in a similar manner, except the provisions of the proposed rule are used to estimate final import quantities and prices. Expected imports are given by designated exports minus expected fruit loss due to fruit cuttings and rejected shipments in Spain and in the United States. Given expected import levels, we estimate import prices and benefits, wholesale prices and benefits, and retail prices and consumer benefits. For the most likely designated export quantity (90,032 metric tons), estimates of gross revenues less payments on clementines for importers and wholesalers are $120 million and $60 million, respectively. The estimate for retail consumer benefits is an additional $30 million.

Net Impact of the Proposed Rule

Relative to the current ban, net welfare impacts associated with the proposed rule are positive for each designated export quantity. Under the most likely designated export quantity, expected welfare gains associated with the proposed rule are approximately $210 million for marketing season 2002, which includes approximately $120, $60, and $30 million in estimated welfare gains for importers, wholesalers, and retail consumers, with practically no increase in expected costs to U.S. taxpayers and fruit and vegetable producers.

Estimated net welfare effects relative to the previous import program are approximately $26 million under the most likely designated export quantity scenario. In this case, importers, wholesalers, and retail consumers are expected to be better off under the proposed rule, because the expected amount of clementines ultimately imported into the United States during marketing season 2002 exceeds the amount imported in 2000. These results indicate that net welfare effects associated with the proposed rule will likely be positive relative to either baseline. If clementine imports increase and clementines substitute for domestically produced tangerines; however, benefits would be reduced due to profit losses experienced by U.S. tangerine producers.

Analysis of the Economic Effects on Small Entities

There are approximately 15 Spanish clementine importers in the United States, three of which import the majority of clementines (Sibley 2002). In addition, individuals in foreign countries own at least two of the import companies in this list. The U.S. Small Business Administration defines a small clementine importer (NAICS 42248 Fresh Fruit and Vegetable Wholesalers) as one with annual sales receipts of $100 million or less. As a result, approximately 13 small importers may be affected by the proposed rule. The number of small wholesalers potentially affected by the proposed rule is not known. These entities include supermarkets and other grocery stores (NAICS 445110) with annual sales receipts of $23 million or less, warehouse clubs and superstores (NAICS 452910) with annual sales receipts of $23 million or less, and fruit and vegetable markets (NAICS 445230) with annual sales receipts of $6 million or less.

Because the percentage of income derived from the sale of clementines by wholesalers is likely to be low, the proposed rule will not likely have a significant negative impact on a substantial number of small wholesalers relative to either baseline. In addition, small importers and wholesalers will likely be better off under the proposed rule relative to the current ban and, when designated exports are at or above the most likely value, better off under the proposed rule relative to the previous import program as well. As a result, the proposed rule will not have a significant impact on any small importers and wholesalers in the United States relative to the current ban, and the proposed rule will likely not have a significant negative impact on a substantial number of small importers relative to the previous import program.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow clementines to be imported into the United States from Spain. If this proposed rule is adopted, State and local laws and regulations regarding clementines imported under this rule would be preempted while the fruit is in foreign commerce. Fresh clementines are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–023–3. Please send a copy of your comments to: (1) Docket No. 02–023–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for

the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

§ 300.1 Materials incorporated by reference.

(a) * * *

(5) Treatment T107–a, dated _____.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

(1) Be registered with the Government of Spain; and

(2) Enter into an agreement with the Government of Spain whereby the producer agrees to participate in and follow the Mediterranean fruit fly management program established by the Government of Spain.

(c) *Management program for Mediterranean fruit fly; monitoring.* The Government of Spain's Mediterranean

APHIS inspectors will cut and inspect fruit that are randomly selected from throughout the shipment at a rate designated in this paragraph. If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire shipment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two shipments of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.

(1) For the first clementine shipping season that occurs after the effective date of this rule, inspectors will cut 200 randomly selected fruit per shipment.

(2) For all further shipping seasons, inspectors will cut fruit according to the following table, except as noted in paragraph (f)(3) of this section:

If the sample size for a given season is—	. . . and the rejection rate during that season is—	. . . then the sample size for the next season is—

the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collectfon on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.014 hours per response.

Respondents: Full-time, salaried plant health officials of Spain's plant protection service, and growers and shippers of clementines.

Estimated annual number of respondents: 37.

Estimated annual number of responses per respondent: 216,303.

Estimated annual number of responses: 8,003,200.

Estimated total annual burden on respondents: 113,200 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, a new paragraph (a)(5) would be added as follows:

§ 300.1 Materials incorporated by reference.

(a) * * *

(5) Treatment T107–a, dated _____.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. A new § 319.56–2jj would be added to read as follows:

§ 319.56–2jj Administrative instructions; conditions governing the importation of clementines from Spain.

Clementines (*Citrus reticulata*) from Spain may only be imported into the United States in accordance with the regulations in this section.

(a) *Trust fund agreement.* Clementines from Spain may be imported only if the Government of Spain or its designated representative enters into a trust fund agreement with the Animal and Plant Health Inspection Service (APHIS) before each shipping season. The Government of Spain or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraphs (b) through (g) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraphs (b) through (g) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The Government of Spain or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Government of Spain or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Government of Spain or its designated representative or held on account until needed.

(b) *Grower registration and agreement.* Persons who produce clementines in Spain for export to the United States must:

(1) Be registered with the Government of Spain; and

(2) Enter into an agreement with the Government of Spain whereby the producer agrees to participate in and follow the Mediterranean fruit fly management program established by the Government of Spain.

(c) *Management program for Mediterranean fruit fly; monitoring.* The Government of Spain's Mediterranean fruit fly management program must be approved by APHIS, and must contain the fruit fly trapping and recordkeeping requirements specified in this paragraph. The program must also provide that clementine producers must allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Mediterranean fruit fly management program.

(1) *Trapping and control.* In areas where clementines are produced for export to the United States, traps must be placed in Mediterranean fruit fly preferred host plants at least 6 weeks prior to harvest. Bait treatments using malathion, spinosad, or another pesticide approved by APHIS must be applied in the production areas at a rate appropriate to maintain the level of infestation of clementines by Mediterranean fruit flies at 1.5 percent or less.

(2) *Records.* The Government of Spain or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce clementines for export to the United States. All trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request.

(d) *Phytosanitary certificate.* Clementines from Spain must be accompanied by a phytosanitary certificate stating that the fruit meets the conditions of the Government of Spain's Mediterranean fruit fly management program and applicable APHIS regulations.

(e) *Labeling.* Cartons in which clementines are packed must be labeled with a lot number that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The lot number must end with the letters "US." Such labeling must be large enough to clearly display the required information and must be located on the side of the cartons to facilitate inspection.

(f) *Pre-treatment sampling; rates of inspection.* For each shipment of clementines intended for export to the United States, prior to cold treatment, APHIS inspectors will cut and inspect fruit that are randomly selected from throughout the shipment at a rate designated in this paragraph. If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire shipment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two shipments of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.

(1) For the first clementine shipping season that occurs after the effective date of this rule, inspectors will cut 200 randomly selected fruit per shipment.

(2) For all further shipping seasons, inspectors will cut fruit according to the following table, except as noted in paragraph (f)(3) of this section:

If the sample size for a given season is—	. . . and the rejection rate during that season is—	. . . then the sample size for the next season is—
200	≤5 percent	100
	>5 percent	200
100	≤2 percent	76
	>2 percent but ≤5 percent	100
	>5 percent	200
76	≤2 percent	76
	>2 percent but ≤5 percent	100
	>5 percent	200

(3) If APHIS determines that fruit presented for inspection and treatment appear to be highly infested during a shipping season in which 100 or 76 fruit are cut per shipment, APHIS reserves the right to increase the required sample size during the shipping season. At no time will more than 200 fruit be required to be cut, but the sample size could be raised to that level at APHIS's discretion.

(g) *Cold treatment.* Clementines must be cold treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. Upon arrival of clementines at a port of entry into the United States, APHIS inspectors will examine the cold treatment data for each shipment to ensure that the cold treatment was successfully completed. If the cold treatment has not been successfully completed, the shipment will be held until appropriate remedial actions have been implemented.

(h) *Port of entry sampling.* Clementines imported from Spain are subject to inspection by an inspector at the port of entry into the United States. At the port of first arrival, an inspector will sample and cut clementines from each shipment to detect pest infestation according to sampling rates determined by the Administrator. If a single live Mediterranean fruit fly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section are not protecting against the introduction of Medflies into the United States, APHIS may suspend the importation of clementines and conduct an investigation into the cause of the deficiency.

(i) *Shipping season.* For the purposes of this section, a shipping season is considered to include the period beginning approximately in mid-September and ending approximately in late February of the next calendar year.

Done in Washington, DC, this 8th day of July 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs, USDA.

[FR Doc. 02–17431 Filed 7–8–02; 3:26 pm]

BILLING CODE 3410–34–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–165868–01]

RIN 1545–BA47

10 or More Employer Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding whether a welfare benefit fund is part of a 10 or more employer plan. The regulations reflect changes to the law made by the Deficit Reduction Act of 1984. The regulations will affect certain employers that provide welfare benefits to employees through a plan to which more than one employer contributes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 9, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, November 5, 2002, must be received by Tuesday, October 15, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–165868–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–165868–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in Room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Betty J. Clary, (202) 622–6080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regulations Unit Paralegal (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of

Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collections of information should be received by September 9, 2002. Comments are specifically requested concerning:

Whether the proposed collections of

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed

rules relating to the definition of fund because "the employer's interest with respect to such a plan is more similar to the relationship of an employer to a fund than an insured to an insurer." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1159 (1984), 1984–3 C.B. (Vol. 2) 1, 413.

In Notice 95–34, 1995–1 C.B. 309, the IRS identified certain types of arrangements that do not satisfy the

the transactions described in Notice 95–34 as *listed transactions* for purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations. Independent of their classification as "listed transactions" for purposes of §§ 1.6011–4T(b)(2) and 301.6111–2T(b)(2), such transactions may also be subject to the disclosure

employer by any person." The legislative history indicates that the regulatory definition of fund should be broad and should encompass situations "in which an employer may, in some cases, pay an insurance company more in a year than the benefit costs incurred in that year and the employer has an unconditional right in a later year to a refund or credit of the excess of payments over benefit costs." H.R. Conf.

419A(f)(6) and (2) provides the Commissioner and each participating employer with the right to inspect and copy all such records.

In addition, the proposed regulations make clear that in order to be eligible for the exception from the deduction limits of sections 419 and 419A, a plan must satisfy the requirements of section 419A(f)(6) and these regulations both in form and operation. For purposes of

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Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collections of information should be received by September 9, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.419A(f)(6)–1(a)(2) and § 1.419A(f)(6)–1(e). These collections of information are authorized by section 419A(i) of the Internal Revenue Code. This information will be required by the Commissioner and by employers participating in a plan that is intended to be a 10 or more employer plan described in section 419A(f)(6) to verify the plan's compliance with section 419A(f)(6). This information will be used by the Commissioner and by the employers to determine whether the provisions of sections 419 and 419A, concerning the deductibility of employer contributions to a welfare benefit fund, are applicable to the employers participating in the plan. The respondents are administrators of plans that include certain taxable or tax-exempt welfare benefit funds.

Estimated total annual reporting and/or recordkeeping burden: 2500 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 25 hours.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations under section 419A of the Internal Revenue Code. Sections 419 and 419A, which were added to the Code by section 511 of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494), set forth special rules for the deduction of contributions to a welfare benefit fund that would otherwise be deductible, including limitations on the amount of the deduction. Pursuant to section 419A(f)(6), the rules of sections 419 and 419A do not apply in the case of a welfare benefit fund that is part of a plan to which more than one employer contributes and to which no employer normally contributes more than 10 percent of the contributions of all employers under the plan. However, this exception for 10 or more employer plans does not apply to any plan that maintains experience-rating arrangements with respect to individual employers.

Section 419A(i) of the Code provides that the Secretary shall prescribe regulations as may be appropriate to carry out the purposes of sections 419 and 419A. Section 419A(i) further provides that the regulations may provide that the plan administrator of any welfare benefit fund to which more than one employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of section 419A.

The legislative history of sections 419 and 419A of the Code explains that the principal purpose of the deduction limits for contributions to welfare benefit funds "is to prevent employers from taking premature deductions, for expenses which have not yet been incurred, by interposing an intermediary organization which holds assets which are used to provide benefits to the employees of the employer." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1155 (1984), 1984–3 C.B. (Vol. 2) 1, 409. The section 419(e)(3) definition of fund includes taxable trusts and organizations described in section 501(c)(9) and includes regulatory authority to encompass "any account held for an employer by any person." The legislative history indicates that the regulatory definition of fund should be broad and should encompass situations "in which an employer may, in some cases, pay an insurance company more in a year than the benefit costs incurred in that year and the employer has an unconditional right in a later year to a refund or credit of the excess of payments over benefit costs." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1155 (1984), 1984–3 C.B. (Vol. 2) 1, 409.[1]

The legislative history of section 419A(f)(6) of the Code explains that the reason the deduction limits of sections 419 and 419A do not generally apply to a fund that is part of a 10 or more employer plan is that "the relationship of a participating employer to [such a] plan often is similar to the relationship of an insured to an insurer." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1159 (1984), 1984–3 C.B. (Vol. 2) 1, 413. Thus, the premise underlying the exception is that no special limitation on deductions is necessary in situations where a payment by an employer in excess of the minimum necessary to currently provide for the benefits under the plan is effectively lost to that employer, because the economics of the plan will discourage excessive contributions.

The exception to the deduction limitation does not apply, however, where the plan maintains experience-rating arrangements with respect to individual employers. The reason for excluding these plans from the exception is that an experience-rating arrangement with respect to an individual employer changes the economics of the plan and allows an employer to contribute an amount in excess of the minimum amount necessary to provide for the current benefits with the confidence that the excess will inure to the benefit of that employer or its employees. The legislative history notes that making the exception to the deduction limits unavailable to plans that determine contributions on the basis of experience rating is consistent with the general

[1] Section 1851 of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), modified the definition of "fund" in section 419(e) to exclude amounts held pursuant to a specific type of insurance contract. While section 419(e)(4), as amended, clarifies that assets held by an insurance company under certain experience-rated contracts do not constitute a fund (so that premiums under those contracts are not subject to the deduction limitations of section 419), this amendment has no relevance in determining whether a plan intended to be described in section 419A(f)(6) has an experience-rating arrangement with respect to individual employers. Any insurance contracts purchased under a 10 or more employer plan are investments of the fund and are not the fund itself.

rules relating to the definition of fund because "the employer's interest with respect to such a plan is more similar to the relationship of an employer to a fund than an insured to an insurer." H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1159 (1984), 1984–3 C.B. (Vol. 2) 1, 413.

In Notice 95–34, 1995–1 C.B. 309, the IRS identified certain types of arrangements that do not satisfy the requirements of section 419A(f)(6). Those arrangements typically require large employer contributions relative to the cost of the coverage for the benefits to be provided under the plan. The plans identified in the Notice often maintain separate accounting of the assets attributable to the contributions made by each participating employer.[2] In some cases an employer's contributions are related to the claims experience of its employees, while in other cases benefits are reduced if assets derived from an employer's contributions are insufficient to fund the benefits to that employer's employees. Thus, a particular employer's contributions or its employees' benefits may be determined in a way that insulates the employer to a significant extent from the experience of other participating employers.

The arrangements described in Notice 95–34 and similar arrangements do not satisfy the requirements of section 419A(f)(6) of the Code and do not provide the tax deductions claimed by their promoters for any of several reasons. For example, such an arrangement may be providing deferred compensation; the arrangement may be separate plans maintained for each employer; or the plan may be maintaining, in form or in operation, experience-rating arrangements with respect to individual employers (e.g., where the employers have reason to expect that, at least for the most part, their contributions will benefit only their own employees). The Notice also states that even if an arrangement satisfies the requirements of section 419A(f)(6), so that the deduction limits of sections 419 and 419A do not apply to the arrangement, the employer contributions may represent expenses that are not deductible under other sections of the Code.

In Notice 2000–15, 2000–1 C.B. 826 (supplemented and superseded by Notice 2001–51, 2001–34 I.R.B. 190), the Service identified transactions that are the same as or substantially similar to the transactions described in Notice 95–34 as *listed transactions* for purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations. Independent of their classification as "listed transactions" for purposes of §§ 1.6011–4T(b)(2) and 301.6111–2T(b)(2), such transactions may also be subject to the disclosure requirements of section 6011, the tax shelter registration requirements of section 6111, or the list maintenance requirements of section 6112 under the regulations issued in February 2000 (§§ 1.6011–4T, 301.6111–2T and 301.6112–1T, A–4), as well as the regulations issued in 1984 and amended in 1986 (§§ 301.6111–1T and 301.6112–1T, A–3). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under section 6707(a), and to the penalty under section 6708(a) if the requirements of section 6112 are not satisfied.

[2] *See Booth* v. *Commissioner*, 108 T.C. 524 (1997), for an arrangement using a separate accounting system that does not qualify under the 10 or more employer plan exception.

Explanation of Provisions

These proposed regulations provide guidance under section 419A(f)(6) of the Code regarding the requirements that a welfare benefit fund must satisfy in order for an employer's contribution to the fund to be excepted from the rules of sections 419 and 419A. These regulations are consistent with the IRS's analysis of the arrangements described in Notice 95–34, discussed above and reproduced below.

Section 419A(f)(6) of the Code provides that sections 419 and 419A do not apply in the case of a welfare benefit fund that is part of a 10 or more employer plan that does not maintain experience-rating arrangements with respect to individual employers. A *10 or more employer plan* is a plan to which more than one employer contributes and to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

Pursuant to the authority set forth in section 419A(i), the proposed regulations provide a special rule to assist participating employers and the Commissioner in verifying that the arrangement satisfies the section 419A(f)(6) requirements. Under that rule, an arrangement satisfies the requirements of section 419A(f)(6) and the regulations only if the plan is maintained pursuant to a written document that (1) requires the plan administrator to maintain records sufficient for the Commissioner or any participating employer to readily verify the plan's compliance with section 419A(f)(6) and (2) provides the Commissioner and each participating employer with the right to inspect and copy all such records.

In addition, the proposed regulations make clear that in order to be eligible for the exception from the deduction limits of sections 419 and 419A, a plan must satisfy the requirements of section 419A(f)(6) and these regulations both in form and operation. For purposes of these regulations, the term *plan* means the totality of the arrangement and all related facts and circumstances, including any related insurance contracts. Thus, all agreements and understandings (including promotional materials and policy illustrations) will be taken into account in determining whether the requirements of section 419A(f)(6) are satisfied in form and in operation. For example, if promotional materials indicate that an employer or its employees will receive a future benefit based on the employer's accumulated contributions, the plan will be treated as maintaining experience-rating arrangements with respect to individual employers, even if the formal plan does not specifically provide for experience rating.

The proposed regulations clarify the situations in which a plan maintains experience-rating arrangements with respect to individual employers for purposes of section 419A(f)(6). A plan maintains an experience-rating arrangement with respect to an employer if the employer's cost of coverage for any period is based, in whole or in part, either on the benefits experience or on the overall experience (or on any proxy for the benefits experience or overall experience) of that employer or one or more employees of that employer. The prohibition against experience rating with respect to individual employers applies under all circumstances, including employer withdrawals and plan terminations.

For purposes of the proposed regulations, an employer's *cost of coverage* is the relationship between that employer's contributions (including those of its employees) under the plan and the benefits or other amounts payable under the plan with respect to that employer. The term *benefits or other amounts payable* includes all amounts payable or distributable (or that will be otherwise provided), regardless of the form of the payment or distribution. *Benefits experience* refers, generally, to the benefits and other amounts incurred, paid, or distributed (or otherwise provided) in the past. The *overall experience* of an employer is the balance that would have accumulated in a welfare benefit fund if that employer

were the only employer providing benefits under the plan. The *overall experience* of an employee is the balance that would have accumulated in a welfare benefit fund if that employee were the only employee being provided benefits under the plan. *Overall experience* is defined similarly for a group of employers or a group of employees.

The proposed regulations illustrate experience of that employer or its employees.

Another special rule is provided in the case of a plan maintaining an experience-rating arrangement with respect to a group of participating employers or a group of employees covered under the plan (a rating group). Under that rule, a plan will not be treated as maintaining an experience-rating arrangement with respect to an the type of welfare benefit fund that Congress intended to be subject to the deduction limitations of sections 419 and 419A.

Furthermore, Congress' expectation that employers participating in 10 or more employer plans would not have a financial incentive to over-contribute was the basis for providing the section 419A(f)(6) exception from the deduction limits of sections 419 and 419A.

of these characteristics does not create an inference that it is a 10 or more employer plan described in section 419A(f)(6).

The first characteristic indicating that a plan is not a 10 or more employer plan described in section 419A(f)(6) is that the assets of the plan are allocated among the participating employers through a separate accounting of contributions and expenditures for individual employers or otherwise. The rating arrangements with respect to individual employers). In *Booth* v. *Commissioner*, 108 T.C. 524 (1997), the Tax Court held that the arrangement was an aggregation of separate plans (and thus was not a single plan) and that there were experience-rating arrangements with respect to the individual employers.

Finally, these proposed regulations provide that the plan administrator of a plan that is intended to be a 10 or more issuing this Notice to alert taxpayers and their representatives to some of the significant tax problems that may be raised by these arrangements.

In general, contributions to a welfare benefit fund are deductible when paid, but only if they qualify as ordinary and necessary business expenses of the taxpayer and only to the extent allowable under section 419 and section 419A of the Code. Those sections impose strict limits on the amount of tax-deductible prefunding permitted for contributions to a welfare benefit fund.

were the only employer providing benefits under the plan. The *overall experience* of an employee is the balance that would have accumulated in a welfare benefit fund if that employee were the only employee being provided benefits under the plan. *Overall experience* is defined similarly for a group of employers or a group of employees.

The proposed regulations illustrate various ways a plan can violate the prohibition against maintaining experience-rating arrangements with respect to individual employers: By adjusting an employer's contributions, by adjusting the benefits for its employees, or by adjusting both, based on the benefits experience or overall experience of the employees of that employer.

Thus, a plan maintains an experience-rating arrangement with respect to an individual employer if the current (or future) cost of coverage of the employer is (or will be) based on either the past benefits or other amounts paid with respect to one or more of that employer's employees (or any proxy therefor) or on the balance accumulated in the fund as a result of the employer's or its employees' past contributions (or any proxy therefor). Accordingly, the process for determining whether a plan maintains an experience-rating arrangement is to inquire whether the past experience of an individual employer or its employees is used, in whole or in part, to determine the employer's cost of coverage. This determination is not intended to be purely a computational one (although actual numbers often can be used to demonstrate the existence of an experience-rating arrangement).

The proposed regulations also include special rules that apply in certain situations. One rule applies where a plan specifies a minimum contribution required to maintain a benefit level, but permits an employer to contribute more, and the amount of benefits and duration of coverage are fixed. These plans commonly involve universal life insurance contracts with flexible premiums. When analyzing these arrangements, for purposes of determining whether an employer's cost of coverage is based on past experience, the Commissioner may treat the employer as contributing the minimum contribution amount needed to maintain that coverage. The relevant question would then be whether the relationship between the minimum amount the employer must contribute and the benefits or other amounts payable under the arrangement depends on the past experience of that employer or its employees.

Another special rule is provided in the case of a plan maintaining an experience-rating arrangement with respect to a group of participating employers or a group of employees covered under the plan (a rating group). Under that rule, a plan will not be treated as maintaining an experience-rating arrangement with respect to an individual employer merely because the cost of coverage under a plan with respect to the employer is based, in whole or in part, on the benefits experience or the overall experience (or a proxy for either type of experience) of a rating group that includes the employer or one or more of its employees, provided that the employer does not normally contribute more than 10 percent of all contributions with respect to that rating group.

Other special rules relate to the treatment of insurance contracts. Under those rules, insurance contracts under an arrangement are treated as assets of the fund. Thus, any payments under an arrangement from an employer or its employees directly to an insurance company will be treated as contributions to the fund, and any amounts paid by the insurance company under the arrangement will be treated as paid by the fund. Further, as of any date, the fund will be treated as having either a gain or loss with respect to an insurance contract, depending upon the benefits paid under the contract, the value of the contract, and the premiums paid on the contract.

These special rules relating to insurance contracts recognize that if whole life insurance policies, or similar policies that generate a savings element, are purchased under an arrangement, the retained values of those policies (including cash values, reserves, and any other economic values, such as conversion credits or high dividend rates) reflect the past experience of the employees who participate under the plan. As a result, if the retained values associated with policies insuring an employer's employees under an arrangement are used to determine the current cost of coverage for that employer (as opposed to being shared among all of the employers participating in the plan), the employer can anticipate that its past contributions in excess of incurred losses for claims for its employees will inure to the benefit of the employer (as opposed to the other employers participating in the plan). This assurance that the employer will benefit from favorable past experience is the hallmark of an experience-rating arrangement. It is also the hallmark of the type of welfare benefit fund that Congress intended to be subject to the deduction limitations of sections 419 and 419A.

Furthermore, Congress' expectation that employers participating in 10 or more employer plans would not have a financial incentive to over-contribute was the basis for providing the section 419A(f)(6) exception from the deduction limits of sections 419 and 419A. Allowing a 10 or more employer plan to use insurance contracts for an employer's employees with retained values would provide a financial incentive for the employer to over-contribute to the plan, contrary to the premise underlying the intent of Congress in providing the exception for 10 or more employer plans. If the retained values of life insurance contracts relating to an employer's employees are used to determine that employer's cost of coverage, the arrangement results in a prohibited experience-rating arrangement under these proposed regulations.

These proposed regulations also identify five characteristics that are indications that an employer's interest with respect to the plan is more similar to the relationship of an individual employer to a fund than an insured to an insurer. (*See*, H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1155 (1984), 1984–3 C.B. (Vol. 2) 1, 413.) The presence of some of these characteristics in a plan suggests that there are multiple plans present instead of a single plan. The presence of others tends to indicate that an employer's cost of coverage is (or will be) based on that employer's benefits experience. Others tend to indicate that the plan is expected to accumulate a surplus that ultimately will be used for the benefit of the individual employers (or their employees). One way this surplus might be used would be to reduce future contributions for the individual employers based on past contributions or claims of the employers. Another way would be to pay benefits to an employer's employees based on the employer's share of the surplus on the occasion of the withdrawal of the employer or at plan termination, thereby violating the rule that an employer's cost of coverage cannot be based on its overall experience. Accordingly, these regulations provide that a plan exhibiting any of these characteristics is not a 10 or more employer plan described in section 419A(f)(6) unless it is established to the satisfaction of the Commissioner that the plan satisfies the requirements of section 419A(f)(6) and these proposed regulations. It should be noted that the fact that a plan has none of these characteristics does not create an inference that it is a 10 or more employer plan described in section 419A(f)(6).

The first characteristic indicating that a plan is not a 10 or more employer plan described in section 419A(f)(6) is that the assets of the plan are allocated among the participating employers through a separate accounting of contributions and expenditures for individual employers or otherwise. The second characteristic is that amounts charged under the plan differ among the employers in a manner that is not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers (such as age, gender, dependents covered, geographic locale, or the benefit package). The third characteristic is that the plan does not provide for fixed welfare benefits for a fixed coverage period for a fixed price. The fourth characteristic is that the plan charges the participating employers an unreasonably high amount for the covered risk. The fifth characteristic is that the plan provides for payment of benefits upon triggering events other than the illness, personal injury, or death of an employee or family member, or the employee's involuntary termination of employment.

A number of examples are provided in the proposed regulations illustrating the application of the rules regarding experience-rating arrangements to specific fact situations. Many of these arrangements exhibit the characteristics of a fund that Congress intended to be subject to the deduction limitations of sections 419 and 419A. Each example illustrates only the application of the definition of experience-rating arrangements under section 419A(f)(6) and these regulations, and no inference should be drawn from the scope of the examples about whether these plans are otherwise described in section 419A(f)(6) or about any other provision of the Code. For example, no inference should be drawn about whether any plan described in the examples is a single plan. In addition, no inference should be drawn about the applicability or nonapplicability of any other Code provision, such as section 404, that might limit or preclude the deduction for contributions to the arrangement. For example, in *Neonatology Associates, P.A.*, v. *Commissioner*, 115 T.C. 43 (2000), *appeal docketed*, No. 01–2862 (3d Cir.), the Tax Court held that the contributions were in large part constructive dividends to the employee/owners (and thus did not reach the government's alternative contention that the plan was maintaining experience-rating arrangements with respect to individual employers). In *Booth* v. *Commissioner*, 108 T.C. 524 (1997), the Tax Court held that the arrangement was an aggregation of separate plans (and thus was not a single plan) and that there were experience-rating arrangements with respect to the individual employers.

Finally, these proposed regulations provide that the plan administrator of a plan that is intended to be a 10 or more employer plan shall maintain records sufficient to substantiate that the plan is described in section 419A(f)(6). An opinion letter stating the plan is described in section 419A(f)(6) does not constitute substantiation.

Proposed Effective Date

Except as explained below, these regulations—which generally clarify existing law—are proposed to be effective for contributions paid or incurred in taxable years of an employer beginning on or after the date of publication of this Notice of Proposed Rulemaking in the **Federal Register**. For contributions made before this proposed effective date, the IRS will continue applying existing law, including the analysis set forth in Notice 95–34 and relevant case law. Thus, taxpayers should not infer that a contribution that would be nondeductible under the regulations would be deductible if made before that date. In this regard, taxpayers are reminded that, as noted above, the IRS has already identified transactions that are the same as or substantially similar to the transactions described in Notice 95–34 as *listed transactions* for purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations.

The requirement that written plan documents contain specified provisions relating to compliance information and the record maintenance requirement for plan administrators are proposed to be effective for taxable years of a welfare benefit fund beginning after the publication of final regulations. Existing record retention requirements and record production requirements under section 6001 continue to apply to employers and promoters.

For the convenience of taxpayers, Notice 95–34 is reproduced below.

Appendix—Notice 95–34

Taxpayers and their representatives have inquired as to whether certain trust arrangements qualify as multiple employer welfare benefit funds exempt from the limits of section 419 and section 419A of the Internal Revenue Code. The Service is issuing this Notice to alert taxpayers and their representatives to some of the significant tax problems that may be raised by these arrangements.

In general, contributions to a welfare benefit fund are deductible when paid, but only if they qualify as ordinary and necessary business expenses of the taxpayer and only to the extent allowable under section 419 and section 419A of the Code. Those sections impose strict limits on the amount of tax-deductible prefunding permitted for contributions to a welfare benefit fund.

Section 419A(f)(6) provides an exemption from section 419 and section 419A for certain welfare benefit funds. In general, for this exemption to apply, an employer normally cannot contribute more than 10 percent of the total contributions, and the plan must not be experience rated with respect to individual employers. The legislative history states that the exemption under section 419A(f)(6) is provided because "the relationship of a participating employer to [such a] plan often is similar to the relationship of an insured to an insurer." Even if the 10 percent contribution limit is satisfied, the exemption does not apply to a plan that is experience rated with respect to individual employers, because the "employer's interest with respect to such a plan is more similar to the relationship of an employer to a fund than an insured to an insurer." H.R. Rep. No. 98–861, 98th Cong., 2d Sess., 1159 (1984–3 C.B. (Vol. 2) 1, 413).

In recent years a number of promoters have offered trust arrangements that they claim satisfy the requirements for the 10-or-more-employer plan exemption and that are used to provide benefits such as life insurance, disability, and severance pay benefits. Promoters of these arrangements claim that all employer contributions are tax-deductible when paid, relying on the 10-or-more-employer exemption from the section 419 limits and on the fact that they have enrolled at least 10 employers in their multiple employer trusts.

These arrangements typically are invested in variable life or universal life insurance contracts on the lives of the covered employees, but require large employer contributions relative to the cost of the amount of term insurance that would be required to provide the death benefits under the arrangement. The trust owns the insurance contracts. The trust administrator may obtain the cash to pay benefits, other than death benefits, by such means as cashing in or withdrawing the cash value of the insurance policies. Although, in some plans, benefits may appear to be contingent on the occurrence of unanticipated future events, in reality, most participants and their beneficiaries will receive their benefits.

The trusts often maintain separate accounting of the assets attributable to the contributions made by each subscribing employer. Benefits are sometimes related to the amounts allocated to the employees of the participant's employer. For example, severance and disability benefits may be subject to reduction if the assets derived from an employer's contributions are insufficient to fund all benefits promised to that employer's employees. In other cases, an

employer's contributions are related to the claims experience of its employees. Thus, pursuant to formal or informal arrangements or practices, a particular employer's contributions or its employees' benefits may be determined in a way that insulates the employer to a significant extent from the experience of other subscribing employers.

In general, these arrangements and other similar arrangements do not satisfy the requirements of the section 419A(f)(6) exemption and do not provide the tax-

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the

2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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and that provides the Commissioner and each participating employer (or a person acting on the participating employer's behalf) with the right, upon written request to the plan administrator, to inspect and copy all such records. *See* § 1.414(g)–1 for the definition of plan administrator.

(3) *Application of rules*—(i) *In general.* The requirements described in paragraph (a)(1) and (a)(2) of this section

negative. A plan also maintains an experience-rating arrangement with respect to an individual employer where an employer is entitled to receive (or can expect to receive) a rebate of all or a portion of its contributions if that employer's overall experience is positive or, conversely, where an employer is liable to make additional contributions if its overall experience is negative.

(ii) *Treatment of flexible contribution arrangements.* Solely for purposes of determining the cost of coverage under a plan, if contributions for any period can vary with respect to a benefit package, the Commissioner may treat the employer as contributing the minimum amount that would maintain the coverage for that period.

(iii) *Experience rating by group of employers or group of employees.* A

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employer's contributions are related to the claims experience of its employees. Thus, pursuant to formal or informal arrangements or practices, a particular employer's contributions or its employees' benefits may be determined in a way that insulates the employer to a significant extent from the experience of other subscribing employers.

In general, these arrangements and other similar arrangements do not satisfy the requirements of the section 419A(f)(6) exemption and do not provide the tax deductions claimed by their promoters for any one of several reasons, including the following:

(1) The arrangements may actually be providing deferred compensation. This is an especially important consideration in arrangements similar to that in *Wellons* v. *Commissioner*, 31 F.3d 569 (7th Cir. 1994), aff'g, 64 T.C.M. (CCH) 1498 (1992), where the courts held that an arrangement purporting to be a severance pay plan was actually deferred compensation. If the plan is a nonqualified plan of deferred compensation, deductions for contributions will be governed by section 404(a)(5), and contributions to the trust may, in some cases, be includible in employees' income under section 402(b). Section 404(a)(5) provides that contributions to a nonqualified plan of deferred compensation are deductible when amounts attributable to the contributions are includible in the employees' income, and that deductions are allowed only if separate accounts are maintained for each employee.

(2) The arrangements may be, in fact, separate plans maintained for each employer. As separate plans, they do not qualify for the 10-or-more employer plan exemption in section 419A(f)(6).

(3) The arrangements may be experience rated with respect to individual employers in form or operation. This is because, among other things, the trust maintains, formally or informally, separate accounting for each employer and the employers have reason to expect that, at least for the most part, their contributions will benefit only their own employees. Arrangements that are experience rated with respect to individual employers do not qualify for the exemption in section 419A(f)(6).

(4) Even if the arrangements qualify for the exemption in section 419A(f)(6), employer contributions to the arrangements may represent prepaid expenses that are nondeductible under other sections of the Internal Revenue Code.

Taxpayers and their representatives should be aware that the Service has disallowed deductions for contributions to these arrangements and is asserting the positions discussed above in litigation.

Finally, in response to questions raised by taxpayers and their representatives, we note that the Service has never issued a letter ruling approving the deductibility of contributions to a welfare benefit fund under section 419A(f)(6). Although a trust used to provide benefits under an arrangement of the type discussed in this Notice may have received a determination letter stating that the trust is exempt under section 501(c)(9), a letter of this type does not address the tax deductibility of contributions to such a trust.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collections of information in the regulation are in § 1.419A(f)(6)–1(a)(2) and § 1.419A(f)(6)–1(e) and consist of the requirements that a plan administrator maintain certain information and that it provide that information upon request to the Commissioner and to employers participating in the plan. This certification is based on the fact that requests for such information are likely to be made, on average, less than once per year per employer and that the costs of maintaining and providing this information are small. In addition, relatively few small entities are plan administrators. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

A public hearing has been scheduled for November 5, 2002 at 10 a.m., in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors must enter at the main entrance, located at 1111 Constitution Ave, NW. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of topics to be discussed and time to be devoted to each topic (preferably a signed original and eight (8) copies) by October 15, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Betty J. Clary, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.419A(f)(6)–1 is also issued under 26 U.S.C. 419A(i). * * *

Par. 2. Section 1.419A(f)(6)–1 is added to read as follows:

§ 1.419A(f)(6)–1 Exception for 10 or more employer plan.

(a) *Requirements*—(1) *In general.* Sections 419 and 419A do not apply in the case of a welfare benefit fund that is part of a 10 or more employer plan described in section 419A(f)(6). A plan is a 10 or more employer plan described in section 419A(f)(6) only if it is a single plan—

(i) To which more than one employer contributes;

(ii) To which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers;

(iii) That does not maintain an experience-rating arrangement with respect to any individual employer; and

(iv) That satisfies the requirements of paragraph (a)(2) of this section.

(2) *Compliance information.* A plan satisfies the requirements of this paragraph (a)(2) if the plan is maintained pursuant to a written document that requires the plan administrator to maintain records sufficient for the Commissioner or any participating employer to readily verify that the plan satisfies the requirements of section 419A(f)(6) and this section

and that provides the Commissioner and each participating employer (or a person acting on the participating employer's behalf) with the right, upon written request to the plan administrator, to inspect and copy all such records. *See* § 1.414(g)–1 for the definition of plan administrator.

(3) *Application of rules*—(i) *In general.* The requirements described in paragraph (a)(1) and (a)(2) of this section must be satisfied both in form and in operation.

(ii) *Plan includes totality of arrangement.* For purposes of this section, the term plan includes the totality of the arrangement and all related facts and circumstances, including any related insurance contracts. Accordingly, all agreements and understandings (including promotional materials and policy illustrations) and the terms of any insurance contract will be taken into account in determining whether the requirements are satisfied in form and in operation.

(b) *Experience-rating arrangements*—(1) *General rule.* A plan maintains an experience-rating arrangement with respect to an individual employer and thus does not satisfy the requirement of paragraph (a)(1)(iii) of this section if, with respect to that employer, there is any period for which the relationship of contributions under the plan to the benefits or other amounts payable under the plan (the *cost of coverage*) is or can be expected to be based, in whole or in part, on the benefits experience or overall experience (or a proxy for either type of experience) of that employer or one or more employees of that employer. For purposes of this paragraph (b)(1), an employer's contributions include all contributions made by or on behalf of the employer or the employer's employees. See paragraph (d) of this section for the definitions of *benefits experience, overall experience,* and *benefits or other amounts payable.* The rules of this paragraph (b) apply under all circumstances, including employer withdrawals and plan terminations.

(2) *Adjustment of contributions.* An example of a plan that maintains an experience-rating arrangement with respect to an individual employer is a plan that entitles an employer to (or for which the employer can expect) a reduction in future contributions if that employer's overall experience is positive. Similarly, a plan maintains an experience-rating arrangement with respect to an individual employer where an employer can expect its future contributions to be increased if the employer's overall experience is negative. A plan also maintains an experience-rating arrangement with respect to an individual employer where an employer is entitled to receive (or can expect to receive) a rebate of all or a portion of its contributions if that employer's overall experience is positive or, conversely, where an employer is liable to make additional contributions if its overall experience is negative.

(3) *Adjustment of benefits.* An example of a plan that maintains an experience-rating arrangement with respect to an individual employer is a plan under which benefits for an employer's employees are (or can be expected to be) increased if that employer's overall experience is positive or, conversely, under which benefits are (or can be expected to be) decreased if that employer's overall experience is negative. A plan also maintains an experience-rating arrangement with respect to an individual employer if benefits for an employer's employees are limited by reference, directly or indirectly, to the overall experience of the employer (rather than having all the plan assets available to provide the benefits).

(4) *Special rules*—(i) *Treatment of insurance contracts*—(A) *In general.* For purposes of this section, insurance contracts under the arrangement will be treated as assets of the fund. Accordingly, the value of the insurance contracts (including non-guaranteed elements) is included in the value of the fund, and amounts paid between the fund and the insurance company are disregarded, except to the extent they generate gains or losses as described in paragraph (b)(4)(i)(C) of this section.

(B) *Payments to and from an insurance company.* Payments from a participating employer or its employees to an insurance company pursuant to insurance contracts under the arrangement will be treated as contributions made to the fund, and amounts paid under the arrangement from an insurance company will be treated as payments from the fund.

(C) *Gains and losses from insurance contracts.* As of any date, if the sum of the benefits paid by the insurer and the value of the insurance contract (including non-guaranteed elements) is greater than the cumulative premiums paid to the insurer, the excess is treated as a gain to the fund. As of any date, if the cumulative premiums paid to the insurer are greater than the sum of the benefits paid by the insurer and the value of the insurance contract (including non-guaranteed elements), the excess is treated as a loss to the fund.

(ii) *Treatment of flexible contribution arrangements.* Solely for purposes of determining the cost of coverage under a plan, if contributions for any period can vary with respect to a benefit package, the Commissioner may treat the employer as contributing the minimum amount that would maintain the coverage for that period.

(iii) *Experience rating by group of employers or group of employees.* A plan will not be treated as maintaining an experience-rating arrangement with respect to an individual employer merely because the cost of coverage under the plan with respect to the employer is based, in whole or in part, on the benefits experience or the overall experience (or a proxy for either type of experience) of a rating group, provided that no employer normally contributes more than 10 percent of all contributions with respect to that rating group. For this purpose, a *rating group* means a group of participating employers that includes the employer or a group of employees covered under the plan that includes one or more employees of the employer.

(iv) *Family members, etc.* For purposes of this section, contributions with respect to an employee include contributions with respect to any other person (*e.g.*, a family member) who may be covered by reason of the employee's coverage under the plan and amounts provided with respect to an employee include amounts provided with respect to such a person.

(c) *Characteristics indicating a plan is not a 10 or more employer plan*—(1) *In general.* The presence of any of the characteristics described in paragraphs (c)(2) through (c)(6) of this section generally indicates that the plan is not a 10 or more employer plan described in section 419A(f)(6). Accordingly, unless established to the satisfaction of the Commissioner that the plan satisfies the requirements of section 419A(f)(6) and this section, a plan having any of the following characteristics is not a 10 or more employer plan described in section 419A(f)(6). A plan's lack of all the following characteristics does not create any inference that the plan is a 10 or more employer plan described in section 419A(f)(6).

(2) *Allocation of plan assets.* Assets of the plan or fund are allocated to a specific employer or employers through separate accounting of contributions and expenditures for individual employers, or otherwise.

(3) *Differential pricing.* The amount charged under the plan is not the same for all the participating employers, and those differences are not reflective of differences in risk or rating factors that

are commonly taken into account in manual rates used by insurers (such as age, gender, geographic locale, number of covered dependents, and benefit terms) for the particular benefit or benefits being provided.

(4) *No fixed welfare benefit package.* The plan does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost, within the

credited with the sum of the contributions under the plan with respect to that employer (or group of employers), less the benefits and other amounts paid or distributed (or otherwise provided) with respect to that employer (or group of employers) or the employees of that employer (or group of employers), and adjusted for gain or loss from insurance contracts (as described

(ii) *Treatment of actuarial gains or losses.* A plan will not be treated as failing to provide for fixed welfare benefits for a fixed coverage period for a fixed cost merely because the plan does not pay the promised benefits (or requires all participating employers to make proportionate additional contributions based on the fund's shortfall) when there are insufficient assets under the plan to pay the

contributions or the provision of the benefits.

Example 1. (i) An arrangement provides welfare benefits to employees of participating employers. Each year a participating employer is required to contribute an amount equal to the claims and other expenses expected with respect to that employer for the year (based on age, gender, geographic locale, number of participating employees, benefit terms, and other risk or rating factors commonly taken into account in manual

(iii) Nothing in the facts described in this Example 2 indicates that the arrangement maintains experience-rating arrangements prohibited under section 419A(f)(6) and this section. An employer's cost of coverage under the arrangement is based, in part, on the benefits experience of that employer (as well as of all the other participating employers). However, pursuant to paragraph (b)(4)(iii) of this section, the arrangement will not be treated as maintaining experience-rating arrangements with respect to the individual employers merely because the

for that employer's *overall experience.* An employer's *overall experience,* as that term is defined in paragraph (d)(3) of this section, includes the balance that would have accumulated in the fund if that employer's employees were the only employees being provided benefits under the plan. Under that definition, the overall experience is credited with the sum of the contributions paid under the plan by or on behalf of that employer less the benefits or other amounts provided to with respect to that employer's employees, and adjusted for gain or loss from insurance

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are commonly taken into account in manual rates used by insurers (such as age, gender, geographic locale, number of covered dependents, and benefit terms) for the particular benefit or benefits being provided.

(4) *No fixed welfare benefit package.* The plan does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost, within the meaning of paragraph (d)(5) of this section.

(5) *Unreasonably high cost.* The plan provides for fixed welfare benefits for a fixed coverage period for a fixed cost, but that cost is unreasonably high for the covered risk for the plan as a whole.

(6) *Nonstandard benefit triggers.* Benefits or other amounts payable can be paid, distributed, transferred, or otherwise provided from a fund that is part of the plan by reason of any event other than the illness, personal injury, or death of an employee or family member, or the employee's involuntary separation from employment. Thus, for example, a plan exhibits this characteristic if the plan provides for the payment of benefits to an employer's employees on the occasion of the employer's withdrawal from the plan.

(d) *Definitions.* For purposes of this section:

(1) *Benefits or other amounts payable.* The term *benefits or other amounts payable* includes all amounts that are payable or distributable (or that will be otherwise provided) directly or indirectly to employers, to employees or their beneficiaries, or to another fund as a result of a spinoff or transfer, and without regard to whether payable or distributable as welfare benefits, cash, dividends, rebates of contributions, property, promises to pay, or otherwise.

(2) *Benefits experience.* The *benefits experience* of an employer (or of an employee or a group of employers or employees) means the benefits and other amounts incurred, paid, or distributed (or otherwise provided) directly or indirectly, including to another fund as a result of a spinoff or transfer, with respect to the employer (or employee or group of employers or employees), and without regard to whether provided as welfare benefits, cash, dividends, credits, rebates of contributions, property, promises to pay, or otherwise.

(3) *Overall experience*—(i) *Employers.* The term *overall experience* means, with respect to an employer (or group of employers), the balance that would have accumulated in a welfare benefit fund if that employer (or those employers) were the only employer (or employers) providing welfare benefits under the plan. Thus, the overall experience is credited with the sum of the contributions under the plan with respect to that employer (or group of employers), less the benefits and other amounts paid or distributed (or otherwise provided) with respect to that employer (or group of employers) or the employees of that employer (or group of employers), and adjusted for gain or loss from insurance contracts (as described in paragraph (b)(4)(i) of this section), investment return, and expenses. Overall experience as of any date may be either a positive or a negative number.

(ii) *Employees.* The term *overall experience* means, with respect to an employee (or group of employees, whether or not employed by the same employer), the balance that would have accumulated in a welfare benefit fund if the employee (or group of employees) were the only employee (or employees) being provided welfare benefits under the plan. Thus, the overall experience is credited with the sum of the contributions under the plan with respect to that employee (or group of employees), less the benefits and other amounts paid or distributed (or otherwise provided) with respect to that employee (or group of employees), and adjusted for gain or loss from insurance contracts (as described in paragraph (b)(4)(i) of this section), investment return, and expenses. Overall experience as of any date may be either a positive or a negative number.

(4) *Employer.* The term *employer* means the employer whose employees are participating in the plan and those employers required to be aggregated with the employer under section 414(b), (c), or (m). In the case of an employer that is the recipient of services performed by a leased employee described in section 414(n) who participates in the plan, the leased employee is treated as an employee of the recipient and contributions made by the leasing organization attributable to service performed with the recipient are treated as made by the recipient.

(5) *Fixed welfare benefit package*—(i) *In general.* A plan provides for fixed welfare benefits for a fixed coverage period for a fixed cost, if it—

(A) Defines one or more welfare benefits, each of which has a fixed amount that does not depend on the amount or type of assets held by the fund,

(B) Specifies fixed contributions to provide for those welfare benefits, and

(C) Specifies a coverage period during which the plan agrees to provide specified welfare benefits, subject to the payment of the specified contributions by the employer.

(ii) *Treatment of actuarial gains or losses.* A plan will not be treated as failing to provide for fixed welfare benefits for a fixed coverage period for a fixed cost merely because the plan does not pay the promised benefits (or requires all participating employers to make proportionate additional contributions based on the fund's shortfall) when there are insufficient assets under the plan to pay the promised benefits. Similarly, a plan will not be treated as failing to provide for fixed welfare benefits for a fixed coverage period for a fixed cost merely because the plan provides a period of extended coverage after the end of the coverage period to all participating employers at no cost to the employers (or provides a proportionate refund of contributions to all participating employers) because of the plan-wide favorable actuarial experience during the coverage period.

(e) *Maintenance of records.* The plan administrator of a plan that is intended to be a 10 or more employer plan described in section 419A(f)(6) shall maintain permanent records and other documentary evidence sufficient to substantiate that the plan satisfies the requirements of section 419A(f)(6) and this section. (*See* § 1.414(g)–1 for the definition of plan administrator.)

(f) *Examples.* The provisions of paragraph (c) of this section and the provisions of section 419A(f)(6) and this section relating to experience-rating arrangements may be illustrated by the following examples. Unless stated otherwise, it should be assumed that any life insurance contract described in an example is non-participating and has no value other than the value of the policy's current life insurance protection plus its cash value. Paragraph (ii) of each example applies the characteristics listed in paragraph (c) of this section to the facts described in that example. Paragraphs (iii) and (iv) of each example analyze the facts described in the example to determine whether the plan maintains experience-rating arrangements with respect to individual employers. Paragraphs (iii) and (iv) of each example illustrate only the meaning of *experience-rating arrangements.* No inference should be drawn from these examples about whether these plans are otherwise described in section 419A(f)(6) or about the applicability or nonapplicability of any other Internal Revenue Code provision that may limit or deny the deduction of contributions to the arrangements. Further, no inference should be drawn from the examples concerning the tax treatment of employees as a result of the employer

contributions or the provision of the benefits.

Example 1. (i) An arrangement provides welfare benefits to employees of participating employers. Each year a participating employer is required to contribute an amount equal to the claims and other expenses expected with respect to that employer for the year (based on age, gender, geographic locale, number of participating employees, benefit terms, and other risk or rating factors commonly taken into account in manual rates used by insurers for the benefits being provided), multiplied by the ratio of actual claims with respect to that employer for the previous year over the expected claims with respect to that employer for the previous year. No employer participating in the arrangement contributes more than 10 percent of the total contributions made under the arrangement by all the employers.

(ii) This arrangement exhibits at least one of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). Differential pricing exists under this arrangement because the amount charged under the plan is not the same for all the participating employers, and those differences are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided.

(iii) This arrangement does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Under the arrangement, an employer's cost of coverage for each year is based, in part, on that employer's benefits experience (i.e., the benefits and other amounts provided in the past with respect to one or more employees of that employer). Accordingly, pursuant to paragraph (b)(1) of this section, the arrangement maintains experience-rating arrangements with respect to indivdual employers.

Example 2. (i) The facts are the same as in Example 1, except that the amount charged to an employer each year is equal to claims and other expenses expected with respect to that employer for the year (determined the same as in Example 1), multiplied by the ratio of actual claims for the previous year (determined on a plan-wide basis) over the expected claims for the previous year (determined on a plan-wide basis).

(ii) Based on the limited facts described above, this arrangement exhibits none of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). Unlike the arrangement discussed in Example 1, there is no differential pricing under the arrangement because the only differences in the amounts charged to the employers are solely reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided.

(iii) Nothing in the facts described in this Example 2 indicates that the arrangement maintains experience-rating arrangements prohibited under section 419A(f)(6) and this section. An employer's cost of coverage under the arrangement is based, in part, on the benefits experience of that employer (as well as of all the other participating employers). However, pursuant to paragraph (b)(4)(iii) of this section, the arrangement will not be treated as maintaining experience-rating arrangements with respect to the individual employers merely because the employers' cost of coverage is based on the benefits experience of a group of employees eligible under the plan, provided no employer normally contributes more than 10 percent of all contributions with respect to the rating group that includes the employees of an individual employer. Under the arrangement described in this Example 2, the rating group includes all the participating employers (or all of their employees), and no employer normally contributes more than 10 percent of the contributions made under the arrangement by all the employers. Accordingly, absent other facts, the arrangement will not be treated as maintaining experience-rating arrangements with respect to individual employers.

Example 3. (i) Arrangement A provides welfare benefits to employees of participating employers. Each year an employer is required to contribute an amount equal to the claims and other expenses expected with respect to that employer for the year (based on risk or rating factors commonly taken into account in manual rates used by insurers for the benefits being provided), adjusted based on the employer's notional account. An employer's notional account is determined as follows. The account is credited with the sum of the employer's contributions previously paid under the plan less the benefit claims for that employer's employees. The notional account is further increased by a fixed five percent investment return (regardless of the actual investment return earned on the funds). If an employer's notional account is positive, the employer's contributions are reduced by a specified percentage of the notional account. If an employer's notional account is negative, the employer's contributions are increased by a specified percentage of the notional account.

(ii) Arrangement A exhibits at least two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets under the plan are allocated to specific employers. Second, differential pricing exists because the amount charged under the plan is not the same for all the participating employers, and those differences are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided.

(iii) Arrangement A does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Under the arrangement, a participating employer's cost of coverage for each year is based on a proxy for that employer's *overall experience.* An employer's *overall experience,* as that term is defined in paragraph (d)(3) of this section, includes the balance that would have accumulated in the fund if that employer's employees were the only employees being provided benefits under the plan. Under that definition, the overall experience is credited with the sum of the contributions paid under the plan by or on behalf of that employer less the benefits or other amounts provided to with respect to that employer's employees, and adjusted for gain or loss from insurance contracts, expenses, and investment return. Under the formula used by the arrangement in this example to determine employer contributions, expenses are disregarded and a fixed investment return of five percent is used instead of actual investment return. The disregard of expenses and substitution of the fixed investment return for the actual investment return merely results in an employer's notional account that is a proxy for the overall experience of that employer. Accordingly, the arrangement maintains experience-rating arrangements with respect to individual employers.

Example 4. (i) Under Arrangement B, death benefits are provided for eligible employees of each participating employer. Individual level premium life insurance policies are purchased to provide the death benefits. Each policy has a face amount equal to the death benefit payable with respect to the individual employee. Each year, a participating employer is charged an amount equal to the level premiums payable with respect to the employees of that employer. One participating employer, F, has an employee, P, whose coverage under the arrangement commenced at the beginning of 2000, when P was age 50. P is covered under the arrangement for $1 million of death benefits, and a life insurance policy with a face amount of $1 million has been purchased on P's life. The level annual premium on the policy is $23,000. At the beginning of 2005, when P is age 55, the $23,000 premium amount has been paid for five years and the policy, which continues to have a face amount of $1 million, has a cash value of $92,000. Another employer, G, has an employee, R, who is also 55 years old at the beginning of 2005 and is covered under Arrangement B for $1 million, for which a level premium life insurance policy with a face amount of $1 million has been purchased. However, R did not become covered under Arrangement B until the beginning of 2005. Because R's coverage began at age 55, the level annual premium charged for the policy on R's life is $30,000, or $7,000 more than the premiums payable on the policy in effect on P's life. Employer F is charged $23,000 and employer G is charged $30,000 for the death benefit for employees P and R, respectively. Assume that employees P and R are the only covered employees of their respective employers and that they are identical with respect to any risk and rating factors used by the insurer (other than age at policy issuance).

(ii) Arrangement B exhibits at least three of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer

plan described in section 419A(f)(6). First, assets of the plan are effectively allocated to specific employers. Second, there is differential pricing under the arrangement. That is, the amount charged under the plan during the year for a specific amount of death benefit coverage is not the same for all the employers (employer F is charged $23,000 each year for $1 million of death benefit coverage while employer G is charged $30,000 each year for the same coverage), and the difference is not reflective of differences

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experience-rating arrangement with respect to each other participating employer. Accordingly, Arrangement B maintains experience-rating arrangements with respect to individual employers. This would also be the result if Arrangement B maintained an experience-rating arrangement with respect to only one individual employer.

Example 5. (i) Under Arrangement C, death benefits are provided for eligible employees of each participating employer. Flexible premium universal life insurance policies are

death benefit coverage, but for the second year it is zero for the same amount of coverage because that is the minimum amount needed to keep the insurance policy from lapsing. Employer H's overall experience at the beginning of the second year of coverage is $18,000, because that is the balance that would have accumulated in the fund if H were the only employer providing benefits under Arrangement C. (The special rule of paragraph (b)(4)(ii) of this section only applies to determine cost of

purchase one-year term insurance coverage on the lives of the covered employees with a face amount equal to the death benefit provided by the plan. No employer is entitled to any rebates or refunds provided under the insurance contract.

(ii) Arrangement D does not exhibit any of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). Under Arrangement D, assets are not allocated to a

participating employer's cost of coverage is the relationship of its contributions to the death benefit coverage or other amounts payable with respect to that employer, including the employer's portion of the insurance company rebate and refund amounts. The rebate and refund amounts are allocated to an employer based on that employer's contribution for the prior year. However, even though an employer's overall experience includes its past contributions, contributions alone are not a proxy for an employer's overall experience under the

arrangement is not a 10 or more employer plan described in section 419A(f)(6). The amount charged under the arrangement to an employer in one geographic area can be expected to differ from that charged to an employer in another geographic area (and the differences are not merely reflective of risk or rating factors for those geographic areas), resulting in differential pricing.

(iii) Based on the facts described in this Example 8, an employer participating in Arrangement E should be able to establish to the satisfaction of the Commissioner that the

plan described in section 419A(f)(6). First, assets of the plan are effectively allocated to specific employers. Second, there is differential pricing under the arrangement. That is, the amount charged under the plan during the year for a specific amount of death benefit coverage is not the same for all the employers (employer F is charged $23,000 each year for $1 million of death benefit coverage while employer G is charged $30,000 each year for the same coverage), and the difference is not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the death benefit being provided (employees P and R are the same age). Third, there is unreasonably high cost, at least during the early years of coverage under the arrangement when the amounts charged to an employer for that employee's death benefit coverage are unreasonably high for the covered risk for the plan as a whole.

(iii) Arrangement B does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement B maintains experience-rating arrangements with respect to individual employers because the cost of coverage for each year for any employer participating in the arrangement is based on a proxy for the overall experience of that employer. Under Arrangement B, employer F's cost of coverage for 2005 is $23,000 for $1 million of coverage. The $92,000 cash value at the beginning of 2005 in the policy insuring P's life is a proxy for employer F's overall experience. (The $92,000 is essentially the balance that would have accumulated in the fund if employer F were the only employer providing welfare benefits under Arrangement B.) Further, the $23,000 charged to F for the $1 million of coverage in 2005 is based on the $92,000 since, in the absence of the $92,000, employer F would have been charged $30,000 for P's $1 million death benefit coverage. (Note that the conclusion that the $92,000 balance is the basis for the lower premium charged to employer F is consistent with the fact that a $92,000 balance, if converted to a life annuity using the same actuarial assumptions as were used to calculate the cash value amount, would be sufficient to provide for annual annuity payments of $7,000 for the life of P—an amount equal to the $7,000 difference from the premium charged in 2005 to employer G for the $1 million of coverage on employee R's life.) Thus, F's cost of coverage for 2005 is based on a proxy for F's overall experience. Accordingly, Arrangement B maintains an experience-rating arrangement with respect to employer F.

(iv) Arrangement B also maintains an experience-rating arrangement with respect to employer G because it can be expected that each year G will be charged $30,000 for the $1 million of coverage on R's life. Each year, G's cost of coverage will reflect G's prior contributions and allocable earnings, so that G's cost of coverage will be based on a proxy for G's overall experience. Accordingly, Arrangement B maintains an experience-rating arrangement with respect to employer G. Similarly, Arrangement B maintains an experience-rating arrangement with respect to each other participating employer. Accordingly, Arrangement B maintains experience-rating arrangements with respect to individual employers. This would also be the result if Arrangement B maintained an experience-rating arrangement with respect to only one individual employer.

Example 5. (i) Under Arrangement C, death benefits are provided for eligible employees of each participating employer. Flexible premium universal life insurance policies are purchased to provide the death benefits. Each policy has a face amount equal to the death benefit payable with respect to the individual employee. Each participating employer can make any contributions to the arrangement provided that the amount paid for each employee is at least the amount needed to prevent the lapse of the policy. The amount needed to prevent the lapse of the universal life insurance policy is the excess, if any, of the mortality and expense charges for the year over the policy balance. All contributions made by an employer are paid as premiums to the universal life insurance policies purchased on the lives of the covered employees of that employer. Participating employers H and J each have a 50-year-old employee covered under Arrangement C for death benefits of $1 million, which is the face amount of the respective universal life insurance policies on the lives of the employees. In the first year of coverage employer H makes a contribution of $23,000 (the amount of a level premium) while employer J contributes only $6,000, which is the amount of the mortality and expense charges for the first year. At the beginning of year two, the balance in employer H's policy (including earnings) is $18,000, but the balance in J's policy is zero. Although H is not required to contribute anything in the second year of coverage, H contributes an additional $15,000 in the second year. Employer J contributes $7,000 in the second year.

(ii) Arrangement C exhibits at least two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are effectively allocated to specific employers. Second, the arrangement does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost.

(iii) Arrangement C does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement C maintains experience-rating arrangements with respect to individual employers because the cost of coverage of an employer participating in the arrangement is based on a proxy for the overall experience of that employer. Pursuant to paragraph (b)(4)(ii) of this section (concerning treatment of flexible contribution arrangements), solely for purposes of determining an employer's cost of coverage, the Commissioner may treat an employer as contributing the minimum amount needed to maintain the coverage. Applying this treatment, H's cost of coverage for the first year of coverage under Arrangement C is $6,000 for $1 million of death benefit coverage, but for the second year it is zero for the same amount of coverage because that is the minimum amount needed to keep the insurance policy from lapsing. Employer H's overall experience at the beginning of the second year of coverage is $18,000, because that is the balance that would have accumulated in the fund if H were the only employer providing benefits under Arrangement C. (The special rule of paragraph (b)(4)(ii) of this section only applies to determine cost of coverage; it does not apply in determining overall experience.) The $18,000 balance in the policy insuring the life of employer H's employee is a proxy for H's overall experience. Employer H can choose not to make any contributions in the second year of coverage due to the $18,000 policy balance. Thus, H's cost of coverage for the second year is based on a proxy for H's overall experience. Accordingly, Arrangement C maintains an experience-rating arrangement with respect to employer H.

(iv) Arrangement C also maintains an experience-rating arrangement with respect to employer J because in each year J can contribute more than the amount needed to prevent a lapse of the policy on the life of its employee and can expect that its cost of coverage for subsequent years will reflect its prior contributions and allocable earnings. Accordingly, Arrangement C maintains an experience-rating arrangement with respect to employer J.

Example 6. (i) Arrangement D provides death benefits for eligible employees of each participating employer. Each employer can choose to provide a death benefit of either one, two, or three times the annual compensation of the covered employees, provided that no employer contributes more than 10 percent of the total contributions under the plan by all employers. Under Arrangement D, the death benefit is payable only if the employee dies while employed by the employer. If an employee terminates employment with the employer or if the employer withdraws from the arrangement, the death benefit is no longer payable, no refund or other credit is payable to the employer or to the employees, and no policy or other property is transferrable to the employer or the employees. Furthermore, other than any conversion rights the employees may have under state law, the employees have no right under Arrangement D to coverage under any other arrangement and no right to purchase or to convert to an individual insurance policy. Arrangement D determines the amount required to be contributed by each employer for each month of coverage by aggregating the amount required to be contributed for each covered employee of the employer. The amount required to be contributed for each covered employee is determined by multiplying the amount of the death benefit coverage (in thousands) for the employee by five-year age bracket rates in a table specified by the plan. The rates in the specified table do not exceed the rates set forth in Table I of § 1.79–3(d)(2). The table is used uniformly for all covered employees of all employers participating in Arrangement D. Arrangement D uses the amount contributed by each employer to

purchase one-year term insurance coverage on the lives of the covered employees with a face amount equal to the death benefit provided by the plan. No employer is entitled to any rebates or refunds provided under the insurance contract.

(ii) Arrangement D does not exhibit any of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). Under Arrangement D, assets are not allocated to a specific employer or employers. Differences in the amounts charged to the employers are solely reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided. The arrangement provides for fixed welfare benefits for a fixed coverage period for a fixed cost, within the meaning of paragraph (d)(5) of this section. The cost charged under the arrangement is not unreasonably high for the covered risk of the plan as a whole. Finally, benefits and other amounts payable can be paid, distributed, transferred, or otherwise made available only by reason of the death of the employee, so that there is no nonstandard benefit trigger under the arrangement.

(iii) Nothing in the facts of this Example 6 indicates that Arrangement D fails to satisfy the requirements of section 419A(f)(6) or this section by reason of maintaining experience-rating arrangements with respect to individual employers. Based solely on the facts described above, Arrangement D does not maintain an experience rating-arrangement with respect to any individual employer because for each participating employer there is no period for which the employer's cost of coverage under the arrangement is based, in whole or in part, on either the benefits experience or the overall experience (or a proxy for either type of experience) of that employer or its employees.

Example 7. (i) The facts are the same as in Example 6, except that under the arrangement, any refund or rebate provided under that year's insurance contract is allocated among all the employers participating in the arrangement in proportion to their contributions, and is used to reduce the employers' contributions for the next year.

(ii) This arrangement exhibits at least one of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). The arrangement includes nonstandard benefit triggers because amounts are made available to an employer by reason of the insurer providing a refund or rebate to the plan, an event that is other than the illness, personal injury, or death of an employee or family member, or an employee's involuntary separation from employment.

(iii) Based on the limited and specific facts described in this Example 7, an employer participating in this arrangement should be able to establish to the satisfaction of the Commissioner that the plan does not maintain experience-rating arrangements with respect to individual employers. A participating employer's cost of coverage is the relationship of its contributions to the death benefit coverage or other amounts payable with respect to that employer, including the employer's portion of the insurance company rebate and refund amounts. The rebate and refund amounts are allocated to an employer based on that employer's contribution for the prior year. However, even though an employer's overall experience includes its past contributions, contributions alone are not a proxy for an employer's overall experience under the particular facts described in this Example 7. As a result, a participating employer's cost of coverage under the arrangement for each year (or any other period) is not based on that employer's benefits experience or its overall experience (or a proxy for either type of experience), except as follows: If the total of the insurance company refund or rebate amounts is a proxy for the overall experience of all participating employers, a participating employer's cost of coverage will be based in part on that employer's overall experience (or a proxy therefor) by reason of that employer's overall experience being a portion of the overall experience of all participating employers. Under the special rule of paragraph (b)(2)(iii) of this section, however, that fact alone will not cause the arrangement to be treated as maintaining an experience-rating arrangement with respect to an individual employer because no employer normally contributes more than 10 percent of the total contributions under the plan by all employers (the rating group). Accordingly, the arrangement will not be treated as maintaining experience-rating arrangements with respect to individual employers.

Example 8. (i) Arrangement E provides medical benefits for covered employees of 90 participating employers. The level of medical benefits is determined by a schedule set forth in the trust document and does not vary by employer. Other than any rights an employee may have to COBRA continuation coverage, the medical benefits cease when an employee terminates employment with the employer. If an employer withdraws from the arrangement, there is no refund of any contributions and there is no transfer of anything of value to employees of the withdrawing employer. Arrangement E determines the amount required to be contributed by each employer for each year of coverage. To determine the amount to be contributed for each employer, Arrangement E classifies an employer based on the employer's location. These geographic areas are not changed once established under the arrangement. The amount charged for the coverage under the arrangement to the employers in a geographic area is initially determined from a rate-setting manual based on the benefit package, but adjusted to reflect the claims experience of the employers in that classification as a whole. Arrangement E does not have any geographic area classification for which one of the employers in the classification contributes more than 10 percent of the contributions made by all the employers in that classification.

(ii) Arrangement E exhibits at least one of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). The amount charged under the arrangement to an employer in one geographic area can be expected to differ from that charged to an employer in another geographic area (and the differences are not merely reflective of risk or rating factors for those geographic areas), resulting in differential pricing.

(iii) Based on the facts described in this Example 8, an employer participating in Arrangement E should be able to establish to the satisfaction of the Commissioner that the plan does not maintain experience-rating arrangements with respect to individual employers even though there is differential pricing. Although an employer's cost of coverage for each year is based, in part, on its benefits experience (as well as the benefits experience of the other employers in its geographic area), that does not result in experience-rating arrangements with respect to any individual employer because the employers in each geographic area are a rating group and no employer normally contributes more than 10 percent of the contributions made by all the employers in its rating group. (See paragraph (b)(4)(iii) of this section.)

Example 9. (i) The facts of Arrangement F are the same as those described in Example 8 for Arrangement E, except that K, an employer in one of Arrangement F's geographic areas, contributes more than 10 percent of the contributions made by the employers in that geographic area.

(ii) For the same reasons as described in Example 8, Arrangement F results in differential pricing.

(iii) Arrangement F does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. An employer's cost of coverage for each year is based, in part, on its benefits experience (as well as the benefits experience of the other employers in its geographic area) and the special rule for experience-rating by a rating group does not apply to Arrangement F because employer K contributes more than 10 percent of the contributions made by the employers in its rating group. Accordingly, Arrangement F maintains experience-rating arrangements with respect to individual employers.

Example 10. (i) The facts of Arrangement G are the same as those described in Example 8 for Arrangement E, except for the way that the arrangement classifies the employers. Under Arrangement G, the experience of each employer for the prior year is reviewed and then the employer is assigned to one of three classifications (low cost, intermediate cost, or high cost) based on the ratio of actual claims with respect to that employer to expected claims with respect to that employer. No employer in any classification contributes more than 10 percent of the contributions of all employers in that classification.

(ii) For the same reasons as described in Example 8, Arrangement G results in differential pricing.

(iii) Arrangement G does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this

section is not satisfied. The special rule in paragraph (b)(4)(iii) of this section for rating groups can prevent a plan from being treated as maintaining experience-rating arrangements with respect to individual employers if the mere use of a rating group is the only reason a plan would be so treated. Under Arrangement G, however, an employer's cost of coverage for each year is based on the employer's benefits experience in two ways: the employer's benefits experience is part of the benefits experience

with respect to individual employers because the cost of coverage for a participating employer is based on a proxy for the overall experience of that employer. Under Arrangement H, the contributions of a participating employer are fixed. The benefits or other amounts payable with respect to an employer include the value of the life insurance policies that are distributable to the employees of that employer upon the withdrawal of that employer from the plan. Thus, the cost of coverage for any period of

requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement J maintains experience-rating arrangements with respect to individual employers because the cost of coverage for a participating employer is based on a proxy for the overall experience of that employer. Under Arrangement J, the contributions of a participating employer are fixed. The benefits or other amounts payable with respect to an employer are the one-, two-, or three-times-compensation death benefit for each employee of the employer for the current

assets of the plan are allocated to specific employers. Second, because the plan allows an employer to choose to contribute an amount that is different than that contributed by another employer for the same benefit, the amount charged under the plan is not the same for all participating employers (and the differences in the amounts are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided), resulting

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–063]

RIN 2115–AA97

Safety and Security Zones: USCGC EAGLE Port Visit—Salem Harbor, Massachusetts

suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a

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section is not satisfied. The special rule in paragraph (b)(4)(iii) of this section for rating groups can prevent a plan from being treated as maintaining experience-rating arrangements with respect to individual employers if the mere use of a rating group is the only reason a plan would be so treated. Under Arrangement G, however, an employer's cost of coverage for each year is based on the employer's benefits experience in two ways: the employer's benefits experience is part of the benefits experience of a rating group that is otherwise permitted under the special rule of paragraph (b)(4)(iii) of this section, and the employer's benefits experience is considered annually in redetermining the rating group to which the employer is assigned. Accordingly, Arrangement G maintains experience-rating arrangements with respect to individual employers.

Example 11. (i) Arrangement H provides a death benefit equal to a multiple of one, two, or three times compensation as elected by the participating employer for all of its covered employees. Universal life insurance contracts are purchased on the lives of the covered employees. The face amount of each contract is the amount of the death benefit payable upon the death of the covered employee. Under the arrangement, each employer is charged annually an amount equal to 200 percent of the mortality and expense charges under the contracts for that year covering the lives of the covered employees of that employer. Arrangement H pays the amount charged each employer to the insurance company. Thus, the insurance company receives an amount equal to 200 percent of the mortality and expense charges under the policies. The excess amounts charged and paid to the insurance company increase the policy value of the universal life insurance contracts. When an employer ceases to participate in Arrangement H, the insurance policies are distributed to each of the covered employees of the withdrawing employer.

(ii) Arrangement H exhibits at least three of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets are effectively allocated to specific employers. Second, because the amount of the withdrawal benefit (*i.e.*, the value of the life insurance policies to be distributed) is unknown, the arrangement does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost. Finally, Arrangement H includes nonstandard benefit triggers because amounts can be distributed under the arrangement for a reason other than the illness, personal injury, or death of an employee or family member, or an employee's involuntary separation from employment.

(iii) Arrangement H does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Pursuant to paragraph (b)(1) of this section, the prohibition against maintaining experience-rating arrangements applies under all circumstances, including employer withdrawals. Arrangement H maintains experience-rating arrangements with respect to individual employers because the cost of coverage for a participating employer is based on a proxy for the overall experience of that employer. Under Arrangement H, the contributions of a participating employer are fixed. The benefits or other amounts payable with respect to an employer include the value of the life insurance policies that are distributable to the employees of that employer upon the withdrawal of that employer from the plan. Thus, the cost of coverage for any period of an employer's participation in Arrangement H is the relationship between the fixed contributions for that period and the variable benefits payable under the arrangement. The value of those variable benefits depends on the value of the policies that would be distributed if the employer were to withdraw at the end of the period. (Each year the insurance policies to be distributed to the employees in the event of the employer's withdrawal will increase in value due to the premium amounts paid on the policy in excess of current mortality and expense charges.) For reasons similar to those discussed above in Example 5, the aggregate value of the life insurance policies on the lives of an employer's employees is a proxy for that employer's overall experience. Thus, a participating's employer's cost of coverage for any period is based on a proxy for the overall experience of that employer. Accordingly, Arrangement H maintains experience-rating arrangements with respect to individual employers.

(iv) The result would be the same if, rather than distributing the policies, Arrangement H distributed cash amounts equal to the cash values of the policies. The result would also be the same if the distribution of policies or cash values is triggered by employees terminating their employment rather than by employers ceasing to participate in the arrangement.

Example 12. (i) The facts of Arrangement J are the same as those described in Example 11 for Arrangement H, except that (1) Arrangement J purchases a special term insurance policy on the life of each covered employee with a face amount equal to the death benefit payable upon the death of the covered employee, and (2) there is no benefit distributable upon an employer's withdrawal. The special term policy includes a rider that extends the term protection for a period of time beyond the term provided on the policy's face. The length of the extended term is not guaranteed, but is based on the excess of premiums over mortality and expense charges during the period of original term protection, increased by any investment return credited to the policies.

(ii) Arrangement J exhibits two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are effectively allocated to specific employers. Second, the plan does not provide for fixed welfare benefits for a fixed coverage period for a fixed cost because the coverage period is not fixed.

(iii) Arrangement J does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement J maintains experience-rating arrangements with respect to individual employers because the cost of coverage for a participating employer is based on a proxy for the overall experience of that employer. Under Arrangement J, the contributions of a participating employer are fixed. The benefits or other amounts payable with respect to an employer are the one-, two-, or three-times-compensation death benefit for each employee of the employer for the current year, plus the extended term protection coverage for future years. Thus, for any period extending to or beyond the end of the original term of one or more of the policies on the lives of an employer's employees, the employer's cost of coverage is the relationship between the fixed contributions for that period and the variable benefits payable under the arrangement. The value of those variable benefits depends on the aggregate value of the policies insuring the employer's employees (*i.e.*, the total of the premiums paid on the policies by Arrangement J to the insurance company, reduced by the mortality and expense charges that were needed to provide the original term protection, and increased by any investment return credited to the policies). The aggregate value of the policies insuring an employer's employees is, at any time, a proxy for the employer's overall experience. Thus, a participating employer's cost of coverage for any period described above is based on a proxy for the overall experience of that employer. Accordingly, Arrangement J maintains experience-rating arrangements with respect to individual employers.

Example 13. (i) Arrangement K provides a death benefit to employees of participating employers equal to a specified multiple of compensation. Under the arrangement, a flexible-premium universal life insurance policy is purchased on the life of each covered employee in the amount of that employee's death benefit. Each policy has a face amount equal to the employee's death benefit under the arrangement. Each participating employer is charged annually with the aggregate amount (if any) needed to maintain the policies covering the lives of its employees. However, each employer is permitted to make additional contributions to the arrangement and, upon doing so, the additional contributions are paid to the insurance company and allocated to one or more contracts covering the lives of the employer's employees. In the event that any policy covering the life of an employee would lapse in the absence of new contributions from that employee's employer, and if at the same time there are policies covering the lives of other employees of the employer that have cash values in excess of the amounts needed to prevent their lapse, the employer has the option of reducing its otherwise-required contribution by amounts withdrawn from those other policies.

(ii) Arrangement K exhibits at least two of the characteristics listed in paragraph (c) of this section generally indicating that the arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are allocated to specific employers. Second, because the plan allows an employer to choose to contribute an amount that is different than that contributed by another employer for the same benefit, the amount charged under the plan is not the same for all participating employers (and the differences in the amounts are not reflective of differences in risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided), resulting in differential pricing.

(iii) Arrangement K does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement K maintains experience-rating arrangements with respect to individual employers because the cost of coverage for any employer participating in the arrangement is based on a proxy for the overall experience of that employer. Under Arrangement K the benefits with respect to an employer for any year are a fixed amount. For purposes of determining the employer's cost of coverage for that year, the Commissioner may treat the employer's contribution under the special rule of paragraph (b)(4)(ii) of this section (concerning treatment of flexible contribution\arrangements) as being the minimum contribution amount needed to maintain the universal life policies with respect to that employer for the death benefit coverage for that year. Because the employer has the option to prevent the lapse of one policy by having amounts withdrawn from other policies, that minimum contribution amount will be based in part on the aggregate value of the policies on the lives of that employer's employees. That aggregate value is a proxy for the employer's overall experience. Accordingly, Arrangement K maintains experience-rating arrangements with respect to individual employers.

(g) *Effective date*—(1) *In general.* Except as set forth in paragraph (g)(2) of this section, this section applies to contributions paid or incurred in taxable years of an employer beginning on or after July 11, 2002.

(2) *Compliance information and recordkeeping.* Paragraphs (a)(1)(iv), (a)(2), and (e) of this section apply for taxable years of a welfare benefit fund beginning after the date of publication of final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–063]

RIN 2115–AA97

Safety and Security Zones: USCGC EAGLE Port Visit—Salem Harbor, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary safety and security zones for the United States Coast Guard Cutter (USCGC) EAGLE's port visit to the PG & E Power Plant in Salem, MA, from August 9, 2002, to August 12, 2002. The safety and security zones would temporarily close all waters within a 100 yard radius of the USCGC EAGLE while underway off the coast of Massachusetts in United States territorial seas, and while moored at the PG & E Pier in Salem Harbor, Salem, MA. The safety and security zones would prohibit entry into or movement within this portion of Salem Harbor during the effective periods.

DATES: Comments and related material must reach the Coast Guard on or before 29 July 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 A.M. and 3 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dave Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–063), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid in this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

In light of terrorist attacks on New York City and Washington D.C. on September 11, 2001, temporary safety and security zones are proposed to safeguard the United States Coast Guard Cutter (USCGC) EAGLE (a training vessel for the U. S. Coast Guard Academy), persons on the vessel, the public, and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The USCGC EAGLE presents a possible target of terrorist attack, because it is a prominent and highly visible public vessel. These proposed safety and security zones, having identical boundaries, prohibit entry into or movement within the specified areas.

This regulation proposes to establish safety and security zones within a 100 yard radius of the USCGC EAGLE while it is moored at the PG & E Pier in Salem Harbor, Salem, MA and while the vessel is transiting within navigable waters of the United States in the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10. Under the Ports and Waterways Safety Act, (33 U.S.C.S. 1221 et. seq.) navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988 (103 Stat. 2981; 54 FR 777, January 9, 1989). This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law.

The safety and security zones would be in effect while the USCGC EAGLE is transiting within the navigable waters of the United States and while moored at the PG & E Pier from August 9, 2002, to August 12, 2002.

These zones are needed to safeguard the USCGC EAGLE, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. Marine traffic may transit safely outside of the safety and security zones during the effective periods. Public notifications will be made prior to the effective period via safety marine information broadcasts

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government's having first provided the

"Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to

Dated: July 2, 2002.

B.M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–17474 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036. E-mail: *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct

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these zones are needed to safeguard the USCGC EAGLE, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. Marine traffic may transit safely outside of the safety and security zones during the effective periods. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Due to the short timeframe before this event takes place, a normal period for notice and comment was not possible. However, we wanted to provide the public the opportunity to comment. The shortened comment period provided will permit the public to participate in this rulemaking, while still providing sufficient time to develop and publish a final rule, thereby accounting for the interest in safety and security of the maritime community and of the USCGC EAGLE during the specified periods. Accordingly, this rule will become effective less than thirty days after publication.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Captain of The Port does anticipate some impact to vessel traffic due to the proposed safety and security zones. Some impact on recreational vessel and small passenger vessel traffic is expected in the vicinity of Salem Harbor, however it is expected to be minimal due to the ability of these vessels to transit safely outside of the safety and security zones. Thus, although this proposed regulation would prevent traffic from transiting a portion of Salem Harbor during the effective periods, the effects of this proposed regulation will not be significant for the reasons outlined above. Advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have significant economic impact on a substantial number of small entities. This rule would have a minimal impact on small entities because vessel traffic can safely pass outside of the safety and security zones during the effective periods, the safety and security zones are limited in duration, and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Dave Sherry at the address listed under **ADDRESSES**.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Execute Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T02–063 to read as follows:

§ 165.T02–063 Safety and Security Zones: USCGC EAGLE Port visit-Salem Harbor, Massachusetts.

(a) *Location:* The following areas are safety and security zones:

(1) All waters of Salem Harbor within a 100 yard radius of the United States Coast Guard Cutter (USCGC) EAGLE while moored at the PG & E Pier;

(2) All navigable waters of the United States within the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10, within a 100 yard radius of the USCGC EAGLE while underway.

(b) *Effective Period.* This section is effective from 6 a.m. August 9, 2002 through 6 p.m. August 12, 2002.

(c) *Definitions.* For purposes of this section, *navigable waters of the United States* includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(d) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 2, 2002.

B.M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–17474 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–50; GA–53; GA–56; GA–58; GA–59–200230(b); FRL–7244–6]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Georgia on December 6, 1999, March 21, 2000, January 4, 2001, August 21, 2001, and December 28, 2001. These submittals contain revisions to Georgia's Rules for Air Quality Control and Rules for Enhanced Inspection and Maintenance. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as a noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 12, 2002.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036. E-mail: *martin.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: June 26, 2002.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17317 Filed 7–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–49–200232(b); FRL–7244–8]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division (GAEPD) on November 17, 1999. The revision pertains to William L. Bonnell's Air Quality Permit. This permit revision went through a thirty day comment period and was the subject of a public hearing on September 8, 1999. No comments were received on the permit revisions. The revised permit became State effective on October 7, 1999. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as a noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in

commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 12, 2002.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal are

proposed amendment does not affect existing MSWLFs.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is promulgating this amendment as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. In the event that EPA receives adverse

703–412–9810 or TDD 703–412–3323 (hearing impaired).

For information on specific aspects of this rule, contact Mary T. Moorcones, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–

Ext. 73085 or via e-mail at <*WebmasterARP@faa.gov*>.

Acronyms

The full names for the acronyms used in this document are listed in the following table:

Acronym	Definition
AC	Federal Aviation Administration Advisory Circular 150/

II. Why We Are Proposing an Amendment to the MSWLF Location Restrictions for Airport Safety
III. Description of How Today's Proposed Action Would Change the Current Regulations
IV. Description of Today's Proposed Amendment to MSWLF Location Restrictions for Airport Safety
A. Landfills to Which the Proposed New Restrictions Apply
B. Exemptions to the Limitations
V. How the States and Tribes Implement This

Section 503 of the Ford Act was enacted to address the potential hazard posed to aircraft by birds attracted to landfills. According to the Federal Aviation Administration (FAA), an estimated 87 percent of the collisions between wildlife and civil aircraft occurred on or near airports when aircraft were less than 2,000 feet above ground level. Collisions with wildlife at these altitudes are especially dangerous because aircraft pilots have minimal

commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 12, 2002.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036. E-mail: *martin.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: June 28, 2002.

Winston A. Smith,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17456 Filed 7–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[F–2002–AIRP–FFFP; FRL–7227–8]

RIN 2050–AE91

Municipal Solid Waste Landfill Location Restrictions for Airport Safety

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing action to amend the location restriction requirements in the criteria for municipal solid waste landfills (MSWLFs). EPA is amending this provision in order to incorporate new landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act). The Ford Act siting restrictions apply to specified smaller public airports to address the potential hazard that birds attracted to MSWLFs may pose to aircraft operations. Today's proposed amendment does not affect existing MSWLFs.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is promulgating this amendment as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. In the event that EPA receives adverse comments on the direct final rule, we will address all public comments in a subsequent final rule based on this proposed rule; and, we will not institute a second comment period on this action. If we receive no adverse comment, we will not take any further action on this proposed rule. Any parties interested in commenting must do so at this time.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: This section provides addresses regarding: (1) Where and in what form you should submit responses to today's action; (2) where you can view public comments responding to this action; and (3) where you can view the docket index and supporting documents to the proposed rule. Please reference RCRA Docket No. F–2002–AIRF–FFFF in your comments. You may submit your comments (1) in hard copy (paper) either by mail or by hand or (2) using electronic mail, as follows:

- Mail: Submit an original and two hard copies to the RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Deliveries: Submit an original and two hard copies to the RCRA Information Center (RIC), Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia 22202.
- Electronic Submissions: Via the Internet to: *rcra-docket@epa.gov*. You must provide your electronic submissions as ASCII files; and, you must avoid the use of special characters and any form of encryption. Comments in electronic format should also be identified by referencing RCRA Docket No. F–2002–AIRF–FFFF.

See the **SUPPLEMENTARY INFORMATION** section for information about where and how you can view the docket for this rule, including electronic access to some of the information such as the docket index and supporting documents.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323 (hearing impaired).

For information on specific aspects of this rule, contact Mary T. Moorcones, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–338–1348; e-mail: *<moorcones.mary@epamail.epa.gov>*.

You can also access some information about this rule electronically via the Internet at: *<http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm>*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are public or private individuals or groups seeking to construct or establish new municipal solid waste landfills (MSWLFs) near specified airports after April 5, 2000. Affected categories and entities are included in the following table:

Category	Examples of regulated entities
Federal Government.	Agencies constructing or establishing new MSWLFs within six miles of a public airport.
State, Local and Tribal Government.	Governments constructing or establishing new MSWLFs within six miles of a public airport.

The table above is not intended to be exhaustive but rather to provide examples of entities likely to be regulated by this action. To determine whether your facility would be impacted by this action, you should carefully examine the applicability criteria in the rule. If you have questions regarding the applicability of this action to a particular facility, please contact Mary T. Moorcones, U.S. Environmental Protection Agency, Office of Solid Waste (5305W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 540–338–1348; e-mail: *<moorcones.mary@epamail.epa.gov>*. Entities considering construction or establishment of a new MSWLF also should contact the Federal Aviation Administration (FAA) to determine if an airport within six statute miles of the new MSWLF meets the criteria established by FAA to comply with the statute. The FAA can be contacted at the FAA's Office of Airport Safety and Standards, Airport Safety and Certification Branch, at 800–842–8736, Ext. 73085 or via e-mail at *<WebmasterARP@faa.gov>*.

Acronyms

The full names for the acronyms used in this document are listed in the following table:

Acronym	Definition
AC	Federal Aviation Administration Advisory Circular 150/5200–34, together with its Appendix 1, dated August 26, 2000.
CFR	The United States Code of Federal Regulations.
EPA	The United States Environmental Protection Agency.
FAA	The United States Federal Aviation Administration.
Ford Act	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.
MSWLF	Municipal Solid Waste Landfill.
NTTA	National Technology and Transfer Act of 1995.
OMB	The United States Office of Management and Budget.
RCRA	The Resource Conservation and Recovery Act.
RIC	Resource Conservation and Recovery Act Information Center.
UMRA	Unfunded Mandates Reform Act of 1995.
U.S.	United States.
U.S.C.	United States Code.

Where To Find and View Information About This Rule

All documents in the docket for this rulemaking, including public comments, are available for review in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review the docket materials in person, we recommend that the public make an appointment by calling 703–603–9230. The public can hard copy a maximum of 100 pages from the docket at no charge. Additional copies cost $0.15/page.

You can access the Index to the docket and the supporting documents electronically on the Internet at: *<http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm>*. If you access the information electronically, you can download or print copies free of charge.

Preamble

Outline

I. Legal Authority for Today's Proposed Rule
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A. Executive Order 12866: Regulatory Planning & Review
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E. Executive Order 13132: Federalism
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G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer & Advancement Act of 1995
I. Executive Order 12898: Environmental Justice
J. Executive Order 13211: Energy Effects

I. Legal Authority for Today's Proposed Rule

The EPA is proposing this rule under Sections 1008(a), 2002 (general rule making authority), and 4004 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6907(a), 6912, 6944.

II. Why We Are Proposing an Amendment to the MSWLF Location Restrictions for Airport Safety

On April 5, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Public Law 106–181. Section 503 of the Ford Act includes a provision limiting the "construction or establishment" of municipal solid waste landfills (MSWLFs) within six miles of certain smaller public airports. The FAA issued guidance regarding the requirements of the Ford Act in FAA Advisory Circular (AC) 150/5200–34 (August 26, 2000). Today's proposed rule incorporates the statutory requirement into EPA's Criteria for Municipal Solid Waste Landfills, 40 CFR part 258. Specifically, we are proposing to amend the location restriction requirements pertaining to airport safety found in § 258.10 of the criteria by adding this new location restriction to the existing location restrictions.

Section 503 of the Ford Act was enacted to address the potential hazard posed to aircraft by birds attracted to landfills. According to the Federal Aviation Administration (FAA), an estimated 87 percent of the collisions between wildlife and civil aircraft occurred on or near airports when aircraft were less than 2,000 feet above ground level. Collisions with wildlife at these altitudes are especially dangerous because aircraft pilots have minimal time to recover. Databases managed by the FAA and the United States Air Force show that more than 54,000 civil and military aircraft reported strikes with wildlife from 1990 to 1999 (FAA AC No. 150/5200–34).

III. Description of How Today's Proposed Action Would Change the Current Regulations

40 CFR 258.10 sets forth location restrictions for MSWLFs to address airport safety. The § 258.10(a) and (c) contain requirements for new MSWLFs, existing MSWLFs and lateral expansions of landfills that are located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 of any airport runway used only by piston-type aircraft. Owners or operators of such landfills are required to (1) demonstrate that the MSWLFs are designed and operated so as not to "pose a bird hazard to aircraft," (2) place a copy of the demonstration in the MSWLF operating record, and (3) notify the State Director that it has been placed in the operating file. "State Director" is defined as "the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities."

Section 258.10(b) applies to new MSWLFs and lateral expansions proposed to be constructed within a five-mile radius of the end of any airport runway used by turbojet or piston-type aircraft. For such proposed new MSWLFs and lateral expansions, the owner or operator must notify the affected airport and the FAA.

Section 258.10(d) defines "airport" to mean a "public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities." This subsection also defines "bird hazard."

IV. Description of Today's Proposed Amendment to MSWLF Location Restrictions for Airport Safety

Today's proposed rule adds a new paragraph (e) to § 258.10 that incorporates the location restrictions enacted in § 503 of the Ford Act

prohibiting construction or establishment of a new MSWLF within six miles of a "public airport." A "public airport" is one that: (1) Has received grants under the Airport and Airway Improvement Act of 1982, as amended (chapter 471, 49 U.S.C. 47101, et. seq.) and (2) is primarily served by general aviation aircraft and regularly scheduled air carrier operations that use

established before April 5, 2000) that is expanded or modified after April 5, 2000; or (4) MSWLFs in the State of Alaska. In addition, the aviation agency of the state in which the airport is located can request an exemption from the six mile limitation from the FAA for a new MSWLF. Section 10 of the FAA AC No. 150/5200–34 sets out the procedure for applying for an exemption.

it simply incorporates the legislative directive of the Ford Act. We explained our reasons in the Preamble to the direct final rule. EPA is making this change in order to eliminate potential confusion between the new requirements under the Ford Act and the MSWLF criteria, promulgated in 1991 pursuant to the Resource Conservation and Recovery Act (RCRA). The final rule will be effective on October 9, 2002, without

recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Today's rule, deals only with siting of future individual

it will not increase requirements for existing landfills, regardless of size. As a result, today's proposed rule will not impose significant new burdens on small entities. Therefore, for the reasons stated above, the EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates

the private sector. Thus, today's proposed rule is not subject to the requirements of Sections 202 and 205 of UMRA.

D. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., requires the federal government (and thus EPA) to minimize the paperwork burden resulting from any collection of information by or for the federal government. Under 44 U.S.C.

prohibiting construction or establishment of a new MSWLF within six miles of a "public airport." A "public airport" is one that: (1) Has received grants under the Airport and Airway Improvement Act of 1982, as amended (chapter 471, 49 U.S.C. 47101, et. seq.) and (2) is primarily served by general aviation aircraft and regularly scheduled air carrier operations that use aircraft designed for 60 passengers or less. Today's proposed rule applies to MSWLFs (as defined in 40 CFR 257.3 through 257.8) that receive putrescible waste (as defined in 40 CFR 257.3 through 257.8).

A. Landfills to Which the Proposed New Restrictions Apply

The new six (6) mile restriction only applies to new MSWLFs constructed or established after April 5, 2000. "Construct a MSWLF" is defined as in Appendix 1 of the FAA AC 150/5200–34 as "excavate or grade land, or raise structures, to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting authority." "Establish a MSWLF" is defined in Appendix 1 of the FAA AC 150/5200–34 as a MSWLF that "receives[s] the first load of putrescible waste on site for placement in a prepared municipal solid waste landfill."

To determine whether an airport in the vicinity of a proposed MSWLF is an airport that is subject to the Ford Act, the landfill owner or operator should contact the FAA. As the FAA guidance indicates, those airports covered by the Ford Act do not fall into a classification or category that has been established by the FAA or other legislation. See FAA AC No. 150/5200–34, section 8. If the airport in question does not meet the definition in the Ford Act, then today's rule does not apply to the proposed landfill. If the airport in question meets the Ford Act definition, then the proposed landfill must be located at least six miles from the airport. The FAA AC 150/5200–34 also provides guidance for determining whether a new MSWLF falls within the six mile range. The six mile distance is to be measured from "the closest point of the airport property boundary to the closest point of the MSWLF property boundary (FAA AC No. 150/5200–34, section 9).

B. Exemptions to the Limitations

The six mile siting limitation does not apply to: (1) A MSWLF where construction or establishment began on or before April 5, 2000; (2) an existing MSWLF that received putrescible waste on or before April 5, 2000; (3) an existing MSWLF (constructed or established before April 5, 2000) that is expanded or modified after April 5, 2000; or (4) MSWLFs in the State of Alaska. In addition, the aviation agency of the state in which the airport is located can request an exemption from the six mile limitation from the FAA for a new MSWLF. Section 10 of the FAA AC No. 150/5200–34 sets out the procedure for applying for an exemption.

New MSWLFs that are not subject to the six mile siting limitation, including those in the State of Alaska, continue to be subject to the landfill siting criteria at 40 CFR 258(a)–(d).

V. How the States and Tribes Implement This Rule

EPA recognizes that today's rule and the language in the Ford Act are more stringent than the existing 258.10 location restrictions because the boundary for newly constructed or established MSWLFs is moved from five miles to six miles from certain airports. However, EPA does not deem this change to be significant. This provision concerns only new MSWLFs constructed or established after April 5, 2001. EPA does not expect many new landfills to be constructed, and expects fewer still to be located in the vicinity of an airport defined in section 503 of the Ford Act. In addition, EPA notes that the statutory restriction in section 503 of the Ford Act applies to such new MSWLFs regardless of whether EPA incorporates its terms into the MSWLF criteria. Therefore states are not required to amend permit programs which have been determined to be adequate under 40 CFR part 239. States however have the option to amend statutory or regulatory definitions pursuant to today's rule. If a state chooses to amend its permit program pursuant to today's action, the state must notify the Regional Administration of the modification as provided by 40 CFR 239.12. Today's amendments are directly applicable to landfills in states without an approved permit program under Part 239, and in Indian Country. We also encourage tribes to adopt today's amendments into their programs.

VI. Why We Are Also Promulgating This Proposed Amendment As a Direct Final Promulgation Without Prior Proposal

In the "Rules and Regulations" section of today's **Federal Register**, EPA is also promulgating this amendment as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment because it simply incorporates the legislative directive of the Ford Act. We explained our reasons in the Preamble to the direct final rule. EPA is making this change in order to eliminate potential confusion between the new requirements under the Ford Act and the MSWLF criteria, promulgated in 1991 pursuant to the Resource Conservation and Recovery Act (RCRA). The final rule will be effective on October 9, 2002, without further notice unless we receive adverse comment by August 12, 2002. If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. A comment will be considered adverse if it: (1) Is negative and addresses the basis or purpose of the rule; (2) suggests that the rule should not be adopted or offers facts or data contrary to the basis upon which EPA relied in issuing the rule; (3) recommends changes that suggest that the rule without these changes would be inappropriate; and (4) is germane. A comment is not adverse if it: (1) Is not clearly related to the subject of the rule and/or (2) supports the rule or is irrelevant to the rule (e.g., a comment addressing an aspect of the program not considered in the rule).

VII. Applicability of Relevant Statutes and Executive Orders to Today's Rule

A. Executive Order 12866: Regulatory Planning & Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. Executive Order 12866 defines a significant regulatory action as one that is likely to result in actions that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Today's rule, deals only with siting of future individual MSWLFs after the statute's passage, does not have an adverse impact on the economy, the environment, the public, or governments. Similarly, it neither interferes with other agencies nor impacts other programs, the President's priorities, or legal mandates. Indeed, today's direct final rule codifies a legal mandate that enhances public safety and is more protective of wildlife than doing nothing.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq., generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The regulatory flexibility analysis is not required if the head of an agency certifies that the rule will not have a significant adverse impact on a substantial number of small entities. If the agency certifies that there is no such impact, the agency must provide a statement of the factual basis for the certification.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

The following discussion explains EPA's factual basis for our certification that this proposed rule will not have a significant adverse impact on a substantial number of small entities. This proposed rule does not impact any existing MSWLFs, only future construction and establishment of MSWLFs begun after the date of the enactment of the statute (April 5, 2000). There will be no added costs to those entities involved in establishing or constructing new MSWLFs because this proposed rule will not increase the requirements for landfills begun on or before the enactment of the statute; it will only affect their location. Similarly, it will not increase requirements for existing landfills, regardless of size. As a result, today's proposed rule will not impose significant new burdens on small entities. Therefore, for the reasons stated above, the EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments—either in the aggregate or to the private sector—of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule. The above requirements of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed (under Section 203 of the UMRA) a small government agency plan. The plan must provide for: (1) Notifying potentially affected small governments; (2) enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates; and (3) informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule does not contain any federal mandates that are covered under the regulatory provision of Title II of the UMRA that apply to state, local, or tribal governments of the private sector. The rule does not impose any additional enforceable duty on any state, local, or tribal governments or on the private sector. Thus, today's proposed rule is not subject to the requirements of Sections 202 and 205 of UMRA.

D. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., requires the federal government (and thus EPA) to minimize the paperwork burden resulting from any collection of information by or for the federal government. Under 44 U.S.C. 3501 et seq., EPA must submit a request to collect the information, together with a copy of the rule, to the Office of Management and Budget (OMB) in those cases where EPA is collecting information in a notice of proposed or final rule making. EPA does not plan to submit an ICR to OMB for review under the Paperwork Reduction Act, 44 U.S.C., 3501 et seq. because there are no information collection requirements associated with today's proposed rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." The phrase, "policies that have federalism implications," is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Today's proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule does not impose any requirements, implementation duties, enforcement duties, monitoring requirements, or reporting requirements on states. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development or

regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or would be

J. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 258

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific

number of Pacific mackerel estimated to comprise each year class at the beginning of 2002, (2) modeled estimates of fishing mortality during 2001, (3) assumptions for natural and fishing mortality through the first half of 2002, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2002, would be 77,516 metric tons (mt). Applying the formula in the FMP would result in a

Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch. Public comments are requested on how the fishery might be conducted for the 2002/2003 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following determinations have been made for the July 1, 2002, through June 30, 2003,

regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's action incorporates requirements that are already in effect pursuant to the Ford Act. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and must explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action, i.e., hazards to aircraft from birds attracted to municipal solid waste landfills, present a disproportionate risk to children.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

Today's proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus.

I. Executive Order 12898: Environmental Justice

EPA has undertaken to incorporate environmental justice into its policies and programs through: (1) Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"; (2) EPA's April 1995, "Environmental Justice Strategy, Office of Solid Waste and Emergency Response Environmental Justice Task Force Action Agenda Report"; and (3) the National Environmental Justice Advisory Council. EPA is committed to addressing environmental justice concerns, and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure: (1) That no segment of the population—regardless of race, color, national origin, or income—bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities; and (2) that all people live in clean and sustainable communities. The EPA believes that today's proposed rule, which conforms the language in 40 CFR 258.10 to the Ford Act, has no adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. These standards would not affect the location of any MSWLF other than to prohibit the location of MSWLFs within six miles of a public airport as defined in the proposed rule.

J. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 31, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–16995 Filed 7–10–02; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020628163–2163–01; I.D. 061302B]

RIN 0648–AP43

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. The intended effect of this action is to propose allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by July 26, 2002.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The report Stock Assessment of Pacific Mackerel with Recommendations for the 2002–2003 Management Season may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively

managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The FMP relies on a framework procedure that includes public comment to announce the harvest guideline each year without publication of a proposed rule. However, to ensure compliance with the Administrative Procedure Act, a proposed rule is being published. Team, Subpanel, and SSC meetings as described above were held as in the past. The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, California, on May 29, 2002 (67 FR 34434, May 14, 2002). The SSC and Subpanel meetings took place in conjunction with the June 17–21, 2002, Council meeting in Foster City, California.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2001, and then estimated for the fishing season that begins July 1, 2002, based on (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2002, (2) modeled estimates of fishing mortality during 2001, (3) assumptions for natural and fishing mortality through the first half of 2002, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2002, would be 77,516 metric tons (mt). Applying the formula in the FMP would result in a harvest guideline of 12,456 mt, which is lower than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to

determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2002, this estimate is 77,516 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 59,316 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 59,316 mt, that is, 41,521 mt.

4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (41,521 mt), which is 12,456 mt.

Information on the fishery and the stock assessment are found in the report Stock Assessment of Pacific Mackerel with Recommendations for the 2002–2003 Management Season, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2001/2002 fishing season, a directed fishery for Pacific mackerel of 6,000 mt was set beginning July 1, 2001, followed by an incidental allowance of 45 percent of Pacific mackerel in landings of any CPS. A 1–mt landing of mackerel per trip was also allowed if no other species were landed during a trip. A significant amount of the harvest guideline remained unused toward the end of the fishing season; therefore, the directed fishery was reopened on April 1, 2002 (67 FR 16322, April 5, 2002). NMFS implemented this approach last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch. Public comments are requested on how the fishery might be conducted for the 2002/2003 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following determinations have been made for the July 1, 2002, through June 30, 2003, fishing season. Public comment is sought on these determinations.

Based on the estimated biomass of 77,516 mt and the formula in the FMP, a harvest guideline of 12,456 would be calculated and would be in effect for the fishery beginning on July 1, 2002. This harvest guideline would be available for harvest for the fishing season beginning at 12:01 a.m. on July 1, 2002, and continue through June 30, 2003, unless the harvest guideline is attained and the fishery closed before June 30.

Classification

These proposed specifications are issued under the authority of, and NMFS has preliminarily determined that they are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and the regulations implementing the FMP at 50 CFR part 660, subpart I.

This proposed rule has been determined to be not significant for purpose of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The low harvest guideline for Pacific mackerel is not expected to have significant effect on the fleet because mackerel has not been a significant source of revenue for the fleet. The CPS fleet targets a variety of species depending on environmental and market conditions and can easily compensate for a low mackerel harvest.

Northern anchovy, Pacific sardine, Pacific mackerel, jack mackerel (finfish), and market squid are the target species of the fleet. Jack mackerel, northern anchovy, and market squid are monitored species under the FMP. However, the market squid fishery is actively managed by the State of California. Squid contributes a substantial portion of the total revenue to the CPS fleet in most years.

An average of 273 vessels landed CPS off the Pacific coast from 1996 through 2000. Only 65 of these vessels are authorized to fish in the limited entry fishery for finfish south of 39° N. lat. In the limited entry area, vessels without limited entry permits may land up to 5 metric tons per trip of finfish until the directed fishery is closed. An open access fishery exists north of 39° N. lat., which includes Oregon, Washington, and a

portion of California north of San Francisco. All vessels are considered small businesses. The species harvested can exhibit wide variability in abundance from year to year; therefore, when one species is unavailable, revenue is typically derived from other CPS.

From 1996 through 2000, 25.2 percent of total ex-vessel revenue was derived from finfish, and 6.8 percent of that revenue resulted from landings of Pacific mackerel. On average, approximately 15 percent of the 273 vessels (41 vessels) depend on CPS total revenue totaled only $8.3 million because of a low squid harvest. In that year, mackerel made up 30.8 percent of revenue.

There are indications of an approaching El Nino. If an El Nino occurs, there will be a significant drop in ex-vessel revenue in 2003 due to the unavailability of squid. Nevertheless, the FMP requires setting the Pacific mackerel harvest guideline based on the current biomass estimate to ensure protection of the resource and to ensure a fishery in subsequent years. There are sardine and anchovy harvest, Pacific mackerel comprised less than 4 percent of ex-vessel revenue. If a low squid harvest occurs in 2003 resulting from an El Nino event, the most likely result is that Pacific mackerel will make up approximately 9 percent of ex-vessel revenue.

Hence, implementation of these specifications would not have a significant economic impact on a substantial number of small entities. As

Notices

Federal Register

Vol. 67, No. 133

Thursday, July 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

Type of Request: Extension of Currently Approved Information Collection.

Abstract: Form FSA–410–1 is used for collecting information for making

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

portion of California north of San Francisco. All vessels are considered small businesses. The species harvested can exhibit wide variability in abundance from year to year; therefore, when one species is unavailable, revenue is typically derived from other CPS.

From 1996 through 2000, 25.2 percent of total ex-vessel revenue was derived from finfish, and 6.8 percent of that revenue resulted from landings of Pacific mackerel. On average, approximately 15 percent of the 273 vessels (41 vessels) depend on CPS finfish, that is, finfish accounts for the greatest share of a vessel's total ex-vessel revenue. There also are an average of 19 processors and buyers in California, Oregon, and Washington whose annual purchases of CPS finfish represent the largest share of their total annual expenditures.

Average revenue of the fleet for 1996 through 2000 was $31.4 million. Squid comprised almost 75 percent of that revenue, but during an El Nino event squid availability drops precipitously. In 1998, total revenue totaled only $8.3 million because of a low squid harvest. In that year, mackerel made up 30.8 percent of revenue.

There are indications of an approaching El Nino. If an El Nino occurs, there will be a significant drop in ex-vessel revenue in 2003 due to the unavailability of squid. Nevertheless, the FMP requires setting the Pacific mackerel harvest guideline based on the current biomass estimate to ensure protection of the resource and to ensure a fishery in subsequent years. There are ameliorating factors that currently exist that would reduce the impact that occurred in the 1998 fishery. Sardine landings increased from 32,553 mt in 1996 to 67,888 mt in 2000, the result of an increasing biomass and the development of new markets. Domestic harvest of sardine in 2001 was 78,583 mt with an ex-vessel revenue of more than $9 million. Similar levels are expected in 2002. Revenue from northern anchovy was only $245,000 in 1998, while revenue in 2001 was $1.4 million. In 2001, due to increased sardine and anchovy harvest, Pacific mackerel comprised less than 4 percent of ex-vessel revenue. If a low squid harvest occurs in 2003 resulting from an El Nino event, the most likely result is that Pacific mackerel will make up approximately 9 percent of ex-vessel revenue.

Hence, implementation of these specifications would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this rule has been prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

[FR Doc. 02–17463 Filed 7–10–02; 8:45 am]

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Notices

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Thursday, July 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Request for Direct Loan Assistance

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency is seeking comments from all interested individuals and organizations on the extension of currently approved information collection for a form used in support of the FSA, Farm Loan Programs (FLP). This extension of information collection does not involve any revisions to the program regulations.

DATES: Comments on this notice must be received on or before September 9, 2002 to be assured consideration.

ADDRESSES: Comments concerning this notice should be addressed to Bashir Duale, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington DC 20250–0522. Copies of the information collection and comments received may be obtained from Bashir Duale at the above address.

FOR FURTHER INFORMATION CONTACT: Bashir Duale, Senior Loan Officer, USDA, Farm Service Agency, at (202) 720–1632 or by email to: *bashir_duale@wdc.usda.gov.* Individuals who use telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Request for Direct Loan Assistance.

OMB Control Number: 0560–0167.

Expiration Date of Approval: December 31, 2002.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: Form FSA–410–1 is used for collecting information for making eligibility and financial feasibility determinations on respondents' requests for direct operating, farm ownership, and emergency loans and for currently indebted borrowers requesting loan servicing assistance as authorized under the Consolidated Farm and Rural Development Act. Travel time has been included in the Estimated Annual Burden on Respondents.

Estimate of Annual Burden: Average 1 hour.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 46,812.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 93,624.

Invitation of Public Comment

Comment is invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Public Comments

All comments received in response to this notice, including name and addresses when provided, will be a matter of public record. Comments will be summarized and included in the information collection submission for OMB approval.

Signed in Washington, DC, on June 28, 2002.

James Little,

Administrator, Farm Service Agency.

[FR Doc. 02–17451 Filed 7–10–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on July 22, 2002, in Greenville, California and another on August 9, 2002, in Quincy, CA. The purpose of both meetings will be to provide for a finalized cycle 2 project funding process and related timeline under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES & ADDRESSES: The July 22 meeting will take place from 9–2 p.m., at the Catholic Church Social Hall, 209 Jesse Street, Greenville, California. The August 9 meeting location will be announced at the July 22 meeting.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, PO Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by E–Mail *eataylor@fs.fed.us.* Final agendas are posted one week prior to the meeting on the Internet at: *http://www.fs.r5.fs.fed.us/pay2states/plumas.* Prior meeting minutes and agendas are available on the same site.

SUPPLEMENTARY INFORMATION: Agenda items for the July 22 meeting include: (1) Review and discuss cycle 1 project implementation efforts to date; (2) Continue review & discussion of cycle 1 process, (3) Continue to refine timeline for cycle 2 process; (4) Review process documents including outreach, concept paper requests and project proposals formats and amend as needed; and, (5) Future meeting schedule/logistics/agenda. Agenda for the August 9 meeting will be determined at the July 22, 2002 meeting. The meeting is open to the public and individuals may address the Committee after being recognized by the Chair.

Dated: July 2, 2002.

Robert G. MacWhorter,

Acting Forest Supervisor.

[FR Doc. 02–17468 Filed 7–10–02; 8:45 am]

BILLING CODE 3511–02–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of a Public Meeting on the Agriculture Innovation Center Demonstration Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

engineering services, applied research, scale production, etc., (b) assistance in marketing, market development, and business planning, and (c) organization, outreach, and development assistance. What is the appropriate mix of each?

2. *Viable methods of raising the equity capital necessary for many producer-owned value-added ventures.* How can assistance to agricultural producers best be structured for this

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration,

to comment on the *Preliminary Results* of this review, we received petitioners' case brief and Viraj's rebuttal brief. At the request of the petitioners, we held a hearing on May 8, 2002. We did not conduct a verification in this proceeding.

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in

the "Issues and Decision Memorandum" from Richard Moreland, Deputy Assistant Secretary, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated July 5, 2002, ("*Decision Memorandum*"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded, all of which are in the *Decision Memorandum*, is attached

Normal Value

We used the same methodology as that described in the *Preliminary Results* to determine the cost of production ("COP"), whether home market sales were at prices below the COP, and the NV, except that, in calculating COP, we recalculated Viraj's interest and SG&A expense ratios (*see Calculation Memorandum* and *Issues and Decision Memorandum* at

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of a Public Meeting on the Agriculture Innovation Center Demonstration Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This Notice is to notify entities concerned with agricultural value-added marketing issues and other interested persons that the Rural Business-Cooperative Service (RBS) is holding a public meeting for interested persons to express their views on implementing the Agriculture Innovation Center Demonstration Program to assist U.S. agricultural producers.

DATES: The meeting will be held on July 31, 2002, starting at 9 a.m. eastern time, with registration at 8 a.m. The public meeting will end at 4:30 p.m. unless concluded earlier.

ADDRESSES: The meeting will be held in Room 107–A, Jamie Whitten Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. Those interested in making a presentation at the meeting should send a written request to Wendy Dotson, Office of the Deputy Administrator for Cooperative Services, Room 4016, Stop 3250, 1400 Independence Avenue SW., Washington, DC 20250–3250.

FOR FURTHER INFORMATION CONTACT: John Dunn, Director, Cooperative Management Resource Division, RBS, Room 4206–S, Stop 3256, 1400 Independence Avenue, SW., Washington, DC 20250–3256, Telephone: 202–690–1374.

SUPPLEMENTARY INFORMATION: The meeting will be conducted by representatives of the Department of Agriculture. The information from the meeting will be considered in implementing provisions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) concerning the Agriculture Innovation Center Demonstration Program (section 6402). The purpose of the meeting is to provide background information for consideration in the implementation and administration of this program.

RBS is particularly interested in receiving comments on the following specific issues as they relate to agriculture innovation centers:

1. *Focus of work by the proposed innovation centers*—The relative importance of (a) technical assistance, engineering services, applied research, scale production, etc., (b) assistance in marketing, market development, and business planning, and (c) organization, outreach, and development assistance. What is the appropriate mix of each?

2. *Viable methods of raising the equity capital necessary for many producer-owned value-added ventures.* How can assistance to agricultural producers best be structured for this purpose?

3. How the innovation centers might best coordinate with existing technical assistance, business advisory, and organizational assistance providers.

4. How to meet the demand for value-added assistance in traditional crop and livestock value-added enterprises as well as newer, unique niche opportunities.

5. The desirability of the entity having the required assistance expertise in-house versus contracting out for that expertise.

6. Suggestions for criteria for scoring and selecting proposals that accomplish innovation center objectives.

To schedule oral testimony for the public meeting, notify Ms. Dotson, in writing, at the above address. Requests may be sent by facsimile to (202) 720–4641 or e-mail to *wendy.dotson@usda.gov*. Those who wish to make oral presentations must restrict presentations to 15 minutes and are also encouraged to have written copies of their complete comments, including exhibits, for inclusion the Agency's record. Written copies should also be sent to Ms. Dotson in advance of the meeting. Those who register their attendance at the public meeting, but have not been scheduled in advance to present oral testimony, will be given an opportunity to do so if time permits. Otherwise, the opportunity will be given to submit their views in writing by August 6, 2002. Participants who require a sign language interpreter or other special accommodations should contact Ms. Wendy Dotson as directed above.

Copies of the presentations will not be available for distribution from the Department. However, they will be available for public inspection in Room 4206 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours, 8:00–4:30 EDT.

Dated: July 5, 2002.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 02–17408 Filed 7–10–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 7, 2002, the Department of Commerce published the preliminary results and partial rescission of the administrative review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. We find that the reviewed company did not sell stainless steel bar from India in the United States below normal value during the period of review ("POR") of February 1, 2000, to January 31, 2001.

EFFECTIVE DATE: July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Ryan Langan or Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–2613 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended effective January 1, 1995, ("The Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April 2000).

Background

On March 7, 2002, the Department published in the **Federal Register**, *Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review* (67 FR 10377) ("*Preliminary Results*"). The only manufacturer/exporter subject to this review is Viraj Group, Ltd. ("Viraj" or "respondent"). After inviting parties

to comment on the *Preliminary Results* of this review, we received petitioners' case brief and Viraj's rebuttal brief. At the request of the petitioners, we held a hearing on May 8, 2002. We did not conduct a verification in this proceeding.

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which, if less than 4.75 mm in thickness, have a width measuring at least 10 times the thickness, or, if 4.75 mm or more in thickness, have a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review areaddressed in the "Issues and Decision Memorandum" from Richard Moreland, Deputy Assistant Secretary, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated July 5, 2002, ("*Decision Memorandum*"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Fair Value Comparisons

To determine whether sales of stainless steel bar from India to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Results*, except as noted below and in the *Viraj Group, Ltd. Final Results Calculation Memorandum* ("*Calculation Memorandum*"), dated July 5, 2002, which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the *Preliminary Results*, except that we corrected certain ministerial errors and did not make a duty drawback adjustment (*see Calculation Memorandum and Issues* and *Decision Memorandum* at Comments 2 and 5).

Normal Value

We used the same methodology as that described in the *Preliminary Results* to determine the cost of production ("COP"), whether home market sales were at prices below the COP, and the NV, except that, in calculating COP, we recalculated Viraj's interest and SG&A expense ratios (*see Calculation Memorandum* and *Issues and Decision Memorandum* at Comments 3 and 4).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication, selling, general and administrative expenses, and packing costs.

2. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales are made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. We found that Viraj did not make more than 20 percent of its sales of any product at prices less than the COP. Therefore, all of Viraj's home market sales have been included in the calculation of NV, in accordance with section 773(b)(1).

Final Results of Review

We determine that the following percentage margin exists for the period February 1, 2000, through January 31, 2001:

Producer/Manufacturer/Exporter	Weighted-Average Margin
The Viraj Group, Limited	0.47% (*de minimis*)

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de*

minimis (*i.e.*, 0.50 percent or greater). Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question. The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR.

Cash Deposit Rates

The following antidumping duty

responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA01930–2298; phone (978)281–9200; fax (978)281–9371.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those

changes in vitamin A and E status in relation to various life history stages in captive Steller sea lions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of

and hawksbill turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*).

The permit allows the take of green, loggerhead, Kemp's ridley and hawksbill turtles to study the demographic composition and genetic origin of sea turtles within the Key West National Wildlife Refuge, Florida,

SUPPLEMENTARY INFORMATION: This invention relates to a system and method for accessing information and data relating to medical information, and more particularly to a laser accident registry. The system includes a data structure that allows for easy access of the information while maintaining a smaller overall sized database.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

minimis (*i.e.*, 0.50 percent or greater). Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question. The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) for Viraj, no antidumping duty deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the "all others" rate established in the less-than-fair-value investigation (*see Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994)).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1

Issues in Decision Memorandum

Comment 1. Collapsing the Viraj Group
Comment 2. Duty Drawback
Comment 3. Calculation of Interest Expense for VIL
Comment 4. Calculation of Interest Expense
Comment 5. Ministerial Errors

[FR Doc. 02–17475 Filed 7–10–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070302A]

Marine Mammals; File No. 42–1642

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Mystic Aquarium, 55 Coogan Blvd., Mystic, CT 06355 (Dr. Lisa Mazarro, Principal Investigator) has requested an amendment to scientific research Permit No. 42–1642.

DATES: Written or telefaxed comments must be received on or before August 12, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA01930–2298; phone (978)281–9200; fax (978)281–9371.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 42-1642, issued on October 15, 2001 (66 FR 53403) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 42-1642 authorizes the permit holder to: study metabolic clearance rates of vitamins A and E using isotope tracers and vitamin analogs in captive Steller sea lions (*Eumetopias jubatus*) in relation to various life history stages; establish the vitamin A and E status of free-ranging Steller sea lions; determine the metabolic requirements for these vitamins by relating intake to blood levels in captive specimens; and receive or import serum and milk samples from captive marine mammals held in facilities within the United States and abroad to study the disease hemochromatosis (an excessive accumulation of iron in tissues often associated with hepatic lesions) as well as others associated with general marine mammal health. The permit holder requests authorization to import one male Steller sea lion from the Vancouver Aquarium, Vancouver, Canada for breeding with female Steller sea lions currently held by Mystic Aquarium in support of their study of changes in vitamin A and E status in relation to various life history stages in captive Steller sea lions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 3, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–17462 Filed 7–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052402A]

Endangered Species; File No. 1358

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc., 4160 NE Hyline Drive, Jensen Beach, Florida 34957, has been issued a permit to take green, loggerhead, Kemp's ridley and hawksbill turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376 and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On January 3, 2002, notice was published in the **Federal Register** (67 FR 308) that a request for a scientific research permit to take green, loggerhead, Kemp's ridley and hawksbill turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*).

The permit allows the take of green, loggerhead, Kemp's ridley and hawksbill turtles to study the demographic composition and genetic origin of sea turtles within the Key West National Wildlife Refuge, Florida.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 5, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–17464 Filed 7–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Browser for an Accident and Incident Registry

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/082,132 entitled "Browser for an Accident and Incident Registry," filed February 26, 2002. Foreign rights are also available (PCT/US02/05649), The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to a system and method for accessing information and data relating to medical information, and more particularly to a laser accident registry. The system includes a data structure that allows for easy access of the information while maintaining a smaller overall sized database.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–17472 Filed 7–10–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Hold An Environmental Scoping Meeting To Solicit Citizen Input Into a Study of an Environmental Dredging Project on the Mahoning River in Ohio

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Pittsburgh District (District), U.S. Army Corps of Engineers will conduct a public environmental scoping meeting to solicit input for alternatives for a proposed environmental dredging project on the Mahoning River in Ohio currently under study. Representatives of the Pittsburgh District will provide an overview presentation on the proposed environmental dredging project and the National Environmental Policy Act (NEPA) process. The public is invited to provide comments or ask questions relevant to the project.

Date of Meeting: July 31, 2002 from 7 to 9 p.m.

Place: Holiday Inn, Youngstown Metroplex, 1620 Motor Inn Drive, Girard, OH 44420–2422.

ADDRESSES: Submit questions or comments regarding the environmental dredging project to Mr. Carmen Rozzi, Project Manager, U.S. Army Corps of Engineers, Mahoning Environmental Dredging Project, 1000 Liberty Ave., Pittsburgh, PA 15222–4186, telephone (412) 395–7227 or e-mail: *lrp.mahdredge@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions or comments regarding this notice can be directed to Ms. Deborah Duda, U.S. Army Corps of Engineers, 1000 Liberty Avenue, Pittsburgh, PA, 15222–4186, Telephone (412) 395–7213, e-mail: *lrp.mahdredge@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The District is evaluating alternative

strategies for the environmental restoration of 31 miles of the Mahoning River through environmental dredging. The project is being undertaken pursuant to the authority of section 312 of the Water Resources Development Act of 1990 (Pub. L. 101–640), as amended by Section 205 of the Water Resources Development Act of 1996 (Pub. L. 104–303). Section 312 provides for the removal of contaminated

the environmental impacts of proposed actions on the Mahoning River and cumulative impacts of these proposed Federal actions in conjunction with reasonably foreseeable future actions by others. The impacts analysis will include biological resources, cultural resources and socioeconomic effects, air quality, noise impacts, and recreation resources.

These agency and public meetings

Canal north and south levees in the Natomas basin area. Since that time engineering studies have shown that an additional 6 miles of levee improvements along the Sacramento River east levee are required for a total of about 18 miles from the mouth of the Natomas Cross Canal to Natomas Main Drain.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action

encouraged to respond to this notice and provide a current address if they wish to be notified of the SEIS/EIR circulation.

4. Public Scoping Meeting

A series of public scoping meetings will be held from 6–8 p.m. on the following dates: July 25, 2002, South Natomas Community Center, July 30, 2002, Teal Bend Golf Course; and July

guidance on how colleges can comply with Title IX. The Secretary believes that it would be in the public interest to establish this Commission for the purpose of collecting information, analyzing issues, and obtaining broad public input directed at improving the application of current Federal standards for measuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX.

and Overall Systems Efficiency Improvements.

SUMMARY: The U.S. Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy, Office of Heavy Vehicle Technologies (OHVT), is seeking applications for cost-shared research and development for truck Essential Power Systems (EPS). Trucks include Class 2b through Class 8. The Essential Power System is a cross-

strategies for the environmental restoration of 31 miles of the Mahoning River through environmental dredging. The project is being undertaken pursuant to the authority of section 312 of the Water Resources Development Act of 1990 (Pub. L. 101–640), as amended by Section 205 of the Water Resources Development Act of 1996 (Pub. L. 104–303). Section 312 provides for the removal of contaminated sediments (dredging) within navigable waters for the purpose of ecosystem restoration and identifies the Mahoning River, Ohio and Pennsylvania, dure to the severity of contamination, as one of five rivers in the nation given top priority for removal and remediation of contaminated sediments. The District will receive input from local, State and Federal agencies during an agency scoping meeting scheduled for earlier the day of the public environmental scoping meeting, and will use that input to evaluate alternatives and select a recommended alternative for implementation. The District will assess the environmental impacts of the recommended alternative and prepare an Environmental Assessment (EA). If, in the course of preparing the EA, significant impacts to the environment are identified, the District will prepare an Environmental Impact Statement (EIS). If no significant impacts are identified, the EA will be finalized and a Finding of No Significant Impact (FONSI) will be prepared.

1. *Proposed Action:* The Mahoning Environmental Dredging Project is designed to restore the ecosystem of the Mahoning River by removing contaminated sediment throughout a 31-mile stretch of the river (form Warren, Ohio to the Ohio-Pennsylvania border). The scoping process will solicit alternative methods of removing and disposing of contaminated sediment from the riverbed and riverbank in the most effective method.

2. *Reasonable Alternatives:* The District will evaluate a Future Without Project (No Action) Alternative and Future With Project Alternatives. The exact nature and extent of the projects in the Future With Project Alternatives will be determined as part of scoping during the NEPA process. To facilitate scoping of the environmental effects of the project, the public may initially base comments upon a combination of possible actions that result in the removal of contaminated sediments from the riverbed and riverbank. As the NEPA process continues, the District will refine the analysis and evaluation of possible plans for implementation.

The primary issues to be analyzed in depth during the NEPA process will be the environmental impacts of proposed actions on the Mahoning River and cumulative impacts of these proposed Federal actions in conjunction with reasonably foreseeable future actions by others. The impacts analysis will include biological resources, cultural resources and socioeconomic effects, air quality, noise impacts, and recreation resources.

These agency and public meetings will serve as the initial scoping effort for this action. In addition to the public notice, a notice will be mailed to all addresses on the Mahoning Environmental Dredging mailing list. Coordination throughout the project will be maintained with the appropriate local, State, and Federal agencies. The need for additional public meetings will be determined as the study progresses. Interested parties are encouraged to provide oral comments relevant to issues to be addressed in the NEPA process at the public forums. Otherwise, the District requests written comments or requests for information be directed to the following study contact: Mr. Carmen Rozzi (*see* **ADDRESSES** above).

John N. Goga,
Chief, Planning Branch.
[FR Doc. 02–17470 Filed 7–10–02; 8:45 am]
BILLING CODE 3710–ES–M

DEPARTMENT OF DEFENSE

Department of the Army, Army Corps of Engineers

Intent To Prepare a Joint Supplemental Environmental Impact Statement and Environmental Impact Report for Sacramento River East Levee and Natomas Cross Canal Levee Modifications as a Feature of the American River (Common Features), CA Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is preparation of a Supplemental Environmental Impact Statement and Environmental Impact Report (SEIS/EIR) to address potential improvements to the existing flood control systems. The American River (Common Features) project is located in Sacramento and Sutter Counties. The U.S. Army Corps of Engineers (Corps) is currently completing slurry wall work on approximately 20 miles of levee along the lower American River. In 1996 and 1999, Congress authorized modification of 12 miles of Sacramento River east levees and 5 miles of Natomas Cross Canal north and south levees in the Natomas basin area. Since that time engineering studies have shown that an additional 6 miles of levee improvements along the Sacramento River east levee are required for a total of about 18 miles from the mouth of the Natomas Cross Canal to Natomas Main Drain.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS/EIR should be addressed to Liz Holland at (916) 557–6763 or by mail to U.S. Army Corps of Engineers, ATTN CESPK–PD–R, 1325 J Street, Sacramento, CA 95814–2922.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps, in partnership with the State of California, Reclamation Board and the Sacramento Area Flood Control Agency are conducting a study on modifying the levees in the Natomas Basin area, which will be documented in the SEIS/EIR. The study focuses on ways to improve flood protection to portions of the City and County of Sacramento and Sutter County lying within the Natomas Basin.

2. Alternatives

The SEIS/EIR will address an array of flood control improvement alternatives. Alternatives analyzed during the investigation will include a combination of one or more flood protection measures. These measures include levee raising, seepage berms, seepage wells, and slurry walls.

3. Scoping Process

a. The project study plan provides for a series of public scoping meetings to present information to the public and to receive comments from the public. The Corps has initiated a process to involve concerned individuals, and local, State, and Federal agencies.

b. Significant issues to be analyzed in depth in the SEIS/EIR include: Adverse effects on vegetation and wildlife resources; special-status species; esthetics; cultural resources; recreation; land use; fisheries; water quality; air quality; transportation and socioeconomics; and cumulative effects of related projects in the study area.

c. The Corps will consult with the State Historic Preservation Officer to comply with the National Historic Preservation Act, and the U.S. Fish and Wildlife Service to provide a Fish and Wildlife Coordination Act Report as an appendix to the SEIS/EIR.

d. A 30-day public review period will be provided for individuals and agencies to review and comment on the draft SEIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the SEIS/EIR circulation.

4. Public Scoping Meeting

A series of public scoping meetings will be held from 6–8 p.m. on the following dates: July 25, 2002, South Natomas Community Center, July 30, 2002, Teal Bend Golf Course; and July 31, 2002, Holt of California Conference Room.

5. Availability

The draft SEIS/EIR is scheduled to be available for public review and comment in the summer of 2003.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 02–17471 Filed 7–10–02; 8:45 am]
BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

The Secretary of Education's Commission on Opportunity in Athletics; Notice of Establishment

AGENCY: Office for Civil Rights, Education.

ACTION: Notice of establishment of The Secretary of Education's Commission on Opportunity in Athletics.

SUMMARY: The Secretary of Education announces his intention to establish the Secretary of Education's Commission on Opportunity in Athletics. The Commission will be governed by the Federal Advisory Committee Act (Pub. L. 92–463 as amended; 5 U.S.C.A. Appendix 2).

Purpose: The Secretary has determined that the 30th anniversary of the passage of Title IX of the Education Amendments of 1972 ("Title IX") is an appropriate time to review the application of current Federal standards for measuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX. This landmark legislation prohibits recipients of Federal funds from discriminating on the basis of sex. Prior to the enactment of Title IX, schools and universities receiving federal funds were free to discriminate against women (and girls).

Over the last 30 years, there has been a dramatic increase in the number of women's (and girls') athletic teams at both the high school and college levels. From 1981 to 1999, the total number of college women's teams increased by 66%. Despite these gains, many college administrators claim that the Department has failed to provide clear guidance on how colleges can comply with Title IX. The Secretary believes that it would be in the public interest to establish this Commission for the purpose of collecting information, analyzing issues, and obtaining broad public input directed at improving the application of current Federal standards for measuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX.

The Commission will produce a report, not later than January 31, 2003, to the Secretary outlining its findings and any recommendations as to whether the Title IX standards should be revised, and if so, how the standards should be revised to improve the effectiveness of Title IX and to maintain and build upon the extraordinary progress that has resulted from its passage 30 years ago.

The Commission will consist of not more than 15 members appointed by the Secretary from the public and private sectors, as well as up to three ex officio members from the Department of Education. The members shall include representatives of college, university, and school district officials, such as athletic directors, coaches, and other faculty, and representatives of intercollegiate and secondary school athletics; and may include researchers, state and local officials, and other persons with special expertise in intercollegiate and secondary school athletics or issues of equal educational opportunity. The membership of the Commission will be fairly balanced to reflect representation of a wide range of interests and perspectives relating to men's and women's (and boys' and girls') athletics. Members shall be appointed for the life of the Commission and the Secretary shall select one or more chairpersons from among the members of the Commission.

For Additional Information: Contact Deborah Price, U.S. Department of Education, Washington, DC 20202. Telephone: (202) 708–9132.

Dated: July 5, 2002.

Rod Paige,
Secretary of Education.
[FR Doc. 02–17467 Filed 7–10–02; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation

AGENCY: Albuquerque Operations Office, Department of Energy.

ACTION: Notice of availability of solicitation—Research and Development for Truck Essential Power Systems for Increased Powertrain Fuel Efficiency and Overall Systems Efficiency Improvements.

SUMMARY: The U.S. Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy, Office of Heavy Vehicle Technologies (OHVT), is seeking applications for cost-shared research and development for truck Essential Power Systems (EPS). Trucks include Class 2b through Class 8. The Essential Power System is a cross-cutting technology area (technologies and systems) that seeks to provide more efficient, practical, and cost effective management of electrical, mechanical, and thermal power on trucks. The EPS provides a possible technology pathway for future truck electrification.

DATES: Applications are to be received no later than 3 p.m. local prevailing time on August 26, 2002. Any application received after the due date will not be evaluated.

FOR FURTHER INFORMATION CONTACT: Evan M. Dunne, Contract Specialist, DOE/AL, at (505) 845–4798 or by e-mail at *edunne@doeal.gov*.

SUPPLEMENTARY INFORMATION: The solicitation will be available on the internet on or about July 12, 2002 at the following web site: *http://doe-iips.pr.doe.gov/*. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. Teaming arrangements are strongly encouraged, especially among truck original equipment manufacturers (OEM's) and manufacturers of powertrain/engine and truck systems, to take advantage of the best complementary technologies available from the different companies/organizations. Participation of universities, small businesses, state and local governments, Indian tribes, and DOE Laboratories is also encouraged. It is desired by DOE that the primary applicant be an industrial partner. This promotes timely technology transfer to the private sector and enhances U.S. industrial competitiveness.

Issued in Albuquerque, New Mexico.

William L. McCullough,
Contracting Officer, Complex Support Branch, Contracts and Procurement Division.
[FR Doc. 02–17419 Filed 7–10–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

BP Cherry Point Cogeneration Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with the State of Washington Energy Facility Site Evaluation Council (EFSEC) for a proposed new cogeneration plant and

The EIS will evaluate the environmental consequences of the proposed project, including:

- Construction and operation of the powerplant;
- Approximate 1400 ft-long extension of an existing natural gas pipeline on BP property;
- Existing water supply for the BP refinery that would be utilized for the cogeneration facility;

EIS, and EFSEC is the lead Washington State agency. In February 2001, BP requested BPA transmission services. On March 12, 2001, BP requested EFSEC to initiate a Potential Site Study for the BP Cherry Point Cogeneration Project. On May 2, 2001, EFSEC held an open house meeting to introduce the BP Cherry Point Cogeneration Project to interested parties in Whatcom County and the surrounding area. On September

Issued in Portland, Oregon, on June 18, 2002

Stephen J. Wright,
Administrator and Chief Executive Officer.
[FR Doc. 02–17420 Filed 7–10–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive,

site at *http://tonto.eia.doe.gov/oog/info/ngs/schedule.html*.

A Form EIA–912 respondent is instructed to submit revisions to previously reported data if the revisions are greater than one billion cubic feet (BCF). As with any EIA information product based on survey data, the WNGSR data may undergo revision(s) based on a number of factors including:

(1) As more accurate information becomes available to a respondent after

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with the State of Washington Energy Facility Site Evaluation Council (EFSEC) for a proposed new cogeneration plant and its electrical interconnection with the Federal Columbia River Transmission System. The scope of the EIS will include construction and operation of the proposed power plant, a new 1-mile, 230-kilovolt (kV) transmission line, and ancillary facilities. BPA is the lead Federal agency under NEPA and EFSEC is the lead Washington State agency under SEPA.

DATES: All interested parties are invited to comment on the scope of the proposed EIS. An open house and public scoping meeting was held on July 9, 2002, at the Blaine High School Performing Arts Center, 965 H Street, Blaine, Washington. All comments subsequent to the open house should be received by August 9, 2002.

ADDRESSES: To be placed on the project mailing list, including notification of meetings, call toll-free 1–800–622–4520, name this project, BP Cherry Point Cogeneration Project, and leave your complete name and address.

To comment, call toll-free 1–800–622–4519; send an e-mail to the BPA Internet address *comment@bpa.gov*; or send a letter to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION CONTACT: Thomas C. McKinney, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–4749; or e-mail *tcmckinney@bpa.gov*. Additional information can be found at BPA's web site: *http://www.efw.bpa.gov*.

SUPPLEMENTARY INFORMATION: The BP Cherry Point Cogeneration Project is a 720-megawatt (MW) generating station proposed by BP West Coast Products, LLC (BP). The project site is in Whatcom County, Washington, near the community of Birch Bay. BP has requested an interconnection and other transmission services that would allow firm power delivery to the wholesale power market. BPA proposes to execute agreements with BP to provide the interconnection and firm power transmission.

The EIS will evaluate the environmental consequences of the proposed project, including:

- Construction and operation of the powerplant;
- Approximate 1400 ft-long extension of an existing natural gas pipeline on BP property;
- Existing water supply for the BP refinery that would be utilized for the cogeneration facility;
- Wastewater disposal through the existing refinery waste water treatment system;
- Construction and operation by BP of an electrical interconnection consisting of a new 1-mile 230-kilovolt double-circuit, wood pole transmission line from the powerplant switchyard looping into Bonneville's existing 230-kV Custer-Intalco No.1 transmission line, and minor modifications to Bonneville's existing Custer and Intalco Substations.
- Interconnection agreement that BPA proposes with BP; and
- Firm transmission agreement that BPA proposes with BP.

Proposed Action. The BP Cherry Point Cogeneration Project is an approximate 720 MW natural gas-fired combined-cycle combustion turbine cogeneration facility on approximately 33 acres of land adjacent to and northeast of the BP refinery. The plant would be configured with three combustion turbines each driving an electric generator. Each of the gas turbine trains would be equipped with a heat recovery steam generator and duct firing capability to augment steam production. Steam would be produced at high pressure in the heat recovery steam generators and sent to one steam turbine driven electric generator with extraction and condensing capability. The refinery would also serve as a "steam host" for a portion of the steam produced by the combustion turbine. Natural gas would be supplied through an existing company owned proprietary natural gas pipeline running from Canada to the refinery. If additional gas is needed it would be obtained from a third party.

The electrical interconnection would occur approximately one mile east of the refinery on BPA's existing 230-kV transmission line connecting BPA's Custer and Intalco Substations. The entire project, including the new transmission line would be on refinery owned property, and would be entirely contained in a Major Industrial Urban Growth Area/Port Industrial as defined in the Whatcom County Comprehensive Plan, issued May 20, 1997. The area is zoned Heavy Impact Industrial.

Process to Date. BPA is the lead Federal agency for the joint NEPA/SEPA EIS, and EFSEC is the lead Washington State agency. In February 2001, BP requested BPA transmission services. On March 12, 2001, BP requested EFSEC to initiate a Potential Site Study for the BP Cherry Point Cogeneration Project. On May 2, 2001, EFSEC held an open house meeting to introduce the BP Cherry Point Cogeneration Project to interested parties in Whatcom County and the surrounding area. On September 28, 2001, EFSEC published the Potential Site Study. On June 10, 2002, BP submitted to EFSEC an Application for Site Certification.

Alternatives Proposed for Consideration. Alternatives thus far identified for evaluation in the EIS are (1) the proposed action, and (2) no action. Other alternatives may be identified through the scoping process.

Identification of Environmental Issues. The lead agencies have determined that this proposal may have a significant adverse impact on the environment. EFSEC will prepare an EIS consistent with its responsibilities under Chapter 80.50 and 43.21C (2)(c) of the Revised Code of Washington and Chapter 463–47 and 197–11 of the Washington Administrative Code. BPA will prepare an EIS pursuant to NEPA and the Council of Environmental Quality and DOE NEPA regulations. Therefore, BPA and EFSEC intend to prepare a joint NEPA/SEPA EIS addressing both the powerplant and the associated electric power interconnection and transmission facilities. The principal issues identified thus far for consideration in the Draft EIS are (1) air quality impacts, (2) socio-economic impacts including transportation impacts, and (3) wetlands and wildlife habitat impacts.

These issues, together with any additional significant issues identified through the scoping process, will be addressed in the Draft EIS. BPA will also use the EIS and NEPA process to address historic preservation and cultural resource issues under Section 106 of the National Historic Preservation Act.

Receiving comments from interested parties will assure that EFSEC and BPA address in the EIS the full range of issues and potentially significant impacts related to the proposed project. When completed, the Draft EIS will be circulated for review and comment. EFSEC and BPA will hold at least one public comment meeting on the Draft EIS. EFSEC and BPA will consider comments received on the Draft EIS and respond to comments in the Final EIS.

Issued in Portland, Oregon, on June 18, 2002

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02–17420 Filed 7–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Policy for Revisions to the Weekly Natural Gas Storage Report; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Policy for revisions to the Weekly Natural Gas Storage Report; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revision policy for the *Weekly Natural Gas Storage Report* (WNGSR). The WNGSR provides weekly estimates of working gas volumes held in underground storage facilities at the national and regional levels. The WNGSR became a new EIA information product in 2002 replacing an American Gas Association report begun in 1994 and discontinued in 2002. The WNGSR is based on information collected by EIA on Form EIA–912, "Weekly Underground Gas Storage Report."

DATES: Comments must be filed by August 12, 2002. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to William Trapmann. To ensure receipt of the comments by the due date, submission by FAX (202–586–4220) or e-mail *(William.Trapmann@eia.doe.gov)* is recommended. The mailing address is Energy Information Administration, EI–44, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Trapmann may be contacted by telephone at 202–586–6408.

FOR FURTHER INFORMATION CONTACT: The WNGSR is available on EIA's Internet site at *http://tonto.eia.doe.gov/oog/info/ngs/ngs.html*. The survey Form EIA–912 and instructions used to collect information for the WNGSR are available at *http://www.eia.doe.gov/oil_gas/natural—gas/survey_forms/nat_survey_forms.html*. Requests for additional information should be directed to Mr. Trapmann at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to EIA dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to EIA's mission.

The *Weekly Natural Gas Storage Report* (WNGSR) provides weekly estimates of working gas volumes held in underground storage facilities at the national and regional levels. WNGSR users include policymakers, commodity market analysts, and industry experts. EIA uses the data to prepare analytical products assessing storage operations and the impact on supplies available, and to analyze relationships between demand, heating-degree-days, and inventory levels.

II. Current Actions

EIA is developing a policy for revisions to data disseminated in the WNGSR. EIA is soliciting public involvement and comments on the revision policy.

The WNGSR is based on information collected on Form EIA–912. Form EIA–912 respondents provide estimates for working gas in storage as of 9 a.m. Friday each week. The deadline for submitting reports to the EIA is 5 p.m. Eastern Time the following Monday, except when Monday is a Federal holiday. In that case, forms should be submitted by 5 p.m. on Tuesday. The WNGSR is released on Thursday between 10:30 and 10:40 a.m. Eastern Time on EIA's Web site, except when Thursday is a Federal holiday. Notification of changes in this general schedule is maintained on the EIA Web site at *http://tonto.eia.doe.gov/oog/info/ngs/schedule.html*.

A Form EIA–912 respondent is instructed to submit revisions to previously reported data if the revisions are greater than one billion cubic feet (BCF). As with any EIA information product based on survey data, the WNGSR data may undergo revision(s) based on a number of factors including:

(1) As more accurate information becomes available to a respondent after the Form EIA–912 is filed, a respondent may need to file new data.

(2) After submitting Form EIA–912 and prior to the next weekly submission, a respondent may determine that information submitted was incorrect (*e.g.*, numbers were transposed, numbers were entered in the wrong item on the form, other reporting errors).

(3) A respondent may submit Form EIA–912 too late for inclusion in the current week estimates for the WNGSR.

(4) A respondent may report a reclassification of base and working gas.

(5) A respondent may report a change in field operating status.

(6) EIA may incorporate a new reference month in the estimation process.

With respect to the dissemination of revisions to WNGSR data, EIA is proposing a policy for two revision types; *i.e.*, (1) scheduled revisions, and (2) unscheduled major revisions.

Scheduled revisions are made in the next scheduled WNGSR and occur when the cumulative effect of all reported changes is at least seven billion cubic feet (BCF) at either a regional or national level but less than the quantity determined as the threshold for an unscheduled revision. If a revision is made, changes to all regions will be recorded. Consequently, although all respondents' changes will be entered into EIA's database for editing, imputation, and other analytic purposes, the changes will only lead to a published revision when it exceeds the seven BCF threshold.

Unscheduled major revisions are of significant magnitude and interest and as a result the revised WNGSR data will be disseminated prior to the next scheduled WNGSR. An unscheduled major release will occur when the following two conditions are met: (1) EIA has received and confirmed the need for a revision in either the most recent current week or prior week estimates of an amount which is at least 35 BCF or one standard error of the national estimate, and (2) the revised estimates will be available for dissemination at least 24 hours before the next scheduled WNGSR. The

threshold of 35 billion cubic feet was selected because that would have been the approximate standard error of the national estimate if the EIA–912 survey had been operating in March 2001 when national inventories were at 742 BCF. EIA's intention to release an unscheduled major revision will be announced to the public through the EIA Web site and the e-mail list-serves maintained for the WNGSR and the development of EIA's policy for revisions of the WNGSR. The comments will also become a matter of public record.

After EIA has completed development of the WNGSR revision policy, a **Federal Register** notice will be issued announcing the policy.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

ISO. Pursuant to the Appendix I Agreement, Ameren, FirstEnergy, and NIPSCO are seeking authorization, under Section 203 of the FPA, to transfer functional control of their transmission facilities to GridAmerica. In turn, GridAmerica will cede certain functions, set forth in Schedule 5 (Delineation Functions) to the Appendix I Agreement. The Delineation of Functions is fully consistent with the

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17435 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–390–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002,

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–390–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

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threshold of 35 billion cubic feet was selected because that would have been the approximate standard error of the national estimate if the EIA–912 survey had been operating in March 2001 when national inventories were at 742 BCF. EIA's intention to release an unscheduled major revision will be announced to the public through the EIA Web site and the e-mail list-serves maintained for the WNGSR and the National Energy Information Center. Interested parties may sign up for the WNGSR list serve without charge through the EIA Web site at *http://www.eia.doe.gov/listserv_signup.html*. EIA proposes that an unscheduled major revision will be released at 10:30 a.m. Eastern Time on the next day that the Federal government is open for business following the announcement.

III. Request for Comments

The public should comment on the actions discussed in item II as well as the questions below.

General Issues

A. Is the proposed WNGSR revision policy appropriate for both scheduled and unscheduled revisions?

B. What additional actions could EIA take to help ensure and maximize the quality, objectivity, utility, and integrity of the WNGSR?

Scheduled Revisions

A. Is the threshold criteria for scheduled revisions of a change of at least seven BCF appropriate but less than the quantity determined as the threshold for an unscheduled revision appropriate?

B. What information should be made available to WNGSR users with respect to scheduled revisions?

Unscheduled Major Revisions

A. Is the threshold criteria of a change of at least 35 BCF or one standard error of the national estimate appropriate for a major unscheduled revision?

B. Is the timing criteria that a major unscheduled revision must be available for dissemination at least 24 hours before the next scheduled WNGSR appropriate?

C. Are there any other criteria that should be considered regarding the threshold size and timing of the release of major unscheduled revisions?

D. How should the public be notified of the upcoming release of an unscheduled major revision?

E. How soon after the notification should the unscheduled major revision be released?

Comments submitted in response to this notice will be considered during development of EIA's policy for revisions of the WNGSR. The comments will also become a matter of public record.

After EIA has completed development of the WNGSR revision policy, a **Federal Register** notice will be issued announcing the policy.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, July 5, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–17421 Filed 7–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2068–000]

Ameren Energy, Inc., on behalf of Union Electric Company d/b/a/ AmerenUE and Ameren Energy Generating Company; Notice of Filing

July 3, 2002.

Take notice that on June 11, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties) pursuant to section 205 of the Federal Power Act and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with The Cincinnati Gas & Electric Company. Ameren Energy seeks Commission acceptance of these service agreements effective May 1, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 8, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17387 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket Nos. EC02–90–000 and ER02–2233–000]

Ameren Services Company et al.; Notice of Filing and Request for Expedited Schedule

July 5, 2002.

In the matter of: Ameren Services Company, FirstEnergy Corp., Northern Indiana Public Service Company, National Grid USA, Midwest Independent System Operator, Inc.

Take notice that on July 3, 2002, pursuant to Section 203 of the Federal Power Act (FPA), Ameren Services Company (Ameren), acting as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a/ AmerenCIPS; FirstEnergy Corp. (FirstEnergy), on behalf of its subsidiary American Transmission Systems, Inc.; Northern Indiana Public Service Company (NIPSCO); National Grid USA (National Grid); and the Midwest Independent System Operator, Inc. (Midwest ISO), tendered for filing a Participation Agreement and a pro forma Appendix I Agreement concerning the operation of GridAmerica LLC (GridAmerica) within the Midwest ISO.

The Participation Agreement obligates the parties, upon receipt of Commission approval and satisfaction of other conditions precedent, to form GridAmerica and to sign the Appendix I Agreement with no material modifications. The Appendix I Agreement will govern the relationship between GridAmerica and the Midwest ISO. Pursuant to the Appendix I Agreement, Ameren, FirstEnergy, and NIPSCO are seeking authorization, under Section 203 of the FPA, to transfer functional control of their transmission facilities to GridAmerica. In turn, GridAmerica will cede certain functions, set forth in Schedule 5 (Delineation Functions) to the Appendix I Agreement. The Delineation of Functions is fully consistent with the Commission's policy concerning functions that may be performed by an independent transmission company and those which must be performed by a non-profit regional transmission organization. The Appendix I Agreement also addresses rates and revenue allocation in accordance with recent Commission pronouncements. Specifically, in the Appendix I Agreement, the Midwest ISO agrees to support the recovery of lost revenues by Ameren, FirstEnergy, and NIPSCO due to the elimination of rate pancaking. The parties also expect that integration of GridAmerica into the Midwest ISO will not increase the Midwest ISO's Schedule 10 rate adder. In order to permit the parties to complete the development of the GridAmerica systems, and to integrate those systems into the Midwest ISO systems in time to permit the commencement of operations during the fourth quarter of 2002, the parties seek an expedited time schedule.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17435 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–465–001 and RP00–616–001]

CMS Trunkline LNG Company, LLC; Notice of Compliance Filing

July 3, 2002.

Take notice that on June 26, 2002, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, revised tariff sheets as listed on Appendix A attached to the filing.

TLNG states that this filing is being made to comply with the Commission's Order on Compliance With Order Nos. 637, 587-G, and 587-L issued on June 5, 2002.

TLNG states that copies of this filing are being served on all affected shippers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before July 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17392 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–390–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–390–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia's blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gas Transmission Corporation, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is

filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17393 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–391–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–391–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17394 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–392–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–392–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17395 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–393–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–393–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17396 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–394–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–394–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

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Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17397 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–395–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–395–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17398 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–396–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–396–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17399 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–397–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–397–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17400 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–398–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–398–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17401 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–399–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–399–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17402 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–400–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2002.

Take notice that on June 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP02–400–000, a request pursuant to 157.205 and 157.216 (18 CFR Sections 157.205 and 157.216) of the Commission's Regulations under the Natural Gas Act, for authorization to abandon its point of delivery to Columbia Gas of Pennsylvania (CPA) located in Washington County, Pennsylvania, under Columbia Gulf's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. Copies of this request are on file with the Commission and are available for public inspection. This request may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Columbia Gulf states that it was advised by CPA that Columbia's point of delivery in Washington County, Pennsylvania, known as Meadows Grandstand (MS#601143), is now being served from a CPA distribution line and that the service from Columbia is no longer needed. Columbia Gulf states that it is proposing to abandon by removal in its entirety the Meadowlands Grandstand point of delivery to CPA. Columbia Gulf states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia Gulf's abandonment activities will consist of removing the station in its entirety and capping the tap.

Any questions concerning this request may be directed to Fredric J. George, Attorney, Columbia Gulf Transmission Company, P. O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or fax (304) 357–3206.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17403 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17384 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–055]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

July 5, 2002.

Take notice that on June 28, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction under its Rate Schedule FTS–1: Service Agreement No. 73072 between Columbia Gulf Transmission Company and Virginia Power Energy Marketing, dated June 26, 2002.

Transportation service is to commence November 1, 2002 and end March 31, 2003 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17442 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–163–000]

Conectiv Bethlehem, Inc.; Notice of Reapplication for Commission Determination of Exempt Wholesale Generator Status

July 3, 2002.

Take notice that on June 24, 2002, Conectiv Bethlehem, Inc. (CBI) tendered for filing with the Federal Energy Regulatory Commission (Commission), a reapplication for exempt wholesale generator (EWG) status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The reapplication supplements and reaffirms CBI's original application submitted on August 3, 2001 in Docket No. EG01–278–000.

Copies of the filing were served upon the affected state regulatory commissions and the service list in Docket No. EG01–278–000.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 15, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17386 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–003]

East Tennessee Natural Gas Company; Notice of Amendment

July 5, 2002.

Take notice that on June 26, 2002, East Tennessee Natural Gas Company (East Tennessee), 5400 Westheimer Court, Houston, Texas 77056–5310, filed with the Commission in Docket No. CP01–415–003 a petition to amend its application filed on July 26, 2001, in Docket No. CP01–415–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), to modify the proposed construction and operation of facilities in the Patriot Project. Specifically, East Tennessee seeks authorization to incorporate into the Patriot Project certain facilities previously proposed and authorized, but not yet constructed, in Docket No. CP01–375–000 to serve the Tennessee Valley Authority (TVA),[1] all as more fully set forth in the amendment which is open to the public for inspection. This petition may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call (202)208–2222 for assistance).

East Tennessee proposes to amend its Patriot Project to undertake the following activities:

a. Eliminate 13.76 miles of 20-inch diameter pipeline loop on Line 3200 in Franklin, Grundy, Hamilton, Marion, and Sequatchie Counties, Tennessee, originally proposed in the July 26, 2001, application filed in Docket No. CP01–415–000;

[1] 97 FERC ¶ 61,361 (2001). East Tennessee made a separate filing with the Commission on June 26, 2002, in Docket No. CP01–375–000, to partially vacate the authorization previously granted in Docket No. CP01–375–000.

b. Eliminate uprate of the Maximum Allowable Operating Pressure (MAOP) on 6.14 miles of 16-inch diameter pipeline (Uprate K) on Line 3300 in Sevier County, Tennessee, originally proposed in the July 26, 2001, application filed in Docket No. CP01–415–000;

c. Install a 1,590 H.P. Saturn compression unit in lieu of the 6,270 H.P. compression unit authorized for Compressor Station 3206 in Marshall County, Tennessee, in Docket No. CP01–375–000, and install a 6,270 H.P. Centaur compression unit in lieu of the 10,310 H.P. Taurus compression unit originally proposed for Compressor Station 3306 in Greene County, Tennessee, in the July 26, 2001, application filed in Docket No. CP01–415–000;

d. Replace aerodynamic assemblies at Compressor Stations 3206 and 3209 in Marshall and Franklin Counties, Tennessee, respectively, as authorized in Docket No. CP01–375–000;

e. Incorporate 8.74 miles of 20-inch diameter pipeline on Line 3200 in Moore and Franklin Counties, Tennessee, authorized in Docket No. CP01–375–000 as the TVA Loop 3;

f. Uprate the MAOP on 5.44 miles of 12-inch diameter pipeline on Line 3200 in Franklin County, Tennessee, authorized in Docket No. CP01–375–000; and,

g. Eliminate reverse compression at Compressor Station 3219 in Blount County, Tennessee, because the amended precedent agreement with Henry County Power, LLC, shifted the natural gas volumes to be received at various receipt points (however, no change in the total natural gas volumes is proposed).

Any questions regarding the application should be directed to Steven E. Tillman, Director, Regulatory Affairs, East Tennessee Natural Gas Company, P.O. Box 1642, Houston, Texas 77251–1642, phone number (713) 627–5113.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 26, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17437 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–63–004]

Great Lakes Gas Transmission Limited Partnership; Notice of Rate Schedule LFT Activity Report

July 5, 2002.

Take notice that on June 27, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing a report to provide its first year of operating experience under Rate Schedule LFT.

Great Lakes states that the filing is submitted in compliance with the Commission's order in Docket No. RP00–63–002 dated April 27, 2001. 95 FERC ¶ 61,142 (2001). Great Lakes reports that it did not enter into any contracts for Rate Schedule LFT service nor did it provide any LFT service during the period April 30, 2001 through April 29, 2002.

Great Lakes indicates that the filing was served on all parties to the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17436 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–373–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 3, 2002.

Take notice that on June 28, 2002, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 4, to be effective July 1, 2002.

National Fuel states that the purpose of this filing is to update the Annual Charge Adjustment (ACA) surcharge applicable to its customers.

National Fuel states that copies of its filing have been served upon its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17391 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–010]

Midwestern Gas Transmission Company; Notice of Negotiated Rates and Tariff

July 3, 2002.

Take notice that on June 28, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 4, to be effective July 1, 2002.

Midwestern states that the purpose of this filing is to update the Annual Charge Adjustment (ACA) surcharge applicable to its customers.

Midwestern states that copies of its filing have been served upon its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17399 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17444 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–374–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

July 3, 2002.

Take notice that on June 28, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective May 2, 2002:

Fourth Revised Sheet No. 20

Gulf South states that the purpose of this filing is to combine Second Revised Sheet No. 20 and Third Revised Sheet No. 20 previously approve by the Commission in Dockets RP00–340 and RP02–223, respectively.

Gulf South states copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17399 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–49–000]

ISO New England Inc.; Notice of Application

July 5, 2002.

Take notice that on July 1, 2002, ISO New England Inc. (ISO-NE) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make additional long-term borrowings in an amount not to exceed $24.5 million either under its existing credit facility or a new credit facility.

ISO-NE also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 17, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17436 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–337–003 and RP01–93–003]

Kern River Gas Transmission Company; Notice of Compliance Filing

July 3, 2002.

Take notice that on June 28, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing.

Kern River states that the purpose of this filing is to comply with the directives of the Commission's "Order on Compliance with Order No. 637 and Second Order on Compliance with Order Nos. 587–G and 587–L," (1) by filing actual tariff sheets consistent with the directives in the Order pertaining to scheduling equality, segmentation, discounting, netting and trading, and penalties; and (2) by explaining why it is not operationally feasible for Kern River to offer a park and loan service at this time.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17391 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–80–001]

Lake Road Trust Ltd., Lake Road Generating Company, L.P.; Notice of Filing

July 3, 2002.

Take notice that on June 27, 2002, Lake Road Trust Ltd. and Lake Road Generating Company, L.P. (Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission), a correction to its Application for Order Under Section 203 of the Federal Power Act and Request for Expedited Action filed on June 21, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 12, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17385 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–010]

Midwestern Gas Transmission Company; Notice of Negotiated Rates and Tariff

July 3, 2002.

Take notice that on June 28, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing and acceptance, an interruptible gas transportation service agreement pursuant to Midwestern's Rate Schedule IT–1, First Revised Sheet No. 7 and First Revised Sheet No. 273 of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1. The filing contains attachments of Contract No. IT0027 and a letter agreement that reflects a non-conforming contract between Midwestern and Mirant Americas Energy Marketing, LP (Mirant), which contains a discounted transportation rate and a negotiated fuel rate.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a proest with the Federal Energy Regulatory Commission, 888 First Street., NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Sections 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17389 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–373–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 3, 2002.

Take notice that on June 28, 2002, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective July 1, 2002.

Forty Sixth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering ("IG") rate semi-annually and monthly. Further, National is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The six-month redetermination as shown at Page 4 of Appendix E produced an IG rate of $0.14 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17398 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–065]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 5, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–382–011]

Northern Natural Gas Company; Notice of Compliance Filing

July 5, 2002.

Take notice that on June 28, 2002,

environmental assessment (EA) on the natural gas pipeline facilities proposed by SCG Pipeline, Inc. (SCG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the

that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for

Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the

instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17398 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–238–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

July 3, 2002.

Take notice that on June 28, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective June 1, 2002.

Natural states that the purpose of this filing is to comply with the Commission's letter order issued on May 31, 2002, in Docket No. RP02–238.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list at Docket No. RP02–238.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17394 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–065]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 5, 2002.

Take notice that on June 28, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing an amendment to a negotiated rate agreement currently on file with the Commission. Natural states that the amendment is attached as Appendix A to the filing, with an effective date of July 1, 2002.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17443 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–382–011]

Northern Natural Gas Company; Notice of Compliance Filing

July 5, 2002.

Take notice that on June 28, 2002, pursuant to its FERC Gas Tariff and the Carlton Settlement approved in Docket No. RP01–382–008, Northern Natural Gas Company (Northern) has filed various schedules detailing the Carlton buyout and surcharge dollars reimbursed to the appropriate parties.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17445 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–000]

SCG Pipeline, Inc.; Notice of Availability of the Environmental Assessment for the Proposed SCG Pipeline Project

July 5, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by SCG Pipeline, Inc. (SCG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed facilities in Chatham and Effingham Counties, Georgia and Jasper County, South Carolina. These facilities would consist of SCG's proposed 18.2-mile-long, 20-inch-diameter pipeline extending from an interconnect with Southern Natural Gas Company's (Southern) pipeline system in Chatham County, Georgia to a terminus in Jasper County, South Carolina. The EA also addresses the construction of proposed meter stations at the interconnection with Southern's pipeline system and at the proposed pipeline terminus.

The capacity of the SCG Pipeline Project would be 190 million cubic feet per day (MMcfd), and the primary source of natural gas would be imported liquefied natural gas (LNG) from the Elba Island LNG terminal in Savannah, Georgia. SCG seeks to acquire capacity in Southern's existing 13.25-mile-long, 30-inch-diameter twin pipelines which extend between Elba Island, Georgia and SCG's proposed interconnection at Port Wentworth, Georgia in Chatham County. SCG's interconnection at Port Wentworth also provides the capability to receive up to 93 MMcfd from Southern's Savannah Lateral in the event that Elba Island LNG supply is unavailable.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1.
- Reference Docket No. CP02–57–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 5, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). [1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet Web site www.ferc.gov using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17438 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–375–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2002.

Take notice that on June 28, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets listed on Appendix A to the filing, to become effective August 1, 2002.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers.

Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% LF
Market 1	$(0.024)/dth	$(0.0003)/dth	$(0.0011)/dth
Market 2	$(0.074)/dth	$(0.0009)/dth	$(0.0033)/dth
Market 3	$(0.108)/dth	$(0.0013)/dth	$(0.0049)/dth

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

states that the above referenced tariff sheets have been revised to reflect the new negotiated rate contract information. Transwestern also has removed the contract information and footnotes attributable to negotiated rates that have expired. Transwestern has also consolidated information into footnote 1 to avoid repetitive language on alternate receipt and delivery points. Finally, Transwestern has added has added the term of each negotiated rate

154.206 (2001), to move into effect, subject to refund, on July 1, 2002, as part of its FERC Gas Tariff, First Revised Volume No. 1, the rates and tariff sheets that were previously accepted and suspended, subject to refund, by the Commission in its January 30, 2002 "Order Accepting and Suspending Tariff Sheets Subject To Refund and Conditions and Establishing Hearing Procedures" issued in Docket No. RP02–

Zone	Reservation	Usage	100% LF
Market 1	$(0.024)/dth	$(0.0003)/dth	$(0.0011)/dth
Market 2	$(0.074)/dth	$(0.0009)/dth	$(0.0033)/dth
Market 3	$(0.108)/dth	$(0.0013)/dth	$(0.0049)/dth

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17400 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–371–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2002.

Take notice that on June 28, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed in Appendix A to the filing, with a proposed effective date of August 1, 2002.

Transco states that the instant filing is submitted pursuant to Section 39 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover (i) the cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms) and (ii) the related cost of transporting such gas.

The revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 2002 through July 31, 2003 plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 2002.

Transco states that included in Appendix B attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0137 per dt reflected on the tariff sheets included therein.

Transco states that it is serving copies of the instant filing to its affected customers, interested State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17396 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–372–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2002.

Take notice that on June 28, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of such tariff sheets is August 1, 2002.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedule X–321 and to convert such services to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations effective August 1, 2002.

The rates applicable to the converted service are the generally applicable charges under Rate Schedule FT (including fuel), plus reservation and commodity rate surcharges as set forth on First Revised Sheet No. 40N to Transco's Third Revised Volume No. 1 Tariff. First Revised Sheet No. 40N sets forth the charges applicable to TEMCO-Leidy firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to annual firm transportation service under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to TEMCO and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17397 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–022]

Transwestern Pipeline Company; Notice of Negotiated Rates and Tariff Filing

July 3, 2002.

Take notice that on June 28, 2002, Transwestern Pipeline Company (Transwestern) tendered on filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 1, 2002:

Seventeenth Revised Sheet No. 5B.05
Eighth Revised Sheet No. 5B.06
Ninth Revised Sheet No. 5B.07
Sixth Revised Sheet No. 5B.08
Third Revised Sheet No. 5B.09
Third Revised Sheet No. 5B.10
First Revised Sheet No. 5B.11
First Revised Sheet No. 5B.12

Transwestern states that the above sheets are being filed to implement specific negotiated rate agreements with Sempra Energy Trading Corp. and Calpine Energy Services, L.P. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. Transwestern states that the above referenced tariff sheets have been revised to reflect the new negotiated rate contract information. Transwestern also has removed the contract information and footnotes attributable to negotiated rates that have expired. Transwestern has also consolidated information into footnote 1 to avoid repetitive language on alternate receipt and delivery points. Finally, Transwestern has added has added the term of each negotiated rate as suggested by the Indicated Shippers in their protest in Docket No. RP97–288–020.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17390 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–001]

Viking Gas Transmission Company; Notice of Motion To Place Suspended Rates and Sheets Into Effect

July 3, 2002.

Take notice that on June 28, 2002, Viking Gas Transmission Company (Viking) filed a motion pursuant to Section 4 of the Natural Gas Act (NGA) and Section 154.206 of the Commission's Regulations, 18 CFR 154.206 (2001), to move into effect, subject to refund, on July 1, 2002, as part of its FERC Gas Tariff, First Revised Volume No. 1, the rates and tariff sheets that were previously accepted and suspended, subject to refund, by the Commission in its January 30, 2002 "Order Accepting and Suspending Tariff Sheets Subject To Refund and Conditions and Establishing Hearing Procedures" issued in Docket No. RP02–132–000, 98 FERC ¶ 61,066 ("January 30, 2002 Suspension Order"). These sheets are listed on Appendix A to this filing.

In addition and to the extent necessary to effectuate the rates accepted and suspended, subject to refund, to be effective July 1, 2002 pursuant to the January 30, 2002 Suspension Order, Viking filed a motion to move into effect, subject to refund, the substitute tariff sheets listed on Appendix B which incorporate the rates accepted and suspended by the Commission in its January 30, 2002 Suspension Order along with the annual adjustment that Viking filed and the Commission accepted to Viking's Fuel and Loss Retention Percentages (FLRPs) and Load Management Cost Reconciliation Adjustment (LMCRA).

Viking states that copies of this motion filing are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17393 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1420–003, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 5, 2002.

The following filings have been made with the Commission. When an application is listed, any person wishing to obtain a copy should contact the applicant or its counsel. When a rate change is listed, any person wishing to obtain a copy should contact the public reference room. Any person desiring to intervene or to protest any of the filings should file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Any comments should be submitted on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

Comment Date: July 19, 2002.

4. Southern California Edison Company

[Docket No. ER02–2188–000]

Take notice that on June 28, 2002, Southern California Edison Company (SCE) tendered for filing a Notice of Cancellation (Notice) of the Interconnection Facilities Agreement and a Service Agreement for Wholesale Distribution Service between SCE and Effingham County and the following eligible buyer, Progress Ventures, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Effingham County's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Effingham County requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina

10. PJM Interconnection, L.L.C.

[Docket No. ER02–2194–000]

Take notice that on June 28, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) one executed interim interconnection service agreement between PJM and Motiva Enterprises, L.L.C. (Motiva).

PJM requests a waiver of the Commission's 60-day notice

Services, Inc. under Cleco's Open Access Transmission Tariff (OATT). The Service Agreements are designated as Cleco Power LLC Service Agreement Nos. 59 & 60 to its OATT, FERC Electric Tariff, Original Volume No. 1

Comment Date: July 19, 2002.

13. Bridger Valley Electric Association, Inc.

[Docket No. ER02–2198–000]

Take notice that on June 28, 2002,

instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17393 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–370–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 3, 2002.

Take notice that on June 28, 2002, West Texas Gas, Inc. (WTG) submitted for filing, pursuant to Section 19 of the General Terms and Conditions of its FERC Gas Tariff its annual purchased gas cost reconciliation for the period ending April 30, 2002. Under Section 19, any difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. The report indicates that WTG overcollected its actual costs by $11,240 during the reporting period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before July 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17395 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1420–003, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 5, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–003]

Take notice that on June 28, 2002, Westar Energy, Inc. and its wholly owned subsidiary, Kansas Gas and Electric Company (collectively referred to as Westar Energy), submitted their compliance filing in response to the Commission's May 31, 2002 order in *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,250.

A copy of this filing was served on all parties in Docket No. ER02–1420.

Comment Date: July 19, 2002.

2. Virginia Electric and Power Company

[Docket No. ER02–2185–000]

Take notice that on June 28, 2002, Virginia Electric and Power Company (the Company) respectfully tendered for filing the following Service Agreement by Virginia Electric and Power Company to Southeastern Power Administration, designated as Service Agreement No. 3 under the Company's Wholesale Cost-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7, effective on January 16, 2002.

The Company requests an effective date of June 6, 2002, as requested by the customer. Copies of the filing were served upon Southeastern Power Administration, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: July 19, 2002.

3. ARE Generation Company, L.L.C.

[Docket No. ER02–2187–000]

Take notice that on June 28, 2002, ARE Generation Company, L.L.C. (AGC) submitted for filing a notice of cancellation pursuant to 18 CFR 35.15 to reflect the cancellation of its FERC Electric Tariff, Original Volume No. 1, and Service Agreement No. 1 under that tariff, with a proposed effective date of June 28, 2002. Notice of the filing was served on BP Energy Company, the customer under the service agreement.

Comment Date: July 19, 2002.

4. Southern California Edison Company

[Docket No. ER02–2188–000]

Take notice that on June 28, 2002, Southern California Edison Company (SCE) tendered for filing a Notice of Cancellation (Notice) of the Interconnection Facilities Agreement and a Service Agreement for Wholesale Distribution Service between SCE and Sierra Power Corporation. The Notice cancels FERC Electric Tariff, Original Volume No. 5, Service Agreements No. 30 and No. 34.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and Sierra Power Corporation.

Comment Date: July 19, 2002.

5. Southern California Edison Company

[Docket No. ER02–2189–000]

Take notice that on June 28, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and Whitewater Hill Wind Partners, LLC (Whitewater). SCE respectfully requests the Agreements become effective on June 29, 2002.

These Agreements specify the terms and conditions under which SCE will interconnect Whitewater's generating facility to its electrical system and provide Distribution System capacity for up to 66 MW of power produced by the generating facility.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Whitewater.

Comment Date: July 19, 2002.

6. New England Power Company

[Docket No. ER02–2190–000]

Take notice that on June 28, 2002, New England Power Company (NEP) submitted for filing Original Service Agreement No. 213 for Short-Term Firm HVDC Transmission Service between NEP and H.Q. Energy Services, (U.S.) Inc., under NEP's open access transmission tariff—FERC Electric Tariff, Second Revised Volume No. 9.

Comment Date: July 19, 2002.

7. Progress Energy Inc. on behalf of Effingham County Power, LLC

[Docket No. ER02–2191–000]

Take notice that on June 28, 2002, Effingham County Power, LLC (Effingham County) tendered for filing an executed Service Agreement between Effingham County and the following eligible buyer, Progress Ventures, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Effingham County's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Effingham County requests an effective date of June 1, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission, the Georgia Public Service Commission and the South Carolina Public Service Commission.

Comment Date: July 19, 2002.

8. California Independent System Operator Corporation

[Docket No. ER02–2192–000]

Take notice that on June 28, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 45. The purpose of the amendment is to allow the ISO to update its transmission Access Charge and Wheeling Access Charge, after the Commission makes a revised transmission revenue requirement effective for a Participating Transmission Owner. The amendment also clarifies certain other aspects of the ISO's transmission Access Charge and Wheeling Access Charge. The ISO requests the amendment be made effective on July 1, 2002.

In addition, the filing provides, for informational purposes, notice of the revised transmission Access Charge and Wheeling Access Charge rates that will go into effect on July 1, 2002 in accordance with the approved formula.The ISO states that this filing has been served on the California Public Utilities Commission, all California ISO Scheduling Coordinators.

Comment Date: July 19, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER02–2193–000]

Take notice that on June 28, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing six executed agreements for network integration transmission service with Allegheny Energy Supply Co. (Allegheny).

PJM requested a waiver of the Commission's notice regulations to permit the effective date of June 1, 2002 for the agreements, the date that the agreements were executed and that service commences under the agreements. Copies of this filing were served upon Allegheny, as well as the state utility regulatory commissions within the PJM region.

Comment Date: July 19, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER02–2194–000]

Take notice that on June 28, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) one executed interim interconnection service agreement between PJM and Motiva Enterprises, L.L.C. (Motiva).

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date of June 1, 2002, the date the interim period specified in the agreement commences. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: July 19, 2002.

11. New York State Electric & Gas Corporation

[Docket No. ER02–2195–000]

Take notice that on June 28, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 200 filed with FERC corresponding to a Facilities Agreement with the New York Power Authority (NYPA). The proposed amendment would increase revenues by $4,718.95 for the period from September 1, 2002 through August 31, 2003.

This rate filing is made pursuant to Paragraph 5.1 of the October 19, 1999 Facilities Agreement between NYSEG and NYPA, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as property taxes, are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 2001. The revised facilities charge is levied on the cost of the 135 MVAR capacitor and associated equipment interconnected with NYSEG's Oakdale Substation, constructed by NYSEG for the sole use of NYPA.

NYSEG requests an effective date of September 1, 2002. Copies of the filing were served upon the New York Power Authority and the Public Service Commission of the State of New York.

Comment Date: July 19, 2002.

12. Cleco Power LLC

[Docket No. ER02–2196–000]

Take notice that on June 28, 2002, Cleco Power LLC (Cleco) filed two long-term firm Transmission Service Agreements with Aquila Merchant Services, Inc. under Cleco's Open Access Transmission Tariff (OATT). The Service Agreements are designated as Cleco Power LLC Service Agreement Nos. 59 & 60 to its OATT, FERC Electric Tariff, Original Volume No. 1

Comment Date: July 19, 2002.

13. Bridger Valley Electric Association, Inc.

[Docket No. ER02–2198–000]

Take notice that on June 28, 2002, Bridger Valley Electric Association, Inc. (Bridger Valley) tendered for filing an Open Access Transmission Tariff, designated as FERC Electric Tariff, Original Volume No. 1, and accompanying initial rates for service under the OATT. Bridger Valley requests an effective date of August 27, 2002.

Comment Date: July 19, 2002.

14. WPS Empire State, Inc.

[Docket No. ER02–2199–000]

Take notice that on June 28, 2002, WPS Empire State, Inc. (Empire) submitted its revised market-based rate tariff and Notice of Succession. Empire requests that its revised tariff become effective on June 29, 2002, one day after this filing is made.

This filing has been served on Empire's market-based rate customers.

Comment Date: July 19, 2002.

15. Upper Peninsula Power Company

[Docket No. ER02–2200–000]

Take notice that on June 28, 2002, Upper Peninsula Power Company (UPPCo) tendered for filing First Revised Rate Schedule FERC No. 26 between UPPCo and the City of Escanaba, Michigan for wholesale electric power service (Revised Rate Schedule). The Revised Rate Schedule has been modified to reduce the maximum contract demand capacity obligation of UPPCo to supply firm power to the City and to reduce the contract demand component of the minimum demand billing charge associated with this obligation.

UPPCo respectfully requests that the Revised Rate Schedule become effective as of June 1, 2002. Copies of the filing were served upon the City of Escanaba and the Michigan Public Service Commission.

Comment Date: July 19, 2002.

16. Exelon Generation Company, LLC

[Docket No. ER02–2201–000]

Take notice that on June 27, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Rainy River Energy Corporation, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: July 19, 2002.

17. Sithe Energy Marketing, L.P.

[Docket No. ER02–2202–000]

Take notice that on June 28, 2002, Sithe Energy Marketing, L.P. tendered for filing an application for

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

inspection and reproduction at the address in item h above.

n. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made when the Commission determines it necessary to do so.

- Issue Acceptance Letter: July 2002
- Issue Scoping Document: July 2002
- Notice that Application Ready for

with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project Nos.:* 2576–022 and 2597–019.

c. *Date filed:* August 31, 1999..

d. *Applicant:* Northeast Generation Company.

e. *Names of Projects:* Falls Village Project and Housatonic Project.

f. *Location:* The Falls Village, Bulls

powerhouse with a total installed capacity of 9.0 megawatts (MW) producing approximately 36,733 megawatt hours (Mwh) annually; and (4) a switch yard connected to the project via a 69 kilovolt (kV) interconnected transmission line.

2. *The Bulls Bridge Development consists of the following existing facilities:* (1) A 203-foot-long, 24-foot-high stone and concrete gravity dam with a dam crest of 354 feet NGVD; (2)

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River Energy Corporation, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: July 19, 2002.

17. Sithe Energy Marketing, L.P.

[Docket No. ER02–2202–000]

Take notice that on June 28, 2002, Sithe Energy Marketing, L.P. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: July 19, 2002.

18. Mirant Delta, LLC

[Docket No. ER02–2203–000]

Take notice that, on June 28, 2002, Mirant Delta, LLC (Mirant Delta) tendered for filing certain revised tariff sheets to the Must-Run Service (RMR) Agreement (Rate Schedule FERC No. 5) between Mirant Delta and the California Independent System Operator Corporation (CAISO). The revisions (1) reflect the termination of the RMR Agreement as to Pittsburg Power Plant Units 1 and 2, effective retroactively midnight December 31, 2001, and (2) remove an incorrect reference to Pittsburg Power Plant Units 3 and 4.

Comment Date: July 19, 2002.

19. Wisvest-Connecticut, LLC

[Docket No. ER02–2204–000, No. ER99–967–002]

Take notice that on June 28, 2002, Wisvest-Connecticut, LLC (Wisvest-Connecticut) and PSEG Fossil LLC (PSEG Fossil) (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) their Notice of Change in Status for Approval of Market-Based Rate Authority and Filing of Conforming Changes to Market-Based Rates Tariff, Subject to Condition of Closing, and request for waivers pursuant to Section 205 of the Federal Power Act, to address the proposed sale of issued and outstanding membership interests in Wisvest-Connecticut to PSEG Fossil. In addition, the Applicants submitted certain revised tariff sheets of Wisvest-Connecticut's existing tariff permitting power sales at market-based rates, in order to conform to the change in status.

Comment Date: July 19, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17446 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2574–032.

c. *Date filed:* April 29, 2002.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Lockwood Hydroelectric Project.

f. *Location:* On the Kennebec River, in the city of Waterville and town of Winslow, Kennebec County, Maine. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, P.E., Director of Business and Regulatory Affairs—Northeast Region, FPL Energy Maine Hydro LLC, 150 Main Street, Lewiston, Maine 04240.

i. *FERC Contact:* David Turner, e-mail address *david.turner@ferc.gov*, or telephone (202) 219–2844.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time. We do not anticipate the need for preparing a draft Environmental Assessment (EA) and intend to issue a single EA rather than issuing a draft and final EA. The EA will include our recommendations for operating procedures and environmental assessment measures that should be part of any license issued by the Commission. Staff intends to allow at least 30 days for entities to comment on the EA before final action is taken on the license application. All comments on the EA, filed with the Commission, will be considered in an order taking final action on the license application.

l. *Description of the Project:* The project consists of: (1) 1,035 feet of water retaining structures, including a 875-foot-long concrete gravity dam, two spillway sections, and 160-foot-long forebay headworks; (2) a 450-foot-long forebay canal; (3) an approximately 1,300-foot-long bypassed reach; (4) two powerhouses with a total installed capacity of 6,915 kW, and a hydraulic capacity of 5,660 cfs; (5) a project impoundment with a length of 1.2 miles and a surface area of 81.5 acres; and; (7) appurtenant facilities.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for

inspection and reproduction at the address in item h above.

n. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made when the Commission determines it necessary to do so.

- Issue Acceptance Letter: July 2002
- Issue Scoping Document: July 2002
- Notice that Application Ready for Environmental Analysis: September 2002
- Notice of the availability of the Environmental Assessment: February 2003
- Ready for Commission decision on the application: April 2003.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17388 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms, and Conditions, and Prescriptions

July 5, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project Nos.:* 2576–022 and 2597–019.

c. *Date filed:* August 31, 1999..

d. *Applicant:* Northeast Generation Company.

e. *Names of Projects:* Falls Village Project and Housatonic Project.

f. *Location:* The Falls Village, Bulls Bridge, Shepaug, Rocky Falls and Stevenson developments are located on the Housatonic River, 76.2 miles, 52.9 miles, 44.1 miles, 30.0 miles and 19.3 miles, respectively, from its mouth. The project is in the western portion of Connecticut in the counties of Fairfield, New Haven and Litchfield. Approximately 74 acres of Federal land are within project boundaries.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert A. Gates, Project Manager, Northeast Generating Services, 143 West Street, New Milford, Connecticut 06776 (860) 354–8840 or e-mail at *gatesr@nu.com*.

i. *FERC Contact:* Jack S. Duckworth, (202) 219–2818 or via e-mail at *jack.duckworth@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions and prescriptions:* 60 days from the date of issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is ready for environmental analysis at this time.

l. *Description of the project:*

1. *The Falls Village Development consists of the following existing facilities:* (1) A 300-foot-long, 14-foot-high concrete gravity dam with two spillways having a combined overflow length of approximately 280 feet, and a crest at elevation 631.5 feet National Geodetic Vertical Datum (NGVD); (2) an impoundment 3.8 miles long containing 1,135 are-feet when at elevation 633.2 feet NGVD; (3) a dam-integral powerhouse with a total installed capacity of 9.0 megawatts (MW) producing approximately 36,733 megawatt hours (Mwh) annually; and (4) a switch yard connected to the project via a 69 kilovolt (kV) interconnected transmission line.

2. *The Bulls Bridge Development consists of the following existing facilities:* (1) A 203-foot-long, 24-foot-high stone and concrete gravity dam with a dam crest of 354 feet NGVD; (2) a two-mile-long power canal; (3) a 156-foot-long, 17-foot-high rock fill gravity weir dam; (4) a 2.25 mile-long reservoir with an 1,800 acre-feet storage capacity, a surface area, which, at a normal elevation of 354 feet NGVD, occupies approximately 120 acres; (5) a powerhouse with a capacity of 7.2 MW, producing approximately 44,079 MWh annually; and (6) a 69kV line connecting the development to the Rocky River development.

3. *The Rocky River Pumped Storage Development consists of the following existing facilities:* (1) A 952-foot-long earth-filled core wall dam, a 2,500-foot-long earthen canal dike that forms the north bank of the power canal to the intake structure, six dikes, a dam crest elevation averaging 440.1 feet NGVD, and an intake canal 3,190 feet in length; (2) a 7-mile-long, Candlewood Lake reservoir with a 5,610 acre impoundment at 428.1 feet NGVD; (3) a powerhouse with a rated 31 MW capacity averaging 14,238 MWh per year; and (4) a development connection to the applicant's transmission system via the Rocky River-Carmel Hill 1813 line, the Rocky River-Bull Bridge 1555 line and the Rocky River-West Brookfield 1618 line.

4. *The Shepaug Development consists of the following existing facilities:* (1) A 1,412-foot, bedrock-anchored, concrete gravity dam having a crest elevation of 205.3 feet NGVD; (2) an impoundment, at maximum operational elevation level of 198.3 feet NGVD, occupying 1870 acres; (3) a powerhouse with a rated capacity of 37.2 MW with a 1997 production of 118,680 MWh; and (4) a development connection to the applicant's transmission system via the Shepaug-Bates 1622 line and Shepaug-Stony Hill-West Brookfield 1887 line.

5. *The Stevenson Development consists of the following existing facilities:* (1) A 1,250-foot, bedrock-anchored, concrete gravity dam with a rest elevation of 98.3 feet NGVD, 696 feet of spillway and an integral powerhouse; (2) an impoundment occupying a surface area of 1,063 acres at 101.3 feet NGVD, which contains a storage volume of 2,650 acre-feet; (3) a powerhouse with a rated capacity of

30.5 MW with a 1997 production of 92,448 MWh; and (4) a development connection to the applicant's transmission system via several 115 kV transmission lines.

m. Locations of the application: A copy of the application is available for public inspection and reproduction at the commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by

the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17440 Filed 7–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–851–000]

Southern Company Services, Inc.; Notice of Technical Conference

July 5, 2002.

In the Commission's order issued on

listed in the **SUPPLEMENTARY INFORMATION** portion of this notice. The settlement requires the settling parties to pay $626,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating

American Thread Company, The (Coats American, Inc.); Amperex Corporation (Philips Electronics North America Corporation); Amstar Corporation (Flex-Pack Printing Plant n/k/a Tate & Lyle North American Sugars, Inc.); Anaconda—Related Parties (Atlantic Richfield Company); Anchorage, Inc., The; Anco Packaging Corporation (CCL Label, Inc.); Anderson & Sons, Inc.; Apco Products, Inc.; Ashland Chemical

Design Label Manufacturing Company; Dexter Corporation—Related Parties (Akzo Nobel Aerospace Coatings, Inc.); Dielectric Polymers, Inc.; Dupont—Related Parties (E.I. du Pont de Nemours and Company); Durham Manufacturing Company, The; E.J. Balsser, Inc. (E.J. Gaisser, Inc.); Easco Aluminum/Eastern Extrusion Corp.; Eastern Holding Corporation; Eastern Lacquer Corp./ Eastern Chem–Lac; Electrocal; Electrolux Corporation; Energy

30.5 MW with a 1997 production of 92,448 MWh; and (4) a development connection to the applicant's transmission system via several 115 kV transmission lines.

m. Locations of the application: A copy of the application is available for public inspection and reproduction at the commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *www.ferc.gov* using the "RIMS" link-select "Docket #" and follow the instructions. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

o. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008. p. *Procedural Schedule:* The application processing will proceed according to the following tentative schedule:

Receipt of terms and conditions, recommendations & prescriptions: September 2002
Notification of Draft EIS: April 2003
Public Meeting on Draft EIS: May 2003
Final EIS: October 2003

All filings must (1) bear in all capital letters, the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17440 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2744–000]

North American Hydro Inc.; Notice To Convene Meeting on Alternative Dispute Resolution Process

July 5, 2002.

On June 24, 1997, the Commission issued an "Order Approving Feasibility Study for Fish Exclusion Measures." The order required North American Hydro Inc. or the licensee to file a two-year feasibility study to determine the practicality of fish protection measures at the project. The project is located on the Menominee River in Marinette County Wisconsin and Menominee County, Michigan.

On September 22, 1999 and on April 28, 2000, based on comments received from the Wisconsin and Michigan Departments of Natural Resources and the U.S. Fish and Wildlife Service, North American Hydro filed its Evaluation of Fish Exclusion Measures for Park Mill Project. Issues that remain unresolved are related to fish entrainment and mortality. These issues include monetary compensation values of the fish, appropriate fish passage protection devices, costs of fish protection measures, a fish protection fund, and compensatory mitigation.

The Commission's Dispute Resolution Service will conduct a convening session on July 25, 2002, commencing at 10:30 a.m., in the Conference Room at the Peshtigo Service Center of the Wisconsin Department of Natural Resources in Peshtigo, Wisconsin. The convening session will cover Alternative Dispute Resolution (ADR) processes and interest-based negotiation. The Dispute Resolution Service will also assist the parties in better identifying and clarifying the issues in the above-captioned docket. If a party has any questions, please call Deborah Osborne at (202) 208–0831.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17441 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–851–000]

Southern Company Services, Inc.; Notice of Technical Conference

July 5, 2002.

In the Commission's order issued on March 27, 2002,[1] the Commission directed a technical conference be held to address issues raised by the filing.

Take notice that a technical conference will be held on Wednesday, August 7, 2002, at 9:30 a.m., in a room to be designated, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. If appropriate, the technical conference will continue on Thursday, August 8, 2002 at 9:30 a.m., in a room to be designated, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The parties should be prepared to discuss the contested issues in this proceeding, and the June 21, 2002 staff information requests and the answers thereto. Parties will be provided an opportunity to file comments following the technical conference.

All interested parties and staff are permitted to attend the conference.

Magalie R. Salas,
Secretary.
[FR Doc. 02–17439 Filed 7–10–02; 8:45 am]
BILLING CODE 6717–01–P

[1] Southern Company Service, Inc., 98 FERC ¶ 61,328 (2002).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7244–9]

Proposed CERCLA Administrative Cost Recovery Settlement; Angelillo Property Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Angelillo Property Superfund Site site in Southington, Connecticut with the settling parties listed in the **SUPPLEMENTARY INFORMATION** portion of this notice. The settlement requires the settling parties to pay $626,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 (Telephone No. 617–918–1440).

DATES: Comments must be submitted on or before August 12, 2002.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 (Telephone No. 617–918–1440). A copy of the proposed settlement may be obtained from Audrey Zucker, U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone No. 617–918–1788). Comments should reference the Angelillo Property Superfund Site in Southington, Connecticut and EPA Docket No.1–2001–0031 and should be addressed to Audrey Zucker, U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100(SES), Boston, MA 02114–2023.

FOR FURTHER INFORMATION CONTACT: Audrey Zucker, U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100(SES), Boston, MA 02114–2023 (Telephone No. 617–918–1788).

SUPPLEMENTARY INFORMATION: The following is a list of settling parties, including settling federal parties, to the proposed settlement:

A.R. Sandri, Inc.; Acushnet Company, Titleist Golf Division; AGC Incorporated; Albany International—Related Parties; Allen Mfg. Co. (The Danaher Companies); Allied Printing Services,Inc.; Allied–Signal—Related Parties (Honeywell International Inc.); American Biltrite, Inc.; American Cyanamid—Related Parties (Cytec Industries Inc.); American Electro Products, Inc.; American Hoechst—Related Parties (CNA Holdings, Inc.); American Optical (Warner Lambert Co.); American Powdered Metals; American Standard, Inc.—Related Parties; American Thread Company, The (Coats American, Inc.); Amperex Corporation (Philips Electronics North America Corporation); Amstar Corporation (Flex–Pack Printing Plant n/k/a Tate & Lyle North American Sugars, Inc.); Anaconda—Related Parties (Atlantic Richfield Company); Anchorage, Inc., The; Anco Packaging Corporation (CCL Label, Inc.); Anderson & Sons, Inc.; Apco Products, Inc.; Ashland Chemical Company—Related Parties; Avco Lycoming Division (Textron Inc.); Avery–Dennison Corp.—Related Parties (Dennison Manufacturing Company); B.A. Ballou & Company; Bailey Corp.—Related Parties; Ball Metal Container Group; Bangor Punta Corp.; Barden Corp.—Related Parties; BASF Corporation—Related Parties; Bedoukian Research, Inc.; Belding Hemingway—Belding Corticelli Thread Co.; Benjamin Moore & Company; Benmont Corporation (Textron, Inc.); Berol—Related Parties (Newell Rubbermaid, Inc.); BIC Corporation (Waterman BIC Pen Corp.)(BIC Pen Corp.); Biltrite Corporation, The; Black & Decker Corp.—Related Parties (Emhart Industries, Inc.); Boeden Chemical—Related Parties; Brake Systems, Inc.; Brand–Rex—Related Parties (Akzo Nobel, Inc. f/k/a Akzona)(BICC Cables Corporation); Branson—Related Parties (Branson Ultrasonics Corp.); Bridgeport Machine Inc./Textron, Inc. (Textron, Inc.); Bull Metal Products; Burndy Corporation—Related Parties; C & M Corporation; C. Cowles & Company; C.E. Bradley Laboratories, Inc.; C.F. Jameson & Co., Inc.; C.L. Hauthaway & Sons Corp.; C.R. Bard, Inc.; California Products Corporation; Camger Chemical Systems, Inc.; Camvac Intn'l, Inc.: Dunmore Corporation/Rexham (Rexam, Inc.); Capitol Records, Inc.; Carlisle Corp.—Tensolite Division; Carris Reels, Inc.—Related Parties; Champion International Corporation—Champion Retail (International Paper Company); Chartpak; Chelsea Industries—Related Parties (Maynard Plastics Company)(Pyrotex); Chemical Coatings (Providence, RI); CHR Industries, Inc.; Chromium Process Co.; Ciba Specialty Chemical Corporation (Novartis Corporation f/k/a Ciba–Geigy Corporation and Hamblet & Hayes Company); City of Torrington; Compo Industries—Related Parties; Cooper Industries—Related Parties (Cooper Industries, Inc.)(Belden Wire & Cable Company); Custom Chemicals Co.; Custom Coatings & Laminating Company; D.G.C. Auto Body; Dampney Company, Inc.; Darworth Company; Deitsch Plastics Co., Inc.; Delker Corporation, The/Robert Hunsicker; Design Label Manufacturing Company; Dexter Corporation—Related Parties (Akzo Nobel Aerospace Coatings, Inc.); Dielectric Polymers, Inc.; Dupont—Related Parties (E.I. du Pont de Nemours and Company); Durham Manufacturing Company, The; E.J. Balsser, Inc. (E.J. Gaisser, Inc.); Easco Aluminum/Eastern Extrusion Corp.; Eastern Holding Corporation; Eastern Lacquer Corp./Eastern Chem–Lac; Electrocal; Electrolux Corporation; Energy Maintenance Corporation; Engelhard Corporation; Enthone Incorporated; Ethan Allen—Related Parties; Fairchild—Related Parties (Schlumberger Technology Corporation); Fairprene Industrial Products Company, Inc. (BBA U.S. Holdings, Inc.); Fenner America, Ltd. (Fenner, Inc.); Fibre Leather Manufacturing Corp.; Fish Chem. & Equip., Inc./Fish–Callahan Chemical; Franklin Pumping Service (Franklin Environmental Services, Inc.); Freudenberg–NOK—Related Parties; Frismar, Inc.; GenCorp—Related Parties; General Chemical Corp.—Related Parties; General Electric Company—Related Parties; General Foods Corp.—Carton and Container Div. (Kraft Foods North America, Inc.); General Motors Corp.—Related Parties; George Newman & Co.—Related Parties; George Schmitt & Co., Inc.—Related Parties; Giering Metal Finishing Company, Inc.; Gillette Company, The; Gintzler Graphics, Inc.; Goldshield—Related Parties; GTE Sylvania Corporation—Related Parties (GTE Operations Support Incorporated); Guard All Chemical Company, Inc.; Guilford Gravure, Inc.; H.B. Fuller Company—Related Parties; Haartz Auto Fabric Company; Halliday Lithographs—Related Parties (Quebecor Printing Halliday); Hampden Papers, Inc.—Related Parties; Hampford Research, Inc.—Hampford Chemicals; Handy & Harmon—Related Parties; Harris Semiconductor, Inc. (Harris Corporation); Hartford Courant, The; Hazen Paper Company; Helikon Furniture Co., Inc.; Heminway & Bartlett Manufacturing Co.; Heminway Corporation; Hercules Incorporated; Hicks & Otis Prints, Inc.; Holyoke Card and Paper Company; Hopewell Precision, Inc.; Howe Folding Furniture Company; Hoyt & Worthen Tanning Corporation; Hubbard Hall Chemical Company (Hubbard Hall, Inc.); Humphrey Chemical Company; The I.C.I. Americas—Related Parties; Ideal Tape Co., Inc.; Indusol, Inc.; Industrial Polymers & Chemicals, Inc.; Ingersoll–Rand Company—Related Parties; International Paper Company—Related Parties; Ionics, Incorporated; Irving

Tanning Company—Related Parties; James River Corporation—Related Parties (Fort James Corporation/Fort James Operating Company) (Eastern Holding Corporation); John L. Armitage & Company; K.J. Quinn and Co.—Related Parties (K.J. Quinn & Co., Inc.) (Courtaulds Aerospace, Inc./PRC–DeSoto International); Kanthal Corporation—Related Parties; Keeler & Long, Inc.; KEM Plastic Playing Cards, Milford Div.; Rockbestos Company–Cerrock Wire & Cable (Rockbestos–Surprenant Cable Corp.); Rogers Corporation—Related Parties; Ross & Roberts, Inc.; Roy Brothers, Inc.; Royal Business—Related Parties (Olivetti Office U.S.A.); Safety Kleen Corp.–Related Parties (Safety Kleen Systems, Inc.); Sanders Associates, Inc. (Lockheed Martin Corporation) (BAE Systems); Sargent Manufacturing Automatics, Inc.; Xidex Corp. (Anacomp, Inc.); Zollo Drum Co.

Dated: May 23, 2002.

Rich Cavagnero,
Acting Director, Office of Site Remediation and Restoration, Region 1.
[FR Doc. 02–17457 Filed 7–10–02; 8:45 am]
BILLING CODE 6560–50–P

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 18, 2002 at 10 a.m.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.
[FR Doc. 02–17517 Filed 7–9–02; 11:37 am]
BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

renewal of certain FDA advisory committees by the Deputy Commissioner of Food and Drugs (the Deputy Commissioner). The Deputy Commissioner has determined that it is in the public interest to renew the charters of the committees listed in the following table for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed in the following table. This notice is issued under the

Tanning Company—Related Parties; James River Corporation—Related Parties (Fort James Corporation/Fort James Operating Company) (Eastern Holding Corporation); John L. Armitage & Company; K.J. Quinn and Co.—Related Parties (K.J. Quinn & Co., Inc.) (Courtaulds Aerospace, Inc./PRC–DeSoto International); Kanthal Corporation—Related Parties; Keeler & Long, Inc.; KEM Plastic Playing Cards, Inc.; Keystone Cement Company; King Industries, Inc.; L.E. Carpenter & Company; Lakewood Metal Products; Larson Tool & Stamping Co.; Lightolier Corporation—Related Parties (Genlyte Thomas Group, LLC);

Lilly Industries, Inc.—Related Parties (The Valspar Corporation); Litton Ind.—Related Parties; Lonza,Inc.; Lukon, Inc.; Lunquist Tool & Manufacturing Co., Inc. (Lutco, Inc.); M.H. Rhodes, Inc.; Macbeth, Div. of Kollmorgen Corp. (Kollmorgen Corporation); Mace Adhesives & Coating Co., Inc.; Maine Pearl Essence; Majilite Co., Division of Kollmorgen Corp. (Kollmorgen Corporation); Markem Corporation; Mead Specialty—Related Parties (Mead Corporation); Miller Container; Mobil Chemical Co.—Related Parties (Exxon Mobil Corporation); Mohawk Finishing Products, Inc.; Monsanto Company—Related Parties (Pharmacia Corporation/Solutia, Inc.); Morton International, Inc.—Related Parties (Rohm and Haas Company); Narragansett Coated Paper Corp.; Nashua Corp.—Related Parties; New England Aircraft Products/Howmet Corp.; New England Etching Company; New England Printed Tape Company, Inc. (NEPTCO Incorporated); Norton Company—Related Parties; Nu–Brite/Sico (Nu–Brite Chemical Company, Inc.) (O.K.P. Inc. f/k/a Kyanize Paint, Inc.); Pacific Anchor Chemical Corporation—Related Parties (Air Products and Chemicals, Inc.); Parker Hannifin—Related Parties; Permacel; Pierce & Stevens Corp.; Photocircuits Corporation (Kollmorgen Corporation); Pitney Bowes, Inc.; Platt & Labonia Company; Plymouth Rubber Company Inc.; Porce–Len, Inc.; Power Semi–Conductors, Inc.—Related Parties; Prime Tanning Company (Berwick, ME); Quality Nameplate, Inc.; Quebecor Printing Providence, Inc.—Related Parties; Raffi & Swanson—Related Parties; Rapid Power Technologies; Reflexite Corporation; Reichhold, Inc. f/k/a Reichhold Chemicals, Inc.; Reliance—Related Parties (Azko Nobel Coatings Inc.); Rex Leather; Rexall Chemical; Sundown Vitamins/Kraft Foods North America, Inc.; Risdon Corp.—Related Parties (Risdon–AMS (USA), Inc.); Robertshaw Controls Co., Milford Div.; Rockbestos Company–Cerrock Wire & Cable (Rockbestos–Surprenant Cable Corp.); Rogers Corporation—Related Parties; Ross & Roberts, Inc.; Roy Brothers, Inc.; Royal Business—Related Parties (Olivetti Office U.S.A.); Safety Kleen Corp.–Related Parties (Safety Kleen Systems, Inc.); Sanders Associates, Inc. (Lockheed Martin Corporation) (BAE Systems); Sargent Manufacturing Company; Scharr Industries (Illinois Tool Works, Inc.); Scovill—Related Parties (Saltire Industrial, Inc. f/k/a Scovill Inc.); Shell Chemical Company (Shell Oil Company); Sherwin Williams Company, The—Related Parties; Shipley Company LLC; Solvents Recovery Service of New Jersey, Inc. (Safety Kleen Systems, Inc.); Spaulding Co.–Sports Worldwide, Inc.; Specialty Packaging Prod., Div. Ethyl/VCA (Owens–Illinois Inc.); Spectrum Coatings Laboratories, Inc.; Sprague Electric Company—Related Parties (American Annuity Group, Inc.) (Great American Financial Resources, Inc.)(Sprague Electric Technologies); Stanadyne Automotive Corp.; StanChem, Inc.—Related Parties; Stanley Works, The—Related Parties; Strathmore Products, Inc.; Summit Finishing Co.; Sun Chemical Company (Sequa Corporation); Supreme–Lake Mfg., Inc.; Synthetic Products Co. (SPC Divestitures, Inc.); Tapecon, Inc.; Tech Etch, Inc.; Tex–Tech Industries; Troy Mills, Inc.; Tyco Labs—Related Parties (Tyco International (US), Inc.); U.S. Navy Air Station (Quanset Point, RI); U.S. Postal Service; U.S. Postal Service, Vehicle Maintenance Facility; Uncas Manufacturing Company; Union Camp—Related Parties (International Paper Company); United Merchants & Manufacturing, Decora Div. (Decora, Inc.); United Oil Recovery/United Indus. Services Div.; Upaco Adhesives, Inc.; Upjohn Company, The (n/k/a Pharmacia & Upjohn Company); Uretek, Inc.; Vanderbilt Chemical Corporation (R.T. Vanderbilt Company, Inc.); Verla International, Ltd.; Vistron Corporation (Probrush/BP America, Inc.); Vitramon, Inc.; Voltarc Tubes, Inc. (n/k/a PerkinElmer Optoelectronics, Inc.); Voltax Co., Inc., The, by John L. Armitage & Co., Inc.; Wallace Barnes; Wallace Silversmith—Related Parties; Ware Chemical Corporation (Kraft Foods North America, Inc.); Waterbury Companies—Related Parties; Waterbury Plating Company (Nardozzi Realty Co.); Web Technologies, Inc.; Westfield Coatings Corporation—Related Parties; Westvaco Corporation—Related Parties; Weyerhauser Co., Wood Prod. Div.; Weymouth Art Leather Co.; Whittaker Corporation—Related Parties; Winslow Automatics, Inc.; Xidex Corp. (Anacomp, Inc.); Zollo Drum Co.

Dated: May 23, 2002.

Rich Cavagnero,

Acting Director, Office of Site Remediation and Restoration, Region 1.

[FR Doc. 02–17457 Filed 7–10–02; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to guarantee up to $250 million of equipment and other goods and services on behalf of U.S. exporters to a buyer in China. The U.S. exports will enable the Chinese company to increase output of various petrochemicals by 1.815 million metric tons per year. The outputs are HDPE (200,000 tons per year), LDPE (250,000 tons per year), Polypropylene (240,000 tons per year), Ethylene Glycol (356,000 tons per year), Propylene Oxide (88,000 tons per year), Styrene (550,000 tons per year), Butadiene (131,000 tons per year). It is envisioned this new production will be consumed in China. Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 02–17425 Filed 7–10–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Previously Announced Date & Time: Tuesday, June 25, 2002, Meeting Closed to the Public. This Meeting was Rescheduled for Wednesday, June 26, 2002.

DATE & TIME: Tuesday, July 16, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 18, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington DC, (Ninth Floor).

STATUS: This Meeting Will be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–07: Careau & Co. and Mohre Communications by Robert F. Carrot, President.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–17517 Filed 7–9–02; 11:37 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Deputy Commissioner of Food and Drugs (the Deputy Commissioner). The Deputy Commissioner has determined that it is in the public interest to renew the charters of the committees listed in the following table for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed in the following table. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated in the following table unless the Deputy Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Medical Imaging Drugs Advisory Committee	February 28, 2004
Gastrointestinal Drugs Advisory Committee	March 3, 2004
Advisory Committee for Reproductive Health Drugs	March 23, 2004
Arthritis Advisory Committee	April 5, 2004
Veterinary Medicine Advisory Committee	April 24, 2004
Anesthetic and Life Support Drugs Advisory Committee	May 1, 2004
Blood Products Advisory Committee	May 13, 2004
Pulmonary-Allergy Drugs Advisory Committee	May 30, 2004
Drug Safety and Risk Management Advisory Committee (formerly Drug Abuse Advisory Committee)	May 31, 2004
Science Advisory Board/NCTR	June 2, 2004
Peripheral and Central Nervous System Drugs Advisory Committee	June 4, 2004
Psychopharmacologic Drugs Advisory Committee	June 4, 2004
Transmissible Spongiform Encephalopathies Advisory Committee	June 9, 2004

FOR FURTHER INFORMATION CONTACT: Linda A. Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

Dated: July 5, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17478 Filed 7–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; Drug Safety and Risk Management Advisory Committee (Formally Drug Abuse Advisory Committee)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for four members to serve on the Drug Safety and Risk Management Advisory Committee in the Center for Drug Evaluation and Research.

FDA has a special interest in ensuring that women, minority groups, and the physically challenged are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically challenged candidates. Final selection from each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance on membership.

DATES: Nominations should be received before September 1, 2002.

ADDRESSES: All nominations for membership should be sent to Kimberly Topper, and all nominations for consumer-nominated members should be sent to Linda Sherman (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kimberly Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: topperk@cder.fda.gov; or

Linda Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220, e-mail: lsherman@oc.fda.gov.

SUPPLEMENTARY INFORMATION: On June 1, 2002, the Drug Safety and Risk Management Advisory Committee (formerly Drug Abuse Advisory Committee) was rechartered with 9 of the proposed 13 members. Accordingly, FDA is requesting nominations for members to serve on the Drug Safety and Risk Management Advisory Committee (formerly Drug Abuse Advisory Committee).

Function: The committee advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered

by the Department of Health and Human Services (DHHS) and the Department of Justice with regard to safety, abuse potential, risk management, risk communication, and quantitative evaluation of spontaneous reports, and recommends actions to be taken by DHHS with regard to marketing, investigation, and control of such drugs or other substances.

Criteria for Members

committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it

(FDA). The meeting will be open to the public.

Name of Committee: Drug Safety and Risk Management Advisory Committee (formerly Drug Abuse Advisory Committee).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 17, 2002, from 8 a.m. to 5

a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee

of experience with implementation of the guidance, input from the Advisory Committee for Pharmaceutical Science at a meeting held on November 28 and 29, 2001, and changes in agency thinking based on new data. This revision should provide better guidance to sponsors conducting bioavailability (BA) and bioequivalence (BE) studies for orally administered drug products.

DATES: Submit written or electronic comments on the draft revised guidance

dissolution methods development (section III, Methods to Document BA and BE), (2) changes to the use of only the average BE approach for BE comparisons, (section IV, Comparison of BA Measures in BE Studies), (3) clarifies the definitions of proportionality (section V, Documentation of BA and BE) in the documentation of BA and BE in response to comments from industry, (4) changes recommendations regarding

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by the Department of Health and Human Services (DHHS) and the Department of Justice with regard to safety, abuse potential, risk management, risk communication, and quantitative evaluation of spontaneous reports, and recommends actions to be taken by DHHS with regard to marketing, investigation, and control of such drugs or other substances.

Criteria for Members

Persons nominated for membership on the committees described previously in this document must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as anesthesiology, surgery, internal medicine, infectious disease, asthma, rheumatology, microbiology, pediatrics, ophthalmology, cardiology, clinical/medical oncology, hematology, radiology, nuclear medicine, biostatistics, epidemiology, dermatopathology/immunodermatology, dermatology, psychopharmacology, neurochemistry, neuropharmacology, endocrinology, obstetrics and gynecology, reproductive endocrinology, gastroenterology, pharmacology, clinical pharmacology, hepatology, virology, pharmaceutical manufacturing, bioavailability and bioequivalence research, pharmacokinetics, neurology, psychiatry, psychology, neuropharmacology, neuropathology, pulmonary disease, allergy, immunology, clinical immunology, safety, abuse potential, risk management, risk communication and quantitative evaluation of spontaneous reports or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is up to 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described previously in this document one voting member who is nominated by consumer organizations. These members are recommended by consumer organizations which have the responsibility for screening, interviewing, and recommending candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is up to 4 years. Nominations for all committees listed previously in this document are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict on interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 5, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17477 Filed 7–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Drug Safety and Risk Management Advisory Committee (formerly Drug Abuse Advisory Committee).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 17, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–021), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (for Express delivery: 5630 Fishers Lane, Room 1093, Rockville MD 20857), 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss ways to improve the usefulness of consumer medication information (CMI) distributed with prescriptions being filled at the nation's pharmacies. Findings of a recent FDA-sponsored study(www.fda.gov/ohrms/dockets/ac/acmenu.htm) showed that CMI is currently being distributed with more than 85 percent of prescriptions and that scientific accuracy of the materials is high, but the usefulness of materials is variable due largely to omissions of important risk and benefit information. The committee will consider: (1) Potential causes of insufficiencies in CMI, including current practices of the parties involved in developing and processing CMI and pharmacy practices that may affect the distribution and content of CMI, and (2) potential interventions to address causes of CMI insufficiencies in the current system, and scientific methods to assess and monitor whether effective communication of key information to patients is occurring.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 15, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 15, 2002, and submit

a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly L. Topper by July 15, 2002.

FDA regrets that it was unable to publish this notice 15 days prior to the Drug Safety and Risk Management Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Drug Safety and Risk Management Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15–day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: July 5, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17402 Filed 7–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0258]

Draft Revised Guidance for Industry on Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revised guidance for industry entitled "Bioavailability and Bioequivalence for Orally Administered Drug Products—General Considerations." FDA's Biopharmaceutics Coordinating Committee determined that a revision of the guidance was necessary as a result of experience with implementation of the guidance, input from the Advisory Committee for Pharmaceutical Science at a meeting held on November 28 and 29, 2001, and changes in agency thinking based on new data. This revision should provide better guidance to sponsors conducting bioavailability (BA) and bioequivalence (BE) studies for orally administered drug products.

DATES: Submit written or electronic comments on the draft revised guidance by August 12, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft revised guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Aida L. Sanchez, Center for Drug Evaluation and Research (HFD–650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5847.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft revised guidance for industry entitled "Bioavailability and Bioequivalence for Orally Administered Drug Products—General Considerations." This document is intended to provide information to sponsors and/or applicants planning to include BA and BE information for orally administered drug products in investigational new drug applications (INDs), new drug applications (NDAs), abbreviated new drug applications (ANDAs), and their supplements. This draft revises the guidance published as a final guidance in the **Federal Register** on October 27, 2000 (65 FR 64449). It is being revised as a result of changes in agency thinking based, in part, on input from the Advisory Committee for Pharmaceutical Science, experience with the guidance, and comments from industry. This draft revision of the guidance does the following: (1) Changes recommendations for the use of replicate and nonreplicate study designs for extended-release products and includes recommendations regarding dissolution methods development (section III, Methods to Document BA and BE), (2) changes to the use of only the average BE approach for BE comparisons, (section IV, Comparison of BA Measures in BE Studies), (3) clarifies the definitions of proportionality (section V, Documentation of BA and BE) in the documentation of BA and BE in response to comments from industry, (4) changes recommendations regarding waivers of BE studies (subsection V.C.2, Waivers of In Vivo BE Studies (Biowaivers)) in certain situations, and (5) makes other changes such as use of the more general term "modified release" as opposed to "extended" or "delayed release" (subsections V.D.2 and V.D.3) and minor corrections to citations of the regulations. This draft revision should provide better guidance to sponsors conducting BA and BE studies for orally administered drug products.

This draft revised guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft revised guidance, when finalized, will represent the agency's current thinking on submitting BA and BE information to INDs, NDAs, and ANDAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments on the draft revised guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. This draft revised guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: June 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17403 Filed 7–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0004

AGENCY: Bureau of Land Management, Interior.

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumption we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic,

20 applications annually, with a total annual burden of 30 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 2520–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a

A claim is not held in good faith when held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession if it was initiated while the land was withdrawn or reserved for Federal purposes.

When BLM receives the application, we will analyze the information, conduct an on-site field examination of the lands, and prepare reports. The BLM

for public lands under a color-of-title claim. The BLM uses the information to determine if the applicant is eligible to acquire public lands under the Color-of-Title Act of December 22, 1928.

DATES: You must submit your comments to BLM at the address below on or before September 9, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to:

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 IA]

Extension of Approved Information Collection, OMB Approval Number 1004–0004

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from those persons who submit Form 2520–1 to apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States. The BLM uses this information to determine if the applicant is eligible to make a desert-land entry under the appropriate land entry laws.

DATES: You must submit your comments to BLM at the address below on or before September 9, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0004" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumption we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress passed the Desert Land Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 231, 323, 325, 327–329) to encourage and promote the economic development of the arid and semiarid public lands. Through the Act, you may apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States. The regulations in 43 CRF 2520 provide guidelines and procedures to obtain public lands under the Act.

You qualify to file a desert-land entry if you are a citizen of the United States; 21 years old; and a resident in the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, South Dakota, Utah, Washington, or Wyoming (no residency is required in the State of Nevada).

You may apply for one or more tracts of public lands totaling no more than 320 acres. The lands must be surveyed or unsurveyed, unappropriated, non-mineral, and non-timber. The lands must be suitable for agricultural purposes and more valuable for that purpose than any other. The tracts of land must be sufficiently close to each other to manage satisfactorily as an economic unit.

You must locate lands you feel can be economically developed and determine the legal land description. You must contact the BLM State Office where the lands are located and verify the lands are available for desert-land entry application.

When BLM receives the application, we will examine your application for completeness and accuracy and classify the lands included in the application. BLM will approve your application if the lands are classified suitable for desert-land entry or reject your application if the lands are classified unsuitable for desert-land entry.

Based on past experience processing these applications, BLM estimates the public reporting burden for completing the Form 2520–1 is 90 minutes. BLM estimates that we receive approximately 20 applications annually, with a total annual burden of 30 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 2520–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: May 22, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–17409 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0010

AGENCY: Bureau of Land Management, Interior

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from those persons who submit a Conveyance Affecting Color or Claim of Title Application (Form No. 2540–2) to apply for public lands under a color-of-title claim. The BLM uses the information to determine if the applicant is eligible to acquire public lands under the Color-of-Title Act of December 22, 1928.

DATES: You must submit your comments to BLM at the address below on or before September 9, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You many mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0010" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress passed the Color-of-Title Act of December 22, 1928 (45 Stat. 1069), as amended by the Act of July 28, 1953 (67 Stat. 227; 43 U.S.C. 1068–1068b), to provide for the transfer of legal title to public lands from the United States to eligible individuals, groups, or corporations who have a valid color-of-title claim. The regulations at 43 CFR part 2540 provide guidelines to file a color-of-title claim.

Any individual, group, or corporation that possesses valid evidence of a title to public lands administered by BLM may file a color-of-title application (Form 2540–2). The Act refers to Class I and Class II claims. A Class I is a claim:

(1) held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for a minimum of 20 years; and

(2) where claimant or predecessors placed valuable improvements and cultivated part of the land.

A Class II is a claim held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for the period commencing not later than January 1, 1901, to date of application, during which time they paid taxes levied on the land by State and local governmental units.

A claim is not held in good faith when held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession if it was initiated while the land was withdrawn or reserved for Federal purposes.

When BLM receives the application, we will analyze the information, conduct an on-site field examination of the lands, and prepare reports. The BLM will approve your application if you meet the requirements of a Class I or Class II claim. We will reject your application if you do not meet the requirements of a Class I or Class II claim. Class II claims are discretionary and we may reject the application if the public interest in retention of the lands clearly outweighs the interest of the applicant

Based on past experience processing these applications, BLM estimates the public reporting burden for completing the Form 2540–2 is one hour. BLM estimates that we receive approximately 37 applications annually, with a total annual burden of 37 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 2540–2 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: May 22, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–17410 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–001]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) request the Office of Management and Budget (OMB) to extend an existing approval to collect information from those persons who submit a Color-of-Title Tax Levy and Payment Record Application (Form No. 2540–3) to apply for public lands under a color-of-title claim. The BLM uses the information to determine if the applicant is eligible to acquire public lands under the Color-of-Title Act of December 22, 1928.

DATES: You must submit your comments to BLM at the address below on or before September 9, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0011" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress passed the Color-of-Title Act of December 22, 1928 (45 Stat. 1969), as amended by the Act of July 28, 1953 (67 Stat. 227; 43 U.S.C. 1068–1068b), to provide for the transfer of legal title to public lands from the United States to eligible individuals, groups, or corporations who have a valid color-of-title claim. The regulations at 43 CFR

2540 provide guidelines to file a color-of-title claim.

Any individual, group, or corporation that possesses valid evidence of a title to public lands administered by BLM may file a color-of-title application. The Act refers to Class I and Class II claims. A Class I claim is a claim:

(1) Held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or

Any member of the public may request and obtain, without charge, a copy of the BLM Form No. 2540–3 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TTD) my call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

nonprofit entities and 25 years for Federal, States and local governmental entities. We issue leases subject to appropriate environmental and legal stipulations and leases must contain provisions for compliance with:

(1) Nondiscrimination based on race, color, sex, age, religion, or national origin;

(2) An approved plan of management and development upon which BLM

(4) Check for the presence of unpatented mining claims (R&PP leases and conveyances cannot be issued where mineral claims are present) and, if necessary to determine the validity of a mining claim. The cost of the determination will be the responsibility of the applicant;

(5) Conduct a field examination and other investigations to gather information and data on the

lands under the Color-of-Title Act of December 22, 1928.

DATES: You must submit your comments to BLM at the address below on or before September 9, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

2540 provide guidelines to file a color-of-title claim.

Any individual, group, or corporation that possesses valid evidence of a title to public lands administered by BLM may file a color-of-title application. The Act refers to Class I and Class II claims. A Class I claim is a claim:

(1) Held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for a minimum of 20 years; and

(2) where the claimant or predecessors placed valuable improvements and cultivated part of the land.

A Class II claim is a claim held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim of color-of-title for the period commencing not later than January 1, 1901, to date of application, during which time they paid taxes levied on the land by State and local government units.

A claim is not held in good faith when held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession if it was initiated while the land was withdrawn or reserved for Federal purposes.

The information we collect on the Color-of-Title Tax Levy and Payment Record Form No. 2540–3 is required by 43 CFR 2540 to process applications to acquire legal title to public lands under the December 22, 1928 Act, as amended by the July 28, 1953 Act. The following information is collected on the form:

(1) Applicant's name;

(2) Legal land description claimed;

(3) Itemized data relating to all recorded tax payments in chronological order; and

(4) Certification by the proper county official.

When BLM receives the application, we will analyze the information, conduct an on-site field examination of the lands, and prepare reports. The BLM will approve your application if you meet the requirements of a Class I or Class II claim. We will reject your application if you do not meet the requirements of a Class I or Class II claim. Class II claims are discretionary and we may reject the application if the public interest in retention of the lands clearly outweighs the interest of the applicant.

Based on past experience processing these applications, BLM estimates the public reporting burden for completing the Form 2540–3 is one hour. BLM estimates that we receive approximately 37 applications annually, with a total annual burden of 37 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form No. 2540–3 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: May 28 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–17411 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0012

AGENCY: Bureau of Land Management, Interior

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from States and local government agencies and from qualified nonprofit corporations and associations who submit an Application for Land for Recreation or Public Purposes (form No. 2740–1) to obtain public lands and benefits for recreational and public purposes. The BLM uses the information to determine if an applicant meets the requirements of the Recreation and Public Purpose Act (R&PP) of June 14, 1926.

DATES: You must submit your comments to BLM at the address below on or before September 9, 2000. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0012" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Commentes will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TTD) my call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Recreation and Public Purpose Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), authorizes the Secretary of the Interior to lease or convey certain public lands to States and local government agencies, and to qualified nonprofit corporations and associations for recreational and public purpose under specified conditions. The term "public purpose" means providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety, or welfare. We permit use of lands or facilities for habitation, cultivation, trade, or manufacturing only when necessary for and integral to the essential part of public purpose. 43 CFR 2740 regulations provide guidelines to lease or convey public lands under the Act.

The Act applies to all public lands, except lands within national forests, national parks and monuments, national wildlife refuges, Indian lands, and acquired lands. We lease revested Oregon and California Railroad grant lands, and reconveyed Coos Bay Wagon Road grant lands in western Oregon only to State and Federal instrumentalities, political subdivisions, and to municipal corporations.

Lease periods may be for any length of time, but must not exceed 20 years for nonprofit entities and 25 years for Federal, States and local governmental entities. We issue leases subject to appropriate environmental and legal stipulations and leases must contain provisions for compliance with:

(1) Nondiscrimination based on race, color, sex, age, religion, or national origin;

(2) An approved plan of management and development upon which BLM based the lease decision (we may cancel a lease for nonuse or a use (without prior BLM consent) other than for which BLM issued the lease);

(3) The Federal Government may reserve the standing timber, use of water, or place other limitations on the use of natural resource; and

(4) Other reasonable stipulations we may require as part of the consideration for the moderate charge for land.

BLM issues patents under the Act that convey a restricted title containing provisions which, if not complied with, may result in reversion of the title to the United States. These provisions are:

(1) Nondiscrimination clauses providing that the patentee may not restrict or permit restrictions on the use of the lands conveyed or facilities because of race, color, sex, age, religion, or national origin;

(2) A provision that, if the patentee or its successor in interest attempts to transfer tile or control over the land to another or the land is devoted to a use (without prior BLM consent) other than for what it conveyed, title will revert to the United States;

(3) The patent must stipulate the lands in perpetuity are used for the purposes for which the lands are acquired (the lease or patent may stipulate that certain provisions of the development plan, including the management plan, may be subject to review by the Secretary of the Interior or his delegate); and

(4) All minerals are reserved to the United States. After receiving the form, the BLM will:

(1) Determine if the applicant's proposal conforms with land use planning, review land status to determine if the lands are subject to application, and determine if the application meets all requirements of the law and regulations:

(2) Review the development and management plans to determine adequacy and effectiveness, and evaluate the construction schedule and estimated financing to ensure they are realistic and practicable;

(3) Secure the views of other agencies that have an interest in the lands, including State and local planning and zoning departments;

(4) Check for the presence of unpatented mining claims (R&PP leases and conveyances cannot be issued where mineral claims are present) and, if necessary to determine the validity of a mining claim. The cost of the determination will be the responsibility of the applicant;

(5) Conduct a field examination and other investigations to gather information and data on the environmental considerations and proper classification of the lands;

(6) Publish a notice to solicit views and comments from the public concerning the proposal.

Based on past experience processing these applications, BLM estimates the public reporting burden for completing and providing the information for Form 2740–1 is 40 hours. BLM estimates that we receive approximately 55 applications annually, with a total annual burden of 2,200 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form No. 2740–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: May 28, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–17412 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0029

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from those persons who submit a Color-of-Title Application (Form No. 2540–1) to apply for public lands under a color-of-title claim. The BLM uses the information to determine if the applicant is eligible to acquire public lands under the Color-of-Title Act of December 22, 1928.

DATES: You must submit your comments to BLM at the address below on or before September 9, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0029" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) the accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress passed the Color-of-Title Act of December 22, 1928 (45 Stat. 1069), as amended by the Act of July 28, 1953 (67 Stat. 227; 43 U.S.C. 1068–1068b), to provide for the transfer of legal title to public lands from the United States to eligible individuals, groups, or corporations who have a valid color-of-title claim. The regulations at 43 CFR 2540 provide guidelines to file a color-of-title claim.

Any individual, group, or corporation that possesses valid evidence of a title to public lands administered by BLM may file a Color-of-Title Application (Form 2540–1). The Act refers to Class I and Class I claims. A Class I claim is a claim:

(1) Held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for a minimum of 20 years;

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a

development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands

requirements and associated burden hours. Submission of the information in this collection is necessary for MMS to initiate and track appeals of disputed orders. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 170 lessees or designees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 265 hours. See the following chart for a breakdown of the burden estimate by CFR section and paragraph.

30 CFR Section	Requirement	Annual number of responses	Burden hours per response	Annual burden hours
250.1409 (a); (b)(2)	(a) When you receive the Reviewing Officer's final decision, you	10	1	10

Any individual, group, or corporation that possesses valid evidence of a title to public lands administered by BLM may file a Color-of-Title Application (Form 2540–1). The Act refers to Class I and Class I claims. A Class I claim is a claim:

(1) Held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for a minimum of 20 years; and

(2) where claimant or predecessors placed valuable improvements and cultivated part of the land.

A Class II claim is a claim held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for the period commencing not later than January 1, 1901, to date of application, during which time they paid taxes levied on the land by State and local governmental units.

A claim is not held in good faith when held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession if it was initiated while the land was withdrawn or reserved for Federal purposes.

When BLM receives the application, we will analyze the information, conduct an on-site field examination of the lands, and prepare reports. The BLM will approve your application if you meet the requirements of a Class I or Class II claim. We will reject your application if you do not meet the requirements of a Class I or Class II claim. Class II claims are discretionary and we may reject the application if the public interest in retention of the lands clearly outweighs the interest of the applicant.

Based on past experience processing these applications, BLM estimates the public reporting burden for completing the Form 2540–1 is 15 minutes. BLM estimates that we receive approximately 37 applications annually, with a total annual burden of 9 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 2540–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: May 28, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–17413 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0121).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are submitting to OMB for review and approval an information collection request (ICR) titled "Administrative Appeal Procedures" (formerly titled "Preliminary Statement of Issues and Fee Waiver"). We are also soliciting comments from the public on this ICR.

DATES: Submit written comments on or before August 12, 2002.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0107), 725 17th Street, NW., Washington, DC 20503. Also, submit copies of your written comments to Carol Shelby, Regulatory Specialist, Minerals Management Service, MS 320B2, PO Box 25165, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also submit your comments at our e-mail address *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Shelby at (303) 231–3151 or FAX (303) 231–3385.

FOR FURTHER INFORMATION CONTACT: Carol Shelby, Regulatory Specialist, phone (303) 231–3151 or FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION:

Title: Administrative Appeal Procedures.

OMB Control Number: 1010–0121.

Bureau Form Numbers: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions for the Secretary.

On January 12, 1999, DOI published a proposed rule in the **Federal Register** (64 FR 1930) to revise the appeals process. Proposed 43 CFR part 4, subpart J, would have established a new 1-step process for appeals of royalty orders. Among other actions, the proposed rule would have replaced the current regulations at 30 CFR part 290 and 43 CFR part 4, subpart E, as they relate to appeals of royalty orders. MMS submitted an information collection request entitled "Preliminary Statement of Issues and Fee Waiver" to cover the information collection requirements in that proposed rule. OMB approved that request on April 13, 1999, and assigned OMB Control Number 1010–0121.

MMS received numerous negative comments about some of the provisions in the proposed rule. Consequently, on May 13, 1999, MMS published a final rule in the **Federal Register** (64 FR 26240) making final only those portions of the January 1999 proposed rule that received few, if any, comments. For example, rather than finalizing the substantive procedural changes in the proposed rule, the regulations in 30 CFR part 290 were separated into two subparts—subparts A and B—and rewritten using plain English principles. Subpart A relates to appeals for the Offshore Minerals Management program, and subpart B relates to appeals for the Royalty Management Program (currently Minerals Revenue Management). Subpart J of 43 CFR part 4 was added to the final rule to incorporate specific time frames required in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. However, the final rule does not contain the substantive changes required to change the appeals process from a 2-step to a 1-step process as originally proposed in the proposed rule.

MMS is revising this information collection to cover the reporting requirements contained in the final rule. These requirements are located in 30 CFR parts 250 and 290. Refer to the burden chart for identified reporting

requirements and associated burden hours. Submission of the information in this collection is necessary for MMS to initiate and track appeals of disputed orders. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 170 lessees or designees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 265 hours. See the following chart for a breakdown of the burden estimate by CFR section and paragraph.

30 CFR Section	Requirement	Annual number of responses	Burden hours per response	Annual burden hours
250.1409 (a); (b)(2)	(a) When you receive the Reviewing Officer's final decision, you have 60 days to either pay the penalty or file an appeal in accordance with 30 CFR part 290 * * * (b) If you file an appeal, you must either: (1) [see § 250.1409(b)(1) below] or (2) Notify the Regional Adjudication Office * * * that you want your lease-specific/area-wide bond on file to be used as the bond for the penalty amount * * *.	10	1	10
250.1409 (b)(1)	(b) If you file an appeal, you must either: (1) Submit a surety bond * * * or (2) [see § 250.1409(b)(2) above] * * *.	(1)		
290.4(a), (b)(1)	For your appeal to be filed, MMS must receive all of the following within 60 days after you receive the decision or order: (a) A written Notice of Appeal together with a copy of the decision or order you are appealing * * * (b) A nonrefundable processing fee of $150 paid with the Notice of Appeal * * * (1) Identify the order you are appealing on the check or other form of payment * * *.	10	10	100
290.7(a)(2)	(a) The decision or order is effective during the 60–day period for filing an appeal * * * unless (1) * * * or (2) you post a surety bond under 30 CFR 250.1409 pending the appeal * * *.	(1)		
290.105(a)(1) and (2)	(a) You may appeal an order to the Director, Minerals Management Service * * * by filing a Notice of Appeal in the office of the official issuing the order within 30 days from service of the order * * * (1) Within the same 30–day period, you must file * * * a statement of reasons or written arguments or briefs * * * (2) If you are a designee, when you file your Notice of Appeal, you must serve your Notice of Appeal on the lessees for the leases in the order you appealed.	150 (2)	1	150
290.106(a)	(a) If you are a lessee, * * * you may join in that appeal * * * by filing a Notice of Joinder with the office or official that issued the order.	10	.5	5
Total		180		265

[1] Burden covered in OMB Control Number 1010-0006.

[2] The statement of reasons required in 30 CFR 290.105(a)(1) is part of the administrative appeals process and is exempt from the Paperwork Reduction Act of 1995. Consequently, the burden for preparation of the statement of reasons is not included in this information collection request.

Estimated Annual Reporting and Recordkeeping "Non-hour" Burden: We have identified $1,500 of "non-hour" cost burden.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on February 28, 2002, we published a **Federal Register** notice (67 FR 9316) with the required 60–day comment period announcing that we would submit this ICR to OMB for approval. We received comments from one organization. We responded to the comments in our ICR submission for OMB approval. We have posted a copy of the ICR at our Internet Web site *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.hem*. We will also provide a copy of the ICR to you without charge upon request.

If you wish to comment in response to this notice, please send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive your comments by August 12, 2002. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public Comment Policy: We will post all comments received in response to this notice on our Internet Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm* for public review. We also make copies of these comments, including names and home addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado.

responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice. A detailed assessment of the human remains was made by the Bureau

Village Tribe.This notice has been sent to officials of the Kenaitze Indian Tribe and the Seldovia Village Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 West 7th Avenue, Number 13, Anchorage, AK 99513-7599, telephone (907) 271-5510,

individual were collected by an unknown person from "Sandwich Islands." The American Museum of Natural History received these remains in 1929 as a gift from Jessie Y. Loomis in the name of Earnest Yates Loomis, deceased. The American Museum of Natural History's documentation states that these human remains had been held by the American Institute of Phrenology, but it does not indicate whether Mr. or

determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native Hawaiian ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native Hawaiian human remains and the Hawai'i Island Burial Council, Hui

(NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Antelope Valley Indian Museum, Lancaster, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR

Public Comment Policy: We will post all comments received in response to this notice on our Internet Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm* for public review. We also make copies of these comments, including names and home addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado.

Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744.

Dated: July 2, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–17407 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Alaska State Museum, Juneau, AK, and in the Control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Alaska State Museum, Juneau, AK, and in the control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice. A detailed assessment of the human remains was made by the Bureau of Land Management, Alaska State Office and the Alaska State Museum professional staff in consultation with representatives of the Kenaitze Indian Tribe and Seldovia Village Tribe.In 1956, human remains representing a minimum of one individual were removed from Halibut Cove, Kachemak Bay, AK, during legally authorized work by archeologist Joel M. Moss. Mr. Moss donated the remains to the Alaska State Museum the same year. The human remains are estimated to date to the 19th century or earlier. No known individual was identified. The single associated funerary object is a stone lamp.Based on cranial morphology, stratigraphy, and an associated funerary object, this individual has been identified as Native American. Based on geographic location, this individual is affiliated with Athabaskan culture and, specifically, with the Athabaskan tribe represented by the Seldovia Village Tribe. This determination of cultural affiliation is based upon the continuity of Native American occupation in the Kachemak Bay, AK, area and verification by representatives of the Kenaitze Indian Tribe that Kachemak Bay is within the traditional territory of the Tainana Athabaskans. Members of the Seldovia Village Tribe report use of the Kachemak Bay area by their ancestors.Based on the above-mentioned information, officials of the Bureau of Land Management, Alaska State Office have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Land Management, Alaska State Office also have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management, Alaska State Office have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and tribes represented by the Seldovia Village Tribe.This notice has been sent to officials of the Kenaitze Indian Tribe and the Seldovia Village Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 West 7th Avenue, Number 13, Anchorage, AK 99513-7599, telephone (907) 271-5510, before August 12, 2002. Repatriation of the human remains and associated funerary object to the Seldovia Village Tribe may begin after that date if no additional claimants come forward.

Dated:April 25, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17430 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, Kaua'i/Ni'ihau Island Burial Council, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, O'ahu Island Burial Council, and Office of Hawaiian Affairs.

In an unknown year, human remains representing a minimum of one individual were collected by an unknown person from "Sandwich Islands." The American Museum of Natural History received these remains in 1929 as a gift from Jessie Y. Loomis in the name of Earnest Yates Loomis, deceased. The American Museum of Natural History's documentation states that these human remains had been held by the American Institute of Phrenology, but it does not indicate whether Mr. or Mrs. Loomis was a member of the American Institute of Phrenology. The American Museum of Natural History has no information regarding the American Institute of Phrenology's acquisition of these remains. No known individual was identified. No associated funerary objects are present.

In an unknown year, human remains representing a minimum of one individual were collected by an unknown person and identified as a "Sandwich Islander from Kahahlooa." The American Museum of Natural History received these remains in 1929 as a gift from Jessie Y. Loomis in the name of Earnest Yates Loomis, deceased. The American Museum of Natural History's documentation states that these human remains had been held by the American Institute of Phrenology, but it does not indicate whether Mr. or Mrs. Loomis was a member of the American Institute of Phrenology. American Museum of Natural History documentation indicates that, in 1867, these remains were in the possession of John Butler, Esq. The American Museum of Natural History has no information regarding the American Institute of Phrenology's or Mr. Butler's acquisition of these remains. No known individual was identified. No associated funerary objects are present.

These individuals have been identified as Native Hawaiian based on the American Museum of Natural History's documentation describing each as a "Sandwich Islander." Sandwich Islands is a former name of the Hawaiian Islands. Archeological, biological, geographic, linguistic, and consultation evidence indicate a lengthy Native Hawaiian occupation of the Hawaiian Islands. The geographic location reported for the human remains is consistent with the traditional territory of Native Hawaiians, represented here by the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, Kaua'i/Ni'ihau Island Burial Council, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, O'ahu Island Burial Council, and Office of Hawaiian Affairs.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native Hawaiian ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native Hawaiian human remains and the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, Kaua'i/Ni'ihau Island Burial Council, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, O'ahu Island Burial Council, and Office of Hawaiian Affairs.

This notice has been sent to officials of the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, Kaua'i/Ni'ihau Island Burial Council, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, O'ahu Island Burial Council, and Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Elaine Guthrie, Acting Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5835, before August 12, 2002. Repatriation of the human remains to the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawai'i Nei, Kaua'i/Ni'ihau Island Burial Council, Maui/Lana'i Island Burial Council, Moloka'i Island Burial Council, O'ahu Island Burial Council, and Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: June 18, 2002

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17415 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Antelope Valley Indian Museum, Lancaster, CA, and in the Control of the California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Antelope Valley Indian Museum, Lancaster, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA, that meets the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The one cultural item is a wedding blanket made of white cotton. The dates of fabrication and/or use are unknown. The blanket was donated by an unidentified resident of Oraibi Village, Third Mesa, in Arizona, to the Antelope Valley Indian Museum, Lancaster, CA, in 1954. The owner of the museum, Grace W. Oliver, donated the blanket to the California Department of Parks and Recreation in 1979.

Departmental records indicate that it was taken from a burial cave that was disturbed as a result of construction activities. Information provided by representatives of the Hopi Tribe of Arizona and of the village of Oraibi substantiates cultural affiliation of the blanket with the Hopi Tribe of Arizona.

Based on the above-mentioned information, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity, that can be reasonably traced between this item and the Hopi Tribe of Arizona.

This notice has been sent to officials of the Hopi Tribe of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653-7976, before August 12, 2002. Repatriation of this unassociated funerary object to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: May 16, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–17085 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

Jicarilla Apache Indian Reservation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, Shoshone Tribe of the Wind River Reservation, Wyoming; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

In October 1955, human remains representing a minimum of four individuals were removed from the eroded ground surface of site 5LN32, on Jefferson County, CO. No known individuals were identified. The 369 associated funerary objects include 75 chipped stone artifacts (including 11 corner-notched projectile points), 2 ground cobbles, 203 stone disk beads, 4 nuggets of raw copper, 14 cord-marked pottery sherds, 4 bone awls, 22 bone beads, 2 shell pendants, 2 shell beads, 1 unmodified shell, and approximately 40 unmodified rabbit incisors

removed from site 5LR1683, the Roberts Ranch burial, or Office of Archaeology and Historic Preservation (OAHP) Burial Number 75, on private land near Livermore, Larimer County, CO. No known individual was identified. The 404 associated funerary objects are 2 shell pendants, 110 shell disk beads, 235 bone beads, 2 grinding slabs, 12 pieces of debitage, 2 chipped stone scrapers, 36 juniper seed beads, and 5

indicates that a relationship of shared group identity can be reasonably traced between these human remains and the Pawnee Nation of Oklahoma.

In 1995, at the time that Colorado Historical Society was completing its NAGPRA inventory, and in 1996 and 1998 for human remains discovered on State and private lands, officials of Colorado Historical Society determined that, pursuant to 43 CFR 10.2(d)(1), the

This notice has been sent to officials of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Indian Tribe, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek

funerary object to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: May 16, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–17085 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Colorado Historical Society, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Colorado Historical Society professional staff in consultation with representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. The following tribes were invited, but have been unable to participate in consultations: the Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, Shoshone Tribe of the Wind River Reservation, Wyoming; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

In October 1955, human remains representing a minimum of four individuals were removed from the eroded ground surface of site 5LN32, on private land near Boyero, Lincoln County, CO. No known individuals were identified. The 133 associated funerary objects are a one awl fragment and 132 bone beads and bead fragments. Additional associated funerary objects from this burial were described in "Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museums of Anthropolicy, Denver CO," published in the **Federal Register** on April 10, 2001 (see Volume 66, Number 69, pages 18654–56). In accordance with provisions of NAGPRA, 43 CFR 10.10(b)(2), the University of Denver responded to a repatrisan claim by the Pawnee Nation of Oklahoma. The claim requested that control of the associated funerary objects be transferred to the Pawnee Nation of Oklahoma, and that termporary custody of the associated funeral objects be transferred to Colorado Historical Society. These requests were fulfilled, respectively, on December 31, 2001, and on January 24, 2002.

Maurice Frink and Willena D. Cartwright of the Colorado Historical Society and Dr. Arnold Withers of the University of Denver Department of Anthropology excavated the site. According to the original site records, the remains were excavated from a burial pit exposed by weathering. Associated funerary objects, archeological context, and mortuary patterns indicate that the site dates from approximately the Early Ceramic period (circa A.D. 1000–1000, also known as Plains Woodland) to the Middle Ceramic period (circa A.D. 1000–1500). The preponderance of the evidence, including archeology, oral traditions presented during consultations with the tribes listed above, expert opinion, and new evidence provided by the Pawnee Nation of Oklahoma in their repatriation request of October 30, 2001, indicates that a relationship of shared group identity can be reasonably traced between these human remains and associated funerary objects and the Pawnee Nation of Oklahoma.

In May 1993, human remains representing one individual were removed from site 5LR1683, the Roberts Ranch burial, or Office of Archaeology and Historic Preservation (OAHP) Burial Number 75, on private land near Livermore, Larimer County, CO. No known individual was identified. The 404 associated funerary objects are 2 shell pendants, 110 shell disk beads, 235 bone beads, 2 grinding slabs, 12 pieces of debitage, 2 chipped stone scrapers, 36 juniper seed beads, and 5 *Olivella* sp. shell beads.

After discovery, OAHP staff excavated the burial under a State of Colorado archeological permit. Radiocarbon dates from the site range from A.D. 320 to 540. Style of funerary objects, manner of interment, and radiocarbon dates indicate that the burial dates to the Early Ceramic period (crica A.D. 100–1000). The preponderance of the evidence, including archeology, oral traditions presented during consultations with the tribes listed above, expert opinion, and new evidence provided by the Pawnee Nation of Oklahoma in their repatriation request of October 30, 2001, indicates that a relationship of shared group identity can be reasonably traced between these human remains and associated funerary objects and the Pawnee Nation of Oklahoma.

In May 1994 and May 1996, human remains representing a minimum of two individuals were removed from site 5JF223, the Magic Mountain site, or OAHP Burial Number 166, on municipal land in Golden, Jefferson County, CO. No known individuals were identified. No associated funerary objects are present.

The remains were excavated by staff of Centennial Archaeology, Inc., during a planned excavation of the site under a State of Colorado archeological permit. Both individuals were contextually associated with the Early Ceramic period occupational component of the site, which dates approximately A.D. 200 to 1000. The preponderance of the evidence, including archeology, oral traditions presented during consultations with the tribes listed above, expert opinion, and new evidence provided by the Pawnee Nation of Oklahoma in their repatriation request of October 30, 2001, indicates that a relationship of shared group identity can be reasonably traced between these human remains and the Pawnee Nation of Oklahoma.

In July 1998, human remains representing a minimum of two individuals were removed from site 5JF1780, the Lena Gulch site, or OAHP Burial Number 150, during highway construction of Colorado highway C–470 on state lands near Golden, Jefferson County, CO. No known individuals were identified. The 369 associated funerary objects include 75 chipped stone artifacts (including 11 corner-notched projectile points), 2 ground cobbles, 203 stone disk beads, 4 nuggets of raw copper, 14 cord-marked pottery sherds, 4 bone awls, 22 bone beads, 2 shell pendants, 2 shell beads, 1 unmodified shell, and approximately 40 unmodified rabbit incisors apparently representing an ornamental object.

Colorado Department of Transportation archeologists conducted excavations of the inadvertent discoveries under a State of Colorado archeological permit. The remains were removed from primary interment contexts disturbed by construction activity. Contextual evidence indicates that the two individuals were interred at or near the same time. Diagnostic artifacts and radiocarbon dates (A.D. 599 to 768) indicate that the burials date to the Early Ceramic period. The preponderance of the evidence, including archeology, oral traditions presented during consultations with the tribes listed above, expert opinion, and new evidence provided by the Pawnee Nation of Oklahoma in their repatriation request of October 30, 2001, indicates that a relationship of shared group identity can be reasonably traced between these human remains and associated funerary objects and the Pawnee Nation of Oklahoma.

In September 1998, human remains representing a minimum of one individual were removed from site 5WL2614, or OAHP Burial Number 154, during excavations associated with pipeline construction on private land in Weld County, CO. No known individual was identified. No associated funerary objects are present.

After discovery, the site was excavated under a State of Colorado archeological permit by Metcalf Archaeological Consultants. The human remains were sent to Dr. Diane France of Colorado State University for analysis. The method of interment indicates that this was a primary interment. Radiocarbon dates for the site (A.D. 580 to 770) indicate that the burial dates to the Early Ceramic period. Artifacts associated with the burial and method of interment are consistent with Early Ceramic period mortuary contexts along the Rocky Mountain Front Range. The preponderance of the evidence, including archeology, oral traditions presenting during consultations with the tribes listed above, expert opinion, and new evidence provided by the Pawnee Nation of Oklahoma in their repatriation request of October 30, 2001, indicates that a relationship of shared group identity can be reasonably traced between these human remains and the Pawnee Nation of Oklahoma.

In 1995, at the time that Colorado Historical Society was completing its NAGPRA inventory, and in 1996 and 1998 for human remains discovered on State and private lands, officials of Colorado Historical Society determined that, pursuant to 43 CFR 10.2(d)(1), the above-mentioned human remains represent 10 individuals of Native American ancestry. At the time, officials of Colorado Historical Society also determined that according to the definition of cultural affiliation provided under 43 CFR 10.2(e), there was not sufficient evidence to trace a relationship of shared group identity between the human remains and associated funerary objects and any present-day Native American tribe or Native Hawaiian organization. The Colorado Historical Society provided an inventory of these culturally unidentifiable human remains and associated funerary objects to the Department Consulting Archeologist as required under 43 CFR 10.9(e)(6).

Through ongoing consultations with Native American tribes, along with information presented by tribal experts and scholars during a NAGPRA consultation project in partnership with the Colorado Commission of Indian Affairs and tribes in October 2000 in Denver, CO, and information presented by the Pawnee Nation in their October 30, 2001, repatriation request, the Colorado Historical Society received additional evidence regarding cultural affiliation of these human remains and associated funerary objects.

Based on the above-mentioned information, officials of the Colorado Historical Society have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 10 individuals of Native American ancestry. Officials of the Colorado Historical Society also have determined that, pursuant to 43 CFR 10.2(d)(2), the 906 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Colorado Historical Society have determined that, pursuant to 43 CFR 10.2(e), and in accordance with 25 U.S.C. 3005(a)(4), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pawnee Nation of Oklahoma.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Indian Tribe, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Midewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Prairie Island Indian Community of Minnesota Midewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee Midewakanton Sioux Community of Minnesota (Prior Lake); Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone Tribe of the Wind River Reservation, Wyoming; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe); Standing Rock Sioux Tribe of North and South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Yankton Sioux Tribe of South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Anne W. Bond, Director of Collections and Exhibitions, Colorado Historical Society, 1300 Broadway,

Denver, CO 80203–2137, telephone (303) 866–4691, before August 12, 2002. Repatriation of these human remains and associated funerary objects to the Pawnee Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 6, 2002.

Robert Stearns,

Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town,. Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 6, 2002.

Robert Stearns,

were recovered by Captain John S. Bailey near the old lime kiln on the banks of the Delaware River at Lower Black's Eddy, Bucks County, PA. No known individual was identified. No associated funerary objects are present. The human remains consist of the right parietal bone of a skull. The elevated skullcap and high-vaulted shape are characteristic of Native American populations. An August 5, 1873, article

Grand Council of North America. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Nancy Keim Comley, Lambertville Historical Society, P.O. Box 2, Lambertville, NJ 08530, telephone (609) 397-0770, before August 12, 2002. Repatriation of the human remains to the Delaware Nation, Oklahoma; Delaware Tribe of Indians,

Denver, CO 80203–2137, telephone (303) 866–4691, before August 12, 2002. Repatriation of these human remains and associated funerary objects to the Pawnee Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 6, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17427 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Columbus Museum, Columbus, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Columbus Museum, Columbus, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Columbus Museum professional staff in consultation with representatives of the Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; and Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations. Representatives of the Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Thlopthlocco Tribal Town, Oklahoma were invited to consult at museum expense, but declined to participate.

In 1981, human remains representing one individual were removed during salvage excavations at the Coweta tallahassee site (1RU11), Russell County, AL, by staff of the Columbus Museum. No known individual was identified. The 914 associated funerary objects are 1 British sword hilt with blade fragments, 2 musket balls, 2 gun flints, 15 brass buttons, 891 blue glass beads, 1 white glass bead, 1 brass buckle, and 1 scabbard buckle. The associated funerary objects indicate that these human remains were probably buried during the early 18th century. Site 1RU11 is believed to have been the location of the Creek community of Coweta tallahassee. Benjamin Hawkins, the United States Principal Temporary Agent for Indians South of the Ohio River, established an agency at Coweta tallahassee in 1797. He noted that Coweta tallahassee was inhabited by European Americans, Europeans, and African Americans, as well as Native Americans. While it is not possible to conclusively demonstrate that these human remains are Native American, the preponderance of the evidence supports a determination that they are more than likely Native American.

In 1957-1983, human remains representing 66 individuals were removed during salvage excavations at the Abercrombie site (1RU61), Russell County, AL, by staff of the Columbus Museum. No known individuals were identified. The 859 associated funerary objects are 780 whelk shell beads, 5 whelk shell face mask gorgets, 1 pair of shell earrings, 1 olive shell, 2 large mussel shells, 1 large mussel shell, 1 large cockle shell, 2 greenstone disks, 1 greenstone spatulate celt (spud), a lithic "toolkit" consisting of 41 pieces of chert and 11 pieces of bone or antler, 1 chert flake, 1 bone spatula, 1 bone tine, 1 antler tip, 1 reconstructed pottery jar with scroll design, 1 pottery duck head effigy, 1 pottery vessel, 1 copper or brass arrow pendent, 1 Hispanic olive jar sherd, and 5 glass trade beads. The three pottery vessels are believed to have been manufactured around A.D. 1550-1650. The Hispanic olive jar is believed to have been manufactured around A.D. 1600. The five glass trade beads are believed to have been manufactured around A.D. 1590. The associated funerary objects and other diagnostic artifacts found at site 1RU61 indicate that these human remains were probably buried during the 16th or early 17th centuries. Benjamin Hawkins noted that the site was abandoned at the time of his visit in 1797.

In the 17th century, the area in which 1RU11 and 1RU61 are located was called the Province of Apalachicoli by the Spanish. The area is believed to have been occupied by Hitchiti speakers until the late 17th century when Muskhogee speakers also known as the Lower Creek – occupied the area. Both the Hitchiti and the Lower Creek are ancestral to the present-day Creek and Seminole and other Indian tribes.

In 1967, human remains representing one individual were removed from the Pinkston site (1Mc6), Macon County, AL. No known individual was identified. The human remains were donated to the Columbus Museum by Frank Morast. Mr. Morast also donated seven items that he identified as having been found with the human remains. The seven associated funerary objects are one copper/brass chest plate, two copper/brass neck bands, one copper/brass disk, and two copper/brass armbands. The Pinkston site (1Mc6) is purported to have been the Muskogee town site of Autosi.

Based on the above-mentioned information, officials of the Columbus Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 68 individuals of Native American ancestry. Officials of the Columbus Museum also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 1780 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Columbia Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town,Oklahoma.

This notice has been sent to officials of the Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jeanne Marie Warzeski, the Columbus Museum, 1251 Wynnton Road, Columbus, GA 31906, telephone (706) 649-0713 or fax (706) 649-1070, before August 12, 2002. Repatriation of the human remains and associated funerary objects to the Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town,. Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 6, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17428 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Lambertville Historical Society, Lambertville, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Lambertville Historical Society, Lambertville, NJ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Lambertville Historical Society professional staff in consultation with the New Jersey State Museum and representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and Stockbridge-Munsee Community of Mohican Indians of Wisconsin. The Lambertville Historical Society also consulted with the Native American Alliance of Bucks County and the Delaware Nation Grand Council of North America, two nonfederally recognized Indian groups.

In either 1858 or 1862, human remains representing one individual were recovered by Captain John S. Bailey near the old lime kiln on the banks of the Delaware River at Lower Black's Eddy, Bucks County, PA. No known individual was identified. No associated funerary objects are present. The human remains consist of the right parietal bone of a skull. The elevated skullcap and high-vaulted shape are characteristic of Native American populations. An August 5, 1873, article in the Bucks County Intelligencer reported that there was an "indication that the spot [from which the human remains were recovered] was an Indian burial place, as well as a manufactory of arrow heads and other utensils of stone."

These human remains are believed to have been found at the Lower Black's Eddy site (36BU23). The Lower Black's Eddy site was excavated in 1893 by Dr. Henry C. Mercer and was considered by him to be one of the oldest and largest village sites in the Delaware Valley between Trenton and the Lehigh River. The site was excavated again in 1982 and 1986-87. These excavations identified a stratified sequence spanning the Late/Terminal Archaic (3000-1000 B.C), Early/Middle Woodland (1000 B.C.-A.D. 500), and Late Woodland periods (A.D. 500-1600). The relatively good condition of the skull and the acidity of the soil at the Lower Black's Eddy site indicate that the human remains were probably buried during the Late Woodland period (A.D. 500-1600). The Delaware River and its tributaries are thought to be the homeland of the Delaware Indians, many of whom were relocated to Oklahoma and Wisconsin during the 19th century.

Based on the above-mentioned information, officials of the Lambertville Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Lambertville Historical Society also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and Stockbridge-Munsee Community of Mohican Indians of Wisconsin.

This notice has been sent to officials of the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Native American Alliance of Bucks County; and the Delaware Nation Grand Council of North America. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Nancy Keim Comley, Lambertville Historical Society, P.O. Box 2, Lambertville, NJ 08530, telephone (609) 397-0770, before August 12, 2002. Repatriation of the human remains to the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; and Stockbridge-Munsee Community of Mohican Indians of Wisconsin may begin after that date if no additional claimants come forward.

Dated: March 27, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17418 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Logan Museum of Anthropology, Beloit College, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Logan Museum of Anthropology that meets the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a bear headdress (Xoots Shakee.at). It is comprised of an ermine fur crown decorated around the edge with sea-lion whiskers and red and yellow shafted flicker feathers. The carved wooden frontlet represents a bear whose breast and abdomen are decorated with the head of an eagle and the head and front legs of a frog. The carving is painted red, black, blue, and green and is inlaid with abalone shell along the top and along each side of the bear crest. The interior frame of the headdress is constructed of wood and whalebone and lined with cotton cloth.

Accession and catalogue records of the Logan Museum of Anthropology and the Portland Art Museum indicate that the bear headdress was collected by Axel Rasmussen in Alaska between 1926 and 1936. Mr. Rasmussen went to Alaska in the late 1920s as superintendent of schools at Wrangell. In 1937, he left Wrangell for a similar position in Skagway, where he stayed until his death in 1945. The headdress

of cultural patrimony and the Teikweidi Clan of the Tlingit tribe, whose interests are represented here by the Central Council of Tlingit and Haida Indian Tribes.

This notice has been sent to officials of the Central Council of Tlingit and Haida Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact William Green,

ceremonial wand (8367); and two prayer or dance sticks (8798.1-.2).

Between 1968 and 1971, eleven objects were donated to the Logan Museum of Anthropology from the Herbert S. and Sonia Bleeker Zim Collection. These include two dance sticks: one from Moenkopi, AZ, measures 22¼ inches long and ¾ inch thick; the other, which is painted, measures approximately 16 inches long,

J.N. Bishop Gallery in Los Angeles, CA. A notarized letter signed by Mrs. J.N. Bishop states that the costume was purchased legally and that Mrs. Bishop knew the owner of the costume. The mud head kachina mask is from First Mesa, AZ; it measures 11½ inches in height, is constructed of dyed cotton, and was purchased from Gallery II Primitive Art in Phoenix, AZ. Catalogue information does not provide data on

Arizona identified the dance wands as Marua Vaho.

Accession and catalogue records of the Logan Museum of Anthropology indicate that these cultural items are of Hopi origin from Hopi villages in northern Arizona. Consultation with representatives of the Hopi Tribe of Arizona acting on behalf of Hopi traditional religious leaders confirm the Hopi identity of these cultural items.

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Metropolitan Park District of the Toledo Area, Toledo, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Accession and catalogue records of the Logan Museum of Anthropology and the Portland Art Museum indicate that the bear headdress was collected by Axel Rasmussen in Alaska between 1926 and 1936. Mr. Rasmussen went to Alaska in the late 1920s as superintendent of schools at Wrangell. In 1937, he left Wrangell for a similar position in Skagway, where he stayed until his death in 1945. The headdress was probably collected while he was in Wrangell, as the date marked on the collector's catalogue card predates his tenure in Skagway. In 1948, his art collection was donated to the Portland Art Museum, which sold the headdress to the St. Paul Gallery in St. Paul, MN, in 1959. Rev. Glen Ridenour purchased the headdress from the St. Paul Gallery at an unknown date and sold it to the Logan Museum of Anthropology in 1964.

Consultations with and documentation provided by representatives of the Central Council of Tlingit and Haida Indian Tribes acting on behalf of the Teikweidi Clan of the Tlingit confirm the Tlingit identity of this cultural item, and the Teikweidi Clan of the Tlingit as the rightful custodians of this item. Central Council of Tlingit and Haida Indian Tribes representatives have provided evidence that the headdress is needed for religious ceremonies by the clan, and that the headdress has ongoing historical, traditional, and cultural importance to the Tlingit people, and to the Teikweidi Clan in particular, and that under the Tlingit system of communal property ownership, this cultural item could not have been alienated, appropriated, or conveyed by any individual.

Based on the above-mentioned information, officials of the Logan Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Logan Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance to the clan itself and is of such central importance that it could not have been alienated, appropriated, or conveyed by any individual. Lastly, officials of the Logan Museum of Anthropology have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between this sacred object/object of cultural patrimony and the Teikweidi Clan of the Tlingit tribe, whose interests are represented here by the Central Council of Tlingit and Haida Indian Tribes.

This notice has been sent to officials of the Central Council of Tlingit and Haida Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact William Green, Director, Logan Museum of Anthropology, Beloit College, 700 College St., Beloit, WI 53511, telephone (608) 363-2119 before August 12, 2002. Repatriation of this sacred object/object of cultural patrimony to the Central Council of Tlingit and Haida Indian Tribes may begin after that date if no additional claimants come forward.

Dated: June 19, 2002

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17414 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Logan Museum of Anthropology, Beloit College, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Logan Museum of Anthropology that meet the definition of "sacred objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 27 cultural items are one mud head kachina mask (catalogue number 1542); one mask (6896); one snake costume (comprised of twelve parts) (1597.1-.12); one prayer stick (8369); two dance wands (3891, 3892); five ceremonial dance paddles (7026, 7027, 7028, 7029, 7030); four ceremonial hoes (7020, 7021, 7022, 7023); two dance sticks (7502, 9075); seven painted wooden sticks (7441.1-.6, 8799); one ceremonial wand (8367); and two prayer or dance sticks (8798.1-.2).

Between 1968 and 1971, eleven objects were donated to the Logan Museum of Anthropology from the Herbert S. and Sonia Bleeker Zim Collection. These include two dance sticks: one from Moenkopi, AZ, measures 22¼ inches long and ¾ inch thick; the other, which is painted, measures approximately 16 inches long, is in the shape of an arrow, and has pine twigs and yarn tied to each end. The other nine objects are six painted wooden sticks carved in various animal forms, all measuring approximately 12 inches in length, one painted wooden stick 15½ inches long with images of corn and a rain cloud on both sides, and two prayer or dance sticks measuring between 9 and 11 inches and painted with imagery of tadpoles, cornstalks, and rain clouds. There is no information available regarding how or when the Zims acquired these items.

In 1957, four ceremonial hoes and five ceremonial dance paddles were acquired through an exchange with the Southwest Museum, Los Angeles, CA. The hoes measure between 7½ and 12 inches in length; one is painted with a rain cloud design. The dance paddles measure between 18 and 24 inches in length. Two of the dance paddles are painted with human figures; one is painted with a corn design and kachina on one side, while the other is painted with a corn design and has feathers attached. Another dance paddle is painted with a figure on one side, which is wearing a tableta headdress and is identified as Shalako Mana kachina. Catalogue information identifies it as part of an altar or altarpiece and as having been used by the Priestess of Maurrau. Logan Museum of Anthropology catalogue information identifies both the hoes and dance paddles as ceremonial. There is no information available regarding the objects' collection history prior to acquisition by the Logan Museum of Anthropology. The Hopi Tribe of Arizona identified the five ceremonial dance paddles as Marau Vaho.

The snake costume and the mud head kachina mask were purchased for the Logan Museum of Anthropology through the Bob Becker North American Indian Fund in 1976 and 1982 respectively. The snake costume consists of twelve parts: rope and leather armbands; two shell necklaces; a bandolier of leather, shell, and cloth; a leather purse; a leather sash with shell and metal tinklers; a cloth kilt with shells; a feather headdress; a fur container; and cloth and leather anklets. The costume was purchased from the J.N. Bishop Gallery in Los Angeles, CA. A notarized letter signed by Mrs. J.N. Bishop states that the costume was purchased legally and that Mrs. Bishop knew the owner of the costume. The mud head kachina mask is from First Mesa, AZ; it measures 11½ inches in height, is constructed of dyed cotton, and was purchased from Gallery II Primitive Art in Phoenix, AZ. Catalogue information does not provide data on the objects' collection history prior to acquisition by the Logan Museum of Anthropology. The Hopi Tribe of Arizona identified the mud head kachina mask as a Koyemsi Kwatsi.

One mask was purchased from Walter Randall, Inc., Primitive, Archaic and Fine Arts, New York, NY, in 1961. Catalogue information refers to the item as a Kachina cult mask. The mask is constructed of horsehide with wooden 'pop' eyes and mouth and measures 7½ by 5½ inches. Catalogue information does not provide data on the object's collection history prior to acquisition by the Logan Museum of Anthropology. The Hopi Tribe of Arizona identified the mask as a Katsin Kwatsi.

One ceremonial wand and one prayer stick were donated to the Logan Museum of Anthropology in 1964 by Helen-Margaret Greene of Tucson, AZ. The donor's inventory refers to the ceremonial wand as a corn flower baton with spruce or mariposa lily, purchased from Alfred Joshongewa at Shungopavi, Second Mesa, AZ, in 1960. The wand is 14 inches in length and is constructed of painted wood with handspun cotton, prayer feathers, and spruce twigs attached. The prayer stick is constructed of painted wooden dowels wrapped in corn leaves with a cluster of herbs and feathers and is 6 inches in length. The Logan Museum of Anthropology catalogue information identifies both these items as ceremonial. No information is available regarding the collection history of the prayer stick. The Hopi Tribe of Arizona identified the prayer stick as a Paho.

Two wooden dance wands derive from unknown sources. They were acquired by the Logan Museum of Anthropology in 1983. One dance wand is painted with a tadpole design on one side and a kachina and corn image on the other. It measures 20 by 3½ inches. The other dance wand is painted with a rain cloud image on one side and six pairs of vertical red lines on the other and is 22¾ inches in length and 6½ inches in width. Catalogue information does not provide data regarding the collection history of the objects prior to acquisition by the Logan Museum of Anthropology. The Hopi Tribe of Arizona identified the dance wands as Marua Vaho.

Accession and catalogue records of the Logan Museum of Anthropology indicate that these cultural items are of Hopi origin from Hopi villages in northern Arizona. Consultation with representatives of the Hopi Tribe of Arizona acting on behalf of Hopi traditional religious leaders confirm the Hopi identity of these cultural items. Representatives of the Hopi Tribe of Arizona acting on behalf of Hopi traditional religious leaders have identified these cultural items as needed by Native American traditional religious leaders for the practice of traditional Native American religion by its present-day adherents. Furthermore, representatives of the Hopi Tribe identify the Society Priests of the Hopi Tribe of Arizona as the rightful custodians of these items.

Based on the above-mentioned information, officials of the Logan Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(3), these 27 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Logan Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these sacred objects and the Hopi Tribe of Arizona.

This notice has been sent to officials of the Hopi Tribe of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact William Green, Director, Logan Museum of Anthropology, Beloit College, 700 College St., Beloit, WI 53511, telephone (608) 363-2119, before August 12, 2002. Repatriation of these sacred objects to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: June 25, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17416 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Metropolitan Park District of the Toledo Area, Toledo, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Metropolitan Park District of the Toledo Area, Toledo, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Metropolitan Park District of the Toledo Area professional staff in consultation with the Lucas County Coroner's Office, the Center for Historic and Military Archaeology at Heidelberg College, and representatives of the Grand Traverse Band of Ottawa & Chippewa Indians of Michigan, Little River Band Ottawa Indians of Michigan, Little Traverse Band of Odawa Indians of Michigan, and Ottawa Tribe of Oklahoma. The Metropolitan Park District of the Toledo Area also consulted with representatives of the American Indian Intertribal Association, a nonfederally recognized Indian group.

In 1999, human remains representing two individuals were found by an unknown person at a site on Audubon Islands State Nature Preserve, Lucas County, OH. The site was investigated by the Lucas County Coroner's Office. No known individuals were identified. The 1,590 associated funerary objects are 1,484 glass seed beads, 2 iron tomahawk heads, 1 barbed iron rod (possibly a fishing spear), 68 fragments of spalled iron rust, 1 iron knife, 2 iron nails, 1 iron folding knife with bone handle, 1 pair of iron scissors, 1 copper broach, 3 copper rings, 3 brass tinkling cones, 3 lead musket balls, 18 whole or fragmentary flint flakes, 1 vermillion

clay lump, and 1 ceramic sherd with cord-roughed design.

The Lucas County Coroner's Office identified the human remains as Native American based on the presence of marked shoveling of the incisors and flattening of the proximal femur shaft. The associated funerary objects indicate that these human remains were probably buried around the A.D. 1790-1810 period.

Metropolitan Park District of the Toledo Area have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ottawa Tribe of Oklahoma.

This notice has been sent to officials of the Grand Traverse Band of Ottawa & Chippewa Indians of Michigan, Little

associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe Hearst Museum of Anthropology professional staff in consultation with

Dated:May 24, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17417 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural

pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact David Stier, Director, Springfield Science

after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

Reporting: In accordance with Pub. L

clay lump, and 1 ceramic sherd with cord-roughed design.

The Lucas County Coroner's Office identified the human remains as Native American based on the presence of marked shoveling of the incisors and flattening of the proximal femur shaft. The associated funerary objects indicate that these human remains were probably buried around the A.D. 1790-1810 period.

Audubon Island is located in the lower Maumee Valley in northern Ohio. Some Ottawa bands had taken up residence in the lower Maumee Valley by A.D. 1740-1750. Following Pontiac's siege of Detroit in the summer of 1763, some of the Ottawa bands from that area resettled to the lower Maumee Valley. In 1764, Captain Thomas Morris met an Ottawa delegation at the foot of the Maumee Rapids, adjacent to Audubon Island. Between 1783 and 1794, Audubon Island was known as ACol. McKee's Island,@ and was farmed as part of Alexander McKee's Department of Indian Affairs post at the foot of the Maumee Rapids. Several other Euro-Canadian traders occupied lands in the area, presumably with the consent of the local Ottawa.

In 1795, many of the Great Lakes-Ohio Valley tribes signed the Treaty of Greenville, which produced several land cessions, including a 12-square-mile reserve surrounding the foot of the Maumee Rapids and Audubon Island. Occupation of Audubon Island by the Ohio Ottawa appears to have ceased at that time, at which point some of them moved to Walpole Island, Canada.

Between 1807 and 1817, the United States established four small reservations for the Ottawa along the lower Maumee River. Audubon Island lies between two of these reservations. The four reservations were finally ceded to the United States in 1831-1833 in return for lands in present Franklin County, KS. In 1867, the Kansas reservation organization was dissolved and the Ottawa sold their individual allotments and moved to Oklahoma.

Based on the above-mentioned information, officials of the Metropolitan Park District of the Toledo Area have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Metropolitan Park District of the Toledo Area also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 1,590 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Metropolitan Park District of the Toledo Area have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ottawa Tribe of Oklahoma.

This notice has been sent to officials of the Grand Traverse Band of Ottawa & Chippewa Indians of Michigan, Little River Band Ottawa Indians of Michigan, Little Traverse Band of Odawa Indians of Michigan, Ottawa Tribe of Oklahoma, American Indian Intertribal Association, and Walpole Island First Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objectsshould contact Gary Horn, Associate Director, Metropolitan Park District of the Toledo Area, 5100 West Central Avenue, Toledo, OH 43615-2100, telephone (419) 535-3050, before August 12, 2002. Repatriation of the human remains and associated funerary objects to the Ottawa Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 23, 2002

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17426 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe Hearst Museum of Anthropology professional staff in consultation with representatives of the Arctic Slope Regional Corporation.

In 1963, human remains representing at least one individual were removed from Structure E, Mound A, at the Birnirk site, Point Barrow, AK, by K. Bohnsack. These human remains were donated to the Phoebe A. Hearst Museum in 1964 by S. Holland. No known individual was identified. No associated funerary objects are present.

These individuals have been identified as Native American based on geographic information and documentation at the Phoebe A. Hearst Museum. Consultation with tribal representatives, geographic location, and documentation at the Phoebe A. Hearst Museum suggest that a relationship exists between contemporary inhabitants of the Arctic Slope Regional Corporation and these human remains from Point Barrow, AK, and Birnirk, AK.

Based on the above-mentioned information, officials of the Phoebe Hearst Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Arctic Slope Regional Corporation.

This notice has been sent to officials of the Arctic Slope Regional Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before August 12, 2002. Repatriation of the human remains to the Arctic Slope Regional Corporation may begin after that date if no additional claimants come forward.

Dated:May 24, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17417 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Springfield Science Museum, Springfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Springfield Museum of Scienco, Springfield, MA, that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The five cultural items are a copper "nose ring," a bracelet, two tubular beads, and a pendant. In 1906, J.T. Bowne purchased these cultural items from a collector in Oregon and donated them to the Springfield Science Museum in 1925. According to museum records, these items were removed from a burial mound at Klamath Falls, OR. Historic sources, oral traditions, and consultation information also indicate that these cultural items are from the burial of a Klamath individual from traditional Klamath territory in Oregon. The Springfield Science Museum does not have possession of the human remains from this site.

Based on the above-mentioned information, officials of the Springfield Science Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Springfield Science Museum also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact David Stier, Director, Springfield Science Museum, 236 State Street, Springfield, MA 01103, telephone (413) 263-6800, extension 321, before August 12, 2002. Repatriation of these unassociated funerary objects to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

Dated: June 6, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–17429 Filed 7–10–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

[AAG/A Order No. 275–2002]

Privacy Act of 1974; Computer Matching Agreement

AGENCY: Department of Justice.

ACTION: Notice—computer matching between the Department of Justice (DOJ) and the United States Postal Service (USPS).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818, June 19, 1989), OMB Bulletin 89–22, "Instructions of Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," and OMB Circular No. A–130, Revised February 8, 1996, "Management of Federal Information Resources," the Department of Justice is issuing a public notice of its intent to conduct a computer matching program with the USPS. Under this matching program, entitled USPS Employees Who Are Federal Delinquent Debtors, the USPS will provide information to the DOJ relating to current or former USPS employees whose salary or other Federal benefits are subject to offset to satisfy delinquent debts owed to Federal agencies.

DATES: Effective date: The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

Reporting: In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public" and Circular No. A–130, Revised February 8, 1996, "Management of Federal Information Resources", copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: This matching program is being conducted under the authority of the following statutes and regulations which authorize agencies to collect, or refer to other agencies for collection, delinquent debts owed to the United States and/or which specifically authorize collection by salary or other administrative offset to satisfy such debts: The Debt Collection Act of 1982 (Public Law 97–365), as amended by the Debt Collection Improvement Act (DCIA) of 1996 (Public Law 104–134, section 31001), which authorizes Federal agencies to offset a Federal employee's salary as a means of satisfying delinquent debts owed to the United States (5 U.S.C. 5514(a) and note).

Objectives To Be Met By the Matching Program: The purpose of this program is to provide DOJ with current information on individuals who (1) are delinquent in paying their debts to the United States government and (2) are current or former employees of the USPS, so that DOJ can pursue potential salary or administrative offsets.

Records To Be Matched: DOJ will provide records from the Debt Collection Offset Payment System, JUSTICE/JMD–009. This system of records contains information on almost 19,000 persons indebted to the United States who have allowed their debts to become delinquent and whose debts are in the DOJ data base for debts submitted to the Treasury Offset Program (TOP). DOJ records will be matched against records contained in USPS' Privacy Act System of Records: Finance Records—Payroll System, USPS 050.020, which contains records of about 800,000 employees.

Categories of Records/Individuals Involved: DOJ will submit the name and nine digit Social Security Number (SSN) of each delinquent debtor in DOJ's TOP data base USPS will compare the name and SSN for each debtor record submitted by DOJ to its data base of employee records. For each DOJ record that matches a USPS record, USPS will provide to the DOJ, the name, SSN, date of birth, home address, place of work

ACTION: Notice.

SUMMARY: The designation of El Salvador under the Temporary Protected Status (TPS) program will expire on September 9, 2002. This notice extends the Attorney General's designation of El Salvador for 12 months until September 9, 2003. This extension allows eligible nationals of El Salvador to re-register for TPS and to

Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide

work on rebuilding smaller healthcare facilities had only begun. RIC Report.

El Salvador's reconstruction efforts also have been hindered by delays in the disbursement of aid needed to rebuild. As of October 2001, El Salvador had received only 39 percent of the $354 million committed by donors, much of which has been from the United States. State Department Reportcommendation. While USAID is

appropriate government agencies, finds that the conditions that prompted designation of El Salvador under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(C). There continues to be a substantial, but temporary, disruption of living conditions in El Salvador as a result of environmental disaster, and El Salvador continues to be unable, temporarily, to handle adequately the return of its nationals. 8

register for TPS during the re-registration period in order to be eligible for this extension. See the following re-registration instructions.

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS benefits under the El Salvador TPS program who wish to maintain such benefits must apply for an extension by

Categories of Records/Individuals Involved: DOJ will submit the name and nine digit Social Security Number (SSN) of each delinquent debtor in DOJ's TOP data base USPS will compare the name and SSN for each debtor record submitted by DOJ to its data base of employee records. For each DOJ record that matches a USPS record, USPS will provide to the DOJ, the name, SSN, date of birth, home address, place of work and employee type (e.g., permanent or temporary).

Notice Procedures: For current and future USPS employees completing a PS Form 2591, Application for Employment, and various other personnel and benefit related forms, notice of possible computer matches involving their records is included in the Privacy Act Statement accompanying each form. DOJ provides direct notice to delinquent debtors that DOJ will seek to collect the delinquent debt via tax refund, salary, or administrative offset, and that DOJ will use computer matching to accomplish the offsets. Both USPS and DOJ have provided constructive notice to record subjects through the publication of system of records notices in the **Federal Register** for the records involved in this match that contain routine uses permitting disclosures for this matching program.

Address for Receipt of Public Comments or Inquiries: Interested persons are invited to submit written comments regarding this notice to Imogene McCleary, Deputy Director, Debt Collection Management, Justice Management Division, 325 7th Street NW., 2nd Floor South, Washington, DC 20530.

Dated: July 25, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–17423 Filed 7–10–02; 8:45 am]

BILLING CODE 4410–CH–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2212–02; AG Order No. 2597–2002]

RIN 1115–AE26

Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of El Salvador under the Temporary Protected Status (TPS) program will expire on September 9, 2002. This notice extends the Attorney General's designation of El Salvador for 12 months until September 9, 2003. This extension allows eligible nationals of El Salvador to re-register for TPS and to apply for an extension of their employment authorization documentation. The re-registration period will begin on September 9, 2002 and remain in effect through November 12, 2002.

Given the large number of Salvadorans affected by this notice and given that the initial registration period runs for the duration of the initial 18-month designation period, the Immigration and Naturalization Service (Service) recognizes that many re-registrants will not receive their new Employment Authorization Documents (EADs) until after their current EADs expire on September 9, 2002. Accordingly, this notice automatically extends, until March 9, 2003, the validity of EADs issued pursuant to the El Salvador TPS program, and explains how TPS beneficiaries or their employers may determine which EADs are automatically extended. This notice also sets forth procedures by which Salvadoran TPS class members must re-register for the 12-month extension.

EFFECTIVE DATES: The extension of the TPS designation for El Salvador is effective September 9, 2002, and will remain in effect until September 9, 2003. The re-registration period begins September 9, 2002 and will remain in effect until November 12, 2002. Applications for re-registration will not be accepted before September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Emily Crowder Frazelle, Program Analyst, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, D C 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of El Salvador Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, or any extension thereof, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide To Extend the TPS Designation for El Salvador?

On March 9, 2001, the Attorney General initially designated El Salvador under the TPS program for a period of 18 months, based on a series of severe earthquakes that caused numerous fatalities and injuries and left 1.6 million people (over one-quarter of the country's population) without adequate housing. 66 FR 14214; Service Resource Information Center Report (RIC Report) (May 14, 2002). Following the initial designation, the Departments of State and Justice have monitored the reconstruction progress in El Salvador. The Attorney General's decision to extend the TPS designation is made on the determination that the conditions that warranted TPS designation initially continue to exist.

The Department of State reports that the earthquakes affected two-thirds of the country and damaged or destroyed over 300,000 houses. State Department Report (May 9, 2002). While the Government of El Salvador has made great strides in responding to the immediate humanitarian impact of the earthquakes, the Department of State reports that much of the country remains devastated. As of April 2002, the Government of El Salvador has replaced less than one quarter of the 170,000 homes destroyed by the earthquakes. *Id.* An estimated one half of all families who lost their homes remain in temporary metal or plastic shelters. RIC Report.

The Department of State also reports that El Salvador's infrastructure remains severely damaged. "More than three-quarters of the over 1,000 km. of damaged road [sic] needs repair." State Department Report. The earthquakes affected 40 percent of the country's education and health infrastructure; many of the 2,200 schools, 120 health centers, and 900 public buildings damaged in the earthquakes have yet to be repaired or replaced. *Id.* The Service Resource Information Center reports that, by the beginning of 2002, there had been little reconstruction in the health sector. The seven most quake-damaged hospitals were described by health officials as still in a "critical state," and

work on rebuilding smaller healthcare facilities had only begun. RIC Report.

El Salvador's reconstruction efforts also have been hindered by delays in the disbursement of aid needed to rebuild. As of October 2001, El Salvador had received only 39 percent of the $354 million committed by donors, much of which has been from the United States. State Department Reportcommendation. While USAID is assisting reconstruction through a 2-year $110 million program, most of the major USAID activities did not commence until March 2002. *Id.*

The Service Resource Information Center reports that El Salvador's recovery has been further affected by a subsequent drought. Food stocks were already depleted following the earthquakes, and the drought has left at least 35,000 subsistence farming families destitute (approximately 318,000 people). As of April 2002, up to 200,000 people were still threatened by "food insecurity." UNICEF reported in April 2002 that 34 percent of children in the four eastern departments most affected by last year's drought suffer from malnutrition, up from 12 percent in 2000. RIC Report. Ongoing housing shortages, damage to infrastructure, reduction in employment opportunities, and the infancy of the reconstruction effort render El Salvador temporarily unable to absorb the return of its nationals. State Department Report.

Based on this review, the Attorney General, after consultation with appropriate government agencies, finds that the conditions that prompted designation of El Salvador under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(C). There continues to be a substantial, but temporary, disruption of living conditions in El Salvador as a result of environmental disaster, and El Salvador continues to be unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B)(i)-(ii). On the basis of these findings, the Attorney General concludes that the TPS designation for El Salvador should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Benefits Through the El Salvador TPS Program, Do I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the El Salvador TPS program, your benefits will expire on September 9, 2002. Accordingly, you must re-register for TPS in order to maintain your benefits through September 9, 2003. See the following re-registration instructions. TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If My Initial El Salvador TPS Application Is Pending, Do I Still Re-Register for TPS?

Yes. If your initial TPS application is still pending approval, you must re-register for TPS during the re-registration period in order to be eligible for this extension. See the following re-registration instructions.

If	Then
You are applying for an Employment Authorization Document until September 9, 2003.	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have an Employment Authorization Document or do not require such a document.	You must complete and file Form I–765 with no fee.
You are applying for an Employment Authorizataion Document and are requesting a fee waiver.	You must complete and file: (1) Form I–765 with no fee and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of El Salvador (or alien having no nationality who last habitually resided in El Salvador) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to apply for TPS, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i).

Does This Extension Allow Nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) Who Entered the United States After February 13, 2001, To Apply for TPS?

No. This is a notice of an extension of the TPS designation for El Salvador, not a notice of redesignation of El Salvador under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, Salvadorans (or aliens having no nationality and who last habitually resided in El Salvador) must have resided continuously in the United States since February 13, 2001, and must have been continuously physically present in the United States since March 9, 2001.

How Do I Re-Register for an Extension?

All persons previously granted TPS benefits under the El Salvador TPS program who wish to maintain such benefits must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with the Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the fifty-dollar ($50) fingerprint fee. Child beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

Submit the completed forms and applicable fee, if any, to the Service's service center office having jurisdiction over your place of residence during the 60-day re-registration period that begins September 9, 2002, and ends November 12, 2002 (inclusive of such end date). Applications will not be accepted before the re-registration period begins.

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2. To be eligible for late initial registration, an applicant must:

(1) Be a national of El Salvador (or alien who has no nationality and who last habitually resided in El Salvador);

(2) Have been continuously physically present in the United States since

only after the initial registration period closes on September 9, 2002. Given the staggering of initial registration and re-registration periods, and given the large number of Salvadoran TPS class members who are eligible for re-registration, re-registrants would receive their new EADs only after their current EADs have expired. To prevent a gap in employment authorization

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received an extension of employment authorization by virtue of this **Federal Register** notice

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the Service's Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a Service representative. Also, employers may call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155, or 1–800–

not request employment authorization documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had

Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2. To be eligible for late initial registration, an applicant must:

(1) Be a national of El Salvador (or alien who has no nationality and who last habitually resided in El Salvador);

(2) Have been continuously physically present in the United States since March 9, 2001;

(3) Have continuously resided in the United States since February 13, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the initial registration period from March 9, 2001, through September 9, 2002, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Why Is the Attorney General Automatically Extending the Validity of EADs From September 9, 2002, to March 9, 2003?

The Attorney General has decided to extend automatically the validity of EADs to prevent a lapse in Service-issued employment authorization documentation for qualified re-registrants during the time that re-registration applications are processed. Since Because the initial designation's registration period remains open until September 9, 2002, the Service will continue to receive and process initial TPS applications until the end of the initial designation period. To minimize overlapping receipts of both initial registration and re-registration applications, which are filed on the same forms but have different documentation and fee requirements, the Attorney General has elected to open the 60-day re-registration period only after the initial registration period closes on September 9, 2002. Given the staggering of initial registration and re-registration periods, and given the large number of Salvadoran TPS class members who are eligible for re-registration, re-registrants would receive their new EADs only after their current EADs have expired. To prevent a gap in employment authorization documentation for qualified re-registrants, the Attorney General is extending automatically the validity of the applicable EADs for a period of 6 months, to March 9, 2003. 8 U.S.C. 1254a(a)(2); 1254a(d)(1)-(2).

Who Is Eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of El Salvador (or an alien having no nationality who last habitually resided in El Salvador) who has applied for and received an EAD under the initial TPS designation for El Salvador. This automatic extension is limited to EADs bearing an expiration date of September 9, 2002, and the notation: "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766 or "274A.12(A)(12)" or 274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

TPS applicants who have not yet received their initial or provisional EAD, including those who apply after the date of this notice but before the initial registration period closes on September 9, 2002, may receive an EAD that facially expires on September 9, 2002. Such an EAD is covered by the automatic extension described above, even though some applicants may receive their EAD only after September 9, 2002.

Must Qualified Individuals Apply to the Service for the Automatic Extension of Their TPS-related EADs?

No, qualified individuals do not have to apply for this automatic employment authorization extension to March 9, 2003. However, qualified individuals must re-register for TPS during the re-registration period that begins on September 9, 2002, and continues through November 12, 2002, in order to be eligible for a new EAD that is valid until September 9, 2003.

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received an extension of employment authorization by virtue of this **Federal Register** notice may present to their employer a TPS-related EAD as proof of identity and employment authorization until March 9, 2003. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the automatic extension of employment authorization documentation to March 9, 2003. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Which EADs That Have Been Automatically Extended Through March 9, 2003, Are Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until March 9, 2003, employers of Salvadoran TPS class members whose employment authorization has been automatically extended by this notice must accept an EAD that contains an expiration date of September 9, 2002, and that bears one of the following notations: "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or, "274A.12(A)(12)" or "274A.12(c)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B. New EADs or extension stickers showing the March 9, 2003 expiration date will not be issued.

Employers should not request proof of Salvadoran citizenship. Employers presented with an EAD that this **Federal Register** notice has extended automatically and that appears to be genuine and to relate to the employee should accept the document as a valid "List A" document and should not ask for additional Form I–9 documentation. This action by the Attorney General through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the Service's Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a Service representative. Also, employers may call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155, or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688, or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

Notice of Extension of Designation of El Salvador Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of El Salvador for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of El Salvador under section 244(b)(1)(B) of the Act is extended for an additional 12-month period from September 9, 2002, to September 9, 2003. 8 U.S.C. 1254a(b)(3)(C).

(2) As of June 10, 2002, there are approximately 263,000 nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who have applied for TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of El Salvador (or an alien having no nationality who last habitually resided in El Salvador) who received TPS during the initial designation period must re-register for TPS during the 60-day re-registration period from September 9, 2002 until November 12, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization documentation, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on September 9, 2003, the Attorney General will review the designation of El Salvador under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) TPS-related Employment Authorization Documents that expire on September 9, 2002 are extended automatically until March 9, 2003 for qualified Salvadorans.

(7) Information concerning the extension of designation of El Salvador under the TPS program will be available at local Service offices upon publication of this notice and the Service's National Customer Service Center at 1–800–375–5283. This information will also be posted on the Service Web site at *http://www.ins.usdoj.gov.*

Dated: July 8, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–17479 Filed 7–8–02; 3:48 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Survey of the Costs to Employers To Expand the Quarterly Unemployment Insurance Wage Report

ACTION: Notice.

SUMMARY: The Department of Labor as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed survey of costs to employers if modifications were made to their state unemployment insurance quarterly wage reports. The changes involve expanding the employee name fields and adding three additional labor market information (LMI) elements. A similar study of costs, which would be incurred by State Workforce Agencies (SWAs), has recently been completed (OMB Control No. 1205–0419, expired 12/31/2001) (See **Federal Register**/Vol. 64, No. 60/Tuesday, March 30, 1999/Notices, page 15179, for the original announcement of the survey). A copy of the proposed information collection request (IRC) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 9, 2002.

ADDRESSES: Bill Whitt, Office of Income Support, Employment and Training Administration, Department of Labor, Room S4231, 200 Constitution Ave, NW., Washington, DC 20210; (202) 693–3219 (this is not a toll-free number), Fax 202–693–3229, E-mail *bwhitt@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

SWAs collect and maintain quarterly wage record information from employers for purposes of administering state unemployment insurance programs; among other things, the information includes employee name, social security number (SSN), quarterly wages and employer identification number. Federal law requires that a number of state and federal agencies use UI quarterly wage record information in certain program operations. In addition, wage records are provided by the SWAs to the National Directory of New Hires (NDNH), a database primarily used for child support enforcement purposes.

The Social Security Administration (SSA) maintains the NDNH on behalf of the Department of Health and Human Services (HHS). Part of SSA's responsibility is to verify the name and

social security number of individuals and the employer identification numbers on the UI wage records provided to the NDNH. This verification involves matching SSA name/SSN information against the UI wage records. However, a lack of standardization among SWAs in the reporting of such information makes verification difficult and diminishes the usefulness of the

use data from the wage records to evaluate the outcomes of job training programs and services and to gather LMI. The additional wage record data elements could enhance the measurement of performance of such programs.

Gaining some knowledge of the potential cost of reporting the additional information will help the ETA in

information technology, e.g., permitting electronic submission of responses.

III. Current Actions

To examine the potential cost to employers, the ETA is planning to collect survey data from random samples of employers in the United States. The survey will collect information on how (1) employers

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 5, 2002.

Accounting Principles ("US GAAP") unless EMCC determines that circumstances warrant the applicant's providing such discussion. For financial statements prepared in accordance with any other accounting standard, the applicant must still provide EMCC with a discussion of the material variations of the accounting principles used from US GAAP.[4]

When membership requirements were

supplemental information in the context of an SEC concept release.[6]

III. Discussion

the Commission finds that the proposed rule change is consistent with the Act's requirements and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F) of the Act.[7] Section 17A(b)(3)(F) of the Act requires that the

social security number of individuals and the employer identification numbers on the UI wage records provided to the NDNH. This verification involves matching SSA name/SSN information against the UI wage records. However, a lack of standardization among SWAs in the reporting of such information makes verification difficult and diminishes the usefulness of the information in the NDNH. SSA has established a standard for reporting and storage of the name field for W–2 purposes and HHS suggests that implementation of the same standard for UI wage records would be beneficial to the NDNH, the UI agencies and other users of wage records. Effective use of such a standard by the UI agencies may improve the utility of wage record data now being used for detection and collection of unemployment insurance overpayments.

A change in the name field requirements may be costly for some employers to implement. Therefore, ETA is interested in gathering estimates from employers of the costs that they expect to incur if they were to adopt the new standard.

In addition to name field standardization, some groups have expressed interest in LMI, such as quarterly hours paid, weeks worked and the zip code designating the location of jobs, that is not currently available from most SWA's UI tax and wage records or from other sources. Wage data currently received are utilized for a number of government programs as well as for research purposes. For example, under the Workforce Investment Act, states use data from the wage records to evaluate the outcomes of job training programs and services and to gather LMI. The additional wage record data elements could enhance the measurement of performance of such programs.

Gaining some knowledge of the potential cost of reporting the additional information will help the ETA in making future decisions on whether to encourage SWAs to ask employers for this information. A survey form, which shows the standards for the suggested changes, has been developed to assist employers in estimating their costs for compliance with the suggested changes.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of ETA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

To examine the potential cost to employers, the ETA is planning to collect survey data from random samples of employers in the United States. The survey will collect information on how (1) employers currently submit UI tax and wage records, current costs associated with quarterly reporting, estimated costs for the initial change to accommodate expanded name fields and the additional labor market elements, and the on-going annual costs to employers for these changes; (2) the changes may impact employer staff costs and information technology costs; and (3) easily employers believe the changes can be implemented. As a supplement to the survey, a small number of employers will be asked to participate in case studies regarding similar, but more detailed questions in relation to possible costs associated with adding wage record elements.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Survey of the Costs to Employers to Expand the Quarterly Unemployment Insurance Tax Report.

Affected Public: Employers.

Total Respondents: Sample of employers, approximately 1600 for survey; 12 for case studies.

Frequency: One time only.

Total Responses: 1,612.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden (hours)
Survey	1600	One time	1600	30	800
Case Studies	12	One time	12	90	18
Totals			1612		818

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 5, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–17447 Filed 7–10–02; 8:45 am]

BILLING CODE 4510–30–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46164; File No. SR–EMCC–2000–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Approving a Proposed Rule Change Relating to Financial Statements Prepared in Accordance With International Accounting Standards or United Kingdom Generally Accepted Accounting Principles

July 3, 2002.

On February 29, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and on October 26, 2000, and on November 13, 2000, amended it proposed rule change. Notice of the proposal was published in the **Federal Register** on December 13, 2000.[2] One comment letter was received.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

EMCC's rule change will modify EMCC rule 2, section 3(b) to permit EMCC to accept financial statements from an applicant prepared in accordance with International Accounting Standards ("IAS") or United Kingdom Generally Accepted Accounting Principles ("UK GAAP") without requiring the applicant to provide a discussion of the material variations of such accounting principles from United States Generally Accepted Accounting Principles ("US GAAP") unless EMCC determines that circumstances warrant the applicant's providing such discussion. For financial statements prepared in accordance with any other accounting standard, the applicant must still provide EMCC with a discussion of the material variations of the accounting principles used from US GAAP.[4]

When membership requirements were initially established in 1996, EMCC's staff had minimal experience in analyzing non-U.S. financial statements. Therefore, EMCC deemed it prudent to require applicants submitting audited financial statements prepared on a basis other than US GAAP to provide a discussion of the material differences. Since that time, EMCC's staff's familiarity with, understanding of, and expertise in evaluating financial statements not prepared in accordance with US GAAP has significantly increased.[5]

When assessing an applicant's qualifications for EMCC membership, the audited financial statements comprise only a portion of the materials provided to and reviewed by EMCC. Such additional materials include, but are not limited to, reports filed with the applicant's primary regulator, interim financials, and a detailed risk management questionnaire. To assure itself that the applicant's financial responsibility and operational capability is sufficient for membership, EMCC might also require an applicant to make its books and records available to EMCC. Thus, EMCC has the ability to seek information its deems necessary or relevant to sufficiently assess and review an applicant's qualifications and capability for membership.

II. Comments

Edmund L. Jenkins, Chairman of the Financial Accounting Standards Board, suggested that the Commission delay approval of EMCC's proposed rule change until the Commission passes judgment on the suitability of financial statements prepared according to non-U.S. accounting standards without supplemental information in the context of an SEC concept release.[6]

III. Discussion

the Commission finds that the proposed rule change is consistent with the Act's requirements and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F) of the Act.[7] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By enabling EMCC to accept financial statements from prospective members that are prepared in accordance with IAS or UK GAAP without a discussion of the material variations of these accounting principles from US GAAP should facilitate the timely review and processing of an applicant's membership application and should encourage additional applicants to seek EMCC membership, which should have the effect of increasing EMCC's membership. Expanded EMCC membership would result in more firms availing themselves of the efficiencies obtained through use of a registered clearing agency, which should promote the prompt and accurate clearance and settlement of securities transactions eligible for processing at EMCC. Furthermore, because of EMCC's staff's familiarity with, understanding of, expertise in evaluating financial statement prepared in accordance with IAS or UK GAAP, EMCC can dispose of the requirement of a statement of material differences from US GAAP for these two accounting principles without any lessening of its ability to provide safe clearance and settlement services.

In response to the one commenter, EMCC's rule change differs from the Commission's consideration of potential changes to the filing requirements for securities issued to the general public by foreign issuers. EMCC's rule change deals only with EMCC's requirements for the financial reports of its own members and prospective members, which are sophisticated and highly regulated banks and broker-dealers that are engaged in the business of trading emerging market securities. This rule change has no affect on any financial statements filed with the Commission (financial statements filed with the Commission must be prepared in

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43675 (Dec. 5, 2000), 65 FR 77948.

[3] Letter from Edmund L. Jenkins, Chairman, Financial Accounting Standards Board (Jan. 3, 2001).

[4] Pursuant to EMCC's rules, EMCC requires its members to submit audited financial statements and other interim periodic financial statements. EMCC will also allow its members to provide these financial statements prepared in accordance with IAS or UK GAAP without requiring the member to provide a discussion of the material variations of such accounting principles from US GAAP unless EMCC determines that circumstances warrant the applicant's providing such discussion.

[5] EMCC has stated that its staff responsible for reviewing financial statements not prepared in accordance with US GAAP will remain informed of the material variations between US GAAP and IAS and between US GAAP and UK GAAP.

[6] Securities Exchange Act Release No. 42430 (Feb. 16, 2000), 65 FR 8896 (Feb. 23, 2000). This concept release sought public comment on the subject of whether and under what conditions the Commission should accept foreign private issuers' financial statements that are prepared according to IAS.

[7] 15 U.S.C. 78q–1(b)(3)(F).

accordance with US GAAP) and has no affect on the ability of U.S. public investors' access to financial information of the underlying emerging market securities.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3420]

State of Texas; Disaster Loan Areas

As a result of the President's major disaster declaration on July 4, 2002, I find that Bexar, Blanco, Comal, Hays, Kerr and Medina Counties in the State of Texas constitute a disaster area due

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). Notice is hereby given that both the Information Technology Systems Review Staff (S1J–

information systems security programs. This includes the development of SSA's security program requirements and procedures, the implementation of governing directives in the area of systems security, the administration of the Agency access control program, and managing an onsite systems review and a comprehensive security compliance and monitoring program. OSSOM provides educational training and

Subchapter TH

The Office of the Chief Information Officer

TH.00 Mission

TH.10 Organization

TH.20 Functions

Section TH.00 The Office of the Chief Information Officer—(Mission)

B. The Immediate Office of the Chief Information Officer provides the CIO with management support on the full range of his/her responsibilities. Other duties include the coordination and preparation of reports on a variety of IT projects, the Information Resource Management Plan, and enterprise IT Architecture. The Office is responsible for Agency compliance with legislation, OMB directives and GAO guidance

accordance with US GAAP) and has no affect on the ability of U.S. public investors' access to financial information of the underlying emerging market securities.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2000–01) be, and hereby, is approved.

For the Commission by the Division of market Regulation, pursuant to delegated authority. [6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17432 Filed 7–10–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3426]

State of Arizona; (Amendment #1); Disaster Loan Areas

In accordance with a notice received from the Federal Emergency Management Agency, dated July 2, 2002, the above numbered declaration is hereby amended to include Coconino and Gila Counties in the State of Arizona as disaster areas due to damages caused by wildfires occurring on June 18, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Maricopa, Mohave, Pinal and Yavapai Counties in Arizona; and Kane County in Utah. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is August 24, 2002, and for economic injury the deadline is March 25, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 5, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17465 Filed 7–10–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas; Disaster Loan Areas

As a result of the President's major disaster declaration on July 4, 2002, I find that Bexar, Blanco, Comal, Hays, Kerr and Medina Counties in the State of Texas constitute a disaster area due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 2, 2002 and for economic injury until the close of business on April 4, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Atascosa, Bandera, Burnet, Caldwell, Edwards, Frio, Gillespie, Guadalupe, Kendall, Kimble, Llano, Real, Travis, Uvalde, Wilson and Zavala in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit available elsewhere	6.750
Homeowners without Credit available elsewhere	3.375
Businesses with Credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 342811. For economic injury the number is 9Q4900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 5, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17466 Filed 7–10–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). Notice is hereby given that both the Information Technology Systems Review Staff (S1J–2) and the Office of Information Systems Security (S1NG) in the Office of the Deputy Commissioner Finance, Assessment and Management (S1) are abolished. The policy functions of both this staff and this office are transferred to the new Office of the Chief Information Officer. The operational program management responsibility for IT systems security is consolidated in the new Office of Systems Security Operations Management under the Deputy Commissioner Finance, Assessment and Management's Office of Financial Policy and Operations (S1N). The new material and changes are as follows:

Section S1.00 The Office of the Deputy Commissioner Finance, Assessment Management—(Mission)

Replace with the following:

The Office of the Deputy Commissioner Finance, Assessment and Management (ODCFAM) directs the administration of comprehensive SSA management programs including budget, acquisition and grants, facilities management and publications and logistics. The Office directs the development of Agency policies and procedures as well as the management of the Agency financial management systems. It directs the evaluation of programs operations quality and the management of Agency quality assurance, management integrity and the oversight of SSA's matching operations.

Section S1.10 The Office of the Deputy Commissioner Finance, Assessment Management —(Organization)

Delete C.2. The Information Technology Systems review Staff (S1J–2).

Re-number C.3. to C.2.

Section S1N.10 The Office of Financial Policy and Operations—(Organization)

Delete G. in its entirety

Add

G. The Office of Systems Security Operations Management

Section S1N.20 Office of Financial Policy and Operations—(Functions)

Delete G. in its entirety

Add

G. The Office of Systems Security Operations Management (OSSOM) directs, coordinates, and manages SSA's information systems security programs. This includes the development of SSA's security program requirements and procedures, the implementation of governing directives in the area of systems security, the administration of the Agency access control program, and managing an onsite systems review and a comprehensive security compliance and monitoring program. OSSOM provides educational training and awareness programs to management and employees on systems security operational policies, procedures, and requirements; serves as the operational focal point for day-to-day contact with the Office of Inspector General on matters of fraud, waste and abuse; and provides direction to the Agency's systems security officers. OSSOM is also responsible for implementing security requirements and executing safeguards for SSA's state information exchange program.

Dated: July 1, 2002.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 02–17383 Filed 7–10–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). This notice moves the Chief Information Officer from the immediate Office of the Commissioner and establishes the Office of the Chief Information Officer. The new material and changes are as follows:

Section SA.20 Office of the Commissioner—(Functions)

Delete from

A.

The Chief Information Officer is also located in the immediate Office of the Commissioner and reports directly to the Commissioner on statutorily defined CIO duties and as a key advisor to the Deputy Commissioner of Social Security.

Section S.10 The Social Security Administration—(Organization):

Add

M. The Office of the Chief Information Officer

Add

Subchapter TH

The Office of the Chief Information Officer

TH.00 Mission

TH.10 Organization

TH.20 Functions

Section TH.00 The Office of the Chief Information Officer—(Mission)

The Office of the Chief Information Officer (OCIO) develops the Information Resource Management Plan and defines the Information Technology (IT) vision and strategy for the Social Security Administration. The Office shapes the application of technology in support of the Agency's Strategic Plan including the Information Technology Architecture that outlines the long term Strategic Architecture and Systems Plans for the Agency and includes Agency IT Capital Planning. The OCIO supports and manages pre and post implementation reviews of major IT programs and projects as well as project tracking at critical review points. The OCIO provides oversight of major IT acquisitions to ensure they are consistent with Agency architecture and with the IT budget, and is responsible for the development of Agency IT security policies. The Office directs the realization of the Agency's Information Technology Architecture to guarantee architecture integration, design consistency, and compliance with federal standards, works with other Agencies on government-wide projects such as e-GOVERNMENT, and develops long range planning for IT Human Resource Strategies.

Section TH.10 The Office of the Chief Information Officer—(Organization)

The Office of the Chief Information Officer, under the leadership of the Chief Information Officer includes:

A. The Chief Information Officer
B. The Immediate Office of the Chief Information Officer
C. The Office of Information Technology Systems Review
D. The Office of Information Technology Security Policy

Section TH.20 The Office of the Chief Information Officer—(Functions)

A. The Chief Information Officer is directly responsible to the Commissioner for carrying out the OCIO mission and providing general supervision to the major components of the OCIO. The CIO is a member of the Federal CIO Council. The Deputy Chief Information Officer assists the Chief Information Officer in carrying out his/her responsibilities.

B. The Immediate Office of the Chief Information Officer provides the CIO with management support on the full range of his/her responsibilities. Other duties include the coordination and preparation of reports on a variety of IT projects, the Information Resource Management Plan, and enterprise IT Architecture. The Office is responsible for Agency compliance with legislation, OMB directives and GAO guidance concerning IT capital and investment control and for issuance of Agency procedures in this area. It also designates a member to serve on the Architecture Review Board (ARB). The CIO will select the chair of the ARB.

C. The Office of Information Technology Systems Review serves as the principal independent source of advice to the Information Technology Advisory Board, the SSA Chief Financial Officer, and the CIO on the feasibility, suitability, and conformance to regulations of proposed systems plans and acquisitions, on proposed systems design and requirement specifications, and on all other systems strategies and related issues. It reviews the proposed Information Technology Systems (ITS) budget and Agency Procurement Requests for adequacy, clarity, cost-effectiveness, achievability, consistency with Agency plans, and to ensure that project objectives are realistic and complete. It conducts technical reviews of the functional requirements and design specifications of all ITS hardware and software systems to ensure their sufficiency and compliance with applicable policies, procedures, and Agency plans. The Office conducts in-process reviews of systems, planned implementation strategies, contracts, interagency agreements, and other ongoing work in the systems area to determine compliance with Agency decisions and plans and monitors significant ITS projects to ensure that Agency objectives and timeframes are met. The Office conducts Information Management reviews, maintains the Agency ITS budget projects accounting data base, and provides the CIO and Commissioner with regular status reports on the execution of the Agency's ITS budget.

D. The Office of Information Technology Security Policy is responsible for directing and managing SSA's overall information systems security program. This includes the development of SSA's security policy requirements and the effective implementation of other governing directives. It guides SSA-wide security awareness programs for management and employees on security policy/requirements. The Office is also

responsible for setting policy for developing and implementing security requirements/safeguards for SSA's state information exchange program and leading and coordinating physical security policy.

Dated: July 1, 2002.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 02–17382 Filed 7–10–02; 8:45 am]

correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions may contact the Office of Citizen Exchanges, room 216, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone number 202/619–5326, fax number 202/260-0440, or *pmidgett@pd.state.gov* to

chuff@pd.state.gov, and Carol Herrera, 202/619-5405; e-mail: *cherrera@pd.state.gov,* James Ogul, 202/205-0535; e-mail: *jogul@pd.state.gov.*

For all Sub-Saharan African Countries and Two Special Projects Per Below for Namibia and Senegal

1. *Creating awareness and changing behavior to combat HIV/AIDS:* Proposals should foster awareness of

journalists. Contact Curt Huff at 202/619–5972 to discuss internship possibilities. Applicants must also contact the Public Affairs Officer at the U.S. Embassy in Windhoek (tel 264–61–229801; fax 264–61–232476; e-mail *Gkopf@pd.state.gov*) for more detailed guidance on the type of program desired and contacts with whom to work. Although not a requirement, one or two other Sub-Saharan countries could be

21st century needs. Topics might include strategic planning, budgeting, personnel issues, delegation, leadership, negotiation, and presentation skills.

6. *Judicial reform, independence, and development:* Proposals should address the educational and organizational needs of judges and their staffs, streamlining of court procedures, and development of codes of conduct. Such projects should be conducted in close

equal opportunity for women in one or more areas of life such as business, politics, social and other areas of leadership. Projects might provide leadership training, network building, advocacy strategies, analyses of discriminatory practices, confidence building activities, and visions of a more equitable society. A rationale should be developed on whether to include men in the project. Projects

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responsible for setting policy for developing and implementing security requirements/safeguards for SSA's state information exchange program and leading and coordinating physical security policy.

Dated: July 1, 2002.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 02–17382 Filed 7–10–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4064]

Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs) in an Open Competition Seeking Cooperative International Projects To Introduce American and Foreign Participants to Each Other's Social, Economic, and Political Structures

Important Note: This Request for Grant Proposals contains language in certain sections that is new or significantly different from that used in the past. Please pay special attention to the following sections: General Program Guidelines; Ineligibility; Program Data Requirements, and Budget Guidelines and Cost-Sharing Requirements.

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for cooperative international projects that introduce American and foreign participants to each others' social, economic, and political structures and international interests. U.S.-based public and private non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support international projects in the United States and overseas involving current or potential leaders.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFGP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

Announcement Name and Number: All correspondence with the Bureau concerning this RFGP should reference the "Open Competition for Cooperative International Projects" and reference number: ECA/PE/C–03–01. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions may contact the Office of Citizen Exchanges, room 216, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone number 202/619–5326, fax number 202/260-0440, or *pmidgett@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Raymond H. Harvey, on all other inquiries and correspondence.

To Download a Solicitation Package Via Internet: The entire Solicitation Package also may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Program Information

Overview

We welcome proposals that directly respond to the following themes, regions and countries. Given budgetary considerations, projects in countries and for themes other than those listed will not be eligible for consideration and will be ruled technically ineligible. The themes listed below are important to the Office of Citizen Exchanges, but no guarantee is made or implied that grants will be made in all categories.

Proposals for single country, sub-regional and regional projects will be accepted. In some cases, where noted, multi-country proposals will be given priority consideration.

The Bureau encourages applicants to consider carefully the choice of target countries and issues. In order to prevent duplication of effort, proposals should reflect an understanding of the work of development agencies, where appropriate, on the target themes, and focus on countries for which there has been limited investment on the selected issue, or for which exchange activities would complement—not duplicate—current assistance programs.

All exchanges must be bilateral, with roughly equal numbers of participants from the U.S. and foreign countries or will be declared technically ineligible. Applicants should carefully review the following recommendations for proposals in specific geographical areas.

Sub-Saharan Africa (AF)

Contacts for African programs: Curtis Huff, 202/619–5972; e-mail: *chuff@pd.state.gov,* and Carol Herrera, 202/619-5405; e-mail: *cherrera@pd.state.gov,* James Ogul, 202/205-0535; e-mail: *jogul@pd.state.gov.*

For all Sub-Saharan African Countries and Two Special Projects Per Below for Namibia and Senegal

1. *Creating awareness and changing behavior to combat HIV/AIDS:* Proposals should foster awareness of risk and promote behavior changes crucial to control and eventual eradication of the disease. Proposals should address a selection of the following topics: Education strategies to teach prevention to people who don't believe it can happen to them or believe that infection is inevitable; stigma reduction strategies for people living with HIV/AIDS; engagement of political, religious, cultural and other leaders in public education efforts; grassroots mobilization and advocacy.

2. *Professionalism & independence in the media:* Proposals to build professionalism in the media—*i.e.,* gaining an appreciation of and skill for objective reporting; developing subject specialization (*e.g.,* legal, environmental, health, or financial issues); giving fair coverage to positive as well as negative news; separating opinion from news coverage; avoiding inflammatory presentations; and maintaining independence from special interests. Attention should be given to laws that constrain freedom of information and to forces that urge journalists to censor themselves. We encourage programs with hands-on activities such as professional internships, small group training and specially tailored projects, rather than academic seminars. Of special interest are projects on political reporting in a multi-party democracy.

Namibia media project: Proposals should develop and implement in Namibia a broadcast (radio and television) journalism-training program at the university level and for practicing journalists. The emphasis should be on practical education aimed at generating professional-quality broadcasting products, including script writing, text editing, management of call-in programs, interviewing skills, location work, and application of Internet and other IT resources for program development. Applicants must work with one of the following: University of Namibia, the Polytechnic University in Windhoek, and/or the Namibia Broadcasting Corporation. The project should include development of a curriculum to be used by Namibian partners and 3–4 month internships in the U.S. for practicing Namibian journalists. Contact Curt Huff at 202/619–5972 to discuss internship possibilities. Applicants must also contact the Public Affairs Officer at the U.S. Embassy in Windhoek (tel 264–61–229801; fax 264–61–232476; e-mail *Gkopf@pd.state.gov*) for more detailed guidance on the type of program desired and contacts with whom to work. Although not a requirement, one or two other Sub-Saharan countries could be included in the project, and the best fit would be English-speaking countries where elections are anticipated in 2003.

3. *Education for democracy at the grassroots and in government:* Proposals should be school-based, producing a curriculum and training teachers in its use, or community-based, involving citizens in awareness and skill-building activities, with emphasis on the role that the individual should and can play in a democracy. Issues to be addressed might include the meaning of civil society, the separation of governmental powers, the role of non-governmental organizations, components of democracy and national identity, political tolerance, social diversity, rule of law, democratic and team-centered approaches to decision-making. Of special interest are projects that focus on leadership development for at-risk youth and school-based programs aimed at inculcating a culture of lawfulness that counters crime and corruption by educating young people on their civil, moral, and legal obligations to society. Proposals should include different ethnic and religious groups in order to expand the dialogue for coexistence.

4. *U.S.-Africa trade, finding markets, using AGOA:* The African Growth and Opportunities Act (AGOA), signed into law in May of 2000, offers qualifying African countries (there are 35 as of this time) preferential access to U.S. markets for their industries. Proposals should "jumpstart" the AGOA process by providing medium and small African business entrepreneurs and members of business associations an understanding of AGOA and of the American market place. Projects should enhance African understanding of U.S. business norms and actual practices, of U.S. customs operations, product distribution and retailing, and help them develop business linkages and relationships with manufacturers and business in their respective sectors.

5. *Organizational Management: businesses, hospitals, NGOs, educational institutions:* Proposals should develop training programs in management that would be useful in a variety of settings (*e.g.,* businesses, NGOs, educational institutions, hospitals, government offices), meeting 21st century needs. Topics might include strategic planning, budgeting, personnel issues, delegation, leadership, negotiation, and presentation skills.

6. *Judicial reform, independence, and development:* Proposals should address the educational and organizational needs of judges and their staffs, streamlining of court procedures, and development of codes of conduct. Such projects should be conducted in close cooperation with in-country stakeholders who would help to define specific objectives and plan activities. The project should build interest and cooperation between U.S. and African judges, staffs, and professional organizations.

Senegalese Judicial project: Proposals would focus on training Senegalese judges in areas such as contract law, business law, transparency/combating corruption, money laundering, and alternative sentencing. We encourage linkages between the Center for Judicial Training of Senegal and the National Judicial College at the University of Nevada-Reno. The exchange should include seminars, courtroom visits, trial simulations and professional appointments. Activities in Senegal should include seminars and workshops for judicial professionals as well as business groups, NGOs and academics.

7. *Cross-cultural, inter-ethnic and inter-religious dialogues:* Proposals should promote constructive dialogue and the reduction of stereotyping, violence, hatred, and incitement among diverse groups. A proposal could address a particular conflict or develop a broadly applicable educational program. It could work through the media or educational institutions or NGOs or other implementation channels. It should build a valued working relationship between U.S. and African professionals in conflict management and resolution, and it should develop, test, and result in a training program that can continue after grant support is finished.

Of particular interest would be a proposal on Post-Conflict Recovery (consideration should be given to countries such as Angola, Democratic Republic of the Congo, Sierra Leone, Rwanda, Ethiopia and Eritrea). Issue should include setting priorities and reconciliation methodologies after a long war, *i.e.* family reunification, land tenure, encouraging a return to the countryside, permanent resettlement in place vs. return to pre-conflict homes, de-mining and major infrastructure repair.

8. *Strengthening women's roles in society—business, politics, and social leadership:* Proposals should promote equal opportunity for women in one or more areas of life such as business, politics, social and other areas of leadership. Projects might provide leadership training, network building, advocacy strategies, analyses of discriminatory practices, confidence building activities, and visions of a more equitable society. A rationale should be developed on whether to include men in the project. Projects should also build a valued working relationship between U.S. and African partners.

9. *Environmental education and protection:* Proposals should develop exchanges which focus public awareness on the threat posed by environmental deterioration, facilitate efforts to combat the threat by mobilizing governmental and/or non-governmental action, and work at multiple levels to educate and to develop solutions. Of special interest are proposals that would strengthen national park systems, that would clean up major cities, and that would make clean water much more widely available. ECA Bureau funds cannot be used for construction projects, but should be used for planning and mobilizing forces to accomplish these goals. Proposals should build a valued working relationship between Americans and Africans that is likely to continue after grant support is finished.

East Asia and the Pacific (EAP)

The contact for East Asian and Pacific programs: Steve Lebens, 202/260–5485; e-mail: *slebens@pd.state.gov.*

For China

1. *Rule of Law:* Proposals should include the development of an independent judiciary; the enforcement of commercial laws such as intellectual property rights protection, sanctity of contracts, and competition policy; labor rights; government accountability; and alternative dispute resolution. The objective is to acquaint officials, journalists, lawyers and other relevant professionals with the concepts and practice of law in the U.S. and China.

2. *World Trade Organization Implementation:* Proposals should focus on the issues of World Trade Organization implementation, including TRIPS compliance, Intellectual Property Rights enforcement, regulatory transparency, sector reforms, and measures that government and business can take to ease the displacement of workers in the process of economic liberalization.

3. *Volunteerism:* Proposals should emphasize the role that volunteer groups play in giving voice to citizens'

concerns and how such organizations succeed in developing effective volunteer networks.

4. *Women in Society:* Proposals should foster a dialogue on effectively addressing the common challenges women face in both countries, including combating family violence, a rapidly growing concern in China.

Please note that the need to involve individuals and organizations in the

The countries/entities comprising the NEA and SA Areas are listed below. Currently there is no U.S. mission in Iran, Iraq, or Libya. Please consider countries and specific themes listed below as guides to potential exchange partnerships. But note that all themes may be appropriate for single country, multi-country or regional proposals.

Countries/Entities of the Near East and North Africa—Algeria; Bahrain;

the governments in the area and that foreign involvement with local NGO's must be carefully thought out and approached with subtlety and sensitivity. Close consultation with American Embassy/Consulate officers is critical.

For India; Israel; Iraq; the West Bank and Gaza; Pakistan; Lebanon; Sri Lanka

2. *Conflict Management/Ethnic*

that constrain press freedoms or promote self-censorship.

For Syria

A proposal is sought to assist the Faculty of Journalism of the University of Damascus in developing a journalism certification program for journalism graduates that will deal with the issues outlined above. The positive role of a free and open press in a democracy

increasing role in public debates, in the media, and in regional conferences, there is little evidence of reform. A populace experiencing abuses of power and corruption on a daily basis loses confidence in its institutions. The American NGO would work with indigenous NGO's, citizens' rights groups, journalists, human rights organizations, and government officials to share experiences on how best to

enhance public awareness of the threat posed by environmental deterioration, facilitate efforts to combat the threat by mobilizing either governmental or non-governmental organizations, engage municipal officials, planners, and service providers, and work at multiple levels to educate and to develop solutions. Environmental deterioration is closely linked, both directly and indirectly, with issues of public health

concerns and how such organizations succeed in developing effective volunteer networks.

4. *Women in Society:* Proposals should foster a dialogue on effectively addressing the common challenges women face in both countries, including combating family violence, a rapidly growing concern in China.

Please note that the need to involve individuals and organizations in the Western region of China's vast interior should be reflected in successful proposals, particularly in the Rule of Law and WTO proposals.

For Indonesia, Malaysia, Philippines or Thailand

1. *Conflict Resolution:* Proposals should focus on the use of arbitration and reconciliation techniques to create conditions for the peaceful resolution of disputes in a multi-ethnic, multi-cultural, multi-religious society. Participants could be leaders from government, civil society, and religious institutions as well as from the media. Activities promoting cultural and religious tolerance are especially welcome, as are projects, which factor in follow-up activities.

2. *Religious Institutions in a Democracy:* Proposals should build a better understanding of the role religion plays in each country, with emphasis on how religious groups and institutions participate in a democratic, secular society in which the separation of church and state and tolerance are the guiding principles. Participants could be religious as well as lay leaders. Activities should illustrate how American religious leaders, both lay and ordained, function free of state control, contribute to society at large, and provide spiritual and ethical guidance. Balanced, two-way exchanges are essential.

3. *Education:* Proposals should promote an understanding of the role of public and private schools, with and without religious affiliations, in ethnically, culturally, and religiously diverse societies. Participants could be schoolteachers, administrators, and education officials. Activities should illustrate how education can promote tolerance and encourage understanding of democratic values. Balanced, two-way exchanges are essential.

Near East and North Africa (NEA); South Asia (SA)

Contacts for NEA and SA programs: Thomas Johnston, 202/619–5325; {*tjohnsto@pd.state.gov*} or Susan Krause, 202/619–5332; {*skrause@pd.state.gov*}.

The countries/entities comprising the NEA and SA Areas are listed below. Currently there is no U.S. mission in Iran, Iraq, or Libya. Please consider countries and specific themes listed below as guides to potential exchange partnerships. But note that all themes may be appropriate for single country, multi-country or regional proposals.

Countries/Entities of the Near East and North Africa—Algeria; Bahrain; Egypt; Iran; Iraq*; Israel; Jordan; Kuwait; Lebanon; Libya; Morocco; Oman; Qatar; Saudi Arabia; Syria; Tunisia; the United Arab Emirates (UAE); the West Bank and Gaza; Yemen.

*Note: For Iraq—grant proposals may only be submitted for projects that involve Iraqis residing in the areas of northern Iraq outside the control of the government of Iraq and/or Iraqi expatriates living in other parts of the Middle East. Regarding northern Iraq, current restrictions make the authorization of the travel of American citizens to any part of Iraq under a USG grant unlikely, and the expenditure of USG funds in Iraq requires a license from Office of Foreign Asset Control (OFAC). OFAC can and does authorize the provision of a broad range of services and materials that conform to the U.S. Oil-for-Food Goods Review List. Programming with Iraqis from the North or expatriates living outside Iraq that would take place in the United States or in other countries is not subject to these restrictions.

Countries of South Asia—Afghanistan; Bangladesh; Bhutan; India; the Maldives; Nepal; Pakistan; Sri Lanka.

For India; Bangladesh; Pakistan; Iraq; Nepal; Egypt; Morocco; Jordan; Israel; the West Bank and Gaza; Lebanon; Syria; Saudi Arabia; Kuwait; the UAE

1. *Citizen Participation and Advocacy (Building and Strengthening Non-governmental Organizations):* Proposals should promote an understanding of the proper role of NGO's, facilitate Internet communication, and develop cooperation between educators and NGO's and between government agencies and NGO's for community action. Social and political activism, encouraged, focused, and channeled through non-governmental organizations, is a basic underpinning of democratic society. Strengthening NGO advocacy skills, management, grassroots support, recruitment and motivation of volunteers, fundraising and financial management, media relations, and networking for mutual support and reinforcement will strengthen democratic/civil society trends in the region. It is essential that organizations submitting proposals in this category recognize that democratic activism may be viewed with suspicion by some of the governments in the area and that foreign involvement with local NGO's must be carefully thought out and approached with subtlety and sensitivity. Close consultation with American Embassy/Consulate officers is critical.

For India; Israel; Iraq; the West Bank and Gaza; Pakistan; Lebanon; Sri Lanka

2. *Conflict Management/Ethnic Tolerance and Cooperation:* Proposals should focus on redefining inter-communal conflict in specific situations and, through facilitating dialogue—among teachers, professionals, businesspersons, journalists, community activists—promote better understanding among parties in conflict. A community that expends its time, its energy, and its material resources on offensive or defensive combat is unable to develop or maintain a civil basis for democratic institutions. Communal and ethnic tolerance is difficult to achieve, and the problem has worsened with the rise of community-based political groupings. There are numerous community groups working to bring about resolution to the challenge posed by ethnic nationalism, and the American experience of absorbing, integrating, and accommodating diverse communities from various parts of the world into a civil, as opposed to an ethnically defined, polity would be useful to these groups. Of particular relevance would be the experience of programs that teach tolerance in either a formal setting or in novel, arts/media-based contexts.

For Israel; the West Bank and Gaza; Egypt; Syria; Lebanon; Tunisia; Morocco; Jordan; India; Nepal; Pakistan; and Iraqi

3. *Journalism Training, Professional Skills, and Responsibility/The Role of the Press in a Democratic Society:* Proposals should promote professionalism and provide training and advice to individuals and organizations devoted to the protection of press freedoms and to the defense of journalists and their right to practice their profession with integrity. The development of professionalism in media—gaining an appreciation for the importance of objective reporting; the ethics of presenting a true and balanced account of events; developing subject specialization; applying rational management techniques to newspaper publishing; etc.—remains an area in which serious efforts must be expended if the fourth estate is to fulfill its potential as a pillar of democratic society. Proposals should focus on how professional journalists deal with laws that constrain press freedoms or promote self-censorship.

For Syria

A proposal is sought to assist the Faculty of Journalism of the University of Damascus in developing a journalism certification program for journalism graduates that will deal with the issues outlined above. The positive role of a free and open press in a democracy cannot be overstated; one of the tasks in the development of a free press is training and sustaining a corps of professional journalists. One means for doing so is working with university journalism faculties to strengthen curriculum, train professors, seek international accreditation, and develop internship programs.

For Egypt; India; Israel; Iraq; Syria; Lebanon; Saudi Arabia; Kuwait; UAE; Bahrain; Oman; Qatar; Yemen. This theme is also appropriate for a South Asia regional exchange or a regional project involving the countries of the Arabian Gulf

4. *Women's Activism, Political Activism and Leadership, and Organizational Skills:* Proposals should acquaint elected women leaders with skills in budget, human resource management, policy analysis, legislative drafting, and fighting corruption. Although the principle of equal rights for women and minorities has attained the status of a basic value in many legal systems throughout the region, women continue to exercise disproportionately little political and social influence. While some women's groups have organized themselves and actively campaign for equal rights and a greater say in local issues, women need to learn how to develop consensus on issues and build a constituency, mobilize support—both urban/political and grassroots—raise money at the municipal, state, and national levels, and how to win elections. Once elected, at either the state or the national level, women need to know how to effectively represent the interests of their constituents. They also need to know how to advocate for changes in policy as well as practice in the areas of health care, education, domestic violence, and equal treatment under the law.

For All Countries; Iraq

5. *Good Governance/The Accountability of Government:* Proposals should assist in the development of mechanisms of control to counteract corruption. Although concepts such as good governance and ethics, transparency, responsiveness, and the fight against corruption play an increasing role in public debates, in the media, and in regional conferences, there is little evidence of reform. A populace experiencing abuses of power and corruption on a daily basis loses confidence in its institutions. The American NGO would work with indigenous NGO's, citizens' rights groups, journalists, human rights organizations, and government officials to share experiences on how best to expose and combat corruption. Success in making government at all levels accountable and transparent would contribute greatly toward the development of democratic institutions and civic responsibility and would encourage increased foreign investment.

For Egypt

The Egyptian People's Assembly would welcome the opportunity to cooperate with one or more American institutions in arranging exchange visits, training, and possibly internships/fellowships for young Assembly staffers/civil servants. Focus areas would include legislative research and drafting, constituent relations, public affairs, media relations, etc. American hosts might include both the U.S. Congress and state legislatures.

For India; Pakistan; Nepal; Afghanistan; Morocco; Egypt; Iraq; Jordan; General

6. *Adult Education/Teacher and Technical Training:* Proposals should lead to an upgrading of teacher training and development of technical education curricula. In countries throughout the Near East, North Africa, and South Asia, the workforce is characterized by an abundance of underemployed university graduates and an oversupply of unskilled day laborers. While universities proliferate, there are very few institutions in which one can learn how to be a skilled teacher, how to operate a water treatment plant, how to implement environmentally and scientifically sound agricultural practices, or how to design and plan road safety measures. There is a real need for trained teachers at all levels as well as for technically qualified, mid-level workers. In order to develop sustainable economies that can produce a reasonable standard of living for growing populations in the 21st century, many NEA and SA countries must rapidly upgrade their teacher training and their technical education curricula.

For Egypt; Israel; Jordan; the West Bank and Gaza; Lebanon; Bahrain; India; Nepal

7. *Environmental Protection/Natural Resources Management:* Proposals should develop exchanges which enhance public awareness of the threat posed by environmental deterioration, facilitate efforts to combat the threat by mobilizing either governmental or non-governmental organizations, engage municipal officials, planners, and service providers, and work at multiple levels to educate and to develop solutions. Environmental deterioration is closely linked, both directly and indirectly, with issues of public health (air and water pollution; solid waste management) and economic welfare (preservation of natural sites; eco-tourism; agricultural productivity; the rational management of natural resources; the balance between industrial growth and environmental concerns, especially in urban areas). Since pollutant-laden air and impure groundwater are trans-boundary issues, faced by all countries/entities, multi-country proposals would be welcome. Of special concern to India is the need for increased awareness and training regarding the treatment and disposal of hazardous, often medical/bio-medical waste.

For the Middle East Region

Proposals should develop exchanges which enhance public awareness of natural resources management, largely on the allocation, conservation, purification, and re-use of water, potentially with an educational component.

For the Middle East Region; Iraq

8. *Public Health/Mental Health:* Proposals should address the introduction or improvement of mental health programs dealing with traumatic experiences or violence. Issues of public health are central to the social well-being and to the economic productivity and stability of a country. Proposals should include education/training designed to address problems resulting from traumatic experiences, or to address the behavior of individual citizens living in an environment of violence.

(Formal medical education and dispensing of medications are outside the purview of this theme and will not be accepted activities for funding based on exchange guidelines.)

For India

Proposals should promote exchange programs among governmental or non-governmental organizations, municipal officials, planners, and service providers to educate and develop solutions for current practices having a negative impact on public health. Such practices include lack of adequate water treatment, inadequate vehicle exhaust

standards, food processing facilities, waste collection and disposal (including biomedical waste), lack of sterile practices at hospitals, the absence of screening at blood banks, the operation of aging smokestack industries, etc.

For Israel; the West Bank and Gaza; Lebanon; India: Pakistan; Bangladesh

Proposals should investigate the judiciary, the quality of the relationship between the judiciary and the bar, and, by extrapolation, raise the quality of the administration of justice.

For Israel; Jordan; the West Bank and Gaza; Egypt; Iraq; Pakistan; Regionwide

10. *Civic Education:* Proposals should focus on integrating civic education concepts such as increased citizen participation in the political process, the role of political parties, and the importance of a free press in a democratic society into primary and secondary school curricula. Proposals should also focus on developing programs to educate university students and young leaders on democratic principles and practices. Proposals should focus on the development of curricula and textbooks, teacher training, and the creation of student activities that promote democratic principles and practices. Proposals should also focus on developing programs to educate university students and young leaders on democratic principles and practices.

For Caribbean and Haiti

3. *HIV/AIDS Awareness:* Proposals should focus on creative community-based initiatives that will promote better health care and prevent the spread of HIV/AIDS. Proposals should focus on educating girls and young women on some of the following topics: the need

participating in the global economy. Projects, which include orderly market compliance, intellectual property rights (IPR) enforcement, regulatory transparency, sector reforms and measures that government and business can take to ease the displacement of workers in the process of economic liberalization. A sub-theme would include a discussion of how the U.S. implements commercial diplomacy

- Experienced staff with language facility and a commitment by the staff to monitor projects locally to improve accountability;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A follow-on plan beyond the scope of the Bureau grant.

Proposal narratives must demonstrate

4. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

5. Content-based Internet training/cyber-training to encourage citizen participation in workshops, fora, chats, and/or discussions via the Internet that will stimulate communication and information sharing among key opinion leaders on priority topics as a form of

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standards, food processing facilities, waste collection and disposal (including biomedical waste), lack of sterile practices at hospitals, the absence of screening at blood banks, the operation of aging smokestack industries, etc.

For Israel; the West Bank and Gaza; Lebanon; India: Pakistan; Bangladesh

Proposals should investigate the causes of increased societal and/or in-school violence, to train individuals such as teachers and youth leaders to recognize trauma/stress-related behavior and address it, and to develop programs focused on youth and young adults—the most common perpetrators and victims of the violence—are needed. Statistics in Israel indicate an alarming increase in incidents of violence in Israeli society, particularly school violence and domestic violence. Similar patterns appear to exist in the West Bank and Gaza. Educators posit that the ubiquitous violence and uncertainty that characterize the Israeli-Palestinian confrontation has a spillover effect, with students acting out in the schools what they witness in the streets and at home.

For NEA and SA Region wide; India; Iraq

9. *Rule of Law/Administration of Justice:* Proposals should introduce judges of both lower and higher courts to the functioning of the legal systems in the U.S. and foreign countries, with emphasis on introducing the principles and practices of U.S. jurisprudence and such fundamental procedures as alternate dispute resolution, early neutral evaluation, case management, the acceptance of guilty pleas, continuous trial proceedings, and arbitration/mediation. A well-trained, independent judiciary is fundamental to a democratic political and social system. Public perception of unequal and unfair treatment before the bench of women, members of ethnic minority communities and the poor is widespread in the region. Even well qualified and well-intentioned judges are obstructed in their efforts to deliver justice by case backlog, by procedural delay, and by insufficient authority to exercise judicial discretion in court management.

For Pakistan or South Asia Regional

Proposals should address such issues as performance standards (efficiency; competence; fairness of administration), ethical standards (impropriety; corruption; discrimination against specific groups, such as women or minorities), and other related concerns. The goal of these exchanges is to enhance the professionalism of the judiciary, the quality of the relationship between the judiciary and the bar, and, by extrapolation, raise the quality of the administration of justice.

For Israel; Jordan; the West Bank and Gaza; Egypt; Iraq; Pakistan; Regionwide

10. *Civic Education:* Proposals should focus on integrating civic education concepts such as increased citizen awareness, participation, volunteerism, and community service into elementary and secondary education. The development of ethics and civic responsibility/virtue through education is an important step in creating a more civil and democratic society. Middle Eastern groups are particularly interested in learning how American school systems have incorporated in their curricula community service, environmental campaigns, and other activities that involve students in the larger society.

Western Hemisphere Affairs (WHA)

The Bureau of Western Hemisphere Affairs includes the countries of Canada, Mexico, Central and South America, and the Caribbean.

The contact for Western Hemisphere Affairs programs: Laverne Johnson, 202/619–5337; e-mail: *ljohnson@pd.state.gov.*

For Peru, Mexico, Chile, Uruguay, and Paraguay

1. *Civil Society Participation in Government:* Proposals should focus on the role of NGOs in influencing political processes, lobbying, and networking with other organizations. Participants would be representatives of politically engaged NGOs with a good government focus. Project activities might focus on how municipal teams, including government officials, educational leaders, NGOs, business leaders, *etc.*, join forces to develop approaches to economic development or solutions to major problems (environment, crime, drug use, *etc.*). Ideally, participants will be committed activists who will share ideas, successes, and challenges from the two countries.

For Brazil, Argentina, Peru, Uruguay, Venezuela, Guatemala, Costa Rica, and Honduras

2. *Improving Civil Rights for Afro-Latino Minorities:*

Proposals should focus on Non-Governmental Organizations (NGOs) working for the inclusion of Afro-Latinos and other miporities in higher education, modernization of curriculum to counter negative images of those groups, and the training and education of young leaders from those communities.

For Caribbean and Haiti

3. *HIV/AIDS Awareness:* Proposals should focus on creative community-based initiatives that will promote better health care and prevent the spread of HIV/AIDS. Proposals should focus on educating girls and young women on some of the following topics: the need for prevention and stigma reduction strategies for people living with HIV/AIDS, engagement of political, religious, cultural and other leaders in public education efforts; grassroots mobilization and advocacy.

For Chile, Guatemala, Peru, and Nicaragua

4. *Protection of Indigenous Cultures in a Shrinking World:* Proposals would address the protection of indigenous cultures by demonstrating ways in which technology can be adapted to local conditions, and how these technologies can be used to protect and preserve and disseminate information about local cultural heritage. Emphasis under this theme is on assisting countries in preserving their cultural heritage through programs designed to reduce the threat of pillage of sites representing irreplaceable cultural heritage, and to create opportunities to develop long-term strategies for preserving cultural property through training and conservation, museum development, and public education. Projects might include supporting the preservation of cultural sites, objects in a site, museum or similar institution, or forms of traditional cultural expression.

For Peru, Brazil, Nicaragua, and Chile

5. *Democracy Support/Good Governance:* Proposals may address any of the following program concepts designed to enhance democracy within these countries: Anti-corruption, Administration of Justice (also Comparative Legal Systems), Civilian-Military Relations, Civil Society Participation in Government, Leadership for Democracy, and Alternative Dispute Resolution as a Solution to Inter-ethnic conflict. Proposals should focus on how a democratic government functions from the community to the national level in addressing these concepts.

For Chile, Mexico, and Brazil

6. *Sustainable Economic Development:* Proposals should focus on the impact of globalization on the national economy with emphasis on both the benefits of globalization and the inherent risks involved in

participating in the global economy. Projects, which include orderly market compliance, intellectual property rights (IPR) enforcement, regulatory transparency, sector reforms and measures that government and business can take to ease the displacement of workers in the process of economic liberalization. A sub-theme would include a discussion of how the U.S. implements commercial diplomacy including how we negotiate and plan our trade/commercial relations.

Central and Eastern Europe (CEE) and Eurasia

Requests for proposals involving the following countries will be announced in separate competitions: CEE—Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic, and Slovenia. Eurasia—Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Proposals involving these regions WILL NOT be accepted under this competition and if received, will be deemed technically ineligible.

Western Europe (WEU)

Proposals involving this region WILL NOT be accepted under this competition and if received, will be deemed technically ineligible.

General Program Guidelines

Applicants must identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments is required and must be included in the section on Institutional Capacity. All proposals must contain letters of support tailored to the project being proposed from all foreign-country partner organizations. Failure to include the above information and documentation will make a proposal technically ineligible.

Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: they should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area;
- Experienced staff with language facility and a commitment by the staff to monitor projects locally to improve accountability;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A follow-on plan beyond the scope of the Bureau grant.

Proposal narratives must demonstrate an organization's willingness to consult closely with the Public Affairs Section and other officers at the U.S. Embassy. Proposal narratives must confirm that all materials developed for the project will acknowledge USG funding for the program as well as a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning, extended and intensive workshops and seminars taking place in the United States or overseas. Examples of possible program activities include.

1. A U.S.-based program that includes: orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience to committed people within each country, and become active in a practical and valuable way.

3. Seed/small grants to indigenous non-profit organizations to support community-based educational projects that build upon exchange activities and that address issues of local concern. Proposals may include a component for a Seed/Small Grants Competition (often referred to as 'sub-grants' or 'secondary grants'). This requires a detailed plan for recruitment and advertising; description of the proposal review and award mechanism; a plan for how the grantee would monitor and evaluate small grant activity; and a proposed amount for an average grant. The small grants should be directly linked to exchange activities. Small/seed grants may not be used for micro-credit or re-loaning purposes. Small/seed grants may not exceed 10% of the total value of the grant funds sought from ECA.

4. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

5. Content-based Internet training/cyber-training to encourage citizen participation in workshops, fora, chats, and/or discussions via the Internet that will stimulate communication and information sharing among key opinion leaders on priority topics as a form of cost sharing. Proposals that include Internet utilization must reflect knowledge of the opportunities and obstacles that exist for use of information technologies in the target country or countries, and, if needed, provide hardware, software and servers, preferably as a form of cost sharing. Federal standards are under review and their adoption may impact on the implementation of these programs.

Ineligibility

All proposals will undergo an initial review to determine their technical eligibility. A proposal will be deemed technically ineligible for consideration if:

1. It does not fully adhere to the guidelines established in this document and in the Proposal Submission Instructions;
2. It is not received by the deadline;
3. It is not submitted by a U.S. based Public Private not for profit organization meeting provisions described in Internal Revenue code section 26 USC 503 c (3);
4. The foreign country or geographic location is ineligible.
5. The proposal does not include an in-country foreign partner organization(s) and does not contain letters of support from foreign partners, tailored to the proposed project and specific information in the narrative about the partner organization's past activities and accomplishments;
6. The proposed exchange activity is not bilateral in scope with roughly equal numbers of participants from the U.S. and foreign countries;
7. It does not provide at least 50% cost-sharing of the grant funds sought from ECA;
8. It does not confirm that all materials developed for the project will acknowledge USG funding for the program;
9. It does not include a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits.

Activities ineligible for support: Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; *i.e.*, clerical work, auto maintenance, *etc.*, and other occupations requiring less than two

years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, academic scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (*i.e.*,

assessment efforts will focus on: (a) Determining if objectives are being met or have been met, (b) identifying any unmet needs, and (c) assessing if the project has effectively discovered resources, advocates, and financial support for sustainability of future projects. Informal evaluation through discussions and other sources of feedback will be carried out throughout the duration of the project. Formal

proposals *must* provide a *minimum* of 50 percent cost sharing of the amount of grant funds sought from ECA, although proposals with higher cost-sharing levels are welcome.

Example: A proposal requests $140,000 in grant funds from ECA, for a project with a total budget of $500,000. The required minimum allowable cost-sharing offered must amount to at least $70,000. In this case,

contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department

included costs for travel insurance for U.S. participants in the budget.

12. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the Solicitation Package.

Please refer to the Solicitation Package for complete budget guidelines

proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described

years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, academic scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (*i.e.*, one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are a small part of a larger project in duration and scope that is receiving Bureau funding from this competition. The Office will only support workshops, seminars and training sessions that are an integral part of a larger project. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that for programs including U.S. internships, grant applicants submit letters tentatively committing host institutions to support the internships. In the selection of foreign participants, the Department and U.S. Embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When participants are selected, grantee institutions will provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States. (*See* section below on requirements for maintenance of and provision to ECA of data on participants and program activities.)

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Evaluation

In general, evaluation should be ongoing and evolving throughout the duration of the project. The evaluation plan will incorporate an assessment of the program from a variety of perspectives. Specifically, project assessment efforts will focus on: (a) Determining if objectives are being met or have been met, (b) identifying any unmet needs, and (c) assessing if the project has effectively discovered resources, advocates, and financial support for sustainability of future projects. Informal evaluation through discussions and other sources of feedback will be carried out throughout the duration of the project. Formal evaluation will be conducted at the end of each phase, using instruments designed specifically to measure the impact of the activities and should obtain participants' feedback and comments on the program content and administration. A detailed evaluation will be conducted at the conclusion of the project and the report will be submitted to the Department of State Bureau of Educational and Cultural Affairs. When possible, the evaluation should be done by an independent evaluator.

Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau of Educational and Cultural Affairs as required. As a minimum, the data must include the following:

- Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.
- Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

Budget Guidelines and Cost-Sharing Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international development or exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. Grant awards will range from $125,000 to $175,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. To be eligible for consideration under this competition, proposals *must* provide a *minimum* of 50 percent cost sharing of the amount of grant funds sought from ECA, although proposals with higher cost-sharing levels are welcome.

Example: A proposal requests $140,000 in grant funds from ECA, for a project with a total budget of $500,000. The required minimum allowable cost-sharing offered must amount to at least $70,000. In this case, the cost-sharing far exceeds the minimum, since actual cost-sharing is $360,000.

When cost sharing is offered, it is understood and agreed that the applicant must provide the minimum amount of cost sharing as stipulated in this RFGP and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all allowable costs, which are claimed as being your contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced proportionately to the contribution.

The following project costs are eligible for consideration for funding:

1. *Travel costs.* International and domestic airfares; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. *Per Diem.* For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at *http://www.policyworks.gov/*

3. *Interpreters.* If needed, interpreters for the U.S. program are available through the U.S. Department of State Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter to participant ratio. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters.

4. *Book and cultural allowance.* Foreign participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. program staff members are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise, design or manage development projects or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. *Room rental.* Room rental may not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop, and translate materials for participants.

8. *Equipment.* Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

9. *Working Meal.* The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to included costs for travel insurance for U.S. participants in the budget.

12. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the Solicitation Package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on *Friday, October 4, 2002.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs Ref.: ECA/PE/C/–03–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, the Public Diplomacy section and other elements at the U.S. Embassy will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are *not* rank ordered and *all* carry equal weight in the proposal evaluation after all required elements have been met (required cost-sharing, letters of support, willingness to work with U.S. embassies, *etc.*).

1. *Program planning to achieve program objectives:* Proposals should clearly demonstrate how the institution plans to achieve the program's objectives. Objectives should be reasonable, feasible, and flexible. The proposal should contain a detailed agenda and relevant work plan that demonstrates substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. For technical projects, foreign experts and their local partners will be required to have the necessary education, training and experience for the work to

be undertaken, in addition to language skills where applicable.

3. *Institutional Record/Ability:* Proposals should demonstrate an institutional record of successful development or exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau

of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests,

granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: You can mail or deliver comments to the U.S. Department of

Qualifications of Applicants

1. Danny Adams

Mr. Adams, age 44, has finger-counting vision in his right eye due to childhood trauma. The best-corrected visual acuity in his left eye is 20/20. An optometrist examined him in 2001 and certified, "This patient has sufficient vision to perform the driving tasks required to operate a commercial

that he has driven straight trucks for 3 years, accumulating 27,000 miles. He holds a Class C Maryland driver's license, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

5. Frank R. Berritto

Mr. Berritto, 62, has amblyopia in his right eye. His best-corrected visual

8. James W. Collins

Mr. Collins, 38, has amblyopia in his right eye. His best-corrected vision in the right eye is 20/100 and in the left, 20/20. An ophthalmologist examined him in 2002 and certified, "In my opinion, Mr. Collins' vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Collins submitted that he has driven straight trucks for 5 years, accumulating

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be undertaken, in addition to language skills where applicable.

3. *Institutional Record/Ability:* Proposals should demonstrate an institutional record of successful development or exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Many successful applicants will have a multiyear track record of successful work in the selected country or within the region.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Follow-on Activities:* Proposals should identify other types of exchanges or linkages that might be undertaken after completion of the Bureau supported activity.

7. *Monitoring and Project Evaluation Plan:* Proposals should provide a detailed plan for monitoring and evaluating the program. The evaluation plan should identify anticipated outcomes and performance requirements clearly related to program objectives and activities and include procedures for ongoing monitoring and corrective action when necessary. The identification of best practices relating to project administration is also encouraged, as is the discussion of unforeseen difficulties.

8. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals must provide 50% cost sharing (of the amount of grant funds requested from ECA) through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: July 2, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–17454 Filed 7–10–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–12294]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice announces the FMCSA's receipt of applications from 30 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments and see the submissions of other commenters at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.*

Background

Thirty individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemptions will achieve the required level of safety.

Qualifications of Applicants

1. Danny Adams

Mr. Adams, age 44, has finger-counting vision in his right eye due to childhood trauma. The best-corrected visual acuity in his left eye is 20/20. An optometrist examined him in 2001 and certified, "This patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Adams reported that he has driven straight trucks for 27 years, accumulating 157,000 miles. He holds a Class A commercial driver's license (CDL) from South Carolina, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. Michael D. Armstrong

Mr. Armstrong, 52, has amblyopia in his right eye. His best-corrected vision is 20/50 in the right eye and 20/20 in the left. Following an examination in 2001, his optometrist certified, "It is my opinion that his vision is sufficient to operate a commercial vehicle." Mr. Armstrong reported that he has driven tractor-trailer combinations for 9 years, accumulating 900,000 miles. He holds a Class A CDL from Florida, and his driving record shows no accidents or convictions for traffic violations in a CMV for the last 3 years.

3. Thomas E. Barnhart

Mr. Barnhart, 53, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/400 in the left. His optometrist examined him in 2001 and certified, "In my medical opinion Thomas Barnhart has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Barnhart submitted that he has driven straight trucks for 10 years, accumulating 400,000 miles. He holds a Chauffeur's License from Indiana, and there are no CMV accidents or convictions for moving violations on his driving record for the last 3 years.

4. William J. Bell

Mr. Bell, 33, underwent cataract surgery on his right eye in childhood. The best-corrected visual acuity of his right eye is 20/200 and of his left eye 20/25. His ophthalmologist examined him in 2002 and stated, "In summary, based on my understanding of his continuously satisfactory driving record, repeated visual field examinations indicating a horizontal field of at least 150 degrees, and his recorded binocular visual acuity of 20/25, I believe that he has 'sufficient vision to perform the driving tasks required to operate a commercial vehicle.'" Mr. Bell reported that he has driven straight trucks for 3 years, accumulating 27,000 miles. He holds a Class C Maryland driver's license, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

5. Frank R. Berritto

Mr. Berritto, 62, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist certified, "Mr. Berrito's condition is stable, and in my medical opinion, he has sufficient vision necessary for driving his commercial vehicle." Mr. Berritto submitted that he has driven buses for 3 years, accumulating 42,000 miles. He holds a Class C CDL from New York, and his driving record shows he has had no accidents or convictions for moving violations in a CMV in the last 3 years.

6. Robert B. Brewer, Jr.

Mr. Brewer, 63, has a dislocated lens in his right eye due to trauma in 1982. His best-corrected visual acuity is 20/60 in the right eye and 20/20 in the left. An ophthalmologist examined him in 2001 and stated, "In my medical opinion, Mr. Brewer has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to Mr. Brewer's application, he has driven straight trucks for 10 years, accumulating 125,000 miles, and tractor-trailer combinations for 10 years, accumulating 862,500 miles. He holds a Class A CDL from Montana, and, according to his driving record, he has had no accidents or convictions for moving violations in a CMV in the last 3 years.

7. Jack D. Clodfelter

Mr. Clodfelter, 66, experienced an ischemic attack in his right eye in 1998. His aided visual acuity in the right eye is 20/80 and in the left 20/20. An optometrist examined him in 2001 and certified, "It is my opinion that Mr. Clodfelter has sufficient vision to perform the driving tasks required while operating a commercial vehicle." In his application, Mr. Clodfelter stated he has 21 years and 2.6 million miles of experience in operating tractor-trailer combinations. He holds a North Carolina Class A driver's license currently, but at the time of his application he held a Class A CDL, now expired. There are no accidents or convictions for moving violations in a CMV on his record for the last 3 years.

8. James W. Collins

Mr. Collins, 38, has amblyopia in his right eye. His best-corrected vision in the right eye is 20/100 and in the left, 20/20. An ophthalmologist examined him in 2002 and certified, "In my opinion, Mr. Collins' vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Collins submitted that he has driven straight trucks for 5 years, accumulating 41,000 miles. He holds a Class B CDL from Illinois, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

9. Douglas W. Cotney

Mr. Cotney, 55, had a choroidal rupture in his right eye due to trauma in 1972. His visual acuity is 20/400 in the right eye and 20/20 in the left. Following an examination in 2002, his optometrist stated, "It is my medical opinion that Mr. Cotney has sufficient vision to perform the driving tasks required to operate a commercial vehicle just as he has done for the past 30 years." Mr. Cotney reported that he has 35 years and 472,000 miles of experience in driving straight trucks. He holds a Class DMV driver's license from Alabama, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

10. Tommy J. Cross, Jr.

Mr. Cross, 21, has an aphakic right eye due to congenital cataract extraction in childhood. His best-corrected visual acuity is counting fingers in the right eye and 20/20 in the left. An optometrist who examined him in 2001 certified, "In my professional medical opinion, Mr. Tommy J. Cross, Jr. has sufficient vision to safely perform the driving tasks necessary to operate a commercial vehicle." Mr. Cross reported that he has driven straight trucks for 3 years, accumulating 85,000 miles, and tractor-trailer combination vehicles for 2 years, accumulating 125,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

11. Daniel K. Davis III

Mr. Davis, 43, has an aphakic left eye due to trauma in 1980. His best-corrected vision is 20/20 in the right eye and 20/800 in the left. An optometrist who examined him in 2002 noted that Mr. Davis would be applying for a CDL and certified, "In my medical opinion, Mr. Davis has sufficient vision to perform the driving tasks required." Mr. Davis reported that he has operated

straight trucks for 20 years, accumulating 400,000 miles. He holds a Class DM driver's license from Massachusetts. His driving record for the last 3 years shows he has had no accidents and one conviction for a moving violation—Speeding—in a CMV. He exceeded the speed limit by 14 mph.

12. Eric D. Davis

15. Gary T. Hicks

Mr. Hicks, 42, has amblyopia in his right eye. His best-corrected visual acuity is 20/50 in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist commented, "Mr. Hicks has stable amblyopia in the right eye. He also has full visual fields in each eye. It is my opinion that he will be able to continue

has driven straight trucks for 2 years, accumulating 200,000 miles, and tractor-trailer combinations for 36 years, accumulating 3.9 million miles. He holds a Class A CDL from North Carolina. His driving record shows he has had one accident and no convictions for moving violations in a CMV over the last 3 years. According to the police report, the accident occurred in a construction zone where the lane

examined him in 2001 and stated, "He does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Reveal reported he has driven straight trucks for 36 years, accumulating 1.1 million miles, and tractor-trailer combinations for 17 years, accumulating 340,000 miles. He holds an Ohio Class A CDL. His driving record shows that he has had one accident and no convictions for

trailer combinations for 3 years, accumulating 21,000 miles. He holds a Class A CDL from Texas, and his driving record for the past 3 years shows no accidents or convictions for traffic violations in a CMV.

25. Kenneth D. Sisk

Mr. Sisk, 33, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/300 in the

His best-corrected vision is 20/20 in the right eye and 20/200 in the left. Following an examination in 2001, his ophthalmologist certified, "In my opinion, this individual has adequate vision to continue driving a commercial vehicle as he has been for the past 30 years." Mr. Walker submitted that he has operated straight trucks for 5 years, accumulating 55,000 miles, and tractor-trailer combinations for 9 years,

straight trucks for 20 years, accumulating 400,000 miles. He holds a Class DM driver's license from Massachusetts. His driving record for the last 3 years shows he has had no accidents and one conviction for a moving violation—Speeding—in a CMV. He exceeded the speed limit by 14 mph.

12. Eric D. Davis

Mr. Davis, 41, lost his right eye due to trauma at age 12. His visual acuity is 20/15 in the left eye. An ophthalmologist examined him in 2001 and certified, "Eric has sufficient vision to be able to drive a commercial truck." Mr. Davis stated that he has driven straight trucks for 22 years, accumulating 462,000 miles, and tractor-trailer combinations for 4 years, accumulating 300,000 miles. He holds an Ohio Class A CDL, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

13. Gary R. Evans

Mr. Evans' left eye was removed during childhood secondary to complications of a congenital cataract. His best-corrected visual acuity is 20/40 in the right eye. His ophthalmologist examined him in 2002 and certified, "In my opinion, he does have sufficient vision to perform driving tasks associated with operating a commercial vehicle." In his application, Mr. Evans, age 47, reported that he has driven straight trucks for 18 years, accumulating 369,000 miles. He holds a Connecticut Class 2 driver's license, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

14. Shelton L. Harvey

Mr. Harvey, 57, has had a macular hole in his left eye due to trauma since 1988. His best-corrected visual acuity is 20/20 in the right eye and 20/150 in the left. Following an examination in 2002, his optometrist certified, "In my medical opinion Mr. Harvey has sufficient vision to perform the driving tasks required to operate a commercial vehicle." According to his application, Mr. Harvey has operated tractor-trailer combinations for 9 years, accumulating 540,000 miles. He holds a Georgia Class C driver's license currently, but at the time of his application he held a Class A CDL, now expired. His driving record for the last 3 years shows that he had no accidents and one conviction for a moving violation—Speeding—in a CMV. He exceeded the speed limit by 17 mph.

15. Gary T. Hicks

Mr. Hicks, 42, has amblyopia in his right eye. His best-corrected visual acuity is 20/50 in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist commented, "Mr. Hicks has stable amblyopia in the right eye. He also has full visual fields in each eye. It is my opinion that he will be able to continue his occupation as a commercial vehicle operator." Mr. Hicks submitted that he has driven straight trucks for 25 years, accumulating 875,000 miles, tractor-trailer combinations for 10 years, accumulating 10,000 miles, and buses for 1 year, accumulating 2,000 miles. He holds a Class A CDL from North Carolina, and his driving record shows he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

16. Walter R. Morris

Mr. Morris, 58, has been aphakic in the left eye since age 8 due to trauma. His best-corrected vision is 20/15 in the right eye and counting fingers in the left. An ophthalmologist examined him in 2001 and stated, "He has sufficient vision to drive a commercial vehicle without prescription eyeglasses." Mr. Morris, who holds a Class A CDL from New Jersey, reported that he has been driving tractor-trailer combination vehicles for 40 years, accumulating 2.6 million miles. His driving record shows he has had no accidents or convictions for traffic violations in a CMV during the last 3 years.

17. Barbara C. Pennington

Ms. Pennington, 38, has been blind in the right eye since 1991 due to an accident. She has best-corrected visual acuity of 20/30 in the left eye. Following an examination in 2001, her ophthalmologist stated, "Patient has good vision in left eye to operate a commercial vehicle." Ms. Pennington submitted that she has driven tractor-trailer combinations for 8 years, accumulating 650,000 miles. She holds a Florida Class A CDL, and her driving record shows that during the last 3 years she has had no accidents or convictions for moving violations in a CMV.

18. Stephen C. Perdue

Mr. Perdue, 58, has been blind in the left eye since 1970 due to a retinal detachment. His corrected visual acuity in the right eye is 20/25+. Following an examination in 2002, his ophthalmologist stated, "It is my opinion once again that this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Perdue reported that he has driven straight trucks for 2 years, accumulating 200,000 miles, and tractor-trailer combinations for 36 years, accumulating 3.9 million miles. He holds a Class A CDL from North Carolina. His driving record shows he has had one accident and no convictions for moving violations in a CMV over the last 3 years. According to the police report, the accident occurred in a construction zone where the lane shifts were poorly marked and some of the old markings were still visible. The police report indicated that the driver of the other vehicle followed the old markings, causing his trailer to veer into the lane occupied by Mr. Perdue's vehicle. Neither driver was cited.

19. Allen V. Pickard

Mr. Pickard, 43, has a macular scar in his left eye due to an injury in 1996. His visual acuity is 20/20 in the right eye and 20/120 not correctable in the left. An optometrist who examined him in 2001 certified, "I do believe that Mr. Pickard has adequate vision to safely operate a commercial motor vehicle." Mr. Pickard submitted that he has operated straight trucks for 27 years, accumulating 135,000 miles, and tractor-trailer combinations for 12 years, accumulating 600,000 miles. He holds a Class A CDL from South Dakota, and his driving record shows he has had no accidents or convictions for traffic violations in a CMV for the last 3 years.

20. Larry A. Priewe

Mr. Priewe, 44, lost his left eye due to an injury 38 years ago. His visual acuity is 20/15 corrected in the right eye. An ophthalmologist examined him in 2001 and certified, "In my medical opinion, you have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Priewe submitted that he has driven tractor-trailer combinations for 23 years, accumulating 2.1 million miles. He holds a Class AM CDL from North Dakota. His driving record for the past 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, Mr. Priewe's vehicle was stuck in a snowdrift and partially on the roadway during a blowing snowstorm, and he was unable to put out his flares due to his compartment being blocked by snow. Another vehicle coming over a hillcrest struck the rear of his vehicle. Neither driver was cited.

21. Gary L. Reveal

Mr. Reveal, 56, has been blind in his right eye since birth due to optic nerve damage. His best-corrected vision is 20/15 in the left eye. An optometrist examined him in 2001 and stated, "He does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Reveal reported he has driven straight trucks for 36 years, accumulating 1.1 million miles, and tractor-trailer combinations for 17 years, accumulating 340,000 miles. He holds an Ohio Class A CDL. His driving record shows that he has had one accident and no convictions for moving violations in a CMV for the past 3 years. As indicated by the police report, Mr. Reveal was stopped to back into a private driveway while a second vehicle behind him was stopped to let him proceed. The second vehicle was struck by a third vehicle and pushed into Mr. Reveal's vehicle. The driver of the third vehicle was charged with "Following Too Closely." Mr. Reveal was *not* charged.

22. Billy L. Riddle

Mr. Riddle, 45, has amblyopia in his left eye. He has 20/15 vision in the right eye and 20/160 in the left. Following an examination in 2002, his optometrist certified, "Patient has sufficient vision to drive a commercial vehicle." Mr. Riddle submitted that he has driven straight trucks and tractor-trailer combinations for 19 years, accumulating 380,000 miles in the former and 950,000 miles in the latter. He holds a Class A CDL from Texas, and his driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

23. Randolph L. Rosewicz

Mr. Rosewicz, 49, lost his left eye at age 3 due to congenital glaucoma. His best-corrected visual acuity is 20/20 in the right eye. An ophthalmologist examined him in 2002, and commented, "With the stability noted I believe that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rosewicz submitted that he has 17 years and 255,000 miles of experience in operating straight trucks. He holds a Class ABCDM CDL from Wisconsin, and his driving record shows that he has had no accidents or convictions for moving violations in a CMV for the last 3 years.

24. Robert L. Savage

Mr. Savage, 68, has had a macular scar in his left eye since 1946. His best-corrected vision is 20/20 in the right eye and 20/80 in the left. His ophthalmologist examined him in 2001 and certified, "He functions commensurate with safe operation of a commercial vehicle, with vision sufficient." In his application, Mr. Savage indicated he has driven tractor-trailer combinations for 3 years, accumulating 21,000 miles. He holds a Class A CDL from Texas, and his driving record for the past 3 years shows no accidents or convictions for traffic violations in a CMV.

25. Kenneth D. Sisk

Mr. Sisk, 33, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/300 in the left. Following an examination in 2002, his optometrist certified, "I do not see any problem with him operating a commercial vehicle, especially since he has been driving about 17 years with no problems and seems to compensate well for the lack of acuity in the left eye." Mr. Sisk reported that he has operated straight trucks for 6 years, accumulating 225,000 miles, and tractor-trailer combinations for 6 years, accumulating 60,000 miles. He holds a Class A CDL from North Carolina, and his driving record for the past 3 years shows no accidents or convictions for traffic violations in a CMV.

26. Kenneth E. Suter, Jr.

Mr. Suter, 38, has amblyopia in his left eye. His best-corrected visual acuity is 20/15 in the right eye and 20/200+ in the left. Following an examination in 2002, his optometrist affirmed, "Based on this vision examination, I feel you have sufficient vision to operate a commercial vehicle as you have done so safely in the past." Mr. Suter holds a Class A CDL from Ohio, and reported that he has driven straight trucks for 15 years, accumulating 675,000 miles, and tractor-trailer combinations for 6 years, accumulating 30,000 miles. His driving record shows no accidents or convictions for moving violations in a CMV for the past 3 years.

27. Patrick D. Talley

Mr. Talley, 36, has a macular scar in his right eye due to histoplasmosis in childhood. His best-corrected visual acuity is 20/50 in the right eye and 20/20 in the left. Following an examination in 2002, his optometrist certified, "In my medical opinion, he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Talley reported that he has operated straight trucks for 14 years, accumulating 318,000 miles. He holds a Class DM driver's license from South Carolina, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

28. Loren R. Walker

Mr. Walker, 60, experienced an ischemic attack in his left eye in 1975. His best-corrected vision is 20/20 in the right eye and 20/200 in the left. Following an examination in 2001, his ophthalmologist certified, "In my opinion, this individual has adequate vision to continue driving a commercial vehicle as he has been for the past 30 years." Mr. Walker submitted that he has operated straight trucks for 5 years, accumulating 55,000 miles, and tractor-trailer combinations for 9 years, accumulating 816,000 miles. He holds a Class A CDL from Idaho. He has had no accidents and one conviction for a traffic violation—Using the Second Lane of a Three-Lane Highway—in a CMV for the last 3 years, according to his driving record.

29. Edward C. Williams

Mr. Williams, 51, has had a macular hole in his left eye since 1992. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. An optometrist examined him in 2001 and certified, "Mr. Williams' vision is adequate to operate a commercial vehicle." Mr. Williams submitted that he has driven straight trucks and tractor-trailer combinations for 24 years, accumulating 1.3 million miles in the former and 660,000 miles in the latter. He holds a Class AM CDL from Alabama. His driving record for the last 3 years shows he has had two accidents and no convictions while operating a CMV. According to the police report for the first accident, an oncoming vehicle that crossed the centerline while attempting to pass collided with Mr. Williams' vehicle. According to the police report for the second accident, Mr. Williams was driving a wrecker towing a vehicle when the towed vehicle incurred a flat tire, causing it to hit a bridge. Mr. Williams was not cited in either accident.

30. Timothy J. Wilson

Mr. Wilson, 47, is blind in the right eye due to an injury in 1965. His visual acuity is 20/20 in the left eye. Following an examination in 2001, his optometrist certified, "In my medical opinion, Mr. Wilson has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Wilson indicated he has driven straight trucks for 5 years, accumulating 15,000 miles, and tractor-trailer combinations for 25 years, accumulating 500,000 miles. He holds a Class AM CDL from Maryland, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of

will become part of this docket and will be available for inspection and copying

sightseeing, and photography. We intend to do overnight charters, extending to 7 day "coastline tour" charters, depending upon the desires of the clients. In essence we will be "renting a Yacht"."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1970. Place of construction: Quebec, Canada.

(5) A statement on the impact this

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SERENITY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under

received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THE OBJECTIVE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address.

Issued on: July 2, 2002.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 02–17098 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12709]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LUCKY LADY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12709. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* LUCKY LADY. *Owner:* Donald E. Beard.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Length of Vessel: 45.6; Breadth: 15.0; Draft: 4.6; Gross Tonnage: 32 GRT; Net Tonnage: 25 NRT;"

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:*

"Our intended use is to charter this vessel to those tourists who would like to see the coastline locally in Kachemak Bay and extending around the point to Seward, or from Homer to Kodiak. We would like to tour the coves and bays of the coastline and allow those tourists who would like an option other than Fishing and Hunting Charters to see and photograph Alaska. The vessel is designed for extended stays on board, complete with a skiff on her aft that can be used to travel into land for hiking, sightseeing, and photography. We intend to do overnight charters, extending to 7 day "coastline tour" charters, depending upon the desires of the clients. In essence we will be "renting a Yacht"."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1970. Place of construction: Quebec, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "There are currently no commercial passenger vessel operators based in Homer who provide charters of this nature. The majority of operators run 8 hour Fishing Charters in a 6 pack vessel. Other vessels provide hunting charters where the vessel drops the hunters off in an area, then picks them up at a later date. The other option are the water taxi's, which deliver people to the "other side" of Kachemak bay, drop them off, and then later pick them up. This tourist group goes hiking, stays at one of the lodges, or visits one of the restaurants. Again, this is limited and does not allow the experience of traveling the coastline. There is a market open for those people who choose not to fish but would like to spend time on the ocean viewing and photographing our coastline. We have the vessel to cater to that market." "We have received only positive feedback and support from the small passenger vessel operators in our area. Additionally, we have received positive comments from our local Chamber of Commerce and business owners, as our business will be contributing to our local economy."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This will have no impact on U.S. shipyards. The Homer boat harbor consists primarily of 6 pack fishing charter vessels, commercial fishing vessels, large commercial vessels, and private use boats."

Dated: July 8, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17448 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12710]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SERENITY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12710. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SERENITY. *Owner:* Eric N. Lamb & Christina Tilly.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "50 ft LOA, 14.1 ft Breadth, 52,000 lbs weight (per 46 USC 14502."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* Non-fishing 6-pack sightseeing sailing cruises around San Diego Harbor & the San Diego Coastline."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Taipei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Rapid growth in the San Diego area, it's rising population and the continuing increase of tourists coming to this city, has created a demand for the services we wish to offer. Our target market is growing at a faster pace than the existing six-pack charters now available for solely harbor & coastal 'sight seeing' cruises. Being a "NO FISHING" charter, we will have no impact on the majority of existing six-pack charters in the area."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "We feel this has no impact on U.S., Shipyards."

Dated: July 8, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17449 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12711]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THE OBJECTIVE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12711. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been

received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20990]

Laidlaw Inc.—Acquisition of Control—Rockton Bus Company, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

Laidlaw asserts that Rockton will be able to offer its Illinois and Iowa originated passengers tour and sightseeing services over an expanded area and that the addition of Rockton to the Laidlaw family will promote the efficient use of buses and ensure that Rockton and the other Laidlaw affiliates will have an adequate number of buses to serve the public.

Under 49 U.S.C. 14303(b), we must

SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: July 2, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–17110 Filed 7–10–02; 8:45 am]

BILLING CODE 4915–00–P

received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: THE OBJECTIVE. *Owner:* The Objective, Inc.

(2) Size, capacity and tonnage of vessel. According to the *applicant:* "46 ft. LOA pilot-house trawler-yacht, 27 net tons"

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "To provide recreational charters, both day and overnight, designed to enhance client appreciation of our country as experienced by water, and to create an appreciation of the role of wood in the design and history of recreational vessels." "Territorial waters of the contiguous United States as well as Alaska and Hawaii, but predominantly along the Eastern Seaboard."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1988. *Place of construction:* Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "None, since there are no other commercial operators with this same intended commercial use, and since the proposed scope of business is very small and the area of operation is not concentrated n one specific region of U.S. waters."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "None, except a FAVORABLE economic impact when the vessel is hauled every 18–36 months for routine maintenance, painting, and refurbishing. Recent haul-outs since 1997 have been in Florida and South Carolina."

Dated: July 8, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17450 Filed 7–10–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20990]

Laidlaw Inc.—Acquisition of Control—Rockton Bus Company, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: In an application filed under 49 U.S.C. 14303, Laidlaw, Inc. (Laidlaw), a noncarrier, through its indirectly controlled subsidiary, Laidlaw Transit, Inc. (Transit Inc.) (collectively referred to as Laidlaw), seeks to acquire indirect control of Rockton Bus Company, Inc. (Rockton), a motor passenger carrier. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by August 26, 2002. Applicant may file a reply by September 9, 2002. If no comments are filed by August 26, 2002, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20990 to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Fritz R. Kahn, 1920 N Street (8th Floor), NW., Washington, DC 20036–1601.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Rockton is a motor passenger carrier that is authorized to provide special and charter operations pursuant to federally issued authority in Docket No. MC–165295. Laidlaw submits that, pursuant to a voting trust agreement, dated November 1, 1999, Transit, Inc., acquired all of Rockton's outstanding shares of stock.

Laidlaw directly or indirectly controls a number of motor passenger carriers, including Transit, Inc. (MC–161299). Laidlaw's motor passenger carrier subsidiaries, with the exception of Greyhound Lines, Inc. (Greyhound), are largely limited to charter and special operations in the United States. Greyhound holds federally issued operating authority in Docket No. MC–1515 and provides mainly nationwide, scheduled regular-route operations. As a result of the proposed acquisition, Laidlaw asserts that Rockton will be able to offer its Illinois and Iowa originated passengers tour and sightseeing services over an expanded area and that the addition of Rockton to the Laidlaw family will promote the efficient use of buses and ensure that Rockton and the other Laidlaw affiliates will have an adequate number of buses to serve the public.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has shown that the proposed acquisition of control will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. See 49 CFR 1182.2(a)(7). Additional information may be obtained from applicant's representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at: "*http://WWW.STB.DOT.GOV.*"

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on August 26, 2002, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: July 2, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–17110 Filed 7–10–02; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 67, No. 133

Thursday, July 11, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal

January 28, 2002, make the following correction:

On page 4140, in the table, the second page of table 3 was inadvertently left

Corrections

Federal Register
Vol. 67, No. 133
Thursday, July 11, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010313063–1297–02; I.D. 121200A]

RIN 0648–A020

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

Correction

In rule document 02–1875 beginning on page 4100 in the issue of Monday, January 28, 2002, make the following correction:

On page 4140, in the table, the second page of table 3 was inadvertently left out. The missing page of table 3 is corrected to read as set forth below.

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

FMP SPECIES	Species Code	PRODUCT CODE: 11 MINCE	30 SURIMI	24 FILLETS DEEP SKIN	23 FILLETS SKINLESS/BONELESS	22 FILLETS W/RIBS NO SKIN	21 FILLETS W/SKIN NO RIBS	20 FILLETS W/SKIN & RIBS	19 BELLY	18 CHUNKS	17 CHEEKS	16 HEADS	15 PECTORAL GIRDLE
PACIFIC COD	110	0.5	0.15	...	0.25	0.25	0.33	0.45	0.01	...	0.05	...	0.05
ARROWTOOTH FLOUNDER	121	...	...	...	0.22	0.27	0.27	0.32	...	...	...	...	...
FLATHEAD SOLE	122	...	...	...	0.22	0.27	0.27	0.32	...	...	...	...	...
ROCK SOLE	123	...	...	...	0.22	0.27	0.27	0.32	...	...	...	...	...
DOVER SOLE	124	...	...	...	0.22	0.27	0.27	0.32	...	...	...	...	...
REX SOLE	125	...	...	...	0.22	0.27	0.27	0.32	...	...	...	...	...
YELLOWFIN SOLE	127	...	0.18	...	0.22	0.27	0.27	0.32	...	...	...	...	...
GREENLAND TURBOT	134	...	...	...	0.22	0.27	0.27	0.32	...	...	...	...	...
THORNYHEAD ROCKFISH	143	...	...	...	0.25	0.35	0.30	0.40	...	...	...	...	...
SCULPINS	160	...	...	...	...	...	...	...	...	...	...	...	...
ATKA MACKEREL	193	...	0.15	0.16	0.21	0.30	0.30	0.35	...	...	...	0.15	...
POLLOCK	270	...	0.15[2],[3]	...	...	...	...	...	...	...	...	...	...
SMELTS	510	...	...	...	...	...	...	...	...	...	...	...	...
EULACHON	511	...	...	...	...	...	...	...	...	...	...	...	...
CAPELIN	516	...	...	...	0.25	0.30	0.30	...	...	...	...	...	...
SHARKS	689	...	...	...	...	...	...	...	...	...	...	...	...
SKATES	700	...	...	...	...	...	...	...	...	...	...	...	...
SABLEFISH	710	...	...	...	0.25	0.30	0.30	0.35	...	...	0.05	...	...
OCTOPUS	870	...	...	...	...	...	...	...	...	...	...	...	...
SQUID	873	...	...	...	...	...	...	...	...	...	...	...	...
ROCKFISH	---	...	...	...	0.25	0.33	0.30	0.40	0.10	0.05	0.05	0.15	...
Conversion rates to Net Weight for PACIFIC HALIBUT	200	---	---	---	---	---	---	---	---	---	---	---	---

[FR Doc. C2–1875 Filed 7–10–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–11032]

Funding for Mandated Security Modifications to Flightcrew Compartment Doors

Correction

In notice document 02–16499, Tuesday, July 2, 2002, make the following correction:

On page 44496, in the third column, under the "**ADDRESSES**" section, in the third and fourth lines, the web address is corrected to read as set forth below, "*http://www2.airweb.faa.gov/airplane_security/announce.*htm".

[FR Doc. C2–16499 Filed 7–10–02; 8:45 am]
BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

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Thursday,
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[FR Doc. C2–1875 Filed 7–10–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–11032]

Funding for Mandated Security Modifications to Flightcrew Compartment Doors

Correction

In notice document 02–16499, beginning on page 44496 in the issue of Tuesday, July 2, 2002, make the following correction:

On page 44496, in the third column, under the "**ADDRESSES**" section, in the third and fourth lines, the web address is corrected to read as set forth below, "*http://www2.airweb.faa.gov/airplane_security/announce*.htm".

[FR Doc. C2–16499 Filed 7–10–02; 8:45 am]
BILLING CODE 1505–01–D

VOL 67 ISS 133 JL 11 2002 UMI

Federal Register

Thursday,
July 11, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7237–1]

RIN 2060–AG98

National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and

dyeing, and finishing operations at major sources to meet the HAP emission standards reflecting the application of the maximum achievable control technology (MACT). Emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, would protect and enhance the quality of the Nation's air resources so as to promote the public health and

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–97–51. No

will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Regulated Entities. The proposed

the EPA Administrator, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

dyeing, or finishing operations are covered under the North American Industrial Classification System (NAICS) codes listed in the following table. However, sources classified under other NAICS codes may be subject to the proposed standards if they meet the applicability criteria. Not all sources classified under the NAICS codes in the following table will be subject to the proposed standards because some of the

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7237–1]

RIN 2060–AG98

National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for fabric and other textile coating, printing, slashing, dyeing, and finishing operations, pursuant to section 112(d) of the Clean Air Act (CAA). This action also revises the title of the source category. The Printing, Coating and Dyeing of Fabrics source category was included in the initial list of categories of hazardous air pollutants (HAP), published in the **Federal Register** on July 16, 1992. This action changes the title of the source category to Printing, Coating, and Dyeing of Fabrics and Other Textiles, to clarify the applicability of the proposed NESHAP to HAP-emitting operations performed on textile substrates including, but not limited to, fabric.

The EPA has estimated that there are approximately 135 major source facilities in the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category. The principal HAP emitted by these affected sources include toluene, methyl ethyl ketone (MEK), methanol, xylenes, methyl isobutyl ketone (MIBK), methylene chloride, n-hexane, trichloroethylene, and n,n-dimethyl formamide. Secondary HAP emitted include 1,1,1-trichloroethane, naphthalene, ethyl benzene, glycol ethers (ethylene glycol), biphenyl, and styrene.

Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the eye, lung, and mucous membranes, effects on the central nervous system, and damage to the liver. The EPA has classified two of the HAP as probable or possible human carcinogens. In general, these adverse health effect findings have only been shown with concentrations higher than those typically in the ambient air. The proposed standards would reduce nationwide HAP emissions from major sources by approximately 60 percent. The reduction in HAP emissions would be achieved by requiring all fabric and other textiles coating, printing, slashing, dyeing, and finishing operations at major sources to meet the HAP emission standards reflecting the application of the maximum achievable control technology (MACT). Emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, would protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare, protect the environment, and achieve a primary goal of the CAA.

DATES: *Comments.* Submit comments on or before September 9, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by July 31, 2002. If requested, a public hearing will be held within approximately 30 days following publication of this document in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–51, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–51, U.S. EPA, 501 M Street, SW., Room M–1500, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group (C539–03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–7946, to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–97–51 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Vinson Hellwig, Coatings and Consumer Products Group (C539–03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–2317; facsimile number (919) 541–5689; electronic mail (e-mail) address: *hellwig.vinson@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–97–51. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Mr. Vinson Hellwig, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group (C539–03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The proposed source category definition includes sources that engage in the coating, printing, slashing, dyeing, or finishing of any fabric or other textile. In general, sources that engage in fabric and other textiles coating, printing, slashing, dyeing, or finishing operations are covered under the North American Industrial Classification System (NAICS) codes listed in the following table. However, sources classified under other NAICS codes may be subject to the proposed standards if they meet the applicability criteria. Not all sources classified under the NAICS codes in the following table will be subject to the proposed standards because some of the classifications cover products outside the scope of the NESHAP for printing, coating and dyeing of fabrics and other textiles.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

NAICS Code	NAICS product description
31321	Broadwoven Fabric Mills
31322	Narrow Fabric Mills and Schiffli Machine Embroidery
313241	Weft Knit Fabric Mills
313311	Broadwoven Fabric Finishing Mills
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills
313320	Fabric Coating Mills
314110	Carpet and Rug Mills
326220	Rubber and Plastics Hoses and Belting and Manufacturing
339991	Gasket, Packing, and Sealing Device Manufacturing

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your operation is regulated by this action, you should examine the applicability criteria in § 63.4281 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with HAP emissions from coating, printing, slashing, dyeing, and finishing operations?
II. Summary of the Proposed Rule
A. What source categories and subcategories are affected by the proposed rule?
B. What is the relationship to other rules?
C. What are the primary sources of emissions and what are the emissions?
D. What is the affected source?
E. What are the emission limits, operating limits, and other standards?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance provisions?
H. What are the notification, recordkeeping, and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category and subcategories?
B. How did we select the regulated pollutants?
C. How did we select the affected source?
D. How did we determine the basis and level of the proposed standards for existing and new or reconstructed sources?
E. How did we select the format of the proposed standards?
F. How did we select the testing and initial compliance requirements?
G. How did we select the continuous compliance requirements?
H. How did we select the notification, recordkeeping, and reporting requirements?
I. How did we select the compliance date?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental, and energy impacts?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Printing, Coating, and Dyeing of Fabrics source category was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. As has been noted previously in this preamble, today's action changes the title of the source category to Printing, Coating, and Dyeing of Fabrics and Other Textiles.

Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

and nausea). The EPA has classified two of the HAP (methylene chloride and naphthalene) as probable or possible human carcinogens.

We do not have the type of current detailed data on each of the facilities covered by the emission standards for this source category, and the people living around the affected facilities, that would be necessary to conduct an

a textile web substrate. Once the coating is dried (and cured, if necessary) it bonds with the substrate to form a continuous solid film for decorative, protective, or functional purposes. Similarly, the coating and printing subcategory includes printing activities and equipment used to apply color and patterns to textile substrates, usually in the form of a paste. After application of the printing material, the substrate is

used by an affected source and not for commerce, unless organic HAP emissions from the facility that performs coating, printing, slashing, dyeing, or finishing operations are as high as the specified major source HAP emissions.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to

efficiency (OCE) with an alternative weight fraction of solids applied emission rate limit based on the amount of coating solids used at the affected source. The VOC limitations in the NSPS are emission reduction standards; there is not an emission rate option based on the amount of coating solids used. Because of the differences between the two rules, compliance with either rule cannot be deemed

equipment cleaning, and waste and wastewater operations.

The primary source of HAP emissions from slashing is methanol from polyvinyl alcohol (PVA) size, typically applied to synthetics (although it adheres to and is used for natural fibers as well). The methanol is present in the PVA size as a contaminant and is not needed for the slashing process. The methanol emissions can arise either

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP Emissions From Coating, Printing, Slashing, Dyeing, and Finishing Operations?

The HAP emitted from coating, printing, slashing, dyeing, and finishing operations include toluene, MEK, methanol, xylenes, MIBK, methylene chloride, n-hexane, trichloroethylene, and n,n-dimethylformamide. These compounds account for about 81 percent of the nationwide HAP emissions from this source category. The HAP that would be controlled with the proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the eyes, lungs, and mucous membranes, effects on the central nervous system, and damage to the heart and liver) and acute health disorders (*e.g.*, respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea). The EPA has classified two of the HAP (methylene chloride and naphthalene) as probable or possible human carcinogens.

We do not have the type of current detailed data on each of the facilities covered by the emission standards for this source category, and the people living around the affected facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these affected facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these affected facilities. However, to the extent the adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories and Subcategories Are Affected by the Proposed Rrule?

The proposed rule would apply to you if you own or operate a fabric or other textile coating, printing, slashing, dyeing, or finishing operation or group of such operations that is a major source, or is located at a major source, or is part of a major source of HAP emissions, whether or not you manufacture the substrate. The coating, printing, slashing, dyeing, or finishing operations themselves are not required to be major sources of HAP emissions in order for them to be covered by the proposed rule. As long as some part of the facility where the operations are located (*e.g.*, a process boiler or manufacturing operations associated with production of the final product) causes it to be a major source, the coating, printing, slashing, dyeing, and finishing operations would be subject to the standards.

Any major HAP-emitting facility that performs coating, printing, slashing, dyeing, or finishing of fabric or other textiles is in this source category. As defined in the proposed rule, fabric or other textiles includes, but is not limited to, yarn, fiber, cord, thread, fabric and textile products, tents, roofing, soft baggage, marine fabric, drapery linings, flexible hoses, hot-air balloons, and awnings. The source category includes three subcategories (coating and printing, slashing, and dyeing and finishing) as described in the following paragraphs.

The coating and printing subcategory encompasses coating activities and equipment used to apply semi-liquid coating material to one or both sides of a textile web substrate. Once the coating is dried (and cured, if necessary) it bonds with the substrate to form a continuous solid film for decorative, protective, or functional purposes. Similarly, the coating and printing subcategory includes printing activities and equipment used to apply color and patterns to textile substrates, usually in the form of a paste. After application of the printing material, the substrate is treated with steam, heat, or chemicals to fix the color. If you coat fabric or other textiles and any other substrate on a coating line, then that line would be subject to the proposed rule unless it is specifically exempted in another NESHAP. We currently plan to provide such an exemption in the tire cord production NESHAP for tire cord coating lines that occasionally coat fabric. Another exemption is planned for the paper and other web coating NESHAP for lines that coat medical tape or duct tape.

The slashing subcategory includes the yarn preparation process performed on warp yarn prior to weaving. Slashing is the application of a chemical solution (known as sizing) to a yarn in a water solution followed by squeezing and drying.

The dyeing and finishing subcategory includes the equipment and operations involved in two separate but related processes that are both performed at some sources, while only one or the other is performed at other sources. Dyes and finishes are applied to yarn, fiber, cord, thread, or fabric in aqueous solutions and then dried. Dyeing is the application of color to the whole body of a textile substrate. Finishing is a process performed after dyeing that improves the appearance and/or usefulness of a textile substrate.

You would not be subject to the proposed rule if your coating, printing, slashing, dyeing, or finishing operation is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through your permitting authority.

Exclusions from the source category include coating, printing, slashing, dyeing or finishing at sources using only coating, printing, slashing, dyeing, finishing, thinning, and cleaning materials that contain no organic HAP; coating, printing, slashing, dyeing, or finishing that occurs at research or laboratory facilities or that is part of janitorial, building, and facility maintenance operations; and coating, printing, slashing, dyeing, or finishing

used by an affected source and not for commerce, unless organic HAP emissions from the facility that performs coating, printing, slashing, dyeing, or finishing operations are as high as the specified major source HAP emissions.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules. We specifically request comments on how monitoring, recordkeeping, and reporting requirements can be consolidated for sources that are subject to more than one rule.

New Source Performance Standards—40 CFR part 60, subpart VVV. The new source performance standards (NSPS) for polymeric coating of supporting substrates apply to affected facilities that apply elastomers, polymers, or prepolymers to a supporting web other than paper, plastic film, metallic foil, or metal coil and that began construction, reconstruction, or modification after April 30, 1987. The pollutants regulated are volatile organic compounds (VOC). The affected facility is each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of the affected substrate. Emissions of VOC from the coating operation must be reduced by at least 90 percent or a total enclosure must be installed around the coating operation vented to an add-on control device that is at least 95 percent efficient. Depending on criteria in the NSPS, VOC emissions from onsite coating mix preparation equipment must be vented to a 95 percent efficient add-on control device or each piece of mix preparation equipment must be covered.

The proposed requirements for coating operations differ from the NSPS in three ways. First, the "affected source" for the proposed rule is defined broadly as the collection of all of the coating and printing operations and associated processes at the facility, whereas the "affected facility" for the NSPS is defined narrowly as each individual coating operation. The proposed NESHAP's broader definition of an affected source allows averaging across coating and printing lines for compliance purposes. Second, the proposed rule regulates organic HAP. While most organic HAP emitted from coating and printing operations are VOC, some VOC are not listed as HAP, and, therefore, the NSPS regulates a broader range of pollutants than the proposed NESHAP. Third, the HAP emission limitations in the proposed rule are in terms of an overall control efficiency (OCE) with an alternative weight fraction of solids applied emission rate limit based on the amount of coating solids used at the affected source. The VOC limitations in the NSPS are emission reduction standards; there is not an emission rate option based on the amount of coating solids used. Because of the differences between the two rules, compliance with either rule cannot be deemed compliance with the other. A coating or printing operation that meets the applicability requirements of both rules must comply with both. Overlapping reporting, recordkeeping, and monitoring requirements may be resolved through your title V permit.

Future national emission standards for the surface coating of paper and other web products. The paper and other web coating NESHAP were proposed September 13, 2000 (65 FR 55332). If you operate a coating line(s) that applies coatings both to paper and other web and to fabric and other textile substrates on the same line, then the coating line(s) is subject to the proposed printing, coating, and dyeing of fabrics and other textiles NESHAP. The only exceptions are where the paper and other web substrate being coated is medical tape or duct tape or where fabric is being laminated to a paper or other web substrate, and these exceptions will be specified in the paper and other web NESHAP.

Future national emission standards for tire manufacturing. The EPA has identified affected sources in the tire manufacturing source category that coat tire cord and that also sometimes apply coatings to textile cord used in the production of belts and hoses. If the source is subject to the tire manufacturing NESHAP, it is not subject to the proposed printing, coating, and dyeing of fabrics and other textiles NESHAP.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

HAP emission sources. Coating and printing material application and curing are the largest contributors of HAP emissions at coating and printing affected sources. For example, based on the responses to a survey of the coating industry, the portion of total affected source HAP emissions attributed to coating application and curing is estimated to be approximately 95 percent. Other operations and activities that may create HAP emissions associated with coating/printing include storage tanks, substrate preparation, coating and printing material mixing/thinning operations, parts and equipment cleaning, and waste and wastewater operations.

The primary source of HAP emissions from slashing is methanol from polyvinyl alcohol (PVA) size, typically applied to synthetics (although it adheres to and is used for natural fibers as well). The methanol is present in the PVA size as a contaminant and is not needed for the slashing process. The methanol emissions can arise either from the size cooking operation and/or from the application or slashing process—the distribution is unclear, although it will depend upon the temperature at which the size is cooked, the cooking time, and how often mixing containers (cookers) are opened.

The sources of HAP emissions from dyeing are the HAP constituents that are contained in dyestuffs and auxiliary chemicals as purchased. The HAP constituents are needed to impart certain desirable characteristics to the dyed substrate (e.g., certain colors can only be attained through the use of HAP-containing dyestuffs or auxiliaries.) No HAP are known to be added by the users. The fraction of HAP contained in dye materials that is emitted to the atmosphere is generally estimated to range from zero to 10 percent, although a few sources report from 19 percent to as much as 100 percent emitted. The fraction of HAP in dye materials emitted to the atmosphere depends on the characteristics of the specific HAP constituents and the pressures and temperatures that the HAP are exposed to in the dyeing process operations. Most HAP constituents are believed to be rinsed from the substrate before the substrate is dried, because drying a substrate with unattached dye would adversely affect the quality of the dyed product.

The sources of HAP emissions from finishing are the HAP constituents that are contained in finishing materials as purchased, *i.e.*, as delivered to the affected source, before alteration. As is the case with dyeing, the HAP constituents are needed to impart certain desirable characteristics to the finished substrate (e.g., a resin finish containing HAP might be applied to a cotton/polyester blend for durable press and dimensional stability). No HAP are known to be added by the users. In finishing, unlike in dyeing, the fraction of HAP contained in finishes that is emitted to the atmosphere is generally assumed to be 100 percent with the exception of HAP that cross-link to the fiber, such as formaldehyde. This is because finished textiles are generally dried and cured at relatively high temperatures over 300 degrees Fahrenheit.

Organic HAP. Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from coating and printing include toluene, MEK, hexane, and n,n-dimethylformamide. These compounds account for approximately 92 percent of this subcategory's nationwide organic HAP emissions. Other significant organic HAP identified include MIBK, materials that are the source of HAP emissions limited by the requirements of the proposed NESHAP.

The affected source for the coating and printing subcategory includes: all web coating and printing equipment used to apply cleaning materials to a substrate to prepare it for coating or printing material application, to apply coating or printing materials to a substrate and to dry or cure the coating manual and automated equipment and containers used for conveying waste materials generated by a dyeing or finishing operation; and all manual and automated equipment, structures, and devices used to convey, treat, or dispose of wastewater streams or residuals. The regulated materials for the dyeing and finishing subcategory are the dyeing, finishing, and cleaning materials used in the affected source.

limits, either individually (compliant material option) or collectively (emission rate without add-on controls option), during each monthly compliance period. Second, you could use a capture system and add-on control device to meet either the applicable organic HAP OCE limit or emission rate limit. Third, you could use a 100 percent efficient capture system and an oxidizer that reduces organic HAP emissions to no more than 20 ppmv. site-specific parameter limits that you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures (PTE), you would establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are PTE, you would establish limits on average facial velocity or pressure drop new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The proposed rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed rule, all of the applicable General Provisions requirements would

Organic HAP. Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from coating and printing include toluene, MEK, hexane, and n,n-dimethylformamide. These compounds account for approximately 92 percent of this subcategory's nationwide organic HAP emissions. Other significant organic HAP identified include MIBK, hexane, and methylene chloride.

Available emission data collected during the development of the proposed NESHAP show that the organic HAP emitted from slashing is methanol. Methanol accounts for almost 100 percent of this subcategory's nationwide organic HAP emissions.

Based on emission data reported in survey responses collected during the development of the proposed NESHAP, methanol, glycol ether, and ethylene glycol are the primary HAP emitted from textile dyeing and finishing operations. These HAP account for approximately 82 percent of this subcategory's nationwide HAP emissions. Other significant organic HAP identified include formaldehyde, toluene and styrene.

Inorganic HAP. Based on information reported in survey responses during the development of the proposed NESHAP, inorganic HAP, including chromium, cobalt, hydrogen chloride, lead, manganese compounds and nickel, are components of some coatings, dyes, and finishes used by this source category. Inorganic HAP are not likely to be emitted because of the application techniques used.

D. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed standards define the affected source for each subcategory as the collection of all equipment associated with the coating and printing, the slashing, or the dyeing and finishing performed on a textile substrate. For the purpose of defining the affected source, the textile substrate includes staple fibers and filaments suitable for conversion to or use as yarns, or for the preparation of woven, knit, or nonwoven fabrics; yarns made from natural or manufactured fibers; fabrics and other manufactured products made from staple fibers and filaments and from yarn; and garments and other articles fabricated from fibers, yarns, or fabrics. Also for each subcategory, the specific regulated materials are defined. Regulated materials are the HAP-containing materials that are the source of HAP emissions limited by the requirements of the proposed NESHAP.

The affected source for the coating and printing subcategory includes: all web coating and printing equipment used to apply cleaning materials to a substrate to prepare it for coating or printing material application, to apply coating or printing materials to a substrate and to dry or cure the coating or printing materials after application by exposure to heat or radiation (coating or printing material drying or curing), or to clean coating/printing operation equipment; all storage containers and mixing vessels in which regulated materials are stored or mixed; all manual and automated equipment and containers used for conveying regulated materials; all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating or printing operation; and all manual and automated equipment, structures, and devices used to convey, treat, or dispose of wastewater streams or residuals. Coating or printing material drying or curing at ambient conditions is not drying or curing for the purpose of the proposed standards. The regulated materials for the coating and printing subcategory are the coating, printing, thinning and cleaning materials used in the affected source.

The affected source for the slashing subcategory includes: all slashing equipment used to apply and dry size on warp yarn; all storage containers and mixing vessels in which regulated materials are stored or mixed; all manual and automated equipment and containers used for conveying regulated materials; all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a slashing operation; and all manual and automated equipment, structures, and devices used to convey, treat, or dispose of wastewater streams or residuals. The regulated materials for the slashing subcategory are the slashing materials used in the affected source.

The affected source for the dyeing and finishing subcategory includes: all dyeing and finishing equipment used to apply dyeing or finishing materials, to fix dyeing materials to the substrate, to rinse the textile substrate, to dry or cure the dyeing or finishing materials, or to clean dyeing/finishing operation equipment; all storage containers and mixing vessels in which regulated materials are stored or mixed; all manual and automated equipment and containers used for conveying regulated materials; all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a dyeing or finishing operation; and all manual and automated equipment, structures, and devices used to convey, treat, or dispose of wastewater streams or residuals. The regulated materials for the dyeing and finishing subcategory are the dyeing, finishing, and cleaning materials used in the affected source.

E. What Are the Emission Limits, Operating Limits, and Other Standards?

We are proposing standards that would limit organic HAP emissions from coating, printing, slashing, dyeing, and finishing operations. The proposed standards include emission limits, operating limits, and work practice standards. Emission limits are being proposed for the coating and printing, slashing, and dyeing and finishing subcategories. Operating limits and work practice standards are being proposed for the coating and printing subcategory.

Emission limits. In the coating and printing subcategory, we are proposing to limit organic HAP emissions to the atmosphere from each new and reconstructed affected source to one of the following three specified levels: (1) At least a 98 percent organic HAP OCE (OCE limit); (2) no more than 0.08 kilograms (kg) organic HAP/kg of coating solids used (0.08 pound (lb) organic HAP/lb of coating solids used) during each monthly compliance period (emission rate limit); or (3) if you are using an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 parts per million by volume (ppmv) on a dry basis is achieved and the efficiency of the capture system is 100 percent (outlet concentration limit). The proposed HAP emission limits for each existing affected source are: (1) To achieve at least a 97 percent OCE limit; (2) an emission rate limit of no more than 0.12 kg organic HAP/kg of coating solids used (0.12 lb organic HAP/lb of coating solids used) in each monthly compliance period; or (3) if you are using an oxidizer to control organic HAP emissions, operate the oxidizer to achieve the outlet concentration limit of no greater than 20 ppmv on a dry basis and the efficiency of the capture system is 100 percent.

You may choose from several compliance options in the proposed rule to achieve the coating and printing emission limits. You could comply through a pollution prevention approach by applying regulated materials that meet the emission rate limits, either individually (compliant material option) or collectively (emission rate without add-on controls option), during each monthly compliance period. Second, you could use a capture system and add-on control device to meet either the applicable organic HAP OCE limit or emission rate limit. Third, you could use a 100 percent efficient capture system and an oxidizer that reduces organic HAP emissions to no more than 20 ppmv.

In the slashing subcategory, we are proposing to require each new, reconstructed and existing affected source to emit no organic HAP. This is not an absolute zero HAP limit since the compliance procedures specify that to determine organic HAP emissions, you would count only organic HAP present in the materials you use at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1 percent or more for other organic HAP compounds. To comply with the slashing organic HAP emission limits, you must apply only materials that individually meet the standard during each monthly compliance period.

In the dyeing and finishing subcategory, we are proposing to limit organic HAP emissions from each new, reconstructed and existing affected source that conducts dyeing operations only or both dyeing and finishing operations to no more than 0.016 kg organic HAP per kg of dyeing material used (0.016 lb organic HAP per lb of dyeing material used) for each monthly compliance period. You could comply with the dyeing and finishing organic HAP emission rate by applying materials that meet the emission rate, either individually or collectively, during each monthly compliance period. Each new, reconstructed and existing affected source that conducts only finishing operations is required to emit no organic HAP. This is not an absolute zero HAP limit since the compliance procedures specify that to determine organic HAP emissions, you would count only organic HAP that are present in the materials you use at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1 percent or more for other organic HAP compounds.

Operating limits. If you reduce emissions from coating or printing operations by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. These limits are site-specific parameter limits that you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures (PTE), you would establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are PTE, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would either monitor the temperature immediately before and after the catalyst bed, or you would monitor the temperature before the catalyst bed and prepare and implement an inspection and maintenance plan that includes periodic catalyst activity checks. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you would monitor the outlet gas temperature from the condenser. For concentrators, you would monitor the temperature in the desorption gas stream and the pressure drop across the zeolite wheel or rotary carbon bed.

The site-specific parameter limits that you establish must reflect operation of the capture system and add-on control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work practice standards. If you use an emission capture system and add-on control device for compliance, you would be required to develop and implement a work practice plan to minimize organic HAP emissions from mixing operations, storage tanks and other containers, and handling operations for coating, printing, thinning, cleaning, and waste materials.

Operations during startup, shutdown, or malfunction. If you use a capture system and add-on control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and add-on control device.

General Provisions. The General Provisions (40 CFR part 63, subpart A) would also apply to you as indicated in the proposed rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The proposed rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed rule, all of the applicable General Provisions requirements would apply to you.

F. What Are the Testing and Initial Compliance Requirements?

Compliance dates. Existing affected sources would have to be in compliance with the final standards no later than [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. New and reconstructed affected sources would have to be in compliance upon startup of the affected source or by the [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. The effective date is the date on which the final rule is published in the **Federal Register**.

The proposed initial compliance period begins on the compliance date and ends on the last day of the first full month following the compliance date; except for new and reconstructed sources required to conduct performance tests, the initial compliance period ends on the last day of the first full month following the performance test if the performance test is conducted later than the compliance date (the proposed rule allows the test to be conducted up to 180 days later).

Being "in compliance" means that the owner or operator of the affected source meets the requirements to achieve the emission limitations during the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance with the organic HAP emission limit and other applicable requirements for that period. If the affected source does not meet the emission limit and other applicable requirements, it is out of compliance for the entire initial compliance period.

Emission limits. With the exception of the slashing emission limit, there are several proposed options for complying with the proposed emission limits, and the testing and initial compliance requirements vary accordingly. You would be able to use different compliance options for different coating, printing, dyeing, and finishing operations in the affected source for

each subcategory and also for the same operation at different times.

Compliance based on materials used in the affected source. If you demonstrate compliance with the proposed coating and printing emission limits based on the materials used, you would determine the mass of organic HAP and the mass fraction of solids in all materials used during the month of the initial compliance period. You

easily demonstrate compliance by using low-HAP or non-HAP dyeing, finishing and cleaning materials. To demonstrate compliance with the compliant material option, you would demonstrate that the organic HAP content of each dyeing, finishing, and cleaning material meets the applicable emission limit in Table 1 to the proposed subpart. To determine the mass of organic HAP in dyeing, finishing and cleaning materials, you

- Calculate the ratio of the total mass of organic HAP in the materials used to the total mass of materials used.
- Record the calculations and results and include them in your Notification of Compliance Status.

Note that if you choose to use this option for a particular dyeing/finishing operation or group of operations rather than for an entire affected source, you would calculate the organic HAP

HAP" should be interpreted to mean materials that contain organic HAP levels below the levels specified in § 63.4341(e) of the proposed rule, which are typical reporting levels. These typical reporting levels only count organic HAP that are present at 0.1 percent or more by mass for OSHA-defined carcinogens and at 1.0 percent or more by mass for other compounds.

To determine the mass fraction of

cleaning material using the same types of data and methods previously described for the compliant material option.

- Determine the mass fraction of solids for each coating and printing material you used using the same types of data or methods described for the compliant material option.
- Calculate the total mass of organic HAP in all materials used and total mass

equipment (or the capture efficiency of the capture system and the oxidizer outlet organic HAP concentration) and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed no later than the compliance date for existing sources and 180 days after the compliance date for new and reconstructed sources. If you are demonstrating compliance with the

each subcategory and also for the same operation at different times.

Compliance based on materials used in the affected source. If you demonstrate compliance with the proposed coating and printing emission limits based on the materials used, you would determine the mass of organic HAP and the mass fraction of solids in all materials used during the month of the initial compliance period. You would be required to demonstrate either that the organic HAP content of each coating and printing material meets the applicable emission limit and that you use no organic HAP-containing thinning or cleaning materials (compliant material option); or that the total mass of organic HAP in all coating, printing, thinning, and cleaning materials used divided by the total mass of solids in coating and printing materials used meets the applicable emission limit (emission rate without add-on controls option).

The compliant material option is a pollution prevention option that allows you to easily demonstrate compliance by using low-HAP or non-HAP coating and printing materials. If you use coating and printing materials that, based on their organic HAP content, individually meet the kg (lb) organic HAP emitted per kg (lb) solids used levels in the applicable emission limits and you use non-HAP thinners and other additives and cleaning materials, this compliance option is available to you. For this option, we have minimized recordkeeping and reporting requirements. You can demonstrate compliance by using readily available purchase records containing manufacturer's formulation data to determine the organic HAP content of each coating, printing, or other material and the amount of each material used. You would not need to perform any detailed emission rate calculations.

To demonstrate compliance with the compliant material option, you would demonstrate that the organic HAP content of each coating and printing material meets the applicable emission limit in Table 1 to the proposed subpart, and that you used no organic HAP-containing thinning or cleaning materials. For example, if you are using the compliant materials option for your existing source, you would demonstrate that: (1) Each coating and printing material used has an organic HAP content no greater than 0.12 kg (0.12 lb) organic HAP per kg (lb) solids used, (2) and that you used no organic HAP-containing thinning or cleaning materials. Note that "no organic HAP" is not intended to mean absolute zero. Materials that contain "no organic HAP" should be interpreted to mean materials that contain organic HAP levels below the levels specified in § 63.4341(e) of the proposed rule, which are typical reporting levels. These typical reporting levels only count organic HAP that are present at 0.1 percent or more by mass for OSHA-defined carcinogens and at 1.0 percent or more by mass for other compounds.

To determine the mass fraction of organic HAP in coating, printing, thinning, and cleaning materials and the mass fraction of solids in coating and printing materials, you could rely on manufacturer's formulation data. You would not be required to perform tests or analysis of the material if formulation data are available. Alternatively, you could use results from the test methods listed below. You may also use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions, 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For mass fraction of organic HAP, you would use Method 311 of 40 CFR part 63, appendix A;
- The proposed rule would allow you to use nonaqueous volatile matter as a surrogate for organic HAP, which would include all organic HAP plus all other organic compounds, and excluding water. If you choose this option, you would use Method 24 of 40 CFR part 60, appendix A; and
- For mass fraction of solids, you would use Method 24 of 40 CFR part 60, appendix A.

The emission rate without add-on controls option is a pollution prevention option where you can demonstrate compliance based on the organic HAP contained in the mix of coating, printing, thinning, and cleaning materials you use. This option allows you the flexibility to use some individual coating or printing materials that do not individually meet the emission limit if you use other low-HAP or non-HAP coating or printing materials such that overall emissions from the affected source during the compliance period meet the emission limit.

To demonstrate initial compliance with the emission rate limit without add-on controls option, you would be required to:

- Determine the quantity of each coating, printing, thinning, and cleaning material you used.
- Calculate the mass of organic HAP in each coating, printing, thinning, and cleaning material using the same types of data and methods previously described for the compliant material option.
- Determine the mass fraction of solids for each coating and printing material you used using the same types of data or methods described for the compliant material option.
- Calculate the total mass of organic HAP in all materials used and total mass of solids for all coating and printing materials used. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the ratio of the total mass of organic HAP to the total mass of solids for the materials used.
- Record the calculations and results and include them in your Notification of Compliance Status.

Note that if you choose to use this option for a particular coating/printing operation or group of operations rather than for an entire affected source, you would calculate the organic HAP emission rate using just the materials used in that operation or group. You would need to separately demonstrate compliance for all other operations in the affected source.

To demonstrate compliance with the proposed slashing emission limits, you must use the compliant material option and demonstrate that each slashing material used during the initial compliance period contains no organic HAP. As was noted regarding thinning or cleaning materials used in coating/printing operations, "no organic HAP" is not intended to mean absolute zero. Materials that contain "no organic HAP" should be interpreted to mean materials that contain organic HAP levels below the levels specified in § 63.4341(e) of the proposed rule, which are typical reporting levels.

To demonstrate compliance with the proposed dyeing and finishing emission limits, you would be required to demonstrate either that the organic HAP content of each dyeing, finishing and cleaning material meets the applicable emission limit (compliant material option) or that the total mass of organic HAP in all dyeing, finishing and cleaning materials used divided by the total mass of dyeing, finishing and cleaning materials used meets the applicable emission limit (emission rate without add-on controls option).

As previously described for coating/printing operations, the compliant material option is a pollution prevention option that allows you to easily demonstrate compliance by using low-HAP or non-HAP dyeing, finishing and cleaning materials. To demonstrate compliance with the compliant material option, you would demonstrate that the organic HAP content of each dyeing, finishing, and cleaning material meets the applicable emission limit in Table 1 to the proposed subpart. To determine the mass of organic HAP in dyeing, finishing and cleaning materials, you may rely on manufacturer's formulation data. You would not be required to perform tests or analysis of the material if formulation data are available. Alternatively, you could use results from the test methods listed below. You may also use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions, 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For mass fraction of organic HAP, you would use Method 311 of 40 CFR part 63, appendix A;
- The proposed rule would allow you to use nonaqueous volatile matter as a surrogate for organic HAP, which would include all organic HAP plus all other organic compounds, and excluding water. If you choose this option, you would use Method 24 of 40 CFR part 60, appendix A.

Again as previously described for coating/printing operations, the emission rate without add-on controls option is a pollution prevention option where you can demonstrate compliance based on the organic HAP contained in the mix of dyeing, finishing, and cleaning materials you use. This option allows you more flexibility that the compliant material option, but requires the calculation of the emission rate each month. To demonstrate initial compliance with the emission rate without add-on controls option, you would be required to:

- Determine the mass of each dyeing, finishing and cleaning material you used.
- Calculate the mass of organic HAP in each dyeing, finishing and cleaning material.
- Calculate the total mass of organic HAP in all materials and the total mass of all materials used for the compliance period. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the ratio of the total mass of organic HAP in the materials used to the total mass of materials used.
- Record the calculations and results and include them in your Notification of Compliance Status.

Note that if you choose to use this option for a particular dyeing/finishing operation or group of operations rather than for an entire affected source, you would calculate the organic HAP emission rate using just the materials used in that operation or group. You would need to separately demonstrate compliance for all other operations in the affected source.

Compliance based on using a capture system and add-on control device for coating and printing operations. If you use a capture system and add-on control device on a coating/printing operation, other than a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the capture and control efficiencies of the equipment or the oxidizer outlet organic HAP concentration. For the organic HAP emission rate limit, you also would determine the mass fraction of organic HAP and the mass fraction of solids in all materials used during the month of the initial compliance period. You would be required to demonstrate either that the organic HAP OCE is greater than or equal to the applicable organic HAP OCE limit, that the oxidizer outlet organic HAP concentration is no greater than 20 ppmv on a dry basis and the efficiency of the capture system is 100 percent, or that the capture and control system reduces organic HAP emissions to a level no greater than the applicable emission rate limit.

If you use a solvent recovery system for which you conduct a liquid-liquid material balance, you would be required to demonstrate either that the organic HAP OCE determined by material balance during the month of the initial compliance period is greater than or equal to the applicable organic HAP OCE limit or that the solvent recovery system reduces organic HAP emissions to a level no greater than the applicable emission rate limit.

The proposed testing and initial compliance requirements associated with determining the OCE of the capture system and add-on control device are summarized in the following paragraphs.

If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct material balances, you would be required to conduct an initial performance test to determine the capture and control efficiencies of the equipment (or the capture efficiency of the capture system and the oxidizer outlet organic HAP concentration) and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed no later than the compliance date for existing sources and 180 days after the compliance date for new and reconstructed sources. If you are demonstrating compliance with the applicable emission rate limit with add-on controls, you would need to schedule the performance test in time to obtain the results for use in calculating your emission rate for the month of the initial compliance period.

You would determine both the efficiency of the capture system and either the organic HAP emission reduction efficiency of the add-on control device or the outlet organic HAP concentration of the oxidizer. To determine the capture efficiency, you would either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried or cured within the enclosure); or use one of three protocols in proposed § 63.4365 to measure capture efficiency. If you have a PTE and all regulated materials are applied and dried or cured within the enclosure and you route all exhaust gases from the enclosure to an add-on control device, then you would assume 100 percent capture. To demonstrate compliance with the oxidizer outlet organic HAP concentration limit, 100 percent capture is required.

To determine the organic HAP emission reduction efficiency of the add-on control device, you would conduct measurements of the inlet and outlet gas streams. Only the outlet gas stream would be measured to determine outlet concentration. The performance test would consist of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites.
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981.
- Method 4 to determine stack moisture.
- Method 25 or 25A to determine organic volatile matter concentration. You would use Method 25A to demonstrate compliance with the oxidizer outlet organic HAP

concentration limit because the limit is less than 50 ppmw. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the OCE using a liquid-liquid material balance instead of

Operating limits. As mentioned above, you would establish operating limits as part of the initial performance test of a capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and add-

temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser and do not conduct liquid-liquid material balances to demonstrate compliance, you would

system and add-on control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and add-on control device.

G. What Are the Continuous Compliance Provisions?

Emission limits. If you demonstrate compliance with the proposed emission

results for each month would affect your compliance determination. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the add-on control device, you would assume the capture system and add-on control device are achieving the same emission reduction as they did during the performance test in which the operating limits were established. If you are

emissions collected by the capture system are routed to the add-on control device by monitoring for potential bypass of the add-on control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the add-on control device;
- Car-seal or lock-and-key valve

concentration limit because the limit is less than 50 ppmw. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the OCE using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used during the month of the initial compliance period and determine the total volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system during the compliance period. Then you would compare the amount recovered to the amount used to determine the OCE. You would record the calculations and results and include them in your Notification of Compliance Status.

Additional proposed testing and initial compliance requirements associated with demonstrating compliance using the emission rate with add-on controls option are as follows:

- Determine the mass fraction of organic HAP in each coating, printing, thinning, and cleaning material used and the mass fraction of solids in coating and printing materials used during the month of the initial compliance period, as described previously in "Compliance based on materials used in the affected source."
- Calculate the total mass of organic HAP in all materials and total mass of solids for all coating and printing materials. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the organic HAP emission reductions from the controlled coating or printing operations using the capture and control efficiencies determined during the performance test or the materials balance for the month and the total mass of organic HAP in materials used in controlled coating and printing operations.
- Calculate the ratio of the total mass of HAP emissions to the total mass of solids for the materials used during the month of the initial compliance period.
- Record the calculations and results and include them in your Notification of Compliance Status.
- Develop and implement a work practice plan to minimize emissions from storage, mixing, and handling of organic HAP-containing materials.

Operating limits. As mentioned above, you would establish operating limits as part of the initial performance test of a capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and add-on control devices during the performance test, conducted under representative conditions, that demonstrated compliance with the emission limits.

The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.4374 of the proposed rule. If you use add-on control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits would be the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed during the performance test. For each 3-hour period, the average temperature and the average temperature difference would have to be at or above these limits. Alternatively, you would be allowed to meet only the temperature limit before the catalyst bed if you develop and implement an inspection and maintenance plan that includes periodic catalyst activity checks.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or below this limit.

If you use a concentrator, you would monitor the desorption concentrate stream gas temperature and the pressure drop of the dilute stream across the concentrator. These values would be recorded at least once every 15 minutes. The operating limits would be the average temperature (to be met as a minimum) and the average pressure drop (not to be exceeded) measured during the performance test.

For each capture system that is not a PTE, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test to be met as a minimum. For each capture system that is a PTE, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inch water.

Work practices. If you use a capture system and add-on control device for compliance, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions to the atmosphere from storage, mixing, material handling, and waste handling operations. This plan would include a description of all steps taken to minimize emissions from these sources (e.g., using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, placing solvent-laden cloths in closed containers immediately after use, etc.). You would have to make the plan available for inspection if the Administrator requests to see it.

Operations during startup, shutdown, or malfunction. If you use a capture system and add-on control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and add-on control device.

G. What Are the Continuous Compliance Provisions?

Emission limits. If you demonstrate compliance with the proposed emission limits for slashing based on the materials used (compliant material option), you would demonstrate continuous compliance if, for each monthly compliance period, the organic HAP content of each slashing material used meets the emission limits. You would use manufacturer's data to demonstrate compliance each month as you did for the initial compliance period.

If you demonstrate compliance with the proposed emission limits for coating and printing based on the materials used, you would demonstrate continuous compliance if, for each monthly compliance period, either you use only coating and printing materials that meet the applicable emission limit and only non-HAP thinning and cleaning materials (compliant material option); or that the ratio of total mass of organic HAP to total mass of solids in coating and printing materials used is less than or equal to the emission limits (emission rate without add-on controls option). You would follow the same procedures for calculating the organic HAP to coating and printing solids ratio that you used for the initial compliance period.

If you demonstrate compliance with the proposed emission limits for dyeing and finishing based on the materials used, you would demonstrate continuous compliance if, for each monthly compliance period, either the organic HAP content of each dyeing, finishing and cleaning material meets the applicable emission limit (compliant material option) or the total mass of organic HAP in all dyeing, finishing and cleaning materials used divided by the total mass of dyeing, finishing and cleaning materials used meets the applicable emission limit (emission rate without add-on controls option). You would follow the same procedures for determining the mass of organic HAP in all materials used during the month that you used for the initial compliance period.

For each coating or printing operation on which you use a capture system and add-on control device, other than solvent recovery for which you conduct a liquid-liquid material balance, the continuous parameter monitoring results for each month would affect your compliance determination. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the add-on control device, you would assume the capture system and add-on control device are achieving the same emission reduction as they did during the performance test in which the operating limits were established. If you are demonstrating compliance with either the organic HAP OCE option or the emission rate with add-on controls option, you would then apply the OCE to the total mass of organic HAP in materials used in controlled coating or printing operations to determine the monthly mass of organic HAP emissions from those operations. If there were any deviations from the operating limits during the month or any bypasses of the add-on control device, you would account for them in the calculation of the applicable emission rate by assuming the capture system and add-on control device were achieving zero emission reduction during the periods of deviation.

For each coating and printing operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you would use the liquid-liquid material balance to determine the emission rate. You would be required to measure the amount of all materials used during each month and determine the volatile matter content of these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system during the month and calculate the weight percent of organic HAP used that was emitted to determine compliance with the organic HAP OCE option. If you are complying with the emission rate with add-on controls option, you would apply the OCE to the total mass of organic HAP in the materials used to determine total organic HAP emissions as input to the compliance demonstration.

Operating limits. If you use an emission capture system and add-on control device, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and add-on control device are operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and add-on control device with bypass lines that could allow emissions to bypass the add-on control device, you would have to demonstrate that organic HAP emissions collected by the capture system are routed to the add-on control device by monitoring for potential bypass of the add-on control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the add-on control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the add-on control device is operating;
- Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the add-on control device is operating; or
- Automatic shutdown system to stop the coating or printing operation when flow is diverted from the add-on control device.

A deviation would occur for any period of time the bypass monitoring procedures indicate that emissions are not routed to the add-on control device.

Work practices. If you use an emission capture system and add-on control device for compliance, you would be required to implement on an ongoing basis the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

Operations during startup, shutdown, and malfunction. If you use a capture system and add-on control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, and malfunction of the capture system and add-on control device.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and add-on control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial notifications. If you own or operate an existing affected source, you would be required to send a notification

to the EPA Regional Office in the region where your affected source is located and to your State agency no later than [DATE 1 YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. For new and reconstructed sources, you would send the notification within 120 days after the date of initial startup or [DATE 120 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE

showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping requirements. You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3

different from the procedures specified in the affected source's SSMP.

- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any

system and add-on control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your SSMP, you would report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

Electronic reporting option. Comments are invited on the option of

III. Rationale for Selecting the Proposed Standards

A. How did We Select The Source Category and Subcategories?

Printing, coating, and dyeing of fabrics (changed by today's action to printing, coating, and dyeing of fabrics and other textiles) is a source category that is on the list of source categories to be regulated because it contains major

Subcategory selection. The statute gives us discretion to determine if and how to subcategorize. Once the floor has been determined for new or reconstructed and existing affected sources for a source category or subcategory, we must set MACT standards that are no less stringent than the MACT floor. Such standards must then be met by all sources within the source category or subcategory. A

to the EPA Regional Office in the region where your affected source is located and to your State agency no later than [DATE 1 YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. For new and reconstructed sources, you would send the notification within 120 days after the date of initial startup or [DATE 120 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. The report notifies us and your State agency that you have an existing affected source that is subject to the proposed standards, or that you have constructed a new affected source. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of performance test. If you demonstrate compliance by using a capture system and add-on control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. The performance test would be required no later than the compliance date for an existing affected source. For a new or reconstructed affected source, the performance test would be required no later than 180 days after initial startup or [180 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test.

Notification of compliance status. You would send us a Notification of Compliance Status within 30 days after the end of the initial compliance period. In the notification, you would certify whether each affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and provide information on any deviations from the emission limits, operating limits, or other requirements.

If you elect to comply by using a capture system and add-on control device for which you conduct performance tests, you must provide the results of the tests. Your notification would also include the measured range of each monitored parameter, the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping requirements. You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the emission control and monitoring equipment must be kept for the life of the equipment.

You would need to keep all documentation supporting initial notifications and notifications of compliance status.

If your affected source is complying with the slashing emission limits, you would need to keep records of the organic HAP content of each slashing material as purchased.

Depending on the compliance option that you choose for your affected source complying with the dyeing and finishing or coating and printing emission limits, you would need to keep records of the following:

- Organic HAP content, volatile matter content, coating and printing materials solids content, and quantity of the dyeing, finishing, coating, printing, thinning, and cleaning materials used during each compliance period.
- For the emission rate (with or without add-on controls) compliance options, calculations of your emission rate for each compliance period.

If your affected source is in the coating and printing subcategory and you demonstrate compliance by using a capture system and add-on control device, you would also need to keep records of the following:

- All required measurements, calculations, and supporting documentation needed to demonstrate compliance with the standards.
- All results of performance tests and parameter monitoring.
- All information necessary to demonstrate conformance with your plan for minimizing emissions from mixing, storage, and waste handling operations.
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed.
- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and add-on control device.
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP.
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule including, but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and add-on control device to reduce organic HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. The plan would stay in your records for the life of the affected source or until the source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superseded versions on record for 5 years following the revision.

Periodic reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would include them in the report as follows:

- Report each deviation from the emission limit.
- Report each deviation from the work practice standards if you use an emission capture system and add-on control device.
- If you use an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, report each deviation from an operating limit and each time a bypass line diverts emissions from the add-on control device to the atmosphere.
- Report other specific information on the periods of time the deviations occurred.

You would also have to include in each semiannual report an identification of the compliance option(s) you used for each affected source and any time periods when you changed to another compliance option.

Other reports. You would be required to submit reports for periods of startup, shutdown, or malfunction of the capture system and add-on control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your SSMP, you would report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

Electronic reporting option. Comments are invited on the option of voluntary electronic reporting for all reporting requirements in the proposed rule. The option would allow the use of the Internet to meet the reporting requirements of the proposed rule. You would be allowed to choose the option to submit all reports electronically in lieu of filing written reports. The electronic records submittals would need to include all the information that otherwise would be submitted in written reports. The electronic submittals would be via electronic data interchange and would use Data Exchange Templates (DET). The DET or electronic forms will be used to "tag" data elements, which will allow reporting of the information to EPA. You would submit the electronic forms through EPA's Central Data Exchange (CDX). We would supply the required data elements, and you would be responsible for submitting the data appropriately "tagged." If the rule were delegated to State, local or tribal agencies for implementation and enforcement, EPA would coordinate with the delegated agencies to provide them with either the electronic information or a hard copy of the required report.

Under this proposed electronic reporting option, it would be necessary to establish: (1) That an electronic document was sent (or not sent); (2) when the document was sent; (3) by whom the document was sent, and including both the individual who sent it and the identity of the entity the individual is authorized to represent; (4) when the document was received; (5) that the document was not altered from the time it was sent to the time it was received; and (6) the contents of the document sent.

Specifically, we request comment on the concept of electronic reporting, advantages to the regulated community by reducing reporting burdens; cost or cost savings; advantages or disadvantages to State/local/tribal agencies; and difficulties to be overcome in the implementation of electronic reporting.

III. Rationale for Selecting the Proposed Standards

A. How did We Select The Source Category and Subcategories?

Printing, coating, and dyeing of fabrics (changed by today's action to printing, coating, and dyeing of fabrics and other textiles) is a source category that is on the list of source categories to be regulated because it contains major sources which emit or have the potential to emit at least 10 tons of any one HAP or at least 25 tons of any combination of HAP annually. The proposed rule would control HAP emissions from both new and existing major sources. Area sources are not being regulated under the proposed rule.

Printing, coating, and dyeing of fabrics as described in the initial listing includes any affected source engaged in those activities. We also have found that slashing and finishing operations in printing, coating and dyeing sources have the potential to emit major source levels of organic HAP. We use the product lists contained in the NAICS code descriptions to describe the vast array of products composed of or containing fabric, textiles, yarn, fiber, cord, or thread that has been coated, printed, slashed, dyed or finished.

We intend the source category to include sources for which fabric and other textiles coating, printing, slashing, dyeing and finishing is either their principal activity or an integral part of a production process that is the principal activity. Many coating, printing, slashing, dyeing and finishing operations are located at plant sites that are dedicated to these activities. However, some are located at sites for which some other activity is principal, such as production of sheets and towels or rubber belt manufacturing. Collocated coating, printing, slashing, dyeing and finishing operations comparable to the types and sizes of the dedicated affected sources, in terms of the affected operation and applicable emission control techniques, are included in the source category.

The source category does not include research or laboratory facilities; janitorial, building, and facility maintenance operations; coating, printing, slashing, dyeing, or finishing operations in which no organic HAP-containing materials are used; or coating, printing, slashing, dyeing or finishing used by a facility and not for commerce, unless organic HAP emissions from the coating, printing, slashing, dyeing or finishing operations are at major source levels.

Subcategory selection. The statute gives us discretion to determine if and how to subcategorize. Once the floor has been determined for new or reconstructed and existing affected sources for a source category or subcategory, we must set MACT standards that are no less stringent than the MACT floor. Such standards must then be met by all sources within the source category or subcategory. A subcategory is a group of similar sources within a given source category. As part of the regulatory development process, we evaluate the similarities and differences between industry segments or groups of affected sources comprising a source category. In establishing subcategories, we consider factors such as process operations (type of process, raw materials, chemistry/formulation data, associated equipment, and final products); emission characteristics (amount and type of HAP); add-on control device applicability; and opportunities for pollution prevention. We may also consider existing rules or guidance from States and other regulatory agencies in determining subcategories.

After reviewing survey responses from the industry, facility site visit reports, and information received from stakeholder meetings, we found that the printing, coating, and dyeing of fabrics and other textiles source category may be grouped into three subcategories with differing material application and performance requirements, emission characteristics, applicable add-on emission controls and pollution prevention opportunities. The three subcategories are: (1) Coating and printing, (2) slashing, and (3) dyeing and finishing. The following paragraphs include descriptions of each subcategory.

Coating and printing subcategory. The coating and printing subcategory includes affected sources that apply coatings to or print textile substrates. The coating and printing manufacturing processes, HAP emissions, and types of controls in use sufficiently set them apart from the other processes that are used in the manufacture of textile products to warrant a subcategory. Coating is a web coating operation, and the physical operations and most sources performing coating are separate and distinct from the other textile operations. Many coating operations are subject to State reasonably available control technology requirements or to the polymeric coating of supporting substrates NSPS (40 CFR part 60, subpart VVV) and have installed emission control systems for VOC. Since a number of the VOC emitted from

coating operations are also organic HAP (*e.g.*, toluene, MEK, xylene, and methanol), the VOC emission control systems in place are also effective for controlling organic HAP emissions. Printing is a web process very similar to coating and uses some of the same equipment. The application and drying of printing materials and the organic HAP emission sources are identical or nearly identical to coating, and materials are frequently compounded in the facility performing the coating. Manmade fibers coated with epoxy or phenolic resins are often not immediately cured following application, but are first laid in a mold and then cured under pressure to form a composite structure.

The coating or printing process generally is made up of the following unit operations: mixing the coating or

processes that are used in the manufacture of textile products to warrant a subcategory. Dyeing and finishing processes both use various types of aqueous materials, the choice of which depends on the type of substrate and the desired properties in the end product. Many affected sources perform both dyeing and finishing and use some common equipment (*e.g.*, tenter frames) for unit operations in both processes. In

of substrate, use of carriers and weight limitations. Dyeing systems can be aqueous, nonaqueous (inorganic solvents), or use sublimation (thermosal, heat transfer). Hydrophilic fibers such as cotton, rayon, wool, and silk are typically easier to dye as compared with hydrophobic fibers such as acetate, polyesters, polyamides, and polyacrylonotriles.

The four basic steps in the dyeing

immersing fabrics in a relatively concentrated dyebath for short periods. Substrate is fed continuously into a dye range at speeds usually between 540 and 2,690 feet per minute, and a concentrated solution of dyes and chemicals (held in pads) is moved evenly and uniformly to the goods with thorough penetration. A pad mangle helps apply pressure to squeeze dye solution into the fabric, and the dye is usually diffused or fixed by heating in

coating operations are also organic HAP (*e.g.*, toluene, MEK, xylene, and methanol), the VOC emission control systems in place are also effective for controlling organic HAP emissions. Printing is a web process very similar to coating and uses some of the same equipment. The application and drying of printing materials and the organic HAP emission sources are identical or nearly identical to coating, and, therefore, the control options and limits for coating would be applicable to printing as well.

Coating is a specialized chemical finishing technique designed to produce textiles to meet high performance requirements, *e.g.*, for end products such as tents, roofing, soft baggage, marine fabric, drapery linings, flexible hoses, hot-air balloons, and awnings. Coatings generally impart elasticity to substrates, as well as resistance to one or more elements such as abrasion, water, chemicals, heat, fire, and oil. The substrate itself provides strength (such as tear strength) and can include wovens, nonwovens, knits, yarn, cord, and thread, although woven fabrics are most commonly used.

Printing is the application of color to a substrate in a design or pattern. In some cases, the printing material is chemically the same as coating material only thinned to a lower viscosity. There are typically four types of printing, including rotary screen, engraved roller, flat-bed screen, and heat transfer. Rotary screen and engraved roller closely resemble coating and use principally the same type of equipment as coating. Flat-bed screen is typically not a high production technique and does not emit large quantities of HAP over a period of time given the limits of production. Heat transfer emits little or no HAP in the transfer of the print to the substrate.

Both the substrates coated and printed as well as the coatings themselves vary. A number of different substrates can be coated including rayon, nylon, polyester, cotton, and blends. Coating chemicals used vary depending on end use of the coated substrate. Examples of coating chemicals include vinyl, urethane, silicone, and styrene-butadiene rubber. The polymer can be bought in various forms such as chunks, blocks, chips, pellets or fine powder. However, besides the polymer resins, several other chemicals can also be included in the prepared coating. These include plasticizers to increase pliability (*e.g.*, fatty acids, alcohols), solvents to disperse solids and adjust viscosity (*e.g.*, toluene, xylene, N,N-dimethylformamide, and MEK), pigments, curing agents, and fillers (*e.g.*, carbon black and teflon). Rubber coating materials are frequently compounded in the facility performing the coating. Manmade fibers coated with epoxy or phenolic resins are often not immediately cured following application, but are first laid in a mold and then cured under pressure to form a composite structure.

The coating or printing process generally is made up of the following unit operations: mixing the coating or printing materials (including the solvents), conditioning the substrate, applying the coating or printing materials to the substrate, evaporating the solvent in a drying oven and sometimes curing or vulcanizing by exposure to heat, and cleaning coating or printing operation equipment. A coating or printing operation with coating or printing material drying or curing at ambient conditions is not coating or printing for the purpose of the proposed subpart. Therefore, a coating or printing operation that does not dry or cure the applied coating or printing material by exposure to heat is not subject to the requirements of the proposed subpart.

The application processes used by affected sources in the industry are similar in that they use continuous web coating techniques, but they include several types of coating and substrates. The coating industry treats coating as a surface applied coating in which a distinct layer of coating is applied to the textile surface.

Slashing subcategory. The slashing subcategory includes affected sources that perform slashing operations. The slashing equipment, emission characteristics, and opportunities for pollution prevention in the industry are distinct from those in the rest of the fabric and other textiles coating, printing, and dyeing source category, warranting a separate subcategory.

Slashing is a yarn preparation process performed on warp yarn prior to weaving. Warp yarns need to sustain their elongation and flexibility during the weaving process, which necessitates the slashing process. In the slashing process, large rolls (beams) of warp yarn are passed through a size box containing the aqueous sizing compound. Squeeze rolls remove excess solution and the yarn then passes through a drying unit that usually consists of steam filled dry cans (rollers) or an oven and then through a series of separator bars to prevent the ends from sticking together. After the separation process, the warp is then wound onto the loom beam. Some mills perform desizing. During the desizing step, at the end of the textile process, most of the sizing (slashing material) is removed from the textile by washing and the sizing is present in the wastewater.

The objectives of slashing are to strengthen, smooth the outer surface, and lubricate the yarn. The chemical nature of the size applied is dependent on the yarn substrate and the type of weaving being used. The three main types of size currently used are natural products (starch), fully synthetic products (*e.g.*, PVA), and semisynthetic blends (*e.g.*, modified starches and carboxymethyl cellulose (CMC)).

When starch or modified starch is the sizing compound, there is water but no HAP emitted from the slashing process. Starch is used principally on cotton, but does not work well on synthetic fibers. Also, starch is not more widely used and is not a good substitute for synthetic sizing because of water pollution concerns. Starch greatly increases the biological oxygen demand and cannot be partially recycled.

The PVA and CMC are typically recycled when possible to reduce water treatment and water pollution. The CMC is not as widely used as starch and PVA because of the cost of the material. The CMC is not as effective in the slashing process on cotton and synthetic textiles as starch, modified starches, or PVA, respectively.

The primary source of HAP emissions from slashing is methanol from PVA size, typically applied to synthetics (although it adheres to and is used for natural fibers as well). The methanol is present in the PVA size as a contaminant and is not needed for the slashing process. The methanol emissions can arise either from the size cooking operation and/or from the application or slashing process; the distribution is unclear, although it will depend upon the temperature at which the size is cooked, the cooking time, and how often mixing containers (cookers) are opened. These processes are not presently regulated by Federal, State or local agencies, and there are no known HAP emission capture or add-on control systems in use on size cooking or slashing processes. However, information submitted to us from suppliers representing approximately 74 percent of the domestic market for PVA indicate that PVA with less than 1 percent methanol is readily available, and these suppliers are now changing their production to supply the lower HAP material.

Dyeing and finishing subcategory. The dyeing and finishing subcategory includes affected sources that perform dyeing and/or finishing operations. The process operations, materials and the organic HAP emissions sufficiently set these processes apart from the other

processes that are used in the manufacture of textile products to warrant a subcategory. Dyeing and finishing processes both use various types of aqueous materials, the choice of which depends on the type of substrate and the desired properties in the end product. Many affected sources perform both dyeing and finishing and use some common equipment (*e.g.*, tenter frames) for unit operations in both processes. In some cases, the finishes are applied to the substrate wet from the dyeing process, and no drying is done until after the finish application. No add-on organic HAP emission controls are known to be in use on dyeing processes and very few on finishing processes. The few add-on emission controls used on finishing processes were installed to control opacity and are not effective at controlling organic HAP emissions. The similarities of process operation equipment, sources of organic HAP emissions (many of which are fugitive), absence of add-on HAP emission controls and opportunities for pollution prevention in the dyeing and finishing industry lend these operations well to subcategorization for the purpose of determining emission limits.

Dyeing is the application of color to the whole body of a textile material with some degree of color fastness. Textiles are dyed using continuous and batch processes, and dyeing may take place at any of several stages in the manufacturing process (*i.e.*, prior to fiber extrusion, fiber in staple form, yarn, fabric, garment). Most of the dyeing is done in finishing departments of basic manufacturing sources, although there are also several commission dyehouses. From an environmental perspective, dyeing has typically been viewed as a wastewater issue due to large quantities of water, chemicals, and auxiliaries (such as salt) used.

Dyeing is essentially a mass transfer process where the dye diffuses in solution, adsorbs onto the fiber surface, and finally, within the fiber. Dyeing is complicated by the fact that there are many sources of color variations, such as dyes, substrate, preparation of substrate, dyeing auxiliaries used, and water. Processing variables such as time, temperature, and dye liquor ratio (lbs of dyebath to lbs of cloth) also affect dyeing results. There are hundreds of dyes within several dye classes, each of which exhibits different results when applied to different types of substrates.

Various types of dyeing machines are used for both continuous and batch processes. Every dye system has different characteristics in terms of factors such as versatility, cost, tension of substrate, use of carriers and weight limitations. Dyeing systems can be aqueous, nonaqueous (inorganic solvents), or use sublimation (thermosal, heat transfer). Hydrophilic fibers such as cotton, rayon, wool, and silk are typically easier to dye as compared with hydrophobic fibers such as acetate, polyesters, polyamides, and polyacrylonotriles.

The four basic steps in the dyeing process are: dissolving or dispersing dye, diffusing dye onto the fiber surface, absorbing dye onto the fiber surface, and diffusing dye into the fiber. Batch dyeing involves moving the dye liquor through the goods or moving the goods through the dye liquor. The substrate is immersed in the dyebath during the entire period of dyeing. In batch dyeing, a certain amount of substrate, usually 220 to 2,200 lbs, is loaded onto a dyeing machine and is brought to equilibrium or near equilibrium with a solution containing the dye. Once immersed in the dye bath, because the dyes have an affinity for the fibers, the dye molecules leave the dye solution and enter the fibers over a period of minutes to hours.

Auxiliary chemicals and controlled dyebath conditions (mainly temperature) accelerate and optimize the action. The dye is fixed in the fiber using heat and/or chemicals after which the substrate is washed to remove unfixed dyes and chemicals. There is a trend to use lower liquor ratios (lbs of dyebath to lbs of cloth) in batch dyeing, which lends benefits such as faster heating/cooling and less waste. Batch equipment can usually be purchased as atmospheric (operated below 212 degrees Fahrenheit) or pressurized (operated to about 280 degrees Fahrenheit) machines. Most batch dyeing is being done using pressurized machines, although some sources use atmospheric machines, especially for dyeing. Atmospheric dyeing might be required for fleeces and stretch fabrics, such as Lycra®, which typically cannot be dyed using jet equipment. Dyeing processes in pressurized machines release no organic HAP emissions to the atmosphere since the process is totally enclosed, and the pressure is released at the end of the dyeing process by cooling the dye bath which is subsequently drained before opening the dyeing machine. However, in some cases, the drying of the pressure-dyed substrate releases HAP emissions.

Continuous processes typically consist of dye application, dye fixation with chemicals or heat, and washing. Almost all continuous dyeing is done at atmospheric pressure. Continuous dyeing is usually used for long runs of polyester/cotton fabrics and involves immersing fabrics in a relatively concentrated dyebath for short periods. Substrate is fed continuously into a dye range at speeds usually between 540 and 2,690 feet per minute, and a concentrated solution of dyes and chemicals (held in pads) is moved evenly and uniformly to the goods with thorough penetration. A pad mangle helps apply pressure to squeeze dye solution into the fabric, and the dye is usually diffused or fixed by heating in a steamer or oven. Dye fixation on fiber occurs much more rapidly in continuous dyeing as compared to batch dyeing. After fabrics are dyed, they are dried in ovens or tenter frames after washing to remove un-reacted chemical or loose dye. A substrate that is processed through atmospheric batch dyeing is not dried at the dye range; it is sent to finishing and may be finished wet or dry.

Various classes of dyes can be used, *e.g.*, disperse for synthetics and direct for cellulosics. Dyes used in the textile industry are mostly synthetic and are derived from coal tar and petroleum-based derivatives. Dyes are sold as powders, granules, pastes, liquid dispersions, and solutions. Not only are dyes applied in different ways, they also impart color using different mechanisms. Dyes can be classified according to chemical constitution or method of application. Dyestuffs can work on principles of electrostatic bonding, covalent bonding, or physical entrapment. For example, acid dyes work through the mechanism of electrostatic bonding, whereas disperse dyes work by physical entrapment. Different dye classes exhibit different affinities depending on the type of fiber, although even dyes within the same classes can show wide affinity variations. They also exhibit different properties such as their fastness under end use conditions (*e.g.*, light, laundering, or dry cleaning).

Various combinations of chemical auxiliaries and process conditions (temperature and pressure) may be used to better fix the dye on the textile or impart specific characteristics. For example, a dye bath may contain the dyestuffs along with appropriate auxiliaries such as wetting agents and also specific chemicals such as acetic acid or sodium hydroxide. The use of higher temperatures and superatmospheric pressures have reduced the need for dye carriers (chemical accelerants) that were required at lower temperatures for the use of disperse dyes on synthetic substrates, such as polyester.

The sources of HAP emissions from dyeing are the HAP constituents that are

contained in dyestuffs and auxiliary chemicals as purchased. The HAP constituents are needed to impart certain desirable characteristics to the dyed substrate (*e.g.*, certain colors can only be attained through the use of HAP-containing dyestuffs or auxiliaries.) No HAP are known to be added by the users. The fraction of HAP contained in dye materials that are emitted to the atmosphere are generally

chemicals they choose to use for a particular function.

The industry uses numerous categories of proprietary chemical speciality products that are used as chemical finishes. Some examples of chemical finish classes include:

- Resin finishes (permanent press) are used on cotton or rayon to minimize the need to iron by keeping the fabric smooth after washing and drying. Most

Proper use and application of N-methylol crosslinkers can minimize formaldehyde releases. Mechanical finishing (compacting) can also eliminate use of the crosslinker. Some crosslinkers that eliminate formaldehyde are available, but much more expensive. The industry has made a lot of efforts to reduce the amount of free formaldehyde in resins, however good substitutes that do not adversely

contained in the coating, printing, dyeing and finishing materials used by this source category include chromium, cobalt, hydrogen chloride, lead, manganese compounds and nickel. There is limited opportunity for these HAP to be emitted into the ambient air because all of the application techniques used involve direct application of the inorganic HAP-containing material to the substrate by

cleaning of process operation equipment. These operations include storage and mixing of regulated materials, regulated material application and flash-off and drying and curing of applied materials by exposure to heat, cleaning operations, waste handling operations, and wastewater treatment operations.

In selecting the affected source, we considered, for each operation, the

maximize emissions reductions in the most cost-effective manner.

Additional information on the coating, printing, slashing, dyeing and finishing operations is included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New or Reconstructed Sources?

The sections below present the

contained in dyestuffs and auxiliary chemicals as purchased. The HAP constituents are needed to impart certain desirable characteristics to the dyed substrate (*e.g.*, certain colors can only be attained through the use of HAP-containing dyestuffs or auxiliaries.) No HAP are known to be added by the users. The fraction of HAP contained in dye materials that are emitted to the atmosphere are generally estimated to range from zero to 10 percent, but have been reported as high as 100 percent, and depend on the characteristics of the specific HAP constituents and the pressures and temperatures that the HAP are exposed to in the dyeing process operations. The fraction of HAP emitted to the atmosphere from dye materials have not been confirmed by test data. Most HAP constituents are believed to be rinsed from the substrate before the substrate is dried, because drying a substrate with unattached dye would adversely affect the quality of the dyed product.

Finishing refers to any process operation performed after bleaching, dyeing, or printing that improves the appearance and/or usefulness of a textile substrate. Finishing encompasses any of several mechanical (*e.g.*, texturizing, napping) and chemical processes (*e.g.*, optical finishes, softeners, urea-formaldehyde resins for crease resistance) performed on fiber, yarn, or fabric to improve its appearance, texture, or performance. The organic HAP emission sources from finishing are specific chemical compounds that may be applied and released during subsequent drying and curing operations. Chemical finishing is also referred to as wet finishing. No chemicals are used in mechanical or dry finishing.

The textile is usually dried prior to chemical finishing using either convective (hot air) or conductive (heated cans) methods. Chemical finishing is commonly done on a continuous finishing range (pad and tenter frame). The textile is passed through an aqueous solution containing the finishing chemical(s) and auxiliaries. After treatment, the textile is typically passed through an oven to drive off water and activate/cure finishing chemicals. It is important to note that there is no set recipe for the chemical finishes or mechanical finishing processes applied to any given substrate. Finishing methods are used according to desired characteristics of the end product (which vary widely and are market driven), and the firms themselves have some amount of flexibility in the specific processes or chemicals they choose to use for a particular function.

The industry uses numerous categories of proprietary chemical speciality products that are used as chemical finishes. Some examples of chemical finish classes include:

- Resin finishes (permanent press) are used on cotton or rayon to minimize the need to iron by keeping the fabric smooth after washing and drying. Most resins contain formaldehyde; resins without formaldehyde are typically much costlier and adversely affect product quality.
- Softeners are used with resins to improve the way the fabric feels by breaking down hardness or stiffness.
- Stain resist finishes are used extensively on carpets and upholstery fabrics. Soil release finishes allow soils and stains to be removed by laundering.
- Water repellants used to prevent fabrics from being wet out (breathable, unlike waterproofing agents) include, but are not limited to, wax, silicone, and fluorine.
- Flame retardant qualities can be achieved by using special fibers or phosphorus-based finishes.
- Antistatic agents decrease or eliminate static electricity in textiles.
- Handbuilders give the fabrics body or stiffness. Other examples of types of chemical finishes include anticreasing agents, deodorants, moth resisting agents, oil repellants, rust preventatives, and shrinkage controllers. Some companies use more specialized finishes like electrical finishes and teflon®. Because there are typically a wide variety of choices of chemical finishes that can be used within each finish class, it is often difficult to tag finishes used in certain classes as always toxic or nontoxic. In certain cases, as in the case of permanent press finishes, most of the resins used contain formaldehyde, although low or non-formaldehyde finishes are being developed to suit certain applications.

There are also several different types of mechanical finishing techniques. For example, heatsetting can be done to improve dimensional stability in synthetic textiles. Shearing involves using rotary blade(s) to trim raised surfaces and reduce pilling. Other examples include embossing, glazing, sueding, and polishing.

Many chemical and mechanical alternatives are available for every finishing operation, but the specific nature and applicability of these is unclear. Some mechanical finishes and design alternatives can avoid chemical processing. For example for softness, enzyme softening of cotton and other mechanical alternatives can be used. Proper use and application of N-methylol crosslinkers can minimize formaldehyde releases. Mechanical finishing (compacting) can also eliminate use of the crosslinker. Some crosslinkers that eliminate formaldehyde are available, but much more expensive. The industry has made a lot of efforts to reduce the amount of free formaldehyde in resins, however good substitutes that do not adversely affect the quality of the product are difficult to find. Formaldehyde contents can vary anywhere from less than one half of one percent for light weight fabrics to 4 percent for heavy fabrics (melamine-formaldehyde resins), and there is a lot of variability in types of resins. Formaldehyde itself does not affect the product, however it does affect the properties of the resin itself (manufacturing). Acrylic handbuilders and stiffeners can replace formaldehyde-based handbuilders.

The sources of organic HAP emissions from finishing are the HAP constituents that are contained in finishing materials as purchased. As is the case with dyeing, the organic HAP constituents are needed to impart certain desirable characteristics to the finished substrate (*e.g.*, a resin finish containing organic HAP might be applied to a cotton/polyester blend for durable press and dimensional stability). No organic HAP are known to be added by the users. In finishing, unlike in dyeing, the fraction of organic HAP contained in finishes that are emitted to the atmosphere are generally assumed to be 100 percent with the exception of HAP that cross-link to the fiber, such as formaldehyde. This is because the finished textile is typically dried and cured at relatively high temperatures over 300 degrees Fahrenheit.

B. How did We Select The Regulated Pollutants?

Organic HAP. Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from printing, coating and dyeing sources include toluene, MEK, methanol, xylenes, MIBK, methylene chloride, n-hexane, trichloroethylene, and n,n-dimethylformamide. These compounds account for approximately 81 percent of this category's nationwide organic HAP emissions. However, many other organic HAP are used, or can be used, in coating, printing, slashing, dyeing, and finishing operations. Therefore, the proposed rule would regulate emissions of all organic HAP.

Inorganic HAP. Based on information reported during development of the proposed NESHAP, inorganic HAP

contained in the coating, printing, dyeing and finishing materials used by this source category include chromium, cobalt, hydrogen chloride, lead, manganese compounds and nickel. There is limited opportunity for these HAP to be emitted into the ambient air because all of the application techniques used involve direct application of the inorganic HAP-containing material to the substrate by techniques such as knife-over-roll, reverse roll, dip, pad and immersion. These techniques would not typically generate air emissions of the inorganic compounds. Once deposited on the substrate, the inorganic compounds remain on the substrate and are not emitted during subsequent drying and curing process operations. Therefore, we conclude that there are limited or no air emissions of inorganic HAP, and the proposed standards would not regulate them.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category or subcategory being regulated. The affected source also serves to establish where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms "construction" and "reconstruction" with reference to the term "affected source" and provide that new source MACT applies when construction or reconstruction of an affected source occurs. The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When an emission standard is based on a collection of emissions sources, or total facility emissions, we select an affected source based on that same collection of emission sources, or the total facility, as well. This approach for defining the affected source broadly is particularly appropriate for industries where a plantwide emission standard provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost effective than if separate standards were established for each emission point within an affected source.

Selection of affected source. The affected source for the proposed standards is broadly defined for each subcategory. It includes all operations associated with coating and printing, with slashing, or with dyeing and finishing and in all cases includes the cleaning of process operation equipment. These operations include storage and mixing of regulated materials, regulated material application and flash-off and drying and curing of applied materials by exposure to heat, cleaning operations, waste handling operations, and wastewater treatment operations.

In selecting the affected source, we considered, for each operation, the extent to which HAP-containing materials are used and the amount of HAP that are emitted. Coating, printing, slashing, dyeing and finishing material application, flash-off, and curing/drying operations by exposure to heat account for the majority of HAP emissions from coating, printing, slashing, dyeing and finishing operations. These operations are included in the affected source.

We were not able to obtain data to adequately quantify HAP emissions from storage, mixing, cleaning, waste handling and wastewater treatment. However, solvents that are added to coatings as thinners, for example, and HAP from other HAP-containing materials such as dyeing or finishing auxiliaries, may be emitted during mixing and storage. The level of emissions depends on the type of mixing and the type of storage container and the work practices used at the affected source. The magnitude of emissions from cleaning depends heavily on the amount and HAP content of cleaning materials used. Emissions from waste handling operations depend on the type of system used to collect and transport organic HAP-containing waste materials in the affected source. For example, solvent-laden rags that are used to clean application equipment could be a source of HAP emissions. The method used to isolate and store such rags affects the level of emissions to ambient air. The HAP emissions from wastewater treatment depend on the quantity and types of HAP discharged to the wastewater treatment operation and the subsequent wastewater treatment processes, e.g., treatment by aeration or by biodegradation. Mixing, storage, cleaning, waste handling, and wastewater treatment operations are included in the affected source.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its total usage of HAP-containing materials, each affected source can select among available coating, printing, slashing, dyeing, finishing, thinning, and cleaning materials, as well as use of emission capture systems and add-on controls for coating and printing operations, to maximize emissions reductions in the most cost-effective manner.

Additional information on the coating, printing, slashing, dyeing and finishing operations is included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New or Reconstructed Sources?

The sections below present the rationale for determining the MACT floor, regulatory alternatives beyond the floor, and selection of the proposed standards for existing and new or reconstructed affected sources in each of the three subcategories identified in the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category.

How did we determine the MACT floor technology? After we identify the specific source categories or subcategories of sources to regulate under section 112 of the CAA, we must develop emission standards for each category and subcategory. Section 112(d)(3) establishes a minimum baseline or "floor" for standards. For new sources in a category or subcategory, the standards cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

Coating and printing subcategory. There are an estimated 60 facilities in the coating and printing subcategory. Quantitative data on HAP use and emission control were obtained from 22 coating sources. The 22 sources in the MACT database are representative of the different sizes of companies and the range of products in the national population of coating sources. Qualitative data providing descriptions of coating and printing processes, HAP control technologies, and process and control technology concerns also were obtained from site visits and industry trade groups, such as the Rubber Manufacturers Association. These data verified that the coating processes and HAP emission sources are similar for all coating types and that similar HAP control technologies are used. They also verified that, although we do not have quantitative data on printing operations, it is reasonable to use the coating data for making decisions for both coating and printing sources due to the

similarities between coating and printing processes and materials used.

The MACT database shows that the most common approach for reducing organic HAP emissions at coating and printing sources is the use of add-on capture and control systems. At the sources reporting the highest level of control, coating application stations are enclosed in rooms, and the ventilation air is directed to the add-on control

the top three sources ranged from 93 to 99 percent. These data clearly indicate that controls on some specific coating operations may be capable of achieving greater than 99 percent HAP destruction based on 100 percent capture and thermal oxidizer destruction efficiency greater than 99 percent. However, to determine the level of emission control that is technically and consistently achievable over the long term with

of 0.12 lb of organic HAP per lb of solids for existing sources and 0.08 lb of organic HAP per lb of solids for new and reconstructed sources. The alternative emission rate limits are being proposed to provide compliance flexibility for affected sources.

Slashing subcategory. As has been previously noted in this preamble, the primary source of HAP emissions from slashing is methanol from PVA size. The

methanol is not an OSHA-defined carcinogen, the floor for slashing is zero organic HAP. Other synthetic organic sizing compounds in use also contain HAP, but the HAP content of these sizing compounds is well below 1 percent.

Because PVA sizing is available with zero organic HAP, and this represents the emission rate achieved by the majority of sources in this subcategory and by the 'best similar source," the

the materials used in the process. Defining the MACT floor in terms of the mass of HAP per mass of purchased materials (weight percent HAP in the purchased materials) correlates directly to HAP emissions, serves to reduce the HAP emissions at the source, and is not dependent on the split of emissions between different unit operations in the process range or between media (air and water).

calculated MACT floor was zero weight percent organic HAP. However, under this approach only three of the 11 dye classes reported in the dyeing survey were represented in the MACT floor.

Since the choice of a dye class depends on many factors, including substrate, color (market driven), end use of the dyed substrate, and quality (*e.g.*, dye fastness), and cannot be made purely on the basis of organic HAP content of the materials, we chose a

similarities between coating and printing processes and materials used.

The MACT database shows that the most common approach for reducing organic HAP emissions at coating and printing sources is the use of add-on capture and control systems. All the sources reporting the highest level of control, coating application stations are enclosed in rooms, and the ventilation air is directed to the add-on control device. This type of capture system can achieve 100 percent capture of emissions when designed to meet the criteria specified in EPA Method 204 of 40 CFR part 51, appendix M. This capture system is called a PTE. Of the 22 sources in the MACT database, six reported the use of PTE and 13 reported that they operated control devices on a total of 29 coating lines. Of the 29 controlled lines, 16 lines use thermal oxidizers, three lines use catalytic oxidizers, nine lines use carbon adsorbers, and one line uses an electrostatic precipitator.

The MACT database contains information concerning the level of HAP emissions from coating application and drying/curing, the capture efficiency for each coating application area or for the entire coating line, and the destruction or removal efficiency of the add-on control device receiving the HAP emissions. We were able to determine the coating line application and drying/curing OCE for each source from this information when available. This value was the most common among all the data available, and it was determined that the coating application and drying/curing OCE was the value that was most correlated with HAP emissions. Therefore, the coating application and drying/curing OCE was used as the basis for the MACT floor calculations. The OCE was calculated as a sourcewide average to incorporate the effects of averaging across coating lines in sources with more than one coating line.

To determine the existing source MACT floor, the sources were ranked based on the average OCE. The statute requires EPA to base the floor for existing sources on the average emission limitation achieved by the best performing 12 percent of existing sources for which the Administrator has data. The best performing 12 percent of the 22 sources in the MACT database constitutes a set of three affected sources. All three of the best-performing sources use capture systems and add-on control devices including both thermal oxidizers and carbon adsorbers. The two sources using thermal oxidizers are achieving 100 percent capture of application station emissions through the use of PTE. The reported OCE for the top three sources ranged from 93 to 99 percent. These data clearly indicate that controls on some specific coating operations may be capable of achieving greater than 99 percent HAP destruction based on 100 percent capture and thermal oxidizer destruction efficiency greater than 99 percent. However, to determine the level of emission control that is technically and consistently achievable over the long term with thermal oxidation, it is important to consider not only the level of control reported, but also the data quality concerns and the control levels that EPA has generally found to be achievable for this type of control technology. This approach ensures that factors that affect control levels, such as variations in source operating conditions and inlet loadings to the add-on control device, are accommodated in the determination of the MACT floor.

A study conducted by EPA indicated that a 98 percent reduction is the minimum control efficiency that new thermal oxidizers can be expected to achieve. Information from vendor guarantees supports the determination of a destruction efficiency of 98 percent for thermal oxidizers. Therefore, we adjusted the destruction efficiencies for the two MACT floor sources using thermal oxidizers to 98 percent. The calculated MACT floor using the adjusted value results in an average 97 percent OCE for the three sources that make up the best-performing 12 percent of sources in the coating and printing subcategory. Therefore, the MACT floor for existing sources is 97 percent OCE.

As indicated previously in this preamble, the MACT floor for new sources must reflect the emission control achieved in practice by the best-controlled similar source. The OCE data cited above show that the best-controlled similar source for which we have data is using a PTE to achieve 100 percent capture and a thermal oxidizer, which as described above, we have determined can consistently achieve 98 percent destruction. Therefore, a 98 percent OCE is the MACT floor for new and reconstructed sources in the coating and printing subcategory.

Data from the coating MACT database were used to calculate alternative emission rate limits for existing and new and reconstructed sources. The alternative organic HAP emission rate was calculated based on applying the MACT floor OCE (97 percent for existing sources and 98 percent for new and reconstructed sources) to a pre-controlled HAP emission rate representative for this industry. This calculation process, described in the docket, resulted in HAP emission rates of 0.12 lb of organic HAP per lb of solids for existing sources and 0.08 lb of organic HAP per lb of solids for new and reconstructed sources. The alternative emission rate limits are being proposed to provide compliance flexibility for affected sources.

Slashing subcategory. As has been previously noted in this preamble, the primary source of HAP emissions from slashing is methanol from PVA size. The methanol emissions can arise either from the size cooking operation, the application process, or both; the distribution is unclear. Also as previously noted, there are no known HAP emission capture or control systems in place on size cooking or slashing processes. Therefore, we judged that the most reasonable approach to establishing a MACT floor would be to identify a pollution prevention option that is the average being achieved by all affected slashing operations.

Based on information submitted to the EPA by the American Textile Manufacturers Institute (ATMI) on September 17, 1999, we determined that the majority, not just the top 12 percent, of the domestic textile market in 1998 was using PVA for slashing with methanol comprising less than 1 percent by weight of the PVA "as purchased." Methanol is a contaminant in the PVA that is a residual material from the manufacture of the PVA. Prior to 1999, the typical PVA sizing compound contained from 4 to 10 percent methanol. The ATMI submittal included letters from suppliers representing approximately 74 percent of the domestic market for PVA. The letters indicated that the "less than 1 percent methanol" is readily available and that the suppliers are changing their production to supply the lower HAP material. The letters provide detailed information from the PVA suppliers and are located in the Confidential Business Information files at EPA. Information collected from the WWW on two domestic suppliers of PVA confirms that PVA with "less than 1 percent methanol" is readily available from suppliers.

On the basis of the information described above, we determined that the MACT floor for the slashing subcategory is the use of low-HAP PVA containing less than 1 percent HAP, by weight, "as purchased." For the purpose of determining the mass fraction of organic HAP in a slashing material, each organic HAP that is not an OSHA-defined carcinogen as specified in 29 CFR 1910.1200(d)(4) and that is measured to be present at less than 1 percent is counted as zero. Therefore, since methanol is not an OSHA-defined carcinogen, the floor for slashing is zero organic HAP. Other synthetic organic sizing compounds in use also contain HAP, but the HAP content of these sizing compounds is well below 1 percent.

Because PVA sizing is available with zero organic HAP, and this represents the emission rate achieved by the majority of sources in this subcategory and by the "best similar source," the MACT floor for existing, new, and reconstructed sources is the pollution prevention option of zero organic HAP in the sizing material "as purchased."

Dyeing and finishing subcategory. Quantitative data on dyeing materials usage were received from 41 sources. Similarly, quantitative data on finishing materials usage were received from 31 sources. All of the information in the dyeing and finishing MACT database is confidential; therefore, no individual facility data are presented in this preamble.

Qualitative information providing descriptions of dyeing and finishing processes, pollution prevention opportunities, and verification that add-on control technologies generally are not used on dyeing and finishing HAP emission sources were also obtained from site visits and industry trade groups such as the ATMI. The qualitative data provide a representation of the dyeing and finishing industry and verify that the MACT database is reflective of the variety of dyeing and finishing processes that are used by the affected sources that will be subject to the proposed rule.

The MACT floors for dyeing and finishing were evaluated on the basis of the HAP content of the purchased materials used in the dyes and finishes applied. There are currently no emission controls used to reduce HAP emissions from dyeing operations. The few emission controls used on finishing operations were installed to reduce opacity and most are not efficient at reducing HAP emissions. Furthermore, no emission factors have been developed for dyeing or finishing operations and the split of emissions, particularly from dyeing, are dependent on site specific conditions such as the unit operations the textile passes through in the process range, the types of equipment used for the process, the dye or finish chemistry, and the process conditions, e.g., the points in the process where the textile is subjected to heat. Finally, the available data include information on the HAP content of the dyeing or finishing materials used annually and HAP emission estimates based on the mass of HAP contained in the materials used in the process. Defining the MACT floor in terms of the mass of HAP per mass of purchased materials (weight percent HAP in the purchased materials) correlates directly to HAP emissions, serves to reduce the HAP emissions at the source, and is not dependent on the split of emissions between different unit operations in the process range or between media (air and water).

For this analysis, we determined that a total of 30 of the 41 sources with dyeing processes in the MACT database are major or synthetic minor HAP emission sources and 12 of the 29 sources with finishing processes in the MACT database are major or synthetic minor HAP emission sources. Eleven sources with dyeing processes could not be used in the MACT floor analysis for the following reasons: one source has been shut down, nine are area sources, and the title V HAP status of one source has not been determined. Similarly, 19 sources with finishing process information could not be used in the MACT floor analysis for the following reasons: one source has been shut down, one reported only coating process information, 15 are area sources of HAP emissions, and the title V HAP status of two sources has not been determined. Information from the sources with indeterminate title V HAP status was examined to determine if any of the sources could potentially be MACT floor sources. None was determined to be a MACT floor source. Separate MACT floor analyses were done for dyeing and finishing, as described in the following paragraphs.

We evaluated two different approaches for determining the MACT floor in weight percent organic HAP in dyeing materials. The dyeing survey collected information on the organic HAP content of dyes and of auxiliary chemicals, which we refer to in this discussion as "dye materials." There are 11 chemical dye classes in which these dye materials are classified. In the first approach to determining the MACT floor, we determined the weight percent organic HAP in dye materials for each source in the MACT floor database, without regard to the dye classes used at each source. To calculate the weight percent organic HAP, the mass of organic HAP in dye materials as purchased was calculated and divided by the total mass of dye materials purchased. The result was multiplied by 100 to calculate the weight percent HAP in dye materials purchased by each source. For the four best-performing sources (12 percent of 30 sources), each of which reported zero organic HAP in dye materials as purchased, the calculated MACT floor was zero weight percent organic HAP. However, under this approach only three of the 11 dye classes reported in the dyeing survey were represented in the MACT floor.

Since the choice of a dye class depends on many factors, including substrate, color (market driven), end use of the dyed substrate, and quality (*e.g.*, dye fastness), and cannot be made purely on the basis of organic HAP content of the materials, we chose a second approach to determining the MACT floor that would represent all of the dye classes reported in the dyeing survey. Under this second approach, a MACT floor analysis was done for each dye class in the database. For each dye class, the weight percent organic HAP in dye materials purchased was calculated for each source using the dye class. The usage of different dye classes varied across the sources. Some dye classes were used by as few as two sources while others were used by as many as 14 sources. Therefore, the number of best-performing sources for each dye class was either one or two (taking 12 percent of the number of sources using the dye class and rounding up to the next whole number).

To determine the MACT floor for dyeing, we calculated a weighted average organic HAP content of dye materials as purchased from the dye class MACT floors, using the total mass of dye materials used by the MACT floor source or sources for each dye class to weight the dye class MACT floor organic HAP contents. The dyeing MACT floor organic HAP content in materials as purchased was determined to be 1.58 weight percent for existing sources.

No technology has been identified that could achieve a lower organic HAP content in materials as purchased. Therefore, the dyeing MACT floor organic HAP content in materials as purchased for new and reconstructed sources was also determined to be 1.58 weight percent.

Since the choice of a finish class depends on the desired characteristics of the finished substrate and cannot be made solely on the basis of the HAP content of the finish, we also chose the approach of calculating the MACT floor that would represent all of the finish classes reported in the finishing survey. As was the case for dyeing, a MACT floor analysis was done for each finish class in the database. The finishing survey collected information on the organic HAP content of each finish class as purchased. In some cases, sources reported different chemistry for finishes within the same finish class for use on different products. Therefore, for each

finish class used by each source, the weight percent organic HAP in finishing materials purchased was calculated by determining the total mass of organic HAP in finishing materials as purchased for the finish class (sum of the mass of organic HAP in different formulations within the finish class), divided by the total mass of finishing materials purchased for the finish class (sum of mass of finishing materials purchased

and consider any reasonable regulatory alternatives that are "beyond-the-floor," taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new or reconstructed and existing sources because of different MACT floors, and separate standards may be established for new and existing sources.

the limited applicability of waterborne, UV-curable, EB-curable, and thermal (hot-melt) coating and waterborne printing materials, we do not believe it is feasible to require the use of these coating and printing materials and rejected them as a beyond-the-floor option for organic HAP.

It is technically feasible to reduce emissions from affected sources by at least 98 percent through the use of

Slashing subcategory. The MACT floors for new or reconstructed sources and existing sources in the slashing subcategory are based on pollution prevention options reflecting the use of non-HAP materials. There is no beyond-the-floor technology that could achieve a lower organic HAP content in materials as purchased than zero percent.

Dyeing and finishing subcategory. The

be achieved in several different ways. Many sources would be able to upgrade existing or install new emission control systems to comply with the MACT floor OCE. Sources using oxidizers to control organic HAP emissions with low inlet loadings may be able to comply with the oxidizer outlet organic HAP concentration limit. Some sources would be able to use low- or non-HAP coating and printing materials, or a

operations, alternative standards based on HAP content are also proposed that will achieve HAP reductions comparable to the overall percent reduction limit. The format of the proposed alternative standards is mass of organic HAP per mass of coating solids. The performance-based nature of the proposed format would allow coating operation owners and operators flexibility in choosing any combination of means (including coating

finish class used by each source, the weight percent organic HAP in finishing materials purchased was calculated by determining the total mass of organic HAP in finishing materials as purchased for the finish class (sum of the mass of organic HAP in different formulations within the finish class), divided by the total mass of finishing materials purchased for the finish class (sum of mass of finishing materials purchased within the finish class) multiplied by 100. The one source (12 percent of the number of sources reporting use of the finish class, which ranged from one to eight) reporting the lowest weight percent organic HAP in finishing materials for each finish class was chosen as the floor affected source. The usage of different finish classes varied across the sources. Some finish classes were used by only one source while others were used by as many as eight sources. Therefore, there was only one best-performing source for each finish class (taking 12 percent of the number of sources using the finish class and rounding up to one).

To determine the MACT floor for finishing, we calculated a weighted average organic HAP content of finishing materials as purchased from the finish class MACT floors, using the total mass of finishing materials used by the MACT floor source for each finish class to weight the finish class MACT floor organic HAP contents. The weighted average organic HAP content in finishing materials as purchased was determined to be 0.03 weight percent for existing sources. As was the case for the slashing subcategory MACT floor, for the purpose of determining the mass fraction of organic HAP in a finishing material, each organic HAP that is not an OSHA-defined carcinogen as specified in 29 CFR 1910.1200(d)(4) and that is measured to be present at less than 1 percent, is counted as zero. Therefore, the finishing MACT floor for existing sources is zero organic HAP in finishing materials as purchased.

No technology has been identified that could achieve a lower organic HAP content in finishing materials as purchased. Therefore, the finishing MACT floor for new and reconstructed sources was also determined to be zero organic HAP in finishing materials as purchased.

How did we consider beyond-the-floor technology? After the MACT floors have been determined for new or reconstructed and existing sources in a source category or subcategory, we must set emission standards that are no less stringent than the floors. Such standards must then be met by all sources within the category or subcategory. We identify and consider any reasonable regulatory alternatives that are "beyond-the-floor," taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new or reconstructed and existing sources because of different MACT floors, and separate standards may be established for new and existing sources.

Coating and printing subcategory. The beyond-the-floor levels of control for coating and printing, to be considered, must be greater than an OCE of 97 percent for existing sources. The floor for existing sources was based on the use of control equipment with a control efficiency of 97 percent and a capture efficiency of 100 percent. In addition, we applied the 97 percent MACT floor OCE to a pre-controlled HAP emission rate representative for this industry to calculate an alternative emission rate limit.

We identified two regulatory alternatives more stringent than the existing source MACT floor level of control for organic HAP and the alternative emission rate limit. These alternatives were conversion to coating and printing materials that have a very low, or no, organic HAP content and use of add-on capture systems and add-on control devices to achieve an OCE of 98 percent.

Lower-organic-HAP liquid coatings fall into two primary categories. The most common category is waterborne coatings, which allow the mixing of certain materials that would be incompatible in organic solvent borne coatings. The second category is higher solids coatings that result from alternate technologies such as ultraviolet (UV)-curable coatings and electron beam (EB)-curable coatings. Some urethane coatings can be applied with a thermal process. These coatings do not employ organic HAP or VOC to keep the pigment and other components of the coating in solution until curing. Therefore, organic HAP emissions are very small.

These lower-organic-HAP coatings are currently in production use for some products in the coating industry, but their applicability is limited in that, for some products, these coatings are not able to achieve the desired final product characteristics. Similarly, low-organic-HAP or waterborne printing materials are used for the majority of printed products, but these printing materials are not able to achieve the desired final product characteristics for certain products, such as designer and fashion apparel, requiring the use of higher organic HAP printing materials. Given the limited applicability of waterborne, UV-curable, EB-curable, and thermal (hot-melt) coating and waterborne printing materials, we do not believe it is feasible to require the use of these coating and printing materials and rejected them as a beyond-the-floor option for organic HAP.

It is technically feasible to reduce emissions from affected sources by at least 98 percent through the use of capture systems and add-on control devices. Based on the model plants analysis used to estimate the impacts of the proposed rule, the incremental HAP reductions that could be achieved by using capture systems and add-on control devices to comply with a "beyond-the-floor" alternative of 98 percent reduction would range from about 0.09 megagram (Mg) (0.1 ton) to about 3.8 Mg (4.2 tons) per affected source. The 98 percent reduction alternative would result in an estimated additional HAP reduction of 32 tons per year. To achieve this small incremental HAP emissions reductions, existing affected sources would have to upgrade or replace most existing add-on control systems. We believe the incremental emissions reductions that would be achieved at this time are not supported by the additional cost that many existing sources would incur to upgrade or replace existing add-on control systems. Therefore, we rejected requiring 98 percent overall control as a beyond-the-floor option for organic HAP at existing sources in the coating and printing subcategory.

The beyond-the-floor levels of control for coating and printing, to be considered, must be greater than an OCE of 98 percent for new or reconstructed affected sources. The new source floor was based on the use of control equipment with a destruction efficiency of 98 percent and a capture efficiency of 100 percent. Vendors could not guarantee greater than 98 percent destruction efficiency for the operating conditions experienced in coating and printing and over the life of the equipment.

The use of low HAP containing coating and printing materials was considered for a beyond-the-floor option for new or reconstructed sources. However, as is explained above for existing sources, it was determined that some products in the coating and printing industry cannot meet certain performance characteristics with low-organic-HAP coating and printing materials.

For these reasons, we determined that requiring beyond-the-floor emission limits for new or reconstructed sources is not practicable for this subcategory.

Slashing subcategory. The MACT floors for new or reconstructed sources and existing sources in the slashing subcategory are based on pollution prevention options reflecting the use of non-HAP materials. There is no beyond-the-floor technology that could achieve a lower organic HAP content in materials as purchased than zero percent.

Dyeing and finishing subcategory. The MACT floors for new or reconstructed sources and existing sources in the dyeing and finishing subcategory represent pollution prevention options reflecting the use of low- and non-HAP materials. No beyond-the-floor technology has been identified that could achieve a lower-organic-HAP content in materials as purchased and would be applicable to all products for dyeing operations; and zero percent HAP is the lowest-organic-HAP content in materials as purchased for finishing operations that can be achieved.

How did we select the proposed standards? For existing sources in each subcategory, we based the proposed standards on the existing source MACT floor. As described earlier, we determined that beyond-the-floor options were not technically or economically feasible for all existing sources. For the same reasons, we based the proposed standards for new or reconstructed sources in each subcategory on the new source MACT floor.

We note here that our assumption, used in the development of the MACT floors, that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends waste organic HAP-containing materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed. We, therefore, concluded that that practice may not be common within the printing, coating, and dyeing industry. We recognize, however, that some large affected sources may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

Coating and printing subcategory. In the coating and printing subcategory, the MACT levels of control for new or reconstructed and existing sources can be achieved in several different ways. Many sources would be able to upgrade existing or install new emission control systems to comply with the MACT floor OCE. Sources using oxidizers to control organic HAP emissions with low inlet loadings may be able to comply with the oxidizer outlet organic HAP concentration limit. Some sources would be able to use low- or non-HAP coating and printing materials, or a combination of low-HAP coating and printing materials and emission control systems to comply with the emission rate limit. If a source is also using thinning or cleaning materials that contain organic HAP, then it may be able to switch to lower-HAP or non-HAP thinning and cleaning materials, which are widely available, to reduce the sourcewide organic HAP emission rate to the MACT level.

Slashing subcategory. In the slashing subcategory, sources can use readily available slashing materials that comply with the emission rate limit.

Dyeing and finishing subcategory. Sources in the dyeing and finishing subcategory can use dyeing and finishing materials that comply with the emission rate limit. If certain products require the use of higher-HAP materials, sources in the dyeing and finishing subcategory also can comply with the affected source organic HAP emission rate limit by averaging across all dyeing and/or finishing materials used.

E. How Did We Select the Format of the Proposed Standards?

Numerical emission standards are required by section 112(h) of the CAA unless we can justify that it is not feasible to prescribe or enforce an emission standard, in which case a design, equipment, work practice, or operational standard can be set.

We selected the format of the proposed standards for the coating and printing subcategory to be an overall percent reduction of emissions, taking into account both capture and control system efficiencies. Data available to us regarding the efficiency of capture and control systems used in this industry indicate that overall efficiency is typically determined by a performance test for capture systems and oxidizers and liquid-liquid material balance for solvent recovery systems. The proposed standards allow for determining OCE through a variety of mechanisms to be consistent with industry practices. We selected this format because it reflects MACT at all affected sources and allows flexibility in the method selected for achieving the percent reduction limit.

To encourage the use of low- and non-HAP materials in coating and printing operations, alternative standards based on HAP content are also proposed that will achieve HAP reductions comparable to the overall percent reduction limit. The format of the proposed alternative standards is mass of organic HAP per mass of coating solids. The performance-based nature of the proposed format would allow coating operation owners and operators flexibility in choosing any combination of means (including coating reformulation, use of lower-HAP or non-HAP materials, solvent elimination, and add-on control devices) to comply with the emission limits that is workable for their particular situations.

We selected the format of the proposed standards for the slashing and the dyeing and finishing subcategories to be mass of organic HAP per mass of materials used in the process. The format promotes a pollution prevention approach to reducing emissions from these processes and limits organic HAP emissions from the various sources of emissions without requiring a site-specific determination of the split of organic HAP between air and water and the distribution of organic HAP emissions between potential emission sources. The overall percent reduction in emissions format that we are proposing for the coating and printing subcategory is not appropriate for the slashing subcategory or the dyeing and finishing subcategory because organic HAP emission controls are not used to reduce emissions from these processes.

In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established in the following situations: when a pollutant cannot be emitted through a conveyance or capture system, or when measurement is not practicable because of technological and economic limitations. Many printing, coating and dyeing sources use some type of work practice measure to reduce HAP emissions from mixing, cleaning, storage, and waste handling areas as part of their standard operating procedures. They use these measures to decrease solvent usage and minimize exposure to workers. However, we do not have data to quantify accurately the emissions reductions achievable by the work practice measures. The level of emissions depends on the type of equipment used and the work practices used at the affected source and would be very site-specific. For example, emissions from solvent-laden rags used to clean coating application stations would depend on the method used to isolate and store such rags. In addition to lacking adequate data and information to quantify an emissions

level for such operations, it is not practicable to measure emissions from these operations since they often occur in large open areas not amenable to testing. Therefore, work practice standards are appropriate for such operations under section 112(h) of the CAA.

Under the options where emissions are reduced by using low- or non-HAP materials, we assume that all the organic

over Method 311 for use in the proposed standards.

Method 24 is the method developed by EPA for determining the mass fractions of volatile matter and solids for coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In other standards, VOC emission control measures have been implemented in coating industries with

have not identified any other methods that provide advantages over these methods.

G. How Did We Select the Continuous Compliance Requirements?

To demonstrate continuous compliance with the proposed monthly emission limits, you would also need records of the quantity of coating, printing, slashing, dyeing, finishing,

determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with and effective enforcement of the proposed standards, modifying them as appropriate for the fabric and other textiles printing, coating, and dyeing industry.

I. How Did We Select the Compliance Date?

technologies. In addition, time would be needed to establish records management systems required for enforcement purposes. Some sources may need the time to purchase and install emission capture and control systems. In such cases, you would need to obtain a permit for the use of add-on controls, which will require time for approval from the permitting authority.

The CAA requires that new or

consolidation throughout the industry, there is expected to be little growth within the printing, coating and dyeing industry during the next 5 years. Only three new coating sources and no new printing, slashing, dyeing, or finishing sources are projected. For more information on how impacts were estimated, see the docket for the proposed rule.

A. What Are the Air Impacts?

level for such operations, it is not practicable to measure emissions from these operations since they often occur in large open areas not amenable to testing. Therefore, work practice standards are appropriate for such operations under section 112(h) of the CAA.

Under the options where emissions are reduced by using low- or non-HAP materials, we assume that all the organic HAP in the materials entering the affected source are volatilized (emitted). Therefore, emissions from operations occurring within the affected source (*e.g.*, mixing operations) are accounted for in the determination of total materials usage at the affected source. However, when you comply by using capture systems and add-on control devices, emissions from mixing, storage, and waste handling operations are often not routed to the add-on control devices and would not be practicable to measure for inclusion in a determination of compliance with the emission limit. Therefore, the proposed rule would require development and implementation of an emission reduction work practice plan to assure that emissions are reduced from such operations.

F. How Did We Select the Testing and Initial Compliance Requirements?

The proposed standards would allow you to choose among several methods to demonstrate compliance with the proposed standards for organic HAP: use of materials which individually contain low or no organic HAP; achieving an overall organic HAP emission rate from all materials that is less than the applicable emission rate limit; or, for coating and printing affected sources, capture systems and add-on control devices.

Materials with low- or no-organic-HAP. You would be required to document the organic HAP content of all materials and show that each is less than the applicable emission limit. You would also have to show that each thinner and each cleaning material used contains no organic HAP. You would use manufacturer's formulation data to document the organic HAP content of slashing materials and would have the option of using manufacturer's formulation data to document the organic HAP content of coating, printing, dyeing, finishing, cleaning and thinning materials.

Method 311 is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards.

Method 24 is the method developed by EPA for determining the mass fractions of volatile matter and solids for coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In other standards, VOC emission control measures have been implemented in coating industries with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

Overall organic HAP emission rate. To demonstrate initial compliance for coating and printing operations using this option, you would calculate the organic HAP emission rate for one or more coating and printing operation in the affected source, based on the mass of organic HAP in all coating, printing, thinning, and cleaning materials and the mass of coating solids used during the compliance period. Similarly, for dyeing and finishing operations, you would calculate the mass of organic HAP in all dyeing, finishing and cleaning materials used during the compliance period. You would be required to demonstrate that the organic HAP emission rate does not exceed the applicable emission limit using the methods discussed previously.

Capture systems and add-on control devices. If you use a capture system and add-on control device, other than a solvent recovery device for which you conduct a liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its OCE or oxidizer outlet organic HAP concentration. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its OCE.

If you are demonstrating compliance with the organic HAP emission rate with add-on controls option, the OCE would be combined with the monthly mass of organic HAP in the coating, printing, thinning, and cleaning materials used to calculate the monthly HAP emission rate in kg HAP/kg of coating solids.

If you conduct a performance test, you would also determine parameter operating limits during the test. The test methods that the proposed standards would require for the performance test are required under many standards of performance for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over these methods.

G. How Did We Select the Continuous Compliance Requirements?

To demonstrate continuous compliance with the proposed monthly emission limits, you would also need records of the quantity of coating, printing, slashing, dyeing, finishing, thinning, and cleaning materials used and the data and calculations supporting your determination of their organic HAP content. If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery system each month.

To ensure continuous compliance with the proposed organic HAP emission limits and operating limits, the proposed standards would require continuous parameter monitoring of capture systems and add-on control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture systems and add-on control devices commonly used in the industry. These monitoring parameters are used in other standards for similar industries. The values of these parameters that correspond to compliance with the proposed emission limits are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the capture system and add-on control device.

You would be required to determine 3-hour average values for most monitored parameters for the affected source. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 2 of the proposed subpart OOOO. We evaluated the General Provisions requirements and included those we

determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with and effective enforcement of the proposed standards, modifying them as appropriate for the fabric and other textiles printing, coating, and dyeing industry.

I. How Did We Select the Compliance Date?

You would be allowed 3 years to comply with the final standards for existing affected sources. This is the maximum period allowed by the CAA. We believe that 3 years for compliance is necessary to allow adequate time to accommodate the variety of compliance methods that existing sources may use. Some sources in this category would need this 3-year maximum amount of time to develop and test reformulated coating, printing, dyeing and finishing materials. We want to encourage the use of these pollution prevention technologies. In addition, time would be needed to establish records management systems required for enforcement purposes. Some sources may need the time to purchase and install emission capture and control systems. In such cases, you would need to obtain a permit for the use of add-on controls, which will require time for approval from the permitting authority.

The CAA requires that new or reconstructed affected sources comply with standards immediately upon startup or the effective date of the final rule, whichever is later.

IV. Summary of Environmental, Energy, and Economic Impacts

The proposed standards will affect an estimated 135 major sources that perform coating, printing, slashing, dyeing and finishing operations. The impacts are presented relative to a baseline reflecting the level of control prior to the standards. Due to consolidation throughout the industry, there is expected to be little growth within the printing, coating and dyeing industry during the next 5 years. Only three new coating sources and no new printing, slashing, dyeing, or finishing sources are projected. For more information on how impacts were estimated, see the docket for the proposed rule.

A. What Are the Air Impacts?

We estimated that compliance with the proposed emission limits would result in reductions of nationwide organic HAP emissions of 4,104 tpy (3,723 Mg/yr). This represents a reduction of 60 percent from the baseline organic HAP emissions of 6,820 tpy (6,187 Mg/yr). Table 2 to this preamble gives a summary of the primary air impacts by subcategory associated with implementation of the rule as proposed.

TABLE 2.—SUMMARY OF PRIMARY AIR IMPACTS BY SUBCATEGORY FOR EXISTING SOURCES

Subcategory	Emissions before NESHAP (tpy)	Emissions after NESHAP (tpy)	Emission reduction (tpy)	Percent reduction
Coating and Printing	5,571	2,389	3,182	57
Dyeing and Finishing	901	153	748	83
Slashing	348	174	174	50
Source Category Nationwide Total	6,820	2,716	4,104	60

B. What Are the Cost Impacts?

We have estimated the costs related to complying with the emission limitations and meeting the monitoring, recordkeeping, and reporting requirements. The costs to comply with the emission limitations include the costs of adding or upgrading emission control systems; the increased cost of compliant, low-formaldehyde permanent press finishes; and the cost of performance testing emission control systems. We have assumed for this analysis that all sources with affected slashing and dyeing operations will comply through the use of reformulated slashing, dyeing, thinning, and cleaning materials, and that these materials can be utilized without the need for capital expenditures. Annual costs for meeting the monitoring, recordkeeping, and reporting requirements of the proposed rule have also been included.

To comply with the proposed standards, coating and printing affected sources that are not currently in compliance would likely use either upgraded existing emission control systems or new emission control systems. We estimated the capital and annual costs of carbon adsorbers, thermal oxidizers, catalytic oxidizers and coating rooms, using model plants based on information in our facility database. We examined the current level of control reported by each source in the database to determine control measures and associated model plant costs required to achieve compliance with the proposed emission limits. Control costs estimated for the database sources were extrapolated to nationwide totals.

The dyeing and finishing compliance options are based on the use of low-HAP materials. Qualitative information concerning pollution prevention measures gathered from stakeholder meetings and site visits indicated that there would be substantial costs incurred in reducing the formaldehyde content of permanent press resins. We used information collected from a research and marketing company and textile chemical suppliers to estimate the incremental cost to produce finished fabric, using a compliant resin versus a formaldehyde resin. The incremental cost was applied to the quantity of fabric estimated to currently be finished with non-compliant formaldehyde resins.

Performance testing costs for coating and printing sources using add-on control systems to comply with the standard include the labor hours required to conduct performance testing and monitoring on each emission capture system and add-on control device used and to develop the associated data elements for recordkeeping and reporting purposes. Recordkeeping and reporting includes all labor hours related to installing recordkeeping and reporting systems, developing SSMP, initial notification, compliance status notification, performance test notification, performance test report, materials usage tracking, training personnel, and monitoring deviations and SSMP reports and recordkeeping.

We estimate total capital costs, in 1997 dollars, for the approximately 135 existing major sources to be $18.8 million and annual costs, in 1997 dollars, to be $14.5 million. These annual costs include approximately $5.6 million associated with add-on control systems for coating and printing operations, $7.5 million in direct costs associated with finishing material usage,

and $1.4 million in monitoring, reporting, and recordkeeping costs.

The only new source costs would be for the three projected new coating sources. New coating sources would not install controls beyond those required for new source review, and these controls would meet the proposed new source limit. They would incur no capital costs, and we estimate their annual costs to be a total of $13,000 to

however, other factors will weigh more heavily in this decision. For example, current economic trends have shown a continuous decline of the textile market as more manufacturing moves abroad. Only three new coating sources are projected to come on-line in the 5 years following promulgation of the rule, and no additional printing, slashing, dyeing or fabric finishing sources are projected. The three new coating sources that are

adsorber. The estimated increase in nationwide total cooling water usage would be 70.3 million gallons per year. The cooling water is assumed not to result in wastewater. There would be a small increase in water usage for steam to regenerate carbon. The steam used to regenerate carbon yields water requiring wastewater treatment. The estimated increase in nationwide total wastewater generation would be 3.8 million gallons

State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles

to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed rule.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

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and $1.4 million in monitoring, reporting, and recordkeeping costs.

The only new source costs would be for the three projected new coating sources. New coating sources would not install controls beyond those required for new source review, and these controls would meet the proposed new source limit. They would incur no capital costs, and we estimate their annual costs to be a total of $13,000 to comply with the proposed rule's monitoring, recordkeeping, and reporting requirements.

C. What Are the Economic Impacts?

The Agency prepared an economic impact analysis to evaluate the impacts the proposed rule would have on the producers and consumers of fabric and other textiles coating, printing, dyeing and finishing products, and society as a whole. Overall, the analysis indicates a minimal change in the prices, production quantities, and international trade of coated, printed, dyed, and finished products.

Social costs take into account changes in behavior by producers and consumers due to the imposition of compliance costs from the proposed rule. Based on the estimated compliance costs associated with the proposed rule and the predicted changes in price and production in the affected industries, the estimated annual social cost of the proposed rule is projected to be $14.5 million (2000 dollars). It is projected that producers of coated, printed, dyed and finished fabrics would absorb $10.4 million, while the remaining $4.1 million would be passed through to consumers.

We estimate that prices for coated, printed, dyed, and finished fabrics and other textiles would increase by less than one-tenth of one percent as a result of the proposed standards. Production quantities of coated, printed, dyed, and finished fabrics and other textiles would decline by the same magnitude, one-tenth of a percent, as well.

The effects of the proposed rule on international trade of coated, printed, dyed, and finished fabric and other textiles were also estimated. Because the predicted changes in price for both coated, printed, dyed, and finished fabric and other textiles are small, trade of these products is not expected to be significantly affected. We expect that imports of both coated and finished fabrics and other textiles would increase by less than one-tenth of a percent.

For new sources, it can be reasonably assumed that the investment decision to enter the coating, printing, dyeing and finishing industry may be slightly altered as a result of the proposed rule; however, other factors will weigh more heavily in this decision. For example, current economic trends have shown a continuous decline of the textile market as more manufacturing moves abroad. Only three new coating sources are projected to come on-line in the 5 years following promulgation of the rule, and no additional printing, slashing, dyeing or fabric finishing sources are projected. The three new coating sources that are projected to come on-line would incure a total of only $13,000 in annual costs to meet the requirements of the proposed standards.

Quantified economic impacts of the proposed rule on printed, dyed, and slashed fabric products were not calculated in the economic impact analysis because the compliance costs for the sources that produce these products are minimal and relate only to monitoring, recordkeeping, and reporting activities. Based on a qualitative analysis of the printing, dyeing, and slashing markets, we have determined that the impact on the prices and quantities of these products would be insignificant. We have also determined that international trade of these products would not be significantly affected. For more information, refer to the "Economic Impact Analysis of the Proposed Textile Coating, Printing, Dyeing and Finishing NESHAP" in the docket for the proposed rule.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from industry survey responses, we found no indication that the use of low-organic HAP content coating, printing, slashing, dyeing, finishing, thinning, and cleaning materials at existing sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in the utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. Also, there would be no significant change in the amount of materials used or the amount of waste produced.

Non-air environmental and energy impacts would result from the installation of new and the upgrade of existing add-on controls by affected sources in the coating and printing subcategory. Affected sources adding carbon adsorber systems would require increased cooling water usage for the condenser used to recover organic HAP from the regenerated carbon, and in certain situations for spray towers to cool the gas entering the carbon adsorber. The estimated increase in nationwide total cooling water usage would be 70.3 million gallons per year. The cooling water is assumed not to result in wastewater. There would be a small increase in water usage for steam to regenerate carbon. The steam used to regenerate carbon yields water requiring wastewater treatment. The estimated increase in nationwide total wastewater generation would be 3.8 million gallons per year.

Affected sources using existing catalytic oxidizers to comply with the proposed emission limits probably would be required to install larger volumes of catalysts and to replace the catalysts more frequently than current replacement cycles to maintain high performance levels, resulting in a small increase in solid waste generation. Similarly, affected sources that currently do not operate emission control systems and that install catalytic oxidizers to comply with the proposed emission limits would increase solid waste generation. Sometimes the spent catalyst is regenerated by the manufacturer for reuse. Activated carbon used in carbon adsorbers is returned to the manufacturer at the end of its useful life and converted to other salable products. Little solid waste impact is expected from this source.

Energy requirements for implementation of the compliance options for coating and printing affected sources would include electricity to collect and treat ventilation air, electricity to light PTE, and natural gas to provide supplemental fuel for stable operation of oxidizers. The estimated increase in nationwide total electricity usage would be almost 2.8 million kilowatt hours per year and the estimated nationwide total natural gas usage would increase by about 195 million standard cubic feet per year.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the proposed rule was determined to not be a significant regulatory action because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Section 6 of Executive Order 13132, EPA may not issue a rule that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed rule. The EPA also may not issue a rule that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed rule.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of Section 6 of the Executive Order do not apply to the proposed rule. Although Section 6 of Executive Order 13132 does not apply to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed rule.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The proposed rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate printing, coating, and dyeing affected sources. Thus, Executive Order 13175 does not apply to the proposed rule.

The EPA specifically solicits additional comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. The proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual

cost of the proposed rule for any year has been estimated to be $14.5 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose

numbers of employees. This leads a substantial fraction of the companies in the fabric and other textiles coating, printing, finishing, dyeing, and slashing source category to be considered small businesses based on SBA's small business size standards.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a

Although this proposed rule will not have a substantial impact on small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We made an effort to identify the small businesses potentially impacted by this rule. For the coating and printing subcategory we contacted the State regulatory agency or the facility for every small business we identified. For the dyeing and finishing

destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each monthly compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The monitoring, recordkeeping, and reporting burden for this collection

SW., Room 925H, West Tower, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 11, 2002, a comment to OMB is best assured of having its full

In addition to the VCS EPA proposes to use in the proposed rule, the search for emissions monitoring procedures identified 16 other VCS. The EPA determined that ten of these 16 standards would not be practical due to lack of equivalency, detail, and/or quality assurance/quality control requirements. Therefore, we do not propose to adopt these VCS in the proposed rule. The reasons for this determination for the ten methods are

cost of the proposed rule for any year has been estimated to be $14.5 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed rule on small entities, "small entity" is defined as: (1) A small business according to Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We applied the definition of a small business as provided by the SBA at 13 CFR 121, and classified by the NAICS. The firms owning sources directly affected by the proposed rule are generally classified by the NAICS codes 313210 (Broadwoven Fabric Mills), 313311 (Broadwoven Fabric Finishing Mills), 313320 (Fabric Coating Mills), and 313312 (Textile and Fabric Finishing (except Broadwoven Fabric) Mills).

The SBA defines small businesses in NAICS codes 313210, 313311, and 313320 as those with fewer than 1000 employees (as described in (1) above). In NAICS code 313312, the SBA defines a small business as one with fewer than 500 employees. In the past several years, production in the textile manufacturing industry has become more capital intensive, thus utilizing smaller numbers of employees. This leads a substantial fraction of the companies in the fabric and other textiles coating, printing, finishing, dyeing, and slashing source category to be considered small businesses based on SBA's small business size standards.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

The EPA identified 40 small companies classified as owning coating operations by NAICS 313320. Of these 40 small coating companies, 22 (55 percent) are projected to face zero compliance costs. Fifteen (37.5 percent) face costs less than 1 percent of their sales, and two (5 percent) have cost-to-sales ratios between 1 and 3 percent. Only one (2.5 percent) of these companies has a cost-to-sales ratio that exceeds 3 percent (3.2 percent). This analysis leads us to conclude that there is not a significant impact on a substantial number of small entities in the coating and printing subcategory.

For the dyeing and finishing subcategory, the engineering analysis determined that at most five finishing businesses representing seven facilities, would face positive compliance costs in order to meet the requirements specified by the proposed NESHAP. Of these five firms, we were able to identify one company as large. This means that at most four small businesses face compliance costs associated with the proposed rule.

The EPA did not possess sufficient data to identify the five finishing facilities expected to face compliance costs, so the small business analysis for finishers consisted of a sensitivity analysis of cost-to-sales ratios using minimum, mean, median, and maximum estimated compliance costs for finishing facilities. Sales data were available for 58 percent of all small business finishers EPA identified including those not subject to the rule. Using median compliance cost estimates for finishing sources, EPA found that only three companies had cost-to-sales ratios between 1 and 3 percent and none had a cost-to-sales ratio exceeding 3 percent. This analysis leads us to conclude that there is not a significant impact on a substantial number of small entities in the dyeing and finishing subcategory.

For the small and large companies that engage in dying and slashing, compliance costs are limited to monitoring, recordkeeping, and reporting costs. Based on a qualitative analysis, EPA concludes that the cost will be minimal.

Although this proposed rule will not have a substantial impact on small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We made an effort to identify the small businesses potentially impacted by this rule. For the coating and printing subcategory we contacted the State regulatory agency or the facility for every small business we identified. For the dyeing and finishing subcategory we determined there were few small businesses potentially impacted by the rule, but were unable to identify these facilities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2071.01) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (subpart A of 40 CFR part 63), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coating, printing, slashing, dyeing, finishing, thinning, and cleaning materials data and calculations used to determine compliance. This information includes the amount (kg) used during each monthly compliance period, mass fraction organic HAP, and, for coating and printing materials only, mass fraction of solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each monthly compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The monitoring, recordkeeping, and reporting burden for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 213 labor hours per affected source at a total annual cost of $1.4 million. This estimate includes, for affected sources with existing or newly-installed add-on control systems, a one-time performance test and report (with repeat tests where needed), one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed, semiannual compliance status reports, and recordkeeping. There are no capital/startup costs associated with the monitoring requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (or by courier, send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA, 401 M Street, SW., Room 925H, West Tower, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 11, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by August 12, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, material specifications, test methods, sampling and analytical procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The proposed rule involves technical standards. The EPA proposes in the proposed rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, and 204A–F. The search and review results have been documented and are placed in the docket for the proposed rule.

The VCS ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," is cited in the proposed rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ANSI/ASME PTC 19.10–1981 is an acceptable alternative to Method 3B.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference in EPA Method 24. Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are incorporated by reference in EPA Method 311.

In addition to the VCS EPA proposes to use in the proposed rule, the search for emissions monitoring procedures identified 16 other VCS. The EPA determined that ten of these 16 standards would not be practical due to lack of equivalency, detail, and/or quality assurance/quality control requirements. Therefore, we do not propose to adopt these VCS in the proposed rule. The reasons for this determination for the ten methods are discussed below.

The standard ISO 10780:1994, "Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in the proposed rule. This standard recommends the use of L-shaped pitots, which historically have not been recommended by EPA because the S type design has large openings which are less likely to plug up with dust.

The standard ASTM D3464–96, "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of the proposed rule primarily because applicability specifications are not clearly defined, e.g., range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The standard EN 12619:1999, "Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method," is an impractical alternative to EPA Method 25A for the purposes of the proposed rule. This standard is impractical because it does not measure solvent process vapors in concentrations greater than 40 ppm carbon. A method whose upper limit is 40 ppm carbon has a measurement range too limited to be useful in measuring source emissions.

Four of the ten VCS are impractical alternatives to EPA test methods for the purposes of the proposed rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM 3796–90 (Reapproved 1996), "Standard Practice for Calibration of Type S Pitot Tubes," for EPA Method 2; ASTM D3271–87, "Standard Practice for Direct Injection of Solvent-Reducible Paints into a Gas

Chromatograph for Solvent Analysis," for EPA Method 311; ASTM E337–84 (Reapproved 1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4; and CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in

applicable VCS. Commenters should also explain why the proposed rule should adopt these VCS in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR

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Tables to Subpart OOOO of Part 63
Table 1 to Subpart OOOO of Part 63—Emission Limits for New or Reconstructed and Existing Affected Sources in the Printing, Coating, and Dyeing of Fabrics and Other Textiles Source Category
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dyes or finishes a fabric or other textiles. Dyeing and finishing operations are defined in § 63.4381. Dyed and finished textiles are used in a wide range of products including, but not limited to, apparel, carpets, high-performance industrial fabrics, luggage, military fabrics, outer wear, sheets, towels, and threads.

(b) You are subject to this subpart if you own or operate a new,

materials to a substrate to prepare it for coating or printing material application, to apply coating or printing materials to a substrate and to dry or cure the coating or printing materials, or to clean coating/printing operation equipment;

(2) All storage containers and mixing vessels in which coating, printing, thinning, or cleaning materials are stored or mixed;

(3) All manual and automated

Chromatograph for Solvent Analysis," for EPA Method 311; ASTM E337–84 (Reapproved 1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4; and CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Method 3A.

Three of the ten VCS are impractical alternatives to EPA test methods for the purposes of the proposed rule because they lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASTM D3154–91, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 2C, 3, 3B, and 4; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," for EPA Method 3A; and ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A.

The following six of the 16 VCS identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 1 (and possibly 2); ISO/DIS 11890–1 Part 1, "Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content—Difference Method," for EPA Method 24; ISO/DIS 11890–2 Part 2, "Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content—Gas Chromatographic Method," for EPA Method 24; ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; and ISO/FDIS 14965, "Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method," for EPA Method 25A and parts of Method 25. While we are not proposing to include these six VCS in today's proposal, EPA will consider the standards when final.

The EPA takes comment on compliance demonstration requirements proposed in this rule and specifically invites the public to identify potentially applicable VCS. Commenters should also explain why the proposed rule should adopt these VCS in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Section 63.8 of subpart A of the General Provisions allows for any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 17, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart OOOO to read as follows:

Subpart OOOO—National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

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Tables to Subpart OOOO of Part 63

Table 1 to Subpart OOOO of Part 63—Emission Limits for New or Reconstructed and Existing Affected Sources in the Printing, Coating, and Dyeing of Fabrics and Other Textiles Source Category
Table 2 to Subpart OOOO of Part 63—Operating Limits if Using Add-On Control Devices and Capture System
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Subpart OOOO—National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

What This Subpart Covers

§ 63.4280 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for fabric and other textiles printing, coating and dyeing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.4281 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is the printing, coating, slashing, dyeing or finishing of fabric and other textiles, and it includes the subcategories listed in paragraphs (a)(1) through (3) of this section.

(1) The coating and printing subcategory includes any facility that coats or prints fabric or other textiles. Coating and printing operations are defined in § 63.4381. Coated and printed substrates are used in products including, but not limited to, architectural structures, apparel, flexible hoses, hot-air balloons, lightweight liners, luggage, military fabric, rainwear, sheets, tents, threads and V-belts. The coating and printing subcategory includes any fabric or other textile coating line that also performs coating on another substrate unless such coating is specifically exempted from this subpart by another NESHAP in this part.

(2) The slashing subcategory includes any facility with slashing operations as defined in § 63.4381. In the slashing process, sizing compounds are applied to warp yarn to bind the fiber together and stiffen the yarn to provide abrasion resistance during weaving.

(3) The dyeing and finishing subcategory includes any facility that dyes or finishes a fabric or other textiles. Dyeing and finishing operations are defined in § 63.4381. Dyed and finished textiles are used in a wide range of products including, but not limited to, apparel, carpets, high-performance industrial fabrics, luggage, military fabrics, outer wear, sheets, towels, and threads.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.4282, that is a major source, is located at a major source, or is part of a major source of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to coating, printing, slashing, dyeing, or finishing operations that meet the criteria of paragraphs (c)(1) through (3) of this section.

(1) Coating, printing, slashing, dyeing or finishing operations conducted at a source that uses only coating, printing, slashing, dyeing, finishing, thinning and cleaning materials that contain no organic HAP as determined according to § 63.4341.

(2) Coating, printing, slashing, dyeing, or finishing that occurs at research or laboratory facilities or that is part of janitorial, building, and facility maintenance operations.

(3) Coating, printing, slashing, dyeing, or finishing used by a facility and not for commerce, unless organic HAP emissions from the coating, printing, slashing, dyeing or finishing operations are as high as the major source HAP emissions specified in paragraph (b) of this section.

63.4282 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source within each of the three subcategories listed in § 63.4281(a).

(b) The affected source for the coating and printing subcategory is the collection of all of the items listed in paragraphs (b)(1) through (5) of this section that are used in coating and printing operations. The regulated materials for the coating and printing subcategory are the coating, printing, thinning and cleaning materials used in the affected source.

(1) All web coating and printing equipment used to apply cleaning materials to a substrate to prepare it for coating or printing material application, to apply coating or printing materials to a substrate and to dry or cure the coating or printing materials, or to clean coating/printing operation equipment;

(2) All storage containers and mixing vessels in which coating, printing, thinning, or cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coating, printing, thinning, or cleaning materials;

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating or printing operation; and

(5) All manual and automated equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals.

(c) The affected source for the slashing subcategory is the collection of all of the items listed in paragraphs (c)(1) through (5) of this section that are used in slashing operations. The regulated materials for the slashing subcategory are the slashing materials used in the affected source.

(1) All slashing equipment used to apply and dry size on warp yarn;

(2) All storage containers and mixing vessels in which slashing materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying slashing materials;

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a slashing operation; and

(5) All manual and automated equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals.

(d) The affected source for the dyeing and finishing subcategory is the collection of all of the items listed in paragraphs (d)(1) through (5) of this section that are used in dyeing and finishing operations. The regulated materials for the dyeing and finishing subcategory are the dyeing, finishing and cleaning materials used in the affected source.

(1) All dyeing and finishing equipment used to apply dyeing or finishing materials, to fix dyeing materials to the substrate, to rinse the textile substrate, to dry or cure the dyeing or finishing materials, or to clean dyeing/finishing operation equipment;

(2) All storage containers and mixing vessels in which dyeing, finishing or cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying dyeing, finishing or cleaning materials;

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating or printing operation; and

(5) All manual and automated equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals.

(e) The affected source for the printing subcategory is the collection of all of the items listed in paragraphs (e)(1) through (5) of this section that are used in printing operations. The regulated materials for the printing subcategory are the printing materials used in the affected source.

(1) All printing equipment used to apply printing materials to the substrate, to dry or cure the printing materials, or to clean printing equipment;

(2) All storage containers and mixing vessels in which printing materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying printing materials;

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a printing operation; and

(5) All manual and automated equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals.

63.4283 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than July 11, 2005.

(b) If you have a new affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by July 11, 2002 or upon startup of your affected source, whichever is later.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date the new affected source begins operation if it is a major source when it starts up.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 3 years after the source becomes a major source.

(d) You must meet the notification requirements in § 63.4310 according to the schedule in § 63.4310 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations

§ 63.4290 What emission limits must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) If you use an add-on control device to meet an emission limit in Table 1 to this subpart, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) for each add-on control device according to the requirements in § 63.4374.

§ 63.4291 What are my options for meeting the emission limits?

You must use one of the options in paragraphs (a) through (d) of this section to meet the emission limits in Table 1 to this subpart.

(a) Use only coating, printing, slashing, dyeing, finishing, thinning and cleaning materials that contain no organic HAP as determined according to § 63.4341.

(b) Use a combination of coating, printing, slashing, dyeing, finishing, thinning and cleaning materials that meet the emission limits in Table 1 to this subpart when averaged across all coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during each compliance period, according to the requirements in § 63.4341.

(c) Use a control device to reduce the organic HAP emissions from the coating, printing, slashing, dyeing, finishing, thinning and cleaning operations and meet the emission limits in Table 1 to this subpart according to the requirements in § 63.4342, § 63.4352, § 63.4362, § 63.4363, § 63.4366, § 63.4367, and § 63.4368.

(d) Use any combination of the options in paragraphs (a), (b), and (c) of this section.

§ 63.4292 What operating limits must I meet?

(a) If you use an add-on control device to meet an emission limit in Table 1 to this subpart, you must meet the operating limits you establish during the performance test according to the procedures in § 63.4367. You must meet the operating limits at all times after you establish them.

(b) If you use an add-on control device other than those listed in Table 2 of this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4293 What work practice standards must I meet?

You must meet each work practice standard in Table 1 to this subpart that applies to you.

General Compliance Requirements

§ 63.4300 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of a capture system or add-on control device used for the affected source.

§ 63.4301 What parts of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4310 What notifications must I submit?

(a) You must submit the notifications in paragraphs (b) through (d) of this section and in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e), 63.8(f)(4), and 63.9(b) through (e) and (g) and (h) that apply to you by the dates specified.

(b) If you have a new affected source, you must submit an Initial Notification not later than 15 days after the date you begin coating, printing, slashing, dyeing, finishing, thinning or cleaning materials at the affected source.

(c) If you have an existing affected source, you must submit an Initial Notification not later than 120 days after July 11, 2002.

(d) If you are required to conduct a performance test, you must submit a Notification of Intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin.

§ 63.4320 What reports must I submit?

(a) You must submit each report in Table 1 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 1 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.4283 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your affected source in § 63.4283.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your affected source in § 63.4283.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to part 70 or part 71 of this chapter, and if the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

§ 63.4330 What records must I keep?

(a) You must keep the records specified in paragraphs (b) through (d) of this section.

(b) You must keep records of the data and calculations you use to determine if you are in compliance with the emission limitations in this subpart.

(c) You must keep records of the data and calculations you use to determine if you are in compliance with the work practice standards in this subpart.

(d) You must keep records of the data and calculations you use to determine if you are in compliance with the operation and maintenance requirements in this subpart.

§ 63.4331 In what form and for how long must I keep my records?

(a) You must keep your records in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) You must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4340 By what date must I conduct the initial compliance demonstration?

You must conduct the initial compliance demonstration that shows you meet the emission limitations for the compliant material option in Table 1 to this subpart during the initial compliance period described in paragraphs (a) through (c) of this section.

(a) If you have an existing affected source, the initial compliance period begins on July 11, 2005 and ends on December 31, 2005.

(b) If you have a new affected source that starts up before July 11, 2002, the initial compliance period begins on July 11, 2002 and ends on December 31, 2002.

(c) If you have a new affected source that starts up after July 11, 2002, the initial compliance period begins on the date of initial startup and ends on December 31 of the year of initial startup.

§ 63.4341 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you.

(b) You must conduct a separate initial compliance demonstration for each compliance option you use to meet the emission limitations in Table 1 to this subpart.

(c) You must identify all coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(d) You must determine the mass fraction of organic HAP for each material used during the initial compliance period using one of the options in paragraphs (d)(1) through (3) of this section.

(1) Determine the mass fraction of organic HAP for each material used during the initial compliance period using Method 311 (appendix A to part 63 of this chapter), Method 24 (appendix A to part 60 of this chapter), or an alternative method approved by the Administrator.

(2) Use the default organic HAP mass fraction for solvents and solvent blends listed in Table 4 to this subpart.

(3) Use the default organic HAP mass fraction for petroleum solvent groups listed in Table 5 to this subpart.

(e) You must determine the mass of each material used during the initial compliance period.

(f) You must determine the volume of each material used during the initial compliance period.

(g) You must determine the density of each material used during the initial compliance period.

(h) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(i) You must determine the total volume of coating solids used during the initial compliance period.

(j) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(k) You must determine the total volume of coating solids used during the initial compliance period.

(l) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(m) You must determine the total volume of coating solids used during the initial compliance period.

(n) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(o) You must determine the total volume of coating solids used during the initial compliance period.

(p) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(q) You must determine the total volume of coating solids used during the initial compliance period.

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(t) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(u) You must determine the total volume of coating solids used during the initial compliance period.

(v) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

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(x) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

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(dd) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

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(ddd) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

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(qqqqqq) You must determine the total volume of coating solids used during the initial compliance period.

(rrrrrr) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(ssssss) You must determine the total volume of coating solids used during the initial compliance period.

(tttttt) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(uuuuuu) You must determine the total volume of coating solids used during the initial compliance period.

(vvvvvv) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

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(xxxxxx) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

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(zzzzzz) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(aaaaaaa) You must determine the total volume of coating solids used during the initial compliance period.

(bbbbbbb) You must determine the mass of organic HAP in the coating, printing, slashing, dyeing, finishing, thinning and cleaning materials used during the initial compliance period.

(ccccccc) You must determine the total volume of coating solids used during the initial compliance period

(3) All manual and automated equipment and containers used for conveying dyeing, finishing or cleaning materials;

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating or printing operation; and

(5) All manual and automated equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals.

(e) An affected source is a new source if it meets the criteria in paragraph (e)(1) of this section and the criteria in either paragraph (e)(2) or (3) of this section.

(1) You commenced the construction of the source after July 11, 2002, by installing new coating, printing, slashing, dyeing, or finishing equipment.

(2) The new coating, printing, slashing, dyeing or finishing equipment is used at a source where no coating, printing, slashing, dyeing or finishing was previously performed.

(3) The new coating, printing, slashing, dyeing and finishing equipment is used in a subcategory in which no equipment was previously used.

(f) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(g) An affected source is existing if it is not new or reconstructed.

§ 63.4283 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.4340, 63.4350, 63.4360, and 63.4365.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is the [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(d) You must meet the notification requirements in § 63.4310 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.4290 What emission limits must I meet?

You must meet the emission limit for the subcategory or subcategories present in your facility. The three subcategories are: coating and printing, slashing, and dyeing and finishing. Table 1 to this subpart presents the emission limits for a new or reconstructed affected source and for an existing affected source in each subcategory.

§ 63.4291 What are my options for meeting the emission limits?

You must include all regulated materials (as defined in § 63.4381) used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in Table 1 to this subpart. To make this determination, you must use at least one of the compliance options for the subcategory listed in paragraphs (a) through (c) of this section.

(a) *Coating and printing.* You may apply any one of the compliance options in paragraphs (a)(1) through (5) of this section to an individual coating/printing operation or to multiple coating/printing operations in the affected source as a group or to the entire affected source in the coating and printing subcategory. You may use different compliance options for different coating/printing operations or at different times on the same coating/printing operation. However, you may not use different compliance options at the same time on the same coating/printing operation. If you switch between compliance options for any coating/printing operation or group of operations, you must document this switch as required by § 63.4330(c), and you must report it in the next semiannual compliance report required in § 63.4320.

(1) *Compliant material option.* Demonstrate that the organic HAP content of each coating and printing material used in the coating/printing operation(s) is less than or equal to the applicable emission limit in Table 1 to this subpart, and that each thinning and cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.4340, 63.4341, and 63.4342 to demonstrate compliance with the applicable emission limit using this option.

(2) *Emission rate without add-on controls option.* Demonstrate that, based on the regulated materials used in the coating/printing operation(s), the organic HAP emission rate for the coating/printing operation(s) is less than or equal to the applicable emission limit in Table 1 to this subpart, calculated as a monthly emission rate. You must meet all the requirements of §§ 63.4350, 63.4351, and 63.4352 to demonstrate compliance with the applicable emission limit using this option.

(3) *Emission rate with add-on controls option.* Demonstrate that, based on the regulated materials used in the coating/printing operation(s) and the organic HAP emissions reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating/printing operation(s) is less than or equal to the applicable emission limit in Table 1 to this subpart, calculated as a monthly emission rate. If you use this compliance option, you must also demonstrate that all capture systems and control devices for the coating/printing operation(s) meet the operating limits required in § 63.4292, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), and that you meet the work practice standards required in § 63.4293. You must meet all the requirements of §§ 63.4360 through 63.4363 and §§ 63.4370 through 63.4374 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

(4) *Organic HAP overall control efficiency option.* Demonstrate that, based on the organic HAP emission capture and add-on control efficiencies achieved, the organic HAP overall control efficiency is greater than or equal to the applicable organic HAP overall control efficiency limit in Table 1 to this subpart. If you use this compliance option, you must also demonstrate that all capture systems and control devices for the coating/printing operation(s) meet the operating limits required in § 63.4292, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), and that you meet the work practice standards required in § 63.4293. You must meet all the requirements of §§ 63.4365 through 63.4368 and §§ 63.4370 through 63.4374 to demonstrate compliance with the applicable emission limits, operating limits, and work practice standards using this option.

(5) *Oxidizer outlet organic HAP concentration limit.*

If you use an oxidizer to control organic HAP emissions, demonstrate that the oxidizer is operated such that the outlet organic HAP concentration is no greater than 20 parts per million by volume (ppmv) on a dry basis, and the efficiency of the capture system is 100 percent. If you use this compliance option, you must also demonstrate that all capture systems and oxidizers for the coating/printing operation(s) meet the operating limits required in § 63.4292, and that you meet the work practice standards required in § 63.4293. You must meet all the requirements of §§ 63.4365 through 63.4368 and §§ 63.4370 through 63.4374 to demonstrate compliance with the applicable emission limits, operating limits, and work practice standards using this option.

(b) *Slashing.* You must use the compliant material option to demonstrate that the mass fraction of organic HAP in each slashing material used in the slashing operation(s) is less than or equal to the applicable emission limit in Table 1 to this subpart. You must meet all the requirements of §§ 63.4340, 63.4341, and 63.4342 to demonstrate compliance with the applicable emission limit.

(c) *Dyeing and finishing.* You may apply either of the compliance options in paragraphs (c)(1) and (2) of this section to an individual dyeing/finishing operation or to multiple dyeing/finishing operations in the affected source as a group or to the entire affected source in the dyeing and finishing subcategory. You may use different compliance options for different dyeing/finishing operations or at different times on the same dyeing/finishing operation. However, you may not use different compliance options at the same time on the same dyeing/finishing operation. If you switch between compliance options for any dyeing/finishing operation or group of operations, you must document this switch as required by § 63.4330(c), and you must report it in the next semiannual compliance report required in § 63.4320.

(1) *Compliant material option.* Demonstrate that the mass fraction of organic HAP in each dyeing, finishing, and cleaning material used in the dyeing/finishing operation(s) is less than or equal to the applicable emission limit in Table 1 to this subpart. You must meet all the requirements of §§ 63.4340, 63.4341, and 63.4342 to demonstrate compliance with the applicable emission limit using this option.

(2) *Emission rate without add-on controls option.* Demonstrate that, based on the dyeing, finishing, and cleaning materials used in the dyeing/finishing operation(s), the organic HAP emission rate for the dyeing operation(s), the organic HAP emission rate for the finishing operation(s) or the combined organic HAP emission rate for dyeing and finishing is less than or equal to the applicable emission limit(s) in Table 1 to this subpart, calculated as a monthly emission rate. You must meet all the requirements of §§ 63.4350, 63.4351, and 63.4352 to demonstrate compliance with the applicable emission limit(s) using this option.

§ 63.4292 What operating limits must I meet?

(a) For any coating/printing operation, slashing operation, or dyeing/finishing operation on which you use the compliant material option or coating/printing operation or dyeing/finishing operation on which you use the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating/printing operation on which you use the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4361(d)(5), you must meet the operating limits specified in Table 2 of this subpart. These operating limits apply to the emission capture and control systems on the coating/printing operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the procedures in § 63.4367. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 2 of this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4293 What work practice standards must I meet?

(a) For any slashing operation or dyeing/finishing operation, you are not required to meet any work practice standards. For any coating/printing operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use either the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option for a coating/printing operation, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coating, printing, thinning, and cleaning materials used in, and waste materials generated by, the coating/printing operations for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coating, printing, thinning, cleaning, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coating, printing, thinning or cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coating, printing, thinning, cleaning, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coating, printing, thinning and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, EPA, may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.4300 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Each affected source must be in compliance with the applicable emission limitations in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(2) During the period between the compliance date specified for your affected source in § 63.4283 and the date when you establish operating limits and demonstrate compliance with them, you must maintain a log detailing the operation and maintenance of the coating/printing operation(s) during the period.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or add-on control device.

Notifications, Reports, and Records

§ 63.4310 What notifications must I submit?

(a) You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial Notification.* You must submit the Initial Notification required by § 63.9(b) no later than 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) *Notification of Compliance Status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 days after the end of the initial compliance period described in § 63.4283 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (5) of this section.

(1) The results of the emission capture system and add-on control device performance tests, solvent recovery system liquid-liquid material balances, oxidizer operating limits, and work practice standards.

(2) A description of the coating/printing operation(s) for which you used the compliant material option or the emission rate without add-on controls option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

(3) A description of the coating/printing operation(s) for which you used the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

(4) A description of the dyeing/finishing operation(s) for which you used the compliant material option or the emission rate without add-on controls option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

(5) A description of the dyeing/finishing operation(s) for which you used the emission rate with add-on controls option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

§ 63.4311 What compliance certifications must I submit?

(a) You must submit the compliance certifications in § 63.9(h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial Compliance Certification.* You must submit the Initial Compliance Certification required by § 63.9(h) no later than 30 days after the end of the initial compliance period described in § 63.4283 that applies to your affected source. The Initial Compliance Certification must contain the information specified in paragraphs (b)(1) through (5) of this section.

(1) The results of the emission capture system and add-on control device performance tests, solvent recovery system liquid-liquid material balances, oxidizer operating limits, and work practice standards.

(2) A description of the coating/printing operation(s) for which you used the compliant material option or the emission rate without add-on controls option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

(3) A description of the coating/printing operation(s) for which you used the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

(4) A description of the dyeing/finishing operation(s) for which you used the compliant material option or the emission rate without add-on controls option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

(5) A description of the dyeing/finishing operation(s) for which you used the emission rate with add-on controls option, and the records you will keep to demonstrate ongoing compliance with the applicable emission limits.

(c) *Compliance certifications.* You must submit compliance certifications semiannually according to the requirements in § 63.4320. The compliance certifications must contain the information specified in paragraphs (c)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance certification must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance certification must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

HAP emission rate, using Equations 1, 2, and 3, respectively, of § 63.4351.

(iii) For the emission rate without add-on controls option as specified in § 63.4291(b)(2) for dyeing/finishing operations, provide the calculation of the total mass of organic HAP emissions; the calculation of the total mass of dyeing, finishing, and cleaning materials used; and the calculation of the organic HAP emission rate, using Equations 1, 2, and 3, respectively, of § 63.4351.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4293 and the startup, shutdown and malfunction plan required by § 63.4300.

§ 63.4320 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the compliance date and ends on June 30 or December 31, whichever occurs first following the compliance date. The first semiannual compliance report must be postmarked no later than 60 days after the end of the first semiannual reporting period. Each subsequent semiannual compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31. Each subsequent semiannual compliance report must be postmarked no later than 60 days after the end of the semiannual reporting period.

(1) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(2) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(3) If there were periods during which you did not monitor and collect data as required by this subpart, the compliance report must include a statement that there were periods during which you did not monitor and collect data as required by this subpart, and the reasons for not monitoring and collecting data.

(4) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(b) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (b)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(c) *Compliance report.* You must submit compliance reports semiannually according to the requirements in § 63.4320. The compliance reports must contain the information specified in paragraphs (c)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(d) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (d)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(e) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (e)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(f) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (f)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(g) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (g)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(h) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (h)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(i) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (i)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(j) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (j)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(k) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (k)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(l) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (l)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(m) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (m)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(n) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (n)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(o) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (o)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(p) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (p)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(q) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (q)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(r) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (r)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(s) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (s)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(t) *Deviations.* You must report each deviation from any emission limitation in this subpart that occurs at your affected source. The report must contain the information in paragraphs (t)(1) through (4) of this section.

(1) The company name and address of the affected source.

(2) A statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) The date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the actions taken.

(5) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(6) If you had a deviation from any emission limitation in this subpart during the reporting period, the compliance report must include a statement that there were deviations from the emission limitations during the reporting period, and the reasons for any deviations.

(7) If you had a deviation from any emission limitation in this subp

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General Compliance Requirements

§ 63.4300 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Each affected source must be in compliance with the applicable emission limit in Table 1 to this subpart at all times.

(2) Any coating/printing operation for which you use either the emission rate with add-on controls option, as specified in § 63.4291(a)(3), the organic HAP overall control efficiency option, as specified in § 63.4291(a)(4), or the oxidizer outlet organic HAP concentration option, as specified in § 63.4291(a)(5), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating/printing operations must be in compliance with the applicable emission limit in Table 1 to this subpart at all times.

(ii) Each controlled coating/printing operation must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4292 at all times except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4361(h).

(iii) Each controlled coating/printing operation must be in compliance with the work practice standards in § 63.4293 at all times.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating/printing operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move the substrate among enclosures.

§ 63.4301 What parts of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4310 What notifications must I submit?

(a) You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial Notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) *Notification of Compliance Status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.4340, § 63.4350, or § 63.4360 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.4340, § 63.4350, § 63.4360, or § 63.4365 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.4291 that you used during the initial compliance period on each coating/printing operation in each coating/printing affected source, on each slashing operation in each slashing affected source, and on each dyeing/finishing operation in each dyeing/finishing affected source.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description of and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in Table 1 to this subpart, include all the calculations you used to determine the kilogram (kg) organic HAP emitted per kg of solids used in coating and printing material or the weight percent organic HAP compounds in slashing, dyeing or finishing material to demonstrate your failure to meet the applicable emission limit. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iii) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example regulated material or a summary of the results of testing conducted according to § 63.4341(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP and mass fraction of solids for one coating or printing formulation including thinning materials, mass fraction of organic HAP for one cleaning material and mass fraction of organic HAP for all of the regulated materials "as purchased" used in one slashing operation or dyeing/ finishing operation.

(ii) Mass of coating or printing formulation used in coating/printing operation or of regulated materials used in slashing or dyeing/finishing operation during the compliance period.

(iii) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.4351.

(8) The calculation of kg organic HAP per kg of coating and printing solids used and of kg organic HAP per kg of dyeing and finishing material "as purchased" for the compliance option(s) you use, as specified in paragraphs (c)(8)(i) through (iv) of this section.

(i) For the compliant material option as specified in § 63.4291(a)(1) for coating/printing operations and § 63.4291(c)(1) for dyeing/finishing operations, provide an example calculation of the organic HAP content for one coating and one printing material, or for one dyeing and one finishing material, as appropriate, using Equation 1 of § 63.4341.

(ii) For the emission rate without add-on controls options as specified in § 63.4291(a)(2) for coating/printing operations, provide the calculation of the total mass of organic HAP emissions; the calculation of the total mass of coating and printing solids used; and the calculation of the organic HAP emission rate, using Equations 1, 2, and 3, respectively, of § 63.4351.

(iii) For the emission rate without add-on controls option as specified in § 63.4291(b)(2) for dyeing/finishing operations, provide the calculation of the total mass of organic HAP emissions; the calculation of the total mass of dyeing, finishing, and cleaning materials used; and the calculation of the organic HAP emission rate, using Equations 5, 6, and 7, respectively, of § 63.4351.

(iv) For the emission rate with add-on controls option as specified in § 63.4291(a)(3), provide the calculation of the total mass of organic HAP emissions before add-on controls using Equation 1 of § 63.4351, and the calculation of the organic HAP emission rate using Equation 5 of § 63.4361.

(9) For the emission rate with add-on controls option as specified in § 63.4291(a)(3), the organic HAP overall control efficiency option as specified in § 63.4291(a)(4), and the oxidizer outlet organic HAP concentration option as specified in § 63.4291(a)(5), for each controlled coating/printing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section.

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. If you are demonstrating compliance with the oxidizer outlet organic HAP concentration option, the emission capture system must be a PTE. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4293 and the startup, shutdown and malfunction plan required by § 63.4300.

§ 63.4320 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements of this section may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.4340, § 63.4350, § 63.4360, or § 63.4365 that applies to your affected source and ends on June 30 or December 31, whichever date is the first date at least 6 months after the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(3) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31.

(iv) Identification of the compliance option or options specified in § 63.4291 that you used on each coating/printing operation, slashing operation, and dyeing/finishing operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls, the emission rate with add-on controls, or the organic HAP overall control efficiency compliance option (§ 63.4291(a)(2), (3), or (4)), the calculation results for each month during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in Table 1 to this subpart, § 63.4292, and § 63.4293 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you use the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option and there were no periods during which the

continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: compliant material option.* If you use the compliant material option, and there was a deviation from the applicable HAP

according to § 63.4351(a)(3)(iii) or (b)(3)(ii). You do not need to submit background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: add-on controls options.* If you use one of the add-on

(vii) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(viii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(ix) The date and time period of each deviation from an operating limit in Table 2 to this subpart, date and time period of any bypass of the add-on

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shut down, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this

(1) A record of the coating/printing operations on which you used each compliance option and the time periods (beginning and ending dates) you used each option. For each month, a record of all required calculations for the compliance option(s) you used, as specified in paragraphs (c)(1)(i) through (iv) of this section.

(i) For the compliant material option, a record of the calculation of the organic

(i) For the compliant material option, a record of the calculation of the mass fraction of organic HAP for each dyeing, finishing, and cleaning material, according to § 63.4341(h)(1).

(ii) For the emission rate without add-on controls option, the calculation for the total mass of organic HAP emissions for the dyeing, finishing and cleaning materials used each month using Equations 4 and 4A of § 63.4351 and, if applicable, the calculation used to

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continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: compliant material option.* If you use the compliant material option, and there was a deviation from the applicable HAP content requirements in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating, printing, slashing, dyeing or finishing material used that deviated from the emission limit, each cleaning material used in dyeing/finishing operations that deviated from the emission limit, and each thinning or cleaning material used in coating/printing operations that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content using Equation 1 of § 63.4341 for each regulated material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by material suppliers or manufacturers, or test reports).

(iii) The determination of mass fraction of organic HAP for each regulated material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by material suppliers or manufacturers, or test reports).

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you use the emission rate without add-on controls option and there was a deviation from the applicable emission limit in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the organic HAP emission rate exceeded the applicable 1-month emission limit in Table 1 to this subpart.

(ii) The calculations used to determine the 1-month organic HAP emission rate for the compliance period in which the deviation occurred. You must submit the calculations for Equations 1, 1A and 1B, 2, 3, and 4 in § 63.4351, and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4351(a)(3)(iii) or (b)(3)(ii). You do not need to submit background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: add-on controls options.* If you use one of the add-on controls options in § 63.4291(a) and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the organic HAP emission rate exceeded the applicable 1-month emission limit in Table 1 to this subpart.

(ii) If you use the emission rate option, the calculations used to determine the 1-month organic HAP emission rate for each compliance period in which a deviation occurred. You must submit the calculations that apply to you, including Equations 1, 1A and 1B, 2, 3, and 4 of § 63.4351; Equations 1, 1A and 1B, 3, and 5 of § 63.4361; and Equation 4 of § 63.4361. You do not need to submit the background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) If you use the organic HAP overall control efficiency option, the calculations used to determine the 1-month organic HAP overall control efficiency for each compliance period in which a deviation occurred. You must submit the calculation of organic HAP overall control efficiency using Equation 3A of § 63.4361 for a solvent recovery system for which you conduct a liquid-liquid material balance according to § 63.4361(d)(5), or Equation 6 of § 63.4361 for an emission capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance according to § 63.4361(d)(5). You do not need to submit the background data supporting these calculations (e.g., test reports).

(iv) The date and time that each malfunction started and stopped.

(v) A brief description of the CPMS.

(vi) The date of the latest CPMS certification or audit.

(vii) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(viii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(ix) The date and time period of each deviation from an operating limit in Table 2 to this subpart, date and time period of any bypass of the add-on control device, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(x) A summary of the total duration of each deviation from an operating limit in Table 2 to this subpart and each bypass of the add-on control device during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(xi) A breakdown of the total duration of the deviations from the operating limits in Table 2 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xii) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xiii) A description of any changes in the CPMS, coating/printing operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiv) For each deviation from the work practice standards, a description of the deviation, the date and time period duration of the deviation, and the actions you took to correct the deviation.

(xv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use one of the add-on control options in § 63.4291(a), you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you use one of the add-on control options in § 63.4291(a) and you have a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shut down, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section as required by paragraph (a) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.4330 What records must I keep?

You must collect and keep a record of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data or test data used to determine the mass fraction of organic HAP for coating, printing, slashing, dyeing, finishing, thinning, and cleaning materials; and the mass fraction of solids for coating and printing materials. If you conducted testing to determine mass fraction of organic HAP, of coating, printing, slashing, dyeing and finishing materials or the mass fraction of solids of coating or printing materials, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraph (c)(1) for coating/printing operations and the records specified in paragraph (c)(2) for dyeing/finishing operations.

(1) A record of the coating/printing operations on which you used each compliance option and the time periods (beginning and ending dates) you used each option. For each month, a record of all required calculations for the compliance option(s) you used, as specified in paragraphs (c)(1)(i) through (iv) of this section.

(i) For the compliant material option, a record of the calculation of the organic HAP content for each coating and printing material, using Equation 1 of § 63.4341.

(ii) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coating, printing, thinning and cleaning materials used each month using Equations 1, 1A, and 1B of § 63.4351 and, if applicable, the calculation used to determine the mass of organic HAP in waste materials according to § 63.4351(a)(3)(iii); the calculation of the total mass of the solids contained in all coating and printing materials used each month using Equation 2 of § 63.4351; and the calculation of each 1-month organic HAP emission rate using Equation 3 of § 63.4351.

(iii) For the emission rate with add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coating, printing, thinning and cleaning materials used each month using Equations 1, 1A, and 1B of § 63.4351 and, if applicable, the calculation used to determine the mass of organic HAP in waste materials according to § 63.4351(a)(3)(iii); the calculation of the total mass of the solids contained in all coating and printing materials used each month using Equation 2 of § 63.4351; the calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices using Equations 1 and 1A and 1B of § 63.4361 and Equations 3 and 4 of § 63.4361, as applicable; and the calculation of each month's organic HAP emission rate using Equation 5 of § 63.4361.

(iv) For the organic HAP overall control efficiency option or the oxidizer outlet organic HAP concentration option, the records specified in paragraph (j) of this section.

(2) A record of the dyeing/finishing operations on which you used each compliance option and the time periods (beginning and ending dates) you used each option. For each month, a record of all required calculations for the compliance option(s) you used, as specified in paragraphs (c)(2)(i) and (ii) of this section.

(i) For the compliant material option, a record of the calculation of the mass fraction of organic HAP for each dyeing, finishing, and cleaning material, according to § 63.4341(h)(1).

(ii) For the emission rate without add-on controls option, the calculation for the total mass of organic HAP emissions for the dyeing, finishing and cleaning materials used each month using Equations 4 and 4A of § 63.4351 and, if applicable, the calculation used to determine the mass of organic HAP in waste materials according to § 63.4351(a)(3)(iii); the calculation of the total mass of dyeing, finishing, and cleaning materials used each month using Equation 5 of § 63.4351; and the calculation of each 1-month organic HAP emission rate using Equation 6 of § 63.4351.

(d) A record of the name and mass of each coating, printing, dyeing, finishing, thinning and cleaning material used during each compliance period. If you are using the compliant material option for all regulated materials at the source, you may maintain purchase records for each material used rather than a record of the mass used.

(e) A record of the mass fraction of organic HAP for each coating, printing, dyeing, finishing, thinning and cleaning material used during each compliance period.

(f) A record of the mass fraction of coating and printing solids for each coating and printing material used during each month.

(g) If you use an allowance in Equation 1 or 4 of § 63.4351 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.4351(a)(3)(iii) or (b)(3)(ii), you must keep records of the information specified in paragraphs (g)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you used an allowance in Equation 1 or 4 of § 63.4345, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility, and the date of each shipment.

(2) Identification of the coating/printing or dyeing/finishing operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 or 4, respectively, of § 63.4351.

(3) The methodology used in accordance with § 63.4351(a)(3)(iii) or (b)(3)(ii) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of

organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(h) [Reserved]

(i) You must keep records of the date, time, and duration of each deviation.

(j) *Records for the oxidizer outlet organic HAP concentration option.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during the compliance period, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during the compliance period, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during the compliance period, including a copy of the test report.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during the compliance period, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during the compliance period, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during the compliance period, including a copy of the test report.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4340 By what date must I conduct the

material option, the slashing operation or group of slashing operations must use no slashing material with a mass fraction of organic HAP that exceeds the applicable emission limit in Table 1 to this subpart.

(c) You may use the compliant material option for any individual dyeing/finishing operation, for any group of dyeing/finishing operations in the affected source, or for all the dyeing/finishing operations in the affected

(A) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you don't have to count it. Express the mass fraction of each organic HAP you count

you use the tables, you must use the values in Table 4 for all solvent blends that match Table 4 entries, and you may only use Table 5 if the solvent blends in the materials you use do not match any of the solvent blends in Table 4 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 4 or 5 to this subpart, the Method 311 results will take precedence

organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(h) [Reserved]

(i) You must keep records of the date, time, and duration of each deviation.

(j) If you use the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option, you must keep the records specified in paragraphs (i)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 2 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.4371(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.4370 and 63.4371(b) through (e) including the records specified in paragraphs (j)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-fugitive protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating/printing operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.4371(e), if applicable.

(6) The records specified in paragraphs (j)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination or oxidizer outlet organic HAP concentration determination as specified in § 63.4372.

(i) Records of each add-on control device performance test conducted according to §§ 63.4370 and 63.4372.

(ii) Records of the coating/printing operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.4373 and to document compliance with the operating limits as specified in Table 2 to this subpart.

(8) A record of the work practice plan required by § 63.4293 and documentation that you are implementing the plan on a continuous basis.

§ 63.4331 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4340 By what date must I conduct the initial compliance demonstration?

You must complete the compliance demonstration for the initial compliance period according to the requirements in § 63.4341. The initial compliance period begins on the applicable compliance date specified in § 63.4283 and ends on the last day of the first full month after the compliance date. The initial compliance demonstration includes the calculations according to § 63.4341 and supporting documentation showing that during the initial compliance period, the organic HAP content of each coating and printing material you used and the mass fraction of organic HAP in each slashing, dyeing, finishing, and cleaning material you used did not exceed the applicable limit in Table 1 to this subpart, and documentation that you used no thinners or cleaners in coating/printing operations that contained organic HAP according to § 63.4341(h).

§ 63.4341 How do I demonstrate initial compliance with the emission limitations?

(a) You may use the compliant material option for any individual coating/printing operation, for any group of coating/printing operations in the affected source, or for all the coating/printing operations in the affected source. You must use either the emission rate without add-on controls option, the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option for any coating/printing operation(s) in the affected source for which you do not use this option. For a coating/printing affected source to demonstrate initial compliance using the compliant material option, the coating/printing operation or group of coating/printing operations must use no coating or printing material with an organic HAP content that exceeds the applicable emission limit in Table 1 to this subpart and must use no thinning or cleaning material that contains organic HAP, as determined according to this section.

(b) You must use the compliant material option for each slashing affected source, as required in Table 1 to this subpart. For a slashing affected source to demonstrate initial compliance using the compliant material option, the slashing operation or group of slashing operations must use no slashing material with a mass fraction of organic HAP that exceeds the applicable emission limit in Table 1 to this subpart.

(c) You may use the compliant material option for any individual dyeing/finishing operation, for any group of dyeing/finishing operations in the affected source, or for all the dyeing/finishing operations in the affected source. You must use the emission rate without add-on controls option for any dyeing/finishing operations in the affected source for which you do not use this option. For a dyeing/finishing affected source to demonstrate initial compliance using the compliant material option, the dyeing/finishing operation or group of dyeing/finishing operations must use no dyeing, finishing, or cleaning material with a mass fraction of organic HAP that exceeds the applicable emission limit in Table 1 to this subpart.

(d) Any coating/printing operation, slashing operation, or dyeing/finishing operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.4292 and 63.4293, respectively.

(e) To demonstrate initial compliance with the emission limitations using the compliant material option, you must meet all the requirements of this section for any coating/printing operation, slashing operation, or dyeing/finishing operation using this option. Use the procedures in this section on each regulated material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the HAP content of regulated materials that are reclaimed onsite and reused in the coating/printing operation, slashing operation, or dyeing/finishing operation for which you use the compliant material option, provided these regulated materials in their condition as received were demonstrated to comply with the compliant material option.

(1) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each regulated material used during the compliance period by using one of the options in paragraphs (e)(1)(i) through (v) of this section.

(i) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (e)(1)(i) and (ii) of this section when performing a Method 311 test.

(A) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you don't have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.3791).

(B) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.763).

(ii) *Method 24 (appendix A to 40 CFR part 60).* For coating, printing, dyeing and finishing material, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(iii) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP or mass fraction of solids once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(iv) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (e)(1)(i) through (iii) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (e)(1)(i) through (iii) of this section, then the test method results will take precedence.

(v) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 4 or 5 to this subpart. If you use the tables, you must use the values in Table 4 for all solvent blends that match Table 4 entries, and you may only use Table 5 if the solvent blends in the materials you use do not match any of the solvent blends in Table 4 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 4 or 5 to this subpart, the Method 311 results will take precedence.

(2) *Determine the mass fraction of solids for each coating and printing material.* You must determine the mass fraction of solids (kg of solids per pound (lb) of coating or printing material) for each coating and printing material used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (e)(2)(i) through (iii) of this section. If test results obtained according to paragraph (e)(2)(i) or (ii) of this section do not agree with the information obtained under paragraph (e)(2)(iii) of this section, the test results will take precedence.

(i) *Method 24 (appendix A to 40 CFR part 60).* You may use Method 24 for determining the mass fraction of solids of coating and printing materials.

(ii) *Alternative method.* You may use an alternative test method for determining solids content of each coating and printing material once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(iii) *Information from the supplier or manufacturer of the material.* You may obtain the mass fraction of solids for each coating and printing material from the supplier or manufacturer. If there is disagreement between such information and the test method results, then the test method results will take precedence.

(3) *Calculate the organic HAP content of each coating or printing material.* Calculate the organic HAP content, kg organic HAP per kg of solids used, of each coating and printing material used during the compliance period, using Equation 1 of this section:

$$H_c = (W_c)/(W_f) \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating or printing material, kg organic HAP per kg solids used in the coating or printing material.

W_c = mass fraction of organic HAP in the coating or printing material, kg organic HAP per kg material, determined according to paragraph (e)(1) of this section.

W_f = mass fraction of solids in coating or printing material, kg solids per kg of coating or printing material, determined according to paragraph (e)(2) of this section.

(4) *Compliance demonstration.* The calculated organic HAP content for each coating and printing material used during the initial compliance period must be less than or equal to the applicable emission limit in Table 1 to this subpart. You must keep all records required by this section to demonstrate compliance.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4350 By what date must I conduct the initial compliance demonstration?

You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4351. The initial compliance period begins on the applicable compliance

outlet organic HAP concentration option.

(1) *Determine the mass fraction of organic HAP for each material used.* Determine the mass fraction of organic HAP for each coating, printing, thinning and cleaning material used during the compliance period according to the requirements in § 63.4341(e)(1).

(2) *Determine the mass fraction of solids for each material used.* Determine the mass fraction of solids for each coating and printing material used during the compliance period according to the requirements in § 63.4341(e)(2).

(3) *Calculate the total mass of coating and printing solids used.* Determine the total mass of coating and printing solids used during the compliance period, using Equation 1 of this section:

$$A = \sum_{i=1}^{m} (M_{c,i} \times W_{c,i}) \qquad \text{(Eq. 1)}$$

Where:

A = total mass of organic HAP in the coating and printing materials used during the compliance period, kg.

$M_{c,i}$ = total mass of coating or printing material, i, used during the compliance period, kg.

$W_{c,i}$ = mass fraction of organic HAP in coating or printing material, i, kg organic HAP per kg of material.

m = number of different coating and printing, materials used during the compliance period.

(D) You must document the methodology you use to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4530(g). To the extent that waste manifests include this, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(5) *Calculate the total mass of coating and printing solids used.* Determine the

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W_f = mass fraction of solids in coating or printing material, kg solids per kg of coating or printing material, determined according to paragraph (e)(2) of this section.

(4) *Compliance demonstration.* The calculated organic HAP content for each coating and printing material used during the initial compliance period must be less than or equal to the applicable emission limit in Table 1 to this subpart, and each thinning and cleaning material used during the initial compliance period must contain no organic HAP according to paragraph (e)(1) of this section. The mass fraction of organic HAP for each slashing, dyeing and finishing material used during the initial compliance period and cleaning material used in dyeing/finishing operations during the initial compliance period, determined according to paragraph (e)(1) of this section, must be less than or equal to the applicable emission limit in Table 1 to this subpart. You must keep all records required by §§ 63.4330 and 63.4331. As part of the Notification of Compliance Status required in § 63.4310, you must:

(i) Identify any coating/printing operation, slashing operation, and dyeing/finishing operation for which you used the compliant material option;

(ii) Submit a statement that the coating/printing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coating and printing material for which the organic HAP content exceeds the applicable emission limit in Table 1 to this subpart, and you used no thinning materials or cleaning materials that contained organic HAP, determined according to paragraph (b)(1) of this section; and

(iii) Submit a statement that the slashing operation(s) and dyeing/finishing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no slashing, dyeing and finishing material for which the mass fraction of organic HAP exceeds the applicable emission limit in Table 1 to this subpart, and you used no cleaning materials in the dyeing/finishing affected source for which the mass fraction of organic HAP exceeds the applicable emission limit in Table 1 to this subpart, determined according to the requirements of § 63.4341(e)(1).

§ 63.4342 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period, to demonstrate continuous compliance, you must use no coating or printing material for which the organic HAP content determined using Equation 1 of § 63.4341, exceeds the applicable emission limit in Table 1 to this subpart. For each compliance period, you must use no slashing material, dyeing or finishing material, or cleaning material in dyeing/finishing operations for which the mass fraction of organic HAP, determined according to the requirements of § 63.4341(e)(1), exceeds the applicable emission limit in Table 1 to this subpart. For each compliance period, you must use no thinning or cleaning materials in a coating/printing affected source that contain organic HAP, determined according to the requirements of § 63.4341(e)(1). Each month following the initial compliance period described in § 63.4340 is a compliance period.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any regulated material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(5).

(c) As part of each semiannual compliance report required by § 63.4320, you must identify any coating/printing operation, slashing operation, or dyeing/or finishing operation for which you used the compliant material option. If there were no deviations from the applicable emission limit in Table 1 to this subpart, submit a statement that, as appropriate, the coating/printing operations were in compliance with the emission limitations during the reporting period because you used no coating or printing material for which the organic HAP content exceeded the applicable emission limit in Table 1 to this subpart, and you used no thinning or cleaning materials in a coating/printing affected source that contained organic HAP, determined according to § 63.4341(e)(1), and that the slashing and dyeing/finishing operations were in compliance with the emission limitations during the reporting period because you used no slashing, dyeing or finishing material, or cleaning material in dyeing/finishing operations for which the mass fraction of organic HAP exceeded the applicable emission limit in Table 1 to this subpart.

(d) You must maintain records as specified in §§ 63.4330 and 63.4331.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4350 By what date must I conduct the initial compliance demonstration?

You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4351. The initial compliance period begins on the applicable compliance date specified in § 63.4283 and ends on the last day of the first full month after the compliance date. The initial compliance demonstration includes the calculations according to § 63.4351 and supporting documentation showing that for coating/printing operations, the organic HAP emission rate for the initial compliance period was equal to or less than the applicable emission limit in Table 1 to this subpart and for dyeing/finishing operations, the mass fraction of organic HAP for the initial compliance period was less than or equal to the applicable emission limit in Table 1 to this subpart.

§ 63.4351 How do I demonstrate initial compliance with the emission limitations?

(a) For coating/printing operations, you may use the emission rate without add-on controls option for any individual coating/printing operation, for any group of coating/printing operations in the affected source, or for all the coating/printing operations as a group in the affected source. You must use either the compliant material option, the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option for any coating/printing operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating/printing operation or group of coating/printing operations must meet the applicable emission limit in Table 1 to this subpart but is not required to meet the operating limits or work practice standards in §§ 63.4292 and 63.4293, respectively. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in Table 1 to this subpart for the coating/printing operation(s). When calculating the organic HAP emission rate according to this section, do not include any coating, printing, thinning or cleaning materials used on coating/printing operations for which you use the compliant material option, the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option.

(1) *Determine the mass fraction of organic HAP for each material used.* Determine the mass fraction of organic HAP for each coating, printing, thinning and cleaning material used during the compliance period according to the requirements in § 63.4341(e)(1).

(2) *Determine the mass fraction of solids for each material used.* Determine the mass fraction of solids (kg of solids per kg of coating or printing material) for each coating and printing material used during the compliance period according to the requirements in § 63.4341(e)(2).

(3) *Determine the mass of each material used.* Determine the mass (kg) of each coating, printing, thinning or cleaning material used during the compliance period by measurement or usage records.

(4) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coating, printing, thinning and cleaning materials used during the compliance period minus the organic HAP in certain waste materials. Calculate the mass of organic HAP emissions using Equation 1 of this section:

$$H_e = A + B - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the compliance period, kg.

A = total mass of organic HAP in the coating and printing materials used during the compliance period, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinning and cleaning materials used during the compliance period, kg, as calculated in Equation 1B of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to paragraph (a)(4)(iii) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(i) Calculate the kg organic HAP in the coating and printing materials used during the compliance period using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(M_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coating and printing materials used during the compliance period, kg.

$M_{c,i}$ = total mass of coating or printing material, i, used during the compliance period, kg.

$W_{c,i}$ = mass fraction of organic HAP in coating or printing material, i, kg organic HAP per kg of material.

m = number of different coating and printing, materials used during the compliance period.

(ii) Calculate the kg of organic HAP in the thinning and cleaning materials used during the compliance period using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(M_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinning and cleaning materials used during the compliance period, kg.

$M_{t,j}$ = total mass of thinning or cleaning material, j, used during the compliance period, kg.

$W_{t,j}$ = mass fraction of organic HAP in thinning or cleaning material, j, kg organic HAP per kg thinning or cleaning material.

n = number of different thinning and cleaning materials used during the compliance period.

(iii) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (a)(4)(iii)(A) through (D) of this section.

(A) You may include in the determination only waste materials that are generated by coating/printing operations in the affected source for which you use Equation 1 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(B) You must determine either the amount of the waste materials sent to a TSDF during the compliance period or the amount collected and stored during the compliance period designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(C) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (a)(4)(iii)(B) of this section.

(D) You must document the methodology you use to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4530(g). To the extent that waste manifests include this, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(5) *Calculate the total mass of coating and printing solids used.* Determine the total mass of coating and printing solids used, kg, which is the combined mass of the solids contained in all the coating and printing materials used during the compliance period, using Equation 2 of this section:

$$H_t = \sum_{i=1}^{m} \left(M_{c,i}\right) \qquad \text{(Eq. 2)}$$

Where:

H_t = total mass of solids contained in coating and printing materials used during the compliance period, kg.

$M_{c,i}$ = mass of coating or printing solids in the coating or printing material, i, used during the compliance period, kg.

m = number of coating and printing materials used during the compliance period.

(6) Calculate the organic HAP emission rate for the compliance period, kg organic HAP emitted per kg solids used, using Equation 3 of this section:

$$H_{mo} = \frac{H_e}{H_t} \qquad \text{(Eq. 3)}$$

Where:

H_{mo} = organic HAP emission rate for the compliance period, kg of organic HAP emitted per kg of solids in coating and printing materials used.

H_e = total mass organic HAP emissions from all regulated materials used during the compliance period, kg, as calculated by Equation 1 of this section.

H_t = total mass of coating and printing solids in materials used during the compliance period, kg, as calculated by Equation 2 of this section.

(7) *Compliance demonstration.* The organic HAP emission rate for the initial compliance period must be less than or equal to the applicable emission limit in Table 1 to this subpart. You must keep all records as required by §§ 63.4330 and 63.4331. As part of the Notification of Compliance Status required by § 63.4310, you must identify the coating/printing operation(s) for which you used the emission rate without add-on controls option and submit a

statement that the coating/printing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in Table 1 to this subpart, determined according to the procedures in this section.

(b) For dyeing and finishing operations, you may use the emission

H_e = total mass of organic HAP emissions during the compliance period, kg.

A = total mass of organic HAP in the dyeing, finishing, and cleaning materials used during the compliance period, kg, as calculated in Equation 4B of this section.

R_w = total mass of organic HAP in waste materials sent or designated for

(C) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (b)(3)(ii)(B) of this section.

(D) You must document the methodology you use to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4530(g). To the extent that waste manifests include this, they may be used as part of the

of Compliance Status required by § 63.4310, you must identify the dyeing/finishing operation(s) for which you used the emission rate without add-on controls option and submit a statement that the dyeing/finishing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in

must submit a statement that, as appropriate, the coating/printing operations or the dyeing/finishing operations were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in Table 1 to this subpart.

(d) You must maintain records as specified in §§ 63.4330 and 63.4331

according to § 63.4361(d)(5); calculations according to § 63.4561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in Table 1 to this subpart; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4374; and documentation of whether you

statement that the coating/printing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in Table 1 to this subpart, determined according to the procedures in this section.

(b) For dyeing and finishing operations, you may use the emission rate without add-on controls option for any individual dyeing/finishing operation, for any group of dyeing/finishing operations in the affected source, or for dyeing/finishing operations as a group in the affected source. You must use the compliant material option for any dyeing/finishing operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the dyeing/finishing operation or group of operations must meet the applicable emission limit in Table 1 to this subpart but is not required to meet the operating limits or work practice standards in §§ 63.4292 and 63.4293, respectively. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in Table 1 to this subpart for the dyeing/finishing operation(s). When calculating the organic HAP emission rate according to this section, do not include any dyeing and finishing materials used on dyeing/finishing operations for which you use the compliant material option.

(1) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each dyeing, finishing, and cleaning material used during the compliance period according to the requirements in § 63.4341(e)(1).

(2) *Determine the mass of each material used.* Determine the mass (kg) of each dyeing, finishing, and cleaning material used during the compliance period by measurement or usage records.

(3) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all dyeing, finishing, and cleaning materials used during the compliance period minus the organic HAP in certain waste materials. Calculate the mass of organic HAP emissions using Equation 4 of this section:

$$H_e = A - R_w \qquad \text{(Eq. 4)}$$

Where:

H_e = total mass of organic HAP emissions during the compliance period, kg.

A = total mass of organic HAP in the dyeing, finishing, and cleaning materials used during the compliance period, kg, as calculated in Equation 4B of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the compliance period, kg, determined according to paragraph (b)(3)(ii) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(i) Calculate the kg organic HAP in the dyeing, finishing, and cleaning materials used during the compliance period using Equation 4A of this section:

$$A = \sum_{i=1}^{m} \left(M_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 4A)}$$

Where:

A = total mass of organic HAP in the dyeing, finishing, and cleaning materials used during the compliance period, kg.

$M_{c,i}$ = mass of dyeing, finishing, or cleaning material, i, used during the compliance period, kg.

$W_{c,i}$ = mass fraction of organic HAP in dyeing, finishing, or cleaning material, i, kg HAP per kg of material.

(ii) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 4 of this section, then you must determine it according to paragraphs (b)(3)(ii)(A) through (D) of this section.

(A) You may include in the determination only waste materials that are generated by dyeing/finishing operations in the affected source for which you use Equation 4 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(B) You must determine either the amount of the waste materials sent to a TSDF during the compliance period or the amount collected and stored during the compliance period designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(C) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (b)(3)(ii)(B) of this section.

(D) You must document the methodology you use to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4530(g). To the extent that waste manifests include this, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(4) *Calculate the total mass of dyeing, finishing, and cleaning materials used.* Determine the total mass of dyeing, finishing, and cleaning materials used, kg, which is the combined mass of all the dyeing, finishing, and cleaning materials used during the compliance period, using Equation 5 of this section:

$$M_t = \sum_{i=1}^{m} \left(M_{c,i}\right) \qquad \text{(Eq. 5)}$$

Where:

M_t = total mass of dyeing, finishing, and cleaning materials used during the compliance period, kg.

$M_{c,i}$ = mass of dyeing, finishing, or cleaning material, i, used during the compliance period, kg,

m = number of dyeing, finishing, and cleaning materials used during the compliance period.

(5) Calculate the organic HAP emission rate, kg organic HAP emitted per kg dyeing, finishing, and cleaning material used, using Equation 6 of this section:

$$H_{mo} = \frac{H_e}{M_t} \qquad \text{(Eq. 6)}$$

Where:

H_{mo} = the organic HAP emission rate for the compliance period, kg of organic HAP emitted per kg of dyeing, finishing, and cleaning materials.

H_e = total mass of organic HAP emissions from all materials used during the compliance period, kg, as calculated by Equation 4 of this section.

M_t = total mass of dyeing, finishing, and cleaning materials used during the compliance period, kg, as calculated by Equation 5 of this section.

(6) *Compliance demonstration.* The organic HAP emission rate for the initial compliance period must be less than or equal to the applicable emission limit in Table 1 to this subpart. You must keep all records as required by §§ 63.4330 and 63.4331. As part of the Notification of Compliance Status required by § 63.4310, you must identify the dyeing/finishing operation(s) for which you used the emission rate without add-on controls option and submit a statement that the dyeing/finishing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in Table 1 to this subpart, determined according to the procedures of this section.

(i) If your affected source performs only dyeing operations, paragraphs (b)(1) through (5) of this section apply to dyeing materials only, and you must demonstrate compliance with the emission limit in Table 1 to this subpart for dyeing operations.

(ii) If your affected source performs only finishing operations, paragraphs (b)(1) through (5) of this section apply to finishing materials only, and you must demonstrate compliance with the emission limit in Table 1 to this subpart for finishing operations.

(iii) If your affected source performs both dyeing and finishing operations, paragraphs (b)(1) through (5) of this section apply to dyeing and finishing materials combined, and you must demonstrate compliance with the emission limit in Table 1 to this subpart for dyeing and finishing operations.

§ 63.4352 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.4351(a) for coating/printing operations and according to § 63.4351(b) for dyeing/finishing operations, must be less than or equal to the applicable emission limit in Table 1 to this subpart. Each month following the initial compliance period described in § 63.4350 is a compliance period.

(b) If the organic HAP emission rate for any 1-month compliance period exceeded the applicable emission limit in Table 1 to this subpart, this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(6).

(c) As part of each semiannual compliance report required by § 63.4320, you must identify any coating/printing operation or dyeing/finishing operation for which you used the emission rate without add-on controls option. If there were no deviations from the applicable emission limit in Table 1 to this subpart, you must submit a statement that, as appropriate, the coating/printing operations or the dyeing/finishing operations were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in Table 1 to this subpart.

(d) You must maintain records as specified in §§ 63.4330 and 63.4331.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.4360 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4283. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4370, 63.4371, and 63.4372, and establish the operating limits required by § 63.4292, no later than the applicable compliance date specified in § 63.4283. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), you must initiate the first material balance no later than the applicable compliance date specified in § 63.4283.

(2) You must develop and begin implementing the work practice plan required by § 63.4293 no later than the compliance date specified in § 63.4283.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4361. The initial compliance period begins on the applicable compliance date specified in § 63.4283 and ends on the last day of the first full month after the compliance date, or the date you conduct the performance tests of the emission capture systems and add-on control devices, or initiate the first liquid-liquid material balance for a solvent recovery system, whichever is later. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4370, 63.4371, and 63.4372; results of liquid-liquid material balances conducted according to § 63.4361(d)(5); calculations according to § 63.4561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in Table 1 to this subpart; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4374; and documentation of whether you developed and implemented the work practice plan required by § 63.4293.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4292 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. This requirement does not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.4361(d)(5).

(b) *Existing sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4283. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4370, 63.4371, and 63.4372, and establish the operating limits required by § 63.4292, no later than the compliance date specified in § 63.4283. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), you must initiate the first material balance no later than the compliance date specified in § 63.4283.

(2) You must develop and begin implementing the work practice plan required by § 63.4293 no later than the compliance date specified in § 63.4283.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4361. The initial compliance period begins on the

applicable compliance date specified in § 63.4283 and ends on the last day of the first full month after the compliance date. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4370, 63.4371, and 63.4372; results of liquid-liquid material balances conducted according to § 63.4361(d)(5); option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option. You do not need to redetermine the mass of organic HAP in coating, printing, thinning, or cleaning materials that have been reclaimed onsite and reused in the coating/printing operation(s) for which you use the emission rate with add-on control option.

(b) *Compliance with operating limits.*

(3) *Calculate the organic HAP emissions reductions for each controlled coating/printing operation.* Determine the mass of organic HAP emissions reduced for each controlled coating/printing operation during the compliance period. The emissions reductions determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the

Where:

H_C = mass of organic HAP emission reduction for the controlled coating/printing operation during the compliance period, kg.

A_I = total mass of organic HAP in the coating and printing materials used in the controlled coating/printing operation during the compliance period, kg, as calculated in Equation 1A of this section.

(ii) Calculate the total mass of organic HAP in the thinning and cleaning materials used in the controlled coating/printing operation(s) during the compliance period, kg, using Equation 1B of this section:

$$B_I = \sum_{j=1}^{n} \left(M_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

and recovery efficiency to the mass of organic HAP contained in the coating, printing, thinning, and cleaning materials that are used in the coating/printing operation controlled by the solvent recovery system during the compliance period. Perform a liquid-liquid material balance for the compliance period as specified in paragraphs (d)(5)(i) through (v) of this section. Calculate the mass of organic

applicable compliance date specified in § 63.4283 and ends on the last day of the first full month after the compliance date. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4370, 63.4371, and 63.4372; results of liquid-liquid material balances conducted according to § 63.4361(d)(5); calculations according to § 63.4561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in Table 1 to this subpart; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4374; and documentation of whether you developed and implemented the work practice plan required by § 63.4293.

§ 63.4361 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any individual coating/printing operation, for any group of coating/printing operations in the affected source, or for all of the coating/printing operations in the affected source. You may include both controlled and uncontrolled coating/printing operations in a group for which you use this option. You must use either the compliant material option, the emission rate without add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option for any coating/printing operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, any coating/printing operation for which you use the emission rate with add-on controls option must meet the applicable emission limitations in Table 1 to this subpart, and in §§ 63.4292 and 63.4293. You must meet all the requirements of this section. When calculating the organic HAP emission rate according to this section, do not include any coating, printing, thinning, or cleaning materials used on coating/printing operations for which you use the compliant material option, the emission rate without add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option. You do not need to redetermine the mass of organic HAP in coating, printing, thinning, or cleaning materials that have been reclaimed onsite and reused in the coating/printing operation(s) for which you use the emission rate with add-on control option.

(b) *Compliance with operating limits.* Except as provided in § 63.4360(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4361(d)(5), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.4292, using the procedures specified in §§ 63.4373 and 63.4374.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.4293 during the initial compliance period as specified in § 63.4330.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (d)(1) through (8) of this section to demonstrate compliance with the applicable emission limit in Table 1 to this subpart.

(1) *Determine the mass fraction of organic HAP, the mass fraction of solids, and mass of materials used.* Follow the procedures specified in § 63.4351(a)(1), (2), and (3) to determine the mass fraction of organic HAP for each coating, printing, thinning and cleaning material used during the compliance period; the mass fraction of solids for each coating and printing material used during the compliance period; and mass of each coating, printing, thinning or cleaning material used during the compliance period.

(2) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4351, calculate the total mass of organic HAP emissions before add-on controls from all coating, printing, thinning or cleaning materials used during the compliance period minus the organic HAP in certain waste materials in the coating/printing operation or group of coating/printing operations for which you use the emission rate with add-on controls.

(3) *Calculate the organic HAP emissions reductions for each controlled coating/printing operation.* Determine the mass of organic HAP emissions reduced for each controlled coating/printing operation during the compliance period. The emissions reductions determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (d)(4) of this section to calculate the mass of organic HAP emissions reductions for each controlled coating/printing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating/printing operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (d)(5) of this section to calculate the organic HAP emissions reductions.

(4) *Calculate the organic HAP emission reduction for each controlled coating/printing operation not using liquid-liquid material balance.* For each controlled coating/printing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reductions using Equation 1 of this section. The equation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coating, printing, thinning, or cleaning materials that are used in the coating/printing operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4363(c) or (d) occurs in the controlled coating/printing operation, including a deviation during startup, shutdown, or malfunction, then you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating/printing operation for the time period of the deviation.

$$H_C = (A_I + B_I - H_{UNC})\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \quad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emission reduction for the controlled coating/printing operation during the compliance period, kg.

A_I = total mass of organic HAP in the coating and printing materials used in the controlled coating/printing operation during the compliance period, kg, as calculated in Equation 1A of this section.

B_I = total mass of organic HAP in the thinning and cleaning materials used in the controlled coating/printing operation during the compliance period, kg, as calculated in Equation 1B of this section.

H_{UNC} = total mass of organic HAP in the coating, printing, thinning, and cleaning materials used during all deviations specified in § 63.4363(c) and (d) that occurred during the compliance period in the controlled coating/printing operation, kg, as calculated in Equation 1C of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4370 and 63.4371 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.4370 and 63.4372 to measure and record the organic HAP destruction or removal efficiency.

(i) Calculate the total mass of organic HAP in the coating and printing materials used in the controlled coating/printing operation(s) during the compliance period, kg, using Equation 1A of this section:

$$A_I = \sum_{i=1}^{m} (M_{c,i})(W_{c,i}) \quad \text{(Eq. 1A)}$$

Where:

A_I = total mass of organic HAP in the coating and printing materials used in the controlled coating/printing operations(s) during the compliance period, kg.

$M_{c,i}$ = mass of coating or printing material, i, used during the compliance period, kg.

$W_{c,i}$ = mass fraction of organic HAP in coating or printing material, i, kg per kg.

m = number of different coating and printing materials used during compliance period.

(ii) Calculate the total mass of organic HAP in the thinning and cleaning materials used in the controlled coating/printing operation(s) during the compliance period, kg, using Equation 1B of this section:

$$B_I = \sum_{j=1}^{n} (M_{t,j})(W_{t,j}) \quad \text{(Eq. 1B)}$$

Where:

B_I = total mass of organic HAP in the thinning and cleaning materials used in the controlled coating/printing operation(s) during the compliance period, kg.

$M_{t,j}$ = total mass of thinning or cleaning material, j, used during the compliance period, kg.

$W_{t,j}$ = mass fraction of organic HAP in thinning or cleaning material, j, kg per kg.

n = number of different thinning or cleaning materials used during the compliance period.

(iii) Calculate the mass of organic HAP in the coating, printing, thinning, and cleaning materials used in the controlled coating/printing operation during deviations specified in § 63.4563(c) and (d), using Equation 1C of this section.

$$H_{UNC} = \sum_{h=1}^{q} (M_h)(W_h) \quad \text{(Eq. 1C)}$$

Where:

H_{UNC} = total mass of organic HAP in the coating, printing, thinning, and cleaning materials used during all deviations specified in § 63.4563(c) and (d) that occurred during the month in the controlled coating/printing operation, kg.

M_h = total mass of coating, printing, thinning, or cleaning material, h, used in the controlled coating/printing operation during deviations, kg.

W_h = mass fraction of organic HAP in coating, printing, thinning, or cleaning material, h, kg organic HAP per kg material.

q = number of different coating, printing, thinning, and cleaning materials used.

(5) *Calculate the organic HAP emissions reductions for controlled coating/printing operation using liquid-liquid material balances.* For each controlled coating/printing operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reductions by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coating, printing, thinning, and cleaning materials that are used in the coating/printing operation controlled by the solvent recovery system during the compliance period. Perform a liquid-liquid material balance for the compliance period as specified in paragraphs (d)(5)(i) through (v) of this section. Calculate the mass of organic HAP emissions reductions by the solvent recovery system as specified in paragraph (d)(5)(vi) of this section.

(i) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system for the compliance period. The device must be initially certified by the manufacturer to be accurate to within ±2.0 percent of the mass of volatile organic matter recovered.

(ii) For each solvent recovery system, determine the mass of volatile organic matter recovered for the compliance period, kg, based on measurement with the device required in paragraph (d)(5)(i) of this section.

(iii) Determine the mass fraction of volatile organic matter for each coating and printing material used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg volatile organic matter per kg coating and printing material. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating or printing material. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(iv) Measure the mass of each coating, printing, thinning, or cleaning material used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg.

(v) For the compliance period, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency using Equation 2 of this section:

$$R_V = 100\frac{M_{VR}}{\sum_{i=1}^{m} M_i WV_{c,i} + \sum_{j=1}^{n} M_j WV_{t,j}} \quad \text{(Eq. 2)}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the compliance period, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the compliance period, kg.

M_i = mass of coating or printing material, i, used during the compliance period, kg.

$WV_{c,i}$ = mass fraction of volatile organic matter per kg coating or printing material.

M_j = mass of thinning or cleaning material, j, used during the compliance period, kg.

$WV_{t,j}$ = mass fraction of volatile organic matter per kg thinning or cleaning material.

m = number of different coating and printing materials used during the compliance period.

n = number of different thinning and cleaning materials used during the compliance period.

$$H_{HAP} = \frac{H_e - \sum_{i=1}^{q}(H_{C,i}) - \sum_{j=1}^{r}(H_{CSR,j})}{H_t} \quad \text{(Eq. 4)}$$

Where:

H_{HAP} = organic HAP emission rate with add-on controls for the compliance period, kg organic HAP emitted per kg solids used.

§ 63.4362 [Reserved]

§ 63.4363 How do I demonstrate continuous compliance with the emission limitations?

63.4320(a)(7). For the purposes of completing the compliance calculations specified in § 63.4361(d)(4), you must treat the materials used during a deviation on a controlled coating/

$$R_V = 100\frac{M_{VR}}{\sum_{i=1}^{m} M_i WV_{c,i} + \sum_{j=1}^{n} M_j WV_{t,j}} \quad \text{(Eq. 2)}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the compliance period, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the compliance period, kg.

M_i = mass of coating or printing material, i, used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating or printing material, i, kg volatile organic matter per kg coating or printing material.

M_j = mass of thinning or cleaning material, j, used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinning or cleaning material, j, kg volatile organic matter per kg thinning or cleaning material.

m = number of different coating and printing materials used in the coating/printing operation controlled by the solvent recovery system during the compliance period.

n = number of different thinning and cleaning materials used in the coating/printing operation controlled by the solvent recovery system during the compliance period.

(vi) Calculate the mass of organic HAP emission reductions for the coating/printing operation controlled by the solvent recovery system during the compliance period using Equation 3 of this section and according to paragraphs (d)(5)(vi)(A) and (B) of this section:

$$H_{CSR} = \left(A_{CSR} + B_{CSR}\right)\left(\frac{R_V}{100}\right) \quad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating/printing operation controlled by the solvent recovery system during the compliance period, kg.

A_{CSR} = total mass of organic HAP in the coating and printing material used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinning and cleaning materials used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg, calculated using Equation 3B of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(A) Calculate the total mass of organic HAP in the coating and printing materials used in the coating/printing operation(s) controlled by the solvent recovery system during the compliance period, kg, using Equation 3A of this section:

$$A_{CSR} = \sum_{i=1}^{m}\left(M_{c,i}\right)\left(W_{c,i}\right) \quad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coating and printing materials used in the coating/printing operations(s) controlled by the solvent recovery system during the compliance period, kg.

$M_{c,i}$ = mass of coating or printing material, i, used during the compliance period in the coating/printing operation(s) controlled by the solvent recovery system, kg.

$W_{c,i}$ = mass fraction of organic HAP in coating or printing material, i, kg per kg.

m = number of different coating and printing materials used during compliance period.

(B) Calculate the total mass of organic HAP in the thinning and cleaning materials used in the coating/printing operation(s) controlled by the solvent recovery system during the compliance period, kg, using Equation 3B of this section:

$$B_{CSR} = \sum_{j=1}^{n}\left(M_{t,j}\right)\left(W_{t,j}\right) \quad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinning and cleaning materials used in the coating/printing operation(s) controlled by the solvent recovery system during the compliance period, kg.

$M_{t,j}$ = total mass of thinning or cleaning material, j, used during the compliance period in the coating/printing operation(s) controlled by the solvent recovery system, kg.

$W_{t,j}$ = mass fraction of organic HAP in thinning or cleaning material, j, kg per kg.

n = number of different thinning or cleaning materials used during the compliance period.

(6) *Calculate the total mass of coating and printing solids used.* Determine the total mass of coating and printing solids used, kg, which is the combined mass of the solids contained in all the coating and printing material used during the compliance period in the coating/printing operation(s) or which you use the emission rate with add-on controls option, using Equation 2 of § 63.4351.

(7) *Calculate the organic HAP emission rate with add-on controls for the compliance period.* Determine the organic HAP emission rate with add-on controls for the compliance period, kg organic HAP emitted per kg solids used during the compliance period, using Equation 4 of this section.

$$H_{HAP} = \frac{H_e - \sum_{i=1}^{q}\left(H_{C,i}\right) - \sum_{j=1}^{r}\left(H_{CSR,j}\right)}{H_t} \quad \text{(Eq. 4)}$$

Where:

H_{HAP} = organic HAP emission rate with add-on controls for the compliance period, kg organic HAP emitted per kg solids used.

H_e = total mass of organic HAP emissions before add-on controls from all the coating, printing, thinning, and cleaning materials used during the compliance period, kg, determined according to paragraph (d)(2) of this section.

$H_{C,i}$ = total mass of organic HAP emissions reduction for controlled coating/printing operation, i, not using a liquid-liquid material balance, during the compliance period, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emissions reduction for coating/printing operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the compliance period, kg, from Equation 3 of this section.

H_t = total mass of coating and printing solids used during the compliance period, kg, from Equation 2 of § 63.4351.

q = number of controlled coating/printing operations not using a liquid-liquid material balance.

r = number of coating/printing operations controlled by a solvent recovery system using a liquid-liquid material balance.

(8) *Compliance demonstration.* To demonstrate initial compliance with the emission limit calculated using Equation 4 of this section, the organic emission rate with add-on controls for the compliance period must be less than or equal to the applicable emission limit in Table 1 to this subpart. You must keep all records as required by §§ 63.4330 and 63.4331. As part of the Notification of Compliance Status required by § 63.4310, you must identify the coating/printing operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating/printing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in Table 1 to this subpart, and you achieved the operating limits required by § 63.4292 and the work practice standards required by § 63.4293.

§ 63.4362 [Reserved]

§ 63.4363 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in Table 1 to this subpart, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.4361, must be equal to or less than the applicable emission limit in Table 1 to this subpart. Each month following the initial compliance period described in § 63.4360 is a compliance period. You must perform the calculations in § 63.4361 on a monthly basis.

(b) If the emission rate with add-on controls for any 1-month compliance period exceeded the applicable emission limit in Table 1 to this subpart, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4292 that applies to you, as specified in Table 2 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 2 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 2 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.4361(d)(4), you must treat the materials used during a deviation on a controlled coating/printing operation as if they were used on an uncontrolled coating/printing operation for the time period of the deviation as indicated in Equation 1 of § 63.4361.

(d) You must meet the requirements for bypass lines in § 63.4374(b) for controlled coating/printing operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating/printing operation is running, this is a deviation that must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7). For the purposes of completing the compliance calculations specified in § 63.4361(d)(4), you must treat the materials used during a deviation on a controlled coating/printing operation as if they were used on an uncontrolled coating/printing operation for the time period of the deviation, as indicated in Equation 1 of § 63.4361.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4293. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4330(j)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7).

(f) As part of each semiannual compliance report required in § 63.4320, you must identify the coating/printing operation(s) for which you use the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in Table 1 to this subpart, and you achieved the operating limits required by § 63.4292 and the work practice standards required by § 63.4293 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating/printing operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.4300(c).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating/printing operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are

violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4330 and 63.4331.

Compliance Requirements for the Organic HAP Overall Control Efficiency and Oxidizer Outlet Organic HAP Concentration Options

§ 63.4365 By what date must I conduct performance tests and other initial compliance demonstrations?

You must conduct performance tests and other initial compliance demonstrations as specified in this section.

(a) You must conduct a performance test of each capture system and add-on control device according to the procedures in § 63.4370 and establish the operating limits required by § 63.4374 no later than the compliance date specified in § 63.4283.

(b) You must conduct a performance test to demonstrate initial compliance with the applicable overall control efficiency limit in Table 1 to this subpart or the oxidizer outlet organic HAP concentration was no greater than 20 parts per million by weight (ppmw) on a dry basis; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4374; and documentation of whether you developed and

applicable operating limits in § 63.4292 according to the procedures in paragraph (b) of this section and the work practice standards in § 63.4293 according to the procedures in paragraph (c) of this section. When calculating the organic HAP overall control efficiency according to this section, do not include any coating, printing, thinning, or cleaning materials used on coating/printing operations for which you use the organic HAP overall control efficiency option.

(3) *Calculate the organic HAP emissions reductions for each controlled coating/printing operation.* Determine the mass of organic HAP emissions reduced for each controlled coating/printing operation during the compliance period. The emissions reductions determination quantifies the

(ii) Calculate the total mass of organic HAP in the thinning and cleaning materials used in the controlled coating/printing operation(s) during the compliance period, kg, using Equation 1B of § 63.4361.

(iii) Calculate the mass of organic HAP in the coating, printing, thinning, and cleaning materials used in the controlled coating/printing operation during deviations specified in

violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4330 and 63.4331.

Compliance Requirements for the Organic HAP Overall Control Efficiency and Oxidizer Outlet Organic HAP Concentration Options

§ 63.4365 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4283. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4366(d)(5), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4370, 63.4371, and 63.4372, and establish the operating limits required by § 63.4292, no later than the applicable compliance date specified in § 63.4283. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4366(d)(5), you must initiate the first material balance no later than the applicable compliance date specified in § 63.4283.

(2) You must develop and begin implementing the work practice plan required by § 63.4293 no later than the compliance date specified in § 63.4283.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4366. The initial compliance period begins on the applicable compliance date specified in § 63.4283 and ends on the last day of the first full month after the compliance date, or the date you conduct the performance tests of the emission capture systems and add-on control devices, or initiate the first liquid-liquid material balance for a solvent recovery system, whichever is later. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4370, 63.4371, and 63.4372; results of liquid-liquid material balances conducted according to § 63.4366(d)(5); calculations according to § 63.4366 and supporting documentation showing that during the initial compliance period either the organic HAP overall control efficiency was equal to or greater than the applicable overall control efficiency limit in Table 1 to this subpart or the oxidizer outlet organic HAP concentration was no greater than 20 parts per million by weight (ppmw) on a dry basis; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4374; and documentation of whether you developed and implemented the work practice plan required by § 63.4293.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4292 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. This requirement does not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.4366(d)(5).

(b) *Existing sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4283. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4366(d)(5), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4370, 63.4371, and 63.4372, and establish the operating limits required by § 63.4292, no later than the compliance date specified in § 63.4283. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4366(d)(5), you must initiate the first material balance no later than the compliance date specified in § 63.4283.

(2) You must develop and begin implementing the work practice plan required by § 63.4293 no later than the compliance date specified in § 63.4283.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4366. The initial compliance period begins on the applicable compliance date specified in § 63.4283 and ends on the last day of the first full month after the compliance date. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4370, 63.4371, and 63.4372; results of liquid-liquid material balances conducted according to § 63.4366(d)(5); calculations according to § 63.4366 and supporting documentation showing that during the initial compliance period the organic HAP overall control efficiency was equal to or greater than the applicable organic HAP overall control efficiency limit in Table 1 to this subpart or the oxidizer outlet organic HAP concentration was no greater than 20 ppmw on a dry basis and the efficiency of the capture system was 100 percent; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4374; and documentation of whether you developed and implemented the work practice plan required by § 63.4293.

§ 63.4366 How do I demonstrate initial compliance?

(a) You may use the organic HAP overall control efficiency option or the oxidizer outlet organic HAP concentration option for any individual coating/printing operation, for any group of coating/printing operations in the affected source, or for all of the coating/printing operations in the affected source. You may include both controlled and uncontrolled coating/printing operations in a group for which you use the organic HAP overall control efficiency option. You must use either the compliant material option, the emission rate without add-on controls option, or the emission rate with add-on controls option for any coating/printing operation(s) in the affected source for which you do not use either the organic HAP overall control efficiency option or the oxidizer outlet organic HAP concentration option. To demonstrate initial compliance, any coating/printing operation for which you use the organic HAP overall control efficiency option must meet the applicable organic HAP overall control efficiency limitations in Table 1 to this subpart according to the procedures in paragraph (d) of this section. Any coating/printing operation for which you use the oxidizer outlet organic HAP concentration option must meet the 20 ppmw on a dry basis limit and achieve 100 percent capture efficiencies according to the procedures in paragraph (e) of this section. To demonstrate initial compliance with either option, you also must meet the

applicable operating limits in § 63.4292 according to the procedures in paragraph (b) of this section and the work practice standards in § 63.4293 according to the procedures in paragraph (c) of this section. When calculating the organic HAP overall control efficiency according to this section, do not include any coating, printing, thinning, or cleaning materials used on coating/printing operations for which you use the compliant material option, the emission rate without add-on controls option, the emission rate with add-on controls option, or the oxidizer outlet organic HAP concentration option. You do not need to redetermine the mass of organic HAP in coating, printing, thinning, or cleaning materials that have been reclaimed onsite and reused in coating/printing operation(s) for which you use the organic HAP overall control efficiency option.

(b) *Compliance with operating limits.* Except as provided in § 63.4365(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4366(d)(5), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.4292, using the procedures specified in §§ 63.4373 and 63.4374.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.4293 during the initial compliance period as specified in § 63.4330.

(d) *Compliance with organic HAP overall control efficiency limits.* You must follow the procedures in paragraphs (d)(1) through (7) of this section to demonstrate compliance with the applicable organic HAP overall control efficiency limit in Table 1 to this subpart.

(1) *Determine the mass fraction of organic HAP and mass of coating or printing materials used.* Follow the procedures specified in § 63.4351(a)(1) and (2) to determine the mass fraction of organic HAP and mass of each coating, printing, thinning or cleaning material used during the compliance period.

(2) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4351, calculate the total mass of organic HAP emissions before add-on controls from all coating, printing, thinning or cleaning materials used during the compliance period minus the organic HAP in certain waste materials in the coating/printing operation or group of coating/printing operations for which you use the organic HAP overall control efficiency option.

(3) *Calculate the organic HAP emissions reductions for each controlled coating/printing operation.* Determine the mass of organic HAP emissions reduced for each controlled coating/printing operation during the compliance period. The emissions reductions determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (d)(4) of this section to calculate the mass of organic HAP emissions reductions for each controlled coating/printing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating/printing operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (d)(5) of this section to calculate the organic HAP emissions reductions.

(4) *Calculate the organic HAP emissions reductions for controlled coating/printing operations not using liquid-liquid material balance.* For each controlled coating/printing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reductions using Equation 1 of § 63.4361. The equation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coating, printing, thinning, or cleaning materials that are used in the coating/printing operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4363(c) or (d) occurs in the controlled coating/printing operation, including a deviation during startup, shutdown, or malfunction, then you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of § 63.4361 treats the materials used during such a deviation as if they were used on an uncontrolled coating/printing operation for the time period of the deviation.

(i) Calculate the total mass of organic HAP in the coating and printing material(s) used in the controlled coating/printing operation during the compliance period, kg, using Equation 1A of § 63.4361.

(ii) Calculate the total mass of organic HAP in the thinning and cleaning materials used in the controlled coating/printing operation(s) during the compliance period, kg, using Equation 1B of § 63.4361.

(iii) Calculate the mass of organic HAP in the coating, printing, thinning, and cleaning materials used in the controlled coating/printing operation during deviations specified in § 63.4563(c) and (d), using Equation 1C of § 63.4361.

(5) *Calculate the organic HAP emissions reductions for controlled coating/printing operations using liquid-liquid material balance.* For each controlled coating/printing operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reductions by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coating, printing, thinning, or cleaning materials that are used in the coating/printing operation controlled by the solvent recovery system during the compliance period. Perform a liquid-liquid material balance for the compliance period as specified in paragraphs (d)(5)(i) through (vi) of this section.

(i) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system for the compliance period. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(ii) For each solvent recovery system, determine the mass of volatile organic matter recovered for the compliance period, kg, based on measurement with the device required in paragraph (d)(5)(i) of this section.

(iii) Determine the mass fraction of volatile organic matter for each coating and printing material used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg volatile organic matter per kg coating and printing material. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating or printing material. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of

40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(iv) Measure the mass of each coating, printing, thinning, or cleaning material used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg.

(v) For the compliance period, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency using Equation 2 of § 63.4361.

(vi) Calculate the mass of organic HAP emissions reductions for the coating/printing operation controlled by the solvent recovery system during the compliance period, using Equation 4 of § 63.4361.

(6) *Calculate the organic HAP overall control efficiency.* Determine the organic HAP overall control efficiency, kg organic HAP emissions reductions per kg organic HAP emissions before add-on controls during the compliance period, using Equation 1 of this section.

time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.4366(d)(4), you must treat the materials used during a deviation on a controlled coating/printing operation as if they were used on an uncontrolled coating/printing operation for the time period of the deviation as indicated in Equation 1 of § 63.4361.

(d) You must meet the requirements

work practice standards required by § 63.4293 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating/printing operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan

information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4371. You must conduct each performance test of an add-on control

40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(iv) Measure the mass of each coating, printing, thinning, or cleaning material used in the coating/printing operation controlled by the solvent recovery system during the compliance period, kg.

(v) For the compliance period, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency using Equation 2 of § 63.4361.

(vi) Calculate the mass of organic HAP emissions reductions for the coating/printing operation controlled by the solvent recovery system during the compliance period, using Equation 4 of § 63.4361.

(6) *Calculate the organic HAP overall control efficiency.* Determine the organic HAP overall control efficiency, kg organic HAP emissions reductions per kg organic HAP emissions before add-on controls during the compliance period, using Equation 1 of this section.

$$E_{HAP} = 1 - \frac{H_e - \sum_{i=1}^{q}(H_{C,i}) - \sum_{j=1}^{r}(H_{CSR,j})}{H_e} \times 100 \quad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions before add-on controls from all the coating, printing, thinning, and cleaning materials used during the compliance period, kg, determined according to paragraph (d)(2) of this section.

$H_{C,i}$ = total mass of organic HAP emissions reduction for controlled coating/printing operation, i, during the compliance period, kg, from Equation 1 of § 63.4361.

$H_{CSR,j}$ = total mass of organic HAP emissions reduction for controlled coating/printing operation, j, during the compliance period, kg, from Equation 4 of § 63.4361.

q = number of controlled coating/printing operations except those controlled with a solvent recovery system.

r = number of coating/printing operations controlled with a solvent recovery system.

(7) *Compliance demonstration.* To demonstrate initial compliance with the organic HAP overall control efficiency in Table 1 to this subpart, organic HAP overall control efficiency calculated using Equation 1 of this section must be at least 98 percent for new or reconstructed affected sources and at least 97 percent for existing affected sources. You must keep all records as required by §§ 63.4330 and 63.4331. As part of the Notification of Compliance Status required by § 63.4310, you must identify the coating/printing operation(s) for which you used the organic HAP overall control efficiency option and submit a statement that the coating/printing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP overall control efficiency was greater than or equal to the applicable organic HAP overall control efficiency in Table 1 to this subpart, and you achieved the operating limits required by § 63.4292 and the work practice standards required by § 63.4293.

(e) *Compliance with oxidizer outlet organic HAP concentration limit.* You must follow the procedures in paragraphs (e)(1) through (3) of this section to demonstrate compliance with the oxidizer outlet organic HAP concentration limit of no greater than 20 ppmw on a dry basis.

(1) *Install and operate a PTE.* Install and operate a PTE around each work station and associated drying or curing oven in the coating/printing operation. An enclosure that meets the requirements in § 63.4371(a) is considered a PTE. Route all organic emissions from each PTE to an oxidizer.

(2) *Determine oxidizer outlet organic HAP concentration.* Determine oxidizer outlet organic HAP concentration through performance tests using the procedures in § 63.4372(a) and (b).

(3) *Compliance demonstration.* To demonstrate initial compliance with the oxidizer outlet organic HAP concentration limit in Table 1 to this subpart, the oxidizer outlet organic HAP concentration must be no greater than 20 ppmv on a dry basis and the efficiency of the capture system must be 100 percent. You must keep all records as required by §§ 63.4330 and 63.4331. As part of the Notification of Compliance Status required by § 63.4310, you must identify the coating/printing operation(s) for which you used the oxidizer outlet organic HAP concentration option and submit a statement that the coating/printing operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the oxidizer outlet organic HAP concentration was no greater than 20 ppmv on a dry basis, the efficiency of the capture system was 100 percent, and you achieved the operating limits required by § 63.4292 and the work practice standards required by § 63.4293.

§ 63.4367 [Reserved]

§ 63.4368 How do I demonstrate continuous compliance with the emission limitations?

(a) You must meet all the requirements of this section to demonstrate continuous compliance with the organic HAP overall control efficiency. The organic HAP overall control efficiency for each compliance period, determined according to the procedures in § 63.4366(d), must be equal to or greater than the applicable organic HAP overall control efficiency limit in Table 1 to this subpart. Each month following the initial compliance period described in § 63.4365 is a compliance period. You must perform the calculations in § 63.4366(d) on a monthly basis. You must meet the applicable requirements of paragraphs (c) through (j) of this section to demonstrate continuous compliance with the oxidizer outlet organic HAP concentration limit.

(b) If the organic HAP overall control efficiency for any 1-month compliance period failed to meet the applicable organic HAP overall control efficiency in Table 1 to this subpart, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4292 that applies to you, as specified in Table 2 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 2 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 2 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.4366(d)(4), you must treat the materials used during a deviation on a controlled coating/printing operation as if they were used on an uncontrolled coating/printing operation for the time period of the deviation as indicated in Equation 1 of § 63.4361.

(d) You must meet the requirements for bypass lines in § 63.4374(b) for controlled coating/printing operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating/printing operation is running, this is a deviation that must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7). For the purposes of completing the compliance calculations specified in § 63.4366(d)(4), you must treat the materials used during a deviation on a controlled coating/printing operation as if they were used on an uncontrolled coating/printing operation for the time period of the deviation as indicated in Equation 1 of § 63.4361.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4293. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4330(j)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4310(c)(6) and 63.4320(a)(7).

(f) As part of each semiannual compliance report required in § 63.4320, you must identify the coating/printing operation(s) for which you use the organic HAP overall control efficiency option or the oxidizer outlet organic HAP concentration option. If there were no deviations from the organic HAP overall control efficiency limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP overall control efficiency for each compliance period was greater than or equal to the applicable organic HAP overall control efficiency in Table 1 to this subpart, and you achieved the operating limits required by § 63.4292 and the work practice standards required by § 63.4293 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating/printing operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.4300(c).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating/printing operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4330 and 63.4331.

Performance Testing and Monitoring Requirements

§ 63.4370 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4360 or § 63.4365 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating/printing operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating/printing operation. Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4371. You must conduct each performance test of an add-on control device according to the requirements in § 63.4372.

§ 63.4371 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.4360 or § 63.4365.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met.

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coating, printing, thinning, and cleaning materials used in the coating/printing operation are applied within the capture system; coating and printing solvent flash-off, curing, and drying occurs within the capture system; and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if the web enters the open shop environment when moving between the application station and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, up to 8 hours.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating/printing operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating/printing operation where coating, printing, thinning, and cleaning materials are applied, and all areas

make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coating, printing, thinning, and cleaning materials used in the coating/printing operation during each capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound-emitting operations inside the building enclosure, other than the coating/printing operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{(TVH_{captured} + TVH_{uncaptured})} \times 100 \quad \text{(Eq. 3)}$$

temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating/printing operation where coating, printing, thinning, and cleaning materials are applied, and all areas where emissions from these applied coating, printing, thinning, and cleaning materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating/printing operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or tenter frame, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, printing, thinning, and cleaning material used in the coating/printing operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coating, printing, thinning, and cleaning materials used in the coating/printing operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(M_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = mass of liquid TVH in materials used in the coating/printing operation during the capture efficiency test run, lb.

TVH_i = mass fraction of TVH in coating, printing, thinning, or cleaning material, i, that is used in the coating/printing operation during the capture efficiency test run, kg TVH per kg material.

M_i = total mass of coating, printing, thinning, or cleaning material, i, used in the coating/printing operation during the capture efficiency test run, kg.

n = number of different coating, printing, thinning, and cleaning materials used in the coating/printing operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound-emitting operations inside the building enclosure, other than the coating/printing operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{\left(TVH_{used} - TVH_{uncaptured}\right)}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating/printing operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating/printing operation where coating, printing, thinning, and cleaning materials are applied, and all areas where emissions from these applied coating, printing, thinning, and cleaning materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating/printing operation where capture devices collect emissions generated by the coating/printing operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a tenter frame, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound-emitting operations inside the building enclosure, other than the coating/printing operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.4372 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by §§ 63.4360 and 63.4365. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods as specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME, PTC 19.10–1981, "Flue and Exhaust Gas Analyses."

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure the volatile organic matter concentration as carbon at the inlet and outlet of the add-on control device simultaneously, using Method 25 or 25A of appendix A to 40 CFR part 60. If you are demonstrating compliance with the oxidizer outlet organic HAP concentration limit, only the outlet volatile organic matter concentration must be determined. The outlet volatile organic matter concentration is determined as the average of the three test runs.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet. Method 25A must be used to demonstrate compliance with the oxidizer outlet organic HAP concentration limit.

(3) Use Method 25A if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet to the atmosphere of each device. For example, if one add-on control device is a concentrator with an outlet to the atmosphere for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet to the atmosphere for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions:

$$M_f = Q_{sd} C_c [12][0.0416][10^{-6}] \qquad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmv, dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mole/m ^{3}) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency using Equation 2 of this section.

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4374 What are the requirements for continuous parameter monitoring system (CPMS) installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4373 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.4360 or § 63.4365 and described in §§ 63.4370, 63.4371, and 63.4372, you must establish the operating limits required by § 63.4292 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4292.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (i.e., conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.4566.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle, and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrator.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.4371(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 2 to this subpart.

(1) During the capture efficiency determination required by § 63.4360 or § 63.4365 and described in §§ 63.4370 and 63.4371, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.4374 What are the requirements for continuous parameter monitoring system (CPMS) installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating/printing operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(2)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure continuous monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating/printing operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating/printing operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shutdown the coating/printing operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.4320.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and

cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement

your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to

materials, such as dirt, grease, or oil, from a textile before or after a coating/printing operation, slashing operation, or dyeing/finishing operation or from equipment associated with the coating/printing operation, slashing operation, or dyeing/finishing operation, such as tanks, rollers, rotary screens, and knife or wiper blades. Thus, it includes any cleaning material used on substrates or equipment or both.

Controlled coating/printing operation means a coating/printing operation from which some or all of the organic HAP emissions are routed through an

may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating or printing operation, or capture system, or add-on control device parameters.

combination of these types of equipment, but always includes at least the point at which a dyeing or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that dyeing or cleaning material occur. There may be multiple dyeing operations in an affected source.

Emission limitation means an emission limit, operating limit, or work

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cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrator.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.4380 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the U.S. EPA), has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the work practice standards in § 63.4293 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.4381 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

As purchased means the condition of a coating, printing, slashing, dyeing, or finishing material as delivered to the affected source, before alteration.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating or printing operation in the use of coating or printing materials, both at the point of application and at subsequent points where emissions from the coating or printing materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating or printing operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, or oil, from a textile before or after a coating/printing operation, slashing operation, or dyeing/finishing operation or from equipment associated with the coating/printing operation, slashing operation, or dyeing/finishing operation, such as tanks, rollers, rotary screens, and knife or wiper blades. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means the application of a semi-liquid coating material to one or both sides of a textile web substrate. Once the coating material is dried (and cured, if necessary), it bonds with the textile to form a continuous solid film for decorative, protective, or functional purposes. Coating does not include finishing where the fiber is impregnated with a chemical or resin to impart certain properties, but a solid film is not formed. Coating does not include the production or printing of laminated fabric.

Coating material means an elastomer, polymer, or prepolymer material applied as a thin layer to a textile web. Such materials include, but are not limited to, coatings, sealants, inks, and adhesives. Decorative, protective, or functional materials that consist only of acids, bases, or any combination of these substances are not considered coating material for the purposes of this subpart. Thinning materials also are not included in this definition of coating materials, but are accounted for separately.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating material application (surface preparation), to apply coating material to a substrate (coating application) and to dry or cure the coating material after application by exposure to heat or radiation (coating drying or curing), or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Coating application with handheld, nonrefillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of this subpart. A coating operation with coating material drying or curing at ambient conditions is not coating for the purposes of this subpart.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating or printing operation, or capture system, or add-on control device parameters.

Controlled coating/printing operation means a coating/printing operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dyeing means the process of applying color to the whole body of a textile substrate with either natural or synthetic dyes. Dyes are applied to yarn, fiber, cord, or fabric in aqueous solutions and dried before or after finishing, depending on the process. Continuous dyeing processes include, but are not limited to thermosol, pad/steam, pad/dry, and rope range dyeing. Batch dyeing processes include, but are not limited to, jet, beck, stock, yarn, kier, beam, pad, package and skein dyeing.

Dyeing materials means the purchased dyes and dyeing auxiliaries that are used in the dyeing process. The dyes are the substances that add color to textiles through incorporation into the fiber by chemical reaction, absorption or dispersion. Dyeing auxiliaries are various substances that can be added to the dyebath to aid dyeing. Dyeing auxiliaries may be necessary to transfer the dye from the dyebath to the fiber or they may provide improvements in the dyeing process or characteristics of the dyed fiber.

Dyeing operation means the collection of equipment used to dye a textile substrate and includes equipment used for dye application, dye fixation, textile substrate rinsing and drying, or to clean dyeing operation equipment. A single dyeing operation may include any combination of these types of equipment, but always includes at least the point at which a dyeing or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that dyeing or cleaning material occur. There may be multiple dyeing operations in an affected source.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Fabric means any woven, knitted, plaited, braided, felted, or non-woven material made of filaments, fibers, or yarns including thread. This term includes material made of fiberglass, natural fibers, synthetic fibers, or composite.

Finishing means the chemical treatment of a textile (e.g., with resins, softeners, stain resist or soil release agents, water repellants, flame retardants, antistatic agents, or hand builders) that improves the appearance and/or usefulness of the textile substrate.

Finishing materials means the purchased substances (including auxiliaries added to the finish to improve the finishing process or the characteristics of the finished textile) that are applied individually or as mixtures to textile substrates to impart desired properties.

Finishing operations means the collection of equipment used to finish a textile substrate including chemical finish applicator(s), flashoff area(s) and drying or curing oven(s).

Laminated fabric means fabric composed of a high-strength reinforcing base fabric between two plies of flexible thermoplastic film. Also, two or more fabrics or a fabric and a paper substrate may be bonded with an adhesive to form a laminate.

Manufacturer's formulation data means data on a material (such as a coating, printing, slashing, dyeing and finishing) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, and coating, printing, dyeing,

slashing, finishing, thinning, or cleaning material content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained; kg of organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on

organic HAP emissions from that printing or cleaning material occur. There may be multiple printing operations in an affected source. A printing operation with printing material drying or curing at ambient conditions is not printing for the purposes of this subpart.

Regulated materials means the HAP-containing materials that are used in the three printing, coating, and dyeing

prepare it for coating, printing, dyeing and finishing material application.

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Textile means any one of the following:

(1) Staple fibers and filaments suitable

TABLE 1 TO SUBPART OOOO OF PART 63.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AND EXISTING AFFECTED SOURCES IN THE PRINTING, COATING AND DYEING OF FABRICS AND OTHER TEXTILES SOURCE CATEGORY

If your affected source is a . . .	And it conducts . . .	Then this is the organic HAP emission limit for each 1-month compliance period . . .
1. New or reconstructed coating and printing affected source.	Coating operations only, or Printing operations only, or Both coating and printing operations.	You may choose any one of the following limits: Reduce organic HAP emissions to the atmosphere by achieving at least a 98 percent organic HAP overall control efficiency; Limit organic HAP emissions to the atmosphere to no more than 0.08 kg of organic HAP per kg of solids used; or If you use an oxidizer to control organic HAP emis-

slashing, finishing, thinning, or cleaning material content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained; kg of organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per mass of solids for a coating or printing material calculated using Equation 1 of § 63.4341. The organic HAP content is determined for the coating or printing material as purchased.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Printing means the application of color and patterns to textiles, usually in the form of a paste, using a variety of techniques including, but not limited to, ink jet, roller and rotary screen printing. After application of the printing material, the textile usually is treated with steam, heat, or chemicals to fix the color.

Printing material means the purchased substances, usually including gums or thickeners, dyes and appropriate chemicals such as defoamers and resins that are mixed to produce the print pastes applied to textile substrates as patterns and colors.

Printing operation means equipment used to apply cleaning materials to a substrate to prepare it for printing material application (surface preparation), to apply printing material to a substrate (printing application) and to dry or cure the printing material after application by exposure to heat or radiation (printing material drying or curing), or to clean printing operation equipment (equipment cleaning). A single printing operation may include any combination of these types of equipment, but always includes at least the point at which a printing or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that printing or cleaning material occur. There may be multiple printing operations in an affected source. A printing operation with printing material drying or curing at ambient conditions is not printing for the purposes of this subpart.

Regulated materials means the HAP-containing materials that are used in the three printing, coating, and dyeing subcategories defined in § 63.4281(a) and are the source of the HAP emissions limited by the requirements of this subpart. The specific regulated materials for each subcategory are defined in § 63.4282.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products that is conducted under the close supervision of technically trained personnel and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Slashing means the application of a chemical sizing solution to warp yarns prior to weaving to protect against snagging or abrasion that could occur during weaving.

Slashing materials, also known as sizing, means the purchased compounds that are applied to warp yarns prior to weaving. Starch, gelatin, oil, wax, and manufactured polymers such as polyvinyl alcohol, polystyrene, polyacrylic acid and polyacetates are used as sizing compounds.

Slashing operation means the equipment used to mix and prepare size for application and the slasher, which is the equipment used to apply and dry size on warp yarn.

Solids means the nonvolatile portion of the coating and printing materials that makes up the dry film on a coated substrate and the pattern or color on a printed substrate.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means chemical treatment of part or all of a substrate to prepare it for coating, printing, dyeing and finishing material application.

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Textile means any one of the following:

(1) Staple fibers and filaments suitable for conversion to or use as yarns, or for the preparation of woven, knit, or nonwoven fabrics;

(2) Yarns made from natural or manufactured fibers;

(3) Fabrics and other manufactured products made from staple fibers and filaments and from yarn; and

(4) Garments and other articles fabricated from fibers, yarns, or fabrics.

Thinning material means an organic solvent that is added to a coating or printing material after the coating or printing material is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic material determined according to Methods 204A through 204C of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating/printing operation means a coating/printing operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compounds (VOC) means any compounds defined as VOC in 40 CFR 51.100(s).

Wastewater means water that is generated in a coating, printing, slashing, dyeing or finishing operation and is collected, stored, or treated prior to being discarded or discharged.

Web means a continuous textile substrate which is flexible enough to be wound or unwound as rolls.

Tables to Subpart OOOO of Part 63

If you are required to comply with operating limits in § 63.4292, you must comply with the applicable emission limits in the following table:

TABLE 1 TO SUBPART OOOO OF PART 63.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AND EXISTING AFFECTED SOURCES IN THE PRINTING, COATING AND DYEING OF FABRICS AND OTHER TEXTILES SOURCE CATEGORY

If your affected source is a . . .	And it conducts . . .	Then this is the organic HAP emission limit for each 1-month compliance period . . .
1. New or reconstructed coating and printing affected source.	Coating operations only, or Printing operations only, or Both coating and printing operations.	You may choose any one of the following limits: Reduce organic HAP emissions to the atmosphere by achieving at least a 98 percent organic HAP overall control efficiency; Limit organic HAP emissions to the atmosphere to no more than 0.08 kg of organic HAP per kg of solids used; or If you use an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater then 20 ppmv by compound on a dry basis is achieved and the efficiency of the capture system is 100 percent.
2. Existing coating and printing affected source.	Coating operations only, or Printing operations only, or Both coating and printing operations.	You may choose any one of the following limits: Reduce organic HAP emissions to the atmosphere by achieving at least a 97 percent organic HAP overall control efficiency; Limit organic HAP emissions to the atmosphere to no more than 0.12 kg of organic HAP per kg of solids used; or If you use an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 ppmv on a dry basis is achieved and the efficiency of the capture system is 100 percent.
3. New, reconstructed or existing dyeing and finishing affected source.	a. Dyeing operations only	You must limit organic HAP emissions to the atmosphere to no more than 0.016 kg of organic HAP per kg of dyeing materials.
	b. Finishing operations only	You must limit organic HAP emissions to the atmosphere to no more than zero kg of organic HAP per kg of finishing materials as determined according to § 63.4341 of this subpart.
	c. Both dyeing and finishing operations	You must limit organic HAP emissions to the atmosphere to no more than 0.016 kg of organic HAP per kg of dyeing and finishing materials.
4. New, reconstructed or existing slashing affected source.	Slashing operations only	You must limit organic HAP emissions to the atmosphere to no more than zero kg organic HAP per kg of slashing materials as determined according to § 63.4341 of this subpart.

If you are required to comply with the operating limits by § 63.4292, you must comply with the applicable operating limits in the following table:

TABLE 2 TO SUBPART OOOO OF PART 63.—OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.4373(a).	i. collecting the combustion temperature data according to § 63.4374(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.4373(b); and either.	i. collecting the temperature data according to § 63.4374(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.4373(b)(2); or.	collecting the temperature data according to § 63.4374(c), reducing the data to 3-hour block averages, and maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. develop and implement an inspection and maintenance plan according to § 63.4373(b)(4).	maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.4373(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.

TABLE 2 TO SUBPART OOOO OF PART 63.—OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM—Continued

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
3. carbon adsorber	a. the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow	i. measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to § 63.4374(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO—Continued

Citation	Subject	Applicable to subpart OOOO	Explanation
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart 0000 is also specified in § 63.4281.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart 0000.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before	Yes.	

TABLE 2 TO SUBPART OOOO OF PART 63.—OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM—Continued

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
3. carbon adsorber	a. the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to §63.4373(c).	i. measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to §63.4374(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to §63.4373(c).	i. measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to §63.4374(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to §63.4373(d).	i. collecting the condenser outlet (product side) gas temperature according to §63.4374(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to §63.4373(e).	i. collecting the temperature data according to 63.4374(f); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to §63.4373(e).	i. collecting the pressure drop data according to 63.4374(f); and ii. reducing the pressure drop data to 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. emission capture system that is a PTE according to §63.44371(a).	a. the direction of the air flow at all times must be into the enclosure; and either.	i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to §63.4374(g)(1) or the pressure drop across the enclosure according to §63.4374(g)(2); and ii. reducing the data for facial velocity or pressure drop to 3-hour block averages; and iii. maintaining the 3-hour average facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or.	See item 6a of this table.
	c. the pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	See item 6a of this table.
7. emission capture system that is not a PTE according to §63.4371(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to §63.4373(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to §63.4374(g); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

Citation	Subject	Applicable to subpart OOOO	Explanation
§63.1(a)(1)–(14)	General Applicability	Yes.	

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO—Continued

Citation	Subject	Applicable to subpart OOOO	Explanation
§63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart 0000 is also specified in §63.4281.
§63.1(c)(1)	Applicability After Standard Established	Yes.	
§63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart 0000.
§63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§63.2	Definitions	Yes	Additional definitions are specified in §63.4381.
§63.3(a)–(c)	Units and Abbreviations	Yes.	
§63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§63.4(b)–(c)	Circumvention/Severability	Yes.	
§63.5(a)	Construction/Reconstruction	Yes.	
§63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§63.6(a)	Compliance with Standards and Maintenance Requirements—Applicability.	Yes.	
§63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4283 specifies the compliance dates.
§63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.4283 specifies the compliance dates.
§63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	Only sources using an add-on control device to comply with the standards must complete startup, shutdown, and malfunction plans.
§63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standards.
§63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§63.6(h)	Compliance With Opacity/Visible Emission Standards.	Yes	Subpart 0000 does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§63.6(j)	Presidential Compliance Exemption	Yes.	
§63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§63.4364, 63.4365, and 63.4366.
§63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. Section 63.4360 specifies the schedule for performance test requirements that are earlier than those specified in §63.7(a)(2).
§63.7(a)(3)	Performance Tests Required by the Administrator.	Yes.	
§63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard.
§63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO—Continued

Citation	Subject	Applicable to subpart OOOO	Explanation
§63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in §63.4368.
§63.8(a)(4)	Additional Monitoring Requirements	No	Subpart OOOO does not have monitoring requirements for flares.
§63.8(b)(1)	Conduct of Monitoring	Yes	
§63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	No	Subpart OOOO does not require CEMS.
§63.8(c)(1)(i)	Operation and Maintenance of Monitoring Systems.	Yes	
§63.8(c)(1)(ii)	Spare Parts for CMS	No	Subpart OOOO does not require CMS.
§63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS.	No	
§63.8(c)(2)–(3)	Monitoring System Installation	No	Subpart OOOO does not require CMS.
§63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	No	Subpart OOOO does not require continuous monitoring systems.
§63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	No	Subpart OOOO does not require COMS.
§63.8(c)(6)–(8)	CMS Requirements	No	Subpart OOOO does not require CMS.
§63.8(d)–(e)	CMS Quality Control, Performance Evaluation of CMS.	No	
§63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	No	
§63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart OOOO does not require CEMS.
§63.8(g)(1)–(5)	Data Reduction	No	Subpart OOOO does not require COMS or CEMS.
§63.9(a)–(d)	Notification Requirements	Yes	Additional requirements for sources with capture systems and add-on control devices are specified in §63.4367.
§63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device efficiency at sources using these to comply with the standard.
§63.9(f)	Notification of Visible Emissions/Opacity Test	No	Subpart OOOO does not establish opacity standards.
§63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart OOOO does not require CMS.
§63.9(h)(1)–(6)	Notification of Compliance Status	Yes	Additional requirements for sources with capture systems and add-on control devices are specified in §63.4367.
§63.9(i)	Adjustment of Submittal Deadlines	Yes	
§63.9(j)	Change in Previous Information	Yes	
§63.9(k)	Electronic Reporting Procedures	Yes	
§63.10(a)	Recordkeeping/Reporting	Yes	
§63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §63.4330.
§63.10(b)(2)(i)–(iii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	Yes	
§63.10(b)(2)(iv)–(v)	Recordkeeping of Malfunctions	Yes	Applies only to capture system and add-on control device efficiency at sources using these to comply with the standard.
§63.10(b)(2)(vi)–(xi)	Recordkeeping for CMS Malfunctions	No	Subpart OOOO does not require CMS.
§63.10(b)(2)(xii)	Record Measurements to Demonstrate Compliance with Emission Limitation.	Yes	Applies only to capture system and add-on control device efficiency at sources using these to comply with the standard.
§63.10(b)(2)(xiii)	Record CMS Data to Demonstrate Compliance with Emission Limitation.	No	Subpart OOOO does not require CMS.
§63.10(b)(2)(xiv)	Record Actions to Minimize Emissions and Record Corrective Actions.	Yes	
§63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes	
§63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§63.10(c)(7)–(8)		No	The same records are required in §63.4320(a)(4).
§63.10(c)(9)–(15)		Yes.	
§63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in §63.4320
§63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in §63.4320
§63.10(d)(3)	Reporting Opacity or Visible Emissions Observations	No	Subpart OOOO does not require opacity or visible emissions observations.
§63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes	
§63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Additional requirements are specified in §63.4320
§63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart OOOO does not require CMS.
§63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	
§63.10(e)(4)	COMS Data Reports	No	Subpart OOOO does not require COMS.
§63.10(f)	Recordkeeping/Reporting Waiver	Yes	
§63.11(a)–(b)	Control Device Requirements	No	Subpart OOOO does not require flares.
§63.12(a)–(c)	State Authority and Delegations	Yes	
§63.13(a)–(c)	Addresses of State and Regional Offices and Submittal of Reports.	Yes	
§63.14(a)–(b)	Incorporation by Reference	Yes	
§63.15(a)–(b)	Availability of Information and Confidentiality.	Yes	

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO—Continued

Citation	Subject	Applicable to subpart OOOO	Explanation
§63.16(a)–(b)	Performance Tracks	Yes	

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO—Continued

Citation	Subject	Applicable to subpart OOOO	Explanation
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.4368.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart OOOO does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.4368.
§ 63.8(c)(4)	CMS	No	Section 63.4368 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart OOOO does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4368 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)–(8)	CMS Out of Control Periods and Reporting.	Yes.	
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart OOOO does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart OOOO does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.4363 and 63.4368 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart OOOO does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart OOOO does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.4310 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.4330 and 63.4331.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for Startup, Shutdown, and Malfunction records only apply to add-on control devices used to comply with the standards.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart 0000 does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO—Continued

Citation	Subject	Applicable to subpart OOOO	Explanation
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.4320(a)(4).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4320
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4320(h).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart 0000 does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standards.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart OOOO does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.4320(g) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart OOOO does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart OOOO does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/ Confidentiality.	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 4 TO SUBPART OOOO OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/Solvent blend	CAS. No.	Average Organic HAP Mass Fraction	Typical Organic HAP, Percent Mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naptha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol®	8052–49–3	0.01	0.5% xylenes, solvent 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 5 TO SUBPART OOOO OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS[a]

[b] Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 5 TO SUBPART OOOO OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS[a]

Solvent Type	Average Organic HAP Mass Fraction	Typical Organic HAP, Percent by Mass
Aliphatic[b] ..	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene.
Aromatic[c] ..	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 4 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Part III

The President

Executive Order 13271—Establishment of the Corporate Fraud Task Force

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Title 3—

The President

Executive Order 13271 of July 9, 2002

Establishment of the Corporate Fraud Task Force

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Presidential Documents

Title 3—

The President

Executive Order 13271 of July 9, 2002

Establishment of the Corporate Fraud Task Force

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen the efforts of the Department of Justice and Federal, State, and local agencies to investigate and prosecute significant financial crimes, recover the proceeds of such crimes, and ensure just and effective punishment of those who perpetrate financial crimes, it is hereby ordered as follows:

Section 1. *Establishment.* The Attorney General shall immediately establish within the Department of Justice a Corporate Fraud Task Force (Task Force). Without regard to any other provision of this order, the Task Force shall be subject to the authority of the Attorney General under applicable law.

Sec. 2. *Membership and Operation.* Subject to section 4 of this order, the Task Force shall have the following members:

(a) the Deputy Attorney General, who shall serve as Chair;

(b) the Assistant Attorney General (Criminal Division);

(c) the Assistant Attorney General (Tax Division);

(d) the Director of the Federal Bureau of Investigation;

(e) the United States Attorney for the Southern District of New York;

(f) the United States Attorney for the Eastern District of New York;

(g) the United States Attorney for the Northern District of Illinois;

(h) the United States Attorney for the Eastern District of Pennsylvania;

(i) the United States Attorney for the Central District of California;

(j) the United States Attorney for the Northern District of California;

(k) the United States Attorney for the Southern District of Texas; and

(l) such other officers or employees of the Department of Justice as the Attorney General may from time to time designate.

The Deputy Attorney General shall convene and direct the work of the Task Force in fulfilling all its functions under this order. The Deputy Attorney General may permit, when he deems it appropriate, the designee of a member of the Task Force, including those designated under section 4 of this order, to participate in lieu of the member. The Deputy Attorney General shall convene the first meeting of the Task Force within 10 days of the date of this order and shall thereafter convene the Task Force at such times as he deems appropriate.

Sec. 3. *Functions.* Consistent with the constitutional authority of the President, the authorities assigned to the Attorney General by law, and other applicable law, the Task Force shall:

(a) provide direction for the investigation and prosecution of cases of securities fraud, accounting fraud, mail and wire fraud, money laundering, tax fraud based on such predicate offenses, and other related financial crimes committed by commercial entities and directors, officers, professional advisers, and employees thereof (hereinafter "financial crimes"), when such cases are determined by the Deputy Attorney General, for purposes of this order, to be significant;

(b) provide recommendations to the Attorney General for allocation and reallocation of resources of the Department of Justice for investigation and

prosecution of significant financial crimes, recovery of proceeds from such crimes to the extent permitted by law, and other matters determined by the Task Force from time to time to be of the highest priority in the investigation and prosecution of such crimes; and

(c) make recommendations to the President, through the Attorney General, from time to time for:

(i) action to enhance cooperation among departments, agencies, and entities of the Federal Government in the investigation and prosecution of significant financial crimes;

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prosecution of significant financial crimes, recovery of proceeds from such crimes to the extent permitted by law, and other matters determined by the Task Force from time to time to be of the highest priority in the investigation and prosecution of such crimes; and

(c) make recommendations to the President, through the Attorney General, from time to time for:

(i) action to enhance cooperation among departments, agencies, and entities of the Federal Government in the investigation and prosecution of significant financial crimes;

(ii) action to enhance cooperation among Federal, State, and local authorities responsible for the investigation and prosecution of significant financial crimes;

(iii) changes in rules, regulations, or policy to improve the effective investigation and prosecution of significant financial crimes; and

(iv) recommendations to the Congress regarding such measures as the President may judge necessary and expedient relating to significant financial crimes, or the investigation or prosecution thereof.

Sec. 4. *Additional Participation for Specified Functions.* In the Task Force's performance of the functions set forth in subsection 3(c) of this order, and to the extent permitted by law, the following officers of the executive branch shall be members of the Task Force in addition to such other officers of the Federal Government as the Deputy Attorney General deems appropriate:

(a) the Secretary of the Treasury;

(b) the Chairman of the Securities and Exchange Commission;

(c) the Chairman of the Commodities Futures Trading Commission;

(d) the Chairman of the Federal Energy Regulatory Commission; and

(e) the Chairman of the Federal Communications Commission.

Sec. 5. *Internal Management Purpose.* This order is intended to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity or otherwise against the United States, its departments, agencies, entities, instrumentalities, officers, or employees, or any other person.

Sec. 6. *Termination.* The Task Force shall terminate when directed by the President or, with the approval of the President, by the Attorney General.

THE WHITE HOUSE,
July 9, 2002.

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Federal Register
Vol. 67, No. 134
Friday, July 12, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988

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Rules and Regulations

Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes crop provisions for the insurance of sugarcane. The intended effect of this action is to provide policy changes to better meet the needs of the insured. The changes will apply for the 2003 and subsequent crop years.

EFFECTIVE DATE: This rule is effective August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Risk Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through April 30, 2004.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policy contained in this rule does not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. Additionally, the regulation does not require any greater action on the part of small entities than is required on the part of large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On October 18, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 62311–62313 to revise 7 CFR 457.116 Sugarcane Crop Insurance Provisions, effective for the 2002 and succeeding crop years.

Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of 18 comments were received from two reinsured companies and a trade association. The comments received and FCIC's responses are as follows:

Comment. A comment from a trade association stated that the language in section 5(b)(1) is not clear as to which year's production guarantee will be used to determine if the sugarcane is damaged to the extent that it is uninsurable. The commenter also asked who will make the determination that such sugarcane will not produce the production guarantee. The commenter recommended clarifying this section by stating that we will not insure a field of sugarcane that did not produce the production guarantee the previous year.

Response. FCIC disagrees with the commenter's recommended change to section 5(b)(1). Adoption would render the sugarcane uninsurable any time an indemnity is paid the previous year even if the sugarcane has recovered. However, FCIC has clarified that

sugarcane damaged the previous crop year will not be insurable for the current crop year if the sugarcane is unable to produce the yield used to establish the production guarantee for the unit. This clarification is consistent with other crop policies. Company loss adjusters must inspect damaged sugarcane prior to the dates listed in section 7(a)(3) or (4), to determine if such sugarcane is insurable.

Comment. A trade association and an approved insurance provider commented about the language in section 5(b)(2) as some producers may have sugarcane that exceeds the age limitations. FCIC will examine the yields of the varieties of sugarcane when setting the age limitations.

Comment. A trade association and an approved insurance provider commented about the language in section 5(b)(2) as some producers may have sugarcane that exceeds the age limitations. FCIC will examine the yields of the varieties of sugarcane when setting the age limitations.

Response. FCIC has revised section 7(b)(2) to specify the later of April 15, or 30 days following harvest of the previous crop for stubble cane. This will allow time for an appraisal before

Comment. A trade association asked if the proposed language in section 7(b)(2) means that a subsequent year's coverage for a sugarcane crop in all other states except Louisiana could begin prior to the end of the previous year's insurance period of April 30.

Response. FCIC has revised section 7(b)(2) to specify the later of April 15, or 30 days following harvest of the previous crop for stubble cane. This will allow time for an appraisal before

appraisal is not requested the production to count for such acreage will be the production guarantee. No additional expenses will be incurred by approved insurance providers, because this is currently a requirement in the policy. Therefore, no change has been made.

Comment. A trade association recommended for consistency that the same production guarantee be used in the settlement of claim examples in

vii. Revise newly designated sections 10(c)(1)(iv) and (c)(1)(v) introductory text.

The revisions and additions read as follows:

§ 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2003 and succeeding crop years are as follows:

* * * * *

(b) In accordance with the provisions of section 11 of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is:

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

* * * * *

9. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed.

(a) In addition to your duties under section 14 of the Basic Provisions (§ 457.8), in the event of damage or loss:

(1) * * *

(2) You must give us notice at least 15 days

sugarcane damaged the previous crop year will not be insurable for the current crop year if the sugarcane is unable to produce the yield used to establish the production guarantee for the unit. This clarification is consistent with other crop policies. Company loss adjusters must inspect damaged sugarcane prior to the dates listed in section 7(a)(3) or (4), to determine if such sugarcane is insurable.

Comment. A trade association and an approved insurance provider questioned what age limitations (number of years) will be applicable in section 5(b)(2)?

Response. The age limitation by sugarcane variety, if applicable, will be listed in the Sugarcane Special Provisions. A general example of such a statement would be "Sugarcane variety LCP 85–384 will not be insurable the sixth year after the initial planting of the sugarcane."

Comment. An approved insurance provider objected to adding an age limitation on insurable sugarcane in section 5(b)(2). The commenter said the age is not the key variable in the yield but rather care and cultural practices determine yields.

Response. Research shows that sugarcane production decreases with the age of a sugarcane stand and at some point the sugarcane will be unable to produce the yield used to establish the production guarantee. It would violate the principals of insurance to insure a crop that has no expectations of producing the production guarantee. Therefore, no change has been made.

Comment. A trade association recommended that approved insurance providers be given the ability to review the age limitations that will be contained in the Special Provisions prior to issuance of the Special Provisions. This would allow them the opportunity to suggest any changes to these provisions.

Response. The Risk Management Agency Regional Offices will work with all appropriate parties to obtain the information to determine the appropriate age limitations. Any comments will be considered during the process.

Comment. A trade association and an approved insurance provider recommended that FCIC list in the Sugarcane Loss Adjustment Standards Handbook the new and old varieties of sugarcane currently being grown. The commenters also stated that current producers are obtaining good yields on some varieties of sugarcane for up to six years and nearly all varieties for up to four years.

Response. The list of insurable sugarcane must also be available to producers. Therefore, the Sugarcane Special Provisions, which are issued annually, will contain a list of insurable sugarcane varieties and their age limitations. FCIC will examine the yields of the varieties of sugarcane when setting the age limitations.

Comment. A trade association and an approved insurance provider commented about the language in section 5(b)(2) as some producers may have sugarcane that exceeds the age limitation for insurance but the producers prefer to continue to keep such sugarcane under production. In addition, the commenters asked if a producer must request coverage by written agreement to continue to insure such sugarcane.

Response. Coverage for sugarcane that has exceeded the age limitation may be provided if the producer requests that such sugarcane be insured and the insurance provider agrees in writing to insure such acreage. Agreements in writing must not be provided unless the producer can show that the crop has the expectation of producing at least the yield used to establish the production guarantee.

Comment. A trade association stated that although limiting the age at which sugarcane can be insured may eliminate the need for performing stand appraisals, there will still be the need for some type of appraisal if the producer requests insurance of such sugarcane by written agreement.

Response. FCIC agrees there is a need for an appraisal method to determine the insurability of sugarcane that has exceeded the age limitation. The appraisal method will be described in the Sugarcane Loss Adjustment Standards Handbook, which is posted on FCIC's website at: www.rma.usda.gov.

Comment. A trade association asked if the dates in sections 7(a)(3) and (4) are needed if insurance coverage is not allowed on sugarcane that was damaged the previous year. Also, if a written agreement is allowed, language should be provided to state that a field inspection is or is not required.

Response. Sugarcane damaged the previous year may be insurable if it is able to produce the yield used to establish the production guarantee for the current crop year. The dates specified in sections 7(a)(3) and (4) are the dates when insurance will attach to such sugarcane. Language has been added to section 5(b)(2) to specify that an appraisal is needed to determine whether the sugarcane is able to produce the yield used to establish the production guarantee for the current crop year.

Comment. A trade association asked if the proposed language in section 7(b)(2) means that a subsequent year's coverage for a sugarcane crop in all other states except Louisiana could begin prior to the end of the previous year's insurance period of April 30.

Response. FCIC has revised section 7(b)(2) to specify the later of April 15, or 30 days following harvest of the previous crop for stubble cane. This will allow time for an appraisal before insurance attaches.

Comment. A trade association recommended clarifying the language in section 9(a)(2) to state that sugarcane cut for seed without an appraisal will be considered as destroyed without consent and not less than the production guarantee will be considered as production to count. The commenter also requested clarification as to what production will be used to update the actual production history database for the following year for such acreage.

Response. FCIC agrees that not more than the production guarantee should be assigned as production to count and has revised the provision accordingly. This is consistent with section 10(c)(1)(i)(B). For actual production history purposes, the number of acres of sugarcane destroyed without consent will be counted in the total acreage for the unit, but the production to count for such acreage will be zero.

Comment. Two comments were received, one from a trade association and one from an approved insurance provider regarding section 9(a)(2) that a producer knows which acreage is going to be planted or replanted, but may not know which acreage will be cut for seed.

Response. Producers should certainly know before they harvest the crop, which acres are going to be harvested for seed. The 15 day requirement is needed to allow the approved insurance provider time to appraise the acreage. Therefore, no change has been made.

Comment. A trade association commented on the addition of language in section 9(a)(2) that requires an appraisal of sugarcane that will be cut for seed, even though there may not be a loss on the sugarcane. This will result in additional expense to the companies.

Response. The current Sugarcane Crop Provisions in section 9(a)(2) requires the producer to give at least 15 days notice prior to cutting sugarcane for seed and after such notice the sugarcane will be appraised for its sugar potential. Section 9(a)(3), requires a producer to request an appraisal if any time during the crop year sugarcane acreage cut for seed will not produce at least the production guarantee. If an appraisal is not requested the production to count for such acreage will be the production guarantee. No additional expenses will be incurred by approved insurance providers, because this is currently a requirement in the policy. Therefore, no change has been made.

Comment. A trade association recommended for consistency that the same production guarantee be used in the settlement of claim examples in section 10.

Response. FCIC agrees with the comment and has clarified the settlement of claim examples by using the term production guarantee, where applicable, and the same number of pounds for the production guarantee.

In addition to the changes described above, FCIC has made the following changes:

1. Added language in section 7(a)(1) to clarify when insurance attaches for plant cane.

2. Clarified that the language in section 9(a)(3) refers to sugarcane cut for seed.

3. Replaced the term "approved yield" with "production guarantee" in section 9(a)(2) to be consistent with section 10(c)(1)(i)(B) of the current Sugarcane Crop Provisions and also in section 9(a)(3) to be consistent with section 10(c)(1)(iv) of this final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, Sugarcane, reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) for the 2003 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend 457.116 as follows:

a. Revise the first sentence of the introductory text;

b. In the crop insurance provisions:

i. In Section 1, revise the definition of "sugarcane";

ii. Revise sections 3, 5, 6, and 7;

iii. Revise section 9(a) introductory text and 9(a)(2), and add section 9(a)(3);

iv. Add 2 examples following section 10(b)(4);

v. Remove section 10(c)(1)(iv);

vi. Redesignate sections 10(c)(1)(v) and (c)(1)(vi) as sections 10(c)(1)(iv) and (c)(1)(v), respectively; and

vii. Revise newly designated sections 10(c)(1)(iv) and (c)(1)(v) introductory text.

The revisions and additions read as follows:

§ 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2003 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Sugarcane. The grass, Saccharum officinarum, that is grown to produce sugar.

* * * * *

3. Contract Changes.

In accordance with section 4 of the Basic Provisions (§ 457.8), the contract change date is June 30 preceding the cancellation date.

* * * * *

5. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions (§ 457.8), the crop insured will be all the sugarcane in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is grown for processing for sugar or for seed; and

(3) That is not interplanted with another crop, unless allowed by a written agreement.

(b) In addition to the crop listed as not insured in section 8(b) of the Basic Provisions (§ 457.8), we will not insure any sugarcane:

(1) That was damaged the previous crop year to the extent the sugarcane is unable to produce the yield used to establish the production guarantee for the unit for the current crop year; or

(2) That exceeds the age limitations (by variety, if applicable) contained in the Special Provisions , unless we agree in writing to insure such acreage. An agreement in writing will not be provided unless, after an appraisal, we determine that the crop is able to produce at least the yield used to establish the production guarantee for the unit for the current crop year.

6. Insurable Acreage.

Section 9(a)(3) of the Basic Provisions (§ 457.8), is not applicable to the Sugarcane Crop Insurance Provisions.

7. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions (§ 457.8), insurance attaches:

(1) On the later of the day we accept your application or at the time of planting for plant cane;

(2) On the first day following harvest of the previous crop for stubble cane except as contained in sections 7(a)(3) and (4);

(3) On the later of April 15 or 30 days following harvest of the previous crop for stubble cane damaged during the previous crop year in all states (except Louisiana); and

(4) On the later of April 30 or 30 days following harvest of the previous crop for stubble cane damaged during the previous crop year in Louisiana.

(b) In accordance with the provisions of section 11 of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is:

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

* * * * * *

9. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed.

(a) In addition to your duties under section 14 of the Basic Provisions (§ 457.8), in the event of damage or loss:

(1) * * *

(2) You must give us notice at least 15 days before you begin cutting any sugarcane for seed. Your notice must include the unit number and the number of acres you intend to harvest as seed. Failure to give us timely notice will cause the acreage cut for seed to be considered as put to another use without consent. The production to count for such acreage will not be less than the production guarantee.

(3) You must request an appraisal if any time during the crop year sugarcane acreage cut for seed will not produce at least the production guarantee so we can determine the production to count. If you do not request an appraisal, the production to count for such acreage will be the production guarantee.

* * * * *

10. Settlement of Claim.

* * * * * *

(b) * * *

(4) * * *

Example 1: Assume you have a 100 percent share in a unit of 100 acres of sugarcane, an approved yield of 6,000 pounds of raw sugar per acre, a coverage election of 65 percent, and a price election of $0.12 a pound. The production guarantee would be 3,900 pounds of raw sugar per acre (6,000 × 65%). Further assume that you are only able to harvest 200,000 pounds of raw sugar because the unit was damaged by an insurable cause of loss. Your indemnity would be calculated as follows:

(1) 100 acres × 3,900 pound production guarantee = 390,000 pound production guarantee;

(2) 390,000 pound production guarantee − 200,000 pounds harvested production = 190,000 pound production loss;

(3) 190,000 pound production loss × $0.12 price election = $22,800 loss; and

(4) $22,800 loss × 100 percent share = $22,800 indemnity payment.

Example 2: Assume the same set of facts. Also, assume that you cut 20 acres of this unit for seed without giving notice that you were cutting this acreage for seed and that you are only able to harvest 200,000 pounds from the remaining 80 acres. Your indemnity would be calculated as follows:

(1) 100 acres × 3,900 pound production guarantee = 390,000 pound production guarantee;

(2) 390,000 pound production guarantee − 278,000 (200,000 pounds harvested production ÷ 78,000 pounds production for putting acreage to another use without consent, (20 acres × 3,900 pound production guarantee per acre)) = 112,000 pound production loss;

(3) 112,000 pound production loss × $0.12 price election = $13,440 loss; and

(4) $13,440 loss × 100 percent share = $13,440 indemnity payment.

(c) * * *

(1) * * *

(iv) Potential production on insured acreage harvested for seed (see section 9(a)(3));

(v) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of

DATES: Effective August 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and

designation as published in the most recent type certificate data sheet for the affected models.

Explanation of Changes to Paragraph (a) of this AD

Paragraph (a) of the proposed rule pertains to both initial and repetitive inspections of the spoiler hold-down actuator supports. For purposes of clarity, this AD has been revised to specify requirements for the initial

hours required to accomplish terminating action. In addition, the manufacturer of the airplane recommended a 15-month period for replacement of the specified parts. The FAA finds that a compliance time which does not exceed 15 months is necessary to ensure continued operational safety of these airplanes. However, paragraph (e) of this final rule does provide affected operators the opportunity to apply for an adjustment

actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

(3) 112,000 pound production loss × $0.12 price election = $13,440 loss; and

(4) $13,440 loss × 100 percent share = $13,440 indemnity payment.

(c) * * *

(1) * * *

(iv) Potential production on insured acreage harvested for seed (see section 9(a)(3));

(v) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

* * * * *

Signed in Washington, DC, on June 26, 2002.

Ross J. Davidson, Jr.,

Administrator, Federal Crop Insurance Corporation.

[FR Doc. 02–16680 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–244–AD; Amendment 39–12816; AD 2002–14–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model 717–200 airplanes, that requires repetitive inspections for cracking of the spoiler hold-down actuator supports located on the left and right wing rear spars; adjustment of the spoiler hold-down actuators; and replacement of cracked spoiler hold-down actuator supports with new, improved supports. This AD also requires replacement of all spoiler hold-down actuator supports with new, improved supports, which terminates the repetitive inspections. The actions specified by this AD are intended to detect and correct as well as to prevent cracks in the spoiler hold-down actuator supports, which could lead to reduced spoiler hold-down capability, resulting in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement.

DATES: Effective August 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241; fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCI text,

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717 series airplanes was published in the **Federal Register** on January 4, 2002 (67 FR 538). That action proposed to require repetitive inspections for cracking of the spoiler hold-down actuator supports located on the left and right wing rear spars; adjustment of the spoiler hold-down actuators; and replacement of cracked spoiler hold-down actuator supports with new, improved supports. That action also proposed to require replacement of all spoiler hold-down actuator supports with new, improved supports which terminates the repetitive inspections.

Explanation of Change to Applicability

The FAA has revised the applicability of the existing AD to identify the model designation as published in the most recent type certificate data sheet for the affected models.

Explanation of Changes to Paragraph (a) of this AD

Paragraph (a) of the proposed rule pertains to both initial and repetitive inspections of the spoiler hold-down actuator supports. For purposes of clarity, this AD has been revised to specify requirements for the initial inspection in paragraph (a) of this AD and those for repetitive inspections in paragraph (b) of this AD.

In addition, the FAA has changed all reference to a "detailed visual inspection" to a "detailed inspection" in this final rule.

Explanation of Changes to Notes 3 and 4

Information pertaining to inspections accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 01, dated February 28, 2001, has been removed from Note 3 of the proposed rule and incorporated into paragraph (c) of this AD to clarify the compliance time for performing the next repetitive inspection.

Information pertaining to replacement of a spoiler hold-down actuator support, accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 717–57–0004, dated May 30, 2001, has been removed from Note 4 of the proposed rule and incorporated into paragraph (d) of this AD to clarify that the replacement constitutes terminating action for the particular actuator support.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Compliance Time for Terminating Action

Two commenters request that the compliance time for terminating action be extended from 15 months to 60 months after the effective date of the AD. The commenters suggest that the proposed repetitive inspections at intervals of 500 flight hours will ensure airworthiness until the 60-month time limit is reached.

The FAA does not concur. The 15-month compliance period was based upon study of the consequences of failure of the spoiler hold-down actuator supports and associated parts, the availability of replacement parts, typical maintenance intervals, and the work hours required to accomplish terminating action. In addition, the manufacturer of the airplane recommended a 15-month period for replacement of the specified parts. The FAA finds that a compliance time which does not exceed 15 months is necessary to ensure continued operational safety of these airplanes. However, paragraph (e) of this final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment. Accordingly, no change has been made to the proposed rule in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 52 McDonnell Douglas Model 717 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD.

It will take approximately 12 work hours per airplane to accomplish the required detailed inspection for cracks and the adjustment of the spoiler hold-down actuator supports at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection and adjustment on U.S. operators is estimated to be $25,920, or $720 per airplane, per inspection cycle.

It will take approximately 18 to 43 work hours per airplane to accomplish the replacement of the spoiler hold-down actuator supports and associated parts at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this AD. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be between $38,880 and $92,880, or between $1,080 and $2,580 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–16 McDonnell Douglas: Amendment 39–12816. Docket 2001–NM–244–AD.

Applicability: Model 717–200 airplanes, manufacturer's fuselage numbers 5002 through 5064 inclusive, and 5066 through 5073 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct as well as to prevent cracks in the spoiler hold-down actuator supports, which could lead to reduced spoiler hold-down capability, resulting in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement, accomplish the following:

Initial Inspection

(a) Prior to the accumulation of 1,500 total flight hours (FH) or within 500 FH after the effective date of this AD, whichever occurs later: Perform a detailed inspection of the spoiler hold-down actuator supports on the left and right wing rear spar for cracks, in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 02, dated October 2, 2001.

(1) If no crack is detected: Prior to further flight, adjust the spoiler hold-down actuators in accordance with the service bulletin.

(2) If any crack is detected: Prior to further flight, adjust the spoiler hold-down actuators in accordance with the service bulletin. Within 500 flight hours after accomplishment of the inspection, replace the cracked spoiler hold-down actuator supports and associated idler link(s), hinge pins, and attaching parts with new parts and adjust the spoiler hold-down actuators, in accordance with Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001. Replacement of a cracked spoiler hold-down actuator support as required herein constitutes terminating action for that actuator support for the requirements of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) If the initial inspection required by paragraph (a) of this AD does not detect cracks, repeat the detailed inspection of the spoiler hold-down actuator support, in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 02, dated

October 2, 2001, at intervals not to exceed 500 flight hours until the accomplishment of the requirements of paragraph (d) of this AD.

(c) If a detailed inspection for cracks of a spoiler hold-down actuator support was performed and the actuator was adjusted prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 01, dated February 28, 2001, repeat the detailed inspection in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 02, dated October 2, 2001, within 500 FH of the

actuation system incorporates multiple independent systems to lock the thrust reverser in the "stowed" position. The intent is that, if one locking system fails, the other locking systems will continue to function, keeping the thrust reverser locked in the "stowed" position. However, inadequate separation of control wiring for the thrust reverser actuation system could allow a single failure to damage wiring for more than one locking system, which could result

and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington,

Comments for inclusion in the Rules Docket must be received on or before September 10, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–108–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m.,

non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 18 work hours to

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following

October 2, 2001, at intervals not to exceed 500 flight hours until the accomplishment of the requirements of paragraph (d) of this AD.

(c) If a detailed inspection for cracks of a spoiler hold-down actuator support was performed and the actuator was adjusted prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 01, dated February 28, 2001, repeat the detailed inspection in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 02, dated October 2, 2001, within 500 FH of the last inspection or within 500 FH of the effective date of this AD, whichever occurs later.

Terminating Action

(d) Within 15 months after the effective date of this AD: Replace spoiler hold-down actuator supports, idler links, hinge pin, and attaching parts with new parts and adjust the spoiler hold-down actuators, in accordance with Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001. Replacement of all spoiler hold-down actuators in accordance with Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001, constitutes terminating action for the requirements of this AD.

(1) Any spoiler hold-down actuator supports, idler links, hinge pin, or attaching parts which have previously been replaced in accordance with paragraph (a)(2) of this AD do not need to be replaced.

(2) Any spoiler hold-down actuator supports, idler links, hinge pins, or attaching parts which were replaced prior to the effective date of this AD in accordance with Boeing Service Bulletin 717–57–0004, original issue, dated May 30, 2001, do not need to be replaced.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin 717–57A0002, Revision 02, dated October 2, 2001; and Boeing Service Bulletin 717–57–0004, Revision 01, dated October 2, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 16, 2002.

Issued in Renton, Washington, on July 3, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17299 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–108–AD; Amendment 39–12802; AD 2002–14–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Equipped With Rolls Royce RB211–524H Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–300 series airplanes equipped with Rolls Royce RB211–524H series engines. This action requires re-routing a certain wire bundle containing control wiring for the thrust reverser actuation system. This action is necessary to ensure that control wiring for the thrust reverser actuation system is adequately separated. Inadequately separated wiring could allow a single failure to result in uncommanded deployment of a thrust reverser and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 29, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 10, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–108–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–108–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2666; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: During inspections performed in the course of certificating Boeing Model 767–400ER series airplanes, the FAA discovered that control wiring for the thrust reverser actuation system brake was routed under the same clamps as wiring that controls the pressure regulating shut-off valve and the differential pressure valve of the thrust reverser system, as well as wiring of unrelated systems. Due to the criticality of an uncommanded deployment of a thrust reverser in flight, the thrust reverser

actuation system incorporates multiple independent systems to lock the thrust reverser in the "stowed" position. The intent is that, if one locking system fails, the other locking systems will continue to function, keeping the thrust reverser locked in the "stowed" position. However, inadequate separation of control wiring for the thrust reverser actuation system could allow a single failure to damage wiring for more than one locking system, which could result in an uncommanded deployment of a thrust reverser and consequent reduced controllability of the airplane.

A subsequent review of wiring designs on other Model 767 series airplanes revealed that a condition similar to that described previously also exists on Model 767–300 series airplanes equipped with Rolls Royce RB211–524H series engines. Therefore, these airplanes are subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–78–0085, dated November 8, 2001. That service bulletin describes procedures for re-routing wire bundle W518, which is located along the leading edge of the right wing from the outboard pressure seal to the wing/strut disconnect. The procedures include performing a functional test to verify proper operation of the thrust reverser actuation system following the re-routing of the wire bundle. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to ensure that control wiring for the thrust reverser actuation system is adequately separated. Inadequately separated wiring could allow a single failure to result in uncommanded deployment of a thrust reverser and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 10 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $600 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–108–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–02 Boeing: Amendment 39–12802. Docket 2002–NM–108–AD.

Applicability: Model 767–300 series airplanes, line numbers 001 through 810 inclusive, certificated in any category, and equipped with Rolls Royce RB211–524H series engines.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 767–78–0085, dated November 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 23, 2002.

ADDRESSES: You may get the service information referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257–890; facsimile: ++49 72578922. You may view this information at the Federal

blocks for cracks and replace if necessary.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Sailplanes Does This AD Impact?

We estimate that this AD affects 43 sailplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–02 Boeing: Amendment 39–12802. Docket 2002–NM–108–AD.

Applicability: Model 767–300 series airplanes, line numbers 001 through 810 inclusive, certificated in any category, and equipped with Rolls Royce RB211–524H series engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that control wiring for the thrust reverser actuation system is adequately separated in order to prevent a single failure from resulting in uncommanded deployment of a thrust reverser and consequent reduced controllability of the airplane, accomplish the following:

Re-Routing of Wire Bundle and Functional Test

(a) Within 36 months after the effective date of this AD, re-route wire bundle W518 (which is located along the leading edge of the right wing from the outboard pressure seal to the wing/strut disconnect), according to Boeing Service Bulletin 767–78–0085, dated November 8, 2001. Before the next flight after the re-routing, the functional test specified in the procedures in the service bulletin must be successfully completed.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 767–78–0085, dated November 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 29, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17244 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–12–AD; Amendment 39–12818; AD 2002–14–18]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Models DG–400 and DG–800A Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (DG Flugzeugbau) Models DG–400 and DG–800A sailplanes. This AD requires you to inspect the rear plate of the propeller mount for marks and/or cracks and replace if necessary. This AD also requires you to inspect the mounting blocks for cracks and replace if necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct cracks in the propeller mount plate and mounting blocks, which could result in reduced structural integrity of the propeller mounting structure. This could lead to a hazardous flight condition or loss of control of the sailplane.

DATES: This AD becomes effective on August 23, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 23, 2002.

ADDRESSES: You may get the service information referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257–890; facsimile: ++49 72578922. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002CE–12AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified FAA that an unsafe condition may exist on all Model DG–400 and DG–800A sailplanes. The LBA reports that cracks have been found on the rear plate of the propeller mount on one DG–400 sailplane. The cracks were found during regular maintenance. Models DG–400 and DG–800A sailplanes are equipped with the same propeller mount structure.

What Is the Potential Impact if FAA Took No Action?

This condition, if left undetected and corrected, could result in reduced structural integrity of the propeller mounting structure. This could lead to a hazardous flight condition or loss of control of the sailplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all DG Flugzeugbau Models DG–400 and DG–800A sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 20, 2002 (67 FR 35456). The NPRM proposed to require you to inspect the rear plate of the propeller mount for marks and/or cracks and replace if necessary. The NPRM also proposed to require you to inspect the mounting blocks for cracks and replace if necessary.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

Cost Impact

How Many Sailplanes Does This AD Impact?

We estimate that this AD affects 43 sailplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required for the inspection	$60	43 × $60 = $2,580.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of sailplanes that may need such replacement:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $60 per hour = $120	$400	$120 + $400 = $520.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of the inspection is "within the next 25 hours time-in-service (TIS) or 3 calendar months after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The unsafe condition on these sailplanes is not a result of the number of times the sailplane is operated. Sailplane operation varies among operators. For example, one operator may operate the sailplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours TIS and calendar time in order to ensure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–14–18 Glaser-Dirks Flugzeugbau GMBH: Amendment 39–12818; Docket No. 2002–CE–12–AD.

(a) *What sailplanes are affected by this AD?* This AD affects Models DG–400 and DG–800A sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the propeller mount plate, which could result in reduced structural integrity of the propeller mounting structure. This could lead to a hazardous flight condition or loss of control of the sailplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Accomplish the following inspections: ..... (i) Inspect the rear plate of the propeller mount for cracks and any marks made by the mounting bolt washer; and. (ii) Inspect the mounting blocks for the rear plate of the propeller mount for cracks.	Inspect within the next 25 hours time-in-service (TIS) or 3 calendar months after August 23, 2002 (the effective date of this AD), whichever occurs first.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001; or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as applicable, and the applicable maintenance manual.
(2) Accomplish the following if cracks and/or marks are found during the inspections required in paragraph (d)(1) of this AD:. (i) If a mark made by the mounting bolt washer	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001; or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as ap-

needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the

incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of

procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore,—(1) Is not a

Actions	Compliance	Procedures
(1) Accomplish the following inspections: ..... (i) Inspect the rear plate of the propeller mount for cracks and any marks made by the mounting bolt washer; and. (ii) Inspect the mounting blocks for the rear plate of the propeller mount for cracks.	Inspect within the next 25 hours time-in-service (TIS) or 3 calendar months after August 23, 2002 (the effective date of this AD), whichever occurs first.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001; or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as applicable, and the applicable maintenance manual.
(2) Accomplish the following if cracks and/or marks are found during the inspections required in paragraph (d)(1) of this AD:. (i) If a mark made by the mounting bolt washer is found and the mark is 0.1 mm deep or less and no cracks are found on the rear plate of the propeller mount, polish out the mark using standard maintenance practices;. (ii) If a mark made by the mounting bolt washer is found and the mark is more than 0.1 mm deep and/or cracks are found on the rear plate of the propeller mount, replace the rear plate with a new one. Use new bolts and washers as required by paragraph (d)(3) of this AD; and. (iii) If cracks are found on the mounting block(s) of the rear plate of the propeller mount, replace the mounting block(s) with a new one. Use new bolts and washers as required by paragraph (d)(3) of this Ad.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001; or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as applicable, and the applicable maintenance manual.
(3) Reinstall the rear plate of the propeller mount to the mounting blocks using new bolts, M10x25 DIN912–8.8zn with the aluminum washer S48 (or FAA-approved equivalent parts).	Prior to further flight after the inspections required in paragraph (d)(1) of this AD and/or after the replacements required in paragraph (d)(2) of this AD.	In accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001; or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001, as applicable, and the applicable maintenance manual.
(4) Do not install any rear propeller mount plate mounting bolts that are not bolts M10x25 DIN912–8.8zn with aluminum washer S48 (or FAA-approved equivalent parts).	As of August 23, 2002 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office Manager.

Note: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with DG Flugzeugbau Technical Note No. 826/42, dated August 30, 2001; or DG Flugzeugbau Technical Note No. 873/25, dated August 30, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on August 23, 2002.

Issued in Kansas City, Missouri, on July 3, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17304 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30320; Amdt. No. 3014]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 5, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; AND § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC Number	Subject
06/20/02	AL	Huntsville	Madison County Executive.	2/5825	VOR/DME–B, Amdt 6.
06/20/02	AL	Troy	Troy Muni	2/5827	ILS Rwy 7, Amdt 7A.
06/20/02	AL	Huntsville	Madison County Executive.	2/5829	RNAV (GPS) Rwy 18, Orig.
06/20/02	MT	Kalispell	Glacier Park Intl	2/5847	ILS Rwy 2, Amdt 4B.
06/20/02	CT	Willimantic	Windham	2/5867	LOC Rwy 27, Amdt 2A.
06/20/02	CO	Pueblo	Pueblo Memorial	2/5873	ILS Rwy 26R, Amdt 13.
06/21/02	NC	Wilmington	Wilmington Intl	2/5908	RNAV (GPS) Rwy 35, Orig.
06/21/02	NC	Wilmington	Wilmington Intl	2/5909	RNAV (GPS) Rwy 17, Orig.
06/21/02	CO	Durango	Durango-La Plata	2/5910	VOR OR GPS–A, Amdt 6.

FOR FURTHER INFORMATION CONTACT: Kelly Riley, Senior Special Counsel, at (202) 942–0752, Susie Cho, Special Counsel, at (202) 942–0748, and Geoffrey Pemble, Attorney, at (202) 942–0757, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion

A. Assessments Under Section 31(d) of the Exchange Act

Section 31(d) of the Exchange Act provides that each national securities exchange and each national securities association shall pay an assessment "for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any such association otherwise than on an exchange. The amendment to Preliminary Note to Rule 31–1 establishes this method of calculating the Section 31(d) assessment.[8]

B. Fees under Sections 31(b) and (c) of the Exchange Act

In addition to the assessments paid by exchanges and associations pursuant to section 31(d) of the Exchange Act, section 31(b) of the Exchange Act requires each national securities

FDC date	State	City	Airport	FDC Number	Subject
06/20/02	AL	Huntsville	Madison County Executive.	2/5826	VOR/DME–B, Amdt 6.
06/20/02	AL	Troy	Troy Muni	2/5827	ILS Rwy 7, Amdt 7A.
06/20/02	AL	Huntsville	Madison County Executive.	2/5829	RNAV (GPS) Rwy 18, Orig.
06/20/02	MT	Kalispell	Glacier Park Intl	2/5847	ILS Rwy 2, Amdt 4B.
06/20/02	CT	Willimantic	Windham	2/5867	LOC Rwy 27, Amdt 2A.
06/20/02	CO	Pueblo	Pueblo Memorial	2/5873	ILS Rwy 26R, Amdt 13.
06/21/02	NC	Wilmington	Wilmington Intl	2/5908	RNAV (GPS) Rwy 35, Orig.
06/21/02	NC	Wilmington	Wilmington Intl	2/5909	RNAV (GPS) Rwy 17, Orig.
06/21/02	CO	Durango	Durango-La Plata County.	2/5910	VOR OR GPS–A, Amdt 6.
06/21/02	NC	Wilmington	Wilmington Intl	2/5917	LOC BC Rwy 17, Amdt 7B.
06/21/02	NC	Wilmington	Wilmington Intl	2/5918	Radar-1, Amdt 6B.
06/21/02	NC	Wilmington	Wilmington Intl	2/5919	TACAN–A, Orig.
06/21/02	NC	Wilmington	Wilmington Intl	2/5920	ILS Rwy 35, Amdt 20B.
06/21/02	CO	Hayden	Yampa Valley	2/6022	ILS/DME Rwy 10, Amdt 1.
06/24/02	CO	Grand Junction	Grand Junction/ Walker Field.	2/6018	LDA/DME Rwy 29, Orig.
06/25/02	CA	Oakland	Metropolitan Oakland Intl.	2/6094	RNAV (GPS) Rwy 27L, Orig.
06/25/02	NV	Las Vegas	McCarran Intl	2/6097	ILS Rwy 25R, Amdt 16F.
06/26/02	ME	Rangeley	Steven A. Bean Muni.	2/6118	NDB or GPS–A, Amdt 4. This replaces FDC 2/5693 IN TL02–15.
06/26/02	GA	Thomaston	Thomaston-Upston County.	2/6127	ILS Rwy 30, Orig.
06/26/02	GA	Thomaston	Thomaston-Upston County.	2/6128	NDB or GPS Rwy 30, Amdt 1.
06/26/02	UT	Salt Lake City	Salt Lake City Intl	2/6131	ILS Rwy 17, Amdt 12A.
06/28/02	SD	Sioux Falls	Joe Foss Field	2/6213	ILS Rwy 3, Amdt 27.
06/28/02	NH	Manchester	Manchester	2/6223	ILS Rwy 6 Orig.
07/01/02	CA	Blythe	Blythe	2/6375	VOR or GPS–A, Amdt 6A.
07/01/02	CA	Blythe	Blythe	2/6374	VOR/DME or GPS Rwy 26, Amdt 5A.
06/18/02	TX	Houston	George Bush Intercontinental Arpt/ Houston.	2/5723	ILS Rwy 15R, Orig.
06/20/02	KS	Wichita	Colonel James Jabara.	2/5876	GPS Rwy 18, Orig.
06/20/02	KS	Wichita	Colonel James Jabara.	2/5877	VOR/DME RNAV Rwy 18, Amdt 3.
06/24/02	LA	Patterson	Harry P. Williams Memorial.	2/6031	ILS Rwy 24, Orig.
06/24/02	TX	Madisonville	Madisonville Muni	2/6015	VOR/DME Rwy 18, Amdt 2.
06/25/02	OK	Lawton	Lawton-Ft Sill Regional.	2/6069	Radar-2, Amdt 1A.
06/26/02	TX	Anahuc	Chambers County	2/6133	NDB Rwy 12, Amdt 1.
07/02/02	IL	Chicago	Chicago-O'Hare Intl	2/6421	ILS Rwy 22R, Amdt 7A.

[FR Doc. 02–17582 Filed 7–11–02; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46169; File No. S7–14–02]

RIN 3235–AI49

Assessments on Security Futures Transactions and Fees on Sales of Securities Resulting from Physical Settlement of Security Futures Pursuant to Section 31 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting an amendment to a rule under the Securities Exchange Act of 1934 ("Exchange Act") to clarify how to calculate assessments that are required to be paid by national securities exchanges and national securities associations pursuant to section 31(d) of the Exchange Act for security futures transactions. In addition, the amendment will provide guidance on how to calculate fees that are required to be paid by national securities exchanges and national securities associations pursuant to sections 31(b) and (c) of the Exchange Act, respectively, for sales of securities that result from the physical settlement of security futures.

EFFECTIVE DATE: August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kelly Riley, Senior Special Counsel, at (202) 942–0752, Susie Cho, Special Counsel, at (202) 942–0748, and Geoffrey Pemble, Attorney, at (202) 942–0757, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 31 of the Exchange Act[1] requires each national securities exchange and each national securities association to pay assessments and fees based on transactions in or sales of certain securities. On May 1, 2002, the Commission proposed an amendment to Rule 31–1[2] to clarify how national securities exchanges and national securities associations should calculate: (1) Assessments for security futures transactions required to be paid pursuant to section 31(d) of the Exchange Act[3] and (2) fees for sales of securities resulting from physical settlement of security futures required to be paid pursuant to either section 31(b) or (c) of the Exchange Act.[4] The Commission received four comment letters in response to the Proposing Release.[5] As discussed further below, the Commission is adopting the amendment to Rule 31–1 regarding payment of the Section 31 assessment as proposed. In addition, the Commission is adopting an amendment to Rule 31–1 regarding how Section 31 fees are to be calculated for sales of securities that result from physical settlement of security futures, which is modified from the amendment proposed in response to comments.

[1] 15 U.S.C. 78ee.

[2] 17 CFR 240.31–1.

[3] Earlier this year, the Commission exempted futures on narrow-based security indexes from the assessment and fee requirements of section 31 of the Exchange Act. *See* Securities Exchange Act Release No. 45371 (January 31, 2002), 67 FR 5199 (February 5, 2002). Accordingly, assessments under Section 31(d) of the Exchange Act are required to be paid only on transactions in futures on single securities.

[4] *See* Securities Exchange Act Release No. 45854, 67 FR 30628 (May 7, 2002) ("Proposing Release").

[5] *See* letters to Jonathan G. Katz, Secretary, Commission, from Kathleen M. Hamm, Senior Vice President Regulation and Compliance, Nasdaq Liffe Markets, LLC, dated June 7, 2002 ("NQLX Letter"); C. Robert Paul, General Counsel, OneChicago, dated June 6, 2002 ("OneChicago Letter"); W. Leo McBlain, Chairman, Financial Information Forum, dated June 5, 2002 ("FIF Letter"); and email to Jonathan G. Katz, Secretary, Commission, from Franc Spinelli, Refco, dated May 16, 2002 ("Refco Letter").

II. Discussion

A. Assessments Under Section 31(d) of the Exchange Act

Section 31(d) of the Exchange Act provides that each national securities exchange and each national securities association shall pay an assessment "for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange."[6] The amendment to Rule 31–1 adopted by the Commission clarifies two issues with regard to the application of Section 31(d): (1) The meaning of "round turn" and (2) the unit of a "transaction" on which the assessment is based. These issues are discussed below.

1. Meaning of "Round Turn"

Section 31(d) clarifies that a "round turn" transaction on a security future is "treated as including one purchase and one sale" of a contract for future delivery. The Commission believes that the correct interpretation of this phrase is a completed trade involving the simultaneous purchase and sale of a contract for future delivery by the two parties to the trade.[7] From the perspective of an exchange or association, there is, in fact, one purchase and one sale of a contract for future delivery in such a trade. Accordingly, this interpretation is consistent with the fact that it is the obligation of an exchange or association to pay an assessment on each round turn transaction.

2. Meaning of "Transaction"

Exchanges and associations must pay Section 31(d) assessments for each "round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery)." The parenthetical makes clear that the assessment is applied on each purchase and sale of each *contract* for future delivery. Thus, the total Section 31 assessment an exchange or association must pay to the Commission will be the amount of the assessment—which is currently $0.009—multiplied by the number of contracts traded on such exchange or by or through a member of such association otherwise than on an exchange. The amendment to Preliminary Note to Rule 31–1 establishes this method of calculating the Section 31(d) assessment.[8]

B. Fees under Sections 31(b) and (c) of the Exchange Act

In addition to the assessments paid by exchanges and associations pursuant to section 31(d) of the Exchange Act, section 31(b) of the Exchange Act requires each national securities exchange to pay a fee based on the aggregate dollar amount of sales of securities transacted on such exchange. Similarly, section 31(c) of the Exchange Act requires each national securities association to pay a fee based on the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange.[9]

1. Section 31(b) and 31(c) Fees Payable Upon Physical Settlement

Because at physical settlement of a security future a sale of the underlying security or securities occurs, each national securities exchange or national securities association is required to pay a fee to the Commission based on the dollar amount of such sale. Thus, as in the exercise of an option,[10] the fees that are required pursuant to either section 31(b) or section 31(c) of the Exchange Act are payable to the Commission only if a security future is held until settlement and settlement results in the physical delivery of the underlying security or securities. The amendment to the Preliminary Note to Rule 31–1 clarifies that the obligation to pay a Section 31(b) or (c) fee on a sale of a security underlying a physically-settled security future does not accrue until the time that physical settlement occurs.[11]

[6] 15 U.S.C. 78ee(d). For fiscal year 2002, the assessment is $0.009 for each round turn transaction on a security future. For fiscal year 2007 and each succeeding fiscal year, such assessment shall be equal to $0.0042 for each round turn transaction.

[7] The Commission received one comment letter addressing the interpretation of the term "round turn"; the commenter agreed with the Commission's interpretation. *See* NQLX Letter.

[8] The Commission received no comments on this aspect of the proposal.

[9] Sections 31(b) and (c) of the Exchange Act set forth initial rates of $15 per $1,000,000. The Commission, however, is required to make adjustments to these fee rates pursuant to section 31(j) of the Exchange Act. *See* Securities Exchange Act Release No. 45842 (April 29, 2002) (Order making fiscal 2003 annual adjustments to the fee rates applicable under section 6(b) of the Securities Act of 1933, and sections 13(e), 14(g), 31(b) and 31(c) of the Exchange Act).

[10] Section 31 fees that are paid upon an option's exercise are paid only on options that are physically-settled, not options that are cash-settled, because, upon exercise, physically-settled options result in the actual sale and delivery of the underlying securities.

[11] One commenter agreed with the Commission's interpretation by noting that, because Congress specifically excluded security futures contracts from Section 31(b) and (c) fees, the commenter believed that Congress did not intend to levy fees at the time of the formation of the contract, but rather at physical delivery of the underlying security. *See* NQLX Letter.

2. Calculation of Aggregate Dollar Amount of Sales of Securities

In the Proposing Release, the Commission proposed to amend the Preliminary Note to Rule 31–1 to clarify that the dollar amount of a sale of securities resulting from the physical settlement of a security future should be calculated based on the price at which the security future was entered into by the market participant effecting delivery

Finally, the commenters argued that using the initial trade price as the price upon which Section 31 fees are assessed would create verification problems.[18] Specifically, the commenters noted that because member firms are the only entities currently tracking the original transaction price, exchanges and associations that are subject to the obligation to pay the fee would not be able to verify the trade information received from the member firms.[19] One

members. The brokers for parties with long positions pay to (or receive from) the clearing agency any decrease (or increase) in the futures contract price since the trade. Similarly, the brokers for the parties with the short positions pay to (or receive from) the clearing agency any increase (or decrease) in the futures contract price since the trade. This exchange of mark-to-market payments is referred to as variation settlement. Thus, at expiration of a

obligation to pay Section 31(b) and (c) fees. The amendment to the Preliminary Note to Rule 31–1 provides that OCC may pay Section 31 assessments on round turn transactions on security futures and fees for sales of securities that result from the physical settlement of security futures on behalf of national securities exchanges and national securities associations.

If a national securities exchange or national securities association chooses

physical settlement of security futures be calculated based on the original sale price of the security future.[27] According to some commenters, this requirement would cause operational and technical challenges, which could result in undue costs and burdens for multiple market participants including exchanges, firms, service bureaus, and clearing organizations.[28] Several commenters noted that the futures exchanges and clearing organizations do not track

In addition, because the amendment to Rule 31–1 does not give rise to additional obligations on national securities exchanges, associations, or other market participants, but rather merely provides guidance on complying with existing statutory obligations, the Commission has concluded that there would be no costs imposed on market participants by the amendment to the rule.

C. Benefits

2. Calculation of Aggregate Dollar Amount of Sales of Securities

In the Proposing Release, the Commission proposed to amend the Preliminary Note to Rule 31–1 to clarify that the dollar amount of a sale of securities resulting from the physical settlement of a security future should be calculated based on the price at which the security future was entered into by the market participant effecting delivery of the underlying security at settlement. The Commission, however, sought comment on whether this was the appropriate price for determining the dollar amount of the sale.

All of the commenters to the Proposing Release argued that the original trade price should not be used as the benchmark for calculating fees under Sections 31(b) and (c).[12] Instead, the commenters recommended that the Commission adopt an alternative interpretation that would base the Section 31(b) and (c) fees on the final settlement price of the security futures contract. One commenter noted that its draft exchange rules define the settlement price as the price at which the securities underlying the futures contract are deliverable.[13] Several commenters further noted that the initial trade price is not the price paid by the buyer, or received by the seller, for the underlying security at expiration.[14]

The commenters further argued that using the sales price of the security future would be complicated and burdensome to implement. All of the commenters noted that neither The Options Clearing Corporation ("OCC") nor the exchanges retain original trade price information pertaining to open positions for more than one day.[15] The commenters stated that using the sales price of the security future would require costly systems changes by market participants such as OCC because original trade price information is not readily tracked or available and would have to be obtained from the party making the delivery.[16] One of the commenters estimated that its required systems modifications would take approximately three months to complete.[17]

Finally, the commenters argued that using the initial trade price as the price upon which Section 31 fees are assessed would create verification problems.[18] Specifically, the commenters noted that because member firms are the only entities currently tracking the original transaction price, exchanges and associations that are subject to the obligation to pay the fee would not be able to verify the trade information received from the member firms.[19] One commenter argued that additional audits and reviews would have to be implemented at additional costs.[20] The commenters noted that verifying the accuracy of the information provided to a clearing organization would be impossible without extensive investigation and manual intervention involving multiple organizations.[21]

Instead, a majority of the commenters recommended that the Commission use the settlement price at expiration as the basis upon which to calculate the dollar amount of a sale of securities resulting from the physical settlement of a security future.[22] They believed that this approach would be less complicated and easier to implement because the relevant information is readily ascertainable by the exchanges and OCC, and no systems modifications would be needed for either calculation or verification of Section 31 fees.[23] Further, as noted above, two commenters noted that the settlement price is the dollar amount the buyer pays and the seller receives for delivery of the underlying security.[24]

The Commission believes that the commenters make compelling arguments as to why the Section 31(b) and (c) fees should be based on the final settlement price, rather than on the price at which the security future was entered into by the market participant effecting delivery, and has amended Rule 31–1 accordingly.

A buyer and seller enter into a futures contract at the current futures price for delivery on a specified date of an underlying asset or instrument. At the close of trading, all futures contracts open on that day are marked-to-market. The mark-to-market is a risk reduction mechanism to reduce the clearinghouse's exposure to its members. The brokers for parties with long positions pay to (or receive from) the clearing agency any decrease (or increase) in the futures contract price since the trade. Similarly, the brokers for the parties with the short positions pay to (or receive from) the clearing agency any increase (or decrease) in the futures contract price since the trade. This exchange of mark-to-market payments is referred to as variation settlement. Thus, at expiration of a futures contract, any difference between the price at which a buyer and seller may have entered into their respective positions has been bridged by the intervening mark-to-market variation settlement, *i.e.*, each party will have received (or paid) the difference between the original sale price and the final settlement price of the contract. Accordingly, physical settlement pursuant to the terms of a futures contract takes place at an invoicing price based on the final settlement price.

The amendment we are adopting to the Preliminary Note to Rule 31–1 requires that the fees paid under Sections 31(b) and (c) when physical settlement of a security future occurs be based on the price received by the seller from the buyer in exchange for delivery of the security or securities underlying such security future—*i.e.*, the final settlement price. A delivery against payment of the security or securities underlying a security future only occurs at expiration of a physically-settled contract, once the buyers electing to receive physical delivery and the sellers electing to make physical delivery have been identified. At physical delivery, the buyer pays and the seller receives the final settlement price of the underlying security. The Commission believes that this amendment specifying the price on which exchanges and associations must base Section 31(b) and (c) fees is responsive to commenters' concerns. Moreover, the Commission believes that the amount of fees collected under Sections 31(b) and (c) under this methodology will not alter the expected collection from that which would have been collected under the proposed methodology.

C. Payment of Section 31 Assessments and Fees

The obligation to pay the Section 31(d) assessment on a security futures transaction rests with national securities exchanges and national securities associations. Similarly, national securities exchanges and national securities associations have the

[12] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter.

[13] *See* NQLX Letter.

[14] *See* NQLX Letter and Refco Letter

[15] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter

[16] *Id.*

[17] *See* NQLX Letter. FIF agreed with this argument by stating that the operational and technical challenges that would result from using the initial trade price as the basis upon which the Section 31 fee calculation is made would require months of development work for multiple industry participants. *See* FIF Letter.

[18] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter.

[19] *Id.*

[20] *See* NQLX Letter.

[21] *Id.*

[22] *See* NQLX Letter; OneChicago Letter; and Refco Letter.

[23] *See* NQLX Letter and OneChicago Letter.

[24] *See supra* note 14 and accompanying text.

obligation to pay Section 31(b) and (c) fees. The amendment to the Preliminary Note to Rule 31–1 provides that OCC may pay Section 31 assessments on round turn transactions on security futures and fees for sales of securities that result from the physical settlement of security futures on behalf of national securities exchanges and national securities associations.

If a national securities exchange or national securities association chooses to levy charges upon its members to cover the Section 31(d) assessments for security futures transactions, such exchange or association would need to adopt rules requiring its members to pay such assessments.[25] In addition, national securities exchanges and national securities associations could adopt new or amend current rules to require their members to pay fees to cover the fees owed by such exchanges or associations under Section 31(b) or (c) of the Exchange Act to clarify the application of such fees to sales of securities that result from the physical settlement of security futures.[26]

III. Paperwork Reduction Act

The Paperwork Reduction Act is not applicable to the amendment because it does not impose any collection of information requirements that would require the approval of the Office of Management and Budget.

IV. Costs and Benefits of Amendment to Rule 31–1

A. Comments

In the Proposing Release, the Commission considered preliminarily the costs and benefits of the amendment to Rule 31–1 and requested comment on all aspects of its cost-benefit analysis, including identification of any additional costs or benefits of the proposed amendment to Rule 31–1. None of the commenters provided dollar-based estimates regarding the overall costs and benefits of the proposed amendment to Rule 31–1. However, several commenters discussed issues related to the costs and benefits of the proposed amendment.

Specifically, commenters raised concerns with the proposal that fees on sales of securities that result from the physical settlement of security futures be calculated based on the original sale price of the security future.[27] According to some commenters, this requirement would cause operational and technical challenges, which could result in undue costs and burdens for multiple market participants including exchanges, firms, service bureaus, and clearing organizations.[28] Several commenters noted that the futures exchanges and clearing organizations do not track initial trade price information for more than one day.[29] One commenter noted that such data would have to be obtained from the party making the delivery.[30] In addition, one commenter noted that market participants would need mechanisms to keep track of which futures transactions result in physical delivery as differentiated from those that do not.[31] Thus, a majority of the commenters suggested using the final settlement price as the basis for fee calculation.[32]

B. Costs

The amendment to Rule 31–1 is for the purpose of providing guidance on how Section 31 assessments and fees are to be calculated for transactions in security futures and sales of securities resulting from physical settlement of security futures. Specifically, the amendment is intended to clarify: (1) The method by which assessments required pursuant to section 31(d) of the Exchange Act are calculated for round turn transactions on security futures traded on national securities exchanges or by members of national securities associations; and (2) the manner in which fees required pursuant to sections 31(b) and (c) of the Exchange Act are calculated for sales of securities resulting from physical settlement of security futures.

As noted above, the Commission has modified its proposal in response to comments and is adopting an amendment to Rule 31–1 requiring that the payment of the Section 31(b) or (c) fee be based upon the price received by the seller in exchange for delivery of the security or securities underlying such security future—*i.e.*, the final settlement price. The Commission believes that this method should address the cost concerns raised by the commenters.

In addition, because the amendment to Rule 31–1 does not give rise to additional obligations on national securities exchanges, associations, or other market participants, but rather merely provides guidance on complying with existing statutory obligations, the Commission has concluded that there would be no costs imposed on market participants by the amendment to the rule.

C. Benefits

The Commission has concluded that the amendment to Rule 31–1 will benefit exchanges and associations by providing clarification on the assessments and fees payable under sections 31(b), (c) and (d) of the Exchange Act. Although these sections of the Exchange Act set forth generally the obligations of national securities exchanges and national securities associations to pay assessments and fees on security futures transactions and sales of securities resulting from physical settlement of such futures, the Commission has concluded that guidance is necessary to clarify the mechanics of the assessment and fee calculation and collection process for security futures. The Commission's guidance in the amendment to Rule 31–1 will remove any potential ambiguity in the statute about, for example, the meaning of "round turn transaction" and the price on which fees for sales of securities that result from the physical settlement of security futures will be based.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact of such rules on competition.[33] In addition, section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[34]

The Commission has considered the amendment to the rule in light of these standards and has concluded that it will not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, in amending Rule 31–1 the Commission is

[25] Currently, national securities exchanges and the National Association of Securities Dealers ("NASD") charge their members fees to cover the fees owed by them to the Commission under sections 31(b) and (c) of the Exchange Act. *See, e.g.*, Schedule A to the NASD By-Laws, Section 8; New York Stock Exchange Rule 440H.

[26] National securities exchanges registered under section 6(g) of the Exchange Act would not be required to file such rules with the Commission. *See* Exchange Act Section 6(g)(4)(B), 15 U.S.C. 78f(g)(4)(B).

[27] *See* NQLX Letter; OneChicago Letter; FIF Letter; and Refco Letter.

[28] *See* NQLX Letter and FIF Letter.

[29] *See* NQLX Letter; OneChicago Letter; and FIF Letter.

[30] *See* OneChicago Letter.

[31] *See* FIF Letter.

[32] *See* NQLX Letter; OneChicago Letter; and Refco Letter.

[33] 15 U.S.C. 78w(a)(2).

[34] 15 U.S.C. 78c(f).

merely providing guidance in the rule to clarify recent amendments to section 31 of the Exchange Act. Likewise, the Commission has concluded that the amendment to the rule will not have an impact on capital formation. To the extent the amendment to the rule reduces any ambiguity regarding the application of Section 31 to security futures transactions and the physical settlement of security futures, the amendment to Rule 31–1 promotes

§ 240.31–1 Securities transactions exempt from transaction fees.

Preliminary Notes

1. The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange (with the exception of sales of options on securities indexes) is to be paid by the exchange or the national

Dated: July 8, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17494 Filed 7–11–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

22 CFR Part 11

SUPPLEMENTARY INFORMATION: When requested and authorized by the candidate, the Director General of the Foreign Service, or the Director General's delegatee, will review the case of any Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide and will determine whether or not it is in the best interest of the Service to appoint the candidate despite the medical

2. Amend § 11.1 to revise paragraphs (e)(4) and (5) and the second sentence in paragraph (f) as follows:

§ 11.1 Junior Foreign Service officer career candidate appointments.

* * * * *

(e) * * *

(4) *Determination.* The Medical Director of the Department of State will determine, on the basis of the report of the physician(s) who conducted the medical examination, whether the

SUMMARY: The Indian Gaming Regulatory Act established the National Indian Gaming Commission (NIGC or Commission) as an independent federal regulatory agency responsible for federal oversight of Indian gaming. This interpretive rule explains the Commission's understanding of its oversight authority in the area of environment, public health and safety.

EFFECTIVE DATE: This rule is effective August 12, 2002.

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merely providing guidance in the rule to clarify recent amendments to section 31 of the Exchange Act. Likewise, the Commission has concluded that the amendment to the rule will not have an impact on capital formation. To the extent the amendment to the rule reduces any ambiguity regarding the application of Section 31 to security futures transactions and the physical settlement of security futures, the amendment to Rule 31–1 promotes efficiency.

VI. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[35] the Chairman of the Commission certified that the amendment to the rule would not have a significant economic impact on a substantial number of small entities. This certification was attached to the Proposing Release as Appendix A.[36] The Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

VII. Statutory Authority

For the reasons set forth above, the Commission amends Rule 31–1 under the Exchange Act pursuant to its authority under Exchange Act Sections 3(b), 23(a), and 31.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Final Rule

For the reasons set out in the preamble, the Commission is amending Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Amend § 240.31–1 by:

a. Removing the Preliminary Note;

b. Adding Preliminary Notes 1 and 2; and

c. Adding introductory text to § 240.31–1.

The additions read as follows:

[35] 5 U.S.C. 605(b).

[36] *See* Proposing Release, *supra* note 4.

§ 240.31–1 Securities transactions exempt from transaction fees.

Preliminary Notes

1. The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange (with the exception of sales of options on securities indexes) is to be paid by the exchange or the national securities association itself, respectively, or by The Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or The Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option.

2. The section 31(d) assessment on a round turn transaction on a security future traded on a national securities exchange, or by or through a member of a national securities association otherwise than on a national securities exchange, is to be paid by the exchange or the national securities association itself, respectively, or by The Options Clearing Corporation on behalf of the exchange or association, and such assessment is to be computed on the basis of the number of contracts of sale for future delivery traded on such exchange or by or through any member of such association otherwise than on an exchange. In the event of the physical settlement of a security future, a section 31 fee is to be paid by the exchange on which the round turn transaction on the security future was traded, or, if the round turn transaction on the security future was traded by or through a member of a national securities association otherwise than on a national securities exchange, by the association, or by The Options Clearing Corporation on behalf of such exchange or association. Such fee, whether paid under section 31(b) or section 31(c), is to be computed on the basis of the price received by the seller in exchange for delivery of the security or securities underlying the security future. The obligation to pay fees under section 31(b) or (c) does not accrue until the time that physical delivery occurs.

The following shall be exempt from section 31 of the Act:

* * * * *

Dated: July 8, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17494 Filed 7–11–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

22 CFR Part 11

[Public Notice 4065]

RIN 1400–AB–42

Waivers of the Worldwide Availability Requirement for Foreign Service Candidates

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This Final Rule amends the regulations on the appointment of Foreign Service Officers to allow the Director General (DG) of the Foreign Service, or the Director General's delegatee, to review the case of a Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide to determine whether or not it is in the best interest of the Service to appoint the candidate despite the medical disqualification. This decision, as to whether or not to grant a waiver of the Foreign Service worldwide availability requirement, was previously made by a committee created solely for that purpose. The shifting of this decision to the Director General, or the Director General's delegatee, in no way alters the rights or interests of any parties, nor does it alter the substantive criteria by which a decision whether or not to waive the worldwide availability requirement will be made. As with the committee's decisions at present, the decisions of the Director General, or the Director General's delegatee, will be final and will not be subject to further appeal.

In addition, while candidates must still be medically cleared for full overseas duty, the Department of State no longer considers the medical condition of eligible family members for pre-employment purposes. References to previous practices in this regard are therefore being removed as are references to the procedures of the former United States Information Agency.

DATES: This rule is effective August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Amory, Office of the Legal Adviser, 202–647–4646.

SUPPLEMENTARY INFORMATION: When requested and authorized by the candidate, the Director General of the Foreign Service, or the Director General's delegatee, will review the case of any Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide and will determine whether or not it is in the best interest of the Service to appoint the candidate despite the medical disqualification. This decision, as to whether or not to grant a waiver of the Foreign Service worldwide availability requirement, was previously made by a committee established solely for that purpose. The shifting of responsibility for this decision to the Director General, or the Director General's delegatee, is being made in appreciation of the magnitude of such decisions for the Service and as part of a general effort to increase the efficiency and transparency of the Foreign Service appointment process. This change in no way alters the rights or interests of any parties nor does it alter the substantive criteria by which a decision whether or not to waive the worldwide availability requirement will be made. As with the committee's decisions, the decisions of the Director General, or the Director General's delegatee, are final and are not subject to further appeal.

In addition, while candidates must still be medically cleared for full overseas duty, the Department of State no longer considers the medical condition of eligible family members for pre-employment purposes. References in 22 CFR § 11.1 (e)(4) to previous practices in this regard are hereby removed and the citation to the Foreign Affairs Manual has been updated. It should be noted, however, that the Department still requires medical clearances for family members before they can travel overseas to accompany an employee on assignment at US Government expense. Finally, references in 22 CFR Part § 11.1(e)(5) to the procedures of the former United States Information Agency are hereby removed pursuant to the Foreign Affairs Reform and Restructuring Act of 1998.

List of Subjects in 22 CFR Part 11

Foreign Service.

As stated in the preamble, the Department of State amends 22 CFR part 11 as follows:

PART 11—APPOINTMENT OF FOREIGN SERVICE OFFICERS

1. The authority citation for part 11 is revised to read as follows:

Authority: 22 U.S.C. 3926, 3941.

2. Amend § 11.1 to revise paragraphs (e)(4) and (5) and the second sentence in paragraph (f) as follows:

§ 11.1 Junior Foreign Service officer career candidate appointments.

* * * * *

(e) * * *

(4) *Determination.* The Medical Director of the Department of State will determine, on the basis of the report of the physician(s) who conducted the medical examination, whether the candidate has met the required medical standards for appointment (see section 1930, Volume 3, Foreign Affairs Manual).

(5) *Waiver of worldwide availability requirement.* When authorized and requested by the candidate, the Director General of the Foreign Service, or the Director General's delegatee, will review the case of any Department of State Foreign Service candidate who has been denied an unlimited medical clearance for assignment worldwide, and determine whether or not the candidate should be appointed despite the medical disqualification. Decisions of the Director General of the Foreign Service, or the Director General's delegatee, are final and are not subject to further appeal by the candidate.

(f) * * * Candidates who have completed the examination process; have passed their medical examination, or have obtained a waiver from the Director General of the Foreign Service, or his or her delegatee, or the equivalent in accordance with the procedures of the other participating agencies; and on the basis of their background investigation, have been found suitable to represent the United States abroad, will have their names placed on the functional rank-order register(s), or a special register, for the agency or agencies for which they have been found qualified. * * *

* * * * *

Grant S. Green, Jr.,

Under Secretary for Management, Department of State.

[FR Doc. 02–17585 Filed 7–11–02; 8:45 am]

BILLING CODE 4710–35–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 580

RIN 3141–AA04

Environment, Public Health and Safety

AGENCY: National Indian Gaming Commission.

ACTION: Interpretive rule.

SUMMARY: The Indian Gaming Regulatory Act established the National Indian Gaming Commission (NIGC or Commission) as an independent federal regulatory agency responsible for federal oversight of Indian gaming. This interpretive rule explains the Commission's understanding of its oversight authority in the area of environment, public health and safety.

EFFECTIVE DATE: This rule is effective August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Christine Nagle at 202–632–7003; fax 202-632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (IGRA or Act), creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands to shield Indian tribes from organized crime and other corrupting influences; ensure that Indian tribes are the primary beneficiaries of gaming revenues; and assure that gaming is conducted fairly and honestly by both operators and players. To effect these goals, the Commission was granted, among other things, oversight and enforcement authority, including the authority to monitor tribal compliance with the Act, the Commission's regulations, and tribal gaming ordinances, 25 U.S.C. 2713.

A tribal government, as a condition precedent to the lawful operation of gaming activities on Indian lands, must adopt an ordinance governing gaming activities on its Indian lands, 25 U.S.C. 2710. The Act specifies a number of mandatory provisions to be contained in each tribal gaming ordinance and subjects such ordinances to agency review and the Chairman's approval. Approval by the Chairman is predicated on the inclusion of each of the specified mandatory provisions in the tribal gaming ordinance. Among these is a requirement that the ordinance must contain a provision ensuring that "the construction and maintenance of the gaming operation, and the operation of that gaming is conducted in a manner that adequately protects the environment and the public health and safety," 25 U.S.C. 2710 (b)(2)(E).

The Act further extends authority to the Commission to impose sanctions, including civil fines and closure orders, if the Commission finds that gaming on Indian lands is being conducted in violation of the provisions contained in

the authorizing tribal gaming ordinance, 25 U.S.C. 2713. Thus, it is clear that Congress intended the Commission to exercise at least some degree of general oversight authority with respect to whether or not a gaming facility is being operated in compliance with the Congressionally mandated provisions in tribal gaming ordinances. Otherwise, Congress would not have extended the Commission enforcement authority in relation to compliance matters arising

It began its work in November 1999, producing a recommendation for the full Commission's consideration in May 2000. The Advisory Committee met four times to develop a regulatory proposal; an additional meeting was held after the close of the public comment period to discuss the comments that had been submitted. Upon consideration of the comments submitted, and discussions with the Tribal-Commission Advisory Committee, the Commission decided to

specific description of the systems in place in order that the Commission would have a means of understanding the mechanisms specific to each tribe and tailor its oversight activities accordingly. Since tribal law and governmental structures may vary substantially as well as climate and geography, it was felt that the only way the Commission could fairly and appropriately conduct oversight is to ensure that it is based on a sound

comments, drawing the Commission's interest.

The Commission's Oversight Role

The overwhelming majority of tribal commenters reasserted the view that the proposal was unduly burdensome and constituted an unwarranted intrusion into the governmental prerogatives of tribes so as to exceed the statutory authority delegated by the Congress in IGRA. Many commenters asserted that

ordinances and to sanction incidents of non-compliance through civil fine assessment and orders of temporary closure, it is impossible to conclude that Congress intended the Commission's role to be constrained to the degree suggested in some comments.

At the same time, the Commission recognizes that as a fundamental principle of federal law and policy, tribal governments have the right and

What Is the Commission's Responsibility Under Section 2710 (b)(2)(E) in the Area of Environment, Public Health and Safety?

The Commission interprets section 2710 (b)(2)(E) of IGRA to mean that the Commission has a limited and discrete responsibility to provide regulatory oversight in relation to tribal compliance with this provision. The Commission discerns nothing within the Act or the legislative history to

the authorizing tribal gaming ordinance, 25 U.S.C. 2713. Thus, it is clear that Congress intended the Commission to exercise at least some degree of general oversight authority with respect to whether or not a gaming facility is being operated in compliance with the Congressionally mandated provisions in tribal gaming ordinances. Otherwise, Congress would not have extended the Commission enforcement authority in relation to compliance matters arising under "tribal" gaming ordinances.

Since 1993, when the Commission became operational, the Chairman has required each tribal gaming ordinance to include an express statement that gaming facilities under the control of the tribal government submitting the ordinance would be constructed, operated and maintained in a manner that adequately protects the environment, public health and safety. In 1999, the Commission undertook the development of regulations governing the method of oversight it will use in determining tribal compliance with this provision of IGRA.

The Commission recognizes that tribal governments, as an incident of inherent tribal sovereignty, have broad autonomy and authority over internal tribal affairs, including, in particular, matters pertaining to tribal lands and the health and welfare of the people and the community. Moreover, the Commission is aware that the principle of tribal self-determination is a cornerstone of federal Indian law and policy and has remained so for more than a quarter century. Accordingly, federal or other incursions upon tribal authority in such matters receive careful scrutiny by the courts. Cognizant of these facts, and bound by such federal laws and policies, the Commission approached this rulemaking effort with no small degree of caution and concern. Given the primacy of tribal regulation over the environment, public health and safety as well as federal policies regarding tribal consultation in matters directly affecting tribes, the Commission established a tribal advisory committee to assist in the development of an appropriate process through which the Commission could carry out its oversight responsibility under IGRA without improperly encroaching upon the authority of tribal government.

Tribal Advisory Committee

In November 1999, a Tribal-Commission Advisory Committee was formed to consult on the project and develop recommendations to the Commission. The Advisory Committee, was comprised of representatives of tribal governments and the Commission. It began its work in November 1999, producing a recommendation for the full Commission's consideration in May 2000. The Advisory Committee met four times to develop a regulatory proposal; an additional meeting was held after the close of the public comment period to discuss the comments that had been submitted. Upon consideration of the comments submitted, and discussions with the Tribal-Commission Advisory Committee, the Commission decided to revise and republish the proposal for additional comment.

The Advisory Committee through a consensus process produced a recommended rule for submission to the Commission. The recommendation was approved by the Commission for publication in the **Federal Register** as a proposed rule. Essentially, the regulation established a process for oversight based on tribal submissions of "Environment, Public Health & Safety Plans" (Plan) for review by the Commission. The Plans would then form the basis for the Commission's oversight activities. Each Plan was to contain a narrative specific to five distinct areas of concern: (1) Emergency preparedness; (2) food & water; (3) construction & maintenance; (4) hazardous and other materials; and (5) sanitation.

The approach taken by the Committee reflects an effort to balance the need for a uniform system of oversight with the need for flexibility given the widely varying circumstances and geographic dispersion of Indian gaming operations. The proposal also reflects an effort to appropriately narrow and define the Commission's role given the fact that the Commission lacks the technical expertise and the capacity to review and evaluate tribal standards or programs or to itself establish and promulgate specific technical standards appropriate to the industry. It was the view of the Committee that Congress intended a narrow role for the Commission, particularly since the Act contains no other provisions pertinent to this issue, nor does the legislative history suggest that the Commission has the responsibility to develop expansive programs relative to the environment, public health and safety. Accordingly, the Committee concluded that the Commission's role is properly confined to ensuring that tribal standards are in place in each of the five key areas identified by the Committee and ensure that such standards are enforced through an on-going process of monitoring and oversight by qualified personnel.

The purpose of the Plan was to provide the Commission with a tribe-specific description of the systems in place in order that the Commission would have a means of understanding the mechanisms specific to each tribe and tailor its oversight activities accordingly. Since tribal law and governmental structures may vary substantially as well as climate and geography, it was felt that the only way the Commission could fairly and appropriately conduct oversight is to ensure that it is based on a sound understanding of the circumstances, systems, and standards applicable to each gaming tribe.

Initial Comment Period

At the close of the initial comment period the Commission had received 127 comments, all suggesting substantial changes to the proposed rule and many challenging the Commission's authority to promulgate the rule in the first instance. The comments reflected a widespread view that the proposed rule was both burdensome and intrusive, and questioned the need for it. State and local governments requested that they be given a role in deciding what was to be included in tribal Plans.

The general thrust of the comments led the Commission to conclude that in order to reflect the general purpose and intent of the rule, revision was warranted. The Commission also perceived the need for greater clarity with regard to its view that regulatory primacy and primary responsibility for ensuring compliance with the environment, public health and safety provision rests with tribal government. The Committee was re-convened to assist the Commission to revise the proposal in such a way to make clear that the purpose of the rule is to establish an appropriate process through which the Commission may carry out its discrete and limited oversight responsibility.

Second Comment Period

Upon reviewing the comments, the Advisory Committee recommended a number of revisions to the proposed rule, but left largely intact the provisions utilizing the Plan process. The revised proposal was published in the fall of 2000, allowing for a thirty-day comment period, which was later extended through December 29, 2001. In response, the Commission again received well over a hundred comments, largely raising the same objections, with the same polarization between tribal and state governments. A number of comments, however, further developed some of the issues that had been referenced in the first round of comments, drawing the Commission's interest.

The Commission's Oversight Role

The overwhelming majority of tribal commenters reasserted the view that the proposal was unduly burdensome and constituted an unwarranted intrusion into the governmental prerogatives of tribes so as to exceed the statutory authority delegated by the Congress in IGRA. Many commenters asserted that Congress could not have intended an extensive role for the Commission given the very limited reference to the environment, public health & safety within the Act. Moreover, the commenters pointed out, the Commission lacks appropriate expertise to properly evaluate tribal environment, public health and safety standards and practices as well as the capacity to do so. These Commenters also asserted that matters pertaining to the environment, public health and safety are more properly within the purview of other governmental agencies, both tribal and federal. It was also asserted that there was no explicit Congressional authority to impose additional enforceable burdens on tribal governments and that in doing so the Commission had run afoul of federal policies restricting the imposition of unfunded mandates in agency rulemaking.

The foregoing arguments are not without a degree of merit. In fact, these points were at the forefront of the Advisory Committee's concerns in developing its recommendation and by the Commission in its deliberations as well. While the Commission does not agree that it is without authority or responsibility altogether, it does accept Congress intended the Commission to play a limited, rather than expansive role. IGRA explicitly accords the Commission a role in ensuring compliance with the environment, public health and safety provision of IGRA. The question, therefore, is not whether the Commission has a responsibility in this regard, but rather the nature and extent of its responsibility.

The Commission does not agree that its responsibility is merely to ensure that each tribal gaming ordinance contains a rote recitation of the language set forth in 25 U.S.C. 2710 (b)(2)(E). Such interpretation would render this provision of the Act superfluous and constitute a breach of an agency's a fundamental duty to give full effect to the plain language of the Act in determining Congressional intent related thereto. Moreover, because IGRA authorizes the Commission to enforce compliance with tribal gaming ordinances and to sanction incidents of non-compliance through civil fine assessment and orders of temporary closure, it is impossible to conclude that Congress intended the Commission's role to be constrained to the degree suggested in some comments.

At the same time, the Commission recognizes that as a fundamental principle of federal law and policy, tribal governments have the right and authority to make their own choices in exercising their governmental powers. Tribal governmental powers are inherent and not derived from the federal government. As such, when a federal agency seeks to exert itself into an arena routinely controlled by tribal authority, the relevant inquiry is whether a statute, treaty or judicial decision authorizes federal activity in the particular area. Federal statutes affecting Indian affairs require broad construction when the rights of Indians are established or preserved and narrow construction when the rights of Indians are limited or abrogated.

In balancing the Commission's responsibility against the inherent rights of tribal governments the Commission has endeavored to find an objective method for meeting its oversight responsibility in a non-intrusive, non-burdensome manner respectful of tribal primacy in the environmental, public health and safety arenas. Having now had the benefit of the views and thoughts contained in nearly 300 comments, as well as opportunity for in-depth study of the issues and related federal law and policy, the Commission is of the view that the Plan process is more burdensome and intrusive than originally projected. It is further concerned that the estimation of the costs associated with the preparation of a Plan may have been underestimated. In considering the burden and financial impact the proposed rule may have had on tribal governments, the Commission recognizes that existing federal policy discourages the imposition of unfunded mandates on tribal, state, and local governments.

In the final analysis, the Commission has concluded that a simpler, less programmatic approach is warranted. This final rule represents the Commission's interpretation of its responsibility under 25 U.S.C. 2710(b)(2)(E) and provides guidance to tribal governments as to the oversight standard the Commission will apply in determining tribal compliance with this provision of the Act.

What Is the Commission's Responsibility Under Section 2710 (b)(2)(E) in the Area of Environment, Public Health and Safety?

The Commission interprets section 2710 (b)(2)(E) of IGRA to mean that the Commission has a limited and discrete responsibility to provide regulatory oversight in relation to tribal compliance with this provision. The Commission discerns nothing within the Act or the legislative history to suggest that Congress intended a more extensive role for the Commission or manifesting any intent to relieve tribal government of any measure of authority or regulatory primacy over issues concerning the environment, public health and safety in any area within the authority of the tribe or to shift, alter, or otherwise effect any transfer of responsibility from tribal government to the National Indian Gaming Commission.

What Is the Commission's Interpretation With Regard to the Duties and Responsibilities of Tribal Governments Under Section 2710(b)(2)(E) of the Act?

It is the Commission's view that section 2710 (b)(2)(E) requires tribal governments electing to conduct gaming on tribal lands to apply, adopt or issue standards designed to ensure that gaming operations on Indian lands are constructed, operated and maintained in a manner that adequately protects the environment, public health and safety, and, furthermore, to enforce compliance with such standards through an ongoing system of monitoring, conducted by qualified personnel. At a minimum, such standards must address: (1) Emergency preparedness; (2) food & water; (3) construction & maintenance; (4) hazardous and other materials; and (5) sanitation.

How Would a Tribal Government Satisfactorily Assert Its Compliance With Section 2710 (b)(2)(E) of IGRA?

The Commission recognizes that tribal governments vary dramatically in terms of size, structure, and organization. Accordingly, compliance may be effected in any number of ways. For example, departments or agencies within tribal government may issue rules or procedures, conduct inspections, and bring enforcement actions. Another tribal government may enter into intergovernmental compacts with state, local or federal government to carry out such activities while others may contract privately for such functions. In the Commission's view, the particular manner in which compliance with tribal environment,

public health and safety standards is enforced is not so important. The key objective is to confirm that standards and enforcement systems are in place.

What Action May the Commission Take if the Commission Determines That a Gaming Operation Is Not Subject to Environmental, Public Health and/or Safety Standards or That Such Standards Are Not Routinely Enforced?

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 02–191]

Reorganization of the Office of Media Relations

AGENCY: Federal Communications Commission.

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.15 is amended by adding paragraph (f) to read as follows:

§ 0.15 Functions of the Office.

DoD agency. In addition, the rule contains editorial changes to clarify instructions for completion of DD Form 350.

DD Form 350, and other forms prescribed by the DFARS, are not included in the Code of Federal Regulations. The forms are available electronically via the Internet at *http://web1.whs.osd.mil/icdhome/ddeforms.htm*.

This rule was not subject to Office of

(b) * * * The term does not include grants, cooperative agreements, or training authorizations. * * *

* * * * * *

(c) * * *

(5) For the Defense Contract Management Agency (excluding contract administration office responsibilities in 204.670–4): Defense Contract Management Agency, ATTN: DCMA–DSP, 6350 Walker Lane, Suite 300, Alexandria, VA 22310–3226.

* * * * * *

350). Submit one DD Form 350 report for the FMS requirements and another. DD Form 350 report for the non-FMS requirements.

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PART 253—FORMS

6. Section 253.204–70 is revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

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public health and safety standards is enforced is not so important. The key objective is to confirm that standards and enforcement systems are in place.

What Action May the Commission Take if the Commission Determines That a Gaming Operation Is Not Subject to Environmental, Public Health and/or Safety Standards or That Such Standards Are Not Routinely Enforced?

If the Commission determines that a tribal government has failed to apply, adopt, issue or enforce environmental, public health and/or safety standards covering gaming operations on Indian lands, the Commission will first notify the governing body of the tribe of its concern. If the absence of standards or failure to enforce does not present imminent jeopardy to the environment, public health or safety, the Commission will refer the matter to the appropriate tribal regulatory authority for appropriate action. The Commission will proceed to enforcement only where no corrective action has been undertaken within a reasonable time, and such inaction results in a condition of imminent jeopardy to the environment, public health and safety.

What is Imminent Jeopardy?

A finding of imminent jeopardy represents the standard the Commission will apply in determining that a condition poses a threat of such severity to the environment or the public health or safety as to warrant the Commission's intervention. For purposes of this regulation, imminent jeopardy exists where conditions are present that pose a real and immediate threat: (1) To the environment, which, if uncorrected, would result in actual harm to life or destruction of property; or (2) to human health and well being, which, if uncorrected, could result in serious illness or death.

Signed this 3rd day of July, 2002.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–17151 Filed 7–11–02; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 02–191]

Reorganization of the Office of Media Relations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to reflect the new organizational structure of the Office of Media Relations of the Federal Communications Commission, identifying their new functions.

DATES: Effective July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Beth Richards, Office of the Chairman, 202/418–1514 or Yvette Barrett, Office of the Managing Director, 202/418–0603.

SUPPLEMENTARY INFORMATION: This Order adopted June 26, 2002 and released July 9, 2002 by the Commission amends its rules to reflect the new structure of the Office of Media Relations to include the management of audio and visual support services for the Commission.

Authority for the adoption of the foregoing revisions is contained in sections 4(i), 4(j), 5(b), 5(c), 201(b) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 201(b) and 303 (r).

The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) is inapplicable.

Accordingly, *it is ordered* that part 0 of the Commission rules, set forth in Title 47 of the Code of Federal Regulations, *are amended* as set forth in the rule changes to be effective July 15, 2002.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.15 is amended by adding paragraph (f) to read as follows:

§ 0.15 Functions of the Office.

* * * * *

(f) Manage the FCC's audio/visual support services and maintain liaison with outside parties regarding the broadcast of Commission proceedings.

[FR Doc. 02–17574 Filed 7–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 253

[DFARS Case 2002–D010]

Defense Federal Acquisition Regulation Supplement; Reporting Requirements Update

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide contract action reporting requirements for Fiscal Year 2003. The rule makes changes to the Individual Contracting Action Report and the corresponding reporting instructions.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2002–D010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule contains Fiscal Year 2003 requirements for completion of DD Form 350, Individual Contracting Action Report. DoD uses this form to collect statistical data on its contracting actions. The rule includes reporting changes related to indefinite-delivery contracts; performance-based service contracts; the SBA/OFPP pilot program for acquisition of services from small business concerns; purchases made using the Governmentwide purchase card; and purchases made by a DoD agency on behalf of another DoD or non-DoD agency. In addition, the rule contains editorial changes to clarify instructions for completion of DD Form 350.

DD Form 350, and other forms prescribed by the DFARS, are not included in the Code of Federal Regulations. The forms are available electronically via the Internet at *http://web1.whs.osd.mil/icdhome/ddeforms.htm*.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D010.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 204 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.670–1 is amended as follows:

a. In paragraph (b) introductory text by revising the second sentence;

b. By redesignating paragraph (c)(5) as paragraph (c)(6); and

c. By adding a new paragraph (c)(5) to read as follows:

204.670–1 Definitions.

* * * * *

(b) * * * The term does not include grants, cooperative agreements, or training authorizations. * * *

* * * * *

(c) * * *

(5) For the Defense Contract Management Agency (excluding contract administration office responsibilities in 204.670–4): Defense Contract Management Agency, ATTN: DCMA–DSP, 6350 Walker Lane, Suite 300, Alexandria, VA 22310–3226.

* * * * *

3. Section 204.670–2 is amended as follows:

a. In paragraph (a)(2)(ii) by removing "or";

b. By redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(iv); and

c. By adding a new paragraph (a)(2)(iii) to read as follows:

204.670–2 Reportable contracting actions.

(a) * * *

(2) * * *

(iii) Multiple reports required by 204.670–6(c)(1) to separate foreign military sales (FMS) requirements from non-FMS requirements; or

* * * * *

4. Section 204.670–3 is amended in paragraph (a)(2) by revising the first sentence to read as follows:

204.670–3 Contracting office responsibilities.

(a) * * *

(2) Complete the DD Form 350 when funds are obligated or deobligated or when an indefinite-delivery contract is established with no initial obligation of funds. * * *

* * * * *

5. Section 204.670–6 is amended as follows:

a. In paragraph (b)(1)(iii), in the last sentence, by removing "in accordance with agency procedures";

b. In paragraph (b)(1)(iv) by revising the last sentence;

c. By revising paragraph (c)(1); and

d. In paragraph (c)(3) by removing the last sentence.

The revised text reads as follows:

204.670–6 Types of DD Form 350 reports.

* * * * *

(b) * * *

(1) * * *

(iv) * * * USACCE consolidates these transactions monthly and reports the cumulative dollar amounts and actions on one DD Form 350.

* * * * *

(c) * * *

(1) The action includes FMS requirements in addition to non-FMS requirements (Line B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements.

* * * * *

PART 253—FORMS

6. Section 253.204–70 is revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

Policy on use of a DD Form 350 is in 204.670–2. This subsection contains instructions for completion of the DD Form 350.

(a) *Part A of the DD Form 350.* Part A identifies the report and the reporting activity. Complete all four lines.

(1) LINE A1, TYPE OF REPORT. Enter one of the following codes:

(i) *Code 0—Original.* Enter code 0 unless code 1 or code 2 applies.

(ii) *Code 1—Canceling.* A canceling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) *Code 2—Correcting.* A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) LINE A2, REPORT NUMBER. Enter the six-position local control number (see 204.670–3(a)(5)). Do not leave blank or enter all zeros. If Line A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) LINE A3, CONTRACTING OFFICE.

(i) LINE A3A, REPORTING AGENCY FIPS 95 CODE. Enter one of the following codes: 2100 (Army); 1700 (Navy); 5700 (Air Force); 96CE (Army Civil Works); 97AS (DLA); 9763 (DCMA); 9700 (all other defense agencies).

(ii) LINE A3B, CONTRACTING OFFICE CODE. Enter the code assigned by the departmental data collection point in 204.670–1(c).

(4) LINE A4, NAME OF CONTRACTING OFFICE. Enter sufficient detail to establish the identity of the contracting office.

(b) *Part B of the DD Form 350.* Part B describes the transaction.

(1) LINE B1, CONTRACT IDENTIFICATION INFORMATION.

(i) LINE B1A, CONTRACT NUMBER.

(A) Enter—

(1) The DoD contract number; or

(2) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(B) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(C) The DoD contract number is the basic (13-position alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7003 or constructed under an exception permitted by 204.7000. Do not enter any supplementary procurement instrument identification numbers as part of the contract number (these go on Line B2).

(ii) LINE B1B, ORIGIN OF CONTRACT. Enter the code that identifies the agency that awarded the basic contract. Use the following codes:

(A) DoD contracts—enter code 97.

(B) Non-DoD contracts—enter the code that identifies the awarding agency in the Treasury Department Publication, Publication 1075, Appendix A, Federal Agency Symbols for Standard Reporting.

(C) Contracts awarded by foreign governments—enter code 00.

(iii) LINE B1C, MODIFICATION NUMBER. Enter the modification number (see 204.7004(c)); modifications to orders under DoD contracts have a two-position modification number following the four-position order number (see 204.7004(e)); and modifications to orders under non-DoD contracts have a six-position modification number following the 13-position order number.

(3) LINE B3, ACTION DATE.

(i) Enter the year, month, and day of the effective date for fiscal obligation purposes of the contract action reported on this DD Form 350.

(ii) For the first report on a contract, enter the date the contract was awarded.

(iii) For subsequent reports on a contract, enter the date the modification was effective.

(iv) For reports on deobligations, enter the date the deobligation was effective.

(4) LINE B4, TYPE OF ACTION CODE. Enter one of the following codes:

(i) *Code A—Purchase.* Enter code A for a contract for supplies or services.

(ii) *Code B—Delivery Order.* Enter code B for a delivery order under a basic ordering agreement.

(iii) *Code C—Purchase Order.* Enter code C for a purchase order.

(iv) *Code D—Delivery Order.* Enter code D for a delivery order under a contract.

(v) *Code E—Definitive Contract.* Enter code E for a definitive contract.

(vi) *Code F—Blanket Purchase Agreement.* Enter code F for a blanket purchase agreement.

(vii) *Code G—Basic Ordering Agreement.* Enter code G for a basic ordering agreement.

(viii) *Code H—Basic Agreement.* Enter code H for a basic agreement.

(ix) *Code J—Task Order.* Enter code J for a task order under a contract.

(x) *Code K—Task Order.* Enter code K for a task order under a basic ordering agreement.

(xi) *Code L—Task Order.* Enter code L for a task order under a basic agreement.

(xii) *Code M—Other Order.* Enter code M for an order under a contract, basic ordering agreement, or basic agreement that is not a delivery order or task order.

(xiii) *Code P—Purchase Order.* Enter code P for a purchase order under a blanket purchase agreement.

(xiv) *Code S—Purchase Order.* Enter code S for a purchase order under a basic ordering agreement.

(xv) *Code T—Purchase Order.* Enter code T for a purchase order under a basic agreement.

(5) LINE B5, CONTRACTING AGENCY.

(A) LINE B5A, CONTRACTING AGENCY ID CODE. Enter the code that identifies the contracting agency in the Treasury Department Publication, Publication 1075, Appendix A, Federal Agency Symbols for Standard Reporting.

(B) LINE B5B, GOVERNMENT AGENCY. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y when the contractor is a Federal, State, or local government agency of the United States and outlying areas (see 204.670–1(d)). Do not use code Y when the government agency is an educational institution or a JWOD Participating Nonprofit Agency.

(2) Code N—No. Enter code N when the contractor is not a government agency.

(6) LINE B6, CONTRACTOR.

(A) LINE B6A, DUNS NUMBER. Enter the DUNS number of the contractor receiving the award. For awards to individuals outside the United States, use DUNS number 99–999–9999. For awards to individuals within the United States, use DUNS number 15–390–6193 (see 204.670–6(b)(1)).

(B) LINE B6B, CONTRACTOR NAME. Enter the name of the contractor receiving the award. For awards to individuals outside the United States, enter "Individual Outside the United States." For awards to individuals within the United States, enter "Individual Within the United States."

(C) LINE B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave Line B6C blank. Use data for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for items manufactured under supply contracts;

(B) Location from where shipments from stock are made under supply contracts;

(C) Actual construction site for construction contracts;

(D) Planned construction site for architect-engineer contracts;

(E) Location where the preponderance of the work is performed for service contracts; or

(F) Contractor's plant for research and development contracts.

(D) LINE B6D, CONGRESSIONAL DISTRICT. Enter the congressional district of the principal place of performance. Do not leave Line B6D blank. Use data for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for items manufactured under supply contracts;

(B) Location from where shipments from stock are made under supply contracts;

(C) Actual construction site for construction contracts;

(D) Planned construction site for architect-engineer contracts;

(E) Location where the preponderance of the work is performed for service contracts; or

(F) Contractor's plant for research and development contracts.

(E) LINE B6E, COUNTRY CODE. Enter the code that identifies the country in which the principal place of performance is located. Use the following codes:

(A) United States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(2) For places outside the United States and outlying areas, enter the alpha country code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions,

(C) LINE B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave Line B6C blank. Use data for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for items manufactured under supply contracts;

(B) Location from where shipments from stock are made under supply contracts;

(C) Actual construction site for construction contracts;

(D) Planned construction site for architect-engineer contracts;

(E) Location where the preponderance of the work is performed for service contracts; or

(F) Contractor's plant for research and development contracts.

(12) LINE B12, PRINCIPAL PRODUCT OR SERVICE. Line B12 has five parts. Do not leave any parts of Line B12 blank. Codes for Line B12 can be found in the DoD Procurement Coding Manual (MN02) under "PRODUCT AND SERVICE CODE ASCII FILE DOWNLOADS" at the bottom of the following web page: *http://web1.whs.osd.mil/peidhome/guide/mn02/mn02.htm*.

(i) LINE B12A, FEDERAL SUPPLY CLASS OR SERVICE CODE. Enter the 4-

(C) The DoD contract number is the basic (13-position alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7003 or constructed under an exception permitted by 204.7000. Do not enter any supplementary procurement instrument identification numbers as part of the contract number (these go on Line B2).

(ii) LINE B1B, ORIGIN OF CONTRACT. Enter the code that indicates the agency that assigned the contract number.

(A) *Code A—DoD.*

(B) *Code B—NASA.*

(C) *Code C—Other Non-DoD Agency.*

(iii) LINE B1C, BUNDLED CONTRACT. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y when the contract meets the definition of "bundled contract" at FAR 2.101 and the contract value exceeds $5 million.

(B) *Code N—No.* Enter code N when code Y does not apply.

(iv) LINE B1D, BUNDLED CONTRACT EXCEPTION. If Line B1C is coded Y, enter one of the following codes. Otherwise, leave Line B1D blank.

(A) *Code A—Mission Critical.* Enter code A if the agency has determined that the consolidation of requirements is critical to the agency's mission, but the measurably substantial benefits do not meet the thresholds set forth in FAR 7.107 to determine that the consolidation is necessary and justified.

(B) *Code B—OMB Circular A–76.* Enter code B if the agency used the OMB Circular A–76 process to determine that the consolidation of requirements is necessary and justified rather than applying the substantial benefits analysis required by FAR 7.107.

(C) *Code C—Other.* Enter code C when codes A and B do not apply.

(v) LINE B1E, PERFORMANCE-BASED SERVICE CONTRACT (see FAR Subpart 37.6). Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y when at least 80 percent of the contract value is for work that is performance based.

(B) *Code N—No.* Enter code N when code Y does not apply.

(2) LINE B2, MODIFICATION, ORDER, OR OTHER ID NUMBER. Enter the supplementary procurement instrument identification number if one was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Orders under DoD contracts have a four-position number (see 204.7004(d)); orders under non-DoD contracts have a 13-position number with an F in the ninth position; modifications to contracts and agreements have a six-position modification number (see 204.7004(c)); modifications to orders under DoD contracts have a two-position modification number following the four-position order number (see 204.7004(e)); and modifications to orders under non-DoD contracts have a six-position modification number following the 13-position order number.

(3) LINE B3, ACTION DATE.

(i) Enter the year, month, and day of the effective date for fiscal obligation purposes.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(4) LINE B4, COMPLETION DATE.

(i) Enter the year, month, and day of the last contract delivery date or the end of the performance period. If the contract is incrementally funded, report the completion date for the entire contract. Report the completion date associated with an option quantity when the option is exercised.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(5) LINE B5, CONTRACTOR IDENTIFICATION INFORMATION.

(i) Use data that relates to the contractor whose name and address appear in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of Solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work;

(B) For Federal schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent); and

(C) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office.

(ii) Some of the parts of Line B5 may not apply to the action being reported. Follow the instructions for each part.

(A) LINE B5A, CONTRACTOR IDENTIFICATION NUMBER (DUNS).

(1) Enter the contractor's 9-position Data Universal Numbering System (DUNS) number (see FAR 4.602(d) and 4.603 and DFARS Subpart 204.73).

(2) For U.S. Army Contracting Command, Europe, consolidated reporting of vouchers for utilities from municipalities, use DUNS number 15–390–6193 (see 204.670–6(b)(1)).

(B) LINE B5B, GOVERNMENT AGENCY. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y when the contractor is a Federal, State, or local government agency of the United States and outlying areas (see 204.670–1(d)). Do not use code Y when the government agency is an educational institution or a JWOD Participating Nonprofit Agency.

(2) Code N—No. Enter code N when code Y does not apply.

(C) LINE B5C. Reserved.

(D) LINE B5D, CONTRACTOR NAME AND DIVISION NAME. Enter the contractor's name as stated in the offer and resultant contract. Include its division name.

(E) LINE B5E, CONTRACTOR ADDRESS. Enter the contractor's address as stated in the offer and resultant contract. Include street address or P.O. Box, city or town, state or country, and ZIP code, if applicable. Do not enter foreign postal codes.

(F) LINE B5F, TAXPAYER IDENTIFICATION NUMBER. Enter the contractor's taxpayer identification number (TIN) (see FAR Subpart 4.9). Leave Line B5F blank if the contractor is—

(1) A nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(2) An agency or instrumentality of a foreign government; or

(3) An agency or instrumentality of the Federal Government.

(G) LINE B5G, PARENT TAXPAYER IDENTIFICATION NUMBER. Enter the contractor's parent company (common parent) TIN (see FAR Subpart 4.9 and 52.204–3). If the contractor does not have a parent company or the parent company meets the exemption for Line B5F, leave Line B5G blank.

(H) LINE B5H, PARENT NAME. If a parent company TIN is entered on Line B5G, enter the name of the parent company (common parent) on Line B5H. Leave Line B5H blank if there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) LINE B6, PRINCIPAL PLACE OF PERFORMANCE.

(i) The place, or places, where the contract will be performed may be specified by the Government or listed by the contractor in response to the solicitation provision at FAR 52.214–14, Place of Performance—Sealed Bidding, or FAR 52.215–6, Place of Performance. Use data for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for items manufactured under supply contracts;

(B) Location from where shipments from stock are made under supply contracts;

(C) Actual construction site for construction contracts;

(D) Planned construction site for architect-engineer contracts;

(E) Place of mining for mined supplies; or

(F) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (b)(6)(i)(A) through (F) of this subsection (e.g., more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location on Line B6.

(iii) If places of performance are too varied or not known, enter the contractor's home office location. However, if the contractor is a domestic concern and the entire contract will be performed outside the United States, enter the most frequent place of performance.

(iv) Follow the instructions for each part of Line B6 that applies to the action being reported.

(A) LINE B6A, CITY OR PLACE CODE.

(1) For places in the United States and outlying areas, enter the numeric place code from FIPS PUB 55, Guideline: Codes for Named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas. Leave Line B6A blank for places outside the United States and outlying areas.

(2) If the city or locality is not listed, look in FIPS PUB 55 for the county code of the principal place of performance. Enter that code on Line B6A. Use 50000 for Washington, DC, with a State code of 11.

(3) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes when the first position of the class code is X or Z.

(B) LINE B6B, STATE OR COUNTRY CODE.

(1) For places in the United States and outlying areas, enter the numeric State code from FIPS PUB 55 or FIPS PUB 5, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(2) For places outside the United States and outlying areas, enter the alpha country code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

(C) LINE B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave Line B6C blank.

(7) LINE B7, TYPE OBLIGATION. Enter one of the following codes:

(i) *Code 1—Obligation.* Enter code 1 if the action obligates funds.

(ii) *Code 2—Deobligation.* Enter code 2 if the action deobligates funds.

(iii) *Code 3—No Dollars Obligated or Deobligated.* Enter code 3 if the action is the initial award of an indefinite-delivery contract that neither obligates nor deobligates funds.

(8) LINE B8, OBLIGATED OR DEOBLIGATED DOLLARS. Enter the net amount of funds (whole dollars only) obligated or deobligated by the action. Enter zero if the action is the initial award of an indefinite-delivery contract that neither obligates nor deobligates funds, i.e., Line B7 is coded 3.

(9) LINE B9, FOREIGN MILITARY SALE. Enter one of the following codes. If only part of the action is a foreign military sale, separately report the parts (see 204.670–6(c)).

(i) *Code Y—Yes.* Enter code Y when the action is under a foreign military sales arrangement, or under any other arrangement when a foreign country or international organization is bearing the cost of the acquisition.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(10) LINE B10, MULTIYEAR CONTRACT. Enter one of the following codes:

(i) *Code Y—Yes.* Enter code Y when the action is a multiyear contract as defined at FAR 17.103. Do not report contracts containing options as multiyear unless the definition at FAR 17.103 applies to the contract.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(11) LINE B11, TOTAL ESTIMATED CONTRACT VALUE. Enter the total estimated contract value (in whole dollars) only at the time of initial placement of the contract, including placement of an indefinite-delivery or multiyear contract. Include the total estimated value of orders and options anticipated to be placed over the life of the contract.

(12) LINE B12, PRINCIPAL PRODUCT OR SERVICE. Line B12 has five parts. Do not leave any parts of Line B12 blank. Codes for Line B12 can be found in the DoD Procurement Coding Manual (MN02) under "PRODUCT AND SERVICE CODE ASCII FILE DOWNLOADS" at the bottom of the following web page: *http://web1.whs.osd.mil/peidhome/guide/mn02/mn02.htm.*

(i) LINE B12A, FEDERAL SUPPLY CLASS OR SERVICE CODE. Enter the 4-character Federal supply class (FSC) or service code that describes the contract effort. There are three categories of codes to choose from. If more than one category or code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(A) *Supplies.* If the action is for the purchase (not lease or rental) of supplies, enter an FSC code on Line B12A. FSC codes are all numeric. The Department of Defense Federal Supply Classification Cataloging Handbook (H2) may also help with the correct 4-digit code.

(B) *Services.* If the action is for services (except research, development, test, and evaluation), construction, equipment lease or rental, or facilities lease or rental, enter a service code on Line B12A.

(C) *Research, Development, Test, and Evaluation (RDT&E).* If the action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code on Line B12A. All RDT&E codes should begin with the letter "A." Do not use an RDT&E code for—

(1) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraph (b)(12)(i)(A) or (B) of this subsection; or

(2) Orders under Federal schedule contracts. Instead, use an FSC or Service code under the instructions in paragraph (b)(12)(i)(A) or (B) of this subsection.

(ii) LINE B12B, DOD CLAIMANT PROGRAM CODE. Enter a code that identifies the commodity described on Line B12E. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value. If the description on Line B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the R&D is a guided missile, enter code A20. If the R&D cannot be

identified to any particular objective, enter code S10;

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair, or modification services, enter the code that best identifies the program;

(C) Equipment rental (including rental of automatic data processing equipment), enter code S10;

(D) Utility services, enter code S10;

Environmental Protection Agency (EPA)-designated product(s) were acquired and all contained the required minimum recovered material content. See the EPA Comprehensive Procurement Guidelines program list at *http://www.epa.gov/cpg/.*

(B) Code B—FAR 23.405(c)(1) Justification. Enter code B if EPA-designated product(s) were acquired without the required minimum recovered material content and a

(1) Enter code 3 when the action is the award or modification of a definitive contract or a modification that definitizes a contract. Code 3 includes the following:

(i) Definitive contract awards under the Small Business Administration 8(a) program.

(ii) Notices of award.

(iii) Lease agreements.

(iv) Indefinite-delivery-definite-quantity contracts (FAR 52.216–20).

(v) Indefinite-delivery-indefinite-

described in code 7 instructions, enter code 7 on Line B13A.

(G) *Code 8—Order from UNICOR or JWOD.* Enter code 8 if the action is an order placed with Federal Prison Industries (UNICOR) or a JWOD Participating Nonprofit Agency in accordance with FAR Subpart 8.6 or 8.7. Use code 6 for orders from the Procurement List under Federal schedules. When the action is a modification to an order described in

additional work requiring a justification and approval (J&A).

(B) *Code B—Additional Work (other).* Enter code B when the action is a modification of an existing contract (including a letter contract) that is not covered by code A or by codes C through H (see code H for exercise of an option). Code B includes actions that—

(1) Initiate an incremental yearly buy under a multiyear contract;

(2) Amend a letter or other contract to add work that does not require a J&A;

task order was issued pursuant to a process that permitted each contract awardee a fair opportunity to be considered (see FAR 16.505(b)(1)).

(B) *Code B—Urgency.* Enter code B if the agency need is so urgent that providing a fair opportunity would result in unacceptable delays (see FAR 16.505(b)(2)(i)).

(C) *Code C—One/Unique Source.* Enter code C if only one contract awardee is capable of providing the supplies or services at the level or

identified to any particular objective, enter code S10;

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair, or modification services, enter the code that best identifies the program;

(C) Equipment rental (including rental of automatic data processing equipment), enter code S10;

(D) Utility services, enter code S10;

(E) Services that cannot be identified to any listed program, enter code S10; or

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) LINE B12C, PROGRAM, SYSTEM, OR EQUIPMENT CODE.

(A) Enter a code that describes the program, weapons system, or equipment. If there is no code that applies to the action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(B) If the action is funded by the Ballistic Missile Defense Organization, enter code CAA.

(C) If the action supports environmental cleanup programs, enter one of the codes listed in Section II of the DoD Procurement Coding Manual (MN02) under the heading "Environmental Cleanup Programs" at *http://web1.whs.osd.mil/peidhome/guide/mn02/SECT2.HTM*.

(D) Defense Logistics Agency and Defense Contract Management Agency activities must use the code assigned by the sponsoring military department.

(iv) LINE B12D, NAICS CODE. Enter the North American Industry Classification System (NAICS) code for the acquisition. Use the NAICS code in effect at the time of award. These codes are in the 2002 U.S. NAICS Manual (*http://www.census.gov/pub/epcd/www/naics.html*). If more than one code applies to the action, enter the code that best identifies the product or service representing the largest dollar value.

(v) LINE B12E, NAME OR DESCRIPTION. Enter the name or a brief description of the commodity or service. If the description is classified, enter only the word "Classified." Do not use "Classified" when a code name (e.g., Minuteman, Polaris, Trident, Pershing) or an identifying program number (e.g., WS–107A) can be used.

(vi) LINE B12F, EPA-DESIGNATED PRODUCT(S). Enter one of the following codes:

(A) Code A—EPA-Designated Product(s) with Minimum Recovered Material Content. Enter code A if Environmental Protection Agency (EPA)-designated product(s) were acquired and all contained the required minimum recovered material content. See the EPA Comprehensive Procurement Guidelines program list at *http://www.epa.gov/cpg/*.

(B) Code B—FAR 23.405(c)(1) Justification. Enter code B if EPA-designated product(s) were acquired without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) competitively within a reasonable period of time.

(C) Code C—FAR 23.405(c)(2) Justification. Enter code C if EPA-designated product(s) were acquired without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) at a reasonable price.

(D) Code D—FAR 23.405(c)(3) Justification. Enter code D if EPA-designated product(s) were acquired without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) to reasonable performance standards in the specifications.

(E) Code E—No EPA-Designated Products Acquired. Enter code E if no EPA-designated products were acquired.

(vii) LINE B12G, RECOVERED MATERIAL CLAUSES. If an EPA-designated product was acquired, *i.e.*, Line B12F is coded A, B, C, or D, enter one of the following codes. Otherwise, leave Line B12G blank.

(A) Code A—FAR 52.223–4. Enter code A if the solicitation included the provision at FAR 52.223–4, Recovered Material Certification.

(B) Code B—FAR 52.223–4 and FAR 52.223–9. Enter code B if the solicitation included the provision at FAR 52.223–4, Recovered Material Certification, and the contract includes the clause at FAR 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

(13) LINE B13, KIND OF ACTION. Some of the parts of Line B13 may not apply to the action being reported. Follow instructions for each part. When the action is a modification, complete Lines B13A and B13D.

(i) LINE B13A, CONTRACT OR ORDER. Enter one of the following codes:

(A) *Code 1—Letter Contract.* Enter code 1 when the action is a letter contract or a modification to a letter contract that has not been definitized.

(B) *Code 3—Definitive Contract.* *(1)* Enter code 3 when the action is the award or modification of a definitive contract or a modification that definitizes a contract. Code 3 includes the following:

(i) Definitive contract awards under the Small Business Administration 8(a) program.

(ii) Notices of award.

(iii) Lease agreements.

(iv) Indefinite-delivery-definite-quantity contracts (FAR 52.216–20).

(v) Indefinite-delivery-indefinite-quantity contracts (FAR 52.216–22) when funds are obligated by the contract itself.

(vi) Initial award of an indefinite-delivery contract when no funds are obligated.

(2) Code 3 excludes orders from the Procurement List (see codes 6 and 8).

(C) *Code 4—Order under an Agreement.* Enter code 4 when the action is an order or definitization of an order under an agreement other than a blanket purchase agreement. Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and a job order when the contract is created by issuing the order. An order under a blanket purchase agreement established under a Federal schedule (see FAR 8.404(b)(4)) is coded 7. An order under other blanket purchase agreements, pursuant to FAR 13.303, is coded 9. When the action is a modification to an order described in code 4 instructions, enter code 4 on Line B13A.

(D) *Code 5—Order under Indefinite-Delivery Contract.* Enter code 5 when the action is an order, including a task or delivery order, under an indefinite-delivery contract awarded by a Federal agency. For example, enter code 5 for an order under a GSA indefinite-delivery contract, such as a GSA area-wide contract for utility services, that is not a Federal schedule. When the action is a modification to an order described in code 5 instructions, enter code 5 on Line B13A.

(E) *Code 6—Order under Federal Schedule.* Enter code 6 if the action is an order under a Federal schedule. An order under a blanket purchase agreement established under a Federal schedule is coded 7. Code 6 includes orders under Federal schedules for items on the Procurement List. When the action is a modification to an order described in code 6 instructions, enter code 6 on Line B13A.

(F) *Code 7—BPA Order under Federal Schedule.* Enter code 7 if the action is an order under a blanket purchase agreement established under a Federal schedule (see FAR 8.404(b)(4)). When the action is a modification to an order described in code 7 instructions, enter code 7 on Line B13A.

(G) *Code 8—Order from UNICOR or JWOD.* Enter code 8 if the action is an order placed with Federal Prison Industries (UNICOR) or a JWOD Participating Nonprofit Agency in accordance with FAR Subpart 8.6 or 8.7. Use code 6 for orders from the Procurement List under Federal schedules. When the action is a modification to an order described in code 8 instructions, enter code 8 on Line B13A.

(H) *Code 9—Award under FAR Part 13.* Enter code 9 if the action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10), is an award pursuant to FAR Part 13, except when the action is a blanket purchase agreement order pursuant to FAR 8.404(b)(4) (see code 7). When the action is a modification to an award described in code 9 instructions, enter code 9 on Line B13A.

(ii) LINE B13B, TYPE OF INDEFINITE-DELIVERY CONTRACT. If the action is the award or modification of an indefinite-delivery contract, i.e., Line B13A is coded 3 and the ninth position of B1A is coded D, complete Line B13B. If the action is an order or modification of an order under an indefinite-delivery contract, i.e., Line B13A is coded 5, complete Line B13B. Otherwise, leave Line B13B blank.

(A) *Code A—Requirements Contract (FAR 52.216–21).*

(B) *Code B—Indefinite-Quantity Contract (FAR 52.216–22).*

(C) *Code C—Definite-Quantity Contract (FAR 52.216–20).*

(iii) LINE B13C, MULTIPLE OR SINGLE AWARD INDEFINITE-DELIVERY CONTRACT. If the action is the award or modification of an indefinite-delivery contract, or an order or modification of an order under an indefinite-delivery contract, i.e., Line B13B is coded A, B, or C, complete Line B13C. Otherwise, leave Line B13C blank.

(A) *Code M—Multiple Award.* Enter code M if the indefinite-delivery contract is a multiple award contract.

(B) *Code S—Single Award.* Enter code S if the indefinite-delivery contract is a single award contract.

(iv) LINE B13D, MODIFICATION. If the action is a modification, enter one of the following codes. Otherwise, leave Line B13D blank.

(A) *Code A—Additional Work (new agreement).* Enter code A when the action is a bilateral supplemental agreement that obligates funds for additional work requiring a justification and approval (J&A).

(B) *Code B—Additional Work (other).* Enter code B when the action is a modification of an existing contract (including a letter contract) that is not covered by code A or by codes C through H (see code H for exercise of an option). Code B includes actions that—

(*1*) Initiate an incremental yearly buy under a multiyear contract;

(*2*) Amend a letter or other contract to add work that does not require a J&A; or

(*3*) Order under a priced exhibit or production list.

(C) *Code C—Funding Action.* Enter code C when the action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds. This includes—

(*1*) Incremental funding (other than incremental yearly buys under multiyear contracts, which are coded B);

(*2*) Changes to the estimated cost on cost-reimbursement contracts;

(*3*) Repricing actions covering incentive price revisions;

(*4*) Economic price adjustments; and

(*5*) Initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year.

(D) *Code D—Change Order.* Enter code D if the action is a change order issued under the "Changes," "Differing Site Conditions," or similar clauses in existing contracts.

(E) *Code E—Termination for Default.* Enter code E if the action is a modification that terminates all or part of the contract for default.

(F) *Code F—Termination for Convenience.* Enter code F if the action is a modification that terminates all or part of the contract for convenience.

(G) *Code G—Cancellation.* Enter code G if the action is a modification that cancels the contract. Do not use code G to cancel a prior DD Form 350 (see Line A1).

(H) *Code H—Exercise of an Option.* Enter code H if the action is an exercise of an option.

(I) *Code J—Definitization.* Enter code J if the action is a definitization modification. For the definitization of a letter contract, enter code 3 on Line B13A.

(v) LINE B13E, MULTIPLE AWARD CONTRACT FAIR OPPORTUNITY. If the action is an order under a multiple award indefinite-delivery contract, i.e., Line B13C is coded M, enter one of the following codes. Otherwise, leave Line B13E blank.

(A) *Code A—Fair Opportunity Process.* Enter code A if the delivery or task order was issued pursuant to a process that permitted each contract awardee a fair opportunity to be considered (see FAR 16.505(b)(1)).

(B) *Code B—Urgency.* Enter code B if the agency need is so urgent that providing a fair opportunity would result in unacceptable delays (see FAR 16.505(b)(2)(i)).

(C) *Code C—One/Unique Source.* Enter code C if only one contract awardee is capable of providing the supplies or services at the level or quality required because the supplies or services are unique or highly specialized (see FAR 16.505(b)(2)(ii)).

(D) *Code D—Follow-On Contract.* Enter code D if the order was issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order (see FAR 16.505(b)(2)(iii)).

(E) *Code E—Minimum Guarantee.* Enter code E if it was necessary to place an order to satisfy a minimum amount guaranteed to the contractor (see FAR 16.505(b)(2)(iv)).

(vi) LINE B13F, INDEFINITE-DELIVERY CONTRACT USE. If the action is the initial award of an indefinite-delivery contract, enter one of the following codes to indicate if the indefinite-delivery contract can be used Government-wide, within DoD only, within the department or agency only, or by the contracting office only. Otherwise, leave Line B13F blank.

(A) *Code A—Government-Wide.*

(B) *Code B—DoD-Wide.*

(C) *Code C—DoD Department or Agency Only.*

(D) *Code D—Contracting Office Only.*

(vii) LINE B13G—INDEFINITE-DELIVERY CONTRACT ORDERING PERIOD ENDING DATE. If the action is the initial award of an indefinite-delivery contract and Line B13F is coded A, B, C, or D, enter the date the ordering period ends. Otherwise, leave Line B13G blank. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(14) LINE B14, CICA APPLICABILITY. Enter one of the following codes:

(i) *Code A—Pre-CICA.* Enter code A if the action resulted from a solicitation issued before April 1, 1985. Modifications within the original scope of work of such awards and orders under pre-CICA indefinite-delivery type contracts also are coded A.

(ii) *Code B—CICA Applicable.* Enter code B if—

(A) The action resulted from a solicitation issued on or after April 1, 1985, or is a modification coded A on Line B13D issued on or after April 1, 1985; and

(B) Neither code C nor code D applies.

(iii) *Code C—Simplified Acquisition Procedures Other than FAR Subpart 13.5.* Enter code C if the action resulted from use of the procedures in FAR Part compliance with the planning requirements of sections 5122 and 5123 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1422 and 1423).

(ii) *Code N—No.* Enter code N if code Y does not apply.

(c) *Part C of the DD Form 350.*

(1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in Part D).

(B) *Code B—FAR 5.202(a)(13).* Enter code B if the action was not synopsized because the acquisition did not exceed the simplified acquisition threshold and was made through FACNET or another means that provided access to the notice of proposed action through the single, Governmentwide point of entry (see FAR 5.202(a)(13)).

(C) *Code C—SBA/OFPP Pilot Program.* Enter Code C if the action was not synopsized because the acquisition

specific source pursuant to FAR 6.302–5(b)(2) or (4), e.g., qualified nonprofit agencies employing people who are blind or severely disabled (see FAR Subpart 8.7) or 8(a) program (see FAR Subpart 19.8);

(4) International agreements and Foreign Military Sales when the acquisition is to be reimbursed by a foreign country that requires that the product or services be obtained from a particular firm as specified in official

(v) LINE C5, TYPE OF CONTRACT.

(A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out

(2) The action is pursuant to simplified acquisition procedures, *i.e.*, Line B13A is coded 9; or

(3) The action is an order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(B) Otherwise, enter one of the following codes:

(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(2) Code B—Full and Open

(ii) *Code B—CICA Applicable.* Enter code B if—

(A) The action resulted from a solicitation issued on or after April 1, 1985, or is a modification coded A on Line B13D issued on or after April 1, 1985; and

(B) Neither code C nor code D applies.

(iii) *Code C—Simplified Acquisition Procedures Other than FAR Subpart 13.5.* Enter code C if the action resulted from use of the procedures in FAR Part 13, including blanket purchase agreement orders with Federal schedule contractors, other than those in Subpart 13.5.

(iv) *Code D—Simplified Acquisition Procedures Pursuant to FAR Subpart 13.5.* Enter code D if the action resulted from use of the procedures in FAR Subpart 13.5.

(15) LINE B15, INFORMATION TECHNOLOGY PRODUCTS OR SERVICES. If the action is for information technology products or services, enter one of the following codes. Otherwise, leave Line B15 blank.

(i) *Code A—Commercially Available Off-the-Shelf Item.* Enter code A if the action is for an item of supply that meets the definition of commercial item in FAR 2.101, does not require any modification, and is available in the commercial marketplace.

(ii) *Code B—Other Commercial Item of Supply.* Enter code B if the action is for an item of supply that meets the definition of commercial item in FAR 2.101, but requires minor modifications, or is not yet available in the commercial marketplace, but will be available in time to meet the Government's needs.

(iii) *Code C—Nondevelopmental Item Other than Commercial Item.* Enter code C if the action is for an item of supply, other than a commercial item, that meets the definition of nondevelopmental item in FAR 2.101.

(iv) *Code D—Other Noncommercial Item of Supply.* Enter code D if the action is for an item of supply that does not meet the definition of commercial item or nondevelopmental item in FAR 2.101.

(v) *Code E—Commercial Service.* Enter code E if the action is for a service that meets the definition of commercial item in FAR 2.101.

(vi) *Code F—Noncommercial Service.* Enter code F for all other services.

(16) LINE B16, CLINGER-COHEN ACT PLANNING COMPLIANCE. If the action is for information technology products or services, enter one of the following codes. Otherwise, leave Line B16 blank:

(i) *Code Y—Yes.* Enter code Y if the action is for information technology products or services acquired in compliance with the planning requirements of sections 5122 and 5123 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1422 and 1423).

(ii) *Code N—No.* Enter code N if code Y does not apply.

(c) *Part C of the DD Form 350.*

(1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in Part D).

(2) Do not complete Part C if the action is with a government agency, *i.e.*, Line B5B (Government Agency) is coded Y (Yes). If the action is an order under a Federal schedule, *i.e.*, Line B13A is coded 6, complete only the following lines in Part C: Line C3, and Lines C13A and C13B (when applicable).

(3) In completing Part C, use codes that describe either the current action or the original contract as follows:

(i)(A) If the current action is a modification, other than a new work modification, or an order under an indefinite-delivery contract, code the lines in Part C to describe the original contract.

(B) If the current action is an order under a multiple award contract, *i.e.*, Line B13A is coded 5 and Line B13C is coded M, code Lines C6 and C7 to describe the order and code the rest of Part C to describe the original contract.

(C) Otherwise, code the lines in Part C to describe the current action.

(ii) If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original action.

(4) Complete Part C as follows:

(i) LINE C1, SYNOPSIS. Enter one of the following codes:

(A) *Code A—Synopsis Only.* Enter code A only if a synopsis of the proposed action was prepared and transmitted in accordance with FAR Subpart 5.2.

(B) *Code B—Combined Synopsis/Solicitation.* Enter code B if a combined synopsis/solicitation of the proposed action was prepared and transmitted in accordance with FAR Subpart 5.2 and 12.603,

(C) *Code N—Not Synopsized.* Enter code N if a synopsis was not prepared.

(ii) LINE C2, REASON NOT SYNOPSIZED. Enter one of the following codes if a synopsis was not prepared, *i.e.*, Line C1 is coded N. Otherwise, leave Line C2 blank.

(A) *Code A—Urgency.* Enter code A if the action was not synopsized due to urgency (see FAR 6.302–2).

(B) *Code B—FAR 5.202(a)(13).* Enter code B if the action was not synopsized because the acquisition did not exceed the simplified acquisition threshold and was made through FACNET or another means that provided access to the notice of proposed action through the single, Governmentwide point of entry (see FAR 5.202(a)(13)).

(C) *Code C—SBA/OFPP Pilot Program.* Enter Code C if the action was not synopsized because the acquisition was subject to the SBA/OFPP Pilot Program that allows for waiver of synopsis requirements for acquisitions of services between $25,000 and $100,000 from small businesses under set-asides (OFPP memorandum dated September 27, 2001, Subject: Extension of the Pilot Program on Acquisition of Services from Small Businesses). Do not use Code C if the acquisition is subject to the Small Business Competitiveness Demonstration Program.

(D) *Code Z—Other Reason.* Enter code Z if the action was not synopsized due to some other reason.

(iii) LINE C3, EXTENT COMPETED. Enter one of the following codes:

(A) *Code A—Competed Action.* Enter code A when—

(1) The action is an order under a Federal schedule, *i.e.*, Line B13A is coded 6;

(2) Competitive procedures were used to fulfill the requirement for full and open competition (see FAR Subpart 6.1);

(3) Full and open competition procedures after exclusion of sources were used in order to establish or maintain alternative sources, to set aside an acquisition for small business or HUBZone small business, or to compete Section 8(a) awards (see FAR Subpart 6.2);

(4) Statutory authorities for other than full and open competition were used (see FAR Subpart 6.3) and more than one offer was received (if only one offer was received, use code D);

(5) The action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively; or

(6) Simplified acquisition procedures were used and competition was obtained.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems, excluding long distance telecommunications services, when only one supplier can furnish the service (see FAR 6.302–1(b)(3));

(2) Brand name commercial products for authorized resale;

(3) Acquisitions authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302–5(b)(2) or (4), e.g., qualified nonprofit agencies employing people who are blind or severely disabled (see FAR Subpart 8.7) or 8(a) program (see FAR Subpart 19.8);

(4) International agreements and Foreign Military Sales when the acquisition is to be reimbursed by a foreign country that requires that the product or services be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; and

(5) Other contracting actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

Note: Even though Part C is not completed for actions with a government agency, the database will automatically include these actions in the category of not available for competition.

(C) *Code C—Follow-On to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program, if such placement was necessitated by prior acquisition decisions. Code C applies to contracts that meet the statutory criteria for Phase III follow-on under the Small Business Innovation Research Program.

(D) *Code D—Not Competed.* Enter code D when codes A, B, and C do not apply.

(iv) LINE C4, SEA TRANSPORTATION. When the origin of the contract is DoD, i.e., Line B1B is coded A, enter one of the following codes. Otherwise, leave Line C4 blank.

(A) *Code Y—Yes—Positive Response to DFARS 252.247–7022 or 252.212–7000(c)(2).* Enter code Y when the contractor's response to the provision at 252.247–7022, Representation of Extent of Transportation by Sea, or 252.212–7000(c)(2), Offeror Representations and Certifications—Commercial Items, indicates that the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to DFARS 252.247–7022 or 252.212–7000(c)(2).* Enter code N when the contractor's response to the provision at 252.247–7022 or 252.212–7000(c)(2) indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Provision Not Included in Solicitation.* Enter code U when the contractor did not complete the representstion at 252.247–7022 or 252.212–7000(c)(2) or the solicitation did not include either provision.

(v) LINE C5, TYPE OF CONTRACT.

(A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out separate DD Forms 350 (with different report numbers) for each type.

(C) Enter one of the following codes:

(1) Code A—Fixed-Price Redetermination.

(2) Code J—Firm-Fixed-Price.

(3) Code K—Fixed-Price Economic Price Adjustment.

(4) Code L—Fixed-Price Incentive.

(5) Code M—Fixed-Price-Award-Fee.

(6) Code R—Cost-Plus-Award-Fee.

(7) Code S—Cost Contract.

(8) Code T—Cost-Sharing.

(9) Code U—Cost-Plus-Fixed-Fee.

(10) Code V—Cost-Plus-Incentive-Fee.

(11) Code Y—Time-and-Materials.

(12) Code Z—Labor-Hour.

(vi) LINE C6, NUMBER OF OFFERORS SOLICITED.

(A) Leave Line C6 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (*i.e.*, before the effective date of the Competition in Contracting Act);

(2) The action is an order or modification of an order under a non-DoD indefinite-delivery contract, *i.e.*, Line B1B is coded B or C and Line B13A is coded 5; or

(3) The action is an order or modification of an order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one offeror was solicited; or

(2) Code 2—More than One. Enter code 2 if more than one offeror was solicited.

(vii) LINE C7, NUMBER OF OFFERS RECEIVED.

(A) Leave Line C7 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (*i.e.*, before the effective date of the Competition in Contracting Act); or

(2) The action is an order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(B) Otherwise, enter the specific number of offers received (001–999).

(viii) LINE C8, SOLICITATION PROCEDURES.

(A) Leave Line C8 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (*i.e.*, before the effective date of the Competition in Contracting Act);

(2) The action is pursuant to simplified acquisition procedures, *i.e.*, Line B13A is coded 9; or

(3) The action is an order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(B) Otherwise, enter one of the following codes:

(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(2) Code B—Full and Open Competition—Competitive Proposal. Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(3) *Code C—Full and Open Competition—Combination.* Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).

(4) Code D—Architect-Engineer. Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(5) Code E—Basic Research. Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(6) Code F—Multiple Award Schedule. Enter code F if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(7) Code G—Alternative Sources. Enter code G if the action resulted from use of competitive procedures but excluded a particular source pursuant to FAR 6.202(a).

(8) Code K—Set-Aside. Enter code K if the action resulted from any—

(i) Set-aside for small business concerns (see FAR Subpart 19.5), including small business innovation research (SBIR) actions;

(ii) Set-aside for small disadvantaged business concerns;

(iii) Set-aside for HUBZone small business concerns (see FAR 19.1305);

(iv) Set-aside for very small business concerns (see FAR 19.904);

(v) Set-aside (including portions of broad agency announcements) for historically black colleges and universities or minority institutions (see 226.7003 and 235.016);

(vi) Set-aside for emerging small business concerns (see FAR 19.1006(c)); or

(vii) Competition among Section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(9) Code N—Other than Full and Open Competition. Enter code N if the action resulted from use of other than full and open competition pursuant to FAR Subpart 6.3. This includes awards

to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR Subpart 8.7) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

(ix) LINE C9, AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION.

(A) Leave Line C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (*i.e.*, before the effective date of the Competition in Contracting Act).

(B) Otherwise, enter one of the following codes:

(1) Code A—Unusual and Compelling Urgency. Enter code A if the action resulted from use of other than full and open competition pursuant to FAR 6.302–2.

(2) Code B—Industrial Mobilization; Engineering, Developmental, or Research Capability. Enter code B if the action resulted from use of other than full and open competition pursuant to FAR 6.302–3.

(3) Code C—International Agreement. Enter code C if the action resulted from use of other than full and open competition pursuant to FAR 6.302–4.

(4) Code D—Authorized or Required by Statute. Enter code D if the action resulted from use of other than full and open competition pursuant to FAR 6.302–5.

(5) Code E—National Security. Enter code E if the action resulted from use of other than full and open competition pursuant to FAR 6.302–6.

(6) Code F—Public Interest. Enter code F if the action resulted from use of other than full and open competition pursuant to FAR 6.302–7.

(7) Code G—Follow-On to Competed Action. Enter code G if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii).

(8) Code H—Unsolicited Proposal. Enter code H if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(iii).

(9) Code J—Utilities. Enter code J if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(b)(3).

(10) Code K—Follow-On to Competed Action (Set-Aside). Enter code K if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was set aside for small business or HUBZone small business.

(11) Code L—Expired Authority. Enter code L if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(i).

(12) Code M—Follow-On to Competed Action (8(a)). Enter code M if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

(13) Code N—Minimum Requirements. Enter code N if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(iv).

(14) Code P—Unsolicited Research Proposal. Enter code P if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(iii).

(15) Code Q—Patent or Data Rights. Enter code Q if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(iv).

(16) Code R—Only One Source—Other. Enter code R if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(i).

(17) Code S—Follow-On to Competed Action (HUBZone). Enter code S if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to a HUBZone small business.

(18) Code T—Follow-On to Competed Action (Small Disadvantaged Business). Enter code T if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to a small disadvantaged business.

(19) Code V—Follow-On to Competed Action (Very Small Business). Enter code V if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to a very small business.

(20) Code W—Follow-On to Competed Action (Small Business). Enter code W if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to a small business.

(21) Code X—Follow-On to Competed Action (Emerging Small Business). Enter code X if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to an emerging small business.

(22) Code Y—Follow-On to Competed Action (Historically Black College or University (HBCU)). Enter code Y if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to an HBCU.

(23) Code Z—Follow-On to Competed Action (Minority Institution (MI)). Enter code Z if the action resulted from use of other than full and open competition pursuant to FAR 6.302–1(a)(2)(ii) and was awarded to an MI.

(x) LINE C10, NUMBER OF ARCHITECT-ENGINEER CONTRACTS.

(A) Leave Line C10 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (*i.e.*, before the effective date of the Competition in Contracting Act);

(2) The action is an order or modification of an order under a non-DoD indefinite-delivery contract, *i.e.*, Line B1B is coded B or C and Line B13A is coded 5; or

(3) The action is an order or modification of an order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one architect-engineer contract was solicited; or

(2) Code 2—More than One. Enter code 2 if more than one architect-engineer contract was solicited.

(xi) LINE C11, NUMBER OF CONTRACTS AWARDED.

(A) Leave Line C11 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (*i.e.*, before the effective date of the Competition in Contracting Act);

(2) The action is an order or modification of an order under a non-DoD indefinite-delivery contract, *i.e.*, Line B1B is coded B or C and Line B13A is coded 5; or

(3) The action is an order or modification of an order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one contract was awarded; or

(2) Code 2—More than One. Enter code 2 if more than one contract was awarded.

(xii) LINE C12, NUMBER OF ACTIONS.

(A) Leave Line C12 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (*i.e.*, before the effective date of the Competition in Contracting Act);

(2) The action is an order or modification of an order under a non-DoD indefinite-delivery contract, *i.e.*, Line B1B is coded B or C and Line B13A is coded 5; or

(3) The action is an order or modification of an order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one action was taken; or

(2) Code 2—More than One. Enter code 2 if more than one action was taken.

(xiii) LINE C13, FOREIGN TRADE DATA.

(A) The term "United States (U.S.)," as used on Line C13, excludes the Trust Territory of Palau (*see* 204.670–1 for definition of United States and outlying areas).

(B) LINE C13A, PLACE OF MANUFACTURE. Complete Line C13A only if the action is for supplies and is—

(i) Code Part D to describe the current action when—

(A) The action is a new requirement, *i.e.*, Line B13A is coded 1, 3, 4, 7, or 9 and Line B13D is coded A or is blank; or

(B) The action is an order from the Schedule or the Procurement List, *i.e.*, Line B13A is coded 8 and Line B13D is coded A or is blank.

(ii) Otherwise, code Part D to describe the original contract. If there are no

place of performance is outside the United States and outlying areas.

(8) Code T—Historically Black College or University (HBCU). Enter code T if the contractor is an HBCU as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(9) Code U—Minority Institution (MI). Enter code U if the contractor is an MI as defined at 252.226–7000 and the place of performance is within the

(iii) Code C—Black American.

(iv) Code D—Hispanic American.

(v) Code E—Native American.

(vi) Code F—Other SDB Certified or Determined by SBA.

(vii) Code Z—No Representation.

(E) LINE D1E, VETERAN-OWNED SMALL BUSINESS. Enter one of the following codes if the contractor is a veteran-owned small business. Otherwise, leave Line D1E blank.

(1) Code A—Service-Disabled Veteran. Enter code A if the contractor

to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR Subpart 8.7) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

(ix) LINE C9, AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION.

(A) Leave Line C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).

(B) Enter one of the following codes if the action resulted from use of other than full and open competition, i.e., Line C8 is coded N. Otherwise, leave Line C9 blank.

(1) Code 1A—Unique Source. Enter code 1A if the action was justified pursuant to FAR 6.302–1(b)(1).

(2) Code 1B—Follow-On Contract. Enter code 1B if the action was justified pursuant to FAR 6.302–1(a)(2)(ii) or (iii).

(3) Code 1C—Unsolicited Research Proposal. Enter code 1C if the action was justified pursuant to FAR 6.302–1(a)(2)(i).

(4) Code 1D—Patent or Data Rights. Enter code 1D if the action was justified pursuant to FAR 6.302–1(b)(2).

(5) Code 1E—Utilities. Enter code 1E if the action was justified pursuant to FAR 6.302–1(b)(3).

(6) Code 1F—Standardization. Enter code 1F if the action was justified pursuant to FAR 6.302–1(b)(4).

(7) Code 1G—Only One Source—Other. Enter code 1G if the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in codes 1A through 1F.

(8) Code 2A—Urgency. Enter code 2A if the action was justified pursuant to FAR 6.302–2.

(9) Code 3A—Particular Sources. Enter code 3A if the action was justified pursuant to FAR 6.302–3(a)(2).

(10) Code 4A—International Agreement. Enter code 4A if the action was justified pursuant to FAR 6.302–4.

(11) Code 5A—Authorized by Statute. Enter code 5A if the action was justified pursuant to FAR 6.302–5(a)(2)(i).

(12) Code 5B—Authorized Resale. Enter code 5B if the action was justified pursuant to FAR 6.302–5(a)(2)(ii).

(13) Code 6A—National Security. Enter code 6A if the action was justified pursuant to FAR 6.302–6.

(14) Code 7A—Public Interest. Enter code 7A if the action was taken pursuant to FAR 6.302–7.

(x) LINE C10, SUBJECT TO LABOR STANDARDS STATUTES. Enter one of the following codes. When the action is an order or modification of an order under a Federal schedule, i.e., Line B13A is coded 6, leave Line C10 blank.

(A) Code A—Walsh-Healey Act. Enter code A when the action is subject to the provisions of FAR Subpart 22.6.

(B) Code C—Service Contract Act. Enter code C when the action is subject to the provisions of the Service Contract Act (see FAR Part 37).

(C) Code D—Davis-Bacon Act. Enter code D when the action is subject to the Davis-Bacon Act (see FAR 22.403–1).

(D) Code Z—Not Applicable. Enter code Z when codes A, C, and D do not apply.

(xi) LINE C11, COST OR PRICING DATA. Enter one of the following codes when the origin of the contract is DoD, i.e., Line B1B is coded A. Otherwise, leave Line C11 blank.

(A) Code Y—Yes—Obtained. Enter code Y when cost or pricing data were obtained (see FAR 15.403–4) and certified in accordance with FAR 15.406–2.

(B) Code N—No—Not Obtained. Enter code N when neither code Y nor code W applies.

(C) Code W—Not Obtained—Waived. Enter code W when cost or pricing data were not obtained because the head of the contracting activity waived the requirement (see FAR 15.403–1(c)(4)).

(xii) LINE C12, CONTRACT FINANCING. When the origin of the contract is DoD, *i.e.*, Line B1B is coded A, enter one of the following codes identifying whether or not progress payments, advance payments, or other financing methods were used. When the origin of the contract is not DoD, leave Line C12 blank.

(A) Code A—FAR 52.232–16. Enter code A if the contract contains the clause at FAR 52.232–16, Progress Payments.

(B) Code C—Percentage of Completion Progress Payments. Enter code C if the contract provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(C) Code D—Unusual Progress Payments or Advance Payments. Enter code D if the contract provides unusual progress payments or advance payments (see FAR Subpart 32.4 and 32.501–2).

(D) Code E—Commercial Financing. Enter code E if the contract provides for commercial financing payments (see FAR Subpart 32.2).

(E) Code F—Performance-Based Financing. Enter code F if the contract provides for performance-based financing payments (see FAR Subpart 32.10).

(F) Code Z—Not Applicable. Enter code Z when codes A through F do not apply.

(xiii) LINE C13, FOREIGN TRADE DATA.

(A) The term "United States (U.S.)," as used on Line C13, excludes the Trust Territory of Palau (*see* 204.670–1 for definition of United States and outlying areas).

(B) LINE C13A, PLACE OF MANUFACTURE. Complete Line C13A only if the action is for a foreign end product or a service provided by a foreign concern under a DoD contract or a Federal schedule. Otherwise, leave Line C13A blank.

(1) Code A—U.S. Enter code A if the action is for—

(i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or

(ii) Services performed in the United States by a foreign concern.

(2) Code B—Foreign. Enter code B if the action is for—

(i) Any other foreign end product; or

(ii) Services performed outside the United States by a foreign concern.

(C) LINE C13B, COUNTRY OF ORIGIN CODE.

(1) Complete Line C13B only if Line C13A is coded A or B. Otherwise, leave Line C13B blank.

(2) Enter the code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions, that identifies the country where the foreign product is coming from or where the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value of work under the contract.

(xiv) LINE C14, COMMERCIAL ITEM. Enter one of the following codes:

(A) *Code Y—Yes—FAR 52.212–4 Included.* Enter code Y if the contract contains the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items.

(B) *Code N—No—FAR 52.212–4 Not Included.* Enter code N if code Y does not apply.

(d) *Part D of the DD Form 350.*

(1) Do NOT complete Part D if the action is—

(i) With a government agency, *i.e.*, Line B5B is coded Y; or

(ii) An order under a Federal schedule, *i.e.*, Line B13A is coded 6.

(2) Use the codes on Lines B13A and B13D to determine whether the codes in Part D will describe the current action or the original contract.

(i) Code Part D to describe the current action when—

(A) The action is a new requirement, *i.e.*, Line B13A is coded 1, 3, 4, 7, or 9 and Line B13D is coded A or is blank; or

(B) The action is an order from the Schedule or the Procurement List, *i.e.*, Line B13A is coded 8 and Line B13D is coded A or is blank.

(ii) Otherwise, code Part D to describe the original contract. If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original action.

(3) Determine the status of the concern (*e.g.*, size and ownership) in accordance with FAR Part 19 and DFARS Part 219.

(4) Complete Part D as follows:

(i) LINE D1, TYPE OF CONTRACTOR.

(A) LINE D1A, TYPE OF ENTITY. Enter one of the following codes:

(1) Code A—Small Disadvantaged Business (SDB) Performing in U.S. Enter code A if the contractor is a small disadvantaged business concern as defined in 219.001 and the place of performance is within the United States and outlying areas.

(2) Code B—Other Small Business (SB) Performing in U.S. Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.

(3) Code C—Large Business Performing in U.S. Enter code C if the contractor is a domestic large business concern and the place of performance is within the United States and outlying areas.

(4) Code D—JWOD Participating Nonprofit Agency. Enter code D if the contractor is a qualified nonprofit agency employing people who are blind or severely disabled (see FAR 8.701) and the place of performance is within the United States and outlying areas.

(5) Code F—Hospital. Enter code F if the contractor is a hospital and the place of performance is within the United States and outlying areas.

(6) Code L—Foreign Concern or Entity. Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S.-chartered nonprofit institution.

(7) Code M—Domestic Firm Performing Outside U.S. Enter code M if the contractor is a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and outlying areas.

(8) Code T—Historically Black College or University (HBCU). Enter code T if the contractor is an HBCU as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(9) Code U—Minority Institution (MI). Enter code U if the contractor is an MI as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(10) Code V—Other Educational. Enter code V if the contractor is an educational institution that does not qualify as an HBCU or MI and the place of performance is within the United States and outlying areas.

(11) Code Z—Other Nonprofit. Enter code Z if the contractor is a nonprofit organization (as defined in FAR 31.701) that does not meet any of the criteria in codes D, F, T, U, or V and the place of performance is within the United States and outlying areas.

(B) LINE D1B, WOMEN-OWNED BUSINESS. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor's response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is a women-owned business.

(2) Code N—No. Enter code N if the contractor's response to FAR 52.204–5, 52.212–3(c), or 52.219–1(b) indicates that it is not a women-owned business.

(3) Code U—Uncertified. Enter code U if the information is not available because the contractor did not complete the representation in FAR 52.204–5, 52.212–3(c), or 52.219–1(b).

(C) LINE D1C, HUBZONE REPRESENTATION. Enter one of the following codes when the contractor is a small business performing inside the United States, i.e., Line D1A is coded A or B. Otherwise, leave Line D1C blank.

(1) Code Y—Yes. Enter code Y if the contractor represented that it is a HUBZone small business concern at the time of contract award (see FAR 19.307).

(2) Code N—No. Enter code N if code Y does not apply.

(D) LINE D1D, ETHNIC GROUP.

(1) Complete Line D1D if the action is with a small disadvantaged business and the origin of the contract is DoD, i.e., Line B1B is coded A. Otherwise, leave Line D1D blank.

(2) Enter the code from the following list that corresponds to the ethnic group that the contractor marked in the solicitation provision at FAR 52.219–1, Small Business Program Representations, or FAR 52.212–3(c).

(i) Code A—Asian-Indian American.

(ii) Code B—Asian-Pacific American.

(iii) Code C—Black American.

(iv) Code D—Hispanic American.

(v) Code E—Native American.

(vi) Code F—Other SDB Certified or Determined by SBA.

(vii) Code Z—No Representation.

(E) LINE D1E, VETERAN-OWNED SMALL BUSINESS. Enter one of the following codes if the contractor is a veteran-owned small business. Otherwise, leave Line D1E blank.

(1) Code A—Service-Disabled Veteran. Enter code A if the contractor represented that it is a service-disabled veteran-owned small business.

(2) Code B—Other Veteran. Enter code B if the contractor represented that it is a veteran-owned small business, other than a service-disabled veteran-owned small business.

(ii) LINE D2, REASON NOT AWARDED TO SDB. Enter one of the following codes when the contractor is a small business (other than a small disadvantaged business) or a large business performing in the United States, *i.e.*, Line D1A is coded B or C. Otherwise, leave Line D2 blank.

(A) *Code A—No Known SDB Source.*

(B) *Code B—SDB Not Solicited.* Enter code B when there was a known SDB source, but it was not solicited.

(C) *Code C—SDB Solicited and No Offer Received.* Enter code C when an SDB was solicited but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SDB Solicited and Offer Was Not Low.* Enter code D when an SDB offer was not the low or most advantageous offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when an SDB did not receive the award for any other reason or when the action is an order or modification of an order under a non-DoD contract, *i.e.*, Line B1B is coded B or C and Line B13A is coded 5.

(iii) LINE D3, REASON NOT AWARDED TO SB. Enter one of the following codes when the contractor is a large business performing in the United States, *i.e.*, Line D1A is coded C. Otherwise, leave Line D3 blank. (The term "small business" includes all categories of small businesses.)

(A) *Code A—No Known SB Source.*

(B) *Code B—SB Not Solicited.* Enter code B when there was a known small business source, but it was not solicited.

(C) *Code C—SB Solicited and No Offer Received.* Enter code C when a small business concern was solicited

but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited and Offer Was Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when an SB did not receive the award for any other reason or when the action is an order or modification of an order under a non-DoD contract, *i.e.*, Line B1B is coded B or C and Line B13A is coded 5.

(iv) LINE D4, REASON NOT AWARDED TO SDB OR SB. Enter one of the following codes when the contractor is a small business or a large business performing in the United States, *i.e.*, Line D1A is coded A, B, or C. Otherwise, leave Line D4 blank.

(A) *Code A—Unrestricted Competition.* Enter code A when the action was unrestricted competition.

(B) *Code B—Set-Aside Not Used.* Enter code B when the action was not set aside for small business concerns.

(C) *Code C—Insufficient Capabilities.* Enter code C when the action was set aside for small business concerns, but the contracting officer determined that no small business concern had the capability to perform the work.

(D) *Code D—Other.* Enter code D when the action was set aside for small business concerns, but for any other reason.

(v) LINE D5, EXTENT COMPETED. Enter one of the following codes:

(1) Code A—Full and Open Competition. Enter code A when the action was competed and all responsible sources were solicited.

(2) Code B—Not Available for Competition. Enter code B when the action was not available for competition.

(3) Code C—Full and Open After Exclusion of Sources. Enter code C when the action was competed and all responsible sources were solicited, but one or more sources were excluded.

(4) Code D—Follow On to Competed Action. Enter code D when the action was not competed, but was a follow-on action to a competed action.

(5) Code E—Competed Under SAP. Enter code E when the action was competed under simplified acquisition procedures.

(6) Code F—Competed Under Mandatory Source. Enter code F when the action was competed under mandatory sources.

(7) Code G—Competed Under Mandatory and Discretionary Source. Enter code G when the action was competed under mandatory and discretionary sources.

(8) Code N—Not Competed. Enter code N when the action was not competed.

(vi) LINE D6, NUMBER OF OFFERS RECEIVED. Enter the number of offers received in response to the solicitation. Enter 99 if 99 or more offers were received. Enter 00 if the action was not competed.

(vii) LINE D7, COMMERCIAL ITEM ACQUISITION PROCEDURES. Enter one of the following codes:

(1) Code A—Used. Enter code A when FAR Part 12 was used.

(2) Code B—Not Used. Enter code B when FAR Part 12 was not used.

(3) Code C—Exempt. Enter code C when FAR Part 12 was exempt.

(viii) LINE D8, SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(A) Complete Line D8 only when the contractor is a small business performing in the United States and the action is under the Small Business Competitiveness Demonstration Program, *i.e.*, Line D1A is coded A or B and Line D9 is coded Y. Otherwise, leave Line D8 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the

(A) Complete Line D10 only when the contractor is a small business performing in the United States and the action is under the Small Business Competitiveness Demonstration Program, *i.e.*, Line D1A is coded A or B and Line D9 is coded Y. Otherwise, leave Line D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the

(B) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(ii) Otherwise, leave Line E1 blank.

(2) LINE E2, COST ACCOUNTING STANDARDS CLAUSE. Enter code Y on Line E2 if the contract includes a Cost Accounting Standards clause (see FAR Part 30). Otherwise, leave Line E2 blank.

(3) LINE E3, REQUESTING AGENCY CODE (FIPS 95). If making a purchase on behalf of a non-DoD agency, enter the

through December. For example, enter January 2, 2003, as 20030102.

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DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2000–D014]

Defense Federal Acquisition

but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited and Offer Was Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when a small business did not receive the award for any other reason or when the action is an order or modification of an order under a non-DoD contract, i.e., Line B1B is coded B or C and Line B13A is coded 5.

(iv) LINE D4, SET-ASIDE OR PREFERENCE PROGRAM.

(A) LINE D4A, TYPE OF SET-ASIDE. Enter one of the following codes:

(1) Code A—None. Enter code A if there was no set-aside (i.e., codes B through L do not apply).

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (see FAR 19.502–2), including actions reserved exclusively for small business concerns pursuant to FAR 13.003(b)(1), or if the action resulted from the Small Business Innovation Research Program.

(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (see FAR 19.502–3).

(4) Code D—Section 8(a) Set-Aside or Sole Source. Enter code D if the contract was awarded to—

(i) The Small Business Administration under Section 8(a) of the Small Business Act (see FAR Subpart 19.8); or

(ii) An 8(a) contractor under the direct award procedures at 219.811.

(5) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses.

(6) Code F—HBCU or MI—Total Set-Aside. Enter code F if the action was a total set-aside for HBCU or MI (see 226.7003).

(7) Code G—HBCU or MI—Partial Set-Aside. Enter code G if the action was a partial set-aside for HBCU or MI under a broad agency announcement (see 235.016).

(8) Code H—Very Small Business Set-Aside. Enter code H if the action was a set-aside for very small businesses (see FAR Subpart 19.9).

(9) Code J—Emerging Small Business Set-Aside. Enter code J if the action was an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10).

(10) Code K—HUBZone Set-Aside or Sole Source. Enter code K if the action was—

(i) A set-aside for HUBZone small business concerns (see FAR 19.1305); or

(ii) A sole source award to a HUBZone small business concern (see FAR 19.1306).

(11) Code L—Combination HUBZone and 8(a). Enter code L if the action was a combination HUBZone set-aside and 8(a) award.

(B) LINE D4B, TYPE OF PREFERENCE. Enter one of the following codes, even if Line D4A is coded E:

(1) Code A—None. Enter code A if no preference was given.

(2) Code B—SDB Price Evaluation Adjustment—Unrestricted. Enter code B if the action was unrestricted but an SDB received an award as a result of a price evaluation adjustment (see FAR Subpart 19.11).

(3) Code C—SDB Preferential Consideration—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business and preferential consideration resulted in an award to an SDB.

(4) Code D—HUBZone Price Evaluation Preference. Enter code D if the contractor received the award as a result of a HUBZone price evaluation preference (see FAR 19.1307).

(5) Code E—Combination HUBZone Price Evaluation Preference and SDB Price Evaluation Adjustment. Enter code E if the contractor received the award as a result of both a HUBZone price evaluation preference and an SDB price evaluation adjustment (see FAR 19.1307).

(C) LINE D4C, PREMIUM PERCENT.

(1) Complete Line D4C if the origin of the contract is DoD, i.e., Line B1B is coded A, and—

(i) An SDB or HBCU/MI set-aside was used, i.e., Line D4A is coded E, F, or G; or

(ii) A preference program was used, i.e., Line D4B is coded B, C, D, or E.

(2) Otherwise, leave Line D4C blank.

(3) Calculate the premium percentage per 219.202–5 and enter it as a three-digit number rounded to the nearest tenth, e.g., enter 7.55% as 076. If no premium was paid, enter three zeros (000).

(v) LINES D5—D6. Reserved.

(vi) LINE D7, SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM. Enter one of the following codes. When the action is an order or modification of an order under a non-DoD contract, i.e., Line B1B is coded B or C and Line B13A is coded 5, leave Line D7 blank.

(A) *Code A—Not a SBIR Program Phase I, II, or III.* Enter code A if the action is not in support of a Phase I, II, or III SBIR Program.

(B) *Code B—SBIR Program Phase I Action.* Enter code B if the action is related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is related to a Phase II contract in support of the SBIR Program.

(D) *Code D—SBIR Program Phase III Action.* Enter code D if the action is related to a Phase III contract in support of the SBIR Program.

(vii) LINE D8, SUBCONTRACTING PLAN—SB, SDB, HBCU, OR MI. Enter one of the following codes:

(A) *Code A—Plan Not Included—No Subcontracting Possibilities.* Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (see FAR 19.705–2(c)).

(B) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (e.g., because the action did not meet the dollar thresholds in FAR 19.702(a)).

(C) *Code C—Plan Required—Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (see FAR 19.708(c)).

(D) *Code D—Plan Required—Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (see FAR 19.708(c) and 219.708(c)).

(viii) LINE D9, SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM. When the action is under a contract that was awarded before the demonstration program began (January 1, 1989) and does not involve a new work modification, enter code N on Line D9. When the action is an order or modification of an order under a non-DoD contract, i.e., Line B1B is coded B or C and Line B13A is coded 5, enter code N on Line D9. Otherwise, code Line D9 as follows:

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10 and DFARS Subpart 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(ix) LINE D10, SIZE OF SMALL BUSINESS.

(A) Complete Line D10 only when the contractor is a small business performing in the United States and the action is under the Small Business Competitiveness Demonstration Program, *i.e.,* Line D1A is coded A or B and Line D9 is coded Y. Otherwise, leave Line D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program:

(1) Code A—50 or fewer employees.
(2) Code B—51–100 employees.
(3) Code C—101–250 employees.
(4) Code D—251–500 employees.
(5) Code E—501–750 employees.
(6) Code F—751–1,000 employees.
(7) Code G—Over 1,000 employees.
(8) Code M—$1 million or less.
(9) Code N—Over $1 million—$2 million.
(10) Code P—Over $2 million—$3.5 million.
(11) Code R—Over $3.5 million—$5 million.
(12) Code S—Over $5 million—$10 million.
(13) Code T—Over $10 million—$17 million.
(14) Code U—Over $17 million.

(x) LINE D11, EMERGING SMALL BUSINESS.

(A) Complete this line only if the action is under the Small Business Competitiveness Demonstration Program, i.e., Line D9 is coded Y, and the action is in one of the four designated industry groups, not one of the targeted industry categories. Otherwise, leave Line D11 blank.

(B) Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor represents in the provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) *Part E of the DD Form 350.* Part E gathers data on specialized items that may not become permanent reporting elements.

(1) LINE E1, CONTINGENCY, HUMANITARIAN, OR PEACEKEEPING OPERATION.

(i) Enter code Y on Line E1 if the action exceeds $200,000 and is in support of—

(A) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(B) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(ii) Otherwise, leave Line E1 blank.

(2) LINE E2, COST ACCOUNTING STANDARDS CLAUSE. Enter code Y on Line E2 if the contract includes a Cost Accounting Standards clause (see FAR Part 30). Otherwise, leave Line E2 blank.

(3) LINE E3, REQUESTING AGENCY CODE (FIPS 95). If making a purchase on behalf of a non-DoD agency, enter the four-position code from FIPS PUB 95 that identifies the non-DoD agency. If making a purchase for another DoD department or agency, enter 2100 for Army, 1700 for Navy, 5700 for Air Force, 97AS for DLA, 96CE for USACE, 9763 for DCMA, and 9700 for all other defense agencies. Otherwise, leave Line E3 blank.

(4) LINE E4, REQUESTING ACTIVITY CODE. If making a purchase on behalf of a non-DoD agency, enter the non-DoD agency's office code, if provided. Otherwise, leave Line E4 blank. If making a purchase on behalf of a DoD activity, enter the DoDAAC of the activity for whom the purchase was made. DoDAACs can be found at: *https://day2k1.daas.dla.mil/dodaac/dodaac.asp.* If multiple requesting activities are involved, enter the DoDAAC of the activity that provided the largest portion of funding for the action.

(5) LINE E5, NUMBER OF ACTIONS. If submitting a consolidated DD Form 350, enter the number of actions included in the consolidated report (see 204.670–6(h)). Otherwise, enter 1 on Line E5.

(6) LINE E6, PAYMENT BY GOVERNMENTWIDE PURCHASE CARD. If payment is to be made through use of the Governmentwide purchase card, enter Y on Line E6. Otherwise, leave Line E6 blank.

(f) *Part F of the DD Form 350.* Part F identifies the reporting official.

(1) LINE F1, NAME OF CONTRACTING OFFICER OR REPRESENTATIVE. Enter the name (Last, First, Middle Initial) of the contracting officer or representative.

(2) LINE F2, SIGNATURE. The person identified on Line F1 must sign.

(3) LINE F3, TELEPHONE NUMBER. Enter the telephone number (with area code) for the individual on Line F1. Installations with Defense Switched Network (DSN) must enter the DSN number.

(4) LINE F4, DATE. Enter the date that the DD Form 350 Report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

[FR Doc. 02–17524 Filed 7–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2000–D014]

Defense Federal Acquisition Regulation Supplement; Ocean Transportation by U.S.-Flag Vessels; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 67 FR 38020–38022 on May 31, 2002, pertaining to requirements for use of U.S.-flag vessels in the transportation of supplies by sea.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350.

Correction

In the issue of Friday, May 31, 2002, on page 38021, in the third column, amendatory instruction 5.b. is corrected by removing "252.247–2023" and adding in its place "252.247–7023".

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–17521 Filed 7–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA–01–10566 (HM–207B)]

RIN 2137–AC64

Hazardous Materials: Retention of Shipping Papers

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to require shippers and carriers to retain a copy of each hazardous material

shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier.

EFFECTIVE DATE: This final rule is effective on August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation

(RSPA, we) issued a notice of proposed rulemaking (NPRM) to amend the HMR to conform with § 5110(e) (66 FR 47443). We proposed to add a new § 172.201(e) and amend §§ 174.24, 175.30, 176.24, and 177.817 to require each shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. An

retained for 375 days after the date the initial carrier accepts the hazardous materials for transportation. One commenter suggests that we implement a system for tracking hazardous materials shipments. Other commenters suggest revisions to the NPRM proposals related to the shipping paper retention period, acceptance date, permanent shipping papers, mode-specific requirements, retention at principal place of business, and proposed

delivered within 10 days after they are offered to a carrier. Most commenters support the proposed 375-day period for retention of shipping papers. However, one commenter, the Institute of Makers of Explosives (IME), stated the retention requirement should be "1 year" as stated in the law. IME states that "* * * delivery may not take place within 10 days in all cases. While as a whole most hazardous materials shipments may be delivered within 10 days (largely

shipment and the date of acceptance are not always the same. This is especially true for rail shipments. A BOL may be sent electronically to the railroad many hours, sometimes days, prior to the arrival of the train crew who accepts a shipment. RSPA should specify how the retention period is triggered in this situation." It was not our intention in the NPRM to require shippers and carriers to implement new systems for preparing and dating shipping

shipment is offered and accepted by the initial carrier for transportation. This is the same date that the three-year retention period for hazardous waste manifests starts. Well over 95 percent of hazardous materials shipments are delivered within 10 days after they are offered to a carriers. Therefore, for these shipments, our proposal to begin the 375-day retention period on the date a shipment is offered and accepted by the initial carrier is consistent with the statutory requirement for retention of

shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier.

EFFECTIVE DATE: This final rule is effective on August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require a person who offers a hazardous material for transportation in commerce to describe the hazardous material on a shipping paper in the manner required in 49 CFR part 172, subpart C. A paper copy of the shipping paper must accompany a hazardous material during transportation. A shipping paper includes "a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203 and 172.204." 49 CFR 171.8 (definition of "shipping paper"). A hazardous waste manifest "may be used as the shipping paper" if it contains all the information required by part 172, subpart C. 49 CFR 172.205(h).

Since 1980, generators and transporters of hazardous waste have been required to retain a copy of the hazardous waste manifest "for three years from the date the waste was accepted by the initial carrier." 49 CFR 172.205(e)(5), adopted in RSPA's May 22,1980 final rule, 45 FR 34560, 34698. *See also* regulations of the U.S. Environmental Protection Agency at 40 CFR 262.40(a), 263.22(a).

In 1994, Congress amended the Federal hazardous material transportation law (Federal hazmat law) to require that, after a hazardous material "is no longer in transportation," each offeror and carrier of a hazardous material must retain the shipping paper "or electronic image thereof for a period of 1 year to be accessible through their respective principal places of business." 49 U.S.C. 5110(e), added by Pub. L. 103–311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier "shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations."

On September 12, 2001, the Research and Special Programs Administration (RSPA, we) issued a notice of proposed rulemaking (NPRM) to amend the HMR to conform with § 5110(e) (66 FR 47443). We proposed to add a new § 172.201(e) and amend §§ 174.24, 175.30, 176.24, and 177.817 to require each shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. An electronic image includes an image transmitted by a facsimile (FAX) machine, an image on the screen of a computer, or an image generated by an optical imaging machine. In order to facilitate compliance with and enforcement of the requirement, we proposed that the copy include the date that the shipment is accepted for transportation by the initial carrier. We further proposed to require the shipping paper copy or its electronic image to be accessible at or through the principal place of business of each person required to prepare or maintain it during transportation.

Except for hazardous waste manifests, *see* 49 CFR 172.205(a), the HMR do not require a shipping paper to be in any specific form or format. We understand that different types of documents are used by offerors of hazardous material to meet the requirement to describe the hazardous material on a "shipping paper." Some private motor carriers use the same shipping paper for multiple shipments of a hazardous material. Typically, these permanent shipping papers are used by private motor carriers who transport a single hazardous material on a regular basis over an extended period, such as one cargo tank of gasoline. However, permanent shipping papers may also be utilized by common or contract carriers. In the NPRM, we proposed to permit operators to retain a single copy of such permanent shipping papers for the period in which the shipping paper is used and 375 days thereafter, provided that the operator also retains a record of each shipment made under the shipping paper.

II. Discussion of Comments

We received 16 written comments. The commenters included a university, utility companies, shippers, carriers, and representatives from industry associations representing a broad spectrum of businesses that offer hazardous materials for transportation or transport hazardous materials in commerce. Most commenters generally support the intent of the proposal to require a copy of the shipping paper or an electronic image thereof to be retained for 375 days after the date the initial carrier accepts the hazardous materials for transportation. One commenter suggests that we implement a system for tracking hazardous materials shipments. Other commenters suggest revisions to the NPRM proposals related to the shipping paper retention period, acceptance date, permanent shipping papers, mode-specific requirements, retention at principal place of business, and proposed legislative changes to the current shipping paper requirement in the Federal hazmat law.

A. Shipment Tracking System

Florida International University (FIU) suggests we require shippers and carriers to implement a tracking system that would show the exact date when transportation ends. According to FIU,

> "With a better tracking system, shippers and carriers will be able to know when the shipment departs and when it arrives at its final destination. We think there should be a document or form, which should be created for the original carrier, all intermediate carriers (if any), and the final carrier who receives the cargo. This form should be returned to the previous carrier and originating location electronically notifying the shipment's arrival and condition. By doing this, it will ensure the tracking of the dates and time it takes exactly to arrive to each destination (if going through more than one destination). With a better tracking system it would even be convenient to make the original carrier responsible and liable for knowing at any given time the current location, final destination, and final date of transportation. All this, of course, in addition to keeping records of the materials. All second hand carriers should electronically report all information to the first carrier."

We disagree. For purposes of this rulemaking, a complicated and expensive tracking system of the type suggested by FIU is not necessary. Nor do we agree that a second shipping document would help achieve the goals of this rulemaking. The current shipping paper requirement, modified as proposed in the NPRM, is adequate to assure implementation of the shipping paper retention requirement in Federal hazmat law. Further, an additional form would result in an unacceptable increase in paperwork burden on the regulated industry.

B. 375-Day Retention Period

The NPRM proposed to require shipping papers to be retained for 375 days (one year plus 10 days) for consistency with the statutory requirement that shipping papers be retained for one year *after transportation ends*. Over 95 percent of hazardous materials shipments are delivered within 10 days after they are offered to a carrier. Most commenters support the proposed 375-day period for retention of shipping papers. However, one commenter, the Institute of Makers of Explosives (IME), stated the retention requirement should be "1 year" as stated in the law. IME states that "* * * delivery may not take place within 10 days in all cases. While as a whole most hazardous materials shipments may be delivered within 10 days (largely because of the preponderance of flammable liquid deliveries), across different hazard classes and types of carriers the '10-day' delivery date is going to vary widely. For simplicity, the retention requirement should be simply, as stated in the law, '1 year.'" We disagree. The current statutory requirement is for shipping papers to be retained for one year after a shipment is "no longer in transportation." A regulatory requirement to retain shipping papers for one year is not consistent with the statutory requirement. A requirement to retain shipping papers for 375 days accommodates most shipment delivery times. In this final rule, we are adopting the 375-day retention period as proposed.

C. Acceptance Date

Several commenters object to the proposal to require shipping papers to include the date the shipment is accepted by the initial carrier. The Association of American Railroads (AAR) notes that for rail transportation, "the date on railroad shipping papers (waybills) is the date a shipment has been offered for transportation, *i.e.*, when the shipper has notified a railroad the shipment is ready to be picked up by the railroads. That date may or may not be the actual date a shipment is picked up by a railroad. It is common practice for a railroad to pick up a shipment one or more days after it is ready for transportation. Consequently, the railroads oppose the proposed requirement that the date of actual acceptance be placed on shipping papers. It would take substantial investment in computer reprogramming and changes in railroad procedures to use the date of actual receipt of a shipment on shipping papers." The Fertilizer Institute (TFI) requests clarification of the meaning of "date of acceptance." TFI states, "[W]hen shipments are presented for transportation, a signature generally is required on the Bill of Lading (BOL). We assume that the signature and date on the BOL will establish the 'date of acceptance' and trigger the retention period. * * * However, the date of shipment and the date of acceptance are not always the same. This is especially true for rail shipments. A BOL may be sent electronically to the railroad many hours, sometimes days, prior to the arrival of the train crew who accepts a shipment. RSPA should specify how the retention period is triggered in this situation." It was not our intention in the NPRM to require shippers and carriers to implement new systems for preparing and dating shipping documentation. We agree with AAR and TFI that the shipping paper retention requirements should be sufficiently flexible to accommodate current rail transportation practices. In this final rule, the shipping paper requirements for rail shipments permit the date on the shipping paper to be the date a shipper notifies the rail carrier that a shipment is ready for transportation, as indicated on the waybill or bill of lading, as an alternative to the date the shipment is picked up, or accepted, by the carrier.

IME is concerned that a shipper may not always know when the carrier accepts a shipment, especially rail shipments. IME suggests that requiring both the shipper and carrier to date the shipping paper on the date the carrier accepts the shipment may not be the best approach. IME recommends "the date be keyed to when the shipper 'prepares the shipping paper' instead * * * This would also reduce the compliance burden, as the initial carrier does not have to add a subsequent 'acceptance' date." We disagree. A shipper may prepare shipping papers well in advance of offering a shipment for transportation. The date of acceptance of a shipment by a carrier more closely approximates the actual beginning of transportation and is, thus, consistent with the current statutory requirement for retention of shipping papers for one year after transportation ends. As stated above, for rail shipments, this final rule permits the date on a shipping paper to be the date the carrier is notified that a shipment is ready for transportation as an alternative to the date the carrier picks up, or accepts, the shipment. This revision to the NPRM proposal should help to minimize the compliance burden on shippers and carriers.

The Agricultural Retailers Association (ARA) opposes inclusion of the acceptance date on shipping papers, as proposed. ARA states, "This proposal appears to be arbitrary and capricious. There will be a cost involved to change recordkeeping systems that are based on one year and without apparent benefit economically or safety-wise." We disagree. The proposed 375-day retention period begins from the date a shipment is offered and accepted by the initial carrier for transportation. This is the same date that the three-year retention period for hazardous waste manifests starts. Well over 95 percent of hazardous materials shipments are delivered within 10 days after they are offered to a carriers. Therefore, for these shipments, our proposal to begin the 375-day retention period on the date a shipment is offered and accepted by the initial carrier is consistent with the statutory requirement for retention of shipping documents for one year after transportation ends.

AAR suggests that we require only the last modified version of the shipping paper to be retained. AAR states that "shipping papers can be changed multiple times in the course of a shipment. Reasons for changing shipping papers include: substitution of the scale weight for the initial estimate of the weight; diversion or reconsignment of a shipment; and addition of switching information. There is no reason to keep versions of shipping papers that have been superseded." Provided the shipment notification date or date of acceptance is on the shipping paper, we agree that the current railroad practice to retain the last modified version of the shipping paper is acceptable for retention purposes proposed under this rulemaking.

D. Permanent Shipping Papers

Most commenters support the NPRM proposal as it applies to permanent shipping papers. However, three commenters oppose the proposal to require shippers to retain a record of each shipment made under a permanent shipping paper. SRP, an electric system operator and provider, and the Utility Solid Waste Activities Group (USWAG) state, "RSPA's proposal to require maintenance of a running record of each shipment made under a 'permanent shipping paper' goes above and beyond statutory requirements and existing regulatory practice to create a redundant recordkeeping obligation with little apparent value." SRP further states that " this requirement would significantly impact our workload, again with no gain from a transportation safety aspect."

We disagree that the requirement to retain a copy of a daily record of the shipments made under a permanent shipping paper increases the recordkeeping burden. We also disagree that maintenance of a running record of each shipment made under a "permanent shipping paper" goes above and beyond statutory requirements and existing regulatory practice. It is our understanding that retention of this type

of information on a daily basis is standard business practice for inventory and tax purposes, and therefore, does not pose an additional recordkeeping burden. The federal hazmat law requires a shipping paper to be retained for each hazardous materials shipment. Thus, a requirement to maintain a record of each shipment made under a permanent shipping paper is entirely consistent with the statute.

E. Mode-Specific Requirements

The Air Transport Association of America, Inc. (ATA) requests that we clarify the proposed requirement for air transportation. ATA states that "the proposed rule is unclear as to whether the shipper is required to retain a copy of the shipping paper or whether the air carrier is required to retain a copy of the shipping paper." The proposed requirement is for the shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. Each shipper and carrier is required to retain a copy of the shipping paper.

F. Principal Place of Business

The proposed requirement that the shipping paper copy or its electronic image be accessible at or through the principal place of business of each person required to prepare or maintain it during transportation is supported by most commenters. However, the Air Transport Association of America, Inc. (ATA) states that "the proposed rule is unclear as to whether the shipper is required to retain a copy of the shipping paper or whether the air carrier is required to retain a copy of the shipping paper." The proposed requirement is for the shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. Each shipper and carrier is required to retain a copy of the shipping paper.

The American Trucking Associations suggest that the proposed revisions to § 177.817(a) relieve a motor carrier from the responsibility to carry a copy of the shipping paper with the shipment on exception from shipping paper requirements for hazardous materials shipped in accordance with § 173.315(m) or any other exceptions stated elsewhere in the HMR. In this final rule we have modified the language for clarity.

The American Trucking Associations suggest that the proposed revisions to § 177.817(a) relieve a motor carrier from the responsibility to carry a copy of the shipping paper with the shipment on exception from shipping paper requirements for hazardous materials shipped in accordance with § 173.315(m) or any other exceptions stated elsewhere in the HMR. In this final rule we have modified the language for clarity.

With facsimile machines and email capabilities, companies can transmit copies of shipping papers from shipping locations to a principal place of business very quickly. A 48-hour period is not necessary to fax or email a copy of a shipping document. An authorized official will need to see a copy while he or she is on the premises conducting an inspection, not 48 hours later. The proposal is adopted in this final rule.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Federal hazardous materials transportation law preempts any State, local, or Indian tribe requirement on the preparation, execution, and use of shipping documents related to hazardous materials that is not substantively the same as this final rule. 49 U.S.C. 5125(b)(1). Federal preemption of inconsistent State, local, and Indian tribe requirements also applies to the design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce. 49 U.S.C. 5125(b)(2). This final rule does not impose any requirements on the design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container. Therefore, this final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Federal preemption of inconsistent State, local, and Indian tribe requirements is not unique to the hazardous materials transportation law. In addition, section 5125(b)(2) of that law is expressly applicable to those items "as the Secretary may by regulation determine" and does not, by its own terms, require the Secretary to impose such requirements. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Section 5125(d)(1) provides persons directly affected by Federal preemption an opportunity to petition for administrative determinations of preemption applicability. Section 5125(d)(2) provides that if a petition for administrative determination is not acted upon within one year after it is filed, the petition shall be deemed to be granted and preemption will be determined to exist. Section 5125(d)(3) requires that a determination be made after notice and an opportunity for public comment. Section 5125(g)(2) provides for de novo judicial review of final administrative determinations. Section 5125(b)(1)(B) provides that preemption determinations do not affect the authority of a State, political subdivision, or Indian tribe to enforce a law regarding the transportation of hazardous materials that is consistent with the HMR. Section 5125(b)(1)(A) provides that, unless otherwise authorized by Federal law, preemption shall not apply to a requirement of a State, political subdivision, or Indian tribe with respect to a matter not covered by the HMR. Section 5125(b)(1)(C) provides that, unless otherwise authorized by Federal law, preemption shall not apply to a requirement of a State, political subdivision, or Indian tribe with respect to a matter covered by the HMR, but that is more stringent than the HMR. Section 5125(c)(1) provides that a State, political subdivision, or Indian tribe may request that the Secretary of Transportation waive preemption with respect to any requirement that is not otherwise authorized by Federal law and that is more stringent than the HMR. Section 5125(c)(2) provides that a waiver may be granted only if the Secretary finds that the requirement affords an equal or greater level of protection to the public than is afforded by the HMR and does not unreasonably burden commerce. Section 5125(c)(3) provides that a waiver may be granted subject to conditions the Secretary considers necessary.

Section 5125(e) provides that any person, agency, or State may apply for a waiver of preemption applicability. Section 5125(f) provides that a State, political subdivision, or Indian tribe may request that the Secretary of Transportation consult with the Federal Energy Regulatory Commission (FERC) with respect to a requirement that is covered by the HMR and that concerns the transportation of hazardous materials in intrastate pipelines. Section 5125(f) provides that the Secretary may participate in a FERC proceeding concerning the requirement. Section 5125(g)(1) provides for judicial review of a waiver determination.

Section 5125(h) provides that a State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous materials only if the fee is fair and used for a purpose related to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response. Section 5125(i) provides that in considering the Federal hazmat law, the HMR, or a preemption determination, the courts shall consider the Federal interest in uniform Federal regulation of hazardous materials transportation and any benefits associated with uniformity.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

This final rule has been analyzed in accordance with the principles and criteria contained in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will not have a significant economic impact on a substantial number of small entities. This final rule will relieve a restriction on the use of electronic image of shipping papers and will provide flexibility in the retention of shipping papers.

E. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to the private sector, or to the Federal government, or to State, local, or tribal governments in the aggregate.

F. Paperwork Reduction Act

This final rule does not impose new information collection requirements. It will relieve a restriction on the use of electronic image of shipping papers and will provide flexibility in the retention of shipping papers.

G. Regulation Identifier Number (RIN)

A RIN number is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

This final rule does not affect packaging or hazard communication requirements for shipments of hazardous materials transported in commerce. We find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazmat, Incorporation by reference, Training.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172 and 177 are amended as follows:

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of information on a daily basis is standard business practice for inventory and tax purposes, and therefore, does not pose an additional recordkeeping burden. The federal hazmat law requires a shipping paper to be retained for each hazardous materials shipment. Thus, a requirement to maintain a record of each shipment made under a permanent shipping paper is entirely consistent with the statute.

E. Mode-Specific Requirements

United Parcel Service (UPS) suggests that proposing to delete the second sentence of § 175.30(a)(2), which requires only the originating aircraft operator to retain a copy of the shipping paper, poses a new problem concerning the shipper's certification required by § 172.204. According to UPS, the current regulations for air, motor, and rail carriers allow for the shipper's certificate to be delivered to the originating operator. This provision continues in the regulations applicable to the surface modes that are proposed in this rulemaking. UPS states that "by proposing to delete the current sentence focused on the originating aircraft operator, RSPA has proposed to require that the certification be delivered to every and all air carriers involved in the movement of a specific shipment. This requirement has the potential to impose a significant burden on operators who rely on close partnerships with dedicated charter air carriers to extend their delivery networks and may use streamlined documentation to furnish the required hazardous materials information to those partner carriers." UPS indicates a need for uniformity in application of the HMR for each mode. We agree that the application of the shipper's certification should be uniform as it applies to the modes. In this final rule, we revised § 175.30(a)(2) to indicate that the initial air carrier will receive the shipper's certification in accordance with provisions in § 172.204.

The Fertilizer Institute (TFI) requests clarification of the proposed language in § 176.24(a). TFI is concerned that "RSPA may have unintentionally narrowed the scope of exceptions to shipping paper requirements. Currently, this section references only the exceptions to shipping paper requirements specified in § 172.200(b). Section 173.315(m) also contains exceptions from shipping paper requirements under certain conditions. We strongly recommend that RSPA omit references to specific CFR sections and simply reference exceptions to shipping paper requirements in general." We did not intend to eliminate the current exception from shipping paper requirements for hazardous materials shipped in accordance with § 173.315(m) or any other exceptions stated elsewhere in the HMR. In this final rule we have modified the language for clarity.

The American Trucking Associations suggest that the proposed revisions to § 177.817(a) relieve a motor carrier from the responsibility to carry a copy of the shipping paper with the shipment on the motor vehicle. We agree that the proposed language should be clarified, and have done so in this final rule. The American Trucking Associations further suggest that the proposed revisions to § 177.817(a) require a shipper's certification on all copies of the shipping paper instead of the initial carrier's copy. We disagree. Section 177.817(b) addresses a shipper certification on a shipping paper offered to an initial carrier. Paragraph (b) of § 177.817 is unchanged in this final rule.

F. Principal Place of Business

Several commenters say that requiring shipping papers to be accessible at or through a central location or principal place of business, and to be "immediately available" upon request to authorized officials may cause problems. According to the Dangerous Goods Advisory Council (DGAC; formerly the Hazardous Materials Advisory Council), "* * * production plants or other shipping points have the original signed documents. Copies, or electronic images thereof, can be transferred to a central location but not instantaneously as implied in the proposal." DGAC suggested that the proposal be modified to require shipping papers to be "immediately available to shipping/origination points or available within 48 hours at a central location" in order to recognize a common industry practice of batch processing of documents for electronic transmission. Similarly, the Air Transport Association states that "* * * air carriers principal places of business must include all airport locations where the carrier operates, as carriers normally maintain shipping paper record files at the origin station. Requiring air carriers to maintain a storage or a data base for shipping papers at a headquarters office location would not appear feasible or desirable." We disagree with the commenters. The proposal does not require duplicate sets of shipping records to be maintained at various locations. The proposal requires copies of shipping papers or electronic images of shipping papers to be immediately available at a company's principal place of business. With facsimile machines and email capabilities, companies can transmit copies of shipping papers from shipping locations to a principal place of business very quickly. A 48-hour period is not necessary to fax or email a copy of a shipping document. An authorized official will need to see a copy while he or she is on the premises conducting an inspection, not 48 hours later. The proposal is adopted in this final rule.

The Air Transport Association also expressed concern with the wording in the NPRM that allows retention of an "electronic image" of a shipping paper. According to the Air Transport Association, an image is not the same as an electronic record of the information on the shipping paper. The wording "electronic image" is taken directly from the Federal hazmat law. As we explained in the NPRM, an electronic image includes an image transmitted by a facsimile machine, an image on the screen of a computer, or an image generated by an optical imaging machine. The Air Transport Association's suggestion that we revise the proposal to permit retention of an electronic record of the information on the shipping paper is not consistent with the statutory requirement.

G. Three-Year Retention (HMTA Re-authorization)

Two commenters note that the Administration's proposed legislation to re-authorize the hazardous materials transportation safety program requires retention of shipping papers for three years. Both commenters are opposed to the proposal in the re-authorization legislation. The bill is currently under consideration by the Congress. At such time as the legislation becomes law, we will address any revisions to the current shipping paper retention requirements.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Executive Order 12866 and, was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

This final rule implements a statutory requirement that has been in effect since 1994. We do not anticipate any additional costs on offerors and carriers of hazardous materials, and, preparation of a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Federal hazardous materials transportation law preempts any State, local, or Indian tribe requirement on the preparation, execution, and use of shipping documents related to hazardous materials that is not substantively the same as this final rule, 49 U.S.C. 5125(b)(1)(B), but this final rule does not have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. The consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item 3 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to assure that the HMR requirements for retention of shipping papers are consistent with Federal hazardous materials transportation law.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption of this final rule is 90 days from publication of this final rule in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to assess the impact of its regulations on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule implements a statutory requirement that has been in effect since 1994. This final rule will not impose additional costs on offerors and carriers of hazardous material. I hereby certify that, while the final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small businesses.

E. Unfunded Mandates Reform Act of 1995

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. No new burdens are proposed under this final rule. RSPA has a current information collection approval under OMB No. 2137–0034, "Shipping Papers and Emergency Response Information" which includes the shipping paper retention requirement in the burden estimates.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

This final rule does not affect packaging or hazard communication requirements for shipments of hazardous materials transported in commerce. We find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR Parts 172, 174, 175, 176, and 177, as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.201, the section heading is revised and a new paragraph (e) is added to read as follows:

§ 172.201 Preparation and retention of shipping papers

* * * * *

(e) Each person who provides the shipping paper must retain a copy of the shipping paper required by § 172.200(a), or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government

agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier, except that, for rail shipments, the date on the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. The date on the shipping paper may be the date a shipper notifies the rail carrier that a shipment is ready for transportation, as indicated on the waybill or bill of lading, as an

§ 176.24 Shipping papers

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter.

(b) Each person receiving a shipping paper required by this section must

for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. A motor carrier (as defined in § 390.5 of Subchapter B of Chapter III of Subtitle B) that uses a shipping paper without change for multiple shipments of a single hazardous material (i.e., one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

Issued in Washington, DC, on July 8, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–17566 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–60–P

agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier, except that, for rail shipments, the date on the shipment waybill or bill of lading may be used in place of the date of acceptance by the initial carrier. A motor carrier (as defined in § 390.5 of Subchapter B of Chapter III of Subtitle B) that uses a shipping paper without change for multiple shipments of a single hazardous material (*i.e.*, one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. Section 174.24 is revised to read as follows:

§ 174.24 Shipping papers.

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by rail unless that person receives a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter. Only an initial carrier within the United States must receive and retain a copy of the shipper's certification as required by § 172.204 of this subchapter. This section does not apply to a material that is excepted from shipping paper requirements by this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. The date on the shipping paper may be the date a shipper notifies the rail carrier that a shipment is ready for transportation, as indicated on the waybill or bill of lading, as an alternative to the date the shipment is picked up, or accepted, by the carrier.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. In § 175.30, paragraph (a)(2) is revised to read as follows:

§ 175.30 Accepting and inspecting shipments

(a) * * *

(1) * * *

(2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by § 171.11 of this subchapter. Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. Only an initial carrier must receive and retain a copy of the shipper's certification as required by § 172.204 of this subchapter.

* * * * *

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. Section 176.24 is revised to read as follows:

§ 176.24 Shipping papers

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. In § 177.817, paragraph (a) is revised and new paragraph (f) is added, to read as follows:

§ 177.817 Shipping papers

(a) *General requirements.* A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter. A carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter.

* * * * *

(f) *Retention of shipping papers.* Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. A motor carrier (as defined in § 390.5 of Subchapter B of Chapter III of Subtitle B) that uses a shipping paper without change for multiple shipments of a single hazardous material (i.e., one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

Issued in Washington, DC, on July 8, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–17566 Filed 7–11–02; 8:45 am]

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Proposed Rules

Federal Register

Vol. 67, No. 134

Friday, July 12, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final

subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has

—The unsafe condition referenced in this document exists or could develop on other Socata Model TBM 700 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

after the effective date of this proposed AD.

We do not have justification to require this action prior to further flight. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

Proposed Rules

Federal Register
Vol. 67, No. 134
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–15–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. This proposed AD would require you to perform a test on the flight control system and adjust the control roll stop if jamming occurs during the test. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this proposed AD are intended to prevent the flight control wheels from traveling beyond normal roll control limits, which could result in the control wheel becoming jammed. Such a condition could lead to reduced or loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 14, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–15–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–15–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–15–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all Socata Model TBM 700 airplanes. The DGAC reports that, during a ground test of the flight control system on one of the affected airplanes, the pilot control wheel became jammed when performing dual actions (e.g., full up and full left) because the control wheel was turned beyond normal roll control travel limits. This was a result of a misadjustment of the roll control.

What Are the Consequences if the Condition Is Not Corrected?

If this condition is not corrected, it could result in the flight control wheels traveling beyond normal roll control limits, which could result in the control wheel becoming jammed. This could lead to reduced or loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Socata has issued Service Bulletin SB 70–095 27, dated November 2001.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Inspecting the flight control system to determine if jamming occurs; and
—Adjusting the roll control stop to correct this condition.

What Action Did the DGAC Take?

The DGAC classified this service bulletin as mandatory and issued French AD 2001–582(A), dated November 28, 2001, in order to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Socata Model TBM 700 airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

What Are the Differences Between This Proposed AD, the Service Information, and the DGAC AD?

The DGAC AD requires inspection, and, if necessary, adjustment prior to further flight after the effective date of the AD. We propose a requirement that you inspect, and, if necessary, adjust within 100 hours time-in-service (TIS) after the effective date of this proposed AD.

We do not have justification to require this action prior to further flight. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 133 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	None	$60	$60 × 133 = $7,980.

We estimate the following costs to accomplish any necessary modification that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 per hour=$180	None	$180

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

SOCATA—GROUPE AEROSPATIALE:
Docket No. 2002–CE–15–AD

(a) *What airplanes are affected by this AD?* This AD affects Model TBM 700 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the flight control wheels from traveling beyond normal roll control limits, which could result in the control wheel becoming jammed. Such a condition could lead to reduced or loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Perform a test of the pilot and right-hand (RH) station control wheels to determine if either control wheels become jammed.	Within the next 100 hours time-in-service after the effective date of this AD and thereafter every time the flight control system undergoes maintenance.	In accordance with Socata TBM Aircraft Mandatory Service Bulletin SB 70–095 27, dated November 2001.
(2) Adjust the roll control stops if jamming occurs on either the pilot control wheel or the RH station control wheel during any test required in pargraph (d)(1) of this AD.	Prior to further flight after jamming is found during any test required by paragraph (d)(1) of this AD.	In accordance with Socata TBM Aircraft Mandatory Service Bulletin SB 70–095 27, dated November 2001.

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action

This NPRM proposes similar actions for certain Boeing Model 757–200 series airplanes because the number 3 cargo door is very similar to the number 3 cargo door on Model 727 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000, which

fleet data received from the manufacturer which show that fatigue cracking of the frames on the cargo door occurred on affected airplanes that have accumulated between 22,199 and 27,528 total flight cycles.

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in

Actions	Compliance	Procedures
(1) Perform a test of the pilot and right-hand (RH) station control wheels to determine if either control wheels become jammed.	Within the next 100 hours time-in-service after the effective date of this AD and thereafter every time the flight control system undergoes maintenance.	In accordance with Socata TBM Aircraft Mandatory Service Bulletin SB 70–095 27, dated November 2001.
(2) Adjust the roll control stops if jamming occurs on either the pilot control wheel or the RH station control wheel during any test required in pargraph (d)(1) of this AD.	Prior to further flight after jamming is found during any test required by paragraph (d)(1) of this AD.	In accordance with Socata TBM Aircraft Mandatory Service Bulletin SB 70–095 27, dated November 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD. No passengers are allowed for this flight.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in French AD 2001–582(A), dated November 28, 2001.

Issued in Kansas City, Missouri, on July 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17600 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require repetitive inspections for fatigue cracking of certain areas of the forward and aft frames of the cargo doors and repair, if necessary. This action is necessary to find and fix such cracking, which could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 26, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–192–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–192–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–192–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–192–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during fatigue testing of the fuselage of a Boeing Model 757 series airplane, extensive cracking in the web and inner and outer chords of the number 1 and 2 cargo door frames was found. Subsequent to that testing, several reports were received from operators indicating cracking of the door frames on the number 1 and 2 cargo door frames on other Model 757 series airplanes. Cracking of the frame web was found on four of those airplanes. All of the cracking occurred at, or slightly outboard of, door stop number 6. Inner chord cracking ranged from 0.12 to 3.0 inches, and web cracking ranged from 0.40 inch to completely severed. The airplanes had accumulated between 22,199 and 27,528 flight cycles, and between 32,956 and 55,707 flight hours. Fatigue cracking of the cargo door frames, if not found and fixed, could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway.

Related Rulemaking

This proposed AD is related to AD 86–17–05R1, amendment 5714 (52 FR 32534, August 26, 1987), which is applicable to certain Boeing Model 727 series airplanes. That AD requires repetitive inspections for cracking of cargo door frames and repair, if necessary. That AD also provides a modification as terminating action for the forward frame of the number 3 cargo door.

This NPRM proposes similar actions for certain Boeing Model 757–200 series airplanes because the number 3 cargo door is very similar to the number 3 cargo door on Model 727 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000, which describes procedures for repetitive detailed and high frequency eddy current inspections for cracking of the cargo door frames, and repair, if necessary. Group 1 and 2 airplanes described in the service bulletin have only number 1 and 2 cargo doors. Group 3 airplanes have an additional number 3 cargo door. The inspections include the frame webs, frame inner and outer chords, bear strap, and skin panels between the upper and lower sills of the cargo door. The service bulletin also describes procedures for detailed inspections for stringers 29R and 24R.

The service bulletin describes procedures for repair of cracking that is confined to the frame webs. The service bulletin specifies contacting Boeing for repair information if any cracking is found in one of the frame chords, the bear strap, or the skin panel adjacent to the cargo doorway, or if damaged areas are outside specified limits. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This Proposed AD and the Service Information

The compliance times specified in the tables in Section 1.E., Compliance, of the referenced service bulletin identify various inspection thresholds for doing the initial detailed and high frequency eddy current inspections, based on the number of flight cycles the airplane has accumulated (between 27,000 and 30,000). However, we have determined that the inspections required by this proposed AD must be done before the accumulation of 22,000 total flight cycles or within 500 flight cycles after the effective date of the AD, whichever is later. This determination is based on fleet data received from the manufacturer which show that fatigue cracking of the frames on the cargo door occurred on affected airplanes that have accumulated between 22,199 and 27,528 total flight cycles.

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

Cost Impact

There are approximately 57 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes it would take approximately 3 work hours per airplane to do the proposed high frequency eddy current and detailed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $5,040, or $180 per airplane, per inspection cycle.

For Group 3 airplanes it would take approximately 1 work hour per airplane to do the proposed additional detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of the cargo door frames, which could lead to rapid depressurization of the airplane and result in

ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in

value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations, 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.

"Class II gaming" means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant

against suits by others, *Seminole Tribe* v. *Florida*, 517 U.S. 44 (1996); *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991). Additionally, the United States has occasionally taken positions on the classification of games that federal courts subsequently deemed incorrect, causing substantial consternation among tribes and states and subjecting the government to criticism by the courts. *See United*

to be practical for use on a routine basis. Another method is through the use of advisory opinions prepared and issued by the Commission's Office of General Counsel upon request by an interested party. To date, the Office General Counsel has issued more than thirty such opinions regarding the classification of individual games. These opinions, however, are merely advisory in nature and not the result of formal administrative processes. They

planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–192–AD.

Applicability: Model 757–200 series airplanes, line numbers 1 through 57 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of the cargo door frames, which could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 22,000 total flight cycles or within 500 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspections specified in paragraph (a)(1) and (a)(2) of this AD, per Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000.

(1) For all airplanes: Do detailed and high frequency eddy current (HFEC) inspections for cracking of the door frames of the number 1 and 2 cargo doors (includes the frame webs, frame inner and outer chords, bear strap, and skin panels between the upper and lower sills of the cargo door). Repeat the detailed inspections every 3,000 flight cycles, and the HFEC inspections every 12,000 flight cycles.

(2) For Group 3 airplanes: Do a detailed inspection for cracking of the door frame of the number 3 cargo door. Repeat the inspection every 3,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair

(b) Before further flight, repair any cracking found in the frame webs per Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000. If any cracking is found in any other area and the service bulletin specifies to contact Boeing for disposition of those repairs, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 3: There is no terminating action currently available for the repetitive inspections required by this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 8, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17549 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 504

RIN 3141–AA04

Classification of Games

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule withdrawal.

SUMMARY: The National Indian Gaming Commission hereby gives notice that the proposed regulations establishing a formal process for the classification of games published in the **Federal Register** on November 10, 1999, 64 FR 61234, are withdrawn.

DATES: The proposed rule published on November 10, 1999, at 64 FR 61234 is withdrawn as of July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman, Deputy General Counsel, NIGC, Suite 9100, 1441 L St. NW., Washington, DC 20005. Telephone: 202–632–7003; and fax, 202–632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (IGRA or Act), creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

"Class I gaming" means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations, 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.

"Class II gaming" means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games, 25 U.S.C. 2703 (7)(A). Class II gaming, however, does not include any banking card games, electronic or electromechanical facsimiles of any game of chance or slot machines of any kind, 25 U.S.C. 2703 (7)(B). Tribal governments and the NIGC share regulatory authority over Class II gaming without the involvement of state government.

Class III gaming, on the other hand, may be conducted lawfully only if the state in which the tribe is located and the tribe reach an agreement called a tribal-state compact. For a compact to be effective, the approval of the Secretary of the Interior of the compact terms must be obtained. "Class III gaming" includes all forms of gaming that do not constitute Class I or II gaming, 25 U.S.C. 2703 (8). Class III gaming thus includes all other games of chance, including most forms of casino-type gaming, such as slot machines, roulette and pari-mutuel wagering, and banking card games, such as blackjack.

Game classification is the key feature around which the legal and regulatory framework of tribal gaming is centered. Any doubts or confusion as to the proper classification of a game, therefore, will raise serious questions as to the legality of play of a particular game and may subject a gaming operation to an enforcement action. While Congress outlined the basic parameters for the classification of games, the Commission was left the task of defining certain key terms, *see*, 25 U.S.C. 2703(6)–(8), which was completed on April 9, 1992, with the publication of a final rule setting forth the operational definitions, 57 FR 12382.

Notwithstanding the Commission's best efforts to produce clear, comprehensive definitions, issues in relation to the classification of games continued to emerge throughout the 1990's, resulting in a series of disputes between federal, state, and tribal government. Further complicating the situation, these disputes are not readily subject to judicial resolution because courts have generally recognized immunities among such sovereigns against suits by others, *Seminole Tribe* v. *Florida*, 517 U.S. 44 (1996); *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991). Additionally, the United States has occasionally taken positions on the classification of games that federal courts subsequently deemed incorrect, causing substantial consternation among tribes and states and subjecting the government to criticism by the courts. *See United States* v. *162 Megamania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000); *United States* v. *103 Electronic Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000).

The proposed rule represents the Commission's first attempt to confront these difficulties through the establishment of a formal process for the classification of games. In large measure this approach was in response to increases in the volume of disputes related to the classification of games. As this rulemaking effort got underway, decisions in the courts began to make it increasingly clear that some of the Commission's definitions were out of alignment with judicial interpretation of the Act. The definitions pertaining to games featuring the use of technological aids were particularly troublesome. Advances in technology had produced devices that in the view of the Commission blurred the distinction between simple technological aids and electromechanical facsimiles of games of chance, the earlier permissible without a compact, the latter unlawful without a compact. The analytical unanimity of the courts with regard to these cases impressed upon the Commission the need to reexamine its definitional regulations.

Early in 2001, the Commission undertook a thorough reexamination of its definitional regulations. Due to the interrelationship between the definitional rules and the proposed game classification procedural regulation, action on the proposed procedural rule was stayed pending a final determination with regard to the definitions. Having now issued a final rule amending the Commission's definitions for technological aids, electromechanical facsimile, and games similar to bingo, the Commission is now in a position to address the issue of procedure. 67 FR 41166, June 17, 2002.

Currently, there are three methods available to the Commission for addressing the classification of games. One is classification through formal notice and comment rulemaking. While such method produces certainty and finality, the process is slow, cumbersome, and insufficiently nimble to be practical for use on a routine basis. Another method is through the use of advisory opinions prepared and issued by the Commission's Office of General Counsel upon request by an interested party. To date, the Office General Counsel has issued more than thirty such opinions regarding the classification of individual games. These opinions, however, are merely advisory in nature and not the result of formal administrative processes. They are not, thus, entitled to the level of deference that must be accorded to final decisions of the Commission, though the courts have accorded them limited deference in certain circumstances. *United States* v. *162 Megamania Gambling Devices*, 231 F.3d 713, 719, 720, 722–23 (10th Cir. 2000); *see also Diamond Game Enterprises, Inc.* v. *Reno*, 230 F.3d 365 (D.C. Cir. 2000) (relying on Commission's advisory opinion on the Tab Force Validation System).

The third method is through formal administrative enforcement action. These actions may be brought in instances where the Chairman determines that the games offered constitute Class III games and no compact is in place. While such administrative adjudications can provide reliable results, the process is cumbersome, time-consuming and resource-intensive for both the Commission and the affected party. A single enforcement action may be pending for many months or years before the administrative process produces a final agency determination, after which, the matter may be subject to another lengthy proceeding in the federal courts.

The Commission is of the view that none of the three methods presently available is ideal. As a matter of sound public policy as well as in the interest of fairness and due process, a regulated industry ought not to be forced to risk enforcement action in order to obtain a legally binding and judicially reviewable classification opinion from the Commission. Absent a fair, carefully thought-out procedure for classifying games, however, the Commission has no alternative but to follow the status quo, which has been unsatisfactory to all concerned.

The Commission's proposed rule establishing a classification procedure was severely criticized by tribal governments in written comments as well as in the testimony at the hearing on the proposal held January 24, 2000 in Tulsa, Oklahoma. The most vehement criticism was that the rule failed to recognize that the Commission shares responsibility for the regulation of Class

II gaming with tribal governments. Tribal governments, as the primary regulators of Indian gaming, have an important role to play in the classification of games. Many felt that the procedure would exacerbate rather than reduce conflict because the process minimizes the role of tribal gaming commissions in making classification determinations in the first instance.

A second major criticism was that the rule was far too sweeping in that no years with favorable result. Given the joint system of tribal and federal regulation and the on-going relationship between tribal and federal regulators, the expertise and experience of tribal regulators would have greatly aided the Commission's effort to develop a proposal in better alignment with the concerns and needs of tribal governments and to assist in resolving the problems that remain outstanding. If, at a future time, the Commission mechanism that encourages even broader tribal participation in our rulemaking initiatives, I would encourage future Commissions to use tribal advisory committees in rulemaking initiatives. However, I believe that the current Commission simply lacks the power to bind future Commissions to a particular rulemaking process. Future Commissions are free to use the rulemaking approach that allows interested parties to participate in the

interim final rule (BOP–1017–F, RIN 1120–AA23). To clarify that this rulemaking is a change to the same interim rules, we are merging that action into this proposed rule.

The Correction Officers Health and Safety Act of 1998 gave the Bureau new statutory authority for conducting HIV tests. Additionally, the Centers for Disease Control (CDC) has issued a variety of recommendations on prevention and control of HIV, disease management to address testing requirements for tuberculosis (TB). The Bureau's general authority to protect and provide for the safekeeping and care of inmates in Bureau custody (18 U.S.C. 4042(a)) allows us to conduct medical tests as necessary to protect the health of the inmate population. Currently, testing of inmates for TB is conducted in accordance with the recommendations and guidelines published by the Centers for Disease to ever-changing medical standards and Federal medical guidelines.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the

II gaming with tribal governments. Tribal governments, as the primary regulators of Indian gaming, have an important role to play in the classification of games. Many felt that the procedure would exacerbate rather than reduce conflict because the process minimizes the role of tribal gaming commissions in making classification determinations in the first instance.

A second major criticism was that the rule was far too sweeping in that no game, even those games unquestionably falling within the Class II criteria, could be introduced for play without first receiving a classification decision from the Commission. Critics felt that given the large number of Class II games, the Commission would not be able to produce classification decisions in a reasonable or timely fashion. Many felt that the Commission's capacity to produce decisions under the rule would be overwhelmed by the sheer volume of the workload. The Commission itself has concerns in this regard. Grandfathering those games in common play at the time of issuance was considered, but this approach also has its faults and the Commission has yet to discern a way of effecting a workable solution to the myriad of issues involved in resolving this difficulty.

Commenters raised a number of other significant questions, many of which possess great merit. The Commission is particularly sensitive to the concern that its workload capacity could be detrimentally affected. Indeed, classification decisions often present difficult technical issues and the process may be highly time intensive. In some cases, the expense may be substantial. On the other hand, the Commission recognizes that its lack of a uniform process for making gaming classification decisions fosters a climate of uncertainty, exacerbating disputes and increasing the likelihood of long, drawn out litigation.

The Commission recognizes that Congress intended a partnership between it and tribal gaming regulators. IGRA clearly anticipates that tribal and federal regulators must work collaboratively to insure the integrity of Indian gaming. The Commission believes that a middle ground can be found with regard to a formal mechanism for game classification; however, the current proposal does not satisfy this objective.

It is the Commission's view that the proposed rule would have more likely satisfied the concerns of all if there had been greater opportunity for tribal input during its development. The Commission has utilized collaborative processes in rulemaking for a number of years with favorable result. Given the joint system of tribal and federal regulation and the on-going relationship between tribal and federal regulators, the expertise and experience of tribal regulators would have greatly aided the Commission's effort to develop a proposal in better alignment with the concerns and needs of tribal governments and to assist in resolving the problems that remain outstanding. If, at a future time, the Commission reconsiders promulgation of a rule establishing a formal procedure for the classification of games, a tribal advisory committee should be established to advise the Commission as to the nature and content of such rule.

History of the Rulemaking

A proposed rule establishing a process for classification of games was published in the **Federal Register** on November 10, 1999. 64 FR 61234.

Sixty-nine (69) comments were submitted in response to that publication. Comments were initially due on January 10, 2000. On December 27, 1999, the Commission issued a Notice of Extension of Time and Notice of Hearing. Written and oral testimony was submitted to the Commission at a public hearing on January 24, 2000, in Tulsa, Oklahoma. Following the extension, comments were due February 24, 2000.

Notice

The National Indian Gaming Commission (Commission) hereby gives notice that the proposed regulations establishing a formal process for the classification of games published in the **Federal Register** on November 10, 1999, 64 FR 61234, are withdrawn. If, at a future time, the Commission elects to proceed with the promulgation of a rule establishing a formal procedure for the classification of games, it will establish a tribal advisory committee to advise the Commission as to the nature and content of such rule.

Signed this 3rd day of July, 2002.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

Chairman's Dissent

I respectfully dissent from the Commission's statement that attempts to bind a future Commission to establish a formal tribal advisory committee for the creation of a gaming classification rule. I believe strongly that tribal advisory committees are an effective way to obtain tribal input for rulemaking initiatives. Though I would prefer a mechanism that encourages even broader tribal participation in our rulemaking initiatives, I would encourage future Commissions to use tribal advisory committees in rulemaking initiatives. However, I believe that the current Commission simply lacks the power to bind future Commissions to a particular rulemaking process. Future Commissions are free to use the rulemaking approach that allows interested parties to participate in the process and that, ultimately, will produce the best rule under the circumstances.

Montie R. Deer,

Chairman.

[FR Doc. 02–17152 Filed 7–11–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1104–P]

RIN 1120–AB03

Infectious Disease Management: Voluntary and Involuntary Testing

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons proposes to revise its regulations on the management of infectious diseases. The changes address the circumstances under which the Bureau conducts voluntary and involuntary testing for HIV, tuberculosis, and other infectious diseases. We intend this amendment to provide for the health and safety of staff and inmates.

DATES: Comments due by September 10, 2002.

ADDRESSES: Submit comments to: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau proposes to revise its regulations on the infectious disease management program (28 CFR, part 549, subpart A). These regulations were published in the **Federal Register** on October 5, 1995 (60 FR 52278) as interim final rules. We received no public comment on that interim rule. We had published an entry in the Unified Regulatory Agenda describing the finalization of that interim final rule (BOP–1017–F, RIN 1120–AA23). To clarify that this rulemaking is a change to the same interim rules, we are merging that action into this proposed rule.

The Correction Officers Health and Safety Act of 1998 gave the Bureau new statutory authority for conducting HIV tests. Additionally, the Centers for Disease Control (CDC) has issued a variety of recommendations on prevention and control of HIV, Tuberculosis, and other infectious diseases. Consequently, the Bureau is proposing to revise its regulations in accordance with the new statutory authority and in consideration of CDC recommendations.

Currently, Bureau regulations on the management of infectious diseases provide for mandatory HIV testing of a yearly random sample, yearly new commitment sample, new commitment re-test sample, pre-release testing, and clinically indicated testing. Any inmate refusing an order for one of these mandatory HIV testing programs is subject to an incident report for refusing to obey an order. Current regulations do not allow for involuntary HIV testing of an inmate following any intentional or unintentional exposure, when there is a risk of transmission of HIV infection to Bureau employees or other persons in a Bureau institution.

The Correction Officers Health and Safety Act of 1998 provides that each individual convicted of a Federal offense who is sentenced to a period of six months or more is to be tested for HIV, if such individual is determined to be at risk for HIV infection in accordance with the guidelines issued by the Bureau. The act also provides for involuntary HIV testing following any intentional or unintentional exposure when there is a risk of transmission of HIV infection to Bureau employees or other persons in a Bureau institution. Because of this new statutory authority, the Bureau is proposing to amend its regulations to allow involuntary testing in those instances where an inmate refuses to be tested following any intentional or unintentional exposure. The inmate may also be subject to an incident report for refusing to obey an order.

The Bureau will continue to allow an inmate to request to be tested for HIV. Such testing is limited to no more than once per 12-month period, unless the Bureau determines that additional testing is warranted. The Bureau will also continue to provide pre- and post-test counseling, regardless of the test results.

The Bureau is also proposing to amend its regulations on infectious disease management to address testing requirements for tuberculosis (TB). The Bureau's general authority to protect and provide for the safekeeping and care of inmates in Bureau custody (18 U.S.C. 4042(a)) allows us to conduct medical tests as necessary to protect the health of the inmate population. Currently, testing of inmates for TB is conducted in accordance with the recommendations and guidelines published by the Centers for Disease Control (CDC) in 1992. In response to the increased transmission of TB in correctional facilities, the CDC updated and expanded previously published recommendations for preventing and controlling TB in correctional facilities.

Based on these updated recommendations, the Bureau will screen each inmate for TB within two calendar days of initial incarceration. We intend to appropriately treat, isolate and/or protect inmates as a result of exposure in the two-day interim before testing. The Bureau will also conduct follow-up testing for each inmate annually. In addition, the Bureau will screen an inmate for TB when health services staff determine that the inmate may be at risk for infection. An inmate who refuses TB screening may be subject to an incident report for refusing to obey an order. If an inmate refuses PPD skin testing, and there is no contraindication to PPD skin testing, institution medical staff will educate and counsel the inmate regarding the need for such testing in an institutional setting (for example, the need to identify HIV+ inmates who have not received a course of prophylaxis and are at high risk for the development of active tuberculous disease). If an inmate still refuses PPD skin testing despite education and counseling, institution medical staff will test the inmate involuntarily. The intent of this amendment is to control TB among staff and inmates in correctional facilities.

To provide for the protection, safekeeping, and care of inmates in our custody (as required by 18 U.S.C. 4042(a)), we retain, revised for clarity, regulations on diagnostics (549.12(c)); Programming, Duty and Housing Restrictions (549.13); Confidentiality of Information (549.14); and Infectious Disease Training and Preventive Measures (549.15).

Finally, the Bureau is removing provisions in current § 549.13(c)(2) and (3) dealing with medical isolation and quarantining as these are governed by normal medical protocols and do not need to appear in the regulations. Removing these provisions from regulation and retaining them in Bureau policy allows us the flexibility to adhere to ever-changing medical standards and Federal medical guidelines.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule has been reviewed as a "significant regulatory action" under section 3(f) of Executive Order 12866 by the Office of Management and Budget (OMB).

Executive Order 13212

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse

includes testing, appropriate treatment, prevention, education, and infection control measures.

§ 549.11 Program responsibility.

Each institution's Health Services Administrator (HSA) and Clinical Director (CD) are responsible for the operation of the institution's infectious disease program in accordance with applicable laws and regulations.

which inmates or staff may have been exposed to tuberculosis. Inmates will be tested according to paragraph (b)(4) of this section.

(c) *Diagnostics.* The Bureau tests an inmate for an infectious or communicable disease when the test is necessary to verify transmission following exposure to bloodborne pathogens or to infectious body fluid. An inmate who refuses diagnostic testing is subject to an incident report

release, placement in a community-based program, furlough, or full-term release, the Warden will send a letter to the Chief, United States Probation Office (USPO) in the district where the inmate is being released if the inmate is known to be HIV seropositive or under treatment for active TB.

(c) If the inmate is being released to a halfway house, a copy of the USPO letter will be forwarded to the appropriate Community Corrections

Conway, Arkansas, facility from the lists of hazardous wastes.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that

D. When would the EPA finalize the delisting?
E. How would this action affect the states?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
A. What wastes did Tokusen petition EPA

of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the address listed above.

List of Subjects in 28 CFR Part 549

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 549 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. Revise the authority citation for 28 CFR part 549 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4014, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise Subpart A to read as follows:

Subpart A—Infectious Disease Management

Sec.
549.10 Purpose and scope.
549.11 Program responsibility.
549.12 Testing.
549.13 Programming, duty, and housing restrictions.
549.14 Confidentiality of information.
549.15 Infectious disease training and preventive measures.

Subpart A—Infectious Disease Management

§ 549.10 Purpose and scope.

The Bureau will manage infectious diseases in the confined environment of a correctional setting through a comprehensive approach which includes testing, appropriate treatment, prevention, education, and infection control measures.

§ 549.11 Program responsibility.

Each institution's Health Services Administrator (HSA) and Clinical Director (CD) are responsible for the operation of the institution's infectious disease program in accordance with applicable laws and regulations.

§ 549.12 Testing.

(a) *Human Immunodeficiency Virus (HIV).* (1) *Clinically indicated.* The Bureau tests inmates who have sentences of six months or more if health services staff determine, taking into consideration the risk as defined by the Centers for Disease Control guidelines, that the inmate is at risk for HIV infection. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(2) *Exposure incidents.* The Bureau tests an inmate, regardless of the length of sentence or pretrial status, when there is a significant risk that the inmate transmitted the HIV infection, whether intentionally or unintentionally, to Bureau employees or other non-inmates who are lawfully present in a Bureau institution. Exposure incident testing does not require the inmate's consent.

(3) *Surveillance testing.* The Bureau conducts HIV testing for surveillance purposes as needed. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(4) *Inmate request.* An inmate may request to be tested. The Bureau limits such testing to no more than one per 12-month period unless the Bureau determines that additional testing is warranted.

(5) *Counseling.* Inmates being tested for HIV are to receive pre- and post-test counseling, regardless of the test results.

(b) *Tuberculosis (TB).* (1) The Bureau screens each inmate for TB (e.g., PPD skin test, medical history, etc.) within two calendar days of initial incarceration.

(2) The Bureau conducts follow-up tests for each inmate annually.

(3) The Bureau will screen an inmate for TB when health services staff determine that the inmate may be at risk for infection.

(4) An inmate who refuses TB screening may be subject to an incident report for refusing to obey an order. If an inmate refuses PPD skin testing, and there is no contraindication to PPD skin testing, then, institution medical staff will test the inmate involuntarily.

(5) The Bureau conducts TB contact investigations following any incident in which inmates or staff may have been exposed to tuberculosis. Inmates will be tested according to paragraph (b)(4) of this section.

(c) *Diagnostics.* The Bureau tests an inmate for an infectious or communicable disease when the test is necessary to verify transmission following exposure to bloodborne pathogens or to infectious body fluid. An inmate who refuses diagnostic testing is subject to an incident report for refusing to obey an order.

§ 549.13 Programming, duty, and housing restrictions.

(a) The CD will assess any inmate with an infectious disease for appropriateness for programming, duty, and housing. Inmates with infectious diseases, that are transmitted through casual contact, will be prohibited from employment in any area, until fully evaluated by a health care provider.

(b) Inmates may be limited in programming, duty, and housing assignments when their infectious disease is transmitted through casual contact. The Warden, in consultation with the CD, may exclude inmates, on a case-by-case basis, from work assignments based upon the security and good order of the institution.

(c) If an inmate tests positive for an infectious disease, that test alone does not constitute sole grounds for disciplinary action. Disciplinary action may be considered when coupled with a secondary action that could lead to transmission of an infectious agent. Inmates testing positive for infectious disease are subject to the same disciplinary policy that applies to all inmates (see 28 CFR part 541, subpart B). Except as provided for in our disciplinary policy, no special or separate housing units may be established for HIV-positive inmates.

§ 549.14 Confidentiality of information.

Any disclosure of test results or medical information is made in accordance with the Privacy Act of 1974 and the HHS Standards for Privacy of Individually Identifiable Health Information promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996. Routine uses of such information maintained by the Bureau in its Privacy Act systems of records include the following:

(a) The HSA will ensure that each institution's respective state health department is informed of all cases of infectious diseases which are required by the state to be reported to the state health department.

(b) For all inmates being released from Bureau custody on parole, supervised release, placement in a community-based program, furlough, or full-term release, the Warden will send a letter to the Chief, United States Probation Office (USPO) in the district where the inmate is being released if the inmate is known to be HIV seropositive or under treatment for active TB.

(c) If the inmate is being released to a halfway house, a copy of the USPO letter will be forwarded to the appropriate Community Corrections Manager (CCM). The CCM will notify the Director of the halfway house (if applicable).

(d) The HSA will notify the Immigration and Naturalization Service (INS) of any inmate testing HIV positive or who is under treatment for *active* TB who is to be released to an INS detainer.

§ 549.15 Infectious disease training and preventive measures.

(a) The HSA will ensure that a qualified health care professional provides training, incorporating a question-and-answer session, about infectious diseases to all newly committed inmates, during Admission and Orientation.

(b) Inmates in work assignments which staff determine to present the potential for occupational exposure to blood or infectious body fluids will receive annual training on prevention of work-related exposures and will be offered vaccination for Hepatitis B.

[FR Doc. 02–17564 Filed 7–11–02; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7245–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste-specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

The EPA is also proposing to grant a petition submitted by Tokusen USA, Inc. (Tokusen) to exclude (or delist) a certain solid waste generated by its Conway, Arkansas, facility from the lists of hazardous wastes.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Tokusen's petitioned waste is nonhazardous with respect to the original listing criteria and that the dewatered sludge generated from the on-site Wastewater Treatment Plant (WWTP) and not from a manufacturing process will substantially reduce the likelihood of migration of constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until August 26, 2002. We will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by July 29, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Ali Dorobati, Hazardous Waste Division, Active Sites Branch, Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72219–8913. Identify your comments at the top with this regulatory docket number: "F–02–ARDEL–TOKUSEN."

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Larry K. Landry (214) 665–8134.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve this delisting?
C. How will Tokusen manage the waste if it is delisted?
D. When would the EPA finalize the delisting?
E. How would this action affect the states?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
A. What wastes did Tokusen petition EPA to delist?
B. What is Tokusen and how did it generate this waste?
C. What information and analyses did Tokusen submit to support its petition?
D. What were the results of Tokusen's analysis?
E. How did EPA evaluate the risk of delisting this waste?
F. What other factors did EPA consider?
G. What is EPA's evaluation of this delisting petition?
IV. Next Steps
A. With what conditions must the petitioner comply?
B. What happens if Tokusen violates the terms and conditions?
V. Public Comments
A. How can I as an interested party submit comments?
B. How may I review the docket or obtain copies of the proposed exclusions?
VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. Unfunded Mandates Reform Act
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer and Advancements Act
XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) to grant Tokusen's petition to have its dewatered WWTP sludge excluded, or delisted, from the definition of a hazardous waste; and

(2) to use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Tokusen's petition requests a delisting for an F006 listed hazardous waste. Tokusen does not believe that the petitioned waste meets the criteria for which EPA listed it. Tokusen also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this

petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the

comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

hazardous waste characteristics even if EPA has "delisted" the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those

B. What Is Tokusen, and How Did it Generate This Waste?

The Tokusen facility is located in an industrial/commercial setting in the southern portion of the City of Conway, Faulkner County, Arkansas. The 47.25 acre Tokusen property contains a production facility measuring approximately 400,000 square feet in size. Plant process operations at the Tokusen facility are in support of a

(1) Historical information on past waste generation and management practices;

(2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from Tokusen's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Conway, Arkansas facility.

C. How Will Tokusen Manage the Waste if It Is Delisted?

Tokusen currently sends the petitioned waste to Envirite Corporation, a hazardous landfill in Harvey, Illinois. If the delisting exclusion is finalized, Tokusen intends to dispose of the petitioned waste, dewatered WWTP sludge, in a solid waste landfill in Little Rock, Arkansas called Waste Management Industrial Landfill.

D. When Would the EPA Finalize the Delisting?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Tokusen transports the petitioned waste to or manages the waste in any State with delisting authorization, Tokusen must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Tokusen Petition EPA To Delist?

On October 24, 2001, Tokusen petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a dewatered WWTP sludge generated from the facility located in Conway, Arkansas. The waste falls under the classification of listed waste because of the "derived-from" rule in § 261.3. Specifically, in its petition, Tokusen requested that EPA grant an exclusion for 670 cubic yards of dewatered sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with the "derived-from" rule.

B. What Is Tokusen, and How Did it Generate This Waste?

The Tokusen facility is located in an industrial/commercial setting in the southern portion of the City of Conway, Faulkner County, Arkansas. The 47.25 acre Tokusen property contains a production facility measuring approximately 400,000 square feet in size. Plant process operations at the Tokusen facility are in support of a singular finished product, namely high carbon steel tire cord for use in radial tire manufacturing. The facility operates 24 hours per day, 7 days per week, 365 days per year with the exception of periodic planned shutdowns for routine maintenance.

The Tokusen facility manufactures steel cord used to produce steel belted radial tires. The steel cord is produced from steel rod which has been reduced in size and electroplated with copper and zinc to produce a brass coating. The plant generates four major types of waste and they are process wastewater, F006 dewatered WWTP sludge, sanitary sewage and other solid waste (rod wrappers, lube sludge, soap dust and other solids). The petitioned waste is generated from the wastewater treatment plant and not from the manufacturing process. The electroplating units which contribute wastewater to the WWTP are the copper and zinc electroplating baths. The waste code of the petitioned waste is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

C. What Information and Analyses Did Tokusen Submit to Support its Petition?

To support its petition, Tokusen submitted:

(1) Historical information on past waste generation and management practices;

(2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Analytical constituents of concern for F006;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned waste.

D. What Were the Results of Tokusen's Analyses?

The EPA believes that the descriptions of the Tokusen analytical characterization provide a reasonable basis to grant Tokusen's petition for an exclusion of the dewatered WWTP sludge. The EPA believes the data submitted in support of the petition show the dewatered WWTP sludge is non-hazardous. Analytical data for the dewatered WWTP sludge samples were used in the DRAS. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by Tokusen and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the dewatered WWTP sludge. The data submitted in support of the petition show that constituents in Tokusen's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Tokusen has successfully demonstrated that the dewatered WWTP sludge is non-hazardous.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WWTP SLUDGE [1]

Constituent	Total constituent analyses (mg/kg)	TCLP leachate Concentration (mg/l)
Antimony	1.27	*0.5
Arsenic	3.32	*0.5
Barium	49	*0.1
Chromium	13	*0.05
Cobalt	2.21	*0.05
Copper	3,190	0.09
Lead	5,130	0.402
Nickel	38.2	1.93
Selenium	4.08	0.0734
Silver	0.174	0.0283
Vanadium	5.67	0.0134
Zinc	21,800	5.94
1,4 Dichlorobenzene	*0.020	0.019

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WWTP SLUDGE [1]

Constituent	Total constituent analyses (mg/kg)	TCLP leachate Concentration (mg/l)
Hexachlorobutadiene	*0.330	0.120

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
* Denotes that the constituent was not detected at the noted detection limit.

public docket for this proposed rule, F–02–ARDEL–Tokusen.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any [illegible] waste process and analytical Tokusen's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Tokusen's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Tokusen an exclusion for the dewatered WWTP sludge. The EPA believes the data submitted in support of the petition show Tokusen's process can render the [illegible] provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) *Waste Holding and Handling:* The purpose of this paragraph is to ensure that Tokusen manages and disposes of any dewatered WWTP sludge that might contain hazardous levels of inorganic and organic constituents according to

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WWTP SLUDGE [1]

Constituent	Total constituent analyses (mg/kg)	TCLP leachate Concentration (mg/l)
Hexachlorobutadiene	*0.330	0.120

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
* Denotes that the constituent was not detected at the noted detection limit.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Tokusen's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Tokusen's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm*. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (e.g., volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Tokusen has never directly disposed of this material in a solid waste landfill, so no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

The EPA believes that the descriptions of Tokusen's hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table II. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern which tested, are likely to be present or formed as reaction products or by products in Tokusen's waste. In addition, on the basis of explanations and analytical data provided by Tokusen, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

F. What Other Factors Did EPA Consider?

During the evaluation of Tokusen's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Tokusen's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Tokusen's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Tokusen's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Tokusen's dewatered WWTP sludge. A description of EPA's assessment of the potential impact of Tokusen's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F–02–ARDEL–Tokusen.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Tokusen's waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Tokusen's dewatered WWTP sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

G. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Tokusen's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table II). We believe Tokusen's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Tokusen's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Tokusen an exclusion for the dewatered WWTP sludge. The EPA believes the data submitted in support of the petition show Tokusen's process can render the dewatered WWTP sludge non-hazardous.

We have reviewed the sampling procedures used by Tokusen and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the dewatered WWTP sludge. The data submitted in support of the petition show that constituents in Tokusen's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Tokusen has successfully demonstrated that the dewatered WWTP sludge is non-hazardous.

The EPA therefore, proposes to grant an exclusion to Tokusen, in Conway, Arkansas, for the dewatered WWTP sludge described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the dewatered WWTP sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Tokusen, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) *Delisting Levels:* This paragraph provides the levels of constituents that Tokusen must test the leachate from the dewatered WWTP sludge, below which these wastes would be considered non-hazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR part 261, appendix IX, Table 1, based on information in the petition. We compiled the inorganic and organic constituents list from the composition of the waste, descriptions of Tokusen's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) *Waste Holding and Handling:* The purpose of this paragraph is to ensure that Tokusen manages and disposes of any dewatered WWTP sludge that might contain hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Holding the dewatered WWTP sludge until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective when we sign it, but the disposal cannot begin until the verification sampling is completed.

(3) *Verification Testing Requirements:* (A) *Initial Verification Testing:* If the EPA determines that the data from the initial verification period shows the treatment process is effective, Tokusen may request that EPA allow it to conduct verification testing quarterly. If EPA approves this request in writing, then Tokusen may begin verification testing quarterly.

The EPA believes that an initial period of 60 days is adequate for a facility to collect sufficient data to verify that the data provided for the dewatered WWTP sludge, in the 2001 petition, is representative.

If we determine that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification period demonstrate that the treatment process is effective, Tokusen may request quarterly testing. EPA will notify Tokusen, in writing, if and when they may replace the testing conditions in paragraph(3)(A)with the testing conditions in (3)(B).

(B) *Subsequent Verification Testing:* The EPA believes that the concentrations of the constituents of concern in the dewatered WWTP sludge may vary over time. As a result, to ensure that Tokusen's treatment process can effectively handle any variation in constituent concentrations in the waste, we are proposing a subsequent verification testing condition.

The proposed subsequent testing would verify that Tokusen operates the manufacturing of steel cord as it did during the initial verification testing. It would also verify that the dewatered WWTP sludge do not exhibit

unacceptable levels of toxic constituents.

The EPA is proposing to require Tokusen to analyze representative samples of the dewatered WWTP sludge quarterly during the first year of waste generation. Tokusen would begin quarterly sampling on the anniversary date of the final exclusion as described in paragraph (3)(B).

(C) *Termination of Organic Testing:* The EPA is proposing to end the

request for inspection by any employee or representative of EPA or the State of Arkansas.

If the proposed exclusion is made final, it will apply only to 670 cubic yards of dewatered WWTP sludge, generated annually at the Tokusen facility after successful verification testing.

We would require Tokusen to file a new delisting petition under any of the following circumstances:

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR

regulatory docket number: "F–02–ARDEL-Tokusen."

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety

unacceptable levels of toxic constituents.

The EPA is proposing to require Tokusen to analyze representative samples of the dewatered WWTP sludge quarterly during the first year of waste generation. Tokusen would begin quarterly sampling on the anniversary date of the final exclusion as described in paragraph (3)(B).

(C) *Termination of Organic Testing:* The EPA is proposing to end the subsequent testing conditions for organics during the first year in paragraph (1)(C) after Tokusen has demonstrated that the waste consistently meets the delisting levels. Annual testing requires the full list of components in paragraph 1.

If the annual testing of the waste does not meet the delisting requirements in paragraph 1, Tokusen must notify the Agency according to the requirements in paragraph 6. We will take the appropriate actions necessary to protect human health and the environment. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

To confirm that the characteristics of the waste do not change significantly over time, Tokusen must continue to analyze a representative sample of the waste for organic constituents annually. If operating conditions change as described in paragraph (4); Tokusen must reinstate all testing in paragraph (1)(A). They must prove through a new demonstration that their waste meets the conditions of the exclusion. Tokusen must continue organic testing of the dewatered WWTP sludge for the exclusion of that waste.

(4) *Changes in Operating Conditions:* Paragraph (4) would allow Tokusen the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, Tokusen must prove the effectiveness of the modified process and request approval from the EPA. Tokusen must manage wastes generated during the new process demonstration as hazardous waste until they have obtained written approval and paragraph (3) is satisfied.

(5) *Data Submittals:* To provide appropriate documentation that Tokusen's facility is properly treating the waste, Tokusen must compile, summarize, and keep delisting records on-site for a minimum of five years. They should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Tokusen furnish these data upon request for inspection by any employee or representative of EPA or the State of Arkansas.

If the proposed exclusion is made final, it will apply only to 670 cubic yards of dewatered WWTP sludge, generated annually at the Tokusen facility after successful verification testing.

We would require Tokusen to file a new delisting petition under any of the following circumstances:

(a) If they significantly alter the manufacturing process treatment system except as described in paragraph (4);

(b) If they use any new manufacturing or production process(es), or significantly change from the current process(es) described in their petition; or

(c) If they make any changes that could affect the composition or type of waste generated.

Tokusen must manage waste volumes greater than 670 cubic yards of dewatered WWTP sludge as hazardous until we grant a new exclusion.

When this exclusion becomes final, Tokusen's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Tokusen must either treat, store, or dispose of the waste in an on-site facility. If not, Tokusen must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

(6) *Reopener:* The purpose of paragraph 6 is to require Tokusen to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Tokusen must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in paragraph 1. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented.

This provision expressly requires Tokusen to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553 (b).

(7) *Notification Requirements:* In order to adequately track wastes that have been delisted, EPA is requiring that Tokusen provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Tokusen must provide this notification within 60 days of commencing this activity.

B. What Happens if Tokusen Violates the Terms and Conditions?

If Tokusen violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Tokusen to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Section Chief of the Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Ali Dorobati, Hazardous Waste Division, Active Sites Branch, Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72219–8913 Identify your comments at the top with this regulatory docket number: "F–02–ARDEL-Tokusen."

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their

communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the facility has not treated the waste, Tokusen must manage and dispose the waste generated under Subtitle C of RCRA. (3) *Verification Testing Requirements:* Tokusen must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Tokusen must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph

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communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 2, 2002.

Steve Vargo,

Acting Director, Multimedia Planning & Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Tokusen USA, Inc	Conway, AR	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste Nos. F006) generated at a maximum annual rate of 670 cubic yards per calendar year after [insert publication date of the final rule] and disposed in a Subtitle D landfill. For the exclusion to be valid, Tokusen must implement a testing program that meets the following Paragraphs: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (mg/1). The petitioner must use an acceptable leaching method, for example SW–846, Method 1311 to measure constituents in the waste leachate. Dewatered WWTP sludge (i) Inorganic Constituents Antimony-0.360; Arsenic-0.0654; Barium-51.1; Chromium-5.0; Cobalt-15.7; Copper-7,350; Lead-5.0; Nickel-19.7; Selenium-1.0; Silver-2.68; Vanadium-14.8; Zinc-196. (ii) Organic Constituents 1,4 Dichlorobenzene-3.03; hexachlorobutadiene-0.21. (2) *Waste Holding and Handling:* Tokusen must store the dewatered WWTP sludge as described in its RCRA permit, or continue to dispose of as hazardous all dewatered WWTP sludge generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered WWTP sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Tokusen can manage and dispose the non-hazardous dewatered WWTP sludge according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Tokusen must retreat the batches of waste used to generate the representative sample until it meets the levels. Tokusen must repeat the analyses of the treated waste.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the facility has not treated the waste, Tokusen must manage and dispose the waste generated under Subtitle C of RCRA. (3) *Verification Testing Requirements:* Tokusen must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Tokusen must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) *Initial Verification Testing:* After EPA grants the final exclusion, Tokusen must do the following: (i) Collect and analyze composites of the dewatered WWTP sludge. (ii) Make two composites of representative grab samples collected. (iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1. (iv) Sixty (60) days after this exclusion becomes final, report the operational and analytical test data, including quality control information. (B) *Subsequent Verification Testing:* Following written notification by EPA, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. (C) *Termination of Organic Testing:* (i) Tokusen must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(A)(ii), until the analytical results submitted under Paragraph (3)(B) show a minimum of two consecutive samples below the delisting levels in Paragraph (1)(A)(i), Tokusen may then request that EPA stop quarterly organic testing. After EPA notifies Tokusen in writing, the company may end quarterly organic testing. (ii) Following cancellation of the quarterly testing, Tokusen must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion). (4) *Changes in Operating Conditions:* If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA in writing; they may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA. (5) *Data Submittals:* Tokusen must submit the information described below. If Tokusen fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Tokusen must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Arkansas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. §1001 and 42 U.S.C. §6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) *Reopener:* (A) If, anytime after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in

Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

Authority: 47 U.S.C. 154, 303, 334 and 336.

§73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia is amended by removing DTV channel 48 and adding DTV channel 8 at Lewisburg.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–17486 Filed 7–11–02; 8:45 am]

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 10, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on "Help & Information" or

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) *Reopener:* (A) If, anytime after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Tokusen must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Tokusen fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Tokusen must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

[FR Doc. 02–17458 Filed 7–11–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1551, MB Docket No. 02–178, RM–10456]

Digital Television Broadcast Service; Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by High Mountain Broadcasting Corporation, licensee of station WVSX–TV, Lewisburg, West Virginia, proposing the substitution of DTV 8 for DTV channel 48 at Lewisburg. DTV Channel 8 can be allotted to Lewisburg at reference coordinates 37–46–22 N. and 80–42–25 W. with a power of 3.8, a height above average terrain HAAT of 568 meters.

DATES: Comments must be filed on or before August 26, 2002, and reply comments on or before September 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: George R. Borsari, Jr., Borsari & Paxson, 4000 Albemarle Street, NW, Suite 100, Washington, DC (Counsel for High Mountain Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–178, adopted June 28, 2002, and released July 5, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia is amended by removing DTV channel 48 and adding DTV channel 8 at Lewisburg.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–17486 Filed 7–11–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–12538]

RIN 2127–AI84

Federal Motor Vehicle Safety Standards; Low Speed Vehicles; Notice of Proposed Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document responds to a petition for rulemaking from General Motors Corporation concerning low-speed vehicles. A low-speed vehicle is defined as a four-wheeled vehicle, other than a truck, whose maximum speed is between 20 and 25 miles per hour. The petitioner requested that the agency initiate rulemaking to amend the Federal motor vehicle safety standard for low-speed vehicles to require those vehicles to bear a label identifying safety hazards associated with the operation of low-speed vehicles in mixed traffic, *i.e.*, on roads used by regular vehicles, and to be equipped with additional conspicuity features to make low-speed vehicles more visible to other vehicles.

The agency is granting both requests. In this document, the agency is proposing to amend the standard to require low-speed vehicles to bear a warning label to ensure that drivers of those vehicles are alerted to the hazards associated with the operation of low-speed vehicles in mixed traffic. The agency is also proposing that low-speed vehicles be equipped with reflex reflectors or retroreflective conspicuity sheeting, a slow-moving vehicle emblem, and headlamps, taillamps, and side marker lamps that are illuminated while the low-speed vehicle is being operated to enhance their conspicuity.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 10, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, you may call Richard Van Iderstine, Office of Crash Avoidance Standards, Visibility and Injury Prevention Division (Telephone: 202–366–2720, Fax: 202–493–2739).

For legal issues, you may call Dion Casey, Office of Chief Counsel (Telephone: 202–366–2992, Fax: 202–366–3820).

You may send mail to either of these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

In the late 1990s, there was a growing public interest in using golf cars [1] to

[1] These vehicles, referred to variously as "golf cars," "golf carts," or "neighborhood electric vehicles" (NEVs), offer a variety of advantages. They are low-cost and energy efficient. Also, since many of these vehicles are electric-powered, they provide quieter transportation that does not pollute the air of the communities in which they are operated.

make short trips for shopping, social, and recreational purposes, primarily within retirement or other planned communities with golf courses. At the time, 12 states had passed legislation authorizing local jurisdictions to permit general on-road use of these vehicles, subject to speed and/or operational limits.[2] A majority of these states conditioned the on-road use of golf cars upon their being equipped with specified safety equipment.

increased, and to consider whether the requirements of Standard No. 500 meet the anticipated safety needs of LSV users.

NHTSA notes that in a September 1, 2000 **Federal Register** notice [6] responding to petitions for reconsideration of the final rule establishing Standard No. 500, the agency decided to treat several of the petitions as petitions for rulemaking. The agency stated: "We will begin to

in FMVSS 500 in the future to avoid any unreasonable risk to safety.

In support of its petition, GM noted that LSVs, with a top speed of 25 mph, move much more slowly than conventional motor vehicles.[9] In addition, because they have a much less substantial structure than conventional motor vehicles and thus less crashworthy, safety concerns necessarily arise when LSVs are operated in mixed traffic; *i.e.*, with

Second, states that are likely to experience this proliferation of NEVs have not adopted the prudent restrictions that formerly limited LSVs to separated lanes on roads specifically designated for LSV use as part of specific, locally adopted golf cart transportation plans. In California, a state law enacted in 1999 (the year after NHTSA adopted the current rule) provides that LSVs may be operated on any roads with speed limits up to 35 mph, unless state or local regulators decide to impose tighter restrictions on specific roads.[9] A similar law was passed last year in New York. We are aware of no restrictions that bar

differences in speed and mass between the LSV and the other crash vehicle. In a crash between an LSV (with a top speed of 25 mph) and a conventional vehicle traveling at least 10 mph faster, for example, the energy contributed to the crash by the conventional vehicle, ignoring mass difference, will be at minimum nearly 100% greater than the energy contributed by the LSV. When we then take account of the very large mass differences between LSVs and standard vehicles, together with the fact that the actual speed of conventional vehicles on these roads will very often exceed 35 mph, the

admitted that it cannot precisely estimate the magnitude of the increased risk for two reasons: (1) because the LSV population is currently small, real world crash statistics involving LSVs are sparse; and (2) it is still too early to know the effect of the state law mandates on the number of LSVs sold. However, GM stated that "it is clear that a real basis for concern now exists and that the increased risk will be discernible unless effective measures

make short trips for shopping, social, and recreational purposes, primarily within retirement or other planned communities with golf courses. At the time, 12 states had passed legislation authorizing local jurisdictions to permit general on-road use of these vehicles, subject to speed and/or operational limits.[2] A majority of these states conditioned the on-road use of golf cars upon their being equipped with specified safety equipment.

However, the increased use of golf cars on public roads had resulted in several deaths and numerous serious injuries. By 1998, NHTSA estimated that there were an average of 3 deaths and 222 injuries per year as a result of on-road crashes involving golf cars.[3]

In response, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard No. 500, "Low-Speed Vehicles." (63 FR 33193, June 17, 1998). A "low-speed vehicle" is defined as a four-wheeled motor vehicle, other than a truck, whose maximum speed is between 20 and 25 miles per hour. (49 CFR 571.3).[4] Standard No. 500 requires an LSV to be equipped with headlamps, front and rear turn signal lamps, tail lamps, stop lamps, reflex reflectors, exterior and/or interior mirrors, a parking brake, a windshield, a Vehicle Identification Number (VIN), and a seat belt assembly at each designated seating position. (49 CFR 571.500). LSVs do not have to comply with any other Federal motor vehicle safety standards (FMVSSs).

At the time of the final rule, NHTSA anticipated that sales of LSVs would grow, and, as a result, deaths and serious injuries resulting from crashes involving LSVs would occur.[5] The agency also committed to monitor the safety record of LSVs as their use increased, and to consider whether the requirements of Standard No. 500 meet the anticipated safety needs of LSV users.

NHTSA notes that in a September 1, 2000 **Federal Register** notice[6] responding to petitions for reconsideration of the final rule establishing Standard No. 500, the agency decided to treat several of the petitions as petitions for rulemaking. The agency stated: "We will begin to develop appropriate performance specifications for LSVs, with the intent of proposing and adopting them."[7]

The agency is not proposing any performance specifications in this document because of time considerations. As noted in the GM petition, some State ZEV mandates, including California's, will take effect this year, potentially causing a rapid increase in the number of LSVs operated on public roadways. In order to address this situation, the agency needed to propose a rule with requirements that could be implemented quickly and easily. The agency believes that the best way to do that is by requiring LSVs to be equipped with additional conspicuity features since such features can be added relatively quickly and easily. However, the agency is continuing to develop performance specifications for LSVs and remains committed to proposing such specifications in the future.

II. Petition

On January 9, 2002, the agency received a petition from General Motors Corporation (GM). GM requested that the agency amend Standard No. 500 to require all low-speed vehicles to be equipped with a label identifying safety hazards associated with the operation of low-speed vehicles in mixed traffic, and additional conspicuity features, such as paint color/markings or roof flags, to make low-speed vehicles more visible to other vehicles. GM also requested that the agency take the following steps related to the safety of LSVs:

(1) Notify state governmental agencies with responsibility for traffic safety of the potential risks associated with increased operation of LSVs on public roadways where they will potentially interact with conventional vehicles at substantial speeds and encourage those state agencies to consider appropriate measures to reduce the potential for harm.

(2) Monitor closely any increased usage of LSVs on public roads for the incidence of collisions and resulting injuries to determine if stronger measures should be incorporated in FMVSS 500 in the future to avoid any unreasonable risk to safety.

In support of its petition, GM noted that LSVs, with a top speed of 25 mph, move much more slowly than conventional motor vehicles.[8] In addition, because they have a much less substantial structure than conventional motor vehicles and thus less crashworthy, safety concerns necessarily arise when LSVs are operated in mixed traffic; *i.e.*, with larger and faster motor vehicles.

GM also noted that in the 1998 final rule establishing Standard No. 500, NHTSA concluded that data available at that time did not support a requirement that LSVs meet the same safety requirements as conventional motor vehicles. The agency reasoned that the volume of LSVs was very small and that the natural market for LSVs seemed to be in places with controlled operating environments, such as gated or planned communities, typically built near golf courses. In addition, at that time the State of California, the largest likely market for LSVs, generally permitted LSVs on public roads only in localities that had adopted golf cart transportation plans, including separate golf cart lanes. At that time, only a few localities had done so.

In its petition, GM stated that circumstances have changed in two relevant ways since the final rule was issued:

> First, the volume of NEVs [neighborhood electric vehicles] is growing substantially as a result of new regulations promulgated in several states. Specifically, NEVs qualify as zero emission vehicles [ZEVs] under state regulations that, if implemented, would mandate that vehicles with no tailpipe emissions be produced and sold as a condition to selling regular cars and trucks in the states that adopt the mandate. Known as the ZEV mandate, this requirement originated in California and is also under consideration in Massachusetts, New York, and Vermont. GM believes that the volume of NEVs in California alone will increase many fold from the current low levels—perhaps to as many as 50,000 units—by the end of 2002 and grown even higher beyond that. To the extent the Northeast states adopt and implement this mandate, the numbers will increase proportionately, even though these states have many fewer operating environments well suited to NEVs. In all four states, the growth in NEV volume will be far greater under the ZEV mandate than natural market forces would foster in the absence of these mandates.

[2] These states were Arizona, California, Colorado, Florida, Georgia, Illinois, Iowa, Minnesota, Nevada, New Mexico, Texas, and Wyoming.

[3] (63 FR 33206, June 17, 1998). The deaths and injuries were estimated for the years 1993 through 1996. Most golf cars are not low speed vehicles as defined in 49 CFR 571.3 because their maximum speed typically is less than 20 mph. However, NHTSA used crash data for golf cars in the final rule because the agency did not have any crash data on low speed vehicles, and because, with the exception of their speed capability, golf cars and LSVs are similar in design.

[4] As noted above, most golf cars are not LSVs because their maximum speed typically is less than 20 mph.

[5] NHTSA does not have any evidence of the number of deaths and injuries that have resulted from crashes between LSVs and conventional motor vehicles since 1998. This is primarily because many States do not require LSVs to be registered as motor vehicles. Thus, NHTSA had no way to track LSVs. The agency has requested that the American Association of Motor Vehicle Administrators (AAMVA), which represents State motor vehicle and law enforcement officials, encourage States to require LSVs to be registered as motor vehicles.

[6] 65 FR 53219.

[7] 65 FR 53221.

[8] GM uses the phrases "standard vehicles," "regular vehicles," and "conventional vehicles" to refer to motor vehicles other than LSVs, i.e., motor vehicles that are subject to the relevant Federal motor vehicle safety standards. In this document, the agency will refer to these motor vehicles as "conventional vehicles."

> Second, states that are likely to experience this proliferation of NEVs have not adopted the prudent restrictions that formerly limited LSVs to separated lanes on roads specifically designated for LSV use as part of specific, locally adopted golf cart transportation plans. In California, a state law enacted in 1999 (the year after NHTSA adopted the current rule) provides that LSVs may be operated on any roads with speed limits up to 35 mph, unless state or local regulators decide to impose tighter restrictions on specific roads.[9] A similar law was passed last year in New York. We are aware of no restrictions that bar LSVs from any roads in Massachusetts or Vermont. Traffic safety statistics show that 48% of vehicle accidents (other than those involving pedestrians and cyclists) occur on roads with posted speeds of 35 mph or less. The risk of injury to LSV occupants is, of course, substantially affected by the differences in speed and mass between the LSV and the other crash vehicle. In a crash between an LSV (with a top speed of 25 mph) and a conventional vehicle traveling at least 10 mph faster, for example, the energy contributed to the crash by the conventional vehicle, ignoring mass difference, will be at minimum nearly 100% greater than the energy contributed by the LSV. When we then take account of the very large mass differences between LSVs and standard vehicles, together with the fact that the actual speed of conventional vehicles on these roads will very often exceed 35 mph, the risks of severe injury or death to LSV occupants grow even larger.
>
> GM claimed that these two new circumstances combine to create a sharply increased risk of injury for LSV occupants unless NHTSA adopts measures to mitigate the risk. GM admitted that it cannot precisely estimate the magnitude of the increased risk for two reasons: (1) because the LSV population is currently small, real world crash statistics involving LSVs are sparse; and (2) it is still too early to know the effect of the state law mandates on the number of LSVs sold. However, GM stated that "it is clear that a real basis for concern now exists and that the increased risk will be discernible unless effective measures are promptly taken."
>
> To mitigate the increased risk described above, GM requested that the agency amend Standard No. 500 to require all LSVs to be equipped with a label reading as follows:

WHEN OPERATING VEHICLE ON PUBLIC ROADS

THIS VEHICLE OFFERS MUCH LESS CRASH PROTECTION THAN A REGULAR CAR, VAN, OR TRUCK. THIS MEANS A HIGHER RISK OF INJURY OR DEATH IN COLLISIONS, EVEN AT LOW SPEEDS. The higher the speed of the traffic around you, the higher the risk of injury.

To reduce these risks:

1. Avoid roads with regular traffic, even if the speed limit is low.
2. Whenever possible, stay on roads and lanes limited to low speed vehicles.
3. Wear your safety belt at all times.
4. Avoid operating at night, because your vehicle may be hard for others to see.
5. Never drink and drive.

And, to help avoid rollovers, SLOW DOWN BEFORE MAKING SHARP TURNS.

> GM also requested that the agency amend Standard No. 500 to require LSVs to be equipped with additional conspicuity features.[10] GM suggested that the agency require the canopy of LSVs to be painted a certain color, such as bright yellow or chartreuse/neon green, require LSVs to display a colorful flag or banner elevated above the roofline, and/or require LSVs to be equipped with additional plastic reflectors or reflecting tape.
>
> Finally, GM urged the agency to issue these amendments as soon as possible because thousands of additional LSVs could be purchased in the next year or two in at least four states. GM also requested that the agency implement a short phase-in period for these new requirements.

[9] GM claimed: "The effect of the California law change is to allow LSVs to use the vast majority of (and in many cases virtually all) non-freeway roads in major California cities such as Los Angeles. This includes major urban and suburban thoroughfares on which vehicles routinely travel 40–50–60 mph notwithstanding posted speed limits of 30–35 mph. The California Highway Patrol foresaw the concern we are raising in its 1999 study on golf cart transportation plans. On page 13, that study states, 'Part of the success of the Palm Desert and Sun City Roseville programs is the constant attention to ensuring safety by separating golf carts from other traffic and pedestrians via lane striping and other measures. Safety may be compromised should programs deviate from this practice and * * * allow golf carts to mix with vehicular traffic on roadways with a speed limit of more than 25 mph. * * *' California Highway Patrol Report to the Legislature, Golf Cart Transportation Plans in California, at 13 (August 1999)."

[10] Currently, Standard No. 500 requires LSVs to be equipped with reflex reflectors: one red on each side of the LSV as far to the rear as practicable, and one red on the rear of the LSV.

III. Discussion and Analysis

A. Authority To Regulate Anticipated Safety Problems

In the final rule establishing Standard No. 500, NHTSA made it clear that it has the authority to regulate anticipated as well as current safety problems. The agency stated:

> NHTSA observes that its authority is preventive in nature. Congress has charged it with issuing standards to protect the public

> against "unreasonable risk" of crashes and of deaths and injuries resulting from crashes. 49 U.S.C. 30102(8) and 30111(a). This means that the existence of a risk is sufficient to justify the issuance of standards. If the occurrence of deaths and injuries is reasonably anticipated, NHTSA need not wait until they actually begin to occur in large numbers before taking action to prevent them.

(63 FR 33206, June 17, 1998).

The agency also made it clear that it

> protection than conventional motor vehicles.
>
> NHTSA does not have any current national sales figures for LSVs. However, Global Electric Motorcars (GEM), the largest U.S. LSV manufacturer, produced more than 5,000 LSVs in 2000.[11] Moreover, NHTSA expects LSVs to be used to meet State Zero Emission Vehicle (ZEV) mandates that, if implemented, would require vehicles with no tailpipe

> rule because the agency did not have any crash data on low speed vehicles, and because, with the exception of their speed capability, golf cars and LSVs are similar in design.
>
> At the time of the final rule, NHTSA anticipated that sales of LSVs would grow, and, as a result, deaths and serious injuries resulting from crashes involving LSVs would occur. As noted above, the agency does not have any information on the number of deaths

State	Roads on which operation is permitted	Required safety equipment
Illinois	Roadways designated by local government	Steering apparatus, rearview mirror, front and rear red reflectorized warning devices, slow moving vehicle emblem, headlight, brake lights, and turn signals.
Iowa	Roadways with posted speed limit of 35 mph or less	Must conform to FMVSS No. 500.
Kansas	Roadways with posted speed limit of 40 mph or less	Must conform to FMVSS No. 500.
Maine	Roadways with posted speed limit of 35 mph or less	Must conform to FMVSS No. 500.
Maryland	In Allegany County only, to cross highways for continued access to any portion of a golf course.	None.
Michigan	Roadways with posted speed limit of 35 mph or less	Headlamps, front and rear turn signal lamps, tail lamps, stop lamps, reflex reflectors, exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle

against "unreasonable risk" of crashes and of deaths and injuries resulting from crashes. 49 U.S.C. 30102(8) and 30111(a). This means that the existence of a risk is sufficient to justify the issuance of standards. If the occurrence of deaths and injuries is reasonably anticipated, NHTSA need not wait until they actually begin to occur in large numbers before taking action to prevent them.

(63 FR 33206, June 17, 1998).

The agency also made it clear that it intended to track any safety problems resulting from the use of LSVs and, if warranted, adjust the standard:

> NHTSA will monitor the safety record of LSVs as the use of those vehicles increases. The agency will also consider whether Standard No. 500 meets the anticipated safety needs of LSV users.

(63 FR 33212).

NHTSA believes that it is reasonable to anticipate deaths and injuries resulting from crashes involving LSVs for the following reasons. First, as noted in the GM petition, more States are permitting the operation of LSVs. Second, as explained below, most of these States are not limiting LSV operation to controlled environments or to separate, marked traffic lanes. Instead, they are permitting the operation of LSVs on public roads with speed limits up to 35 mph. Thus, LSVs will be operated in a mixed traffic environment, with much heavier, faster, and aggressive conventional motor vehicles. Third, LSVs offer less crash protection than conventional motor vehicles.

NHTSA does not have any current national sales figures for LSVs. However, Global Electric Motorcars (GEM), the largest U.S. LSV manufacturer, produced more than 5,000 LSVs in 2000.[11] Moreover, NHTSA expects LSVs to be used to meet State Zero Emission Vehicle (ZEV) mandates that, if implemented, would require vehicles with no tailpipe emissions to be produced and sold as a condition of selling conventional motor vehicles in the States that adopt these regulations. Many LSVs would qualify as ZEVs because they are fully electric vehicles powered by batteries. Currently, ZEV mandates are being considered in California, Massachusetts, and New York. In its petition GM stated that if these regulations are implemented, "GM believes that the volume of [LSVs] in California alone will increase many fold from the current low levels " to perhaps as many as 50,000 units "by the end of 2002 and grow even higher beyond that."

B. Safety Problem

In the 1998 final rule, the agency estimated that there were an average of 3 deaths and 222 injuries per year as a result of on-road crashes involving golf cars.[12] As noted above, golf cars are not LSVs, as defined in 49 CFR 571.3, because their maximum speed typically is less than 20 mph. However, NHTSA used crash data for golf cars in the final rule because the agency did not have any crash data on low speed vehicles, and because, with the exception of their speed capability, golf cars and LSVs are similar in design.

At the time of the final rule, NHTSA anticipated that sales of LSVs would grow, and, as a result, deaths and serious injuries resulting from crashes involving LSVs would occur. As noted above, the agency does not have any information on the number of deaths and fatalities from crashes involving LSVs since 1998. The agency requests comment on this issue.

NHTSA observed in the final rule that it does not have the authority to prescribe the conditions under which LSVs are operated on the public roads; this is the prerogative of State and local jurisdictions. As noted in the GM petition, the State ZEV mandates that have been enacted since the final rule was published probably will substantially increase the sales of LSVs. The agency's review of State laws also indicates that, since the final rule was published, fifteen additional States have enacted laws allowing operation of LSVs on public roads.[13] Those States, the roads on which operation of LSVs is permitted, and the required safety equipment, are listed in the table below. Thirteen of the States specifically allow operation of LSVs on public roads with a posted speed limit of 35 mph or less. One State permits operation of LSVs on public roads with a posted speed limit of 40 mph or less.

State	Roads on which operation is permitted	Required safety equipment
Arizona	Roadways with posted speed limit of 35 mph or less	Headlamps, tail lamps, reflectors, stop lamps, mirror, brakes, and a notice of operational restrictions permanently attached to or painted on the vehicle in a location in clear view of the driver.
Arkansas	Private and public roadways designated by local government to travel to and from a residence to a golf course.	None.
California	Roadways with posted speed limit of 35 mph or less, unless State or local authorities impose restrictions.	Must conform to FMVSS No. 500. Local government may require additional safety devices.
Colorado	Private and public roadways designated by local government.	Headlamps, tail lamps, reflectors, stop lamps, mirror, brakes, and triangular slow-moving vehicle emblem.
Connecticut	Private and public roadways (not highways) designated by local government.	Local government may require safety devices.
Florida	Roadways with posted speed limit of 35 mph or less	Headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and VIN.
Georgia	Private and public roadways designated by local government.	Must comply with motor vehicle equipment requirements.
Hawaii	Roadways with posted speed limit of 35 mph or less	Must display triangular slow moving vehicle emblem and a notice of the vehicle's operational restrictions, and conform to FMVSS No. 500.

[11] "DaimlerChrysler Corporation to Sell Zero-Emission Neighborhood Electric Vehicles," October 23, 2000, available at *http://www.gemcar.com/*.

[12] 63 FR 33206. The deaths and injuries were estimated for the years 1993 through 1998.

[13] As noted above, the twelve states that permitted operation of LSVs on public roads at the time the final rule was published were Arizona, California, Colorado, Florida, Georgia, Illinois, Iowa, Minnesota, Nevada, New Mexico, Texas, and Wyoming. The fifteen states that have enacted laws permitting operation of LSVs on public roads since the final rule was published are Arkansas, Connecticut, Hawaii, Kansas, Maine, Maryland, Michigan, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Virginia, and Wisconsin.

State	Roads on which operation is permitted	Required safety equipment
Illinois	Roadways designated by local government	Steering apparatus, rearview mirror, front and rear red reflectorized warning devices, slow moving vehicle emblem, headlight, brake lights, and turn signals.
Iowa	Roadways with posted speed limit of 35 mph or less	Must conform to FMVSS No. 500.
Kansas	Roadways with posted speed limit of 40 mph or less	Must conform to FMVSS No. 500.
Maine	Roadways with posted speed limit of 35 mph or less	Must conform to FMVSS No. 500.
Maryland	In Allegany County only, to cross highways for continued access to any portion of a golf course.	None.
Michigan	Roadways with posted speed limit of 35 mph or less	Headlamps, front and rear turn signal lamps, tail lamps, stop lamps, reflex reflectors, exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror, parking brake, windshield, VIN, and seat belt assemblies at each designated seating position.
Minnesota	Roads designated by local government	Slow moving vehicle emblem and a rear view mirror.
Nevada	Roadways with posted speed limit of 35 mph or less	Headlamps, tail lamps, reflectors, stop lamps, mirror, and brakes.
New Mexico	Private and public roadways designated by local government. Carts may not be operated on state highways.	A slow moving vehicle emblem or flashing yellow light.
New York	Public highways with posted speed limit of 35 mph or less	Must conform to FMVSS No. 500.
North Carolina	Roadways with posted speed limit of 35 mph or less	Headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and VIN.
North Dakota	Roadways with posted speed limit of 35 mph or less	Headlamps, front and rear turn signal lamps, tail lamps, stop lamps, reflex reflectors, one red reflector on the rear, brakes, parking brake, windshield, VIN, safety belt installed at each designated seating position, exterior mirror mounted on the operator's side of the vehicle, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror.
Oklahoma	Roadways with posted speed limit of 35 mph or less	Must conform to FMVSS No. 500.
Oregon	Roadways with posted speed limit of 35 mph or less, but local governments may allow operation on city streets or county roads with posted speed limit of more than 35 mph.	None.
South Carolina	Secondary highways and streets within 2 miles of residence during daylight hours.	None.
Texas	Private and public roadways designated by local government.	Slow-moving vehicle emblem.
Virginia	Roadway between residence and golf course if the trip would not be longer than one-half mile in either direction, and the speed limit on the road is no more than 35 mph.	Slow-moving vehicle emblem.
Wisconsin	On public roadways designated by local government to and from a golf course if the distance is one mile or less.	Local government may require reflective devices.
Wyoming	Public streets and roadways designated by local government.	Local government may require safety devices.

In promulgating the final rule establishing Standard No. 500, NHTSA encouraged the States to limit the operation of LSVs to controlled environments, such as gated communities, or, if the States permitted the operation of LSVs on public roads with conventional vehicles, would require LSVs to be operated only in separate, designated lanes. The agency stated:

> The driving environment should be appropriate to the vehicle and its characteristics. Limitation of LSV use to low-speed city and suburban streets is necessary, but [does] not eliminate the safety risks.

(63 FR 33208). The agency then described the operating environment in the City of Palm Desert (California) and urged state and local officials to adopt similar requirements:

> The City of Palm Desert permits on-road use of golf cars in the same lanes as passenger cars and other larger motor vehicles in speed zones posted for speeds up to 25 miles per hour. In speed zones posted for speeds over 25 miles per hour, golf cars may be operated on-road only if there is a lane designated for their use and if the golf car is, in fact, operated within that lane.
>
> * * * * *
>
> NHTSA recognizes that not all operating environments may be as controlled as that of the City of Palm Desert. The agency encourages other states and municipalities to study the features of the City of Palm Desert's plan, and to adopt those features to the extent practicable.

(63 FR 33208).

Based on the above table, the agency notes that the States have not adopted requirements limiting the operation of LSVs to controlled environments. On the contrary, the States seem to be expanding the environment in which they are permitting the operation of LSVs. For example, at the time of the 1998 final rule, California, Iowa, and Nevada permitted LSVs to be operated only on public and private roadways designated by local government. However, in 1999, California enacted a law permitting LSVs to be operated on

any road with a posted speed limit of 35 mph or less, unless State or local authorities impose restrictions; and in 1999 and 2000, Nevada and Iowa, respectively, enacted laws permitting LSVs to be operated on any road with a posted speed limit of 35 mph or less. In 1998, Florida permitted LSVs to be operated only on private and public roadways designated by local governments and in self-contained retirement communities. Currently, with a posted speed limit greater than 35–40 mph, may result in more crashes involving LSVs and conventional vehicles.

As noted above, the agency does not have any data on the number of crashes involving LSVs and conventional vehicles. However, the agency notes that LSVs typically weigh from 1,100 to 1,400 pounds, while conventional light vehicles can weigh anywhere from 2,000 to 10,000 pounds. Thus, in a crash the conspicuity requirements in Standard No. 500 to tail lamps and red reflex reflectors (one on each side and one on the rear of the vehicle).

The agency also believed that drivers of LSVs should be aware of the risks associated with operating an LSV in mixed traffic. The agency stated:

> With respect to the operator, the safety goal is that the driver be familiar with the operating characteristics of the LSV so that he or she may drive appropriately to

⚠ WARNING: LOW-SPEED VEHICLE with MINIMAL safety equipment compared to motor vehicles

any road with a posted speed limit of 35 mph or less, unless State or local authorities impose restrictions; and in 1999 and 2000, Nevada and Iowa, respectively, enacted laws permitting LSVs to be operated on any road with a posted speed limit of 35 mph or less. In 1998, Florida permitted LSVs to be operated only on private and public roadways designated by local governments and in self-contained retirement communities. Currently, however, Florida permits LSVs to be operated on streets where the posted speed limit is 35 mph or less.

Moreover, many States permit LSVs to cross roadways with a posted speed limit greater than 35 mph. For example, Arizona, California, Florida, Hawaii, Iowa, Michigan, Nevada, New York, North Carolina, North Dakota, and Oklahoma permit LSVs to cross roadways with a posted speed limit in excess of 35 mph. Kansas permits LSVs to cross roadways with a posted speed limit in excess of 40 mph.

As noted in the 1998 final rule, the operation of LSVs in an environment with heavier, faster moving vehicles raises obvious safety concerns. Because LSVs are much lighter than conventional vehicles and are not subject to the same Federal motor vehicle safety standards, they are less crashworthy than conventional vehicles. Thus, LSV drivers, especially those unused to the limited acceleration capabilities of LSVs, and passengers will be exposed to a greater risk of injury or death when operating an LSV on roadways with a posted speed limit of 35 mph, or when attempting to cross a roadway with a posted speed limit greater than 35 mph.

Accordingly, the agency anticipates that the increase in the number of States that permit LSVs to operate in mixed vehicular traffic on roadways with a posted speed limit of 35–40 mph or less, and that permit LSVs to cross roadways with a posted speed limit greater than 35–40 mph, may result in more crashes involving LSVs and conventional vehicles.

As noted above, the agency does not have any data on the number of crashes involving LSVs and conventional vehicles. However, the agency notes that LSVs typically weigh from 1,100 to 1,400 pounds, while conventional light vehicles can weigh anywhere from 2,000 to 10,000 pounds. Thus, in a crash between an LSV and a conventional vehicle, the driver of the LSV would be exposed to a greater risk of injury or death.

IV. Agency Proposal

A. Summary of the Proposal

In the final rule establishing Standard No. 500, the agency noted that LSVs must be able to avoid crashes. The agency stated:

> In the mixed motoring environment that will result when LSVs are introduced, crash avoidance will become all the more important. The small LSV must be easily detectable by drivers of larger vehicles.
>
> (63 FR 33208).

Thus, NHTSA determined that the key to minimizing crashes between LSVs and conventional vehicles was enhanced conspicuity of LSVs. The agency described several suggestions to enhance the conspicuity of LSVs made by commenters on the NPRM. One commenter suggested that the agency require LSVs to be equipped with a high-intensity flashing yellow lamp on the rear or top of the LSV. Another recommended that a retroreflective orange triangle be applied to the front and rear of LSVs. However, because the agency hoped that the States would permit the operation of LSVs only in controlled environments,[14] it limited the conspicuity requirements in Standard No. 500 to tail lamps and red reflex reflectors (one on each side and one on the rear of the vehicle).

The agency also believed that drivers of LSVs should be aware of the risks associated with operating an LSV in mixed traffic. The agency stated:

> With respect to the operator, the safety goal is that the driver be familiar with the operating characteristics of the LSV so that he or she may drive appropriately to minimize the possibility of rollover, or hitting a pedestrian or other vehicle.
>
> (63 FR 33208). However, NHTSA did not require LSVs to be equipped with a warning label because the agency hoped that the States would limit the operation of LSVs to controlled environments.

Since the States are permitting more widespread operation of LSVs than NHTSA originally hoped, the agency now believes that a warning label and additional conspicuity requirements may be necessary. Accordingly, the agency is proposing to amend Standard No. 500 to require LSVs to be equipped with a warning label and the following additional conspicuity features: either additional reflex reflectors on the sides and rear of the vehicle, as required for passenger cars by Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment," or retroreflective conspicuity sheeting on the sides and rear of the vehicle, as required by S5.7.1.4.1(a) and S5.7.1.4.2 of Standard No. 108; a slow moving vehicle emblem; and headlamps, taillamps, and side marker lamps that are illuminated while the LSV is being operated.

B. Warning Label

LSVs would have to be equipped with a warning label that reads as follows:

[14] In the final rule, NHTSA stated, "The driving environment should be appropriate to the vehicle and its characteristics." 63 FR 33208 (June 17, 1998). The agency also urged States to adopt features limiting the use of LSVs to controlled environments or to separate, marked traffic lanes. *Id.*

⚠ WARNING: LOW-SPEED VEHICLE with MINIMAL safety equipment compared to motor vehicles

sharing roads with LARGER VEHICLES

YOU HAVE A HIGHER RISK OF CRASH, SERIOUS INJURY, OR DEATH WHEN:

TOP SPEED 25

driving where POSTED speed is HIGHER than TOP speed

ALWAYS WEAR SAFETY BELTS

The warning label would have to be permanently affixed in a location that is inside the vehicle and is clearly visible from the driver's seating position. The text area of the label would be no less than 175 cm^2 (27 in^2). The header and footer areas would be yellow with black text, and the message area would be white with black text. The font of the text in the header and footer areas would be not less than 6.25 mm (¼ inch) high, the font of the text in the center of the message area not less than 5 mm (3/16 inch) high, and the font of the text at the sides of the message area not less than 3 mm (⅛ inch) high.

The agency notes that the use of yellow with the word "warning" would disagree with American National Standards Institute (ANSI) standards. ANSI standards specify that when the word "warning" is used in the heading, the background color should be orange. However, in issuing a 1996 final rule requiring new warning labels for vehicles with air bags,[15] the agency conducted several focus groups to evaluate different warning labels. The agency stated:

Yellow was the overwhelming color preference of the participants in the focus groups. Only two of the 53 participants preferred orange. Participants generally stated that yellow was more eye-catching than orange. Participants also noted that red (stop) and yellow (caution) had meaning to them, but not orange.[16]

The agency also notes that several States require LSVs to be equipped with a notice conveying the operational restrictions of LSVs or the potential risks of driving LSVs to the driver. For example, Arizona and Hawaii require LSVs to have a notice of the operational restrictions applying to the vehicle permanently attached to or painted on the vehicle in a location that is in clear view of the driver.

NHTSA realizes that in these States, the warning label proposed in this document might partially duplicate the State-required notices. However, the agency believes that the proposed warning label would complement the State-required notices to inform LSV drivers both of the operational limitations of LSVs and the risks associated with driving LSVs in mixed traffic. To facilitate compliance with both the Federal and State warning label requirements, NHTSA is proposing to allow the proposed warning label to be combined with similar State-required labels. The agency requests comments from State agencies on these issues.

C. Reflex Reflectors or Retroreflective Sheeting

LSVs would have to be equipped with either reflex reflectors or retroreflective sheeting. If the LSV is equipped with reflex reflectors, the reflex reflectors would have to comply with Table III and Table IV of Standard No. 108 for passenger cars, multipurpose passenger vehicles, trucks, and buses. This would require LSVs to be equipped with four red and two amber reflex reflectors. The reflex reflectors would have to be mounted at a height above the road surface of not less than 15 inches, nor more than 60 inches, and be located as follows: two red reflectors on the rear of the LSV, one on each side of the vertical centerline, at the same height, and as far apart as practicable; one red reflector on each side of the LSV, as far to the rear as practicable; and one amber on each side of the LSV, as far to the front as practicable.

If the LSV is equipped with retroreflective sheeting, the retroreflective sheeting would have to comply with the requirements of

[15] 61 FR 60206 (November 27, 1996), Docket No. 74–14, Notice 103.

[16] 61 FR 60211 (November 27, 1996).

S5.7.1.1 through S5.7.1.3 of Standard No. 108. This would require the retroreflective sheeting to consist of a smooth, flat, transparent exterior film with retroreflective elements embedded or suspended beneath the film so as to form a non-exposed retroreflective optical system. This also would require the retroreflective sheeting to have a width of at least 50 mm and be applied in a pattern of alternating white and red No. 108 for the side of trailers. This would require a strip of retroreflective sheeting, as horizontal as practicable, to be applied to each side of the LSV. The strip would have to originate and terminate as close as possible to the front and rear of the LSV as practicable. The strip would not have to be continuous as long as not less than half the length of the LSV was covered, and the spaces were distributed as evenly as

Standard No. 108 for the rear of trailers. This would require a strip of retroreflective sheeting, as horizontal as practicable, to be applied across the full width of the rear of the LSV. The strip would have to originate and terminate as close to the extreme edges of the LSV as practicable. The strip would have to be located as close as practicable to not less than 375 mm and not more than 1565 mm above the road surface.

D. Slow Moving Vehicle Emblem

LSVs also would have to be equipped with a slow moving vehicle emblem on the rear of the LSV. The slow moving vehicle emblem would have to comply with the emblem maintained by the American Society of Agricultural Engineers (ANSI/ASAE S276.5 MAY98, Slow-Moving Vehicle Identification Emblem), and would have to be mounted in accordance with ASAE requirements.

Following is a picture of the slow moving vehicle emblem with its dimensions.

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S5.7.1.1 through S5.7.1.3 of Standard No. 108. This would require the retroreflective sheeting to consist of a smooth, flat, transparent exterior film with retroreflective elements embedded or suspended beneath the film so as to form a non-exposed retroreflective optical system. This also would require the retroreflective sheeting to have a width of at least 50 mm and be applied in a pattern of alternating white and red color segments.

The retroreflective sheeting would have to be applied to the sides of LSVs as specified in S5.7.1.4.2 of Standard No. 108 for the side of trailers. This would require a strip of retroreflective sheeting, as horizontal as practicable, to be applied to each side of the LSV. The strip would have to originate and terminate as close as possible to the front and rear of the LSV as practicable. The strip would not have to be continuous as long as not less than half the length of the LSV was covered, and the spaces were distributed as evenly as possible.

The retroreflective sheeting also would have to be applied to the rear of LSVs as specified in S5.7.1.4.1(a) of Standard No. 108 for the rear of trailers. This would require a strip of retroreflective sheeting, as horizontal as practicable, to be applied across the full width of the rear of the LSV. The strip would have to originate and terminate as close to the extreme edges of the LSV as practicable. The strip would have to be located as close as practicable to not less than 375 mm and not more than 1565 mm above the road surface.

Following are drawings of an LSV with reflex reflectors and of an LSV with retroreflective sheeting.

A. LSV with Reflex Reflectors

B. LSV with Retroreflective Sheeting

NHTSA believes that the proposed requirements, if adopted, would significantly enhance the visibility of LSVs, from both the side and rear views, at night.[17]

The agency notes that consumers may have an adverse reaction to retroreflective sheeting on the side of LSVs. However, the strip of retroreflective sheeting would have to cover only the rear of the vehicle and half the length of the vehicle. In addition, the agency is proposing to allow LSV manufacturers to use reflex reflectors instead of retroreflective sheeting. These reflectors might be more aesthetically pleasing than sheeting to drivers. Comments are invited on this issue.

[17] The agency is proposing to adopt both requirements, but manufacturers would only have to comply with one or the other.

D. Slow Moving Vehicle Emblem

LSVs also would have to be equipped with a slow moving vehicle emblem on the rear of the LSV. The slow moving vehicle emblem would have to comply with the emblem maintained by the American Society of Agricultural Engineers (ANSI/ASAE S276.5 MAY98, Slow-Moving Vehicle Identification Emblem), and would have to be mounted in accordance with ASAE requirements.

Following is a picture of the slow moving vehicle emblem with its dimensions.

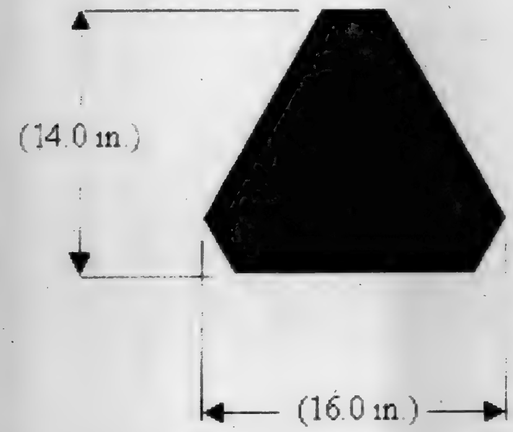

A. LSV Emblem with Dimensions

The ASAE slow moving vehicle emblem is a fluorescent orange, equilateral triangle with a red retroreflective border. The ASAE standard specifies that the emblem is mounted with the point of the triangle upward in a plane perpendicular to the direction of travel and ± 20 degrees from the vertical. The emblem is displayed as near to the rear and centered, or as near to the left of center of the vehicle or equipment, as practical. It is located 0.6 to 3 meters (2 to 10 feet) above the ground measured from the lower edge of the emblem. The emblem is "securely and rigidly affixed to the equipment."

NHTSA notes that several States, including Colorado, Hawaii, Illinois, Minnesota, New Mexico, Texas, and Virginia, currently require LSVs to be equipped with a slow moving vehicle emblem. However, most of these States require the emblem to conform to the ASAE standard as to specifications and mounting. The slow moving vehicle emblem proposed in this document would be consistent with those States' requirements.

Some States require that the emblem conform to different specifications. For example, Hawaii requires the emblem to be mounted at a height of 3 to 5 feet above the ground, and New Mexico requires the emblem to be mounted at a height of 2 to 5 feet above the ground. NHTSA notes that the ASAE height specification (2 to 10 feet above the ground) the agency is proposing to require would mesh with these State requirements. However, the agency invites comment on this issue.

E. Side Marker Lamps

LSVs also would have to be equipped with side marker lamps as specified in Table III and Table IV of Standard No. 108 for passenger cars, multipurpose passenger vehicles, trucks, and buses. This would require LSVs to be equipped with 2 red and 2 amber side marker lamps. The side marker lamps would have to be mounted at a height above the road surface of not less than 15 inches, and be located as follows: one red on each side of the LSV, as far to the rear as practicable; and one amber on each side of the LSV, as far to the front as practicable.

The agency believes that the addition of side marker lamps would significantly enhance the visibility of LSVs, from the side view, at night.

F. Headlamps, Taillamps, and Side Marker Lamps Illuminated While LSV Is Being Operated

An LSV's headlamps, taillamps, and side marker lamps also would have to be illuminated at all times while the LSV is being operated. Thus, when an LSV's ignition is activated, or the switch or device that provides power from the propulsion batteries to the propulsion motor(s) is in the activated or the ready-to-drive position, its headlamps, taillamps, and side marker lamps would have to illuminate automatically and remain illuminated.

The agency believes that requiring LSV headlamps, taillamps, and side marker lamps to be illuminated while the LSV is being operated would significantly enhance the conspicuity of LSVs from the front and rear during the daytime and twilight hours. While the agency has no data on the effectiveness of requiring headlamps, taillamps, and side marker lamps to be illuminated during vehicle operation, a June 2000 NHTSA report on the effectiveness of daytime running lamps (DRLs) indicated that passenger cars with DRLs were involved in 7 percent fewer non-fatal, two-vehicle crashes, and 28 percent fewer pedestrian fatalities.[18]

The agency also notes that many LSVs operate on battery power, and that the

[18] "A Preliminary Assessment of the Crash-Reduciing Effectiveness of Passenger Car Daytime Runninig Lamps (DRLs)," NHTSA, June 2000, DOT HS 808 645. A copy of this report has been placed in the docket.

maximum range of current battery-powered LSVs is limited to about 30 miles on a full battery charge. Requiring LSVs to have their headlamps, taillamps, and side marker lamps illuminated at all times while the LSV is being operated would have some impact on the battery power. However, the agency is uncertain of the extent of that impact. The agency also notes that reducing the maximum range of battery-

1. Would these conspicuity features be appropriate and effective during the day? At night?
2. Should the agency require conspicuity features in addition to those being proposed?
3. What would the cost be of the proposed features? Of any additional features?
4. How can the agency increase conspicuity while maintaining consumer acceptance?

conspicuity features proposed in this document.

The agency also believes that LSV manufacturers and/or dealers would need little time to procure and install most of the items the agency is proposing to require because they are readily available and easily installed.[19] Retroreflective sheeting may be installed with adhesive backings. Reflex reflectors also may be installed with adhesive backings or with self-drilling-

the agency believes that this difference in cost will not affect the $0.08 to $0.13 per vehicle estimate.

NHTSA estimates that the cost of equipping an LSV with the proposed slow moving vehicle emblem, including installation and overhead costs, would be $7.00 per vehicle.

NHTSA is proposing to require LSV manufacturers to equip LSVs with either three additional reflex reflectors (an additional one on each side and the rear of the vehicle) or retroreflective sheeting

their headlamps, taillamps, and side marker lamps illuminated at all times while the LSV is being operated would have some impact on the battery power. However, the agency has not been able to quantify that impact or the cost of that impact. The agency invites comment on this issue.

Based on the cost estimates above, the total cost of this proposal would be from $38.38 to $53.89 per vehicle, depending on whether LSV manufacturers choose to comply with reflex reflectors or

how many LSVs are manufactured each year. However, according to its petition, GM believes that the volume of LSVs could grow to 50,000 units per year by the end of 2002. Using the 50,000 figure, the total cost of this rulemaking would be from $1.9 million to $2.7 million.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory

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maximum range of current battery-powered LSVs is limited to about 30 miles on a full battery charge. Requiring LSVs to have their headlamps, taillamps, and side marker lamps illuminated at all times while the LSV is being operated would have some impact on the battery power. However, the agency is uncertain of the extent of that impact. The agency also notes that reducing the maximum range of battery-powered LSVs could be considered a safety issue if an LSV runs out of power while being operated on a public roadway.

NHTSA requests comment on the impact of this proposed requirement on the conspicuity of LSVs, the maximum range of battery-powered LSVs, and the safety consequences of reduced battery power.

G. Notifying State Agencies and Monitoring LSV Usage

Finally, GM requested that the agency: (1) notify State agencies of the potential risks associated with the increased operation of LSVs on public roads and encourage those State agencies to consider appropriate measures to reduce the potential for harm; and (2) monitor any increased usage of LSVs on public roads for the incidence of collisions and resulting injuries to determine if stronger measures should be incorporated in Standard No. 500.

NHTSA believes these recommendations have merit. With so many States permitting LSVs to be operated on public roads, we agree that it would be worthwhile for the agency to emphasize its concerns to those State agencies about the risks associated with the operation of LSVs on public roads. As to monitoring LSV usage on public roads and fatalities and injuries as a result of crashes involving LSVs, we will consult with the state agencies on this matter.

As such, the agency believes that States should consider monitoring LSV usage on public roads and fatalities and injuries that result from crashes involving LSVs. The agency invites comment on how that monitoring should be done, both on a State and a national level, consistently and effectively. The agency also invites comment on the best way to consult with the States on this issue.

H. Questions on This Proposal

The agency requests answers to the following questions on the additional conspicuity requirements and warning label proposed in this document. Specifically:

1. Would these conspicuity features be appropriate and effective during the day? At night?
2. Should the agency require conspicuity features in addition to those being proposed?
3. What would the cost be of the proposed features? Of any additional features?
4. How can the agency increase conspicuity while maintaining consumer acceptance?
5. Should additional language or issues (*e.g.*, state of battery charge, rollover propensity, etc.) be included in the warning label?
6. Where should the label be located on the LSV? Should the agency specify that the label must be visible to a normally seated driver using the occupant restraints? Should it specify that the location of the label in relation to the H-point of the driver's seat, as the agency has done with respect to the location of the telltale for the air bag on-off switch?
7. What color(s) should the label be?
8. What size should the label be? What size should the font be?
9. Should the label be required to be permanent?
10. What would the cost be of adding this warning label?
11. What steps can the agency take to mesh its proposed warning label and slow moving vehicle emblem with existing State requirements for warning labels and slow moving vehicle emblems?
12. What steps should the agency and States take to address the risks associated with the operation of LSVs in mixed traffic and to monitor crashes involving LSVs?
13. How would the proposed requirement that LSVs have their headlamps, taillamps, and side marker lamps illuminated at all times while the LSV is being operated impact LSVs that operate on battery power?

Please be as specific as possible in your answers to these questions and provide supporting data.

I. Lead Time

NHTSA is proposing to require these additional features, except for the side marker lamps, for LSVs manufactured on or after September 1, 2002 for the following reasons.

The ZEV mandate discussed above will take effect in California September 1, 2002. Thus, the agency anticipates that a high volume of LSVs could be sold and operating on the public roads later this year. The agency believes the safety of the drivers of these LSVs would be enhanced by requiring these LSVs to be equipped with the conspicuity features proposed in this document.

The agency also believes that LSV manufacturers and/or dealers would need little time to procure and install most of the items the agency is proposing to require because they are readily available and easily installed.[19] Retroreflective sheeting may be installed with adhesive backings. Reflex reflectors also may be installed with adhesive backings or with self-drilling-tapping screws or by pop-rivets. The slow-moving vehicle emblem is almost always installed on a completed vehicle using brackets provided by the vehicle manufacturer or by the emblem manufacturer.

The agency notes that while the warning label is not readily available, it should not be difficult for LSV manufacturers and dealers to procure such a label when the content of the warning is already known. Warning labels also are easily installed. They typically have an adhesive backing and can be added as the LSV is assembled or some time after.

NHTSA also notes that the lights-on requirement would necessitate an additional relay that can be added after the LSV is assembled, by either the manufacturer or dealer. Instructions from the LSV manufacturer would simplify this process, especially if the manufacturer were to make available to LSV dealers a kit that would suffice until all LSVs were manufacturer with a standard lights-on feature.

The agency is proposing to require side marker lamps be installed on LSVs manufactured on or after September 1, 2003. The agency is proposing an additional year of lead time for this feature because the installation of side marker lamps requires a wiring harness change and possibly a higher current capable lighting switch/relay. Thus, the agency believes an extra year of lead time is appropriate for this feature.

V. Costs

NHTSA estimates that the cost of equipping an LSV with the proposed warning label would be from $0.08 to $0.13 per vehicle.[20] The agency notes that a small number of manufacturers already equip some LSVs with a label warning of the vehicle's operational restrictions. These labels may need to be redesigned, which would cost less than providing a new label. However, given the small number of LSVs that are currently equipped with such a label,

[19] The agency notes that some vehicles may be at dealerships, but believes that these additional items would easily be installable by dealers because they are simple add-on devices.

[20] All cost estimates are in 2001 dollars.

the agency believes that this difference in cost will not affect the $0.08 to $0.13 per vehicle estimate.

NHTSA estimates that the cost of equipping an LSV with the proposed slow moving vehicle emblem, including installation and overhead costs, would be $7.00 per vehicle.

NHTSA is proposing to require LSV manufacturers to equip LSVs with either three additional reflex reflectors (an additional one on each side and the rear of the vehicle) or retroreflective sheeting on the sides and rear of the vehicle. The retail cost of reflex reflectors is about $1.00. Thus, if LSV manufacturers choose to comply by equipping LSVs with additional reflex reflectors, the agency estimates that the cost, including installation and overhead costs, would be $3.00 per vehicle.

The average current price of 50 mm-wide retroreflective sheeting is $2.54 per meter. The average LSV is about 3 meters long and 1.42 meters wide. However, the agency is proposing to require that the retroreflective sheeting cover only half of the length of the sides of LSVs. Thus, the average LSV would require 4.42 meters of 50 mm-wide retroreflective sheeting, at a cost of $11.23. The agency estimates that the labor cost would be $3.30 per vehicle.

The agency notes that in a 1992 NHTSA rulemaking to require that trailers with a gross vehicle weight rating of more than 10,000 pounds be equipped with either retroreflective sheeting or reflectors,[21] trailer manufacturers commented that their cost estimate was 54 percent higher than NHTSA's cost estimate. To account for the possibility that trailer manufacturers might experience costs higher than the agency's estimate, NHTSA increased its cost estimate by half the difference between the agency's estimate and the trailer manufacturer's estimate, or 27 percent. To be consistent, the agency is increasing its cost estimate for the current rulemaking by 27 percent as well. Thus, if LSV manufacturers choose to comply by equipping LSVs with retroreflective sheeting, the agency estimates that the cost would be $18.46 per vehicle [($11.23 + $3.30) * 1.27].

The agency estimates that the cost of equipping an LSV with side marker lamps would be $28.30 per vehicle.

The agency has been unable to estimate the cost of requiring LSVs to have their headlamps, taillamps, and side marker lamps illuminated while the LSV is being operated. The agency notes that many LSVs operate on batteries, and requiring LSVs to have their headlamps, taillamps, and side marker lamps illuminated at all times while the LSV is being operated would have some impact on the battery power. However, the agency has not been able to quantify that impact or the cost of that impact. The agency invites comment on this issue.

Based on the cost estimates above, the total cost of this proposal would be from $38.38 to $53.89 per vehicle, depending on whether LSV manufacturers choose to comply with reflex reflectors or retroreflective sheeting.

VI. Benefits

NHTSA has not attempted to quantify the safety benefits of these proposals. The agency invites comment on this issue.

VII. Rulemaking Analyses and Notices:

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT's Regulatory Policies and Procedures. This regulatory action would require additional conspicuity features and a warning label on LSVs. If this proposal is adopted, the agency estimates that the cost of these additions would be from $38.38 to $53.89 per vehicle, depending on whether LSV manufacturers choose to comply with reflex reflectors or retroreflective sheeting. The agency does not know how many LSVs are manufactured each year. However, according to its petition, GM believes that the volume of LSVs could grow to 50,000 units per year by the end of 2002. Using the 50,000 figure, the total cost of this rulemaking would be from $1.9 million to $2.7 million.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's (SBA) regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effect of this proposed rule under the Regulatory Flexibility Act. As noted above, this proposed rule would require additional conspicuity features and a warning label on LSVs. The agency does not believe that there are a significant number of small businesses that manufacture LSVs in the U.S. market. The agency knows of six LSV manufacturers. Three of them are aligned with large companies, and one is a foreign manufacturer, leaving only 2 small LSV manufacturers in the U.S.

Based on this analysis, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this proposed rule would not have any significant impact on the quality of the human environment.

[21] NHTSA issued the final rule on December 10, 1992 (57 FR 58406, Docket No. 80–9, Notice 6).

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct

motor vehicle or replacement part. 49 U.S.C. 32909 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle theft prevention standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

than 15 inches and not more than 60 inches, and be located as follows: Two amber, mounted (one on each side) as far forward as practicable; two red, mounted (one on each side) as far rearward as practicable; and two red mounted on the rear, one on each side of the vertical centerline, at the same height, and as far apart as practicable.

Thus, NHTSA's proposal differs from the SAE standard in one minor way: The SAE standard specifies a different

from other vehicles' headlamps. If they were more than 60 inches above the road, they would not reflect light effectively, and thus would not be easily seen. However, side marker lamps emit light. Thus, they do not have to be below a certain height in order to be seen. NHTSA is not proposing to adopt yellow as the color for these side marker lamps for the same reasons the agency is not proposing to adopt yellow as the color for reflex reflectors.

agency is not proposing the safety warning specified in the SAE standard. However, the agency solicits comments on this and all other aspects of the SAE standard. The agency will consider those comments in making decisions about a final rule.

The agency will consider any other relevant voluntary standards should they become available.

H. Unfunded Mandates Reform Act

—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it would have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. If adopted, the proposal would preempt State laws requiring slow moving vehicle emblems, other than the emblem specified by the ASAE, to be mounted on LSVs in accordance with requirements different from those specified by the ASAE. The proposal would also impact state requirements for warning labels on LSVs. Accordingly, the agency contacted the AAMVA, and officials from Connecticut, Florida, Hawaii, Missouri, New Jersey, New York, Ohio, Oregon, Texas, and Virginia prior to issuing this proposed rule.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 33118, whenever a Federal motor vehicle theft prevention standard is in effect, a State or political subdivision of a State may not adopt or maintain a different theft prevention standard for a motor vehicle or replacement part. 49 U.S.C. 32909 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle theft prevention standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule does not have any requirements that would be considered information collection requirements as defined by OMB in 5 CFR part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The agency is proposing to use the following standard from the American Society of Agricultural Engineers: ANSI/ASAE S276.5 MAY98, Slow-Moving Vehicle Identification Emblem.

The agency also notes that, in March 2002, the Society of Automotive Engineers (SAE) adopted a standard on LSVs.[22] The SAE standard specifies that reflex reflectors are to be mounted at a height above the road surface of not less than 15 inches nor more than 60 inches, and be located as follows: Two yellow, mounted (one on each side) as far forward as practicable; two red, mounted (one on each side) as far rearward as practicable; and two red, mounted on the rear, as far from the vehicle centerline as practicable.

NHTSA is proposing to require that the reflex reflectors be mounted at a height above the road surface of not less than 15 inches and not more than 60 inches, and be located as follows: Two amber, mounted (one on each side) as far forward as practicable; two red, mounted (one on each side) as far rearward as practicable; and two red mounted on the rear, one on each side of the vertical centerline, at the same height, and as far apart as practicable.

Thus, NHTSA's proposal differs from the SAE standard in one minor way: The SAE standard specifies a different color (yellow) than the agency's proposal (amber) for the two reflectors mounted on the side of the LSV as far forward as practicable. NHTSA is not proposing to adopt yellow as the color for these reflectors for the following reasons. First, the agency wants these LSV requirements to be consistent with the requirements for other light vehicles. Standard No. 108 requires reflex reflectors for other light vehicles to be amber (or red), not yellow. Second, Standard No. 108 refers to SAE standard J594f (January 1977) for the color of reflex reflectors. That SAE standard refers to SAE standard J578, "Color Specifications for Electric Signal Lighting Devices," which uses "amber" and "yellow" interchangeably. Finally, the SAE standard for LSVs does not define "yellow."

The SAE standard also contains optional specifications for side marker lamps. If side marker lamps are provided, the SAE standard specifies that they are to be mounted at a height above the road surface of not less than 15 inches and not more than 60 inches, and be located as follows: One yellow on each side of the LSV, as far forward as practicable; and one red on each side of the LSV, as far rearward as practicable.

NHTSA is proposing to require that side marker lamps be mounted at a height above the road surface of not less than 15 inches and not more than 60 inches, and be located as follows: One amber, mounted (one on each side) as far forward as practicable; and two red, mounted (one on each side) as far rearward as practicable.

Thus, the agency's proposal differs from the SAE standard in two minor ways: The SAE standard contains a maximum height specification (60 inches above the road surface), and the agency's proposal does not; and the SAE standard specifies a different color (yellow) for the side marker lamps located as far forward as practicable than the agency's proposal (amber). NHTSA is not proposing a maximum height specification for side marker lamps because it is unnecessary. Reflex reflectors are required to be mounted between 15 and 60 inches above the road surface because they reflect light

[22] "Low Speed Vehicles," Document No. J2358, March 2002.

from other vehicles' headlamps. If they were more than 60 inches above the road, they would not reflect light effectively, and thus would not be easily seen. However, side marker lamps emit light. Thus, they do not have to be below a certain height in order to be seen. NHTSA is not proposing to adopt yellow as the color for these side marker lamps for the same reasons the agency is not proposing to adopt yellow as the color for reflex reflectors.

Finally, the SAE standard specifies that LSVs be equipped with several safety warnings/signs. The SAE standard specifies that safety signs be permanently affixed to the vehicle, be visible to the operator, and convey the following information:

To avoid the risk of severe personal injury or death:

a. Only operate at maximum speed when on smooth, flat, non-congested roadways or paved pathways.

b. Do not operate the vehicle until all occupants are seated and seat belts are fastened (if so equipped).

c. Drive slowly in turns and when descending grades.

d. Set parking brake before leaving vehicle.

e. Place vehicle control in "Neutral/Park", if so equipped, and remove the ignition key when not in use.

f. Do not operate under the influence of alcohol or other drugs.

NHTSA is proposing to require that the warning label be permanently affixed in a location that is inside the vehicle and is clearly visible from the driver's seating position. The warning label would have to convey the following information:

a. An LSV has less safety equipment than conventional motor vehicles;.

b. The operator and passengers have a higher risk of crash, serious injury, or death when the LSV is operated on roads with conventional motor vehicles or on roads where the posted speed limit exceeds 25 mph;

c. LSV operators and passengers should always wear safety belts.

The agency believes that the warning label proposed in this document addresses the safety problem discussed in this document, *i.e.*, the operation of LSVs on roads with conventional motor vehicles and on roads where the posted speed limit exceeds the top speed of LSVs. In addition, NHTSA is proposing specifications for the size of the font, the background colors, and the size of the label itself. The SAE standard does not contain such specifications. The agency believes such specifications are necessary to ensure that the warning is uniform, eye-catching, and is easy to read and understand. Accordingly, the agency is not proposing the safety warning specified in the SAE standard. However, the agency solicits comments on this and all other aspects of the SAE standard. The agency will consider those comments in making decisions about a final rule.

The agency will consider any other relevant voluntary standards should they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

If adopted, this proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could the agency improve clarity by adding tables, lists, or diagrams?

—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential

business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business

imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically

(ii) Retroreflective sheeting as specified in S5.7.1.1 through S5.7.1.3 of Standard No. 108 (49 CFR 571.108), located as specified in S5.7.1.4.1(a) of Standard No. 108 for the rear of trailers, and S5.7.1.4.2 of Standard No. 108 for the side of trailers,

* * * * *

(11) An emblem that complies with ANSI/ASAE S276.5 MAY98, Slow-Moving Vehicle Identification Emblem

⚠ WARNING: LOW-SPEED VEHICLE with MINIMAL safety equipment compared to motor vehicles

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business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber products, Tires.

In consideration of the foregoing, NHTSA is proposing to amend part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 39 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.500 would be amended by revising paragraph S5(b) introductory text, (b)(1), (b)(3), and (b)(5), and adding paragraphs S5(b)(11), (b)(12), and (b)(13) to read as follows:

§ 571.500 Standard No. 500; Low-speed vehicles.

* * * * *

S5. Requirements.

* * * * *

(b) Each low-speed vehicle must be equipped with:

(1) Headlamps that are illuminated when the ignition is activated, or the switch or device that provides power from the propulsion batteries to the propulsion motor(s) is in the activated or the ready-to-drive position,

* * * * *

(3) Taillamps that are illuminated when the ignition is activated, or the switch or device that provides power from the propulsion batteries to the propulsion motor(s) is in the activated or the ready-to-drive position,

* * * * *

(5)(i) Reflex reflectors as specified in Table III of Standard No. 108 (49 CFR 571.108) for passenger cars, multipurpose passenger vehicles, trucks, and buses, and mounted as specified in Table IV of Standard No. 108 (49 CFR 571.108), or

(ii) Retroreflective sheeting as specified in S5.7.1.1 through S5.7.1.3 of Standard No. 108 (49 CFR 571.108), located as specified in S5.7.1.4.1(a) of Standard No. 108 for the rear of trailers, and S5.7.1.4.2 of Standard No. 108 for the side of trailers,

* * * * *

(11) An emblem that complies with ANSI/ASAE S276.5 MAY98, Slow-Moving Vehicle Identification Emblem (American Society of Agricultural Engineers, 2950 Niles Rd., St. Joseph, MI 49085–9659, USA ph. 616–429–0300, fax 616–429–3852, *hq@asae.org.*) This emblem must be mounted in accordance with the requirements therein.

(12) For LSVs manufactured on or after September 1, 2003, side marker lamps as specified in Table III of Standard No. 108 (49 CFR 571.108) for passenger cars, multipurpose passenger vehicles, trucks, and buses, that are:

(i) Mounted as specified in Table IV of Standard No. 108 (49 CFR 571.108), and

(ii) Illuminated when the ignition is activated, or the switch or device that provides power from the propulsion batteries to the propulsion motor(s) is in the activated or the ready-to-drive position, and

(13) A warning label that meets the following requirements—

(i) The label must be permanently affixed to a location that is inside the vehicle and is clearly visible from the driver's seating position.

(ii) The text area of the label must be not less than 175 cm^2 (27 in^2).

(iii) The header and footer areas must be yellow with black text, and the message area must be white with black text.

(iv) The font of the text in the header and footer areas must be not less than 6.25 mm (¼ inch) high; the font of the text in the center of the message area must be not less than 5 mm (3/16 inch) high; and the font of the text at the sides of the message area must be not less than 3 mm (⅛ inch) high.

(v) The label may be combined with a similar State-required warning label. On combined labels, the text specified in this section must be separated from the State-required text by a line.

(vi) The warning label must read as shown in Figure 1:

Figure 1

* * * * *

Issued: July 5, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–17422 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 67, No. 134
Friday, July 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

Title: USDA Registration Form to Request Electronic Access Code.

OMB Control Number: 0560–0219.

Type of Request: Extension of a currently approved information

Office of Management and Budget, Washington, DC 20503, and to Brent Trout, Accountant, Accounting Systems and Planning Staff, Kansas City Finance Office, Farm Service Agency, United States Department of Agriculture, STOP

intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is

the nearest one-quarter cent, the resulting national average for the period July 1, 2002 through June 30, 2003 will be 15.25 cents per meal. This is an decrease of .25 cents from the school year 2002 rate.

In addition to the 15.25 cents per meal, Congress has authorized additional funds to be used to purchase foods under section 6(e) of the Act (42 U.S.C. 1755(e)). Therefore, for this school year, schools will receive more

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, SD, Prairie Project Area Proposal and Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact

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Notices

Federal Register
Vol. 67, No. 134
Friday, July 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the intention of the Farm Service Agency (FSA) to request approval for information collection necessary to allow USDA's County Based Agency (CBA) customers to securely and confidently share data and receive services electronically. Authority for obtaining information from users is included in the Freedom to E-File Act, the Government Paperwork Elimination Act, and Electronic Signatures in Global and National Commerce Act ("E–SIGN"). This voluntary registration process will enable customers as well as CBA employees to register as authorized users and provide single sign-on capability for CBA on-line applications. The objectives of the registration process are to employ standardized methods for verifying the identity of CBA customers/partners and managing their credentials in support of electronic alternatives to traditional ink signatures and non-repudiation.

DATES: Comments on this notice must be received on or before September 10, 2002 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Brent Trout, Accountant, Accounting Systems and Planning Staff, Kansas City Finance Office, Farm Service Agency, United States Department of Agriculture, STOP 8548; 6501 Beacon Drive, Kansas City, MO 64133, telephone number (816) 823–1119; or Internet e-mail, BETROUT@kcc.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: USDA Registration Form to Request Electronic Access Code.

OMB Control Number: 0560–0219.

Type of Request: Extension of a currently approved information collection.

Abstract: The USDA CBA's have developed a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process provides an electronic alternative to traditional ink signatures. The process is based on a one-time registration requirement for each CBA customer desiring access to any on-line services that require user authentication. Form AD–2016 (USDA Registration Form to Request Electronic Access Code) is to be used to collect the minimum information necessary to verify and validate the identity of the customer before issuing user access credentials. Time to complete the form will vary from an estimated 10 to 15 minutes depending upon the method option the customer chooses to submit the form.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 10 to 15 minutes (dependent on type of submission) per customer.

Respondents: Individual CBA Service Center Customers.

Estimated Number of Respondents: 1,100,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,331,000.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of the information on those who respond, including the use of appropriate automated, electronic, mechanical, or techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Brent Trout, Accountant, Accounting Systems and Planning Staff, Kansas City Finance Office, Farm Service Agency, United States Department of Agriculture, STOP 8548; 6501 Beacon Drive, Kansas City, MO 64133, telephone number (816) 823–1119. Copies of the information collection may be obtained from Mr. Trout at the address above, or from a link at the FSA Web site at *www.fsa.usda.gov*. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on June 28, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–17598 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2002 to June 30, 2003

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof, to be provided in the 2003 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2002 through June 30, 2003

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1) (B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to Section 6(c)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 15.25 cents for the period July 1, 2002 through June 30, 2003.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index decreased by 2.1 percent from 136.60 for March, April and May of 2001 to 133.79 for the same three months in 2002. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2002 through June 30, 2003 will be 15.25 cents per meal. This is an decrease of .25 cents from the school year 2002 rate.

In addition to the 15.25 cents per meal, Congress has authorized additional funds to be used to purchase foods under section 6(e) of the Act (42 U.S.C. 1755(e)). Therefore, for this school year, schools will receive more than 15.25 cents per meal in commodities.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs." For the 2003 school year, commodity only schools shall be eligible to receive donated food assistance valued at 35.25 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the Section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2003. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), 14(f) and 17(h)(1) (B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and 6(e)(1), 1762a(f), and 1766(h)(1)(B)).

Dated: July 5, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–17509 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, SD, Prairie Project Area Proposal and Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement multiple resource management actions within the Prairie Project Area as directed by the Black Hills National Forest Land and Resource Management Plan. The Prairie Project Area covers about 29,000 acres of National Forest System land and about 6,300 acres of interspersed private land within the lower Rapid Creek watershed directly west of Rapid City, South Dakota. Proposed actions include: *Promoting natural fuel breaks* (via vegetation treatment) to reduce potential for large-scale intense wildfire; *Reduction of fuels* that currently exist and fuel created by vegetation treatment within the wildland-urban interface; *Wildlife habitat improvement* to protect critical big game winter range and habitat for a variety of plant and animal species; Supporting the preceding actions using *Vegetation treatments* on an estimated 8,000 acres to reduce the density of pine trees and restore hardwoods; *Providing a mix of motorized and non-motorized use* opportunities.

DATES: Comments concerning the scope of the analysis must be received by August 19, 2002. The draft environmental impact statement is expected to be available for public review by November 2002 and the final environmental impact statement is expected to be completed by March 2003.

ADDRESSES: Send written comments to Robert J. Thompson, District Ranger, Black Hills National Forest, Mystic Ranger District, 803 Soo San Drive, Rapid City, South Dakota 57702. Telephone Number: (605) 343–1567. e-mail: *mailroom_r2_blackhills@fs.fed.us*. With "Prairie" as subject.

FOR FURTHER INFORMATION CONTACT: Phill Grumstrup, Project coordinator, Black Hills National Forest, Mystic Ranger District, at above address, phone (605) 343–1567.

SUPPLEMENTARY INFORMATION: The actions proposed are in direct response to management direction provided by the Black Hills National Forest Land and Resource Management Plan (Forest Plan). The site specific actions are designed based on Forest Plan Standards and Guidelines to promote existing resource conditions in the Prairie Project Area toward meeting Forest Plan Goals and Objectives. The project area lies along the east side of the Black Hills National Forest and directly west of Rapid City, South Dakota. Anticipated issues include: fire and fuels hazard in the wildland-urban interface; support and opposition to

to reduce the density of pine trees. This may be done by using commercial timber harvest to thin out commercial size trees and using other methods to thin small, non-commercial size trees. Thinning trees will reduce the potential for spreading crown fires by providing fuel breaks, lessening the risk from insects and disease, improving stand growth and vigor, and providing wood-fiber products for the local economy.

- Provide a mix of motorized and

reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final

DATES: The meeting will be held on July 29, 2002, and will begin at 1:30 p.m. until approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA

Grading Project; (5) Recommend and submit Projects; and (6) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 1, 2002.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 02–17511 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–11–M

Abstract: This web-based form collects information to register respondents in the workshop, *Meeting the Information Requirements of the Animal Welfare Act*. Information collected includes: workshop date preference, signature, name, title, organization name, mailing address, phone and fax numbers, and email address. Five questions are asked regarding: database searching experience, Institutional Animal Care and Use Committee membership, and

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Plan). The site specific actions are designed based on Forest Plan Standards and Guidelines to promote existing resource conditions in the Prairie Project Area toward meeting Forest Plan Goals and Objectives. The project area lies along the east side of the Black Hills National Forest and directly west of Rapid City, South Dakota. Anticipated issues include: fire and fuels hazard in the wildland-urban interface; support and opposition to vegetation treatment such as timber harvest; impacts of vegetation treatment and multiple forest uses on wildlife habitat; conflicting motorized and non-motorized use and travel management issues; maintaining and improving developed and dispersed recreation opportunities.

Purpose and Need for Action

The purpose of and need for the actions proposed in the Prairie Project is to: Reduce the potential for large-scale intense wildfire, reduce fuel loads and assure access for fire protection; Protect big game winter range and provide habitat for a variety of plant and animal species; and provide for a variety of recreation opportunities including motorized and non-motorized uses while moving toward or meeting related Forest Plan Goals and Objectives, consistent with Forest Plan Standards and Guidelines.

Proposed Action

Proposed actions include the following:

- Reduce the potential for large-scale, intense wildfire by developing and maintaining natural fuel breaks. This action includes thinning the forest, removing conifers from hardwood stands such as aspen, bur oak and birch and by expanding and/or creating meadows.
- Reduce the amount of fuel that currently exists and fuel created by vegetation treatment activities. Treatment could include lopping, chipping, crushing, piling and burning; construction of up to 30 miles of constructed fuel breaks adjacent to private property, particularly those properties with houses and subdivisions; and prescribed burning of up to 4,000 acres to reduce fuels and benefit wildlife habitat.
- Manage big game winter range by providing opening for forage and protecting game animals during the critical winter period over a large portion of the area by expanding area closures to off-road motorized use seasonally or year-round.
- Support the preceding actions by treating up to 8,000 acres of vegetation to reduce the density of pine trees. This may be done by using commercial timber harvest to thin out commercial size trees and using other methods to thin small, non-commercial size trees. Thinning trees will reduce the potential for spreading crown fires by providing fuel breaks, lessening the risk from insects and disease, improving stand growth and vigor, and providing wood-fiber products for the local economy.
- Provide a mix of motorized and non-motorized opportunities in the area by designating some areas for off-road ATV/4-wheeler use and other areas for non-motorized uses such as hiking, mountain biking and walk-in hunting.

Responsible Official

John C. Twiss, Forest Supervisor, Black Hills National Forest, Highway 385 North RR 2, Box 200, Custer, SD 57730.

Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action or alternatives at this time.

Scoping Process

Comments and input regarding the proposal will be requested via direct mailing from the public, other groups and agencies during the 30-day (plus) public comment period in July and August 2002. Also, response to the draft EIS will be sought from the interested public in November-December 2002.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. It is our desire to involve interested parties and especially adjacent landowners in identifying the issues related to proposed activities. Comments will assist the planning team identify key issues and opportunities used to develop project alternatives and mitigation measures.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be for 45 days (beginning around November 1, 2002) from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21)

Dated: July 8, 2002.

John C. Twiss,

Forest Supervisor.

[FR Doc. 02–17506 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on July 29, 2002, and will begin at 1:30 p.m. until approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail: ggaddini@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Approve the Minutes from Last Meeting, (2) Proposed By-Laws- Action, (3) Draft Selection Criteria/Operating Guidelines-Action, (4) Title II Submission Form—Action, (5) Update on RAC Projects, (6) Scramblers Presentations, (7) Public Comment, and (8) Next Agenda. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 8, 2002.

James F. Giachino,

Designated Federal Officer.

[FR Doc. 02–17507 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on August 8, 2002, from 3 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the June 27, 2002 Meeting; (3) Discuss the Prioritization of 2002 Project Proposals; (4) Discussion of the Elk Mountain Road Grading Project; (5) Recommend and submit Projects; and (6) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 1, 2002.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 02–17511 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent to Seek Approval to Collect Information

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice and Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Agricultural Library's intent to request approval for a new information collection form related to the Animal Welfare Information Center's (AWIC) workshop, *Meeting the Information Requirements of The Animal Welfare Act.* This workshop registration form requests contact, affiliation, and database searching experience information from participants. Participants include principal investigators, members of Institutional Animal Care and Use Committees, information providers, administrators of animal use programs, and veterinarians.

DATES: Comments on this notice must be received by September 16, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Barbara Buchanan Biological Sciences Librarian, USDA, ARS, NAL, Animal Welfare Information Center, 10301 Baltimore Avenue. 4th Floor, Beltsville, MD 20705–2351. Submit electronic comments to *bbuchana@nal.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Buchanan, Biological Sciences Librarian, Phone: 301–504–7048, or Fax: 301–504–7125

SUPPLEMENTARY INFORMATION:

Title: Workshop Registration Meeting the Information Requirements of the Animal Welfare Act.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection form.

Abstract: This web-based form collects information to register respondents in the workshop, *Meeting the Information Requirements of the Animal Welfare Act.* Information collected includes: workshop date preference, signature, name, title, organization name, mailing address, phone and fax numbers, and email address. Five questions are asked regarding: database searching experience, Institutional Animal Care and Use Committee membership, and what they would like to learn from their participation in the workshop

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: principal investigators, members of Institutional Animal Care and Use Committees, information providers, administrators of animal use programs, and veterinarians.

Estimated Number of Respondents: 100 per year.

Estimated Total Annual Burden on Respondents: 8.33 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: June 25, 2002.

Caird E. Rexroad,

Acting Associate Administrator

[FR Doc. 02–17487 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Reinstate a Previously Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request reinstatement of a previously approved

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governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Horse owners, breeders, trainers, boarders.

Estimated Number of Respondents:

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Impact Statement; Swan Quarter Watershed Project, Hyde County, North Carolina

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Swan Quarter Watershed Project, Hyde County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mary K. Combs, State Conservationist, Natural Resources Conservation Service, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609, telephone (919)

a.m. Tuesday, July 16–17, in the Agenda items include:

(1) Call to order and approval of the Agenda.
(2) Approval of the Minutes of the 64th Meeting.
(3) Reports from Congressional Liaisons.
(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of

People Who Are Blind or Severely Disabled published notice (67 FR 15175, 35096, and 36567) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government

8405–00–NSH–0013 (Blue Top, XX-Large).
8405–00–NSH–0014 (Blue Top, XXX-Large).
8405–00–NSH–0015 (Blue Top, XXXX-Large).

NPA: Middle Georgia Diversified Industries, Inc., Dublin, Georgia.

Contract Activity: Immigration and Naturalization Service, DOJ.

Services

Service Type/Location: Administrative Support Services, Federal Bureau of Prisons, Butner, North Carolina.

NPA: Raleigh Lions Clinic for the Blind, Inc.,

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request reinstatement of a previously approved information collection, the Equine Survey.

DATES: Comments on this notice must be received by September 16, 2002 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Equine Survey.

OMB Number: 0535–0227.

Type of Request: Intent to Request Reinstatement of a Previously Approved Information Collection.

Abstract: To improve information regarding the equine industry, several State Departments of Agriculture are expected to contract with the National Agricultural Statistics Service to conduct an Equine Survey in their State within the next 3 years. Equine activities offer unusually varied opportunities for rural development. In addition to providing the livelihood for breeders, trainers, veterinarians, and many others, the horse remains important to recreation. The number of operations, number of animals, and economic information will quantify the importance of the equine industry to State economies. Income data provides a view of the benefits that the industry provides to the State economy and a ranking of its relative importance within both the agricultural sector and the State's total economic sector. The expenditure information provides data regarding the multiplier effect of money from the equine industry, effects of wage rates paid to both permanent and part-time employees, and secondary businesses supported by the industry. NASS intends to request that the survey be approved for 3 years. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Horse owners, breeders, trainers, boarders.

Estimated Number of Respondents: 45,000.

Estimated Total Annual Burden on Respondents: 22,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: June 24, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–17488 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Swan Quarter Watershed Project, Hyde County, NC

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Swan Quarter Watershed Project, Hyde County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mary K. Combs, State Conservationist, Natural Resources Conservation Service, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609, telephone (919) 873–2101.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mary K. Combs, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to reduce flood damages. Proposed measures to address wind-tide flooding include 33,194 linear feet of earthen dike, 4,606 linear feet of PVC sheet piling, 10 pipes, and 28 tide gates. The project will benefit 125 homes and businesses and 2,400 acres of cropland.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jacob Crandall, Assistant State Conservationist for Water Resources at 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Mary K. Combs,

State Conservationist.

[FR Doc. 02–17482 Filed 7–11–02; 8:45 am]

BILLING CODE 3410–16–M

ARTIC RESEARCH COMMISSION

U.S. Arctic Research Commission Meeting

July 1, 2002.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 65th Meeting in Palisades, NY on July, 16–17, 2002. The Business Session open to the public will convene at 8:15 a.m. Tuesday, July 16–17, in the Agenda items include:

(1) Call to order and approval of the Agenda.
(2) Approval of the Minutes of the 64th Meeting.
(3) Reports from Congressional Liaisons.
(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will begin at 8:15 a.m. Tuesday, July 16. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

CONTACT PERSON FOR MORE INFORMATION: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 02–17483 Filed 7–11–02; 8:45 am]

BILLING CODE 7555–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: August 11, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On March 29, May 17, and May 24, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 15175, 35096, and 36567) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Pad, Message, "While You Were Out"
7530–00–NIB–0547.
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Pad, Scouring
7920–00–171–1534.
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.
Product/NSN: Uniforms, Shirts and Pants
8405–00–NSH–0002 (Blue Pants, Small).
8405–00–NSH–0003 (Blue Pants, Medium).
8405–00–NSH–0004 (Blue Pants, Large).
8405–00–NSH–0005 (Blue Pants, X-Large).
8405–00–NSH–0006 (Blue Pants, XX-Large).
8405–00–NSH–0007 (Blue Pants, XXX-Large).
8405–00–NSH–0008 (Blue Pants, XXXX-Large).
8405–00–NSH–0009 (Blue Top, Small).
8405–00–NSH–0010 (Blue Top, Medium).
8405–00–NSH–0011 (Blue Top, Large).
8405–00–NSH–0012 (Blue Top, X-Large).
8405–00–NSH–0013 (Blue Top, XX-Large).
8405–00–NSH–0014 (Blue Top, XXX-Large).
8405–00–NSH–0015 (Blue Top, XXXX-Large).
NPA: Middle Georgia Diversified Industries, Inc., Dublin, Georgia.
Contract Activity: Immigration and Naturalization Service, DOJ.

Services

Service Type/Location: Administrative Support Services, Federal Bureau of Prisons, Butner, North Carolina.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.
Contract Activity: Federal Bureau of Prisons LSCI, Butner, North Carolina.
Service Type/Location: Administrative Support Services, GSA Tampa Property Management Office, Tampa, Florida.
NPA: Tampa Lighthouse for the Blind, Tampa, Florida.
Contract Activity: GSA Property Management Division, Atlanta, Georgia.
Service Type/Location: Janitorial/Grounds and Related Services, Federal Building, Tucson, Arizona. Motor Pool Office and Garage, Tucson, Arizona. US Border Patrol Sector HQ, Tucson, Arizona.
NPA: Tetra Corporation, Tucson, Arizona.
Contract Activity: GSA, Public Buildings Service, San Francisco, California.
Service Type/Location: Packaging Service: Crane Division, Naval Surface Warfare Center, Crane, Indiana.
NPA: Knox County Association for Retarded Citizens, Inc., Vincennes, Indiana.
Contract Activity: Naval Surface Warfare Center, Crane, Indiana.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are hereby deleted from the Procurement List:

Products

Product/NSN: Impulse Merchandising Program (IMP) Shippers.
M.R. 11522 (Corn Skewers).
M.R. 11577 (Pet Scooper/Pet Lids).
M.R. 11602 (Straws).
M.R. 11616 (Foil Baking Cups).
M.R. 11695 (Cheese Cloth).
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–17545 Filed 7–11–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: August 11, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On March 29, May 17, and May 24, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 15175, 35096, and 36567) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

Contract Activity: Department of Veterans Affairs, Long Beach, California.
Service Type/Location: Laundry Service
National Training Center.
Fort Irwin, California.
NPA: Job Options, Inc., San Diego, California.
Contract Activity: Department of the Army, Fort Irwin, California.
Service Type/Location: Switchboard Operation
VA Health Care Center, San Diego, California.
NPA: PRIDE Industries, Roseville, California.

Milwaukee, Wisconsin.
Product/NSN: Potpourri/M.R. 404.
NPA: Envision, Inc., Wichita, Kansas.
Product/NSN: Broom, Corn/M.R. 960.
Product/NSN: Mop, Deck/M.R. 961.
Product/NSN: Refill, Mop, Dust/M.R. 985.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
Product/NSN: Air Deodorizer, Push-Up, Floral Spring/M.R. 506.
Product/NSN: Air Deodorizer, Push-up, Lemon/M.R. 507.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Product/NSN: Dog Bones/M.R. 009.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Product/NSN: Dog Bones/M.R. 405.
Product/NSN: Dog Bones/M.R. 406.
Product/NSN: Dog Bones/M.R. 407.
Product/NSN: Dog Bones/M.R. 408.
Product/NSN: Dog Bones/M.R. 409.
Product/NSN: Dog Bones/M.R. 410.
Product/NSN: Dog Bones/M.R. 411.
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin.
Product/NSN: Brush, Bottle/M.R. 956.
Product/NSN: Brush, Pastry and Basting/

In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6)).

Contact Person for More Information: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: July 9, 2002.

Carol Booker,

Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–17545 Filed 7–11–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 11, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Pen, Free Ink, Rollerball, Needle Point.
7520–00–NIB–1538 (Black 5mm).
7520–00–NIB–1539 (Black 7mm).
7520–00–NIB–1540 (Blue 5mm).
7520–00–NIB–1541 (Blue 7mm).
7520–00–NIB–1542 (Red 5mm).
7520–00–NIB–1543 (Red 7mm).
NPA: San Antonio Lighthouse, San Antonio, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Food Service Attendant
Dakota Inn (Flight Kitchen and Alert Facility), Minot AFB, North Dakota.
NPA: MVW Services, Inc., Minot, North Dakota.
Contract Activity: Department of the Air Force, Minot AFB, North Dakota.
Service Type/Location: Grounds Maintenance
USCG Chief of Staff Quarters, Bethesda, Maryland
USCG Commandant Quarters, Kenwood, Maryland
USCG Vice Commandant Quarters, Bethesda, Maryland
NPA: The Arc of Montgomery County, Inc., Rockville, Maryland.
Contract Activity: USCG Headquarters HSC A–3, Washington, DC
Service Type/Location: Janitorial/Custodial
Air Traffic Control Tower (Midway Airport), Chicago, Illinois.
NPA: Jewish Vocational Service & Employment Center, Chicago,Illinois.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois
Service Type/Location: Janitorial/Custodial
FAA Chicago/Tracon, Elgin, Illinois.
NPA: Jewish Vocational Service & Employment Center, Chicago, Illinois.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Custodial
VA Greater Los Angeles Regional Healthcare System.
Consolidated Mail Outpatient Pharmacy.
Los Angeles, California.
NPA: Job Options, Inc., San Diego, California.
Contract Activity: Department of Veterans Affairs, Long Beach, California.
Service Type/Location: Laundry Service
National Training Center.
Fort Irwin, California.
NPA: Job Options, Inc., San Diego, California.
Contract Activity: Department of the Army, Fort Irwin, California.
Service Type/Location: Switchboard Operation
VA Health Care Center, San Diego, California.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: VA Health Care System (664/NBC), San Diego, California.
Service Type/Location: Telephone Answering Service
Naval Medical Center, San Diego, California.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contract Activity: Naval Medical Center, San Diego, California.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products have been proposed for deletion from the Procurement List:

Products

Product/NSN: Strainer/M.R. 818.
Product/NSN: Strainer and Pastry Brush/M.R. 817.
Product/NSN: Strainer and Pastry Brush/M.R. 829.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Product/NSN: Bowl, Deodorizer/M.R. 503.
Product/NSN: Bowl, Deodorizer/M.R. 504.
NPA: Tampa Lighthouse for the Blind, Tampa, Florida.
Product/NSN: Cutlery, Heavy Duty/M.R. 597.
NPA: Ho'opono Workshop for the Blind, Honolulu, Hawaii.
NPA: MidWest Enterprises for the Blind, Inc., Kalamazoo, Michigan.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Product/NSN: Potpourri/M.R. 404.
NPA: Envision, Inc., Wichita, Kansas.
Product/NSN: Broom, Corn/M.R. 960.
Product/NSN: Mop, Deck/M.R. 961.
Product/NSN: Refill, Mop, Dust/M.R. 985.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
Product/NSN: Air Deodorizer, Push-Up, Floral Spring/M.R. 506.
Product/NSN: Air Deodorizer, Push-up, Lemon/M.R. 507.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Product/NSN: Aqua Plunger Mop/M.R. 1026.
NPA: ISIGHT, Inc., Las Vegas, Nevada.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Product/NSN: Brush, Duster/M.R. 913.
Product/NSN: Gloves, Latex/M.R. 516.
Product/NSN: Gloves, Latex/M.R. 517.
Product/NSN: Gloves, Latex/M.R. 518.
NPA: New York City Industries for the Blind, Brooklyn, New York.
Product/NSN: Mop, Sponge, Block/M.R. 990.
Product/NSN: Sac Saver/M.R. 1010.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Product/NSN: Broom, Mixed Fiber/M.R. 901.
Product/NSN: Fabric Softener Sheets, Reusable/M.R. 519.
Product/NSN: Refill, Mop, Dust/M.R. 985.
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Product/NSN: Apron, Child, Painted Design/M.R. 780.
NPA: Lions Industries for the Blind, Inc., Kinston, North Carolina.
Product/NSN: Character Lunch Bags/M.R. 407.
Product/NSN: Master Baster/M.R. 802.
Product/NSN: Soap Shipper/M.R. 431.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Product/NSN: Kitchen, Utensils/M.R. 848.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.
Product/NSN: Bag, Canvas/M.R. 701.
NPA: Lions Volunteer Blind Industries, Inc., Morristown, Tennessee.
Product/NSN: Clothspin, Plastic/M.R. 570.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Product/NSN: Cleaner, All Purpose/M.R. 510.
NPA: The Lighthouse of Houston, Houston, Texas.
Product/NSN: Cover, Ironing Board/M.R. 965.
Product/NSN: Pad, Microwave/M.R. 562.
Product/NSN: Pad, Replacement, Handle Scrubber/M.R. 540.
Product/NSN: Pad, Replacement, Handle Scrubber/M.R. 545.
Product/NSN: Pad, Replacement, Handle Scrubber/M.R. 546.
Product/NSN: Pad, Scouring/M.R. 547.
Product/NSN: Scrubber/M.R. 542.
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas.
Product/NSN: Broom, Upright/M.R. 951.
Product/NSN: Broom, Whisk/M.R. 910.
Product/NSN: Brush, Duster/M.R. 913.
Product/NSN: Executive Twist Pen Shipper/M.R. 009.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Product/NSN: Dog Bones/M.R. 405.
Product/NSN: Dog Bones/M.R. 406.
Product/NSN: Dog Bones/M.R. 407.
Product/NSN: Dog Bones/M.R. 408.
Product/NSN: Dog Bones/M.R. 409.
Product/NSN: Dog Bones/M.R. 410.
Product/NSN: Dog Bones/M.R. 411.
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin.
Product/NSN: Brush, Bottle/M.R. 956.
Product/NSN: Brush, Pastry and Basting/M.R. 959.
Product/NSN: Cover, Ironing Board/M.R. 964.
Product/NSN: Handle, Mop, Spring Lever/M.R. 920.
Product/NSN: Kitchen, Utensils/M.R. 828.
Product/NSN: Kitchen, Utensils/M.R. 850.
Product/NSN: Kitchen, Utensils/M.R. 860.
Product/NSN: Kitchen, Utensils/M.R. 862.
NPA: None currently authorized.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia, for all the Military Resale Products.
Product/NSN: Enamel/8010–01–336–3978.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–17546 Filed 7–11–02; 8:45 am]
BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting Notice

Date and Time: July 17, 2002; 10:45 a.m.–3:30 p.m.

Place: RFE/RL Broadcast Center, Room 546, Prague, Czech Republic.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6)).

Contact Person for More Information: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: July 9, 2002.

Carol Booker,
Legal Counsel.
[FR Doc. 02–17623 Filed 7–10–02; 8:53 am]
BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, July 19, 2002 9 a.m.

PLACE: OMNI Detroit River Place, Hotel, 1000 River Place, Detroit, MI 48207.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of June 21, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Florida and Kentucky
VI. Discussion of the Statutory report, "Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Directives?"
VII. Discussion of staff report and recommendations on the civil rights implications of welfare reauthorization
VIII. Presentations from Midwest Regional SAC members on post-9/11 and other civil rights issues in their states, and by individuals and organizational representatives on post-9/11 issues affecting Arab and Muslim Americans in Michigan and the midwestern region
IX. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,
Deputy General Counsel.
[FR Doc. 02–17763 Filed 7–10–02; 4:00 pm]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 10371). We invited parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed companies are listed below in the section entitled "Final Results of Review." The period of review is February 1, 2000, through January 31, 2001.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Maisha Cryor, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1391 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 10371). We invited parties to comment on our preliminary results. We received comments from the petitioners, the Mushroom Canning Subcommittee of the Agricultural Committee of the California Canning Peach Association, and from the respondents, Agro Dutch Foods Ltd. ("Agro Dutch")[1], Himalya International Ltd. ("Himalya"), Saptarishi Agro Industries, Inc. ("Saptarishi"), and Weikfield Agro Products Ltd. ("Weikfield"). The period of review is February 1, 2000, through January 31, 2001.

On March 7, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 10371). We invited parties to comment on our preliminary results. We received comments from the petitioners, the Mushroom Canning Subcommittee of the Agricultural Committee of the California Canning Peach Association, and from the respondents, Agro Dutch Foods Ltd. ("Agro Dutch")[1], Himalya International Ltd. ("Himalya"), Saptarishi Agro Industries, Inc. ("Saptarishi"), and Weikfield Agro Products Ltd. ("Weikfield"). The period of review is February 1, 2000, through January 31, 2001.

The merchandise subject to the order is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").[2] Although the HTSUS

raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the

of subject merchandise for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of certain preserved mushrooms from India entered, or withdrawn from

Dated: July 5, 2002.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

Appendix—List of Issues

General Comment

Comment 1: Profit Rate for Constructed Value

Company-Specific Comments

Agro Dutch

Comment 2: Application of Facts Available for Certain U.S. Sales

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March.7, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 10371). The review covers four manufacturers/exporters. The period of review is February 1, 2000, through January 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Katherine Johnson, or Margarita Panayi, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136, (202) 482–4929, or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the "Department's") regulations are to 19 CFR Part 351 (2000).

Background

The review covers four manufacturers/exporters: Agro Dutch Foods Ltd. ("Agro Dutch")[1], Himalya International Ltd. ("Himalya"), Saptarishi Agro Industries, Inc. ("Saptarishi"), and Weikfield Agro Products Ltd. ("Weikfield"). The period of review is February 1, 2000, through January 31, 2001.

On March 7, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 10371). We invited parties to comment on the preliminary results of review. On March 20 and 26, 2002, we received requests for a public hearing from respondent Agro Dutch and the petitioners[2], respectively. We received case briefs from the petitioners and Agro Dutch on May 10, 2002. We received rebuttal briefs from the petitioners, Agro Dutch and Weikfield on May 17, 2002. We held a public hearing at the Department on May 22, 2002. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by the order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under the order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to the order is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").[3] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Allegation of Duty Reimbursement

In its January 30, 2002, comments, the petitioners allege that because Agro Dutch and Weikfield are the importers of record for the preserved mushrooms they produce and export to the United States, and, therefore, pay all applicable antidumping cash deposits and duties on this merchandise, they are paying duties on behalf of their respective importers within the meaning of the Department's reimbursement regulation. *See* 19 CFR 351.402(f). In numerous cases, the Department has held that reimbursement within the meaning of the regulation does not occur when the importer and exporter are the same legal entity. Because Agro Dutch and Weikfield function both as the exporter and U.S. importer of the preserved mushrooms they produce, there is no basis for reducing U.S. price under the Department's reimbursement regulation. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 66 FR 53388 (October 22, 2001), and accompanying Issues and Decision Memorandum at Comment 1. No parties have commented on this issue in the context of this review since the allegation was made on January 30, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 5, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Decision Memo are identical in content.

[1] Effective January 8, 2001, Agro Dutch changed its name from "Agro Dutch Foods Limited" Agro Dutch Industries Limited."

[2] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc.; Modern Mushrooms Farms, Inc.; Monterey Mushrooms, Inc.; Mount Laurel Canning Corp.; Mushrooms Canning Company; Southwood Farms; Sunny Dell Foods, Inc.; and United Canning Corp.

[3] As of January 1, 2002, the HTSUS numbers are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000.

Changes From the Preliminary Results

Based on our analysis of comments received, we have made certain changes to the margin calculations, including:

- The application of adverse facts available to certain Agro Dutch sales;
- The revision of Agro Dutch's imputed credit expense calculation to include commissions Agro Dutch deducted from the gross price in the calculation;
- The change in the payment date used for calculating imputed credit expenses on unpaid sales made by Agro Dutch and Weikfield from the preliminary results date to the final results date; and
- The revision of the assessment rate calculation for Agro Dutch's and Weikfield's export price sales from a percentage to a per-unit basis.

For a discussion of these changes, see the "Margin Calculations" section of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist:

Manufacturer/exporter	Margin (percent)
Agro Dutch Foods Ltd/Agro Dutch Industries Ltd	27.80
Himalya International Ltd	0.68
Saptarishi Agro Industries, Ltd	66.24
Weikfield Agro Products Ltd	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We will direct the Customs Service to assess the resulting rates against the entered units or customs values of the subject merchandise on each importer's entries under the relevant order during the review period. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of certain preserved mushrooms from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Agro Dutch, Himalya, Saptarishi, and Weikfield will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: July 5, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues

General Comment

Comment 1: Profit Rate for Constructed Value

Company-Specific Comments

Agro Dutch

Comment 2: Application of Facts Available for Certain U.S. Sales
Comment 3: Treatment of Rejected U.S. Sales
Comment 4: Classification of "Expenses Written Off"
Comment 5: Classification of Exchange Rate Losses for Notes Payable
Comment 6: Agro Dutch Name Change

Weikfield

Comment 7: Inclusion of Parent Company G&A Expenses in Weikfield's G&A Rate

Saptarishi

Comment 8: Selection of Facts Available Rate

[FR Doc. 02–17592 Filed 7–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of third new shipper review and final results and partial rescission of second antidumping duty administrative review.

SUMMARY: On March 6, 2002, the Department of Commerce published the preliminary results of the third new shipper review and second antidumping duty administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 10128 (March 6, 2002) (*Preliminary Results*). The new shipper review covers two respondents and the administrative review covers two respondents (*see* "Background" section below for further discussion). The

period of review is February 1, 2000, through January 31, 2001. We gave interested parties an opportunity to comment on our preliminary results.

Based on the additional publicly available information used in these final results and the comments received from the interested parties, we have made changes in the margin calculations for the respondents in these reviews. The final weighted-average dumping margins for the reviewed firms in these

request made by the petitioners,[2] these reviews now cover only the following four exporters: (1) Gerber; (2) Raoping Xingyu; (3) Shantou Hongda; and (4) Shenxian Dongxing (*see* "Partial Rescission of Administrative Review" section below of this notice for further discussion).

On March 6, 2002, the Department published in the **Federal Register** the preliminary results of the third new shipper review and second antidumping

whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium,

respect to Shanghai Foodstuffs, Fujian Cereals, and the Canned Goods Company of Raoping pursuant to 19 CFR 351.213(d)(3). Each of these companies reported that it made no shipments of subject merchandise during the period of review ("POR") in response to the Department's questionnaire. Based on the results of our examination of shipment data furnished by the Customs Service, we are satisfied that these respondents did

raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on the use of additional

To value grain and super phosphate, we used data from Flex Foods' 2000–2001 financial report.

To value super potassium, we used a POR value from the publication *Chemical Weekly*.

Since the surrogate value for salt was not contemporaneous with the POR, we adjusted this value for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

With respect to Gerber, we have

period of review is February 1, 2000, through January 31, 2001. We gave interested parties an opportunity to comment on our preliminary results.

Based on the additional publicly available information used in these final results and the comments received from the interested parties, we have made changes in the margin calculations for the respondents in these reviews. The final weighted-average dumping margins for the reviewed firms in these reviews are listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (2000).

Background

Of the 26 companies [1] for which the Department initiated reviews based on a request made by the petitioners,[2] these reviews now cover only the following four exporters: (1) Gerber; (2) Raoping Xingyu; (3) Shantou Hongda; and (4) Shenxian Dongxing (*see* "Partial Rescission of Administrative Review" section below of this notice for further discussion).

On March 6, 2002, the Department published in the **Federal Register** the preliminary results of the third new shipper review and second antidumping duty administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") (*see Preliminary Results* at 67 FR 10128). On March 26, 2002, and in accordance with 19 CFR 351.301(c)(3)(ii), one of the four respondents, Gerber, submitted additional publicly available information for the Department's consideration in the final results. On April 5, 2002, another respondent, Raoping Xingyu submitted its case brief. On May 29, 2002, the parties withdrew their request for a hearing. The petitioners and Gerber submitted their case and rebuttal briefs on June 4, and June 10, 2002, respectively. Raoping Xingyu did not submit a rebuttal brief. The other two respondents, Shantou Hongda and Shenxian Dongxing, did not file case or rebuttal briefs.

On June 21, 2002, we informed the parties to this proceeding that we considered the data contained in three attachments to the petitioners' case brief to be new factual information pursuant to 19 CFR 351.301(c)(3)(ii). However, we also informed the parties that we considered this information to be relevant to this proceeding and had decided to consider it in these final results. Therefore, because it was filed in an untimely manner in this proceeding, we provided the respondents until June 26, 2002, to submit comments on that new factual information and the petitioners' arguments in reliance on that information. On June 26, 2002, Gerber submitted comments on the use of that information in this proceeding.

The Department has conducted these reviews in accordance with section 751 of the Act.

Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* [4] ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

We have rescinded this review with respect to China Processed, Fujian Yu Xing, and Xiamen Jiahua pursuant to 19 CFR 351.213(d)(1), because the petitioners withdrew their request for review and no other interested party requested a review of these companies. We have also rescinded this review with respect to Shanghai Foodstuffs, Fujian Cereals, and the Canned Goods Company of Raoping pursuant to 19 CFR 351.213(d)(3). Each of these companies reported that it made no shipments of subject merchandise during the period of review ("POR") in response to the Department's questionnaire. Based on the results of our examination of shipment data furnished by the Customs Service, we are satisfied that these respondents did not ship subject merchandise to the United States during the POR. Moreover, we have rescinded this review with respect to Tak Fat, Mei Wei, Zhang Zhou Longhai, Citic Ningbo, Zhejiang Cereals, China Ningbo, Longhai Senox, Beiliu Canned, Putian, General Canned Food Factory of Zhangzhou, Jiangsu Cereals, Shenzhen Cofry, Xiamen Gulong, and Dongya, because the shipment data furnished by the Customs Service also indicated that there were no U.S. entries of subject merchandise during the POR for these companies. *See Preliminary Results*, 67 FR at 10128.

With respect to Green Fresh, we erred in the preliminary determination by deeming Green Fresh to be an uncooperative respondent based on shipment data furnished by the Customs Service. After further examination and clarification of the response from Green Fresh, we have concluded that the shipment data furnished by the Customs Service reflects a U.S. entry of the subject merchandise which the Department reviewed in a prior new shipper review. *See Final Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 45006 (August 27, 2001). Therefore, this shipment is not a sale which the Department needs to consider in this administrative review. As result, pursuant to 19 CFR 351.213(d)(3), we are rescinding this review with respect to Green Fresh because we are satisfied that Green Fresh had no entries of the subject merchandise into the United States during this POR based on data furnished by the Customs Service.

[1] The petitioners' request included the following companies: (1) Tak Fat Trading Co. ("Tak Fat"); (2) Mei Wei Food Industry Co., Ltd. ("Mei Wei"); (3) China Processed Food Import & Export Company ("China Processed"); (4) Fujian Yu Xing Fruits and Vegetables Foodstuffs Co., Ltd. ("Fujian Yu Xing"); (5) Raoping Xingyu Foods, Co., Ltd. ("Raoping Xingyu"); (6) Raoping Yucun Canned Foods Factory ("Raoping Yucun"); (7) Shantou Hongda Industrial General Corporation ("Shantou Hongda"); (8) Shenxian Dongxing Foods Co., Ltd. ("Shenxian Dongxing"); (9) Gerber Food (Yunnan) Co., Ltd. ("Gerber"); (10) Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh"); (11) Zhang Zhou Longhai Lubao Food Co., Ltd. ("Zhang Zhou Longhai"); (12) Citic Ningbo Import & Export Corp., Ltd. ("Citic Ningbo"); (13) Shanghai Foodstuffs Import & Export Corporation ("Shanghai Foodstuffs"); (14) Zhejiang Cereals, Oils & Foodstuffs Import & Export Co., Ltd. ("Zhejiang Cereals"); (15) China Ningbo Canned Food Factory ("China Ningbo"); (16) Longhai Senox Limited ("Longhai Senox"); (17) Beiliu Canned Food Factory ("Beiliu Canned"); (18) Fujian Cereals, Oils & Foodstuffs Import & Export (Group) Corp. ("Fujian Cereals"); (19) Putian Cannery ("Putian"); (20) General Canned Food Factory of Zhangzhou; (21) Jiangsu Cereals, Oils & Foodstuffs Import & Export Group Corp. ("Jiangsu Cereals"); (22) Canned Goods Company of Raoping; (23) Shenzhen Cofry Cereals, Oils & Foodstuffs, Co., Ltd. ("Shenzhen Cofry"); (24) Xiamen Gulong Import & Export Co., Ltd. ("Xiamen Gulong"); (25) Dongya Food Co., Ltd. ("Dongya"); and (26) Xiamen Jiahua Import & Export Trading Co., Ltd. ("Xiamen Jiahua").

[2] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

[3] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

[4] As of January 1, 2002, the HTS codes are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000.

Changes Since the Preliminary Results

Based on the use of additional publicly available information and the comments received from the interested parties, we have made changes in the margin calculation for each respondent. For a discussion of these changes, see the "Margin Calculations" section of the *Decision Memo*.

For the final results, we calculated average surrogate percentages for factory overhead, selling, general and administrative expenses, and profit using the 2000–2001 financial reports of Agro Dutch Foods Ltd. ("Agro Dutch") and Flex Foods Ltd. ("Flex Foods"), and the 1999–2000 financial report of Himalya International Ltd. ("Himalya"). *See Decision Memo* at Comment 5.

We have corrected an error which affected the amount of miscellaneous fixed assets to include in the factory overhead percentage derived from data contained in Himalya's 1999–2000 financial report of an Indian producer of the subject merchandise.

To value fresh mushrooms, we calculated a simple average price based on data contained in the 2000–2001 financial report of Premier Explosives Ltd. ("Premier"), the 1999–2000 financial report of Agro Dutch, and February 2000–January 2001 price data contained in the *Economic Times of India*. *See Decision Memo* at Comment 1.

For Shantou Hongda and Gerber, we used price data contained in the 1999–2000 financial report, rather than in the 2000–2001 financial report of Agro Dutch to calculate an average POR price for a 68 ounce can since the 1999–2000 financial report contained specific price data in that report. For Raoping Xingyu, we used its reported market-economy prices to value this input. *See Decision Memo* at Comment 4.

To value spawn and cattle manure, we used data from the 2000–2001 financial reports of Agro Dutch and Flex Foods.

To value straw, we calculated an average price based on the wheat straw value from Agro Dutch's 2000–2001 financial report and the general straw value from Flex Foods' 2000–2001 financial report. *See Decision Memo* at Comment 3.

To value grain and super phosphate, we used data from Flex Foods' 2000–2001 financial report.

To value super potassium, we used a POR value from the publication *Chemical Weekly*.

Since the surrogate value for salt was not contemporaneous with the POR, we adjusted this value for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

With respect to Gerber, we have corrected arithmetical errors which affected the calculation of electricity costs associated with its spawn production, the cost of the mushrooms it purchased for use in the brining stage of production, and the cost of cans it used in the processing stage of production.

We have removed language in the SAS program used for Raoping Xingyu which overwrote data for two control numbers and have assigned to each distinct product code the factors contained in Raoping Xingyu's May 9, 2002, supplemental response. In addition we have corrected the scrap value in Raoping Xingyu's margin program.

To account for different drained weight capacities of various sizes of cans used by one respondent (*i.e.*, Shantou Hongda) and purchased by another respondent (*i.e.*, Raoping Xingyu), we have calculated for each can size a price per drained weight based on the price per piece obtained from surrogate value data. Since Shenxian Dongxing produced its own cans and Gerber reported its can usage on a piece basis rather than on a kilogram basis, we did not need to make the above-noted adjustment for those companies. *See Decision Memo* at Comment 10.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Issues and Decision Memorandum ("*Decision Memo*") from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Final Results of Reviews

We determine that the following weighted-average margin percentages exist for the period February 1, 2000, through January 31, 2001:

Exporter	Margin (percent)
Gerber Food (Yunnan) Co., Ltd.	14.79
Raoping Xingyu Foods, Co., Ltd.	161.57
Shantou Hongda Industrial General Corporation	0.00
Shenxian Dongxing Foods Co., Ltd.	0.00

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR from each respondent for which the import-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). In accordance with 19 CFR 351.212(b), we have calculated importer-specific ad valorem duty assessment rates. We will direct the Customs Service to assess the resulting

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an

ACTION: Notice of final court decision and amended final results of administrative review.

SUMMARY: The United States Court of International Trade has affirmed the Department of Commerce's final remand results affecting the final weighted-average margins for the 1995/1996 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the

(2) exclude the "purchases of traded goods" from its calculation of the cost of manufacturing; (3) adjust United States price by recalculating marine insurance pursuant to a value-based methodology; and (4) correct clerical errors in the calculation of the weight of scrap for one of the Chinese producers. *See Timken Company* v. *United States*, Court No. 97–12–02156, Slip Op. 01–96 (CIT August 9, 2001).

In its instructions, the CIT did not

consistent with those final results of redetermination on remand.

Company	Margin
Peer Bearing Co. and Chin Jun Industrial Ltd.	3.07
China National Machinery Import and Export Corp. (CMC)	3.05
Guizhou Machinery Import and Export Corp.	31.05
Liaoning MEC Group Co., Ltd.	0.61
Luoyang Bearing Factory	3.84
Premier Bearing and Equipment,	

Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel AP will convene to review a report of the Mackerel Stock Assessment Panel (MSAP) that includes status of stock information on Gulf Group king

351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR from each respondent for which the import-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). In accordance with 19 CFR 351.212(b), we have calculated importer-specific ad valorem duty assessment rates. We will direct the Customs Service to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and 751(a)(2)(B) of the Act: (1) The cash deposit rates for Gerber, Raoping Xingyu, Shantou Hongda, and Shenxian Dongxing will be the rates indicated above; (2) the cash deposit rate for PRC exporters for whom the Department has rescinded the review or for whom a review was not requested for this POR (*i.e.*, China Processed, Fujian Yu Xing, Xiamen Jiahua, Fujian Cereals, Shanghai Foodstuffs, the Canned Goods Company of Raoping, Tak Fat, Mei Wei, Zhang Zhou Longhai, Citic Ningbo, Zhejiang Cereals, China Ningbo, Longhai Senox, Beiliu Canned, Putian, General Canned Food Factory of Zhangzhou, Jiangsu Cereals, Shenzhen Cofry, Xiamen Gulong, and Dongya) will continue to be the rate assigned in an earlier segment of the proceeding or the PRC-wide rate of 198.63 percent; (3) the cash deposit rate for all other PRC exporters will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: July 5, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Surrogate Value Selection for Fresh Mushrooms.
2. Surrogate Value Selection for Furnace Oil.
3. Surrogate Value Selection for Straw.
4. Surrogate Value Selection for Cans and Lids.
5. Whether to Use Data Contained in More Current Financial Reports Submitted for Two Indian Producers of the Subject Merchandise.
6. How to Treat Water Costs.
7. Whether to Use Domestic Rather than Import Surrogate Values.
8. Whether to Inflate Certain Surrogate Values Which Cover a Portion of the Period of Review.
9. Whether to Inflate U.S. Dollar-Denominated Surrogate Values to the POR.
10. Whether to Adjust Factors Reported by Raoping Xingyu for Certain Can Sizes.
11. Whether to Adjust Factors Reported by Shantou Hongda and Shenxian Dongxing.
12. The Use of Information Contained in the Petitioners' Case Brief.

[FR Doc. 02–17593 Filed 7–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative review.

SUMMARY: The United States Court of International Trade has affirmed the Department of Commerce's final remand results affecting the final weighted-average margins for the 1995/1996 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. There was no appeal to the United States Court of Appeals for the Federal Circuit. As there is now a final and conclusive court decision in this case, we are amending the final results of review and we will instruct the Customs Service to liquidate entries subject to this review. The period of review is June 1, 1995, through May 31, 1996.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: George Callen or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0180 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Background

On November 17, 1997, the Department published the final results of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China covering the period June 1, 1995, through May 31, 1996. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 62 FR 61276 (November 17, 1997) (Final Results).

The Timken Company contested the Department's decision in the Final Results. In issuing its decision in this case, the United States Court of International Trade (CIT) instructed the Department to make the following changes to its margin calculations for the Final Results: (1) Determine direct labor costs without relying on labor hours and, if necessary, open the record; (2) exclude the "purchases of traded goods" from its calculation of the cost of manufacturing; (3) adjust United States price by recalculating marine insurance pursuant to a value-based methodology; and (4) correct clerical errors in the calculation of the weight of scrap for one of the Chinese producers. *See Timken Company* v. *United States*, Court No. 97–12–02156, Slip Op. 01–96 (CIT August 9, 2001).

In its instructions, the CIT did not refer to companies by name. Accordingly, in implementing the court's instructions for determining direct labor costs without relying on labor hours, excluding the "purchases of traded goods" in calculating the cost of manufacturing, and adjusting United States price by recalculating marine insurance pursuant to a value-based methodology, we calculated the changes for all companies for which we had data and for which we had performed calculations to arrive at the weighted-average dumping margins in the Final Results. For one company, Guizhou Machinery Import and Export Corp. (Guizou), this resulted in a change in margin from 21.79 percent to 31.05. This new margin is also the highest overall margin calculated in any segment of this proceeding.

The Department issued final results of redetermination on remand on December 13, 1999. The CIT affirmed the Department's final remand results and dismissed the case. *See Timken Company* v. *United States*, Slip Op. 02–30 (CIT March 20, 2002). There was no appeal to the United States Court of Appeals for the Federal Circuit. As there is now a final and conclusive court decision in this action, we are amending our final results of review and we will instruct the Customs Service to liquidate entries subject to this review.

Amendment to Final Results

Pursuant to section 516A(e) of the Act, we are now amending the final results of administrative review of the antidumping duty order on TRBs from the People's Republic of China for the period of review June 1, 1995, through May 31, 1996. In the original Final Results, we established margins for Jilin Machinery Import & Export Corporation (Jilin) and the PRC-wide rate on the basis of total adverse facts available and selected the highest ovrall margin calculated in any segment of the proceeding. As noted above, that rate is now 31.05 percent, the rate calculated for Guizhou in the final results of redetermination on remand. Accordingly, we are amending the rate for Jilin and the PRC-wide rate consistent with those final results of redetermination on remand.

Company	Margin
Peer Bearing Co. and Chin Jun Industrial Ltd.	3.07
China National Machinery Import and Export Corp. (CMC)	3.05
Guizhou Machinery Import and Export Corp.	31.05
Liaoning MEC Group Co., Ltd.	0.61
Luoyang Bearing Factory	3.84
Premier Bearing and Equipment, Ltd.	5.60
Shandong Machinery and Equipment Import and Export Corp.	19.13
Wanxiang Group Corp.	0.11
Xiangfan Machinery Foreign Trade Corp.	0.49
Zhejiang Machinery Import and Export Corp.	0.17
Jilin	31.05
PRC Wide Rate	31.05

Accordingly, the Department will determine and the Customs Service will assess appropriate antidumping duties on entries of the subject merchandise exported by firms covered by this review.

We are issuing and publishing this determination in accordance with section 751(a) of the Act.

Dated: July 3, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–17591 Filed 7–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070902A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Mackerel Advisory Panel (AP).

DATES: The AP meeting is scheduled to begin at 8:30 a.m. on July 29, 2002 and will conclude by 3 p.m.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel AP will convene to review a report of the Mackerel Stock Assessment Panel (MSAP) that includes status of stock information on Gulf Group king mackerel and little tunny, as well as the range of acceptable biological catch (ABC). The Mackerel AP will also review the report of the Socioeconomic Panel (SEP) on these stocks and may make recommendations to the Council for additional management measures based on these reviews. The Mackerel AP will also receive reports on the status of the Dolphin/Wahoo Fishery Management Plan (FMP) that is being developed jointly with the South Atlantic and Caribbean Fishery Management Councils and a regulatory amendment to establish definitions of maximum sustainable yield (MSY), optimum yield (OY), overfishing, and the overfished condition for mackerel and cobia stocks in the Gulf. the various shrimp stocks in the Gulf.

Although other non-emergency issues not on the agendas may come before the Mackerel AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Actions of the Mackerel AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 22, 2002.

Dated: July 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17557 Filed 7–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070802E]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Stephen J. Morreale, Department of Natural Resources, Cornell University, Ithaca, NY 14853, has applied in due form for a permit to take loggerhead turtles (*Caretta caretta*), Kemp's ridley turtles (*Lepidochelys kempii*), green turtles (*Chelonia mydas*), and Leatherback turtles (*Dermochelys*

auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17559 Filed 7–11–02; 8:45 am]

BILLING CODE 3510–22–S

Environmental Assessment of Proposed Groundfish Management Measures and Specifications for 2003, (4) complete and/or review economic/social analysis of proposed harvest levels and management measures for 2003, (5) evaluate a restructured bycatch model, (6) complete and/or review rebuilding plans for overfished groundfish stocks,(7) resolve any outstanding recreational data issues and evaluate the need for inseason management

Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Stephen J. Morreale, Department of Natural Resources, Cornell University, Ithaca, NY 14853, has applied in due form for a permit to take loggerhead turtles (*Caretta caretta*), Kemp's ridley turtles (*Lepidochelys kempii*), green turtles (*Chelonia mydas*), and Leatherback turtles (*Dermochelys*

NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

For Permit No. 782–1676, the applicant proposes to take Alaska

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070802E]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and Bluefish Monitoring Committee will hold public meetings.

DATES: The meetings will be held on Thursday, July 25, 2002, beginning at 9 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn BWI, 890 Elkridge Landing Road, Linthicum, MD; telephone: 410–859–8400.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 2003 commercial management measures, commercial quotas, and recreational harvest limits for summer flounder, scup, and black sea bass. The Bluefish Monitoring Committee will meet to recommend commercial management measures, recreational management measures, and a commercial quota and recreational harvest limit for bluefish for 2003.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17559 Filed 7–11–02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070202D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Monday, July 29, 2001 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, July 30 through Friday, August 2.

ADDRESSES: The meetings will be held at: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to prepare final recommendations regarding groundfish harvest levels and management for 2003. The GMT will also prepare reports, recommendations, and analyses in support of various Council decisions through the remainder of the year. The following specific items comprise the draft agenda: (1) prepare final acceptable biological catch (ABC) and optimum yield (OY) recommendations for 2003, (2) calculate limited entry, open access, and other allocations, (3) evaluate management options and the Environmental Assessment of Proposed Groundfish Management Measures and Specifications for 2003, (4) complete and/or review economic/social analysis of proposed harvest levels and management measures for 2003, (5) evaluate a restructured bycatch model, (6) complete and/or review rebuilding plans for overfished groundfish stocks,(7) resolve any outstanding recreational data issues and evaluate the need for inseason management adjustments, (8) consider recommending any Exempted Fishing Permits, (9) evaluate Programmatic Environmental Impact Statements, (10) recommend 2003 groundfish stock assessment priorities, (11) evaluate issues and consider recommendations for delegating nearshore management authority to the states, (12) consider recommendations for FMP Amendment 17 and multi-year management issues, (13) consider recommendations for marine reserve proposals for Channel Island National Marine Sanctuary, and (14) other miscellaneous Council groundfish issues.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 9, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17558 Filed 7–11–02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070102G]

Endangered Species; File No. 1389

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Stephen J. Morreale, Department of Natural Resources, Cornell University, Ithaca, NY 14853, has applied in due form for a permit to take loggerhead turtles (*Caretta caretta*), Kemp's ridley turtles (*Lepidochelys kempii*), green turtles (*Chelonia mydas*), and Leatherback turtles (*Dermochelys coriacea*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 12, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The purpose of this research is to re-institute a long-term mark-recapture study in order to monitor the population levels and health status of sea turtles inhabiting the Long Island Sound and Peconic Bay Estuaries. The turtles will be captured in pound nets then flipper and PIT tagged, blood sampled, biopsied, and released near their capture site. The researcher requests to be able to take 126 loggerhead, 52 Kemp's ridley, 45 green and 3 leatherback sea turtles.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: July 8, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–17561 Filed 7–11–02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062702A]

Marine Mammals; File Nos. 782–1676 and 1032–1679

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit to take marine mammals for scientific research:

National Marine Mammal Laboratory, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA, 98115; and

Dr. Robert A. Garrott, Ecology Department, Montana State University, 310 Lewis Hall, Bozeman, MT 59717.

DATES: Written or telefaxed comments must be received on or before August 12, 2002.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426 (File 782–1676 only); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

For Permit No. 782–1676, the applicant proposes to take Alaska harbor seals and spotted seals to estimate population size and trend, current and net productivity rates, and current takes by commercial fisheries and subsistence hunters. One component of the research is to determine the relative proportion of seals at sea that are not counted during aerial census surveys.

For Permit No. 1032–1679, the applicant proposes to take Weddell seals (*Leptonychotes weddellii*) by capture, tag and release and conduct census surveys for population estimates on McMurdo Sound, Antarctica. Other species that may be incidentally taken are crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*) and Antarctic fur seal (*Arctocephalus gazella*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 8, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–17556 Filed 7–11–02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062702B]

Marine Mammals; File No. 1032–1678

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Jennifer Skidmore and Jill Lewandowski, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112, have applied in due form for a permit to take Weddell seals (*Leptonychotes weddellii*) by capture, tag and release and conduct census surveys for population estimates on McMurdo Sound, Antarctica. Other species that may be incidentally taken are crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*) and Antarctic fur seal (*Arctocephalus gazella*).

DATES: Written or telefaxed comments must be received on or before August 12, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426 (File 782–1676 only); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Jill Lewandowski,(301)713–2289.

SUPPLEMENTARY INFORMATION: The subject application for Permit No. 112–1684–00 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: July 5, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries.

[FR Doc. 02–17560 Filed 7–11–02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0187]

3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0187.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirement

to the acquisition of similar property, must include a request for offerors to state prices for the new items being acquired both with and without any exchange allowance.

- 217.72, Bakery and Dairy Products. Section 217.7201, paragraph (b)(2), of this subpart requires a contractor's list of cabinet equipment in the Schedule of the contract, when the contractor is required to furnish its own cabinets for dispensing milk from bulk containers.
- 217.74, Undefinitized Contract

- 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside. Paragraph (c)(2) of this clause requires that, upon request of the contracting officer, the offeror will provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.
- 252.237–7000, Notice of Special Standards of Responsibility. Paragraph (c) of this provision requires the

Dated: July 8, 2002.
Eugene T. Nitta,
Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 02–17556 Filed 7–11–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062802A]

Marine Mammals; File Application No. 112–1684

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Point Defiance Zoo and Aquarium, 5400 North Pearl Street, Tacoma, WA 98407, has applied in due form for a permit to import one harbor seal (*Phoca vitulina richardsi*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before August 12, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular permit request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Jill Lewandowski,(301)713–2289.

SUPPLEMENTARY INFORMATION: The subject application for Permit No. 112–1684–00 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import one harbor seal (Phoca vitulina richardsi), from the Island Wildlife Natural Care Centre, Salt Spring Island, British Columbia, Canada, to Point Defiance Zoo and Aquarium in Tacoma, WA. The applicant requests this import for the purpose of public display. The receiving facility, Point Defiance Zoo and Aquarium, 5400 North Pearl Street, Tacoma, WA 98407 is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee; (2) offers an educational program based on professionally accepted standards of the American Zoo and Aquarium Association and the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 91–C–0003, issued by the U.S. Department of Agriculture under the Animal Welfare Act.

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 5, 2002.
Eugene T. Nitta,
Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries.
[FR Doc. 02–17560 Filed 7–11–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0187]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DoD Acquisition Process (Solicitation Phase)

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through December 31, 2002. DoD proposes that OMB extend its approval for 3 additional years.

DATES: DoD will consider all comments received by September 10, 2002.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite OMB Control Number 0704–0187 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0187.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirement addressed in this notice is available electronically on the World Wide Web at: *http://www.acq.osd.mil/dp/dars/dfars.html*. Paper copies are available from Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Information Collection in Support of the DoD Acquisition Process (Solicitation Phase), OMB Control Number 0704–0187.

Needs and Uses: This information collection requirement pertains to information that an offeror must submit to DoD in response to a request for proposals or an invitation for bids. DoD uses this information to evaluate offers; determine whether the offered price is fair and reasonable; and determine which offeror to select for contract award. DoD also uses this information in determining whether to provide precious metals as Government-furnished material; whether to accept alternate preservation, packaging, or packing; and whether to trade in existing personal property toward the purchase of new items.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 9,870,858.

Number of Respondents: 161,355.

Responses Per Respondent: Approximately 12.

Annual Responses: 1,954,238.

Average Burden Per Response: 5.05 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection pertains to information, not separately covered by another OMB clearance, that an offeror must submit to DoD in response to a request for proposals or an invitation for bids. In particular, the information collection covers the following DFARS requirements:

- 217.70, Exchange of Personal Property. Section 217.7004, paragraph (a), of this subpart requires that solicitations that contemplate exchange (trade-in) of personal property, and application of the exchange allowance to the acquisition of similar property, must include a request for offerors to state prices for the new items being acquired both with and without any exchange allowance.
- 217.72, Bakery and Dairy Products. Section 217.7201, paragraph (b)(2), of this subpart requires a contractor's list of cabinet equipment in the Schedule of the contract, when the contractor is required to furnish its own cabinets for dispensing milk from bulk containers.
- 217.74, Undefinitized Contract Actions. Unless an exception in 217.7404–5 of this subpart applies, paragraph (b) of 217.7404–3 requires the contractor to submit a qualifying proposal in accordance with the definitization schedule of the undefinitized contract action. A "qualifying proposal" is defined in paragraph (c) of 217.7401 as a proposal containing sufficient information for DoD to do complete and meaningful analyses and audits of the information in the proposal and any other information that the contracting officer has determined that DoD needs to review in connection with the contract.
- 217.75, Acquisition of Replenishment Parts. Paragraph (d) of 217.7504 of this subpart permits contracting officers to include, in sole-source solicitations for replenishment parts, a provision requiring an offeror to supply, with its proposal, price and quantity data on any Government orders for the replenishment part issued within the most recent 12 months.
- 252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material. Paragraph (b) of this clause requires an offeror to cite the type and quantity of precious metals required in the performance of the contract. Paragraph (c) requires the offeror to submit two prices for each deliverable item that contains precious metals: one based on the Government furnishing the precious metals, and the other based on the contractor furnishing the precious metals.
- 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country. Paragraph (c) of this provision requires an offeror to provide a disclosure with its offer if the government of a terrorist country has a significant interest in the offeror, in a subsidiary of the offeror, or in a parent company of which the offeror is a subsidiary.
- 252.211–7004, Alternate Preservation, Packaging, and Packing. Paragraph (b) of this provision requires an offeror to submit information sufficient to allow evaluation of any alternate preservation, packaging, or packing proposed by the offeror.
- 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside. Paragraph (c)(2) of this clause requires that, upon request of the contracting officer, the offeror will provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.
- 252.237–7000, Notice of Special Standards of Responsibility. Paragraph (c) of this provision requires the apparently successful offeror, under a solicitation for audit services, to give the contracting officer evidence that it is licensed by the cognizant licensing authority in the State or other political jurisdiction where the offeror operates its professional practice.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.
[FR Doc. 02–17522 Filed 7–11–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0082]

Federal Acquisition Regulation; Submission for OMB Review; Economic Purchase Quantities—Supplies

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0082).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning economic purchase quantities—supplies. A request for public comments was published in the **Federal Register** at 67 FR 20745, on April 26, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR,

and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or

Dated: July 8, 2002.
Linda K. Nelson,
Acting Director, Acquisition Policy Division.
[FR Doc. 02–17595 Filed 7–11–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0144]

Federal Acquisition Regulation; Submission for OMB Review; Treatment of Proprietary Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0144).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement

Dated: July 8, 2002.
Linda K. Nelson,
Acting Director, Acquisition Policy Division.
[FR Doc. 02–17597 Filed 7–11–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Treatment of Proprietary Data

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

DATES: Interested persons are invited to submit comments on or before August 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address

and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The provision at 52.207–4, Economic Purchase Quantities—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

B. Annual Reporting Burden

Respondents: 1,524.
Responses Per Respondent: 25.
Annual Responses: 38,100.
Hours Per Response: .83.
Total Burden Hours: 31,623.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantities—Supplies, in all correspondence.

Dated: July 8, 2002.
Linda K. Nelson,
Acting Director, Acquisition Policy Division.
[FR Doc. 02–17595 Filed 7–11–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0080]

Federal Acquisition Regulation; Submission for OMB Review; Integrity of Unit Prices

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0080).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning integrity of unit prices. A request for public comments was published in the **Federal Register** at 67 FR 20744 on April 26, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 15.408(f) and the clause at FAR 52.215–14, Integrity of Unit Prices, require offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule contains no reporting requirements on contracts with commercial items.

B. Annual Reporting Burden

Respondents: 1,000.
Responses Per Respondent: 10.
Annual Responses: 10,000.
Hours Per Response: 1 hour.
Total Burden Hours: 10,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices, in all correspondence.

Dated: July 8, 2002.
Linda K. Nelson,
Acting Director, Acquisition Policy Division.
[FR Doc. 02–17596 Filed 7–11–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0144]

Federal Acquisition Regulation; Submission for OMB Review; Payment by Electronic Fund Transfer

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0144).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning payment by electronic fund transfer. A request for public comments was published in the **Federal Register** at 67 FR 20744 on April 26, 2002. No comments were received.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires certain information to be provided by contractors which would enable the Government to make payments under the contract by electronic fund transfer (EFT). The information necessary to make the EFT transaction is specified in clause 52.232–33, Payment by Electronic Fund Transfer-Central Contractor Registration, which the contractor is required to provide prior to award, and clause 52.232–34, Payment by Electronic Fund Transfer-Other Than Central Contractor Registration, which requires EFT information to be provided as specified by the agency to enable payment by EFT.

B. Annual Reporting Burden

Respondents: 14,000.
Responses Per Respondent: 10.
Annual Responses: 140,000.
Hours Per Response: .5.
Total Burden Hours: 70,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0144, Payment by Electronic Fund Transfer, in all correspondence.

Dated: July 8, 2002.
Linda K. Nelson,
Acting Director, Acquisition Policy Division.
[FR Doc. 02–17597 Filed 7–11–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Treatment of Proprietary Data

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement is sponsoring a public meeting to discuss the treatment of proprietary data during all phases of DoD procurements. A background paper to be discussed at the public meeting is available on the Defense Procurement Internet home page at *http://www.acq.osd.mil/dp/*. If necessary to ensure that all the views of the interested parties have been heard, subsequent public meetings may be held concerning this issue. The dates and times of any subsequent meetings will be published after the initial meeting, on the Defense Procurement Internet home page at *http://www.acq.osd.mil/dp/*.

DATES: The first meeting will be held on July 26, 2002, from 9 a.m. to 5 p.m, with an hour break for lunch at 12 p.m.

ADDRESSES: The meeting will be held in Room C–43, Crystal Mall, Building 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, Chair, Defense Acquisition Regulations Council Committee on Patents, Data, and Copyrights, by telephone at (703) 588–5090, by fax at (703) 588–8037, or by e-mail at *William.Anderson@pentagon.af.mil*.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.
[FR Doc. 02–17523 Filed 7–11–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 8, 2002.
John D. Tressler,
Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: NCES Quick Response Information System.
Frequency: On Occasion.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions; Individuals or household; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden:
Responses: 10,518.
Burden Hours: 7,889.
Abstract: The Quick Response Information System (QRIS) is comprised

of two types of surveys, one oriented towards elementary and secondary school and library issues, the Fast Response Survey System (FRSS) and the second intended to address issues in postsecondary education, the Postsecondary Education Quick Information System (PEQIS). All the surveys conducted the QRIS are required to inform current policy issues for which there are no other timely and/or appropriate data available. In recent

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Lauren *Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section

be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 1735. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651.or to the e-mail address

available on the Internet at: *http://www.r5.fs.fed.us/tahoe/*.

EIS No. 020287, FINAL SUPPLEMENT, FHW, HI, Honoapiilani Highway/FAP Route 30 Improvement, New Information Concerning Construction of Modifications to Honoapiilani Highway from Puamana to Honokowai, COE Permits and NPDES Permit Issuance and Funding, Lahaina District, Maui County, HI, Wait Period Ends: August 12, 2002, Contact: Domingo Galicinao (808) 541–2700.

on the East to Mark Twain Lake and the Mexico Bypass on the West, Funding and COE Section 404 Permits Issuance, Pike, Monroe, Ralls and Audrain Counties, MO, Wait Period Ends: August 19, 2002, Contact: Don Newmann (573) 636–7104.

Amended Notices

EIS No. 020213, DRAFT EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements from PA Route 51 to I–

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental

of two types of surveys, one oriented towards elementary and secondary school and library issues, the Fast Response Survey System (FRSS) and the second intended to address issues in postsecondary education, the Postsecondary Education Quick Information System (PEQIS). All the surveys conducted the QRIS are required to inform current policy issues for which there are no other timely and/or appropriate data available. In recent years, surveys have been conducted on topics as diverse as distance education in postsecondary education, services for students with disabilities in postsecondary education, advanced telecommunications in elementary and secondary schools, summer programs for migrant students, and teacher quality.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2029. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17498 Filed 7–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Lauren *Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 8, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.
Frequency: On Occasion; Annually.
Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 2,887,200.
Burden Hours: 2,165,400.
Abstract: This promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 1735. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17499 Filed 7–11–02; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6630–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements
Filed July 01, 2002, through July 05, 2002
Pursuant to 40 CFR 1506.9.

EIS No. 020285, DRAFT SUPPLEMENT, FHW, CA, I–880/CA–92 Interchange Reconstruction, I–880 from Winton Avenue to Tennyson Road and CA–92 from Hesperian Boulevard to Santa Clara Street, Updated Information, Funding, City of Hayward, Alameda County, CA, Comment Period Ends: August 26, 2002, Contact: Maiser Khaled (916) 498–5020.

EIS No. 020286, DRAFT EIS, AFS, CA, Red Star Restoration Project, Removal of Fire-Killed Trees, Fuels Reduction, Road Reconstruction and Decommissioning, and Associated Restoration, Tahoe National Forest, Foresthill Ranger District, Placer County, CA, Comment Period Ends: August 26, 2002, Contact: Karen Jones (530) 478–6254. This document is available on the Internet at: *http://www.r5.fs.fed.us/tahoe/*.

EIS No. 020287, FINAL SUPPLEMENT, FHW, HI, Honoapiilani Highway/FAP Route 30 Improvement, New Information Concerning Construction of Modifications to Honoapiilani Highway from Puamana to Honokowai, COE Permits and NPDES Permit Issuance and Funding, Lahaina District, Maui County, HI, Wait Period Ends: August 12, 2002, Contact: Domingo Galicinao (808) 541–2700.

EIS No. 020288, DRAFT EIS, FHW, CA, Willits Freeway Bypass Project, Construction and Operation of a New Segment of U.S. 101, COE Section 404 Permit, NPDES Permit and Endangered Species Act (Incidental Take Permit), City of Willits, Mendocino County, CA, Comment Period Ends: August 26, 2002, Contact: Maiser Khaled (916) 498–5020.

EIS No. 020289, FINAL EIS, RUS, AK, Southern Intertie Project, Constructing and Operating a new 138kV Transmission Line between the Kenai Peninsula and Anchorage, Right-of-Way Permit, Special-Use Permit, COE Section 10 and 404 Permit, Kenai Peninsula to Anchorage, AK, Wait Period Ends: August 12, 2002, Contact: Laurence R. Wolfe (202) 720–1784.

EIS No. 020290, DRAFT SUPPLEMENT, COE, OR, Columbia River Channel Improvement Project, Additional Information, To Update the Disposal Plan and to Update the Project Economics, Columbia and Lower Willamette River Federal Navigation Channel, OR, Comment Period Ends: September 03, 2002, Contact: Laura Hicks (503) 808–4705.

EIS No. 020291, DRAFT EIS, FTA, VA, Dulles Corridor Rapid Transit Project, To Provide High-Quality and High-Capacity Transit Service in Dulles Corridor, West Falls Church Metrorail Station in Fairfax County to the Vicinity of Route 772 in Loudoun County, VA, Comment Period Ends: August 28, 2002, Contact: John Dittmeier (703) 247–6500.

EIS No. 020292, FINAL EIS, FHW, TN, KY, Corridor 18/Interstate 69 Proposed Improvements from the U.S. 412/U.S. 51 Interchange to the U.S. 51 Fulton Bypass/Purchase Parkway Interchange, Dyer and Obion Counties, TN and Fulton County, KY, Wait Period Ends: August 12, 2002, Contact: Charles Boyd (615) 781–5770.

EIS No. 020293, FINAL EIS, FHW, MO, MO–19, MO–107 and U.S. 54 Improvements and Extension, U.S. 61 near Bowling Green and New London on the East to Mark Twain Lake and the Mexico Bypass on the West, Funding and COE Section 404 Permits Issuance, Pike, Monroe, Ralls and Audrain Counties, MO, Wait Period Ends: August 19, 2002, Contact: Don Newmann (573) 636–7104.

Amended Notices

EIS No. 020213, DRAFT EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements from PA Route 51 to I–376 in Monroeville and Pittsburg, Funding, U.S. Coast Guard Bridge Permit and COE Section 404 Permit, Allegheny County, PA, Comment Period Ends: September 09, 2002, Contact: James A. Cheatham (717) 221–3461. Revision of FR Notice Published on 05/31/2002: Extending Comment Period From 08/14/2002 to 09/09/2002.

EIS No. 020231, DRAFT EIS, COE, TX, North Padre Island Storm Damage Reduction and Environmental Restoration Project, Construction of a Channel between the Laquna Madre and the Gulf of Mexico across North Padre Island referred to as Packery Channel Project, Nueces County, IL, Comment Period Ends: July 29, 2002, Contact: Sam J. Watson (409) 766–3946. Revision of FR Notice Published on 06/14/2002: Correction to Contact Person Phone Number.

EIS No. 020278, FINAL EIS, FHW, NY, NYS Route 17, Horseheads Project, Reconstruction from RM 17–6205–1069 to RM 14–6201–3040, Town and Village of Horseheads (P.I.N. 6239.00) Chemung County, NY, Wait Period Ends: August 05, 2002, Contact: Robert E. Arnold (518) 431–4127. Revision of FR Notice published on 07/05/2002: Correction to Document Status from Draft to Final.

EIS No. 020282, FINAL EIS, COE, NJ, Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440-RS, US Army COE Section 10 and 404 Permit Issuance, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ, Wait Period Ends: August 19, 2002, Contact: Steven Schumach (212) 264–0183. Revision of FR notice published on 07/05/2002: Correction Comment Period from 8/5/2002 to 8/19/2002.

Dated: July 9, 2002.

Joseph C. Montgomery,

Director, NEPA, Office of Federal Activities.

[FR Doc. 02–17537 Filed 7–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65360–CO Rating EC1, Lizard Head Road Easement, Application from Private Landowners Requesting a Permit to Cross Public Lands to Access Non-Federal Lands, San Juan National Forest, Dolores Ranger District, Dolores County, CO.

Summary: EPA expressed environmental concerns about the impacts of road construction in roadless areas and development impacts to wetlands. EPA suggests that the final EIS discuss how the potential impacts to these sensitive resources will be minimized and mitigated.

ERP No. D–BLM–K61155–CA Rating EC2, Imperial Sand Dunes Recreation Area, Revising and Updating the Recreation Area Management Plan and Amendment to the California Desert Conservation Area Plan, Imperial County, CA.

Summary: EPA expressed environmental concerns associated with air quality impacts, habitat degradation, habitat fragmentation, and wilderness trespass associated with OHV use; requested additional detail on thresholds and consequences associated with adaptive management; and recommended additional measures to promote energy conservation and pollution minimization.

ERP No. D–NPS–K61156–00 Rating EC2, Lake Mead National Recreation Area, Long-Term Management of Lake Mead and Mohave and Associated Shoreline and Development Area, Lake Management Plan, Clark County, NV and Mohave County, AZ.

Summary: EPA expressed environmental concerns due to projected adverse effects on water quality and aquatic resources. EPA provided comments on construction-related air emissions, pollution prevention opportunities, and hazardous materials, asking that the Final EIS discuss these issues and identify mitigation measures.

Final EISs

ERP No. F–AFS–L65333–OR Five Rivers Watershed Landscape Management Project, Terrestrial and Aquatic Habitat Restoration, Special-Use-Permit Issuance, Siuslaw National Forest, Waldport Ranger District, *Summary:* EPA believes that issues raised at the DEIS stage have been adequately addressed. EPA concurs with the selected alternative and is satisfied with mitigation of wetland losses.

ERP No. F–FHW–F40396–IL US 67 (FAP–310) Expressway from Jacksonville to Macomb Transportation Improvements, Funding, US Army COE Section 10 and 404 and NPDES Permits Issuance, Morgan, Cass, Schuyler and

"Supplemental Allocation of Fiscal Year 2002 Operator Training Grants" issued on June 5, 2002. This memorandum provides National guidance for the allocation of funds used under section 104(g)(l) of the Clean Water Act.

ADDRESSES: Municipal Assistance Branch, U.S. EPA, 1200 Pennsylvania Avenue, NW. (4204–M), Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Curt

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 02–145; FCC 02–178]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required

delivery of video programming for our ninth annual report ("2002 Report"). We seek to compare video distribution alternatives available to consumers, and to evaluate the extent to which consumers have choices among video programming distributors and delivery technologies and to properly define the economic market or markets where competition takes place. We expect to base our evaluation on differences in video programming offerings, prices for programming services and associated

existing Commission regulations and other provisions of the law on competition in the video marketplace. To what extent do consumers have access to more than one video programming distributor? To what extent have customers switched from one provider or technology to another, and what factors are responsible for the switch? Where does head-to-head competition exist between cable and other video programming distributors, or among various types of video

prevention opportunities, and hazardous materials, asking that the Final EIS discuss these issues and identify mitigation measures.

Final EISs

ERP No. F–AFS–L65333–OR Five Rivers Watershed Landscape Management Project, Terrestrial and Aquatic Habitat Restoration, Special-Use-Permit Issuance, Siuslaw National Forest, Waldport Ranger District, Lincoln and Lane Counties, OR.

Summary: The final EIS adequately discloses the impacts and satisfactorily responds to most of EPA's comments on the draft EIS. Therefore, EPA has no objection to the action as proposed.

ERP No. F–AFS–L65398–ID Brush Boulder Project, Vegetation Management, Road Construction, Reconstruction and Decommissioning, North Fork Payette River, Boise National Forest, Cascade Ranger District, Valley County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J67030–UT EPA expressed environmental concerns with the implementation of long-term treatment controls and mitigation associated with impacts to water quality.

Summary: ERP No. F–FAA–F51048–IL South Suburban Airport, Proposed Site Approval and Land Acquisition for a Future Air Carrier Airport, Will and Kankakee Counties, IL.

Summary: EPA has no adverse comments on the Tier 1 FEIS. EPA encourages the FAA to conduct a thorough analysis and discussion of direct, as well as, cumulative impacts associated with the proposed project in any Tier 2 environmental documentation.

ERP No. F–FHW–D40311–00 US Route 15 Improvement Project, PA–6015, Section G–20 and G–22 Tioga County, Pennsylvania, PIN 6008.22.123 Steuben County, New York and US Route 15 between PA Route 287 and Presho, New York, Funding and US Army COE Section 404 Permit Tioga County, PA and Steuben County, NY.

Summary: EPA continues to express environmental concern about impacts to natural resources as a result of the disposal of fill material generated during construction. EPA and other resource agencies support the acquisition and reforestation of a 100-year floodplain along the Cowanesque River in order to offset any outstanding wetland impacts.

ERP No. F–FHW–F40391–MI M–24 Reconstruction Project, From One Mile North of the Oakland County Line to I–69, Funding, Lapeer County, MI.

Summary: EPA believes that issues raised at the DEIS stage have been adequately addressed. EPA concurs with the selected alternative and is satisfied with mitigation of wetland losses.

ERP No. F–FHW–F40396–IL US 67 (FAP–310) Expressway from Jacksonville to Macomb Transportation Improvements, Funding, US Army COE Section 10 and 404 and NPDES Permits Issuance, Morgan, Cass, Schuyler and McDonough Counties, IL.

Summary: EPA determined that the FEIS adequately addressed its concerns regarding the purpose and need of the project, the choice of alignment alternatives, and groundwater quality impacts. However, EPA remains concerned about the impacts of explosive demolition techniques on the quality of the Illinois River and the direct impacts to the Beardstown Marsh Natural Area. EPA recommends considering alternate alignments or providing funding for special management techniques on nearby sites.

ERP No. F–FHW–G40164–TX President George Bush Turnpike (PGBT) Segment IV, Improvement from I–35E to I–635, Funding and US Army COE Section 404 Permit Issuance, Dallas Dallas County, TX.

Summary: EPA has no further comments to offer. The Final EIS has responded to comments on the Draft EIS.

ERP No. F–TPT–K61154–CA Presidio Trust Implementation Plan (PTIP), An Updated Plan for the Area B of the Presidio of San Francisco, Implementation, San Francisco Bay Area, Marin County, CA.

Summary: The FEIS had adequately addressed EPA's issues raised in our DEIS comment letter.

Dated: July 9, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–17538 Filed 7–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7245–2]

Availability of "Supplemental Allocation of Fiscal Year 2002 Operator Training Grants for Wastewater Security"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Supplemental Allocation of Fiscal Year 2002 Operator Training Grants" issued on June 5, 2002. This memorandum provides National guidance for the allocation of funds used under section 104(g)(l) of the Clean Water Act.

ADDRESSES: Municipal Assistance Branch, U.S. EPA, 1200 Pennsylvania Avenue, NW. (4204–M), Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Curt Baranowski, (202) 564–0636 or *baranowski.curt@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/tomm.htm*, under "*Supplemental Wastewater Security Grant Guidance*".

Dated: June 21, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–17539 Filed 7–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7245–3]

Availability of "Allocation of Fiscal Year 2002 Youth and the Environment Training and Employment Program Funds"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Allocation of Fiscal Year 2002 Youth and the Environment Training and Employment Program Funds" issued on May 28, 2002. This memorandum provides National guidance for the allocation of funds used under section 104(b)(3) of the Clean Water Act.

ADDRESSES: Municipal Assistance Branch (4204–M), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Curt Baranowski, (202) 564–0636 or *baranowski.curt@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from Program's web page at *http://www.epa.gov/owm/youth.htm* under the *Grant Guidance* link.

Dated: June 7, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–17540 Filed 7–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 02–145; FCC 02–178]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing the competition report that is to be submitted to Congress in December 2002. The document will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due on or before July 29, 2002, and reply comments are due on or before August 30, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION, CONTACT: Anne Levine, Media Bureau at (202) 418–7027 or via internet at *alevine@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry*, MB Docket 02–145, adopted June 13, 2002 and released June 14, 2002. The full text of this *Notice* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via internet at *http://www.fcc.gov/mb/.*

Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to annually report to Congress on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry* ("*Notice*") solicits data and information on the status of competition in the market for the delivery of video programming for our ninth annual report ("2002 Report"). We seek to compare video distribution alternatives available to consumers, and to evaluate the extent to which consumers have choices among video programming distributors and delivery technologies and to properly define the economic market or markets where competition takes place. We expect to base our evaluation on differences in video programming offerings, prices for programming services and associated equipment, and other services offered (e.g., telephony, high-speed Internet access services). We seek information that will allow us to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and the effect on the cable television industry and on consumers. The Commission will report on the current state of competition and report on changes in the competitive environment since our 2001 Report was submitted to Congress.

2. The accuracy and the usefulness of the 2002 Report are directly related to the information we receive from commenters. To the extent feasible, we request data as of June 30, 2002, to facilitate our analysis of competitive trends over time. Comments submitted in this proceeding will be augmented with information from publicly available sources and other Commission proceedings.

Competition in the Market for the Delivery of Video Programming

3. Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors include cable systems, direct broadcast satellite ("DBS") providers, home satellite dish ("HSD") providers, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution services ("MMDS"), broadband service providers ("BSPs"), and over-the-air broadcast television stations.

4. We ask commenters to provide information on the most significant changes or developments in the past year. Specifically, we seek information regarding each of the video programming distributors, including the number of homes passed, the number of subscribers, the services offered, the cost for various service options, financial information on each industry, ownership information, and data on investments in plant and facility upgrades.

5. We seek information on industry and market structure and the effect of existing Commission regulations and other provisions of the law on competition in the video marketplace. To what extent do consumers have access to more than one video programming distributor? To what extent have customers switched from one provider or technology to another, and what factors are responsible for the switch? Where does head-to-head competition exist between cable and other video programming distributors, or among various types of video programming distributors? How has such competition affected prices, service offerings, and quality of service? We seek information on existing and planned overbuilding activity.

6. We request comment on any factors that are unique to competition in the multiple dwelling units ("MDUs") submarket. We request information for new case studies and updates on previous case studies on the effects of actual and potential competition in local markets where consumers have a choice among video programming distributors. We also seek information on what barriers to entry exist in the market?

7. We ask commenters to provide data on national and local programming services, and their ownership. We seek information on the extent to which programmers are affiliated with video programming distributors and to what extent programming distributors, both broadcast and non-broadcast programming services, are involved in the production of the programming they provide, vertically integrated or not. Further, we request data on programming services including the scope of service, launch date, identification of ownership, and number of subscribers. To what extent are video programming distributors able to acquire or license unaffiliated programming? Are there certain programming services or types of services without which competitive video service providers may find themselves unable to compete effectively. We also seek information on how video programming distributors package their programming. In addition, we seek information on the ability of programmers to sell programming.

8. Further, we request comment regarding public, educational, and governmental ("PEG") access and leased access channels and the number of channels being used for each of these purposes. We also seek information on the use of leased access channels, either on a part time or full time basis. We request comment on the effectiveness of our program access, program carriage, and channel occupancy rules. We seek

information regarding video programming providers' experiences offering closed captioning and video description.

9. We also ask for information on advanced service offerings (e.g., high-speed Internet access services, telephony, video-on-demand, high definition television, interactive television) and new ways of offering service (e.g., personal video recorders, streaming video) that are being

resulting from upgrades, the number of systems with digital tiers, the number of households where digital services are available, and the number of subscribers to digital services. What types of programming are available on digital tiers?

12. We seek information on cable system transactions, including the names of the buyer and seller, the date of the transaction, type of transaction (i.e., sale, swap, or trade), name and

services are offered in this manner? What are the regulatory implications of server-based services? What effect does server-provided video have on a programmer's ability to launch a new service?

16. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by

local television service is offered, or will be offered in the near future, pursuant to *Satellite Home Viewer Improvement Act of 1999* ("SHVIA"), including the number and affiliation of the stations carried. What percentage of DBS subscribers are opting for local programming packages where available? In cases in which additional equipment is needed to receive a full complement of local signals, what percentage of subscribers are obtaining this additional

("multicasting"), and the extent to which they are being planned as ancillary and supplementary services such as subscription services. We also seek information on DTV carriage agreements between broadcasters and cable operators and the status of any such negotiations. In addition, we request information on the sales of DTV consumer equipment and the factors affecting consumer adoption of DTV equipment.

many programmers and what type of programming is being offered on this basis? To what extent are OVS operators offering voice and data services? How are such service offerings packaged and at what price to consumers? What effect has the *City of Dallas, Texas* v. *FCC* decision had on the growth of OVS? Are OVS operators combining such systems with franchised cable operations to serve specific geographic regions?

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information regarding video programming providers' experiences offering closed captioning and video description.

9. We also ask for information on advanced service offerings (e.g., high-speed Internet access services, telephony, video-on-demand, high definition television, interactive television) and new ways of offering service (e.g., personal video recorders, streaming video) that are being deployed by video programming distributors. Specifically, we request information regarding the amount and type of programming being offered in high-definition television ("HDTV") format. We seek updated statistics such as the cost of such services, the subscribership to these services, and the number of homes to which each type of service is available. Further, we seek information on the impact that the availability of non-video services offered by video programming providers has on the nature of competition in the video marketplace. We request comment on the development and deployment of ITV services. We request information on the extent to which video programming distributors offer or plan to offer EPGs. To what extent are national distributors of EPGs affiliated with video programming distributors? To what extent are EPGs that are affiliated with a video programming distributor available to competitors? We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How many households have one or more devices? We seek information on the retail availability of navigation devices to consumers.

Cable Television

10. We plan to report on the performance of the cable television industry, and request data and comments on the current state of competition in this segment of the market. We seek statistical information on the cable industry generally and specifically the financial performance of the industry, capital acquisition and disposition, rates, channel capacity, programming costs, homes passed, subscribership, viewership, new service offerings, and the investments that cable operators have made to upgrade their plant and equipment.

11. We request information on the deployment of various technical methods to increase capacity. For individual MSOs, we request data on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity resulting from upgrades, the number of systems with digital tiers, the number of households where digital services are available, and the number of subscribers to digital services. What types of programming are available on digital tiers?

12. We seek information on cable system transactions, including the names of the buyer and seller, the date of the transaction, type of transaction (i.e., sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. We seek similar information for non-cable video programming providers. We also request comment on the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data regarding the effect of clustering by cable operators on competition in the video programming distribution market.

13. We seek comment on whether cable operators are changing the way they package programming. We also are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition.

14. We further request information about the availability of advanced services such as digital video, high-speed Internet access services, telephony, video-on-demand, and the amount and type of programming being offered in HDTV format. To what extent are consumers now purchasing cable modem equipment certified by CableLabs under their Certified Cable Modem Project, rather than renting from video programming distributors? We also seek the most recent information regarding the development of specifications for interoperable set-top boxes on Cable Television Laboratories, Inc.'s OpenCable process. What percentage of existing equipment is compatible with the OpenCable standards? What developments have taken place in the last year relating to the POD-Host Interface, or PHI license, that affect the deployment of navigation devices or their availability at retail stores? Finally, we solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant. What is the status of the testing and implementation of this standard?

15. We seek information on cable operators that currently provide or plan to provide server-based offerings. Under these systems, the programming services reside at a central location and are accessible on demand. What types of services are offered in this manner? What are the regulatory implications of server-based services? What effect does server-provided video have on a programmer's ability to launch a new service?

16. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. Previously, we reported that the benchmark had not been met. Have there been any developments in the last year that would suggest that the criteria specified under Section 612(g) have been met? Under sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity. We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals. Further, we seek information on the number of cable systems not subject to effective competition that lack addressable converters or have other technological limitations that prevent access to programming on a per channel or per program basis without subscription to tiers other than the basic tiers. Are there cable systems that will not meet the October 2002 deadline for the capability to allow "buy-through"?

Direct-to-Home Satellite Services

17. We seek updated information about direct-to-home ("DTH") satellite services, which includes direct broadcast satellite ("DBS") and home satellite dish ("HSD" or "C-Band") services. We ask for information on subscribership on DBS and HSD services. Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another video programming distributor? How many or what percentage of households cannot receive DBS service because they are not within the line-of-sight of the satellite signal? We seek comment on the geographic locations of DBS and HSD subscribers, by state and type of area (i.e., urban, suburban, rural). To what extent do DBS subscribers reside in areas not passed by cable systems?

18. We request information on the number of markets where local-into-local television service is offered, or will be offered in the near future, pursuant to *Satellite Home Viewer Improvement Act of 1999* ("SHVIA"), including the number and affiliation of the stations carried. What percentage of DBS subscribers are opting for local programming packages where available? In cases in which additional equipment is needed to receive a full complement of local signals, what percentage of subscribers are obtaining this additional equipment? We also request information on the impact on DBS subscribership and penetration as well as its effect on the video programming market generally. What percentage of DBS subscribers continues to subscribe to cable in order to receive local broadcast signals?

19. We request data that will allow us to compare DBS and cable rates for programming packages and equipment. What is the typical cost of DBS equipment and installation? We request information regarding DBS operator equipment leasing program options, including the monthly rates charged for leasing equipment. To what extent do satellite operators subsidize equipment costs in order to attract subscribers? Have DBS rates for some programming packages increased over the last year? What factors affect changes in DBS prices?

20. We seek information on the status of Internet access services offered by the DBS industry. We seek information regarding other advanced services offered or co-marketed by DBS operators. To what extent are DBS operators offering programming in HDTV format? What marketing arrangements have non-DBS video programming distributors entered into to provide DBS service to their customers?

Broadcast Television

21. We seek information on the role of broadcast television in the market for the delivery of video programming. We request information on the number and percentage of MVPD subscribers who rely on off-air reception for local broadcast service on one or more television sets, by type of MVPD service. In addition, what percentage of households have only over-the-air broadcast television reception on all television sets?

22. We request information regarding the amount and type of programming (e.g., network, local, syndicated) being broadcast on digital channels, including the extent to which DTV channels are being used for HDTV, the extent to which they are being used for multichannel program offerings ("multicasting"), and the extent to which they are being planned as ancillary and supplementary services such as subscription services. We also seek information on DTV carriage agreements between broadcasters and cable operators and the status of any such negotiations. In addition, we request information on the sales of DTV consumer equipment and the factors affecting consumer adoption of DTV equipment.

Wireless Cable

23. We seek information regarding the previously identified trend towards declining subscribership for MMDS-provided video. We request fact-based projections and forecasts on the future of video programming distribution via MMDS technology. What factors affect the health and viability of the MMDS industry? We seek information about the availability of advanced services such as digital video, high-speed Internet access services, and telephony. What is the current availability of two-way services such as high-speed Internet access and telephony by MMDS operators?

Satellite Master Antenna Systems

24. SMATV systems, also known as private cable operators or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. We request data for SMATV systems, including subscribership levels, service areas, and the identities of the largest operators. We also request information on the types of services offered by SMATV providers and the price charged for those services. How do the programming packages offered and the price of SMATV service compare to those of incumbent cable operators? Are there services that SMATV operators provide their subscribers that cable, DBS, and other technologies do not? Finally, what factors affect the health and viability of the SMATV industry?

Open Video Systems

25. We request information on the operation of open video systems, including the number of homes passed, the number of subscribers, and the types of services being offered by OVS operators. How are video services provided by OVS operators packaged and what is the typical cost for monthly service? To what extent are open video systems joint ventures between video service providers and other entities and what are the arrangements among the participants in such ventures? Are unaffiliated programmers seeking carriage on open video systems? How many programmers and what type of programming is being offered on this basis? To what extent are OVS operators offering voice and data services? How are such service offerings packaged and at what price to consumers? What effect has the *City of Dallas, Texas* v. *FCC* decision had on the growth of OVS? Are OVS operators combining such systems with franchised cable operations to serve specific geographic regions?

Local Exchange Carriers and Utilities

26. We seek information regarding LECs, long distance telephone companies, and utility companies that provide video services. We request information on franchised cable systems operated by LECs, both within their telephone service areas and outside those regions. To what extent are LEC video programming services being bundled with telephone, Internet, or other utility services?

Broadband Service Providers

27. We seek current information regarding the provision of video, voice, and data services by broadband service providers ("BSPs"). We request data on the geographic locations of such systems, whether they operate as franchised cable systems, the number of homes passed, and the number of subscribers they serve. We ask commenters to provide information regarding the video service packages that are offered and the rates charged for the various packages. Are video services offered in combination with advanced services? We further seek comment on the current and potential effect of BSPs on the status of video competition. What are the technical and economic obstacles to the successful operation of systems of this type? Are there issues involving pole attachments, access to programming, competitors' rates, broadcast signal retransmission consent, equipment availability, access to MDU inside wiring, or local municipal regulation that affect the viability of BSPs as competitors in the market for the delivery of video programming?

Home Video Sales and Rentals

28. We seek information regarding the home video sales and rental market. We request data on the number or percentage of households with videocassette recorders, laser disc players, DVD players, and PVRs. We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental. How does the cost of renting a video or DVD movie compare to the cost of a pay-per-view, video-on-demand, or near video-on-demand movie from a

video programming distributor? We seek information on the development of the Internet as a means through which some video retailers are selling their videos. Further, we seek information on the development of companies offering PVR services in conjunction with video programming distributors, equipment manufacturers, advertisers, and programmers.

Internet Video

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to

comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Elevation Certificate and the Floodproofing Certificate. The Elevation certificate is required by the NFIP to certify the elevations of the buildings so the policy can be properly rated. It also provides documentation to verify the community's enforcement of building

The Elevation Certificate/ Floodproofing Certificate is an adjunct to the application for flood insurance and is required for proper rating of Post-FIRM structures, which are buildings constructed after publication of the Flood Insurance Rate Map (FIRM), for flood insurance in Special Flood Hazard Areas (44 CFR 61.7,61.8). In addition, the Elevation Certificate is needed for Pre-FIRM structures being rated under Post-FIRM flood insurance rules. The

Collection of Information

Title: Post Construction Elevation Certificate/FloodProofing Certificate.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0077.

Form Numbers: FEMA Form 81–31, Elevation Certificate, and FEMA Form 81–65, Flood Proofing Certificate.

Abstract: The Elevation Certificate and Floodproofing Certificate are adjuncts to the application for flood

rules. The certificates provide community officials and others standardized documents to readily record needed information.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. The community officials or other professionals provided the elevation data required to document conformance with floodplain management regulations

video programming distributor? We seek information on the development of the Internet as a means through which some video retailers are selling their videos. Further, we seek information on the development of companies offering PVR services in conjunction with video programming distributors, equipment manufacturers, advertisers, and programmers.

Internet Video

29. Finally, we seek information on the types of video services currently being offered over the Internet and fact-based projections of when Internet video will become a viable competitor in the market for the delivery of video programming. We also solicit information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet.

Procedural Matters

Ex Parte

30. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

Filing of Comments and Reply Comments

31. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 29, 2002, and reply comments on or before August 30, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The Media Bureau contact for this proceeding is Anne Levine at (202) 418–7027, or at *alevine@fcc.gov*.

Ordering Clause

34. This Notice is issued pursuant to authority contained in sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17516 Filed 7–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Elevation Certificate and the Floodproofing Certificate. The Elevation certificate is required by the NFIP to certify the elevations of the buildings so the policy can be properly rated. It also provides documentation to verify the community's enforcement of building ordinances, which is important to the NFIP mitigation and floodplain management activities.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Jhun de la Cruz, Insurance Examiner, Federal Insurance and Mitigation Administration, (202) 646–2650 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.anderson@fema.gov*.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) regulations require the elevation or floodproofing of newly constructed structures in designated special flood hazard areas. As part of the agreement for making flood insurance available in a community, the NFIP requires the community to adopt a floodplain management ordinance containing certain minimum requirements intended to reduce future flood losses. One such requirement is that the community require that residential buildings be elevated to above the base flood elevation and, to enforce this requirement, obtain the elevation of the lowest floor (including basement) of all new and substantially improved structures, and maintain a record of all such information. These data should be generated and retained as part of the community's permit issuance and building inspection processes. The Elevation Certificate is one convenient way for a community to comply with this requirement; however, it is not prescribed. The Floodproofing Certificate may similarly be used to establish the required record in those instances when floodproofing for non-residential structures is a permitted practice.

The Elevation Certificate/ Floodproofing Certificate is an adjunct to the application for flood insurance and is required for proper rating of Post-FIRM structures, which are buildings constructed after publication of the Flood Insurance Rate Map (FIRM), for flood insurance in Special Flood Hazard Areas (44 CFR 61.7,61.8). In addition, the Elevation Certificate is needed for Pre-FIRM structures being rated under Post-FIRM flood insurance rules. The standardized format of the Elevation

Certificate and Floodproofing Certificate for Non-Residential Structures (FEMA Forms 81–31 and 81–65) provide the community officials and others documents, which may be used to readily record needed information.

Collection of Information

Title: Post Construction Elevation Certificate/FloodProofing Certificate.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0077.

Form Numbers: FEMA Form 81–31, Elevation Certificate, and FEMA Form 81–65, Flood Proofing Certificate.

Abstract: The Elevation Certificate and Floodproofing Certificate are adjuncts to the application for flood insurance. The certificates are required for proper rating of post Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others standardized documents to readily record needed information.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. The community officials or other professionals provided the elevation data required to document conformance with floodplain management regulations and for the applicants so that actuarial insurance rates can be charged for insuring property against the flood hazard.

Affected Public: Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions, Farms, and State, Local or Tribal Governments.

ESTIMATED TOTAL ANNUAL BURDEN (C) HOURS

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response	Annual burden hours (A × B × C)
81–31	54,515	1	3	63,545
81–65	180	1	3.25	910
Total	54,695			164,455

Estimated Cost: The estimated annual cost to the respondents is approximately $12,306,375 (54,695 × $225 (average cost)). This estimated cost is based on a fee of $150$300 charged to the applicant by the private sector professional completing the Elevation or Floodprooofing certificates. The estimated annual cost to the Federal government to process, analyze and maintain this information is approximately $77,485.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

Dated: July 3, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–17555 Filed 7–11–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1422–DR]

Arizona; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arizona (FEMA–1422–DR), dated June 25, 2002, and related determinations.

EFFECTIVE DATE: July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arizona is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2002:

Coconino and Gila Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17552 Filed 7–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1425–DR), dated June 28, 2002, and related determinations.

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 28, 2002:

Bexar, Blanco, Comal, Hays, Kerr and Medina Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1425–DR), dated June 28, 2002, and related determinations.

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 28, 2002:

Bexar, Blanco, Comal, Hays, Kerr and Medina Counties for Individual Assistance.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Bexar, Blanco, Comal, Hays, Kerr and Medina Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

I do hereby appoint Sandra L. Coachman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Bexar, Blanco, Comal, Hays, Kerr and Medina Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of State

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: The Department of State cancelled the following Optional Form:

The purpose of the project is to provide expanded office and vehicle maintenance facilities for the INS within reasonable distance of the International Port of Entry at Otay Mesa in western San Diego County, California.

The purchase of 20 acres of property in unincorporated western San Diego County will be the proposed action evaluated in the EA. The EA will examine the potential impacts to the

identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EA should be directed to GSA at the address provided above.

Kevin F. Waldron,

Site Specialist.

[FR Doc. 02–17510 Filed 7–11–02; 8:45 am]

BILLING CODE 6820–27–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 4, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include Public Assistance, limited to Category A (debris removal), and Category B (emergency protective measures), including direct Federal assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Bexar, Blanco, Comal, Hays, Kerr and Medina Counties for Public Assistance, limited to Category A (debris removal) and Category B (emergency protective measures), including direct Federal assistance (already designated for Individual Assistance).

Bandera, Gillespie, Kendall and Uvalde Counties for Individual Assistance and Public Assistance, limited to Category A (debris removal) and Category B (emergency protective measures), including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17553 Filed 7–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 4, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 4, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms and flooding beginning on June 29, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Texas

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sandra L. Coachman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Bexar, Blanco, Comal, Hays, Kerr and Medina Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17554 Filed 7–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 7, 2002

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 7, 2002.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¾ percent.

By order of the Federal Open Market Committee, July 3, 2002.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 02–17512 Field 7–11–02; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee meeting on May 7, 2002, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of State

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: The Department of State cancelled the following Optional Form: OF 230, Part 1, Application for Immigrant Visa and Alien Registration.

This form is now a State Department form (DS Form 2083 Part I). You can request copies of the new form from: Department of State, A/RPS/DIR, SA–22, 18th and G Streets, NW; Suite 2400, Washington, DC 20522–2201, 202.312.9605.

DATES: Effective July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202.312.9605.

Dated: July 2, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–17496 Filed 7–11–02; 8:45 am]

BILLING CODE 5820–34–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent; Environmental Assessment: San Diego County, CA

AGENCY: General Services Administration (GSA).

ACTION: Notice of intent.

SUMMARY: The GSA is issuing this notice to advise the public that an Environmental Assessment will be prepared for a proposed construction project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Waldron (9PC), United States General Services Administration, Public buildings Service, 450 Golden Gate Avenue Third Floor, San Francisco, Ca 94102, Phone (415) 522–3275 Fax (415) 522–3316.

SUPPLEMENTARY INFORMATION: The GSA, in conjunction with the Immigration and Naturalization Service (INS), will prepare an Environmental Assessment (EA) to evaluate the environmental impacts of construction of a Border Patrol Station/Administration Building for the United States Immigration and Naturalization Service (INS). Potential resources areas of concern within the project area include endangered species, cultural resources, and traffic.

The purpose of the project is to provide expanded office and vehicle maintenance facilities for the INS within reasonable distance of the International Port of Entry at Otay Mesa in western San Diego County, California.

The purchase of 20 acres of property in unincorporated western San Diego County will be the proposed action evaluated in the EA. The EA will examine the potential impacts to the environment that may result from three alternatives and a "no action" alternative. Implementation of either action alternative would result in the construction of a one or two story building of approximately 75,000 square feet, vehicle maintenance and storage facilities, and associated parking lots, landscaping, and infrastructure improvements. Major environmental issues that will be addressed in the EA include, but are not limited to, socioeconomic impacts, air and water quality, traffic and transportation, endangered species, cultural resources, and local infrastructure impacts. The draft EA is due to be published in September 2002. A public hearing and a 45-day review period will follow the publication and distribution of the Draft EA. Four alternatives are being considered for this project. These include construction on a 20-acre parcel known as the Swallow Parcel at Alta Road and Siempre Viva Road, construction on a 35-acre parcel at Alta Road and the yet-to-be constructed Lone Star Road, construction on a 20-acre parcel also off Alta Road north of Lone Star Road, or a no action alternative.

The appropriate federal, state and local agencies, private organizations and citizens who have previously expressed or are known to have interest in this proposal will be placed on a mailing list to receive project-related materials.

A Public Scoping Meeting

Will be held Thursday, July 18, 2002 at 6:30 p.m. at the Otay Mesa Branch Library 3003 Coronado Avenue, San Diego.

The purpose of this hearing is to receive written and verbal comments regarding the potential environmental impacts of the land purchase and construction of the Border Patrol facility. A brief presentation will precede the request for public comment. GSA and INS representative will be available at this meeting to receive comments from the public. Translation services will be made available upon request tot he GSA.

To ensure that the full range of issues related to this proposal action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EA should be directed to GSA at the address provided above.

Kevin F. Waldron,

Site Specialist.

[FR Doc. 02–17510 Filed 7–11–02; 8:45 am]

BILLING CODE 6820–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02168]

Clinical Immunization Safety Assessment Centers (CISA); Notice of Availability of Funds for Fiscal Year 2002; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for a cooperative agreement program for Clinical Immunization Safety Assessment Centers (CISA) was published in the **Federal Register** on June 24, 2002, [Vol. 67 Number 121, Pages 42564–42566]. The notice is amended as follows: On page 42565, first column, under Section C. Eligible Applicants, at the end of the first paragraph, add the following sentence: "The existing CISA Network includes Boston Medical Center, Columbia Presbyterian, John Hopkins (and it's subcontractor, University of Maryland), Kaiser Permanente Northern California (and it's subcontractors Vanderbilt and Stanford)."

Dated: July 5, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17505 Filed 7–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Implementation of Promoting Safe and Stable Families by Indian Tribes.

OMB No.: New Collection.

Description: The purpose of this study is to examine the ways in which Indian Tribes used funds they received under

title IV–B subpart 2 to provide services that strengthen families' ability to care for their children. Additionally, a broad range of related child welfare issues with respect to Indian Tribes will be explored. Consistent with this approach, the research framework for this study documents and analyzes a full range of implementation issues for Promoting Safe and Stable Families (PSSF)—planning; accomplishments and changes; organization and infrastructure; related services and practices; and resource uses and allocation—over time and across various stakeholders involved. This study also provides a historical perspective on Tribal implementation of the PSSF legislation, including recent emphasis on strengthening parental relationships and promoting healthy marriages.

Respondents: Tribal Leaders; Program Managers for title IV–B, subpart 1 and 2 and Front Line Workers for title IV–B, subpart 1 and 2; Child Welfare/Human Service Collaborators; Funding Officials; and Court Officials.

ANNUAL BURDEN ESTIMATES

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to the appropriate contact person in the **FOR FURTHER INFORMATION CONTACT** section of

diseases, pediatrics, microbiology, biochemistry, and consumer interest.

Functions

1. *Allergenic Products Advisory Committee*

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the

nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of

title IV–B subpart 2 to provide services that strengthen families' ability to care for their children. Additionally, a broad range of related child welfare issues with respect to Indian Tribes will be explored. Consistent with this approach, the research framework for this study documents and analyzes a full range of implementation issues for Promoting Safe and Stable Families (PSSF)—planning; accomplishments and changes; organization and infrastructure; related services and practices; and resource uses and allocation—over time and across various stakeholders involved. This study also provides a historical perspective on Tribal implementation of the PSSF legislation, including recent emphasis on strengthening parental relationships and promoting healthy marriages.

Respondents: Tribal Leaders; Program Managers for title IV–B, subpart 1 and 2 and Front Line Workers for title IV–B, subpart 1 and 2; Child Welfare/Human Service Collaborators; Funding Officials; and Court Officials.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal Leaders	40	1	1	40
Program Managers and Front Line Workers	120	1	1	120
Funding Officials	20	1	1	20
Child Welfare/Human Service Collaborators	60	1	1	60
Court Officials	20	1	1	20
Estimated Total Annual Burden Hours				260

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 8, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17480 Filed 7–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–2002–05]

Notice of Second Request for Applications Under the Office of Community Services Fiscal Year 2002 Assets for Independence Demonstration Program (IDA Program)

AGENCY: Office of Community Services (OCS), Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of continuing availability of funds and request for a second round of competitive applications under the Office of Community Services' Assets for Independence Demonstration Program.

SUMMARY: Applications received pursuant to the ACF Program Announcement issued in the **Federal Register** on April 15, 2002 (69 FR 18312) revealed there is an insufficient number of acceptable applications in the first round of proposal reviews for OCS to fully expend available funds. Therefore, the Office of Community Services announces a second invitation to eligible entities to submit applications pursuant to that announcement. Applications must be received on or before August 5, 2002.

Application Deadline: Applications must be received on or before August 5, 2002 in order to be considered for review and funding.

FOR FURTHER INFORMATION CONTACT: Sheldon Shalit, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone: 202–401–4807; e-mail: *sshalit@acf.hhs.gov.*

Dated: July 1, 2002.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 02–17519 Filed 7–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Blood Products Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through December 31, 2003.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to the appropriate contact person in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding nominations except for consumer representatives: Jane Brown, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314.

Regarding nominations for consumer representatives: Linda Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members with appropriate expertise for vacancies listed as follows:

1. Allergenic Products Advisory Committee: Three vacancies occurring August 31, 2003; immunology, pediatrics, internal medicine, biochemistry, statistics, consumer interest, and related scientific fields.

2. Blood Products Advisory Committee: One vacancy occurring in September 30, 2002, and six vacancies occurring on September 30, 2003; clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields.

3. Transmissible Spongiform Encephalopathies Advisory Committee: Five vacancies occurring January 31, 2003; clinical administrative medicine, hematology, virology, neurology, infectious diseases, immunology, blood banking, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions.

4. Vaccines and Related Biological Products Advisory Committee: Five vacancies occurring in January 31, 2003; immunology, molecular biology, recombinant deoxyribonucleic acid (rDNA), virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, biochemistry, and consumer interest.

Functions

1. *Allergenic Products Advisory Committee*

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

2. *Blood Products Advisory Committee*

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

3. *Transmissible Spongiform Encephalopathies Advisory Committee*

Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

4. *Vaccines and Related Biological Products Advisory Committee*

Reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular needs at this time for each committee are shown in section I of this document. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Consumer Representatives

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through consumer organizations that have the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vita of each nominee, current address and telephone numbers, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: July 5, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–17514 Filed 7–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Evidence Based Assisted Reproductive Technologies; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "Evidence Based Assisted Reproductive Technologies." The public workshop will be of primary interest to consumers, researchers, academia, ART practitioners, and sponsors of clinical trials evaluating novel ART. The goals of the public workshop are to: (1) Assess the usefulness of animal models in evaluating the safety and efficacy of human ART, and (2) identify social and ethical issues specific to ART. These issues will be discussed by the Reproductive Health Drugs Advisory Committee (the subcommittee).

Date and Time: The public workshop will be held on Thursday, July 18, 2002, from 8 a.m. to 4 p.m.

Location: The public workshop will be held in the Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD 20857. Seating is limited and available only on a first-come, first-served basis.

address, telephone number, fax number, e-mail address, title, business affiliation (if applicable), the sponsor of the presentation (e.g., the organization paying travel expenses or fees), a brief summary of the presentation, and the approximate amount of time requested for the presentation. Presentation times may be limited. Persons or groups having similar interests are encouraged to consolidate their presentations and present them through a single

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 10, 2002.

technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HA Calculation of Occupancy Percentage for a Requested Budget Year (RBY).

OMB Control Number: 2577–0066.

Description of the need for the information and proposed use: This collection of information is necessary to

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Evidence Based Assisted Reproductive Technologies; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) in cosponsorship with the National Institutes of Health (NIH), and Department of Health and Human Services (DHHS), Office of Women's Health is announcing the following public workshop entitled: "Evidence Based Assisted Reproductive Technologies (ART)." The topics to be discussed include: (1) The FDA regulatory framework; (2) methods of supporting research in this area by NIH; and (3) scientific, social, ethical and policy issues concerning ART.

Date and Time: The public workshop will be held on September 18, 2002, from 8:30 a.m. to 4:30 p.m., and September 19, 2002, from 8 a.m. to 12 a.m.

Location: The public workshop will be held at Lister Hill Center, Bldg. 38A, NIH, 8600 Rockville Pike, Bethesda, MD.

Contact Person: For information about this notice: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210, FAX 301–594–1944.

For information about the public workshop: Melanie Whelan, Center for Biologics Evaluation and Research (HFM–40), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3079, FAX 301–827–3843, or e-mail: whelan@cber.fda.gov.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to Melanie Whelan (see *Contact Person*) by Friday, September 6, 2002. The registration form is available at http://www.fda.gov/cber/meetings.htm. There is no registration fee for the public workshop. Space is limited, therefore interested parties are encouraged to register early. There will be no onsite registration.

If you need special accommodations due to a disability, please contact Melanie Whelan at least 7 days in advance.

SUPPLEMENTARY INFORMATION: This public workshop will provide a forum for discussion of scientific, social, ethical, and policy issues related to ART. The public workshop will be of primary interest to consumers, researchers, academia, ART practitioners, and sponsors of clinical trials evaluating novel ART. The goals of the public workshop are to: (1) Assess the usefulness of animal models in evaluating the safety and efficacy of human ART, and (2) identify social and ethical issues specific to ART. These issues are of interest to FDA, NIH, and DHHS to guide development of scientific initiatives, policy, and regulations in this area and to identify areas where research funding may be needed.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the workshop will also be available on the Internet at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: July 8, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17584 Filed 7–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Drug Development; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop, cosponsored with the American Academy of Pediatrics (AAP), regarding pediatric oncology drug development. The public workshop is intended to provide information for and perspective from advocacy groups, interested health care providers, academia, and industry organizations on various aspects of drug development in pediatric oncology, including prioritization of new and emerging therapeutic alternatives, clinical trial design, and access to new therapeutic agents. The input from this public workshop will be used in developing topics for discussion at future meetings of the Pediatric Subcommittee of the Oncologic Drugs Advisory Committee (the subcommittee).

Date and Time: The public workshop will be held on Thursday, July 18, 2002, from 8 a.m. to 4 p.m.

Location: The public workshop will be held in the Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD 20857. Seating is limited and available only on a first-come, first-served basis. Please note there is very limited parking in the vicinity of 5630 Fishers Lane, but it is near the Twinbrook Metro station. Please bring picture identification in order to clear building security.

Contact: Steven I. Hirschfeld, Center for Drug Evaluation and Research (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1532, e-mail: HIRSCHFELDS@CDER.FDA.GOV.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop, cosponsored with the AAP, regarding pediatric oncology drug development. On January 4, 2002, the President signed into law the Best Pharmaceuticals for Children Act (Public Law 107–109). Section 15 of the Best Pharmaceuticals for Children Act (Section 15) relates to the subcommittee.

Section 15 directs the subcommittee, in carrying out "the mission of reviewing and evaluating the data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pediatric cancers," to:

- Evaluate and, to the extent practicable, prioritize new and emerging therapeutic alternatives available to treat pediatric cancer;
- Provide recommendations and guidance to help ensure that children with cancer have timely access to the most promising new cancer therapies; and
- Advise on ways to improve consistency in the availability of new therapeutic agents.

The agency is seeking public input to inform its future decisionmaking in regard to Section 15.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Requests to Make Oral Presentations: The public workshop agenda allows opportunities for oral presentations from interested persons. If you desire to make a formal oral presentation, please notify the contact person (see the *Contact* section of this document) before July 17, 2002, and provide your name, address, telephone number, fax number, e-mail address, title, business affiliation (if applicable), the sponsor of the presentation (e.g., the organization paying travel expenses or fees), a brief summary of the presentation, and the approximate amount of time requested for the presentation. Presentation times may be limited. Persons or groups having similar interests are encouraged to consolidate their presentations and present them through a single representative.

Persons needing a sign language interpreter or other special accommodations should notify the contact person by July 17, 2002.

Transcripts: Transcripts of the public workshop will be available for review at the Dockets Management Branch Public Reading Room, Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852 and on the Internet at http://www.fda.gov/ohrms/dockets/ac/cder02.htm or you may request a transcript of the public workshop from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 20 working days after the public workshop, at a cost of 10 cents per page.

Dated: July 8, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17513 Filed 7–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–06]

Notice of Proposed Information Collection for Public Comment—Housing Agency (HA) Calculation of Occupancy Percentage for a Requested Budget Year (RBY) PHA-Owned Rental Housing Performance Funding System (PFS)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 10, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HA Calculation of Occupancy Percentage for a Requested Budget Year (RBY).

OMB Control Number: 2577–0066.

Description of the need for the information and proposed use: This collection of information is necessary to ensure that Housing Agencies determine an appropriate and justifiable occupancy percentage for RBY in a uniform manner when calculating operating subsidy eligibility under the PFS.

Agency form numbers, if applicable: HUD–25728.

Members of affected public: State and Local Governments (Public Housing Agencies).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,100 PHAs (respondents), one form per PHA, one hour per response for a total of 3,100 hours which includes preparation of the response (3,100 hours) and recordkeeping burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 2, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

HA Calculation of Occupancy Percentage for a Requested Budget Year (RBY)

PHA/IHA-Owned Rental Housing Performance Funding System (PFS)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0066
(Exp. 9/30/2002)

1a. Name and Address of PHA/IHA (Include Street Address, City, State, Zip Code)	2a. Contact (Person who can best answer questions about this submission)
	2.b Contact's Phone Number (include area code)

Part C. Status of Units Undergoing Modernization as of Report Date If changes occur after the Report Date but prior to submission of this form, the most current status will be shown.

	Occupied Units	Vacant Units
26. Protected Units		
a. Number of units that are under modernization construction (contract awarded or force account work started)		
b. Number of units not under construction contract but included in a HUD-approved modernization budget where the time period for placing the units under construction (two FFYs after FFY of approval) has not yet expired.		
27. Unprotected Units: Number of units included in a HUD-approved modernization budget where the time period for placing the units under construction (two FFYs after FFY of approval) has expired.		

Part D. Units Estimated to be Available for Occupancy During RBY	(a) No. of Units	(b) Avg. No. of Mos. in RBY	(c) No. of Unit Mos.(a x b)
28. Units Available as of Report Date (Enter line 9)		12	
29. Additional Units Available During RBY because of Development/Acquisition of PFS-Eligible projects	+		+

HA Calculation of Occupancy Percentage for a Requested Budget Year (RBY)

PHA/IHA-Owned Rental Housing Performance Funding System (PFS)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0066 (Exp. 9/30/2002)

1a. Name and Address of PHA/IHA (Include Street Address, City, State, Zip Code)	2a. Contact (Person who can best answer questions about this submission) 2.b Contact's Phone Number (include area code)

3. RBY Beginning Date: (mo/day/yyyy)	4. Type of Submission	5. PAS/LOCCS Project Number	6. Report Date (mo/day/yyyy) (check one box)	7. Data Source
	☐ Original ☐ Revision No. ( )		☐ Actual Day ☐ Average for Actual Month	☐ form HUD-51234 ☐ Rent Roll Records

Part A. Actual Occupancy Data as of Report Date

8. Units Occupied	
9. Units Available	
10. Actual Occupancy Percentage (Divide line 8 by line 9; multiply by 100 and round to nearest whole)	%

Stop & Note 11. If the HA-wide occupancy percentage shown on line 10 is 97% or greater and the HA believes that an average occupancy rate of at least 97% is sustainable for the RBY, then check the box below. You have completed the form and do not need to proceed further.

☐ High Occupancy HA: Occupancy Percentage is 97% or higher and is sustainable for the RBY → Use 97% as the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

12. Units vacant as of Report Date (subtract line 8 from line 9 and enter result)	

Stop & Note 13. If the result on line 12 is five or fewer vacant units and the HA believes that during the RBY: 1) the inventory (line 9) will not change; and, 2) the number of vacant units on line 12 will be vacant for the full RBY, then check the box below. You have completed the form and do not need to proceed further.

☐ High Occupancy HA with five or fewer vacant units → Use line 10 for the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

Part B. Distribution of Actual Vacancies By Major Cause Given below are circumstances and actions recognized by HUD as possible causes of vacancies that are beyond the control of the HA to correct. If appropriate, please distribute the number of vacant units reported on line 12 among these causes. Attach sheet identified with HA name and address, the RBY beginning date, and ACC number. Use the sheet to describe, for each circumstance; when the circumstance occurred; the location of the units involved; why the circumstance is preventing the HA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing the vacant units; and the likelihood that these circumstances will be mitigated or eliminated in the RBY.

14. Units vacant because of litigation (e.g., units that are being held vacant as part of court-ordered or HUD-approved desegregation plan)	
15. Units vacant because of Federal, Tribal, or State laws of general applicability. (Note: do not include units vacant only because they do not meet minimum construction or habitability standards.)	
16. Units vacant due to changing market conditions	
17. Units vacant because of natural disaster	
18. Units vacant because of insufficient funding for otherwise approvable CIAP application	
19. RMC-managed units vacant because of failure of HA to fund approvable request for Federal modernization funding **(This line for use only by RMCs)**	
20. Units vacant because of casualty loss and need to settle insurance claims	
21. Total Units Vacant Due To Circumstances Beyond The HA's Control (Enter sum of lines 14 - 20)	
22. Units vacant after adjusting for circumstances beyond the HA's control (Subtract line 21 from line 12)	

Stop & Note 23. If the result on line 22 is five or fewer vacant units and the HA believes that during the RBY: 1) the inventory (line 9) will not change; and, 2) the number of vacant units on both lines 21 and 22 will be vacant for the full RBY, then check the box below. You have completed the form and do not need to proceed further.

☐ High Occupancy HA with five or fewer vacant units after adjustment for vacancies beyond its control → Use line 10 for the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

24. Vacancy Percentage after adjusting for beyond control circumstances (Divide line 22 by line 9, multiply by 100, and round to nearest whole)	%

Stop & Note 25. If the result on line 24 is 3% or less and the HA believes that during the RBY: 1) the inventory (line 9) will not change; and, 2) the number of vacant units on lines 21 and 22 will be vacant for the full RBY, then check the box below. You have completed the form and do not need to proceed further.

☐ High Occupancy HA: 3% or less vacancy rate afteradjustment for vacancies beyond control → Use line 10 for the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

Part C. Status of Units Undergoing Modernization as of Report Date If changes occur after the Report Date but prior to submission of this form, the most current status will be shown.

	Occupied Units	Vacant Units
26. Protected Units		
a. Number of units that are under modernization construction (contract awarded or force account work started)		
b. Number of units not under construction contract but included in a HUD-approved modernization budget where the time period for placing the units under construction (two FFYs after FFY of approval) has not yet expired.		
27. Unprotected Units: Number of units included in a HUD-approved modernization budget where the time period for placing the units under construction (two FFYs after FFY of approval) has expired.		

Part D. Units Estimated to be Available for Occupancy During RBY	(a) No. of Units	(b) Avg. No. of Mos. in RBY	(c) No. of Unit Mos.(a x b)
28. Units Available as of Report Date (Enter line 9)		12	
29. Additional Units Available During RBY because of Development/Acquisition of PFS-Eligible projects	+		+
30. Units Unavailable During RBY because of Demolition/Disposition/Conversion Actions Approved By HUD	-		-
31. Total (Add lines 28 and 29; subtract line 30)			

Part E. Units Estimated to be Occupied During RBY			
32. Units Occupied as of Report Date (Enter line 8)		12	
33. Additional Units Occupied during RBY because of Development/Acquisition of PFS-Eligible Projects	+		+
34. Reoccupancy during RBY of Units Vacated for Circumstances Beyond the HA's Control	+		+
35. Reoccupancy during RBY of Vacant Units in a Funded Modernization Program	+		+
36. Occupied Units in Funded Modernization Program Being Vacated during RBY	-		-
37. Occupied Units Being Vacated during RBY because of Demolition/Disposition/Conversion Actions Approved by HUD. If there are occupied units that become vacant after the Report Date but before the start of the RBY because of circumstances and actions beyond the HA's control, place that number here ( ) and include in total shown on 37. Attach separate sheet with same information requested in Part C.			
38. Total (Add lines 32-35, subtract lines 36 and 37)			

Part F. Occupancy Percentage During RBY	
39. Total Unit Months of Occupancy (Enter line 38c)	
40. Total Unit Months Available for Occupancy (Enter line 31c)	
41. Occupancy Percentage for RBY (Divide line 39 by line 40; multiply by100 and round to nearest whole)	%
42. Average Number of Vacant Units During RBY (Subtract line 39 from line 40;divide result by 12 and round to nearest whole)	

Stop & Note 43. If the result on line 41 is 97% or higher or if the result on line 42 is five or less, then check the appropriate box below. You have completed the form and do not need to proceed further.

☐ a. High Occupancy HA: Occupancy Percentage is 97% or higher for the RBY → Use 97% as the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

☐ b. High Occupancy HA with five or fewer vacant units → Use line 41 for the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

Part G. Vacancy Percentage for RBY Adjusted for Modernization		
44. Total Unit Months of Vacancy in RBY (Enter line 40 less line 39)		
45. Total Unit Months for Vacant Units In Funded Mod. and Under Construction or Funded for Construction (Sum the vacant units of lines 26a and b; multiply by 12)		
46. If any of the vacant units on lines 26a or b will be reoccupied during the RBY, enter that number times the average number of months during the RBY these units will be reoccupied.	-	
47. If any of the occupied units on lines 26a or b will be vacated during the RBY for mod. construction, enter that number times the average number of monthsduring the RBY these units will be vacated.	+	
48. Total Unit Months for Vacant Units In Funded Mod. And Under Construction or Funded For Construction In RBY (Add line 45; less line 46; plus line 47)		
49. Total Unit Months of Vacancy in RBY Adjusted for Modernization (Enter line 44 less line 48)		
50. Vacancy Percentage for RBY Adjusted for Modernization (Divide line 49 by line 40; multiple by 100; and round to nearest whole.)		%
51. Average Number of Vacant Units in RBY Adjusted for Modernization (Divide line 49 by 12; round to nearest whole)		

Stop & Note 52. If the result on line 50 is 3% or lower or if the result on line 51 is five or less, then check the appropriate box below. You have completed the form and do not need to proceed further.

☐ a. High Occupancy HA: Vacancy Percentage is 3% or less for the RBY after Modernization Adjustment → Use line 41 as the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

☐ b. High Occupancy HA: five or fewer vacant units after Modernization Adjustment → Use line 41 for the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

Part H. Vacancy Percentage for RBY Adjusted for Both Modernization *and* Beyond Control Circumstances	
53. Total Unit Months of Vacancy in RBY (Enter line 44)	
54. Total Unit Months of Vacancy in RBY Due to Modernization (Enter line 48)	
55. Total Unit Months of Vacancy in RBY Due to Beyond Control Vacancies (Enter line 21 times 12; less any entry made on line 34c)	
56. Total Unit Months of Vacancy After Above Adjustments (Enter line 53 less lines 54 and 55)	
57. Vacancy Percentage for RBY After Above Adjustments (Divide line 56 by line 40; multiple by 100; and round to nearest whole.)	%
58. Average Number of Vacant Units in RBY After Above Adjustments (Divide line 56 by 12; round to nearest whole)	

Stop & Note 59. If the result on line 57 is 3% or lower or if the result on line 58 is five or less, then check the appropriate box below. You have completed the form and do not need to proceed further.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Instructions for Preparing Form HUD-52728, HA Calculation of Occupancy Percentage for a Requested Budget Year (RBY)

The purpose of this form is to provide a structured format for Public Housing Authorities (PHAs), Indian Housing Authorities (IHAs), and, if applicable, Resident Management Corporations (RMCs) to use in developing an appropriate and justifiable projection of occupancy for the RBY. The projected occupancy percentage that is developed will be used as one element in the calculation of operating subsidy under the Performance Funding System (PFS), 24 CFR Parts 950 and 990, as applicable. The term

vacated in order for construction work to be performed and then reoccupied upon completion. If changes occur after the Report Date but prior to the submission of this form, the most current status will be shown.

Line 26. Enter data on the number of protected units, both vacant and occupied, as of the Report Date, which may fall into two categories: (a) the number of units that are under construction (contract awarded or force account work started); or (b) the number of units not under construction

Part H. Vacancy Percentage for RBY Adjusted for Both Modernization *and* Beyond Control Circumstances

53. Total Unit Months of Vacancy in RBY (Enter line 44)	
54. Total Unit Months of Vacancy in RBY Due to Modernization (Enter line 48)	
55. Total Unit Months of Vacancy in RBY Due to Beyond Control Vacancies (Enter line 21 times 12; less any entry made on line 34c)	
56. Total Unit Months of Vacancy After Above Adjustments (Enter line 53 less lines 54 and 55)	
57. Vacancy Percentage for RBY After Above Adjustments (Divide line 56 by line 40; multiple by 100; and round to nearest whole.)	%
58. Average Number of Vacant Units in RBY After Above Adjustments (Divide line 56 by 12; round to nearest whole)	

59. If the result on line 57 is 3% or lower **or** if the result on line 58 is five or less, then check the appropriate box below. You have completed the form and do not need to proceed further.

Stop & Note

- ☐ a. High Occupancy HA: Vacancy Percentage is 3% or less for the RBY after Modernization Adjustment → Use line 41 as the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723
- ☐ b. High Occupancy HA: five or fewer vacant units after Modernization Adjustment → Use line 41 for the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723

Part I. Adjustment for Long Term Vacancies If the HA estimates that it will have a vacancy percentage of more than 3% for its RBY and more than five vacant units after adjusting for vacant units undergoing modernization and vacancies beyond its control, the HA will exclude all of its long-term vacancies (if any) from its count of units available for occupancy and use this section to determine its projected occupancy percentage.

60. Total Long-term Vacancies (Subtract vacant units shown on lines 21, 26a, and b from line 12. Analyze remaining vacancies and identify those units that have been vacant for more than 12 months as of the Report Date.)	
61. Unit Months of Vacancy Associated With Long-Term Vacancies (Multiply line 60 by 12)	
62. Total Unit Months Available for Occupancy in RBY Adjusted for Long-Term Vacancies (Subtract line 61 from line 31(c)) **Use this UMA number in all other PFS calculations.**	
63. Occupancy Percentage for RBY Adjusted for Long-Term Vacancies (Divide line 38(c) by line 62; multiply by 100 and round to nearest whole)	%
64. Average Number of Vacant Units in RBY after All Adjustments (Subtract line 60 from line 58)	
65. Total Unit Months of Vacancy in RBY after All Adjustments (Subtract line 61 from line 56)	
66. Vacancy Percentage for RBY Adjusted for Long-Term Vacancies (Divide line 65 by line 62; multiply by 100 and round to nearest whole)	%

67. If the result on line 63 is 97% or higher **or** if the result on line 64 is five or less **or** if the result on line 66 is 3% or less, then check the appropriate box below. You have completed the form and do not need to proceed further.

Stop & Note

- ☐ a. High Occupancy HA: Occupancy Percentage is 97% or higher for the RBY after Long-Term Vacancies Adjustment → Use 97% as the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723. **Use the UMA result on line 62 in calculating PFS eligibility.**
- ☐ b. High Occupancy HA: Five or fewer vacant units after Adjustment for Long-TermVacancies → Use line 63 as the Projected Occupancy Percentage on Part B, line 11of form HUD-52723. **Use the UMA result on line 62 in calculating PFS eligibility.**
- ☐ c. High Occupancy HA: Vacancy Percentage is 3% or lower for the RBY after Long-Term Vacancies Adjustment → Use line 63 as the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723. **Use the UMA result on line 62 in calculating PFS eligibility.**

Part J. Projected Occupancy Percentages for Low Occupancy HAs If the HA cannot determine an acceptable Projected Occupancy Percentage for the RBY using the above approach, it will use this section. The HA will use the lower of either 97% or that percentage based on having five units vacant for the RBY. Either percentage can be adjusted for vacant units undergoing modernization construction and vacancies beyond its control. Small HAs of 140 units or less will generally want to use a percentage based on five vacant units.

68. Enter 97% if HA has more than 140 units. If 140 or fewer units, determine occupancy percentage based on 5 vacant units, for RBY. (Take 60 unit months and divide by line 62; multiply by 100 and round to nearest whole. Subtract result from 100%)	%
69. Percentage Adjustment for Modernization and Beyond Control Vacancies (Add lines 48 plus 55; divide that sum by line 62; multiply by 100 and round to nearest whole)	%
70. Projected Occupancy Percentage for Low Occupancy HA (Take the percentage on line 68 and subtract the percentage shown on line 69. Use the result as the Projected Occupancy Percentage on Part B, line 11 of form HUD-52723. **Use the UMA result on line 62 in calculating PFS eligibility)**	%

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Instructions for Preparing Form HUD-52728, HA Calculation of Occupancy Percentage for a Requested Budget Year (RBY)

The purpose of this form is to provide a structured format for Public Housing Authorities (PHAs), Indian Housing Authorities (IHAs), and, if applicable, Resident Management Corporations (RMCs) to use in developing an appropriate and justifiable projection of occupancy for the RBY. The projected occupancy percentage that is developed will be used as one element in the calculation of operating subsidy under the Performance Funding System (PFS), 24 CFR Parts 950 and 990, as applicable. The term Housing Authority (HA) will be used to collectively describe both PHAs and IHAs. The form is **not** for use by HAs requesting operating subsidy solely to cover the cost of an Independent Audit (IA).

The instructions should be read carefully since it may not be necessary for a HA to complete all sections of the form in order to determine an acceptable projected occupancy percentage for the RBY. The form has been designed to go from the most simple situation to the relatively more complex cases. If, at any point, an HA is able to classify itself as a High Occupancy HA, it does not need to proceed further with the form.

Headings:

RBY Beginning. Enter the beginning month, day and year of the requested budget year for which this form is submitted.

Type of Submission. Indicate whether this form is (1) the original submission for the RBY or (2) a revision of the latest approval for the subject fiscal year. If a revision, enter the revision number.

ACC Number. Enter the number of the Annual Contributions Contract (ACC) covering the projects for which this form is submitted.

PAS/LOCCS Project No. Enter the PAS/LOCCS Project Number applicable to the corresponding Calculation of Performance Funding System Operating Subsidy, form HUD-52723.

Report Date. Enter the date of the occupancy data collected to determine the actual occupancy percentage. **Unless otherwise approved by HUD**, that date will be the last day of the month ending six months before the start of the HA's RBY or the monthly average for the month ending six months before the start of its budget year. Check whether actual day data was used or an average was constructed using actual data for the month.

Data Source. Indicate the data source used to calculate the actual occupancy percentage.

Part A. Actual Occupancy Data as of Report Date

Using actual occupancy data as of the Report Date, an HA will determine its actual occupancy percentage and number of vacant units. For many HAs, this will be the only section that will need to be completed.

Part B. Distribution of Actual Vacancies By Major Cause

This part allows the HA to present data and supporting narrative on the number of units that are vacant for reasons that are beyond the control of the HA to correct. For a further description of allowable reasons, please refer to ¶ 990.102 and the definition of units vacant due to circumstances and actions beyond the HA's control.

Part C. Status of Units Undergoing Modernization

Data in this part will be used in determining the occupancy percentage for the RBY. If the RBY occupancy percentage is less than 97% and HA will have more than five vacant units, data from this part will be used in Part G to determine if the RBY occupancy percentage is justified. Report occupied units, as appropriate, on lines 26a., 26b., and 27, if they will be subsequently vacated in order for construction work to be performed and then reoccupied upon completion. If changes occur after the Report Date but prior to the submission of this form, the most current status will be shown.

Line 26. Enter data on the number of protected units, both vacant and occupied, as of the Report Date, which may fall into two categories: (a) the number of units that are under construction (contract awarded or force account work started); or (b) the number of units not under construction contract but included in a HUD-approved modernization budget where the time period for placing the units under construction (two Federal Fiscal Years (FFYs) after the FFY of approval) has not yet expired.

Line 27. Enter data on the number of unprotected units, both vacant and occupied, as of the Report Date, which are the number of units included in a HUD-approved modernization budget where the time period for placing the units under construction (two FFYS after FFY of approval) has expired and the units are not yet under construction. Note: When such units subsequently reach construction, they will become protected units. If a change in status occurs after the initial subsidy calculation has been approved, an HA may recalculate its subsidy eligibility as part of its year-end adjustments.

Part D. Units Estimated to be Available for Occupancy During RBY

Data which is entered on **line 29** or **line 30** must only reflect actions that have been approved by HUD, including approvals made after the Report Date but prior to the submission of this form. If there are pending applications for HUD approval of actions that would increase or decrease the number of units available for occupancy at the time of submission, that data will be excluded.

Part E. Units Estimated to be Occupied During RBY

Line 33. Use this line to show the number of units on line 29. (if any) that will be occupied during the RBY.

Line 34. Use this line to show the number of units on line 21. (if any) that will be occupied during the RBY.

Line 35. Use this line to show the number of vacant units on lines 26a and 26b. (if any) that will be reoccupied during the RBY.

Line 36. Use this line to show the number of occupied units on lines 26a, 26b, and 27. (if any) that will be vacated during the RBY.

Line 37. Use this line to show the number of units on line 30. (if any) that will be vacated during the RBY.

Part G. Vacancy Percentage for RBY Adjusted for Modernization

Note that this section deals with units that meet the definition of being vacant units undergoing modernization. The units must be under construction and on-schedule or funded for construction with the time period (two-year maximum after award) for fund obligation not expiring.

Part I. Adjustment for Long Term Vacancies

Note that if this section is used, the HA will be recalculating its Unit Months Available (UMAs) to exclude long-term vacancies and must use the recalculated result in its determination of PFS eligibility. If the UMAs for occupancy have been adjusted for long term vacancies, the unit months associated with those vacancies, line 61, shall be multiplied by 20% of the AEL (Part A, line 8 of the HUD-52723 prepared for RBY) and the result displayed on Part D, line 7 of the HUD-52723.

[FR Doc. 02–17489 Filed 7–11–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant

intent to add a new Privacy Act system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S. C. 552a(e)(4)). The new system of records is called the Electronic Email Archive System (EEAS), Interior—OS–10.

SECURITY CLASSIFICATION:

Sensitive, but unclassified.

SYSTEM LOCATION:

The records of this system are located at a digital safe site at a location managed by the contractor for the Department of the Interior. Only information maintained at this site by the contractor is considered a Privacy Act system of records covered by this notice.

to contracting and record security are met.

(b) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(c) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(1) One of the following is a party to

application agreements. Access to the system is limited to authorized personnel whose official duties require such access. The EEAS system will be maintained at the Government contractor's facility at a secured data center.

RETENTION AND DISPOSAL:

Records in this system will be retained indefinitely pending completion of *Cobell et al.* v. *Norton, et al.*, U.S.D.C. D.C., No. 1:96CV01285 or

identified in the "Notification procedure" section above. The request must meet the requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Some information maintained in the system is collected from mag-tapes provided by Interior bureau/office email backup systems from those installations identified in the "Categories of individuals" section above. This

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[FR Doc. 02–17489 Filed 7–11–02; 8:45 am]
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2564, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 2, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–17057 Filed 7–11–02; 8:45 am]
BILLING CODE 5210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Addition of a New System of Records

AGENCY: Department of the Interior.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Department of the Interior is issuing public notice of its intent to add a new Privacy Act system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S. C. 552a(e)(4)). The new system of records is called the Electronic Email Archive System (EEAS), Interior—OS–10.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. Any persons interested in commenting on this proposed system of records may do so by submitting comments in writing to the Departmental Privacy Act Officer, U.S. Department of the Interior, Office of the Chief Information Officer, MS 5312 MIB, 1849 C Street NW., Washington, DC 20240.

Comments received within 30 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. In that case the Department will publish any changes to the routine uses.

FOR FURTHER INFORMATION CONTACT: For information on the Electronic Email Archive System contact Regina Lawrence, Office of the Chief Information Officer, Department of the Interior at 202–208–5413, or mail at MS–5312–MIB, 1849 C St. NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Interior Electronic Email Archive System (EEAS) will contain data from certain Department of the Interior bureaus/offices with Indian Trust program responsibilities for the purpose of responding to discovery requests from plaintiffs and requests from the Court, the Special Master, and the Court Monitor in *Cobell et al.* v. *Norton, et al.*, U.S.D.C. D.C., No. 1:96CV01285. The capability of the system to retrieve information from an email archive depository will assist compliance with court requirements.

Dated: July 9, 2002

Marilyn Legnini,

Departmental Privacy Act Officer, Office of the Chief Information Officer.

INTERIOR/OS–10.

SYSTEM NAME:

Electronic Email Archive System (EEAS).

SECURITY CLASSIFICATION:

Sensitive, but unclassified.

SYSTEM LOCATION:

The records of this system are located at a digital safe site at a location managed by the contractor for the Department of the Interior. Only information maintained at this site by the contractor is considered a Privacy Act system of records covered by this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on individuals who send and receive electronic messages using Internet email and interoffice email from and to those Departmental bureaus/offices involved with Indian Trust programs, and those individuals who are referred to in the electronic messages. These bureaus/offices are as follows: Office of the Solicitor, Bureau of Indian Affairs, Office of the Special Trustee for American Indians, Office of the Assistant Secretary—Indian Affairs, Bureau of Land Management, Office of the Assistant Secretary—Policy, Management, and Budget, Office of Hearings and Appeals, Office of Historical Trust Accounting, Office of the Secretary, and the Minerals Management Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information from Internet email and interoffice email, including address of sender and receiver(s), subject, date sent or received, text of the message, name of attachment, attachment text, and certification status. The name and email address of the sender and receiver are captured along with the bcc, cc, subject line, and text of the message.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, 43 CFR 1455, and 40 CFR part 1441.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system's main purpose is to respond to discovery requests from plaintiffs and requests from the Court, the Special Master, and the Court Monitor in the *Cobell* v. *Norton* litigation, filed in the U.S. District Court for the District of Columbia.

Disclosures outside the Department of the Interior can be made to:

(a) Contractors who service and maintain the system for the Department, ensuring that all provisions of the Privacy Act, and all other applicable laws, regulations, and policies relating to contracting and record security are met.

(b) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(c) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(1) One of the following is a party to the proceeding or has an interest in the proceeding:

(a) The Department or any component of the Department;

(b) Any Departmental employee acting in his or her official capacity;

(c) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; and

(2) We deem the disclosure to be:

(a) Relevant and necessary to the proceeding; and

(b) Compatible with the purpose for which we compiled the information.

(d) The appropriate Federal agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, or order.

(e) A congressional office in response to an inquiry to that office by the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system of records is maintained in electronic format on a system hard drive.

RETRIEVABILITY:

This specific system has the capability of performing searches through email archive information identified in the "Category of records" section above using any word or number criteria. This capability makes it unique from other email archive systems that are maintained by Interior bureaus/offices, and therefore, this system becomes subject to Privacy Act requirements.

SAFEGUARDS:

The contractor maintaining this system must follow the requirements under 5 U.S.C. 552a(e)(10) and 43 CFR 2.51 for security standards. A security plan was developed to prevent unauthorized access to the system. The plan addresses application security, administration/user security, and application agreements. Access to the system is limited to authorized personnel whose official duties require such access. The EEAS system will be maintained at the Government contractor's facility at a secured data center.

RETENTION AND DISPOSAL:

Records in this system will be retained indefinitely pending completion of *Cobell et al.* v. *Norton, et al.*, U.S.D.C. D.C., No. 1:96CV01285 or until the Court orders the Department to retain/dispose of these records differently.

SYSTEM MANAGER(S) AND ADDRESS:

The Technology Services Division, Administrative Operations Directorate, National Business Center, Department of the Interior, MS–1540–MIB, 1849 C St. NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

To determine whether your records are in this Privacy Act system of records, contact the Privacy Act Officer at the bureau/office from which your email message was sent or where it was received (see list of participating bureau/offices identified in the "Categories of individuals" section above). Interior bureaus/offices are listed at the Department of the Interior Web site at *www.doi.gov*. The request must meet the requirements of 43 CFR 2.60. Provide the following information with your request:

(a) Proof of your identity;

(b) List of all the names by which you have been known, such as maiden name or alias;

(c) Your Social Security Number;

(d) Your mailing address;

(e) Time period(s) that records pertaining to you may have been created or maintained, to the extent known by you (*See* 43 CFR 2.60(b)(3)); and

(f) Specific description or identification of the records you are requesting (including whether you are asking for a copy of all of your records or only a specific part of them), and the maximum amount of money that you are willing to pay for their copying (See 43 CFR 2.63(b)(4)).

RECORD ACCESS PROCEDURES:

To request access to records, follow procedures in the "Notification procedure" section above. The request must meet the requirements of 43 CFR 2.63. Provide with your request the same information identified in the "Notification procedures" sections.

CONTESTING RECORD PROCEDURES:

To request an amendment of a record, send requests in writing to the contacts identified in the "Notification procedure" section above. The request must meet the requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Some information maintained in the system is collected from mag-tapes provided by Interior bureau/office email backup systems from those installations identified in the "Categories of individuals" section above. This information is downloaded onto a hard drive managed by the contractor and stored digitally. Information from Interior bureau/office e-mail servers will be captured in real time, transmitted electronically through secured networks, and captured and stored electronically into the EEAS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–17587 Filed 7–11–02; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska Resource Advisory Council Meeting and Field Tour

AGENCY: Bureau of Land Management (BLM), Alaska State Office, Interior.

ACTION: Notice of meeting and field tour.

SUMMARY: The Bureau of Land Management's Alaska Resource Advisory Council will conduct a brief meeting at Prince William Sound Community College in Glennallen.

The purpose of the meeting is to provide a briefing for the council in preparation for a tour of BLM public lands along the Denali Highway. The meeting is open to the public. Members of the public may present brief oral comments to the council about BLM's management of the Denali Highway corridor during the meeting as time allows. Written comments will also be accepted.

The meeting will be followed by a two-day tour of the east portion of the Denali Highway corridor. The council will visit recreation areas, mining claims, off-highway vehicle trails, and cultural sites in the Tangle Lakes Archaeological District.

DATES: The meeting is July 28, 2002, 7–9 p.m. The field tour is July 29–30, 2002.

ADDRESSES: Inquiries or comments should be sent to BLM External Affairs, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–3322 or e-mail *Teresa_McPherson@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The council provides advice and recommendations on resource and land management issues for 86 million acres of public lands administered by the BLM in Alaska. The council includes representatives from energy, tourism, and commercial recreation interests;

Federal Register on August 22, 1997 (62 FR 44714). The Department published a final determination to acknowledge the Chinook Indian Tribe/Chinook Nation in the **Federal Register** on January 9, 2001 (66 FR 1690). The Quinault Indian Nation requested reconsideration of the final determination before the Interior Board of Indian Appeals (IBIA). On August 1, 2001, the IBIA affirmed the final determination with respect to

becomes scarce. Chinook descendants participated in claims activities, seeking compensation for the loss of Chinook aboriginal territory, in the first decade of the 20th century, the decade after 1925, and the 1950's. These judicial proceedings also resulted, however, in a conclusion by the Court of Claims in 1906 that the Lower Band of Chinook had "long ceased to exist" as a band and a conclusion by a Federal district court in 1928 that the Chinook had lost their

This reconsidered final determination also concludes that the final determination improperly relied on the petitioner's members or ancestors living in Bay Center, combined with the petitioner's claims and acknowledgment activities, to find that the petitioner as a whole met the requirement of community, criterion (b). With respect to Chinook claims organizations and their activities between 1920 and 1970, this reconsidered final determination

demonstrate that it was identified as an Indian entity by external observers on a substantially continuous basis between 1873 and 1951.

The petitioner did not provide new evidence of identifications of a Chinook Indian entity between 1873 and 1924. The petitioner provided examples to show that some of its ancestors were identified in 1925 and 1927, and again in 1951 and the following years, as a group or groups bringing claims on

sufficient to show continuous significant social interaction between the Indians living in Bay Center and the Chinook descendants concentrated in Dahlia or Ilwaco between 1880 and 1950. The social interaction in the 1930's and 1940's appears to be based on relations that were established during earlier periods and to rest primarily in the older generation. As people who had been closely connected as children and young adults died, the

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–3322 or e-mail *Teresa_McPherson@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The council provides advice and recommendations on resource and land management issues for 86 million acres of public lands administered by the BLM in Alaska. The council includes representatives from energy, tourism, and commercial recreation interests; conservation organizations; and elected officials, Alaska Native organizations, and the public at large.

Authority: The Alaska Resource Advisory Council meets in accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972.

Dated: May 29, 2002.

George P. Oviatt,

Acting State Director.

[FR Doc. 02–17638 Filed 7–11–02; 9:31 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Reconsidered Final Determination To Decline To Acknowledge the Chinook Indian Tribe/Chinook Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reconsidered final determination.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8. Pursuant to 25 CFR 83.10(m) and 25 CFR 83.11(h)(3), notice is hereby given that the Assistant Secretary declines to acknowledge the Chinook Indian Tribe/Chinook Nation, c/o Mr. Gary Johnson, P.O. Box 228, Chinook, Washington 98614, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not meet all seven criteria set forth in 25 CFR 83.7 in the 1978 regulations, or in 25 CFR 83.7 as modified by 25 CFR 83.8 in the 1994 regulations.

DATES: Pursuant to 25 CFR 83.11(h)(3), this reconsidered determination is final and effective upon publication.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: The Department published a proposed finding to decline to acknowledge the Chinook Indian Tribe, Inc., in the **Federal Register** on August 22, 1997 (62 FR 44714). The Department published a final determination to acknowledge the Chinook Indian Tribe/Chinook Nation in the **Federal Register** on January 9, 2001 (66 FR 1690). The Quinault Indian Nation requested reconsideration of the final determination before the Interior Board of Indian Appeals (IBIA). On August 1, 2001, the IBIA affirmed the final determination with respect to matters within its jurisdiction (36 IBIA 245). However, the IBIA referred to the Secretary nine additional issues that it found to be outside of its jurisdiction. The Secretary then referred eight of those issues to the Assistant Secretary for reconsideration of the final determination. Those issues require a reconsideration of only criteria (a), (b), and (c). This decision addresses the eight issues referred and reconsiders the final determination to the extent impacted by the resolution of those issues. This reconsidered final determination is based on a reconsideration of all the evidence before the Department relevant to those criteria in accordance with the analysis of the eight referred issues.

The Chinook petitioner's members descend from the Lower Band of Chinook and also from the Wahkiakum, Kathlamet, and Willapa bands of Chinook, and the Clatsop tribe, also a Chinookan-speaking group, that lived historically along the lower Columbia River. The population of the Chinook bands was severely reduced by a series of epidemics in the 1780's, the 1830's, and the late 1850's. The United States negotiated treaties with these separate Chinook bands in 1851, but the Senate did not ratify them. Chinook representatives refused to sign a treaty negotiated in 1855. The Government created the Shoalwater Bay Reservation by executive order in 1866 for the "Indians on Shoalwater Bay," who were intermixed Chinook and Chehalis indians. The Government enlarged the Quinault Reservation by executive order in 1873 for the "fish-eating Indians on the Pacific coast," a definition that has been interpreted as including the Chinook. By 1900, some Chinook descendants were listed on the censuses of these and other reservations. Other Chinook descendants lived off reservations among the non-Indian population and tended to cluster geographically in three separate settlements: at Bay Center on Shoalwater Bay, at Ilwaco at the mouth of the Columbia, and upriver along the shore of the Columbia around Dahlia. After the mid-1850's, the evidence of Chinook band or tribal organization becomes scarce. Chinook descendants participated in claims activities, seeking compensation for the loss of Chinook aboriginal territory, in the first decade of the 20th century, the decade after 1925, and the 1950's. These judicial proceedings also resulted, however, in a conclusion by the Court of Claims in 1906 that the Lower Band of Chinook had "long ceased to exist" as a band and a conclusion by a Federal district court in 1928 that the Chinook had lost their tribal organization. From the mid-1850's until 1951, when Chinook descendants organized to pursue historical Chinook claims, there is scant evidence to suggest that any Chinook community or organization existed as a distinct entity or that informal leaders had political influence over ancestors of the petitioner.

On the eight issues referred by the Secretary, this reconsidered final determination concludes that the previous Assistant Secretary had the authority to review the Chinook petition under the 1994 revised acknowledgment regulations, and that a reconsidered final determination should be made under both the 1978 and 1994 regulations to resolve the questions raised in this case about whether the result would be different under the revised 1994 regulations than under the original 1978 regulations. It also concludes that the previous Assistant Secretary had authority to retain an outside consultant to assist him in his consideration of the Chinook petition.

The final determination explicitly relied upon 1911, 1912, and 1925 statutes in deciding that the petitioner met criteria (a), (b) and (c). This reconsidered final determination concludes that those three statutes are not evidence that the Federal Government understood or identified the Chinook as still existing at the time the statutes were enacted. The 1925 claims statute, used in the final determination as evidence of previous Federal acknowledgment of the petitioner, was not "clearly premised" on the existence in 1925 of a Chinook political entity with a government-to-government relationship with the United States, which is the standard under the acknowledgment regulations for finding unambiguous previous Federal acknowledgment. This conclusion regarding these statutes is important for the reconsidered final determination because the final determination expressly found that "[w]ere it not for the acts of Congress in 1911, 1912, and most importantly, 1925, it would not have been possible to make a positive determination on the evidence presented."

This reconsidered final determination also concludes that the final determination improperly relied on the petitioner's members or ancestors living in Bay Center, combined with the petitioner's claims and acknowledgment activities, to find that the petitioner as a whole met the requirement of community, criterion (b). With respect to Chinook claims organizations and their activities between 1920 and 1970, this reconsidered final determination concludes that the final determination incorrectly relied on them as sufficient evidence for satisfying criteria (b) and (c) under both the 1978 or 1994 regulations. This reconsidered final determination also clarifies and restates the Department's position that there is no presumption of continuous existence and that the evidentiary benefits afforded to previously acknowledged petitioners are already incorporated in the regulations. The evidence under criteria (a), (b), and (c) is evaluated below in the context of these conclusions on these referred issues.

The 1994 regulations require an evaluation of whether the petitioner was a previously acknowledged tribe within the meaning of the regulations. Because the United States engaged in treaty negotiations with a Chinook tribal entity in 1851 and 1855, it has been determined that the petitioner meets the definition of unambiguous Federal acknowledgment in section 83.1 and is eligible to be evaluated under modified requirements provided in section 83.8 of the 1994 regulations, with 1855 as the date of last Federal acknowledgment. Conclusions concerning previous acknowledgment are solely for the purposes of a determination of previous acknowledgment under 25 CFR part 83, and are not intended to reflect conclusions concerning successorship in interest to a particular treaty or other rights.

Criterion 83.7(a) requires a demonstration of external identification of the petitioner as an Indian entity, from first sustained contact with non-Indians under the 1978 regulations or from the date of last Federal acknowledgment under sections 83.8(d)(1) or 83.8(d)(5) of the 1994 regulations. The proposed finding concluded that the petitioner did not meet criterion 83.7(a) under the 1978 regulations. The final determination concluded that the petitioner met the criterion under both the 1978 and 1994 regulations. Given the conclusions of the proposed finding that a historical Chinook tribe had been identified until 1873 and that several Chinook organizations had been identified since 1951, the petitioner needed to demonstrate that it was identified as an Indian entity by external observers on a substantially continuous basis between 1873 and 1951.

The petitioner did not provide new evidence of identifications of a Chinook Indian entity between 1873 and 1924. The petitioner provided examples to show that some of its ancestors were identified in 1925 and 1927, and again in 1951 and the following years, as a group or groups bringing claims on behalf of a historical Chinook tribe against the United States, but that evidence does not show that a Chinook entity was identified on a substantially continuous basis between 1927 and 1951. A few identifications during a three-year period of the three-quarters of a century between 1873 and 1951 does not constitute "substantially continuous" identification. The evidence is insufficient to show that the petitioner meets the requirements of this criterion between 1873 and 1951. Because the evidence in the record does not show that the petitioning group has been identified as an Indian entity "from historical times until the present," or from last acknowledgment in 1855 until the present, on a "substantially continuous" basis, this reconsidered final determination concludes that the petitioner does not meet the requirements of criterion 83.7(a) either under the 1978 regulations or as modified by sections 83.8(d)(1) or 83.8(d)(5) under the 1994 regulations.

Criterion 83,7(b) in the 1978 regulations requires the petitioner to demonstrate that "a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area." The 1994 regulations similarly require that a "predominant portion of the petitioning group comprises a distinct community." As modified by section 83.8(d)(2), a petitioner that has been previously acknowledged is required only to meet this criterion "at present."

"Community" is defined in the 1994 regulations, section 83.1, as "any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers." The proposed finding concluded that the petitioner did not meet criterion 83.7(b) under the 1978 regulations. The final determination concluded that the petitioner met the criterion under both the 1978 and 1994 regulations.

The final determination found that evidence submitted by the petitioner in response to the proposed finding was sufficient to show continuous significant social interaction between the Indians living in Bay Center and the Chinook descendants concentrated in Dahlia or Ilwaco between 1880 and 1950. The social interaction in the 1930's and 1940's appears to be based on relations that were established during earlier periods and to rest primarily in the older generation. As people who had been closely connected as children and young adults died, the succeeding generations interacted less often and intensely until the community of Chinook descendants became indistinguishable from the rest of the population. For the post-1950 time period, there is insufficient evidence regarding actual social interaction among a predominant portion of the petitioner's membership. Because the petitioner has not demonstrated that "a substantial portion of the petitioning group" has formed a community "distinct from other populations in the area" since 1950, nor that a "predominant portion of the petitioning group comprises a distinct community" at present, this reconsidered final determination concludes that the petitioner does not meet the requirements of criterion 83.7(b) either under the 1978 regulations or as modified by section 83.8(d)(2) under the 1994 regulations.

Criterion 83.7(c), in both the 1978 and 1994 regulations, requires the petitioner to demonstrate that it has maintained "political influence" or authority over its members as an autonomous entity throughout history. The definition of "political influence or authority" in section 83.1 of the 1994 regulations is "a tribal council, leadership, internal process or other mechanism" which the group has used to influence or control the behavior of its members in significant respects, or make decisions for the group which substantially affect its members, or represent the group in dealing with outsiders in matters of consequence. As modified by 83.8(d)(3), a petitioner that has been previously acknowledged is required to demonstrate that it meets the requirements of the criterion "at present" and, for the period between last Federal acknowledgment and the present, the petitioner must demonstrate that "authoritative, knowledgeable external sources" identified leaders or a governing body who exercised political influence or authority over the petitioning group, and also demonstrate one form of evidence listed in section 83.7(c). This reconsidered final determination concludes that the petitioner did not provide such

evidence. In this situation, the regulations provide, in section 83.8(d)(5), that the petitioner alternatively may demonstrate that it meets the requirements of criterion 83.7(c) from "last Federal acknowledgment until the present." The proposed finding concluded that the petitioner did not meet criterion 83.7(c) under the 1978 regulations. The final determination concluded that the petitioner met the criterion under both

determination concludes that the petitioner does not meet the requirements of criterion 83.7(c) either under the 1978 regulations or as modified by section 83.8(d)(5) under the 1994 regulations.

The available evidence demonstrates that the petitioner does not meet all seven criteria required for Federal acknowledgment. Specifically, the petitioner does not meet criteria 83.7 (a), (b), or (c) under the 1978 regulations,

Regulations 1500–1508 Council on Environmental Quality Regulations, and 43 Code of Federal Regulations 3809, the Bureau of Land Management (BLM), Winnemucca Field Office will be directing the preparation of a third-party Supplemental Environmental Impact Statement (SEIS) to analyze a proposed new mine expansion called the Millennium project. The project would disturb approximately 1,394 acres of public and private lands and is located

and public land. In September 2001, BLM issued a Record of Decision authorizing activities proposed in an environmental impact statement (EIS). Previous to the EIS, numerous mine plan modifications and the original mine plan approvals were authorized in various environmental assessments (EAs). Currently, the mine is approved to disturb 1,831 acres on private and public lands. In April 2002, GMMC submitted a plan of operations

North Central Avenue, Phoenix, AZ, Telephone (602) 417–9215.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Arizona. At this meeting, topics we plan to discuss include: The agenda items to be covered include: review of the March 1, 2002

ACTION: Notice of Intent and Call for Coal Information.

SUMMARY: The Bureau of Land Management (BLM) field office in Jackson, Mississippi (Jackson Field Office) is initiating the preparation of a Resource Management Plan (RMP) for the states of Alabama and Mississippi (AL–MS).

This action will require the preparation of an Environmental Impact

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evidence. In this situation, the regulations provide, in section 83.8(d)(5), that the petitioner alternatively may demonstrate that it meets the requirements of criterion 83.7(c) from "last Federal acknowledgment until the present." The proposed finding concluded that the petitioner did not meet criterion 83.7(c) under the 1978 regulations. The final determination concluded that the petitioner met the criterion under both the 1978 and 1994 regulations.

The record for this case lacks examples of an internal political process, either formal or informal, among the petitioner's ancestors, or of formal or informal political leadership or influence over the petitioner's ancestors as a group between 1855 and 1925. There is evidence of some leadership by George Charley during the late 1920's on behalf of a federally recognized tribe and a portion of the petitioner's ancestors at Bay Center, but not on behalf of the petitioner's ancestors along the Columbia River. There is also very limited evidence that a claims organization existed in the late 1920's and early 1930's, but no evidence that it had any internal political process which resulted in group decisions. There is almost no evidence of political activities or leadership between the early 1930's and 1951. There is evidence for the years between 1951 and 1970 that two organizations were active to pursue a claims case, but insufficient evidence that either organization had an internal decision-making process that embodied a bilateral political relationship between leaders and members which existed broadly among the membership. During the most recent decades the petitioner has had a formal political organization. The proposed finding concluded that there was "very little information available about the internal political processes of the petitioner from 1970 to the present," and a lack of evidence that the organization was broadly based. The petitioner's new evidence does not change this conclusion. Because the available evidence does not include identifications of leaders or a governing body by "authoritative, knowledgeable external sources," this reconsidered final determination concludes that the petitioner does not meet criterion 83.7(c) as modified by section 83.8(d)(3) under the 1994 regulations. Because the available evidence does not demonstrate that the petitioning group has exercised political influence over its members from historical times until the present, or from last acknowledgment in 1855 until the present, this reconsidered final determination concludes that the petitioner does not meet the requirements of criterion 83.7(c) either under the 1978 regulations or as modified by section 83.8(d)(5) under the 1994 regulations.

The available evidence demonstrates that the petitioner does not meet all seven criteria required for Federal acknowledgment. Specifically, the petitioner does not meet criteria 83.7 (a), (b), or (c) under the 1978 regulations, nor those three criteria under the 1994 regulations as modified by sections 83.8(d)(1), (d)(2), (d)(3), or (d)(5). The petitioner was found to meet criteria 83.7 (d), (e), (f), and (g) in the original final determination. Those criteria were not at issue in the referral by the Secretary. In accordance with the regulations set forth in 25 CFR 83.7 [1978] and 25 CFR 83.10(m) [1994], failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law.

The final determination on whether or not the Chinook petitioner meets criteria (a), (b), and (c) is superceded by this reconsidered final determination. The **Federal Register** notice of the final determination published on Jan. 9, 2001 (66 FR 1690), is superceded by this notice. This reconsidered determination is final and effective upon publication.

Dated: July 5, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–17551 Filed 7–10–02; 9:48 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–02–1990–EX]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement To Analyze the Proposed Millennium Project Plan of Operations for Glamis Marigold Mining Company and Notice of Public Scoping and Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement to analyze the Proposed Millennium Project Plan of Operations for Glamis Marigold Mining Company (GMMC) and notice of public scoping and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, and 43 Code of Federal Regulations 3809, the Bureau of Land Management (BLM), Winnemucca Field Office will be directing the preparation of a third-party Supplemental Environmental Impact Statement (SEIS) to analyze a proposed new mine expansion called the Millennium project. The project would disturb approximately 1,394 acres of public and private lands and is located in Humboldt County, Nevada.

DATES: This notice initiates the public scoping process. Comments can be submitted in writing to the BLM, Winnemucca Field Office at the address listed below. All public meetings will be announced through the local news media and newsletters at least 15 days prior to the meetings.

Public Participation: The purpose of these public meetings is to identify potentially significant issues to be addressed in the SEIS, to determine the scope of issues to be addressed, to identify viable alternatives, and to encourage public participation in the NEPA process. Additional briefings will be considered, as appropriate. Comments, including names and street addresses of respondents, will be available for public review at the Winnemucca Field Office located in Winnemucca, Nevada, during regular business hours, and may be published as part of the SEIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, Winnemucca Office, Attention: Jeff Johnson, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Jeff Johnson, BLM Winnemucca at (775) 623–1500 or FAX # (775) 623–1503.

SUPPLEMENTARY INFORMATION: Since 1988 the Marigold Mine located approximately three miles south of Valmy, Nevada has been in commercial operation. The Marigold mine presently has mineral/development interests on approximately 19,000 acres of private and public land. In September 2001, BLM issued a Record of Decision authorizing activities proposed in an environmental impact statement (EIS). Previous to the EIS, numerous mine plan modifications and the original mine plan approvals were authorized in various environmental assessments (EAs). Currently, the mine is approved to disturb 1,831 acres on private and public lands. In April 2002, GMMC submitted a plan of operations modification referred to as the Millennium Expansion Project. The Millennium Expansion Project would disturb an additional 1,394 acres and would include expansion of existing and construction of new pits, expansion of existing waste rock storage facilities and construction of new waste rock storage facilities, two new heap leach processing facilities to include solution ponds, carbon columns, reagent storage tanks, a new ADR facility, support facilities (truck shop, fuel storage, warehouse), ancillary facilities, and construction of an evapo-transpiration closure cover system for the heap leach facilities.

Dated: June 13, 2002.

Terry A. Reed,

Field Manager, Winnemucca Field Office.

[FR Doc. 02–17588 Filed 7–11–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

Notice of Public Meeting, Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Arizona Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 1, 2002 at the BLM National Training Center, 9828 North 31st Avenue in Phoenix, Arizona, beginning at 9 a.m. The public comment period will begin at approximately 11:30 a.m., and the meeting will adjourn at approximately 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, AZ, Telephone (602) 417–9215.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Arizona. At this meeting, topics we plan to discuss include: The agenda items to be covered include: review of the March 1, 2002 meeting minutes; BLM State Director's Update on legislation, regulations and statewide issues; Updates on the Proposed Las Cienegas Resource Management Plan and Final Environmental Impact Statement, Arizona Drought Strategy, and the Arizona In-Lieu Selection; Status of Arizona BLM Planning Starts and Discussion of establishing a RAC Planning Working Group; Update Proposed Field Office Rangeland Resource Teams; RAC Questions on Written Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dated: July 1, 2002.

Carl Rountree,

Arizona Associate State Director.

[FR Doc. 02–17481 Filed 7–11–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1610–DO]

Notice of Intent To Prepare a Resource Management Plan for Alabama and Mississippi. Call for Coal Information and Invitation To Participate in Identification of Issues and Planning Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent and Call for Coal Information.

SUMMARY: The Bureau of Land Management (BLM) field office in Jackson, Mississippi (Jackson Field Office) is initiating the preparation of a Resource Management Plan (RMP) for the states of Alabama and Mississippi (AL–MS).

This action will require the preparation of an Environmental Impact Statement (EIS). Planning will be conducted for lands (tracts) and minerals under the administration of the BLM. The RMP will establish land use management policy on approximately 2,080 acres of land in Alabama, 3,770 acres of land in Mississippi and 200,000 acres of BLM administered in Alabama and Mississippi fluid mineral rights (oil and gas).

This notice also solicits coal information (Call for Coal Information) for BLM-administered coal in Alabama and Mississippi. Coal companies, state and local governments, and the general public are encouraged to submit information to assist the BLM in determining coal development potential, and development conflicts with other resources. If it is determined that there is development potential, BLM staff will give further consideration to addressing coal leasing in the RMP. See **SUPPLEMENTARY INFORMATION** for the data requested in this Call for Coal Information.

DATES: Submit comments and coal information on or before September 10, 2002.

ADDRESSES: Send written comments and coal information to BLM, Jackson Field Office; RMP AL–MS; 411 Briarwood Dr., Ste. 404; Jackson, MS 39206. Submit electronic comments and coal information to *Elizabeth_Allison@blm.gov* (RMP Team Leader). See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Elizabeth Allison, (601) 977–5413.

SUPPLEMENTARY INFORMATION: Planning will be conducted for lands (tracts) and minerals under the administration of the BLM. The tracts are located in more than 32 counties in Alabama and 19 counties in Mississippi. There are approximately 200,000 acres of BLM administered fluid mineral rights (oil and gas) under patented (private) lands in Alabama and Mississippi. BLM administered coal in these States may be addressed, if there are expressions of interest for future leasing and development.

Preliminary issues represent the BLM's knowledge, to date, on existing issues and concerns. The anticipated issues to be addressed in the RMP include, but are not limited to: (1) Public lands that could be transferred from BLM administration; (2) public lands that would be designated and managed as special management areas, and (3) BLM-administered fluid minerals that would be closed to leasing or designated as open to oil and gas leasing subject to standard lease terms and conditions. Other issues to be addressed includes archeology, lands and realty, geology and minerals, outdoor recreation, socioeconomic, soils, water, and wildlife. A RFDS will be developed for BLM-administered fluid minerals and used in the preparation of the RMP and EIS.

This notice initiates the National Environmental Policy Act (NEPA) public scoping process. The BLM will work collaboratively with interested parties to identify the management issues and concerns to be addressed in the RMP and EIS. The BLM will utilize and coordinate the NEPA commenting process to satisfy the public participation requirements of subpart 3420.1–2 (43 CFR 3420.1–2). Information is needed for (1) the application of coal planning screens, and (2) possible activity planning (i.e., tract delineation, ranking and selection). Based on the information that's received, additional issues (coal leasing) could be addressed in the RMP.

Those issues would be based on:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations.

Dated: June 4, 2002.

Mike Nedd,

Eastern States Director.

[FR Doc. 02–17589 Filed 7–11–02; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

ACTION: Notice of submission for OMB review; comment request.

SUMMARY: The Minerals Management Service (MMS) has submitted to the Office of Management and Budget (OMB) an information collection request (ICR) titled, "30 CFR 250, Subpart A, General," to renew approval of the collection of information contained in the regulations. OMB has assigned control number 1010–0114 to this ICR. The MMS will use the information to ensure that operations in the Federal offshore area are carried out in a safe and environmentally sound manner.

DATES: Submit written comments by August 12, 2002.

ADDRESSES: You may submit comments directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. Mail vouchered comments to the address given below. You may also e-mail comments to OMB at *oira_docket@omb.eop.gov*. Please send a copy of your comments to MMS at the address below.

FOR FURTHER INFORMATION CONTACT: Rules Processing Team; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; telephone (703) 787–1600. You may also contact Rules Processing Team to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires each agency "to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information" and to obtain OMB approval before implementing the collection. Agencies must also estimate the burden and cost to the public for collections of information and solicit comments. Regulations implementing these responsibilities are in 5 CFR 1320.8(d) and 1320.12(a). Section 1320.8(d) requires that, before submitting an ICR to OMB, agencies must provide the public and affected agencies a 60-day notice and comment period through the **Federal Register** and other appropriate means. Such notice must contain the following items:

1. Title of the information collection;
2. Summary of the collection;
3. Description of the need for, and proposed use of, the information;
4. Description of the likely respondents and proposed frequency of response;
5. Estimate of the burden that will result from the collection; and
6. Notice that comments may be submitted to OMB.

The MMS has submitted an ICR to OMB with the following information:

1. Title of the information collection: 30 CFR 250, Subpart A, General.
2. Summary of the collection: The regulations require the submission of information to ensure that operations in the Federal offshore area are carried out in a safe and environmentally sound manner.
3. Description of the need for, and proposed use of, the information: The information is used to ensure that operations in the Federal offshore area are carried out in a safe and environmentally sound manner.
4. Description of the likely respondents and proposed frequency of response: Respondents are Federal oil, gas, and sulphur lessees and operators. The frequency of response is on occasion.
5. Estimate of the burden that will result from the collection: The annual burden is 1,000 hours.
6. Notice that comments may be submitted to OMB: Comments may be submitted to OMB at the address given above.

Dated: June 27, 2002.

Carolita U. Kallaur,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–17590 Filed 7–11–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) announces the next meeting of the Outer Continental Shelf (OCS) Policy Committee.

DATES: The meeting will be held on Wednesday, August 7, 2002, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hilton Hotel, 1001 Howard Avenue, New Orleans, Louisiana 70113, (504) 581–1300.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Gernhofer, Executive Secretary, OCS Policy Committee, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817, (703) 787–1211.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice to the Secretary of the Interior on a variety of matters related to OCS oil and gas leasing and development, including the 5-year leasing program. The agenda for the meeting will include:

- Status of the 2002–2007 5-year OCS oil and gas leasing program.
- Update on the Gulf of Mexico Energy Security Act of 2002.
- Update on the Deepwater Royalty Relief Act.
- Update on the Outer Continental Shelf Deep Gas Royalty Relief Act.
- Update on the Outer Continental Shelf Natural Gas Deep Water Royalty Relief Act.
- Update on the Outer Continental Shelf Natural Gas Deep Water Royalty Relief Act.
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- Update on the Outer Continental Shelf Natural Gas Deep Water Royalty Relief Act.

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Preliminary issues represent the BLM's knowledge, to date, on existing issues and concerns. The anticipated issues to be addressed in the RMP include, but are not limited to: (1) Public lands that could be transferred from BLM administration; (2) public lands that would be designated and managed as special management areas, and (3) BLM-administered fluid minerals that would be closed to leasing or designated as open to oil and gas development under (a) standard terms and conditions, (b) timing limitation (seasonal) constraints, (c) controlled surface use constraints, or (d) no surface occupancy constraints.

These issues are not final and may be refined by public input (comments). Issues proposed by the public will be reviewed by BLM. Determinations will be made as to whether they (1) will be addressed in the RMP or (2) are outside the scope of the RMP.

Preliminary planning criteria developed to guide the preparation of this RMP are listed below. These criteria may be refined by public input (comment).

1. Land use planning and environmental analysis will be conducted in accordance with laws, regulations, executive orders and manuals. Planning will be conducted for lands (tracts) and minerals under the administration of the BLM.

2. Surface tracts will be mapped and identified by legal description. Land use policy will be established for BLM-administered lands identified after the RMP is completed.

3. A reasonably foreseeable development scenario (RFDS) will be prepared for the future leasing (and development) of fluid minerals under split-estate lands (i.e., non-BLM surface and BLM minerals). The RFDS will be developed on a regional (county) basis. Areas of high, moderate and low oil and gas potential will be identified (mapped) for each state.

4. Areas with the potential for non energy solid mineral leasing (i.e., phosphates, sodium, etc.) will be evaluated for inclusion in the RMP.

5. Resource data needed to evaluate the impacts of future (foreseeable) mineral development will be collected on a regional basis.

6. The planning team will work cooperatively with (1) federal, state, county and local governments and agencies; (b) tribal governments; (c) groups and organizations; and (d) individuals.

An interdisciplinary team approach will be used to address resource issues in this RMP. The preliminary list of resource programs that will be addressed includes archeology, lands and realty, geology and minerals, outdoor recreation, socioeconomic, soils, water, and wildlife. A RFDS will be developed for BLM-administered fluid minerals and used in the preparation of the RMP and EIS.

This notice initiates the National Environmental Policy Act (NEPA) public scoping process. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to national, regional and local needs and concerns. The public is invited to participate in this planning process, beginning with the identification of issues and planning criteria for the RMP. Comments relating to the preliminary issues and planning criteria (listed above) can be submitted in writing to the address listed above.

This planning process will emphasize localized one-to-one contacts, media coverage, direct mailings and continual coordination and collaboration. Meetings will be conducted to (1) determine the scope of the RMP, and (2) obtain input on issues and planning criteria. All public meetings will be announced through the local news media and BLM's Web site (*www.es.blm.gov*) at least 15 days prior to the event.

Individuals who submit comments may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses and individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public review in their entirety.

You may submit comments and coal information by sending electronic mail (e-mail) to *Elizabeth_Allison@blm.gov* (RMP Team Leader).

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. The BLM also accepts comments and data on disks in WordPerfect 7 (and higher) and Word 97 (and higher) file formats or the ASCII file format. Identify all comments and data in electronic form by the docket number [PP 4F4327/R2253].

Information is needed to determine (1) The potential for coal development and (2) the development conflicts with other resources. Industry and other interested parties are asked to provide information required in Title 43 of the Code of Federal Regulations (CFR), subpart 3420.1–2 (43 CFR 3420.1–2). Information is needed for (1) the application of coal planning screens, and (2) possible activity planning (i.e., tract delineation, ranking and selection). Based on the information that's received, additional issues (coal leasing) could be addressed in the RMP.

Those issues would be based on:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations.

2. Determining areas acceptable for further coal leasing consideration with special stipulations.

3. Determining areas unacceptable for further coal leasing consideration.

These determinations will be based on the data BLM receives. BLM staff will: (1) Assess coal development potential, (2) apply unsuitability criteria to proposed lease areas, (3) identify potential multiple use conflicts and (4) identify surface owner consultation needs.

The type of information needed includes, but is not limited to, the following:

1. Location:

a. Mining companies should include a narrative description and delineate areas on a map (scale of 1 inch to 2,000 feet) for areas they are interested in leasing.

b. Descriptions of both public and private industry coal users in the general region.

2. Quantity needs (tonnage, dates) for both public and private industry coal developers and users.

3. Quality needs (by type and grade) by end users of the coal.

4. Coal reserve drilling data which may pertain to the planning area.

5. Information pertaining to land and mineral ownership.

a. Surface owner consent previously granted, whether consent is transferrable, and surface owner leases with coal companies.

b. Non federal, or fee (private) coal ownership adjacent to federal tracts currently leased or mined.

6. Other resource values occurring within the planning area which may conflict with coal development:

a. Describe the resource value and locate it on a map (scale of 1 inch to 2,000 feet).

b. State the reasons the particular resource would be in conflict with coal development.

Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this Call for Coal Information.

(Authority: 43 U. S. C. 1701 et al; 42 U. S. C. 4321.)

Dated: June 4, 2002.

Mike Nedd,

Eastern States Director.

[FR Doc. 02–17589 Filed 7–11–02; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0073).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are submitting to OMB for review and approval an information collection request (ICR) titled "30 CFR Part 220, Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases." We are also soliciting comments from the public on this ICR.

DATES: Submit written comments on or before August 12, 2002.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0073), 725 17th Street, NW., Washington, DC 20503. Also, submit copies of your written comments to Carol Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also submit your comments at our email address *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Shelby at (303) 231–3151 or FAX (303) 231–3385.

FOR FURTHER INFORMATION CONTACT: Carol Shelby, telephone (303) 231–3151, FAX (303) 231–3385, or email *Carol.Shelby@mms.gov*.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR Part 220, Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.

OMB Control Number: 1010–0073.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for the management of all mineral leasing activities on Federal and Indian lands. The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) requires the Secretary of the Interior to establish a comprehensive fiscal accounting, auditing, and collection system to accurately determine oil and gas royalties and other payments, and to collect and account for those monies in a timely manner. The Secretary delegated the authority for royalty management to MMS to develop a net profit share bidding system to encourage exploration and development of oil and gas leases on submerged lands of the Outer Continental Shelf (OCS). Section 8(a) of the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*), authorizes DOI to implement alternative bidding systems for the award of Federal oil and gas leases on the OCS. The net profit share lease (NPSL) system endeavors to balance the securing of a fair market return to the Federal Government for the lease of its lands with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development and provides for a sharing of the risks by the lessee and the Government. The bidding system incorporates a fixed capital recovery system as the means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

The NPSL lessees are required to maintain an NPSL capital account and to provide either annual or monthly reports using data maintained in the capital account. In addition, NPSL lessees must file a report after each inventory of controllable material and following the cessation of production. Further, when nonoperators of an NPSL lease call for an audit, they must notify MMS, and when DOI calls for an audit, the lessee must notify all nonoperators on the lease. These requirements can be found in 30 CFR 220.010, 220.031, and 220.033.

The MMS is requesting an extension of OMB's approval to continue to collect this information. Submission of this information is required in order for MMS to determine when NPSL royalty payments are due and to determine the proper amount of payment. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: Annually before production; monthly after production.

Estimated Number and Description of Respondents: 12 OCS oil and gas lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 3,674 hours. The following chart shows the breakdown of the burden hours by CFR section and paragraph:

Section	Reporting or record keeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
220.010(a) 220.030(a)	For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations. Each lessee * * * shall establish and maintain such records as are necessary * * *.	1	22	22
220.031(a)	Each lessee * * * shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account.	16	5	80

Section	Reporting or record keeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
220.031(b)	Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee * * * shall file a report for each NPSL, not later than 60 days following the end of each month.	16	1204	3,264
220.031(d)	Each lessee * * * shall file a report not later than 90 days after each inventory is taken * * *.	8	22	176
220.031(e)	Each lessee * * * shall file a final report, not later than 60	2	22	44

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0068), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments to

energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1334(a) of the OCS Lands Act specifies that the Secretary prescribe rules and regulations "to provide for the prevention of waste and conservation of the natural resources of the (Outer Continental Shelf, and the

resources, and protecting correlative rights, including the Government's interests. We also use information submitted to determine competitiveness of a reservoir or to decide that compelling unitization will achieve these results.

Please note, 30 CFR 250.1303 states that "MMS will maintain and provide a model unit agreement for you to follow." Upon a recent review of the two current models, it was noted that they specified submission of "four

Section	Reporting or record keeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
220.031(b)	Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee * * * shall file a report for each NPSL, not later than 60 days following the end of each month.	16	[1]204	3,264
220.031(d)	Each lessee * * * shall file a report not later than 90 days after each inventory is taken * * *.	8	22	176
220.031(e)	Each lessee * * * shall file a final report, not later than 60 days following the cessation of production * * *.	2	22	44
220.033(b)(1)	When non-operators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call * * *.	2	22	44
220.033(b)(2)	If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit * * * The lessee shall send copies of the notice to the non-operators on the lease.	2	22	44
Total			319	3,674

[1] 17 leases x 12 months.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on February 19, 2002, we published a **Federal Register** notice (67 FR 7394) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. We did not receive any comments. We have posted a copy of the ICR at our Internet Web site *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will also provide a copy of the ICR to you without charge upon request.

If you wish to comment in response to this notice, please send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive your comments by August 12, 2002. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public Comment Policy. We will post all comments received in response to this notice on our Internet Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm* for public review. We also make copies of the comments, including names and addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado.

Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 21, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–17541 Filed 7–11–02; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart M, Unitization, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by August 12, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0068), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments to MMS, the e-mail address is: *rules.comments@MMS.gov*. Reference Information Collection 1010–0068 in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, at (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations and model unitization agreements that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart M, Unitization.

OMB Control Number: 1010–0068.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1334(a) of the OCS Lands Act specifies that the Secretary prescribe rules and regulations "to provide for the prevention of waste and conservation of the natural resources of the (O)uter Continental Shelf, and the protection of correlative rights therein" and include provisions "for unitization, pooling, and drilling agreements." To carry out these responsibilities, the Secretary has authorized MMS to issue orders and regulations governing offshore oil and gas lease operations.

This notice concerns the paperwork requirements of 30 CFR part 250, subpart M, Unitization, and related documents. Responses are mandatory or are required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). MMS OCS Regions use the information to determine whether to approve a proposal to enter into an agreement to unitize operations under two or more leases or to approve modifications when circumstances change. The information is necessary to ensure that operations will result in preventing waste, conserving natural resources, and protecting correlative rights, including the Government's interests. We also use information submitted to determine competitiveness of a reservoir or to decide that compelling unitization will achieve these results.

Please note, 30 CFR 250.1303 states that "MMS will maintain and provide a model unit agreement for you to follow." Upon a recent review of the two current models, it was noted that they specified submission of "four copies" of operator designations. In accordance with the Paperwork Reduction Act, we have determined that only "two copies" are necessary and have revised the models to reduce the copy requirements. Copies of the model unit agreements are posted at the MMS Web site: *http://www.gomr.mms.gov/homepg/pd/unitization.html*.

Frequency: The frequency of reporting is on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 5,396 hours. The following chart details the individual components and estimated hour burdens. There are no recordkeeping requirements under 30 CFR part 250, subpart M. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart M	Reporting requirement	Burden per requirement	Average annual responses	Annual burden hours
1301	General description of requirements	Burden included in following sections.		0
1301(f)(3), (g)(1)	Request suspension of production or operations.	Burden covered in 1010–0114		0
1302(b)	Request preliminary determination on competitive reservoir.	36 hours	1 request	36
1302(b)	Submit concurrence or objection on competitiveness with supporting evidence.	36 hours	1 request	36
1302(c), (d)	Submit joint plan of operations or separate plan if agreement cannot be reached.	36 hours	1 plan	36
1303	Apply for voluntary unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, and supporting data; request for variance from model agreement.	144 hours	14 applications/plans	2,016
1304(b)	Request compulsory unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, and supporting data; serving non-consenting lessees with documents.	144 hours	1 request	144

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart M	Reporting requirement	Burden per requirement	Average annual responses	Annual burden hours
1303; 1304	*Submit revisions or modifications to unit agreement, unit operating agreement, plan of operation, change of unit operator, etc.	6 hours	285 revisions/modifications.	1,710
1303; 1304	*Submit initial, and revisions to, participating area.	48 hours	24 submissions	1,152
1304(d)	Request hearing on required unitization	1 hour	1 request	1
	Submit statement at hearing on compul-	4 hours	1 statement	4

is to announce that the Service and the DOS are holding a meeting to solicit views from the public concerning the terms of a proposed safe third-country agreement.

DATES AND TIMES: The meeting will be held on Thursday, August 1, 2002, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Immigration and Naturalization Service Headquarters, 425 I Street, NW.,

What Recent Governmental Actions Support Pursuing This Agreement?

On December 3, 2001, Attorney General John Ashcroft signed an accord with then Canadian Minister of Citizenship and Immigration, Elinor Caplan, and the Solicitor General, Lawrence MacAuley, agreeing "to begin discussions on a safe third-country exception to the right to apply for asylum." The accord provided, "Such

TIME AND DATE: 9:30 a.m., Tuesday, July 16, 2002.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.
2. Reports from the Chairman

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart M	Reporting requirement	Burden per requirement	Average annual responses	Annual burden hours
1303; 1304	*Submit revisions or modifications to unit agreement, unit operating agreement, plan of operation, change of unit operator, etc.	6 hours	285 revisions/modifications.	1,710
1303; 1304	*Submit initial, and revisions to, participating area.	48 hours	24 submissions	1,152
1304(d)	Request hearing on required unitization	1 hour	1 request	1
1304(e)	Submit statement at hearing on compulsory unitization.	4 hours	1 statement	4
1304(e)	Submit three copies of verbatim transcript of hearing.	1 hour	1 submission	1
1304(f)	Appeal final order of compulsory under unitization.	Burden covered 1010–0121		0
1300–1304	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	2 hours	130 requests	260
Total Hour Burden			460	5,396

*These requirements are specified in each Unit Agreement.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: Section 250.1304(d) provides an opportunity for parties notified of compulsory unitization to request a hearing. Section 250.1304(e) requires the party seeking the compulsory unitization to pay for the court reporter and three copies of the verbatim transcript of the hearing. It should be noted there have been no such hearings in the recent past, and none are expected in the near future. We estimate the paperwork cost burden would be less than $250.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 28, 2002, we published a **Federal Register** notice (67 FR 14968) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, 30 CFR 250.199 provides the OMB control numbers for the information collection requirements imposed by the regulations and forms. That regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 12, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 7, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–17542 Filed 7–11–02; 8:45 am]

BILLING CODE 4310–MR–W

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2221–02]

Meeting on Proposed Safe Third Country Agreement With Canada for Asylum Seekers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service) and the Department of State (DOS) are engaged in formal negotiations with the Canadian government to enter into an agreement that would limit the access of asylum seekers, under appropriate circumstances, to the system of only one of the two countries (safe third-country agreement). The purpose of this notice is to announce that the Service and the DOS are holding a meeting to solicit views from the public concerning the terms of a proposed safe third-country agreement.

DATES AND TIMES: The meeting will be held on Thursday, August 1, 2002, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Immigration and Naturalization Service Headquarters, 425 I Street, NW, Washington, DC, 20536, Shaughnessy Conference Room, Sixth Floor.

FOR FURTHER INFORMATION CONTACT: Georgia Papas, Office of International Affairs, Asylum Division, Immigration and Naturalization Service, 111 Massachusetts Avenue, NW, Washington, DC. 20536; telephone (202) 514–6029; fax (202) 305–0827; e-mail *Georgia.Papas@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Meeting?

The purpose of this meeting is to solicit the views of non-governmental organizations and other interested members of the public regarding the terms of a safe third-country agreement between the United States and Canada.

What Would Such an Agreement Do?

This agreement, when finalized, will limit asylum seekers' access, in certain circumstances, to the asylum system of the last of the two countries where they have been present.

What Legal Authority Permits the United States To Enter Into Such an Agreement?

The United States asylum laws contain provisions that make certain aliens ineligible to apply for asylum if they can be removed to a prescribed "safe third country." Specifically, section 208(a)(1) of the Immigration and Nationality Act (Act) permits any alien who arrives in the United States to apply for asylum. However, section 208(a)(2)(A) provides that such an alien may not apply for asylum in the United States if the Attorney General determines that the person can be removed to a country pursuant to a bilateral or multilateral agreement (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) where he or she would not face persecution and would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

What Recent Governmental Actions Support Pursuing This Agreement?

On December 3, 2001, Attorney General John Ashcroft signed an accord with then Canadian Minister of Citizenship and Immigration, Elinor Caplan, and the Solicitor General, Lawrence MacAuley, agreeing "to begin discussions on a safe third-country exception to the right to apply for asylum." The accord provided, "Such an arrangement would limit the access of asylum seekers, under appropriate circumstances, to the system of only one of the two countries." Additionally, the Office of Homeland Security's Action Plan for Creating a Secure and Smart Border includes the negotiation of a safe third-country agreement as 1 of 30 shared initiatives between the United States and Canada.

Where Can the Public Obtain a Copy of the Proposed Agreement Prior to the August 1, 2002, Meeting?

Beginning on July 15, 2002, the public will be able to obtain a copy of the proposed agreement on the Service's Internet Web site at: *http://www.ins.usdoj.gov.*

What Is the Agenda for This Meeting?

There will be an overview of the terms of the draft agreement and an opportunity for public comment.

Who Can Attend This Meeting?

The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating and to arrange for appropriate clearance into the building. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before the meeting, or promptly afterward, to the contact person for consideration by the Service and the DOS.

Dated: July 5, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–17609 Filed 7–9–02; 4:03 pm]

BILLING CODE 4410–10–U

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Tuesday, July 16, 2002.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposal to adopt retroactive application of 28 CFR § 2.80.
4. Proposals to clarify and make corrections to the following rules: 28 CFR 2.75(a)(1) and (2); 28.CFR 2.80; 28 CFR 2.82(a); 28 CFR 2.86; 28 CFR 2.106(a), (b), and (d); 28 CFR 2.208(f) and 28 CFR 2.219.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 9, 2002.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 02–17624 Filed 7–10–02; 10:02 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement; Pursuant To The Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY: Department of Justice, United States Parole Commission.

DATE AND TIME: 11:00 a.m., Tuesday, July 16, 2002.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting: Appeals to the Commission involving approximately five cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 9, 2002.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 02–17625 Filed 7–10–02; 10:02 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training

Action No. 2010–72, U.S.D.C.), the U.S. Department of Labor (DOL) negotiated with the plaintiffs a series of regulations published June 10, 1980. Employment and Training Administration (ETA) regulations at 20 CFR 651, 653 and 658 under the Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998, set forth the role and responsibilities of the United States Employment Service (USES) and the

Seasonal Farm Workers Report, ETA 5418, from a current end date of September 30, 2002 to a new end date of September 30, 2004.

Type of Review: Extension without change.

Record, ETA 8429 and the Services to Migrant and Seasonal Farm Workers Report, ETA 5418, from a current end date of September 30, 2002 to a new end date of September 30, 2004.

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division: Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by

CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled

NY020026 (Mar. 01, 2002)
NY020029 (Mar. 01, 2002)
NY020031 (Mar. 01, 2002)
NY020032 (Mar. 01, 2002)
NY020033 (Mar. 01, 2002)
NY020034 (Mar. 01, 2002)
NY020036 (Mar. 01, 2002)
NY020037 (Mar. 01, 2002)
NY020038 (Mar. 01, 2002)
NY020039 (Mar. 01, 2002)
NY020040 (Mar. 01, 2002)
NY020041 (Mar. 01, 2002)

Dated: July 9, 2002.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 02–17625 Filed 7–10–02; 10:02 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed two-year extension of the Employment Service Complaint Referral Record, ETA 8429, and the Services to Migrant and Seasonal Farm Workers Report, ETA 5148, from the current end date of September 30, 2002 to a new end date of September 30, 2004.

A copy of the previously approved information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 10, 2002.

ADDRESSES: Gay Gilbert, Office of Workforce Security, U.S. Employment Service/ALMIS, 200 Constitution Avenue, NW., Room S–4510, Washington, DC 20210, (202–693–3428—not a toll free number) and Internet address: *ggilbert@doleta.gov* and/or fax: 202–693–3015.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the settlement in the case of *NAACP* v. *Secretary of Labor (Civil Action No. 2010–72, U.S.D.C.)*, the U.S. Department of Labor (DOL) negotiated with the plaintiffs a series of regulations published June 10, 1980. Employment and Training Administration (ETA) regulations at 20 CFR 651, 653 and 658 under the Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998, set forth the role and responsibilities of the United States Employment Service (USES) and the state workforce agencies (SWAs) regarding compliance of said regulations.

In compliance with 20 CFR 653.109, DOL established record keeping requirements to allow for the efficient and effective monitoring of SWAs regulatory compliance.

The ETA Form 8429, Employment Service Complaint Referral Record, is used to collect and document all individual complaints filed under the Employment Service complaint system.

The ETA Form 5148, Services to Migrant and Seasonal Farm Workers Report, is used to collect data which are primarily used to monitor and measure the extent and effectiveness of Employment Service (ES) services to migrant and seasonal farm workers as a high priority target group for ES services.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)) to extend collection of the Employment Service Complaint Referral Record, ETA 8429 and the Services to Migrant and Seasonal Farm Workers Report, ETA 5418, from a current end date of September 30, 2002 to a new end date of September 30, 2004.

Type of Review: Extension without change.

Record, ETA 8429 and the Services to Migrant and Seasonal Farm Workers Report, ETA 5418, from a current end date of September 30, 2002 to a new end date of September 30, 2004.

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).

Title: Employment Service Complaint Referral Record, ETA 8429, Services to Migrant and Seasonal Farm Workers Report, ETA 5148.

OMB Number: 1205–0039.

Frequency: Quarterly and on occasion, respectively.

Affected Public: State governments.

Total Respondents: 208.

Estimated Burden Hours: 5,530.

Complaint Log Maintenance

1. Record Keeping

Number of record-keepers: 168.
Annual hours per record-keeper: 6.3.
Record-keeper hours: 1,059.

2. Processing ETA 8429

Annual number of forms: 2,520.
Minutes per form: 8.
Processing hours: 336.

Outreach Log

1. Record Keeping

Number of record-keepers: 150.
Annual hours per record-keeper: 26.
Record-keepers hours: 3,900.

2. Data Collection/Reporting ETA 5148

Annual number of reports: 208.
Minutes per report: 70.
Record keeping hours: 244.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request; they will also become a matter of public record.

Dated: June 24, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–17599 Filed 7–11–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division: Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY020002 (Mar. 01, 2002)
NY020003 (Mar. 01, 2002)
NY020004 (Mar. 01, 2002)
NY020005 (Mar. 01, 2002)
NY020006 (Mar. 01, 2002)
NY020007 (Mar. 01, 2002)
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decisions issued during the year, extensive Help desk Support, etc.

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When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State.

—Panel Discussion with OSS Discipline Scientists and Program Executives
—Preliminary Results from the Lesley University Phase III Evaluation Study
—Discussion/Formulation of Task Force Findings and Recommendations
—Writing Assignments
—Schedule of Activities for Completing the Task Force Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Any member of the public may file a written statement with the Committee; such statements should be

—Discussion of Science Program Outcomes for the FY02 Government Performance and Results Act Assessment
—Report on the Education and Public Outreach Task Force

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Any member of the public may file a written statement with the Committee; such statements should be

requesting renewal of a broad scope license.

6. *An estimate of the number of responses:* 1.

7. *The estimated number of annual respondents:* 1.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 1.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Act are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

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When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of July 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–17319 Filed 7–11–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–086)]

NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach Task Force; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Education and Public Outreach (E/PO) Task Force.

DATES: Wednesday, August 7, 2002, 9 a.m. to 5:30 p.m., Thursday, August 8, 2002, 9 a.m. to 5:30 p.m., and Friday, August 9, 2002, 9 a.m. to 3 p.m.

ADDRESSES: Marriott Metro Center Hotel, located at 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Panel Discussion with Mission E/PO Leads

—Panel Discussion with OSS Discipline Scientists and Program Executives
—Preliminary Results from the Lesley University Phase III Evaluation Study
—Discussion/Formulation of Task Force Findings and Recommendations
—Writing Assignments
—Schedule of Activities for Completing the Task Force Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 9, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–17547 Filed 7–11–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–087)]

NASA Advisory Council, Space Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC).

DATES: Monday, August 5, 2002, 8:30 a.m. to 5:30 p.m., Tuesday, August 6, 2002, 8:30 a.m. to 5:30 p.m., and Wednesday, August 7, 2002, 8:30 a.m. to Noon.

ADDRESSES: NASA Headquarters, located at 300 E Street, SW., Washington, DC 20546, room 5H46 on August 5 and 6, and room 9H40 on August 7.

FOR FURTHER INFORMATION CONTACT: Ms. Marian R. Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Associate Administrator's Report
—Division and Program Directors' Reports
—Subcommittee Roadmap Reports
—Reports on the National Research Council's Decadal Surveys for Solar System Exploration and Sun-Earth Connection
—Discussion of Science Program Outcomes for the FY02 Government Performance and Results Act Assessment
—Report on the Education and Public Outreach Task Force

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Any member of the public may file a written statement with the Committee; such statements should be provided to the contact above no later than five working days before the meeting. Visitors to the meeting will be requested to sign a visitor's register.

Dated: July 9, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–17594 Filed 7–11–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 33—Specific Domestic Licenses of Broad Scope for Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

5. *Who will be required or asked to report:* All applicants requesting a license of broad scope for byproduct material and all current licensees requesting renewal of a broad scope license.

6. *An estimate of the number of responses:* 1.

7. *The estimated number of annual respondents:* 1.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 1.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 33 contains mandatory requirements for the issuance of a broad scope license authorizing the use of byproduct material. The subparts cover specific requirements for obtaining a license of broad scope. These requirements include equipment, facilities, personnel, and procedures adequate to protect health and minimize danger to life or property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World

Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 12, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0015), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of July, 2002.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17515 Filed 7–11–02; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering

that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect

Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. There are two deletions, four additions, and one name change to the 2002 list of Designated Federal Entities and Federal Entities from the 2001 list. America's Educational Goals Panel and

10. Federal Communications Commission—Chairperson
11. Federal Election Commission—Chairperson
12. Federal Housing Finance Board—Chairperson
13. Federal Labor Relations Authority—Chairperson
14. Federal Maritime Commission—Chairperson
15. Federal Trade Commission—Chairperson

14. Court of Appeals for Veterans Claims—Chief Judge
15. Defense Nuclear Facilities Safety Board—Chairperson
16. Delta Regional Authority—Federal Co-Chairperson
17. Export-Import Bank—President and Chairperson
18. Farm Credit System Financial Assistance Corporation—Chairperson
19. Farm Credit System Insurance

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UNITED STATES NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) part 55, section 55(c) for Facility Operating License Nos. DPR–19 and DPR–25, issued to Exelon Generation Company, LLC (the licensee), for operation of the Dresden Nuclear Power Station, Units 2 and 3 (Dresden), located in Morris, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee on a one-time-only basis from the two-year requirement of 10 CFR 55.59(c) for conducting a comprehensive licensed operator requalification written examination at Dresden.

The proposed action is in accordance with the licensee's application for exemption dated July 2, 2002, as supplemented by letter dated July 8, 2002.

The Need for the Proposed Action

The proposed action would extend the date for the licensee to complete the licensed operator requalification comprehensive written examinations at Dresden. The proposed action would extend the date for completing the examinations to August 2, 2002, (extending the examination schedule to 30 months rather than the 24 months required by 10 CFR 55.59(c)). The need for this proposed action arose due to the licensee erroneously scheduling the written examinations at an interval greater than the required 24 months.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the extension of the operator requalification examinations to August 2, 2002.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources:

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Dresden, dated November 1973.

Agencies and Persons Consulted

On July 8, 2002, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 2, 2002, as supplemented by letter dated July 8, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of July, 2002.

Jon B. Hopkins,

Acting Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–17650 Filed 7–11–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

2002 List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as subsequently amended.

FOR FURTHER INFORMATION CONTACT: Tawana Webb at 202–395–7586, Office of Federal Financial Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 2002 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act. This list is also posted on the OMB Web site at *http://www.whitehouse.gov/financial*.

The list is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The Designated Federal Entities are listed in the IG Act, except that those agencies which have ceased to exist or have changed status have been deleted from the list.

Federal Entities are required to report annually to each House of the Congress and OMB on audit and investigative activities in their organizations. Federal Entities are defined as "any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled

corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. There are two deletions, four additions, and one name change to the 2002 list of Designated Federal Entities and Federal Entities from the 2001 list. America's Educational Goals Panel and the State Justice Institute were deleted from the Federal Entities list. The Commission on Ocean Policy (Pub. L. 106–553), National Veterans Business Development Corporation (Pub. L. 106–50), Pacific Charter Commission (Pub. L. 106–570), and Vietnam Education Foundation (Pub. L. 106–554) were added as Federal Entities, as a result of the Public Laws cited. The name of the U.S. Holocaust Memorial Museum was changed by Pub. L. 106–292.

The 2002 List of Designated Federal Entities and Federal Entities was prepared in consultation with the U. S. General Accounting Office.

Mark W. Everson,

Controller, Office of Federal Financial Management.

Herein follows the text of the 2002 List of Designated Federal Entities and Federal Entities:

2002 List of Designated Federal Entities and Federal Entities

The Inspector General Act of 1978, as subsequently amended, requires OMB to publish a list of "Designated Federal Entities" and "Federal Entities" and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. Amtrak—President
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Denali Commission—Chairperson
8. Equal Employment Opportunity Commission—Chairperson
9. Farm Credit Administration—Chairperson

Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Chemical Safety and Hazard Investigation Board—Chairperson
8. Christopher Columbus Fellowship Foundation—Chairperson
9. Commission for the Preservation of America's Heritage Abroad—Chairperson
10. Commission of Fine Arts—Chairperson
11. Commission on Civil Rights—Chairperson
12. Commission on Ocean Policy—Chairperson
13. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
10. Federal Communications Commission—Chairperson
11. Federal Election Commission—Chairperson
12. Federal Housing Finance Board—Chairperson
13. Federal Labor Relations Authority—Chairperson
14. Federal Maritime Commission—Chairperson
15. Federal Trade Commission—Chairperson
16. Legal Services Corporation—Board of Directors
17. National Archives and Records Administration—Archivist of the United States
18. National Credit Union Administration—Chairperson
19. National Endowment for the Arts—Chairperson
20. National Endowment for the Humanities—Chairperson
21. National Labor Relations Board—Chairperson
22. National Science Foundation—National Science Board
23. Peace Corps—Director
24. Pension Benefit Guaranty Corporation—Chairperson
25. Securities and Exchange Commission—Chairperson
26. Smithsonian Institution—Secretary
27. United States International Trade Commission—Chairperson
28. United States Postal Service—Governors of the Postal Service
14. Court of Appeals for Veterans Claims—Chief Judge
15. Defense Nuclear Facilities Safety Board—Chairperson
16. Delta Regional Authority—Federal Co-Chairperson
17. Export-Import Bank—President and Chairperson
18. Farm Credit System Financial Assistance Corporation—Chairperson
19. Farm Credit System Insurance Corporation—Chairperson
20. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
21. Federal Mediation and Conciliation Service—Director
22. Federal Mine Safety and Health Review Commission—Chairperson
23. Federal Retirement Thrift Investment Board—Executive Director
24. Harry S Truman Scholarship Foundation—Chairperson
25. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
26. Institute of Museum and Library Services—Director
27. Inter-American Foundation—Chairperson
28. James Madison Memorial Fellowship Foundation—Chairperson
29. Japan-U.S. Friendship Commission—Chairperson
30. Marine Mammal Commission—Chairperson
31. Merit Systems Protection Board—Chairperson
32. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
33. National Capital Planning Commission—Chairperson
34. National Commission on Libraries and Information Science—Chairperson
35. National Council on Disability—Chairperson
36. National Mediation Board—Chairperson
37. National Transportation Safety Board—Chairperson
38. National Veterans Business Development Corporation—Chairperson
39. Neighborhood Reinvestment Corporation—Chairperson
40. Nuclear Waste Technical Review Board—Chairperson
41. Occupational Safety and Health Review Commission—Chairperson
42. Office of Government Ethics—Director
43. Office of Navajo and Hopi Indian Relocation—Chairperson

44. Office of Special Counsel—Special Counsel
45. Offices of Independent Counsel—Independent Counsels
46. Overseas Private Investment Corporation—Board of Directors
47. Pacific Charter Commission—Chairperson
48. Postal Rate Commission—Chairperson
49. Presidio Trust—Chairperson
50. Selective Service System—Director

and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

We estimate we will process 5,000 requests annually from RI 20–120. This

U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, July 16, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: July 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17610 Filed 7–9–02; 4:17 pm]

BILLING CODE 8010–01–M

Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: Slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel

safeguard measures. Accordingly, under authority vested in the USTR by Proclamation 7529, I modify the HTS provisions created by the annex to Proclamation 7529 as set forth in the annex to this notice. Such modifications shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

On March 19, 2002 and June 4, 2002, USTR published **Federal Register**

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44. Office of Special Counsel—Special Counsel
45. Offices of Independent Counsel—Independent Counsels
46. Overseas Private Investment Corporation—Board of Directors
47. Pacific Charter Commission—Chairperson
48. Postal Rate Commission—Chairperson
49. Presidio Trust—Chairperson
50. Selective Service System—Director
51. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
52. Smithsonian Institution/National Gallery of Art—President
53. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director
54. Trade and Development Agency—Director
55. U.S. Holocaust Memorial Museum—Chairperson
56. U.S. Institute of Peace—Chairperson
57. Vietnam Education Foundation—Chairperson

[FR Doc. 02–17497 Filed 7–11–02; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a New Information Collection RI 20–120

AGENCY: Office of Personnel Management (OPM).
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a new information collection. RI 20–120, Request for Change to Unreduced Annuity, is a new form designed to collect information OPM needs to comply with the wishes of the retired Federal employee whose marriage has ended. We have always needed this information. In the past, we have considered the information originally provided in the correspondence from the retiree and have made further inquiries as needed. This new form will provide an organized way for the retiree to give us everything at one time.

Comments are particularly invited on:
—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

We estimate we will process 5,000 requests annually from RI 20–120. This form takes an average of 30 minutes per response to complete. The annual burden is estimated to be 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination Contact: Cyrus Benson, Team Leader Desktop Publishing and Printing Team Budget and Administrative Services Division (202) 606–0623

U.S. Office of Personnel Management
Kay Coles James,
Director.

[FR Doc. 02–17406 Filed 7–11–02; 8:45 am]
BILLING CODE 6325–55–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 15, 2002:

Closed Meetings will be held on Tuesday, July 16, 2002, at 10 a.m., and Thursday, July 18, 2002, at 10 a.m., and an Open Meeting will be held on Wednesday, July 17, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, July 16, 2002, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Thursday, July 18, 2002, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and
Adjudicatory matter.

The subject matter of the Open Meeting scheduled for Wednesday, July 17, 2002, will be:

1. The Commission will consider whether to propose amendments to rule 206(4)–2, the custody rule under the Investment Advisers Act of 1940, to enhance the protections afforded to advisory clients' assets, harmonize the rule with current custodial practices, and clarify circumstances under which advisers have custody of client assets.

2. The Commission will consider whether to adopt amendments to rule 17a–8 under the Investment Company Act of 1940. The proposed amendments to rule 17a–8 would expand the types of business combinations permitted by the rule and make the rule available for mergers between registered investment companies and certain unregistered entities. The proposed amendments to rule 17a–8 are designed to reduce burdens on investment companies by permitting investment companies to enter into mergers that present little risk of overreaching without first obtaining an exemptive order from the Commission.

3. The Commission will consider whether to propose exemptions for most standardized options from provisions of the Securities Act of 1933 and from the registration requirements of the Securities Exchange Act of 1934. The proposals would ensure comparable regulatory treatment of standardized options and security futures products.

4. The Commission will consider whether to amend the Privacy Act System of Records for Enforcement Files (SEC–42) to clarify that disclosures may be made in connection with debt collection activities, including disclosures to credit reporting bureaus, to update statutory and regulatory references and addresses of system administrators, and to append a statement regarding previously published Privacy Act exemptions claimed for the system.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: July 9, 2002.
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02–17610 Filed 7–9–02; 4:17 pm]
BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Exclusion of Particular Products from Actions under Section 203 of the Trade Act of 1974 With Regard to Certain Steel Products; Conforming Changes and Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.
ACTION: Notice.

SUMMARY: Pursuant to authority granted to the United States Trade Representative (USTR) in Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553), the USTR has found that particular products should be excluded from actions under section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (Trade Act) with regard to certain steel products, and is modifying subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice to implement these exclusions. Pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in the subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The modifications and corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in each item in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street NW., Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: Slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States ("HTS") ("safeguard measures") for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota.

Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding four particular products from the safeguard measures, and modified the HTS accordingly.

I have further considered exclusion requests for certain products designated as X–004, X–010, X–011, X–018, X–021, X–022, X–025, X–032, X–035, X–039, X–046, X–048, X–059, X–061, X–072, X–075, X–077, X–083, X–088, X–089, X–090, X–093, X–100, X–104, X–108, X–109, X–110, X–113, X–116, X–119, X–120, X–122, X–128, X–134, X–142, X–143, X–147, X–160, X–162, X–172, X–177, X–186, X–187, X–188, X–194, X–196, X–213, and X–219. I have also considered exclusion requests for certain products designated N–300, N–303, N–313, N–316, N–319, N–321, N–377, N–387, N–392, N–426, N–454, N–455, N–456, N–467, N–491, N–495, N–499. I find that the exclusion from the safeguard measures established in Proclamation 7529 of certain steel products within these designations, as described in sections 2 and 3 of the annex to this notice, would not undermine the goals of those safeguard measures. Therefore, I find that these products should be excluded from those safeguard measures. Accordingly, under authority vested in the USTR by Proclamation 7529, I modify the HTS provisions created by the annex to Proclamation 7529 as set forth in the annex to this notice. Such modifications shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

On March 19, 2002 and June 4, 2002, USTR published **Federal Register** notices (67 FR 12635 and 67 FR 38541, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date set forth in each item in the annex to this notice.

Robert B. Zoellick,
United States Trade Representative.

Annex

The HTS is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the Harmonized Tariff Schedule of the United States (HTS). The new subheading and superior text thereto being inserted by this notice are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively. Individual subdivisions of U.S. note 11 to subchapter III

of chapter 99 of the HTS set forth herein specify that quantities of the named goods may enter under the terms of such subdivisions during periods beginning on July 12, 2002; and such subdivisions and the associated subheadings shall be effective with respect to the specified goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EDT, on July 12, 2002; other provisions of this notice likewise specify that they are effective on or after 12:01 a.m., EDT, on July 12, 2002. The

bottom side: nickel layer of 1.0 micrometer or more; the foregoing designated as X–109;".

J. In subdivision (iiii), delete "in coils,".

K. Annex paragraph 9(U) of the notice of June 4, 2002, is modified to read as follows: "In subdivision (b)(xlviii), "457.2 mm" is deleted and "457.0 mm" is inserted in lieu thereof;".

L. Subheading 9903.73.45 is modified by deleting "11(b)(xi)" and by inserting in lieu thereof "11(b)(xi)(A)'; and subheadings 9903.73.45 and 9903.73.46, as inserted by paragraph 10(D) of such notice, are

maximum, sulfur 0.01 maximum, silicon 0.13 to 0.45 and nickel 8.40 to 9.60; or

(C) Flat-rolled products having a width not over 600 mm, not further worked than hot rolled, of a thickness of 4.75 mm or greater, containing by weight 24 percent or more of nickel with or without other elements and composed according to specification ASTM F15;"

B. Subdivision (b)(xx) is deleted and replaced by:

"(xx) Flat-rolled, hot-rolled products designated as X–116, as described below:

phosphorus not over 0.03, sulfur not over 0.03, chromium 0.90 to 1.20, molybdenum 0.15 to 0.30; hardness: HRB of not over 87; tensile strength of 500 N/mm2 or greater; elongation of 30 percent or more; yield ratio of not over 80 percent; thickness: 2.6 to 4.0 mm; width: 1066 mm to 1321 mm; and with edge: square cut edge free of burrs, rice marks, protrusions or damage;

(B) Products having widths greater than 914 mm, certified by the importer to have had ladle chemical analysis (percent by weight): carbon 0.56 to 0.64, manganese 0.75

inclusive, the foregoing meeting the following characteristics: cold-rolled, with a fully spheroidized uniform pinpoint carbide structure in a ferrite matrix; cleanliness meeting ASTM E45 CT3.6 maximum; edges machined square and decornered; dish 0.025 mm maximum per 25.4 mm of width, straightness 6.35 mm in 3,048 mm, surface finish to be uniform through each coil, face to face and coil to coil, hardness 300–350 VPN; with chemical composition (percent by weight): carbon 0.65 to 0.74, silicon 0.20 to 0.35, manganese 0.30 to 0.50, sulfur 0.025

0.015 maximum and silicon 0.15 to 0.25; thickness 0.254 mm to 2.324 mm; width 914.4 mm to 1320.8 mm; spheroidized annealed; thickness tolerance of half the ASTM A568 standard or less; and HRB hardness HRB 90 maximum;'

F. In subdivision (b)(xxxii) is modified by striking "or" at the end of subdivision (b)(xxxii)(C)(XV), by inserting "or" at the end of subdivision (b)(xxxii)(D), and the following new subdivision is inserted thereafter:

"(E) Products with thickness 1.07 mm or

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of chapter 99 of the HTS set forth herein specify that quantities of the named goods may enter under the terms of such subdivisions during periods beginning on July 12, 2002; and such subdivisions and the associated subheadings shall be effective with respect to the specified goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EDT, on July 12, 2002; other provisions of this notice likewise specify that they are effective on or after 12:01 a.m., EDT, on July 12, 2002. The remaining provisions of this notice shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002:

1. In order to make corrections in subchapter III of chapter 99 of the HTS, the following modifications shall be made in U.S. note 11 to such subchapter:

A. Subdivision (b)(viii)(A) is modified by deleting "0.245" and by inserting in lieu thereof "0.254".

B. Subdivision (b)(xv), as modified by paragraph 9(E) of the notice published on June 4, 2002, is modified by inserting a comma after "nickel of 0.40 percent maximum".

C. In annex paragraph 9(N) of such notice, "subdivision (b)(xxxii)(B)" is modified to read "subdivision (b)(xxxii)(C)"; and in subdivision (b)(xxxii)(C) the language "(imported under subheading 7209.16.00, 7209.18.15, 7209.18.25 or 7209.17.00)" is deleted;

D. Subdivision (b)(xxxv)(A) is modified by deleting all of the text starting with "tin-nickel layer" and by inserting in lieu thereof the following: "tin-nickel layer of 1.0 micrometer or more; tin layer of 0.05 micrometer or more; nickel-graphite layer over 0.2 micrometer, and bottom side: nickel layer of 1.0 micrometer or more;".

E. Subdivision (b)(xxxv)(B) is modified by deleting all of the text starting with "tin-nickel layer" and by inserting in lieu thereof the following: "tin-nickel layer of 1.0 micrometer or more; nickel-graphite layer of 0.5 micrometer or more; bottom side: nickel layer of 1.0 micrometer or more;".

F. Subdivision (b)(xxxv)(C) is modified by deleting all of the text starting with "nickel-graphite layer" and by inserting in lieu thereof the following: "nickel-graphite layer of 1.0 micrometer or more; bottom side: nickel layer of 1.0 micrometer or more;".

G. Subdivision (b)(xxxv)(D) is modified by deleting all of the text starting with "nickel layer" and by inserting in lieu thereof the following: "nickel layer of 1.0 micrometer or more; nickel-phosphorus layer of 0.1 micrometer or more; bottom side: nickel layer of 1.0 micrometer or more;".

H. Subdivision (b)(xxxv)(E) is modified by deleting all of the text starting with "nickel-tin-nickel" and by inserting in lieu thereof "nickel-tin-nickel combination layer of 1.0 micrometer or more; tin layer only of 0.05 micrometer or more; bottom side: nickel layer of 1.0 micrometer or more;".

I. Subdivision (b)(xiii) is modified by deleting all of the text starting with "nickel-tin layer" and by inserting in lieu thereof the following: "nickel-tin layer of 1.0 micrometer or more; tin layer of 0.05 micrometer or more; bottom side: nickel layer of 1.0 micrometer or more; the foregoing designated as X–109;".

J. In subdivision (liii), delete "in coils,".

K. Annex paragraph 9(U) of the notice of June 4, 2002, is modified to read as follows: "In subdivision (b)(xlviii), "457.2 mm" is deleted and "457.0 mm" is inserted in lieu thereof;".

L. Subheading 9903.73.45 is modified by deleting "11(b)(xi)" and by inserting in lieu thereof "11(b)(xi)(A)'; and subheadings 9903.73.45 and 9903.73.46, as inserted by paragraph 10(D) of such notice, are redesignated as 9903.73.46 and 9903.73.47, respectively.

M. The superior text to subheadings 9903.73.42 through 9903.73.52 is modified by deleting "with a height of 80 mm or more" and by inserting "with any linear dimension of 80 mm or greater when measured through a solid portion of the cross section".

2. In order to provide that additional categories of goods related to existing exclusions are excluded from the actions taken in Presidential Proclamation 7529 and that needed clarifications are made, U.S. note 11(b) to subchapter III of chapter 99 of the HTS is further modified as follows:

A. Subdivision (b)(xi) is deleted and replaced by:

"(xi) Products designated as X–083, with the following characteristics:

(A) Products known as "Superplast SP 300," the foregoing which are plates, pre-forged and rolled blocks or forged extra-heavy section blocks, with thickness of 152 and 1270 mm, inclusive, widths of 1990 mm, and lengths of 3048 to 3810 mm, inclusive; containing, by weight, carbon of between 0.235 and 0.265 percent, chromium of between 1.20 and 1.40 percent, manganese of between 1.20 and 1.40 percent, nickel of 0.30 percent maximum, molybdenum of between 0.35 and 0.45 percent, silicon of between 0.05 and 0.15 percent, boron of between 0.002 and 0.004 percent and sulphur of between 0.015 and 0.020 percent; with oxygen of 20 ppm (parts per million) and hydrogen of 2 ppm; if measuring between 152 and 203 mm displaying through hardness of 269 to 320 Brinnell, with a maximum dispersion of 15 bhn throughout; if measuring 203 and 1270 mm having through hardness of 290 to 320 Brinnell, with a maximum dispersion of 30 bhn throughout; all such products conforming to ultrasonic testing requirements of American Society of Testing and Materials (ASTM) A578-S9, with a 2 mm flat bottom hole, and homogenous product (free of hardspots) cleanliness guaranteed per ASTM E45 method A, worst field ratings A: 1.5 maximum, B: 1.5 maximum, C: 1.0 maximum and D: 1.5 maximum;

(B) Flat-rolled products imported in condition as specified in ASTM/ASME A353 (as rolled) or ASTM/ASME A553 (quenched and tempered), thickness of 4.75 mm or greater, minimum Charpy impact energies at −196° § C of 90 J (longitudinal) and 80 J (transverse), manufactured in compliance with the European material standard EN 10028-Part 4 and the required certification EN 10204 3.1.A; with chemical composition (percent by weight): carbon 0.13 maximum, manganese 0.90 to 0.98, phosphorus 0.015 maximum, sulfur 0.01 maximum, silicon 0.13 to 0.45 and nickel 8.40 to 9.60; or

(C) Flat-rolled products having a width not over 600 mm, not further worked than hot rolled, of a thickness of 4.75 mm or greater, containing by weight 24 percent or more of nickel with or without other elements and composed according to specification ASTM F15;"

B. Subdivision (b)(xx) is deleted and replaced by:

"(xx) Flat-rolled, hot-rolled products designated as X–116, as described below:

(A) Products not further processed than hot-rolled, of the grade known as "ALFORM" or "ALFORM 890/900," of a thickness of not over 4.75 mm, whether in coils or in cut-to-length form (provided for in subheading 7225.30.70 or 7225.40.70);

(B) Products of grade SAE 8667, with chemical composition (percent by weight): carbon 0.61 to 0.72, chromium 0.20 to 0.35, manganese 0.30 to 0.50, molybdenum 0.08 to 0.15, nickel 0.20 to 0.35, phosphorus 0.025 maximum, sulfur 0.025 maximum and silicon 0.20 to 0.35; hot-rolled, pickled and oiled in coils; according to specification OCS–1; silicon-aluminum killed, without welds; fine austenitic grain; thickness: 2.26 mm or 3.18 mm or 4.36 mm, thickness tolerances ±0.090 mm; conicity measured at 40 mm from edge; thickness tolerances for remainder ±0.18 mm; and width of 1,028.7 mm to 1,033.55 mm;

(C) Grade SAE 8667, hot-rolled, pickled and oiled products in coils; silicon-aluminum killed, without welds, fine austenitic grain; thickness 2.29 mm, thickness tolerances ±0.090 mm; conicity measured at 40 mm from edge, 0.090 mm for 95 percent of coil length, thickness tolerances for remainder ±0.18 mm, width 1028.7 mm. −0.00 mm/+4.75 mm; with chemical composition (percent by weight): carbon 0.61 to 0.72, chromium 0.40 to 0.60, manganese 0.35 to 0.55, molybdenum 0.10 to 0.20, nickel 0.60 to 0.90, phosphorus 0.025 maximum, sulfur 0.025 and silicon 0.20 to 0.35; or

(D) Pickled and oiled products in coils, silicon-aluminum killed, grade 1050 mod. according to SAE J403–92; tolerances according to ASTM A568/91A, no welds, thickness tolerances ±0.13mm, thickness/width combinations: not over 1.98 mm/927.10 mm or not over 2.28 mm/1146 mm; with chemical composition (percent by weight): aluminum 0.02 to 0.07, carbon 0.51 to 0.55, chromium not over 0.05, manganese 0.78 to 0.90, phosphorus 0.012 maximum, sulfur 0.003 maximum and silicon 0.20 to 0.30; cleanliness: inclusions not to exceed 15,000 per Wallace Barnes (approximately 12 maximum Stringer Type per ASTM); free of primary and secondary pipe, lamination, seams, laps, rolled in scale, harmful segregation (¼ point) and other defects injurious to final product integrity;'

C. Subdivision (b)(xxiii) is deleted and replaced by:

"(xxiii) Hot-rolled flat-rolled products designated as X–142, meeting the following characteristics:

(A) Products known in industry usage as "SCM 415," with chemical composition (percent by weight): carbon 0.13 to 0.18, silicon 0.15 to 0.35, manganese 0.60 to 0.85, phosphorus not over 0.03, sulfur not over 0.03, chromium 0.90 to 1.20, molybdenum 0.15 to 0.30; hardness: HRB of not over 87; tensile strength of 500 N/mm2 or greater; elongation of 30 percent or more; yield ratio of not over 80 percent; thickness: 2.6 to 4.0 mm; width: 1066 mm to 1321 mm; and with edge: square cut edge free of burrs, rice marks, protrusions or damage;

(B) Products having widths greater than 914 mm, certified by the importer to have had ladle chemical analysis (percent by weight): carbon 0.56 to 0.64, manganese 0.75 to 1.00, nickel 0.40 to 0.70 and molybdenum 0.15 to 0.25; or

(C) Products meeting ASTM A506 (Modified UNS G41180), with chemical composition (percent by weight): manganese 0.60 to 0.90, chromium 0.55 to 0.75, silicon 0.30 to 0.45, copper 0.20, molybdenum 0.10 to 0.15, carbon 0.13 to 0.18, sulfur not over 0.005, phosphorus not over 0.025, niobium (columbium) 0.02 to 0.04, nickel not over 0.10; thickness of 1.55 mm or more but not over 3.76 mm; calcium refinement; half gauge tolerance ±0.115 mm; with coil size of 900 to 1,200 kg per cm width with no more than 10 percent of the coils between 600 and 900 kg per cm width;' D.Subdivision (b)(xxv) is deleted and the following new provisions are inserted in lieu thereof:

"(xxv) Cold-rolled products designated as X–010, as described below:

(A) Blue finish band saw steel meeting the following characteristics: Thickness not over 1.31 mm; width not over 80 mm; chemical composition (percent by weight): carbon 1.2 to 1.3, silicon 0.15 to 0.35, manganese 0.20 to 0.35, phosphorus not over 0.03, sulfur not over 0.007, chromium 0.30 to 0.5 and nickel not over 0.25; with the following other properties: carbides fully spheroidized, having greater than 80 percent of carbides, which are not over 0.003 mm and uniformly dispersed; surface finish is blue finish free from pits, scratches, rust, cracks, or seams; smooth edges; edge camber (in each 300 mm of length) of not over 7 mm arc height; and cross bow (per mm of width) of 0.015 mm maximum;

(B) Bright or blue finished band saw steel, if entered in an aggregate annual quantity not to exceed 250 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, and meeting the following characteristics: cold-rolled, heat treated with fine spheroidized structure, edge machined, corner radius 45 degrees, controlled dish to 0.375 mm per 25.4 mm maximum; straightness 6.35 mm in 3,048 mm, supplied in coils of matched length and in sets; with chemical composition (percent by weight): carbon 0.70 to 0.80, silicon 0.10 to 0.30, manganese 0.60 to 0.85, chromium 0.20 to 0.30, sulfur 0.025 maximum and phosphorus 0.025 maximum; meeting ASTM E45 3.0/3.5 CT for cleanliness and with grain size 5 to 8 according to ASTM E112; thickness not over 1.25 mm and width not over 42 mm;

(C) Bandsaw steel, if entered in an aggregate annual quantity not to exceed 163 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing meeting the following characteristics: cold-rolled, with a fully spheroidized uniform pinpoint carbide structure in a ferrite matrix; cleanliness meeting ASTM E45 CT3.6 maximum; edges machined square and decornered; dish 0.025 mm maximum per 25.4 mm of width, straightness 6.35 mm in 3,048 mm, surface finish to be uniform through each coil, face to face and coil to coil, hardness 300–350 VPN; with chemical composition (percent by weight): carbon 0.65 to 0.74, silicon 0.20 to 0.35, manganese 0.30 to 0.50, sulfur 0.025 maximum, phosphorus 0.025 maximum, chromium 0.40 to 0.60, nickel 0.60 to 0.90 and molybdenum 0.08 to 0.15; thickness not over 1.1 mm and width not over 35 mm;

(D) Flat-rolled steel with the following characteristics: commercially designated as "B82", cold-rolled, hardened and tempered, leather polished (heavy grain), hardness HRC 38 to 54, finish to be consistent coil to coil and face to face; capable of passing tooth setting bend test without fracture; with chemical composition (percent by weight): carbon 0.70 to 0.80, manganese 0.65 to 0.85, sulfur 0.008 maximum and phosphorus 0.018 maximum; dish 0.025 mm maximum per 25.4 mm of width; cleanliness meeting ASTM E45M 3.5CT, grain size 5 to 8 ASTM E112, tempered martensite microstructure free from segregation or banding, after polishing the product may be naturally colored blue, bronze or gold, thickness not over 2.30 mm and width not over 375 mm; or

(E) Cold-rolled, flat-rolled steel, if entered in an aggregate annual quantity not to exceed 340 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, and with the following characteristics: cleanliness meeting ASTM E45M 3.5CT; grain size 5 to 8 by ASTM E112; hardened and tempered within the range HRC 43 to 54; with chemical composition (percent by weight): carbon 0.98 to 1.05, manganese 0.30 to 0.50 and sulfur 0.015 maximum; dish 0.025 mm maximum per 25.4 mm of width; scaleless, heavy gauge leather polished or blue, whether or not edge machined; width of 150 mm or less and thickness of not over 2.35 mm;'

E. Subdivision (b)(xxxi) is deleted and the following new provisions are inserted:

"(xxxi) Cold-rolled flat-rolled steel designated as X–083, with the following characteristics:

(A) Products not further worked than cold-rolled, less than 4.75 mm in thickness; containing, by weight, at least 14 percent nickel or 25 percent cobalt, with or without other elements; controlled expansion alloys are composed according to specifications ASTM F15, ASTM F30, ASTM B753 ASTM F1684; magnetic alloys composed according to specifications ASTM A753 or ASTM A801; or

(B) Products of grade C1095/SAE1095, if entered in an aggregate annual quantity not to exceed 12,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, and with chemical composition (percent by weight): carbon of 0.90 to 1.04, manganese 0.30 to 0.50, phosphorus 0.025 maximum, sulfur 0.015 maximum and silicon 0.15 to 0.25; thickness 0.254 mm to 2.324 mm; width 914.4 mm to 1320.8 mm; spheroidized annealed; thickness tolerance of half the ASTM A568 standard or less; and HRB hardness HRB 90 maximum;'

F. In subdivision (b)(xxxii) is modified by striking "or" at the end of subdivision (b)(xxxii)(C)(XV), by inserting "or" at the end of subdivision (b)(xxxii)(D), and the following new subdivision is inserted thereafter:

"(E) Products with thickness 1.07 mm or more but not over 3.05 mm, width 130 mm or more but not over 413 mm; with chemical composition (percent by weight): carbon 0.67 to 0.80, silicon 0.20 to 0.35, manganese 0.30 to 0.50, nickel 1.90 to 2.20, chromium 0.10 to 0.20, phosphorus not over 0.03, sulfur not over 0.015 and copper not over 0.15; flatness tolerance of ±0.001 mm per millimeter of product width; straightness of product (camber): short camber ±0.2997 mm over 1,016 mm, long camber: ±0.7620 mm over 3,048 mm; edge finish: square smooth edges free of burrs; surface finish: smooth surface of Ra 0.4–0.8 micrometer on both sides; hardened and tempered, bright finished random length coils; microstructure: evenly tempered martensitic structure free of carbide network; and no decarburization;'

G. (i) In subdivision (xxxiv)(C), the language "width 12.6365 mm, polished surface, tensile strength 1,696 MPa—2,096 MPa" is deleted and "width 12.6365 mm plusmn;0.0508 mm, polished surface, tensile strength 1,560 MPa minimum" is substituted in lieu thereof;

(ii) In subdivision (xxxiv), delete the final word "or" from subdivision (E) and insert the following new subdivisions in alphabetical sequence:

"(G) Flat-rolled products, Eberle 18, Eberle 18C (SAE1095 modified steel), thickness not over 1.0 mm; width not over 152.4 mm; with chemical composition (percent by weight): carbon 0.90 to 1.05, silicon 0.15 to 0.35,manganese 0.30 to 0.50, phosphorus 0.03 maximum and sulfur 0.006 maximum; mechanical properties: ultimate tensile strength at least 1590 N/mm2, hardness greater than or equal to 475 Vickers hardness; physical properties: flatness less than 0.2 percent of the product width; microstructure: completely free from decarburization, carbides are spheroidal and fine within 1 percent to 4 percent (area percentage) in the uniform tempered martensite; non-metallic inclusions: sulfide inclusions with area percentage not over 0.04, and oxide inclusions with area percentage not over 0.05; and surface roughness Ra 0.13 micrometer, Rmax 1.5 micrometers;

(H) Flat-rolled products, with chemical composition (percent by weight): carbon 0.98 to 1.05, silicon 0.15 to 0.30, manganese 0.4 to 0.6, sulfur 0.005 maximum, phosphorus 0.2 maximum, aluminum 0.01 maximum, chromium 0.15 to 0.4, copper 0.15 maximum and nickel 0.15 maximum; width 12.7 mm or more but not over 508 mm, thickness 0.1143 mm or more but not over 0.1422 mm, inclusive, thickness tolerance +/-0.005 mm, edges deburred; tensile strength 1000 to 1100 N/mm2; and hardened and tempered with hardness HV 580 to 650;

(I) Flat-rolled products, Eberle 18, Eberle 18C (SAE1095 modified steel), having a width not over 152.4 mm and thickness 0.254 mm to 0.889 mm; bright polished, unpolished or blue polished surface, surface roughness Rtmax 3.0 micrometer; ultimate tensile strength 1696 MPa +/-310 ksi; edges deburred or machined; with chemical composition (percent by weight): carbon 0.90 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.50, phosphorus 0.03 maximum and sulfur 0.006 maximum;

(J) Ski edge profiles, grade SAE 1070 or 1095, hot-rolled, pickled and oiled, in coils, with chemical composition (percent by weight): carbon 0.65 to 0.75, manganese 0.40 to 0.60, phosphorus not over 0.020, sulfur not over 0.010, aluminum not over 0.020, chromium 0.05 to 0.30 and nickel 1.90 to 2.20;".

H. In subdivision (b)(xxxv), the word "or" is deleted at the end of (b)(xxxv)(D), "or" is inserted at the end of (b)(xxxv)(E), and the following new subdivision is inserted in alphabetical sequence:

"(F) Flat-rolled products, with unalloyed nickel plated coating measuring not over 5 microns per side with coating on one side at least 2 microns in thickness; with cold-rolled substrate known in industry usage as

tensile strength 162 kgf/mm\2\ minimum; hardness 475 minimum Vickers hardness number; flatness less than 0.2 percent of product width; microstructure: completely free from decarburization; carbides spheroidal and fine and within 1 percent to 4 percent (area percentage) in uniform tempered martensite; sulfide inclusions with area percentage not over 0.04 percent and oxide inclusion with area percentage not over 0.05 percent; compressive stress: 10 to 40 kgf/mm\2\; surface roughness specifications: if thickness is not over 0.209 mm, will have

strength 600 to 760 MPa, tensile strength 800 MPa or more and elongation greater than 10 percent;

(iv) Alloy bar, not further worked than hot-rolled, designated as X–147, meeting the characteristics described below:

(A) ASTM grade 8620Te products, entered in an aggregate annual quantity not to exceed 2,100 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing certified by the importer as meeting the following

thickness of 3.81 (minus 0, plus 0.40 mm) and width over 1,943.1mm; thickness of 2.31 mm (minus 0, plus 0.40 mm) and width 1,936.75 mm or more;

(B) Products in coils, whether or not pickled & oiled, with chemical composition (percent by weight): carbon 0.015 to 0.030, manganese 0.140 to 0.200, phosphorus 0.017 maximum, sulfur 0.010 maximum, silicon 0.024 maximum, aluminum 0.040 to 0.080, nitrogen 0.0040 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum,

(I) Flat-rolled products, Eberle 18, Eberle 18C (SAE1095 modified steel), having a width not over 152.4 mm and thickness 0.254 mm to 0.889 mm; bright polished, unpolished or blue polished surface, surface roughness Rtmax 3.0 micrometer; ultimate tensile strength 1696 MPa +/-310 ksi; edges deburred or machined; with chemical composition (percent by weight): carbon 0.90 to 1.05, silicon 0.15 to 0.35, manganese 0.30 to 0.50, phosphorus 0.03 maximum and sulfur 0.006 maximum;

(J) Ski edge profiles, grade SAE 1070 or German grade X35CrMo17, the foregoing with chemical composition (percent by weight) for X35CrMo17 being carbon 0.33 to 0.45, silicon 1.0 maximum, manganese 1.50 maximum, phosphorus 0.04 maximum, sulfur 0.025 maximum, chromium 15.5 to 17.5, molybdenum 0.8 to 1.3 and nickel 1.0 maximum; hardened and tempered to 45 to 52 HRC; bright surface or primer coated and stamped according to drawing;

(K) Products described in industry usage as finally annealed electrical steel strip, the foregoing being flat-rolled silicon steel, coated with an insulating laquer modified according to customer's specification (C3/C5 type), low thickness deviation across the width (value for 0.50 mm thick material: maximum 0.02 mm, value for 0.65 mm thick material: maximum 0.03 mm); grade: finally annealed electrical steel product according to EN 10106 (specific grades: M530–50A, M530–65A with customer specified maximum core losses of 6.05 W/kg P 1.5 at 60 Hz and 5.80 W/kg P 1.5 at 60 Hz); finally annealed and coated; thickness 0.50 mm to 0.65 mm and width 1,250 mm maximum; or

(L) Products described in industry usage as doctor blade steel for the printing industry, with thickness 0.076 to 0.25 mm and width 70 mm maximum; straightness deviation 0.6 mm per 3000 mm; commercial grade UHB 20 C; with chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.20 to 0.50, phosphorus 0.015 maximum and sulfur 0.010 maximum; with the end product having tight straightness, flatness and a fine dispersed microstructure of high purity, heat-treated;

(M) Hardened and tempered cold-rolled products, meeting AISI 1075; with thickness of 0.2 mm to 3.0 mm to meet Swedish T5 thickness tolerance; width of 622 mm to 1,016 mm; with chemical composition (percent by weight): carbon 0.70 to 0.80, silicon 0.15 to 0.30, manganese 0.50 to 0.7, phosphorus not over 0.020, sulfur not over 0.010, aluminum not over 0.020 and chromium 0.31 to 0.50;

(N) Products meeting AISI 1075, with thickness of 0.2 mm to 3.0 mm to meet Swedish T5 thickness tolerance; width of 622 mm to 1,016 mm; with chemical composition (percent by weight): carbon 0.97 to 1.03, silicon 0.15 to 0.30, manganese 0.40 to 0.50, phosphorus not over 0.020, sulfur not over 0.005, aluminum not over 0.020 and chromium 0.31 to 0.50;

(O) Products having a thickness of 0.5 mm to 3.5 mm and width of 50 mm to 650 mm; roughness: Ra (RMS) maximum 0.2 micrometer; with chemical composition (percent by weight): carbon 0.70 to 0.80, silicon 0.15 to 0.35, manganese 0.30 to 0.50, phosphorus not over 0.020, sulfur not over 0.010, aluminum not over 0.020, chromium 0.05 to 0.30 and nickel 1.90 to 2.20;".

H. In subdivision (b)(xxxv), the word "or" is deleted at the end of (b)(xxxv)(D), "or" is inserted at the end of (b)(xxxv)(E), and the following new subdivision is inserted in alphabetical sequence:

"(F) Flat-rolled products, with unalloyed nickel plated coating measuring not over 5 microns per side with coating on one side at least 2 microns in thickness; with cold-rolled substrate known in industry usage as commercial grade battery grade sheet and having a thickness from 0.10 mm to 0.762 mm; the foregoing substrate with the following chemical composition (percent by weight): carbon not over 0.08, manganese not over 0.45, phosphorus not over 0.02, sulfur not over 0.02, aluminum not over 0.15 and silicon not over 0.10; with such substrate having the following mechanical specifications: tensile strength not to exceed 448 MPa, yield strength from 220 to 379 MPa, minimum elongation of 18 percent; Vickers hardness of 85 to 150, equiaxed or pancake with grain type size (ASTM) from 7 to 12 with delta r value ±0.2 and a lankford value greater than or equal to 1.2;".

I. The word "or" is deleted at the end of subdivision (b)(xliv)(A), and the following new provisions are inserted in alphabetical sequence in subdivision (b)(xliv):

"(C) Single-reduced, tin-coated steel, entered in an aggregate annual quantity not to exceed 36,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing of a width of 1,138.2375 or more but not over 1,141.4125 mm; with thickness range of 0.260 mm to 0.270 mm (95 pound base box) or 0.267 mm to 0.278 mm (97 pound base box); 1.7/1.7 g/m\2\ tin coating, Type L, T3.5 CA, low chromium; or

(D) Electrolytically tin plated steel, entered in an aggregate annual quantity not to exceed 40,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing meeting one of the following ASTM specifications: A623, A623M, A624 or A624M and having the following additional properties: width either 1,071 mm or more but not over 1,074 mm or 1,202 mm or more but not over 1,205 mm; T4 temper; thickness of one or more of the following gauges: 0.280 mm, 0.300 mm, 0.315 mm, 0.325 mm or 0.355 mm; continuously annealed; standard shot blasted surface finish; chemistry of type L, oiled with acetyltributyl citrate (ATBC), tin plate coating weight of 2.2 g/m² for one side and 3.4 g/m² for the opposite side; matte finish; and utilizing clean steel practices;"

J. Subdivision (b)(l) is modified by deleting "200,000 metric tons," and by inserting in lieu thereof "200,000 t during the 12-month period beginning on March 20, 2002 or March 20, 2003 or during the period from March 20, 2004 through March 20, 2005, inclusive, under subheading 9903.72.75,"; and by deleting "50,000 metric tons," and by inserting in lieu thereof "50,000 t during the 12-month period beginning on March 20, 2002 or March 20, 2003 or during the period from March 20, 2004 through March 20, 2005, inclusive, under subheading 9903.72.76,".

K. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 12, 2002 and through the close of the period specified in U.S. note 11(a) to subchapter III of chapter 99, the superior text to subheadings 9903.73.88 through 9903.73.95 is modified by deleting ", other than fittings not machined, not tooled and not otherwise processed after forging".

3. In order to provide that additional groups of products shall be excluded from the import relief, U.S. note 11(c) is modified by inserting immediately after the last sentence the following additional sentence and the subordinate paragraphs set forth herein:

"For purposes of this paragraph, the following goods shall be excluded from the application of relief under the subheadings referred to in paragraph (a) of this note:

(i) Cold-rolled, flat-rolled steel, designated as X–110, meeting the following characteristics:

(A) Grade 20C products, entered in an aggregate annual quantity not to exceed 45,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing hardened and tempered, with thickness 0.102 mm or more but not over 1.20 mm and width not over 355.6 mm; tensile strength from 1600 N/mm\2\ to 2100 N/mm\2\ with a tolerance ±80 N/mm\2\; hardness 480 to 615 HV; thickness tolerance of T3 if thickness not over 0.381 mm, T2 if thickness over 0.381 mm but not over 0.508 mm, and T1 if over 0.508 mm but not over 1.194 mm; and flatness tolerance of 0.20 percent of product width;

(B) Grade 20C products, entered in an aggregate annual quantity not to exceed 5,700 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing hardened and tempered, with thickness 0.102 mm or more but not over 0.635 mm; width 12.7 mm or more but not over 355.6 mm; tensile strength ranging 1750 N/ mm\2\ to 2100 N/mm\2\ with tolerance ±80 N/mm\2\; hardness 520 to 615 HV, thickness tolerance of T3, width tolerance of B1, flatness tolerance of 0.30 percent of product width, straightness tolerance of R2, minimal surface defects with a maximum depth of 5 micrometers, and maximum scratch depth of 2.0 micrometers;

(C) Steel known in industry usage as flapper valve steel, entered in an aggregate annual quantity not to exceed 17,500 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing hardened and tempered, surface polished; thickness not over 1.0 m;, width not over 355.6 mm; with chemical composition (percent by weight): carbon 0.90 or more but not over 1.05, silicon 0.15 or more but not over 0.35, manganese 0.30 or more but not over 0.50, phosphorus 0.03 maximum, sulfur 0.006 maximum, tensile strength 162 kgf/mm\2\ minimum; hardness 475 minimum Vickers hardness number; flatness less than 0.2 percent of product width; microstructure: completely free from decarburization; carbides spheroidal and fine and within 1 percent to 4 percent (area percentage) in uniform tempered martensite; sulfide inclusions with area percentage not over 0.04 percent and oxide inclusion with area percentage not over 0.05 percent; compressive stress: 10 to 40 kgf/mm\2\; surface roughness specifications: if thickness is not over 0.209 mm, will have roughness (RZ) not over 0.5 micrometer; if thickness is over 0.209 mm but not over 0.310 mm, will have roughness (RZ) of not over 0.6 micrometer; if thickness is over 0.310 mm but not over 0.440 mm, will have roughness (RZ) of not over 0.7 micrometer; if thickness is over 0.440 mm but not over 0.560 mm, will have roughness (RZ) of not over 0.8 micrometer; if thickness if over 0.560 mm, will have roughness (RZ) of not over 1.0 micrometer; or

(D) Flat-rolled steel, with chemical composition (percent by weight): carbon 0.70 or more but not over 0.80, silicon 0.20 or more but not over 0.35, manganese 0.30 or more but not over 0.45, chromium 0.05 or more but not over 0.17, nickel 1.85 or more but not over 2.15, phosphorus 0.018 maximum, sulfur 0.005 maximum; hardened and tempered, bright and polished; thickness 0.60 mm or more but not over 3.05 mm; width 16.0 mm or more but not over 412.8 mm; tensile strength 1290 N/mm\2\ minimum; hardness 40 HRC minimum; with square and smooth edges; free from surface defects; thickness tolerance of T1 according to Swedish Standard 21 21 11 as in effect on March 20, 2002 and certified by the importer to meet such standard; and maximum unflatness of 0.10 percent of the product width;

(ii) Cold-rolled flat-rolled deep drawing enameling steel, designated as X–119, with the characteristics specified for ASTM A–424 Type 3, interstitial-free; with chemical composition (percent by weight): carbon 0.02 maximum, titanium 0.05 minimum, manganese 0.35 maximum, phosphorus 0.020 maximum, and sulfur 0.030 maximum; with surface roughness 2.29 to 3.07 micrometers; dry (no oil on surface); hardness 24–45 HRB;

(iii) Cold-rolled, flat-rolled steel, designated as X–122, meeting the characteristics described below:

(A) Dual phase steel products with dispersed martensitic islands in mainly ferrite matrix, thickness 0.60 mm to 1.75 mm; width 800 mm to 1600 mm; with chemical composition (percent by weight): carbon 0.06 to 0.14, silicon 0.20 maximum, manganese 1.0 to 2.0, phosphorus 0.04 maximum and sulfur 0.015 maximum; yield strength 340 to 410 MPa, tensile strength over 600 MPa and elongation over 20 percent; or

(B) Products with up to 50 percent martensite in ferrite matrix, thickness 0.80 mm to 1.60 mm; width 1,000 mm to 1,400 mm; with chemical composition (percent by weight): carbon 0.10 to 0.18, silicon 0.80 maximum, manganese 1.5 to 2.0, phosphorus 0.05 maximum, sulfur 0.03 maximum, aluminum 0.02 to 0.05, chromium 0.60 maximum, titanium 0.08 to 0.15; yield strength 600 to 760 MPa, tensile strength 800 MPa or more and elongation greater than 10 percent;

(iv) Alloy bar, not further worked than hot-rolled, designated as X–147, meeting the characteristics described below:

(A) ASTM grade 8620Te products, entered in an aggregate annual quantity not to exceed 2,100 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing certified by the importer as meeting the following characteristics: tellurium content to achieve a sulfide mean aspect ratio of 5:1 maximum; reduction ratio of 16:1 minimum, achieved through continuous bloom casting at 560 x 400 mm; fully surface inspected and certified by the producer to be free from defects deeper than 0.75 percent of bar diameter; certified as free from mixes, achieved by 100 percent spectrometer testing; or

(B) ASTM grade 5150Te products, certified to meet the following characteristics: tellurium content to achieve a sulfide mean aspect ratio of 5:1 maximum; reduction ratio of 16:1 minimum, achieved through continuous bloom casting at 560 x 400 mm; fully surface inspected and certified by the producer to be free from defects deeper than 0.75 percent of bar diameter; certified as free from mixes, achieved by 100 percent spectrometer testing;

(v) Hot-rolled flat-rolled steel, designated as X–025, in coils, with chemical composition (percent by weight): carbon 0.10 to 0.14, manganese 0.90 maximum, phosphorus 0.025 maximum, sulfur 0.002 maximum, silicon 0.30 to 0.50, chromium 0.50 to 0.70, copper 0.20 to 0.40 and nickel 0.20 maximum; width not over 1,138 mm, thickness 1.60 to 5.03 mm; minimum yield strength 344 N/mm²; tensile strength of 482 to 607 N/mm²; thickness tolerance according to half of ASTM 568 specification; minimum elongation 22 percent; hardness 79 to 89 HRB; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale, and embosses;

(vi) Hot-rolled flat-rolled steel designated as X–072, with characteristics described below:

(A) Products in coils, with chemical composition (percent by weight): carbon 0.90 to 1.30, manganese 0.425 to 0.575, phosphorus 0.020 maximum, sulfur 0.020 maximum, silicon 0.020 maximum, aluminum 0.025 to 0.060, nitrogen 0.0030 to 0.0050, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.005 maximum, vanadium 0.005 maximum, boron 0.0005 maximum and titanium 0.005 maximum; minimum yield strength 248 MPa, minimum tensile strength 345 MPa, minimum elongation 30 percent in 50.8 mm; if pickled and oiled, in dimensions of: thickness of 2.79 mm (minus 0, plus 0.40 mm) and width over 1,879.6 mm; thickness of 3.81 (minus 0, plus 0.40 mm) and width 1,930.4 mm or more, thickness of 2.31 mm (minus 0, plus 0.40 mm) and width 1,936.75 mm or more; or if not pickled and oiled, in dimensions of: thickness of 2.79 mm (minus 0, plus 0.40 mm) and width over 1,879.6 mm, thickness of 3.81 (minus 0, plus 0.40 mm) and width over 1,943.1mm; thickness of 2.31 mm (minus 0, plus 0.40 mm) and width 1,936.75 mm or more;

(B) Products in coils, whether or not pickled & oiled, with chemical composition (percent by weight): carbon 0.015 to 0.030, manganese 0.140 to 0.200, phosphorus 0.017 maximum, sulfur 0.010 maximum, silicon 0.024 maximum, aluminum 0.040 to 0.080, nitrogen 0.0040 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.005 maximum, vanadium 0.005 maximum, boron 0.0005 maximum and titanium 0.005 maximum; yield strength 170 to 210 MPa, tensile strength 300 to 325 MPa, minimum elongation 40 percent in 50.8 mm; thickness 2.79 mm (minus 0, plus 0.40 mm) and width over 1,943.1 mm; or

(C) Products in coils, with chemical composition (percent by weight): carbon 0.045 to 0.094, manganese 0.445 to 0.554, phosphorus 0.020 maximum, sulfur 0.005 maximum, silicon 0.030 maximum, aluminum 0.015 to 0.055, nitrogen 0.0050 maximum, copper 0.040 maximum, tin 0.010 maximum, chromium 0.040 maximum, nickel 0.040 maximum, molybdenum 0.010 maximum, niobium (columbium) 0.020 to 0.030, vanadium 0.005 maximum, boron 0.0005 maximum and titanium 0.005 maximum; minimum yield strength 345 MPa, minimum tensile strength 414 MPa, minimum elongation 26 percent in 50.8 mm; if pickled and oiled, in dimensions of thickness of 3.50 mm (minus 0, plus 0.40 mm) and width 1,936.75 mm or more; or if not pickled and oiled, in dimensions of thickness of 3.50 mm (minus 0, plus 0.40 mm) and width of over 1,943.1 mm;

(vii) Hot-rolled flat-rolled steel, designated as X–119, with thickness 4 mm or more but not over 13 mm, width 400 mm or more but not over 470 mm; with chemical composition (percent by weight): carbon not over 0.12, silicon not over 0.6, manganese not over 2.1, phosphorus not over 0.025, sulfur not over 0.015, aluminum greater than or equal to 0.02, with a maximum of the following microalloying elements: niobium (columbium) 0.09, vanadium 0.20, titanium 0.22, molybdenum 0.50 and boron 0.005; minimum yield strength of 758 MPa in both longitudinal and transverse rolling directions, minimum tensile strength of 814 MPa, Charpy impact values greater than or equal to 17J at −40°C; elongation greater than or equal to 15 percent; bendability 1.125 times thickness (minimum);

(viii) Hot-rolled flat-rolled steel, not clad or plated or coated, not further worked than hot-rolled, with thickness of 1.9 mm or more but not over 3.1 mm and width over 254 mm but not over 343 mm; the foregoing designated as X–172 and meeting the following characteristics:

(A) Products with chemical composition (percent by weight): carbon 0.78 to 0.83, manganese 0.40 to 0.50, phosphorus 0.020 maximum, sulfur 0.008 percent maximum, silicon 0.15 to 0.25, chromium 0.05 to 0.15, copper 0.11 maximum, tin 0.020 maximum and aluminum 0.020 to 0.060; with the following other properties: non-metallic

inclusion rating; ASTM E45 Method—A, plate—1 (thin series only, no heavy series allowed), A–2 maximum, B–1 maximum, C–1 maximum, D–1 maximum; DIN 50 602 Method M Plate—1: SS—maximum—3, OA—maximum 1, OS—maximum 1, OG—maximum 2; microstructure: banding—#1 maximum; decarburization complete (free ferrite) 0.012 mm maximum, total (complete + partial) 0.05 mm maximum, carbide size #5 maximum, grain size minimum #7; pickled, ingot cast; hardness HRB 100 maximum;

(B) Products with chemical composition (percent by weight): carbon 0.90 to 1.05, manganese 0.30 to 0.50, phosphorus 0.025 maximum, sulfur 0.008 maximum, silicon 0.15 to 0.30, chromium 0.10 to 0.25, aluminum 0.02 maximum, molybdenum 0.02 to 0.05, copper 0.05 to 0.20 and nickel 0.05 to 0.20; with the following other properties: non-metallic inclusion rating; ASTM E45 Method—A, plate—1 (thin series only, no heavy series allowed), A—2 maximum, B–2 maximum, C–2 maximum, D–2 maximum; microstructure: banding—none; complete decarburization 0.012 mm maximum, total decarburization 0.025 mm maximum; carbide size—#5 maximum (minimum 95 percent spheroidization is required); grain size minimum #7; pickled, ingot cast; hardness HRB 95 maximum;

(C) Products with chemical composition (percent by weight): carbon 0.90 to 1.05, manganese 1.00 to 1.20, phosphorus 0.020 maximum, sulfur 0.007 maximum, silicon 0.15 to 0.35, chromium 0.50 to 0.70, vanadium 0.05 to 0.15, aluminum 0.060 maximum; with the following other properties: non-metallic inclusion rating; ASTM E45 Method—A, plate—1, Thin Series: A–2.5 maximum, B–2.0 maximum, C–2.0 maximum, D–2.0 maximum, Thick Series: A–0.0 maximum, B–0.5 maximum, C–0.5 maximum, D–0.0 maximum; microstructure: banding—none, complete decarburization (free ferrite) 0.012 mm maximum, total (complete + partial) 0.05 mm maximum, carbide size #6 maximum, grain size ASTM #7 or finer; pickled, ingot cast, annealed, hardness HRB 100 maximum;

(D) Products with chemical composition (percent by weight): carbon 0.68 to 0.80, manganese 0.55 to 0.75, phosphorus 0.020 maximum, sulfur 0.015 maximum, silicon 1.30 to 1.50, chromium 0.30 to 0.50, copper 0.20 maximum; with the following other properties: non-metallic inclusion rating: ASTM E45—Method A, Plate—1, A–2 maximum, B–2 maximum, C–2 maximum, D–2 maximum; microstructure: banding—#1 maximum, complete decarburization 0.012 mm maximum, total decarburization 0.05 mm maximum, uniformly spheroidized with pin point carbides, carbide size #3 maximum, grain size minimum #7; pickled, ingot cast; hardness HRB 94 maximum;

(E) Products with chemical composition (percent by weight): carbon 0.30 to 0.35, manganese 0.65 to 0.80, phosphorus 0.015 maximum, sulfur 0.010 maximum, silicon 0.30 to 0.45, copper 0.20 maximum, nickel 0.30 to 0.90, chromium 3.00 to 3.20, molybdenum 2.00 to 2.20, vanadium 0.30 to 0.40, aluminum 0.04 to 0.08, hydrogen 0.001 maximum, nitrogen 0.03 maximum and oxygen .015 maximum; with the following other properties: non-metallic inclusion rating of ASTM E45 Method—A, Plate—1, A–2 maximum, B–2 maximum, C–2 maximum, D–2 maximum; microstructure: banding—#3 maximum, complete decarburization 0.012 mm maximum, total decarburization 0.05 mm maximum, carbide size #5 maximum, grain size minimum #8; pickled, ingot cast; hardness HRB 95 maximum;

(F) Products with chemical composition (percent by weight): carbon 0.45 to 0.50, manganese 0.60 to 0.90 percent, phosphorus 0.015 maximum, sulfur 0.007 maximum, silicon 0.10 to 0.25, chromium 0.90 to 1.10, molybdenum 0.90 to 1.10, calcium 0.001 maximum; copper 0.20 maximum, vanadium 0.08 to 0.15, nickel 0.50 to 0.70, aluminum 0.040 to 0.080, tin 0.020 maximum, antimony 0.020 maximum, hydrogen 0.001 maximum, nitrogen 0.015 maximum and oxygen 0.01 maximum; with the following other properties: non-metallic inclusion rating; ASTM E45 Method;—A plate—1, (thin series only, no heavy series allowed) A–2 maximum, B–2 maximum, C–2 maximum, D–2 maximum; microstructure: banding—#3 maximum, complete decarburization 0.012 mm maximum, total decarburization 0.05 mm maximum, carbide size #5 maximum, grain size minimum #8; pickled, ingot cast; hardness HRB 95 maximum; or

(G) Products with chemical composition (percent by weight): carbon 0.31 to 0.35, manganese 0.60 to 0.80 percent, phosphorus 0.015 maximum, sulfur 0.005 maximum, silicon 0.25 to 0.45, chromium 0.90 to 1.10, molybdenum 1.85 to 2.15, calcium 0.001 maximum, niobium (columbium) 0.08 to 0.12, vanadium 0.40 to 0.50, nickel 0.90 to 1.10, aluminum 0.03 to 0.07, tin 0.020 maximum and antimony 0.010 maximum, with hydrogen 10 ppm maximum, nitrogen 150 ppm maximum and oxygen 100 ppm maximum; with the following other properties: non-metallic inclusion rating of ASTM E45 Method—A, Plate—1-r: Thin Series: A–2.0 maximum, B–2.0 maximum, C 2.0 maximum, D–2.0 maximum; Thick Series: A–0.0 B–0.5, C–0.5, D–0.0; microstructure: banding—#3 maximum, partial decarburization 1.5 percent of hot roll thickness maximum per side—no free ferrite is allowed, grain size minimum #7; pickled; ingot cast; hardness HRB 96 maximum;

(ix) Hot-rolled, flat-rolled steel, designated as X–213, if entered in an aggregate annual quantity not to exceed 4,800 t during the 12–month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with improved formability through inclusion shape control; yield strength 551 MPa minimum; tensile strength 621 MPa minimum; elongation in 50.8 mm of 18 percent minimum; with chemical composition (percent by weight): carbon 0.045 to 0.094, manganese 1.45 to 1.65, phosphorus 0.02 maximum, sulfur 0.01 maximum, silicon 0.15 to 0.25, aluminum 0.015 to 0.055, nitrogen 0.005 to 0.011, copper 0.04 maximum, nickel 0.04 maximum, chromium 0.04 maximum, tin 0.01 maximum, niobium (columbium) 0.057 to 0.073, vanadium 0.07 to 0.09, boron 0.0008 maximum and titanium 0.005 maximum; inclusion shape control through a calcium treatment, thickness 6.07 (minus 0, plus 0.406 mm) and width 1384.3 mm (minus 0, plus 25.4 mm);

(x) Three-layer clad plates with two hard outside layers and one soft center layer; with chemical composition (in percent by weight): (i) cladding/hard layer, grade known as ALTRIX 2003: carbon 0.70 to 0.80, silicon not over 0.40, manganese 0.60 to 0.80, phosphorus not over 0.03, sulfur not over 0.03 percent, chromium 0.20 to 0.35; and (ii) soft center layer: carbon not over 0.12, manganese 0.75 to 0.95, phosphorus not over 0.03, sulfur not over 0.03; total thickness of all three layers 6 to 9 mm; the foregoing designated as X–021;

(xi) Stainless steel products, if entered in an aggregate annual quantity not to exceed 63 t during the 12–month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing cold finished, round, flat, square, hexagon and sections in straight lengths, containing by weight at least 17 percent chromium, 7 percent nickel and 2.3 percent molybdenum and conforming to specifications ASTM A276 and ASTM A479, the foregoing designated as X–004;

(xii) Stainless steel products, either round section bars with diameters from 12.7 to 508 mm or products with rectangular sections with thickness 11 or more but not over 356 mm and width 45 or more but not over 762 mm; modified AISI 420 with chemical composition (percent by weight): carbon 0.36 to 0.40, silicon 0.60 to 1.30, manganese 0.20 to 0.70, phosphorus not over 0.025, sulfur not over 0.0050, chromium 13.2 to 14.0, nickel not over 0.50, molybdenum not over 0.25, vanadium 0.15 to 0.40, titanium not over 0.012, niobium (columbium) and nitrogen not over 0.03, copper not over 0.15, aluminum 0.070 to 0.100, hydrogen not over 0.0003 and oxygen not over 0.0015; minimum cleanliness according to ASTM E45/87, Method A plate III Slag type A: T less than 1, H less than 0.5; Slag type B: T less than 1, H less than 0.5; Slag type C: T less than 1.5, H less than 1.0; or Slag type D: T less than 1; all the foregoing designated as X–196;

(xiii) AISI/SAE 201 stainless steel products, cold rolled, annealed, and tempered, in 250 kg spools, thickness 0.25 mm or more but not over 0.8 mm, width 2 mm or more but not over 5 mm; surface and edges to be clean, smooth, and free from cracks and any form of surface imperfections, all the foregoing designated as X–194;

(xiv) Stainless steel rods in cross-sectional diameters measuring less than 5.5 mm, designated as X–090 and meeting the following characteristics:

(A) AISI grade ER 307 Si products, with chemical composition (percent by weight): carbon 0.06 to 0.10, silicon 0.6 to 0.95, manganese 6.5 to 7.5, sulfur not over 0.015, phosphorus not over 0.020, nickel 8 to 9, chromium 18.5 to 19.5 and molybdenum not over 0.5;

(B) AISI grade ER 308 L products, with chemical composition (percent by weight): carbon not over 0.02, silicon 0.30 to 0.60, manganese 1.5 to 2.0, sulfur not over 0.015, phosphorus not over 0.020, nickel 9.5 to 10.5, chromium 19.5 to 20.5, molybdenum not over 0.2 and cobalt not over 0.15;

(C) AISI grade ER 308 L Si products, with chemical composition (percent by weight): carbon not over 0.02, silicon 0.65 to 0.95, manganese 1.5 to 2.0, sulfur not over 0.015, phosphorus not over 0.020, nickel 9.5 to 10.5, chromium 19.5 to 20.5, molybdenum not over 0.2 and cobalt not over 0.15;

(D) AISI grade ER 309 products, with chemical composition (percent by weight): carbon 0.06 to 0.10, silicon 0.30 to 0.60, manganese 1.5 to 2.0, sulfur not over 0.015, phosphorus not over 0.025, nickel 13 to 14, chromium 23.5 to 24.5, molybdenum not over 0.4 and cobalt not over 0.15;

(E) AISI grade ER 309 L products, with chemical composition (percent by weight): carbon not over 0.02, silicon 0.30 to 0.60, manganese 1.5 to 2.0, sulfur not over 0.015, phosphorus not over 0.025, nickel 13 to 14, chromium 23.0 to 24.5, molybdenum not over 0.4 and cobalt not over 0.15;

(F) AISI grade ER 309 L Mo products, with chemical composition (percent by weight): carbon not over 0.02, silicon 0.30 to 0.60, manganese 1.3 to 1.8, sulfur not over 0.015, phosphorus not over 0.025, nickel 14.5 to 15.5, chromium 21 to 22 and molybdenum 2.5 to 3.0;

(G) AISI grade ER 310 products, with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.30 to 0.60, manganese 1.5 to 2.0, sulfur not over 0.015, phosphorus not over 0.025, nickel 20.5 to 21.5 and chromium 25.5 to 26.5; or

(H) AISI grade ER 312 products, with chemical composition (percent by weight): carbon 0.09 to 0.12, silicon 0.20 to 0.50, manganese 1.5 to 2.0, sulfur not over 0.015, phosphorus not over 0.025, nickel 9 to 10, chromium 30 to 31 and molybdenum not over 0.2;

(xv) Flat-rolled products known in industry usage as electrolytic chromium-coated steel (also known as tin free steel), composed according to the following ASTM specifications: A623, A623M, A657 or A657M; with the following properties: actual width of 900.1 mm (minus 0 mm, plus 3.175 mm); plated or coated with chromium oxides or with chromium and chromium oxides; temper of modified DR 550; thickness of 0.215 mm, with gauge tolerance of minus 8 percent, plus 5 percent; continuously annealed; type L chemistry, oiled with dioctyl sebacate (DOS); the foregoing designated as X–160;

(xvi) Welded drawn-over-mandrel tubes, meeting the characteristics described below, imported for the production of specific automotive or agricultural vehicle and machinery components, the foregoing designated as X–162:

(A) Products measuring 20.00 to 35.00 mm outside diameter with an outside diameter tolerance of not over 0.10 mm; wall thickness of 3.00 mm or more but not over 5.00 mm with an allowable wall thickness variation of the greater of 3.0 percent of the thickness or 0.10 mm; with partial decarburization of not over 0.10 mm in depth; produced according to DIN 2393 C under St − 34–3 , St 37–3, St 44–3 or St 52–3 with narrowed chemical analysis (aluminum killed only) of composition (percent by weight): carbon not over 0.24, manganese not over 1.60, silicon not over 0.55 and aluminum at least 0.02; the foregoing imported pursuant to a purchase order from an automotive assembled camshaft manufacturer in the United States;

(B) Products produced according to DIN 2393 C under St − 34–3 , St 37–3, St 44–3 or St 52–3, with narrowed chemical analysis (aluminum killed only) of composition (percent by weight): carbon not over 0.24, manganese not over 1.60, silicon not over 0.55 and aluminum at least 0.02; and (i) for steering cylinders: measuring 35.00 mm or more but not over 60.00 mm in outside diameter, not over 3.50 mm in wall thickness, an inside diameter tolerance of not over 0.10 mm, and a wall thickness tolerance of 3.0 percent or 0.10 mm, whichever is greater, having partial decarburization of not over 0.10 mm in depth, an inner surface roughness (Rz) of not over 0.004 mm; or (ii) for steering columns: measuring 18.00 mm or more but not over 40.00 mm in outside diameter, 1.00 mm or more but not over 4.00 mm in wall thickness, with an outside diameter tolerance of not over 0.10 mm and a wall thickness tolerance of 3.0 percent or 0.10 mm, whichever is greater, having partial decarburization of not over 0.10 mm in depth; all the foregoing imported pursuant to a purchase order from an automotive steering system manufacturer in the United States;

(C) Products measuring 26.00 mm or more but not over 65.00 mm in outside diameter and 3.00 mm or more but not over 8.00 mm in wall thickness; having an outside diameter tolerance of not over 0.20 mm and having a wall thickness variation of not over 3.0 percent but at least 0.10 mm; having a partial decarburization of not over 0.05 mm in depth; produced according to microalloyed steels for cold upsetting: 19Mn5 mod., 26Mn5 mod., 34Mn5 mod. or 40Mn5 mod.; the foregoing imported pursuant to a purchase order from an automotive half shaft manufacturer in the United States for high quality tubes;

(D) Profiled tubes measuring 30.00 mm or more but not over 100.00 mm outside diameter and 2.40 mm or more but not over 6.00 mm wall thickness and having dimensional tolerances such that a tube pair is telescopic over 2 meters of length, having a partial decarburization not over 0.10 mm in depth, produced according to DIN 2393 C under St − 34–3 , St 37–3, St 44–3 or St 52–3 with narrowed chemical analysis (aluminum killed only) of composition (percent by weight): carbon not over 0.24, manganese not over 1.60, silicon not over 0.55 and aluminum at least 0.02; the foregoing imported pursuant to a purchase order from a power takeoff shaft manufacturer in the United States; or

(E) Measuring 17.00 mm or more but not over 40.00 mm in outside diameter with a tolerance of 0.20 mm, wall thickness of 2.30 mm or more but not over 6.00 mm with a wall thickness tolerance of 3.0 percent or 0.10 mm, whichever is greater; partial decarburization not over 0.05 mm in depth, produced as microalloyed steels for cold upsetting: 19Mn5 mod., 26Mn5 mod., 34Mn5 mod. or 40Mn5 mod.; imported pursuant to a purchase order from an automotive stabilizer bar manufacturer in the United States; or

(xvii) Welded drawn-over-mandrel profiled tubes, designated as X–162, the foregoing measuring 6 to 7 m in length, 34.50 mm or more but not over 64.50 mm in outside diameter and 2.50 mm or more but not over 5.50 mm in wall thickness; having dimensional tolerances so that a tube pair is telescopic over 2 m length; produced according to DIN 2393 C under St 52–3 with narrowed chemical analysis (aluminum killed only) of composition (percent by weight): carbon not over 0.24, manganese not over 1.60, silicon not over 0.55 and aluminum of 0.02 or more; the foregoing imported pursuant to a purchase order from a power takeoff shaft manufacturer in the United States.

(xviii) Hot-rolled flat-rolled products, designated as X–021 and meeting the characteristics described below:

(A) Products entered in an aggregate annual quantity not to exceed 1,953 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.05 to 0.10, silicon 0.20 to 0.50, manganese 1.60 to 2.00, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 0.30 to 0.65, molybdenum 0.20 to 0.50, copper 0.20 to 0.40, vanadium 0.040 to 0.100, niobium (columbium) 0.020 to 0.060 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni+ Cu)/15) of 0.48 to 0.56, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.29 to 0.035; thickness of 8 mm to 25 mm; width of 1,828.8 mm to 2,500 mm for thickness range 8 mm to 15 mm or of 1,828.8 mm to 3,000 mm for thickness range from 15 to 25 mm; minimum yield strength (ReH) 700 N/mm², tensile strength (Rm) 750 to 950 N/mm², fracture elongation minimum A5 of 12 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction, minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation;

(B) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(C) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction, minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(D) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(E) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(F) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(G) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(H) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(I) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(J) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(K) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(L) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(M) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(N) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(O) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni + Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25 mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 900 N/mm²; tensile strength (Rm) 940 to 1,100 N/mm²; fracture elongation minimum A5 of 11 percent; notch impact energy at − 40 °C on Charpy/V samples in longitudinal direction; minimum average value of 40 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation; or

(P) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20

(C) Products entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.15, silicon 0.20 to 0.50, manganese 0.80 to 1.60, phosphorus not over 0.020, sulphur not over 0.008, aluminum 0.020 to 0.080, nickel 1.00 to 2.00, molybdenum 0.20 to 0.50, copper 0.30 to 0.50, vanadium 0.030 to 0.100, niobium (columbium) not over 0.050 and titanium 0.010 to 0.050; carbon equivalent value (CEV) (C + MN/6 (Cr + Mo + V)/5 + (Ni+ Cu)/15) of 0.62 to 0.69, carbon equivalent tekken (CET) (C + (Mn + Mo)/10 + (Cr + Cu)/20 + Ni/40) of 0.34 to 0.38; thickness 8 mm to 25mm; width 1,828.8 mm to 2,500 mm; minimum yield strength (ReH) 960 N/mm²; tensile strength (Rm) 980 to 1150 N/mm²; fracture elongation minimum A5 of 10 percent; notch impact energy at −40 °C on Charpy/V samples in longitudinal direction; minimum average value of 27 joule; and bendability of 2 times thickness for 180 degree bend both transverse and longitudinal orientation;

(xix) Hot-rolled flat-rolled products, designated as X–032 or X–083 and entered in an aggregate annual quantity not to exceed 3,850 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing known in industry usage as "13 percent manganese austenitic" plate; with the following characteristics: non-magnetic; flatness certified to meet ASTM–A6 specification; thickness 4.76 mm to 120.65 mm; width not exceeding 3,048 mm; length not exceeding 8,636 mm; hardness of 180 to 260 BHN; fully austenitic microstructure; in the as-rolled or quench-annealed condition; with chemical composition (percent by weight): carbon 0.80 to 1.20, manganese 12.00 to 14.00, sulfur not over 0.040, phosphorus not over 0.035 and silicon not over 0.50, with or without other elements;

(xx) Hot-rolled flat-rolled designated as X–142, with the following characteristics:

(A) Products known in industry usage as "abrasion resistant steel'; thickness 6.0 mm to 65.0 mm; minimum hardness 401 BHN; with chemical composition (percent by weight): titanium 0.35 to 0.45, carbon 0.29 to 0.31, silicon 0.30 to 0.40, manganese 0.65 to 0.75, phosphorus none to not over 0.010, sulfur not over 0.010, chromium 0.80 to 0.90, molybdenum 0.22 to 0.27; boron 0.0008 to 0.0014, soluble aluminum 0.03 to 0.06 and nitrogen 0.002 to 0.006; descaled; flatness tolerance half of that shown in ASTM A6;

(B) Thermo-mechanically controlled-rolled products having the following characteristics: TMCP (thermo mechanical control process) with a thickness of 4.5 mm to 76.2 mm; yield strength 552 to 690 MPa; minimum tensile strength 621 MPa; Welded Crack Tip Opening Test (CTOD) value at −10 °C: minimum 0.25 mm; with chemical composition (percent by weight): carbon not over 0.12, silicon not over 0.40, manganese not over 2.00, phosphorus not over 0.015, sulfur not over 0.006, niobium (columbium) not over 0.030 and titanium not over 0.020; Pcm no more than 0.23 (Pcm = C + Mn/20 + Si/30 + Cu/20 + Ni/60 + Cr/20 + Mo/15 + V/5 + 5B);

(C) Products entered in an aggregate annual quantity not to exceed 439 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing having a width greater than 915 mm, meeting SAE 4135 specification with the following ladle analysis (percent by weight): carbon 0.33 to 0.38, manganese 0.60 to 0.90, silicon 0.15 to 0.30, phosphorus not over 0.030, sulfur not over 0.030, chromium 0.90 to 1.25 and molybdenum 0.15 to 0.25;

(D) Products entered in an aggregate annual quantity not to exceed 432 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing having a width greater than 915 mm, meeting the following specification (modified SAE 8670) for chemical composition (percent by weight): carbon 0.67 to 0.75, manganese 0.40 to 0.60, silicon 0.20 to 0.35, phosphorus not over 0.035, sulfur not over 0.035, chromium 0.20 to 0.50, nickel 0.70 to 1.00 and molybdenum 0.11 to 0.15; or

(E) Products entered in an aggregate annual quantity not to exceed 6500 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing known in industry usage as "thermo-mechanically controlled-rolled plate"; having the following characteristics: TMCP (thermo mechanical control process): high strength tensile alloy plate; with thickness of 6.0 mm to 40.0 mm; minimum yield strength 685 N/mm²; tensile strength 780 to 890 N/mm²; with chemical composition (percent by weight): titanium 0.008 to 0.017, carbon 0.14 to 0.15, silicon 0.3 to 0.4, manganese 1.14 to 1.40, phosphorus not over 0.02, sulfur not over 0.004, chromium 0.05 to 0.18, molybdenum 0.11 to 0.32, niobium (columbium) 0.017 to 0.023, vanadium not over 0.050, boron 0.0008 to 0.0015, soluble aluminum 0.015 to 0.035 and nitrogen not over 0.004; bendability of one-half times thickness for 180 degree bend; permissible variations from flatness one-fourth of that shown for ASTM A6; Charpy impact at −40 °C, minimum of 40J; carbon equivalent: not over 0.40 percent for products not over 19 mm in thickness, or not over 0.43 percent for products over 19 mm but not over 40 mm in thickness (carbon equivalent = C + MN/6 + (CU + NI)/15 + (CR + MO + V)/5);

(xxi) Cold drawn steel bars, designated as N–319, the foregoing if in standard metric sizes and of round or hexagonal cross section then having a diameter of 5 mm to 70 mm, if of square cross section then measuring 25 mm to 100 mm, or if of rectangular cross section having the smaller side measuring 16 mm to 100 mm and the larger side measuring 25 mm to 250 mm; with chemical composition (percent by weight): carbon 0.18 maximum, manganese 0.90 maximum; phosphorus 0.50 maximum, sulfur 0.050 maximum and remainder iron;

(xxii) Bars of hexagonal cross section, not further worked than cold drawn, measuring 57.15 mm or more but not over 101.6 mm in cross section according to ASTM A29/A108 in freecutting, medium carbon grades; the foregoing designated as N–321;

(xxiii) Bars of nonalloy steel, of round cross section, not further worked than cold formed or cold finished, the foregoing designated as N–377 and meeting the characteristics described below:

(A) Products plated with an inner layer of nickel and an outer layer of hard chrome; having a nickel-layer thickness exceeding 40 micrometers and a chromium layer thickness exceeding 20 micrometers; polished; with the following properties: diameter tolerance of ISO h8 or better, straightness 0.1 mm per meter or better, surface roughness (ra) 0.2 micrometers or better and certified as capable of exposure for 1000 hours in ASTM B117 salt-spray test without corrosive attack; or

(B) Either noninduction hardened or induction hardened products; hard-chrome plated with a chrome layer thickness exceeding 25 micrometers; polished; with the following properties: diameter tolerance ISO h8 or better, straightness 0.1 mm per meter or better, surface roughness (ra) 0.2 micrometers or better and capability of exposure for 96 hours in ASTM B117 salt-spray test without corrosion;

(xxiv) Bars not further worked than cold formed or cold finished, designated as N–454 and meeting the characteristics described below:

(A) Forged and fully heat treated die steel, known in industry usage as "Hydie" with a chemical composition (percent by weight): carbon 0.45 maximum, silicon 0.50 maximum, manganese 0.80 maximum, chromium 3.50 maximum, molybdenum 1.20 maximum and vanadium 0.30 maximum with or without other minor alloying element; thickness not over 500 mm; in round or rectangular cross-section; supplied heat treated to a maximum hardness of 477 brinell;

(B) Spheroidised annealed or spheroidised annealed and fully heat treated forged die steel, known in industry usage as "VMC" the foregoing suitable for use in die inserts, extrusion tools, plastic molds, die casting inserts and cores; with a chemical composition (percent by weight): carbon 0.45 maximum, silicon 1.20 maximum, manganese 0.40, chromium 5.40, molybdenum 1.70 and vanadium 1.10 maximum, with or without other minor alloying elements; with thickness not over 500 mm, in round or rectangular cross-section; supplied heat treated to a maximum hardness of 514 brinell;

(C) Forged and fully heat treated die steel, known in industry usage as "Somdie" with chemical composition (percent by weight): carbon 0.60 maximum, silicon 0.40 maximum, manganese 1.00 maximum, nickel 1.90 percent maximum, chromium 1.30 maximum, molybdenum 0.65, with or without other minor alloying elements; thickness not over 900 mm; in round or rectangular cross-section; supplied heat treated to a maximum hardness of 477 brinell;

(D) Forged and fully heat treated die steel, known in industry usage as "Bestem" with chemical composition (percent by weight): carbon 0.30 maximum, silicon 0.35 maximum, manganese 0.75 maximum, nickel 3.20 maximum, chromium 1.00 maximum and molybdenum 3.50 percent, with or without other minor alloying elements; thickness not over 500 mm; in round or rectangular cross-section; supplied heat treated to a maximum hardness of 477 brinell;

(E) Forged and fully heat treated die steel, known in industry usage as "Thermodie" with chemical composition (percent by weight): carbon 0.60 maximum, silicon 0.70 maximum, manganese 0.70 maximum, nickel 2.40 maximum, chromium 1.10 maximum and molybdenum 0.80, with or without other minor alloying elements; thickness not over 750 mm, in round or rectangular cross-section; supplied heat treated to a maximum hardness of 477 brinell; or

(F) Forged and fully heat treated die steel, known in industry usage as "No. 5 Electem" with chemical composition (percent by weight): carbon 0.60 maximum, silicon 0.35 maximum, manganese 1.00 maximum, nickel 1.50 maximum, chromium 1.10 maximum and molybdenum 0.40; with or without other minor alloying elements; thickness not over 900 mm; in round or rectangular cross-section; supplied heat treated to a maximum hardness of 429 brinell;

(xxv) Cold-finished carbon steel bars, known in industry usage as "JIS S48CL", the foregoing with diameter of 24.3 mm (with tolerance of ± 0.05 mm); cut-to-length; with minimum tensile strength of 735N/mm², minimum yield strength of 539N/mm² and minimum elongation of 15 percent; with chemical composition (percent by weight): carbon 0.45 to 0.51, silicon 0.15 to 0.35, manganese 0.75 to 0.90, phosphorus 0.030 maximum, sulfur 0.015 to 0.040, copper 0.30 maximum, nickel 0.20 maximum, chromium 0.20 maximum, nickel plus chromium 0.35 maximum and lead 0.10 to 0.30; the foregoing designated as X–011;

(xxvi) Bright or blue finish band saw steel, designated as N–313, cold-rolled, meeting the following characteristics: thickness not over 1.31 mm, width not over 80 mm; with chemical composition (percent by weight): carbon 1.2 to 1.3, silicon 0.15 to 0.35, manganese 0.20 to 0.40, phosphorus not over 0.03, sulphur not over 0.015, chromium 0.15 to 0.25 and nickel not over 0.25; with the following other properties: carbides fully spheroidized, having greater than 80 percent of carbides, which are not over 0.003 mm and uniformly dispersed; surface finish blue or bright free from pits, scratches, rust, cracks, or seams; smooth edges; edge camber (in each 300 mm of length) of not over 7 mm arc height; and cross bow of 0.025 mm maximum per 25.4 mm of width;

(xxvii) Cold-rolled flat-rolled wood bandsaw steel in grade UHB 15 N 20; the foregoing with thickness greater than 1.1 mm; width range 6.3 to 412.8 mm; with chemical composition (percent by weight): carbon 0.70 to 0.80, silicon 0.20 to 0.35, manganese 0.30 to 0.45, phosphorus 0.020, sulfur 0.016, nickel 1.90 to 2.10; microstructure fine needled, tempered martensite with a uniform distribution of few (maximum 1 percent by volume) undissolved carbides; inclusions: to DIN 50602: K1 oxide less than 10; maximum OG: 8.2; decarburization: free ferrite not allowed; maximum partial decarburization 4 percent of product thickness; tensile strength/hardness 1450 + 80 N/mm² (42 to 46 HRC); product thickness of not over 2.0 mm 1370 + 80 N/mm² (40 to 43 HRC); surface appearance bright polished/ground surface; maximum approved scratch depth for longitudinal and transversal scratches 10 µ edges: square fine machine smooth edges; flatness: maximum unflatness of 0.10 percent of the nominal product width; maximum coil set: 10 mm/m; straightness: product width of not over 40 mm with a maximum deviation of 0.35 mm per 0.9 m; product width of not over 134 mm with a maximum deviation of 0.25 mm per 0.0 or 0.8 per 3 m; thickness tolerance; T1: within g a product maximum half the tolerance zone for T1; width tolerance B1; the foregoing designated as N–387;

(xxviii) Cold-rolled flat-rolled semi-processed silicon electrical steel, designated as X–077 and meeting the characteristics described below:

(A) Products entered in an aggregate annual quantity not to exceed 6,395 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing meeting ASTM A726 specifications and having the following characteristics: thickness of 0.47 mm ±0.002 mm and width of 1057.28 mm +10 mm/−0; with chemical composition (percent by weight): carbon 0.003, silicon 0.57, manganese 0.43, phosphorus 0.03, sulfur 0.005 and aluminum 0.35; density 7.80 (g/cm3); mechanical properties: hardness of Hv 71; yield strength of 397 MPa or more (longitudinal); tensile strength of 450 MPa or more (longitudinal); elongation of 18 percent (longitudinal); lamination factor of 96.0 percent; coating: dull finish anti-stick coating similar to C4A, supplier's proprietary D coating; magnetic properties: core loss (1.5T/60 Hz) of 4.01 watts/kg typical, 4.41 maximum; permeability (1.5T/60 Hz) of 3630 typical, 2000 minimum; and annealed at 788 °C for one hour in a decarburizing atmosphere;

(B) Products entered in an aggregate annual quantity not to exceed 1,599 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing meeting ASTM A726 specifications and having the following characteristics: thickness of 0.47 mm ± 0.002 mm and width of 1057.28 mm +10 mm/−0; with chemical composition (percent by weight): carbon 0.002, silicon 0.55, manganese 0.85, phosphorus 0.05, sulfur 0.005 and aluminum 0.25; density 7.80 (g/cm3); mechanical properties: hardness of Hv 130; yield strength of 421 MPa or more (longitudinal); tensile strength of 460 MPa or more (longitudinal); elongation of 21 percent (longitudinal); lamination factor of 97.0 percent; coating: dull finish anti-stick coating similar to C4A, supplier's proprietary D coating; magnetic properties: core loss (1.5T/60 Hz) of 3.64 watts/kg typical, 4.08 maximum; permeability (1.5T/60 Hz) of 3000 typical, 2000 minimum; and annealed at 788°C for one hour in a dry N_2 atmosphere; or

(C) Flat-rolled, cold-rolled, silicon bearing, non-oriented electrical steel, entered in an aggregate annual quantity not to exceed 1,550 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive; the foregoing with thickness of 0.50 mm; maximum core loss of 3.70 watts per kg at 60 Hz and 1.5 tesla, when tested on a 25-cm Epstein frame according to the method of IEC 60404–2, where half of the sample products are taken in the longitudinal direction and half in the transverse direction; with carbon not over 0.005 percent by weight; with an inorganic surface insulation (known in industry usage as "Suralac 7000") with a smooth finish that provides a minimum of 12.9 ohms-cm² @ 2.07 MPa tested per ASTM A717/A717M on a Franklin tester; capable of withstanding stress-relieving temperatures without impairing surface insulation, and with an intermittent temperature capability of 850 °C in inert gas as well as a continuous temperature capability of 230 °C in air; industry grade M15;

(xxix) Cold-rolled flat-rolled steel, designated as X–083 and meeting the characteristics described below:

(A) Products entered in an aggregate annual quantity not to exceed 850 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing single reduced, 90 base box weight, T–1 BA, Type MR, 5C matte finish; with thickness of 0.231 mm to 0264 mm and width from 1079.50 mm to 1089.03 mm; produced to ASTM A623–00 and A624–98; certified that such products will each be slit into two coils of equal widths, each coil having a minimum width of 533.4 mm, for use in manufacturing radiator fins; or

(B) Products entered in an aggregate annual quantity not to exceed 250 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing single reduced, 112 base weight, T–2 BA, Type MR, 5C matte finish; with thickness of 0.290 mm to 0.326 mm and width of 1066.80 mm; produced to ASTM A623–00 and A624–98; certified that it will be slit into two coils of equal widths, each coil having a minimum width of 520.7 mm and for use in manufacturing engine gaskets;

(xxx) Cold-rolled flat-rolled steel products, designated as X–142 and meeting the characteristics described below:

(A) Products entered in an aggregate annual quantity not to exceed 5,534 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing in coils, meeting SAE 1050, spheroidized annealed, light matte finish; with thickness of 0.254 mm to 2.324 mm and width of 914 mm to 1,321 mm; slit edge, no weld; Coil I/D 508 mm; Coil O/D 1,524 mm maximum; thickness tolerance (at center of product): ±0.006 mm for thickness from 0.254 mm to 0.381 mm; ±0.007 mm for thickness from 0.381 mm to 0.635 mm; ±0.010 mm for thickness from 0.635 mm to 2.324 mm; rating 1.0 maximum by ASTM E45, method-A; and restricted carbon range of 0.02 points;

(B) Products entered in an aggregate annual quantity not to exceed 100 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing in coils, SAE 1074, spheroidized annealed, light matte finish; thickness of 0.254 mm to 2.324 mm and width of 914 mm to 1,321 mm, slit edge, no weld; Coil I/D: 508 mm; Coil O/D: 1,524 mm maximum; thickness tolerance (center of sheets): ±0.006 mm for thickness from 0.254 mm to 0.381

manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010; or

(J) Products with thickness 1.6 mm to 2.3 mm; tensile strength 980 to1060 N yield strength 580 to 730 N minimum elongation 14 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010;

(xxxi) Cold-rolled flat-rolled products,

yield strength of 360 to 480 MPa; tensile strength of 540 to 660 MPa; and elongation of 21 percent;

(xxxiii) Corrosion resistant continuously annealed flat-rolled products, designated as N–426, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003

manganese not over 0.6, phosphorus not over 0.16, sulfur not over 0.03, silicon 2.0 to 3.0 and iron the remainder; with a thickness of 1.0 to 1.6 mm, thickness tolerance ±0.09 mm, tensile strength 50.0 to 64.2 kgf/mm²; yield point 38.2 to 45.9 kg/mm²; permeability 450 to 1000 (at the magnetic force of 0.30 Oe, according to JIS C 2550), with zinc or zinc-nickel electroplating weight of 20 g/m²; (minimum 17 g/m², maximum 26 g/m²); approximate thickness 3 mm;

(B) Products, whether or not with a chromate-free coating, with a zinc-nickel

electroplating; with coating weights of zinc-nickel 17 to 24 g/m² minimum, and if applicable chromate-free coating 90 to 160 mg/m²; heat resistant chemical treatment of 0.3 to 1.0 g/m²; maximum deviation from horizontal flat surface of 5 mm, with the camber of mother coils not larger than 2 mm/2000 mm in length; with chemical composition (percent by weight): carbon 0.01 maximum, silicon 1.0 to 2.0, manganese 0.5 to 1.5, phosphorus 0.16 maximum and sulfur 0.03 maximum;

(xxxvi) Copper-coated or nickel-coated

weight): carbon 0.17 to 0.23, silicon 0.15 to 0.35, manganese 0.55 to 0.90, phosphorus 0.030 maximum, sulfur 0.010 to 0.030, copper 0.30 maximum, nickel 0.25 maximum, chromium 0.85 to 1.25 and oxygen 0.0015 maximum; or

(C) Products known in industry usage as JIS SCM435HVC; having a diameter of 33.5 mm (with tolerances of ±0.05 mm); with chemical composition (percent by weight): carbon 0.32 to 0.39, silicon 0.15 to 0.35, manganese 0.55 to 0.90, phosphorus 0.030 maximum, sulfur 0.010 to 0.015, copper 0.30

(B) Products entered in an aggregate annual quantity not to exceed 100 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing in coils, SAE 1074, spheroidized annealed, light matte finish; thickness of 0.254 mm to 2.324 mm and width of 914 mm to 1,321 mm, slit edge, no weld; Coil I/D: 508 mm; Coil O/D: 1,524 mm maximum; thickness tolerance (center of sheets): ±0.006 mm for thickness from 0.254 mm to 0.381 mm; ±0.007 mm for thickness 0.381 mm or more but not over 0.635 mm; ±0.010 mm for thickness 0.635 mm or more but not over 2.324 mm; rating 1.0 Max by ASTM E45, method-A; and restricted carbon range of 0.02 points;

(C) Products with thickness from 0.8 mm to 1.0 mm; tensile strength 980 to 1080 N/mm²; yield strength 700 to 850 N/mm²; elongation 11 to 20 percent; minimum stretch flangeability 30 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.02 and, sulfur maximum 0.010;

(D) Products with thickness from 1.0 mm to 1.2 mm; tensile strength 980 to1080 N/mm²; yield strength 690 to 850 N/mm²; elongation 12 to 21 percent; minimum stretch flangeability 30 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010;

(E) Products with thickness from 1.2 mm to 1.6 mm; tensile strength 980 to1,080 N/mm²; yield strength 690 to 850 N/mm²; elongation 13 to 22 percent; minimum stretch flangeability 30 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010;

(F) Products with thickness from 1.6 mm to 2.3 mm; tensile strength 980 to 1,080 N/mm²; yield strength 690 to 850 N/mm²; minimum elongation 13 percent; minimum stretch flangeability 30 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010;

(G) Products with thickness from 0.8 mm to 1.0 mm; tensile strength 980 to 1,060 N/mm² yield strength 590 to 730 N/mm² elongation 13 to 20 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20; phosphorus maximum 0.020 and sulfur maximum 0.010;

(H) Products with thickness 1.0 mm to 1.2 mm; tensile strength 980 to1060 N/mm²; yield strength 580 to 730 N elongation 14 to 21 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010;

(I) Products with thickness 1.2 mm or more but not over 1.6 mm; tensile strength 980 to1060 N yield strength 580 to 730 N elongation 14 to 22 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010; or

(J) Products with thickness 1.6 mm to 2.3 mm; tensile strength 980 to1060 N yield strength 580 to 730 N minimum elongation 14 percent; with chemical composition (percent by weight): carbon maximum 0.19, silicon maximum 1.60, manganese maximum 2.20, phosphorus maximum 0.020 and sulfur maximum 0.010;

(xxxi) Cold-rolled flat-rolled products, designated as X–143 and meeting the characteristics described below:

(A) Single-reduced black plate, entered in an aggregate annual quantity not to exceed 2,467.6 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, and meeting the specification ASTM–A625, having either a minimum thickness of 0.34 mm and a coil width of 125.73 cm, or a thickness of 0.29 mm or more but not over 0.36 mm and a coil width of 67.31 cm to 101.60 cm; the foregoing satisfying the following characteristics: a maximum hardness on the Rockwell B scale of R B–47, with no lap welds and a dry surface roughness of Ra 1.25 to 2.25 microns; with chemical composition (percent by weight): carbon 0.045 maximum, chromium 0.05 maximum and aluminum 0.07 maximum; and certified for use for the manufacture of cookware; or

(B) Cold-rolled drawing quality steel, entered in an aggregate annual quantity not to exceed 1,161.2 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, and meeting the specification ASTM–A619, with a thickness of 0.360 mm or more; the foregoing satisfying the following characteristics: a maximum weight of 5,625 kg per coil (except as provided below), a maximum hardness on the Rockwell B scale of R B–47, with no lap welds and a dry surface roughness of Ra 1.25 to 2.25 microns; with chemical composition (percent by weight): carbon 0.045 maximum, chromium 0.05 maximum and aluminum 0.07 maximum; in the following thickness and coil width combinations respectively: 0.40 mm × 102.24 cm, 0.44 mm × 116.21 cm, 0.45 mm × 120.97 cm; 0.36 mm × 101.92 cm, 0.36 mm × 104.46 cm, 0.36 mm × 90.49 cm, 0.40 mm × 77.79 cm, 0.44 mm × 63.50 cm, 0.44 m × 82.87 cm, 0.39 mm × 93.03 cm, 0.45 mm × 104.46 cm, 0.38 mm × 91.76 (the latter having a maximum weight of 3,600 kg per coil) or 0.42 mm × 91.76 cm (the latter having a maximum weight 3,600 kg per coil); and certified for use in the manufacture of cookware;

(xxxii) Aluminized coated hardenable manganese-boron steel, designated as N–316 and known in industry usage as "USIBOR"; having the following properties: in coils 624 mm to 1600 mm wide; 0.6 mm to 3.0 mm in thickness; having ASTM 463–A coating; with chemical composition (percant by weight): carbon not over 0.25, manganese not over 1.35, sulfur not over 0.008, aluminum not over 0.06, silicon not over 0.35, chromium not over 0.30, nitrogen not over 0.009, boron not over 0.004 and titanium not over 0.05; yield strength of 360 to 480 MPa; tensile strength of 540 to 660 MPa; and elongation of 21 percent;

(xxxiii) Corrosion resistant continuously annealed flat-rolled products, designated as N–426, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below:

(A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1;

(B) Products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer, with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters not exceeding 5;

(C) Products having one side coated with a nickel-iron-diffused layer which is less than 1micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters exceeding 5 microns in length; or

(D) Products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA–microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length;

(xxxiv) Electrogalvanized flat-rolled products, designated as N–455 and meeting the characteristics described below:

(A) Products with chemical composition (percent by weight): carbon not over 0.010, manganese not over 0.6, phosphorus not over 0.16, sulfur not over 0.03, silicon 2.0 to 3.0 and iron the remainder; with a thickness of 1.0 to 1.6 mm, thickness tolerance ±0.09 mm, tensile strength 50.0 to 64.2 kgf/mm²; yield point 38.2 to 45.9 kg/mm²; permeability 450 to 1000 (at the magnetic force of 0.30 Oe, according to JIS C 2550), with zinc or zinc-nickel electroplating weight of 20 g/m²; (minimum 17 g/m², maximum 26 g/m²); approximate thickness 3 mm;

(B) Products, whether or not with a chromate-free coating, with a zinc-nickel alloy electroplating, coating weights of zinc-nickel 17 g/m² minimum; thickness tolerance ±5 percent; tensile strength of 49 to 56 kgf/m m², yield point of 38 to 45 kgf /mm², magnetic properties 700 u or greater; with chemical composition (percent by weight): carbon 0.07 maximum, silicon 3.5 maximum, manganese 2.0 maximum, phosphorus 0.15 maximum and sulfur 0.02 maximum; or

(C) Products, whether or not with chromate or a chromate-free coating, whether or not with heat-resistant coating, with the following specifications: tensile strength 40 to 65 kgf/mm² yield point 25 to 46 kgf/mm² permeability 450 or greater (measured at the magnetic force of 0.30 Oe under direct-current mode; according to JIS C2550); zinc-nickel alloy electroplating; coating weights of zinc-nickel 17 to 24 g/m², if applicable chromate coating 40 to 70 mg/m², if applicable chromate-free coating 90 to 160 mg/m², and if applicable heat-resistance coating 0.3 to 1.2 g/m²; thickness 1.0 to 1.6 mm, thickness tolerance ±5 percent; width tolerance minus 0, plus 7 mm; warp 5 mm maximum and camber 2 mm/2,000 mm maximum; with chemical composition (percent by weight): carbon 0.010 maximum, silicon 3.0 maximum, manganese 2.0 maximum, phosphorus 0.16 maximum and sulfur 0.03 maximum;

(xxxv) High strength electrolytic zinc-coated silicon steel flat-rolled products, designated as N–456 and meeting the characteristics described below:

(A) Products whether or not with a chromate or chromate-free coating, with the following specifications: thickness 1.0 to 1.6 mm, thickness tolerance ±5 percent; width tolerance minus 0, plus 7 mm; tensile strength 41 to 45 kgf/mm²; yield point 26 to 30 kgf/mm²; magnetic properties of permeability 800 or more; with zinc-nickel alloy electroplating, coating weights of zinc-nickel 17 to 24 g/m² minimum, and if applicable chromate-free coating of 90 to 160 mg/m²; heat resistant chemical treatment of 0.3 to 1.0 g/m²; maximum deviation from horizontal flat surface of 5 mm, with the camber of mother coils not larger than 2 mm/2000 mm in length; with chemical composition (percent by weight): carbon 0.01 maximum, silicon 1.0 to 2.0, manganese 0.5 to 1.5, phosphorus 0.16 maximum and sulfur 0.03 maximum; or

(B) Products whether or not with a chromate or chromate-free coating, with the following specifications: thickness 1.0 to 1.6 mm, thickness tolerance ±5 percent; width tolerance minus 0, plus 7 mm; tensile strength 45 to 49 kgf/mm²; yield point 32 to 36 kgf/mm²; magnetic properties of permeability 500 or more; zinc-nickel alloy electroplating; with coating weights of zinc-nickel 17 to 24 g/m² minimum, and if applicable chromate-free coating 90 to 160 mg/m²; heat resistant chemical treatment of 0.3 to 1.0 g/m²; maximum deviation from horizontal flat surface of 5 mm, with the camber of mother coils not larger than 2 mm/2000 mm in length; with chemical composition (percent by weight): carbon 0.01 maximum, silicon 1.0 to 2.0, manganese 0.5 to 1.5, phosphorus 0.16 maximum and sulfur 0.03 maximum;

(xxxvi) Copper-coated or nickel-coated cold-rolled slit-to-width steel, in coils, designated as N–491 and meeting the characteristics described below:

(A) Products having a thickness of 0.508 mm to 0.889 mm and width of 34.671 mm to 51.82 mm; with chemical composition (percent by weight): carbon 0.05 to 0.08, manganese 0.27 to 0.45, phosphorus 0.015 maximum and sulphur 0.035 maximum; with the following other properties: cold-rolled from low carbon rimmed, capped, aluminum-killed or continuous cast steel; uniformly coated with smooth and clean copper, free from pits, blisters, or roughness; deposited electrolytically on the two flat surfaces of the product in a quantity not less than 54.93 g per m² (18 oz per ft²) of product (both sides) or 27.46 g per m² (0.09 oz per ft²) of surface (one side) and not more than 100.7 g per m² (0.33 oz per ft²) of product (both sides) or 50.35 g per m² (0.165 oz per ft²) of surface (one side); wound in coils with an inside diameter of 406 mm to 419 mm; with minimum outside diameter of 508 mm and maximum outside diameter of 1,219 mm; or

(B) Products having a thickness of 0.508 mm to 0.889 mm and width of 34.671 mm to 51.82 mm; with chemical composition (percent by weight): carbon 0.030 to 0.050, manganese 0.11 to 0.20, phosphorus 0.025 maximum, sulphur 0.020 maximum, silicon 0.025 maximum, aluminum 0.025 to 0.07 and nitrogen 0.007 maximum; with copper plus nickel plus chromium 0.150 maximum; with the following other properties: low carbon aluminum killed steel made by continuous casting process; uniformly coated with nickel free from pits or blisters deposited electrolytically on one surface (plated side) of the product in a minimum thickness of 0.00381 mm and the bare side of the product with a maximum of 0.000762 mm of nickel thickness; the plated product is then annealed, and wound in coils with a maximum inside diameter of 508 mm and a maximum outside diameter of 1,727.2 mm;

(xxxvii) Hot-rolled carbon steel bar products, in coils, designated as N–303 and meeting the characteristics described below:

(A) Products known in industry usage as JIS SCM420HVC, having a diameter of 34.0 mm (with tolerances of ±1 mm); with chemical composition (percent by weight): carbon 0.17 to 0.23, silicon 0.15 to 0.35, manganese 0.55 to 0.90, phosphorus 0.030 maximum, sulfur 0.010 to 0.030, copper 0.30 maximum, nickel 0.25 maximum, chromium 0.85 to 1.25, molybdenum 0.10 to 0.25 and niobium (columbium) 0.030 to 0.060;

(B) Products known in industry usage as JIS SCR420HVC, having a diameter of 39.1 mm and 41.5 mm (with tolerances of ±1 mm); with chemical composition (percent by weight): carbon 0.17 to 0.23, silicon 0.15 to 0.35, manganese 0.55 to 0.90, phosphorus 0.030 maximum, sulfur 0.010 to 0.030, copper 0.30 maximum, nickel 0.25 maximum, chromium 0.85 to 1.25 and molybdenum 0.10 to 0.25;

(C) Products known in industry usage as JIS SCM435HVC; having a diameter of 33.5 mm (with tolerances of ±0.05 mm); with chemical composition (percent by weight): carbon 0.32 to 0.39, silicon 0.15 to 0.35, manganese 0.55 to 0.90, phosphorus 0.030 maximum, sulfur 0.010 to 0.015, copper 0.30 maximum, nickel 0.25 maximum, chromium 0.85 to 1.25 and molybdenum 0.10 to 0.25;

(xxxviii) Austenitic manganese steel round and flat bars (Bohler K700), with chemical composition (percent by weight): carbon 1 to 1.3, silicon 0.10 to 0.45, manganese 12.00 to 14.00, phosphorus 0.035 maximum, sulfur 0.040 maximum, chromium 0.50 maximum, molybdenum 0.150 maximum and nickel 0.40 maximum; the foregoing designated as N–387;

(xxxix) Standard rephosphorized and resulfurized carbon steel bars and rods (AISI 1200 Series), designated as N–392 and entered in an aggregate annual quantity not to exceed 30,000 t, the foregoing in coils or straight lengths, not further worked than hot-rolled, of a type known in industry usage as XLCUT; with chemical composition (percent by weight): 0.04 or more phosphorus, 0.24 or more but not over 0.35 sulfur and 0.23 or more but not over 0.35 lead; manganese-to-sulfur ratios of greater than 3:1; reduction ratio for coiled bar and rod of a minimum of 150:1 and for straight bar and rod of a minimum of 35:1; fully surface inspected and certified by the importer to be free from defects deeper than 2 percent of bar and rod diameter or section; certified as free from mixes; achieved by 100 percent spectrometer testing;

(xl) Galvanized, cold formed steel channels, designated as N–495, with surface finish of smooth in-line galvanized zinc coating with controlled mass of 100 g/m² minimum applied after forming by a specialized continuous process, with the zinc coating further passivated to resist white rust; not further cold worked; not manufactured from pre-galvanized product; supplied in lengths of approximately 6.096 m; with the following specifications: product specification TS100, with channels, size range: (i) 76.2 mm × 38.1 mm, 101.6 mm × 50.8 mm or 127 mm × 63.5 mm, with a thickness of 3.96mm and yield strength of 450 MPa, or (ii) 152.4 mm × 76.2 mm, 177.8 mm × 76.2 mm or 203.2 mm × 76.2 mm, with a thickness of 4.77 mm and yield strength of 450 MPa, or (iii) 203.2 mm × 76.2 mm, 228.6 mm × 76.2mm, 254 mm × 88.9 mm or 304.8 mm × 88.9 mm, with a thickness of 5.94 mm, 250 × 90 mm or 300 × 90 mm with thickness of 6.0 mm and a yield strength of 450 MPa, or (iv) 304.8 mm × 88.9 mm × 7.95 mm or 300 mm × 90 mm × 6.0 mm, with a yield strength of 400 MPa; tolerances: squareness (angular tolerance); with included angle between the sides of a channel of 90 degrees; with maximum out of squareness of a channel in accordance with the following: where the shorter leg length is less than 50.8 mm ± 2.0 degrees, where the shorter leg length is greater than 50.8 mm but less than 76.2 mm ± 1.5 degrees, where the shorter leg length is greater than 76.2 mm ± 1.0 degree; twist: maximum angle of twist 1 degree over 1 m; feedstock produced by a fully killed, continually cast steel process to produce a feedstock material with fine grain with controlled and qualified chemistry (percent by weight): 0.20 maximum carbon, 1.60 maximum manganese, 0.10 maximum silicon, 0.10 maximum aluminum, 0.040 maximum phosphorus and 0.030 sulfur; with chemistry controlled to provide a carbon

maximum magnetic permeability of 380, saturated magnetism of 16,350 Gauss and residual magnetism of 8,500 Gauss;

(B) Products known in industry usage as "NAK 80," the foregoing being a plastic mold steel used for applications such as clear lens molds and extremely critical diamond finish applications, with chemical composition (percent by weight): carbon 0.15, manganese 1.50, molybdenum 0.30, copper 1.00, silicon 0.30 , nickel 3.00 and aluminum 1.00; minimum mechanical properties: HRC 40; tensile strength 1264 MPa; reduction 41.9 practices are utilized to produce an exceptionally fine-grained, stable, tough and easy to machine and weld mold steel; or

(E) Products known in industry usage as "CX1," the foregoing being a proprietary cold work die steel that is supplied heat treated to hardness of HRC 50, and can also be machined at this hardness, with the following chemical composition (percent by weight): carbon 0.60, manganese 1.30 chromium 1.00 and molybdenum 0.80; mechanical properties (as supplied): HRC 50; tensile strength 1786 MPa; yield strength

carbon not over 0.1, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum 0.02 to 0.06, titanium not over 0.02, molybdenum not over 0.5, niobium (columbium) not over 0.09 and vanadium not over 0.2; yield strength of 700 to 800 MPa; tensile strength of 750 to 910 MPa; elongation not less than 13 percent; and guaranteed bending radius of 1.6 times;

(B) High strength low alloy grade 100 light gauge steel, with the following characteristics: thickness 4.5 mm or more but injurious defects such as holes, breaks, scabs, scale, and embosses; product produced to enable coiled tubing to satisfy fatigue test (SPE papers 22820, 38407, and 54482);

(C) Products with chemical composition (percent by weight): carbon not over 0.15, manganese not over 1.40, phosphorus not over 0.025, sulfur not over 0.010, silicon not over 0.50, chromium not over 1.00, copper not over 0.50, nickel not over 0.20, niobium (columbium) 0.005 or more and aluminum 0.01 to 0.07; calcium treated; with the following other properties: width not over tolerance: 0.20 mm maximum for 1.6 mm to 4.0 mm, 0.25 mm maximum for 4.0 mm to 6.0 mm, 0.30 mm maximum for 6.0 mm to 8.0 mm, 0.35 mm maximum for 8.0 mm to 12.0 mm; with in-line temper-passed and tension-leveled hot-rolled pickled and oiled flat-rolled products of nonalloy steel in grade 50 meeting the following chemical composition (percent by weight): carbon 0.03 to 0.08, manganese 0.1 to 1.3, silicon not over 0.03, aluminum 0.02 to 0.04, phosphorus not over 0.02, sulfur not over 0.008, copper not over 0.05, nickel not over 0.1, chromium not over 0.1, niobium (columbium) 0.01 to 0.04,

length is greater than 50.8 mm but less than 76.2 mm ± 1.5 degrees, where the shorter leg length is greater than 76.2 mm ± 1.0 degree; twist: maximum angle of twist 1 degree over 1 m; feedstock produced by a fully killed, continually cast steel process to produce a feedstock material with fine grain with controlled and qualified chemistry (percent by weight): 0.20 maximum carbon, 1.60 maximum manganese, 0.10 maximum silicon, 0.10 maximum aluminum, 0.040 maximum phosphorus and 0.030 sulfur; with chemistry controlled to provide a carbon equivalent of no more than CE=0.39; all channels produced from flat product having a uniform cross section (wall thickness);

(xli) Hot-rolled carbon steel bar products designated as X–011 and meeting the characteristics described below:

(A) Products known in industry usage as JIS S35CL, having a diameter of 42 mm (with tolerances of plus or minus 1 mm); cut-to-length; with chemical composition (percent by weight): carbon 0.32 to 0.38, silicon 0.15 to 0.35, manganese 0.60 to 0.90, phosphorus 0.030 maximum, sulfur 0.015 maximum, copper 0.30 maximum, nickel 0.20 maximum, chromium 0.20 maximum, nickel plus chromium 0.35 maximum and lead 0.13 to 0.23; or

(B) Products known in industry usage as JIS S40CKM–1; having a diameter of 95 mm or 120 mm (with tolerances of ± 1 mm); cut-to-length; with chemical composition (percent by weight): carbon 0.36 to 0.44, silicon 0.15 to 0.35, manganese 0.40 to 0.70, phosphorus 0.03 maximum, sulfur 0.03 to 0.08, copper 0.10 maximum, nickel 0.10 maximum, nitrogen 0.010 to 0.020 and lead 0.10 to 0.20;

(xlii) Thermal refined, water quenched, and drawn hot-rolled bars, designated as X–075, with hardness 318 HV minimum, 83 kg/mm minimum tensile strength; 8 percent minimum elongation; microstructure consisting of tempered martensite for 5 mm to 8 mm followed by 1 mm of tempered martensite and transition products; general bar structure consisting of pearlite and ferrite; decarburization 0.85 maximum of bar diameter;

(xliii) Hot-rolled bars, designated as X–134 and meeting the characteristics described below:

(A) Products known in industry usage as "NAK 55," the foregoing which are double-melted hot-rolled or forged plastic mold steel products, with chemical composition (percent by weight): carbon 0.15, manganese 1.50, sulfur 0.10, copper 1.00, silicon 0.30, molybdenum 0.30, nickel 3.00 and aluminum 1.00; displaying the following minimum mechanical properties: hardness of HRC 40, yield strength (0.2 percent offset, 41 HRC) of 1010 MPa, tensile strength of 1255 MPa; reduction of 39.8 percent; elongation in 50 mm of 15.6 percent; with Charpy-notch impact strength longitudinal 9.8 J and transverse of 7.6 J; displaying the following physical properties: coefficient of thermal expansion from 20 °C to 100 °C of 11.3 × 10^{-6} °C^{-1}, from 20 °C to 200 °C of 12.6 × 10^{-6} °C^{-1} and from 20 °C to 300 °C of 13.5 × 10^{-6} °C^{-1}; coefficient of thermal conductivity (J/(smK)) at 93 °C of 41.4 or at 204 °C of 42.2; having magnetic properties of maximum magnetic permeability of 380, saturated magnetism of 16,350 Gauss and residual magnetism of 8,500 Gauss;

(B) Products known in industry usage as "NAK 80," the foregoing being a plastic mold steel used for applications such as clear lens molds and extremely critical diamond finish applications, with chemical composition (percent by weight): carbon 0.15, manganese 1.50, molybdenum 0.30, copper 1.00, silicon 0.30 , nickel 3.00 and aluminum 1.00; minimum mechanical properties: HRC 40; tensile strength 1264 MPa; reduction 41.9 percent; yield strength (0.2 percent offset, 41 HRC) 1018 MPa; elongation in 50 mm (longitudinal) 16.1 percent; Charpy V-Notch impact strength (toughness): longitudinal 11.0 J.; transverse 11.5 J.; physical properties: coefficient of thermal expansion (10^{-6}/K), 20 °C to 100 °C of 11.3, 20 °C to 200 °C of 12.6, 20 °C to 300 °C of 13.5; coefficient of thermal conductivity (J/(smK)) at 93 °C of 41.4, at 204 °C of 42.2; magnetic properties: maximum magnetic permeability 380, saturated magnetism (gauss) 16,360, residual magnetism (gauss) 8,500, and coercive force (Oersted) 14.0; double melted, first in an electric furnace then in a vacuum arc re-melt furnace, hot-rolled or forged to shape and age hardened to Nickel 40; and produced through a super clean, vacuum-arc remelt manufacturing process;

(C) Products known in industry usage as "Super NAK" ("NAK HH"), the foregoing being a plastic mold steel providing a unique combination of high hardness and ability to machine-work the steel; with the following chemical composition (percent by weight): carbon 0.11, manganese 1.4, copper 1.0, chromium 1.6, aluminum 1.0, silicon 0.30, sulfur 0.35, nickel 3.0 and molybdenum 0.3; physical properties: HRC 45; tensile strength 1385 MPa longitudinal, 1359 MPa transverse; yield strength 1031 MPa longitudinal, 1,009 transverse, elongation 11 percent longitudinal, 4 percent transverse, reduction of area 22 percent longitudinal, 6 percent transverse; density of 7.78 mg/m³; produced in an electric furnace then vacuum arc re-melt furnace; hot-rolled or forged to shape; and age hardened to HRC 45 to 48;

(D) Products known in industry usage as "PX5," the foregoing being a plastic mold steel used in all types of plastic molding and design, and is superior to AISI grade P20-type steels in terms of machining, stability, and welding; with the following chemical composition (percent by weight): carbon 0.20, manganese 1.90, sulfur 0.035, molybdenum 0.45, copper 0.10, silicon 0.10 percent, phosphorus 0.010, nickel 0.20, aluminum 0.030 and chromium 2.10; minimum mechanical properties: HRC 30 to 33; tensile strength 1,034 MPa; reduction 48 percent; yield strength 917 MPa; elongation in 50 mm (longitudinal) 20 percent; physical properties: coefficient of thermal expansion (10^{-6}/K), 20 °C to 100 °C of 11.9, 20 °C to 200 °C of 12.8, 20 °C to 300 °C of 13.1, 20 °C to 400 °C of 13.5 and 20 °C to 600 °C of 14.0; coefficient of thermal conductivity (J/(smK)) at 20 °C of 42.5, at 100 °C of 42.4, at 200 °C of 42.1, at 300 °C of 39.2 and at 400 °C of 38.8; produced by electric furnace melting, ladle degassed and refined; proprietary forging, rolling and heat-treating practices are utilized to produce an exceptionally fine-grained, stable, tough and easy to machine and weld mold steel; or

(E) Products known in industry usage as "CX1," the foregoing being a proprietary cold work die steel that is supplied heat treated to hardness of HRC 50, and can also be machined at this hardness, with the following chemical composition (percent by weight): carbon 0.80, manganese 1.30 chromium 1.00 and molybdenum 0.80; mechanical properties (as supplied): HRC 50; tensile strength 1786 MPa; yield strength 1641 MPa; elongation 8 percent; and reduction in area 19 percent; physical properties: coefficient of linear thermal expansion (10^{-6}/K): 20 °C to 200 °C of 12.9 or 20 °C to 420 °C of 13.9; coefficient of thermal conductivity (J/(smK)) at 20 °C of 30.7; density 7.71 mg/m³; produced by electric furnace melting, ladle degassing and refining; having undergone proprietary forging, rolling and heat-treating practices utilized to produce an exceptionally fine-grained, stable, tough and easy to machine and weld die steel;

(xliv) Ball bearing quality hot-rolled bar or wire rod steel, SAE/AISI grade 52100 or JIS SUJ2 specifications, the foregoing designated as X–188;

(xlv) Hot-rolled sheet, in coils, designated as N–300, the foregoing produced to specification API 5L Grade X–52; with chemical composition (percent by weight): Carbon 0.03 to 0.07, manganese 0.95 to 1.20, phosphorus not over 0.010, sulfur not over 0.002, silicon 0.170 to 0.250, copper not over 0.15, nickel not over 0.10, chromium not over 0.07, molybdenum not over 0.03, nitrogen not over 0.009, aluminum 0.020 to 0.050, tin not over 0.020, vanadium not over 0.008, niobium (colombium) 0.016 to 0.026, titanium not over 0.008 and calcium 0.0004 to 0.0050; having the following physical properties: yield ratio of less than 0.900; factor formula of C + Mn/5 + 2(Cb); factor range of 28 to 35; thickness range of 6.35 mm or more but not over 12.70 mm; width range of 1,032.027 mm or more but not over 1,735.38 mm; thickness tolerance: aim ½ ASTM tolerance, except 40 m both ends to be 3/4 ASTM per A568–96, Table 4 and A635–96, Table 4; width tolerance: plus 19.05 mm, minus 0.00 mm, aim plus 10.16 mm (untrimmed); crown tolerance: aim 0.0508 mm, range (minimum minus 0.0127 mm/maximum 0.0762 mm); coil inside diameter of 762.0 mm; coil outside diameter of a maximum of 1,828.8 mm, not to exceed 20,901 kg coil weight; other properties: calcium treated with calcium to sulfur ratio of between 2:1 and 5:1; all heats must be vacuum degassed; oxygen content must be less than 25 ppm; steel produced shall be suitable for HIC-resistant applications as determined by NACE standard TM 0284–96, all the foregoing certified for use in the manufacturing into line pipe;

(xlvi) Hot-rolled flat-rolled steel, designated as N–316 and meeting the characteristics described below:

(A) High strength low alloy grade 100 light gauge steel, with the following characteristics: thickness of 2.3 mm to 3.0 mm; width from 1016 mm to 1524 mm; with chemical composition (percent by weight):

carbon not over 0.1, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum 0.02 to 0.06, titanium not over 0.02, molybdenum not over 0.5, niobium (columbium) not over 0.09 and vanadium not over 0.2; yield strength of 700 to 800 MPa; tensile strength of 750 to 910 MPa; elongation not less than 13 percent; and guaranteed bending radius of 1.6 times;

(B) High strength low alloy grade 100 light gauge steel, with the following characteristics: thickness 4.5 mm or more but not over 12.7 mm; width 1.524 m or more but not over 1.829 m; with chemical composition (percent by weight): carbon not over 0.1, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum 0.02 to 0.06, titanium not over 0.02, molybdenum not over 0.5, niobium (columbium) not over 0.09 and vanadium not over 0.2; yield strength of 700 to 800 MPa; tensile strength of 750 to 910 MPa; elongation not less than 13 percent; guaranteed bending radius of 1.6 times a thickness less than 6 mm and 1.8 times a thickness greater than 6 mm; or

(C) Temper passed grade A1001CSB/1008 CQ products, with thickness 3.1 mm or more but not over 3.6 mm and width 2032 mm or more; yield strength of 179 to 340 MPa; tensile strength of 440 MPa maximum; minimum elongation of 28 percent; with chemical composition (percent by weight): carbon not over 0.1, manganese not over 0.5, phosphorus not over 0.03, sulfur not over 0.03, silicon not over 0.03, copper not over 0.04, nickel not over 0.04, chromium not over 0.04 and aluminum over 0.01;

(xlvii) Hot-rolled flat-rolled products, in coils, the foregoing designated as X–025 and meeting the characteristics described below:

(A) Products with chemical composition (percent by weight): carbon 0.10 to 0.16, manganese 0.70 to 0.90, phosphorus not over 0.025, sulfur not over 0.002, silicon 0.30 to 0.50, chromium 0.50 to 0.70, copper not over 0.25, nickel not over 0.20 and molybdenum not over 0.21; with the following other properties: width not over 1,138 mm; thickness not over 8.89 mm; yield strength greater than or equal to 551 N/mm²; tensile strength 724 N/mm²; thickness tolerance according to half of ASTM 568 specification; elongation greater than or equal to 16 percent; hardness of 70 to 105 HRB; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale, and embosses; product must enable coiled tubing to satisfy fatigue test (SPE papers 22820, 38407 and 54482) constantly;

(B) Products with chemical composition (percent by weight): carbon 0.10 to 0.14, manganese 1.30 to 1.80, phosphorus not over 0.025, sulfur not over 0.001, silicon 0.30 to 0.50, chromium 0.50 to 0.70, copper 0.20 to 0.40, nickel not over 0.20, vanadium not over 0.10 and niobium (columbium) not over 0.08; with the following other properties: width not over 1,138 mm; thickness not over 8.89 mm; yield strength greater than or equal to 551 N/mm²; tensile strength 724 N/mm²; thickness tolerance according to half of ASTM 568 specification; elongation 14 percent or more; hardness of 80 to 105 HRB; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale, and embosses; product produced to enable coiled tubing to satisfy fatigue test (SPE papers 22820, 38407, and 54482);

(C) Products with chemical composition (percent by weight): carbon not over 0.15, manganese not over 1.40, phosphorus not over 0.025, sulfur not over 0.010, silicon not over 0.50, chromium not over 1.00, copper not over 0.50, nickel not over 0.20, niobium (columbium) 0.005 or more and aluminum 0.01 to 0.07; calcium treated; with the following other properties: width not over 1,000 mm; thickness not over 4.6 mm; yield strength 482 N/mm² or more; tensile strength 551 N/mm² or more; thickness tolerance according to half of ASTM 568 specification; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale, and embosses; product produced to enable coiled tubing to satisfy fatigue test (SPE papers 22820, 38407, and 54482);

(D) Products with chemical composition (percent by weight): carbon 0.10 to 0.15, manganese 1.30 to 1.80, phosphorus not over 0.025, sulfur not over 0.001, silicon 0.30 to 0.50, chromium 0.30 to 0.70, copper 0.20 to 0.40, nickel not over 0.20, molybdenum not over 0.40, niobium (columbium) not over 0.08 and vanadium not over 0.10; with the following other properties: width not over 1,138 mm; thickness not over 8.89 mm; yield strength 482 N/mm² or more; thickness tolerance according to half of ASTM 568 specification; elongation 14 percent or more; hardness of 80 to 110 HRB; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale, and embosses; product produced to enable coiled tubing to satisfy fatigue test (SPE papers 22820, 38407, and 54482);

(E) Products with chemical composition (percent by weight): carbon 0.10 to 0.16, manganese 0.70 to 0.90, phosphorus not over 0.020, sulfur not over 0.002, silicon 0.30 to 0.50, chromium 0.50 to 0.70, copper not over 0.25, nickel not over 0.20 and molybdenum not over 0.21; with the following other properties: width not over 1,138 mm; thickness not over to 8.89 mm; yield strength of 355 N/mm² to 569 N/mm²; tensile strength 482 N/mm² or more; thickness tolerance according to half of ASTM 568 specification; elongation 18 percent or more; hardness of 9 to 25 HRC; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale, and embosses; product produced to enable coiled tubing to satisfy fatigue test (SPE papers 22820, 38407, and 54482);

(xlviii) Alloy and nonalloy flat-rolled products, designated as X–083 and entered in an aggregate annual quantity not to exceed 20,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing not further worked than hot-rolled, with the following features: sulfur content 0.005 percent by weight maximum; elongation: 18 percent minimum/31 percent maximum for 1.6 mm to 2.0 mm, 20 percent minimum/32 percent maximum for 2.0 mm to 3.2 mm, 21 percent minimum/33 percent maximum for 3.2 mm to 6.3 mm, 22 percent minimum for 6.3 mm to 12.00 mm; total thickness tolerance: 0.20 mm maximum for 1.6 mm to 4.0 mm, 0.25 mm maximum for 4.0 mm to 6.0 mm, 0.30 mm maximum for 6.0 mm to 8.0 mm, 0.35 mm maximum for 8.0 mm to 12.0 mm; with in-line temper-passed and tension-leveled hot-rolled pickled and oiled flat-rolled products of nonalloy steel in grade 50 meeting the following chemical composition (percent by weight): carbon 0.03 to 0.08, manganese 0.1 to 1.3, silicon not over 0.03, aluminum 0.02 to 0.04, phosphorus not over 0.02, sulfur not over 0.008, copper not over 0.05, nickel not over 0.1, chromium not over 0.1, niobium (columbium) 0.01 to 0.04, titanium not over 0.03, vanadium not over 0.008 and nitrogen not over 0.009; with the combined silicon and phosphorus content not over 0.09; the combined niobium (columbium), titanium, and vanadium content not over 0.22; and carbon equivalent not over 0.36; yield strength of 345 to 448 MPa; tensile strength of 448 to 586 MPa; elongation of 21 percent minimum; thickness 2.4 mm to 7.5 mm; width 1200 mm to 1652 mm; with a typical whiteness value of 70 on scale L*, certified to flatness guarantee of 4 international units before and after laser cutting and to guarantee of no visible defect after painting for both sides of flat panel; and with visible defects including blemishes due to roll marks, pits, tolling scale and scratches;

(xlix) Hot-rolled flat-rolled products, in coils, having width of 1943.1 mm, tolerances of plus 6.35 mm, minus 0.000; composed according to specification SAE C–1006 DQSK, the foregoing designated as X–104;

(l) Hot-rolled flat-rolled steel products, designated as X–108 and meeting the characteristics described below:

(A) Products with thickness of 2 mm or more but not over 11.1 mm; width of 875 or more but not over 1625 mm; minimum yield strength of 689.48 MPa, minimum tensile strength of 158.4 MPa, minimum elongation of 15 percent, bendability of 1.6 to 1.8 times thickness, impact toughness of 27.1 J at −17.8 °C; with chemical composition (percent by weight): maximum carbon 0.12, maximum silicon 0.60, maximum manganese 2.0, maximum phosphorus 0.025, maximum sulfur 0.01, maximum titanium 0.20 and minimum aluminum 0.015 percent; or

(B) Weather resistant steel products, with a thickness of 2.3 mm or more but not over 6.5 mm and width of 875 mm or more but not over 1600 mm; minimum yield strength of 689.48 MPa, minimum tensile strength of 724 MPa, minimum elongation of 18 percent, bendability of 1 times thickness, impact toughness of 27.1 J at −17.8 °C; with chemical composition (percent by weight): maximum carbon 0.10, maximum silicon 0.45, maximum manganese 0.8 and maximum phosphorus 0.012 percent, with microalloying elements added;

(li) Hot-rolled flat-rolled steel products, designated as X–142 and meeting the characteristics described below:

(A) High-carbon alloy steel, with widths greater than 914 mm and made to the following specification: SAE 8660 (modified) (unit: percent by weight, ladle analysis): carbon 0.61 to 0.72, manganese 0.30 to 0.50, nickel 0.60 to 0.90 and molybdenum 0.10 to 0.15;

(B) High-carbon alloy steel, with widths greater than 914 mm and made to the

following specification: SAE 8670 (modified); with chemical composition (percent by weight): carbon 0.67 to 0.75, manganese 0.40 to 0.60, silicon 0.20 to 0.35, phosphorus 0.035 maximum, sulfur 0.035 maximum, chromium 0.20 to 0.50, nickel 0.70 to 1.00 and molybdenum 0.11 to 0.15;

(C) Steel products with chemical composition (percent by weight): carbon 0.20 maximum, silicon 1.20 maximum, manganese 2.00 maximum, phosphorus 0.05 to 0.10, sulfur 0.02 maximum, copper 0.15 to 0.40, nickel 0.40 maximum, aluminum 0.10 to 0.26, silicon 0.20 to 0.50, manganese 0.40 to 0.70, phosphorus 0.025, sulfur not over 0.0050, chromium 13.0 to 13.60, nickel 1.25 to 1.45, molybdenum 0.30 to 0.40, vanadium 0.30 to 0.40, titanium and niobium (columbium) each not over 0.0050, nitrogen 0.10 to 0.14, copper not over 0.15 and aluminum 0.010 to 0.025; hydrogen less than 3 ppm and oxygen less than 15 ppm; dimensions round from 12.7 mm to 762 mm and flat thickness 11 mm to 610 mm, width 45 mm to 915 mm; vacuum degassed and pressure-electro-slag-remelting; cleanliness

composition (percent by weight): carbon 0.80 to 0.95, silicon 0.35 to 0.50, manganese 0.25 to 0.40, phosphorus maximum 0.04, sulfur maximum of 0.04, chromium 17.0 to 18.0, molybdenum 1.00 to 1.25, vanadium 0.08 to 0.15, cobalt 3.8 to 4.2 and remainder iron; edge camber maximum of 10 mm per 1,000 mm length; and decarburization less than 0.01 mm;

(C) ASL 857 rectangular or shaped wire, certified for use in the production of piston rings, the foregoing with chemical composition (percent by weight): carbon 0.60 silicon not over 0.35, chromium not over 0.30, nitrogen not over 0.009, boron not over 0.004 and titanium not over 0.05; yield strength of 280 to 360 MPa; tensile strength of 390 to 510 MPa; elongation of 21 percent;

(lxiii) Flat-rolled products, designated as N–426, annealed, at least 0.2 mm in thickness but not more than 2.5 mm in thickness; at least 600 mm in width but not more than 1300 mm in width; plated with tin and zinc by a hot-dipped coating process, with the zinc content of the plating not less than 7 percent but not more than 9 percent restricted oil film weights of 0.3 to 0.4 g/m² of type DOS–A oil; coil inside diameter ranging from 393.7 to 431.8 mm; coil outside diameter of a maximum 1,625.6 mm; with maximum coil weight of 11,340 kg; and with temper/coating/dimension combination of: CA T–5 temper, 11.2/5.6 g/m² coating, 0.208 mm thickness (+5 percent/−8 percent) and 887.412 or 868.362 mm widths (+3 percent/−8 percent);

(C) Products having differential coating with 11.2 g/m² equivalent on the heavy side, with varied coating equivalents on the lighter

following specification: SAE 8670 (modified); with chemical composition (percent by weight): carbon 0.67 to 0.75, manganese 0.40 to 0.60, silicon 0.20 to 0.35, phosphorus 0.035 maximum, sulfur 0.035 maximum, chromium 0.20 to 0.50, nickel 0.70 to 1.00 and molybdenum 0.11 to 0.15;

(C) Steel products with chemical composition (percent by weight): carbon 0.20 maximum, silicon 1.20 maximum, manganese 2.00 maximum, phosphorus 0.05 to 0.10, sulfur 0.02 maximum, copper 0.15 to 0.40, nickel 0.40 maximum, aluminum 0.10 maximum, niobium (columbium) 0.10 maximum, titanium 0.10 maximum, vanadium 0.10 maximum, boron 0.10 maximum, molybdenum 0.30 maximum; thickness 1.6 to 2.0 mm; tensile strength 590 MPa minimum; yield strength 450 to 600 MPa; and elongation 19 to 35 percent;

(D) Steel products with chemical composition (percent by weight): carbon 0.20 maximum, silicon 1.20 maximum, manganese 2.00 maximum, phosphorus 0.05 to 0.10, sulfur 0.02 maximum, copper 0.15 to 0.40, nickel 0.40 maximum, aluminum 0.10 maximum, niobium (columbium) 0.10 maximum, titanium 0.10 maximum, vanadium 0.10 maximum, boron 0.10 maximum and molybdenum 0.30 maximum; thickness 2.0 to 3.0 mm; tensile strength 590 MPa minimum; yield strength 440 to 590 MPa; and elongation 20 to 36 percent; or

(E) Steel products with chemical composition (percent by weight): carbon 0.20 maximum, silicon 1.20 maximum, manganese 2.00 maximum, phosphorus 0.05 to 0.10, sulfur 0.02 maximum, copper 0.15 to 0.40, nickel 0.40 maximum, aluminum 0.10 maximum, niobium (columbium) 0.10 maximum, titanium 0.10 maximum, vanadium 0.10 maximum, boron 0.10 maximum and molybdenum 0.30 maximum; thickness 3.0 to 6.0 mm; tensile strength 590 MPa minimum; yield strength 430 to 580 MPa; and elongation 21 to 37 percent;

(iii) Alloy steel plate, designated as N–316, the foregoing known in industry usage as "SP 300" and in the form of pre-forged and rolled blocks or forged extra-heavy section blocks; with the following characteristics: thickness 152 mm or more; hardness of 269 to 304 BHN or 290 to 320 BHN; through hardness dispersion not exceeding 15 BHN for thicknesses not over 203 mm and 30 BHN for thicknesses of 203 or more but not over 1,270 mm; conforming to ASTM A578–S9 ultrasonic testing requirements; 2mm flat bottom hole; guaranteed cleanliness per ASTM E45 Method A (worst field ratings: A—not exceeding 1.5, B—not exceeding 1.5, C—not exceeding 1.0, D—not exceeding 1.5); with chemical composition (percent by weight): carbon 0.235 to 0.275, chromium 1.2 to 1.5, manganese 1.2 to 1.5, molybdenum 0.35 to 0.55, silicon 0.05 to 0.15 and sulfur 0.015 to 0.02; oxygen content not exceeding 20 ppm and hydrogen content not exceeding 2 ppm;

(iii) Hot-rolled weldable, soft magnetic special structural alloy steel plate, with increased electrical resistivity of the grade magnetic soft hot rolled (MSH), with thickness 4.75 mm or more but not over 50 mm and width 1016 mm or more but not over 3302 mm; with chemical composition (percent by weight): carbon 0.10 or more, silicon 1.00 to 2.00, manganese 0.15 to 0.60, phosphorus 0.02 or more, sulfur 0.01 or more, chromium 0.65 to 1.00, copper 0.55 or more, aluminum not over 0.02 and titanium 0.02 or more; yield strength of 275 MPa minimum; tensile strength of 430 to 550 MPa and elongation of 24 percent minimum; the foregoing designated as N–467;

(iv) Products designated as X–083 and meeting AISI 4142, the foregoing with dimensions of 1,651 mm by 3,683 mm; thickness of 6 mm to 230 mm; cross rolled in thickness up to 203 mm and forged and hot rolled in thickness greater than 203 mm; through-hard throughout the entire plate with a maximum dispersion of 30 BHN; conforms to ultrasonic testing requirements per ASTM A578–S9 with a 2 mm flat bottom hole used for calibration; microcleanliness ratings per ASTM E–45 method D where the sum of the ratings does not exceed 25 and the maximum worst field ratings are A: 1.0 maximum (thin) and 0.5 maximum (heavy), B: 1.0 maximum thin) and 0.5 maximum (heavy), C: 0.5 maximum (thin and heavy), D: 0.5 maximum. (thin and heavy); flatness that does not exceed 3 mm per meter, with a maximum of 5 mm over the entire length of 3683 mm; with chemical composition (percent by weight): carbon 0.36 to 0.42, manganese 1.10 to 1.30, silicon 0.35 to 0.45, sulfur 0.012 to 0.020, phosphorus not over 0.03, nickel 0.25 to 0.50, chromium 1.00 to 1.20, molybdenum 0.15 to 0.35 and copper not over 0.30; with O_2 not exceeding 20 ppm and H_2 not over 2 ppm; known in industry usage as "Marshalloy MQ™" mold quality;

(v) Flat-rolled hot-rolled plate, designated as X–100 and entered in an aggregate annual quantity not to exceed 75,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive; the foregoing not in coils; of a thickness greater than 4.74 mm; certified for use in the production of large diameter line pipe (greater than 406 mm in diameter); yield strength greater than or equal to 483 MPa;

(vi) Stainless steel bars, designated as N–387 and known in industry usage as "RAMAX S", the foregoing being a modified AISI 400 stainless sulfurized plastic mold steel; with chemical composition (percent by weight): carbon 0.31 to 0.36, silicon 0.20 to 0.50, manganese 1.20 to 1.50, phosphorus not over 0.035, sulfur 0.08 to 0.15, chromium 16.2 to 17.0, nickel 0.40 to 0.70, molybdenum not over 0.60; vanadium not over 0.40, nitrogen 0.10 to 0.14, copper not over 0.30, aluminum not over 0.030 and hydrogen less than 7.0 ppm; if round sections then diameter from 28 mm to 500 mm; if flat sections then thickness 43 mm to 305 mm and width 300 mm to 1,016 mm; vacuum degassed; minimum criterion on cleanliness according to ASTM E45/87, Method A plate I.; Slag type A; T-, H-; Slag type B; T 2.0, H 2.0; Slag type C; T 1.0, H 1.0; Slag type D; T .0, H less than 1.0;

(vii) Stainless steel bar, designated as N–387 and known in industry usage as "STAVAX Supreme," the foregoing which is a premium modified AISI 420 stainless plastic mold steel; with chemical composition (percent by weight): carbon 0.21 to 0.26, silicon 0.20 to 0.50, manganese 0.40 to 0.70, phosphorus 0.025, sulfur not over 0.0050, chromium 13.0 to 13.60, nickel 1.25 to 1.45, molybdenum 0.30 to 0.40, vanadium 0.30 to 0.40, titanium and niobium (columbium) each not over 0.0050, nitrogen 0.10 to 0.14, copper not over 0.15 and aluminum 0.010 to 0.025; hydrogen less than 3 ppm and oxygen less than 15 ppm; dimensions round from 12.7 mm to 762 mm and flat thickness 11 mm to 610 mm, width 45 mm to 915 mm; vacuum degassed and pressure-electro-slag-remelting; cleanliness according to ASTM E45/87, Method A plate III; Slag type A; T less than 1, H less than 0.5; Slag type B; T less than 1, H less than 0.5; Slag type C; T less than1.5, H less than 1.0; Slag type D; T less than 1.0, H less than 0.5;

(viii) Stainless steel bars, of round cross-section, designated as X–093, the foregoing in diameters of 6.35 mm to 101.6 mm, lengths of 3,048 mm to 4.572 mm; finished as follows: for X15TN finished via centerless grinding, or for X15TNW finished via rough-turning; with chemical composition nickel free and including (percent by weight): carbon 0.35 to 0.45, chromium 15.00 to 16.50, molybdenum 1.50 to 2.00, vanadium 0.15 to 0.35, nitrogen 0.15 to 0.25 and sulfur 0.0005 maximum;

(ix) Hot-rolled stainless steel bars, designated as X–219, finished black, in diameters up to 30 mm; lengths of 3,048 mm to 4,572 mm; with chemical composition (percent by weight): carbon 0.80 to 0.90, chromium 17.00 to 18.50, nickel not over 0.50, manganese not over 1.30, molybdenum 2.00 to 2.50, vanadium 0.35 to 0.55, silicon not over 1.00 and sulfur 0.0005 maximum;

(ix) Stainless steel wire, designated as X–018 and meeting the characteristics described below:

(A) Products known in industry usage as SF20T, with chemical composition (percent by weight): carbon 0.05 maximum; manganese 2.00 maximum, phosphorus 0.05 maximum, sulfur 0.15 maximum, silicon 1.00 maximum, chromium 19.00 to 21.00, molybdenum 1.50 to 2.50, lead added 0.10 to 0.30, tellurium added 0.03 minimum; or

(B) Products known in industry usage as DSR16FA, with chemical composition (percent by weight): carbon 0.15 maximum, manganese 1.25 maximum, phosphorus 0.06 maximum, sulfur 0.10 to 0.18, silicon 1.00 maximum, chromium 10.50 to 14.00, molybdenum 0.10 to 0.40, lead added 0.07 to 0.30 and selenium added 0.10 minimum;

(xi) Stainless steel wire, designated as X–177 and meeting the characteristics described below:

(A) ASL 813 rectangular or shaped wire, certified for use in the production of piston rings, the foregoing with chemical composition (percent by weight): carbon 0.60 to 0.70, silicon 0.25 to 0.50, manganese 0.20 to 0.50, phosphorus maximum 0.03, sulfur maximum 0.03, chromium 13.00 to 14.00, molybdenum 0.20 to 0.40 and remainder iron; decarburization less than 0.01 mm; and edge camber maximum of 10 mm per 1,000 mm length;

(B) ASL 874 rectangular or shaped wire, certified for use in the production of piston rings, the foregoing with chemical composition (percent by weight): carbon 0.80 to 0.95, silicon 0.35 to 0.50, manganese 0.25 to 0.40, phosphorus maximum 0.04, sulfur maximum of 0.04, chromium 17.0 to 18.0, molybdenum 1.00 to 1.25, vanadium 0.08 to 0.15, cobalt 3.8 to 4.2 and remainder iron; edge camber maximum of 10 mm per 1,000 mm length; and decarburization less than 0.01 mm;

(C) ASL 857 rectangular or shaped wire, certified for use in the production of piston rings, the foregoing with chemical composition (percent by weight): carbon 0.60 to 0.75, silicon 0.30 to 0.45, manganese 0.25 to 0.40, phosphorus maximum 0.04, sulfur maximum 0.03, chromium 14.0 to 16.0, molybdenum 0.90 to 1.15, vanadium 0.20 to 0.30, cobalt 6.0 to 8.0 and remainder iron; edge camber maximum of 10 mm per 1,000 mm length; and decarburization less than 0.01 mm;

(D) ASL 817 rectangular or shaped wire, certified for use in the production of piston rings, the foregoing with chemical composition (percent by weight): carbon 0.80 to 0.95, silicon 0.35 to 0.50, manganese 0.25 to 0.40, phosphorus maximum of 0.04, sulfur maximum 0.04, chromium 17.0 to 18.0, molybdenum 1.0 to 1.25, vanadium 0.08 to 0.15 and remainder iron; edge camber maximum of 10 mm per 1,000 mm length; and decarburization less than 0.01 mm;

(E) ASL 801 flat or shaped wire, certified for use in the production of spacer-expander (piston oil) rings, the foregoing with chemical composition (percent by weight): carbon maximum 0.12, silicon maximum 1.00, manganese 5.50 to 7.50, phosphorus maximum 0.60 percent, sulfur maximum 0.030, nickel 3.50 to 5.50, chromium 16.00 to 18.00 and nitrogen not over 0.25 percent; heat treatment condition: if ¾ hardened material, the hardness range between 59 and 67 when measured by the Rockwell Hardness Scale using 30 kilogram force load according to ASTM-E18 or hardness range between 386 and 485 when measured by the Vickers Hardness Scale using 1 kilogram force load according to ASTM-E92; if fully annealed material, hardness less than 260 when measured by the Vickers Hardness Scale using 1 kilogram force load according to ASTM–E92; microstructure uniformly solution treated or cold worked; and edge camber 8 mm maximum per 1000 mm length; or

(F) ASL 804 flat or shaped wire certified for use in the production of spacer-expanders, the foregoing with chemical composition (percent by weight): carbon maximum 0.08, silicon maximum 1.00, manganese maximum 2.00, phosphorus maximum 0.040, sulfur maximum 0.030, nickel 8.00 to 10.50 and chromium 18.00 to 20.00; edge camber 8 mm maximum per 1,000 mm length; microstructure uniformly solution treated or cold worked;

(xii) Flat-rolled tin mill products, designated as N–316 and known in industry usage as USIBOR uncoated hardenable manganese-boron steel, in coils measuring 624 mm to 1,600 mm in width; 0.6 mm to 3.0 mm in thickness; with chemical composition (percent by weight): carbon not over 0.25, manganese not over 1.35, sulfur not over 0.008, aluminum not over 0.06, silicon not over 0.35, chromium not over 0.30, nitrogen not over 0.009, boron not over 0.004 and titanium not over 0.05; yield strength of 280 to 360 MPa; tensile strength of 390 to 510 MPa; elongation of 21 percent;

(xiii) Flat-rolled products, designated as N–426, annealed, at least 0.2 mm in thickness but not more than 2.5 mm in thickness; at least 600 mm in width but not more than 1300 mm in width; plated with tin and zinc by a hot-dipped coating process, with the zinc content of the plating not less than 7 percent but not more than 9 percent by weight; with the tin content of the plating not less than 85 percent by weight; with a coating weight of at least 20 g/m² but not more than 100 g/m² per one side; given a special after-treatment with the coating weight of the after-treatment between 10 and 60 mg/m² of chromium per one side or, if no chromium is included in the after-treatment, with a coating weight of 100 to 1,500 mg/m² per side; characterized by the absence of environmental loading substance (Pb); exhibiting no red dust after 480 hours under the Salt Spray Test specified by JIS Z2371; with a press formability demonstrating equivalent mechanical properties to the substrate; weldability such that the number of the continuous spot weld test is more than 200; and, when the material is drawn into a cylindrical cup with a diameter of 50 mm formed with a drawing ratio of 2.2, filled with 40 ml of deteriorated gasoline (a solution of regular gasoline, soured gasoline and 10 percent water, containing 1,000 ppm formic acid, 2000 ppm acetic acid, and 100 ppm chlorine in water phase), and exposed to a temperature of 45 °C for 4 weeks; with the eluted volume of the coating less than 100 mg;

(xiv) Flat-rolled heavy gauge tinplate, with a gauge of 0.52 mm or more, flow-melted for electrical components, T 2, batch annealed, chemical composition according to ASTM A 623, roughness according to ASTM 7B and 7C bright; surface free from visible defects; the foregoing designated as N–499;

(xv) Flat-rolled electrolytically tin coated steel, designated as X–039 and meeting the characteristics described below:

(A) Products having differential coating with 11.2 g/m² equivalent on the heavy side, with varied coating equivalents on the lighter side; with a continuous cast steel chemistry of type MR; with a surface finish of type 7B or 7C; with a surface passivation of 7.532 mg/m² of chromium applied as a cathodic dichromate treatment; with coil form having restricted oil film weights of 0.3 to 0.4 g/m² of type DOS–A oil; coil inside diameter ranging from 393.7 to 431.8 mm; coil outside diameter of a maximum 1,625.6 mm; with maximum coil weight of 11,340 kg; and with temper/coating/dimension combination of: CA T–5 temper, 11.2/5.6 g/m² coating, 0.208 mm thickness (+5 percent/−8 percent) and 887.412 or 868.362 mm widths (+3 percent/−8 percent);

(B) Products having differential coating with 11.2 g/m² equivalent on the heavy side, with varied coating equivalents on the lighter side; with a continuous cast steel chemistry of type MR; with a surface finish of type 7B or 7C; with a surface passivation of 7.532 mg/m² of chromium applied as a cathodic dichromate treatment; with coil form having restricted oil film weights of 0.3 to 0.4 g/m² of type DOS–A oil; coil inside diameter ranging from 393.7 to 431.8 mm; coil outside diameter of a maximum 1,625.6 mm; with a maximum coil weight of 11,340 kg; and with temper/coating/dimension combination of: CA T–5 temper, 11.2/5.6g/m² coating, 0.300 mm thickness (+5 percent/−8 percent) and 776.287 or 903.287 mm widths (+3 percent/−8 percent);

(C) Products having differential coating with 11.2 g/m² equivalent on the heavy side, with varied coating equivalents on the lighter side; with a continuous cast steel chemistry of type MR; with a surface finish of type 7B or 7C, with a surface passivation of 7.532 mg/m² of chromium applied as a cathodic dichromate treatment; with coil form having restricted oil film weights of 0.3 to 0.4 g/m² of type DOS–A oil; coil inside diameter ranging from 393.7 to 431.8 mm; coil outside diameter of a maximum 1,625.6 mm; with maximum coil weight of 11,340 kg; and with temper/coating/dimension combination of: CA T–4 temper, 11.2/2.8 g/m² coating, 0.196 mm thickness (+5 percent/−8 percent), and 893.762 mm or 841.375 mm or 836.612 mm widths (+3 percent/−8 percent);

(D) Products having differential coating with 11.2 g/m² equivalent on the heavy side, with varied coating equivalents on the lighter side; with a continuous cast steel chemistry of type MR; with a surface finish of type 7B or 7C, with a surface passivation of 7.532 mg/m² of chromium applied as a cathodic dichromate treatment; with coil form having restricted oil film weights of 0.3 to 0.4 g/m² of type DOS–A oil; coil inside diameter ranging from 393.7 to 431.8 mm; coil outside diameter of a maximum 1,625.6 mm; with maximum coil weight of 11,340 kg; and with temper/coating/dimension combination of: DR–8 CA temper, 11.2/5.6 g/m² coating, 0.239 mm thickness (+5 percent/−8 percent), and 903.287 mm width (+3 percent/−8 percent); or

(E) Products having differential coating with 11.2 g/m² equivalent on the heavy side, with varied coating equivalents on the lighter side; with a continuous cast steel chemistry of type MR; with a surface finish of type 7B or 7C; with a surface passivation of 7.532 mg/m² of chromium applied as a cathodic dichromate treatment; with coil form having restricted oil film weights of 0.3 to 0.4 g/m² of type DOS–A oil; coil inside diameter ranging from 393.7 to 431.8 mm; coil outside diameter of a maximum 1,625.6 mm; with maximum coil weight of 11,340 kg; and with temper/coating/dimension combination of: DR–8 CA temper, 11.2/2.8 g/m² coating, 0.168 mm thickness (+5 percent/−8 percent), and 912.812 mm width (+3 percent/−8 percent);

(xvi) Flat-rolled tin free steel, designated as X–061, laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer) containing not more than the indicated amounts of the following

maximum coil weight of 11,340 kg; and with temper/coating/dimension combination of: DR–8 CA temper, 11.2/2.8 g/m² coating, 0.168 mm thickness (+5 percent/−8 percent), and 912.812 mm width (+3 percent/−8 percent);

(lxvi) Flat-rolled tin free steel, designated as X–061, laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer) containing not more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (Bisphenol A diglycidyl ether), 1 mg/kg BFDGE (Bisphenol F diglycidyl ether), and 3 mg/kg BPA (Bisphenol A);

(lxvii) Flat-rolled products designated as X–083 and meeting the characteristics described below:

(A) Electrolytic tin plate, designated as X–083 and entered in an aggregate annual quantity not to exceed 4,006 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive, the foregoing single reduced, 0.180 mm to 0.350 mm in thickness (70 to 135 base box weight), in temper designations of T–1BA, T–2BA, T–3BA or T–4CA; Type MR; No. 10 to No. 25 coating; with a 5C unmelted (matte) or 7C melted (stone) finish; width 1022.35 mm to 1174.75 mm; produced to ASTM 623–00 and A624–98; certified to be slit into two coils of equal widths, each coil having a widths of 508 mm or more but not over 609.6 mm, for use in manufacturing of engine gaskets, filters or pail bodies; or

(B) Flat-rolled products, double-reduced, electrolytically plated with tin and/or chromium; thickness not over 0.137 mm ± 5 percent; certified by the importer as manufactured to ASTM A623 type MR specifications; tensile strength of 552 to 572 MPa; manufactured through reduction on a DR temper mill following cold-rolling; and DR8-quality mechanical properties;

(lxviii) Welded pipes and tubes of iron or nonalloy steel, designated as N–319, the foregoing if in standard metric sizes and of square section then measuring 25 mm to 180 mm in diameter, with a wall thickness of 3 mm or more but not over 10 mm, or if of rectangular section with the smallest side measuring at least 25 mm and the largest side measures not over 200 mm; with chemical composition (percent by weight): carbon 0.22 maximum, manganese 1.6 maximum, silicon 0.55 maximum, phosphorus 0.04 maximum, sulfur 0.05 maximum and remainder iron;

(lxix) Welded structural pipes and tubes of alloy or nonalloy steel, designated as X–186, elliptically shaped, meeting ASTM A501, Chapter 10, points 10.4 and 10.5.

(lxx) Cold-rolled flat-rolled products designated as X–046, and meeting the characteristics described below:

(A) Products known in industry usage as "Docol 800 DP" or as "Docol 115"; dual phase; in coils; minimum yield strength 496 MPa; minimum tensile strength 793 MPa; 9 percent minimum elongation; width 787 mm or more but not over 1,387 mm; thickness at least 0.5 mm but not more than 2.0 mm; with chemical composition (percent by weight): carbon 0.13, silicon 0.20, manganese 1.5, phosphorus 0.015 max, sulfur 0.002 max, niobium (columbium) 0.015 and aluminum 0.04;

(B) Product known in industry usage as "Docol 140 DP"; dual phase; thickness at least 0.5 mm but not more than 2 mm; width 889 mm or more but not over 1,400 mm; minimum yield strength 552 MPa, minimum tensile strength 966 MPa; with chemical composition (percent by weight): carbon 0.13, silicon 0.20, manganese 1.5, phosphorus 0.020 maximum, sulfur 0.004 maximum, niobium (columbium) 0.015 and aluminum 0.04; and bendability of 1 times thickness inside radius for 90 degrees bend;

(C) Products known in industry usage as "Docol 1000 DP" or as "Docol 145 DP"; dual phase; thickness at least 0.5 mm but not over 2 mm; width at least 787 mm but not over 1,400 mm; minimum yield strength 689 MPa; minimum tensile strength 1,000 MPa ; minimum elongation 5 percent; with chemical composition (percent by weight): carbon 0.15, silicon 0.20, manganese 1.5, phosphorus not over 0.015, sulfur 0.002 maximum, niobium (columbium) 0.015 and aluminum 0.04;

(D) Products known in industry usage as "Docol 600 DL" or as "Docol 85"; dual phase; thickness 0.5 mm or more but not over 2 mm; width 780 mm or more but not over 1,400 mm; minimum yield strength of 345 MPa; minimum tensile strength of 586 MPa; bendability of 0 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.11, silicon 0.020, manganese 0.70, phosphorus not over 0.05, sulfur not over 0.01 and aluminum 0.04;

(E) Products known in industry usage as "Docol 800 DL" or as "Docol 115"; dual phase; in coils; minimum yield strength 386 MPa; minimum tensile strength 793 MPa; minimum elongation 14 percent; width 787 mm or more but not over 1,400 mm; thickness 0.5 mm or more but not over 2 mm; with chemical composition (percent by weight): carbon 0.14, silicon 0.20, manganese 1.7, phosphorus not over 0.015, sulfur not over 0.02, niobium (columbium) 0.015 and aluminum 0.04; or

(F) Products known in industry usage as "Docol 600 DP" or as "Docol 85 DP"; dual phase; thickness 0.5 mm or more but not over 2 mm; width 780 mm or more but not over 1,400 mm; minimum yield strength of 345 MPa; minimum tensile strength of 586 MPa; minimum elongation of 17 percent; bendability of 0 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.11, silicon 0.020, manganese 0.70, phosphorus not over 0.05, sulfur not more than 0.01 and aluminum 0.04;

(lxxi) Hot-rolled, flat-rolled products, designated as X–083 or X–089, the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.20, manganese 0.50 to 1.00, phosphorus not more than 0.02, sulphur not more than 0.005, silicon 0.20 to 0.50, chromium 0.40 to 0.70, copper 0.05 to 0.40, nickel 0.05 to 0.30, molybdenum 0.05 to 0.50, vanadium not over 0.02, niobium (columbium) not over 0.05, titanium not more than 0.03, with total combined vanadium, niobium (columbium) and titanium content of 0.01 to 0.07, aluminum 0.01 to 0.05 and containing iron; minimum tensile strength 745 MPa; minimum yield strength 606 MPa; and elongation of at least 18 percent;

(lxxii)Flat-rolled steel products, of a thickness of 0.5 mm or more but not over 2 mm, designated as X–120 and meeting the characteristics described below:

(A) Cold-rolled dual phase products, with a width of 780 mm or more but not over 1,600 mm; minimum yield strength 345 MPa; minimum tensile strength 586 MPa; minimum elongation 17 percent; bendability of zero times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.11, silicon 0.20, manganese 0.70, phosphorus not over 0.05, sulfur not over 0.01 and aluminum 0.04;

(B) Cold-rolled dual phase products, with a width of 780 mm but not over 1,600 mm; minimum yield strength 276 MPa; minimum tensile strength 586 MPa; minimum elongation 21 percent; bendability of zero times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.10, silicon 0.40, manganese 1.50, phosphorus not over 0.01, sulfur not over 0.01 and aluminum 0.04;

(C) Cold-rolled dual phase products, with a width of 780 mm or more but not over 1,600 mm; minimum yield strength 496 MPa; minimum tensile strength 793 MPa; minimum elongation 9 percent; bendability of 1 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.13, silicon 0.20, manganese 1.50, phosphorus not over 0.02, sulfur not over 0.002, niobium (columbium) 0.015 and aluminum 0.04;

(D) Cold-rolled dual phase products, with a width of 780 mm or more but not over 1,600 mm; minimum yield strength 689 MPa; minimum tensile strength 1,000 MPa; minimum elongation 6 percent; bendability of 3 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.15, silicon 0.20, manganese 1.50, phosphorus not over 0.015, sulfur not over 0.002, niobium (columbium) 0.015 and aluminum 0.04;

(E) Cold-rolled dual phase products, with a width of 875 mm or more but not over 1,275 mm; minimum yield strength 945 MPa; minimum tensile strength 1,207 MPa; minimum elongation 4 percent; bendability of 4 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.11, silicon 0.20, manganese 1.60, phosphorus not over 0.015, sulfur not over 0.002 and aluminum 0.04;

(F) Cold-rolled dual phase products, with a width of 875 mm or more but not over 1,275 mm; minimum yield strength 1,151; minimum tensile strength 1,314 MPa; minimum elongation 4 percent; bendability of 3 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.17, silicon 0.50, manganese 1.60 percent, phosphorus not over 0.015, sulfur not over 0.002, niobium (columbium) 0.015 and aluminum 0.04; or

(G) Corrosion resistant flat-rolled products, with a width of 780 mm or more but not over 1,600 mm; minimum yield strength 689 MPa; minimum tensile strength 896 MPa; minimum elongation 5 percent; bendability

of 2 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.13, silicon 0.50, manganese 1.20 and phosphorus not over 0.02;

(H) Cold-rolled dual phase products, with minimum Brinell hardness rating 450 Hb; width 875 mm or more but not over 1,275 mm; minimum yield strength 1138 MPa; minimum tensile strength 1,413 MPa; minimum elongation 3 percent; bendability of 4 times thickness for 180 degree bend; with chemical composition (percent by weight): carbon 0.17, silicon 0.50, manganese 1.60, phosphorus not over 0.01, sulfur not over 0.01, niobium (columbium) 0.015 and aluminum 0.04;

(lxxiii) Flat-rolled products, coated with zinc-aluminum alloy consisting of 95 percent zinc and 5 percent aluminum by weight, known in industry usage as "RAGALR® GALFAN"; thickness not over 0.75 mm; width 1,220 mm or more; the foregoing designated as X–048;

(lxxiv) Products referred to as "Type 2 Z-bars", the foregoing used in the manufacture of end sills for railway tank cars; containing vanadium; conforming to ASTM Standard A–572–50; in the approximate form of the letter "Z," with one leg measuring approximately 180 mm and the opposite leg measuring approximately 102 mm; the foregoing designated as X–113;

(lxxv) Flat-rolled products, designated as X–022 and meeting the characteristics described below:

(A) Thermomechanically (TMCP) rolled products, entered in an aggregate annual quantity not to exceed 2,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive; the foregoing meeting the following specifications: (a) As prequalified by crack tip opening test (CTOD) and/or Charpy v-notch (CVN) testing in the weld heat affected zone for improved weldability under API RP2Z; and either (b)(i) BS 7191, EN 10225 or equivalent specification, or (ii) that are ordered with weldability qualifications by CTOD testing at temperatures below −15 °C; with goods entered under clauses (a) and (b)(ii) of this subdivision to be certified by the importer as complying therewith; or

(B) Thermomechanically (TMCP) rolled products, entered in an aggregate annual quantity not to exceed 1,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive; meeting the following specifications: (a) With prequalification by welded crack tip opening test (CTOD) or Charpy v-notch (CVN) testing in the weld head affected zone for improved weldability under API RP2Z; either (b)(i) BS 7191, EN 10225 or equivalent specification, or (ii) that are ordered with weldability qualifications by welded CTOD testing at temperatures below −15 °C; and (c) having a minimum yield strength of 413 MPa; with goods entered under clauses (a) and (b)(ii) of the foregoing to be certified by the importer as complying therewith;

(lxxvi) Flat-rolled products, quenched and tempered, with minimum Brinell hardness of 600 HB; thickness 3 mm or more but not over 51 mm; width not over 3,350 mm; grain refined; surface treated with a low zinc silicate primer; formatted with a square edge; free of scale; certified by the importer as guaranteed to a thickness tolerance of 1/3 of ASTM standards and guaranteed to a flatness tolerance of 4 mm/m or better; the foregoing designated as X–088;

(lxxvii) Martensitic products of stainless steel, quenched and tempered, known in industry usage as AF.913 QT; of round cross section with diameter not over 305 mm; with chemical composition (percent by weight): Carbon not over 0.02, chromium 12.0 to 15.0, nickel 4.0 to 7.0, molybdenum 1.5 to 2.0 and nitrogen 0.06 to 0.12; certified by the importer as produced to ASTM A276, ASTM A473, ASTM A479, ASTM A565, API6A, or NACE MR0175; the foregoing designated as X–035;

(lxxix) Stainless steel wire designated as X–059 and meeting the characteristics described below:

(A) Flat wire, work hardened (3/4 hard) or annealed; with chemical composition (percent by weight): carbon not over 0.15, manganese 5.5 to 7.5, chromium 16.0 to 18.0 and nickel 3.5 to 5.5; tensile strength, work hardened (3/4 hard) condition: 1,172 to 1,345 N/mm²; tensile strength, annealed condition: not over 1,035 N/mm²; or

(B) Hardenable, surgical needle wire, Grade 4C27A; with chemical composition (percent by weight): carbon not over 0.30, silicon not over 1.00, manganese not over 1.75, phosphorus not over 0.030, sulfur not over 0.25, chromium 12.0 to 14.0, nickel not over 0.80 percent and molybdenum not over 1.20 percent;"

4. In order to administer the exclusions set forth in U.S. note 11(b), as modified by this Annex, subheading 9903.73.00 is redesignated as 9903.73.01 and the following new subheadings are inserted in numerical sequence, with conforming changes set forth following the last such new subheading:

	[Flat-rolled...]			
	[Goods...]			
"9903.72.55	Enumerated in U.S. note 11(b)(xx)(A) to this subchapter	No change	No change	No change
9903.72.97	Enumerated in U.S. note 11(b)(xxv)(B) to this subchapter and designated as X–010, if entered in an aggregate annual quantity not to exceed 250 t.	No change	No change	No change
9903.72.98	Enumerated in U.S. note 11(b)(xxv)(C) to this subchapter and designated as X–010, if entered in an aggregate annual quantity not to exceed 163 t.	No change	No change	No change
9903.72.99	Enumerated in U.S. note 11(b)(xxv)(E) to this subchapter and designated as X–010, if entered in an aggregate annual quantity not to exceed 340 t.	No change	No change	No change
9903.73.00	Enumerated in U.S. note 11(b)(xxxi)(B) to this subchapter and designated as X–083, if entered in an annual aggregate quantity not to exceed 12,000 t.	No change	No change	No change

Conforming changes: Subheading 9903.72.86 is modified by deleting "11(b)(xxv)" and by inserting in lieu thereof "11(b)(xxv)(A) and (D)", and subheading 9903.72.93 is modified by deleting "11(b)(xxxi)" and by inserting in lieu thereof "11(b)(xxxi)(A)".

5. In order to provide for the new exclusions added in item 6 of this Annex, the following conforming changes are made in existing HTS subheadings:

A. The article description of subheading 9903.72.57 is modified by inserting at the end thereof ", as described in subheadings 9903.74.38 through 9903.74.45".

B. The article description of subheading 9903.72.78 is modified by inserting at the end thereof ", as described in subheadings 9903.74.61 through 9903.74.81".

C. The article description of subheading 9903.73.01 (as redesignated by this notice) is modified by inserting at the end thereof ", as described in subheadings 9903.75.15 through 9903.75.32".

D. The article description of subheading 9903.73.18 is modified by inserting at the end thereof ", as described in subheadings 9903.76.00 through 9903.76.08".

E. The article description of subheading 9903.73.35 is modified by inserting at the end thereof ", as described in subheadings 9903.76.26 through 9903.76.29".

F. The article description of subheading 9903.73.48 is modified by inserting at the end thereof ", as described in subheadings 9903.76.51 through 9903.76.61".

G. The article description of subheading 9903.73.55 is modified by inserting at the end thereof ", as described in subheadings 9903.76.86 through 9903.76.90".

H. The article description of subheading 9903.73.82 is modified by inserting at the end thereof ", as described in subheadings 9903.77.30 through 9903.77.33".

I. The article description of subheading 9903.74.01 is modified by inserting at the end thereof ", as described in subheadings 9903.77.61 through 9903.77.67".

J. The article description of subheading 9903.74.12 is modified by inserting at the end thereof ", as described in subheading 9903.77.85".

K. The article description of subheading 9903.74.18 is modified by inserting at the end thereof ", as described in subheadings 9903.78.10 through 9903.78.13".

6. In order to administer the new exclusions added to U.S. note 11(c) to this subchapter, the following new subheadings are inserted in subchapter III of chapter 99 in numerical sequence:

	"Goods excluded from the application of relief under U.S. note 11(c) to this subchapter:			
9903.74.38	Enumerated in U.S. note 11(c)(x) to this subchapter	No change	No change	No change
9903.74.39	Enumerated in U.S. note 11(c)(lii) to this subchapter	No change	No change	No change
9903.74.40	Enumerated in U.S. note 11(c)(liii) to this subchapter	No change	No change	No change
9903.74.41	Enumerated in U.S. note 11(c)(liv) to this subchapter	No change	No change	No change
9903.74.42	Enumerated in U.S. note 11(c)(lv) to this subchapter, and entered in an aggregate annual quantity not to exceed 75,000 t.	No change	No change	No change
9903.74.43	Enumerated in U.S. note 11(c)(lxxv)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,000 t.	No change	No change	No change
9903.74.44	Enumerated in U.S. note 11(c)(lxxv)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.45	Enumerated in U.S. note 11(c)(lxxvi) to this subchapter	No change	No change	No change
9903.74.61	Enumerated in U.S. note 11(c)(v) to this subchapter	No change	No change	No change
9903.74.62	Enumerated in U.S. note 11(c)(vi) to this subchapter	No change	No change	No change

9903.76.28	Enumerated in U.S. note 11(c)(lxv) to this subchapter	No change	No change	No change
9903.76.29	Enumerated in U.S. note 11(c)(lxvii) to this subchapter, and entered in an aggregate quantity not to exceed 4,006 t.	No change	No change	No change
9903.76.50	Enumerated in U.S. note 11(c)(lxiii) to this subchapter	No change	No change	No change
9903.76.51	Enumerated in U.S. note 11(c)(iv)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,100 t.	No change	No change	No change
9903.76.52	Enumerated in U.S. note 11(c)(iv)(B) to this subchapter	No change	No change	No change
9903.76.53	Enumerated in U.S. note 11(c)(xxxvii) to this subchapter	No change	No change	No change
9903.76.54	Enumerated in U.S. note 11(c)(xxxviii) to this subchapter	No change	No change	No change
9903.76.55	Enumerated in U.S. note 11(c)(xxxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 30,000 t.	No change	No change	No change
9903.76.56	Enumerated in U.S. note 11(c)(xl) to this subchapter	No change	No change	No change
9903.76.57	Enumerated in U.S. note 11(c)(xli) to this subchapter	No change	No change	No change
9903.76.58	Enumerated in U.S. note 11(c)(xlii) to this subchapter	No change	No change	No change
9903.76.59	Enumerated in U.S. note 11(c)(xliii) to this subchapter	No change	No change	No change

	"Goods excluded from the application of relief under U.S. note 11(c) to this subchapter:			
9903.74.38	Enumerated in U.S. note 11(c)(x) to this subchapter	No change	No change	No change
9903.74.39	Enumerated in U.S. note 11(c)(lii) to this subchapter	No change	No change	No change
9903.74.40	Enumerated in U.S. note 11(c)(liii) to this subchapter	No change	No change	No change
9903.74.41	Enumerated in U.S. note 11(c)(liv) to this subchapter	No change	No change	No change
9903.74.42	Enumerated in U.S. note 11(c)(lv) to this subchapter, and entered in an aggregate annual quantity not to exceed 75,000 t.	No change	No change	No change
9903.74.43	Enumerated in U.S. note 11(c)(lxxv)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,000 t.	No change	No change	No change
9903.74.44	Enumerated in U.S. note 11(c)(lxxv)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.45	Enumerated in U.S. note 11(c)(lxxvi) to this subchapter	No change	No change	No change
9903.74.61	Enumerated in U.S. note 11(c)(v) to this subchapter	No change	No change	No change
9903.74.62	Enumerated in U.S. note 11(c)(vi) to this subchapter	No change	No change	No change
9903.74.63	Enumerated in U.S. note 11(c)(vii) to this subchapter	No change	No change	No change
9903.74.64	Enumerated in U.S. note 11(c)(viii) to this subchapter	No change	No change	No change
9903.74.65	Enumerated in U.S. note 11(c)(ix) to this subchapter, and entered in an aggregate annual quantity not to exceed 4,800 t.	No change	No change	No change
9903.74.66	Enumerated in U.S. note 11(c)(xviii)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,953 t.	No change	No change	No change
9903.74.67	Enumerated in U.S. note 11(c)(xviii)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.68	Enumerated in U.S. note 11(c)(xviii)(C) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.69	Enumerated in U.S. note 11(c)(xix) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,850 t..	No change	No change	No change
9903.74.70	Enumerated in U.S. note 11(c)(xx)(A) or (B) to this subchapter	No change	No change	No change
9903.74.71	Enumerated in U.S. note 11(c)(xx)(C) to this subchapter, and entered in an aggregate annual quantity not to exceed 439 t.	No change	No change	No change
9903.74.72	Enumerated in U.S. note 11(c)(xx)(D) to this subchapter, and entered in an aggregate annual quantity not to exceed 432 t.	No change	No change	No change
9903.74.73	Enumerated in U.S. note 11(c)(xx)(E) to this subchapter, and entered in an aggregate annual quantity not to exceed 750 t.	No change	No change	No change
9903.74.74	Enumerated in U.S. note 11(c)(xlv) to this subchapter	No change	No change	No change
9903.74.75	Enumerated in U.S. note 11(c)(xlvi) to this subchapter	No change	No change	No change
9903.74.76	Enumerated in U.S. note 11(c)(xlvii) to this subchapter	No change	No change	No change
9903.74.77	Enumerated in U.S. note 11(c)(xlviii) to this subchapter, and entered in an aggregate annual quantity not to exceed 20,000 t.	No change	No change	No change
9903.74.78	Enumerated in U.S. note 11(c)(xlix) to this subchapter	No change	No change	No change
9903.74.79	Enumerated in U.S. note 11(c)(l) to this subchapter	No change	No change	No change
9903.74.80	Enumerated in U.S. note 11(c)(li) to this subchapter	No change	No change	No change
9903.74.81	Enumerated in U.S. note 11(c)(lxxi) to this subchapter	No change	No change	No change
9903.75.15	Enumerated in U.S. note 11(c)(i) to this subchapter	No change	No change	No change
9903.75.16	Enumerated in U.S. note 11(c)(ii) to this subchapter	No change	No change	No change
9903.75.17	Enumerated in U.S. note 11(c)(iii) to this subchapter	No change	No change	No change
9903.75.18	Enumerated in U.S. note 11(c)(xxvi) to this subchapter	No change	No change	No change
9903.75.19	Enumerated in U.S. note 11(c)(xxvii) to this subchapter	No change	No change	No change
9903.75.20	Enumerated in U.S. note 11(c)(xxviii)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 6,395 t.	No change	No change	No change
9903.75.21	Enumerated in U.S. note 11(c)(xxviii)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,599 t.	No change	No change	No change
9903.75.22	Enumerated in U.S. note 11(c)(xxviii)(C) to this subchapter	No change	No change	No change
9903.75.23	Enumerated in U.S. note 11(c)(xxix)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 850 t.	No change	No change	No change
9903.75.24	Enumerated in U.S. note 11(c)(xxix)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 250 t.	No change	No change	No change
9903.75.25	Enumerated in U.S. note 11(c)(xxx)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,534 t.	No change	No change	No change
9903.75.26	Enumerated in U.S. note 11(c)(xxx)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 100 t.	No change	No change	No change
9903.75.27	Enumerated in U.S. note 11(c)(xxx)(C) through (J), inclusive, to this subchapter	No change	No change	No change
9903.75.28	Enumerated in U.S. note 11(c)(xxxi)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,467.6 t.	No change	No change	No change
9903.75.29	Enumerated in U.S. note 11(c)(xxxi)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,161.2 t.	No change	No change	No change
9903.75.30	Enumerated in U.S. note 11(c)(lxii) to this subchapter	No change	No change	No change
9903.75.31	Enumerated in U.S. note 11(c)(lxx) to this subchapter	No change	No change	No change
9903.75.32	Enumerated in U.S. note 11(c)(lxxii)(A) through (F) and (H) to this subchapter	No change	No change	No change
9903.75.33	Enumerated in U.S. note 11(c)(i)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 45,000 t.	No change	No change	No change
9903.75.34	Enumerated in U.S. note 11(c)(i)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 5,700 t.	No change	No change	No change
9903.75.35	Enumerated in U.S. note 11(c)(i)(C) to this subchapter, and entered in an aggregate annual quantity not to exceed 17,500 t.	No change	No change	No change
9903.76.00	Enumerated in U.S. note 11(c)(xxxii) to this subchapter	No change	No change	No change
9903.76.01	Enumerated in U.S. note 11(c)(xxxiii) to this subchapter	No change	No change	No change
9903.76.02	Enumerated in U.S. note 11(c)(xxxiv) to this subchapter	No change	No change	No change
9903.76.03	Enumerated in U.S. note 11(c)(xxxv) to this subchapter	No change	No change	No change
9903.76.04	Enumerated in U.S. note 11(c)(xxxvi) to this subchapter	No change	No change	No change
9903.76.05	Enumerated in U.S. note 11(c)(lxiii) to this subchapter	No change	No change	No change
9903.76.06	Enumerated in U.S. note 11(c)(lxvi) to this subchapter	No change	No change	No change
9903.76.07	Enumerated in U.S. note 11(c)(lxxii)(G) to this subchapter	No change	No change	No change
9903.76.08	Enumerated in U.S. note 11(c)(lxxiii) to this subchapter	No change	No change	No change
9903.76.26	Enumerated in U.S. note 11(c)(xv) to this subchapter	No change	No change	No change
9903.76.27	Enumerated in U.S. note 11(c)(lxiv) to this subchapter	No change	No change	No change

9903.76.28	Enumerated in U.S. note 11(c)(lxv) to this subchapter	No change	No change	No change
9903.76.29	Enumerated in U.S. note 11(c)(lxvii) to this subchapter, and entered in an aggregate quantity not to exceed 4,006 t.	No change	No change	No change
9903.76.30	Enumerated in U.S. note 11(c)(lxiii) to this subchapter	No change	No change	No change
9903.76.31	Enumerated in U.S. note 11(c)(iv)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 2,100 t.	No change	No change	No change
9903.76.32	Enumerated in U.S. note 11(c)(iv)(B) to this subchapter	No change	No change	No change
9903.76.53	Enumerated in U.S. note 11(c)(xxxvii) to this subchapter	No change	No change	No change
9903.76.54	Enumerated in U.S. note 11(c)(xxxviii) to this subchapter	No change	No change	No change
9903.76.55	Enumerated in U.S. note 11(c)(xxxix) to this subchapter, and entered in an aggregate annual quantity not to exceed 30,000 t.	No change	No change	No change
9903.76.56	Enumerated in U.S. note 11(c)(xl) to this subchapter	No change	No change	No change
9903.76.57	Enumerated in U.S. note 11(c)(xli) to this subchapter	No change	No change	No change
9903.76.58	Enumerated in U.S. note 11(c)(xlii) to this subchapter	No change	No change	No change
9903.76.59	Enumerated in U.S. note 11(c)(xliii) to this subchapter	No change	No change	No change
9903.76.60	Enumerated in U.S. note 11(c)(xliv) to this subchapter	No change	No change	No change
9903.76.61	Enumerated in U.S. note 11(c)(lxxiv) to this subchapter	No change	No change	No change
9903.76.66	Enumerated in U.S. note 11(c)(xxi) to this subchapter	No change	No change	No change
9903.76.67	Enumerated in U.S. note 11(c)(xxii) to this subchapter	No change	No change	No change
9903.76.68	Enumerated in U.S. note 11(c)(xxiii) to this subchapter	No change	No change	No change
9903.76.69	Enumerated in U.S. note 11(c)(xxiv) to this subchapter	No change	No change	No change
9903.76.90	Enumerated in U.S. note 11(c)(xxv) to this subchapter	No change	No change	No change
9903.77.30	Enumerated in U.S. note 11(c)(xvi) to this subchapter	No change	No change	No change
9903.77.31	Enumerated in U.S. note 11(c)(xvii) to this subchapter	No change	No change	No change
9903.77.32	Enumerated in U.S. note 11(c)(lxviii) to this subchapter	No change	No change	No change
9903.77.33	Enumerated in U.S. note 11(c)(lxix) to this subchapter	No change	No change	No change
9903.77.61	Enumerated in U.S. note 11(c)(xi) to this subchapter, and entered in an aggregate annual quantity not to exceed 63 t.	No change	No change	No change
9903.77.62	Enumerated in U.S. note 11(c)(xii) to this subchapter	No change	No change	No change
9903.77.63	Enumerated in U.S. note 11(c)(lvi) to this subchapter	No change	No change	No change
9903.77.64	Enumerated in U.S. note 11(c)(lvii) to this subchapter	No change	No change	No change
9903.77.65	Enumerated in U.S. note 11(c)(lviii) to this subchapter	No change	No change	No change
9903.77.66	Enumerated in U.S. note 11(c)(lix) to this subchapter	No change	No change	No change
9903.77.67	Enumerated in U.S. note 11(c)(lxxvii) to this subchapter	No change	No change	No change
9903.77.85	Enumerated in U.S. note 11(c)(v) to this subchapter	No change	No change	No change
9903.78.10	Enumerated in U.S. note 11(c)(xiii) to this subchapter	No change	No change	No change
9903.78.11	Enumerated in U.S. note 11(c)(lx) to this subchapter	No change	No change	No change
9903.78.12	Enumerated in U.S. note 11(c)(lxi) to this subchapter	No change	No change	No change
9903.78.13	Enumerated in U.S. note 11(c)(lxxix) to this subchapter	No change	No change	No change"

[FR Doc. 02–17562 Filed 7–11–02; 8:45 am]
BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reinstatement of Treatment on Government Procurement of Products From Honduras

AGENCY: Office of the United States Trade Representative.

ACTION: Reinstatement of treatment on government procurement of products from Honduras.

Under the authority delegated to me by the President in section 1–201 of Executive Order 12260 of December 31, 1980, I hereby direct that products of Honduras shall be treated as eligible products for purposes of section 1–101 of the Executive Order. Such treatment shall not apply to products originating in Honduras that are excluded from duty free treatment under 19 U.S.C. 2703(b). Decisions on the continued application of this treatment will be based on ongoing evaluation of Honduras' efforts to improve domestic procurement practices, its support for relevant international initiatives, such as those in the World Trade Organization (WTO) Working Group on Transparency in Government Procurement and the Free Trade Area of the Americas (FTAA) Negotiating Group on Government Procurement.

Performance with respect to the foregoing factors will be analyzed annually in September, although changes in the application of this treatment may be made at any time. Notice of any changes in this treatment with respect to any beneficiary will be published in the **Federal Register**.

Robert B. Zoellick,
United States Trade Representative.

[FR Doc. 02–17563 Filed 7–11–02; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12741]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: GLPAC will meet on Monday, July 29, 2002, from 1:30 p.m. to 5 p.m. and on Tuesday, July 30, 2002, from 9 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 22, 2002. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before June 22, 2002.

ADDRESSES: GLPAC will meet in Deck Room B of the Maritime Institute of Technology, 5700 Hammonds Ferry Road, Linthicum Heights, Maryland. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Automatic Identification System (AIS) Technology and Training Requirements.

(2) Update on the Great Lakes Pilotage Office Relocation Study.

(3) Update on Bridge Hour Study.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the

to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Mack D. Rutledge, Mayor of Starkville, Mississippi at the following address: City Hall, 101 Lampkin Street, Starkville, MS 38902–0310.

DATES: Comments must be received on or before September 15, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, ATTN: Bobbie J. Smith, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

included dynamic testing of the seat and occupant protection criteria.

The SAE SEAT Committee was tasked with developing a standard that would provide a basis for meeting the 16g rule. SAE published AS 8049, that was incorporated into TSO–C127 in 1992. TSO–C127a was issued in 1998 after AS 8049A was published to further refine the dynamic seat standard. AS 8049 and AS 8049A contained the criteria for

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Dubuque County, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent (Cancellation).

SUMMARY: The FHWA is issuing this notice to advise the public that the

Dated: June 25, 2002.

Bobby W. Blackmon,
Division Administrator, Ames, Iowa.

[FR Doc. 02–17484 Filed 7–11–02; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

U.S. 285 Notice of Intent

(1) Automatic Identification System (AIS) Technology and Training Requirements.
(2) Update on the Great Lakes Pilotage Office Relocation Study.
(3) Update on Bridge Hour Study.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than July 25, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than July 25, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to Margie Hegy at the address in the **ADDRESSES** section no later than July 22, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: July 9, 2002.

J.P. Brusseau,

Captain, Coast Guard, Acting Assistant Commandant for Marine, Safety, Security, and Environmental Protection.

[FR Doc. 02–17565 Filed 7–9–02; 4:03 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at George M. Bryan Field Airport, Starkville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the city of Starkville to waive the requirement that a 4.5 acre parcel of surplus property, located at the George M. Bryan Field Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Mack D. Rutledge, Mayor of Starkville, Mississippi at the following address: City Hall, 101 Lampkin Street, Starkville, MS 38902–0310.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9882. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by city of Starkville, MS to release 4.5 acres of surplus property at the George M. Bryan Field Airport. The property will be sold in part or in whole commercial or industrial users for fair market value. The property is located on the West side of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the city of Starkville, Mississippi.

Issued in Jackson, Mississippi on July 2, 2002.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 02–17575 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order—TSO–C39c, Aircraft Seats and Berths

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comments.

SUMMARY: This notice announces the availability of and request comments on a proposed Technical Standard Order (TSO) C39c, Aircraft Seats and Berths. The proposed TSO–C39c, Aircraft Seats and Berths, prescribes the minimum performance standard (MPS) that a aircraft seat and berth must meet in order to bear the TSO number on its identification plate. Proposed TSO–C39c provides standards for seating systems in transport, rotorcraft, normal and utility airplanes, and acrobatic.

DATES: Comments must be received on or before September 15, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, ATTN: Bobbie J. Smith, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, AIR–120, Aircraft Certification Service, Aircraft Engineering Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone 202–267–9546.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This TSO is proposed to provide minimum performance standards for aircraft seats and berths.

TSO–C39 was originally developed to provide a standard that would serve as a basis for FAA approval to meet the emergency landing loads specified in the airworthiness requirements. Specifically TSO–C39 replaced TSO–C25 as the seat standards when the certification basis for aircraft changed from including a forward crash load of 6g's to 9g's.

TSO–C39 incorporated NAS 809 to provide the criteria that cold be used to demonstrate the strength of aircraft seats to the 9g-standard. In 1988, a new requirement for seat strength and performance, commonly called the 16g rule, was promulgated in the Federal Aviation Regulation. The 16g rule was fundamentally different from previous emergency landing conditions as it included dynamic testing of the seat and occupant protection criteria.

The SAE SEAT Committee was tasked with developing a standard that would provide a basis for meeting the 16g rule. SAE published AS 8049, that was incorporated into TSO–C127 in 1992. TSO–C127a was issued in 1998 after AS 8049A was published to further refine the dynamic seat standard. AS 8049 and AS 8049A contained the criteria for dynamic seats and still included criteria for static strength and design requirements.

Although seats were still being produced to the static 9g-standard in TSO–C39, the seat industry began to increase its production of TSO–C127 and TSO–C127a seats. So there were then, and currently still are, two standards—NAS 809 and AS8049—that addressed static 9g requirements.

In 2000, the FAA and industry formed a team to investigate and implement ways to streamline seat certification. This group recognized that two different standards addressing static strength and design considerations for seats was making the certification process more complicated than it needed to be. Therefore it was proposed that a new revision to TSO–C39 be issued to standardize the state criteria portion of the two standards.

It was decided that this could be successfully accomplished by referencing the static portion of AS 8049A for the proposed revision to TSO–C39. This will bring TSO–C39 in alignment with TSO–C127 and reflect the way industry currently uses the two standards. Most seat manufacturers are already using the static portion of AS 8049A as a basis for meeting airworthiness requirements not covered by the criteria in TSO–C39. Including the assessment under the TSO program will improve certification schedules. Additionally, AS 8049A continues to be reviewed and updated, and changes to AS 8049 will cover TSO–C127 seats as well as TSO–C39 seats.

How To Obtain Copies

A copy of the proposed TSO may be obtained via the information contained in section titled **FOR FURTHER INFORMATION CONTACT**, or the Internet at *http://www.faa.gov/certification/aircraft/TSOA.htm*.

Issued in Washington, DC on July 8, 2002.

David Hempe,

Manager, Aircraft Engineering Division Aircraft Certification Service.

[FR Doc. 02–17576 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Dubuque County, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent (Cancellation).

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare an Environmental Impact Statement a9EIS) as it relates to National Environmental Policy Act of 1969 (NEPA) for the proposed U.S. 20 Capacity Improvement Study in Dubuque County, Iowa is canceled. The NOI was originally published in the **Federal Register** on April 23, 2001. The cancellation is based on budget considerations for this project.

FOR FURTHER INFORMATION CONTACT: Manu M. Chacko, Transportation Engineer, FHWA, 105 6th Street, Ames, IA 50010–6337, (515) 233–7307. James P. Rost, Director, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, (515) 239–1798.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov//fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov.nara*.

Background

The NOI was originally published in the **Federal Register** on April 23, 2001. The cancelled EIS would have studied capacity improvements for U.S. 20 between the Peosta Interchange and Devon Drive in the City of Dubuque in Dubuque County, Iowa. Due to budget constraints, this project has been postponed.

Comments or questions concerning this proposed action should be directed to the Iowa Department of Transportation or FHWA at the address provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: June 25, 2002.

Bobby W. Blackmon,

Division Administrator, Ames, Iowa.

[FR Doc. 02–17484 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

U.S. 285 Notice of Intent

AGENCY: Federal Highway Administration.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements to U.S. 285 from Foxton Road to Bailey in Jefferson and Park Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Sands, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone (303) 969–6730, extension 362.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation (CDOT) will prepare an Environmental Impact Statement in accordance with the National Environmental Policy Act (NEPA) for transportation improvements on U.S. 285 from Foxton Road in Conifer to just south of Bailey, Colorado. The EIS will evaluate the No-Action and Build alternative(s) and determine the estimated costs and potential impacts of each. CDOT will be the local lead agency for the EIS. The project is approximately 15 miles in length. Alternatives that may be evaluated include the No-Action Alternative and various 2, 3 and 4 lane alternatives. A public scoping meeting has been scheduled for July 30, 2002 at the Elk Creek Fire Protection District at 11993 Blackfoot Road in Conifer, CO. Scoping meetings are also planned with the U.S. Army Corps of Engineers, U.S. Forest Service, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Colorado Division of Wildlife and various local agencies. This effort will build on the results of the U.S. 285 Feasibility Study which was completed in March of 2002.

Written comments on project scope should be sent to: Mr. Kim Patel, Project Manager, CDOT Region One, 18500 East Colfax Avenue, Aurora, CO 80111, Telephone: (303) 365–7373.

FHWA, CDOT and other local agencies invite interested individuals, organizations, and federal, state and local agencies to participate in refining the alternatives to be evaluated in the EIS and identifying any significant social, economic or environmental issues related to the alternatives. Scoping comments may be made at the scheduled scoping meeting or in writing. Scoping comments received during the development of the U.S. 285 Feasibility Study will be incorporated into the overall scoping comments for

examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety

of 15-miles per hour for passenger and 10-miles per hour for freight trains. The method of operation is Yard Limit Rule (General Code of Operating Rules). Since 1998, KXHR has operated trains with only one reportable incident, which was a derailment attributed to an equipment failure.

KXHR claims the passenger train operation is on consecutive days, requiring them to make two inspections

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is

Section 238.317(a)(1) requires that whenever the control stand used to control the train is changed, a Class II brake test shall be performed prior to the train's departure from the terminal. PATH requests partial relief from this requirement. PATH does not want to perform this brake test when the train's terminal dwell time is less then five minutes because the conductor would not have time to perform the test at the rear of the train and walk forward to his

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local agencies to participate in refining the alternatives to be evaluated in the EIS and identifying any significant social, economic or environmental issues related to the alternatives. Scoping comments may be made at the scheduled scoping meeting or in writing. Scoping comments received during the development of the U.S. 285 Feasibility Study will be incorporated into the overall scoping comments for the EIS. The public will receive notices on locations and times of future public meetings through newspaper advertisements and individual correspondence. If you wish to be placed on the project mailing list, please contact Mr. Kim Patel at the address noted above.

All significant social, economic and environmental impacts of the alternatives carried forward for complete EIS analysis will be evaluated. Depending on the alternatives under study, environmental and social impacts to be evaluated will include safety and mobility impacts, impacts on cultural resources, noise impacts, natural resources, air quality, threatened and endangered species, wildlife resources, habitat connectivity, and parks and recreation resources.

In accordance with FHWA policy, the Draft EIS will be prepared with required engineering design studies necessary to complete the document. After its publication, the Draft EIS will be available for public and agency review and comments and a public hearing will be held. A Final EIS will hen be prepared, followed by a Record of Decision which will officially select a preferred alternative. Prior to the official selection of a preferred alternative in the Record of Decision, notification of the preference will be made in either the Draft or Final EIS.

The No-Action Alternative is expected to include minor safety improvements, (e.g., intersection improvements, shoulder widening, or climbing lanes) resurfacing, bridge repair, maintenance, stream or other environmental improvements, and the construction of a grade separated intersection at Wandcrest Drive. Through the course of the EIS, other independent utility projects may be identified if they are found to not conflict with the outcome of the EIS.

Issued on: June 13, 2002.

William C. Jones,

Division Administrator.

[FR Doc. 02–17504 Filed 7–11–02; 8:45 am]

BILLING CODE 4410–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Gadsden Switching Service, Inc.

[Docket Number FRA–2002–12315]

The Gadsden Switching Service, Inc. of Scottsboro, Alabama has petitioned on behalf of the Everett Railroad Company for a waiver of compliance for two locomotives from the requirements of the Railroad Safety Glazing Standards, 49 CFR part 223. The two locomotives are operated by remote control and work primarily within the confines of the former Gulf States Steel facility on approximately three miles of track at Gadsden, Alabama. The Gadsden Switching Service, Inc. operation has no public grade crossings.

The two locomotives are presently equipped with ordinary commercial safety glass. On occasion, locomotives EV 913 and EV 921 move over yard tracks owned by CSX Transportation and Norfolk Southern for pick up and delivery of railcars.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2002–12315) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), and 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–17568 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Gulf & Ohio Railways

[Docket Number FRA–2002–11897]

The Gulf and Ohio Railways, parent company to the Knoxville and Holston River Railroad (KXHR), has petitioned for a permanent waiver of compliance from the requirements of the 49 CFR Federal Track Safety Standards Part 213.233, Track Inspections. This requirement prescribes a Gregorian calendar-based frequency for inspecting track to detect deviations from the standards. Railroads operating passenger trains are required to schedule a twice weekly track inspection with at least a one-day interval between inspections.

KXHR began revenue passenger service in early November of 1999. KXHR schedules passenger operations to begin the last week in March and end about mid-November of each year. A passenger train operates twice a day, on Saturdays and Sundays, between milepost 3.8 and milepost 10.8 over the River Front Extension (RFE) track. Freight trains operate daily, Monday through Friday, throughout the RFE's 11.6-miles. In 2001, a substantial number of passengers (more than 12,000) rode the excursion train. In the same year, the traffic density was estimated at 0.072 million gross tons. On the RFE district, KXHR Timetable Number 1 authorizes a maximum speed of 15-miles per hour for passenger and 10-miles per hour for freight trains. The method of operation is Yard Limit Rule (General Code of Operating Rules). Since 1998, KXHR has operated trains with only one reportable incident, which was a derailment attributed to an equipment failure.

KXHR claims the passenger train operation is on consecutive days, requiring them to make two inspections between Monday and Friday, even though they do not operate the passenger train between inspections. KXHR requests relief from the second inspection during the week. In the event a special train is operated between Monday and Friday, KXHR states they will conduct the compulsory twice weekly inspections.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2002–11897) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–17567 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Port Authority Trans-Hudson Corporation

[Docket Number FRA–2002–12409]

The Port Authority Trans-Hudson Corporation (PATH) seeks a waiver of compliance from the requirements of [49 CFR 238.305(c)(10)] and [49 CFR 238.317(a)(1)] of the Passenger Equipment Safety Standards. Section 238.305(c)(10) requires all end doors and side doors to operate safely and as intended. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section, if, at least one operative and accessible door is available on each side of the car; and a notice is prominently displayed directly on the defective door indicating that the door is defective. Section 238.305(d) allows a passenger car found not to be in compliance with the requirements contained in paragraphs (c)(10) at the time of its interior calendar day mechanical inspection to remain in passenger service until the car's next interior calendar day mechanical inspection where it must be repaired or removed from passenger service.

PATH's request was for (MU) passenger cars equipped with two and three double leaf side doors on each side of the car. These cars are allowed to operate beyond the next interior calendar day inspection for up to eight days after the requirements of 238.305(d)(1), (2), and (3) are met. Section 238.305 (d) requires that: (1) A qualified person or a qualified maintenance person determines that the repairs necessary to bring the car into compliance cannot be performed at the time that the current day's interior mechanical inspection is conducted; (2) A qualified person or a qualified maintenance person determines that it is safe to move the equipment in passenger service; and (3) A record is maintained of the non-complying condition with the date and time that the condition was first discovered.

Section 238.317(a)(1) requires that whenever the control stand used to control the train is changed, a Class II brake test shall be performed prior to the train's departure from the terminal. PATH requests partial relief from this requirement. PATH does not want to perform this brake test when the train's terminal dwell time is less then five minutes because the conductor would not have time to perform the test at the rear of the train and walk forward to his operating position between the first and second car.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2002–12409) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–17572 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads

have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12269.

Applicant: CSX Transportation, Incorporated, Mr. N. Michael Choat, Assistant Chief Engineer of Signal Maintenance, 4901 Belfort Road, Suite

that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the

The reason given for the proposed changes is that the signals presently disrupt switching operations due to the need to get permission from the dispatcher to pass signal 2501 if it is red, and changes in the methods of operation have made signal 2501 unnecessary.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and

Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12313.

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company

statements, an application may be set for public hearing.

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–17571 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger

have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12269.

Applicant: CSX Transportation, Incorporated, Mr. N. Michael Choat, Assistant Chief Engineer of Signal Maintenance, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSXT) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, part 236, section 236.110, to the extent that each test record need not be signed by the person making the inspection or test, in lieu of implementing an electronic system to record and maintain Signal inspection records that provide inherent security measures that uniquely identify the person as the author of the record. Once a record is entered and verified, it cannot be modified. In conjunction with this relief, CSXT also requests the utilization of an electronic system for recording and maintaining applicable inspection and test records as defined in 49 CFR, part 234, subject to approval by the Associate Administrator for Safety, as required by section 234.273.

Applicant's justification for relief: CSXT believes that the electronic system will serve the best interest of CSXT and the Federal and State Inspection authorities that are required to inspect records, and anticipate the system will provide many benefits, including:

- Improved availability of test records
- Improved management reporting of compliance
- Improved consistency for filing records
- A reduction in the need for paper documentation

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–17569 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12314.

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, at milepost 250.1 on the Dallas Subdivision, Centennial Yard, in Fort Worth, Texas. The proposed changes consist of the discontinuance and removal of automatic signal 2501 and inoperative approach signal 2500, associated with the 7,500 foot block reduction at the entrance of CTC territory. The 7,500 foot track circuit, protected by signal 2501, will be shortened and used to approach light controlled signal WB at milepost 251.5.

The reason given for the proposed changes is that the signals presently disrupt switching operations due to the need to get permission from the dispatcher to pass signal 2501 if it is red, and changes in the methods of operation have made signal 2501 unnecessary.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–17570 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–12313.

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed modification of the automatic block signal system, at milepost 2.1 on the Altoona Subdivision, in East St. Paul, Minnesota, consisting of the discontinuance and removal of automatic signal 21, and extension of the approach signal 31 block to include the track presently protected signal 21.

The reason given for the proposed changes is that the Arcade Street overpass near the signal is to be reconstructed, and the new overpass will encroach on the present location of signal 21, necessitating its removal or relocation. The low speed of 10 mph, the reduced train traffic, and the short protected block mitigate the necessity of the signal.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 8, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–17571 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12723]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DEEP SCAN.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12723. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel: DEEP SCAN. Owner:* Aqua Gems of the Treasure Coast Inc.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "62 feet long by 18 feet Beam and drafts about 2 and a half ft. Gross tonnage is 26 tons * * *"

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The vessel will be used as a magnetometer and sonar platform to survey and salvage shipwrecks as well as a dive boat platform in areas in Alabama, Florida and Georgia and the Great Lakes region."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1983. *Place of construction:* Holland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Because of the shallow draft capabilities and unique electronics packages of the R/V Deep Scans systems their should be no impact to other commercial operators * * * The R/V Deep Scan is a one of a kind Research Vessel and therefore no impact to other operators and shipyards should be noted or penalized."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "* * *their should be no impact to other * * * U.S. shipyards."

Dated: July 8, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17500 Filed 7–11–02; 8:45 am]

all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to

is being requested is minimal to none. The operations of similar vessels in the geographic area of intended operation of the vessel for which waiver is being requested are as follows: there are no such similar vessels in the geographic area of Shelter Island, New York, and no known comparable boats in operation nearby."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "The impact

You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

the South East Alaska for winter lay up and return to Seward in May of each year. I would like to offer (2) to four (4) guests to accompany me on these two trips per year for a fee."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1997. *Place of construction:* Tapei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34221]

Central Railroad Company of Indianapolis—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Central Railroad Company of Indianapolis (CERA), a Class III rail

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "* * *their should be no impact to other * * * U.S. shipyards."

Dated: July 8, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17500 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12724]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LIEBESTRAUM.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12724. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: LIEBESTRAUM. *Owner:* Franz Fenkl.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "38 ft., 14 tons, no more than 12 persons."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "The geographic region of intended use of the vessel for which waiver is being requested is Coastwise USA and territories, with primary use along the coastline of Shelter Island, New York. The intended use of the vessel for which waiver is being requested is charter boat for lunch and dinner cruises for hotel guests."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1983. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The impact this waiver (if granted) will have on comparable vessels in comparable operations in the intended geographic area of intended operation of the vessel for which waiver is being requested is minimal to none. The operations of similar vessels in the geographic area of intended operation of the vessel for which waiver is being requested are as follows: there are no such similar vessels in the geographic area of Shelter Island, New York, and no known comparable boats in operation nearby."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "The impact this waiver (if granted) will have on U.S. shipyards is none."

Dated: July 8, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17501 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12725]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THORR.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12725. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001.

You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: THORR. *Owner:* Mark S. Kulstad.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "44'2"LWL, 50'6"LOD, 41 gross tons, 33 net tons"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

"I intent to use THORR as my private yacht and offer two (2) to six (6) guests to share in that experience for a fee. I intent to continue to cruise between Seward Alaska, the Prince William Sound and as far west as Kodiak in the summer. The number of day's operation will be limited to the weekends and my days off. My trips will be overnight and three to four days. In September of each year I intend to take THORR down to the South East Alaska for winter lay up and return to Seward in May of each year. I would like to offer (2) to four (4) guests to accompany me on these two trips per year for a fee."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1997. *Place of construction:* Tapei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The impact I will have on other commercial passenger vessel operators should be non-existent. I am owner operator offering 20 to 30 trips a year. I intend to take two to six guests per trip, not because of regulation of economy but because I like to sleep in my own bed. With the hundreds of thousands of visitors to Alaska in the summers my few guests will have no effect on anyone. Currently out of Seward there are no overnight two to six person yacht operators. There are two operators that take out 15 to 20 guests on overnight, sightseeing trips, one operating out of Cordova, and one of Whittier. Out of Seward Kenai Fjord tours, Major marine tours, and Renown Charters offer sightseeing day trips for large groups (25 to 200+). There are also many fishing charters that take out 6 to 25 fishers on daily fishing trips, but THORR is not a fishing boat, it's a luxury yacht, we don't fish. Out of Whittier, Valdez, Cordova, Homer, Kodiak, and considering my 2 trips per year, Juneau, Ketchikan, and Sitka, there are similar large sightseeing tours, fishing charter and large overnight sightseeing charters. I'm sure there a few other small charters similar to my intended operation but with the vast number of tourists, friends, associates, and personal contacts I'm sure I will have no impact on those operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "The issuing of this waiver will have no impact on U.S. shipyards. No U.S. shipyard markets a yacht less that 50 foot, capable of crossing a ocean, for an owner who wants to take the occasional guest for charter."

Dated: July 8, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–17502 Filed 7–11–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34221]

Central Railroad Company of Indianapolis—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Central Railroad Company of Indianapolis (CERA), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 31.66 miles of rail line owned by Norfolk Southern Railway Company (NSR).[1] The line to be acquired and operated runs between (1) Kokomo, IN, milepost I–51.6, and near Kokomo, milepost I–57.2, and (2) near West Marion Belt, IN, milepost TS–157.44, and Kokomo, milepost TS–183.7.[2] CERA certifies that its projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or after June 21, 2002, the effective date of the exemption (7 days after the notice was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34221, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–

[1] CERA initially leased 121.62 miles of rail line in 1989 from Norfolk and Western Railway Company, the predecessor of NSR. However, since 1989, CERA has discontinued service over 90.16 miles of the rail line that it initially leased. CERA continued to operate over those portions of the leased line after each discontinuance, and currently operates over the 31.66 miles of rail line it seeks to acquire.

[2] On June 14, 2002, CERA concurrently filed a notice of exemption in STB Finance Docket No. 34212, *Central Railroad Company of Indianapolis-Trackage Rights Exemption—Norfolk Southern Railway Company* (STB served July 3, 2002), wherein NSR granted CERA approximately 5 miles of overhead and limited local trackage rights over a portion of NSR's tracks as follows: (1) from CERA's connection with NSR and the trackage of the West Marion Belt at Michael, IN, at milepost TS–157.44, to the connection between the West Marion Belt and the trackage of Winamac Southern Railroad Company adjacent to NSR-operated Goodman Yard at Marion, IN, and (2) from CERA's connection with NSR at milepost TS–157.44, through the switch serving Bell Fiber Corporation at milepost TS–155.6, to, and including the switch serving Essex Wire, Incorporated, at milepost TS–154.65.

0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–17503 Filed 7–11–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The IRS, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, REG–209798–95 Final, Amortizable Bond Premium.

DATES: Written comments should be received on or before September 10, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Amortizable Bond Premium.

OMB Number: 1545–1491.

Regulation Project Number: REG–209798–95 Final.

Type of Review: Extension.

Description: The information requested is necessary for the Service to determine whether a holder of a bond had elected to amortize bond premium and is entitled to the deduction claimed. The information will be used to verify that the deduction is correctly computed.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 2,419,064.

Estimated Burden Hours Per Respondent/Recordkeeper:

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 592 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1491.

Regulation Project Number: REG–209798–95 Final.

Type of Review: Extension.

Title: Amortizable Bond Premium.

Description: The information requested is necessary for the Service to determine whether a holder of a bond had elected to amortize bond premium and is entitled to the deduction claimed. The information will be used to verify that the deduction is correctly computed.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 2,419,064.

Estimated Burden Hours Per Respondent/Recordkeeper:

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 592 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Notice of Closed Meeting of Treasury Department Performance Review Board

Pursuant to the requirements of 5 U.S.C. App. 2, 10(d) and Pub. L. 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations

0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–17543 Filed 7–11–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 2, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220

Dates: Written comments should be received on or before August 12, 2002. to be assured of consideration

Internal Revenue Service (IRS)

OMB Number: 1545–1779.

Notice Number: Notice 2002–27.

Type of Review: Extension.

Title: IRA Required Minimum Distribution Reporting.

Description: This notice provides guidance with respect to the reporting requirements, that is, data that custodians and trustees of IRAs must furnish IRS owners in those instances where there must be a minimum distribution from an individual retirement arrangement.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 78,000.

Estimated Burden Hours Per Respondent: 15 hours.

Frequency of Response: Annually, Other (one per IRA).

Estimated Total Reporting Burden: 1,170,000 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–17491 Filed 7–11–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 5, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 12, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0003.

Form Number: IRS Forms SS–4 and SS–4PR.

Type of Review: Extension.

Title: Application for Employer Identification Number (SS–4); and Solicitud de Numero de Identificacíon Patronal (EIN) (SS–4PR).

Description: Taxpayers required to have an identification number for use on any return, statement, or other document must prepare and File Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the IRS and the SSA in tax administration and by the Bureau of the Census for business statistics.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 2,419,064.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form SS–4 (min.)	Form SS–4PR (min.)
Recordkeeping	6	7
Learning about the law or the form	22	22
Preparing the form	46	46
Copying, assembling, and sending the form to the IRS	20	20

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 3,919,265 hours.

OMB Number: 1545–0049.

Form Number: IRS Form 990–BL, Schedule A (Form 990–BL), Form 6069.

Type of Review: Extension.

Title: Form 990–BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons; and Schedule A, (Form 990–BL), Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons Under sections 4951 and 4952 of the Internal Revenue Code; and Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

Description: IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to Form 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung benefit trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeeper: 22.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 990–BL	Schedule A	Form 6069
Recordkeeping	16 hr., 44 min	6 hr., 56 min	6 hr., 42 min.
Learning about the law or the form	3 hr., 52 min	18 min	1 hr., 45 min.
Preparing, copying, assembling and sending the form to the IRS	4 hr., 19 min	25 min	3 hr., 8 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 592 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–17492 Filed 7–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 5, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 12, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1139.

Regulation Project Number: PS–264–82 Final.

Type of Review: Extension.

Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distribution by S Corporations to Shareholders.

Description: The regulations provide the procedures and the statements to be filed by S corporations for making the election provided under section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filled will be used to verify that taxpayers are complying with the requirements imposed by Congress.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1491.

Regulation Project Number: REG–209798–95 Final.

Type of Review: Extension.

Title: Amortizable Bond Premium.

Description: The information requested is necessary for the Service to determine whether a holder of a bond had elected to amortize bond premium and to determine whether an issuer or a holder has changed its method of accounting for premium.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 50,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–17493 Filed 7–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on July 30, 2002, of the following debt management advisory committee: The Bond Market Association; Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Pub. L. 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations of the Committee to the Secretary, pursuant to Pub. L. 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the pubic because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Paul Malvey, Director, Office of Market Finance at 202–622–2630.

Dated: July 9, 2002.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 02–17503 Filed 7–11–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Collection; Comment Request for Interagency Publication

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are proposing to extend, with revisions, the following currently approved collections of information for banks under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 15 to 550 hours, depending on individual circumstances.

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations)

Information Room, Mailstop 1–5, Attention: 1557–0081, Washington, DC 20219. Due to temporary disruptions in the OCC's mail service, commenters are encouraged to submit comments by fax or electronic mail. Comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. Comments will be available for inspection and photocopying at the

Supervision, 1700 G Street, NW., Washington, DC 20552; by hand delivery to the Guard's Desk, east lobby entrance 1700 G Street, NW., Washington, DC 20552, on business days between 9 a.m. and 4 p.m.; by facsimile transmission: (202) 906–6518; or by electronic mail to: *infocollection.comments@ots.treas.gov*. All comments should refer to "TFR Revisions, OMB No. 1550–0023," and

william.magrini@ots.treas.gov, or Marilyn K. Burton, OTS Paperwork Clearance Officer, at (202) 906–6467 or by electronic mail *marilyn.burton@ots.treas.gov*, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revisions, the following currently approved collections of information for

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report) for banks and the Thrift Financial Report (TFR) for savings associations, which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before September 10, 2002.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Attention: 1557–0081, Washington, DC 20219. Due to temporary disruptions in the OCC's mail service, commenters are encouraged to submit comments by fax or electronic mail. Comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. Comments will be available for inspection and photocopying at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. Call (202) 874–5043 to make appointments for inspection of comments.

Board: Written comments, which should refer to "Consolidated Reports of Condition and Income, 7100–0036," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Consolidated Reports of Condition and Income, 3064–0052." Due to temporary disruptions in the FDIC's mail service, commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

OTS: Submit comments by mail to: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; by hand delivery to the Guard's Desk, east lobby entrance 1700 G Street, NW., Washington, DC 20552, on business days between 9 a.m. and 4 p.m.; by facsimile transmission: (202) 906–6518; or by electronic mail to: *infocollection.comments@ots.treas.gov*. All comments should refer to "TFR Revisions, OMB No. 1550–0023," and include your name and phone number. Comments submitted to OTS and the related TFR schedules will be posted on the OTS Internet site at: *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., Washington, DC 20552, by appointment. To make an appointment, call 202–906–5922. Appointments will be scheduled on business days between 10 a.m. and 4 p.m.

Acopy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Sample copies of the proposed new schedule for the Call Report for March 31, 2003, can be obtained at the FFIEC's web site (*www.ffiec.gov*) or may be requested from the agency clearance officers listed below for the OCC, the Board, and the FDIC. Sample copies of the proposed new schedule for the TFR for March 31, 2003, can be obtained at the OTS' web site (*www.ots.treas.gov*) or may be requested from the agency clearance officer listed below for the OTS.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Mary M. West, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst, (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

OTS: William Magrini, Senior Project Manager, Supervision Policy, at (202) 906–5744 or by electronic mail *william.magrini@ots.treas.gov*, or Marilyn K. Burton, OTS Paperwork Clearance Officer, at (202) 906–6467 or by electronic mail *marilyn.burton@ots.treas.gov*, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revisions, the following currently approved collections of information for banks and savings associations.

The agencies estimate that only approximately 130 banks and savings associations (banking institutions) have significant subprime lending programs and would have to complete the entire proposed subprime lending schedule. The agencies further estimate that each of these institutions would need approximately 1 to 1.5 hours to complete this schedule. In addition, other banking institutions with any subprime lending programs would have to complete only a single item on the schedule. Although the agencies do not have an estimate of the number of such banking institutions, they believe that this item would add only a negligible amount of burden. The following burden estimates include the proposed revisions.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).
Form Number: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).
Frequency of Response: Quarterly.
Affected Public: Business or other for-profit.
For OCC:
OMB Number: 1557–0081.
Estimated Number of Respondents: 2,200 national banks.
Estimated Time per Response: 42.05 burden hours.
Estimated Total Annual Burden: 370,076 burden hours.
For Board:
OMB Number: 7100–0036.
Estimated Number of Respondents: 978 state member banks.
Estimated Time per Response: 48.25 burden hours.
Estimated Total Annual Burden: 188,754 burden hours.
For FDIC:
OMB Number: 3064–0052.
Estimated Number of Respondents: 5,480 insured state nonmember banks.
Estimated Time per Response: 32.66 burden hours.
Estimated Total Annual Burden: 715,993 burden hours.

The estimated time per response is an average, which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 15 to 550 hours, depending on individual circumstances.

2. *Report Title:* Thrift Financial Report (TFR).
Form Number: OTS 1313 (for savings associations).
Frequency of Response: Quarterly.
Affected public: Business or other for profit.
For OTS:
OMB Number: 1550–0023.
Estimated Number of Respondents: 1,000 savings associations.
Estimated Time per Response: 33.8 burden hours.
Estimated Total Annual Burden: 135,200 burden hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for savings associations). Except for the items covered in this proposal and a limited number of other items, these information collections are not given confidential treatment. Small businesses (i.e., small banks and savings associations) are affected.

Abstract

Banks file Call Reports and savings associations file the TFR with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting individual banking institutions and the industry as a whole. In addition, Call Reports and TFRs provide the most current statistical data available for evaluating banking institutions' corporate applications such as those for mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports and TFRs also are used to calculate all banking institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and OTS' assessments on savings associations.

Current Action

I. Overview

The agencies are requesting comment on a proposed revision to the Call Report and the TFR that will enable the agencies to better plan their examinations of banking institutions and to monitor off-site the extent of, changes in, and performance of subprime lending programs at banking institutions. Subprime lending refers to loans to borrowers who have weakened credit histories. The characteristics of a subprime borrower typically include a history of paying debts late, personal bankruptcy filings, or a high debt service-to-income ratio. These borrowers, therefore, pose a higher risk of default than do traditional borrowers at banking institutions. A subprime lending program is the regular or targeted acquisition, through origination or purchase, of loans to subprime borrowers that will be held in portfolio or accumulated for resale.

In May 2000, the OCC, the Board, and the FDIC [1] and, in August 2000, the OTS [2] proposed to collect information on subprime lending in the Call Report and TFR to make possible the early detection and proper supervision of subprime lending through off-site monitoring procedures. Banks involved in subprime lending would have reported quarter-end data for eight categories of subprime loans as well as past due and nonaccrual information and year-to-date charge-offs and recoveries for two broader categories of subprime loans. The agencies recognized that the quality and validity of the proposed Call Report and TFR information depended on a workable definition of subprime lending, which was still in the process of development at that time. The definition of subprime included in the 2000 proposals was based on the definition of the term in the agencies' March 1999 guidance on subprime lending. The agencies also asked for comment on whether information should be collected based on loan portfolios or programs that possess subprime characteristics or individual loans with these characteristics.

The comments received in 2000 on the proposed collections of information on subprime lending in the Call Report and TFR were generally unfavorable, particularly with respect to the agencies' then proposed definition. Furthermore, the commenters overwhelmingly stated that if the agencies did collect subprime lending information, the information should only be collected from banks with subprime lending programs. In addition, the commenters suggested that future requests for comment on a subprime information collection for the Call Report and TFR should be

[1] 65 FR 34801, May 31, 2000.
[2] 65 FR 48049, August 4, 2000.

addressed in a separate proposal dealing ...ly with the subprime information co...ion issues.

Over the last two years, the agencies have conducted examinations that have confirmed the agencies' contentions that subprime lending programs continue to pose an increased risk to those institutions involved and to the deposit insurance funds. A disproportionate number of the banking institutions on the FDIC's "problem institution" list ... programs. This information would be the agencies' sole source of off-site data on subprime lending programs. One purpose for which the agencies intend to use these data is to enhance the examination planning process. In addition, the data would provide the agencies with a timely and regular source of information from institutions with subprime consumer lending programs that can be used to monitor the extent of banking institutions'

The term "subprime" refers to the credit characteristics of individual borrowers. Subprime borrowers typically have weakened credit histories that include payment delinquencies, and possibly more severe problems such as charge-offs, judgments, and bankruptcies. The borrowers may also display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria that may encompass borrowers with incomplete

private credit enhancements, or other appropriate risk mitigation techniques.

- Institutions that extend credit to subprime borrowers as part of their standard community lending process or make loans to subprime borrowers as an occasional exception.

Scope of Schedule

Subprime lending, by the nature of the definition, is concentrated in the consumer-lending arena. Thus, the ... extended under other revolving credit plans, and other consumer loans. The sum of the amounts outstanding by loan category must equal the total dollar amount reported in Part I.

Part III requires the same breakout of past due and nonaccrual loans as required in Schedule RC–N of the Call Report and Schedule PD of the TFR (i.e., loans past due 30–89 days and still accruing, loans past due 90 days or more and still accruing, and nonaccrual

overall volume of subprime loans held by banking institutions. For this same reason, the reported data will not reveal whether an individual institution does or does not have loans to subprime borrowers, nor will it reveal the entire amount of the institution's loans to subprime borrowers. As a consequence, care must be taken in interpreting the reported data to avoid reaching improper conclusions.

Furthermore, different institutions

addressed in a separate proposal dealing only with the subprime information collection issues.

Over the last two years, the agencies have conducted examinations that have confirmed the agencies' contentions that subprime lending programs continue to pose an increased risk to those institutions involved and to the deposit insurance funds. A disproportionate number of the banking institutions on the FDIC's "problem institution" list during the past two years have been engaged in subprime lending programs and the volume of loans in these programs has exceeded 25 percent of the institutions' Tier 1 capital.[3] The exact number of institutions involved in subprime lending programs is not known with certainty. However, the agencies estimate that approximately 130 banking institutions currently have significant exposures in the subprime lending business.

The actual extent of banking institutions' involvement in subprime lending programs is not fully known because there is no regular periodic reporting of this activity to the banking agencies. The estimates that have been made come from examination data, but the quality and timeliness of the subprime lending data derived from examination reports is constrained by the lack of standard industry-wide definitions of the terms "subprime" and "program" and by the length of the examination cycle. The issue of timeliness is particularly troublesome from a safety and soundness perspective because subprime lending programs tend to be a volume-oriented business that encourages rapid portfolio growth. Consequently, there is no reliable way to regularly monitor individual institutions' subprime lending programs between examinations.

II. Current Proposal

This proposal addresses solely the agencies' planned collection of information on subprime consumer lending programs each quarter in the Call Report and TFR beginning March 31, 2003. The agencies continue to believe that a need exists to collect information on subprime lending programs. This information would be the agencies' sole source of off-site data on subprime lending programs. One purpose for which the agencies intend to use these data is to enhance the examination planning process. In addition, the data would provide the agencies with a timely and regular source of information from institutions with subprime consumer lending programs that can be used to monitor the extent of banking institutions' involvement in such programs, including the level of growth in this activity, and the performance of subprime portfolios.

Definitions

Subsequent to the 2000 proposals, the agencies issued Expanded Guidance for Subprime Lending Programs on January 31, 2001. This guidance contains definitions that describe the characteristics of the terms "program" and "subprime." Examiners have been using these characteristics during the examination process to determine which institutions have subprime lending programs that, in the aggregate, are greater than or equal to 25 percent of an institution's Tier 1 capital. The agencies propose to use the characteristics described in the Expanded Guidance in the proposed subprime lending program information collection in the Call Report and TFR. These two terms would be defined as follows for purposes of the proposed new schedule:

The term "program" refers to the process of acquiring on a regular or targeted basis, through either origination or purchase, loans to subprime borrowers that are to be held in the institution's own portfolio or accumulated and packaged for sale. The average credit risk profile of such programs or portfolios will likely display significantly higher delinquency and/or loss rates than prime portfolios.

Subprime programs include loan products that attract a disproportionate number of borrowers with weakened credit histories, including payday loan and credit repair products. A subprime program also may include cases where an institution regularly purchases loans, such as indirect auto paper, of which disproportionate amounts qualify as loans to subprime borrowers. In addition, an institution should include any program determined to be a subprime lending program by its primary federal regulator. If a reporting institution has a question as to whether it has a subprime lending program, it should contact its primary federal regulator.

The term "subprime" refers to the credit characteristics of individual borrowers. Subprime borrowers typically have weakened credit histories that include payment delinquencies, and possibly more severe problems such as charge-offs, judgments, and bankruptcies. The borrowers may also display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria that may encompass borrowers with incomplete credit histories. Subprime loans are loans to borrowers displaying one or more of these characteristics at the time of *origination* or *purchase*. Such loans have a higher risk of default than loans to prime borrowers. Generally, subprime borrowers will display a range of credit risk characteristics that may include one or more of the following:

- Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;
- Judgment, foreclosure, repossession, or charge-off in the prior 24 months;
- Bankruptcy in the last 5 years;
- Relatively high default probability as evidenced by, for example, a credit bureau risk score (FICO) of 660 or below (depending on the product/collateral), or other bureau or proprietary scores with an equivalent default probability likelihood; and/or
- Debt service-to-income ratio of 50% or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.

This list is illustrative rather than exhaustive and does not define specific parameters for all subprime borrowers. Institutions that have identified borrowers as "subprime" based on their own internal rating systems should be reported as such.

For purposes of reporting on the proposed schedule, subprime lending does not refer to individual subprime loans originated and managed, in the ordinary course of business, as occasional exceptions to prime risk selection standards. Additionally, this definition generally does not apply to the following:

- Prime loans that develop credit problems after acquisition.
- Loans initially extended in subprime programs that are later upgraded, because of their performance, to programs targeted to prime borrowers.
- Community development loans as defined in the Community Reinvestment Act regulations that may have some higher risk characteristics, but are otherwise mitigated by guarantees from government programs, private credit enhancements, or other appropriate risk mitigation techniques.
- Institutions that extend credit to subprime borrowers as part of their standard community lending process or make loans to subprime borrowers as an occasional exception.

Scope of Schedule

Subprime lending, by the nature of the definition, is concentrated in the consumer-lending arena. Thus, the proposed schedule covers only information on consumer loans. Furthermore, the agencies are proposing that only banking institutions that are programmatic lenders of subprime consumer loans should complete some or all of this schedule. Banking institutions that do not have any subprime consumer lending programs will not be required to provide any information on this schedule.

All banking institutions that have any subprime consumer lending programs would be required to report the total dollar amount outstanding of loans in those programs as of the quarter-end report date in Part I, item 1. However, only those banking institutions where the total dollar amount outstanding is greater than or equal to 25 percent of the reporting institution's Tier 1 capital as of the report date would be required to complete the detailed items in Parts II, III, and IV of the schedule discussed below. Once an institution reaches the 25 percent of Tier 1 capital threshold, it must continue to complete Parts II, III, and IV of the schedule until it fails to meet the Tier 1 capital threshold for two consecutive quarter-end report dates or for the remainder of the calendar year, whichever is longer.

Detailed Items

The proposed detailed items in Parts II, III, and IV of the schedule would allow the agencies to perform off-site monitoring of the performance of banking institutions with significant exposures to subprime lending. Because these parts of the schedule would be completed only by banking institutions with subprime lending programs of at least 25 percent of Tier 1 capital, the schedule would minimize the information collected from banking institutions with small volumes of loans in subprime lending programs.

Part II collects a breakdown of the total dollar amount of loans in subprime consumer lending programs as of the report date into the following consumer loan categories: open-end and closed-end loans secured by 1–4 family residential properties (with first and junior lien closed-end loans reported separately), credit card loans, loans extended under other revolving credit plans, and other consumer loans. The sum of the amounts outstanding by loan category must equal the total dollar amount reported in Part I.

Part III requires the same breakout of past due and nonaccrual loans as required in Schedule RC–N of the Call Report and Schedule PD of the TFR (i.e., loans past due 30–89 days and still accruing, loans past due 90 days or more and still accruing, and nonaccrual loans) for each category of loans reported in Part II of this schedule. However, loans extended under revolving credit plans other than credit cards and other consumer loans are combined rather than reported separately.

Part IV requires the separate reporting of charge-offs and recoveries as in Schedule RI–B of the Call Report and Schedule VA of the TFR for the same loan categories as in Part III.

III. Confidentiality

The agencies are proposing that the information reported in this schedule be accorded confidential treatment on an individual institution basis. The information requested will provide the agencies with sensitive business data that is needed to aid examiners and supervisory analysts in better evaluating the risk profiles and performance of banking institutions with concentrations of subprime lending programs. This information also will be used to plan the detail and timing of examinations and to provide the agencies with a timely and regular source of information on subprime lending programs, which is not currently available.

The agencies believe that confidential treatment initially should be accorded this information collection because, notwithstanding the Examiner Guidance on Subprime Lending, there is no standard industry-wide approach to the definitions of either "subprime" or "program," which means that the meanings of these terms are institution-specific. Thus, the reported information will not be entirely comparable from one institution to the next, leading to potential misinterpretation of the data by the public.

The proposal will not result in the collection of data on all loans to subprime borrowers, but only on subprime lending programs. This outcome occurs because of the supervisory and examination, rather than statistical, focus of the proposed schedule. Moreover, because the focus is also on programs rather than individual loans, attempts to aggregate the reported data across institutions will not provide users with statistics on the overall volume of subprime loans held by banking institutions. For this same reason, the reported data will not reveal whether an individual institution does or does not have loans to subprime borrowers, nor will it reveal the entire amount of the institution's loans to subprime borrowers. As a consequence, care must be taken in interpreting the reported data to avoid reaching improper conclusions.

Furthermore, different institutions may reach different conclusions as to whether one or more of their consumer lending programs are subprime programs and, accordingly, whether their subprime lending programs aggregate 25 percent or more of their Tier 1 capital. The agencies therefore believe that some period of time is needed to ensure that banking institutions understand the proposed definitions and how they may apply to their various lending programs. This will also enable examiners to determine whether institutions are properly applying these definitions and correctly reporting the data.

The agencies also have some concern, due to the sensitive nature of these data, that the release of the subprime lending information before banking institutions and the agencies have adequate experience with it could inhibit the collection of accurate and complete data in the future. Until any potential problems with the newly reported data have been addressed, the agencies believe there is a risk that the data will be misinterpreted and that their release at this time could cause potential harm to an institution or an increased risk to deposit insurance funds. The agencies are initially proposing confidential treatment for the proposed new schedule. However, after experience has been gained with the data, e.g., after six or eight quarters, the agencies will reevaluate whether this treatment should be retained.

IV. Request for Comment

Public comment is requested on all aspects of this proposal. In addition, comments are invited on:

(a) Whether the proposed revisions to the Call Report and TFR collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

[3] In general, Tier 1 capital is the sum of a banking institution's common stockholders' equity (as defined in the agencies' regulatory capital standards), noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries, less goodwill and other intangible assets (other than limited amounts of servicing assets and purchased credit card relationships) and less disallowed deferred tax assets and disallowed credit-enhancing interest-only strips. For banks, see Schedule RC–R of the Call Report to calculate Tier 1 capital. For savings associations, see Schedule CCR of the TFR to calculate Tier 1 capital.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services

Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: July 3, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Federal Deposit Insurance Corporation

Valerie Best,

Assistant Executive Secretary.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

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BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 5720–01–P

Corrections

Federal Register

Vol. 67, No. 134

Friday, July 12, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are

(a) *Need for the Project* (up to 10 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services

or related efforts, and with other appropriate community, State, and Federal resources.

(d) *Quality of Project Services* (up to 25 points). The Secretary considers the

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(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: July 3, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, July 5, 2002.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 8th day of July, 2002.

Federal Deposit Insurance Corporation

Valerie Best,

Assistant Executive Secretary.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 02–17590 Filed 7–11–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 134
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA No. 84.361]

Office of Elementary and Secondary Education—Notice Inviting applications for New Awards for Fiscal Year (FY) 2002

Correction

In notice document 02–16889 beginning on page 44815 in the issue of Friday, July 5, 2002, make the following corrections:

On page 44816, in the second and third columns, the text should read as follows:

* * * * *

(c) Partnership/Interdistrict Approach (up to 5 points). The project would establish a partnership that implements an interdistrict approach to carrying out a public school choice program.

These priorities are specified in the authorizing statute for the program (see section 5244 of the ESEA). The priority points are in addition to any points the applicant earns under the selection criteria listed below. The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority. The maximum number of points an application may earn based on the priority points and the selection criteria is 115 points.

Selection Criteria: The Secretary will use the selection criteria in 34 CFR 75.210 and selection criteria based on statutory provisions to evaluate applications for new grants under this competition. The maximum possible score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Need for the Project* (up to 10 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) Significance (up to 15 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services (*i.e.*, choice options) that address the needs of the target population.

(3) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of Project Design* (up to 40 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project encourages parental involvement and ensures that parents have high-quality information about their choices.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(4) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(5) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(6) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(d) *Quality of Project Services* (up to 25 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(1) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students, as measured against rigorous academic standards.

(2) The extent to which the services to be provided by the proposed project involve the effective collaboration of appropriate partners for maximizing the effectiveness of project services.

(3) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(e) *Quality of Management Plan* (up to 10 Points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including whether it includes clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

Required Use of Funds

An eligible entity that receives a grant under this subpart must use grant funds to provide students selected to participate in the program with transportation services or to pay the cost of transportation to and from the public elementary schools and secondary schools, including, if applicable, charter schools, that the students choose to attend under the program.

* * * * *

[FR Doc. C2–16889 Filed 7–11–02; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology; Final Rules and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7215–7]

RIN 2060–AH68

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control

under one subpart, thus promoting regulatory consistency in NESHAP development. The EPA has identified these four source categories as major sources of hazardous air pollutants (HAP), including cyanide compounds, acrylonitrile, acetonitrile, carbonyl sulfide, carbon disulfide, benzene, 1,3 butadiene, toluene, and 2,4 toluene diisocyanate (TDI). Benzene is a known human carcinogen, and 1,3 butadiene is

standards with this action include: Cyanide Chemicals Manufacturing (Docket No. A–2000–14), Carbon Black Production (Docket No. A–98–10), Ethylene Production (Docket No. A–98–22), and Spandex Production (Docket No. A–98–25). These dockets include source-category-specific supporting information. All dockets are located at the U.S. EPA, Air and Radiation Docket and Information Center, Waterside Mall,

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	325188, 325199	2819, 2869	Producers and coproducers of hydrogen cyanide and sodium cyanide.
	325182	2895	Producers of carbon black by thermal-oxidative decomposition in a closed system, thermal decomposition in a cyclic process, or thermal decomposition in a continuous process.
	325110	2869	Producers of ethylene from refined petroleum or liquid hydrocarbons.
	325222	2824	Producers of spandex.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7215–7]

RIN 2060–AH68

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: This action promulgates amendments to the "generic" maximum achievable control technology (MACT) standards to add national emission standards for hazardous air pollutants (NESHAP) for four additional source categories: Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production. The generic MACT standards provide a structural framework that allows source categories with similar emission types and MACT control requirements to be covered under one subpart, thus promoting regulatory consistency in NESHAP development. The EPA has identified these four source categories as major sources of hazardous air pollutants (HAP), including cyanide compounds, acrylonitrile, acetonitrile, carbonyl sulfide, carbon disulfide, benzene, 1,3 butadiene, toluene, and 2,4 toluene diisocyanate (TDI). Benzene is a known human carcinogen, and 1,3 butadiene is considered to be a probable human carcinogen. The other pollutants can cause noncancer health effects in humans. These standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of MACT. This action also promulgates NESHAP for the heat exchange systems and wastewater operations at ethylene manufacturing facilities.

EFFECTIVE DATE: July 12, 2002.

ADDRESSES: Docket No. A–97–17 contains supporting information used in developing the generic MACT standards. Dockets established for each of the source categories to be assimilated under the generic MACT standards with this action include: Cyanide Chemicals Manufacturing (Docket No. A–2000–14), Carbon Black Production (Docket No. A–98–10), Ethylene Production (Docket No. A–98–22), and Spandex Production (Docket No. A–98–25). These dockets include source-category-specific supporting information. All dockets are located at the U.S. EPA, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing the NESHAP, contact the following at the Emission Standards Division, U.S. EPA, Research Triangle Park, North Carolina 27711:

Information type	Contact (mailcode)	Group	Phone/facsimile/ e-mail address
General	Mark Morris (C50404)	Organic Chemicals Group.	(919) 541–5416/(919) 541–3470/morris.mark@epa.gov
Cyanide Chemicals Manufacturing.	Keith Barnett (C50405)	Organic Chemicals Group.	(919) 541–5605/(919) 541–3470/barnett.keith@epa.gov
Carbon Black Production	John Schaefer (C50404)	Organic Chemicals Group.	(919) 541–0296/(919) 541–3470/schaefer.john@epa.gov
Ethylene Production	Warren Johnson (C50404).	Organic Chemicals Group.	(919) 541–5267/(919) 541–3470/johnson.warren@epa.gov
Spandex Production	Elaine Manning (C43903).	Waste and Chemical Processes Group.	(919) 541–5499/(919) 541–3470/manning.elaine@epa.gov

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Comments. The NESHAP for the four source categories mentioned above were proposed on December 6, 2000 (65 FR 76408). The comment letters received on the proposal are available in Docket No. A–97–17 or the dockets established for the four source categories (*see* **ADRESSESS**), along with a summary of the comment letters and EPA's responses to the comments. In response to the public comments, EPA adjusted the final NESHAP where appropriate.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or final rules at *http://www.epa.gov/ttn/oarpg/t3pfpr.html*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	325188, 325199	2819, 2869	Producers and coproducers of hydrogen cyanide and sodium cyanide.
	325182	2895	Producers of carbon black by thermal-oxidative decomposition in a closed system, thermal decomposition in a cyclic process, or thermal decomposition in a continuous process.
	325110	2869	Producers of ethylene from refined petroleum or liquid hydrocarbons.
	325222	2824	Producers of spandex.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Not all facilities classified under the NAICS or SIC codes are affected. Other types of entities not listed could be affected. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1104 of the final NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review: The NESHAP were proposed on December 6, 2000 (65 FR 76408). This action announces EPA's final decisions on the NESHAP. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 10, 2002. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final NESHAP may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
A. What Is the Purpose of the NESHAP?
B. What is the source of authority for development of NESHAP?
C. What criteria are used in the development of NESHAP?
D. Why is the EPA including today's standards in the generic MACT standards?
II. Summary of Major Comments and Changes Since Proposal to 40 CFR Part 63, Subpart YY and the Referenced Subparts
III. Cyanide Chemicals Manufacturing
A. Summary of Environmental, Energy, Cost, and Economic Impacts
B. Summary of Major Comments and Changes Since Proposal
IV. Carbon Black Production
A. Summary of Environmental, Energy, Cost, and Economic Impacts
B. Summary of Major Comments and Changes Since Proposal
C. New Source Review/Prevention of Significant Deterioration Applicability
V. Ethylene Production
A. Summary of Environmental, Energy, Cost, and Economic Impacts
B. Summary of Major Comments and Changes Since Proposal
VI. Spandex Production
A. Summary of Environmental, Energy, Cost and Economic Impacts
B. Summary of Major Comments and Changes Since Proposal
VII. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act
J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Introduction

A. What Is the Purpose of the NESHAP?

The purpose of the final NESHAP is to protect the public health by reducing emissions of HAP from facilities in four source categories: Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The four categories of major sources for which NESHAP are being established by today's action were listed on the following dates: Cyanide Chemicals Manufacturing, July 16, 1992 (57 FR 31576) and February 12, 1998 (63 FR 6291); Carbon Black Production, June 4, 1996 (61 FR 28197); Ethylene Production, June 4, 1996 (61 FR 28197); and Spandex Production, July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

C. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and

environmental impacts, and energy requirements.

D. Why Is the EPA Including Today's Standards in the Generic MACT Standards?

We are including NESHAP for the Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production source categories under the generic MACT standards to reduce the performance of closed vent systems and control devices. Subpart SS currently states that "all monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately." Therefore, owners and operators are already required by emissions of 10.3 Mg/yr (11.4 tpy), an increase in carbon monoxide (CO) emissions of 42.1 Mg/yr (46.4 tpy), and an increase in particulate matter (PM) emissions of 0.3 Mg/yr (0.3 tpy). Increases in emissions would result from on-site combustion of fossil fuels and emission streams because of control device operations.

2. What Are the Non-Air Health, Environmental, and Energy Impacts?

3. What Are the Cost and Economic Impacts?

The total estimated capital cost of the final standards is $939,000. The total estimated annual cost of the final standards is $2.4 million. These costs represent fourth quarter 1998 dollars.

We prepared an economic impact analysis to evaluate the impacts that the final standards would have on the cyanide manufacturing market,

the rule by revising the definition of "CCMPU" as follows:

Cyanide chemicals manufacturing process unit or CCMPU means the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a cyanide chemicals product. A cyanide chemicals manufacturing process unit shall be limited to any one of the following: an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio hydrogen

HCN rich vent streams that are routed to a boiler or industrial furnace for use as fuel. We did this to be consistent with other NESHAP and because these vent streams are already regulated by other standards. Once we removed these streams and adjusted the floor based on new information received from industry, the MACT floor and MACT level of control was determined to reduce HAP emissions by 98 weight-percent (rather than by 99 weight-

environmental impacts, and energy requirements.

D. Why Is the EPA Including Today's Standards in the Generic MACT Standards?

We are including NESHAP for the Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production source categories under the generic MACT standards to reduce the regulatory burden associated with the development of separate rulemakings. An owner or operator should consult the generic MACT standards for information on applicability of the standards to their source, compliance schedules, and standards. The generic MACT standards generally refer the owner or operator to other subparts for requirements necessary to demonstrate compliance.

We are including the NESHAP for the Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production source categories in the generic MACT standards to simplify the rulemaking process, to minimize the potential for duplicative or conflicting requirements, to conserve limited resources, and to ensure consistency of the air emissions requirements applied to similar emission points. We believe that the generic MACT regulatory framework is appropriate for these source categories because it allows us to incorporate specific applicability and control requirements that reflect our decisions on these source categories while also utilizing generic requirements previously established for similar emission sources that we have determined are also applicable here.

II. Summary of Major Comments and Changes Since Proposal to 40 CFR Part 63, Subpart YY and the Referenced Subparts

The major comments received regard the performance specifications for continuous parameter monitoring systems (CPMS) that were proposed as an amendment to the referenced 40 CFR part 63, subpart SS. Other comments received on subpart YY and the referenced subparts and the responses to those comments are in Docket No. A–97–17.

Several commenters stated that the proposed performance specifications for CPMS would be costly and would not provide an environmental benefit. We proposed performance specifications for CPMS to ensure that such systems are installed, calibrated, and operated in a manner that would yield accurate and reliable information regarding the performance of closed vent systems and control devices. Subpart SS currently states that "all monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately." Therefore, owners and operators are already required by subpart SS to follow written performance specifications, but not necessarily the ones that we proposed in the amendments.

We have decided not to include the performance specifications for CPMS in the final subpart SS for two reasons. First, the number and complexity of the comments would not allow for the expeditious promulgation of the standards for the four source categories we are including under subpart YY. Second, we are currently developing performance specifications for CPMS to be followed by owners and operators of all sources subject to standards under 40 CFR part 63.

Since owners and operators subject to subpart SS are currently required to follow specifications for CPMS, even though they may not be as specific as those we proposed, we have decided to wait for the rulemaking that will propose performance specifications for all of 40 CFR part 63. We decided it would be premature to promulgate performance specifications for subpart SS when the performance specifications that would ultimately be promulgated for all of 40 CFR part 63 may be significantly different as a result of possible public comments received on that rulemaking.

III. Cyanide Chemicals Manufacturing

A. Summary of Environmental, Energy, Cost, and Economic Impacts

1. What Are the Air Quality Impacts?

Nationwide baseline HAP emissions are estimated to be 238 megagrams per year (Mg/yr) (263 tpy). The final standards will reduce HAP emissions by approximately 106 Mg/yr (117 tpy). This is a 45 percent HAP emission reduction from the baseline level for this source category and a 58 percent reduction for those facilities required to install controls to comply with the final standards.

We also estimate that the final standards will reduce emissions of volatile organic compounds (VOC) by 102 Mg/yr (113 tpy). We estimate that the final standards will result in an increase in sulfur oxides (SO_X) emissions of 7.3 Mg/yr (8 tpy), an increase in nitrogen oxides (NO_X) emissions of 10.3 Mg/yr (11.4 tpy), an increase in carbon monoxide (CO) emissions of 42.1 Mg/yr (46.4 tpy), and an increase in particulate matter (PM) emissions of 0.3 Mg/yr (0.3 tpy). Increases in emissions would result from on-site combustion of fossil fuels and emission streams because of control device operations.

2. What Are the Non-Air Health, Environmental, and Energy Impacts?

We believe that there will not be significant adverse non-air health, environmental or energy impacts associated with the final standards. This is supported by impacts analyses associated with the application of the control and recovery devices required under the final standards. We determine impacts relative to the baseline that is set at the level of control in absence of the rule.

Control of equipment leaks is expected to reduce the amount of HAP-containing material that would be discharged to a facility's wastewater treatment stream through equipment washdown or from stormwater runoff.

The use of a scrubber for HAP control of emissions from vents will create HAP-containing effluent. It is anticipated that any wastewater stream created from the use of a scrubber would be treated at a facility's wastewater treatment system with other waste streams.

There are minimal solid or hazardous waste impacts expected as a result of the final standards. A small amount of solid waste may result from replacement of equipment such as seals, packing, rupture disks, and other equipment components, such as pumps and valves. A minimum amount of solid or hazardous waste could also be generated from the use of steam strippers to control wastewater emissions. The possible sources generated include organic compounds recovered in the steam stripper overhead condenser or solids removed during feed pretreatment.

The energy demands associated with the final standards will result from the use of additional electricity, natural gas, and fuel oil to run control equipment. The storage tank, transfer operations, equipment leak, and wastewater controls are not expected to require any additional energy. The total nationwide energy demand that would result from implementing the process vent controls is approximately 3.1×10^{14} Joules per year.

3. What Are the Cost and Economic Impacts?

The total estimated capital cost of the final standards is $939,000. The total estimated annual cost of the final standards is $2.4 million. These costs represent fourth quarter 1998 dollars.

We prepared an economic impact analysis to evaluate the impacts that the final standards would have on the cyanide manufacturing market, consumers, and society. The total annualized social cost (in 1998 dollars) of the final standards on the industry is $2.4 million, which is much less than 0.001 percent of total baseline revenue for the affected sources. A screening analysis indicates that no individual firm affected by the final standards for the cyanide chemicals manufacturing source category would experience costs in excess of 0.001 percent of sales. For this reason, we believe that the impact of the final standards will be minimal. No cyanide chemicals manufacturing facility closures are expected.

B. Summary of Major Comments and Changes Since Proposal

In response to comments received on the proposed standards, we made several changes to the final standards, as well as some clarifications designed to make our intentions clearer. The substantive comments and/or changes and responses made since the proposal are summarized in the following paragraphs. Our complete responses to public comments are contained in a memorandum that can be obtained from the docket (see **ADDRESSES** section).

1. Applicability of the Rule

Some commenters expressed that there was potential for confusion regarding the applicability of the rule. One commenter requested that we specifically exempt downstream equipment from the cyanide chemicals manufacturing NESHAP if the equipment is subject to another NESHAP.

Another commenter expressed that confusion regarding the overlapping requirements affecting the same equipment could be reduced if refined hydrogen cyanide (HCN) "burned on-site as a fuel in a boiler or industrial furnace" was excluded as part of the HCN process. The commenter explained that some producers that generate HCN as a byproduct of acrylonitrile manufacture opt to burn the byproduct HCN on-site as a fuel in boilers and/or industrial furnaces where its end use is regulated under other standards.

One commenter requested that we clarify and restrict the applicability of the rule by revising the definition of "CCMPU" as follows:

Cyanide chemicals manufacturing process unit or CCMPU means the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a cyanide chemicals product. A cyanide chemicals manufacturing process unit shall be limited to any one of the following: an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio hydrogen cyanide process unit * * *.

The commenter explained that, as proposed, the definition of CCMPU could include a chemical manufacturing process unit that creates HCN or sodium cyanide as an incidental or unintended byproduct that could be considered an affected source subject to the cyanide chemicals manufacturing requirements. The commenter stated that this clarification could also be fulfilled by modifying the definition for "cyanide chemicals product," as follows:

Cyanide chemicals product means either hydrogen cyanide or sodium cyanide which is manufactured as the intended product of a CCMPU or a byproduct of the Sohio process. Other hydrogen cyanide or sodium cyanide byproducts, impurities, wastes and trace contaminants are not considered to be cyanide chemicals products.

Based on comments received, we made a few changes to the final standards. To avoid overlapping requirements applying to downstream boilers and/or industrial furnaces, we excluded HCN vent streams used for fuel value in boilers and/or industrial furnaces from HCN chemical manufacturing processes. Exclusion of these boilers and industrial furnaces that use vented emissions for fuel value from the requirements of the cyanide chemicals manufacturing process control requirements is consistent with what is done in other MACT standards.

We also made the commenter's suggested amendments to the "CCMPU" and "cyanide chemicals product" definitions in the final standards. These amendments were made because the intent of the commenter's suggested amendments is consistent with our intent, and we believe that the amended definitions will reduce any potential confusion regarding the applicability of the rule.

2. Process Vent Standards

BMA/Andrussow process vent MACT control level. During our evaluation of comments received on the proposed process vent standards, we reevaluated the MACT level of control established for BMA/Andrussow process vents. Based on our reevaluation, we decided to remove from the MACT analyses HCN rich vent streams that are routed to a boiler or industrial furnace for use as fuel. We did this to be consistent with other NESHAP and because these vent streams are already regulated by other standards. Once we removed these streams and adjusted the floor based on new information received from industry, the MACT floor and MACT level of control was determined to reduce HAP emissions by 98 weight-percent (rather than by 99 weight-percent) or to a concentration level of 20 parts per million by volume (ppmv). Therefore, the final standards have been modified to require that you reduce HAP emissions from Andrussow/BMA process vents by 98 weight-percent (rather than by 99 weight-percent), or to a concentration level of 20 ppmv. Because the MACT level of control has been changed to 98 weight-percent, the final standards also allow you to comply with the requirements for Andrussow/BMA process vents by routing emissions to a flare.

Wet-end process vents. One commenter requested that the final standards clarify that cyanide chemical manufacturing wastewater collection systems and treatment equipment (tanks) containing discarded wastewater are not part of the process and are not subject to the process vent requirements. The commenter explained that weak HAP and cyanide bearing wastewater is sent to, and handled in, on-site wastewater collection and treatment systems and collected in sumps and pumped into tanks where the wastewater is either recycled to recover HCN, or treated in these tanks by hydrolysis and alkaline chlorination. The commenter stated that such vents should be clarified to be subject to the requirements specified for process and maintenance wastewater control requirements under 40 CFR 63.1106 (a) and (b).

Based on this comment, we evaluated the wet end of the sodium cyanide process unit regarding the clarity of the applicability of the wet-end process vent requirements versus the applicability of discarded process wastewater vent requirements. Based on the definitions for "wet-end process vent," "wastewater," and "process wastewater," applicability of requirements appeared to be clear. However, to avoid any potential applicability confusion, the final standards include an amended definition for "wet-end process vent" that specifically clarifies that discarded water that is no longer used in the production process is considered to be process wastewater and that vents from process and maintenance wastewater

operations are not wet-end process vents.

Annual emissions. One commenter stated that the MACT floor determination for Andrussow/BMA process vents was based on annual emissions and the proposed standards require compliance with the floor level of control based on a formula that calculates an overall HAP emission reduction based on hourly emission

allowed to designate "unsafe-to-monitor" equipment with your Notification of Compliance Status report. If it is demonstrated to the Administrator's satisfaction that designated equipment is never safe to monitor, you would not be required to monitor the designated equipment.

4. Hydrogen Fueled Flares

Destruction efficiency. One

evaluation of the comments, we have included provisions in the final standards that allow an owner or operator to submit engineering calculations and/or data to substantiate that flares meet applicable heat content and flow rates under worst case conditions (40 CFR 63.987(b)(3)(v) and (4)).

IV. Carbon Black Production

3. What Are the Non-Air Health, Environmental, and Energy Impacts?

We believe that there will not be any significant adverse non-air health, environmental or energy impacts associated with the final NESHAP. This is supported by impacts analyses associated with the application of control and recovery devices required under the final NESHAP.

There are no water pollution or solid

to prevent fires and explosions, and to prevent loss of compartments. The commenter explained that a typical pressure relief device used in carbon black production does not seal 100 percent, but that the process emits very small amounts of HAP, and single bag failure results in emissions that lead to opacity exceedances.

We evaluated the commenter's concerns and request for exemption from closed vent system inspection

nsrmemos/pcpguide.pdf), we indicated that add-on controls and fuel switches to less polluting fuels may qualify for an exclusion from major NSR as a PCP. To be eligible to be excluded from otherwise applicable major NSR requirements, a PCP must, on balance, be "environmentally beneficial," and the permitting authority must ensure that the project will not cause or contribute to a violation of the national ambient air quality standards (NAAQS)

operations are not wet-end process vents.

Annual emissions. One commenter stated that the MACT floor determination for Andrussow/BMA process vents was based on annual emissions and the proposed standards require compliance with the floor level of control based on a formula that calculates an overall HAP emission reduction based on hourly emission rates. The commenter requested that compliance be based on meeting the proposed weight-percent reduction on an annual basis to be consistent with the MACT floor. The commenter also requested that Item 2 of Table 9 be modified as follows:

a. Reduce the overall annual emission of total HAP from the collection of process vents from continuous unit operations in the process unit by 99 weight-percent in accordance with paragraph (g)(4) of this section.

We agree that the MACT floor for Andrussow/BMA process vents was based on annual emissions and, therefore, compliance with MACT should also be based on annual emissions. We have amended the final standards (Item 2 of Table 9 of § 63.1103(g)) as suggested by the commenter.

3. Unsafe-to-Monitor Equipment

Two commenters expressed safety concerns with the proposed leak detection and repair (LDAR) provisions. It was expressed that many of the lines in HCN service are intentionally placed in out-of-the-way locations to minimize risk in the event of a leak. One commenter requested that we either exempt "unsafe-to-monitor" equipment components from the LDAR program or stay implementation of these requirements to allow adequate opportunity to investigate safer methods than those proposed. The commenter explained that a large percentage of pipeline components in HCN service that would be subject to the proposed LDAR provisions are elevated and are not accessible during operation due to safety concerns. The commenter stated that facilities already have procedures in place to ensure that there are no leaks when equipment is in HCN service. Industry feedback indicates that HCN equipment is unsafe to monitor at all times that equipment is in operation.

Based on our evaluation of the comments received regarding safety concerns with the proposed LDAR provisions, we concur that there are some equipment components that may never be safe to monitor. Therefore, we have added language to the final standards specifying that you are allowed to designate "unsafe-to-monitor" equipment with your Notification of Compliance Status report. If it is demonstrated to the Administrator's satisfaction that designated equipment is never safe to monitor, you would not be required to monitor the designated equipment.

4. Hydrogen Fueled Flares

Destruction efficiency. One commenter expressed that a 99%+ destruction efficiency is supported for hydrogen flares based on data included in the EPA's "Basis for Hydrogen Flaring" report. The commenter stated that these data were based on test methods developed with the EPA and a special flare test-rig built for the experiment.

Another commenter requested that we add language to 40 CFR 63.1103(g)(4)(ii)(B) to allow an owner or operator of a cyanide manufacturing facility to include a flare control efficiency greater than 98% in the calculation of the overall HAP emission reduction, provided they can demonstrate a higher control efficiency based on technically relevant measurements that are of sufficient quality, considering data variability.

We agree with the commenters that an owner or operator of a cyanide manufacturing facility should be allowed to include a flare control efficiency greater than 98% in the calculation of their overall HAP emission reduction provided they can demonstrate a higher control efficiency for their flare. Therefore, the final standards allow an owner or operator to include a flare control efficiency greater than 98% in the calculation of their overall HAP emission reduction if they can demonstrate, to the Administrator's satisfaction, a greater control efficiency (40 CFR 63.1103(g)(4)(ii)(A)).

Flare compliance monitoring requirements. Several commenters recommended that a waiver from testing for all HCN flares be granted. Specifically, one commenter requested a waiver from testing of the net heating value using EPA Method 18, and two commenters requested that a waiver from testing the velocity, using EPA Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, be granted (40 CFR 63.11(b)(6)(ii) and (7)(i), respectively). One commenter expressed that flow velocity testing using EPA Method 2, 2A, 2C, 2D, or 2G of 40 CFR part 60, appendix A, require the insertion of a probe into the waste gas stream which poses safety risks.

Based on comments received regarding it being unsafe to test HCN-rich vent streams to flares, and our evaluation of the comments, we have included provisions in the final standards that allow an owner or operator to submit engineering calculations and/or data to substantiate that flares meet applicable heat content and flow rates under worst case conditions (40 CFR 63.987(b)(3)(v) and (4)).

IV. Carbon Black Production

A. Summary of Environmental, Energy, Cost, and Economic Impacts

1. What Are the Air Quality Impacts?

We estimate that the final NESHAP will reduce HAP emissions by 1,830 Mg/yr (2,020 tpy). This is a 26 percent HAP emission reduction from the total baseline HAP emissions, and a 95 percent HAP emission reduction for those facilities required to install controls to meet the standards.

We estimate that the final NESHAP will reduce CO emissions by 474,000 Mg/yr (522,000 tpy); VOC by 16,900 Mg/yr (18,600 tpy); hydrogen sulfide by 10,300 Mg/yr (11,300 tpy); and PM by 740 Mg/yr (820 tpy). We estimate that the final NESHAP will increase SO_X emissions by 32,900 Mg/yr (36,200 tpy) as a result of on-site combustion of fossil fuels. However, the air quality benefits of the final NESHAP (i.e., reduction in HAP, CO, VOC, and hydrogen sulfide emissions) outweigh the negative impacts associated with the anticipated increases in emissions of SO_X and NO_X.

2. What Are the Cost and Economic Impacts?

The total estimated capital cost of the final NESHAP is $54.9 million. The total estimated annual cost of the final NESHAP is $11.2 million. These costs represent fourth quarter 1998 dollars.

We prepared an economic impact analysis to evaluate the impacts the final NESHAP will have on the industry, market, consumers, and society. The total annualized social cost (in 1997 dollars) of the final NESHAP to the industry is $11.2 million, which is less than 0.001 percent of total baseline revenue for the affected sources. A screening analysis suggests only one of the firms affected by the final NESHAP will experience costs in excess of 1 percent of sales, and no firm will experience costs in excess of 1.5 percent of sales. For this reason, we believe that the impact of the final NESHAP will be minimal. We expect no facility closures as a result of the final NESHAP.

3. What Are the Non-Air Health, Environmental, and Energy Impacts?

We believe that there will not be any significant adverse non-air health, environmental or energy impacts associated with the final NESHAP. This is supported by impacts analyses associated with the application of control and recovery devices required under the final NESHAP.

There are no water pollution or solid waste impacts expected from the use of air emission control devices as a result of the final NESHAP. An increase in energy consumption will result from the use of combustion control systems. We estimate that carbon black production facilities will consume an additional 186 million cubic feet of natural gas per year to meet the regulatory requirements of the final NESHAP. This represents an increase in total domestic natural gas consumption of less than 1/100th of one percent.

B. Summary of Major Comments and Changes Since Proposal

In response to comments received on the proposed standards for the Carbon Black Production source category, we made several changes to the final NESHAP. Only one substantive change was made based on comments received on the proposal. We have summarized the relevant comment/change made in the following paragraphs. Our complete responses to public comments are contained in a memorandum that can be obtained from the docket (see **ADDRESSES** section).

One commenter requested an exemption from the closed vent system initial and annual closed vent system inspection requirements. The commenter expressed that certain safety features are incorporated into their closed vent system operations to protect against overpressure in the case of catastrophic failure of their process filter systems. Concern was expressed that the proposed initial and annual closed vent system inspection requirements may defeat these safety measures because cost-effective technology to provide leak proof seals for the extreme operating temperature ranges that occur in the carbon black production process is not available. The commenter explained that the catastrophic loss of a bag filter due to gaseous build-up and failure can result in ignition of gases, fires, and explosions. In order to prevent the failure of the compartments, industry isolates the failed compartment from the process. Safety relief valves (e.g., weighted-lid systems) are designed into the system to relieve excess pressures, to prevent fires and explosions, and to prevent loss of compartments. The commenter explained that a typical pressure relief device used in carbon black production does not seal 100 percent, but that the process emits very small amounts of HAP, and single bag failure results in emissions that lead to opacity exceedances.

We evaluated the commenter's concerns and request for exemption from closed vent system inspection requirements for specified pressure relief devices used to protect against overpressure in the case of catastrophic failure of their process filter systems. Based on safety concerns and technology considerations, we have included provisions in the final NESHAP that exempt pressure relief devices that meet specified criteria (i.e., devices used to protect against overpressure in the case of catastrophic failure of the process filter system) from the closed vent system inspection requirements of 40 CFR 63.983(b) and (c). The final NESHAP require that exempted pressure relief devices meeting criteria specified in the NESHAP be identified in your Notification of Compliance Status report.

C. New Source Review/Prevention of Significant Deterioration Applicability

A question arose concerning the potential installation of cogeneration technology at carbon black plants which would recover waste heat and gas for use as a fuel input for power generation. This technology could potentially be used to meet the HAP control requirements of the NESHAP. However, cogeneration may result in NO_X emissions during normal operation. If NO_X emission increases are great enough, they may trigger the need for preconstruction permits under the nonattainment new source review (NSR) or prevention of significant deterioration (PSD) program. It is possible, however, that we could consider the application of cogeneration technology to be a pollution control project (PCP), as defined within the context of PSD and NSR, such that cogeneration facilities installed as a result of the NESHAP would qualify for an exemption from NSR/PSD.

In 1992, we adopted an explicit PCP exclusion for electric utility steam generating units (57 FR 32314). In a July 1, 1994, guidance memorandum, we provided guidance to permitting authorities on the approvability of PCP exclusions for source categories other than electric utilities. In that guidance (available at *http://www.epa.gov/rgytgrnj/programs/artd/air/nsr/nsrmemos/pcpguide.pdf*), we indicated that add-on controls and fuel switches to less polluting fuels may qualify for an exclusion from major NSR as a PCP. To be eligible to be excluded from otherwise applicable major NSR requirements, a PCP must, on balance, be "environmentally beneficial," and the permitting authority must ensure that the project will not cause or contribute to a violation of the national ambient air quality standards (NAAQS) or PSD increment, or adversely affect visibility or other air quality related values (AQRV) in a Class I area, and that offsetting reductions are secured in the case of a project which would result in a significant increase of a nonattainment pollutant. The permitting authority can make these determinations outside of the major NSR process. The 1994 guidance did not supercede existing NSR requirements, including approved State NSR programs, nor void or create an exclusion from any applicable minor source preconstruction review requirements in an approved State implementation plan (SIP). Any minor NSR permitting requirements in a SIP would continue to apply, regardless of any exclusion from major NSR that might be approved for a source under the PCP exclusion policy.

We believe that the current guidance on the PCP exclusion adequately provides for the possible exemption from major NSR for cogeneration technology resulting from the NESHAP. Permitting authorities should follow that guidance to the extent allowed under the applicable SIP in order to determine whether the installation of cogeneration technology in a given circumstance qualifies as a PCP. Projects that qualify for the exclusion would be covered under minor source regulations in the applicable SIP, and permitting authorities would be expected to provide adequate safeguards against NAAQS and increment violations and adverse impacts on AQRV in Federal Class I areas. Only in those areas where potential adverse impacts cannot be resolved through the minor NSR programs or other mechanisms would major NSR apply.

V. Ethylene Production

A. Summary of Environmental, Energy, Cost, and Economic Impacts

Environmental, energy, cost, and economic impacts were estimated for the proposed ethylene production NESHAP. No changes have been made to the provisions for process vents, storage vessels, transfer operations, or equipment leaks that would affect these estimates. The changes that were made

to the waste and heat exchange system requirements did not materially change the estimated impacts. The changes generally refined the NESHAP provisions and made them consistent with the basis of the original estimates; therefore, the impacts estimates have not been revised.

Specifically, the original estimates of impacts associated with heat exchange system requirements were estimated to NESHAP requirements to manage and treat waste streams. No adverse economic impact is expected and no significant adverse non-air health, environmental, or energy impacts are expected to result from compliance with the ethylene production NESHAP.

B. Summary of Major Comments and Changes Since Proposal

Comments on the proposed NESHAP

10 Mg/yr, and benzene concentrations of at least 10 parts per million by weight (ppmw). In addition to the standard control requirements, the Benzene Waste Operations NESHAP includes three compliance options that allow a facility to chose which streams to manage and treat as long as certain conditions are met: either the TAB quantity for the untreated waste streams cannot exceed 2 Mg/yr, the facility TAB

compliance options in the Ethylene Production NESHAP.

10 Mg/yr applicability cut-off. Under the proposed NESHAP, all ethylene production facilities that are major sources of HAP emissions, including those with a TAB quantity less than 10 Mg/yr, would have been required to comply with the waste management and treatment requirements. Facilities with a TAB quantity less than 10 Mg/yr are not currently required to comply with the

facility is already 6 Mg/yr or less, no streams would have to be managed and treated, which is not consistent with the MACT floor level of control. Requiring facilities to comply with the standard requirements of the Benzene Waste Operations NESHAP would also not be appropriate because it may require the facilities to treat intermittent streams which are generally not controlled by the best-performing facilities that form the basis of the MACT floor.

containing less than 10 ppmw of benzene is not required to be managed and treated. Under the proposed Ethylene Production NESHAP, streams containing less than 10 ppmw total HAP would not have been required to be managed and treated. Similarly, the Benzene Waste Operations NESHAP require streams to be treated to reduce benzene to 10 ppmw or by 99 percent while the proposed Ethylene Production NESHAP would have required streams

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to the waste and heat exchange system requirements did not materially change the estimated impacts. The changes generally refined the NESHAP provisions and made them consistent with the basis of the original estimates; therefore, the impacts estimates have not been revised.

Specifically, the original estimates of impacts associated with heat exchange system requirements were estimated to be minimal because the proposed NESHAP would have required monthly monitoring which is already being performed by most facilities. As pointed out by several comments, most facilities are not testing at the inlet and outlet of each heat exchanger, as required in the proposed NESHAP, and such a requirement would result in increased compliance costs. However, this requirement has been removed from the NESHAP, making the requirements consistent with the basis of the original impacts assessment.

Although the requirements for waste have been significantly revised, they remain consistent with the basis for the original impacts assessment. The original assessment was based on the assumption that facilities with a total annual benzene (TAB) quantity less than 10 Mg/yr would have to add equipment to manage and treat waste streams. The revised waste requirements maintain this requirement. For facilities with a TAB quantity greater than 10 Mg/yr, the majority of comments regarding the impacts estimated for waste concerned the fact that costs were not included for facilities that will have to add equipment to manage and treat streams that were previously uncontrolled due to a compliance option. The revised NESHAP allow facilities to use the compliance options; therefore, it is not necessary to revise the impacts assessment.

The estimates of environmental, energy, cost, and economic impacts, which have not been revised, are presented in detail in the preamble for the proposed ethylene production NESHAP (65 FR 76433, December 6, 2000). In summary, it is estimated that the NESHAP will decrease HAP emissions by 60 percent or 992 Mg/yr (1,090 tpy) and VOC emissions by 64 percent or 9,271 Mg/yr (10,188 tpy). The annual cost (including amortized capital costs, operating and maintenance costs, and recovery credits) is estimated to range from $7,600 per year for facilities already managing and treating their waste according to the Benzene Waste Operations NESHAP to $1.3 million per year for facilities with a TAB quantity less than 10 Mg/yr that are not currently subject to the Benzene Waste Operations NESHAP requirements to manage and treat waste streams. No adverse economic impact is expected and no significant adverse non-air health, environmental, or energy impacts are expected to result from compliance with the ethylene production NESHAP.

B. Summary of Major Comments and Changes Since Proposal

Comments on the proposed NESHAP were received from ten different entities. A comprehensive summary of public comments can be found in the document entitled "National Emission Standards for Hazardous Air Pollutants—Ethylene Production, Background Information Document for Final Standards, Summary of Public Comments and Responses" (the ethylene production NESHAP BID). The BID contains summaries of all of the comments received with corresponding responses that describe all of the changes that have been made to the NESHAP.

The most significant comments concerned three emission types: waste, heat exchange systems, and equipment leaks. These comments also resulted in the most significant changes to the proposed NESHAP. The following sections summarize the comments received and changes that have been made regarding waste, heat exchange systems, and equipment leaks.

1. Waste Operations

Several commenters disagreed with the determination of MACT for waste for a variety of reasons. Generally, commenters argued that the MACT floor should be based on the Benzene Waste Operations NESHAP. As such, commenters viewed our proposed requirements as more stringent than the MACT floor, which they stated are not justified. Commenters mainly disagreed with the fact that the proposed waste requirements did not include the 1, 2, and 6 Mg/yr compliance options, the 10 Mg/yr TAB quantity applicability cut-off, and applicability and treatment requirements based on benzene. We considered each of the specific issues and came to the conclusions discussed in the following sections.

Compliance options. At proposal, we determined that the standard requirements of the Benzene Waste Operations NESHAP represented the MACT floor for both new and existing ethylene sources. The standard Benzene Waste Operations NESHAP requirements state that facilities with 10 Mg/yr or greater TAB quantity must control waste streams that have flow rates of at least 0.02 liters per minute (lpm), wastewater quantities of at least 10 Mg/yr, and benzene concentrations of at least 10 parts per million by weight (ppmw). In addition to the standard control requirements, the Benzene Waste Operations NESHAP includes three compliance options that allow a facility to chose which streams to manage and treat as long as certain conditions are met: either the TAB quantity for the untreated waste streams cannot exceed 2 Mg/yr, the facility TAB quantity for treated and untreated process wastewater streams is less than 1 Mg/yr, or the facility TAB quantity for all waste streams with at least 10 percent water content is less than 6 Mg/yr. These options are referred to as the 1, 2, and 6 Mg/yr compliance options. The waste or wastewater streams that can be exempted from management and treatment vary with the different compliance options. Details of these compliance options are specified in 40 CFR 61.342(c), (d), and (e) of the Benzene Waste Operations NESHAP.

Commenters disagreed with the fact that the compliance options were not included in the waste requirements for the proposed Ethylene Production NESHAP. Generally, the commenters argued that the compliance options have been found to be equivalent to the standard requirements of the Benzene Waste Operations NESHAP, through development of the Benzene Waste Operations NESHAP and the waste standards for the Petroleum Refineries NESHAP and, therefore, should be included. The commenters also noted that three of the five best performing facilities are using a compliance option.

Since proposal of the Ethylene Production NESHAP, we have obtained information on which facilities are using compliance options and what streams they are controlling. Our general finding is that, regardless of how a facility is complying with the Benzene Waste Operations NESHAP, facilities typically control continuous streams, and facilities tend not to control intermittent streams. Examples of streams that are typically not controlled are samples and maintenance waste (both during normal operations and turn-arounds). The fact that the same types of streams are typically being controlled, regardless of whether a facility is complying with the standard requirements or a compliance option, supports the finding that the 1, 2 and 6 Mg/yr compliance options are equivalent to the standard Benzene Waste Operations NESHAP requirements (and to each other) in the level of control achieved at ethylene production facilities. Therefore, we have determined that it is appropriate to include the 1, 2, and 6 Mg/yr

compliance options in the Ethylene Production NESHAP.

10 Mg/yr applicability cut-off. Under the proposed NESHAP, all ethylene production facilities that are major sources of HAP emissions, including those with a TAB quantity less than 10 Mg/yr, would have been required to comply with the waste management and treatment requirements. Facilities with a TAB quantity less than 10 Mg/yr are not currently required to comply with the management and treatment requirements of the Benzene Waste Operations NESHAP. Commenters argued that because the Benzene Waste Operations NESHAP represents the floor, the 10 Mg/yr applicability cut-off should be included in the Ethylene Production NESHAP. Commenters cited the Petroleum Refineries NESHAP as a precedent, noting that the Benzene Waste Operations NESHAP was determined to represent the MACT floor for waste control at petroleum refineries and the Petroleum Refineries NESHAP does not require control of waste at sources with a TAB quantity less than 10 Mg/yr.

Review of the practices in use at the five best performing ethylene production facilities (representing 12 percent of the industry) shows that four of the five are subject to and, therefore, are assumed to be complying with the management and treatment requirements of the Benzene Waste Operations NESHAP. Only one of the best performing facilities is not required to comply with the management and treatment requirements of the Benzene Waste Operations NESHAP because the TAB quantity for the facility is less than 10 Mg/yr. Exempting facilities with a TAB quantity less than 10 Mg/yr from management and treatment requirements would not reflect the level of control achieved by the average of the five best-performing facilities.

We have determined that the MACT floor for waste includes the management and treatment of waste streams from ethylene production, regardless of a facility's TAB quantity. However, using the Benzene Waste Operations NESHAP stream applicability requirements to determine which streams must be controlled at facilities with a TAB quantity less than 10 Mg/yr may not be appropriate. The 1, 2, and 6 Mg/yr compliance options are not appropriate because their use at a facility with a TAB quantity less than 10 Mg/yr could result in no waste streams being controlled. For example, the 6 Mg/yr option allows a facility to choose which streams to manage and treat as long as the TAB quantity for all streams is less than 6 Mg/yr. If the TAB quantity for the facility is already 6 Mg/yr or less, no streams would have to be managed and treated, which is not consistent with the MACT floor level of control. Requiring facilities to comply with the standard requirements of the Benzene Waste Operations NESHAP would also not be appropriate because it may require the facilities to treat intermittent streams which are generally not controlled by the best-performing facilities that form the basis of the MACT floor determination.

We have determined that the most appropriate way to require facilities with a TAB quantity less than 10 Mg/yr to achieve the level of control achieved by the best-performing facilities is to specify the streams that must be controlled. Data received since proposal indicate that the best performing ethylene facilities control two types of streams as part of their Benzene Waste Operations NESHAP compliance strategy: (1) Spent caustic streams (wastes from the caustic washing process to remove sulfur compounds and other contaminants from the process stream), and (2) dilution steam blowdown streams (condensed steam used to quench the cracked gas condensates). We have determined that it is appropriate to apply the flow rate and concentration control applicability cut-offs in the standard requirements of the Benzene Waste Operations NESHAP to these streams. The best-performing facilities are generally not controlling intermittent streams.

Based on this information, the Ethylene Production NESHAP have been revised to require that facilities with a TAB quantity less than 10 Mg/yr manage and treat, according to the requirements of the Benzene Waste Operations NESHAP, each spent caustic and dilution steam blowdown waste stream with a benzene concentration greater than or equal to 10 ppmw, a flow rate greater than or equal to 0.02 lpm, and an annual wastewater quantity greater than or equal to 10 Mg/yr. The control requirements for these streams apply at all times except during periods of startup, shutdown, and malfunction (SSM), if the SSM precludes the ability to comply and the facility follows the provisions of their SSM plan.

Benzene as a surrogate. One modification made to the Benzene Waste Operations NESHAP requirements for the proposed Ethylene Production NESHAP waste requirements was to base the requirements on total HAP rather than benzene. For example, in the standard requirements of the Benzene Waste Operations NESHAP, a stream containing less than 10 ppmw of benzene is not required to be managed and treated. Under the proposed Ethylene Production NESHAP, streams containing less than 10 ppmw total HAP would not have been required to be managed and treated. Similarly, the Benzene Waste Operations NESHAP require streams to be treated to reduce benzene to 10 ppmw or by 99 percent while the proposed Ethylene Production NESHAP would have required streams to be treated to reduce total HAP to 10 ppmw or by 99 percent.

Several commenters disagreed with EPA's decision to base applicability and treatment requirements on total HAP rather than benzene. Commenters argued that because they are currently treating wastes based on benzene concentration, the requirement to treat wastes based on total HAP concentration is an above-the-floor option. The commenters stated that existing treatment systems are not likely to be capable of treating to the more stringent standards based on total HAP. Commenters stated that although the additional costs would be significant, the additional emission reductions would be minimal because benzene is generally an appropriate surrogate for HAP, and little additional emission reduction would be achieved.

Our original intent in proposing stream applicability and treatment requirements on total HAP content rather than benzene content was to ensure that streams containing HAP other than benzene are treated and controlled. We maintain that because compliance with the Benzene Waste Operations NESHAP represents the MACT floor and results in control of HAP other than benzene, the MACT floor includes control of HAP other than benzene. However, we have determined that it is not necessary to base stream applicability and treatment requirements on total HAP to ensure that all HAP are managed and treated. Information obtained through survey responses and comments shows that, with few exceptions, all of the waste streams from ethylene production units that contain HAP contain benzene. According to commenters (Docket A–98–22), of all the waste streams generated by 33 ethylene manufacturing production units, only two do not contain benzene but contain other HAP. One stream is generated from a reflux drum on a debutanizer column. The stream contains 1,3-butadiene and has a flow rate of 2 gallons per minute. The other stream is an intermittent stream that is generated during turnarounds that contains naphthalene. Applying the finding that the best-performing

facilities generally control continuous streams but not intermittent streams, either due to flow rate and concentration cut-offs or use of a compliance option, we have determined that controlling the continuous 1,3-butadiene stream, but not the naphthalene turnaround stream, is consistent with the MACT floor. To ensure that continuous streams that contain HAP other than benzene are

practicable alternative, which would require that the discharger actively supervise the activities of the offsite treatment facility. The certification provisions are similar to the requirements of 40 CFR part 63, subpart G (the Hazardous Organic NESHAP), and will pose no unreasonable burden on the generators or receivers of the waste.

2. Heat Exchange Systems

stated that such a requirement would ensure a level of performance comparable to the Hazardous Organic NESHAP and would provide facilities flexibility to tailor a monitoring program to their unique circumstances. The commenter explained that one facility may choose to sample the combined cooling water flow from many heat exchangers using a test method with a relatively low detection limit, while another may sample the flow from fewer

equivalent to the floor and will provide an incentive for greater emissions reductions while minimizing monitoring burden.

The final rule requires monthly monitoring for the first 6 months. If no leaks are detected during this period, then the monitoring frequency changes to quarterly. If a leak is subsequently detected, then monthly monitoring is required until the leak is repaired. After the leak is repaired, then monthly

the approach EPA used to determine the MACT floor, stating that HAP emissions from uncontrolled connectors are overestimated due to an inaccurate emission factor. One commenter (Docket A–98–22) provided an alternate emission factor based on data that they gathered from ethylene production units. According to the commenter, when their emission factor is used in the MACT floor analysis, it results in a different five best-performing facilities.

MACT floor. We do not believe that the available data support the commenters' conclusion that connector monitoring should not be included in the MACT floor. However, in consideration of the data submitted by the industry, we elected to require compliance with 40 CFR part 63, subpart UU, National Emission Standards for Equipment Leaks, which requires connector monitoring, but also allows for reduced monitoring frequency for good

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facilities generally control continuous streams but not intermittent streams, either due to flow rate and concentration cut-offs or use of a compliance option, we have determined that controlling the continuous 1,3-butadiene stream, but not the naphthalene turnaround stream, is consistent with the MACT floor. To ensure that continuous streams that contain HAP other than benzene are controlled, while at the same time minimizing the burden of identifying these streams, we are specifically requiring management and treatment of waste streams that contain greater than or equal to 10 ppmw of 1,3-butadiene. To ensure that this requirement does not result in the control of intermittent streams that are generally not controlled, the flow rate applicability cutoffs for benzene-containing streams (0.02 lpm or 10 Mg/yr wastewater quantity) also applies to the butadiene streams.

We have determined that it is not necessary to express the treatment requirements in terms of total HAP. We agree with commenters that treatment and control devices used to remove or destroy benzene will remove and destroy the other HAP regulated by this rule to approximately the same level. Benzene can be used as a surrogate to determine treatment and control efficiencies. If no benzene is present in a regulated stream, another HAP (such as 1,3-butadiene) must be used to show that treatment and control efficiencies required for benzene are achieved for that HAP. In such cases, compliance can also be demonstrated by routing the stream to a control device that is being used to comply with the Benzene Waste Operations NESHAP.

Off-site waste treatment. Some facilities send their regulated wastes off-site for treatment by another entity. The proposed rule specified that wastes must not be transferred unless the transferee has submitted to EPA a certification that they will manage and treat the waste in accordance with the rule and that they accept the responsibility for compliance. Several commenters stated that the certification requirements should be deleted.

The final rule retains the certification requirements. The discharger has the ultimate responsibility for assuring that waste transferred to another party for off-site treatment is treated in conformity with the applicable standard. The transferee is acting as the agent of the discharger when it accepts responsibility for treating the waste. The provisions in the proposal requiring certification by the transferee are less onerous for the discharger than the only practicable alternative, which would require that the discharger actively supervise the activities of the offsite treatment facility. The certification provisions are similar to the requirements of 40 CFR part 63, subpart G (the Hazardous Organic NESHAP), and will pose no unreasonable burden on the generators or receivers of the waste.

2. Heat Exchange Systems

Sampling location. The proposed Ethylene Production NESHAP included requirements to sample cooling water at the inlet and outlet of each heat exchanger for the presence of compounds that indicate a leak. Sampling at each heat exchanger was required to address the fact that cooling water circulation rates through ethylene production units tend to be relatively high. Obtaining only one inlet and outlet sample for the entire system (for example, at the cooling tower) could result in a leak not being detected because the concentration of the leaked compound could be lower that the detection limit of the testing method used.

Several commenters argued that the requirement does not reflect the floor level of control, stating that none of the best-performing facilities are required to test at the inlet and outlet of every heat exchanger. These commenters argued that such a requirement would be an above-the-floor option that is not cost effective. Several commenters provided estimates of the additional costs associated with sampling and testing at each heat exchanger. The estimated annualized costs provided by the commenters ranged from $60,000 to $1.2 million per year for a single ethylene production unit.

One commenter suggested an approach for addressing the circulation rate issue. The commenter based the suggestion on the assumptions that: (1) The requirements of the Hazardous Organic NESHAP result in an adequate level of leak detection, and (2) the circulation rate of cooling water through an ethylene production unit is eight times the circulation rate through a Hazardous Organic NESHAP unit. Using these assumptions, the 1 ppmw leak definition of the Hazardous Organic NESHAP and the average of circulation rates reported for ethylene units in survey responses, the commenter estimated that a 6.35 pound per hour (lb/hr) leak rate would be detected at a Hazardous Organic NESHAP unit. The commenter suggested allowing facilities to decide where to test for leaks with the condition that a leak of this magnitude would be detected. The commenter stated that such a requirement would ensure a level of performance comparable to the Hazardous Organic NESHAP and would provide facilities flexibility to tailor a monitoring program to their unique circumstances. The commenter explained that one facility may choose to sample the combined cooling water flow from many heat exchangers using a test method with a relatively low detection limit, while another may sample the flow from fewer exchangers using a higher detection limit.

Based on information provided by commenters, we agree that requiring testing at the inlet and outlet of each heat exchanger does not represent the floor level of control. We find that the suggestion to allow facilities to develop a site-specific sampling plan based on performance comparable to the Hazardous Organic NESHAP would represent the floor. We have reviewed and agree with the commenter's suggested approach for establishing the floor level sampling plan based on a specified leak detection limit, with one exception. We adjusted the calculation to correct an error in calculating the average circulation rate, which resulted in a leak rate that must be detected of 6.75 lb/hr. Going beyond the floor to the proposed testing requirement would impose costs that are unreasonable given the small emissions reductions that would be achieved. The final rule allows the use of any sampling location plan that is sufficiently sensitive to detect a leak rate of 6.75 lb/hr.

Monitoring frequency. Commenters expressed concern that the proposed rule did not allow reduced heat exchanger monitoring frequency for sustained good performance, which is allowed in other LDAR programs. One of the commenters suggested that we adopt the Hazardous Organic NESHAP requirements for heat exchanges, which start with monthly monitoring and then allow quarterly monitoring. We agree with these comments in general. The floor for heat exchangers is an LDAR program with monthly monitoring. We recognize, however, that the emission performance of LDAR programs is variable and is influenced by a number of site-specific factors. We believe that providing an incentive in the final rule for reduced monitoring will encourage facilities to undertake measures to diagnose the causes of leaks and reduce the frequency of occurrence. Accordingly, the final rule includes a provision for reduced monitoring for units with sustained good performance in preventing leaks. This provision is generally consistent with the Hazardous Organic NESHAP, and we believe it is

equivalent to the floor and will provide an incentive for greater emissions reductions while minimizing monitoring burden.

The final rule requires monthly monitoring for the first 6 months. If no leaks are detected during this period, then the monitoring frequency changes to quarterly. If a leak is subsequently detected, then monthly monitoring is required until the leak is repaired. After the leak is repaired, then monthly monitoring is required for 6 months. If no leaks occur during this period, the monitoring frequency returns to quarterly.

Repair requirements. The proposed Ethylene Production NESHAP would have required a leak to be repaired within 15 days of being detected. Commenters stated that the best-performing facilities are not required to repair leaks within 15 days so this is an above-the-floor option. Commenters provided detailed comments on the steps and costs involved in repairing heat exchangers.

Our original intent in requiring repair in 15 days was to provide consistency with the repair requirements for other leaking components. Through the comments received in response to the proposed NESHAP, we have learned that repairing heat exchangers is different than repairing other types of leaking components. According to commenters, to repair a heat exchanger, it must be shut down, isolated from the process, cleaned, opened, tested to find the leak(s), and repaired. The commenters added that removing an exchanger from service often requires a unit to be shutdown. Commenters provided the contrasting example of a leaking valve, for which packing and flange bolts can often simply be tightened externally or, in extreme cases, can be externally pumped with a sealant or clamped to repair. Based on the information received in response to the proposed NESHAP, we agree that the 15-day repair period is more stringent than the floor and that the more stringent requirement is not reasonable because it does not allow adequate time for repair. We have determined that a 45-day repair period represents the floor. This is the repair period allowed by the Hazardous Organic NESHAP. In addition to extending the repair period to 45 days, we have revised the repair and delay of repair provisions to be consistent with the Hazardous Organic NESHAP.

3. Equipment Leaks

The proposed Ethylene Production NESHAP required connector monitoring. Commenters disagreed with the approach EPA used to determine the MACT floor, stating that HAP emissions from uncontrolled connectors are overestimated due to an inaccurate emission factor. One commenter (Docket A–98–22) provided an alternate emission factor based on data that they gathered from ethylene production units. According to the commenter, when their emission factor is used in the MACT floor analysis, it results in a different five best-performing facilities, of which only two perform connector monitoring. Commenters asserted that connector monitoring is, therefore, not part of the floor. In addition, one commenter explained that their study shows that there is no statistically significant difference between the average emission rates for connectors being monitored for the first time and those that are monitored as part of a continuing monitoring program. Commenters also provided cost data to show that some facilities will incur high costs to monitor connectors with no statistically measurable emissions benefit.

Due to uncertainties regarding connector emission factors used in the original MACT floor analysis, we performed an analysis using an emission factor provided by a commenter; however, this does not mean that we have accepted the commenter's emissions factor as a more accurate estimator of connector emissions (Docket A–98–22). The objective of the analyses was to determine the impact using different connector emission factors would have on which facilities are determined to be the five best-performing sources. Although this analysis resulted in a slightly different five best-performing sources, the floor was the same, since three of the five facilities are monitoring connectors. Through this analysis, we have concluded that, regardless of the emission factor used, the majority of the best-performing facilities are performing connector monitoring.

We also conducted a study of the existing permits at certain facilities that had adopted permit conditions requiring 100 percent connector monitoring annually in exchange for emissions credits to be used for operational flexibility. In setting the MACT floor we found our knowledge of existing permit conditions compelling in terms of emissions benefits and therefore relevant in establishing the MACT floor. Certainly any monitoring worthy of conducting for the purpose of obtaining emissions credits was beneficial beyond cost.

Based on these analyses, we conclude that connector monitoring is part of the MACT floor. We do not believe that the available data support the commenters' conclusion that connector monitoring should not be included in the MACT floor. However, in consideration of the data submitted by the industry, we elected to require compliance with 40 CFR part 63, subpart UU, National Emission Standards for Equipment Leaks, which requires connector monitoring, but also allows for reduced monitoring frequency for good performance instead of annual monitoring. This provides the opportunity to reduce monitoring costs in cases where a low proportion of connectors are leaking. In offering a performance-based requirement for connector monitoring, we also have provided some consistency in approach with the heat exchanger and other equipment monitoring provisions.

VI. Spandex Production

A. Summary of Environmental, Energy, Cost, and Economic Impacts

1. What Are the Air Quality Impacts?

There are no additional emissions reductions achieved by the final NESHAP. The level of control required by the final NESHAP is already in place at the two affected reaction spinning facilities.

2. What Are the Cost Impacts?

The total estimated annual compliance cost of the final NESHAP is $78,040. This estimate includes annualized capital costs for monitoring equipment purchased. Annual costs also include monitoring, recordkeeping, and reporting costs. Costs were not included for control equipment since this is already in place at the two reaction spinning process facilities.

The capital costs are estimated to be $32,820 (in 1998 dollars). The capital costs are for purchase of thermocouples and liquid flow transducers for CPMS equipment and closed vent systems leak detection monitors. These costs are more than likely an overestimate because the two affected facilities already have monitors on their carbon adsorbers.

3. What Are the Economic Impacts?

The goal of the economic impact analysis is to estimate the market response of the spandex production facilities to the final NESHAP and to determine the economic effects that may result from the final NESHAP. The Spandex Production source category contains five facilities, but only the two facilities that use the reaction spinning process are affected by the final

NESHAP. These potentially affected facilities are owned by one company.

Spandex fiber production leads to potential HAP emissions from fiber spinning lines, storage tanks, and process vents; however, the emission sources are well controlled by the affected spandex manufacturing facilities. The mandated levels of control are met at these sources;

4. What Are the Non-Air Health, Environmental and Energy Impacts?

We believe that there would not be significant adverse environmental or energy impacts associated with the final NESHAP. The industry's baseline level of control is high, and the level of control required by the final NESHAP is currently being achieved for the emission point types. Environmental

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

pursuant to Executive Order 12866, EPA must include a certification from its federalism official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on

government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final

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NESHAP. These potentially affected facilities are owned by one company.

Spandex fiber production leads to potential HAP emissions from fiber spinning lines, storage tanks, and process vents; however, the emission sources are well controlled by the affected spandex manufacturing facilities. The mandated levels of control are met at these sources; therefore, no costs for additional add-on air pollution control equipment are expected to be incurred by the spandex facilities to comply with the final NESHAP. Instead, the compliance costs for the final NESHAP relate primarily to monitoring, reporting, and recordkeeping activities. The estimated total annualized cost for the final NESHAP is $78,040, which represents less than 0.01 percent of the revenues of the companies that own the spandex manufacturing facilities. The final NESHAP are, therefore, expected to have a negligible impact on the Spandex Production source category.

The economic impacts at the facility and company levels are measured by comparing the annualized compliance cost for each entity to its revenues. A cost-to-sales ratio is first calculated and then is multiplied by 100 to convert the ratio into percentages. For the final NESHAP, a cost-to-sales ratio exceeding 1 percent is determined to be an initial indicator of the potential for a significant facility impact. Revenues at the facility level are not available, therefore estimated facility revenues received from the sale of spandex fiber are used. Both affected facilities are expected to incur positive compliance costs. The ratio of costs to estimated revenues range from a low of 0.22 percent to a high of 0.35 percent. Thus, on average, the economic impact of the final NESHAP is minimal for the facilities producing spandex fibers.

The share of compliance costs to company sales are calculated to determine company level impacts. One company owns the two affected facilities, so only one firm faces positive compliance costs from the final NESHAP. The ratio of costs to company revenues is 0.10 percent. At the company level, the final NESHAP are not anticipated to have a significant economic impact on companies that own and operate the spandex fiber facilities. For more information, consult the economic impact analysis report entitled, Economic Impact Analysis: Spandex Production, which is in the docket for the spandex source category.

4. What Are the Non-Air Health, Environmental and Energy Impacts?

We believe that there would not be significant adverse environmental or energy impacts associated with the final NESHAP. The industry's baseline level of control is high, and the level of control required by the final NESHAP is currently being achieved for the emission point types. Environmental impacts from the application of the control or recovery devices proposed for the Spandex Production source category are also expected to be minimal for secondary air pollutants. In general, we determine impacts relative to the baseline that is set at the level of control in absence of the final NESHAP.

There is no incremental increase in emissions related to water pollution or solid waste as a result of the final NESHAP.

B. Summary of Major Comments and Changes Since Proposal

Comments on the proposed Spandex Production NESHAP were received from two different entities: the Institute of Clean Air Companies (ICAC) and Dupont. A summary and response to the general comments submitted can be found in Docket A–98–25.

Dupont's comments expressed concern that because the dry spinning spandex production process was not mentioned in the proposal, this could be interpreted as no standard for this source category and, as a result, these facilities would be subject to a case-by-case MACT determination. The discussion of this comment can be found in direct final amendments that are being published separately in this issue of the **Federal Register**.

VII. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a final regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's final rule is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million or more and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the rule. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a final rule with federalism implications to OMB for review

pursuant to Executive Order 12866, EPA must include a certification from its federalism official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No facilities subject to the final rule are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the final rule. Furthermore, EPA is directed to develop the final rule by section 112 of the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to the final rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final rule is not subject to Executive Order 13045 because it establishes an environmental standard based on technology, not health or safety risk. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, today's final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $22.2 million per year. The final rule contains no mandates affecting State, local, or Tribal governments. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires us to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. We must prepare a regulatory flexibility analysis unless we determine that the rule will not have a "significant economic impact on a substantial number of small entities." Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's final rule on small entities, a small entity is defined differently for the four source categories for which we are proposing standards. Based on those definitions, there are no small entities affected by the final rule. Pursuant to the provisions of 5 U.S.C. 605(b), we have determined that the final rule will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in today's final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No.

1893.03) and a copy may be obtained from Susan Auby by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until

EPA's authority to take administrative action would be reduced significantly.

The final rule requires owners or operators of affected sources to retain records for a period of 5 years. The 5-year retention period is consistent with the General Provisions of 40 CFR part 63 and with the 5-year record retention requirement in the operating permit program under title V of the CAA.

"Confidentiality of Business Information."

The EPA expects the final rule to affect a total of 75 facilities over the first 3 years. The EPA assumes that no new facilities will become subject to the rule during each of the first 3 years. The EPA expects 75 existing facilities to be affected by the final rule, and these existing facilities will begin complying in the third year.

The voluntary consensus standard, ASTM D1946–90 (2000), Standard Practice for Analysis of Reformed Gas by Gas Chromatography, is an acceptable method for measuring process vent emissions of carbon monoxide and hydrogen for the purposes of the final rule.

The search and review results have been documented and are placed in the Generic MACT docket (Docket No. A–97–17).

2. Part 63 is amended by adding a new subpart XX to read as follows:

Subpart XX—National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations

Sec.

Introduction

63.1060 What is the purpose of this subpart?

Table 2 to Subpart XX of Part 63—Requirements of 40 CFR Part 61, Subpart FF, Not Included in the Requirements for This Subpart and Alternate Requirements

Introduction

§ 63.1060 What is the purpose of this subpart?

This subpart establishes requirements for controlling emissions of hazardous air pollutants (HAP) from heat exchange

1893.03) and a copy may be obtained from Susan Auby by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

Information is required to ensure compliance with the final rule. If the relevant information were collected less frequently, EPA would not be reasonably assured that a source is in compliance with the rule. In addition, EPA's authority to take administrative action would be reduced significantly.

The final rule requires owners or operators of affected sources to retain records for a period of 5 years. The 5-year retention period is consistent with the General Provisions of 40 CFR part 63 and with the 5-year record retention requirement in the operating permit program under title V of the CAA.

The recordkeeping and reporting requirements of the final rule are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, "Confidentiality of Business Information."

The EPA expects the final rule to affect a total of 75 facilities over the first 3 years. The EPA assumes that no new facilities will become subject to the rule during each of the first 3 years. The EPA expects 75 existing facilities to be affected by the final rule, and these existing facilities will begin complying in the third year.

The estimated average annual burden for the first 3 years after promulgation of the rule for the industries and the implementing agency is outlined below. You can find the details of this information collection in the "Standard Form 83 Supporting Statement for ICR No. 1893.03," in Docket No. A–97–17.

Affected entity	Total hours	Labor costs (10^3)	Capital costs (10^3)	Operating and Maintenance costs (10^3)	Total costs (10^3)
Industry	33,926	1,510	4,901	16	6,427
Implementing agency	3,465	117	0	0	117

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following methods in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3B, 4, 18, 25, 25A, 27, 316, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 27, and 316. Three voluntary consensus standards were identified as acceptable alternatives to EPA test methods and procedures and are cited in the final rule.

The voluntary consensus standard, American Society of Mechanical Engineers (ASME) PTC 19–10–1981—Part 10, Flue and Exhaust Gas Analyses, is cited in the final rule for its manual method for measuring the oxygen content of exhaust gas. Part 10 of ASME PTC 19–10–1981 is an acceptable alternative to Method 3B.

The voluntary consensus standard, American Society for Testing and Materials (ASTM) D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in the rule in addition to EPA Methods. Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 where: (1) The target compounds are those listed in Section 1.1 of ASTM D6420–99, and (2) the target concentration is between 150 parts per billion by volume and 100 ppmv.

For target compounds not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compounds not listed in Table 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

The voluntary consensus standard, ASTM D1946–90 (2000), Standard Practice for Analysis of Reformed Gas by Gas Chromatography, is an acceptable method for measuring process vent emissions of carbon monoxide and hydrogen for the purposes of the final rule.

The search and review results have been documented and are placed in the Generic MACT docket (Docket No. A–97–17).

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2) and, therefore, will be effective on July 12, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding a new subpart XX to read as follows:

Subpart XX—National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations

Sec.

Introduction

63.1080 What is the purpose of this subpart?

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Applicability for Waste Requirements

63.1093 Does this subpart apply to my waste streams?

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Waste Requirements

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63.1096 What requirements must I comply with if I transfer waste off-site?

Implementation and Enforcement

63.1097 Who implements and enforces this subpart?

Tables to Subpart XX of Part 63

Table 1 to Subpart XX of Part 63—Hazardous Air Pollutants

Table 2 to Subpart XX of Part 63—Requirements of 40 CFR Part 61, Subpart FF, Not Included in the Requirements for This Subpart and Alternate Requirements

Introduction

§ 63.1080 What is the purpose of this subpart?

This subpart establishes requirements for controlling emissions of hazardous air pollutants (HAP) from heat exchange systems and waste streams at new and existing ethylene production units.

§ 63.1081 When must I comply with the requirements of this subpart?

You must comply with the requirements of this subpart according to the schedule specified in § 63.1102(a).

Definitions

§ 63.1082 What definitions do I need to know?

(a) Unless defined in paragraph (b) of this section, definitions for terms used in this subpart are provided in the Clean Air Act, § 63.1103(e), and 40 CFR 61.341.

(b) The following definitions apply to terms used in this subpart:

Continuous butadiene waste stream means the continuously flowing process wastewater from the following equipment: The aqueous drain from the debutanizer reflux drum, water separators on the C4 crude butadiene transfer piping, and the C4 butadiene storage equipment; and spent wash water from the C4 crude butadiene carbonyl wash system. The continuous butadiene waste stream does not include butadiene streams generated from sampling, maintenance activities, or shutdown purges. The continuous butadiene waste stream does not include butadiene streams from equipment that is currently an affected source subject to the control requirements of another NESHAP. The continuous butadiene waste stream contains less than 10 parts per million by weight (ppmw) of benzene.

Dilution steam blowdown waste stream means any continuously flowing process wastewater stream resulting from the quench and compression of cracked gas (the cracking furnace effluent) at an ethylene production unit and is discharged from the unit. This stream typically includes the aqueous or oily-water stream that results from condensation of dilution steam (in the cracking furnace quench system), blowdown from dilution steam generation systems, and aqueous streams separated from the process between the cracking furnace and the

cracked gas dehydrators. The dilution steam blowdown waste stream does not include dilution steam blowdown streams generated from sampling, maintenance activities, or shutdown purges. The dilution steam blowdown waste stream also does not include blowdown that has not contacted HAP-containing process materials.

Heat exchange system means any cooling tower system or once-through

(b) Your heat exchange system contains an intervening cooling fluid, containing less than 5 percent by weight of total HAP listed in Table 1 to this subpart, between the process and the cooling water. This intervening fluid must serve to isolate the cooling water from the process fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for

system according to the requirements of paragraph (a) of this section, monitoring each heat exchanger according to the requirements of paragraph (b) of this section, or monitoring a surrogate parameter according to the requirements of paragraph (c) of this section. If you elect to comply with the requirements of paragraph (a) or (b) of this section, you may use alternatives in paragraph (d)(1) or (2) of this section for determining the

exchange system cooling water using any method listed in 40 CFR part 136. Use the same method for both entrance and exit samples. You may validate 40 CFR part 136 methods for the HAP listed in Table 1 to this subpart according to the procedures in appendix D to this part. Alternative methods may be used upon approval by the Administrator.

(4) Take a minimum of three sets of samples at each heat exchanger entrance and exit.

(5) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the

determined according to the provisions of appendix D to this part. Alternative methods may be used upon approval by the Administrator.

(3) Take a minimum of three sets of samples at each heat exchanger entrance and exit.

(4) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the

provided in paragraph (c)(1)(iii)(A)(*1*) or (c)(1)(iii)(A)(*2*) of this section, as appropriate.

(1) If no leaks are detected, monitor quarterly thereafter until a leak is detected.

(2) If a leak is detected, monitor monthly until the leak has been repaired. Upon completion of repair, monitor according to the specifications in paragraph (c)(1)(iii)(A) of this section.

(B) Monitor the cooling water weekly

cracked gas dehydrators. The dilution steam blowdown waste stream does not include dilution steam blowdown streams generated from sampling, maintenance activities, or shutdown purges. The dilution steam blowdown waste stream also does not include blowdown that has not contacted HAP-containing process materials.

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water). A heat exchange system can include more than one heat exchanger and can include an entire recirculating or once-through cooling system.

Process wastewater means water which comes in contact with benzene or butadiene during manufacturing or processing operations conducted within an ethylene production unit. Process wastewater is not organic wastes, process fluids, product tank drawdown, cooling water blowdown, steam trap condensate, or landfill leachate. Process wastewater includes direct-contact cooling water.

Spent caustic waste stream means the continuously flowing process wastewater stream that results from the use of a caustic wash system in an ethylene production unit. A caustic wash system is commonly used at ethylene production units to remove acid gases and sulfur compounds from process streams, typically cracked gas. The spent caustic waste stream does not include spent caustic streams generated from sampling, maintenance activities, or shutdown purges.

Applicability for Heat Exchange Systems

§ 63.1083 Does this subpart apply to my heat exchange system?

The provisions of this subpart apply to your heat exchange system if you own or operate an ethylene production unit expressly referenced to this subpart XX from subpart YY of this part. The provisions of subpart A (General Provisions) of this part do not apply to this subpart except as specified in subpart YY of this part.

§ 63.1084 What heat exchange systems are exempt from the requirements of this subpart?

Your heat exchange system is exempt from the requirements in §§ 63.1085 and 63.1086 if it meets any one of the criteria in paragraphs (a) through (e) of this section.

(a) Your heat exchange system operates with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(b) Your heat exchange system contains an intervening cooling fluid, containing less than 5 percent by weight of total HAP listed in Table 1 to this subpart, between the process and the cooling water. This intervening fluid must serve to isolate the cooling water from the process fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(c) The once-through heat exchange system is subject to a National Pollution Discharge Elimination System (NPDES) permit with an allowable discharge limit of 1 part per million by volume (ppmv) or less above influent concentration, or 10 percent or less above influent concentration, whichever is greater.

(d) Your once-through heat exchange system is subject to a NPDES permit that meets all of the conditions in paragraphs (d)(1) through (4) of this section.

(1) The permit requires monitoring of a parameter or condition to detect a leak of process fluids to cooling water.

(2) The permit specifies the normal range of the parameter or condition.

(3) The permit requires monthly or more frequent monitoring for the parameters selected as leak indicators.

(4) The permit requires you to report and correct leaks to the cooling water when the parameter or condition exceeds the normal range.

(e) Your recirculating or once-through heat exchange system cools process fluids that contain less than 5 percent by weight of total HAP listed in Table 1 to this subpart.

Heat Exchange System Requirements

§ 63.1085 What are the general requirements for heat exchange systems?

Unless you meet one of the requirements for exemptions in § 63.1084, you must meet the requirements in paragraphs (a) through (d) of this section.

(a) Monitor the cooling water for the presence of substances that indicate a leak according to § 63.1086.

(b) If you detect a leak, repair it according to § 63.1087 unless repair is delayed according to § 63.1088.

(c) Keep the records specified in § 63.1089.

(d) Submit the reports specified in § 63.1090.

Monitoring Requirements for Heat Exchange Systems

§ 63.1086 How must I monitor for leaks to cooling water?

You must monitor for leaks to cooling water by monitoring each heat exchange system according to the requirements of paragraph (a) of this section, monitoring each heat exchanger according to the requirements of paragraph (b) of this section, or monitoring a surrogate parameter according to the requirements of paragraph (c) of this section. If you elect to comply with the requirements of paragraph (a) or (b) of this section, you may use alternatives in paragraph (d)(1) or (2) of this section for determining the mean entrance concentration.

(a) *Heat exchange system.* Monitor cooling water in each heat exchange system for the HAP listed in Table 1 to this subpart (either total or speciated) or other representative substances (e.g., total organic carbon or volatile organic compounds (VOC)) that indicate the presence of a leak according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) You define the equipment that comprises each heat exchange system. For the purposes of implementing paragraph (a) of this section, a heat exchange system may consist of an entire heat exchange system or any combinations of heat exchangers such that, based on the rate of cooling water at the entrance and exit to each heat exchange system and the sensitivity of the test method being used, a leak of 3.06 kg/hr or greater of the HAP in Table 1 to this subpart would be detected. For example, if the test you decide to use has a sensitivity of 1 ppmv for total HAP, you must define the heat exchange system so that the cooling water flow rate is 51,031 liters per minute or less so that a leak of 3.06 kg/hr can be detected.

(2) Monitoring periods. For existing sources, monitor cooling water as specified in paragraph (a)(2)(i) of this section. Monitor heat exchange systems at new sources according to the specifications in paragraph (a)(2)(ii) of this section.

(i) Monitor monthly for 6 months, both initially and following completion of a leak repair. Then monitor as provided in either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this section, as appropriate.

(A) If no leaks are detected by monitoring monthly for a 6-month period, monitor quarterly thereafter until a leak is detected.

(B) If a leak is detected, monitor monthly until the leak has been repaired. Upon completion of repair, monitor according to the specifications in paragraph (a)(2)(i) of this section.

(ii) Monitor the cooling water weekly for heat exchange systems at new sources.

(3) Determine the concentration of the monitored substance in the heat exchange system cooling water using any method listed in 40 CFR part 136. Use the same method for both entrance and exit samples. You may validate 40 CFR part 136 methods for the HAP listed in Table 1 to this subpart according to the procedures in appendix D to this part. Alternative methods may be used upon approval by the Administrator.

(4) Take a minimum of three sets of samples at each entrance and exit.

(5) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the 0.05 level of significance, if the exit mean concentration is at least 10 percent greater than the entrance mean, or a leak of 3.06 kg/hr or greater of the HAP (total or speciated) in Table 1 to this subpart or other representative substance into the cooling water is detected, you have detected a leak.

(b) *Individual heat exchangers.* Monitor the cooling water at the entrance and exit of each heat exchanger for the HAP in Table 1 to this subpart (either total or speciated) or other representative substances (e.g., total organic carbon or VOC) that indicate the presence of a leak in a heat exchanger according to the requirements in paragraphs (b)(1) through (4) of this section.

(1) Monitoring periods. For existing sources, monitor cooling water as specified in paragraph (b)(1)(i) of this section. Monitor each heat exchanger at new sources according to the specifications in paragraph (b)(1)(ii) of this section.

(i) Monitor monthly for 6 months, both initially and following completion of a leak repair. Then monitor as provided in paragraph (b)(1)(i)(A) or (b)(1)(i)(B) of this section, as appropriate.

(A) If no leaks are detected by monitoring monthly for a 6-month period, monitor quarterly thereafter until a leak is detected.

(B) If a leak is detected, monitor monthly until the leak has been repaired. Upon completion of repair, monitor according to the specifications in paragraph (b)(1)(i) of this section.

(ii) Monitor the cooling water weekly for heat exchangers at new sources.

(2) Determine the concentration of the monitored substance in the cooling water using any method listed in 40 CFR part 136, as long as the method is sensitive to concentrations as low as 10 ppmv. Use the same method for both entrance and exit samples. Validation of 40 CFR part 136 methods for the HAP listed in Table 1 to this subpart may be determined according to the provisions of appendix D to this part. Alternative methods may be used upon approval by the Administrator.

(3) Take a minimum of three sets of samples at each heat exchanger entrance and exit.

(4) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the 0.05 level of significance, if the exit mean concentration is at least 1 ppmv or 10 percent greater than the entrance mean, whichever is greater, you have detected a leak.

(c) *Surrogate parameters.* You may elect to comply with the requirements of this section by monitoring using a surrogate indicator of leaks, provided that you comply with the requirements of paragraphs (c)(1) through (3) of this section. Surrogate indicators that could be used to develop an acceptable monitoring program are ion specific electrode monitoring, pH, conductivity, or other representative indicators.

(1) You shall prepare and implement a monitoring plan that documents the procedures that will be used to detect leaks of process fluids into cooling waters. The plan shall require monitoring of one or more process parameters or other conditions that indicate a leak. Monitoring that is already being conducted for other purposes may be used to satisfy the requirements of this section. The plan shall include the information specified in paragraphs (c)(1)(i) through (iv) of this section.

(i) A description of the parameter or condition to be monitored and an explanation of how the selected parameter or condition will reliably indicate the presence of a leak.

(ii) The parameter level(s) or condition(s) that shall constitute a leak. This shall be documented by data or calculations showing that the selected levels or conditions will reliably identify leaks. The monitoring must be sufficiently sensitive to determine the range of parameter levels or conditions when the system is not leaking. When the selected parameter level or condition is outside that range, you have detected a leak.

(iii) Monitoring periods. For existing sources, monitor cooling water as specified in paragraph (c)(1)(iii)(A) of this section. Monitor heat exchange systems at new sources according to the specifications in paragraph (c)(1)(iii)(B) of this section.

(A) Monitor monthly for 6 months, both initially and following completion of a leak repair. Then monitor as provided in paragraph (c)(1)(iii)(A)(*1*) or (c)(1)(iii)(A)(*2*) of this section, as appropriate.

(1) If no leaks are detected, monitor quarterly thereafter until a leak is detected.

(2) If a leak is detected, monitor monthly until the leak has been repaired. Upon completion of repair, monitor according to the specifications in paragraph (c)(1)(iii)(A) of this section.

(B) Monitor the cooling water weekly for heat exchange systems at new sources.

(iv) The records that will be maintained to document compliance with the requirements of this section.

(2) If a leak is identified by audio, visual, or olfactory inspection, a method listed in 40 CFR part 136, or any other means other than those described in the monitoring plan, and the method(s) specified in the plan could not detect the leak, you shall revise the plan and document the basis for the changes. You shall complete the revisions to the plan no later than 180 days after discovery of the leak.

(3) You shall maintain, at all times, the monitoring plan that is currently in use. The current plan shall be maintained on-site, or shall be accessible from a central location by computer or other means that provide access within 2 hours after a request. If the monitoring plan is changed, you must retain the most recent superseded plan for at least 5 years from the date of its creation. The superseded plan shall be retained on-site or accessible from a central location by computer or other means that provide access within 2 hours after a request.

(d) *Simplifying assumptions for entrance mean concentration.* If you are complying with paragraph (a) or (b) of this section, you may elect to determine the entrance mean concentration as specified in paragraph (d)(1) or (2) of this section.

(1) Assume that the entrance mean concentration of the monitored substance is zero; or,

(2) Determine the entrance mean concentration of a monitored substance at a sampling location anywhere upstream of the heat exchanger or heat exchange system, provided that there is not a reasonable opportunity for the concentration to change at the entrance to each heat exchanger or heat exchange system.

Repair Requirements for Heat Exchange Systems

§ 63.1087 What actions must I take if a leak is detected?

If a leak is detected, you must comply with the requirements in paragraphs (a) and (b) of this section unless repair is delayed according to § 63.1088.

(a) Repair the leak as soon as practical but not later than 45 calender days after you received the results of monitoring tests that indicated a leak. You must repair the leak unless you demonstrate that the results are due to a condition other than a leak.

(b) Once the leak has been repaired, use the monitoring requirements in

are not available, you may delay repair a maximum of 120 calendar days. You must demonstrate that the necessary equipment, parts or personnel were not available.

Recordkeeping and Reporting Requirements for Heat Exchange Systems

§ 63.1089 What records must I keep?

You must keep the records in

§ 63.1092 What are the major differences between the requirements of 40 CFR part 61, subpart FF, and the waste requirements for ethylene production sources?

The major differences between the requirements of 40 CFR part 61, subpart FF, and the requirements for ethylene production sources are listed in paragraphs (a) through (d) of this section.

(a) The requirements for ethylene production sources apply to all ethylene

transfer waste off-site, you must comply with the requirements of § 63.1096.

(a) *Continuous butadiene waste streams.* Manage and treat continuous butadiene waste streams that contain greater than or equal to 10 ppmv 1,3-butadiene and have a flow rate greater than or equal to 0.02 liters per minute, according to either paragraph (a)(1) or (2) of this section. If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), comply with the requirements of this section at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction through (e) in either the Periodic Reports required in § 63.152 or the Periodic Reports required in § 63.1110(e).

(3) If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), comply with the requirements of this section at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction submitted to the treatment operator initially and whenever there is a change in the required treatment.

(b) You may not transfer the waste stream unless the transferee has submitted to the Administrator a written certification that the transferee will manage and treat any waste stream received from a source subject to the requirements of this subpart in accordance with the requirements of this subpart.

and (b) of this section unless repair is delayed according to § 63.1088.

(a) Repair the leak as soon as practical but not later than 45 calender days after you received the results of monitoring tests that indicated a leak. You must repair the leak unless you demonstrate that the results are due to a condition other than a leak.

(b) Once the leak has been repaired, use the monitoring requirements in § 63.1086 within 7 calender days of the repair or startup, whichever is later, to confirm that the heat exchange system has been repaired.

§ 63.1088 In what situations may I delay leak repair, and what actions must I take for delay of repair?

You may delay the repair of heat exchange systems if the leaking equipment is isolated from the process. You may also delay repair if repair is technically infeasible without a shutdown, and you meet one of the conditions in paragraphs (a) through (c) of this section.

(a) If a shutdown is expected within the next 2 months of determining delay of repair is necessary, you are not required to have a special shutdown before that planned shutdown.

(b) If a shutdown is not expected within the next 2 months of determining delay of repair is necessary, you may delay repair if a shutdown for repair would cause greater emissions than the potential emissions from delaying repair until the next shutdown of the process equipment associated with the leaking heat exchanger. You must document the basis for the determination that a shutdown for repair would cause greater emissions than the emissions likely to result from delay of repair. The documentation process must include the activities in paragraphs (b)(1) through (4) of this section.

(1) State the reason(s) for delaying repair.

(2) Specify a schedule for completing the repair as soon as practical.

(3) Calculate the potential emissions from the leaking heat exchanger by multiplying the concentration of HAP listed in Table 1 to this subpart (or other monitored substances) in the cooling water from the leaking heat exchanger by the flow rate of the cooling water from the leaking heat exchanger and by the expected duration of the delay.

(4) Determine emissions of HAP listed in Table 1 to this subpart (or other monitored substances) from purging and depressurizing the equipment that will result from the unscheduled shutdown for the repair.

(c) If repair is delayed because the necessary equipment, parts or personnel are not available, you may delay repair a maximum of 120 calendar days. You must demonstrate that the necessary equipment, parts or personnel were not available.

Recordkeeping and Reporting Requirements for Heat Exchange Systems

§ 63.1089 What records must I keep?

You must keep the records in paragraphs (a) through (e) of this section, according to the requirements of § 63.1109(c).

(a) Monitoring data required by § 63.1086 that indicate a leak, the date the leak was detected, or, if applicable, the basis for determining there is no leak.

(b) The dates of efforts to repair leaks.

(c) The method or procedures used to confirm repair of a leak and the date the repair was confirmed.

(d) Documentation of delay of repair as specified in § 63.1088.

(e) If you validate a 40 CFR part 136 method for the HAP listed in Table 1 to this subpart according to the procedures in appendix D to this part, then you must keep a record of the test data and calculations used in the validation.

§ 63.1090 What reports must I submit?

If you delay repair for your heat exchange system, you must report the delay of repair in the semiannual report required by § 63.1110(e). If the leak remains unrepaired, you must continue to report the delay of repair in semiannual reports until you repair the leak. You must include the information in paragraphs (a) through (e) of this section in the semiannual report.

(a) The fact that a leak was detected, and the date that the leak was detected.

(b) Whether or not the leak has been repaired.

(c) The reasons for delay of repair. If you delayed the repair as provided in § 63.1088(b), documentation of emissions estimates.

(d) If a leak remains unrepaired, the expected date of repair.

(e) If a leak is repaired, the date the leak was successfully repaired.

Background for Waste Requirements

§ 63.1091 What do the waste requirements do?

This subpart requires you to comply with 40 CFR part 61, subpart FF, National Emission Standards for Benzene Waste Operations. There are some differences between the ethylene production waste requirements and those of subpart FF.

§ 63.1092 What are the major differences between the requirements of 40 CFR part 61, subpart FF, and the waste requirements for ethylene production sources?

The major differences between the requirements of 40 CFR part 61, subpart FF, and the requirements for ethylene production sources are listed in paragraphs (a) through (d) of this section.

(a) The requirements for ethylene production sources apply to all ethylene production sources that are part of a major source. The requirements do not include a provision to exempt sources with a total annual benzene quantity less than 10 megagrams per year (Mg/yr) from control requirements.

(b) The requirements for ethylene production sources apply to continuous butadiene waste streams which do not contain benzene quantities that would make them subject to the management and treatment requirements of 40 CFR part 61, subpart FF.

(c) The requirements for ethylene production sources do not include the compliance options at 40 CFR 61.342(c)(3)(ii), (d) and (e) for sources with a total annual benzene quantity less than 10 Mg/yr.

(d) If you transfer waste off-site, you must comply with the requirements in § 63.1096 rather than 40 CFR 61.342(f).

Applicability for Waste Requirements

§ 63.1093 Does this subpart apply to my waste streams?

The waste stream provisions of this subpart apply to your waste streams if you own or operate an ethylene production facility expressly referenced to this subpart XX from subpart YY of this part. The provisions of subpart A (General Provisions) of this part do not apply to this subpart except as specified in a referencing subpart.

§ 63.1094 What waste streams are exempt from the requirements of this subpart?

The types of waste described in paragraphs (a) and (b) of this section are exempt from this subpart.

(a) Waste in the form of gases or vapors that is emitted from process fluids.

(b) Waste that is contained in a segregated storm water sewer system.

Waste Requirements

§ 63.1095 What specific requirements must I comply with?

For waste that is not transferred off-site, you must comply with the requirements in paragraph (a) of this section for continuous butadiene waste streams and paragraph (b) of this section for benzene waste streams. If you transfer waste off-site, you must comply with the requirements of § 63.1096.

(a) *Continuous butadiene waste streams.* Manage and treat continuous butadiene waste streams that contain greater than or equal to 10 ppmv 1,3-butadiene and have a flow rate greater than or equal to 0.02 liters per minute, according to either paragraph (a)(1) or (2) of this section. If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), the requirements of paragraph (a)(3) of this section apply also.

(1) Route the continuous butadiene stream to a treatment process or wastewater treatment system used to treat benzene waste streams that complies with the standards specified in 40 CFR 61.348. Comply with the requirements of 40 CFR part 61, subpart FF; with the changes in Table 2 to this subpart, and as specified in paragraphs (a)(1)(i) through (v) of this section.

(i) Determine the butadiene concentration of the waste stream according to 40 CFR 61.355(c)(1) through (3), except substitute "1,3-butadiene" for each occurrence of "benzene." You may validate 40 CFR part 136 methods for 1,3-butadiene according to the procedures in appendix D to this part. You do not need to determine the butadiene concentration of a waste stream if you designate that the stream must be controlled.

(ii) Comply with 40 CFR 61.342(c)(1)(ii) and (iii) for each waste management unit that receives or manages the waste stream prior to and during treatment or recycling of the waste stream.

(iii) Comply with the recordkeeping requirements in 40 CFR 61.356(b), (b)(1) and (b)(2), except substitute "1,3-butadiene" for each occurrence of "benzene" and "continuous butadiene waste stream" for each occurrence of "waste stream."

(iv) Comply with the reporting requirements in 40 CFR 61.357(a), (a)(2), (a)(3), (a)(3)(iii) through (v), and (d)(1) and (2), except substitute "1,3-butadiene" for each occurrence of "benzene" and "continuous butadiene waste stream" for each occurrence of "waste stream."

(v) Include only the information in 40 CFR 61.357(a)(2) and (a)(3)(iii) through (v) in the report required in 40 CFR 61.357(a) and (d)(2).

(2) Comply with the process wastewater requirements of subpart G of this part. Submit the information required in § 63.146(b) in the Notification of Compliance Status required by § 63.1110(d). Submit the information required in § 63.146(c) through (e) in either the Periodic Reports required in § 63.152 or the Periodic Reports required in § 63.1110(e).

(3) If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), comply with the requirements of this section at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction precludes the ability of the affected source to comply with the requirements of this section and the owner or operator follows the provisions for periods of startup, shutdown, and malfunction, as specified in § 63.1111.

(b) *Benzene waste streams.* For benzene-containing streams, you must comply with the requirements of 40 CFR part 61, subpart FF, except as specified in Table 2 to this subpart. You must manage and treat waste streams as specified in either paragraph (b)(1) or (2) of this section.

(1) If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), manage and treat spent caustic waste streams and dilution steam blowdown waste streams according to 40 CFR 61.342(c)(1) through (c)(3)(i). The requirements of this paragraph (b)(1) shall apply at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction precludes the ability of the affected source to comply with the requirements of this section and the owner or operator follows the provisions for periods of startup, shutdown, and malfunction, as specified in § 63.1111.

(2) If the total annual benzene quantity from waste at your facility is greater than or equal to 10 Mg/yr, as determined according to 40 CFR 61.342(a), you must manage and treat waste streams according to any of the options in 40 CFR 61.342(c)(1) through (e).

§ 63.1096 What requirements must I comply with if I transfer waste off-site?

If you elect to transfer waste off-site, you must comply with the requirements in paragraphs (a) through (d) of this section.

(a) Include a notice with the shipment or transport of each waste stream. The notice shall state that the waste stream contains organic HAP that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator initially and whenever there is a change in the required treatment.

(b) You may not transfer the waste stream unless the transferee has submitted to the Administrator a written certification that the transferee will manage and treat any waste stream received from a source subject to the requirements of this subpart in accordance with the requirements of this subpart.

(c) By providing this written certification to the Administrator, the certifying entity accepts responsibility for compliance with the regulatory provisions in this subpart with respect to any shipment of waste covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of those provisions by owners or operators of sources.

(d) The certifying entity may revoke the written certification by sending a written statement to the Administrator and you. The notice of revocation must provide at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions of this subpart. Upon expiration of the notice period, you may not transfer the waste stream to that off-site treatment operation. Written certifications and revocation statements to the Administrator from the transferees of waste shall be signed by the responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable by the treater to other off-site waste treatment operators.

Implementation and Enforcement

§ 63.1097 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities

contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the nonopacity emissions standards in §§ 63.1085, 63.1086 and 63.1095, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Tables to Subpart XX of Part 63

TABLE 1 TO SUBPART XX OF PART 63.—HAZARDOUS AIR POLLUTANTS

Subpart SS—[Amended]

3. Section 63.981 is amended by adding in alphabetical order a definition of *Supplemental combustion air* to read as follows:

§ 63.981 Definitions.

* * * * *

Supplemental combustion air means the air that is added to a vent stream after the vent stream leaves the unit.

5. Section 63.987 is amended by:

a. Revising the definition of D_j in paragraph (b)(3)(ii); and

b. Revising paragraph (b)(3)(iii).

The revisions read as follows:

§ 63.987 Flare requirements.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

D_j = Concentration of sample

63.990(a), 63.993(a), 63.994(a), and 63.995(a) under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major changes to monitoring under § 63.8(f) and as

contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the nonopacity emissions standards in §§ 63.1085, 63.1086 and 63.1095, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Tables to Subpart XX of Part 63

TABLE 1 TO SUBPART XX OF PART 63.—HAZARDOUS AIR POLLUTANTS

Hazardous air pollutant	CAS No.
Benzene	71432
1,3-Butadiene	106990
Cumene	98828
Ethyl benzene	100414
Hexane	110543
Naphthalene	91203
Styrene	100425
Toluene	108883
o-Xylene	95476
m-Xylene	108383
p-Xylene	106423

TABLE 2 TO SUBPART XX OF PART 63.—REQUIREMENTS OF 40 CFR PART 61, SUBPART FF, NOT INCLUDED IN THE REQUIREMENTS FOR THIS SUBPART AND ALTERNATE REQUIREMENTS

If the total annual benzene quality for waste from your facility is * * *	Do not comply with:	Instead, comply with:
1. Less than 10 Mg/yr	40 CFR 61.340	§ 63.1093.
	40 CFR 61.342(c)(3)(ii), (d), and (e)	There is no equivalent requirement.
	40 CFR 61.342(f)	§ 61.1096.
	40 CFR 61.355(j) and (k)	There is no equivalent requirement.
	40 CFR 61.356(b)(2)(ii), (b)(3) through (b)(5)	There is no equivalent requirement.
	The requirement to submit the information required in 40 CFR 61.357(a) to the Administrator within 90 days after January 7, 1993.	The requirement to submit the information required in 40 CFR 61.357(a) as part of the Initial Notification required in 40 CFR 63.1110(c).
	The requirement in 40 CFR 61.357(d) to submit the information in 40 CFR 61.357(d)(1) and (d)(2) if the TAB quantity from your facility is equal to or greater than 10 Mg/yr.	The requirement to submit the information in 40 CFR 61.357(d)(1) and (d)(2) for spent caustic, dilution steam blowdown, and continuous butadiene waste streams.
	The requirement in 40 CFR 61.357(d)(1) to submit the information required in 40 CFR 63.357(d)(1) to the Administrator within 90 days after January 7, 1993.	The requirement to submit the information required in 40 CFR 61.357(d)(1) as part of the Notification of Compliance Status required in 40 CFR 63.1110(d).
	40 CFR 61.357(d)(3) through (d)(5)	There is no equivalent requirement.
2. Greater than or equal to 10 Mg/yr	40 CFR 61.340	§ 61.1093.
	40 CFR 61.342(f)	§ 61.1096.
	The requirement to submit the information required in 40 CFR 61.357(a) to the Administrator within 90 days after January 7, 1993.	The requirement to submit the information required in 40 CFR 61.357(a) as part of the Initial Notification required in 40 CFR 63.1110(c).
	The requirement in 40 CFR 61.357(d) to submit the information in 40 CFR 61.357(d)(1) and (d)(2) if the TAB quantity from your facility is equal to or greater than 10 Mg/yr.	The requirement to submit the information in 40 CFR 61.357(d)(1) and (d)(2) as part of the Notification of Compliance Status required in 40 CFR 63.1110(d).

Subpart SS—[Amended]

3. Section 63.981 is amended by adding in alphabetical order a definition of *Supplemental combustion air* to read as follows:

§ 63.981 Definitions.

* * * * *

Supplemental combustion air means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental combustion air. Air required to operate combustion device burner(s) is not considered supplemental combustion air. Air required to ensure the proper operation of catalytic oxidizers, to include the intermittent addition of air upstream of the catalyst bed to maintain a minimum threshold flow rate through the catalyst bed or to avoid excessive temperatures in the catalyst bed, is not considered to be supplemental combustion air.

* * * * *

4. Section 63.983 is amended by:

a. Revising paragraphs (a)(3)(i) and (a)(3)(ii);

b. Revising the heading for paragraph (b); and

c. Adding paragraph (b)(4).

The revisions and additions read as follows:

§ 63.983 Closed vent systems.

(a) * * *

(3) * * *

(i) Properly install, maintain, and operate a flow indicator that is capable of taking periodic readings. Records shall be generated as specified in § 63.998(d)(1)(ii)(A). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. Records shall be generated as specified in § 63.998(d)(1)(ii)(B).

* * * * *

(b) *Closed vent system inspection and monitoring requirements.* * * *

(4) For each bypass line, the owner or operator shall comply with paragraph (b)(4)(i) or (ii) of this section.

(i) If a flow indicator is used, take a reading at least once every 15 minutes.

(ii) If the bypass line valve is secured in the non-diverting position, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position, and the vent stream is not diverted through the bypass line.

* * * * *

5. Section 63.987 is amended by:

a. Revising the definition of D_j in paragraph (b)(3)(ii); and

b. Revising paragraph (b)(3)(iii).

The revisions read as follows:

§ 63.987 Flare requirements.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

D_j = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of 40 CFR part 60, appendix A, or by American Society for Testing and Materials (ASTM) D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) under the conditions specified in § 63.997(e)(2)(iii)(D)(*1*) through (*3*). Hydrogen and carbon monoxide are measured by ASTM D1946–90; and

* * * * *

(iii) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in unit of standard temperature and pressure), as determined by Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

* * * * *

6. Part 63 is amended by adding § 63.992 to read as follows:

§ 63.992 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the nonopacity emissions standards in §§ 63.983(a) and (d), 63.984, 63.985(a), 63.986(a), 63.987(a), 63.988(a), 63.990(a), 63.993(a), 63.994(a), and 63.995(a) under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

* * * * *

7. Section 63.997 is amended by:

a. Revising paragraph (e)(2)(ii);

b. Revising paragraph (e)(2)(iii) introductory text;

c. Revising the first sentence of paragraph (e)(2)(iii)(C)(*1*);

d. Revising paragraph (e)(2)(iii)(D);

e. Adding paragraph (e)(2)(iii)(E);

f. Revising paragraph (e)(2)(iv) introductory text;

g. Removing and reserving paragraphs (e)(2)(iv)(B)(*2*) and (*3*); and

h. Adding paragraphs (e)(2)(iv)(F) through (I).

The revisions and additions read as follows:

§ 63.997 Performance test and compliance assessment requirements for control devices.

* * * * *

(e) * * *

(2) * * *

(ii) *Gas volumetric flow rate.* The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate.

(iii) *Total organic regulated material or TOC concentration.* To determine compliance with a parts per million by volume total organic regulated material or TOC limit, the owner or operator shall use Method 18 or 25A of 40 CFR part 60, appendix A, as applicable. The ASTM D6420–99 may be used in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. The procedures specified in paragraphs (e)(2)(iii)(A), (B), (D), and (E) of this section shall be used to calculate parts per million by volume concentration. The calculated concentration shall be corrected to 3 percent oxygen using the procedures specified in paragraph (e)(2)(iii)(C) of this section if a combustion device is

the control device and supplemental combustion air is used to combust the emissions.

* * * * *

(C) * * *

(*1*) The emission rate correction factor (or excess air), integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, or American Society of Mechanical Engineers (ASME) PTC 19–10–1981—Part 10 Method 25 to measure inlet and outlet concentrations of TOC if the condition in either paragraph (e)(2)(iv)(H)(*1*) or (*2*) of this section is met.

(*1*) The concentration at the inlet to the control system and the required level of control would result in exhaust TGNMO concentrations of 50 parts per million by volume or less.

(*2*) Because of the high efficiency of the control device, the anticipated TGNMO concentrations of the control

(*2*) The test results are acceptable if the response from the high level calibration gas is at least 20 times the standard deviation for the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale.

(*3*) The span value of the analyzer must be less than 100 parts per million by volume.

(*4*) Report the results as carbon,

and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(1) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1)(i) through (v) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(i) Approval of alternatives to the

out if this subpart is delegated to a State, local, or tribal agency.

(1) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (f)(i) through (v) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(i) Approval of alternatives to the

out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the

the control device and supplemental combustion air is used to combust the emissions.

* * * * *

(C) * * *

(*1*) The emission rate correction factor (or excess air), integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, or American Society of Mechanical Engineers (ASME) PTC 19–10–1981—Part 10 (available for purchase from: ASME International, Three Park Avenue, New York, NY 10016–5990, 800–843–2763 or 212–591–7722), shall be used to determine the oxygen concentration.

* * *

* * * * *

(D) To measure the total organic regulated material concentration at the outlet of a control device, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99. If you have a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream using process knowledge or the screening procedure described in Method 18. In conducting the performance test, analyze samples collected at the outlet of the combustion control device as specified in Method 18 or ASTM D6420–99 for the regulated material compounds present at the inlet of the control device. The method ASTM D6420–99 may be used only under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section.

(*1*) If the target compound(s) is listed in Section 1.1 of ASTM D6420–99 and the target concentration is between 150 parts per billion by volume and 100 parts per million by volume.

(*2*) If the target compound(s) is not listed in Section 1.1 of ASTM D6420–99 but is potentially detected by mass spectrometry, an additional system continuing calibration check after each run, as detailed in Section 10.5.3 of ASTM D6420–99, must be followed, met, documented, and submitted with the performance test report even if you do not use a moisture condenser or the compound is not considered soluble.

(*3*) If a minimum of one sample/analysis cycle is completed at least every 15 minutes.

(E) To measure the TOC concentration, use Method 18 of 40 CFR part 60, appendix A, or use Method 25A of 40 CFR part 60, appendix A, according to the procedures in paragraphs (e)(2)(iii)(E)(*1*) through (*4*) of this section.

(*1*) Calibrate the instrument on the predominant regulated material compound.

(*2*) The test results are acceptable if the response from the high level calibration gas is at least 20 times the standard deviation for the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale.

(*3*) The span value of the analyzer must be less than 100 parts per million by volume.

(*4*) Report the results as carbon, calculated according to Equation 25A–1 of Method 25A of 40 CFR part 60, appendix A.

(iv) *Percent reduction calculation.* To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18, 25, or 25A of 40 CFR part 60, appendix A, as applicable. The method ASTM D6420–99 may be used in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. The procedures specified in paragraphs (e)(2)(iv)(A) through (I) of this section shall be used to calculate percent reduction efficiency.

* * * * *

(F) To measure inlet and outlet concentrations of total organic regulated material, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. In conducting the performance test, collect and analyze samples as specified in Method 18 or ASTM D6420–99. You must collect samples simultaneously at the inlet and outlet of the control device. If the performance test is for a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream (i.e., uncontrolled emissions) using process knowledge or the screening procedure described in Method 18. Quantify the emissions for the regulated material compounds present in the inlet gas stream for both the inlet and outlet gas streams for the combustion device.

(G) To determine inlet and outlet concentrations of TOC, use Method 25 of 40 CFR part 60, appendix A. Measure the total gaseous non-methane organic (TGNMO) concentration of the inlet and outlet vent streams using the procedures of Method 25. Use the TGNMO concentration in Equations 4 and 5 of paragraph (e)(2)(iv)(B) of this section.

(H) Method 25A of 40 CFR part 60, appendix A, may be used instead of Method 25 to measure inlet and outlet concentrations of TOC if the condition in either paragraph (e)(2)(iv)(H)(*1*) or (*2*) of this section is met.

(*1*) The concentration at the inlet to the control system and the required level of control would result in exhaust TGNMO concentrations of 50 parts per million by volume or less.

(*2*) Because of the high efficiency of the control device, the anticipated TGNMO concentration of the control device exhaust is 50 parts per million by volume or less, regardless of the inlet concentration.

(I) If the uncontrolled or inlet gas stream to the control device contains formaldehyde, you must conduct emissions testing according to paragraph (e)(2)(iv)(I)(*1*) or (*2*) of this section.

(*1*) If you elect to comply with a percent reduction requirement and formaldehyde is the principal regulated material compound (i.e., greater than 50 percent of the regulated material compounds in the stream by volume), you must use Method 316 or 320 of 40 CFR part 63, appendix A, to measure formaldehyde at the inlet and outlet of the control device. Use the percent reduction in formaldehyde as a surrogate for the percent reduction in total regulated material emissions.

(*2*) If you elect to comply with an outlet total organic regulated material concentration or TOC concentration limit, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (by volume) formaldehyde, you must use Method 316 or 320 of 40 CFR part 63, appendix A, to separately determine the formaldehyde concentration. Calculate the total organic regulated material concentration or TOC concentration by totaling the formaldehyde emissions measured using Method 316 or 320 and the other regulated material compound emissions measured using Method 18 or 25/25A.

* * * * *

Subpart TT—[Amended]

8. Section 63.1000 is amended by adding paragraph (b) to read as follows:

§ 63.1000 Applicability.

* * * * *

(b) *Implementation and enforcement.* This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(1) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1)(i) through (v) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(i) Approval of alternatives to the nonopacity emissions standards in §§ 63.1003 through 63.1015, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(ii) [Reserved]

(iii) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(iv) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(v) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

* * * * *

Subpart UU—[Amended]

9. Section 63.1019 is amended by adding paragraph (f) to read as follows:

§ 63.1019 Applicability.

* * * * *

(f) *Implementation and enforcement.* This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(1) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (f)(i) through (v) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(i) Approval of alternatives to the nonopacity emissions standards in §§ 63.1022 through 62.1034, under § 63.6(g), and the standards for quality improvement programs in § 63.1035. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(ii) [Reserved]

(iii) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(iv) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(v) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

* * * * *

Subpart WW—[Amended]

10. Part 63 is amended by adding § 63.1067 to subpart WW to read as follows:

§ 63.1067 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the nonopacity emissions standards in §§ 63.1062 and 63.1063(a) and (b) for alternative means of emission limitation, under § 63.6(g).

(2) [Reserved]

(3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Subpart YY—[Amended]

11. Section 63.1100 is amended by:

a. Revising the first sentence of paragraph (a);

b. Adding four entries in alphabetical order and footnotes (c) and (d) to Table 1 to § 63.1100(a);

c. Revising the first sentence of the introductory text of paragraph (g);

d. Revising paragraphs (g)(1) through (4);

e. Revising the heading for paragraph (g)(5); and

f. Adding paragraph (g)(6).

The revisions and additions read as follows:

§ 63.1100 Applicability.

(a) *General.* This subpart applies to source categories and affected sources specified in § 63.1103(a) through (h).

* * *

TABLE 1 TO § 63.1100(A)—SOURCE CATEGORY MACT[a] APPLICABILITY

Source category	Storage vessels	Process vents	Transfer racks	Equipment leaks	Wastewater streams	Other	Source category MACT requirements
*	*	*	*	*	*	*	*
Carbon Black Production	No	Yes	No	No	No	No	§ 63.1103(f).
Cyanide Chemicals Manufacturing	Yes	Yes	Yes	Yes	Yes	No	§ 63.1103(g).
Ethylene Production	Yes	Yes	Yes	Yes	Yes	Yes[c]	§ 63.1103(e).
*	*	*	*	*	*	*	*
Spandex Production	Yes	Yes	No	No	No	Yes[d]	§ 63.1103(h).
*	*	*	*	*	*	*	*

[a] Maximum achievable control technology.
[c] Heat exchange systems as defined in § 63.1103(e)(2).
[d] Fiber spinning lines.

* * * * * * *

(g) *Overlap with other regulations.* Paragraphs (g)(1) through (6) of this section specify the applicability of this subpart YY emission point requirements when other rules may apply. * * *

(1) *Overlap of subpart YY with other regulations for storage vessels.* (i) After the compliance dates specified in § 63.1102, a storage vessel that must be controlled according to the requirements in this subpart YY and is also subject to the storage vessel provisions in 40 CFR part 60, subpart Kb, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, must comply with the provisions specified in this subpart YY, except as provided in paragraphs (g)(1)(ii) and (iii) of this section.

(ii) A storage vessel with a design capacity greater than or equal to 75 cubic meters and less than 151 cubic meters that is used to store liquids with a maximum true vapor pressure greater than or equal to 76.6 kilopascals and less than 91.0 kilopascals is required to comply with the provisions specified in 40 CFR part 60, subpart Kb, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, instead of the requirements in this subpart YY.

(iii) A storage vessel with a design capacity greater than or equal to 151 cubic meters that is used to store liquids with a maximum true vapor pressure greater than or equal to 5.2 kilopascals and less than 76.6 kilopascals is required to comply with the provisions specified in 40 CFR part 60, subpart Kb, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, instead of the requirements in this subpart YY.

(2) *Overlap of subpart YY with other regulations for process vents.* After the compliance dates specified in § 63.1102, each process vent that must be controlled according to the requirements in this subpart YY and is also subject to the process vent provisions in 40 CFR part 60, subpart Kb, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, must comply with the provisions specified in this subpart YY, except as provided in paragraphs (g)(2)(i) and (ii) of this section.

(i) A process vent with a design capacity greater than or equal to 75 cubic meters and less than 151 cubic meters that is used to store liquids with a maximum true vapor pressure greater than or equal to 76.6 kilopascals and less than 91.0 kilopascals is required to comply with the provisions specified in 40 CFR part 60, subpart Kb, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, instead of the requirements in this subpart YY.

(ii) A process vent with a design capacity greater than or equal to 151 cubic meters that is used to store liquids with a maximum true vapor pressure greater than or equal to 5.2 kilopascals and less than 76.6 kilopascals is required to comply with the provisions specified in 40 CFR part 60, subpart Kb, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, instead of the requirements in this subpart YY.

(3) *Overlap of subpart YY with other regulations for transfer racks.* After the compliance dates specified in § 63.1102, each transfer rack that must be controlled according to the requirements in this subpart YY and is also subject to the transfer rack provisions in 40 CFR part 60, subpart XX, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, must comply with the provisions specified in this subpart YY, except as provided in paragraphs (g)(3)(i) and (ii) of this section.

(i) A transfer rack with a design capacity greater than or equal to 75 cubic meters and less than 151 cubic meters that is used to store liquids with a maximum true vapor pressure greater than or equal to 76.6 kilopascals and less than 91.0 kilopascals is required to comply with the provisions specified in 40 CFR part 60, subpart XX, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, instead of the requirements in this subpart YY.

(ii) A transfer rack with a design capacity greater than or equal to 151 cubic meters that is used to store liquids with a maximum true vapor pressure greater than or equal to 5.2 kilopascals and less than 76.6 kilopascals is required to comply with the provisions specified in 40 CFR part 60, subpart XX, 40 CFR part 61, subpart Y, or 40 CFR part 63, subpart WW, instead of the requirements in this subpart YY.

(4) *Overlap of subpart YY with other regulations for wastewater for source categories other than ethylene production.* After the compliance dates specified in § 63.1102, each wastewater stream that must be controlled according to the requirements in this subpart YY and is also subject to the wastewater provisions in 40 CFR part 61, subpart FF, or 40 CFR part 63, subpart G, must comply with the provisions specified in this subpart YY, except as provided in paragraphs (g)(4)(i) and (ii) of this section.

(i) A wastewater stream with a flow rate greater than or equal to 10 liters per minute and less than 151 liters per minute that contains water with a total annual benzene quantity greater than or equal to 1 megagram per year and less than 10 megagrams per year is required to comply with the provisions specified in 40 CFR part 61, subpart FF, or 40 CFR part 63, subpart G, instead of the requirements in this subpart YY.

(ii) A wastewater stream with a flow rate greater than or equal to 151 liters per minute that contains water with a total annual benzene quantity greater than or equal to 1 megagram per year and less than 10 megagrams per year is required to comply with the provisions specified in 40 CFR part 61, subpart FF, or 40 CFR part 63, subpart G, instead of the requirements in this subpart YY.

(5) *Overlap of subpart YY with other regulations for wastewater for source categories that produce ethylene.* Paragraphs (g)(5)(i) through (iii) of this section specify the applicability of this subpart YY emission point requirements when other rules may apply.

(i) After the compliance dates specified in § 63.1102, each wastewater stream that must be controlled according to the requirements in this subpart YY and is also subject to the wastewater provisions in 40 CFR part 61, subpart FF, or 40 CFR part 63, subpart G, must comply with the provisions specified in this subpart YY, except as provided in paragraphs (g)(5)(ii) and (iii) of this section.

(ii) A wastewater stream with a flow rate greater than or equal to 10 liters per minute and less than 151 liters per minute that contains water with a total annual benzene quantity greater than or equal to 1 megagram per year and less than 10 megagrams per year is required to comply with the provisions specified in 40 CFR part 61, subpart FF, or 40 CFR part 63, subpart G, instead of the requirements in this subpart YY.

(iii) A wastewater stream with a flow rate greater than or equal to 151 liters per minute that contains water with a total annual benzene quantity greater than or equal to 1 megagram per year and less than 10 megagrams per year is required to comply with the provisions specified in 40 CFR part 61, subpart FF, or 40 CFR part 63, subpart G, instead of the requirements in this subpart YY.

(6) *Overlap of subpart YY with other regulations for heat exchange systems.* After the compliance dates specified in § 63.1102, each heat exchange system that must be controlled according to the requirements in this subpart YY and is also subject to the heat exchange system provisions in 40 CFR part 61, subpart F, or 40 CFR part 63, subpart F, must comply with the provisions specified in this subpart YY, except as provided in paragraphs (g)(6)(i) and (ii) of this section.

(i) A heat exchange system that is used to cool process fluids containing benzene and that is not subject to the requirements in 40 CFR part 61, subpart F, or 40 CFR part 63, subpart F, because it is operated with the minimum pressure on the cooling water side greater than the maximum pressure on the process side is required to comply with the provisions specified in 40 CFR part 61, subpart F, or 40 CFR part 63, subpart F, instead of the requirements in this subpart YY.

(ii) A heat exchange system that is used to cool process fluids containing benzene and that is not subject to the requirements in 40 CFR part 61, subpart F, or 40 CFR part 63, subpart F, because it is operated with the minimum pressure on the cooling water side greater than the maximum pressure on the process side is required to comply with the provisions specified in 40 CFR part 61, subpart F, or 40 CFR part 63, subpart F, instead of the requirements in this subpart YY.

* * * * *

§ 63.1102 Compliance schedule.

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production, § 63.1103(b)(1)(i) for acrylic and modacrylic fiber production, § 63.1103(c)(1)(i) for hydrogen fluoride production, § 63.1103(d)(1)(i) for polycarbonate production, § 63.1103(e)(1)(i) for ethylene production, § 63.1103(f)(1)(i) for carbon black production, § 63.1103(g)(1)(i) for cyanide chemicals manufacturing, and § 63.1103(h)(1)(i) for spandex production, shall comply with this subpart no later than the applicable effective date in Table 1 to § 63.1102 of this section.

(ii) The owner or operator of a new or reconstructed affected source that has an initial startup after the applicable effective date in Table 1 to § 63.1102 of this section shall comply with this subpart upon initial startup.

(iii) The owner or operator of a new or reconstructed affected source that commences construction or reconstruction after the proposal date, and that has an initial startup before the effective date of standards for an affected source, shall comply with this subpart no later than the applicable effective date in Table 1 to § 63.1102 of this section.

(iv) The owner or operator of a new or reconstructed affected source that commences construction or reconstruction after the proposal date, and that has an initial startup after the effective date of standards for an affected source, shall comply with this subpart upon initial startup.

(v) The owner or operator of a new or reconstructed affected source that commences construction or reconstruction after the proposal date, and that has an initial startup before the effective date of standards for an affected source, shall comply with this subpart no later than the applicable effective date in Table 1 to § 63.1102 of this section.

(A) The promulgated standards are more stringent than the proposed standards.

(B) The owner or operator complies with this subpart as proposed during the 3-year period immediately after the effective date of standards for the affected source.

(2) *Compliance dates for existing sources.* (i) The owner or operator of an existing affected source shall comply with the requirements of this subpart

(g) *Overlap with other regulations.* Paragraphs (g)(1) through (6) of this section specify the applicability of this subpart YY emission point requirements when other rules may apply. * * *

(1) *Overlap of subpart YY with other regulations for storage vessels.* (i) After the compliance dates specified in § 63.1102, a storage vessel that must be controlled according to the requirements of this subpart and subpart G of this part is required to comply only with the storage vessel requirements of this subpart.

(ii) After the compliance dates specified in § 63.1102, a storage vessel that must be controlled according to the requirements of this subpart and subpart Ka or Kb of 40 CFR part 60 is required to comply only with the storage vessel requirements of this subpart.

(2) *Overlap of subpart YY with other regulations for process vents.* (i) After the compliance dates specified in § 63.1102, a process vent that must be controlled according to the requirements of this subpart and subpart G of this part is in compliance with this subpart if it complies with either set of requirements. The owner or operator must specify the rule with which they will comply in the Notification of Compliance Status report required by § 63.1110(a)(4).

(ii) After the compliance dates specified in § 63.1102, a process vent that must be controlled according to the requirements of this subpart and subpart III, RRR or NNN of 40 CFR part 60 is required to comply only with the process vent requirements of this subpart.

(3) *Overlap of subpart YY with other regulations for transfer racks.* After the compliance dates specified in § 63.1102, a transfer rack that must be controlled according to the requirements this subpart and subpart G of this part is required to comply only with the transfer rack requirements of this subpart.

(4) *Overlap of subpart YY with other regulations for equipment leaks.* (i) After the compliance dates specified in § 63.1102, equipment that must be controlled according to this subpart and 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart J or subpart V, is required only to comply with the equipment leak requirements of this subpart.

(ii) After the compliance dates specified in § 63.1102, equipment that must be controlled according to this subpart and subpart H of this part is in compliance with the equipment leak requirements of this subpart if it complies with either set of requirements. The owner or operator must specify the rule with which they will comply in the Notification of Compliance Status report required by § 63.1110(a)(4).

(5) *Overlap of subpart YY with other regulations for wastewater for source categories other than ethylene production.*

* * * * *

(6) *Overlap of subpart YY with other regulations for waste for the ethylene production source category.* (i) After the compliance date specified in § 63.1102, a waste stream that is conveyed, stored, or treated in a wastewater stream management unit, waste management unit, or wastewater treatment system that receives streams subject to both the control requirements of § 63.1103(e)(3) for ethylene production sources and the provisions of §§ 63.133 through 63.147 shall comply as specified in paragraphs (g)(6)(i)(A) through (C) of this section. Compliance with the provisions of this paragraph (g)(6)(i) shall constitute compliance with the requirements of this subpart for that waste stream.

(A) Comply with the provisions in §§ 63.133 through 63.137 and 63.140 for all equipment used in the storage and conveyance of the waste stream.

(B) Comply with the provisions in §§ 63.1103(e), 63.138, and 63.139 for the treatment and control of the waste stream.

(C) Comply with the provisions in §§ 63.143 through 63.148 for monitoring and inspections of equipment and for recordkeeping and reporting requirements. The owner or operator is not required to comply with the monitoring, recordkeeping, and reporting requirements associated with the treatment and control requirements in §§ 61.355 through 61.357.

(ii) After the compliance date specified in § 63.1102, compliance with § 63.1103(e) shall constitute compliance with the Benzene Waste Operations NESHAP (subpart FF of 40 CFR part 61) for waste streams that are subject to both the control requirements of § 63.1103(e)(3) for ethylene production sources and the control requirements of 40 CFR part 61, subpart FF.

12. Section 63.1101 is amended by:

a. Adding a sentence at the end of the introductory text;

b. Adding a sentence at the end of the definition of "process vent"; and

c. Revising the definitions of "Shutdown," "Storage vessel or tank," and "Total organic compounds or TOC."

The revisions and additions read as follows:

§ 63.1101 Definitions.

* * * The definitions in this section do not apply to waste requirements for ethylene production sources.

* * * * *

Process vent * * * This definition does not apply to ethylene production sources. Ethylene process vents are defined in § 63.1103(e)(2).

* * * * *

Shutdown means the cessation of operation of an affected source or equipment that is used to comply with this subpart, or the emptying and degassing of a storage vessel. For the purposes of this subpart, shutdown includes, but is not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. Shutdown includes the decoking of ethylene production unit furnaces.

* * * * *

Storage vessel or *tank*, for the purposes of regulation under the storage vessel provisions of this subpart, means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) that provides structural support and is designed to hold an accumulation of liquids or other materials. Storage vessel includes surge control vessels and bottoms receiver vessels. For the purposes of regulation under the storage vessel provisions of this subpart, storage vessel does not include vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships; pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere; or wastewater storage vessels. Wastewater storage vessels are covered under the wastewater provisions of § 63.1106.

* * * * *

Total organic compounds or (TOC) means the total gaseous organic compounds (minus methane and ethane) in a vent stream, with the concentrations expressed on a carbon basis.

* * * * *

13. Section 63.1102 is amended by revising paragraph (a) adding and reserving paragraph (b), and adding a Table 1 to § 63.1102 to read as follows:

§ 63.1102 Compliance schedule.

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production, § 63.1103(b)(1)(i) for acrylic and modacrylic fiber production, § 63.1103(c)(1)(i) for hydrogen fluoride production, § 63.1103(d)(1)(i) for polycarbonate production, § 63.1103(e)(1)(i) for ethylene production, § 63.1103(f)(1)(i) for carbon black production, § 63.1103(g)(1)(i) for cyanide chemicals manufacturing, or § 63.1103(h)(1)(i) for spandex production shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart according to the schedule in paragraph (a)(1) or (2) of this section, as appropriate. Proposal and effective dates are specified in Table 1 to this section.

(1) *Compliance dates for new and reconstructed sources.* (i) The owner or operator of a new or reconstructed affected source that commences construction or reconstruction after the proposal date, and that has an initial startup before the effective date of standards for an affected source, shall comply with this subpart no later than the applicable effective date in Table 1 to § 63.1102 of this section.

(ii) The owner or operator of a new or reconstructed affected source that has an initial startup after the applicable effective date in Table 1 to § 63.1102 of this section shall comply with this subpart upon startup of the source.

(iii) The owner or operator of an affected source that commences construction or reconstruction after the proposal date, but before the effective date in Table 1 to this section, shall comply with this subpart no later than the date 3 years after the effective date if the conditions in paragraphs (a)(1)(iii)(A) and (B) of this section are met.

(A) The promulgated standards are more stringent than the proposed standards.

(B) The owner or operator complies with this subpart as proposed during the 3-year period immediately after the effective date of standards for the affected source.

(2) *Compliance dates for existing sources.* (i) The owner or operator of an existing affected source shall comply with the requirements of this subpart within 3 years after the effective date of standards for the affected source.

(ii) The owner or operator of an area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source shall be subject to the relevant standards for existing sources under this subpart. Such sources shall comply with the relevant standards within 3 years of becoming a major source.

(b) [Reserved].

TABLE 1 TO § 63.1102.—SOURCE CATEGORY PROPOSAL AND EFFECTIVE DATES

Source category	Proposal date	Effective date
(a) Acetal Resins Production	October 14, 1998	June 29, 1999.
(b) Acrylic and Modacrylic Fibers Production	October 14, 1998	June 29, 1999.
(c) Hydrogen Fluoride Production	October 14, 1998	June 29, 1999.
(d) Polycarbonate Production	October 14, 1998	June 29, 1999.
(e) Ethylene Production	December 6, 2000	July 12, 2002.
(f) Carbon Black Production	December 6, 2000	July 12, 2002.
(g) Cyanide Chemicals Manufacturing	December 6, 2000	July 12, 2002.
(h) Spandex Production	December 6, 2000	July 12, 2002.

14. Section 63.1103 is amended by adding paragraphs (e) through (h) to read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(e) *Ethylene production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the ethylene production (as defined in paragraph (e)(2) of this section) source category, the affected source shall comprise all emission points listed in paragraphs (e)(1)(i) (A) through (G) of this section that are associated with an ethylene production unit that is located at a major source, as defined in section 112(a) of the Act.

(A) All storage vessels (as defined in § 63.1101) that store liquids containing organic HAP.

(B) All ethylene process vents (as defined in paragraph (e)(2) of this section) from continuous unit operations.

(C) All transfer racks (as defined in paragraph (e)(2) of this section) that load HAP-containing material.

(D) Equipment (as defined in § 63.1101) that contains or contacts organic HAP.

(E) All waste streams (as defined in paragraph (e)(2) of this section) associated with an ethylene production unit.

(F) All heat exchange systems (as defined in paragraph (e)(2) of this section) associated with an ethylene production unit.

(G) All ethylene cracking furnaces and associated decoking operations.

(ii) *Exceptions.* The emission points listed in paragraphs (e)(1)(ii) (A) through (L) of this section are in the ethylene production source category but are not subject to the requirements of paragraph (e)(3) of this section.

(A) Equipment that is located within an ethylene production unit that is subject to this subpart but does not contain organic HAP.

(B) Stormwater from segregated sewers.

(C) Water from fire-fighting and deluge systems in segregated sewers.

(D) Spills.

(E) Water from safety showers.

(F) Water from testing of fire-fighting and deluge systems.

(G) Vessels storing organic liquids that contain organic HAP as impurities.

(H) Transfer racks, loading arms, or loading hoses that only transfer liquids containing organic HAP as impurities.

(I) Transfer racks, loading arms, or loading hoses that vapor balance during all transfer operations.

(J) Air emissions from all ethylene cracking furnaces, including furnace stack emissions during decoking operations.

(K) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

(L) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships.

(iii) *Exclusions.* The provisions of this subpart do not apply to process units and emission points subject to subparts F, G, H, I and CC of this part.

(iv) *Compliance schedule.* The compliance schedule for the ethylene production source category is specified in § 63.1102.

(2) *Definitions. Ethylene process vent* means a gas stream with a flow rate greater than 0.005 standard cubic meters

per minute containing greater than 20 parts per million by volume HAP that is continuously discharged during operation of an ethylene production unit, as defined in this section. Ethylene process vents are gas streams that are discharged to the atmosphere (or the point of entry into a control device, if any) either directly or after passing through one or more recovery devices. Ethylene process vents do not include stream and aromatics from pyrolysis gasoline.

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water). A heat exchange system can include an entire recirculating or once-through cooling system.

Transfer rack means the collection of loading arms and loading hoses at a single loading rack that is used to fill

concentration, water content) are determined at the point of waste generation. Examples of a waste stream include process wastewater, product tank drawdown, sludge and slop oil removed from waste management units, and landfill leachate.

(3) *Requirements.* The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in

TABLE 7 TO § 63.1103(E).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
		(ii) Install process piping designed to collect the HAP-containing vapors displaced from tank trucks or railcars during loading and to route it to a process, a fuel gas system, or a vapor balance system, as specified in § 63.1105.
(f) Equipment (as defined in § 63.1101) that contains or contacts organic HAP.	(1) The equipment contains or contacts ≥5 weight-percent organic HAP; and the equip-	Comply with the requirements of subpart UU of this part.

per minute containing greater than 20 parts per million by volume HAP that is continuously discharged during operation of an ethylene production unit, as defined in this section. Ethylene process vents are gas streams that are discharged to the atmosphere (or the point of entry into a control device, if any) either directly or after passing through one or more recovery devices. Ethylene process vents do not include relief valve discharges; gaseous streams routed to a fuel gas system; leaks from equipment regulated under this subpart; episodic or nonroutine releases such as those associated with startup, shutdown, and malfunction; and in situ sampling systems (online analyzers).

Ethylene production or production unit means a chemical manufacturing process unit in which ethylene and/or propylene are produced by separation from petroleum refining process streams or by subjecting hydrocarbons to high temperatures in the presence of steam. The ethylene production unit includes the separation of ethylene and/or propylene from associated streams such as a C_4 product, pyrolysis gasoline, and pyrolysis fuel oil. Ethylene production does not include the manufacture of SOCMI chemicals such as the production of butadiene from the C_4 stream and aromatics from pyrolysis gasoline.

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water). A heat exchange system can include an entire recirculating or once-through cooling system.

Transfer rack means the collection of loading arms and loading hoses at a single loading rack that is used to fill tank trucks and/or railcars with organic HAP. Transfer rack includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves. Transfer rack does not include racks, arms, or hoses that contain organic HAP only as impurities; or racks, arms, or hoses that vapor balance during all loading operations.

Waste means any material resulting from industrial, commercial, mining, or agricultural operations, or from community activities, that is discarded or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled, or discharged.

Waste stream means the waste generated by a particular process unit, product tank, or waste management unit. The characteristics of the waste stream (e.g., flow rate, HAP concentration, water content) are determined at the point of waste generation. Examples of a waste stream include process wastewater, product tank drawdown, sludge and slop oil removed from waste management units, and landfill leachate.

(3) *Requirements.* The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in Table 7 to this section. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, except for paragraphs (d), (g), (h), (i), (j), (l)(1), and (n). An owner or operator must perform the applicability assessment procedures and methods for equipment leaks specified in § 63.1107. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. Procedures for approval of alternate means of emission limitations are specified in § 63.1113.

TABLE 7 TO § 63.1103(E).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥4 cubic meters but ≤95 cubic meters.	(i) Fill the vessel through a submerged pipe; or (ii) Comply with the requirements for storage vessels with capacities ≥95 cubic meters.
(b) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but ≥76.6 kilopascals; and the capacity of the vessel is ≥95 cubic meters.	(i) Comply with the requirements of subpart WW of this part; or (ii) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices and meet the requirements of § 63.982(a)(1).
(c) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of total organic HAP is ≥76.6 kilopascals.	(i) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices and meet the requirements of § 63.982(a)(1).
(d) An ethylene process vent (as defined in paragraph (e)(2) of this section).	(1) The process vent is at an existing source and the vent stream has a flow rate ≥0.011 scmm and a total organic HAP concentration ≥50 parts per million by volume; or the process vent is at a new source and the vent stream has a flow rate ≥0.008 scmm and a total organic HAP concentration ≥30 parts per million by volume.	(i) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices and meet the requirements specified in § 63.982(b) and (c)(2).
(e) A transfer rack (as defined in paragraph (e)(2) of this section).	(1) Materials loaded have a true vapor pressure of total organic HAP ≥3.4 kilopascals and ≥76 cubic meters per day (averaged over any consecutive 30-day period) of HAP-containing material is loaded.	(i) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices as specified in § 63.1105; or

TABLE 7 TO § 63.1103(E).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
		(ii) Install process piping designed to collect the HAP-containing vapors displaced from tank trucks or railcars during loading and to route it to a process, a fuel gas system, or a vapor balance system, as specified in § 63.1105.
(f) Equipment (as defined in § 63.1101) that contains or contacts organic HAP.	(1) The equipment contains or contacts ≥5 weight-percent organic HAP; and the equipment is not in vacuum service.	Comply with the requirements of subpart UU of this part.
(g) Processes that generate waste (as defined in paragraph (e)(2) of this section).	(1) The wastewater contains any of the following HAP: benzene, cumene, ethyl benzene, hexane, naphthalene, styrene, toluene, o-xylene, m-xylene, p-xylene, or 1,3-butadiene.	(i) Comply with the waste requirements of subpart XX of this part. For ethylene manufacturing process unit waste stream requirements, terms have the meanings specified in subpart XX.
(h) A heat exchange system (as defined in paragraph (e)(2) of this section).	.....	Comply with the heat exchange system requirements of subpart XX of this part.

(f) *Carbon black production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the carbon black production source category (as defined in paragraph (f)(2) of this section), the affected source shall comprise each carbon black production process unit located at a major source, as defined in section 112(a) of the Act. The affected source for the carbon black production source category includes all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit.

(ii) *Compliance schedule.* The compliance schedule for the carbon black production and acetylene decomposition carbon black production affected sources, as defined in paragraph (f)(1)(i) of this section, is specified in § 63.1102.

(2) *Definitions. Carbon black production* means the production of carbon black by either the furnace, thermal, acetylene decomposition, or lampblack processes.

Carbon black production unit means the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a carbon black product. For the purposes of this subpart, a carbon black production process unit includes reactors and associated operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A carbon black production process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

Dryer means a rotary-kiln dryer that is heated externally and is used to dry wet pellets in the wet pelletization process.

Main unit filter means the filter that separates the carbon black from the tailgas.

Process filter means the filter that separates the carbon black from the conveying air.

Purge filter means the filter that separates the carbon black from the dryer exhaust.

(3) *Requirements.* (i) Table 8 to this section specifies the carbon black production standards applicability for existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

(ii) Pressure relief devices used to protect against overpressure in the case of catastrophic failure of your process filter system are exempt from the closed vent system inspection requirements of § 63.983(b) and (c). Exempt pressure relief devices must be designated and identified in your Notification of Compliance Status report.

TABLE 8 TO § 63.1103(F).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CARBON BLACK PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A carbon black production main unit filter process vent.	(1) The HAP concentration of the emission stream is equal to or greater than 260 parts per million by volume[a].	(i) Reduce emissions of HAP by using a flare meeting the requirements of subpart SS of this part; or (ii) Reduce emissions of total HAP by 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

[a] The weight-percent organic HAP is determined according to the procedures specified in § 63.1104(e).

(g) *Cyanide chemicals manufacturing applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the cyanide chemicals manufacturing source category, the affected source shall include each cyanide chemicals manufacturing process unit located at a major source, as defined in section 112(a) of the Act. The affected source shall also include all waste management unit, a BMA process unit, a sodium cyanide process unit, or a Sohio hydrogen cyanide process unit. For the purpose of this subpart, a cyanide chemicals manufacturing process unit includes reactors and associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A cyanide chemicals manufacturing hydrogen cyanide is reacted with sodium hydroxide and ends at the point the solid sodium cyanide product is shipped offsite or used as a raw material in a downstream process. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide prior to the hydrogen cyanide refining process, the unit operation where sodium cyanide is formed is not considered to be part of the sodium

manufacturing standards applicable to existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

(4) *Determination of overall HAP emission reduction for a process unit.* (i) The owner or operator shall determine the overall HAP emission reduction for process vents in a process unit using Equation 1 of this section. The overall organic HAP emission reduction shall be determined for all process vents in the process unit.

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(g) *Cyanide chemicals manufacturing applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the cyanide chemicals manufacturing source category, the affected source shall include each cyanide chemicals manufacturing process unit located at a major source, as defined in section 112(a) of the Act. The affected source shall also include all waste management units, maintenance wastewater, and equipment (as defined in § 63.1101) that contain or contact cyanide chemicals that are associated with the cyanide chemicals manufacturing process unit.

(ii) *Compliance schedule.* The compliance schedule for the affected source, as defined in paragraph (f)(1)(i) of this section, is specified in § 63.1102.

(2) *Definitions. Andrussow process unit* means a process unit that produces hydrogen cyanide by reacting methane and ammonia in the presence of oxygen over a platinum/rhodium catalyst. An Andrussow process unit begins at the point at which the raw materials are stored and ends at the point at which refined hydrogen cyanide is reacted as a raw material in a downstream process, burned on-site as fuel in a boiler or industrial furnace, or is shipped offsite. If raw hydrogen cyanide from the reactor is reacted with sodium hydroxide to form sodium cyanide prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the Andrussow process unit.

Blausaure Methane Anlage (BMA) process unit means a process unit that produces hydrogen cyanide by reacting methane and ammonia over a platinum catalyst. A BMA process unit begins at the point at which raw materials are stored and ends at the point at which refined hydrogen cyanide is reacted as a raw material in a downstream process, burned on-site as a fuel in a boiler or industrial furnace, or is shipped offsite. If raw hydrogen cyanide from the reactor is reacted with sodium hydroxide to form sodium cyanide prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the BMA process unit.

Byproduct means a chemical that is produced coincidentally during the production of another chemical.

Cyanide chemicals manufacturing process unit or *CCMPU* means the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a cyanide chemicals product. A cyanide chemicals manufacturing process unit shall be limited to any one of the following: an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio hydrogen cyanide process unit. For the purpose of this subpart, a cyanide chemicals manufacturing process unit includes reactors and associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A cyanide chemicals manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

Cyanide chemicals product means either hydrogen cyanide, potassium cyanide, or sodium cyanide which is manufactured as the intended product of a CCMPU or a byproduct of the Sohio process. Other hydrogen cyanide, potassium cyanide, or sodium cyanide byproducts, impurities, wastes, and trace contaminants are not considered to be cyanide chemicals products.

Dry-end process vent means a process vent originating from the drum filter or any other unit operation in the dry end of a sodium cyanide manufacturing process unit. For the purposes of this subpart, the dry end of the sodium cyanide process unit begins in the unit operation where water is removed from the sodium cyanide, usually in the drum filter, and ends when the sodium cyanide is used as a raw material in a downstream process, or is shipped offsite.

Organic HAP means, for purposes of applicability of the requirements of this subpart, all hydrogen cyanide compounds.

Raw hydrogen cyanide means hydrogen cyanide that has not been through the refining process. Raw hydrogen cyanide usually has a hydrogen cyanide concentration less than 10 percent.

Refined hydrogen cyanide means hydrogen cyanide that has been through the refining process. Refined hydrogen cyanide usually has a hydrogen cyanide concentration greater than 99 percent.

Refining process means the collection of equipment in a cyanide chemicals manufacturing processing unit used to concentrate raw hydrogen cyanide from a concentration around 10 percent or less to refined hydrogen cyanide at a concentration greater than 99 percent.

Sodium cyanide process unit means a process unit that produces sodium cyanide by reacting hydrogen cyanide and sodium hydroxide via the neutralization, or wet, process. A sodium cyanide process unit begins at the unit operation where refined hydrogen cyanide is reacted with sodium hydroxide and ends at the point the solid sodium cyanide product is shipped offsite or used as a raw material in a downstream process. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide prior to the hydrogen cyanide refining process, the unit operation where sodium cyanide is formed is not considered to be part of the sodium cyanide process unit. For this type of process, the sodium cyanide process unit begins at the point that the aqueous sodium cyanide stream leaves the unit operation where the sodium cyanide is formed. In situations where potassium hydroxide is substituted for sodium hydroxide to produce potassium cyanide, the process unit is still considered a sodium cyanide process unit.

Sohio hydrogen cyanide process unit means a process unit that produces hydrogen cyanide as a byproduct of the acrylonitrile production process when acrylonitrile is manufactured using the Sohio process. A Sohio hydrogen cyanide process unit begins at the point the hydrogen cyanide leaves the unit operation where the hydrogen cyanide is separated from the acrylonitrile (usually referred to as the heads column). The Sohio hydrogen cyanide process unit ends at the point refined hydrogen cyanide is reacted as a raw material in a downstream process, burned on-site as fuel in a boiler or industrial furnace, or is shipped offsite. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the Sohio hydrogen cyanide process unit.

Wet-end process vent means a process vent originating from the reactor, crystallizer, or any other unit operation in the wet end of the sodium cyanide process unit. For the purposes of this subpart, the wet end of the sodium cyanide process unit begins at the point at which the raw materials are stored and ends just prior to the unit operation where water is removed from the sodium cyanide, usually in the drum filter. Wastewater streams containing discarded wastewater from the sodium cyanide production process are not considered to be part of the wet-end sodium cyanide process. Discarded wastewater that is no longer used in the production process is considered to be process and/or maintenance wastewater. Vents from process and maintenance wastewater operations are not wet-end process vents.

(3) *Requirements.* Table 9 to this section specifies the cyanide chemicals manufacturing standards applicable to existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

(4) *Determination of overall HAP emission reduction for a process unit.* (i) The owner or operator shall determine the overall HAP emission reduction for process vents in a process unit using Equation 1 of this section. The overall organic HAP emission reduction shall be determined for all process vents in the process unit.

$$RED_{CCMPU} = \left(\frac{\sum_{i=1}^{n} \left(E_{unc,i}\right)\left(\frac{R_i}{100}\right)}{\sum_{i=1}^{n} \left(E_{unc,i}\right) + \sum_{j=1}^{m} \left(E_{unc,j}\right)} \right) * 100 \qquad \text{[Equation 1]}$$

Where:

RED_{CCMPU}=Overall HAP emission reduction for the group of process vents in the CCMPU, percent.

$E_{unc,i}$=Uncontrolled HAP emissions from process vent i that is controlled by using a combustion, recovery, or recapture device, kg/yr.

n=Number of process vents in the process unit that are controlled by using a combustion, recovery, or recapture device.

R_i=Control efficiency of the combustion recovery, or recapture device used to control HAP emissions from vent i, determined in accordance with paragraph (g)(4)(ii) of this section.

$E_{unc,j}$=Uncontrolled HAP emissions from process vent j that is not controlled by using a combustion, recovery, or recapture device, kg/yr.

m=Number of process vents in the process unit that are not controlled by using a combustion, recovery, or recapture device.

(ii) The control efficiency shall be assigned as specified in paragraph (g)(4)(ii) (A) or (B) of this section.

(A) If the process vent is controlled using a flare in accordance with the provisions of § 63.987, or a combustion device in accordance with the provisions of § 63.988(b)(2), for which a performance test has not been conducted, the control efficiency shall be assumed to be 98 weight-percent. For hydrogen-fueled flares, an owner or operator may use a control efficiency greater than 98 weight-percent if they can provide engineering calculations and supporting information demonstrating a greater control efficiency.

(B) If the process vent is controlled using a combustion, recovery, or recapture device for which a performance test has been conducted in accordance with the provisions of § 63.997, the control efficiency shall be the efficiency determined by the performance test.

(5) *Source category specific modifications to testing procedures.* (i) When identifying equipment subject to any equipment leak requirements, an owner or operator is allowed to designate specific components of such equipment as never being safe to monitor with their Notification of Compliance Status report and periodic compliance reports. In order for an owner or operator to designate such equipment as never being safe to monitor, they must certify that monitoring such equipment at any time the CCMPU is operating is never safe (e.g., monitoring this equipment would present an unreasonable hazard or preclude testing personnel from meeting emergency evacuation requirements). If it is demonstrated to the Administrator's satisfaction that equipment designated by the owner or operator as never safe to monitor is appropriately designated, an owner or operator will not be required to monitor such equipment.

(ii) For process vent hydrogen cyanide emissions that are vented to a control device other than a flare during startup, shutdown, and malfunction, the design evaluation must include documentation that the control device being used achieves the required control efficiency during the reasonably expected maximum flow rate and emission rate during startup, shutdown, and malfunction.

(iii) If a facility controls process vent emissions during startup, shutdown, and malfunction by using a flare, an owner or operator is not required to perform flow rate and heat content testing as specified in § 63.987(b)(3)(ii) and (iii). In lieu of performing flow rate and heat content testing, an owner or operator is required to submit engineering calculations that substantiate that a flare meets the applicable heat content or flow rates, or provide data from a compliance assessment that the flare is in compliance under worst case conditions (e.g., maximum operating conditions).

(iv) If flare velocity and net heating value testing, as specified in § 63.11(b)(6)(ii) and (b)(7)(i), would create an unreasonable hazard for testing personnel, an owner or operator is allowed to submit engineering calculations that substantiate vent stream velocity and heat content of a flare in lieu of test data. These calculations are required to be submitted with the facilities' compliance test notification report for approval by the Administrator.

(v) The data from any performance test method used to measure HCN concentrations must be validated using EPA Method 301 (40 CFR part 63, appendix A).

TABLE 9 TO § 63.1103(G).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A storage vessel	(1) The storage vessel contains refined hydrogen cyanide.	(i) Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or (ii) Reduce emissions of hydrogen cyanide by 98 weight-percent, or to a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to

TABLE 9 TO § 63.1103(G).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
(e) A transfer rack	(1) The transfer rack is used to load refined hydrogen cyanide into tank trucks and/or rail cars.	(i) Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or (ii) Reduce emissions of hydrogen cyanide by 98 weight-percent, or to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of

TABLE 9 TO § 63.1103(G).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A storage vessel	(1) The storage vessel contains refined hydrogen cyanide.	(i) Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or (ii) Reduce emissions of hydrogen cyanide by 98 weight-percent, or to a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(1) or (d).
(b) A process vent from a continuous unit operations in an Andrussow, BMA, or Sohio hydrogen cyanide process unit.		(i) Reduce overall annual emissions of total HAP from the collection of process vents from continuous unit operations in the process by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements specified in § 63.982(a)(2); or (ii) Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by using a flare meeting the requirements specified in § 63.982(b); or (iii) Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by 98 weight-percent or to a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).
(c) One or more wet end process vents, as defined in paragraph (g)(2) of this section, in a sodium cyanide process unit.		(i) Reduce overall annual emissions of total HAP from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements of § 63.982(a)(2); or (ii) Reduce emissions of total HAP from each wet-end process vent in the process unit by using a flare meeting the requirements of § 63.982(b); or (iii) Reduce emissions of total HAP from each wet-end process vent by 98 weight-percent, or to a concentration of 20 parts per million by volume, by venting emissions through a closed vent system and any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).
(d) One or more dry end process vents, as defined in paragraph (g)(2) of this section, in a sodium cyanide process unit.		(i) Reduce overall annual emissions of sodium cyanide from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements of § 63.982(a)(2); or (ii) Reduce emissions of sodium cyanide from each dry-end process vent in the process unit by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d).

TABLE 9 TO § 63.1103(G).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
(e) A transfer rack	(1) The transfer rack is used to load refined hydrogen cyanide into tank trucks and/or rail cars.	(i) Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or (ii) Reduce emissions of hydrogen cyanide by 98 weight-percent, or to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements specified in § 63.982(c)(1), (c)(2), or (d).
(f) A new cyanide chemicals manufacturing process unit that generates process wastewater.	(1) The process wastewater is from HCN purification, ammonia purification, or flare blowdown.	(i) Achieve a combined removal and control of HAP from wastewater of 93 weight-percent.
(g) A cyanide chemicals manufacturing process unit that generates maintenance wastewater.	(1) The maintenance wastewater contains hydrogen cyanide or acetonitrile.	(i) Comply with the requirements of § 63.1106(b).
(h) An item of equipment listed in § 63.1106(c)(1) that transports or contains wastewater liquid streams from a cyanide chemicals manufacturing process unit.	(1) The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).	(i) Comply with the requirements in Table 35 of subpart G of this part.
(i) Equipment, as defined under § 63.1101	(1) The equipment contains or contacts hydrogen cyanide and operates equal to or greater then 300 hours per year.	(i) Comply with either subpart TT or UU of this part, and paragraph (g)(5) of this section, with the exception that open-ended lines that contain or contact hydrogen cyanide are exempt from any requirements to install a cap, plug, blind flange, or second valve to be capped.

(h) *Spandex production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the spandex production (as defined in paragraph (h)(2) of this section) source category, the affected source shall comprise all emission points listed in paragraphs (h)(1)(i)(A) through (C) of this section that are associated with a reaction spinning spandex production process unit located at a major source, as defined in section 112(a) of the Act.

(A) All process vents (as defined in § 63.1101).

(B) All storage vessels (as defined in § 63.1101) that store liquids containing organic HAP.

(C) All spandex fiber spinning lines using a spinning solution having organic HAP.

(ii) *Exceptions.* The emission points listed in paragraphs (h)(1)(ii)(A) and (B) of this section are in the spandex production source category but are not subject to the requirements of paragraph (h)(3) of this section.

(A) Equipment that is located within a spandex production process unit that is subject to this subpart but does not contain organic HAP.

(B) Vessels storing organic liquids that contain organic HAP as impurities.

(iii) *Compliance schedule.* The compliance schedule for affected sources, as defined in paragraph (h)(1)(i) of this section, is specified in paragraph (b) of § 63.1102.

(2) *Definitions. Fiber spinning line* means the group of equipment and process vents associated with spandex fiber spinning operations. The fiber spinning line includes the blending and dissolving tanks, spinning solution filters, spinning units, spin bath tanks, and the equipment used downstream of the spin bath to wash, draw, or dry on the wet belt the spun fiber.

Spandex or spandex fiber means a manufactured synthetic fiber in which the fiber-forming substance is a long-chain polymer comprised of at least 85 percent by mass of a segmented polyurethane.

Spandex production means the production of synthetic spandex fibers.

Spandex production process unit means a process unit that is specifically used for the production of synthetic spandex fibers.

(3) *Requirements.* Table 10 to this section specifies the spandex production source category requirements for new and existing sources. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, excluding paragraphs (b)(1), (d), (g), (h), (i), (j), (l)(1), and (n). General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. Procedures for approval of alternate means of emission limitations are specified in § 63.1113.

TABLE 10 TO § 63.1103(H)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A SPANDEX PRODUCTION PROCESS UNIT AT A NEW OR EXISTING SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of the organic HAP is ≥ 3.4 kilopascals; and the capacity of the vessel is ≥ 47 cubic meters.	(i) Comply with the requirements of subpart WW of this part; or (ii) Reduce emissions of organic HAP by 95 weight-percent by venting emissions in through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as

collected HAP vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected HAP vapors to a process.

(b) *Operating requirements.* An owner or operator of a transfer rack shall operate it in such a manner that emissions are routed through the equipment specified in paragraph (a) of this section.

(c) *Test methods and procedures.* The owner or operator of a transfer rack shall use the procedures and equipment specified in paragraphs (h)(1) and (2) shall be used.

(1) The pressure test procedures specified in Method 27 of appendix A to 40 CFR part 60.

(2) A pressure measurement device that has a precision of ± 2.5 millimeters of mercury or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

[FR Doc. 02–12841 Filed 7–11–02; 8:45 am]
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TABLE 10 TO § 63.1103(H)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A SPANDEX PRODUCTION PROCESS UNIT AT A NEW OR EXISTING SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of the organic HAP is ≥ 3.4 kilopascals; and the capacity of the vessel is ≥ 47 cubic meters.	(i) Comply with the requirements of subpart WW of this part; or (ii) Reduce emissions of organic HAP by 95 weight-percent by venting emissions in through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(1).
(b) A process vent		Reduce emissions of organic HAP by 95 weight-percent, or reduce organic HAP or TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).
(c) A fiber spinning line		Operate the fiber spinning line such that emissions are captured and vented through a line closed vent system to a control device that complies with the requirements of § 63.982(a)(2). If a control device other than a flare is used, HAP emissions must be reduced by 95 weight-percent, or total organic HAP or TOC must be reduced to a concentration of 20 parts per million by volume, whichever is less stringent.

15. Section 63.1104 is amended by:

a. Revising the last sentence of paragraph (a);

b. Revising the first sentence of paragraph (e) introductory text;

c. Revising the first sentence of paragraph (f)(1);

d. Revising the last sentence of paragraph (k) introductory text; and

e. Revising the first sentence of paragraph (m)(2)(i) introductory text.

The revisions are to read as follows:

§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.

(a) * * * The owner or operator of a process vent is not required to determine the criteria specified for a process vent that is being controlled (including control by flare) in accordance with the applicable weight-percent, TOC concentration, or organic HAP concentration requirement in § 63.1103.

* * * * *

(e) *TOC or Organic HAP concentration.* The TOC or organic HAP concentrations shall be determined based on paragraph (e)(1), (e)(2), or (k) of this section, or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. * * *

* * * * *

(f) * * *

(1) Use Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate. * * *

* * * * *

(k) * * * If a process vent flow rate or process vent organic HAP or TOC concentration is being determined for comparison with the applicable flow rate or concentration value presented in the tables in § 63.1103 to determine control requirement applicability, engineering assessment may be used to determine the flow rate or concentration for the representative operating conditions expected to yield the highest flow rate or concentration.

* * * * *

(m) * * *

(2) *Process change.* (i) Whenever a process vent becomes subject to control requirements under this subpart as a result of a process change, the owner or operator shall submit a report within 60 days after the performance test or applicability assessment, whichever is sooner. * * *

* * * * *

16. Add § 63.1105 to read as follows:

§ 63.1105 Transfer racks.

(a) *Design requirements.* The owner or operator shall equip each transfer rack with one of the control options listed in paragraphs (a)(1) through (4) of this section.

(1) A closed vent system designed to collect HAP-containing vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a flare. The owner or operator must meet the requirements of § 63.982(a)(3).

(2) A closed vent system designed to collect HAP-containing vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a control device other than a flare. The owner or operator must meet the requirements of § 63.982(a)(3).

(3) Process piping designed to collect the HAP vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a process where the HAP vapors shall predominantly meet one of, or a combination of, the ends specified in paragraphs (a)(3)(i) through (iv) of this section or to a fuel gas system. The owner or operator must meet the requirements of § 63.982(a)(3).

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not HAP;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(4) Process piping designed to collect the HAP vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a vapor balance system. The vapor balance system must be designed to route the collected HAP vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected HAP vapors to a process.

(b) *Operating requirements.* An owner or operator of a transfer rack shall operate it in such a manner that emissions are routed through the equipment specified in paragraph (a) of this section.

(c) *Control device operation.* Whenever HAP emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(d) *Tank trucks and railcars.* The owner or operator shall load HAP-containing materials only into tank trucks and railcars that meet the requirement in paragraph (d)(1) or (2) of this section and shall maintain the records specified in paragraph (i) of this section.

(1) Have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months as determined by the procedures in paragraph (h) of this section. Vapor-tight means that the pressure in a truck or railcar tank will not drop more than 750 pascals within 5 minutes after it is pressurized to a minimum of 4,500 pascals.

(e) *Pressure relief device.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the loading equipment of each tank truck or railcar shall begin to open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to the requirements of this paragraph.

(f) *Compatible system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall load HAP-containing materials only to tank trucks or railcars equipped with a vapor collection system that is compatible with the transfer rack's closed vent system or process piping.

(g) *Loading while systems connected.* The owner or operator of a transfer rack subject to this subpart shall load HAP-containing material only to tank trucks or railcars whose collection systems are connected to the transfer rack's closed vent system or process piping.

(h) *Vapor tightness procedures.* For the purposes of demonstrating vapor tightness to determine compliance with paragraph (d)(2) of this section, the procedures and equipment specified in paragraphs (h)(1) and (2) shall be used.

(1) The pressure test procedures specified in Method 27 of appendix A to 40 CFR part 60.

(2) A pressure measurement device that has a precision of ± 2.5 millimeters of mercury or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(i) *Recordkeeping.* The owner or operator of a transfer rack shall record that the verification of DOT tank certification or Method 27 of appendix A to 40 CFR part 60 testing required in § 63.84(c) has been performed. Various methods for the record of verification can be used, such as a check-off on a log sheet, a list of DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on-site that do not have the appropriate documentation.

17. Subpart YY is amended by adding § 63.1114 to read as follows:

§ 63.1114 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the nonopacity emissions standards in § 63.1103(a)(3), (b)(3) through (5), (c)(3), (d)(3), (e)(3), (f)(3), (g)(3) and (4), and (h)(3) under § 63.6(g). Follow the requirements in § 63.1113 to request permission to use an alternative means of emission limitation. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

[FR Doc. 02–12841 Filed 7–11–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7215–6]

RIN 2060–AH68

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action to amend the "generic" maximum achievable control technology (MACT) standards to clarify the agency's intent concerning dry spinning spandex production processes. The national emission standards for hazardous air pollutants (NESHAP) for the Spandex Production source category, along with the NESHAP for three other source categories, are being included in the Generic MACT rule in this issue of the **Federal Register**.

DATES: The direct final rule will be effective on September 25, 2002 without further notice, unless significant adverse comments are received by August 12, 2002, or by August 26, 2002 if a public hearing is requested. See the proposed rule in this issue of the **Federal Register** for information on the hearing. If we receive timely adverse comments, we will withdraw this direct final rule and take final action pursuant to the proposed rule.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–25, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–25, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**). Comments may

also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–98–25 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on

silence concerning these facilities in the proposal was intended to reflect this conclusion.

However, we agree with the commenter that our silence in the proposal regarding the dry spinning production process might be interpreted as a failure to specifically address the need for standards governing emissions of hazardous air pollutants (HAP) from these facilities and, thereby, trigger the case-by-case determinations required by

extrusion of fibers, and drying of fibers. However, a major process difference that affects the amount of HAP emissions from the dry spinning process is the type of solvent used in the production. In the dry spinning production process, non-HAP solvents are used as opposed to HAP-containing solvents used in the reaction spinning process. The estimated total HAP from the three dry spinning production facilities is approximately 4.1

combined annual MDI emissions from the storage tanks at all three dry spinning facilities do not exceed 500 pounds. We do not believe that requiring additional controls on these storage tanks would yield any meaningful emission reductions. This conclusion is corroborated by our determination that all of the MDI storage tanks at dry spinning production facilities are below the size and vapor pressure requirements for control under

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also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–98–25 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Manning, Waste and Chemical Processes Group, Emission Standards Division (Mailcode C43903), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5499, electronic mail (e-mail) address: *manning.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect file format. All comments and data submitted in electronic form must note the docket number A–98–25. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Elaine Manning, c/o OAQPS Document Control Officer (Mailcode C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of the administrative record compiled by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	325222	2824	Producers of spandex.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1104 of the rule. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by September 10, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

Outline. The information presented in this preamble is organized as follows:

I. Why are we publishing these amendments as a direct final rule?
II. What amendments are we making to the NESHAP for spandex production?
III. What are the administrative requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children for Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act
J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Why Are We Publishing These Amendments as a Direct Final Rule?

The EPA received several comments on the proposed standards for spandex production. One commenter was concerned that because the dry spinning spandex production process was not mentioned in the proposal, an interpretation could be made that EPA failed to make any decision concerning a MACT standard for this group of sources, and as a result these facilities would be subject to a case-by-case MACT determination under CAA section 112(j). Prior to proposal, we evaluated HAP emissions from dry spinning spandex production and determined that adoption of MACT standards requiring additional emissions reductions for these facilities is not necessary or appropriate. Our

silence concerning these facilities in the proposal was intended to reflect this conclusion.

However, we agree with the commenter that our silence in the proposal regarding the dry spinning production process might be interpreted as a failure to specifically address the need for standards governing emissions of hazardous air pollutants (HAP) from these facilities and, thereby, trigger the case-by-case determinations required by the "hammer" provision in CAA section 112(j). Since we did not explicitly state our decision not to adopt any standards for these sources or describe our rationale for that decision in the proposed rule, we have determined that we should supplement our proposal. However, since we do not expect our decision that no MACT standards are necessary for spandex dry spinning facilities to be controversial, and we do not anticipate any adverse comments concerning our decision, we have determined that it is appropriate to effectuate this decision through a direct final rule. This assures that any ambiguity which might otherwise exist concerning our intention to adopt MACT requirements for these facilities will be resolved in a timely manner.

If any adverse comment is received concerning our decision not to adopt MACT standards for spandex dry spinning facilities, we will withdraw this direct final rule. In the "Proposed Rules" section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposal for our decision not to adopt MACT standards for these facilities in the event we receive any adverse comment. In that case, EPA will publish a timely withdrawal notice before the effective date of this direct final rule and will take final action concerning the proposal after considering the comments received.

II. What Amendments Are We Making to the NESHAP for Spandex Production?

During the rule development, we investigated emissions from dry spinning spandex production processes (comparing the emissions to the reaction spinning process) and made the following findings.

While dry and reaction spinning processes have many similarities, there are significant differences in HAP emissions and controls between the processes. The dry and reaction spinning processes are similar in their use of reactants and process chemistry. Both processes involve the same basic process steps, including production of prepolymer, production of polymer, extrusion of fibers, and drying of fibers. However, a major process difference that affects the amount of HAP emissions from the dry spinning process is the type of solvent used in the production. In the dry spinning production process, non-HAP solvents are used as opposed to HAP-containing solvents used in the reaction spinning process. The estimated total HAP from the three dry spinning production facilities is approximately 4.1 megagrams per year (mg/yr) (4.5 tons per year (tpy)) whereas the two reaction spinning processes emit 303 mg/yr (334 tpy).

Although the dry spinning production process does not use HAP solvents, small amounts of organic HAP are used and generated. The HAP that is produced in the dry spinning process is formaldehyde. Formaldehyde is generated as a byproduct of heating the dimethyl acetamide in the spin cells and is emitted from the process vent along with the non-HAP solvent. None of the existing dry spinning production facilities have controls in place for formaldehyde emissions. Therefore, the floor for dry spinning production process vents is no control. A beyond-the-floor analysis (development of a regulatory option and analysis of the costs associated with the option) was performed on the HAP emissions from the dry spinning production process. The flow rates for process vent streams from the dry spinning production process are large and the concentration of formaldehyde is low. The total annual cost to control these emissions would be approximately $49 million per year, or $12 million per ton of formaldehyde controlled. This is an unreasonable cost to go beyond the floor. Controlling this stream would also use significant amounts of energy. We do not know of a way to change the process or the feeds to reduce the HAP emissions. We have, therefore, decided not to select the beyond-the-floor regulatory option.

The other source of HAP emissions from dry spinning production sources is methylene diphenyl diisocyanate (MDI) storage. The MDI is one of the raw materials used in the spandex production process and has a very low volatility. Thus, we would expect emissions of MDI from the storage tanks to also be very low, perhaps even undetectable. All MDI storage tanks at dry spinning spandex production facilities are fixed-roof tanks. Additionally, one facility has carbon canisters on the vents from the MDI storage tanks (although the control efficiency of the canisters cannot be determined). We estimate that the combined annual MDI emissions from the storage tanks at all three dry spinning facilities do not exceed 500 pounds. We do not believe that requiring additional controls on these storage tanks would yield any meaningful emission reductions. This conclusion is corroborated by our determination that all of the MDI storage tanks at dry spinning production facilities are below the size and vapor pressure requirements for control under all existing MACT standards.

Based on the above analysis, we have concluded that the MACT floor for spandex dry spinning facilities is no control and that adoption of additional emission controls is not warranted. Therefore, we determined that it is not necessary or appropriate to promulgate any MACT requirements for these facilities.

III. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to

ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably

provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these rule amendments do not contain a

that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the amendments impose no additional regulatory requirements on owners or operators of affected sources.

G. Paperwork Reduction Act

This action does not impose any new information collection burden.

impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association

Dated: May 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to these amendments. Thus, the requirements of section 6 of the Executive Order do not apply.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officals in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate spandex production facilities. Thus, Executive Order 13175 does not apply to these rule amendments.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, these rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. Today's amendments do not add new requirements that would increase the costs of the rule. Thus, these rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, these rule amendments are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325411 or 325412 that has as many as 750 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the rule amendments on small entities, the EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the amendments impose no additional regulatory requirements on owners or operators of affected sources.

G. Paperwork Reduction Act

This action does not impose any new information collection burden. However, an information collection request (ICR) has been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, for the rule which is amended by today's direct final rule. An ICR document has been prepared by EPA (ICR No. 1983.02) and a copy may be obtained from Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on September 25, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart YY—[Amended]

2. Section 63.1103 is amended by:

a. Revising paragraph (h)(1)(i) introductory text;

b. Adding paragraph (h)(1)(ii)(C); and

c. Adding, in alphabetical order, definitions of *dry spinning* and *reaction spinning* to paragraph (h)(2).

The revision and additions are to read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(h) * * *

(1) * * *

(i) *Affected source.* For the spandex production (as defined in paragraph (h)(2) of this section) source category, the affected source shall comprise all emission points listed in paragraphs (h)(1)(i)(A) through (C) of this section that are associated with a spandex production process unit located at a major source, as defined in section 112(a) of the Act.

* * * * *

(ii) * * *

(C) Emission points listed in paragraphs (h)(1)(i)(A) through (C) of this section that are associated with a dry spinning spandex production process unit.

* * * * *

(2) *Definitions.*

Dry spinning means a fiber-forming process where prepolymer is reacted with a chain-extender to generate polymer prior to spinning; the polymer is dissolved in a solvent and is extruded into a cell of hot gases for fiber formation.

* * * * *

Reaction spinning means a fiber-forming process where prepolymer is extruded into a spin bath that contains a chain-extender; the chemical reaction to make polymer occurs simultaneously with extrusion/fiber formation.

* * * * *

[FR Doc. 02–12842 Filed 7–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7215–6]

RIN 2060–AH68

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

Center (6102), Attention Docket Number A–98–25, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Public Hearing. If a public hearing is held, it will be held at the EPA's Office

If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Jolynn Collins, U.S. EPA, Mailcode C43903, Research Triangle Park, NC 27711, telephone (919) 541–5671, at least 2 days in

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	325222	2824	Producers of spandex.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business,

or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small

a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the amendments impose no additional regulatory requirements on owners or

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7215–6]

RIN 2060–AH68

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, amendments.

SUMMARY: This action proposes an amendment to the "generic" maximum achievable control technology (MACT) standards for the Spandex Production source category. This action corrects an oversight in the December 6, 2000 proposal.

In the "Rules and Regulations" section of this **Federal Register**, we are making this amendment in a direct final rule, without prior proposal, because we view this revision as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for this amendment in the preamble to the direct final rule. If we receive no adverse comments, we will take no further action on this proposed rule. If we receive any timely adverse comments, we will publish a document withdrawing the direct final rule. All such comments will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on that subsequent final rule. Any parties interested in commenting must do so at this time.

DATES: Comments. Written comments must be received by August 12, 2002, unless a hearing is requested by July 22, 2002. If a hearing is requested, written comments must be received by August 26, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 22, 2002, a public hearing will be held on July 29, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–25, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–25, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION**.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina at 10:30 a.m.

Docket. Docket No. A–98–25 contains supporting information used in developing the rule. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Manning, Waste and Chemical Processes Group, Emission Standards Division (Mailcode C43903), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5499, electronic mail (e-mail) address: *manning.elaine@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect file format. All comments and data submitted in electronic form must note the docket number A–98–25. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

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Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Jolynn Collins, U.S. EPA, Mailcode C43903, Research Triangle Park, NC 27711, telephone (919) 541–5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket. The docket is an organized and complete file of the administrative record compiled by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

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Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	325222	2824	Producers of spandex.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1104 of the rule. If you have questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325411 or 325412 that has as many as 750 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the amendments impose no additional regulatory requirements on owners or operators of affected sources. The amendments correct an oversight.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 15, 2002.

Christine Todd Whitman,

Administrator.

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Part III

Federal Communications Commission

47 CFR Part 1
Assessment and Collection of Regulatory Fees For Fiscal Year 2002; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 02–64; FCC 02–205]

Assessment and Collection of Regulatory Fees For Fiscal Year 2002

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2002. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of

DATES: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: July 3, 2002.

Released: July 5, 2002.

By the Commission: Commissioner Copps concurring and issuing a

established, and prescribed rules to govern payment of the fees.[7]

5. For fiscal years after FY 1994, we modified the fee schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress annually requires us to recover through regulatory fees.[8] of regulation could not be adjusted to an acceptable and balanced level. We concluded that it would be best to discontinue attempts to base the schedule on our available cost data. Instead, we chose to adjust the FY 1999 through FY 2001 fees through "Mandatory Adjustments" only. We have found no reason to deviate from this policy for FY 2002. However, we are applying the "Mandatory Adjustments" as we did in FY 2001 to provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees and Procedural Changes

11. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term for "small" fees) to obtain actual fee

FEDERAL COMMUNICATIONS COMMISSION

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I. Introduction

1. By this *Report and Order*, the Commission concludes a proceeding to revise its Schedule of Regulatory Fees to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required us to collect for Fiscal Year (FY) 2002.[1]

2. We must collect $218,757,000 through regulatory fees to recover the costs of our competition, enforcement, spectrum management, and consumer information activities for FY 2002.[2] *See* Attachment G for a description of these activities. This amount is $18,611,000 or approximately 9.3% more than the amount designated for recovery through regulatory fees for FY 2001.[3] We are revising our fees in order to collect this amount as illustrated in a new fee schedule in Attachment D.

3. In revising our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 159(b)(2). The Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[4]

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover its regulatory costs.[5] In our *FY 1994 Fee Order*,[6] we adopted the Schedule of Regulatory Fees that Congress initially established, and prescribed rules to govern payment of the fees.[7]

5. For fiscal years after FY 1994, we modified the fee schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress annually requires us to recover through regulatory fees.[8] Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services * * *"[9]

6. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the cost of regulating various services that are subject to a fee, and for other purposes.[10] The Commission is planning a new improved cost accounting system, which we anticipate to be operational after sufficient testing. For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, in FY 1997, we found that some fee categories received disproportionately high cost allocations. We adjusted for these high cost allocations by redistributing the costs, and maintained a 25% limit on the extent in which service fee categories could be increased. We believed that this 25% limit would enable cost-based service fees to be implemented more gradually over time. We thought that this methodology, which we continued to use for FY 1998, would enable us to develop a regulatory fee schedule that more closely reflected our cost of regulation. Over time, as the cost of regulation increased or decreased, this methodology would enable us to revise the fee schedule to reflect those services whose regulatory costs had changed.

7. However, we found that developing a regulatory fee structure based on available but insufficiently detailed cost information sometimes did not permit us to recover the amount that Congress required us to collect. In some instances, the large increases in the cost of regulation could not be adjusted to an acceptable and balanced level. We concluded that it would be best to discontinue attempts to base the schedule on our available cost data. Instead, we chose to adjust the FY 1999 through FY 2001 fees through "Mandatory Adjustments" only. We have found no reason to deviate from this policy for FY 2002. However, we are applying the "Mandatory Adjustments" as we did in FY 2001 to better incorporate changes in payment units. Finally, section 9(b)(4)(B) requires us to notify Congress, if there are any "Permitted Amendments," 90 days before those amendments go into effect.[11] However, since we are making no "Permitted Amendments," this section does not apply for FY 2002.

8. We also amended the rules governing our regulatory fee program based upon our prior experience in administering the program.[12] These changes are discussed in more detail in paragraphs 29–34.

III. Discussion

A. Development of FY 2002 Fees

i. Adjustment of Payment Units

9. In calculating FY 2002 regulatory fees for each service, we adjusted the estimated payment units for each service to reflect substantial changes in payment units for many services since adopting our FY 2001 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. Attachment B summarizes how revised payment units were determined for each fee category.[13]

ii. Calculation of Revenue Requirements

10. We compared the sum of all estimated revenue requirements for FY 2001 to the amount that we must collect for FY 2002, which is approximately 9.3% more total revenue than in FY 2001. We increased each FY 2001 fee revenue category estimate by 9.3% to provide a total FY 2002 revenue estimate of $218,757,000. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees and Procedural Changes

11. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(2) of the Act. *See* Attachment C.

12. Once we established our tentative FY 2002 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Unless otherwise noted herein, nothing else in this proceeding is intended to change any policies or procedures established or reaffirmed in the *FY 2001 Order* (66 FR 36177).

13. Finally, we have incorporated, as Attachment F, Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other important information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2002.

B. NPRM Issues and Comments Received

14. The Commission issued a *Notice of Proposed Rulemaking (NPRM)*, adopted on March 22, 2002, setting forth a proposed fee schedule for FY 2002 based on the methodology used in FY 2001. The *NPRM* also requested comment on certain administrative issues, including proposals related to AM and FM population calculation errors, payment of fees using credit cards, the imposition of a processing fee for delinquent fee payments, and refunds involving less than $10.

15. In response to the *NPRM*, we received comments from AT&T; Verizon; the American Association of Paging Carriers; the Allied Personal Communications Industries Association of California; Blooston, Mordkofsky, Dickens, Duffy & Prendergast; and from two amateur radio licensees. Replies were filed by Verizon and American Mobile Telecommunications Association. Arch Wireless, along with the American Association of Paging

[1] 47 U.S.C. 159(a).

[2] Public Law 107–77 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 66 FR 36177 (2001).

[4] 47 CFR 1.1152 through 1.1156.

[5] 47 U.S.C. 159(a).

[6] 59 FR 30984 (1994).

[7] 47 U.S.C. 159(b), (f)(1).

[8] 47 U.S.C. 159(b)(2).

[9] 47 U.S.C. 159(b)(3).

[10] 47 U.S.C. 159(i).

[11] 47 U.S.C. 159(b)(4)(B).

[12] 47 CFR 1.1151 *et seq.*

[13] It is important to note also that the required increase in regulatory fee payments of approximately 9.3 percent in FY 2002 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increases from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

Carriers and the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, also filed a Notice of Ex Parte Presentation. None of the parties commented on the NPRM's administrative proposals. The comments of AT&T and Verizon relate to whether the Commission should use more current data or a different methodology in setting the Interstate Telecommunications Service Providers requires us to collect.[15] Allied further contends that the methodology for calculating the current fee schedule for CMRS messaging be changed from a per unit basis to an interstate revenue basis.[16] The American Association of Paging Carriers ("AAPC") and the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("BMDDP") also raise the same issue stating that the per unit fee for CMRS Messaging has in FY 2001. The FY 2002 unit fee results from dividing this new revenue requirement by the estimated number of units which we believe will be reported and a fee paid for FY 2002. While using a higher unit estimate of "38.9 or even 45.3 million units" would significantly lower the per unit fee, the commenters have not demonstrated that those estimates accurately represent the number of paying units currently in use

quarter 2002 revenues in Form 499–Q filings, and in any case, Form 499–Q lacks sufficient detail to permit calculation of the regulatory fee base. However, for purposes of calculating ITSP regulatory fees, what is most important is the submission of a *comprehensive* data form that meets our rigid time schedule, and FCC Form 499–A serves this purpose well. Although FCC Form 499–Q may reflect more

the fee in advance for a number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are: (1) "Standard" fees, (2) "large" fees, and (3) "small" fees.

event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The starting date for payment of small fees established in this proceeding is September 10, 2002.

Carriers and the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, also filed a Notice of Ex Parte Presentation. None of the parties commented on the NPRM's administrative proposals. The comments of AT&T and Verizon relate to whether the Commission should use more current data or a different methodology in setting the Interstate Telecommunications Service Providers (ITSP) regulatory fee. The comments of the CMRS messaging industry object to the increase proposed to the per unit fee for CMRS messaging providers. Amateur radio commenters object to paying regulatory fees when renewing their authorizations. This *Report and Order* discusses each of these issues and finds no basis for changing the approach proposed in the *NPRM*.

i. Amateur Vanity Call Signs

16. Amateur licensees Steven Karty and William J. Hanrahan support the payment of a regulatory fee for the initial administrative cost actually incurred by the Commission, but question why the amateur vanity call sign fee must be paid upon renewal. William J. Hanrahan also suggests that there be no cost distinction between vanity call signs and systematically assigned call signs. Section 9 of the Communications Act, as amended, provides for the recovery of the Commission's costs associated with its enforcement, policy and rulemaking, user information, and international activities.[14] Every day, Commission staff are engaged in activities involving amateur vanity call signs, such as protecting the assignment of vanity call signs, investigating complaints on the improper or illegal usage of call signs, requests for call signs that are already assigned to someone else, and all related research that is necessary to insure the proper assignment of call signs. Therefore, because the Commission continues to incur costs on vanity call signs even after the issuance or renewal of amateur vanity call signs, we believe that it is appropriate to assess such a regulatory fee upon the renewal of amateur vanity call sign licenses.

ii. Commercial Mobile Radio Service (CMRS) Messaging

17. Allied Personal Communications Industries Association of California ("Allied") argues that the CMRS Messaging fee of $0.08 per unit represents a 60% increase from last year's per unit fee of $0.05, rather than an increase of 9.3% that Congress requires us to collect.[15] Allied further contends that the methodology for calculating the current fee schedule for CMRS messaging be changed from a per unit basis to an interstate revenue basis.[16] The American Association of Paging Carriers ("AAPC") and the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("BMDDP") also raise the same issue stating that the per unit fee for CMRS Messaging has increased 60%, far beyond the 9.3% increase intended by Congress.[17] Furthermore, AAPC also discusses the impact of using an estimate of 23.6 million units as the basis for calculating CMRS Messaging fees, and whether a higher estimate (e.g. 38.9 million or even 45.3 million units) should not be used.[18] The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast also argues that an $0.08 per unit regulatory fee would be disastrous to an already fragile paging industry whose businesses are generally defined as "small" or "very small" businesses.[19] BMDDP also argues that because these businesses are small and community oriented, there is a great deal of customer loyalty to these local businesses, which is likely to change with declining revenues and higher regulatory fees.[20] And finally, BMDDP argues that historically speaking, the Commission has followed a policy of gradualism in protecting fledging telecommunications industries and small businesses, particularly if this policy will further the public interest.[21] In an oral Ex Parte presentation, Arch Wireless, Inc. ("Arch"), along with the American Association of Paging Carriers and the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, suggested that the Commission revise its methodology and use revenues, rather than estimated CMRS messaging units, as the basis for configuring regulatory fees in the future.[22]

18. The 9.3% increase has been applied to the total revenue required to be collected from the CMRS Messaging industry, not to the per unit fee assessed in FY 2001. The FY 2002 unit fee results from dividing this new revenue requirement by the estimated number of units which we believe will be reported and a fee paid for FY 2002. While using a higher unit estimate of "38.9 or even 45.3 million units" would significantly lower the per unit fee, the commenters have not demonstrated that those estimates accurately represent the number of paying units currently in use by the messaging industry. Furthermore, the commenters have provided no basis to substantiate the claim that a $0.03 annual increase per unit will be damaging to the industry. With respect to the suggestion that revenues be used as the basis for determining regulatory fees for CMRS messaging, this suggestion will require further consideration, particularly in determining whether a comprehensive source of revenue information is available for all entities engaged in providing CMRS messaging services.

iii. Interstate Telecommunications Service Providers (ITSP)

19. AT&T Corporation ("AT&T") asserts that the current regulatory fees mechanism does not conform to the methodology used for assessment and collection of universal service support and requests the Commission, to be consistent, reduce the time lag between the accrual of revenues and the payment of regulatory fees.[23] AT&T argues that this time lag between assessment and collection unfairly disadvantages certain carriers and reduces competition.[24] In revising its schedule of fees, the Commission follows a rigid time schedule that incorporates such steps as collecting data, reviewing the information, seeking public comments and reply comments, submitting a 60-day or 90-day notice to OMB and Congress, respectively, as well as to allow sufficient time for review and adoption of the Report and Order. Hence, AT&T's suggestion to use more current data from FCC Form 499–Q (submitted by carriers on August 1, 2002) is simply impractical given our rigid time schedule.[25] In addition, AT&T also notes that our fee calculations are based on 2001 revenue data, and since FY 2002 regulatory fees are not paid until September 2002, a time lag exists that could alter the regulatory rate for ITSP fees, which can be rectified by the use of FCC Form 499–Q (data from second quarter 2002). Carriers have not yet filed second

[14] 47 U.S.C. 159(a)(1).

[15] Comments submitted by Allied Personal Communications Industries Association of California on April 23, 2002, page 4.

[16] Ibid.

[17] Comments submitted on April 23, 2002 by the American Association of Paging Carriers (page 2), and the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (page 3).

[18] American Association of Paging Carriers (pages 2, 4–6).

[19] Blooston, Mordkofsky, Dickens, Duffy & Prendergast, pages 1–2.

[20] Ibid., pages 2–4.

[21] Ibid., pages 5–6, 8–9.

[22] Notice of Oral Ex Parte Presentation, submitted on May 17, 2002.

[23] Comments submitted by AT&T on April 23, 2002, page 4.

[24] Ibid, page 5.

[25] Ibid, page 7.

quarter 2002 revenues in Form 499–Q filings, and in any case, Form 499–Q lacks sufficient detail to permit calculation of the regulatory fee base. However, for purposes of calculating ITSP regulatory fees, what is most important is the submission of a *comprehensive* data form that meets our rigid time schedule, and FCC Form 499–A serves this purpose well. Although FCC Form 499–Q may reflect more current revenues data, we believe that it is not submitted with sufficient detail to permit carriers to complete Form 159–W, which is used as the basis for calculating and paying the Interstate Telecommunications Service Providers (ITSP) fee obligation.

20. AT&T also suggests that the Commission simultaneously modify its regulatory fee collections methodology from a historical revenue-based assessment to a connection and capacity-based mechanism if and when the Commission modifies its universal service contribution methodology.[26] In the *Universal Service Contribution Methodology Further Notice*, we specifically sought comment on the appropriate basis for calculating regulatory fees if the Commission were to adopt a connection and capacity-based universal service contribution methodology.[27] Until we resolve the issue of how contributions to universal service should be calculated, contemplating any revision to our regulatory fee methodology would be premature.

C. Procedures for Payment of Regulatory Fees

21. We are retaining the procedures that we have established for the payment of regulatory fees. *See* paragraphs 22–24. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are: (1) "Standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

22. As we have in the past, we are treating regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will begin September 10, 2002 and end at close of business September 25, 2002.

ii. Installment Payments for Large Fees

23. While time constraints will again preclude an opportunity for installment payments, regulatees in any category of service with a liability of $12,000 or more may choose to pay these fees on the last date that fee payments may be submitted. The date for installment payments will end at close of business on September 25, 2002.

iii. Advance Payments of Small Fees

24. As we have in the past, we are treating regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers noted.[28] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The starting date for payment of small fees established in this proceeding is September 10, 2002.

iv. De Minimis Fee Payment Liability

25. As we have in the past, regulatees whose *total regulatory fee liability*, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2002.

v. Standard Fee Calculations and Payment Dates

26. For licensees and permittees of Media (formerly Mass Media) services, we propose that the responsibility for payment of regulatory fees rests with the holder of the permit or license on October 1, 2001. However, in instances where a Media service license or authorization is *transferred or assigned after October 1, 2001*, and arrangements to pay have not been made between the two parties, the fee is still due and must be paid by the licensee or holder of the authorization on the date that the fee payment is due. For licensees, permittees and holders of other authorizations in the Wireline Competition Bureau (formerly Common Carrier) and Cable Services (presently within the Media Bureau) whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before *October 1, 2001*. A pending change in the status of a license or permit that is not granted as of that date is not taken into account, and the fee is based on the authorization that existed on October 1, 2001.

27. For regulatees whose fees are based upon a subscriber, unit or circuit count, such as cable subscriber services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services, the number of a regulatees' subscribers, units or circuits on *December 31, 2001*, will be used to calculate the fee payment.[29] A pending

[26] But see Verizon Reply Comments submitted on May 3, 2002.

[27] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Trust-in-Billing and Billing Format*, CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170, Further Notice of Proposed Rulemaking and Order, paragraph 82 (released February 26, 2002) (Universal Service Contribution Methodology Further Notice).

[28] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

[29] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable

Continued

change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 2001, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due. For facilities-based common carriers with active international bearer circuits, the

population city grade of each station, it is possible that in some instances the calculation of the population count and related fee may inadvertently be incorrectly stated in the Media Regulatory Fees Public Notice that identifies the radio station call signs and their respective fees. Therefore, if a licensee has paid the fee listed in the Media Regulatory Fees Public Notice and it is later determined that the

viii. Technical Changes

32. Regulatory fee payments may be made by Visa, MasterCard, American Express, and Discover credit cards. When paying by credit card, regulatees have two options: (1) Regulatees may submit their payment by using the Commission's FeeFiler (an electronic payment system), or (2) Regulatees may provide the requested credit card information on the FCC Form 159,

processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial or underpayment of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later

B. Authority and Further Information

38. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.[31] It is ordered that this *Report and Order* is adopted. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory

§ 1.1110 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, on money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa, MasterCard, American Express, or Discover credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless

change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 2001, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due. For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2001.

28. Because of the time constraint in paying regulatory fees, the Commission *highly recommends* that entities submitting *more than twenty-five (25) Form 159–C's* use the *electronic fee filer program* when sending in their regulatory fee payment. This will not only reduce errors that can result, but also reduce the amount of paperwork that is received by the Commission. Furthermore, as was the practice last year, the Commission will, for the convenience of payers, accept fee payments made *in advance* of the normal formal window for the payment of regulatory fees.

vi. Mandatory Use of FCC Registration Number (FRN)

29. Pursuant to MD Docket No. 00–205 adopted on August 24, 2001 effective December 3, 2001 regulatory fee filers are required to provide FRN's with regulatory fee payments.[30] This matter was first noted in the *FY 2001 Regulatory Fee NPRM*, to which the Commission received no comments. Regulatory fee payments received without an FRN will be retained by the Agency. The FCC will send the filer a letter notifying them that the payment was received without an FRN and that proper credit for the payment will not occur until the FRN is provided. The filer may receive dunning notices from the FCC until the appropriate FRN is provided for the payment.

vii. Population Count of AM and FM Radio Stations

30. The population count for radio stations is not derived merely by a census count of the surrounding community, but from a formula that incorporates various indices such as power, tower size, class size, and other technical attributes. The methodology for calculating the population count is listed in *Attachment H* of this *Report and Order*. Because a number of components are used to calculate the population city grade of each station, it is possible that in some instances the calculation of the population count and related fee may inadvertently be incorrectly stated in the Media Regulatory Fees Public Notice that identifies the radio station call signs and their respective fees. Therefore, if a licensee has paid the fee listed in the Media Regulatory Fees Public Notice and it is later determined that the population calculation for the station is incorrect, and a letter verifying the correct population count is provided from the supplier of the population calculation, the Commission will refund the fee amount overpaid. Similarly, if it is determined that the population calculation and related fee for the station has been understated, and the Commission obtains verification of the correct population calculation from the supplier of the population calculation, the Commission will bill the licensee for the difference in fees that should have been paid.

31. In addition, we will make corrections for such population calculation errors, whether by refunding or billing for corrected fee amounts, only for three (3) fiscal years after the error appears in the Media Regulatory Fees Public Notice. For example, in the case of a population calculation error resulting in an overstated fee amount, if the Media Regulatory Fees Public Notice for FY 2002 contains a population calculation and related fee error and the licensee provides the appropriate verification of the error before September 30, 2005, the Commission will refund the amount overpaid. Similarly, in a case where a population calculation error results in an understated fee amount, if the Fiscal Year 2002 population calculation error is discovered and verified before September 30, 2005, the Commission will bill the licensee for the difference between the correct fee and the fee listed in the Fiscal Year 2002 Media Regulatory Fees Public Notice. We believe that three years provides a reasonable time for a licensee or the Commission to discover and seek to rectify population calculation errors, and that limiting the time for correction of fees will protect both licensees and the Government from being subject to indefinite potential obligations to make corrective payments. We proposed this issue of addressing incorrect population counts for AM and FM radio stations in the *Notice of Proposed Rulemaking*, but we did not receive any comments or reply comments relating to this particular issue.

viii. Technical Changes

32. Regulatory fee payments may be made by Visa, MasterCard, American Express, and Discover credit cards. When paying by credit card, regulatees have two options: (1) Regulatees may submit their payment by using the Commission's FeeFiler (an electronic payment system), or (2) Regulatees may provide the requested credit card information on the FCC Form 159, (Remittance Advice), and mail it to the address described in the Public Notice. Refunds of regulatory fees paid by credit cards are made by check payable to the regulatory fee payor. *No refunds are issued to the card processor.*

33. It has come to our attention that we did not make corresponding revisions to certain descriptive portions of sections 1.1152 and 1.1157 of our rules when the regulatory fees for wireless radio services were amended to include standard annual regulatory fees based on payment units for Commercial Mobile Radio Service (CMRS) Mobile and CMRS Messaging. The descriptive portions of sections 1.1152 and 1.1157 of our rules are changed to reflect that it is no longer the case that all regulatory fee payments for wireless radio services are paid in advance when applications are filed.

34. The Commission incurs transaction costs when processing refunds. The Commission has determined that, in some instances, the transaction costs outweigh the dollar amount of the refund. Therefore, for purposes of more efficient money management, payments in excess of an application or regulatory fee will be refunded only if the overpayment is *$10 or more.*

D. Schedule of Regulatory Fees

35. The Commission's Schedule of Regulatory Fees for FY 2002 is contained in Attachment D of this *Report and Order.*

E. Enforcement

36. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). The Commission assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial or underpayment of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. *See* 47 CFR 1.1164. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payor. *See* 47 CFR 1.1164.

system operators may base their count on "a typical day in the last full week" of December 2001, rather than on a count as of December 31, 2001.

[30] 66 FR 47090 (September 14, 2001).

IV. Procedural Matters

A. Ordering Clause

37. Accordingly, it is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 9, 2002, which is no less that 30 days from the date of publication in the **Federal Register**. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Federal Communications Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, send this to Small Business Administration (SBA). Finally, it is ordered that this proceeding is *terminated.*

B. Authority and Further Information

38. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.[31] It is ordered that this *Report and Order* is adopted. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis (FRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

39. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Communications common carriers, Radio, Telecommunications, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

Accordingly, part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1110 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.1110 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, on money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa, MasterCard, American Express, or Discover credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (i.e., checks with a third party as maker or endorser) will not be accepted.

* * * * *

3. Section 1.1113 is amended by revising paragraph (a)(5) Note to read as follows:

§ 1.1113 Return or refund of charges.

(a) * * *

(5) * * *

Note— Payments in excess of an application fee will be refunded only if the overpayment is $10 or more.

* * * * *

4. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90):		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
2. Microwave (47 CFR Pt. 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159)	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
3. 218–219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159)	25.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	25.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.

[31] 47 U.S.C. 154(i)–(j), 159, & 303(r).

Exclusive use services (per license)	Fee amount [1]	Address
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
4. Shared Use Services:		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.

	Fee amount	Address
125,001–400,000 population	2,250	
400,001–1,000,000 population	3,125	
1,000,000 population	4,975	
2. AM Class B:		
<=20,000 population	375	
20,001–50,000 population	725	
50,001–125,000 population	975	
125,001–400,000 population	1,575	
400,001–1,000,000 population	2,525	
1,000,000 population	4,100	
3. AM Class C:		

Exclusive use services (per license)	Fee amount [1]	Address
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
4. Shared Use Services:		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Renewal Only (FCC 601 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159)	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Renewal Only (FCC 601 & 159)	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159)	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159).	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 605 & 159)	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (FCC 605 & 159)	1.45	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.45	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
6. CMRS Mobile Services (per unit) (FCC 159)	[2] .24	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835.
7. CMRS Messaging Services (per unit) (FCC 159)	[3] .06	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835.

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.
[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.
[3] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

5. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
Radio [AM and FM] (47 CFR, Part 73)		
1. AM Class A:		
<=20,000 population	$500	FCC, Radio, P.O. Box 358835, Pittsburgh, PA 15251–5835.
20,001–50,000 population	925	
50,001–125,000 population	1,500	

	Fee amount	Address
125,001–400,000 population	2,250	
400,001–1,000,000 population	3,125	
1,000,000 population	4,975	
2. AM Class B:		
<=20,000 population	375	
20,001–50,000 population	725	
50,001–125,000 population	975	
125,001–400,000 population	1,575	
400,001–1,000,000 population	2,525	
1,000,000 population	4,100	
3. AM Class C:		
<=20,000 population	275	
20,001–50,000 population	375	
50,001–125,000 population	525	
125,001–400,000 population	800	
400,001–1,000,000 population	1,425	
1,000,000 population	2,075	
4. AM Class D:		
<=20,000 population	325	
20,001–50,000 population	525	
50,001–125,000 population	775	
125,001–400,000 population	950	
400,001–1,000,000 population	1,700	
1,000,000 population	2,625	
5. AM Construction Permit	370	
6. FM Classes A, B1 and C3:		
<=20,000 population	375	
20,001–50,000 population	725	
50,001–125,000 population	975	
125,001–400,000 population	1,575	
400,001–1,000,000 population	2,525	
?1,000,000 population	4,100	
7. FM Classes B, C, C1 and C2:		
<=20,000 population	500	
20,001–50,000 population	925	
50,001–125,000 population	1,500	
125,001–400,000 population	2,250	
400,001–1,000,000 population	3,125	
?1,000,000 population	4,975	
8. FM Construction Permits	1,500	
TV (47 CFR, Part 73) VHF Commercial		
1. Markets 1 thru 10	47,050	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	34,700	
3. Markets 26 thru 50	23,625	
4. Markets 51 thru 100	15,150	
5. Remaining Markets	3,525	
6. Construction Permits	2,750	
UHF Commercial		
1. Markets 1 thru 10	12,800	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	10,300	
3. Markets 26 thru 50	6,600	
4. Markets 51 thru 100	3,875	
5. Remaining Markets	1,075	
6. Construction Permits	5,175	
Satellite UHF/VHF Commercial		
1. All Markets	805	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits	420	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74).	320	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Multipoint Distribution (Includes MMDS, MDS, & LMDS)	430	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251–5835

6. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.

	Fee amount	Address
Carriers		

§ 1.1158 Form of payment for regulatory fees.

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa, Mastercard, American Express or Discover credit cards only. The Commission discourages applicants from submitting

Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. None.

III. Description and Estimate of the Number of Small Entities to Which the Proposed

licensees and regulatees that may be affected by these rules.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[46] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and

	Fee amount	Address
Radio Facilities		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.

	Fee amount	Address
Carriers		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	.00153	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.

7. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$65	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Cable TV System	.53	

8. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities		
1. International (HF) Broadcast	$495	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. International Public Fixed	1,400	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Geostationary Orbit)	99,700	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Non-Geostationary Orbit)	103,200	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Earth Stations		
Transmit/Receive & Transmit Only (per authorization or registration).	$140	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Carriers		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	$2.00	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

* * * * *

9. Section 1.1157 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.1157 Payment of charges for regulatory fees.

* * * * *

(a) (1) The amount of the regulatory fee payment that is due with any application for authorization shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in § 1.1160, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee due with an application for authorization will result in the return of the accompanying application, including an application for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees applicable to certain wireless radio, mass media, common carrier, cable and international services shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments or in a single payment on a date certain as announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

* * * * *

10. Section 1.1158 is amended by revising the section heading and introductory paragraph to read as follows:

§ 1.1158 Form of payment for regulatory fees.

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa, Mastercard, American Express or Discover credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

11. Section 1.1160 is amended by revising paragraph (a)(1) to read as follows:

§ 1.1160 Refunds of regulatory fees.

(a) * * *

(1) When no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in the appropriate block of the FCC Form 159. Payments in excess of a regulatory fee will be refunded only if the overpayment is $10.00 or more.

* * * * *

Note: The following attachments will not appear in the Code of Federal Regulations.

Attachment A—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[32–35] an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2002*.[36] The Commission sought written public comments on the proposals in its FY 2002 regulatory fees NPRM, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[37]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $218,757,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. None.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[38] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[39] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[40] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[41] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[42] Nationwide, as of 1992, there were approximately 275,801 small organizations.[43] "Small governmental jurisdiction"[44] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[45] As of 1992, there were approximately 85,006 governmental entities in the United States.[46] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[47] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[48] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[49]

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[50] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[51] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[52] The Commission has determined that there are 68,980,000 subscribers in the United States.[53] Therefore, we estimate that an operator serving fewer than 689,800 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[54] Based

[32–35] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[36] 67 FR 17325 (April 10, 2002).

[37] 5 U.S.C. 604.

[38] 5 U.S.C. 603(b)(3).

[39] 5 U.S.C. 601(6).

[40] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[41] Small Business Act, 15 U.S.C. 632 (1996).

[42] 5 U.S.C. 601(4).

[43] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[44] 47 CFR 1.1162

[45] 5 U.S.C. 601(5).

[46] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[47] *Id.*

[48] 13 CFR 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

[49] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[50] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[51] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[52] 47 U.S.C. 543(m)(2).

[53] *Annual Assessment of the Status on Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00–132, Seventh Annual Report, FCC 01–1 (released January 8, 2001), Table C–1.

[54] *Id.* 47 CFR 76.1403(b).

on available data, we estimate that the number of cable operators serving 689,800 subscribers or less totals 1,450.[55] We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[56] and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television

dominance is not "national" in scope.[63] We have therefore included small incumbent LECs in this FRFA analysis, although we emphasize that this FRFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[64] This number contains a variety of different

Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these revised rules.

13. *Local Exchange Carriers (LECS), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access

The Census report does not provide more precise data.

15. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency

number of geostationary space stations that would constitute a small business under the SBA definition.

23. *Space Stations (Non-Geostationary).* There are presently six Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

24. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls

Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[60] Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.[61] There were 1,509 television stations operating in the nation in 1992.[62] That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 30, 2001.[63] For 1992,[64] the

on available data, we estimate that the number of cable operators serving 689,800 subscribers or less totals 1,450.[55] We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[56] and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[57] multipoint distribution systems (MDS),[58] satellite master antenna systems (SMATV), and subscription television services.

Wireline Competition Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its Telecommunications Provider Locator report, which encompasses data compiled from FCC Form 499–A Telecommunications Reporting Worksheets.[59] According to data in the most recent report, there are 5,679 interstate service providers.[60] These providers include, *inter alia*, incumbent local exchange carriers, competitive access providers (CAPS)/ competitive local exchange carriers (CLECs), local resellers and other local exchange carriers, interexchange carriers, operator service providers, prepaid calling card providers, toll resellers, and other toll carriers.

10. We have included small incumbent local exchange carriers (LECs)[61] in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[62] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[63] We have therefore included small incumbent LECs in this FRFA analysis, although we emphasize that this FRFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[64] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[65] It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these revised rules.

12. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[66] According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.[67] All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these revised rules.

13. *Local Exchange Carriers (LECS), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[68] The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the FCC 499–A Telecommunications Reporting Worksheets.[69] According to our most recent data, there are 1,329 incumbent and other LECs, 532 CAPs and competitive local exchange carriers (CLECs), 229 IXCs, 22 OSPs, 936 payphone providers, 32 prepaid calling card providers, 38 other toll carriers, and 710 local and toll resellers.[70] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity incumbent and other LECs, 532 CAPs/ CLECs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 local and toll resellers, 32 prepaid calling card providers, and 38 other toll carriers that may be affected by the revised rules.

International Services

14. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[71] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[72] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[73]

[55] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA–01–0158 (released January 24, 2001).

[56] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[57] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[58] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[59] FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Table 1 (November 2001).

[60] FCC, *Telecommunications Provider Locator* at Table 1.

[61] *See* 47 U.S.C. 251(h) (defining "incumbent local exchange carrier").

[62] 5 U.S.C. 601(3).

[63] Letter *from* Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[64] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) *(1992 Census)*.

[65] *See generally* 15 U.S.C. 632(a)(1).

[66] *1992 Census, supra*, at Firm Size 1–123.

[67] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

[68] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

[69] *See Telecommunications Provider Locator* at Table 1.

[70] *Telecommunications Provider Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

[71] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[72] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[73] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

The Census report does not provide more precise data.

15. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

16. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

17. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

18. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/ Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

19. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

20. *Mobile Satellite Earth Stations.* There are 21 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

21. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

22. *Space Stations (Geostationary).* There are presently an estimated 71 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

23. *Space Stations (Non-Geostationary).* There are presently six Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

24. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[74] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[75] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Media Services

25. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[76] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[77] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[78] Included in this industry are commercial, religious, educational, and other television stations.[79] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[80] Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.[81] There were 1,509 television stations operating in the nation in 1992.[82] That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 30, 2001.[83] For 1992,[84] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[85] Only commercial stations are subject to regulatory fees.

26. Additionally, the SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[86] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[87] Included in this industry are commercial, religious, educational, and other radio stations.[88] Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.[89] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.[90] The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[91] Official Commission records indicate that at total of 11,334 individual radio stations were operating in

[74] 13 CFR 121.201, NAICS codes 51321 and 51322.

[75] 13 CFR 121.201, NAICS codes 51321 and 51322.

[76] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Report and Order* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Report and Order*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[77] 13 CFR 121.201, NAICS code 51312.

[78] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[79] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as: Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[80] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[81] *Id.*, NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[82] FCC News Release No. 31327 (January 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[83] FCC News Release, "Broadcast Station Totals as of September 30, 2001."

[84] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." *See 1992 Census, Series UC92–S–1*, at III.

[85] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[86] 13 CFR 121.201, NAICS codes 513111 and 513112.

[87] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

1992.[92] As of September 30, 2001, Commission records indicate that a total of 13,012 radio stations were operating, of which 8,285 were FM stations.[93] Only commercial stations are subject to regulatory fees.

27. The rules may affect an estimated total of 1,230 television stations, approximately 1,261 of which are considered small businesses.[94] The revised rules will also affect an estimated total of 10,819 radio stations, approximately 12,209 of which are small businesses.[95] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from affiliated companies. In addition, the SBA's definition of a small business radio or television broadcasting station is not dominant in its field of operation. The SBA definition of small entity for radio and television broadcasting stations and audio and television broadcasting facilities is based on annual receipts of $6 million or less. According to the Census Bureau, only 7,616 radio and television broadcasting stations out of a total of 12,717 such stations operating during 1992 had annual receipts of $5 million or more. Similarly, according to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of December 31, 2000, only about 4,127 of the 8,225 radio stations operating during that period had revenues of $5 million or more. We therefore estimate that the majority of radio broadcasting stations are small entities.

28. We also note, in addition to the radio stations and television stations, there are approximately 2,032 cable and other pay television services, 1,134 wireless cable operators, 2,032 direct broadcast satellite services, 1,301 multipoint distribution systems, and 1,262 satellite master antenna systems operating during 1992. Further, there are approximately 100 licensees in the Low Power Television Service, 1,550 licensees in the Television Translator Service, and 2,261 licensees in the Low Power FM Service. Each of these services must be included in our consideration of small entities. Also included are approximately 2,954 FM translator stations and 1,460 low power FM stations, many of which are presumably small entities. We note, however, that many of the radio and television stations, including low power television stations, are affiliated with much larger companies that have more than sufficient resources to satisfy any of the applicable small business size standards specified by the SBA. Nevertheless, we do not exclude any radio or television broadcasting entities from our estimate of small entities because the revenues of those affiliated companies are not counted. We reiterate that for all of the radio and television broadcasting entities discussed above, other than those which are affiliated with much larger companies, we estimate that virtually all of them are small entities.

29. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and satellite uses. Auctions 30 (Local Multipoint Distribution Service (LMDS)) and 31 (39 GHz Service) have been completed. Auction 30 resulted in 104 licensees receiving 864 licenses. Auction 31 resulted in 18 licensees receiving 247 licenses. Auctions 45 (24 GHz Service) and 47 (Local Multipoint Distribution Service (LMDS)) have been scheduled. Auction 45 is scheduled for December 4, 2002. Auction 47 is scheduled for January 22, 2003. Auction 45 will result in 4 licensees receiving 4 licenses. Auction 47 will result in 2 licensees receiving 2 licenses.

30. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint and one-way video services to subscribers.[96] The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[100] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years of not more than $40 million.[101] The Commission defined a very small business as an entity with annual average gross revenues of not more than $15 million for the preceding three years.[102] These definitions were approved by the SBA. The auction resulted in 67 successful bidders obtaining licenses for 493 channels. Of the 67 auction winners, 61 met the definition of a small business. MDS auctions have not yet been held. Approximately 440 incumbent MDS licensees have gross revenues that are not expected to exceed $15 million annually. Assuming that most of these licensees qualify as small businesses, we estimate that this number will also apply to any MDS licensees that will not be small businesses.

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and satellite uses. The Commission defined "small business" for the purposes of auctioning 39 GHz licenses as a firm that had average annual gross revenues of less than $40 million in the three previous calendar years.[103] A "very small business" is defined as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years.[104] These definitions were approved by the SBA. The auction resulted in 18 licensees receiving 247 licenses. Auctions 45 (24 GHz Service) and 47 (Local Multipoint Distribution Service (LMDS)) have been scheduled. Auction 45 is scheduled for December 4, 2002. Auction 47 is scheduled for January 22, 2003. Auction 45 will result in 4 licensees receiving 4 licenses. Auction 47 will result in 2 licensees receiving 2 licenses.

32. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and satellite uses. The Commission defined "small business" for the purposes of auctioning 39 GHz licenses as a firm that had average annual gross revenues of less than $40 million in the three previous calendar years.[105] A "very small business" is defined as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years.[106] These definitions were approved by the SBA. The auction resulted in 18 licensees receiving 247 licenses. Auctions 45 (24 GHz Service) and 47 (Local Multipoint Distribution Service (LMDS)) have been scheduled. Auction 45 is scheduled for December 4, 2002. Auction 47 is scheduled for January 22, 2003. Auction 45 will result in 4 licensees receiving 4 licenses. Auction 47 will result in 2 licensees receiving 2 licenses.

[92] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[93] FCC News Release, "Broadcast Station Totals as of September 30, 2001."

[94] 13 CFR 121.201, NAICS codes 51312 and 51132.

[95] 13 CFR 121.201, NAICS codes 51312 and 51132.

[96] The Commission refers generally to MDS and Instructional Television Fixed Service (ITFS). These services are sometimes collectively referred to as "wireless cable." They provide multichannel video programming and other services, such as Internet access, analogous to those provided by cable systems.

[100] *See* 47 CFR 21.901(b)(3).

[101] *See* 47 CFR 21.961(b)(1).

[102] *See* 47 CFR 21.961(b)(1).

[103] *See* 47 CFR 21.961(b)(1).

[104] *See* 47 CFR 21.961(b)(1).

[105] *See* 47 CFR 21.961(b)(1).

[106] *See* 47 CFR 21.961(b)(1).

small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[110] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[111] The SBA has approved these definitions.[112]

33. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[113] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[114] The SBA has approved these definitions.[115]

34. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services licenses have been conducted. For purposes of the two auctions that have already been held, small businesses were entities with average gross revenues for the three preceding years of not more than $40 million. Very small businesses were entities with average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these definitions. The auctions resulted in 41 licensees receiving 459 licenses. Auctions 45 (24 GHz Service) and 47 (Local Multipoint Distribution Service (LMDS)) have been scheduled. Auction 45 is scheduled for December 4, 2002. Auction 47 is scheduled for January 22, 2003. Auction 45 will result in 4 licensees receiving 4 licenses. Auction 47 will result in 2 licensees receiving 2 licenses.

35. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[116] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[117] The SBA has approved these definitions.[118]

36. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services licenses have been conducted. For purposes of the two auctions that have already been held, small businesses were entities with average gross revenues for the three preceding years of not more than $40 million. Very small businesses were entities with average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these definitions. The auctions resulted in 41 licensees receiving 459 licenses. Auctions 45 (24 GHz Service) and 47 (Local Multipoint Distribution Service (LMDS)) have been scheduled. Auction 45 is scheduled for December 4, 2002. Auction 47 is scheduled for January 22, 2003. Auction 45 will result in 4 licensees receiving 4 licenses. Auction 47 will result in 2 licensees receiving 2 licenses.

37. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[119] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[120] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[121] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, based on the information we have, it is unlikely that the small businesses won more than 40 percent in Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

38. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had average gross revenues of $40 million or less in the three previous calendar years.[122] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[123] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[124] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, based on the information we have, it is unlikely that the small businesses won more than 40 percent in Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

[110] *See* 47 CFR 21.961(b)(1).

[111] *See* 47 CFR 21.961(b)(1).

[112] *See* 47 CFR 21.961(b)(1).

[113] *See* 47 CFR 21.961(b)(1).

[114] *See* 47 CFR 21.961(b)(1).

[115] *See* 47 CFR 21.961(b)(1).

[116] *See* 47 CFR 21.961(b)(1).

[117] *See* 47 CFR 21.961(b)(1).

[118] *See* 47 CFR 21.961(b)(1).

[119] *See* 47 CFR 21.961(b)(1).

[120] *See* 47 CFR 21.961(b)(1).

[121] *See* 47 CFR 21.961(b)(1).

[122] *See* 47 CFR 21.961(b)(1).

[123] *See* 47 CFR 21.961(b)(1).

[124] *See* 47 CFR 21.961(b)(1).

1992.[92] As of September 30, 2001, Commission records indicate that a total of 13,012 radio stations were operating, of which 8,285 were FM stations.[93] Only commercial stations are subject to regulatory fees.

27. The rules may affect an estimated total of 1,230 television stations, approximately 1,281 of which are considered small businesses.[94] The revised rules will also affect an estimated total of 10,819 radio stations, approximately 12,209 of which are small businesses.[95] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,256 low power television stations (LPTV).[96] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

28. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[97]

29. The Commission estimates that there are approximately 3,600 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[98]

30. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint and one-way video services to subscribers.[99] The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[100] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[101] The Commission established this small business definition in the context of this particular service and with the approval of the SBA.[102] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[103] Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.[104] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by these revised rules.

Wireless and Commercial Mobile Services

31. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[105] According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[106] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the November 2001 *Telecommunications Provider Locater*, 858 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.[107] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 858 small wireless service providers that may be affected by these revised rules.

32. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[108] According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[109] If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

33. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 62 FR 16004, April 3, 1997, we adopted criteria for defining small and very

[92] FCC News Release, No. 31327 (Jan. 13, 1993).

[93] FCC News Release, "Broadcast Station Totals as of September 30, 2001."

[94] We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than $10 million and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

[95] We use the 96% figure of radio station establishments with less than $5 million revenue from data presented in the year 2000 estimate (*FCC News Release*, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

[96] FCC News Release, "Broadcast Station Totals as of September 30, 2001."

[97] 13 CFR 121.201, NAICS codes 513111 and 513112.

[98] 15 U.S.C. 632.

[99] For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS). *See* 66 FR 36177.

[100] *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

[101] 47 CFR 21.961 and 1.2110.

[102] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

[103] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* At 9608.

[104] 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. Section 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $11 million or less). *See* 13 CFR 121.201.

[105] 13 CFR 121.201, NAICS code 513322.

[106] *1992 Census, Series UC92–S–1*, at Table 5, NAICS code 513322.

[107] *Telecommunications Provider Locater*, Table 1 (November 2001).

[108] 13 CFR 121.201, NAICS code 513322.

[109] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[110] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[111] The SBA has approved these definitions.[112] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[113] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[114] Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[115]

34. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[116] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[117] Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[118]

35. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[119] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[120] The SBA has approved these definitions.[121] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[122] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent data in the *Telecommunications Provider Locator*, 608 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[123] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 608 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

36. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[124] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[125] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[126] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[127] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. An additional classification for "very small business" was added for C Block and is defined as "an entity that together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the preceding three years.[128] The SBA approved this definition."[129] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

37. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the

[110] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997).

[111] *220 MHz Third Report and Order*, 12 FCC Rcd at 11068–69, paragraph 291.

[112] *See* Letter to D. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[113] *See generally* Public Notice, "220 MHz Service Auction Closes," Public Notice, 14 FCC Rcd 605 (1998).

[114] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Public Notice, 14 FCC Rcd 1085 (1999).

[115] "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

[116] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order*, 65 FR 17599 (April 4, 2000).

[117] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecommunications Bureau, October 23, 1998).

[118] "700 MHz Guard Bands Auction Closes," Public Notice, DA 01–478 (rel. February 22, 2001).

[119] *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997), at paragraphs 291–295.

[120] 700 MHz Guard Band Auction Closes," Public Notice, 15 FCC Rcd 18026 (2000).

[121] "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, at paragraph 98–107 (1999).

[122] "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

[123] *See Telecommunications Provider Locater* at Table 1 (November 2001).

[124] *See generally* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (2000).

[125] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96–278, WT Docket No. 96–59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996).

[126] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[127] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

[128] *See* Amendment of the Commission's Rules Regarding installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order, 13 FCC Rcd 15743 at 15767–68, paragraphs 45–46 (1998).

[129] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.[130] A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA.[131] In the future, the

licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

40. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average

sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

43. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The

approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.*, an entity with no more than 1,500 persons.[146] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities

49. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[150] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify

approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

53. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar

Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.[130] A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA.[131] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions.

However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

38. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[132] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[133] We will use the SBA's definition applicable to radiotelephone (wireless) companies, i.e., an entity employing no more than 1,500 persons.[134] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

39. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[135] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[136] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

40. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[137] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.[138] Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.[139] Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[140] An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

41. These revised fees in the Report and Order apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

42. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

43. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs[141] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

44. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2001. These licensees are presumed to be individuals, and therefore not small entities. All other amateur licensees are exempt from payment of regulatory fees.

45. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.[142]

46. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate that only 16,800 will be subject to FY 2001 regulatory fees.

47. *Fixed Microwave Services.* Microwave services include common carrier,[143] private-operational fixed,[144] and broadcast auxiliary radio services.[145] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.*, an entity with no more than 1,500 persons.[146] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

48. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[147] There are a total of approximately 127,540 licensees within these services. Governmental entities[148] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this FRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[149] All licensees in this category are exempt from the payment of regulatory fees.

49. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[150] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

50. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.[151] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

51. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[152] The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

52. *39 GHz Service.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[153] An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[154] These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

53. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[155] An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[156] These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.[157] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

54. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[158] *In the 218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[159] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[160] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses, which would also be expected to have average annual gross revenues that fall below the thresholds established by the Commission and approved by the SBA.

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[130] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP93–253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

[131] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[132] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[133] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[134] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[135] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[136] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[137] 47 CFR 90.814(b)(1).

[138] *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

[139] *See* Letter to Daniel B. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

[140] *Id.*

[141] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at paragraph 116.

[142] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[143] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[144] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[145] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[146] 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

[147] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,606 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[148] 47 CFR 1.1162.

[149] 5 U.S.C. 601(5).

[150] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[151] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

[152] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[153] *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, Report and Order, 12 FCC Rcd 18600 (1997).

[154] *Id.*

[155] See Local Multipoint Distribution Service, Second Report and Order, 62 FR 23148, April 29, 1997.

[156] *Id.*

[157] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[158] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP WT Docket No. 93–253, *Fourth Report and Order*, 59 FR 24947 (May 13, 1994).

[159] In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656 (November 3, 1999).

[160] *Id.*

Attachment B—Sources of Payment Unit Estimates for FY 2002

In order to calculate individual service fees for FY 2002, we adjusted FY 2001 payment units for each service to more accurately reflect expected FY 2002 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2002 estimates with actual FY 2001 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2002 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2002 payment units are based on FY 2001 actual payment units, it does not necessarily mean that our FY 2002 projection is *exactly* the same number as FY 2001. It means that we have either rounded the FY 2002 number or adjusted it slightly to account for these variables.

not to exceed $3 million for the preceding three years.[160] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses by these revised rules.

III. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

55. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[161] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

56. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

57. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[162] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[163] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[164] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[165]

58. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[166] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

IV. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

59. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra*, which gives "Detailed Guidance on Who Must Pay Regulatory Fees." Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

60. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 2000*, Public Law 106–553, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2002.[167] As noted, we have previously sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

61. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

62. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 161, *supra*, and Attachment F of the *Report and Order*, *infra*.

Report to Small Business Administration: The Commission will send a copy of this *Report and Order*, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Report to Congress: The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order*, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

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[160] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (1999).

[161] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[162] 47 CFR 1.1164.

[163] 47 CFR 1.1164(c).

[164] Public Law 104–134, 110 Stat. 1321 (1996).

[165] 31 U.S.C. 7701(c)(2)(B).

[166] 47 CFR 1.1166.

[167] 47 U.S.C. 159(a).

Attachment B—Sources of Payment Unit Estimates for FY 2002

In order to calculate individual service fees for FY 2002, we adjusted FY 2001 payment units for each service to more accurately reflect expected FY 2002 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2002 estimates with actual FY 2001 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2002 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2002 payment units are based on FY 2001 actual payment units, it does not necessarily mean that our FY 2002 projection is *exactly* the same number as FY 2001. It means that we have either rounded the FY 2002 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz,[168] Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Mass Media Bureau estimates.
UHF/VHF Television Stations	Based on Mass Media Bureau estimates and actual FY 2001 payment units.
AM/FM/TV Construction Permits	Based on Mass Media Bureau estimates and actual FY 2001 payment units.
LPTV, Translators Boosters	Based on actual FY 2001 payment units.
Auxiliaries	Based on Wireless Telecommunications Bureau estimates.
MDS/LMDS/MMDS	Based on Mass Media Bureau estimates.
Cable Antenna Relay Device (CARS)	Based on Wireline Competition Bureau (previously Cable Services Bureau) estimates.
Cable Television System Subscribers	Based on Wireline Competition Bureau (previously Cable Services Bureau) and industry estimates of subscribership.
Interstate Telecommunication Service Providers	Based on actual FY 2001 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2002 revenue growth for industry as estimated by Wireline Competition Bureau.
Earth Stations	Based on International Bureau estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

[168] The Wireless Telecommunications Bureau's staff advises that they anticipate receiving only 25 applications for 218–219 MHz (formerly IVDS) in FY 2001.

Fee category	FY 2002 payment units	Payment years	FY 2001 revenue estimate	Pro-rated FY 2002 revenue requirement	Computed new FY 2002 regulatory fee	Rounded new FY 2002 regulatory fee	Expected Fy 2002 revenue
PLMRS (Exclusive Use)	4,100	10	275,000	300,575	7	5	205,000
PLMRS (Shared use)	43,500	10	2,900,000	3,169,700	7	5	2,175,000
Microwave	11,500	10	1,195,000	1,306,135	11	10	1,150,000
218–219 MHz (Formerly IVDS)	5	10	1,250	1,366	27	25	1,250
Marine (Ship)	5,200	10	550,000	601,150	12	10	520,000
GMRS	3,180	5	50,000	54,650	3	5	79,500
Aviation (Aircraft)	2,700	10	175,000	191,275	7	5	135,000
Marine (Coast)	900	10	65,000	71,045	8	10	90,000
Aviation (Ground)	2,000	5	85,000	92,905	9	10	100,000
Amateur Vanity Call Signs	9,000	10	120,000	131,160	1.46	1.45	130,500
AM Class A	76	1	146,300	159,906	2,104	2,100	159,600
AM Class B	1,672	1	1,806,300	1,974,286	1,181	1,175	1,964,600
AM Class C	990	1	618,760	676,305	683	685	678,150
AM Class D	1,933	1	2,033,850	2,222,998	1,150	1,150	2,222,950
FM Classes A, B1 & C3	3,192	1	4,160,000	4,546,880	1,424	1,425	4,548,600
FM Classes B, C, C1 & C2	2,956	1	5,166,300	5,646,766	1,910	1,900	5,616,400
AM Construction Permits	45	1	16,240	17,750	370	370	17,760
FM Construction Permits	202	1	277,500	303,308	1,502	1,500	303,000
Satellite TV	128	1	93,980	102,720	803	805	103,040
Satellite TV Construction Permit	5	1	1,920	2,099	420	420	2,100
VHF Markets 1–10	44	1	1,894,200	2,070,361	47,054	47,050	2,070,200

Fee category	FY 2002 payment units	Payment years	FY 2001 revenue estimate	Pro-rated FY 2002 revenue requirement	Computed new FY 2002 regulatory fee	Rounded new FY 2002 regulatory fee	Expected Fy 2002 revenue
VHF Markets 11–25	61	1	1,936,675	2,116,786	34,701	34,700	2,116,700
VHF Markets 26–50	76	1	1,642,025	1,794,733	23,615	23,625	1,795,500
VHF Markets 51–100	114	1	1,581,250	1,728,306	15,161	15,150	1,727,100
VHF Remaining Markets	215	1	691,025	755,290	3,513	3,525	757,875
VHF Construction Permits	22	1	55,350	60,498	2,750	2,750	60,500
UHF Markets 1–10	97	1	1,136,250	1,241,921	12,803	12,800	1,241,600
UHF Markets 11–25	98	1	922,500	1,008,293	10,289	10,300	1,009,400

Fee category	Annual regulatory fee
FM Radio Construction Permits	1,500
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	47,050
Markets 11–25	34,700
Markets 26–50	23,625
Markets 51–100	15,150
Remaining Markets	3,525
Construction Permits	2,750
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	12,800

Fee category	FY 2002 payment units	Payment years	FY 2001 revenue estimate	Pro-rated FY 2002 revenue requirement	Computed new FY 2002 regulatory fee	Rounded new FY 2002 regulatory fee	Expected Fy 2002 revenue
VHF Markets 11–25	61	1	1,936,675	2,116,786	34,701	34,700	2,116,700
VHF Markets 26–50	76	1	1,642,025	1,794,733	23,615	23,625	1,795,500
VHF Markets 51–100	114	1	1,581,250	1,728,306	15,161	15,150	1,727,100
VHF Remaining Markets	215	1	691,025	755,290	3,513	3,525	757,875
VHF Construction Permits	22	1	55,350	60,498	2,750	2,750	60,500
UHF Markets 1–10	97	1	1,136,250	1,241,921	12,803	12,800	1,241,600
UHF Markets 11–25	98	1	922,500	1,008,293	10,289	10,300	1,009,400
UHF Markets 26–50	129	1	778,250	850,627	6,594	6,600	851,400
UHF Markets 51–100	190	1	672,375	734,906	3,868	3,875	736,250
UHF Remaining Markets	205	1	201,250	219,966	1,068	1,075	221,450
UHF Construction Permits	59	1	280,000	306,040	5,187	5,175	305,325
Auxiliaries	24,000	1	270,000	295,110	12	10	240,000
International HF Broadcast	6	1	2,720	2,973	495	495	2,970
LPTV/Translators/Boosters	2,800	1	823,500	900,086	321	320	896,000
CARS	1,600	1	93,500	102,196	64	65	104,000
Cable Systems	68,980,000	1	33,431,844	36,541,005	0.53	0.53	36,541,005
Interstate Telecommunication Service Providers	66,544,000,000	1	93,387,376	102,072,402	0.00153	0.00153	102,072,402
CMRS Mobile Services (Cellular/Public Mobile)	125,000,000	1	27,404,520	29,953,140	0.24	0.24	29,953,140
CMRS Messaging Services	23,600,000	1	1,625,054	1,776,184	0.08	0.08	1,776,184
MDS/MMDS/LMDS	2,300	1	900,000	983,700	428	430	989,000
International Bearer Circuits	2,830,000	1	4,202,255	4,593,065	1.62	2	5,660,000
International Public Fixed	1	1	1,275	1,394	1,394	1,400	1,400
Earth Stations	3,873	1	501,120	547,724	141	140	542,220
Space Stations (Geostationary)	71	1	6,476,250	7,078,541	99,698	99,700	7,078,700
Space Stations (Non-geostationary)	6	1	566,550	619,239	103,207	103,200	619,200
Total Estimated Revenue to be Collected			201,214,514	219,927,464			219,571,972
Total Revenue Requirement				218,757,000			218,757,000
Difference				1,170,464			814,972

Note.—1.093 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 107–77 and 47 U.S.C. 159(a)(2)).

Attachment D—FY 2002 Schedule of Regulatory Fees

Fee category	Annual regulatory fee
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	$5
Microwave (per license) (47 CFR part 101)	10
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	25
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.45
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.24
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS, LMDS & MDS) (per call sign) (47 CFR part 21)	430
AM Radio Construction Permits	370

Fee category	Annual regulatory fee
FM Radio Construction Permits	1,500
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	47,050
Markets 11–25	34,700
Markets 26–50	23,625
Markets 51–100	15,150
Remaining Markets	3,525
Construction Permits	2,750
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	12,800
Markets 11–25	10,300
Markets 26–50	6,600
Markets 51–100	3,875
Remaining Markets	1,075
Construction Permits	5,175
Satellite Television Stations (All Markets)	805
Construction Permits—Satellite Television Stations	420
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	320
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	65
Cable Television Systems (per subscriber) (47 CFR part 76)	.53
Interstate Telecommunication Service Providers (per revenue dollar)	.00153
Earth Stations (47 CFR part 25)	140
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	99,700
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	103,200
International Bearer Circuits (per active 64KB circuit)	2
International Public Fixed (per call sign) (47 CFR part 23)	1,400
International (HF) Broadcast (47 CFR part 73)	495

FY 2002 Radio Station Regulatory Fees

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001–50,000	925	725	375	525	725	925
50,001–125,000	1,500	975	525	775	975	1,500
125,001–400,000	2,250	1,575	800	950	1,575	2,250
400,001–1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

Attachment E—Comparison Between FY 2001, FY 2002 Proposed and Final Regulatory Fees

Fee category	Annual regulatory fee FY 2001	NPRM proposed fee FY 2002	Annual regulatory fee FY 2002
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	5	5	5
Microwave (per license) (47 CFR part 101)	5	10	10
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	10	25	25
Marine (Ship) (per station) (47 CFR part 80)	10	10	10
Marine (Coast) (per license) (47 CFR part 80)	5	10	10
General Mobile Radio Service (per license) (47 CFR part 95)	5	5	5
Rural Radio (47 CFR part 22) (previously listed under Land Mobile)	5	5	5
PLMRS (Shared Use) (47 CFR part 90)	5	5	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5	5	5
Aviation (Ground) (per license) (47 CFR part 87)	10	10	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.20	1.45	1.45
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.27	.24	.24
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.05	.08	.08
Multipoint Distribution Services (Includes MMDS, LMDS & MDS) (per call sign) (47 CFR part 21)	450	430	430
AM Construction Permits	260	370	370
FM Construction Permits	925	1,500	1,500
TV (47 CFR part 73) VHF Commercial:			
Markets 1–10	45,100	47,050	47,050
Markets 11–25	32,825	34,700	34,700
Markets 26–50	21,325	23,625	23,625
Markets 51–100	13,750	15,150	15,150
Remaining Markets	3,275	3,525	3,525
Construction Permits	3,075	2,750	2,750

Fee category	Annual regulatory fee FY 2001	NPRM proposed fee FY 2002	Annual regulatory fee FY 2002
TV (47 CFR part 73) UHF Commercial:			
Markets 1–10	15,150	12,800	12,800
Markets 11–25	12,300	10,300	10,300
Markets 26–50	7,075	6,600	6,600
Markets 51–100	4,075	3,875	3,875
Remaining Markets	1,150	1,075	1,075
Construction Permits	4,000	5,175	5,175
Satellite Television Stations (All Markets)	740	805	805
Construction Permits—Satellite Television Stations	480	420	420
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	320	320	320
Broadcast Auxiliary (47 CFR part 74)	10	10	10
CARS (47 CFR part 78)	65	65	65
Cable Television Systems (per subscriber) (47 CFR part 76)	.53	.53	.53
Interstate Telecommunication Service Providers (per revenue dollar)	.00153	.00153	.00153
Earth Stations (47 CFR part 25)	140	140	140
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	99,700	99,700	99,700
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	103,200	103,200	103,200
International Bearer Circuits (per active 64KB circuit)	2	2	2
International Public Fixed (per call sign) (47 CFR part 23)	1,400	1,400	1,400
International (HF) Broadcast (47 CFR part 73)	495	495	495

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section

under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2002, Microwave licensees will pay a $10 annual regulatory fee per license, payable for an

reinstatement license. The total regulatory fee due is $100 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2002, licensees of Marine (Coast) Stations will pay a $10 annual regulatory fee per call

Fee category	Annual regulatory fee FY 2001	NPRM proposed fee FY 2002	Annual regulatory fee FY 2002
TV (47 CFR part 73) UHF Commercial:			
Markets 1–10	15,150	12,800	12,800
Markets 11–25	12,300	10,300	10,300
Markets 26–50	7,075	6,600	6,600
Markets 51–100	4,075	3,875	3,875
Remaining Markets	1,150	1,075	1,075
Construction Permits	4,000	5,175	5,175
Satellite Television Stations (All Markets)	740	805	805
Construction Permits—Satellite Television Stations	480	420	420
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	305	320	320
Broadcast Auxiliary (47 CFR part 74)	10	10	10
CARS (47 CFR part 78)	55	65	65
Earth Stations (47 CFR part 25)	180	140	140
Cable Television Systems (per subscriber) (47 CFR part 76)	.49	.53	.53
Interstate Telecommunication Service Providers (per revenue dollar)	.00132	.00153	.00153
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	98,125	99,700	99,700
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	94,425	123,850	103,200
International Bearer Circuits (per active 64KB circuit)	5	2	2
International Public Fixed (per call sign) (47 CFR part 23)	1,275	1,400	1,400
International (HF) Broadcast (47 CFR part 73)	680	495	495

FY 2001 Radio Station Regulatory Fees

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	450	350	250	300	350	450
20,001–50,000	850	675	350	475	675	850
50,001–125,000	1,375	900	475	700	900	1,375
125,001–400,000	2,050	1,450	725	875	1,450	2,050
400,001–1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

FY 2001 Radio Station Regulatory Fees

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001–50,000	925	725	375	525	725	925
50,001–125,000	1,500	975	525	775	975	1,500
125,001–400,000	2,250	1,575	800	950	1,575	2,250
400,001–1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act,[169] as modified in the instant *Report and Order*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 through 2001, and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[170]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

[169] 47 U.S.C. 159(g).

[170] 47 U.S.C. 159(b)(2), (3).

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[171] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[172] For FY 2002, PLMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license.[173] The total regulatory fee due is $50 for the ten-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2002, Microwave licensees will pay a $10 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private carrier basis. The Commission anticipated receiving 25 applications in the 218–219 MHz service during FY 2001. For FY 2002, we anticipate receiving five applications and propose that the annual regulatory fee for 218–219 MHz licensees be set at $25 per application. The total regulatory fee due would be $250 for the ten-year license term.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2002, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $10 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2002, licensees of Marine (Coast) Stations will pay a $10 annual regulatory fee per call sign, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 per call sign for the ten-year license term.

9. *Private Land Mobile Radio Services (PLMRS)(Shared Use):* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2002, licensees of services in this category will pay a $5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The Commission exercises that authority. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2002, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications

[171] 47 U.S.C. 159(b)(1)(A).

[172] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[173] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2000 is less than one-tenth of one percent and, therefore, is statistically insignificant.

to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2002, licensees of Aviation (Ground) Stations will pay a $10 annual regulatory fee per license, payable for the entire five-year

broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the

part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2002, the regulatory fee is $.08 per unit.

16. Finally, with regard to our definition of a CMRS payment units, we clarify that fees are assessable on each CMRS subscriber considered "active" as

higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2002 are as follows:

FY 2002 Radio Station Regulatory Fees

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001–50,000	925	725	375	525	725	925
50,001–125,000	1,500	975	525	775	975	1,500
125,001–400,000	2,250	1,575	800	950	1,575	2,250

to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2002, licensees of Aviation (Ground) Stations will pay a $10 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $50 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2002, GMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $25 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.20 annual regulatory fee per call sign, as prescribed in the FY 2001 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 2002 fee schedule becomes effective. The total regulatory fee due would be $12 per license for the ten-year license term.[174] For FY 2002, Amateur Vanity Call Sign applicants will pay a $1.45 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $14.50 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[175] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 2002, the regulatory fee is $.24 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (e.g., one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. In addition, this category includes small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2002, the regulatory fee is $.08 per unit.

16. Finally, with regard to our definition of a CMRS payment units, we clarify that fees are assessable on each CMRS subscriber considered "active" as of December 31, 2001. Examples of CMRS subscribers include: subscribers of terrestrial mobile telephone services, subscribers of one-way or two-way paging services, and subscribers of other wireless messaging services that are capable of transmitting and/or receiving data communications. A "feeable" CMRS payment unit is a CMRS subscriber that has possession of a mobile device that can transmit or receive voice or non-voice communications, or a CMRS subscriber has a contractual agreement for the provision of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and obtains a paging services contract from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Further, if John Doe purchases a pager and obtains paging services from a paging reseller which resells services from Paging Licensee X, Paging Licensee X is still responsible for paying the applicable regulatory fee for this CMRS payment unit.

2. Media Services

17. The regulatory fees for the Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[176] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2002 are as follows:

[174] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[175] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

[176] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

FY 2002 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001–50,000	925	725	375	525	725	925
50,001–125,000	1,500	975	525	775	975	1,500
125,001–400,000	2,250	1,575	800	950	1,575	2,250
400,001–1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

19. Licensees may determine the appropriate fee payment by referring to the FCC's internet world wide web site (*http://www.fcc.gov*) or by calling the FCC's National Call Center (1–888–225–5322). The same information may be included in the Public Notices mailed to each licensee for which we have a current address on file.

(Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment).

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct *new* Commercial AM Stations. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $370 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group in the above table.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct *new* Commercial FM Stations. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $1,500 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group in the above table.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 70, 2002 Edition, Warren Publishing, Inc., or similar source. The fees for each station categories are as follows:

VHF Markets 1–10	$47,050
VHF Markets 11–25	34,700
VHF Markets 26–50	23,625
VHF Markets 51–100	15,150
VHF Remaining Markets	3,525
UHF Markets 1–10	12,800
UHF Markets 11–25	10,300
UHF Markets 26–50	6,600
UHF Markets 51–100	3,875
UHF Remaining Markets	1,075

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $805 annually. Those stations designated as Television Satellite Stations in the 2002 Edition of the *Television and Cable Factbook* (or similar source) are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct *new* Commercial VHF Television Stations authorized as of October 1, 2001. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $2,750 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the television station appears.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct *new* UHF Television Stations authorized as of October 1, 2001. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $5,175 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the television station appears.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 2002 is $420. A regulatee who held a construction permit on October 1, 2001 will pay a fee of $420 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the station appears.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2002, MDS and MMDS

Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *supra*).

b. Interstate Telecommunication Service Providers

33. This category includes all

carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2002, carriers must multiply their interstate and international revenue from subject local and toll services by the factor 0.00153 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

CALENDAR 2001 REVENUE INFORMATION

[show amounts in whole dollars]

Name	Amount
1. Service provided by U.S. carriers that both originates and terminates in foreign points. FCC Form 499–A Line 412 (e)	
2. Interstate end-user revenues from all telecommunications services. FCC Form 499–A Line 420(d)	
3. International end-user revenues from all telecommunications services except international-to-international. FCC Form 499–A Line	

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i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators that meet certain requirements will have their fees waived.[177] For FY 2002, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $320 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 2002, licensees of Commercial Auxiliary Stations will pay a $10 annual regulatory fee on a per call sign basis.

[177] See 10 FCC Rcd 12759, 12762 (1995).

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2002, MDS and MMDS stations will pay an annual regulatory fee of $430 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2002, Cable Systems will pay a regulatory fee of $.53 per subscriber.[178] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 2001. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. *See* FY 1994 *Report and Order*, Appendix B at paragraph 31.[179]

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2002, licensees will pay an annual regulatory fee of $65 per CARS license.

4. Wireline Competition Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *supra*).

b. Interstate Telecommunication Service Providers

33. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as "interstate telecommunication service providers".

34. Interstate service providers include CAP/CLECs, incumbent local exchange carriers (local telephone operating companies), interexchange carriers (long distance telephone companies), local resellers, OSPs (operator service providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, prepaid card, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, and other local and other service providers.

35. To avoid imposing a double payment burden on resellers, we base the regulatory fee on end-user revenues. Interstate telecommunication service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.[180] Interstate telecommunication service providers do not pay the Common Carrier regulatory fee on revenue from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's

[178] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

[179] 59 FR 30984 (June 16, 1994).

[180] *See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (*Contributor Reporting Requirements Order*).

carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2002, carriers must multiply their interstate and international revenue from subject local and toll services by the factor 0.00153 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

CALENDAR 2001 REVENUE INFORMATION

[show amounts in whole dollars]

Name	Amount
1. Service provided by U.S. carriers that both originates and terminates in foreign points. FCC Form 499–A Line 412 (e)	
2. Interstate end-user revenues from all telecommunications services. FCC Form 499–A Line 420(d)	
3. International end-user revenues from all telecommunications services except international-to-international. FCC Form 499–A Line 420(e)	
4. Total end-user revenues (Sum of Lines 1, 2 and 3) Note: Also enter this number on Block (28A)—"FCC Code 1".	
5. End-user interstate mobile service monthly and activation charges. FCC Form 499–A Line 409(d)	
6. End-user international mobile service monthly and activation charges. FCC Form 499–A Line 409(e)	
7. End-user interstate mobile service message charges including roaming charges but excluding toll charges.FCC Form 499–A Line 410(d)	
8. End-user international mobile service message charges including roaming charges but excluding toll charges.FCC Form 499–A Line 410(e)	
9. End-user interstate satellite services. FCC Form 499–A Line 416(d)	
10. End-user international satellite services. FCC Form 499–A Line 416(e)	
11. Surcharges on mobile and satellite services identified as recovering universal service contributions and included in Line 403(d) or 403(e) on your FCC Form 499. [Note: You may not include in Block 11 universal service pass-through surcharges applied to local or toll services, nor any surcharges identified as intrastate surcharges.]	
12. Interstate and international revenues from resellers that do not contribute to USF. FCC Form 499–A Line 511(b)	
13. Total excluded end-user revenues. (Sum Lines 5 through 12.) Note: Also enter this number on Block (29A)—"FCCCode 2".	
14. Total subject revenues. (Line 4 minus Line 13) Note: Also enter this number in Block (25A)—"Quantity".	
15. Interstate telecommunications service provider fee factor	.00153
16. 2002 Regulatory Fee (Line 14 times Line 15)* Note: Also enter this number in Block (27A)—"Total Fee".	

*You are exempt from filing if the amount on line 16 is less than $10.

5. International Services

a. Earth Stations

36. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[181] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 2002, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite, Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $140 per authorization or registration *as well as a separate fee of $140 for each associated Hub Station.*

37. *Receive-only earth stations.* For FY 2002, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

38. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 2002, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $99,700 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

39. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 2002, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $103,200 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order*[182] at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations

[181] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and cooperate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2001.

[182] 65 FR 37408 (July 11, 1997).

of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and

(circuits derived from 64 Kbps bearer circuits by the use of digital circuit multiplication systems) are not equivalent 64 kbps bearer circuits. Such derived circuits are not subject to payment of a fee. Only the 64 Kbps bearer circuit from which they have been derived will be subject to payment of a fee. Resold circuits are not subject to payment of a fee. For FY 2002, the regulatory fee is $2 for each active 64 Kbps bearer circuit or equivalent. For

action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support

activity includes direct organizational FTEs and FTE workyear efforts provided by staff offices that support policy direction, program development, legal services, and executive direction, as well as support services associated with spectrum management activities.

Attachment H—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70

American Association of Paging Carriers ("AAPC")

Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("BMDDP")

Arch Wireless, Inc. ("Arch")

Attachment J—AM and FM Radio Regulatory Fees

The List of regulatory fees is available from the FCC Public Reference Room,

of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we previously clarified our definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

40. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See* FY 1994 *Report and Order* at 5367.[183] Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps (or E–1) circuit is 30 64 Kbps circuits; a 155 Mbps (or STM–1) circuit is 1,890 64 Kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, any derived circuits (circuits derived from 64 Kbps bearer circuits by the use of digital circuit multiplication systems) are not equivalent 64 kbps bearer circuits. Such derived circuits are not subject to payment of a fee. Only the 64 Kbps bearer circuit from which they have been derived will be subject to payment of a fee. Resold circuits are not subject to payment of a fee. For FY 2002, the regulatory fee is $2 for each active 64 Kbps bearer circuit or equivalent. For television channels, we assess fees as follows:

Analog television channel size in MHz—	Number of equivalent 64 Kbps circuits
36	630
24	288
18	240

e. International Public Fixed

41. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2002, International Public Fixed Radio Service licensees will pay a $1,400 annual regulatory fee per call sign.

f. International (HF) Broadcast

42. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2002, International HF Broadcast Stations will pay an annual regulatory fee of $495 per station license.

Attachment G—Description of FCC Activities

Licensing: This activity includes the authorization or licensing of radio stations, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with licensing activities.

Competition: This activity includes formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with activities to promote competition.

Enforcement: This activity includes enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Consumer Information Services: This activity includes the publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with consumer information activities.

Spectrum Management: This activity includes management of the electromagnetic spectrum as mandated by the Communications Act of 1934, as amended. Spectrum management includes the structure and processes for allocating, allotting, assigning, and licensing this scarce resource to the private sector and state and local governments in a way that promotes competition while ensuring that the public interest is best served. In order to manage spectrum in both an efficient and equitable manner, the Commission prepares economic, technical and engineering studies, coordinates with federal agencies, and represents U.S. industry in international forums. This activity includes direct organizational FTEs and FTE workyear efforts provided by staff offices that support policy direction, program development, legal services, and executive direction, as well as support services associated with spectrum management activities.

Attachment H—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[184] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[185] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment I

Parties Filing Comments on the Notice of Proposed Rulemaking

Steven Karty
William J. Hanrahan
AT&T Corporation ("AT&T")
American Association of Paging Carriers ("AAPC")
Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("BMDDP")
Allied Personal Communications Industries Association of California ("Allied")

Parties Filing Reply Comments

Verizon, Inc. ("Verizon")
American Mobile Telecommunications Association, Inc. ("AMTA")

Parties Filing a Notice of Oral Ex Parte Presentation

Arch Wireless, Inc. ("Arch")
Filed by Wilkinson, Barker, Knauer, LLP
Other Entities Present at the Meeting:
American Association of Paging Carriers ("AAPC")
Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("BMDDP")
Arch Wireless, Inc. ("Arch")

Attachment J—AM and FM Radio Regulatory Fees

The List of regulatory fees is available from the FCC Public Reference Room, CY–A257, 445 12th St. SW, Washington, DC 20554.

Statement of Commissioner Michael Copps, Concurring

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2002

I am concerned that the Commission does not address when or how it would adjust the regulatory fees to take into account changes to the cost of regulating various services. The paging industry argues that it faces a 60 percent per unit increase in regulatory fees this year due to a declining subscriber base, notwithstanding reduced regulatory resources devoted to paging. Today's order concludes that the paging industry has not demonstrated that an increase from $.05 to $.08 per unit per year would harm the industry as a whole, but fails to address the underlying concern about revisions to the Commission's methodology. I take some comfort, however, that the Commission plans to have in place a new accounting system in the near future, and that, in the meantime, our rules expressly provide that individual providers may seek reduction or deferral of regulatory fees due to financial hardship.

[FR Doc. 02–17308 Filed 7–11–02; 8:45 am]
BILLING CODE 6712–02–P

[183] 59 FR 30984 (June 16, 1994).

[184] 47 CFR 73.150 and 73.152.

[185] 47 CFR 73.313.

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July 12, 2002

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Federal Register

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Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

changes, the tribe's former name is included with the new tribal name. We will continue to list the tribe's former name for several years before dropping the former name from the list. We have also made several corrections. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name.

The listed entities are acknowledged to have the immunities and privileges

Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California

Comanche Nation, Oklahoma (formerly the Comanche Indian Tribe)
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation; California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona (formerly the Fort McDowell Mohave-Apache Community of the Fort

Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan (previously listed as the Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of 562 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the notice published on March 13, 2000 (65 FR 13298). Six tribal entities have been added to the list. Three of the six tribes became newly recognized since the last publication. The other three tribes were omitted from earlier **Federal Register** publications of the Tribal Entities List. The Shawnee Tribe and the Graton Rancheria, were recognized under Titles 7 and 14 of the Act of December 27, 2000, Pub. L. 106–568, 114 Stat. 2868. The Cowlitz Indian Tribe was acknowledged under 25 CFR part 83. The final determination for federal acknowledgment became effective on January 4, 2002. The Assistant Secretary—Indian Affairs reaffirmed the formal recognition of the King Salmon Tribe, the Shoonaq' Tribe of Kodiak, and the Lower Lake Rancheria, on December 29, 2000. The reaffirmation acknowledged that an administrative oversight had occurred and that three tribes had been omitted from the **Federal Register** list of entities recognized and eligible to receive services from the United States Bureau of Indian Affairs.

Several tribes have also made changes to their tribal name. Most of the name changes are minor in nature, except for the California Valley Miwok Tribe (formerly the Sheep Ranch Rancheria). To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. We will continue to list the tribe's former name for several years before dropping the former name from the list. We have also made several corrections. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: July 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan (previously listed as the Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan)
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California

Comanche Nation, Oklahoma (formerly the Comanche Indian Tribe)
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington (formerly the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation)
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma (formerly the Delaware Tribe of Western Oklahoma)
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin (previously listed as the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin)
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona (formerly the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation)
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan (previously listed as the Grand Traverse Band of Ottawa & Chippewa Indians of Michigan)
Graton Rancheria, California
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community, Michigan (previously listed as the Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan)
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico (formerly the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation)
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan (previously listed as the Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan)
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (previously listed as the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin)
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan (previously listed as the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan)
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan (previously listed as the Little River Band of Ottawa Indians of Michigan)
Little Traverse Bay Bands of Odawa Indians, Michigan (previously listed as the Little Traverse Bay Bands of Odawa Indians of Michigan)
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota (previously listed as the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota)

Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
Sokaogon Chippewa Community, Wisconsin (previously listed as the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin)
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin
Indian Community of the Upper Sioux Reservation, Minnesota)
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California

Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin (previously listed as the Oneida Tribe of Wisconsin)
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe, California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana (previously listed as the Pokagon Band of Potawatomi Indians of Michigan)
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Nation, Kansas (formerly the Prairie Band of Potawatomi Indians)
Prairie Island Indian Community in the State of Minnesota (previously listed as the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota)
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota (previously listed as the Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota)
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California (formerly the Coast Indian Community of Yurok Indians of the Resighini Rancheria)
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan (previously listed as the Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation)
St. Croix Chippewa Indians of Wisconsin (previously listed as the St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation)
St. Regis Band of Mohawk Indians of New York

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (previously listed as the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake))
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California (formerly the Soboba Band of Luiseno Mission Indians of the Soboba Reservation)
Sokaogon Chippewa Community, Wisconsin (previously listed as the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin)
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin (previously listed as the Stockbridge-Munsee Community of Mohican Indians of Wisconsin)
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Reservation—Wiyot Tribe, California
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California (previously listed as the Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma (previously listed as the United Keetoowah Band of Cherokee Indians of Oklahoma)
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Community, Minnesota (previously listed as the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota)
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe (formerly the Native Village of Mountain Village)
Native Village of Atka
Village of Atmautluak

Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor

Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (*See* Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

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Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point (previously listed as the Village of Clark's Point)
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council (formerly the Native Village of Dillingham)
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council (formerly the Koliganek Village)
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (*See* Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (*See* Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Shoonaq' Tribe of Kodiak
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek

Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (*See* Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

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Part V

Department of Housing and Urban Development

Notice on Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as "Covered Units" Eligible for Inclusion in the Federal Public Housing Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4774–N–01]

Notice on Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as "Covered Units" Eligible for Inclusion in the Federal Public Housing Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces the process by which State or locally developed public housing units developed under New York law may be designated as "covered units" eligible for inclusion in the Federal public housing program. This notice is published pursuant to section 519 of the Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276), which authorized the Secretary of HUD to include State and locally developed public housing units developed under New York law into the Federal public housing program for purposes of receiving allocations of operating and capital funds pursuant to statutory and regulatory formulas. This provision authorizes the inclusion of not more than 7,000 units in New York.

FOR FURTHER INFORMATION CONTACT: Program Center: HUD Office of Public and Indian Housing, Grants Management Center, Michael E. Diggs, Director, 501 School St. SW., 8th Floor, Washington, DC 20024, Telephone: (202) 358–0221 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Paperwork Reduction Act Statement

The information collection requirements contained in this notice NOFA have been submitted to the Office of Management and Budget (OMB) for emergency approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Upon approved, the OMB Control Number will be published in a separate notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

VI. Final Approval

Final approval and funding, for both fiscal years commencing with Fiscal Year 2000 and future fiscal years, are subject to any further relevant legislative action; acceptable submission and HUD approval of all information required by this Notice; documentation assessments of competence are not applicable or sufficient; an independent physical inspection satisfactory to HUD; and the execution of an Annual Contributions Contract (ACC) or ACC amendment including the covered units selected pursuant to this Notice.

Dated: June 27, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4774–N–01]

Notice on Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as "Covered Units" Eligible for Inclusion in the Federal Public Housing Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice to public housing agencies on applying to HUD for designation of certain New York state public housing units as Federally covered units.

SUMMARY: The purpose of this Notice is to: advise public housing agencies (PHAs) in the State of New York on applying for designation of public housing units developed and funded in accordance with New York law as "covered units," up to 7,000 of which will be eligible to receive Federal public housing operating and capital funds allocated according to statutory and regulatory formulas; obtain information about all developments and units that could be "covered units"; and obtain PHAs' preferences as to which of their developments and units they would want included in the Federal housing program.

DATES: PHAs must respond by: September 10, 2002.

ADDRESSES: Submit one original set of information requested in this notice to HUD Headquarters at the following address: HUD Office of Public and Indian Housing, Grants Management Center, 501 School St. SW., 8th Floor, Washington, DC 20024.

Provide one copy of the information requested in this notice to the local HUD Program Center or HUB.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear-McCown, Program Analyst, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone: (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9(n) of the United States Housing Act of 1937 (1937 Act), added by section 519 of the Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276), authorized the Secretary of HUD to include State and locally developed public housing units developed under New York law into the Federal public housing program for purposes of receiving allocations of operating and capital funds pursuant to statutory and regulatory formulas. This provision authorizes the inclusion of not more than 7,000 units in New York in the federal public housing program. However, a separate provision of the same law (Sec. 226 of Pub. L. 105–276) prohibited the use of these Federal funds to provide new assistance for State and locally developed public housing units. These conflicting provisions gave rise to legal questions concerning HUD's authority and responsibility to implement section 9(n). Both the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit have issued decisions this year, indicating that implementation of section 9(n) should proceed retroactive to Fiscal Year 2000.

II. Eligibility

A New York public housing agency that operates, owns, or manages covered locally developed public housing units is eligible to seek inclusion of those units in the Federal public housing program. The term "covered locally developed public housing units" is defined by section 9(n)(1)(b) of the 1937 Act as public housing units developed pursuant to laws of the State of New York and that received debt service and operating subsidies pursuant to such laws.

III. Funding

Funding for "covered units" will be provided from the public housing Operating Fund and Capital Fund. Funding for "covered units" will cover Fiscal Year 2000 through 2003 and thereafter, and will directly reduce the amount of Operating Fund and Capital Fund monies in Fiscal Year 2003 and thereafter that would otherwise be distributed to all public housing agencies.

IV. Response Due Date and Address for Submission

Information requested by this notice, and in the form and manner described in this Notice, is due no later than September 10, 2002. No exceptions to this deadline will be considered. Submit one original set of documents to HUD Headquarters at the following address and one copy to the local HUB or Program Center: HUD Office of Public and Indian Housing, Grants Management Center, Michael E. Diggs, Director, 501 School St. SW., 8th Floor, Washington, DC 20024, Telephone: (202) 358–0221 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

V. Required Materials

PHAs interested in having units designated as "covered units" shall submit the following information for *all* units they administer that were developed pursuant to the laws of the State of New York and that received debt service and operating subsidies pursuant to such laws. This information will be used to aid HUD in determining which units shall receive the "covered" designation.

Provide the following in the order it is presented. Items 1–11 shall be submitted for each site:

(1) Name of development;
(2) Number of units;
(3) Location (census tract);
(4) Age and general condition;
(5) Composition of units by bedroom size; and family, elderly, or disabled designation;
(6) Current vacancy rate and vacancy rate for past two years;
(7) If readily available, actual operating expenses for the last two fiscal years; if such information is not readily available, list any unusually large recent, current, or projected operating costs (e.g. extraordinarily high utilities costs);
(8) Summary of large capital improvements made over preceding five-year period;
(9) Projected capital needs for next five years;
(10) Debt service amounts (if any);
(11) Extraordinary liabilities the Federal government may need to assume (e.g., litigation);
(12) Most recent Public Housing Assessment System (PHAS) rating and designation for the PHA from HUD, or copy of any recent performance assessment from applicable State or local government or other independent entity; and
(13) Other information requested by HUD as necessary to complete its review.

In addition; the PHA shall identify in its submission the developments and total number of units it seeks to include in the Federal public housing program and any other factors HUD should take into account.

Paperwork Reduction Act Statement

The information collection requirements contained in this notice NOFA have been submitted to the Office of Management and Budget (OMB) for emergency approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Upon approved, the OMB Control Number will be published in a separate notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

VI. Final Approval

Final approval and funding, for both fiscal years commencing with Fiscal Year 2000 and future fiscal years, are subject to any further relevant legislative action; acceptable submission and HUD approval of all information required by this Notice; documentation of sufficient managerial competence HUD may require if PHAS or other assessments of competence are not applicable or sufficient; an independent physical inspection satisfactory to HUD; and the execution of an Annual Contributions Contract (ACC) or ACC amendment including the covered units selected pursuant to this Notice.

Dated: June 27, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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Part VI

Department of Health and Human Services

Office of Community Services

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications, Spring, 2002 Announcement; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 2002–13]

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications, Spring, 2002 Announcement

sent are found in Part D of this program announcement.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director, Division of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC 20447, (202) 401–9343. This program announcement, along with the necessary applications forms, is

feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an on-going procedure for obtaining input from State and national networks of eligible entities. Thus, the CSBG Monitoring and Assessment Task Force (MATF) continues to focus on implementation of the Results-Oriented Management and Accountability (ROMA) system to address the challenges and unmet needs

in this context is viewed within the framework of both community conditions and systems, i.e., (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations

fiscal year. In cases where eligible entity status is unclear, a final determination will be made by OCS/ACF.

Hub is a Department of Health and Human Services designation for multiple regional locations.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the

oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 2002–13]

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications, Spring, 2002 Announcement

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Request for applications under the Office of Community Services' Training, Technical Assistance and Capacity-Building Program.

SUMMARY: The Office of Community Services announces that competing applications will be accepted for new grants pursuant to the Secretary's authority under Section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training, and Educational Services (Coats) Human Services Reauthorization Act of 1998, (Pub. L. 105–285). This program announcement consists of seven parts. Part A provides information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of the program, the priority areas that will be considered for funding, and which organizations are eligible to apply in each priority area. Part C provides details on application prerequisites, anticipated amounts of funds available in each priority area, estimated number of grants to be awarded, and other grant-related information. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package. Part F provides instructions for completing an application. Part G details post-award requirements.

DATES: The closing date for submission of applications is August 26, 2002. The closing date for receipt of applications is 4:30 p.m. Eastern time zone. Applications received after 4:30 p.m. on the closing date will be classified as late. Postmarks and other similar documents do not establish receipt of an application. Detailed application submission instructions, including addresses where applications must be sent are found in Part D of this program announcement.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director, Division of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC 20447, (202) 401–9343. This program announcement, along with the necessary applications forms, is accessible on the OCS web site for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs* Additional copies of this program announcement can be obtained by calling (202) 401–9343.

The Catalog of Federal Domestic Assistance number is "93.570." This Program announcement title is "Training, Technical Assistance, and Capacity-Building Program."

Part A—Preamble

1. Legislative Authority

Sections 674(b)(2) and 678A(a)(1)(A) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Coats Human Services Reauthorization Act of 1998, (Pub. L. 105–285) authorizes the Secretary of Health and Human Services to utilize a percentage of appropriated funds for: Training, technical assistance, planning, evaluation, performance measurement, monitoring, to assist States in carrying out corrective actions and to correct programmatic deficiencies of eligible entities, and for reporting and data collection activities related to programs or projects carried out under the CSBG Act. The Secretary may carry out these activities through grants, contracts, or cooperative agreements. To address program quality in financial management practices, management information and reporting systems, measurement of program results, and to ensure responsiveness to identified local needs, the Secretary is required to distribute funds directly to eligible entities, or statewide or local organizations (including faith-based organizations) or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. The Secretary may carry out the remaining activities through appropriate entities.

The process for determining the technical assistance, training and capacity-building activities to be carried out must (a) ensure that the needs of eligible entities and programs relating to improving program quality, including financial management practices, are addressed to the maximum extent feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an on-going procedure for obtaining input from State and national networks of eligible entities. Thus, the CSBG Monitoring and Assessment Task Force (MATF) continues to focus on implementation of the Results-Oriented Management and Accountability (ROMA) system to address the challenges and unmet needs of States and Community Action Agencies and to increase program quality and management within the Community Services Network. The Task Force has taken a comprehensive approach to monitoring, including establishing national goals and outcome measures and target dates for nation-wide implementation; reviewing data needs relevant to these outcome measures; and assessing technical assistance and training provided toward capacity building within the Community Services Network.

2. Definitions of Terms

For purposes of the FY 2001 CSBG Training, Technical Assistance and Capacity-Building Program, the following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common distinguishing characteristics including residency, for example, the "low-income" community, or the "religious" community or the "professional" community. The individual members of these "communities" may or may not reside in a specific neighborhood, county or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community

in this context is viewed within the framework of both community conditions and systems, i.e., (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement is an award instrument of financial assistance where "substantial involvement" is anticipated between the awarding agency and the recipient during the performance of the contemplated project or activity. "Substantial involvement" means that the recipient can expect Federal programmatic collaboration or participation in managing the award. The specific responsibilities of the awarding agency and the recipient will be determined as part of the process of creating the cooperative agreement.

Eligible applicants described in this announcement shall be eligible entities, organizations (including faith-based and community-based) or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. See description of Eligible Entities below.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under Sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the Coats Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farmworker organizations that received CSBG funding in the previous fiscal year. In cases where eligible entity status is unclear, a final determination will be made by OCS/ACF.

Hub is a Department of Health and Human Services designation for multiple regional locations.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Non-profit Organization refers to an organization, including faith-based, which has "demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low income families and communities." Acceptable documentation for eligible non-profit status is limited to: (1) A copy of a current, valid Internal Revenue service tax exemption certificate; (2) a copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code; and/or (3) Articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Outcome Measures are indicators that focus on the direct results one wants to have on customers.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity building activities undertaken with grant funds that will have significant impact, i.e. activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refer to the Commonwealth of Puerto Rico, and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Part B—Purposes/Program Priority Areas

The principal purposes of this Training, Technical Assistance and Capacity-Building announcement are to:

Provide an opportunity for national associations that provide training and technical assistance to the Community Services Network to extend and enhance their efforts;

Continue a national effort to build strong administration and financial management capabilities among "at risk" local community action programs through crisis aversion intervention and timely technical assistance; and

Clarify and re-announce a competition for grants to promote partnerships between community action agencies and other service providers, including faith-based organizations, to promote achievement of ROMA client and community goals. An original competition for such grants, announced as Priority Area 4.0, *Partnerships Among Suppliers and Providers of Service to Low-Income People*, in the January 18, 2002

Federal Register, was suspended. Previous applicants have the opportunity to re-apply under Priority 2.0, Strengthening Partnerships, prior to the closing date of this announcement.

Priority areas of the Office of Community Services' Fiscal Year 2002 Spring Training, Technical Assistance and Capacity-Building Program are as follows:

greater engagement of fathers and the promotion of healthy marriages. In addition, OCS will support an effort to identify and reward "excellence" among community action programs that have achieved measurable outcomes in one or more of the areas described above.

Eligible Applicants: National non-profit associations representing Community Action Agencies.

Anticipated Grant Awards: One cooperative agreement (up to entities and state-wide organizations or associations of community action agencies.

Anticipated Grant Awards: One grant (up to $300,000 annually for a maximum of two years).

Priority Area 2.0: Strengthening Partnerships

One of the primary goals of the Administration is to encourage expansion of the number and kinds of

action agencies learn of ways to establish or expand partnerships with other service providers, such as faith-based, charitable, and/or other community groups, to advance client-focused community action ROMA Goals 1 and 6—client/family self-sufficiency and family strengthening. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the CSN

and human and financial resources; (4) evidence of previous success, including descriptions of other collaborations, and measurable client improvements that resulted from such collaborative work; and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible Applicants: State CSBG Lead Agencies, State CAA Associations, eligible entities, and non-profit

action other service provider staff and clients on particular strengths and challenges of such collaboration; and (4) develop a guide based on the information described above in a manner useful to the CSN.

Eligible Applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, and non-profit organizations.

Anticipated Grant Awards: One (up to $45,000 for 12 months).

Capacity-Building Grants to Promote

Federal Register, was suspended. Previous applicants have the opportunity to re-apply under Priority 2.0, Strengthening Partnerships, prior to the closing date of this announcement.

Priority areas of the Office of Community Services' Fiscal Year 2002 Spring Training, Technical Assistance and Capacity-Building Program are as follows:

Priority Area 1.0: National CAA Capacity Building

Sub-Priority Areas:
- 1.1 National Training (NT)
- 1.2 Strengthening CAA Capacity to Address Legal Issues (LF)
- 1.3 National Peer to Peer Assistance (PP)

Priority Area 2.0: Strengthening Partnerships

Sub-Priority Areas:
- 2.1 Coordination Strategies Between Community Action and Other Service Providers, Including Faith-Based Organizations to Advance ROMA Client Goals 1 and 6 (FP)
- 2.2 Coordination Strategies Between Community Action And Other Service Providers, Including Faith-Based Organizations to Advance ROMA Community Goals 2 and 3 (FC)

Priority Area 1.0: National CAA Capacity Building

This priority area addresses activities to assist states and eligible entities to acquire skills and further understand legal frameworks for community action. In order to ensure that OCS meets its compliance and technical assistance responsibilities for the CSBG Program and continues its effective partnership with the Community Services Network, grants awarded under Priority 1.1 will be funded in the form of a Cooperative Agreement. A Cooperative agreement is to be renewed annually for a specified number of years.

Sub-Priority 1.1: National Training (NT)

OCS will fund one national organization associated with community action to: (a) Re-engage the public in an on-going dialogue about the conditions of poverty and how community action at the State and local levels may address those conditions more effectively; (b) identify and promote strategies for integrating services within communities to address the multiple conditions of poverty among individuals and families and that help them achieve greater self-sufficiency; (c) identify and promote strategies for improving the supportive conditions of communities in which poor families live; and (d) identify and promote community action strategies for strengthening the family environment in which children are raised through greater engagement of fathers and the promotion of healthy marriages. In addition, OCS will support an effort to identify and reward "excellence" among community action programs that have achieved measurable outcomes in one or more of the areas described above.

Eligible Applicants: National non-profit associations representing Community Action Agencies.

Anticipated Grant Awards: One cooperative agreement (up to $500,000 annually for a maximum of three years).

Sub-Priority 1.2: Strengthening CAA Capacity to Address Legal Issues (LF)

OCS will fund one national non-profit organization to provide legal assistance to local community action agencies to help them improve the lives of clients and the conditions of communities in which they live. Specifically, the successful applicant will provide legal assistance to: (1) Help agencies understand and advocate for the rights of clients in such matters as community governance and/or service eligibility; (2) safeguard the statutory role of agencies as client and community advocates; (3) interpret Federal, State, and local statutes or regulations that pertain to the roles and functions of community action; and (4) assist local agencies involved in litigation or formal administrative actions to obtain appropriate legal counsel.

Eligible Applicants: National, non-profit legal services organizations.

Anticipated Grant Awards: One grant (up to $250,000 annually for a maximum of three years).

Sub-Priority 1.3: National Peer-to-Peer Assistance

The purpose of this Sub-Priority is to continue to strengthen the fiscal and management capacity of eligible entities, especially those that may be considered "at risk." OCS will fund one project which will provide coordinated, timely, peer-to-peer technical assistance and crisis aversion intervention for CAAs which have identified themselves as experiencing programmatic, administrative, board, and/or fiscal management problems. Peer-to-peer assistance may involve helping an agency resolve adverse program monitoring or audit findings, improve or upgrade financial management systems, prevent losses of funds, avert serious deterioration of the board of directors, or other immediate problems that prevent the agency carrying out their client and community service obligations.

Eligible Applicants: Community action agencies and other eligible entities and state-wide organizations or associations of community action agencies.

Anticipated Grant Awards: One grant (up to $300,000 annually for a maximum of two years).

Priority Area 2.0: Strengthening Partnerships

One of the primary goals of the Administration is to encourage expansion of the number and kinds of organizations devoted to helping communities and low-income citizens achieve their potential. The Administration has developed a "Faith-based and Community-based Initiative" that has, among other things, called for the removal of barriers thereby creating greater participation of faith-based groups in providing community services, and stronger coordination among all service organizations within a community that address the needs of low-income citizens.

OCS recognizes that the Community Services Network (CSN) has a long history of forming partnerships with a variety of service providers at the community level, including faith-based organizations. OCS intends to encourage further expansion of such collaborative efforts to achieve both client and community goals.

OCS intends to fund the development and dissemination of two technical assistance documents intended to help partners in the CSN, at both the State and community levels, learn ways to enhance collaboration of community action with other service providers, including faith-based and community organizations. In addition, OCS will support capacity-building efforts in selected States and/or communities to form new or expanded community action partnerships to achieve specific client or community results, and to disseminate the results of these capacity-building efforts to the Network.

Sub-Priority Area 2.1 Coordination Strategies Between Community Action Agencies and Other Service Providers, Such As Faith-Based, Charitable, and/or Other Community Groups, to Advance ROMA Client Goals 1 and 6 (FP)

OCS will fund up to four technical assistance and capacity building efforts to promote the achievement of client-focused Goals 1 and 6:

Guide to Achieving Client Outcomes Through Community Action Partnerships with Other Service Providers, Such As Faith-Based, Charitable, and/or Other Community Groups—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with other service providers, such as faith-based, charitable, and/or other community groups, to advance client-focused community action ROMA Goals 1 and 6—client/family self-sufficiency and family strengthening. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the CSN that have a history of successful linkage/collaboration with other providers, such as faith-based, charitable, and/or other community groups working to achieve client-focused outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, and capturing and reporting results; (3) gather insights and analyses from participating community action and other service provider staff on particular strengths and challenges of such collaboration; and (4) develop a guide based on the information described above in a manner useful to the CSN.

Eligible Applicants: State CSBG Lead Agencies, State CAA Associations, local CSBG eligible entities, and non-profit organizations.

Anticipated Grant Awards: One (up to $45,000 for 12 months).

Capacity-Building Grants to Promote Self-sufficiency and/or Family Strengthening Through Collaboration Between Community Action and Other Service Providers, Including Faith-Based and Community Organizations—OCS will fund between one and three States or local community action agencies or other non-profit service providers, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative work among organizations to promote client/family self-sufficiency and/or to strengthen families. The successful applicant(s) will describe in their application(s): (1) The specific goal(s) they intend to advance through new or expanded partnerships between community action and other service providers, including faith-based and community organizations; (2) the specific and measurable client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) the particular contributions each organizational partner will bring to the collaboration, including special skills, and human and financial resources; (4) evidence of previous success, including descriptions of other collaborations, and measurable client improvements that resulted from such collaborative work; and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible Applicants: State CSBG Lead Agencies, State CAA Associations, eligible entities, and non-profit organizations.

Anticipated Grant Awards: Up to three ($20,000 each for 12 months).

Sub-Priority Area 2.2 Coordination Strategies Between Community Action Agencies and Other Service Providers, Such as Faith-Based, Charitable, and/or Other Community Groups To Advance ROMA Community Goals 2 and 3 (FC)

As with sub-priority area 2.1, OCS will fund up to four grants to promote the achievement of community-focused goals (community development and citizen empowerment) through new or expanded collaboration between community action and other service providers, such as faith-based, charitable, and/or other community groups. OCS will solicit applications in two categories:

Guide to Achieving Community Development/Citizen Empowerment Goals Through Collaboration Between Community Action and other Service Providers, Such as Faith-Based, Charitable, and/or Other Community Groups—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with other service providers to advance community development and citizen empowerment—ROMA national goals 2 and 3.

Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the Network that have a history of successful linkage/collaboration with other service providers, such as faith-based, charitable, and/or other community groups, to achieve community outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, and capturing and reporting results; (3) gather insights and analyses from participating community action other service provider staff and clients on particular strengths and challenges of such collaboration; and (4) develop a guide based on the information described above in a manner useful to the CSN.

Eligible Applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, and non-profit organizations.

Anticipated Grant Awards: One (up to $45,000 for 12 months).

Capacity-Building Grants to Promote Community Development and/or Citizen Empowerment Through Collaboration Between Community Action and Other Service Providers, Such as Faith-Based, Charitable, and/or Other Community Groups—OCS will fund between one and three States or local community action agencies or other non-profit organizations, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative work among organizations to promote community development and/or citizen empowerment. The successful applicant(s) will describe in their application(s): (1) The specific goal(s) they intend to advance through new or expanded partnerships between community action other service providers, including faith-based and community organizations; (2) the specific and measurable community and client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) the particular contributions each organizational partner will bring to the collaboration, including special skills, and human and financial resources; (4) evidence of previous success, including descriptions of other collaborations, and measurable community and client improvements that resulted from such collaborative work; and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible Applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, and non-profit organizations

Anticipated Grant Awards: Up to three ($20,000 each for 12 months).

Part C—Application Prerequisites

1. Eligible Applicants

See individual sub-priority areas in Part B.

2. Forms of Awards

The Office of Community Services intends to support grants for successful

applicants under all priority areas with the exception of one cooperative agreement under Sub-Priority Area 1.1. A cooperative agreement is an award instrument of financial assistance when substantial involvement is anticipated between the awarding office and the recipient organization during performance of the contemplated project.

OCS invites qualified entities to submit competing grant applications for

Applicant Role and Responsibilities

1. Develop and implement work plans that will ensure that the services and activities approved in the application address the training and technical assistance needs of the community services network based on the requirement for specified projects.

2. Collaborate with the OCS to finalize the major goals and objectives of the overall project and exchange information on strategies for achieving

comment on materials prior to their finalization.

4. Promote the involvement of OCS in applicant meetings, conferences and initiatives to strengthen the knowledge base of the applicant and the OCS.

5. Promote the involvement of OCS in applicant meetings, conferences and initiatives to strengthen the knowledge base of the applicant and the OCS.

6. Work collaboratively with the grantee in reviewing and providing

will receive only one grant in a sub-priority area. Applicants that receive more than one grant for a common budget and project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100 percent of the total annual salary. The sub-priority area must be clearly identified by title and number.

8. Project Evaluations

Each application must include an

using all mail services to ensure that the applications are received on or before the deadline time and date. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, "Attention: CSBG Training, Technical Assistance, and Capacity Building Program", 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447.

5. Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

All information collections within this Program Announcement are approved under OMB Control Number

applicants under all priority areas with the exception of one cooperative agreement under Sub-Priority Area 1.1. A cooperative agreement is an award instrument of financial assistance when substantial involvement is anticipated between the awarding office and the recipient organization during performance of the contemplated project.

OCS invites qualified entities to submit competing grant applications for the award of cooperative agreements under the FY 2002 Spring Training, Technical Assistance and Capacity Building Program Announcement. The purpose of the cooperative agreement is to assure that there is increased capacity in the community services network to provide national ROMA training, timely, coordinated peer-to-peer-technical assistance to address crises at the local level by CSBG-service providers; and to develop tools to promote collaboration between community action and other community groups, including faith-based/charitable organizations. The duties and responsibilities of the applicant and ACF/OCS in fulfilling the agreement will include the following:

Applicant Role and Responsibilities

1. Develop and implement work plans that will ensure that the services and activities approved in the application address the training and technical assistance needs of the community services network based on the requirement for specified projects.

2. Collaborate with the OCS to finalize the major goals and objectives of the overall project and exchange information on strategies for achieving the goals and objectives.

3. Provide a plan to access the outcomes of the project quarterly.

4. Promote the involvement of OCS in applicant meetings, conferences and initiatives to strengthen the knowledge base of the applicant and the OCS.

OCS Roles and Responsibilities

1. Within 60 days of the award of the grant, OCS will meet with the grantee to coordinate and develop a joint work plan with agreed upon short- and long-term priorities based on the applicant's work plan.

2. Discuss mechanisms of obtaining project status.

3. Through the duration of the cooperative agreement, review and comment on materials prior to their finalization.

4. Promote the involvement of OCS in applicant meetings, conferences and initiatives to strengthen the knowledge base of the applicant and the OCS.

5. Promote the involvement of OCS in applicant meetings, conferences and initiatives to strengthen the knowledge base of the applicant and the OCS.

6. Work collaboratively with the grantee in reviewing and providing feedback to address need for project adjustments and updates.

7. Develop any special conditions related to implementation of such projects.

3. Availability of Funds

The total amount of funds currently available for new grants and one cooperative agreement in FY 2002 under this Program Announcement is $1,260,000. For multi-year projects, continued funding is dependent upon proof of satisfactory performance and the availability of Federal funds. Amounts expected to be available and numbers of grants under each sub-priority area stated in Part B are as follows:

Sub-priority area	Approx. funds available for new projects	Estimated number of new grants
1.1: National Training (NT)	$500,000	1
1.2: Strengthen CAA Capacity to Address Legal Issues (LF)	250,000	1
1.3: National Peer-to-Peer Assistance (PP)	300,000	1
2.1 Coordination Strategies Between Community Action and Other Service Providers, Including Faith-Based and Community Organizations, to Advance ROMA Client Goals I and VI (FP). Guide ($45,000) Capacity Building ($60,000)	105,000	4
2.2 Coordination Strategies Between Community Action And Other Service Providers, Including Faith-Based Organizations, to Advance ROMA Community Goals II and III (FC). Guide ($45,000) Capacity Building ($60,000)	105,000	4
Total	1,260,000	Up to 11 Grants

4. Project and Budget Periods

This announcement is inviting applications for project periods up to 3 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for up to 3 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 3 year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Note: Please note that specific project periods under this announcement vary depending on the Sub-Priority Area.

5. Project Beneficiaries

The overall intended beneficiaries of the projects to be funded under this Spring FY 2002 CSBG Training, Technical Assistance and Capacity Building Program Announcement are the various "partners" in the Community Services Network. Specific beneficiaries are indicated under each sub-priority area in Part B.

6. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

7. Separate Multiple Applications

Separate applications must be made for each sub-priority area. An applicant will receive only one grant in a sub-priority area. Applicants that receive more than one grant for a common budget and project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100 percent of the total annual salary. The sub-priority area must be clearly identified by title and number.

8. Project Evaluations

Each application must include an assessment or self-evaluation to determine the degree to which the goals and objectives of the project are met, such as client satisfaction surveys, administration of simple before/after tests of knowledge with comparison of scores to show grasp of teaching points, simple measures of the results of service delivery, and others as appropriate. Goal setting and goal measurement should be the framework for evaluation. Goals, to the extent suitable, should be impact-oriented.

Part D—Application Procedures

Availability of Forms

Applications for awards under this Spring FY 2002 CSBG Training, Technical Assistance and Capacity Building Program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and the attachments to this program announcement contain all the instructions and forms required for submission of an application. These forms may be photocopied for use in developing the application.

Part F also contains instructions for the project narrative. The project narrative must be submitted on plain bond paper along with the SF–424 and related forms.

A copy of this program announcement and the required forms are available on the Internet through the OCS web site at: *http://www.acf.dhhs.gov/programs/ocs*.

If the program announcement cannot be accessed through the OCS web site, it can be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this program announcement.

2. Deadlines

Refer to the section entitled "Closing Date" at the beginning of this program announcement for the last day on which applications should be submitted.

Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline time and date. Applicants are responsible for mailing applications well in advance when using all mail services to ensure that the applications are received on or before the deadline time and date. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, "Attention: CSBG Training, Technical Assistance, and Capacity Building Program", 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447.

Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers, shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. EST, Monday through Friday, excluding Federal holidays, at the: Administration for Children and Families, Office of Grants Management, "Attention: CSBG Training, Technical Assistance and Capacity Building Program", 901 D Street, SW., 2nd Floor Mailroom, Washington, DC 20024.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt. Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ACF may extend the deadline for all applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of the mail service. A determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

3. Number of Copies Required

One signed original application and two copies should be submitted at the time of initial submission (OMB 0970–0062).

4. Designation of Sub-Priority Area

The first page of the SF–424 must contain in the lower right-hand corner a designation indicating under which sub-priority are funds are being requested. For example, if you are applying for Sub-Priority Area 2.6—Local Capacity Building, you must have a designation of 2.6 in the lower right-hand corner. Without this clear designation, your proposal may not be reviewed correctly.

5. Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

All information collections within this Program Announcement are approved under OMB Control Number 0970–0062 which expires 12/31/2003.

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

6. State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. Note: State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

The following States and Territories have elected to participate under the Executive Order process and have established a Single Point of Contact (SPOC): Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam. Puerto Rico, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands.

Jurisdictions not listed have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects to be administered by Federally recognized Indian Tribes need take no action in regard to E.O. 12372.

Although the jurisdictions described above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even

if a State, territory, commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as early as possible in the review process. ACF will not guarantee to accommodate or explain for SPOC comments that are received after the review has been completed.

7. Selection Procedures

Each application will be reviewed and evaluated competitively by a panel of at least three reviewers who are experts in the subject area of the sub-priority area under which funds are being requested. The panel will review each application against the criteria listed below. The panel will then score each application and prepare a written evaluation. The results of the panel's review will be used by the Director, Office of Community Services, in making the final decisions.

In addition to the above, the following will be considered in making awards:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in the project period.

(3) *Target Populations:* The application contains a project that will serve the specified target populations.

(4) *Location:* The application contains a project that will be located in the area specified.

(5) *Project Costs:* The budget is adequate and costs are reasonable in relation to the proposed project.

(6) *Previous Performance:* The applicant has not had unsatisfactory performance reports and is not delinquent or in default on Federal non-tax debts.

(7) *Multiple Awards:* In order to assure the most equitable distribution of assistance under this announcement, no more than one grant will be awarded under each sub-priority area to the same applicant.

(8) *Technical Assistance:* The application contains a project that will provide technical assistance to other applicants.

(9) *Non-Profit Status:* The applicant is a non-profit organization.

(10) *Innovative Approaches:* The application contains innovative approaches to achieve project goals.

(11) *Budget Justification:* The budget justification is detailed and sufficient to support the budget.

(12) *Project Evaluation:* The application contains a project evaluation that is sufficient to measure the success of the project.

(13) *Leveraging Resources:* The application contains a project that will leverage resources.

(14) *Geographic Distribution:* The application contains a project that will be geographically distributed.

(15) *Past Performance:* The application contains a project that will be successfully implemented in the project period.

(16) *Project Duplication:* The application contains a project that will not duplicate existing projects.

(17) *Project Objectives:* The application contains a project that has objectives that are consistent with the purpose of the sub-priority area under which funds are being requested.

(18) *Project Activities:* The application contains a project that has activities that are consistent with the purpose of the sub-priority area under which funds are being requested.

(19) *Project Results:* The application contains a project that has results that are consistent with the purpose of the sub-priority area under which funds are being requested.

(20) *Organizational Experience:* The application contains a project that will be operated by an organization that has the experience to successfully implement the project.

(21) *Staffing:* The application contains a project that will be staffed adequately.

(22) *Project Management:* The application contains a project that will be managed adequately.

(23) *Coordination:* The application contains a project that will be coordinated adequately with other appropriate agencies and boards in the area.

(24) *Local Management:* The application contains a project that will be managed adequately by the local governing board.

(25) *Fiscal Controls:* The application contains adequate fiscal controls to properly account for project costs.

(26) *Audit Findings:* The application contains a project that will be operated by an organization that has no significant audit findings.

(27) *Personnel:* The application contains adequate personnel to implement the project.

(28) *Training:* The application contains adequate training to implement the project.

(29) *Coordination:* The application contains adequate coordination to implement the project.

(30) *Linkages:* The application contains adequate linkages to implement the project.

(31) *Monitoring:* The application contains adequate monitoring to implement the project.

(32) *Reporting:* The application contains adequate reporting to implement the project.

(33) *Evaluation:* The application contains adequate evaluation to implement the project.

(34) *Dissemination:* The application contains adequate dissemination to implement the project.

(35) *Utilization:* The application contains adequate utilization to implement the project.

(36) *Miscellaneous:* The application contains adequate miscellaneous to implement the project.

(37) *Other:* The application contains adequate other to implement the project.

(38) *Other:* The application contains adequate other to implement the project.

(39) *Other:* The application contains adequate other to implement the project.

if a State, territory, commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official - State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 4th Floor, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment H to this program announcement.

7. Application Consideration

Applications that meet the screening requirements in Sections 8.a. and 8.b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Qualified panelists not directly responsible for programmatic management of the grant will review applications. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

8. Criteria For Screening Applications

a. Initial Screening

All applicants will receive a written acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A budget narrative, which corresponds to the object class categories in the SF 424A for the use of Federal funds, must be included in the application.

(3) The SF–424 and the SF–424B must be signed by an official of the applicant organization who has authority to obligate the organization legally.

(4) A project narrative must also accompany the standard forms.

b. Pre-Rating Review

Applications, which pass the initial screening, will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in the project period.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State staff administering CSBG funds, CAA State or regional associations, and/or local providers of CSBG-funded services and activities. Benefits to low-income consumers of CSBG services also must be identified.

(4) *Program Focus:* The application must address the purpose of the sub-priority area under which funding is being requested.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications that pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score to each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B.

Criteria for Review and Evaluation of Applications Submitted under this Program Announcement

(1) Criterion I: Need for Assistance (Maximum: 20 points)

(a) The application documents that the project addresses vital needs related to the purposes stated under the appropriate sub-priority area discussed in this program announcement (Part B) and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from *State* CSBG Directors, *local* service providers and/or State and Regional organizations of local service providers. (0–10 points)

(2) Criterion II: Work Program (Maximum: 30 points)

The work program is results-oriented, appropriately related to the legislative mandate and specifically related to the sub-priority area under which funds are being requested.

Applicant addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including reasons for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, including priority this project has for the agency; past performance in similar work; and specific resources contributed to the project that are critical to success.

Applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 points)

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State and/or regional associations, and/or local providers of CSBG services and activities.

The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

If proposing a project with a training and technical assistance focus, applicant indicates the number of organizations and/or staff it will impact.

If proposing a project with a data collection focus, applicant provides a description of the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

If proposing to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

Methods of securing participant feedback and evaluations of activities are described in the application.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum 10 Points)

Applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate is described.

(5) Criterion V: Ability of Applicant to Perform (Maximum: 20 points)

(a) The applicant demonstrates that it has experience and a successful track record relevant to the specific activities and program area that it proposes to undertake.

If applicant is proposing to provide training and technical assistance, it details its competence in the specific program priority area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis.

If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization. (0–10 points)

(b) Applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0–10 points)

(6) Criterion VI: Adequacy of Budget (Maximum: 5 points)

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Part E—Contents of Application and Receipt Process

1. Contents of the Application

A cover letter containing an e-mail address and a facsimile (FAX) number, if available, should accompany the application. This will facilitate receipt of an acknowledgment from ACF that the application has been received. (See Part D., 8.a.)

Each application should include one original and two additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that, in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b. "Budget Information-Non-Construction Programs" (SF–424A). (Attachment B)

c. A completed, signed and dated "Assurances—Non-Construction Programs" (SF–424B). (Attachment C)

d. Drug-free Certification. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment D)

e. Debarment Certification. (Attachment E)

f. Certification Regarding Environmental Tobacco Smoke. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment F)

g. Disclosure of Lobbying Activities, SF–LLL. Complete, sign and date form, as appropriate. (Attachment G)

h. A Project Abstract of 500 words or less. The abstract should provide a succinct description of the need, project goals, and a summary of work plan and the proposed impact. Abstract will be maintained as part of the Grantee Administration Tracking System (GATES).

i. A Project Narrative consisting of the following elements preceded by a consecutively numbered table of contents that will describe the project in the following order:

(i) Need for Assistance
(ii) Work Program
(iii) Significant and Beneficial Impact
(iv) Evidence of Significant Collaborations
(v) Ability of Applicant to Perform
(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status, where applicable; relevant sections of by-laws, articles of incorporation, and/or statement from appropriate State CSBG office which confirms eligibility; resumes; Single Point of Contact comments, where applicable; and any partnership/collaboration agreements.

The original must bear the signature of the authorizing official representing the applicant organization.

The total number of pages for the entire application package should not exceed 35 pages, including appendices. Pages should be numbered sequentially throughout.

If appendices include photocopied materials, they must be legible.

Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or

applications enclosed in a binder are specifically discouraged.

Applications must be submitted on white 8½ x 11-inch paper only since OCS may find it necessary to duplicate them for review purposes. They must not include colored, oversized or folded materials; organizational brochures or other promotional materials; slides; films; clips; etc. They will be discarded if included.

Part F—Instructions for Completing Application

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.570."

The title is "Office of Community Services" Discretionary CSBG Awards—Fiscal Year 2002 Spring Training, Technical Assistance, and Capacity-Building Programs."

15a. For purposes of this announcement, this amount should reflect the amount requested for the

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification: Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and Non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect

current approved rate agreement if it was negotiated with a Federal agency other than the U.S. Department of Health and Human Services. For an educational institution, the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of column (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, and

the focus areas described in Part B and follow the format outlined below:

(a) Need for Assistance
(b) Work Program
(c) Significant and Beneficial Impact
(d) Evidence of Significant Collaborations
(e) Ability of the Applicant to Perform
(f) Adequacy of the Budget

Part G—Post Award Information and Reporting Requirements

Following approval of the

applications enclosed in a binder are specifically discouraged.

Applications must be submitted on white 8½ x 11-inch paper only since OCS may find it necessary to duplicate them for review purposes. They must not include colored, oversized or folded materials; organizational brochures or other promotional materials; slides; films; clips; etc. They will be discarded if included.

Part F—Instructions for Completing Application Package

(Approved by the OMB under Control Number 0970–0062)

The standard forms attached to this program announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424, (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not applicable."

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

SF–424 "Application for Federal Assistance" Item

Item

1. For the purposes of this program announcement, all projects are considered "Applications"; there are no "Pre-Applications."

5. and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, articles of incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New."

9. Enter "DHHS–ACF/OCS."

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.570."

The title is "Office of Community Services" Discretionary CSBG Awards—Fiscal Year 2002 Spring Training, Technical Assistance, and Capacity-Building Programs."

15a. For purposes of this announcement, this amount should reflect the amount requested for the entire project period.

15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See instructions accompanying the form as well as the instructions set forth below:

In completing these sections, the Federal budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and Non-Federal will include mobilized funds from all other sources—applicant, State, and other. Federal funds, other than those requested from the Training and Technical Assistance Program should be included in Non-Federal entries.

Sections A and D must contain entries for both Federal (OCS) and non-Federal (mobilized).

Section A—Budget Summary

Col. (a): Line 1—Enter "OCS Training and Technical Assistance Program"; Col.

(b): Line 1—Enter "93.570".

Col. (c) and (d): Not Applicable

Col. (e)–(g): For lines 1 enter in column (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5—Enter the figures from Line 1 for all columns completed under (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification: Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and Non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d–Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the U.S. Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the U.S. Department of Health and Human Services. For an educational institution, the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be budgeted or charged as direct costs to the grant.

Line 6k—Totals: The total amount shown in Section B, Column (5), should be the same as the amount shown in Section A, line 5, column (e).

Line 7—Program Income: Enter the estimated amount of income, if any is expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from column 1 to column 5 for all line items.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources refer to other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Categories, section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of column (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, and column (f).

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant for first year and by quarter, during the first 12-month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14 for all columns.

Section E—Budget Estimates of Federal Funds Needed For Balance of the Project

To be completed by applicants applying for funds for a three year project period.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the U.S. Department of Health and Human Services. If the applicant decides not apply an indirect cost rate to the proposal, then "this line should be left blank."

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances Non-Construction"

Applicant must sign and return the "Assurances" found at Attachment C with its application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below:

(a) Need for Assistance
(b) Work Program
(c) Significant and Beneficial Impact
(d) Evidence of Significant Collaborations
(e) Ability of the Applicant to Perform
(f) Adequacy of the Budget

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award, which indicates, the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–122 (nonprofit) and A–87 (governmental).

Grantees will be required to submit semi-annual program progress narrative and financial reports (SF–269) as well as a final program progress narrative report and a final financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989 imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier Contractors or subgrantee will pay with profits or *non-*

appropriated funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the applicant/grantee

Dated: June 27, 2002.

Clarence H. Carter,

Director, Office of Community Services.

List of Attachments

A—Application For Federal Assistance, SF 424

B—Budget Information—Non-Construction Programs, SF 424A

C—Assurances—Non-Construction Programs, SF 424B

Attachment A, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION		
Legal Name:	Organizational Unit:	

appropriated funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local governmental by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment H indicates the regulations that apply to all applicants/grantees under this program.

Dated: June 27, 2002.

Clarence H. Carter,

Director, Office of Community Services.

List of Attachments

A—Application For Federal Assistance, SF 424

B—Budget Information—Non-Construction Programs, SF 424A

C—Assurances—Non-Construction Programs, SF 424B

D—Certification Regarding Drug-Free Work Place

E—Debarment Certification

F—Certification Regarding Environmental Tobacco Smoke

G—Disclosure of Lobbying Activities, SF–LLL

H—Listing of State Single Points of Contact

BILLING CODE 4184–01–P

Attachment A, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, State, and zip code): | Name and telephone number of person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

12. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	
c. State	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184–01–C

Attachment A, Page 2

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Item 1: Type of Submission—Preapplication, Application, Construction, Non-Construction.

Item 2: Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

Item 3: State use only (if applicable).

Item 4: If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

Item 5: Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

Item 6: Enter Employer Identification Number (EIN) as assigned by the Internal Review Service.

Item 7: Enter the appropriate letter in the space provided.

Item 8: Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for

Attachment B, Page 1

OMB Approval No. 0348-0044

Grant Program, Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget	
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)
1.		$ .00	$ .00	$ .00	$ .00
2.		.00	.00	.00	.00
3.		.00	.00	.00	.00
4.		.00	.00	.00	.00
5. Totals		$ .00	$ .00	$ .00	$ .00

Grant Program, Function or Activity (a)	Total (g)
1.	$ .00
2.	.00
3.	.00
4.	.00
5. Totals	$ .00

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Review Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability form an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the programs under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

Attachment B, Page 1

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
	$	$	$	$	$
a. Personnel					
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

Previous Edition Usable

Attachment B, Page 2

| Grant Program Function or Activity (a) | (e) TOTALS | (a) Fourth Quarter | | | | | |

Attachment B, Page 2

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8-11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	$	$	$	$	$
13. Federal					
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT	FUTURE FUNDING PERIODS (Years)			
(a) Grant Program	(b) First	(c) Second	(d) Third	(e) Fourth
	$	$	$	$
16.				
17.				
18.				
19.				
20. TOTAL (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
21. Direct Charges:
22. Indirect Charges:
23. Remarks:

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Standard Form 424A (Rev. 7-97) Page

BILLING CODE 4184-01-C

Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe now and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amounts(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-j—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter total of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(3). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency

Line 22—Enter the type of indirect rate (provisions, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C

OMB Approval No. 0348–0040

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or

which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g)

U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.)

200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false

insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided (below the sites) for the performance or work done in connection with the specific grant:

Attachment C

OMB Approval No. 0348–0040

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0349–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additfonal assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measure under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514: (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date submitted

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE–WIDE AND STATE AGENCY–WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affect grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided (below the sites) for the performance or work done in connection with the specific grant:

Place of Performance
(Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Administration for Children and Families, U.S. Department of Health and Human Services: Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.,

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible,

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code, Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless is knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.,

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The proposective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code, Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement in a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Attachment G, Page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal

OMB State Single Point of Contact Listing

Arizona

Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280–1315
FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th Street, Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
FAX (501) 682–5206

Iowa

Steven R. McCann
Division for Community Assistance
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242–4719
FAX (312) 814–1800

Indiana

Renee Miller
State Budget Agency
212 State House
Indianapolis, Indiana 46204–2796
Telephone: (317) 232–2971 (directline)
FAX: (317) 233–3323

Iowa

Steven R. McCann
Division for Community Assistance
Iowa Department of Economic Development

Attachment G, Page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	 Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184-01-C

Attachment G, Page 3

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Requests for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan number commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," Section 4, "the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed financial assistance and direct Federal development." This attached listing is the OFFICIAL OMB LISTING. OMB's point of contact for the SPOC list is Frederick J. Charney (202) 395–3993 or grants@omb.eop.gov. This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

OMB State Single Point of Contact Listing

Arizona

Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280–1315
FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
FAX: (501) 682–5206

California

Grants Coordination
State Clearinghouse
Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, California 95814
Telephone: (916) 445–0613
FAX: (916) 323–3018

Delaware

Francine Booth
State Single Point of Contact
Executive Department
Office of the Budget
540 S. Dupont Highway
Suite 5
Dover, Delaware 19901
Telephone: (302) 739–3326
FAX: (302) 739–5661

District of Columbia

Charles Nichols
State Single Point of Contact
Office of Grants Mgmt. & Dev.
717 14th Street, N.W. Suite 1200
Washington, DC 20005
Telephone: (202) 727–1700 (direct)
(202) 727–6537 (secretary)
FAX: (202) 727–1617

Florida

Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399–2100
Telephone: (850) 922–5438
FAC: (850) 414–0479
Contact: Cherie Trainor

Georgia

Deborah Stephens
Coordinator
Georgia State Clearinghouse
270 Washington Street, S.W.—8th Floor
Atlanta, Georgia 30334
Telephone: (404) 656–3855
FAX: (404) 656–7901

Illinois

Virginia Bova, State Single Point of Contact
Illinois Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3–400
Chicago, Illinois 60601
Telephone: (312) 814–6028
FAX (312) 814–1800

Indiana

Renee Miller
State Budget Agency
212 State House
Indianapolis, Indiana 46204–2796
Telephone: (317) 232–2971 (directline)
FAX: (317) 233–3323

Iowa

Steven R. McCann
Division for Community Assistance
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242–4719
FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director
Sandra Brewer, Executive Secretary
Intergovernmental Affairs
Office of the Governor
700 Capitol Avenue
Frankfort, Kentucky 40601
Telephone: (502) 564–2611
FAX: (502) 564–0437

Maine

Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287–3261
FAX: (207) 287–6489

Maryland

Linda Janey
Manager, Plan & Project Review
Maryland Office of Planning
301 W. Preston Street—Room 1104
Baltimore, Maryland 21201–2365
Staff Contact: Linda Janey
Telephone: (410) 767–4490
FAX: (410) 767–4480

Michigan

Richard Pfaff
Southeast Michigan Council of Governments
660 Plaza Drive—Suite 1900
Detroit, Michigan 48226
Telephone: (313) 961–4266
FAX: (313) 961–4869

Mississippi

Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
550 High Street
303 Walters Sillers Building
Jackson, Mississippi 39201–3087
Telephone: (601) 359–6762
FAX: (601) 359–6758

Missouri

Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Jefferson Building, 9th Floor
Jefferson City, Missouri 65102
Telephone: (314) 751–4834
FAX: (314) 751–7819

Nevada

Department of Administration

State Clearinghouse
209 E. Musser Street, Room 220.
Carson City, Nevada 89710
Telephone: (702) 687–4065
FAX: (702) 687–3983
Contact: Heather Elliot
(702) 687–6367

New Hampshire

Jeffrey H. Taylor
Director, New Hampshire Office of State Planning
Attn: Intergovermental Review Process

600 East Boulevard Avenue
Bismarck, North Dakota 58505–0170
Telephone: (701) 224–2094
FAX: (701) 224–2308

Rhode Island

Kevin Nelson
Review Coordinator
Department of Administration
Division of Planning
One Capitol Hill, 4th Floor
Providence, Rhode Island 02908–5870
Telephone: (401) 277–2656

Room 116 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538–1027
FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director
Community Development Division
W. Virginia Development Office
Building #6, Room 553
Charleston, West Virginia 25305
Telephone: (304) 558–4010
FAX: (304) 558–3248

Friday,
July 12, 2002

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(702) 687–6367

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New Mexico

Nick Mandell
Local Government Division
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Santa Fe, New Mexico 87503
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North Carolina

Jeanette Furney
North Carolina Department of Administration
116 West Jones Street—Suite 5106
Raleigh, North Carolina 27603–8003
Telephone: (919) 733–7232
FAX: (919) 733–9571

North Dakota

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600 East Boulevard Avenue
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Rhode Island

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One Capitol Hill, 4th Floor
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FAX: (401) 277–2083

South Carolina

Omeagia Burgess
State Single Point of Contact
Budget and Control Board
Office of State Budget
1122 Ladies Street—12th Floor
Columbia, South Carolina 29201
Telephone: (803) 734–0494
FAX: (803) 734–0645

Texas

Tom Adams
Governors Office
Director, Intergovernmental Coordination
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 463–1771
FAX: (512) 936–2681

Utah

Carolyn Wright
Utah State Clearinghouse
Office of Planning and Budget
Room 116 State Capitol
Salt Lake City, Utah 84114
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West Virginia

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Charleston, West Virginia 25305
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Wisconsin

Jeff Smith
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Wisconsin Department of Administration
101 East Wilson Street—6th Floor
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Madison, Wisconsin 53707
Telephone: (608) 266–0267
FAX: (608) 267–6931

Wyoming

Sandy Ross
State Single Point of Contact
Department of Administration and Information
2001 Capitol Avenue, Room 214
Cheyenne, WY 82002
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FAX: (307) 777–3696

[FR Doc. 02–17520 Filed 7–11–02; 8:45 am]
BILLING CODE 4184–01–P

Federal Register

Friday,
July 12, 2002

Part VII

Department of Health and Human Services

Centers for Disease Control and Prevention

Preliminary Guidance for Notification of Possession of Select Agents; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Preliminary Guidance for Notification of Possession of Select Agents

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

2002." Section 202(a) of the Act directs the Secretary of the Department of Health and Human Services, within 30 days of enactment, to provide written guidance on how persons in possession of biological agents or toxins shall notify the Secretary of such possession. To meet this requirement, the Centers for Disease Control and Prevention (CDC) has submitted a proposed data collection instrument (see draft form below) and guidance document to the

to ensure management oversight of this notification requirement. The RFO should be either a safety officer, a senior management official of the facility, or both, who has been authorized by the facility to complete and submit the notification form. The RFO should not be an individual who actually possesses, uses, or transfers such agents or toxins. To complete the notification form, the RFO will need to inventory its facility and consult with others (*e.g.*,

DRAFT

FORM APPROVED
OMB NO. 0920-XXXX
EXP DATE XX/XX/XXXX

DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR DISEASE CONTROL AND PREVENTION NATIONAL CENTER FOR INFECTIOUS DISEASES LABORATORY REGISTRATION/SELECT AGENT TRANSFER PROGRAM ATLANTA, GA 30333	U.S. DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION SERVICE VETERINARY SERVICES NATIONAL CENTER FOR IMPORT-EXPORT, PRODUCTS PROGRAM RIVERDALE, MD 20737

NOTIFICATION OF POSSESSION OF SELECT AGENTS OR HIGH CONSEQUENCE LIVESTOCK PATHOGENS AND TOXINS

NAME OF FACILITY	NAME OF RESPONSIBLE FACILITY OFFICAL (RFO) AND ADDRESS, IF DIFFERENT FROM FACILITY

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Preliminary Guidance for Notification of Possession of Select Agents

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: General notice.

SUMMARY: The purpose of this Notice is to announce preliminary guidance for notification of possession of select agents as mandated in Section 202(a) of Public Law 107–188 "Public Health Security and Bioterrorism Preparedness and Response Act of 2002."

FOR FURTHER INFORMATION CONTACT: John R. Moore, Centers for Disease Control and Prevention, Office of Program Planning and Evaluation, 1600 Clifton Road NE, Mailstop D–23, Atlanta, Georgia 30333. Telephone: (404) 639–7070.

SUPPLEMENTARY INFORMATION: On June 12, 2002, President George W. Bush signed Public Law 107–188 "Public Health Security and Bioterrorism Preparedness and Response Act of 2002." Section 202(a) of the Act directs the Secretary of the Department of Health and Human Services, within 30 days of enactment, to provide written guidance on how persons in possession of biological agents or toxins shall notify the Secretary of such possession. To meet this requirement, the Centers for Disease Control and Prevention (CDC) has submitted a proposed data collection instrument (see draft form below) and guidance document to the Office for Management and Budget (OMB) for approval under the Paperwork Reduction Act. CDC published a notice in the **Federal Register** on July 2, 2002 inviting public comments on the proposed data collection. Public comments are due by July 16, 2002. Within two weeks of this date, and upon receipt of OMB approval, CDC will publish another notice in the **Federal Register** announcing approval and publication of the data collection instrument. The data collection instrument will contain the list of select agents currently contained in 42 CFR part 72, appendix A.

Each facility should designate a responsible facility official (RFO) to complete this form by September 10, 2002. It is the responsibility of the RFO to ensure management oversight of this notification requirement. The RFO should be either a safety officer, a senior management official of the facility, or both, who has been authorized by the facility to complete and submit the notification form. The RFO should not be an individual who actually possesses, uses, or transfers such agents or toxins. To complete the notification form, the RFO will need to inventory its facility and consult with others (*e.g.*, principal investigators) as necessary to obtain the information required for the notification form. The RFO must review and sign the notification form and will be the point of contact if CDC has questions concerning the form or other matters related to the Act. Many facilities will receive the form via direct mailing, and the form will also be published in the **Federal Register**.

Further guidance, the approved data collection instrument, and location of submission will be announced at a later date.

Dated: July 10, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

BILLING CODE 4163–18–P

DRAFT

FORM APPROVED
OMB NO. 0920-XXXX
EXP DATE XX/XX/XXXX

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL CENTER FOR INFECTIOUS DISEASES
LABORATORY REGISTRATION/SELECT AGENT TRANSFER PROGRAM
ATLANTA, GA 30333

U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
VETERINARY SERVICES
NATIONAL CENTER FOR IMPORT-EXPORT, PRODUCTS PROGRAM
RIVERDALE, MD 20737

NOTIFICATION OF POSSESSION OF SELECT AGENTS OR HIGH CONSEQUENCE LIVESTOCK PATHOGENS AND TOXINS

NAME OF FACILITY

NAME OF RESPONSIBLE FACILTIY OFFICAL (RFO) AND ADDRESS, IF DIFFERENT FROM FACILITY

ADDRESS OF FACILITY

TITLE OF RFO

RFO TELEPHONE NUMBER

RFO FAX NUMBER

CHECK ("X") FOR EACH AGENT(S) OR TOXIN(S) USED OR POSSESSED BY YOUR FACILITY (CHECK ONE OR MORE CATEGORIES AS APPROPRIATE)	VIABLE	NUCLEIC ACID OR GENETIC ELEMENTS FROM AGENT	VACCINE APPROVED BY USDA OR FDA (modified)	REGISTERED WITH HHS SELECT AGENT PROGRAM
HHS SELECT AGENTS				
☐ CRIMEAN-CONGO HAEMORRHAGIC FEVER VIRUS				
☐ EBOLA VIRUSES				
☐ LASSA FEVER VIRUS				
☐ MARBURG VIRUS				
☐ *RICKETTSIA PROWAZEKII*				
☐ *RICKETTSIA RICKETTSII*				
☐ SOUTH AMERICAN HAEMORRHAGIC FEVER VIRUSES				
☐ TICK-BORNE ENCEPHALITIS COMPLEX VIRUSES				
☐ VARIOLA MAJOR VIRUS (SMALLPOX VIRUS)				
☐ VIRUSES CAUSING HANTAVIRUS PULMONARY SYNDROME				
☐ YELLOW FEVER VIRUS				
☐ *YERSINIA PESTIS*				
☐ ABRIN				
☐ CONOTIXINS				
☐ DIACETOXYSCIRPENOL				
☐ RICIN				
☐ SAXITOXIN				
☐ TETRODOTOXIN				
USDA-HHS OVERLAP AGENTS				
☐ *BACILLUS ANTHRACIS*				
☐ *BRUCELLA ABORTUS*				
☐ *BRUCELLA MELITENSIS*				
☐ *BRUCELLA SUIS*				
☐ *BURKHOLDERIA (PSEUDOMONAS) MALLEI*				
☐ *BURKHOLDERIA (PSEUDOMONAS) PSEUDOMALLEI*				
☐ *CLOSTRIDIUM BOTULINUM*				
☐ *COCCIDIOIDES IMMITIS*				
☐ *COXIELLA BURNETTII*				
☐ EASTERN EQUINE ENCEPHALITIS VIRUS				
☐ EQUINE MORBILLIVIRUS (HENDRA VIRUS)/NIPAH VIRUS				
☐ *FRANCISELLA TULARENSIS*				
☐ RIFT VALLEY FEVER VIRUS				
☐ VENEZUELAN EQUINE ENCEPHALITIS VIRUS				
☐ AFLATOXINS				
☐ BOTULINUM TOXINS				
☐ *CLOSTRIDIUM PERFRINGENS* EPSILON TOXIN				
☐ SHIGATOXIN				
☐ STAPHYLOCOCCAL ENTEROTOXIN				
☐ T-2 TOXIN				

DRAFT

CHECK ("X") FOR EACH AGENT(S) OR TOXIN(S) USED OR POSSESSED BY YOUR FACILITY (CHECK ONE OR MORE CATEGORIES AS APPROPRIATE)	VIABLE	NUCLEIC ACID OR GENETIC ELEMENTS FROM AGENT	VACCINE APPROVED BY USDA OR FDA (modified)	REGISTERED WITH HHS SELECT AGENT PROGRAM
USDA HIGH CONSEQUENCE OF LIVESTOCK PATHOGENS AND TOXINS				
☐ AFRICAN HORSE SICKNESS VIRUS				
☐ AFRICAN SWINE FEVER				
☐ AKABANE VIRUS				
☐ AVIAN INFLUENZA VIRUS (HIGHLY PATHOGENIC)				
☐ BLUE TONGUE VIRUS (EXOTIC)				
☐ BOVINE SPONGIFORM ENCEPALOPATHY AGENT				

Friday,
July 12, 2002

DRAFT

CHECK ("X") FOR EACH AGENT(S) OR TOXIN(S) USED OR POSSESSED BY YOUR FACILITY (CHECK ONE OR MORE CATEGORIES AS APPROPRIATE)	VIABLE	NUCLEIC ACID OR GENETIC ELEMENTS FROM AGENT	VACCINE APPROVED BY USDA OR FDA (modified)	REGISTERED WITH HHS SELECT AGENT PROGRAM
USDA HIGH CONSEQUENCE OF LIVESTOCK PATHOGENS AND TOXINS				
☐ AFRICAN HORSE SICKNESS VIRUS				
☐ AFRICAN SWINE FEVER				
☐ AKABANE VIRUS				
☐ AVIAN INFLUENZA VIRUS (HIGHLY PATHOGENIC)				
☐ BLUE TONGUE VIRUS (EXOTIC)				
☐ BOVINE SPONGIFORM ENCEPALOPATHY AGENT				
☐ CAMEL POX VIRUS				
☐ CLASSICAL SWINE FEVER				
☐ *COWDRIA RUMINANTIUM* (HEARTWATER)				
☐ FOOT AND MOUTH DISEASE VIRUS				
☐ GOAT POX VIRUS				
☐ JAPANESE ENCEPHALITIS VIRUS				
☐ LUMPY SKIN DISEASE VIRUS				
☐ MALIGNANT CATARRHAL FEVER				
☐ MENANGLE VIRUS				
☐ *MYCOPLASMA CAPRICOLUMM F 38/M.M YCOIDES CAPRI* (CONTAGIOUS CAPRINE PLEUROPNEUMONIA AGENT)				
☐ *MYCOPLASMA MYCOIDES MYCOIDES* (CONTAGIOUS BOVINE PLEUROPNEUMONIA AGENT)				
☐ NEWCASTLE DISEASE VIRUS (EXOTIC)				
☐ PESTE DES PETITS RUMINANTS				
☐ RINDERPEST VIRUS				
☐ SHEEP POX				
☐ SWINE VESICULAR DISEASE VIRUS				
☐ VESICULAR STOMATITIS VIRUS				

TYPE OF FACILITY: ☐ ACADEMIC ☐ GOVERNMENT ☐ COMMERICAL ☐ PRIVATE ☐ OTHER (PLEASE EXPLAIN)

TPYE OF WORK TO BE PERFORMED AT FACILITY *(PROPOSED USE OF MATERIAL AND DERIVATIVES; DIAGNOSTICS, VACCINE DEVELOPMENT, ETC., IF FOR USE IN ANIMALS, SPECIFY SPECIES)*

FOR ANY LISTED AGENTS OR TOXINS POSSESSED BY YOUR FACILITY, LIST U.S. VETERINARY PERMIT FOR IMPORTATION AND TRANSPORTATIONS OF CONTROLLED MATERIALS AND ORGANISMS AND VECTORS NUMBERS (VS Form 16-6A) (if applicable)

CDC SELECT AGENT TRANSFER PROGRAM REGISTRATION NUMBER AND EXPIRATION DATE (if applicable)

I hereby certify that I have been designated as the Responsible Facility Official for the institution/organization listed above, that I am authorized to bind the institution/organization, and that the information supplied on this form is to the best of my knowledge accurate and truthful. I understand that a false statement on any part of this form could result in a fine up to $500,000 or imprisonment of up to five years, or both for each violation (18 U.S.C. §1001, 18 U.S.C. § 3568.3571)

SIGNATURE OF RESPONSIBLE FACILITY OFFICIAL

TYPED NAME AND TITLE | DATE

☐ **DECLARATION OF NON-POSSESSION: THIS FACILITY DOES NOT POSSESS AN AGENT ON THIS LIST.**

I hereby certify that I have been designated as the Responsible Facility Official for the institution/organization listed above, that I am authorized to bind the institution/organization, and that the information supplied on this form is to the best of my knowledge accurate and truthful. I understand that a false statement on any part of this form could result in a fine of up to $500,000 or imprisonment of up to five years, or both for each violation (18 U.S.C. §1001 & U.S.C. § 3568.3571)

SIGNATURE OF RESPONSIBLE FACILITY OFFICIAL

TYPED NAME AND TITLE | DATE

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[FR Doc. 02–17771 Filed 7–11–02; 10:24 am]
BILLING CODE 4163–18–C

Federal Register

Friday,
July 12, 2002

Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Puyallup Tribe of Indians and the State

DATES: This action is effective July 12, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian, Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–17642 Filed 7–11–02; 11:14 am]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Puyallup Tribe of Indians and the State of Washington, which was executed on May 30, 2002.

DATES: This action is effective July 12, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian, Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–17642 Filed 7–11–02; 11:14 am]

BILLING CODE 4310–4N–M

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG97

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Holtec International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to Certificate of Compliance (CoC) Number 1014. This amendment modifies the present cask system design to: add four new multipurpose canisters; add new containers for damaged fuel; add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment also uses revised thermal analysis tools to include natural convection heat transfer, revises the helium backfill requirements to allow a helium density measurement to be used, allows a helium drying system rather than the existing vacuum drying system, and requires soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to applicable CoC conditions and sections of Appendices A and B to the CoC to reflect the changes.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail jmm2@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72 entitled, "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of dry storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the Holtec International HI-STORM 100 cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1014.

Discussion

On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications have been made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. No other changes to the Holtec International HI-STORM 100 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This rule revises the Holtec International HI-STORM 100 cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1014. The amendment consists of changes to the Technical Specifications as described above. The particular Technical Specifications that are changed are identified in the NRC staff's Safety Evaluation Report (SER) for Amendment 1.

The NRC published a direct final rule (67 FR 14627; March 27, 2002) and the companion proposed rule (67 FR 14662) in the **Federal Register** to revise the Holtec International HI-STORM 100 cask system listing in 10 CFR 72.214 to include Amendment 1 to the CoC. The comment period ended on April 26, 2002. Three comment letters were received on the proposed rule. One comment was considered to be

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significant and adverse and warranted withdrawal of the direct final rule. A notice of withdrawal was published in the **Federal Register** on June 7, 2002; 67 FR 39260. Additionally, the NRC staff made minor editorial changes, in response to the two other comment letters, to Appendix B to CoC 1014, for the HI-STORM 100 cask system.

The NRC finds that the amended Holtec International HI-STORM 100 cask system, as designed and when fabricated and used in accordance with the conditions specified in the CoC, meets the requirements of 10 CFR part 72. Thus, the NRC is approving the amendment to the Holtec International HI-STORM 100 cask system design listing in § 72.214.

Discussion of Changes

The commenter stated that the draft amended certificate that would allow licensees to store certain items of nonfuel hardware with the spent fuel in the cask. The commenter assumed that this nonfuel hardware was Greater-than-Class-C (GTCC) waste and noted that the NRC, in a recent rulemaking, had prohibited commingling of GTCC waste and spent fuel in the same cask except on a case-by-case basis. The commenter's concerns were focused on (1) the storage of GTCC waste

rulemaking. From basic corrosion principles, in order for galvanic corrosion/chemical reactions to occur between the spent fuel, the confinement boundary, and nonfuel hardware, an electrolyte is needed (water) and the components must be fairly far apart from one another on the galvanic series. The NRC staff approved the storage of the nonfuel hardware because the cask is dry, backfilled with an inert gas (*i.e.*, no electrolyte is present), and the

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate

the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specification for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also utilizes revised thermal analysis tools to include natural convection heat transfer, revises the

fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage

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significant and adverse and warranted withdrawal of the direct final rule. A notice of withdrawal was published in the **Federal Register** on June 7, 2002; 67 FR 39260. Additionally, the NRC staff made minor editorial changes, in response to the two other comment letters, to Appendix B to CoC 1014, for the HI-STORM 100 cask system.

The NRC finds that the amended Holtec International HI-STORM 100 cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of part 72. Thus, use of the Holtec International HI-STORM 100 cask system, as approved by the NRC, will continue to provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the Holtec International HI-STORM 100 cask system under the general license in 10 CFR part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on July 15, 2002. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

Summary of Public Comments on the Proposed Rule

The NRC received three comment letters on the proposed rule. The comments included the State of Illinois and two from the applicant (Holtec International).

Comments on the Holtec International HI-STORM 100 Cask System

Minor changes were made to Appendix B to the CoC to correct several inconsistencies and a typographical error. The SER was not changed as a result of public comments. A review of the comments and the NRC staff's responses follow:

Comment: One commenter suggested editorial changes to Appendix B of the CoC. These changes include a correction to Table 2.1–1 where the term "water displacement guide tube plugs" should be used rather than the incorrect term "water displacement rod guide tubes" and a typographical error in Table 2.1–3.

Response: The NRC staff agreed with the comments. The suggested changes have been made to Appendix B.

Comment: One commenter raised concerns with the provisions in the draft amended certificate that would allow licensees to store certain items of nonfuel hardware with the spent fuel in the cask. The commenter assumed that this nonfuel hardware was Greater-than-Class-C (GTCC) waste and noted that the NRC, in a recent rulemaking, had prohibited commingling of GTCC waste and spent fuel in the same cask except on a case-by-case basis. The commenter's concerns were focused on (1) the storage of GTCC waste commingled with the fuel, (2) the possibility of adverse interactions between the chemical elements and compounds in the nonfuel hardware and the fuel as well as the material components of the cask, and (3) the absence of documentation of NRC's analysis and criteria to accept storage of the nonfuel hardware.

Response: The NRC disagrees with the comment. First, under 10 CFR 72.3, spent fuel is defined to include "the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies." The nonfuel hardware included burnable poison rod assemblies, thimble plug devices, control rod assemblies, axial power shaping rods, wet annular burnable absorbers, rod cluster control assemblies, control element assemblies, water displacement guide tube plugs, and orifice rod assemblies. These nonfuel hardware items permitted to be stored in the cask by this amendment are "other radioactive materials associated with fuel assemblies." As explained in the GTCC waste rule,[1] the NRC believes that appropriate interim storage for these nonfuel components is with the associated spent fuel. However, with respect to GTCC waste that is not integral to spent fuel assemblies, the NRC concluded that this waste should not be stored in the same cask with spent fuel and that storing this waste would only be allowed on a case-by-case basis after a thorough analysis of possible adverse interactions between the materials in these components and the materials in the cask.

Second, materials interaction between spent fuel and radioactive materials associated with fuel assemblies was considered in the definitions at 10 CFR 72.3 and in the recent rulemaking associated with Interim Storage for Greater Than Class C Waste at 66 FR 51823, and the comment provided no new information suggesting a need for reconsideration of this issue in this rulemaking. From basic corrosion principles, in order for galvanic corrosion/chemical reactions to occur between the spent fuel, the confinement boundary, and nonfuel hardware, an electrolyte is needed (water) and the components must be fairly far apart from one another on the galvanic series. The NRC staff approved the storage of the nonfuel hardware because the cask is dry, backfilled with an inert gas (*i.e.*, no electrolyte is present), and the materials are not at the extreme end of the galvanic series from the spent fuel.

Third, in documenting the NRC's review findings and conclusions, it is neither practical nor appropriate to specify each detail considered in the staff's determination of acceptability. Rather, the documentation focuses on the safety and risk significant factors of the cask's overall performance in areas such as structural integrity, confinement boundary integrity, fuel cladding integrity, radiation shielding, criticality safety, heat removal, and operations and maintenance during normal and accident conditions. Although materials interactions with the nonfuel hardware identified in the comment were considered for acceptability in dry cask storage systems, they do not present conditions that are significant enough to warrant documentation in the SER.

Summary of Final Revisions

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1014 is revised by adding the effective date of the initial certificate and the effective date of Amendment Number 1.

Good Cause To Dispense With Deferred Effective Date Requirement

The NRC finds that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)). The primary purpose of the delayed effective date requirement is to give affected persons; *e.g.*, licensees, a reasonable time to prepare to comply with or take other action with respect to the rule. In this case, the rule does not require any action to be taken by licensees. The regulation allows, but does not require, use of the amended Holtec International HI–STORM 100 cask system for the storage of spent nuclear fuel. The amended Holtec International HI–STORM 100 cask system meets the requirements of 10 CFR part 72, is ready to be used, and, as approved by the NRC, will continue to provide adequate protection of public health and safety and the environment.

[1] The NRC published a final rule amending 10 CFR part 72 which authorized the storage of GTCC waste under a Part 72 specific license on October 11, 2001; 66 FR 51823.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Public Law 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending the Holtec International HI–STAR 100 cask system within the list of NRC-approved cask systems for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This final rule amends the CoC for the Holtec International HI–STORM 100 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment modifies the present cask system design to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI–STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specification for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also utilizes revised thermal analysis tools to include natural convection heat transfer, revises the helium backfill requirements to allow a helium density measurement to be used, allows a helium drying system rather than the existing vacuum drying system, and requires soluble boron during canister loading for certain higher enriched fuels. In addition, modifications have been made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the Holtec International HI-STORM 100 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes.

The alternative to this action is to withhold approval of this amended cask system design and issue a site-specific license to each licensee. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption or a site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under

a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Agency Contacts

Mr. Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Mr. Christopher Regan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6185, e-mail *cmr3@nrc.gov*.

Environmental Impact: Categorical Exclusion

The NRC has determined that the environmental assessment is not applicable to this amendment and that this amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(20). Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act Statement

This amendment does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to Part 72 that approved the Holtec International HI-STORM 100 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On October 3, 2000, and as supplemented on December 15, 2000, and January 16, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to add the HI-STORM 100S overpack to the HI-STORM 100 cask system. The HI-STORM 100S overpack is an improved version of the HI-STORM 100 overpack that will be used for long-term storage of spent nuclear fuel. The HI-STORM 100S overpack is designed to mitigate the effects of design basis accidents that could occur during storage. Key design features include additional radiation shielding and an increased pressure margin. The HI-STORM 100S overpack would be added to the HI-STORM 100 cask system as an option for storage of spent fuel.

The alternative to this action is to withhold approval of this amended cask system design and issue a site-specific license to each licensee. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption or a site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Agency Contacts

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Regulatory Analysis

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The alternative to this action is to withhold approval of this amended cask system design and issue a site-specific license to each licensee. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption or a site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014
Initial Certificate Effective Date: June 1, 2000
Amendment Number 1 Effective Date: July 15, 2002.
SAR Submitted by: Holtec International
SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System
Docket Number: 72–1014
Certificate Expiration Date: June 1, 2020

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 23, 2002.

ADDRESSES: You may get the service information referenced in this AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; telephone: (319) 295–2512; facsimile: (319) 295–5064. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106. You may also view this information at the FAA, Small Airplane Directorate, Standards Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407. E-mail address: *Roger.Souter@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The air data computer (ADC), as part of its monitoring process, tests for errant sensor behavior such as unreasonable

Testing of certain Rockwell Collins ADCs reveals the ADC could display unwarranted flags on aircraft where you can select the "Normal/Alternate Air" static source. When there is a significant difference between normal and alternate/revisionary static air sources, you can exceed the ADC monitor thresholds and the ADC would display flags.

If the flight crew used the undesirable ADC flag displays to deselect the alternate static air source before the

a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, this final rule will have no adverse effect on public health and safety. This final rule has no significant identifiable impact on or benefit to other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014
Initial Certificate Effective Date: June 1, 2000
Amendment Number 1 Effective Date: July 15, 2002.
SAR Submitted by: Holtec International
SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System
Docket Number: 72–1014
Certificate Expiration Date: June 1, 2020
Model Number: HI-STORM 100

* * * * *

Dated at Rockville, Maryland, this 30th day of June, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–17648 Filed 7–12–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–14–AD; Amendment 39–12819; AD 2002–14–19]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. ADC–85, ADC–85A, ADC–850D, and ADC–850F Air Data Computers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell Collins, Inc. (Rockwell Collins) ADC–85, ADC–85A, ADC–850D, and ADC–850F air data computers that are installed on airplanes. This AD requires you to replace any affected air data computer (ADC) with one that has a reprogrammed and tested central processing unit (CPU) circuit card and circuit card assembly. This AD is the result of a flight test that showed that these ADC's could display an unwarranted ADC flag in response to the airplane's "Normal/Alternate Air" static source selection capability. The actions specified by this AD are intended to prevent an unwarranted display of the ADC flag when switching static air sources. This could cause the flight crew to react to this incorrect flight information and possibly result in an unsafe operating condition.

DATES: This AD becomes effective on August 23, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 23, 2002.

ADDRESSES: You may get the service information referenced in this AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; telephone: (319) 295–2512; facsimile: (319) 295–5064. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407. E-mail address: *Roger.Souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The air data computer (ADC), as part of its monitoring process, tests for errant sensor behavior such as unreasonable jumps in altitude and unreasonably high vertical speed. When the ADC detects an errant sensor behavior, the ADC displays a flag for 5.5 seconds plus the time it takes for the sensor to settle within the limits for another 5.5-second period. This results in a minimum ADC flag display of 11 seconds.

Testing of certain Rockwell Collins ADCs reveals the ADC could display unwarranted flags on aircraft where you can select the "Normal/Alternate Air" static source. When there is a significant difference between normal and alternate/revisionary static air sources, you can exceed the ADC monitor thresholds and the ADC would display flags.

If the flight crew used the undesirable ADC flag displays to deselect the alternate static air source before the initial 11-second display period, a valid air source may have been deselected. Confusion could result when the previously unflagged normal static air source is reselected. This may also result in the ADC displaying a flag for the first 11 seconds. The affected ADC's include:

Unit	Part No.	Applicable to Serial No.
ADC–85 (Incorporating Rockwell Collins Service Bulletin No. 58)	622–8051–002 622–8051–003	All units.
ADC–85A (Incorporating Rockwell Collins Service Bulletin No. 58)	822–0370–113 822–0370–123 822–0370–139 822–0370–404 822–0370–408	All units.
ADC–850D (Incorporating Rockwell Collins Service Bulletin No. 58) ...	822–0389–133	All up to and including 3DGW (except for 1P6D, 22RC–22RF, and 23WK–3DGP).
ADC–850F	822–1036–406 822–1036–418	All units.

What Is the Potential Impact If FAA Took No action?

If these situations were to occur while the flight crew was making critical flight decisions, this unwarranted ADC flag could distract the crew and the lack of attention to the critical actions could result in an unsafe operating condition.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Rockwell Collins ADC–85, ADC–85A, ADC–850D, and ADC–850F air data computers that are installed on airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on March 30, 2002 (67 FR 12910). The supplemental NPRM proposed to require you to replace any affected ADC with one that has a reprogrammed and tested CPU circuit card and circuit card assembly.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Remove Saab Model 340 from the Applicable Airplane Model List

What Is the Commenter's Concern?

A commenter states that, even though fitted with the subject ADC, the Saab 340 is not designed with the ability to use alternate static sources.

What Is FAA's Response to the Concern?

We concur that the airplane is not designed with the ability to use alternate static sources. Therefore, we are removing the Saab 340 from the applicable airplane model list.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the supplemental NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the supplemental NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects more than 329 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/operators of the Affected Airplanes?

We estimate the following costs to accomplish the removal, installation, reprogramming, and testing of the ADC in each airplane:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 per hour = $360	$680	$1040

For units that are still under warranty, Rockwell Collins will provide the parts and labor at no charge.

Regulatory Impact

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

Actions	Compliance	Procedures
(1) Perform the following, unless already accomplished: (i) Remove any affected ADC from the airplanes. (ii) As applicable, replace or reprogram parts or circuit card assemblies on central processing unit (CPU) circuit cards. (iii) Test the ADC. (iv) Install the modified ADC in the airplanes.	Within the next 12 calendar months after August 23, 2002 (the effective date of this AD).	In accordance with Rockwell Collins Service Bulletin No. 62, Revision No. 2, ADC–85/85A/850C/850D/850E/850F–34–62), Revision No. 2, dated March 7, 2000, or Service Bulletin No. 62, dated October 25, 1999, as applicable, the applicable Collins Computer Component Maintenance Manual, and Collins Avionics Standard Shop Practices Instruction Manual.

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 per hour = $360	$680	$1040

For units that are still under warranty, Rockwell Collins will provide the parts and labor at no charge.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–14–19 Rockwell Collins, Inc.: Amendment 39–12819; Docket No. 2000–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Rockwell Collins air data computers (ADC) that are installed in, but not limited to the airplanes that are listed below:

(1) Affected ADC's:

Unit	Collins part no. (CPN)	Applicable to serial no.
ADC–85 (Incorporating Rockwell Collins Service Bulletin No. 58)	622–8051–002 622–8051–003	All units.
ADC–85A (Incorporating Rockwell Collins Service Bulletin No. 58)	822–0370–113 822–0370–123 822–0370–139 822–0370–404 822–0370–408	All units.
ADC–850D (Incorporating Rockwell Collins Service Bulletin No. 58)	822–0389–133	All up to and including 3DGW (except for 1P6D, 22RC–22RF, and 23WK–3DGP).
ADC–850F	822–1036–406 822–1036–418	All Units.

(2) List of airplanes where the affected ADC could be installed. This is not a comprehensive list and airplanes not on this list that have the ADC installed through field approval or other methods are still affected by this AD:

Unit	Airplane model
ADC–85/ADC–85A	Astra AIA. Chinese Y7 and Y8. Czech LET–610. DC–8. Falcon 20F.
	Piaggio P–180. Raytheon B200, B300, C90A and 1900D.
ADC–850D	Lear 60.
ADC–850F	Falcon 20, 50, and 50EX.

(b) *Who must comply with this AD?* Anyone who wishes to operate any airplane that uses one of the above referenced Rockwell Collins air data computers must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent an unwarranted display of the ADC flag when switching static air sources. This could cause the flight crew to react to this incorrect flight information and possibly result in an unsafe operating condition.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Perform the following, unless already accomplished: (i) Remove any affected ADC from the airplanes. (ii) As applicable, replace or reprogram parts or circuit card assemblies on central processing unit (CPU) circuit cards. (iii) Test the ADC. (iv) Install the modified ADC in the airplanes.	Within the next 12 calendar months after August 23, 2002 (the effective date of this AD).	In accordance with Rockwell Collins Service Bulletin No. 62, Revision No. 2, ADC–85/85A/850C/850D/850E/850F–34–62), Revision No. 2, dated March 7, 2000, or Service Bulletin No. 62, dated October 25, 1999, as applicable, the applicable Collins Computer Component Maintenance Manual, and Collins Avionics Standard Shop Practices Instruction Manual.
(2) Do not install on any airplane one of the affected ADCs unless the modification and test required by paragraphs (d)(1)(ii) and (d)(1)(iii) of this AD are accomplished	As of August 23, 2002 (the Service date of this AD).	In accordance with Rockwell Collins Service Bulletin No. 62, Revision No. 2, ADC–85/85A/850C/850D/850E/850F–34–62, dated March 7, 2000, or Service Bulletin No. 62, dated October 25, 1999, as applicable.

Note 1: Rockwell Collins Operator Bulletin 99–7, dated August 1999, contains information about an operational placard to install until accomplishment of the actions of this AD. While not necessary to address the unsafe condition in this AD, FAA highly recommends that you incorporate this placard.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407, E-mail: *Roger.Souter@faa.gov.*

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Rockwell Collins Service Bulletin No. 62, Revision No. 2, ADC–85/85A/850C/850D/850E/850F–34–62, dated March 7, 2000, or Rockwell Collins Service Bulletin No. 62, ADC–85/85A/850C/850F–34–62, dated October 25, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on August 23, 2002.

Issued in Kansas City, Missouri, on July 3, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17306 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–018]

RIN No. 1218–AB88

Safety Standards for Signs, Signals, and Barricades

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to significant adverse comments, OSHA is withdrawing the direct final rule for Signs, Signals, and Barricades that was published on April 15, 2002. In the document, OSHA stated that if it received significant adverse comments, the agency would "publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule * * *" Two of the eight comments received will, in this instance, be treated as significant adverse comments. OSHA published a companion proposed rule identical to the direct final rule on the same day: [67 FR 18145]. The agency will address comments on the direct final and proposed rules in a new final rule. OSHA will not institute a second comment period.

DATES: The direct final rule for Signs, Signals, and Barricades published on April 15, 2002 [67 FR 18091] is withdrawn as of July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Ford, Office of Construction Standards and Construction Services,

Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2345.

Authority: This document was prepared under the direction of John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to

free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect

the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to Part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
105	8–1–02	9–1–02	4.25	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 106, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2345.

Authority: This document was prepared under the direction of John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 29 CFR Part 1911.

Signed at Washington, DC, this 11th day of July, 2002.

John Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–17851 Filed 7–12–02; 8:45 am]

BILLING CODE 4510–26–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in August 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during August 2002, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during August 2002, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during August 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to Part 4044) will be 5.50 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for July 2002) of 0.20 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to Part 4022) will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for July 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to Part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 106, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
106	8–1–02	9–1–02	4.25	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 106, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
106	8–1–02	9–1–02	4.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
August 2002	.0550	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 9th day of July 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–17641 Filed 7–12–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–042–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the New Mexico regulatory program (the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposed revisions to and additions of rules about definitions, general environmental resource information, operations that may have an adverse impact on publicly owned parks or places listed on the National Register of Historic Places, bond release applications, termination of jurisdiction, prime farmland reclamation, inspection frequency of abandoned sites, hearings for charges of violation, the qualifying criteria for assistance under the small operator's program, areas where mining is prohibited or limited, criteria for designating areas unsuitable for surface coal mining, applications for and approval of coal exploration operations of more than 250 tons, criteria for permit approval or denial, application and approval criteria for demonstrating valid existing rights, the one square mile criterion in the definition of intermittent streams, and miscellaneous non-substantive editorial revisions. New Mexico revised its program to be consistent with the corresponding Federal regulations, provide additional safeguards, and clarify ambiguities.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: *wgainer@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C.

1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.15, and 931.16.

II. Submission of the Proposed Amendment

By letter dated October 31, 2001 (Administrative Record No. NM–1), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment at its own initiative.

We announced receipt of the proposed amendment in the November 29, 2001, **Federal Register** (66 FR 59538). In the same document, we opened the public comment period and provided opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on December 31, 2001. We did not hold a public hearing or meeting because no one requested one.

III. OSM's Findings

Following are the findings we made concerning the proposed amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the proposed amendment as submitted.

New Mexico proposed to revise its rules at 19.8.1.1100.A, B, and C NMAC (30 CFR 773.5, 780.21(c), and 784.20(c)) concerning definitions, general environmental resource information, and operations that may have an adverse impact on publicly owned parks or places listed on the National Register of Historic Places.

New Mexico proposed to revise its rules at 19.8.1.1100.A NMAC (30 CFR 773.5) concerning definitions by adding definitions for "intermittent stream" and "perennial stream."

New Mexico proposed to revise its rules at 19.8.1.1100.B NMAC (30 CFR 780.21(c) and 784.20(c)) concerning general environmental resource information by requiring that the information be sufficient to determine the effects of proposed coal exploration or mining operations on cultural and historic resources listed on the National Register of Historic Places.

New Mexico proposed to revise its rules at 19.8.1.1100.C NMAC (30 CFR 773.5) concerning operations that may have an adverse impact on publicly owned parks or places listed on the National Register of Historic Places by adding a definition for "publicly owned parks or places listed on the National Register of Historic Places."

New Mexico proposed to revise its rules at 19.8.19.1900.A, C and C(2) NMAC (30 CFR 772.11(a), 772.12, and 772.13(a)) concerning requirements for coal exploration; and 19.8.20.2009.E and E(5) NMAC (30 CFR 780.21(c)) concerning general requirements for the hydrologic balance by requiring that the information be sufficient to determine the effects of proposed coal exploration or mining operations on cultural and historic resources listed on the National Register of Historic Places.

New Mexico proposed to revise its rules at 19.8.9.912.A and B NMAC (30 CFR 780.31) concerning protection of public parks and historic places.

New Mexico proposed to revise its rules at 19.8.11.1106.D NMAC (30 CFR 773.15) concerning criteria for permit approval or denial.

New Mexico proposed to revise its rules at 19.8.14.1412.A NMAC (30 CFR 800.40(a)(3)) concerning bond release application requirements.

New Mexico proposed to revise its rules at 19.8.14.1415.A NMAC (30 CFR

does not include land or coal in place and (2) "net worth" to mean the total assets minus total liabilities and is equivalent to owner's equity, and, for the purposes of 19.8.14.1410.A(3)(b) NMAC, plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

At 30 CFR 800.23(a) and (b), the counterpart Federal regulations define, respectively, (a) "fixed assets" to mean assets used in the regular operation of the business, and (b) "net worth" to mean the total assets minus total liabilities and is equivalent to owner's equity.

OSM further stated that in its definition of fixed assets—

> Unimproved land will not be allowed in the fixed assets calculations because values are often unreliable. Coal in place is not easily liquidated and its value depends on mining and market conditions; therefore, it is not included.

New Mexico's proposal to eliminate assets used for coal mining is consistent with the Federal regulations at 30 CFR 800.23(a) concerning self-bonding that eliminate the use of assets whose values

provides protection for roads and streams involving watersheds one square mile or greater in area that flow only in direct response to surface runoff from precipitation or melting snow or ice that is no less effective than the Federal program. New Mexico pointed out that the inclusion of the one square mile watershed criteria in its definition of "intermittent stream" would, in effect, cause thousands of normally dry ephemeral arroyos in New Mexico to arbitrarily be classified as intermittent

1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated November 28, 2001, New Mexico sent us an amendment to its program (Administrative Record No. NM–853) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to June 19, 1997, and April 2, 2001 letters (Administrative Record Nos. NM–796 and NM–851) that we sent to New Mexico in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 931.16(e), (u) and (v); and to include the changes made at its own initiative.

We announced receipt of the proposed amendment in the January 9, 2002, **Federal Register** (67 FR 1173). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. NM–857). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 8, 2002. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to New Mexico's Rules

New Mexico proposed minor wording, editorial, punctuation and/or grammatical changes to the following previously-approved rules.

19.8.1 through 19.8.34 New Mexico Annotated Code (NMAC) (no corresponding Federal regulation or SMCRA provision), administrative code citations;

19.8.8.802.A NMAC (30 CFR 780.21(c)), general requirements for description of hydrology and geology;

19.8.13.1307 NMAC (30 CFR 774.17(b)(3)), requirement to obtain a bond;

19.8.19.1900.A, C and C(2) NMAC (30 CFR 772.11(a), 772.12, and 772.13(a)); requirements concerning coal exploration; and

19.8.20.2009.E and E(5) NMAC (30 CFR 780.21(c)), general requirements for the hydrologic balance.

Because these changes are minor, we find that they will not make New Mexico's rules less effective than the corresponding Federal regulations.

B. Revisions to New Mexico's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

New Mexico proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

19.8.1.7.O(5) NMAC (30 CFR 701.5), definition of "other treatment facilities;"

19.8.1.7.P(12) NMAC (30 CFR 701.5), definition of "previously mined area;"

19.8.1.7.Q(1) NMAC (30 CFR 701.5), definition of "qualified laboratory;"

19.8.2.201 NMAC (30 CFR 761.11), areas where surface coal mining operations are prohibited;

19.8.2.202.A and B(1), (2) and (3), and (C) NMAC (30 CFR 761.17(a) and (b)(1), (2) and (3), and (C)), regulatory authority obligations at the time of permit application review;

19.8.2.202.E NMAC (30 CFR 761.15), procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling;

19.8.2.202.F NMAC (30 CFR 761.17(b)(4) and (d)(1) through (3)), procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places;

19.8.2.202.G NMAC (30 CFR 761.13(c)), procedures for compatibility findings concerning surface coal mining operations on Federal lands in national forests;

19.8.2.202.H and 19.8.3.300.C NMAC (30 CFR 762.14), applicability of petitions for lands designated unsuitable for mining to areas where surface coal mining operations are prohibited or limited;

19.8.2.203 NMAC (30 CFR 761.12), exceptions to rules concerning areas where surface coal mining operations are prohibited;

19.8.6.602.A and 603 NAMC (30 CFR 772.12), permit requirements for exploration;

19.8.7.704.C NMAC (30 CFR 778.16), proposed permit area location with respect to areas designated unsuitable for mining;

19.8.8.801.B NMAC (30 CFR 779.12), general environmental resources information for cultural and historic resources;

19.8.9.912.A and B NMAC (30 CFR 780.31), protection of public parks and historic places;

19.8.11.1106.D NMAC (30 CFR 773.15), criteria for permit approval or denial;

19.8.14.1412.A NMAC (30 CFR 800.40(a)(3)), bond release application requirements;

19.8.14.1415.A NMAC (30 CFR 700.11(d)), termination of jurisdiction;

19.8.20.2057.A and 19.8.20.2058.A NMAC (30 CFR 816.104(a), 816.105(a), 817.104(a), and 817.105(a)), definitions of "thin overburden" and "thick overburden;"

19.8.24.2400.C NMAC (30 CFR 785.17(e)(5)), prime farmland performance standard;

19.8.29.2900.G NMAC (30 CFR 840.11(g)), definition of "abandoned site;"

19.8.31.3107.A NMAC (30 CFR 845.19(a)), request for an administrative review hearing concerning assessed civil penalties; and

19.8.32.3200.B, 19.8.32.3203.A and B(1) through (6), and 19.8.32.3206.A NMAC (30 CFR 795.6(a)(2)(i) and (ii), 795.9(a) and (b)(1) through (6), and 795.12(a), (a)(2) and (a)(3)), eligibility for the small operator assistance program (SOAP), SOAP services and data requirements, and SOAP applicant liability.

19.8.35.7.A, B, C, and D NMAC (30 CFR 761.5 and 761.5(a), (b) and (c)), definition of "valid existing rights" (VER); and

19.8.35.8.A and B NMAC; 19.8.35.9.A, B, C, and D NMAC; 19.8.35.10A, B, C, and D NMAC; 19.8.35.11.A, B, and C NMAC; 19.8.35.12.A, B, C, D, and E NMAC; 19.8.35.13 NMAC; and 19.8.35.14 NMAC (30 CFR 761.16(a), (b), (c), (d), (e), (f), and (g)), submission and processing of requests for VER.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. Revisions to New Mexico's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. 19.8.1.7.F(5) and N(2) NMAC, Definitions of "Fixed Assets" and "Net Worth."

At 19.8.1.7.F(5) and N(2) NMAC, New Mexico proposed to revise the definitions of, respectively, (1) "fixed assets" to mean plants, facilities and equipment, not used for the production, transportation or processing of coal, and

does not include land or coal in place and (2) "net worth" to mean the total assets minus total liabilities and is equivalent to owner's equity, and, for the purposes of 19.8.14.1410.A(3)(b) NMAC, plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

At 30 CFR 800.23(a) and (b), the counterpart Federal regulations define, respectively, (1) "fixed assets" to mean plants and equipment but does not include land or coal in place and (2) "net worth" to mean total assets minus total liabilities and is equivalent to owner's equity.

New Mexico's proposed definition of "fixed assets" requires an applicant for self-bonding to reduce the value of its fixed assets by eliminating plants, facilities and equipment used for the production, transportation or processing of coal from the calculation of fixed assets. Similarly, New Mexico's proposed definition of "net worth" requires an applicant, that bases its qualification for self-bonding on the financial tests at 19.8.14.1410.A (3)(b) NMAC, to remove the value of assets such as plants, facilities and equipment used for the production, transportation or processing of coal from its calculation of net worth. These provisions are not included in the counterpart Federal definitions.

Self-bonds are not based upon the permittee's assignment or pledge of assets. Therefore, a regulatory authority relies on the financial tests to indicate whether the liquidity and solvency levels of a self-bonding applicant are sufficient for the applicant to perform its reclamation obligations without separate surety. Plants, facilities and equipment used for coal mining are likely to be more temporary in nature and likely to be removed or demolished following mining as part of the approved reclamation plan. New Mexico's proposed revisions of the definitions of "fixed assets" and "net worth" require a self-bonding applicant to rely on the value of more permanent assets not related to its mining operation.

With these proposed revisions, New Mexico has proposed to provide additional protection from the risk of forfeiture of a self-bond than is afforded in the Federal regulations. In its preamble to the final self-bonding regulations (48 FR 36418, August 10, 1983), OSM indicated that some balance sheet items were defined by using standard accounting definitions; others were altered to provide more protection and less risk to the regulatory authority. OSM further stated that in its definition of fixed assets—

> Unimproved land will not be allowed in the fixed assets calculations because values are often unreliable. Coal in place is not easily liquidated and its value depends on mining and market conditions; therefore, it is not included.

New Mexico's proposal to eliminate assets used for coal mining is consistent with the Federal regulations at 30 CFR 800.23(a) concerning self-bonding that eliminate the use of assets whose values are unreliable and not easily liquidated.

Therefore, the Director finds that New Mexico's proposed definitions at 19.8.1.7.F(5) and N(2) NMAC are no less stringent than SMCRA and no less effective than the counterpart Federal regulations at 30 CFR 800.23(a) and approves them.

2. 19.8.1.7.I(7) NMAC, Definition of "Intermittent Stream," New Mexico's Response to Required Amendments at 30 CFR 931.16(e), (u) and (v).

New Mexico's existing rule at 19.8.1.7.I(7) NMAC defines "intermittent stream" to mean "a stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge."

OSM, at 30 CFR 701.5, defines "intermittent stream" to mean (a) a stream or reach of stream that drains a watershed of at least one square mile, or (b) a stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

OSM required at 30 CFR 931.16(e), (u) and (v) that New Mexico revise its definition of "intermittent stream," at 19.8.1.7.I(7) NMAC, to include any watershed that drains more than one square mile or otherwise revise its rules, concerning streams that drain watersheds one square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice, to be no less effective than the Federal regulations concerning permit application requirements and performance standards involving diversions, roads and stream protection. (See findings nos. 7(a), 20(d), and 21; 58 FR 65907, December 17, 1993; Administrative Record No. NM–706.)

New Mexico responded by explaining why, based on regional conditions and historical experience, it would be inappropriate to include any watershed draining one-square mile in its definition of "intermittent stream" and why the existing New Mexico program provides protection for roads and streams involving watersheds one square mile or greater in area that flow only in direct response to surface runoff from precipitation or melting snow or ice that is no less effective than the Federal program. New Mexico pointed out that the inclusion of the one square mile watershed criteria in its definition of "intermittent stream" would, in effect, cause thousands of normally dry ephemeral arroyos in New Mexico to arbitrarily be classified as intermittent streams. Furthermore, New Mexico stated—

> [t]here has been no historic or scientific justification in the last twenty years of New Mexico's regulatory program to impose the higher standards of protection associated with the higher flows of truly intermittent and perennial streams to the normally dry arroyos of New Mexico.

OSM adopted its definition of "intermittent stream" along with definitions of perennial and ephemeral streams in the original 1979 permanent program regulations (44 FR 14932, March 13, 1979). OSM stated these terms were adopted to distinguish continuously or nearly continuously flowing streams from ephemeral streams, because different regulatory controls were needed to protect these two categories. A one-mile watershed concept in part (a) of the Federal definition of "intermittent stream" was adopted because at least two states (Alabama, Illinois) found it easy to administer and apply. OSM also stated that, even for arid regions, a stream draining that much land has the potential for flood volumes that would necessitate application of more stringent stream channel diversion criteria (*i.e.*, those applicable to intermittent streams rather than ephemeral streams). The term "intermittent stream" comes into play in the Federal regulations governing diversions at 30 CFR 816.43, stream buffer zones at 30 CFR 816.57 and roads at 30 CFR 816.150 and 151.

Under the Federal regulations at 30 CFR 816.43, concerning diversions, intermittent streams may be diverted but must comply with findings for stream buffer zones and the diverted channel must be designed and certified by a professional engineer for a 10-year, 6-hour storm event for temporary and 100-year, 6-hour storm events for permanent diversions. In the Federal regulations, diversions of ephemeral streams must be designed for 2-year, 6-hour storms for temporary and 10-year, 6-hour storms for permanent diversions.

Under the Federal regulations at 30 CFR 816.57, concerning stream buffer zones, no land within 100 feet of an intermittent stream shall be disturbed

unless the regulatory authority specifically authorizes surface mining activities closer to or through such a stream. The regulatory authority may authorize such activities only after finding that surface mining activities will not cause or contribute to the violation of applicable water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. The stream buffer limitations do not

and, minimize impact to the hydrologic balance.

The higher standards imposed on diversions of intermittent and perennial streams are to provide a greater degree of safety and environmental protection for the higher flows associated with those types of streams. There has been no historical or scientific justification to impose these higher standards on normally dry, ephemeral arroyos in New Mexico.

Performance Standards Regarding Road Crossings. Because of the nature of ephemeral streams (dry arroyos) in New

New Mexico provided examples of approved diversions and road crossings designed under the existing rules for ephemeral streams draining areas larger than one square mile. These examples are from three of the five active mining operations in New Mexico. Because of topographic conditions in New Mexico where the other two approved mining operations exist, there are no ephemeral streams draining a watershed that is greater than one square mile. Three of

3. 19.8.2.202.D NMAC, Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road.

Both New Mexico's proposed rules at 19.8.2.202.D NMAC and the counterpart Federal regulations at 30 CFR 716.14 require that an applicant must obtain any necessary approvals from the authority with jurisdiction over the road if the applicant proposes to: (1) Relocate

hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

New Mexico's rules are the same as the Federal regulations with one exception. New Mexico, instead of requiring a public comment period during which a hearing may be requested, has elected to always require a public hearing as a means of

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. NM–854), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual

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unless the regulatory authority specifically authorizes surface mining activities closer to or through such a stream. The regulatory authority may authorize such activities only after finding that surface mining activities will not cause or contribute to the violation of applicable water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. The stream buffer limitations do not apply to ephemeral streams.

Under the Federal regulations at 30 CFR 816.150(a), concerning all roads, no part of any road shall be located in the channel of an intermittent stream unless specific approval is granted by the regulatory authority in accordance with 30 CFR 816.41 through 30 CFR 816.43 and 30 CFR 816.57. Under the Federal regulations at 30 CFR 816.151, concerning primary roads, fords of intermittent streams are prohibited unless specifically approved by the regulatory authority as temporary routes during periods of road construction. These limitations on roads do not apply to ephemeral streams.

New Mexico specifically addressed these regulatory ramifications concerning ephemeral streams draining areas greater than one square mile with the following discussion in support of the effectiveness of its existing program:

Performance Standards Regarding Diversion Designs. The [New Mexico] regulations for diversions of ephemeral streams already require that the diversions be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas and prevent material damage outside the permit area and to assure the safety of the public.

Temporary clear water diversions of ephemeral streams must be designed to safely pass the peak runoff from a 2-year, 24-hour event and temporary diversions of any disturbed area or permanent diversions the 10-year, 24-hour event. These design standards take into account the exact watershed in question as well as the predicted rainfall amounts and intensity of the area. Therefore, a *site specific* calculation must be done for ephemeral stream channel diversion that would take into account the possibility of "flash flooding".

Diversions of ephemeral streams must also be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to stream flow and to run-off outside the permit area, to the extent possible *using the best technology currently available.*

Therefore, diversion designs of ephemeral streams must already use site-specific designs which take into account the local watershed and rainfall conditions; use the best technology currently available; protect against material damage both on and off-site; and, minimize impact to the hydrologic balance.

The higher standards imposed on diversions of intermittent and perennial streams are to provide a greater degree of safety and environmental protection for the higher flows associated with those types of streams. There has been no historical or scientific justification to impose these higher standards on normally dry, ephemeral arroyos in New Mexico.

Performance Standards Regarding Road Crossings. Because of the nature of ephemeral steams (dry arroyos) in New Mexico, the protection of stream habitat in arroyos is not an issue. Therefore, the disallowance of stream fords of arroyos with a watershed of more than one square mile is not appropriate.

Performance Standards Regarding Stream Buffer Zones. Again, the higher standards imposed on mining disturbances within 100' of a perennial or intermittent stream are to provide a greater degree of protection for the higher flows, moisture and stream habitat associated with intermittent and perennial streams. Imposing this same standard to normally dry, ephemeral arroyos is not necessary or appropriate in New Mexico.

New Mexico noted that the existing New Mexico program requires that all structures (*e.g.,* diversions and low water crossings) treating *disturbed area* (emphasis added) runoff must be designed, at a minimum, to safely pass the 10-year, 24-hour storm event. This requirement does not exist in the Federal program, and is more stringent than the Federal regulations with respect to temporary diversions of ephemeral streams, which require that temporary structures be designed to safely pass the 2-year, 6-hour storm event. In New Mexico, only temporary clear water diversions of ephemeral drainages would be designed using the minimum 2-year, 24-hour storm event.

In addition, New Mexico stressed that the existing implementation of its design rules for all structures errs on the conservative side because the analysis of a watershed (1) includes high curve runoff numbers based on soil types and a lack of vegetation and (2) assumes that rain falls evenly over the entire watershed. It is the nature of storm events in New Mexico that rain is highly localized and rarely if ever falls over an entire watershed. These aspects of watershed analysis in New Mexico result in structures designed to handle more water than would be anticipated to actually ever result from a design storm event. Therefore, should a flash flood occur in one part of the watershed, New Mexico asserts that the diversion or road crossing designed for ephemeral streams draining larger than one square mile will include the capacity to handle the more localized event.

New Mexico provided examples of approved diversions and road crossings designed under the existing rules for ephemeral streams draining areas larger than one square mile. These examples are from three of the five active mining operations in New Mexico. Because of topographic conditions in New Mexico where the other two approved mining operations exist, there are no ephemeral streams draining a watershed that is greater than one square mile. Three of these five examples have been in place for 15, 16, and 22 years; the other two have been in place 2 and 3 years. These structures involve ephemeral drainages with watersheds ranging in area from 2.3 to 121.7 square miles.

Specifically, New Mexico approved: (1) In 2000, a low water road crossing for an ephemeral stream that drains a watershed of 121.7 square miles; (2) in 1999, a temporary diversion for a ephemeral stream that drains a watershed of 2.3 square miles; (3) in 1987, a diversion for an ephemeral stream that drains a watershed of 16 square miles; (4) in 1986, a diversion for an ephemeral stream that drains a watershed of 7.2 square miles; and (5) in 1980, a diversion for an ephemeral stream that drains a watershed of 121.7 square miles. In the history of these examples, New Mexico has never observed problems in the field. New Mexico offered these examples as evidence that its exiting program provides for adequate protection for structures involving ephemeral streams that drain more than one square mile and flow only in direct response to surface runoff from precipitation or melting snow or ice.

Based on the above discussion, OSM finds that New Mexico has addressed all programmatic ramifications concerning the protection of ephemeral streams draining areas greater than one square mile, and, in doing so, has demonstrated, through rationale and field examples, that its existing program rules are no less effective than the Federal program in providing for protection of ephemeral streams draining an area of more than one square mile. Therefore, the Director no longer requires revision of New Mexico's definition of "intermittent stream" at 19.8.1.7.I(7) NMAC to include streams draining an area greater than one square mile and is removing the required amendments at 30 CFR 931.16(e), (u) and (v).

3. 19.8.2.202.D NMAC, Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road.

Both New Mexico's proposed rules at 19.8.2.202.D NMAC and the counterpart Federal regulations at 30 CFR 716.14 require that an applicant must obtain any necessary approvals from the authority with jurisdiction over the road if the applicant proposes to: (1) Relocate a public road, (2) close a public road, or (3) conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

The Federal regulation at 30 CFR 761.14(c) requires that, before approving one of the above exceptions to the prohibitions placed on mining near public roads, the regulatory authority, or the public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. The Federal regulations state that before making this determination, the authority must: (1) Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation; (2) if a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and (3) based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the authority must make this finding within 30 days after the hearing.

New Mexico proposed at 19.8.2.202.D NMAC that, where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate or close any public road, the Director (of the New Mexico program) shall: (1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road; (2) provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing; (3) hold a public hearing in the locality of the proposed mining operations where any member of the public may participate for the purpose of determining whether the interests of the public and affected landowners will be protected; and (4) make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

New Mexico's rules are the same as the Federal regulations with one exception. New Mexico, instead of requiring a public comment period during which a hearing may be requested, has elected to always require a public hearing as a means of determining whether the interests of the public and affected landowners will be protected. The counterpart Federal regulations only require a public hearing if requested during a public comment period. New Mexico, in always providing for a public hearing, has afforded a greater opportunity for public input than do the Federal regulations.

The Director finds that New Mexico's proposed rules at 19.8.2.202.D NMAC are consistent with and no less effective than the Federal regulations at 30 CFR 716.14 and approves them.

4. 19.8.29.2900.H NMAC, Inspection Frequency at Abandoned Mines

New Mexico proposed rules at 19.8.29.2900.H NMAC concerning the frequency of inspection at abandoned coal mines. With one exception, New Mexico's proposed rules are identical to the counterpart Federal regulations at 30 CFR 840.11(h).

New Mexico's proposed 19.8.29.2900.H NMAC provides for a minimum inspection frequency of one complete inspection per quarter at abandoned sites. The counterpart Federal regulations at 30 CFR 840.11(h) provide for a minimum inspection frequency of one complete inspection per year. New Mexico's proposed rules eliminate the requirement for the partial inspections at abandoned sites that are required for active coal mine operations, as do the counterpart Federal regulations. However, New Mexico's proposed minimum inspection frequency of one complete inspection per quarter is greater than and more stringent than that provided for in the Federal regulations. A greater inspection frequency may result in greater environmental protection at the abandoned site in that field conditions would be assessed more frequently.

Therefore, the Director finds that New Mexico's proposed rules at 19.8.29.2900.H NMAC are no less effective than the Federal regulations at 30 CFR 840.11(h) and approves them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. NM–854), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Administrative Record No. NM–854).

By letter dated December 17, 2001 (Administrative Record No. NM–855), the Bureau of Land Management (BLM) responded with the following comments. BLM requested clarification of New Mexico's proposed rules at (1) 19.8.2.201 NMAC, concerning areas where surface coal mining operations are prohibited, and (2) 19.8.24.2400.C NMAC, concerning prime farmland.

Areas where surface coal mining operations are prohibited. New Mexico's proposed rule at 19.8.2.201 NMAC is substantively identical to the Federal regulation at 30 CFR 761.11. Both identify specific locations where surface coal mining operations are prohibited, subject to valid existing rights (VER), with possible exceptions. Features protected include public and National Parks, wildlife refuges, public roads, occupied dwellings, schools, churches and cemeteries.

BLM asked whether mining would be prohibited or allowed on the areas in question if a cultural feature were created after the coal lease was issued, or after the operation began on the lease or logical mining unit.

When a mining operation began is directly relevant to whether resource protection under 30 CFR 761.11 and 19.8.2.201 NMAC is exempted. Whether the coal lease was issued may be relevant to a determination of VER. Below is an explanation of the proposed New Mexico rules that would determine when mining would be prohibited.

OSM's Federal regulations at 30 CFR 761.12 and New Mexico's proposed rules at 19.8.2.203 NMAC exempt the prohibitions of 30 CFR 761.11 and 19.8.2.201 NMAC (1) concerning surface coal mining operations with a valid permit that existed when the land came under the protection of 30 CFR 761.11 or 19.8.2.201 NMAC and (2) with respect to operations existing prior to August 3, 1977, lands upon which validly authorized surface coal mining operations existed when the land came under the protection of the Federal

regulations at 30 CFR 761.11 or the New Mexico rules at 19.8.2.201 NMAC.

Where these exemptions do not apply, the prohibitions may be waived if the applicant can demonstrate VER as defined by New Mexico at proposed rules 19.8.35.7.A through D NMAC and in the Federal regulations at 30 CFR 761.5(a), (b) and (c).

OSM's definition of VER (New Mexico's definition is identical to OSM's definition) provides for a person

approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as: (i) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of 30 CFR 761.11 or 30 U.S.C.

Prime Farmlands. New Mexico's proposed rule 19.8.24.2400.C NMAC is identical to the Federal regulation at 30 CFR 785.17(e)(5) and requires that—

the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the

the NRCS and must still meet the prime farmland soil reconstruction and bond release standards.

OSM did not discuss the location of the water body with respect to prime farmland soils. The plain language of New Mexico's rule and the Federal regulation requires that the water body be within the post-reclamation non-prime farmland portions of the permit area. Therefore, it could not be within the post-reclamation prime farmland

Mexico's proposed rule at 19.8.9.912.A NMAC.

New Mexico's proposed 19.8.9.912.A NMAC requires that an applicant for a proposed operation that may have an adverse effect on any publicly owned parks or any places listed on the National Register of Historic Places shall include a plan describing the measures to be used to prevent adverse impacts, or designed to minimize adverse impacts when valid existing rights exist

Director is not requiring that New Mexico take action in response to this comment.

V. OSM's Decision

Based on the above findings, we approve New Mexico's November 28, 2001, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR part 931, which codify decisions concerning the New Mexico program. We find that good cause exists under 5

regulations at 30 CFR 761.11 or the New Mexico rules at 19.8.2.201 NMAC.

Where these exemptions do not apply, the prohibitions may be waived if the applicant can demonstrate VER as defined by New Mexico at proposed rules 19.8.35.7.A through D NMAC and in the Federal regulations at 30 CFR 761.5(a), (b) and (c).

OSM's definition of VER (New Mexico's definition is identical to OSM's definition) provides for a person claiming VER to demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation. However, a person claiming VER must also demonstrate compliance with one of the following standards: (1) All permits and other authorizations required to conduct surface coal mining operations must have been obtained, or a good faith effort to obtain all necessary permits and authorizations must have been made, before the land came under the protection of Sec. 761.11 or 30 U.S.C. 1272(e). At a minimum, an application must have been submitted for any permit required under the Federal regulations or a counterpart State program; (2) the land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations have been obtained, or a good faith attempt to obtain all permits and authorizations has been made, before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as: (i) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) depend upon use of that land for surface coal mining operations. (ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations. (iii) The extent to which investments in the operation before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations. (iv) Whether the land lies within the area identified on the life-of-mine map submitted under 30 CFR 779.24(c) or 30 CFR 783.24(c) before the land came under the protection of 30 CFR 761.11.

Furthermore, a person who claims VER to use or construct a road across the surface of lands protected by 30 CFR 761.11 or 30 U.S.C. 1272(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in 30 CFR 700.5: (1) The road existed when the land upon which it is located came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations. (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations. (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). (4) VER exist under paragraphs (a) and (b) of the definition.

Because New Mexico's proposed rules at 19.8.2.201 NMAC are substantively identical to the Federal regulations at 30 CFR 761.11, the Director, as discussed in Finding No. III.B above, is approving them. The Director is not requiring that New Mexico take any action in response to BLM's comments.

Prime Farmlands. New Mexico's proposed rule 19.8.24.2400.C NMAC is identical to the Federal regulation at 30 CFR 785.17(e)(5) and requires that—

> the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

BLM questioned (1) whether the proposed rule meant that soil and growth medium (which we construed to be prime farmland soils) would not be covered by any planned water body, (2) how far removed must any water body be located (i.e., would there be a required zone between the prime farmland and the water body or could prime farmland surround a water body) and (3) can prime farmland be relocated in the reclamation process?

OSM promulgated the Federal regulation at 30 CFR 785.17(e)(5) on October 18, 1988; see the preamble discussion at II.A, 53 FR 40828, 40829—40835. In this discussion OSM asserted that the relocation of prime farmland soils within the permit is authorized. The only limitation is that the applicant must demonstrate that there will be no decrease in the acreage of prime farmland soils and the productivity capacity of reconstructed prime farmland will be maintained. OSM clarified that where non-prime farmland areas are found on the permit areas, these areas may be subjected to land use changes, including the creation of water bodies, provided that the alternative post-mining land use requirements of the regulations are met.

OSM stated that prime farmland soils removed for water bodies must be removed, segregated, and stockpiled, but not replaced within the impoundment. These soils are to be reconstructed in the same way other prime farmland soils are reconstructed within the permit area and with the review and concurrence of the Nation Resource Conservation Service (NRCS, old Soil Conservation Service). OSM also stated that prime farmland soils may not be moved from a pre-mining location to a post-mining location within a permit area if the pre-mining area would not normally be disturbed in order to extract the coal, and, when the shifting of the location of prime farmland soils is part of a complete mining and reclamation plan, such soil relocation will be kept to a minimum, will be reviewed and concurred in by the NRCS and must still meet the prime farmland soil reconstruction and bond release standards.

OSM did not discuss the location of the water body with respect to prime farmland soils. The plain language of New Mexico's rule and the Federal regulation requires that the water body be within the post-reclamation non-prime farmland portions of the permit area. Therefore, it could not be within the post-reclamation prime farmland portions of the permit area. The location of the water body with respect to the location of the prime farmland soils would be predicated by the requirement that the applicant demonstrate that the productivity of the prime farmland soils would be maintained. We also note that protection of all non-prime farmland topsoil is required and it would not be placed beneath a reclaimed water body.

Because New Mexico's proposed rules at 19.8.24.2400.C NMAC are substantively identical to the Federal regulations at 785.17(e)(5), the Director, as discussed in Finding No. III.B above, is approving them. The Director is not requiring that New Mexico take any action in response to BLM's comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. NM–854). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 10, 2001, we requested comments on New Mexico's amendment (Administrative Record No. NM–854). ACHP did not respond to our request.

The SHPO responded with a letter dated January 10, 2002 (Administrative Record No. NM–856), with the following comment concerning New Mexico's proposed rule at 19.8.9.912.A NMAC.

New Mexico's proposed 19.8.9.912.A NMAC requires that an applicant for a proposed operation that may have an adverse effect on any publicly owned parks or any places listed on the National Register of Historic Places shall include a plan describing the measures to be used to prevent adverse impacts, or designed to minimize adverse impacts when valid existing rights exist or joint agency approval is to be obtained under 19.8.2.202.E NMAC.

SHPO recommended that New Mexico's proposed rule at 19.8.9.912.A NMAC include a reference to the State Register of Cultural Properties to ensure adequate protection to properties listed only on the State Register and not listed on the National Register.

Properties on the State Register of Cultural Properties include properties that are listed on the National Register of Historic Places, are in the process of being listed on the national register, and would likely be eligible for listing on the National Register of Historic Places. Properties that would be eligible for listing on the National Register of Historic Places would be protected under proposed 19.8.9.912.B NMAC. New Mexico's rule at 19.8.9.912.B NMAC provides that the Director of the New Mexico program may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

Proposed 19.8.9.912.A and B NMAC are identical to the Federal regulations at 30 CFR 780.31(a) and (b). The Federal regulations and New Mexico's proposed rules do provide for more stringent protection of public parks and places listed on the National Register of Historic Places. However, applications that may impact cultural and historic resources are sent by the Director of the New Mexico program to the SHPO for review and comment. New Mexico would take seriously all recommendations from the SHPO and would likely, under 19.8.9.912B NMAC, require mitigation of any adverse impacts.

Because OSM cannot require that New Mexico promulgate rules that are more stringent than the Federal regulations, the Director, as discussed in Finding No. III.B above, is approving New Mexico's proposed rules. The Director is not requiring that New Mexico take action in response to this comment.

V. OSM's Decision

Based on the above findings, we approve New Mexico's November 28, 2001, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR part 931, which codify decisions concerning the New Mexico program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state

governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given

subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

§ 931.16 [Amended]

3. Section 931.16 is amended by removing and reserving paragraphs (e), (u) and (v).

[FR Doc. 02–17651 Filed 7–12–02; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

Register. The permanent security zones being established by the rulemaking are smaller in size than the temporary security zones currently in effect. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by a larger security zone. In addition, the temporary security zones currently in place may impact several private residences, the smaller permanent security zones ensure that these residences are not adversely impacted.

location and the restrictions involved via Local Notice To Mariners.

Discussion of Comment and Changes

The Coast Guard received 10 comments on the proposed rulemaking. Eight comments support the establishment of security zones around the nuclear power stations. The only concern of those in favor of the establishment of security zones was that Coast Guard ensure the permanent security zones do not encompass the

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governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 2002.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 931 is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended in the table by adding a new entry in chronological order by July 15, 2002, to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments

* * * * *

Original submission date	Date of final publication	Citation/description
November 28, 2001	July 15, 2002	19.8.1.7.F(5); 19.8.1.7N(2); 19.8.1.7.O(5); 19.8.1.7.P(12); 19.8.1.7.Q(1); 19.8.2.201; 19.8.2.202.A through H; 19.8.2.203; 19.8.3.300.C; 19.8.6.602.A and 603; 19.8.7.704.C; 19.8.8.801.B; 19.8.8.802.A; 19.8.9.912.A and B; 19.8.11.1106.D; 19.8.13.1307; 19.8.14.1412.A; 19.8.14.1415.A; 19.8.19.1900.A, C and C(2); 19.8.20.2009.E and E(5); 19.8.20.2057.A; 19.8.20.2058.A; 19.8.24.2400.C; 19.8.29.2900.G and H; 19.8.31.3107.A; 19.8.32.3200.B; 19.8.32.3203.A and B; 19.8.32.3206.A; and 19.8.35.7 through 14 NMAC.

§ 931.16 [Amended]

3. Section 931.16 is amended by removing and reserving paragraphs (e), (u) and (v).

[FR Doc. 02–17651 Filed 7–12–02; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–011]

RIN 2115–AA97

Security Zones; Captain of the Port Toledo Zone, Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent security zones on the navigable waters of Lake Erie in the Captain of the Port Toledo Zone. These security zones are necessary to protect the Enrico Fermi 2 Nuclear Power Station and the Davis Besse Nuclear Power Station from possible acts of terrorism. These security zones are intended to restrict vessel traffic from a portion of Lake Erie off the Enrico Fermi 2 and the Davis Besse Nuclear Power Stations.

DATES: This rule is effective July 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–011] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, Marine Safety Office Toledo, at (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 8, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Captain of the Port Toledo Zone, Lake Erie" in the **Federal Register** (67 FR 30846). We received 10 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permanent security zones being established by the rulemaking are smaller in size than the temporary security zones currently in effect. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by a larger security zone. In addition, the temporary security zones currently in place may impact several private residences, the smaller permanent security zones ensure that these residences are not adversely impacted.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

This rule establishes a permanent security zone off the waters of Enrico Fermi 2 Nuclear Power Station, Newport, Michigan. This security zone includes waters and adjacent shoreline within a boundary commencing at 41°58.4′ N, 083°15.4′ W; then northeast to 41°58.5′ N, 083°15.0′ W; then southeast to 41°58.2′ N, 083°13.7′ W; then south to 41°56.9′ N, 083°13.8′ W; then west to 41°56.9′ N, 083°15.2′ W; then back to the starting point at 41°58.4′ N, 083°15.4′ W. These coordinates are based upon North American Datum 1983 (NAD 83).

This rule also establishes a permanent security zone off the waters of Davis Besse Nuclear Power Station, Port Clinton, Ohio. This security zone includes waters and adjacent shoreline within a boundary commencing at 41°36.1′ N, 083°04.7′ W; then north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; southwest to 41°35.4′ N, 083°03.7′ W; then west following the shoreline back to the point of origin (NAD 83).

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Toledo, or his authorized representative, are prohibited from entering or moving within these zones. The Captain of the Port Toledo may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Toledo's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, exact location and the restrictions involved via Local Notice To Mariners.

Discussion of Comment and Changes

The Coast Guard received 10 comments on the proposed rulemaking. Eight comments support the establishment of security zones around the nuclear power stations. The only concern of those in favor of the establishment of security zones was that Coast Guard ensure the permanent security zones do not encompass the beachfront of any private residences. The two comments against establishing permanent security zones questioned the impact of having security zones.

Three comments recommended changes to the security zone coordinates surrounding the Davis Besse Nuclear Power Station. The commenters noted that the Coast Guard's beginning coordinate for the security zone around the David Besse Power Station (41°36.3′ N, 083°04.9′ W) included several private residences. The comments requested the Coast Guard identify a new starting coordinate that excludes the private residences. After conducting an updated security risk assessment of the facility, the Coast Guard concurs with these comments and has identified the new starting coordinate as 41°36.1′ N, 083°04.7′ W (NAD 83).

Two comments opposed the security zone around the Enrico Fermi 2 Power Station, one questioning the impact of a security zone and the other stating that allowing fishermen in the area is a better way to protect the area. The security zones create a clear area in which unauthorized persons are readily detectable. This area, coupled with Coast Guard patrols, the assistance of state, local, and the nuclear power plant security personnel, all help to create an area to detect and respond to unauthorized individuals or vessels. Currently, the Captain of the Port Toledo believes that this method is the most effective way of deterring waterborne security threats to these nuclear facilities.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory

Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT was not conducted. The change to the starting coordinate discussed above does not change this assessment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate in the security zones. The security zones will not have a significant economic impact on a substantial number of small entities because the zones are small and vessel traffic can pass safely around the zones. Vessels will be allowed to enter the zones on a case-by-case basis with permission of the Captain of the Port Toledo or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Herb Oertli, Chief of Port Operations, Marine Safety Office Toledo, at (419) 418–6050.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule would not have implications for federalism under that Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and provide clear legal standards.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

then northeast to 41°58.5′ N, 083°15.0′ W; then southeast to 41°58.2′ N, 083°13.7′ W; then south to 41°56.9′ N, 083°13.8′ W; then west to 41°56.9′ N, 083°15.2′ W; then back to the starting point at 41°58.4′ N, 083°15.4′ W (NAD 83).

(2) *Davis Besse Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°36.1′ N, 083°04.7′ W; north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; southwest to 41°35.4′ N, 083°03.7′ W; then west following the shoreline back to the point of origin (NAD 83).

DATES: Effective from 12:01 a.m. (local) on July 1, 2002 to 11:59 p.m. (local) on July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Dave McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909 (67 FR 44558, July 3, 2002), for fireworks displays in the Captain of the Port Milwaukee Zone. The permanent safety zones are necessary to protect the boaters from the hazards associated with fireworks displays. The safety zones will temporarily close all waters and the adjacent shoreline encompassed by the arc of a circle with a 420-foot radius of the fireworks barge with its center in approximate position 43°02.00′ N, 087°53.00′ W (NAD 1983), on July 4, 2002 from 9:20 p.m. until 10:10 p.m. The alternate location will include all waters and the adjacent shoreline encompassed by the arc of a circle with a 420-foot radius of the fireworks barge with its center in approximate position 44°05.33′ N, 087°39.00′ W (NAD 1983), on July 4, 2002 from 9:20 p.m. until 10:10 p.m. If display is moved to secondary site, it will temporarily close entrance to Manitowoc Harbor.

(5) *Fourthfest of Greater Racine, Racine, WI. Location:* The primary location will include all waters and

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Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT was not conducted. The change to the starting coordinate discussed above does not change this assessment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Our rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone. In addition, in the event that it may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Toledo to transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule would not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We received several comments from property owners that wanted to ensure the security zones did not include any of their beachfront property. The western end of the security zone was adjusted slightly to ensure that the security zone did not encompass any private property.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.T09–135 [Removed]

2. Remove § 165.T09–135.

§ 165.T09–136 [Removed]

3. Remove § 165.T09–136.

4. Add § 165.915 to read as follows:

§ 165.915 Security zones; Captain of the Port Toledo Zone, Lake Erie.

(a) *Security zones.* The following areas are security zones:

(1) *Enrico Fermi 2 Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°58.4′ N, 083°15.4′ W; then northeast to 41°58.5′ N, 083°15.0′ W; then southeast to 41°58.2′ N, 083°13.7′ W; then south to 41°56.9′ N, 083°13.8′ W; then west to 41°56.9′ N, 083°15.2′ W; then back to the starting point at 41°58.4′ N, 083°15.4′ W (NAD 83).

(2) *Davis Besse Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°36.1′ N, 083°04.7′ W; north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; southwest to 41°35.4′ N, 083°03.7′ W; then back to the starting point 41°36.1′ N, 083°04.7′ W (NAD 83).

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit through either of these security zones, prior to transiting, must contact the Captain of the Port Toledo at telephone number (419) 418–6050, or on VHF/FM channel 16 and request permission. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 3, 2002.

D.L. Scott,

Commander, U.S. Coast Guard, Captain of the Port Toledo.

[FR Doc. 02–17739 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–060]

Safety Zones; Captain of the Port Milwaukee Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Milwaukee Zone during July 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Milwaukee Zone.

DATES: Effective from 12:01 a.m. (local) on July 1, 2002 to 11:59 p.m. (local) on July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Davè McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909 (67 FR 44558, July 3, 2002), for fireworks displays in the Captain of the Port Milwaukee Zone during July 2002. The following safety zones are in effect for fireworks displays occurring in the month of July 2002:

(1) *City of Sheboygan Fourth of July Fireworks, Sheboygan, WI. Location:* All waters and adjacent shoreline of Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in the approximate position 43°44.48′ N, 087°42.14′ W (NAD 1983), on July 4, 2002 from 9:20 p.m. until 10:05 p.m. In the event of inclement weather on July 4, 2002, the safety zone will be enforced on July 5, 2002 from 9:20 p.m. until 10:05 p.m. This safety zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(2) *City of Kenosha Fourth of July Fireworks, Kenosha, WI. Location:* All waters and adjacent shoreline around the South Pier Light area, Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in approximate position 42°35.17′ N, 087°48.33′ W (NAD 1983), on July 4, 2002 from 9:15 p.m. until 10:05 p.m. This safety zone will encompass the entrance to Kenosha Harbor and will result in its closure while the safety zone is in effect.

(3) *U.S. Bank (Firstar) Fireworks, Milwaukee, WI. Location:* All waters and adjacent shoreline south of Juneau Park, outer Milwaukee Harbor encompassed by the arc of a circle with an 840-foot radius of the fireworks barge with its center in approximate position 43°02.23′ N, 087°53.30′ W (NAD 1983), on July 3, 2002 from 9:20 p.m. until 10:10 p.m. In the event of inclement weather on July 3, 2002, the safety zone will be enforced on July 4, 2002 from 9:20 p.m. until 10:10 p.m.

(4) *Manitowoc Municipal Fourth of July Fireworks, Manitowoc, WI. Location:* The primary location will include all waters and adjacent shoreline east of the Manitowoc Yacht Club, Lake Michigan encompassed by the arc of a circle with an 840-foot radius of the fireworks barge in approximate position 44°06.05′ N, 087°38.37′ W (NAD 1983), on July 4, 2002 from 9:20 p.m. until 10:10 p.m. The alternate location will include all waters and the adjacent shoreline encompassed by the arc of a circle with a 420-foot radius of the fireworks barge with its center in approximate position 44°05.33′ N, 087°39.00′ W (NAD 1983), on July 4, 2002 from 9:20 p.m. until 10:10 p.m. If display is moved to secondary site, it will temporarily close entrance to Manitowoc Harbor.

(5) *Fourthfest of Greater Racine, Racine, WI. Location:* The primary location will include all waters and adjacent shoreline around the north breakwall, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.14′ N, 087°46.30′ W (NAD 1983) on July 4, 2002 from 9:20 p.m. until 10:10 p.m. The alternate location will include all waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.21′ N, 087°46.45′ W (NAD 1983) (on the beach north of the northern breakwall) on July 4, 2002 from 9:20 p.m. until 10:10 p.m. In the event of inclement weather on July 4, 2002, the safety zone will be enforced on July 5, 2002 from 9:20 p.m. until 10:10 p.m.

(6) *Celebrate Amerifest, Green Bay, WI. Location:* All waters and adjacent shoreline between the Green Bay & Western Railroad Bridge (mile marker 1.03) and the Mason St. Bridge (mile marker 3.52) on the Fox River on July 4, 2002 from 2 p.m. until 11 p.m. This safety zone will temporarily close the Fox River. (This safety zone does not encompass the water of the East River.)

(7) *South Shore Frolics Fireworks, Milwaukee, WI. Location:* All waters and adjacent shoreline east of the South Shore Park, Milwaukee Harbor encompassed by the arc of a circle with a 280-foot radius with its center in approximate position 42°59.43′ N, 087°52.54′ W (NAD 1983), on July 12, 13, and 14, 2002 from 9:50 p.m. until 10:30 p.m.

(8) *Kewaunee Annual Trout Festival, Kewaunee, WI. Location:* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°27.30′ N, 087°29.46′ W (NAD 1983), on July 19, 2002 from 9:20 p.m. until 9:50 p.m. This safety zone will temporarily close the entrance to Kewaunee Harbor.

(9) *Port Washington Fish Days Fireworks, Port Washington, WI. Location:* All waters and adjacent shoreline around the Wisconsin Electric Coal Dock, Lake Michigan encompassed by the arc of a circle with an 840-foot

radius with its center in approximate position 43°23.07′ N, 087°51.55′ W (NAD 1983), on July 20, 2002 from 9:25 p.m. until 10:10 p.m. This safety zone will temporarily close the entrance to Port Washington Harbor.

(10) *Germanfest Fireworks, Milwaukee, WI. Location:* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin 43°02.209′ N, 087°53.714′ W; then southeast to 19, 2002, until 11 p.m. (local) on July 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CDG09–02–020] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Chicago, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Commander. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

"Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami–02–054]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL, and Port of Key West, Key West,

radius with its center in approximate position 43°23.07′ N, 087°51.55′ W (NAD 1983), on July 20, 2002 from 9:25 p.m. until 10:10 p.m. This safety zone will temporarily close the entrance to Port Washington Harbor.

(10) *Germanfest Fireworks, Milwaukee, WI. Location:* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 1983) on July 26, 27, and 28, 2002 from 9:50 p.m. until 10:30 p.m. The Harbor Island Lagoon Area is encompassed by this safety zone.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be enforced for the duration of the events. Vessels may not enter the safety zone without permission from Captain of the Port Milwaukee. Requests to transit the safety zone must be made in advance by contacting the person listed in **FOR FURTHER INFORMATION CONTACT** and must be approved by the Captain of the Port Milwaukee before transits will be authorized. Spectator vessels may anchor outside the safety zone but are cautioned not to block a navigable channel.

Dated: July 3, 2002.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 02–17740 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–020]

Safety Zone; Gary Air and Water Show, Lake Michigan, Gary, IN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Gary Air and Water Show. The safety zone is necessary to protect vessels, participants and spectators during the Gary Air and Water Show. This safety zone is intended to restrict vessels from a portion of Lake Michigan.

DATES: This temporary final rule is effective from 8:30 a.m. (local), on July 19, 2002, until 11 p.m. (local) on July 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CDG09–02–020] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Chicago, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST3 Kathryn Varela, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life, injury, or damage to property or the environment.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with firework displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of person and property at these events and help minimize any risks.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated on scene representative. The Captain of the Port Chicago's designated on scene representative will be the Patrol Commander. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are independently owned and operated are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITTED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 8:30 a.m. on July 19, 2002 until 11 p.m. on July 21, 2002, a new temporary § 165.T09–011 is added to read as follows:

§ 165.T09–011 Safety Zone; Lake Michigan, Gary, Indiana.

(a) *Location.* The following is a safety zone: all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a radius of 5 nautical miles with its center in approximate position 41°37′25″ N, 087°15′42″ W (off of Miller Beach Ogden Dunes). These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Enforcement periods.* This section will be enforced from 8:30 a.m. to 5 p.m. (local), on July 19, 2002; from 8:30 a.m. to 5 p.m. (local), on July 20, 2002; and from 8:30 a.m. to 11 p.m. on July 21, 2002.

(c) *Regulations.* In accordance with § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated on scene representative. Section 165.23 also contains other applicable requirements.

Dated: June 28, 2002.

R.E. Seebald,

Captain, Coast Guard, Captain of the Port Chicago.

[FR Doc. 02–17742 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami–02–054]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL, and Port of Key West, Key West, Florida; Hutchinson Island Power Plant, St. Lucie, Florida, and Turkey Point Power Plant, Florida City, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard will be maintaining temporary security zones in the Captain of the Port Miami area for national security reasons to protect the public and ports from potential subversive acts. Similar security zones have been in effect under temporary rules following the terrorist attacks of September 11, 2001, on the World Trade Center and Pentagon. While this temporary rule is in effect, the Coast Guard will engage in notice and comment rulemaking to propose that these security zones be made permanent. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective from 12 midnight on June 16, 2002 until 11:59 p.m. on December 15, 2002. Comments and related material must reach the Coast Guard on or before September 13, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Miami 02–054] and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139–6940, between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Warren Weedon, Coast Guard Marine Safety Office Miami, at (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists

for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will broadcast notice to mariners via VHF–FM marine band radio announcing specific times and dates of activation of these zones.

Background and Purpose

A temporary security zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a terrorist attack. Based on recent intelligence reports, the Captain of the Port Miami has determined that vessels could be used to cause damage to vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida against hazardous cargo vessels and high capacity passenger vessels entering, departing and moored within these ports. The same threat is posed to the power plants located at Hutchinson Island and Turkey Point and these security zones are necessary to protect the public, ports, and waterways of the United States from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Fixed and Moving Security Zones Around Vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West—Paragraph (a)(1) of this temporary rule will create 100-yard fixed and moving security zones in the Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL. These security zones will be activated when a cruise ship, a vessel carrying cargoes of

will include all land and water within lines connecting the following points: 25°26.8′ N, 080°16.8′ W; 25°26.8′ N, 080°21′ W; 25°20′ N, 080°16.8′ W; 25°20′ N, 080°20.4′ W.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are independently owned and operated are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under

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for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and place enforcement vessels in the vicinity to advise mariners of the restriction. While this rule is in effect, the Coast Guard will complete notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment within the Captain of the Port Miami zone.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Miami 02–054] indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida against hazardous cargo vessels and high capacity passenger vessels entering, departing and moored within these ports. The same threat is posed to the power plants located at Hutchinson Island and Turkey Point and these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

The Coast Guard Captain of the Port (COTP), Miami established temporary security zones in these areas shortly following the September 11, 2001 attacks. Those temporary final rules (TFRs) issued before this rulemaking will expire soon:

On September 11, 2001, the COTP issued a TFR (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01–093) for 100-yard security zones around certain vessels in the Port of Palm Beach, Miami, Port Everglades, and Key West, FL, that expired September 25, 2001. On September 25, 2001, the COTP issued another TFR (67 FR 1101, January 9, 2002, COTP Miami 01–115) that maintained these 100-yard security zones around certain vessels in the Ports of Palm Beach, Miami, Port Everglades, and Key West, FL, and added a reference to specific points (buoys) where moving zones were activated and deactivated. This second TFR will expire June 15, 2002.

On September 21, 2001, the COTP issued a TFR (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01–106) for security zones around Turkey Point and Saint Lucie, FL, nuclear power plants that expired November 21, 2001. On December 10, 2001, the COTP issued another TFR (67 FR 4355, January 30, 2002, COTP Miami 01–142) for security zones around these two nuclear power plants that will expire June 15, 2002.

On October 7, 2001, the COTP issued a TFR (67 FR 6652, February 13, 2002, COTP Miami 01–116) for fixed-security zones in Port Everglades and Miami, FL, that will expire June 15, 2002.

On October 11, 2001, the COTP issued a TFR (67 FR 4177, January 29, 2002, COTP Miami 01–122) for a fixed-security zone for Port Everglades, FL, that will expire June 15, 2002.

Discussion of Rule

In this one rule, the COTP is combining the security zones discussed in the four immediately proceeding paragraphs. These zones are described below in the same order as they appear in the regulation, 33 CFR 165.T07–054.

Fixed and Moving Security Zones Around Vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West—Paragraph (a)(1) of this temporary rule will create 100-yard fixed and moving security zones in the Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL. These security zones will be activated when a cruise ship, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in Title 33, Code of Federal Regulations parts 126 and 127 respectively, enter or moor within one of these Ports. The security zones will be activated when a subject vessel passes the sea buoy for inbound transits, and is deactivated when the vessel departs the port and passes the sea buoy.

Fixed Security Zone in the Port of Miami—Paragraph (a)(2) of this temporary rule will create a fixed security zone encompassing all waters between the Port of Miami and MacArthur Causeway. The fixed security zones is activated when two or more high capacity passenger vessels, vessels carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in Title 33, Code of Federal Regulations part 120, 126, and 127 respectively, enter or moor within this zone.

Fixed Security Zones in Port Everglades—Paragraph (a)(3) of this temporary rule will create a fixed security zone encompassing the waters of the Intracoastal Waterway between the northern tip of Port Everglades berth 22 near Burt and Jacks Restaurant and a point directly east across the Intracoastal Waterway; and a line drawn from the corner of Port Everglades berth 29 at point easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area. The fixed security zone is activated when a cruise ship, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in Title 33, Code of Federal Regulations part 126 and 127 respectively, enter or moor within this zone.

Hutchinson Island Power Plant and Turkey Point Power Plant—Paragraph (a)(4) of this temporary rule will create a security zone in waters around the Hutchinson Island (Port St. Lucie) nuclear power plant. The zone will include all waters within a line connecting the following points: 27°21.20′ N, 080°16.26′ W; 27°19.18′ N, 080°15.21′ W; 27°20.36′ N, 080°12.83′ W; 27°22.43′ N, 080°13.8′ W. Paragraph (a)(5) will create a security zone for Turkey Point power plant. The zone

will include all land and water within lines connecting the following points: 25°26.8′ N, 080°16.8′ W; 25°26.8′ N, 080°21′ W; 25°20′ N, 080°16.8′ W; 25°20′ N, 080°20.4′ W.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because vessel traffic may be minimally impacted for short periods to allow for the arrival and departure of high risk vessels. Alternate vessel traffic routes have also been accounted for to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels into these security zones on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because most small entities will be able to transit around the security zones and they may be allowed to enter the zone on a case-by-case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because no environmental changes will be affected with the security zone implementation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–054 is added to read as follows:

§ 165.T07–054 Security Zones, Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, FL; St. Lucie Hutchinson Island, and Turkey Point Power Plants, FL.

(a) The following areas are security zones:

(1) *Fixed and Moving Security Zones Around Vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West*—Temporary moving security zones are established 100 yards around all high capacity passenger vessels, vessel carrying cargoes of particular hazard are berthed, by staying on the north side of the law enforcement boats and cruise ship tenders which will mark a transit lane in channel.

(ii) When high capacity passenger vessels are not berthed on the Main Channel, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed Security Zones in the Port Everglades*—A temporary fixed security

(5) *Turkey Point Power Plant*—A temporary security zone encompasses all land and water within lines connecting the following points: 25°26.8′ N, 080°16.8′ W; 25°26.8′ N, 080°21′ W; 25°20′ N, 080°16.8′ W; 25°20′ N, 080°20.4′ W.

(b) *Regulations.* (1) Prior to commencing the movement, the person directing the movement of a high capacity passenger vessel, a vessel carrying cargoes of particular hazard or

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes the procedures for the release of information about holders of postage meter licenses. The procedures are

through (d)(9), respectively; and by adding a new paragraph (d)(3) to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified Postal Service customers will be made available only as follows:

* * * * *

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[A–1–FRL–7240–7]

Approval and Promulgation of Section 112(l) Authority for Regulating Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emissions Standards for Hazardous Air Pollutants From the Pulp and Paper

§ 165.T07–054 Security Zones, Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, FL; St. Lucie Hutchinson Island, and Turkey Point Power Plants, FL.

(a) The following areas are security zones:

(1) *Fixed and Moving Security Zones Around Vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West*—Temporary moving security zones are established 100 yards around all high capacity passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: "LW" buoy, at approximate position 26°46′18″ N, 080°00′36″ W when entering the Port of Palm Beach, passes "PE" buoy, at approximate position 26°05′30″ N, 080°04′48″ W when entering Port Everglades; the "M" buoy, at approximate position 25°46′06″ N, 080°05′ when entering the Port of Miami; and "KW" buoy, at approximate position 24°27′42″ N, 081°48′06″ W when entering the Port of Key West. Temporary fixed security zones are established 100 yards around all high capacity passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, while they are docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(2) *Fixed Security Zone in the Port of Miami*—A fixed security zone encompasses all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami. The western boundary is formed by an imaginary line from points 25°46.76′ N, 080°10.87′ W, to 25°46.77′ N, 080°10.92′ W to 25°46.88′ N, 080°10.84′ W and ending on Watson Park at 25°47.00′ N, 080°10.67′ W. The eastern boundary is formed by an imaginary line from the traffic light located at Bridge road, which leads to Star Island, and MacArthur Causeway directly extending across the Main Channel to the Port of Miami, at 25°46.32′ N, 080°09.23′ W: The fixed security zone is activated when two or more of either a high capacity passenger vessel, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 120, 126, and 127 respectively, enter or moor within this zone.

(i) Vessels may transit the Main Channel when only one cruise ship or vessel carrying cargoes of particular hazard are berthed, by staying on the north side of the law enforcement boats and cruise ship tenders which will mark a transit lane in channel.

(ii) When high capacity passenger vessels are not berthed on the Main Channel, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed Security Zones in the Port Everglades*—A temporary fixed security zone encompasses all waters west of an imaginary line starting at the northern most point 26°05.98′ N, 080°07.15′ W, near the west side of the 17th Street Bridge, to the southern most point 26°05.41′ N, 080°06.97′ W on the northern tip of pier 22 near Burt and Jacks Restaurant, Port Everglades, Florida. An additional temporary fixed security zone encompasses the Intracoastal Waterway between a line connecting point 26°05.41′ N, 080°06.97′ W on the northern tip of berth 22 near Burt and Jacks Restaurant and a point directly east across the Intracoastal Waterway to 26°05.41′ N, 080°06.74′ W; and a line drawn from the corner of Port Everglades berth 29 at point 26°04.72′ N, 080°06.92′ W, easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area at point 26°04.72′ N, 080°06.81′ W. The fixed security zone is activated when a cruise ship, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 126 and 127 respectively, enter or moor within this zone.

(i) Vessels may transit the Intercoastal Waterway when high capacity passenger vessels or vessels carrying cargoes of particular hazard are berthed, by staying east of the law enforcement boats and cruise ship tenders which will mark a transit lane in the Intercoastal Waterway.

(ii) Periodically, vessels may be asked to temporarily hold their positions while large commercial traffic operates in this area. Vessels near this security zone must follow the orders of the law enforcement vessels on scene. When high capacity passenger vessels are not berthed on the Intercoastal Waterway, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(4) *Hutchinson Island Power Plant*—A temporary security zone encompasses all waters within lines connecting the following points: 27°21.20′ N, 080°16.26′ W; 27°19.18′ N, 080°15.21′ W; 27°20.36′ N, 080°12.83′ W; 27°22.43′ N, 080°13.6′ W.

(5) *Turkey Point Power Plant*—A temporary security zone encompasses all land and water within lines connecting the following points: 25°26.8′ N, 080°16.8′ W; 25°26.8′ N, 080°21′ W; 25°20′ N, 080°16.8′ W; 25°20′ N, 080°20.4′ W.

(b) *Regulations.* (1) Prior to commencing the movement, the person directing the movement of a high capacity passenger vessel, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 120, 126 and 127 respectively, shall make a security broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port Miami or his designated representative. Certain industry vessels such as pilot boats, cruise ship tenders, tug boats and contracted security vessels may patrol these zones to strictly advise mariners of the restrictions. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) when the security zones are being enforced.

(3) Persons desiring to enter or transit the area of the security zone may contact the Captain of the Port on VHF Marine Band Radio, Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety or environmental safety.

(c) *Dates.* This section is effective from 12 midnight on June 16, 2002 until 11:59 p.m. on December 15, 2002.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: June 13, 2002.

J.A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 02–17741 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes the procedures for the release of information about holders of postage meter licenses. The procedures are necessary to ensure individual privacy while providing for the release of information needed for customer protection.

DATES: This rule is effective July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, 703–292–3782, or by fax, 703–292–4050.

SUPPLEMENTARY INFORMATION: The Postal Service published a proposed rule on May 9, 2002, to amend 39 CFR part 265, Release of Information, giving new procedures for releasing the name and address of a particular holder of a postage meter license. The new procedures will ensure that legitimate expectations of individual privacy are met, while providing for the release of information needed for consumer protection. The new procedures remove the processing of requests for information about meter license holders from field locations, and enables Postage Technology Management at Postal Service Headquarters to ensure that information is released appropriately. Comments on the proposed rule were due on or before June 10, 2002. We received no comments objecting to the proposed rule or requesting any changes. Therefore, the rule is adopted as final without any changes.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3, 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Amend § 265.6 by revising paragraphs (d) introductory text and (d)(2); by redesignating paragraphs (d)(3) through (d)(8) as paragraphs (d)(4) through (d)(9), respectively; and by adding a new paragraph (d)(3) to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified Postal Service customers will be made available only as follows:

* * * * *

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit in behalf of a holder will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(3) *Name and address of postage meter license holder.* The name and address of the holder of a postage meter license authorizing use of a postage meter printing a specified indicium will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9, provided the holder is using the license for a business or firm. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper on which the meter indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and not an individual. (Lists of postage meter license holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–17712 Filed 7–12–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[A–1–FRL–7240–7]

Approval and Promulgation of Section 112(l) Authority for Regulating Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emissions Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a delegation request submitted by the State of Maine. Pursuant to section 112(l) of the Clean Air Act (CAA), Maine Department of Environmental Protection (ME DEP) requested approval to implement and enforce state permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. EPA is granting ME DEP the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements. This action is being taken in accordance with the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on August 14, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, Office of Ecosystems Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023, Telephone (617) 918–1655.

SUPPLEMENTARY INFORMATION:

Outline

I. What action is EPA taking?
II. Why is EPA taking this action?
III. What events led up to this action?
IV. In what ways can EPA delegate HAP standards to state governments?
V. What is the process for approval of an Equivalency by Permit (EBP) program?
VI. Where is Maine's EBP program in the delegation process?
VII. What are the legal standards governing the EBP program?
VIII. How much oversight authority does EPA have over an EBP program?
IX. What comments did EPA receive and how did we respond?
X. Administrative Requirements

I. What Action Is EPA Taking?

EPA is approving a delegation request submitted by ME DEP under section 112 of the Clean Air Act (CAA), 42 U.S.C. 7412. On January 17, 2002, EPA proposed to approve ME DEP's delegation request for authority to substitute approved state permit terms

ME DEP will continue to implement and enforce the Pulp and Paper MACT without changes for all other pulp and paper mills in Maine.

ME DEP also asked us to approve its demonstration that it has adequate authorities and resources to implement and enforce all CAA section 112 programs and rules. This demonstration, when approved, will streamline the approval process for future CAA section 112(l) applications.

Second, the state submits pre-draft title V permit terms and conditions to EPA for approval. EPA evaluates these terms and conditions, which will apply to the sources identified in step 1, and determines whether as a whole they are as stringent as the federal standard. EPA can identify potential issues with the equivalency demonstration and address them prior to the normal operating permit review process (65 FR 55817).

Third, the state writes the pre-draft

There will be an opportunity for public comment during this process.

VII. What Are the Legal Standards Governing the EBP Program?

Section 112(l) of the CAA and 40 CFR part 63 subpart E allow S/L/T governments to develop and submit EBP programs to EPA for approval. If EPA approves a S/L/T's EBP program, the S/L/T can implement and enforce it "in lieu of" the Pulp and Paper MACT

Pursuant to 40 CFR 63.94(d), all issued or revised title V permits under an approved program must: (1) Identify the specific terms and conditions with which the source would be required to comply pursuant to its title V permit, and contain permit terms and conditions that reflect all of the requirements of the otherwise applicable federal section 112 requirement; (2) identify specifically how the alternative requirements in the

issued (40 CFR 70.8(c)). If the state fails, within 90 days after the date of EPA's objection, to revise and submit a proposed permit in response to the objection, EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under title V of the CAA (40 CFR 70.8(c)(4)).

In each pre-draft, proposed and final permit, ME DEP is required to indicate prominently that the permit contains alternative section 112 requirements. In

IX. What comments did EPA receive and how did we respond?
X. Administrative Requirements

I. What Action Is EPA Taking?

EPA is approving a delegation request submitted by ME DEP under section 112 of the Clean Air Act (CAA), 42 U.S.C. 7412. On January 17, 2002, EPA proposed to approve ME DEP's delegation request for authority to substitute approved state permit terms and conditions for otherwise applicable federal section 112 standards (67 FR 2390). This action finalizes our approval of ME DEP's delegation request.

II. Why Is EPA Taking This Action?

On April 15, 1998, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for the Pulp and Paper Industry (63 FR 18617), which has been codified in 40 CFR part 63, subpart S. These standards regulate emissions of air toxics, or hazardous air pollutants (HAPs), within the pulp and paper production source category. The standards require both new and existing major sources within this category to control HAP emissions using the maximum achievable control technology (MACT). We will refer to these section 112 standards as "the Pulp and Paper MACT."

When Congress enacted the CAA amendments in 1990, it recognized that some state, local, and tribal (S/L/T) air pollution control agencies had developed their own air toxics rules. Congress therefore revised section 112(l) of the CAA to allow the EPA to approve S/L/T rules and regulations to be implemented and enforced in place of section 112 rules and requirements when the S/L/T agency demonstrates that such alternative standards or programs are no less stringent than EPA's rules (65 FR 55810 (September 14, 2000)).

EPA is approving ME DEP's alternative program because ME DEP has demonstrated that its requirements will be no less stringent than the Pulp and Paper MACT.

III. What Events Led Up to This Action?

On July 16, 1999, EPA delegated its authority to implement and enforce the Pulp and Paper MACT to ME DEP. Lincoln Pulp and Paper, in Lincoln, ME (LPP) is one of several sources in Maine currently subject to the Pulp and Paper MACT. On September 25, 2001, ME DEP requested authority to implement and enforce alternative requirements to the Pulp and Paper MACT at LPP. The EPA Regional Office in Boston has been working closely with ME DEP and LPP to define the alternative requirements. ME DEP will continue to implement and enforce the Pulp and Paper MACT without changes for all other pulp and paper mills in Maine.

ME DEP also asked us to approve its demonstration that it has adequate authorities and resources to implement and enforce all CAA section 112 programs and rules. This demonstration, when approved, will streamline the approval process for future CAA section 112(l) applications.

IV. In What Ways Can EPA Delegate HAP Standards to State Governments?

The provisions in 40 CFR part 63, subpart E ("delegation rule") outline the procedures for delegating the authority to implement and enforce HAP standards and other requirements to S/L/T governments. Subpart E contains several options to allow S/L/Ts to demonstrate equivalency with corresponding federal requirements. These include: slight amendments to the federal section 112 rule (40 CFR 63.92); rule for rule substitution (40 CFR 63.93); program substitution (substituting for part or all of the air toxics program) (40 CFR § 63.97); or equivalency by permit (substituting rules through the operating permit program) (40 CFR 63.94). Under the Equivalency by Permit ("EBP") provisions, approved S/L/T governments can substitute approved alternative requirements through title V operating permit terms and conditions (40 CFR 63.94).

V. What Is the Process for Approval of an Equivalency by Permit (EBP) Program?

The EBP process comprises three steps.

First, EPA gives "up-front approval" to a S/L/T EBP program; in this case, the state has submitted its EBP program. This step ensures that ME DEP meets the 40 CFR 63.91(d) criteria for up-front approval, provides a legal foundation for ME DEP to replace some federal section 112 requirements with alternative, federally enforceable requirements, and delineates the specific sources and federal emission standards for which the state is accepting delegation (65 FR 55816). If EPA approves the program, EPA will amend 40 CFR part 63 to incorporate the approval. The approval is contingent upon the state's including, in title V permits, terms and conditions no less stringent than the federal standard. Until the state writes its approved alternative requirements into the specific title V permit and issues it, the federal section 112 requirements remain applicable to the source (65 FR 55817).

Second, the state submits pre-draft title V permit terms and conditions to EPA for approval. EPA evaluates these terms and conditions, which will apply to the sources identified in step 1, and determines whether as a whole they are as stringent as the federal standard. EPA can identify potential issues with the equivalency demonstration and address them prior to the normal operating permit review process (65 FR 55817).

Third, the state writes the pre-draft permit terms and conditions that EPA approved into its draft title V permits. These then go through the regular title V permit issuance process, during which the public has an opportunity to comment on the submittal (40 CFR 70.7(a)(1)(ii) and (h)). EPA and the public can review the alternative requirements before final delegation occurs (65 FR 55817). EPA does not delegate authority unless the state issues the title V permit with the permit terms exactly as EPA approved them.

VI. Where Is Maine's EBP Program in the Delegation Process?

This rulemaking completes step 1 in the delegation process. ME DEP's EBP program has also completed step 2 in the delegation process. The delegation rule allows a state to submit its pre-draft permit terms and conditions at the same time as its request for up-front approval (40 CFR 63.94(c)(7)). In accordance with 40 CFR 63.94(d)(1)–(3), on January 17, 2002, ME DEP submitted LPP's pre-draft permit terms and conditions in a side-by-side comparison of the alternative requirements with the Pulp and Paper MACT requirements. EPA reviewed the pre-draft title V permit terms and conditions for LPP, identified several issues, and worked closely with ME DEP to ensure that our concerns were addressed. In a letter dated April 15, 2002, the EPA Regional Administrator conditionally approved the pre-draft permit terms and conditions. The approval is conditioned upon LPP meeting a number of requirements, including an initial performance demonstration to document that the alternative approach achieves emission reductions equivalent to or greater than those required by the Pulp and Paper MACT.

To complete the final step, the state will incorporate the approved permit terms and conditions into its draft title V permits for the affected sources (40 CFR 63.94(e)(1)). The permit must be issued or revised according to the provisions of 40 CFR 70.7 before EPA may finally delegate authority to the state to implement alternatives to the Pulp and Paper MACT through issuance of the permit (40 CFR 70.7(a)(1)(ii)).

There will be an opportunity for public comment during this process.

VII. What Are the Legal Standards Governing the EBP Program?

Section 112(l) of the CAA and 40 CFR part 63 subpart E allow S/L/T governments to develop and submit EBP programs to EPA for approval. If EPA approves a S/L/T's EBP program, the S/L/T can implement and enforce it "in lieu of" the Pulp and Paper MACT requirements through CAA title V permits. Section 112(l) allows us to approve S/L/T programs if the S/L/T can demonstrate that the program "achieves equivalent or better environmental results" as compared to the federal standards (65 FR at 55810). An EBP program "shall not include authority to set standards less stringent than" the federal standards (CAA Section 112(l)(1)).

Sections 63.91(d) and 63.94(b) specify the criteria that a S/L/T must meet for EPA to approve its EBP program. A request for program approval must: (1) To the extent possible, identify all specific sources or source categories for which the S/L/T is seeking authority to implement and enforce section 112 standards, and if any such sources comprise a subset of sources within the S/L/T's jurisdiction, request delegation for the remainder of the sources in those source categories; (2) to the extent possible, identify all existing and future section 112 emission standards for which the S/L/T is seeking authority to implement and enforce alternative requirements; (3) include a one-time demonstration that the S/L/T has an approved title V operating permit program and that the program permits the affected sources; and (4) meet the requirements in 40 CFR 63.91(d) for demonstrating that adequate authority and resources exist to implement and enforce the S/L/T EBP program. ME DEP's EBP program has met these criteria. *See* 62 FR 7939 (March 24, 1997) and 66 FR 52874 (December 17, 2001); Request for Approval of State Requirements that Substitute for a Section 112 Rule (September 25, 2001) (letter from James Brooks, Director, Maine DEP Bureau of Air Quality, submitting state's EBP program to EPA).

Furthermore, 40 CFR 63.94(d) specifies the criteria that the alternative requirements must meet for EPA to approve them. EPA's delegation of authority to implement the Pulp and Paper MACT is contingent upon the state including in title V permits terms and conditions that are no less stringent than the federal standard and have been approved by EPA (65 FR at 55817).

Pursuant to 40 CFR 63.94(d), all issued or revised title V permits under an approved program must: (1) Identify the specific terms and conditions with which the source would be required to comply pursuant to its title V permit, and contain permit terms and conditions that reflect all of the requirements of the otherwise applicable federal section 112 requirement; (2) identify specifically how the alternative requirements in the form of permit terms and conditions are "the same as or differ from the requirements in the otherwise applicable Federal section 112 rule"; and (3) provide EPA with detailed documentation that demonstrates that the alternative requirements are at least as stringent as the otherwise applicable federal requirements, as specified in 40 CFR 63.93(b).

In this way, the regulations governing the EBP program ensure that the state's program sets environmental standards at least as stringent as those required under the applicable federal regulations, and that each affected source under the program will achieve compliance no later than would be required by the federal regulations. The EBP program simply allows S/L/Ts to meet these requirements by writing its standards into title V permits after EPA has approved the alternative requirements.

VIII. How Much Oversight Authority Does EPA Have Over an EBP Program?

EPA oversees enforcement and compliance with the federal HAP standards in a number of ways through the EBP process.

First, EPA reviews the S/L/T's EBP program and goes through notice and comment rulemaking during the "up-front approval" step. EPA approves the EBP program only after ensuring that the S/L/T has adequate authority and resources to implement and enforce it consistent with CAA requirements.

Second, even after a S/L/T's EBP program has been approved, EPA may object to a title V permit for noncompliance with applicable CAA requirements. CAA Section 505(b)(1); 40 CFR 70.8(c). Under 40 CFR 70.8(a), a state that is authorized to implement the title V permit program must submit to EPA a copy of each permit application (including any application for permit modification), each proposed permit, and each final title V permit. If EPA determines that any proposed permit is not in compliance with applicable requirements under the CAA and objects to issuance of the permit within 45 days of receipt of the proposed permit and all necessary supporting information, the permit cannot be issued (40 CFR 70.8(c)). If the state fails, within 90 days after the date of EPA's objection, to revise and submit a proposed permit in response to the objection, EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under title V of the CAA (40 CFR 70.8(c)(4)).

In each pre-draft, proposed and final permit, ME DEP is required to indicate prominently that the permit contains alternative section 112 requirements. In addition, "[i]n the notice of pre-draft permit availability, the state shall specifically solicit public comments on the alternative requirements" (40 CFR 63.94(e)(2)).

Third, even after the state issues a title V permit, EPA can terminate, modify, or revoke and reissue a permit upon a finding of good cause (40 CFR 70.7(g)). EPA can reopen and revise a permit under a number of circumstances—(e.g. where new CAA requirements apply), where EPA finds that the permit contains a material mistake, or where EPA determines that the permit must be revised or revoked to assure compliance with applicable requirements (40 CFR 70.7(f)). If EPA finds such cause, it will notify the state and the permittee of this finding in writing (40 CFR 70.7(g)). The state must then forward to EPA a "proposed determination of termination, modification, or revocation and reissuance," as appropriate (40 CFR 70.7(g)(2)). If the state fails to submit a proposed determination or fails to resolve any objection that EPA makes to the permit, EPA will ultimately terminate, modify, or revoke and reissue the permit (40 CFR 70.7(g)(5)).

Fourth, EPA retains authority to enforce any applicable rule, emission standard or requirement established under CAA section 112 (40 CFR 63.90(d)(2)). In addition, the CAA authorizes EPA to enforce all rules, programs, state or local permits, or other requirements approved under part 63, including the EBP program, and all resulting title V operating permit conditions (40 CFR 63.90(e)).

Finally, whenever EPA determines that a permitting authority is not adequately administering or enforcing a program in accordance with the requirements of the CAA, EPA must notify the state (40 CFR 70.10(b)(1)). If the state's failure to administer or enforce the program persists after such notice the state may be subject to sanctions under section 179(b) of the Act, and EPA may ultimately promulgate, administer, and enforce a federal permit program (40 CFR 70.10(b)(2)).

Thus, at every step in the EBP process, EPA reviews the S/L/T's program and its implementation to ensure that all applicable federal requirements are met. First, EPA ensures that the S/L/T has adequate authority and resources to implement and enforce the EBP program consistent with CAA requirements. Second, EPA reviews the pre-draft title V permit terms and conditions and can object to any proposed permit that fails to set

Emissions that would have been emitted from an open sewer system can be captured and then destroyed in a biological treatment unit (40 CFR 63.446). The federal regulation requires kraft pulp mills to either: (1) Reduce or destroy the total HAPs by at least 92% or more by weight; or (2) for mills that perform bleaching, to remove 10.2 pounds per ton or more of total HAP per oven dried ton of pulp (ODP) (40 CFR 63.446(e)).

standards at least as stringent as those required under the applicable federal regulations. EPA has worked closely with ME DEP and LPP to ensure that the alternative requirements for LPP will achieve equivalent or better environmental results. In addition, as discussed in section VIII, EPA's delegation in no way impairs the Agency's authority to oversee and enforce those equivalent requirements. EPA's delegation therefore will not

will seek and carefully consider the Nation's input during this process.

Final Action

EPA is approving ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for LPP for subpart S.

X. Administrative Requirements

A. Executive Order 12866

Agency's authority to oversee and enforce the state's equivalent standards.

C. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have

approvals under 40 CFR 63.94 do not create any new requirements but simply allows the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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Thus, at every step in the EBP process, EPA reviews the S/L/T's program and its implementation to ensure that all applicable federal requirements are met. First, EPA ensures that the S/L/T has adequate authority and resources to implement and enforce the EBP program consistent with CAA requirements. Second, EPA reviews the pre-draft title V permit terms and conditions and can object to any proposed permit that fails to set standards at least as stringent as those required under the applicable federal regulations. Third, throughout the life of a title V permit that has been issued, EPA retains authority to terminate, modify, or revoke and reissue it upon a finding of good cause. Fourth, EPA retains authority to enforce the terms and conditions of any title V permit. Finally, whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA is authorized to implement a federal permit program.

IX. What Comments Did EPA Receive and How Did We Respond?

On February 7, 2002, in response to the proposed rule, the Penobscot Indian Nation ("the Nation") submitted comments to EPA. EPA did not receive any other comments.

The Nation's reservation includes over 110 islands in the Penobscot River. Many of these islands are downstream of LPP, including Indian Island, seat of the Nation's government. The discharge from LPP's waste treatment system empties into the Penobscot River.

a. *Comment 1:* The Nation is concerned about methanol emissions at LPP. Since its tribal reservation lands are located directly in LPP's discharge flow, the Nation believes that LPP's proposal to move its methanol emissions through its wastewater biological treatment system will significantly impact the Nation's natural resources all along the aquatic ecosystems of the river and islands.

Response: EPA recognizes the Nation's concern about methanol releases into the Penobscot River. ME DEP has demonstrated, however, that its EBP program will ensure LPP achieves a level of control at least as stringent as the federal requirements in the Pulp and Paper MACT.

The Pulp and Paper MACT requires kraft pulp mills to control emissions of condensate streams from certain processes (40 CFR 63.440 through 63.459). One control option for kraft pulp mills is to enclose the condensate streams in a closed collection system and route the enclosed streams to a wastewater biological treatment system. Emissions that would have been emitted from an open sewer system can be captured and then destroyed in a biological treatment unit (40 CFR 63.446). The federal regulation requires kraft pulp mills to either: (1) Reduce or destroy the total HAPs by at least 92% or more by weight; or (2) for mills that perform bleaching, to remove 10.2 pounds per ton or more of total HAP per oven dried ton of pulp (ODP) (40 CFR 63.446(e)).

LPP has proposed an alternative to the Pulp and Paper MACT where the condensate streams are enclosed as required in the federal rule, except that the streams will be routed through the facility's wetwell and primary clarifier prior to reaching the biological treatment unit. The wetwell and the primary clarifier are open to the atmosphere and therefore some HAP emissions will be lost from these units. To compensate for the emissions lost from these locations, LPP has completed a sewer upgrade project which includes sending two waste streams not regulated by the Pulp and Paper MACT through the closed collection system. EPA has calculated, based on preliminary data provided by LPP, that the losses from the wetwell and clarifier are less than the extra reductions from LPP's upgraded sewer project and the control of additional waste streams. EPA has issued a conditional approval of the pre-draft permit terms and conditions that requires LPP to conduct an initial performance demonstration to document equivalency. The alternative, therefore, must result in emission reductions that are at least equivalent to those required by the Pulp and Paper MACT.

Whether LPP complies with the Pulp and Paper MACT or with alternative requirements through an approved EBP program, it must destroy HAPs by at least 92% or remove at least 10.2 lb/ODT of HAPs. Therefore, the alternative proposed by LPP will not significantly impact the Nation's natural resources in comparison with continued enforcement of the Pulp and Paper MACT. In addition, adequate monitoring provisions are in place to ensure that when LPP does emit too much methanol into the river or the air, the state and EPA can take appropriate actions to restore the performance required by the MACT.

b. *Comment 2:* The Nation believes that EPA's approval of ME DEP's program will affect enforcement of and compliance with the federal standards.

Response: As discussed above in section VII, the legal framework governing the EBP program ensures that the state's program sets environmental standards at least as stringent as those required under the applicable federal regulations. EPA has worked closely with ME DEP and LPP to ensure that the alternative requirements for LPP will achieve equivalent or better environmental results. In addition, as discussed in section VIII, EPA's delegation in no way impairs the Agency's authority to oversee and enforce those equivalent requirements. EPA's delegation therefore will not affect enforcement of and compliance with the federal standards.

c. *Comment 3:* The Nation considers approval of ME DEP's EBP program to be inappropriate in light of EPA's trust responsibility to the Nation.

Response: The federal government has a trust responsibility to federally-recognized Indian tribes that arises from Indian treaties, statutes, executive orders, and the historical relations between the United States and Indian tribes. EPA acknowledges that it must act in accordance with this trust responsibility when taking actions that affect tribal interests, including consulting with affected tribes and assessing tribal interests and concerns in decision making.

EPA believes its action in approving ME DEP's EBP program is consistent with its trust responsibility to the Nation. As discussed above, EPA has determined that approval of ME DEP's EBP program will not have any adverse effect on the Nation's resources because the program will achieve a level of emissions control at least as stringent as the applicable federal standard and is subject to a level of EPA oversight equivalent to the existing part 63 and part 70 programs.

In addition, upon EPA's receipt of this application from ME DEP in September 2001, EPA immediately recognized the need to consult with the Nation in Maine and initiated such discussions in October. EPA corresponded several times with representatives at the Nation's Department of Natural Resources from December through February, and also met with the Nation's representatives in Maine on February 20, 2002.

During the public comment period, the Nation also raised questions as to how EPA would consult with tribes in our oversight of the CAA permit program. The Regional air permitting program and the Nation have agreed to discuss the issue of identifying facilities that EPA expects to have an impact in Indian country and to work toward developing an approach for consultation with Indian tribes in appropriate cases as permits are being developed. EPA will seek and carefully consider the Nation's input during this process.

Final Action

EPA is approving ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for LPP for subpart S.

X. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review." This rule is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

EPA has concluded that this final rule may have tribal implications because LPP is located near the Penobscot Nation's territories. This action will not, however, impose substantial direct compliance costs on tribal governments or preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. After carefully considering the Nation's concerns, as discussed above in EPA's response to comments, EPA has concluded that this action will have no adverse effect on tribal resources because the regulations governing the EBP program ensure that the state's program sets environmental standards at least as stringent as those required under the applicable federal regulations. In addition, EPA's delegation in no way impairs the Agency's authority to oversee and enforce the state's equivalent standards.

C. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows Maine to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

D. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This final rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but simply allows the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector.

This Federal action allows Maine to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a

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"major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(19) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(19) Maine.

(i) [Reserved]

person has ninety (90) days in which to request through the community that the Acting Administrator reconsiders the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to

regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform This rule meets the applicable standards of Section 2(b)(2) of Executive

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

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"major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 23, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(19) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(19) Maine.

(i) [Reserved]

(ii) Maine Department of Environmental Protection (ME DEP) may implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper, located in Lincoln, Maine, for subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. This action is contingent upon ME DEP including, in title V permits, terms and conditions that are no less stringent than the federal standard and have been approved by EPA. In addition, the requirement applicable to the source remains the federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 02–17698 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7525]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual change) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator reconsiders the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood-plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Lee	City of Auburn	May 28, 2002, June 4, 2002, *Opelika-Auburn News.*	The Honorable Bill Ham, Jr, Mayor of the City of Auburn, 144 Tichenor Avenue, Auburn, Alabama 36830.	May 20, 2002	010144 E
Jefferson	Unincorporated Areas.	May 17, 2002, May 22, 2002, *The Birmingham News.*	Mr. Gary White, President of the Jefferson County Commission, Courthouse, Room 680A, 716 Richard Arrington Jr. Boulevard North, Birmingham, Alabama 35203.	Aug. 21, 2002	010217 E
Mobile	Unincorporated Areas.	Apr. 17, 2002, Apr. 24, 2002, *Mobile Register.*	Mr. Joe W. Ruffer, Director of Public Works, Mobile Government Plaza, 205 Government Street, Mobile, Alabama 36604–1600.	Apr. 10, 2002	015008 J
Arizona: Maricope	City of Tempe	May 1, 2002, May 8, 2002, *Arizona Republic.*	The Honorable Neil G. Giuliano, Mayor of the City of Tempe, P.O. Box 5002, Tempe, Arizona 85280.	Aug. 6, 2002	040054 G&F
Connecticut: Hartford	Town of Berlin	Apr. 26, 2002, May 3, 2002, *The Herald.*	Ms. Bonnie Therrien, Manager of the Town of Berlin, Town Hall, 240 Kensington Road, Berlin, Connecticut 06037.	Apr. 15, 2002	090022 D
Fairfield	City of Stamford	May 10, 2002, May 17, 2002, *The Stamford Advocate.*	The Honorable Dannel P. Malloy, Mayor of the City of Stamford, 888 Washington Boulevard, 10th Floor Government Center, Stamford, Connecticut 06904.	Apr. 23, 2002	090015 C&D
Florida Volusia	City of Ormond Beach.	Mar. 27, 2002, Apr. 3, 2002, *News-Journal.*	The Honorable Carl Persis, Mayor of the City of Ormond Beach, P.O. Box 277, Ormond Beach, Florida 32175–0277.	Apr. 16, 2002	125136 G
Osceola	Unincorporated Areas.	Feb. 8, 2002, Feb. 15, 2002, *Osceola Sentinel.*	Mr. Robert Fernandez, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, Florida 34741–5488.	Dec. 7, 2001	120189 F
Polk	Unincorporated Areas.	May 21, 2002, May 28, 2002, *The Ledger.*	Mr. Kim W. Keene, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831–9005.	May 14, 2002	120261 F
Georgia: Fulton	City of Alpharetta	Mar. 28, 2002, Apr. 4, 2002, *The Revue & News.*	The Honorable Charles E. Martin, Mayor of the City of Alpharetta, City Hall, Two South Main Street, Alpharetta, Georgia 30004.	Mar. 21, 2002	130084 D
North Carolina: Wake	Town of Cary	Apr. 23, 2002, Apr. 30, 2002, *The News and Obvserver.*	The Honorable Glenn Lang, Mayor of the Town of Cary, P.O. Box 8005, Cary, North Carolina 27512.	July 30, 2002	370238 D
Durham	City of Durham	June 4, 2002, June 11, 2002, *The Herald-Sun.*	The Honorable William V. Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	Sept. 10, 2002	370086 G

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Durham	Unincorporated Areas.	June 4, 2002, June 11, 2002, *The Herald-Sun.*	Mr. Michael M. Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Durham, North Carolina 27701.	Sept. 10, 2002	370085 G
Lee	City of Sanford	Apr. 18, 2002, Apr. 25, 2002, *Sanford Herald.*	The Honorable Winston C. Hestor, Mayor of the City of Sanford, P.O. Box 3729, Sanford, North Carolina 27331–3729.	July 25, 2002	370143 B
Pennsylvania:	Borough of	May 29, 2002, June 5,	The Honorable Keith Johnston, Mayor	Sept. 4, 2002	420034 D

petition must be received by August 29, 2002.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, Stan Backaitis, Office of Crashworthiness Standards at 202–366–4912. For legal

2. Sternum Deflection
3. Lower Leg
4. Neck

G. Sensor Specifications

H. Figures, Drawings, and PADI Document

1. Figures O1, O2, O3, O4, and O5
2. Drawing SA572–S14
3. Drawing 880105–000
4. Drawing 880105–434
5. Drawing 880105–440
6. Minor Drawing Revisions
7. PADI Document

V. Rulemaking Analyses and Notices

designs for this portion of the population.[1] One way to evaluate the protection provided by, and the risks associated with, air bag systems is through the use of human mechanical surrogates with a high degree of biofidelity, such as the family of Hybrid III-type crash test dummies.

On March 1, 2000, NHTSA published a final rule adopting design and performance specifications for a new dummy whose height and weight are representative of a fifth percentile

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Durham	Unincorporated Areas.	June 4, 2002, June 11, 2002, *The Herald-Sun.*	Mr. Michael M. Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Durham, North Carolina 27701.	Sept. 10, 2002	370085 G
Lee	City of Sanford	Apr. 18, 2002, Apr. 25, 2002, *Sanford Herald.*	The Honorable Winston C. Hestor, Mayor of the City of Sanford, P.O. Box 3729, Sanford, North Carolina 27331–3729.	July 25, 2002	370143 B
Pennsylvania: Montgomery.	Borough of Emsworth.	May 29, 2002, June 5, 2002, *The Citizen.*	The Honorable Keith Johnston, Mayor of the Borough of Emsworth, 171 Center Avenue, Pittsburgh, Pennsylvania 15202.	Sept. 4, 2002	420034 D
Puerto Rico	Commonwealth	May 31, 2002, June 7, 2002, *The San Juan Star.*	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00901.	Sept. 6, 2002	720000 E
South Carolina: Lexington.	Unincorporated Areas.	Apr. 19, 2002, Apr. 26, 2002, *The State.*	Mr. Bill Banning, Council Chairman, 212 South Lake Drive, Lexington, South Carolina 29072.	July 26, 2002	450129 G
Tennessee: Davidson	Metropolitan Government of Nashville.	Feb. 8, 2002, Feb. 15, 2002, *The Tennessean.*	The Honorable Bill Purcell, Mayor of the Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, Nashville, Tennessee 37201.	May 17, 2002	470040 F
Davidson	City of Oak Hill	Feb. 8, 2002, Feb. 15, 2002, *The Tennessean.*	The Honorable Warren Wilkerson, Mayor of the City of Oak Hill, 5548 Franklin Road, Suite 102, Nashville, Tennessee 37220.	May 17, 2002	470351 F
Virginia: Augusta	Unincorporated Areas.	May 28, 2002, June 4, 2002 *The Daily News Record.*	Mr. Patrick J. Coffield, Augusta County Administrator, P.O. Box 590, Verona, Virginia 24482–0590.	Sept. 3, 2002	510013 B
Loudoun	Town of Leesburg	May 15, 2002, May 22, 2002, *Loudoun Times Mirror.*	The Honorable B.J. Webb, Mayor of the Town of Leesburg, 25 West Market Street, P.O. Box 88, Leesburg, Virginia 20178.	Aug. 21, 2002	510091 D
Loudoun	Unincorporated Areas.	May 15, 2002, May 22, 2002, *Loudoun Times Mirror.*	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, SE., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	Aug. 21, 2002	510090 D
Loudoun	Unincorporated Areas.	May 22, 2002, May 29, 2002, *Loudoun Times Mirror.*	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, SE., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	May 6, 2002	510090 D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 2, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–17278 Filed 7–12–02; 8:45 am]

BILLING CODE 6718–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2000–6940]

RIN 2127–AI01

Anthropomorphic Test Devices; Hybrid III 5th Percentile Female Test Dummy, Alpha Version; Final Rule; Response to Petitions for Reconsideration

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the final rule that adopted design and performance specifications for a new dummy whose height and weight are representative of a fifth percentile female adult. That final rule was published on March 1, 2000. Adopting the dummy was the first step toward using the dummy to evaluate the safety of air bags for small-statured adults and teenagers. The petitions are granted in part and denied in part. The agency also discovered several minor discrepancies in the drawings package and is correcting those errors in this document.

DATES: The amendments made in this final rule are effective September 13, 2002. If you wish to submit a petition for reconsideration for this rule, your petition must be received by August 29, 2002.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, Stan Backaitis, Office of Crashworthiness Standards at 202–366–4912. For legal issues, Dion Casey, Office of the Chief Counsel, at 202–366–2992. Both officials can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Availability of Drawings and PADI Document: The drawings and specifications package and the PADI (Procedures for Assembly, Disassembly, and Inspection) Document referred to in this final rule are available for viewing and copying at the DOT Docket's public area, located at Plaza 401, 400 Seventh Street, SW, Washington, D.C. 20590. Copies of these documents are also available from Reprographic Technologies, 9107 Gaither Road, Gaithersburg, MD 20877, (301) 419–5070. These documents may be downloaded from the DOT's document management system website at http://dms.dot.gov. Click on "Search," then on "Search Form." Under "Agency," click on "NHTSA." Under "Category," click on "Rulemaking." Under "Subcategory," click on "Crashworthiness Drawings and Test Equipment Specifications." Then click on "Search" and select the desired file.

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I. Summary of Decision

Most of the issues raised in the petitions were minor and involved technical changes to either the dummy specifications or to the drawing package. In response to the petitions, the agency is making the following minor changes to the dummy specifications: (1) Adding a channel frequency class specification if a rotary potentiometer is used for measuring head rotation; (2) specifying a maximum sternum displacement limit; (3) prohibiting contact between the dummy and any attachments to the test probe during a knee or thorax impact test; and (4) revising the thorax and knee test probe specifications to include provisions for mounting suspension hardware if a cable system is used for impacts, adopt a lower minimum mass moment of inertia, clarify the specification for free air resonant frequency, and add a minimum edge radius for the impact face.

NHTSA's review of the petitions and production dummies also uncovered several minor errors and discrepancies in the figures, tables, and drawings package, which are resolved in this document.

The petitioners also raised more significant issues. They requested that the agency specify a post-test calibration, narrow the temperature range for the torso flexion test, and discontinue using the Hybrid III neck for assessing neck injury criteria. The agency is denying those requests.

Further changes to the dummy will be designated as beta, gamma, etc., to assure that modifications can be easily tracked and identified. The new dummy is defined by a drawing and specification package, a new procedures document for disassembly, assembly and inspection, and performance parameters including associated calibration procedures.

II. Background

Air bag-related fatalities and injuries to small female drivers seated close to the deploying air bag in low speed crashes have raised serious concerns about the safety of certain air bag designs for this portion of the population.[1] One way to evaluate the protection provided by, and the risks associated with, air bag systems is through the use of human mechanical surrogates with a high degree of biofidelity, such as the family of Hybrid III-type crash test dummies.

On March 1, 2000, NHTSA published a final rule adopting design and performance specifications for a new dummy whose height and weight are representative of a fifth percentile female adult. (65 FR 10961). The specifications were added to 49 CFR Part 572 as Subpart O.

This new dummy (hereinafter referred to as the "HIII–5F dummy") is capable of accurately assessing the potential for injuries to small-statured adults and teenagers. It is especially needed to ensure that air bags protect small-statured adult females and teenage vehicle occupants in frontal crashes and to minimize the risk of injury during those crashes. The dummy will also provide a means of gathering useful information in a variety of crash environments to better evaluate vehicle safety.

The HIII–5F dummy's specifications adopted in the final rule consist of a drawing package that shows the component parts, the subassemblies, and the assembly of the complete dummy. They also specify materials and material treatment processes, where practical, for all the dummy's component parts, and specify the dummy's instrumentation and instrument installation methods. In addition, the specifications contain a manual specifying disassembly, inspection, and assembly procedures, and a parts list of dummy drawings. These drawings and specifications ensure that the dummies will vary little from each other in their construction and are capable of consistent and repeatable responses in the impact environment.

The final rule also established impact performance criteria for the HIII–5F dummy. These criteria address head, neck, and thorax impact responses. The criteria serve as calibration checks and further assure the kinematic uniformity of the dummy and the absence of

[1] Close proximity to the air bag is one of the primary factors leading to serious injury or fatality. Several factors can lead to an individual being too close to the air bag at the time of deployment, including failure to wear a safety belt. Nevertheless, very small-statured women appear to constitute the largest segment of the driver population that may not be able to sit a safe distance from the air bag, even when properly restrained. Additionally, differences in body size may lead to more severe injury for a small-statured woman than for an unrestrained, average-size male.

structural damage and functional deficiency from previous use.

Adopting the dummy is a step toward assuring the users that it is a stable and useful test device for the assessment of vehicle safety and its readiness to be used in the tests the agency conducts to determine compliance with Federal Motor Vehicle Safety Standards. The use of the HIII–5F dummy in NHTSA compliance tests is being addressed in

six-year-old children (HIII–6C), and three-year-old children (HIII–3C), in addition to the Notice of Proposed Rulemaking (NPRM) proposing the HIII–5F dummy. Historically, NHTSA has required that the structural properties of a dummy satisfy the specifications set out in the applicable regulation in every respect both before and after its use in any test in a Federal motor vehicle safety standard. However, in the NPRM

without an air bag, the HIII–5F dummy's neck extension exceeded the IARV value. However, the 50th percentile male dummy in the same test at the same speed met the injury criteria. Toyota noted that the incidence rates of cervical spine injury in the real world for a 5th percentile female-statured occupant is not significantly different from those for a 50th percentile male-statured occupant. Therefore, Toyota believed that the HIII–5F dummy's neck

recommended that the agency cease using the HIII–5F dummy to assess neck injuries.

NHTSA agrees that the biomechanical corridors for the Hybrid III neck were based on the inertial loading response of human heads with respect to their torso. However, this does not invalidate the design and use of the neck in other impact applications. Paragraph 4.5.3 of SAE document J885, July 1986, titled "Human Tolerance to Impact

lower end of the resistance spectra since the volunteers were tested for normal resistance to head motion rather than at a pain-producing level. In addition, the tests were conducted under nearly static loading conditions. Dynamically, visco-elastic properties of the neck structure would be expected to generate a higher resistance to impact-induced motion, and thus a larger moment, with little observable head rotation. These informal tests revealed that the human

condyle joint, the forces and moments may be somewhat different for the dummy and human neck due to stiffness differences. These forces and moments may be lower than those measured by the dummy due to the lower stiffness of the human spine. However, the critical values for Nij (neck injury criteria formula, found in Standard No. 208, to evaluate neck injury) have already been adjusted to account for this.

structural damage and functional deficiency from previous use.

Adopting the dummy is a step toward assuring the users that it is a stable and useful test device for the assessment of vehicle safety and its readiness to be used in the tests the agency conducts to determine compliance with Federal Motor Vehicle Safety Standards. The use of the HIII–5F dummy in NHTSA compliance tests is being addressed in separate rulemaking proceedings.

III. Petitions

NHTSA received petitions for reconsideration of the final rule from DaimlerChrysler; Toyota Motor Corporation; the Alliance of Automobile Manufacturers (whose members are BMW Group, DaimlerChrysler, Fiat, Ford Motor Company, General Motors, Isuzu, Mazda, Mitsubishi Motors, Nissan, Porsche, Toyota, Volkswagen, and Volvo); First Technology Safety Systems (FTSS—a manufacturer of crash test dummies); and Robert A. Denton, Inc. (a manufacturer of crash test dummies and the load cells used in crash test dummies).

Toyota and the Alliance requested that a post-test calibration of the dummy be included in the performance specifications. A post-test calibration is an assessment of whether the dummy conforms to NHTSA specifications after it has been used in a crash test. Toyota and DaimlerChrysler recommended that the agency discontinue using the Hybrid III neck to assess neck injury criteria.

The remainder of the issues raised in the petitions are relatively minor, technical issues. All of the issues are addressed in the Discussion and Analysis section below.

IV. Discussion and Analysis

A. Post-Test Calibration

Toyota and the Alliance requested that a post-test calibration of the dummy be included in the performance specifications. Toyota and the Alliance asserted that a post-test calibration is necessary to provide an objective check of the validity of the test dummy data acquired during the test, particularly if the crash test results in an apparent non-compliance. The Alliance stated that, without a post-test calibration, "neither a vehicle manufacturer nor a NHTSA test contractor can determine whether an apparent vehicle non-compliance is due to a test dummy anomaly during a test."

Toyota and the Alliance previously raised the issue of post-test calibration of dummies in their comments on NHTSA's proposals to establish Hybrid III dummies for 12-month-old children, six-year-old children (HIII–6C), and three-year-old children (HIII–3C), in addition to the Notice of Proposed Rulemaking (NPRM) proposing the HIII–5F dummy. Historically, NHTSA has required that the structural properties of a dummy satisfy the specifications set out in the applicable regulation in every respect both before and after its use in any test in a Federal motor vehicle safety standard. However, in the NPRM proposing the HIII–5F dummy, the agency rejected a post-test dummy calibration provision for the following reasons:

> NHTSA is concerned that the post-test calibration requirement could handicap and delay its ability to resolve a potential vehicle or motor vehicle equipment test failure solely because the post-test dummy might have experienced a component failure and might no longer conform to all of the specifications. On several occasions during the past few years, a dummy has been damaged during a compliance test such that it could not satisfy all of the post-test calibration requirements. Yet the damage to the dummy did not affect its ability to accurately measure the performance requirements of the standard. The agency is also concerned that the interaction between the vehicle or equipment and the dummy could be directly responsible for the dummy's inability to meet calibration requirements. In such an instance, the failure of the test dummy should not preclude the agency from seeking compliance action. Thus, NHTSA has tentatively concluded that removal of the post-calibration requirement would be in the public interest, since it would permit the agency to proceed with a compliance investigation in those cases where the test data indicate that the dummy measurements were not markedly affected by the dummy damage or that some aspect of vehicle or equipment design was responsible for the dummy failure.

(63 FR 46981, 46983, September 3, 1998).

The agency believes this reasoning remains valid. Further, in their petitions for reconsideration, neither Toyota nor the Alliance provided any new information that would support the reversal of the decision not to include a post-test calibration provision. Thus, the agency is denying this part of the Alliance and Toyota petitions.

B. Neck Characteristics

1. Neck Response

Toyota expressed concern with the response of the HIII–5F dummy's neck. Toyota first expressed these concerns in its comments to the Supplemental Notice of Proposed Rulemaking updating Standard No. 208, Occupant Crash Protection, published in the **Federal Register** on November 5, 1999 (64 FR 60556).

In those comments, Toyota stated that in barrier crash testing at about 23 kph without an air bag, the HIII–5F dummy's neck extension exceeded the IARV value. However, the 50th percentile male dummy in the same test at the same speed met the injury criteria. Toyota noted that the incidence rates of cervical spine injury in the real world for a 5th percentile female-statured occupant is not significantly different from those for a 50th percentile male-statured occupant. Therefore, Toyota believed that the HIII–5F dummy's neck response was inappropriately measuring an artifact of the dummy, not the actual response that is related to the injuries that may be seen by a small statured female.

In addition, Toyota claimed to experience non-biofidelic responses of the HIII–5F dummy's neck. Toyota observed a large flexion moment when the dummy's head was slightly extended rearward, and a large extension moment when the dummy's head was slightly flexed forward and the rotational angle of the head was very small. Toyota stated that this indicated the existence of a neck artifact in the HIII–5F dummy.

Due to these concerns, Toyota recommended that the dummy not be used to measure any neck injury criteria associated with the neck extension bending moment until these issues are resolved.

DaimlerChrysler argued that the current biomechanical flexion and extension response corridors of the Hybrid III dummy neck are not applicable to air bag loading. DaimlerChrysler stated that the biomechanical response corridors for the Hybrid III neck were developed based on inertial loading (whiplash loading of seat belt-restrained occupants) of the head-neck rather than direct impact loading by the deploying air bag. DaimlerChrysler claims that impact loading of the head-neck is significantly different because the Hybrid III neck bends in a second-mode, in contrast to the first-mode of bending associated with inertial loading. In this second-mode of bending, the dummy's neck produces substantial moments with very little observed rotation between the head and chest, which places the neck response outside the established biomechanical design corridors. DaimlerChrysler stated that a relaxed human neck cannot produce a resistance moment without significant rotation of the head. Thus, DaimlerChrysler claimed, the dummy's neck is not biofidelic for air bag loading, and the responses can be considered an artifact of current Hybrid III dummy neck design not relevant for assessing human injury. DaimlerChrysler recommended that the agency cease using the HIII–5F dummy to assess neck injuries.

NHTSA agrees that the biomechanical corridors for the Hybrid III neck were based on the inertial loading response of human heads with respect to their torso. However, this does not invalidate the design and use of the neck in other impact applications. Paragraph 4.5.3 of SAE document J885, July 1986, titled "Human Tolerance to Impact Conditions as Related to Motor Vehicle Design" reads:

> * * * the neck can be injured without exceeding its static angular range of motion. * * * Measures of the neck loads may be a better indicator of injury potential [than angular rotation].

The agency disagrees with DaimlerChrysler's claim that a relaxed human neck cannot produce a resistance moment without significant rotation of the head. The agency believes that this statement is incorrect for several reasons.

First, to hold the head upright, activation of the cervical musculature is required. Dynamic loading of this activated musculature would produce high visco-elastic reaction forces. In real-world crashes, it is also reasonable to expect that most occupants who see an impending collision may activate additional neck muscles to brace themselves. The Hybrid III dummy neck reflects these reactions by incorporating a stiffness equivalent to 80% muscle tone in its design.

Second, NHTSA's Vehicle Research and Test Center (VRTC) conducted informal tests with several human volunteers and special tests with HIII–5F dummies[2] to determine the average resistance that the neck can generate before noticeable head rotation is observed. Male and female volunteers were loaded at the chin in the inferior-superior direction. Moments were calculated at the level of the occipital condyle before noticeable head rotation was observed. The average female volunteer produced a neck moment of 6.4 to 7.7 Nm at the level of the occipital condyle. The average male volunteer produced a neck moment of 12.2 to 15 Nm. Test results suggested that, before noticeable head rotation has occurred, the moments generated by the female volunteers at the occipital condyle level and those measured by the HIII–5F dummy neck were approximately the same. The measured human moment resistance values are probably at the lower end of the resistance spectra since the volunteers were tested for normal resistance to head motion rather than at a pain-producing level. In addition, the tests were conducted under nearly static loading conditions. Dynamically, visco-elastic properties of the neck structure would be expected to generate a higher resistance to impact-induced motion, and thus a larger moment, with little observable head rotation. These informal tests revealed that the human neck can provide resistance to bending moments at the level of the occipital condyle. Similarly, the moments that the Hybrid III dummy neck produces with little head-to-torso rotation are a reasonably accurate representation of what the total human neck experience would be.

Third, at high loading rates (as generated by air bags), the rotational inertial resistance of the head may be large. In a series of tests using small female cadavers in the driver ISO 2 position, angular accelerations of the head reached a peak of 8000 rad/sec^2 at 10 ms with little rotation of the head. If the moment of inertia of the head were approximately 0.0155 kg-m/sec^2, the equivalent resistive moment due to inertia at that point in time would be about 125 Nm.

Thus, the facts do not support the DaimlerChrysler argument that the head of the human is free to rotate about the occipital condyle without any resistance under high speed impact conditions. Under a high loading rate and in the presence of partially activated cervical musculature, the human neck can experience large, short duration extension moments in the presence of small angular rotations of the head. Thus, the agency does not believe that the measured forces and moments are an artifact of the dummy.

Fourth, preliminary analysis using modeling techniques has shown that, for an air bag loading to the head and neck, the initial rotation of the head with respect to the chest does not change significantly as the stiffness of the occipital condyle and neck elements are changed. That is to say, in a global sense, the dummy and human necks interact with the deploying air bag in approximately the same way and produce similar kinematics and total loads in the neck. However, at the local level, particularly at the occipital condyle joint, the forces and moments may be somewhat different for the dummy and human neck due to stiffness differences. These forces and moments may be lower than those measured by the dummy due to the lower stiffness of the human spine. However, the critical values for Nij (neck injury criteria formula, found in Standard No. 208, to evaluate neck injury) have already been adjusted to account for this.

Finally, in pendulum impacts to the underside of the chin, the neck is forced into tension-type stretching and extension bending. Within a few milliseconds, the load cells in the upper neck register a large moment. Similarly, a human, under similar impact loading conditions, would have a high probability of fatal injuries, primarily at the upper portion of the neck. The NHTSA Special Crash Investigations (SCI) files, as of January 2002, show a total of twenty-six females with serious or fatal neck injuries due to deploying air bag exposures. Nineteen of these were caused by injuries to the upper neck segments. Only one of the twenty-six clearly showed a failure at the bottom of the cervical spine, while the remaining six showed massive blunt injuries, fractures of cervicals, transactions, etc., that were difficult to assign to any specific section of the neck. SCI describes a typical unrestrained occupant injury when the occupant gets too close to the air bag[3] as follows:

> Upon impact, the air bag deploys into the out-of-position adult passenger's neck and head. As the air bag expands, it results in the rapid translation and extension of the air bag underneath the chin against the neck and then wrapping upward from ear to ear. The occupant's head is effectively lifted upward off the neck resulting in an atlanto-occipital joint fracture (C1–C2) and transection of the spinal cord, and probable brain stem injuries.

The agency notes that only two additional small female (adult occupant category up to a height of 5 feet 4 inches) neck injuries were added to the SCI data files between March 2000 and January 2002. One injury was sustained in a 1990 model year vehicle, and the other in a 1994 model year vehicle. To the present time, the SCI data contain no neck injuries of small females in vehicles of post-1997 model years.

In summary, the agency believes that the current Hybrid III neck is appropriate for use in both inertial and impact loading scenarios to assess the risk of injury. Further, the compensation

[2] See report titled "Impact Loading to the Chin of the Hybrid III Small Female Dummy Head and Neck System," September 27, 2000, submitted to Docket No. NHTSA–2000–6940.

[3] August "Chip" B. Chidester & Thomas A. Roston, "Air Bag Crash Investigations," NHTSA, Paper No. 246, ESV Conference Proceedings, Amsterdam, Netherlands (June 2001).

[4] See report titled "Evaluation of Neck Wrap and Skin Modifications for the Hybrid III Small Female Dummy," August 1998, submitted to Docket No. NHTSA–98–4283.

factors associated with the current Nij critical values account for the higher forces and moments measured in the dummy due to stiffness differences between the dummy and human necks. Accordingly, the agency is denying this part of the Toyota and DaimlerChrysler petitions.

2. Neck Injury Criteria

DaimlerChrysler argued that neck tension alone is the most accurate characterized the three different interaction patterns in the following manner: (1) The air bag directly loading the head in the fore-and-aft direction pushes the chin of the dummy downward (flexion) and backwards; (2) the air bag "trapped under the chin" pushes the chin upward (extension) and backwards; and (3) the air bag fabric, entrapped in the hollow area between the neck and the jaw, pushes the head upward (extension) and forward 5000 N, which are much higher than the injury assessment reference value (IARV) of 3100 N used in the Standard No. 208 sled test and by industry as an IARV for shear load. Although the shear load is not directly included in the Nij formulation, the high shear load along with the tension loads causes the large extension moments which result in an Nij failure with a value of 4.5 in tension-extension. The agency believes that the current Hybrid III dummy neck and the

scenarios that could cause high occipital condyle moments and high Nij's without producing harmful neck injuries.

3. Neck Shield

The Alliance noted that the HIII–5F dummy final rule does not contain a neck skin or neck shield for the dummy. The Alliance stated that without a neck skin or shield, a deploying air bag may get caught on the head-neck structure of the head. This modification prevented the air bag from snagging behind the jaw, but not from under the chin. It did not affect the flexion and extension responses in the standard pendulum calibration tests.

Before issuing the NPRM and final rule for the HIII–5F dummy, NHTSA made an exhaustive effort to evaluate a variety of neck shields.[4] The agency was unable to produce any evidence that neck shields could effectively and extension. The Alliance and FTSS noted that the table contains a typographical error: the column headings "Extension" and "Flexion" are reversed. The Alliance and FTSS recommended that the agency correct this error.

NHTSA agrees with this recommendation. Accordingly, the agency is switching the order of the "Extension" and "Flexion" column headings.

C. Torso Flexion Test

factors associated with the current Nij critical values account for the higher forces and moments measured in the dummy due to stiffness differences between the dummy and human necks. Accordingly, the agency is denying this part of the Toyota and DaimlerChrysler petitions.

2. Neck Injury Criteria

DaimlerChrysler argued that neck tension alone is the most accurate predictor of injury assessment. DaimlerChrysler stated that the absence of moment as an effective injury predictor may be due to the inability of the Hybrid III dummy family to accurately simulate human neck moment response to the type of loading seen in air bag deployment tests. Thus, DaimlerChrysler recommended that the agency cease using the HIII–5F to assess neck injuries.

DaimlerChrysler submitted similar comments on the advanced air bag (Standard No. 208) Supplemental Notice of Proposed Rulemaking (SNPRM) and NPRM. NHTSA responded to these comments in the final rule on advanced air bags. The agency stated that the biomechanical tests used to reach the conclusion that tension alone is the most accurate predictor of injury were limited to one loading mode of out-of-position testing. In a vehicle environment, the neck is subject to many loading modes, including compression, flexion, extension, lateral bending, and torsion. Biomechanical data have shown that these other loading modes are in fact injurious to the neck. Thus, the agency has chosen to adopt more comprehensive neck injury criteria in the standard.

Further, the biomechanical community addressed the load and moment relationship to injury and came to the consensus judgment that both moments and forces (shear, tension, and compression) are needed for injury assessment purposes. Members of the Alliance and the international automobile importers appear to agree with that conclusion. Also, analysis by NHTSA SCI of occupant injuries in air bag deployment crashes clearly indicates that more than one injury mechanism is involved in neck trauma. Thus, all of the forces and moments must be considered to assure the occupant's safety.

Finally, the agency reviewed the data provided by DaimlerChrysler from a series of out-of-position tests with the HIII–5F dummy. DaimlerChrysler provided data on three types of air bag-to-head interactions with the HIII–5F dummy positioned close to the passenger air bag. DaimlerChrysler characterized the three different interaction patterns in the following manner: (1) The air bag directly loading the head in the fore-and-aft direction pushes the chin of the dummy downward (flexion) and backwards; (2) the air bag "trapped under the chin" pushes the chin upward (extension) and backwards; and (3) the air bag fabric, entrapped in the hollow area between the neck and the jaw, pushes the head upward (extension) and forward.

The agency's review of the data from these tests indicates that dummy and the Nij criteria appear to accurately distinguish injurious from non-injurious loading patterns. For case one, the agency agrees with DaimlerChrysler's description of contact with the air bag on the front of the face at the chin. The applied force of the deploying air bag causes flexion of the head/neck and backwards loading of the head relative to the neck. This loading pattern of low to moderate flexion at the upper cervical spine does not appear to be associated with the type of air bag related neck injuries reported by SCI. The Nij for DaimlerChrysler's case one was 0.7 tension-flexion. The agency believes that the Hybrid III dummy and the Nij injury criteria correctly identify this as a non-injurious mode of interaction.

For case two, DaimlerChrysler characterized the interaction as "air bag trapped under the chin" of the dummy. The agency believes that interaction of the expanding air bag with the under surface of the chin is very similar to the injury patterns seen in SCI cases with upper cervical tension-extension type injuries. The Nij for this case was 2.9 tension-extension. The agency believes that the Hybrid III dummy and the Nij injury criteria correctly identify this as a potentially harmful mode of interaction.

For case three, DaimlerChrysler claimed that air bag fabric was entrapped in the hollow area between the neck and jaw. In this third loading mode, the air bag expands in a wedge-like manner, pushing the neck backwards and at the same time pushing the head upward and dragging it forward along the undersurface of the chin. As with case two, the agency believes that interaction of the expanding air bag with the under surface of the chin is very similar to the injury patterns seen in SCI cases with upper cervical tension-extension type injuries. Further, the addition of a significant direct shear loading to the anterior surface of the neck in case three creates an even greater probability of this loading mode being harmful to humans. The shear loads measured in this third loading mode are more than 5000 N, which are much higher than the injury assessment reference value (IARV) of 3100 N used in the Standard No. 208 sled test and by industry as an IARV for shear load. Although the shear load is not directly included in the Nij formulation, the high shear load along with the tension loads causes the large extension moments which result in an Nij failure with a value of 4.5 in tension-extension. The agency believes that the current Hybrid III dummy neck and the Nij injury criteria correctly identify this as a potentially harmful human mode of interaction.

Examination of vehicle crash data with the HIII–5F dummy seated in the full forward position (at 30 mph into a flat, rigid barrier) suggested that the first two modes of interaction described by DaimlerChrysler are common. Loading mode one results in lower values of Nij, while loading mode two results in higher values of Nij. However, case three, where the load applied by the air bag pulls the head forward, was not observed in vehicle crash tests. Based on the calculated external shear and axial forces applied by the air bag, there were no cases of high shear forces pulling the head forward. Review of the films from these tests indicated that for the low driver Nij cases, the air bag appeared fully or nearly fully deployed upon contact with the occupant's head. There was no contact or only glancing contact with the anterior surface of the dummy neck. In contrast, review of the films for cases with high driver Nij values showed clear interaction of an inflating air bag with the underside of the dummy's chin and neck, as evidenced by chalk transfers onto the air bag fabric, visible folds of the air bag located under the chin, and inflation around the dummy's chin resulting in a dumbbell-type appearance of the air bag. These vehicle crash test data support the appropriateness of the Hybrid III neck and the Nij criteria for identifying injurious air bag loading patterns.

In summary, the agency believes the current neck and Nij are appropriate, sufficient, and needed for the intended purpose. The neck has sufficient sensitivity to objectively differentiate between deploying air bag systems that are inherently safe and those that are unsafe for the small occupant.

Accordingly, NHTSA is denying this part of the DaimlerChrysler petition. The agency will continue to use the current Hybrid III neck and Nij criteria as published in the HIII–5F final rule. However, the agency will conduct further review of out-of-position test data and compare them with SCI cases to determine if there are any loading scenarios that could cause high occipital condyle moments and high Nij's without producing harmful neck injuries.

3. Neck Shield

The Alliance noted that the HIII–5F dummy final rule does not contain a neck skin or neck shield for the dummy. The Alliance stated that without a neck skin or shield, a deploying air bag may get caught on the head-neck structure of the dummy, raising concerns about the validity of the forces and moments being recorded.

The Alliance also noted that the SAE Hybrid III Dummy Family Task Group has evaluated a variety of neck skin concepts. The Task Group has agreed that a neck skin is preferable to no neck skin. Currently, the Task Group is evaluating the effects of various neck skin designs.

Accordingly, the Alliance recommended that the agency add a neck skin to the HIII–5F dummy. The Alliance recommended that the agency choose a neck skin type to avoid compliance issues over neck force-moment measurements because several of its member companies are currently developing their advanced restraint systems using the HIII–5F dummy fitted with different types of neck skin.

DaimlerChrysler conducted a series of static air bag deployment tests to investigate the loading of the head and neck of the HIII–5F dummy during air bag deployment. DaimlerChrysler observed that the SAE recommended head skin and neck shield did not prevent the air bag from being trapped under the chin or behind the jaw of the dummy.

To eliminate this artifact, DaimlerChrysler modified the dummy using two approaches. In its first approach, DaimlerChrysler used a modified head/neck skin. Using neck parts from the Hybrid II 50th percentile male dummy, additional skin and rubber, and a head skin from the HIII–5F dummy, DaimlerChrysler formed a neck surface that extended from the jaw to the upper torso. This modification prevented the air bag from snagging under the chin or behind the jaw and produced an insignificant change in the pendulum extension test. In addition, the moment and rotation responses were within the specified biomechanical extension corridor. However, DaimlerChrysler believed that the flexion response would be compromised due to the bridge effect between the neck skin and the upper torso jacket.

In its second approach, DaimlerChrysler added a pair of aluminum patches to the notch area of the head. This modification prevented the air bag from snagging behind the jaw, but not from under the chin. It did not affect the flexion and extension responses in the standard pendulum calibration tests.

Before issuing the NPRM and final rule for the HIII–5F dummy, NHTSA made an exhaustive effort to evaluate a variety of neck shields.[4] The agency was unable to produce any evidence that neck shields could effectively and consistently reduce some of the high moments associated with aggressive air bags. Thus, the agency did not specify a neck shield for the HIII–5F dummy. The agency remains unconvinced that neck shields will be able to have such effects.

In its petition, DaimlerChrysler noted that it has produced two head-neck shield modifications which prevented the air bag from getting caught under the dummy's chin or behind its jaw. DaimlerChrysler provided a picture of a modified Hybrid II head and an accompanying neck cover without indicating what neck was used for that installation. Inasmuch as the head is not of a Hybrid III dummy, the shield modification for that head may not provide any insight as to the effectiveness of such a modification for the Hybrid III dummy. The agency notes that DaimlerChrysler admitted that one of its neck shield designs might compromise the neck flexion response due to bridge effects between the neck skin and the upper torso jacket, and that the other design did not prevent the air bag from getting caught under the chin.

Based on observations of dummy interactions with deploying air bags and real-world neck injury patterns to small females from Special Crash Investigations photos, the agency believes that the Hybrid III head/neck without the neck skin produces sufficiently realistic interactions with the deploying air bag to indicate either beneficial or overly aggressive effects of the air bag on the human occupants it is designed to protect. Moreover, the agency notes that the petitioners have not provided any feasible suggestions on what type of neck shield they would support to improve its alleged shortcomings. Accordingly, the agency is denying this part of the Alliance and DaimlerChrysler petitions.

4. Pendulum Pulse for Neck Flexion/Extension

Table B of § 572.133 specifies the pendulum pulse for neck flexion and extension. The Alliance and FTSS noted that the table contains a typographical error: the column headings "Extension" and "Flexion" are reversed. The Alliance and FTSS recommended that the agency correct this error.

NHTSA agrees with this recommendation. Accordingly, the agency is switching the order of the "Extension" and "Flexion" column headings.

C. Torso Flexion Test

Section 572.135 specifies procedures for the torso flexion test. The temperature range for the test is specified at 66 to 78 degrees F. The Alliance and FTSS stated that this range is too wide and could result in test variability because of the sensitivity of the dummy materials to temperature. The Alliance noted, for example, that the dummy's lumbar spine should be maintained at 69 to 72 degrees F for proper behavior. The Alliance and FTSS recommended that the agency change the temperature range specification to 69 to 72 degrees F to be consistent with other dummy component tests.

To determine whether there is a need for a narrower temperature range in torso flexion tests, NHTSA's Vehicle Research and Test Center (VRTC) performed two series of temperature sensitivity tests on the HIII–3C dummy: one at a temperature range between 66 and 78 degrees F, and the other between 69 and 72 degrees F. In both series of tests, the average resistance force to flexion was slightly higher at the lower temperature.[5] However, the test results also indicated a resistance force difference of less than 2 pounds over the full temperature range for both series. In addition, plots of force vs. angle showed a very consistent and uniform slope with considerable overlap of measurements over the entire range of temperatures tested, indicating that temperature is not a significant factor. Based on these test data, VRTC concluded that variations in temperature have virtually no influence on the test results due to torso flexion in a crash test.

Although these tests were performed with the HIII–3C dummy and not the HIII–5F dummy, the agency believes that the similarities of design and test methods between the HIII–3C and HIII–5F dummies would lead to the same temperature sensitivity conclusions for the HIII–5F dummy.

To address the petitioners' concern with the "consistency" of temperature specifications, the agency has reviewed

[4] See report titled "Evaluation of Neck Wrap and Skin Modifications for the Hybrid III Small Female Dummy," August 1998, submitted to Docket No. NHTSA–98–4283.

[5] The test results can be found in Docket No. NHTSA–2000–7051.

all temperature ranges for crash test dummies currently specified in 49 CFR Part 572. Except for the Hybrid III neck and thorax, all specifications for Hybrid II, Hybrid III, and side impact (SID) dummies call for a test temperature range of 66 to 78 degrees F. The narrower temperature specification (69 to 72 degrees F) for the Hybrid III neck and thorax is due to a greater temperature sensitivity of these components, which highly influences

peak force measured within the required displacement limit.

FTSS stated:

We have studied fourteen thorax calibration tests of seven FTSS 5th female dummies manufactured to date, and while the majority of the dummies pass the 5% requirement, we are unable to see a relationship between the 18 mm to 50 mm peak force and the maximum deflection force that would justify a fractional limit. For this reason, we suggest that an absolute peak

with the longitudinal axis, must be at least 25 mm (1.0 in) long, and have a flat, continuous, and non-deformable 152.4 ± 0.25 mm (6.00 ± 0.01 in) diameter face with a maximum edge radius of 12.7 mm (0.5 in). The probe's end opposite to the impact face must have provisions for mounting of an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. No concentric portions of the impact probe may exceed the diameter of the impact face. The impact probe shall have a free air resonant frequency of not less than 1000 Hz.

requirement that the probe be symmetric about its longitudinal axis. FTSS stated that the necessary addition of cable attachments and velocity vanes means this requirement cannot be met. FTSS noted that these attachments will cause the center of gravity (CG) to be slightly offset from the geometrical center of the probe. Thus, FTSS recommended that the agency specify a dimensional tolerance for the CG offset of 3.5 mm.[6]

2. Mass Moment of Inertia

Paragraph (a) of § 572.137 specifies that the test probe for thoracic impacts have a MMI of 5492 kg–cm^2 (4.86 lbs-in-sec^2) in yaw and pitch about the CG. Paragraph (b) specifies that the test probe for knee impacts have a MMI of 622 kg–cm^2 (0.55 lbs-in-sec^2) in yaw and pitch about the CG.

The Alliance stated that, for thorax impact probes used at a number of test labs, the MMI values fall below 5492

dummy stating that the probe needs to be generic in specification and that the users desire to make them from building blocks, essentially, an assembly of multiple pieces. The commenters also requested that NHTSA not specify the probe by design. NHTSA agreed with this objective but noted that any probe that cannot be specified by design must be specified by engineering parameters, which are mass, stiffness, MMI, CG location, and resonance of the probe's

all temperature ranges for crash test dummies currently specified in 49 CFR Part 572. Except for the Hybrid III neck and thorax, all specifications for Hybrid II, Hybrid III, and side impact (SID) dummies call for a test temperature range of 66 to 78 degrees F. The narrower temperature specification (69 to 72 degrees F) for the Hybrid III neck and thorax is due to a greater temperature sensitivity of these components, which highly influences the head kinematics and chest compression in crash tests. However, impact responses of the head, torso flexion, and femurs are not sensitive to temperature variations in the 66 to 78 degrees F range, and therefore allow a wider temperature spread. Thus, specifying a narrower temperature range exclusively for the torso flexion test for the HIII–5F dummy would create an inconsistency with respect to all other dummy torso flexion tests in Part 572.

Moreover, to change the temperature specifications to a narrower range for dummies that already have a temperature specification of 66 to 78 degrees F, the agency would have to initiate rulemaking to determine the desirability of such a change. The agency notes that there are a number of dummy users, other than the petitioners, who may neither see a need for nor want to have a narrower temperature range specification. Some test facilities do not have the torso flexion test fixtures set up in a tight temperature control environment. These facilities would have to make capital expenditures to accommodate a narrower range specification.

In addition, the agency would have to provide a rationale for narrowing the temperature specification. Inasmuch as VRTC could not show a need for a narrower temperature range, and the petitioners have not provided data that would support the need for such a change, the agency would not be able to justify the requested revision.

In view of these considerations, the agency is denying this part of the Alliance and FTSS petitions.

D. Thoracic Peak Force Criterion

Section 572.134 specifies the thorax assembly and test procedure. Paragraph (b)(1) specifies the maximum sternum displacement relative to the spine (compression) and the peak force within this specified compression corridor. The last sentence of that paragraph specifies:

The peak force after 18.0 mm (0.71 in) of sternum displacement but before reaching the minimum required 50.0 mm (1.97 in) sternum displacement limit shall not exceed by more than five percent the value of the peak force measured within the required displacement limit.

FTSS stated:

We have studied fourteen thorax calibration tests of seven FTSS 5th female dummies manufactured to date, and while the majority of the dummies pass the 5% requirement, we are unable to see a relationship between the 18 mm to 50 mm peak force and the maximum deflection force that would justify a fractional limit. For this reason, we suggest that an absolute peak force limit between 18 mm and 50 mm would be more appropriate and this force limit should be 5% higher than the maximum peak force limit, rounded to the nearest 100 N.

FTSS requested that the peak force be specified as an absolute value rather than a percentage. FTSS recommended that the last sentence of paragraph (b)(1) be revised to read:

The peak force after 18.0 mm (0.71 in) of sternum displacement but before reaching the minimum required 50.0 mm (1.97 in) sternum displacement limit shall not exceed 4600 N.

The HIII–5F final rule states that peak force during the displacement interval of 50–58 mm must be within 3900–4400 N. Applying the five percent criteria specified in paragraph (b)(1) to this results in a force range of 4095–4620 N. FTSS's recommended limit of 4600 N is basically the same as the limit that results from applying the five percent criteria currently specified in paragraph (b)(1). Thus, the agency agrees with FTSS's recommended change.

Accordingly, the agency is revising the last sentence of paragraph (b)(1) to read:

The peak force after 18.0 mm (0.71 in) of sternum displacement but before reaching the minimum required 50.0 mm (1.97 in) sternum displacement limit shall not exceed 4600 N.

E. Impact Pendulum Characteristics

1. Probe Definition

Section 571.137 specifies test conditions and instrumentation. Paragraphs (a) and (b) specify the geometrical and inertial properties for the thorax and knee probes, respectively. Paragraph (a) reads:

The test probe for thoracic impacts shall be of rigid metallic construction, concentric in shape, and symmetric about its longitudinal axis. It shall have a mass of 13.97 ± 0.023 kg (30.8 ± 0.05 lbs) and a minimum mass moment of inertia of 5492 kg–cm² (4.86 lbs-in-sec²) in yaw and pitch about the CG [center of gravity]. ⅓ of the weight of the suspension cables and their attachments to the impact probe must be included in the calculation of mass, and such components may not exceed three percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis, must be at least 25 mm (1.0 in) long, and have a flat, continuous, and non-deformable 152.4 ± 0.25 mm (6.00 ± 0.01 in) diameter face with a maximum edge radius of 12.7 mm (0.5 in). The probe's end opposite to the impact face must have provisions for mounting of an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. No concentric portions of the impact probe may exceed the diameter of the impact face. The impact probe shall have a free air resonant frequency of not less than 1000 Hz.

Paragraph (b) reads:

The test probe for knee impacts shall be of rigid metallic construction, concentric in shape, and symmetric about its longitudinal axis. It shall have a mass of 2.99 ± 0.01 kg (6.6 ± 0.022 lbs) and a minimum mass moment of inertia of 622 kg-cm² (0.55 lbs-in-sec²) in yaw and pitch about the CG. ⅓ of the weight of the suspension cables and their attachments to the impact probe may be included in the calculation of mass, and such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis, must be at least 12.5 mm (0.5 in) long, and have a flat, continuous, and non-deformable 76.2 ± 0.2 mm (3.00 ± 0.01 in) diameter face with a maximum edge radius of 12.7 mm (0.5 in). The probe s end opposite to the impact face must have provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. No concentric portions of the impact probe may exceed the diameter of the impact face. The impact probe must have a free air resonant frequency of not less than 1000 Hz.

The Alliance argued that the requirement in both paragraphs that the probe be symmetric about its longitudinal axis is unrealistic because the pendulum is often fitted with velocity vanes, causing asymmetry. The Alliance recommended that the agency revise the first sentence of both paragraphs to read as follows:

The primary test probe, less any additional hardware, for [thoracic or knee] impacts shall be of rigid metallic construction, concentric in shape, and symmetric about its longitudinal axis.

FTSS argued that the test probe definitions are vague and overly restrictive. FTSS claimed that the test probes can be adequately defined by the geometry of the contact area with the dummy together with the mass, center of gravity (CG) location, and moments of inertia of the entire probe.

FTSS expressed concerns about the descriptions of the geometrical and inertial properties for the thorax and knee probes. FTSS stated that it is not clear what "concentric in shape" means because "concentric" means "having the same center" but does not define the shape of an object. FTSS echoed the Alliance's concerns about the requirement that the probe be symmetric about its longitudinal axis. FTSS stated that the necessary addition of cable attachments and velocity vanes means this requirement cannot be met. FTSS noted that these attachments will cause the center of gravity (CG) to be slightly offset from the geometrical center of the probe. Thus, FTSS recommended that the agency specify a dimensional tolerance for the CG offset of 3.5 mm.[6]

Finally, FTSS argued that the requirement that no concentric portions of the probe exceed the diameter of the impact face is redundant because mass distribution is controlled by the mass moments of inertia (MMI) specification. Accordingly, FTSS recommended that the agency delete the sentence "No concentric portions of the impact probe may exceed the diameter of the impact face" from both paragraphs and replace the first sentence of both paragraphs with the following sentences:

The test probe should be of rigid metallic construction with the geometrical and inertial properties specified below. The probe center of gravity shall lie within 3.5 mm of the longitudinal axis passing through the center of the impacting face.

NHTSA agrees with the Alliance that the test probe definition should include provisions for mounting suspension hardware if a cable system is used for guiding the impactor's trajectory. However, the agency does not agree with FTSS that the possible CG offset from the longitudinal axis is either needed or should be specified. NHTSA believes the specifications in the final rule for MMI in pitch and yaw provide sufficient controls to assure stable kinematics during the probe's free flight and impact with the dummy. Inasmuch as hardware attachments do not meet the definition of concentricity, the agency is excluding them from the concentricity requirement.

Accordingly, NHTSA is revising § 572.137(a) and (b) as specified in section E.7 below. The agency is also adding a paragraph (7) to § 572.134(c) and a paragraph (6) to § 572.136(c) disallowing any contact between hardware attached to the probe and the dummy. The agency believes this is necessary to assure that hardware attached to the probe does not interfere with the dummy. Each paragraph will read as follows:

No suspension hardware, suspension cables, or any other attachments to the probe, including the velocity vane, shall make contact with the dummy during the test.

[6] FTSS stated that they have calculated that the maximum offset will not exceed 3.5 mm.

2. Mass Moment of Inertia

Paragraph (a) of § 572.137 specifies that the test probe for thoracic impacts have a MMI of 5492 kg–cm² (4.86 lbs-in-sec²) in yaw and pitch about the CG. Paragraph (b) specifies that the test probe for knee impacts have a MMI of 622 kg–cm² (0.55 lbs-in-sec²) in yaw and pitch about the CG.

The Alliance stated that, for thorax impact probes used at a number of test labs, the MMI values fall below 5492 kg–cm². The Alliance argued that these probes were used to develop the data that formed the basis for the thorax calibration performance corridors adopted by the agency in the final rule.

The Alliance observed that a similar problem exists with the MMI specification for the test probe for knee impacts in paragraph (b). The Alliance claimed that the MMI values of knee impact probes used at a number of test labs fall below 622 kg-cm².

The Alliance recommended that the agency delete the MMI criteria until substantial data are available justifying its need. In the alternative, the Alliance requested that if the cylindrical pendulum described in paragraphs (a) and (b) represents the ideal test probe, and if NHTSA insists on retaining the MMI requirement, the agency change the MMI requirement to 1132.5 kg-cm² for the thorax test probe and 156.8 kg-cm² for the knee test probe.

FTSS stated that in setting the minimum MMI, "it appears that NHTSA has used the measured values of the physical probes at it's [sic] own test laboratories without a tolerance and without an analysis of a minimum MMI that will ensure satisfactory performance." FTSS stated that "these numbers are arbitrary and have not been justified."

FTSS noted that its thorax test probe has a yaw MMI of 5320 kg-cm² and a pitch MMI of 5303 kg-cm², both of which fall below the minimum specified in § 572.137(a). FTSS stated that NHTSA has no evidence to suggest that these probes do not provide satisfactory performance. FTSS claimed that the minimum MMI specification, as currently written, will force a re-design of the probe and obsolescence of existing probes without evidence that the design is inadequate. FTSS recommended that the MMI specification be held in abeyance for six months to allow time to develop criteria for the probes and to develop and manufacture re-designed probes as necessary.

NHTSA specified the test probes in generic terms in response to industry comments on the NPRM for the HIII–5F dummy stating that the probe needs to be generic in specification and that the users desire to make them from building blocks, essentially, an assembly of multiple pieces. The commenters also requested that NHTSA not specify the probe by design. NHTSA agreed with this objective but noted that any probe that cannot be specified by design must be specified by engineering parameters, which are mass, stiffness, MMI, CG location, and resonance of the probe's structure. As a result, the agency accepted the commenters' desire for a generic probe and specified the probe in engineering terms.

However, assembling probes from multiple pieces may result in compositions taking many configurations and wide variations of the MMI in yaw and pitch. These wide variations are evident in the Alliance's petition, in which it noted that its member companies have used different probes with MMIs ranging from 4114 to 5320 kg-cm² (calculated) for thorax test probes and from 209 to 331 kg-cm² (measured) for knee test probes.

To determine the effects on kinematics of low and high inertia test probes, the agency studied the kinematics of a probe with a considerably lower MMI than specified in § 572.137 and compared that with the kinematics of the NHTSA probe having a much higher MMI. The evaluation revealed that the low inertia probe experienced considerable motion instability. In contrast, the agency probe with the MMI specified in the final rule exhibited very stable free flight kinematics. This experiment shows that the use of probes with low MMIs could lead to unstable kinematics. Inasmuch as the response of the dummy in calibration tests is used as a measure of the dummy's repeatability and objectivity, it is important that the test probe kinematics at and during the impact with the dummy not be a source of variability.

In its petition, the Alliance included a table with actual inertia values of test probes used by the industry for both thorax and knee calibrations. The agency believes that these values reflect current industry practice, and, therefore, these are reasonably good grounds for their acceptance. In contrast, the calculated probe values, which are considerably below the inertia values currently used by the industry, have never been evaluated for kinematic stability as used in the specified tests.

As a result, the agency is accepting as the minimum MMI for thorax test probes the lower MMI value of 3646 kg-cm², and for knee test probes the lower MMI value of 209 kg-cm², cited by the

Alliance. Accordingly, the agency is changing the MMI specification for thorax test probes in § 572.137(a) to 3646 kg-cm² (3.22 lb-in-sec²), and the MMI specification for knee test probes in § 572.137(b) to 209 kg-cm² (.177 lb-in-sec²), in yaw and pitch about the CG of the probe.

Since the FTSS thorax probe, with a yaw MMI value of 5320 kg-cm² and a pitch MMI value of 5303 kg-cm², meets this specification, the agency is denying

The agency notes that commenters on the HIII–6C and HIII–5F dummy NPRMs expressed a desire for generic probe specifications to allow users the freedom to design and build probes in a variety of ways, including constructing them from building blocks. As a result, the agency developed a generic engineering specification and inserted it in the final rules for the HIII–6C, HIII–5F, and HIII–3C dummies.

NHTSA concludes that the Alliance's argument does not demonstrate the irrelevance of the minimum natural free air resonance frequency for undefined probes. Instead, the Alliance argument demonstrates that the agency should specify which resonance mode it is defining. Thus, the agency is revising the last sentence in "572.137(a) and (b) to read:

The impact probe has a free air resonant

6. Impact Face Edge Radius

Section 572.137(a) specifies that the edge radius of the thorax probe impact face is a maximum of 12.7 mm. Both the Alliance and FTSS stated that specifying a maximum edge radius allows for smaller radii, which could affect the probe's interaction with the dummy due to differences in initial contact area. The Alliance and FTSS recommended that the agency delete the word "maximum"

(b) The test probe for knee impacts, except for attachments, shall be of rigid metallic construction and concentric about its longitudinal axis. Any attachments to the impactor, such as suspension hardware, impact vanes, etc., must meet the requirements of § 572.136(c)(6). The impactor shall have a mass of 2.99 ± 0.23 kg (6.6 ± 0.05 lbs) and a minimum mass moment of inertia of 209 kg-cm² (0.177 lb-in-sec²) in yaw and pitch about the CG of the probe. One-third (⅓) of the weight of suspension cables and any attachments to the impact probe may be

NHTSA notes that the Class 180 specification in "572.137(m)(3)(iii) is in line with the specification for the Hybrid III 50th percentile male dummy. The agency believes this specification is sufficient for direct chest deflection measurement. However, Class 600 data are needed if a V*C measurement is to be made. NHTSA does not require the measurement of V*C, but the agency has no objection to filtering the data to a higher CFC class since that level data is

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Alliance. Accordingly, the agency is changing the MMI specification for thorax test probes in § 572.137(a) to 3646 kg-cm² (3.22 lb-in-sec²), and the MMI specification for knee test probes in § 572.137(b) to 209 kg-cm² (.177 lb-in-sec²), in yaw and pitch about the CG of the probe.

Since the FTSS thorax probe, with a yaw MMI value of 5320 kg-cm² and a pitch MMI value of 5303 kg-cm², meets this specification, the agency is denying the FTSS request to hold the minimum MMI specification in abeyance for six months.

3. Free Air Resonance Frequency

Paragraphs (a) and (b) of § 572.137 both specify that the probe have a free air resonant frequency of not less than 1000 Hz.

The Alliance said that there are insufficient data to support the need for such a specification. The Alliance stated that preliminary analysis of the knee test probe conducted by FTSS demonstrates that the measured free air resonance frequency of a probe currently in use is only 662 Hz. Additional analysis conducted by DaimlerChrysler indicates that there is not frequency content sufficient to excite a resonance, thereby failing to meet the 1000 Hz requirement. Thus, the Alliance recommended that this specification be deleted until substantial data are available to justify it.

FTSS disagreed with the free air resonant frequency specification. FTSS claimed that NHTSA established it without specifying the methods to measure the frequency or providing a rationale for the need of it. FTSS stated that it has analyzed the frequency content of the probe structure used in its calibration laboratories. It said that the results showed that the probe has two primary resonant modes. The first resonant mode is bending of the probe about its CG, causing each end of the probe to translate laterally. FTSS noted that a typical accelerometer, which is mounted at the non-impacted end of the probe, has less than three percent cross-axis sensitivity. Accordingly, if the probe's first mode natural resonance were excited during a dummy test, the effect on the signal of a longitudinally oriented accelerometer would be minimal. FTSS asserted that it may be more appropriate to specify a 1000 Hz resonant frequency limit in the sensitive axis of the accelerometer. However, FTSS recommended that the free air resonant frequency specification be held in abeyance for six months to allow time to develop criteria for the probes and to develop and manufacture re-designed probes as necessary.

The agency notes that commenters on the HIII–6C and HIII–5F dummy NPRMs expressed a desire for generic probe specifications to allow users the freedom to design and build probes in a variety of ways, including constructing them from building blocks. As a result, the agency developed a generic engineering specification and inserted it in the final rules for the HIII–6C, HIII–5F, and HIII–3C dummies.

The agency believes that the resonant frequency specification is necessary for three reasons: (1) Because the intent of users is to build the probe from multiple pieces and of unspecified material, the natural resonance of the probe is the only reliable indicator to assure that the probe will be of sufficient structural rigidity and capable of repeatable response; (2) the specification will assure that a multiple piece probe will not produce separate interactions between its constituent parts; and (3) the specification will assure that the mounting structure for the accelerometer is sufficiently rigid and will not affect the accelerometer readings.

NHTSA does not agree with the Alliance comment that the resonance specification is unnecessary. A multiple piece impact probe, if improperly constructed, may contain a series of resonances along its longitudinal axis. The 1000 Hz minimum specification would preclude use of such a probe.

Moreover, in its petition, the Alliance indicated that the probe's free air resonance frequency is 662 Hz, which falls below the minimum specification of 1000 Hz. However, the agency's review of the Alliance data indicated the existence of at least two resonances: one around 800 Hz and the other around 7.5 kHz. The 800 Hz resonance is due to the first mode of beam bending around the CG of the probe. The 7.5 kHz is the second mode natural resonance of the probe along its longitudinal axis.

The agency agrees with the FTSS observation that beam bending is perpendicular to the longitudinal axis of the probe and should have little, if any, effect on the output of the longitudinally-oriented accelerometer (unless the accelerometer has a large cross axis sensitivity). In contrast, resonance along the axis of the probe is of primary interest in thorax and knee tests. NHTSA would not be concerned if the probe's resonance in the longitudinal axis of the impactor were at 7.5 kHz. This exceeds the agency's specification of 1 kHz. However, if the probe's resonance were lower than 1 kHz, it could affect the measured impact response.

NHTSA concludes that the Alliance's argument does not demonstrate the irrelevance of the minimum natural free air resonance frequency for undefined probes. Instead, the Alliance argument demonstrates that the agency should specify which resonance mode it is defining. Thus, the agency is revising the last sentence in "572.137(a) and (b) to read:

> The impact probe has a free air resonant frequency of not less than 1000 Hz, which may be determined using the procedure listed in Docket No. NHTSA–6714–14.

4. Weight of Attachments to the Thorax and Knee Probes

Paragraphs (a) and (b) of § 572.137 both specify that one-third of the weight of suspension cables and any attachments to the impact probe must be included in the calculation of mass, and that such components may not exceed three percent of the total weight of the test probe. There were no comments regarding this specification. However, the specifications for the HIII–3C and CRABI dummies specify that one-third of the weight of suspension cables and any attachments to the impact probe may not exceed five percent of the total weight of the test probe. To maintain consistency in specifications for the entire H–III dummy family, the agency is revising the specification in paragraphs (a) and (b) of § 572.137 to five percent of the total weight of the test probe. This change has been made as specified in section E.7 below.

5. Knee Impactor Mass Tolerance

Section 572.137(b) specifies that the test probe for knee impacts have a mass of 2.99 ± 0.01 kg (6.6 ± 0.022 lbs).

The Alliance and FTSS argued that the probe mass tolerance of ± 0.01 kg (± 0.022 lb) is not practical. The Alliance stated that some accelerometers weigh approximately 0.02 lb. FTSS stated that a mass tolerance of 0.01 kg is too small to be practically measured. Thus, the Alliance and FTSS recommended that the agency increase the tolerance to ± 0.023 kg (± 0.05 lb) to account for both slight mass deviations and additional instrumentation, such as accelerometers.

NHTSA agrees that the mass tolerance is too tight. Accelerometers used on the probe do not have to be the same as the very low mass accelerometers used on the dummy. Since the weight of some accelerometers can be as high as 0.02 lb, the agency must account for this additional variation. Accordingly, the agency is changing the mass tolerance in ±572.137(b) to ± 0.023 kg (± 0.05 lb).

6. Impact Face Edge Radius

Section 572.137(a) specifies that the edge radius of the thorax probe impact face is a maximum of 12.7 mm. Both the Alliance and FTSS stated that specifying a maximum edge radius allows for smaller radii, which could affect the probe's interaction with the dummy due to differences in initial contact area. The Alliance and FTSS recommended that the agency delete the word "maximum".

NHTSA agrees with these concerns. At its extreme, a maximum radius specification allows the edge of the probe face to have no radius and produce a sharp corner. Such a probe face may affect the probe's interaction with the dummy if the alignment at impact was not perfect. However, the agency does not agree with the Alliance and FTSS recommendation of specifying an exact radius. This could cause substantial tolerancing problems over even small variations of the edge radius. To overcome these concerns, the agency is adding a minimum edge radius of 7.6 mm (0.3 in) to both the thorax and knee impact probe specifications to assure that the probes will always have an edge radius that is practical to hold and will not affect the probes' interaction with the dummy.

7. Conclusion

In view of the discussion above, the agency is revising paragraphs (a) and (b) of § 572.137 to read as follows:

> (a) The test probe for thoracic impacts, except for attachments, shall be of rigid metallic construction and concentric about its longitudinal axis. Any attachments to the impactor, such as suspension hardware, impact vanes, etc., must meet the requirements of § 572.134(c)(7). The impactor shall have a mass of 13.97 ± 0.23 kg (30.8 ± 0.05 lbs) and a minimum mass moment of inertia of 3646 kg-cm² (3.22 lbs-in-sec²) in yaw and pitch about the CG of the probe. One-third (⅓) of the weight of suspension cables and any attachments to the impact probe must be included in the calculation of mass, and such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis of the probe, has a flat, continuous, and non-deformable 152.4 ± 0.25 mm (6.00 ± 0.01 in) diameter face with a minimum/maximum edge radius of 7.6/12.7 mm (0.3/0.5 in). The impactor shall have a 152.4–152.6 mm (6.0–6.1 in) diameter cylindrical surface extending for a minimum of 25 mm (1.0 in) to the rear from the impact face. The probe's end opposite to the impact face has provisions for mounting of an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. The impact probe has a free air resonant frequency of not less than 1000 Hz, which may be determined using the procedure listed in Docket No. NHTSA–6714–14.
>
> (b) The test probe for knee impacts, except fof attachments, shall be of rigid metallic construction and concentric about its longitudinal axis. Any attachments to the impactor, such as suspension hardware, impact vanes, etc., must meet the requirements of § 572.136(c)(6). The impactor shall have a mass of 2.99 ± 0.23 kg (6.6 ± 0.05 lbs) and a minimum mass moment of inertia of 209 kg-cm² (0.177 lb-in-sec²) in yaw and pitch about the CG of the probe. One-third (⅓) of the weight of suspension cables and any attachments to the impact probe may be included in the calculation of mass, and such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis of the probe, has a flat, continuous, and non-deformable 76.2 ± 0.2 mm (3.00 ± 0.01 in) diameter face with a minimum/maximum edge radius of 7.6/12.7 mm (0.3/0.5 in). The impactor shall have a 76.2–76.4 mm (3.0–3.1 in) diameter cylindrical surface extending for a minimum of 12.5 mm (0.5 in) to the rear from the impact face. The probe's end opposite to the impact face has provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. The impact probe has a free air resonant frequency of not less than 1000 Hz, which may be determined using the procedure listed in Docket No. NHTSA–6714–14.

F. Instrumentation Filter Classes

1. Thorax Spine and Pendulum Accelerations

Section 572.137(m)(3)(ii) specifies CFC Class 1000 filters for conditioning the spine and pendulum acceleration signals. The Alliance and FTSS recommended that the agency change this specification to Class 180 because Class 1000 is too high for the pendulum acceleration measurement during impact with the dummy, and to remain consistent with SAE–J211.

NHTSA agrees with the Alliance and FTSS comments regarding § 572.137(m)(3)(ii). The current specification of Class 1000 is too high for the intended application and is not consistent with SAE–J211 Recommended Practice and similar specifications in the final rules for other dummies. The agency notes that it is a typographical error. Accordingly, the agency is correcting this error by revising "572.137(m)(3)(ii) to read as follows:

> (ii) Spine and pendulum accelerations—Class 180

2. Sternum Deflection

Section 572.137(m)(3)(iii) specifies the sternum deflection signal filters at Class 180. The Alliance recommended that the agency change this specification to Class 600 to remain consistent with SAE–J211.

NHTSA notes that the Class 180 specification in "572.137(m)(3)(iii) is in line with the specification for the Hybrid III 50th percentile male dummy. The agency believes this specification is sufficient for direct chest deflection measurement. However, Class 600 data are needed if a V*C measurement is to be made. NHTSA does not require the measurement of V*C, but the agency has no objection to filtering the data to a higher CFC class since that level data is suitable for both the deflection and V*C measurements. Accordingly, the agency is revising § 572.137(m)(3)(iii) to read as follows:

> (iii) Sternum deflection—Class 600

3. Lower Leg

Section 572.137(m)(6) specifies the femur forces filters at Class 600. The Alliance and FTSS recommended that the agency revise this paragraph to include a knee pendulum filter, also of Class 600, to remain consistent with SAE–J211.

NHTSA notes that currently § 572.137(m)(6) reads: "Femur forces—Class 600." Since the femur force is calculated during calibration from the pendulum based accelerometer, the agency assumed it was clear that the Class 600 also applied to the impactor mounted accelerometer data. Apparently, it was not. Accordingly, the agency is revising § 572.137(m)(6) to read as follows:

> (6) Femur forces and knee pendulum—Class 600

4. Neck

Section 572.137(m)(2) specifies the neck signal filters. The Alliance and FTSS noted that it does not specify a filter class for the neck test rotation potentiometers. The Alliance and FTSS recommended that the agency add a paragraph (iv) to that section to read as follows:

> (iv) Rotation potentiometer—Class 60.

In § 572.137(m)(2), NHTSA did not specify use of mechanical test fixtures, including potentiometers, to measure head rotation in the specified head-neck tests. The agency believes that there are several methods of measuring this, and there is no reason why a specific method should limit the user's choice. The Alliance and FTSS recommended that the agency revise § 572.137(m)(2) to specify a channel class to provide guidance for those instances in which a rotary potentiometer is used to measure the amount of head rotation by adding:

> (iv) Rotation potentiometer—Class 60.

In its petitions concerning the HIII–6C final rule, the Alliance noted that industry users appear to have reached a consensus that the Society of

Automotive Engineers (SAE) recommended practice J211 Channel Frequency Class (CFC) 60 specification is appropriate if a potentiometer is used to measure head rotation. In addition, the VRTC used the CFC 60 to filter head rotation data measured by rotary potentiometers to establish the certification requirements for the dummies. VRTC review of raw data showed absence of high frequency signals that would obviate the need for specification to 3000 Hz. Denton stated that the measured free air resonance of its load cell is below 5000 Hz and that it has functioned well for years. Denton argued that if the agency did not change this specification, many, if not all, existing lumbar spine load cells currently in use would be rendered obsolete.

Denton also requested that the agency change the CFC specification to Class 600 for data signals generated by the

Specifically, the Alliance and FTSS recommended that the agency change the tolerance for the test probe alignment from ± 0.05 degrees to ± 0.5 degrees, and the tolerance for the impact probe weight from ± 0.01 kg (0.02 lb) to ± 0.023 kg (0.05 lb) to conform to the text of the final rule. Finally, the Alliance and FTSS stated that Figure O3 does not contain a pelvic angle measurement. They noted that the Society for Automotive Engineers (SAE)

load cells for use within the HIII–5F dummy. The drawing specifies a diameter dimension of 1.722 inches/ 4.375 millimeters, with a tolerance of ±0.005 inch, for the load cell.

Denton said that there are three errors in this specification. First, the 1.722 inches should be 1.75 inches. Denton said that its Model 2121 femur, which has been used for this application worldwide (including by NHTSA) for

3. Drawing 880105–000

In inspecting production dummies, the VRTC noted a discrepancy in the height reference dimension "AA" of sheet 5 of 6 of drawing 880105. This dimension locates the measurement of the maximum chest circumference "Y" of the dummy with respect to the seating surface. Currently, the dimension is 12.0 ±0.20 inches.

The agency is increasing that

drawing, the agency could not be assured that the dummy response would be consistent with these underlying tests.

Accordingly, the agency has revised the abdominal insert drawing in drawing 880105–434 by replacing the semicircular cutout shape with a rectangular cutout shape 4.45 inches wide and 2.00 inches long in the fore and aft direction from the posterior side, and 1.87 inches deep from the top

Automotive Engineers (SAE) recommended practice J211 Channel Frequency Class (CFC) 60 specification is appropriate if a potentiometer is used to measure head rotation. In addition, the VRTC used the CFC 60 to filter head rotation data measured by rotary potentiometers to establish the certification requirements for the dummies. VRTC review of raw data showed absence of high frequency signals that would obviate the need for a specification greater than CFC 60.

Consequently, the agency has no objections to specifying Channel Frequency Class 60 for this application if a rotary potentiometer is used for measuring head rotation. The agency is revising "572.137(m)(2) to add the following paragraph:

(iv) Rotation potentiometer—Class 60 (optional).

G. Sensor Specifications

The drawing package contains seven drawings that provide generic specifications for load cells used within the HIII–5F dummy. Each of these drawings specifies that the load cell electrical output/input sensitivity at capacity be 1.0 mV/V MIN.

Denton stated that many of the existing load cells that it has built for these applications have a nominal sensitivity specification of 1.0 mV/V channels. Due to manufacturing variations, load cells may have a sensitivity above or below the 1.0 mV/V level. Denton stated that many existing load cells would be rendered obsolete by this requirement. Denton argued that load cells with outputs slightly below 1.0 mV/V have functioned satisfactorily in these applications for many years. Denton also stated that NHTSA did not provide any data to justify this requirement. Thus, Denton requested that this specification be changed to 0.75 mV/V MIN.

NHTSA is granting Denton's request. The agency notes that this change is nominal and will have no detrimental effects on the quality of the resulting data channel. Accordingly, the agency is changing this specification in Drawings SA572–S11, SA572–S14, SA572–S15, SA572–S29, SA572–S16–L&R, SA572–S27, and SA572–S28 from 1.0 mV/V MIN to 0.75 mV/V MIN.

Drawing SA572–S15 for the Small Female Lumbar Spine Load Cell specifies 5000 Hz as the minimum free air resonance specification. It also specifies that the lumbar load cell force measurement use a Channel Frequency Class (CFC) of 1000.

Denton requested that the agency change the free air resonance specification to 3000 Hz. Denton stated that the measured free air resonance of its load cell is below 5000 Hz and that it has functioned well for years. Denton argued that if the agency did not change this specification, many, if not all, existing lumbar spine load cells currently in use would be rendered obsolete.

Denton also requested that the agency change the CFC specification to Class 600 for data signals generated by the lumbar load cell. Denton noted that there is no rationale for the Class 1000 specification for the force measurement and that it was chosen by default. Denton stated that it is extremely unlikely that any forces or moments will come even close to exceeding Class 600 because the top of the load cell is attached to a rubber lumbar spine, and the lumbar spine will be unable to transmit high frequencies.

NHTSA is granting both of Denton's requests. As Denton noted, the agency chose the minimum free air resonance specification and CFC by default. Accordingly, the agency is revising Drawing SA572–S15 by changing the minimum free air resonance specification from 5000 Hz to 3000 Hz and changing the lumbar force CFC classification from Class 1000 to Class 600.

H. Drawings, Figures, and PADI Document

The Alliance and FTSS found several errors in Figures O1, O2, and O3. Denton noted several specification errors in Drawing SA572–S14. In the process of inspecting production dummies, the VRTC noted additional dimensional discrepancies in three of the dummy drawings. The agency believes that these discrepancies are of little consequence to the dummy functioning but must be adjusted to reflect the dummies being built with production equipment. In this document, the agency is correcting the errors in these drawings.

1. Figures O1, O2, O3, O4, and O5

The Alliance noted that Figure O1 (*Neck Flexion Test Setup Specifications*) is missing the label for the lower neck-adjusting bracket. The Alliance also noted that the second label for the neck-adjusting bracket in Figure O2 (*Neck Extension Test Setup Specifications*) is incorrect. It should read: "BRACKET—NECK ADJUSTING—UPPER (P/N 880105–207)."

The Alliance and FTSS noted that some of the language in Figure O3 (*Thorax Impact Test Setup Specifications*) does not conform to the language in the final rule text. Specifically, the Alliance and FTSS recommended that the agency change the tolerance for the test probe alignment from ± 0.05 degrees to ± 0.5 degrees, and the tolerance for the impact probe weight from ± 0.01 kg (0.02 lb) to ± 0.023 kg (0.05 lb) to conform to the text of the final rule. Finally, the Alliance and FTSS stated that Figure O3 does not contain a pelvic angle measurement. They noted that the Society for Automotive Engineers (SAE) Engineering Aid 25 specifies that the pelvis should be inclined rearward 7 ± 2 degrees with respect to the horizontal. They recommended that this angle be added to the note Pelvic Angle Reference Surface" in Figure O3 so that testers will not be required to force the dummy's pelvis into an unnatural orientation.

NHTSA agrees with all of these recommendations. The suggested changes reflect errors in the figures. Accordingly, the agency is revising Figure O1 by adding the missing label for the lower neck-adjusting bracket. That label will read "BRACKET—NECK ADJUSTING—LOWER (P/N 880105–208)." The agency is also revising the second label for the neck-adjusting bracket in Figure O2 to read: BRACKET—NECK ADJUSTING—UPPER (P/N 880105–207). The agency is changing the tolerance for the test probe alignment in Figure O3 from ± 0.05 degrees to ± 0.5 degrees, and the tolerance for the impact probe weight in Figures O3 and O5 from ± 0.01 kg (0.02 lb) to ± 0.023 kg (0.05 lb). Finally, the agency is adding the angle 7 ± 2 degrees from the horizontal to the note Pelvic Angle Reference Surface in Figure O3.

In reviewing Figure O4, NHTSA discovered that it had failed to specify the weight of the pull mechanism[7] used in the torso flexion test. The Hybrid III Six- and Three-Year-Old dummy requirements each specify the weight of the pull mechanism for the torso flexion test. To be consistent with those dummy requirements and assure test repeatability, the agency is specifying that the weight of the pull mechanism must be less than or equal to 1.07 kg (2.35 lb).

Accordingly, the agency is adding the following note to Figure O4: "Combined weight of load cell, loading adaptor bracket, pull cable, and attachment hardware 1.07 kg (2.35 lb).

2. Drawing SA572–S14

This drawing provides generic specifications for the uniaxial femur load cells for use within the HIII–5F dummy. The drawing specifies a diameter dimension of 1.722 inches/4.375 millimeters, with a tolerance of ±0.005 inch, for the load cell.

Denton said that there are three errors in this specification. First, the 1.722 inches should be 1.75 inches. Denton said that its Model 2121 femur, which has been used for this application worldwide (including by NHTSA) for many years, has a diameter of 1.75 inches. Denton argued that if NHTSA required a diameter of 1.722 inches, all existing femur force transducers would be rendered obsolete. As a result, the agency and its contractors, and other test facilities worldwide, would have to purchase all new femur force transducers. Denton also argued that this dimension is irrelevant to the performance of the load cell. Thus, Denton requested that the diameter dimension be changed to 1.75 inches.

Second, Denton argued that the ±0.005 inch tolerance is unnecessarily tight for the diameter dimension. Denton requested that the tolerance be changed to two decimal places, or ±0.01 inch.

Third, Denton noted that the metric conversion for 1.722 inches is stated incorrectly in the drawing. It should be 44.45, rather than 4.375, millimeters.

NHTSA agrees with all three of Denton's recommendations. The agency notes that the 1.722 inch specification and metric conversion for 1.722 inches were errors, and the agency is correcting them in this document. The agency also agrees that the tolerance specification is unnecessarily tight. For the load cells used in the Child Restraint Air Bag Interaction (CRABI) dummy, NHTSA has already changed the tolerance specification for diameter dimensions to two decimal places. For the sake of consistency, the agency is changing the tolerance specification of the HIII–5F load cell diameter dimension to two decimal places as well. Accordingly, the agency is revising Drawing SA572–S14 by changing: (1) The load cell diameter dimension to 1.75 inches; (2) the tolerance to ±0.01 inch; and (3) the metric conversion for 1.75 inches to 44.45 millimeters.

3. Drawing 880105–000

In inspecting production dummies, the VRTC noted a discrepancy in the height reference dimension "AA" of sheet 5 of 6 of drawing 880105. This dimension locates the measurement of the maximum chest circumference "Y" of the dummy with respect to the seating surface. Currently, the dimension is 12.0 ±0.20 inches.

The agency is increasing that dimension to 13.6 ±0.50 inches. This increase is needed to allow for stack up of dimensional tolerances of dummy components from the bottom of the buttocks to the shoulder structure and for variations in the dummy's torso posture. The changes will appear in the modified drawing as revision "J".

The agency's review of drawing 880105–000 (sheet 3 of 6) also revealed an erroneous callout for Item #4 of the parts list. Item #4 specifies part #9000224, Screw, 10–24 x 5/8, SHCS. However, the agency has determined that a 5/8 inch length screw is too long and will bottom-out before securely fastening the head accelerometer mount to the skull casting. The correct length of screw is 3/8 inch. Accordingly, the correct callout for Item #4 is part #9000487, 10–24 x 3/8, SHCS. The agency is revising Print 880105–000 sheet 3 of 6 to reflect this correction under revision "I".

4. Drawing 880105–434

The VRTC also noted a discrepancy in the abdominal insert drawing in drawing 880105–434. Currently, the abdominal drawing specifies, on the posterior side of the abdomen, a semicircular relief denoted by the R 3.62 and R 1.90 dimensions and shape.

Instead, the abdominal drawing should specify a rectangular shaped cutout on the posterior side of the abdomen to fit around the chest deflection transducers mounted bi-laterally next to the lumbar spine. All of NHTSA's evaluation, calibration, repeatability, and reproducibility work, including vehicle tests, have been performed with the HIII–5F dummy containing an abdomen with the rectangular cutout. If the abdominal insert were fabricated according to the dimensions and shape in the current drawing, the agency could not be assured that the dummy response would be consistent with these underlying tests.

Accordingly, the agency has revised the abdominal insert drawing in drawing 880105–434 by replacing the semicircular cutout shape with a rectangular cutout shape 4.45 inches wide and 2.00 inches long in the fore and aft direction from the posterior side, and 1.87 inches deep from the top surface of the abdomen. The change will appear in the modified drawing as revision "C".

5. Drawing 880105–440

Finally, the VRTC noted a discrepancy in the datum line in Drawing 880105–440, Molded Pelvic Assembly. The drawing dimension with respect to the datum line adds up to an overall depth of 10 inches in the fore-aft direction. As measured, however, the actual parts on several FTSS and Denton dummies have an overall depth of 9.25 inches. These dummies provide a good fit between the pelvis and thigh flesh.

The VRTC has inspected several pelvis assemblies and determined that the 1.00 inch dimension to the end of the pelvis flesh at the interface with the thigh flesh is incorrectly specified in the drawing. It is not needed, if the overall fore and aft depth of 9.25 inches of the pelvis is specified. Thus, control of the pelvis to a depth of 9.25 inches eliminates a potential assembly interference problem and provides a good fit between the pelvis and thigh flesh during the attachment of the femur to the pelvis. Accordingly, the agency is removing the 1.00 inch dimension from the end of the pelvis flesh and adding an overall depth dimension of 9.25 inches. The changes will appear in the modified drawing as revision "B".

6. Minor Drawing Revisions

In reviewing the drawings package, VRTC discovered several missing or misplaced notes and call out errors. To correct these errors, the agency is revising the drawings as shown in the following table. The revised drawings package contains a drawing revision list (Drawing Number SA572–880105DRL–1) describing all these changes.

Drawing #	Drawing title	Revision	Reason
880105–109	SKIN, HEAD—HIII 5th FEMALE	Added hole note "½ in. Dia."	The hole in the skin for the condile pin had no dimension.
880105–728–1	ARM COMPLETE ASSEMBLY, RIGHT.	Corrected location of balloon "11" arrowhead.	The arrow for item #11 was not pointing to the clamping screw.
880105–728–2	ARM COMPLETE ASSEMBLY, LEFT	Corrected location of balloon "11" arrowhead.	The arrow for item #11 was not pointing to the clamping screw.

[7] The pull mechanism consists of the load cell, loading adapter bracket, pull cable, and attachment hardware needed for the torso flexion test.

Drawing #	Drawing title	Revision	Reason
880105–650/651	HYBRID III 5th FEMALE—FOOT ASSEMBLY.	(1) Changed weight to 1.75 +/- 0.10 lbs. from 1.60 +/- 0.10 lbs. (2) Removed "left" from the title block.	(1) The weight was changed to 1.75 lbs to reflect the actual weight of the foot assembly. (2) The word "LEFT" was removed from the title block because the drawing is for the Left and Right Assembly.
880105–621	KNEE CLEVIS—ADAPTOR WELDMENT.	Changed hole dia. to .266 from .2656	The hole drilled in part is actually .266.
880105–516	LINEAR POT—SHAFT MODIFICATIONS.	Changed call-out in "Next Assembly" to 880105–629L/R from 880105–	Drawing 880150–229L/R specified in the "Next Assembly" was incorrect.

Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under the Executive Order, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local officials early in the process of developing the regulation, and the agency also complies with certain other specified requirements. If the agency complies with certain requirements and preempts State law, the Executive Order requires the agency to provide all affected State and local officials with notice and an opportunity for appropriate participation in the proceedings.

This rulemaking will not have any federalism implications, because it will not preempt State law and will not have any substantial effects on the States or on the relationship between the national government and the States. Accordingly, the agency has not consulted with State officials in the development of this rule.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory

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Drawing #	Drawing title	Revision	Reason
880105–650/651	HYBRID III 5th FEMALE—FOOT ASSEMBLY.	(1) Changed weight to 1.75 +/- 0.10 lbs. from 1.60 +/- 0.10 lbs. (2) Removed "left" from the title block.	(1) The weight was changed to 1.75 lbs to reflect the actual weight of the foot assembly. (2) The word "LEFT" was removed from the title block because the drawing is for the Left and Right Assembly.
880105–621	KNEE CLEVIS—ADAPTOR WELDMENT.	Changed hole dia. to .266 from .2656	The hole drilled in part is actually .266.
880105–516	LINEAR POT—SHAFT MODIFICATIONS.	Changed call-out in "Next Assembly" to 880105–528L/R from 880105–229L/R.	Drawing 880150–229L/R specified in the "Next Assembly" was incorrect.
880105–250	NECK ASSEMBLY	Changed note 2 from 2.0 +/- 0.2 lbs/in to 12.0 +/- 2.0 in-lbs.	Incorrect torque designation. The PADI document (page 11) requires the neck to be torqued to 10–14 in-lbs.
880105–1092	LUMBAR LOAD CELL SIMULATOR	Hole depth dia .75 x .30 DP. changed to dia. .75 x .350 DP. Removed .350 dimension from crossectional view.	Corrected depth of .75 dia. hole note, and removed duplicate call-out of same in crossectional view.
H350–1006	MOUNT, CHEST ACCELEROMETER FOR ENDEVCO 7264–2000 ACCELS ON TRIAX MOUNT.	Added to title block "SA572–S4" and removed "Endevco 7264–2000".	Title block was revised by removing vendor designated accelerometer call-out.

7. PADI Document

Currently, the PADI (Procedures for Assembly, Disassembly, and Inspection) Document specifies that the dummy shoes shall be "low dress black oxfords, size 8E that met MIL–S–13192P." These specifications must be updated to be consistent with the specifications in the Standard No. 208 Advanced Air Bag NPRM. Accordingly, the agency is revising the fifth sentence on page four of the PADI Document (under the Clothing section) to read as follows:

The shoes are women's low dress black oxfords, size 7½

W that meet MIL–S21711E.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. This rule also is not considered to be significant under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document amends 49 CFR Part 572 by making minor amendments to the design and performance specifications for a new 5th percentile female dummy that the agency may later incorporate into Federal motor vehicle safety standards. This document does not impose requirements on anyone.

The cost of an uninstrumented 5th percentile female dummy is approximately $33,400. Instrumentation would add from $29,000 to $99,100 to the cost, depending on the amount of instrumentation the user chooses to employ. This document does not add any costs to the cost of the dummy or any instrumentation. Thus, the economic impacts of this document are minimal, and no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rule under the Regulatory Flexibility Act and certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not impose or rescind any requirements. This rule makes relatively minor amendments to the design and performance specifications for a new 5th percentile female dummy that the agency may later incorporate into Federal motor vehicle safety standards. It does not impose requirements on anyone. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

C. National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule makes relatively minor amendments to the design and performance specifications for a new 5th percentile female dummy that the agency may later incorporate into Federal motor vehicle safety standards. The agency has determined that this rule does not have sufficient federalism implications to warrant consultation and the preparation of a Federalism Assessment.

E. Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid control number from the Office of Management and Budget (OMB). This rule does not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR Part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The 5th percentile female test dummy that is the subject of this document was developed under the auspices of the SAE. All relevant SAE standards were reviewed as part of the development process. The following voluntary consensus standards have been used in developing the dummy: SAE Recommended Practice J211, Rev. Mar 95 "Instrumentation for Impact Tests;" and SAE J1733 of 1994–12 "Sign Convention for Vehicle Crash Testing, Surface Vehicle Information Report."

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, Federal requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule does not impose any unfunded mandates under the UMRA. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. This rule makes relatively minor amendments to the design and performance specifications for a new 5th percentile female dummy that the agency may later incorporate into Federal motor vehicle safety standards. It will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 572

Incorporation by reference, Motor vehicle safety.

In consideration of the foregoing, 49 CFR Part 572 is amended as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for Part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. In "572.130, paragraphs (a)(1) introductory text, (a)(2), and (c)(1) are revised to read as follows:

§572.130 Incorporation by reference.

(a) * * *

(1) A drawings and specification package entitled "Parts List and Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy (HIII–5F, Alpha Version)" (June 2002), incorporated by reference in "572.131, and consisting of:

* * * * *

(2) A procedures manual entitled "Procedures for Assembly, Disassembly, and Inspection (PADI) Subpart O Hybrid III Fifth Percentile Adult Female Crash Test Dummy (HIII–5F), Alpha Version" (June 2002), incorporated by reference in "572.131, and consisting of:

* * * * *

3. In "572.131, paragraph (a)(2) is revised to read as follows:

§572.131 General description.

(a) * * *

(2) Parts List and Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy (HIII–5F, Alpha Version) (June 2002) (refer to § 572.130(a)(1)(ix)).

* * * * *

TABLE B.—PENDULUM PULSE

Time ms	Flexion		Extension	
	m/s	ft/s	m/s	ft/s
10	2.1–2.5	6.9–8.2	1.5–1.9	4.9–6.2
20	4.0–5.0	13.1–16.4	3.1–3.9	10.2–12.8
30	5.8–7.0	19.5–23.0	4.6–5.6	15.1–18.4

5. In "572.134, the last sentence of

etc., must meet the requirements of

One-third (1/3) of the weight of

Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy (HIII–5F, Alpha Version)" (June 2002), incorporated by reference in "572.131, and consisting of:

* * * * *

(2) A procedures manual entitled "Procedures for Assembly, Disassembly, and Inspection (PADI) Subpart O Hybrid III Fifth Percentile Adult Female Crash Test Dummy (HIII–5F), Alpha Version" (February 2002), incorporated by reference in § 572.132.

* * * * *

(c) * * *

(1) The Parts List and Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy, (HIII–5F, Alpha Version) (June 2002), referred to in paragraph (a)(1) of this section and the Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 5th Percentile Small Adult Female Crash Test Dummy, Alpha Version, referred to in paragraph (a)(2) of this section are available from Reprographic Technologies, 9107 Gaither Road, Gaithersburg, MD 20877, (301) 419–5070. These documents are also accessible for reading and copying through the DOT Docket Management System.

* * * * *

3. In "572.131, paragraph (a)(2) is revised to read as follows:

§ 572.131 General description.

(a) * * *

(2) Parts List and Drawings, Part 572 Subpart O Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy (HIII–5F, Alpha Version) (June 2002) (refer to § 572.130(a)(1)(ix)).

* * * * *

4. In "572.133, Table B is revised to read as follows:

§ 572.133 Neck assembly and test procedure.

* * * * *

TABLE B.—PENDULUM PULSE

Time ms	Flexion		Extension	
	m/s	ft/s	m/s	ft/s
10	2.1–2.5	6.9–8.2	1.5–1.9	4.9–6.2
20	4.0–5.0	13.1–16.4	3.1–3.9	10.2–12.8
30	5.8–7.0	19.5–23.0	4.6–5.6	15.1–18.4

5. In "572.134, the last sentence of (b)(1) is revised and paragraph (c)(7) is added to read as follows:

§ 572.134 Thorax assembly and test procedure.

* * * * *

(b) * * *

(1) * * * The peak force after 18.0 mm (0.71 in) of sternum displacement but before reaching the minimum required 50.0 mm (1.97 in) sternum displacement limit shall not exceed 4600 N.

* * * * *

(c) * * *

(7) No suspension hardware, suspension cables, or any other attachments to the probe, including the velocity vane, shall make contact with the dummy during the test.

6. In § 572.136, paragraph (c)(6) is added to read as follows:

§ 572.136 Knees and knee impact test procedure.

* * * * *

(c) * * *

(6) No suspension hardware, suspension cables, or any other attachments to the probe, including the velocity vane, shall make contact with the dummy during the test.

7. In § 572.137, paragraphs (a), (b), (m)(3)(ii) and (iii), and (m)(6), are revised and paragraph (m)(2)(iv) is added to read as follows:

§ 572.137 Test conditions and instrumentation.

(a) The test probe for thoracic impacts, except for attachments, shall be of rigid metallic construction and concentric about its longitudinal axis. Any attachments to the impactor, such as suspension hardware, impact vanes, etc., must meet the requirements of § 572.134(c)(7). The impactor shall have a mass of 13.97 ± 0.23 kg (30.8 ± 0.05 lbs) and a minimum mass moment of inertia of 3646 kg-cm^2 (3.22 lbs-in-sec^2) in yaw and pitch about the CG of the probe. One-third (1/3) of the weight of suspension cables and any attachments to the impact probe must be included in the calculation of mass, and such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis of the probe, has a flat, continuous, and non-deformable 152.4 ± 0.25 mm (6.00 ± 0.01 in) diameter face with a minimum/maximum edge radius of 7.6/12.7 mm (0.3/0.5 in). The impactor shall have a 152.4–152.6 mm (6.0–6.1 in) diameter cylindrical surface extending for a minimum of 25 mm (1.0 in) to the rear from the impact face. The probe's end opposite to the impact face has provisions for mounting of an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. The impact probe has a free air resonant frequency of not less than 1000 Hz, which may be determined using the procedure listed in Docket No. NHTSA–6714–14.

(b) The test probe for knee impacts, except for attachments, shall be of rigid metallic construction and concentric about its longitudinal axis. Any attachments to the impactor, such as suspension hardware, impact vanes, etc., must meet the requirements of § 572.136(c)(6). The impactor shall have a mass of 2.99 0.23 kg (6.6 ±0.05 lbs) and a minimum mass moment of inertia of 209 kg-cm^2 (0.177 lb-in-sec^2) in yaw and pitch about the CG of the probe. One-third (1/3) of the weight of suspension cables and any attachments to the impact probe may be included in the calculation of mass, and such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis of the probe, has a flat, continuous, and non-deformable 76.2 ± 0.2 mm (3.00 ± 0.01 in) diameter face with a minimum/maximum edge radius of 7.6/12.7 mm (0.3/0.5 in). The impactor shall have a 76.2–76.4 mm (3.0–3.1 in) diameter cylindrical surface extending for a minimum of 12.5 mm (0.5 in) to the rear from the impact face. The probe's end opposite to the impact face has provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. The impact probe has a free air resonant frequency of not less than 1000 Hz, which may be determined using the procedure listed in Docket No. NHTSA–6714–14.

* * * * *

(m) * * *

(2) * * *

(iv) Rotation potentiometer—Class 60 (optional)

(3) * * *

(ii) Spine and pendulum accelerations—Class 180

(iii) Sternum deflection—Class 600

* * * * *

(6) Femur forces and knee pendulum—Class 600

* * * * *

8. At the end of subpart O, Figures O1, O2, O3, O4, and O5 are revised as follows:

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Figures to Subpart O

FIGURE O1
NECK FLEXION TEST SETUP SPECIFICATIONS

FIGURE O2
NECK EXTENSION TEST SETUP SPECIFICATIONS

Figures to Subpart O

FIGURE O1
NECK FLEXION TEST SETUP SPECIFICATIONS

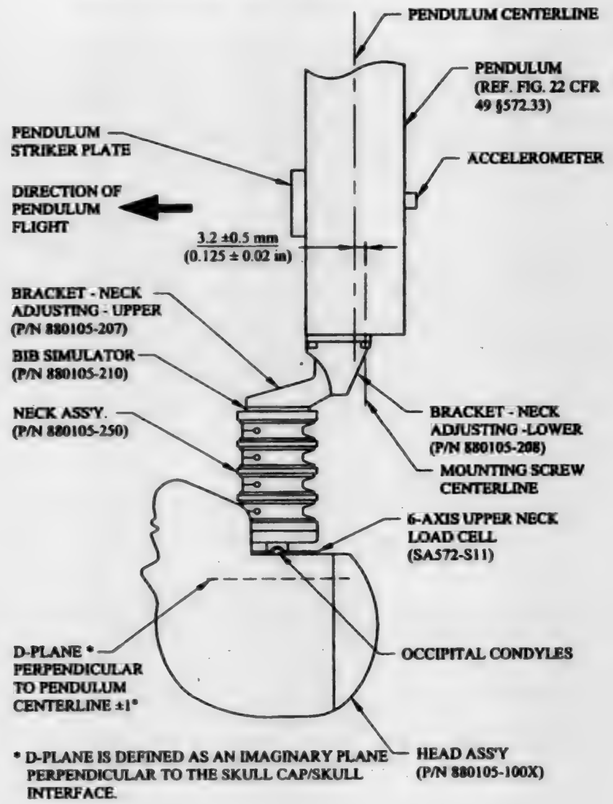

* D-PLANE IS DEFINED AS AN IMAGINARY PLANE PERPENDICULAR TO THE SKULL CAP/SKULL INTERFACE.

FIGURE O2
NECK EXTENSION TEST SETUP SPECIFICATIONS

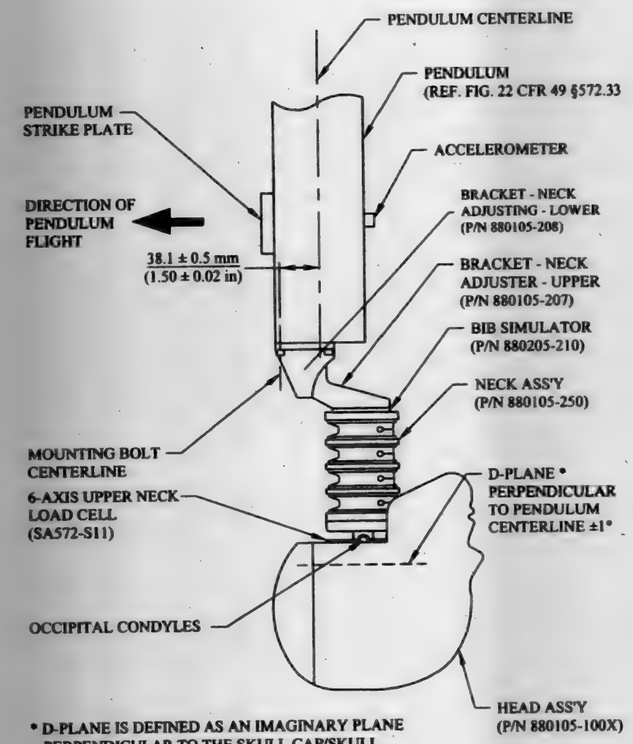

* D-PLANE IS DEFINED AS AN IMAGINARY PLANE PERPENDICULAR TO THE SKULL CAP/SKULL INTERFACE.

ACT PROBE SUPPORT LES	
ELEROMETER MOUNTED SENSITIVE AXIS IN LINE CENTERLINE OF TEST E LONGITUDINAL AXIS SA572-S4)	
ERLINE OR ARMS ZONTAL ±2°	
PROBE CENTERLINE ZONTAL ±0.5°	
MPACT PROBE WEIGHT NCLUDING ALL INSTRUMENTATION AND 1/3 OF SUPPORT CABLE WEIGHT * 13.97 ±0.023 kg (30.8 ± 0.05 lb)	
	FLAT, SMOOTH, RIGID, CLEAN, DRY SEATING SURFACE HORIZONTAL ± 0.5°

FIGURE 03
THORAX IMPACT TEST SETUP SPECIFICATIONS

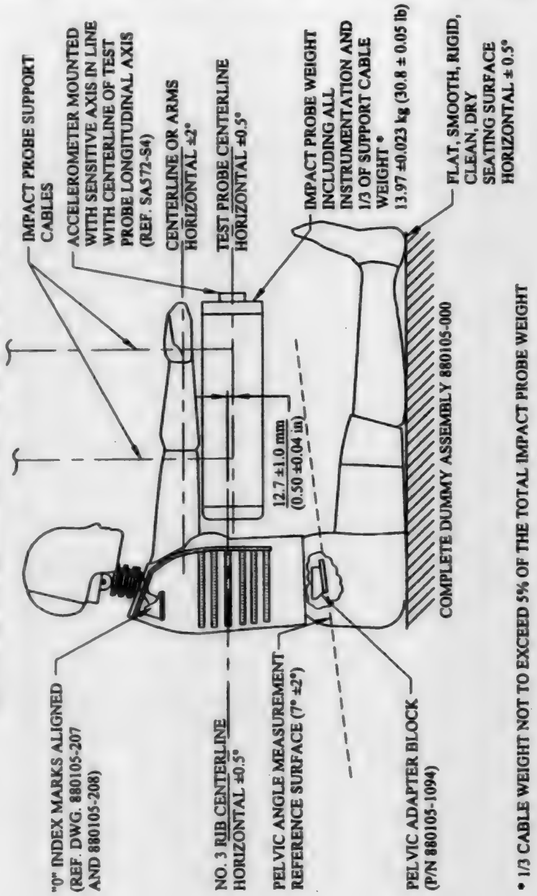

FIGURE 04
TORSO FLEXION TEST SET UP SPECIFICATIONS

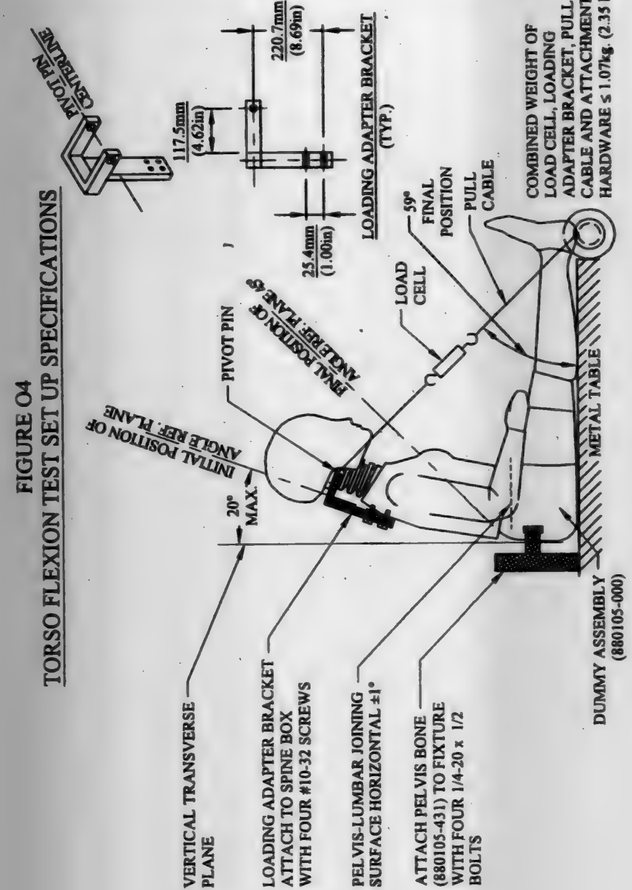

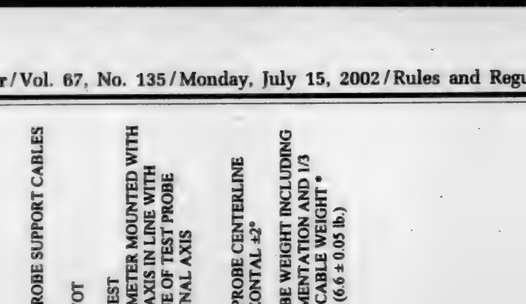

publication of the 2003 specifications and management measures. Comments on this rule will be accepted through July 30, 2002.

ADDRESSES: Submit comments to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.access.gpo.gov/su_docs/aces/*

bycatch of non-target species was estimated to be at approximately 3,527 lb (1.6 mt). Bycatch of yelloweye rockfish, an overfished groundfish species, is of particular concern in the sport halibut fisheries. In order to keep the south coast all-depth fishery open while reducing the likelihood that the fishery will intercept yelloweye rockfish, WDFW recommended to NMFS and the International Pacific Halibut Commission (IPHC) that the all-

The Washington south coast all-depth subarea would be changed from a 5 days per week (Sunday through Thursday) fishery to a 2 days per week (Friday and Saturday) fishery. Additionally, sport fishing for halibut in this area would be restricted to an area known as the Westport, WA halibut hot spot and an area closer to shore between Grays Harbor, WA and Leadbetter Point, WA. The purpose of leaving these areas open is to lengthen the season by allowing

FIGURE 05
KNEE IMPACT TEST SETUP SPECIFICATIONS

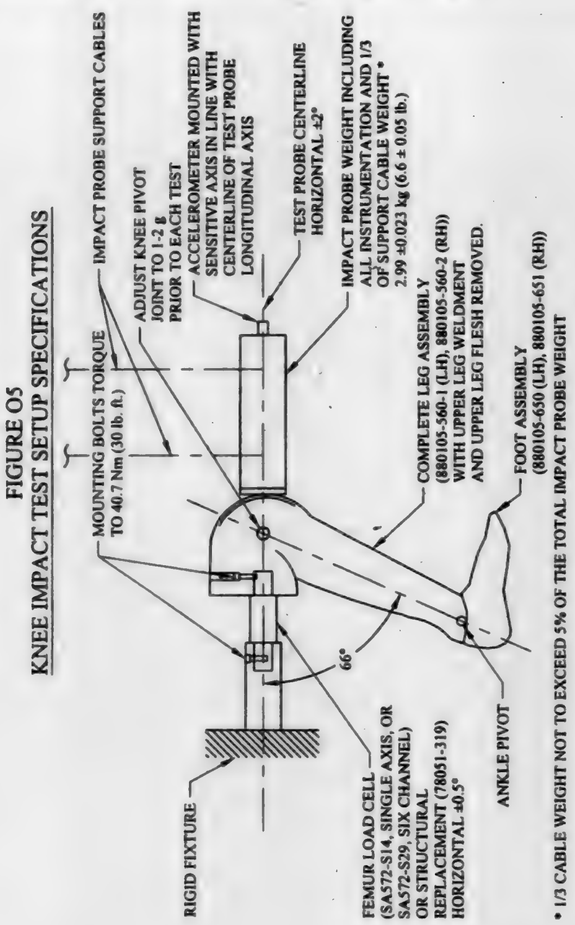

Issued: June 13, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–15285 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 020131023–2056–02; I.D. 070302B]

Pacific Halibut Fisheries; Washington Sport Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action and partial closure; request for comments.

SUMMARY: NMFS announces changes to the regulations for the Area 2A sport halibut fisheries off the south coast of Washington. This action would change the days and the area open to halibut fishing along the south coast. The purpose of this action is to allow continued access to Washington's south coast halibut quota while reducing the likelihood of yelloweye rockfish interception.

DATES: Effective 0001 local time, July 12, 2002, through the **Federal Register** publication of the 2003 specifications and management measures. Comments on this rule will be accepted through July 30, 2002.

ADDRESSES: Submit comments to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Jamie Goen (NMFS, Northwest Region) 206–526–6140.

SUPPLEMENTARY INFORMATION: The Area 2A Catch Sharing Plan for Pacific halibut off Washington, Oregon, and California is implemented in the annual management measures for the Pacific halibut fisheries published on March 20, 2002 (67 FR 12885). Those regulations established the 2002 area quota for the south coast of Washington (Queets River to Leadbetter Point) fishery of 42,739 lb (19.4 mt) and the related management measures. The all-depth sport fishery in this area is scheduled for 5 days per week (Sunday through Thursday), and the nearshore fishery is scheduled for 7 days per week.

Over the last 4 weeks, the pace of the all-depth halibut fishery has slowed, due in part to a shift in fishing effort into the recreational chinook salmon fishery, which was open from May 25 through June 16 off the Washington coast. Effort in the sport halibut fishery is expected to remain low due to the opening of the recreational coho salmon fishery in the Westport, WA area. The coho fishery starts June 30 and lasts 5 days per week (Sunday through Thursday) through the earlier of September 8 or quota attainment.

As of June 27, 2002, a total of 1,919 lb (0.87 mt) of halibut were landed over the last 4 weeks compared to 31,390 lb (14.24 mt) over the first 4 weeks of the fishery. The quota left remaining for the Washington south coast fishery (both all-depth and nearshore) is 9,430 lb (4.28 mt). Although the pace of the south coast all-depth fishery has slowed, Washington Department of Fish and Wildlife (WDFW), the agency that directly monitors the sport halibut fishery off Washington's coast, is concerned about leaving the entire south coast all-depth fishery open 5 days per week because of potential rockfish bycatch in the halibut sport fishery. WDFW is trying to keep bycatch of non-target species in the recreational fisheries below approximately 6,614 lb (3 mt) statewide. At the end of May, bycatch of non-target species was estimated to be at approximately 3,527 lb (1.6 mt). Bycatch of yelloweye rockfish, an overfished groundfish species, is of particular concern in the sport halibut fisheries. In order to keep the south coast all-depth fishery open while reducing the likelihood that the fishery will intercept yelloweye rockfish, WDFW recommended to NMFS and the International Pacific Halibut Commission (IPHC) that the all-depth fishery be changed from a 5 days per week fishery (Sunday through Thursday - the same open days as the recreational coho salmon fishery) to a 2 day per week fishery (Friday and Saturday). While this change would reduce the days of the week that a vessel could fish for halibut, thus reducing the chance of intercepting yelloweye rockfish, it would also allow more opportunity for sport boats to fish because they could target halibut on days when the salmon fishery is closed.

In addition to a reduction in fishing days per week, WDFW proposed to restrict the all-depth area that can be fished to the following two areas: (1) an area known as the "Westport, WA halibut hot spot" and (2) an area from Grays Harbor, WA south to Leadbetter Point, WA. NMFS proposes to allow only these areas to remain open because it would allow fishing for halibut in areas that have minimal yelloweye rockfish bycatch. The Westport, WA halibut hot spot is a three mile by three mile area approximately 34 miles offshore defined by the following coordinates: 47°19′ N. lat. by 124°53′ W. long., 47°19′ N. lat. by 124°48′ W. long., 47°16′ N. lat. by 124°53′ W. long., and 47°16′ N. lat. by 124°48′ W. long. Because the Westport, WA halibut hot spot is farther offshore, it is primarily accessible to charter boats and larger private vessels. In order to allow equal halibut opportunity to smaller private vessels along the south coast of Washington, WDFW also proposed to open an area closer to shore within an area defined by the following coordinates: 47°00′ N. lat. south to 46°38′10″ N. lat.(Leadbetter Point, WA), and east of 124°27 W. long.

Section 25 of the 2002 Pacific halibut regulations provides NMFS with the authority to make certain inseason management changes, provided that the action is necessary to allow allocation objectives to be met, and that the action will not result in exceeding the catch limit for the area. The Catch Sharing Plan's structuring objective for the Washington south coast area is to maximize the season length, while maintaining a quality fishing experience.

The Washington south coast all-depth subarea would be changed from a 5 days per week (Sunday through Thursday) fishery to a 2 days per week (Friday and Saturday) fishery. Additionally, sport fishing for halibut in this area would be restricted to an area known as the Westport, WA halibut hot spot and an area closer to shore between Grays Harbor, WA and Leadbetter Point, WA. The purpose of leaving these areas open is to lengthen the season by allowing fishers access to areas of more abundant halibut while reducing the likelihood of yelloweye rockfish interception.

In consultation with the WDFW and the IPHC, NMFS has determined that restricting the Washington south coast all-depth subarea to halibut fishing only on Fridays and Saturdays in the areas defined above meets the Catch Sharing Plan's objective of providing a quality fishing experience without allowing the fishery to exceed the Washington south coast halibut quota. Additionally, this action is expected to protect an overfished groundfish species, yelloweye rockfish.

NMFS Action

For the reasons stated above, NMFS announces the following change to the 2002 annual management measures (67 FR 12885, March 20, 2002).

1. On page 12895, in section 24. *Sport Fishing for Halibut*, paragraph (4)(b)(iii)(A) is revised to read as follows:

24. Sport Fishing for Halibut

* * * * *

(A) The south coast area (Queets River to Leadbetter Point) will remain open until 42,739 lb (19.4 mt) is estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first.

(*1*) The fishing season commences May 1 and continues 7 days a week in the area from Queets River south to 47°00′ N. lat. and east of 124°40′ W. long.

(*2*) The fishing season commences on May 1 and continues 5 days per week (Sunday through Thursday) in all waters until July 11. Starting July 12, the fishing season will be 2 days a week (Friday and Saturday) in the area outside the area described in (A)(1), but will be restricted to two areas defined by the following coordinates:

(*i*) 47°19′ N. lat. by 124°53′ W. long., 47°19′ N. lat. by 124°48′ W. long., 47°16′ N. lat. by 124°53′ W. long., and 47°16′ N. lat. by 124°48′ W. long and

(*ii*) 47°00′ N. lat. south to 46°38′10″ N. lat.(Leadbetter Point), and east of 124°27′ W. long.

* * * * *

Classification

This action is authorized by the regulations implementing the Catch Sharing Plan. The determination to take these actions is based on the most recent data available. The Assistant Administrator for Fisheries, NOAA (AA), has determined that good cause exists for this document to be published without affording a prior opportunity for public comment under 5 U.S.C. public interest because it would delay this action and lead to earlier season closures and a greater likelihood of yelloweye rockfish interception in the halibut sport fishery off Washington's south coast. It is contrary to the public interest because it would delay this action and prevent fishers from continuing to access the Washington south coast halibut quota while avoiding yelloweye rockfish. For the above reasons, the AA has also effectiveness of this action. This action is authorized by Section 25 of the annual management measures for Pacific halibut fisheries published on March 20, 2002 (67 FR 12885), and has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 773–773k *et seq.*

Dated: July 10, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable

Proposed Rules

Federal Register
Vol. 67, No. 135
Monday, July 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237, (202) 720–8938, or E-mail: *George.Kelhart@usda.gov*.

Dated: July 9, 2002.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–17615 Filed 7–12–02; 8:45 am]

BILLING CODE 3410–02–P

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Classification

This action is authorized by the regulations implementing the Catch Sharing Plan. The determination to take these actions is based on the most recent data available. The Assistant Administrator for Fisheries, NOAA (AA), has determined that good cause exists for this document to be published without affording a prior opportunity for public comment under 5 U.S.C. 553(b)(B) because doing so would be impracticable and contrary to the public interest. Providing prior notice and opportunity for public comment would be impracticable and contrary to the public interest because it would delay this action and lead to earlier season closures and a greater likelihood of yelloweye rockfish interception in the halibut sport fishery off Washington's south coast. It is contrary to the public interest because it would delay this action and prevent fishers from continuing to access the Washington south coast halibut quota while avoiding yelloweye rockfish. For the above reasons, the AA has also determined that good cause exists to waive the delay of effectiveness of this action under 5 U.S.C. 553(d)(3).

Public comments will be received for a period of 15 days after the effectiveness of this action. This action is authorized by Section 25 of the annual management measures for Pacific halibut fisheries published on March 20, 2002 (67 FR 12885), and has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 773–773k *et seq.*

Dated: July 10, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17704 Filed 7–10–02; 4:31 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 135
Monday, July 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–610 REVIEW]

Dried Prunes Produced in California; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This notice of review announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 993 for dried prunes produced in California, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by September 13, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or may be viewed at *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; E-mail: *Richard.VanDiest@usda.gov;* or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237, (202) 720–8938, or E-mail: *George.Kelhart@usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order No. 993, as amended (7 CFR part 993), regulates the handling of dried prunes produced in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS initially published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 993, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; U.S.C. 601–612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525). Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review.

The purpose of the review will be to determine whether the marketing order for dried prunes produced in California should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the dried prune marketing order's impact on small businesses are invited.

Dated: July 9, 2002.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–17615 Filed 7–12–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–32–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Eurocopter France (ECF) Model AS355N helicopters. The current AD requires visually inspecting the four engine exhaust pipe ejector (ejector) attachment lugs (lugs), the starter-generator (S–G) attachment flange (flange) and attachment half-clamps (half-clamps) for cracks, and the S–G shaft for radial play. This superseding AD would retain the current requirements, except would not require measuring the radial play but would require measuring each S–G engine clamp torque and vibration level and recording the S–G vibration level on a component history card or equivalent record. If the S–G vibration level is equal to or higher than 0.5 inches per second (IPS), this superseding AD would require repairing or replacing the S–G, as necessary. This proposal is prompted by additional cases of S–G damage and the need for additional corrective actions. The actions specified by this proposed AD are intended to prevent excessive S–G vibration, which could lead to separation of an ejector, impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 13, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the

Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Federal Register between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

would require repairing or replacing the S–G, as necessary. Also, this action would require inspecting the lugs, the two clamps, and the flange for a crack and replacing any cracked part with an airworthy part before further flight. This proposal is prompted by reports of S–G damage, cracks in the lugs, and a report of in-flight loss of an ejector. The actions specified by the proposed AD are intended to prevent excessive S–G vibration, which could lead to

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

vibration level for each S–G in accordance with the Accomplishment Instructions, paragraph 2.A.2., of Eurocopter France (ECF) Telex No. 01.00.45 R3, dated November 22, 2001 (Telex), as follows:

(1) For each S–G with less than 10 hours TIS since initial installation, before further flight, and at or between the hours TIS as shown in Table 1 of this AD:

TABLE 1.—S–G VIBRATION LEVEL MEASUREMENT INTERVALS

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 1999–469–058(A)R1, dated August 9, 2000, and 1999–469–058(A)R2, dated January 9, 2002.

Issued in Fort Worth, Texas, on July 3, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–17301 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–13–P

Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Federal Register between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–32–AD." The postcard will be date stamped and returned to the commenter.

Discussion

This document proposes superseding an existing AD for ECF Model AS355N helicopters. This action would require determining the S–G clamp torque in accordance with the maintenance manual and the vibration level on both engines at specified intervals. This action would also require recording each vibration level on the component history card or equivalent record. If the S–G vibration level is equal to or higher than 0.5 IPS (12.7 mm/s), this action would require repairing or replacing the S–G, as necessary. Also, this action would require inspecting the lugs, the two clamps, and the flange for a crack and replacing any cracked part with an airworthy part before further flight. This proposal is prompted by reports of S–G damage, cracks in the lugs, and a report of in-flight loss of an ejector. The actions specified by the proposed AD are intended to prevent excessive S–G vibration, which could lead to separation of an ejector, impact with the main or tail rotor, and subsequent loss of control of the helicopter.

On March 6, 2000, the FAA issued AD 2000–05–15, Amendment 39–11625 (65 FR 14209), to require visually inspecting the four lugs, the flange, and the half-clamps for cracks and the S–G shaft for radial play. That action was prompted by reports of S–G damage, cracks in the lugs, and a report of in-flight loss of an ejector. The requirements of that AD are intended to prevent separation of an ejector from the helicopter, which could result in a main or tail rotor strike and subsequent loss of control of the helicopter.

Since the issuance of that AD, further cases of damage due to excessive S–G vibration have resulted in modifying the technical analysis and the precautionary measures.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS355N helicopters. The DGAC advises of further cases of S–G deterioration, which may lead to failure of the engine exhaust pipe lugs and loss of the ejector.

ECF has issued Eurocopter Alert Telex (Telex) No. 01.00.45 R3, dated November 22, 2001 that supersedes Alert Telex No. 01.00.45 R2, dated August 24, 2000, and No. 01.00.15 R2, dated April 3, 2000, that superseded Alert Telex No. 01.00.45, dated October 27, 1999. Alert Telex No. 01.00.45 R3 specifies checking the S–G clamp torque and vibration levels and recording vibration levels. If the vibration level is equal to or above 0.5 IPS (12.7 mm/s), Telex 01.00.45 R3 specifies repairing the S–G as well as conducting additional inspections and repairs. The Telex states that ECF is developing modifications to return to an acceptable maintenance program.

The DGAC classified Telex Nos. 01.00.45 R2 and 01.00.45 R3 as mandatory. The DGAC issued AD Nos. 1999–469–058(A)R1, dated August 9, 2000, and 1999–469–058(A)R2, dated January 9, 2002, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other ECF Model AS355N helicopters of this same type design. Therefore, the proposed AD would supersede AD 2000–05–15 to require determining the S–G clamp torque in accordance with the maintenance manual and measuring and recording the vibration level at specified intervals. If the vibration level is equal to or higher than 0.5 IPS, the AD would require repairing or replacing the S–G with an airworthy S–G, as necessary. In addition, the AD would require inspecting the lugs, the two clamps, and the flange for a crack, and replacing any cracked part with an airworthy part before further flight.

The FAA estimates that this proposed AD would:

- Affect 13 helicopters of U.S. registry;
- Require 5.5 work hours for the inspections;
- Require 5 work hours to replace the parts at an average labor rate of $60 per work hour;
- Cost approximately $6,346 for each S–G, $12,148 for each exhaust pipe, $500 for each flange, and $175 for each clamp or $38,338 per helicopter; and
- Result in a total cost impact of $506,584, assuming one inspection and replacement of all parts per helicopter.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11625 (65 FR 14209, March 16, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 2002–SW–32–AD. Supersedes AD 2000–05–15, Amendment 39–11625, Docket No. 99–SW–87–AD.

Applicability: Model AS355N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive starter-generator (S–G) vibration, which may lead to separation of an engine exhaust pipe ejector (ejector), impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and at or between 10 and 15 hours time-in-service (TIS), inspect the torque on each S–G attachment clamp (clamp). If the torque is not within tolerances provided in the maintenance manual, adjust the torque accordingly.

(b) Measure and record on a component history card or equivalent record the vibration level for each S–G in accordance with the Accomplishment Instructions, paragraph 2.A.2., of Eurocopter France (ECF) Telex No. 01.00.45 R3, dated November 22, 2001 (Telex), as follows:

(1) For each S–G with less than 10 hours TIS since initial installation, before further flight, and at or between the hours TIS as shown in Table 1 of this AD:

TABLE 1.—S–G VIBRATION LEVEL MEASUREMENT INTERVALS

Hours TIS
A. 10 and 15.
B. 24 and 35.
C. 45 and 55.
D. 70 and 80.
E. 100 and 110.

(2) For each S–G with 10 hours or more TIS but less than 110 hours TIS since initial installation, begin and continue the vibration level measurements at or between the applicable hours TIS shown in Table 1 of this AD.

(3) For each S–G with more than 110 hours TIS since initial installation, measure the vibration level before further flight.

(c) After doing paragraph (b) of this AD, thereafter, at intervals not to exceed 110 hours TIS, measure the vibration level in accordance with paragraph 2.A.2. of the Telex.

(d) If the vibration level of an S–G is equal to or greater than 0.5 inches per second (IPS) (12.7 mm/s):

(1) Remove the S–G and repair or replace it with an airworthy S–G.

(2) Visually inspect the four ejector attachment lugs (lugs) and the two clamps for a crack in accordance with the Accomplishment Instructions, paragraph 2.B.3.b.1B), of the Telex.

(3) Inspect the two half-clamps for a crack.

(4) Remove the S–G to engine attachment flange (flange). Clean and inspect the flange for a crack in accordance with the Accomplishment Instructions, paragraph 2.B.3.b.1D) of the Telex.

(5) If a crack is found, before further flight, repair or replace the cracked part with an airworthy part in accordance with the Accomplishment Instructions, paragraph 2.B.3.b.3 of the Telex, except you are not required to report your findings to the manufacturer.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 1999–469–058(A)R1, dated August 9, 2000, and 1999–469–058(A)R2, dated January 9, 2002.

Issued in Fort Worth, Texas, on July 3, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–17301 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–06–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters. This proposal would require establishing or reducing the life limits of various parts listed in the airworthiness limitations section (ALS) of the maintenance manual. This proposal is prompted by the results of fatigue tests and analysis to determine life limits for various parts. The actions specified by this proposed AD are intended to establish or reduce the life limits to prevent failure of specified parts and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 13, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before

agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

An unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States if the proposed life limits are not followed. Therefore, the proposed AD would require establishing

contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

TABLE 1—Continued

Part name	Part No.	Hours TIS
(4) Tail rotor retention strap assembly	109–8131–07–1	1,800
(5) Tail rotor hub assembly	109–0131–06–7	3,000
(6) Tail rotor 90-degree gearbox pinion gear	109–0433–01–107	6,100
(7) Tail rotor 90-degree gearbox crown gear	109–0443–01–103	11,700
(8) Main rotor control bolt	109–0110–90–103	5,000

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–06–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On September 7, 2001, Agusta sent the FAA a comparison between the May 1996 and July 2001 issues of the ALS of its maintenance manual and provided justification for the changes in fatigue lives of certain parts. The justification for changing the life limits was based on applying new fatigue life computations, a rescue hoist flight spectrum, a Category A training flight spectrum, a new operational limit, and an update of loads in-flight survey data.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

An unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States if the proposed life limits are not followed. Therefore, the proposed AD would require establishing or reducing the life limits of specified parts of the main transmission assembly and supports, the tail rotor assemblies, the main rotor control bolt, and the fuselage left-hand elevator, and revising the ALS of the maintenance manual accordingly.

The FAA estimates that 31 helicopters of U.S. registry would be affected by this proposed AD. One copy of each of the 11 parts listed in Table 1 of this proposal would cost approximately $41,294. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,280,114, assuming that one copy of each part would be replaced on the entire fleet. There would be no additional labor costs as the parts would be replaced during the normal maintenance process.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Agusta S.p.A.: Docket No. 2002–SW–06–AD.

Applicability: Model A109E helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service (TIS), unless accomplished previously.

To prevent failure of specified parts of the main transmission assembly and supports, the tail rotor assemblies, the main rotor control bolt, or the fuselage left-hand elevator, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace each part listed in Table 1 with an airworthy part on or before reaching the specified hours TIS as shown in Table 1 of this AD as follows:

TABLE 1

Part name	Part No.	Hours TIS
(1) Main transmission gear pinion	109–0403–05–111	6,100
(2) Main transmission gear driver	109–0403–04–3	8,300
(3) Main transmission shaft assembly	109–0405–76–107	25,000

TABLE 1—Continued

Part name	Part No.	Hours TIS
(4) Tail rotor retention strap assembly	109–8131–07–1	1,800
(5) Tail rotor hub assembly	109–0131–06–7	3,000
(6) Tail rotor 90-degree gearbox pinion gear	109–0433–01–107	6,100
(7) Tail rotor 90-degree gearbox crown gear	109–0443–01–103	11,700
(8) Main rotor control bolt	109–0110–90–103	5,000
(9) Fuselage left-hand elevator	109–0200–02–93	4,400
(10) Main transmission support aft rod	109–0325–03–113	35,000
(11) Main transmission support lower fitting	109–0325–08–1	30,000

(b) This AD revises the airworthiness limitations section of the maintenance manual by establishing or reducing the life limit as specified in Table 1 of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits will not be issued.

Issued in Fort Worth, Texas, on July 5, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–17424 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. P 68 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Vulcanair S.p.A. (Vulcanair) P 68 series airplanes. This proposed AD would require you to inspect the flight and engine control systems to ensure that there is correct connecting bolt and linkage installation, no interference, and correct installation of certain components. The proposed AD would also require you to make any necessary adjustments and modify and install the split link and full travel limit assembly. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to prevent failure of the primary flight control system caused by certain configurations. Such failure could lead to loss of aircraft flight control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 26, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–13–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Vulcanair S.p.A., Via G. Pascoli 7, 80026 Casoria (Naples) Italy, telephone: +39.081.5918111; facsimile: +39.081.5918172. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write

"Comments to Docket No. 2002–CE–13–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe

—Inspecting to ensure that the split link is correctly installed in the chain and that the lock-wire is present and undamaged;
—Making any necessary adjustments; and
—Modifying and installing the split link and full travel limit assembly.

Vulcanair P68 Series Service Bulletin No. 111, Rev. 1, dated February 20, 2002, includes procedures for:

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA Decided?

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in

Compliance Time of this Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 30 days after the effective date of the AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

The compliance of this proposed AD

effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39

"Comments to Docket No. 2002–CE–13–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on certain Vulcanair Models P 68, P 68B, P 68C, P 68C–TC, P 68 "OBSERVER", AP68TP300 "SPARTACUS", P68TC "OBSERVER", AP68TP 600 "VIATOR", and P68 "OBSERVER 2" airplanes. The ENAC reports several instances of incorrectly installed bolts, missing nuts, and the presence of interference between the forward control lever assembly and the airframe.

What Are the Consequences If the Condition Is Not Corrected?

If not detected and corrected, these conditions could result in failure of the primary flight controls. Such failure could lead to loss of aircraft flight control.

Is There Service Information that Applies to this Subject?

Vulcanair has issued P68 Series Service Bulletin No. 110, dated March 19, 2002; and P68 Series Service Bulletin No. 111, Rev. 1, dated February 20, 2002.

What Are the Provisions of this Service Information?

Vulcanair P68 Series Service Bulletin No. 110, dated March 19, 2002, includes procedures for:

—Inspecting for interference between the control column interconnection chain and the engine control pedestal assembly when the flight controls are in the maximum nose-down position;
—Inspecting to ensure that the split link is correctly installed in the chain and that the lock-wire is present and undamaged;
—Making any necessary adjustments; and
—Modifying and installing the split link and full travel limit assembly.

Vulcanair P68 Series Service Bulletin No. 111, Rev. 1, dated February 20, 2002, includes procedures for:

—Inspecting all control cable and control rod connecting bolts and linkages for proper installation;
—Inspecting for interference between the flight control components and the airframe installations;
—Making any necessary adjustments; and
—Inspecting for the correct installation of the part number AN24–18A bolt that connects the forward control cable rod to the control column and reinstalling if necessary.

What Action Did the ENAC Take?

The ENAC classified these service bulletins as mandatory. In order to ensure the continued airworthiness of these airplanes in Italy, the ENAC issued the following:

—Italian AD Number 2002–212, dated March 28, 2002; and
—Italian AD Number 2002–155, dated February 22, 2002.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA Decided?

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Vulcanair P 68 series airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service information.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that the proposed AD affects as many as 58 airplanes in the U.S. registry. The actions specified in Vulcanair P68 Series Service Bulletin No. 110 affect 15 U.S.-registered airplanes. The actions specified in Vulcanair P68 Series Service Bulletin No. 111, Rev.1, affect 58 U.S.-registered airplanes.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspections and modifications of Vulcanair P68 Series Service Bulletin No. 110:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 workhours × $60 per hour = $420	$150	$570	$8,550

We estimate the following costs to accomplish the proposed inspections of Vulcanair P68 Series Service Bulletin No. 111, Rev. 1:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	None	$240	$13,920

The FAA has no method of determining the number of necessary adjustments each owner/operator would incur if connecting bolts, linkage, etc. were found incorrectly installed. We estimate the cost to be minor.

Compliance Time of this Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 30 days after the effective date of the AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

The compliance of this proposed AD is presented in calendar time instead of hours TIS because these missing or incorrectly installed parts is due to a lack of quality control at the factory. The problem has the same chance of existing on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, we believe that 30 days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and
—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Vulcanair S.P.A.: Docket No. 2002–CE–13–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1 Airplanes: Model P 68 "OBSERVER 2", serial numbers 401 through 411.

(2) Group 2 Airplanes: Model P 68 "OBSERVER 2", serial numbers 412 and 413.

(3) Group 3 Airplanes: Model P 68C, serial number 402.

(4) Group 4 Airplanes:

Model	Serial Nos.
P 68 "OBSERVER"	All serial numbers through 411.
P 68 "OBSERVER"	All serial numbers through 400.
P68TC "OBSERVER"	All serial numbers through 411.

(5) Group 5 Airplanes:

Model	Serial Nos.
AP68TP300 "SPARTACUS"	All serial numbers through 413.
P 68	All serial numbers through 413.
P 68 "OBSERVER"	412 and 413.
P 68 B	All serial numbers through 413.
P 68C	All serial numbers through 401 and 403 through 413.
P 68C–TC	All serial numbers through 413.
P68TC "OBSERVER"	412 and 413.
P68TP 600 "VIATOR"	All serial numbers through 413.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraphs (a)(1) through (a)(5) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the primary flight control system caused by certain configurations. Such failure could lead to loss of aircraft flight control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Airplane groups affected	Procedures
(1) Inspect the connecting bolts in the stabilator, rudder, aileron, and flap controls to verify the correct installation and inspect the forward control lever for interference with the airframe. (i) If interference or any incorrect installations are found during the inspections, obtain a repair scheme from the manufacturer through the	Within the next 30 days after the effective date of this AD. Perform necessary repairs prior to further flight after the inspection in which the interference or any incorrect installation is found.	Group 1, Group 2, and Group 3.	Inspect in accordance with paragraph 2. WORK PROCEDURE, 2.1 PART A, of Vulcanair P68 Series Service Bulletin No. 111 Rev. 1, dated February 20, 2002. Repair in accordance with the repair scheme obtained from Vulcanair S.p.A., Via G. Pascoli 7, 80026 Casoria (Naples) Italy. Obtain this repair scheme through the FAA at the address specified in paragraph

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219–AA92

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

After reviewing the testimony and comments from the mining and manufacturing communities, as well as the specific recommendations from MSHA's Belt Air Advisory Committee, "Belt Entry Ventilation Review: Report of Findings and Recommendations" (1989), MSHA chose to pursue rulemaking. During the next several years, MSHA worked closely with the former Bureau of Mines to develop a new laboratory-scale test for

air coursed through the belt haulageway has contributed to the increased use of belt monitoring systems, and has thereby indirectly contributed to the decrease in the severity of belt fires. Currently this practice is only allowed in a mine after MSHA grants a petition for modification of the safety standard that requires entries used to course air to the mine face and working areas to be separate from belt haulage entries.

During the past 15 years, MSHA has

Actions	Compliance	Airplane groups affected	Procedures
(1) Inspect the connecting bolts in the stabilator, rudder, aileron, and flap controls to verify the correct installation and inspect the forward control lever for interference with the airframe. (i) If interference or any incorrect installations are found during the inspections, obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD. (ii) Incorporate this repair scheme	Within the next 30 days after the effective date of this AD. Perform necessary repairs prior to further flight after the inspection in which the interference or any incorrect installation is found.	Group 1, Group 2, and Group 3.	Inspect in accordance with paragraph 2. WORK PROCEDURE, 2.1 PART A, of Vulcanair P68 Series Service Bulletin No. 111 Rev. 1, dated February 20, 2002. Repair in accordance with the repair scheme obtained from Vulcanair S.p.A., Via G. Pascoli 7, 80026 Casoria (Naples) Italy. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(2) Accomplish the following inspections: (i) Inspect to ensure that there is no interference between the control column interconnection chain and engine control pedestal assembly when the flight controls are in the maximum nose down position. Correct any interference as specified in the service information or obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD, as applicable. (ii) Inspect to ensure that the split link (part number NOR7.059–1) is correctly installed in the chain and that the lock-wire is present, undamaged, and installed correctly. Make any necessary corrections.	Inspect within the next 30 days after the effective date of this AD. Make any necessary corrections or repairs prior to further flight after the inspection where the problem is found.	Group 1 and Group 4	In accordance with the WORK PROCEDURE section of Vulcanair P68 Series Service Bulletin No. 110, dated March 19, 2002. Repair in accordance with the repair scheme obtained from Vulcanair S.p.A., Via G. Pascoli 7, 80026 Casoria (Naples) Italy. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(3) Install and modify the following: (i) Split Link, part number NOR7.059–1. (ii) Full Travel Limit Assembly, part number 5.3077–1/–2.	Within the next 30 days after the effective date of this AD.	Group 1 and Group 4	In accordance with the WORK PROCEDURE section of Vulcanair P68 Series Service Bulletin No. 110, dated March 19, 2002.
(4) Inspect bolt part number AN24–18A to verify the correct installation and inspect for the existence of a part number MS21083N4 nut. Correctly install an incorrectly installed bolt and, if missing, install the nut.	Within the next 30 days after the effective date of this AD. Install prior to further flight after the inspection where problems are found.	Group 1, Group 2, Group 3, Group 4, and Group 5.	In accordance with the WORK PROCEDURE section of Vulcanair P68 Series Service Bulletin No. 111 Rev. 1, dated February 20, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

Note 2: The FAA recommends that owners/operators report results of all inspections required in paragraphs (d)(1), (d)(2)(i), (d)(2)(ii), and (d)(4) of this AD to the manufacturer as stated in the service bulletins.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Vulcanair S.p.A., Via G. Pascoli 7, 80026 Casoria (Naples) Italy, telephone: +39.081.5918111; facsimile: +39.081.5918172. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD Number 2002–212, dated March 28, 2002; and Italian AD Number 2002–155, dated February 22, 2002.

Issued in Kansas City, Missouri, on July 5, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17601 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219–AA92

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws the proposed rule that would have established a new laboratory-scale flame test for conveyor belts used in underground coal mines. This rulemaking was initiated in 1989 in response to a number, over the prior 12 years, of reportable (*i.e.*, greater than 30 minutes) conveyor belt fires attributable to belt material. Since that time, accident and injury data reflect a decline in the number of these fires. We attribute this decrease in conveyor belt fires to improvements in belt monitoring and maintenance, along with technological advances in conveyor systems. Therefore, in the absence of a need for rulemaking, MSHA is withdrawing the proposed rule.

DATES: This proposed rule published on December 24, 1992, is withdrawn as of July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov*, (202) 693–9440 (telephone), (202) 693–9441 (facsimile). You can request a copy of this withdrawal notice in an alternate format, such as a large print version, an electronic file or a file on a disk. This withdrawal notice is available on MSHA's Internet site, *http://www.msha.gov*, at the "Statutory and Regulatory Information" icon.

SUPPLEMENTARY INFORMATION:

A. Background

On January 17, 1989, in response to a number of conveyor belt fires in underground coal mines, MSHA announced a public meeting to discuss the development of a revised laboratory-scale flame resistance test for conveyor belts (54 FR 1802). MSHA investigated 293 underground coal mine fires between 1970 and 1988, and determined that conveyor belts were involved in 53 of those fires. During this 19 year period, 36 of the 53 belt fires (68%) occurred during the 9 years between 1980 and 1988.

After reviewing the testimony and comments from the mining and manufacturing communities, as well as the specific recommendations from MSHA's Belt Air Advisory Committee, "Belt Entry Ventilation Review: Report of Findings and Recommendations" (1989), MSHA chose to pursue rulemaking. During the next several years, MSHA worked closely with the former Bureau of Mines to develop a new laboratory-scale test for determining the flame resistance of conveyor belts, and the two agencies jointly developed a laboratory-scale test for assessing the flame resistance of conveyor belts which would measure flame propagation rather than burn time, as the current test does. On December 24, 1992, MSHA published the proposed rule (57 FR 61524) which would have replaced the existing standards for testing and acceptance of conveyor belts with the new test.

B. Reasons for Withdrawal

The number of conveyor belt fires has significantly declined since MSHA began work on this rulemaking. During the 10 years since this proposed rule was published (1993–2002), the industry reported 10 conveyor belt fires, as compared with the 34 reported fires during the 10 years before publication (1983–1992). Further, the injuries to miners from the fires reported since MSHA initiated this rulemaking consist of smoke inhalation during two of the fires. This decrease is due largely to belt monitoring improvements that alert miners to potentially hazardous situations which could cause fires, and to technological advances that minimize friction on the belt, a primary cause of belt fires.

The most notable improvement in belt monitoring is the mining industry's increased use of atmospheric monitoring systems (AMS)in conveyor belt passageways. Monitoring systems in general give advance warning to allow a fire in a belt entry to be addressed sooner, thereby limiting potential fire damage and injuries to miners. An AMS can further provide advance warning of carbon monoxide (CO) and methane (CH_4) concentrations, thereby allowing the opportunity to address potentially hazardous situations.

Although AMSs have been in use for many years, these systems have rapidly become more sophisticated, evolving from simple monitors into complex devices with integral computer technology capable of transmitting environmental measurements from remote locations to attended mine areas.

The industry practice of ventilating active working places in the mine with air coursed through the belt haulageway has contributed to the increased use of belt monitoring systems, and has thereby indirectly contributed to the decrease in the severity of belt fires. Currently this practice is only allowed in a mine after MSHA grants a petition for modification of the safety standard that requires entries used to course air to the mine face and working areas to be separate from belt haulage entries.

During the past 15 years, MSHA has granted more than 100 of these petitions. Each petition involves a thorough on-site investigation to determine that safety measures exist to address the concerns normally associated with coursing belt air to working places. The primary concern is combustion products from a fire on or near the conveyor belt being carried to the miners. The required system of safeguards, which includes ability to monitor and detect conditions which could contribute to fires in the belt haulageway, is actively in place at all these mines. MSHA is currently pursuing a separate rulemaking that would permit the use of belt air in active working places, conditioned on the use of AMS systems, required for approval of these petitions, as well as additional safety measures.

The mining industry has also benefitted from many technological advances in conveyor belt systems, and has applied this technology at many mines since this proposed rule was published. Improvements in belt rollers, roller bearings, slippage alignment, and belt rip detection have been instrumental in minimizing friction. Also, flame-resistant pulley lagging and roller covers are available for belt rollers. Some roller bearings are permanently sealed, which prevents combustible lubricants from igniting and involving the belt, and also eliminates some maintenance requirements. A number of slippage control systems which monitor the sequence systems on each conveyor are in use today. When a conveyor is not moving, a slippage switch automatically shuts down all conveyors behind the stopped conveyor. Rip detection systems continually scan the belt and notify miners of rips or tears.

A number of devices, such as chute liners and belt skirting, control the flow of coal at transfer points. These devices not only reduce the amount of coal that spills, thereby minimizing a source of combustible material, but also help reduce the level of combustible coal dust in the atmosphere. Finally, automated systems provide more reliable and accurate readings of

conditions that could potentially result in hazards to miners.

For all the reasons stated herein, this proposed rule is withdrawn.

Signed at Arlington, VA, this 8th day of July 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–17852 Filed 7–12–02; 8:45 am]

BILLING CODE 4510–43–P

written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859)260–8400. E-mail: *bkovacic@osmre.gov*.

prohibits its own implementation until implementing regulations are promulgated by Kentucky and approved by OSM. In addition, 30 CFR 732.17(g) prohibits States from implementing proposed amendments to their programs until OSM approves the amendments. Because OSM determined that SB 374 could not be implemented without accompanying regulations, SB 374 is not a functioning part of the approved State program until promulgation of such

above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the

date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in

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conditions that could potentially result in hazards to miners.

For all the reasons stated herein, this proposed rule is withdrawn.

Signed at Arlington, VA, this 8th day of July 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–17852 Filed 7–12–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–240–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are proposing the removal of two instructions to the State of Kentucky pertaining to required amendments to the Kentucky regulatory program (the "Kentucky program"). The Kentucky program was established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky. We are proposing to remove the instructions because the actions we required have either been satisfied or are no longer applicable and nothing further is required by the state. This document gives the times and locations that the Kentucky program is available for your inspection, the comment period during which you may submit written comments on the proposed actions, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on these proposed actions until 4 p.m., e.s.t. August 14, 2002. If requested, we will hold a public hearing on the proposed actions on August 9, 2002. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on July 30, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859)260–8400. E-mail: *bkovacic@osmre.gov*.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502)564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859)260–8400. Internet: *bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Actions
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Actions

At 30 CFR 917.16(c)(2), we required Kentucky to submit proposed regulations to implement the program changes contained in Senate Bill (SB) 374. SB 374 added a new section to Kentucky's statutes pertaining to the issuance of special permits for the remining of previously affected mined areas. However, SB 374 specifically prohibits its own implementation until implementing regulations are promulgated by Kentucky and approved by OSM. In addition, 30 CFR 732.17(g) prohibits States from implementing proposed amendments to their programs until OSM approves the amendments. Because OSM determined that SB 374 could not be implemented without accompanying regulations, SB 374 is not a functioning part of the approved State program until promulgation of such regulations. *See* 51 FR 26002, 26005 (July 18, 1986). For these reasons, the requirement codified at 30 CFR 917.16(c)(2) is unnecessary and should be removed.

At 30 CFR 917.16(o), we required Kentucky to submit a program change to the Kentucky Revised Statutes at 350.060 to: (1) clarify that a person may not continue to conduct surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired, and (2) require the issuance of an imminent harm cessation order to any person conducting surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired. On September 6, 2000, we announced the preemption and supersession of KRS 350.060(16) because it was inconsistent with the requirements of SMCRA (65 FR 53909). Because both our disapproval and subsequent supersession of the quoted provisions of the statute prevent Kentucky from implementing those provisions, and because the Kentucky program otherwise requires issuance of imminent harm cessation orders to persons conducting surface coal mining operations under expired permits, we believe that the requirements codified at 30 CFR 917.16(o) are no longer necessary and should therefore be removed.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. KY–231–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t., July 30, 2002. If you are disabled and need special accommodations to attend a public hearing, contac. the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C)of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–023–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

intent to prospect, bonding, reassertion of jurisdiction, areas upon which coal mining is prohibited, designation of lands unsuitable, small operator assistance program, certification of blasters, and blaster training courses. Montana also proposes to recodify the Administrative Rules of Montana from ARM 26.4 to ARM 17.24. Montana intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and

Application Requirements; 17.24.327, Coal Processing Plants and Support Facilities Not Located Within a Mine Permit Area: Special Application Requirements; 17.24.401, Filing of Application and Notice; 17.24.403, Informal Conference; 17.24.404, Review of Application; 17.24.405, Findings and Notice of Decision; 17.24.413, Conditions of Permit; 17.24.415, Permit Revisions; 17.24.416, Permit Renewal; 17.24.501, General Backfilling and

Operations; 17.24.825, Alternate Reclamation: Alternate Revegetation; 17.24.826, Alternate Reclamation: Period of Responsibility for Alternate Revegetation; 17.24.901, General Application and Review Requirements; 17.24.903, General Performance Standards; 17.24.911, Subsidence Control; 17.24.924, Disposal of Underground Development Waste: General Requirements; 17.24.925, Disposal of Underground Development

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 10, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–17654 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–023–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes revisions, additions, and deletions to rules and statutes about the definitions, ownership and control, baseline information, maps, prime farmland, reclamation plan, ponds and embankments, transportation facilities plan, coal processing plants and support facilities, permit application, permit conditions, permit revisions, permit renewal, backfilling and grading requirements, small depressions, burial and treatment of exposed mineral seams, storage and final disposal of garbage, disposal of offsite-generated waste and fly ash, contouring, buffer zones, thick overburden and excess spoil, thick overburden and disposal of excess spoil, permanent cessation of operations, roads and railroad loops, soil removal, blasting schedule, permanent sealing of drilled holes, water quality performance standards, reclamation of drainages, sedimentation ponds and other treatment facilities, discharge structures and outflow structures, permanent and temporary impoundments, groundwater monitoring, surface water monitoring, wells and underground operations, redistribution and stockpiling of soil, establishment of vegetation, soil amendments and other management techniques, other revegetation comparison standards, vegetation production, cover, diversity, density, and utility requirements, measurement standards for trees, shrubs, and half-shrubs, postmining land use, alternate reclamation, general performance standards, subsidence controls, disposal of underground development waste, disposal of coal processing waste, information and monthly reports, renewal and transfer of permits, drill holes, roads and other transportation facilities, removal of equipment, test pits, bond release procedures, notice of intent to prospect, bonding, reassertion of jurisdiction, areas upon which coal mining is prohibited, designation of lands unsuitable, small operator assistance program, certification of blasters, and blaster training courses. Montana also proposes to recodify the Administrative Rules of Montana from ARM 26.4 to ARM 17.24. Montana intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., [m.d.t.] August 14, 2002. If requested, we will hold a public hearing on the amendment on August 9, 2002. We will accept requests to speak until 4 p.m., [m.d.t.] on July 30, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, Casper, WY 82601–1918, (307) 261–6550, *guypadgett@osmre.gov*.

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Ave., PO Box 200901, Helena, MT 59620–0901, (406) 444–4964, *nharrington@st.mt.us*.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–6550. Internet: *guypadgett@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated May 7, 2002, Montana sent us a proposed amendment to its program (SPATS No. MT–023–FOR; Administrative Record No. MT–20–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to letters dated March 29, 1990; June 5, 1996; January 13, 1997; and June 26, 1997 (Administrative Record Nos. MT–60–07, MT–60–09, MT–60–10, and MT–60–11) that we sent to Montana in accordance with 30 CFR 732.17(c), in response to the required program amendment at 30 CFR 926.16(e)(9), and to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provisions of the Administrative Rules of Montana (ARM) that Montana proposes to revise, add or delete are: ARM 17.24.301(13), (34), (38), (46), (64), (69), (71), (72), (75), (95), (101), (103), (104), and (105), Definitions; 17.24.302, Format and Supplemental Information; 17.24.303, Legal, Financial, Compliance, and Related Information; 17.24.304, Baseline Information: Environmental Resources; 17.24.305, Maps; 17.24.306, Baseline Information: Prime Farmland Investigation; 17.24.313, Reclamation Plan; 17.24.315, Plan for Ponds and Embankments; 17.24.321, Transportation Facilities Plan; 17.24.324, Prime Farmland: Special Application Requirements; 17.24.327, Coal Processing Plants and Support Facilities Not Located Within a Mine Permit Area: Special Application Requirements; 17.24.401, Filing of Application and Notice; 17.24.403, Informal Conference; 17.24.404, Review of Application; 17.24.405, Findings and Notice of Decision; 17.24.413, Conditions of Permit; 17.24.415, Permit Revisions; 17.24.416, Permit Renewal; 17.24.501, General Backfilling and Grading Requirements; 17.24.501A, Final Grading Requirements; 17.24.503, Small Depressions; 17.24.505, Burial and Treatment of Exposed Mineral Seams and Waste Materials; 17.24.507, Storage and Final Disposal of Garbage and Other Debris; 17.24.510, Disposal of Off-site Generated Waste and Fly Ash; 17.24.514, Contouring; 17.24.518, Buffer Zones; 17.24.519A, Thick Overburden and Excess Spoil; 17.24.520, Thick Overburden and Disposal of Excess Spoil; 17.24.522, Permanent Cessation of Operations; 17.24.601, General Requirements for Road and Railroad Loop Construction; 17.24.603, Road and Railroad Loop Embankments; 17.24.604, Soil Removal; 17.24.605, Hydrologic Impact of Roads and Railroad Loops; 17.24.606, Surfacing of Roads; 17.24.607, Maintenance of Roads and Railroad Loops; 17.24.623, Blasting Schedule; 17.24.625, Seismograph Measurements; 17.24.632, Permanent Sealing of Drilled Holes; 17.24.633, Water Quality Performance Standards; 17.24.634, Reclamation of Drainages; 17.24.639, Sedimentation Ponds and Other Treatment Facilities; 17.24.640, Discharge Structures and Outflow Structures; 17.24.642, Permanent and Temporary Impoundments; 17.24.645, Groundwater Monitoring; 17.24.646, Surface Water Monitoring; 17.24.647, Transfer of Wells; 17.24.652, Wells and Underground Openings: Safety; 17.24.702, Redistribution and Stockpiling of Soil; 17.24.711, Establishment of Vegetation; 17.24.713, Timing of Seeding and Planting; 17.24.716, Method of Revegetation; 17.24.718, Soil Amendments and Other Management Techniques; 17.24.724, Use of Revegetation Comparison Standards; 17.24.725, Period of Responsibility; 17.24.726, Vegetation Production, Cover, Diversity, Density, and Utility Requirements; 17.24.728, Composition of Vegetation; 17.24.733, Measurement Standards for Trees, Shrubs, and Half-Shrubs; 17.24.762, Postmining Land Use; 17.24.815, Prime Farmlands: Revegetation; 17.24.821, Alternate Reclamation: Submission of Plan; 17.24.823, Alternate Reclamation: Approval of Plan and Review of Operations; 17.24.825, Alternate Reclamation: Alternate Revegetation; 17.24.826, Alternate Reclamation: Period of Responsibility for Alternate Revegetation; 17.24.901, General Application and Review Requirements; 17.24.903, General Performance Standards; 17.24.911, Subsidence Control; 17.24.924, Disposal of Underground Development Waste: General Requirements; 17.24.925, Disposal of Underground Development Waste: Valley Fill; 17.24.927, Disposal of Underground Development Waste: Durable Rock Fills; 17.24.932, Disposal of Coal Processing Waste; 17.24.1001, Permit Requirement; 17.24.1002, Information and Monthly Reports; 17.24.1003, Renewal and Transfer of Permits; 17.24.1005, Drill Holes; 17.24.1006, Roads and Other Transportation Facilities; 17.24.1010, Removal of Equipment; 17.24.1014, Test Pits: Application Requirements, Review Procedures, Bonding, and Additional Performance Standards; 17.24.1017, Bond Release Procedures for Drilling Operations; 17.24.1018, Notice of Intent to Prospect; 17.24.1103, Bonding: Period of Responsibility for Alternate Revegetation; 17.24.1104, Bonding: Adjustment of Amount of Bond; 17.24.1108, Bonding: Certificates of Deposit; 17.24.1111, Bonding: Bond Release Application Requirements; 17.24.1112, Bonding: Advertisement of Release Applications and Receipt of Objections; 17.24.1116, Bonding: Criteria and Schedule for Release of Bond; 17.24.1116A, Reassertion of Jurisdiction; 17.24.1132, Areas Upon Which Coal Mining is Prohibited: Definitions and Standard for Measurement of Distances; 17.24.1143, Designation of Lands Unsuitable: Prospecting on Designated Lands; 17.24.1221, Small Operator Assistance Program: Program Services; 17.24.1222, Small Operator Assistance Program: Eligibility for Assistance; 17.24.1223, Small Operator Assistance Program: Filing for Assistance; 17.24.1224, Small Operator Assistance Program: Application Approval and Notice; 17.24.1225, Small Operator Assistance Program: Data Requirements; 17.24.1226, Small Operator Assistance Program: Qualification of Laboratories, Consultants, and Contractors; 17.24.1228, Small Operator Assistance Program: Applicant Liability; 17.24.1261, Certification of Blasters and 17.24.1262, Blaster Training Courses. In addition, Montana proposes to recodify its rules from ARM 26.4 to 17.24.

The provisions of the Montana Code Annotated (MCA) that Montana proposes to revise are: MCA 82–4–205,

Administration by Department; 82–4–206, Procedure for Contested Case Hearings; 82–4–231, Submission of and Action on Reclamation Plan; 82–4–241, Receipts Paid into General Fund; and 82–4–254, Violation-Penalty-Waiver.

Specifically, Montana proposes to revise the definitions of "approximate original contour," "occupied residential dwelling and structures related thereto," "excess spoil," "other treatment facilities," "owned or controlled and

30 days of the judicial decision unless the applicant provides proof that the violation has been or is in the process of being resolved to the satisfaction of the agency having jurisdiction over the violation.

At ARM 17.24.405, Montana proposes to delete an obsolete provision concerning OSM preparing written findings on Federal lands.

At ARM 17.24.413, Montana corrects a grammatical error.

obsolete provisions concerning roads, add railroad loop construction, and clarify other subsections.

At ARM 17.24.603, Montana proposes to make this rule applicable to only road and railroad loop embankments as 17.24.639 addresses sediment pond embankments.

At ARM 17.24.604, Montana proposes to delete this rule concerning soil removal as it is covered at 17.24.701.

At ARM 17.24.640, Montana proposes to expand this rule concerning discharge structures to cover outflow sites.

At ARM 17.24.642, 17.24.645, and 17.24.646, Montana proposes to correct various cross-references.

At ARM 17.24.702, Montana proposes wording revisions for clarification.

At ARM 17.24.711, Montana proposes to add the requirement for a "predominance of native species" and with the Act, the rules, and permit conditions.

At ARM 17.24.1002, Montana proposes revisions relating to prospecting operations which substantially disturb land or water resources and adds a requirement that annual reports be filed for prospecting operations in accordance with the statues at MCA 82–4–226 and 82–4–237.

At ARM 17.24.1003, Montana proposes a new rule to reiterate

At ARM 17.24.1222, concerning the small operator assistance program eligibility, Montana revises the section to allow production of up to 300,000 tons of coal/year. Montana also revises the section to provide that the definition of ownership and control is based upon a greater than 10% interest in the operation.

At ARM 17.24.1223, Montana proposes to revise map specification for programmatic consistency and to allow

Administration by Department; 82–4–206, Procedure for Contested Case Hearings; 82–4–231, Submission of and Action on Reclamation Plan; 82–4–241, Receipts Paid into General Fund; and 82–4–254, Violation-Penalty-Waiver.

Specifically, Montana proposes to revise the definitions of "approximate original contour," "occupied residential dwelling and structures related thereto," "excess spoil," "other treatment facilities," "owned or controlled and owns or controls," "soil survey," and "sedimentation pond;" add definitions of "domestic water supply," "habit or characteristic pattern," "material damage," "non-commercial building," "railroad loop," "replace adversely affected domestic water supply;" and recodify other definitions at ARM 17.24.301.

At ARM 17.24.302, Montana proposes to refer to Federal lands instead of Federal coal, and revise the number of applications required for submission.

At ARM 17.24.303, Montana proposes to allow the applicant to request confidentiality on proprietary information.

At ARM 17.24.304, Montana proposes clarification revisions.

At ARM 17.24.305, Montana proposes revisions to delete qualified, registered land surveyors or professional geologists and only allow qualified licensed professional engineers and revisions concerning the preparation of maps.

At ARM 17.24.306, 17.24.324, 17.24.401, 17.24.724, 17.24.815, 17.24.823, and 17.24.825, Montana changes the reference from the U.S. soil conservation service to the U.S. natural resources conservation service.

At ARM 17.24.313, 17.24.632, 17.24.647, 17.24.652, 17.24.903, 17.24.925, 17.24.1001, 17.24.1005 through 17.24.1018, 17.24.1132, and 17.24.1143, Montana deletes "exploration" and adds "prospecting."

At ARM 17.24.315, Montana revises cross-references and adds requirements for a stability analysis and foundation information concerning ponds and embankments.

At ARM 17.24.321, Montana adds clarifying information concerning the transportation facilities plan, changes "rail system" to "railroad loop" and adds requirements for ramp roads.

At ARM 17.24.327, Montana revises a cross-reference.

At ARM 17.24.403, Montana makes grammatical revisions.

At ARM 17.24.404, Montana clarifies that if the initial judicial hearing authority either denies a stay or affirms a violation concerning a permit application, then the coal mining operations must be terminated within 30 days of the judicial decision unless the applicant provides proof that the violation has been or is in the process of being resolved to the satisfaction of the agency having jurisdiction over the violation.

At ARM 17.24.405, Montana proposes to delete an obsolete provision concerning OSM preparing written findings on Federal lands.

At ARM 17.24.413, Montana corrects a grammatical error.

At ARM 17.24.415, Montana clarifies language concerning permit revision applications.

At ARM 17.24.416, Montana deletes language referring to major permit revisions which they believe belongs in another section.

At ARM 17.24.501, Montana makes editorial revisions and adds necessary language concerning final grading requirements from 17.24.501A.

At ARM 17.24.501A, Montana proposes to delete this section and transfer the necessary programmatic language to ARM 17.24.501.

At ARM 17.24.503, Montana proposes to allow small depressions for wildlife use and eliminate size restriction on depressions.

At ARM 17.24.505, Montana proposes to add exposed mineral seams to this rule concerning the burial and treatment of waste materials, clarify that impoundments may not include acid, acid-forming, toxic, or toxic-forming wastes, and allow greater flexibility in the covering of exposed mineral seams with a requirement for a demonstration of protection with a lesser cover depth.

At ARM 17.24.507, Montana proposes to correct a cross-reference to PL 94–580.

At ARM 17.24.510, Montana primarily proposes to add and revise cross-references.

At ARM 17.24.514, Montana proposes to delete this rule as it is not needed.

At ARM 17.24.518, Montana proposes to correct a grammatical error.

At ARM 17.24.519A, Montana proposes to delete this rule and move the language to 17.24.520.

At ARM 17.24.520, Montana has added the former language from 17.24.519A, clarified that excess spoil would be used to eliminate highwalls, and has recodified the rule's subsections.

At ARM 17.24.522, Montana clarifies that an operator who permanently ceases mining operations, whether in all or part of the permit area, shall close or backfill and otherwise reclaim all affected areas, regardless of whether the permit has expired, been revoked, or suspended.

At ARM 17.24.601, Montana proposes to delete much of this rule due to obsolete provisions concerning roads, add railroad loop construction, and clarify other subsections.

At ARM 17.24.603, Montana proposes to make this rule applicable to only road and railroad loop embankments as 17.24.639 addresses sediment pond embankments.

At ARM 17.24.604, Montana proposes to delete this rule concerning soil removal as it is covered at 17.24.701.

At ARM 17.24.605, Montana proposes to delete redundant or unnecessary language concerning the hydrologic impact of roads, make the rule applicable to railroad loops, and allow greater flexibility in impounding water under certain conditions at the site of water control structures.

At ARM 17.24.606, Montana proposes to delete this rule concerning the surfacing of roads as it is covered at 17.24.601.

At ARM 17.24.607, Montana proposes to add railroad loops to the maintenance of roads and eliminate other redundancies.

At ARM 17.24.623, Montana proposes to eliminate restrictions on when blasting may proceed.

At ARM 17.24.625, Montana corrects a cross-reference.

At ARM 17.24.633, Montana proposes clarifications to language concerning water quality performance standards.

At ARM 17.24.634, Montana proposes: (1) Various editorial revisions; (2) to move the definition of "natural habit and characteristic pattern of streams" to 17.24.301(46); (3) to delete the 120 day requirement for the design submittal " for more flexibility; (4) to eliminate the requirement that designs be certified by a registered, professional engineer; (5) to eliminate the requirement that the Department inspect all drainage channels prior to resoiling and seeding; and (6) to disallow an exception to having a channel "approximate an appropriate geomorphic habit or characteristic pattern."

At ARM 17.24.639, Montana proposes various changes to: (1) Revise the amount of sediment storage from 0.035 ac-ft/acre to 0.02 ac-ft per acre; (2) delete the requirement for a bathymetric survey; (3) make clarification, redundancy, and editorial corrections; (4) eliminate the requirement that excavated ponds require spillways; (5) make revisions in accordance with OSM's part 732 letter dated June 26, 1997, concerning the Energy Policy Act; (6) allow more flexibility for accounting for embankment settlement; and (7) allow steeper interior slopes for excavated ponds.

At ARM 17.24.640, Montana proposes to expand this rule concerning discharge structures to cover outflow sites.

At ARM 17.24.642, 17.24.645, and 17.24.646, Montana proposes to correct various cross-references.

At ARM 17.24.702, Montana proposes wording revisions for clarification.

At ARM 17.24.711, Montana proposes to add the requirement for a "predominance of native species" and self-regeneration of plants, and to correct a cross-reference.

At ARM 17.24.713, Montana proposes to delete the 90-day seeding requirement.

At ARM 17.24.716, Montana proposes to transfer a requirement for a permanent diverse vegetative cover of predominantly native species to 17.24.711 and provide a cross-reference to the statutes.

At ARM 17.24.718, Montana makes a grammatical correction.

At ARM 17.24.725, 17.24.726, and 17.24.728, Montana proposes to revise the cross-references to the correct statute citation.

At ARM 17.24.733, Montana proposes to delete a measurement standard for trees, shrubs, and half-shrubs, which has no Federal requirement.

At ARM 17.24.762, Montana proposes to revise the cross-reference to the correct rule citation.

At ARM 17.24.821 and 17.24.825, Montana proposes language to clarify cross-references and technical standards.

At ARM 17.24.826, Montana proposes a new rule to replace 17.24.1103.

At ARM 17.24.901 and 17.24.911, Montana proposes various revisions to address OSM's June 5, 1996, part 732 letter concerning the Energy Policy Act, which requires the prompt repair or compensation for material damage caused by subsidence to noncommercial buildings and occupied residential dwelling and related structures caused by underground coal mining operations conducted after October 24, 1992; and the replacement of drinking, domestic, and residential water supplies that have been adversely impacted by surface or underground coal mining operations conducted after that date.

At ARM 17.24.924, Montana proposes to delete subsection (15).

At ARM 17.24.927 and 17.24.932, Montana revises a cross-reference due to the deletion of ARM 17.24.924(15).

At ARM 17.24.1001, Montana proposes new language to alert landowners to the prospector's liability under a prospecting permit and the Department's responsibility to inspect prospecting operations for compliance with the Act, the rules, and permit conditions.

At ARM 17.24.1002, Montana proposes revisions relating to prospecting operations which substantially disturb land or water resources and adds a requirement that annual reports be filed for prospecting operations in accordance with the statues at MCA 82–4–226 and 82–4–237.

At ARM 17.24.1003, Montana proposes a new rule to reiterate language contained at 17.24.418.

At ARM 17.24.1014, Montana proposes to add the requirements that the notice of application be published by the applicant, and that the affirmative demonstration and written findings required for the application also address coal test pit prospecting.

At ARM 17.24.1018, Montana adds the requirements that the notice of intent to prospect include copies of the documents upon which the applicant bases his or her legal right to prospect on the land affected, as well as document that the landowners have been contacted concerning the notice of intent to prospect.

At ARM 17.24.1103, Montana proposes to delete this rule and insert it at ARM 17.24.826.

At ARM 17.24.1104, Montana proposes a new subsection to address bonding and OSM's June 5, 1996, part 732 letter concerning the Energy Policy Act.

At ARM 17.24.1108, Montana proposes to delete the reference to the FSLIC (Federal Savings and Loan Insurance Corporation).

At ARM 17.24.1111, Montana has added a requirement that each application for partial or full bond release include a notarized statement certifying that all applicable reclamation requirements have been achieved in accordance with the Act, the rules, and the approved reclamation plan.

At ARM 17.24.1112, Montana proposes to add the phrase "by any affected person" concerning the submission of comments on bond release applications.

At ARM 17.24.1116, Montana proposes to insert the language from 17.24.1116A concerning the reassertion of jurisdiction.

At ARM 17.24.1116A, Montana proposes to delete this section, as the language is contained at 17.24.1116.

At ARM 17.24.1221, concerning the small operator assistance program services, Montana adds a provision to allow funds to pay contractors and consultants. In addition, a cross-reference is made to services provided for in ARM 17.24.1225.

At ARM 17.24.1222, concerning the small operator assistance program eligibility, Montana revises the section to allow production of up to 300,000 tons of coal/year. Montana also revises the section to provide that the definition of ownership and control is based upon a greater than 10% interest in the operation.

At ARM 17.24.1223, Montana proposes to revise map specification for programmatic consistency and to allow for a legal right of entry for contractors and consultants participating in the small operator assistance program.

At ARM 17.24.1224, Montana changes the small operator assistance program application approval and notice to allow for contractors and consultants.

At ARM 17.24.1225, Montana adds additional data collection requirements concerning the small operator assistance program.

At ARM 17.24.1226, concerning the small operator assistance program qualification, Montana provides for consultants and contractors, clarifies language, and adds cross-references.

At ARM 17.24.1228, concerning the small operator assistance program liability, Montana provides for contractors and consultants, clarifies the coal production limit of 300,000 tons of coal/year, and makes the coal production limit effective within a 12-month period immediately following the date on which the permit was issued.

At ARM 17.24.1261, Montana proposes revisions to provide consistency with 17.24.1262, to revise the training manual on an as-needed basis, to eliminate cross-reference to a blaster's exam given by the Department of Labor, to lower the refresher course requirement to 16 hours, and to eliminate the option of meeting equivalent requirements for blaster certification.

At ARM 17.24.1262, Montana proposes to delete language which is also provided at 17.24.1261.

At MCA 82–4–205 and 82–4–206, Montana proposes to move the authority to conduct contested case hearings from the Department to the Board.

At MCA 82–4–231, Montana proposes revisions to the timeline for completing an environmental impact statement and adds a reference to a new Montana statute.

At MCA 82–4–241, Montana proposes that bond forfeiture moneys are only used for reclamation of lands on which bond forfeiture has occurred, and that funds held by the Department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the Department is not able to locate a surety or other person who owns the funds, must be deposited in the state special revenue fund and credited to the environmental rehabilitation and response account.

At MCA 82–4–254, Montana proposes revisions to reflect the change to move the authority for conducting contested case hearings from the Department to the Board.

III. Public Comment Procedures

organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., [m.d.t.] on July 30, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We

and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 02–17653 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–05–P

and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity

locate a surety or other person who owns the funds, must be deposited in the state special revenue fund and credited to the environmental rehabilitation and response account.

At MCA 82–4–254, Montana proposes revisions to reflect the change to move the authority for conducting contested case hearings from the Department to the Board.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see Dates). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. MT–023–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at (307) 261–6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., [m.d.t.] on July 30, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 02–17653 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Petition IV–2001–4; FRL–7245–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for CITGO Petroleum Corporation—Dorsville Terminal; Doraville (Dekalb County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated June 5, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to CITGO Petroleum Corporation—Doraville Terminal (CITGO-Doraville) for its facility, located in Doraville, Dekalb County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/citgo_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on August 30, 2001, requesting that EPA object to a state title V operating permit issued by EPD to CITGO-Doraville. The Petitioner maintains that the CITGO-Doraville permit is inconsistent with the Act because the permit: (1) Does not contain adequate monitoring; (2) does not contain adequate reporting requirements related to monitoring; (2) impermissibly limits the use of credible evidence; (3) does not ensure the source's synthetic minor source status; and (4) did not undergo adequate public notice procedures.

On June 5, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the CITGO-Doraville permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: June 24, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–17692 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Petition IV–2001–3; FRL–7245–6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Seminole Road Landfill; Ellenwood (Dekalb County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated June 5, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Seminole Road Landfill (Seminole Landfill) located in Ellenwood, Dekalb County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public

apparent limitation of enforcement authority and credible evidence; (4) inadequate reporting requirements relating to monitoring; and (5) inadequate public notice procedures.

On June 5, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Seminole Landfill permit is not in compliance with the requirements of the Act on the

meadows and shrub/grasslands to agricultural crops, residential areas, and recreational facilities has also contributed to the eradication of local populations of squirrels.

The objective of this plan is to provided a framework for the recovery of the squirrel so that protection by the Act is no longer necessary. Recovery is contingent on protecting and managing the squirrel's habitat to maintain and enhance viable populations through a

Background

Recovery of endangered or threatened animals and plants is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of

and fragmentation from agricultural and urban development; activities associated with, and grazing by, domestic livestock; competition from nonnative vegetation; alterations of the natural fire cycle; and fire rehabilitation activities.

We solicit additional data and information that may assist us in making a final decision on this proposed action. We may revise this proposal to incorporate or address new information received during the

feet (ft)) to 1,645 m (5,400 ft) elevation in southwestern Idaho. This species is found along the Snake River Plain and Owyhee Plateau in Ada, Canyon, Gem, Elmore, Payette, and Owyhee Counties.

Of 88 known occurrences of *Lepidium papilliferum*, 70 are currently extant (exist), 13 are considered extirpated (extinct), and five are historic (i.e., plants have not been relocated; location information is based on collections made between 1911 and 1974) (Moseley

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated June 5, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Seminole Road Landfill (Seminole Landfill) located in Ellenwood, Dekalb County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/seminole—decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on August 22, 2001, requesting that EPA object to a state title V operating permit issued by EPD to Seminole Landfill. The Petitioner maintains that the Seminole Landfill permit is inconsistent with the Act because of: (1) The inaccuracy of the permit application; (2) the incompleteness of the permit narrative and the permit itself; (3) the permit's apparent limitation of enforcement authority and credible evidence; (4) inadequate reporting requirements relating to monitoring; and (5) inadequate public notice procedures.

On June 5, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Seminole Landfill permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: June 24, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–17693 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of a Draft Recovery Plan for the Northern Idaho Ground Squirrel (*Spermophilus brunneus brunneus*), for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of the Draft Recovery Plan for the Northern Idaho Ground Squirrel (*Spermophilus brunneus brunneus*; squirrel). The draft plan includes specific recovery criteria and measures to be taken in order to delist the squirrel. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before September 13 2002, to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal working hours at the following location: Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709 (Phone: 208–378–5243). Requests for copies of the draft recovery plan, and written comments and materials regarding this plan should be addressed to Robert Ruesink, Field Supervisor, at the above address.

FOR FURTHER INFORMATION CONTACT: Rich Howard, Fish and Wildlife Biologist, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of this recovery plan. Substantive technical comments may result in changes to the plan. Substantive comments regarding recovery plan implementation will be forwarded to appropriate Federal or other entities for consideration during the implementation of recovery actions.

The squirrel was listed as a threatened species on April 5, 2000. This subspecies is endemic to the Weiser and Little Salmon River Basins in western Idaho. It is distributed in small, isolated populations across two U.S. Forest Service Districts, and State and private lands in Adams and Valley Counties of western Idaho. It formerly occurred in Long Valley and Round Valley of Valley County, but no viable populations have been documented there within the past 5 years. Twenty-three population sites are considered extant; another 14 have unknown status or have become extirpated.

Declines in extant population sites and numbers of squirrels are attributed to the loss and fragmentation of habitat. The squirrel is dependent on meadow and shrub/grassland, and does well in habitat bordered by coniferous forests. However, the species becomes extirpated from areas that develop high densities of small trees. Conifers have displaced the species' food base, and inhibited or prevented dispersal of yearlings and adults between population sites. Land conversion from

meadows and shrub/grasslands to agricultural crops, residential areas, and recreational facilities has also contributed to the eradication of local populations of squirrels.

The objective of this plan is to provided a framework for the recovery of the squirrel so that protection by the Act is no longer necessary. Recovery is contingent on protecting and managing the squirrel's habitat to maintain and enhance viable populations through a range of natural variability.

The squirrel will be considered for delisting when a total of 30 stable population sites are distributed throughout the historic range of the species. Each population site that has maintained a 5-year average size of 100 to 500 individuals will be considered stable. At least 20 of the 30 population sites must be protected. Additionally, genetic exchange between population sites should be occurring through dispersal or linkage corridors; a post-delisting monitoring program should be written and ready to be implemented; and ecological management of habitats should be initiated for all population sites.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: May 16, 2002.

Benito A. Perez,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 02–17685 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ50

Endangered and Threatened Wildlife and Plants; Listing the Plant *Lepidium papilliferum* (slickspot peppergrass) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Lepidium papilliferum* (slickspot peppergrass) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). *Lepidium papilliferum* is endemic to sagebrush-steppe habitat in southern Idaho. This species is threatened by a variety of immediate factors including: habitat destruction and fragmentation from agricultural and urban development; activities associated with, and grazing by, domestic livestock; competition from nonnative vegetation; alterations of the natural fire cycle; and fire rehabilitation activities.

We solicit additional data and information that may assist us in making a final decision on this proposed action. We may revise this proposal to incorporate or address new information received during the comment period. This proposal, if made final, would extend the Federal protection and recovery provisions of the Act to this species.

DATES: We will accept comments from all interested parties until the close of business September 13, 2002. A public hearing has been scheduled for Thursday, August 29, 2002, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m in Boise, ID (*see* **ADDRESSES**).

ADDRESSES: *Comment submission:* If you wish to comment, you may submit your comments and materials by one of several methods.

1. You may submit written comments and information to the Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709.

2. You may hand-deliver written comments to our Snake River Basin Office, at the address given above.

3. You may send comments by electronic mail (e-mail): *fw1srbocomment@fws.gov.* See the Public Comments Solicited section below for file format and other information on electronic filing.

Public Hearing: The public hearing will be conducted at the AmeriTel Inn/Boise Spectrum, 7499 W. Overland Road, Boise, Idaho 83709.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Snake River Basin Office. There are no limits to the length of written comments presented at the hearing or mailed to the Service.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, Snake River Basin Office (*see* **ADDRESSES**) (telephone 208/378–5243; facsimile 208/378–5262). Information regarding this proposal is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Lepidium papilliferum is a herbaceous annual or biennial plant that occurs in sagebrush-steppe habitats at approximately 670 meters (m) (2,200 feet (ft)) to 1,645 m (5,400 ft) elevation in southwestern Idaho. This species is found along the Snake River Plain and Owyhee Plateau in Ada, Canyon, Gem, Elmore, Payette, and Owyhee Counties.

Of 88 known occurrences of *Lepidium papilliferum*, 70 are currently extant (exist), 13 are considered extirpated (extinct), and five are historic (i.e., plants have not been relocated; location information is based on collections made between 1911 and 1974) (Moseley 1994; Mancuso 2000; Shelly Cooke, Idaho Conservation Data Center (ICDC), pers. comm., 2002, ICDC 2002). Occurrences of *L. papilliferum* can include one to several occupied slickspots within an area determined to be suitable habitat. The total amount of habitat containing interspersed slickspots that have extant occurrences of *L. papilliferum* is about 5,000 hectares (ha) (12,356 acres (ac)). Only 6 of the 70 extant occurrences are considered to be high-quality habitat and contain large numbers of the plants (ICDC 2002). The number of *L. papilliferum* individuals at each extant occurrence ranges from 1 to 3,000 (Mancuso 2000; ICDC 2002).

This species is threatened by a variety of activities including urbanization, gravel mining, irrigated agriculture, habitat degradation due to cattle and sheep grazing, fire and fire rehabilitation activities, and continued invasion of habitat by non-native plant species (Moseley 1994; Mancuso and Moseley 1998). As a result of habitat loss and degradation, the documented extirpation rate of *Lepidium papilliferum* populations is the highest known of any Idaho rare plant species (Moseley 1994). The historical (undocumented) loss of *L. papilliferum* may have been even higher during the early 1900s (Mancuso *et al.* 1998) due to the widespread loss and degradation of sagebrush-steppe habitat in southwestern Idaho as a result of urbanization, livestock grazing, and irrigated agriculture (Moseley 1994).

Lepidium papilliferum was originally described as *L. montanum* var. *papilliferum* in 1900 by Louis Henderson. It was included as a distinct species in a recent review of taxa in the mustard family (Brassicaceae) (Rollins 1993). Rollins (1993) based his justification on physical features that *L. papilliferum* possesses and *L. montanum* does not, such as: (1) Trichomes (hairlike structures) occurring on the filaments of stamens (part of flower that produces pollen), which is unique among all North American *Lepidium* species; (2) all the leaves on *L. papilliferum* are pinnately divided, whereas *L. montanum* has

some leaves that are not divided; and (3) the shape of the silique (seed capsule) is different from that of *L. montanum*, and it has no wings, or even vestiges of wings, at its apex (end of the capsule), which also differs from that of *L. montanum* (Moseley 1994).

Lepidium papilliferum is an annual or biennial plant that reaches 10 to 30 centimeters (cm) (4 to 12 inches (in)) in height. Leaves and stems are pubescent (covered with fine, soft hairs), and the

"poor"; and (2) an Occurrence Viability Rank which provides a scale to assess the prospects that an occurrence will persist over time, and includes factors affecting the viability and defensibility of the occurrence (Mancuso 2001). The four Occurrence Viability Rankings are: (1) A-ranked occurrences are those sites found in the highest quality communities; these occurrences generally have not been burned and are not dominated by nonnative annuals; (2)

organic matter and nutrients due to the lower biomass production compared to surrounding habitat areas. The restricted distribution of *L. papilliferum* is likely a product of the scarcity of these extremely localized, specific soil conditions, and the loss and degradation of these habitat areas throughout southwestern Idaho.

Like many short-lived plants growing in arid environments, the above-ground number of *Lepidium papilliferum*

enabling introduced annual species (especially cheatgrass) to become dominant over large portions of the Snake River Plain (Yensen 1980; Moseley 1994). The invasion of cheatgrass has shortened the fire frequency of the sagebrush-steppe from between 60 to 110 years, to less than 5 years as it provides a continuous, highly flammable fuel through which a fire can easily spread (Whisenant 1990; Moseley 1994; Mancuso and Moseley 1998). The

us to list *Lepidium papilliferum* as threatened or endangered, and on an emergency basis. The petition submitted information stating that this species is threatened by competition with nonnative and woody vegetation, improper livestock grazing practices, improper herbicide application, inbreeding depression, and fire suppression. We responded to the Petitioners with a letter dated April 27, 2001, stating that the species was

for, and destroyed some, *L. papilliferum*, in addition to fragmenting and isolating extant occurrences (Moseley 1994). Subsequent increased frequency of fire, and the associated invasion of weedy annual plants, are serious range-wide threats to the long-term integrity of *L. papilliferum* habitat and population viability (M. Mancuso, *in litt.*, 1998).

To illustrate the pattern of ongoing habitat degradation for this species, in

some leaves that are not divided; and (3) the shape of the silique (seed capsule) is different from that of *L. montanum*, and it has no wings, or even vestiges of wings, at its apex (end of the capsule), which also differs from that of *L. montanum* (Moseley 1994).

Lepidium papilliferum is an annual or biennial plant that reaches 10 to 30 centimeters (cm) (4 to 12 inches (in)) in height. Leaves and stems are pubescent (covered with fine, soft hairs), and the divided leaves have linear segments (Moseley 1994). Numerous small, white, 4-petalled flowers terminate the branches. This species produces small, orbicular (spherical) fruits (siliques), which are approximately 3 millimeters (0.1 in) long. *Lepidium papilliferum* is mainly pollinated by bees (Apidae, Colletidae, and Halictidae families), flies (Syrphidae family), and some beetle species (Dermestidae and Cerambycidae families (Robertson 2001). The primary seed dispersal mechanism is probably gravity, although wind and water may have a minor role (Moseley 1994). *Lepidium papilliferum* seeds may be viable in the soil for up to 12 years (Dana Quinney, *in litt.*, 2002).

Lepidium papilliferum occurs in semi-arid sagebrush-steppe habitats on the Snake River Plain, Owyhee Plateau, and adjacent foothills in southern Idaho. Associated native species include *Artemisia tridentata* ssp. *wyomingensis* (Wyoming big sagebrush), *A. tridentata* ssp. *tridentata* (basin big sagebrush), *Agropyron spicatum* (bluebunch wheatgrass), *Stipa thurberiana* (Thurber's needlegrass), *Poa secunda* (Sandberg's bluegrass), and *Sitanion hystrix* (bottlebrush squirreltail). Non-native species frequently associated with *L. papilliferum* include *Bromus tectorum* (cheatgrass), *Sisymbrium altissimum* (tumble mustard), *Ranunculus testiculatus* (bur buttercup), *Lepidium perfoliatum* (clasping pepperweed), and *Agropyron cristatum* (crested wheatgrass) (Moseley 1994; Mancuso and Moseley 1998).

Lepidium papilliferum is restricted to small areas, similar to vernal pools, known as slickspots (also called mini-playas or natric sites). Slickspots range from less than 1 square meter (m^2) (10 square feet (ft^2)) to about 10 m^2 (110 ft^2) within communities dominated by other plants (Mancuso *et al.* 1998). *Lepidium papilliferum* is limited to slickspots covering a relatively small area. These sparsely vegetated microsites are very distinct from the surrounding shrubland vegetation, and are characterized by relatively high concentrations of clay and salt (Fisher *et al.* 1996). The microsites also have reduced levels of organic matter and nutrients due to the lower biomass production compared to surrounding habitat areas. The restricted distribution of *L. papilliferum* is likely a product of the scarcity of these extremely localized, specific soil conditions, and the loss and degradation of these habitat areas throughout southwestern Idaho.

Like many short-lived plants growing in arid environments, the above-ground number of *Lepidium papilliferum* individuals at any one site can fluctuate widely from one year to the next depending on seasonal precipitation patterns (Mancuso and Moseley 1998; Mancuso 2001). Flowering individuals represent only a portion of the population, with the seed bank contributing the remainder, and apparently the majority, in many years (Mancuso and Moseley 1998). For annual plants, maintaining a seed bank (a reserve of dormant seeds, generally found in the soil) is important for year-to-year and long-term survival (Baskin and Baskin 1978). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year (Given 1994). The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. The extent of seed bank reserves is variable from population to population, and large fluctuations in the number of standing plants at a given site may occur from one year to the next. Depending on the vigor of the individual plant and the effectiveness of pollination, dozens, if not hundreds of seeds could be produced.

For example, in 1998, approximately 16,000 *Lepidium papilliferum* plants were counted along 45 transects situated within 40 occurrences monitored by Mancuso (2000). In 1999, only 3,060 *L. papilliferum* plants were counted along these same transects and two additional ones. Mancuso (2001) continued his monitoring of these transects in 2000, and tallied about 7,100 *L. papilliferum* plants. Much of the slickspot habitat for *L. papilliferum* occurs within a complex of the larger sagebrush-steppe habitat described above.

The displacement of native plants by nonnative species is a major problem in sagebrush-steppe habitats of the Intermountain region (Rosentreter 1994; Ann DeBolt, Bureau of Land Management (BLM), pers. comm., 1999). Widespread grazing by livestock in the late 1800s and early 1900s severely degraded sagebrush-steppe habitat, enabling introduced annual species (especially cheatgrass) to become dominant over large portions of the Snake River Plain (Yensen 1980; Moseley 1994). The invasion of cheatgrass has shortened the fire frequency of the sagebrush-steppe from between 60 to 110 years, to less than 5 years as it provides a continuous, highly flammable fuel through which a fire can easily spread (Whisenant 1990; Moseley 1994; Mancuso and Moseley 1998). The result has been the permanent conversion of vast areas of the former sagebrush-steppe ecosystem into nonnative annual grasslands. An estimated 2 to 2.43 million ha (5 to 6 million ac) of sagebrush-steppe in the western Snake River basin has been converted to nonnative annual vegetation dominated by cheatgrass and *Taeniatherum caput-medusae* (medusahead) (Noss *et al.* 1995), primarily due to continued overgrazing and fire. The continued cumulative effects of overgrazing and fire suppression permit the invasion of nonnative plant species into slickspot habitats (Rosentreter 1994). *Lepidium papilliferum* populations typically decline or are extirpated following the replacement of sagebrush-steppe habitat by nonnative annuals.

Another problem has been the use of nonnative perennial species, such as *Agropyron cristatum* and *A. intermedium* (intermediate wheatgrass), to restore or rehabilitate shrub-steppe habitat after a fire event. Although some *Lepidium papilliferum* may temporarily persist in spite of these restoration seedings, most occurrences support small numbers of plants (fewer than five per slickspot) and long-term persistence data are unavailable (Mancuso and Moseley 1998). Habitat degradation, fragmentation, and loss of sagebrush-steppe vegetation have occurred throughout the range of *L. papilliferum*. Popovich (2001) found in his surveys for *L. papilliferum* in the Inside Desert area on BLM land in 2000 that, generally, slickspots dominated by nonnative vegetation had fewer *L. papilliferum* plants than slickspot sites with greater native vegetation retention.

In 1997, an effort was initiated by the ICDC to develop an ecological integrity index for assessing and monitoring *Lepidium papilliferum* habitat in southwestern Idaho (Mancuso and Moseley 1998). This monitoring includes the following components: (1) an Integrity Condition Rating to assess the overall habitat condition, which includes those attributes associated with the slickspot microsite and the shrub-steppe habitat. Integrity Condition Ratings are ranked as "good", "fair", or "poor"; and (2) an Occurrence Viability Rank which provides a scale to assess the prospects that an occurrence will persist over time, and includes factors affecting the viability and defensibility of the occurrence (Mancuso 2001). The four Occurrence Viability Rankings are: (1) A-ranked occurrences are those sites found in the highest quality communities; these occurrences generally have not been burned and are not dominated by nonnative annuals; (2) B-ranked occurrences typically consist of good to high quality habitat; (3) C-ranked occurrences are generally in fair to low-quality habitat; some of these occurrences are highly disturbed and are not expected to remain viable; and (4) D-ranked occurrences are in degraded habitats; these occurrences are not expected to remain viable (Moseley 1994).

Currently, only 6 (9 percent) of the 70 extant *Lepidium papilliferum* occurrences are A-ranked; 9 (13 percent) are B-ranked; 2 (3 percent) are B/C-ranked; 20 (29 percent) are C-ranked; 1 (1 percent) is C/D-ranked; and 17 (24 percent) are D-ranked (ICDC 2002). Fifteen occurrences are not ranked (21 percent) due to a lack of information on habitat characteristics (S. Cooke, pers. comm., 2002).

Previous Federal Action

Federal Government actions for the plant began in 1990 when this species (as *Lepidium montanum* var. *papilliferum*) was designated as a category 2 candidate in the February 21, 1990 (55 FR 6184) Notice of Review. Category 2 candidates were those for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but sufficient data to support proposed rules were not currently available. This taxon was retained as a category 2 candidate in the September 30, 1993 (58 FR 51144) Notice of Review. Upon publication of the February 28, 1996 Notice of Review (61 FR 7596), we ceased using candidate category designations. *Lepidium papilliferum* was not included as a candidate species in this notice. We reinstated the species as a candidate species, with a listing priority number of 2, in the October 25, 1999, Notice of Review (64 FR 57534). The species was again listed as a candidate in the October 30, 2001, Notice of Review (66 FR 54808).

On April 9, 2001, we received a petition dated April 4, 2001, from the Committee for Idaho's High Desert, the Western Watersheds Project, the Wilderness Society, and the Idaho Conservation League (Petitioners) asking us to list *Lepidium papilliferum* as threatened or endangered, and on an emergency basis. The petition submitted information stating that this species is threatened by competition with nonnative and woody vegetation, improper livestock grazing practices, improper herbicide application, inbreeding depression, and fire suppression. We responded to the Petitioners with a letter dated April 27, 2001, stating that the species was already identified as a candidate, and we do not publish petition findings on candidate species since we have already determined that their listing is warranted (Service 2001). We also stated that our initial review of their petition did not indicate an emergency situation existed.

On November 6, 2001, the Petitioners filed a complaint for our failure to emergency list *Lepidium papilliferum* as threatened or endangered, and our failure to proceed with a proposed rule to list *L. papilliferum* as endangered or threatened on a non-emergency basis (*Committee for Idaho's High Desert and Western Watersheds Project* v. *Anne Badgley, et al.* (Case No. CV 01–1641–AS)). On April 2, 2002, based on a settlement agreement between us and the Petitioners, the court signed an order requiring us to submit for publication in the **Federal Register** a proposal to list the species by July 15, 2002. This proposed rule complies with the settlement agreement.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors, and their application to *Lepidium papilliferum*, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Most sagebrush-steppe habitat that has not been converted to cropland in southwestern Idaho has been degraded by wildfire, livestock grazing and trampling, the invasion of nonnative plant species, and off-road vehicle use; these factors continue to threaten all remaining habitat for *Lepidium papilliferum* (Moseley 1994; Mancuso and Moseley 1998; ICDC 1999; Mancuso 2000). The conversion of the original sagebrush-steppe to annual grasslands has reduced suitable remaining habitat for, and destroyed some, *L. papilliferum*, in addition to fragmenting and isolating extant occurrences (Moseley 1994). Subsequent increased frequency of fire, and the associated invasion of weedy annual plants, are serious range-wide threats to the long-term integrity of *L. papilliferum* habitat and population viability (M. Mancuso, *in litt.*, 1998).

To illustrate the pattern of ongoing habitat degradation for this species, in 1994, 12 *Lepidium papilliferum* occurrences were given a "B" rank (Moseley 1994). By 1998, eight of these occurrences (67 percent) had declined in quality to either a "C" or "D" rank due to the effects of habitat degradation and fragmentation (M. Mancuso, *in litt.*, 1998). Lower quality (*i.e.*, C- and D-ranked) occurrences are not likely to persist in the future. Examples of decline in habitat quality include two *L. papilliferum* occurrences near Kuna Butte on BLM lands. *Lepidium papilliferum* habitat at one site south of Kuna (Initial Point) that received an A-rank in 1994 had declined to a D-rank by 1998. Recent wildfires in the area destroyed the original sagebrush vegetation which has now been largely replaced by nonnative species. Mechanical fire rehabilitation efforts also adversely affected the slickspots; less than 0.04 ha (0.1 ac) of occupied habitat now exists at this site (M. Mancuso, *in litt.*, 1998; ICDC 1999). Another *L. papilliferum* occurrence south of Kuna (Kuna Butte) declined from an A-rank in 1994 to a C-ranking in 1998 due to habitat degradation from fire, post-fire rehabilitation efforts, and the invasion of nonnative species which now dominate the vegetation; occupied *L. papilliferum* habitat at this occurrence is also restricted to less than 0.04 ha (0.1 ac) (ICDC 1999). Both occurrences are now considered to have poor habitat quality.

Livestock effects on unique habitats such as slickspots are magnified in areas where nonnative plant invasions and altered fire regimes occur. Arid soils with inorganic crusting are more susceptible to impacts when soils are wet (Belnap *et al.* 1999). Slickspots are characterized by a near-surface distribution of soluble sodium salts, thin vesicular (small cavity) surface crusts, and shallow well-developed argillic (relating to clay mineral) horizons (Fisher *et al.* 1996). Slickspots often contain some surface water in the winter, spring, and after thundershowers (Fisher *et al.* 1996; James Klott, BLM, pers. comm., 2000). Water that is present for more than a day often will attract livestock to slickspots (J. Klott, pers. comm., 2000).

Livestock trampling of slickspots is one of the main disturbances to slickspot microsites (Mancuso 2001), especially in the spring (approximately April through June) when the soils are moist. Trampling by livestock can physically damage the vegetation that exists there and compact the soil, which greatly accelerates desertification processes (becoming more like a desert) through increased soil loss and water runoff (Moseley 1994; D. Quinney and

would likely damage *L. papilliferum* and its habitat throughout the Juniper Butte ETR, especially at the INRMP proposed grazing intensity level, which is to graze 2,470 AUMs for 60 days (Air Force 2000). The Air Force is currently preparing a Vegetation Management Environmental Assessment (EA) that would address how the area is grazed by livestock and the necessary conservation measures needed for *L. papilliferum*. It is anticipated that the minimal soil disturbance (e.g., "no till" drills) are available, but have not been regularly used in southwestern Idaho to date (R. Rosentreter, BLM, pers. comm., 1999). In some cases, not seeding burned areas can result in the loss of *L. papilliferum* occurrences due to nonnative weed invasion. In 2001, the BLM modified its rangeland drills used in fire rehabilitation to reduce the seeding depths so the drills would be less damaging to *L. papilliferum* habitat.

Development of adjacent private land also threatens at least four *Lepidium papilliferum* occurrences on BLM land (Mancuso 2000). For example, the Soles Rest Creek *L. papilliferum* occurrence is on BLM land adjacent to private property that is under construction for a residential development (A. DeBoldt, pers. comm., 2002). An all-season road has replaced a two-track road and spur roads now lead off the improved road. Due to this increased access, and the

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Livestock trampling of slickspots can also lead to the invasion or increase of nonnative annual species such as *Bromus tectorum, Sisymbrium altissimum, Ranunculus testiculatus,* and *Lepidium perfoliatum* into shrub-steppe habitats through transport of the seeds of these species by animals in their feces or hides (Ellison 1960; Pyke 1999). The majority of the 40 extant *Lepidium papilliferum* occurrences being monitored (92 percent of the 40) had invasive annual grasses that either dominated or co-dominated the herbaceous vegetation (Mancuso 2000).

Slickspots are small areas of habitat that are relatively free of organic debris and nutrients. The presence of livestock in an area with slickspots generally results in increases in organic debris, such as livestock feces, especially when the slickspots have standing water. As organic debris is increased, the incidence of nonnative species invasion also increases (J. Klott, pers. comm., 2000), leading to the loss of suitable habitat for *Lepidium papilliferum*. Heavily grazed and trampled locations may favor species such as bur buttercup (Pyke 1999). Once the integrity of the slickspot has been disrupted, invasion by nonnative species will be enhanced (J. Klott, pers. comm., 2000). Invader species (such as those indicated above) can also encroach onto a site from adjacent sites in later stages of deterioration (in fair to poor range conditions) (Holechek *et al.* 1998).

As a result of numerous fires and reseeding efforts associated with fire rehabilitation with non-native perennial grasses, the BLM has granted Temporary Non-Renewable (TNR) livestock grazing permits to permittees in the Jarbidge Resource Area. A TNR is a permit that increases a livestock permittee's allotted Animal Unit Months (AUMs) in a permitted grazing area, based on the estimated amount of forage available for livestock. An increase in livestock grazing pressure increases the likelihood of trampling of *Lepidium papilliferum* plants, soil compaction, and the introduction of nonnative vegetation in slickspots. Until 1995, TNR permits were granted on a yearly basis without environmental review or surveys for sensitive plant species. In 1996, the BLM prepared an environmental assessment analyzing the potential impacts of authorizing TNR permits, and provided a framework for managing the TNR program (Martha Hahn, BLM, *in litt.*, 2000). Beginning in 1999, a TNR permit was denied if *L. papilliferum* was observed in the allotment for that year; if L. papilliferum was not observed, the TNR permit was granted (John Biar, BLM, pers. comm., 2000; J. Klott, pers. comm., 2000). However, since 2000, while some BLM pastures may be closed to grazing use if *L. papilliferum* is present, this does not necessarily always occur (J. Klott, pers. comm., 2000), and the decision to allow grazing is based mainly on how close slickspots containing *L. papilliferum* are to water sources.

The BLM has taken some steps to mitigate grazing impacts to *Lepidium papilliferum* on land it manages. It has moved a few water troughs that attracted livestock into an area that contained *L. papilliferum*, and also fenced an area containing the species to protect it from the livestock. Also, the BLM has changed the season of grazing use from spring to fall, although this does not generally protect the biennial form of *L. papilliferum*. Large areas that have not been surveyed are still grazed, and many areas at less than 1,524 m (5,000 ft) in elevation are permitted to be grazed the entire year. Although surveys are conducted yearly, funds are insufficient for the BLM to cover all of the grazing allotments throughout the species' range (J. Klott, pers. comm., 2002).

In 1996, the Air Force acquired BLM land to establish the Juniper Butte Enhanced Training Range (ETR), under the Juniper Butte Range Withdrawal Act (Pub. L. 105–261), which provided for the withdrawal and management of this area by the Air Force for military activities (Air Force 2000). Juniper Butte ETR is approximately 4,856 ha (12,000 ac) in size, and the landscape is a mosaic of shrub-steppe and nonnative plant communities. Numerous fires in this area resulted in a conversion from the native sagebrush-perennial grassland vegetation to nonnative perennial or annual grasslands (Air Force 2000). Slickspot habitat and *Lepidium papilliferum* are distributed throughout the entire Juniper Butte ETR area. A total of 597 slickspots or complexes of varying sizes were located in a 1998 Air Force survey on the Juniper Butte ETR, and totaled approximately 0.9 ha (2.2 ac) of potential *L. papilliferum* habitat. This figure did not include the 121 ha (300 ac) primary ordnance (bomb) impact zone. Slickspot habitat on the Juniper Butte ETR is currently considered low ranking (C-rank) (Mancuso 2002).

Under BLM management, this land was permitted to be grazed by livestock for many years as part of the Juniper Draw allotment (Air Force 2000). At the present time, the Juniper Butte ETR area continues to be grazed by a BLM permittee (Angelia Martin, Air Force, pers. comm., 2002). The Air Force has recently completed its Integrated Natural Resource Management Plan (INRMP) for the Juniper Butte ETR, which was prepared to provide mitigation and monitoring for lands affected by military activities, and to provide management guidance for this area (Air Force 2000).

Under the INRMP, the Air Force proposes to utilize grazing throughout the entire Juniper Butte ETR to reduce the amount of standing grass biomass for wildfire control (Air Force 2000). Currently, the permittee is required to graze his permitted 1,806 AUMs for 60 days (2 months) sometime between April 1 and June 30 (during a 90-day window) each year. In the early spring, Air Force staff begin to check a number of slickspots, and if there is standing water in them, grazing may be delayed until after April 1 with the potential of having grazing delayed until May 1. However, at that time, whether the slickspots are wet or not, the cattle must be turned out to graze the 60 days until the end of June. Outside of the primary ordnance impact area, the Juniper Butte ETR is divided into three pastures. During the spring, the Air Force (2000) proposes to suspend training in the primary ordnance impact area in order to clean up inert training ordnance dropped from jets during training exercises in this impact zone and one of the pastures. It is anticipated that a small amount of ordnance will be dropped outside the primary ordnance impact area, but we consider this impact on *Lepidium papilliferum* to be minor. Livestock will be allowed to graze during this time. Soil and vegetation disturbance due to this activity would be greatest at this time of year, and would likely damage *L. papilliferum* and its habitat throughout the Juniper Butte ETR, especially at the INRMP proposed grazing intensity level, which is to graze 2,470 AUMs for 60 days (Air Force 2000). The Air Force is currently preparing a Vegetation Management Environmental Assessment (EA) that would address how the area is grazed by livestock and the necessary conservation measures needed for *L. papilliferum*. It is anticipated that the INRMP will be updated with information from the final EA.

Wildfire is a threat to all known *Lepidium papilliferum* occurrences throughout its range. Frequent fires are likely to degrade remaining *L. papilliferum* habitat in the future. For example, 29 of the 40 monitored (73 percent) *L. papilliferum* occurrences have been completely burned, have a mosaic burn pattern, or have distinct burned and unburned segments (Mancuso 2000). Increased sedimentation after a fire may also allow weedy species to invade slickspots (DeBoldt 1999 cited in Air Force 2000).

Post-fire range restoration efforts also threaten *Lepidium papilliferum*. Some occupied slickspots have been lost following drill-seedings, but it is often not clear whether fire, seeding, or the combination of the two disturbances caused the disappearance of the species or the slickspot. Drill seeding is the process of seeding an area using a rangeland drill which plants and covers seed simultaneously in furrows. It is designed to give the seeds moisture and temperature advantages that will enhance their competitive fitness, and consequently, their success rate (Scholten and Bunting 2001). Slickspots may reform over time after being drilled (Moseley 1994; Noe 1999 cited in Air Force 2000), but it is not known if *L. papilliferum* populations will remain viable for as long as the slickspot takes to reform (Air Force 2000). In their study examining the effects of drill seeding on *L. papilliferum*, Scholten and Bunting (2001) found that the density of *L. papilliferum* individuals was lower on drilled slickspots than on non-drilled sites.

Fire rehabilitation is needed to reduce the invasion of nonnative vegetation to burned areas. Drill-seeding may have less severe impacts on slickspot habitat than disking the soil, but the success of fire rehabilitation efforts at maintaining slickspots and *Lepidium papilliferum* varies considerably. Drill-seeding tends to break the linkages between slickspots and can result in slickspots shrinking in size, particularly those that are relatively small (J. Klott, pers. comm., 2000). Seeding methods that cause minimal soil disturbance (e.g., "no till" drills) are available, but have not been regularly used in southwestern Idaho to date (R. Rosentreter, BLM, pers. comm., 1999). In some cases, not seeding burned areas can result in the loss of *L. papilliferum* occurrences due to nonnative weed invasion. In 2001, the BLM modified its rangeland drills used in fire rehabilitation to reduce the seeding depths so the drills would be less damaging to *L. papilliferum* habitat.

Seeding burned areas with *Agropyron cristatum*, a non-native forage species, or other non-native perennial grasses, has resulted in the destruction of at least one *Lepidium papilliferum* site (Moseley 1994). *Agropyron cristatum* is a strong competitor and its seedlings are better than native species at acquiring moisture at low temperatures (Lesica and DeLuca 1998). For example, on the Juniper Butte ETR, approximately 80 percent or 3,708 ha (9,163 ac) of this area is dominated by nonnative perennial plant communities as a result of fire rehabilitation efforts (Air Force 1998).

Other potential threats to this species resulting from fire prevention and rehabilitation measures include the use of Oust, a non-specific herbicide that is toxic to plants in the mustard family. Oust is a sulfometuron methyl herbicide and is successful at killing annual plants while having little impact on established perennials (Scholten 2000 cited in Scholten and Bunting 2001). It has been used over large areas of BLM lands that contain *Lepidium papilliferum* habitat. Also, the practice of "green-stripping" or converting native habitat to nonnative plant species that are not considered to be very flammable has occurred (Moseley 1994). Since wildfire prevention and control is a high priority for the BLM and other agencies in southwestern Idaho, potential threats to *L. papilliferum* habitat associated with these activities are expected to continue.

The long-term viability of *Lepidium papilliferum* occurrences on private land is questionable due to the continuing expansion of residential developments in and around Boise (Moseley 1994). Twenty-eight of the 88 known *L. papilliferum* occurrences (32 percent) occur either wholly or partially on private lands. Of these, 13 occurrences (46 percent) are known to have been extirpated within the past 50 years (Moseley 1994; ICDC 2002). Urbanization, agricultural conversion, and associated factors such as increased risk of damage or extirpation from fire, trampling, and off-road vehicle use, threaten all existing *L. papilliferum* occurrences on private land.

Development of adjacent private land also threatens at least four *Lepidium papilliferum* occurrences on BLM land (Mancuso 2000). For example, the Soles Rest Creek *L. papilliferum* occurrence is on BLM land adjacent to private property that is under construction for a residential development (A. DeBoldt, pers. comm., 2002). An all-season road has replaced a two-track road and spur roads now lead off the improved road. Due to this increased access, and the resulting potential for an increase in off-road vehicle use that would trample plants, fire hazard, and introduction of nonnative species, this *L. papilliferum* occurrence declined from an A-rank to a B-rank.

In this same general area, a recent trespass occurred in which a private landowner bladed a 2.4 kilometer (km) (1.5 mile (mi)) road through BLM land to reach his private inholding. This individual bladed the road through slickspot habitat and a *Lepidium papilliferum* population. The BLM is now in the process of developing an environmental assessment to rehabilitate the land damaged during this incident and route a road away from slickspot habitat and *L. papilliferum* plants to accommodate this landowner as well as others (A. DeBoldt, pers. comm., 2002).

In another recent event, unauthorized blading of an existing roadway on BLM lands impacted at least six slickspots known to contain *Lepidium papilliferum*. The total number of slickspots impacted by the 84 km (52 mi) of blading is unknown as the blading may have removed all physical evidence of small slickspots (BLM 2001).

A recent assessment of the ecological status of *Lepidium papilliferum* indicates that the six remaining high-quality (A-ranked) *L. papilliferum* occurrences are threatened by fire, off-road vehicle use, habitat degradation and trampling resulting from livestock, powerline/pipeline maintenance activities, and illegal dumping (M. Mancuso, *in litt.*, 1998; Mancuso 2000). These six occurrences are located on mixed land ownerships consisting of BLM, State, and private land.

Military training activities and the development of the 4,856 ha (12,000 ac) Juniper Butte ETR in southwestern Idaho by the Air Force is also a threat to the species, and it is expected that direct impacts due to construction and training activities will result in the loss of *Lepidium papilliferum* within the 121 ha (300 ac) primary ordnance impact zone (Air Force 1998, 2000). The Juniper Butte ETR contains occupied and potentially suitable habitat for *L.*

papilliferum (A. DeBolt, *in litt.*, 1998; Air Force 1998; 1999; ICDC 1999); surveys conducted in June 1998 indicate that at least 1,000 plants were present (Air Force 1999). The Air Force constructed facilities within the 121 ha (300 ac) primary ordnance impact zone during 2000 and 2001, and to avoid impacts to some slickspots, the Air Force shifted the locations of several industrial complex buildings just prior to construction. Although fire protection Reservoir site, which is on both BLM and State land. The Tenmile Creek site has been affected by recent, apparently illegal mining activity (A. DeBolt, pers. comm., 1999); this site is on BLM and private land. Gravel deposits located near Boise are considered to be especially valuable for mining since the gravel does not have to be shipped long distances to market (A. DeBoldt, pers. comm., 2002).

need to protect sensitive, candidate, and Federally listed species, and monitoring *L. papilliferum* on Federal lands has been initiated. Monitoring helps to identify threats and management actions that may be necessary to control habitat degradation, but the effects of activities such as livestock use of the habitat have not been evaluated for most *L. papilliferum* occurrences managed by the BLM. Numerous occurrences on

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Because the majority of populations of Lepidium papilliferum are extremely small (fewer than 5 plants per slickspot), and existing habitat is fragmented by agricultural conversion, fire, grazing, roads, and urbanization, local extirpation is a threat to this species. Habitat fragmentation has also likely resulted in reduced gene flow

species representing less than 1.5 percent of the extant occurrences. Based on our evaluation, *L. papilliferum* meets the definition of endangered under the Act, which is a species in danger of becoming extinct throughout all or a significant portion of its range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the—(i) specific areas within the geographical area occupied

refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if

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papilliferum (A. DeBolt, *in litt.*, 1998; Air Force 1998; 1999; ICDC 1999); surveys conducted in June 1998 indicate that at least 1,000 plants were present (Air Force 1999). The Air Force constructed facilities within the 121 ha (300 ac) primary ordnance impact zone during 2000 and 2001, and to avoid impacts to some slickspots, the Air Force shifted the locations of several industrial complex buildings just prior to construction. Although fire protection has been made a priority, it is inevitable that fire will occur due to proposed training activities throughout the Juniper Butte ETR. The overall habitat quality in the Juniper Butte ETR ranges from moderate to low since portions of the area burned several years ago (A. DeBolt, pers. comm., 1999) and have been reseeded to nonnative perennial grasses.

An additional potential threat to *Lepidium papilliferum* on the Juniper Butte ETR within the primary ordnance impact area is the impact of dropping bombs on slickspots. Each bomb weighs approximately 11 kilograms (25 pounds) (Air Force 2000), and even though they are inert and will not explode, dropping them from planes onto slickspots could compact the soil and crush plants. Because the slickspots are relatively small, it would be difficult to avoid them on the bombing range. However, this threat is considered minimal as the Air Force intends to use only 121 ha (300 ac) or 2.5 percent of the entire Juniper Butte ETR as the actual bombing impact area (Air Force 2001), and because this area contains only 3 percent of the total occupied L. *papilliferum* habitat.

Lepidium papilliferum occurs on BLM lands called the Orchard Training Area, where the IDARNG has been conducting its military training exercises since 1953 under a Memorandum of Understanding between the two agencies (Quinney 2000). Over the past 12 years, IDARNG has implemented actions to meet the conservation needs of *L. papilliferum*, while still providing for military training activities. These actions include intensive fire suppression efforts, and restricting ground operated military training to where the plants and its habitat are not found.

Gravel or cinder mining threatens at least two occurrences of *Lepidium papilliferum* on State and Federal lands (M. Mancuso, *in litt.*, 1998; A. DeBolt, pers. comm., 1999). These occurrences, located at Tenmile Creek and Fraser Reservoir, currently support high-quality (A-ranked) habitat for this species (M. Mancuso, *in litt.*, 1998). Ongoing mining activity and off-road vehicle use are present at the Fraser Reservoir site, which is on both BLM and State land. The Tenmile Creek site has been affected by recent, apparently illegal mining activity (A. DeBolt, pers. comm., 1999); this site is on BLM and private land. Gravel deposits located near Boise are considered to be especially valuable for mining since the gravel does not have to be shipped long distances to market (A. DeBoldt, pers. comm., 2002).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The plant is not a source for human food, nor is it currently of commercial horticulture interest. Therefore, overutilization is not considered to be a threat to this species at the present time.

C. Disease or Predation

The effects of overgrazing by livestock (generally defined as greater than 45 percent use of the available forage) in shrub-steppe habitats has been well documented (Yensen 1980; Whisenant 1990; Noss *et al.* 1995; Holechek *et al.* 1998; Belnap *et al.* 1999; Holechek et al. 1999). Although grazing of *Lepidium papilliferum* by cattle appears low, and infrequent by other herbivores (Popovich 2001), spring-grazing sheep have been observed to uproot *L. papilliferum* plants. Since *L. papilliferum* is apparently unpalatable, sheep rarely consume the plants but simply pull them from the ground while foraging, killing the plants (D. Quinney and J. Weaver, pers. comm., 1998). Recent studies from 1994 to 1999 reported that as much as 50 percent or more of the *L. papilliferum* plants at various monitoring sites on the Snake River Plain were damaged or destroyed by cattle and sheep grazing and trampling (Moseley 1994; J. Weaver, *in litt.*, 1998; Mancuso 2000). For additional discussion on livestock grazing threats to this species, see Factors A and E.

Herbivory by beetles has been observed on *Lepidium papilliferum* plants (M. Mancuso, *in litt.*, 1998). Although some plants were nearly defoliated and may have been killed by beetle herbivory, it is not considered to be a major threat at this time. However, the effects of threats such as insect herbivory on *L. papilliferum* may become more detrimental as population sizes are reduced.

D. The Inadequacy of Existing Regulatory Mechanisms

Lepidium papilliferum is considered a sensitive species by the BLM (J. Klott, pers. comm., 2002; ICDC 2002). The BLM has regulations that address the need to protect sensitive, candidate, and Federally listed species, and monitoring *L. papilliferum* on Federal lands has been initiated. Monitoring helps to identify threats and management actions that may be necessary to control habitat degradation, but the effects of activities such as livestock use of the habitat have not been evaluated for most *L. papilliferum* occurrences managed by the BLM. Numerous occurrences on Federal lands are threatened by nonnative weeds, herbicide spraying, mining, off-road vehicle use, and habitat degradation through increased fire frequency (see Factors A and E for additional information).

Land exchanges involving the transfer of BLM land supporting *Lepidium papilliferum* into private ownership are a potential threat to this species. For example, a land exchange is currently proposed whereby the BLM would sell 12 ha (30 ac) of a 16 ha (40 ac) parcel to a private developer in the foothills of Boise, ID, as part of a larger land exchange. BLM would retain the 4 ha (10 ac) that contains a population of *L. papilliferum*. The 12 ha (30 ac) would be sold with a conservation easement and the developer would be required to fence the perimeter of the 4 ha (10 ac) retained in BLM ownership. With the 4 ha (10 ac) site surrounded by residential development, *L. papilliferum* habitat becomes fragmented and the population isolated from other *L. papilliferum* populations (A. DeBoldt, pers. comm., 2002). Future land exchanges are a continuing threat since BLM lands occupied by *L. papilliferum* could potentially support activities such as farming and mining, and may be sold for development purposes.

A conservation agreement with the City of Boise was completed in 1996 for the Hulls Gulch Reserve in the foothills north of Boise, which includes minimal habitat for *Lepidium papilliferum* (Service, *in litt.*, 1996). The *L. papilliferum* habitat within the Hulls Gulch Reserve, restricted to less than 2 m^2 (21.5 ft^2), is very low quality (D-rank), vulnerable to disturbances from an adjacent trail, and a housing development (Mancuso 2000), and represents only one occurrence of *L. papilliferum*.

Lepidium papilliferum is considered to be rare and imperiled at the global and State scale (G2/S2 rating) by the Idaho Natural Heritage Program (Idaho Native Plant Society 1999; Air Force 2000). However, Idaho has no endangered species legislation that protects threatened or endangered species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Because the majority of populations of Lepidium papilliferum are extremely small (fewer than 5 plants per slickspot), and existing habitat is fragmented by agricultural conversion, fire, grazing, roads, and urbanization, local extirpation is a threat to this species. Habitat fragmentation has also likely resulted in reduced gene flow between populations (M. Mancuso, *in litt.* 1998), thus inhibiting dispersal and recolonization of potentially suitable habitat areas. The small size of many populations presents a threat to their survival due to environmental and genetic factors (Moseley 1994). In addition, less than 2,246 ha (5,550 ac) of high-quality (with A-ranked occurrences) potential habitat, with slickspots scattered throughout, exists for this species (M. Mancuso, *in litt.*, 1998; ICDC 2002), which may not be adequate to ensure the long-term persistence of *L. papilliferum*. In 1999, new threats, including off-road vehicle use, cinder and gravel mining claims, and residential development, were observed at 7 (14 percent) of the 40 occurrences monitored, indicating a continuation of the threats associated with this species (Mancuso 2000).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining the status of *Lepidium papilliferum*. The small amount of occupied habitat, combined with ongoing threats make this species vulnerable to extinction. Most of the remaining sites that support *L. papilliferum* are small and fragmented, and existing occurrences are vulnerable to impacts from factors including grazing, trampling, herbicide use, military training, competition from nonnative vegetation, urban and agricultural development, and habitat degradation from frequent fires. Seventy-four percent of *L. papilliferum* occurrences are either completely or partially on Federal land managed primarily by the BLM and Air Force, and may be afforded some level of protection. Approximately 32 percent of *L. papilliferum* occurrences occur either partially or wholly on private lands. Of the 70 extant occurrences, only 6 (9 percent) are considered to be viable (A-ranked).

Existing regulatory mechanisms are inadequate or ineffective in protecting this taxon. One conservation agreement has been developed and implemented for *Lepidium papilliferum;* however, it covers only one occurrence of the species representing less than 1.5 percent of the extant occurrences. Based on our evaluation, *L. papilliferum* meets the definition of endangered under the Act, which is a species in danger of becoming extinct throughout all or a significant portion of its range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the—(i) specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the designating a particular area as critical. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would derive from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits.

The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also produce some educational or informational benefits. Therefore, designation of critical habitat for *Lepidium papilliferum* is prudent.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing *Lepidium papilliferum* without designation of critical habitat will allow us to concentrate our limited resources on higher priority listing actions, while allowing us to put in place protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. The legislative history of the 1982 Act amendments also emphasized this point: "The Committee feels strongly, however, that, where biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat. * * * The committee expects the agencies to make the strongest attempt possible to determine critical habitat within the time period designated for listing, but stresses that the listing of species is not to be delayed in any instance past the time period allocated for such listing if the biological data is clear but the habitat designation process is not complete" (H.R. Rep. No. 97–567 at 20 (1982)). We will prepare a critical habitat designation in the future when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages public awareness and results in

conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a)(2) of the Act requires

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to *Lepidium papilliferum*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply (16 U.S.C. 1538(a)(2)). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to

(4) Fire rehabilitation that does not reseed to native shrub-steppe habitat and maintain slickspot integrity;

(5) Failure to control wildfires in shrub-steppe habitats;

(6) Residential or commercial development within shrub-steppe habitat with slickspots;

(7) Uncontrolled off-road vehicle use and other recreational activities in *L. papilliferum* habitats;

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AI50" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Snake River Fish and Wildlife Office at telephone number 208/378–5243.

sufficient time to process requests, please call no later than 1 week before the hearing date.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a

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conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species, or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible federal agency must enter into consultation with us.

Federal agencies that may have involvement with *Lepidium papilliferum* include the Federal Housing Administration and Farm Services Agency, which may be affected through potential funding of housing and farm loans where this species or its habitat occurs. Highway construction and maintenance projects that receive funding from the U.S. Department of Transportation for Federal highways will also be subject to review under section 7 of the Act. In addition, activities or actions that may affect populations of *L. papilliferum* that occur on Federal lands (*e.g.*, managed by the BLM or Department of Defense) will be subject to section 7 review. Activities on private, State, county or city lands requiring a permit or funding from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration or Federal Emergency Management Agency), will also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to *Lepidium papilliferum*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply (16 U.S.C. 1538(a)(2)). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport or ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction, any plant listed as an endangered or threatened species. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant taxa under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species' range. Collection, damage or destruction of this species on Federal land is prohibited, although in appropriate cases a Federal permit could be issued to allow collection for scientific or recovery purposes.

Activities that we believe could potentially result in a violation of section 9 include, but are not limited to:

(1) Grazing levels within *L. papilliferum* habitat that promote the invasion of nonnative species;

(2) Placement of water, salt, and fences for livestock and its associated use within *L. papilliferum* habitat;

(3) Grazing during wet periods that results in the disturbance of slickspot hydrology;

(4) Fire rehabilitation that does not reseed to native shrub-steppe habitat and maintain slickspot integrity;

(5) Failure to control wildfires in shrub-steppe habitats;

(6) Residential or commercial development within shrub-steppe habitat with slickspots;

(7) Uncontrolled off-road vehicle use and other recreational activities in *L. papilliferum* habitats;

(8) Federal land exchanges that may result in the loss or degradation of *L. papilliferum* habitat; and

(9) Application of pesticides/herbicides in violation of label restrictions.

We believe that activities that are unlikely to violate section 9 include any agricultural or residential uses on non-Federal land. We are not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Snake River Basin Office (*see* **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations on listed plants and animals, and general inquiries regarding prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) Additional information concerning the range, locations, and population size of this species;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on this species; and

(4) The reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act, including whether the benefit of designation will outweigh any benefits of exclusion;

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AI50" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Snake River Fish and Wildlife Office at telephone number 208/378–5243.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Snake River Basin Office (*see* **ADDRESSES**).

In making any final decision on this proposal, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

Public Hearings

In anticipation of public interest in this issue, a public hearing has been scheduled for Thursday, August 29, 2002, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m. at the AmeriTel Inn/Boise Spectrum, 7499 W. Overland Rd, Boise, ID. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send the peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite them to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing of *Lepidium papilliferum*.

National Environmental Policy Act

We have determined that an environmental assessment and/or an environmental impact statement, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following—(1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to: *Exsec@ios.doi.gov*.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The existing OMB control number is 1018–0094 for permit applications regarding endangered and threatened species; this control number expires 7/31/2004.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this document, is available upon request from the Snake River Basin Office (*see* **ADDRESSES** section).

Author(s)

The primary authors of this proposed rule are Jeri Wood, U.S. Fish and Wildlife Service, Snake River Basin Office (*see* **ADDRESSES**), and Barbara Behan, U.S. Fish and Wildlife Service, Regional Office, Portland, OR.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical

order under FLOWERING PLANTS to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Lepidium papilliferum	Slickspot peppergrass	U.S.A. (ID)	Brassicaceae (Mustard)	E		NA	NA

Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis*)

hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection,

order under FLOWERING PLANTS to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Lepidium papilliferum	Slickspot peppergrass.	U.S.A. (ID)	Brassicaceae (Mustard)	E		NA	NA
.	.	.	.	.	.	.	.

Dated: July 5, 2002.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–17715 Filed 7–12–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designations for 32 plants from the island of Lanai, Hawaii. In addition, the comment period which originally closed on May 3, 2002, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on August 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 6 p.m. to 8 p.m. on Thursday, August 1, 2002, on the island of Lanai, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. We will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Lanai Public Library Meeting Room, Fraser Avenue, Lanai City, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2002, we published a revised proposed critical habitat rule for 32 of the 37 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Lanai (67 FR 9806). The original comment period closed on May 3, 2002. The comment period now closes on August 30, 2002. Written comments should be submitted to us (see **ADDRESSES** section).

A total of 37 species historically found on Lanai were listed as endangered or threatened species under the Act between 1991 and 1999. Some of these species may also occur on other Hawaiian islands. Previously, we proposed that designation of critical habitat was prudent for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis*, and *Zanthoxylum hawaiiense*) of the 37 species reported from the island of Lanai. No change is made to the 32 proposed prudency determinations in the March 4, 2002, revised proposed critical habitat rule for plants from Lanai. We previously proposed that designation of critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis* because it had not been seen recently in the wild, and no viable genetic material of this species is known to exist (65 FR 82086). No change is made to this proposed prudency determination in the March 4, 2002, revised proposed critical habitat rule (67 FR 9806). In the March 4, 2002, revised proposed critical habitat rule, we proposed that designation of critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum*, a species for which a prudency determination has not been made previously. We determined that designation of critical habitat was prudent for *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi* at the time of their listing in 1999.

We also propose designation of critical habitat for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta,*

Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis*, and *Viola lanaiensis*) plant species. Critical habitat is not proposed for four (*Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum*, and *Zanthoxylum hawaiiense*) of the 37 species which no longer occur on the island of Lanai, and for which we are unable to identify any habitat that is essential to their conservation on the island of Lanai. Critical habitat is not proposed for *Phyllostegia glabra* var. *lanaiensis* for the reasons given above. Eight critical habitat units, totaling approximately 7,853 hectares (19,405 acres), are proposed for designation on the island of Lanai. For locations of these proposed units, please consult the proposed rule (67 FR 9806).

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a request from a government agency of the State of Hawaii, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Information regarding this proposal is available in alternative formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act;

(3) Specific information on the amount, distribution, and quality of habitat for the 32 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values", and reductions in administrative costs); and

(7) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Reopening of the comment period will enable us to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on August 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Christa Russell (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 8, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–17745 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 135

Monday, July 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

Service Special Uses Handbook, FSH 2709.11, Chapter 30, Fee Determination, as ID number 2709.11–2002–2.

DATES: The interim directive is effective July 15, 2002.

The púrpose of the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative is to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome current identified economic problems.

To obtain application instructions and all required forms, please contact Cooperative Services Program at (202) 690–3407 or FAX (202) 690–2723. The application forms and instructions may also be requested via e-mail by sending a message with your name, mailing address, and phone number to *edgar.lewis@usda.gov*. The application

community leaders and residents to available economic development information.

traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership between the 1890 institutions and RBS through

rural communities. This outreach initiative includes, but is not limited to, technical assistance in economic and community development, feasibility studies, research, market development, loan packaging, conducting workshops and seminars in the area of business and economic development, and developing and providing access to computer web sites in the targeted population and communities. The actual number of cooperative agreements funded will depend on the quality of proposals

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Rental Fee Waivers for Noncommercial, Educational Broadcasters and State and Local Entities Holding Leases or Permits for Communications Uses on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency interim directive.

SUMMARY: The Forest Service is issuing an interim directive (ID) to provide internal guidance to its employees in implementing a rental fee waiver for noncommercial, educational sectarian broadcasters that hold a Forest Service lease or special use permit to occupy National Forest System lands for telecommunications purposes. Based on an analysis of applicable case law, the Forest Service is modifying its fee waiver policy to exempt from a rental fee those sectarian broadcasters that have a Forest Service lease or special use permit, are licensed by the Federal Communications Commission (FCC) as a noncommercial, educational broadcaster, and have nonprofit status under section 501(c)(3) of the Internal Revenue Code. Additionally, the ID clarifies that the Forest Service rental fee calculation for facility owners and facility managers does not include sectarian broadcasters in their facilities that can verify their nonprofit status under section 501(c)(3) of the Internal Revenue Code and their classification by the FCC as noncommercial, educational sectarian broadcasters. The Forest Service is also clarifying its current fee waiver policy to provide that States and local governmental entities are not to be granted a fee waiver when their authorized use on the National Forest is commercial in nature or is intended to generate a profit. The interim directive is issued to the Forest Service Special Uses Handbook, FSH 2709.11, Chapter 30, Fee Determination, as ID number 2709.11–2002–2.

DATES: The interim directive is effective July 15, 2002.

ADDRESSES: The interim directive is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives*. Single paper copies of the interim directive also are available by contacting Mark Scheibel, Forest Service, USDA, Lands Staff (Mail Stop 1124), 1400 Independence Avenue, SW., Washington, DC 20250–1124 (telephone 202–205–1264).

FOR FURTHER INFORMATION CONTACT: Mark Scheibel, Lands Staff (202–205–1264).

Dated: June 19, 2002.

Dale N. Bosworth,

Chief.

[FR Doc. 02–17607 Filed 7–12–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals: Fiscal Year 2002 Funding Opportunity for 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.5 million in competitive cooperative agreement funds allocated from fiscal year 2002 budget. RBS hereby requests proposals from Tuskegee University and the 1890 Land Grant Universities (1890 Institutions) interested in applying for competitively awarded cooperative agreements for support of RBS' mission goals and objectives of outreach to small rural communities and to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership between the 1890 Institutions and RBS through cooperative agreements.

Eligible applicants must provide matching funds in support of this project. Matching funds must equal at least 25 percent of the amount provided by RBS in the cooperative agreement. This Notice lists the information needed to submit an application for these funds.

DATES: Cooperative agreement applications must be received by 4 p.m. August 29, 2002. Proposals received after August 29, 2002, will not be considered for funding. Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before September 13, 2002 to be considered.

ADDRESSES: Send proposals and other required materials to Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, E-mail: *edgar.lewis@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, E-mail: *edgar.lewis@usda.gov*.

SUPPLEMENTARY INFORMATION:

General Information

This solicitation is issued pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996. Also, this solicitation is issued pursuant to Executive Order 13256 (February 12, 2002), "President's Board of Advisors on Historically Black Colleges and Universities." RBS was established by the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance, and creating effective strategies for rural development.

The purpose of the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative is to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership through cooperative agreements between 1890 Institutions and RBS, to develop programs to assist future entrepreneurs and businesses.

RBS plans to use cooperative agreements with the 1890 Institutions to strengthen the capacity of these communities to undertake innovative, comprehensive, citizen led, long-term strategies for community and economic development. The cooperative agreements will be for an outreach effort to promote RBS programs and shall include, but not limited to:

(1) Developing a program of business startup and technical assistance for assisting with new business development, business planning, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for small businesses;

(2) Developing management and technical assistance plans that will:

(i) Assess small business alternatives to traditional agricultural and other natural resource based industries;

(ii) Assist in the development of business plans or loan packages, marketing, or bookkeeping;

(iii) Assist and train small businesses in customer relations, product development, or business planning and development.

(3) Assessing and conducting feasibility studies of local community weaknesses and strengths, feasible alternatives to agricultural production, and the necessary infrastructure to expand or develop new or existing businesses;

(4) Providing community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities;

(5) Conducting seminars to disseminate information to stimulate business and economic development in selected rural communities; and

(6) Establishing and maintaining a computer network system, linking community leaders and residents to available economic development information.

To obtain application instructions and all required forms, please contact Cooperative Services Program at (202) 690–3407 or FAX (202) 690–2723. The application forms and instructions may also be requested via e-mail by sending a message with your name, mailing address, and phone number to *edgar.lewis@usda.gov*. The application forms and instructions will be mailed to you (not e-mailed or faxed) as quickly as possible. When calling or e-mailing Cooperative Services, please indicate that you are requesting application forms and instructions for fiscal year (FY) 2002 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative.

Use of Funds

Funds may be used to pay up to 75 percent of the costs for carrying out relevant projects. Applicants' contributions may be in cash or in-kind contributions and must be from non-Federal funds. Funds may not be used to: (1) Pay more than 75 percent of relevant project or administrative costs; (2) pay costs of preparing the application package; (3) fund political activities; (4) pay costs prior to the effective date of the cooperative agreement; (5) proposals may not provide for revolving funds; (6) construction; (7) any activities where there are or may appear to be a conflict of interest; (8) paying obligations before the date of the cooperative agreement; or (9) purchasing real estate.

Based on Section 708 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002, (Pub. L. 107–76, Nov. 28, 2001) "No funds appropriated by this Act may be used to pay indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total cost of the agreement when the purpose of such cooperative arrangement is to carry out programs of mutual interest between the two parties."

Available Funds and Award Limitations

The total amount of funds available in FY 2002 for support of this program is approximately $1.5 million. Applicants should request a budget commensurate with the project proposed. Total funds to be awarded will be distributed to the 1890 Institutions competitively, for the purpose of conducting outreach and providing technical assistance to small rural communities. This outreach initiative includes, but is not limited to, technical assistance in economic and community development, feasibility studies, research, market development, loan packaging, conducting workshops and seminars in the area of business and economic development, and developing and providing access to computer web sites in the targeted population and communities. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be $150,000. It is anticipated that a typical award would range from $75,000 to $150,000.

Eligible Applicants and Beneficiaries

Eligible applicants are 1890 Institutions. Eligible applicants must provide matching funds equal to at least 25 percent of the amount provided by RBS in the cooperative agreement. Matching funds must be spent in proportion to the spending of funds received from the cooperative agreement. Applicant, and the assigned personnel, must also have expertise and experience in providing the recommended assistance. Applicants should also have a previous record of successful implementation of similar projects and must have the expertise in the use of electronic network technologies and/or a business information system network web site.

Eligible beneficiaries must be located in a rural area as defined in 7 U.S.C. 1991 (a)(b) with economic need. Economic need can be demonstrated by the methods delineated in the evaluation section of this notice. Location in an Empowerment Zone, Enterprise Community, or Champion Community is sufficient evidence of economic need. Eligible beneficiaries must also be located in communities that show significant community support for the proposal. Preference will be given for projects that operate in a multi-county service area.

Methods for Evaluating and Ranking Applications

Applications will be collectively evaluated at the end of the application period and will be rated and ranked by a review panel based on the criteria and weights found in the next section. If there is a tie score after the proposals have been rated and ranked, the tie will be resolved by lottery. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first applicant drawn will receive the highest rank among the ties,

with the next draw receiving the next rank.

Evaluation Criteria and Weights

Proposals will be evaluated using the following seven criteria. Each criterion is given the weight value shown with total points equal to 100. Points do not have to be awarded by RBS for each criterion. After all proposals have been evaluated, the Administrator may award an additional 10 discretionary points to

amount the local community poverty rate exceeds the State average as following. Percents will be rounded to the next whole number.

Less than 10%	0 points.
10–15	5 points.
16–20	8 points.
21–25	12 points.
26–30	16 points.
Greater than 30	20 points.

Up to 5 additional points may be awarded based on the qualification and subject skill level of the individuals directly conducting the technology outreach activities. Applicants must provide sufficient information for the evaluation panel to properly rate this technology criterion.

7. *Business Economic Development Activities (Up to 20 points)*—This criterion is meant to evaluate the applicant's ability to impact business

proposals. RBS retains those rights delineated in 7 CFR 3019.36. Also, the recipients will deliver project outreach success stories and other project related information requested by RBS for use on the Web site *(http://BISNet.cmps.subr.edu)*.

Award Amount

In the event that the applicant is to receive an award that is less than the amount requested, the applicant will be

company development, business planning, new enterprise, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for small businesses.

(10) Provide office space, equipment, and supplies for all personnel assigned to the project.

(11) Develop management and technical assistance plans in cooperation with RBS State Office that

performing the tasks in the agreement as needed and will provide RBS National Office with the necessary information for RBS to do the following:

(a) Monitor the program as it is being implemented and operated, including monitoring of financial information to ensure that there is no commingling or use of program funds for administrative expenses to operate an IRP or other unapproved items.

(b) Halt activity, after written notice,

with the next draw receiving the next rank.

Evaluation Criteria and Weights

Proposals will be evaluated using the following seven criteria. Each criterion is given the weight value shown with total points equal to 100. Points do not have to be awarded by RBS for each criterion. After all proposals have been evaluated, the Administrator may award an additional 10 discretionary points to any proposal to obtain the broadest geographic dispersion of the funds, insure a broad diversity of project proposals, or insure a broad diversity in the size of the awards.

1. *Support of Local Community (Up to 10 points)*—Proposals should have the support of local government, educational, community, and business groups. Higher points will be awarded for proposals demonstrating broad support from all four components of the community. Broad support is demonstrated by tangible contribution, such as volunteering human capital, computers, transportation and/or co-sponsoring workshops and conferences. Points will be awarded based on the level of tangible contribution in comparison to the size of the award.

2. *Matching Funds/Leveraging (Up to 15 points)*—Points will be awarded based upon the amount the proposal exceeds the minimum 25 percent matching requirement. Applicants will be required to provide matching funds or equivalent in-kind in support of this project. Evidence of matching funds availability must be provided. Funds or equivalent in-kind must be available at the time the cooperative agreement is entered into. Points will be awarded as follows:

25% to 35% Match	5 points.
>35% to 50% Match	8 points.
>50% to 75% Match	12 points.
>75% Match	15 points.

3. *Economic Need of Community (Up to 20 points)*—Projects entirely in Empowerment Zones, Enterprise Communities, and Champion Communities will automatically receive the full 20 points. Otherwise, points will be awarded for demonstrated economic need based on the local community 10-year average poverty rate as compared to the respective State 10-year average poverty rate. Applicants may use county poverty rates for served communities. When multi-communities proposals are submitted, the over-all average for all counties will be used. Applicants must provide 10 years of poverty data for each targeted community in their respective State. Points will be awarded based on the amount the local community poverty rate exceeds the State average as following. Percents will be rounded to the next whole number.

Less than 10%	0 points.
10–15	5 points.
16–20	8 points.
21–25	12 points.
26–30	16 points.
Greater than 30	20 points.

4. *Previous Accomplishments (Up to 10 points)*—A point will be awarded to those 1890 Institutions for each year they have been awarded a cooperative agreement under this program up to 8 years. An additional 2 points shall be given to each institution that has received a cooperative agreement for the last 5 years (1997–2001). This criterion is meant to reward those institutions that have repeatedly participated in this program and shown their expertise and commitment to the program. Applicants must provide evidence of satisfactorily completing the agreement for each year that they claim for credit.

5. *Service Area (Up to 10 points)*—This criterion will be evaluated based upon the number of people directly assisted in the targeted communities. "Directly assisted" means those people that attend classes, workshops, or conferences sponsored by the applicant or received direct one-on-one technical assistance such as loan packaging activities. Points will be awarded based upon the ratio of the number of people served to the total Federal dollars received through the cooperative agreement (number of people served/Federal dollars). Higher points will be awarded to those proposals with the highest number of people served per Federal dollar ratio.

6. *Technology Outreach (Up to 15 points)*—This criterion is meant to evaluate the applicant's level of outreach and capacity to provide innovative and effective computer technology outreach to the underserved targeted rural communities. Points will be awarded based on the number of computer-related classes, the number of hits made in a business information system network, and the number of people assisted in a one-on one computer technology training.

A maximum of 10 points will be awarded based upon ratio of number of people reached via technology using the above items to the total Federal dollars received through the cooperative agreement (number of people reached/Federal dollars). Higher points will be awarded to those proposals with the highest number of people reached to Federal dollar ratio.

Up to 5 additional points may be awarded based on the qualification and subject skill level of the individuals directly conducting the technology outreach activities. Applicants must provide sufficient information for the evaluation panel to properly rate this technology criterion.

7. *Business Economic Development Activities (Up to 20 points)*—This criterion is meant to evaluate the applicant's ability to impact business economic development by (saving or creating jobs), starting new businesses, and promoting USDA-Rural Development programs in targeted rural communities. This shall be done by conducting business-related classes for entrepreneurs and providing one-on-one technical help (such as preparing feasibility studies and packaging loans), and providing the type of technical assistance that will result in new businesses. Promoting USDA-Rural Development programs can be demonstrated by conducting workshops or conferences in the targeted communities using the agency's published resources and, if possible personnel. Points will be awarded as follows:

1 point for every type of activity listed above up to 10 points
1 point for each outreach activity to promote RBS programs up to 5 points

Up to 5 additional points may be awarded for this criterion based on the qualification and subject skill level of the individual directly conducting the business economic development outreach activities. Applicants must provide sufficient information for the evaluation panel to properly rate this criterion.

Projected number of jobs saved or created, new business starts, and one on one assistance must be as realistic as possible. The Agency reserves the right to reduce applicant's scores if it is determined that the numbers projected, quality of the courses taught or the resource materials used for conducting workshops and conferences are below the standards needed to achieve the stated objectives.

Deliverables

During the term of the negotiated agreements, the recipients will deliver quarterly reports of progress of the work to RBS and prepare and deliver a final report detailing all work done and results accomplished. In addition, all reports forwarded to RBS must be forwarded to the Rural Development State Office. Also, upon request by RBS, the recipient will deliver manuscripts, videotapes, software, or other media, as may be identified in approved

proposals. RBS retains those rights delineated in 7 CFR 3019.36. Also, the recipients will deliver project outreach success stories and other project related information requested by RBS for use on the Web site *(http://BISNet.cmps.subr.edu)*.

Award Amount

In the event that the applicant is to receive an award that is less than the amount requested, the applicant will be required to modify the application to conform to the reduced amount before execution of the cooperative agreement. RBS reserves the right to reduce or de-obligate any award if acceptable modifications are not submitted by the awardees within 10 working days from the date the application is returned to the applicant. Any modification must be within the scope of the original application.

Recipient Requirements

Institutions that are awarded a cooperative agreement will be responsible for the following:

(1) Completing the objectives as defined in the approved proposal.

(2) During the term of the agreement, keep up-to-date records on the project, and on or prior to October 7, January 6, April 7, and July 7, make quarterly reports of the progress of the work to RBS, and prepare a final report detailing all work done and results accomplished. All reports will be forwarded to RBS headquarters and to the Rural Development State Office.

(3) Submit to RBS, on a quarterly basis, Form SF–270, "A Request for Advance or Reimbursement."

(4) Keep an account of expenditures of the Federal dollars and matching fund dollars and provide to RBS, Form SF–269, "A Financial Status Report," with each Form SF–270 submitted, and a final SF–269 within 90 days of the project's completion.

(5) Immediately refund to RBS, at the end of the agreement, any balance of unobligated funds received from RBS.

(6) Provide matching funds or equivalent in-kind in support of the project, at least to the level agreed to in the accepted proposal.

(7) Conduct seminars to disseminate Rural Development program information to stimulate business and economic development in selected rural communities.

(8) Participate in the RBS Entrepreneurship Conferences when planned.

(9)In cooperation with local businesses, develop a program of business startup and technical assistance that will assist with new company development, business planning, new enterprise, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for small businesses.

(10) Provide office space, equipment, and supplies for all personnel assigned to the project.

(11) Develop management and technical assistance plans in cooperation with RBS State Office that will:

(a) Assess small business alternatives to traditional agricultural and other natural resources-based industries;

(b) Assist in the development of business plans and loan packages, marketing, bookkeeping assistance, and organizational sustainability; and

(c) In cooperation with RBS State Office, provide technical assistance and training in customer relations, product development, and business planning and development.

(12) Assess the need for and, if necessary, conduct a feasibility study of local community weaknesses and strengths, feasible alternatives to agriculture production, and the needed infrastructure to expand or develop new or existing businesses. The plans for any such studies must be submitted for approval prior to the study being conducted.

(13) In cooperation with the RBS State Office, provide community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities.

(14) Establish and maintain the BISNet web site, linking community leaders and residents to available economic development information.

(15) Assure and certify that it is in compliance with, and will comply in the course of the agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in 7 CFR part 3015, 3015.205(b) and 7 CFR part 3019.

(16) Federal funds can only be used to pay meeting related travel expenses, if the employees are performing a service of direct benefit to the Government directly in furtherance of the objectives of the proposed agreement. Therefore, Federal funds cannot be used to pay non-Federal employees to attend meetings.

(17) Not commingle or use program funds for administrative expenses to operate an Intermediary Relending Program (IRP).

(18) As a cooperative agreement and not a grant, the 1890 Institution will collaborate with the RBS State Office in performing the tasks in the agreement as needed and will provide RBS National Office with the necessary information for RBS to do the following:

(a) Monitor the program as it is being implemented and operated, including monitoring of financial information to ensure that there is no commingling or use of program funds for administrative expenses to operate an IRP or other unapproved items.

(b) Halt activity, after written notice, if tasks are not met.

(c) Review and approve changes to key personnel.

(d) Provide guidance in the evaluation process and other technical Assistance as needed.

(e) Approve the final plans for the community business workshops, business and economic development sessions, and training workshops to be conducted by the Institution.

(f) Provide reference assistance as needed to the Institution for technical assistance given on a one-on-one basis to entrepreneurs and startup businesses.

(g) Review and comment upon strategic plans developed by the Institution for targeted areas.

(h) Review economic assessments made by the Institution for targeted counties so that RBS can indicate which of its programs may be beneficial.

(i) Carefully screen the project to prevent First Amendment violations.

(j) Monitor the program to ensure that a BISNet link is established and maintained.

(k) Provide technical assistance and training to BISNet Hub-sites and Wide Area Network (WAN) Team Members at the universities in preparing economic development information for posting on the Internet.

(l) Allow the RBS State Office to conduct a semi-annual on-site review and submit written reports to the National Office.

Content of a Proposal

A proposal should contain an original and two copies of each of the following:

(1) Completed Forms.

(i) Form SF–424, "Application for Federal Assistance."

(ii) Form SF–424A, "Budget Information—Non-Construction Programs."

(iii) Form SF–424B, "Assurances—Non-Construction Programs."

(iv) Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

(v) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

(2) *Table of Contents:* For ease of locating information, each proposal

must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(3) *Project Executive Summary:* A summary of the Project Proposal, not to exceed one page.

(4) *Project Proposal:* The application must contain a narrative statement addressing the following points:

(i) Goals and objectives of the proposed project.

(ii) Need for the project.

(iii) Location and description of the service area.

(iv) Relationship between the project and other related activities in the service area.

(v) Complete description of the management plan to be followed in carrying out the project.

(vi) Qualifications of key personnel and project staff.

(vii) Technology Outreach. The proposal should address the applicant's ability to deliver computer technology to the targeted rural communities and implement and maintain a computer network system linking community leaders and residents to available economic development information.

(viii) Business Economic Development Activities. The proposal should address the applicant's ability to impact business economic development by (saving or creating jobs), starting new businesses, and promoting USDA-Rural Development programs in targeted rural communities.

(ix) Evaluation plan for the project.

(x) Budget and budget justification.

(xi) Commitment letters from participating entities.

(xii) Letters of support from local government, educational, community, and business groups.

(xiii) Other pertinent information.

(5) *Certifications:* Certifications regarding lobbying, debarment, suspension, and other responsibility matters; and drug-free workplace requirements as specified in 7 CFR part 3017, Exhibits A and B.

(6) *Civil Rights Compliance:* Applicants must provide assurance that they will comply with all applicable civil rights laws, regulations, and executive orders. Applicants must provide assurance that they will comply with the Americans with Disabilities Act of 1990.

(7) *Environmental Impact:* Applicants must provide assurance that they will comply with all applicable environmental laws, regulations, and executive orders.

Applicable Regulations

Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations

Paperwork Reduction Act

The collection of information requirements contained in this notice have received temporary emergency

Federal assistance and financial capability to pay the non-Federal share of project costs. The applicant also assures compliance with various legal and regulatory requirements as described in the form.

Form SF–270, "Request for Advance or Reimbursement"

This form must be completed by the funded recipient certifying that, to the best of its knowledge and belief, the

Regulations and Paperwork Management Branch (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden to collect the required information, including the

as personal data and work experience from job applicants. Selecting officials review the information shown on the form to evaluate applicant's eligibility for employment and to determine the best qualified applicants to fill Census jobs.

The BC–170 is used throughout the census and intercensal periods for the Special Census, pretests, and dress rehearsals for short-term time limited appointments. Applicants completing

must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(3) *Project Executive Summary:* A summary of the Project Proposal, not to exceed one page.

(4) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed outreach initiative. The proposal must include at least the following:

(i) Project Title Page. Should include the following: title of the project, names of principal investigators, and applicant organization.

(ii) Introduction. A concisely worded justification or rationale for the outreach initiative must be presented. Included should be a summarization of social and economical statistical data (income, population, employment rate, poverty rate, education attainment, etc.), of the target area which substantiates the need for the outreach initiative. Note in this section if the target area includes an Employment Zone/Champion Community.

(iii) Workplan. Discuss the approach (strategy) to be used in carrying out the proposed outreach initiative and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included. Also, the workplan must include:

(a) Overview of the project objectives and goals: Identify and discuss the specific goals and objectives of the project and the impact of the outreach initiative on end-users;

(b) Timeframe: Develop a tentative schedule for conducting the major steps of the outreach initiative;

(c) Milestones: Describe and quantify the expected outcome of the specific outreach objective, including jobs created or assisted, conferences and seminars conducted and number of participants, loans packaged, etc.;

(d) Recipient involvement: Identify the person(s)who will be performing the activities; and

(e) RBS involvement: Identify RBS staff responsible for assisting and monitoring the activities.

(iv) Estimated Budget. Detail budget justification including matching funds.

(v) Leveraging Funds. Other institutional support of this outreach initiative project.

(vi) Coordination and Management Plan. Describe how the project will be coordinated among various participants, nature of the collaborations and benefits to participants, the communities, the applicant, and RBS. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(vii) Technology Outreach. The proposal should address the applicant's ability to deliver computer technology to the targeted rural communities and implement and maintain a computer network system linking community leaders and residents to available economic development information.

(viii) Key Personnel Support. The proposal should include curriculum vitae for the principal investigator and other key personnel used to carry out the goals and objectives of the proposal.

(ix) Facilities or Equipment. Where the project will be located (housed) and what other equipment is needed or already available to carry out the specific objectives of the project.

(x) Previous Accomplishments. Summarize previous accomplishments of outreach work funded by RBS or similar outreach experiences.

(xi) Local Support. Letters of support from the local community such as businesses, local government, community-based organization, etc.

(xii) Any other information necessary for RBS to approve and rank your proposal.

Additionally you are encouraged to provide any strategic plan that has been developed to assist business development or entrepreneurship for the targeted communities.

What To Submit

All applicants for the cooperative agreement must submit a completed original, plus two copies of the proposal for this competitive program.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include, but are not limited to:

7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

7 CFR part 3015—Uniform Federal Assistance Regulations

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grant)

7 CFR part 3018—New Restrictions on Lobbying

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations

Paperwork Reduction Act

The collection of information requirements contained in this notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0570–0041. However, in accordance with the Paperwork Reduction Act of 1995, RBS will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day public comment period.

Abstract

Approximately $1.5 million will be made available for cooperative agreements between RBS and the nation's 1890 Land Grant Institutions and Tuskegee University. The agreements are for the purpose of outreach, to small rural communities, to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome current identified economic problems. Proposals in both traditional and non-traditional business enterprises are encouraged. The initiative seeks to create a working partnership between 1890 Institutions and Tuskegee University and RBS through cooperative agreements.

Public Burden in This Notice

Form SF–424, "Application for Federal Assistance"

This application is used by applicants as a required face sheet for applications for Federal funding.

Form SF–424A, "Budget Information—Non-Construction Programs"

This form must be completed by applicants to show the project's anticipated budget breakdown in terms of expense categories and division of Federal and non-Federal sources of funds.

Form SF–424B, "Assurances—Non-Construction Programs"

This form must be completed by the applicant to provide the Federal Government certain assurances of the applicant's legal authority to apply for Federal assistance and financial capability to pay the non-Federal share of project costs. The applicant also assures compliance with various legal and regulatory requirements as described in the form.

Form SF–270, "Request for Advance or Reimbursement"

This form must be completed by the funded recipient certifying that, to the best of its knowledge and belief, the data submitted are correct and that outlays were made in accordance with the grant conditions or other agreement, and the payment is due and has not been previously requested.

Form SF–269, "Financial Status Report"

This form must be completed by the funded recipient certifying that, to the best of its knowledge and belief, this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award document.

Project Proposal

The applicant must submit a project proposal containing the elements described in this notice and in the format prescribed. The application must contain a narrative statement describing the nature of the proposed outreach initiative.

Reporting Requirements

Funded recipients will be required to submit written project performance reports quarterly and a final report highlighting successes over the course of the project.

Recordkeeping Requirements

Regulations require that financial records, supporting documents, statistical records, and all other records pertinent to the award, will be retained for a period of at least 3 years after the agreement closing. The exception that records will be retained beyond 3 years is if audit findings have not been resolved.

Estimate of Burden: Public reporting burden for this collection is estimated to range from 15 minutes for some forms to 15 hours for the proposal per response.

Respondents: Only 1890 Land Grant Institutions of Higher Education and Tuskegee University.

Estimated Number of Respondents: 17.

Estimated Number of Responses Per Respondent: 3.

Estimated Number of Responses: 293.

Estimated Total Annual Burden on Respondents: 743 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden to collect the required information, including the validity of the strategy used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on the paperwork burden may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 10, 2002.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 02–17714 Filed 7–12–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census Employment Inquiry.

Form Number(s): BC–170.

Agency Approval Number: 0607–0139.

Type of Request: Revision of a currently approved collection.

Burden: 4,150 hours.

Number of Respondents: 16,600.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau requests continued OMB approval for the BC–170, Census Employment Inquiry. We are also requesting minor modifications to the collection. The BC–170 is used to collect information such as personal data and work experience from job applicants. Selecting officials review the information shown on the form to evaluate applicant's eligibility for employment and to determine the best qualified applicants to fill Census jobs.

The BC–170 is used throughout the census and intercensal periods for the Special Census, pretests, and dress rehearsals for short-term time limited appointments. Applicants completing the form for a census related position are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). In addition, as an option to the OF–612, Optional Application for Federal Employment, the BC–170 may be used when applying for temporary/permanent office and field positions (clerks, field representatives, supervisors) on a recurring survey in one of the Census Bureau's 12 Regional Offices (ROs) throughout the United States.

During the decennial census, the BC–170 is intended to expedite hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The use of this form is limited to only situations which require the establishment of a temporary office and/or involve special, one-time or recurring survey operations at one of the ROs. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management (OPM) Optional Forms that are available for use by the public when applying for Federal positions. In addition, during the next decade and before the 2010 decennial census, we expect to recruit approximately 176,000 applicants for census jobs (i.e., special censuses and decennial pretests and dress rehearsals).

A separate informational cover sheet will be attached to the BC–170 to provide applicants with a brief description of their prospective job duties with the Census Bureau; the cover sheet message will vary for decennial, special censuses, or recurring survey positions. The cover sheet and "Education" sections have been revised as necessary to reflect changes in administrative requirements.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Required to obtain a benefit.

Legal Authority: Title 13 U.S.C., sections 23a & c.

OMB Desk Officer: Susan Schechter, (202) 395–5103. Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

July 9, 2002.

concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 16, 2002, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
200	1,287,716 kilograms.
219	14,774,634 square meters.
225	8,428,603 square meters.
300/301	6,322,603 kilograms.
313–O [2]	26,808,415 square meters.

obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 9, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17633 Filed 7–12–02; 8:45 am]

BILLING CODE 3510–07–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

July 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 9, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 15, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	633,082 dozen.
336/636	782,481 dozen.
342/642	725,499 dozen.
369–S [2]	2,535,683 kilograms.
638/639	2,582,818 dozen.
641	1,411,983 dozen.
647/648	2,373,544 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–17631 Filed 7–12–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

July 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, the recrediting of unused carryforward, swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63025, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 9, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 16, 2002, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
200	1,287,716 kilograms.
219	14,774,634 square meters.
225	8,426,603 square meters.
300/301	6,322,603 kilograms.
313–O [2]	26,808,415 square meters.
314–O [3]	83,608,280 square meters.
315–O [4]	42,530,966 square meters.
317–O [5]/617/326–O [6]	37,081,577 square meters of which not more than 5,173,219 square meters shall be in Category 326–O.
331pt./631pt. [7]	1,523,626 dozen pairs.
336/636	974,338 dozen.
338/339	1,961,027 dozen.
340/640	2,216,275 dozen.
341	1,569,076 dozen.
342/642	587,885 dozen.
347/348	2,793,269 dozen.
359–C/659–C [8]	2,184,171 kilograms.
359–S/659–S [9]	2,444,116 kilograms.
360	2,046,215 numbers.
361	2,046,215 numbers.
369–S [10]	1,411,305 kilograms.
433	12,270 dozen.
443	95,319 numbers.
445/446	67,454 dozen.
447	20,134 dozen.
448	21,970 dozen.
604–A [11]	1,007,236 kilograms.
611–O [12]	4,883,603 square meters.
613/614/615	36,970,213 square meters.
618–O [13]	7,196,512 square meters.
619/620	13,108,256 square meters.
625/626/627/628/629–O [14]	36,494,016 square meters.
638/639	2,188,492 dozen.
641	3,474,779 dozen.
643	511,556 numbers.
647/648	4,586,029 dozen.
Group II	
201, 218, 220, 224, 226, 227, 237, 239pt. [15], 332, 333, 352, 359–O [16], 362, 363, 369–O [17], 400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. [18], 469pt. [19], 603, 604–O [20], 624, 633, 652, 659–O [21], 666pt. [22], 845, 846 and 852, as a group	128,888,953 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. and 469pt., as a group	3,552,889 square meters equivalent.
In Group II subgroup	
435	55,781 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.43.2090, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211,33.0017 and 6211.43.0010.

[9] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 369–S: only HTS number 6307.10.2005.

[11] Category 604–A: only HTS number 5509.32.0000.

[12] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[13] Category 618–O: all HTS numbers except 5406.24.9010 and 5406.24.9040.

[14] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[15] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[16] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[17] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[18] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[19] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6304.99.6020, 6307.90.3020, 6307.90.4020, 6307.90.5020, 6307.90.8920, 6307.90.8935, 6307.90.9907, 6307.90.9965, 6307.90.9986, 6406.10.9020, 6406.10.9040, 6406.99.1510, 6406.99.1540, 6406.99.1550, 6505.90.1530, 6505.90.1550, 6505.90.2070 and 6505.90.2560 (Category 469pt.).

[20] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6504.00.9015, 6504.00.9060, 6502.00.9030, 6505.90.5090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category

Category	Adjusted twelve-month limit [1]
Sublevel in Group II	
604	3,190,822 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178,

[10] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[11] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[12] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[13] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[14] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[15] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000. 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[16] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–17630 Filed 7–12–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Products Produced or Manufactured in the Philippines

July 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, shift, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63031, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 9, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 16, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	2,523,318 dozen.
331pt./631pt. [2]	2,506,935 dozen pairs.
333/334	441,133 dozen of which not more than 63,330 dozen shall be in Category 333.
336	1,110,795 dozen.
338/339	3,813,891 dozen.
341/641	1,247,323 dozen.
342/642	960,782 dozen.
347/348	3,651,305 dozen.
351/651	902,773 dozen.
352/652	3,603,784 dozen.
359–C/659–C [3]	1,339,299 kilograms.
369–S [4]	615,508 kilograms.
443	48,418 numbers.
445/446	32,504 dozen.
447	9,103 dozen.
611	7,854,442 square meters.
633	58,235 dozen.
634	666,044 dozen.
636	2,585,828 dozen.
638/639	2,632,535 dozen.
643	1,387,972 numbers.
645/646	1,128,551 dozen.
647/648	1,701,540 dozen.
659–H [5]	2,243,778 kilograms.
Group II	
200–220, 224–227, 300–326, 332, 359pt. [6], 360, 362, 363, 369pt. [7], 400–414, 434–438, 442, 444, 448, 459pt. [8], 469pt. [9], 603, 604, 613–620, 624–629, 644, 659–O [10], 666pt. [11], 845, 846 and 852, as a group.	202,692,086 square meters equivalent.

Category	Adjusted twelve-month limit [1]
Sublevel in Group II	
604	3,190,822 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[7] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[8] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[9] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[10] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[11] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–17632 Filed 7–12–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

July 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.ustreas.gov.* For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63033, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 9, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 15, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	17,381 dozen.
442	17,404 dozen.
443	40,046 numbers.
444	4,829 numbers.
447/448	35,398 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–17629 Filed 7–12–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Buildings and Land at a Military Installation Designated for Closure; Naval Air Station (NAS) Barbers Point, Oahu, HI

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This notice provides notice of the availability of buildings and land at NAS Barbers Point, HI, for the purposes of implementing the provisions of the DBCRA, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding redevelopment authority and additional surplus property at NAS Barbers Point, HI, is published in the **Federal Register**.

Redevelopment Authority: The local redevelopment authority for NAS Barbers Point, HI, of rpurposes of implementing the provisions of the DBCRA, as amended, is the Barbers Point Naval Air Station Redevelopment Commission.

Dated: July 1, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, July 18, 2002, 5:30 p.m.–9 p.m.

Minutes: The minutes of this meeting fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

the 2008 Summer Olympic Games. Prior to 2008, Beijing will be implementing the "Green Olympics" program, where billions of dollars will be invested in new infrastructure projects to improve the city's environment. Central to these investments will be the application of new technologies to improve Beijing's air quality.

The use of fossil fuels dominates China's energy demographic and China represents a large market for American

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Buildings and Land at a Military Installation Designated for Closure; Naval Air Station (NAS) Barbers Point, Oahu, HI

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This notice provides information regarding additional surplus property at NAS Barbers Point, Oahu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Richard A. Engel, Head, BRAC Real Estate Section, Naval Facilities Engineering Command, 1322 Patterson Ave SE., Suite 1000, Washington Navy Yard, DC 20374–5065, telephone (202) 685–9203, or J.M. Kilian, Director, Real Estate Department, Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 472–1503. For more detailed information regarding particular properties identified in this notice (i.e. acreage, floor plan, sanitary facilities, exact street address, etc.), contact Mr. Roger Au, Base Operating Support, Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone (808) 474–5946.

SUPPLEMENTARY INFORMATION: In 1993, NAS Barbers Point, HI was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), Pub. L. 101–510, as amended. Pursuant to this designation, in October 1995, approximately 2,146.9 acres of land and related facilities at this installation were determined surplus to the Federal Government and available for use by (a) non-Federal, public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended. In June 1997, a second determination was made that 5.7 acres of land and related facilities at this installation were surplus to the Federal Government. On September 4, 2001, a third determination was made that 54.9 acres of land and related facilities at this installation were surplus to the Federal Government. On June 27, 2002, a fourth determination was made that 145.8 acres of land and related facilities at this installation were surplus to the Federal Government.

Notice of Surplus Property: Pursuant to paragraph (7)(B) of section 2905(b) of the DBCRA, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding redevelopment authority and additional surplus property at NAS Barbers Point, HI, is published in the **Federal Register**.

Redevelopment Authority: The local redevelopment authority for NAS Barbers Point, HI, of rpurposes of implementing the provisions of the DBCRA, as amended, is the Barbers Point Naval Air Station Redevelopment Commission. The Barbers Point Naval Air Station Redevelopment Commission was appointed by the Governor of the State of Hawaii to provide advice on the redevelopment of the closing Air Station. A cross section of community interests is represented on the Commission. The point of contact is Mr. William Bass, Executive Director, Barbers Point Naval Air Station Redevelopment Commission, PO Box 75268, Kapolei, HI 96707–0268, telephone (808) 692–7924 or 692–7925, facsimile (808) 692–7926.

Surplus Property Descriptions: The following is a listing of the additional land and facilities at NAS Barbers Point, HI that were declared surplus to the Federal Government on June 27, 2002.

Land: One parcel of land consisting of approximately 145.8 acres of fee simple land at NAS Barbers Point, HI on the island of Oahu, State of Hawaii.

Buildings: The following is a summary of the facilities located on the above-described land. Storage buildings: Seven structures of approximately 4,812 square feet.

Expressions of Interest: Pursuant to paragraph 7(C) of Section 2905(b) of the DBCRA, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, state and local governments, representatives of the homeless, and other interested parties located in the vicinity of NAS Barbers Point, HI shall submit to the said local redevelopment authority (Barbers Point Naval Air Station Redevelopment Commission) a notice of interest, of such governments, representatives, and parties in the above described additional surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Hawaii, the date by which expressions of interest must be submitted. In accordance with Section 2(e)(6) of said Base Closure Community Redevelopment and Homeless Assistance Act of 1994, expressions of interest will be solicited by the Barbers Point Naval Air Station Redevelopment Commission.

Dated: July 1, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–17711 Filed 7–12–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Magneto-Inductive Systems Limited

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Magneto-Inductive Systems Limited, an exclusive license to practice the Government-owned invention described in U.S. Patent No. 6,253,679, entitled "Magneto-Inductive On Command Fuze and Firing Device," issued July 3, 2001.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Coastal Systems Station, Dahlgren, Div, NSWC, 6703 W. Hwy 98, Code CP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646, fax (850) 235–5497, or E-Mail at *gilbertha@ncsc.navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: July 1, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–17710 Filed 7–12–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, July 18, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6 p.m. Call to Order; Introductions; Approve June Minutes; Review Agenda
6:10 p.m. DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m. Ex-officio Comments
6:40 p.m. Public Comments and Questions
6:50 p.m. Action Item Review
7:05 p.m. Break
7:15 p.m. Discussion
- Resolution on Accelerated Clean Up Plan

7:45 p.m. Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:30 p.m. Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments

8:45 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on July 3, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–17635 Filed 7–12–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Beijing Green Olympics Program

AGENCY: Office of Fossil Energy, DOE.

ACTION: Request for comments.

SUMMARY: The Department of Energy (DOE) will be entering into a dialogue with the Beijing City Government in preparation for implementation of the Green Olympics Program. DOE is requesting comments from stakeholders on the best way to use this opportunity to develop markets in China for American firms.

DATES: Comments must be submitted on or before August 14, 2002.

ADDRESSES: Comments should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX (301) 903–1591).

FOR FURTHER INFORMATION CONTACT: Barbara McKee via e-mail at *barbara.mckee@hq.doe.gov,* or by telephone at (301) 903–3820.

SUPPLEMENTARY INFORMATION: In 2001, the City of Beijing was chosen to host the 2008 Summer Olympic Games. Prior to 2008, Beijing will be implementing the "Green Olympics" program, where billions of dollars will be invested in new infrastructure projects to improve the city's environment. Central to these investments will be the application of new technologies to improve Beijing's air quality.

The use of fossil fuels dominates China's energy demographic and China represents a large market for American goods and services in energy fields. Additionally, through the Beijing Green Olympics program, there will be substantial business opportunities for American firms with offerings including clean coal and oil and gas technologies, as well as emissions control systems.

DOE is preparing to enter into a dialogue with the Beijing City Government, which is implementing the Green Olympics Program. DOE is interested in its stakeholders' views as to how it can effectively use this relationship to develop market share for American firms.

If there are specific items that anyone would like to see included in this dialogue, please provide that information to Barbara Mckee, Director, Office of Coal and Power Import/Export, at the address, e-mail, and telephone number listed above. A letter from Carl Michael Smith, Assistant Secretary, Office of Fossil Energy, announcing this initiative and requesting comments appears on the Fossil Energy website at *www.fossil.energy.gov.* A copy of that letter also appears on the *Federal Business Opportunities* website at *www.fedbizops.gov.*

Issued in Washington, DC, on July 8, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal and Power Import/Export, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 02–17634 Filed 7–12–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub.

L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee

DATES: August 1, 2002.

TIME: 8:30 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Crystal Room, 2399

Issued at Washington, DC on July 9, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–17636 Filed 7–12–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

FOR FURTHER INFORMATION CONTACT: Jean J. Boulin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Phone: 202–586–9870, FAX: 202–586–1233.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. Statutory Requirements
B. Background
20. Service Water Heating Controls
D. Energy Cost Budget
E. Conclusion About Detailed Textual Analysis
IV. Filing Certification Statements with DOE
A. Review and Update
B. Certification
C. Request for Extensions
D. Submittals
Appendix A. Description of Proposed Analysis
Appendix B. Description of the Quantitative

codes shall meet or exceed Standard 90.1–1989 or the last revised standard for which the Secretary has made a positive determination (42 U.S.C. 6833(b)(2)(B)(ii)).

ECPA also requires the Secretary to permit extensions of the deadlines for the State certification if a state can demonstrate that it has made a good faith effort to comply with the requirements of Section 304(b) and that it has made significant progress in doing

workshop, and sought public comment. 65 FR 6195. On February 17, 2000, we held a workshop to obtain comment on the approach we proposed to use. See the summary of the proposed approach in Appendix A.

We requested comments and/or data concerning issues relating to the comparative analysis of Standard 90.1–1989 and Standard 90.1–1999. We especially expressed interest in any comments or data regarding: (1) The

L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee

DATES: August 1, 2002.

TIME: 8:30 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Crystal Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

• Full committee discussion on the development of a Vision document for federal biomass research and development programs.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Douglas E. Kaempf at 202–586–7766 or *Bioenergy @ee.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 9, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–17636 Filed 7–12–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–DET–02–001]

Building Energy Standards Program: Determination Regarding Energy Efficiency Improvements in the Energy Standard for Buildings, Except Low-Rise Residential Buildings, ASHRAE/IESNA Standard 90.1–1999.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Department of Energy (DOE or Department) today determines that the 1999 edition of the *Energy Standard for Buildings, Except Low-Rise Residential Buildings*, American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Illuminating Engineering Society of North America (IESNA) Standard 90.1–1999, (Standard 90.1–1999 or the 1999 edition) would achieve greater energy efficiency in buildings, except low-rise residential buildings, than the 1989 edition (Standard 90.1–1989 or the 1989 edition). As a result of this positive determination regarding Standard 90.1–1999, each State is required to certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency to meet or exceed Standard 90.1–1999 for any "building" within the meaning of Section 303(2) of the Energy Conservation and Production Act, as amended. This Notice provides guidance to States on Certifications, and Requests for Extensions of Deadlines for Certification Statements.

DATES: Certifications and Requests for Extensions of Deadlines, with regard to Standard 90.1–1999, are due at DOE on or before July 15, 2004.

ADDRESSES: Certifications, or Requests for Extensions of Deadlines should be directed to the Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Technology Assistance, EE–42, 1000 Independence Avenue, SW., Washington, DC. 20585–0121. Envelopes or packages should be labeled, "State Certification of Commercial Building Codes Regarding Energy Efficiency."

FOR FURTHER INFORMATION CONTACT: Jean J. Boulin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Phone: 202–586–9870, FAX: 202–586–1233.

SUPPLEMENTARY INFORMATION:

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3. Comments on Preliminary Quantitative and Textual Analyses
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I. Introduction

A. Statutory Requirements

Title III of the Energy Conservation and Production Act (ECPA), establishes requirements for the Building Energy Efficiency Standards Program (42 U.S.C. 6831–6837).

ECPA provides that whenever the Standard 90.1–1989, or any successor to that code, is revised, the Secretary must make a determination, not later than 12 months after such revision, whether the revised code would improve energy efficiency in commercial buildings and must publish notice of such determination in the **Federal Register** (42 U.S.C. 6833 (b)(2)(A)). The Secretary may determine that the revision of Standard 90.1–1989, or any successor thereof, improves the level of energy efficiency in commercial buildings. If the Secretary makes a determination that the revised standard will improve energy efficiency in commercial buildings, then not later than two years after the date of the publication of such affirmative determination, each State is required to certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency with respect to the revised or successor code for any "building" within the meaning of Section 303(2) of ECPA. The State must include in its certification a demonstration that the provisions of its commercial building code, regarding energy efficiency, meet or exceed the revised standard (in this case, Standard 90.1–1999) (42 U.S.C. 6833(b)(2)(B)(i)). If the Secretary makes a determination that the revised standard will not improve energy efficiency in commercial buildings, State commercial codes shall meet or exceed Standard 90.1–1989 or the last revised standard for which the Secretary has made a positive determination (42 U.S.C. 6833(b)(2)(B)(ii)).

ECPA also requires the Secretary to permit extensions of the deadlines for the State certification if a state can demonstrate that it has made a good faith effort to comply with the requirements of Section 304(b) and that it has made significant progress in doing so (42 U.S.C. 6833(c)).

B. Background

1. Publication of Standard 90.1–1999

The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America (IESNA) approved the publication of the 1999 edition of *Energy Standard for Buildings Except Low-rise Residential Buildings*, in June 1999. Several appeals to this decision were heard and subsequently rejected and the 1999 edition was published in February 2000.

The Standard was developed under American National Standards Institute approved consensus standard procedures. The American Society of Heating Refrigerating and Air-Conditioning Engineers submitted the standard to the American National Standards Institute (ANSI) for designation as an approved ANSI standard. In December 2000, after several appeals by the American Gas Association, the 1999 edition of Standard 90.1 was approved as an American National Standard.

2. Workshop and Comments on Analysis Methodology

In arriving at a determination, the Department first reviewed all significant changes between the 1989 edition and the 1999 edition of Standard 90.1. Standard 90.1 is complex and covers a broad spectrum of the energy related components and systems in buildings ranging from simple storage buildings to complex hospitals and laboratories. The size of buildings addressed range from those smaller than single family homes to the largest buildings in the world. The approach to development of the standard changed from that used for the 1989 edition, as did the scope and the way components were defined. We concluded that a simple comparison of the two editions would not be possible. Therefore, we decided to hold a public workshop and seek public comment on our proposed analysis methodology. On February 8, 2000, we proposed a methodology, announced a public workshop, and sought public comment. 65 FR 6195. On February 17, 2000, we held a workshop to obtain comment on the approach we proposed to use. See the summary of the proposed approach in Appendix A.

We requested comments and/or data concerning issues relating to the comparative analysis of Standard 90.1–1989 and Standard 90.1–1999. We especially expressed interest in any comments or data regarding: (1) The seven building types selected for analysis; (2) the 11 representative climate locations proposed for the analysis; (3) the frequency of use of alternative paths to compliance in building standards (e.g., space-by-space versus whole building lighting power allowances); (4) new non-residential building construction data by state or census division and building type; (5) data to quantify the impact of Standard 90.1–1999 on additions and renovations to existing buildings; (6) the prevalence of the semi-heated building envelope subcategory in the building types proposed for analysis; and (7) specific comments on the preliminary energy savings analysis distributed in June 1999.

We received comments from American Electric Power, the American Gas Association, the Edison Electric Institute, GARD Analytics, Inc., the New Buildings Institute, and Virginia Power.

American Electric Power, the Edison Electric Institute, and Virginia Power recognized that, given the numerous assumptions required to simulate the potential impact of the new standard, reasonable minds could differ over both the specific model employed and over the assumptions used in those models. For that reason, they cautioned the Department against becoming involved in a lengthy process aimed at reconciling all approaches. They expressed belief in the results of the initial analysis that the 1999 edition would save energy across a broad section of commercial buildings. We recognized their cautions about the complexity of the problem and magnitude of alternative compliance approaches in the standard. However, we felt obligated to extend the analysis as far as feasible.

The New Buildings Institute supported the proposed methodology for the purpose of a simple yes/no determination but felt that the proposed methodology was inadequate for determining energy savings estimates associated with using Standard 90.1–1999. Here too, we recognized the difficulty of absolute quantification of savings, and make no such claim for the

analysis on which this determination relies.

The American Gas Association argued that the Department should rely solely on quantitative estimates of energy savings as a means of comparing the two editions of Standard 90.1 and minimize the use of qualitative comparisons. We tend to agree with the previous comments from American Electric Power, the Edison Electric Institute, and

effects are likely to be insignificant. First, since Standard 90.1–1999 places the same requirements on buildings with different types of heating or cooling equipment (and this was also true of previous ASHRAE standards), the impacts of the standard on most building costs should be identical, regardless of the type of energy or equipment used. Second, if the comparative costs and market shares of

publication of ASHRAE 90.1–1999 for the comparison.

Section 304(b)(2) of ECPA, as amended, which applies to commercial building code updates, requires that when the provisions of ASHRAE Standard 90.1–1989, or any successor standard, are revised, the Secretary shall, not later than 12 months after the date of such revision, publish a notice in the **Federal Register**, with its

Standard 90.1–1989 with addenda in effect at the time EPACT was enacted. Since this is the first determination for commercial building codes since ECPA was amended by EPACT on October 24, 1992, it is reasonable to interpret section 304(b)'s reference to ASHRAE Standard 90.1–1989 to include the addenda in effect on the date of enactment. DOE interprets the statute to require a comparison of that version of ASHRAE

determination in the **Federal Register**. The language does not require that DOE perform an independent economic analysis as part of the determination process. As a matter of fact, Section 304(b) omits any reference to language concerning economic justification.

However, Congress was concerned that the technological feasibility and cost effectiveness of the Voluntary Building Energy Codes be considered. Section 307 clearly requires DOE to

criteria which should be used in modeling the 1989 edition's envelope criteria; and (3) eliminating estimates of equipment operating hours in weighting equipment efficiency. In addition, we estimated efficiency improvement for cooling equipment and incorporated estimates of both single and three phase unitary cooling equipment less than 65,000 Btu per hour, shipped to commercial buildings.

GARD Analytics suggested we use

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analysis on which this determination relies.

The American Gas Association argued that the Department should rely solely on quantitative estimates of energy savings as a means of comparing the two editions of Standard 90.1 and minimize the use of qualitative comparisons. We tend to agree with the previous comments from American Electric Power, the Edison Electric Institute, and Virginia Power, and the New Buildings Institute regarding the details of the analysis, and concluded that it was necessary to note changes that individually, or in net, result in increased energy efficiency, even where they could not be accurately quantified. We believe that States can use this information when upgrading their energy codes.

The American Gas Association also expressed a strong belief that the analysis should be based on the minimum requirements of each edition and not on typical design and construction practice. In the area of heating, ventilating and air-conditioning and water heating equipment, the American Gas Association expressed the opinion that the Department should include analysis of equipment market share impacts in its analysis. It also expressed the opinion that the analysis be based on consensus forecasts of commercial construction activity, rather than on existing building stock, and use these forecasts as the basis for energy consumption calculations. It was concerned that the Department select the correct version of the 1989 edition for the baseline and recommended that the baseline be the 1989 edition plus all addenda to that edition, up to the publication of the 1999 edition. Finally, the American Gas Association expressed the belief that the analysis must include a cost-effectiveness and economic justification review.

We agree that the analysis should be based on the minimum requirements of each standard but in assessing the impact of those requirements, we believe that assessment should be based on a realistic estimate of what is being built. We believe that we have done this in our analysis.

We do not believe it is necessary for the Department to perform a quantitative analysis of the likely effects of Standard 90.1–1999 on fuel and equipment market shares in order to support a conclusion regarding the likely net energy savings that would result. Without performing a quantitative analysis of the possible effects on fuel or equipment market shares, there are several reasons why the Department has concluded that these effects are likely to be insignificant. First, since Standard 90.1–1999 places the same requirements on buildings with different types of heating or cooling equipment (and this was also true of previous ASHRAE standards), the impacts of the standard on most building costs should be identical, regardless of the type of energy or equipment used. Second, if the comparative costs and market shares of equipment used in buildings covered by the ASHRAE standard are influenced by other administrative actions taken by the Department of Energy or other government agencies, any effects on fuel market shares that result from such other actions cannot properly be attributed to the ASHRAE standard that is the subject of today's determination. Finally the choice of fuels and equipment by new building designers, builders, and owners is affected by many factors, only a few of which are related to the comparative first costs of the equipment and building systems involved. In cases where comparative equipment and system costs are a significant factor in fuel choice, the small changes in these costs that might be attributable to the ASHRAE 90.1–1999 building standard are very unlikely to significantly affect market shares or the resulting energy savings.

We considered using what the American Gas Association referred to as consensus forecasts of commercial construction activity, rather than data on the existing building stock in our analyses. We concluded, however, that available forecasts are not really consensus forecasts. These latter forecasts are extremely short term in perspective, and reflect that the construction market is likely to remain volatile over the intermediate term. We have therefore used the new construction square footage data from 2001–2010, extracted from the Energy Information Administration's National Energy Modeling System, as the basis for our analysis.

Furthermore, AGA believes that each addendum should be treated as a revision to the standard, thus requiring DOE to issue a determination for each addendum pursuant to Section 304(b)(2) of ECPA, as amended, 42 U.S.C. 6834 (b)(2). AGA has also questioned the appropriateness of the baseline DOE used when comparing the revised ASHRAE Standard 90.1–1999 with its predecessor, ASHRAE Standard 90.1–1989, in order to determine whether the new ASHRAE Standard improves energy efficiency. AGA would have DOE use ASHRAE Standard 90.1–1989 with all of the addenda up until the publication of ASHRAE 90.1–1999 for the comparison.

Section 304(b)(2) of ECPA, as amended, which applies to commercial building code updates, requires that when the provisions of ASHRAE Standard 90.1–1989, or any successor standard, are revised, the Secretary shall, not later than 12 months after the date of such revision, publish a notice in the **Federal Register**, with its determination as to whether the revised standard will improve energy efficiency in commercial buildings. Once the Secretary issues a determination, States have two years, with possible extensions for good faith efforts, to comply with the certification requirements in Section 304(b)(2).

DOE interprets the language in Section 304(b)(2) to mean that when a comprehensive revision of the ASHRAE Standard is published, which in this case is ASHRAE Standard 90.1–1999, then that revised or successor standard triggers the Secretary's obligation to issue a determination as to whether the revised standard improves energy efficiency. This determination is made by comparing the revised or successor standard to the last predecessor standard.

While it is true that the addenda process is part of the ongoing maintenance of the standard and thus continually modifies the existing standard over time, it would be an unreasonable reading of the statute to categorize each addendum in this maintenance process as a "revised or successor standard" within the meaning of Section 304(b)(2), so as to require a determination by the Secretary. Such an interpretation of the statute would put an unreasonable burden both on the States and DOE. For the States, a determination by the Secretary requires some State action, and what is required depends upon whether the Secretary issues an affirmative or a negative determination. If the Secretary were required to issue a determination after each addendum was published, the States would be constantly required to change their codes. This would affect the stability and certainty of State commercial building codes. DOE believes that Congress could not have intended this result. Therefore, DOE concludes that the statute only requires a determination by the Secretary when there is a comprehensive revision to the standard.

With respect to the baseline for comparing the energy efficiency of revised ASHRAE Standard 90.1–1999 with its predecessor, ASHRAE Standard 90.1–1989, DOE's position is that the appropriate baseline is ASHRAE

Standard 90.1–1989 with addenda in effect at the time EPACT was enacted. Since this is the first determination for commercial building codes since ECPA was amended by EPACT on October 24, 1992, it is reasonable to interpret section 304(b)'s reference to ASHRAE Standard 90.1–1989 to include the addenda in effect on the date of enactment. DOE interprets the statute to require a comparison of that version of ASHRAE 90.1–1989 (and not any subsequent addenda) with ASHRAE Standard 90.1–1999. If DOE were to adopt the AGA position and include all of the intervening addenda to ASHRAE Standard 90.1–1989 up to the adoption of ASHRAE 90.1–1999 in the baseline, it would render DOE's determination almost meaningless. That is, if all of the post-enactment addenda to ASHRAE Standard 90.1–1989 were included in the baseline, the real energy efficiency improvements (assuming there are any) of the revised standard would be reflected in the baseline. A comparison of a revised standard and the previous standard (under such an interpretation) would always show little, if any, energy efficiency gains. That would defeat the statute's purpose of requiring DOE to compare the energy efficiency of revised standards (*i.e.*, comprehensive revisions of ASHRAE Standard 90.1–1989 or successor standards) with the prior or last standard.

AGA and the Natural Resources Defense Council argue that DOE has a statutory responsibility to determine whether the revised standard would improve energy efficiency in commercial buildings and also whether all new energy efficiency measures are technologically feasible and economically justified. (Letter dated April 12, 2000, from the American Gas Association and the Natural Resources Defense Council, signed by Charles H. Fritts and Katherine Kennedy, to Dan W. Reicher, Assistant Secretary Energy Efficiency and Renewable Energy) They contend that DOE is required to conduct cost-effectiveness and economic justification analyses as part of the process in making its determination concerning ASHRAE Standard 90.1–1999 pursuant to Section 304 of ECPA, as amended. These who commented believe that the statutory scheme, including Section 307, entitled "Support for Voluntary Building Energy Codes," supports its argument.

The statutory language in Section 304(b) states that the Secretary is required to make a determination as to whether any successor standard to ASHRAE Standard 90.1–1989 will improve energy efficiency. The Secretary must publish a notice of this determination in the **Federal Register**. The language does not require that DOE perform an independent economic analysis as part of the determination process. As a matter of fact, Section 304(b) omits any reference to language concerning economic justification.

However, Congress was concerned that the technological feasibility and cost effectiveness of the Voluntary Building Energy Codes be considered. Section 307 clearly requires DOE to participate in the ASHRAE process and to assist in determining the cost effectiveness and technical feasibility of the ASHRAE standard. It also requires DOE to periodically review the economic basis of the voluntary building energy codes and participate in the industry process for review and modification, including seeking adoption of all technologically feasible and economically justified energy efficiency measures.

Unlike Section 307 which specifically includes language concerning economic justification, Section 304 omits any reference to economic justification. It is generally presumed that Congress acts intentionally and purposefully where it includes particular language in one section of a statute but omits it in another section. *See Bates* v. *United States*, 522 U.S. 23, 29–30 (1997). Accordingly, the statutory scheme cannot be read to require an economic analysis as part of the determination process in Section 304(b).

The fact that the Section 304 determination process does not require the Secretary to perform an economic analysis does not diminish the importance that the ASHRAE standards be technologically feasible and economically justified. However, it appears that Congress assumed that these concerns would be worked out by stakeholders, with DOE participating in the ASHRAE process itself. The language of Section 307 clearly delineates DOE as one participant in the process, not the ultimate decision maker of the ASHRAE standard or successor revisions.

Accordingly, for all of these reasons, DOE has determined that it is not required to perform an economic analysis as part of its determination process in Section 304 of ECPA, as amended.

A number of the GARD Analytics comments were incorporated into our analysis. They include: (1) Extending the aggregation to cover buildings with different window area fractions instead of doing a sensitivity analysis; (2) use of the Alternate Component Packages tables in the 1989 edition's envelope section, to make it easier to identify the criteria which should be used in modeling the 1989 edition's envelope criteria; and (3) eliminating estimates of equipment operating hours in weighting equipment efficiency. In addition, we estimated efficiency improvement for cooling equipment and incorporated estimates of both single and three phase unitary cooling equipment less than 65,000 Btu per hour, shipped to commercial buildings.

GARD Analytics suggested we use specific prototype buildings as it did in its analysis, instead of our scaling approach. It also urged us to select specific building sizes for analysis. We believe that by using a scaling approach, we can better assess the impact of building envelope changes. Scaling permits us to better account for the actual ratio of building wall area to floor area in a population of buildings, rather than assume some fraction of the building population has a single size and geometry and that those characteristics hold for all buildings in that fraction of the building population. The size selection of the prototype used for scaling is near the median square footage for most building categories. Using a building size that is close to the median helps ensure that the characterization of secondary effects, such as the transitional performance of the building under thermostat setback conditions, is captured in a manner that is reasonable for the majority of the building population.

GARD Analytics also commented on our use of a one-to-one aspect ratio (the ratio of length to width of a building) in the prototype. While we use an aspect ratio of one-to-one in the prototype simulation, to make the simulation orientation neutral, our scaling process does include typical aspect ratios for all building types to correctly determine the ratio of perimeter and core areas in the building population. GARD Analytics commented that the use of scaling does not allow the use of different lighting power densities for different building sizes, as are shown in the 1989 edition. In our approach the weighted average lighting power density over all Commercial Building Energy Consumption Survey building sizes was used as the basis of our simulation of the 1989 edition's requirements. This correctly characterizes the average lighting improvement over all building sizes.

GARD Analytics also had a number of comments on our proposed methodology. It suggested that selection of building types by baseline energy use was less correct than if it was done by square footage. We disagree. The purpose of selection by energy use, as

opposed to square footage, is to select the building types that will be most significant in terms of national energy use. We believe that as the number of building types used is increased, the set of buildings types selected by either method will converge to the same set.

GARD Analytics also questioned elimination of the in-patient health care facilities category from our analysis and stated that available hospital models could be used. In-patient health care

DOE2.1 and BLAST (Building Loads and System Thermodynamics) are both building energy analysis computer programs. GARD Analytics commented that DOE should use DOE2.1, instead of BLAST, as the basis of the energy simulations. They state that DOE2.1 is more commonly used by building designers and that further development of BLAST is being phased out. DOE disagrees with the comment since

results of more simulations would not result in a more accurate conclusion to our analysis. A number of these comments are addressed in our detailed textual analysis.

3. Comments on Preliminary Quantitative and Textual Analyses

As a matter of policy to further the determination process, we sought further comments on the application of

Five complained about the amount of time it is taking the Department to make a determination (Johnson, Cowen, Coakley, Weitz, and Goldstein). They stated that the delay was adversely impacting States ability to update their energy codes and gain energy and greenhouse gas benefits.

Five commented that they interpreted the analyses to conclude that there would be a net positive increase in commercial building energy efficiency

leakage, floors over unconditioned spaces, opaque wall thermal transmittance, opaque doors, load calculations and sizing, off-hour controls and setbacks, simultaneous heating and cooling controls, air-conditioning equipment, and non-code language. In several cases, while we disagreed with comments, we further clarified our rationale, as noted below.

Six comments received had to do with differing interpretations of the standard.

the standard, even if the changes cannot be fully quantified. In the case of exit signs, and heating equipment, we did not agree that, where there were no criteria in the 1989 edition and there were criteria in the 1999 edition, we could not or should not project savings. No changes were made in response to these comments except for the comment on window thermal transmittance, where explanatory text was added to the textual analysis.

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opposed to square footage, is to select the building types that will be most significant in terms of national energy use. We believe that as the number of building types used is increased, the set of buildings types selected by either method will converge to the same set.

GARD Analytics also questioned elimination of the in-patient health care facilities category from our analysis and stated that available hospital models could be used. In-patient health care facilities are perceived to have high thermal loads and equipment loads within the health care category. Given the requirements of the 1999 edition, inclusion of this category would increase estimates of energy savings. However, we considered the relatively low ranking of in-patient health care buildings in terms of net energy use and the modest level of future in-patient health care new building growth. This reduced the importance of modeling this category. Finally, we did not have confidence in the representative nature of available in-patient healthcare models. We therefore chose not to simulate this building type separately in our analysis. We believe that not doing so resulted in a conservative estimate of the energy savings attributable to the 1999 edition.

GARD Analytics also commented that we should use the operating schedules and loads from the 1999 edition for the analysis. Our selected schedules are based on accurate measured data and we believe that they are at least as representative of typical buildings as those in the 1999 edition.

GARD Analytics commented on the use of supplemental lighting power allowances. We concluded that the most appropriate lighting power allowances for our quantitative comparison were the whole-building lighting requirements. We commented on the space-by-space requirements and the impact of the supplemental lighting power allowances in our detailed textual analysis.

GARD Analytics commented that we should use the maximum fan power allowances under both standards in our comparison. However, since the maximum fan power allowances are effectively the same in both standards, and are not believed representative of typical building design, we chose to use a more typical fan power usage and thus show a more realistic level of energy usage for buildings under both standards. Utilizing the maximum fan power would increase internal building loads, decrease heating loads and lower building balance temperature. The impact would be to increase absolute energy savings over the 1989 edition.

DOE2.1 and BLAST (Building Loads and System Thermodynamics) are both building energy analysis computer programs. GARD Analytics commented that DOE should use DOE2.1, instead of BLAST, as the basis of the energy simulations. They state that DOE2.1 is more commonly used by building designers and that further development of BLAST is being phased out. DOE disagrees with the comment since BLAST forms the basis of the Department's new, improved simulation tool, Energy Plus, and since DOE is actually phasing out support for DOE2.1.

GARD Analytics commented that we should use the most stringent compliance path on which to do our quantitative analysis. The Department considered this but selected the prescriptive compliance paths on which to base its quantitative analysis, since it is those paths for which specific requirements can be accurately identified for "prototype" buildings. Selecting representative requirements from the variable requirements in the other paths becomes highly speculative. We have addressed requirements from these other compliance paths in the detailed textual analysis.

GARD Analytics commented on the selection of climates and regional weighting for our analysis. It felt that DOE's strategy to select the cities (which represent sets of climate data) is suboptimal and ignores the real effect of the standard having different criteria in different climates. We have reviewed our selection of climates and methodology and believe it to be entirely representative and appropriate for this analysis. GARD Analytics also commented that it was unnecessary to use sub-census regions in our aggregation approach. However, we feel that the use of sub-census regions is necessary to correctly represent the variation in energy costs in the western U.S. We believe that it introduces no additional error in the remainder of the analysis.

GARD Analytics made a number of comments that we should do more detailed analyses. Examples of further analysis suggested by GARD Analytics included: state by state comparisons of the standards, the development of lighting power usage using the space-by-space method, inclusion of room air conditioners in the development of the cooling equipment efficiencies, the use of below ground building spaces in the comparison, and the use of marginal energy costs. We reviewed these comments, but concluded that the limited data available for describing building populations and weighting the results of more simulations would not result in a more accurate conclusion to our analysis. A number of these comments are addressed in our detailed textual analysis.

3. Comments on Preliminary Quantitative and Textual Analyses

As a matter of policy to further the determination process, we sought further comments on the application of the methodology and the validity of preliminary conclusions posted on our web site. A summary of comments and responses on common topical issues, regarding the application of the methodology and the preliminary conclusions, follows below. For detailed responses to the comments received, see *Response to Comments on Preliminary Analyses Supporting DOE's Determination Regarding Standard 90.1–1999*, which is part of the administrative record for this Determination Notice. This document may be viewed at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., except Federal holidays, or a copy may be obtained from the Department from the contact person identified above.

We received 12 comments, two from design practitioners (G. Johnson and Kay), four from States or code officials (Lloyd, Weitz, Cowen, Hogan), one representing States in a region (Coakley), one jointly from the two professional societies sponsoring the consensus process that developed the Standard (Wolf and Timmings), one from a public interest group (Goldstein), one from an energy code consultant (J. Johnson), and two representing the gas industry (Ranfone and Hemphill). Two who commented (Johnson and Kay) did not comment on the analysis. One of those who did not comment on the analysis joined four others who commented that the Department was late in making its determination and that the delay was hampering the Region's or State's updating of its energy codes (G. Johnson, Lloyd, Coakley, and Weitz). Of the nine commenting on the analysis, seven felt the analysis was well done or reasonable and agreed with the results. (Lloyd, Cowen, Coakley, Weitz, Wolf and Timmings, Goldstein and J. Johnson). One who commented suggested a change and wanted some further analysis done (Hogan), and another who commented had 35 detailed comments (Hemphill).

Five complained about the amount of time it is taking the Department to make a determination (Johnson, Cowen, Coakley, Weitz, and Goldstein). They stated that the delay was adversely impacting States ability to update their energy codes and gain energy and greenhouse gas benefits.

Five commented that they interpreted the analyses to conclude that there would be a net positive increase in commercial building energy efficiency and agreed with the conclusion for a positive determination. (Coakley, Lloyd, Weitz, Wolf and Timmings, Goldstein, and J. Johnson). Three of these further commented that the analyses were reasonable. One (Weitz) expressed the opinion that this is an achievable standard and indicated that Massachusetts has already adopted a new construction energy code based on the 1999 edition. However, one (Ranfone) commented that DOE should not complete its determination, until such time as an analysis is done to determine whether all new energy efficiency measures are technologically feasible and economically justified, a comment DOE previously addressed above.

One (Hogan) commented, and we agree, that the building envelope criteria for the "lodging" category in our quantitative analysis should be taken from the "residential" column in the tables in Appendix B of the 1999 edition, rather than from the "nonresidential" category, since the only change was in the opaque envelope. We have revised the analysis accordingly.

Hogan also commented that the quantitative analysis should be expanded to include all energy used in buildings, including elevators, exterior lighting for entrances and facades, parking lighting, and parking ventilation, and be expanded to differentiate part-load operation between fan systems with and without variable frequency fans. Data on buildings and building component characteristics are insufficient to accurately include these in our analysis. However, each is addressed in the detailed textual analysis, except for elevators which are not addressed in either the 1989 or 1999 editions of Standard 90.1.

One who commented (Hemphill) submitted 35 detailed comments on our analyses. We agreed in whole or in some part with eleven of these comments and have accordingly made changes or clarifications to our textual analysis. These eleven include comments on: exterior lighting power, interior lighting power—space-by-space, envelope air leakage, floors over unconditioned spaces, opaque wall thermal transmittance, opaque doors, load calculations and sizing, off-hour controls and setbacks, simultaneous heating and cooling controls, air-conditioning equipment, and non-code language. In several cases, while we disagreed with comments, we further clarified our rationale, as noted below.

Six comments received had to do with differing interpretations of the standard. These included comments having to do with lighting power exemptions, lighting integral to equipment, transformers, transportation systems, energy management systems, and the energy cost budget compliance path. On review, we disagreed with the interpretations presented in the comment and made no change. For example, in the case of energy management systems, they are recommended not required, as implied in the comment, in buildings over 40,000 square feet in the 1989 edition. In the 1999 edition, energy management systems are not omitted but are addressed differently, under controls. In the case of the comment on the energy cost budget compliance path, we believe that both editions establish a baseline of requirements from the prescriptive compliance approach and require the energy cost of the design to be equivalent or less than the baseline. We therefore believe that in each edition the energy cost budget compliance path criteria are roughly equivalent to the prescriptive compliance path.

The comments of Hemphill, which related to transformers, transportation systems, and energy management systems, suggested that we might have missed some differences between the two editions of the standard. On inspection we found that we had missed some differences. Therefore we have added analysis that addresses the subdivision of electric power feeders and provisions for check metering of loads.

Eight comments received had to do with differing opinions on appropriate approaches to the textual analysis. These included comments on the subjective nature of the analysis of the envelope section, exit signs, the use of the prescriptive compliance path and not the performance paths in the analysis, our conclusions on the lighting power exemptions, window thermal transmittance and solar heat gain, temperature reset controls, and heating equipment. Four of these comments provide no suggestion of an alternative approach. We believe that our approach in the textual analysis provides useful information to states which will adopt the standard, even if the changes cannot be fully quantified. In the case of exit signs, and heating equipment, we did not agree that, where there were no criteria in the 1989 edition and there were criteria in the 1999 edition, we could not or should not project savings. No changes were made in response to these comments except for the comment on window thermal transmittance, where explanatory text was added to the textual analysis.

Six other comments were received with which we disagreed but which led us to adding explanatory text to the textual analysis. This was done in the analysis relative to speculative building envelopes, envelope thermal transmittance in cold climates, slab on grade and below grade wall insulation, roof thermal transmittance, temperature controls, and pipe and duct insulation. One of these, the comment on pipe and duct insulation appeared to be a misinterpretation of what we wrote. In addition, more analysis was done on the subject of roof thermal transmittance.

Five comments appear to have been a misinterpretation of our written analysis. These comments concerned parts of our whole building interior lighting power criteria, interior lighting controls and separate air distribution systems, radiant heating, and service water heating equipment. In the case of the comment on interior lighting controls, there are also opinions stated without support. Review of our explanations did not suggest any change.

One (Hemphill) argued that there was no difference in scope between the two editions. However, four others (Coakley, Weitz, Wolf and Timmings, and Goldstein) all recognized the expansion of the scope of the 1999 edition to renovations of existing buildings. We agree with the latter majority opinion including those representing the organizations sponsoring the two editions. We note that through the mid 1990s the American National Standards Institute recognized the ASHRAE Standard 100 series, that explicitly addressed existing buildings. Under American National Standards Institute policy, two standards (Standard 90.1–1989 and ASHRAE Standard 100) could not address existing buildings.

One (Hemphill) interpreted our analysis regarding increasing the scope of the 1999 edition to existing buildings to imply that the increased energy efficiency could approach 50 percent of the energy use reduction from new construction and expressed the opinion that there was absolutely no basis for this assertion, and that the implication was wholly inappropriate. Another

(Wolf and Timmings) commented on the subject that industry estimates indicate that at least 60 percent of heating and cooling equipment sales are for replacement markets, and only 40 percent for new buildings, but did not provide a source for this estimate. We continue to believe that it is difficult to quantify the energy efficiency impact of the change in scope to include existing buildings. We will not attempt to

2. Detailed Textual Analysis

We also performed a detailed analysis of the differences between the textual requirements and stringencies of the two editions of Standard 90.1 concerning the scope of the standard, the building envelope requirements, the building lighting and power requirements, and the building mechanical equipment requirements. The detailed textual analysis addresses

represent the most common approach to using the standard in question for most buildings.

D. Determination Statement

The Department's review and evaluation found that there are significant differences between the 1989 edition and the 1999 edition. Our overall conclusion is that the 1999 edition will improve the energy

TABLE 1.—ESTIMATED ENERGY USE INTENSITY BY BUILDING TYPE—1989 EDITION

Building type	Building type floor area weight	Whole building energy use intensity (kBtu/sf-yr or $/sf-yr)				
		Electric	Gas	Site EUI	Source EUI	$UI
Assembly	0.068	61.55	32.18	93.73	231.78	1.48
Education	0.218	35.65	18.86	54.50	134.47	0.87
Food	0.027	101.60	35.52	137.12	363.04	2.32
Lodging	0.079	42.80	17.61	60.41	155.88	1.00
Office	0.190	49.85	5.61	55.45	165.00	1.09
Retail	0.246	57.14	3.95	61.09	186.39	1.23
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

(Wolf and Timmings) commented on the subject that industry estimates indicate that at least 60 percent of heating and cooling equipment sales are for replacement markets, and only 40 percent for new buildings, but did not provide a source for this estimate. We continue to believe that it is difficult to quantify the energy efficiency impact of the change in scope to include existing buildings. We will not attempt to estimate the impact of this change. Today's determination does not address or rely on this difference.

C. Summary of the Comparative Analysis

We carried out both a broad quantitative analysis and a detailed textual analysis of the differences between the requirements and the stringencies in the 1989 and the 1999 editions.

1. Quantitative Analysis

The quantitative comparison of energy codes was done using whole-building energy simulations of buildings built to each standard. We simulated seven representative building types in 11 representative U.S. climates. Only differences between new building requirements were considered in this quantitative analysis. The simulations were based on a 15 zone building prototype used in previous DOE building research. The simulated Energy Use Intensities (EUI) for each zone were scaled to correctly reflect variations in building size and shapes for each representative building type. Energy use intensities developed for each representative building type were weighted by total national square footage of each representative building type to provide an estimate of the difference between the national energy use in buildings constructed to both editions. A more detailed explanation is located in Appendix B to this notice.

The quantitative analysis of the energy consumption of buildings built to the 1999 edition, compared with buildings built to the 1989 edition for new buildings, indicates national source energy savings of approximately 6.4 percent of commercial building energy consumption. Site energy savings are estimated to be approximately 4.5 percent. These figures represent a conservative estimate of energy savings for new buildings.

2. Detailed Textual Analysis

We also performed a detailed analysis of the differences between the textual requirements and stringencies of the two editions of Standard 90.1 concerning the scope of the standard, the building envelope requirements, the building lighting and power requirements, and the building mechanical equipment requirements. The detailed textual analysis addresses a number of differences that, while very real, we could not accurately or reliably quantify because of lack of reliable information about the building stock and the incorporation of various components and equipment in various parts of the country. Therefore, the detailed textual analysis makes no attempt to quantify the differences between the 1989 and 1999 editions.

The emphasis of our detailed requirement and stringency analysis was on differences between the envelope, lighting, and mechanical sections of both editions of Standard 90.1.

The lighting requirements comparison focused on the impact the different lighting requirements have on lighting energy use, as well as on building loads. The comparison looked separately at the whole building and space-by-space lighting requirements in both standards in a variety of commercial building types, as well as examined the effect of any "additional lighting power allowances." It also looked at controls.

The mechanical requirements comparison looked at equipment efficiency requirements and system design requirements. The system design requirements affect the system efficiency, system thermal load, and also had some direct energy impacts.

In comparing the envelope requirements, we made judgements of relative stringency and frequency of occurrence of components.

Each standard has multiple ways to demonstrate compliance. We did not perform a detailed comparison of the relative stringency of the alternate paths internal to a single standard or between standards. The large number of variables among the alternative compliance paths made such a comparison prohibitive to undertake. Further, we knew of no data on which to base the selection of representative requirements for such an analysis. Assignment of requirements would have been arbitrary. Rather we focused on the prescriptive compliance paths in each section, which we believe represent the most common approach to using the standard in question for most buildings.

D. Determination Statement

The Department's review and evaluation found that there are significant differences between the 1989 edition and the 1999 edition. Our overall conclusion is that the 1999 edition will improve the energy efficiency of commercial buildings, even though in certain limited instances stringencies for some requirements are reduced. However, we found a number of changes in textual requirements and stringencies that will decrease energy efficiency. Overall, we concluded the changes in textual requirements and stringencies are "positive," in the sense that they will improve energy efficiency in commercial construction. Our quantitative analysis shows, nationally, new building efficiency should improve by about six percent, looking at source energy, and by about four percent, when considering site energy. DOE has therefore concluded that the 1999 edition should receive an affirmative determination under Section 304(b) of the Energy Conservation and Production Act for "buildings" within the meaning of Section 303(2).

II. Results of Quantitative Analysis

Tables 1 and 2 show the aggregated energy use and associated energy savings by building type for the seven categories analyzed and on an aggregated national basis for the 1989 and 1999 editions, respectively. See Appendix B for an explanation of the methodology we used. For each edition the building floor area weight is used to calculate the building energy or cost use intensity. The electric and gas building energy use intensity is presented for each type analyzed with electric predominating in all types. Site energy use intensities ranges from more than 137 thousand Btu per square foot annually for the Food building type to more than 18 thousand Btu per square foot annually for the Warehouse building type. Source energy use intensities have similar ranges as site energy ranges but vary in quantitative order from site energy intensities. (Lodging and Office rank 4th and 5th respectively for site energy, while for source energy their ranking is reversed, 5th and 4th respectively.). Building energy cost intensities are also presented.

TABLE 1.—ESTIMATED ENERGY USE INTENSITY BY BUILDING TYPE—1989 EDITION

Building type	Building type floor area weight	Whole building energy use intensity (kBtu/sf-yr or $/sf-yr)				
		Electric	Gas	Site EUI	Source EUI	$UI
Assembly	0.068	61.55	32.18	93.73	231.78	1.48
Education	0.218	35.65	18.86	54.50	134.47	0.87
Food	0.027	101.60	35.52	137.12	363.04	2.32
Lodging	0.079	42.80	17.61	60.41	155.88	1.00
Office	0.190	49.85	5.61	55.45	165.00	1.09
Retail	0.246	57.14	3.95	61.09	186.39	1.23
Warehouse	0.173	10.43	8.19	18.62	42.32	0.27
National	.....	43.36	12.09	55.44	151.52	0.99

TABLE 2.—ESTIMATED ENERGY USE INTENSITY BY BUILDING TYPE—1999 EDITION

Building type	Building type floor area weight	Whole building energy use intensity (kBtu/sf-yr or $/sf-yr)				
		Electric	Gas	Site EUI	Source EUI	$UI
Assembly	0.068	55.71	33.88	89.59	215.04	1.37
Education	0.218	31.59	20.05	51.64	122.88	0.79
Food	0.027	102.78	34.91	137.69	366.12	2.35
Lodging	0.079	41.04	15.94	56.98	148.41	0.95
Office	0.190	44.56	6.32	50.88	148.95	0.98
Retail	0.246	48.14	5.17	53.31	159.08	1.05
Warehouse	0.173	17.91	9.11	27.02	67.15	0.43
National	.....	40.04	12.91	52.95	141.88	0.92

Table 3 presents the estimated percent energy savings between the 1989 and 1999 editions. Overall, considering those differences that can be reasonably quantified, the 1999 edition will increase the energy efficiency of commercial buildings. However, this is not true for new buildings of all building types. In the case of the Food Service and the Warehouse building categories, the 1999 edition will allow increased energy usage. This is primarily due to an increased lighting power allowance for these building categories under the 1999 edition. Numbers in Table 3 represent percent energy savings. Thus, negative numbers represent increased energy use.

TABLE 3.—ESTIMATED PERCENT ENERGY SAVINGS WITH 1999 EDITION—BY BUILDING TYPE

Building type	Building type floor area weight	Percent reduction in whole building energy use intensity				
		Electric	Gas	Site EUI	Source EUI	$UI
Assembly	0.068	9.5	−5.3	4.4	7.2	7.5
Education	0.218	11.4	−6.3	5.2	8.5	9.0
Food	0.027	−1.2	1.7	−0.4	−0.8	−0.9
Lodging	0.079	4.1	9.5	5.7	4.8	4.7
Office	0.190	10.6	−12.7	5.2	9.7	9.8
Retail	0.246	15.7	−30.7	12.7	14.7	14.9
Warehouse	0.173	−71.6	−11.3	−45.1	−58.7	−59.7
National	1.000	7.6	−6.8	4.5	6.4	6.6

A comparison of energy savings by building type for each of the different standard scenarios modeled is shown in Table 4, to give an idea of where most of the savings or increases derive. For example, we estimate a slight percentage increase in energy use intensity indicated in the "1989 edition with 1999 edition envelope requirements" row, indicated by the negative savings. Similarly there is an estimated percentage increase in gas energy use intensity indicated in the "Gas EUI" column, also indicated by negative savings. Conversely, other rows indicate estimated percentage reduction in energy use intensity for lighting and mechanical requirements.

TABLE 4.—PERCENT ENERGY SAVINGS FROM 1989 EDITION

[National figures, all building types]

Standard scenario	Electric EUI	Gas EUI	Site EUI	Source EUI	$UI
1989 edition	0	0	0	0	0
1989 edition with 1999 edition envelope requirements	−0.1	−4.3	−0.9	−0.3	−0.3
1989 edition with 1999 edition lighting requirements	5.9	−8.3	2.8	4.6	4.9
1989 edition with 1999 edition lighting and envelope requirements	6.0	−10.1	2.5	4.6	4.8

TABLE 4.—PERCENT ENERGY SAVINGS FROM 1989 EDITION—Continued

[National figures, all building types]

Standard scenario	Electric EUI	Gas EUI	Site EUI	Source EUI	$UI
1989 edition with 1999 edition mechanical requirements	2.2	3.0	2.4	2.3	2.2
1999 edition compliant buildings	7.6	−6.8	4.5	6.4	6.6

III. Discussion of Detailed Textual Analysis

differences in exempted spaces is expected to be a small increase in

edition requires all buildings more than 5,000 square feet in size to have

controls without allowing an increase in connected power.

The 1989 edition requires permanently wired lighting fixtures and switched receptacles in hotel suites of rooms to be controlled at the entrance to each room. The 1999 edition further requires this control to be at the entrance of the entire suite area. The 1999 edition should save energy by making it easier to turn off all the lights on the way out.

types show the 1989 edition having lighting power allowances 0.20 to 0.80 Watts per square foot higher than in the 1999 edition. Considering all eleven matched building types, there is an average reduction of 0.11 Watts per square foot with the 1999 edition. Within the two building types representing the largest percentage of building floor area in the commercial sector (office and retail) the reductions with the 1999 edition are 0.40 Watts per

1999 edition's space lighting power values, so adjustments for space dimensions are not permitted. The 1999 edition does allow some additional lighting power allowances to accommodate specific lighting needs. These include additional power for decorative lighting (1.0 Watt per square foot), additional power for VDT terminal lighting (0.35 Watts per square foot), and additional power for retail display lighting. In the latter case, either 1.6

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TABLE 4.—PERCENT ENERGY SAVINGS FROM 1989 EDITION—Continued

[National figures, all building types]

Standard scenario	Electric EUI	Gas EUI	Site EUI	Source EUI	$UI
1989 edition with 1999 edition mechanical requirements	2.2	3.0	2.4	2.3	2.2
1999 edition compliant buildings	7.6	−6.8	4.5	6.4	6.6

III. Discussion of Detailed Textual Analysis

The 1999 edition is written in code language and as a result excludes some of the guidance provided in the 1989 edition. A]though the guidance in the 1989 edition is not enforceable, it provided designers with suggestions for implementing energy efficient solutions. However, the guidance in the 1989 edition made it difficult for designers and code officials to quickly identify the relevant criteria.

A. Lighting and Power

1. Interior Lighting Power Exemptions

The 1989 edition entirely exempts a number of lighting categories such as display or accent lighting for galleries, and lighting in spaces designed for the visually impaired. In doing so, it also exempts controls for those lights. While the 1999 edition exempts the lighting power requirements, it retains requirements for controls in the exempted areas. Lighting for outdoor manufacturing, commercial greenhouses, and process facilities; and special lighting for research are exempt in the 1989 edition but not in the 1999 edition. These differences can be expected to result in some reduction in lighting power use as a result of the additional coverage in the 1999 edition. Conversely, there are a number of narrowly targeted exemptions in the 1999 edition that are not in the 1989 edition. These include: lighting integral to equipment installed by its manufacturer; lighting integral to open and glass enclosed refrigerator and freezer cases; lighting integral to food warming and preparation equipment; lighting in interior spaces that have been designated as a registered interior historic landmark; exit signs; lighting that is for sale or lighting educational demonstration systems; and casino gaming areas. The first three of these are not generally controlled by the 1989 edition because they are rarely known at the time the lighting plans are approved. While portions of gaming areas are often considered entertainment areas and exempt, the broader 1999 edition exemption can be expected to increase energy use in casinos. Lighting for landmark interiors might also increase in some cases. The net effect of these differences in exempted spaces is expected to be a small increase in efficiency in the 1999 edition.

2. Exterior Lighting Power

The 1989 edition prescribes maximum installed lighting power (Watts/square foot or Watts/ linear foot) for exterior building and grounds areas that, when added together, become the allowed exterior wattage. The 1999 edition sets similar criteria for exits, entrances and surface areas or facades, but also adds an efficacy requirement of 60 lumens per Watt in luminaries of more than 100 Watts. There is a three Watts per lineal foot increase in allowable wattage for entrances without canopies in the 1999 edition. However, there is a decrease in allowable wattage for all exits (five Watts per lineal foot), and for high traffic canopied entrances (seven Watts per square foot), and for light traffic canopied entrances (one Watt per square foot). The net impact is unknown as data on the number of building entrances and exits and their characteristics are not known.

For loading areas, loading doors, storage and non-manufacturing work areas, and driveways, walkways, and parking lots, the 1999 edition deviates from the 1989 edition by eliminating any Watts/square foot or Watts/linear foot maximums and instead sets an efficacy requirement of 60 lumens per Watt (more than 100 Watts per luminaire). This requirement in the 1999 edition eliminates the use of low efficiency technologies, such as incandescent lamps, and allows the economics of fixture and energy cost to restrict the exterior lighting use to the minimum needed. We are aware of no data on which to make a judgement as to net decrease or increase in energy use from this change.

3. Lighting Controls—Interior

The 1989 edition requires control points for each task or group of tasks within a 450 square foot area. It "counts" control "points" (one for manual, two for occupancy sensors, etc.) to show compliance with this requirement, giving credit to automatic controls versus manual ones. It further sets a minimum of one control for each 1,500 Watts of lighting. In place of this task control requirement, the 1999 edition requires all buildings more than 5,000 square feet in size to have automatic lighting shutoff in all spaces using time of day, occupancy sensor or similar methods. Buildings more than 5,000 square feet make up approximately half the number of commercial buildings built and more than 89 percent of the floor area constructed. This should save energy in these buildings during unoccupied hours. Where occupant sensors are used to comply with the requirement, the savings should be greatest, since this will shut off lights in unoccupied individual spaces, even during regular business hours.

The 1999 edition adds control requirements for six specific lighting functions: all task lighting, hotel/motel guest rooms, display/accent lighting, case lighting, nonvisual (plant growth, food warming), and demonstration (for sale or for lighting demonstration). Furthermore, the 1999 edition requires that spaces up to 10,000 square feet in size have at least one control per 2,500 square feet and that larger spaces have one control per 10,000 square feet. In buildings with large open areas with multiple task areas lit by general lighting, the 1989 edition would require more (total manual or automatic) switching than the 1999 edition. The 1999 edition instead reduces lighting use in unoccupied spaces with automatic controls that do not require human intervention. The 1999 automatic control requirements are more likely to reduce lighting energy use in these spaces, than the manual controls permitted in the 1989 edition.

The 1989 edition provides lighting control credits for use in calculating interior lighting power densities to encourage the use of automatic controls. For each area or group of lights that are controlled by an occupancy sensor, lumen maintenance sensor, daylight sensor, or combination of sensors, the design connected lighting power value, used in showing compliance, can be reduced from 10 percent to 40 percent, depending on the controls used. This allows more lighting power to be used in the space in exchange for the use of an automatic lighting control. The 1999 edition requires the use of automatic controls without allowing an increase in connected power.

The 1989 edition requires permanently wired lighting fixtures and switched receptacles in hotel suites of rooms to be controlled at the entrance to each room. The 1999 edition further requires this control to be at the entrance of the entire suite area. The 1999 edition should save energy by making it easier to turn off all the lights on the way out.

4. Ballast Efficacy Factor

The 1989 edition includes a minimum ballast efficacy factor. The 1999 edition does not. However, new ballast manufacturing standards, required under the Energy Policy and Conservation Act, serve the same purpose and no longer make it necessary to include such criteria in the 1999 edition. There will be no change in energy use as a result of this difference.

5. Exit Signs

The 1999 edition includes an additional section specifying a minimum efficiency (35 lumens per Watt) for all exit signs operating at greater than 20 Watts that is intended to eliminate the use of standard incandescent lamps in exit signs. This will essentially eliminate the use of incandescent exit signs thereby reducing energy consumption.

6. Interior Lighting Power—Whole Building

The 1999 edition provides greater clarity in specifying the calculation of luminaire or lighting system wattage that covers self ballasted, remote ballasted, track lighting systems and other miscellaneous lighting. This could eliminate some underestimation of installed lighting power. For example, it is common for a fluorescent lighting fixture to be described by builders (with respect to power consumption) as the simple sum of the lamp wattages while ignoring ballast energy use.

The 1989 edition presents a set of whole building lighting power density requirements for 11 building types in six different building size ranges (0–2,000; 2,001–10,000; 10,001–25,000; 25,001–50,000; 50,001–250,000; and greater than 250,001 square feet). The 1999 edition presents a single set of whole building lighting power density requirements for 31 building types without building size variation. For four of the building types, where there is a reasonable match between 1989 and 1999 editions, the 1999 allowance is higher by 0.06 to 0.64 Watts per square foot. Seven other matched building types show the 1989 edition having lighting power allowances 0.20 to 0.80 Watts per square foot higher than in the 1999 edition. Considering all eleven matched building types, there is an average reduction of 0.11 Watts per square foot with the 1999 edition. Within the two building types representing the largest percentage of building floor area in the commercial sector (office and retail) the reductions with the 1999 edition are 0.40 Watts per square foot for office and 0.60 Watts per square foot for retail buildings. Because there is an average reduction of lighting power densities from the 1989 edition to the 1999 edition in all matching building types, and also a reduction in the lighting power densities allowed in the two largest building types (office and retail), the overall effect of the whole building lighting power density requirements in the 1999 edition will be to provide increased energy efficiency in most building types. However, it should be noted that there is an increase in the lighting power allowance for warehouse and storage type buildings which are significant in terms of total commercial building area. We expect a net reduction in energy use, with the whole building requirements. (See also the quantitative analysis of lighting requirements, Table 4.)

7. Interior Lighting Power—Space-By-Space

Both the 1989 and 1999 editions present individual building space lighting power allowance values for use in applying a space-by-space compliance method where individual space lighting power is aggregated to arrive at a building total power allowance. The 1989 edition's tabulated space-by-space allowances are used in the compliance process only after they have been adjusted by an Area Factor (AF) ranging from 1.0 to 1.8. This factor is used to increase the allowed lighting power when the shape of the room (the size and height) necessitates the use of additional lighting power to achieve certain levels of illuminance. The area factor that can be used to calculate some space type allowances is limited. For example, the allowance for sports playing areas, corridors, open offices, and mechanical rooms cannot be modified by an area factor, while the allowance for enclosed offices can be modified by an area factor of up to 1.55. Spaces that are used for multiple functions, such as auditoriums, conference, banquet, and meeting rooms, are allowed an additional lighting power adjustment factor of 1.5. By contrast, this adjustment for room dimensions is already built into the 1999 edition's space lighting power values, so adjustments for space dimensions are not permitted. The 1999 edition does allow some additional lighting power allowances to accommodate specific lighting needs. These include additional power for decorative lighting (1.0 Watt per square foot), additional power for VDT terminal lighting (0.35 Watts per square foot), and additional power for retail display lighting. In the latter case, either 1.6 Watts per square foot of specific display area is allowed for general merchandise highlighting, or 3.9 Watts per square foot of specific display area is allowed for valuable merchandise highlighting. This additional power is only allowed if the specified luminaries are installed and can only be used for the specific purpose noted.

It is difficult to assess the actual impact from the use of the 1999 edition's space-by-space method versus the 1989 edition's. This is because the allowed power density for a building will depend greatly on the space makeup of the building, the individual room dimensions (affecting the area factor adjustment) and any additional allowances that may apply. However, the average of all matching 1989 and 1999 edition power density space values shows a 0.36 Watts per square foot decrease in the 1999 edition's values from those in the 1989 edition. Identical room geometry configurations (based on those used in the development of the 1999 edition's lighting power densities) were taken into account in reaching this conclusion. Furthermore, it is important to consider the items in both editions that can modify these lighting allowances. For example, the 1989 edition would allow the use of a 1.5 additional lighting power adjustment factor for multipurpose spaces, such as "Auditorium," "Conference/Meeting Room," and "Banquet/Multi-Purpose Space." Whereas the 1999 edition would be even more energy efficient because there is no such area factor adjustment.

Determining the impact of the additional power allowances in the 1999 edition is difficult, since any comparison with values in the 1989 edition uses either example buildings or lighting models. Using either example buildings or lighting models requires many assumptions regarding what is "typical " in each type of space and how each space is used. For example, in the 1989 edition, the base lighting power density for a mass merchandise store in a warehouse type setting is 3.3 Watts per square foot. With the application of an appropriate area factor (1.05), the 1989 edition's adjusted

power allowance is 3.46 Watts per square foot. The 1999 edition starts with a base lighting power density for all retail establishments of 2.1 Watts per square foot. The 1999 edition allows additional lighting power for certain lighting activities including retail sales lighting. These come in the form of an additional 1.6 Watts per square foot of lighted area for merchandise highlighting and 3.9 Watts per square foot of lighted area for specific merchandise highlighting. Because the 1999 edition's values are based on the lighted area, the actual power allowance is similar to how the area factor in the 1989 edition depends on the geometry of the individual space.

Office space lighting has a similar difference between the two editions. The 1999 edition offers an additional power allowance for visual display terminal lighting. Spaces with decorative lighting similarly are allowed extra power only for the decorative lighting used. No such allowances are included in the 1989 edition's values. To compare the two editions, we assumed that the 1999 edition allowance would match that of the 1989 edition. For this comparison, we determined what additional lighting power allowances would need to be applied to the 1999 edition's base value to match the 1989 edition's value. This comparison allows for a determination of any stringency associated with the use of the low base numbers in the 1999 standard. In some of these cases a range of power values represents the possible

subdividing metering loads, in the 1999 edition, will make check metering and commissioning of these systems more difficult. In doing so, it will likely result in some increase in energy consumption.

9. Transformers

The 1989 edition suggested that building transformers be selected to optimize the combination of no-load, part-load, and full-load losses, and had

1999 edition. However, the 1989 edition did not provide for a comparison over multiple possible system designs, that might have produced more efficient options. Thus, the removal of the requirement is unlikely to have a significant impact on building efficiency.

10. Motors

The 1989 edition had motor efficiency

B. Building Envelope

1. Air Leakage

The 1989 edition provides a series of air-leakage standards or requirements that individual components must meet. The 1999 edition replaces all these standards with a requirement to use the National Fenestration Rating Council's, *Procedure for Determining Fenestration Product Air Leakage*, NFRC 400, as the test procedure. Table 6 compares the air

power allowance is 3.46 Watts per square foot. The 1999 edition starts with a base lighting power density for all retail establishments of 2.1 Watts per square foot. The 1999 edition allows additional lighting power for certain lighting activities including retail sales lighting. These come in the form of an additional 1.6 Watts per square foot of lighted area for merchandise highlighting and 3.9 Watts per square foot of specific fine merchandise display. The application of these allowances will depend on the layout of the retail space and how and at what height lighting is employed. This is similar to how the area factor in the 1989 edition depends on the geometry of the individual space.

Office space lighting has a similar difference between the two editions. The 1999 edition offers an additional power allowance for visual display terminal lighting. Spaces with decorative lighting similarly are allowed extra power only for the decorative lighting used. No such allowances are included in the 1989 edition's values.

To make some assessment of the possible impact of these additional allowances, we developed characteristics of a space under the 1999 edition whose total space lighting power allowance would match that of the 1989 edition. For this comparison, we determined what additional lighting power allowances would need to be applied to the 1999 edition's base value to match the 1989 edition's value. This comparison allows for a determination of any stringency associated with the use of the low base numbers in the 1999 standard. In some of these cases a range of power values represents the possible variation in calculated values using the 1989 standard. The 1999 standard allows for only one base value. Table 5 presents comparisons for a variety of representative cases.

TABLE 5.—ADDITIONAL LIGHTING POWER ALLOWANCE IN THE 1999 EDITION NEEDED TO MATCH THE 1989 EDITION LIGHTING POWER ALLOWANCE

Space type [Additional lighting type]	1989 edition adjusted total power	1999 edition base power	Possible scenarios of use of additional power in 1999 to equal 1989 edition value
Hotel Lobby [Decorative]	2.51	1.7	Permits 20 percent of the entire space to have decorative lighting.
Office—enclosed [Visual Display Terminal].	2.38	1.5	Cannot reach the1989 edition's value (Max 1999 value = 1.85).
Office—open [Visual Display Terminal].	2.51	1.3	Cannot reach the 1989 edition's value (Max 1999 value = 1.65).
Jewelry Retail [Highlight Merchandise].	5.88 to 7.40	2.1	In most cases, one cannot reach the 1989 edition's value (Max 1999 value = 6.00). Need to have 97 percent of the entire space covered with spotlighted fine merchandise displays, to reach the 1989 edition's lower value.
Fine Merchandise Retail [Highlight Merchandise].	3.36 to 4.23	2.1	Need to have between 32 and 55 percent of space dedicated to spotlighted fine merchandise displays—or, more than 78 percent of the space dedicated to spotlighted general displays, to reach the 1989 edition's value.
Mass Merchandise (big box) Retail [Highlight Merchandise].	3.30	2.1	75 percent of space dedicated to spotlighted general displays—OR—30 percent of space dedicated to spotlighted fine merchandise displays, to reach the 1989 edition's values.
Department Store Retail [Highlight Merchandise].	3.10 to 4.10	2.1	Need to have between 26 and 51 percent of space dedicated to spotlighted fine merchandise displays, or over 62 percent of the space dedicated to spotlighted general displays, to reach the 1989 edition's values.
Food and Misc. Retail [Highlight Merchandise].	2.80	2.1	Need to have 43 percent of space dedicated to spotlighted general displays, to reach the 1989 edition's values.
Service Retail [Highlight Merchandise].	2.84 to 3.57	1.05 to 1.32	Need to have between 46 and 92 percent of the entire space dedicated to spotlighted general displays, to reach the 1989 edition's values.
Mall Concourse [Highlight Merchandise].	1.40 to 1.85	1.8	The 1999 value is within or close to possible 1989 values.

In the case of the hotel lobby it would be possible to use the decorative lighting power credit in 20 percent of the entire space without exceeding the requirements of the 1989 edition, which is quite reasonable. However, in the case of the mall concourse example, no additional lighting power allowance is required for the 1999 edition lighting power allowance to equal or exceed the 1989 edition value. By contrast, the enclosed and open office examples show that the 1989 edition lighting value cannot be achieved, even with the maximum allowance possible applied.

In the case of Jewelry stores, in most cases one cannot reach the 1989 value. Where one can reach the 1989 value, it would require an unreasonable 97 percent of the entire sales area to be covered with fine merchandise displays, in order to meet the 1989 value. In the Mass Merchandising, Food and Miscellaneous Retail and Service Retail categories, the additional areas of highlighted merchandise required to match the 1989 values are excessive and generally unrealistic. In the remaining two examples (fine Merchandise and Department Store) the 1989 edition lighting values can be achieved with additional lighting power scenarios that are generally reasonable for some of the spaces, but only where low room cavity ratio values occur. Overall, these results indicate that the 1999 edition lighting values are more stringent, with the additional lighting power allowances more than compensated for by the reduction in base lighting power in the 1999 edition.

8. End Use Metering

The 1989 edition had requirements for the subdivision of electrical power feeders by use category, to facilitate end-use metering in buildings with more than 250 kVA connected load. In addition it had provisions to check meter loads of individual tenants with more than 100 kVA of connected load. The removal of requirements for subdividing metering loads, in the 1999 edition, will make check metering and commissioning of these systems more difficult. In doing so, it will likely result in some increase in energy consumption.

9. Transformers

The 1989 edition suggested that building transformers be selected to optimize the combination of no-load, part-load, and full-load losses, and had a requirement that an annual operating cost calculation be done and added to the electrical design documentation for buildings with total building transformers more than 300 kVA. The requirement has been removed from the 1999 edition. However, the 1989 edition did not provide for a comparison over multiple possible system designs, that might have produced more efficient options. Thus, the removal of the requirement is unlikely to have a significant impact on building efficiency.

10. Motors

The 1989 edition had motor efficiency requirements for motors operating more than 500 hours per year. However, the efficiency levels included are less efficient than Federal manufacturing standards enacted in 1992 and thus have no impact on building efficiency.

B. Building Envelope

1. Air Leakage

The 1989 edition provides a series of air-leakage standards or requirements that individual components must meet. The 1999 edition replaces all these standards with a requirement to use the National Fenestration Rating Council's, *Procedure for Determining Fenestration Product Air Leakage*, NFRC 400, as the test procedure. Table 6 compares the air leakage requirements for envelope openings in the two editions. The number in the right-hand column indicates that the 1999 edition permits more air leakage and is therefore less stringent.

TABLE 6.— COMPARISON OF AIR LEAKAGE REQUIREMENTS IN THE 1989 AND 1999 EDITIONS.

Product	1989 edition	1999 edition	1989–1999 difference
Windows:			
Aluminum Framed, Operable	0.37 cfm/lon ft	0.4 cfm/ft²	+0.03
Aluminum Framed, Jalousie	1.5 cfm/f2	0.4 cfm/ft²	−1.10
Aluminum Framed, Fixed	0.15 cfm/ft²	0.4 cfm/ft²	+0.25
Vinyl Framed	0.06 cfm/ft²	0.4 cfm/ft²	+0.34
Wood Framed, Residential	0.37 cfm/ft²	0.4 cfm/ft²	+0.03
Wood Framed, Light Commercial	0.25 cfm/ft²	0.4 cfm/ft²	+0.15
Wood Framed, Heavy Commercial	0.15 cfm/ft²	0.4 cfm/ft²	+0.25
Skylights	0.05 cfm/ft²	0.4 cfm/ft²	+0.35
Doors:			
Aluminum Sliding	0.37 cfm/ft²	0.4 cfm/ft²	+0.03
Vinyl Sliding	0.37 cfm/ft²	0.4 cfm/ft²	+0.03
Wooden, Residential	0.34 cfm/ft²	0.4 cfm/ft²	+0.06
Wooden, Light Commercial	0.25 cfm/ft²	0.4 cfm/ft²	+0.15
Wooden, Heavy Commercial	0.10 cfm/ft²	0.4 cfm/ft²	+0.30
Commercial Entrance, glazed	1.25 cfm/ft²	1.0 cfm/ft²	−0.25
Commercial Entrance, opaque	1.25 cfm/f2	0.4 cfm/ft²	−0.85
Residential Swinging	0.50 cfm/ft²	0.4 cfm/ft²	−0.10
Aluminum Wall Sections	0.06 cfm/ft²	Not covered	+

The impact of these changes on energy efficiency is hard to evaluate. Air leakage requirements for windows are less stringent for six window types and more stringent in one window type in the 1999 edition. Skylight requirements are more stringent in the 1999 edition than in the 1989 edition. Doors are more stringent for three types and less stringent for five other types, in the 1999 edition. Jalousie windows are not a predominate window type in commercial construction, but there has been a significant increase in allowed leakage rate for other window types under the 1999 edition. Therefore, the overall impact in comparing the requirements for window air leakage is a reduction in stringency.

For doors, there are significant increased leakage rates for wooden doors and slight increased leakage for sliding doors. However for the categories of "Commercial entrance doors" and for "All other commercial doors," there are expected to be significant reductions in allowed leakage. Because of the predominance of commercial steel doors in the latter category, we believe door air leakage requirements are more stringent in the 1999 edition.

The 1999 edition does include additional requirements for loading dock weather seals in colder climates (greater than 3,600 heating degree days, base 65 degrees Fahrenheit) and also a requirement for vestibules in commercial building entrance doors. Vestibules are not required in climates of less than 1,800 heating degree days, base 65 degrees Fahrenheit; in buildings of less than four stories; where doors open directly from a dwelling unit; where doors open directly from a space less than 3,000 square feet in area; in buildings entrances with revolving doors; and where doors are used primarily to facilitate vehicular movement or material handling and adjacent personnel doors. These requirements are not present in the1989 edition. The combination of the more stringent requirements for "commercial" doors and loading dock and vestibule requirements should improve energy efficiency in buildings where they are required.

We would expect there to be fewer doors than windows in most commercial buildings. We therefore expect an overall decrease in stringency due to air leakage under the 1999 edition.

2. Insulation Installation

The 1999 edition requires that insulation be installed in substantial contact with the inside surface of cavities. It also requires that lighting fixtures, heating, ventilating, and air-conditioning, and other equipment not be recessed in such a manner as to affect the insulation performance. Finally, the 1999 edition bans installation of insulation on suspended ceilings with

removable ceiling panels. The 1989 edition does not address this subject at all. These 1999 edition insulation installation requirements are expected to save energy in commercial buildings.

3. Allowance for Speculative Buildings

Buildings constructed on speculation that they will be leased or occupied by as yet unknown occupants are referred to as "speculative" buildings in the 1999 edition. Speculative buildings are upgrade to the envelope efficiency if the building use changes to a more demanding occupancy (such as office space). We believe that under the 1999 edition the transition from a semi-heated space (such as the conversion of a warehouse heated for freeze protection only to a conditioned space for other use such as office) would entail the addition of heating capacity, and likely cooling capacity in most climates.

Similarly, changes in lighting would

for cold climates with more than 15,000 heating degree days, base 65 degrees Fahrenheit. The 1999 edition addresses these cold climates in three bins, or groupings of ranges of degree days, that are slightly different from the 1989 edition. These three bins include criteria for buildings in climates with heating degree day, base 65 degrees Fahrenheit between 12,601 and 16,200 (bin 24), between 16,201 and 19,800

required skylight U-factor. On the other hand, the total area of skylight that can be installed is less in the 1999 edition. In other words, the 1999 edition has greater restriction on the total roof area in skylights, but does allow skylights with a higher U-factor to be used. This essentially allows the user of the 1999 edition to put in a smaller amount of less efficient skylight than the 1989 edition.

The 1989 edition does not have any

gain. The 1999 edition does include specific solar heat gain coefficient requirements for skylights. Solar heat gain coefficient values for glass skylights range from 0.16 in very warm climates to "No Requirement" in very cold climates. Implicit in the1989 edition's thermal transmittance requirements, however, are SHGC values associated with the required glass. With required U-factors at 0.7 and 0.52 for skylights, skylights would have

double pane and double low-emissivity glazing. Such construction would have solar heat gain coefficient values of 0.68 and 0.59. Using this logic, a comparison of skylight solar heat gain coefficient values is constructed in Table 9. Values are taken for five percent of the roof area in skylights, as this is the maximum prescriptive level in the 1999 edition. The upper range of solar heat gain coefficient values in the 1999 edition column is for cooler climates within

removable ceiling panels. The 1989 edition does not address this subject at all. These 1999 edition insulation installation requirements are expected to save energy in commercial buildings.

3. Allowance for Speculative Buildings

Buildings constructed on speculation that they will be leased or occupied by as yet unknown occupants are referred to as "speculative" buildings in the 1999 edition. Speculative buildings are often designed and the envelope constructed prior to the final occupancy being known. Both the 1989 and 1999 editions cover this issue, albeit in somewhat different fashion. The 1989 edition sets the most stringent envelope requirements likely to be encountered to be installed in the building from the start, while the 1999 edition allows a less stringent envelope to be installed to accommodate a less demanding occupancy (such as a semi-heated warehouse), but then requires an upgrade to the envelope efficiency if the building use changes to a more demanding occupancy (such as office space). We believe that under the 1999 edition the transition from a semi-heated space (such as the conversion of a warehouse heated for freeze protection only to a conditioned space for other use such as office) would entail the addition of heating capacity, and likely cooling capacity in most climates. Similarly, changes in lighting would likely occur. Building inspections would normally be required which would trigger a review of energy code requirements. While these approaches differ, we do not believe the difference will impact the overall energy use of commercial buildings.

4. Envelope Thermal Transmittance in Cold Climates

The 1989 edition has an explicit set of requirements for the building envelope (wall, roof, and fenestration) for cold climates with more than 15,000 heating degree days, base 65 degrees Fahrenheit. The 1999 edition addresses these cold climates in three bins, or groupings of ranges of degree days, that are slightly different from the 1989 edition. These three bins include criteria for buildings in climates with heating degree day, base 65 degrees Fahrenheit between 12,601 and 16,200 (bin 24), between 16,201 and 19,800 (bin 25) and more than 19,801 (bin 26). The envelope criteria vary with differences in construction (see Table 7). The U-factor requirements in the 1999 edition are generally less stringent. However, the only U.S. climate in the 1989 or 1999 edition's weather data that would fall under the "cold climate" requirements would be Barrow Alaska. Thus we expect any impact to be negligible because of the small amount of construction in Barrow and similar smaller cold climate communities.

TABLE 7.—DIFFERENCES IN BUILDING ENVELOPE THERMAL REQUIREMENTS IN COLD CLIMATES BETWEEN THE 1989 AND 1999 EDITIONS

Envelope element	1989 edition cold climate (>15,000 HDD65) requirements	1999 Edition bin 25 (16,201–19,800 HDD65) requirements
Opaque Wall	U–0.053 for large buildings U–0.040 for small buildings	U–0.045 to 0.071, depending on type of wall.
Fenestration	U–0.52 (for window to wall ratios of less than 0.2 for large buildings and 0.15 for small buildings).	U–0.43, for the corresponding WWR values.
Roof	U–0.024	U–0.027 to 0.049, depending on type of roof.
Floor Over Unconditioned Space	U–0.023	U–0.033 to 0.064, depending on type of floor.
Slab on Grade Insulation	R–15 for 48 inches	R–15, for 24 inches.
Skylight	Not allowed	U–0.95.

5. Skylight Thermal Transmittance and Solar Heat Gain

For buildings whose overall roof U-factor, including skylights, is less than the 1989 edition's requirements, no separate skylight requirements must be met. For buildings that cannot meet this requirement, the 1989 edition contains skylight thermal transmittance requirements that are a function of heating degree days, base 65 degrees Fahrenheit, as well as provides credit toward the overall roof U-factor requirement, where lighting controls are used to reduce lighting consumption. The 1999 edition has separate requirements for glass skylights with curbs, plastic skylights with curbs, and skylights without curbs, which vary by climate bin. The least stringent of these are for glass skylights with curbs. The 1999 edition provides no envelope credits for using lighting controls in conjunction with skylights. A comparison of the 1989 and 1999 editions' U-factor requirements is shown in Table 8. The original 1989 edition had U-factors based on center of window measurements. The 1999 edition has U-factors based on whole window measurements. We used U-factors based on whole window measurements which are incorporated in Addenda F to the 1989 edition, for an accurate comparison.

TABLE 8.—COMPARISON OF SKYLIGHT U-FACTOR REQUIREMENTS IN THE 1989 AND 1999 EDITIONS

Climates with:	1989 edition	1999 edition
HDD65 <8000	U–0.7	U–1.17 to 1.96 (glass).
HDD65 ≥8000	U–0.52	U–0.88 to 1.17 (glass).
Skylight curbs all climates	U–0.21	Included in U-factor for skylights with curbs.

Furthermore, the 1989 edition limits the maximum allowable percent of skylight area, based on skylight visible light transmittance, number of heating degree days, base 65 degrees Fahrenheit, number of cooling degree hours, base 80 degrees Fahrenheit, foot candle level, and interior lighting power density. The allowable percent of roof area in skylight ranges from about 2 percent to 12 percent for specific combinations. The 1999 edition limits skylights to 5 percent of roof area.

The 1989 edition is more stringent than the 1999 edition in terms of

required skylight U-factor. On the other hand, the total area of skylight that can be installed is less in the 1999 edition. In other words, the 1999 edition has greater restriction on the total roof area in skylights, but does allow skylights with a higher U-factor to be used. This essentially allows the user of the 1999 edition to put in a smaller amount of less efficient skylight than the 1989 edition.

The 1989 edition does not have any requirements for skylight solar heat gain. The 1999 edition does include specific solar heat gain coefficient requirements for skylights. Solar heat gain coefficient values for glass skylights range from 0.16 in very warm climates to "No Requirement" in very cold climates. Implicit in the1989 edition's thermal transmittance requirements, however, are SHGC values associated with the required glass. With required U-factors at 0.7 and 0.52 for skylights, skylights would have to be constructed with glazing similar to double pane and double low-emissivity glazing. Such construction would have solar heat gain coefficient values of 0.68 and 0.59. Using this logic, a comparison of skylight solar heat gain coefficient values is constructed in Table 9. Values are taken for five percent of the roof area in skylights, as this is the maximum prescriptive level in the 1999 edition. The upper range of solar heat gain coefficient values in the 1999 edition column is for cooler climates within each range.

TABLE 9.—COMPARISON OF SOLAR HEAT GAIN COEFFICIENTS IN THE 1989 AND 1999 EDITIONS

Climates with:	1989 edition SHGC	1999 edition SHGC
HDD65 ≤7,500	0.68	0.16 to 0.62.
HDD65 ≥7,500 <10,801	0.59	0.36 to 0.64.
HDD65 >10,801	0.59	No requirement.

The 1999 edition solar heat gain coefficient requirement is more stringent for virtually all locations in the US. The 1989 edition does have lower solar heat gain coefficient requirements in very cold climates, but since solar gain is a net benefit in these climates, restricting solar gain provides no benefit.

The lack of data on the amount of skylight in various parts of the country makes it inappropriate for us to reach a conclusion as to the net impacts of these changes.

6. Slab-On-Grade and Below Grade Wall Insulation

Slab-on-grade insulation requirements are nonexistent in both editions in warm climates. For cooler climates, the 1989 edition requires between R–7 and R–8 for vertical insulation, extended 24 inches deep, whereas there are effectively no requirements for slab insulation in the 1999 edition in the continental U.S. For heated slabs, the 1989 edition requires an additional insulation level of R–2, to that required for unheated slabs, in all cases. For below grade walls, the 1989 edition requires insulation levels from R–7 to R–16, for the first story below grade, depending on location. Whereas there are effectively no requirements for below grade wall insulation in the 1999 edition, until above 9,000 heating degree days, base 65 degrees Fahrenheit (much of Alaska and some northern Minnesota locations). The reduction of slab-on-grade and below grade wall insulation requirements in the 1999 edition will result in higher heating loads in cold climates, particularly for small buildings, resulting in more energy use. While a reduction in stringency, the impact of the removal of below grade or slab wall insulation is tempered by the insulating effect of the surrounding earth, relative to removing insulation from envelope components exposed to the air and sun (such as walls and roofs).

7. Roof Thermal Transmittance

We looked at roof thermal transmittance requirements first by estimating the building footprint area (assumed to approximate the roof area) by dividing the floor area by the number of floors for each building type. We then applied the Commercial Building Energy Consumption Survey statistical weights to each building type, to develop a table of the estimated roof area. This was done for each roof surface type classification for each of the 18 building use classifications in the 1992 Commercial Building Energy Consumption Survey. There are 17 Commercial Building Energy Consumption Survey roof surface classifications, which were aggregated into the three roof types in the 1999 standard as shown in Table 10, below. Where a significant fraction of a particular roof surface classification could be divided into one or more construction categories, estimates were made of the relative percentage in each category and are shown in parentheses in Table 10. Finally, the fraction of estimated roof area for each roof construction is shown for non-residential, semi-heated, and residential space types.

TABLE 10.—ESTIMATED ROOF AREA FRACTIONS BY 1999 EDITION ROOF CONSTRUCTION CATEGORY

1999 edition room construction	CBECS 1992 roof surface classifications	Estimated roof area fraction (in percent)		
		Non-residential	Semi-heated [a]	Residential [b]
Insulation Entirely Above Deck	Built-up, Built-up & metal, Built-up & s/m ply, Composite, Foam/Styrofoam, Single/multiple ply (33%), Shingles & built-up (50%).	50.2	45.9	45.6
Metal Building	Metal/Rubber (80%), Metal Surfacing (80%), Single/multiple ply (33%).	16.5	32.9	4.9

TABLE 10.—ESTIMATED ROOF AREA FRACTIONS BY 1999 EDITION ROOF CONSTRUCTION CATEGORY—Continued

1999 edition room construction	CBECS 1992 roof surface classifications	Estimated roof area fraction (in percent)		
		Non-residential	Semi-heated [a]	Residential [b]
Attic and Other	Concrete Roof, Metal/Rubber (20&), Metal Surfacing (20%), Other (specify), Shingles & metal, Shingles & s/m ply, Shingles (not wood), Single/multiple ply (33%), Shingles & built-up (50%), Slate & shingles, Slate or tile, Wooden materials.	33.3	21.2	49.4

TABLE 12.—COMPARISON OF FLOOR OVER UNCONDITIONED SPACE U-FACTOR CRITERIA IN THE 1989 AND 1999 EDITIONS

City	1989 edition all floors	1999 edition						1989–1999 difference		
		Non-residential			Semi-heated			Non-residential		
		Wood frame & other	Steel joists	Mass	Wood frame & other	Steel joists	Mass	Wood frame & other	Steel joists	Mass
Orlando	0.28	No requirement			No requirement			0.280		
Phoenix	0.19	0.051	0.052	0.137	No requirement			0.139	0.138	0.053

TABLE 10.—ESTIMATED ROOF AREA FRACTIONS BY 1999 EDITION ROOF CONSTRUCTION CATEGORY—Continued

1989 edition room construction	CBECS 1992 roof surface classifications	Estimated roof area fraction (in percent)		
		Non-residential	Semi-heated [a]	Residential [b]
Attic and Other	Concrete Roof, Metal/Rubber (20&), Metal Surfacing (20%), Other (specify), Shingles & metal, Shingles & a/m ply, Shingles (not wood), Single/multiple ply (33%), Shingles & built-up (50%), Slate & shingles, Slate or tile, Wooden materials.	33.3	21.2	49.4

[a] Non-refrigerated warehouse assumed.
[b] Lodging buildings only.

Metal surfacing (about 13% of floor area) can be considered part of a metal building roof or a roof with metal joists (big box buildings such as Walmarts). The 80/20 split here allocates most of these surfaces to metal buildings which are the more prevalent class of new commercial construction. The shingles/slate, tile/wooden materials, are likely to be in place on roofs with attics or single rafter roofs, because they rely on roof pitch to shed water. The remaining categories cover a variety of combinations of materials, mainly synthetic/rubber surfaces. Some of these may be flat roofs, but they could be metal joists roofs or deck roofs. We allocated these evenly over the 1999 edition's roof construction categories.

The fractions of roof types estimated were used to weight the required U-factors from the 1999 edition for each climate and for each category of building, non-residential, semi-heated, and residential.

The results shown in Table 11 suggest that for most non-residential buildings, the 1999 edition has more stringent roof U-factor requirements in warm to mild climates (significantly so in Knoxville and Los Angeles, moderately so in Orlando, Seattle, and Shreveport, and slightly so in Fresno). It is slightly less stringent in the cooler climates of Denver, Detroit, and Providence, and is significantly less stringent in Minneapolis and Phoenix. Overall, we expect a slight increase in heating energy use and slight decrease in cooling energy use for most non-residential buildings from these requirements.

The semi-heated building category in the 1999 edition shows a substantial increase in average U-factor for all buildings, which is expected to result in increased energy use due to increased heating loads for these buildings.

A comparison of the requirements for the residential space category in the 1999 edition shows a reduction in U-factor (increase in stringency) for all climates except Los Angeles, which shows a substantial increase in U-factor (decrease in stringency).

Overall, it is expected that the changes in U-factor requirements in the 1999 edition will result in some increase in heating energy use, primarily as a result of the significant changes in requirements for semi-heated spaces. It is expected that it will also result in some decrease in cooling energy use in most (but not all climates).

TABLE 11.—AVERAGE ROOF U-FACTOR REQUIRED

City	1989 edition	1999 edition			Change 1989–1999 Non-res [1]
		Non-res	Semi-heated	Residential	
Denver	0.051	0.054	0.123	0.045	−0.003
Detroit	0.053	0.054	0.123	0.045	−0.001
Fresno	0.059	0.054	0.172	0.045	0.005
Knoxville	0.110	0.054	0.149	0.045	0.056
Los Angeles	0.100	0.070	0.202	0.200	0.030
Minneapolis	0.045	0.051	0.123	0.045	−0.006
Orlando	0.063	0.054	1.140	0.045	0.009
Phoenix	0.046	0.054	0.172	0.045	−0.008
Providence	0.053	0.054	0.123	0.045	−0.001
Seattle	0.064	0.054	0.149	0.049	0.010
Shreveport	0.066	0.054	0.172	0.045	0.012

[1] Negative U-factors indicate decreased stringency.

8. Floors Over Unconditioned Spaces

For each climate, the 1989 edition provides a single prescriptive U-factor for floors, while the 1999 edition provides nine possible U-factors (or R-values) depending on building type and floor type. The range of requirements for the 1999 edition addresses wood framed, steel framed, and mass (concrete) floor construction separately. Typically, wood framed floors have the lowest (most stringent) U-factor requirement, while mass floors have the highest (least stringent) U-factor. The 1999 edition is typically more stringent for wood framed and steel framed floors, and less stringent for mass floors in nonresidential (and residential) buildings. The 1999 edition is less stringent for semi-heated buildings. See Table 12.

TABLE 12.—COMPARISON OF FLOOR OVER UNCONDITIONED SPACE U-FACTOR CRITERIA IN THE 1989 AND 1999 EDITIONS

City	1989 edition all floors	1999 edition						1989–1999 difference		
		Non-residential			Semi-heated			Non-residential		
		Wood frame & other	Steel joists	Mass	Wood frame & other	Steel joists	Mass	Wood frame & other	Steel joists	Mass
Orlando	0.28	No requirement			No requirement			0.280		
Phoenix	0.19	0.051	0.052	0.137	No requirement			0.139	0.138	0.053
Los Angeles	0.17							0.119	0.118	0.033
Shreveport	0.11							0.059	0.058	−0.027
Fresno	0.10							0.049	0.048	0.037
Knoxville	0.074	0.051	0.052	0.107	0.660	0.069	0.322	0.023	0.022	−0.033
Seattle	0.056							0.050	0.004	−0.051
Denver	0.049	0.033	0.052	0.087	0.066	0.069	0.322	0.016	−0.003	−0.038
Detroit	0.048							0.015	−0.004	−0.039
Providence	0.048							0.015	−0.004	−0.039
Minneapolis	0.040							0.007	−0.012	−0.047

9. Opaque Wall Thermal Transmittance

The 1989 edition provides a single prescriptive U-factor for lightweight walls and a range of possible U-factors for mass walls (depending on thermal mass, percent fenestration, and internal load density), while the 1999 edition provides 12 possible U-factors (or R-values) depending on building type and wall construction. The maximum thermal transmittance requirements for mass walls in the 1999 edition generally fall within the range of allowable values in the 1989 edition, except for semi-heated buildings where in all cases the 1999 criteria are less stringent. However, since buildings in the semi-heated category are expected to have relatively low heating loads (due to the low internal temperature and limited heating capacity) and no cooling loads, the reduction in stringency is expected to have a minimal impact.

The difference in criteria for lightweight walls between the 1989 and 1999 editions varies, with some wall types being more stringent in some locations and other less stringent. In general, wood framed wall requirements in the 1999 edition are most likely to be more stringent than corresponding requirements in the 1989 edition.

To compare requirements for mass walls in the1989 edition, we used the Alternate Component Packages tables to determine U-factor requirements for 8 inch solid concrete and solid grouted concrete block mass walls (Heat Capacity > 15 Btu/ft\2\-F) as well as for 8 inch unfilled or insulated concrete block walls (10 Btu/ft\2\-F < Heat Capacity < 15 Btu/ft\2\-F). We did this for insulation on the inside of the wall; integral with the wall; and on the outside of the wall, under each of the three internal load density (ILD) ranges in the Alternate Component Packages tables. This was done for the 11 locations and for 18 percent and 38 percent window to wall area ratios. The requirements used were based on interpolation across the tabulated fenestration levels. For each internal load density range, we averaged together all calculated U-factor requirements. These results are shown in Table 13. In addition, we show the 1999 edition's U-factor requirements by that edition's three space-type categories (non-residential, residential, and semi-heated).

TABLE 13.—MASS WALL REQUIREMENTS COMPARISON

Location	1989 edition mass wall requirements			1999 edition mass wall requirements			U-Factor difference		
	Interior load density			Non-residential	Residential	Semi-heated	Non-residential	Non-residential [a]	Residential [b]
	Low	Medium	High						
ORL	0.624	0.649	0.636	0.58	0.151	0.58	−0.062	−0.473	−0.044
PHX	0.404	0.403	0.400	0.58	0.151	0.58	0.179	−0.253	0.176
LOS	0.737	0.791	0.793	0.58	0.151	0.58	−0.212	−0.586	−0.157
SHR	0.301	0.327	0.328	0.58	0.123	0.58	0.252	−0.178	0.279
FRS	0.293	0.307	0.311	0.58	0.151	0.58	0.271	−0.142	0.287
KNX	0.166	0.185	0.188	0.151	0.104	0.58	−0.036	−0.062	0.414
SEA	0.123	0.140	0.147	0.151	0.104	0.58	0.007	−0.019	0.458
DET	0.100	0.107	0.109	0.123	0.09	0.58	0.015	−0.010	0.480
DEN	0.131	0.144	0.144	0.123	0.09	0.58	−0.021	−0.041	0.449
PRV	0.100	0.107	0.109	0.123	0.09	0.58	0.015	−0.010	0.480
MNP	0.078	0.087	0.088	0.104	0.09	0.58	0.017	0.012	0.502

[a] Non-Residential versus average of Medium and High Interior Load Density cases.

[b] Residential versus Low Interior Load Density case.
[c] Semi-heated versus Low Interior Load Density case.

The difference in required U-factors for typical buildings is also shown in Table 13. For this comparison, we have assumed that most non-residential buildings in the 1999 edition would fall into either the medium or high interior load density ranges of the 1989 edition. The average U-factor for both of these

high percentages of window area (typically greater than 50 percent).

For our analysis, we assumed the mid-internal gain range of the ACP tables (1.51–3.00 W/ft²) as being typical of the non-residential building loads, and the low-internal gain range of the ACP tables (0.0–1.5 W/ft²) as

and non-swinging doors, with requirements ranging from a U-factor of 0.5 (for both door types in cold climates) to 1.45 for uninsulated doors of both types. An insulated metal door or a solid wood door requires a U-factor of 0.5. Glass doors that are more than one-half glass are considered to be

engineering professionals, could have a significant impact on smaller commercial buildings, especially design-build facilities. The inclusion of explicit maximum safety factors in the 1989 standard recognizes the tendency for much larger values to be used by system designers. The exclusion of such factors in the 1999 standard has the potential for significantly oversizing equipment, resulting in operating inefficiency.

will limit reheating and recooling done by separate systems, which will provide improved efficiency over the 1989 edition.

4. Off-Hour Controls and Setback

The 1999 edition requirements for off-hour controls are limited to systems with heating or cooling capacity greater than 65,000 Btu per hour and fan system power greater than ¾ horsepower. The requirement for off-hour controls in the

exhaust systems less than or equal to 3,000 cubic feet per minute, in warm climates (less than or equal to 3,000 heating degree days, base 65 degrees Fahrenheit). Overall, the 1999 edition is considerably more stringent for large systems, but is less stringent for small systems in climates above 3,000 heating degree days, base 65 degrees Fahrenheit.

6. Humidity Control

The 1989 edition had a requirement

[b] Residential versus Low Interior Load Density case.
[c] Semi-heated versus Low Interior Load Density case.

The difference in required U-factors for typical buildings is also shown in Table 13. For this comparison, we have assumed that most non-residential buildings in the 1999 edition would fall into either the medium or high interior load density ranges of the 1989 edition. The average U-factor for both of these interior load density ranges was used in the comparison. Most residential buildings would fall into the low interior load density range of the 1989 edition. Most semi-heated building spaces (assumed to be similar to warehouse buildings) would likely fall under the low interior load density range of the 1989 edition. As can be seen from the table, the requirements of the 1999 edition are more stringent for residential buildings, in almost all climates. This is particularly so in moderate to warm climates. The 1999 edition is considerably less stringent for semi-heated buildings in all but Orlando and Los Angeles, where heating losses are not expected to be significant. The 1999 edition is generally less stringent for non-residential construction in moderate to warm climates and slightly less stringent for cool or cold climates. Overall, it is expected that the reduced U-factor requirements for mass walls in the non-residential and semi-heated category will result in increased heating energy use over the 90.1–1989 mass wall requirements.

10. Window Thermal Transmittance and Solar Heat Gain

The 1989 edition does not specifically provide a prescriptive approach to window thermal transmittance or solar heat gain, but rather treats windows as a component of the building wall, where the wall must have certain overall heating and cooling performance to show compliance. However, the ACP (Alternate Component Packages) tables, which set out prescriptive requirements for the building envelope, provide tables of maximum percentage of wall glazing as a function of window U-factor, shading coefficient, projection factor, and building internal gains. The 1999 edition, by contrast, provides prescriptive U-factor requirements and Solar Heat Gain Coefficient requirements for particular combinations of percentage of glazing and building category (non-residential, residential, semi-heated), simplifying use and enforcement. Both editions require the use of an energy tradeoff methodology for buildings with very high percentages of window area (typically greater than 50 percent).

For our analysis, we assumed the mid-internal gain range of the ACP tables (1.51–3.00 W/ft^2) as being typical of the non-residential building loads, and the low-internal gain range of the ACP tables (0.0–1.5 W/ft^2) as being typical of semi-heated buildings such as warehouses. For residential space types such as hotels and hospitals, we assumed either low-or mid-internal gain ranges of the ACP tables could be appropriate in the 1989 edition. For multi-family high rise buildings we assumed low-internal gain ranges.

For these typical levels of internal gains, the requirements for window thermal transmittance in residential and non-residential buildings are very similar in both editions. The 1989 edition is somewhat more stringent in cold climates in buildings with a high percentage of glazing. The 1999 edition is marginally more stringent in the rest of the country. For semi-heated buildings, the requirements in the 1999 edition are less stringent, except for in warm climates where both editions require single pane glass.

Window solar heat gain requirements in the 1999 edition are typically more stringent in buildings with lower glazing areas (less than 30 percent), but often less stringent in buildings with higher glazing areas (38 percent or 45 percent). Maximum solar heat gain requirements do not exist for semi-heated buildings in the 1999 edition. However, limiting solar heat gain does not reduce energy use for a building that is only heated.

For windows with northern orientations, the 1999 edition generally allows greater solar heat gain per window area than the 1989 edition. A review of six of the seven building types (not including warehouse buildings which are commonly semiheated buildings) in the quantitative analysis suggested that approximately 73% of the floor area of these buildings would be in buildings with glazing fractions of less than 30%. This suggests that overall, the 1999 edition is more energy efficient in reducing solar heat gain in most buildings. It is somewhat less efficient with regard to window thermal transmittanco, particularly in cold climates.

11. Opaque Doors

The 1999 edition contains explicit U-factor requirements for both swinging and non-swinging doors, with requirements ranging from a U-factor of 0.5 (for both door types in cold climates) to 1.45 for uninsulated doors of both types. An insulated metal door or a solid wood door requires a U-factor of 0.5. Glass doors that are more than one-half glass are considered to be equivalent to vertical fenestration and would need to meet vertical glazing requirements. The 1989 edition does not explicitly deal with either opaque or glazed doors, but instead treats them as part of the overall wall requirement. Opaque doors are part of the opaque wall, glass doors are part of the glazed area. Since the required thermal performance of opaque doors in the 1999 edition is generally worse than that of the surrounding opaque wall area, and the opaque door requirements are included in the overall wall requirements of the 1989 edition, the requirements of the 1999 edition are less stringent. Doors represent a small percentage of the wall area of multistory buildings. They also represent a fairly small percentage of the wall area of many large single story buildings. Most commercial entrance doors are glazed, reducing the impact of the difference in opaque door requirements. We therefore conclude that the energy impact of this change is likely to be small for most buildings. However, in individual buildings with a significant number of doors, such as some warehouses, the impact may be significant.

C. Mechanical Equipment and Systems

1. Load Calculations and Sizing

The 1999 edition has no explicit sizing requirements for heating ventilation and air-conditioning systems. The1989 edition requires the use of a computational procedure for load calculations, and it details selection of indoor and outdoor design temperature, the use of Standard 62–89 for minimum ventilation, and a selection of allowed sources for internal gain data. The 1989 edition also explicitly allows a ten percent safety factor for steady-state design loads and additional 30 percent and ten percent multipliers beyond that to account for heating and cooling pick-up loads. However, these additional parameters represent typical values or sources for sizing calculation data. The omission of explicit sizing requirements for heating ventilation and air-conditioning systems, while unlikely to have much impact on large commercial buildings, which are typically designed by

engineering professionals, could have a significant impact on smaller commercial buildings, especially design-build facilities. The inclusion of explicit maximum safety factors in the 1989 standard recognizes the tendency for much larger values to be used by system designers. The exclusion of such factors in the 1999 standard has the potential for significantly oversizing equipment, resulting in operating inefficiency.

2. Separate Air Distribution Systems

The 1989 edition requires that zones with special process, temperature, and/or humidity requirements, either be served by air distribution systems separate from those used to satisfy zones conditioned for comfort only, or have provisions to allow control for comfort conditioning only. An exception to this allows up to 25 percent of the air flow serving primarily process systems to be directed for comfort cooling only needs with no system design modification. This exception might be used for office space in an industrial facility. This requirement provides the ability to operate the primary heating ventilation and air-conditioning systems for comfort conditioning only when processes are not operating. The 1999 edition has no requirements explicitly for systems and equipment used for process applications. However, where systems would also serve spaces conditioned for comfort only, the equipment and system requirements of the 1999 edition would apply. In particular, requirements referring to zone isolation, dehumidification, and simultaneous heating and cooling would address most of the issues addressed by the separate air distribution system requirement in the 1989 edition. This will result in a minor reduction in stringency in a limited number of buildings.

3. Temperature Controls

The 1999 edition has an additional requirement that all zone and loop controllers shall incorporate control error correction. In addition, it explicitly requires a set point overlap restriction when the heating and cooling to a zone are controlled by separate thermostats within that zone. In the 1989 edition, it is not clear whether individual thermostats are required that control both heating and cooling to a 5 degree Fahrenheit deadband, or whether it means that the space should be controlled to provide a 5 degree Fahrenheit deadband. The additional requirements make the 1999 edition clearer as to the requirements and better at controlling room temperature and will limit reheating and recooling done by separate systems, which will provide improved efficiency over the 1989 edition.

4. Off-Hour Controls and Setback

The 1999 edition requirements for off-hour controls are limited to systems with heating or cooling capacity greater than 65,000 Btu per hour and fan system power greater than ¾ horsepower. The requirement for off-hour controls in the 1989 edition are for systems greater than two kilowatts. Exceptions are also made for heating ventilation and air-conditioning systems serving hotel or motel guest rooms. In these cases the 1999 edition is less stringent. However, the optimum start controls required in the 1999 edition for large systems, should reduce the number of hours needed to bring the building to operating temperature.

The 1989 edition allows either independent shut-off controls or setback controls to reduce heating and cooling to the zone. The 1999 edition requires automatic shutoff controls for the supply of conditioned air, outside air, and exhaust air to each independent isolation area, as well as automatic shutdown controls. However, it specifically allows substitution of a system air flow reduction in the non-occupied zones, but limits the total volume of air to those zones to 14 percent of the system airflow. The 1999 edition, by requiring maximum setback air volumes, has explicit, and therefore more stringent, off-hour requirements. These would be achieved by simple thermostat setback. Both editions incorporate different exceptions to these off-hour requirements for multi-zone systems. Our limited data on commercial building multi-zone systems and operating schedules is insufficient to evaluate these exceptions.

5. Dampers

The 1999 edition requires motorized dampers in stair and elevator shafts and in all outdoor air supply exhaust hoods, vents, and ventilators. Gravity dampers are acceptable on buildings less than three stories and of any height in buildings in climates with less than 2,700 heating degree days, base 65 degrees Fahrenheit. These damper performance requirements are more stringent than similar requirements in the 1989 edition. However, the requirements in the 1999 edition pertain to fewer systems (only to systems larger than 65,000 Btu per hour). The 1989 edition requires dampers (motorized or gravity) or other means of volume shut-off or reduction. It exempts supply and exhaust systems less than or equal to 3,000 cubic feet per minute, in warm climates (less than or equal to 3,000 heating degree days, base 65 degrees Fahrenheit). Overall, the 1999 edition is considerably more stringent for large systems, but is less stringent for small systems in climates above 3,000 heating degree days, base 65 degrees Fahrenheit.

6. Humidity Control

The 1989 edition had a requirement that any humidity control device (humidistat) be capable of limiting the use of fossil fuel or electric energy to provide relative humidities of greater than 30 percent or less than 60 percent. This range limit setpoint requirement for zone humidification is not included in the 1999 edition. Instead a requirement for having the capability to prevent simultaneous humidification or dehumidification was added, with an exception for zones with tight humidity requirements, approved by local authorities, or for desiccant systems used in series with evaporative cooling. Minimum impact is expected from this change as both editions effectively require systems with both humidification and dehumidification to have the controls to limit possible waste of energy that would result from simultaneous humidification and dehumidification.

7. Radiant Heating

The title, purpose, and scope of the 1989 edition do not include unenclosed spaces, and has no requirements for heating such spaces. Hence, warm air heating systems may be used. By specifically including such spaces as loading docks without air curtains in the 1999 edition's title, purpose, and scope, and requiring radiant heating systems (excluding warm air systems), energy will be saved by requiring more efficient systems for that application.

8. Ventilation

The 1989 edition requires ventilation systems be designed capable of providing the ventilation levels prescribed in Standard 62–1989. The 1989 edition did not set the ventilation rate, but rather specified a minimum operational ventilation rate the system must be designed to provide. Operation of a system at higher or lower ventilation rates is allowed under the 1989 edition. The 1999 edition omits these requirements. No savings or loss in efficiency should occur from this specific change.

Further, the new requirements in the 1999 edition for automatic ventilation controls for high occupancy areas make the 1999 edition more stringent than the

1989 edition and should provide some energy savings.

9. Pipe and Duct Insulation

The 1999 edition has slightly less stringent pipe insulation requirements than the 1989 edition for most building applications. The 1999 edition does not require insulation of piping unions in heating systems or hot water piping between the shutoff valve and coil (up to 4 feet of pipe), in conditioned spaces 1989 edition restricts its use for seal class C above 1 inch. Research is ongoing regarding the impact of this, however, we believe that there is a potential reduction in energy efficiency with the 1999 edition.

10. Heat Recovery

New requirements in the 1999 edition for exhaust air heat recovery for systems of 5,000 cubic feet per minute or greater with 70 percent or greater outside air cooling systems in the same zone. Similarly, exceptions are provided for both editions regarding: (1) Zones with special pressurization or cross-contamination requirements; (2) zones where at least 75 percent of the reheat energy is provided from a site-recovered or site-solar source; and (3) where the reheated volume of supply air to a zone is no greater than the maximum of several defined limits. However, the

motors that are ten horsepower and above. The 1999 edition also has more stringent unloading requirements for variable air volume fans. The 1999 edition places those requirements on variable air volume systems of 30 horsepower and above, as compared to variable air volume systems of 75 horsepower and above, as specified in the 1989 edition. Both the constant volume and variable volume fan power requirements will be extended to far

The 1999 edition requires reset on chilled and hot water temperature controls used for heating ventilation and air-conditioning systems more than 300,000 Btu per hour design capacity. Direct energy savings are expected from the reset of the supply water temperature from chiller and boiler, and the air supply temperatures in the system are assumed to follow the water temperature reset. An exception is made for hydronic systems that use variable

the 1989 edition does not (as is the case with absorption and heat rejection equipment for example) increased energy efficiency occurs unless the requirements are set at or below common practice. In these cases, we used ASHRAE's assessment of the minimum performance of the equipment used in common practice as a baseline. A summary of the shipped capacity weighted efficiency improvements across generic product

1989 edition and should provide some energy savings.

9. Pipe and Duct Insulation

The 1999 edition has slightly less stringent pipe insulation requirements than the 1989 edition for most building applications. The 1999 edition does not require insulation of piping unions in heating systems or hot water piping between the shutoff valve and coil (up to 4 feet of pipe), in conditioned spaces. It requires more insulation on higher temperature (> 250 F) piping, and less insulation on lower temperature heating system and service hot water piping. In contrast, the 1989 edition requires more insulation on low temperature cooling system piping. Overall, there appears to be some small reduction in insulation requirements. However, since the piping is insulated under both standards, the incremental reduction in insulation is expected to have minimal impact.

The 1999 edition has significantly less stringent duct insulation requirements for some categories of ducts than the 1989 edition. For cooling only ducts, the 1999 edition requires generally lower insulation levels for ducts located outside the building, and insulation levels at or lower than required in the 1989 edition for most spaces inside the building. The 1999 edition, generally requires higher insulation levels for ventilated attics and for unvented attics with non-insulated attic decks, which can be high temperature areas of the building. It requires no insulation for indirectly conditioned spaces including return air plenums.

For heating only ducts, the 1999 edition requires somewhat less insulation on exterior heating ducts, except in the most extreme heating climates, where it requires more than the 1989 edition. It requires very little insulation on heating-only ductwork located inside the building envelope.

For return ducts located exterior to the building, the 1999 edition requires lower insulation levels than the 1989 edition. The lower duct insulation requirements are likely to be most significant for heating-only ducts in climates where insulation is not required for particular attics or unconditioned spaces. The reduction in the minimum insulation level for cooling only ductwork is significant for central systems that rely on year round cooling availability (such as variable air volume or dual duct systems). Both insulation reductions will decrease energy efficiency of the 1999 edition.

Finally, the 1999 edition does not restrict the use of pressure sensitive tape at seal level C for supply pressures up to 2 inches of pressure, whereas the 1989 edition restricts its use for seal class C above 1 inch. Research is ongoing regarding the impact of this, however, we believe that there is a potential reduction in energy efficiency with the 1999 edition.

10. Heat Recovery

New requirements in the 1999 edition for exhaust air heat recovery for systems of 5,000 cubic feet per minute or greater with 70 percent or greater outside air, will have significant positive impact on energy efficiency in heating ventilation and air-conditioning systems with high outside air requirements. However, the number of buildings that have these systems and that are exempted is significant.

Requirements have also been added that condenser heat recovery be used to provide heating of service hot water for buildings with a combination of continuous operation, high water heating loads (greater than 1,000,000 Btu per hour) and high cooling loads (approximately 400 tons). Primary examples are large hotel facilities. These requirements significantly increase efficiency, but in a relatively small percentage of buildings.

11. Completion Requirements

Both editions have requirements for testing and balancing of heating ventilation and air-conditioning equipment. The 1999 edition requires a written balancing report for zones more than 5,000 square feet in area, as well as requires the ability to measure differential pressure across pumps greater than 10 horsepower in size. For buildings larger than 50,000 square feet conditioned area, detailed commissioning instructions for heating ventilation and air-conditioning systems are required to be provided by the designer in plans and specifications. An exception to this requirement is made for warehouses and semi heated spaces. The more detailed and extensive documentation requirements have the potential to provide long-term energy efficiency beyond what would be expected under the minimum completion requirements of the 1989 edition.

12. Simultaneous Heating and Cooling Controls

The 1989 and 1999 editions have essentially identical text requiring that zone thermostatic and humidistatic controls shall be capable of operating the supply of heating and cooling energy in sequence to prevent reheating, recooling, or mixing of previously heated and cooled air, or other simultaneous operation of heating and cooling systems in the same zone. Similarly, exceptions are provided for both editions regarding: (1) Zones with special pressurization or cross-contamination requirements; (2) zones where at least 75 percent of the reheat energy is provided from a site-recovered or site-solar source; and (3) where the reheated volume of supply air to a zone is no greater than the maximum of several defined limits. However, the 1999 standard provides much more detail regarding the possible characterization of the circumstances under which these exceptions would apply. In the third category, the 1999 edition changes the stipulations to limit the use of most of these maximum-reheated-air exceptions. These changes should result in a reduction in building energy use for many common multi-zone heating ventilation and air-conditioning system designs.

13. Economizer Controls

The 1999 edition requires economizers in fewer locations than the 1989 edition, but requires them in the locations of the country where they are expected to be most beneficial. The 1989 edition requires economizers on 7.5 ton or larger equipment in climates where economizers are required. The 1999 edition uses a sliding scale of economizer requirements. These requirements depend on climate and system size. They range from 65,000 Btu per hour equipment in climates where economizers are most effective to 135,000 Btu per hour where economizers are least effective. In addition, the 1999 edition requires air economizers to be capable of providing 100 percent of the design supply air quantity, versus only 85 percent in the 1989 edition. In addition, the 1999 edition specifies: (1) Allowed economizer control types to maximize economizer savings in specific climates, (2) leakage rates for outside air dampers, and (3) that economizer dampers in multi-zone systems be capable of being sequenced with the mechanical cooling equipment and not be controlled by only mixed air temperature. In general, the 1999 edition attempts to provide more economizer savings where economizers are most beneficial.

14. Fan System Design Criteria

Both editions will result in similar fan power efficiencies. However, the 1999 edition requires the efficiencies be included on motor nameplates, in order to make them more easily inspected. In addition, the 1999 edition places these requirements on fan motors of five horsepower and above, whereas the 1989 edition places requirements on motors that are ten horsepower and above. The 1999 edition also has more stringent unloading requirements for variable air volume fans. The 1999 edition places those requirements on variable air volume systems of 30 horsepower and above, as compared to variable air volume systems of 75 horsepower and above, as specified in the 1989 edition. Both the constant volume and variable volume fan power requirements will be extended to far more system types in the 1999 edition. Overall, there is expected to be a reduction in allowed fan power use in the 1999 edition, particularly for multi-zone systems.

15. Pumping System Design

Both editions require that pumping systems designed for variable flow be designed to allow flow variation down to 50 percent of design flow rates. The 1999 edition also has a requirement that, for systems with more than 100 feet of pumping head and motors greater than 50 horsepower power, consumption at 50 percent flow, be no more than 30 percent of design flow. This will effectively require variable speed pump drives on these large pumping systems. Exceptions are made for pumps less than 75 horsepower where reduction of flow would be below the minimum flow requirements for heating ventilation and air-conditioning equipment and for systems that include no more than three control valves. Significant energy savings will result from application of the 1999 edition in larger pumping systems due to these part-load performance requirements.

16. Temperature Reset Controls

The 1989 edition requires system temperature reset controls on both multi-zone air systems and large, non-variable-flow hedonic systems. These controls shall be capable of providing a reset of at least 25 percent of the design supply to room air temperature difference, with some exceptions, most notably for low zone flow rates or for systems not capable of providing reheat. The primary purpose of this requirement is to reduce reheat in air systems. Supply water temperatures must also be capable of a reset equivalent to 25 percent of the design supply-to-return water temperature difference. This requirement does not apply to hydronic systems that can provide a 50 percent reduction in system flow, or are less than 600,000 Btu per hour in capacity. Nor does it apply to reset controls that would cause improper operation of heating, cooling, humidification, or dehumidification systems.

The 1999 edition requires reset on chilled and hot water temperature controls used for heating ventilation and air-conditioning systems more than 300,000 Btu per hour design capacity. Direct energy savings are expected from the reset of the supply water temperature from chiller and boiler, and the air supply temperatures in the system are assumed to follow the water temperature reset. An exception is made for hydronic systems that use variable flow to reduce pumping energy, or for systems where reset would cause improper operation of heating, cooling, humidification or dehumidification systems. Overall, there is little net change in the reset requirements for hydronic systems other than the 1999 edition applying them to more systems.

The 1999 edition removes the air supply reset requirements, while directly addressing simultaneous heating and cooling. This is addressed by better limiting the amount of air reheated or recooled and is set forth in a new section of the standard (see Simultaneous Heating and Cooling Controls above). Some minimal degradation in efficiency is expected from removal of the supply air reset requirements, but this is likely to be mitigated by the increase in efficiency from requiring reset on smaller hydronic systems.

17. Hot Gas Bypass Restriction

The 1999 edition introduces a new requirement that restricts the use of hot gas bypass in cooling equipment unless the equipment is designed with multiple steps of unloading. In the latter case, hot gas bypass is allowed, but maximum hot gas bypass levels are specified as a fraction of total capacity for different sizes of cooling equipment. This requirement will provide an improvement in part-load performance for cooling equipment, where manufacturers are not already incorporating multiple steps of unloading.

18. Heating Ventilation and Air-Conditioning Equipment

The 1999 edition provides updated equipment efficiency requirements with an effective date of October 29, 2001. Tables 6.2.1A–6.2.1G of the 1999 edition show the existing 1989 edition's heating ventilation and air-conditioning equipment efficiency requirements (shown in the "minimum efficiency" column) with the 1999 edition's update requirements shown in the "Efficiency as of October 29, 2001" column in each table across heating and cooling product categories. Where the 1999 edition has equipment efficiency requirements but the 1989 edition does not (as is the case with absorption and heat rejection equipment for example) increased energy efficiency occurs unless the requirements are set at or below common practice. In these cases, we used ASHRAE's assessment of the minimum performance of the equipment used in common practice as a baseline. A summary of the shipped capacity weighted efficiency improvements across generic product categories is shown in Table 14.

TABLE 14.—SHIPPED CAPACITY WEIGHTED EFFICIENCY IMPROVEMENT ACROSS GENERIC PRODUCT CATEGORIES, INCLUDING EQUIPMENT SHIPMENTS TO COMMERCIAL BUILDINGS COVERED BY FEDERAL MANUFACTURING STANDARDS

Equipment category	Estimated full load efficiency improvement (in percent)
Unitary Air Conditioners and Condensing Units	7
Unitary and Applied Heat Pumps	9.2
Electrically Operated Water Chillers	16.8
Absorption Chillers	5.2+
Packaged Terminal Air Conditioners and Heat Pumps	22.4
Room Air Conditioners	10.1
Furnaces, Duct Furnaces, Unit Heaters	0+
Boilers	0

The absorption chillers 5.2 percent estimated full load efficiency improvement is based on double effect chillers. The 1989 edition had no efficiency requirement for absorption chiller equipment. Based on an industry derived market baseline for double effect chillers provided during the development of the 1999 edition, the 1989 edition's performance coefficient is 0.95. Therefore, selection of the 1999 edition's coefficient of performance of 1.0 will provide improved efficiency. Improvements of up to 25 percent above market minimums are estimated for single effect equipment.

The full load efficiency improvement in room air-conditioners in the 1999 edition were adopted from the Department's manufacturing standard requirements, effective October 1, 2000 (10 CFR 430). These efficiency improvements cannot be attributed to the improved requirements of the 1999 edition.

For furnaces, duct furnaces, and unit heaters, changes were made to test procedures and efficiency descriptors for unit heaters, but no net change was made in efficiency in the 1999 edition. Improved prescriptive requirements in the 1999 edition for warm-air furnaces such as requirements for intermittent ignition or interrupted device and jacket loss limits, will improve annual efficiency.

For boilers, the full load thermal efficiency descriptor was improved in the 1999 edition, but not the boiler efficiency requirements. The 1999

19. Service Water Heating Equipment Efficiency

The 1999 edition sets service water heating (SWH) equipment efficiencies for gas and oil fired equipment at, or moderately higher than, the 1989 edition levels. It improves thermal efficiencies from two to three percentage points for gas water heaters with integral storage, and improves thermal efficiencies one percent for oil fired

required, which is absent in the 1999 edition. The energy impact of dropping this requirement is highly dependent on the fuel source used by the booster heater. Generally, a slight increase in site energy use in specific applications might be expected, however, there may also be a corollary reduction in source energy use occurring from the reduced use of electric booster heaters (a cheap first cost alternative to meeting the 1989

review and update the provisions of its commercial building code to meet or exceed the provisions of the 1999 edition for any "building" within the meaning of Section 303(2) of the Energy Conservation and Production Act, as amended. This action must be taken not later than two years from the date of today's notice, unless an extension is provided. Section 304(b)(2)(B)(i) and (c).

The Department recognizes that some States do not have a State commercial

designate a State official, such as the Director of the State energy office, State code commission, utility commission, or equivalent State agency having primary responsibility for commercial building codes, to provide the certification to the Secretary. Such a designated State official could also provide the certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

lighting requirements have on lighting energy use, as well as on building loads. The comparison would look separately at the whole building and space-by-space lighting requirements in a variety of commercial building types, as well as examine the effect of any "additional lighting power allowances."

We proposed that the mechanical requirements comparison be divided into comparisons of equipment efficiency requirements and system design requirements. We explained that the system design requirements affect both the system

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made in efficiency in the 1999 edition. Improved prescriptive requirements in the 1999 edition for warm-air furnaces such as requirements for intermittent ignition or interrupted device and jacket loss limits, will improve annual efficiency.

For boilers, the full load thermal efficiency descriptor was improved in the 1999 edition, but not the boiler efficiency requirements. The 1999 edition's requirements for thermal efficiency will remove some boilers from the market that currently meet the single 80 percent combustion efficiency requirement in the 1989 edition, and have thermal efficiencies of less than 75 percent. This is particularly true of steam boilers.

In addition to providing updated efficiency requirements for most commercial equipment, the 1999 edition subdivides several of the original 1989 edition product categories and adds new efficiency requirements for heat rejection equipment that were not covered under the 1989 edition. The 1999 edition provides coefficient of performance and integrated part-load value requirements for centrifugal chillers operating at other than nominal test conditions. It also expresses efficiency requirements, for boilers less than or equal to 2.5 million Btu per hour input rating, using true thermal efficiency, as opposed to combustion efficiency requirements in the 1989 edition. The 1999 edition provides separate efficiency requirements for packaged terminal air conditioner and packaged terminal heat pump equipment. The 1999 edition also updates efficiency requirements to reflect changing test procedures and mandates the use of either intermittent or interrupted ignition devices and power venting or flue dampers on forced air furnaces. Finally, the 1999 edition restricts jacket losses on gas and electric furnaces located outside the conditioned space.

The 1999 edition provides significant improvement to cooling equipment efficiencies, and minor increases in average oil or gas space heating equipment efficiency due to a change in either efficiency designator or shell loss requirements. It also provides for a moderate increase in heat pump heating side efficiency. All of these requirements (except for room air-conditioners) will improve the general efficiency of commercial space conditioning products beyond that required in the 1989 edition and will thus contribute to energy savings with the 1999 edition.

19. Service Water Heating Equipment Efficiency

The 1999 edition sets service water heating (SWH) equipment efficiencies for gas and oil fired equipment at, or moderately higher than, the 1989 edition levels. It improves thermal efficiencies from two to three percentage points for gas water heaters with integral storage, and improves thermal efficiencies one percent for oil fired instantaneous water heaters with integral storage, as well as for the similarly defined category of "hot water supply boiler."

For the 1999 edition, the general form of the equations for standby loss for oil and gas water heaters were slightly modified and rewritten to include a fuel input rating variable and the definition of the volume in the equation. In the 1989 edition, the standby loss was purely a function of volume. With the modification in the 1999 edition of the standby loss equation, standby loss is now a function of both volume and input rating. For gas and oil water heaters, the stringencies of each standard are roughly the same within each of the individual product categories. This allows somewhat more standby loss for large input rating products and allows somewhat less standby loss for smaller input rating products. Without very detailed information about the shipped quantity of products within a size category, it is unknown whether there is a net change in efficiency. For electric water heaters greater than 12 kilowatt input, the 1999 edition does appear to allow marginally greater standby loss, as the formula is based on rated as opposed to measured volume. This allows a ten percent variation between the rated and measured volume. However, since this product is covered by a Federal national manufacturing standard that is more stringent than the requirements of the 1999 edition and the federal standard preempts state or local regulation, the reduced stringency in the 1999 will not reduce energy efficiency.

20. Service Water Heating Controls

Both the 1989 and 1999 edition have requirements for a minimum service hot water temperature control capability set point, as well as a maximum control temperature requirement for public restrooms of 110 degrees Fahrenheit. Since these are only capability and not set point requirements, no change in net building energy use is expected or assured. The 1989 edition also has a requirement that booster heaters be installed where outlet temperatures of more than 120 degrees Fahrenheit were required, which is absent in the 1999 edition. The energy impact of dropping this requirement is highly dependent on the fuel source used by the booster heater. Generally, a slight increase in site energy use in specific applications might be expected, however, there may also be a corollary reduction in source energy use occurring from the reduced use of electric booster heaters (a cheap first cost alternative to meeting the 1989 edition requirement). The net impact on hot water energy use is expected to be minimal.

D. Energy Cost Budget

For both editions, the Energy Cost Budget section provides a whole-building tradeoff methodology to allow innovative or unique buildings to comply with the standard. The Energy Cost Budget section requires the designer to simulate both a baseline building that complies with the standard and the actual design being proposed. The design building is not allowed to have a greater energy cost than the baseline building that complies with the standard. Neither edition of the standard allows designs to exceed the base standard, and as such, the stringency of the Energy Cost Budget method in each edition is roughly equivalent to the stringency that would be achieved if the building complied with the prescriptive requirements of the respective editions of the standard.

E. Conclusion About Detailed Textual Analysis

Our assessment of seven areas of change in the Lighting and Power sections of the two editions leads us to conclude that there will be a net positive increase of efficiency in commercial buildings from these revisions. Conversely, our assessment of the eleven areas of change in the Envelope section of the two editions leads us to conclude that there will be a net decrease in efficiency of commercial buildings due to these changes. Finally, our review of the 22 areas of change in the Mechanical Equipment and Systems sections of the two editions leads us to conclude that these revisions will produce a net positive increase in the efficiency of commercial buildings.

We therefore conclude from our detailed textual analysis that there will be a modest net gain from the changes.

IV. Filing Certification Statements with DOE

A. Review and Update

On the basis of today's DOE determination, each State is required to review and update the provisions of its commercial building code to meet or exceed the provisions of the 1999 edition for any "building" within the meaning of Section 303(2) of the Energy Conservation and Production Act, as amended. This action must be taken not later than two years from the date of today's notice, unless an extension is provided. Section 304(b)(2)(B)(i) and (c).

The Department recognizes that some States do not have a State commercial building code or have a code that does not apply to all commercial buildings. If local building codes regulate commercial building design and construction rather than a State code, the State must provide for review and update of those local codes to meet or exceed the 1999 edition. States may base their certifications on reasonable actions by units of general purpose local government. Each such State must still review the information obtained from the local governments and gather any additional data and testimony for its own certification.

States should be aware that the Department considers high-rise (greater than three stories) multi-family residential buildings and hotel, motel, and other transient residential building types of any height as commercial buildings for energy code purposes. Consequently, commercial buildings, for the purposes of certification, would include high-rise (greater than three stories) multi-family residential buildings and hotel, motel, and other transient residential building types of any height.

B. Certification

Section 304(b) of ECPA requires each State to certify to the Secretary of Energy that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency to meet or exceed the 1999 edition. The certification must include a demonstration that the provisions of its commercial building energy code regarding energy efficiency, meet or exceed Standard 90–1999 for any "building" within the meaning of Section 303(2) of the Energy Conservation and Production Act, as amended. If a State intends to certify that its commercial building code already meets or exceeds the requirements of the 1999 edition, it would be appropriate for the State to provide an explanation of the basis for this certification, e.g., the 1999 edition is incorporated by reference in the State's building code regulations. The Department believes that it would be appropriate for the chief executive of the State (e.g., the Governor) to designate a State official, such as the Director of the State energy office, State code commission, utility commission, or equivalent State agency having primary responsibility for commercial building codes, to provide the certification to the Secretary. Such a designated State official could also provide the certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

C. Request for Extensions

Section 304(c) of ECPA requires that the Secretary permit an extension of the deadline for complying with the certification requirements described above if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. Such demonstrations could include one or more of the following: (1) A plan for response to the requirements stated in section 304; or (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of section 304.

D. Submittals

When submitting any certification documents in response to this notice, the Department requests that the original documents be accompanied by one copy of the same.

Issued in Washington, DC, on July 8, 2002.

David K. Garman,

Assistant Secretary for Energy Efficiency and Renewable Energy.

Appendix A. Description of Proposed Analysis

At the February workshop we explained that the proposed analysis would provide qualitative comparisons of the stringencies between the two editions of Standard 90.1 in: (1) The scope of the standard; (2) the building envelope requirements; (3) the building lighting requirements; (4) the building mechanical equipment requirements; and (5) the paths to compliance.

We stated that the proposed emphasis of the qualitative comparison would differ between the envelope, lighting, and mechanical sections. In the building envelope section, the comparison would focus on the impact of the different building envelope requirements on the building heating and cooling loads for different building types and climates. The envelope comparison would examine requirements for all envelope components, including roofs, walls, floors, and fenestration as well as explore variations in construction types and in the window-to-wall ratio.

In the lighting requirements comparison, we explained that the proposed focus would be primarily on the impact the different lighting requirements have on lighting energy use, as well as on building loads. The comparison would look separately at the whole building and space-by-space lighting requirements in a variety of commercial building types, as well as examine the effect of any "additional lighting power allowances."

We proposed that the mechanical requirements comparison be divided into comparisons of equipment efficiency requirements and system design requirements. We explained that the system design requirements affect both the system efficiency and system load impacts, and may have direct energy impacts as well. We also proposed that tables of relative stringency and estimated positive or negative national energy impact be prepared based on practical application of the system design requirements in each standard.

We explained that each standard has multiple ways to demonstrate compliance. We proposed to enumerate the multiple paths to compliance, but did not propose to perform a detailed comparison of the relative stringency of alternate paths internal to a single standard or between standards. We explained that the large quantity of variables among the alternative compliance paths would make such analysis prohibitive to undertake. Further, we explained that we knew of no data on which to base the selection of representative requirements for such an analysis. Assignment of requirements would be arbitrary. Rather we proposed to focus on what we believed is the most common approach to using the standard in question for particular building types.

Addressing the quantitative analysis, we proposed to base the quantitative comparison of energy codes on whole building energy simulations of buildings built to each standard. We proposed to simulate seven representative building types in 11 representative U.S. climates. The simulated buildings would utilize the 15 zone building prototypes used in previous DOE building research, and the energy use intensities for each zone from the simulations would be scaled to correctly reflect variations in characteristic building sizes and shapes for each representative building type. Energy Use Intensities (EUIs) developed for each representative building type would be weighted by total national square footage in each representative building category to provide an estimate of the national energy savings.

We noted that only changes to requirements for new buildings would be considered in this quantitative analysis.

Appendix B. Description of the Quantitative Analysis

The analysis methodology is briefly described below. This is followed by a description of the input assumptions.

I. Analysis Methodology

To determine the aggregate impact of changes to the envelope, lighting, and mechanical sections of 90.1, a series of building simulations were made using the BLAST (Building Loads Analysis and System Thermodynamics) building simulation

software. Seven building types, shown in Table 15, were used in the analysis. These seven building types used represent approximately 80 percent of commercial building energy consumption, according to the Energy Information Administration's 1995 Commercial Building Energy Consumption Survey (CBECS95) data. (The Office building type includes Outpatient Health Care at 76.6 thousand Btu per year.)

TABLE 15.—ENERGY CONSUMPTION BY PRINCIPAL BUILDING ACTIVITY (TRILLION BTU)

Building types simulated	Annual energy use	Percent of total
Office	1,095	20.6
Mercantile and Service	973	18.3
Education	614	11.5

edition's requirements do not necessarily reflect the performance of typical building assemblies, the actual U-factors used in the simulations were chosen to reflect the U-factors of real building assemblies which best approach, without being less stringent than, the U-value requirements of the standard. This is expected to be more representative of the real envelope performance resulting from application of the 1989 edition. Note that by being more stringent than the U-factor requirements, this procedure provides a conservative estimate of the envelope energy

In the case of Food Service and Education, the 1989 edition provides lighting power density values for subcategories of these building types. Food Service is composed of Fast Food/Cafeteria and Leisure Dining/Bar subcategories, Education is composed of Preschool/Elementary, Jr. High/High School, and Technical/Vocational subcategories. In these cases, first the lighting power densities for the different building sub types were averaged together for each building area category. Then, a weighting of these new lighting power densities by building size

tables. For a comparison of these building types, the 1989 edition's whole building lighting power density values were developed by applying the appropriate 1989 edition's space-type lighting power density values (with appropriate Area Factor adjustments) to the building specific space type square footage data used in the development of the 1999 edition lighting power densities. The 1989 edition building specific space type data models the actual weighting of space type square footage, within a specific building type, based on

software. Seven building types, shown in Table 15, were used in the analysis. These seven building types used represent approximately 80 percent of commercial building energy consumption, according to the Energy Information Administration's 1995 Commercial Building Energy Consumption Survey (CBECS95) data. (The Office building type includes Outpatient Health Care at 76.6 thousand Btu per year.)

TABLE 15.—ENERGY CONSUMPTION BY PRINCIPAL BUILDING ACTIVITY (TRILLION BTU)

Building types simulated	Annual energy use	Percent of total
Office	1,095	20.6
Mercantile and Service	973	18.3
Education	614	11.5
Lodging	461	8.7
Public Assembly	449	8.4
Food Service	332	6.2
Warehouse and Storage	325	6.1
Total for above Categories	4,249	
Total for all commercial buildings	5,323	79.8

Construction variation within each building category was simulated using four different window to wall area ratios, both mass (such as dense masonry) and light frame wall construction types, and gas and electric heating fuel types. Two scenarios of economizer usage were simulated in each climate to account for the variation of economizer usage requirements in combination with equipment size. The buildings were simulated in 11 different climate locations (Table 16). The climate locations were chosen based on statistical cluster analysis of 234 Typical Mean Year weather data tapes and were chosen to be representative of the variation in climate found in the U.S. Several of the more significant climate parameters are shown in Table 16. These include, Heating Degree Days, base 65 degrees Fahrenheit (HDD 65); Vertical Solar radiation, in the North (VSN), East/West (VSEW), and South (VSS) orientations; Cooling Degree Day, base 50 degrees Fahrenheit (CDD 50); minimum recorded outdoor temperatures for 99.6 percent of the time for heating design calculations; maximum recorded Dry Bulb (DB) outdoor temperatures exceeded 1 percent of the time for cooling design calculations; and maximum recorded Wet Bulb (WB) outdoor temperatures exceeded one percent of the time, also for cooling design calculations.

TABLE 16.—CLIMATES LOCATIONS USED

Location	HDD 65	VSN	VSEW	VSS	CDD 50	Heating design 99.6	Cooling design (1% DB)	Cooling design 1% WB)
Denver, CO	6083	428	971	1321	2611	−3	90	59
Detroit, MI	5997	390	676	858	3199	0	87	72
Fresno, CA	2700	459	1029	1199	5070	30	101	70
Knoxville, TN	3818	446	762	898	4455	13	90	74
Los Angeles, CA	1494	482	962	1146	4456	43	81	64
Minneapolis, MN	8060	380	709	972	2751	−16	88	71
Orlando, FL	532	511	881	974	8288	37	93	76
Phoenix, AZ	1382	488	1116	1310	7830	34	108	70
Providence, RI	6022	393	677	874	2756	5	86	71
Seattle, WA	5281	350	621	828	1683	23	81	64
Shreveport, LA	2265	484	843	954	6022	22	95	77
Tampa, FL	575	518	890	974	7985	36	91	77

In addition to simulating buildings that complied with the 1989 and 1999 editions, the changes in envelope, lighting and mechanical requirements were each separately simulated, without changing the 1989 edition's requirements for the other components. Then, because the lighting and envelope requirements impact each other, particularly in the 1989 edition, the combined lighting and envelope requirement differences were analyzed, again without changing the 1989 edition's requirements for the other components. Calculating the difference between this combination and all 1999 edition requirements allowed an assessment of the impact of the mechanical changes after adjusting for this thermal load shift. In all, six separate sets of requirement changes were simulated.

In total, 2464 simulations were performed for each set of requirement changes. A prototypical 48,000 ft², 15-zone, slab-on-grade building was used for all the simulations. Simulation results for this prototypical building size were then scaled to reflect aggregate energy use in buildings across a wide range of sizes and shapes using Commercial Building Energy Consumption Survey building data. Single zone air-conditioning and heating systems were assumed in the building model to permit this scaling. This simplification should result in a lower-bound estimate of energy savings with the standard as explained in mechanical system characterization below.

II. Simulation Input Characterization

A. Envelope

The building envelope characteristics examined in the analysis were the opaque wall and roof U-factors, the fenestration U-factors, either the fenestration Shading Coefficient requirements (in the 1989 edition) or Solar Heat Gain Coefficient requirements (in the 1999 edition), and the effective slab U-factors for slab on grade construction. These characteristics were determined for each set of requirement changes, building type, and climate combination simulated.

The 1989 edition's envelope requirements simulated were based on the 1989 edition's Alternate Component Packages (ACP) tables. These tables represent the prescriptive compliance path for the 1989 edition's envelope requirements. Because the 1989 edition's requirements do not necessarily reflect the performance of typical building assemblies, the actual U-factors used in the simulations were chosen to reflect the U-factors of real building assemblies which best approach, without being less stringent than, the U-value requirements of the standard. This is expected to be more representative of the real envelope performance resulting from application of the 1989 edition. Note that by being more stringent than the U-factor requirements, this procedure provides a conservative estimate of the envelope energy savings.

In addition, the 1989 edition's ACP tables represent more stringent envelope requirements than that specified for most climates or buildings, using these equations outlined in Chapter 8 of the 1989 edition. The equations are embodied in the ENVSTD, version 2.4, software. For this reason, the use of the ACP tables as the basis for the 1989 edition's envelope provides a lower boundary to the estimate of energy savings from the building envelope requirements.

B. Lighting

The lighting power density requirements were developed from the whole building lighting requirements for both the 1989 and 1999 editions, for comparable building types, where available. The 1999 edition provides single value whole building lighting power density values for 31 different building types. The 1989 edition provides whole building lighting power density values for only 11 different building types. However, it provides different lighting power densities for six different building size categories within each building type. In neither case do the whole building lighting power density values correspond perfectly to the building types simulated. The following procedure was used to develop whole building lighting numbers for each of these categories.

1. Lighting Power—1989 Edition

For office and warehouse building types, where there is a direct match with the 1989 standard whole building lighting power categories, the lighting power density was estimated by weighting the whole lighting power density across the six building size categories by the fraction of each building type's floor space in each size category using CBECS95 data.

In the case of Food Service and Education, the 1989 edition provides lighting power density values for subcategories of these building types. Food Service is composed of Fast Food/Cafeteria and Leisure Dining/Bar subcategories, Education is composed of Preschool/Elementary, Jr. High/High School, and Technical/Vocational subcategories. In these cases, first the lighting power densities for the different building sub types were averaged together for each building area category. Then, a weighting of these new lighting power densities by building size category was made, using CBEC's data for Food Service or Education building types, as appropriate.

In the case of retail type buildings, the 1989 edition has three basic retail building subcategories, Retail, "Mall Concourse, and "Service. Commercial Building Energy Consumption Survey floor area data is categorized as Enclosed Shopping Center/Mall, Retail (except Mall), Service (except Food), and Strip Shopping. To make a realistic weighting by retail type the following allocation of Commercial Building Energy Consumption Survey retail type floor area was made.

TABLE 17.—ALLOCATION OF CBECS95 RETAIL TYPE FLOOR AREA

Retail building categories—1989 edition	Allocation of CBECS95 building category floor area
Retail	Retail (except Mall) plus Strip Shopping plus half of Enclosed Shopping/Mall.
Mall Concourse	Half of Enclosed Shopping/Mall.
Service	Service (except Food).

Then a weighted average of the allowed lighting power densities was constructed, using the 1989 edition's lighting power density values and the CBECS95 floor area data for each building type and size category.

For Lodging and Public Assembly building types, the 1989 edition has no direct match in the whole building lighting power density tables. For a comparison of these building types, the 1989 edition's whole building lighting power density values were developed by applying the appropriate 1989 edition's space-type lighting power density values (with appropriate Area Factor adjustments) to the building specific space type square footage data used in the development of the 1999 edition lighting power densities. The 1989 edition building specific space type data models the actual weighting of space type square footage, within a specific building type, based on actual current U.S. construction data. The lighting power density value for the Lodging category is made up of the average of the whole building lighting power densities constructed for the 1999 edition's building categories: Dormitory, Hotel, and Motel. The lighting power density value for the Public Assembly categories is similarly made up of the average 1999 edition's whole building lighting power density values for Convention Center, Motion Picture Theater, Performing Arts Theater, Town Hall, Sports Arena, Museum, and Gymnasium.

2. Lighting Power—1999 Edition

The 1999 edition provides single value, whole building, lighting power density requirements for Office, Retail, Education, and Warehouse buildings, and these requirements were used in the simulations. The 1999 edition does not provide single lighting power density values for Food Service, Lodging, or Public Assembly buildings. For these cases, the average whole building lighting power density requirements, for building types falling in each category, was taken to form a single lighting power density requirement. In these cases, the same specific building types used to develop the 1989 edition's lighting power density values were used to derive the 1999 edition's lighting power densities for Lodging and Public Assembly building types. The 1999 edition's Food Service value was derived as the average of the 1999 edition's three whole building food service building type values.

Table 18 shows a comparison of Whole Building lighting requirements under both editions.

TABLE 18.—LIGHTING POWER DENSITY

[Watts/ft²]

Building type	1989 edition	1999 edition
Education	1.79	1.50
Food Service	1.62	1.73
Lodging	1.53	1.73
Offices	1.63	1.30
Public Assembly	1.72	1.53
Retail	2.36	1.90
Warehouse/Storage	0.53	1.20

C. Mechanical Equipment

Single zone cooling and heating systems were used in the analysis. The choice of single zone system in the analysis is expected to provide a lower boundary to our estimate of cooling energy savings. First, this is because the improvement in the 1999 edition's average efficiency requirements, for single zone cooling systems (typically unitary equipment), is relatively small compared to that for typical central system cooling equipment (typically water chillers). This is more obvious when one realizes that shipments of all products to commercial buildings includes residential type cooling

products shipped to small commercial buildings. Additionally, modeling single zone systems does not take into account the fact that the 1999 edition has introduced requirements for central system heat rejection equipment, where none existed in the 1989 edition. There is relatively little improvement in heating equipment efficiency requirements, in the 1999 edition, for equipment used in single zone systems (typically furnaces), or central systems (typically boilers). The impact of the 1999 edition on heating energy use will typically shipments of residential size water heating equipment (regulated by manufacturing standards under Subpart C of 10 CFR 430) to commercial buildings. While these units may be used in some commercial buildings, increased efficiencies are the result of regulatory actions under 10 CFR 430, not Standard 90.1. Nor did we account for the use of tankless instantaneous water heaters in commercial buildings. Correctly accounting for shipped capacity of both the residential

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2126–001]

Consolidated Edison Company of New York, Inc.; Notice of Filing

July 9, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000, CP02–397–000 and CP02–398–000]

Greenbrier Pipeline Company, LLC; Notice of Applications

July 8, 2002.

Take notice that on July 3, 2002, Environmental Policy Act review of its proposed project intended to identify landowner issues and resolve problems before the certificate application was filed. Greenbrier asks the Commission to issue a preliminary determination on non-environmental issues by December 31, 2002 and a final order granting the requested authorizations by June 1, 2003. Greenbrier anticipates placing a portion of the facilities in service by February 1, 2005 for electric generation Greenbrier also proposes to construct a total of 44,980 HP of compression at two sites: (1) 33,145 HP at the proposed Elk River Compressor Station in Kanawha county, WV, and (2) 11,835 HP at the proposed Eden Compressor Station site in Rockingham County, NC. The proposed project's 279 miles of pipeline and two compressor stations will provide up to 600,000 Dth per day of firm transportation service. The estimated cost is approximately $497

products shipped to small commercial buildings. Additionally, modeling single zone systems does not take into account the fact that the 1999 edition has introduced requirements for central system heat rejection equipment, where none existed in the 1989 edition. There is relatively little improvement in heating equipment efficiency requirements, in the 1999 edition, for equipment used in single zone systems (typically furnaces), or central systems (typically boilers). The impact of the 1999 edition on heating energy use will typically be determined principally by changes in heating loads rather than heating equipment efficiency.

1. Cooling Equipment

Cooling equipment efficiencies were developed by weighting the energy efficiency rating for each of 20 categories of single zone cooling equipment in the standard, by an estimate of shipped cooling capacity for each category. The primary source of shipping data was 1998 U.S. Census Data. In the case of the less than 65,000 Btu per hour unitary air source heat pumps and air conditioners, this census data was augmented by our interpretation of Air-Conditioning and Refrigeration Institute and Lawrence Berkeley National Laboratory data on single phase air-conditioners and heat pumps shipped to commercial buildings. Using the weighting information and equipment efficiencies in each edition, the average unitary equipment efficiency requirement for commercial buildings increased 7.5 percent, from an average energy efficiency ratio of from 9.28 to 9.98. This improvement was simulated for all building types except Lodging. For Lodging, it was assumed that the majority of single zone cooling equipment would be packaged terminal equipment. The average efficiency requirement for packaged terminal equipment increased 22 percent, from 8.4 to 10.28, based on a shipped capacity weighting. These efficiencies were used in the Lodging simulations for the respective Standard levels.

2. Space Heating Equipment

No change in heating equipment combustion efficiency is required in the 1999 edition. However, for commercial furnaces, a reduction in the loss through the equipment casing from 1.5 percent to 0.75 percent was modeled to reflect differences in the requirements in the two editions. No change in furnace casing losses was assumed where electric resistance heat was assumed.

3. Economizers

For each building type, simulations were made both assuming economizer operation and not assuming economizer operation. Based on the economizer requirements in each edition and the available cooling equipment shipment data, shipped cooling capacity weights were developed for systems requiring economizer usage in each climate.

4. Service Water Heating Equipment

Service water heating equipment efficiencies increased from 78 percent to 80 percent for most tank-type gas fired water heaters. This was reflected in the input assumptions. We did not account for shipments of residential size water heating equipment (regulated by manufacturing standards under Subpart C of 10 CFR 430) to commercial buildings. While these units may be used in some commercial buildings, increased efficiencies are the result of regulatory actions under 10 CFR 430, not Standard 90.1. Nor did we account for the use of tankless instantaneous water heaters in commercial buildings. Correctly accounting for shipped capacity of both the residential size and tankless equipment to commercial buildings would reduce the average efficiency improvement somewhat, but accurate shipment data to commercial buildings is largely unavailable.

No change in water heater standby loss efficiencies was modeled. For fossil fuel fired equipment, the standby loss efficiencies within a given size category are essentially the same. While a different formulation of the standby loss equations was used in the 1999 edition, there are both standby loss increases and decreases in any given product category. We are unaware of a data base that categorizes this data to permit accurate estimation of a net result. For electric water heaters, there appears to be a reduction in standby loss efficiency in the 1999 edition. However, the Energy Policy and Conservation Act, as amended, does not permit the manufacture or sale of these lower efficiency products. Therefore, there is no predicted impact on actual buildings.

D. Aggregation of Results

Aggregation to a national estimate of energy use is based on energy use intensities (EUI) developed from simulations, under each edition. Aggregation of energy use intensity from the simulations was done as follows: (1) Extract zone-based energy use intensities from simulations; (2) aggregate results by required economizer usage in each climate; (3) map simulation results by climate to 11 geographical areas (augmented census divisions); (4) scale simulation results to existing building stock floor area by building type and census region; (5) weight results for frame and mass wall construction by appropriate building type and census region weights for these types of construction; (6) weight results for heating fuel by augmented census division weights for electric resistance heating usage in commercial buildings (Commercial Building Energy Consumption Survey data); (7) convert energy use intensities by fuel type to site energy, source energy, and energy cost intensities, by building type, and augmented census division; (8) weight energy use intensity results by building construction floor area estimates, by building type and in each augmented census division. The building construction data was derived from the Energy Information Administration's National Energy Modeling System data sets.

[FR Doc. 02–17637 Filed 7–12–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2126–001]

Consolidated Edison Company of New York, Inc.; Notice of Filing

July 9, 2002.

Take notice that on June 28, 2002, Consolidated Edison Company of New York, Inc., (Con Edison) submitted for filing a revised unexecuted Interconnection Agreement between Con Edison and PSEG Power In-City I, LLC (PSEG Power) making a minor correction to the filing made on June 20, 2002. This filing is made to correct a formatting error in the table of contents of the agreement.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 19, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17722 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000, CP02–397–000 and CP02–398–000]

Greenbrier Pipeline Company, LLC; Notice of Applications

July 8, 2002.

Take notice that on July 3, 2002, Greenbrier Pipeline Company, LLC (Greenbrier), 120 Tredegar Street, Richmond, Virginia 2319, filed applications pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations. In Docket No. CP02–396–000, Greenbrier requests a certificate of public convenience and necessity authorizing it to construct, own, operate, and maintain certain pipeline, compression and other facilities. In Docket No. CP02–397–000, Greenbrier requests a blanket certificate pursuant to Subpart G of Part 284 of the Commission's Regulations authorizing Greenbrier to provide open access firm and interruptible transportation services. In Docket No. CP02–398–000, Greenbrier requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations to perform certain routine construction, operation, and abandonment activities. Greenbrier's proposals are more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

In Docket No. PF01–1–000, Greenbrier participated in a pre-filing National Environmental Policy Act review of its proposed project intended to identify landowner issues and resolve problems before the certificate application was filed. Greenbrier asks the Commission to issue a preliminary determination on non-environmental issues by December 31, 2002 and a final order granting the requested authorizations by June 1, 2003. Greenbrier anticipates placing a portion of the facilities in service by February 1, 2005 for electric generation plant test gas and by May 1, 2005 for general purposes. The entire project is scheduled to be in-service by November 1, 2005.

Any questions regarding Greenbrier's application should be directed to Sean Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301, phone (304) 627–3463 or fax (304) 627–3305.

Greenbrier proposes to construct mainline facilities consisting of: (1) 217 miles of 30-inch pipeline from an interconnect with Dominion Transmission, Inc. and Tennessee Gas Pipeline near Clendenin, WV, to a point in Rockingham County, NC (through Kanawha, Clay, Nicholas, Fayette, Raleigh, Summers, and Mercer Counties, WV, and Giles, Bland, Pulaski, Montgomery, Floyd, Franklin, and Henry Counties, VA); (2) 41 miles of 24-inch pipeline continuing through Rockingham, Caswell, and Person Counties, NC; and (3) about 17.5 miles of 20-inch pipeline from Person County to Granville County, NC. The proposed facilities include three laterals: (1) Approximately 1 mile of 12-inch lateral pipeline in Person County, NC; (2) 2 miles of 10-inch lateral pipeline in Granville County, NC; and (3) approximately ½ mile of 30-inch lateral pipeline in Rockingham County, NC. Greenbrier also proposes to construct a total of 44,980 HP of compression at two sites: (1) 33,145 HP at the proposed Elk River Compressor Station in Kanawha county, WV, and (2) 11,835 HP at the proposed Eden Compressor Station site in Rockingham County, NC. The proposed project's 279 miles of pipeline and two compressor stations will provide up to 600,000 Dth per day of firm transportation service. The estimated cost is approximately $497 million.

The project is said to be designed to create gas supply diversity and to serve the growing energy market in the South Atlantic region, including local distribution companies' growth, new electric power plants, marketers, and others. Greenbrier has entered into 15-year precedent agreements with seven shippers for all of the project's 600,000 Dth per day capacity. The precedent agreements reflect both negotiated rates and recourse rates, and two of the precedent agreements include interim rates for the period during which a portion of the project's facilities will be in early service. Greenbrier states that the only difference between the negotiated rates and the recourse rates its that the negotiated rates include a lower rate of return on equity.

Greenbrier's recourse rates, as stated in its *pro forma* tariff, include both term differentiated and seasonal rates. For FT contracts of 15 years or greater, the recourse rates are based upon a 15-year levelized cost-of-service. The recourse rates for contracts having a term shorter than 15 years are based on a traditional, first full-year cost-of-service. Seasonal rates are calculated for a summer period (April 1 through October 31) and a winter period (November 1 through March 31).

Rate design	Traditional rate ($/Dth)	Levelized rate ($/Dth)
Winter Reservation Rate	$20.9016	$17.1753
Winter Daily Rate	0.6921	0.5687
Summer Reservation Rate	4.9766	4.0894
Summer Daily Rate	0.1628	0.1338
Annual Reservation Rate	11.6120	9.5418
Annual Daily Rate	0.3818	0.3137

Greenbrier requests regulatory asset treatment for the differences between its book depreciation and the depreciation component of its levelized firm recourse rates and its initial levelized negotiated rates. Greenbrier also requests that the Commission authorize it to cease calculating AFUDC on certain facilities, at the time those facilities are placed in service early, and capture and defer as a regulatory asset any shortfall in revenue, or as a regulatory liability any excess revenue collected, compared to the cost of service for those facilities placed in service (on or about May 1, 2005) until the entirety of the project is placed in service (on or about November 1, 2005).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 29, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be

placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to

provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the

http://www.ferc.gov using the "RIMS" link, select "Docket #" and follow the instructions (please call (202) 208–2222 for assistance).

Missouri Interstate asks the Commission to issue a final certificate order by October 1, 2002, to allow Missouri Interstate to commence transportation services in time for the 2002–2003, heating season.

Any questions regarding Missouri Interstate's application should be

person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to

non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the

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placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17718 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC02–85–000 and ER02–2218–000]

Minnesota Power, Rainy River Energy Corporation; Notice of Filing

July 9, 2002.

Take notice that on June 26, 2002, Minnesota Power (MP) and Rainy River Energy Corporation (Rainy River) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Joint Application for Order Authorizing Transfer of Jurisdictional Facilities pursuant to Section 203 of the Federal Power Act seeking authorization for Rainy River to transfer to MP three power contracts. MP owns and operates generation, transmission and distribution facilities and provides electricity to 138,000 customers in northeastern Minnesota and northwestern Wisconsin. Rainy River is a power marketer that has a market-based rate tariff on file with the Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 19, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17720 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–399–000, CP02–400–000 and CP02–401–000]

Missouri Interstate Gas, LLC; Notice of Application

July 9, 2002.

Take notice that on July 3, 2002, Missouri Interstate Gas, LLC (Missouri Interstate), 110 Algana Court, St. Peters, Missouri 63376, filed an application for a certificate of public convenience and necessity and related authorizations pursuant to Section 7(c) of the Natural Gas Act (NGA) and the Commission's Rules and Regulations thereunder. Missouri Interstate requests authorization for the following:

(i) A certificate of public convenience and necessity authorizing Missouri Interstate to construct, install, and operate natural gas pipeline facilities in Illinois and Missouri;

(ii) A blanket certificate of public convenience and necessity pursuant to Part 284, Subpart G of the Commission regulations authorizing the transportation of gas for others;

(iii) A blanket certificate of public convenience and necessity under Part 157, Subpart F of the Commission's regulations authorizing the construction, acquisition, abandonment and operation of certain facilities, all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Missouri Interstate asks the Commission to issue a final certificate order by October 1, 2002, to allow Missouri Interstate to commence transportation services in time for the 2002–2003, heating season.

Any questions regarding Missouri Interstate's application should be directed to David J. Ries, President, Missouri Interstate Gas, LLC, 110 Algana Court, St. Peters, Missouri, 63376 at (636) 926–0387 or by fax (636) 926–3668 or Jane E. Stelck, Heller Ehrman, White & McAuliffe, LLP, Suite 300, 1666 K Street NW, Washington, DC, 20006 at (202) 912–2183 or by fax (202) 912–2020.

Missouri Interstate proposes to own, operate and place into service approximately 5.6 miles of existing 12-inch diameter pipeline and to construct approximately 1 mile of 12-inch diameter pipeline and interconnection valves. The existing facility extends from a point at the edge of the Mississippi River in Madison County, Illinois, under the river, to a point approximately five miles west of the Mississippi River in St. Charles County, Missouri.

Missouri Interstate proposes to transport up to 20 MMcf/day of natural gas to customers in the West St. Louis suburbs in Missouri. Missouri Interstate estimates that the acquisition, conversion, construction and interconnections of the pipeline will result in an overall plant investment of approximately $13,361,180.

Missouri Interstate proposes to provide both firm and interruptible services based on an open access non-discriminatory basis, pursuant to Part 284 of the Commission's Regulations, with services available at both recourse and negotiated rates. Missouri Interstate's with cost-based rates are designed using a straight-fixed variable rate structure. Missouri Interstate had submitted a pro forma FERC Gas Tariff for Commission review.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17719 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–391–000]

Natural Gas Pipeline Company of America; Notice of Application

July 9, 2002.

On June 24, 2002, Natural Gas Pipeline Company of America (Natural), located at 747 East 22nd Street, Lombard, Illinois 60148, filed an application in Docket No. CP02–391–000 pursuant to section 7(c) of the Natural Gas Act (NGA), and subpart A of part 157 of the Federal Energy RegulatoryCommission's (Commission) regulations for a certificate of public convenience and necessity authorizing the construction and operation of one new 6,000 horsepower compressor and the construction of seventeen new injection/withdrawal wells at Natural's North Lansing Storage Field located in Harrison County, Texas, which will enable Natural to provide an additional 10.7 Bcf of firm storage service. The total estimated construction cost for the proposed section 7(c) facilities is $31,053,749. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call (202)208–2222 for assistance).

The additional 10.7 Bcf working gas and storage service was offered to

customers on a firm basis under Natural's Rate Schedule "Nominated Storage Service" (NSS). One new non-affiliated shipper has signed a binding precedent agreement for the full volume for a term of not less than ten years with a negotiated rate for service on Natural's Gulf Coast system. The project will result in an aggregate maximum daily quantity of 146,686 Dth of additional NSS. Furthermore, Natural proposes that the NSS service will be available by

two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–6–000]

Texas Gas Transmission Corporation; Notice of Filing

July 9, 2002

On June 25, 2002, Texas Gas

standards of conduct under 18 CFR Part 161 of the Commission's regulations.

Williams Gas Pipelines Central, Inc. states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in

holds in Wisvest-Connecticut, a public utility subject to the Commission's jurisdiction under the FPA. The proposed transaction will result in PSEG Fossil indirectly acquiring control over Wisvest-Connecticut's two generating stations, a 553 MW coal and oil fired generating facility in Bridgeport, Connecticut and a 466 MW oil and gas-fired generating facility in New Haven, Connecticut, as well as associated jurisdictional facilities,

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–40–000, et al.]

American Electric Power Company, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 8, 2002.

The following filings have been made with the Commission. The filings are

customers on a firm basis under Natural's Rate Schedule "Nominated Storage Service" (NSS). One new non-affiliated shipper has signed a binding precedent agreement for the full volume for a term of not less than ten years with a negotiated rate for service on Natural's Gulf Coast system. The project will result in an aggregate maximum daily quantity of 146,666 Dth of additional NSS. Furthermore, Natural proposes that the NSS service will be available by the summer of 2003 and requests that the Commission issue a certificate in this docket by November 2002.

Any questions regarding this application should be directed to Floyd Hofstetter, Vice President, Storage Operations, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148, phone (630) 691–3660.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17717 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–6–000]

Texas Gas Transmission Corporation; Notice of Filing

July 9, 2002

On June 25, 2002, Texas Gas Transmission Corporation filed its revised standards of conduct under 18 CFR Part 161 of the Commission's regulations.

Texas Gas Transmission Corporation states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17724 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–5–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing

July 9, 2002

On June 21, 2002, Williams Gas Pipelines Central, Inc. filed its revised standards of conduct under 18 CFR Part 161 of the Commission's regulations.

Williams Gas Pipelines Central, Inc. states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17723 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–87–000]

Wisvest Corporation; Wisvest-Connecticut LLC; PSEG Fossil LLC; Notice of Filing

July 9, 2002.

Take notice that on June 28, 2002, Pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. 824b (2000), and Part 33 of the Commission's regulations thereunder, 18 CFR Part 33, Wisvest Corporation (Wisvest or Seller), Wisvest-Connecticut, LLC (Wisvest-Connecticut) and PSEG Fossil LLC (PSEG Fossil or Buyer) (together, the Applicants) filed an application with the Federal Energy Regulatory Commission (Commission) for approval to permit Wisvest to transfer and PSEG Fossil to acquire 100% of the membership interests Wisvest currently holds in Wisvest-Connecticut, a public utility subject to the Commission's jurisdiction under the FPA. The proposed transaction will result in PSEG Fossil indirectly acquiring control over Wisvest-Connecticut's two generating stations, a 553 MW coal and oil fired generating facility in Bridgeport, Connecticut and a 466 MW oil and gas-fired generating facility in New Haven, Connecticut, as well as associated jurisdictional facilities, wholesale power sales contracts and Wisvest-Connecticut's market-based rate schedule on file with the Commission.

PSEG Fossil is a new market entrant in New England that, together with its affiliates, owns only de minimis electric generation in New England, all of which is fully committed under long-term power sales agreements. The Applicants, therefore, request a shortened notice period and expedited Commission approval within 60 days of filing in order to achieve closing of the proposed transaction on or before October 1, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 19, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17721 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC98–40–000, et al.]

American Electric Power Company, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Company, Inc. and Central and South West Corp.

[Docket Nos. EC98–40–000, ER98–2770–000, ER98–2786–000]

Take notice that on June 28, 2002, American Electric Power Service Corporation (AEPSC), on behalf of American Electric Power Company, Inc., submitted a compliance filing with respect to a divestiture commitment in these dockets.

Comment Date: July 19, 2002.

2. Nevada Power Company

[Docket No. ER02–84–002]

Take notice that on May 1, 2002, Nevada Power Company tendered for filing its compliance filing making the changes to the executed Interconnection and Operation Agreement between Nevada Power Company and Duke Energy Moapa, LLC required by the Federal Energy Regulatory Commission's April 1, 2002 Order in this docket.

Comment Date: July 19, 2002.

3. Southern Company Services, Inc.

[Docket Nos. ER02–352–003]

Take notice that on July 1, 2002, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company, made a compliance filing in accordance with the Federal Energy Regulatory Commission's order in Southern Company Services, Inc., 99 FERC ¶61,249.

Comment Date: July 22, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–004]

Take notice that on July 1, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed with the Federal Energy Regulatory Commission (Commission) a compliance filing in the above reference docket pursuant to the Commission's May 31, 2002 Order in Midwest Independent Transmission System, Docket No. ER02–1420–000, 99 FERC ¶61,250.

The Midwest ISO requested that the Commission accept the compliance filing and subsequent changes to the Revised Midwest ISO Agreement and Resulting Company Open Access Transmission Tariff as effective March 29, 2002. Copies of this filing were electronically served upon Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants,

Comment Date: July 22, 2002.

7. Southern Company Services, Inc.

[Docket No. ER02–2207–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Sawnee Electric Membership Corporation (Sawnee EMC) dated as of February 28, and conditions for capacity and associated energy sales from Southern Power to Flint EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

10. Southern Company Services, Inc.

[Docket No. ER02–2210–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2002.

a. *Type of Filing:* Application for Amendment of License to find that a

reproduction at the Commision's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2002.

Take notice that the following application has been filed with the Commission and is available for public

The Midwest ISO requested that the Commission accept the compliance filing and subsequent changes to the Revised Midwest ISO Agreement and Resulting Company Open Access Transmission Tariff as effective March 29, 2002. Copies of this filing were electronically served upon Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: July 22, 2002.

5. Southern Company Services, Inc.

[Docket No. ER02–2205–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Coweta-Fayette Electric Membership Corporation (Coweta-Fayette EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Coweta-Fayette EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

6. Southern Company Services, Inc.

[Docket No. ER02–2206–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Flint Electric Membership Corporation (Flint EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Flint EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

7. Southern Company Services, Inc.

[Docket No. ER02–2207–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Sawnee Electric Membership Corporation (Sawnee EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Sawnee EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

8. Southern Company Services, Inc.

[Docket No. ER02–2208–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Okefenoke Rural Electric Membership Corporation (Okefenoke REMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Okefenoke REMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

9. Southern Company Services, Inc.

[Docket No. ER02–2209–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Flint Electric Membership Corporation (Flint EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Flint EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

10. Southern Company Services, Inc.

[Docket No. ER02–2210–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Carroll Electric Membership Corporation (Carroll EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Federal Energy Regulatory Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Carroll EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17733 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2002.

a. *Type of Filing:* Application for Amendment of License to find that a certain transmission line is no longer jurisdictional and no longer requires licensing.

b. *Project No.:* 1971–075.

c. *Date Filed:* February 26, 2002.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Hells Canyon.

f. *Location:* The project is located on the Snake River in Ada, Adam, Boise, Gem and Washington Counties, Idaho.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 385.207.

h. *Applicant Contacts:* Robert W. Stahman, Vice President, Secretary and General Counsel, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707. Lee S. Sherline, Leighton & Sherline, 8211 Chivalry Road, Annadale, VA 22003–1337.

i. *FERC Contact:* Etta Foster, (202) 219–2679, or *etta.foster@ferc.gov.*

j. *Deadline for filing comments, motions to intervene or protests:* August 12, 2002.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intevenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The applicant requests that the eastern 4.02 miles of its transmission line #923 be deleted from the license and exhibits J and M be revised to reflect this change.

l. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commision's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17726 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary and Approve Revised Exhibit G.

b. *Project No.:* 2569–093.

c. *Date Filed:* June 18, 2002.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Black River Project.

f. *Location:* The project is located on the Black River, in Jefferson County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Sam S. Hirshey, Manager, Hydro Licensing & Regulatory Compliance, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2790.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Mohamad Fayyad at (202) 219–2665, or e-mail address: *mohamad.fayyad@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 12, 2002. *All documents (original and eight copies) should be filed with:* Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2569–093) on any comments or motions filed.

k. *Description of Request:* The licensee is proposing to add to project boundary about a ½ acre of land adjacent to the power canal at the Kamargo Development. The subject land is currently the property of Ms. Gayle McGregor, which includes her residence. The licensee says the inclusion of Ms. McGregor's property in the project boundary has been made necessary by the continued and periodic emergence of sinkholes at the property, which FERC has determined are caused by the project operation and water in the power canal. The licensee says its proposal that includes acquiring the property, removing the residence and fencing the affected area, is the only logical and effective long term plan, which will eliminate potential hazards associated with the sinkholes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for

site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17727 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 113-foot-high, 765-foot-long concrete dam impounding the Crow Creek Reservoir, which has a 31-acre surface area at normal maximum water surface elevation 2,622 feet, (2) a proposed 250-foot-long, 78-inch-diameter steel penstock, (3) a proposed

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis,

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17729 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Chatfield Dam and Reservoir, would consist of: (1) A proposed 1,500-foot-long, 54-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17727 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 9, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12197–000.

c. *Date filed*: June 10, 2002.

d. *Applicant*: Crow Creek Hydro, LLC.

e. *Name and Location of Project*: The Crow Creek Dam Hydroelectric Project would be located at an existing dam owned by the City of The Dalles on Crow Creek in Wasco County, Oregon. The project would not occupy Federal or Tribal lands.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact*: James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12197–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project would consist of: (1) The existing 113-foot-high, 765-foot-long concrete dam impounding the Crow Creek Reservoir, which has a 31-acre surface area at normal maximum water surface elevation 2,622 feet, (2) a proposed 250-foot-long, 78-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of 3.5 megawatts, (4) a proposed 15-mile-long, 25-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 15.3 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17729 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 9, 2002

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12199–000.

c. *Date filed*: June 10, 2002.

d. *Applicant*: Chatfield Hydro, LLC.

e. *Name and Location of Project*: The Chatfield Dam Hydroelectric Project would be located on the South Platte River in Douglas County, Colorado. The project would utilize the U.S. Army Corps of Engineer's existing Chatfield Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact*: James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12199–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the existing Chatfield Dam and Reservoir, would consist of: (1) A proposed 1,500-foot-long, 54-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 2.1 megawatts, (3) a proposed one-mile-long, 15-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 8.5 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17730 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17731 Filed 7–12–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 9, 2002

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12198–000.

c. *Date filed*: June 10, 2002.

d. *Applicant*: Crow Creek Hydro, LLC.

e. *Name and Location of Project*: The Crow Creek Dam Hydroelectric Project would be located at an existing dam owned by the City of The Dalles on Crow Creek in Wasco County, Oregon. The project would not occupy Federal or Tribal lands.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact*: James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12198–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project would consist of: (1) The existing 25-foot-high, 400-foot-long concrete dam impounding Black Lake, which has a 10,500-acre surface area at normal maximum water surface elevation 105 feet, (2) two proposed

agenda and directions to the hotel are enclosed.

If you plan to attend or have suggestions for the agenda, please respond by Friday, August 2, 2002 via facsimile to Roberta Coulter at 202/208–0353, or you may email our team at: gasoutreach@ferc.gov. Please include in the response the names, addresses, and telephone numbers of all attendees from your organization.

To help us enhance our panel

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filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17730 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12215–000.

c. *Date filed*: June 17, 2002.

d. *Applicant*: Allen-Chivery Hydro, LLC.

e. *Name and Location of Project*: The Allen-Chivery Dam Hydroelectric Project would be located at an existing dam owned by the State of Louisiana on the Bayou Bourbeu in Natchitoches Parish, Louisiana.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact*: James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12215–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project would consist of: (1) The existing 25-foot-high, 400-foot-long concrete dam impounding Black Lake, which has a 10,500-acre surface area at normal maximum water surface elevation 105 feet, (2) two proposed 100-foot-long, 168-inch-diameter steel penstocks, (3) a proposed powerhouse containing two generating units, each with an installed capacity of 3.2 megawatts, (4) a proposed one-mile-long, 25-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 15.25 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17731 Filed 7–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Workshop; Better Stakeholder Involvement: How to Make It Work

July 9, 2002.

The Office of Energy Projects is continuing the second phase of its Better Stakeholder Involvement Series with a workshop to be held in Denver, Colorado on Thursday, August 8, 2002. We are again inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations interested in developing strategies for involving people in the pre-filing planning process for natural gas pipelines.

We will be working from the ideas outlined in staff's December 2001 report: "Ideas for Better Stakeholder Involvement In The Interstate Natural Gas Pipeline Planning Pre-Filing Process."[1] Our intent is to identify ways to assist all involved parties in working together to resolve issues early in the pipeline planning process; help companies prepare and file complete applications; and to expedite the Commission's regulatory process, where appropriate.

As we consider various ways to accomplish the pre-filing objectives, the Denver workshop will focus on methods of communication and the dissemination of information to the stakeholders. The workshop will include presentations from panel members sharing their experiences, and an open discussion forum for all participants. We will not discuss the merits of any pending or planned pipeline projects.

The workshop will be held at the Red Lion Hotel Denver Central, 4040 Quebec Street, Denver, Colorado 80216, phone number 1–303–321–6666. A preliminary agenda and directions to the hotel are enclosed.

If you plan to attend or have suggestions for the agenda, please respond by Friday, August 2, 2002 via facsimile to Roberta Coulter at 202/208–0353, or you may email our team at: gasoutreach@ferc.gov. Please include in the response the names, addresses, and telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider, and forward to us, issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below:

Lauren O'Donnell 202/208–0325

Jeff Shenot 202/219–2178

Howard Wheeler 202/208–2299

J. Mark Robinson,

Director, Office of Energy Projects.

Attachments.

Preliminary Workshop Agenda—Better Stakeholder Involvement: How to Make It Work

Denver Workshop

August 8, 2002, 9:00 am–4:30 pm

Overview

The Denver meeting will be an interactive workshop that provides time for communication among the stakeholder groups. The meeting is geared toward brainstorming and idea generation. Speakers will address the following topics to set the stage for discussion.

Discussion Topics

- Elements of Company Public Participation Plans: Getting the Word Out
- The Land Agent's Viewpoint: Making Contact
- Project-Specific Website Development: Demonstrations
- Maintaining the Agency/Company Relationship: A Case Study
- Working with State and Federal Agencies: How Early is Too Early?
- The Citizen Perspective: Before You Come On My Land. * * *

Your Participation

Please come prepared with examples of innovative tools and ideas that work. In addition to panel presentations, we expect group discussion to add to our collective understanding of how best to inform and involve all stakeholders in the pre-filing siting process.

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[1] The staff report can be downloaded from the FERC web-site at www.ferc.gov or requested by e-mail at: gasoutreach@ferc.gov.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Standard Market Design Data and Software Standards; Notice of Conference and Agenda

July 9, 2002.

As announced in the Notice of Conference issued June 6, 2002, the staff

Ongun Alsac, Senior Vice President, Nexant, Inc.

John Finney, Director of Technology, ABB, Inc.

Guillermo Irisarri, Executive Vice President and Principal Engineer, OATI, Inc.

Petar Ristanovic, Executive Consultant, Siemens Power Transmission and Distribution, Inc.

David Sun, Corporate Engineer, ALSTOM, Corp.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000—Maine; Damariscotta Mills Project]

Ridgewood Maine Hydro Partners, L.P.; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included In or

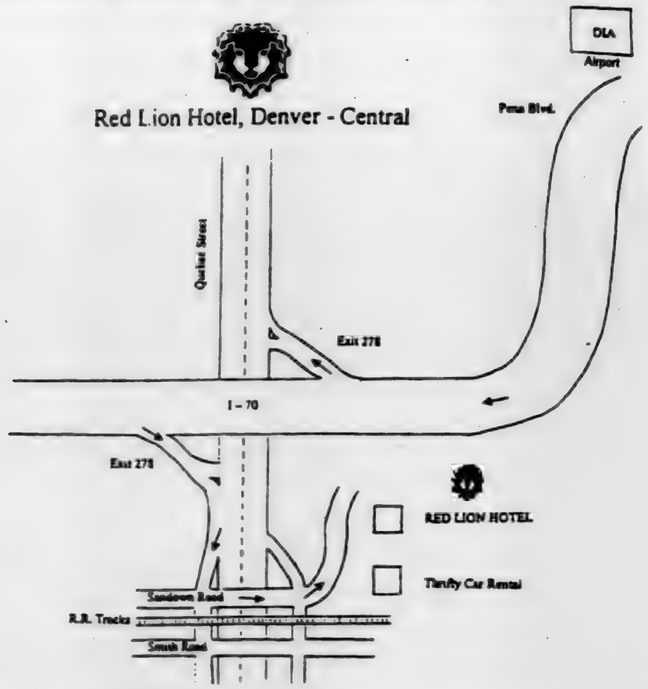

From Denver International Airport and Westbound
Exit the airport on Pena Boulevard. Follow Pena Boulevard approximately 9 miles to I-70 West Bound. I-70 West to Exit 278 Quebec Street. Turn left onto Quebec Street (South bound). Get in the far right lane and pass under the Interstate. Exit right for Smith Road. Stay in the left lane after exiting. Take the first left onto Sandown Road. Cross over the Quebec Street upper level (stop sign) and turn left onto frontage road in front of the Thrifty Car Rental. Hotel entrance is on the right hand side.

East Bound
I-70 East Bound to Exit 278 Quebec Street. Stay right for Smith Road. After exiting move to the left lane. Take the first left onto Sandown Road. Cross over the Quebec Street upper level (stop sign) and turn left onto the frontage road in front of the Thrifty Car Rental. Hotel entrance is on the right hand side.

Southeast Bound on I-270
I-270 Southeast Bound to the Quebec Street Exit, turn left. Get in the far right lane and pass under the Interstate. Exit right for Smith Road. Stay in the left lane after exiting. Take the first left onto Sandown Road. Cross over the Quebec Street upper level (stop sign) and turn left onto the frontage road in front of the Thrifty Car Rental. Hotel entrance is on the right hand side.

Northbound on Quebec Street
Stay in the far right lane (do not continue on Quebec under the overpass). Cross Smith Road and the railroad tracks. Turn right onto the frontage road in front of Thrifty Car Rental. Hotel entrance is on the right hand side.

[FR Doc. 02–17725 Filed 7–12–02; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Standard Market Design Data and Software Standards; Notice of Conference and Agenda

July 9, 2002.

As announced in the Notice of Conference issued June 6, 2002, the staff of the Federal Energy Regulatory Commission (Commission) will hold a conference on data and software needs in connection with the implementation of the Commission's Standard Market Design (SMD) rule. The conference will be held on July 18, 2002, starting at 9:00 a.m. (a change from the previously noticed starting time) at the Federal Energy Regulatory Commission, 888 First Street, N.E., in Washington DC, in the Commission Meeting Room.

The conference will discuss data and software standards needed to implement SMD efficiently. The focus will be on exploring what should be standardized; whether there should be a standard data model; on examining the potential for developing data sets to benchmark the needed software; and on finding user-friendly, transparent interfaces that will help to instill confidence in the process. Attached is the Conference Agenda.

All interested parties are invited to attend. There is no registration or fee.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700, or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on "FERC."

All interested parties are invited to attend. For additional information, please contact Rene Forsberg at 202–208–0425 or *Renee.Forsberg@ferc.gov*.

Linwood A. Watson, Jr.,
Deputy Secretary.

Conference Agenda

Opening Remarks: 9 a.m.
Software Developments: 9:05 a.m.–11:30 a.m.
Ongun Alsac, Senior Vice President, Nexant, Inc.
John Finney, Director of Technology, ABB, Inc.
Guillermo Irisarri, Executive Vice President and Principal Engineer, OATI, Inc.
Petar Ristanovic, Executive Consultant, Siemens Power Transmission and Distribution, Inc.
David Sun, Corporate Engineer, ALSTOM, Corp.
Lunch and Software Demos: 11:30 a.m.–1 p.m.
Security Issues: 1 p.m.–1:30 p.m.
Howard Schmidt, Vice Chairman, President's Critical Infrastructure Protection Board.
Chuck Noble, Information Security Coordinator, New England ISO.
ISO Software Experience: 1:30 p.m.–3:30 p.m.
Cherie Broadrick, Manager Corporate Planning, ERCOT.
David La Plante, Vice President Market Development, New England ISO.
Andy Ott, General Manager of Market Coordination, PJM ISO.
Roberto Paliza, Principal Consultant, Midwest ISO.
Don Watkins, Chairman, Common Systems Interface Coordination Group, Seams Steering Group—Western Interconnection (SSG–WI).
Planning Process for Software and Data Standards: 3:45 p.m.–5 p.m.
Clark Gellings, Vice President Power Delivery and Markets Electric Power Research Institute.
Ongun Alsac, Senior Vice President, Nexant, Inc.
John Finney, Director of Technology, ABB, Inc.
Guillermo Irisarri, Executive Vice President and Principal Engineer, OATI, Inc.
Petar Ristanovic, Executive Consultant, Siemens Power Transmission and Distribution, Inc.
David Sun, Corporate Engineer, ALSTOM Corp.
Cherie Broadrick, Manager Corporate Planning, ERCOT.
David La Plante, Vice President Market Development, New England ISO.
Andy Ott, General Manager of Market Coordination, PJM ISO.
Roberto Paliza, Principal Consultant, Midwest ISO.
Don Watkins, Chairman, Common Systems Interface Coordination Group, Seams Steering Group—Western Interconnection (SSG–WI).

* * * * *

[FR Doc. 02–17732 Filed 7–12–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000—Maine; Damariscotta Mills Project]

Ridgewood Maine Hydro Partners, L.P.; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 9, 2002.

On October 18, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Damariscotta Mills Hydroelectric Project (FERC No. 11566–000) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places. The Damariscotta Mills Hydroelectric Project is located on the Damariscotta River, in Lincoln County, Maine. Ridgewood Maine Hydro Partners, L.P. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The following additions are made to the restricted service list notice issued on October 18, 2001, for Project No. 11566–000:

Mr. Dale Wright, Chairman, Town of Nobleboro, 192 US Highway 1, Nobleboro, ME 04555;

Mr. Jonathan C. Hull, Esq., P.O. Box 880, Damariscotta, ME 04543;

Ms. Rosa Sinclair, Chair, Town of Jefferson, 58 Washington Road, Jefferson, ME 04348

Alec Giffen, Land & Water Associates, 9 Union Street, Hallowell, ME 04347

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–17728 Filed 7–12–02; 8:45 am]
BILLING CODE 6717–01–P

[1] 18 CFR 285.2010.

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10015; FRL–6723–8]

Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection; Correction; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

7672, *http://www.epa.gov/epaoswer/hotline/*.

For technical information about this Notice and the ICR renewal contact: Judith Kendall, Toxics Release Inventory Program Division, OEI, Environmental Protection Agency (2844T), 1200 Pennsylvania Ave. NW, Washington, DC 20460, Telephone: 202–566–0750; Fax: 202–566–0727; email: *kendall.judith@epa.gov*.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of the ICR are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (*http://www.epa.gov/fedrgstr/*). An electronic

reporting and record keeping requirements associated with reporting to the Toxics Release Inventory (TRI), which appear in 40 CFR part 372. The location for the Document Control Office (DCO), where comments may be submitted in person or by courier was incorrectly listed. Also, this notice announces that the TSCA Nonconfidential Information Center, North East Mall, Room B–607, Waterside Mall, 401 M Street, SW,

of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI–10015. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting (EPA ICR No. 1704.06, OMB No. 2070–0143). This ICR covers the reporting and record keeping requirements associated with reporting under the alternate threshold for reporting to the Toxics Release Inventory (TRI), which appear in 40

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10015; FRL–6723–8]

Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection; Correction; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical correction; extension of comment period.

SUMMARY: This notice corrects an error published in the **Federal Register** of July 1, 2002, (67 FR 44213) (FRL–6723–8) concerning a notice announcing that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to procedures described in 5 CFR 1320.12: Toxic Chemical Release Reporting (EPA ICR No. 1363.12, OMB No. 2070–0093). This ICR covers the reporting and record keeping requirements associated with reporting to the Toxics Release Inventory (TRI), which appear in 40 CFR part 372. The location for the Document Control Office (DCO), where comments may be submitted in person or by courier, was incorrectly listed. Also, this notice announces that the TSCA Nonconfidential Information Center, North East Mall, Room B–607, Waterside Mall, 401 M Street, SW, Washington, DC, will be closed from August 12–27, 2002. The Center will move to the EPA West Building basement, 1301 Constitution Avenue, NW, Washington, DC. This center contains the public version of the official record which is available for inspection. Because of these corrections, EPA is extending the comment period by 7 days until September 6, 2002. The comment period for the proposed rule was initially scheduled to close on August 30, 2002.

DATES: Comments, identified by the docket control number OEI–10015, must be received by EPA on or before September 6, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: The Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*.

For technical information about this Notice and the ICR renewal contact: Judith Kendall, Toxics Release Inventory Program Division, OEI, Environmental Protection Agency (2844T), 1200 Pennsylvania Ave. NW, Washington, DC 20460, Telephone: 202–566–0750; Fax: 202–566–0727; email: *kendall.judith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

A. Affected Entities

Entities that will be affected by this action are those facilities that manufacture, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) to report annually to EPA their environmental releases and other waste management activities involving such chemicals.

Currently, those industries with the following SIC code designations (that meet all other threshold criteria for TRI reporting) must report toxic chemical releases and other waste management activities:

- 20–39, manufacturing
- 10, metal mining (except for SIC codes 1011, 1081, and 1094)
- 12, coal mining (except for SIC code 1241 and extraction activities)
- 4911, 4931 and 4939, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
- 4953, RCRA Subtitle C hazardous waste treatment and disposal facilities
- 5169, chemicals and allied products wholesale distributors
- 5171, petroleum bulk plants and terminals
- 7389, solvent recovery services, and
- federal facilities in any SIC code

To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 372 and section 3(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of the ICR are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (*http://www.epa.gov/fedrgstr/*). An electronic copy of the collection instrument referenced in this ICR and instructions for its completion are available at *http://www.epa.gov/triinter/#forms*.

B. In Person

The Agency has established an official record for this action under docket control number OEI–10015. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099. The TSCA Nonconfidential Information Center will close from August 12–27, 2002. The Center will move to the EPA West Building basement at 1301 Constitution Avenue, NW, Washington, DC. For more information on how to access the information, contact James Wanzer at (202) 566–0729.

III. What Does This Notice Do?

This notice corrects an error published in the **Federal Register** of July 1, 2002, (67 FR 44213) (FRL–6723–8), concerning a notice announcing that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to procedures described in 5 CFR 1320.12: Toxic Chemical Release Reporting (EPA ICR No. 1363.12, OMB No. 2070–0093). This ICR covers the reporting and record keeping requirements associated with reporting to the Toxics Release Inventory (TRI), which appear in 40 CFR part 372. The location for the Document Control Office (DCO), where comments may be submitted in person or by courier was incorrectly listed. Also, this notice announces that the TSCA Nonconfidential Information Center, North East Mall, Room B–607, Waterside Mall, 401 M Street, SW, Washington, D.C., will be closed from August 12–27, 2002.

The Center will move to the EPA West Building basement, 1301 Constitution Avenue, NW, Washington, DC. This center contains the public version of the official record which is available for inspection. Because of these corrections, EPA is extending the comment period by 7 days. Comments concerning EPA's notice announcing its plan to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12: Toxic Chemical Release Reporting (EPA ICR No. 1363.12, OMB No. 2070–0093) are due on or before September 6, 2002. The comment period for the proposed rule was initially scheduled to close on August 30, 2002. The following is the corrected information on how to submit comments for EPA's ICR renewal notice.

A. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OEI–10015") in your correspondence.

1. *By mail.* All comments should be sent in triplicate to : Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Ariel Rios Building, Washington, DC 20460.

2. *In person or by courier.* Comments may be delivered in person or by courier to: OPPT Document Control Office (DCO) in the EPA East Building, Room 6428, 1201 Constitution Avenue, NW, Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* Submit your comments electronically by e-mail to: "*oppt.ncic@epa.gov*." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI–10015. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

List of Subjects in 40 CFR Part 372

Environmental protection, Information collection requests, Reporting and record keeping requirements.

Dated: July 5, 2002.

Elaine G. Stanley,

Director, Office of Information Analysis and Access, Office of Environmental, Information.

[FR Doc. 02–17686 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10016; FRL–6723–9]

Toxic Chemical Release Reporting; Alternate Threshold for Low Annual Reportable Amounts; Request for Comment on Renewal Information Collection; Correction; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical correction; extension of comment period.

SUMMARY: This notice corrects an error published in the **Federal Register** of July 1, 2002, (67 FR 44197) (FRL–6723–9) concerning a notice announcing that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting (EPA ICR No. 1704.06, OMB No. 2070–0143). This ICR covers the reporting and record keeping requirements associated with reporting under the alternate threshold for reporting to the Toxics Release Inventory (TRI), which appear in 40 CFR part 372. The location for the Document Control Office (DCO), where comments may be submitted in person or by courier, was incorrectly listed. Also, this notice announces that the TSCA Nonconfidential Information Center, North East Mall, Room B–607, Waterside Mall, 401 M Street, SW., Washington, DC, will be closed from August 12–27, 2002. The Center will move to the EPA West Building basement, 1301 Constitution Avenue, NW., Washington, DC. This center contains the public version of the official record which is available for inspection. Because of these corrections, EPA is extending the comment period by 7 days until September 6, 2002. The comment period for the proposed rule was initially scheduled to close on August 30, 2002.

DATES: Comments, identified by the docket control number OEI–10016, must be received by EPA on or before September 6, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION: For general information, contact The Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800)553–7672, *http://www.epa.gov/epaoswer/hotline/*. For technical information about this Notice and the ICR renewal, contact: Judith Kendall, Toxics Release Inventory Program Division, OEI (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Telephone: 202–566–0750; Fax: 202–566–0727; email: *kendall.judith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

A. *Affected Entities:* Entities that will be affected by this action are those facilities that manufacture, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory

(TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), to report annually to EPA their environmental releases of such chemicals.

Currently, those industries with the following SIC code designations (that meet all other threshold criteria for TRI reporting) must report toxic chemical releases and other waste management activities:

as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099. The TSCA Nonconfidential Information Center will close from August 12–27, 2002. The Center will move to the EPA West Building basement at 1301 Constitution Avenue, NW, Washington, DC. For more information on how to access the information, contact James Wanzer at (202) 566–0729.

III. What Does This Notice Do?

This notice corrects an error published in the **Federal Register** of July 1, 2002, (67 FR 44213) (FRL–6723–8), concerning a notice announcing that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to procedures described in 5 CFR 1320.12: Toxic Chemical Release Reporting (EPA ICR No. 1363.12, OMB No. 2070–0093). This ICR covers the reporting and record keeping requirements associated with reporting to the Toxics Release Inventory (TRI), which appear in 40 CFR part 372. The location for the Document Control Office (DCO), where comments may be submitted in person or by courier was incorrectly listed. Also, this notice announces that the TSCA Nonconfidential Information Center, North East Mall, Room B–607, Waterside Mall, 401 M Street, SW, Washington, D.C., will be closed from August 12–27, 2002.

The Center will move to the EPA West Building basement, 1301 Constitution Avenue, NW, Washington, DC. This center contains the public version of the official record which is available for inspection. Because of these corrections, EPA is extending the comment period by 7 days. Comments concerning EPA's notice announcing its plan to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12: Toxic Chemical Release Reporting (EPA ICR No. 1363.12, OMB No. 2070–0093) are due on or before September 6, 2002. The comment period for the proposed rule was initially scheduled to close on August 30, 2002. The following is the corrected information on how to submit comments for EPA's ICR renewal notice.

A. How and to Whom Do I Submit Comments?

You may submit comments through

not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

List of Subjects in 40 CFR Part 372

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

above referenced **Federal Register** notice and are also available at the SAB website (*www.epa.gov/sab*). The notice also included a call for nominations for members of the panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the panel. A Short List of individuals from which the panel will be chosen has been posted at the SAB's website.

The following three teleconference

(d) to identify areas where the Panel would welcome additional input.

See below for availability of review materials, the charge to the review panel, and contact information.

3. Metals Assessment Panel—August 29, 2002 Teleconference

The Metals Assessment Panel will meet on August 29, 2002 by teleconference from 2 p.m. to 4 p.m. Eastern Time.

Purpose of the Meeting—The purpose

(TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), to report annually to EPA their environmental releases of such chemicals.

Currently, those industries with the following SIC code designations (that meet all other threshold criteria for TRI reporting) must report toxic chemical releases and other waste management activities:

- 20–39, manufacturing sector
- 10, metal mining (except for SIC codes 1011, 1081, and 1094)
- 12, coal mining (except for SIC code 1241 and extraction activities)
- 4911, 4931 and 4939, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce
- 4953, RCRA Subtitle C hazardous waste treatment and disposal facilities
- 5169, chemicals and allied products wholesale distributors
- 5171, petroleum bulk plants and terminals
- 7389, solvent recovery services, and
- Federal facilities in any SIC code

To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 372 and section 4(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Additional Information or Copies of This Document and Other Support Documents

A. *Electronic Availability:* Electronic copies of this Notice and the ICR are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (*http://www.epa.gov/fedrgstr/*). An electronic copy of the collection instrument referenced in this ICR and instructions for its completion are available at *http://www.epa.gov/triinter/#forms.*

B. *In Person:* The Agency has established an official record for this action under docket control number OEI–10016. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099. The TSCA Nonconfidential Information Center will close from August 12–27, 2002. The Center will move to the EPA West Building basement at 1301 Constitution Avenue, NW., Washington, DC. For more information on how to access the information, contact James Wanzer at (202) 566–0729.

III. What Does This Notice Do?

This Notice corrects an error published in the **Federal Register** of July 1, 2002, (67 FR 44197) (FRL–6723–9), concerning a notice announcing that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting (EPA ICR No. 1704.06, OMB No. 2070–0143). This ICR covers the reporting and record keeping requirements associated with reporting under the alternate threshold for reporting to the Toxics Release Inventory (TRI), which appear in 40 CFR part 372. The location for the Document Control Office (DCO), where comments may be submitted in person or by courier was incorrectly listed. Also, this notice announces that the TSCA Nonconfidential Information Center, North East Mall, Room B–607, Waterside Mall, 401 M Street, SW, Washington, DC, will be closed from August 12–27, 2002. The Center will move to the EPA West Building basement, 1301 Constitution Avenue, NW, Washington, DC. This center contains the public version of the official record which is available for inspection. Because of these corrections, EPA is extending the comment period by 7 days. Comments concerning EPA's notice announcing its plan to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting (EPA ICR No. 1704.06, OMB No. 2070–0143) are due on or before September 6, 2002. The comment period for the proposed rule was initially scheduled to close on August 30, 2002. The following is the corrected information on how to submit comments for EPA's ICR renewal notice.

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (*i.e.*, "OEI–10016") in your correspondence.

1. *By mail.* All comments should be sent in triplicate to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Ariel Rios Building, Washington, DC 20460.

2. *In person or by courier.* Comments may be delivered in person or by courier to: OPPT Document Control Office (DCO) in the EPA East Building, Room 6428, 1201 Constitution Avenue, NW, Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* Submit your comments electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI–10016. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

List of Subjects in 40 CFR Part 372

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

Dated: July 5, 2002.

Elaine G. Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 02–17687 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7245–4]

EPA Science Advisory Board, Notification of Public Advisory Committee Meetings; Metals Assessment Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of three conference call meetings of Metals Assessment Panel of the US EPA Science Advisory Board (SAB). These conference call meetings are preparatory for a face-to-face meeting to be held September 10–12 in or near Washington DC. Once the location is known, the face-to-face meeting will be the subject of a separate announcement. The Panel will hold conference calls on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. For teleconference meetings, available lines may also be limited.

Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Background

The EPA Science Advisory Board (SAB, Board) announced in 67 FR 38957–38959, June 6, 2002 that it had been asked to undertake a review of EPA's draft Action Plan for the "Framework for Metals Assessment and Cross-Agency Guidance for Assessing Metals-Related Hazard and Risk." The background, charge, and description of the review documents appear in the above referenced **Federal Register** notice and are also available at the SAB website (*www.epa.gov/sab*). The notice also included a call for nominations for members of the panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the panel. A Short List of individuals from which the panel will be chosen has been posted at the SAB's website.

The following three teleconference meetings will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meetings are all open to the public, but, due to limited space, seating will be on a first-come basis. The SAB Staff encourages members of the public who plan to attend any or all of the three meetings in person to call a few days in advance of that meeting and to arrive at least 15 minutes before the scheduled start time so that the necessary building security requirements can be accommodated before the start of the meeting. The public may also attend the teleconference meetings via telephone, however, lines may be limited. For further information concerning the meetings or how to obtain the teleconference phone number, please contact the individuals listed at the end of this FR notice.

1. Metals Assessment Panel—August 8, 2002 Teleconference

The Metals Assessment Panel will meet on August 8, 2002 by teleconference from 2 p.m. to 4 p.m. Eastern Time.

Purpose of the Meeting—The purpose of this public teleconference meeting is to: (a) Discuss the charge and review materials provided to the Metals Assessment Panel; (b) to clarify any questions relating to the charge and the review materials; (c) to discuss specific charge assignments to the panelists; and (d) to clarify specific points of interest raised by the Panelists in preparation for the face-to-face meeting to be held on September 10–12, 2002.

See below for availability of review materials, the charge to the review panel, and contact information.

2. Metals Assessment Panel—August 15, 2002 Teleconference

The Metals Assessment Panel will meet on August 15, 2002 by teleconference from 2 p.m. to 4 p.m. Eastern Time.

Purpose of the Meeting—The purpose of this public teleconference meeting is to: (a) Hear invited presentations; (b) to hear public comment; (c) to provide an opportunity for panel discussion; and (d) to identify areas where the Panel would welcome additional input.

See below for availability of review materials, the charge to the review panel, and contact information.

3. Metals Assessment Panel—August 29, 2002 Teleconference

The Metals Assessment Panel will meet on August 29, 2002 by teleconference from 2 p.m. to 4 p.m. Eastern Time.

Purpose of the Meeting—The purpose of this public teleconference meeting is to: (a) Allow panelists to identify points they think should be addressed in the Panel's report; (b) provide other panelists with an opportunity to add to or correct those points; and (c) identify for the Agency and the Public any areas where the panel would welcome additional information or comment.

See below for availability of review materials, the charge to the review panel, and contact information.

FOR FURTHER INFORMATION CONTACT: Persons desiring information about public participation in the meetings identified above must contact Kathleen White, Designated Federal Officer, Metals Assessment Panel, USEPA Science Advisory Board (1400A), Suite 6450Z, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4559; fax at (202) 501–0582; or via e-mail at *white.kathleen@epa.gov*. Requests for oral comments must be made *in writing* (e-mail, fax or mail) and received by Ms. White no later than noon Eastern Time on the following dates: for the August 8 teleconference call, requests must be received by August 1st; for the August 15 teleconference call, requests must be received by August 8; for the August 29 conference call, requests must be received by August 22.

The public is encouraged to provide written comments. Those who prefer to provide oral comments are encouraged to schedule them for August 15. The oral public comment period will be limited and divided among the speakers who register. Additional opportunities for public comment will be available at the face to face meeting to be held September 10–12. Registration is on a first come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Speakers who are unable to register in time may provide their comments in writing.

Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference before June 30, 2002, must contact Ms.Zisa Lubarov-Walton, Management Assistant, EPA

Science Advisory Board (1400A), Suite 6450N, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4537; fax at (202) 501–0582; or via e-mail at *lubarov-walton.zisa@epa.gov*

A copy of the draft agenda for each meeting will be posted on the SAB Website (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before that meeting.

Availability of Review Material—

minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until two days following the date of the meeting (unless otherwise stated above), written

Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (*http://www.epa.gov/sab*) and in the just-released EPA Science Advisory Board FY2001 Annual Staff Report—Expanding Expertise and

Dated: July 9, 2002.

Vanessa Vu,

Director, EPA Science Advisory Board.

[FR Doc. 02–17699 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open

Science Advisory Board (1400A), Suite 6450N, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4537; fax at (202) 501–0582; or via e-mail at *lubarov-walton.zisa@epa.gov*

A copy of the draft agenda for each meeting will be posted on the SAB Website *(www.epa.gov/sab)* (under the AGENDAS subheading) approximately 10 days before that meeting.

Availability of Review Material—There is one primary document that is the subject of the review. The draft Metals Action Plan is available on the EPA Risk Assessment Forum's website: *http://www.epa.gov/ncea/raf/rafpub.htm*. The review document is also available electronically at the following site *http://oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=4580* For questions and information pertaining to the review documents, please contact Dr. Bill Wood (Mail Code 8601D), U.S. Environmental Protection Agency, Washington, DC 20460; tel. (202) 564–3358, e-mail: *wood.bill@epa.gov*. Dr. Wood will refer you to the appropriate contact for the particular issue of interest.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website *(http://www.epa.gov/sab)* and in the *Science Advisory Board FY2001 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: July 9, 2002.

Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board.

[FR Doc. 02–17691 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7245–9]

EPA Science Advisory Board; Notification of Public Advisory Committee Teleconference Meeting

Summary—Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the EPA Science Advisory Board (SAB), a chartered Federal advisory committee, is announcing that it will meet in a public teleconference on August 12, 2002 from 1 p.m. to 3 p.m. Eastern Time. The meeting will be hosted in Conference Room 6013, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis. For further information concerning the meeting or how to obtain the phone number, please contact the individuals listed below.

Purpose of the Teleconference—At the planned teleconference, the EEAC will continue their discussions on the EPA affordability criteria under the Safe Drinking Water Act as amended in 1996. The Committee began its discussions of this issue at its June 13, 2002 meeting, held at the Holiday Inn, Alexandria, Virginia (*see* 67 FR 20765–20767, April 26, 2002 for additional background information on this meeting).

FOR FURTHER INFORMATION: Members of the public desiring additional information about the meeting, must contact Mr. Thomas Miller, Designated Federal Officer, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4558; fax at (202) 501–0323; or via e-mail at *miller.tom@epa.gov*. A copy of the draft agenda will be posted on the SAB Website (*http://www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before the meeting.

Members of the public desiring additional information about the meeting location or the call-in number, must contact Ms. Diana Pozun, Program Specialist, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4544; fax at (202) 501–0323; or via e-mail at *pozun.diana@epa.gov*.

Oral Comments—The SAB will have a brief period (no more than 15 minutes) available during the Teleconference meeting for applicable public comment. Members of the public who wish to make a brief oral presentation must contact Mr. Miller in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Monday, August 5, 2002, in order to be included on the Agenda. The oral public comment period will be limited to 15 minutes divided among the speakers who register. Registration is on a first come basis, allowing approximately three to five minutes per speaker or organization. Speakers who are unable to register in time, may provide their comments in writing.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, for conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until two days following the date of the meeting (unless otherwise stated above), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (*http://www.epa.gov/sab*) and in the just-released EPA Science Advisory Board FY2001 Annual Staff Report—Expanding Expertise and Experience which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 9, 2002.

Vanessa Vu,

Director, EPA Science Advisory Board.

[FR Doc. 02–17699 Filed 7–12–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Tuesday, July 16, 2002

July 9, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, Juy 16, 2002, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115); and Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended (CC Docket No. 96–149).
3	Wireless Telecommunications.	Title: The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010 (WT Docket No. 96–86). Summary: The Commission will consider a Fifth Report and Order concerning the migration to 6.25 kHz spectral efficiency in the 700 MHz public safety band.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are avaflable in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *<http://www.fcc.gov/realaudio/>*. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–1470, Ext. 10; fax number (703) 834–0111.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17791 Filed 7–11–02; 11:07 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–7]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2002–03 second quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2002–03 second quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before August 30, 2002.

ADDRESSES: Bank members selected for the 2002–03 second quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *fitzgerald@fhfb.gov*.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at *fitzgerald@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.2(b)(1)(i). The Finance Board must select members for review each calendar quarter, and may review the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the August 30, 2002 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before July 29, 2002, each Bank will notify the members in its district that have been selected for the 2002–03 second quarter review cycle and inform them of the deadline for submitting a Community Support Statement. 12 CFR 944.2(c)(2)(i). The Finance Board will notify each member selected for review of the member's most recent Community Support rating and the date of the examination that resulted in the rating. 12 CFR 944.2(c)(2)(ii).

Federal Savings Bank	Dover	New Hampshire
Franklin Savings Bank	Franklin	New Hampshire
Meredith Village Savings Bank	Meredith	New Hampshire
Salem Co-operative Bank	Salem	New Hampshire
First Brandon National Bank	Brandon	Vermont
Randolph National Bank	Randolph	Vermont

Federal Home Loan Bank of New York—District 2

Liberty Bank	Avenel	New Jersey
Pamrapo Savings Bank, S.L.A.	Bayonne	New Jersey
Farmers & Mechanics Bank	Burlington	New Jersey
Freehold Savings & Loan Association	Freehold	New Jersey

Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the August 30, 2002 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before July 29, 2002, each Bank will notify the members in its district that have been selected for the 2002–03 second quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: *www.fhfb.gov*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2002–03 second quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Superior Savings of New England, National Association	Branford	Connecticut
Enfield Federal Savings and Loan Association	Enfield	Connecticut
Essex Savings Bank	Essex	Connecticut
First City Bank	New Britain	Connecticut
Citizens Bank of Connecticut	New London	Connecticut
Auburn Savings & Loan	Auburn	Maine
First National Bank of Bar Harbor	Bar Harbor	Maine
First FS&LA of Bath	Bath	Maine
Aroostook County FS&LA	Caribou	Maine
Kennebunk Savings Bank	Kennebunk	Maine
Community Credit Union	Lewiston	Maine
Portland Regional Federal Credit Union	Portland	Maine
Skowhegan Savings Bank	Skowhegan	Maine
Kennebec Federal Savings and Loan Association	Waterville	Maine
North Middlesex Savings Bank	Ayer	Massachusetts
Boston Private Bank & Trust Company	Boston	Massachusetts
First Trade Union Bank, F.S.B	Boston	Massachusetts
First Federal Savings Bank of Boston	Boston	Massachusetts
Investors Bank & Trust Company	Boston	Massachusetts
Peoples Federal Savings Bank	Brighton	Massachusetts
Cambridge Savings Bank	Cambridge	Massachusetts
East Cambridge Savings Bank	Cambridge	Massachusetts
Dedham Institution for Savings	Dedham	Massachusetts
Eagle Bank	Everett	Massachusetts
Citizens-Union Savings Bank	Fall River	Massachusetts
Foxboro Federal Savings	Foxboro	Massachusetts
Georgetown Savings Bank	Georgetown	Massachusetts
Hyde Park Savings Bank	Hyde Park	Massachusetts
First Essex Bank	Lawrence	Massachusetts
Marblehead Savings Bank	Marblehead	Massachusetts
Medford Co-operative Bank	Medford	Massachusetts
Plymouth Savings Bank	Middleboro	Massachusetts
Millbury Savings Bank	Millbury	Massachusetts
Monson Savings Bank	Monson	Massachusetts
Lawrence Savings Bank	North Andover	Massachusetts
Warren Five Cents Savings Bank	Peabody	Massachusetts
Saugus Bank, A Cooperative Bank	Saugus	Massachusetts
Scituate Federal Savings Bank	Scituate	Massachusetts
Middlesex Federal Savings, F.A.	Somerville	Massachusetts
Spencer Savings Bank	Spencer	Massachusetts
Hampden Savings Bank	Springfield	Massachusetts
Bristol County Savings Bank	Taunton	Massachusetts

Federal Savings Bank	Dover	New Hampshire
Franklin Savings Bank	Franklin	New Hampshire
Meredith Village Savings Bank	Meredith	New Hampshire
Salem Co-operative Bank	Salem	New Hampshire
First Brandon National Bank	Brandon	Vermont
Randolph National Bank	Randolph	Vermont

Federal Home Loan Bank of New York—District 2

Liberty Bank	Avenel	New Jersey
Pamrapo Savings Bank, S.L.A.	Bayonne	New Jersey
Farmers & Mechanics Bank	Burlington	New Jersey
Freehold Savings & Loan Association	Freehold	New Jersey
Spencer Savings Bank, SLA	Garfield	New Jersey
GSL Savings Bank	Guttenberg	New Jersey
Oritani Savings Bank	Hackensack	New Jersey
Investors Savings Bank	Millburn	New Jersey
Millington Savings Bank	Millington	New Jersey
Dollar Savings Bank	Newark	New Jersey
Ocean City Home Bank	Ocean City	New Jersey
Amboy National Bank	Old Bridge	New Jersey
OceanFirst Bank	Toms River	New Jersey
First Savings Bank	Woodbridge	New Jersey
Brooklyn Federal Savings Bank	Brooklyn	New York
Canisteo Savings & Loan Association	Canisteo	New York
Elmira Savings & Loan, F.A	Elmira	New York
The Upstate National Bank	Fayetteville	New York
The National Bank of Geneva	Geneva	New York
Glens Falls National Bank and Trust Company	Glens Falls	New York
Maple City Savings Bank, FSB	Hornell	New York
Sunnyside FS&LA of Irvington	Irvington	New York
The Lyons National Bank	Lyons	New York
Maspeth Federal Savings and Loan Association	Maspeth	New York
Massena Savings & Loan	Massena	New York
Cross County Federal Savings Bank	Middle Village	New York
Provident Bank	Montebello	New York
Carver Federal Savings	New York	New York
The Berkshire Bank	New York	New York
Ogdensburg Federal Savings and Loan Association	Ogdensburg	New York
Wilber National Bank	Oneonta	New York
Union State Bank	Orangeburg	New York
First Tier Bank & Trust	Salamanca	New York
Saratoga National Bank & Trust Company	Saratoga Springs	New York
The National Bank of Stamford	Stamford	New York

Federal Home Loan Bank of Pittsburgh—District 3

Delaware National Bank	Georgetown	Delaware
Artisans' Bank	Wilmington	Delaware
Laurel Savings Bank	Allison Park	Pennsylvania
Investment Savings Bank	Altoona	Pennsylvania
Reliance Savings Bank	Altoona	Pennsylvania
Peoples Home Savings Bank	Beaver Falls	Pennsylvania
Keystone Savings Bank	Bethlehem	Pennsylvania
Columbia County Farmers National Bank	Bloomsburg	Pennsylvania
The Bryn Mawr Trust Company	Bryn Mawr	Pennsylvania
Community Bank, National Association	Carmichaels	Pennsylvania
Charleroi Federal Savings Bank	Charleroi	Pennsylvania
Citizens National Bank of Evans City	Evans City	Pennsylvania
Armstrong County Building and Loan Association	Ford City	Pennsylvania
Greenville Savings Bank	Greenville	Pennsylvania
Westmoreland FS&LA of Latrobe	Latrobe	Pennsylvania
Mifflin County Savings Bank	Lewistown	Pennsylvania
First Citizens National Bank	Mansfield	Pennsylvania
First National Bank of Mifflintown	Mifflintown	Pennsylvania
First Federal Savings Bank	Monessan	Pennsylvania
Parkvale Bank	Monroeville	Pennsylvania
Community State Bank of Orbisonia	Orbisonia	Pennsylvania
Beneficial Savings Bank	Philadelphia	Pennsylvania
Firstrust Bank	Philadelphia	Pennsylvania
Prudential Savings Bank, PaSA	Philadelphia	Pennsylvania
NorthSide Bank	Pittsburgh	Pennsylvania
West View Savings Bank	Pittsburgh	Pennsylvania
Liberty Savings Bank, F.S.B	Pottsville	Pennsylvania
Elk County Savings & Loan Association	Ridgway	Pennsylvania
Sewickley Savings Bank	Sewickley	Pennsylvania

Keystone State Savings Bank	Sharpsburg	Pennsylvania
The First National Bank of Slippery Rock	Slippery Rock	Pennsylvania
Union National Bank and Trust Company	Souderton	Pennsylvania
East Stroudsburg Savings Association	Stroudsburg	Pennsylvania
Washington Federal Savings Bank	Washington	Pennsylvania
First FS&LA of Greene County	Waynesburg	Pennsylvania
Citizens & Northern Bank	Wellsboro	Pennsylvania
First Century Bank, N.A	Bluefield	West Virginia
Huntington Federal Savings Bank	Huntington	West Virginia
Doolin Security Savings Bank FSB	New Martinsville	West Virginia
United National Bank	Parkersburg	West Virginia
First FS&LA of Ravenswood	Ravenswood	West Virginia
First Federal Savings Bank	Sistersville	West Virginia

First State Bank	Danville	Virginia
Powell Valley National Bank	Jonesville	Virginia
The Bank of Charlotte County	Phenix	Virginia
Valley Bank	Roanoke	Virginia

Federal Home Loan Bank of Cincinnati—District 5

Bank of Edmonson County.		
Brownsville	Kentucky.	
United Citizens Bank	Campbellsburg	Kentucky
Citizens Bank & Trust Company	Campbellsville	Kentucky
Farmers and Traders Bank	Campton	Kentucky
Carrollton Federal Savings & Loan Association	Carrollton	Kentucky
First National Bank	Central City	Kentucky

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Keystone State Savings Bank	Sharpsburg	Pennsylvania
The First National Bank of Slippery Rock	Slippery Rock	Pennsylvania
Union National Bank and Trust Company	Souderton	Pennsylvania
East Stroudsburg Savings Association	Stroudsburg	Pennsylvania
Washington Federal Savings Bank	Washington	Pennsylvania
First FS&LA of Greene County	Waynesburg	Pennsylvania
Citizens & Northern Bank	Wellsboro	Pennsylvania
First Century Bank, N.A	Bluefield	West Virginia
Huntington Federal Savings Bank	Huntington	West Virginia
Doolin Security Savings Bank FSB	New Martinsville	West Virginia
United National Bank	Parkersburg	West Virginia
First FS&LA of Ravenswood	Ravenswood	West Virginia
First Federal Savings Bank	Sistersville	West Virginia
The Williamstown National Bank	Williamstown	West Virginia

Federal Home Loan Bank of Atlanta—District 4

Brantley Bank and Trust Company	Brantley	Alabama
Bank of Carbon Hill	Carbon Hill	Alabama
Heritage Bank	Decatur	Alabama
Robertson Banking Company	Demopolis	Alabama
The Citizens Bank	Greensboro	Alabama
Security Federal Savings Bank	Jasper	Alabama
Gulf Federal Bank, a FSB	Mobile	Alabama
Loyal American Life Insurance Company	Mobile	Alabama
The Citizens Bank	Moulton	Alabama
Phenix-Girard Bank	Phenix City	Alabama
The Bank of Vernon	Vernon	Alabama
Bank of Wedowee	Wedowee	Alabama
Bank of Belle Glade	Belle Glade	Florida
Community Bank of Manatee	Bradenton	Florida
Commercebank, N.A	Coral Gables	Florida
Peoples State Bank of Groveland	Groveland	Florida
Florida Bank, N.A	Jacksonville	Florida
First State Bank of Florida Keys	Key West	Florida
International Finance Bank	Miami	Florida
Charlotte State Bank	Port Charlotte	Florida
First American Bank of Walton County	Santa Rosa Beach	Florida
Bank of St. Augustine	St. Augustine	Florida
Central Bank of Tampa	Tampa	Florida
Wauchula State Bank	Wauchula	Florida
Cornerstone Bank	Atlanta	Georgia
ebank	Atlanta	Georgia
Bank of Early	Blakely	Georgia
Colony Bank Southeast	Broxton	Georgia
The Claxton Bank	Claxton	Georgia
United Community Bank Rabun County	Clayton	Georgia
Central Bank and Trust	Cordele	Georgia
Chestatee State Bank	Dawsonville	Georgia
Bank of Eastman	Eastman	Georgia
Gilmer County Bank	Ellijay	Georgia
Capital Bank	Fort Oglethorpe	Georgia
Bank of Hiawassee	Hiawassee	Georgia
Farmers State Bank	Lincolnton	Georgia
Peoples Bank	Lyons	Georgia
Mount Vernon Bank	Mt. Vernon	Georgia
The Citizens Bank	Nashville	Georgia
Colony Bank of Wilcox	Rochelle	Georgia
Greater Rome Bank	Rome	Georgia
Georgia Central Bank	Social Circle	Georgia
Citizens Security Bank	Tifton	Georgia
Community First Bank	Baltimore	Maryland
Mercantile Safe Deposit and Trust Company	Baltimore	Maryland
Easton Bank and Trust Company	Easton	Maryland
Jarrettsville Federal S&L Association	Jarrettsville	Maryland
Maryland Bank and Trust Company	Lexington Park	Maryland
First National Bank of North East	North East	Maryland
Colombo Bank	Rockville	Maryland
The East Carolina Bank	Engelhard	North Carolina
Catawba Valley Bank	Hickory	North Carolina
First Bank	Troy	North Carolina
Sandhills Bank	Bethune	South Carolina
The Peoples Bank	Iva	South Carolina
Carolina Community Bank, N.A	Latta	South Carolina
The Palmetto Bank	Laurens	South Carolina
The Citizens Bank	OlantaS	outh Carolina

First State Bank	Danville	Virginia
Powell Valley National Bank	Jonesville	Virginia
The Bank of Charlotte County	Phenix	Virginia
Valley Bank	Roanoke	Virginia

Federal Home Loan Bank of Cincinnati—District 5

Bank of Edmonson County.		
Brownsville	Kentucky.	
United Citizens Bank	Campbellsburg	Kentucky
Citizens Bank & Trust Company	Campbellsville	Kentucky
Farmers and Traders Bank	Campton	Kentucky
Carrollton Federal Savings & Loan Association	Carrollton	Kentucky
First National Bank	Central City	Kentucky
Clinton Bank	Clinton	Kentucky
Peoples Bank of Northern Kentucky	Crestview Hills	Kentucky
Farmers National Bank	Cynthiana	Kentucky
Central Kentucky Federal Savings Bank	Danville	Kentucky
United Kentucky Bank of Pendleton County	Falmouth	Kentucky
State Bank and Trust Company	Harrodsburg	Kentucky
First Financial Bank	Harrodsburg	Kentucky
First Federal Savings and Loan Association	Hazard	Kentucky
Citizens National Bank	Lebanon	Kentucky
Home Federal Bank, FSB	Middlesboro	Kentucky
Peoples Bank Mt. Washington	Mt. Washington	Kentucky
Family Bank, FSB	Paintsville	Kentucky
Farmers Bank and Trust Company, Inc.	Princeton	Kentucky
First Bank and Trust Company	Princeton	Kentucky
Liberty National Bank	Ada	Ohio
The Peoples Savings and Loan Company	Bucyrus	Ohio
First Safety Bank	Cincinnati	Ohio
The Clifton Heights Loan and Building Company	Cincinnati	Ohio
The Savings Bank	Circleville	Ohio
The Peoples Bank Company	Coldwater	Ohio
First City Bank	Columbus	Ohio
The Cortland Savings and Banking Company	Cortland	Ohio
Ohio Heritage Bank	Coshocton	Ohio
Heartland Bank	Croton	Ohio
Valley Savings Bank	Cuyahoga Falls	Ohio
First Federal Bank of the Midwest	Defiance	Ohio
Fidelity Federal Savings & Loan Association of Delaware	Delaware	Ohio
The Home Building and Loan Company	Greenfield	Ohio
Greenville Federal Savings & Loan Association	Greenville	Ohio
First Federal Savings Bank	Ironton	Ohio
Lawrence Federal Savings Bank	Ironton	Ohio
Liberty Federal Savings Bank	Ironton	Ohio
Ohio River Bank	Kenton	Ohio
Home Savings and Loan Company of Kenton, Ohio	Kingston	Ohio
Kingston National Bank	Logan	Ohio
The Citizens Bank of Logan	Mansfield	Ohio
Mechanics Savings Bank	Marietta	Ohio
Peoples Bank, National Association	Middlefield	Ohio
The Middlefield Banking Company	Nelsonville	Ohio
Nelsonville Home and Savings Association	Newark	Ohio
First FS&LA of Newark	Oak Harbor	Ohio
The National Bank of Oak Harbor	Reading	Ohio
Valley Central Savings Bank	Sandusky	Ohio
The Citizens Banking Company	Sidney	Ohio
Peoples Federal Savings & Loan Association	Somerset	Ohio
Commodore Bank	Tipp City	Ohio
Monroe Federal Savings and Loan Association	Van Wert	Ohio
Van Wert Federal Savings Bank	Wapakoneta	Ohio
Home Savings Bank of Wapakoneta	Waterford	Ohio
The Waterford Commercial & Savings Bank	West Union	Ohio
Adams County Building & Loan Company	Bartlett	Tennessee
Bank of Bartlett	Bolivar	Tennessee
Bank of Bolivar	Clarksville	Tennessee
Farmers & Merchants Bank	Dyer	Tennessee
Farmers and Merchants Bank	Dyersburg	Tennessee
First Citizens National Bank	Elizabethton	Tennessee
Elizabethton Federal Savings Bank	Jamestown	Tennessee
Progressive Savings Bank	Knoxville	Tennessee
Home Federal Bank of Tennessee	Lenoir City	Tennessee
First Central Bank	Livingston	Tennessee
American Savings Bank	Madisonville	Tennessee
Volunteer Federal Savings & Loan Association		

Jefferson Federal Savings & Loan Association	Morristown	Tennessee
TNBank	Oak Ridge	Tennessee
Union Planters Bank of N.W. Tennessee	Paris	Tennessee
Citizens Community Bank	Winchester	Tennessee

Federal Home Loan Bank of Indianapolis—District 6

First Federal Savings Bank of Angola	Angola	Indiana
Peoples Federal Savings Bank of Dekalb County	Auburn	Indiana
Peoples Federal Savings Bank	Aurora	Indiana
Farmers and Mechanics FS&LA	Bloomfield	Indiana
The First State Bank	Bourbon	Indiana
English State Bank	English	Indiana

CoVest Banc, National Association	Des Plaines	Illinois
First Federal Savings & Loan Association	Edwardsville	Illinois
Forreston State Bank	Forreston	Illinois
Central Bank Fulton	Fulton	Illinois
Glenview State Bank	Glenview	Illinois
Guardian Savings Bank FSB	Granite City	Illinois
First National Bank of Grant Park	Grant Park	Illinois
The Granville National Bank	Granville	Illinois
The Bradford National Bank of Greenville	Greenville	Illinois
The Havana National Bank	Havana	Illinois
Herrin Security Bank	Herrin	Illinois
CIB Bank	Hillside	Illinois
South End Savings, s.b	Homewood	Illinois
1st National Bank of Jonesboro	Jonesboro	Illinois

Jefferson Federal Savings & Loan Association	Morristown	Tennessee
TNBank	Oak Ridge	Tennessee
Union Planters Bank of N.W. Tennessee	Paris	Tennessee
Citizens Community Bank	Winchester	Tennessee

Federal Home Loan Bank of Indianapolis—District 6

First Federal Savings Bank of Angola	Angola	Indiana
Peoples Federal Savings Bank of Dekalb County	Auburn	Indiana
Peoples Federal Savings Bank	Aurora	Indiana
Farmers and Mechanics FS&LA	Bloomfield	Indiana
The First State Bank	Bourbon	Indiana
English State Bank	English	Indiana
Old National Bank in Evansville	Evansville	Indiana
Home Loan Bank, FSB	Fort Wayne	Indiana
The Farmers Bank	Frankfort	Indiana
Newton County Loan & Savings, FSB	Goodland	Indiana
First Federal Savings & Loan	Greensburg	Indiana
Lake FS&LA of Hammond	Hammond	Indiana
HFS Bank, F.S.B.	Hobart	Indiana
Security Federal Savings Bank	Logansport	Indiana
Michigan City Savings & Loan Association	Michigan City	Indiana
The First National Bank of Monterey	Monterey	Indiana
First Merchants Bank, N.A.	Muncie	Indiana
Mutual Federal Savings Bank	Muncie	Indiana
American Savings, FSB	Munster	Indiana
Community Bank	Noblesville	Indiana
First National Bank of Odon	Odon	Indiana
Lincoln Federal Savings Bank	Plainfield	Indiana
First Parke State Bank	Rockville	Indiana
Scottsburg Building & Loan Association	Scottsburg	Indiana
Home Federal Savings Bank	Seymour	Indiana
Owen Community Bank, SB	Spencer	Indiana
First Farmers State Bank	Sullivan	Indiana
Peoples Community Bank	Tell City	Indiana
Terre Haute First National Bank	Terre Haute	Indiana
First Federal Savings Bank of Wabash	Wabash	Indiana
First FS&LA of Washington	Washington	Indiana
Home Building Savings Bank, FSB	Washington	Indiana
Peoples National Bank & Trust Company	Washington	Indiana
Bank of Wolcott	Wolcott	Indiana
First Federal of Northern Michigan	Alpena	Michigan
Bank of Ann Arbor	Ann Arbor	Michigan
Farmers State Bank Breckenridge	Breckenridge	Michigan
Eaton Federal Savings Bank	Charlotte	Michigan
Huron Community Bank	East Tawas	Michigan
The Hastings City Bank	Hastings	Michigan
Bay Port State Bank	Pigeon	Michigan
Kalamazoo County State Bank	Schoolcraft	Michigan
Franklin Bank, National Association	Southfield	Michigan
First National Bank of St. Ignace	St. Ignace	Michigan
Northwestern Savings Bank and Trust	Traverse City	Michigan

Federal Home Loan Bank of Chicago—District 7

West Pointe Bank and Trust Company	Belleville	Illinois
The Belvidere National Bank and Trust Company	Belvidere	Illinois
Citizens Savings Bank	Bloomington	Illinois
American Enterprise Bank	Buffalo Grove	Illinois
Farmers State Bank of Camp Point	Camp Point	Illinois
Cornerstone Bank & Trust, N.A.	Carrollton	Illinois
Central Illinois Bank	Champaign	Illinois
First Federal Savings Bank of Champaign-Urbana	Champaign	Illinois
Charleston Federal Savings & Loan Association	Charleston	Illinois
Broadway Bank	Chicago	Illinois
Universal Federal Savings Bank	Chicago	Illinois
Central FS&LA of Chicago	Chicago	Illinois
Columbus Savings Bank	Chicago	Illinois
Fidelity Federal Savings Bank	Chicago	Illinois
Liberty Bank for Savings	Chicago	Illinois
Lincoln Park Savings Bank	Chicago	Illinois
Mutual FS&LA	Chicago	Illinois
1st Security Federal Savings Bank	Chicago	Illinois
Collinsville Building and Loan Association	Collinsville	Illinois
Home Federal Savings & Loan Association	Collinsville	Illinois
Hickory Point Bank & Trust, fsb	Decatur	Illinois

CoVest Banc, National Association	Des Plaines	Illinois
First Federal Savings & Loan Association	Edwardsville	Illinois
Forreston State Bank	Forreston	Illinois
Central Bank Fulton	Fulton	Illinois
Glenview State Bank	Glenview	Illinois
Guardian Savings Bank FSB	Granite City	Illinois
First National Bank of Grant Park	Grant Park	Illinois
The Granville National Bank	Granville	Illinois
The Bradford National Bank of Greenville	Greenville	Illinois
The Havana National Bank	Havana	Illinois
Herrin Security Bank	Herrin	Illinois
CIB Bank	Hillside	Illinois
South End Savings, s.b	Homewood	Illinois
1st National Bank of Jonesboro	Jonesboro	Illinois
Eureka Savings Bank	La Salle	Illinois
First State Bank of Western Illinois	LaHarpe	Illinois
First National Bank of Illinois	Lansing	Illinois
Lisle Savings Bank	Lisle	Illinois
First National Bank of Litchfield, IL	Litchfield	Illinois
West Suburban Bank	Lombard	Illinois
First Security Bank	Macknaw	Illinois
First National Bank of Manhattan	Manhattan	Illinois
Milford Building & Loan Association	Milford	Illinois
Nashville Savings Bank	Nashville	Illinois
Northview Bank & Trust	Northfield	Illinois
Illini State Bank	Oglesby	Illinois
Peoples Bank & Trust	Pana	Illinois
The Poplar Grove State Bank	Poplar Grove	Illinois
Citizens First National Bank	Princeton	Illinois
First Robinson Savings Bank, N.A	Robinson	Illinois
Alpine Bank of Illinois	Rockford	Illinois
First FS&LA of Shelbyville, IL	Shelbyville	Illinois
The First National Bank	Vandalia	Illinois
International Bank of Amherst	Amherst	Wisconsin
First National Bank of Bangor	Bangor	Wisconsin
Bank of Brodhead	Brodhead	Wisconsin
Bank of Deerfield	Deerfield	Wisconsin
Meridian Capital Bank, N.A	Edgar	Wisconsin
Fox Valley Savings	Fond du Lac	Wisconsin
National Exchange Bank & Trust	Fond du Lac	Wisconsin
First Northern Savings Bank	Green Bay	Wisconsin
Ixonia State Bank	Ixonia	Wisconsin
First Federal Savings Bank La Crosse-Madison	La Crosse	Wisconsin
Ladysmith Federal Savings & Loan	Ladysmith	Wisconsin
Markesan State Bank	Markesan	Wisconsin
Fidelity National Bank	Medford	Wisconsin
Merrill Federal Savings and Loan Association	Merrill	Wisconsin
Continental Savings Bank, S.A	Milwaukee	Wisconsin
Guaranty Bank, S.S.B	Milwaukee	Wisconsin
Bank of Elmwood	Racine	Wisconsin
Spencer State Bank	Spencer	Wisconsin
First Bank	Tomah	Wisconsin
Farmers State Bank of Waupaca	Waupaca	Wisconsin
Paper City Savings Association	Wisconsin Rapids	Wisconsin
		xxxxxxxxxxxxxxxxx-xxx

Federal Home Loan Bank of Des Moines—District 8

Citizens Savings Bank	Anamosa	Iowa
Community State Bank	Ankeny	Iowa
Ashton State Bank	Ashton	Iowa
Atkins Savings Bank & Trust	Atkins	Iowa
Midwest FS&LA of Eastern Iowa	Burlington	Iowa
Iowa Trust and Savings Bank	Centerville	Iowa
First Security Bank and Trust	Charles City	Iowa
Page County Federal Savings Association	Clarinda	Iowa
First Federal Savings Bank of Creston, F.S.B	Creston	Iowa
Principal Bank	Des Moines	Iowa
State FS&LA of Des Moines	Des Moines	Iowa
Fidelity Bank & Trust	Dyersville	Iowa
Community Savings Bank	Edgewood	Iowa
First American Bank	Fort Dodge	Iowa
Hampton State Bank	Hampton	Iowa
Independence Federal Bank for Savings	Independence	Iowa
Hawkeye State Bank	Iowa City	Iowa

First Community Bank, FSB	Keokuk	Iowa
Keokuk Savings Bank & Trust Company	Keokuk	Iowa
Keystone Savings Bank	Keystone	Iowa
Iowa State Savings Bank	Knoxville	Iowa
Cedar Valley Bank & Trust	LaPorte City	Iowa
Farmers & Merchants Savings Bank	Lone Tree	Iowa
United Community Bank	Milford	Iowa
New Albin Savings Bank	New Albin	Iowa
City State Bank	Norwalk	Iowa
Northwestern State Bank	Orange City	Iowa
Clarke County State Bank	Osceola	Iowa
Bank Iowa	Oskaloosa	Iowa
Oxford Bank	Oxford	Iowa
Security Savings Bank	Sac City	Iowa
Security Savings Bank	Sioux City	Iowa
Security Savings Bank	Sioux City	Iowa
Security Savings Bank	Sioux

First Community Bank, FSB	Keokuk	Iowa
Keokuk Savings Bank & Trust Company	Keokuk	Iowa
Keystone Savings Bank	Keystone	Iowa
Iowa State Savings Bank	Knoxville	Iowa
Cedar Valley Bank & Trust	LaPorte City	Iowa
Farmers & Merchants Savings Bank	Lone Tree	Iowa
United Community Bank	Milford	Iowa
New Albin Savings Bank	New Albin	Iowa
City State Bank	Norwalk	Iowa
Northwestern State Bank	Orange City	Iowa
Clarke County State Bank	Osceola	Iowa
Bank Iowa	Oskaloosa	Iowa
First Trust & Savings Bank	Oxford	Iowa
Citizens State Bank	Pocahontas	Iowa
Citizens Bank	Sac City	Iowa
American State Bank	Sioux Center	Iowa
Solon State Bank	Solon	Iowa
Northwest Federal Savings Bank	Spencer	Iowa
First Federal Savings Bank of the Midwest	Storm Lake	Iowa
Randall-Story State Bank	Story City	Iowa
Waukee State Bank	Waukee	Iowa
West Liberty State Bank	West Liberty	Iowa
Viking Savings Association, F.A	Alexandria	Minnesota
Northern National Bank	Baxter	Minnesota
First State Bank of Bigfork	Bigfork	Minnesota
Brainerd Savings & Loan	Brainerd	Minnesota
The Oakley National Bank of Buffalo	Buffalo	Minnesota
State Bank in Eden Valley	Eden Valley	Minnesota
Bank Midwest Minnesota Iowa, N.A	Fairmont	Minnesota
The State Bank of Faribault	Faribault	Minnesota
First Minnesota Bank, N.A	Glencoe	Minnesota
The First National Bank of Menahga	Menahga	Minnesota
TCF National Bank	Minneapolis	Minnesota
The First National Bank of Osakis	Osakis	Minnesota
First National Bank of Plainview	Plainview	Minnesota
Signal Bank South, NA	Red Wing	Minnesota
21st Century Bank	Rogers	Minnesota
Citizens Independent Bank	St. Louis Park	Minnesota
The First National Bank of St. Peter	St. Peter	Minnesota
Tracy State Bank	Tracy	Minnesota
Queen City Federal Savings Bank	Virginia	Minnesota
Missouri Federal Savings Bank	Cameron	Missouri
Southwest Missouri Bank	Carthage	Missouri
North American Savings Bank, FSB	Grandview	Missouri
MCM Savings Bank, FSB	Hannibal	Missouri
First Federal Bank, F.S.B	Kansas City	Missouri
Lacelde County Bank	Lebanon	Missouri
Clay County Savings & Loan Association	Liberty	Missouri
Liberty Savings Bank, F.S.B	Liberty	Missouri
First Home Savings Bank	Mountain Grove	Missouri
Home S&LA of Norborne, F.A	Norborne	Missouri
Southern Missouri Bank & Trust	Poplar Bluff	Missouri
Central Federal Savings and Loan Association	Rolla	Missouri
Montgomery First National Bank	Sikeston	Missouri
Guaranty Federal Savings Bank	Springfield	Missouri
Midwest FS&LA of St. Joseph	St. Joseph	Missouri
Bremen Bank and Trust Company	St. Louis	Missouri
First Bank	St. Louis	Missouri
Lindell Bank & Trust Company	St. Louis	Missouri
Southern Commercial Bank	St. Louis	Missouri
BNC National Bank	Bismarck	North Dakota
First Southwest Bank	Bismarck	North Dakota
Ramsey National Bank & Trust Company	Devils Lake	North Dakota
American State Bank and Trust of Dickinson	Dickinson	North Dakota
Security State Bank	Dunseith	North Dakota
First National Bank North Dakota	Grand Forks	North Dakota
National Bank of Harvey	Harvey	North Dakota
Walhalla State Bank	Walhalla	North Dakota
Dacotah Bank	Aberdeen	South Dakota
First Savings	BankBeresford	South Dakota
First Federal Bank	Beresford	South Dakota
First National Bank in Brookings	Brookings	South Dakota
Bryant State Bank	Bryant	South Dakota

First Western Federal Savings Bank	Rapid City	South Dakota
Federal Home Loan Bank of Dallas—District 9		
First National Bank of Sharp County	Ash Flat	Arkansas
Arkansas National Bank	Bentonville	Arkansas
Heartland Community Bank	Camden	Arkansas
Corning Savings and Loan Association	Corning	Arkansas
Arkansas Diamond Bank	Glenwood	Arkansas
First Arkansas Bank and Trust	Jacksonville	Arkansas
Arkansas Bankers' Bank	Little Rock	Arkansas
Diamond State Bank	Murfreesboro	Arkansas
First National Bank	Paragould	Arkansas
Peoples Bank	Paragould	Arkansas
First Community Bank	Pocahontas	Arkansas
Bank of Rogers	Rogers	Arkansas
Bank of Star City	Star City	Arkansas
Bank of Waldron	Waldron	Arkansas
First National Bank USA	Boutte	Louisiana
Citizens Progressive Bank	Columbia	Louisiana
Beauregard Federal Savings Bank	DeRidder	Louisiana
Home Bank	Lafayette	Louisiana
First FS&LA of Lake Charles, Inc	Lake Charles	Louisiana
Bank of New Orleans	Metairie	Louisiana
Minden Building & Loan Association	Minden	Louisiana
Algiers Homestead Association	New Orleans	Louisiana
Dryades Savings Bank, FSB	New Orleans	Louisiana
Fifth District Savings and Loan Association	New Orleans	Louisiana
Union Savings and Loan Association	New Orleans	Louisiana
Plaquemine Bank & Trust Company	Plaquemine	Louisiana
Rayne Building and Loan Association	Rayne	Louisiana
Citizens Bank and Trust Company	Springhill	Louisiana
First National Bank of Lucedale	Lucedale	Mississippi
First National Bank of Pontotoc	Pontotoc	Mississippi
North Central Bank For Savings	Winona	Mississippi
Alamogordo Federal Savings & Loan Association	Alamogordo	New Mexico
Charter Bank	Albuquerque	New Mexico
First National Bank	Artesia	New Mexico
The First National Bank of New Mexico	Clayton	New Mexico
First National Bank	Las Vegas	New Mexico
First Federal Bank	Roswell	New Mexico
Alamo Bank of Texas	Alamo	Texas
Firstbank Southwest National Association	Amarillo	Texas
First Savings Bank, FSB	Arlington	Texas
Affiliated Bank F.S.B	Bedford	Texas
Brenham National Bank	Brenham	Texas
Texas Bank	Brownwood	Texas
The First State Bank	Celina	Texas
The First National Bank of Chillico	Chillico	Texas
First Bank of West Texas	Coahoma	Texas
The First State Bank	Columbus	Texas
First Bank of Conroe, N.A	Conroe	Texas
First Commerce Bank	Corpus Christi	Texas
Citizens National Bank	Crockett	Texas
Cuero State Bank s.s.b	Cuero	Texas
Dalhart Federal Savings and Loan Association	Dalhart	Texas
Preston National Bank	Dallas	Texas
First State Bank of Texas	Denton	Texas
First Prosperity Bank	El Campo	Texas
Citizens National Bank	Fort Worth	Texas
Colonial Savings, F.A	Fort Worth	Texas
Guaranty National Bank	Gainesville	Texas
National BankGatesville	Texas.	
Planters & Merchants State Bank	Hearne	Texas
Houston Community Bank,	N.A.Houston	Texas
Justin State Bank	Justin	Texas
City National Bank	Kilgore	Texas
Farmers & Merchants State Bank	Krum	Texas
Fayette Savings Bank, ssb	La Grange	Texas
National Bank and Trust	La Grange	Texas
Commerce Bank	Laredo	Texas
Falcon International Bank	Laredo	Texas
East Texas Professional Credit Union	Longview	Texas
Longview Bank and Trust	Longview	Texas
The First State Bank of Louise	Louise	Texas
First Bank & Trust Company	Lubbock	Texas

Lubbock National Bank	Lubbock	Texas
Gladewater National Bank	Mesquite	Texas
First National Bank of Mount Vernon	Mount Vernon	Texas
First National Bank in Munday	Munday	Texas
Morris County National Bank	Naples	Texas
First Federal Community Bank	Paris	Texas
Peoples National Bank	Paris	Texas
Gulf Coast Educators Federal Credit Union	Pasadena	Texas
PointBank, N.A.	Pilot Point	Texas
Pilgrim Bank	Pittsburg	Texas
Wood County National Bank	Quitman	Texas
Robert Lee State Bank	Robert Lee	Texas
Intercontinental National Bank	San Antonio	Texas

Nebraska Energy Federal Credit Union	Columbus	Nebraska
American Interstate Bank	Elkhorn	Nebraska
Genoa National Bank	Genoa	Nebraska
United Nebraska Bank	Grand Island	Nebraska
TierOne Bank	Lincoln	Nebraska
Platte Valley National Bank	Morrill	Nebraska
Otoe County Bank & Trust Company	Nebraska City	Nebraska
Nehawka Bank	Nehawka	Nebraska
Enterprise Bank, N.A	Omaha	Nebraska
Platte Valley National Bank	Scottsbluff	Nebraska
First National Bank	Sidney	Nebraska
The Wymore State Bank	Wymore	Nebraska
Anadarko Bank & Trust Company	Anadarko	Oklahoma
Community Bank	Bristow	Oklahoma

Lubbock National Bank	Lubbock	Texas
Gladewater National Bank	Mesquite	Texas
First National Bank of Mount Vernon	Mount Vernon	Texas
First National Bank in Munday	Munday	Texas
Morris County National Bank	Naples	Texas
First Federal Community Bank	Paris	Texas
Peoples National Bank	Paris	Texas
Gulf Coast Educators Federal Credit Union	Pasadena	Texas
PointBank, N.A.	Pilot Point	Texas
Pilgrim Bank	Pittsburg	Texas
Wood County National Bank	Quitman	Texas
Robert Lee State Bank	Robert Lee	Texas
Intercontinental National Bank	San Antonio	Texas
Balcones Bank, S.S.B.	San Marcos	Texas
Citizens State Bank	Sealy	Texas
Southern National Bank of Texas	Sugar Land	Texas
The American National Bank of Texas	Terrell	Texas
Citizens First Bank	Tyler	Texas
Hill Bank & Trust Company	Weimar	Texas
American National Bank	Wichita Falls	Texas
Wilson State Bank	Wilson	Texas

Federal Home Loan Bank of Topeka—District 10

San Luis Valley Federal Bank	Alamosa	Colorado
Collegiate Peaks Bank	Buena Vista	Colorado
Pikes Peak National Bank	Colorado Springs	Colorado
Community Banks of Colorado	Cripple Creek	Colorado
Vectra Bank Colorado	Denver	Colorado
Rocky Mountain Bank and Trust	Florence	Colorado
First National Bank, Fort Collins	Fort Collins	Colorado
First State Bank of Fort Collins	Fort Collins	Colorado
Gunnison Savings and Loan Association	Gunnison	Colorado
American Bank	Loveland	Colorado
Rio Grande Savings and Loan Association	Monte Vista	Colorado
Montrose Bank	Montrose	Colorado
The First National Bank of Ordway	Ordway	Colorado
Paonia State Bank	Paonia	Colorado
Community Banks of Southern Colorado	Rocky Ford	Colorado
Century Savings and Loan Association	Trinidad	Colorado
Park State Bank & Trust	Woodland Park	Colorado
Prairie State Bank	Augusta	Kansas
First National Bank in Cimarron	Cimarron	Kansas
Girard National Bank	Girard	Kansas
Farmers Bank & Trust, N.A	Great Bend	Kansas
Golden Belt Bank, FSA	Hays	Kansas
Central National Bank	Junction City	Kansas
Argentine Federal Savings	Kansas City	Kansas
Citizens Bank of Kansas, N.A	Kingman	Kansas
University National Bank of Lawrence	Lawrence	Kansas
Mutual Savings Association	Leavenworth	Kansas
The Citizens State Bank	Liberal	Kansas
The Citizens State Bank	Moundridge	Kansas
Midland National Bank	Newton	Kansas
Peoples Bank	Overland Park	Kansas
Bank of Blue Valley	Overland Park	Kansas
Peabody State Bank	Peabody	Kansas
The Bank of Perry	Perry	Kansas
The Plains State Bank	Plains	Kansas
The Peoples Bank	Pratt	Kansas
First Bank Kansas	Salina	Kansas
Security Savings Bank	Salina	Kansas
The Stockton National Bank	Stockton	Kansas
First National Bank of Syracuse	Syracuse	Kansas
The Bank of Tescott	Tescott	Kansas
Capitol Federal Savings Bank	Topeka	Kansas
Silver Lake Bank	Topeka	Kansas
Southwest Bank, N.A	Ulysses	Kansas
Kendall State Bank	Valley Falls	Kansas
Bank of Commerce & Trust Company	Wellington	Kansas
Garden Plain State Bank	Wichita	Kansas
Commerce Bank, N.A	Wichita	Kansas
Western Heritage Credit Union	Alliance	Nebraska
Farmers & Merchants National Bank	Ashland	Nebraska
Beatrice National Bank & Trust	Beatrice	Nebraska
Clarkson Bank	Clarkson	Nebraska

Nebraska Energy Federal Credit Union	Columbus	Nebraska
American Interstate Bank	Elkhorn	Nebraska
Genoa National Bank	Genoa	Nebraska
United Nebraska Bank	Grand Island	Nebraska
TierOne Bank	Lincoln	Nebraska
Platte Valley National Bank	Morrill	Nebraska
Otoe County Bank & Trust Company	Nebraska City	Nebraska
Nehawka Bank	Nehawka	Nebraska
Enterprise Bank, N.A	Omaha	Nebraska
Platte Valley National Bank	Scottsbluff	Nebraska
First National Bank	Sidney	Nebraska
The Wymore State Bank	Wymore	Nebraska
Anadarko Bank & Trust Company	Anadarko	Oklahoma
Community Bank	Bristow	Oklahoma
McCurtain County National Bank	Broken Bow	Oklahoma
Oklahoma Bank & Trust Company	Clinton	Oklahoma
American Bank of Oklahoma	Collinsville	Oklahoma
Citizens Bank of Edmond	Edmond	Oklahoma
First National Bank & Trust	Elk City	Oklahoma
Bank of the Panhandle	Guymon	Oklahoma
Legacy Bank	Hinton	Oklahoma
The First State Bank	Keyes	Oklahoma
City National Bank & Trust Company	Lawton	Oklahoma
First National Bank in Marlow	Marlow	Oklahoma
Community National Bank of Okarche	Okarche	Oklahoma
First National Bank in Okeene	Okeene	Oklahoma
BancFirst	Oklahoma City	Oklahoma
Local Oklahoma Bank, NA	Oklahoma City	Oklahoma
National Bank of Commerce	Oklahoma City	Oklahoma
The Bankers Bank	Oklahoma City	Oklahoma
The Okmulgee Savings and Loan Association	Okmulgee	Oklahoma
Citizens Bank & Trust Company	Okmulgee	Oklahoma
Bank of the Lakes, N.A	Owasso	Oklahoma
First State Bank of Porter	Porter	Oklahoma
Farmers State Bank	Quinton	Oklahoma
First National Bank & Trust Company	Shawnee	Oklahoma
Valley National Bank	Tulsa	Oklahoma
Triad Bank, N.A	Tulsa	Oklahoma
The First National Bank & Trust Company	Vinita	Oklahoma

Federal Home Loan Bank of San Francisco—District 11

Borrego Springs Bank	Borrego Springs	California
Fullerton Community Bank	Fullerton	California
Broadway Federal Bank, F.S.B	Inglewood	California
Western Financial Bank	Irvine	California
Silvergate Bank	La Mesa	California
Family Savings Bank, F.S.B	Los Angeles	California
Monterey County Bank	Monterey	California
Standard Savings Bank, FSB	Monterey Park	California
Trust Bank	Monterey Park	California
Metropolitan Bank	Oakland	California
Community Bank	Pasadena	California
IndyMac Bank, F.S.B	Pasadena	California
Bank of Petaluma	Petaluma	California
El Dorado Savings Bank	Placerville	California
Life Bank	Riverside	California
California Federal Bank	San Francisco	California
Sincere FSB	San Francisco	California
EastWest Bank	San Marino	California
Bay View Bank, NA	San Mateo	California
First FS&LA of San Rafael	San Rafael	California
First Federal Bank of California	Santa Monica	California
National Bank of the Redwoods	Santa Rosa	California
Sunwest Bank	Tustin	California
Desert Community Bank	Victorville	California
Citibank, FSB	New York	New York
Washington Mutual Bank, FA	Seattle	Washington

Federal Home Loan Bank of Seattle—District 12

First National Bank of Anchorage	Anchorage	Alaska
Mt. McKinley Mutual Savings Bank	Fairbanks	Alaska
Bank of Guam	Hagatna	Guam
American Savings Bank, F.S.B	Honolulu	Hawaii
Mountain West Bank	Coeur D'Alene	Idaho
First Security Bank	Bozeman	Montana

Glacier Bank of Eureka	Eureka	Montana
Heritage Bank	Great Falls	Montana
Ravalli County Bank	Hamilton	Montana
American Federal Savings Bank	Helena	Montana
Glacier Bank	Kalispell	Montana
Big Sky Western Bank	Kalispell	Montana
Montana First National Bank	Kalispell	Montana
Manhattan State Bank	Manhattan	Montana
Stockman Bank of Montana	Miles City	Montana
Bank of Astoria	Astoria	Oregon
Security Bank	Coos Bay	Oregon
The Bank of Salem	Salem	Oregon
Columbia River Bank	The Dalles	Oregon

2. Community First Financial Corporation, Lynchburg, Virginia; to acquire up to 9.3 percent of the voting shares of Highlands Community Bank, Covington, Virginia (in organization).

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to merge with Mississippi Valley Bancshares, Inc., St.

open to the public. The agenda will be announced at a future date. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, MD, Executive Secretary, Advisory Committee on

captured in appropriate enterprise applications and summarized in the Data Warehouse; (3) manages HRSA-wide working groups as necessary to integrate enterprise data architecture with business applications and to re-engineer business processes; and (4) enhances and expands use and usefulness of HRSA's Data Warehouse through providing basic analytic capacity and user support; developing and maintaining a range of information

Glacier Bank of Eureka	Eureka	Montana
Heritage Bank	Great Falls	Montana
Ravalli County Bank	Hamilton	Montana
American Federal Savings Bank	Helena	Montana
Glacier Bank	Kalispell	Montana
Big Sky Western Bank	Kalispell	Montana
Montana First National Bank	Kalispell	Montana
Manhattan State Bank	Manhattan	Montana
Stockman Bank of Montana	Miles City	Montana
Bank of Astoria	Astoria	Oregon
Security Bank	Coos Bay	Oregon
The Bank of Salem	Salem	Oregon
Columbia River Bank	The Dalles	Oregon
Liberty Bank	Salt Lake City	Utah
Wells Fargo Northwest, N.A	Salt Lake City	Utah
Cascade Bank	Everett	Washington
Raymond Federal Savings Bank	Raymond	Washington
Evergreen Bank	Seattle	Washington
Pacific Northwest Bank	Seattle	Washington
Washington Federal Savings	Seattle	Washington
Sterling Savings Bank	Spokane	Washington
Buffalo Federal Savings Bank	Buffalo	Wyoming
Hilltop National Bank	Casper	Wyoming
Big Horn Federal Savings Bank	Greybull	Wyoming

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before July 29, 2002, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2002–03 second quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2002–03 second quarter review cycle must be delivered to the Finance Board on or before the August 30, 2002 deadline for submission of Community Support Statements.

Dated: July 3, 2002.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

[FR Doc. 02–17217 Filed 7–12–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. The John M. Morrison Florida Intangible Trust No. 5 dated May 16, 2002, Naples, Florida; to acquire control of Central Bancshares, Inc., Golden Valley, Minnesota, and thereby indirectly acquire control of Central Bank, Stillwater, Minnesota.

Board of Governors of the Federal Reserve System, July 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17614 Filed 7–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Capital Bank Corporation, Raleigh, North Carolina; to merge with High Street Corporation, Asheville, North Carolina, and thereby indirectly acquire High Street Banking Company, Asheville, North Carolina.

2. Community First Financial Corporation, Lynchburg, Virginia; to acquire up to 9.3 percent of the voting shares of Highlands Community Bank, Covington, Virginia (in organization).

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to merge with Mississippi Valley Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire Southwest Bank of St. Louis, St. Louis, Missouri, Southwest Bank, Belleville, Illinois, and Southwest Bank of Phoenix, Phoenix, Arizona.

In connection with this application, Applicant also has applied to engage in extending credit and servicing loans, through RE Holding Company A, RE Holding Company B, RE Holding Company C and SWB Real Estate Investment Trust, all located in Clayton, Missouri, pursuant to section 225.28(b)(1) of Regulation Y; to engage in providing financial and investment advisory services, through Eagle Fund, L.L.C., St. Louis, Missouri, pursuant to sections 225.28(b)(6) of Regulation Y; to engage in trust company activities, through MVBI Capital Trust, Wilmington, Delaware, pursuant to section 225.28(b)(5) of Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. State Capital Corporation, Greenwood, Mississippi; to acquire up to 100 percent of the voting shares of Mississippi Southern Bank, Port Gibson, Mississippi.

Board of Governors of the Federal Reserve System, July 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–17613 Filed 7–12–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of September 5, 2002, meeting.

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet on Thursday September 5, 2002 from 8 a.m. to 5 p.m. The meeting will take place at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20001. The meeting will be entirely open to the public. The agenda will be announced at a future date. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, MD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 200 Independence Ave., SW., Room 736–E, Washington, DC 20201. Phone (202) 690–5558, FAX (202) 260–9372, e-mail *StephenDNightingale@osophs.dhhs.gov.*

Dated: July 9, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–17677 Filed 7–12–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) as most recently amended at (60 FR 56605, November 6, 1995 as last amended at 66 FR 56333, dated November 7, 2001).

This notice reflects organizational changes in the Office of Information Technology, Office of the Administrator; the Division of Management Services, Office of Management and Program Support; and the HIV/AIDS Bureau. Make the following changes:

A. In the Office of Information Technology (RAG), Establish the Division of Knowledge Management Services

Division of Knowledge Management Services (RAG1)

Develops and maintains an overall knowledge management strategy for HRSA that is integrated with HHS and government-wide strategies. Specifically: (1) Identifies information needs across HRSA and develops approaches for meeting those needs; (2) ensures that data required to satisfy enterprise information requirements are captured in appropriate enterprise applications and summarized in the Data Warehouse; (3) manages HRSA-wide working groups as necessary to integrate enterprise data architecture with business applications and to re-engineer business processes; and (4) enhances and expands use and usefulness of HRSA's Data Warehouse through providing basic analytic capacity and user support; developing and maintaining a range of information products; and demonstrating the potential uses of information in supporting management decisions.

B. In the Division of Management Services Remove the Tort Claims Function and Place It in the HIV/AIDS Bureau (RV)

Division of Management Services (RS1)

Provides Agency-wide leadership and direction in the areas of management policies and procedures and property management, and serves as the Executive Officer for the Office of Management and Program Support (OMPS) and for the Office of the Administrator (OA). Specifically: (1) Provides advice and guidance for the establishment or modification of organizational structures, functions, and delegations of authority; (2) conducts and coordinates the Agency's issuances, reports and mail management programs; (3) manages and maintains a records and forms management program for the Agency, this includes electronic data; (4) manages the intra- and interagency agreements process; (5) conducts Agency-wide management improvement programs; (6) conducts management and information studies and surveys; (7) oversees and coordinates the implementation of directives and policies relating to the Privacy Act; (8) plans, directs, and coordinates administrative management activities and services including personnel, financial, materiel management, and general administrative services for OA and OMPS; (9) acts for the Associate Administrator for Management and Program Support concerning space, parking, and communications management for headquarters and represents him/her in matters relating to the management of the Parklawn Building complex; (10) advises on and coordinates Agency-wide policies and procedures required to implement General Services Administration and Departmental regulations governing materiel management, including travel, transportation, motor vehicle, and utilization and disposal of property; (11) oversees and coordinates the Agency's committee management program; and

(12) coordinates the Agency's Alternative Dispute Resolution (ADR) Program.

C. In the HIV/AIDS Bureau (RV) Revise the Functional Statement to Read

Provides leadership and direction for the HIV/AIDS programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically: (1) Coordinates the formulation of an overall strategy and

their successors, pending further re-delegation, provided they are consistent with this action. This document is effective upon date of signature.

Dated: July 1, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–17583 Filed 7–12–02; 8:45 am]

BILLING CODE 4160–15–P

premature termination of the planned experimental procedures and indeterminate or possibly misleading findings relative to the influence of negative priming on the processing of auditory stimuli in normal and aphasic subjects.

Mr. Pennington has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of three (3) years, beginning on

The purpose of the program is to establish a plan to conduct a home-based and community-based demonstration project to reduce the incidence and severity of infections in patients with ESRD in Hawaii and to monitor the impact that this project has in the defined patient population.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases: To apply

consider a demonstration project in Hawaii to reduce the incidence of infection in this patient population.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $300,000 is available

criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

G. Submission and Deadline

Submit the original and two copies of

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(12) coordinates the Agency's Alternative Dispute Resolution (ADR) Program.

C. In the HIV/AIDS Bureau (RV) Revise the Functional Statement to Read

Provides leadership and direction for the HIV/AIDS programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically: (1) Coordinates the formulation of an overall strategy and policy for HRSA AIDS programs; (2) coordinates the internal functions of the Bureau and its relationships with other national health programs; (3) establishes AIDS program objectives, alternatives, and policy positions consistent with broad Administration guidelines; (4) administers the Agency's AIDS grants and contracts programs; (5) reviews AIDS related program activities to determine their consistency with established policies; (6) represents the Agency and the Department at AIDS related meetings, conferences and task forces; (7) serves as principal contact and advisor to the Department and other parties concerned with matters relating to planning and development of health delivery systems relating to HIV/AIDS; (8) develops and administers operating policies and procedures for the Bureau; (9) directs and coordinates the Bureau activities in support of the Department/Bureau's Affirmative Action and Equal Employment Opportunity programs by ensuring that all internal employment practices provide an equal opportunity to all qualified persons and its employment practices do not discriminate on the basis of race, color, sex, age, national origin, religious affiliation, marital status, and that all external benefits and service oriented activities relative to the recipients of Federal funds are likewise addressed in accordance with applicable laws, Executive Orders, HHS regulations and policies; (10) provides direction to the Bureau's Civil Rights compliance activities; (11) directs and coordinates Bureau Executive Secretariat activities; (12) serves in developing and coordinating (telehealth) programs and in facilitating the electronic dissemination of best practices in health care to health care professionals; (13) directs the HRSA Center for Quality; and (14) coordinates the Department's tort claims panel and associated activities.

Delegation of Authority

All delegations and re-delegations of authorities to officers and employees of HRSA which were in effect immediately prior to the effective date of this action will be continued in effect in them or their successors, pending further re-delegation, provided they are consistent with this action. This document is effective upon date of signature.

Dated: July 1, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–17583 Filed 7–12–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

James C. Pennington, Brown University: Based on the report of an inquiry/investigation conducted by Brown University and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that James C. Pennington, formerly a graduate student in the Department of Cognitive and Linguistic Sciences, engaged in scientific misconduct by fabricating data in his master's thesis. The research was supported by National Institute on Deafness and Other Communication Disorders (NIDCD), National Institutes of Health (NIH), grant R01 DC000314, "Speech and language processing in aphasia."

Specifically, PHS found that:

1. For Experiment 3, reported as having been conducted with 12 normal subjects, Mr. Pennington fabricated: (a) The mean reaction time data to auditory stimuli presented in Figures 5 and 6, and the results of the associated statistical analyses; and (b) the accuracy data presented in Tables 4 and 5, and the results of the associated statistical analysis.

2. For Experiment 4, reported as having been conducted with 6 subjects with Broca's aphasia, Mr. Pennington fabricated: (a) The mean reaction time data to auditory stimuli presented in Figures 7 and 8, and the results of the associated statistical analyses; and (b) the accuracy data presented in Table 6, and the results of the associated statistical analysis.

The fabrication of Experiments 3 and 4, which were intended to incorporate improvements to the procedures used in Experiments 1 and 2, resulted in the premature termination of the planned experimental procedures and indeterminate or possibly misleading findings relative to the influence of negative priming on the processing of auditory stimuli in normal and aphasic subjects.

Mr. Pennington has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of three (3) years, beginning on June 21, 2002: (1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and (2) that any institution that submits an application for PHS support for a research project on which Mr. Pennington's participation is proposed or that uses him in any capacity on PHS supported research, or that submits a report of PHS-funded research in with he is involved, must concurrently submit a plan for supervision of his duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Mr. Pennington's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852. (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–17750 Filed 7–12–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02214]

Demonstration Project To Reduce the Incidence and Severity of Infection in Patients With End Stage Renal Disease (ESRD) in Hawaii; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a grant program to reduce the incidence and severity of infection in patients with End Stage Renal Disease (ESRD) in Hawaii. This program addresses the "Healthy People 2010" focus area(s) Immunization and Infectious Diseases.

The purpose of the program is to establish a plan to conduct a home-based and community-based demonstration project to reduce the incidence and severity of infections in patients with ESRD in Hawaii and to monitor the impact that this project has in the defined patient population.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases: To apply scientific findings to prevent and control infectious diseases.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. sections 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Assistance will be provided only to public and private nonprofit organizations located in the State of Hawaii having at least five dialysis centers on at least three of the Hawaiian Islands, and which treat at least 800 patients.

Based on data from CDC's Dialysis Surveillance Network, the estimated rate of serious infection with bacteremia is 2.3 per 100 patient-months. To detect a 25% decrease in this rate (with 80% power), the study would need 9,706 patient-months of followup. If the study lasts 12 months, then approximately 800 patients need to be studied each month. In order to recruit a sufficient number of high-risk patients and complete the project in a timely fashion, it will be necessary to have a large population base of ESRD patients.

The effect of the intervention is likely to vary among dialysis centers; therefore to determine the effectiveness of the intervention it is necessary that the applicant have at least five facilities. To ensure the capture of a representative patient sample, dialysis units on at least three of the Islands should be included. These requirements are necessary for the success of this project.

The House of Representatives Conference Report accompanying the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill ending September 30, 2002, and For Other Purposes (H.R. 3061, 107th Congress), recognized that many Native Hawaiians in rural Hawaii afflicted with ESRD and on dialysis have a history of repeated infections that put them at greater risk for frequent hospitalization. The Committee encouraged CDC to consider a demonstration project in Hawaii to reduce the incidence of infection in this patient population.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $300,000 is available in FY 2002 to fund approximately one award. It is expected that the award will begin on or about September 15, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change. Matching funds are not required for this program.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Collect baseline data on infection incidence using a standardized protocol in a large group of ESRD patients.
2. Assess risk factors for infection in this group. Potential risk factors include patient factors, infection control practices at the dialysis centers, and home practices.
3. Through risk factor analyses, identify a group of patients at high risk for infection.
4. Design and develop a home-based and community-based intervention program to make home visits, provide education, and implement infection prevention measures. A multidisciplinary team should use a case management approach, assess each patient's needs, and develop a plan of individualized interventions.
5. Implement case management services and home visits on the group of high-risk ESRD patients.
6. Monitor and evaluate the impact of the interventions. Collect followup data on the problems of implementing the program, the lessons learned, acceptability to patients, and infection incidence in the group of ESRD patients.

F. Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

The application must be received by 5 p.m. Eastern Time August 14, 2002. Submit the application to:

Technical Information Management-PA02214, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will

demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goal stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

4. Evaluation Plan (5 points)

The extent to which the applicant presents a plan for monitoring progress toward the stated goals and objectives.

5. Measures of Effectiveness (5 points)

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant? Are the measures objective/quantitative and

associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact:

Sharon Robertson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Connecticut Medicaid State Plan Amendment (SPA) 01–011B

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. The State indicated in its response dated February 22, 2002, that it published a public notice on September 26, 2001. Under section 1902(a)(13)(A) of the Act, payment rates for hospital services must be established through a public process which includes notice and a reasonable opportunity for review and comment. Federal regulations at 42 CFR 447.205

(CMS) was unable to approve this amendment.

The issue is whether SPA 01–011B complies with requirements for publication of public notice and the effective date. Connecticut submitted SPA 01–011B on September 21, 2001. The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. The State indicated in its response dated February 22, 2002, that it published a public notice on

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demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goal stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Background and Need (30 points)

The extent to which the applicant demonstrates a strong understanding of the problem of infections in ESRD patients. The extent to which the applicant illustrates the need for this grant program. The extent to which the applicant presents a clear goal for this grant that is consistent with the described need.

2. Capacity (30 points)

The extent to which the applicant demonstrates that they have the expertise, facilities, and other resources necessary to accomplish the program requirements, including curricula vitae of key personnel and letters of support from any participating organizations/institutions.

3. Operational Plan (30 points)

a. The extent to which the applicant presents clear, time-phased objectives that are consistent with the stated program goal and a detailed operational plan outlining specific activities that are likely to achieve the objective. The extent to which the plan clearly outlines the responsibilities of each of the key personnel.

b. The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Evaluation Plan (5 points)

The extent to which the applicant presents a plan for monitoring progress toward the stated goals and objectives.

5. Measures of Effectiveness (5 points)

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant? Are the measures objective/quantitative and do they adequately measure the intended outcome?

6. Budget (Not Scored)

The extent to which the applicant presents a detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this grant program.

7. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Semi-annual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact:

Sharon Robertson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2748, E-mail address: *sqr2@cdc.gov.*

For program technical assistance, contact:

Jerome Tokars, M.D., Division of Healthcare Quality Promotion, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE. Mailstop E–55, Atlanta, GA 30333, Telephone number: 404–498–1125, E-mail address: *Jtokars@cdc.gov.*

Dated: July 9, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17628 Filed 7–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02163]

Support for Civil Society of Organizations Responding to HIV/AIDS in Zimbabwe; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for cooperative agreement program for Support for Civil Society of Organizations Responding to HIV/AIDS in Zimbabwe was published on May 23,2002, Volume 67, Number 100, pages 36194–36196. The notice is amended as follows: On page 36195, Column 2, Paragraph "F. Content", Letter of Intent (LOI), the following change is added: A (LOI) is optional for this program.

Dated: July 9, 2002.

Sandra R. Manning,

Director, Procurements and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17627 Filed 7–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Connecticut Medicaid State Plan Amendment (SPA) 01–011B

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 30, 2002, at 10 a.m., at the JFK Federal Building; Room 2250, Boston, Massachusetts 02203–0003, to reconsider our decision to disapprove Connecticut SPA 01–011B.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410)–786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Connecticut SPA 01–011B.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid (CMS) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issue is whether SPA 01–011B complies with requirements for publication of public notice and the effective date. Connecticut submitted SPA 01–011B on September 21, 2001. The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. The State indicated in its response dated February 22, 2002, that it published a public notice on September 26, 2001. Under section 1902(a)(13)(A) of the Act, payment rates for hospital services must be established through a public process which includes notice and a reasonable opportunity for review and comment. Federal regulations at 42 CFR 447.205 state that the public notice must be published before the proposed effective date of any significant change in payment rates. The CMS interprets this advance public notice requirement to mean the notice must be published at least one calendar day prior to the proposed effective date. Therefore, the earliest approvable effective date for this amendment is September 27, 2001. Because the State requested an effective date of July 1, 2001, CMS was unable to approve the requested amendment.

I am scheduling a hearing on your request for reconsideration to be held on August 30, 2002, at 10 a.m., at the JFK Federal Building, Room 2250, Boston, Massachusetts 02203–0003, to reconsider our decision to disapprove Connecticut SPA 01–011B.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Mr. Michael P. Starkowski, Deputy Commissioner, State of Connecticut, Department of Social Services, 25 Sigourney Street, Hartford, CT 06106–5033.

Dear Mr. Starkowski: I am responding to your request for reconsideration of the decision to disapprove Connecticut State Plan Amendment (SPA) 01–011B.

The issue involves publication of public notice and effective date. Connecticut submitted SPA 01–011B on September 21, 2001. The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. For the reasons stated below, the Centers for Medicare & Medicaid Services (CMS) was unable to approve this amendment.

The issue is whether SPA 01–011B complies with requirements for publication of public notice and the effective date. Connecticut submitted SPA 01–011B on September 21, 2001. The amendment would provide an update factor for inpatient hospital rates as of July 1, 2001. The State indicated in its response dated February 22, 2002, that it published a public notice on September 26, 2001. Under section 1902(a)(13)(A), payment rates for hospital services must be established through a public process which includes notice and a reasonable opportunity for review and comment. Federal regulations at 42 CFR 447.205 state that the public notice must be published before the proposed effective date of any significant change in payment rates. The CMS interprets this advance public notice requirement to mean the notice must be published at least one calendar day prior to the proposed effective date. Therefore, the earliest approvable effective date for this amendment is September 27, 2001. Because the State requested an effective date of July 1, 2001, CMS was unable to approve the requested amendment.

I am scheduling a hearing on your request for reconsideration to be held on August 30, 2002, at 10 a.m., at the JFK Federal Building, Room 2250, Boston, Massachusetts 02203–0003, to reconsider our decision to disapprove Connecticut SPA 01–011B.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–17619 Filed 7–12–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–29/30]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and

(keypunching) and retrieval into OSCAR at the CMS ROs. The form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 661; *Total Annual Responses:* 661; Total Annual Hours: 1,157.

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or

Dated: July 2, 2002.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17708 Filed 7–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND

55; *Total Annual Responses:* 660; *Total Annual Hours:* 5,280.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on

be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System (IEVS) and Supporting Regulations in 42 CFR

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–29/30]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as Rural Health Clinic and Rural Health Clinic Survey Report Form and Supporting Regulations in 42 CFR 491.1–491.11; *Form No.:* CMS–0029/0030 (OMB# 0938–0074); *Use:* The Form CMS–29 is utilized as an application to be completed by suppliers of RHC services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Online Survey and Certification and Reporting System (OSCAR) by the CMS Regional Offices (RO). The Form CMS–30 is an instrument used by the State survey agency to record data collected in order to determine RHC compliance with individual conditions of participation and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction (keypunching) and retrieval into OSCAR at the CMS ROs. The form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 661; *Total Annual Responses:* 661; Total Annual Hours: 1,157.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown CSM–29/30, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 2, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17706 Filed 7–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–137]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Internal Revenue Service/Social Security Administration/Health Care Financing Administration Data Match and Supporting Regulations in 42 CFR 411.20–411.206; *Form No.:* CMS–R–137; *Use:* Employers who are identified through a match of IRS, SSA, and Medicare records will be contacted concerning group health plan coverage of identified individuals to ensure compliance with Medicare Secondary Payer provisions found at 42 U.S.C. 1395y(b). *Frequency:* Annually *Affected Public:* Federal Government, business or other for profit, not for profit institutions, Farms, Federal Government and State, Local or Tribal Government; *Number of Respondents:* 327,947; *Total Annual Responses:* 327,947; *Total Annual Hours Requested:* 1,096,466.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–R–137, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 2, 2002.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17708 Filed 7–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–319]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control (MEQC) Sample Section Lists and Supporting Regulations in 42 CFR 431.800–431.865; *Form No.:* CMS–0319 (OMB# 0938–0147); *Use:* The sample selection lists contain identifying information on Medicaid beneficiaries and is the basis for the cases that States review to determine the accuracy of the Medicaid eligibility determinations. The Regional Office uses this list to monitor State review activity; *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 660; *Total Annual Hours:* 5,280.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown CMS–319, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 5, 2002.

Julie Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17756 Filed 7–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–74]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System (IEVS) and Supporting Regulations in 42 CFR 435.940–435.965; *Form No.:* CMS–R–74 (OMB# 0938–0467); *Use:* Section 1137 of the Social Security Act requires Medicaid State agencies and other federally funded welfare agencies to request income and resource data from certain federal agencies, State wage information collection agencies, and State unemployment compensation agencies through an IEVS. The purpose of the IEVS is to ensure that only eligible individuals receive benefits.; *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 54; Total Annual Hours: 98,524.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 2, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17707 Filed 7–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–841, 842, 844–853]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Part B Durable Medical Equipment Regional Carrier Certificate Requirements and Supporting Regulations in 42 CFR 424.57; *Form No.:* CMS–841, 842, 844–853 (OMB# 0938–0679); *Use:* The CMS–843 (power wheelchair) collection separately due to the public comments we received.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or

related to the project. The cost of this 17-month project is $248,541.

FOR FURTHER INFORMATION CONTACT: Leonard Sternback, Administration for Children and Families, 50 U.N. Plaza, San Francisco, California 94102, Phone: 415–437–7671.

Dated: July 2, 2002.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

entrants, and certain Amerasians and victims of severe forms of trafficking in persons.

A. KR.10 Organization. Delete in its entirety and replace with the following:

KR.10 Organization. The Office of Refugee Resettlement is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KRA)

programs and Wilson/Fish projects. The Division develops guidance and procedures for their implementation; manages special initiatives to increase refugee self-sufficiency such as through demonstration or pilot programs; and manages the unaccompanied minors program to ensure that refugee and entrant unaccompanied minors are provided appropriate care and services. The Division ensures the quality of medical screening and initial medical

significant increases in arrivals to communities where adequate or appropriate services do not exist; strengthens the role of ethnic community national or multi-State organizations to promote economic independence among refugees; provides for English language training and provides where specific needs have been shown and recognized by the Director for health (including mental health) services, social services, educational and other services

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–841, 842, 844–853]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity; *Form No.:* CMS–841, 842, 844–853 (OMB# 0938–0679); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information necessary to make an appropriate claim determination. Suppliers and physicians will complete these forms. *Frequency:* Record Keeping and reporting on occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal Government; *Number of Respondents:* 137,300; *Total Annual Responses:* 6.7 million; *Total Annual Hours:* 1.13 million.

This **Federal Register** notice does not include the CMS–843 collection. The 60-day **Federal Register** notice for all of the CMNs was published on March 4, 2002, Volume 67, Number 42, Page 9741–9743. We will be publishing the 30-day **Federal Register** notice for the CMS–843 (power wheelchair) collection separately due to the public comments we received.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 2, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17709 Filed 7–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to the University of Maryland, Baltimore County

AGENCY: Office of Planning, Research and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the University of Maryland, Baltimore County, to use data from previous evaluations of welfare-to-work programs to determine how these programs can be made more efficient. The University of Maryland, Baltimore County, is uniquely qualified to conduct this study, because its database presently contains detailed information on 24 welfare-to-work programs conducted in over 50 sites. The project described in the proposal would build on this database for the current research.

This 17-month project is being funded noncompetitively. The University has several facilities and resources on campus for undertaking the study. The University also will rely upon several outside sources with specialized expertise to conduct various activities related to the project. The cost of this 17-month project is $248,541.

FOR FURTHER INFORMATION CONTACT: Leonard Sternback, Administration for Children and Families, 50 U.N. Plaza, San Francisco, California 94102, Phone: 415–437–7671.

Dated: July 2, 2002.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 02–17705 Filed 7–12–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KR, the Office of Refugee Resettlement (ORR) [63 FR 42050], as last amended, August 6, 1998. This notice reflects the realigning of functions within the Office of Refugee Resettlement and the establishment of a new Division.

These Chapters are amended as follows:

KR.00 Mission. Delete in its entirety and replace with the following:

KR.00 Mission. The Office of Refugee Resettlement (ORR) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to refugee resettlement, immigration, victims of severe forms of trafficking in persons, victims of torture, and repatriation of U.S. citizens. The Office plans, develops and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office also plans, develops and provides direction on the administration of the U.S. Repatriate Program. It develops, recommends, and issues program policies, procedures and interpretations to provide program direction. The Office monitors and evaluates the performance of States and other public and private agencies in administering these programs and supports actions to improve them. It provides leadership and direction in the development and coordination of national public and private programs that provide assistance to refugees, asylees, Cuban and Haitian entrants, and certain Amerasians and victims of severe forms of trafficking in persons.

A. KR.10 Organization. Delete in its entirety and replace with the following:

KR.10 Organization. The Office of Refugee Resettlement is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KRA)
Division of Refugee Assistance (KRE)
Division of Community Resettlement (KRF)
Division of Budget, Policy and Data Analysis (KRG)

B. Delete KR.20 Functions, Paragraph A, Office of the Director in its entirety and replace with following:

KR.20 Functions. A. The Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out ORR's mission and providing guidance and general supervision to the components of ORR. The Office provides direction in the development of program policy and budget and in the formulation of salaries and expense budgets. Staff also provide administrative and personnel support services. The Office is responsible for implementing certain provisions of the Trafficking Victims Protection Act.

The Office coordinates with the lead refugee and entrant program offices of other federal departments; provides leadership in representing refugee and entrant programs, policies and administration to a variety of governmental entities and other public and private interests; and acts as the coordinator of the total refugee and entrant resettlement effort for ACF and the Department. The Office coordinates the certification of, and services to, victims of severe forms of trafficking. It also coordinates with other Federal government agencies on certification activities and policy issues related to the trafficking law.

C. Delete KR.20 Functions, Paragraph B, the Division of Refugee Self-Sufficiency in its entirety and replace with the following:

B. The Division of Refugee Assistance provides direction for assuring that refugees are provided assistance and services through the State-administered program and alternative programs such as the Wilson/Fish projects in a manner that helps refugees to become employed and economically self-sufficient as soon after their arrival in the United States as possible. The Division monitors and provides technical assistance to the State-administered domestic assistance programs and Wilson/Fish projects. The Division develops guidance and procedures for their implementation; manages special initiatives to increase refugee self-sufficiency such as through demonstration or pilot programs; and manages the unaccompanied minors program to ensure that refugee and entrant unaccompanied minors are provided appropriate care and services. The Division ensures the quality of medical screening and initial medical treatment of refugees. The Division also assists public and private agencies on data reporting and the resolution of reporting problems.

D. Amend KR.20 Functions to add the following new paragraph:

D. The Division of Budget, Policy and Data Analysis manages the allocation and tracking of funds for refugee cash and refugee medical assistance and State administrative costs; prepares annual budget estimates and related materials; and develops regulations, legislative proposals, and routine interpretations of policy regarding the State-administered and alternative programs. The Division collects data and performs analyses on the changing needs of the refugee and entrant population; provides leadership to identify data needs and sources, and formulates data and reporting requirements.

E. Delete KR.20 Functions, Paragraph C, Division of Community Resettlement, in its entirety and replace with the following:

C. The Division of Community Resettlement directs and manages effective refugee resettlement through the programmatic implementation of grants, contracts and special initiatives, such as the Voluntary Agency Program, associated with national discretionary activity. The Division oversees and monitors most ORR discretionary grants; recommends grantee allocations, coordinates with the grants management office to review the financial expenditures under discretionary grant programs; provides data in support of apportionment requests; and provides technical assistance on discretionary grants operations. The Division coordinates and provides liaison with the Department and other Federal agencies on discretionary grant operational issues and other activities as specified by the Director or required by Congressional mandate; assists private agencies on data reporting and the resolution of reporting problems; compiles, evaluates, and disseminates information on refugee service programs; responds to unanticipated refugee and entrant arrivals or significant increases in arrivals to communities where adequate or appropriate services do not exist; strengthens the role of ethnic community national or multi-State organizations to promote economic independence among refugees; provides for English language training and provides where specific needs have been shown and recognized by the Director for health (including mental health) services, social services, educational and other services.

The Division develops Repatriation plans to make arrangements and approve payments for temporary assistance to certain U.S. citizens and dependents repatriated from foreign countries, and for the hospitalization of certain U.S. Nationals repatriated because of mental illness.

Dated: July 8, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 02–17606 Filed 7–12–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oxytetracycline Hydrochloride for Marking Fish; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness, target animal safety, human food safety, and environmental data that may be used in support of a new animal drug application (NADA) or supplemental NADA for use of a solution of oxytetracycline hydrochloride for skeletal marking of finfish by immersion. The data, contained in Public Master File (PMF) 5667, were compiled under National Research Support Project-7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses.

ADDRESSES: Submit NADAs or supplemental NADAs to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–131), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: jgotthar@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

Oxytetracycline hydrochloride soluble powder, used in solution for skeletal marking of juvenile finfish by immersion as an aid in identification is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, oxytetracycline hydrochloride is subject to section 512 of the act (21 U.S.C. 360b) and may not be legally marketed without an approved or authorized reference to such data; data concerning manufacturing methods, facilities, and controls; and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning PMF 5667 or requirements for approval of an NADA or supplement may contact Joan C. Gotthardt (see **FOR FURTHER INFORMATION CONTACT**).

In accordance with the freedom of

applications requesting FY 2003 funding.

Size of parent's family [1]	Income [2] level
1	$17,720
2	23,680
3	30,040
4	36,200
5	42,360
6	48,520
7	54,680

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17658 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17658 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

Rockville, MD 20855, 301–827–7571, e-mail: jgotthar@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

Oxytetracycline hydrochloride soluble powder, used in solution for skeletal marking of juvenile finfish by immersion as an aid in identification is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, oxytetracycline hydrochloride is subject to section 512 of the act (21 U.S.C. 360b), requiring that its uses be the subject of an approved NADA or supplemental NADA. Fish are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP–7 Project, North Eastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14850, has provided target animal safety, effectiveness, human food safety, and environmental data for use of oxytetracycline hydrochloride soluble powder for skeletal marking of fish by immersion. These data are contained in PMF 5667.

Under §§ 25.15(d) and 25.33(d)(4) (21 CFR 25.15(d) and 25.33(d)(4)), sponsors of NADAs and supplemental NADAs for drugs in minor species, including wildlife and endangered species, are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement when the drug has been approved for use in another or the same species where similar animal management practices are used. The categorical exclusion applies unless, as defined in § 25.21 (21 CFR 25.21), extraordinary circumstances exist which indicate that the proposed action may significantly affect the quality of the human environment. Therefore, based upon information available, FDA agrees that when the application is submitted, the applicant may claim a categorical exclusion under § 25.33(d)(4) provided that the applicant can state that to the best of the applicant's knowledge, as in § 25.21, no extraordinary circumstances exist. It is assumed that the applicant has made a reasonable effort to determine that no extraordinary circumstances exist.

Sponsors of NADAs or supplemental NADAs may, without further authorization, reference the PMF 5667 to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as: Data supporting extrapolation from a major species in which the drug is currently approved or authorized reference to such data; data concerning manufacturing methods, facilities, and controls; and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning PMF 5667 or requirements for approval of an NADA or supplement may contact Joan C. Gotthardt (see **FOR FURTHER INFORMATION CONTACT**).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information provided in PMF 5667 to support approval of an application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 27, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–17749 Filed 7–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

New Annual "Low-Income" Levels for Various Health Professions and Nursing Programs Included in Titles VII and VIII of the Public Health Service Act

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the new "low-income" levels for various programs included in titles VII and VIII of the Public Health Service (PHS) Act, which use the U.S. Census Bureau "low income" levels to determine eligibility for program participation. The Department periodically publishes in the **Federal Register** low-income levels used to determine eligibility for grants and cooperative agreements to institutions providing training for (1) disadvantaged individuals, (2) individuals from a disadvantaged background, or (3) individuals from "low-income" families.

SUPPLEMENTARY INFORMATION: This notice announces increase in income levels intended for use in determining eligibility for participation in the following programs:

Advanced Education Nursing (section 811)
Allied Health Special Projects (section 755)
Basic Nurse Education and Practice (section 831)
Dental Public Health (section 768)
Faculty Loan Repayment and Minority Faculty Fellowship Program (section 738)
General and Pediatric Dentistry (section 747)
Health Administration Traineeships and Special Projects (section 769)
Health Careers Opportunity Program (section 739)
Loans to Disadvantaged Students (section 724)
Physician Assistant Training (section 747)
Primary Care Residency Training (section 747)
Public Health Traineeships (section 767)
Quentin N. Burdick Program for Rural Interdisciplinary Training (section 754)
Residency Training in Preventive Medicine (section 768)
Public Health Training Centers (section 766)
Nursing Workforce Diversity (section 821)

These programs generally award grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, nursing, chiropractic, public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice, and other public or private nonprofit health or education entities to assist the disadvantaged to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for disadvantaged students.

Low-Income Levels

The Secretary defines a "low-income" family for programs included in titles VII and VIII of the PHS Act as having an annual income that does not exceed 200 percent of the Department's poverty guidelines. The Department's poverty guidelines which were published in the **Federal Register** on Thursday, February 14, 2002, (67 FR 6931), are based on poverty thresholds published by the U.S. Census Bureau, adjusted annually for changes in the Consumer Price Index. The Secretary annually adjusts the low-income levels based on the Department's poverty guideline and makes them available to persons responsible for administering the applicable programs. The following income figures will be used for health professions and nursing grant applications requesting FY 2003 funding.

Size of parent's family [1]	Income [2] level
1	$17,720
2	23,680
3	30,040
4	36,200
5	42,360
6	48,520
7	54,680
8	60,840

[1] Includes only dependents on Federal income tax forms.

[2] Adjusted gross income for calendar year 2001.

Dated: July 9, 2002.

Elizabeth M. Duke,

Adminstrator.

[FR Doc. 02–17751 Filed 7–12–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and the personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, RFA AA00–003 Alcohol Research Centers Applications.

Date: July 30, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, PhD, Chief, Extramural Project Review Branch, OSA, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, MSC 7003, Rockville, MD 20892–7003, 301–443–2860, *ehayunga@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17673 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting:

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: July 29, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To debrief on May 2002 meeting and to get updates from the working group.

Place: 6116 Executive Blvd., Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/dclg/dclg.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17658 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee to the Director, National Cancer Institute, July 10, 2002, 1 p.m. to July 10, 2002 3 p.m. National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD, 20892 which was published in the **Federal Register** on June 18, 2002, 67 FR41434.

This meeting is amended to change the meeting time to 2:30 p.m. to 4 p.m. The meeting is open to the public.

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17659 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Complementary and Alternative Medicine Special Emphasis Panel, July 8, 2002, 2 pm to July 8, 2002, 5 pm, 6707 Democracy Blvd., Bethesda, MD, 20892 which was published in the **Federal Register** on June 18, 2002, 67 FR 41435.

The meeting will be held July 9, 2002 from 2 pm to 5 pm, 6707 Democracy Blvd., Bethesda, Maryland (telephone conference call). The meeting is closed to the public.

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17663 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17674 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

Name of Committee: National Institute on Aging Special Emphasis Panel, "Aging and Oxidative Damage".

Date: July 8–9, 2002.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Galveston Island Resort, 5400 Seawell Boulevard, Galveston, TX 77551.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, "Age–Department Attenuation to Environmental Toxin Insults"?.

Date July 22–23, 2002.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Brown—A Camberly Hotel, 335 West Broadway, Louisville, KY 40202.

Contact Person: Jeffrey M. Chernak, PhD, confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Primary Care Anziety Intervention.

Date: July 22, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant

Name of Committee: National Institute of Mental Health Special Emphasis Panel, IP–RISP.

Date: July 30, 3002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd.,

Dated: July 3, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–17663 Filed 7–12–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.
Date: September 19, 2002.
Time: 8:30 a.m. to 2:30 p.m.
Agenda: Report of Center Director & other issues.
Place: Natcher Building 45, Conference Room D, National Institutes of Health, Bethesda, MD 20892.
Closed: 2:40 p.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Natcher Building 45, Conference Room D, National Institutes of Health, Bethesda, MD 20892.
Contact Person: Louise E. Ramm, PhD., Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.
Information is also available on the Institute's/Center's home page: *www.ncrr.nih.gov/newspub/minutes.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)
Dated: July 8, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–17674 Filed 7–12–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, July 25, 2002, 8:30 a.m. to July 25, 2002, 6 p.m., Monarch Hotel, 2400 M Street, NW., Washington, DC 20037 which was published in the **Federal Register** on June 26, 2002, 67 FR 02–16076.

The meeting will be held on August 9, 2002 from 8:30 a.m. to 6 p.m. The meeting is closed to the public.

Dated: July 3, 2002.
LaVerne Y. Stringfield,
Directer, Office of Federal Advisory Committee Policy.
[FR Doc. 02–17657 Filed 7–12–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, "Aging and Oxidative Damage".
Date: July 8–9, 2002.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Galveston Island Resort, 5400 Seawell Boulevard, Galveston, TX 77551.
Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Neurosciences R03'S.
Date: July 8–9, 2002.
Time: 6:30 a.m. to 5 p.m.,
Agenda: To review and evaluate grant applications,
Place: Pickwick Hotel & Conference Center, 2012 Magnolia Avenue, Birmingham, AL 35205.
Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 2701 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Metabolism and Aging.
Date: July 15–16, 2002.
Time: 7 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: New York Midtown East Countyard By Marriott, 866 Third Ave., New York, NY 10022.
Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Contract For Clinical Services.
Date: July 18, 2002.
Time: 9 a.m. to 1 p.m.
Agenda: To review and evaluate contract proposals.
Place: 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Nekola, PhD, Chief of the Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814–9692, 301–496–9666.

This notice is being published less than 15 days prior to the meeting due

to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, "Age–Department Attenuation to Environmental Toxin Insults"?.
Date July 22–23, 2002.
Time: 6:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Brown—A Camberly Hotel, 335 West Broadway, Louisville, KY 40202.
Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 2301 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Active.
Date: July 24, 2002.
Time: 8: a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892.
Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel AgeWise.
Date: August 6, 2002.
Time: 10 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.
(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 3, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–17660 Filed 7–12–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Primary Care Anziety Intervention.
Date: July 22, 2002.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Nueroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93. 282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 3, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–17662 Filed 7–12–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, IP–RISP.
Date: July 30, 3002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 92.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 3, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–17664 Filed 7–12–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Focal Segmental Glomerulosclerosis
Date: August 6, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Comprehensive Programs and Beta Cell Biology
Date: August 6, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 6, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 7, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 7, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 8, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 8, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 9, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 9, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 12, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 12, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 13, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 13, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 14, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 14, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 15, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 15, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 16, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 16, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 19, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 19, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 20, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 20, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 21, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 21, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 22, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 22, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 23, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 23, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 26, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 26, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 27, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 27, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 28, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 28, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 29, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 29, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Islet Cell Biology
Date: August 30, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal Gateway Marri

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Comprehensive Programs and Beta Cell Biology.

Date: August 7–8, 2002.

Time: 7 p.m. to 4 p.m.

Agenda: to review and evaluate grant applications

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis, Panel. Functional Genomics of Beta Cell Biology.

Date: August 8, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17665 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Prevention Research Initiative.

Date: August 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17666 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 23, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700-B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17667 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel. Program Project Grants.

Date: August 9, 2002.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd, Suite 707 MSC 4870, Bethesda, MD 20892–4870.

Contact Person: Richard J Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

(Catagloue of Federal Domestic Assistance Program Nos. 93. 846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17668 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Medication Development for Stimulant Dependence"

Date: July 17, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institutes on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17669 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of R01 Supplement.

Date: August 6, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17670 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: August 11–13, 2002.

Closed: August 11, 2002, 8 p.m. to 9:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

Open: August 12, 2002, 8:30 a.m. to 5 p.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Toxicology.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: August 13, 2002, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K Akiyama, PhD, Acting Deputy Scientific Director, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17672 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 23, 2002.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17675 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17656 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Contact Person: Steven K Akiyama, PhD, Acting Deputy Scientific Director, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17671 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Partnerships for Novel Therapeutic, Diagnostic and Vector Control Strategies in, Infectious Diseases".

Date: July 24–26, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anna Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301 496–2550, *ar15o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17672 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 23, 2002.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room B, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 23, 2002.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 23, 2002.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 23, 2002.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: The meeting of the full Council will be open to the public for general discussion.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17675 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: September 4, 2002.

Time: 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: September 5, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17676 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 10, 2002, 8:30 a.m. to July 10, 2002, 5 p.m., Monarch Hotel, 2400 M Street, NW., Washington, DC 20037 which was published in the **Federal Register** on June 18, 2002, 67 FR 41437–41439.

The meeting has been changed to August 2, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17656 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RESP (02) (Review of Deferred Application).

Date: July 10, 2002.

Time: 9:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALTX–4 (02).

Date: July 16, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–2359, *shayiqr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CAMP (06) Chemotherapeutic Drug Delivery.

Date: July 26, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, (301) 435–1212, *riverase@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17673 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program Board of Scientific Counselors, Technical Reports Review Subcommittee and Publication Date Subcommittee.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Mary S. Wolfe, P.O. Box 12233, 111 T.W. Alexander Dr., MD A3–01, Research Triangle Park, NC 27709, T: 919–541–0295; e-mail: *wolfe@nieh.nih.gov.* Following the meeting, summary minutes will be prepared and can be obtained from the Publications and Program Services Branch, NIEHS, P.O. Box 12233, MD EC–14, Research Triangle Park, NC 27709, 919/541–0073.

The agenda and roster of subcommittee members will be available prior to the meeting on the NTP Web home page at *http://ntp-server.niehs.nih.gov* and upon request to the NTP Executive Secretary, Dr. Mary S. Wolfe, P.O. Box 12233, 111 T.W. Alexander Dr., MD A3–01, Research Triangle Park, NC 27709, T: 919–541–0295; e-mail: *wolfe@nieh.nih.gov.* Following the meeting, summary minutes will be prepared and can be obtained from the Publications and Program Services Branch, NIEHS, P.O. Box 12233, MD EC–14, Research Triangle Park, NC 27709, 919/541–0073.

Persons registering to submit comments are asked to provide a written copy of their statement to the Executive Secretary on or before August 28, 2002, to enable review by the Subcommittee and NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation or may be submitted in lieu of an oral presentation. Each submitter is asked to provide 30 copies of their statement for distribution to the Subcommittee members and NTP staff.

NTP Board of Scientific Counselors

The Board is a technical advisory body composed of scientists from the public and private sectors who provide primary scientific oversight and peer review to the NTP. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the Board provides scientific peer review of the findings and conclusions of NTP Technical Reports. The Report on Carcinogens Subcommittee of the Board provides scientific peer review of nominations to the *Report on Carcinogens,* a Congressionally mandated listing of agents known or reasonably anticipated to be human carcinogens.

The Board's members are selected from recognized authorities biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the Board.

Dated: July 5, 2002.

Samuel H. Wilson,

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CAMP (06) Chemotherapeutic Drug Delivery.

Date: July 26, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17661 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Toxicology Program Board of Scientific Counselors Technical Reports Review Subcommittee Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee on September 5 and 6, 2002, in the Rodbell Auditorium, Rall Building, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. each day.

Agenda

The primary agenda topic is the peer review of seven draft Technical Reports (TR) of rodent toxicology and carcinogenesis studies conducted by the NTP. The reports are listed in the table below in the tentative order of their review for each day. The NTP Technical Reports will be reviewed over two days: reports numbered TR 510 to TR 514 on September 5 and reports numbered TR 516 and TR 517 on September 6. There will also be brief presentations on September 6 concerning the use of transgenic models in carcinogenic hazard identification and NTP studies.

The agenda and roster of subcommittee members will be available prior to the meeting on the NTP Web home page at *http://ntp-server.niehs.nih.gov* and upon request to the NTP Executive Secretary, Dr. Mary S. Wolfe, P.O. Box 12233, 111 T.W. Alexander Dr., MD A3–01, Research Triangle Park, NC 27709, T: 919–541–0295; e-mail: *wolfe@nieh.nih.gov.* Following the meeting, summary minutes will be available on the NTP Web home page and in hard copy upon request to the Executive Secretary. Plans are also underway for making this meeting available for viewing on the Internet *(http://www.niehs.nih.gov/external/video.htm).*

The NTP Board of Scientific Counselors Technical Reports Review Subcommittee meeting is open to the public. Attendance at this meeting is limited only by the space available. Individuals who plan to attend are asked to register with the NTP Executive Secretary (*see* contact information above). The names of those registered to attend will be given to the NIEHS Security Office in order to gain access to the campus. Persons attending who have not pre-registered may be asked to provide pertinent information about the meeting, *i.e.*, title or host of meeting before gaining access to the campus. All visitors (whether or not you are pre-registered) will need to be prepared to show 2 forms of identification (ID), *i.e.*, driver's license and one of the following: company ID, government ID, or university ID. Also, those planning to attend who need special assistance are asked to notify the NTP Executive Secretary in advance of the meeting (*see* contact information above).

Draft Reports Available for Public Review and Comment

Approximately five weeks prior to the meeting, the draft reports will be available for public review, free of charge, through the Environmental Health Perspectives (EHP) at *http://ehp.niehs.nih.gov/.* Printed copies can be obtained, as available, from Central Data Management (CDM), NIEHS, 111 T.W. Alexander Dr., P.O. Box 12233, MD EC–03, Research Triangle Park, NC 27709, t: 919–541–3419, fax: 919–541–3687, e-mail: *CDM@niehs.nih.gov.*

Comments on any of the NTP Technical Reports are welcome. Time will be provided at the meeting for public comment on each of the reports under review. In order to facilitate planning for the meeting, persons requesting time for an oral presentation on a particular report are asked to notify the Executive Secretary at 919–541–0530, fax: 919–541–0295, e-mail: *wolfe@niehs.nih.gov.* Persons registering to submit comments are asked to provide a written copy of their statement to the Executive Secretary on or before August 28, 2002, to enable review by the Subcommittee and NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation or may be submitted in lieu of an oral presentation. Each submitter is asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail, and supporting organization (if any). Each speaker will be allotted at least seven minutes and, if time permits, up ten minutes for presentation of oral comments. Each organization is allowed one time slot per report being reviewed. Registration for making public comments will also be available on-site. If registering on-site to speak and read comments from printed copy, the speaker is asked to provide 25 copies of the statement. These copies will be distributed to the Subcommittee and NTP staff and will supplement the record.

Request for Additional Information

The NTP would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please send this information to CDM at the address given above. CDM will forward the information to the appropriate NTP staff scientist.

NTP Technical and Toxicity Report Series

The NTP conducts toxicology and carcinogenesis studies of agents of public health concern. Any scientist, organization, or member of the public may nominate a chemical for NTP testing. Details about the nomination process are available on the NTP Web site (*http://ntp-server.niehs.nih.gov*). The results of short-term rodent toxicology studies are published in the NTP Toxicity Report series. Longer-term studies, generally, rodent carcinogenicity studies, are published in the NTP Technical Report series. Study abstracts for all reports are available at the NTP Web site under NTP Study Information. Hard copies and PDF files of published reports can be obtained through subscription to the EHP (*http://ehp.niehs.nih.gov/* or 1–800–315–3010).

NTP Board of Scientific Counselors

The Board is a technical advisory body composed of scientists from the public and private sectors who provide primary scientific oversight and peer review to the NTP. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and overall scientific quality. The Technical Reports Review Subcommittee of the Board provides scientific peer review of the findings and conclusions of NTP Technical Reports. The Report on Carcinogens Subcommittee of the Board provides scientific peer review of nominations to the *Report on Carcinogens*, a Congressionally mandated listing of agents known or reasonably anticipated to be human carcinogens.

The Board's members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the Board.

Dated: July 5, 2002.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE ON SEPTEMBER 5–6, 2002

Chemical CAS No.	Report No.	Primary uses	Route & exposure levels	Review order
September 5, 2002: Dipropylene glycol, 25265–71–8.	TR 511	A component of air and room fresheners, household cleansers, cosmetic formulations, auto paints, and antifreeze.	Two-year exposure via drinking water: 2,500, 10,000, or 40,000 ppm to male and female F344/N rats and 10,000, 20,000, or 40,000 ppm to male and female B6C3F1 mice.	1
Elmiron, 37319–17–8	TR 512	Used in treatment of thrombosis and hyperlipidemia and for relief of urinary bladder pain associated with interstitial cystitis.	Two-year exposure by gavage in deionized water: 14, 42, or 126 mg/kg body weight to male F344/N rats; 28, 84, or 252 mg/kg to female F344/N rats; 56, 168, or 504 mg/kg to male and female B6C3F1 mice.	2
Decalin, 91–17–8	TR 513	An industrial solvent for fats, resins, oils, waxes, and naphthalene; a substitute for turpentine; a constituent of motor fuels and lubricants.	Two-year inhalation exposure (25, 100, or 400 ppm in air) to male and female F344/N rats and B6C3F1 mice.	3
Urethane + ethanol, 51–79–6, 64–17–5.	TR 510	Urethane is a by-product of fermentation and occurs in breads and alcoholic beverages. The effect of urethane was studied in combination with alcohol (ethanol).	Two-year drinking water exposures of 10, 30, or 90 ppm urethane in 0, 2.5%, or 5% ethanol mixtures to male and female B6C3F1 mice.	4
Cinnamaldehyde, 14371–10–9.	TR 514	A flavoring and fragrance ingredient; the primary component of cinnamon oil.	Two-year exposure of microencapsulated chemical in feed (1,000, 2,100, or 4,100 ppm) to male and female F344/N rats and B6C3F1 mice.	5
September 6, 2002: Trimethylolpropane triacrylate, 15625–89–5.	TR 516	A representative multifunctional acrylate used in photocurable inks and coatings, acrylic glues, paper and wood impregnates, wire and cable extrusion, and polymer-concrete composites.	Six-month dermal applications (0.75, 1.5, 3, 6, or 12 mg/kg body weight) to male and female Tg.AC hemizygous mice.	6
Pentaerythritol triacrylate, 3524–68–3.	TR 517	Representative multifunctional acrylate used in photocurable inks and coatings and as an ingredient of acrylic glues, adhesives, and sealants.	Six-month dermal applications (0.75, 1.5, 3, 6, or 12 mg/kg body weight) to male and female Tg.AC hemizygous mice.	7

[FR Doc. 02–17655 Filed 7–12–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2003 National Survey on Drug Use and Health—(0930–0110, Revision)—The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older.

The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2003 NSDUH, additional questions are being added regarding types of schooling (e.g., public versus private). Several questions using "item count" methodology to estimate use of specific hard-core drugs are slated to be removed. The remaining modular components of the questionnaire will remain essentially unchanged except for minor modifications to wording. In the first quarter of 2003 there will be a field test of the usability of updated computer equipment for screening and interviewing to ensure that the new equipment can be successfully used by both the field interviewing staff and respondents.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2003 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

	Number of responses	Responses per respondent	Average burden per response (hr)	Total burden (hrs.)

Location

Located within the Refuge, the Cullinan Ranch is bordered by the South and Dutchman Sloughs to the north and State Route 37 to the south. California Department of Fish and Game Pond 1 borders Cullinan Ranch to the west. Guadalcanal Village Wetlands (Guadalcanal), which is owned by the State of California and is currently being restored to tidal marsh, borders Cullinan

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–02–1020–00]

Science Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land

specific hard-core drugs are slated to be removed. The remaining modular components of the questionnaire will remain essentially unchanged except for minor modifications to wording. In the first quarter of 2003 there will be a field test of the usability of updated computer equipment for screening and interviewing to ensure that the new equipment can be successfully used by both the field interviewing staff and respondents.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2003 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

	Number of responses	Responses per respondent	Average burden per response (hr)	Total burden (hrs.)
Household Screening	182,250	1	0.083	15,127
Interview and Verification Form	67,500	1	1.0	67,500
Electronic Screening—Field Test	1,440	1	0.083	120
Interview and Verification Form—Field Test	384	1	1.0	384
Screening Verification*	5,603	1	0.067	375
Interview Verification*	10,183	1	0.067	682
Total	202,500			84,188

*Includes cases from Field Test sample.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 9, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–17626 Filed 7–12–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Assessment

AGENCY: Fish And Wildlife Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Assessment under the National Environmental Policy Act and Notice of Public Meeting on Tidal Marsh Restoration Planning at Cullinan Ranch, San Pablo Bay National Wildlife Refuge, Solano and Napa Counties, California.

SUMMARY: In accordance with National Environmental Policy Act of 1969, as amended (NEPA) regulations (40 CFR 1501.7), this notice advises other agencies, Tribes, and the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare environmental documentation on a proposed tidal marsh restoration project at Cullinan Ranch, a unit of the San Pablo Bay National Wildlife Refuge (Refuge), Solano and Napa Counties, California. Interested persons are encouraged to submit written comments and/or attend a public scoping meeting to identify and discuss issues and alternatives that should be addressed. The Service intends to prepare an Environmental Assessment for this project. However, if the Service determines that the project would result in significant impacts, the Service will prepare an Environmental Impact Statement. The purpose of the scoping meeting is to describe restoration alternatives, identify the scope of issues that need to be addressed, and discuss important issues related to tidal marsh restoration at Cullinan Ranch.

DATES: A public scoping meeting will be held on August 7, 2002, from 7 p.m. to 9 p.m., see **ADDRESSES** for location. Written comments related to the scope and content of environmental documentation should be received by the Service at the Newark address below by August 14, 2002.

ADDRESSES: The public meeting will be held at the Mare Island Elementary School, 9th and Tisdale Streets, Vallejo, CA 94591. Written comments may also be mailed to Margaret T. Kolar, Refuge Complex Manager, San Francisco Bay National Wildlife Refuge Complex, PO Box 524, Newark, California 94560.

FOR FURTHER INFORMATION CONTACT: Mike Parker, Deputy Project Leader, San Francisco Bay NWR Complex, (510) 792–0222.

SUPPLEMENTARY INFORMATION: The Cullinan Ranch restoration project would restore approximately 1,500 acres of diked baylands back to historic tidal conditions by reintroducing tidal flow into the project area. This area, Cullinan Ranch, also known as the Napa Marsh Unit of the San Pablo Bay National Wildlife Refuge (Refuge), is located in an area of the Napa River Delta that was historically defined by a network of meandering sloughs and extensive estuarine tidal marshes. Reintroduction of tidal flow will restore vital salt marsh habitat for endangered species, including the salt marsh harvest mouse (Reithrodontomys raviventris) and the California clapper rail (Rallus longirostris obsoletus), as well as provide roosting and foraging habitat for migratory waterbirds.

The proposed restoration is based on the concept that reintroducing tidal waters will naturally develop salt-water marsh habitat conditions. The existing perimeter levee currently prevents tidal flows into the area and as a result, the land has subsided several feet in elevation and becomes inundated with freshwater during the rainy season. Once restored, twice-daily tidal flows would carry and deposit sediment, establishing marsh plain elevations sufficient to support tidal marsh vegetation. As tidal waters enter and exit the site, tidal channels would develop. Continued tidal action would maintain an active exchange of water, sediment and nutrients between the marsh habitat and the Bay, further enhancing the value of the habitat for plants and wildlife.

In keeping with one of the purposes of the Refuge "* * * to conserve fish, wildlife, or plants which are listed as endangered species or threatened species," the Cullinan Ranch restoration project would restore historic salt marsh habitat for the benefit of threatened and endangered species as well as many other estuarine-dependent species.

Location

Located within the Refuge, the Cullinan Ranch is bordered by the South and Dutchman Sloughs to the north and State Route 37 to the south. California Department of Fish and Game Pond 1 borders Cullinan Ranch to the west. Guadalcanal Village Wetlands (Guadalcanal), which is owned by the State of California and is currently being restored to tidal marsh, borders Cullinan Ranch to the east.

Project Components

Specific components of Cullinan Ranch tidal marsh restoration follow.

1. Blocking drainage ditches with earthen fill to promote redevelopment of the historical sloughs on the project site.
2. Reinforcing two Pacific Gas & Electric transmission tower footings to protect them from possible damage from tidal flows when the levee is breached.
3. Constructing and reinforcing an existing levee adjacent to State Route 37 and California Department of Fish and Game (CDFG) Pond 1, to protect these areas from flooding and erosion during high water conditions.
4. Breaching the northern levee adjacent to South and Dutchman sloughs to introduce historic tidal flow to the site.
5. Long-term monitoring of wildlife, plants, hydrology, and geomorphology.

Public Meetings

With the publication of this notice, the public is encouraged to attend public meetings and submit written comments for consideration in developing design alternatives for restoration at Cullinan Ranch. Format for the public meeting will be a presentation on proposed design alternatives followed by a workshop to gather public comments. Comments received shall be used to identify issues and draft preliminary alternatives.

Dated: July 8, 2002.

D. Kenneth McDermond,

Acting Manager, California/Nevada Operations, Sacramento, California.

[FR Doc. 02–17603 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1610–PG; DBG–0200001]

Notice of Public Meeting, Lower Snake River District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 14, 2002 at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho, beginning at 9 a.m. The public comment periods will be held after each topic. The meeting is expected to adjourn at 4 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, topics we plan to discuss include:

Subgroup reports on OHV initiative, river recreation and resource management plans; Panel discussion regarding sage grouse habitat management; Update on Mormon Cricket EA, treatments and plans for 2003; and Update on the two Resource Management Plans under development in the District.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dated: July 2, 2002.

Sandy Guches,

Acting District Manager.

[FR Doc. 02–17617 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–02–1020–00]

Science Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to discuss the Science Advisory Board workplan, science strategy implementation, and the framework for the curriculum proposal.

DATES: BLM will hold the public meeting on Monday, August 5, from 8 a.m. to 4:30 p.m. local time.

ADDRESSES: BLM will hold the public meeting at the Training Room at the Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, P.O. Box 25047, Denver, CO 80225–0047, 303–236–6454.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

I. The Agenda for the Public Meeting is as Follows

8 a.m.—Welcome and Introductions
8:15 a.m.—Director's Comments
8:45 a.m.—Department's Comments
9:15 a.m.—Science in Alaska
10 a.m.—SAB Workplan Discussion and Approval
10:45 a.m.—Update on Science Strategy Implementation
1 p.m.—Discuss the Science Strategy Implementation Paper and Comment
2 p.m.—Discuss the Peer Review Paper and Comment
3:15 p.m.—Discuss the Framework for a Curriculum Proposal
4 p.m.—Public Comment
4:30 p.m.—Adjourn

II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and

regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom on Information Act (FOIA)

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, National Capital Memorial Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in Law 99–652, the Commemorative Works Act (40 U.S.C. 1001 *et. seq*), to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each

Project Leader (202–205–3032; *jtortorice@usitc.gov*), Amanda Horan, Deputy Project Leader (202–205–3459; *ahoran@usitc.gov*), or Richard Brown, Chief, Services and Investment Division (202–205–3438; *rbrown@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091;

prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 19, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 22, 2002. In the event that, as of the close of business on September 17, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17644 Filed 7–12–02; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

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regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom on Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business will be in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: *lee_barkow@blm.gov*. Please include the identifier "Science4" in the subject of your message and your name and address in the body of your message.

III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Lee Barkow,

Director, National Science and Technology Center.

[FR Doc. 02–17684 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, National Capital Memorial Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 10 a.m., on Wednesday, July 31, 2002, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and conducting routine business, the Commission will review the following:

Action Items

(1) Consideration of a recommendation relative to placement, within Area I as established by the Commemorative Works Act of 1986, of the Memorial to President John Adams and his Legacy (Pub. L. 107–62, November 5, 2001).

(2) Continuation of consideration of the alternative site study for the plaque to be placed at the Lincoln Memorial commemorating the "I Have a Dream" speech of Martin Luther King, Jr.

(3) Legislative Proposals introduced in the 107th Congress to establish memorials in the District of Columbia and its environs.

Other Business

General matters and routine business.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission, at (202) 619–7097.

DATES: July 31, 2002.

ADDRESSES: Room 312, National Building Museum, 5th and F Streets, NW., Washington, D.C., 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, 202–619–7097.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. 1001 *et. seq*), to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC., and its environs.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

Dated: June 26, 2002.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 02–17604 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–444]

Oil and Gas Field Services: Impediments to Trade and Prospects for Liberalization

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: July 8, 2002.

SUMMARY: Following receipt of a request on June 18, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–444, Oil and Gas Field Services: Impediments to Trade and Prospects for Liberalization, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Joann Tortorice, Project Leader (202–205–3032; *jtortorice@usitc.gov*), Amanda Horan, Deputy Project Leader (202–205–3459; *ahoran@usitc.gov*), or Richard Brown, Chief, Services and Investment Division (202–205–3438; *rbrown@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background: As requested by the USTR, in its report the Commission will (1) describe the various activities involved in the provision of oil and gas field services; (2) describe the nature of trade in oil and gas field services; and (3) examine the extent of impediments to trade and potential benefits of trade liberalization. Since oil and gas field services are conducted in a large number of countries, USTR has requested that the Commission's study focus on issues that could be relevant multilaterally.

For the purpose of this study, oil and gas field services are broadly defined to include evaluation and exploration activities; drilling activities; and well development and completion activities. The letter follows similar requests made by the USTR in November 1999 and February 2001 for the Commission to conduct investigations on electric power services and natural gas services in selected foreign markets. The Commission submitted its report on electric power services to the USTR on November 23, 2000, and on natural gas services on October 16, 2001. Copies of these reports may be obtained by contacting the Office of the Secretary at 202–205–2000 or by accessing the USITC Internet server www.usitc.gov). The USTR asked that the Commission furnish its report by March 18, 2003, and that the Commission make the report available to the public in its entirety.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 1, 2002. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., September 17, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 19, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 22, 2002. In the event that, as of the close of business on September 17, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after September 17, 2002, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission will not include any confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on October 22, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

WTO, GATS, Oil and gas field services.

Issued: July 9, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17644 Filed 7–12–02; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee meeting on Thermal-Hydraulic Phenomena scheduled for July 17–18, 2002 has been changed to a one day meeting, which will be held on Wednesday, July 17, 2002 at 8:30 a.m. in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The Subcommittee will continue its review of the NRC Office of Nuclear Regulatory Research (RES) draft Regulatory Guide, DG–1120, "Transient and Accident Analysis Methods". The Subcommittee will also discuss the status of the RES experimental program pertaining to subcooled flow boiling phenomena.

Notice of this meeting was published in the **Federal Register** on Tuesday, July 2, 2002 (67 FR 44478). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Mr. Paul A. Boehnert, Senior Staff Engineer (telephone 301–415–8065 or e-mail: *PAB2@nrc.gov*) between 7:30 a.m. and 5 p.m. (EDT).

Dated: July 9, 2002.

Sher Bahadur,

Associate Director for Technical Support.

[FR Doc. 02–17645 Filed 7–12–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Withdrawal

The Nuclear Regulatory Commission is withdrawing Draft Regulatory Guide DG–4006, "Demonstrating Compliance with the Radiological Criteria for License Termination," from consideration as a regulatory guide. DG–4006 was published for public comment in August 1998.

This draft guide was issued to propose guidance on demonstrating compliance with radiological criteria at the sites of licensees who wish to terminate their licenses and release their sites. Appendix D of NUREG–1727,

"NMSS Decommissioning Standard Review Plan," published in September 2000, incorporates the guidance that was proposed in DG–4006.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made

power reactors to which the models apply could request amendments confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comments on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires

soliciting comment on a proposed change to the STS that modifies requirements regarding missed surveillances. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible

accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed no significant hazards consideration determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revision to the completion time for Condition B of TS

report appears as a reference in license applications, except to ensure that the material presented applies to the specified plants involved.

The proposed change revises the CT from 1 hour to 24 hours for Condition B of TS 3.5.1, "Accumulators," and its associated Bases. Condition B of TS 3.5.1 currently specifies a CT of one hour to restore a RCS accumulator to operable status when declared

Risk Evaluation

A three-tiered approach, consistent with RG 1.177,[1] was used by the staff to evaluate the risk associated with the proposed accumulator CT, or allowed outage time (AOT), extension from 1 hour to 24 hours. The need for the proposed change was that the current one-hour CT would be insufficient in most cases for licensees to take a reasonable action when an accumulator was found to be inoperable.

"NMSS Decommissioning Standard Review Plan," published in September 2000, incorporates the guidance that was proposed in DG–4006.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

Comments and suggestions are encouraged at any time in connection with guides currently being developed or published guides. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. (5 U.S.C. 552(a))

Dated at Rockville, Maryland this 3rd day of July 2002.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 02–17646 Filed 7–12–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Revise the Completion Time From 1 Hour To 24 Hours for Condition B of Technical Specification 3.5.1, "Accumulators," and Its Associated Bases, Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the modification of the completion time from 1 hour to 24 hours for Condition B of Technical Specification (TS) 3.5.1, "Accumulators," and its associated Bases. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to revise the completion time from 1 hour to 24 hours for Condition B of TS 3.5.1, "Accumulators," and its associated Bases. Licensees of nuclear power reactors to which the models apply could request amendments confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comments on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires August 14, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, MD.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Girija Shukla, Project Manager, Mail Stop: O–7E1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–8439.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that modifies requirements regarding missed surveillances. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the revision of the accumulators completion time from 1 hour to 24 hours in TSs. This proposed change was proposed for incorporation into the STSs by all Owners Groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–370. TSTF–370 can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs/.*

Applicability

This proposed change to modify TS to revise the accumulators completion time from 1 hour to 24 hours is applicable to all Westinghouse nuclear steam supply system (NSSS) plants regardless of plant vintage and number of loops.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the attached model SE and the NSHC. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed no significant hazards consideration determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revision to the completion time for Condition B of TS 3.5.1, "Accumulators," and its associated Bases for each plant that applies for and receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change TSTF–370, Risk-Informed Evaluation of an Extension to Accumulator Completion Times for Westinghouse Plants

1.0 INTRODUCTION

The Nuclear Energy Institute (NEI) Technical Specification Task Force (TSTF) has proposed a generic change to the standard technical specifications (STSs) (NUREG–1431) on behalf of the industry. This proposed generic technical specifications (TSs) change, identified by TSTF–370, will revise the completion time (CT) from 1 hour to 24 hours for Condition B of Technical Specification (TS) 3.5.1, "Accumulators," and its associated Bases. Condition B of TS 3.5.1 currently specifies a CT of one hour to restore a reactor coolant system (RCS) accumulator to operable status when declared inoperable due to any reason except not being within the required boron concentration range.

2.0 BACKGROUND

Topical Report WCAP–15049, "Risk-Informed Evaluation of an Extension to Accumulator Completion Times," was submitted to the NRC on August 20, 1998, and approved in the NRC letter dated February 19, 1999. The WCAP evaluates the risk associated with extending the accumulator CT from 1 hour to 24 hours for reasons other than boron concentration out of specification.

Wolf Creek was the lead plant for the Westinghouse Owners Group (WOG) program and received plant specific approval for changes to the TSs on April 27, 1999 (License Amendment No. 124). In the NRC letter of February 19, 1999, the staff indicated that it will not repeat its review of the matters described in Topical Report WCAP–15049 when the report appears as a reference in license applications, except to ensure that the material presented applies to the specified plants involved.

The proposed change revises the CT from 1 hour to 24 hours for Condition B of TS 3.5.1, "Accumulators," and its associated Bases. Condition B of TS 3.5.1 currently specifies a CT of one hour to restore a RCS accumulator to operable status when declared inoperable due to any reason except not being within the required boron concentration range.

3.0 EVALUATION

Deterministic Evaluation

The purpose of the emergency core cooling system (ECCS) accumulators is to supply water to the reactor vessel during the blowdown phase of a loss-of-coolant accident (LOCA). The accumulators are large volume tanks, filled with borated water and pressurized with nitrogen. The cover-pressure is less than that of the reactor coolant system so that following an accident, when the reactor coolant system pressure decreases below tank pressure, the accumulators inject the borated water into the RCS cold legs. The current deterministic safety analysis has not been changed, and thus the limiting condition of operation (LCO), *i.e.*, the lowest functional capability required for safe operation continues to be:

"LCO 3.5.1, [Four] ECCS accumulators shall be operable.

Applicability: Modes 1 and 2, Mode 3 with RCS pressure > [1000] psig."

Where the bracketed information is nominal, and is subject to substitution of plant specific values.

Under Actions, TSs allow for limited deviations from the LCO. Historically, these Actions and associated CTs have been set using judgement and are not part of the deterministic safety analysis discussed above. Currently, the TS allows for one accumulator to be inoperable for one hour for reasons other than boron concentration not within limits during Modes 1, 2, and in Mode 3 with pressurizer pressure > a plant specific pressure. The WCAP, as well as this TSTF, proposes to increase this CT to 24 hours. The proposed CT of 24 hours is an extension of the current ACTION statement. CTs are by their nature determined by conditions of risk and the impact of the proposed change on risk is reviewed in the following section.

Risk Evaluation

A three-tiered approach, consistent with RG 1.177,[1] was used by the staff to evaluate the risk associated with the proposed accumulator CT, or allowed outage time (AOT), extension from 1 hour to 24 hours. The need for the proposed change was that the current one-hour CT would be insufficient in most cases for licensees to take a reasonable action when an accumulator was found to be inoperable.

Tier 1: Quality of Probabilistic Risk Assessment (PRA) and Risk Impact

Westinghouse used a reasonable approach to assess the risk impact of the proposed accumulator CT extension. The approach is generally consistent with the intent of the applicable NRC RGs 1.174[2] and 1.177. The quantitative risk measures addressed in the topical report included the change in core damage frequency (CDF) and incremental conditional core damage probability (ICCDP[3]) for a single CT. The change in large early release frequency (LERF) and incremental conditional large early probability (ICLERP[4]) for a single CT was qualitatively addressed. Representative calculations were performed to determine the risk impact of the proposed change. Various accumulator success criteria were considered in these calculations to encompass the whole spectrum of Westinghouse plants, *e.g.*, two-, three- and four-loop plants. A reasonable effort was also made to address the differences in other components of risk analysis such as initiating event (IE) frequency and accumulator unavailability among Westinghouse plants.

Westinghouse considered a comprehensive range of IEs in the risk analysis. LOCAs in all sizes—large, medium and small—were included, and reactor vessel failure and interfacing system LOCA were also considered. Modeling of accumulators for mitigation of events other than large, medium and small LOCAs was identified to have insignificant risk impact; therefore, the analysis was performed only on

[1] RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," September 1998.

[2] RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," July 1998.

[3] ICCDP = [(conditional CDF with the subject equipment out-of-service)—(baseline CDF with nominal expected equipment unavailabilities) x (duration of single CT under consideration)].

[4] ICLERP = [(conditional LERF with the subject equipment out-of-service)—(baseline LERF with nominal expected equipment unavailabilities) x (duration of single CT under consideration)].

accumulator injection in response to large, medium and small LOCA events. The success criteria considered are summarized as follows:

LOCA category	No. of loops	Success criteria
Large	4	3 accumulators to 3 of 3 intact loops (3/3); 2 accumulators to 2 of 3 intact loops (2/3); no accumulators required (0/3).
	3	2 accumulators to 2 of 2 intact loops (2/2); 1 accumulator to 1 of 2 intact loops (1/2); no accumulators required (0/2).
	2	1 accumulator to 1 of 1 intact loop (1/1); no accumulators required (0/1).
Medium and Small	4	3 accumulators to 3 of 3 intact loops (3/3).
	3	2 accumulators to 2 of 2 intact loops (2/2).
	2	1 accumulator to 1 of 1 intact loop (1/1).

2, and 1/1 for 4-loop, 3-loop, and 2-loop, respectively) following failure of HPI.

Case 2. This case credited more realistic improved accumulator success criteria (no accumulator required) for large LOCA events and credited the use of accumulators in responding to medium and small LOCA events (3/3, 2/2, and 1/1 for 4-loop, 3-loop, and 2-loop, respectively) following failure of HPI.

The results were summarized as follows:

Case	LOCA CDF (/yr) (Current)	LOCA CDF (/yr) (Proposed)	ΔCDF	ICCDP
4-loop Design Basis	6.93×10^{-7}	9.24×10^{-7}	2.31×10^{-7}	8.20×10^{-7}
4-loop Case 1	6.23×10^{-8}	7.77×10^{-8}	1.54×10^{-8}	5.53×10^{-8}
4-loop Case 2	4.57×10^{-8}	6.09×10^{-8}	1.52×10^{-8}	5.41×10^{-8}
3-loop Design Basis	4.62×10^{-7}	6.18×10^{-7}	1.56×10^{-7}	8.21×10^{-7}
3-loop Case 1	4.27×10^{-8}	5.31×10^{-8}	1.04×10^{-8}	5.48×10^{-8}

accumulator injection in response to large, medium and small LOCA events.

The success criteria considered are summarized as follows:

LOCA category	No. of loops	Success criteria
Large	4	3 accumulators to 3 of 3 intact loops (3/3); 2 accumulators to 2 of 3 intact loops (2/3); no accumulators required (0/3).
	3	2 accumulators to 2 of 2 intact loops (2/2); 1 accumulator to 1 of 2 intact loops (1/2); no accumulators required (0/2).
Medium and Small	2	1 accumulator to 1 of 1 intact loop (1/1); no accumulators required (0/1).
	4	3 accumulators to 3 of 3 intact loops (3/3).
	3	2 accumulators to 2 of 2 intact loops (2/2).
	2	1 accumulator to 1 of 1 intact loop (1/1).

The success criteria considered in this analysis were comprehensive and considered conservative in many cases. For example, many plants indicated the accumulator success criteria for medium and small LOCA events resulted from their role in an alternate success path, in which high pressure injection (HPI) had already failed. Additionally, the staff's review of a number of the original individual plant examinations (IPEs) indicated that no accumulator was needed at all for many medium LOCA sequences and for most of small LOCA sequences.

The fault trees that model accumulator unavailabilities were evaluated. The assumptions made in the fault tree modeling were detailed and were found to be reasonable. For example, the model assumed that the total CT would be used for each corrective maintenance, and this was considered conservative. A comprehensive list of failure mechanisms was considered, and potential common cause failures for check valves and motor-operated valves were also included. Westinghouse used the Multiple Greek Letter technique to determine the common cause failure contributions to the accumulator injection failure.

The component failure rates were taken from the Advanced Light Water Utility Requirements Document.[5] Accumulator unavailabilities due to boron concentration out of limit and due to other reasons were calculated based on a survey of a number of Westinghouse plants. The values for component failure rates and accumulator unavailabilities were within reasonable range. The common cause factors used were also comparable to those used in other PRAs. The accumulator fault trees were quantified using the WesSAGE computer code. The code provided information on the unavailability and cutsets related to the component failures and maintenance activities modeled in the fault trees. A separate hand calculation was used to determine the unavailability due to potential common cause failures. Evaluation of some of the cutsets provided in the topical report did not reveal any unexpected results.

The staff examined the accident sequence identification for each LOCA category. The probability of the sequence leading to core damage involving accumulator failure is summarized for each LOCA category as follows:

Large LOCA: (Large LOCA IE frequency) x (accumulator unavailability).

Medium LOCA: (Medium LOCA IE frequency) x (unavailability of HPI) x (accumulator unavailability).

Small LOCA: (Small LOCA IE frequency) x (unavailability of HPI) x (accumulator unavailability).

The LOCA IE frequencies used for WCAP–15049 are summarized below. Also listed are the LOCA frequencies used in NUREG/CR–4550[6] (the NUREG–1150 study) for pressurized water reactors (PWRs) and those in the original IPEs.

	WCAP–15049	NUREG–1150	IPE Average (High; Low)
Large LOCA	3 x $^{-4}$/yr	5 x 10^{-4}/yr	3.3 x 10^{-4}/yr (5 x 10^{-4}/yr; 1 x 10^{-5}/yr).
Medium LOCA	8 x 10^{-4}/yr	1 x 10^{-3}/yr	7.9 x 10^{-4}/yr (2.6 x 10^{-3}/yr; 1 x 10^{-4}/yr).
Small LOCA	7 x 10^{-3}/yr	1 x 10^{-3}/yr	8.9 x 10^{-3}/yr (2.9 x 10^{-2}/yr; 3.7 x 10^{-4}/yr).

Westinghouse indicated that the IE frequencies for WCAP–15049 were based on the plant-specific information contained in the Westinghouse Owners Group (WOG) PSA Comparison Database, which documented the PRA modeling methods and results of the updated PRAs for Westinghouse plants. The mean IE frequencies were used for the risk analysis. These were comparable to the values used for the NUREG–1150 study and the average values in the original IPEs. The staff also found that the IE frequency values in high range among the original IPEs were not much higher than those used for this topical report. The HPI unavailability values used were 7 x 10^{-3} and 1 x 10^{-3}/yr for medium and small LOCA events, respectively. The staff's examination revealed that the HPI unavailability values were generally comparable to those used in other PRAs, and were generally conservative.

The risk measures calculated to determine the impact on plant risk were based on three different cases. The risk measures considered in each case included the impact on CDF and ICCDP for a single CT, and the impact on LERF and ICLERP for a single CT were qualitatively considered. The three cases considered were:

Design basis case. This case required accumulator injection only for mitigation of large LOCA events (3/3 for 4-loop, 2/2 for 3-loop, and 1/1 for 2-loop).

Case 1. This case credited realistic accumulator success criteria (2/3 for 4-loop, 1/2 for 3-loop, and 0/1 for 2-loop) for large LOCA events and credited the use of accumulators in responding to medium and small LOCA events (3/3, 2/2, and 1/1 for 4-loop, 3-loop, and 2-loop, respectively) following failure of HPI.

Case 2. This case credited more realistic improved accumulator success criteria (no accumulator required) for large LOCA events and credited the use of accumulators in responding to medium and small LOCA events (3/3, 2/2, and 1/1 for 4-loop, 3-loop, and 2-loop, respectively) following failure of HPI.

The results were summarized as follows:

Case	LOCA CDF (/yr) (Current)	LOCA CDF (/yr) (Proposed)	ΔCDF	ICCDP
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4-loop Case 1	6.23 x 10^{-8}	7.77 x 10^{-8}	1.54 x 10^{-8}	5.53 x 10^{-8}
4-loop Case 2	4.57 x 10^{-8}	6.09 x 10^{-8}	1.52 x 10^{-8}	5.41 x 10^{-8}
3-loop Design Basis	4.62 x 10^{-7}	6.18 x 10^{-7}	1.56 x 10^{-7}	8.21 x 10^{-7}
3-loop Case 1	4.27 x 10^{-8}	5.31 x 10^{-8}	1.04 x 10^{-8}	5.48 x 10^{-8}
3-loop Case 2	3.05 x 10^{-8}	4.08 x 10^{-8}	1.03 x 10^{-8}	5.42 x 10^{-8}
2-loop Design Basis	2.31 x 10^{-7}	3.09 x 10^{-7}	7.80 x 10^{-8}	8.21 x 10^{-7}
2-loop Case 1	1.52 x 10^{-8}	2.04 x 10^{-8}	5.20 x 10^{-9}	5.42 x 10^{-8}
2-loop Case 2	1.52 x 10^{-8}	2.04 x 10^{-8}	5.20 x 10^{-9}	5.42 x 10^{-8}

For both realistic cases, the ΔCDFs and ICCDPs were very small for 2-loop, 3-loop, and 4-loop plants, and were much below the numerical guidelines in the RGs 1.174 and 1.177. The staff also noted that the values were considered still bounding in the sense that the risk analysis used a multitude of conservative assumptions and data in the modeling. For many Westinghouse plants, the realistic impact on risk would be much smaller than the values above.

A set of sensitivity cases were also calculated using higher IE frequencies for small and medium LOCAs. The results of the sensitivity calculations did not cause the overall risk impact to increase significantly.

Westinghouse indicated that accumulator success or failure has no direct impact on the containment performance, and that the LERF would therefore increase only in direct proportion to the increased CDF due to accumulator failures. Westinghouse concluded that, since the impact on CDF was small, the impact on LERF would also be small. The staff found the Westinghouse argument to be acceptable; therefore, the impact on LERF and ICLERP for a single CT was very small.

One of the potential benefits of the proposed extended CT was the averted risk associated with avoiding a forced plant shutdown and startup. The risk associated with a forced plant shutdown and ensuing startup due to the inflexibility in current TS could be significant in comparison with the risk increase due to the proposed accumulator CT increase.

Based on the staff's Tier 1 review, the quality of risk analysis used to calculate the risk impact of the proposed accumulator CT extension was reasonable and generally conservative. It was also found that the risk impact of the proposed change was below the staff guidelines in RGs 1.174 and 1.177.

Tier 2 and 3: Configuration Risk Control

Tier 2 of RG 1.177 addresses the need to preclude potentially high risk configurations which could result if certain equipment is taken out-of-service during implementation of the proposed TS change (in this case accumulator CT). If such configurations are identified, the licensee should also identify appropriate measures to avoid them.

The accumulators are always needed to mitigate large size LOCAs. Large LOCAs require accumulators to inject as analyzed under Tier 1 in order to avoid core damage. This means that if a large LOCA occurs without the accumulator function, the core will be damaged independently of whether other systems, such as HPI, function properly or not. However, the probability that a large LOCA occurs in the 24-hour CT is extremely small (in the order of 1E–7 or less). Furthermore, no compensatory or other measures are possible. Due to the negligible risk increase associated with this scenario and the fact that there are no measures to take once a large LOCA occurs, no "high risk" configurations are associated with this scenario.

In general, medium LOCAs do not require accumulators if at least one HPI train is available. This means that if a medium LOCA occurs when minimum accumulator functionality is unavailable and at the same time HPI is unavailable, the core will be damaged. However, the probability that a medium LOCA occurs in the 24-hour CT and at the same time both trains of HPI are unavailable is extremely small (in the order of 1E–8 or less), because it is assumed that the plant is not operating at power with both HPI trains out-of-service. This assumption is based on current STS that limit operation at power with no HPI capability. Therefore, no Tier 2 restrictions beyond those currently in the STS are deemed necessary.

Tier 3 calls for a program to identify "risk significant" configurations beyond those identified in Tier 2 resulting from maintenance or other operational activities and take appropriate compensatory measures to avoid such configurations. Because the accumulator sequence modeling is relatively independent of that for other systems, the Tier 2 analysis by itself is sufficient.

Furthermore, 10 CFR 50.65(a)(4) (Maintenance Rule) requires that licensees assess the risk any time maintenance is being considered on safety-related equipment. This requirement serves the objectives of Tier 3.

In summary, the Tier 2 evaluation did not identify the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration. The current TS provisions were found to be sufficient to address the Tier 2 issue. Because the accumulator sequence modeling is relatively independent of that for other systems and the implementation of the Maintenance Rule, the staff concluded that application of Tier 3 to the proposed accumulator CT was not necessary.

The NRC staff finds that the proposed changes will allow safe operation with the changes in CT from 1 hour to 24 hours for Condition B of TS LCO 3.5.1, "Accumulators," and its associated Bases. The NRC staff also finds that the proposed changes are consistent with the incremental conditional core damage probabilities calculated in WCAP–15049 for the accumulator allowed outage time increase and meet the criterion of 5E–07 in RGs 1.174 and 1.177. The analysis and acceptance provided in this SE, as demonstrated by WCAP–15049, covers all Westinghouse NSSS plants regardless of plant vintage and number of loops. The NRC staff, therefore, concludes that the proposed

[5] "Advanced Light Water Utility Requirements Document," Volume II, ALWR Evolutionary Plant, Chapter 1, Appendix A, PRA Key Assumptions and Ground Rules, Rev. 5, Issued December 1992.

[6] NUREG/CR–4550, "Analysis of Core Damage Frequency: Internal Events Methodology," Vol. 1, Rev. 1, January 1990.

TSTF–370, Revision 0 changes are acceptable.

5.0 STATE CONSULTATION

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049 evaluation, the plant design will not be changed with this proposed

increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049 evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours

comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Copies of written comments received

meeting in July. Therefore, OPIC's public hearing in conjunction with OPIC's Board of Directors meeting scheduled for 2 PM on July 18, 2002 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: July 11, 2002.

Connie M. Downs,

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TSTF–370, Revision 0 changes are acceptable.

5.0 STATE CONSULTATION

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

6.0 ENVIRONMENTAL CONSIDERATION

The amendment changes a requirement with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration and there has been no public comment on such finding (FR). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

7.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment would change the technical specifications to revise the completion time (CT) from 1 hour to 24 hours for Condition B of TS 3.5.1, "Accumulators," and its associated Bases. Condition B of TS 3.5.1 currently specifies a CT of one hour to restore a reactor coolant system (RCS) accumulator to operable status when declared inoperable due to any reason except not being within the required boron concentration range.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049, "Risk-Informed Evaluation of an Extension to Accumulator Completion Times," evaluation, the proposed change will allow plant operation in a configuration outside the design basis for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP–15049 is within the acceptance limit of 1.0E–06/yr for a total plant core damage frequency (CDF) less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049 for the accumulator CT increase meet the criterion of 5E–07 in Regulatory Guides (RG) 1.174 and 1.177 for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049, design basis accumulator success criteria are not considered necessary to mitigate large break loss-of-coolant accident (LOCA) events, and were only included in the WCAP–15049 evaluation as a worst case data point. In addition, WCAP–15049 states that the NRC has indicated that an incremental conditional core damage frequency (ICCDP) greater than 5E–07 does not necessarily mean the change is unacceptable.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049 evaluation, the plant design will not be changed with this proposed technical specification CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP–15049 evaluation demonstrates that the small increase in risk due to increasing the accumulator allowed outage time (AOT) is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049 evaluation, the proposed change will allow plant operation in a configuration outside the design basis for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049 evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049 evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 9th day of July, 2002.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Chief, Technical Specifications Section, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–17649 Filed 7–12–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Control Room Envelope Habitability

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: On May 9, 2002 (67 FR 31385), the U.S. Nuclear Regulatory Commission (NRC) published for public comment a proposed generic letter concerning control room envelope habitability determination. The 90-day public comment period was to have expired on August 7, 2002. The NRC received a request to extend the comment period by an additional 60 days. After consideration of the request, the NRC has decided to extend the public comment period for an additional 60 days.

DATES: The public comment period has been extended and now expires on September 6, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Copies of written comments received and documents related to this action may be examined at the NRC Public Document Room, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland. Documents are also available electronically at NRC's Public Electronic Reading Room on the Internet at <*http://www.nrc.gov/reading-rm.html*>. From this site, the public can gain entry into NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession No. for the document containing the proposed generic letter is ML021230323. You may send comments electronically from this site by clicking on comment form. For more information, contact the NRC's Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to <*pdr@nrc.gov*>.

FOR FURTHER INFORMATION CONTACT: W. Mark Blumberg, 301–415–1083, or by e-mail to <*wmb1@nrc.gov*>.

Dated at Rockville, Maryland, this 8th day of July 2002.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–17647 Filed 7–12–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Public Hearing

July 18, 2002.

TIME AND DATE: 2 P.M., Thursday, July 18, 2002.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 67, Number 128, Page 44648) on July 3, 2002. OPIC will not be holding a Board of Directors meeting in July. Therefore, OPIC's public hearing in conjunction with OPIC's Board of Directors meeting scheduled for 2 PM on July 18, 2002 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: July 11, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–17807 Filed 7–11–02; 12:00 pm]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 2002. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium

employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 2002, as announced by the IRS, is 6 percent.

From	Through	Interest rate (percent)
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	9/30/02	4.75

Multiemployer Plan Valuations Following Mass Withdrawal

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27549]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 8, 2002.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions

equity securities of companies substantially all of whose physical properties consist of nonutility energy-related assets (collectively, "Energy Related Assets")[1] in the United States that would be incidental to, and would assist Applicants and their subsidiaries in connection with, energy marketing, brokering, and trading ventures.[2] Applicants were authorized to invest up to $2.0 billion ("Previous Investment Limitation") during the Previous

United States. These Energy Related Assets would be incidental to and would assist Applicants and their subsidiaries in connection with the Commodities Business in the United States and Canada. Applicants further seek authorization to increase the Investment Limitation by an additional $2.0 billion, which, together with existing authority, will increase the aggregate amount that could be invested in Energy Related Assets to $4.0 billion

1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.) The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 2002 is 5.52 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 2001 and July 2002.

For premium payment years beginning in:	The required interest rate is:
August 2001	4.77
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 2002, as announced by the IRS, is 6 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	9/30/02	6

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the third quarter (July through September) of 2002 (*i.e.*, the rate reported for June 17, 2002) is 4.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	9/30/02	4.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of July 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–17639 Filed 7–12–02; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

AGENCY: Postal Rate Commission.

TIME AND DATE: July 18, 2002 at 10 a.m.

PLACE: Commision conference room, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Item no. 1: annual budget submission for fiscal year 2003; item no. 2: selection of vice chairman.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268– 20268–789–6820

Dated: July 11, 2002.

Steven W. Williams,

Secretary.

[FR Doc. 02–17849 Filed 7–11–02; 1:23 pm]

BILLING CODE 7710FWM

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27549]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 8, 2002.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications/declarations for complete statements of the proposed transactions summarized below. The applications/declarations are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications/declarations should submit their views in writing by August 2, 2002, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant/declarant at the address specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 2, 2002, the applications/declarations, as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–9353)

American Electric Power Company, Inc. ("AEP"), a registered public utility holding company, AEP Energy Services, Inc. ("AEPES") and AEP Resources, Inc. ("Resources"), both wholly owned nonutility subsidiaries of AEP (collectively, "Applicants"), all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10 and 12 of the Act and rules 45, 46, and 54 under the Act to their previously filed application-declaration ("Application").

By orders dated November 2, 1998 (HCAR No. 26933), December 22, 1999 (HCAR No. 27120), and August 13, 2001 (HCAR No. 27432) in this file (collectively, the "Previous Orders") the Commission authorized, among other things, Applicants to acquire from time to time through December 31, 2003 ("Previous Authorization Period"), nonutility energy-related assets or the equity securities of companies substantially all of whose physical properties consist of nonutility energy-related assets (collectively, "Energy Related Assets")[1] in the United States that would be incidental to, and would assist Applicants and their subsidiaries in connection with, energy marketing, brokering, and trading ventures.[2] Applicants were authorized to invest up to $2.0 billion ("Previous Investment Limitation") during the Previous Authorization Period in Energy Related Assets.

Under the Previous Orders, AEP, Resources, AEPES and any existing or new, direct or indirect subsidiaries of either company were authorized to issue securities to finance the purchase of Energy Related Assets in an aggregate amount not to exceed the Previous Investment Limitation, the securities to consist of any combination of (i) shares of common stock of AEP; (ii) borrowings by AEP from banks or other financial institutions under credit lines or otherwise; (iii) guarantees of indebtedness issued by Resources, AEPES or any existing or new, direct or indirect, subsidiary of Resources or AEPES; or (iv) guarantees of securities issued by any special purpose finance subsidiary ("SPF").

In turn, under the Previous Orders, Resources, AEPES, any existing or new, direct or indirect subsidiary of Resources, AEPES, and any SPF were authorized to issue debt, equity or preferred securities of any type, including guarantees as appropriate, from time to time during the Previous Authorization Period to finance acquisitions of Energy Related Assets.

Under this authority, AEP has, among other things, acquired midstream gas assets, including intrastate pipeline systems in Louisiana and Texas, natural gas processing plants, and storage facilities.

Applicants now seek authorization to acquire, in one or more transactions from time to time through June 30, 2004 ("New Authorization Period"), Energy Related Assets in Canada as well as the United States. These Energy Related Assets would be incidental to and would assist Applicants and their subsidiaries in connection with the Commodities Business in the United States and Canada. Applicants further seek authorization to increase the Investment Limitation by an additional $2.0 billion, which, together with existing authority, will increase the aggregate amount that could be invested in Energy Related Assets to $4.0 billion ("New Investment Limitation").

Consistent with the Previous Orders, Applicants propose to acquire Energy Related Assets for cash or in exchange for common stock of AEP or other securities of Applicants or may include the assumption of debt of the seller, or any combination of the foregoing. Consistent with the Previous Orders, under no circumstances will the Applicants acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause the companies to be considered an "electric utility company" or "gas utility company" as defined in section 2 of the Act.

Accordingly, to provide the maximum flexibility, AEP requests authorization to issue securities in the manner described in an aggregate amount, when added to all other outstanding securities issued to purchase Energy Related Assets in File No. 70–9353, would not exceed the New Investment Limitation. Applicants were authorized in the Previous Orders to organize direct or indirect SPFs to finance these acquisitions, which authority Applicants request continue throughout the New Authorization Period.

Applicants also request that, to the extent not exempt under rule 52 and/or rule 45(b), the financing authority continue through the Authorization Period in an amount, when added to all other outstanding securities issued to purchase Energy Related Assets in File No. 70–9353, would not exceed the New Investment Limitation.

In addition, AEP, Resources, AEPES, and any new, direct or indirect subsidiaries of Resources or AEPES request authorization to guarantee financial commitments, other than indebtedness, of any entity owning or operating Energy Related Assets in an aggregate amount not to exceed the New Investment Limitation.[3]

In addition, AEP requests authorization to allow companies formed to own Energy Related Assets

[1] Energy Related Assets include natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities.

[2] By orders dated September 13, 1996 (HCAR No. 26572), September 27, 1996 (HCAR No. 26583), May 2, 1997 (HCAR No. 26713), November 30, 1998 (HCAR No. 26947), April 7, 1999 (HCAR No. 26998), and August 19, 1999 (HCAR No. 27062) in File No. 70–8779, AEP was authorized to form direct or indirect nonutility subsidiaries to broker and market electric power, natural and manufactured gas, emissions allowances, coal, oil, refined petroleum products, and natural gas liquids in the United States and Canada ("Commodities Business").

[3] The aggregate principal amount of these guarantees, exclusive of any guarantees or other forms of credit support that are exempt under rules 45(b) and 52(b), will not exceed the New Investment limitation.

("Energy Related Asset Subsidiaries") to declare and pay dividends to their parent companies from time to time out of capital and unearned surplus to the extent permitted by applicable law.

Allegheny Energy, Inc. (70–8883)

Allegheny Energy, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered public utility holding company; its direct wholly owned public utility company

Dominion Resources, Inc. (70–10037)

Dominion Resources, Inc. ("Dominion"), a registered holding company, 120 Tredegar Street, Richmond, Virginia 23219, and Dominion Oklahoma Texas Exploration & Production, Inc. ("DOTEPI"), a nonutility subsidiary company of Dominion, Four Greenspoint Plaza, 16945 Northchase Drive, Suite 1750, Houston, Texas 77060, have filed a

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17612 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25650; 812–12789]

942–0528, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

shareholders in complete liquidation and dissolution of the Acquired Funds.

4. Applicants state that the Board has determined that the investment objectives of each Acquired Fund and the Acquiring Fund are identical. In seeking its objective, the Acquiring Fund employs a blended style of investing, using both growth-based and value-based strategies. One of the Acquired Funds seeks to achieve its investment objective by investing

effective; (d) the receipt of an opinion of counsel that the Reorganizations will be tax-free for the Funds and their shareholders; and (e) each Acquired Fund shall have declared and paid dividend(s) which shall have the effect of distributing to its shareholders all net investment company taxable income for all taxable periods, if any, and all of its net realized capital gains. The Reorganization Agreements may be terminated by the Board or may be

("Energy Related Asset Subsidiaries") to declare and pay dividends to their parent companies from time to time out of capital and unearned surplus to the extent permitted by applicable law.

Allegheny Energy, Inc. (70–8803)

Allegheny Energy, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered public utility holding company; its direct wholly owned public utility company subsidiaries Monongahela Power Company ("Monongahela Power"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, and Allegheny Energy Supply Company, LLC ("Supply"), 10435 Downsville Pike, Hagerstown, Maryland 21740; and its indirect wholly owned public utility company subsidiary Allegheny Generating Company ("AGC"), 10435 Downsville Pike, Hagerstown, Maryland 21740, have filed a post-effective amendment to a declaration ("Declaration") under section 12(c) of the Act and rules 46 and 54 under the Act.

AGC is a single asset company that owns a 40% undivided interest in a 2100-megawatt hydroelectric station located in Bath County, Virginia.[4] By order dated September 19, 1996 (HCAR No. 26579), the Commission authorized AGC to pay dividends from capital surplus through December 31, 2001. AGC continues to have declining capital needs and its retained earnings are insufficient to pay common stock dividends. As a result, AGC requests authorization to continue to pay dividends from capital surplus through December 31, 2005.

AGC's current earnings are determined in accordance with a Federal Energy Regulatory Commission ("FERC") approved cost of service formula. Under that formula, available cash flow from operations is applied first to the minimal capital expenditure requirements for AGC's existing single asset, and next to the pay down of debt and to the payment of dividends in a proportion that maintains debt at about 60% and equity at about 40% of total capitalization.

AGC's current and proposed dividend payment policy remains unchanged since AGC's operations commenced in 1985. Prior to 1985, AGC paid no dividends but accrued retained earnings as a result of recording allowance for funds used during construction in accordance with the FERC uniform system of accounts. From 1985 to 1996, AGC paid dividends from current earnings and accrued retained earnings.

[4] AGC is jointly owned by Monongahela Power (27%) and Supply (73%).

Dominion Resources, Inc. (70–10037)

Dominion Resources, Inc. ("Dominion"), a registered holding company, 120 Tredegar Street, Richmond, Virginia 23219, and Dominion Oklahoma Texas Exploration & Production, Inc. ("DOTEPI"), a nonutility subsidiary company of Dominion, Four Greenspoint Plaza, 16945 Northchase Drive, Suite 1750, Houston, Texas 77060, have filed a declaration under section 12(c) and rules 46, 53, and 54 under the Act.

On November 2, 2001, Consolidated Natural Gas Company ("CNG"), a wholly owned registered holding company subsidiary of Dominion, acquired in a merger transaction Louis Dreyfus Natural Gas Corp. ("LD"), a company engaged in natural gas exploration and production in the United States. Under the merger agreement, LD was merged with and into DOTEPI, a newly formed subsidiary of Dominion.[5] All of DOTEPI's shares were contributed by Dominion to CNG immediately following the merger. The acquisition was financed in part through the issuance of long-term debt and trust-preferred securities by CNG.

The acquisition was accounted for by the purchase method of accounting. As a result, the retained earnings of LD were recharacterized as paid-in-capital on DOTEPI's books. DOTEPI now requests authorization to pay dividends to CNG out of its capital surplus to compensate for the accounting treatment. The amount of dividends will be limited to the amount of LD's retained earnings immediately prior to the merger.[6] Dominion states that the payment of dividends to CNG will allow CNG to service the acquisition debt incurred in connection with the merger.

Dominion also requests authorization for any nonutility company in the Dominion system to declare and pay dividends out of capital surplus to its immediate parent companies, subject to applicable corporate law and any applicable financing agreement that restricts distributions to shareholders. Dominion states that the payment of dividends will benefit the system by enabling the parent companies to reduce or refinance borrowings and to fund operations of the system companies.

[5] The common stock of DOTEPI was acquired by CNG under rule 58.

[6] The amount of LD's retained earnings as of October 31, 2001 was $302.7 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17612 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25650; 812–12789]

Banknorth Funds, et al.; Notice of Application

July 8, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit a certain series of a registered open-end management investment company to acquire all of the assets and liabilities of certain other series of the same registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Banknorth Funds, Banknorth, N.A., and Banknorth Investment Advisors ("BIA").

Filing Dates: The application was filed on February 27, 2002 and amended on July 1, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 2, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Banknorth Investment Management Group, 111 Main Street, Burlington, VT 05402–0409.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Banknorth Funds is a Delaware business trust registered under the Act as an open-end management investment company and currently consists of six series. Two of the series, the Banknorth Large Cap Growth Fund and the Banknorth Value Fund are the "Acquired Funds," and a third series, the Banknorth Large Cap Core Fund, is the "Acquiring Fund" (each series a "Fund" and collectively, the "Funds").

2. BIA, a division of Banknorth Investment Management Group, which is a division of Banknorth N.A., is registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves as the investment adviser to each of the Funds. As of May 20, 2002, Banknorth N.A., in a fiduciary capacity, owned more than 5% (and more than 25%) of the outstanding voting securities of each of the Funds.

3. On November 15, 2001, the Funds' board of trustees ("Board"), including all of the trustees who are not "interested persons" of the Funds as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), unanimously approved the proposed reorganizations and agreements and plans of reorganization of the respective Funds ("Reorganization Agreements"). Under the Reorganization Agreements, the Acquiring Fund will acquire all of the assets, subject to the liabilities, of each of the Acquired Funds in exchange for shares of the Acquiring Fund (the "Reorganizations"). Shareholders of each Acquired Fund will receive Acquiring Fund shares having an aggregate net asset value equal to the aggregate net asset value of each Acquired Fund determined as of the close of the New York Stock Exchange (normally 4:00 p.m. Eastern time) on the day of closing of each Reorganization. The net asset value of the Acquiring Fund's shares and the Acquired Funds' net asset values will be determined according to each Fund's then-current prospectus and statement of additional information. As soon as reasonably practical after the closing of each Reorganization, the Acquired Funds will distribute the shares of the Acquiring Fund pro rata to their shareholders in complete liquidation and dissolution of the Acquired Funds.

4. Applicants state that the Board has determined that the investment objectives of each Acquired Fund and the Acquiring Fund are identical. In seeking its objective, the Acquiring Fund employs a blended style of investing, using both growth-based and value-based strategies. One of the Acquired Funds seeks to achieve its investment objective by investing primarily in the growth-oriented stocks of large-capitalization companies, and the other Acquired Fund invests primarily in value-oriented stocks of large-capitalization companies. Applicants state that the rights and obligations of the Acquired Funds' shareholders are identical to those of the Acquiring Fund's shareholders. Shares of the Acquiring Fund and the Acquired Funds are subject to a maximum front-end sales charge of 5.50%, a rule 12b–1 fee of 0.25% and shareholder service fees of 0.25%. No sales charge or exchange fee will be imposed in connection with the Reorganizations. Banknorth N.A. will bear the costs of each Reorganization.

5. The Board, including all of the Disinterested Trustees, unanimously determined that each Reorganization was in the best interest of each Fund and its shareholders, and that the interests of each Fund's existing shareholders will not be diluted as a result of the Reorganizations. In approving the Reorganizations, the Board considered various factors, including, among other things: (a) The terms and conditions of the Reorganizations, including any changes in services to be provided to shareholders of each Fund; (b) the respective expense ratios of the Funds; (c) the investment objectives, management policies and investment restrictions of the Funds; (d) the potential economies of scale that are likely to result from the larger asset base of the combined Funds; (e) the anticipated tax-free nature of the Reorganizations; (f) the fact that the costs of each Reorganization will be borne by Banknorth, N.A.; and (g) the relative performance of each Fund.

6. The Reorganizations are subject to a number of conditions precedent, including that: (a) The shareholders of each Acquired Fund shall have approved their respective Reorganization; (b) applicants will have received from the Commission an exemption from section 17(a) of the Act for the Reorganizations; (c) a registration statement on Form N–14 under the Act and the Securities Act of 1933 relating to the Acquiring Fund will have become effective; (d) the receipt of an opinion of counsel that the Reorganizations will be tax-free for the Funds and their shareholders; and (e) each Acquired Fund shall have declared and paid dividend(s) which shall have the effect of distributing to its shareholders all net investment company taxable income for all taxable periods, if any, and all of its net realized capital gains. The Reorganization Agreements may be terminated by the Board or may be abandoned at any time prior to the closing date of the Reorganizations. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

7. The registration statement on Form N–14 for the Reorganization of each Acquired Fund containing a combined prospectus/proxy statement was filed with the Commission on June 4, 2002. It is expected that the combined prospectus/proxy statement will be mailed to shareholders of each Acquired Fund in July 2002. Shareholder meetings for the Acquired Funds' shareholders to consider the Reorganizations have been scheduled for August 9, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person ("Second-Tier Affiliates"), solely by reason of having a common investment adviser, common directors, and/or common officers, provided, that certain conditions are satisfied. Applicants believe that rule 17a–8 may not be available to exempt the Reorganizations

because the Funds may be deemed to be affiliated persons by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that Banknorth N.A., an affiliated person of BIA, owns as a fiduciary and has the power to vote more than 5% (and more than 25%) of the outstanding voting securities of each of the Funds. Therefore, the Acquiring Fund may be deemed a Second-Tier Affiliate of each Acquired Fund.

SUMMARY OF APPLICATION: Applicants request an order to permit a registered open-end management investment company to acquire all of the assets and assume all of the liabilities of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Principal Bond Fund, Inc. (the "Bond Fund"), Principal High Yield Fund, Inc. (the "High Yield

under the Investment Advisers Act of 1940. The Adviser is an indirect wholly-owned subsidiary of Principal Financial Group, Inc. ("Principal Financial"). Principal Life Insurance Company ("Principal Life") is also an indirect wholly-owned subsidiary of Principal Financial. Principal Life, for its own account, owns more than 5% of the outstanding voting securities of the Acquired Fund.

2. On March 11, 2002, the board of

since the date the shareholders initially purchased the shares of the Acquired Fund.

4. The Boards, including all of the Independent Directors, determined that the Reorganization is in the best interests of each Fund and its shareholders and that the interests of shareholders would not be diluted as a result of the Reorganization. In determining whether to approve the Reorganization, the Boards considered

shareholders of record on or prior to the Closing Date a dividend, which together with all previous dividends will have the effect of distributing to shareholders all of its income and all net realized capital gains, if any, as of the Closing. The Plan may be terminated by mutual consent of each Board at any time prior to the Closing Date. No material changes will be made to the Plan without prior approval of the Commission.

7. A registration statement on Form

Principal Life has the power to vote more than 5% of the outstanding voting securities of the Acquired Fund. The Acquired Fund therefore may be an affiliated person of an affiliated person of the Acquiring Fund.

4. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the

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because the Funds may be deemed to be affiliated persons by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that Banknorth N.A., an affiliated person of BIA, owns as a fiduciary and has the power to vote more than 5% (and more than 25%) of the outstanding voting securities of each of the Funds. Therefore, the Acquiring Fund may be deemed a Second-Tier Affiliate of each Acquired Fund.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate each Reorganization. Applicants submit that the Reorganizations satisfy the conditions of section 17(b) of the Act. Applicants also state that the Board, including all of the Disinterested Trustees, has found the participation of the Funds in the Reorganizations to be in the best interests of each Fund and its shareholders and that such participation will not dilute the interests of existing shareholders of each Fund. Applicants also state that the Reorganizations will be effected on the basis of relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17611 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25651; 812–12811]

Principal Bond Fund, Inc., et al.; Notice of Application

July 8, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a registered open-end management investment company to acquire all of the assets and assume all of the liabilities of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Principal Bond Fund, Inc. (the "Bond Fund"), Principal High Yield Fund, Inc. (the "High Yield Fund"), and Principal Management Corporation (the "Adviser").

FILING DATES: The application was filed on April 18, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 30, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o The Principal Financial Group, 711 High Street, Des Moines, Iowa 50392–0200.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations:

1. The Bond Fund (the "Acquiring Fund") and the High Yield Fund (the "Acquired Fund," together with the Acquiring Fund, the "Funds") are Maryland corporations and are registered under the Act as open-end management investment companies. The Adviser serves as the investment adviser to each Fund and is registered under the Investment Advisers Act of 1940. The Adviser is an indirect wholly-owned subsidiary of Principal Financial Group, Inc. ("Principal Financial"). Principal Life Insurance Company ("Principal Life") is also an indirect wholly-owned subsidiary of Principal Financial. Principal Life, for its own account, owns more than 5% of the outstanding voting securities of the Acquired Fund.

2. On March 11, 2002, the board of directors of each Fund (each a "Board," together, the "Boards"), including in each case all of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), approved an Agreement and Plan of Reorganization (the "Plan"). Under the Plan, the Acquiring Fund will acquire all of the assets and assume all of the liabilities of the Acquired Fund in exchange for shares of the designated class of the Acquiring Fund (the "Reorganization"). The closing of the Reorganization ("Closing") is expected to occur on July 31, 2002, (the "Closing Date"). The shares of the Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of regular trading on the New York Stock Exchange on the Closing Date. The value of assets of the Funds will be determined in accordance with the Acquiring Fund's then current prospectus and statement of additional information (whose valuation procedures are identical to the Acquired Fund's). As soon as practicable after the Closing, the Acquired Fund will distribute pro rata to its shareholders of record, determined as of the close of business on the Closing Date, its shares of the Acquiring Fund received at the Closing and will be liquidated.

3. Each Fund offers Class A and Class B shares. Class A shares are subject to a front-end sales charge, rule 12b–1 distribution fees, service fees, and in some cases, a contingent deferred sales charge ("CDSC") and Class B shares are subject to rule 12b–1 distribution fees, service fees and a CDSC. Applicants state that the rights and obligations of each class of the Acquiring Fund are identical to those of the corresponding share class of the Acquired Fund. Shareholders of each class of the Acquired Fund will receive shares of the corresponding class of the Acquiring Fund. No sales charges or other fees will be imposed in connection with the Reorganization. For purposes of calculating any CDSC on shares of the Acquiring Fund, shareholders of the Acquired Fund will be deemed to have held the shares of the Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund.

4. The Boards, including all of the Independent Directors, determined that the Reorganization is in the best interests of each Fund and its shareholders and that the interests of shareholders would not be diluted as a result of the Reorganization. In determining whether to approve the Reorganization, the Boards considered various factors, including: (a) The terms and conditions of the Reorganization; (b) the comparative investment performance of the Funds; (c) the possible advantages to the Acquired Fund's shareholders of investing in a larger asset pool with a higher quality of securities; (d) the federal income tax consequences to the Acquired Fund's shareholders; (e) the possible benefits of a larger asset base to portfolio management of the Acquiring Fund; (f) the compatibility of investment objectives and policies of the Funds and any changes to the objectives and policies of the Acquired Fund that will result from the Reorganization; and (g) the tax-free nature of the Reorganization.

5. Applicants also state that the Boards determined that the investment objectives, restrictions and policies of the Funds, though not identical, are similar and the range of credit qualities in which the Acquiring Fund invests should offer the Acquired Fund's shareholders some degree of continuity in investment exposure to high yield bonds as well as potential for reduced risk. Although there is overlap in the range of securities in which the Funds may invest, Applicants state, however, that the Acquired Fund's assets that are not eligible investment for the Acquiring Fund will be liquidated prior to the Closing and the Acquired Fund and its shareholders will be responsible for any brokerage expenses and tax consequences resulting from this liquidation. The Adviser will bear all of the other costs associated with the Reorganization.

6. The Reorganization is subject to a number of conditions precedent, including that: (a) The Acquired Fund's shareholders will have approved the Reorganization; (b) the Funds will have received opinions of counsel that the Reorganization will be tax-free for the Funds and their shareholders; (c) applicants will have received from the Commission the exemptive relief requested by the application; (d) an N–14 registration statement relating to the Reorganization will have become effective with the Commission; and (e) the Acquired Fund will declare to shareholders of record on or prior to the Closing Date a dividend, which together with all previous dividends will have the effect of distributing to shareholders all of its income and all net realized capital gains, if any, as of the Closing. The Plan may be terminated by mutual consent of each Board at any time prior to the Closing Date. No material changes will be made to the Plan without prior approval of the Commission.

7. A registration statement on Form N–14 relating to the Reorganization, containing a proxy statement/prospectus, was filed with the Commission and declared effective and was mailed to the Acquired Fund's shareholders on May 20, 2002. A special meeting of the Acquired Fund's shareholders was held on June 26, 2002, and the Reorganization was approved.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided, that certain conditions are satisfied.

3. Applicants state that they may not rely on rule 17a-8 because the Funds may be deemed to be affiliated persons for reasons other than those set forth in the rule. Applicants state that Principal Financial and the Adviser may be deemed to control the Funds. Also, Principal Life owns more than 5% of the total outstanding voting securities of the Acquired Fund. The Acquired Fund, pursuant to section 2(a)(3)(B) of the Act, is an affiliated person of Principal Life and Principal Financial because Principal Life has the power to vote more than 5% of the outstanding voting securities of the Acquired Fund. The Acquired Fund therefore may be an affiliated person of an affiliated person of the Acquiring Fund.

4. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to effect the Reorganization. Applicants submit that the Reorganization satisfies the conditions of section 17(b) of the Act. Applicants also state that the Boards, including all of the Independent Directors, have determined that the participation of the Funds in the Reorganization is in the best interests of each Fund and that such participation will not dilute the interests of existing shareholders of each Fund. Applicants also state that the Reorganization will be effected on the basis of relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17678 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46166; File No. SR–DTC–2001–14]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Closing of the Mortgage-Backed Securities Division of the Depository Trust Company

July 3, 2002.

On July 24, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). Notice of the proposal was published in the **Federal Register** on December 17, 2001.[1] Three comment letters were received.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change enables DTC to close its Mortgage Backed Securities Division ("MBS Division"). Among other things, the MBS Division provided the facilities for the issuance, immobilization, clearance, and settlement of mortgage-

The conversion took place in phases over a series of weekends beginning October 6, 2001, and ending March 23, 2002. During the conversion, different classes of GNMA securities were moved electronically from the MBS Division to the Federal Reserve Banks in accordance with delivery instructions provided to the MBS Division by the MBS Division's participants. Other securities issued through and settled at the MBS Division, namely securities

Fedwire system would foster unfair discrimination among participants because securities settled in the Fedwire system are subject to a practice known as "dealer time"[6] that does not exist in DTC's MBS Division's settlement environment.[7] The commenter requested that the Commission institute proceedings under Section 19(b)(2)(B) to determine if DTC's proposed rule change should be disapproved.

Another comment letter submitted by

keep its MBS Division open. Accordingly, the proposed rule change should enable DTC to eliminate unproductive expenditures and use its resources in a more efficient manner to promote the prompt and accurate clearance and settlement of securities transactions.

The concern raised in the State Street letter regarding dealer time concerns an industry practice relating to the

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17679 Filed 7–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46165; File No. SR–NASD–

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act,[5] the NASD is filing with the Commission a proposed rule change to establish November 6, 2002 as the effective date for certain provisions

December 17, 2001.[1] Three comment letters were received.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change enables DTC to close its Mortgage Backed Securities Division ("MBS Division"). Among other things, the MBS Division provided the facilities for the issuance, immobilization, clearance, and settlement of mortgage-backed securities guaranteed by the Government National Mortgage Association ("GNMA"). However, in May 2000 GNMA publicly announced its decision to utilize the Fedwire system[3] of the Board of Governors of the Federal Reserve System ("Fed") for the clearance and settlement of these mortgage-backed securities.[4] On March 23, 2002, the conversion of GNMA securities from the MBS Division to the Federal Reserve Banks was completed.

Prior to GNMA's announcement of its decision to move its securities from the MBS Division to the Federal Reserve Banks, the Ginnie Mae Settlement Task Force was organized by The Bond Market Association ("TBMA") to assess the feasibility of the transfer. That task force consisted of representatives from broker-dealers, custodial banks, clearing banks, GNMA, the Federal Reserve Banks, the Mortgage Bankers Association, DTC, and TBMA. Followiing GNMA's announcement, the task force formed the Ginnie Mae Conversion Subcommittee to develop a conversion plan setting forth conversion details and an implementation schedule. The conversion subcommittee was comprised of representatives from broker-dealers, GNMA, the Federal Reserve Banks, DTC, clearing banks, and custodial banks. In February 2001, the subcommittee issued its Conversion Plan.[5]

The conversion took place in phases over a series of weekends beginning October 6, 2001, and ending March 23, 2002. During the conversion, different classes of GNMA securities were moved electronically from the MBS Division to the Federal Reserve Banks in accordance with delivery instructions provided to the MBS Division by the MBS Division's participants. Other securities issued through and settled at the MBS Division, namely securities guaranteed by the Department of Veterans Affairs and a limited number of FNMA and FHLMC securities that are collateralized by GNMA securities, were also moved to Federal Reserve Banks during the conversion.

Shortly after the completion of the payment of principal and interest with respect to securities last converted, DTC closed the transaction processing system of the MBS Division and returned the MBS Division participant fund deposits to the MBS Division's participants. DTC will now delete from its rules the rules that applied to the MBS Division.

Although DTC will close its MBS Division, GNMA securities remain eligible for processing at DTC and can be processed at DTC in the same manner as are other Fedwire-eligible securities. Fedwire-eligible securities processed at DTC are deposited and withdrawn free of payment to and from DTC's Fedwire account. Once deposited into DTC's Fedwire account, Fedwire-eligible securities are processed at DTC among DTC participants subject to DTC's rules and procedures applicable to other DTC-eligible fixed income securities.

In connection with the conversion of GNMA securities to the Federal Reserve Banks, DTC considered expanding its processing to permit GNMA securities to be delivered against payment into and from DTC's Fedwire account. DTC solicited comments from its participants, but fewer than a dozen participants expressed an interest in using such a service. In light of the development costs involved and the limited interest expressed by its participants, DTC's Board of Directors concluded that DTC's resources would be better applied to projects that serve a wider participant base.

II. Comments

The Commission received three comment letters. One commenter, Daniel L. Goelzer on behalf of State Street Bank and Trust Company, stated that the transfer of settlement responsibility for GNMA mortgage-backed securities from DTC to the Fedwire system would foster unfair discrimination among participants because securities settled in the Fedwire system are subject to a practice known as "dealer time"[6] that does not exist in DTC's MBS Division's settlement environment.[7] The commenter requested that the Commission institute proceedings under Section 19(b)(2)(B) to determine if DTC's proposed rule change should be disapproved.

Another comment letter submitted by TBMA in response to the State Street letter strongly supported the transfer of GNMA settlement to the Federal Reserve Banks and the subsequent closure of DTC's MBS Division. TBMA argued, among other things, that the proposed rule filing "will promote the effective clearance and settlement of those securities on a basis comparable to mortgage-backed securities of other U.S. government-sponsored enterprises."[8] TBMA also stated that the dealer time guidelines are recommended, voluntary industry practices and are not relevant to the merits of the proposed rule change.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act's requirements and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F) of the Act.[9] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Given the decision by GNMA to move its securities to the Federal Reserve Banks and use Fedwire for clearing its mortgage-backed securities, there is no reason for DTC to keep its MBS Division open. Accordingly, the proposed rule change should enable DTC to eliminate unproductive expenditures and use its resources in a more efficient manner to promote the prompt and accurate clearance and settlement of securities transactions.

The concern raised in the State Street letter regarding dealer time concerns an industry practice relating to the settlement of Fedwire-eligible securities and is not the subject of this proposed rule change.[10] Furthermore, the Fed addressed this issue in a 1995 release adopting new closing times for the Fedwire securities transfer system.[11] Responding to State Street's suggestion that the Fed also review the need for a dealer turnaround deadline, the Fed stated that "[d]ealer-turnaround time was established by the PSA [the previous name of the BMA] as an industry guideline to promote the smooth functioning of the government securities market" and that "[t]he dealer-turnaround deadline had been reflected in the Federal Reserve Banks" operating circulars; however, the Reserve Banks do not police participant activity with respect to this time." The Fed concluded that their action (*i.e.*, adopting new closing times) did "not preclude the continuation of an industry standard for a dealer-turnaround time if the industry believes it is needed." Therefore, because GNMA securities will now be cleared and settled through the Fedwire system, commenters should direct their concerns regarding Fedwire rules to the Fed.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2001–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17679 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Securities Exchange Act Release No. 45146 (Dec. 10, 2001), 66 FR 65014.

[2] Letters from Daniel L. Goelzer, Baker & McKenzie on behalf of State Street Bank and Trust Company (Dec. 14, 2001); Paul Saltzman, Executive Vice President and General Counsel, The Bond Market Association (Jan. 7, 2001); and Daniel L. Goelzer, Baker & McKenzie on behalf of State Street (Mar. 13, 2002).

[3] The Fedwire system is currently used for, among other things, the issuance and settlement of U.S. Treasury securities and mortgage-backed securities guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA").

[4] *See* 66 FR 44258 (Aug. 22, 2001) (issuance of final rule by GNMA governing payments of book-entry securities).

[5] The Conversion Plan is available online at <*www.frbservices.org*> and at <*www.bondmarkets.com/regulatory*>. A copy of the Conversion Plan is also attached as Exhibit 2 of DTC's filing [DTC Important Notice No. 1483 (Feb. 15, 2001)], which is available through the Commission's Public Reference Section or through DTC.

[6] "Dealer time is a 15-minute window at the end of the Fed's book-entry security processing day during which dealers may make deliveries of securities to customers, but customers may not make deliveries to dealers. As a result of dealer time, institutional clients are unable to make deliveries during the last 15 minutes of the delivery day and are therefore forced to hold positions overnight and to incur significant financing costs. In contrast, dealer participants in the Fedwire system can effect delivery to non-dealers during this 15 minute period, while simultaneously enjoying protection from having to accept delivery. Just as dealer time imposes overnight financing costs on non-dealers, it afford dealers a privileged opportunity to avoid these costs by protecting dealers from receiving positions for which payment would have to be made." State Street letter (Dec. 14, 2000) at page 2.

[7] [7]: The purpose of the second State Street letter was to submit a letter dated March 1, 2002, from the New York Clearing House Association, the Boston Clearing House Association, and the Bank Depository Users Group to the TBMA, requesting that TBMA rescind its dealer-to-customer good delivery (*i.e.* dealer time) guidelines.

[8] TBMA letter at page 1.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] The first State Street letter acknowledged this by recognizing "that disapproval of the DTC rule proposal * * * might not necessarily prevent the transfer of GNMA securities to the Fedwire system or compel the abolition of dealer time." Goelzer letter (Dec. 14, 2000) at page 7, fn 10.

[11] 60 FR 42410 (Aug. 15, 1995).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46165; File No. SR–NASD–2002–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Establishing Effective Dates for NASD Rule 2711, Research Analysts and Research Reports

July 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2002, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On July 3, 2002, the NASD filed Amendment No. 1 to the proposed rules change.[3] The NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon filing Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act,[5] the NASD is filing with the Commission a proposed rule change to establish November 6, 2002 as the effective date for certain provisions of NASD Rule 2711. First, the proposed rule change would establish November 6, 2002 as the effective date for Rules 2711(b) and (c) for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions on underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Rules 2711(b) and (c), when effective, will prohibit a research analyst from being subject to the supervision or control of any employee of a member's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report or recommendation ("subject company").

Second, the proposed rule change would also establish November 6, 2002 as the effective date for Rule 2711(h)(2) as applied to the receipt of compensation by a member's foreign affiliates from a subject company. Rule 2711(h)(2), when effective, will require a member to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next 3 months.[6]

Third, the proposed rule change would establish November 6, 2002, subject to certain conditions, as the effective date for Rule 2711(g)(3) for those research analysts who must divest holdings to comply with their firm's more restrictive policy that prohibits analyst ownership of securities they cover. Rule 2711(g)(3), when effective, will prohibit a "research analyst account" from purchasing or selling a security or option or derivative of that security, in a manner contrary to the analyst's most recent published recommendation reflected in the member's research report.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD established a further condition for delaying the implementation of Rules 2711(b) and (c) until November 6, 2002 for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions on underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Amendment No. 1 requires that those firms that meet the eligibility requirements outlined above must maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rules 2711(b) and (c). In Amendment No. 1, NASD also corrected several technical errors that appeared in its original filing. *See* letter from Marc Menchel, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 2, 2002 ("Amendment No. 1").

[4] 17 CFR 240.19b–4(f)(1).

[5] 15 U.S.C. 78s(b)(1).

[6] *See* Amendment No. 1, *supra* note 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its original rule filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

securities—becomes effective on November 6, 2002.

Small Firms and "Gatekeeper" Provisions

Rule 2711 contains provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to

business and/or reduce the research coverage of smaller companies.

The NASD is sensitive to the burdens on small firms and, as the Commission's May 10th order noted, is reviewing the issue to explore possible exemptions or accommodations that can be made while preserving the purposes of the rule. To that end, the NASD is proposing to delay implementation of Rules 2711(b) and (c) until November 6, 2002 for members that over the previous

this firm, mapping revenues from one division to another would require manual matching of identification numbers. The firm has undertaken to do so with respect to its United States-based affiliates, but has told the NASD it requires more time to aggregate compensation from all of its foreign affiliates. The NASD further understands that other members with global operations have similar challenges.

company registered under the Investment Company Act of 1940.

Several members have gone beyond the requirements of the rule and instituted internal policies that prohibit research analysts from owning securities that they cover. Most of these firms require that analysts divest themselves, over a certain period of time, of any existing holdings in securities they cover. Consequently, analysts could face the predicament of violating Rule

with which to make investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its original rule filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD is filing the proposed rule change to establish November 6, 2002 as the effective date for the following provisions of NASD Rule 2711: (a) Rules 2711(b) and (c) for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions on underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions; (b) Rule 2711(h)(2) as applied to the receipt of compensation by a member's foreign affiliates from a subject company; and (c) Rule 2711(g)(3), subject to certain conditions, for those research analysts who must divest certain holdings to comply with their firm's more restrictive policy that prohibits analyst ownership of securities they cover.

On May 10, 2002, the Commission approved new NASD Rule 2711, which governs conflicts of interest when research analysts recommend equity securities in research reports and during public appearances.[7] The Commission approved a staggered implementation period for the rule. Most provisions of the rule become effective on July 9, 2002, including those that restrict supervision and control of research analysts by the investment banking department and those that require disclosure of investment banking compensation received from a subject company. The "gatekeeper" provisions, described below, become effective September 9, 2002, and Rule 2711(h)(1)(B)—a requirement to disclose firm ownership of subject company securities—becomes effective on November 6, 2002.

Small Firms and "Gatekeeper" Provisions

Rule 2711 contains provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. Rule 2711(b)(1) prohibits a research analyst from being under the control or supervision of any employee of the investment banking department. Rule 2711(b)(2) prohibits employees in the investment banking department from reviewing or approving any research reports prior to publication. Rule 2711(b)(3) creates an exception to (b)(2) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, Rule 2711(c) restricts communications between a member and the subject company of a research report, except that a member may submit sections of the research report to the company to verify factual accuracy and may notify the subject company of a ratings change after the "close of trading" on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from legal or compliance.

As the Commission noted in its May 10th order, several commenters argued that the gatekeeper provisions would impose significant costs, especially for smaller firms that would have to hire additional personnel. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the rules might force some firms out of business and/or reduce the research coverage of smaller companies.

The NASD is sensitive to the burdens on small firms and, as the Commission's May 10th order noted, is reviewing the issue to explore possible exemptions or accommodations that can be made while preserving the purposes of the rule. To that end, the NASD is proposing to delay implementation of Rules 2711(b) and (c) until November 6, 2002 for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions on underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

As a further condition for the delayed implementation date, those firms that meet the eligibility requirements outlined above would be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rules 2711(b) and (c). The NASD believes that for these members, provided they comply with the conditions described, the burdens of the specific provisions outweigh the benefits to the investing public. Moreover, relief from these provisions will preserve these firms' roles as sources for capital and research for smaller local and regional issuers.[8]

Receipt of Investment Banking Compensation by Foreign Affiliates

Rule 2711(h)(2)(A)(ii) requires a member to disclose in research reports if the member or its affiliates: (a) Managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) received compensation for investment banking services from the subject company in the past 12 months; or (c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months. The NASD understands that members are setting up systems that can readily track the information required by this provision of the rule. However, certain members, particularly those with global operations and several foreign affiliates, have informed the NASD that the scope of their operations make it impossible to have systems in place by July 9, 2002, to track all investment banking compensation received by their foreign affiliates. For example, one firm has informed the NASD that it generates over 300 global research products per day and that each of its foreign divisions are separately automated. According to this firm, mapping revenues from one division to another would require manual matching of identification numbers. The firm has undertaken to do so with respect to its United States-based affiliates, but has told the NASD it requires more time to aggregate compensation from all of its foreign affiliates. The NASD further understands that other members with global operations have similar challenges.

The NASD recognizes that the tracking of investment banking compensation received from foreign affiliates requires significant resources and therefore believes it is appropriate to allow members additional time to set up systems to enable compliance with the rule. Accordingly, the NASD is proposing to delay the implementation date for Rule 2711(h)(2)(A)(ii) until November 6, 2002, only as it relates to investment banking compensation received by members' foreign affiliates. Members would remain responsible for complying with the rule's provisions for investment banking compensation received by the member and those affiliates based in the United States. Members who delay implementation would have to disclose that their foreign affiliates may (a) have managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) have received compensation for investment banking services from the subject company in the past 12 months; or (c) expect to receive or intend to seek compensation for investment banking services from the subject company in the next 3 months. Members that delay implementation of Rule 2711(h)(2)(A)(ii) must notify NASD's Corporate Financing Department in writing at 9509 Key West Avenue, Rockville, MD 20850.

Trading Against Recommendations

Rule 2711 contains provisions that restrict personal trading by research analysts, but it does not completely prohibit ownership of securities that the analyst covers. One such restriction is found in Rule 2711(g)(3), which becomes effective on July 9, 2002. That provision prohibits a "research analyst account" from purchasing or selling a security or option or derivative of that security, in a manner contrary to the analyst's most recent published recommendation reflected in the member's research report. The rule defines "research analyst account" as any account in which a research analyst or member of the research analyst's household has a financial interest, or over which the analyst has discretion or control, except for an investment company registered under the Investment Company Act of 1940.

Several members have gone beyond the requirements of the rule and instituted internal policies that prohibit research analysts from owning securities that they cover. Most of these firms require that analysts divest themselves, over a certain period of time, of any existing holdings in securities they cover. Consequently, analysts could face the predicament of violating Rule 2711(g)(3) to comply with their firm's more restrictive policy because they could be required by their firm to divest their holdings in a security even as they maintained a buy recommendation in that security. Absent some relief from the rule, analysts would have to divest all holdings in securities they cover by July 9, 2002, or cease coverage in those securities in which they held positions.

To alleviate the described dilemma, and to allow an orderly liquidation of holdings, the NASD is proposing to delay implementation of Rule 2711(g)(3) until November 6, 2002, only for analysts that meet the following conditions: (a) They are employed by a member firm that, as of July 9, 2002, has adopted a policy that bans analyst ownership of securities they cover and further requires complete divestiture of existing holdings in those securities; (b) they abide by a reasonable plan of liquidation under which all shares are to be sold by November 6, 2002 and file that plan with their firm's legal or compliance department no later than July 9, 2002; (c) they receive written approval of the liquidation plan from their firm's legal or compliance department; and (d) they notify NASD's Corporate Financing Department of their delayed implementation of the provision in writing at 9509 Key West Avenue, Rockville, MD 20850.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change would reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. The NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the NASD as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Rule 19b–4(f)(1) under the Act.[10] Consequently, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file

[7] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) ("May 10th order").

[8] *See* Amendment No. 1, *supra* note 3.

[9] 15 U.S.C. 78*o*–3 (b)(6).

[10] 17 CFR 240.19b–4(*f*)(1).

number SR–NASD–2002–87 and should be submitted by August 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17682 Filed 7–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46156; File No. SR–NASD–2002–87]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Schedule A to the NASD By-Laws

July 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASDR"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Section 8(b) of Schedule A to the NASD By-Laws to conform Schedule A to Section 31 of the Act,[3] as amended by H.R. 5024, the Investor Protection Act of 2002. The text of the proposed rule change is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Section 8(b) of Schedule A to the NASD By-Laws to conform Schedule A to Section 31 of the Act, as amended by H.R. 5024, the Investor Protection Act of 2002. Section 31 of the Act requires the Commission to collect transaction fees from national securities exchanges and national securities associations to recover the costs of the government related to the supervision and regulation of securities markets and securities professionals. Section 31 of the Act, as amended by H.R. 5024, increases the rate of the transaction fees from $16.00 per million dollars of transactions to $25.00 per million dollars of transactions. The proposed rule change would amend Section 8(b) of Schedule A to the NASD By-Laws to increase the rate of the transaction fees from $16.00 per million dollars of transactions to $25.00 per million dollars of transactions.

The NASD has requested that the proposed rule change be made effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Section 8(b) of Schedule A to the NASD By-Laws to conform Schedule A to Section 31 of the Act,[7] as amended by H.R.

which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17683 Filed 7–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46163; File No. SR–NYSE–

The Commission received one comment letter on the proposed rule change, as amended.[6] On June 27, 2002, the NYSE file Amendment No. 3 to the proposed rule change with the Commission.[7] This order approves the proposed rule change, as amended, on a permanent basis and grants accelerated approval to Amendment No. 3. The Commission is also soliciting comments on Amendment No. 3 from interested persons.

number SR–NASD–2002–87 and should be submitted by August 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17682 Filed 7–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46168; File No. SR–NASD–2002–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. to Amend Schedule A to the NASD By-Laws Relating to Transaction Fees

July 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On June 26, 2002, the NASD amended the proposal.[3] The NASD again amended the proposal on June 27, 2002.[4] The Association filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(2) thereunder[6] as one establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Section 8(b) of Schedule A to the NASD By-Laws to conform Schedule A to Section 31 of the Act,[7] as amended by H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act"). The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

BY-LAWS OF NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Schedule A

* * * * *

Section 8—Transaction Fees

* * * * *

(b) SEC transaction fee. Each member shall be assessed an *SEC* transaction fee. *The amount of the transaction fee shall be determined by the SEC in accordance with Section 31 of the Act.* [of 1/300 of one percent of the aggregate dollar value of sales of covered securities transacted by or through such member. For purposes of this section, covered securities shall mean:

(i) all securities traded otherwise than on a national securities exchange (other than bonds, debentures, other evidences on indebtedness, and any sale or any class of sales of securities which the Securities and Exchange Commission may exempt from the fee imposed by Section 31 of the Act, and securities described in subparagraph (ii)) that are subject to prompt last sale reporting and

(ii) effective October 1, 1997, securities registered on a national securities exchange pursuant to Section 12(b) of the Act (other than bonds, debentures, other evidences o[n]*f* indebtedness, and any sale or any class of sales of securities which the Securities and Exchange Commission may exempt from the fee imposed by Section 31 of the Act) traded otherwise than on such exchange.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act provides for the assessment of transaction fees ("Section 31 fees") to be paid to the Commission. Section 31 levies transaction fees for exchange and off-exchange traded securities. Schedule A, Section 8(b) of the NASD By-Laws provides that these fees are assessed at a rate equal to 1/300 of one percent of the aggregate amount of sales transacted by or through any member of a national securities association or transacted on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness and securities futures products). Under Schedule A, Section 8(b), the NASD collects the fee for off-exchange traded securities from members on behalf of the Commission.

On December 21, 2001, Congress passed the Fee Relief Act, which provides for the reduction of Section 31 fees. Specifically, the Fee Relief Act amends Section 31 to reduce the transaction fees collected from 1/300 of one percent to $15 per $1,000,000. This rate went into effect on December 28, 2001.

The Fee Relief Act also provides for an annual adjustment of the fee rate and, in some circumstances, a mid-year adjustment. The SEC will calculate the adjustments in accordance with the Fee Relief Act and publish the revised rates well in advance of any adjustment.

The proposed amendment to Schedule A to the NASD By-Laws conforms the NASD By-Laws to these Congressional changes and allows for future adjustments to be made to the rates as specified by the SEC and in Section 31 of the Act.

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(5) of the Act,[8] which requires, among other things, that a national securities association's rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 26, 2002 letter from T. Grant Callery, NASD, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). In Amendment No. 1, the NASD amended the statutory basis for the proposed rule change to reflect its belief that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act. 15 U.S.C. 78o–3(b)(5).

[4] *See* June 27, 2002 letter from T. Grant Callery, NASD, to Katherine England, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, the NASD provided new proposed rule language to correct a technical problem with the proposed rule language previously provided. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on June 27, 2002, the date that the NASD filed Amendment No. 2.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 15 U.S.C. 78ee.

[8] 15 U.S.C. 78o–3(b)(5).

which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because the proposal establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–65 and should be submitted by August 5, 2002.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17683 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46163; File No. SR–NYSE–2001–45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Permanent Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing of and Order Granting Accelerated Approval to Amendment No. 3 Relating to Initial Listing Standards and Allocation Policy for Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940

July 3, 2002.

I. Introduction

On October 29, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to the initial listing standards and allocation policy for closed-end management investment companies registered under the Investment Company Act of 1940 (hereinafter referred to as "funds" or "closed-end funds"). On March 14, 2002, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3] On April 1, 2002, the NYSE filed Amendment No. 2 to the proposed rule change with the Commission.[4] On April 2, 2002, the Commission issued notice of, and granted partial accelerated approval to, the proposed rule change and Amendment Nos. 1 and 2 thereto, on a three-month pilot basis.[5]

The Commission received one comment letter on the proposed rule change, as amended.[6] On June 27, 2002, the NYSE file Amendment No. 3 to the proposed rule change with the Commission.[7] This order approves the proposed rule change, as amended, on a permanent basis and grants accelerated approval to Amendment No. 3. The Commission is also soliciting comments on Amendment No. 3 from interested persons.

II. Description of Proposal

The NYSE proposes to permanently amend Section 102.04 of the Exchange's Manual regarding listing standards for closed-end funds. The Exchange is proposing to apply to all individual closed-end funds that desire to list on the Exchange the $60 million public market value test currently used for funds applying in connection with their initial public offering. In addition, the Exchange is proposing a standard under which a group of funds meeting certain specified requirements can be listed concurrently by a single "fund family,"[8] even if the group includes one or more funds with less than $60 million in public market value. Specifically, the Exchange would generally authorize the listing of a fund family[9] if: (1) The total group market value of publicly held shares (offering proceeds, in the case of newly formed funds) equals in the aggregate at least $200 million; (2) each group averages at least $45 million in market value of

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002 ("Amendment No. 1").

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 1, 2002 ("Amendment No. 2") (replacing Form 19b–4 in its entirety).

[5] *See* Securities Exchange Act Release No. 45684 (April 2, 2002), 67 FR 17092 (April 9, 2002).

[6] *See* letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated April 30, 2002 ("ICI Letter").

[7] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 25, 2002 ("Amendment No. 3"). In Amendment No. 3, the NYSE made a technical correction to the rule text and a conforming change to the purpose section to clarify the definition of affiliated persons in Section 102.04 of the NYSE Listed Company Manual ("Manual") and Section V of the NYSE's Allocation Policy and Procedures ("Allocation Policy").

[8] A "fund family" (as the term is used herein) consists of funds with a common investment adviser or having investment advisers, which are "affiliated persons," as defined in Section 2(3) of the Investment Company Act of 1940, as amended. *See* Amendment No. 3, *supra* note 7. The Exchange represents that it will not have discretion to list a group of closed-end funds that desire to list concurrently by a fund family if the group does not satisfy the listing requirements for a fund family set forth in this proposal. However, the Exchange will retain the discretion to exclude a fund family that otherwise satisfies the requirements. Telephone conversation between Janet Kissane, Office of the General Counsel, NYSE, and Terri Evans, Assistant Director, and Frank N. Genco, Attorney, Division, Commission, on July 3, 2002.

[9] The Exchange has represented that the composition of the group will be determined in each case by the investment adviser bringing the group listing to the Exchange.

publicly held shares (proceeds) per fund; and (3) no one fund in the group has a market value of publicly held shares (proceeds) of less than $30 million. This group standard would apply regardless of whether the group consists of newly formed or existing funds, or a combination thereof.

Finally, the Exchange is proposing to amend its Allocation Policy to permit a fund family to be allocated to one

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the requirements under Section 6(b)(5) of the Act[12] that the rules of an exchange be designed to

notes that during the three-month pilot it received only one comment letter, which supported the proposed rule change. Accordingly, the Commission finds it appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act[13] to approve the proposed rule change, as amended, on a permanent basis.

The Commission also finds good cause for accelerating approval of Amendment No. 3, because it merely

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17661 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] because it will help prevent fraudulent and manipulative acts and practices, as well as promote just and equitable principles of trade. The Commission finds the proposal is consistent with Section 6(b)(6) of the Act,[7] because the proposal provides a

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 5, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

publicly held shares (proceeds) per fund; and (3) no one fund in the group has a market value of publicly held shares (proceeds) of less than $30 million. This group standard would apply regardless of whether the group consists of newly formed or existing funds, or a combination thereof.

Finally, the Exchange is proposing to amend its Allocation Policy to permit a fund family to be allocated to one specialist unit, unless the Allocation Committee believes it appropriate to allocate the group to more than one specialist unit. In certain situations, the Allocation Committee would be permitted to allocate funds within a group to more than one unit. Such situations could include, for example, instances where the number of funds in the group, the types of funds, or the relative values of the funds suggest to the Allocation Committee that allocation to more than one specialist unit would be appropriate.[10]

III. Summary of Comments

As noted above, the Commission received one comment letter regarding the proposal.[11] ICI supported the proposed rule change, as amended by Amendment Nos. 1 and 2, and believed that the proposal would facilitate the listing of closed-end funds on the Exchange, particularly for listings of closed-end funds from a single fund family. ICI noted that the proposal would eliminate the existing distinction between newly formed and existing funds for listing purposes that currently requires existing funds to meet the same financial standards applicable to regular operating companies. ICI emphasized that the adoption of listing eligibility criteria for closed-end funds should take into account that such funds are structured and regulated differently than regular operating companies and, therefore, different financial standards should be applied to closed-end funds as compared to regular operating companies. Finally, ICI noted that the allocation to one specialist unit of all of the closed-end funds in a fund family group may result in a more effective utilization of the resources of the Exchange.

[10] The Exchange has represented that the normal Allocation Policy would apply to closed-end funds being listed on the Exchange just as they apply to any other business corporation being listed. Therefore, the amendment being proposed hereby is altering the Allocation Policy in only the discreet manner specified. The Exchange also represented that all the other aspects of the Allocation Policy, including the method by which the listed company is permitted to pick from a panel of specialists put together by the Allocation Committee, would apply.

[11] *See* ICI Letter.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the requirements under Section 6(b)(5) of the Act[12] that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public.[13]

The Commission believes that the proposed rule change strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing funds, including fund families, on the Exchange. The Commission also believes that providing an alternative method to list closed-end funds on the Exchange should accommodate the desire of fund families to list groups of closed-end funds on one marketplace.

Furthermore, the Commission believes that it is reasonable to permit the Allocation Committee under normal circumstances to allocate to one specialist unit all the closed-end funds in a family group listed under the group criteria. According to the Exchange, economies of scale and more effective utilization of resources may be realized by the allocation of a group of what are likely to be less actively traded securities to one specialist unit, rather than to have the individual funds within the group allocated to a number of units. The Commission notes, however, that the Allocation Committee would not be required to allocate the entire group to one specialist unit. The Committee retains the flexibility to allocate to more than one unit if there are factors present that make the Committee believe that allocation to more than one unit is appropriate.

Finally, the Commission notes that it has no knowledge of any problems or regulatory concerns that have developed since the approval of the three-month pilot program.[14] The Commission also notes that during the three-month pilot it received only one comment letter, which supported the proposed rule change. Accordingly, the Commission finds it appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act[15] to approve the proposed rule change, as amended, on a permanent basis.

The Commission also finds good cause for accelerating approval of Amendment No. 3, because it merely clarifies the meaning of fund family to include those funds with a common investment adviser or having investment advisers which are affiliated persons, as defined by the Investment Company Act. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,[16] and section 19(b)(2) of the Act[17] to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–45 and should be submitted by August 5, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change, as amended, (File No. SR–NYSE–2001–45) is approved on a permanent basis.

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] Telephone conversation between Janet Kissane, Office of the General Counsel, NYSE, and Frank N. Genco, Attorney, Division, Commission, on July 2, 2002.

[15] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17681 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46167; File No. SR–PHLX–2002–09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Amend Rules for the Administration of Order, Decorum, Health, Safety, and Welfare on the Exchange

July 8, 2002.

On February 1, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain Rules for the administration of order, decorum, health, safety, and welfare on the Exchange. The proposal would add procedures to govern actions by Floor Officials and Exchange staff to summarily remove a member from the floor for breaches of regulations that relate to the administration of order, decorum, health, safety and welfare on the Exchange, increase fine amounts for order and decorum violations as specified in proposed Regulation 4, reorganize current Regulation 4 for clarity, and amend Article VIII, Section 8–1 and Article X, Section 10–11 of the Exchange's By-Laws to eliminate inconsistencies with Exchange rules.

The Phlx amended the proposal on May 7, 2002. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 16, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] because it will help prevent fraudulent and manipulative acts and practices, as well as promote just and equitable principles of trade. The Commission finds the proposal is consistent with Section 6(b)(6) of the Act,[7] because the proposal provides a mechanism for the appropriate discipline for violations of certain rules and regulations.

In addition, the Commission finds the proposal is consistent with Section 6(b)(7) of the Act[8] because the proposal provides a fair procedure for the disciplining of members and persons associated with members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9], that the proposed rule change (SR–PHLX–2002–09), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17680 Filed 7–12–02; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45905 (May 10, 2002), 67 FR 34978.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas; (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated July 4, 2002, the above numbered declaration is hereby amended to include Bandera, Gillespie, Kendall and Uvalde Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Kinney, Mason and Maverick Counties in Texas. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 5, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17643 Filed 7–12–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 36 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2003, subject to the availability of funds. Twelve states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Michael Finnerty, State Director, Salt Lake Community College, 1623 South State Street, Salt Lake City, UT 84115, (801) 957–3481.

Mr. Keith Coppage, Acting State Director, California Trade & Comm. Agency, 801 K Street, Suite 1700, Sacramento, CA 95814, (916) 323–0459.

Mr. Henry Turner, Executive Director, Howard University, 2600 6th St., NW., Room 125, Washington, DC 20059, (202) 806–1550.

Dr. Bruce Whitaker, Director, American Samoa Community College, PO Box 2609, Pago Pago, American Samoa 96799, 011–684–699–9155.

Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO

Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219.

Mr. John Lenti, State Director, University of South Carolina, College of Business Administration, 1710 College Street, Columbia, SC 29208, (803) 777–4907.

Mr. Albert Laabs, State Director, Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 324,

volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective

Subject: CAC/30/Meet/004/02 dated April 29, 2002, r-1—Expedited Resolution 801r, CAC/30/Meet/005/02 dated May 8, 2002, r-2—Expedited Resolution 851, r-3—Expedited Resolution 853, Intended effective date: expedited for June 1/July 1, 2002.

Docket Number: OST–2002–12700.

Date Filed: June 28, 2002.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0394 dated 21

Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–12569.

U.S. as required for U.S. air carriers. This notice announces the date, time, location and procedures for the public meeting.

DATES: The meeting will be held on Tuesday, July 30, 2002, beginning at 9 a.m. Persons unable to attend the meeting are invited to provide written comments to the DOT Docket Management System, on or before August 20, 2002.

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Mr. Henry Turner, Executive Director, Howard University, 2600 6th St., NW., Room 125, Washington, DC 20059, (202) 806–1550.
Dr. Bruce Whitaker, Director, American Samoa Community College, PO Box 2609, Pago Pago, American Samoa 96799, 011–684–699–9155.
Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3794.
Mr. Jerry Cartwright, State Director, University of West Florida, 19 West Garden Street, Pensacola, FL 32501, (850) 595–6060.
Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (706) 542–6762.
Mr. Sam Males, State Director,University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717.
Ms. Debbie Bishop Trocha, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204,(317) 234–2086.
Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 200 West Kawili Street, Hilo, HI 96720, (808) 974–7515.
Mr. Mark Petrilli, State Director, Department of Commerce and, Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856.
Ms. Mary Collins, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (603) 862–4879.
Mr. John Massaua, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420.
Mr. Scott Daugherty, State Director, University of North Carolina,5 West Hargett Street, Suite 600, Raleigh, NC 27601–1348, (919) 715–7272.
Mr. Casey Jeszenka, Director, University of Guam, PO Box 5061—U.O.G. Station, Mangilao, Guam 96923, (671) 735–2553.
Ms. Carol Lopucki, State Director, Small Business Development Center, Grand Valley State University, 510 West Fulton Avenue, Grand Rapids, MI 49504, (616) 336–7480.
Mr. George Youngerman, Acting State Director, University of North Dakota, PO Box 7308, Grand Forks, ND 58202, (701) 777–3700.
Ms. Erica Kauten, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–7794.
Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219.
Mr. John Lønti, State Director, University of South Carolina, College of Business Administration, 1710 College Street, Columbia, SC 29208, (803) 777–4907.
Mr. Albert Laabs, State Director, Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 324, Nashville, TN 37217–2833, (615) 366–3931.
Mr. Robert Hamlin, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111.
Mr. Wade Druin, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5287.
Ms. Carolyn Clark, State Director, Washington State University, 601 West First Avenue, Spokane, WA 99202–3899, (509) 358–7765.

FOR FURTHER INFORMATION CONTACT: Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Suite 4600, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;
(b) Increase economic growth;
(c) Assist more small businesses; and
(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: July 10, 2002.

Johnnie L. Albertson,
Associate Administrator for Small Business Development Centers.

[FR Doc. 02–17690 Filed 7–12–02; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 28, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12564.
Date Filed: June 24, 2002.
Parties: Members of the International Air Transport Association.

Subject: CAC/30/Meet/004/02 dated April 29, 2002, r-1—Expedited Resolution 801r, CAC/30/Meet/005/02 dated May 8, 2002, r-2—Expedited Resolution 851, r-3—Expedited Resolution 853, Intended effective date: expedited for June 1/July 1, 2002.

Docket Number: OST–2002–12700.
Date Filed: June 28, 2002.
Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0394 dated 21 June 2002 and CTC COMP 0401 dated 25 June 2002 (technical correction), CTC COMP 0397 dated 21 June 2002, Cargo Resolutions except to/from USA/US Territories (r1–r37), Minutes—CTC COMP 0400 dated 25 June, Intended effective date: 1 October 2002.

Dorothy Y. Beard,
Federal Register Liaison.

[FR Doc. 02–17746 Filed 7–12–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 5, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Section 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12698.
Date Filed: July 1, 2002.
Parties: Members of the International Air Transport Association.

Subject: PTC2 ME 0107 dated 28 June 2002, TC2 Within Middle East Expedited Resolution 002oo, Intended effective date: 15 August 2002.

Dorothy Y. Beard,
Federal Register Liaison.

[FR Doc. 02–17748 Filed 7–12–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending June 28, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–12569.
Date Filed: June 24, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 15, 2002.
Description: Application of Atlantic Coast Jet, Inc., requesting reissuance of its certificate of public convenience and necessity in the name of Atlantic Coast Jet, LLC, or in the alternative, approval of the transfer of Atlantic Coast Jet's certificate authority to Atlantic Coast Jet, LLC.

Docket Number: OST–2002–12632.
Date Filed: June 26, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 17, 2002.
Description: Application of Tatonduk Outfitters, Ltd. d/b/a, Tatonduk Flying Service d/b/a, Air Cargo Express, pursuant to Section 215.4, requesting registration of a name change and reissuance of certificates of public convenience in the name of Tatonduk to Tatonduk Outfitters Limited d/b/a Tatonduk Flying service d/b/a, Air Cargo Express d/b/a, Everts air Alaska d/b/a Everts Air Cargo.

Dorothy Y. Beard,
Federal Register Liaison.

[FR Doc. 02–17747 Filed 7–12–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2002–12504] Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting to be held to solicit comments and information on a final rule that the FAA published June 21, 2002, on security considerations for the flightdeck on foreign operated transport category airplanes. The final rule requires the same level of safety for flightdeck protection for foreign air carriers operating to, from, and over the U.S. as required for U.S. air carriers. This notice announces the date, time, location and procedures for the public meeting.

DATES: The meeting will be held on Tuesday, July 30, 2002, beginning at 9 a.m. Persons unable to attend the meeting are invited to provide written comments to the DOT Docket Management System, on or before August 20, 2002.

ADDRESSES: The public meeting will be held at the National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594. Persons unable to attend the meeting may mail their comments in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–2002–12504, 400 Seventh Street, SW, Plaza Level, Room 401, Washington, DC 20590. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at anytime. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site. Comments may be filed and/or examined at the U.S. Department of Transportation Dockets, Plaza Level, Room 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Effie Upshaw, Federal Aviation Administration, Office of Rulemaking, ARM–209, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7626; fax (2020 267–5075; e-mail: *effie.upshaw@faa.gov.*

Questions concerning the applicability of the part 129 requirements should be directed to Michael E. Daniel, International Liaison Staff, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4510; fax (202) 385–4561; e-mail: *mike.e.daniel@faa.gov.*

Background

On September 11, 2001, the United States experienced terrorist attacks when aircraft were commandeered and used as weapons. These actions demonstrated that there is a need to improve the design, operational, and procedural security of the flightdeck.

In response, the FAA amended Title 14 Code of Federal Regulation part 121 to require that certain U.S. air carriers install reinforced flightdeck doors that

provide intrusion resistance and ballistic penetration resistance by April 9, 2003 (Amendment 121–288, 67 FR 2881, January 15, 2002). As discussed in the preamble to Amendment 121–288, the FAA expected that foreign operators conducting service to and from the United States under part 129 would have flightdeck security measures commensurate with those of U.S. carriers.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the

that the domestic rulemaking may be brought up during the meeting. To the extent that such discussions are relevant to the subject of flightdeck security on foreign operated airplanes, they will be allowed to proceed. However, discussions that are not relevant to the purpose of the meeting will be ruled out of order and the meeting Chair will move on to the next discussion item.

Issued in Washington, DC on July 9, 2002.

application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Hunstville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal

required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: The underwriting limitation for Fidelity and Deposit Company of Maryland and Transatlantic Reinsurance Company which were last listed in Treasury Department Circular 570, July 1, 2002, revision, at 67 FR 44293 as $5,748,000 and $101,985,000 respectively, are hereby corrected to read $11,899,000 and $126,406,000 respectively, effective

provide intrusion resistance and ballistic penetration resistance by April 9, 2003 (Amendment 121–288, 67 FR 2881, January 15, 2002). As discussed in the preamble to Amendment 121–288, the FAA expected that foreign operators conducting service to and from the United States under part 129 would have flightdeck security measures commensurate with those of U.S. carriers.

On June 21, 2002, the FAA issued a final rule entitled "Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes" (67 FR 42450). The final rule requires improved flightdeck security and other operational and procedures changes to prevent unauthorized access to the flightdeck on passenger-carrying aircraft and some cargo aircraft operated by foreign carriers under the provisions of part 129. The FAA is holding this public meeting to give the public an additional opportunity to comment on the final rule.

Participation at the Meeting

The FAA should receive requests from persons who wish to present oral statements at the meeting no later than July 25, 2002. Such requests should be submitted to Effie Upshaw, as listed above in the section titled **FOR FURTHER INFORMATION CONTACT**, and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. An agenda of speakers will be available at the meeting. The names of those individuals who request to present oral statements after the date specified above may not appear on the written agenda. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Persons requiring audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The FAA will use the following procedures to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who are scheduled to present statements or who register between 8:30 a.m. and 9 a.m. on the day of the meeting. While the FAA will make every effort to accommodate all persons wishing to participate, admission will be subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meeting.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

(5) Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this rulemaking will be present.

(6) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the FAA representatives during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. Additional transcript purchase information will be available at the meeting.

(7) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide nine copies of all materials to be presented for distribution to the FAA representatives; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by FAA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by an FAA representative is not intended to be, and should not be construed as, a position of the FAA.

(9) The meeting is designed to solicit public views and gather additional information on the rule. Therefore, the meeting will be conducted in an informal and non-adversarial manner. No individual will be subject to cross-examination by any other participant; however, FAA representatives may ask questions to clarify a statement and to ensure a complete and accurate record.

(10) As this issue is closely related to rulemaking adopted for domestic U.S. operations (which is also an area of high public interest), the FAA anticipates that the domestic rulemaking may be brought up during the meeting. To the extent that such discussions are relevant to the subject of flightdeck security on foreign operated airplanes, they will be allowed to proceed. However, discussions that are not relevant to the purpose of the meeting will be ruled out of order and the meeting Chair will move on to the next discussion item.

Issued in Washington, DC on July 9, 2002.

Tony Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–17738 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at the Hunstville International Airport, AL

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Hunstville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 14, 2002.

ADDRESSES: Comments on the application may be mailed or delivered in triplicate to the FAA at the following address: Jackson, MS Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 392082307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Hunstville, AL 35834.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under section 158.23 of part 158

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, FAA Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9884. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Hunstville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 2002.

The following is a brief overview of the application.

PFC Application: 02–12–C–00–HSV.

Level of the proposed PFC: $4.50.

Proposed charge effective date: September 1, 2002.

Proposed charge expiration date: November 2, 2004.

Total estimated net PFC revenue: $2,649,591.

Brief description of proposed project(s): Extend Runway 18R/36L 4,600 feet; Acquire Noise Land (101.7 acres); Acquire Security Vehicle (2002).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Huntsville-Madison County Airport Authority.

Issued in Jackson, MS on July 8, 2002.

Wayne Atkinson,

Manager, Jackson, MS Airports District Office, Southern Region.

[FR Doc. 02–17734 Filed 7–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Correction—Fidelity and Deposit Company of Maryland and Transatlantic Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44293.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: The underwriting limitation for Fidelity and Deposit Company of Maryland and Transatlantic Reinsurance Company which were last listed in Treasury Department Circular 570, July 1, 2002, revision, at 67 FR 44293 as $5,748,000 and $101,985,000 respectively, are hereby corrected to read $11,899,000 and $126,406,000 respectively, effective today.

Federal bond-approving officers should annotate their references copies of the Treasury Circular 570, 2002 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: July 3, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–17713 Filed 7–12–02; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 67, No. 135
Monday, July 15, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive

Friday, July 5, 2002, make the following corrections:

1. On page 44810, in the first column, under **SUMMARY:** in the 21st line, remove the phrase "Subsequent Envrionmental

Monday,
July 15, 2002

Corrections

Federal Register
Vol. 67, No. 135
Monday, July 15, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan

Correction

In notice document 02–16508 beginning on page 44174 in the issue of Monday, July 1, 2002, make the following correction:

On page 16508, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C2–16508 Filed 7–12–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Ricin Vaccine and Methods of Making and Using Thereof

Correction

In notice document 02–16885 appearing on page 44809 in the issue of Friday, July 5, 2002, make the following correction:

On page 44809, in the first column, under the **"SUMMARY:"** section, in the fourth line, "110/083.336" should read "110/083,336".

[FR Doc. C2–16885 Filed 7–12–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement/ Subsequent Environmental Impact Report for a Permit Application for the Proposed West Basin Marine Terminal Improvement Projects in the Port of Los Angeles, Los Angeles County, CA

Correction

In notice document 02–16886 beginning on page 44810 in the issue of Friday, July 5, 2002, make the following corrections:

1. On page 44810, in the first column, under **SUMMARY:** in the 21st line, remove the phrase "Subsequent Envrionmental Impact Statement".

2. On page 44810, in the second column, under **ADDRESSES:** in the eighth and ninth lines, "Dr. Ralph Apply" should read "Dr. Ralph Appy".

[FR Doc. C2–16886 Filed 7–12–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

Correction

In notice document 02–15868 beginning on page 42549 in the issue of Monday, June 24, 2002, make the following correction:

On page 42549, under **DATES:**, in the second line "August 23, 2002" should read "July 24, 2002".

[FR Doc. C2–15868 Filed 7–12–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
July 15, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Transition to an All Stage 3 Fleet Operating in the Contiguous United States and the District of Columbia; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12771; Amendment No. 91–276]

RIN 2120–AH41

Transition to an All Stage 3 Fleet Operating in the Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the operating rules for airplanes with a maximum weight of more than 75,000 pounds. This rule makes the current regulation consistent with the amended Airport Noise and Capacity Act of 1990 (ANCA). This rule limits the operation of these airplanes in the contiguous United States to those airplanes that have been shown to comply with Stage 3 noise levels. This rule also allows operators of Stage 2 airplanes that legally operated their airplanes outside the contiguous United States to obtain a special flight authorization to bring those airplanes into the contiguous United States for maintenance.

DATES: This final rule is effective August 14, 2002.

Comments Invited

Although this final rule is being adopted without prior notice and prior public comment, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within the DOT should provide an opportunity for public comment on regulations issued without

at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement

75,000 pounds may operate that airplane in the contiguous United States only for the following purposes:

- Sell, lease, or scrap the airplane.
- Obtain modifications to meet Stage 3 noise levels.
- Obtain scheduled heavy maintenance or significant modifications.
- Deliver the airplane to a lessee or return it to a lessor.
- Park or store the airplane.

makes the current regulation consistent with the amended ANCA.

The original text of ANCA places limits on the operation of airplanes "with a maximum weight of more than 75,000 pounds" That language is not specific given the number of aircraft weights that may be recorded for an individual airplane. Since the regulations were adopted in 1991, the FAA has considered this weight to be the maximum takeoff weight of the

to any operator. The section number is reserved.

Section 91.857 Stage 2 Operations Outside of the 48 Contiguous United States, and Authorization for Maintenance

Section 91.857(b) allowed operators of Stage 2 airplanes that legally operated their airplanes outside the contiguous United States to obtain a special flight

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12771; Amendment No. 91–276]

RIN 2120–AH41

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule removes outdated language, revises several sections, and adds one new section to the noise operating regulations. Some revisions are a result of statutory changes to the Airport Noise and Capacity Act. New requirements define specific filing procedures and criteria for special flight authorizations. These revisions will make the noise operating regulations consistent with statutory provisions.

DATES: This final rule is effective July 15, 2002. Comments must be received on or before August 14, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12771 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3561; facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this final rule is being adopted without prior notice and prior public comment, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2002." The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last five digits of the Docket number how at the beginning of this document. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Background

The Airport Noise and Capacity Act of 1990 (49 U.S.C. 47528 *et seq.*) (ANCA), prohibits the operation of Stage 2 civil subsonic turbojet airplanes with a maximum weight of more than 75,000 pounds in the contiguous United States after December 31, 1999. The ANCA also required the Federal Aviation Administration (FAA) to establish by regulation a schedule of phased compliance that would eliminate Stage 2 operations by the final compliance date.

Those regulations were promulgated in 1991, and codified at 14 CFR 91.851–91.877. In general, the regulations required each operator of Stage 2 airplanes to progressively reduce the number of Stage 2 airplanes it operates incrementally by 25% by the end of 1994, 1996, and 1998, respectively. In the alternative, operators could choose to operate a fleet of airplanes that was increasingly Stage 3: 55% after 1994, 65% after 1996, and 75% after 1998. Under either option, except as provided in the ANCA, no Stage 2 airplane has been allowed to operate in the contiguous United States after December 31, 1999.

On November 29, 1999, ANCA was amended. The prohibition on revenue operation of Stage 2 airplanes after December 31, 1999, remains in effect. The amended law permits certain nonrevenue Stage 2 operations to occur after December 31, 1999. Specifically, any operator of a Stage 2 airplane over

75,000 pounds may operate that airplane in the contiguous United States only for the following purposes:

- Sell, lease, or scrap the airplane.
- Obtain modifications to meet Stage 3 noise levels.
- Obtain scheduled heavy maintenance or significant modifications.
- Deliver the airplane to a lessee or return it to a lessor.
- Park or store the airplane.
- Prepare the airplane for any of these events.

On December 17, 1999 (64 FR 70571), the FAA published a notice of these statutory changes. As part of that notice, the FAA instructed operators how to apply for special flight authorizations.

Further Amendments to ANCA

The original language of ANCA did not allow foreign air carriers to apply for a waiver from the Stage 2 final compliance requirement. On April 5, 2000, ANCA was again amended by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (commonly known as AIR 21). Section 721(d) of AIR 21, "Waivers For Aircraft Not Complying With Stage 3 Noise Levels," allowed foreign air carriers, for a limited time, to apply for a waiver from the Stage 3 aircraft requirement of 49 U.S.C. 47528(a). The amended statutory provision stated that a foreign air carrier had until the 15th day following the date of enactment of AIR 21 to file an application for a waiver; the deadline was April 20, 2000.

Section-by-Section Analysis

The FAA is amending its regulations consistent with Public Law 106–113 and § 721(d) of AIR 21. The following is an explanation of the changes to each affected section of the regulations.

PART 91 SUBPART I—OPERATING NOISE LIMITS

Section 91.801(c) Applicability: Relation to Part 36

This section applies to any civil subsonic turbojet airplane with a maximum certificated weight of more than 75,000 pounds. The amendment to ANCA inserted the phrase "(for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator)" after "civil subsonic turbojet." The effect of the amendment and the changes to paragraph (c) of § 91.801 is to limit applicability of these regulations to U.S.-registered civil subsonic turbojet for which the Administrator has issued an airworthiness certificate other than an experimental certificate. This change makes the current regulation consistent with the amended ANCA.

The original text of ANCA places limits on the operation of airplanes "with a maximum weight of more than 75,000 pounds" That language is not specific given the number of aircraft weights that may be recorded for an individual airplane. Since the regulations were adopted in 1991, the FAA has considered this weight to be the maximum takeoff weight of the airplane, which is recognized throughout the industry. Accordingly, the FAA is adding the term "takeoff" to section 91.801(c) to codify which weight is to be used in referring to the noise operating regulations. No operational changes or changes in aircraft status will result from this addition because the FAA has always used maximum takeoff weight in determining whether an airplane was subject to the law and these regulations. The change is intended to eliminate any future questions or remaining confusion about which airplane weight will be used.

Section 91.803(b) Part 125 Operators: Designation of Applicable Regulations

This paragraph is amended to remove references to other sections that are removed.

Section 91.807 Phased Compliance Under Parts 121, 125, and 135; Subsonic Airplanes

This section sets out the compliance schedule for the elimination of Stage 1 airplanes. The text is removed since the requirements no longer apply to any operator. The section number is reserved.

Section 91.809 Replacement Airplanes

This section sets out the planes for replacing Stage 1 airplanes. The text is removed since the requirements no longer apply any operator. The section number is reserved.

Section 91.811 Service to Small Communities Exemption: Two-Engine, Subsonic Airplanes

This section provided a basis for exemption for the operation of certain Stage 1 airplanes. The text is removed since the requirements no longer apply to any operator. The section number is reserved.

Section 91.813 Compliance Plans and Status: U.S. Operations of Subsonic Airplanes

This section sets out the requirements for compliance plans for the elimination of Stage 1 airplanes. The text is removed since the requirements no longer apply to any operator. The section number is reserved.

Section 91.857 Stage 2 Operations Outside of the 48 Contiguous United States, and Authorization for Maintenance

Section 91.857(b) allowed operators of Stage 2 airplanes that legally operated their airplanes outside the contiguous United States to obtain a special flight authorization to bring those airplanes into the contiguous United States for maintenance. The FAA's authority to allow these flights expired as of December 31, 1999. The reference to authorization for maintenance is removed from the section title, and the text of § 91.857(b) is deleted since the authorizations are no longer available. The paragraph (a) designation is also removed because the remaining text is a single paragraph.

New Section 91.858 Special Flight Authorization for Non-Revenue Stage 2 Operations

This is a new section on special flight authorizations for non-revenue Stage 2 operations. These authorizations were provided for by the amendment to ANCA in November 1999, described earlier in this document. The information specified in this section was published in the **Federal Register** on December 17, 1999. Adoption of this information into the current regulations makes them consistent with the amended ANCA.

Section 91.859 Modification To Meet Stage 3 Noise Levels

The text of this section is removed because the November 1999 change to ANCA included Stage 3 modification as one of the bases for a special flight authorization.

Section 91.873 Waivers From Final Compliance

The FAA is making two changes to § 91.873 in this final rule. One change revises § 91.873(a) by adding the words "or a foreign air carrier" after the words "U.S. air carrier." The other change revises § 91.873(b) by adding the date of application for a foreign air carrier. In the case of a foreign air carrier, AIR 21 required that the application be filed by the 15th day following the date of enactment of the law; that date was April 20, 2000. To avoid confusion, the FAA decided to incorporate these two changes to make the regulations consistent with the statutory provisions of AIR 21 passed on April 5, 2000.

Paperwork Reduction Act

Information collection requirements contained in 14 CFR part 91 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB control number 2120–0652. There are no new requirements for information collection associated with this amendment.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency must propose or adopt a regulation only upon a reasonable determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the

barriers to international trade; and does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the final rule and of applicable statutes, to fit regulatory and

of this Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will reduce costs for has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Aircraft, Noise control, Reporting and record keeping requirements.

The Amendments

In consideration of the foregoing the Federal Aviation Administration amends part 91 of Chapter I of Title 14

§ 91.857 Stage 2 operations outside of the 48 contiguous United States.

An operator of a Stage 2 airplane that is operating only between points outside the contiguous United States on or after November 5, 1990, must include in its operations specifications a statement that such airplane may not be used to provide air transportation to or from any airport in the contiguous United States.

9. Add § 91.858 to read as follows:

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Paperwork Reduction Act

Information collection requirements contained in 14 CFR part 91 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB control number 2120–0652. There are no new requirements for information collection associated with this amendment.

Good Cause for Immediate Adoption

When Congress amended ANCA in November 1999, it stated that the regulations were considered to be modified where they conflicted with any new statutory provision (Public Law 106–113). In an effort to distribute this information to the affected public, the FAA published a notice of these changes on December 17, 1999, as described earlier, and stated that this change to the current regulations would be made.

Similarly, the April 2000 changes to ANCA by AIR 21 effectively changed the affected regulations at that time.

In addition to the statutory changes described, the FAA is removing outdated portions of text in the noise operating regulations. Since none of these changes has any effect on current operators, the FAA finds that prior notice and public comments are unnecessary.

Although this final rule is being adopted without prior notice and public comment, interested persons may submit comments in duplicate to the address listed under the **ADDRESSES** caption above. This final rule may be amended in response to such comments.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this final rule indicates that its economic impact is negligible. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is negligible.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency must propose or adopt a regulation only upon a reasonable determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation.

Since this final rule will remove and reserve sections concerning outdated Stage 1 requirements and revise other sections of the noise regulations, the expected cost impact will be negligible. The new section 91.858 on special flight authorizations allows operators to fly Stage 2 airplanes into the contiguous United States for specific purposes that would otherwise be prohibited. Since an operator may choose to apply for a special flight authorization if needed, the FAA has determined that his rule allows some cost savings to certain foreign operators while imposing only negligible costs on society at large. This rule is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; will not have a significant impact on a substantial number of small entities; reduces barriers to international trade; and does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the final rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the act.

However, if an agency determines that the final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the negligible cost impact of the rule, the FAA has determined that this final rule will have no significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be used as the basis for U.S. standards. In addition, consistent with this Administration's belief in the general superiority and desirability of free trade, it is the policy of this Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will reduce costs for some international entities.

Unfunded Mandated Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on States, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, amended (42 U.S.C. 6362) and FAA Order 1050.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Aircraft, Noise control, Reporting and record keeping requirements.

The Amendments

In consideration of the foregoing the Federal Aviation Administration amends part 91 of Chapter I of Title 14 Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 447121, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506, 46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat 1180).

§ 91.801 [Amended]

2. Amend § 91.801 by revising paragraph (c) to read as follows:

§ 91.801 Applicability: Relation to part 36.

* * * * *

(c) Sections 91.851 through 91.877 of this subpart prescribe operating noise limits and related requirements that apply to any civil subsonic turbojet airplane (for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator) with a maximum certificated takeoff weight of more than 75,000 pounds operating to or from an airport in the 48 contiguous United States and the District of Columbia under this part, parts 121, 125, 129, or 135 of this chapter on and after September 25, 1991.

§ 91.803 [Amended]

3. Amend § 91.803 by removing the phrase "91.809, 91.811 and 91.813" in paragraph (b).

§ 91.807 [Removed and Reserved]

4. Section 91.807 is removed and reserved.

§ 91.809 [Removed and Reserved]

5. Section 91.809 is removed and reserved.

§ 91.811 [Removed and Reserved]

6. 91.811 removed and reserved.

§ 91.813 [Removed and Reserved]

7. 91.813 is removed and reserved.

§ 91.857 [Revised]

8. Revise § 91.857 to read as follows:

§ 91.857 Stage 2 operations outside of the 48 contiguous United States.

An operator of a Stage 2 airplane that is operating only between points outside the contiguous United States on or after November 5, 1990, must include in its operations specifications a statement that such airplane may not be used to provide air transportation to or from any airport in the contiguous United States.

9. Add § 91.858 to read as follows:

§ 91.858 Special flight authorizations for non-revenue Stage 2 operations.

(a) After December 31, 1999, any operator of a Stage 2 airplane over 75,000 pounds may operate that airplane in nonrevenue service in the contiguous United States only for the following purposes:

(1) Sell, lease, or scrap the airplane;

(2) Obtain modifications to meet Stage 3 noise levels;

(3) Obtain scheduled heavy maintenance or significant modifications;

(4) Deliver the airplane to a lessee or return it to a lessor;

(5) Park or store the airplane; and

(6) Prepare the airplane for any of the purposes listed in paragraph (a)(1) thru (a)(5) of this section.

(b) An operator of a Stage 2 airplane that needs to operate in the contiguous United States for any of the purposes listed above may apply to FAA's Office of Environment and Energy for a special flight authorization. The applicant must file in advance. Applications are due 30 days in advance of the planned flight and must provide the information necessary for the FAA to determine that the planned flight is within the limits prescribed in the law.

§ 91.859 [Removed and Reserved]

10. Section 91.859 is removed and reserved.

§ 91.873 [Amended]

11. Amend § 91.873 by revising paragraphs (a) and (b) to read as follows:

§ 91.873 Waivers from final compliance.

(a) A U.S. air carrier or a foreign air carrier may apply for a waiver from the prohibition contained in § 91.853 of this part for its remaining Stage 2 airplanes, provided that, by July 1, 1999, at least 85 percent of the airplanes used by the carrier to provide service to or from an airport in the contiguous United States will comply with the Stage 3 noise levels.

(b) An application for the waiver described in paragraph (a) of this section must be filed with the Secretary of Transportation no later than January 1, 1999, or, in the case of a foreign air

carrier, no later than April 20, 2000. Such application must include a plan with firm orders for replacing or modifying all airplanes to comply with Stage 3 noise levels at the earliest practicable time.

* * * * *

Issued in Washington, DC on July 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–17744 Filed 7–12–02; 8:45 am]

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carrier, no later than April 20, 2000. Such application must include a plan with firm orders for replacing or modifying all airplanes to comply with Stage 3 noise levels at the earliest practicable time.

* * * * *

Issued in Washington, DC on July 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–17744 Filed 7–12–02; 8:45 am]

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Part III

The President

Memorandum of July 2, 2002—Delegation of Authority Under Section 124 of the National Defense Authorization Act for Fiscal Year 2001

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Title 3—

The President

Memorandum of July 2, 2002

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Presidential Documents

Title 3—

The President

Memorandum of July 2, 2002

Delegation of Authority Under Section 124 of the National Defense Authorization Act for Fiscal Year 2001

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and laws of the United States of America, you are delegated the authority and assigned the responsibility of the President under section 124(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398).

The authority delegated by this memorandum may be redelegated, in writing, not lower than the Under Secretary of Defense level.

You are authorized and directed to publish this memorandum in the **Federal Register**.

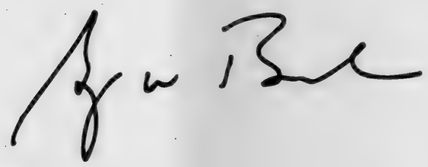

THE WHITE HOUSE,
Washington, July 2, 2002.

[FR Doc. 02–17938
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 327/P.L. 107–198
Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)
S. 2578/P.L. 107–199
To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

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H.R. 327/P.L. 107–198
Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)
S. 2578/P.L. 107–199
To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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Federal Register
Vol. 67, No. 136
Tuesday, July 16, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER, issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket No. 01–073–2]

Untreated Citrus From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the plant quarantine safeguard regulations to remove Brownsville and Hidalgo, TX, as ports of entry for untreated Mexican oranges, tangerines, and grapefruit transiting the United States for export to another country. We are also removing Brownsville, TX, as an authorized port for the exportation by water of shipments of untreated Mexican oranges, tangerines, and grapefruit. We are taking these actions because neither port has been used for these purposes in over 20 years. These actions will update the regulations so that they accurately reflect the ports used for the importation and exportation by water of untreated citrus from Mexico.

EFFECTIVE DATE: August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Byrne, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5242.

SUPPLEMENTARY INFORMATION:

Background

The plant quarantine safeguard regulations in 7 CFR part 352 relieve restrictions for certain plants, plant products, plant pests, soil, and other products and articles that are classified as prohibited or restricted in other regulations in title 7, chapter III. Such plant products include fruits and vegetables that are moved into the United States for: (1) A temporary stay where unloading or landing is not intended; (2) unloading or landing for transshipment and exportation; (3) unloading or landing for transportation and exportation; or (4) unloading and entry at a port other than the port of arrival. Fruits and vegetables that are moved into the United States under these circumstances are subject to inspection and must be handled in accordance with conditions assigned under the safeguard regulations to prevent the introduction and spread of plant pests.

The regulations in § 352.30 address the movement into or through the United States of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to foreign countries. Those regulations have allowed untreated oranges, tangerines, and grapefruit from Mexico to enter the United States at the ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX, and be moved, under certain conditions, by truck or railcar to seaports at Brownsville and Galveston, TX, for export by water to another country.

In a proposed rule published in the **Federal Register** on March 21, 2002 (67 FR 13103–13104, Docket No. 01–073–1), we proposed to amend the regulations by removing Brownsville and Hidalgo, TX, as ports of entry for untreated oranges, tangerines, and grapefruit from Mexico. In the same document, we also proposed to remove Brownsville, TX, as an authorized port for the exportation by water of such fruit.

We solicited comments concerning our proposal for 60 days ending May 20, 2002. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the plant quarantine safeguard regulations by removing Brownsville and Hidalgo, TX, as ports of entry for untreated Mexican oranges, tangerines, and grapefruit transiting the United States for export to another country. We are also removing Brownsville, TX, as an authorized port for the exportation by water of shipments of untreated Mexican oranges, tangerines, and grapefruit. We are taking these actions because neither port has been used for these purposes in over 20 years. These actions will update the regulations so that they accurately reflect the ports used for the importation and exportation by water of untreated citrus from Mexico.

Since the ports of Brownsville and Hidalgo, TX, have not been used for any shipments of untreated citrus from Mexico in over 20 years, this action will have no economic effect on any entity. Small entities located at or around the ports of Brownsville and Hidalgo, TX, will not be affected by this rule for the same reason that no economic entity of any size will be affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 352 as follows:

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

1. The authority citation for part 352 is revised to read as follows:

Authority: 7 U.S.C. 7711–7714, 7731, 7734, and 8311; 21 U.S.C. 136 and 136a;31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 352.30 [Amended]

2. Section 352.30 is amended as follows:

a. In paragraph (b)(2), by removing the words "Brownsville," and "Hidalgo,".

b. In paragraph (b)(3)(iii), by removing the words "Brownsville or".

c. In paragraph (c)(1), by removing the

provisions of the Order for reallocation of Council membership.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Background

Under the Order, the Council administers a nationally coordinated program of research, development, and information designed to strengthen the fresh mushroom's position in the market place and to establish, maintain, and

into the United States through the U.S. Customs Service.

The Order established a Council of up to nine members. For the purposes of establishing the Council, the United States was divided into four producer regions.

In addition, §§ 1209.30(a) and (c) of the Order state that importers shall be represented by a single, separate region (referred to as Region 5) when imports, on average (2 years), equal or exceed 35 million pounds of mushrooms annually.

Section 1209.30(e) provides that each producer region that produces, on average, at least 35 million pounds of mushrooms annually is entitled to one member. Further, each producer region is entitled to an additional member for each 50 million pounds of annual production, on average, in excess of the initial 35 million pounds required to qualify for representation, until the nine seats on the Council are filled. Under the Order, "on average" reflects a rolling

Authority: 7 U.S.C. 7711–7714, 7731, 7734, and 8311; 21 U.S.C. 136 and 136a;31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

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b. In paragraph (b)(3)(iii), by removing the words "Brownsville or".

c. In paragraph (c)(1), by removing the words "Brownsville, or".

d. In paragraph (c)(3), in the paragraph heading and in paragraphs (c)(3)(i) and (c)(3)(ii), by removing the words "Brownsville or" each time they appear.

Done in Washington, DC, this 10th day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–17796 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[Doc # FV–02–706 IFR]

Mushroom Promotion, Research, and Consumer Information Order; Reallocation of Mushroom Council Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on adjusting representation on the Mushroom Council (Council) to reflect shifts in production since the original producer regions were established and the increased volume of imports. These adjustments are required by the Mushroom Promotion, Research, and Consumer Information Order (Order) and would result in changing the number of Council members in three of the four producer regions and adding a fifth region to provide an importer position on the Council.

DATES: Effective date: July 17, 2002. Comments must be received by August 15, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), Department of Agriculture (USDA), Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at *http://www.ams.usda.gov/fv/rpdocketlist.htm*.

FOR FURTHER INFORMATION CONTACT: Deborah S. Simmons, Research and Promotion Branch, FV, AMS, USDA, Room 2535-S, Stop 0244, Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free); e-mail to deborah.simmons@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Mushroom Promotion, Research, and Consumer Information Order (Order) [7 CFR Part 1209]. The Order is authorized under the Mushroom Promotion, Research and Consumer Information Act of 1990 (Act) (7 U.S.C. 6101–6112).

Executive Orders 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers and importers to file a written petition with USDA if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a final decision on behalf of the Department. If the petitioner disagrees with the Judicial Officer's decision, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on small entities that would be affected by this rule. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $5 million. Under these definitions, the majority of producers and importers that would be affected by this rule would be considered small entities. Producers and importers of less than 500,000 pounds or less of mushrooms for the fresh market are exempt from the Order.

According to the Council, there are approximately 137 non-exempt producers and 135 non-exempt importers who are eligible to serve on the Council.

The overall impact would be favorable for producers and importers because the producers and importers would have more equitable representation on the Council.

The addition of one importer position on the Council would mean two additional nominees. However, this rule would also reduce the number of producer nominees from 18 to 16. Therefore, there is no increase in overall burden, but only a change in the type of respondent under the Order.

As such, with regard to the information collection requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0505–0001. This rule, however, does add a new category of respondents—importers. The estimated burden for importer nominee information is 0.50 hours per response with two responses once every three years. This is the same burden that applies to producer nominees. Since producer nominees are reduced by this rule from 18 to 16, the estimated total annual burden on respondents associated with nominee background forms is 2.7 hours. The estimated cost of providing nomination information by eighteen persons eligible to be nominated to serve as members on the Council remains at $27.00 or $1.50 per person.

In terms of alternatives to this rule, this action reflects the volume thresholds and procedures that have been established previously under the provisions of the Order for reallocation of Council membership.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Background

Under the Order, the Council administers a nationally coordinated program of research, development, and information designed to strengthen the fresh mushroom's position in the market place and to establish, maintain, and expand markets for fresh mushrooms. The program is financed by an assessment of 0.21 cents per pound on any person who produces or imports over 500,000 pounds of mushrooms for the fresh market annually. The Order specifies that handlers are responsible for collecting and submitting the producer assessment to the Council, reporting their handling of mushrooms, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Council on mushrooms imported into the United States through the U.S. Customs Service.

The Order established a Council of up to nine members. For the purposes of establishing the Council, the United States was divided into four producer regions.

In addition, §§ 1209.30(a) and (c) of the Order state that importers shall be represented by a single, separate region (referred to as Region 5) when imports, on average (2 years), equal or exceed 35 million pounds of mushrooms annually. Currently, there is no Region 5.

Section 1209.30(d) of the Order provides that at least every five years, the Council should review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years. Based on the review, the Council would recommend reapportionment of the regions, or modification of the number of members from such regions, or both.

Section 1209.30(e) provides that each producer region that produces, on average, at least 35 million pounds of mushrooms annually is entitled to one member. Further, each producer region is entitled to an additional member for each 50 million pounds of annual production, on average, in excess of the initial 35 million pounds required to qualify for representation, until the nine seats on the Council are filled. Under the Order, "on average" reflects a rolling average of production or imports during the last two fiscal years.

The average production of pounds by producer region for the years 2000 and 2001 is 74.4 million pounds for Region 1; 297.2 million pounds for Region 2; 121.6 million pounds for Region 3, and 107.8 million pounds for Region 4. The average number of pounds imported for the years 2000 and 2001 is 39.3 million.

As a result, the Council recommended the following changes in Council membership:

Region	Average assessed pounds (in millions)	Members earned first 35 million pounds	Members earned next 50 million pounds	Members earned next 50 million pounds	Total members per region	Change in number of members
Region 1	74.4	1			1	−1
Region 2	297.2	1	1	1	3	0
Region 3	121.6	1	1		2	−1
Region 4	107.8	1	1		2	+1
Region 5	39.3	1			1	+1
Total	640.3	5	3	1	9	0

Therefore, pursuant to § 1209.30, a new § 1209.230 is added to the regulations under the Order to change the composition of the Council. Nominations based upon the changes made in this rule would be received for the term of office that begins on January 1, 2003.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule should be in place as soon as possible so that the nomination process may be conducted taking into account the changes that appear in this rule. The new term of office begins on January 1, 2003. In addition and for the same reasons, a 30-day period is provided for interested persons to comment on this rule.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mushroom promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1209, Chapter XI of Title 7 is amended as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

2. A new § 1209.230 is added to read as follows:

§ 1209.230 Reallocation of council members.

Pursuant to § 1209.30 of the Order, the regions and their number of members on the Council shall be as follows:

Region 1: Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, New Hampshire, North Dakota, Ohio, Rhode Island, South Dakota, Vermont, Wisconsin, and Wyoming—1 Producer Member.

Region 2: Delaware, Maryland, New Jersey, Pennsylvania, the District of Columbia, West Virginia, and Virginia—3 Producer Members.

Region 3: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington—2 Producer Members.

Region 4: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, the Commonwealth of Puerto Rico, South Carolina, Tennessee, and Texas—2 Producer Members.

Region 5:—1 Importer Member.

Dated: July 10, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–17764 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–127–AD; Amendment 39–12820; AD 2002–14–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –800, and –900

be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. necessary. The corrective action involves connecting the subject circuit breaker wire to the 115-volt AC standby power supply bus, performing a test to ensure that the pitot heater system operates correctly, and repeating the measurement of the electrical voltage at the circuit breaker for the captain's pitot heater. If the test fails or the electrical voltage is still incorrect, the service bulletin specifies to troubleshoot the problem and repeat the corrective

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation

the circuit breaker for the captain's pitot heater to determine if the pitot heater is connected to the correct power supply bus, per Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002.

(1) If the measurement is 100 to 122 volts alternating current (AC): No further action is required by this AD.

(2) If the measurement is not 100 to 122 volts AC: Before further flight, perform all actions associated with connecting the subject circuit breaker wire to the 115-volt AC standby power supply bus (including

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–127–AD; Amendment 39–12820; AD 2002–14–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –800, and –900 series airplanes. This action requires measuring the electrical voltage at the circuit breaker for a certain pitot heater to determine if the pitot heater is connected to the correct power supply bus, and performing corrective action, if necessary. This action is necessary to prevent ice from blocking the pitot tube that provides airspeed data to the captain. Such ice blockage could lead to the flightcrew receiving incorrect airspeed data, which could result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect. This action is intended to address the identified unsafe condition.

DATES: Effective July 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–127–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2890; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that, on certain Boeing Model 737–600, –700, –800, and –900 series airplanes, the captain's indicated airspeed sensor and the captain's display unit may give inconsistent airspeed data to the flightcrew. Investigation of two incidents has revealed that, during production, the circuit breaker wire for the captain's pitot heater was connected to the 28-volt alternating current (AC) power supply bus, instead of the 115-volt AC standby power supply bus. The 28-volt power supply bus does not supply sufficient electrical power to heat the captain's pitot probe and keep it free of ice. This condition, if not corrected, could cause ice blockage of the captain's pitot probe, leading to the flightcrew receiving incorrect airspeed data, which could result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002, which describes procedures for measuring the electrical voltage at the circuit breaker for the captain's pitot heater to determine if the pitot heater is connected to the correct power supply bus, and performing corrective action, if necessary. The corrective action involves connecting the subject circuit breaker wire to the 115-volt AC standby power supply bus, performing a test to ensure that the pitot heater system operates correctly, and repeating the measurement of the electrical voltage at the circuit breaker for the captain's pitot heater. If the test fails or the electrical voltage is still incorrect, the service bulletin specifies to troubleshoot the problem and repeat the corrective actions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent ice from blocking the pitot tube that provides airspeed data to the captain, which could lead to the flightcrew receiving incorrect airspeed data and result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Service Information and This AD

While the service bulletin specifies that no further action is necessary if the voltage measurement of the circuit breaker for the captain's pitot heater is 115 volts AC, paragraph (a)(1) of this AD states that, if the measurement is between 100 and 122 volts AC, no further action is required by this AD. The range of 100 to 122 volts AC specified in this AD accounts for normal variances that may be encountered during the voltage measurement.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–127–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–20 Boeing: Amendment 39–12820. Docket 2002–NM–1AD.

Applicability: Model 737–600, –700, –800, and –900 series airplanes; as listed in Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from blocking the pitot tube that provides airspeed data to the flightcrew, which could lead to the flightcrew receiving incorrect airspeed data, and result in loss of control of the airplane if the flightcrew fails to recognize that the data are incorrect, accomplish the following:

Measurement of Voltage and Corrective Actions

(a) Within 60 days after the effective date of this AD, measure the electrical voltage at the circuit breaker for the captain's pitot heater to determine if the pitot heater is connected to the correct power supply bus, per Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002.

(1) If the measurement is 100 to 122 volts alternating current (AC): No further action is required by this AD.

(2) If the measurement is not 100 to 122 volts AC: Before further flight, perform all actions associated with connecting the subject circuit breaker wire to the 115-volt AC standby power supply bus (including performing a test to ensure that the pitot heater system operates correctly, repeating the measurement of the electrical voltage at the circuit breaker for the captain's pitot heater, and troubleshooting and correcting the wire connections until the test and measurement are successful), per the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–24A1150, dated April 11, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 31, 2002.

Issued in Renton, Washington, on July 8, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17548 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–44–AD; Amendment 39–12822; AD 2002–14–22]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing AD that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The existing AD requires you to inspect the left and right main landing gear (MLG) assemblies for bolts with a serial number (S/N) beginning with the letters "AT" and numbers 299 or lower and replace each bolt with a bolt that does not have a S/N with both the letters "AT" and a number 299 or lower. The existing AD also requires you to report the results of the inspection to the FAA. This amendment retains the requirements of the existing AD and adds airplanes to the applicability. This amendment is prompted by the FAA's determination that the applicability of the existing AD should be expanded to include additional airplanes that have the affected bolts installed. The actions specified by this AD are intended to prevent failure of the MLG bolts, which could result in collapse of the MLG and consequent loss of control of the airplane during landing.

DATES: Effective July 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Guilfoyle, Aerospace Engineer, Standards Office, Small Airplane Directorate, Aircraft Certification Service, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION: Comments Invited

How Do I Comment on This AD?

We invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under the ADDRESSES section. Include the docket number in your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will not consider comments received after the comment closing date unless we decide to do so for good cause.

We will not consider comments that are not about the AD. We will not consider arguments that suggest the AD should address other concerns that you have. If you want us to address these concerns, you need to submit a comment directing us to do so and explain the reason why we should do so.

You can get a copy of this AD by sending a request to the Rules Docket at the address listed under the ADDRESSES section. Include the docket number in your request.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard with the following statement on it: "Comments to Docket No. 2001–CE–44–AD." We will date stamp the postcard and mail it back to you.

How Can I Find Out What Changes Will Be Made to This AD Based on Comments Received?

We will consider all comments received on or before the closing date. We may amend this AD in light of those comments.

We will not provide a separate response to comments received. If we change this AD in response to comments, we will summarize the substantive comments and state why we did not accept them.

Are There Any Specific Portions of This AD I Should Pay Attention To?

We specifically invite comments about:

- The compliance time of this AD and whether it is adequate to address the unsafe condition.
- The cost impact of this AD on you.
- Any alternative actions you would like us to consider.

Will I Be Informed of the Comments Others Have Made?

We will summarize the substantive comments we receive and will include this summary in the regulatory evaluation we prepare for this AD. We will also include in the regulatory evaluation a response to the substantive comments.

Discussion of Requirements of This AD

What Events Have Caused This AD?

On March 1, 2001, we issued AD 2001–05–03, Amendment 39–12151 (66 FR 14049, March 9, 2001), which requires you to inspect the left and right main landing gear (MLG) assemblies for bolts with a serial number (S/N) beginning with the letters "AT" and numbers 299 or lower and replace each bolt with a bolt that does not have a S/N with both the letters "AT" and a number 299 or lower. That AD also requires you to report the results of the inspection to the FAA. That AD was prompted by the FAA's determination that the bolts with S/N beginning with the letters "AT" and numbers 299 or lower may have been installed on certain Pilatus Models PC–12 and PC–12/45 airplanes. The actions specified by that AD are intended to prevent failure of the MLG bolts, which could result in collapse of the MLG and consequent loss of control of the airplane during landing.

What Is the Difference Between This AD and the Previous AD?

This AD retains the requirements of AD 2001–05–03 and adds airplanes to the applicability.

What Is the Potential Impact if FAA Takes No Action?

If not prevented, failure of the MLG bolts, which could result in collapse of the MLG and consequent loss of control of the airplane during landing.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is "within the next 30 days after the effective date of this AD".

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-service (TIS)?

Although malfunction of the main landing gear is unsafe during flight, the MLG bolts are not subject to fatigue cracking. Therefore, we have determined that a compliance time in calendar time is adequate to address the unsafe condition.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this AD (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the

(a) What airplanes are affected by this AD? This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1: Pilatus may have installed the affected bolts on the following airplanes at manufacture. All portions of this AD apply to these airplanes:

Model	Serial Nos.
PC–12 and PC–12/45.	349, 352, 357, 359, 362 through 365, 367, 369, 371, 375, 377, 380, 384

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–44–AD; Amendment 39–12822; AD 2002–14–22]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to inspect the left and right main landing gear (MLG) assemblies for bolts with a serial number (S/N) beginning with the letters "AT" and numbers 299 or lower and replace each bolt with a bolt that does not have a S/N with both the letters "AT" and a number of 299 or lower. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and replace defective MLG assembly bolts that have an improper cadmium plating, which could cause hydrogen embrittlement and bolt failure. Such failure could lead to MLG collapse during landing.

DATES: This AD becomes effective on August 29, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 29, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a manufacturing defect, certain bolts on the main landing gear (MLG) assembly may be defective. The problem is caused by an improper cadmium process applied to the high strength steel part, which can cause hydrogen embrittlement and subsequent failure of the bolt.

The defective bolts were initially installed on MLG assemblies that have a serial number beginning with the letters "AM". Each bolt in the defective lot incorporates the letters "AT" and a number of 299 or lower.

What Is the Potential Impact if FAA Took No Action?

If not corrected, such failure could lead to MLG collapse during landing.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 1, 2002 (67 FR 9420). The NPRM proposed to require you to inspect the left and right main landing gear (MLG) assemblies for bolts with a serial number (S/N) beginning with the letters "AT" and numbers 299 or lower and replace each bolt with a bolt that does not have a S/N with both the letters "AT" and a number of 299 or lower.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 16 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection and replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Manufacturer will pay for workhours	Parts will be provided at no cost to the owners/operators of the affected aircraft.	None	None.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is "within the next 30 days after the effective date of this AD".

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-service (TIS)?

Although malfunction of the main landing gear is unsafe during flight, the condition is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for an airplane with 500 hours TIS. A calendar time for compliance will ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–14–22—Pilatus Aircraft Ltd.: Amendment 39–12822; Docket No. 2001–CE–44–AD.

(a) What airplanes are affected by this AD? This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1: Pilatus may have installed the affected bolts on the following airplanes at manufacture. All portions of this AD apply to these airplanes:

Model	Serial Nos.
PC–12 and PC–12/45.	349, 352, 357, 359, 362 through 365, 367, 369, 371, 375, 377, 380, 384, 385, 388, 390, 391, 393, 401, and 409.

(2) Group 2: The affected bolts could be installed through spare replacement on any of the following model airplanes. Paragraphs (d)(3) and (d)(4) of this AD apply to these airplanes:

Model	Serial Nos.
PC–12 and PC–12/45	All serial numbers

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace defective main landing gear (MLG) assembly bolts that have an improper cadmium plating, which could cause hydrogen embrittlement and bolt failure.

(d) *What actions must I accomplish to address this problem?* To address this problem, accomplish all actions for Group 1 airplanes, and accomplish paragraphs (d)(3) and (d)(4) of this AD for Group 2 airplanes:

Actions	Compliance	Procedures
(1) Inspect the left and right main landing gear (MLG) assembly for the existence of a bold, part number (P/N) 532.10.12.077, that has a serial number (S/N) with both the letters "AT" and a number of 299 or lower. (i) If the above referenced bolts are not installed, no further action is required. (ii) If the above referenced bolts are installed, replace each bolt with an FAA-approved bolt that does not have a S/N with both the letters "AT" and a number of 299 or lower.	Inspect within the next 30 days after August 29, 2002 (the effective date of this AD). Prior to further flight, replace bolts found during the inspection required in paragraph (d)(1) of this AD.	Pilatus PC–12 Service bulletin No. 32–012, dated October 18, 2001, provides information about these actions.
(2) Send the removed bolts to Pilatus Aircraft Ltd. so the bolts cannot be reused and report the results of the inspection (positive or negative) to FAA. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after removing the bolts or within 10 days after August 29, 2002 (the effective date of this AD), whichever occurs later.	Send the removed bolts to Pilatus Aircraft Ltd. at the address in paragraph (h) of this AD, and send the report to Doug Rudolph, FAA, at the address in paragraph (f) of this AD.
(3) Do not install any bolt, P/N 532.10.12.077, on any MLG assembly that has a S/N with bolt the letters "AT" and a number of 299 or lower.	As of August 29, 2002 (the effective date of this AD).	Not Applicable.

Actions	Compliance	Procedures
(4) If you have already accomplished the actions specified in Pilatus PC–12 Service Bulletin No. 32–012, dated October 18, 2001, send a report to the FAA at the address in paragraph (f) of this AD, stating if one of the affected bolts was replaced and returned to Pilatus.	Within the next 30 days after August 29, 2002 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *Where can I get the service information referenced in this AD?* You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) *When does this amendment become effective?* This amendment becomes effective on August 29, 2002.

Issued in Fort Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17735 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to

routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Actions	Compliance	Procedures
(4) If you have already accomplished the actions specified in Pilatus PC–12 Service Bulletin No. 32–012, dated October 18, 2001, send a report to the FAA at the address in paragraph (f) of this AD, stating if one of the affected bolts was replaced and returned to Pilatus.	Within the next 30 days after August 29, 2002 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC–12 Service Bulletin No. 32–012, dated October 18, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on August 29, 2002.

Issued in Kansas City, Missouri, on July 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17602 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Airspace Docket No. 2001–ASW–18]

Establishment of Class D Airspace; Stillwater Municipal Airport, Stillwater, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This document establishes Class D Airspace at Stillwater Municipal Airport, Stillwater, OK. Establishing an Air Traffic Control Tower at Stillwater Municipal Airport, Stillwater, OK, has made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Stillwater Municipal Airport, Stillwater, OK.

EFFECTIVE DATE: Effective 0901 UTC, October 3, 2002. Comments must be received on or before August 30, 2002.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2001–ASW–18, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, Telephone 817–222–5597.

SUPPLEMENTARY INFORMATION: This document establishes Class D Airspace at Stillwater Municipal Airport, Stillwater, OK. Establishing an Air Traffic Control Tower at Stillwater Municipal Airport, Stillwater, OK, has made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft operating in the vicinity of Stillwater Municipal Airport, Stillwater, OK.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9J dated August 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period..

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA–public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–ASW–18." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW OK D Stillwater Municipal Airport, Stillwater, OK [New]

Stillwater Municipal Airport, OK
(Lat. 36°09'37" N., long. 97°05'09" W.)

That airspace extending upward from the surface to but not including 3,500 feet MSL within a 4-mile radius of Stillwater Municipal Airport. This Class D airspace area is effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in Fort Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17735 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2002–ASW–1]

Establishment of Class E Airspace; Scott Field Airport, Mangum, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This document establishes Class E airspace at Scott Field Airport, Mangum, OK. The development of an area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP), to Scott Field Airport, Mangum, OK, has made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft operating in the vicinity of Scott Field Airport, Mangum, OK.

DATES: Effective 0901 UTC, October 3, 2002. Comments must be received on or before August 30, 2002.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2002–ASW–1, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5597.

SUPPLEMENTARY INFORMATION: This document establishes Class E airspace at Scott Field Airport, Mangum, OK. The development of an area navigation (RNAV) global positioning system (GPS)

standard instrument approach procedure (SIAP), to Scott Field Airport, Mangum, OK, has made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9J, dated August 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR § 71.1.

determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

DATES: Effective 0901 UTC, October 3, 2002. Comments must be received on or before August 30, 2002.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2002–ASW–2, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of Regional Counsel, Southwest Region, Federal Aviation Administration, 2601

rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

standard instrument approach procedure (SIAP), to Scott Field Airport, Mangum, OK, has made this rule necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9J, dated August 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR § 71.1.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–ASW–1." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Scott Field Airport, Mangum, OK [New]

Scott Field Airport, OK
(Lat. 34°53'33"N., long. 99°31'42"W.)

That airspace extending upward from 700 feet above the surface within an 8.9-mile radius of Scott Field Airport.

* * * * *

Issued in Fort Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17736 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2002–ASW–2]

Revision of Class E Airspace; Springhill, LA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revised the Class E airspace at Springhill, LA. The development of a Nondirectional Radio Beam (NDB) Standard Instrument Approach Procedure (SIAP), at Springhill Airport, Springhill, LA, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Springhill Airport, Springhill, LA.

DATES: Effective 0901 UTC, October 3, 2002. Comments must be received on or before August 30, 2002.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2002–ASW–2, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–5597.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Springhill, LA. The development of a NDB SIAP, at Springhill Airport, Springhill, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Springhill Airport, Springhill, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9J, dated August 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–ASW–2." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant economic impact; positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103; 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 1, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Springhill, LA [Revised]

Springhill Airport, LA
(Lat. 32°58'59" N., long. 93°24'39" W.)
Springhill NDB
(Lat. 32°55'13" N., long. 93°24'34" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile

radius of Springhill Airport and within 3.2 miles each side of the 180° bearing of the Springhill NDB extending from the 6.4-mile radius to 10.9 miles South of the airport.

* * * * *

Issued in Forth Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17737 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN122–3; FRL–7235–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Indiana's opacity rule. IDEM submitted the revised opacity regulation to the EPA on October 21, 1999, as a requested revision to its SIP. The revisions address applicable requirements concerning the start-up and shutdown of utility boilers, the terminology used in discussing averaging periods, time periods for temporary exemptions, alternative

19 CFR Part 163

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), are amended as set forth below.

PART 132—QUOTAS

which required that lamb meat subject to the TRQ be covered under certain circumstances by an export certificate in order to obtain the in-quota rate of duty. Also, an appropriate reference to the export-certificate requirement of § 132.16 was included in the appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), which lists those records that are required for the entry of imported merchandise. (*See*

VII. Administrative Requirements.

I. What Is EPA Approving?

EPA is approving revisions to Indiana's opacity rule. IDEM submitted the revised opacity regulation to the EPA on October 21, 1999, as a requested revision to its SIP. The revisions address applicable requirements concerning the start-up and shutdown of utility boilers, the terminology used in discussing averaging periods, time periods for temporary exemptions, alternative

gas stream comes in contact with the atmosphere, however, chemical reactions and cooling occur, causing visible emissions which can be seen by an observer.

C. Clarification of Averaging Periods

The current version of this rule, 326 IAC 5–1–2, states that the limits are not to be exceeded "in 24 consecutive readings" with readings taken every 15 seconds. The revised rule states that the limits are not to be exceeded in "any

radius of Springhill Airport and within 3.2 miles each side of the 180° bearing of the Springhill NDB extending from the 6.4-mile radius to 10.9 miles South of the airport.

* * * * *

Issued in Forth Worth, TX, on July 5, 2002.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 02–17737 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 02–36]

RIN 1515–AD09

Elimination of the Tariff-Rate Quotas on Imported Lamb Meat

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The tariff-rate quota imposed on imported lamb meat products has been eliminated by Presidential Proclamation 7502 of November 14, 2001. Accordingly, this document amends the Customs Regulations by removing the regulation requiring that lamb meat subject to the tariff-rate quota be covered by an export certificate in order to obtain the in-quota rate of duty.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Fitzpatrick, Office of Field Operations, 202–927–5385.

SUPPLEMENTARY INFORMATION:

Background

Presidential Proclamation 7208 of July 7, 1999, as modified by Presidential Proclamation 7214 of July 30, 1999, imposed a temporary tariff-rate quota (TRQ) effective July 22, 1999, on lamb meat imports provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20, Harmonized Tariff Schedule of the United States (HTSUS), in order to facilitate the domestic industry's adjustment to import competition. Under Presidential Proclamation 7214, the United States Trade Representative (USTR) was authorized to administer the TRQ on the lamb meat.

Pursuant to Presidential Proclamations 7208 and 7214 and the implementing regulations of the USTR (15 CFR part 2014), the United States Customs Service issued § 132.16 of the Customs Regulations (19 CFR 132.16) which required that lamb meat subject to the TRQ be covered under certain circumstances by an export certificate in order to obtain the in-quota rate of duty. Also, an appropriate reference to the export-certificate requirement of § 132.16 was included in the appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), which lists those records that are required for the entry of imported merchandise. (*See* Customs interim and final rules in this matter published in the **Federal Register** on December 2, 1999, and December 13, 2000, respectively (64 FR 67482 and 65 FR 77816).)

The TRQ imposed on the lamb meat has now been eliminated by Presidential Proclamation 7502 of November 14, 2001. With the elimination of this TRQ, there is therefore no longer any need for the regulation requiring that an export certificate cover the lamb meat in order to entitle the lamb meat to the in-quota rate of duty under the TRQ. Accordingly, § 132.16 is being removed from the Customs Regulations as well as the reference to § 132.16 in the Appendix to Part 163.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these amendments merely reflect Presidential Proclamation 7502 of November 14, 2001, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. These amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), are amended as set forth below.

PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows and the relevant specific authority citation for § 132.16 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1623,1624. §§ 132.15, 132.17, and 132.18 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; additional U.S. Note 8 to Chapter 17, HTSUS; and subchapter II of Chapter 99, HTSUS, respectively), 1484, 1508.

2. Part 132 is amended by removing and reserving § 132.16.

PART 163—RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. In the Appendix to part 163, under heading IV, the list of documents/records or information required for entry of special categories of merchandise is amended by removing the listing "§§ 132.15 through 132.17 Export certificates, respectively, for beef, lamb meat, or sugar-containing products subject to tariff-rate quota." and by adding the following listing in its place:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§§ 132.15, 132.17 Export certificates, respectively, for beef or sugar-containing products subject to tariff-rate quota.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: July 10, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–17780 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN122–3; FRL–7235–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Indiana Department of Environmental Management (IDEM) submitted a revised opacity rule to the EPA on October 21, 1999, as a requested revision to its State Implementation Plan (SIP). The revisions amend portions of Indiana's opacity rule concerning the start-up and shutdown of utility boilers, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible emission readings and continuous opacity monitor (COM) data. The proposed rule and direct final rule were published in the November 30, 2001 **Federal Register**. After EPA received adverse comments, a direct final rule withdrawal was published on January 28, 2002. In this action, the EPA responds to the adverse comments and takes final action approving Indiana's SIP revision request.

DATES: This rule is effective on August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

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VII. Administrative Requirements.

I. What Is EPA Approving?

EPA is approving revisions to Indiana's opacity rule. IDEM submitted the revised opacity regulation to the EPA on October 21, 1999, as a requested revision to its SIP. The revisions address applicable requirements concerning the start-up and shutdown of utility boilers, the terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits (AOLs), and conflicts between visible emission readings and COM data. The boiler start-up and shutdown revisions satisfy the Clean Air Act requirements and the EPA policy on such provisions. Other rule revisions aid the enforcement of the opacity rules.

II. What Are the Changes From the Current Rules?

The State's submission revises several sections of Indiana's opacity rule, 326 IAC Article 5. The revisions involve limited exemptions from opacity limits during start-up and shutdown of utility boilers equipped with electrostatic precipitators (ESPs), conflicts between COM data and visible emission readings, clarification of averaging periods, temporary AOLs for non-boiler sources, and exemptions for sources with consolidated Title V permit limits.

A. Provisions for Utility Boilers

The major new component of these revisions allows certain utility boilers to obtain limited exemptions from opacity limits during start-up and shutdown periods in their federally enforceable operating permits. The exemption cannot be longer and will generally be shorter than an upper bound duration established in the rule, 326 IAC 5–1–3(e). This provision is for power plants using coal-fired boilers and ESPs.

B. Conflicts Between COM Data and Visual Opacity Readings

The current SIP version states that if there is a conflict between opacity readings recorded by a COM and those taken by a human observer, the COM data will prevail. EPA requested this rule be revised to make enforcement easier. Indiana revised the rule, 326 IAC 5–1–4(b), to state that data from either a COM or a human observer may be used to show a violation of opacity limits. The basis for this change is that there are certain instances in which opacity readings from an observer may be more accurate than those from a COM. For example, sulfur in a high-temperature gas stream exists in a gaseous state inside a smokestack and would not register on a COM. Once the gas stream comes in contact with the atmosphere, however, chemical reactions and cooling occur, causing visible emissions which can be seen by an observer.

C. Clarification of Averaging Periods

The current version of this rule, 326 IAC 5–1–2, states that the limits are not to be exceeded "in 24 consecutive readings" with readings taken every 15 seconds. The revised rule states that the limits are not to be exceeded in "any one 6-minute averaging period." The limits themselves are unchanged. Indiana made a similar clarification of time averaging periods for temporary AOLs. Under 326 IAC 5–1–3(a) and (b), Indiana may provide temporary AOLs to certain sources for start-up, shutdown, and ash removal. Both of these revisions improve the ability to enforce the rule by making it clearer and more consistent with the opacity test method. The test method (40 CFR part 60, appendix A, Method 9) calls for opacity readings to be taken by an observer every 15 seconds, and for these readings to be averaged on a 6-minute basis.

D. Temporary Alternate Opacity Limitations for Non-Boiler Sources

New provisions in 326 IAC 5–1–3(c) authorize Indiana to grant temporary AOLs to non-boiler sources. These sources now may apply for a short-term opacity AOL for start-up, shutdown, and ash removal situations. IDEM will submit any temporary AOLs to the EPA as site-specific SIP revisions. EPA will review them for compliance with Clean Air Act requirements and EPA policy. This rule revision does not directly affect any SIP emissions limits.

E. Opacity Limit Exemptions for Title V Sources

Indiana's rule had provided an exemption from opacity limits for any source with a specific opacity limit in a Title V permit. The rule, 326 IAC 5–1–1, allowed sources to consolidate multiple limits into a single limit in the Title V permit. This is known as "streamlining." The EPA had informed Indiana that the exemption was inappropriate because it had impermissibly suggested that Title V permits could create SIP exemptions. As a result, Indiana removed the exemption from 326 IAC 5–1–1.

III. What Is EPA's Analysis of the Supporting Materials?

The EPA used its September 20, 1999, memorandum entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown" to evaluate the

exemptions provisions in 326 IAC 5–1–3(e). To be approved, the provisions must meet the seven requirements in this memorandum. The requirements are:

1. The revision must be limited to specific, narrowly-defined source categories using specific control strategies;

2. Use of the control strategy for this source category must be technically infeasible during start-up or shutdown

period. Previously, the limit applied for "twelve (12) continuous minutes." Section (b) similarly changes a "six (6) continuous minutes" to "one (1) six (6) minute" averaging period. The 326 IAC 5–1–3 (a) and (b) revisions also aid rule enforcement.

Indiana also revised 326 IAC 5–1–3 (c) to include non-boiler sources located outside of Lake County with similar AOLs to those of 326 IAC 5–1–3 (a) and (b). Language in 326 IAC 5–1–1 allowing

attainment area) would provide a similar degree of conservatism.

Indiana used five years of meteorological data to model estimated concentrations of particles of nominal aerodynamic diameter of 10 μm or less (PM–10). The Edwardsport modeling results show an ambient PM–10 concentration (including background) of 98.6 $\mu g/m^3$, well below the 24-hour average PM–10 standard of 150 $\mu g/m^3$. Thus, IDEM has demonstrated that the start-up and shutdown exemption in

fact Indiana has demonstrated to EPA that at least some of these sources cannot meet these limits during start-up and shutdown. The infeasibility of meeting the limits led Indiana to pursue an exemption from its normal opacity limits during these periods in accordance with EPA policy. First, the 30 percent opacity limit applies to areas that were previously designated non-attainment for total suspended particulate matter. Only Lake County is

and procedures under which Indiana would accept such revisions. If such a revision is approved by Indiana, the State must submit it to the EPA as a site-specific SIP revision. The EPA will review any such submittals on their own merits under Clean Air Act requirements and take appropriate action.

Alternative opacity limits under Section 326 IAC 5–1–3(d) do not become effective unless and until the EPA approves them as SIP revisions

that it understands that EPA approval of 326 IAC 5–1–3(e) will not make the pre-existing opacity exemptions in the State permits federally enforceable.

Comment 4: Indiana's proposed SIP revision does not comply with the requirements of EPA's September 20, 1999 policy. EPA's policy states that start-ups and shutdowns are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control

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exemptions provisions in 326 IAC 5–1–3(e). To be approved, the provisions must meet the seven requirements in this memorandum. The requirements are:

1. The revision must be limited to specific, narrowly-defined source categories using specific control strategies;

2. Use of the control strategy for this source category must be technically infeasible during start-up or shutdown periods;

3. The frequency and duration of operation in startup or shutdown mode must be minimized;

4. As part of its justification of the SIP revision, the state should analyze the potential worst-case emissions that could occur during start-up and shutdown;

5. All possible steps must be taken to minimize the impact of emissions during start-up and shutdown on ambient air quality;

6. At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions; and

7. The owner or operator's actions during start-up and shutdown periods must be documented by properly signed, concurrent operating logs, or other relevant evidence.

Indiana has met all seven requirements. Language in Indiana's rules meets requirements three, five, six, and seven. An October 10, 2001, letter from IDEM states that the AOL will only be given to 22 power plants using coal-fired boilers with ESPs. This satisfies the first requirement. IDEM supplied technical documentation on the infeasibility of ESPs during start-up and shutdown to meet requirement two. Indiana provided modeling analysis of the potential worst case emissions to meet the fourth requirement, as discussed in section IV below.

In addition to the supporting material for the exemptions in 326 IAC 5–1–3(e), Indiana provided support for its other opacity revisions. Revised language in 326 IAC 5–1–2 clarifies the averaging period for opacity level readings. The averaging period is now "any one (1) six (6) minute averaging period." The former limit of "twenty-four (24) consecutive readings" (readings are taken every 15 seconds) was revised to aid enforcement of the opacity rules. Indiana also submitted revisions to 326 IAC 5–1–3 (a), and (b) which provide sources short-term temporary AOLs for start-up, shutdown, and ash blowing. An alternative 60 percent opacity limit section (a) will now apply for up to "two (2) six (6) minute averaging periods" in any twenty-four hour period. Previously, the limit applied for "twelve (12) continuous minutes." Section (b) similarly changes a "six (6) continuous minutes" to "one (1) six (6) minute" averaging period. The 326 IAC 5–1–3 (a) and (b) revisions also aid rule enforcement.

Indiana also revised 326 IAC 5–1–3 (c) to include non-boiler sources located outside of Lake County with similar AOLs to those of 326 IAC 5–1–3 (a) and (b). Language in 326 IAC 5–1–1 allowing an opacity limits exemption for any source with a specific opacity limit in a Title V permit was removed. This exemption was removed because it had impermissibly suggested that Title V permits could create SIP exemptions.

Indiana held two public hearings on the opacity rule revisions, giving interested parties an opportunity to comment. It held the first public hearing on December 3, 1997 and the second on June 3, 1998. Transcripts of the public hearing are included in the submittal. Representatives from electric utilities, a university, and a cement company made comments at the hearings. These comments were generally supportive of the rule revisions except for two commenters who expressed concern about 326 IAC 5–1–4(b). This section addresses conflicts between visual opacity readings and those taken with a COM. Indiana further revised this section in response to the comments. Section 5–1–4(b) now states that either visual or COM readings may be used to support an enforcement action. The source may also use COM readings and other relevant information to refute the State's findings.

IV. What Are the Environmental Effects of These Alternate Limits in 326 IAC 5–1–3?

Indiana submitted a modeling analysis aimed at assessing the worst-case impact of the limited exemption from opacity limits in 326 IAC 5–1–3(e). This modeling analysis addresses the fourth requirement of EPA's September 20, 1999 policy. Of the 22 eligible facilities, IDEM modeled PSI Energy's power plant in Edwardsport because it has the shortest stacks (183 feet) and the most significant impact from building downwash. A conservative emissions rate was calculated by estimating uncontrolled emissions under full-load operating conditions for a conservative eight-hour start-up period. IDEM developed a conservative estimate of background concentrations in the area of the Edwardsport plant. It showed that application of this background value to the other relevant power plants (none of which are in the Lake County non-attainment area) would provide a similar degree of conservatism.

Indiana used five years of meteorological data to model estimated concentrations of particles of nominal aerodynamic diameter of 10 μm or less (PM–10). The Edwardsport modeling results show an ambient PM–10 concentration (including background) of 98.6 $\mu g/m^3$, well below the 24-hour average PM–10 standard of 150 $\mu g/m^3$. Thus, IDEM has demonstrated that the start-up and shutdown exemption in 326 IAC 5–1–3 is not expected to cause a violation of the PM–10 air quality standards.

The EPA further examined whether air quality problems could arise from multiple sources operating in start-up or shutdown mode simultaneously. With one exception, the relevant power plants are isolated from each other. The one exception is for two facilities in Warrick County. Because the two facilities are about 3 kilometers apart, and because these facilities have significantly higher stacks than the Edwardsport facility, EPA is satisfied that simultaneous operation in start-up or shutdown mode at these two facilities will not cause air quality problems. In addition, because operation in start-up or shutdown mode (particularly eight hours of such operation) is infrequent, simultaneous operation in these modes at more than one source is unlikely. Consequently, EPA believes that granting the exemption requested by Indiana will not jeopardize continued attainment of the air quality standards.

V. What Are EPA's Responses to the Comments on This SIP Revision?

The Indiana Electric Utility Air Work Group submitted a comment supporting the (visual versus monitor) opacity readings revision. EPA acknowledges this comment. EPA has also received ten comments on the proposed rulemaking for Indiana's opacity rule from a Wyoming citizen. The following summarizes the comments and gives the EPA's response:

Comment 1: EPA should not approve an exemption from Indiana's opacity limits because the limits are already quite lax. Sources located in non-attainment areas are subject to a 30 percent opacity limit (except for facilities located in Lake County which are subject to a 20 percent opacity limit), with an exemption allowed for a cumulative total of up to fifteen minutes in a 6-hour period during which opacity cannot exceed 60 percent, and sources elsewhere are subject to a 40 percent opacity limit.

Response 1: Although the commenter considers Indiana's opacity limits lax, in fact Indiana has demonstrated to EPA that at least some of these sources cannot meet these limits during start-up and shutdown. The infeasibility of meeting the limits led Indiana to pursue an exemption from its normal opacity limits during these periods in accordance with EPA policy. First, the 30 percent opacity limit applies to areas that were previously designated non-attainment for total suspended particulate matter. Only Lake County is designated non-attainment for the current, PM–10 based, particulate matter standard.

More importantly, the interpretation of the 60 percent opacity rules as an "exemption" is incorrect. This comment refers to limits in 326 IAC 5–1–2(1)(B) and 326 IAC 5–1–2(2)(C) which state that opacity shall not exceed 60 percent for a cumulative total of 15 minutes in a 6-hour period. These 60 percent limits are in addition to the general 6-minute average opacity limits in 326 IAC 5–1–2 (40 percent, 30 percent, or 20 percent, depending on the location of the source), and are meant to prevent repeated, short-duration high-opacity emissions which may not last long enough to cause a violation of a 6-minute average opacity limit. There is no language in 326 IAC 5–1–2(1)(B) or (2)(C) which exempts sources from other applicable opacity limits. Therefore, it would be a violation of the rule if opacity were to exceed *either* the appropriate 6-minute average opacity limit or the 60 percent 15-minute cumulative limit.

Comment 2: While 326 IAC 5–1–3(d) does require the submittal of a source-specific SIP revision to the EPA for these alternative opacity exemptions, EPA's approval of the procedures for alternative opacity limits in 326 IAC 5–1–3(d) could be construed as a guaranteed approval of the SIP revision as long as the source and the State comply with the requirements of this State rule in crafting alternative opacity limits, especially considering that Indiana's rule does not require the source-specific SIP revision to be approved by EPA before the source can be exempt from SIP opacity requirements. Thus, this provision must not be approved as part of the SIP. Instead, the EPA should simply review and approve or disapprove, as appropriate, each source-specific SIP revision as submitted.

Response 2: We disagree with this interpretation of the State rule. EPA approval of 326 IAC 5–1–3(d) does not guarantee EPA approval of future SIP revisions requesting alternative opacity limits under this subsection. 326 IAC 5–1–3(d) merely lays out the conditions and procedures under which Indiana would accept such revisions. If such a revision is approved by Indiana, the State must submit it to the EPA as a site-specific SIP revision. The EPA will review any such submittals on their own merits under Clean Air Act requirements and take appropriate action.

Alternative opacity limits under Section 326 IAC 5–1–3(d) do not become effective unless and until the EPA approves them as SIP revisions. 326 IAC 5–1–7 states that: "Exemptions given or provisions granted by the commissioner in accordance with section * * * 3(d) * * * of this rule shall be submitted to the U.S. EPA as a SIP revision and shall not become effective until approved as a SIP revision by the U.S. EPA."

Comment 3: EPA's proposed approval of these revisions is in violation of the requirements of the Clean Air Act and EPA's September 20, 1999 policy. First, it is apparent from the language of 326 IAC 5–1–3(e) that Indiana has been allowing, without EPA approval, exemptions from the SIP's opacity requirements in operating permits (state operating permits as well as Part 70 operating permits). Such exemptions are illegal, as operating permits cannot allow a source to violate the SIP and such permits cannot be used to revise a SIP unilaterally. The commenter urges EPA to investigate Indiana's implementation of its permitting program to determine if the state is allowing illegal revisions to other requirements of the SIP as well as the SIP opacity limits through the issuance of operating permits. In addition, EPA's approval of the provision without discussion of the underlying change in specific SIP requirements is clearly improper.

Response 3: The 22 facilities eligible for start-up/shutdown opacity limit exemptions under 326 IAC 5–1–3(e) currently have opacity limit exemptions in their State operating permits. However, since these State operating permits are not federally enforceable, they do not create SIP exemptions. Indiana cannot issue any Title V permits to these 22 facilities which contain start-up/shutdown exemptions until 326 IAC 5–1–3(e) is incorporated into the SIP by federal rulemaking action.

If EPA approves this provision, the State is bound by the provisions in 326 IAC 5–1–3(e) to establish limits which, among other things, "limit the duration and extent of excess emissions to the greatest degree practicable," and "minimize the duration and extent of excess emissions." Indiana has further indicated, in an October 10, 2001 letter, that it understands that EPA approval of 326 IAC 5–1–3(e) will not make the pre-existing opacity exemptions in the State permits federally enforceable.

Comment 4: Indiana's proposed SIP revision does not comply with the requirements of EPA's September 20, 1999 policy. EPA's policy states that start-ups and shutdowns are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment. Thus, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emissions limitations during such periods.

Response 4: The policy continues: "For some source categories, given the types of control technologies available, there may exist short periods of emissions during start-up and shutdown when, despite the best efforts regarding planning, design, and operating procedures, the otherwise applicable emissions limitation cannot be met." The policy also states, "it may be appropriate, in consultation with EPA, to create narrowly-tailored SIP revisions that take these technological limitations into account and state that the otherwise applicable emissions limitations do not apply during narrowly defined start-up and shutdown periods."

The start-up/shutdown exemptions in 326 IAC 5–1–3(e) only apply to coal-fired utility boilers equipped with electrostatic precipitators (ESPs). The rule also permits similar exemptions for boilers equipped with baghouses at sources with a preexisting permit with such an exemption. However, no boilers equipped with baghouses have such a permit, so no boilers with baghouses are eligible for the exemption. This is a specific source category with a certain type of control device that Indiana has determined is technically infeasible to operate in low temperature exhaust streams. Thus, approval of this SIP revision is appropriate under EPA policy.

Comment 5: EPA's policy does allow for narrowly-tailored exemptions from SIP limits for some source categories, "given the types of control technologies available," that cannot meet SIP limits despite best efforts regarding planning, design, and operating procedures. Regarding this SIP revision, Indiana has claimed those coal-fired utility boilers equipped with ESPs cannot meet the existing state opacity limits, which already are quite lenient and already allow greater levels of opacity during periods of start-up and shutdown. Although EPA has stated in its SIP approval that these exemptions only

apply to coal-fired boilers using ESPs, the State rule does not limit the exemption to coal-fired boilers, and it does not limit the exemption to facilities using only ESPs for control. In fact, the exemptions are even allowed for facilities equipped with baghouses and such facilities should have no problems meeting Indiana's lax opacity limits, unless such facilities are bypassing the control equipment or not maintaining and operating the source in accordance with good air pollution control practice for minimizing emissions. Finally, the EPA has no authority to approve or disapprove SIP revisions that are not submitted to the EPA.

Response 5: The EPA's policy does allow for narrowly-tailored exemptions from SIP limits for some source categories, "given the types of control technologies available," that cannot meet SIP limits despite best efforts regarding planning, design, and operating procedures. Regarding this SIP revision, Indiana has claimed those coal-fired utility boilers equipped with ESPs cannot meet the existing state opacity limits, which already are quite lenient and already allow greater levels of opacity during periods of start-up and shutdown. Although EPA has stated in its SIP approval that these exemptions only apply to coal-fired boilers using ESPs, the State rule does not limit the exemption to coal-fired boilers, and it does not limit the exemption to facilities using only ESPs for control. In fact, the exemptions are even allowed for facilities equipped with baghouses and such facilities should have no problems meeting Indiana's lax opacity limits, unless such facilities are bypassing the control equipment or not maintaining and operating the source in accordance with good air pollution control practice for minimizing emissions. Finally, the EPA has no authority to approve or disapprove SIP revisions that are not submitted to the EPA.

Comment 6: The State must be required to show that its minimum criteria for exemptions in 326 IAC 5–1–3(e)(2) will minimize the frequency and duration of excess emissions during start-up and shutdown. Previously, the limit applied for "twelve (12) continuous minutes." Section (b) similarly changes a "six (6) continuous minutes" to "one (1) six (6) minute" averaging period. The 326 IAC 5–1–3 (a) and (b) revisions also aid rule enforcement.

Response 6: The EPA's policy does require that the State must minimize the frequency and duration of excess emissions during start-up and shutdown. The EPA's policy also requires that the State must minimize the impact of emissions during start-up and shutdown on ambient air quality. Indiana has met these requirements. Language in Indiana's rules meets requirements three, five, six, and seven. An October 10, 2001, letter from IDEM states that the AOL will only be given to 22 power plants using coal-fired boilers with ESPs. This satisfies the first requirement. IDEM supplied technical documentation on the infeasibility of ESPs during start-up and shutdown to meet requirement two. Indiana provided modeling analysis of the potential worst case emissions to meet the fourth requirement, as discussed in section IV above.

In addition to the supporting material for the exemptions in 326 IAC 5–1–3(e), Indiana provided support for its other opacity revisions. Revised language in 326 IAC 5–1–2 clarifies the averaging period for opacity level readings. The averaging period is now "any one (1) six (6) minute averaging period." The former limit of "twenty-four (24) consecutive readings" (readings are taken every 15 seconds) was revised to aid enforcement of the opacity rules. Indiana also submitted revisions to 326 IAC 5–1–3 (a), and (b) which provide sources short-term temporary AOLs for start-up, shutdown, and ash blowing. An alternative 60 percent opacity limit section (a) will now apply for up to "two (2) six (6) minute averaging periods" in any twenty-four hour period. Previously, the limit applied for "twelve (12) continuous minutes." Section (b) similarly changes a "six (6) continuous minutes" to "one (1) six (6) minute" averaging period. The 326 IAC 5–1–3 (a) and (b) revisions also aid rule enforcement.

Indiana also revised 326 IAC 5–1–3 (c) to include non-boiler sources located outside of Lake County with similar AOLs to those of 326 IAC 5–1–3 (a) and (b). Language in 326 IAC 5–1–1 allowing an opacity limits exemption for any source with a specific opacity limit in a Title V permit was removed. This exemption was removed because it had impermissibly suggested that Title V permits could create SIP exemptions.

Indiana held two public hearings on the opacity rule revisions, giving interested parties an opportunity to comment. It held the first public hearing on December 3, 1997 and the second on June 3, 1998. Transcripts of the public hearing are included in the submittal. Representatives from electric utilities, a university, and a cement company made comments at the hearings. These comments were generally supportive of the rule revisions except for two commenters who expressed concern about 326 IAC 5–1–4(b). This section addresses conflicts between visual opacity readings and those taken with a COM. Indiana further revised this section in response to the comments. Section 5–1–4(b) now states that either visual or COM readings may be used to support an enforcement action. The source may also use COM readings and other relevant information to refute the State's findings.

IV. What Are the Environmental Effects of These Alternate Limits in 326 IAC 5–1–3?

Indiana submitted a modeling analysis aimed at assessing the worst-case impact of the limited exemption from opacity limits in 326 IAC 5–1–3(e). This modeling analysis addresses the fourth requirement of EPA's September 20, 1999 policy. Of the 22 eligible facilities, IDEM modeled PSI Energy's power plant in Edwardsport because it has the shortest stacks (183 feet) and the most significant impact from building downwash. A conservative emissions rate was calculated by estimating uncontrolled emissions under full-load operating conditions for a conservative eight-hour start-up period. IDEM developed a conservative estimate of background concentrations in the area of the Edwardsport plant. It showed that application of this background value to the other relevant power plants (none of which are in the Lake County non-attainment area) would provide a similar degree of conservatism.

Indiana used five years of meteorological data to model estimated concentrations of particles of nominal aerodynamic diameter of 10 μm or less (PM–10). The Edwardsport modeling results show an ambient PM–10 concentration (including background) of 98.6 $\mu g/m^3$, well below the 24-hour average PM–10 standard of 150 $\mu g/m^3$. Thus, IDEM has demonstrated that the start-up and shutdown exemption in 326 IAC 5–1–3 is not expected to cause a violation of the PM–10 air quality standards.

The EPA further examined whether air quality problems could arise from multiple sources operating in start-up or shutdown mode simultaneously. With one exception, the relevant power plants are isolated from each other. The one exception is for two facilities in Warrick County. Because the two facilities are about 3 kilometers apart, and because these facilities have significantly higher stacks than the Edwardsport facility, EPA is satisfied that simultaneous operation in start-up or shutdown mode at these two facilities will not cause air quality problems. In addition, because operation in start-up or shutdown mode (particularly eight hours of such operation) is infrequent, simultaneous operation in these modes at more than one source is unlikely. Consequently, EPA believes that granting the exemption requested by Indiana will not jeopardize continued attainment of the air quality standards.

V. What Are EPA's Responses to the Comments on This SIP Revision?

The Indiana Electric Utility Air Work Group submitted a comment supporting the (visual versus monitor) opacity readings revision. EPA acknowledges this comment. EPA has also received ten comments on the proposed rulemaking for Indiana's opacity rule from a Wyoming citizen. The following summarizes the comments and gives the EPA's response:

Comment 7: The State must be required to show that its minimum criteria for exemptions in 326 IAC 5–1–3(e)(2) will minimize the frequency and duration of excess emissions during start-up and shutdown. Previously, the limit applied for "twelve (12) continuous minutes." Section (b) similarly changes a "six (6) continuous minutes" to "one (1) six (6) minute" averaging period. The 326 IAC 5–1–3 (a) and (b) revisions also aid rule enforcement.

Response 7: The EPA's policy does require that the State must minimize the frequency and duration of excess emissions during start-up and shutdown. The EPA's policy also requires that the State must minimize the impact of emissions during start-up and shutdown on ambient air quality. Indiana has met these requirements. Language in Indiana's rules meets requirements three, five, six, and seven. An October 10, 2001, letter from IDEM states that the AOL will only be given to 22 power plants using coal-fired boilers with ESPs. This satisfies the first requirement. IDEM supplied technical documentation on the infeasibility of ESPs during start-up and shutdown to meet requirement two. Indiana provided modeling analysis of the potential worst case emissions to meet the fourth requirement, as discussed in section IV above.

In addition to the supporting material for the exemptions in 326 IAC 5–1–3(e), Indiana provided support for its other opacity revisions. Revised language in 326 IAC 5–1–2 clarifies the averaging period for opacity level readings. The averaging period is now "any one (1) six (6) minute averaging period." The former limit of "twenty-four (24) consecutive readings" (readings are taken every 15 seconds) was revised to aid enforcement of the opacity rules. Indiana also submitted revisions to 326 IAC 5–1–3 (a), and (b) which provide sources short-term temporary AOLs for start-up, shutdown, and ash blowing. An alternative 60 percent opacity limit section (a) will now apply for up to "two (2) six (6) minute averaging periods" in any twenty-four hour

day concentration variations, but the question here is whether different locations in Indiana could be expected to have significantly different ensembles of meteorological conditions. EPA believes that the climatology is sufficiently similar across Indiana that an analysis for the one location analyzed by the State is sufficient. Distance from stack to plant fence line can be important for low-level releases, but the peak impacts from the sources examined are generally more than a

revision will not cause or contribute to a violation of the applicable PSD increments is required, "[i]f a State Implementation Plan revision would result in increased air quality deterioration over any baseline concentration." Increment violation can only occur if a source or sources increase actual emissions above baseline levels. EPA views the emissions associated with start-up and shutdown as emissions that were unavoidably

governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

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apply to coal-fired boilers using ESPs, the State rule does not limit the exemption to coal-fired boilers, and it does not limit the exemption to facilities using only ESPs for control. In fact, the exemptions are even allowed for facilities equipped with baghouses and such facilities should have no problems meeting Indiana's lax opacity limits, unless such facilities are bypassing the control equipment or not maintaining and operating the source in accordance with good air pollution practices for minimizing emissions. Thus, the State's rule is not limited to specific, narrowly-defined source categories.

Response 5: 326 IAC 5–1–3(e) states that if a source has different start-up and shutdown conditions from those in subsections (a) or (b) in a valid operating permit on the effective date of this rule (November 8, 1998), the source will be eligible for the 5–1–3(e) start-up/shutdown exemption. In an October 10, 2001, letter, Indiana states that the only facilities having such permits as of November 8, 1998, are a group of 22 power plants using coal-fired boilers equipped with ESPs. Other sources, such as facilities equipped with baghouses, are not eligible for this exemption under the explicit language in 5–1–3(e). The EPA has determined that coal-fired utility boilers equipped with an electrostatic precipitator meet the policy requirement for a narrowly-defined source category.

Comment 6: Indiana did not provide any justification to show that the applicable opacity limits cannot be met for sources other than coal-fired boilers equipped with ESPs, nor did Indiana provide adequate justification to show that the existing opacity requirements could not be met, given the types of control technologies available, at coal-fired boilers equipped with ESPs. Further, the State did not adequately show that the use of ESPs during start-up and shutdown was technically infeasible.

Response 6: The start-up/shutdown exemptions apply only to select facilities with coal-fired utility boilers controlled with ESPs, so there is no need to justify the technical infeasibility for other sources. Indiana's October 10, 2001, letter provides technical justification from Cinergy, Hoosier Energy, NIPSCO, and Indianapolis Power & Light. This technical justification is applicable for all 22 facilities seeking start-up/shutdown exemptions. Energizing an ESP before the flue gas temperature is above the sulfuric acid dew point can result in damage to the equipment. Condensation of sulfuric acid in the ESP may cause corrosion. It may also condense on the dust in the unit causing hard deposits which reduce the PM–10 collection efficiency of the ESP. During the ignition of a coal-fired boiler, there is a risk of a fire or an explosion if the ESP is energized. Normal sparking can ignite any combustible gases in the unit.

Comment 7: The State must be required to show that its minimum criteria for exemptions in 326 IAC 5–1–3(e)(2) will minimize the frequency and duration of excess emissions during start-up and shutdown to the maximum extent practicable. The State rule does not require the facility to, at all times, be operated in a manner consistent with good practice for minimizing emissions. The State rule also does not require the source to demonstrate that all possible steps were taken to minimize the impact of emissions during start-up and shutdown on air quality. In addition, the State rule does not require the owner or operator's action during start-up and shutdown to be properly documented.

Response 7: In fact, language in the State rule does satisfy the September 20, 1999 policy requirement. 326 IAC 5–1–3(e) states that each facility must submit "documentation including, but not limited to, historical opacity information during periods of start-up and shutdown and other pertinent information and proposed permit conditions that limit the duration and extent of excess emissions to the greatest practicable extent. The commissioner shall incorporate permit conditions that are necessary for safe and proper operation of equipment and minimize the duration and extent of excess emissions. Such conditions shall require the source to keep records of times of start-ups, shutdowns, and ash removals and may be more stringent than the operating permit conditions in effect as of the effective date of this rule." The rule was effective on November 8, 1998. In the October 10, 2001 letter, Indiana adds, "we anticipate tightening the allowable time periods and requirements for these limitations as we develop the Title V permits for these sources, based on historical information about emissions during these periods." This will further minimize the frequency and duration of excess emissions.

Comment 8: Start-up/shutdown conditions under 326 IAC 5–1–3(e) "* * * appear to be allowed for facilities located in non-attainment areas."

Response 8: This is not the case. The first sentence of 326 IAC 5–1–3(e) explicitly states that " . . . this section applies to sources existing on the effective date of this rule located in counties other than Lake County." As previously stated, the only PM–10 non-attainment area in Indiana is located in Lake County.

Comment 9: The State's modeling analysis does not adequately demonstrate that the SIP relaxation will not result in a violation of the National Ambient Air Quality Standards (NAAQS). The State claimed that this exemption would apply to 22 facilities, but modeled only one facility. The State's modeling analysis did not address whether the facility modeled had the highest emission rate. The analysis also assumed that the topography, meteorological conditions, distance from stack to fence line, background concentrations, and locations of other nearby sources were identical to the source modeled. The State should have modeled every source with an exemption from the SIP opacity limits with the specific conditions applicable to each facility to truly examine worst case ambient impacts. Thus, this analysis is fatally flawed and is not sufficient to demonstrate that the SIP revision won't allow for a violation of the NAAQS.

Response 9: Indiana used a worst-case approach to assess whether the exemptions its rules allow would cause violations of the NAAQS near any of the eligible facilities. Indiana sought to model a scenario that would show impacts equal to or greater than the impacts that would be expected at any of the 22 facilities eligible for these exemptions. This approach seeks to avoid unnecessary and overly burdensome analyses whose results (i.e., attainment) can be deduced from modeling a single worst-case scenario. The question, then, is whether Indiana has in fact modeled a worst-case scenario.

A critical element of the modeled scenario is stack height. Indiana modeled the facility with the shortest stack of the 22 eligible facilities. Indeed, the modeled stack is short enough to have plume downwash, which causes much greater impacts than would occur otherwise. EPA expects this factor to have more effect on plant impacts than the emission differences among these facilities, so that start-up and shutdown at the modeled facility should cause higher concentrations than they would at the other 21 eligible facilities.

The commenter identifies several other parameters that can affect plant impacts. However, none of these parameters is likely to affect plant impacts sufficiently to alter which plant has the worst-case impact. Meteorological variations from day to day obviously create substantial day to

day concentration variations, but the question here is whether different locations in Indiana could be expected to have significantly different ensembles of meteorological conditions. EPA believes that the climatology is sufficiently similar across Indiana that an analysis for the one location analyzed by the State is sufficient. Distance from stack to plant fence line can be important for low-level releases, but the peak impacts from the sources involved are generally more than a kilometer from the source, i.e., well beyond plant fence line. Therefore, differences in fence line distances will likely not affect peak concentrations. Terrain can significantly affect concentrations, particularly if the terrain rises above the top of the stack. However, the stacks of the sources involved are in most cases very tall. They are well above both plant grounds and the highest nearby hilltops. EPA believes that Indiana has modeled the plant with stacks that are not just the shortest but in fact the least elevation above nearby terrain.

The commenter further expresses concern about variations in background concentrations. EPA examined monitoring data throughout the State. Sources in Lake County are not eligible for the exemptions at issue, and so background concentrations there are not relevant. In the rest of the State, the measured background concentrations are comparable to the background concentrations that Indiana used. Whereas Lake County has a complicated mix of sources, making it difficult to assess background concentrations, the rest of the State has fewer sources, such that the "background" impact of other sources can be reasonably represented with available monitoring data. As a result, EPA concludes that the addition of the plant impacts modeled by Indiana to concentrations elsewhere in the State, other than Lake County, would not yield violations of the air quality standards. More generally, EPA concludes that Indiana has modeled a worst-case scenario. Indiana's modeling showed a 24-hour concentration for this scenario of 98.6 $\mu g/m^3$, well below the air quality standard of 150 $\mu g/m^3$. EPA therefore concludes that Indiana's modeling suffices to demonstrate that the exemptions which Indiana's rule authorizes would not allow violations of air quality standards.

Comment 10: The State has not demonstrated that the SIP relaxation will not adversely impact the Prevention of Significant Deterioration (PSD) increments.

Response 10: Under 40 CFR 51.166 (a)(2), a demonstration that a SIP revision will not cause or contribute to a violation of the applicable PSD increments is required, "[i]f a State Implementation Plan revision would result in increased air quality deterioration over any baseline concentration." Increment violation can only occur if a source or sources increase actual emissions above baseline levels. EPA views the emissions associated with start-up and shutdown as emissions that were unavoidably present during the baseline period. While SIP relaxations ordinary allow an increase in emissions, this SIP revision will not yield any increase in emissions above baseline levels and some sources will actually require a decrease in emissions. Consequently, this SIP revision will not consume any PSD increment and a PSD increment consumption analysis is not required.

VI. What Rulemaking Action Is the EPA Taking?

After considering the comments received, EPA continues to believe that Indiana's rule revisions are acceptable, as proposed in the November 30, 2001 proposed rule (66 FR 59757). Therefore, the EPA is approving revisions to Indiana's opacity rule. The revised regulation address provisions concerning the start-up and shutdown of operations, terminology used in discussing averaging periods, time periods for temporary exemptions, alternative opacity limits, and conflicts between visible readings and COM data. This rule will be effective on August 15, 2002.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

Pollution Control Board, Article 5: Opacity Regulations. Filed with the Secretary of State on October 9, 1998 and effective on November 8, 1998. Published in 22 *Indiana Register* 426 on November 1, 1998.

(ii) *Additional material.* Letter of October 10, 2001, from Janet McCabe, Indiana Department of Environmental Management, Assistant Commissioner of the Office of Air Quality, to Stephen Rothblatt, US EPA Region 5, Chief of Air

Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Steven M. Scofield, 404/562–9034.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th

a reference to Chapter 1200–3–20 Limits On Emissions Due to Malfunctions, Start-Ups, And Shutdowns from rule .07 to .06, is not consistent with the federally approved SIP. The revision to the codification of Chapter 1200–3–20 has not been submitted by the State to EPA. Therefore, no action is being taken by EPA on the revision to paragraph (3) of rule 1200–3–5–.09.

III. Final Action

EPA is approving the aforementioned

will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

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House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(146) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(146) On October 21, 1999, Indiana submitted revised state opacity regulations. The submittal amends 326 IAC 5–1–1, 5–1–2, 5–1–3, 5–1–4(b), and 5–1–5(b). The revisions address provisions concerning the startup and shutdown of operations, averaging period terminology, temporary exemptions, alternative opacity limits, and conflicts between continuous opacity monitor and visual readings.

(i) *Incorporation by reference.* Opacity limits for Indiana contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 5: Opacity Regulations. Filed with the Secretary of State on October 9, 1998 and effective on November 8, 1998. Published in 22 *Indiana Register* 426 on November 1, 1998.

(ii) *Additional material.* Letter of October 10, 2001, from Janet McCabe, Indiana Department of Environmental Management, Assistant Commissioner of the Office of Air Quality, to Stephen Rothblatt, US EPA Region 5, Chief of Air Programs Branch. The letter adds the technical justification and air quality analysis required for alternate opacity limits.

[FR Doc. 02–17235 Filed 7–15–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–121; TN–205–200206a; FRL–7245–7]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Tennessee Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on September 1, 1993, and April 9, 1998. The first revision adds definitions for particulate matter based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). The second revision combines the Soda Recovery Boilers rule with the Kraft Mill Recovery Furnaces rule in the Visible Emission regulations.

DATES: This direct final rule is effective September 16, 2002, without further notice, unless EPA receives adverse comment by August 15, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittals are available at the following addresses for inspection during normal business hours: Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Steven M. Scofield, 404/562–9034.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Mr. Scofield can also be reached by phone at (404) 562–9034 or by electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634), EPA revised the national ambient air quality standards (NAAQS) for particulate matter, pursuant to section 109 of the Clean Air Act (CAA). Total suspended particulate (TSP) was replaced as the indicator for the particulate matter ambient standard by a new indicator, particulate matter with a nominal aerodynamic diameter of 10 micrometers or less in size (PM_{10}). In response, Tennessee amended its rules and regulations which dealt with particulate matter to assure compliance with the particulate NAAQS throughout Tennessee.

II. Analysis of State's Submittals

On September 1, 1993, the State of Tennessee, through the TDEC, submitted a revision to rule 1200–3–2–.01 General Definitions, adding definitions for (hhh) "PM_{10} emissions" and (jjj) "Particulate Matter Emissions." These definitions comply with EPA's regulations for control strategies to attain and maintain the NAAQS for particulate matter and for permits to construct pursuant to parts C and D of the CAA.

On April 9, 1998, the State of Tennessee, through the TDEC, submitted revisions to Chapter 1200–3–5 Visible Emission Regulations. Rules 1200–3–5–.09 Kraft Mill Recovery Furnaces and 1200–3–5–.11 Soda Recovery Boilers are being combined into 1200–3–5–.09, with 1200–3–5–.11 being repealed. A revision to paragraph (3) of rule 1200–3–5–.09, which changes

a reference to Chapter 1200–3–20 Limits On Emissions Due to Malfunctions, Start-Ups, And Shutdowns from rule .07 to .06, is not consistent with the federally approved SIP. The revision to the codification of Chapter 1200–3–20 has not been submitted by the State to EPA. Therefore, no action is being taken by EPA on the revision to paragraph (3) of rule 1200–3–5–.09.

III. Final Action

EPA is approving the aforementioned revisions to the Tennessee SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 16, 2002, without further notice unless the Agency receives adverse comments by August 15, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 16, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Accordingly, part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220 is amended in the table in paragraph (c):

a. Under Chapter 1200–3–2 by revising the entry for "Section 1200–3–2–.01."

b. Under Chapter 1200–3–5 by revising the entries for "Section 1200–3–5–.09" and "Section 1200–3–5–.11."

The revisions read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Chapter 1200–3–2	DEFINITIONS			
Section 1200–3–2–	General Definitions	06/25/93	9/16/02	[Insert citation of publication]

C. What is the purpose of the submitted rule?

Rule 74.29 controls the emissions of VOCs from the clean-up of soils contaminated with gasoline, jet fuel, or diesel fuel. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the

rule into the federally enforceable SIP and will terminate all sanctions and sanction clocks associated with our May 22, 2001 limited disapproval.

III. Background Information

Why Was This Rule Submitted?

NO_X and VOC help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes,

§ 52.2220 Identification of plan. (c) * * *

* * * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Chapter 1200–3–2	DEFINITIONS			
Section 1200–3–2–	General Definitions	06/26/93	9/16/02	[Insert citation of publication]
Chapter 1200–3–5–	VISIBLE EMISSION REGULATIONS			
Section 1200–3–5–.09	Kraft Mill and Soda Mill Recovery	04/06/98	9/16/02	[Insert citation of publication]
Section 1200–3–5–.11	Repealed	04/06/98	9/16/02	[Insert citation of publication]

* * * * *

[FR Doc. 02–17701 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0350a; FRL–7231–8]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from soil decontamination operations. We are approving the local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 16, 2002, without further notice, unless EPA receives adverse comments by August 15, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd FL., Ventura CA 93003.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
VCAPCD	74.29	Soil Decontamination Operations	01/08/02	03/15/02

On May 7, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

On May 22, 2001, EPA finalized limited approval and limited disapproval of a previous version of this rule which was adopted on October 10, 1995.

C. What is the purpose of the submitted rule?

Rule 74.29 controls the emissions of VOCs from the clean-up of soils contaminated with gasoline, jet fuel, or diesel fuel. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 74.29 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following: Issue Relating to VOC Regulation, Cut Points, Deficiencies, and Deviations (the "Blue Book"), U.S. EPA, May 25, 1988.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule is consistent with relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSD has more information on our evaluation. In particular, the revisions to this rule adequately address the deficiencies identified in our May 22, 2001 limited disapproval by removing director's discretion formally contained in section C.4 of this rule. The revisions also contain other minor rule improvements and clarifications.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval and we therefore are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by August 15, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect, and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 16, 2002. This action will incorporate this rule into the federally enforceable SIP and will terminate all sanctions and sanction clocks associated with our May 22, 2001 limited disapproval.

III. Background Information

Why Was This Rule Submitted?

NO_X and VOC help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978.	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988.	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991.	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves the state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. PR10–244, FRL–7246–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Commonwealth of Puerto Rico: Control of Emissions From Existing Municipal Solid Waste

III. What comments were received on the proposed approval and how has EPA responded to them?
IV. Conclusion
V. Administrative Requirements

I. What Action Is EPA Taking Today?

EPA is approving the Puerto Rico plan, and the elements therein, as submitted on February 20, 2001, for the control of air emissions from Municipal Solid Waste (MSW) landfills. When EPA developed the New Source Performance

17321, April 10, 2002) regarding the Puerto Rico plan. The 30-day public comment period on EPA's proposed approval ended on May 10, 2002.

IV. Conclusion

For reasons described in this action and in EPA's proposal, EPA is approving Puerto Rico's section 111(d) MSW landfill plan. For further details, the reader is referred to the proposal and the Technical Support Document.

V. Administrative Requirements

federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute,

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because such businesses have already been subject to the federal plan, which mirrors this rule. Therefore, because the Federal approval does not

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Accordingly, part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(297) (i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(A) * * *

(*2*) Rule 74.29 adopted on October 10, 1995, and amended on January 8, 2002.

* * * * * *

[FR Doc. 02–17696 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. PR10–244, FRL–7246–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Commonwealth of Puerto Rico: Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d) plan submitted by the Commonwealth of Puerto Rico, for the purpose of implementing and enforcing the emission guidelines for existing municipal solid waste landfills. The plan was submitted to fulfill the requirements of the Clean Air Act (the Act). The intended effect of this action is to approve a plan required by the Act which establishes emission limits for existing municipal solid waste landfills, and provides for the implementation and enforcement of those limits.

EFFECTIVE DATE: This rule will be effective August 15, 2002.

ADDRESSES: Copies of the Commonwealth submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

Environmental Protection Agency, Caribbean Environmental Protection Division, 1492 Ponce De Leon Avenue, Centro Europa Building, Suite 417, Stop 22, Santurce, Puerto Rico 00907–4127

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket, 401 M Street, SW, Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3713.

SUPPLEMENTARY INFORMATION:

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II. What are the details of EPA's action?
III. What comments were received on the proposed approval and how has EPA responded to them?
IV. Conclusion
V. Administrative Requirements

I. What Action Is EPA Taking Today?

EPA is approving the Puerto Rico plan, and the elements therein, as submitted on February 20, 2001, for the control of air emissions from Municipal Solid Waste (MSW) landfills. When EPA developed the New Source Performance Standards (NSPS) (subpart WWW) for MSW landfills on March 12, 1996, it concurrently promulgated Emission Guidelines (subpart Cc) to control air emissions from existing MSW landfills. The EPA amended these rules on June 16, 1998 and February 24, 1999.

The Puerto Rico Environmental Quality Board (EQB) developed a plan, as required by section 111(d) of the Clean Air Act, 42 U.S.C. 7411(d), to adopt the Emission Guidelines into its body of regulations, and EPA is acting today to approve that plan.

II. What Are the Details of EPA's Specific Action?

On February 20, 2001, Puerto Rico submitted a plan for implementing and enforcing EPA's emission guidelines for existing MSW landfills. The plan contained several elements including: (1) A demonstration of Puerto Rico's legal authority to implement the section 111(d) MSW landfill plan; (2) identification of a mechanism to enforce the emission guidelines; (3) a list of known MSW landfills including their nonmethane organic compound emissions rate estimates; (4) a regulation requiring the installation of emission collection and control equipment which is no less stringent than the requirements in subpart Cc; (5) a description of the process Puerto Rico will use to review and approve site-specific gas collection and control design plans; (6) compliance schedules for each source that require final compliance no later than the dates required in EPA's November 8, 1999 Federal 111(d) plan (64 FR 60703), to which Puerto Rico is currently subject; (7) requirements for sources to test, monitor, keep records, and report to Puerto Rico; (8) records of the public hearings on the Commonwealth's Plan; and (9) a provision for the Commonwealth's submittal to EPA of annual reports on Puerto Rico's progress in the enforcement of its plan.

III. What Comments Were Received on the Proposed Approval and How Has EPA Responded to Them?

There were no comments received on EPA's proposed rulemaking (67 FR 17321, April 10, 2002) regarding the Puerto Rico plan. The 30-day public comment period on EPA's proposed approval ended on May 10, 2002.

IV. Conclusion

For reasons described in this action and in EPA's proposal, EPA is approving Puerto Rico's section 111(d) MSW landfill plan. For further details, the reader is referred to the proposal and the Technical Support Document.

V. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0220. For additional information concerning these requirements, *see* 40 CFR 60.35c. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule does not have federalism implications. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do no apply to this rule.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because such businesses have already been subject to the federal plan, which mirrors this rule. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's

action does not require the public to perform activities conducive to the use of VCS.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule

Subpart BBB—Puerto Rico

2. Part 62 is amended by adding new § 62.13107 and an undesignated heading to subpart BBB to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills (section 111(d) Plan)

§ 62.13107 Identification of Plan.

(a) The Puerto Rico Environmental Quality Board submitted to the Environmental Protection Agency a

Federal Register will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on September 16, 2002 unless EPA receives adverse written comment by August 15, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to

hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal

effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed

effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992,

action does not require the public to perform activities conducive to the use of VCS.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: July 3, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Part 62 is amended by adding new § 62.13107 and an undesignated heading to subpart BBB to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills (section 111(d) Plan)

§ 62.13107 Identification of Plan.

(a) The Puerto Rico Environmental Quality Board submitted to the Environmental Protection Agency a "State Plan for implementation and enforcement of 40 CFR part 60, subpart Cc, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills on February 20, 2001."

(b) Identification of sources: The plan applies to all applicable existing municipal solid waste landfills for which construction, reconstruction, or modification commenced before May 30, 1991; and for which waste has been accepted at any time since November 8, 1987 or that have added capacity for future waste deposition.

[FR Doc. 02–17876 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7241–4]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Georgia's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on September 16, 2002 unless EPA receives adverse written comment by August 15, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. You can view and copy Georgia's application from 8 a.m. to 4:30 p.m. at the following addresses: The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154 East, Atlanta, Georgia 30334–4910, and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Georgia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Georgia Final authorization to operate its

hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Georgia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Georgia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Georgia has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Georgia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Georgia Previously Been Authorized for?

Georgia initially received Final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992, effective July 10, 1992 (57 FR 20055), November 25, 1992, effective January 25, 1993 (57 FR 55466), February 26, 1993, effective April 27, 1993 (58 FR 11539), November 16, 1993, effective January 18, 1994 (58 FR 60388), April 26, 1994, effective June 27, 1994 (59 FR 21664), May 10, 1995, effective July 10, 1995 (60 FR 24790), August 30, 1995, effective October 30, 1995 (60 FR 45069), March 7, 1996, effective May 6, 1996 (61 FR 9108), September 18, 1998, effective November 17, 1998 (63 FR 49852), October 14, 1999, effective December 13, 1999 (64 FR 55629), and November 28, 2000, effective March 30, 2001 (66 FR 8090).

G. What Changes Are We Authorizing With Today's Action?

On April 28, 2000, Georgia submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Georgia's revision consists of provisions promulgated July 1, 1998 through June 30, 1999, otherwise known as RCRA Cluster IX. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Georgia Final authorization for the following program changes:

Description of federal requirement	Federal Register	Analogous State authority [1]
Checklist 169—Petroleum Refining Process Wastes	08/06/98 ..... 63 FR 42184	12–8–62(2),(9), (10), and (20), 12–8–64(1)(D), (I), and (M), 12–8–65(a)(16) and (21), Georgia Hazardous Waste Management Act (GHWMA), Official Code of Georgia (O.C.G.A.) Rule 391–3–11–.07(1) 12—8–62(10) and (20), 12–8–64(1)(D) and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(10) and (20), 12–8–64(1)(D) and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(10) and (20), 12–8–64(1)(J) and (L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11.07(1) and 391–3–11–.10(3) 12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F) and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 170—Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment.	08/31/96 ..... 63 FR 46334	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.

Description of federal requirement	Federal Register	Analogous State authority [1]
Checklist 171—Emergency Revision of Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	09/04/98 ..... 63 FR 47415	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 172—Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags.	09/9/98 ..... 63 FR 48127	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 173—Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule.	09/24/98 ..... 63 FR 51264	12–8–62(14) and (23), 12–8–64(1) (A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21), GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(23). 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.

for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

J. What Is Codification and Is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus,

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17695 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Description of federal requirement	Federal Register	Analogous State authority [1]
Checklist 171—Emergency Revision of Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	09/04/98 ..... 63 FR 47415	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 172—Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags.	09/9/98 ..... 63 FR 48127	12–8–62(14) and (23), 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 173—Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule.	09/24/98 ..... 63 FR 51264	12–8–62(14) and (23), 12–8–64(1) (A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21), GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(23). 12–8–64(1)(A), (B), (D), (F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 174—Post-Closure Permit Requirements and Closure Process.	10/22/98 ..... 63 FR 5671	Rules [2] 391–3–11–.05(1), 391–3–11–.10(1), 391–3–11–.10(2), and 391–3–11–.11(1)(a).
Checklist 175—HWIR-Media	11/30/98 ..... 63 FR 65937	12–8–62(10) and (20), 12–8–64(1)(D) and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21), 12–8–66(e) GWHWM, O.C.G.A. Rules 391–3–11–.10(2), 391–3–11–.11(10) 12–8–64(1)(A),(B),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11–.02(1) and 391–3–11–.10(2) 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11–.02(1), 391–3–11–.10(1) and (2), 3391–3–11.16 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (31) GHWMA, O.C.G.A. Rules 391–3–11–.02 and 391–3–11–.10(2) 12–8–64(1)(A),(B),(C),(D),(E),(F), and (I), 12–8–65(a)(3),(16), and (21), 12–8–66 GHWMA, O.C.G.A. Rules 391–3–11–.11(3)(d) and (I), (7)(d), and (12), 391–3–11–.11(10).
Checklist 176—Universal Waste Rule—Technical Amendments.	12/24/98 ..... 63 FR 71229	12–8–62–(13), 12–8–64(1)(A), (B), (D),(E),(F),(I),(K),(L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.18 12–8–62–(13), 12–8–64(1)(A),(B),(D),(E),(F),(I),(K),(L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.10(3) and 391–3–11.18.
Checklist 177—Organic Air Emission Standards: Clarification and Technical Amendments.	01/21/99 ..... 64 FR 3388	12–8–64(1)(A),(B),(C),(D),(E), and (F), 12–8–65(a)(3),(16), and (21) GHWMA, O.C.G.A. Rules 391–1–11–.08(1) and 391–3–11–.10(1) and (2).
Checklist 178—Petroleum Refining Process Wastes—Leachate Exemption.	02/11/99 ..... 64 FR 6813	12–8–62(10), 12–8–64(1)(D), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1).
Checklist 179—Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards.	05/11/99 ..... 64 FR 25413	12–8–62(10) and (20), 12–8–64(1)(D), and (J), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(20), 12–8–64(1)(D),(J), and (L), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.07(1) 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(E),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rules 391–3–11–.08(1) and 391–3–11.16 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(E),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(14) and (23), 12–8–64(1)(A),(B),(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16 12–8–62(23), 12–8–64(1)(A),(B)(D),(F), and (I), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.16.
Checklist 180—Test Procedures for the Analysis of Oil and Grease and Non-Polar Material.	05/14/99 ..... 64 FR 26327	12–8–62(10), (13), and (20), 12–8–64(1)(A),(B),(D), and (F), 12–8–65(a)(16) and (21) GHWMA, O.C.G.A. Rule 391–3–11–.02(1)

[1] The Georgia provisions are from the Georgia Hazardous Waste Management Regulations effective November 16, 2000.
[2] State does not seek authorization for enforceable documents in lieu of post-closure permits.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

J. What Is Codification and Is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart L for this authorization of Georgia's program until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective September 16, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

[FR Doc. 02–17695 Filed 7–15–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket 99–81; CC Docket No. 92–166; DA 02–1582]

Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band; Amendment of the Commission's Rules To Establish a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz Band; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations that were published in the **Federal Register** of 59 FR 53294 and 65 FR 59140. These corrections revise the text and title of two rules in part 25 of the Commission's rules pertaining to the 1.6/2.4 GHz and 2 GHz mobile-satellite service (MSS). These revisions correct inadvertent omissions in those rules as currently published in the Code of Federal Regulations.

DATES: Effective July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen J. Duall, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1103.

SUPPLEMENTARY INFORMATION:

Summary of Order

This document corrects two inadvertent omissions relating to the rules governing the Mobile-Satellite Service (MSS) in the 1.6/2.4 GHz and 2 GHz bands. These corrections conform the Commission's published rules to the texts of the final rule documents in which the rules were adopted.

First, § 25.136(a) of the Commission's rules is corrected to include aircraft cockpit communications in addition to aircraft Cabin Communications. In the *Big LEO Order*, the Commission adopted several modifications of the Commission's rules, including clarifying that the provisions of § 25.136(a) include cockpit communications as well as aircraft Cabin Communications systems. *See* 59 FR 53294. This modification to § 25.136(a), although specifically ordered in the text of the *Big*

LEO Order, was inadvertently omitted in the amended rules published in the **Federal Register** and sent for inclusion in the Code of Federal Regulations. The Commission subsequently amended § 25.136(a) to govern also earth station networks in the 2 GHz MSS band. *See* 65 FR 59140. In doing so, the failure to modify § 25.136(a) as ordered in the *Big LEO Order* was inadvertently carried over to the *2 GHz MSS Order*. This error

2. Revise paragraph (a) of § 25.136 to read as follows:

§ 25.136 Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

* * * * *

(a) User transceiver units associated with the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service may not be operated on civil

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–205, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also

WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 233A at Pawhuska, Oklahoma, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT:

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1547; MM Docket No. 01–259; RM–10269]

Radio Broadcasting Services; Grandin, MO

AGENCY: Federal Communications Commission.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Grandin, Channel 283A.

Federal Communications Commission.

John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17835 Filed 7–15–02; 8:45 am]
BILLING CODE 6712–01–U

LEO Order, was inadvertently omitted in the amended rules published in the **Federal Register** and sent for inclusion in the Code of Federal Regulations. The Commission subsequently amended § 25.136(a) to govern also earth station networks in the 2 GHz MSS band. *See* 65 FR 59140. In doing so, the failure to modify § 25.136(a) as ordered in the *Big LEO Order* was inadvertently carried over to the *2 GHz MSS Order*. This error is now corrected by revising § 25.136(a) to include aircraft cockpit communications as well as aircraft Cabin Communications, as originally ordered in the text of the *Big LEO Order*.

Second, the title of § 25.143 of the Commission's rules is corrected to include 2 GHz MSS systems in addition to 1.6/2.4 GHz MSS systems. The Commission ordered 2 GHz MSS systems to comply with § 25.143 as part of the 2 GHz MSS Order and amended § 25.143 to reflect this fact. These amendments were included in the final rules that were adopted in the 2 GHz MSS Order and published in the **Federal Register**. *See* 65 FR 59143. Although § 25.143 included 2 GHz MSS systems in the title when published in the *2 GHz MSS Order* and the **Federal Register**, the ordering language in the **Federal Register** inadvertently failed to include the necessary instructions to amend the title of § 25.143 to include 2 GHz MSS systems. *See id.* This omission is corrected by revising the title of § 25.143 to include 2 GHz MSS systems in addition to 1.6/2.4 GHz MSS systems.

Ordering Clause

Pursuant to § 0.261 of the Commission's rules, 47 CFR 0.261, §§ 25.136(a) and 25.143 of the Commission's rules, 47 CFR 25.136(a) and 25.143, *are corrected* as set forth further.

List of Subjects in 47 CFR Part 25

Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 25 is corrected by making the following correcting amendments:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Revise paragraph (a) of § 25.136 to read as follows:

§ 25.136 Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

* * * * *

(a) User transceiver units associated with the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service may not be operated on civil aircraft unless the earth station has a direct physical connection to the aircraft cabin or cockpit communication system.

* * * * *

3. Revise the heading of § 25.143 to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

* * * * *

[FR Doc. 02–17828 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1549; MM Docket No. 01–205; RM–10212]

Radio Broadcasting Services; Weinert, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266C3 to Weinert, Texas, as that community's first local aural transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 46425, September 5, 2001. The allotment of Channel 266C3 at Weinert, Texas, requires a site restriction 13.8 kilometers (8.6 miles) south of the community, utilizing coordinates 33–12–15 NL and 98–37–35 WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 266C3 at Weinert, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 266C3 at Weinert, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–205, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Weinert, Channel 266C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17833 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1548; MM Docket No. 01–260; RM–10270]

Radio Broadcasting Services; Pawhuska, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Pawhuska, Oklahoma, as that community's second local FM transmission service, in response to a petition for rule making filed by Maurice Salsa. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 233A at Pawhuska, Oklahoma, requires a site restriction 11.7 kilometers north of the community, utilizing in this instance, reference coordinates 36–46–16 NL and 96–21–39 WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 233A at Pawhuska, Oklahoma, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 233A at Pawhuska, Oklahoma, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–260, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 233A at Pawhuska.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17834 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 233A at Pawhuska, Oklahoma, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 233A at Pawhuska, Oklahoma, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–260, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Grandin, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17835 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1547; MM Docket No. 01–259; RM–10269]

Radio Broadcasting Services; Grandin, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Grandin, Missouri, as that community's first local aural transmission service, in response to a petition for rule making filed by Charles Crawford. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 283A at Grandin, Missouri, is made without a site restriction, utilizing city reference coordinates 36–49–45 NL and 90–49–22 WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 283A at Grandin, Missouri, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 283A at Grandin, Missouri, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–259, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Grandin, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17835 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1546; MM Docket No. 01–147; RM–10162]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 292A to George West, Texas, as that community's third local aural transmission service, in response to a petition for rule making filed by Katherine Pyeatt. *See* 66 FR 37633, July 19, 2001. The allotment of Channel 292A at George West, Texas, requires a site restriction 12.7 kilometers (7.9 miles) west of the community, utilizing coordinates 28–20–33 NL and 98–14–45 WL. As George West is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 292A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 292A at George West, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 292A at George West, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 292A at George West, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–147, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 292A at George West.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17836 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1545; MM Docket No. 01–146; RM–10161]

Radio Broadcasting Services; Eldorado, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293A to Eldorado, Texas, as that community's first local aural transmission service, in response to a petition for rule making filed by Katherine Pyeatt. *See* 66 FR 37633, July 19, 2001. The allotment of Channel 293A at Eldorado, Texas, requires a site restriction 1.3 kilometers (0.8 miles) southwest of the community, utilizing coordinates 30–51–14 NL and 100–36–43 WL. Additionally, as Eldorado is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 293A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 293A at Eldorado, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 293A at Eldorado, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 293A at Eldorado, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–147, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 293A at Eldorado.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17837 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

Questions related to the application filing process for Channel 238A at Ballinger, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–292, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 288A at Freer.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17839 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

Questions related to the application filing process for Channel 292A at George West, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–147, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 292A at George West.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17836 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1545; MM Docket No. 01–294; RM–10304]

Radio Broadcasting Services; Eldorado, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293A to Eldorado, Texas, as an additional local FM transmission service at that community, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 53755, October 24, 2001. The allotment of Channel 293A at Eldorado, Texas, requires a site restriction 1.3 kilometers (0.8 miles) southwest of the community, utilizing coordinates 30–51–14 NL and 100–36–43 WL. Additionally, as Eldorado is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 293A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 293A at Eldorado, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 293A at Eldorado, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 293A at Eldorado, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–294, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 293A at Eldorado.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17837 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1544; MM Docket No. 01–292; RM–10302]

Radio Broadcasting Services; Ballinger, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238A to Ballinger, Texas, as that community's second local commercial FM transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 53755, October 24, 2001. The allotment of Channel 238A at Ballinger, Texas, requires a site restriction 12.8 kilometers (8.0 miles) southeast of the community, utilizing coordinates 31–38–03 NL and 99–53–13 WL. As Ballinger is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 238A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 238A at Ballinger, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 238A at Ballinger, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 238A at Ballinger, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–292, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 238A at Ballinger.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17838 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1543; MM Docket No. 01–243; RM–10263]

Radio Broadcasting Services; Freer, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288A to Freer, Texas, as that community's second local FM transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 49330, September 27, 2001. The allotment of Channel 288A at Freer, Texas, requires a site restriction 6.8 kilometers (4.2 miles) south of the community, utilizing coordinates 27–49–20 NL and 98–38–04 WL. As Freer is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 288A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 288A at Freer, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 288A at Freer, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 288A at Freer, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–243, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 288A at Freer.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17839 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1542; MM Docket No. 01–256; RM–10256]

Radio Broadcasting Services; Benavides, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to Benavides, Texas, as that community's second local FM transmission service, in response to a petition for rule making filed by Jeraldine Anderson. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 282A at Benavides, Texas, requires a site restriction 5.3 kilometers (3.3 miles) south of the community, utilizing coordinates 27–32–59 NL and 98–25–11 WL. As Benavides is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government has been requested for Channel 282A at that community, but has not been received. Therefore, if a construction permit is granted for Channel 282A at Benavides, Texas, prior to receipt of final notification by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 282A at Benavides, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

Questions related to the application filing process for Channel 282A at Benavides, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–256, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2002–11392]

RIN 2127–AI73

Insurer Reporting Requirements; List of Insurers; Required To File Reports

insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in

on the 1999 calendar year data market shares from A.M. Best, we proposed to remove American Financial Group from Appendix A and to add Great American P & C Group and Metropolitan Life Auto & Home Group to Appendix A.

Each of the 20 insurers listed in Appendix A is required to file a report before October 25, 2002, setting forth the information required by Part 544 for each State in which it did business in

Questions related to the application filing process for Channel 282A at Benavides, Texas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–256, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 282A at Benavides.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17840 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1541; MM Docket No. 01–250; RM–10258]

Radio Broadcasting Services; Bearden, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 224A to Bearden, Arkansas, as that community's first local aural transmission service, in response to a petition for rule making filed by Charles Crawford. *See* 66 FR 52733, October 17, 2001. The allotment of Channel 224A at Bearden, Arkansas, is made without a site restriction, utilizing city reference coordinates 33–43–24 NL and 92–36–54 WL. With this action, this docketed proceeding is terminated.

DATES: Effective August 19, 2002. A filing window for Channel 224A at Bearden, Arkansas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 224A at Bearden, Arkansas, should be addressed to the Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–258, adopted June 26, 2002, and released July 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Bearden, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–17841 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2002–11392]

RIN 2127–AI73

Insurer Reporting Requirements; List of Insurers; Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates regulations on insurer reporting requirements. The regulations list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these regulations must file three copies of its report for the 1999 calendar year before October 25, 2002.

DATES: The final rule on this subject is effective July 16, 2002. Insurers listed in the regulations are required to submit reports on or before October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by

insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On March 27, 2002, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (67 FR 14667). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 24, 2001 (66 FR 53731). Based on the 1999 calendar year data market shares from A.M. Best, we proposed to remove American Financial Group from Appendix A and to add Great American P & C Group and Metropolitan Life Auto & Home Group to Appendix A.

Each of the 20 insurers listed in Appendix A is required to file a report before October 25, 2002, setting forth the information required by Part 544 for each State in which it did business in the 1999 calendar year. As long as these 20 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1999, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1999 calendar year data for market shares from A.M. Best, we proposed to remove Concord Group Insurance Companies (Vermont) from Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 1999 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2002, and set forth the information required by Part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1999, NHTSA proposed to remove A T & T Automotive Services, Inc. from Appendix C and to add Ford Rent-A-Car System to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1999 no later than October 25, 2002, and set forth the information required by Part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Public Comments on Final Determination

Insurers of Passenger Motor Vehicles

In response to the NPRM, the agency received no comments. Accordingly,

this final rule adopts the proposed changes to Appendices A, B, and C.

Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

a. *Mail:* Carlita Ballard or Deborah Mazyck, Office of Planning and Consumer Programs, NHTSA, NPS–32, 400 Seventh Street, SW., Washington

rule would be $53,080 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590, or by calling

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing

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this final rule adopts the proposed changes to Appendices A, B, and C.

Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

a. *Mail:* Carlita Ballard or Deborah Mazyck, Office of Planning and Consumer Programs, NHTSA, NPS–32, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: cballard@nhtsa.dot.gov or dmazyck@nhtsa.dot.gov;*

c. *Fax:* (202) 493–2290; or Theft loss reports may also be submitted to the docket electronically by:

d. Logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on "ES Submit" or "Help" to obtain instructions for filing the document electronically.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866, Regulatory Planning and Review. NHTSA has considered the impact of this proposed rule and has determined that the action is not Asignificant" within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2001 (see *http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $88,500 for any insurer added to Appendix A, $35,420 for any insurer added to Appendix B, and $10,219 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency removed one company and added two companies; for Appendix B, the agency removed one company and for Appendix C, the agency removed one company and added one company. The agency estimates that the net effect of this final rule would be $53,080 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this final rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

8. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Henrietta L. Spinner, Office of Planning and Consumer Programs, NPS–32, NHTSA, 400 Seventh Street, SW, Washington, DC 20590;

b. *E-mail: hspinner@nhtsa.dot.gov; or*

c. *Fax:* (202) 493–2290.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2002 will contain the required information for the 1999 calendar year).

* * * * *

3. Appendix A to Part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group
CNA Insurance Companies
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group[1]
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group[1]
Nationwide Group
Progressive Group
SAFECO Insurance Companies
St. Paul Companies
State Farm Group
Travelers PC Group
USAA Group

4. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
Ford Rent-A-Car System[1]
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

Issued on: July 11, 2002.

Noble N. Bowie,

Acting Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–17893 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011216304–1304–01; I.D. 071102A]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 2002 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 2002, until 2400 hrs, A.l.t., December 31, 2002.

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC allocation of sablefish assigned to trawl gear for the Central Regulatory Area was established as 1,086 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and, contrary to the public interest because the need to implement these measures in a timely fashion to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear for the Central Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17854 Filed 7–11–02; 3:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 136
Tuesday, July 16, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the

those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, July 11, 2002, no one has requested to speak.

must be received by September 16, 2002.

ADDRESSES: Written comments, including nominations for membership, may be submitted in any of three ways:

derricks (see volume 53 of the **Federal Register**, pages 29116 to 29141).

(2) In 1993, § 1926.550 was amended by adding a new (a)(19), which states that *all employees shall be kept clear of loads about to be lifted and of suspended loads* (58 FR 35183).

There have been considerable technological changes since the consensus standards upon which the 1971 OSHA standard is based were developed. For example, hydraulic

ACCSH (under the Construction Safety Act, OSHA is required to consult with ACCSH on all proposed construction standards). Affected parties do not generally have an opportunity to submit arguments and data supporting their positions until the proposed rule is published. In contrast, in a negotiated rulemaking, there is greater opportunity for face-to-face, back-and-forth communications during the process among parties representing different

committee representing the Federal government's statutory mission.

The negotiated rulemaking advisory committee is chaired by a trained facilitator, who applies proven consensus building techniques to help the advisory committee work towards a consensus. The many functions that he or she will perform are discussed below.

Once the committee reaches consensus on the provisions of a proposed rule, the Agency, consistent

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Proposed Rules

Federal Register
Vol. 67, No. 136
Tuesday, July 16, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102740–02]

RIN 1545–BA52

Loss Limitation Rules; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations that relate to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group.

DATES: The public hearing originally scheduled for Friday, July 19, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, March 12, 2002 (67 FR 11070), announced that a public hearing would be held on July 17, 2002. The date of the hearing changed and notice of the change was later published in the **Federal Register** on Friday, June 28, 2002 (67 FR 43574) announcing that a public hearing was scheduled for Friday, July 19, 2002, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, June 26, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, July 11, 2002, no one has requested to speak. Therefore, the public hearing scheduled for Friday, July 19, 2002, is cancelled.

Cynthia Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–17864 Filed 7–11–02; 3:09 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN No. 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of intent to establish Negotiated Rulemaking Committee; request for nominees and comments.

SUMMARY: The Occupational Safety and Health Administration is announcing its intent to establish a Cranes and Derricks Negotiated Rulemaking Advisory Committee (C–DAC) under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA). The Committee will negotiate issues associated with the development of a proposed revision of the existing construction safety standards for the cranes and derricks portion ("1926.550) of 29 CFR part 1926 Subpart N-Cranes, Derricks, Hoists, Elevators, and Conveyors. The Committee will include representatives of parties who would be significantly affected by the final rule. OSHA solicits comments on the initiative and requests interested parties to nominate representatives for membership on C–DAC.

DATES: Written comments and requests for membership must be submitted by September 16, 2002. Comments and requests for membership submitted by mail must be postmarked not later than September 16, 2002. E-mailed or faxed comments or requests for nomination must be received by September 16, 2002.

ADDRESSES: Written comments, including nominations for membership, may be submitted in any of three ways: by mail, by fax, or by e-mail. Please include "Docket No. S–030" on all submissions.

By mail, the address is: OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210, telephone (202) 693–2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax, written comments and nominations for membership that are 10 pages or fewer, may be transmitted to the OSHA Docket Office at telephone number (202) 693–1648.

By email, comments and nominations may be submitted through OSHA's Homepage at *ecomments.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT: Nancy Ford, Office of Construction Standards and Compliance Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room NB3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rule for cranes and derricks in construction, codified in volume 29 of the Code of Federal Regulations (CFR), § 1926.550, which dates back to 1971, is based in part on industry consensus standards from 1967 to 1969. Since 1971, that section of subpart N has undergone only two amendments:

(1) In 1988, § 1926.550 was amended by adding a new paragraph (g) to establish clearly the conditions under which employees on personnel platforms may be hoisted by cranes or derricks (see volume 53 of the **Federal Register**, pages 29116 to 29141).

(2) In 1993, § 1926.550 was amended by adding a new (a)(19), which states that *all employees shall be kept clear of loads about to be lifted and of suspended loads* (58 FR 35183).

There have been considerable technological changes since the consensus standards upon which the 1971 OSHA standard is based were developed. For example, hydraulic cranes were rare at that time but are now prevalent. The existing OSHA standard does not specifically address hydraulic cranes. In contrast, industry consensus standards for derricks were updated in 1995 and crawler, truck and locomotive cranes were updated as recently as 2000.

A cross-section of industry stakeholders has asked the Agency to update Subpart N's crane and derrick requirements. They have indicated that over the past 30 years, the considerable changes in both work processes and crane technology have made much of Subpart N obsolete.

For the past two years, a number of industry representatives have been working with a cranes workgroup of the Advisory Committee for Construction Safety and Health (ACCSH). That workgroup has been developing recommended changes to Subpart N with respect to the requirements for cranes.

Based on the Agency's review of the issues, the progress made by the ACCSH cranes workgroup, and the continued interest in using negotiated rulemaking for this standard, OSHA proposes to use the negotiated rulemaking process to develop a proposed revision of the requirements in Subpart N for cranes and derricks.

The negotiated rulemaking effort described in this notice will be conducted in accordance with the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.*, and the Department of Labor's policy on negotiated rulemaking. Further detail on the Department's negotiated rulemaking policy is in the "Notice of Policy on Use of Negotiated Rulemaking Procedures by Agencies of the Department of Labor" (57 FR 61860).

A. The Concept of Negotiated Rulemaking

Usually, OSHA develops a proposed rule using staff and consultant resources. The concerns of affected parties are often identified through stakeholder meetings and an advance notice of proposed rulemaking (ANPR) published in the **Federal Register**. This is followed by formal consultation with ACCSH (under the Construction Safety Act, OSHA is required to consult with ACCSH on all proposed construction standards). Affected parties do not generally have an opportunity to submit arguments and data supporting their positions until the proposed rule is published. In contrast, in a negotiated rulemaking, there is greater opportunity for face-to-face, back-and-forth communications during the process among parties representing different interests and with agency officials.

Many times, effective regulations have resulted from traditional rulemaking. However, as Congress noted in the Negotiated Rulemaking Act (5 U.S.C. 561), current rulemaking procedures Amay discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *" (Sec. 2(2)). Congress also stated that "adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties." (Sec. 2(3)).

In negotiated rulemaking, a proposed rule is developed by a committee composed of representatives of government and the interests that will be significantly affected by the rule. Decisions are made by consensus. As defined in 5 U.S.C. 562 (2)(a)(b),

'consensus' means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this subchapter, unless such committee agrees to define such term to mean a general but not unanimous concurrence or agrees upon another specified definition.

The process is started by the Agency's careful identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a document such as this one in the **Federal Register**, which identifies a preliminary list of interests and requests public comment on that list.

Following receipt of the comments, the Agency establishes an advisory committee representing these various interests to negotiate a consensus on the provisions of a proposed rule. Representation on the committee may be direct, that is each member represents a specific interest, or indirect, through coalitions of parties formed to represent a specific sphere of interest. The Agency is a member of the committee representing the Federal government's statutory mission.

The negotiated rulemaking advisory committee is chaired by a trained facilitator, who applies proven consensus building techniques to help the advisory committee work towards a consensus. The many functions that he or she will perform are discussed below.

Once the committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, uses that consensus as the basis for its proposed rule, to be published in the **Federal Register**. This provides the required public notice and allows for a public comment period. Members, other participants and other interested parties retain their rights under section 6(b) of the OSH Act to submit written comments and participate in an informal hearing (if requested). OSHA will then publish a final rule based on the record as a whole—the information that was received in the course of developing the proposed rule, together with the comments and information submitted after the proposal is published. OSHA anticipates that the pre-proposal consensus agreed upon by this Committee will effectively narrow the issues in the subsequent rulemaking and reduce the likelihood of litigation.

B. Selecting Part of Subpart N as a Candidate for Negotiated Rulemaking

The Agency may establish a negotiated rulemaking committee if it has determined that the use of the negotiated rulemaking procedure is in the public interest. As discussed above, OSHA has made that determination in this case.

The Agency bases this determination on prior experience with the negotiated rulemaking process. Even before the NRA was enacted, OSHA conducted negotiated rulemaking for its complex health standards for Methylenedianiline (MDA). This committee met seven times over a 10-month period (24 meeting days) and successfully negotiated standards for both general industry and construction. The final standards were ultimately based on the recommended proposed standards, and no litigation followed the standards' promulgation.

Also, the new Steel Erection Standard (29 CFR part 1926 subpart R) was based on a proposal that was developed by the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). The new final rule was published on January 18, 2001, and became effective January 18, 2002. The standard addresses the hazards that have been identified as the major causes of injuries and fatalities in the steel erection industry.

OSHA believes that the cranes and derricks portion of subpart N is an appropriate subject for negotiated rulemaking. In 1998, the Advisory Committee on Construction Safety and Health (ACCSH) formed a workgroup to review subpart N. In December 1999, ACCSH passed a motion submitted by the workgroup, recommending that OSHA consider negotiated rulemaking as the mechanism to revise/update

negotiated rulemaking process. One purpose of this document is to obtain public comment about whether an updated crane standard would significantly affect interests that are not listed above. OSHA invites comment and suggestions on this list of "significantly affected" interests.

C. Members

The negotiating group should not exceed 25 members, and 15 would be

or representatives of organizations. However, an organization that requests membership should identify the individual who will be its representative. If the negotiation is to be successful, members must be able to fully and adequately represent the viewpoints of their respective interests. Those individuals or representatives of organizations who wish to be appointed as members of the Committee should submit a request to OSHA, in

(2) Impartially assisting the members of the committee in conducting discussions and negotiations, and

(3) Supervising the taking of minutes and keeping of records and other relevant responsibilities.

G. OSHA Representative

The OSHA representative, as a full member of the Committee, will participate fully with the other members in the negotiations. The OSHA

13. Blind pick procedures.

II. Proposed Negotiation Procedures

OSHA is proposing to use the following procedures and guidelines for this negotiated rulemaking. The Agency may modify them in response to comments received on this document or during the negotiation process.

A. Committee Formation

OSHA believes that the cranes and derricks portion of subpart N is an appropriate subject for negotiated rulemaking. In 1998, the Advisory Committee on Construction Safety and Health (ACCSH) formed a workgroup to review subpart N. In December 1999, ACCSH passed a motion submitted by the workgroup, recommending that OSHA consider negotiated rulemaking as the mechanism to revise/update subpart N. The workgroup has made considerable progress in identifying and prioritizing areas in the current standard that should be updated to reflect modern safety procedures.

The Agency believes that the selection criteria listed in the NRA (5 U.S.C. 563(a)) have been met. Interests that will be affected by a revised subpart N are known, are limited in number, and to a significant degree are already organized in interest-based coalitions. There appears to be a good possibility of reaching consensus on a proposed rule. In addition, OSHA expects that persons likely to be significantly affected by such a rule will negotiate in good faith. The need for updating provisions is acknowledged by all known interests. As progress has already been made through the efforts of the ACCSH workgroup, OSHA believes that the negotiated rulemaking process will not unreasonably delay the proposal or issuance of a final rule.

C. Agency Commitment

In initiating this negotiated rulemaking process, OSHA is making a commitment on behalf of the Department of Labor that OSHA and all other participants within the Department will provide resources to ensure timely and successful completion of the process. This commitment includes making the negotiations a priority activity for all officials of the Department who need to be involved.

OSHA will take steps to ensure that the negotiated rulemaking committee has sufficient resources to complete its work in a timely fashion. These include the provision or procurement of such support services as: adequate and properly equipped space; logistical support and timely payment of participant travel and expenses where necessary as provided for under the NRA; word processing, communications and other information handling services required by the committee; the services of a facilitator; and such additional statistical, economic, safety, legal, or other technical assistance as may be necessary.

OSHA, to the maximum extent possible consistent with its statutory mission and the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the Agency for public notice and comment. The Agency believes that by updating the existing standard, it can limit or reduce the number of deaths and injuries to employees associated with cranes and derricks used in construction. The Agency, therefore, is committed to publishing a consensus proposal that is consistent with OSHA's legal mandates.

D. Negotiating Consensus

An important benefit of negotiated rulemaking is that it necessarily involves a mutual education of the parties on the practical concerns about the effect of different approaches to various issues. This stems from the fact that in negotiated rulemaking, agreement is by consensus of the interests. As noted above, the NRA defines consensus as the "unanimous concurrence among interests represented on a negotiated rulemaking committee * * * unless such committee agrees to (a different definition)." In addition, experience has demonstrated that using a trained facilitator to work with the Committee will assist all parties, including OSHA, to identify their real interests in the rule, and will enable them to reevaluate previously stated positions on issues involved in this rulemaking effort.

E. Some Key Issues for Negotiation

OSHA expects that the key issues to be addressed as part of these negotiations will include:

1. The identification/description of what constitutes "cranes and derricks" for purposes of determining the equipment that will be covered by the proposed rule.
2. Qualifications of individuals who operate, maintain, repair, assemble, and disassemble cranes and derricks.
3. Work zone control.
4. Crane operations near electric power lines.
5. Qualifications of signal-persons and communication systems and requirements.
6. Load capacity and control procedures.
7. Wire rope criteria.
8. Crane inspection/certification records.
9. Rigging procedures.
10. Requirements for fail-safe, warning, and other safety-related devices/technologies.
11. Verification criteria for the structural adequacy of crane components.
12. Stability testing requirements.
13. Blind pick procedures.

II. Proposed Negotiation Procedures

OSHA is proposing to use the following procedures and guidelines for this negotiated rulemaking. The Agency may modify them in response to comments received on this document or during the negotiation process.

A. Committee Formation

This Committee will be formed and operated in full compliance with the requirements of the Federal Advisory Committee Act (FACA) and the NRA, in a manner consistent with the standards-setting requirements of the OSH Act.

B. Interests Involved

The Agency intends to ensure full and adequate representation of those interests that are expected to be significantly affected by the proposed rule. Section 562 of the NRA defines the term "interest" as follows:

> (5) "interest" means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.

The following interests have been tentatively identified as "significantly affected" by this rulemaking:

— Crane and derrick manufacturers, suppliers, and distributors
— Companies that repair and maintain cranes and derricks
— Crane and derrick leasing companies
— Owners of cranes and derricks
— Construction companies that use leased cranes and derricks
— General contractors
— Labor organizations representing construction employees who operate cranes and derricks and who work in conjunction with cranes and derricks
— Owners of electric power distribution lines
— Civil, structural and architectural engineering firms and engineering consultants involved with the use of cranes and derricks in construction
— Training organizations
— Crane and derrick operator testing organizations
— Insurance and safety organizations, and public interest groups
— Trade associations
— Government entities involved with construction safety and with construction operations involving cranes and derricks.

This list of potential interests is not presented as a complete or exclusive list from which committee members will be selected. The list merely indicates interests that OSHA has tentatively identified as being significantly affected by the outcome of the Subpart N

negotiated rulemaking process. One purpose of this document is to obtain public comment about whether an updated crane standard would significantly affect interests that are not listed above. OSHA invites comment and suggestions on this list of "significantly affected" interests.

C. Members

The negotiating group should not exceed 25 members, and 15 would be preferable. The Agency believes that the more members there are over 15, the more difficult it is to conduct effective negotiations.

OSHA is aware that there may be more interests, whether they are listed here or not, than membership slots on the Committee. In order to have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. To provide adequate representation, these coalitions must agree to support, both financially and technically, a member on the Committee whom they will choose to represent their interest.

It is important to recognize that interested parties who are not selected to membership on the Committee can make valuable contributions to a negotiated rulemaking in any of several ways:

- Asking to be placed on the Committee mailing list and making written comments;
- Attending the Committee meetings, which are open to the public, caucusing with his or her interest's member on the Committee, or even addressing the Committee (often allowed at the end of an issue's discussion or the end of the session, as time permits); and/or
- Assisting in the work of a Committee workgroup.

Informal workgroups are usually established by an advisory committee to help it address technical issues or other particular matters. They might also help analyze costs and compliance data, help draft regulatory text, or initially address novel issues that arise during negotiations. Workgroup members usually have expertise or a particular interest in the technical matter(s) being studied. Because of the importance of this work on technical details, OSHA will also provide appropriate technical expertise for such workgroups, as needed.

D. Request for Nominations

OSHA solicits requests for appointment to membership on the Committee. Members can be individuals or representatives of organizations. However, an organization that requests membership should identify the individual who will be its representative. If the negotiation is to be successful, members must be able to fully and adequately represent the viewpoints of their respective interests. Those individuals or representatives of organizations who wish to be appointed as members of the Committee should submit a request to OSHA, in accordance with the "Public Participation" part of this document.

This document gives notice of the selection process to all potential participants and affords them an opportunity to request representation in the negotiations. The procedure for requesting such representation is set out under the Public Participation part of this document, below.

E. Good Faith Negotiation

Committee members need to have authorization to negotiate on behalf of their interests and be willing to negotiate in good faith. First, each member needs to have good communications with his or her constituencies. An "intra-interest" network of communication should be established to channel information between the member and his/her organization and interest coalition. Second, in nominating a member to represent it, each organization or coalition should designate a person with credibility and authority to insure that information is shared and decisions are made in a timely manner. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members, which must be sustained for a year or more.

Certain considerations are central to negotiating in good faith. One is the willingness to bring all issues to the table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from the type of adversarial positions often taken in rulemaking proceedings, and instead to explore openly with other parties all relevant and productive ideas that may emerge from the discussions of the committee.

F. Facilitator

The facilitator will not be a party to the substantive development of the standard. Rather, the facilitator's role will generally include:

(1) Chairing the meeting of the committee in an impartial manner;
(2) Impartially assisting the members of the committee in conducting discussions and negotiations, and
(3) Supervising the taking of minutes and keeping of records and other relevant responsibilities.

G. OSHA Representative

The OSHA representative, as a full member of the Committee, will participate fully with the other members in the negotiations. The OSHA representative will meet regularly with various senior OSHA officials, briefing them on the negotiations and receiving their suggestions and advice, in order to effectively represent the Agency's views regarding the issues before the Committee. OSHA's representative will also inform the Office of Management and Budget of the status of the negotiations. OSHA's representative will also communicate with ACCSH on a regular basis, informing it of the status and content of the negotiations.

In addition, the OSHA representative will present the negotiators with the available evidence that the Agency has gathered on an issue-by-issue basis for their consideration. The Committee may also consult OSHA's representative to obtain technical information, and to discuss issues associated with setting and administering standards (such as jurisdiction, scope, enforceability, costs and feasibility concerns, and paperwork burden issues). The OSHA representative, together with the Facilitator, will also be responsible for coordinating the administrative and committee support functions to be performed by OSHA's support team.

H. Plain Language

OSHA intends to write its standards in plain language. This means that the provisions must be clear, logically organized, and written with a minimum of industry jargon. It is important to avoid the use of ambiguous regulatory language. It often takes significant effort to express complex and technical concepts in language that can be understood by non-experts. Agency staff will assist the Committee in its drafting efforts.

I. Additional Members

During the course of the Committee's negotiations, an unanticipated issue significantly affecting one or more unanticipated, unrepresented interests may arise. The Committee may decide that it is necessary for that issue to be addressed in the proposed rule. If so, the Agency will publish in the **Federal Register** a request for additional nominations to represent such interests. The Secretary may then select one or

more additional representatives, who will be added as Committee members.

The additional members will not be entitled to revisit any issue that has already been negotiated, unless the Committee agrees by consensus to do so.

J. Replacement Members

In the event an appointed member becomes unavailable or otherwise unable to serve, the Secretary will select

rule to participate. As a first step in response to this notice of intent to negotiate, OSHA recommends that potential participants take a close look at the list of significantly affected interests. They should analyze the list for completeness or over-or under-inclusiveness, and for the purpose of coalition-building. Parties should try to identify others who share a similar viewpoint and who would be affected in

standard, and the topics to be covered regarding cranes and derricks, should be directed to Docket No. S–030, and sent to the OSHA Docket Office (see instructions under **ADDRESSES** near the beginning of this Notice).

IV. Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for

"AC47 Plans and Information Comments" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS published a proposed rulemaking on May 17, 2002 (67 FR 35372), to

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 780, 784 and 800

RIN 1029–AC05

Bonding and Other Financial Assurance Mechanisms for Treatment of Long-Term Pollutional Discharges and Acid/Toxic Mine Drainage (AMD)

for AMD, appropriate financial mechanisms to cover treatment costs, and suggestions on appropriate enforcement in cases where financial assurance is not fully adequate for the long term, but AMD is still being treated. Also, we invite comment on whether codification of our AMD policy statement would be helpful. We are extending the comment period to allow additional time for all interested parties to participate in formulating ideas and

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more additional representatives, who will be added as Committee members.

The additional members will not be entitled to revisit any issue that has already been negotiated, unless the Committee agrees by consensus to do so.

J. Replacement Members

In the event an appointed member becomes unavailable or otherwise unable to serve, the Secretary will select a replacement member to represent the interest the original member had represented.

K. Tentative Schedule

When OSHA publishes a notice establishing the Committee and appointing its members, the Agency will include a proposed schedule of committee meetings. The first meeting will focus largely on procedural matters, including the proposed ground rules. The Committee will agree on dates, times, and locations of future meetings, and will identify and determine how best to address principal issues for resolution.

To prevent delays that might postpone timely issuance of the proposal, OSHA intends to terminate the Committee's activities if it does not reach consensus on a proposed rule within 18 months of the first meeting. The process may end earlier if the Facilitator or the committee itself so recommends.

L. Record of Meetings

In accordance with FACA's requirements, the Facilitator will supervise the keeping of minutes and a record of all committee meetings. These materials will be placed in the public docket No. S–030. Committee meetings will be announced in the **Federal Register** and will be open to the public.

M. Agency Action

As set forth in the NRA, "the Agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment."

N. Committee Procedures

Under the general guidance and direction of the Facilitator, and subject to any applicable legal requirements, appropriate detailed procedures for committee meetings will be established.

III. Public Participation

In a negotiated rulemaking, there are many opportunities for an individual who is interested in the outcome of the rule to participate. As a first step in response to this notice of intent to negotiate, OSHA recommends that potential participants take a close look at the list of significantly affected interests. They should analyze the list for completeness or over-or under-inclusiveness, and for the purpose of coalition-building. Parties should try to identify others who share a similar viewpoint and who would be affected in a similar way by the rule. They should then communicate with these parties of similar interest and begin organizing coalitions to support their shared interests. Once the coalitions are formed, the parties can discuss which individuals should represent their interests and in what capacities.

As indicated above, not every interested party will be able to serve as a member of the Committee. However, an interested party may participate in a variety of other ways. These include working within the interest coalitions (promoting communication, providing expert support in a workgroup or otherwise helping to develop internal ranges of acceptable alternatives, etc.), attending committee meetings in order to caucus with the interest's member, or submitting written comments or materials to the Committee or workgroups.

Persons who will be significantly affected by the revision in the crane and derricks portion of Subpart N, whether or not their interest is listed above in this document, may apply for or nominate another person for membership on the committee to represent such interests. Such requests must be received by the Docket Office (see instructions under **ADDRESSES** near the beginning of this Notice), no later than September 16, 2002. In general, under the NRA, members of the negotiated rulemaking committee shall be responsible for their own expenses, except in certain limited circumstances (see 5 U.S.C. section 588).

Each application or nomination must include:

(1) The name of the applicant or nominee and a description of the interest(s) such person will represent; (2) evidence that the applicant or nominee is authorized to represent those interests that the person proposes to represent, and (3) a description of the person's qualifications and expertise regarding those interests. Each applicant must submit a written commitment to actively participate in good faith in the development of the rule.

All written comments, including comments on the appropriateness of using negotiated rulemaking to develop a proposed cranes and derricks standard, and the topics to be covered regarding cranes and derricks, should be directed to Docket No. S–030, and sent to the OSHA Docket Office (see instructions under **ADDRESSES** near the beginning of this Notice).

IV. Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, (5 U.S.C. 561 *et seq.*), FACA (5 U.S.C. Appendix 2), the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), and Secretary of Labor's Order No. 3–2000 (65 FR 50017, Aug. 16, 2000).

Signed at Washington, DC, this 10th day of July, 2002.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 02–17768 Filed 7–15–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC47

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Plans and Information

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to December 13, 2002, the previous deadline of August 15, 2002, for submitting comments on the proposed rule published May 17, 2002 (67 FR 35372), that describes plan submittals for oil and gas exploration, development and production on the Outer Continental Shelf (OCS).

DATES: We will consider all comments received by December 13, 2002, and we may not fully consider comments received after December 13, 2002.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the e-mail address is: *rules.comments@MMS.gov*. Reference "AC47 Plans and Information Comments" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS published a proposed rulemaking on May 17, 2002 (67 FR 35372), to completely reorganize and update the 30 CFR 250, subpart B, regulations that describe plan submittals for oil and gas exploration and development and production on the OCS. In addition, MMS prepared a companion draft Notice to Lessees and Operators (NTL) for the Gulf of Mexico OCS Region (GOM OCS Region). The draft NTL further interprets the proposed rule regarding information required to be submitted for MMS determinations, analyses, and approvals of plans in the GOM OCS Region. The draft NTL is posted on our MMS web site with the proposed rule for comment. Both the proposed rule and the NTL are very extensive and detailed. Therefore, the Offshore Operators Committee (OOC) requested that we extend the comment period in a letter to MMS dated June 6, 2002. The OOC stated that the additional time was necessary to allow reviewers to prepare comprehensive written comments on the proposed rule and NTL. We have agreed to their request and this notice extends the comment period to December 13, 2002.

Public Comments Procedures: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 18, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–17881 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 780, 784 and 800

RIN 1029–AC05

Bonding and Other Financial Assurance Mechanisms for Treatment of Long-Term Pollutional Discharges and Acid/Toxic Mine Drainage (AMD) Related Issues

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: We are extending the comment period for the advance notice of proposed rulemaking (ANPRM) published in the May 17, 2002, **Federal Register**. The comment period was originally scheduled to close on July 16, 2002, and is now being extended for 90 days. In the ANPRM, we are seeking comments on what types of financial guarantees will best ensure adequate funding for the treatment of unanticipated long-term pollutional discharges, including acid or toxic mine drainage (collectively referred to as AMD), that develop as a result of surface coal mining operations.

DATES: To ensure consideration, we must receive your comments on or before October 15, 2002.

ADDRESSES: You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ruth Stokes, Program Support Directorate, Office of Surface Mining Reclamation and Enforcement, on 202–208–2611.

SUPPLEMENTARY INFORMATION: In response to requests from three parties, we are extending the public comment period for the proposed rule published on May 17, 2002 (67 FR 35071). In the ANPRM, we are seeking comments on what types of financial guarantees will best ensure adequate funding for the treatment of unanticipated long-term pollutional discharges, including acid or toxic mine drainage (collectively referred to as AMD), that develop as a result of surface coal mining operations. Specifically, we are interested in views from all parties on how we can best address the proper level of treatment and number of years to use in calculating financial assurance amounts for AMD, appropriate financial mechanisms to cover treatment costs, and suggestions on appropriate enforcement in cases where financial assurance is not fully adequate for the long term, but AMD is still being treated. Also, we invite comment on whether codification of our AMD policy statement would be helpful. We are extending the comment period to allow additional time for all interested parties to participate in formulating ideas and approaches on ways to address this important issue.

Dated: July 3, 2002.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 02–17892 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–121; TN–205–200206b; FRL–7245–8]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Tennessee Implementation Plan.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revisions submitted by the State of Tennessee for the purpose of revising the regulations for definitions and visible emission in the Tennessee SIP. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 15, 2002.

ADDRESSES: All comments should be addressed to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

ACTION: Proposed rule.

SUMMARY: At the request of the State of California, EPA is proposing to limit the duration of our approvals of motor vehicle emissions budgets ("budgets") in certain existing California state implementation plans (SIPs) that provide for progress, attainment, and maintenance of the 1-hour ozone, 8-hour carbon monoxide (CO), and annual nitrogen dioxide (NO2) national

B. How Are We Proposing to Modify Our Approval of the Budgets?
III. Request for Public Comment
IV. Administrative Requirements

I. Background

A. What Approved SIPs Are Affected by this Proposed Action?

In Table 1 below, labeled "California SIPs Whose Budget Approvals Are Being Modified," we list those SIPs in California that would be affected by this proposed action.

TABLE 1.—CALIFORNIA SIPS WHOSE BUDGET APPROVALS ARE BEING MODIFIED

Area	Pollutant	Plan	Adoption	Submittal	FR Approval
Antelope Valley (SE	Ozone	Attainment Plan	9/9/94, 12/9/94, 4/12/96.	11/15/94, 12/29/94, 7/10/96.	1/8/97 62 FR 1150.

Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Steven M. Scofield, 404/562–9034.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Scofield can also be reached by phone at (404) 562–9034 or by electronic mail at *scofield.steve@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: April 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17700 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0350b; FRL–7231–9]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from soil decontamination operations. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by August 15, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812.

Ventura County Air pollution Control District, 669 County Square Dr., 2nd FL., Ventura CA 93003.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses local rule, VCAPCD 74.29. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Anyone interested in commenting should do so at this time, we do not plan to open a second comment period. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–17697 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–079–SIPS; FRL–7246–3]

Motor Vehicle Emissions Budgets in Progress, Attainment, and Maintenance State Implementation Plans for Ozone, Carbon Monoxide, and Nitrogen Dioxide; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: At the request of the State of California, EPA is proposing to limit the duration of our approvals of motor vehicle emissions budgets ("budgets") in certain existing California state implementation plans (SIPs) that provide for progress, attainment, and maintenance of the 1-hour ozone, 8-hour carbon monoxide (CO), and annual nitrogen dioxide (NO_2) national ambient air quality standards (NAAQS). Specifically, we propose to limit our approvals of the existing budgets to last only until the effective date of EPA's adequacy finding for new budgets that replace these existing approved budgets (*i.e.*, budgets for the same pollutant, Clean Air Act requirement and year). The State of California will submit new budgets as part of comprehensive revisions to certain approved progress, attainment, and maintenance plans that reflect updated information and a new version of California's motor vehicle emission factor model. On the effective date of EPA's adequacy finding for a new budget our approval of the existing budget would terminate and thus the new adequate budget would apply instead of the existing budget for transportation conformity purposes.

DATES: Written comments on this proposal must be received by August 15, 2002.

ADDRESSES: Please mail comments to: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following location: California Air Resources Board, 1001 I Street, Sacramento, California, 95812.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *jesson.david@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Background

A. What Approved SIPs Are Affected by this Proposed Action?

In Table 1 below, labeled "California SIPs Whose Budget Approvals Are Being Modified," we list those SIPs in California that would be affected by this proposed action.

TABLE 1.—CALIFORNIA SIPS WHOSE BUDGET APPROVALS ARE BEING MODIFIED

Area	Pollutant	Plan	Adoption	Submittal	FR Approval
Antelope Valley (SE Desert).	Ozone	Attainment Plan	9/9/94, 12/9/94, 4/12/96.	11/15/94, 12/29/94, 7/10/96.	1/8/97 62 FR 1150.
Bakersfield	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Chico	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Coachella (SE Desert)	Ozone	Attainment Plan	9/9/94, 12/9/94, 4/12/96.	11/15/94, 12/29/94, 7/10/96.	1/8/97 62 FR 1150.
Fresno	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Kern (SE Desert)	Ozone	Attainment Plan	12/1/94	1/28/94	1/8/97 62 FR 1150.
Lake Tahoe—North	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Lake Tahoe—South	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Modesto	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Mojave (SE Desert)	Ozone	Attainment Plan	10/26/94	11/15/94	1/8/97 62 FR 1150.
Monterey	Ozone	Maintenance Plan	5/25/94, 10/19/94	7/14/94, 11/14/94	1/17/97 62 FR 2597.
Sacramento	Ozone	Attainment Plan	12/1/94, 12/12/94, 12/13/94, 12/14/94, 12/20/94.	12/29/94	1/8/97 62 FR 1150.
Sacramento	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
San Diego	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
San Francisco Bay Area.	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
South Coast	Ozone	Attainment Plan	11/15/96, 12/10/99	2/5/97, 2/4/00	4/10/00 65 FR 18903.
South Coast	NO_2	Maintenance Plan	11/15/96	2/5/97	7/24/98 63 FR 39747.
Stockton	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98 63 FR 15305.
Ventura	Ozone	Attainment Plan	11/8/94, 12/19/95	11/15/94, 7/12/96	1/8/97 62 FR 1150.

Note: The attainment plans typically also address CAA provisions relating to progress.

B. What Is Transportation Conformity?

Transportation conformity is a Clean Air Act (CAA) requirement for metropolitan planning organizations (MPOs) and the U.S. Department of Transportation to ensure that federally supported highway and transit activities are consistent with ("conform to") the SIP. Conformity to a SIP means that an action will not cause or contribute to new violations, worsen existing violations, or delay timely attainment.

The conformity requirements are established by CAA section 176(c). We issued the transportation conformity rule (40 CFR part 93) to implement this CAA requirement.

Under section 176(c), a determination of conformity must be based on the most recent estimates of emissions, and such emissions estimates must be determined from the most recent population, employment, travel and congestion estimates as determined by the MPO or other agency authorized to make such estimates. To comply with section 176(c), motor vehicle emissions estimates for conformity purposes must keep pace with the periodic updates of population, employment, travel and congestion estimates. Section 176(c)(4)(B)(ii) of the Clean Air Act requires MPOs and DOTs to determine the conformity of transportation plans and transportation improvement programs no less frequently than every three years even in the absence of any revision to the underlying progress, attainment, or maintenance SIP. *See* 40 CFR 93.104 for the frequency requirements in the conformity rule.

C. What Are Motor Vehicle Emissions Budgets?

Progress, attainment, or maintenance SIPs necessarily include estimates of motor vehicle emissions to help areas attain and maintain the NAAQS. These estimates act as a budget or ceiling for emissions from motor vehicles, and are used in transportation conformity to determine whether transportation plans, programs and, in some circumstances, individual transportation projects conform to the progress, attainment or maintenance SIPs. In order for transportation plans, programs and projects to conform, estimated emissions from transportation plans, programs and projects must not exceed the emission budgets contained in the applicable progress, attainment or maintenance SIPs.

In California, new planning data are becoming available that have not as yet been incorporated into the SIPs. However, the CAA requires that the latest planning assumptions be used to make conformity determinations. As a result it becomes difficult to determine conformity to SIPs that are based on older planning assumptions. Therefore, the State has requested that we limit our approval of SIP budgets so that budgets that incorporate new planning data will apply for conformity as soon as they are adequate rather than when they are approved. As explained below, today's proposal sets forth a means to provide for the earliest possible use of new emissions budgets in the transportation planning and conformity process consistent with the fundamental SIP goal of expeditious attainment and maintenance of the NAAQS.

D. Which Motor Vehicle Emissions Budgets Usually Apply?

According to 40 CFR 93.118(e) of the transportation conformity rule, budgets in a submitted SIP can apply for conformity purposes even before we have approved the SIP, under certain circumstances. First, there must not be any other approved SIP budgets that have been established for the same time frame and with respect to the same CAA requirements. For example, if there is already an approved attainment

demonstration SIP that establishes budgets for the attainment date, and the State submits a revision to those budgets, the newly submitted budgets cannot apply for conformity purposes until we have approved them into the SIP.

Second, submitted SIP budgets cannot be used unless we have formally found that the submitted SIP budgets are adequate for conformity purposes. Our process for determining adequacy is

development of the Table 1 SIPs was EMFAC 7F for those SIPs adopted before 1996. The most recent version of EMFAC applicable to these areas is 7G, which was adopted by CARB in 1996 and which was used in California SIPs adopted after 1995.[1]

On June 14, 2002, CARB submitted a letter indicating the State's intention to submit comprehensive revisions to the progress, attainment,and maintenance

realized for well over a year after the new plans and budgets are submitted, if our prior SIP approvals are not modified to allow for the replacement of the existing budgets upon our adequacy determination with respect to the new budgets.

As described above in Section I.D., new budgets associated with progress, attainment, and maintenance plans generally may not replace existing

budgets using the new version of EMFAC and the updated information, as they have indicated they intend to do, those new budgets will apply for conformity purposes if and when we find the budgets to be adequate for conformity purposes and our adequacy finding is effective. The new budgets would then replace the existing budgets in the approved SIPs, provided that (as we expect) the new budgets are

only to the extent that any new plans explicitly supersede the approved SIPs. Lastly, we do not view California's request to limit the duration of the approval of the existing budgets and have the new budgets apply after they are found adequate to be a SIP revision itself but rather a request that we modify our approvals of previously submitted and approved budgets.

III. Request for Public Comment

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to modify certain previous SIP approval actions, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045,

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demonstration SIP that establishes budgets for the attainment date, and the State submits a revision to those budgets, the newly submitted budgets cannot apply for conformity purposes until we have approved them into the SIP.

Second, submitted SIP budgets cannot be used unless we have formally found that the submitted SIP budgets are adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e)(4) and (5), and in a May 14, 1999 memo from Gay MacGregor, Director, Regional and State Programs Division, Office of Mobile Sources, entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision."

For more details about the applicability of submitted and approved budgets, see 61 FR 36117 (July 9, 1996) and 62 FR 43783 (August 15, 1997). As explained below, today's proposal is not intended to modify the generally applicable rules regarding when submitted budgets become effective for the purposes of transportation conformity. Rather, today's proposal sets forth a means to accommodate the State's request to allow for the prompt use of new budgets in California within the bounds of existing regulatory and statutory requirements.

II. What Are We Proposing Today?

Today, as authorized in CAA sections 110(k) and 301(a), we are proposing to limit the duration of our prior approvals of existing budgets associated with the SIPs for the areas listed above. Under this proposed modification, the existing budgets will continue to be approved but will apply for transportation conformity purposes only until new budgets have been submitted and we have found the new budgets to be adequate.

A. What Modification to Our Approvals of the Existing Budgets Has the State Requested?

The California SIPs identified in Table 1 were developed and adopted in the period 1994 through 1996. In the years since the development of these plans, the California Air Resources Board (CARB) has prepared draft revisions to the mobile source component of the emissions inventories, including a major draft revision to the model used to calculate exhaust and evaporative emissions from motor vehicles. This California-specific model is known as EMFAC. CARB is now making final refinements to this completely new version of EMFAC.

The version of the State's motor vehicle emissions model available for development of the Table 1 SIPs was EMFAC 7F for those SIPs adopted before 1996. The most recent version of EMFAC applicable to these areas is 7G, which was adopted by CARB in 1996 and which was used in California SIPs adopted after 1995.[1]

On June 14, 2002, CARB submitted a letter indicating the State's intention to submit comprehensive revisions to the progress, attainment,and maintenance SIPs and the budgets for the areas listed in Table 1 to reflect, among other new information, the State's revised motor vehicle emissions factors and the updated information on vehicle fleet, age distribution, and activity levels (letter from Michael P. Kenny, CARB, to Wayne Nastri, EPA). The State notes that these plan revisions will benefit air quality and strengthen the SIPs by incorporating: new federally enforceable commitments and control measures; new and updated data that reflect the various emission control rules adopted since the old SIPs were developed; recent vehicle test data for cars and trucks to better represent real-world emissions; and updated vehicle registration data and activity data.

CARB anticipates that by January 2003 the new version of EMFAC will be submitted to us for approval for use in SIPs and conformity analyses statewide. In an April 26, 2002, letter to EPA, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA), CARB included a schedule according to which the State expects to submit revised plans and new budgets based on the new EMFAC model and updated information.[2] The schedule shows that the State expects to submit SIPs for almost all of the areas listed in Table 1 by April 2003.

In the June 14, 2002 letter, CARB discusses the benefits of promptly replacing the existing budgets with the new budgets, noting the advantages of basing transportation conformity determinations on updated and enhanced plans and budgets that use the most current and accurate motor vehicle emissions data. CARB expresses concern that these benefits will not be realized for well over a year after the new plans and budgets are submitted, if our prior SIP approvals are not modified to allow for the replacement of the existing budgets upon our adequacy determination with respect to the new budgets.

As described above in Section I.D., new budgets associated with progress, attainment, and maintenance plans generally may not replace existing budgets for conformity purposes until we have taken final action to approve the new budgets and the new plans to which they correspond.[3] This SIP approval process may take as much as 18 months from submittal of the plans.[4] During this period of time, the conformity of transportation plans, programs, and projects would have to continue to be determined based on the existing budgets, which will increasingly diverge from the progress, attainment, and maintenance needs of the areas.

The adequacy process may be completed in far less time than would be required for full SIP and budget approval. Indeed, under the May 14, 1999, conformity guidance, EPA has established an expedited adequacy process, designed to be completed no more than 90 days from budget submittal.

Because CARB knows that existing SIPs are based on older planning data and models, CARB asks EPA to modify the approval of the existing budgets in the SIPs listed in Table 1 so that the approval of these budgets lasts only until EPA finds adequate new budgets based on updated planning data and models.

B. How Are We Proposing to Modify Our Approval of the Budgets?

In today's notice, we are proposing to limit our approval of existing budgets such that the approved motor vehicle emissions budgets for the SIPs listed in Table 1 will continue to be approved but will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and we have found them to be adequate for conformity purposes.

In other words, when the State submits revised SIPs containing new budgets using the new version of EMFAC and the updated information, as they have indicated they intend to do, those new budgets will apply for conformity purposes if and when we find the budgets to be adequate for conformity purposes and our adequacy finding is effective. The new budgets would then replace the existing budgets in the approved SIPs, provided that (as we expect) the new budgets are submitted as a revision to the progress, attainment, or maintenance SIPs and are established for the same years as those in the approved SIPs.

We believe the new budgets should apply as soon as we find them adequate rather than delaying applicability of the new budgets until we have approved the revised SIPs. This is because we know now that once we have confirmed that the new budgets are adequate, they will be more appropriate than the existing budgets for conformity purposes because the new budgets will be based on updated information.

If we do not modify our approval of the existing budgets, California will revise their plans and budgets as they have committed, but they will not be able to start using them quickly for conformity purposes. In contrast, according to today's proposal, the revised budgets could be used for conformity after we have completed our adequacy review process, which we have committed to complete within 90 days after revisions are submitted, provided they are adequate. If we do not find the new budgets adequate, the existing budgets would continue to apply. In the event that we disapprove the plans and the new budgets after finding the new budgets adequate, we would act to reapprove the original budgets so that they will again apply, unless we have issued a protective finding with respect to disapproval of the new budgets. Conformity determinations of a transportation plan or TIP made based on the adequate budget will remain valid.

This notice does not propose any change to the transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs.

We are proposing only one change to our prior approvals of the California SIPs listed in Table 1: we propose to limit our approval of the budgets in those plans so that they will no longer apply once we find adequate new budgets for the same Clean Air Act requirement and year. In all other respects, the Table 1 SIPs will remain federally approved and enforceable unless and until we finalize approval of revised plans, and our limitations apply only to the extent that any new plans explicitly supersede the approved SIPs. Lastly, we do not view California's request to limit the duration of the approval of the existing budgets and have the new budgets apply after they are found adequate to be a SIP revision itself but rather a request that we modify our approvals of previously submitted and approved budgets.

III. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail or in person to the **ADDRESSES** section listed in the front of this document. Your comments must be received by August 15, 2002, to be considered in the final action taken by EPA.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action modifies certain previous SIP approval actions and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to modify certain previous SIP approval actions and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to modify certain previous SIP approval actions, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Because the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply in the context of EPA's review of SIP submissions, the requirements also do not apply in the context of EPA's modification of its previous approvals of such SIP submissions. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 3, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–17875 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

[1] See CARB, *Methodology for Estimating Emissions from On-Road Motor Vehicles*, 1996. EPA approved EMFAC 7G for use in transportation plan and program conformity analyses in a letter from David Howekamp, EPA, to Michael P. Kenny, CARB, dated April 16, 1998. On January 11, 2002 (67 FR 1464), we approved SF Bay Area-EMFAC2000 for use only in the Bay Area ozone SIP, but we set certain conditions on the approval as explained in that notice due to significant technical limitations in the model.

[2] Letter from Michael P. Kenny (CARB) to Jack Broadbent (EPA), Michael G. Ritchie (FHWA), and Leslie T. Rogers (FTA). A copy of this letter is in the docket to this rulemaking.

[3] In cases where there are currently no approved budgets, the applicability of new budgets would occur when EPA found the budgets adequate under 40 CFR 93.118(e).

[4] CAA section 110(k) provides for a completeness determination 6 months after submittal of a SIP revision, unless we have before that date deemed the submittal complete or incomplete, and requires us to take final action on the submittal within 1 year of the date on which the submittal became complete.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7241–3]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Georgia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate

final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. FMCSA–99–11659 (HM–232A)]

Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at *"http://dms.dot.gov/."*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or William Quade, (202) 366–6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration

or operation of motor vehicles carrying hazardous materials. Therefore, we are issuing this ANPRM as a joint RSPA-FMCSA action.

The HMR focus on the safe transportation of hazardous materials by all modes. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR

agencies, including the Department of Defense (DoD), the Department of Energy (DOE), and the Nuclear Regulatory Commission, as well as some private companies, employ rigorous security measures to protect sensitive shipments. Some of these security measures may also be appropriate for broader application to commercial motor carrier shipments of hazardous materials. In addition, there are many technological solutions for tracking

Operational measures. To reduce or eliminate the necessity for lengthy en route stops, some motor carriers are employing two drivers or using driver relays to avoid en route stops on long trips. These and other adjustments to routine operating procedures are relatively simple and cost-effective ways to enhance hazardous materials transportation security.

Safe havens. Under § 397.5 of the FMCSR, a motor vehicle containing

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final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by August 15, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440. You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190, Kathy Piselli, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154, East, Atlanta Georgia 30334–4910, Phone number: 404–656–7802.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–17694 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. FMCSA–02–11650 (HM–232A)]

RIN 2137–AD70, 2126–AA71

Security Requirements for Motor Carriers Transporting Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Research and Special Programs Administration and the Federal Motor Carrier Safety Administration are examining the need for enhanced security requirements for the motor carrier transportation of hazardous materials. The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures being considered include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and notification to state and local authorities.

DATES: Submit comments by October 15, 2002. To the extent possible, we will consider late-filed comments as we consider further action.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify Docket Number FMCSA–02–11650 (HM–232A). If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at *"http://dms.dot.gov/"* and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at *"http://dms.dot.gov/."*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or William Quade, (202) 366–6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

Over 800,000 shipments of hazardous materials occur each day in the United States. The overwhelming majority of these shipments—approximately 95 percent—are made by highway. Many of the hazardous materials transported by motor carriers potentially may be used as weapons of mass destruction or in the manufacture of such weapons. Since September 11, 2001, on several occasions, Federal law enforcement officials provided information indicating that terrorist organizations may be planning to use motor vehicles transporting certain hazardous materials for additional terrorist attacks on facilities in the United States.

Prior to 1975, the Secretary of Transportation regulated the transportation of hazardous materials by highway under the authority of the Motor Carrier Safety Act (MCSA). The authority to issue regulations under the MCSA is currently delegated to the Federal Motor Carrier Safety Administration (FMCSA). 49 CFR 1.73(g). In 1974, Congress passed the Hazardous Materials Transportation Act (HMTA). The HMTA gave the Secretary the authority to issue "regulations for the safe transportation in commerce of hazardous materials" applicable to "any person who transports, or causes to be transported or shipped, a hazardous material. * * *" Public Law 93–633; 88 Stat. 2156 (Jan. 3, 1975). The Secretary has delegated this rulemaking authority to the Research and Special Programs Administration (RSPA). 49 CFR 1.53(b).

Motor carriers that transport hazardous materials in commerce must comply with both the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), administered by RSPA, and the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390–397), administered by FMCSA. As a result of a1984 amendment to the MCSA and a 1990 amendment to the HMTA, RSPA is authorized to eliminate or amend regulations (other than highway routing regulations) that appear in Part 397 of the FMCSR and that apply solely to the maintenance, equipment, loading,

or operation of motor vehicles carrying hazardous materials. Therefore, we are issuing this ANPRM as a joint RSPA-FMCSA action.

The HMR focus on the safe transportation of hazardous materials by all modes. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR also include operational requirements applicable to each mode of transportation. Part 177 of the HMR specifies operational requirements for motor carriers that transport hazardous materials, such as driver training, loading and unloading requirements for specific hazardous materials, and segregation and separation requirements on loaded vehicles. The FMCSR address motor vehicle and driver safety, including: driver qualifications and licensing; hours of service; vehicle parts and accessories; and vehicle inspection, repair, and maintenance. Part 397 of the FMCSR prescribes certain additional requirements related to attendance and surveillance, parking, and routing of motor vehicles that transport placarded quantities of hazardous materials.

Except for certain shipments of Class 7 (radioactive) materials, neither the HMR nor the FMCSR specifically address security threats to highway shipments of hazardous materials.

On May 2, 2002, RSPA proposed several new requirements to enhance the security of hazardous materials transported in commerce by all modes (67 FR 22028). The notice of proposed rulemaking (NPRM) included proposals to revise shipping documentation requirements to make it easier for law enforcement personnel to identify unusual or unauthorized activities involving transportation vehicles or operators. The NPRM also proposed to require hazardous materials shippers and carriers to assure that hazmat employee training includes a security component. In addition, RSPA proposed to require shippers and carriers of certain highly hazardous materials to develop and implement security plans.

II. Purpose of this ANRPM

RSPA and FMCSA are seeking information on the feasibility of imposing specific security requirements, in addition to those proposed in the May 2 NPRM, on motor carriers that transport hazardous materials in commerce. Certain government agencies, including the Department of Defense (DoD), the Department of Energy (DOE), and the Nuclear Regulatory Commission, as well as some private companies, employ rigorous security measures to protect sensitive shipments. Some of these security measures may also be appropriate for broader application to commercial motor carrier shipments of hazardous materials. In addition, there are many technological solutions for tracking shipments, communicating with drivers, or securing shipments within trailers that can protect shipments from hijacking or provide an early indication of a potential security problem.

Pre-notification. Though not required by Federal regulations, DoD and DOE sometimes notify state and/or local authorities prior to the transportation of certain materials through their jurisdictions. Such pre-notification may include the route planned for the shipment and the time of day during which the shipment will occur. Pre-notification enables emergency responders in jurisdictions through which such shipments take place to prepare in advance for a potential emergency or accident. It also enables state or local authorities to restrict traffic or take other precautions along the affected route.

Escorts. Certain hazardous materials shipments may be accompanied by armed escorts, either on the vehicle or in an accompanying vehicle. The presence of armed escorts is one measure designed to prevent or defeat an attempted hijacking or attack against a shipment.

Vehicle tracking. Satellite tracking, direct short-range communications, and cell phone technologies enable motor carriers to monitor a shipment while en route to its destination and to identify and communicate deviations from prescribed routes or time frames. Relatively sophisticated systems are currently available and are already used by many motor carriers to deter theft. Increasing numbers of motor carriers utilize vehicle tracking systems to enhance shipment security.

Anti-theft devices. There are a number of anti-theft devices that can help to reduce the risk of vehicle hijacking or cargo theft. Devices such as remote vehicle shut-offs, electronic ignition locks, and driver verification systems utilizing security codes or fingerprints assure that unauthorized persons cannot operate a motor vehicle. Tamper-resistant or tamper-evident seals and locks on cargo compartment openings protect sensitive cargoes and limit access to authorized personnel.

Operational measures. To reduce or eliminate the necessity for lengthy en route stops, some motor carriers are employing two drivers or using driver relays to avoid en route stops on long trips. These and other adjustments to routine operating procedures are relatively simple and cost-effective ways to enhance hazardous materials transportation security.

Safe havens. Under § 397.5 of the FMCSR, a motor vehicle containing Division 1.1, 1.2, or 1.3 explosives must be attended by the driver, or qualified representative of the motor carrier, at all times. Division 1.1, 1.2, and 1.3 explosives are excepted from the "attendance" requirements if three conditions are met. One of these conditions occurs when the vehicle is parked in a "safe haven." A "safe haven" is defined in the regulations as an area specifically approved in writing by Federal, State, or local government authorities for the parking of *unattended* vehicles containing Division 1.1, 1.2, and 1.3 explosive materials. The decision as to what constitutes a safe haven is generally made by the competent local authority having jurisdiction over the area.

There are no DOT regulations for construction and security of a safe haven other than the requirements contained in § 397.7 dealing with parking of vehicles containing Division 1.1, 1.2, and 1.3 explosives. The National Fire Protection Association (NFPA) has published standards for safe havens under NFPA 498, *Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives.* DoD has published standards for non-government safe havens used for the commercial shipments of DoD munitions under Military Traffic Management Command (MTMC) Freight Traffic Rules Publication No.1B.

The use of a safe haven may, in fact, increase the possibility of cargo theft or hijacking, because the driver, or qualified representative, is relieved from the attendance requirements of the regulations when using a safe haven. On the other hand, temporary storage of high risk cargoes in a safe haven that utilizes state-of-the-art measures to limit access and exercise 24-hour surveillance could increase the overall transportation security of certain high risk cargoes.

III. Comments

The measures discussed above have the potential to significantly enhance the security of hazardous materials shipments transported by motor vehicle. In addition, at least some of the security measures discussed in this ANPRM could also be applied more broadly to

hazardous materials shipments transported by air, rail, or vessel. Further, application of some or all of these security measures could have implications for the transportation choices made by hazardous materials shippers and for intermodal shipments of hazardous materials. Commenters should be aware that the information and data generated in response to this ANPRM could result in a notice of proposed rulemaking that would apply

reserve the right to reject comments that are beyond the scope of the issues discussed herein. For this ANPRM, comments that include information that may compromise transportation security will be disqualified as beyond the scope of this rulemaking.

There are a number of additional issues that we must address in assessing the feasibility and effectiveness of various measures to enhance hazardous materials transportation security. These

whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of specific security requirements for motor carriers

Eliminating this requirement will enhance the security of hazardous materials shipments.

DATES: Submit comments by August 15, 2002, but, to the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW,

terrorist attacks on facilities in the United States.

Prior to 1975, the Secretary of Transportation regulated the transportation of hazardous materials by highway under the authority of the Motor Carrier Safety Act (MCSA). The authority to issue regulations under the MCSA is currently delegated to FMCSA. 49 CFR 1.73(g). In 1974, Congress passed the Hazardous Materials Transportation Act (HMTA). The HMTA

beginning of each trip and each time the vehicle is parked.

II. Regulatory Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant

hazardous materials shipments transported by air, rail, or vessel. Further, application of some or all of these security measures could have implications for the transportation choices made by hazardous materials shippers and for intermodal shipments of hazardous materials. Commenters should be aware that the information and data generated in response to this ANPRM could result in a notice of proposed rulemaking that would apply more generally to shippers and carriers of certain high-risk hazardous materials, such as explosives, poison-by-inhalation (PIH) materials, and bulk shipments of flammable liquids and gases. The cost of requiring additional security measures may be significant. We urge commenters to consider these issues as they develop responses to this ANPRM.

We invite commenters to submit data and information on:

(1) The state of information and communications technology development and the current level of adoption of state-of-the-art systems by the transportation industry, including those described above and others that commenters believe may warrant consideration;

(2) The effectiveness of different types of physical security measures;

(3) The overall security of safe havens for temporary storage during transportation, including suggestions for improving security at safe havens or alternatives to the use of safe havens;

(4) The costs involved with implementing specific security measures;

(5) Related safety or productivity benefits that would help offset costs;

(6) Measures or incentives that may be appropriate to consider in promoting technology development and adoption in conjunction with or separate from general regulatory requirements; and

(7) Whether specific physical security measures should be limited to certain highly hazardous materials and, if so, which highly hazardous materials might warrant specific security measures.

We are particularly interested in hearing from shippers and carriers that are utilizing some of the technologies and procedures discussed above—information on the benefits realized, the costs incurred, any technical or practical difficulties encountered, and other real-world experience would be especially helpful.

Because this ANPRM addresses measures to enhance the security of hazardous materials in transportation, we urge commenters to carefully consider the information they submit in response to the questions listed above. As with any rulemaking proceeding, we reserve the right to reject comments that are beyond the scope of the issues discussed herein. For this ANPRM, comments that include information that may compromise transportation security will be disqualified as beyond the scope of this rulemaking.

There are a number of additional issues that we must address in assessing the feasibility and effectiveness of various measures to enhance hazardous materials transportation security. These include the analyses required under the following statutes and executive orders:

1. *Executive Order 12866: Regulatory Planning and Review.* E.O. 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with adoption of specific security requirements for motor carriers that transport hazardous materials in commerce.

2. *Executive Order 13132: Federalism.* E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We invite state and local governments with an interest in this rulemaking to comment on the effect that adoption of specific security requirements for motor carriers that transport hazardous materials in commerce may have on state or local safety or environmental protection programs.

3. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.* E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. We invite Indian tribal governments to provide comments as to the effect that adoption of specific security requirements for motor carriers that transport hazardous materials in commerce may have on Indian communities.

4. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of specific security requirements for motor carriers that transport hazardous materials in commerce could have a significant economic impact on your operations, please submit a comment to explain how and to what your business or organization could be affected.

IV. Regulatory Notices—Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Issued in Washington, DC, on July 10, 2002, under authority delegated in 49 CFR part 106.

Robert A McGuire,

Associate Administrator for HazardousMaterials Safety,Research and Special Programs Administration.

Brian McLaughlin,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02–17899 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–60–P; 4910–EY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. RSPA–02–12773 (HM–232B)]

RIN 2137–AD69

Revision to Periodic Tire Check Requirement for Motor Carriers Transporting Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Motor Carrier Safety Administration is proposing to eliminate an outdated requirement for certain motor vehicle operators to stop periodically to check their tires. Eliminating this requirement will enhance the security of hazardous materials shipments.

DATES: Submit comments by August 15, 2002, but, to the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify Docket Number RSPA–02–12773 (HM–232B). If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at "*http://dms.dot.gov/*" and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "*http://dms.dot.gov/.*"

FOR FURTHER INFORMATION CONTACT: William Quade, (202) 366–6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

After the terrorist attacks of September 11, 2001, the Federal Motor Carrier Safety Administration (FMCSA) and the Research and Special Programs Administration (RSPA), reviewed government and industry hazardous materials transportation safety and security programs with a view towards identifying areas where security should be enhanced. Over 800,000 shipments of hazardous materials occur each day in the United States. The overwhelming majority of these shipments—approximately 95 percent—are made by highway. Many of the hazardous materials transported by motor carriers potentially may be used as weapons of mass destruction or in the manufacture of such weapons. Since September 11, 2001, on several occasions, Federal law enforcement officials provided information indicating that terrorist organizations may be planning to use motor vehicles transporting certain hazardous materials for additional terrorist attacks on facilities in the United States.

Prior to 1975, the Secretary of Transportation regulated the transportation of hazardous materials by highway under the authority of the Motor Carrier Safety Act (MCSA). The authority to issue regulations under the MCSA is currently delegated to FMCSA. 49 CFR 1.73(g). In 1974, Congress passed the Hazardous Materials Transportation Act (HMTA). The HMTA gave the Secretary the authority to issue "regulations for the safe transportation in commerce of hazardous materials" applicable to "any person who transports, or causes to be transported or shipped, a hazardous material. . . ." Public Law 93–633; 88 Stat. 2156 (Jan. 3, 1975). The Secretary delegated this rulemaking authority to RSPA. 49 CFR 1.53(b).

Motor carriers that transport hazardous materials in commerce must comply with both the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), administered by RSPA, and the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390–397), administered by FMCSA. As a result of a 1984 amendment to the MCSA and a 1990 amendment to the HMTA, RSPA is authorized to eliminate or amend regulations (other than highway routing regulations) that appear in Part 397 of the FMCSR and that apply solely to the maintenance, equipment, loading, or operation of motor vehicles carrying hazardous materials. Therefore, we are issuing this NPRM as a joint RSPA-FMCSA rulemaking.

Section 397.17 of the FMCSR requires periodic tire inspections for certain vehicles transporting hazardous materials. Drivers of vehicles with dual tires must stop every two hours or 100 miles to inspect the tires. When originally promulgated, this requirement was intended to prevent possible fires caused by overheated tube-type tires. With advancements in tire technology, fires caused by tire overheating occur much less frequently.

To require a vehicle transporting a hazardous material to stop at frequent regular intervals increases the security risk associated with such transportation. Any stop provides an opportunity for potential highjacking or theft of the vehicle and its cargo. Eliminating the tire check stop reduces this potential security risk. Therefore, in this NPRM, we are proposing to remove the requirement to periodically stop and check dual tires from § 397.17 of Part 397. Operators of motor vehicles transporting hazardous materials must still check each vehicle's tires at the beginning of each trip and each time the vehicle is parked.

II. Regulatory Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

The proposal to eliminate the periodic tire check requirement for motor vehicles transporting hazardous materials will not result in increased compliance costs on the industry. Indeed, eliminating periodic stops to check tires will decrease costs for the industry by reducing en route shipment delays and, thus, improving overall delivery times.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We determined that the requirements proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. Eliminating the current requirement for operators of motor vehicles transporting hazardous materials to stop periodically to check tires will decrease costs for the industry by reducing en route shipment delays and, thus, improving overall delivery times.

C. Executive Order 13132

This NPRM was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This NPRM does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This NPRM was analyzed in accordance with the principles and criteria contained in Executive Order

13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

§ 397.17 Tires.

(a) A driver must examine a motor vehicle's tires at the beginning of each trip and each time the vehicle is parked.

* * * * *

Issued in Washington, DC on July 10, 2002, under authority delegated in 49 CFR part 106.

Brian McLaughlin,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

A total of 37 plant species historically found on Lanai were listed as endangered or threatened species under the Endangered Species Act of 1973, as

we proposed critical habitat for 32 of the 37 species from the island of Lanai (67 FR 9805). Critical habitat was not proposed for 5 of the 37 species. The five species are *Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense* which no longer occur on the island of Lanai and for which we are unable to identify any habitat that is essential to their conservation on the island of Lanai (67 FR 9805), and habitat. Based upon the previously published proposal to designate critical habitat for plant species from Lanai, and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

Public Comments Solicited

by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business

13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

F. Paperwork Reduction Act

This NPRM does not impose new information collection requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

There are no significant environmental impacts associated with this NPRM.

List of Subjects in 49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, we propose to amend Title 49, Chapter III, Subchapter B of the Code of Federal Regulations, as follows:

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

1. The authority citation for part 397 would be revised to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

2. In § 397.17, paragraph (a) would be revised to read as follows:

§ 397.17 Tires.

(a) A driver must examine a motor vehicle's tires at the beginning of each trip and each time the vehicle is parked.

* * * * *

Issued in Washington, DC on July 10, 2002, under authority delegated in 49 CFR part 106.

Brian McLaughlin,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

Robert A McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 02–17898 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the island of Lanai, Hawaii. We are also providing notice of the reopening of the comment period for the proposal to determine prudency and to designate critical habitat for these plants to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until August 15, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

A total of 37 plant species historically found on Lanai were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. Seven of these species are endemic to the islands of Lanai, while 30 species are reported from one or more other islands, as well as Lanai.

In other published proposals we proposed that critical habitat was prudent for 35 of the 37 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centarium sebaeoides, Clermontia oblongifolia ssp. mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus faurei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis, Zanthoxylum hawaiiense* from the island of Lanai (64 FR 48307, 65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, and 67 FR 3940). No change was made to these prudency determinations in the March 4, 2002 (67 FR 9805) revised proposal. In addition, on December 27, 2000, we proposed that critical habitat for *Phyllostegia glabra* var. *lanaiensis,* was not prudent because it has not been seen recently in the wild, and no viable genetic material of this species is known (65 FR 82086). No change was made in the March 4, 2002, revised proposal to the not prudent determination for *Phyllostegia glabra* var. *lanaiensis.* In the March 4, 2002, revised proposal, we proposed that critical habitat is prudent for one other species, *Tetramolopium lepidotum* ssp. *lepidotum,* for which a prudency determination had not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu) (67 FR 9805).

In the March 4, 2002, revised prudency and critical habitat proposal, we proposed critical habitat for 32 of the 37 species from the island of Lanai (67 FR 9805). Critical habitat was not proposed for 5 of the 37 species. The five species are *Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense* which no longer occur on the island of Lanai and for which we are unable to identify any habitat that is essential to their conservation on the island of Lanai (67 FR 9805), and *Phyllostegia glabra* var. *lanaiensis* for which we determined that critical habitat designation was not prudent because it has not been seen recently in the wild and no viable genetic material of this species is known (65 FR 82086).

We have proposed to designate a total of 8 critical habitat units covering approximately 7,853 hectares (ha) (19,405 acres (ac)) on the island of Lanai.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for plant species from Lanai, and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Lanai_Crithab@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AH10" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Author(s)

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 NE 11th Avenue, 4th floor, Portland, OR 97232–4181.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–18016 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 136
Tuesday, July 16, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

files. Please include your name and address in your message and "Docket No. 01–018–2" on the subject line.

You may read any comments that we receive on the evaluation in our reading

amended the regulations by removing Great Britain (England, Scotland, Wales, and the Isle of Man) and Northern Ireland from the list of regions considered to be free of rinderpest and

met the standards of the OIE for being considered to be free of FMD.

In this notice, we are announcing the availability for review and comment of a document entitled "APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man)" (May 2002). This evaluation assesses the FMD status of Great Britain and the related disease risks associated with importing animals and animal products

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary

Research, Education, and Economics

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Solicitation for Membership to the Forestry Research Advisory Council.

accomplishing efficiently the purposes of the McIntire-Stennis Act of 1962 (16 U.S.C. 582a-4, *et seq.*). The Council also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600). The Council is composed of 20 voting members from the following membership categories:

• Federal and State agencies

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–018–2]

Availability of Evaluation Related to FMD Status of Great Britain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an evaluation has been prepared by the Animal and Plant Health Inspection Service concerning the foot-and-mouth disease status of Great Britain (England, Scotland, Wales, and the Isle of Man) and the related disease risks associated with importing animals and animal products into the United States from Great Britain. This evaluation will be used as a basis for determining whether to relieve certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain. We are making this evaluation available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 16, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–018–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–018–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–018–2" on the subject line.

You may read any comments that we receive on the evaluation in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective January 15, 2001, and published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), we amended the regulations by removing Great Britain (England, Scotland, Wales, and the Isle of Man) and Northern Ireland from the list of regions considered to be free of rinderpest and FMD. This action was necessary because FMD had been confirmed in both of those regions. The effect of the interim rule was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Great Britain and Northern Ireland.

Although we removed Great Britain and Northern Ireland from the list of regions considered to be free of rinderpest and FMD, we recognized that the appropriate authorities had responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We stated that we intended to reassess the situations in both regions at a future date in accordance with Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rules.

Additionally, we stated that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Great Britain and Northern Ireland, or whether we can restore Great Britain and Northern Ireland to the list of regions in which FMD is not known to exist, or regionalize portions of Great Britain or Northern Ireland as FMD-free.

On January 9, 2002, we published a final rule in the **Federal Register** (67 FR 1072–1074, Docket No. 01–031–3) in which we restored Northern Ireland (as well as the Netherlands) to the list of regions considered to be free of rinderpest and FMD and the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. The action with respect to Northern Ireland and the Netherlands was based on the results of an evaluation that found each region met the standards of the OIE for being considered to be free of FMD.

In this notice, we are announcing the availability for review and comment of a document entitled "APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man)" (May 2002). This evaluation assesses the FMD status of Great Britain and the related disease risks associated with importing animals and animal products into the United States from Great Britain. This evaluation will serve as a basis to determine whether to relieve certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain. We are making the evaluation available for public comment for 60 days.

You may view the evaluation in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice).

You may also request a copy by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the evaluation when requesting copies.

You may also view the evaluation on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html*. At the bottom of that website page, click on "Information previously submitted by Regions requesting export approval and their supporting documentation." At the next screen, click on the triangle beside "European Union/Animals and Animal Products/Foot-and-Mouth Disease," then on the triangle beside "Response by APHIS." A link will then appear for "APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man), May 2002." Following that link will allow you to view the evaluation.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 10th day of July 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–17795 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary

Research, Education, and Economics

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Solicitation for Membership to the Forestry Research Advisory Council.

SUMMARY: In accordance with the Federal Advisory Committee Act, the United States Department of Agriculture (USDA) announces solicitation for nominations to fill six vacancies on the Forestry Research Advisory Council. The initial Council membership was appointed with staggered terms of one, two, and three years. As a result of the staggered appointments, the terms of six members expired December 31, 2001. Nominations for a three-year appointment for all of the six vacant positions are sought.

DATES: Nominations must be received on or before August 16, 2002.

ADDRESSES: The address for hand-delivered nominations or nominations submitted using an express mail or overnight courier service is: Office of the Forestry Research Advisory Council; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 3213, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024; fax: (202) 401–1706. Nominations sent via the U.S. Postal Service must be sent to the following address: Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Office of the Forestry Research Advisory Council; Mail Stop 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210.

FOR FURTHER INFORMATION CONTACT: Catalino A. Blanche, Designated Federal Officer, Forestry Research Advisory Council; Office of the Forestry Research Advisory Council; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210; telephone: (202) 401–4190; fax: (202) 401–1706; e-mail: *cblanche@reeusda.gov*, or contact Dr. Hao Tran, Staff Assistant, Research and Development, Forest Service, U.S. Department of Agriculture; telephone: (202) 205–1293; fax: (202) 205–1530; e-mail: *htran@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The Forestry Research Advisory Council was established to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the McIntire-Stennis Act of 1962 (16 U.S.C. 582a-4, *et seq.*). The Council also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600). The Council is composed of 20 voting members from the following membership categories:

- Federal and State agencies concerned with developing and utilizing the Nation's forest resources, in particular committee membership, will include representation from the National Forest System and Forest and Range Experiment Stations leaders, Forest Service;
- The forest industries;
- The forestry schools of the State certified eligible institutions, and State agricultural experiment stations; and
- Volunteer public groups concerned with forests and related natural resources.

Nomination of members representing the forestry schools will be sent to the Secretary by State-certified eligible forestry schools. This notice does not seek nominations representing those institutions.

Nominees will be carefully reviewed for their broad expertise, leadership and relevancy to a membership category. Nominations for one individual who fits several of the categories, or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee.

To ensure that recommendations of the Council take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Each nominee must submit and complete Form AD–755, Advisory Committee Membership Background Information (which can be obtained from the contact persons above) and will be vetted before selection. Send or fax the nominee's name, resume and completed Form AD–755 as noted above. Applicants are strongly encouraged to submit nominations via overnight mail or delivery service to ensure timely receipt by the USDA.

Done at Washington, DC this 3rd day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–17797 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Draft Environmental Impact Statement for the Drew Creek, Diamond Rock and Divide Cattle Allotments, Tiller Ranger District, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA

notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of supplemental draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the

Dated: July 2, 2002.

James A. Caplan,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 02–17789 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

collected information, EINs meeting the criteria for inclusion in the Bureau's retail, wholesale, or service surveys are subjected to a second sampling. The retail and wholesale EINs selected in this second sampling are placed on a panel to report in our monthly surveys. An additional panel of selected units are included in the annual surveys. The selected service cases report on an annual basis.

Affected Public: Businesses or other

supplemental inquiry concerning school enrollment to be conducted in conjunction with October 2002 Current Population Survey (CPS) interviewing. Selected items which monitored changes in the types of vocational education have been removed since the supplement was last conducted in 2001 and new items have been added to investigate the fields of study for post-secondary degrees and the use of public libraries.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Draft Environmental Impact Statement for the Drew Creek, Diamond Rock and Divide Cattle Allotments, Tiller Ranger District, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA

ACTION: Notice of intent to supplement a draft environmental impact statement.

SUMMARY: The USDA Forest Service will prepare a Supplement to the Draft Environmental Impact Statement (EIS) for the Drew Creek, Diamond Rock and Divide Cattle Allotments. The draft EIS for the Drew Creek, Diamond Rock and Divide Cattle Allotments was released by former Forest Supervisor Don Ostby in May 2001 (Notice of Availability, May 25, 2001). Based on comments received on the draft EIS, Forest Supervisor James H. Caplan decided to prepare a supplement pursuant to 40 CFR 1502.9(c)(1)(ii). This supplement will provide additional information, as well as another alternative, to the existing analysis.

ADDRESSES: Send written comments and suggestions concerning the scope of this supplement to Jill A. Dufour, District Range, Tiller Ranger District, 27812 Tiller-Trail Highway, Tiller, Oregon 97484.

FOR FURTHER INFORMATION CONTACT: Wes Yamamoto, Resource Assistant, Tiller Ranger District, 27812 Tiller-Trail Highway, Tiller, Oregon 97484, or (541) 825–3201.

RESPONSIBLE OFFICIAL: Forest Supervisor James A. Caplan is the responsible official for this EIS. Mr. Caplan may be contacted at Umpqua National Forest, P.O. Box 1008, Roseburg, OR 97470.

SUPPLEMENTARY INFORMATION: The purpose of the supplement is to provide an additional alternative, which was submitted by the South Umpqua Grazing Association. It also will provide additional information on the social and economic environments that would be affected by the proposal. The supplement will be prepared and circulated in the same manner as the draft EIS (40 CFR 1502.9). Comments received on the supplement will be considered in the preparation of the Final Environmental Impact Statement (FEIS). The supplement to the draft EIS is expected to be available for public review and comment in August 2002. The comment period on the supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of supplemental draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objection that could be raised at the draft EIS stage, but are not raised until the completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir, 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Sup. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the supplemental draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the supplemental draft EIS. Comments may also address the adequacy of the supplemental draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the supplemental draft EIS, as well as applicable laws, regulations and policies considered, in making a decision regarding the proposal. The final EIS is scheduled to be completed in November 2002. The Responsible Official is James A. Caplan, Forest Supervisor for the Umpqua National Forest. The Responsible Official will document the decision and rationale for the decision in the Record of Decision. That decision is subject to appeal under 36 CFR Part 215.

Dated: July 2, 2002.

James A. Caplan,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 02–17789 Filed 7–15–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Business and Professional Classification Report.

Form Number(s): SQ–CLASS.

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 9,448.

Number of Respondents: 43,600.

Avg Hours Per Response: 13 minutes.

Needs and Uses: The Census Bureau sponsors the SQ–CLASS, "Business and Professional Classification Report," to collect information needed to keep the retail, wholesale, and service samples current with the business universe. Because of rapid changes in the marketplace caused by the emergence of new businesses, the death of others, and changes in company organization, the Census Bureau canvasses by mail a sample of new Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Each firm selected in this sample is canvassed once for data on the establishment(s) associated with the new EIN. From the perspective of the business firms, this is a one-time collection of data on newly assigned EINs. A different sample of EINs is canvassed four times a year.

We plan to revise the SQ–CLASS form to improve the assignment of kind-of-business codes based on the new North American Industry Classification System (NAICS). Questions have been rearranged on the form to improve the flow. One question has been removed and respondents are asked to provide two additional percentages. We do not expect these inquiries to increase burden.

The completed SQ–CLASS form provides sales, receipts or revenue, company organization, new or refined NAICS codes, and other key information needed for sampling to maintain proper coverage of the universe. Based on the collected information, EINs meeting the criteria for inclusion in the Bureau's retail, wholesale, or service surveys are subjected to a second sampling. The retail and wholesale EINs selected in this second sampling are placed on a panel to report in our monthly surveys. An additional panel of selected units are included in the annual surveys. The selected service cases report on an annual basis.

Affected Public: Businesses or other for-profit, Not-for-profit institutions.

Frequency: One time only.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17894 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, October 2002 School Enrollment Supplement.

Form Number(s): None.

Agency Approval Number: 0607–0464.

Type of Request: Revision of a currently approved collection.

Burden: 4,275 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 4 minutes and 30 seconds.

Needs and Uses: The Census Bureau requests OMB clearance for the supplemental inquiry concerning school enrollment to be conducted in conjunction with October 2002 Current Population Survey (CPS) interviewing. Selected items which monitored changes in the types of vocational education have been removed since the supplement was last conducted in 2001 and new items have been added to investigate the fields of study for post-secondary degrees and the use of public libraries.

This data series has existed for 40 years and provides basic information on enrollment status of various segments of the population necessary as background for policy formation and implementation. The CPS October supplement is the only annual source of data on public/private elementary and secondary school enrollment and characteristics of private school students and their families, which are used for tracking historical trends and for policy planning and support. It is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, this survey provides national trends in enrollment and progress in school.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182 and Title 29 U.S.C., sections 1–9.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17895 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports (Wave III Mandatory & Voluntary Surveys).

Form Number(s): M311H, M311L, M311M, M311N, M336G, MQ313D, MQ313T, MA311D, MA315D, MA327E, MA333D, MA333F, MA333N, MA334P, MA334R and MA335L.

Agency Approval Number: 0607–0476.

Type of Request: Revision of a Currently approved collection.

Burden: 10,274 hours.

Number of Respondents: 5,995.

Avg Hours Per Response: 1.7 hours.

Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR program focuses primarily on the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. Primary users of these data are Government agencies, business firms, trade associations, and private research and consulting organizations. The Federal Reserve Board uses CIR data in its monthly index of industrial production as well as its annual revision to the index. The Bureau of Economic Analysis (BEA) and the Bureau of Labor Statistics (BLS) use the CIR data in the estimate of components of gross domestic product (GDP) and the estimate of output for productivity analysis, respectively. Many Government agencies, such as the International Trade Commission, Department of Agriculture, Food and Drug Administration, Department of Energy, Federal Aviation Administration, BEA, and International Trade Administration, use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." There are three waves that include the mandatory and voluntary surveys. Mandatory and voluntary surveys are divided into separate clearance requests, making six separate clearances. We are now combining the mandatory and voluntary surveys from each wave into one clearance request, reducing the total number of clearance requests from six to three. Therefore, we are incorporating the burden hours

Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2202.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17896 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

function compounds, diazo compounds, organic derivatives of hydrazine, other organic compounds, synthetic organic coloring matter, paints, artificial waxes, prepared glues and adhesives, toners, prepared rubber accelerators, organic composite solvents, prepared binders, polymers of propylene/styrene/vinyl chloride/vinyl acetate, acrylic polymers, polyacetals, polyamides, amino-resins, silicones, self-adhesive plates of plastics, plastic lids, other articles of

U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 30, 2002.).

A copy of the application and accompanying exhibits will be available for public inspection in each of the following U.S. Export Assistance Centers: Seattle, Portland, Spokane, Boise, Anchorage, Los Angeles, San Francisco, Orange County, San Diego, Phoenix, Denver, Dallas, Houston, Austin, Minneapolis, Chicago, Detroit, Cleveland, Pittsburgh, Philadelphia, New York, Boston, Baltimore, Richmond, Atlanta, Miami, Caribbean, Puerto Rico, Portland, Maine, Milwaukee, Indianapolis, Cincinnati, Nashville, Jackson, Mississippi, Jacksonville, Florida, Oklahoma City, Omaha, Kansas City, Missouri, Albuquerque, Las Vegas, Reno, Salt Lake City, Honolulu, Guam, Northern Marianas, Wilmington, Delaware, Buffalo, New York, Virginia Beach, Virginia, Charleston, West Virginia, Newark, New Jersey, Harrisburg, Pennsylvania, Hartford, Connecticut, Portland, Oregon, Fairbanks, Alaska, Juneau, Alaska, Wichita, Kansas, Des Moines, Iowa, Little Rock, Arkansas, Louisville, Kentucky, Birmingham, Alabama, Jackson, Mississippi, Charleston, South Carolina, Columbia, South Carolina, Greenville, South Carolina, Fargo, North Dakota, Sioux Falls, South Dakota, Billings, Montana, Cheyenne, Wyoming, Manchester, New Hampshire, Providence, Rhode Island, Burlington, Vermont, Anchorage, Alaska, Agana, Guam, Saipan

the CIR surveys are divided into "waves." There are three waves that include the mandatory and voluntary surveys. Mandatory and voluntary surveys are divided into separate clearance requests, making six separate clearances. We are now combining the mandatory and voluntary surveys from each wave into one clearance request, reducing the total number of clearance requests from six to three. Therefore, we are incorporating the burden hours currently contained in 0607–0776 into this request and discontinuing that clearance.

Also in this request, we are changing the reporting status of the following voluntary annual surveys to mandatory since they provide detailed commodity data for the 2002 Economic Census. They are MA311D, "Confectionery", MA333N, "Fluid Power Products", and MA335L, "Electric Lighting Fixtures". We are moving the following surveys from another wave into this wave because of changes in survey content. They are M311H, "Animal & Vegetable Fats and Oil (Warehouse Stocks)", M311L, "Fats and Oils (Rendered)", M311M, "Animal & Vegetable Fats and Oil (Consumption and Stocks)", M311N, "Animal & Vegetable Fats and Oil (Production, Consumption, and Stocks)", and MA334R, "Computers and Office and Accounting Machines". Due to a lack of funding, we are discontinuing MA333J, "Selected Pollution Control Equipment" and MA333U, "Coin-Operated Vending Machines." More details concerning these changes are included in Question 15.

Affected Public: Businesses or other for-profit.

Frequency: Monthly, quarterly, and annually.

Respondent's Obligation: Monthly and Quarterly collections are typically voluntary; Annual collections (including counterpart collections) are mandatory.

Legal Authority: Title 13 U.S.C., sections 61, 81, 131, 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 2202.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–17896 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2002]

Foreign-Trade Zone 20—Newport News, Application for Subzone, Canon Virginia, Inc. (Computer Printers and Related Products), Newport News, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Virginia Port Authority, grantee of FTZ 20, requesting special-purpose subzone status for the computer printer and related products manufacturing plant of Canon Virginia, Inc. (Canon) in Newport News, Virginia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 2, 2002.

Canon's Newport News plant is comprised of two sites in Newport News, Virginia: *Site 1* (165.60 acres currently, with 782,793 square feet with a possible expansion of 800,000 square feet) is located at 12000 Canon Blvd., Newport News; and *Site 2* (21.07 acres with 125,000 square feet) located at 120 Enterprise Drive, Newport News, Virginia.

The facility (1,400 employees) produces computer printers (HTSUS 8471, duty-free), and related products such as toner caftridges (HTSUS 8473, duty-free), toner drums (HTSUS 9009, duty-free), and toner (HTSUS 9009, duty-free and 3707, 6.5%). The company also remanufactures and refurbishes photocopying machines (HTSUS 9009, duty-free-3.7%) and bubble jet printers (HTSUS 8471, duty-free) and may include other Canon products such as scanners, facsimile machines, calculators, medical equipment, regular and digital cameras, video camcorders and broadcasting equipment in the future.

Foreign-sourced materials will account for some 50–70 percent of finished product value, and include items from the following general categories: mineral oils, inorganic acids, iron oxides, titanium oxides, sulfates, salts of oxometallic acid, ethers, amine function compounds, diazo compounds, organic derivatives of hydrazine, other organic compounds, synthetic organic coloring matter, paints, artificial waxes, prepared glues and adhesives, toners, prepared rubber accelerators, organic composite solvents, prepared binders, polymers of propylene/styrene/vinyl chloride/vinyl acetate, acrylic polymers, polyacetals, polyamides, amino-resins, silicones, self-adhesive plates of plastics, plastic lids, other articles of plastics, articles of unvulcanized and vulcanized rubber, belts, packing cases, uncoated paper, cartons, paper, printed booklets and leaflets, synthetic monofilaments, cleaning seals, glass spheres, stainless steel wire, fasteners, copper springs, articles of copper, tungsten, base fittings, metal office fasteners, fans, filtering apparatus, automatic data processing machines, molding boxes, valves, ball or roller bearings, shafts, gears, pulleys, electric motors, electrical transformers, electromagnets, batteries, electrical resistors, electrical apparatus for switching, electrical lamps, diodes, transistors, electronic integrated circuits, insulated wire and cable, insulated fittings, lenses, photocopying apparatus, counters, typewriter ribbons, ink pads, and testing and controlling instruments.

Zone procedures would exempt Canon from Customs duty payments on foreign materials used in production for export. Some 15 percent of the plant's shipments are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free and some at 3.7%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9 percent, weighted average 5.6%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 30, 2002.).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 400 North 8th Street, Suite 540, Richmond, VA 23240–0026.

Dated: July 9, 2002.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. 02–17853 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 84–13A12."

Northwest Fruit Exporters' ("NFE") original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); October 16, 2000 (65 FR 63567, October 24, 2000); and October 5, 2001 (66 FR 52111, October 12, 2001). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, Washington 98901–2149.

Contact: James R. Archer, Manager, Telephone: (509) 576–8004.

Application No.: 84–13A12.

Date Deemed Submitted: July 8, 2002.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): L & M Companies, Selah, Washington; Orondo Fruit Co., Inc., Orondo, Washington; and Rawland F. Taplett d/b/a R.F. Taplett Fruit & Cold Storage Co., Wenatchee, Washington;
2. Delete the following companies as "Members" of the Certificate: Chief Wenatchee Growers, Wenatchee, Washington; Dole Northwest, Wenatchee, Washington; Fossum Orchards, Inc., Yakima, Washington; Garrett Ranches Packing, Wilder, Idaho; R.E. Redman & Sons, Inc., Wapato, Washington; Regal Fruit Cooperative, Tonasket, Washington; Sun Fresh International, LLC, Wenatchee, Washington; Taplett Fruit Packing Inc., Wenatchee, Washington; Voelker Fruit & Cold Storage, Inc., Yakima, Washington; and Williamson Orchards, Caldwell, Idaho; and
3. Change the listing of the following Members: "Allan Bros., Inc., Naches, Washington" to the new listing "Allan Bros., Naches, Washington"; "Borton & Sons, Yakima, Washington" to "Borton & Sons, Inc., Yakima, Washington"; "Carlson Orchards, Yakima, Washington" to "Carlson Orchards, Inc., Yakima, Washington"; "CPC International Apple Co., Tieton, Washington" to "CPC International Apple Company, Tieton, Washington"; "Domex Marketing Co., Yakima, Washington" to "Domex Marketing, Yakima, Washington"; "Douglas Fruit Co., Pasco, Washington" to "Douglas Fruit Company, Inc., Pasco, Washington"; "Dovex Fruit Company, Wenatchee, Washington" to "Dovex Fruit Co., Wenatchee, Washington"; "Hansen Fruit & Cold Storage, Co., Yakima, Washington" to "Hansen Fruit & Cold Storage Co., Inc., Yakima, Washington"; "Jenks Bro. Cold Storage, Inc., Royal City, Washington" to "Jenks Bros. Cold Storage & Packing, Royal City, Washington"; "Kershaw Fruit & Cold Storage, Yakima, Washington" to "Kershaw Fruit & Cold Storage, Co., Yakima, Washington"; "Keystone Ranch, Riverside, Washington" to "Keystone Fruit Co. L.L.C. dba Keystone Ranch, Riverside, Washington"; "Lloyd Garretson, Co., Inc., Yakima, Washington" to "Lloyd Garretson Co. Yakima, Washington"; "Northern Fruit Co., Wenatchee, Washington" to "Northern Fruit Company, Inc., Wenatchee, Washington"; "Northwestern Fruit & Produce Co., Yakima, Washington" to "Apple King, LLC, Yakima, Washington"; "Obert Cold Storage, Zillah, Washington" to "Obert Cold Storage, Inc., Zillah, Washington";

"Poirier Packing & Warehouse, Pateros, Washington" to "Poirier Warehouse, Pateros, Washington"; "Price Cold Storage, Yakima, Washington" to "Price Cold Storage & Packing Co., Inc., Yakima, Washington"; "Rainier Fruit Sales, Selah, Washington" to "Rainier Fruit Company, Selah, Washington; "Rowe Farms, Naches, Washington" to "Rowe Farms, Inc., Naches, Washington"; "Sund-Roy, Inc., Yakima, Washington" to "Sund-Roy L.L.C., Yakima, Washington"; "Symms Fruit Ranch, Inc., Caldwell, Idaho" to "Symms Fruit Ranch, Inc., Wilder, Idaho"; "Tieton Fruit & Cold Storage, Tieton, Washington" to "Tieton Fruit & Cold Storage, Inc., Tieton, Washington"; "Valicoff Fruit Co., Wapato, Washington" to "Valicoff Fruit Co., Inc., Wapato, Washington"; "Wapato Fruit Co., Wapato, Washington" to "Wapato Fruit Co., Inc., Wapato, Washington"; "Washington Cherry Growers, Yakima, Washington" to "Washington Cherry Growers, Inc., Yakima, Washington"; "Wenatchee Fruit Co-Operative Association, Wenatchee, Washington" to "Wenatchee Fruit Co-Operative, Inc., Wenatchee, Washington"; "Western Fruit Growers, Sunnyside, Washington" to "Western Fruit Growers, Inc., Sunnyside, Washington"; "Wilbur-Ellis Co., Yakima, Washington" to "Wilbur-Ellis Co., Inc., Yakima, Washington"; "Yakima Fruit & Cold Storage, Yakima, Washington" to "Yakima Fruit & Cold Storage Co., Inc., Yakima, Washington"; "Yakima Sun Fruit Co., Yakima, Washington" to "Yakima Sun Fruit Co., Inc., Yakima, Washington"; "Yakima Valley Fruit Growers Association, Yakima, Washington" to "Yakima Valley Fruit Growers Association, Inc., Yakima, Washington"; "Yakima Valley Growers-Packers, Yakima, Washington" to "Yakima Valley Growers-Packers, Inc., Yakima, Washington"; "Zirkle Fruit Co., Selah, Washington" to "Zirkle Fruit Co., Inc., Selah, Washington"; "Zosel Fruit Co., Wenatchee, Washington" to "Zosel Fruit Co., Inc., Wenatchee, Washington"; and "Zosel Orchards, Wenatchee, Washington" to "Zosel Orchards, Inc., Wenatchee, Washington".

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On October 01, 2001, the Department of Commerce sent to N.B. Carson & Company, Inc. a letter containing the annual report questionnaire. That letter reminded the Certificate holder that the annual report was due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On October 01, 2001, the Department of Commerce sent to N.B. Carson & Company, Inc. a letter containing the annual report questionnaire. That letter reminded the Certificate holder that the annual report was due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from

annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On October 01, 2001, the Department of Commerce sent to N.B. Carson & Company, Inc. a letter containing the annual report questionnaire. That letter reminded the Certificate holder that the annual report was due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On October 01, 2001, the Department of Commerce sent to N.B. Carson & Company, Inc. a letter containing the annual report questionnaire. That letter reminded the Certificate holder that the annual report was due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102B]

Proposed Information Collection; Comment Request; Monitoring of Fish Trap Fishing in the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

Estimated Number of Respondents: 63.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 184.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance

"Poirier Packing & Warehouse, Pateros, Washington" to "Poirier Warehouse, Pateros, Washington"; "Price Cold Storage, Yakima, Washington" to "Price Cold Storage & Packing Co., Inc., Yakima, Washington"; "Rainier Fruit Sales, Selah, Washington" to "Rainier Fruit Company, Selah, Washington; "Rowe Farms, Naches, Washington" to "Rowe Farms, Inc., Naches, Washington"; "Sund-Roy, Inc., Yakima, Washington" to "Sund-Roy L.L.C., Yakima, Washington"; "Valley Fruit, Wapato, Washington" to "Valley Fruit III LLC, Wapato, Washington"; "Yakima Fruit & Cold Storage, Yakima, Washington" to "Yakima Fruit & Cold Storage Co., Yakima, Washington"; and "Zirkle Fruit Co., Selah, Washington" to "Zirkle Fruit Company, Selah, Washington".

Dated: July 10, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–17765 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[No. 99–00006]

Export Trade Certificate of Review

ACTION: Notice of initiation of process to revoke Export Trade Certificate of Review.

SUMMARY: On January 11, 2000, the Secretary of Commerce issued an Export Trade Certificate of Review to T.P. International Expo Services, Inc. Because this certificate holder has failed to file an annual report as required by law the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to T.P. International Expo Services, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a Certificate of Review was issued on January 11, 2000 to T.P. International Expo Services, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to T.P. International Expo Services, Inc., on January 07, 2002, a letter containing annual report questions with a reminder that its annual report was due on February 25, 2002. Additional reminders were sent on April 11, 2002 and on May 21, 2002. The Department has received no written response to any of these letters.

On July 10, 2002, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify T.P. International Expo Services, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: July 10, 2002.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–17766 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84–00027.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to N.B. Carson & Company, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to N.B. Carson & Company, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on October 9, 1984 to N.B. Carson & Company, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On October 01, 2001, the Department of Commerce sent to N.B. Carson & Company, Inc. a letter containing annual report questions with a reminder that its annual report was due on November 23, 2001. Additional reminders were sent on March 25, 2002 and on April 11, 2002. The Department has received no written response from N.B. Carson & Company, Inc. to any of these letters.

On May 28, 2002, and in accordance with Section 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify N.B. Carson & Company, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing N.B. Carson & Company, Inc. thirty days to respond was published in the **Federal Register** on June 3, 2002 at 67 FR 38260. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of N.B. Carson & Company, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to N.B. Carson & Company, Inc. for its failure to file an annual report. The Department has sent a letter, dated July 10, 2002, to notify N.B. Carson & Company, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: July 10, 2002.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–17767 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102B]

Proposed Information Collection; Comment Request; Monitoring of Fish Trap Fishing in the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons using fish traps to participate in the commercial reef fish fishery in the Gulf of Mexico must make an appointment with NMFS in order for the fish traps to be inspected. This is a one-time requirement. Fishermen will also be required to make telephone reports when initiating and terminating fishing trips. This information is needed to monitor fish trap fishing.

II. Method of Collection

The information is submitted via a toll-freetelephone call.

III. Data

OMB Number: 0648–0392.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 63.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 184.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17858 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102C]

Proposed Information Collection; Comment Request; Documentation of Fish Harvest

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5326.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17859 Filed 7–15–02; 8:45 am]

submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information.

The relevant Native American

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17860 Filed 7–15–02; 8:45 am]

as a tanner or agent for such native products must register with NOAA and maintain and submit certain records. The information is necessary for law enforcement purposes.

II. Method of Collection

Paper documentation is submitted to meet the requirements found at 50 CFR 216.23(c).

III. Data

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of the Final Environmental Impact Statement/Final Management Plan for the Proposed San Francisco Bay National Estuarine Research Reserve

AGENCY: The Estuarine Reserves

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

Seafood dealers who possess red porgy, gag, black grouper, or greater amberjack during seasonal fishery closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. Documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. The information is required for the enforcement of fishery regulations.

II. Method of Collection

This is a recordkeeping requirements–no information is submitted to NOAA.

III. Data

OMB Number: 0648–0365.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 25.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 50.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17859 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102D]

Proposed Information Collection; Comment Request; Report of Whaling Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chris Yates, Office of Protected Resources, 301–713–2322, ext. 114.

SUPPLEMENTARY INFORMATION:

I. Abstract

Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, and the IWC, captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information.

The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA.

The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

II. Method of Collection

Reports may be made by phone or fax. Information on equipment marks must be made in writing. No form is used.

III. Data

OMB Number: 0648–0311.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; State, Local, or Tribal Government.
Estimated Number of Respondents: 52.
Estimated Time Per Response: 30 minutes for reports on whales struck or on recovery of dead whales; 5 minutes for providing the relevant Native American whaling organization with information on the mark and self-identification information; 5 minutes for marking gear; and 5 hours for the relevant Native American whaling organization to consolidate and submit reports.
Estimated Total Annual Burden Hours: 62.
Estimated Total Annual Cost to Public: $100.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17860 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071102E]

Proposed Information Collection; Comment Request; Applications and Reports for Registration as a Tanner or Agent

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scot Yamashita, 301–427–2300.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions on taking, killing, or injuring marine mammals if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. Natives need no permit, but non-natives who wish to act as a tanner or agent for such native products must register with NOAA and maintain and submit certain records. The information is necessary for law enforcement purposes.

II. Method of Collection

Paper documentation is submitted to meet the requirements found at 50 CFR 216.23(c).

III. Data

OMB Number: 0648–0179.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 49.
Estimated Time Per Response: 2 hours for an application; and 2 hours for a report.
Estimated Total Annual Burden Hours: 98.
Estimated Total Annual Cost to Public: $350.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–17861 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of the Final Environmental Impact Statement/Final Management Plan for the Proposed San Francisco Bay National Estuarine Research Reserve

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, has published the Final Environmental Impact Statement/Management Plan (FEIS/FMP) for the proposed San Francisco Bay National Estuarine Research Reserve. The FEIS/FMP addresses research, monitoring, education, and resource protection needs for the proposed reserve.

If no substantive comments have been submitted to NOAA by August 19, 2002, a notice of availability of a Record of Decision will be published in the **Federal Register** and a Designation Document will be signed by the Under Secretary of NOAA and the Director of the Romberg Tiburon Center of the San Francisco State University.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie McGilvray (301) 713–3155, Extension 158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA 1305 East West Highway, N/ORM5, Silver Spring, Maryland 20910. Copies of the FEIS/FMP are available upon request to the Estuarine Reserves Division.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves)

Dated: June 28, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean, Services and Coastal Zone, Management.

[FR Doc. 02–17850 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070902B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSCs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to

stock assessment report, and a report on the Tortugas pink shrimp fishery. The Shrimp AP will also receive presentations regarding direct measures to assess shrimp fishing effort that can be used to evaluate effort and bycatch and a summit for sustainability of the shrimp fishery in the Gulf of Mexico.

The Shrimp AP will also review an Options Paper for Amendment 13 to the Shrimp Fishery Management Plan

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 11, 2002.

AGENCY: Committee for the Implementation of Textile Agreements

on January 1, 2002 and extends through December 31, 2002.

Effective on July 18, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	2,191,276 dozen of which not more than 1,287,946 dozen

Exchange Act, 7 U.S.C. 1. *et seq.* as amended. This notice is published pursuant to section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 9(a)(2), and 41 CFR 101–6.1015.

FOR FURTHER INFORMATION CONTACT: Clarence R. Sanders, Legal Counsel to Commissioner Barbara P. Holum, at 202–418–5068, or Martin B. White, Committee Management Officer, at 202–418–5129. Written comments should be submitted to Jean A. Webb, Secretary,

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070902B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Standing and Special Mackerel Scientific and Statistical Committee (SSC) and the Standing and Special Shrimp SSC on Tuesday, July 30, 2002.

DATES: The mackerel SSC will meet beginning at 8:30 a.m. on July 30, 2002, and will conclude by 12 noon. The Shrimp SSC will be convened immediately following the Standing and Special Mackerel SSC meeting.

ADDRESSES: The meetings will be held at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel SSC will be convened to review stock assessment information on mackerel stocks, particularly Gulf Group king mackerel, as well as the report of the Socioeconomic Panel (SEP) and provide recommendations to the Council on possible changes to Federal rules affecting mackerels. The Shrimp SSC will convene to review the Shrimp Stock Assessment Panel (SSAP) report that includes recommendations for definitions of maximum sustainable yields (MSY) optimum yield (OY) overfishing, and the overfished condition for the various shrimp stocks in the Gulf. The Shrimp SSC will also receive a presentation regarding assessment of direct measures of shrimp fishing effort to determine effort and bycatch in the shrimp fishery and may make recommendation regarding these reports and presentations to the Council.

Although other non-emergency issues not on the agendas may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSCs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 22, 2002.

Dated: July 10, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17856 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070902C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP is scheduled to begin at 8:30 a.m. on Wednesday, July 31, 2002.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Shrimp AP will convene to receive reports from NMFS on the status and health of shrimp stocks in the Gulf, a stock assessment report, and a report on the Tortugas pink shrimp fishery. The Shrimp AP will also receive presentations regarding direct measures to assess shrimp fishing effort that can be used to evaluate effort and bycatch and a summit for sustainability of the shrimp fishery in the Gulf of Mexico.

The Shrimp AP will also review an Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) that includes alternatives to add rock shrimp to the Shrimp FMP and establishment of status criteria for shrimp stocks including maximum sustainable yields (MSY), optimum yields (OY), as well as criteria for determining if any of the shrimp stocks are undergoing overfishing or should be classified as overfished. The Options paper may also contain alternatives for requiring vessel monitoring systems and bycatch quotas. Finally, the Shrimp AP will also discuss a preliminary draft of an environmental impact statement (EIS) for essential fish habitat (EFH) in the Gulf.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agendas may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 22, 2002.

Dated: July 10, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–17857 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 11, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63034, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 18, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	2,191,276 dozen of which not more than 1,287,946 dozen shall be in Category 338 and not more than 1,371,355 dozen shall be in Category 339.
347/348	1,492,124 dozen of which not more than 932,575 dozen shall be in Category 347 and not more than 725,339 dozen shall be in Category 348.
639	4,394,111 dozen.
642	435,935 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–17831 Filed 7–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITIES FUTURES TRADING COMMISSION

Notice of Reinstatement of the Global Markets Advisory Committee

AGENCY: Commodities Futures Trading Commission.

ACTION: Notice of reinstatement of the Global Markets Advisory Committee.

SUMMARY: The Commodities Futures Trading Commission has determined to reinstate the charter of its "Global Markets Advisory Committee." As required by sections 9(a)(2) and 149(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § § 9(a)(2) and 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration. The Commission certifies that the reinstatement of this advisory committee is necessary and is in the public interest in connection with the performance of duties on the Commission by the Commodity Exchange Act, 7 U.S.C. 1. *et seq.* as amended. This notice is published pursuant to section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 9(a)(2), and 41 CFR 101–6.1015.

FOR FURTHER INFORMATION CONTACT: Clarence R. Sanders, Legal Counsel to Commissioner Barbara P. Holum, at 202–418–5068, or Martin B. White, Committee Management Officer, at 202–418–5129. Written comments should be submitted to Jean A. Webb, Secretary, Commodities Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The globalization of the futures and options markets has been a principal development of the past decade. Such global expansion is characterized by:

- An increasing number of futures markets being established internationally,
- The increasingly multinational nature of regulated U.S. firms,
- The increasing presence of foreign competitors in the United States ,
- The international linking of markets,
- Concerns about international market risk, and
- An increased demand by U.S. market users for global brokerage services.

Markets are inextricably linked through common products and related market participants. Events that occur in one market can and frequently do cause global regulatory and business concerns.

The Global Markets Advisory Committee's charter directs the committee to assist the Commission in gathering information concerning the regulatory challenges of a global marketplace, including: (1) Avoiding unnecessary regulatory or operational impediments faced by those doing global business, such as differing and/or duplicative regulatory frameworks, lack of transparency of rules and regulations and barriers to market access, while preserving core protection for markets and customers; (2) setting appropriate international standards for regulating futures and derivatives markets and intermediaries; (3) assessing the impact on U.S. markets and firms of the Commission's international efforts and the initiatives of foreign regulators and market authorities; (4) achieving continued global competitiveness of U.S. markets and firms; and (5) identifying methods to improve domestic and international regulatory structures.

The Commission has actively worked with foreign regulators to address global

market issues. Recent global initiatives have been designed to enhance international supervisory cooperation and emergency procedures, to establish concrete standards of best practices that set international benchmarks for regulating futures and derivatives markets, to encourage improved transparency in those markets, to improve the quality and timeliness of international information sharing and to

Committee on Agriculture. A copy of the reinstated charter will be furnished to the Library of Congress and to the Committee Management Secretariat and will be posted on the Commission's Web site at *http://www.cftc.gov*.

Issued in Washington, DC, on July 10, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17847 Filed 7–15–02; 8:45 am]

Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and

to school administrators at grades 4, 8, and 12. This process continues in 2003.

The student background questionnaires consist of two types of questions: (1) Core questions and (2) subject-specific background questions.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2032. When

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following: Monday, August 5, 2002, and Tuesday, August 6, 2002.

- Discussion of Department of Energy High Energy Physics Programs.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CPO2–394–000 and CPO–395–000]

Colonial Gas Company and Energy North Natural Gas, Inc.; Notice of Application

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market issues. Recent global initiatives have been designed to enhance international supervisory cooperation and emergency procedures, to establish concrete standards of best practices that set international benchmarks for regulating futures and derivatives markets, to encourage improved transparency in those markets, to improve the quality and timeliness of international information sharing and to encourage jurisdictions around the world to remove legal or practical obstacles to achieving these goals.

The Commission anticipates that the Global Markets Advisory Committee will provide a valuable forum for information exchange and advice on these matters. The reports, recommendations and general advice from the committee will enable the Commission to assess more effectively the need for possible statutory, regulatory, policy or programmatic initiatives to address the challenges posed by the globalization of the marketplace.

Commissioner Barbara P. Holum is the Chairman and Designated Federal Official of the advisory committee. The committee's membership will be composed of representatives of the markets, firms and market users most directly involved in and affected by the globalization of the industry, and will include, but not be limited to, representatives of U.S. and foreign exchanges, regulators and self-regulators, financial intermediaries, market users, traders and academics. The advisory committee's membership will be balanced in terms of points of view.

The Commission has found that advice on specialized matters of the sort described above is best obtained through the advisory committee framework rather than through other, more costly, less flexible and less efficient means of assembling persons from all sectors of the financial services industry. The Commission has also found that the Global Markets Advisory Committee will not duplicate the functions of the Commission, another existing advisory committee, or other means such as public hearings. The Commission has concluded, therefore, that the reinstatement of the Global Markets Advisory Committee is essential to the accomplishment of its mission and is in the public interest.

Upon publication of this notice in the **Federal Register**, a copy of the reinstated charter of the Global Markets Advisory Committee will be filed with the Chairman of the Commission, the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture. A copy of the reinstated charter will be furnished to the Library of Congress and to the Committee Management Secretariat and will be posted on the Commission's Web site at *http://www.cftc.gov.*

Issued in Washington, DC, on July 10, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17847 Filed 7–15–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Public Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission ("Commission") will hold a public roundtable meeting at which invited participants will discuss clearing issues. Participants will be announced at a later date.

DATES: Thursday, August 1, 2002, from 1 p.m. to 5 p.m.

ADDRESSES: 1155 21st Street, NW., Washington, DC, Lobby Level Hearing Room located at Room 1000. Status: Open.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Issued in Washington, DC this 10th day of July, 2002.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17848 Filed 7–15–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 15, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 10, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision of a currently approved collection.

Title: National Assessment for Educational Progress: 2003 (KA).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 658800.

Burden Hours: 169084.

Abstract: The 2003 NAEP Assessment will encompass the two curricular areas of Reading and Mathematics. Since 1984, NAEP has obtained descriptive information from three different sets of respondents: students, teachers, and school administrators. Questionnaires are administered to students at grades 4, 8, and 12, to teachers at grades 4 and 8, to school administrators at grades 4, 8, and 12. This process continues in 2003.

The student background questionnaires consist of two types of questions: (1) Core questions and (2) subject-specific background questions.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2032. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17754 Filed 7–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Monday, August 5, 2002; 9 a.m. to 6 p.m. and Tuesday, August 6, 2002; 8:30 a.m. to 4 p.m.

ADDRESSES: Cornell University, 109 Clark Hall, Room 700, Ithaca, New York 14853.

FOR FURTHER INFORMATION CONTACT: Glen Crawford, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–9458.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Monday, August 5, 2002, and Tuesday, August 6, 2002.

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Glen Crawford, 301–903–9458 or *Glen.Crawford@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, Room 1E–190; Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 10, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–17804 Filed 7–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–394–000 and CP02–395–000]

Colonial Gas Company and Energy North Natural Gas, Inc.; Notice of Application

July 10, 2002.

Take notice that on June 26, 2002, Colonial Gas Company (Colonial), One Beacon Street, Boston, Massachusetts 02108, and EnergyNorth Natural Gas, Inc. (EnergyNorth) (jointly referred to as Applicants), 1260 Elm Street, Manchester, New Hampshire 03105, subsidiaries of KeySpan Corporation, filed in Docket Nos. CP02–394–000 and CP02–395–000, an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for service area determinations, a declaration that Colonial and EnergyNorth qualify as local distribution companies (LDC) and a waiver of the regulatory requirements under the NGA and the Natural Gas Policy Act (NGPA), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Applicants request a service area determination for the areas they serve in Massachusetts and New Hampshire in order to be able to enlarge or extend their facilities for the purpose of supplying increased market demands without the need to apply to the Commission for further authorization. Specifically, Colonial requests a determination that its service area include its territory in Northeastern Massachusetts as well as EnergyNorth's territory in New Hampshire. EnergyNorth requests a determination that its service area include its territory in New Hampshire as well as Colonial's territory in Northeastern Massachusetts. It is explained that the proposal would allow both affiliated companies to connect their systems at the state border in order to improve distribution system pressures and to avoid the potential of customer outages due to emergency situations.

Applicants also request a declaration that they qualify as LDC's in the service area to be determined for the purposes of section 311 of the NGPA.. In addition, Applicants request a waiver of the

regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA. It is asserted that Applicants' operations are almost entirely in intrastate commerce with the exception of small portions where they cross the Massachusetts-New Hampshire border. It is stated that Colonial's services and rates are regulated by the Massachusetts Department of Telecommunications and

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

www.ferc.gov using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17814 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory

regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA. It is asserted that Applicants' operations are almost entirely in intrastate commerce with the exception of small portions where they cross the Massachusetts-New Hampshire border. It is stated that Colonial's services and rates are regulated by the Massachusetts Department of Telecommunications and Energy and that EnergyNorth's services and rates are regulated by the New Hampshire Public Utilities Commission.

Any questions regarding this amendment should be directed to Thomas O'Neill at (617) 723–5512, or Kenneth T. Maloney at (202) 223–8890.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 31, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17810 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–383–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 2, 2002, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet with a proposed effective date of August 1, 2002:

Sixth Revised Sheet No. 283

Columbia is proposing a new Section 4.2(i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Columbia, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17817 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–384–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 2, 2002, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet with a proposed effective date of August 1, 2002:

Fourth Revised Sheet No. 147

Columbia Gulf is proposing a new Section 4.2 (i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Columbia Gulf, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17818 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–382–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 2, 2002, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 2002:

First Revised Sheet No. 85
Original Sheet No. 86

Crossroads is proposing a new Section 4.2 (i) to Section 4.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Crossroads, under certain limited circumstances, to reserve capacity that is available for firm service under the provisions of GTC Section 4.2 for future expansion projects.

Crossroads states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17816 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–380–000]

MIGC, Inc.; Notice of Filing

July 10, 2002.

Take notice that on July 1, 2002 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 6 with a proposed effective date of August 1, 2002.

MIGC states that the purpose of the filing is to revise and update the fuel retention and loss percentage factors (FL&U factors) set forth in its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirements of Section 25 of said tariff.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17814 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. [Docket No. CP02–383–000]

National Fuel Gas Supply Corporation; Notice of Time Extension for Comment Period

July 11, 2002.

On July 1, 2002, the Federal Energy Regulatory Commission issued a *Notice of Intent To Prepare An Environmental Assessment for the Proposed National Fuel Replacement /Abandonment Project and Request For Comment on Environmental Issues* (NOI). The NOI was sent to all landowners on the project that was supplied by National Fuel Gas Supply Corporation (National Fuel). The NOI requested comments by July 31, 2001. However, on July 10, 2002, National Fuel filed a revised list of 83 additional landowners that were not included in our original NOI mail list. Therefore, we are sending copies of the NOI to the additional 83 landowners and extending the comment period for the NOI to August 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17921 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–377–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 1, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on July 1, 2002:

Fourth Revised Sheet No. 219
Third Revised Sheet No. 222

Northern proposes to update its tariff to reflect the final transition in

Northern's ownership by Dynegy, Inc., and to remove from the tariff certain organizational information that is already included on Northern's website. In that regard, Northern is revising Sheet No. 222 which references Northern's URL website address. Effective July 1, 2002, this address shall be changed to *www.northernnaturalgas.com*. In addition, Northern is revising Sheet No.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–361–000]

Northwest Pipeline Corporation; Notice of Site Visit

July 10, 2002.

On July 16 and 17, 2002, the Office of

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17821 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–080]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company

Northern's ownership by Dynegy, Inc. and to remove from the tariff certain organizational information that is already included on Northern's website. In that regard, Northern is revising Sheet No. 222 which references Northern's URL website address. Effective July 1, 2002, this address shall be changed to *www.northernnaturalgas.com*. In addition, Northern is revising Sheet No. 219 to remove certain language regarding the reporting structure Northern's merchant function under its Pipeline Sales Division. Pursuant to Standard L of Section 161.3 of the Commission's Regulations, such information is posted on Northern's Web site. Therefore, Northern is deleting this language from its tariff.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17812 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–361–000]

Northwest Pipeline Corporation; Notice of Site Visit

July 10, 2002.

On July 16 and 17, 2002, the Office of Energy Projects staff and representatives of Northwest Pipeline Corporation (Northwest) will conduct a site visit of the Grays Harbor Pipeline Project 2001 in Thurston and Grays Harbor Counties, Washington.

All interested parties may attend. Those planning to attend must provide their own transportation. Interested parties can meet staff on July 16 at about 2 p.m. in the parking lot at the Best Western Tumwater Inn, 5188 Capitol Boulevard, Tumwater, Washington. Staff will start on July 17 at 7:30 a.m. at the same location. Also, Mr. Bill Prehm of Northwest can be contacted at telephone No. (360) 507–2804.

For further information, please contact the Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17809 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–083]

Reliant Energy Gas Transmission Company; Notice of Negotiated Rates

July 10, 2002.

Take notice that on July 1, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective July 1, 2002:

Third Revised Sheet No. 640
Second Revised Sheet No. 641
Original Sheet No. 642
Original Sheet No. 643
Original Sheet No. 644
Original Sheet No. 645
Original Sheet No. 646
Original Sheet No. 647
Original Sheet No. 648
Original Sheet No. 649
Original Sheet No. 650
Sheet Nos. 651–699

REGT states that the purpose of this filing is to reflect the implementation of new negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17819 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–076]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Selkirk Cogen Partners, L. P. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17820 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–078]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and USGen New England, Inc. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17821 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–079]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Orchard Gas Corporation. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17822 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–080]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and USGen New England, Inc. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17823 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–081]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company

(Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Pittsfield Generating Company L P. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17824 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–082]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Vermont Electric Power Company, Inc. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17825 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–083]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17826 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–084]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Vermont Electric Power Company, Inc. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17827 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

(Web site) at ebb.wbip.com, to assist its shippers in conducting business on Williston Basin's system. Second, Williston Basin has proposed modifications to its Tariff to reflect other miscellaneous changes. These modifications clarify Williston Basin's existing Tariff and have no rate impact.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17828 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–085]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17829 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–086]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17830 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–087]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17831 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–088]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17832 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–089]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17833 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–090]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17834 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–091]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17835 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–092]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17836 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–093]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17837 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–094]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17838 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–095]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17839 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–096]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 10, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Duke Energy Trading and Marketing, L.L.C. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington

(Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Pittsfield Generating Company L P. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17824 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–378–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 1, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 146, Sheet No. 237, Original Sheet No. 239, Original Sheet No. 240, Original Sheet No. 241 and Sheet No. 242, to become effective August 1, 2002:

Texas Gas states that the purpose of this filing is to modify Texas Gas's tariff to allow it to establish a website for the purpose of conducting limited interactive web-based auctions on the internet (the "Auction Website"). In Order No. 637, the Commission encouraged pipelines to voluntarily develop capacity auctions and to file proposals for implementing auctions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17813 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–049]

TransColorado Gas Transmission Company; Notice of Compliance Filing

July 10, 2002.

Take notice that on July 2, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Eighth Revised Sheet No. 21 and Twenty-First Revised Sheet No. 22A, to be effective July 2, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect one new negotiated-rate contract with Duke Energy Trading and Marketing, L.L.C.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17825 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–381–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 10, 2002.

Take notice that on July 1, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, to become effective July 1, 2002.

Williston Basin states it is proposing to make certain tariff modifications which it believes are necessary to clarify its existing Tariff. Two types of changes are included in the filing. First, Williston Basin has included language in its Tariff to reflect the fact that forms are available on its Interactive Web site (Web site) at ebb.wbip.com, to assist its shippers in conducting business on Williston Basin's system. Second, Williston Basin has proposed modifications to its Tariff to reflect other miscellaneous changes. These modifications clarify Williston Basin's existing Tariff and have no rate impact.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17815 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–89–000, et al.]

Frederickson Power L.P., et al.; Electric Rate and Corporate Regulation Filings

July 9, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Frederickson Power L.P., EPCOR Power Development, Inc., EPDC Inc.

[Docket No. EC02–89–000]

Take notice that on July 1, 2002, Frederickson Power L.P. (Frederickson), and EPCOR Power Development, Inc. and EPDC Inc. (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of the transfer of 60% of the partnership interests in Frederickson to EPCOR Power Development, Inc. and EPDC Inc. (the Acquirors) (the Transaction) so that the Acquirors will indirectly own 100% of Frederickson. Applicants request confidential treatment for the documents contained in Exhibit I.

Comment Date: July 22, 2002.

2. El Paso Merchant Energy, L.P.

[Docket No. ER95–428–024]

Take notice that on July 1, 2002, El Paso Merchant Energy, L.P., filed a triennial market analysis in support of its existing market-based rates authority.

Comment Date: July 22, 2002.

3. Phelps Dodge Energy Services, LLC

[Docket No. ER99–2923–001]

Take notice that on July 1, 2002, Phelps Dodge Energy Services, LLC tendered for filing an updated market analysis and report of changes in status in compliance with the Federal Energy Regulatory Commission's (Commission) Order, issued July 1, 2002, in Green Power Partners I, LLC.

Comment Date: July 22, 2002.

4. Midwest Independent Transmission System Operator Inc.

[Docket No. ER02–108–007]

Take notice that on July 1, 2002, the Midwest Independent Transmission System Operator, Inc. submitted its compliance filing pursuant to the Federal Energy Regulatory Commission's (Commission) May 31, 2002 Order On Compliance Filing, Midwest Independent Transmission System Operator, Inc., in which the Commission directed the Midwest ISO to renegotiate and file a revised Retention Agreement for Market Monitoring Services with Potomac Economics, Ltd.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: July 22, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–001]

Take notice that on July 1, 2002, PJM Interconnection, L.L.C. (PJM), in compliance with the Federal Energy Regulatory Commission's Commission's May 31, 2002 "Order Accepting Tariff Sheets As Modified", PJM Interconnection, L.L.C. (PJM) submitted a compliance filing in this docket revising the PJM Open Access Tariff and Amended And Restated Operating Agreement of PJM Interconnection, L.L.C. to incorporate certain changes to its Economic Load Response Program.

Consistent with the May 31 Order, PJM requests an effective date of June 1, 2002 for the revisions. Copies of this filing have been served on all persons on the service list in Docket No. ER02–1326–000, all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: July 22, 2002.

6. Midwest Independent System Operator, Inc. Southwest Power Pool, Inc.

[Docket No. ER02–1420–003]

Take notice that on July 1, 2002, Southwestern Public Service Company (Southwestern) submitted a compliance filing to the Commission's "Order Conditionally Accepting Proposed Tariff Revisions and Revised Agreement and Confirming Regional Transmission Organization Status" (Order) dated May 31, 2002 in the above-captioned docket.

Southwestern indicates a copy of the filing has been served upon the State Commissions of Kansas, New Mexico, Oklahoma and Texas, and on the customers taking service under the Southwestern portion of the Xcel Energy Joint Open Access Transmission Tariff.

Comment Date: July 22, 2002.

7. Midwest Independent Transmission System Operator, Inc.,

[Docket No. ER02–1420–003]

Take notice that on July 1, 2002, Oklahoma Gas and Electric Company filed to comply with the Federal Energy Regulatory Commission's (Commission) May 31, 2002 Order in the above-captioned proceedings.

The Company states that a copy of the filing has been served on all parties to this proceeding, and on the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: July 22, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–003]

Take notice that on July 1, 2002, pursuant to the Federal Energy Regulatory Commission's (Commission) May 31, 2002 Order Conditionally Accepting Proposed Tariff Revisions and Revised Agreement and Confirming Regional Transmission Organization Status, East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., submitted a compliance filing detailing their plans for RTO participation.

Comment Date: July 22, 2002.

12. Southern Company Services, Inc.

[Docket No. ER02–2212–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Middle Georgia Electric Membership Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Oconee EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

15. Southern Company Services, Inc.

[Docket No. ER02–2215–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as confirmed reservations for such capacity, and will indicate the capacity that is subject to recall.

Comment Date: July 22, 2002.

17. Southern Company Services, Inc.

[Docket No. ER02–2217–000]

Take notice that on July 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Specifically, Southern Companies filed an unexecuted rollover agreement for long-term firm point-to-point transmission service (First Revised Service Agreement No. 387 under the Tariff) with Dynegy Power Marketing, Inc.

Comment Date: July 22, 2002.

19. Southern Company Services, Inc.

[Docket No. ER02–2220–000]

Take notice that on July 1, 2002, SPP seeks an effective date of June 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

23. Southwest Power Pool, Inc.

[Docket No. ER02–2224–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing two unexecuted

Regulatory Commission's (Commission) May 31, 2002 Order Conditionally Accepting Proposed Tariff Revisions and Revised Agreement and Confirming Regional Transmission Organization Status, East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., submitted a compliance filing detailing their plans for RTO participation.

Comment Date: July 22, 2002.

9. Entergy Gulf States, Inc.

[Docket No. ER02–1472–002]

Take notice that on July 1, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance Amended and Restated Interconnection and Operating Agreement with Cottonwood Energy Company LP in response to the Commission's May 31, 2002, order in Entergy Gulf States, Inc.

Comment Date: July 22, 2002.

10. New England Power Company

[Docket No. ER02–1482–001]

Take notice that on July 1, 2002, New England Power Company (NEP) submitted for filing an amendment to its First Revised Service Agreement No. 178 for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Middleborough Gas & Electric Department (Middleborough).

A copy of this filing has been served upon the appropriate state agencies, Middleborough and each person designated on the official service list for this proceeding.

Comment Date: July 22, 2002.

11. Southern Company Services, Inc.

[Docket No. ER02–2211–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Irwin Electric Membership Corporation (Irwin EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Irwin EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

12. Southern Company Services, Inc.

[Docket No. ER02–2212–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Middle Georgia Electric Membership Corporation (Middle Georgia EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Middle Georgia EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

13. Southern Company Services, Inc.

[Docket No. ER02–2213–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Lamar Electric Membership Corporation (Lamar EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Lamar EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

14. Southern Company Services, Inc.

[Docket No. ER02–2214–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Oconee Electric Membership Corporation (Oconee EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Oconee EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

15. Southern Company Services, Inc.

[Docket No. ER02–2215–000]

Take notice that on July 1, 2002, Southern Company Services, Inc., as agent for Southern Power Company (Southern Power), tendered for filing the Requirements Service Agreement between Southern Power and Tri-County Electric Membership Corporation (Tri-County EMC) dated as of February 28, 2002 (the Service Agreement), pursuant to the Commission's authorization for Southern Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Service Agreement provides the general terms and conditions for capacity and associated energy sales from Southern Power to Tri-County EMC commencing on June 1, 2002.

Comment Date: July 22, 2002.

16. Southern Company Services, Inc.

[Docket No. ER02–2216–000]

Take notice that on July 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed an amendment to the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff).

Specifically, Southern Companies propose to amend their Tariff so that they may offer, on a first-come, first-served basis to all Transmission Customers, Recallable Long-Term Firm Point-To-Point Transmission Service under the Tariff. Southern Companies will negotiate and execute with Eligible Transmission Customers Recallable Long-Term Firm Point-To-Point Transmission Service Agreements, the terms of which will specify the reserved capacity subject to recall by Southern Companies, the point of delivery, the point of receipt, the price structure, the length of the recall notice period, and the length of time in which the customer will have to respond to the recall notice. Southern Companies will post offerings of Recallable Long-Term Firm Point-To-Point Transmission Service on their OASIS, will display the confirmed reservations for such capacity, and will indicate the capacity that is subject to recall.

Comment Date: July 22, 2002.

17. Southern Company Services, Inc.

[Docket No. ER02–2217–000]

Take notice that on July 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed eight transmission service agreements under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, these agreements are as follows: (1) Firm point-to-point transmission service agreement with the City of Tallahassee, Florida (regarding OASIS Request No. 327402 (Service Agreement No. 453); (2) firm point-to-point transmission service agreement with Cargill-Alliant (regarding OASIS Request No. 334204) (Service Agreement No. 454); (3) firm point-to-point transmission service agreement with PSEG Energy Resources & Trade LLC (Service Agreement No. 455); (4) non-firm point-to-point transmission service agreement with PSEG Energy Resources & Trade LLC (Service Agreement No. 456); (5) firm point-to-point transmission service agreement with Northern States Power d.b.a. NSP Energy Marketing (First Revised Service Agreement No. 246); (6) non-firm point-to-point transmission service agreement with Northern States Power d.b.a. NSP Energy Marketing (First Revised Service Agreement No. 247); (7) firm point-to-point transmission service agreement with El Paso Merchant Energy, LP (First Revised Service Agreement No. 234); and (8) non-firm point-to-point transmission service agreement with El Paso Merchant Energy, LP (First Revised Service Agreement No. 58).

Comment Date: July 22, 2002.

18. Southern Company Services, Inc.

[Docket No. ER02–2219–000]

Take notice that on July 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), filed an unexecuted transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, Southern Companies filed an unexecuted rollover agreement for long-term firm point-to-point transmission service (First Revised Service Agreement No. 387 under the Tariff) with Dynegy Power Marketing, Inc.

Comment Date: July 22, 2002.

19. Southern Company Services, Inc.

[Docket No. ER02–2220–000]

Take notice that on July 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC) and Savannah Electric and Power Company (Savannah), filed with the Federal Energy Regulatory Commission (Commission) a Letter Agreement between Southern Power Company, GPC and Savannah that authorizes Georgia Power and Savannah to commence, and Southern Power to pay for costs associated with activities to interconnect Southern Power's generating facility in Effingham County, Georgia.

Comment Date: July 22, 2002.

20. Central Maine Power Company

[Docket No. ER02–2221–000]

Take notice that on July 1, 2002, Central Maine Power Company (CMP) tendered for filing, in accordance with Section 1.18 of the Settlement Agreement approved in Docket Nos. ER00–26–000, *et al.*, an informational filing containing the data used to update the formula rates in CMP's Open Access Transmission Tariff. The charges associated with the updated data took effect June 1, 2002. Copies of this filing were served on Commission Staff and the Maine Public Utilities Commission.

Comment Date: July 22, 2002.

21. Southwest Power Pool, Inc.

[Docket No. ER02–2222–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing seven unexecuted service agreements for Firm Point-to-Point Transmission Service with Aquila Merchant Services, Inc. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for these service agreements. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

22. Southwest Power Pool, Inc.

[Docket No. ER02–2223–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Firm Point-to-Point Transmission Service with Exelon Generation Company (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

23. Southwest Power Pool, Inc.

[Docket No. ER02–2224–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing two unexecuted service agreements for Firm Point-to-Point Transmission Service with Tex-La Electric Cooperative of Texas, Inc. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

24. Southwest Power Pool, Inc.

[Docket No. ER02–2225–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing two unexecuted service agreements for Firm Point-to-Point Transmission Service with Tenaska Power Services Co. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for these service agreements. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

25. Southwest Power Pool, Inc.

[Docket No. ER02–2226–000]

Take notice that on July 1, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Firm Point-to-Point Transmission Service with Reliant Energy Services, Inc. (Transmission Customer).

SPP seeks an effective date of June 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: July 22, 2002.

26. Creed Energy Facility, LLC

[Docket No. ER02–2227–000]

Take notice that on July 1, 2002, Creed Energy Facility, LLC (Creed) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Creed proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

27. Feather River Energy Center, LLC

[Docket No. ER02–2228–000]

Take notice that on July 1, 2002, Feather River Energy Center, LLC (Feather River) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm

Comment Date: July 22, 2002.

31. Wolfskill Energy Center, LLC

[Docket No. ER02–2232–000]

Take notice that on July 1, 2002, Wolfskill Energy Center, LLC (Wolfskill) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to

Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and Southwestern Electric Cooperative, Inc. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Southwestern Electric Cooperative, Inc. pursuant to Ameren's Open Access Tariff.

Comment Date: July 22, 2002.

tendered for filing with the Federal Energy Regulatory Commission (Commission) under its Market Rate Power Sales Tariff long-term service agreement for one new customer, Sempra Energy Trading Corporation.

CILCO requested an effective date of June 1, 2002. Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment Date: July 22, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, Fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight

27. Feather River Energy Center, LLC

[Docket No. ER02–2228–000]

Take notice that on July 1, 2002, Feather River Energy Center, LLC (Feather River) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Feather River proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Sutter County, California.

Comment Date: July 22, 2002.

28. Goose Haven Energy Center, LLC

[Docket No. ER02–2229–000]

Take notice that on July 1, 2002, Goose Haven Energy Center, LLC (Goose Haven) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Goose Haven proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

29. Lambie Energy Center, LLC

[Docket No. ER02–2230–000]

Take notice that on July 1, 2002, Lambie Energy Center, LLC (Lambie) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Lambie proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

30. Pajaro Energy Center, LLC

[Docket No. ER02–2231–000]

Take notice that on July 1, 2002, Pajaro Energy Center, LLC (Pajaro) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Pajaro proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Monterey County, California.

Comment Date: July 22, 2002.

31. Wolfskill Energy Center, LLC

[Docket No. ER02–2232–000]

Take notice that on July 1, 2002, Wolfskill Energy Center, LLC (Wolfskill) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Wolfskill proposes to own and operate a 45 megawatt simple cycle natural gas-fired generation facility located in Solano County, California.

Comment Date: July 22, 2002.

32. California Power Exchange Corporation

[Docket No. ER02–2234–000]

Take notice that on July 3, 2002, the California Power Exchange Corporation (CalPX) tendered for filing a proposed Rate Schedule FERC No. 1. The purpose of the rate schedule is to enable CalPX to recover from its participants its costs and expenses for winding up its business from July 1, 2002 through December 31, 2004. CalPX proposes to assess charges to its participants semi-annually based on the amount an individual participant owes CalPX or is owed by CalPX. Any funds not used at the time CalPX terminates its operations would be flowed through to participants. CalPX states that it has served copies of the filing on its participants, on the California ISO, and on the California Public Utilities Commission. CalPX proposes an effective date of September 1, 2002 for its rate schedule.

Comment Date: July 25, 2002.

33. DTE East China, LLC

[Docket No. ER02–2235–000]

Take notice that on July 1, 2002, DTE East China, LLC (DTE East China) tendered for filing a service agreement for certain "tolling" services by DTE East China to PSEG Energy Resources & Trade LLC (PSEG ERT) to be effective June 1, 2002 as Service Agreement No. 1 to DTE East China's FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served upon PSEG ERT.

Comment Date: July 22, 2002.

34. Ameren Services Company

[Docket No. ER02–2236–000]

Take notice that on July 1, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and Southwestern Electric Cooperative, Inc. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Southwestern Electric Cooperative, Inc. pursuant to Ameren's Open Access Tariff.

Comment Date: July 22, 2002.

35. Ameren Services Company

[Docket No. ER02–2237–000]

Take notice that on July 1, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and American Electric Power Services Corp. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to American Electric Power Service Corp. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 22, 2002.

36. Minnesota Power

[Docket No. ER02–2238–000]

Take notice that on July 1, 2002, Minnesota Power tendered for filing a Schedule 4A—Generator Imbalance Service based upon Minnesota Power's Open Access Transmission Tariff Schedule 4—Energy Imbalance and the Midwest Independent System Operator's proposed but currently suspended Schedule 4—Energy Imbalance and Inadvertent Interchange Service. An effective date of August 1, 2002 was requested for Schedule 4A.

Comment Date: July 22, 2002.

37. Maine Electric Power Company

[Docket No. ER02–2239–000]

Take notice that on July 1, 2002 , Maine Electric Power Company (MEPCO) tendered for filing a service agreement for Partial Interim Firm Point-to-Point transmission service entered into with Emera Energy Services, Inc. (Emera). Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented, Original Service Agreement No. 69. MEPCO requests that this agreement become effective as of June 1, 2002..

Comment Date: July 22, 2002.

38. Central Illinois Light Company

[Docket No. ER02–2240–000]

Take notice that on July 1, 2002, Central Illinois Light Company (CILCO), tendered for filing with the Federal Energy Regulatory Commission (Commission) under its Market Rate Power Sales Tariff long-term service agreement for one new customer, Sempra Energy Trading Corporation.

CILCO requested an effective date of June 1, 2002. Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment Date: July 22, 2002.

39. Commonwealth Edison Company

[Docket No. ER02–2241–000]

Take notice that on July 1, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Agreement for Dynamic Scheduling of Transmission Service between ComEd and Wisconsin Electric Corporation (Wisconsin Electric) under ComEd's Open Access Transmission Tariff (OATT).

ComEd seeks an effective date of June 1, 2002 for the Agreement and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Wisconsin Electric and the Illinois Commerce Commission.

Comment Date: July 22, 2002.

40. Hardee Power Partners Limited

[Docket No. ER02–2242–000]

Take notice that on July 1, 2002, Hardee Power Partners Limited (HPP) submitted an abbreviated rate filing in connection with amendments (Sixth Amendments) to two power sales agreements providing for the sale of electric capacity and associated energy to Seminole Electric Cooperative, Inc. (Seminole) and Tampa Electric Company (Tampa Electric), the rates under which were previously accepted by the Commission.

HPP requests waiver of the Commission's sixty (60) day notice requirements and an effective date of January 1, 2002. HPP has served copies of the filing on Seminole, Tampa Electric and the Florida Public Service Commission.

Comment Date: July 22, 2002.

41. Southwest Transmission Cooperative, Inc.

[Docket No. NJ02–5–000]

Take notice that on July 1, 2002, Southwest Transmission Cooperative, Inc., (SWTCO) tendered for filing with the Federal Energy Regulatory Commission (Commission), proposed changes in its Open Access Transmission Tariff.

Comment Date: July 31, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17920 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12191–000.

c. *Date filed:* June 10, 2002.

d. *Applicant:* Prosser Creek Hydro, LLC.

e. *Name and Location of Project:* The Prosser Creek Dam Project would be located on an existing dam on Prosser Creek in Nevada County, California. The existing dam is owned by Continental Group and the project would be partially located on lands administered by Continental Group.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, Fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Motions to intervene, protests, and comments may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12191–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the existing Prosser Creek Reservoir, impounded by an existing 1,880-foot-long, 135-foot-high earthfill dam, having a surface area of 37,000 acres and a storage capacity of 28,641 acre-feet at normal maximum water surface elevation 5,741 feet msl and include: (1) A proposed powerhouse with a total installed capacity of 1 megawatt, (2) a proposed 500-foot-long, 3.5-foot-diameter penstock, (3) a proposed 3-mile-long, 15 kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.5 GWh.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified

comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17921 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight

comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17922 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12220–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Cedar Creek Hydro, LLC.

e. *Name and Location of Project:* The Cedar Creek Dam Hydroelectric Project would be located on Cedar Creek in Franklin County, Alabama. The project would utilize the Tennessee Valley Authority's existing Cedar Creek Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12220–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Cedar Creek Dam and Reservoir, would consist of: (1) A proposed 200-foot-long, 96-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 4 megawatts, (3) a proposed two-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 11.8 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular

application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17923 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12226–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Gillham Hydro, LLC.

e. *Name and Location of Project:* The Gillham Dam Hydroelectric Project would be located on the Cossatot River in Howard County, Arkansas. The project would utilize the U.S. Army Corps of Engineer's existing Gillham Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12226–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Gillham Dam and Reservoir, would consist of: (1) A proposed 200-foot-long, 10-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 8 megawatts, (3) a proposed five-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 15.5 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17924 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12227–000.

c. *Date filed:* June 17, 2002.

d. *Applicant:* Gillham Hydro, LLC.

e. *Name and Location of Project:* The Gillham Dam Hydroelectric Project would be located on the Cossatot River in Howard County, Arkansas. The project would utilize the U.S. Army Corps of Engineer's existing Gillham Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12227–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Gillham Dam and Reservoir, would consist of: (1) A proposed 200-foot-long, 10-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 8 megawatts, (3) a proposed five-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 15.5 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent

application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17924 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12236–000

c. *Date filed:* June 17, 2002.

d. *Applicant:* Nevada Creek Hydro, LLC.

e. *Name and Location of Project:* The Nevada Creek Dam Hydroelectric Project would be located at an existing dam owned by the State of Montana on Nevada Creek in Powell County, Montana.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12236–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) the existing 105-foot-high, 1,083-foot-long concrete dam impounding Nevada Lake, which has a 368-acre surface area at normal maximum water surface elevation 6,415 feet, (2) a proposed 200-foot-long, 72-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of 1.5 megawatts, (4) a proposed one-mile-long, 25-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 2.8 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17925 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Filing and Soliciting Comments, Motions To Intervene and Protests

July 11, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12247–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Conroe Hydro, LLC.

e. *Name and Location of Project:* The Conroe Dam Hydroelectric Project would be located at an existing dam owned by the San Jacinto River Authority on the West Fork San Jacinto River in Montgomery County, Texas.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. Please include the project number (P–12247–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 82-foot-high, 11,300-foot-long concrete dam impounding Lake Conroe, which has a 200,985-acre surface area at normal maximum water surface elevation 201 feet, (2) a proposed 500-foot-long, 66-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of one megawatt, (4) a proposed one-mile-long, 15-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 3.2 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the

Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 208–0400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on July 17, 2002. Attached is the certification of the General Counsel explaining the action

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket# AD02–20, 000, Western Market and Infrastructure Assessment

A–4.
Docket# RT01–88, 016, Alliance Companies
Other#s EL02–65, 000, Alliance Companies and National Grid USA
EL02–65, 002, Virginia Electric and Power Company
New York State Electric & Gas Corporation, Orange & Rockland Utilities Inc. and Rochester Gas and Electric Corporation
RT01–95, 002, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities Inc. and Rochester Gas and Electric Corporation

E–5.
Docket# ER02–1919, 000, Oklahoma Gas and Electric Company

E–6.
Docket# ER02–1974, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1975, 000, Midwest Independent Transmission System Operator, Inc.

E–7.
Omitted

E–8.

Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17926 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

July 10, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 17, 2002, (30 Minutes Following Regular, Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 208–0400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on July 17, 2002. Attached is the certification of the General Counsel explaining the action closing the meeting.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–17969 Filed 7–12–02; 11:29 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

July 10, 2002.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 17, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items Listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone, (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; However, all public documents may be examined in the Reference and Information Center.

709th Meeting—July 17, 2002; Regular Meeting 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket# AD02–20, 000, Western Market and Infrastructure Assessment

A–4.
Docket# RT01–88, 016, Alliance Companies
Other#s EL02–65, 000, Alliance Companies and National Grid USA
EL02–65, 002, Virginia Electric and Power Company
EL02–65, 003, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
EL02–65, 004, FirstEnergy Corporation
EL02–65, 005, American Electric Power Services Corporation
EL02–65, 006, Ameren Services Company
EL02–65, 007, Ameren Services Company, FirstEnergy Corporation, Northern Indiana Public Service Company, Midwest Independent System Operator, Inc.
EL02–65, 008, PJM Interconnection, L.L.C., National Grid USA, American Electric Power Services Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana Illinois Power Company

A–5.
Docket# RT01–99, 000, Regional Transmission Organizations
Other#s RT01–99, 001, Regional Transmission Organizations
RT01–99, 002, Regional Transmission Organizations
RT01–99, 003, Regional Transmission Organizations
RT01–86, 000. Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company and ISO New England Inc.
RT01–86, 001, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company and ISO New England Inc.
RT01–86, 002, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company and Vermont Electric Power Company and ISO New England Inc.
RT01–95, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities Inc. and Rochester Gas and Electric Corporation
RT01–95, 001, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities Inc. and Rochester Gas and Electric Corporation
RT01–95, 002, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange & Rockland Utilities Inc. and Rochester Gas and Electric Corporation
RTO1–2, 000 PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.
RTO1–2, 001 PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.
RTO1–2, 002 PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.
RTO1–2, 003 PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities, Inc.
RTO1–98, 000 PJM Interconnection, L.L.C.
RM01–12, 000 Electricity Market Design and Structure

Markets, Tariffs and Rates—Electric

E–1.
Reserved
E–2.
Docket# ER02–1899, 000, New York Independent System Operator, Inc.
E–3.
Omitted
E–4.
Docket# ER02–1913, 000, Nevada Power Company
E–5.
Docket# ER02–1919, 000, Oklahoma Gas and Electric Company
E–6.
Docket# ER02–1974, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1975, 000, Midwest Independent Transmission System Operator, Inc.
E–7.
Omitted
E–8.
Docket# SC00–1, 003, NorthWestern Energy, LLC
E–9.
Docket# ER00–188, 000, PSI Energy, Inc.
Other#s ER00–188, 001, PSI Energy, Inc.
E–10.
Omitted
E–11.
Omitted
E–12.
Docket# ER02–711, 000, American Electric Power Service Corporation
Other#s ER02–711, 001, American Electric Power Service Corporation
E–13.
Docket# ER02–924, 000, Michigan Electric Transmission Company
E–14.
Docket# ER00–1969, 009, New York Independent System Operator, Inc.
Other#s ER00–1969, 012, New York Independent System Operator, Inc.
ER00–3591, 008, New York Independent System Operator, Inc.
ER00–3591, 010, New York Independent System Operator, Inc.
E–15.
Docket# ER02–11, 000, Pacific Gas and Electric Company
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ER97–1523, 005, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
ER97–1523, 006, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
ER97–1523, 052, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
ER97–1523, 061, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool and New York Independent System Operator, Inc.
EC99–31, 001, New York Power Pool
E–38.
Docket# EL00–46, 001, Entergy Power Marketing Corporation v. Southwest Power Pool, Inc.
Other#S EL00–53, 001, Texas-New Mexico Power Company v. Public Service Company of New Mexico
ER00–1711, 001, Public Service Company of New Mexico
ER00–1829, 001, Southwest Power Pool, Inc.
E–39.
Docket# EF00–2013, 001, United States Department of Energy—Bonneville Power Administration
E–40.
Omitted
E–41.
Docket# ER01–2967, 001, New York Independent System Operator, Inc.
E–42.
Docket# ER02–648, 001, Sithe New Boston, LLC
E–43.
Docket# ER02–561, 001, Pacific Gas & Electric Company
E–44.
Docket# ER02–709, 001, Southwest Power Pool, Inc.
E–45.
Docket# EL00–95, 062, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
Other#s EL00–95, 031, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 053, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 058, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–98, 009, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 033, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 038, Investigation of Practices of California Independent System Operator Corporation & the California Power Exchange
EL00–98, 042, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 047, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL00–98, 051, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
EL01–68, 012, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
EL01–68, 013, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
E–46.
Docket# ER00–2413, 008, American Electric Power Service Corporation
Other#s ER00–3435, 004, Carolina Power & Light Company
ER01–247, 006, Virginia Electric & Power Company
E–47.
Docket# NJ02–4, 000, Kansas Electric Power Cooperative, Inc.
E–48.
Docket# EL01–35, 000, Mirant Delta, LLC and Mirant Poltrero,LLC v. California Independent System Operator Corporation
Other#s EL00–95, 005, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 012, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–95, 030, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–98, 029, Investigation of Practices of the California Independent System Operator Corporation & the California Power Exchange
RT01–82, 000, San Diego Gas & Electric Company
RT01–83, 000, Pacific Gas and Electric Company
RT01–85, 000, California Independent System Operator Corporation
RT01–92, 000, Southern California Edison Company
ER01–1877, 000, California Independent System Operator Corporation
PA02–1, 000, Operational Audit of the California Independent System Operator Corporation
E–49.
Omitted
E–50.
Omitted
E–51.
Omitted
E–52.
Docket# EL02–1, 000, Golden Spread Electric Cooperative, Inc. V. Southwestern Public Service Company
Other#s EL02–21, 000, Southwestern Public Service Company v. Golden Spread Electric Cooperative, Inc.
E–53.
Docket# ER02–929, 000, Ameren Services Company
Other#s ER02–929, 001, Ameren Services Company
E–54.
Docket# EL00–62, 045, ISO New England Inc.
Other#s EL00–62, 041, ISO New England Inc.

Miscellaneous Agenda

M–1.
Docket# RM02–3, 000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities
M-2.
Docket# RM02–10, 000, Electronic Registration

Markets, Tariffs and Rates—Gas

G–1.
Reserved
G–2.
Docket# PR02–11, 000, Jefferson Island Storage & Hub L.L.C.
Other#S PR02–11, 001, Jefferson Island Storage & Hub L.L.C.
G–3.
Docket# RP02–348, 000, Colorado Interstate Gas Company
G–4.
Docket# RP98–206, 008, Atlanta Gas Light Company
G–5.
Docket# RP00–327, 000, Columbia Gas Transmission Corporation
Other#S RP00–327, 002, Columbia Gas Transmission Corporation
RP00–604, 000, Columbia Gas Transmission Corporation
RP00–604, 001, Columbia Gas Transmission Corporation
RP00–604, 002, Columbia Gas Transmission Corporation
G–6.
Docket# RP00–393, 000, Eastern Shore Natural Gas Company
Other#S RP01–43, 000, Eastern Shore Natural Gas Company
RP01–43, 001, Eastern Shore Natural Gas Company
G–7.
Docket# RP00–329, 000, Great Lakes Gas
G–16.
Docket# RM96–1, 022, Standards for Business Practices of Interstate Natural Gas Pipelines
G–17.
Docket# RP00–336, 005, El Paso Natural Gas Company
Other#S RP00–139, 003, KN Marketing, L.P. v. El Paso Natural Gas Company
RP01–484, 001, Aera Energy LLC, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company, California Public Utilities
Reserved
H–2.
Docket# P–2596, 005, Rochester Gas and Electric Corporation
Other#s P–2596, 003, Rochester Gas and Electric Corporation
H–3.
Docket# P–2622, 011, International Paper Company and Turners Falls Hydro LLC
H–4.
Omitted
H–5.
Omitted

modifying the restricted service list in order to include representatives of the Towns of Nobleboro, Jefferson, and Newcastle, and Land & Water Associates. The Damariscotta Mills Hydroelectric Project is located on the Damariscotta River, in Lincoln County, Maine. Ridgewood Maine Hydro Partners, L.P. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or

Alec Giffen, Land & Water Associates, 9 Union Street, Hallowell, ME 04347.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17811 Filed 7–15–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–5]

Abstract: Section 404(g) of the Clean Water Act authorizes States [and Tribes] to assume the Section 404 permit program. States/Tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR part 233) for an approvable program. Specified information and documents must be submitted by the State/Tribe to EPA to request assumption. Once the required information and documents are submitted and EPA has a complete

RP00–604, 001, Columbia Gas Transmission Corporation
RP00–604, 002, Columbia Gas Transmission Corporation
G–6.
Docket# RP00–393, 000, Eastern Shore Natural Gas Company
Other#S RP01–43, 000, Eastern Shore Natural Gas Company
RP01–43, 001, Eastern Shore Natural Gas Company
G–7.
Docket# RP00–329, 000, Great Lakes Gas Transmission L.P.
Other#S RP00–606, 000, Great Lakes Gas Transmission L.P.
RP00–606, 001, Great Lakes Gas Transmission L.P.
G–8.
Docket# RP00–488, 000, Portland Natural Gas Transmission System
Other#S RP01–50, 000, Portland Natural Gas Transmission System
RP01–50, 001, Portland Natural Gas Transmission System
G–9.
Docket# RP01–245, 007, Transcontinental Gas Pipe Line Corporation
Other#S CP01–34, 000, Transcontinental Gas Pipe Line Corporation
CP01–34, 003, Transcontinental Gas Pipe Line Corporation
CP01–103, 000, Transcontinental Gas Pipe Line Corporation
CP01–103, 002, Transcontinental Gas Pipe Line Corporation
RP01–245, 000, Transcontinental Gas Pipe Line Corporation
RP01–245, 005, Transcontinental Gas Pipe Line Corporation
RP01–245, 008, Transcontinental Gas Pipe Line Corporation
RP01–253, 000, Transcontinental Gas Pipe Line Corporation
RP01–253, 002, Transcontinental Gas Pipe Line Corporation
CP01–368, 000, Transcontinental Gas Pipe Line Corporation
CP01–368, 002, Transcontinental Gas Pipe Line Corporation
RP02–171, 000, Transcontinental Gas Pipe Line Corporation
RP02–171, 002, Transcontinental Gas Pipe Line Corporation
G–10.
Docket# RP00–632, 007, Dominion Transmission, Inc.
Other#S RP00–632, 009, Dominion Transmission, Inc.
G–11.
Docket# RP02–176, 001, Panhandle Eastern Pipe Line Company
G–12.
Docket# RP02–209, 001, Southern Natural Gas Company
G–13.
Docket# RP02–143, 001, Kansas Gas Service, a Division of ONEOK, Inc. v. Enbridge Pipelines KPC
G–14.
Docket# RP02–134, 002, Maritimes & Northeast Pipeline, L.L.C.
Other#S RP02–134, 001, Maritimes & Northeast Pipeline, L.L.C.
G–15.
Docket# RP97–287, 056, El Paso Natural Gas Company
G–16.
Docket# RM96–1, 022, Standards for Business Practices of Interstate Natural Gas Pipelines
G–17.
Docket# RP00–336, 005, El Paso Natural Gas Company
Other#S RP00–139, 003, KN Marketing, L.P. v. El Paso Natural Gas Company
RP01–484, 001, Aera Energy LLC, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company, California Public Utilities Commission, Conoco Inc., Coral Energy Resources, L.P., El Paso Natural Gas Company, ONEOK Energy Marketing & Trading Co., L.P., Pacific Gas and Electric Company, Panda Gila River, L.P., Pacific Gas and Electric Company, Panda Gila River, L.P., Southern California Edison Company and Southern California Gas Company v. El Paso Natural Gas Company
RP01–486, 001, Apache Nitrogen Products, Inc., Arizona Electric Power Cooperative, Inc., Arizona Gas Division of Citizens Communications Company, BHP Copper Inc., El Paso Electric Company, El Paso Municipal Customer Group, Phelps Dodge Corporation, Public Service Company of New Mexico, Salt River Project and Southern Union Gas Company v. El Paso Natural Gas Company
G–18.
Docket# RP02–309, 000, Sunoco, Inc.(R&M) v. Transcontinental Gas Pipe Line Corporation
G–19.
Docket# PR02–12, 000, Dow Pipeline Company
G–20.
Docket# RP00–482, 002, Reliant Energy Gas Transmission Company
Other#S RP01–12, 002, Reliant Energy Gas Transmission Company
RP01–317, 003, Reliant Energy Gas Transmission Company
G–21.
Docket# RP97–288 009 Transwestern Pipeline Company
Other#s RP97–288, 010, Transwestern Pipeline Company
RP98–288, 011, Transwestern Pipeline Company
RP97–288, 012, Transwestern Pipeline Company
RP97–288, 013, Transwestern Pipeline Company
RP97–288, 014, Transwestern Pipeline Company
RP97–288, 015, Transwestern Pipeline Company
RP97–288, 016, Transwestern Pipeline Company
G–22.
Docket# RP02–164, 001, PG&E Gas Transmission, Northwest Corporation
G–23.
Docket# PR02–13, 000, Cincinnati Gas & Electric Company
G–24.
Docket# PL02–6, 000, Natural Gas Pipeline Negotiated Rate Policies and Practices

Energy Projects—Hydro

H–1.
Reserved
H–2.
Docket# P–2596, 005, Rochester Gas and Electric Corporation
Other#s P–2596, 003, Rochester Gas and Electric Corporation
H–3.
Docket# P–2622, 011, International Paper Company and Turners Falls Hydro LLC
H–4.
Omitted
H–5.
Omitted
H–6.
Docket# P–9974, 048, Halstead Construction, Inc.
H–7.
Docket# P–7856, 025, Potosi Generating Station, Inc. and Willow Creek Hydro, LLC

Energy Projects—Certificates

C–1.
Reserved
C–2.
Docket# CP02–60, 000, CMS Trunkline LNG Company, LLC
C–3.
Docket# CP01–69, 004, Petal Gas Storage, L.L.C.
C–4.
Docket# CP97–315, 006, Independence Pipeline Company
Other#s CP97–319, 004, ANR Pipeline Company
C–5.
Docket# CP01–422, 000, Kern River Gas Transmission Company
Other#s CP01–422, 001, Kern River Gas Transmission Company

Magalie R. Salas,
Secretary.
[FR Doc. 02–17970 Filed 7–12–02; 11:29 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000]

Ridgewood Main Hydro Partners, L.P.; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 10, 2002.

On October 18, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Damariscotta Mills Hydroelectric Project (FERC No. 11566–000) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places. On February 7, 2002, the Commission issued a notice modifying the restricted service list in order to include representatives of the Towns of Nobleboro, Jefferson, and Newcastle, and Land & Water Associates. The Damariscotta Mills Hydroelectric Project is located on the Damariscotta River, in Lincoln County, Maine. Ridgewood Maine Hydro Partners, L.P. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

As a result of Commission notice issued July 1, 2002, the following two additions are made to the restricted service list notice issued on October 18, 2001, for Project No. 11566–000:

Jim Kardatzke, Bureau of Indian Affairs, ERO, 711 Stewards Ferry Pike, Nashville, TN 37214.

Franklin Keel, Director, Bureau of Indian Affairs, ERO, 711 Stewards Ferry Pike, Nashville, TN 37214.

In addition to the Bureau of Indian Affairs, the current restricted service list for the Damariscotta Hydroelectric Project is as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
Earle G. Shettleworth, Jr., SHPO, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04330.
Dr. Arthur E. Spiess, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04330.
Kevin Webb, CHI Energy, Inc., 200 Bulfinch Drive, Andover, MA 01810.
Dale Wright, Chair, Town of Nobleboro, 192 US Highway 1, Nobleboro, ME 04555.
Philip Wright, Chair, Town of Newcastle, P.O. Box 368, Newcastle, ME 04553.
Jonathan C. Hull, Esq., P.O. Box 880, Damariscotta, ME 04543.
Rosa Sinclair, Chair, Town of Jefferson, 58 Washington Road, Jefferson, ME 04348.
Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109.
Alec Giffen, Land & Water Associates, 9 Union Street, Hallowell, ME 04347.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–17811 Filed 7–15–02; 8:45 am]
BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Clean Water Act Section 404 State-Assumed Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Clean Water Act Section 404 State-Assumed Programs; OMB No. 2040–0168; EPA No. 0220.08; expiration date January 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Comments should be sent to Lori Williams, at US Environmental Protection Agency, Wetlands Division (4502T), 1200 Pennsylvania Avenue NW, Washington, DC 20460 or *williams.lorraine@epa.gov*. Interested persons may obtain a copy of the ICR without charge by contacting the person identified above and referencing the EPA ICR Number, 0220.08, or by downloading a copy off the Internet at *http://www.epa.gov/icr*.

FOR FURTHER INFORMATION CONTACT: Lori Williams by phone at 202–566–1376; by facsimile at 202–566–1375; or by email at *williams.lorraine@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those State/Tribes requesting assumption of the Clean Water Act Section 404 permit program; States/Tribes with approved assumed programs; and permit applicants in States or Tribes with assumed programs.

Title: Section 404 State-Assumed Programs; OMB No. 2040–0168; EPA No. 0220.08; expiration date January 31, 2003.

Abstract: Section 404(g) of the Clean Water Act authorizes States [and Tribes] to assume the Section 404 permit program. States/Tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR part 233) for an approvable program. Specified information and documents must be submitted by the State/Tribe to EPA to request assumption. Once the required information and documents are submitted and EPA has a complete assumption request package, the statutory time clock for EPA's decision to either approve or deny the State/Tribe's assumption request starts. The information contained in the assumption request is made available to the other involved Federal agencies (Corps of Engineers, Fish and Wildlife Service, and National Marine Fisheries Service) and to the general public for review and comment.

States/Tribes must be able to issue permits that comply with the 404(b)(1) Guidelines, the environmental review criteria. States/Tribes and the reviewing Federal agencies must be able to review proposed projects to evaluate and/or minimize anticipated impacts. EPA's assumption regulations establish recommended elements that should be included in the State/Tribe's permit application, so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements are based on the information that must be submitted when applying for a Section 404 permit from the Corps of Engineers.

EPA is responsible for oversight of assumed programs to ensure that State/Tribal programs are in compliance with applicable requirements and that State/Tribal permit decisions adequately consider and minimize anticipated impacts. States/Tribes must evaluate their programs annually and submit the results in a report to EPA. EPA's assumption regulations establish minimum requirements for the annual report. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(iii) We estimate that a State/Tribe will need 80 hours to collect and analyze the information and prepare the annual report. Using the $46,500 for an average State/Tribal employee salary results in an approximate cost of $1,800 to prepare the annual report.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time

ADDRESSES: Please send comments on the proposed ICR to Jack Faulk, USEPA, Office of Wastewater Management, Water Permits Division, 1200 Pennsylvania Avenue, NW., EPA East, Room 7329E, Mail Code 4203M, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Please direct questions or a request for a copy of the ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater

MS4s during the first three years of the program. The data collection effort during this first three-year period was limited to the submittal and review of no exposure certifications and some preliminary Agency work in developing specific program elements. A significant increase in burden for this ICR is the product of that fact.

After general permits for small MS4s and small construction sites are issued in December of 2002, NPDES permitting

Dated: June 27, 2002.

Jane S. Moore,
Acting Director, Office of Wastewater Management.
[FR Doc. 02–17868 Filed 7–15–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–1]

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA's currently approved ICR includes 101,440 hours. The State/Tribe's assumption request is a one-time request; a permit application is made each time someone desires to do work that involves the discharge of dredged or fill material into waters of the United States, including regulated wetlands; and a State/Tribe with an approved program must submit an annual report to EPA each year. This collection is split into three pieces:

(i) We estimate that a State/Tribe will need 520 hours (approximately ¼ of a work year) to prepare the documentation for EPA to determine that a State/Tribe's assumption is complete. We estimate that $46,500 (starting point of a GS–11) is an average State/Tribal employee salary. This results in a one-time cost of $11,625. We estimate that two States or Tribes may request program assumption over the next three years. This results in a total one-time burden of 1,040 hours and a total cost of $23,250.

(ii) We estimate that the average time needed to complete a permit application is five hours. The actual time to complete a permit application will vary greatly depending on the size and location of a planned project. Small projects will require less time; large, complex projects could require significantly more time. We estimate that the "average" assumed program will process 5,000 permits a year. This results in a burden of 25,000 burden hours per year per assumed program. This figure will vary with the assumed program. It is likely that some State/Tribes will have significantly fewer permit applications requested each year; others may have more. It is impossible to estimate the cost of filing an "average" permit application. The application for small projects can be completed by the permit applicant with little cost incurred. The permit application for larger, complex projects may require hiring outside parties such as environmental and engineering firms, surveyors, and lawyers.

(iii) We estimate that a State/Tribe will need 80 hours to collect and analyze the information and prepare the annual report. Using the $46,500 for an average State/Tribal employee salary results in an approximate cost of $1,800 to prepare the annual report.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 10, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 02–17867 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for National Pollutant Discharge Elimination System (NPDES) Storm Water Program Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): NPDES Storm Water Program Phase II; EPA ICR No. 1820.03; OMB Control Number 2040–0211, currently expiring on October 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Please send comments on the proposed ICR to Jack Faulk, USEPA, Office of Wastewater Management, Water Permits Division, 1200 Pennsylvania Avenue, NW., EPA East, Room 7329E, Mail Code 4203M, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Please direct questions or a request for a copy of the ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are addressed by the NPDES Storm Water Program Phase II rule, promulgated on December 8, 1999. This includes regulated small municipal separate storm sewer systems (MS4s), small construction sites (1–5 acres in size), and industrial activities eligible for a "No Exposure Waiver." For purposes of the Phase II Rule, regulated small MS4s are defined as those entities that are not already regulated as a medium or large MS4 and that are located in "urbanized areas" (UAs) as defined by the Bureau of the Census, and those small MS4s located outside of a UA that are designated by NPDES permitting authorities. This ICR also includes information collection requirements applicable to states that are authorized to administer the NPDES Permitting Program in their respective states.

Title: Information Collection Request for NPDES Storm Water Program Phase II; (OMB Control No. 2040–0211; EPA ICR No. 1820.03) expiring 10/31/02.

Abstract: This Information Collection Request (ICR) addresses Phase II of the NPDES storm water program. Under the Phase II rule, EPA regulates storm water discharges from construction sites with activities disturbing equal to or greater than one acre and less than five acres of land, and small MS4s located in Bureau of the Census-designated "urbanized areas." Additional construction sites and small MS4s may be designated by the NPDES permitting authority. NPDES permits provide the mechanism for establishing appropriate controls on these Phase II sources. The Phase II rule also includes a provision that allows industrial facilities regulated under Phase I of the NPDES storm water program to obtain an exclusion from NPDES permitting requirements if they can certify to a condition of "no exposure" on their site.

Permits were not required for small construction sites and regulated small

MS4s during the first three years of the program. The data collection effort during this first three-year period was limited to the submittal and review of no exposure certifications and some preliminary Agency work in developing specific program elements. A significant increase in burden for this ICR is the product of that fact.

After general permits for small MS4s and small construction sites are issued in December of 2002, NPDES permitting authorities, including the Water Permits Division of the EPA Office of Wastewater Management, intend to use the data contained in storm water permit applications, construction waiver certifications, storm water pollution prevention plans (SWPPPs), no exposure certifications, and reports to set appropriate permit conditions, track discharges covered by storm water permits, and assess permit compliance. Other organizations, including EPA's Office of Enforcement and Compliance (OECA) and environmental groups, will most likely use the same collected information to assess the regulated community's level of compliance and to measure the overall effectiveness of the NPDES storm water program.

It is expected that respondents will submit information in hard copy form. The information from them will be entered into a computer database and the original document will be filed. The information will be submitted by the respondents directly to each NPDES-authorized State or Territory, or to EPA in areas where EPA is the NPDES permitting authority. Plans are underway to allow electronic submission of much of the required information but these options are not included in the ICR. At the time those options become available, EPA will update this information collection to reflect a revised burden estimate.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates that 327,119 NPDES entities (consisting of 5,102 small MS4s, 119,112 small construction permittees, 21,020 small construction sites eligible for and receiving a waiver, and 181,885 industrial operators eligible for and receiving the no exposure waiver) will perform activities covered by this ICR. These entities are expected to provide 183,291 responses to State and Federal permit authorities annually. Additionally, 45 states/territories will perform information collection activities. Nationally, NPDES permittees will spend 3,661,312 hours per year on information collection activities as a result of the Storm Water Program Phase II rule (289,794 hours for regulated small MS4s, 21,020 hours for waived small construction sites, 3,323,215 hours for permitted small construction sites, and 27,283 hours for industrial no exposure facilities). The 45 states/territories are expected to spend 211,885 hours per year on information collection activities as a result of the Storm Water Program Phase II rule (11,453 hours for regulated small MS4s, 17,847 hours for waived small construction sites, 151,699 hours for permitted small construction sites, and 30,886 hours for industrial no exposure facilities). Capital and start-up costs associated with the Phase II rule are expected to be negligible. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 27, 2002.

Jane S. Moore,

Acting Director, Office of Wastewater Management.

[FR Doc. 02–17868 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–1]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the renewal package to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 2225A, OECA/OC/AgD, Washington, DC 20460. A copy of this ICR may be obtained from Stephen Howie tel: (202) 564–4146; e-mail: *howie.stephen@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Howie, tel: (202) 564–4146; FAX: (202) 564–0085; e-mail: *howie.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected Entities: This action affects entities which import pesticides or devices into the United States.

Title: Notice of Arrival of Pesticides and Devices (EPA Form 3540–1), OMB Number 2070–0020, EPA ICR Number 0152.07, Expiration Date: December 31, 2002.

Abstract: The U.S. Customs regulations at 19 CFR 12.112 require that an importer desiring to import pesticides into the United States shall, prior to the shipment's arrival, submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to EPA who will determine the disposition of the shipment. After completing the form, EPA returns the form to the importer, or his agent, who must present the form to Customs upon arrival of the shipment at the port of entry. This is necessary to insure that EPA is notified of the arrival of pesticides and devices as required by

the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 17(c) and has the ability to examine such shipments to determine that they are in compliance with FIFRA.

The form requires identification and address information of the importer or his agent and information on the identity and location of the imported pesticide or device shipment.

When the form is submitted to EPA

whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Environmental Protection Agency (EPA) is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): 2003 Drinking Water Infrastructure Needs Survey, EPA ICR #2085.01. Before

available upon request under the Freedom of Information Act. However, EPA's experience with the previous two surveys indicate that these data are rarely, if ever, requested. The data from the questionnaires will provide EPA with a basis for estimating the nationwide infrastructure needs of community water systems. Also, as mandated by Section 1452(a)(1)(D)(ii) of the Safe Drinking Water Act, EPA uses

and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document regarding EB Docket No. 02–149, released on June 19, 2002. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., CY–A257, Washington, DC, 20554, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th SW., CY–B402,

the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 17(c) and has the ability to examine such shipments to determine that they are in compliance with FIFRA.

The form requires identification and address information of the importer or his agent and information on the identity and location of the imported pesticide or device shipment.

When the form is submitted to EPA regional personnel for review it is examined to determine whether the shipment should be released for entry upon arrival or alternatively whether it should be detained for examination. The responsible EPA official returns the form to the respondent with EPA instructions to the U.S. Customs Service as to the disposition of the shipment.

Upon the arrival of the shipment, the importer presents the completed NOA to the District Director of U.S. Customs at the port of entry. U.S. Customs compares entry documents for the shipment with the Notice of Arrival and notifies the EPA Regional Office of any discrepancies which the EPA will resolve with the importer or broker. At this point the shipment may be retained for examination. If there are no discrepancies Customs follows instructions regarding release or detention. If EPA inspects the shipment and it appears from examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions of FIFRA, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission into the United States.

This reporting requirement is needed to inform the Agency of pesticides arriving in the customs territory of the United States and to ensure compliance with FIFRA by the responsible party importing pesticides. This reporting requirement is needed to meet direct statutory requirements of FIFRA regarding notification of the Agency of such arrivals.

The information collected is used by EPA Regional pesticide enforcement and compliance staff and the Headquarters Office of Enforcement and Compliance Assurance and Office of Pesticide Programs. The U.S. Treasury Department (Customs), the Department of Agriculture, the Food and Drug Administration, and other Federal agencies may also make use of this information.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years is estimated to be 0.3 person hours per response.

Respondents/affected entities: 7,000.

Estimated number of respondents: 7,000.

Frequency of responses: 1.

Estimated total annual hour burden: 2,100.

There are no capital/startup costs or operating and maintenance (O&M) costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 3, 2002.

Richard Colbert,

Director, Agriculture Division.

[FR Doc. 02–17874 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; 2003 Drinking Water Infrastructure Needs Survey

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Environmental Protection Agency (EPA) is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): 2003 Drinking Water Infrastructure Needs Survey, EPA ICR #2085.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: A copy of the proposed ICR may be requested from and comments may be mailed to David Travers, Drinking Water Protection Division (Mailcode 4606), Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Copies of the proposed ICR also may be obtained from the Safe Drinking Water Hotline, toll-free at (800) 426–4791. Hours of operation are 9 a.m. to 5:30 p.m. (ET), Monday–Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Travers, (202) 564–4638, fax (202) 564–3757, e-mail: *travers.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which own, operate or regulate community water systems including, but not limited to, owners/operators of community water systems, State Environmental Water Quality Agencies, and State Departments of Health.

Title: 2003 Drinking Water Infrastructure Needs Survey, EPA ICR #2085.01.

Abstract: The purpose of this information collection is to identify the infrastructure needs of community public water systems for the 20-year period from January 2003 through December 2022. EPA's Office of Ground Water and Drinking Water (OGWDW) will collect these data to comply with Sections 1452(h) and 1452(i)(4) of the Safe Drinking Water Act (42 U.S.C. 300h).

EPA will use a questionnaire to collect capital investment information from large (serving more than 50,000 people) and medium (serving more than 3,300 people) community water systems. Participation in the survey is voluntary. Information submitted to EPA as part of the survey will be made available upon request under the Freedom of Information Act. However, EPA's experience with the previous two surveys indicate that these data are rarely, if ever, requested. The data from the questionnaires will provide EPA with a basis for estimating the nationwide infrastructure needs of community water systems. Also, as mandated by Section 1452(a)(1)(D)(ii) of the Safe Drinking Water Act, EPA uses the results of the latest survey to allocate Drinking Water State Revolving Fund (DWSRF) monies to the States. Under the allotment formula, each State receives a grant of the annual DWSRF appropriation in proportion to its share of the total national need—with the proviso that each State receive at least 1% of the total funds available.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: It is estimated that this information collection will involve a total cost burden to the respondents of $1,229,764 and a total hour burden to the respondents of 45,057 hours. There will be no capital, start-up or operation and maintenance costs but the collection will involve a one time response, from 3,790 respondents, of approximately 11.8 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 10, 2002.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–17877 Filed 7–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 02–149; FCC 02–173]

In the Matter of Publix Network Corporations; Customer Attendants, LLC; Revenue Controls Corporations; SignTel, Inc.; and Focus Group, LLC (Publix Companies) Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice; Order to show cause and opportunity for hearing.

SUMMARY: This document is an order for Publix Companies to show cause and give the Publix Companies the opportunity for a hearing before the Commission. The Commission has found that an evidentiary hearing is required to determine whether the Commission should revoke the operating authority of the Publix Companies, the Publix Companies and the principal or principals of the Publix Companies should be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission, the Publix Companies are entitled to any of the telecommunications relay services ("TRS") fund monies that they requested or received from the TRS Fund, and a forfeiture against any or all of the Publix Companies is warranted and, if so, the amount of the forfeiture.

DATES: Effective July 16, 2002.

FOR FURTHER INFORMATION CONTACT: David Hunt, Attorney Advisor for Telecommunications Consumers Division, Enforcement Bureau (202) 418–1522.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document regarding EB Docket No. 02–149, released on June 19, 2002. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., CY–A257, Washington, DC, 20554, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th SW., CY–B402, Washington, DC, 20554, (202) 863–2893. It is also available on the Commission's website at *http://www.fcc.gov/Daily_Releases/Daily_Business/2002/db0619/FCC–02–173A1.pdf.*

Synopsis

A. Background

1. Telecommunications relay services were created to bring to those with a hearing or speech disability the benefits of telecommunications service that had hitherto been unavailable to that segment of the public by "provid[ing] the ability for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio.

2. The Act requires each common carrier providing voice transmission services to provide TRS in accordance with the standards set forth in Section 64.604 of the Commission's rules. Carriers may do this either by providing TRS directly, or by contracting with a TRS provider. Section 64.604 of the Commission's rules established the TRS Fund, currently administered by the National Exchange Carrier Association ("NECA"), which reimburses TRS providers for the costs of providing interstate TRS. Carriers providing interstate telecommunications services must contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues.

3. Payments from the TRS Fund to TRS providers are based on schedules of payment formulae that NECA files annually with the Commission. These formulae are based on total monthly interstate TRS minutes of use ("MOU"), defined as the MOU for completed interstate TRS calls placed through a TRS center beginning after call set-up and concluding after the last message call unit. TRS providers are eligible to receive payments from the TRS Fund only if they are: (1) TRS facilities operated under contract with and/or by

certified state TRS programs pursuant to § 64.605; (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services pursuant to § 64.604; or (3) interstate common carriers offering TRS pursuant to § 64.604. To be entitled to payments from the TRS fund, TRS providers must submit monthly reports of interstate MOU to NECA.

4. As required by the Act, the Commission has established mandatory minimum standards that TRS providers must meet. In its annual reports to Congress, the Commission has required NECA to file data regarding TRS providers' compliance with these standards. In response to these requirements, NECA has collected data regarding such items as percentage of calls answered within specified periods of time, and callback response times. The Commission has not yet mandated that TRS providers meet specific standards for these parameters, but instead has required NECA to report data regarding whether TRS providers are handling calls in a manner consistent with functional equivalency. Thus, TRS providers are not yet required to meet specific standards for these parameters, but instead are required to handle calls in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio.

5. Pursuant to the Commission's rules, NECA has conducted audits of TRS providers' compliance with the Commission's rules and requirements for the 1998–1999 and 1999–2000 fund years. NECA has submitted to the Commission reports of its findings in connection with these audits. NECA's reports indicate that the Publix Companies have violated a number of the Commission's rules governing the provision of TRS and the reporting of data to the TRS Fund administrator. NECA's reports indicate that the Publix Companies have violated the Commission's rules by failing to provide TRS in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. NECA's reports indicate that the Publix Companies have violated the Commission's rules by failing to handle calls in a manner consistent with the confidentiality requirements of the Commission's rules. NECA's reports indicate that the Publix Companies have violated the Commission's rules by failing to handle calls in a manner consistent with the requirement that communications assistants ("CAs") relay conversations between persons with hearing or speech disabilities and other persons in a manner that is transparent and that the CAs did not function as transliterators, but initiated and directed the calls to other employees of the Publix Companies. Thus, these calls were, in effect, calls solely between persons with hearing or speech disabilities.

6. It appears that the calls Publix Companies reported to NECA did not involve calls between persons with hearing or speech disabilities and those

interexchange carriers required of TRS facilities; whether the Publix Companies violated Commission rules by providing inaccurate information (costs and minutes of use) to the TRS Fund Administrator; whether the Publix Companies made intentional misrepresentations or willful material omissions to the Commission; whether the Publix Companies should remain authorized to act as a common carrier; without the prior consent of the Commission should not be issued.

15. The hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order. The ALJ shall apply the conclusions of law set forth in this Order to the findings that he makes in that hearing, upon the following issues:

(a) To determine whether the service the Publix Companies provided met the definition of TRS under § 225(a)(3) of

number of MOU for which the Publix Companies were entitled to receive reimbursement from the TRS Fund;

(p) To determine, in light of all the foregoing, whether Publix Network's authorization to operate as a common carrier should be revoked;

(q) To determine whether, in light of all the foregoing, Publix Network, the Publix Companies, and/or its principals should be ordered to cease and desist from the provision of any interstate

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certified state TRS programs pursuant to § 64.605; (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services pursuant to § 64.604; or (3) interstate common carriers offering TRS pursuant to § 64.604. To be entitled to payments from the TRS fund, TRS providers must submit monthly reports of interstate MOU to NECA.

4. As required by the Act, the Commission has established mandatory minimum standards for all TRS providers. Congress mandated certain of these standards, such as the requirement to operate seven days a week, 24 hours per day pursuant to § 64.604(b)(4) and the prohibition on keeping records of or disclosing the content of TRS calls pursuant to § 64.604(a)(2). The Commission's implementing rules also cover matters such as training, typing speed, and communication competence for the communication assistants. Besides employee qualifications, TRS hardware and access requirements are outlined, as well as reporting functions, payments, contribution computation, and complaint procedures.

5. The Publix Companies have, since 1999, been collecting reimbursements from the TRS Fund for purportedly providing TRS service eligible for compensation under the Commission's rules. The Publix Companies began operating what they described as a TRS center in January 1999 and began submitting MOU reports to NECA in February of that year. From that period until April 2001, the Publix Companies submitted 8,014,815 MOU to NECA as a basis for payment from the TRS Fund. The last billing statement they sent to NECA for compensation from the TRS Fund was dated August 13, 2001, and covered purported TRS MOU for July 2001. The Publix Companies have received reimbursements in excess of $6 million.

6. A random audit of the Publix Companies' TRS operations by NECA in 2001 raised significant questions of whether their relay operations entitled them for the TRS Fund payments that they had requested and received. On June 25, 2001, the Enforcement Bureau ("EB") issued a subpoena for documents to Publix Network ("EB Subpoena"), together with a letter of inquiry. The Publix Companies responded to both EB and the Common Carrier Bureau (CCB) on July 23, 2001. In its response to CCB, Publix Network stated that once it was given notice of CCB's concerns, it had "worked diligently to adjust its operations." Publix Network further stated that its management believed that Publix Network had always been operating "in substantial compliance with the TRS minimum standards."

7. Based on the NECA audit and on the responses received from the Publix Companies to the Commission's inquiries, it appears that the Publix Companies have collected millions of dollars in payments from the TRS Fund without actually having provided TRS services that would have qualified them for reimbursement. It appears that the Publix Companies did not actually provide TRS as defined by the Commission's rules, thus raising a threshold issue about their eligibility for compensation from the TRS Fund. Moreover, there appears to be pervasive misconduct and violations of Commission rules by the Publix Companies. It appears that the Publix Companies violated numerous operational, technical, and functional requirements set forth in the Commission's TRS rules, submitted inflated bills for reimbursement and other false and inadequate data to the TRS Fund Administrator, and made repeated misrepresentations to the Commission. Considered in their totality, it appears that the actions of Publix Network and related companies may have constituted not only multiple, technical violations of the Act and the Commission's rules, but also a deliberate scheme to obtain TRS Fund payments for which these companies were not eligible. In view of the apparent pattern of pervasive misconduct and violations, it appears that the Publix Companies are not qualified, and should not be authorized, to operate as common carriers in the future.

B. Discussion

8. The Publix Companies are eligible to receive payments from the TRS Fund, if at all, only to the extent that they are an interstate common carrier "offering TRS pursuant to Section 64.604." It appears that the services for which the Publix Companies have sought TRS Fund reimbursement fundamentally do not constitute TRS at all. Moreover, to the extent that any TRS was actually provided by the Publix Companies, it appears that it was not "TRS pursuant to § 64.604," because the Publix Companies did not substantially comply with the requirements of that rule.

9. The Commission's definition of TRS requires communication between an individual with a hearing or speech disability and an individual without any such disability. It appears that almost all of the purported calls for which the Publix Companies have sought reimbursement occurred solely between employees of the Publix Companies, and that the CAs did not function as transliterators, but initiated and directed the calls to other employees of the Publix Companies. Thus, these calls were, in effect, calls solely between persons with hearing or speech disabilities.

10. It appears that the calls Publix Companies reported to NECA did not involve calls between persons with hearing or speech disabilities and those without such disabilities. The calls appear to have followed two patterns. In the first, Publix Companies' CAs would place a call to several assistant developers ("ADs") who were in the employ of Dr. Raanan Liebermann, President of the Publix Network Corporation, through Focus Group, and would ask the ADs several questions as per a prepared "script." These scripted conversations would last four to eight hours a day, five days a week. The ADs, however, were, according to the Publix Companies, all persons with hearing or speech disabilities, and thus required no TRS to communicate among themselves. It appears that the CAs functioned as participants, initiators of these calls. However, payments are only available for interstate TRS calls that are placed by TRS users. In the second pattern, it appears that a moderator was involved in the conference calls along with the CAs and ADs. These moderators were employees of Dr. Liebermann through another of the Publix Companies, SignTel. Apparently, the moderator would call as many as six CAs of the Publix Companies, who in turn would usually contact as many as five ADs each. When a moderator was involved in the call, it appears the he or she would read out the questions per the script, and the GAs would type out via TTY the questions for the ADs. When the ADs responded, however, it appears that the responses were not always forwarded to the moderators. Thus, it appears that the moderator may have served only to create the appearance of actual relay service. Calls such as these do not constitute TRS because they do not facilitate communications between persons with hearing or speech disabilities and persons without such disabilities.

11. The Administrative Law Judge is directed to determine whether the service for which the Publix Companies requested and received payments met the definition of TRS in the Act and the Commission's rules; whether the Publix Companies offered TRS pursuant to Section 64.604, including but not limited to whether they met the operational, technical and functional standards, and met the training, confidentiality, and equal access to interexchange carriers required of TRS facilities; whether the Publix Companies violated Commission rules by providing inaccurate information (costs and minutes of use) to the TRS Fund Administrator; whether the Publix Companies made intentional misrepresentations or willful material omissions to the Commission; whether the Publix Companies should remain authorized to act as a common carrier; whether the Publix Companies are entitled to any portion of the payments from the TRS Fund that they requested or received; and whether piercing the corporate veil is appropriate to find the affiliated entities equally liable in this alleged scheme.

C. Conclusion

12. In light of the totality of the information now before us, an evidentiary hearing is required to determine whether the continued operation of the Publix Companies as a common carrier would serve the public convenience and necessity within the meaning of Section 214 of the Act. Further, due to the potentially egregious nature of the Publix Companies' apparently unlawful activities, they will be required to show cause why an order to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued. In light of the apparent violations outlined above, it also appears that a forfeiture should be levied against the Publix Companies. Moreover, because our investigation has raised substantial questions whether the Publix Companies are entitled to any of the payments that they have received and requested from the TRS Fund, we will specify an issue to determine the extent to which the Publix Companies are eligible for any payments.

Ordering Clauses

13. Pursuant to Sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 214, the principal or principals of the Publix Companies *are directed to show cause* why the operating authority bestowed on the Publix Companies pursuant to Section 214 of the Communications Act of 1934, as amended, should not be *revoked*.

14. Pursuant to Section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b), the principal or principals of the Publix Companies *are directed to show cause* why an order directing them *to cease and desist from the provision of any interstate common carrier services* without the prior consent of the Commission should not be issued.

15. The hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order. The ALJ shall apply the conclusions of law set forth in this Order to the findings that he makes in that hearing, upon the following issues:

(a) To determine whether the service the Publix Companies provided met the definition of TRS under § 225(a)(3) of the Act and § 64.601(7) of the Commission's rules;

(b) To determine whether the Publix Companies violated § 64.604(a)(1) of the Commission's rules;

(c) To determine whether the Publix Companies violated Section 225(d)(1)(F) of the Act and § 64.604(a)(2)(i) of the Commission's rules;

(d) To determine whether the Publix Companies violated § 64.604(b)(3) of the Commission's rules;

(e) To determine whether the Publix Companies violated § 64.604(b)(4) of the Commission's rules;

(f) To determine whether the Publix Companies violated § 64.604(c)(3) of the Commission's rules;

(g) To determine whether the Publix Companies violated § 64.604(c)(5)(iii)(C) of the Commission's rules;

(h) To determine whether the Publix Companies violated § 64.604(c)(5)(iii)(E) of the Commission's rules;

(i) To determine whether the MOU generated by the Publix Companies constituted MOU compensable by the TRS Fund;

(j) To determine whether the Publix Companies violated Section 220(e) of the Act by not filing true and accurate data in FCC Form 499–A;

(k) To determine whether the Publix Companies engaged in a pervasive pattern of misrepresentation or lack of candor;

(l) To determine whether the Publix Companies misrepresented or willfully omitted facts in written materials submitted to the Commission, in violation of 47 CFR. Section 1.17;

(m) To determine whether, with respect to the issues (a) through (l) specified above, the Publix Companies knew or should have known that they were committing such violations, whether they acted with the intention of violating a known duty; and whether they acted negligently, or with gross neglect of a known duty;

(n) To determine whether the Publix Companies substantially complied with the requirements of 47 CFR 64.604;

(o) To the extent that the ALJ finds that the Publix Companies were eligible for any TRS Fund reimbursements they requested or received, to determine the number of MOU for which the Publix Companies were entitled to receive reimbursement from the TRS Fund;

(p) To determine, in light of all the foregoing, whether Publix Network's authorization to operate as a common carrier should be revoked;

(q) To determine whether, in light of all the foregoing, Publix Network, the Publix Companies, and/or its principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission;

(r) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, Publix Network, Publix Relay, SignTel, RCC, Customer Attendants, Focus Group, and any other related company under the control and direction of Dr. Raanan Liebermann, should, for purposes of this proceeding, be considered one and the same entity.

16. The Chief, Enforcement Bureau, shall be a party to the designated hearing. Pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding and the burden of proof shall be upon the Enforcement Bureau as to issues (a) through (r) inclusive.

17. To avail themselves of the opportunity to be heard, the principal or principals of the Publix Companies, pursuant to § 1.91(c) of the Commission's rules, *shall file* with the Commission within 30 days of the mailing of this Show Cause Order a *written appearance* stating that a principal or other legal representative from the Publix Companies will appear at the hearing and present evidence on the matters specified in the Show Cause Order. If the Publix Companies fail to file a written appearance within the time specified, the Publix Companies' right to a hearing *shall be deemed to be waived*. In the event that the right to a hearing a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, *shall terminate* the hearing proceeding as to that entity and *certify* this case to the Commission in the regular course of business, and an appropriate order shall be entered.

18. Irrespective of the resolution of the foregoing issues, the ALJ shall determine, pursuant to Section 503(b)(3)(A) of the Act, 47 U.S.C. 503(b)(3)(A), whether an Order of Forfeiture shall be issued against any or each of the Publix companies and their principal(s) for having willfully and/or repeatedly violated Sections 1.17, 64.601(7), 64.604(a)(1), 64.604(a)(2)(i), 64.604(b)(3), 64.604(b)(4), 64.604(c)(3), 64.604(c)(5)(iii)(C), and/or

64.604(c)(5)(iii)(E) of the Commission's rules, 47 CFR 1.17, 64.601(7), 64.604(a)(1), 64.604(a)(2)(i), 64.604(b)(3), 64.604(b)(4), 64.604(c)(3), 64.604(c)(5)(iii)(C), and/or 64.604(c)(5)(iii)(E) and/or Sections 220(e), 225(a)(3) and 225(d)(1)(F) of the Act, 47 U.S.C. 220(e), 225(a)(3) and 225(d)(1)(F). For each violation, the maximum potential forfeiture liability for the parties, joint and separately,

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filed by July 31, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time of filing oppositions has expired.

Subject: Communications Assistance for Law Enforcement Act (CC Docket No. 97–213).

Number of Petitions Filed: 1.

Subject: In the Matter of Revision of Part 15 of the Commission's Rules

hazards, technical hazards, instructional methodology, professional development, leadership, exercise design and evaluation, information technology, public information, integrated emergency management, and train-the-trainer. A significant portion of the training is conducted by State emergency management agencies under cooperative agreements with FEMA.

In order to meet current information

FEMA Forms	Number of respondents (A)	Frequency ofresponse (B)	Hours per response (C)	Annual Burden Hours (A x B x C)
95–41	4,000	Annually	*10	667
Total				667

*Minutes.

Estimated Cost: $12,850, which includes operational and user costs.

Street, SW., Room 316, Washington, DC 20472.

collection to the Office of Management and Budget for review and clearance in

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64.604(c)(5)(iii)(E) of the Commission's rules, 47 CFR 1.17, 64.601(7), 64.604(a)(1), 64.604(a)(2)(i), 64.604(b)(3), 64.604(b)(4), 64.604(c)(3), 64.604(c)(5)(iii)(C), and/or 64.604(c)(5)(iii)(E) and/or Sections 220(e), 225(a)(3) and 225(d)(1)(F) of the Act, 47 U.S.C. 220(e), 225(a)(3) and 225(d)(1)(F). For each violation, the maximum potential forfeiture liability for the parties, joint and separately, shall be the statutory maximum of $120,000 per violation up to a total of $1,200,000 for each continuing violation committed by a common carrier. This figure is set based upon the seriousness of the alleged violations, the continuing nature of the alleged violations, the apparent culpability of each party, the information available to us concerning the financial condition of each party, and the ability of each party to profit from the alleged rule and/or statutory violations.

19. This document constitutes a *notice of opportunity for hearing* pursuant to Section 503(b)(3)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(A), for the potential forfeiture liability outlined above.

20. A copy of this *order to show cause and notice of opportunity for hearing* shall be sent by certified mail, return receipt requested, to Dr. Raanan Liebermann, Publix Network Corporation, 79 Bayard Avenue, North Haven, CT 06473, and Gerard Waldron, Esq., Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC, 20004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17829 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report no. 2560]

Petitions for Reconsideration of Action in Rulemaking Proceedings

July 3, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by July 31, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time of filing oppositions has expired.

Subject: Communications Assistance for Law Enforcement Act (CC Docket No. 97–213).

Number of Petitions Filed: 1.

Subject: In the Matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98–153).

Number of Petitions Filed: 16.

Subject: Amendment of the FM Table of Allotments (MM Docket No. 01–341, RM–10346).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17826 Filed 7–15–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the use of the Emergency Management Institute Resident Course Evaluation Form, which is used to identify problems with course materials, evaluate the quality of the course delivery, facilities and instructors. This notice corrects the **Federal Register** notice published June 14, 2002, to provide a 60-day comment period beginning the date of this notice. In addition, FEMA will not be requesting approval of this information collection under the emergency processing procedures in the Office of Management and Budget regulation 5 CFR 1320.13, but will follow the normal clearance procedures.

SUPPLEMENTARY INFORMATION: The Emergency Management Institute (EMI) develops courses and administers resident and nonresident training programs in areas such as natural hazards, technical hazards, instructional methodology, professional development, leadership, exercise design and evaluation, information technology, public information, integrated emergency management, and train-the-trainer. A significant portion of the training is conducted by State emergency management agencies under cooperative agreements with FEMA.

In order to meet current information needs of EMI staff and management, the EMI uses this course evaluation form to identify problems with course materials, delivery, facilities, and instructors. This is a resident evaluation form. EMI staff will use the information to monitor and recommend changes in course materials, student selection criteria, training experience, and classroom environment. Reports will be generated and distributed to EMI management and staff. Without the information it will be difficult to determine the need for improvements and the degree of student satisfaction with each course. The respondents are students attending EMI resident courses. The evaluation form will be administered at the end of the course and will take no more than 10 minutes to complete. Contractors will scan the evaluation forms and generate the data reports using a computer program developed by a FEMA program analyst contractor. Evaluation forms are destroyed in accordance with FEMA's records retention schedule.

Collection of Information

Title: Emergency Management Institute Resident Course Evaluation Form.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0237.

Form Number(s): FEMA Form 95–41.

Abstract: Students attending the Emergency Management Institute resident program courses at FEMA's National Emergency Training Center will be asked to complete a course evaluation form. EMI staff and management will use the information to identify problems with course materials and evaluate the quality of the course delivery, facilities, and instructors. The data received will enable them to recommend changes in course materials, student selection criteria, training experience and classroom environment.

Affected Public: State, Local or Tribal Government, Individuals or households, and Federal Government.

Estimated Total Annual Burden Hours: 667.

FEMA Forms	Number of respondents (A)	Frequency ofresponse (B)	Hours per response (C)	Annual Burden Hours (A × B × C)
95–41	4,000	Annually	*10	667
Total				667

*Minutes.

Estimated Cost: $12,850, which includes operational and user costs.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Laurie Wivell, National Emergency Training Center, Training Division (301) 447–1216 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or email *muriel.anderson@fema.gov.*

Dated: July 3, 2002.

Reginald Trujillo,

Branch Chief, Program Services & Systems Branch, Facilities Management & Service Division, Administration and Resource Planning Directorate.

[FR Doc. 02–17770 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Public Assistance Progress Report and Program Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0151.

Abstract: Progress Reports ensure that the Federal Emergency Management Agency (FEMA) and the State have up-to-date information on Public Assistance (PA) program grants. The State submits reports quarterly to the Regional Director for construction projects for which a final payment has not been made. The date of the report will be determined jointly by the State and the Disaster Recovery Manager. The progress report describes the status of project completion dates, and circumstances that could delay a project. The State is expected to impose some reporting requirements for applicants so that they can prepare quarterly reports.

Affected Public: State, Local or Tribal Government and Not-For-Profit Institutions.

Number of Respondents: 222,488.

Estimated Time per Respondent:

FEMA Forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
Progress Report	25	4	25	2,500
FEMA Form 90–49	114	53	*10	1,007
FEMA Form 90–91, 90–91A, 90–91B, 90–91C, and 90–91D	564	53	*90	44,838
FEMA Form 90–120	564	53	*10	4,982
FEMA Form 90–121	20	53	*30	530
FEMA Form 90–123	564	53	*15	7,473
FEMA Form 90–124	564	53	*15	7,473
FEMA Form 90–125	564	53	*15	7,473
FEMA Form 90–126	564	53	*15	7,473
FEMA Form 90–127	564	53	*15	7,473
FEMA Form 90–128	114	53	*30	3,021
Total	222,488			94,243

*Minutes.

Estimated Total Annual Burden Hours: 94,243 hours.

Frequency of Response: Quarterly.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice

magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of Guam.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance

(FEMA–1424–DR), dated July 3, 2002, and related determinations.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July

reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov*.

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–17769 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Write Your Own (WYO) Program.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0169.

Abstract: Under the Write Your Own (WYO) Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is guarantor of flood insurance coverage for WYO companies, issued under the WYO arrangements. In order to maintain adequate financial control over Federal funds, the NFIP requires that WYO companies submit a monthly financial report. The NFIP examines the data to ensure that policyholder funds are accounted for and appropriately expended.

Affected Public: Business or Other For-Profit.

Number of Respondents: 105.

Estimated Time per Respondent: 33 minutes.

Estimated Total Annual Burden Hours: 693 hours.

Frequency of Response: Monthly.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov*.

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–17909 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1426–DR]

Guam; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of Guam (FEMA–1426–DR), dated July 6, 2002, and related determinations.

EFFECTIVE DATE: July 6, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 6, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of Guam, resulting from Typhoon Chata'an on July 5–6, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of Guam.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance, under Public Assistance in the designated areas, and Hazard Mitigation throughout the Territory, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later warranted, Federal funds provided under the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile, III of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Territory of Guam to have been affected adversely by this declared major disaster:

Territory of Guam for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance under the Public Assistance program at 75 percent Federal funding.

The Territory of Guam is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17775 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Beltrami, Clay, Pennington, and Polk Counties for Individual Assistance (already designated for Public Assistance).

Itasca, McLeod, and Wright Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17774 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1424–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1424-DR), dated July 3, 2002, and related determinations.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 3, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from severe storms and flooding beginning on June 8, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later requested and warranted, Federal funds provided under the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Glacier, Liberty, Pondera, and Toole Counties and the Blackfeet Indian Reservation for Public Assistance.

All counties and Indian Reservations within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17776 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 8, 2002, and related determinations.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Brown, Caldwell, Eastland, Frio, Goliad, Gonzales, Karnes, La Salle, Real, Taylor and Wilson Counties for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

Atascosa, Guadalupe and Travis Counties for direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174 (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17772 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing an Open Meeting of the Board

Special Meeting in Observance of the 70th Anniversary of the Federal Home Loan Bank Act

TIME AND DATE: 1 p.m., Thursday, July 18, 2002.

PLACE: Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007.

STATUS: Open.

MATTERS TO BE CONSIDERED: Special Meeting in Observance of the 70th Anniversary of the Federal Home Loan Bank Act.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Dated: July 12, 2002.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 02–17913 Filed 7–12–02; 4:15 pm]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Request For Comment on Information Collection Proposals.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposal to extend, without revision, the following information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

OMB control number: 7100–0235

Frequency: Event–generated

Reporters: State member banks and uninsured state branches and agencies of foreign banks

Annual reporting hours: 331,630 hours

Estimated average hours per response: Initial notice or upon request, 1 minute; Case–by–case hold notice, 3 minutes; Notice of exceptions, 3 minutes; Notice posted where customers make deposits,

Abstract: The application for membership is a required one–time submission, pursuant to Section 9 of the Federal Reserve Act, that collects the information necessary for the Federal Reserve to evaluate the statutory criteria for admission of a new or existing bank to membership in the Federal Reserve System. This application provides managerial, financial, and structural data.

Current Actions: The Federal Reserve

Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17772 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 6, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Atascosa, Guadalupe and Travis Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–17773 Filed 7–15–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing an Open Meeting of the Board

Special Meeting in Observance of the 70th Anniversary of the Federal Home Loan Bank Act

TIME AND DATE: 1 p.m., Thursday, July 18, 2002.

PLACE: Daniel Patrick Moynihan United States Courthouse, Ceremonial Courtroom, 9th Floor, 500 Pearl Street, New York, New York.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Federal Home Loan Bank of New York Capital Plan.
- Consideration of a Resolution Concerning the Federal Home Loan Bank of New York's Participation in Public Financing for Reconstruction of Lower Manhattan.
- Granting of a Restated Organizational Certificate to Replace the Original Lost in the Attack of September 11, 2001.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–17964 Filed 7–12–02; 11:04 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request For Comment on Information Collection Proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 16 2002.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Caprio Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports:

1. *Report title:* Consumer Satisfaction Questionnaire
   Agency form number: FR 1379
   OMB control number: 7100–0135
   Frequency: Event–generated
   Reporters: Consumers
   Annual reporting hours: 195 hours
   Estimated average hours per response: 20 minutes
   Number of respondents: 592
   Small businesses are affected.
   General description of report: This information collection is voluntary (15 U.S.C. § 57(a)(f)(1)). This information collection is not usually given confidential treatment under the Freedom of Information Act (FOIA). However, if a respondent provides information not specifically solicited on the form, that information may be exempt from disclosure under FOIA (5 U.S.C. §§ (b)(4), (b)(6), or (b)(7)) upon specific request from the respondent.
   Abstract: The questionnaire is sent to consumers who have filed complaints against state member banks. It is used to determine whether complainants are satisfied with the way the Federal Reserve System handled their complaints and to solicit suggestions for improving the complaint investigation process.
2. *Report title:* The Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act
   Agency form number: Reg CC
   OMB control number: 7100–0235
   Frequency: Event–generated
   Reporters: State member banks and uninsured state branches and agencies of foreign banks
   Annual reporting hours: 331,630 hours
   Estimated average hours per response: Initial notice or upon request, 1 minute; Case–by–case hold notice, 3 minutes; Notice of exceptions, 3 minutes; Notice posted where customers make deposits, 15 minutes; Annual notice of new ATMs, 5 hours; Notice of changes in policy, 20 hours; and Notice of nonpayment to depositary bank, 1 minute.
   Number of respondents: 1,271
   Small businesses are affected.
   General description of report: This information collection is mandatory (12 U.S.C. 4008). Because the Federal Reserve does not collect any information, no issue of confidentiality arises.
   Abstract: Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Reports:

1. *Report title:* Applications for Membership in the Federal Reserve System
   Agency form number: FR 2083, 2083A, 2083B and 2083C
   OMB control number: 7100–0046
   Frequency: On occasion
   Reporters: Commercial banks and certain mutual savings banks
   Annual reporting hours: 280 hours
   Estimated average hours per response: 4 hours
   Number of respondents: 70
   Small businesses are affected.
   General description of report: This information collection is required to obtain or retain a benefit (12 U.S.C. §§ 321, 322, and 333). The information in the application is not confidential; however, parts may be given confidential treatment at the applicant's request (5 U.S.C. § 552(b)(4)).
   Abstract: The application for membership is a required one–time submission, pursuant to Section 9 of the Federal Reserve Act, that collects the information necessary for the Federal Reserve to evaluate the statutory criteria for admission of a new or existing bank to membership in the Federal Reserve System. This application provides managerial, financial, and structural data.
   Current Actions: The Federal Reserve proposes to revise the application by replacing a majority of Section I of the application, which applies to de novo banks, with a reference to the new Interagency Charter and Federal Deposit Insurance application form (ICDIA form), recently developed by the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS). Two existing items and a footnote in this section would be retained and slightly clarified. One item in Section II of the membership application would be revised slightly, and Section III would remain unchanged. The proposed revisions should improve consistency and make filing of the application more expeditious and less burdensome.
2. *Report title:* Domestic Finance Company Report of Consolidated Assets and Liabilities
   Agency form number: FR 2248
   OMB control number: 7100–0005
   Frequency: Monthly, Quarterly, and Semi–annual
   Reporters: Domestic finance companies
   Annual reporting hours: 352 hours
   Estimated average hours per response: Monthly, 18 minutes; Quarterly, 25 minutes; and Semi–annual, 10 minutes.
   Number of respondents: 80
   Small businesses are not affected.
   General description of report: This information collection is voluntary (12 U.S.C. § 225(a)). Individual respondent data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. § 552).
   Abstract: Each monthly report collects balance sheet data on major categories of consumer and business credit receivables and on major short–term liabilities. For quarter–end months (March, June, September, and December), additional asset and liability items are collected to provide a full balance sheet. The supplemental section collects data on asset–backed securities. These data are used to construct universe estimates of finance company holdings, which are published in the monthly statistical releases Finance Companies (G.20) and Consumer Credit (G.19), in the quarterly statistical release

Flow of Funds Accounts of the United States (Z.1), and in the Federal Reserve Bulletin (Tables 1.51, 1.52, and 1.55).

Current Actions: The agency staff proposes three changes to the report. First, because the number of finance companies participating in the monthly survey has declined, the staff proposes to reduce the authorized panel size from 100 finance companies to 80 finance companies. Second, the staff proposes to

checklist that banks could use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval. To the extent that this voluntary form were used by banks, it would potentially ease their reporting burden by allowing the banks to fill in the form rather than typing a letter containing the required information. The form will also potentially help the

application or notification has been filed.

The current FR K–2 was developed in 1992 shortly after the passage of the Foreign Bank Supervision Enhancement Act. Since that time, the Federal Reserve has gained significant experience in processing these types of applications and has over time expanded and modified the list of standard information that should be required in

Attachment E – Commitments Required in Connection with Applications and Notifications by Foreign Banks to Establish Branches, Agencies, Commercial Lending Companies, or Representative Offices in the United States.

5. *Report title:* Application for a Foreign Organization to Become a Bank Holding Company
   Agency form number: FR Y–1f
   OMB control number: 7100–0119

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Minor Clarifications, of the Following Reports:

1. *Report title:* Applications for Subscription to, Adjustment in Holding of, and Cancellation of Federal Reserve Bank Stock
   Agency form number: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087
   OMB control number: 7100–0012

survey leading financial institutions from the thirteen countries participating on the Committee as well as many other countries in order to gauge the likely effects of proposed new capital standards for internationally active banking organizations.

The Committee is developing new regulatory capital standards for internationally active banks (the New Basel Capital Accord, or "Accord") to

Flow of Funds Accounts of the United States (Z.1), and in the Federal Reserve Bulletin (Tables 1.51, 1.52, and 1.55).

Current Actions: The agency staff proposes three changes to the report. First, because the number of finance companies participating in the monthly survey has declined, the staff proposes to reduce the authorized panel size from 100 finance companies to 80 finance companies. Second, the staff proposes to add four questions about the breakdown of 1–4 family real estate loans. These questions would be answered only for quarter–end months. Third, the staff proposes to add a special addendum section to the report, which would on occasion include additional questions pertaining to financial topics of interest. These addendum questions would be asked up to twice a year. To help ease the reporting burden, these addendum questions would be sent in advance to the respondents.

3. *Report title:* Notifications Related to Community Development and Public Welfare Investments of State Member Banks

Agency form number: FR H–6
OMB control number: 7100–0278
Frequency: Event–generated
Reporters: State member banks
Annual reporting hours: 80 hours
Estimated average hours per response: Investment notice, 2 hours; Application, 5 hours; and Extension of divestiture period, 5 hours.
Number of respondents: Investment notice, 25; Application, 5; and Extension of divestiture period, 1.
Small businesses are not affected.
General description of report: This information collection is required to obtain a benefit (12 USC 338a, and 12 CFR 208.22). Individual respondent data generally are not regarded as confidential, but information that is proprietary or concerns examination ratings would be considered confidential.
Abstract: Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) if the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.
Current Actions: The proposed revision would create a form and checklist that banks could use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval. To the extent that this voluntary form were used by banks, it would potentially ease their reporting burden by allowing the banks to fill in the form rather than typing a letter containing the required information. The form will also potentially help the Board staff to collect uniform and thorough information about community development and public welfare investments. The checklist would help banks determine whether they must submit a request for prior approval.

4. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K

Agency form number: FR K–2
OMB control number: 7100–0284
Frequency: Event–generated
Reporters: Foreign banks
Annual reporting hours: 700 hours
Estimated average hours per response: 35 hours
Number of respondents: 20
Small businesses are not affected.
General description of report: This information collection is required to obtain or retain a benefit (12 U.S.C. 3105 and 3107). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption (5 U.S.C. 552).
Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office, or to acquire ownership or control of a commercial lending company in the United States or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.
Current Actions: The application requirements currently are contained in Supervision and Regulation Letter dated March 5, 1992 (SR 92–6). A copy of this letter is available on the Board's public website at http://www.federalreserve.gov/boarddocs/srletters/ . The proposed FR K–2 would consist of a reporting form with filing instructions in addition to the informational requirements currently contained in SR 92–6. The proposed modified and enhanced form FR K–2 would clarify and streamline the information required in international applications and prior notifications and reduce the need for repeated requests for additional information after the application or notification has been filed.

The current FR K–2 was developed in 1992 shortly after the passage of the Foreign Bank Supervision Enhancement Act. Since that time, the Federal Reserve has gained significant experience in processing these types of applications and has over time expanded and modified the list of standard information that should be required in these types of applications and notifications. This expanded list would include information regarding the home country laws and regulations designed to deter and prevent money laundering, terrorist financing and other illicit activities, as well as the policies and procedures in place at the foreign bank to detect and prevent money laundering, terrorist financing, and other illicit activities.

Also, Regulation K has been modified to allow for more proposals to be processed under the prior notification procedures. SR 92–6 currently contains two attachments: one attachment related to information collected in applications to establish a branch, agency, or commercial lending company, and one attachment related to information collected in applications to establish a representative office. The form does not currently contain separate attachments outlining informational requirements for prior notifications. In order to add clarity, the proposed FR K–2 would have separate attachments as follows indicating the required information depending on the type of application or notification.

Attachment A – Information Requested in Connection with Applications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(1) of Regulation K)

Attachment B – Information Requested in Connection with Applications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(1) of Regulation K)

Attachment C – Information Requested in Connection with Notifications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(2)(i)(A) of Regulation K)

Attachment D – Information Requested in Connection with Notifications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(2)(i)(B)(1) – (3) of Regulation K)

Attachment E – Commitments Required in Connection with Applications and Notifications by Foreign Banks to Establish Branches, Agencies, Commercial Lending Companies, or Representative Offices in the United States.

5. *Report title:* Application for a Foreign Organization to Become a Bank Holding Company

Agency form number: FR Y–1f
OMB control number: 7100–0119
Frequency: Event–generated
Reporters: Foreign Banking Organizations
Annual reporting hours: 360 hours
Estimated average hours per response: 90 hours
Number of respondents: 4
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. §§ 1842(a) and (c) and 1844(a) through (c)) and by the USA PATRIOT Act, § 327). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption (5 U.S.C. 552).
Abstract: Under the Bank Holding Company Act (BHCA), submission of this application is mandatory for any company organized under the laws of a foreign country seeking initial entry into the United States through the establishment or acquisition of a U.S. subsidiary bank. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would enhance the convenience and needs of the community to be served.
Current Actions: Several changes would be made to the FR Y–1f, including: (1) clarifying the application to improve consistency with the FR Y–3 (OMB No. 7100–0121), where applicable; (2) adding language to the instructions for an organization seeking to become a financial holding company (FHC) in accordance with the Gramm–Leach–Bliley Act; (3) adding an item to collect information on the anti–money laundering measures taken by the Applicant and its home country to comply with the requirements of the USA PATRIOT Act; and (4) adding items to collect information regarding the manner in which a foreign bank applicant is supervised by its home country authority(ies) and whether it is able to provide adequate assurances of access to information on its operations and activities, as required by the Foreign Bank Supervision Enhancement Act (FBSEA).

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Minor Clarifications, of the Following Reports:

1. *Report title:* Applications for Subscription to, Adjustment in Holding of, and Cancellation of Federal Reserve Bank Stock

Agency form number: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087
OMB control number: 7100–0042
Frequency: On occasion
Reporters: National, State Member, and Nonmember Banks
Annual reporting hours: 881 hours
Estimated average hours per response: 0.5 hours
Number of respondents: 1,758
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. §§ 222, 248, 282, 287, 288, and 321). Upon request from an applicant, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552).
Abstract: These applications are required by the Federal Reserve Act and Regulation I and must be submitted to Federal Reserve Banks by organizing and existing member commercial banks requesting the issuance, adjustment, or cancellation of Federal Reserve Bank stock. The applications are necessary in order to obtain account data on a bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. *Report title:* The Quantitative Impact Study

Agency form number: FR 3045
OMB control number: to be assigned
Frequency: One–time
Reporters: Large domestic bank holding companies
Annual reporting hours: 8,000 hours
Estimated average hours per response: 400 hours
Number of respondents: 20
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 1844) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The Federal Reserve, in conjunction with the Office of the Comptroller of the Currency (OCC), plan to survey twenty large bank holding companies (BHCs) as part of a worldwide effort by the Basel Committee on Banking Supervision (the Committee). The Committee plans to survey leading financial institutions from the thirteen countries participating on the Committee as well as many other countries in order to gauge the likely effects of proposed new capital standards for internationally active banking organizations.

The Committee is developing new regulatory capital standards for internationally active banks (the New Basel Capital Accord, or "Accord") to replace the current standard that has been in place since 1988. The proposed new Accord would be more complex than the original 1988 Accord in order to address the advances and innovations in financial instruments and risk measurement practices that have occurred during the past decade. In designing new capital requirements, the Committee is seeking a standard that provides adequate safety and soundness to world financial markets and that is also far more sensitive to different levels of economic risk than is available with the current Accord. To do this, Committee members believe they must rely more heavily than before on an institution's internal risk measurement systems and its own quantitative assessment of risk, particularly for the largest, most complex, and highly sophisticated banking organizations. For others, less complex capital standards could suffice.

The Committee has structured a proposed standard that entails two different approaches: a simple standard much like the current Accord and a more complex standard that relies on internal risk measurement systems of banks. The latter, in turn, has two variations, a "foundation" and an "advanced"approach. To ensure that each standard would perform sufficiently well, participants to the survey would be asked to calculate their capital requirements under the current rules and also under each of the proposed alternatives.

Board of Governors of the Federal Reserve System, July 10, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–17761 Filed 7–15–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the final forms and instructions may be requested from the Federal Reserve Board Clearance Officer, Mary M. McLaughlin, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Final Approval Under OMB Delegated Authority of the Implementation of the Following Report:

1. *Report title:* Survey of Consumer Attitudes and Expectations

Agency form number: FR 3046
OMB control number: 7100–0261
Frequency: Monthly
Reporters: Individuals
Annual reporting hours: 1,200 hours
Estimated average hours per response: 5 minutes
Number of respondents: 14,400
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 225a and 263). Individual respondent data are not regarded as confidential.
Abstract: The Survey of Consumer Attitudes and Expectations is a monthly survey of consumer attitudes and expectations. The SRC conducts the survey by telephone with a sample of 500 households and includes questions of special interest to Board staff concerning consumer behavior and its implications for the economy. The survey is used to help forecast consumer spending and to help understand the role of consumer behavior in the business cycle. The survey is also used to help evaluate the Federal Reserve's policy, regulatory, and operational responsibilities. The University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and includes questions of special interest to Board staff concerning consumer behavior and its implications for the economy.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Report:

1. *Report title:* Consumer Credit

Agency form number: FR G–20
OMB control number: 7100–0067
Frequency: Monthly
Reporters: Depository institutions
Annual reporting hours: 1,200 hours
Estimated average hours per response: Change in terms notices, 1 minute; Prematurity notices, 1 minute; Disclosures on periodic statements, 8 hours; and Advertising, 30 minutes
Number of respondents: 976
Small businesses are affected.
General description of report: This information collection is mandatory. Section 269 of the Truth in Savings Act (12 U.S.C. § 4308) authorizes the Board to issue regulations to carry out the

under NAICS codes beginning in November 2002, replacing the current Standard Industrial Classification (SIC) codes. To facilitate the use of this new index, the Federal Reserve has asked utilities to reclassify their customers using the NAICS codes. To that end, a new version of the Monthly Report of Industrial Electricity Use, the FR 2009c, was created in August 2000 to be used by respondents reporting in NAICS codes. Respondents could continue

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. The Ernest Hazel III Trust and Kay Hammond Hazel, Vero Beach, Florida, as trustee, to gain control of Cardinal Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Citizens National Bank of Greater St. Louis, Maplewood, Missouri.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Nominations for Members of the U.S. Preventive Services Task Force

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of nominations.

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph F. Lackey —Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10238, Washington, DC 20503 (202–395–7316).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:

1. *Report title:* The Ongoing Intermittent Survey of Households
Agency form number: FR 3016
OMB control number: 7100–0150
Frequency: On occasion
Reporters: Households and individuals
Annual reporting hours: 390 hours
Estimated average hours per response: 3.92 minutes
Number of respondents: 500
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.
Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. The University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and includes questions of special interest to Board staff intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments.

2. *Report title:* The Recordkeeping and Disclosure Requirement in Connection with Regulation M (Consumer Leasing)
Agency form number: Reg M
OMB control number: 7100–0202
Frequency: On occasion
Reporters: Consumer lessors
Annual reporting hours: Disclosures, 11,160 hours; and Advertising, 19 hours
Estimated average hours per response: Disclosures, 18 minutes; and Advertising, 25 minutes
Number of respondents: 310
Small businesses are affected.
General description of report: This information collection is mandatory sections 105(a) and 187 of TILA (15 U.S.C. §§ 1604(a) and 1667f) is not given confidential treatment.
Abstract: The Consumer Leasing Act and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised.

3. *Report title:* The Recordkeeping and Disclosure Requirement in Connection with Regulation DD (Truth in Savings)
Agency form number: Reg DD
OMB control number: 7100–0271
Frequency: Account disclosures, 500; Change in terms notices, 1,130; Prematurity notices, 1,015; Disclosures on periodic statements, 12; and Advertising, 12
Reporters: State member banks
Annual reporting hours: 146,644 hours
Estimated average hours per response: Account disclosures, 1.5 minutes; Change in terms notices, 1 minute; Prematurity notices, 1 minute; Disclosures on periodic statements, 8 hours; and Advertising, 30 minutes
Number of respondents: 976
Small businesses are affected.
General description of report: This information collection is mandatory. Section 269 of the Truth in Savings Act (12 U.S.C. § 4308) authorizes the Board to issue regulations to carry out the provisions of the Act. Since the Federal Reserve does not collect any information, the information collection is not given confidential treatment.
Abstract: The Truth in Savings Act and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts.

Board of Governors of the Federal Reserve System, July 10, 2002.
Jennifer J. Johnson
Secretary of the Board.
[FR Doc. 02–17760 Filed 7–15–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

In notice document 00–19313, beginning on page 46917, in the issue of Tuesday, August 1, 2000, the Federal Reserve announced final approval of the Monthly Survey of Industrial Electricity Use (FR 2009a,b,c; OMB No. 7100–0057). The notice announced the proposal to discontinue the FR 2009a after a two–year transition period ending August 2002. The Federal Reserve has postponed the discontinuance of the FR 2009a for another year to allow respondents more time to convert to the new classification codes.

The industrial output index is currently being revised to reflect the new North American Industry Classification System (NAICS). The Federal Reserve's G.17 statistical release, "Industrial Production and Capacity Utilization", will be published under NAICS codes beginning in November 2002, replacing the current Standard Industrial Classification (SIC) codes. To facilitate the use of this new index, the Federal Reserve has asked utilities to reclassify their customers using the NAICS codes. To that end, a new version of the Monthly Report of Industrial Electricity Use, the FR 2009c, was created in August 2000 to be used by respondents reporting in NAICS codes. Respondents could continue reporting in SIC codes on the FR 2009a until they had converted over to NAICS codes. The FR 2009a was then to be discontinued at the end of a two–year transition period.

This time frame has proven to be unrealistic for some utilities in the FR 2009 panel and, as a result, the Federal Reserve will continue to use the FR 2009a form. The Federal Reserve prefers NAICS coded data and encourages utilities to make the change. Federal Reserve staff will continue to help utilities make the conversion from SIC codes to NAICS codes.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, M/S 41, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Board of Governors of the Federal Reserve System, July 11,2002.
Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 02–17852 Filed 7–15–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 30, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. The Ernest Hazel III Trust and Kay Hammond Hazel, Vero Beach, Florida, as trustee, to gain control of Cardinal Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Citizens National Bank of Greater St. Louis, Maplewood, Missouri.

Board of Governors of the Federal Reserve System, July 10, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–17759 Filed 7–15–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, July 22, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 12, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–18060 Filed 7–12–02; 4:00 pm]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Nominations for Members of the U.S. Preventive Services Task Force

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of nominations.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is inviting nominations of qualified individuals to serve as members on the U.S. Preventive Services Task Force (the Task Force).

AHRQ is now soliciting nominations for members of a standing Task Force. Members will be eligible to serve for three year terms with an option for reappointment. They will meet quarterly for two days in the Washington, DC area and will be responsible for reviewing and commenting on evidence reviews prior to making recommendations. The Task Force will work closely with interested health care organizations.

AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals and organizations may nominate one or more qualified persons for membership on the Task Force.

DATES: To be considered for membership on the Task Force, written nominations should be submitted by September 16, 2002.

ADDRESSES: Submit your responses to: Robert Graham, M.D., ATTN: USPSTF Nominations, Director, Center for Practice and Technology Assessment, Agency for Healthcare Research and Quality, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Barbara Gordon at *USPSTF@AHRQ.GOV*. Responses will be available for inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. AHRQ will not reply to individual responses, but will consider all nominations in selecting members.

Information regarded as private and personal, such as a nominee's social security number, home and Internet addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public. This is in accord with agency confidentiality policies and Department regulations (45 CFR 5.67).

Basic Nomination Requirements

Each nomination should include a current curriculum vitae and should state that the nominee is willing to serve as a member of the Task Force. AHRQ will ask persons being considered for membership to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts, to permit evaluation of possibly significant

www.ahrq.gov/clinic/uspstfix.htm) and through the U.S. Government Printing Office, (202) 512–1800 (refer to stock # 017–001–00525–8). In 1998, members of the third Task Force were appointed for five-year terms. The third Task Force has released its recommendations incrementally. These recommendations can be found at *http://www.ahrq.gov/clinic;uspstfix.htm*.

necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0070]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for

and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical. In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), FDA published a final rule in the **Federal Register** (64 FR 26657, May 17, 1999) amending its regulations by

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA received during fiscal year 2000 and 2001, FDA estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the

Basic Nomination Requirements

Each nomination should include a current curriculum vitae and should state that the nominee is willing to serve as a member of the Task Force. AHRQ will ask persons being considered for membership to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts, to permit evaluation of possibly significant conflicts of interest. It is anticipated that approximately 8–10 individuals will be invited to serve on the Task Force. (See other important nomination requirements below under Nomination Selection.)

Additional Information about the U.S. Preventive Services Task Force may be obtained by contacting: *http://www.ahrq.gov/clinic/uspstfix.htm.*

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including prevention of diseases and other health conditions, and improvements in the organization, financing, and delivery of health care services (42 U.S.C. 299–299c–7 as amended by Public Law 106–129 (1999)).

The Task Force is an independent expert panel, first established in 1984 under the auspices of the U.S. Public Health Service. Currently, under AHRQ's authorizing legislation noted above, the Director of AHRQ is responsible for convening the USPSTF to be composed of individuals with appropriate expertise. The mission of the Task Force is to rigorously evaluate the effectiveness of clinical preventive services and to formulate recommendations for primary care clinicians regarding the appropriate content of periodic health examinations. The first Task Force concluded its work in 1989 with the publication of the Guide to Clinical Preventive Services (the Guide). A second Task Force, appointed in 1990, concluded its work with the release of the second edition of the Guide in December 1995. Programmatic responsibility for the Task Force was transferred to AHRQ in 1995. The 1996 edition of the Guide, evaluating common screening tests, counseling interventions, immunizations and chemoprophylaxis, is available on the Internet (*http://www.ahrq.gov/clinic/uspstfix.htm*) and through the U.S. Government Printing Office, (202) 512–1800 (refer to stock # 017–001–00525–8). In 1998, members of the third Task Force were appointed for five-year terms. The third Task Force has released its recommendations incrementally. These recommendations can be found at *http://www.ahrq.gov/clinic;uspstfix.htm.*

Nomination Selection

Nominations for the Task Force will be selected on the basis of: (1) Clinical expertise in the primary health care of children and/or adults; (2) experience in critical evaluation of research and evidence-based methods; (3) expertise in disease prevention and health promotion; (4) expertise in counseling and behavioral interventions, (5) national leadership within their field of expertise; (6) ability to work collaboratively with peers; and, (7) no substantial conflicts of interest that would impair the scientific integrity of the work of the Task Force. Some Task Force members without primary health care clinical experience may be selected based on their expertise in methodological issues such as medical decision making, clinical epidemiology, and health economics.

Dated: July 9, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–17863 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–317]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control (MEQC) Sampling Plan and Supporting Regulations in 42 CFR 431.800–431.865; *Form No.:* CMS–317 (OMB# 0938–0146); *Use:* The State MEQC sampling plan is necessary for CMS to monitor the States' operation of the MEQC system for States performing the traditional sampling process. The sampling plan includes all data involved in the States' sample selection process—population sizes and sample frame lists, sample sizes, sample selection procedures, and claim collection procedures; *Frequency:* Semi-annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 110; *Total Annual Hours:* 2,640. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown CMS–317, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 5, 2002.

Julie Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–17755 Filed 7–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0070]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 15, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring (OMB Control Number 0910–0409)—Extension

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical. In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), FDA published a final rule in the **Federal Register** (64 FR 26657, May 17, 1999) amending its regulations by adding provisions that clarify FDA's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) . Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products[1] already in place under the authorities of the act and the PHS Act. The information, which is usually submitted as part of a new drug application (NDA) or biologics license application (BLA) or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA received during fiscal year 2000 and 2001, FDA estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved by OMB until March 31, 2005, under OMB control number 0910–0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. The burden totals do not include an increase in burden. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

In the **Federal Register** of March 14, 2002 (67 FR 11512), the agency requested comments on the proposed collections of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000

[1] The information collection requirements for biological products are no longer submitted for approval to OMB in this package, but are included under OMB control number 0901–0124.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 9, 2002.

Margaret M. Dotzel,

forms the basis for determining the amount of extension an applicant may

phase of the regulatory review period, while 394 days occurred during the

Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts

new drug application became effective was on October 13, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 30, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Protonix (NDA 20–987) was initially submitted on June 30, 1998.

3. *The date the application was*

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					4,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 9, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–17784 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0366]

Determination of Regulatory Review Period for Purposes of Patent Extension; PEG-Intron

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PEG-Intron and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product PEG-Intron (peginterferon-alfa–2b). PEG-Intron is indicated for treatment of chronic hepatitis C in patients not previously treated with interferon alfa who have compensated liver disease and are at least 18 years of age. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PEG-Intron (U.S. Patent No. 5,951,974) from Schering Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of PEG-Intron represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PEG-Intron is 1,271 days. Of this time, 877 days occurred during the testing phase of the regulatory review period, while 394 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 30, 1997. The applicant claims July 29, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 30, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act*: December 23, 1999. The applicant claims December 22, 1999, as the date the product license application (BLA) for PEG-Intron (BLA 99–1488) was initially submitted. However, FDA records indicate that BLA 99–1488 was submitted on December 23, 1999.

3. *The date the application was approved*: January 19, 2001. FDA has verified the applicant's claim that BLA 99–1488 was approved on January 19, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 435 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–17783 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1348]

Determination of Regulatory Review Period for Purposes of Patent Extension; Protonix

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Protonix and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Protonix (pantoprazole sodium). Protonix is indicated for short-term treatment (7 to 10 days) of gastroesophageal reflux disease (GERD). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Protonix (U.S. Patent No. 4,758,579) from BYK Gulden Lomerg Chemische Fabrik GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 17, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Protonix represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Protonix is 3,401 days. Of this time, 2,818 days occurred during the testing phase of the regulatory review period, while 583 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 13, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 13, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 30, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Protonix (NDA 20–987) was initially submitted on June 30, 1998.

3. *The date the application was approved*: February 2, 2000. FDA has verified the applicant's claim that NDA 20–987 was approved on February 2, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–17781 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0019]

Determination of Regulatory Review Period for Purposes of Patent Extension; Axert

AGENCY: Food and Drug Administration, HHS.

actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 569 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a

County, Maine. The planning process will also include a Wilderness Review of existing refuge lands, in accordance with the Wilderness Act of 1964, as amended, and Refuge Planning Policy 602 FW Chapters 1, 2, and 3. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*):

The Service will solicit public input via public meetings, workshops, and written comments. Special mailings, newspaper articles, webpages, and announcements will inform people of the time and place of such opportunities for public input to the CCP. Lake Umbagog NWR includes 16,300 acres of fresh water marsh and forest surrounding the 8,500-acre Umbagog Lake on the New Hampshire and Maine border. A draft CCP and EIS is planned

Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0019]

Determination of Regulatory Review Period for Purposes of Patent Extension; Axert

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Axert and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Axert (almotriptan malate). Axert is indicated for acute treatment of migraine with or without aura in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Axert (U.S. Patent No. 5,565,447) from Almirall Prodesfarma S.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Axert represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Axert is 1,348 days. Of this time, 843 days occurred during the testing phase of the regulatory review period, while 505 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 30, 1997. The applicant claims August 29, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 30, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 20, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for Axert (NDA 20–001) was initially submitted on December 20, 1999.

3. *The date the application was approved*: May 7, 2001. FDA has verified the applicant's claim that NDA 20–001 was approved on May 7, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 569 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–17782 Filed 7–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement for Lake Umbagog National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a Comprehensive Conservation Plan (CCP) and associated Environmental Impact Statement (EIS) for Lake Umbagog National Wildlife Refuge (NWR) pursuant to the National Environmental Policy Act and its implementing regulations. Lake Umbagog NWR is located in Coos County, New Hampshire and Oxford County, Maine. The planning process will also include a Wilderness Review of existing refuge lands, in accordance with the Wilderness Act of 1964, as amended, and Refuge Planning Policy 602 FW Chapters 1, 2, and 3. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*):

(1) To advise other agencies and the public of our intentions, and

(2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: The Service will hold a series of public scoping meetings early in the planning process to help identify issues of concern and gather comments from the public:

- Tuesday, July 30, 6:30 p.m., Errol Town Hall, Errol, New Hampshire;
- Thursday, Aug. 1, 6:30 p.m., New Hampshire Community Technical College, Berlin, New Hampshire;
- Friday, Aug. 2, 6:30 p.m., Bethel Inn, Bethel, Maine.

Remaining to be scheduled this summer are meetings in Augusta, Maine and Concord, New Hampshire.

Inquire at the address below for dates and locations of future planning activities, or to be added to our mailing list. Further notice announcing times and locations of public meetings, public hearings, and release of a draft CCP and EIS will be published in local news media.

ADDRESSES: Address comments, questions and requests for more information to the following: Refuge Manager, Lake Umbagog National Wildlife Refuge, P.O. Box 240, Errol, New Hampshire 03579, (603) 482–3415, e-mail: *fw5rw_lunwr@fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. It will provide other agencies and the public with a clear understanding of the desired conditions for the refuge and how the Service will implement management strategies. The planning process will evaluate many elements, including habitat and wildlife management, additional land protection and refuge expansion, public use, and cultural resource protection. Public input into this planning process is essential.

The Service will solicit public input via public meetings, workshops, and written comments. Special mailings, newspaper articles, webpages, and announcements will inform people of the time and place of such opportunities for public input to the CCP. Lake Umbagog NWR includes 16,300 acres of fresh water marsh and forest surrounding the 8,500-acre Umbagog Lake on the New Hampshire and Maine border. A draft CCP and EIS is planned for public review in the fall of 2003. You can view the project's Web page at *http://northeast.fws.gov/planning/umbagog.htm*.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: June 21, 2002.

Richard O. Bennett,

Deputy Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 02–17758 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt.

The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–TE058917–0

Applicant: U.S. Fish and Wildlife Service, Virginia Field Office

The applicant requests authorization to take (collect and kill) glochidia of two Federally listed endangered freshwater mussels, dwarf wedge mussel (Alasmidonta heterodon) from Sullivan County, New Hampshire, and oyster mussel (Epioblasma capsaeformis), from Scott County, Virginia and Hancock County, Tennessee. Acute and chronic toxicity tests will be conducted to determine effect levels on imperiled mussels.

Written data or comments should be submitted to the Regional Permits Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Permits Coordinator. Telephone: 413–253–8628; Fax: 413–253–8482.

Dated: July 3, 2002.

Richard O. Bennett,

Acting Regional Director.

[FR Doc. 02–17788 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Public Workshops for the Draft Conservation Strategy for the Tahoe Yellow Cress (*Rorippa subumbellata* Roll.)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public workshops.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that public workshops will be held to introduce the Draft Conservation Strategy for the Tahoe Yellow Cress (*Rorippa subumbellata* Roll.), a candidate species for listing.

DATES: Four public workshops will be held. Two workshops will take place on July 23, 2002, from 2 to 4 p.m. and 5 to 7 p.m.; and two on July 25, 2002, from 2 to 4 p.m. and 5 to 7 p.m.

ADDRESSES: The public workshops on July 23, 2002, will be held at the El Dorado Public Library in the City of South Lake Tahoe, California, and the workshops on July 25, 2002, will be held at the North Tahoe Conference Center in Kings Beach, California. The Draft Conservation Strategy is available for review on the Tahoe Regional Planning Agency's Web site at *http://www.trpa.org/tyc/Draft_strategy.html*, or hard copies may be requested by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, 89502. Written comments will be accepted at the workshops or may be sent to the Field Supervisor. You may also send comments by electronic mail (e-mail) to *fw1tyc@r1.fws.gov*. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: Tahoe yellow cress" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly

been observed at all sites at any one time. Survey results through the year 2000 showed that Tahoe yellow cress occupied only 27 percent of the known, historic sites. Evidence suggests the decline in the number of sites occupied by Tahoe yellow cress is primarily due to: (1) Alterations in lake level dynamics caused by construction and operation of the Truckee River outlet dam and reservoir; (2) destruction of known and provisions for protection of this species. However, despite these protective mechanisms, current protection is not adequate. Because of the imminent threats facing the species, a task force has been formed to develop and implement a conservation strategy for Tahoe yellow cress. The strategy is coupled with a Memorandum of Understanding/conservation agreement (MOU/CA) that will be signed by the

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on August 8–9, 2002, at the Farmington Field Office, 1235 La Plata Highway,

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 668–02–1610–DO–083A]

DEPARTMENT OF AGRICULTURE

United States Forest Service

Monument Advisory Committee Meeting Schedule Public Comment Time Change

official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the Santa Rosa San Jacinto National Monument (*http://www.ca.blm.gov/palmsprings/*). The subject matter of each meeting will focus on the development and implementation of the

sent to the Field Supervisor. You may also send comments by electronic mail (e-mail) to *fw1tyc@r1.fws.gov*. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: Tahoe yellow cress" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Nevada Fish and Wildlife Office at telephone number 775–861–6300.

FOR FURTHER INFORMATION CONTACT: Jody Fraser, Nevada Fish and Wildlife Office, at the above address and telephone; (facsimile 775–861–6301).

SUPPLEMENTARY INFORMATION:

Background

Tahoe yellow cress (*Rorippa subumbellata* Roll.), a member of the mustard family (Brassicaceae), is restricted to the shores of Lake Tahoe in California and Nevada. This species is a small perennial herb with somewhat fleshy stems and leaves and small yellow flowers. It is primarily found growing in coarse to medium sand, near the mouths of streams or in back-beach depressions around the shore of the lake.

Because of its limited distribution and threats facing the species (*see* discussion below), a Draft Conservation Strategy has been developed to promote the cooperative protection and management of Tahoe yellow cress and its habitat. The public workshops are being held to provide a brief overview of the Conservation Strategy, introduce the objectives of this cooperative effort, and encourage public involvement.

The distribution and habitat of Tahoe yellow cress are limited. The majority of sites supporting this species are found on the west and south shores in California where appropriate habitat is relatively common. There is limited suitable habitat on the east shore in Nevada, which is largely dominated by boulders and rocky cliffs. It grows almost exclusively between the elevations of 1,898 m (6,223 ft) and 1,900 m (6,230 ft). During years with high lake levels, most of the available habitat is inundated, but the plant has been observed to recolonize newly-exposed beaches after being inundated between 2 to 4 years (Josselyn *et al.* 1992).

Surveys for Tahoe yellow cress have been conducted throughout the Lake Tahoe region since 1979. Historically, a total of 51 occurrences of this taxon have been documented from around the lakeshore; however, the plant has never been observed at all sites at any one time. Survey results through the year 2000 showed that Tahoe yellow cress occupied only 27 percent of the known, historic sites. Evidence suggests the decline in the number of sites occupied by Tahoe yellow cress is primarily due to: (1) Alterations in lake level dynamics caused by construction and operation of the Truckee River outlet dam and reservoir; (2) destruction of known and potentially suitable habitat by the construction of piers, jetties, and other structures; (3) high levels of recreational activity associated with beaches; (4) disturbance of habitat by public and private property maintenance activities; and (5) possibly stochastic environmental events. While we recognize that this species is apparently adapted to a highly dynamic environment, human-induced factors caused us to evaluate the status of the species and ultimately designate it as a candidate for listing.

On February 28, 1996, we published in the **Federal Register** (61 FR 7595) a Notice of Review of plant and animal taxa that are candidates for listing as endangered or threatened. This combined notice also presented revised candidate lists which eliminated the separation of species into three categories. The former system led many people to the mistaken conclusion that the addition of thousands of species to the endangered list was imminent. Under the revised list, only category 1 candidate species for which there was enough information to support a listing proposal would be considered "candidates." In the February 28, 1996, Notice of Review, we removed Tahoe yellow cress from the candidate list because the available information did not support issuance of a proposed listing. Following an updated assessment of the status of Tahoe yellow cress and its increasing vulnerability to threats, we included this taxon as a candidate species in the Notice of Review published in the **Federal Register** on October 25, 1999 (64 FR 57533).

Tahoe yellow cress has been documented on lands administered by the United States Forest Service (USFS), Lake Tahoe Basin Management Unit (LTBMU), the State of California Department of Parks and Recreation (CDPR), the State of Nevada Division of State Parks (NDSP), Placer and El Dorado county lands, City of South Lake Tahoe lands, and on private lands.

Activities within the Lake Tahoe shorezone, on both public and private lands, are regulated under various agency policies and management directions, many of which include provisions for protection of this species. However, despite these protective mechanisms, current protection is not adequate. Because of the imminent threats facing the species, a task force has been formed to develop and implement a conservation strategy for Tahoe yellow cress. The strategy is coupled with a Memorandum of Understanding/conservation agreement (MOU/CA) that will be signed by the current participants to demonstrate their long-term commitment to protection of the species. Parties who wish to take a more active role in conservation of this species may be added to the MOU/CA in the future. Implementation of this strategy is a cooperative effort being carried out under the auspices of a multi-agency and private interest group task force. Success of this strategy is largely dependent upon voluntary participation and coordination among parties.

Public Meeting

Public workshops to introduce the Draft Conservation Strategy for Tahoe yellow cress are scheduled to be held on July 23, 2002, from 2 to 4 p.m. and 5 to 7 p.m. at the El Dorado Public Library in the City of South Lake Tahoe, California, and on July 25, 2002, from 2 to 4 p.m. and 5 to 7 p.m. at the North Tahoe Conference Center in Kings Beach, California. Please contact the Nevada Fish and Wildlife Office at the above address with any questions concerning these public workshops.

Public Comments

We will accept comments on the Draft Conservation Strategy through August 8, 2002. Prepared comments will also be accepted at the public workshops. Written comments should be submitted to the Field Supervisor of the Nevada Fish and Wildlife Office in the **ADDRESSES** section.

Dated: July 9, 2002.

Miel R. Corbett,

Acting Deputy Manager, California/Nevada Operations Office, Region 1.

[FR Doc. 02–17886 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–02–1020–PG]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on August 8–9, 2002, at the Farmington Field Office, 1235 La Plata Highway, Farmington, NM, beginning at 8 a.m. both days. An optional Field Trip is planned for Wednesday, August 7. The meeting will adjourn at approximately 5 p.m. both days. The three established RAC subcommittees may have a late afternoon or an evening meeting on Thursday, August 8. The public comment period will begin at 10 a.m. on Friday, August 9, and end at 12 noon.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. At this meeting, topics we plan to discuss include:

Range restoration and the oil and gas industry
Feedback from the Rancher Subgroup from the May 2002 Farmington Oil and Gas Meeting
Update on Otero Mesa Mediation Assessment
Reflection/Learning from Otero Mesa
Renewable Energy
Collaborative land use planning and other topics.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. New Mexico RAC meetings are coordinated with the representative of the Governor of the State of New Mexico, the Office of the Lieutenant Governor.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: June 25, 2002.

Richard A. Whitley,

Acting State Director.

[FR Doc. 02–17785 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 668–02–1610–DO–083A]

DEPARTMENT OF AGRICULTURE

United States Forest Service

Monument Advisory Committee Meeting Schedule Public Comment Time Change

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of change in time for public comment period at meetings. The Monument Advisory Committee desires to change the afternoon comment period previously designated as 3:30 p.m.–4 p.m. The afternoon public comment period will now take place from 1 p.m.–1:30 p.m., with the morning public comment period remaining 9 a.m.–9:30 a.m.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announces a change in time for the afternoon public comment period from 3:30–4 p.m. to 1–1:30 p.m. OSC for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as "National Monument"). The meetings where this time change will go into effect will be held on the following dates:

- Saturday, August 3, 2002
- Saturday, October 5, 2002
- Saturday, December 7, 2002
- Saturday, February 1, 2003

The meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260. The meetings will take place from 9 a.m. until 4 p.m. although meetings may be adjourned prior to 4 p.m. There will be a half hour dedicated to public input during both the first half hour of the meeting and after lunch starting at 1 p.m. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee and subcommittee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the Santa Rosa San Jacinto National Monument (*http://www.ca.blm.gov/palmsprings/*). The subject matter of each meeting will focus on the development and implementation of the Santa Rosa San Jacinto Mountains National Monument Management Plan.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: August 3, 2002; October 5, 2002; December 7; 2002; February 1, 2003; All meetings will take place from 9 a.m. to 4 p.m with a morning public comment period from 9 to 9:30 a.m. and an afternoon public comment period from 1 to 1:30 p.m. Meetings may adjourn prior to 4 p.m.

ADDRESSES: The meeting will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, PO Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov*. Information can be found on our web page: *http://www.ca.blm.gov/palmsprings/*. Documents pertinent to this notice, including comments with the names and addresses of

respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following

Colorado, effective 10 a.m., June 27, 2002. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey and survey of certain mineral claims in Protracted T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1339, Colorado, was accepted April 22, 2002.

June 12, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of section 7, in T. 3 S., R. 5 E., Boise Meridian, Idaho, was accepted June 12, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey and corrective dependent resurvey of a portion of the subdivisional lines and subdivision of section lines in section 7, and the subdivision of sections 19 and 30, in T. 5 N., R. 1 E., Boise Meridian, Idaho, and the plat representing the corrective dependent resurvey of a portion of the Boise Meridian (east boundary), and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 24 and 25, in T. 5 N., R. 1

Specifically, this environmental impact statement evaluates four alternatives for managing the waters and associated shoreline areas of Lake Mead National Recreation Area. Each alternative identifies proposed actions related to recreational opportunity zoning and shoreline zoning, developed areas, facilities and recreational services, recreational conflicts, sanitation and litter, resource protection, and park operations.

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respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: June 11, 2002.

Danella George,

Designated Federal Official, National Monument Manager.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 02–17777 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–35–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[62½% to CO–956–1420–BJ–0000–241A; 12½% to CO–956–9820–BJ–C003–241A; 12½% to CO–956–1420–BJ–CAPD–241A; 12½% to CO–956–1910–BJ–4667–241A]

Colorado: Filing of Plats of Survey

June 27, 2002.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 27, 2002. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey and survey of certain mineral claims in Protracted T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1339, Colorado, was accepted April 22, 2002.

The plat (in 11 sheets) representing Amended Protraction Diagram No. 18, which covers the protracted areas in Townships 49, 50, and 51 North, Ranges 17, 18, 19, and 20 West, New Mexico Principal Meridian, Colorado, was accepted April 30, 2002.

The plat representing the dependent resurveys and surveys in T. 6 S., R. 91 W., Sixth Principal Meridian, Group 1290, Colorado, was accepted May 1, 2002.

The plat representing the corrective dependent resurveys in T. 35 N., R. 1 W., New Mexico Principal Meridian, Group 1266, Colorado, was accepted June 6, 2002.

The plat representing the entire record of the dependent resurvey and survey of section 7, T. 1 N., R. 72 W., Sixth Principal Meridian, Group 875, Colorado, was accepted June 10, 2002.

These surveys were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the retracement and dependent resurvey in T. 32 N., R. 13 W., New Mexico Principal Meridian, Group 1286, Colorado, was accepted April 8, 2002.

This survey was requested by the Bureau of Indian Affairs for administrative and management purposes.

The plat representing the dependent resurveys and surveys in T. 41 N., R. 9 W., New Mexico Principal, Group 1330, Colorado, was accepted May 23, 2002.

The plat representing the entire record of the survey between Protracted Blocks 44 and 45, in Protracted T. 42 N., R. 7 W., New Mexico, Group 1297, Colorado, was accepted June 27, 2002.

These surveys were requested by the U.S. Forest Service for administrative and management purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 02–17787 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified: The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 21, in T. 14 S., R. 27 E., Boise Meridian, Idaho, was accepted May 23, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 10, 14, and 15, and the survey of the 1999–2000 meanders of the Blackfoot River in sections 10, 11, and 14, the North Boundary of the Fort Hall Indian Reservation in sections 10, 11, and 14, and portions of the 1999–2000 median line of the Blackfoot River in sections 10 and 11, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted May 24, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of portions of the north boundary, portions of the subdivisional lines, and portions of the subdivision of section 2, in T. 12 S., R. 19 E., Boise Meridian, Idaho, was accepted May 31, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the north and west boundaries, and of the subdivisional lines, and the subdivision of section 3, in T. 7 N., R. 39 E., and the dependent resurvey of portions of the east and south boundaries, in T. 8 N., R. 38 E., Boise Meridian, Idaho, were accepted June 7, 2002. The plats were prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the corrective dependent resurvey of portions of the north and west boundaries, of the subdivisional lines, and of the subdivision of section 6, and the dependent resurvey of a portion of the subdivisional lines, in T. 12 S., R. 22 E., Boise Meridian, Idaho, was accepted June 12, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of section 7, in T. 3 S., R. 5 E., Boise Meridian, Idaho, was accepted June 12, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The supplemental plat was prepared to correct certain lotting on the plat accepted December 21, 2001, in T. 4 S., R. 35 E., Boise Meridian, Idaho, was accepted June 20, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Indian Affairs.

The plats of the following described lands, accepted for the Director on the dates specified, are pending official filing in the Idaho State Office, Bureau of Land Management, Boise, Idaho:

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, the subdivision of section 30, the metes-and-bounds survey of the center line strip of land in section 30, and the metes-and-bounds survey of parcels A, C, and D in section 30, in T. 3 N., R. 4 E., Boise Meridian, Idaho, was accepted November 30, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivision of section 20, and the survey of the 2001 meanders of Crow Island and two unnamed islands in the Snake River, in T. 7 N., R. 5 W., Boise Meridian, Idaho, was accepted December 7, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the 5½ Standard Parallel North, on the south boundary of Township 26 North, Range 1 East, the subdivisional lines, the boundaries of certain mineral and segregation surveys in sections 11, 12, and 14, the record meanders of the Salmon River in sections 2 and 11, and the subdivision of section 11, and the further subdivision of section 11, and subdivision of section 2, and the survey of a portion of the 2000 meanders of the Salmon River in sections 2 and 11, and the Salmon River Scenic Easement boundary line through the S1/2 of the SE1/4 of the NW1/4 of section 2, in T. 25 N., R. 1 E., Boise Meridian, Idaho, was accepted May 15, 2002.

The plat was prepared to meet certain administrative needs the Bureau of Land Management. The plats representing the dependent resurvey and corrective dependent resurvey of a portion of the subdivisional lines and subdivision of section lines in section 7, and the subdivision of sections 19 and 30, in T. 5 N., R. 1 E., Boise Meridian, Idaho, and the plat representing the corrective dependent resurvey of a portion of the Boise Meridian (east boundary), and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 24 and 25, in T. 5 N., R. 1 W., Boise Meridian, Idaho, were accepted May 31, 2002. The plats were prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the entire survey record of the dependent resurvey of a portion of the 1910 meander lines of the right bank of the South Fork of the Payette River, and the metes-and-bounds survey of lot 10, in section 20, in T. 9 N., R. 4 E., Boise Meridian, Idaho, was accepted June 14, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane E. Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: June 28, 2002.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 02–17786 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement for the Lake Management Plan, Lake Mead National Recreation Area, Mohave County, Arizona and Clark County, NV; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed Lake Management Plan for Lake Mead National Recreation Area. The DEIS describes and analyzes four alternatives to improve the management of Lakes Mead and Mohave to provide for the long-term protection of park resources while allowing a range of recreational opportunities to support visitor needs.

Specifically, this environmental impact statement evaluates four alternatives for managing the waters and associated shoreline areas of Lake Mead National Recreation Area. Each alternative identifies proposed actions related to recreational opportunity zoning and shoreline zoning, developed areas, facilities and recreational services, recreational conflicts, sanitation and litter, resource protection, and park operations.

This document also is used to make reasoned decisions about whether to continue personal watercraft use at Lake Mead NRA. NPS will make the determination based on the unit's enabling statute, mission, management objectives, resources, values, and other uses, as well as impacts from personal watercraft on the unit (65 FR 15,078—2000). In addition, this DEIS evaluates personal watercraft use within Lake Mead National Recreation Area. Consistent with *Bluewater Network* v. *Stanton*, No. CV02093 (D.D.C. 2000) and the settlement agreement approved by the court on April 11, 2001, the DEIS includes an evaluation of various personal watercraft use alternatives to determine their effects on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, safety, and other appropriate topics.

Scoping: Public meetings were initiated in January, 1993 to solicit early input into the scope and range of issues to be analyzed. A notice of intent announcing the decision to prepare the Lake Management Plan and Environmental Impact Statement was published in the **Federal Register** on May 3, 1993. Between January 1993 and September 2000, a series of public scoping meetings were held throughout the area to solicit early input into the scope and range of issues to be analyzed. Scoping comments continued to be accepted and considered until December 2001.

During this comment period, the NPS facilitated over 100 discussions and briefings to park staff, congressional delegations, elected officials, tribal representatives, public service organizations, educational institutions, and other interested members of the public. Nearly 1,000 letters concerning the DEIS planning process were received. The major issues raised during this period are summarized in Chapter 1, Purpose and Need for the Action.

Proposed Plan and Alternatives: The DEIS includes three "action" alternative and one "no action" (existing conditions) alternative. Under all the action alternatives, a Special Regulation would be promulgated to address the

continued use of personal watercraft in the recreation area, in accordance with settlement agreement signed by the United States District Court for the District of Columbia on April 12, 2001. This agreement between the NPS and Bluewater Network requires all park units wishing to continue personal watercraft use to promulgate special regulations after an environmental analysis is conducted in accordance with the 1999 National Environmental

about 2 percent of the water surface area. Facility expansion could occur at several existing developed areas: Cottonwood Cove on Lake Mohave and Overton Beach, Echo Bay, Callville Bay and Temple Bar on Lake Mead. Additional public launch facilities could be constructed at Eldorado Canyon along Lake Mohave, and at Stewarts Point on Lake Mead. This alternative also proposes the

and organizations wishing to express any concerns or provide relevant information are encouraged to contact the Superintendent, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, Nevada 89005, or via telephone at (702) 293–8986. A postcard will be sent to agencies and individuals notifying them of the availability of the DEIS. The document may be obtained from the park (printed copy or CD

Superintendent, Lake Mead National Recreation Area.

Dated: March 27, 2002.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–17907 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Draft

Dated: February 25, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–17906 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Copies of the draft Environmental Impact Statement and

continued use of personal watercraft in the recreation area, in accordance with settlement agreement signed by the United States District Court for the District of Columbia on April 12, 2001. This agreement between the NPS and Bluewater Network requires all park units wishing to continue personal watercraft use to promulgate special regulations after an environmental analysis is conducted in accordance with the 1969 National Environmental Policy Act.

Alternative A: No Action, evaluates the impacts from the continuation of the present management direction, as established by the 1986 General Management Plan for Lake Mead NRA. Under this alternative, the lakes would be managed for rural and urban recreational settings, with no restrictions on motorized use except where specifically marked by buoys. Management zoning of recreational activities would continue in the Boulder Beach (Lake Mead) and Katherine Landing (Lake Mohave) areas. Facility expansion authorized under the General Management Plan would occur as funding and resources become available. No new measures to improve water quality and shoreline sanitation would be implemented. No special regulations related to personal watercraft use would be promulgated, therefore, personal watercraft use would be prohibited after September 15, 2002. No regulation would be promulgated to restrict the use of two-stroke engines.

Alternative B emphasizes the primitive recreational opportunity for visitors, imposing the most limits on motorized water recreation, and furnishing the greatest opportunity for solitude. Development would be capped at existing levels, and some uses, such as overnight camping, may be reduced or eliminated from some areas. A boat carrying capacity would be established for both lakes and a 100-foot wakeless zone would be established along the shoreline of the lakes. Boater education would be offered, but not required. The use of portable toilets would be voluntary. The Environmental Protection Agency regulation requiring the marine industry to improve the efficiency of engines by the year 2006 would be adopted at Lake Mead NRA. The NPS would develop a new regulation requiring the exclusive use of the new direct-injection two-stroke engines, or the equivalent, for motorized vessels within one year of the approval of this plan.

Alternative C, the preferred alternative, slightly increases the overall level of boating activity. Primitive and semi-primitive areas would comprise about 2 percent of the water surface area. Facility expansion could occur at several existing developed areas: Cottonwood Cove on Lake Mohave and Overton Beach, Echo Bay, Callville Bay and Temple Bar on Lake Mead. Additional public launch facilities could be constructed at Eldorado Canyon along Lake Mohave, and at Stewarts Point on Lake Mead. This alternative also proposes the construction of an access road to improve lake access from Northshore Road. Carrying capacities would be used to reduce crowding. Shoreline zoning to separate recreational uses would be further developed at the Boulder Basin and Katherine Landing areas and a 100-foot wakeless zone would be established along the shoreline of the lakes. The NPS would work with the states to develop uniform boating laws and mandatory boater education programs. Alcohol consumption while operating a boat would be prohibited. Sanitation and public education requirements would be implemented and a clean-up program initiated. Glass containers and styrofoam would be prohibited within the park. The Environmental Protection Agency regulation requiring the marine industry to improve the efficiency of engines by the year 2006 would be adopted at Lake Mead NRA. The NPS would develop a new regulation requiring the exclusive use of the new direct-injection two-stroke engines, or the equivalent, for motorized vessels starting in 2012.

Alternative D, proposes managing the waters of the recreation area for concentrated use. A greater percentage of the lakes would be designated as urban park, with no areas designated as primitive or semi-primitive. Facility expansion could occur at several existing developed areas: Cottonwood Cove on Lake Mohave and Overton Beach, Echo Bay, Callville Bay and Temple Bar on Lake Mead. Additional public launch facilities could be constructed at Eldorado Canyon along Lake Mohave, and at Stewarts Point on Lake Mead. Marina expansion would increase the number of slips proposed in Alternative C. Shoreline zoning would be mandatory and exclusive. A 300-foot wakeless zone would be established along the shoreline of the lakes. This alternative would have the same boater education and shoreline sanitation requirements as the proposed action. Alcohol and glass containers would be banned from the recreation area. No regulation would be promulgated to restrict the use of two-stroke engines.

Comments: The DEIS is now available for public review. Interested persons and organizations wishing to express any concerns or provide relevant information are encouraged to contact the Superintendent, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, Nevada 89005, or via telephone at (702) 293–8986. A postcard will be sent to agencies and individuals notifying them of the availability of the DEIS. The document may be obtained from the park (printed copy or CD copy); it is also available at area libraries, or electronically via the Lake Mead National Recreation Area website *http://www.nps.gov/lame/LMPdraft/home.htm*.

All written comments must be postmarked no later than 60 days from the date the Environmental Protection Agency posts its notice of filing in the **Federal Register**. The end date for the comment period is not known at this time. Immediately upon determination of this end date, a postcard will be sent to agencies and individuals on the mailing list, and it will be announced on the park website.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations and business; and, anonymous comments may not be considered.

Public Meetings: The NPS will conduct several public meetings to facilitate public review and comment on the DEIS. Although the logistics for these meetings are not yet confirmed, NPS will make this information available in the near future through press releases and via the park website. Current details on meeting locations, times, and dates can also be obtained by contacting Park Planner, Jim Holland, at the above address, or by telephone at (702) 293–8986.

Decision: Following the formal DEIS review period, comments received will be considered in preparing the Final EIS (FEIS). The FEIS is anticipated to be completed during summer 2002—its availability will be similarly announced in the **Federal Register**. As this is a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region. The Record of Decision may be approved by the Regional Director not sooner than 30 days after the release of the FEIS; subsequently the official responsible for implementation would be the Superintendent, Lake Mead National Recreation Area.

Dated: March 27, 2002.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–17907 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement\General Management Plan, Lassen Volcanic National Park, Lassen, Plumas, Shasta and Tehama Counties, CA; Notice of Approval of Record of Decision

Summary: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement/General Management Plan for Lassen Volcanic National Park. The no-action period was initiated November 9, 2001, with the U.S. Environmental Protection Agency's **Federal Register** (V66, N218, P56673) notification of the filing of the Final Environmental Impact Statement (FEIS).

Decision: As soon as practical the National Park Service will begin to implement the General Management Plan described as the Proposed Action (Alternative C) contained in the FEIS, issued in August, 2001. This alternative was deemed to be the "environmentally preferred" alternative, and it was further determined that implementation of the selected actions will not constitute an impairment of park values or resources. This course of action and three additional alternatives were identified and analyzed in the Final and Draft Environmental Impact Statements (the latter was distributed in August 2000). The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, California 96063–0100; or via telephone request at (530) 595–4444.

Dated: February 25, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–17906 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Draft Environmental Impact Statement, Navajo National Monument, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan for Navajo National Monument.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a draft Environmental Impact Statement and General Management Plan for Navajo National Monument, Arizona.

DATES: The draft Environmental Impact Statement and General Management Plan will remain available for public review for 60 days after publication of this notice. No public meetings are scheduled at this time.

Comments: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Navajo National Monument, HC 71, Box 3, Tonalea, Arizona 86044–9704. You may also comment via the Internet to *Suzy_Stutzman@nps.gov*. Please submit Internet comments either as an ASCII file avoiding the use of special characters and any form of encryption, as a Microsoft Word file, or as a Word Perfect file. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling Suzy Stutzman at 303–987–6671. Finally, you may hand-deliver comments to the Navajo National Monument visitor center or the Intermountain Support Office—Denver, 12795 W. Alameda Parkway, Lakewood, CO (room 186).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Copies of the draft Environmental Impact Statement and General Management Plan are available from the Superintendent, Navajo National Monument, HC 71, Box 3, Tonalea, Arizona 86044–9704. The plan is also available on the internet at: *http://www.nps.gov/planning/nava*.

Public reading copies of the document will be available for review at the following locations: Office of the Superintendent, Navajo National Monument, Tonalea, Arizona 86044, Telephone: 928–672–2700. Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 987–6671. Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Navajo National Monument at the above address and telephone number.

SUPPLEMENTARY INFORMATION: This general management plan will guide the management of Navajo National Monument for the next 15 to 20 years. The general management plan considers three alternatives—a no-action and two action alternatives, including the National Park Service preferred alternative. The preferred alternative would carefully manage the monument's existing land base and emphasize partnerships and cooperation with American Indian tribes and others to protect Navajo National Monument's resources and promote visitor understanding of the entire region. Opportunities for more innovative and diverse programs, education and outreach, cross-training, and broader resource management would be greatly enhanced by a collaborative regional effort.

The draft environmental impact statement assess impacts to cultural resources (archeological resources, historic structures, cultural landscapes, ethnographic resources, and museum collections); natural resources (water resources, wetlands and floodplains, soils, vegetation, wildlife, and threatened, endangered, candidate, and

species of special concern); visitor understanding and experience; remoteness; the monument's socio-economic environment; and monument operations.

Dated: April 10, 2002.

Michael D. Sunder,

Deputy Regional Director, Intermountain Region, National Park Service.

[FR Doc. 02–17802 Filed 7–15–02; 8:45 am]

Schuylkill River Valley National Heritage Management Plan Update.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Management Plan Update for the Schuylkill River Valley National Heritage Area. The Schuylkill River Valley National Heritage Act of 2000 requires the Greenway Association manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

The EIS will address a range of alternatives—they include a no-action alternative and other action alternatives. The impacts of the alternatives will be

American Samoa. In case of flight cancelations to the island of Olosega an alternative meeting site will be at Pago Plaza, Pago Pago, American Samoa. The same date and time period will be used. The agenda for the meeting will include:

Roll Call, Welcome and introductions
Approval of the minutes of the last two meetings
Superintendents report and discussion
Other Board issues
Public comments
3. SRC Chair and Superintendent's of Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes from February 19–20, 2002, meeting.
6. Review Commission Purpose.
7. Status of Membership.
8. Superintendent's Report.
9. Wrangell-St. Elias NP&P Staff Report.
10. Federal Subsistence Wildlife and Fisheries Management Report.
11. Public and Agency Comments.
12. Work Session (comment on issues;

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–955, 960 and 963 (Preliminary) (Remand)]

Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela; Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

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species of special concern); visitor understanding and experience; remoteness; the monument's socio-economic environment; and monument operations.

Dated: April 10, 2002.

Michael D. Sunder,

Deputy Regional Director, Intermountain Region, National Park Service.

[FR Doc. 02–17802 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve

AGENCIES: National Park Service, Interior.

ACTION: Extension of the public scoping period.

SUMMARY: The National Park Service (NPS) announces that the public scoping period for the Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve, published in the **Federal Register** on February 22, 2002 (67 FR 8313), was extended through June 7, 2002. The original scoping period was through April 23, 2002.

DATES: Comments concerning the scope of this project were accepted through June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, Park Planner, National Park Service, Alaska Support Office, 2525 Gambell Street, Anchorage, Alaska 99503. Telephone (907) 257–2651, Fax (907) 257–2517.

Dated: April 10, 2002.

Marcia Blaszak

Acting Regional Director, Alaska Region.

[FR Doc. 02–17805 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the Schuylkill River Valley National Heritage, Management Plan Update

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Schuylkill River Valley National Heritage Management Plan Update.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Management Plan Update for the Schuylkill River Valley National Heritage Area. The Schuylkill River Valley National Heritage Act of 2000 requires the Schuylkill River Greenway Association, with guidance from the National Park Service, to prepare an update of their 1995 Schuylkill Heritage Corridor Management Action Plan. The Management Plan Update is expected to include: (A) Actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area; (B) an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historical, recreational, or scenic significance; (C) a recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, recreational, and natural resources of the Heritage Area in a manner consistent with supporting appropriate and compatible economic viability; (D) a program for implementation of the management plan by the management entity; (E) an analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this title; and (F) an interpretation plan for the Heritage Area.

The study area, designated as the Schuylkill River Valley National Heritage, includes parts of the counties of: Schuylkill, Berks, Chester, Montgomery and Philadelphia in southeastern Pennsylvania as associated with the Schuylkill River corridor.

The National Park Service (NPS) maintains two park sites within the region: Valley Forge National Historical Park and the Hopewell Furnace National Historic Site. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The Schuylkill River Greenway Association manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

The EIS will address a range of alternatives—they include a no-action alternative and other action alternatives. The impacts of the alternatives will be assessed through the EIS process.

A scoping meeting will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspapers.

FOR FURTHER INFORMATION PLEASE CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, U.S. Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov*, 215–597–1848.

If you correspond using the Internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: December 18, 2002.

Dale Ditmanson,

Associate Regional Director, Park Operations and Education, Northeast Region.

Editorial Note: This document was received at the Office of the Federal Register on July 11, 2002.

[FR Doc. 02–17801 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park of American Samoa, Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 9 a.m. to 2 p.m., Saturday, July 27, 2002, in the village of Olosega, Olosega Island, American Samoa. In case of flight cancelations to the island of Olosega an alternative meeting site will be at Pago Plaza, Pago Pago, American Samoa. The same date and time period will be used. The agenda for the meeting will include:

Roll Call, Welcome and introductions
Approval of the minutes of the last two meetings
Superintendents report and discussion
Other Board issues
Public comments

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082 or email NPSA_Superintendent@nps.gov.

Dated: June 4, 2002.

Charles Cranfield,

Superintendent, National Park of American Samoa.

[FR Doc. 02–17800 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Wrangell-St. Elias National Park Subsistence Resource Commissions will be held on Wednesday, September 25, 2002, and Thursday, September 26, 2002, at the East Eddy's and Young's Motel in Tok, Alaska. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's of Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes from February 19–20, 2002, meeting.
6. Review Commission Purpose.
7. Status of Membership.
8. Superintendent's Report.
9. Wrangell-St. Elias NP&P Staff Report.
10. Federal Subsistence Wildlife and Fisheries Management Report.
11. Public and Agency Comments.
12. Work Session (comment on issues, develop new recommendations, prepare letters).
13. Set time and place of next SRC meeting.
Adjournment

DATES: The meeting will begin at 9 a.m. on Wednesday September 25, 2002, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Thursday, September 26, 2002, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting will be held at the East Eddy's and Young's Motel Banquet Room in Tok, AK, telephone (907) 883–4412.

Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

FOR FURTHER INFORMATION CONTACT: Persons who want further information concerning the meeting may contact Superintendent Gary Candelaria or Devi Sharp, Chief of Natural Resources at Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573, telephone (907) 822–5234 or (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Wrangell-St. Elias National Park, P.O. Box 439, Copper Center, Alaska 99573, telephone (907) 822–5234 or (907) 822–52345.

Robert L. Arnberger,

Regional Director, National Park Service, Alaska Region.

[FR Doc. 02–17830 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–955, 960 and 963 (Preliminary) (Remand)]

Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela; Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U. S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its preliminary antidumping investigations Nos. 731–TA–955, 960 and 963 (Preliminary).

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202–205–3193 or Karen V. Driscoll, Office of General Counsel, telephone 202–205–3092, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov.*)

SUPPLEMENTARY INFORMATION:

Reopening Record

In October 2001, the Commission made negligibility determinations in antidumping investigations regarding wire rod imports from Egypt, South Africa and Venezuela, and terminated those investigations pursuant to statute. The Commission's determinations were appealed to the U.S. Court of International Trade (CIT). On June 20, 2002, the CIT issued an opinion requiring the Commission to reconsider its terminations given the modified scope of investigations issued by the Department of Commerce ("Commerce") on April 10, 2002 (67 FR 17,384). The Commission was given until August 2, 2002, or 43 days, in which to comply with the Court's remand order and issue remand determinations.

In order to assist it in making its determinations on remand, the Commission is reopening the record on remand in these investigations to include in the record the modified scope issued by Commerce in April, 2002, and to obtain import data corresponding to that modified scope of investigations regarding subject wire rod imports from all sources. The record in

these proceedings will encompass the material from the record of the original preliminary investigations, information and import data submitted to and gathered by Commission staff during the remand proceedings, and Commerce's modified April 10, 2002 scope (67 FR 17,384).

Participation in the Proceedings

Due to the strict time constraints in

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to the above-referenced parties, as appropriate, under the administrative protective order ("APO") in effect in the original investigation. A separate service list will be maintained by the Secretary

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement-Production of Seven Satellite/Internet Video Programs

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

application process should be directed to Ms. Evens.

All technical and/or programmatic questions concerning this announcement should be directed to Ed Wolahan, Corrections Program Specialist, at 1960 Industrial Circle, Longmont, Colorado 80501, or by calling 800–995–6429 ext 131, or by *email:ewolahan@bop.gov.*

SUPPLEMENTARY INFORMATION:

develop scripts, graphic design, production elements and rehearsal for each module of the site coordinators' training and the distance learning training; (d) use their expertise in designing creative ways to deliver satellite teleconferencing. The producer will also be responsible for attending planning meetings and assisting in the video- taping of testimonials at conferences.

2. *Pre-Production: Video:* The

Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personal (fax, email, and telephone.)

	Hours
1. Offender Job Retention for Correctional Professionals 32 Hour Distance Learning—October 7–11, 2002	
Rehearsal—October 6, 2002	8

these proceedings will encompass the material from the record of the original preliminary investigations, information and import data submitted to and gathered by Commission staff during the remand proceedings, and Commerce's modified April 10, 2002 scope (67 FR 17,384).

Participation in the Proceedings

Due to the strict time constraints in this remand proceeding, and the limited nature of the remand, only those parties to the original administrative proceedings may participate in the Commission's remand proceedings. No additional filings with the Commission will be necessary for these parties to participate in these remand proceedings.

Nature of the Remand Proceedings

On July 12, 2002, the Commission will make available to parties who may participate in the remand proceedings, information that has been gathered by or submitted to the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before July 16, 2002 on whether any new information received affects the Commission's negligibility determinations in these investigations. These comments should not exceed ten double-spaced typewritten pages.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigation must be served on all other parties who may participate in the remand investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to the above-referenced parties, as appropriate, under the administrative protective order ("APO") in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 10, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–17808 Filed 7–15–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–020]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: July 19, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–955, 960, and 963 (Preliminary) (Remand) (Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the Court of International Trade on or before August 2, 2002.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: July 12, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–18046 Filed 7–12–02; 2:53 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement-Production of Seven Satellite/Internet Video Programs

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2003 for a cooperative agreement to fund the production of seven Satellite/Internet video programs. Four of the proposed programs are separate, individual, nationwide satellite/Internet teleconferences (three hours each). The other three are distance learning courses delivered via a satellite/Internet. One of the three distance learning programs are site coordinator/facilitator training sessions (Training for Trainers). A site coordinator precursor module will contain eight hours of satellite/internet training split over two days. The remaining two are content-driven training programs which will consist of 32 hours of training. We will have 16 hours of live-broadcast satellite/Internet training over four days, (four hours each day). The other 16 hours of off-air activities will be directed by our trained site coordinators. There will be a total of 52 hours of broadcast time FY 03.

DATES: Applications must be received by 4 p.m. on Thursday, August 15, 2002.

ADDRESSES: Applications should be addressed to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service ot insure delivery by the due date as mail at NIC is still being delayed due to recent changes in mail handling procedures. Hand delivered applications can be brought to 500 First Street, NW., Washington, DC 20534. The security desk will call Fran Leonard at (202) 307–3106, and 0 for pickup. Faxed or emailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC web page at *www.nicic.org* (Click on "cooperative agreements.") Hard copies of the announcement can be obtained by calling Judy Evens at 1–800–995–6423 x44222 or email at *jevens@bop.gov*. Any specific questions regarding the application process should be directed to Ms. Evens.

All technical and/or programmatic questions concerning this announcement should be directed to Ed Wolahan, Corrections Program Specialist, at 1960 Industrial Circle, Longmont, Colorado 80501, or by calling 800–995–6429 ext 131, or by *email:ewolahan@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background

Distance learning is defined as a training/education process transpiring between trainers/teachers at one location and participants/students at other locations via technology. NIC is using the satellite broadcasting and the Internet to economically reach more correctional staff in federal, state and local agencies. Another strong benefit of satellite delivery is its ability to broadcast programs conducted by experts in the correctional field. The entire audience can be reached at the same time with exactly the same information. Everyone will be reading from the same page. In addition, NIC is creating training programs from its edited 32 hour programs that will be disseminated through its Information Center.

Purpose

The purposes of funding this initiative are:

(1) Produce four-three-hour satellite/Internet videoconferences, disseminating current information to the criminal justice community;

(2) Produce one eight-hour training sessions for site coordinators/facilitators. This is designed to train the facilitators from each registered site concerning the outcomes expected and in the knowledge and skills to facilitate the off-air activities;

(3) Produce two 16-hour sessions of distance learning training that responds directly to the needs identified by practitioners working in the criminal justice arena. The satellite training will be delivered four hours each day, Monday through Thursday.

Scope of Work

To address the scope of work for this project, the following will be needed:

1. *Producer Consultation and Creative Services:* The producer will: (a) Consult and collaborate on program design, program coordination, design of field segments and content development with NIC's Distance Learning Manager; (b) work with each individual consultant and develop their modules for delivery using the distance learning format and/or the teleconference format; (c) help develop scripts, graphic design, production elements and rehearsal for each module of the site coordinators' training and the distance learning training; (d) use their expertise in designing creative ways to deliver satellite teleconferencing. The producer will also be responsible for attending planning meetings and assisting in the video- taping of testimonials at conferences.

2. *Pre-Production: Video:* The producer will supervise the production of vignettes to be used in each of the three-hour videoconferences, as well as the distance learning training. NIC presenters (content experts) will draft outlines of the scripts for each vignette. From the outlines, scripts will be developed by the producer (script writing expert) and approved by NIC's Distance Learning Manager. Professional actors will play the parts designated by the script. Story boards for each production will be written by NIC's Distance Learning Manager.

Producer will supervise camera and audio crews to capture testimonials from leaders in the correctional field at designated correctional conferences. The producers will coordinate all planning of the production and post production for each of the seven teleconferences. Video Production: Video production for each teleconference will consist of video taping content related events in the field, editing existing video and video taping experts for testimonial presentations. It will also include voice over, audio and music for each video, if necessary. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Beta Cam, DV Pro Digital and/or Mini DVD.

Post Production (Studio): Innovated and thought provoking opening sequences will be produced for each teleconference. In addition graphics will be utilized to enhance the learning in each module. The producer will coordinate art direction, lighting, and set design and furniture for all teleconference segments. (Set design should change periodically throughout the award period). The producer will organize and supervise the complete production crew for rehearsal and production days. (*See* schedules below).

3. *Production:* The production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the following days and hours. A production crew will include Director, Audio Operator, Video Operator, Character Generator Operator, Floor Director, Camera Operators (3 to 4), Teleprompter Operator, On Line Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personal (fax, email, and telephone.)

	Hours
1. Offender Job Retention for Correctional Professionals 32 Hour Distance Learning—October 7–11, 2002	
Rehearsal—October 6, 2002	8
Production On-Air, & Rehearsal—October 7, 2002	9
Production On-Air, & Rehearsal—October 8, 2002	9
Production On-Air, & Rehearsal—October 9, 2002	9
Production On-Air, & Rehearsal—October 10, 2002	5
2. Transition From Prison to the Community—February 19, 2003	
Rehearsal—February 18, 2003	8
Production On-Air, February 19, 2003	4
3. Site Coordinators/Facilitators Training for Youthful Offenders in Adult Corrections: A Systemic Approach Using Effective Interventions—May 14 & 15, 2003	
Rehearsal—May 13, 2003	8
Production On-Air—Rehearsal May 14, 2003	9
Production On-Air—May 15, 2003	5
4. The Criminal Justice Response to Children of Prisoners and Their Caretakers—June 18, 2003	
Rehearsal—June 17, 2003 7	8
Production On-Air, June 18, 2003	4
5. Institution Culture—July 16, 2003	
Rehearsal—July 15, 2003	8
Production On Air, July 16, 2003	4
6. Developing an Effective New Employee FTO Program—August 20, 2003	
Rehearsal—August 19, 2003	8
Production On-Air, August 20; 2003	4
7. Youthful Offender in Adult Corrections: A Systemic Approach Using Effective Interventions—32 Hour Distance Learning—September 15–19, 2003	
Rehearsal—September 14, 2003	8
Production On-Air & Rehearsal—September 15, 2003	9
Production On-Air & Rehearsal—September 16, 2003	9
Production On-Air & Rehearsal—September 17, 2003	9
Production On-Air, September 18, 2003	5

4. *Transmission:*

A. Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States;

B. Acquire downlink transponder time for KU-Band and C-Band

C. Purchase Internet streaming of 200 simultaneous feeds for each program.

5. *Equipment:* Applicants must have a minimum of the following equipment (see below.) Applicants must prepare a proposal that describes their plan to address the requirements to produce seven live Internet/Satellite teleconferences. The plan must include a list of all required equipment, identify their key operational staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with NIC's Distance Learning Supervisor.

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team or individual with the requisite skills to successfully meet the objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member review panel.

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, 1998; Supplemental Appropriation Act, 2001

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Secretary's determination of the revised Program Year (PY) 2001 allotments for Dislocated

revised allotments are the result of the reduction of $110 million from the formula program. An additional $67.5 million is rescinded from the Secretary's national reserve account in PY 2001 as required by Public Law 107–20. The outlying areas, which are funded from the Secretary's dislocated worker program national reserve account, will have a reduction of $443,750 in available competitive funds for PY 2001.

The Secretary has made her

4. *Transmission:*
A. Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States;
B. Acquire downlink transponder time for KU-Band and C-Band
C. Purchase Internet streaming of 200 simultaneous feeds for each program.
5. *Equipment:* Applicants must have a minimum of the following equipment and qualified personnel.
A. Broadcast Studio of approximately 2,000 square feet, with an area for a studio audience of between 15 and 20 people.
B. Four-Digital Studio Cameras (One of which could be an overhead camera with robotic control)
C. Chroma Key—At least one wall with chroma key capability along with the digital ultimate keying system
D. A tape operation facility providing playback/record in various formats, including DV, Betacam, Betacam SP, SVHS, VHS, U-Matic 3/4 & SP.
E. A/B roll linear and digital nonlinear editing
F. Three-dimensional animation with computer graphics.
G. Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player
H. Ability to archive three to four videoconferences from FY02 and all seven of FY03
I. Computer Teleprompter for at least two studio cameras
J. Satellite Uplink and Transponder—KU-Band and C-Band/or Digital with KU-Band to cover the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States
K. Portable Field Equipment—Digital Video Cameras with recording decks, portable lighting kits, microphones (hand held and lapel), field monitors, audio mixers, and camera tripods.
6. Personnel:
A. Producer/Director.
B. Script Writer.
C. Set Designer.
D. Lighting Designer.
E. Audio Operator.
F. Graphics Operator.
G. Graphics Artist.
H. Floor Manager.
I. Studio Cameras Operators (3 to 4).
J. Tape Operator.
K. Location Camera Operator.
L. Teleprompter Operator.
M. Clerical/Administrative Support.
N. Makeup Artist.

Application Requirements

Applicants must submit an original (signed in blue ink) and five copies of their application and the required forms (see below.) Applicants must prepare a proposal that describes their plan to address the requirements to produce seven live Internet/Satellite teleconferences. The plan must include a list of all required equipment, identify their key operational staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with NIC's Distance Learning Supervisor. Please note that the Standard Form 424, Application for Federal Assistance, submitted with the proposal must contain the cover sheet, budget, budget narrative, assurances, certifications, and management plan. All required forms and instructions for their completion may be downloaded from the NIC website: http://www.nicic.org.

Authority: Public Law 93–415

Amount of Award

This is a cooperative agreement. A cooperative agreement is a form of assistance relationship through which the National Institute of Corrections is involved during the performance of the award. This award is made to an organization who has the capability to produce live satellite/Internet teleconferences. This initiative emphasizes television quality production that meets or exceeds major network quality. The award will be limited to $300,000 for both direct and indirect costs related to this project. Funds may not be used to purchase equipment, construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy.

All products from this funding will be in the public domain and available to interested agencies through the National institute of Corrections.

Availability of Funds: Funds are not presently available for this cooperative agreement. The Government's obligation under this cooperative agreement is contingent upon the availability of appropriated funds from which payment for cooperative agreement purposes can be made. No legal liability on the part of the government for any payment may arise until funds are made available for this cooperative agreement and until the awardee receives notice of such availability, to be confirmed in writing. Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with the Antideficiency Act, 31 U.S.C. 1341.

Award Period: This award period is from October 1, 2002 to September 30, 2003.

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team or individual with the requisite skills to successfully meet the objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member review panel.

Number of Awards: One (1).

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

NIC Application Number: 03A13: This number should appear as a reference line in your cover letter, in Box 11 of Standard Form 424, and on the outside of the package sent to NIC.

(Catalog of Federal Domestic Assistance Number: 16.601: Corrections—Staff Training and Development)

Dated: July 10, 2002.

Morris Thigpen,

Director, National Institute of Corrections.

[FR Doc. 02–17832 Filed 7–15–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 2, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or e-mail *Howzer-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days form the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.
Agency: Bureau of Labor statistics (BLS).
Title: Current Population Survey (CPS) Basic Labor Force.
OMB Number: 1220–0110.
Affected Public: Individuals or households.
Frequency: Monthly.
Number of Respondents: 57,000.
Number of Annual Responses: 684,000.
Estimated Time Per Response: 7 minutes.
Total Burden Hours: 79,800.
Total Annualized Capital/startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing Services: $0.
Description: Section 2 of Title 29, Chapter 1, Subchapter 1, United States Code Annotated directs the Bureau of Labor statistics (BLS), under the direction of the Secretary of Labor, to collect, collate, and report full and complete statistics of the conditions of labor and the products and distribution of the products of the same. The Current Population Survey (CPS) has been the principal source of the official Government statistics on employment and unemployment for nearly 60 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey also helps to determine the employment situation of specific population groups as well as general trends in employment and unemployment.

Marlene J. Howze,

Acting DOL Clearance Officer.

[FR Doc. 02–17845 Filed 7–15–02; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, 1998; Supplemental Appropriation Act, 2001

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Secretary's determination of the revised Program Year (PY) 2001 allotments for Dislocated Worker Activities.

SUMMARY: Public Law 107–20 Title II Chapter 7, the Supplemental Appropriation Act, 2001, rescinds $177.5 million from the dislocated worker program for PY 2001. The Act calls for a reduction of $110 million (8.6 percent of the amount previously appropriated) from the formula program and $67.5 million (21.2 percent of the amount previously appropriated) from the Secretary's national reserve account. The level of funding for the dislocated worker program is reduced to $1.413 billion due to the rescission. The Act requires the Secretary to implement the rescission based on each state's share of unexpended balances as of June 30, 2001. The procedures for implementing the rescission were provided in Training and Employment Guidance Letter (TEGL) 3–01, "PY 2001 Changes in Dislocated Worker and Youth Funds," dated August 16, 2001. This guidance letter was amended September 28, 2001 ("Change 2"). TEGL 3–01 stated that the rescission would take effect after additional time for review and analysis of expenditure reports on the dislocated worker program. TEGL 26–01 provided states advance notice of the Secretary's planned determination for the revised PY 2001 allotments for dislocated worker activities.

EFFECTIVE DATE: This notice is effective July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Smith, Administrator, U.S. Department of Labor, Office of Adult Services, Employment and Training Administration, Room N–5426, 200 Constitution Avenue, NW., Washington, DC Telephone 202–693–3500; Fax (202) 693–3818.

SUPPLEMENTARY INFORMATION: TEGL 26–01, change 1 provided the states revised PY 2001 allotments for the dislocated worker program under Workforce Investment Act (WIA) Title I. The revised allotments are the result of the reduction of $110 million from the formula program. An additional $67.5 million is rescinded from the Secretary's national reserve account in PY 2001 as required by Public Law 107–20. The outlying areas, which are funded from the Secretary's dislocated worker program national reserve account, will have a reduction of $443,750 in available competitive funds for PY 2001.

The Secretary has made her determination as required by Public Law 107–20 ("Act"). The Act requires the Secretary to reduce the level of funding for states" formula funds for dislocated worker program activities by $110 million and the Secretary's national reserve account by $67.5 million. The attached table shows the revised funding levels for each state as a result of the rescission.

WIA section 132(c) requires the Secretary to conduct reallotment of dislocated worker formula funds based on state financial reports submitted at the end of the program year. The procedures the Secretary uses for recapture and reallotment of funds are described in WIA regulations at 20 CFR 667.150. As stated in TEGLs 12–00 and 5–99, it was intended that the first reallotment of funds under WIA would be in PY 2001 based on obligations of PY 2000 funds. Due to the rescission, the Secretary has determined that reallotment will not apply in PY 2001 based on our review of the rescission language in Public Law 107–20 (Supplemental Appropriation Act, 2001).

Notice of Obligation (NOO) for each State's dislocated worker program was adjusted to reflect the reduction in the level of funding required by the rescission. The adjustment of funds covers NOOs for PY 2001 (July 1 to June 30) allotments.

Attachment A provides the results of the Secretary's determination in a chart showing PY 2001 Dislocated Worker Activities State Allotments and Attachment B shows the Dislocated Worker State Formula PY 2001 Rescission Methodology.

Attachments

Signed at Washington, DC July 9, 2002.

Shirley M. Smith,

Administrator, Office of Adult Services.

BILLING CODE 4510–30–P

Attachment A

U. S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities State Allotments
Impact of PY 2001 Rescission

State/Outlying Area	FY 2001 Initial Allotments	Rescission	PY 2001 Revised Allotments $	PY 2001 Revised Allotments % Change
Total	$1,590,040,000	($177,500,000)	$1,412,540,000	-11.2%
Alabama	15,068,548	(519,868)	14,548,680	-3.5%
Alaska	10,843,316	(374,116)	10,469,200	-3.5%
Arizona	15,068,548	(519,868)	14,548,680	-3.5%
Arkansas	10,843,316	(374,116)	10,469,200	-3.5%
California	15,068,548	(519,868)	14,548,680	-3.5%
Colorado	15,068,548	(519,868)	14,548,680	-3.5%
Connecticut	15,068,548	(519,868)	14,548,680	-3.5%
Delaware	10,843,316	(374,116)	10,469,200	-3.5%
District of Columbia	10,843,316	(374,116)	10,469,200	-3.5%
Florida	15,068,548	(519,868)	14,548,680	-3.5%
Georgia	15,068,548	(519,868)	14,548,680	-3.5%
Hawaii	10,843,316	(374,116)	10,469,200	-3.5%
Idaho	10,843,316	(374,116)	10,469,200	-3.5%
Illinois	15,068,548	(519,868)	14,548,680	-3.5%
Indiana	15,068,548	(519,868)	14,548,680	-3.5%
Iowa	10,843,316	(374,116)	10,469,200	-3.5%
Kansas	10,843,316	(374,116)	10,469,200	-3.5%
Kentucky	15,068,548	(519,868)	14,548,680	-3.5%
Louisiana	15,068,548	(519,868)	14,548,680	-3.5%
Maine	10,843,316	(374,116)	10,469,200	-3.5%
Maryland	15,068,548	(519,868)	14,548,680	-3.5%
Massachusetts	15,068,548	(519,868)	14,548,680	-3.5%
Michigan	15,068,548	(519,868)	14,548,680	-3.5%
Minnesota	15,068,548	(519,868)	14,548,680	-3.5%
Mississippi	10,843,316	(374,116)	10,469,200	-3.5%
Missouri	15,068,548	(519,868)	14,548,680	-3.5%
Montana	10,843,316	(374,116)	10,469,200	-3.5%
Nebraska	10,843,316	(374,116)	10,469,200	-3.5%
Nevada	10,843,316	(374,116)	10,469,200	-3.5%
New Hampshire	10,843,316	(374,116)	10,469,200	-3.5%
New Jersey	15,068,548	(519,868)	14,548,680	-3.5%
New Mexico	10,843,316	(374,116)	10,469,200	-3.5%
New York	15,068,548	(519,868)	14,548,680	-3.5%
North Carolina	15,068,548	(519,868)	14,548,680	-3.5%
North Dakota	10,843,316	(374,116)	10,469,200	-3.5%
Ohio	15,068,548	(519,868)	14,548,680	-3.5%
Oklahoma	10,843,316	(374,116)	10,469,200	-3.5%
Oregon	15,068,548	(519,868)	14,548,680	-3.5%
Pennsylvania	15,068,548	(519,868)	14,548,680	-3.5%
Rhode Island	10,843,316	(374,116)	10,469,200	-3.5%
South Carolina	15,068,548	(519,868)	14,548,680	-3.5%
South Dakota	10,843,316	(374,116)	10,469,200	-3.5%
Tennessee	15,068,548	(519,868)	14,548,680	-3.5%
Texas	15,068,548	(519,868)	14,548,680	-3.5%
Utah	10,843,316	(374,116)	10,469,200	-3.5%
Vermont	10,843,316	(374,116)	10,469,200	-3.5%
Virginia	15,068,548	(519,868)	14,548,680	-3.5%
Washington	15,068,548	(519,868)	14,548,680	-3.5%
West Virginia	10,843,316	(374,116)	10,469,200	-3.5%
Wisconsin	15,068,548	(519,868)	14,548,680	-3.5%
Wyoming	10,843,316	(374,116)	10,469,200	-3.5%
American Samoa	3,000,000	(103,500)	2,896,500	-3.5%
Guam	3,000,000	(103,500)	2,896,500	-3.5%
Northern Marianas	3,000,000	(103,500)	2,896,500	-3.5%
Puerto Rico	15,068,548	(519,868)	14,548,680	-3.5%
Virgin Islands	3,000,000	(103,500)	2,896,500	-3.5%

Attachment B

U. S. Department of Labor
Employment and Training Administration

Dislocated Worker Program State Formula
Program Year 2001 Rescission Calculations

Attachment A

U. S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities State Allotments
Impact of PY 2001 Rescission

State/Outlying Area	PY 2001 Initial Allotments	Rescission	PY 2001 Revised Allotments $	% Change
Total	$1,590,840,000	($177,508,000)	$1,412,548,000	-11.2%
Alabama	15,068,548	(519,868)	14,548,680	-3.5%
Alaska	11,395,001	(551,285)	10,843,716	-4.8%
Arizona *	12,879,316	(977,998)	11,901,318	-7.6%
Arkansas	7,103,656	(1,022,179)	6,081,477	-14.4%
California	273,391,437	(23,003,656)	250,387,781	-8.4%
Colorado	8,255,862	(764,987)	7,490,875	-9.3%
Connecticut	7,406,982	(436,861)	6,970,121	-5.9%
Delaware	2,184,617	(68,936)	2,115,681	-3.2%
District of Columbia	8,433,959	(556,773)	7,877,186	-6.6%
Florida	39,311,417	(2,749,836)	36,561,581	-7.0%
Georgia	20,930,127	(1,933,764)	18,996,363	-9.2%
Hawaii	6,477,632	(1,229,909)	5,247,723	-19.0%
Idaho	3,898,217	(256,101)	3,642,116	-6.6%
Illinois	41,575,303	(2,183,309)	39,391,994	-5.3%
Indiana	10,682,428	(640,174)	10,042,254	-6.0%
Iowa	5,437,368	(302,246)	5,135,122	-5.6%
Kansas	[illegible]02,56	(473,377)	5,029,188	-8.6%
Kentucky	11,735,435	(1,574,438)	10,160,997	-13.4%
Louisiana	23,158,418	(2,506,863)	20,651,555	-10.8%
Maine	3,214,945	(179,397)	3,035,548	-5.6%
Maryland	17,559,765	(1,377,309)	16,182,456	-7.8%
Massachusetts	15,134,353	(463,739)	14,670,614	-3.1%
Michigan	21,932,071	(773,029)	21,159,042	-3.5%
Minnesota	10,473,235	(346,103)	10,127,132	-3.3%
Mississippi	30,701,477	(1,443,863)	29,257,614	-4.7%
Missouri	12,374,521	(1,224,459)	11,150,062	-9.9%
Montana	7,084,638	(208,655)	6,875,983	-2.9%
Nebraska	2,997,707	(142,384)	2,855,323	-4.7%
Nevada	5,334,057	(409,307)	4,924,750	-7.7%
New Hampshire	1,877,882	(112,782)	1,765,100	-6.0%
New Jersey	30,498,439	(2,508,993)	27,989,446	-8.2%
New Mexico *	21,923,521	(1,813,649)	20,109,872	-8.3%
New York	105,559,534	(17,204,630)	88,354,904	-16.3%
North Carolina	16,959,265	(1,459,422)	15,499,843	-8.6%
North Dakota	1,279,725	(89,448)	1,190,277	-7.0%
Ohio	34,309,127	(2,900,698)	31,408,429	-8.5%
Oklahoma	6,561,865	(716,469)	5,845,396	-10.9%
Oregon	28,811,913	(1,449,099)	27,362,814	-5.0%
Pennsylvania	38,706,830	(3,666,625)	35,040,205	-9.5%
Puerto Rico	166,101,676	(16,523,469)	149,578,207	-9.9%
Rhode Island	2,885,714	(132,818)	2,752,896	-4.6%
South Carolina	11,936,257	(888,239)	11,048,018	-7.4%
South Dakota	1,283,809	(45,705)	1,238,104	-3.6%
Tennessee	12,771,543	(965,444)	11,806,099	-7.6%
Texas	63,747,179	(5,366,658)	58,380,521	-8.4%
Utah	4,430,131	(167,492)	4,262,639	-3.8%
Vermont	1,240,882	(18,345)	1,222,537	-1.5%
Virginia	12,424,713	(989,291)	11,435,422	-8.0%
Washington	27,119,437	(1,850,523)	25,268,914	-6.8%
West Virginia	25,423,973	(2,309,570)	23,114,403	-9.1%
Wisconsin	12,880,353	(387,017)	12,493,336	-3.0%
Wyoming	1,663,175	(112,809)	1,550,366	-6.8%
State Total	1,272,832,000	(110,000,000)	1,162,832,000	-8.6%
American Samoa	188,651	0	188,651	0.0%
Guam	742,196	0	742,196	0.0%
Marshall Islands	400,690	0	400,690	0.0%
Micronesia	703,169	0	703,169	0.0%
Northern Marianas	333,969	0	333,969	0.0%
Palau	125,530	0	125,530	0.0%
Virgin Islands	994,210	0	994,210	0.0%
Outlying Area Competitive	486,685	(443,750)	42,935	-91.2%
Outlying Area Total	3,975,100	(443,750)	3,531,350	-11.2%
National Reserve	314,032,900	(67,056,250)	246,976,650	-21.4%

* *For Arizona and New Mexico, rescission amounts include amounts attributable to state share of funds transferred to Navajo Nation in accordance with WIA Sec 166(g)(6).*

Attachment B

U. S. Department of Labor
Employment and Training Administration

Dislocated Worker Program State Formula
Program Year 2001 Rescission Calculations

- Description: Based on State (including Navajo Nation) share of Dislocated Worker unexpended balances as of 6/30/01
  - = 6/30/01 availability (reflecting transfers) less 6/30/01 cumulative expended
  - = Years: PY 1999, PY 2000, and FY 2001
  - = Sum of
    - Estimated Dislocated Worker portion of Statewide Activities
    - Rapid Response Activities
    - Estimated Dislocated Worker portion of Local Administration
    - Local Dislocated Worker Program

- Source: State Workforce Investment Act 6/30/01 reports for Statewide Activities, Rapid Response Activities, Local Administration, Local Youth Program, Local Adult Program, Local Dislocated Worker Program (plus Navajo Nation reports for Dislocated Worker program)

- Methodology for Disaggregating Statewide/Local Admin Report Data by Program:

		Statewide Activities	Local Adminstration
Auth	PY 1999	Prorated using State Allotment by pgm	Prorated using rptd Local Pgm Auth by pgm or State allotment by pgm, if no Local Pgm reported
	FY 2000/FY 2001	Fed NOO $ to State by pgm less est Local Admin Auth by pgm less rptd Local Pgm Auth by pgm less rptd Rapid Response Auth (DW only)	Prorated using rptd Local Pgm Auth by pgm or Fed NOO by pgm, if no Local Pgm reported
Expend	All Years	Prorated using Statewide Auth est by pgm	Prorated using Local Adm Auth est by pgm
Unexpend	All Years	Auth less Expend by Pgm	Auth less Expend by Pgm

- Rescission Calculations:

(1) Unexpended balances as of 6/30/01 for Dislocated Worker program are calculated: 6/30/01 total availability (reflecting transfers) less 6/30/01 cumulative expenditures.
(2) Navajo Nation expended balances are prorated to Arizona and New Mexico based on each state's share of funds transferred to the Navajo Nation for PY 2000 and FY 2001. Each state's resulting share of the Navajo Nation's unexpended funds are added to the state's unexpended balance.
(3) $110 million rescission amount prorated on State share of Dislocated Worker unexpended balances as of 6/30/01.

[FR Doc. 02–17846 Filed 7–15–02; 8:45 am]
BILLING CODE 4510–30–C

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–6 DD 99–01]

Ascertainment of Controversy for the Distribution of the 1999, 2000 and 2001 Musical Works Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice.

SUMMARY: The Copyright Office is announcing the commencement of the ascertainment of controversy for the distribution of the 1999, 2000 and 2001 Musical Works Funds. The Copyright Office is also announcing the commencement of the filing of motions for partial distribution of the Musical Works Funds.

DATES: Notices of intention to participate are due September 16, 2002. Motions for partial distribution are due September 16, 2002.

ADDRESSES: Notices of intention to participate and motions for partial distribution should be addressed to the Copyright Office and delivered by hand to the Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Senior Attorney, Copyright Office, P.O. Box 70400, Washington, DC 20024–0400. Telephone (202) 707–8380. Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Act provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66⅔% of the royalties and the Musical Works Fund receives the remaining 33⅓%. These fees are allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Recording Artists Subfund, the [illegible] available for distribution. 17 U.S.C. 803(d) and 1007(b).

II. Ascertainment of Controversy and Notices of Intention To Participate

Section 251.45(a) of the Copyright Office regulations, title 37 of the Code of Federal Regulations, requires that:

[T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate

of Intention may preclude a party from participating in the distribution proceeding. These notices are due September 16, 2002.

III. Motion of Phase I Claimants for Partial Distribution

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable year. The Copyright Office continues this practice because consolidation of the consideration of the distribution of the 1999, 2000 and 2001 Musical Works Funds provides a cost savings to the parties and to the Copyright Office and because it promotes administrative efficiencies.

Dated: July 11, 2002.

Marilyn J. Kretsinger,

Assistant General Counsel.

Dated: July 10, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–17844 Filed 7–15–02; 8:45 am]
BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[FR Doc. 02–17846 Filed 7–15–02; 8:45 am]
BILLING CODE 4510–30–C

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–6 DD 99–01]

Ascertainment of Controversy for the Distribution of the 1999, 2000 and 2001 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected in 1999, 2000 and 2001 for the distribution of digital audio recording devices and media to submit comments as to whether a controversy exists as to the distribution of the royalty fees in the 1999, 2000 and 2001 Musical Works Funds.

DATES: Comments and Notices of Intention to Participate are due September 16, 2002.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to the Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Ave., SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

The Audio Home Recording Act of 1992 (the "Act"), Public Law 102–563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution among interested copyright parties, provided that the copyright owners file a claim with the Copyright Office each year during January and February. 17 U.S.C. 1005, 1007.

The Act provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66⅔% of the royalties and the Musical Works Fund receives the remaining 33⅓%. These fees are allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Recording Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund. The two subfunds created for the benefit of nonfeatured artists receive a total of 4% of the funds allocated to the Sound Recordings Fund. Of the remaining royalty fees in the Sound Recordings Fund, 60% is allocated to the Copyright Owners Subfund and 40% is allocated to the Featured Recording Artists Subfund. Similarly, the royalty fees allocated to the Musical Works Fund are equally divided between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b).

Distribution of these fees may occur in one of two ways. If the claimants within each subfund agree among themselves how to distribute the royalty fees, the Librarian of Congress distributes the royalties to the claimants in accordance with their negotiated agreement.[1] 17 U.S.C. 1007(b). Alternatively, if the parties cannot reach an agreement, the Librarian of Congress must convene a copyright arbitration royalty panel ("CARP") to determine the distribution of royalty payments.[2] 17 U.S.C. 1007(c). Before commencing a distribution proceeding, however, the Copyright Office must first ascertain whether and to what extent a controversy exists concerning the distribution of the royalty fees among the copyright claimants to the funds available for distribution. 17 U.S.C. 803(d) and 1007(b).

II. Ascertainment of Controversy and Notices of Intention To Participate

Section 251.45(a) of the Copyright Office regulations, title 37 of the Code of Federal Regulations, requires that:

> [T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

The purpose of the negotiation requirement is to make all of the claimants within each fund/subfund aware of each other and to encourage active participation and open discussion on how to resolve each party's claim. The Copyright Office has compiled a list of claimants who have timely filed a claim to either of the two subfunds comprising each of the 1999, 2000, and 2001 Musical Works Funds.[3] Claimants must use these lists in negotiating settlement agreements concerning the distribution of the royalty fees.

At the conclusion of the negotiation period, the claimants must submit to the Copyright Office comments identifying the existence of any settlement agreements and the existence of any remaining controversies. Participants must identify each subfund in the Musical Works Funds by year and indicate whether any controversy remains over the distribution of the royalty fees in that subfund or whether an agreement has been reached. In the case of an agreement, the notice must list the name of all claimants covered by the agreement. Participants must advise the Copyright Office of any controversy by the end of the comment period. The Office will not consider controversies which are brought to its attention after the close of the comment period.

Each claimant who intends to participate in the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds must also file a Notice of Intention to participate. The notice must identify each year and each subfund in which the copyright owner has an interest. Failure to file a timely Notice

[1] Each year, the claimants to the royalty fees in the Sound Recordings Funds have negotiated a universal settlement agreement among themselves as to the proportionate share that each claimant receives from the subfunds. These agreements have made it unnecessary for the Librarian to convene a CARP and have allowed him to distribute all royalty fees allocated to the Sound Recordings Funds, including those fees allocated to the 1999, 2000 and 2001 Sound Recordings Funds. *See* Orders, Docket No. 2000–5 DD 99 (June 2, 2000); Docket No. 2001–4 CARP DD 2000 ((May 21, 2001); and Docket No. 2002–6 CARP DD 2001 (July 10, 2002).

[2] There have been two CARP proceedings to determine the final distribution of the royalty fees in the Musical Works Funds. In 1996, the Librarian convened a CARP to determine the distribution of the 1992, 1993, and 1994 Musical Works Funds, and in 1998, the Librarian convened a second CARP to determine the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds. *See* 62 FR 6558 (February 12, 1997) and 66 FR 9360 (February 7, 2001), respectively.

[3] Copies of the claimant lists are available for viewing and copying between the hours of 8:30 a.m. and 5 p.m. at the: Library of Congress, Copyright Office, Licensing Division, Room LM–458, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20557–6400.

of Intention may preclude a party from participating in the distribution proceeding. These notices are due September 16, 2002.

III. Motion of Phase I Claimants for Partial Distribution

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims with respect to which a controversy exists under his authority set forth in section 1007(c) of the Copyright Act, title 17 of the United States Code. Pursuant to this provision, the American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; The Harry Fox Agency, Inc.; and The Songwriters Guild of America (collectively, the "Settling Parties") submitted a motion to the Copyright Office on June 13, 2002, for a partial distribution of 95% of the Digital Audio Recording Funds Writers and Publishers Subfunds of 1999, 2000, and 2001 Musical Works royalty funds. The Motion states that the Settling Parties have reached a confidential settlement concerning their respective shares for the 1999, 2000 and 2001 Musical Works Funds.

A claimant who is not a party to the Settling Parties' Motion, but who files a Notice of Intention to Participate, may file a response to the motion no later than the due date set forth in this notice for comments on the existence of controversies and the Notices of Intention to Participate. The Motion of the Settling Parties for Partial Distribution of the 1999, 2000 and 2001 Musical Works Funds is available for inspection and copying in the Office of the General Counsel. The Office will consider the merits of this motion once all interested parties have been identified by the Notices of Intention requested herein and have had an opportunity to file responses to the motion.

IV. Consolidation of Proceedings

The Copyright Office is consolidating the consideration of the distribution of the 1999, 2000 and 2001 Musical Works Funds into a single proceeding in order to address the merits of the Settling Parties' motion for a partial distribution of funds from the 1999, 2000 and 2001 Musical Works Funds. The Copyright Office has routinely consolidated the consideration of the distribution of the Musical Works Funds for several years into a single proceeding where, as here, the issues regarding the distribution of the royalty fees are the same for each year. The Copyright Office continues this practice because consolidation of the consideration of the distribution of the 1999, 2000 and 2001 Musical Works Funds provides a cost savings to the parties and to the Copyright Office and because it promotes administrative efficiencies.

Dated: July 11, 2002.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 02–17897 Filed 7–15–02; 8:45 am]
BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–088]

NASA Advisory Council, Space Science Advisory Committee Structure and Evolution of the Universe Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Thursday, August 8, 2002, 8:30 a.m. to 5:30 p.m., and Friday, August 9, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Update on Astronomy and Physics Division Activities
— Report from SEU Working Groups
— Report on Ultra Long Duration Balloon Program
— Report on NASA Long Range Planning
— Discussion of Roadmap

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 10, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–17844 Filed 7–15–02; 8:45 am]
BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 15, 22, 29, August 5, 12, 19, 2002.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 15, 2002

There are no meetings scheduled for the Week of July 15, 2002.

Week of July 22, 2002—Tentative

There are no meetings scheduled for the Week of July 22, 2002.

Week of July 29, 2002—Tentative

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m.—Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9 a.m. Briefing of NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD), (Public Meeting), (Contact: John Zabko, 301–415–2308).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings

call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information: By a vote of 4–0 on July 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues (Closed—Ex. 9)" be held on July 10, and on less than one week's notice to the

Dated: July 10, 2002.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17889 Filed 7–15–02; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3423]

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section

to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be

reduce motor vehicle related traffic injuries and deaths. A core priority of NHTSA is to reduce the number of alcohol-related fatalities. Since 1999, several states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with enhanced publicity. These states were selected because of their potential for reducing the substantial number or percentage of

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's

call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information: By a vote of 4–0 on July 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues (Closed—Ex. 9)" be held on July 10, and on less than one week's notice to the public.

By a vote of 4–0 on July 8 and 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on July 11, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 11, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–17971 Filed 7–12–02; 11:29 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3426]

State of Arizona; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency, dated July 7, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on June 18, 2002 and continuing through July 7, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 24, 2002, and for economic injury the deadline is March 25, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 10, 2002.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17888 Filed 7–15–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3423]

State of Minnesota; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated July 9, 2002, the above-numbered Declaration is hereby amended to include Beltrami, Clay, Itasca, McLeod, Pennington, Polk, and Wright Counties in the State of Minnesota as disaster areas due to damages caused by severe storms, flooding and tornadoes beginning on June 9, 2002 and continuing through June 28, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Aitkin, Anoka, Carver, Cass, Hennepin, Meeker, Renville, Sherburne, Sibley, Stearns, and Wilkin Counties in Minnesota; and Richland County in North Dakota. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 13, 2002 and for economic injury the deadline is March 14, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 10, 2002.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–17889 Filed 7–15–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: August 20, 2002, 10 a.m.–6 p.m., August 21, 2002, 10 a.m.–5 p.m., August 22, 2002, 9 a.m.–1 p.m.

ADDRESSES: Ritz-Carlton Hotel (Pentagon City), 1250 South Hayes Street, Arlington, VA 22202, Phone: (703) 415–5000.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The focus of this meeting will be on Employment Networks and the provision of employment services under the Ticket to Work and Self -Sufficiency Program.

The Panel will meet in person commencing on Tuesday, August 20, 2002 from 10 a.m. to 6 p.m.; Wednesday, August 21, 2002 from 10 a.m. to 5 p.m.; and Thursday, August 22, 2002 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held Tuesday, Wednesday and Thursday, August 20, 21, and 22, 2002. Public testimony will be heard in person Tuesday, August 20, 2002 from 3:50 p.m. to 4:20 p.m. and on Thursday, August 22, 2002 from 9 a.m. to 9:30 a.m. The Panel is particularly interested in hearing public comment from Employment Networks or regarding the provision of employment services under the Ticket to Work Program. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024
- Telephone contact with Kristen Breland at (202) 358–6423
- Fax at (202) 358–6440
- E-mail to *TWWIIAPanel@ssa.gov*

Dated: July 8, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–17753 Filed 7–15–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2002–12499]

National and State Surveys of Alcohol Targets of Opportunity

ACTION: Notice and request for public comment on proposed collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) has a central role in the national effort to reduce motor vehicle related traffic injuries and deaths. A core priority of NHTSA is to reduce the number of alcohol-related fatalities. Since 1999, several states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with enhanced publicity. These states were selected because of their potential for reducing the substantial number or percentage of alcohol-related fatalities occurring each year within their state. During the next few years NHTSA will be supporting additional state programmatic efforts to reduce the number of alcohol-related crashes. One means of determining whether these programs are successful is to conduct periodic telephone surveys of the public both prior to and after program implementation to assess changes in drivers' attitudes and behavior regarding drinking and driving after drinking. It would also be anticipated that states implementing such programs should show larger and more positive changes in attitudes and behavior as compared to a national sample of drivers. Under procedures established by the Paperwork Reduction Act of 1995, NHTSA invites the general public and Federal Agencies to comment on the need for the proposed data collection, the types of questions respondents should be asked, ways to enhance the quality of the collection, and ways to minimize the burden on respondents.

DATES: Comments must be received on or before September 16, 2002.

ADDRESSES: Direct all written comments to US DOT, Docket Management Facility, Docket Operations, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, Docket Number NHTSA–2002–12499. It is requested but not required that 2 copies of the comment be provided. The Docket section is open weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, e-mail *mlevy@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day comment period and otherwise consult with affected agencies and members of the public concerning each proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following collection of information:

National and State Surveys of Alcohol Targets of Opportunity

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: June 30, 2005.

Summary of the Collection of Information

The National Highway Traffic Safety Administration (NHTSA) has a central role in the national effort to reduce motor vehicle related traffic injuries and deaths. A core priority of NHTSA is to reduce the number of alcohol-related fatalities. In support of this priority, since 1999, several states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with substantial publicity about these programs. These states were selected because of their potential for reducing the substantial number or percentage of alcohol-related fatalities occurring each year within their state. One means of determining whether these state programs were successful was to employ periodic telephone surveys of the public both prior to and after program implementation to assess changes in drivers' attitudes and behavior regarding drinking and driving after drinking. [OMB No.2127–0605]

During the next few years NHTSA will be supporting additional state programmatic efforts to reduce the number of alcohol-related crashes. The objective of the current survey is to determine the extent to which target of opportunity programs impact the awareness, attitudes, and driving behavior of motorists. It is anticipated that changes in enforcement levels should be reflected by changes in driver awareness, attitudes and behavior. For all traffic fatalities. Also, an estimated 310,000 persons were injured in crashes where police reported that alcohol was present—an average of one person injured approximately every two minutes. (Traffic Safety Facts: 2000, NHTSA-National Center for Statistics and Analysis). A recent NHTSA sponsored publication "The Economic Impact of Motor Vehicle Crashes," reported that in 2000 alcohol related crashes was associated with more than

It should be noted that during the past decade NHTSA has conducted surveys on drinking and driving attitudes and behavior. Most of these were obtained biannually from nationally represented samples and most of these were conducted years ago and cannot be used within the context of the present study. Some of the survey data were collected within the past year but these data will not be contemporaneous will future

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12173]

RIN 2127–AF53

Odometer Disclosure Requirements; Disclosure of Odometer Information; Review: The Incidence Rate of Odometer Fraud; Preliminary Report

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click "Regulations & Standards" underneath "Car Safety" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

SUPPLEMENTARY INFORMATION: The technical report estimates the probability of an odometer rollback

number of this document (NHTSA–2002–12173) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of

During the next few years NHTSA will be supporting additional state programmatic efforts to reduce the number of alcohol-related crashes. The objective of the current survey is to determine the extent to which target of opportunity programs impact the awareness, attitudes, and driving behavior of motorists. It is anticipated that changes in enforcement levels should be reflected by changes in driver awareness, attitudes and behavior. For example, a state that substantially increases their alcohol-enforcement activities and provides substantial publicity might expect that respondents report a greater degree of awareness of these efforts as compared to before the program began. It may be expected that respondents would report they came in contact with law enforcement more frequently and drive after drinking less often once the program began. In addition, the survey will provide information on driver awareness of specific enforcement techniques being used as well as data regarding ongoing alcohol media campaign(s). It also would be anticipated that states implementing such programs should show larger and more positive changes in attitudes and behavior as compared to a national sample of drivers. The information to be collected by this survey is not available to NHTSA through any other source.

Within each state, the survey will be administered in several waves (e.g., prior to the intervention effort, at the mid-point, and at the end the effort) by telephone to a probability sample of the driving age public (aged 16 years or older as of their last birthday). The national survey also will target the driving age public and will be conducted twice yearly for three years. Participation by respondents is strictly voluntary. The interview is anticipated to average 5 minutes in length. Interviewers will use computer-assisted telephone interviewing to reduce survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. All respondents' results will remain anonymous and completely confidential. Participant names and telephone numbers used to reach the respondents are separated from the data records prior to its entry into the analytical database.

Description of the Need for and Proposed Use of the Information

In 2000, there were 16,792 alcohol-related traffic fatalities. This number represents approximately 40 percent of all traffic fatalities. Also, an estimated 310,000 persons were injured in crashes where police reported that alcohol was present—an average of one person injured approximately every two minutes. (Traffic Safety Facts: 2000, NHTSA-National Center for Statistics and Analysis). A recent NHTSA sponsored publication "The Economic Impact of Motor Vehicle Crashes," reported that in 2000 alcohol related crashes was associated with more than 50 billion dollars in economic costs.

NHTSA is committed to the development of effective programs to reduce the incidence of these crashes. In 1999, NHTSA awarded cooperative agreements valued at approximately $1,000,000 each to five states—Pennsylvania, Georgia, Louisiana, Tennessee, and Texas. During the next few years, NHTSA will be supporting countermeasure efforts to reduce these types of crashes in additional states. Each of these states will be responsible for implementing an enforcement and publicity program. Data to be collected include number and type of police stops made, and changes in alcohol-related violations and crashes.

In order to reduce the work requirements for each state and to create sets of survey data that may be compared among the states, one or more separate awards will be made to survey firms having expertise in conducting random telephone surveys. Thus, the survey data to be collected comprise only one part of the entire data set that will be assessed.

The entire data set will be used to properly plan and evaluate new enforcement programs directed at reducing the occurrence of alcohol-impaired driving. States found to have implemented effective programs to reduce the driving after drinking problem shall prepare materials that highlight the major features of their programs. These materials will be disseminated among states that want to implement an improved alcohol-enforcement program.

The findings from this proposed data collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide data in support of states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries.

It should be noted that during the past decade NHTSA has conducted surveys on drinking and driving attitudes and behavior. Most of these were obtained biannually from nationally represented samples and most of these were conducted years ago and cannot be used within the context of the present study. Some of the survey data were collected within the past year but these data will not be contemporaneous will future state surveys dealing with enforcement and publicity activities.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed collection, a telephone interview averaging approximately 5 minutes in length would be administered to each of 500 randomly selected members of the general public age 16 and older, nationally and for each state supported by this study. The national survey will be conducted six times over the three-year data collection period for a total of 3,000 respondents. State surveys will also be conducted over a three-year period. It is anticipated that three waves will be conducted in each state for a total of 1500 respondents per state and up to 50 states will be surveyed for a total of 75,000 respondents. Interview will be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household will be selected, and each sample member will complete just one interview. Businesses are ineligible for the sample and would be not be interviewed. After each wave is completed and the data analyzed, the findings will be disseminated to each state for review.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 5 minutes to complete the telephone interview. Thus, the number of estimated reporting burden on the general public would be a total of 6500 hours for the national and state surveys or 2166.7 hours per year. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator, Office of Traffic Safety Programs.

[FR Doc. 02–17887 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12173]

RIN 2127–AF53

Odometer Disclosure Requirements; Disclosure of Odometer Information; Review: The Incidence Rate of Odometer Fraud; Preliminary Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report that is a nationwide assessment of odometer fraud. The report's title is *Preliminary Report: The Incidence Rate of Odometer Fraud.*

DATES: Comments must be received no later than November 13, 2002.

ADDRESSES:

Report: You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. A summary of the report is available on the Internet for viewing on line at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/80944.html.* The full report is available on the Internet in PDF format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809441.pdf.*

Comments: All comments should refer to the Docket number of this notice (NHTSA– 2002–12173). You may submit your comments in writing to: U.S. Department of Trnsportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Docket Management Systm Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324 and visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NPP–22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail *ckahane@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click "Regulations & Standards" underneath "Car Safety" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

SUPPLEMENTARY INFORMATION: The technical report estimates the probability of an odometer rollback during the first 11 years of a passenger vehicle's life to the extent it can be detected in title transfer and other odometer reading data. The analyses uses a nationally representative sample of 10,000 passenger cars, pickup trucks, vans and sport utility vehicles and a national vehicle history database to identify vehicles with odometer discrepancies that suggest rollback—*i.e.,* odometer readings on two separate occasions, and the later reading has the lower mileage. The rate of odometer fraud over the life of the vehicle is 3.47 percent (confidence bounds from 2.68 to 4.26 percent). That is a 3.47 percent chance that a vehicle would have its odometer rolled back at any point during the first 11 years of its life. There are approximately 452,000 cases of odometer fraud per year in the United States. This study also estimates the difference between the inflated prices that consumers actually paid for the rolled-back vehicles and the prices they would have been willing to pay if they had known the true mileage. Those costs average $2,336 per case of odometer fraud. Given 452,000 cases per year in the United States, that amounts to $1,056 million per year (confidence bounds from $737 million to $1,376 million).

How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes public review of this preliminary report and invites reviewers to submit comments about the data, the statistical methods used in the analyses, and/or additional information. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement the report. If the comments warrant a significant revision, then NHTSA will either add an appendix to the report or publish a revised report; otherwise, this preliminary report will serve as the final report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2002–12173) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If your submit your comments electronically, log onto the Dockets Management System website at *http://dms.dot.gov* and click on "Help & Information" or "Help/Info" to obtain instructions.

We also request, but do not require you to send a copy to Christina Morgan, Evaluation Division, NPP–22, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *tmorgan@nhtsa.dot.gov*). She can check if your comments have been received at the Docket and she can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelop containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management

receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

form for redemption under this call will be found in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR part 306), and from the Definitives Section of the Bureau of the Public Debt (telephone (304) 480–7936), and on the Bureau of the Public Debt's website, http://www.publicdebt.treas.gov.

3. Redemption payments for such bonds held in book-entry form, whether

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Automotive Products Trade Act of 1965

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

Abstract: Under APTA, Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.

Current Actions: There are no changes to the information collection. This

Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Disclosure of Information on Inward and Outward Vessel Manifest

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

Your may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

Your may also see the comments on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms./dot.gov*).
2. On the page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this Notice (6545). Click on "search."
4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8

Dated: July 11, 2002.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 02–17891 Filed 7–15–02; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption: 7⅞ Percent Treasury Bonds of 2002–07, Washington, DC

1. Public notice is hereby given that all outstanding 7⅞ percent Treasury Bonds of 2002–07 (CUSIP No. 912810 BZ O) dated November 15, 1977, due November 15, 2007, are hereby called for redemption at par on November 15, 2002, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR part 306), and from the Definitives Section of the Bureau of the Public Debt (telephone (304) 480–7936), and on the Bureau of the Public Debt's website, http://www.publicdebt.treas.gov.

3. Redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in *Treasury-Direct* accounts, will be made automatically on November 15, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–17616 Filed 7–15–02; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: June 28, 2002.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 02–17762 Filed 7–15–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Automotive Products Trade Act of 1965

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Automotive Products Trade Act of 1965. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Automotive Products Trade Act of 1965.

OMB Number: 1515–0178.

Form Number: N/A.

Abstract: Under APTA, Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 12,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 23,587.

Estimated Total Annualized Cost on the Public: $46,500.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17778 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Prior Disclosure Regulations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Prior Disclosure Regulations.

OMB Number: 1515–0212.

Form Number: N/A.

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Annualized Cost to the Public: N/A.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17779 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Disclosure of Information on Inward and Outward Vessel Manifest

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Disclosure of Information on Inward and Outward Vessel Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Printing and Records Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Disclosure of Information on Inward and Outward Vessel Manifest.

OMB Number: 1515–0124.

Form Number: N/A.

Abstract: This information is used to grant a domestic importer's, consingee's, and exporter's request for confidentially of its identity from public disclosure.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Documents Required Aboard Private Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1515–0124.

Form Number: N/A.

Abstract: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations, and if applicable, to Overflight authorizations. Customs' also requires that the pilots present documents required by FAA to be on the plane.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Dated: June 21, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–17798 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry and Immediate Delivery

OMB Number: 1515–0124.
Form Number: N/A.
Abstract: This information is used to grant a domestic importer's, consignee's, and exporter's request for confidentially of its identity from public disclosure.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change).
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondents: 578.
Estimated Time Per Respondent: 30 minutes.
Estimated Total Annual Burden Hours: 289.
Estimated Total Annualized Cost on the Public: $1,400.

Dated: July 1, 2002.

Tracey Denning,
Information Services Branch.

[FR Doc. 02–17792 Filed 7–15–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Foreign Trade Zone Annual Reconciliation Certification and recordkeeping Requirement

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.
OMB Number: 1515–0151.
Form Number: N/A.
Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statue and regulations. The operator will furnish Customs an annual certification of their compliance.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change).
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondents: 260.
Estimated Time Per Respondent: 45 minutes.
Estimated Total Annual Burden Hours: 195.
Estimated Total Annualized Cost on the Public: $1,025.50.

Dated: July 1, 2002.

Tracey Denning,
Information Services Branch.

[FR Doc. 02–17793 Filed 7–15–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Documents Required Aboard Private Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2–C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.
OMB Number: 1515–0175.
Form Number: N/A.
Abstract: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations, and if applicable, to Overflight authorizations. Customs' also requires that the pilots present documents required by FAA to be on the plane.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change).
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondents: 150,000.
Estimated Time Per Respondent: 1 minute.
Estimated Total Annual Burden Hours: 2,490.
Estimated Total Annualized Cost on the Public: $49,800.

Dated: July 1, 2002.

Tracey Denning,
Team Leader, Information Services Branch.

[FR Doc. 02–17794 Filed 7–15–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry Summary and Continuation Sheet

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry Summary and Continuation Sheet. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry Summary and Continuation Sheet.
OMB Number: 1515–0065.
Form Number: Customs Form 7501, 7501A.
Abstract: Customs Form 7501 is used by Customs as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change).
Affected Public: Business or other for-profit institutions.
Estimated Number of Respondent: 38,193.
Estimated Time Per Respondent: 20 minutes.
Estimated Total Annual Burden Hours: 20,010,000.
Estimated Annualized Cost to the Public: $153,295,000.

Dated: June 21, 2002.

Tracey Denning,
Information Services Group.

[FR Doc. 02–17798 Filed 7–15–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry and Immediate Delivery Application

AGENCY: U.S. Customs, Department of the Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or beforeSeptember 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting

comments concerning the following information collection:

Title: Entry and Immediate Delivery Application.
OMB Number: 1515–0069.
Form Number: Customs Form 3461 and 3461 Alternate.
Abstract: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

Estimated Total Annual Burden Hours: 3,749,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2002.

Glenn Kirkland,
IRS Reports Clearance Officer.

[FR Doc. 02–17862 Filed 7–15–02; 8:45 am]

recruitment and retention of nurses and other nursing personnel in VA; and to evaluate the future of the nursing profession in VA. The Commission will convene to lay the groundwork for accomplishing its charge and to develop a comprehensive plan for collecting, analyzing, and disseminating data/information. The Commission is chaired by Marilyn M. Pattillo, Ph.D., R.N., C.S., N.P.

The Commission is required, not later

comments concerning the following information collection:

Title: Entry and Immediate Delivery Application.

OMB Number: 1515–0069.

Form Number: Customs Form 3461 and 3461 Alternate.

Abstract: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 6,100.

Estimated Time Per Respondent: 15.5 minutes.

Estimated Total Annual Burden Hours: 949,500.

Estimated Annualized Cost to the Public: $15,658,500.

Dated: June 27, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17799 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Crew's Effects Declaration

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration.

OMB Number: 1515–0061.

Form Number: Customs Form 1304.

Abstract: Customs Form 1304 contains a list of Crew's effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as Crew's effects.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 206,100.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 17,326.

Estimated Total Annualized Cost on the Public: $188,150.

Dated: July 1, 2002.

Tracey Denning,

Information Services Branch.

[FR Doc. 02–17627 Filed 7–15–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8810, Corporate Passive Activity Loss and Credit Limitations.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Passive Activity Loss and Credit Limitations.

OMB Number: 1545–1091.

Form Number: 8810.

Abstract: Under Internal Revenue Code section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Current Actions: There are no changes being made to Form 8810 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time Per Response: 37 hr., 29 min.

Estimated Total Annual Burden Hours: 3,749,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–17862 Filed 7–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold its second meeting on July 29–31, 2002 at the Wyndham Hotel, 1400 M Street NW., Washington, DC 20005. The meeting will begin on Monday, July 29 at 1 p.m. and end on Wednesday, July 31 at 11 a.m.

Established under the "Department of Veterans Affairs Program Enhancements Act of 2001", the Commission is to consider legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA; and to evaluate the future of the nursing profession in VA. The Commission will convene to lay the groundwork for accomplishing its charge and to develop a comprehensive plan for collecting, analyzing, and disseminating data/information. The Commission is chaired by Marilyn M. Pattillo, Ph.D., R.N., C.S., N.P.

The Commission is required, not later than two years from May 8, 2002, to submit to Congress and the Secretary of Veterans Affairs a report on its findings and recommendations.

Members of the public may direct written questions or submit prepared statements for review by the Commission in advance of the meeting, to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: July 10, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–17912 Filed 7–15–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 136

Tuesday, July 16, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND

June 27, 2002, make the following correction:

On page 43512, in the third column, under **Federal Acquisition Circular**, in the last line, "July 24, 2002" should

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July 16, 2002

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Corrections

Federal Register
Vol. 67, No. 136
Tuesday, July 16, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–08; Introduction

Correction

In rule document 02–15939 beginning on page 43512 in the issue of Thursday, June 27, 2002, make the following correction:

On page 43512, in the third column, under **Federal Acquisition Circular**, in the last line, "July 24, 2002" should read "July 29, 2002".

[FR Doc. C2–15939 Filed 7–15–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 16, 2002

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266–2137–03; I.D. 072599A]

RIN 0648–AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations governing the unintentional taking of marine mammals incidental to the Navy operating its Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar. These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental taking of marine mammals during these operations over the course of 5 years, are required by the Marine Mammal Protection Act (MMPA) as amended. The Navy has determined that SURTASS LFA sonar operations may result in the incidental harassment of marine mammals. These regulations prescribe methods of conducting the activity and other measures to mitigate the impact on marine mammals and their habitat. Requirements for monitoring and reporting of such takings are also contained in this rule.

DATES: Effective from July 16, 2002, through July 15, 2007.

ADDRESSES: A copy of the application may be obtained by writing to Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action is available for viewing, by appointment during regular business hours, at the above address. Copies of letters, documents and the public hearing record are available, at copy cost, from this address.

Comments regarding the burden-hour estimate or any other aspect of the

maximum of two systems at sea at any one time.

The purpose of SURTASS LFA sonar is to provide the Navy with a reliable and dependable system for long-range detection of quieter, harder-to-find submarines. Low-frequency (LF) sound travels in seawater more effectively and for greater distances than higher frequency sound used by most other active sonars. According to the Navy,

between pings is typically from 6 to 15 minutes. Average duty cycle (ratio of sound "on" time to total time) can be controlled but cannot be greater than 20 percent; typical duty cycle is between 10 and 15 percent.

The passive or listening component of the system is SURTASS, which detects returning echoes from submerged objects, such as submarines, through the use of hydrophones. The hydrophones

Description of Acoustic Propagation

The following is a very basic and generic description of the propagation of LFA sonar signals in the ocean and is provided to facilitate understanding of this action. However, because the actual physics governing the propagation of SURTASS LFA sound signals is extremely complex and dependent on numerous in-situ environmental factors, the following is for illustrative purposes

region, temperature dominates the SSP and speed *decreases* with depth. Finally, beneath the thermocline, the temperature becomes fairly uniform and increasing pressure causes the SSP to *increase* with depth.

One way to envision sound traveling though the sea is to think of the sound as "rays." As these rays travel though the sea, their direction of travel changes as a result of speed changes, bending or refracting toward areas of lower speed

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266–2137–03; I.D. 072699A]

RIN 0648–AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy, is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to Navy operation of the Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) Sonar. Issuance of regulations, and Letters of Authorization under these regulations, governing unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's operation of SURTASS LFA sonar as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

DATES: Effective from August 15, 2002 through August 15, 2007.

ADDRESSES: A copy of the Navy application and a list of references used in this document may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action is available for viewing, by appointment during regular business hours, at the above address. Copies of letters, documents and the public hearing record are available, at copy cost, from this address.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2322, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On August 12, 1999, NMFS received an application from the U.S. Navy requesting a small take exemption under section 101(a)(5)(A) of the MMPA for the taking of marine mammals incidental to deploying the SURTASS LFA sonar system for training, testing and routine military operations anywhere within the world's oceans (except for Arctic and Antarctic waters) for a period of time not to exceed 5 years. According to the original Navy application, SURTASS LFA sonar would operate a maximum of 4 ship systems in the 10 geographic operating regions in which SURTASS LFA sonar could potentially operate. There would be a maximum of four SURTASS LFA sonar systems with an expected maximum of two systems at sea at any one time.

The purpose of SURTASS LFA sonar is to provide the Navy with a reliable and dependable system for long-range detection of quieter, harder-to-find submarines. Low-frequency (LF) sound travels in seawater more effectively and for greater distances than higher frequency sound used by most other active sonars. According to the Navy, the SURTASS LFA sonar system would meet the Navy's need for improved detection and tracking of new-generation submarines at a longer range. This would maximize the opportunity for U.S. armed forces to safely react to, and defend against, potential submarine threats while remaining a safe distance beyond a submarine's effective weapons range.

Description of the Activity

The SURTASS LFA sonar system is a long-range, LF sonar (between 100 and 500 Hertz) that has both active and passive components. It does not rely on detection of noise generated by the target. The active component of the system is a set of up to 18 LF acoustic transmitting source elements (called projectors) suspended from a cable from underneath a ship. The projectors are devices that transform electrical energy to mechanical energy by setting up vibrations, or pressure disturbances with the water to produce the pulse or ping. The SURTASS LFA sonar acoustic transmission is an omnidirectional (full 360 degrees) beam in the horizontal. The expected water depth of the center of the array is 400 ft (122 m), with a narrow vertical beamwidth that can be steered above or below the horizontal. The source level (SL) of an individual projector in the SURTASS LFA sonar array is approximately 215 dB, and because of the physics involved in beam forming and transmission loss processes, the array can never have a sound pressure level (SPL) higher than the SPL of an individual projector. The expected minimum water depth at which the SURTASS LFA vessel will operate is 200 m (656.2 ft). Normally, the shallowest depth that it can operate is 100 m (328.1 ft).

The typical SURTASS LFA sonar signal is not a constant tone, but rather a transmission of various signal types that vary in frequency and duration (including continuous wave (CW) and frequency-modulated (FM) signals). A complete sequence of sound transmissions is referred to by the Navy as a "ping" and can last as short as 6 seconds (sec) to as long as 100 sec, normally with no more than 10 seconds at any single frequency. The time between pings is typically from 6 to 15 minutes. Average duty cycle (ratio of sound "on" time to total time) can be controlled but cannot be greater than 20 percent; typical duty cycle is between 10 and 15 percent.

The passive or listening component of the system is SURTASS, which detects returning echoes from submerged objects, such as submarines, through the use of hydrophones. The hydrophones are mounted on a horizontal array that is towed behind the ship. The SURTASS LFA sonar ship maintains a minimum speed of 3.0 knots (5.6 km/hr; 3.4 mi/hr) in order to keep the array deployed.

The Navy anticipates that a normal SURTASS LFA sonar deployment schedule for a single vessel would involve about 270 days/year at sea (underway). A normal at-sea mission would occur over a 30-day period, made up of two 9-day exercise segments. The remaining 12 days of the at-sea mission would be spent in transit or repositioning the vessel. In an average year there could be a maximum of 9 missions, six of which would involve the employment of SURTASS LFA sonar in the active mode and three of which would employ the SURTASS LFA sonar in the passive mode only. Active sonar operations could be conducted up to 20 hrs during an exercise day, although the system would actually be transmitting for only a maximum of 4 hrs/day (resulting in 432 hrs of active transmission time per year for each SURTASS LFA sonar system in operation based on a maximum duty cycle of 20 percent). Between missions, an estimated 95 days would be spent in port for upkeep and repair.

At present, only one SURTASS LFA sonar system is available for deployment. A second SURTASS LFA sonar system is expected to be available shortly. Delivery of the third and fourth systems have been postponed until after FY 2007. As a result, under the 5-year window of these regulations, NMFS is authorizing marine mammal harassment takings for only 2 SURTASS LFA sonar systems, on average with one vessel operating in the Pacific-Indian Ocean area and one vessel in the Atlantic Ocean-Mediterranean Sea area. With two vessels, there would normally be 6 SURTASS LFA sonar missions in each of these oceanic basins (or equivalent shorter missions totaling no more than 432 hours of transmission/vessel/ year), or a total of 12 active sonar missions per year over the 5-year period of the regulations.

Description of Acoustic Propagation

The following is a very basic and generic description of the propagation of LFA sonar signals in the ocean and is provided to facilitate understanding of this action. However, because the actual physics governing the propagation of SURTASS LFA sound signals is extremely complex and dependent on numerous in-situ environmental factors, the following is for illustrative purposes only.

In actual SURTASS LFA sonar operations, the crew of the SURTASS LFA sonar platform will measure oceanic conditions (such as sea water temperature and salinity versus depth) prior to and during transmissions and at least every 12 hours, but more frequently when meteorological or oceanographic conditions change. These technicians will then use U.S. Navy sonar propagation models to predict and/or update sound propagation characteristics. According to the Navy, these extremely sophisticated computer simulations are among the most accurate in the world. The short time periods between actual environmental observations and the subsequent model runs further enhance the accuracy of these predictions. Fundamentally these models are used to determine what path the LF signal will take as it travels through the ocean and how strong the sound signal will be at given range along a particular transmission path.

Accurately determining the speed at which sound travels through the water is critical to predicting the path that sound will take. The speed of sound in seawater varies directly with depth, temperature, and salinity. Thus, an increase in depth or temperature or, to a lesser degree, salinity will increase the speed of sound in seawater. However, the oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics which determine the sound speed change with depth (in the case of temperature and salinity), season, geographic location, and locally, with time of day. After accurately measuring these factors, mathematical formulas or models can be used to generate a plot of sound speed versus water depth. This type of plot is generally referred to as a sound speed profile (SSP). Near the surface, ocean water mixing results in a fairly constant temperature and salinity. In this mixed layer, depth (pressure) dominates the SSP and sound speed *increases* with depth. Below the mixed layer, sea temperature drops rapidly in an area referred to as the thermocline. In this region, temperature dominates the SSP and speed *decreases* with depth. Finally, beneath the thermocline, the temperature becomes fairly uniform and increasing pressure causes the SSP to *increase* with depth.

One way to envision sound traveling though the sea is to think of the sound as "rays." As these rays travel though the sea, their direction of travel changes as a result of speed changes, bending or refracting toward areas of lower speed and away from areas of higher speed. Depending on environmental conditions, refraction can either be toward or away from the surface. Additionally, the rays can be reflected or absorbed when they encounter the surface or the bottom. Under the correct environmental conditions, sound rays can repeatedly be refracted upward and downward and thus become trapped in a duct or "sound channel." Similarly, reflections from the surface or the bottom can combine with refraction to create a duct. In the right circumstances, repeated refraction can result in long-range focusing and defocusing of the sound. Because of the possibility of multiple transmission paths, all of which are dependent on environmental conditions, accurate predictions of how sound travels in water is an extremely complex process.

Some of the more prevalent acoustic propagation paths in the ocean include: acoustic ducting; convergence zone (CZ); bottom interaction; and shallow-water propagation.

Acoustic Ducting

There are two types of acoustic ducting: surface ducts and sound channels.

Surface Ducts

As previously discussed, the top layer of the ocean is normally well mixed and has relatively constant temperature and salinity. Because of the effect of depth (pressure), surface layers exhibit a slightly positive sound speed gradient (that is, sound speed increases with depth). Thus, sound transmitted within this layer is refracted upward toward the surface. If sufficient energy is subsequently reflected downward from the surface, the sound can become "trapped" by a series of repeated upward refractions and downward reflections. Under these conditions, a surface duct, or surface channel is said to exist. Sound trapped in a surface duct can travel for relatively long distances with its maximum range of propagation dependent on the specifics of the SSP, the frequency of the sound, and the reflective characteristics of the surface. As a general rule, surface duct

propagation will improve as the temperature uniformity and depth of the layer increase. For example, transmission is improved when cloudy, windy conditions create a well-mixed surface layer or in high-latitude midwinter conditions where the mixed layer extends to several hundred feet deep.

Sound Channels

thus resulting in long-range transmission.

At low and middle latitudes, the deep sound channel axis varies from 1,970 to 3,940 ft (600 to 1,200 m) below the surface. It is deepest in the subtropics and comes to the surface in the high latitudes, where sound propagates in the surface layer. Because propagating sound waves do not interact with either the sea surface or seafloor, sound leaving the near-surface region are refracted back to the surface because of the positive sound speed gradient produced by the greater pressure at deep ocean depths. These deep-refracted rays often become concentrated at or near the surface at some distance from the sound source through the combined effects of downward and upward refraction, thus causing a CZ. CZs may exist whenever the sound speed at the ocean bottom, or

propagation will improve as the temperature uniformity and depth of the layer increase. For example, transmission is improved when cloudy, windy conditions create a well-mixed surface layer or in high-latitude midwinter conditions where the mixed layer extends to several hundred feet deep.

Sound Channels

Variation of sound speed, or velocity, with depth causes sound to travel in curved paths. A sound channel is a region in the water column where sound speed first decreases with depth to a minimum value, and then increases. Above the depth of minimum value, sound is refracted (bent) downward; below the depth of minimum value, sound is refracted upward. Thus, much of the sound starting in the channel is trapped, and any sound entering the channel from outside its boundaries is also trapped. This mode of propagation is called sound channel propagation. This propagation mode experiences the least transmission loss along the path, thus resulting in long-range transmission.

At low and middle latitudes, the deep sound channel axis varies from 1,970 to 3,940 ft (600 to 1,200 m) below the surface. It is deepest in the subtropics and comes to the surface in the high latitudes, where sound propagates in the surface layer. Because propagating sound waves do not interact with either the sea surface or seafloor, sound propagation in sound channels do not attenuate as rapidly as bottom- or surface-interacting paths. The most common sound channels used by SURTASS LFA sonar are convergence zones (CZs).

Convergence Zones

CZs are special cases of the sound-channel effect. When the surface layer is narrow or when sound rays are refracted downward, regions are created at or near the ocean surface where sound rays are focused, resulting in concentrated levels of high sounds. The existence of CZs depends on the SSP and the depth of the water. Due to downward refraction at shorter ranges, sound rays leaving the near-surface region are refracted back to the surface because of the positive sound speed gradient produced by the greater pressure at deep ocean depths. These deep-refracted rays often become concentrated at or near the surface at some distance from the sound source through the combined effects of downward and upward refraction, thus causing a CZ. CZs may exist whenever the sound speed at the ocean bottom, or at a specific depth, exceeds the sound speed at the source depth. Depth excess, also called sound speed excess, is the difference between the bottom depth and the limiting, or critical depth.

CZs vary in range from approximately 18 to 36 nm (33 to 67 km), depending upon the SSP. The width of the CZ is a result of complex interrelationships and cannot be correlated with any specific factor. In practice, however, the width of the CZ is usually on the order of 5 to 10 percent of the range (see Figure 1). For optimum tactical performance, CZ propagation of SURTASS LFA signals is desired and expected in open ocean conditions.

BILLING CODE 3810-FF-P

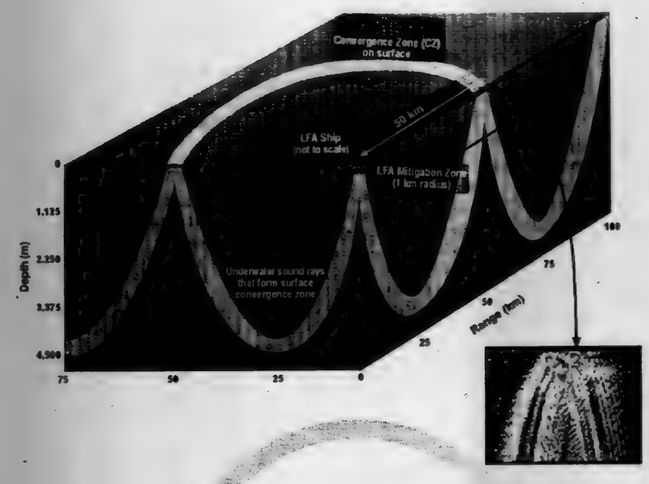

Figure 1. A Schematic of the Propagation of Sound in Convergence Zones.

BILLING CODE 3810-FF-C

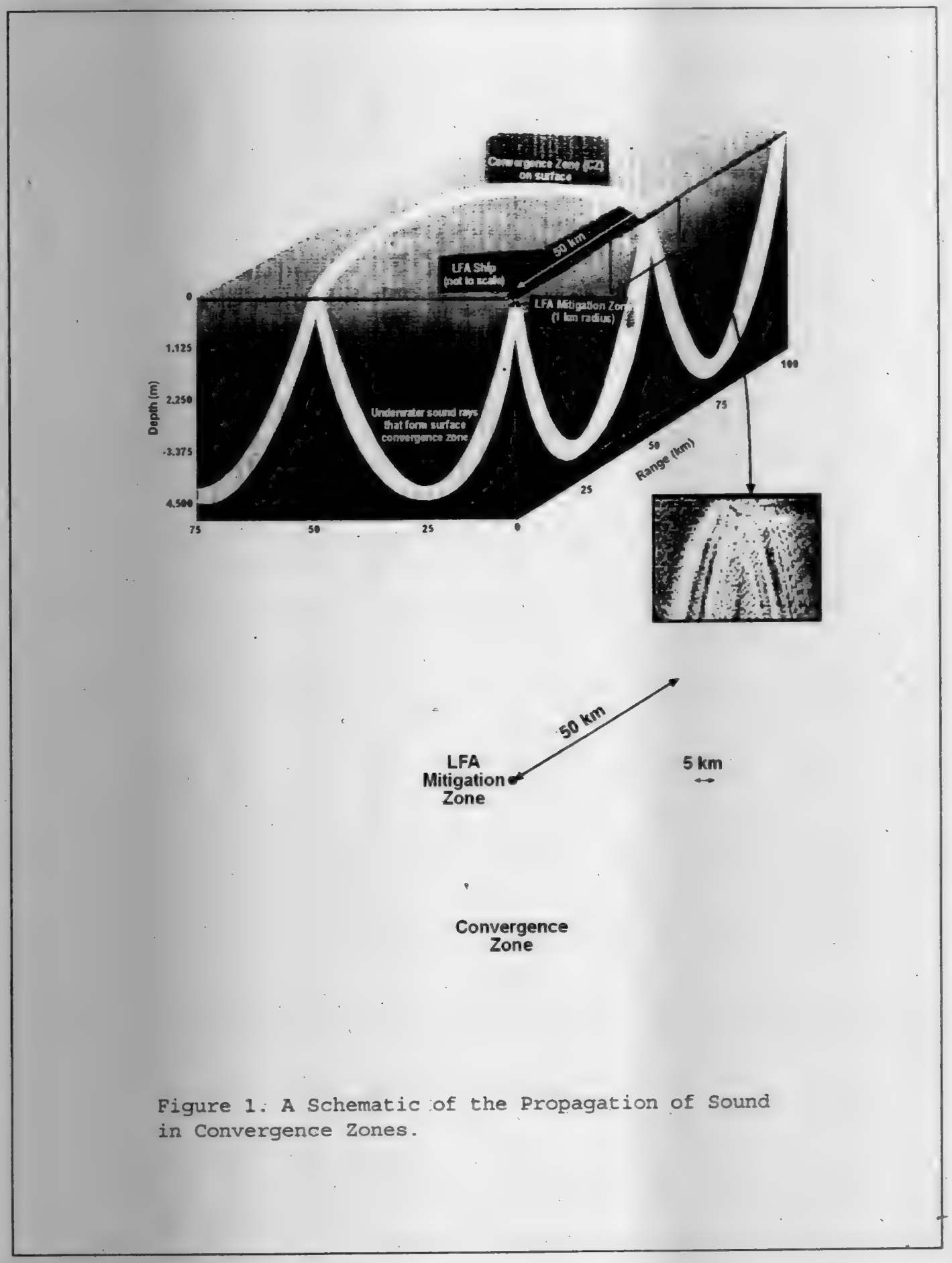

Figure 1. A Schematic of the Propagation of Sound in Convergence Zones.

BILLING CODE 3810–FF–C

Bottom Interaction

Reflections from the ocean bottom and refraction within the bottom can extend propagation ranges. For mid- to high-level frequency sonars (greater than 1,000 Hz), only minimal energy enters into the bottom; thus reflection is the predominant mechanism for energy return. However, at low frequencies, such as those used by the SURTASS LFA sonar source, the sound penetrates the ocean floor, and refraction within the seafloor, not reflection, dominates the energy return. Regardless of the actual transmission mode (reflection from the bottom or refraction within the bottom), this interaction is generally referred to as "bottom-bounce" transmission.

Major factors affecting bottom-bounce transmission include the sound frequency, water depth, angle of incidence, bottom composition, and bottom roughness. A flat ocean bottom produces the greatest accuracy in estimating range and bearing in the bottom-bounce mode.

For SURTASS LFA sonar transmissions between 100 and 330 Hz, bottom interaction would generally occur in areas of the ocean where depths are between approximately 200 m (average minimum water depth for SURTASS LFA sonar deployment) and 2,000 m (660 and 6,600 ft).

Shallow Water Propagation

In shallow water, propagation is usually characterized by multiple reflection paths off the sea floor and sea surface. Thus, most of the water column tends to become ensonified by these overlapping reflection paths. As LFA signals approach the shoreline, they will be affected by shoaling, experiencing high transmission losses through bottom and surface interactions. Therefore, LFA sonar will not be effective in shallow, coastal waters.

In summary, for the SURTASS LFA sonar signal in low- and mid-latitudes, the dominant propagation paths for LFA signals are CZ and bottom interaction (<2000 m (6,600 ft) depth). In high-latitudes, surface ducting provides the best propagation. In most open ocean water, CZ propagation will be most prominent. An example of this propagation path is shown in Figure 1. The SURTASS LFA sonar signals will interact with the bottom, but due to high bottom and surface losses, SURTASS LFA sonar signals will not penetrate coastal waters with appreciable signal strengths.

Comments and Responses

On October 22, 1999 (64 FR 57026), NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on the U.S. Navy application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and content of regulations, if the application was accepted. During the 30-day comment period of that notification, significant comments were received from several organizations and individuals. On March 19, 2001 (66 FR 15375), NMFS published a proposed rule to authorize the U.S. Navy to take small numbers of marine mammals incidental to operation of SURTASS LFA sonar and requested comments, information, and suggestions concerning the request and the regulations proposed to govern the take. The comments provided to NMFS during the ANPR's comment period were addressed in the notice of proposed rulemaking. A copy of the proposed rulemaking document is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Acoustics_Program/acoustics.html*

While the comment period on the proposed rule was for a period of 45 days, the comment period was extended until May 31, 2001, a period of 73 days (66 FR 26828, May 15, 2001). During that time period, NMFS received several thousand comments from organizations and interested citizens. Most of the comments received were petitions, postcards and form letters, either mailed or faxed to NMFS. Approximately 87 letters contained comments, information, and questions that NMFS determined warranted response in this document. Moreover, these letters reflected the same comments that were contained in the other letters and postcards, but in greater detail. They are available for viewing at the following location: *http://fish.nmfs.noaa.gov/ibrm/OPRComments.lhtml?rulein=2*. For those without access to the Internet, copies of these letters and all comments received by NMFS are available from NMFS at copy cost (see **ADDRESSES**).

In addition to written comments, NMFS held three public hearings to obtain oral and written information from the public on NMFS' proposed rule (66 FR 19414, April 16, 2001). These public hearings were held in Los Angeles, CA on April 26, 2001, Honolulu, HI on April 28, 2001, and Silver Spring, MD on May 3, 2001. A copy of any or all of the hearing records is also available from NMFS at copy cost (see **ADDRESSES**).

In this document, NMFS has (1) provided response to comments (RTCs) on both its proposed rule and the Navy's Final EIS; (2) provided cross-references to the appropriate response in the Navy's Final Overseas Environmental Impact Statement and Environmental Impact Statement for SURTASS LFA Sonar (Final EIS) for comments that were addressed in the Navy's Final EIS; (3) edited some comments for clarity and brevity; and (4) grouped similar comments or chosen one or two comments to represent several similar comments. Some comments may not have been addressed because their meaning or relevance was not clear.

In the following sections, NMFS is responding to comments on the Navy activity whether or not the comment was relevant to the Navy's application or the effect of SURTASS LFA sonar on marine mammals and thereby under the purview of NMFS. This was done to further facilitate understanding of the Navy's proposed action, the alternatives identified by the public to SURTASS LFA sonar, and the potential impact of SURTASS LFA sonar on marine mammals.

Activity Concerns (AC)

Comment AC1: The Cold War is over. With no threat from the Russians, why is LFA needed?

Response: It is the opinion of the Navy that the end of the Cold War doesn't end the need for naval surveillance. On 11 October 2001, in testimony before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Committee on Resources on the MMPA and SURTASS LFA Sonar, Vice-Admiral Dennis V. McGinn, the Deputy Chief of Naval Operations for Warfare Requirements and Programs made the following statement concerning the need for SURTASS LFA sonar:

> The Navy has an immediate, critical need for SURTASS LFA. By law, the Navy's primary mission is to maintain, train and equip combat-ready Naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas. Antisubmarine warfare, or ASW, is a critical part of that mission. The Chief of Naval Operations (CNO) has stated that ASW is essential to sea control and maritime dominance. Many nations throughout the world can employ submarines to deny access to forward regions or to significantly delay the execution of crucial Navy operations. Because of its inherent stealth, lethality, and affordability, the submarine is a powerful threat. In 1998 the Chief of Naval Operations emphasized the importance of ASW in protecting our national security and set the direction for achieving operational primacy in ASW. He stated that the Navy's goal is to have the best-trained ASW force in the world, with the right set of tools to prevail in any type of conflict, including the kind we are now facing in the Middle East. My goal here today is to show you why I believe one of the primary ASW tools must be SURTASS LFA.

Comment AC2: War/heightened tension clause is a major loophole allowing the Navy to operate wherever they want without mitigation. Both the Final EIS and the permitting process should address the use of SURTASS LFA sonar during war, combat, and heightened threat conditions.

Response: War, combat, and heightened threat conditions are determined by the Congress or the National Command Authorities (NCA), not the U.S. Navy. Chapter 1 (Purpose and Need) and RTC 1–1.7 of the Final EIS identify the NCA as the President and the Secretary of Defense (or their duly designated alternates or successors), as assisted by the Chairman of the Joint Chiefs of Staff. Since these determinations are not made by the Navy, both the small take application and the Navy's Draft and Final EISs are specifically limited to employment of the SURTASS LFA sonar during training, testing, and routine military operations and will not cover use of the SURTASS LFA system in self-defense, in times of war, combat or heightened threat conditions mentioned by the commenter.

The Final EIS does not include use of SURTASS LFA sonar during these conditions because these operations would be speculative at the EIS stage and outside the Navy's control. Moreover, as noted here, the Council on Environmental Quality (CEQ) regulations, Department of Defense (DOD) Directives and Executive Order (E.O.) 12114 provide specific guidance on what to do in emergencies that are not susceptible to the regular NEPA process.

CEQ Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act under 40 CFR 1506.11 concerning "Emergencies" states,

> Where emergency circumstances make it necessary to take action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency.

DOD Directive 6050.1, Environmental Effects in the United States of DOD Actions, implements the above CEQ regulations and provide policy and procedures to DOD officials. This directive defines "Emergencies" as they apply to DOD Components to include "actions that must be taken to promote the national defense or security that cannot be delayed, and actions necessary to protect life or property."

E.O. 12114 (Environmental Effects Abroad of Major Federal Actions) directs federal agencies to provide informed decision-making for actions that have the potential to significantly harm the environment outside U.S. waters and furthers the purposes of NEPA and other statutes in the global commons. E.O. 12114 Section 2–5 *Exemptions and Considerations* Subsection (a)(iii) states, "actions taken by or pursuant to the direction of the President or Cabinet officer when national security or interest is involved or when the action occurs in the course of an armed conflict are exempt from the Order." Because wartime and heightened threat conditions are provided for by a separate process under CEQ Regulations and are exempted from the requirements of E.O. 12114, consideration of these conditions are outside of the scope of the Final EIS. Therefore, NMFS agrees with the Navy that it is appropriate for these conditions not to be addressed in the Navy's Final EIS.

NMFS is not authorizing the incidental taking of marine mammals during periods of war, combat, and heightened threat conditions in its MMPA application because: (1) The Navy did not request an authorization to cover these conditions, (2) the timing of such events is speculative and outside the control of the U.S. Navy, and (3) because the Navy may not be capable of complying with certain conditions (*e.g.*, area of operations and length of mission, and mitigation and monitoring requirements) contained in the regulations and the Letter of Authorization (LOA). In the rare event that any of these conditions was declared and the Navy's SURTASS LFA sonar assets were included in this condition, an LOA would be placed in abeyance until the war, combat, or heightened threat condition was terminated. Upon its conclusion, NMFS would then reassess the impact on marine mammals using information from the activity area(s) and updated modeling results to determine whether the takings in the future would continue to have no more than a negligible impact on affected marine mammal stocks. For example, additional mitigation might be required to ensure that the stocks affected during the heightened threat condition were not additionally impacted during the period of the regulations' effectiveness.

Comment AC3: A lower-powered, shorter-range system should be used. In a discussion of the supercavitation technology and the Russian Skval torpedo, the commenter stated, "they [the Russians] have also been selling Kilo-Class diesel-electric submarines to nations like North Korea. These submarines are super quiet * * *."

Response: According to the Navy, a lower-powered, and thus shorter-range, system will not meet the Navy's stated need for long-range detection of quiet submarines. The latter statement in the comment reinforces the Final EIS Purpose and Need statement for the development of SURTASS LFA sonar technology and the immediate need to be able to detect these quiet submarines at long range.

Comment AC4: One commenter believes that SPAWAR (Space and Naval Warfare Systems Command) in San Diego (TD3105) stated that SURTASS LFA System was apparently successfully used to locate Soviet submarines during the Cold War.

Response: The referenced statement by SPAWAR actually stated that the SPAWAR Systems Center focused its efforts on the development of *capabilities* to detect and track Soviet nuclear submarines operating in deep water. It also stated that these efforts (development of capabilities) were successful for several systems, such as SURTASS LFA sonar. SPAWAR did not state that SURTASS LFA sonar was used to *actually* track Soviet submarines during the Cold War.

Comment AC5: The Final EIS states that SURTASS LFA sonar is needed to protect "choke points" through which international shipping moves. It also states that LFA operations would generally not occur in areas of high human activity such as high shipping density. Also, will LFA be used in the littorals? If so, the EIS claim that near-shore environments will not be the focus of SURTASS LFA appears to be false.

Response: According to the Navy, SURTASS LFA sonar is a long-range sonar, it does not have to operate in, or near, "choke points" nor close to shore to detect submarines at long range.

SURTASS LFA sonar may support operations that take place in the littoral zone. However, according to the Naval Doctrine Command (1998), littoral zone refers to that area off the coast where naval forces conduct strategic sealift operations, control or interdict sea lines of communication, and project power ashore. The latter objective may entail operations up to approximately 200 nautical miles (nm) (370.4 km) from the coast. However, mitigation measures

prohibit SURTASS LFA sonar from transmitting an SPL greater than 180 dB at a distance of 12 nm (22 km) from any shore.

Comment AC6: One commenter has described a scenario in which the enemy deploys numerous decoys, or "phantom submarines," to confuse the SURTASS LFA sonar computer. He also states that merely by transmitting, the LFA vessel will give away its position.

airgun arrays used in oil and gas exploration. World-wide, there are approximately 150 vessels that conduct these surveys. With source levels of up to 255 dB, and capable of shooting every 10 seconds around the clock, any one of these surveys can put more acoustic energy into the ocean annually than SURTASS LFA sonar. However, the greatest source of sound energy in the oceans caused by humans is from

being developed to improve detection and will be used with SURTASS LFA sonar. Finally, multiple-ship receive arrays are used. Passive-only SURTASS vessels can be used to receive the SURTASS LFA signal from vessels with the active (LFA) component installed. See the Final EIS (RTC 1–1.3) for more information.

Comment AC11: Passive alternatives to SURTASS LFA sonar (*e.g.*, ADS (Advanced Deployable System), Twin

However, on page 2–23 this is contradicted because the Navy stated that "Alternative 2 [unrestricted operations] would provide Fleet operators with * * * maximum submarine detection capability * * *."

Response: Training operations under Alternative 1 in the Navy's EIS will not provide for maximum submarine detection capabilities because of the geographic restrictions. However,

Selection of Species

Comment MMIC1: The impacts on endangered, threatened and depleted species and stocks have not been properly assessed. Specifically mentioned were the migration paths of the female northern (Atlantic) right whale, dugong, and blue and fin whale concentrations in the open ocean.

Response: NMFS believes that impacts to threatened, endangered and

operations, the Navy determined that endangered or threatened species or the critical habitat of any protected species under the jurisdiction of the USFWS will not be affected.

Comment MMIC3: Based on their marked avoidance responses (fleeing up to 80 km (43 nm) from an area where first disturbed) to relatively low levels of LF sounds between 94 and 105 dB (i.e., the 20–1000 Hz band) produced by icebreakers at extraordinarily long

prohibit SURTASS LFA sonar from transmitting an SPL greater than 180 dB at a distance of 12 nm (22 km) from any shore.

Comment AC6: One commenter has described a scenario in which the enemy deploys numerous decoys, or "phantom submarines," to confuse the SURTASS LFA sonar computer. He also states that merely by transmitting, the LFA vessel will give away its position.

Response: As stated in the Final EIS (RTC 1–1.6), the SURTASS LFA sonar vessel cannot remain undetected when transmitting, but it will be protected by naval forces. The use of decoys is a standard countermeasure for undersea warfare, one that has been taken into consideration in the planning and design of sonar systems and tactics.

Comment AC7: Use the military intelligence community to address the diesel submarine threat from rogue nations.

Response: According to the Navy, the intelligence community does provide the Navy Fleet Commanders-in-Chief with information regarding threat submarines. However, real-time, tactical information is still needed from SURTASS LFA sonar for theater commanders to respond to these threats.

Comment AC8: SURTASS LFA sonar is the loudest sound ever produced by man. SURTASS LFA sonar will add tremendously to the problem of ocean noise pollution through the use of very high-energy sound blasting coupled with the long-range underwater effects characteristic of LF sound.

Response: The maximum sound exposure an animal could receive from SURTASS LFA sonar is 215 dB. This is not the loudest sound in the oceans from natural or human sources, nor is it the greatest source of sound energy (in lay terms, the total quantity of sound) in the oceans. Each year billions of lightning strikes hit the ocean with source levels of about 260 dB. Earthquakes and other geological events that exceed 230 dB occur about 1,000 times per year in the Pacific Ocean alone, and 10,000 of them occur that exceed 205 dB. Frankel (1994) estimated the source level for singing humpback whales to be between 170 and 175 dB while Au and Andrews (2001) measured their calls off Hawaii at 189 dB; the average call source level for blue whales was calculated by McDonald *et al.* (2001) to be 186 dB. Watkins *et al.* (1987) and Charif *et al.* (2002) found source levels for fin whales up to 186 dB, and Møhl *et al.* (2000) recorded source levels for sperm whale clicks up to 223 dB (rms).

Aside from explosions, the loudest human noise in the oceans is from airgun arrays used in oil and gas exploration. World-wide, there are approximately 150 vessels that conduct these surveys. With source levels of up to 255 dB, and capable of shooting every 10 seconds around the clock, any one of these surveys can put more acoustic energy into the ocean annually than SURTASS LFA sonar. However, the greatest source of sound energy in the oceans caused by humans is from commercial shipping. SURTASS LFA sonar and all other impulsive human noises could be eliminated and noise levels in the oceans would continue to rise because of shipping alone.

Comment AC9: Provide LFA source level (SL) and attenuation. Define the difference between actual and effective SL of the LFA array. NMFS personnel do not understand that the effective source level of LFAS really is 240 dB. The cumulative sound produced by the LFA array is not limited to the volume of each speaker.

Response: As stated in the Final EIS (RTC 2–1.1 and 2–1.2), the SL of an individual SURTASS LFA source projector is approximately 215 dB. Because the SURTASS LFA array employs more than one source projector, the effective (not actual) SL of the array is a theoretical calculation based on the sound field beam formed by the array at a range of hundreds of meters from the array, where propagation loss has already caused a decrease in received level (RL) of over 40 dB. Therefore, in the proximity of the SURTASS LFA sonar array, the SL approximates that of an individual projector (215 dB), and the sound field of the array is not higher than the SL of an individual projector. For a more detailed explanation see the Final EIS, Appendix B, Subchapter B.3.1.

Comment AC10: The Navy stated that LFA intensities under 215 dB will not "fulfill the purpose." Therefore, there is the likelihood that higher levels will be used during actual military operations. Source level of 215 dB is neither necessary nor desirable. Source levels can be reduced by using: (1) longer duration source signals, (2) replacing single array with multiple arrays, and (3) multi-ship arrays.

Response: According to the Navy, in order to meet the requirement for long-range detection, 215 dB SL is necessary. There will be no transmission levels of greater than 215 dB for each projector. The three items mentioned by the commenter will not reduce the SLs. These items are already part of ASW operations. First, long duration signals of up to a 100-second duration are used by SURTASS LFA sonar. Second, a new twin line SURTASS passive array is being developed to improve detection and will be used with SURTASS LFA sonar. Finally, multiple-ship receive arrays are used. Passive-only SURTASS vessels can be used to receive the SURTASS LFA signal from vessels with the active (LFA) component installed. See the Final EIS (RTC 1–1.3) for more information.

Comment AC11: Passive alternatives to SURTASS LFA sonar (*e.g.*, ADS (Advanced Deployable System), Twin Line SURTASS, Acoustic Rapid Commercial-off-the-shelf Insertion (ARCI) processing, Robust Passive Sonar, "Acoustic daylight" technology) were not considered.

Response: Passive alternatives to SURTASS LFA sonar are discussed in the Final EIS (RTCs 1–2.1, 1–2.2, and 1–2.3). Effective ASW operations require the ability of Fleet Commanders-in-Chief to balance many variable factors, both tactical and environmental, to provide the acceptable probability of detection of threat submarines. The Navy has investigated and/or developed many technologies with the potential to meet its detection needs. These include both passive and active systems. According to the Navy, no one single technology will provide the solution during all tactical and environmental conditions. As stated in the Final EIS (page 2–2), LFA sonar "is an augmentation to the passive [SURTASS] detection system, and is planned for use when passive performance is inadequate." While in some instances passive sonar can provide the detection required, under most conditions, passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot meet the Navy's requirement to detect quiet, hard-to-find submarines during all conditions, particularly at long ranges.

Comment AC12: What are the potential and specific conditions for exceeding 180 dB re: 1 micro Pa (root mean squared (rms)) beyond the 1-km (0.54-nm) mitigation zone? How does that relate to mitigation effectiveness?

Response: Under almost all oceanographic conditions, the 180-dB SPL will not be beyond 1 km (0.54 nm) from the array. Even under ducted or CZ conditions, spherical spreading losses will dominate transmission losses within 1 km (0.54 nm). The actual 180 dB SPL will vary from 750 to 1,000 m (0.4–0.5 nm) from the array. This will not influence mitigation effectiveness.

Comment AC13: In Comment 2–2.1 (in the Final EIS), the Navy states that "the restricted areas will not affect SURTASS LFA sonar routine training and testing, as well as the use of the system during military operations."

However, on page 2–23 this is contradicted because the Navy stated that "Alternative 2 [unrestricted operations] would provide Fleet operators with * * * maximum submarine detection capability * * *."

Response: Training operations under Alternative 1 in the Navy's EIS will not provide for maximum submarine detection capabilities because of the geographic restrictions. However, Alternative 1 is the Navy's preferred alternative in order to protect marine mammals and as a result a small take authorization under the MMPA was not requested for Alternative 2, which would have a potential for increased marine mammal takes.

Comment AC14: Why was the discussion of "Time Reversed Acoustics" as applied to LFA Sonar by NATO (North Atlantic Treaty Organization) and SACLANT (Supreme Allied Commander, Atlantic Center) research omitted from the Final EIS?

Response: There was no discussion of time reversed acoustics in the Final EIS because: (1) No comments were received concerning this issue on the Draft EIS, and (2) It is not relevant to SURTASS LFA sonar analysis. The article referenced by the commenter is Fink (1999) (Scientific American 283(11): 91–97). The commenter stated, "This is an article about a Low Frequency Active Sonar application employed by NATO and the SACLANT research being done." A review of the article found no reference to SURTASS LFA sonar. The NATO/SACLANT experiment concerned underwater communications.

Comment AC15: Individual skippers, untrained in the effects of sound on wildlife, will be allowed to make their own instantaneous assessments based solely on military and political consideration, answerable to none.

Response: NMFS disagrees. The U.S. Navy has asserted that it is committed to full compliance with the LOA issued by NMFS for taking marine mammals incidental to operating SURTASS LFA sonar. Under the LOA, shutdown criteria will be followed whenever a marine mammal is detected prior to entering the 180-dB SURTASS LFA mitigation zone.

Marine Mammal Impact Concerns (MMIC)

During the public comment period, several issues were raised that related more to interpretation of the MMPA than to a discussion of impacts on marine mammals. The former issues are addressed later in this document (see *MMPA Concerns*).

Selection of Species

Comment MMIC1: The impacts on endangered, threatened and depleted species and stocks have not been properly assessed. Specifically mentioned were the migration paths of the female northern (Atlantic) right whale, dugong, and blue and fin whale concentrations in the open ocean.

Response: NMFS believes that impacts to threatened, endangered and depleted species and stocks have been addressed and properly assessed in the Draft and Final EISs. In addition, the Navy has completed formal section 7 consultation under the Endangered Species Act (ESA) with NMFS with the issuance of a Biological Opinion. One result of that consultation is that the Spitzbergen stock of bowhead whales may be subject to Level B harassment. As a result, that stock has been added to the list of authorized species under these regulations.

Animals in unspecified migration corridors and open ocean concentrations are adequately protected by the tripartite mitigation protocols. Dugongs are discussed in RTC MMIC2.

Comment MMIC2: Dugongs occur more than 12 nm (22.2 km) offshore in Australian waters. The U.S. Fish and Wildlife Service (USFWS) should be consulted.

Response: Dugongs are usually found in calm, sheltered, nutrient-rich water less than 5-m (16.4 ft) deep, generally in bays, shallow island and reef areas which are protected against strong winds and heavy seas and which contain extensive sea grass beds. However, they are not confined to inshore waters. There have been sightings near reefs up to 80 km (43.2 nm) offshore in waters up to 37 m (121.4 ft) deep. The average minimum water depth that the SURTASS LFA vessel will operate is 200 m (656.2 ft). The shallowest depth that it can operate is 100 m (328 ft). As a result of sound attention in shallow and shoaling water, dugongs are unlikely to be affected.

The USFWS was consulted. On 18 May 1998, the Department of the Navy, pursuant to section 7 of the ESA, as amended, requested that the USFWS provide a compilation of listed, proposed, and candidate threatened and endangered species under the cognizance of the USFWS covering the ocean regimes in which SURTASS LFA sonar was intended to operate. A copy of this letter was provided in Appendix A of the Final EIS. In addition, the USFWS and the Department of the Interior were provided copies of both the Draft and Final EISs. Because of the offshore nature of SURTASS LFA sonar operations, the Navy determined that endangered or threatened species or the critical habitat of any protected species under the jurisdiction of the USFWS will not be affected.

Comment MMIC3: Based on their marked avoidance responses (fleeing up to 80 km (43 nm) from an area where first disturbed) to relatively low levels of LF sounds between 94 and 105 dB (i.e., the 20–1000 Hz band) produced by icebreakers at extraordinarily long ranges, why were white whales (belugas) in Cook Inlet determined not to be affected by LFA sonar operating in the Gulf of Alaska?

Response: This was discussed in the Final EIS (RTCs 3–2.10 and 3–2.11). The Cook Inlet beluga stock is located in coastal waters and, therefore, is not within the geographic region that SURTASS LFA sonar would operate. Cook Inlet beluga stocks are also unlikely to be subject to SURTASS LFA sonar signals considering the significant coastal sound attenuation prior to reaching Cook Inlet. This assumption has been verified through modeling, as depicted in Figure B–1 of Technical Report (TR) 2. This stock of belugas, therefore, was excluded from further analysis. More information is provided in the Final EIS Subchapter 3.2.5.1.

Furthermore, NMFS does not believe that the discussion on icebreaking vessel noise provided by the commenter is valid for SURTASS LFA sonar. First, NMFS believes the sounds affecting belugas at great distances were not in the 20–1,000 Hz range, but instead were in the 5-kHz range as cited by Richardson *et al.* (1995, p. 257) from the work by Cosens and Dueck (1993). Those latter authors expand on Richardson *et al.* (1995) by noting that belugas are relatively insensitive to sounds below 1 kHz, thus they are unable to detect LF ship noise beyond a few hundred meters of the source even though the source level is high (e.g., 501 Hz at 110 dB = 0.65 km). Higher frequency components of icebreaking vessel noise should be detectable at greater distances because the source levels are relatively high and detection thresholds (of belugas) at those frequencies are relatively low (Cosens and Dueck, 1993). Second, NMFS believes the commenter has taken Richardson *et al.* (1995) out of context. Richardson *et al.* (1995) did not state "fleeing up to 80 km from an area where first disturbed at levels between 94 and 105 dB." The commenter has combined two separate discussions in Richardson *et al.* (1995). What Richardson *et al.* (1995) stated was that after initially being displaced by relatively low levels of noise from the approaching ship (94

to 105 dB in the 20 to 1000 Hz range), the whales sometimes returned 1 to 2 days later when the icebreaking noise levels were still as high as 120 dB. On page 257, Richardson *et al.* (1995) stated that belugas travel up to 80 km (43.2 nm) from the ship track, and typically remain away for 1 to 2 days. They also indicated that this may be due to the high frequency component. Also, this paragraph in Richardson *et al.* (1995)

Potential Effects

Comment MMIC6: The Navy has dismissed behavioral effects below 180 dB as temporary and thus biologically insignificant.

Response: The potential for significant changes in biologically important behavior is considered from 119 to 180 dB as discussed in the Final EIS Subchapter 4.2, specifically 4.2.3.2 and in TR 2.

bubble growth due to supersaturation of gases in the blood (See Final EIS, page 10–137).

Moreover, the Navy's monitoring and mitigation protocols proposed for employment of SURTASS LFA sonar will preclude employment in narrow and deep channels surrounded by land such as those in the Bahamas (22-km/12-nm restriction); and the shut-down criteria for the Navy's high-frequency

surface morphology of the stereocilia is perfectly normal." Stereocilia are the sensory cells responsible for the sensation of hearing. In the chinchilla, no cases of TTS involve the loss of stereocilia, but all cases of PTS do (Ahroon *et al.*, 1996). Cell death clearly qualifies as Level A harassment (injury) under the MMPA. Because there is no cell death with modest (up to 40 dB) TTS, such losses of sensitivity constitute a temporary impairment but

cues that would benefit survival. It should be noted that increased ambient noise levels, due to biologics, storms, shipping, and tectonic events, may also result in short-term decreases in an animal's ability to hear as well as normal. For example, ambient noise in the Hawaiian Islands Humpback Whale National Marine Sanctuary increases seasonally in conjunction with an increase in humpback whale abundance, with no known impacts to

exhibited TTS after a 1-second exposure to maximum levels of 193 dB at 0.4 kHz (400 Hz), the approximate frequency range of SURTASS LFA sonar. NMFS agrees, however, that TTS may occur below 180 dB, depending in part on the duration of the signal and the frequency sensitivity of the recipient. Schlundt *et al.* (2000) showed that bottlenose dolphins experience onset of masked TTS (defined as 6 dB of shift) from a one-second, 3 to 75 kHz, exposure at

to 105 dB in the 20 to 1000 Hz range), the whales sometimes returned 1 to 2 days later when the icebreaking noise levels were still as high as 120 dB. On page 257, Richardson *et al.* (1995) stated that belugas travel up to 80 km (43.2 nm) from the ship track, and typically remain away for 1 to 2 days. They also indicated that this may be due to the high frequency component. Also, this paragraph in Richardson *et al.* (1995) refers to both belugas and narwhals and references Finley *et al.* (1990) (which concerns both whale species). So, it's unclear whether Richardson *et al.* (1995) was referring to narwhals or belugas.

Concerning the belugas "fleeing," on page 256 Richardson *et al.* (1995) stated, "Belugas are rather tolerant of the frequent passages by larger ship vessels traveling in consistent directions in summering areas such as the St. Lawrence River, Cook Inlet, and Beaufort Sea. * * * However, belugas often flee from fast and erratic moving small boats." Icebreakers are not particularly fast, do not move erratically, and are not small. Also, as noted by Cosens and Dueck (1993), the environmental conditions in Lancaster Sound are likely very different than in other areas, such as Cook Inlet. Belugas in Lancaster Sound are inexperienced with shipping noises. Therefore, NMFS considers that the comparison provided by the commenter is not valid for SURTASS LFA sonar.

Comment MMIC4: The EIS completely dismisses organisms that cannot hear in the LF range-humans or toothed whales and dolphins.

Response: The Draft and Final EISs do not dismiss organisms that cannot hear in the LF range. In the Final EIS Subchapter 3.2.1, one of the criteria for analysis of potential impacts is that the organism must have organs or tissues with acoustic impedance different from water or be able to sense LF sound. Potential impacts to human divers and odontocetes are extensively discussed and analyzed. It should also be noted that humans and most odontocetes (which includes dolphins) are capable of hearing in the LF range.

Comment MMIC5: NMFS dismissed concerns of one commenter that ice seals were excluded from consideration in the Draft EIS.

Response: In response to the Marine Mammal Commission (MMC) comment on the Draft EIS, the hooded seal was included in the analysis in the Final EIS and the proposed rule. Also, see Final EIS (RTC 3–2.10).

Potential Effects

Comment MMIC6: The Navy has dismissed behavioral effects below 180 dB as temporary and thus biologically insignificant.

Response: The potential for significant changes in biologically important behavior is considered from 119 to 180 dB as discussed in the Final EIS Subchapter 4.2, specifically 4.2.3.2 and in TR 2.

Comment MMIC7: Intense noise can cause strandings at a variety of frequencies and at RLs well below 180 dB; therefore, there is potential for strandings to occur from deployment of LFA. RLs lower than 180 dB re 1 micro Pa (RMS) can be extremely harmful, even lethal. The Grecian and Bahamian stranding events strongly suggest that SPLs far lower than 180 dB from mid-frequency and LF sounds could have lethal effects on several species of beaked whales over relatively large geographic areas. Therefore, the 1-km (0.54-nm) safety zone is inadequate.

Response: While NMFS agrees that intensive sounds could result in strandings at various frequencies for those marine mammals whose hearing includes the primary frequencies of the sound source, NMFS does not agree with the statements that strandings would occur at levels significantly less than 180 dB. First, results of the Low Frequency Sound Scientific Research Program (LFS SRP) indicated no significant change in biologically important behavior for exposure to sound levels up to 155 dB; i.e., there were no behavioral reactions indicating that marine mammals were being significantly affected or injured. Even though there is an increased probability of behavioral harassment from 155 to 180 dB, there is no indication that behavioral harassment impacts could cause strandings. It should also be noted that many whales vocalize in this range and are not known to result in strandings. With regard to the potential for injury below 180 dB from possible resonance effects, Cudahy and Ellison (2002) noted that "each of the *in vivo* (in the living body) and theoretical studies related to potential tissue damage from underwater sound support a damage threshold on the order of 180 to 190 dB." This tissue damage could include lung damage and hemorrhaging. Also, it has been hypothesized that LF sound could cause bubble growth from supersaturated gases in the blood (similar to the human diver condition known as the bends). Crum and Mao (1996) stated that received level would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (See Final EIS, page 10–137).

Moreover, the Navy's monitoring and mitigation protocols proposed for employment of SURTASS LFA sonar will preclude employment in narrow and deep channels surrounded by land such as those in the Bahamas (22-km/12-nm restriction); and the shut-down criteria for the Navy's high-frequency marine mammal monitoring (HF/M3) sonar has been expanded to include any detection by the HF/M3 sonar that is classified as a marine mammal, which could occur up to 1 km beyond the SURTASS LFA sonar mitigation zone. The stranding of Cuvier's beaked whales in the Mediterranean in 1996 was considered in the SURTASS LFA sonar impact analysis. For details, see the Final EIS pages 3.2–45 to 3.2–47. Both the Greek and Bahamas strandings involved beaked whales. These species are mid-frequency specialists. The only common acoustic source to both events was in the mid-frequency range.

For discussion on whether or not the 1-km (0.54 nm) safety zone is adequate, please see Mitigation Concerns later in this document.

Comment MMIC8: The assumption that temporary threshold shift (TTS), even when it lasts for days, does not constitute injury is intrinsically flawed. TTS may lead to increased vulnerability to predation or to confusion, which may lead to stranding and death.

Response: TTS is a change in the threshold of hearing (the quietest sound an animal can hear), which could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. As such, it could result in a temporary disruption of behavioral patterns, thereby resulting in Level B harassment under the MMPA. The best research to date indicates that the distortion and dysfunction of sensory tissue observed during TTS are only temporary and fully reversed upon recovery (*i.e.*, occasional TTS produces no permanent tissue damage to the ear, only the temporary nondestructive impairment of tissue that fully recovers). This type of temporary nondestructive impairment, as well as the use of TTS in human damage risk criteria, is the scientific basis for not considering TTS as an injury.

Acousticians are in general agreement that a temporary shift in hearing threshold of up to 40 dB due to moderate exposure times is fully recoverable and does not involve tissue damage or cell loss. Liberman and Dodds (1987) state, "* * *acute threshold shifts as large as 60 dB are routinely seen in ears in which the

surface morphology of the stereocilia is perfectly normal." Stereocilia are the sensory cells responsible for the sensation of hearing. In the chinchilla, no cases of TTS involve the loss of stereocilia, but all cases of PTS do (Ahroon *et al.*, 1996). Cell death clearly qualifies as Level A harassment (injury) under the MMPA. Because there is no cell death with modest (up to 40 dB) TTS, such losses of sensitivity constitute a temporary impairment but not an injury. Since the boundary line between TTS and PTS is not clear, definitive, and predictable for marine mammals, NMFS has adopted the standard that 20 dB of TTS defines the onset of PTS (*i.e.*, a temporary shift of 20 dB in hearing threshold). This intentionally conservative standard is appropriate because all of the research on stereocilia has been done on terrestrial mammals, which may be poor models for marine mammals since marine mammals have evolved to withstand large pressure change differentials during diving. This should not be interpreted to mean that the onset of PTS results from adding 20 dB to the dB level found to cause the onset of TTS in an animal, but instead means that the onset of PTS is the sound exposure in level (dB) and duration that would cause a temporary shift of 20 dB in hearing threshold.

As stated in previous actions (66 FR 22450, May 4, 2001), second level impacts (such as potential predation) due to a marine mammal having a temporary hearing impairment cannot be predicted and are, therefore, speculative and difficult to quantify. In fact, any disruption of behavior (Level B harassment) could, with suppositions, be seen as potentially dangerous and, therefore, considered potentially injurious (Level A harassment) as well. Similarly, all injuries could be seen as being accompanied by some disruption of behavior and therefore, Level B disturbances as well as Level A injuries. Such reasoning blurs the distinctions that the statutory definitions of harassment attempt to make.

NMFS believes that Level B harassment, if of sufficient degree and duration, can be very serious and requires consideration when making impact determinations. For example, moderate TTS does not necessarily mean that the animal cannot hear, only that its threshold of hearing is raised above its normal level. The extent of time that this impairment remains is dependent upon the amount of initial TS, which in turn depends on the strength of the received sound and whether the TTS is in a frequency range that the animal depends on for receiving cues that would benefit survival. It should be noted that increased ambient noise levels, due to biologics, storms, shipping, and tectonic events, may also result in short-term decreases in an animal's ability to hear as well as normal. For example, ambient noise in the Hawaiian Islands Humpback Whale National Marine Sanctuary increases seasonally in conjunction with an increase in humpback whale abundance, with no known impacts to these animals. NMFS scientists believe that marine mammals have likely adopted behavioral responses, such as decreased spatial separation, slower swimming speeds, and interruption of socialization to compensate for increased ambient noise or hearing threshold levels.

A hypothesis that marine mammals would be subject to increased predation presumes that the predators would either not be similarly affected by the resultant SPL or would travel from areas outside the impact zone, indicating recognition between a sonar signal at some distance and potentially debilitated food sources. Moreover, NMFS notes that TTS does not cause confusion or disorientation. Disorientation is caused by vestibular affects to the inner ear, not related to TTS (although an animal having vestibular effects could also suffer from TTS). For example, humans attending certain sport or music events may incur a TTS impairment due to the noise, but are not noted for being disoriented afterwards, unless caused by something other than noise. Therefore, NMFS does not believe the evidence warrants that TTS be considered as an injury.

However, because of the SURTASS LFA sonar mitigation zone and the use of the HF/M3 sonar to locate mammals prior to incurring potential injury, the number of animals that might experience an injury from SURTASS LFA transmissions is considered to be few to none. Therefore, no expected increased vulnerability to predation or confusion by SURTASS LFA sonar is expected. This issue will be discussed later in this document (see RTC MMIC40).

Comment MMIC9: There is no evidence that TTS should not occur at SPL of below 180 dB. Caution should be used in citing studies (such as Schlundt *et al.*, 2000) where captive animals were used and the subject animals were not considered to be at the highest risk from LF sound.

Response: The two species tested in Schlundt *et al.* (2000), were tested at their best hearing frequencies (i.e., mid-frequency). In fact, neither the tested bottlenose dolphins nor the belugas exhibited TTS after a 1-second exposure to maximum levels of 193 dB at 0.4 kHz (400 Hz), the approximate frequency range of SURTASS LFA sonar. NMFS agrees, however, that TTS may occur below 180 dB, depending in part on the duration of the signal and the frequency sensitivity of the recipient. Schlundt *et al.* (2000) showed that bottlenose dolphins experience onset of masked TTS (defined as 6 dB of shift) from a one-second, 3 to 75 kHz, exposure at approximately 192 dB RL sound. Assuming a 3-dB exchange rate (e.g., the same amount of shift would result from reducing the intensity by 3 dB and doubling the exposure time (Finneran *et al.*, 2000)), these odontocetes could experience TTS (Level B harassment) from a 16-second exposure to a 180-dB sound at their best frequency, a 32-second exposure at 177 dB, and a 100-sec. exposure at 173 dB. Since this approximation is for mid-frequency marine mammal specialists at mid-frequency sound levels, NMFS believes it is probable that LF marine mammal specialists would incur TTS (Level B harassment) at similar levels and duration to LF sounds. However, the typical SURTASS LFA signal is not a constant tone, but rather a transmission of various waveforms that vary in frequency and duration. A complete sequence of sound transmissions last between 6 and 100 seconds, although the duration of each continuous frequency sound transmission is never longer than 10 seconds. Therefore, the SURTASS LFA signal itself, while possibly capable of causing TTS (Level B harassment), is unlikely to result in Level A harassment (injury) in marine mammals at levels below 180 dB.

Comment MMIC10: Why does NMFS focus on "serious injury", assumed as PTS, whereas the MMC and many other experts have declared that behavioral impacts of biological significance to reproduction and survival cannot be ruled out as results of exposure to LFA well below 180-dB RL? According to NMFS, these impacts cannot be observed over the short term, cannot be mitigated, cannot be quantified as reliable data, and cannot be considered without delaying deployment of LFA. NMFS excludes "behavioral modifications" biologically significant to reproduction and survival because they cannot be observed.

Response: NMFS and the Navy concur that behavioral impacts of biological significance can occur at SPLs below 180 dB. This is implicit in the calculations for Level B takings conducted using the Acoustic Integration Model (AIM). For Level B incidental harassment takings, NMFS

will determine whether takings by harassment are occurring based on whether there is a significant behavioral change in a biologically important activity, such as feeding, breeding, migration or sheltering. All of these activities are potentially important for reproductive success of a marine mammal population.

However, NMFS and the Navy focus on reducing the level of incidental take "Even with a 25 percent reduction in foraging efficiency for all of the 20 days, this would represent only a 5 percent reduction in food intake for that season." The commenter believes that a reduction of 5 percent might affect breeding success, or survival.

Response: Based on the natural regional and annual variability in chlorophyll concentrations that indicate food production for many marine

attempted to lead the discussion toward auditory effects, whereas the authors cited, and objective reviewers clearly recognize, that there are many non-auditory traumas attributable to sound received at high levels. Those listed by the commenter included lung damage and organ system hemorrhage, vestibular dysfunction, and bubble growth in tissue.

Response: NMFS does not agree that

Vestibular function was investigated by the Navy during the Diver's Study and the results reported in TR 3. Measurable performance decrements in vestibular function were observed for guinea pigs using 160 dB SPL signals at lung resonance and 190 dB SPL signals at 500 Hz. It should be kept in mind that guinea pigs are not aquatic species and, as such, are not as robust to pressure changes as marine mammals. Finally, as stated in Crum and Mao (1996) and as

frequency sounds. Other conservative assumptions used in the analysis are presented in the Final EIS Subchapter 1.4.3. Responses to the specific issues are provided here in summary and in detail later in this document:

Non-auditory physiological impacts: As mentioned in RTC MMIC20, Cudahy and Ellison (2002) stated that the expected threshold for *in vivo* tissue damage for low frequency sound is on the order of 180 to 190 dB.

to 180 dB or many pings at a slightly lower RL to possibly incur non-serious injury." This, the commenter believes, is inconsistent with discussions elsewhere in the LOA application and the Final EIS and proposed rule. According to those discussions, "all marine mammals who receive a ping greater than 180 dB are presumed to be injured (that is, seriously injured)." This is presented as conservative because the mitigation seeks to exclude all marine

will determine whether takings by harassment are occurring based on whether there is a significant behavioral change in a biologically important activity, such as feeding, breeding, migration or sheltering. All of these activities are potentially important for reproductive success of a marine mammal population.

However, NMFS and the Navy focus on reducing the level of incidental take by injury, through appropriate mitigation measures (discussed elsewhere in this document), because it believes that injury and mortality can be reduced to the lowest level practicable through various monitoring and mitigation means. In addition, extensive AIM modeling aggregate data results versus probability of risk for all marine mammals modeled at 32 sites worldwide illustrated that the preponderance of all modeled received levels were below 155 dB. This is in the range of exposures in the LFS SRP during which no behavioral impacts of biological significance were observed. Moreover, as detailed elsewhere in this document, NMFS will work with the Navy to undertake a research program to validate impacts on marine mammals and the estimated harassment takes in the area outside the 180-dB isopleth (see RTC MOC25).

Comment MMIC11: Just because animals remain in a particular environment with anthropogenic noise sources present does not mean that they are not negatively impacted by it. They may tolerate the interfering and/or fatiguing effects of the noise because it is occurring in an area of particular biological significance.

Response: NMFS and the Navy agree that animals exposed to SURTASS LFA sonar signals may continue feeding. Phase I of the LFS SRP demonstrated this for blue and fin whales. Also, California sea lions (at Ballard Locks, Seattle, WA) and seals approaching aquaculture pens that are equipped with acoustic harassment devices will feed even in the presence of intense sound sources. However, the 180-dB safety zone for SURTASS LFA sonar insures that no animals will be exposed above that level regardless of context. The 180-dB limit is conservative because both blue and fin whales are known to produce vocalizations at 186 dB. That is, the SURTASS LFA criterion affords animals protection from SPLs that they may commonly experience from other animals.

The alternative hypothesis is discussed in RTC 4–5.39 of the Final EIS.

Comment MMIC12: The LOA application and the Final EIS state, "Even with a 25 percent reduction in foraging efficiency for all of the 20 days, this would represent only a 5 percent reduction in food intake for that season." The commenter believes that a reduction of 5 percent might affect breeding success, or survival.

Response: Based on the natural regional and annual variability in chlorophyll concentrations that indicate food production for many marine mammals, particularly the baleen whales, a 5 percent change in food availability falls within very reasonable statistical bounds. While this does not necessarily mean that an animal would not change its foraging range in order to make up for a food deficiency in one area, it does point up the high probability that from year-to-year, marine mammals can be expected to have different levels of food intake. Thus, a one-time 5 percent change in food intake for a single season (provided the animal is not affected in more than that single season) is considered to have a very low probability of exerting any significant change in that animal's survival or breeding success; and certainly will not affect an animal stock in any significant way.

Comment MMIC13: No research done on effects of marine mammals feeding, or the species upon which they feed.

Response: The LFS SRP conducted research related to marine mammal feeding. The goal of the LFS SRP was to demonstrate avoidance reactions for LF-sensitive species (baleen whales) during critical biological behaviors (foraging/feeding, migrating, breeding). Phase I of the LFS SRP conducted manipulative field experiments to test the effects of LF sound on foraging fin and blue whales off San Nicolas Island, CA. For additional information see Croll *et al.* (2001) and TR 1.

In addition, the potential effects of SURTASS LFA sonar on fish and prey species are covered in the Final EIS Subchapters 4.1.1 and 4.2.7.6. The potential effects on invertebrates are covered in the Final EIS Subchapter 3.2.1.1.

Non-Auditory Metrics

Comment MMIC14: It is incorrect to pick sensory modality for the only discussion concerning the potential harm to marine mammals from mid- and low-frequency sonar. To support this, Richardson *et al.* (1995) was paraphrased in a misleading way because the authors listed four zones of noise influence in which the fourth and most extreme was the zone of hearing loss, discomfort, or injury that is in the "area near the noise source * * *." In other words, NMFS has inappropriately attempted to lead the discussion toward auditory effects, whereas the authors cited, and objective reviewers clearly recognize, that there are many non-auditory traumas attributable to sound received at high levels. Those listed by the commenter included lung damage and organ system hemorrhage, vestibular dysfunction, and bubble growth in tissue.

Response: NMFS does not agree that it has paraphrased Richardson *et al.* (1995) incorrectly. While Richardson *et al.* (1995) listed only four types of noise influence, in recent years, NMFS has defined six categories of noise based on Richardson *et al.* (1995), but updated by Richardson in several small take applications (see for example, BPXA, 1999; Western Geophysical, 1999, 2000; WesternGeco, 2001). This updated information was incorporated into the preamble to the proposed rule. Recently, NMFS has updated small take notices with recognition that there is a potential for non-auditory impacts from loud noises. For example, in the preamble to the final rule for NPAL (66 FR 43442, August 17, 2001) NMFS noted that "intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage." This statement has been added into the current document in recognition of the potential for non-auditory impacts from loud noise events.

However, what is relevant in this document and in the Final EIS is whether or not marine mammals will be exposed to SURTASS LFA signals at high enough intensities to cause non-auditory traumas. With the proposed mitigation measures, the Final EIS analysis concluded that the potential impact on any stock of marine mammals from injury is considered negligible, and the effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal. These potential effects include non-auditory traumas (tissue damage), which are considered to be injuries.

Since the release of the Final EIS, an investigation by Cudahy and Ellison (2002) noted that the expected threshold for *in vivo* (in the living body) tissue damage (including lung damage and hemorrhaging) for LF sound is on the order of 180 to 190 dB. Vestibular effects themselves, which could affect balance and equilibrium, while not considered to be an injury, could be a manifestation of an injury when caused by an impact such as PTS. However, these effects are based on humans.

Vestibular function was investigated by the Navy during the Diver's Study and the results reported in TR 3. Measurable performance decrements in vestibular function were observed for guinea pigs using 160 dB SPL signals at lung resonance and 190 dB SPL signals at 500 Hz. It should be kept in mind that guinea pigs are not aquatic species and, as such, are not as robust to pressure changes as marine mammals. Finally, as stated in Crum and Mao (1996) and as discussed in the Final EIS (page 10–137), researchers hypothesized that the received level would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood. Because the above "non-auditory traumas" are not expected to result from sound exposure below SPLs of 180-dB and the high detection rate of the HF/M3 sonar assuring required SURTASS LFA sonar shutdown when any marine mammal approaches or enters the 180-dB SURTASS LFA mitigation zone, the risks of these traumas to a marine mammal approach zero.

Comment MMIC15: The Navy and NMFS have systematically underestimated the number of animals that may be taken by SURTASS LFA sonar, if deployed, because: (1) Neither the Navy nor NMFS has considered the potential for non-auditory physiological impacts; (2) neither has meaningfully evaluated the potential for stranding; (3) both have underestimated the potential for auditory impacts; (4) both have failed to consider the full range of behavioral impacts and have underestimated the potential for those it has considered; (5) neither has accounted for cumulative and synergistic impacts of multiple active systems or other sound sources operating in the same region; and (6) both have underestimated or have failed to assess impacts on prey species.

Response: The number of animals potentially taken has not been underestimated. On the contrary, the analysis contained in the Draft and Final EISs has erred on the side of caution. The analysis is based on criteria for impacts based on the potential effects to baleen whales, which are considered the most sensitive marine mammals to LF sound (Ketten, 2001). These potential effects are then applied equally to all marine mammals that, based on geographic demographics, could be exposed to the SURTASS LFA sonar signal. Most of these animals are not as sensitive to LF sound as the baleen whales. Some may be nearly as sensitive, such as the sperm whale and elephant seal; but more are predominately sensitive to mid- to high-frequency sounds. Other conservative assumptions used in the analysis are presented in the Final EIS Subchapter 1.4.3. Responses to the specific issues are provided here in summary and in detail later in this document:

Non-auditory physiological impacts: As mentioned in RTC MMIC20, Cudahy and Ellison (2002) stated that the expected threshold for *in vivo* tissue damage for low frequency sound is on the order of 180 to 190 dB.

Stranding: This issue is addressed in detail starting with RTC MMIC22 in this document. In addition, a review of all SURTASS LFA operations with recorded stranding events determined that there have been no strandings associated with SURTASS LFA sonar.

Auditory impacts: The potential for auditory impacts as discussed in the Draft and Final EISs is based on scientific research and conservative analyses.

Behavioral impacts: The criteria for the potential risk of significant change in biologically important behavior, which are discussed in detail in the Draft and Final EISs, are based on scientific research and conservative analyses. See RTC MMIC10 and MMPAC22a in this document.

Cumulative impacts: Cumulative impacts are covered in the Final EIS in Subchapter 4.4. The synergistic impact of multiple active systems is analyzed in the Final EIS Subchapter 4.2.7.4. In addition, SURTASS LFA sonar operations will usually avoid areas with high levels of LF noise/sound (*e.g.*, seismic surveys).

Prey species: Prey species are discussed in the Final EIS. Many of these species, such as squid and zooplankton, are not analyzed because they did not meet the screening criteria used in the Draft and Final EISs for determining whether species would be impacted as determined in Croll *et al.* (1999). Fish species are covered in the Final EIS Subchapters 3.2.2 and 4.1.1. Additionally, during the LFS SRP Phase I, prey field studies were conducted. Variations in these fields were within the normal prey field variations expected from typical changes in natural oceanographic conditions (see TR 1 for more information).

Therefore, based on the above information, NMFS concludes that the potential takes of marine mammals from the operation of the SURTASS LFA sonar has more likely been overestimated by the Navy than underestimated.

Comment MMIC16: One commenter notes that the LOA application states, "* * * a marine mammal would have to receive one ping greater than or equal to 180 dB or many pings at a slightly lower RL to possibly incur non-serious injury." This, the commenter believes, is inconsistent with discussions elsewhere in the LOA application and the Final EIS and proposed rule. According to those discussions, "all marine mammals who receive a ping greater than 180 dB are presumed to be injured (that is, seriously injured)." This is presented as conservative because the mitigation seeks to exclude all marine mammals from the 1 km (0.54 nm) "serious injury impact zone (corresponding to the 180 dB sound field)." Therefore, marine mammals will definitely incur serious injury, as a "conservative" assumption. Clarify "serious injury" well inside of the 180-dB zone and any animal within the 180-dB zone is considered to be injured. The possibility of damage should be at 1 km (0.54 nm), not next to the array.

Response: Neither the proposed rule nor the Final EIS use the term "serious" injury when referring to the 180–dB criterion. In response to comment 18 in the proposed rule, NMFS stated that for this proposed action, scientists have determined that a single-ping RL of 180 dB can be considered a scientifically precautionary level to prevent the potential onset of injury to marine mammals. Serious injury is discussed in response to comment 20 in the proposed rule. NMFS stated that because serious injury is unlikely to occur unless a marine mammal is well inside of the 180–dB safety zone and close to the SURTASS LFA sonar source, and because the closer a marine mammal is to the SURTASS LFA source the more likely it is to be detected and transmissions suspended, the potential for serious injury is minimal.

The LOA application was based on the Draft EIS while the proposed rule was based on the Final EIS. For this reason the LOA application is inconsistent with the Final EIS and proposed rule because the terms "non-serious" and "serious" injury were changed from the Draft EIS to the Final EIS as a result of comments received on the Draft EIS. Also see response to comment 11 in the proposed rule document.

Comment MMIC17: Many scientists believe that LFA sonar is likely to be more harmful than mid-frequency sonar because it covers greater distances and, therefore, exposes more animals and has longer pings.

Response: Comparisons of mid- and low-frequency sonar characteristics do not support this belief. It is true that LF-sonar signals travel farther and usually have longer pulse/ping lengths than MF-sonar signals, under most oceanographic

conditions, which is why the Navy developed the technology. Of importance, however, is the animals' physical susceptibility and behavioral reaction to LF sounds, and that there are far greater numbers of marine mammals sensitive (*i.e.*, auditory—how well they hear) to mid- and high-frequency sound than to LF sound. Most marine mammals hear, vocalize and/or echolocate in the mid- to high-frequency biologically important behavior is considered minimal.

Finally, it seems plausible that marine mammals that have evolved in an ambient hydrostatic pressure environment spanning several orders of magnitude (1:10^3) of dynamic range would be predisposed to have an innately more rugged physiology for handling pressure changes than terrestrial animals (Cudahy and Ellison, information see Final EIS (RTC 3–2.2, 4–5.14, and 4–6.21).

Comment MMIC21: Injury and aversion could extend to at least the first CZ (33 to 65 km (17.8 to 35.1 nm)).

Response: For discussion on CZs, refer to the discussion earlier in this document (see *Description of Acoustic Propagation*). As discussed in response to earlier comments, unless an animal is within the 180–dB SURTASS LFA sonar

operations are a long distance from coastlines (and strandings are unlikely to come ashore), or because the LFA sonar will not cause strandings?

Response: NMFS does not consider strandings to occur only when an animal comes ashore. Any marine mammal injured, dead, or dying comes under the NMFS stranding program and is investigated to the fullest extent possible. However, based on the operational parameters of the SURTASS found that the tactical mid-range frequency sonars that were in use aboard U.S. Navy and allied ships during the March 15–16, 2000, Bahamas sonar exercise were the most plausible source of acoustic or impulse trauma to six beaked whales (DOC and SECNAV, 2001). Tissues from these animals are being intensively studied for the mechanism that caused death. DOC and SECNAV (2001) noted, "SURTASS LFA, another Navy sonar, had no

whales in March 1998 at Rum Cay in the Bahamas. He also stated that a large balaenopterid (cf. *Balaenoptera physalus*) stranded alive under mysterious circumstances on Eleuthera Island in the Bahamas on March 3, 2000, following a TIAPS exercise in the area on February 2000.

Response: TIAPS is an independent Research and Development project being conducted by the Defense Research and Development Canada, an

conditions, which is why the Navy developed the technology. Of importance, however, is the animals' physical susceptibility and behavioral reaction to LF sounds, and that there are far greater numbers of marine mammals sensitive (*i.e.*, auditory—how well they hear) to mid- and high-frequency sound than to LF sound. Most marine mammals hear, vocalize and/or echolocate in the mid- to high-frequency range. In addition, over the past 5 years, the potential effects of LF sonar on marine life has been studied in greater detail than for mid-frequency sonars, meaning there have been more data generated to support the conclusions presented in the Final EIS. NMFS believes that the SURTASS LFA process could be a model of the precautionary approach to introducing novel sound sources into the sea, moving incrementally, conducting research, and developing appropriate mitigation measures.

Comment MMIC18: Because LFA signals are best propagated in the deep sound channel, distant whales are likely to hear the source.

Response: That is a correct statement provided the whales are actually in the deep sound channel and that there is a sufficient amount of SURTASS LFA sonar energy within the channel for the whales to hear. Also, as discussed later in this document, simply hearing the SURTASS LFA signal does not necessarily indicate that a whale has been harassed or "taken."

Comment MMIC19: Injury and psychological effects can result in stranding or adverse reaction, such as rapid ascent from depth.

Response: The Final EIS offers detailed analysis and discussion to support the conclusion that, given the employment of SURTASS LFA sonar will occur as proposed in the Final EIS (with geographic restrictions and monitoring/mitigation measures), the potential for injury to any marine mammals is considered negligible. See Subchapter 1.4 and Subchapter 4.2 for more details. Also, despite the fact that the measurement of the potential for psychological effects on marine mammals from underwater sound sources in the field is extremely problematic and expensive to collect, it is not unreasonable to consider that the analysis of the potential for behavioral effects can be used as a benchmark. Thus, the Final EIS concludes that if SURTASS LFA sonar is employed with the proposed geographic restrictions and monitoring/mitigation measures, the effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal.

Finally, it seems plausible that marine mammals that have evolved in an ambient hydrostatic pressure environment spanning several orders of magnitude (1:10^3) of dynamic range would be predisposed to have an innately more rugged physiology for handling pressure changes than terrestrial animals (Cudahy and Ellison, 2002). Therefore, no psychological or physiological effects would be anticipated from any rapid ascent from depth.

As mentioned in RTC MMIC15 and later in RTC MMIC27, a review of all SURTASS LFA sonar operations has determined that there have been no strandings associated with SURTASS LFA sonar or any other sonar operating below 450 Hz.

Comment MMIC20: LF sonar disrupts the immune system, nervous system, and other body systems and tissues, and causes psychological problems.

Response: See previous response regarding psychological effects. Also, there is no reason to suspect that an intermittent noise source, such as SURTASS LFA sonar would have impacts on marine mammal immune, nervous or other body systems. If LF sounds were to have system-level impacts, one would presume that such effects would manifest first in those marine mammals inhabiting noisy areas, such as offshore large ports where large vessels (with LF sounds) occur in large numbers, or the Gulf of Mexico, off Newfoundland or in the North Sea where offshore oil and gas seismic activity predominate almost year-round.

Regarding tissue effects, Cudahy and Ellison (2002) indicate that the potential for *in vivo* tissue damage to marine mammals from exposure to underwater LF sound will occur at a damage threshold on the order of 180 to 190 dB. This includes: (1) Transluminal (hydraulic) damage to tissues at intensities on the order of 190 dB or greater; (2) vascular damage thresholds from cavitation at intensities in the 240–dB regime; (3) tissue shear damage at intensities on the order of 190 dB or greater; and (4) tissue damage in air-filled spaces at intensities above 180 dB.

Therefore, unless an animal is within the 180–dB SURTASS LFA sonar mitigation zone, NMFS believes that present scientific information indicates that there should be no physical damage to marine mammal body systems or tissues at an SPL less than 180 dB. Because of the mitigation measures, the potential taking of a marine mammal within the 180–dB mitigation zone is considered minimal. For additional information see Final EIS (RTC 3–2.2, 4–5.14, and 4–6.21).

Comment MMIC21: Injury and aversion could extend to at least the first CZ (33 to 65 km (17.8 to 35.1 nm)).

Response: For discussion on CZs, refer to the discussion earlier in this document (see *Description of Acoustic Propagation*). As discussed in response to earlier comments, unless an animal is within the 180–dB SURTASS LFA sonar mitigation zone, the best scientific information available to NMFS indicates that there should be no physical damage (or injury) to marine mammal body systems or tissues at SPLs below 180 dB. Because the first CZ (as shown in Figure 1) is well beyond the 1-km (0.54 nm) radius of the 180–dB SURTASS LFA mitigation zone, no injury should occur at the first CZ or beyond.

The Navy concluded in the Final EIS analysis that significant changes in biologically important behaviors, which could include aversion, may occur, although effects to marine mammal stocks are considered to be negligible.

Strandings

Comment MMIC22: Because none of the previously identified beaked whales in the Bahamas have been seen since the stranding, they may have all been killed or displaced.

Response: Worldwide, the numbers and behavior of beaked whales are poorly known because the animals tend to be shy and avoid survey vessels. The beaked whale population of the Northeast and Northwest Providence Channels of the Bahamas is known somewhat better than in the rest of the Caribbean because resident biologists have been studying it for some time. While one of these biologists stated that the animals are no longer in the area of the March 2000 stranding event, and NMFS has no reason to doubt this statement, the statement that these whales all died from the sonar is an assertion that is not based on data. These whales could have moved to a different foraging area. Without data, one cannot fairly attribute disappearances to any particular cause. These data would not be difficult to obtain. However, one cannot presume that because one type of sonar is implicated in taking one type of whale, another sonar system will have a similar effect. Therefore, the above comment is noted as a comment ancillary to the action under consideration here.

Comment MMIC23: The Navy stated that because of the offshore nature of SURTASS LFA sonar operations, it does not believe that there is a potential for LFA sonar to result in marine mammal stranding incidents. Is this because the operations are a long distance from coastlines (and strandings are unlikely to come ashore), or because the LFA sonar will not cause strandings?

Response: NMFS does not consider strandings to occur only when an animal comes ashore. Any marine mammal injured, dead, or dying comes under the NMFS stranding program and is investigated to the fullest extent possible. However, based on the operational parameters of the SURTASS LFA sonar, there is no reason to believe that there is a potential for the SURTASS LFA sonar to cause injuries or strandings. In addition, because of the fact that SURTASS LFA sonar operations will not occur closer than 12 nm (22 km) from any coastline and because the mitigation measures (passive acoustic, visual observations, and a new high frequency sonar designated HF/M3) used will be above 95 percent effective in detecting most marine mammals prior to entry into the 180–dB SURTASS LFA sonar mitigation zone, injury and/or strandings are highly unlikely.

Comment MMIC24a: Active sonar can kill/traumatize whales. Examples are strandings (Greece, Bahamas, 6 additional strandings, etc.). LFA sonar will cause the extinction of beaked whales and the entire world population of marine mammals. The Navy has ignored a number of mass strandings connected with naval maneuvers involving one form or another of active sonar. Discuss the well-documented stranding of four beaked whales on 3 different Caribbean islands on October 1999, which were correlated with loud sounds in the water. The Canadian LFA system (Towed Integrated Active-Passive Sonar (TIAPS)) has been implicated in the stranding of three Blainville's beaked whales in March 1998 at Rum Cay in the Bahamas. The NATO LFA system (Towed Vertically Directive Source (TVDS)) has been implicated in at least two stranding events in the Mediterranean: (1) Thirteen mammals in Kyparissiakos Gulf in Greece on May 12 and 13, 1996 and (2) nine mammals in the western Peloponnesus approaches on October 1997. These strandings demonstrate that whales can be injured by LF sonar. Why was there a failure to consider the strandings that followed NATO use of low-frequency sonar in the Mediterranean in 1996?

Response: Sonars differ in their operating characteristics, and marine mammal species differ greatly in the sounds to which they are susceptible. This is often overlooked by the public. The scientific investigation regarding the Bahamian beaked whale stranding found that the tactical mid-range frequency sonars that were in use aboard U.S. Navy and allied ships during the March 15–16, 2000, Bahamas sonar exercise were the most plausible source of acoustic or impulse trauma to six beaked whales (DOC and SECNAV, 2001). Tissues from these animals are being intensively studied for the mechanism that caused death. DOC and SECNAV (2001) noted, "SURTASS LFA, another Navy sonar, had no involvement in this event."

A review of the Smithsonian stranding database shows that there have been seven other instances of beaked whale strandings involving more than one species. One of these activities involved ordnance, two were not identified with military activities, and four were concurrent with military maneuvers (Potter, 2000). Except for the Bahamas stranding, no tissues were collected, and the type of military maneuvers and time and distance separating them from the strandings are not known. Without this information science can never prove whether sonar did or did not cause these deaths. These events point out the pressing need for proper scientific study of marine mammals around many sonar operations, including those of SURTASS LFA sonar.

Investigations indicate that SURTASS LFA sonar has not been known to cause a stranding; and because it uses extensive mitigation measures (passive acoustic, visual observers, and the HF/M3 sonar) that make an injury and therefore a stranding unlikely. No mitigation was used with any of the other events just discussed.

The stranding of Cuvier's beaked whales in the Mediterranean in 1996 was considered in the SURTASS LFA sonar impact analysis. For details, see the Final EIS pages 3.2–45 to 3.2–47.

On October 3, 1999, 4 beaked whales (*Ziphius cavirostris*) stranded in the U.S. Virgin Islands. The Navy had exercises ongoing in the offshore waters and also had live-fire exercises in nearshore waters during the time period when the beaked whales stranded. The offshore exercises, but not inshore exercises involved sonar. Although SURTASS LFA sonar was not involved in these exercises, the Navy has not formally confirmed whether mid-frequency sonars may have caused these four whales to strand in the Caribbean.

Information on the stranding in March 1998 at Rum Cay is provided in the following RTC.

Comment MMIC24b: One commenter stated that TIAPS, the Canadian LFA system, has been implicated in the stranding of three Blainville's beaked whales in March 1998 at Rum Cay in the Bahamas. He also stated that a large balaenopterid (cf. *Balaenoptera physalus*) stranded alive under mysterious circumstances on Eleuthera Island in the Bahamas on March 3, 2000, following a TIAPS exercise in the area on February 2000.

Response: TIAPS is an independent Research and Development project being conducted by the Defense Research and Development Canada, an agency of the Department of National Defense and there is no frequency overlap between TIAPS and SURTASS LFA sonar (TIAPS is approximately 1 kHz). To respond to this comment, the Navy contacted the Project Manager/TIAPS at the Canadian Defense Research Establishment Atlantic. The project manager stated that he cooperated with the commenter and his associates in regard to his investigation of both strandings. Concerning the three beaked whale strandings in March 1998 it is apparent that TIAPS Q244 was completed in Exuma Sound well before the time the whales stranded. NMFS, of course, is interested in receiving any information regarding this stranding for its stranding database.

In regard to the March 2000 stranding of a fin whale, because that stranding occurred 18 days after the TIAPS exercise, there does not appear to be a connection between TIAPS trials and the March 2000 strandings in the Bahamas.

Comment MMIC25: Historical records of beaked whale strandings, compiled by the Smithsonian Institution's Marine Mammal Program in the wake of the Bahamas event, suggest a very high correlation between naval activities and both individual beaked whale strandings and multi-species strandings involving beaked whales. The correlation of all the known mixed species mass strandings involving beaked whales with nearby naval maneuvers (International Whaling Commission (IWC, 2001)) most certainly provides evidence for causation. Further investigations by the Navy into military activities and cetacean stranding is warranted.

Response: As mentioned in RTC MMIC24a, Potter (2000) indicates that there have been seven mixed species mass strandings involving beaked whales. Although four of the seven mixed-species mass strandings are associated in time with some type of military maneuvers, none appears to be related to LF sonar.

Simmonds and Lopez-Jurado (1991) stated that between 1982 and 1989 there were 22 strandings of cetaceans in the Canary Islands, with only three being

related in time to military activity. Simmonds and Lopez-Jurado (1991) reported in their text that "Local people have only been aware of such military maneuvers three times since 1985; on each occasion mass live strandings have occurred." These authors indicate that military maneuvers were documented in 1985, 1986 and 1989. However, they report a mass stranding in the Canary Islands in 1986, and there is no mention

Response: The commenter's application of a binomial probability experiment methodology to these data may not be statistically appropriate. NMFS notes that the "rate" of military activity is undefined and unquantified. Also, the stranding data are most probably skewed, in that the distribution of stranding network effort, and naval activity are both non-random and are most likely correlated, since generally countries with an advanced

comment was discussed in the previous RTC in this document.

Comment MMIC28: There is now a weight of evidence (Bahamas stranding event) that beaked whales are at far greater risk from these operations (naval sonar operations) than the four species of mysticetes studied in the LFS SRP; thus, the commenters suggest that NMFS should revise its "negligible impact determination" accordingly.

Response: The Navy's LFS SRP was

Similarly, it is unlikely that SURTASS LFA sonar operations (which would not operate in areas similar to the Bahamas incident) would cause stock level impacts. Therefore, as indicated later in this document, NMFS believes that SURTASS LFA sonar operations are unlikely to have more than a negligible impact on affected species or stocks of marine mammals.

Comment MMIC29: There is no evidence to support the Navy's position

Response: It was not. Readers interested in super-cavitation torpedoes are directed to Ashley. 2001. Scientific American 285(5).

Resonance

Comment MMIC33: Resonance effects in air/gas cavities or spaces can cause injury (tissue damage) or mortality to marine mammals, such as the Greece and Bahamas beaked whale strandings. Air space resonance produced by LFA

marine mammals which require more detailed studies to model lung responses over a range of volumes and diving depths. The Navy has the capability and resources to conduct a thorough review and modeling of all this data, including, for example, full finite element analysis of the ears and air spaces of the Cetacea and other marine mammals to LFA sonar sounds to access the potential for tissue

related in time to military activity. Simmonds and Lopez-Jurado (1991) reported in their text that "Local people have only been aware of such military maneuvers three times since 1985; on each occasion mass live strandings have occurred." These authors indicate that military maneuvers were documented in 1985, 1988 and 1989. However, they report a mass stranding in the Canary Islands in 1986, and there is no mention of military activity in either their report or the Smithsonian database. Furthermore, there is another mixed species mass stranding involving beaked whales noted in the Smithsonian database that occurred in the Canary Islands in 1987, which is also not associated with military activity. One of the mass strandings, from 1974, had an animal with bullet holes found in the body.

Only one of these seven multiple species strandings is known to have occurred concurrent with naval activities and the use of active mid-frequency sonar, the Bahamas stranding in March 2000. There was a single species, mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf in Greece concurrent with the testing of a NATO sonar, whose lowest frequency is 450 Hz, but which also transmits in the 2.6 kHz to 3.4 kHz range. See the Final EIS Subchapter 3.2.5.1 for a more information on these beaked whale strandings.

Summarizing, the information available on marine mammal strandings is, at best, incomplete and inconsistent. Since NMFS does not know how many sonar operations occurred during this time period without marine mammal injuries or strandings, it believes that the data do not necessarily suggest a high correlation between naval activities and beaked whale strandings, nor do they provide evidence of causation; especially for LF sonar.

However, NMFS has not dismissed this information and will coordinate information contained in the annual LOA report, principally time and location of every SURTASS LFA sonar operation, with stranding data that NMFS receives from its stranding coordinators in order to determine whether any links might exist between them.

Comment MMIC26: Based on calculations of the probability of the number of coincidences between strandings and military activities, under the null hypothesis, it is very unlikely that the stranding events of beaked whales were unrelated to military operations unless military operations are very common.

Response: The commenter's application of a binomial probability experiment methodology to these data may not be statistically appropriate. NMFS notes that the "rate" of military activity is undefined and unquantified. Also, the stranding data are most probably skewed, in that the distribution of stranding network effort, and naval activity are both non-random and are most likely correlated, since generally countries with an advanced economy and military can afford stranding network efforts and attract military attention.

Comment MMIC27: Because Dr. Tyack's analysis discussed in Final EIS (RTC 4–4.21) is not presented in detail, the response is "arbitrary and capricious." Provide a comparison of Dr. Tyack's analysis to that of Dr. Whitehead in his May 4, 2001, comments on the proposed rule. One commenter disputes the NMFS statement that "there is no evidence linking SURTASS LFA sonar transmissions to any stranding events * * *" because of the beaked whale stranding on the Grecian coast in 1996.

Response: The Grecian stranding in 1996 was not caused by SURTASS LFA sonar because that sonar was not operating in that area. Both the Greek and Bahamas strandings involved beaked whales. These species are mid-frequency specialists. The only common acoustic source to both events was in the mid-frequency range. There were no low frequency sonar sources involved in the Bahamas stranding (DOC and SECNAV, 2001). Therefore, the evidence does not support the LF component as having a causal relationship to the stranding of beaked whales in Greece. Because tissue damage is not expected to occur from sound exposure below SPLs of 180 dB (Cudahy and Ellison, 2002) and the SURTASS LFA sonar operational protocols require shutdown when any marine mammal approaches and before entering the safety (LFA sonar mitigation) zone, the risk of injury to a marine mammal is negligible. It should be noted that there were no mitigation protocols during either the 1996 or 2000 naval operations, although NMFS understands that the Navy has instituted mitigation measures since the March 2000 event to avoid future stranding incidents (DOC and SECNAV, 2001).

Dr. Peter Tyack of the Woods Hole Oceanographic Institution (Woods Hole) attempted to conduct a correlation analysis of marine mammal strandings and past SURTASS LFA sonar operations. There was no evidence of any correlation; thus, no report was generated. The latter analysis in the comment was discussed in the previous RTC in this document.

Comment MMIC28: There is now a weight of evidence (Bahamas stranding event) that beaked whales are at far greater risk from these operations (naval sonar operations) than the four species of mysticetes studied in the LFS SRP; thus, the commenters suggest that NMFS should revise its "negligible impact determination" accordingly.

Response: The Navy's LFS SRP was designed to study those marine mammals most susceptible to LF sound, sperm and large baleen whales. Beaked whales are mid-frequency specialists, not LF specialists, which was the reason for not including them in the LFS SRP. Moreover, because of their unknown habitats and rare sightings, there is great difficulty in attempting to study these species (see RTC MMIC22). Results from the interim report on the Bahamas strandings (DoC and SECNAV, 2001) cannot be extrapolated to estimate potential risk to these animals from SURTASS LFA sonar because of the differences in frequency regimes (100–500 Hz vs. 3,000–4,000 Hz). Furthermore, as mentioned previously, DOC and SECNAV (2001) state, "SURTASS LFA, another Navy sonar, had no involvement in this (beaked whale stranding) event." However, on July 25, 2001, NMFS issued a modification to a scientific research permit held by Dr. Peter Tyack to undertake studies on beaked whales. In addition, NMFS is recommending research on beaked whales be funded under the SURTASS LFA long-term monitoring (LTM) program.

In the interim, because NMFS does not expect tissue damage to occur from sound exposure below SPLs of 180 dB and because of the high detection rate of the HF/M3 sonar and other monitoring requirements ensuring SURTASS LFA sonar shutdown when any marine mammal (including any beaked whales) approaches or enters the 180–dB LFA mitigation zone, the risk of injury to a marine mammal is near zero. Moreover, the monitoring and mitigation protocols proposed for employment of SURTASS LFA will preclude employment in narrow and deep channels surrounded by land such as those in the Bahamas (22-km/12-nm restriction).

Regarding its negligible impact determination, until scientific evidence is forthcoming on stock discreteness of the Bahamian population of beaked whales, NMFS must conclude that, while locally significant, it is highly unlikely that stock or species level impacts occurred to the beaked whales as a result of the Bahamas incident.

Similarly, it is unlikely that SURTASS LFA sonar operations (which would not operate in areas similar to the Bahamas incident) would cause stock level impacts. Therefore, as indicated later in this document, NMFS believes that SURTASS LFA sonar operations are unlikely to have more than a negligible impact on affected species or stocks of marine mammals.

Comment MMIC29: There is no evidence to support the Navy's position in the Final EIS that the difference in frequency of the sonar in the Bahamas stranding event makes LFA particularly safe or that beaked whales are the only species vulnerable to strandings. The Bahamas incident demonstrates that such impacts are possible and are of concern for LFA sonar.

Response: Please see previous RTCs regarding the potential for strandings to be caused by SURTASS LFA sonar.

Comment MMIC30: NMFS should await the final report on the Bahamas stranding investigation before issuing a small take permit to the Navy.

Response: The interim report on the Bahamas stranding event was released to the public in December 2001 (DOC and SECNAV, 2001). The final report will not be completed until final necropsy analyses have been completed. However, because the analyses regarding the cause of the beaked whale stranding event needed by NMFS to make its determinations on the Navy's small take application are in the interim report, NMFS does not need to delay decision-making until the final report is completed and released to the public.

Comment MMIC31: One commenter stated, "* * * in the Navy's treatment of the Bahamas strandings (Final EIS at 3.2–47), where it suggested that the lack of observed strandings during the LFS SRP rules out any conclusion that might be made about potential impacts on the basis of that incident (and subsequent investigations)."

Response: There is no discussion in the Final EIS or in TR 1 of the lack of strandings during the LFS SRP. What was stated was that there is no evidence that beaked whales are more sensitive to LF sound than the baleen whales studied during the LFS SRP. However, as noted by the commenter, there was a "lack of observed strandings" during all three phases of the LFS SRP. For additional information on events potentially related to LFS SRP Phase III, see the Final EIS (RTC 4–5.25). The Navy did not, as suggested by the commenter, use this lack of strandings as proof of absence of harm.

Comment MMIC32: Was the Bahamas stranding the results of the Navy's testing of super-cavitation torpedoes?

Response: It was not. Readers interested in super-cavitation torpedoes are directed to Ashley. 2001. Scientific American 285(5).

Resonance

Comment MMIC33: Resonance effects in air/gas cavities or spaces can cause injury (tissue damage) or mortality to marine mammals, such as the Greece and Bahamas beaked whale strandings. Air space resonance produced by LFA sonar could cause tissue damage to the lungs of many cetaceans and can inflict injury at frequencies to which creatures are not acoustically sensitive. The resonance would be substantially larger than the displacement associated with mid-frequency sonar. Can the LFA source stimulate resonance sufficient to cause injury to marine mammals? Ten seconds could be enough to induce resonance. Most underwater acousticians would have considered the tactical sonar to be less likely than LFA sonar to cause the bubble resonance phenomena due to the relatively short duration and high sweep rates typical of tactical sonar compared to LFA. One organization received 18 comments on resonance applicability to LFA.

Response: The concept that resonance will increase stress on tissue to the point of damage is in reality two separate concepts: resonance and tissue damage. Cudahy and Ellison (2002) state that resonance does not equal damage and damage is not always linked to resonance. So the issue is not resonance in air/gas cavities, but tissue damage, whether it is caused by resonance or by other means. As discussed in detail under RTC MMIC20, the potential for *in vivo* tissue damage to marine mammals from exposure to underwater LF sound will not occur at a level less than 180 to 190 dB (Cudahy and Ellison, 2002). Please refer to RTC MMIC20 for more information.

Therefore, unless an animal is within the 180-dB SURTASS LFA sonar mitigation zone, there should be no physical damage to body systems or tissues. Because of the mitigation measures, the potential impact to any marine mammal stock from injury is considered negligible. Whether or not SURTASS LFA sonar is more or less likely than a mid-frequency, shorter pulse, sonar to cause resonance is not relevant to the impact analysis in this case because marine mammals are very unlikely to be exposed to injurious levels (above 180 dB RL). Likewise, whether or not 10 seconds could be enough to produce resonance is also not relevant in this case for the same reason.

Comment MMIC34: More studies are required on lung volume resonance in marine mammals which require more detailed studies to model lung responses over a range of volumes and diving depths. The Navy has the capability and resources to conduct a thorough review and modeling of all this data, including, for example, full finite element analysis of the ears and air spaces of the Cetacea and other marine mammals to LFA sonar sounds to access the potential for tissue damage, hearing loss, and death. It is unclear what frequency ranges cause resonance in each species and over what dive depths. Calculated resonance frequencies for marine animals fall within the LFA frequency range. Cranial air space resonance of beaked whales is known to be about the center frequency of LFA, so resonance should be expected. One commenter listed several anatomical considerations concerning airspaces that may be vulnerable to LFA-frequency-induced resonance. These included the lungs and others, such as sinuses. Calculations show that resonance would occur in a bottlenose dolphin lung at 100 Hz at 34 m (111.5 ft) depth to 500 Hz at 500 m (1640 ft) depth and a beaked whale at 100 Hz at 151 m (495 ft) depth to 500 Hz at 1,042 m (3419 ft) depth.

Response: There is abundant anatomical evidence that marine mammals have adapted to dramatic fluctuations in pressure. For example, marine mammal lungs are reinforced with more extensive connective tissues than their terrestrial relatives. These extensive connective tissues, combined with the probable collapse of the alveoli at the depths at which significant SURTASS LFA signals can be heard, make it very unlikely that significant lung resonance effects could be realized. Alveolar collapse is not the only change in the lungs. The trachea can also collapse because cartilage armor rings are often incomplete. Air that does not escape the alveoli is quickly absorbed during diving due to the high partial pressure of the gas (Berta and Sumich, 1999). Complete lung collapse occurs at depths of 25 to 50 m (82 to 164 ft) for Weddell seals (Falke et al., 1985), 75 m (246 ft) for the bottlenose dolphin (Ridgway and Howard, 1979), and probably occurs in the first 50 to 100 m (164 to 328 ft) for most marine mammals (Berta and Sumich, 1999). Also as determined by Cudahy and Ellison (2002), tissue damage is not expected to occur in marine mammals below 180 dB RL.

Based on these reasons, NMFS does not believe that additional research is necessary on the potential for resonance effects in marine mammals due to LF sound prior to SURTASS LFA sonar

operations being authorized to incidentally harass marine mammals, but such research should occur simultaneously with SURTASS LFA sonar operations (i.e., small take authorization holders are required through statements by Congress to conduct appropriate research to address impacts and ways to mitigate those impacts). Moreover, NMFS understands that such research is already underway

are the tuning of the resonance and the damping due to contiguous body structures. The Q value that has been measured *in vivo* in the lungs (of pigs and humans) is a Q from 3 to 5 (Martin *et al.*, 2000). There are no data to support the use of a Q value of 10 as a good estimate of the degree of tuning in cetacean air-filled spaces. In general, the internal organs of mammals are very highly damped. Examining fishes,

support the claims by the commenter that LFA sonar signals will cause air space resonance, tissue damage or injury to marine mammals.

Comment MMIC36: One commenter stated, "We would like to have had the time to see if there are co-resonances, in which, for example, a lung at resonance becomes a sound source of its own. If the Q of the system is 10, then the re-radiation of the lung is actually 10 × the incoming sound pressure that sent it

damage can be attributed to air cavity resonance alone. Damage to hearing apparatus of marine mammals such as uncovered by Dr. Darlene Ketten from Woods Hole illustrates my point. The entry to the brain and on to the hearing apparatus was through a nerve foramen from a sinus cavity. The air cavity of the sinus will not vibrate as a bubble because the bony sinus cavity presents a different acoustical impedance to the sonar. The whole of the lung/bronchial

tympanic sinuses to prevent any bony sound conduction to the ear (Ketten, 1997), emphasizing the auditory pathway from the pan bone in the lower jaw. Therefore, the connection between any possible resonance (coupled or not) in the respiratory system and the bulla/brain is unlikely.

Finally, the SPL threshold for the potential for *in vivo* tissue damage due to exposure to underwater sound, including resonance effects, is on the

the principal means of taking being authorized by this action, have been discussed throughout this document and the Navy's Final EIS. NMFS' determination of negligible impact is discussed later in this document.

Comment MMIC40b: There is no way to know what becomes of stressed or confused animals in offshore waters due to noise pollution. The cause of entanglements, ship collisions, and other such incidents cannot be

operations being authorized to incidentally harass marine mammals, but such research should occur simultaneously with SURTASS LFA sonar operations (i.e., small take authorization holders are required through statements by Congress to conduct appropriate research to address impacts and ways to mitigate those impacts). Moreover, NMFS understands that such research is already underway (e.g., finite element modeling is being conducted on beaked whale skulls collected at the 2000 Bahamas stranding, and studies of tissue and air-space resonance in the head are being conducted by two independent research teams) and additional research may be conducted by the Navy, the National Science Foundation or the National Institutes of Health in the future.

Comment MMIC35: One commenter submitted a paper titled "Air-space Resonance and Other Mechanisms Which May Cause Tissue Damage in Cetaceans" as an attachment to his comments. This paper postulates that: (1) Air space resonance could cause damage to some of the large sinus cavities of cetaceans and that LFA sonar could cause lung damage due to resonance, (2) LFA sonar could cause resonance in the lungs and sinuses and a resonance at the same frequency of the tympanic bone of the middle ear, (3) LFA sonar could induce panic and subsequent problems with equalization, (4) LFA sonar could possibly cause bubble growth in blood vessels, and (5) LFA sonar signals are of long enough duration to cause resonance.

Response: Resonance does occur in natural systems. However, an analysis subsequent to the Final EIS by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury does not support the conclusions in the commenter's paper. The issue is not resonance, but tissue damage. The potential for *in vivo* tissue damage to marine mammals from exposure to underwater LF sound will occur at a damage threshold on the order of 180 to 190 dB (Cudahy and Ellison, 2002) (see RTC MMIC20). The maximum SPL of 160 dB proposed by the commenter is based on a degree of tuning, or Q value, of 10. (**Note:** The Q of a system denotes how sharply the system responds at resonance). In other words, Q designates how much higher a system's resonance frequency response is compared to its response at non-resonance frequencies. If Q is high, the peak in frequency response is high; whereas, if Q is small, the frequency response peak is shallow (Prout and Bienvenue, 1990). Critical issues to consider in examining resonance effects are the tuning of the resonance and the damping due to contiguous body structures. The Q value that has been measured *in vivo* in the lungs (of pigs and humans) is a Q from 3 to 5 (Martin *et al.*, 2000). There are no data to support the use of a Q value of 10 as a good estimate of the degree of tuning in cetacean air-filled spaces. In general, the internal organs of mammals are very highly damped. Examining fishes, extensive measurements of the Q of swim bladders at resonance (covering a wide range of species and sizes) support an *in vivo* range of Q from 1.0 to 6.1 (Love, 1978). Thus, an educated estimate of the Q for other gas-filled structures, which are much less free to move than the lung, would generally be very small, even less than the (1<Q<6) range encompassing both lung and fish swim bladder measured results (Cudahy and Ellison, 2002). Therefore, resonance calculations based on a Q value of 10 are incorrect.

For reasons mentioned in RTC MMIC34, there is abundant anatomical evidence that marine mammals have adapted to dramatic fluctuations in pressure. Please refer to that RTC for further response. In addition, the nasal air sacs are too small to be relevant to LFA transmissions. Furthermore, these nasal diverticuli are clearly involved in sound production (Heyning and Mead, 1990). The pressure fluctuations that accompany the emission of echolocation clicks or communicative sounds must be substantial, so these tissues should also be relatively resistant to damage from external sound sources.

It is likely that marine mammals, which have evolved in an ambient hydrostatic pressure environment spanning several orders of magnitude ($1:10^3$), would be pre-disposed to have an innately rugged physiology for handling pressure changes. Therefore, it is unlikely that they would experience equalization problems. Crum and Mao (1996) stated, "For SPL's below about 190 dB, however, except under relatively extreme conditions of supersaturation, significant bubble growth is unexpected." This is covered in the Final EIS RTC 4–9.4.

In summary, resonance can occur in marine animals, but this resonance does not necessarily lead to injury. Scientific data noted above demonstrate that in order for LF sound to cause injury, the SPL must be above 180 dB. Due to the 180–dB SURTASS LFA sonar safety zone and the additional 1-km buffer zone, the probability of any marine mammal being exposed to received levels at or above 180 dB, with or without resonance, approaches zero. Therefore, the above evidence does not support the claims by the commenter that LFA sonar signals will cause air space resonance, tissue damage or injury to marine mammals.

Comment MMIC36: One commenter stated, "We would like to have had the time to see if there are co-resonances, in which, for example, a lung at resonance becomes a sound source of its own. If the Q of the system is 10, then the re-radiation of the lung is actually 10 × the incoming sound pressure that sent it into resonance. Therefore, the lung becomes an acoustic amplifier. Then, in calculating the effects of LFAS, one must consider any resonant cavity to be a sound source LOUDER than the original LFAS signal, just multiply by Q."

Response: From a purely physiological standpoint, it could be hypothesized that the lung could possibly become an acoustic amplifier. However, there are no data to support a Q of 10 as a good estimate of the degree of tuning in an air-filled space; and in general, the internal organs of mammals are highly damped (Cudahy and Ellison, 2002). These authors cite data for a range of Q from 1 to 6 encompassing both lungs and fish swimbladders. Further, human and pig data collected *in vivo* indicate that at the resonant frequency of the lung, tissue damage occurs above 180 dB SPL (see TR 3 and Cudahy and Ellison, 2002). Since the data were collected at resonance, any amplification would have been included in the response of the lung to the sound, regardless of the Q value.

Comment MMIC37: The Final EIS analysis did not consider Minnaet's and Andreeva/Barham's equations that relate bubble size to resonance frequency and show that there are air cavity volumes of all sizes that may resonate in marine animals.

Response: The consideration of Minnaet's and Andreeva/Barham's equations relating to resonance are not relevant to the analysis in the Final EIS because the best supportive evidence as documented indicates that below 180 dB RL SURTASS LFA signals would not cause injury. For additional information, see the Final EIS Subchapter 1.4.2 and RTC MMIC35. Because of mitigation protocols, the probability of a marine mammal being undetected within the 180–dB SURTASS LFA mitigation zone during transmission approaches zero. The subsequent analysis, mentioned previously, by Cudahy and Ellison (2002) on the potential for resonance from LFA signals to cause injury supports this conclusion.

Comment MMIC38: One commenter stated, "Further, not all marine life

damage can be attributed to air cavity resonance alone. Damage to hearing apparatus of marine mammals such as uncovered by Dr. Darlene Ketten from Woods Hole illustrates my point. The entry to the brain and on to the hearing apparatus was through a nerve foramen from a sinus cavity. The air cavity of the sinus will not vibrate as a bubble because the bony sinus cavity presents a different acoustical impedance to the sonar. The whole of the lung/bronchial tubes/trachea/sinus/air-volume complex must be considered. Modeling of this complex air volume may be possible by considering the lung to vibrate like a bubble and the remaining part act as a Helmholtz resonator. A coupled resonant system such as this can explain the punch through at the nerve foramen site which is soft compared to the bony sinus cavity thus concentrating the displacement on the soft foramen site into the brain where Ketten observed the bloody mass and hearing apparatus trauma."

Response: This comment is an untested hypothesis presented as to a possible coupled resonance mechanism for the injury to the Blainville's beaked whale that stranded during the Bahamas standing event in March 2000. As noted in DOC/SECNAV (2001), the necropsy found a unilateral temporal subarachnoid hemorrhage with blood clots bilaterally in the lateral ventricles. In simpler terms, there was a blood trail in at least one animal that could be traced to a hemorrhage in a discrete region of a fluid space around the temporal regions and within the ventricle of the brain. There was no conclusion drawn by the interim report stating that this was, or could have been, caused by coupled resonance causing the "punch through" at the nerve foramen site into the brain. In fact the report stated, "The actual mechanisms by which these sonar sounds could have caused animals to strand, or their tissues to be damaged, have not yet been revealed, but research is underway."

The commenter discusses the lungs/bronchial tubes/trachea/sinus (air sac) complex. He also comments upon the sinuses surrounding the middle ear. The tympano-periotic structure has a neural connection to the brain, and it was along this neural pathway that he stated Dr. Ketten reported damage in the Bahamas stranding animals. However, there is no connection between the respiratory and auditory systems. Any resonance that may occur in the respiratory system has no physical connection to the bulla and brain. In fact, the bulla appears to be acoustically isolated by ligaments and the peri-tympanic sinuses to prevent any bony sound conduction to the ear (Ketten, 1997), emphasizing the auditory pathway from the pan bone in the lower jaw. Therefore, the connection between any possible resonance (coupled or not) in the respiratory system and the bulla/brain is unlikely.

Finally, the SPL threshold for the potential for *in vivo* tissue damage due to exposure to underwater sound, including resonance effects, is on the order of 180 to 190 dB (Cudahy and Ellison, 2002). In conclusion, the above hypothesis does not appear to be valid.

Additional Marine Mammal Impact Concerns

Comment MMIC39: Can LFA reduce the resolution power (capability) of echo-locating by marine mammals? For example, will a dolphin's ability to distinguish heads from tails on a coin be affected?

Response: No. Dolphin echolocation utilizes high frequency sound and SURTASS LFA sonar is low frequency. Therefore, SURTASS LFA sonar will not affect the resolution capability of echo-locating marine mammals.

Comment MMIC40a: One organization believes that potential non-detectable and unmonitored effects of SURTASS LFA sonar include increases in miscarriage rates, increased vulnerability to other anthropogenic threats (such as entanglement in fishing gear or susceptibility to ship strikes), decreases in feeding rate, changes in lactation rates, increased stress, changes in navigational abilities, potential hearing loss, etc. Even the Navy concedes that incidental takes consisting of short-term behavioral modifications will occur outside the 180–dB isopleth. Since these effects are typically undetectable, it will be impossible to assess or monitor these effects. As a result, the commenter does not believe that NMFS can make a finding of negligible impact.

Response: This comment combines impacts that could potentially occur due to an injury to hearing and those that are short-term behavioral effects due to the SURTASS LFA sonar sounds. In order for injury-related effects to potentially occur, the HF/M3 sonar would need to be ineffective at locating marine mammals. This, as noted elsewhere in this document is unlikely (see Mitigation Concerns). Moreover, in order for a marine mammal to be injured, the HF/M3 sonar would need to have missed the animal through the several acoustic sweeps that it would make prior to the animal getting close enough to the projectors to be injured. Potential behavioral effects, which are the principal means of taking being authorized by this action, have been discussed throughout this document and the Navy's Final EIS. NMFS' determination of negligible impact is discussed later in this document.

Comment MMIC40b: There is no way to know what becomes of stressed or confused animals in offshore waters due to noise pollution. The cause of entanglements, ship collisions, and other such incidents cannot be predicted or recognized.

Response: There is no scientific information to support a hypothesis that sound from SURTASS LFA sonar will increase stress or confusion in marine mammals. Because of the relatively short duty cycle, the water depth of the CZ ray path, the movement of marine mammals in relationship to the SURTASS LFA sonar ship, and the effectiveness of the tripartite mitigation program, few marine mammals are likely to be affected. In order to receive more than one "ping," during a normal 8-hr vessel leg, an animal would need to match the ship in speed and course direction between pings. Also, entanglement in fishing gear, collisions with ships, or strandings appear to result from vestibular effects to the inner ear associated with explosives or being very close to a loud, underwater noise. However, while there is no indication that this would result from being within the 180 dB safety zone for SURTASS LFA sonar, in the effects analysis of the Final EIS, the Navy presumes that 100 percent of the marine mammals within the 180 dB zone would receive an injury even though animals may not actually be injured.

Comment MMIC41: The assumption in the Final EIS analysis that animals are only subject to acoustic stress during LFAS operations is not correct. An animal knowing that the presence of the SURTASS LFA vessel indicates a periodic, unpredictable, annoying noise source, which interferes with their behavior, causes stress.

Response: This assumption presumes that marine mammals will associate a visual cue (the SURTASS LFA sonar vessel) with a noise (presumably an annoying noise). This is unlikely unless the marine mammal can associate a cause and effect between the two cues based on earlier experience. Although this has been known to occur in certain situations (*e.g.*, the eastern tropical Pacific yellowfin tuna purse seine fishery), the short mission length and the likelihood of subsequent encounters make this scenario unlikely in the case of SURTASS LFA sonar. In addition, the results of the LFS SRP did not detect any prolonged behavioral responses

after the cessation of transmissions or any behavioral responses to the mere presence of the *R/V Cory Chouest*.

Comment MMIC42: One commenter stated, "Observations of sea otters made near the playback site during LFS SRP tests off California in January, 1998 found that sea otter foraging success was reduced by 11 percent and dive time increased by 11 perecent when LFA sound source was on (Quicklook, Phase II). This decrease in food-getting

the four species of large whales to serve as indicators for species considered to be equally or less sensitive to LF sound, which included pinnipeds and odontocetes. Sea otters were studied during the LFS SRP Phase II as discussed previously. For additional details, see Final EIS RTC 4–5.2. There are discussions and analyses of potential impacts on fish, sharks and sea turtles in the Final EIS in Subchapters

term impacts, (6) cumulative effects, (7) how sound affects marine animals, (8) how whales communicate, (9) abundance and distribution of species and stocks, and (10) reproduction and survival rates.

Response: For the SURTASS LFA sonar NEPA analysis, the best available scientific information has been used. Data gaps/unknown information are discussed in the Final EIS (RTCs 1–3.6,

precautionary approach to introducing novel sound sources into the sea, moving incrementally, conducting and continuing research, developing appropriate mitigation measures, and monitoring impacts to test the validity of both the model and the assumptions.

Comment SIC3: Species most likely to be affected are pelagic cetaceans, yet there are no reasonable audiograms for these species. There is a lack of

LFS SRP is not sufficient to assess the significance of these changes and more investigations are required.

Response: The specific studies referenced in the Final EIS on pages 4.2–26 to 4.2–29 were not ignored. In fact, Malme *et al.* (1983, 1984) demonstrated that gray whales exhibited statistically significant responses to four different playbacks typical of industrial noise from oil production (drillship, semisubmersible, drilling platform, and

would remain for long in areas where received levels of continuous underwater noise are 140+ dB at frequencies to which the animals are most sensitive."

On page 4.2–29 the Final EIS concluded: In summary, the scientific objective of the LFS SRP was to conduct independent field research in the form of controlled experimental tests of how baleen whales responded to SURTASS LFA sonar signals. Taken together, the three phases of the LFS

after the cessation of transmissions or any behavioral responses to the mere presence of the *R/V Cory Chouest*.

Comment MMIC42: One commenter stated, "Observations of sea otters made near the playback site during LFS SRP tests off California in January, 1998 found that sea otter foraging success was reduced by 11 percent and dive time increased by 11 perecent when LFA sound source was on (Quicklook, Phase II). This decrease in food-getting efficiency and increase in dive time could have biologically significant effects on a population."

Response: The commenter's quote is incomplete. Benech (1998) summarizes observations of sea otters made near the playback site during January 1998. The following is a quote from her conclusions as presented in the Quicklook Report of Phase II and in TR 1:

> Sea otter densities, foraging behavior, and activity patterns remained normal through the course of the acoustic testing period. The only possible atypical behavior that was linked to the offshore acoustic tests was that of forage dive duration and success. The [foraging] success rate was reduced by 11% and dive time increased by a similar amount when all dives during acoustic testing were pooled. Success did not diminish with increasing [sound] duration or [source level] decibels. This difference in forage diving success, although detectable, was not statistically significant within a 95% level of confidence, however there is at least an 80% probability that this reduction in success was not a random event.
>
> It must be noted that these conclusions are based on only two sightings: On January 14, 1998 and January 22, 1998. The sightings were near the playback site(s), which were between 2 and 4 km (1.1 and 2.2 nm) offshore. During regular SURTASS LFA sonar operations, the vessel will be outside of 12 nm (22 km) from the shore. Therefore, based on the statement by the investigator that the sea otter densities, foraging behavior, and activity patterns remained normal through the course of the acoustic testing period, and that the difference in forage diving success, although detectable, was not statistically significant, and based on the coastal nature of sea otters, there is a minimal chance of any biologically significant effects on the sea otter population.

Comment MMIC43: NMFS and the Navy have not conducted studies as to the potential impacts of SURTASS LFA sonar on pinnipeds, dolphins, other toothed whale, sea otters, fish, cephalopods, and other vulnerable marine species.

Response: As stated in the Draft and Final EISs, studies were conducted on the four species of large whales to serve as indicators for species considered to be equally or less sensitive to LF sound, which included pinnipeds and odontocetes. Sea otters were studied during the LFS SRP Phase II as discussed previously. For additional details, see Final EIS RTC 4–5.2. There are discussions and analyses of potential impacts on fish, sharks and sea turtles in the Final EIS in Subchapters 3.2.1.2, 3.2.2, 3.2.3, 4.1.1, 4.1.2, and 4.3.1. Cephalopods were eliminated because of poor sensitivity to LF sound, with hearing thresholds in the LF range estimated to be 146 to 150 dB. For additional information, see Subchapter 3.2.1.1 in the Draft and Final EISs.

Comment MMIC44: One commenter believes that new empirical experiments must be done to assess the implications for the oceans as a whole and the creatures that live in them, and the effects on the ecosystem performance, productivity, biodiversity, extinction rates, and numerous other factors. New data yet to be addressed by the Navy and NMFS includes: self-awareness of cetacea; cultural transmission; language and communications skills; tool use; lifespan of some 200 years; ability to heal human diseases and conditions; increased brain size, increased IQ, more intelligent than humans, brain more evolved than humans; and cetacea are a sovereign people/nation. The permit application must be rejected pending proper analysis and research incorporating new data showing clearly that LFAS is safe for our planet.

Response: The information provided by the commenter that is relevant to the Navy's responsibility under the National Environmental Policy Act (NEPA) and/or NMFS' responsibility under the MMPA has been addressed in the appropriate documents prepared under these statutes. Other issues have not been addressed because they are outside the scope of the analyses required by statute, and NMFS and the Navy do not believe SURTASS LFA sonar will affect those aspects of marine mammal evolution, behavior or social organization identified by the commenter.

Scientific Information Concerns (SIC)

Data Gaps

Comment SIC1: Science cannot provide adequate data to determine the specific characteristics or level of anthropogenic noise that will cause biologically significant impacts. Data gaps/unknown information: (1) Hearing thresholds, (2) injury thresholds, (3) resonance frequencies and levels for injury, (4) short-term impacts, (5) long-term impacts, (6) cumulative effects, (7) how sound affects marine animals, (8) how whales communicate, (9) abundance and distribution of species and stocks, and (10) reproduction and survival rates.

Response: For the SURTASS LFA sonar NEPA analysis, the best available scientific information has been used. Data gaps/unknown information are discussed in the Final EIS (RTCs 1–3.6, 2–3.4, 2–3.7, 2–4.2, 3–8.1, 3–8.3, and 4–4.1). In the Final EIS Subchapter 1.4.2, the Navy discusses scientific data gaps regarding the potential for effects of LF sound on marine life. While recognizing that not all of the questions on the potential for LF sound to affect marine life are answered, and may not be answered in the foreseeable future, the Navy has combined scientific methodology with a conservative approach throughout the Final EIS to protect the marine environment. The Final EIS was developed based on the guidance for how to proceed under situations with incomplete or unavailable information as provided in CEQ NEPA regulations (40 CFR 1502.22). Incomplete and unavailable information were identified and key data gaps were filled through research. The Navy's LFS SRP studies filled in data gaps on the potential effects of LF sound on marine life, and the ongoing monitoring and research programs instituted by the Navy will continue to reduce areas of incomplete information and provide invaluable data that are presently unavailable.

Comment SIC2: One commenter stated that the Navy simply lacks sufficient scientific data to draw any firm conclusions, so it relies upon assumptions and guesses. The example cited was that "although there is no direct data on auditory thresholds for any mysticete species anatomical evidence strongly suggests that their inner ears are well adapted for LF hearing." Therefore the precautionary approach should be followed. Making assumptions based on incomplete data is not precautionary.

Response: The Navy approach was conservative, in that, with the lack of physical data on the hearing thresholds of mysticete whales, it was assumed that they were sensitive to LF sounds and evaluated as such. The same assumption was made for all potentially affected marine mammals, regardless of their sensitivity to LF sound. For a more detailed discussion on the conservative procedures and assumptions in the research and modeling, see Final EIS Subchapter 1.4.3.

NMFS believes that the SURTASS LFA process could be a model of the precautionary approach to introducing novel sound sources into the sea, moving incrementally, conducting and continuing research, developing appropriate mitigation measures, and monitoring impacts to test the validity of both the model and the assumptions.

Comment SIC3: Species most likely to be affected are pelagic cetaceans, yet there are no reasonable audiograms for these species. There is a lack of information on beaked whales. If acoustic sensitivity is unknown, it is impossible to estimate the potential for injury impacts to stocks.

Response: While it is true that there are no audiograms for large cetaceans and a general lack of data on beaked whales and other pelagic species, that does not mean that estimates of the potential impacts under NEPA and MMPA cannot be performed. CEQ's NEPA regulations (40 CFR 1502.22) provide guidance for how to proceed under situations with incomplete or unavailable information. The auditory thresholds utilized in the analysis were based on the best available information. Figure 1–4 in the Final EIS illustrates the assumption that mysticetes have the best LF hearing of all marine mammals. To further ensure the validity of the estimates, the analysis relied on conservative procedures and assumptions in research and modeling as detailed in the Final EIS Subchapter 1.4.3.

LFS SRP

Comment SIC4: The information provided on the LFS SRP often is not sufficient for the reader to understand or judge the merits of Navy and NMFS conclusions based on their results. The Final EIS describes on pages 4.2–26 to 4.2–29 previous studies that suggest significant behavioral responses to underwater sounds. The Final EIS seems to ignore that evidence in forming its conclusions about potential behavioral effects. For example the Final EIS includes: (1) A summary statement by Richardson *et al.* (1995) that indicates that marine mammals may have a limited tolerance for continuous underwater sound levels at or above 120 dB, (2) a description of significant gray whale responses to continuous sounds about 120 dB, (3) a description of behavioral responses of belugas to icebreaker noise at 27 nm (50 km), and (4) a description of avoidance responses of bowhead whales to drill ship noise at RLs of 110 to 132 dB. Therefore, those data, combined with the LFS SRP, demonstrate some potential for significant behavioral responses of marine mammals to LF sound. Available information on the LFS SRP is not sufficient to assess the significance of these changes and more investigations are required.

Response: The specific studies referenced in the Final EIS on pages 4.2–26 to 4.2–29 were not ignored. In fact, Malme *et al.* (1983, 1984) demonstrated that gray whales exhibited statistically significant responses to four different playbacks typical of industrial noise from oil production (drillship, semisubmersible, drilling platform, and production platform) at RLs of approximately 120 dB. This study was replicated in Phase II of the LFS SRP using SURTASS LFA sonar stimuli. However, the Phase II research demonstrated that it may be invalid to apply the inshore (2 km (1.1 nm) from shore) response model (when 50 percent of the whales avoided SURTASS LFA sonar stimuli at RL of 141 ±3 dB) to sources that are farther offshore (4 km (2.2 nm)). With the source level of the offshore source adjusted so that the whales' received level was 140 dB (same as when the source was inshore within the migration corridor), the whales did not alter their migration paths. For additional information see the Final EIS page 4.2–26. For the SURTASS LFA sonar, the offshore model is more appropriate because the SURTASS LFA vessel will not operate within 12 nm (22 km) of the coast.

The other two studies referenced discussed the reactions of two arctic species (bowheads and belugas) in response to noise from icebreakers. Bowheads and belugas inhabit waters frequented by ice and may require a low ambient noise level in order to navigate successfully through the ice, to locate leads and polynyas, and avoid ice keels. SURTASS LFA sonar is not authorized to take marine mammals in this type of environment. Please refer to RTC MMIC3 for more information on beluga whales.

The commenter's statement that Richardson *et al.* (1995), "indicates that marine mammals may have a limited tolerance for continuous underwater sound levels at or above 120 dB" was taken out of context. It was precisely this premise that the LFS SRP was designed to test for LF sonar signals. The Final EIS Subchapter 4.2.4.1 page 4.2–26 actually states: "Prior to the LFS SRP, the best information regarding whale responses to continuous, LF, anthropogenic noise was summarized by Richardson *et al.* (1995b): "Some marine mammals tolerate, at least for a few hours, continuous sound at received levels above 120 dB re 1 µPa. However, others exhibit avoidance when the noise level reaches ~120 dB * * *. It is doubtful that many marine mammals would remain for long in areas where received levels of continuous underwater noise are 140+ dB at frequencies to which the animals are most sensitive."

On page 4.2–29 the Final EIS concluded:

> In summary, the scientific objective of the LFS SRP was to conduct independent field research in the form of controlled experimental tests of how baleen whales responded to SURTASS LFA sonar signals. Taken together, the three phases of the LFS SRP do not support the hypothesis that most baleen whales exposed to RLs near 140 dB would exhibit significant disturbance of behavior and avoid the area. These experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. The fact that none of the LFS SRP observations revealed a significant change in a biologically important behavior helped determine an upper bound for risk. The LFS SRP results cannot, however, be used to prove that there is zero risk at these levels. Accordingly, the risk continuum presented below assumes that risk is small, but not zero, at the RLs achieved during the LFS SRP. The risk continuum modeled a smooth increase in risk that culminates in a 95 percent level of risk of significant change in a biologically important behavior at 180 dB. In this region, the risk continuum is unsupported by observations. However, the AIM simulation results indicate that a small fraction of any marine mammal stock would be exposed to sound levels exceeding 155 dB (see Appendix D and Figures 1–5a through 1–5c).

NMFS concurs with the Navy that sufficient information was provided on the LFS SRP in the Final EIS and TR 1, which was incorporated by reference into the Final EIS in accordance with 40 CFR 1500.21. TR 1 was available to the public upon request.

Comment SIC5: The Final EIS states that "* * * SRP selected the most plausible and likely impacts to address, in particular, significant change in a biologically important behavior. They observed none * * *. Other less plausible and unlikely effects were not addressed." According to the LFS SRP there were biologically significant behaviors.

Response: NMFS and the Navy do not agree that there were biologically significant behavioral changes during the LFS SRP. The independent scientists who designed and conducted the LFS SRP determined that these experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses (Final EIS at page 4.2–29). See RTC MMIC10 for further discussion.

Comment SIC6: The LFS SRP was insufficient because only 4 baleen whales were studied. A limited study of four species of whales could not provide a basis for conclusions about impacts of LFA on all marine mammals. Species studied were not representative species, for example the gray whale is inshore and LFA will operate offshore in pelagic waters. The information collected to date is not representative of the effects

additional information, see the Final EIS (RTCs 4–5.1 and 4–5.2).

Comment SIC7: The LFS SRP was insufficient because it remains to be proven whether it is something about the inshore environment that causes whales to show a greater reaction to noise, or something about the composition of whales that migrate inshore.

Response: While the results from such research would be informative, it would

SURTASS LFA source was transmitting at operational power levels. Even under these circumstances very few animals were exposed at received levels as high as 155 dB. The research was specifically designed so as NOT to expose animals to higher received levels. These research results confirmed what is predicted from the AIM that a very small percentage of animals will be close enough to the SURTASS LFA sonar to

important behavior helped determine an upper bound for risk. The LFS SRP results cannot, however, be used to prove that there is zero risk at these levels.

Accordingly, the risk continuum assumes that risk is small, but not zero, at the RLs achieved during the LFS SRP. The risk continuum modeled a smooth increase in risk that culminates in a 95 percent level of risk of significant

Response: The LFS SRP was one of the largest scientific field studies on the potential impact of underwater sound on marine mammals to date, and consisted of four baleen whale indicator species and three phases, each in a different geographical location. Many scientific metrics were part of the LFS SRP, including aerial surveys, Sound Surveillance System (SOSUS) data collection, observation vessel sightings,

information regarding the sufficiency of the LFS SRP, see the Final EIS Subchapters 1.4.2, 4.2.4, and 4.2.4.3, and Final EIS (RTCs 4–5.1, 4–5.2, 4–5.6, 4–5.8, 4–5.10, 4–5.12, 4–5.14, and 4–5.21). Further, NMFS believes that the Navy has provided sufficient information to make its findings under the MMPA.

As a requirement of this regulatory action and the LOA, the Navy will conduct research in areas where

Comment SIC6: The LFS SRP was insufficient because only 4 baleen whales were studied. A limited study of four species of whales could not provide a basis for conclusions about impacts of LFA on all marine mammals. Species studied were not representative species, for example the gray whale is inshore and LFA will operate offshore in pelagic waters. The information collected to date is not representative of the effects of LFS on all cetaceans. Marine mammals have at least four basic types of ears; therefore, the Navy cannot lump all whales into the same category (baleens).

Response: It is impossible to conduct studies of all marine mammal species within a reasonable period of time. Accordingly, four mysticete species (blue, fin, gray, and humpback whales) were selected because: (1) They are considered most likely among all marine mammals to have the best hearing in the SURTASS LFA sonar frequency band (i.e., they would be the most likely species affected if there was an impact from LFA sonar), (2) most have protected status under the ESA, and (3) there is prior evidence of some avoidance responses to LF sounds. Their responses to LF sound signals during the LFS SRP were to serve as indicators for the responses of other potentially LF-sensitive species, which were presumed to be less vulnerable to SURTASS LFA sonar signals. Whether or not the gray whale is an inshore or pelagic animal is not germane to whether it is a representative species for the LFS SRP. It is representative because it met the three criteria for selection listed above.

The Navy's analysis did not "lump" all whales into the same category. The rationale for using representative species to study the potential effects of LF sound on marine animals emerged from an extensive review in several workshops by a broad group of interested parties: academic scientists, federal regulators, and representatives of environmental and animal welfare groups. The outcome of these discussions concluded that baleen whales (mysticetes) would be the focus of the three phases of the LFS SRP and indicator species for other marine mammals in the analysis of underwater acoustic impacts because they met the selection criteria. Because the results were then utilized in the impact analysis of less LF-sensitive marine mammals, NMFS believes the approach was conservative and scientifically sound, and the potential impacts to odontocetes and pinnipeds were overestimated, not underestimated. For additional information, see the Final EIS (RTCs 4–5.1 and 4–5.2).

Comment SIC7: The LFS SRP was insufficient because it remains to be proven whether it is something about the inshore environment that causes whales to show a greater reaction to noise, or something about the composition of whales that migrate inshore.

Response: While the results from such research would be informative, it would not be relevant to the deployment of the SURTASS LFA sonar because SURTASS LFA sonar will not operate inside of 12 nm (22 km) of any coastline.

Comment SIC8: The LFS SRP was insufficient because it did not study: (1) The species most likely to be affected (commenter did not state what species to which he was referring), (2) sperm and beaked whales, and (3) dolphins that can make LF sounds.

Response: Recognizing that it would not be possible to conduct studies of all marine mammal species within a reasonable period of time, the LFS SRP was designed to study the marine mammal species considered to be the most sensitive to LF sound, the baleen whales. Phase III was designed to allow playback experiments with sperm whales, but no animals were encountered before or during the offshore portions of the cruise schedule. Beaked whales and dolphins were not considered for the LFS SRP because: (1) They are believed to be more sensitive to mid- and high-frequency sound, rather than LF sound, like SURTASS LFA sonar; and (2) they are not listed as threatened or endangered under the ESA, thereby not meeting the selection criteria described in RTC SIC6. However, research on additional marine mammal species will be undertaken in the near future as explained in RTC MOC25 in this document.

Comment SIC9: The LFS SRP was insufficient because research was not conducted at power levels of actual operations. Animals not subjected to 180–dB RL.

Response: NMFS and the Navy do not believe it desirable nor necessary for this action, let alone humane, to test animals at or above levels that might result in injury simply to develop an injury risk continuum (at or above 180 dB). All marine mammals exposed to RL at or above 180 dB are considered for the analysis and for monitoring/reporting purposes to be injured and activities are mitigated to protect marine mammals at that level.

As noted in the Final EIS (RTC 4–5.21), in some of the LFS SRP Phase I experiments (studying the responses of feeding blue and fin whales), the SURTASS LFA source was transmitting at operational power levels. Even under these circumstances very few animals were exposed at received levels as high as 155 dB. The research was specifically designed so as NOT to expose animals to higher received levels. These research results confirmed what is predicted from the AIM that a very small percentage of animals will be close enough to the SURTASS LFA sonar to experience levels above 155 dB. See the Final EIS Figures 1–5a through 5c, Subchapter 4.2.4.3 and Appendix D. The Navy has stated that it would not seek a scientific research permit to perform field tests at higher RLs to animals in the wild. Moreover, injury cannot be studied in the wild. Any such experiments should be undertaken under controlled laboratory conditions, with animals in a more controlled setting. Finally, the Navy believes it has adequate data to assess what the potential for impacts would be for RLs greater than 180 dB RL for the LF sounds from SURTASS LFA sonar, without the need to try to actually expose animals to that RL.

Comment SIC10: The LFS SRP was insufficient because sound levels utilized were only 120 to 150 dB, far lower than the 180 dB deemed acceptable by the Navy. The LFS SRP did not assess potential behavioral responses to signals in the range of 150 or 155 to 180 dB. One cannot extrapolate results above 155 dB. Seventy percent of humpback whales stopped singing at 140 dB; blue whales stopped vocalizing and many stopped feeding; gray whales altered their migration routes. Why are these behavioral effects not considered "significant"?

Response: The scientific objective of the LFS SRP was to conduct independent field research in the form of controlled experimental tests of how baleen whales responded to SURTASS LFA sonar signals. These experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. Study results in TR 1 indicate that 6 cases of humpback song cessation were considered possible responses to SURTASS LFA sonar transmissions. However, the estimated maximum RLs for these animals were 121.5 dB, 123 dB, 129 dB, 133 dB, 145 dB and 150.5 dB (not 70 percent at 140 dB as the commenter states). The fact that none of the LFS SRP observations revealed a significant change in a biologically important behavior helped determine an upper bound for risk. The LFS SRP results cannot, however, be used to prove that there is zero risk at these levels.

Accordingly, the risk continuum assumes that risk is small, but not zero, at the RLs achieved during the LFS SRP. The risk continuum modeled a smooth increase in risk that culminates in a 95 percent level of risk of significant change in a biologically important behavior at 180 dB. In this region, the risk continuum is unsupported by observations. However, because the AIM simulation results indicate that only a small fraction of any marine mammal stock would be exposed to sound levels exceeding 155 dB (See the Final EIS Figures 1–5a through 1–5c, Subchapter 4.2.4.3, and Appendix D) and because the LFA sonar duty cycle is low (60–100 sec ping with 6–15 minute "off" periods) with missions lasting no more than 30 days (normally with two 9-day transmission periods/ mission), significant impacts to marine mammals are not expected. For example, stress is usually a long-term process, but the low duty cycle for SURTASS LFA sonar makes stress seem highly unlikely.

That stated, research on the behavioral reactions of whales to sound levels that were not tested during the LFS SRP, specifically between 155 and 180 dB, has been identified by NMFS as an important component for continuing research under an LOA (see RTC MOC25).

Comment SIC11: The LFS SRP was insufficient because limited sample size in LFS SRP should not be construed as indicating a lack of impact.

Response: The Navy did not expect that these data would provide the definitive, final answer on this issue. Nevertheless, these data, combined with existing data, provide a reasonable basis for informed decision-making regarding the proposed action. For additional information, see the Final EIS (RTCs 4–5.10 and 4–5.23).

Comment SIC12: The LFS SRP was insufficient because the LFS SRP was limited in the temporal and spatial parameters observed (short-term effects only). No long-term effects studied. It is not clear that short-term behavioral responses are good indicators of the potential long-term effects. Significant changes in biologically important behaviors do not necessarily manifest themselves in short-term, visible behavioral responses; *i.e.*, these significant changes can go undetected. No long-term data on changes in reproduction rates or other long-term behavior.

Response: The LFS SRP was one of the largest scientific field studies on the potential impact of underwater sound on marine mammals to date, and consisted of four baleen whale indicator species and three phases, each in a different geographical location. Many scientific metrics were part of the LFS SRP, including aerial surveys, Sound Surveillance System (SOSUS) data collection, observation vessel sightings, and shore-based visual observations, which yielded large experimental datasets, collected in the wild. All of these provided information relating to more than just the potential for short-term biological behavioral effects. The scientific investigators observed some short-term behavior responses and some longer-term responses during the longer Phases I and III of the research, which approached the time period of a full SURTASS LFA sonar mission. The Navy and the independent scientists involved in the LFS SRP believe that the data from the LFS SRP, when combined with other data, provide an adequate basis for the analysis contained in the Draft and Final EISs. NMFS concurs. In addition, short-term studies can address the potential for impacts on behaviors that relate to demographic parameters such as birth rate, growth rate and death rate. For example, the LFS SRP addressed feeding rates, which relate to birth and growth rates. Finally, research on the long-term behavioral reactions of whales to LFA sounds has been identified by NMFS as an important component of a continuing research program under an LOA (see RTC MOC25).

Comment SIC13: The LFS SRP was insufficient because it did not study physiological and psychological stress. Also, it did not study non-acoustic responses.

Response: The LFS SRP field research studies complement Office of Naval Research (ONR) and Chief of Naval Operations (CNO)-sponsored laboratory studies on TTS, physiological stress, and soft tissue damage. The focus of the LFS SRP was on the potential for baleen whale behavioral reactions to LF sound in the wild. Methods to investigate physiological reactions (e.g., TTS, PTS, stress) to underwater LF sound have only recently been accomplished on captive small toothed whales and seals, and are not yet available for free-ranging large whales.

Comment SIC14: The LFS SRP was insufficient because humpback whales left the area in Phase III. This is supported by TR 1, Figure D–21.

Response: There was no statistically significant difference in the overall distribution of the number of animals during Phase III of the LFS SRP. For information regarding the sufficiency of the LFS SRP, see the Final EIS Subchapters 1.4.2, 4.2.4, and 4.2.4.3, and Final EIS (RTCs 4–5.1, 4–5.2, 4–5.6, 4–5.8, 4–5.10, 4–5.12, 4–5.14, and 4–5.21). Further, NMFS believes that the Navy has provided sufficient information to make its findings under the MMPA.

As a requirement of this regulatory action and the LOA, the Navy will conduct research in areas where information on the potential effects of SURTASS LFA sonar operations on the marine environment is incomplete. Potential topics for proposed research include responses of sperm and beaked whales to SURTASS LFA signals, behavioral responses of whales to sound levels not tested (specifically between 155 and 180 dB), and long-term and cumulative effects on marine mammal stocks (also see RTC MOC25).

Comment SIC15: The full results of the LFS SRP were not considered. All peer-reviewed data should be made available, including full results of the LFS SRP, and for all species concerned.

Response: All pertinent results from the LFS SRP were considered in the EIS analysis and in this rulemaking process. LFS SRP data are available to the public in TR 1. The LFS SRP was one of the largest studies on the effects of anthropogenic sound on marine mammals to date. Analysis of the LFS SRP data is continuing. However, there is no evidence in the data that indicates that deployment of the SURTASS LFA system with the mitigation protocols will have any significant effect on marine mammal stocks. Any future results from LFS SRP data analysis will be analyzed by NMFS and the Navy during this authorization period.

Comment SIC16: Much of the data from the LFS SRP, even that which has been analyzed, is still not fully interpreted. For example, based on Miller *et al.* (2000), it is assumed that male humpback whales consider LFA signals to be competition from other male singers.

Response: Miller *et al.* (2000) analyzed songs from six individuals, from whom they had complete song (i.e., a complete song cycle) recordings for periods before, during, and after the LFA transmissions. They found that song length increased during SURTASS LFA transmissions by an average of 29 percent, and returned to baseline length following the playback. Miller *et al.* (2000) suggested that song lengths were increased to compensate for acoustic interference. That interference is simply the presence of potentially masking noise—not the presence of a competing male. The response of singers to the

nearby presence of other singers is stronger, and includes the singer swimming toward and interacting with the other nearby singer(s) (Darling and Bérubé, 2001). These response components, typical of intra-sexual competition, were not observed in Miller *et al.* (2000), supporting their suggestion that the increase in song length is in response to the presence of noise in the bandwidth of the signal, not

for statistical evaluation of an apparent drop in vocalization rate by fin and blue whales and the no impact findings may have been an artifact of the small sample size.

Response: NMFS and the Navy did not expect that these data would provide a definitive answer on this issue. Nevertheless, these data, combined with existing data, provide a

(with received levels below 155 dB and usually below 140 dB) to predict responses at higher exposure levels." Yet the Navy did not heed the advice of the LFS SRP scientist because they extrapolated in the Final EIS to conclude that there is no significant risk below 180-dB levels.

Response: The actual quote from the Quicklook of Phase III dated August 31, 1998, states, "Responses did not scale

Response: TR 1 concerning Phase III (humpback whales) stated, "Many of the whale subjects continued to sing and interact during the playback. Some behavioral responses of focal whales were observed during playback * * * Most of the whales that did respond resumed activities normal for the breeding area within less than an hour." The independent scientists conducting Phase III of the LFS SRP did not conclude that these alterations of

survey area. However, a larger data set taken over a much longer time period than one week is needed before conclusions can be drawn. Dr. Mobley also stated in his declaration that for the same area there were more than twice the whales than in 1995. It should be noted that the results from the LFS SRP Phase III show a different result. Sightings made from the observation vessel showed an observation rate of 1.5 humpback whales per hour on March 1,

Phase III have not been studied by the Navy.

Response: NMFS has not received any scientifically supportable evidence of the decline of spinner/spotted dolphin populations in Hawaiian waters, nor information on still births. Forney *et al.* (2000) and Caretta *et al.* (2001) do not support a hypothesis that there has been a population decline.

Comment SIC31: The Final EIS did not include reports of abnormal

nearby presence of other singers is stronger, and includes the singer swimming toward and interacting with the other nearby singer(s) (Darling and Bérubé, 2001). These response components, typical of intra-sexual competition, were not observed in Miller *et al.* (2000), supporting their suggestion that the increase in song length is in response to the presence of noise in the bandwidth of the signal, not the presence of a competing male.

Comment SIC17: The results of the LFS SRP have not been published and have yet to survive the peer review process.

Response: This comment was addressed in the Final EIS (RTCs 4–5.18 and 4–5.19). To date one article and one paper regarding the results of the LFS SRP have been published: Miller *et al.* (2000), and Croll *et al.* (2001).

Comment SIC18: The Final EIS (RTC 4–5.27) states that many prior studies (prior to LFS SRP) were reviewed in the development of the marine mammal monitoring mitigation, yet no reference is made to these prior studies in the Final EIS.

Response: RTC 4–5.27 states that the Final EIS reviewed the results of prior studies. This information was utilized not only in determining the research strategies for the LFS SRP as noted in the Final EIS Subchapter 4.2.4.1, but also in the analyses performed and documented in the Final EIS. Marine mammal monitoring mitigation was developed as a result of this process; and, therefore, it included the review of literature utilized in the Final EIS for these purposes. A list of references can be found in the Final EIS (pages 13–1 to 13–54).

Comment SIC19: The National Research Council (NRC) stated that critical exposure levels cannot be extrapolated from a few species. However, this is what the Final EIS does based on testing on 4 mysticetes.

Response: It is impossible to conduct studies on all marine mammal species within a reasonable period of time. Accordingly, four mysticete species (blue, fin, gray, and humpback whales) were selected based on the criteria described under RTC SIC8. Their responses to LF sound signals during the LFS SRP were to serve as indicators for the responses of other potentially LF-sensitive species, which were presumed to be less vulnerable to SURTASS LFA sonar signals. For additional information see Final EIS (RTC 4–5.1).

LFS SRP Phases I and II

Comment SIC20: During the LFS SRP Phase I, the sample size was too small for statistical evaluation of an apparent drop in vocalization rate by fin and blue whales and the no impact findings may have been an artifact of the small sample size.

Response: NMFS and the Navy did not expect that these data would provide a definitive answer on this issue. Nevertheless, these data, combined with existing data, provide a reasonable basis for informed decision-making regarding the proposed action. For additional information, see the Final EIS (RTCs 4–5.10, 4–5.23, and 4–5.44).

Comment SIC21: Gray whales cannot be used as indicator species as supported by the Navy's statement in Final EIS (RTC 4–4.18) where it stated, "Gray whales inhabit a unique environment, and all research conducted to date indicates that their behavior does not generalize to other species."

Response: The statement was taken out of context. The term "their behavior" referred only to avoidance by gray whales of sound that was in their migratory path. The LFS SRP results showed that gray whales do not respond to 155 dB RL, generated outside of their migratory path. The gray whale research in Phase II of the LFS SRP was done with a different objective than Phases I and III.

LFS SRP Phase III

Comment SIC22: There is a very real question as to whether the results of the LFS SRP Phase III are statistically significant.

Response: The LFS SRP was intended to collect field research data regarding the responses of selected species of cetaceans to LF sound and, in that respect, the independent scientist principal investigators and the Navy strongly believe it was successful. The Navy did not expect that these data would provide the definitive, final answer on this issue. Nevertheless, these data, combined with existing data, provide a reasonable basis for informed decision-making regarding the proposed action. Phase III included a total of 33 playback experiments with 17 being conducted during focal follows. Singers continued to sing throughout seven of the 17 playbacks. There were six cases of song cessation that were considered possible responses to playback. During the testing period there were 191 hours of control and almost 33 hours of playback observations.

Comment SIC23: One commenter stated that a scientist hired by the Navy to conduct the LFS SRP cautioned in the Executive Summary of the Hawaii Quicklook Report that "it will be difficult to extrapolate from these tests (with received levels below 155 dB and usually below 140 dB) to predict responses at higher exposure levels." Yet the Navy did not heed the advice of the LFS SRP scientist because they extrapolated in the Final EIS to conclude that there is no significant risk below 180-dB levels.

Response: The actual quote from the Quicklook of Phase III dated August 31, 1998, states, "Responses did not scale consistently to received level, and it will be difficult to extrapolate from these results to predict responses at higher exposure levels." This was addressed in the Final EIS (RTC 4–5.1). The analysis presented in the Final EIS does not extrapolate from 150 dB to 180 dB. The selection of the 180-dB criterion was not related to results from the LFS SRP. The Navy accepts that risk is high at 180 dB RL, and assumes that risk of a significant change in a biologically important behavior is low below 150 dB RL because of the relatively modest responses observed during the LFS SRP.

The risk continuum is a biologically reasonable formula for reconciling the LFS SRP data with the conventional assumption of high risk at 180 dB RL. The fact that responses did not consistently scale with RL confirms the risk continuum assumption that not all individuals will react identically when exposed to the same level of SURTASS LFA sonar signals. It should be noted that the risk continuum function corresponds to a dose-response function in a typical pharmacological risk assessment. The Navy's analyses estimated the risk posed by SURTASS LFA sonar by treating the risk of biologically significant behavior to received levels (SPLs in decibels) using probability distribution functions. The results of these analyses appear as continuous functions that are analogous to dose-response curves used in toxicology: at one end of these curves, low received levels ("low dose") would not be expected to elicit a response in the species; at the other end of these curves, high received levels ("high dose") would be expected to elicit much more serious responses. These types of data analyses are accepted as the best practice in disciplines ranging from epidemiology, toxicology, and pharmacology.

Comment SIC24: One commenter disagrees with the Navy's interpretation that changes in singing behavior from the LFS SRP results in a minor, non-significant change. Because song is related to mating behavior, any change is likely to be significant to the limited gene pool of the endangered humpback whale.

Response: TR 1 concerning Phase III (humpback whales) stated, "Many of the whale subjects continued to sing and interact during the playback. Some behavioral responses of focal whales were observed during playback * * * Most of the whales that did respond resumed activities normal for the breeding area within less than an hour." The independent scientists conducting Phase III of the LFS SRP did not conclude that these alterations of behavior were widespread. Therefore, NMFS believes that it is unlikely that a SURTASS LFA sonar vessel, transmitting at no more than a 20-percent duty cycle and moving constantly, thereby resulting in only short term noise interference for an individual animal; and operating at various locations in a yearly period would have a significant (or widespread) impact to this biologically important behavior, including those for humpback whales. This conclusion is supported by the Final EIS analysis.

Comment SIC25: The actual range of RLs during Phase III that coincided with cessation of singing was 103.5 to 142.3 dB, not 120 to 150 dB.

Response: Table D–15 in TR 1 presents the RLs of the 17 singers followed by the observation vessel. The range of RLs for singers that stopped singing was 121.5 to 150.5 dB. The RLs for singers that did not stop singing was 122.8 to 149.9 dB.

Comment SIC26: There is no discussion of the reports of whales leaving the test area (Phase III) in the Final EIS. "Omission of this information cannot be other than deliberate."

Response: The Final EIS addresses this issue in RTC 4–5.10. Humpback whales typically commence their migration from Hawaiian waters in early March. Thus, the decrease in whale numbers in March is consistent with the typical departure schedule for humpback whales.

Comment SIC27: Data imply that there were more whales off the Kona coast on March 8 than on March 1 (Mobley survey), thus supporting the possibility that SURTASS LFA testing drove humpback whales out of one of their favorite breeding and birthing areas. Such effects are biologically significant.

Response: In a court declaration on March 19, 1998 (See Final EIS Appendix C Tab G), Dr. Mobley recounted a higher sighting rate of 0.21 whales per minute for March 1, 1998, versus 0.29 whales per minute for March 8, 1998, for the area off the Kona, or west side, of Hawaii. The declaration did not specify the location in any more detail, nor did it indicate the size of the survey area. However, a larger data set taken over a much longer time period than one week is needed before conclusions can be drawn. Dr. Mobley also stated in his declaration that for the same area there were more than twice the whales than in 1995. It should be noted that the results from the LFS SRP Phase III show a different result. Sightings made from the observation vessel showed an observation rate of 1.5 humpback whales per hour on March 1, 1998 and 3.0 humpback whales per hour on March 8, 1998. Therefore, the scientific data are scientifically inconclusive that the LFS SRP Phase III drove humpback whales out of the area off the Big Island.

Comment SIC28: The Mobley 1998 survey did not include Keahole Point, nor were there any surveys before the testing.

Response: Mobley *et al.* (1999) indicate that the tracklines used during the 1998 survey included the Kona coast and the west side of Hawaii, which includes Keahole Point.

Comment SIC29: As reported by a whale watching activity in Hawaii, the season after the LFS SRP Phase III (1998–99) showed a dramatic drop in numbers of humpbacks in Kona waters as compared to the previous year. The whale watching industry in the remaining areas of the Hawaiian Islands reported numbers at least equal, or as in the case of Kauai, much greater. The Navy did not do follow up research in the area the following year.

Response: The Navy funded statewide research surveys in 1998 and 2000 for Hawaiian waters that included the Kona Coast. Preliminary results indicate that there were fewer whales around the Big Island relative to other areas: however, the sea state conditions for the Big Island were worse in 2000 relative to 1998 (J. Mobley, pers comm). The mean values were a Beaufort sea state of 3.24 for the 2000 survey and 2.82 for the 1998 survey. Buckland *et al.* (1993) found that sea state greatly affects the probability of detection of marine mammals. Based on previous surveys (1993–1998), Mobley *et al.* (1999) found that the probability of detecting a whale at the surface dropped significantly beyond a Beaufort sea state of 3. Moreover, the overall trend since 1993 is for increasing numbers of humpback whales visiting the Hawaiian Islands.

Comment SIC30: Did Phase III of the LFS SRP cause the decline of spinner dolphin population on Hawaiian waters? Reports by independent naturalists, whaleboat captains and fishermen of stillbirths by spinner and spotted dolphins after the LFS SRP Phase III have not been studied by the Navy.

Response: NMFS has not received any scientifically supportable evidence of the decline of spinner/spotted dolphin populations in Hawaiian waters, nor information on still births. Forney *et al.* (2000) and Caretta *et al.* (2001) do not support a hypothesis that there has been a population decline.

Comment SIC31: The Final EIS did not include reports of abnormal behavior by marine animals off Hawaii during the tests (schooling hammerhead sharks, whales swimming at high speeds, dolphins behaving as if threatened).

Response: The reports of the abnormal behavior by marine animals during the LFS SRP Phase III are included in the Final EIS in Appendix C Tabs A, B, and E. In court declarations both Dr. Mobley (Final EIS Appendix C Tab G) and E. Nitta (Final EIS Appendix C Tab H) stated that none of these behaviors were unusual for the Hawaiian waters. In his court declaration (Final EIS Appendix C Tab F) Dr. Fristrup stated that the reported calf breaching activity fell within the range of breaching activity observed during the control period (when the sound source was off). The reported lone humpback whale calf breaching off Hawaii during the LFS SRP Phase III was discussed in the Final EIS (RTC 4–5.25). Reported "acute behavioral responses" during the LFS SRP Phase III are discussed in the Final EIS (RTC 4–5.46).

Comment SIC32: The Final EIS does not meet the minimal standards in dealing with the Chris Reid complaint during Phase III of the LFS SRP. The declaration filed by Dr. Kurt Fristrup in Appendix C of the EIS does not include Ms. Reid's revised date of 10 March 1998. The EIS does not contain the second Fristrup response, which states that a person at Ms. Reid's location would have experienced a received level of 125 dB.

Response: The Navy has conducted a comprehensive and thorough scientifically based research program on the potential effects of LF sound on human divers. Medical doctors and clinical researchers have carried out extensive computer modeling and testing of human and animal subjects. (All testing was done within the guidelines for the protection of human subjects and standard ethical procedures for animal experiments.) The study concluded that the maximum tested sound level of 157 dB did not cause damage to internal or external tissues, or the vital bodily functions and processes in human subjects. Based on the data obtained from these studies, the

Navy Bureau of Medicine incorporated a wide safety margin and established a very conservative limit of 145 dB for LF received sound level for recreational and commercial divers. The mitigation measures provided in the Final EIS will ensure that no diver will be exposed to levels of sound above 145 dB.

The commenter has misinterpreted Dr. Fristrup's statement in his second declaration. Dr. Fristrup stated, "Given

dB), and long-term and cumulative effects on marine mammal stocks. These research issues are described in RTC MOC25. However, it is not necessary to delay this rulemaking until more information is available since the Navy has provided sufficient information in its Final EIS for NMFS to make the findings required by the MMPA. These findings are discussed later in this document.

Response: The LOA application is based on information contained in the Draft EIS, while the proposed rule relies on information contained in the Final EIS. NMFS believes that the Navy's Final EIS combined with the empirical data collected during the LFS SRP and other data provide a reasonable basis for informed decision-making.

Figure 1–4 of the Final EIS provides information on hearing thresholds of

SRP, not the Navy. However, as indicated by research (Schlundt *et al.* (2000), Cudahy and Ellison (2002), and Crum and Mao (1996)), the choice of 160 dB should not be interpreted to mean that injury occurs at an SPL of 160 dB.

Comment SIC40: One commenter stated that on page 52 the LOA application mentioned that Richardson *et al.* (1995) conjectured that prolonged exposure to 120 dB might cause PTS in

Response: The composite audiograms shown in Figure 1–4 use measured and estimated marine mammal hearing data to illustrate that mysticetes have the best LF hearing of all marine mammals. As stated in the Final EIS Subchapter 1.4.2.1 and within Figure 1–4, the thresholds shown for pinnipeds are a composite of measured *lowest* thresholds for multiple species from Richardson *et al.* (1995). It is recognized that there is a substantial difference

oversimplification of an exceedingly complex and poorly understood suite of issues.

Response: NMFS and the Navy concur that the effects of anthropogenic sound on marine mammals is exceedingly complex and there is a lack of information on many, if not most, species. The complexity and length of the Final EIS is testimony to this. Because of this, very conservative assumptions were used for all of the

Navy Bureau of Medicine incorporated a wide safety margin and established a very conservative limit of 145 dB for LF received sound level for recreational and commercial divers. The mitigation measures provided in the Final EIS will ensure that no diver will be exposed to levels of sound above 145 dB.

The commenter has misinterpreted Dr. Fristrup's statement in his second declaration. Dr. Fristrup stated, "Given our source level and range to Keahole Pt., the conservative estimate of received level would be 125 dB. This is equivalent to the received level of song from a singing humpback whale at 400 m distance." Also this is 20 dB below the maximum allowable level that the Navy has determined to be the accepted LFS exposure level (145 dB) to recreational and commercial divers, or 100 times less intense. See Final EIS RTC 4–5.26 and Appendix C for additional information.

LFS SRP Conclusions

Comment SIC33: LFS SRP demonstrated that exposure up to 155 dB (and often lower than 155 dB) causes small but measurable (and statistically significant) behavioral responses (Ref: Croll *et al* (2001), and Miller *et al.* (2000)). Scientific data from the LFS SRP does not justify the Navy's statement that levels below 150 dB are less than 2.5 percent likely to lead to a "significant change in biologically important behavior" because roughly one quarter of the singers in Phase III stopped singing in response to the LFA signal as low as 130 dB.

Response: The LFS SRP, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant change in biologically important behaviors. Most of the singers resumed their songs when the SURTASS LFA signal was terminated. Therefore, the use of 2.5 percent for potential significant change in biologically important behavior at levels below 150 dB is warranted. This is addressed in the Final EIS (RTC 4–5.10 and 4–6.19) and Subchapters 1.4.2, 4.2.4, and 4.2.5.

Comment SIC34: NMFS should direct the Navy to conduct further scientific testing on a broader range of species and at higher RLs before an LOA is issued.

Response: The Navy has instituted a long term research program that will address NMFS-identified research issues potentially including responses of sperm and beaked whales to SURTASS LFA signals, behavioral responses of whales to sound levels not tested (specifically between 155 and 180 dB), and long-term and cumulative effects on marine mammal stocks. These research issues are described in RTC MOC25. However, it is not necessary to delay this rulemaking until more information is available since the Navy has provided sufficient information in its Final EIS for NMFS to make the findings required by the MMPA. These findings are discussed later in this document.

Comment SIC35: The results of the LFS SRP cannot be used, regardless of the findings, to show absence of harm at sound levels up to 180 dB. The Navy predicted a "small take" on the basis that a received level of 180 dB would be relatively safe. This was not based on direct tests.

Response: The LFS SRP was not designed to demonstrate the absence of harm at sound levels up to 180 dB, nor was this criterion based on direct tests. See Final EIS (RTC 4–5.9) for more details. "Small takes" were not based on the 180–dB received level, but on SPLs between 119 and 215 dB.

Comment SIC36: There was an inappropriate comparison of the results of the Acoustic Thermometry of Ocean Climate (ATOC) project impact on humpback and sperm whales to LFA. Commenter stated that the Final EIS willing to use data from ATOC to conclude that there is an absence of responsiveness to LF broadcasts. However, when ATOC caused whale deaths, the Final EIS stated that ATOC and LFA had different acoustic patterns.

Response: As discussed in the Final EIS (RTC 4–4.20), there is no evidence that ATOC transmissions resulted in the death of any whale.

Impact Criteria/Risk Continuum

Comment SIC37: The LFS SRP cannot be used to determine the "risk continuum."

Response: As explained in the Final EIS, the risk continuum was not determined exclusively by the results of the LFS SRP. See Subchapters 1.4.2.2 and 4.2.4.3 for more details.

Comment SIC38: The discussion on pages 54–56 of the LOA application (regarding the 180–dB criterion) differs from information found in the Navy Final EIS; neither is convincing. In the application, the Navy speculated that cetaceans that hear best at low frequencies would have higher thresholds than cetaceans that hear best at high frequencies because ambient noise levels are higher for LF. These levels cannot be used to speculate because ambient noise levels have been increasing in recent times and because noise levels in the past history are unknown.

Response: The LOA application is based on information contained in the Draft EIS, while the proposed rule relies on information contained in the Final EIS. NMFS believes that the Navy's Final EIS combined with the empirical data collected during the LFS SRP and other data provide a reasonable basis for informed decision-making.

Figure 1–4 of the Final EIS provides information on hearing thresholds of marine mammals indicating that mysticete auditory thresholds at their best hearing frequencies are estimated to be about 60 to 90 dB while the thresholds for odontocetes at their best hearing thresholds are about 30 to 40 dB. Additional information can be found in Subchapter 1.4 of the Final EIS. However, NMFS believes that the commenter has misinterpreted the statement in the Navy's application. Archaic ambient LF noise levels are presumed to have been lower than ambient noise of today, due in major part to increases in worldwide shipping, but offset somewhat by archaic volcanic activity. To estimate the threshold for hearing of LF marine mammal specialists (i.e., the large whales), the Navy and NMFS used the best science available on this issue by adopting threshold levels cited in Ketten (1998). Use of this information, while somewhat speculative, remains the best science available until such time as NMFS and the Navy are successful in measuring threshold levels for marine mammals under MMPA scientific research permit 931–1597–00 (dated May 22, 2001).

Comment SIC39: Because the LFS SRP was conducted at a maximum level of 160 dB, this implies that the Navy agreed with many researchers that there is a potential physical threat to marine mammals over 160 dB.

Response: Based on early comments from the MMC and others stating that there may be insufficient information available for the assessment of the potential environmental impacts to conduct a proper NEPA review, the Navy convened a scientific working group of government and non-government scientists to provide advice on needed research. The Navy, based on inputs from the scientific group, developed and implemented the three-phase LFS SRP (see Final EIS Subchapter 4.2.4). The goals, as set by the scientific group, were to determine short-term behavioral impacts to those marine mammals presumed to have the greatest sensitivity to LF sound, the baleen whales. The maximum level of 160 dB was set by the scientific working group and the independent scientists, who planned and executed the LFS

SRP, not the Navy. However, as indicated by research (Schlundt *et al.* (2000), Cudahy and Ellison (2002), and Crum and Mao (1996)), the choice of 160 dB should not be interpreted to mean that injury occurs at an SPL of 160 dB.

Comment SIC40: One commenter stated that on page 52 the LOA application mentioned that Richardson *et al.* (1995) conjectured that prolonged exposure to 120 dB might cause PTS in odontocete species at their most sensitive frequency. This acoustic behavior of odontocetes cannot be used to predict the acoustic behavior of all whales because their hearing is above LFA transmissions frequencies.

Response: The statement in the Navy application notes that the 120 dB level corresponds to the level of uninterrupted sound conjectured by Richardson et al. (1995) that might lead to PTS in the most sensitive odontocete species at their most sensitive frequency, *if exposure were sustained for a very long time.* Recent research does not fully support the commenter's conjecture. Schlundt *et al.* (2000) showed that bottlenose dolphins experience onset of masked TTS (defined as 6 dB of shift) from a one-second, 3–75 kHz, exposure at approximately 192 dB RL sound. Assuming a 3–dB exchange rate (e.g., the same amount of shift that would result from reducing the intensity by 3 dB and doubling the exposure time (Finneran *et al.*, 2000), these odontocetes could experience TTS from a 16-second exposure to a 180–dB sound at their best frequency, a 32-second exposure at 177 dB, etc. Since this approximation is for mid-frequency marine mammal specialists at mid-frequency sound levels, NMFS believes that low frequency marine mammal specialists should incur TTS at similar levels and duration when exposed to low frequency sounds. However, the typical SURTASS LFA signal is not a constant tone, but rather a transmission of various waveforms that vary in frequency and duration. A complete sequence of sound transmissions lasts between 6 and 100 seconds, although the duration of each continuous frequency sound transmission is normally 10 seconds or less. Therefore, the SURTASS LFA signal itself is unlikely to result in either PTS or TTS in marine mammals.

Comment SIC41: The composite pinniped audiogram (Final EIS Figure 1–4) is misleading. It is oversimplified and ignorant of published audiometric data. There is a substantial difference between phocids and otariids.

Response: The composite audiograms shown in Figure 1–4 use measured and estimated marine mammal hearing data to illustrate that mysticetes have the best LF hearing of all marine mammals. As stated in the Final EIS Subchapter 1.4.2.1 and within Figure 1–4, the thresholds shown for pinnipeds are a composite of measured *lowest* thresholds for multiple species from Richardson *et al.* (1995). It is recognized that there is a substantial difference between phocids and otariids concerning hearing, however, this does not change the conclusion in the Final EIS that there are no marine mammals with more sensitive LF hearing than mysticetes.

Comment SIC42: The assumption that the potential for masking effects is negligible because of narrow bandwidth and maximum 10-second duration is incorrect. Also, if we assume that there is no noise other than LFA sonar, it still would not be adequate for a whale to experience no masking 80 percent of the time, if during the other 20 percent of the time a predator is masked, resulting in the whale's death.

Response: The potential impacts for masking by the SURTASS LFA sonar are assessed in the Final EIS Subchapter 4.2.7.7. In summary, masking effects are not expected to be severe because the SURTASS LFA sonar bandwidth is very limited (approximately 30 Hz), the signals do not remain at the same frequency for more than 10 seconds, and the duty cycle is limited (system off at least 80 percent of the time). For example, Dahlheim *et al.* (1984) determined that gray whales in the San Ignacio Lagoon, Baja California shifted the frequencies of their vocalizations away from the predominant noise producers in the lagoon to overcome masking effects. This was also addressed by Richardson *et al.* (1995) who noted in particular that marine mammals, like terrestrial animals, have evolved adaptations to reduce masking of sounds that are important to them. Therefore, it is very likely that, if necessary, marine mammals can adapt by shifting their vocalizations away from the narrow SURTASS LFA frequency band. The probability of an intermittent sound of interest to a marine mammal continuously overlapping the SURTASS LFA signal (with its 6- to 100-sec. transmission period every 6 to 15 minutes) for any period of time is small. A continuous sound, such as noise from a ship, cannot be masked by the intermittent SURTASS LFA transmission.

Comment SIC43: The attempt to apply a single noise exposure standard for all marine mammals is a gross oversimplification of an exceedingly complex and poorly understood suite of issues.

Response: NMFS and the Navy concur that the effects of anthropogenic sound on marine mammals is exceedingly complex and there is a lack of information on many, if not most, species. The complexity and length of the Final EIS is testimony to this. Because of this, very conservative assumptions were used for all of the Navy's analyses. These assumptions are detailed in the Final EIS Subchapter 1.4.3.

The exposure standard used in the Final EIS analysis for all potentially affected marine mammals is appropriate because of its extremely conservative bias. Foremost of these is that all marine mammals were evaluated as if they were equally as sensitive to LF sound as the baleen whales.

180–dB Criterion

Comment SIC44: There are two separate justifications presented for the utilization of the 180–dB criterion for the onset of injury, or threshold shift; one in the proposed rule based on the Draft EIS and the other in the Final EIS. Notwithstanding this, each of these analyses tends to underestimate the potential for auditory impacts. Factors include: (1) Reliance on the Ridgway TTS study; (2) inaccurate use of the HESS (High-Energy Seismic Survey) Workshop and NMFS' Acoustic Criteria Workshop; and (3) reliance on human audiology to determine threshold shift based on "equivalent quiet." Finally, the Navy's theory is inconsistent with the little empirical data that exists on marine mammals (pinnipeds). The extrapolation of human hearing loss data to create models for estimating potential injury to marine mammals may be unfounded. The adoption of a 180–dB SPL as safe for all marine mammals is unsupported by science and actual events (e.g., the beaked whales strandings in Greece and the Bahamas).

Response: The determination of the 180–dB criterion for injury was developed from a combination of several scientific studies and analytical calculations including: (1) Marine mammal hearing thresholds, (2) human hearing loss studies, (3) comparison of fish hearing loss studies, and (4) TTS studies. This was noted in both the Draft and Final EISs. The HESS and NMFS workshops concluded that the 180–dB SPL is the point above which some potentially serious problems in the hearing capability of marine mammals could start to occur. Detailed information on this subject is provided

in the Final EIS Subchapter 1.4.2.1. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury supports this conclusion.

While there is limited empirical evidence at this time (beyond Schlundt *et al.*, 2000) on any injury criterion, the 180 dB level makes common sense, given that Frankel (1994) estimated the source level for singing humpback

support the 180–dB criteria. The Final EIS states, "For the purposes of the SURTASS LFA sonar analyses presented in this OEIS/EIS, all marine animals exposed to RLs ≥180 dB are evaluated as if they are injured" (See Final EIS page 1–34, also See Final EIS pages 14–1 to 14–4 and RTC 4–4.9).

However, NMFS has advised caution with any widespread use of the 180–dB standard for other than impulsive noise.

mitigated to below this level at the marine mammal, a small take authorization may be necessary in order to remain in compliance with the MMPA's prohibition on taking by harassment. Since the Navy determined that SURTASS LFA sonar operations could result in marine mammals being exposed to SPLs greater than 120 dB, it applied for an authorization under the MMPA for incidental taking. Based on

influence is arbitrary and capricious and that the Navy uses the 180–dB sound field to significantly limit the scope of mitigation.

Response: Please see RTC SIC46 regarding the establishment of a 180–dB safety zone and the scientific basis for this determination. In addition, the 180–dB determination is supported by two government-sponsored workshops. The 180–dB criterion was not arbitrarily

be at least 10 dB lower than the 140 dB given in the Final EIS.

Response: In accordance with best scientific practice, the Final EIS Subchapter 1.4.2.1 (Estimating the Potential for Injury to Marine Mammals) studied and analyzed all extant and viable hearing data. These went into the Final EIS discussions on marine mammal hearing thresholds, human hearing loss studies, selection of the 180–dB criterion, extrapolation to

monitoring mitigation methods are only effective to 1 km (0.54 nm). Refer to RTC SIC44 for the 180–dB selection criteria. Depending on conditions, visual monitoring can be effective for greater than 1 km (0.54 nm) and under good conditions can extend to 5.5 km (3 nm). Passive acoustic monitoring does not provide range, but will effectively locate the bearing of vocalizing animals at greater distances than either of the other two methods. Finally, the HF/M3 sonar

in the Final EIS Subchapter 1.4.2.1. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury supports this conclusion.

While there is limited empirical evidence at this time (beyond Schlundt *et al.*, 2000) on any injury criterion, the 180 dB level makes common sense, given that Frankel (1994) estimated the source level for singing humpback whales to be between 170 and 175 dB while Au and Andrews (2001) measured their calls off Hawaii at 189 dB; the average call source level for blue whales was calculated by McDonald *et al.* (2001) to be 186 dB; Watkins *et al.* (1987) and Charif *et al.* (2002) found source levels for fin whales up to 186 dB; and Mohl *et al.* (2000) recorded source levels for sperm whale clicks up to 223 dB. If marine mammals vocalize at these levels, it is realistic to believe that these species have also evolved mechanisms to protect themselves and conspecifics from high SPL vocalizations.

Comment SIC45: One commenter asked that NMFS "prove that the experts agreed that 180 dB was an appropriate threshold of mitigation for the LFA source, based on scientific evidence of biologically important impacts rather than Navy needs or mitigation potentials." Provide certification that the 180–dB criterion is specifically supported by the following workshops: HESS, ONR Workshop on the Effects of Man-Made Noise on Marine Mammals, and NMFS Workshop on Acoustic Criteria. The 180–dB criterion is not accepted by the vast majority of competent non-U.S. Navy supported scientists.

Response: A panel of nine experts in the fields of marine biology and acoustics sponsored by Southern California's HESS Team convened at Pepperdine University in June, 1997 to develop marine mammal exposure criteria (Knastner, 1998). The consensus of the combined experts was that they were

"apprehensive" about levels above 180 dB re 1 μPa (rms) with respect to overt behavioral, physiological, and hearing effects on marine mammals in general. Therefore, the 180–dB radius, as initially defined by transmission loss model and verified on-site, is recommended as the safety zone distance to be used for all seismic surveys within the southern California study area.

Those scientists and experts from Cornell University, University of California San Diego, University of Maryland, Woods Hole, NOAA, ONR, and Naval Submarine Medical Research Laboratory who assisted in the preparation of the Draft and Final EISs support the 180–dB criteria. The Final EIS states, "For the purposes of the SURTASS LFA sonar analyses presented in this OEIS/EIS, all marine animals exposed to RLs ≥180 dB are evaluated as if they are injured" (See Final EIS page 1–34, also See Final EIS pages 14–1 to 14–4 and RTC 4–4.9).

However, NMFS has advised caution with any widespread use of the 180–dB standard for other than impulsive noise. Because SURTASS LFA is not an impulsive noise, the Navy conservatively presumed that any marine mammal exposed to SURTASS LFA sonar received levels of ≥180 dB are evaluated as if they are injured for the purposes of their analysis and operational mitigation.

Comment SIC46: NMFS' mandate is to ensure that "the taking will have negligible impact on the affected species and stocks of marine mammals, will be at the lowest level practicable, and will not have an immitigable adverse impact of the availability of the species or stock(s) for subsistence use." Why does NMFS believe that an RL of 180 dB is an adequate threshold of LFA mitigation to satisfy this mandate? Unless and until the Navy and NMFS can provide an empirically based rationale for choosing 180 dB as the upper limit for acoustic harassment and non-serious injury, rather than any other value between 150 and 180 dB, the 120–dB criterion currently in use should not be abandoned. The LFS SRP does not justify revision of the general criterion from 120 to 180 dB. The use of a level lower than 180 dB as the injury level is appropriate. There is no scientific basis for the 180–dB standard as the upper limit of harassment.

Response: The comment fails to distinguish between an SPL that has been used previously to indicate the onset of Level B harassment for non-impulse (intermittent) noise (i.e., 120 dB) and the level that NMFS and others have adopted as a precautionary level to prevent injury for an impulsive sound (i.e., 180 dB). Research conducted by Malme *et al.* (1983, 1984) showed that gray whales demonstrated statistically significant responses to four different playbacks typical of industrial (intermittent/continuous) noise from oil production (drillship, semisubmersible, drilling platform, and production platform) at RLs of approximately 120 dB. Therefore, this level was the basement level established by NMFS previously for all non-impulsive noise that indicated marine mammals could potentially be harassed at those received levels. For industrial-type (non-impulsive, intermittent and continuous) noise sources, unless noise levels can be mitigated to below this level at the marine mammal, a small take authorization may be necessary in order to remain in compliance with the MMPA's prohibition on taking by harassment. Since the Navy determined that SURTASS LFA sonar operations could result in marine mammals being exposed to SPLs greater than 120 dB, it applied for an authorization under the MMPA for incidental taking. Based on the LFS SRP results, 119 dB was adopted by the Navy as the B parameter (or basement value) for risk to have a significant biological response on the part of the marine mammal. This is explained in more detail in the Final EIS (Subchapters 4–2.3 and 4–2.5.1). Also explained in the Final EIS (Subchapter 1.4.2.1) and in this document are the reasons for determining that 180 dB is a conservative estimate for assessing the onset for injury.

Once the determination is made that a taking will have no more than a negligible impact on affected marine mammal stocks (as is done in this document), the MMPA requires NMFS to prescribe regulations "setting forth* * * means for effecting the least practicable adverse impact on such species or stocks.* * *" These "means" are called mitigation measures by NMFS and have been set out in 50 CFR 216.184 and include the establishment of the 180–dB sound field (i.e., SURTASS LFA mitigation zone) wherein the Navy will not transmit whenever a marine mammal is within that zone. This 180–dB sound field has been determined to be the lowest SPL that is practicable to prevent injury to marine mammals. The HF/M3 sonar is effective up to 2 km (1.1 nm), no practical alternative mitigation measures have been identified that would be superior to the HF/M3, and NMFS and the Navy have shown elsewhere in this document that injury to marine mammals would not occur at lower SPLs. As a result, NMFS has determined that the Navy has mitigated harassment takings to the greatest extent practicable.

Please see RTC SIC44 on why the 180 dB level is a realistic application based upon existing knowledge. In summary, if marine mammals vocalize at high SPLs, it is realistic to believe that these species have also evolved mechanisms to protect themselves and conspecifics from high SPL vocalizations.

Comment SIC47: One commenter stated that a RL of 180 dB as the appropriate threshold of mitigation for the LFA source is not substantiated, and is not scientifically or legally defensible. The commenter stated that the Navy's designation of the 180–dB zone of

influence is arbitrary and capricious and that the Navy uses the 180–dB sound field to significantly limit the scope of mitigation.

Response: Please see RTC SIC46 regarding the establishment of a 180–dB safety zone and the scientific basis for this determination. In addition, the 180–dB determination is supported by two government-sponsored workshops. The 180–dB criterion was not arbitrarily selected based on the fact that the monitoring mitigation methods are only effective to 1 km (0.54 nm), but on the need to minimize the potential for injury. Depending on conditions, visual monitoring can be effective up to 3 nm (5.5 km). Passive acoustic monitoring does not provide range, but will effectively locate the bearing of vocalizing animals at greater distances. Finally, the HF/M3 sonar is effective up to 2 km (1.1 nm)(See the Final EIS Figure 2–5).

Comment SIC48: Based on the stranding in Greece and the results of the LFS SRP (gray whales changing their migration route), it appears that the risk continuum underestimates the decibel level of risk for change in biologically important behavior.

Response: There are no scientific data relating the strandings in Greece to sonar received levels below 180 dB. The LFS SRP, which included gray whales changing their migration route close to shore, exposed baleen whales to RLs ranging from 120 to about 155 dB. This research detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. The fact that none of the LFS SRP observations revealed a significant change in a biologically important behavior helped determine an upper bound for risk. Also, AIM simulation results demonstrate that a very small portion of any marine mammal stock would be exposed to sound levels exceeding 155 dB. Therefore, the risk continuum does not underestimate the level of risk for change in biologically important behavior. For additional information, see Final EIS Figures 1–5a through 1–5c, Subchapter 4.2.4.3, RTC 4–6.2, and Appendix D.

Comment SIC49: In the Final EIS the use of extrapolated data from human auditory standards to justify the 180–dB criterion is inappropriate. Also it is not only highly unlikely that the equivalent quiet (EQ) value for marine mammals in water would be the same as that for humans in air, but the empirical data from Kastak *et al.* (1999) indicate that it is not the same. EQ calculations should be at least 10 dB lower than the 140 dB given in the Final EIS.

Response: In accordance with best scientific practice, the Final EIS Subchapter 1.4.2.1 (Estimating the Potential for Injury to Marine Mammals) studied and analyzed all extant and viable hearing data. These went into the Final EIS discussions on marine mammal hearing thresholds, human hearing loss studies, selection of the 180–dB criterion, extrapolation to marine mammals, comparison to fish hearing studies, and TTS. Where extrapolation and estimation were necessary, internationally recognized scientific subject matter experts in marine biology, marine mammalogy and underwater acoustics were called on to develop this part of the Final EIS.

EQ values extrapolated from human measurements were compared with Kastak *et al.*'s (1999) mean values of onset of TTS for the harbor seal (137 dB), sea lion (150 dB) and elephant seal (148 dB) for 20-minute periods of octave band noise (OBN) in the 100–2,000 Hz frequency regime. The resultant EQ values (adjusted for 8-hour exposure as in Kastak *et al.*'s (1999) 20 minutes) were 125 dB for the harbor seal, 138 dB for the sea lion, and 136 dB for the elephant seal, yielding an average EQ of 133 dB. Applying the SURTASS LFA sonar 100-second EQ differential level of 54 dB to these values results in single-ping safe exposure levels of 179, 193, and 191 dB, respectively, for the three species tested by Kastak *et al.* (1999). Therefore, a 100-second duration for SURTASS LFA sonar of 180 dB can be considered appropriate and, based on Kastak *et al.* (1999) sea lion and elephant seal data, should be conservative for these species at least. See the Final EIS pp. 1–24 to 1–27 for more details.

Ketten (2001) has stated that marine mammal ears physically resemble land mammal ears, and since many forms of hearing loss are based on physical structure, it is therefore likely hearing damage occurs by similar mechanism in both land and marine mammal ears.

Comment SIC50: The Navy "reverse engineered" the presentation of risk to obtain a mitigation level of 180 dB at 1 km (0.54 nm) thus limiting the scope of mitigation. Because 1 km (0.54 nm) can be most effectively monitored visually and with passive acoustics, 180–dB level was therefore chosen. One commenter's hypothesis is that significant biological behaviors take place at RLs far below the level assumed in the EIS and that mitigation of those impacts is probably impossible.

Response: The 180–dB criterion was not selected based on the fact that the monitoring mitigation methods are only effective to 1 km (0.54 nm). Refer to RTC SIC44 for the 180–dB selection criteria. Depending on conditions, visual monitoring can be effective for greater than 1 km (0.54 nm) and under good conditions can extend to 5.5 km (3 nm). Passive acoustic monitoring does not provide range, but will effectively locate the bearing of vocalizing animals at greater distances than either of the other two methods. Finally, the HF/M3 sonar is effective up to 2 km (1.1 nm) (See the Final EIS Figure 2–5). For additional information see the Final EIS (RTC 4–6.5 and 5–1.14).

Comment SIC51: SURTASS LFA sonar operators need to monitor exposure to animals at levels of 160 dB and above for continuous, or quasi-continuous (longer than the integration time of mammalian ears), noise with an absolute never-exceed value of 170 dB in order to reasonably expect to have no physiological damage.

Response: There is no scientific evidence of what a "never exceed" value should be for marine mammals. Essentially, the commenter noted this by stating "longer duration signals should be assigned a lower limit, perhaps in the region of 170 dB." The justification for the Navy's use of the 180–dB criterion for potential injury to marine mammals is discussed in several previous RTCs. For information on monitoring capability for the SURTASS LFA sonar system, see Monitoring Concerns later in this document.

Comment SIC52: If human divers can only safely absorb SURTASS LFA sonar under 145 dB as proposed in the Final EIS, why is it likely that whales can escape injury at much higher levels (up to 180 dB)?

Response: As noted in Final EIS (RTC 4–6.21), the two levels are based on different criteria. The 145–dB criterion for divers is based on psychological aversion (as behavioral response), and the marine mammal criterion is based on potential injury.

Comment SIC53: According to the Navy, it did not deem it necessary to develop an "injury continuum" because of the low number of marine mammals that could potentially experience high RL. This assumption should be validated with detailed research.

Response: NMFS and the Navy do not believe it desirable or necessary, let alone humane, to test animals at or above levels of potential injury in order to develop an injury risk continuum (above 180 dB). All marine mammals exposed to RLs at or above 180 dB are considered for the analysis and for monitoring/ reporting purposes to be injured and SURTASS LFA sonar is

mitigated to prevent any injury. In other words the injury risk is 1.0, which is a very conservative assumption, because not all marine mammals exposed to 180 dB and higher RLs will actually be injured.

Risk Continuum

Comment SIC54: The Navy and NMFS have concluded that RLs of LF sound below 180 dB are unlikely to cause

reactions of whales to sound levels that were not tested during the LFS SRP, specifically between 155 and 180 dB, has been identified by NMFS as a potential topic for the follow-on research under the LOA.

Comment SIC55: Based on the risk continuum 95 percent of marine mammals at RL of 180 dB are at risk. Also all marine mammals exposed to ≥ 180 dB are evaluated as if they were

controls how rapidly risk transitions from low to high values with increasing SPL). The term "extended" related to the results of the LFS SRP and meant that none of the biologically significant behaviors observed during the LFS SRP persisted for any period of time and all subjects returned to normal activities within tens of minutes of cessation of playbacks. Additional details on the risk continuum can be found in the Final

unable to induce TTS in any animal at levels up to 193 dB re 1 micro Pa, which was the maximum level achievable with the equipment being used.

Comment SIC59: One organization commented that NMFS' reliance on the Navy's TTS studies in San Diego, which suggest that TTS occurs in bottlenose dolphins exposed to a single, 1-second pure tone occur at levels above 190 dB, is unwarranted because: (1) High

injury). Therefore, PTS (or injury) would occur above 193 dB. Third, the injury criterion for SURTASS LFA sonar was not based solely on this study (see the Final EIS Subchapter 1.4). Finally, for the purposes of the SURTASS LFA sonar EIS analysis and the proposed mitigation protocols, the level for potential injury was set at 180 dB—a conservative level.

(3) The extrapolation from a 1-second

the report showed no scientific research control for the speed and course of the approaching boat relative to the whales. Despite the conclusions in Green (1998) and Au and Green (2000), the OMI website presented only one of several potential conclusions when it stated, "These studies show that whales" swimming speed and amount of time underwater is affected by the noise level of boats that approach them."

mitigated to prevent any injury. In other words the injury risk is 1.0, which is a very conservative assumption, because not all marine mammals exposed to 180 dB and higher RLs will actually be injured.

Risk Continuum

Comment SIC54: The Navy and NMFS have concluded that RLs of LF sound below 180 dB are unlikely to cause either TTS or significant disruption of feeding, breeding, or other biologically important behaviors. No data are provided or experiments performed to support the conclusion that exposure levels below 180 dB will not cause significant disruption of any biologically important behavior. The conclusion that 180 dB is relatively safe for marine mammals deviates from accepted literature and is not based on empirical data, but on extrapolation above 155 dB.

Response: The scientific objective of the LFS SRP was to conduct independent field research in the form of controlled experimental tests of how baleen whales responded to SURTASS LFA sonar signals. Taken together, the three phases of the LFS SRP do not support the hypothesis that most baleen whales exposed to RLs near 140 dB would exhibit disturbance of behavior and avoid the area (Richardson *et al.*, 1995). These experiments, which exposed baleen whales to RLs ranging from 120 to about 155 dB, detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. The fact that none of the LFS SRP observations revealed a significant change in a biologically important behavior helped determine an upper bound for risk. The LFS SRP results, however, cannot be used to prove that there is zero risk at these levels. Accordingly, the risk continuum assumes that risk is small, but not zero, at the RLs achieved during the LFS SRP. The risk continuum modeled a smooth increase in risk that culminates in a 95 percent level of risk of significant change in a biologically important behavior at 180 dB. In this region, the risk continuum is unsupported by observations. However, the AIM simulation results indicate that only a small fraction of any marine mammal stock would be exposed to sound levels exceeding 155 dB (See the Final EIS Figures 1–5a through 1–5c, Subchapter 4.2.4.3, and Appendix D).

Comparisons of research and analyses of TTS to the 180–dB criterion are discussed in the Final EIS Subchapter 1.4.2.1. Research on the behavioral reactions of whales to sound levels that were not tested during the LFS SRP, specifically between 155 and 180 dB, has been identified by NMFS as a potential topic for the follow-on research under the LOA.

Comment SIC55: Based on the risk continuum 95 percent of marine mammals at RL of 180 dB are at risk. Also all marine mammals exposed to ≥ 180 dB are evaluated as if they were injured. Therefore, if most are at risk at 180 dB, then some are at risk at levels below 180 dB.

Response: The risk continuum and the 95 percent value refer to "significant changes in biologically important behavior" while the ≥ 180 dB value of RL is the risk of the onset of injury. The Final EIS did consider exposures below 180 dB as posing a risk of injury, but determined that the 180–dB criterion for injury is appropriate as detailed in previous responses. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance and tissue damage from LFA signals to cause injury supports this conclusion.

Comment SIC56: One commenter stated that the risk continuum is accepted by NMFS as one of the hypothetical assumptions in the Final EIS to support the 180–dB criteria. This commenter also stated that the risk continuum means that 50 percent of all animals exposed to 165 dB are injured.

Response: The commenter has misinterpreted the basis for the risk continuum as being a measure of injury. It is not a measure of injury; it is a measure of the potential risk of significant change in a biologically important behavior. This is explained in the Final EIS Subchapter 4.2.3.

Comment SIC57: At 66 FR 15386, first column, third paragraph in the proposed rule document, it states, "Because the LFS SRP failed to document any extended biologically significant response at maximum RLs up to 150 dB, the Navy determined that there was a 2.5 percent value of a risk of an animal incurring a disruption of biologically important behavior at an SPL of 150 dB, a 50-percent risk at 165 dB, and a 95-percent risk at 180 dB." However, NMFS provides no indication of what is meant by "extended biologically significant behavior" and how does this term conform to the statutory definition of harassment?

Response: In the 1999 application, the Navy stated, "The value of A used (10) (i.e., A = 10) was consistent with the LFS SRP results, which failed to document any extended, biologically significant response at maximum RLs up to 150 dB." (As defined in the Final EIS Subchapter 4.2.5.2, the A parameter controls how rapidly risk transitions from low to high values with increasing SPL). The term "extended" related to the results of the LFS SRP and meant that none of the biologically significant behaviors observed during the LFS SRP persisted for any period of time and all subjects returned to normal activities within tens of minutes of cessation of playbacks. Additional details on the risk continuum can be found in the Final EIS Subchapter 4.2.5.

However, NMFS believes that the term "extended" as used in the Navy application is a higher threshold than harassment, which refers to a reaction that is behaviorally significant on the part of the animal in the course of that animal's conducting a biologically important activity, such as breeding, feeding, or migrating. Therefore, the term "extended" is not used in this document or in the Navy's Final EIS. In this context, it is the impact of the activity on the animal, more than the duration of the disturbance, that is critical. NMFS clarifies that, for small take authorizations (as opposed to intentional takings), a Level B harassment taking occurs if the marine mammal has a significant behavioral response in a biologically important behavior or activity. For further discussion on this issue, please refer to RTC MMPAC13.

Other Studies

Comment SIC58: The analysis relied too heavily on Ridgway *et al.* (1997), which may not be a good model for the onset of TTS due to SURTASS LFA operations (not 1 second signal). The results of Ridgway *et al.* (1997) were based on exposure to sounds of different frequencies (3, 20, and 75 kHz) from those generated by SURTASS LFA sonar (0.1 to 0.5 kHz).

Response: Ridgway *et al.* (1997) and Schlundt *et al.* (2000) data can be used to extrapolate responses to the SURTASS LFA sonar signals, using established methods of adjusting for differences in signal duration. This was explained in detail in the Final EIS Subchapter 1.4.2.1.

Ridgway *et al.* (1997) was expanded, peer reviewed, and published as Schlundt *et al.* (2000). These results are applicable to the LFA frequency range. As stated in the Final EIS on page 1–27, Schlundt *et al.* (2000) documented temporary shifts in underwater hearing thresholds in trained bottlenose dolphins (*Tursiops truncatus*) and white whales (*Delphinapterus leucas*) after exposure to intense one-second duration tones at 400 Hz, and 3, 10, 20, and 75 kHz. Of primary importance to this deliberation are the LF-band tones at 400 Hz. At this frequency, the researchers were unable to induce TTS in any animal at levels up to 193 dB re 1 micro Pa, which was the maximum level achievable with the equipment being used.

Comment SIC59: One organization commented that NMFS' reliance on the Navy's TTS studies in San Diego, which suggest that TTS occurs in bottlenose dolphins exposed to a single, 1-second pure tone occur at levels above 190 dB, is unwarranted because: (1) High ambient noise levels exist in San Diego Bay (i.e., the research used masking thresholds of some 20–40 dB above acoustic sensitivity; a technique that has long been known to audiologists to result in less observable threshold shifts and thus weaker damage risk criteria); (2) Extrapolation from two species of odontocetes to other species is unjustified; and (3) Extrapolation from 1-second pure tone pulses to the broadband 100-second pulse of LFA is unjustified.

Response: (1) As stated in Schlundt *et al.* (2000), masking noise was used to provide a leveling effect in the presence of variable ambient noise in San Diego Bay, and this masking noise may have caused larger shifts than may have been seen without the masking noise. The scientific evidence from the audiologists (unidentified by the commenter, but assumed to be those referenced in Schlundt *et al.*, 2000) does support the theory concerning less observable threshold shifts for humans (Parker *et al.*, 1976; Humes, 1980). Recent research reported by Finneran *et al.* (2001) at the 2001 Meeting of the Acoustical Society of America in Ft. Lauderdale, FL does not support this theory for marine mammals. That study tested two dolphins in a low noise environment (tank) for 3 and 4.5 kHz with a 1-second pure tone. Subjects demonstrated behavioral changes at 190 dB. Preliminary results indicate no TTS at 4.5 kHz for either subject at received SPLs of 200 dB. The results of Schlundt *et al.* (2000) are applicable because (1) they are supported by recent scientific research and (2) marine mammals live in a noisy environment, one that closely resembles the environmental conditions of the study.

(2) Utilizing the results of this study for other species based on two species is justified. The use of indicator species, and extrapolation of results, is an accepted scientific practice, especially if the results are applied in a conservative manner. First, for the 400-Hz signal, no TTS was observed at the highest level of exposure (193 dB). Second, the onset of TTS is not considered by NMFS to be injury (although the Navy has considered any SPL above 180 dB to be a conservative level for determining injury). Therefore, PTS (or injury) would occur above 193 dB. Third, the injury criterion for SURTASS LFA sonar was not based solely on this study (see the Final EIS Subchapter 1.4). Finally, for the purposes of the SURTASS LFA sonar EIS analysis and the proposed mitigation protocols, the level for potential injury was set at 180 dB—a conservative level.

(3) The extrapolation from a 1-second pure tone to a broadband 100-second ping is discussed in previous RTCs. In addition, LF shipping noise is broadband, SURTASS LFA is not. SURTASS LFA sonar bandwidth is very limited (approximately 30 Hz), and the signals do not remain at the same frequency for more than 10 seconds.

Comment SIC60: In a 5-year report submitted to NMFS in March 1998, the Ocean Mammal Institute (OMI) concluded that when boat engines reach an RL of 120 dB whales swim two to three times faster than around quieter boats. This corroborates the large body of literature indicating that whales avoid sounds at about 115–120 dB.

Response: This concern was discussed in the Final EIS (RTC 4–4.25). In a summary posted on the OMI website, researchers reported that humpback whales changed their behavior when approached by boats with 200 hp engines, which produced RLs of 120 dB at 100 m (328.1 ft) at 2,000 Hz. A review of the actual report submitted to NMFS shows that the report does not support the claim made in the comment. Furthermore, Au and Green (2000) concluded,

* * * the whales appeared to swim fastest in response to the loudest boat. However, it is difficult to know exactly what a pod of humpback whales reacts to. The mere presence of a boat moving into their vicinity could cause serious reactions. Besides the levels of the underwater sounds and the complexity of the sound, the size and shape of a boat may also be important factors.

At close ranges sound intensity and spectral content change rapidly, providing clues to the whales that something is approaching rapidly, thus eliciting an avoidance response, which is not necessarily based on sound level. The OMI website supported this when it stated, "Data analysis showed that the loudness of the boat's engine and the rate of change in noise level significantly affected the whales' swimming speed." It also stated, "Other researchers have noted that whales appear to respond to rate of change in noise level." In other words, it is just as likely that the whales got out of the way because the boat was rapidly approaching them, rather than the level of sound from the engine. A review of the report showed no scientific research control for the speed and course of the approaching boat relative to the whales. Despite the conclusions in Green (1998) and Au and Green (2000), the OMI website presented only one of several potential conclusions when it stated, "These studies show that whales" swimming speed and amount of time underwater is affected by the noise level of boats that approach them."

LFA will not present a rapid "rate of change" to marine mammals because of the boat's slow speed of approximately 3 knots. Additionally, the frequency of the engine noise used to elicit responses from the whales in the Au and Green (2000) study was substantially higher than that of the SURTASS LFA sonar's signal. Therefore, the results from the 5-year report concerning humpback whale reactions to boat engine noise submitted to NMFS by OMI (Green, 1998) and later published (Au and Green, 2000) are not directly comparable to the scientific analyses in the Final EIS.

Comment SIC61: Evidence suggests the potential for serious physical and behavioral effects at exposure levels below 180 dB and widely accepted research demonstrates biological disturbance at far lower levels (115–120 dB).

Response: In order to determine the potential impacts that exposure to LF sound from SURTASS LFA sonar operations could have on marine mammals (below 180 dB), biological risk standards were defined with associated parameters of exposure. Based on the MMPA (Final EIS Subchapter 1.3.3.1), the potential for biological risk was defined as the probability for injury or behavioral harassment of marine mammals. In this analysis, behavioral harassment is assumed to be a significant change in a biologically important behavior, which is consistent with the NRC's characterization (NRC, 2000). The potential for biological risk is a function of an animal's exposure to a sound that would potentially cause hearing, behavioral, psychological or physiological effects. The risk continuum was developed as a measure of the biological risk for behavioral response. The measurement parameters for determining exposure were RL in decibels, length of the signal (ping), and number of pings received. Simple disturbance does not constitute injury or biologically significant behavior modifications.

Comment SIC62: When evaluating the TTS study by Schlundt *et al.* (2000), the Navy downplays individual variability where the small sample size clearly

weakens the general application of the results.

Response: Schlundt *et al.* (2000) is only one of several papers and research cited in the discussion of TTS in the Final EIS. See the Final EIS Subchapter 1.4.2.

Comment SIC63: On page 45, the LOA Request states, "Marine mammal biologists and marine bioacousticians agreed that, based on the best available

difference. To produce equivalent acoustic pressure level for air, 61.5 dB must be subtracted from the sound intensity in water. In other words, 100 dB in air would be equivalent to 161.5 dB in water. See Final EIS (RTC B–1.1) and Appendix B Subchapter B.3.2 for more information.

PE/AIM Simulations

Comment SIC66: It appears from the

(1) The peak received pressure level at an animal's location, and (2) the number of pings received. Processing AIM results using the risk continuum (Subchapter 4.2.6.3) incorporated signal duration (rooted in the risk function). Therefore, varying the duration of a given transmission (and thus the duty cycle) is not directly related to the number of transmissions, nor the number of takes for a given operation,

not to include monitoring detection of species.

Response: This has already been done. Under Alternative 1, modeling was used to analyze each site and species both without and with monitoring mitigation. See Final EIS Table 4.2–10. The AIM simulations utilized conservative values for monitoring mitigation effectiveness. The modeling did not place a high reliance on visual and passive acoustic

the SURTASS LFA source in either stationary or moving mode. For the calculations in the Draft and Final EISs, the source vessel was moving at 3 knots with the ship track being a triangle, eight hours per leg (3 legs per day) with mission durations of 20 days/24 hours per day, as noted in the Draft and Final EIS Table 4.2–6 and TR 2 Table 3–2.

Comment SIC72: The swim speed, interval of course change, angle of course change, dive times, distribution,

(NIOSH) has recently changed their "exchange rate"; that is, the drop in an acceptable noise level for increased durations. The former standard was 5 dB, and the current standard is 3 dB. The section on exchange rate concludes with this statement:

The 3–dB exchange rate is the method most firmly supported by the scientific evidence for assessing hearing impairment as a function of noise level and duration, whether or not an adjustment is used for

weakens the general application of the results.

Response: Schlundt *et al.* (2000) is only one of several papers and research cited in the discussion of TTS in the Final EIS. See the Final EIS Subchapter 1.4.2.

Comment SIC63: On page 45, the LOA Request states, "Marine mammal biologists and marine bioacousticians agreed that, based on the best available data, including results from the LFS SRP, and best scientific judgment, the SURTASS LFA biological risk standards for marine mammals (particularly mysticetes—baleen whales) used for this study are those discussed below." One commenter notes that a significant number of marine mammal biologists and marine bioacousticians do not agree with this.

Response: The SURTASS LFA sonar EIS analysis, based on both scientific research and literature reviews, utilized a risk function methodology to assess the biologically significant behavior of marine mammals. This process was developed by leading experts in the fields of acoustics, bioacoustics and marine biology, and was reviewed by NMFS. Because this methodology is novel, academic discussion is both anticipated and desired. The NRC has proposed the use of risk function (concerning the definition of Level B harassment under the MMPA). NRC (2000) stated, "the ultimate long-term goal should be a risk function involving intensity and duration of exposure (see Miller, 1974) for each species, but our current lack of knowledge impedes this goal."

Comment SIC64: Why was TR 3 (Summary Report on the Bioeffects of Low Frequency Waterborne Noise) missing from the Final EIS?

Response: As explained in Final EIS (RTC 1–3.11), none of the three TRs were missing from the Final EIS. As stated in the Final EIS on page xii, the TRs are incorporated by reference in accordance with 40 CFR 1500.21 and are available upon request. A copy of TR 3 was provided to the commenter on August 24, 1999, during the comment period for the Draft EIS.

Impact Analysis/Modeling

Comment SIC65: The conversion of dB (air) to dB (water) is 26 dB, not 60 dB.

Response: Sound levels in air are not the same as sound levels in water. In order to compare sound (or acoustic) intensity in air against that in water, one must consider the difference in reference standards (26 dB) and the difference in impedance between air and water (35.5 dB), a 61.5–dB difference. To produce equivalent acoustic pressure level for air, 61.5 dB must be subtracted from the sound intensity in water. In other words, 100 dB in air would be equivalent to 161.5 dB in water. See Final EIS (RTC B–1.1) and Appendix B Subchapter B.3.2 for more information.

PE/AIM Simulations

Comment SIC66: It appears from the data provided in the Navy's Final EIS that the Navy's researchers ran their modeling program an insufficient number of hours. Whereas LFA would transmit a proposed 72 hours during each tour of duty, the LFA model seems to have been run only 32 hours—the product of a 60-second "ping" repeated every 15 minutes for 20 days (Compare Final EIS at 2–8 with Final EIS at 4.2–22, 4.2–38). The difference between these two figures becomes more salient when tours of duty are multiplied, to reflect the proposed deployment. In sum, it would appear that, by this single error alone, the Navy has underestimated the overall impact of its system by a factor as great as 2.25, at least some of which would be reflected in additional numbers of animals "taken." Some part of this multiplier would also be reflected in higher equivalent received levels for animals exposed a multiple of times—a concern for NMFS in calculating negligible impact.

Response: The modeling program (AIM) was run with a sufficient number of hours to accurately reflect historical and expected SURTASS LFA operations. Page 4.2–22 of the Final EIS erroneously stated that a 20-percent duty cycle was used in the AIM calculations. AIM modeling was independent of duty cycle and signal duration, as they are embedded in the risk function upper limit calculation. The AIM modeling was based on a maximum received pressure level per transmission basis, independent of the duration of an individual ping. The transmit pressure level used to calculate the received level at the animal was the absolute maximum of all the individual elements in a given transmission. Subchapter 1.4.2.1 addresses how signal duration is accounted for in the selection of the 180 dB upper limit of the risk function, and explains why a 100-second duration criterion for SURTASS LFA sonar of 180 dB is appropriate and conservative. Typical durations for a transmission vary between 6 and 100 seconds, but the peak received pressure level at an individual animal is unaffected by this duration. Thus, the AIM modeling was based on two fundamental quantities: (1) The peak received pressure level at an animal's location, and (2) the number of pings received. Processing AIM results using the risk continuum (Subchapter 4.2.6.3) incorporated signal duration (rooted in the risk function). Therefore, varying the duration of a given transmission (and thus the duty cycle) is not directly related to the number of transmissions, nor the number of takes for a given operation, but has been accounted for in post-AIM analysis. Thus, even though page 4.2–22 of the Final EIS was in error, the AIM model runs presented in the Final EIS are correct. The take estimates presented in the Final EIS Tables 4.2–10 through 4.2–12 are not underestimated, but are valid, as explained in the Final EIS, and conservative (see Subchapters 1.4.3, and 4.2.7.5).

Furthermore, the Navy will rerun the models at least once prior to operating in a specific geographic region in order to derive new take estimates. The Navy will provide this information to NMFS that will reflect estimates for those areas requested for upcoming SURTASS LFA operations, in accordance with the annual LOA.

Comment SIC67: The accuracy and reliability of the input data are missing from these sophisticated models.

Response: The reliability and accuracy of the modeling input parameters were reviewed and cross-checked with marine biology experts. For more details, see the Final EIS (RTCs 4–3.13 and 4–3.14).

Comment SIC68: Calculations (Draft EIS/Final EIS) are based on the assumption that marine mammal species and stocks are uniformly or randomly distributed. Considerable evidence exists to indicate that this distribution is neither uniform nor random, but determined by biological and physical oceanographic features and could lead to an underestimate of effects.

Response: According to the Navy, it agrees that the distribution of marine mammals in the wild is neither uniform nor random. This was an integral part of the acoustic modeling. For each model site, the area was divided into sections or grids (See Appendix A of TR 2). Each section was assigned an animal weight or density for each of the modeled species. Within each of these sections, the distribution was random. Species distributions for each of the 31 sites are provided in Appendix C of TR 2.

Comment SIC69: The Navy should rerun its AIM simulations using varying estimates for its monitoring program to simulate more realistic conditions. Take calculations should be adjusted so as not to include monitoring detection of species.

Response: This has already been done. Under Alternative 1, modeling was used to analyze each site and species both without and with monitoring mitigation. See Final EIS Table 4.2–10. The AIM simulations utilized conservative values for monitoring mitigation effectiveness. The modeling did not place a high reliance on visual and passive acoustic monitoring. The effectiveness of the HF/M3 sonar was limited to a conservative value of 50 percent. The combined efficiency of monitoring by all three methods used in the modeling was 66 percent. Based on testing of the HF/M3 sonar, its efficiency for a 10-m (32.8-ft) whale at 1,000 m (3280.8 ft) is over 95 percent. If the "take" numbers were recalculated, as suggested, the percentages of potentially affected marine mammals would decrease, not increase. For more information, see the Final EIS Subchapters 2.3.2.2 and 4.2.7.1.

Comment SIC70: The SACLANTCEN report states that Cuvier's beaked whale specific sounds are not known, yet the Final EIS claims that passive acoustic devices have a 25 percent probability of detecting them.

Response: The Final EIS Subchapter 4.2.7.1 at 4.2–49 stated: "The *USS SEAWOLF* Shock Testing EIS (Navy, 1998) proposed using a broadband passive detection system. With this system, the *USS SEAWOLF* EIS assumed the following estimates for passive acoustic detection (1.0 = 100 percent):

Sperm whales and *Stenella* dolphins: $ME_{passive} = 0.75$

Other odontocetes except Cuvier's beaked whales: $ME_{passive} = 0.50$

Baleen whales and Cuvier's beaked whale: $ME_{passive} = 0.25$

Because the SURTASS passive array has limited bandwidth, the lowest (conservative) value of 0.25 was used for $ME_{passive}$."

Moreover, it should be noted that the fact that Cuvier's beaked whale species sounds are not known does not imply that they do not vocalize. It only implies that their sounds cannot necessarily be distinguished from other vocalizing cetaceans. However, the Navy's passive detection monitoring is not species-specific. The detection of *any* sounds identified to be from a marine mammal will require adherence to the mitigation protocols in accordance with Chapter 5 of the Final EIS.

Comment SIC71: How were ship movements during the modeled exercise factored into the calculation?

Response: The AIM simulation can calculate the projected sound field from the SURTASS LFA source in either stationary or moving mode. For the calculations in the Draft and Final EISs, the source vessel was moving at 3 knots with the ship track being a triangle, eight hours per leg (3 legs per day) with mission durations of 20 days/24 hours per day, as noted in the Draft and Final EIS Table 4.2–6 and TR 2 Table 3–2.

Comment SIC72: The swim speed, interval of course change, angle of course change, dive times, distribution, abundance, and density inputs to AIM are not site-specific.

Response: Swim speed, interval of course change, and angle of course change are the same for all species at all sites. However, diving regime (depth ranges and percent of time) are based on individual species. Population densities are determined for each site by species by season. These data are provided in the Final EIS Subchapter 4.2.2.2 and TR 2.

Comment SIC73: Beaked whales were not included in the Draft EIS or any modeling scenarios (sites).

Response: The Draft and Final EISs (Table 4.2–4) included beaked whales at 22 of the 31 modeled sites.

Comment SIC74: The PE model did not indicate the effects of infrasonic (0.1 to 15 Hz) sound produced by LFA.

Response: The SURTASS LFA sonar transmit array is not physically capable of producing infrasonic signals.

Single Ping Equivalent (SPE)

Comment SIC75: The Navy does not adequately deal with the exposure of marine mammals to repeated LFA signals, which could increase and intensify the resulting impacts.

Response: The SPE, as defined in the Final EIS Subchapter 4.2.3.1, is the methodology used during the acoustic modeling of potential impacts to marine animals from exposure to LF sound. This method estimates the total exposure of each individually modeled animal, which was exposed to multiple pings over an extended period of time. This is accomplished by the summation of the intensities for all received pings into an equivalent exposure from one ping, which is always at a higher level than the highest individual ping received.

Comment SIC76: There is no scientific justification for the 5 $\log_{10}$ (N) rule for assessing behavioral disturbance risk of multiple exposures. An additive effect of exposure is more appropriately modeled as 10 $\log_{10}$ (N). The Final EIS greatly underestimates the number of marine mammals that will be harassed due to multiple exposures at low levels.

Response: The National Institute for Occupational Safety and Health (NIOSH) has recently changed their "exchange rate"; that is, the drop in an acceptable noise level for increased durations. The former standard was 5 dB, and the current standard is 3 dB. The section on exchange rate concludes with this statement:

> The 3–dB exchange rate is the method most firmly supported by the scientific evidence for assessing hearing impairment as a function of noise level and duration, whether or not an adjustment is used for intermittent exposures. (NIOSH, 1998)

Additionally, at a recent meeting of the Acoustical Society of America, the existing data for TTS in marine mammals were compared for duration and received level. These data also mostly fit along the 3–dB exchange rate.

The 3–dB exchange rate is based on the equal energy assumption and is equivalent to the 10 $\log_{10}$ (duration or N) formulation suggested by the commenter. However, this formulation is based on continuous noise exposure. Interruptions in the noise exposure allow for recovery. Clark *et al.* (1987) found that "intermittent exposures produced less temporary and permanent hearing loss and less cochlear damage than continuous exposures of equal energy." If these TTS results also apply to behavior, it suggests that the intermittent nature of the SURTASS LFA source justifies the 5 $\log_{10}$ (N) formulation.

Furthermore, the existing data on long-term noise exposure in humans show that the effect drops from 10 $\log_{10}$ (duration) to 3.3 $\log_{10}$ (duration) when the total exposure drops to 8 hours. There are also data from impulsive noise exposure that indicate a 5–dB change in threshold is appropriate for a 10-fold change in the number of exposures. This is equivalent to 5 $\log_{10}$ (N).

These data are for TTS, and therefore not directly applicable to behavioral responses. However, the range of known values are 3.3 $\log_{10}$ (N), 5 $\log_{10}$ (N), and 10 $\log_{10}$ (N). Picking the intermediate value may represent the best estimate based on partial knowledge. Picking the extreme value represents the "worst case" scenario. It is conservative, but may be less accurate.

Another argument for a value less than 10 $\log_{10}$ (N) is that most animals that are exposed to multiple pings are at a reasonable range from the ship. These animals are moving through the water column, and the acoustic path of the signal for CZ propagation is a relatively narrow band. As the animals move up and down in the water column, they are unlikely to experience multiple sequential loud pings. The model allows

for non-sequential loud pings, even pings separated to be considered additive, which is a conservative approach.

Comment SIC77: The SPE approach appears to mask potential effects of repeated exposure at lower levels, such as abandonment of feeding and breeding areas or resonance effects. Treating the effects of a single ping at high levels close to the ship as equivalent to

analyze the potential impacts from operating two SURTASS LFA sonars within a representative area (Gulf of Oman). This was described in both the Navy's application and in the Navy's Draft and Final EISs. Table 4–14 of the application assesses the percentage of marine mammal stocks within that area that could potentially be affected. Since no more than two SURTASS LFA sonars are expected to be deployed under this

direction of the *R/V Cory Chouest* at a distance of about 40 mi (64.4 km). Since the SURTASS LFA sonar source can not transmit at mid-frequencies, it was not the SURTASS LFA sonar signal from the *R/V Cory Chouest*.

Comment SIC82: The Navy's calculations strongly underestimate the potential impacts of its noise on an animal's lifetime productivity rate.

Response: The Navy's Final EIS,

be a model. For illustration purposes, the intersection of only one mission per animal over a 20-year period is a valid assumption. First, there will be only two SURTASS LFA sonar vessels deployed during the upcoming 5-year period with each one expected to be located in a different ocean basin and, therefore, only a limited number of active sonar operations (normally 12 missions/year). Second, marine mammal breeding is

effect of LFA sonar on the marine mammal food chain, such as zooplankton and fish?

Response: The potential effects of SURTASS LFA sonar on fish and prey species are covered in the Final EIS Subchapters 4.1.1 and 4.2.7.6; sea turtles are covered in the Final EIS Subchapter 4.1.2; invertebrates are covered in the Final EIS Subchapter 3.2.1.1; plankton are addressed in the

assumptions were necessary because of lack of scientific data, they were made by the subject matter experts and were conservative. There are extensive discussions on fish, sharks and sea turtles in the Final EIS in Subchapters 3.2.1.2, 3.2.2, 3.2.3, 4.1.1, 4.1.2, and 4.3.1. The conclusions are based on the research of numerous recognized scientists. Examples of cited research include Bartol *et al.* (1999), Cox *et al.*

for non-sequential loud pings, even pings separated to be considered additive, which is a conservative approach.

Comment SIC77: The SPE approach appears to mask potential effects of repeated exposure at lower levels, such as abandonment of feeding and breeding areas or resonance effects. Treating the effects of a single ping at high levels close to the ship as equivalent to multiple pings at lower levels ignores the impact of multiple pings at lower levels taking place at substantial distances.

Response: The SPE approach does not mask potential effects of repeated exposures at lower levels because the number of pings required to equate to 180–dB exposure was modeled in the analysis. This conservative approach demonstrated that the potential impact on any stock of marine mammals from injury is considered negligible, which included consideration of multiple impacts at lower levels that equated to 180–dB exposure.

Comment SIC78: Undetected animals could be subject to repeated pings within the 180–dB zone. If an animal is detected within this zone after LFA sonar transmissions have been initiated, it will not be possible to know how long the animal has been subject to high RLs. This animal should be assumed to be injured.

Response: As stated in the Final EIS and the application, all marine mammals that receive a SPL of 180 dB, or greater, are conservatively assumed to be injured.

Cumulative Impacts

Comment SIC79: The Final EIS section on cumulative effects does not provide the necessary analyses to assess the combined effect (all other human-related factors) on marine mammals. The EIS discussion of cumulative impacts does not mention other nations' deployment of LFA systems. Cumulative impacts analysis cannot compare LFA sonar to shipping. One organization is concerned that the multiple deployments of LFA sonar in conjunction with potential deployment of other nation's LF sonar has not been addressed and may have a devastating cumulative effect on marine mammals.

Response: Cumulative impacts that are reasonably foreseeable were considered by the Navy in the preparation of the EIS (Subchapter 4.4) and are discussed in the Final EIS Subchapter 4.4 and RTCs 4–10.1, 4–10.3, 4–10.4, and 4–10.6. Operating more than a single SURTASS LFA sonar source within a single ocean basin is unlikely. However, the Navy did analyze the potential impacts from operating two SURTASS LFA sonars within a representative area (Gulf of Oman). This was described in both the Navy's application and in the Navy's Draft and Final EISs. Table 4–14 of the application assesses the percentage of marine mammal stocks within that area that could potentially be affected. Since no more than two SURTASS LFA sonars are expected to be deployed under this action, no further analyses are required. Moreover, NMFS is unaware of the use by other nations of SURTASS LFA sonar, or other systems that use a LF source (*i.e.*, 1 kHz or below), except for the SACLANTCEN (NATO) TVDS system whose frequency ranges are 450 to 700 Hz for the LF component and 2.6 to 3.4 kHz for the mid-frequency component (SACLANTCEN, 1998). The Navy has no plans to operate with this NATO system. Moreover, if the TVDS system is ever used by other nations, use of this single system and the 2 planned SURTASS LFA systems for the period of these regulations would not exceed the number of LF systems analyzed in the Navy's Final EIS. For further discussion on this issue, please refer to RTC MMPAC33.

Comment SIC80: The United States will not be able to control the deployment of LFA technology by other nations that may not limit their routine usage to levels safe for marine life.

Response: NMFS and the U.S. Navy have no control over activities by other nations. However, while LF sonar technology, in one form or another, may be deployed by other nations, such deployments remain speculative at this time.

Comment SIC81: Despite the fact that LFA signals are a minor part of the increasing oceanic ambient noise, the LFA transmissions nevertheless stand out from this increasing hum. Two commenters state that recorded LFA transmissions at 1,000 miles (1609 km) during acoustic studies highlight this.

Response: Because of its short duty cycle and limited number of systems to be deployed, SURTASS LFA sonar transmissions will not add measurably to the increasing ambient noise in the oceans, and will not be perceptible in most of the ocean basins in which it is deployed. As to the acoustic studies that reported recording of SURTASS LFA at 1,000 miles (1609 km), there was no indication as to the RL of this signal from the Magellan II project except a comment that the researcher was "forced to jump up and turn down the speaker."

In later research he stated that he recorded strong long duration sounds in the 3 kHz range coming from the direction of the *R/V Cory Chouest* at a distance of about 40 mi (64.4 km). Since the SURTASS LFA sonar source can not transmit at mid-frequencies, it was not the SURTASS LFA sonar signal from the *R/V Cory Chouest.*

Comment SIC82: The Navy's calculations strongly underestimate the potential impacts of its noise on an animal's lifetime productivity rate.

Response: The Navy's Final EIS, Subchapter 4.2.7.5 (Biological Context) addresses the potential for long-term effects, such as loss of part of a breeding season, loss of part of a foraging season, and reduction of individual animals' reproductive success. Since the conclusion reached from the analyses done in conjunction with the development of the Final EIS, including the LFS SRP field research, is that the potential impact on any stock of marine mammals from injury due to SURTASS LFA sonar operations is negligible, the primary potential effect for marine mammals is a significant change in a biologically important behavior. For this to translate into impacts on an animal's lifetime productivity rate, the SURTASS LFA sonar would likely need to be operated in a concentrated breeding area throughout an entire breeding season, or operated in a feeding area for months at a time. System operational plans and restrictions preclude these scenarios: (1) All operations will be outside 12 nm (22 km) of any coastline or offshore island, and far enough away from designated offshore biologically important areas to limit SPLs in those areas to below 180 dB; (2) operations will not occur in places and during times of the year when marine mammals are engaged in critical activities (as frequent system shutdowns due to animal detections would negate the system's operational utility); (3) mission length will not exceed 20 days; and (4) no more than 12 percent of any marine mammal stock may incur Level B harassment during the time period of validity for each LOA (1 year). Therefore, NMFS believes the Navy has not underestimated the potential impacts on the lifetime productivity rates for marine mammals.

Comment SIC83: In the Final EIS Subchapter 4.2.7.5 on biological context, the effect of the impact for a 20-day mission over 20 years of breeding seasons per animal were discussed. The model used is incorrect because there was only one mission per animal per 20-year period. Because there are "at least three missions per year per area" there will be a greater intersection of missions on breeding seasons over 20 years, not just one.

Response: The discussion in Subchapter 4.2.7.5 was not intended to

be a model. For illustration purposes, the intersection of only one mission per animal over a 20-year period is a valid assumption. First, there will be only two SURTASS LFA sonar vessels deployed during the upcoming 5-year period with each one expected to be located in a different ocean basin and, therefore, only a limited number of active sonar operations (normally 12 missions/year). Second, marine mammal breeding is seasonal, thereby further limiting the period when marine mammals could potentially be exposed during this critical period. Moreover, as noted in RTC SIC82, it is reasonable to expect that it is unlikely that any single marine mammal will receive an appreciable sound exposure level from SURTASS LFA sonar that will cause significant changes in biologically important behavior during any single mission. Based on the modeled underwater acoustic RLs (AIM analyses results), presented in the Final EIS Subchapter 4.2 EIS, the data presented in Figures 1–5a through 1–5c in the Final EIS, illustrate that the preponderance of all modeled RLs fall below the 155 dB level. Therefore, even if the Navy should choose to conduct missions within the same year in the same area, for the above reasons NMFS believes that SURTASS LFA sonar would not have reproductive level effects on marine mammals. Finally, as explained in detail later in this document (see RTC MMPAC23), NMFS will review the Navy's LOA application to ensure that the Navy has planned active SURTASS LFA sonar missions to avoid, to the extent practical, those critical areas and times of the year when marine mammals are concentrated to carry out important biological activities.

Non-Marine Mammal Impact Concerns (NMMIC)

Comment NMMIC1: The EIS did not include sea snakes because they primarily inhabit inshore waters.

Response: Because sea snakes primarily inhabit shallow areas where SURTASS LFA sounds will attenuate to low levels and because sea snakes have little to no sensitivity to LF sound either from hearing or non-auditory effects, it was appropriate for the Navy to eliminate them from further consideration in the Final EIS.

Comment NMMIC2: The potential effects cannot be predicted and/or were not considered in the analysis for fish, diving birds, invertebrates, plankton, and other non-mammalian species (such as transatmospheric life forms). Soft tissue damage in fish was not considered. No studies done for fish, plankton, and sea turtles. What is the effect of LFA sonar on the marine mammal food chain, such as zooplankton and fish?

Response: The potential effects of SURTASS LFA sonar on fish and prey species are covered in the Final EIS Subchapters 4.1.1 and 4.2.7.6; sea turtles are covered in the Final EIS Subchapter 4.1.2; invertebrates are covered in the Final EIS Subchapter 3.2.1.1; plankton are addressed in the Final EIS Subchapter 3.2.1; and diving birds are discussed in the Final EIS Subchapter 3.2.1.2. As previously stated, the SPL threshold for the potential for *in vivo* tissue damage due to exposure to underwater sound is on the order of 180 to 190 dB. Because the potential for injury to marine mammals, sea turtles, and fish stocks was set at a SPL of 180 dB, the Navy did consider tissue damage for these species. The Final EIS did include life forms that exist both in the atmosphere and the ocean, including pinnipeds, sea turtles, diving sea birds, and humans. As suggested by the commenter, information on other "transatmospheric" life forms is available at http://www.roswellrods.com

Comment NMMIC3: Subchapter 4.1.1.1 of the Final EIS incorrectly states that large pelagic fish (such as tuna) spend most of their time near the surface.

Response: The Final EIS concluded that a negligible portion of any fish stock will be present within the 180-dB sound field and thus the potential for injury to fishes is limited. Therefore, even if pelagic fish do not spend most of their time near the surface, it will not change the determinations made in the Final EIS.

Comment NMMIC4: The analysis of the potential impact to fish in the Final EIS is limited. There is no discussion at all of the potential impacts on fish eggs. The commenter then goes on to state, "There is no basis for assuming that the only injurious effects on fish or fish eggs will take place at 180 dB or higher."

Response: The effects on fish and fish eggs are discussed in the Final EIS subchapters 3.2.2, 3.3.1, 4.1.1, 4.3.1, and RTC 3–2.5, 4–1.6, 4–1.7, and 4–1.10.

Comment NMMIC5: The Navy's conclusions on non-significant impact on fish, sharks and sea turtles and their habitats are based on a number of assumptions and not on empirical evidence. The Navy gives only a cursory look at the potential impact to fish.

Response: Subject matter experts provided the analyses of impacts on fish, sharks, and sea turtles. Much of their analyses are based on peer-reviewed research, as noted here. Where assumptions were necessary because of lack of scientific data, they were made by the subject matter experts and were conservative. There are extensive discussions on fish, sharks and sea turtles in the Final EIS in Subchapters 3.2.1.2, 3.2.2, 3.2.3, 4.1.1, 4.1.2, and 4.3.1. The conclusions are based on the research of numerous recognized scientists. Examples of cited research include Bartol *et al.* (1999), Cox *et al.* (1986a), Cox *et al.* (1986b), Cox *et al.* (1987), Enger (1981), Hastings *et al.* (1996), Klimley and Beavers (1998), Lombarte and Popper (1994), Popper and Clarke (1976), Ridgway *et al.* (1969), Rogers and Cox (1988), Sand and Hawkins (1973), and Ye (1996).

Comment NMMIC6: In Comment 4–5.38, Dr. Popper, a coauthor in Hastings *et al.* (1996), stated that there indeed was delayed sensory damage that was not an artifact of the sacrificing schedule.

Response: Dr. Popper co-authored and reviewed the sections of the Final EIS concerning potential impacts to fish (See Final EIS page 14–2). The possible inconsistency noted in the comment, however, is not relevant because the study exposed the oscar (*Astronotus ocellatus*) to a 300-Hz, 180-dB signal for a minimum of 1 hour. The LFA signal's maximum length is 100 seconds with no more than 10 seconds at any single frequency. Therefore, at this time there is no reason to presume that the limited damage found in Hastings *et al.* (1996) would occur with the much shorter LFA signal. Based partially on the reference, the Final EIS conservatively concluded that it is reasonable to consider hearing loss or injury to fishes from SURTASS LFA sonar transmissions to be limited to the region ≥ 180 dB. However, no more than a negligible portion of any fish stock would be present within the 180-dB sound field at any given time.

Comment NMMIC7: The Navy has dismissed the potential impact to fish, turtles, and humans from resonance of cavities and swim bladders. In Final EIS (RTC 3–2.5), it is not evident why larger fish will not be affected by LFA. In the Final EIS (Subchapter 4.1.1.1) concerning non-auditory injury to fish stocks, the Navy stated, "Therefore, it is not expected that resonance of the swim bladder would play a significant role in response to LF sound (ARPA, 1995)." This reference is for the ATOC system, which has a frequency of 75 Hz. This does not correspond to the frequency to be used by SURTASS LFA sonar of 100 to 500 Hz. Therefore, the Final EIS conclusions are not correct.

Response: The potential for impacts due to resonance of cavities and swim bladders was discussed in the Final EIS

(RTCs 3–2.5, 4–4.15, and 4–6.24). RTC 3–2.5 stated that fish are not expected to be significantly affected by resonance because the SURTASS LFA signal is lower in frequency than the resonance for most fish. However, it did recognize that the resonance frequencies for some of the larger fish may be in the range of SURTASS LFA. For example, the cod has a resonant frequency of 400 to 560 Hz. However, in order to provide

Comment OC3: Divers, swimmers and children in the water are at risk from LFA sonar.

Response: Humans in the water are not at risk from SURTASS LFA sonar transmissions. The Navy sponsored research to study the potential effects of LF sound on humans in the water. Based on this research, in conjunction with guidelines developed from psychological aversion testing, the Navy

Habitat Concerns

Comment HC1: One organization believes that the Navy is unaware of the effect that the LFA sonar system will have on cetaceans' prey, as indicated in section 4.7.6 of the application. Such uncertainties of the effects the sonar system will have on cetaceans indicate the Navy does not know if the system will have no effect or fatal effects on cetaceans; therefore, it should not be

conditions will change over the course of an exercise (up to 20 days), it is unlikely that these characteristics will remain constant. What specific model will the Navy use to determine SPLs for monitoring mitigation? Why does RTC 2–1.4 (in the Final EIS) state that the 180–dB mitigation zone was determined using standard spherical spreading formula?

Response: Please refer to RTC AC12

that utilize the most up-to-date environmental data available. Oceanographic conditions (such as temperature and salinity verses depth, and sound speed) are updated with real-time data at least every 12 hours. According to the Navy, there were and will be no "over-simplified theoretical models" used either in the Final EIS analysis or during at sea operations.

Comment MIC4: The Navy should

Offshore Biologically Important Areas (OBIAs)

Comment MIC6: Sound levels must be monitored from within OBIAs and other protected areas. The Navy should install hydrophones at the borders of the LFA mitigation zone to record all acoustic signals above 160 dB to verify the Navy's RL estimates.

Response: OBIAs and similar areas discussed under this rulemaking are

(RTCs 3–2.5, 4–4.15, and 4–6.24). RTC 3–2.5 stated that fish are not expected to be significantly affected by resonance because the SURTASS LFA signal is lower in frequency than the resonance for most fish. However, it did recognize that the resonance frequencies for some of the larger fish may be in the range of SURTASS LFA. For example, the cod has a resonant frequency of 400 to 560 Hz. However, in order to provide additional protection to marine mammals from potential injury, the Navy has agreed to apply interim operational restrictions that include a maximum frequency of 330 Hz. This will provide additional protection for fish as well.

The SPL threshold for the potential for *in vivo* tissue damage due to exposure to underwater sound is on the order of 180 to 190 dB (Cudahy and Ellison, 2002). Because the potential for injury to marine mammals, sea turtle, and fish was established by the Navy at an SPL of 180 dB, and because the permissible exposure level for humans was set even lower at 145 dB (a value based on aversion reactions, not injury), resonance from LFA sonar is even less likely to impact humans.

The frequency of ATOC is lower than that of SURTASS LFA, and therefore the citing of the ATOC EIS may have been inappropriate. However, the conclusion remains the same.

Comment NMMIC8: It is a matter of concern that the Final EIS makes no attempt to calculate and/or discuss that swimbladders (of fish) vibrate with the greatest amplitude at stimulation frequencies close to the base frequency and at frequencies corresponding to the 2nd and 3rd harmonic.

Response: Resonance of fish swim bladders is discussed in the Final EIS Subchapter 4.1.1.1 and RTC 3–2.5. See Final EIS (RTC 4–6.42) for discussion on harmonics. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury supports this conclusion that tissue damage will not occur at SPLs below 180 dB.

Other Concerns (OC)

Comment OC1: What is the impact on the whale watching industry?

Response: SURTASS LFA sonar operations are not expected to have any impacts on the whale watching industry. For further information, see the Final EIS Subchapters 3.3.2.3 and 4.3.2.1.

Comment OC2: In RTC 4–9.18 of the Final EIS concerning swimmers and snorkelers at or near the surface, were surface ducts taken into account?

Response: Yes.

Comment OC3: Divers, swimmers and children in the water are at risk from LFA sonar.

Response: Humans in the water are not at risk from SURTASS LFA sonar transmissions. The Navy sponsored research to study the potential effects of LF sound on humans in the water. Based on this research, in conjunction with guidelines developed from psychological aversion testing, the Navy concluded that LF sound levels at or below 145 dB would not have an adverse effect on recreational or commercial divers. See the Final EIS Subchapters 1.4.1 and 4.3.2.1 for additional details. As discussed in the Final EIS Subchapter 5.1.2, SURTASS LFA sonar operations would be constrained in the vicinity of known recreational and commercial dive sites to ensure that the sound field at such sites does not exceed 145 dB.

Normally, swimming and snorkeling occur in areas that extend from the surface to depths not greater than 2 m (6.5 ft). Applying acoustic theory and detailed measurements to these depths, there would be substantial sound transmission losses occurring in the top layer of water (about 1.8 m (6 ft)) where swimmers would most likely be found. Sound fields in this layer of water would be about 20 dB less than the sound fields in adjacent deeper water. This is discussed in the Final EIS Subchapter 4.3.2. It is unlikely that a swimmer or snorkeler will ever hear the LFA signal.

Comment OC4: What is the impact to coastal communities via coastal sound absorption? What is the impact to shore communities from invasion by animals (sea otters and pinnipeds), which are being driven out of the water to escape noise? Mitigation will not work—because LF waves penetrate into the shoreline.

Response: The SURTASS LFA sonar signal should not be confused with LF-radio waves used in communication or biologics (e.g., the Sausalito humm). They do not operate similarly. Because SURTASS LFA sonar transmissions will be restricted to SPLs below 180 dB at a distance of 12 nm (22.2 km) from shore and 145 dB within known dive sites, due to significant sound attenuation and absorption characteristics in shoaling and shallow water, there will be no impacts to onshore human coastal communities. Similarly, significant sound attenuation in shoaling waters would preclude the offshore sounds from SURTASS LFA sonar from affecting coastal marine mammals. This was illustrated during Phase II of the LFS–SRP when the SURTASS LFA sonar source was offshore California.

Habitat Concerns

Comment HC1: One organization believes that the Navy is unaware of the effect that the LFA sonar system will have on cetaceans' prey, as indicated in section 4.7.6 of the application. Such uncertainties of the effects the sonar system will have on cetaceans indicate the Navy does not know if the system will have no effect or fatal effects on cetaceans; therefore, it should not be permitted to conduct (operate) the LFA sonar system.

Response: Section 4.7.6 of the Navy application does not state that the Navy is unaware of the impacts of the system on prey species. It states that the potential for indirect effects (including prey availability) for marine mammals is very low. Information on the potential impacts to fish species can be found in the Navy Final EIS, Subchapter 4.1.1. Most benthic and pelagic invertebrate species that are marine mammal prey species are unlikely to be affected by LFA sonar since they do not have organs or tissues susceptible to acoustic sound.

Mitigation Concerns (MIC)

Geographic Restrictions

Comment MIC1: It is not clear that the 12-nm limit (180–dB restriction) would result in the least practicable adverse impact on marine mammals in these areas. If SURTASS LFA sonar is a long-range system, it is not clear why the Navy would need to operate at distances as close as 12 nm (22 km) from shore since presumably LFA sonar has ocean-basin detection capabilities. As a means to have the least practicable effect on marine mammals, it should be restricted to waters further offshore than 12 nm (22 km).

Response: The geographic restriction is for the SURTASS LFA sound field of 180 dB, not the location of the vessel. While the U.S. Navy plans to operate mainly in waters significantly greater than 12 nm (22 km) offshore, it should not be precluded from operating in waters near 12 nm (22 km) from shore, provided the SPL does not exceed 180–dB at a distance of 12 nm (22 km) from any coastline. For this reason, NMFS has not implemented the recommended restriction on SURTASS LFA sonar operations. However, because SURTASS LFA sonar transmissions will be restricted to SPLs below 145 dB within known dive sites, the LFA vessel will remain at distances greater than 12 nm (22 km) from shore in most situations.

Comment MIC2: Prior to each exercise, the marine mammal safety zone will be measured to determine the distance from the source to the 180–dB isopleth. Because oceanographic

conditions will change over the course of an exercise (up to 20 days), it is unlikely that these characteristics will remain constant. What specific model will the Navy use to determine SPLs for monitoring mitigation? Why does RTC 2–1.4 (in the Final EIS) state that the 180–dB mitigation zone was determined using standard spherical spreading formula?

Response: Please refer to RTC AC12 on distances to the 180–dB isopleth. It is understood that oceanographic conditions change over time and the Navy has provided provisions for this in the SPL monitoring protocols. Subchapters S.4.9, 2.3.2.1, and 5.1.3 of the Final EIS state that the SURTASS LFA sonar sound field will be estimated prior to and *during* operations using near-real-time environmental data and underwater acoustic prediction models. Subchapter 5.1.3 in both the Draft and Final EISs state that these sound fields will be updated every 12 hours, or more frequently, when meteorological or oceanographic conditions change.

These models are similar to the Parabolic Equation (PE) Model (Version 3.4), which was used in the Final EIS to predict transmission loss of the SURTASS LFA signal under various environmental conditions. For more information see the Final EIS Subchapter 4.2.2.1.

Within 1 km (0.54 nm) of the array, transmission loss is dominated by spherical spreading; therefore, the use of the standard spherical spreading formula is warranted. This is accounted for in the PE model used.

Comment MIC3: The Navy cannot predict the SPLs for the LFA mitigation zones and geographic restrictions at any depth and range in real time during operational deployment because of the complexity of oceanographic conditions and "[s]ound transmission channeling is not predictable in the Navy's over-simplified theoretical models."

Response: The Navy predicts SPLs for a complete range of underwater acoustic regimes (such as deep-water convergence zone, surface duct, and bottom interaction (see *Description of Acoustic Propagation* in this document)) in extremely complex oceanographic conditions, utilizing a number of very sophisticated models, with the most current environmental data available, as part of all ASW operations. This information is discussed in the Final EIS Subchapters 2.3.2.1, 4.2.2.1, and 5.1,3 and in TR 2 (Acoustic Modeling). Additionally, the acoustic modeling in the Final EIS used the PE Model (Version 3.4). This is only one of the acoustic models integrated into the SURTASS LFA sonar processing system that utilize the most up-to-date environmental data available. Oceanographic conditions (such as temperature and salinity verses depth, and sound speed) are updated with real-time data at least every 12 hours. According to the Navy, there were and will be no "over-simplified theoretical models" used either in the Final EIS analysis or during at sea operations.

Comment MIC4: The Navy should continuously monitor the 180–dB RL and the 1-km (0.54-nm) zone, recording and making available detailed findings of the difference between the two.

Response: As discussed in the Final EIS (RTC 5–1.3), SPLs will be calculated using onboard transmission loss models and near real-time environmental data before and during all SURTASS LFA active transmissions. Acoustic models will be updated at least every 12 hours. The range to the 180–dB RL will be mostly dependent upon the SURTASS LFA SL used, and the possibility of it exceeding 1 km (0.54 nm) is remote. However, any anomalous results will be recorded and reported as part of the LTM program in accordance with the LOA.

Comment MIC5: One organization is not convinced that research has shown that SURTASS LFA does not pose a threat to humpback whales at 180 dB. Therefore, it believes that the Navy should increase the safety zone to ensure that SURTASS LFA sound levels do not penetrate within 12 nm (22 km) of coastlines at any level.

Response: The SURTASS LFA sonar sounds will not exceed 180 dB at a distance of 12 nm (22 km) from any coastline. The selection of the 180–dB criterion is discussed in detail in the Final EIS Subchapter 1.4.2.1. A subsequent analysis by Cudahy and Ellison (2002) of the potential for resonance from SURTASS LFA signals to cause injury supports this conclusion. According to the Office of National Marine Sanctuaries (ONMS) consultation letter to the Navy dated May 15, 2001, ONMS requested that the SPLs generally not exceed 180 dB within the boundaries of National Marine Sanctuaries (NMS) and not exceed 145 dB seasonally for those NMS that are utilized by divers. Specific requirements for each NMS are provided in the referenced letter. To the extent that the recommendations by the ONMS were in regard to the conservation of marine mammals within Sanctuary boundaries, these recommendations have been adopted by NMFS and included as mitigation measures in this rule.

Offshore Biologically Important Areas (OBIAs)

Comment MIC6: Sound levels must be monitored from within OBIAs and other protected areas. The Navy should install hydrophones at the borders of the LFA mitigation zone to record all acoustic signals above 160 dB to verify the Navy's RL estimates.

Response: OBIAs and similar areas discussed under this rulemaking are established to restrict SURTASS LFA sonar SPLs to below 180 dB. As a result, the regulations require the Navy under its LTM program to determine the distance to the 180–dB isopleth during all LFA operations (see RTC MIC4). Since the Navy will not transmit SURTASS LFA sonar signals at an SPL greater than 180 dB inside OBIAs, additional SPL monitoring is not necessary.

Comment MIC7: The OBIAs are inadequate. The four OBIAs comprise only a portion of the offshore biological areas of particular importance to marine mammals. NMFS' system for identifying and designating additional OBIAs has ignored available information on marine mammal species collected by NMFS, Navy, and others. It is recommended that if such data were not examined in developing the proposed rule, then that should be carefully examined before proceeding with the final rule. Examples include: (1) NW Hawaiian Islands 50-nm (92.6-km) zone for monk seal foraging, (2) Pioneer Sea Mount, (3) Tanner Bank, (4) Santa Rosa-Cortez Ridge, (5) The (Sable) Gully off Nova Scotia, (6) feeding grounds of non-Bay of Fundy right whales, (7) 200-m (656.2-ft) isobath surrounding Silver and Navidad Banks, to Hispaniola, and enclosing the established migration corridor of the North Atlantic humpback whale population, (8) major upwelling sites, such as off Africa, India, Gulf of Oman, South America, and US and continental shelf and reef-estuary systems, (9) all IWC whale sanctuaries, (10) all U.S. NMS, (11) marine protected areas, (12) Natural World Heritage sites/UNESCO Biosphere Reserves, (13) known migration routes, and (14) Monterey Bay NMS (60-nm (111.1-km) limit for sound emissions). The proposed system for designating OBIAs inappropriately places the burden on the public to show that offshore areas are important for marine mammal breeding, feeding or other biologically important functions.

Response: NMFS does not consider it necessary to expand the list of OBIAs prior to its making the required determinations under section 101(a)(5)(A) of the MMPA. While some

of the areas mentioned in the comment would qualify for nomination as an OBIA, a delay in the rulemaking process to implement additional OBIAs is not warranted, especially considering the high level of effectiveness of the tripartite monitoring system. Second, the notice of proposed rulemaking made clear that NMFS could not accept petitions for new OBIAs during this rulemaking since any nominations at an additional year or more to the petition process. For this reason, NMFS recommends not nominating areas that are not known areas of high concentration for marine mammals, especially for breeding, feeding or migrating, that warrant more protection than will be provided under the tripartite monitoring and shut-down protocols.

Comment MIC8: The (Sable) Gully has of Maine and surrounding shallow water areas. As stated in the Navy's Final EIS (Subchapter 2.3.2 (Alternative 1; The Preferred Alternative)), OBIA1 encompasses the entire water area inside the 200-meter isobath of the North American east coast. In discussions with the Maine Federal Consistency Coordinator, the Navy confirmed that the seaward limit of OBIA1 connects directly across the

(N), instead of 5 $\log_{10}$ (N), as noted in RTC SIC76. The AIM used in the Navy's Final EIS indicates that approximately 2.5 percent (geographic mitigation only) to 1.9 percent (with geographic mitigation plus monitoring mitigation) of humpback whales off Kauai, HI could be harassed during a mission, not 25 percent as noted by the commenter. This includes multiple pings as noted in detail in the Final EIS.

The commenter advocates that sound during military operations. Since the Navy must train in the same way it expects to fight in order to be effective, and because the Navy should not be excluded from large portions of the ocean, a recommendation to restrict the LFA sonar to levels of 130–140 dB cannot be accepted.

Comment MIC11: One organization believes that impacts could be minimized by offering seasonal protection through known migration 2–4. However, the vast majority of the time the vessel will be at a much greater distance away from the OBIA boundaries and the SPL at the boundary will be correspondingly much less than 180 dB.

General Mitigation Concerns

Comment M1C14: The proposed mitigation is fundamentally flawed because it only applies to the 1-km (0.54 nm) radius (180-dB zone), which does

of the areas mentioned in the comment would qualify for nomination as an OBIA, a delay in the rulemaking process to implement additional OBIAs is not warranted, especially considering the high level of effectiveness of the tripartite monitoring system. Second, the notice of proposed rulemaking made clear that NMFS could not accept petitions for new OBIAs during this rulemaking since any nominations at that stage would not be available for public review before inclusion or rejection in this final rule. NMFS considers a public review and comment period a necessary step in establishing new OBIAs. Once this final rule is implemented, NMFS will accept petitions for OBIAs in accordance with 50 CFR 216.191 promulgated in this final rule. However, as stated in the preamble to the proposed rule, petitions will not affect authorizations for taking marine mammals within those areas until an OBIA is final (if that is the determination). It should be recognized that NMFS may also nominate areas as OBIAs, but does not believe that it should be the sole proponent for nominating areas and that was the reason for allowing it to be a public process following standard rulemaking practice. Additional discussion on OBIAs can be found elsewhere in this document.

NMFS recommends however, that areas already subject to significant anthropogenic noise such as seismic and shipping, areas within 12 nm (22 km) of any coastline, or otherwise already excluded (Arctic, Antarctic oceans), areas that cannot be geographically described (e.g., "the unknown numbers of northern right whales in unknown areas of concentration"), and areas designated for non-biological reasons (e.g., the IWC's Indian Ocean Sanctuary) not be nominated. Areas being nominated must include sufficient information to indicate why that area warrants more protection than would be provided through the Navy's visual, passive acoustic and HF/M3 monitoring program and 180–dB shut-down procedures. If petitions are received without sufficient information for NMFS to justify the petition, NMFS will determine whether the nominated area warrants further study. If it does, NMFS will begin a scientific review of the petition.

Depending upon the degree of scientific information provided by the nominator, the number of other petitions also under consideration, and the number of scientifically related issues on marine mammals also under review in NMFS, this process may add an additional year or more to the petition process. For this reason, NMFS recommends not nominating areas that are not known areas of high concentration for marine mammals, especially for breeding, feeding or migrating, that warrant more protection than will be provided under the tripartite monitoring and shut-down protocols.

Comment MIC8: The (Sable) Gully has recently been designated by the Department of Fisheries and Ocean, Canada, as a pilot marine protected area. This should be recognized.

Response: While the Sable Gully is significant for marine mammals (see Hooker *et al.*, 1999), and may be a good candidate for nomination as an OBIA, NMFS is concerned that continuing oil exploration, including intense seismic surveys, and shipping within the Sable Gully and in nearby waters would limit the Gully's effectiveness for marine mammal protection. It should be recognized that a significant portion of the Gully is already protected as it is within a straight-line projection of the 200-m (656.2-ft) isobath of OBIA1. An application for considering the waters outside the 200-m (656.2-ft) isobath as an OBIA should provide information on why marine mammals would benefit by exclusion of one short-term source of anthropogenic noise (SURTASS LFA sonar), when other sources of anthropogenic noise (commercial shipping, seismic) are more prevalent on a daily and yearly basis. Moreover, NMFS is unaware that any protective measures have been provided for the Gully through regulations under Canada's Oceans Act.

Comment MIC9: Special consideration should be given to minimize potential impacts in the areas that have been identified as critically important seasonal feeding areas for the northern right whale within the Gulf of Maine. OBIA1 may not afford adequate protection for the right whales known to frequent areas along the 200-m (656.2-ft) isobath in the Gulf of Maine at certain times of the year. The OBIA should be extended to include the complete range of northern right whale. It must include the unknown summering ranges of females and unknown migration routes. OBIA1 offers little protection for deep-water species, such as the northern bottlenose whale.

Response: The NMFS and Navy agree that special consideration should be given to minimizing potential adverse impacts from the operation of the Navy's SURTASS LFA sonar in those areas that have been identified as critically important seasonal feeding areas for the right whale within the Gulf of Maine and surrounding shallow water areas. As stated in the Navy's Final EIS (Subchapter 2.3.2 (Alternative 1; The Preferred Alternative)), OBIA1 encompasses the entire water area inside the 200-meter isobath of the North American east coast. In discussions with the Maine Federal Consistency Coordinator, the Navy confirmed that the seaward limit of OBIA1 connects directly across the narrow entrance to the Gulf of Maine between Browns Bank to the north and Georges Bank to the south. Therefore, the Navy will not operate in the Gulf of Maine. It should be noted that the Navy will observe the geographic restrictions of OBIA1 during all seasons of the year, not just during seasonal feeding. Also OBIA1 was designed to include within its boundaries all North Atlantic right whale critical habitats. Therefore, the Navy will not operate in that part of the range of the northern right whale where populations are concentrated. As previously stated, SURTASS LFA sonar will observe geographic restrictions on operations within the Gully, a known deepwater area for northern bottlenose whales.

Finally, any whales in other deep-water areas, such as offshore migration routes which are normally not areas of high concentration (see RTC MIC11), will be protected through the tripartite monitoring mitigation and the SURTASS LFA shutdown criteria.

Comment MIC10: In sensitive areas like humpback breeding areas, as much as 25 percent of the population could reasonably be affected in a critical manner (which is beyond simply harassment). The commenter does not believe that this represents a legitimate attempt to minimize harm due to testing LFA sonar. The distance from marine mammal breeding areas should be at least 200 km (108 nm)(i.e., 140 dB), during the breeding period. NMFS should also identify other biologically important areas and determine the distances that LFA should be allowed to operate in order to keep received levels below 130–140 dB.

Response: NMFS does not agree with the commenter that marine mammals will be injured or killed incidental to operating SURTASS LFA sonar with the implementation of the mitigation and monitoring measures that are required by these regulations. Equating receipt of a ping (or multiple pings) to a prediction in a reduction in the gene pool of 25 percent of the males (those that stopped singing), as the commenter has implied in his letter, is not justified. In addition, NMFS believes the commenter has overestimated harassment takings by use of 10 $\log_{10}$ (N), instead of 5 $\log_{10}$ (N), as noted in RTC SIC76. The AIM used in the Navy's Final EIS indicates that approximately 2.5 percent (geographic mitigation only) to 1.9 percent (with geographic mitigation plus monitoring mitigation) of humpback whales off Kauai, HI could be harassed during a mission, not 25 percent as noted by the commenter. This includes multiple pings as noted in detail in the Final EIS.

The commenter advocates that sound levels not exceed 130–140 dB in biologically sensitive areas. In Miller *et al.* (2000), the commenter states "As the song of these (humpback) whales is associated with reproduction, widespread alterations of their singing behavior might affect demographic parameters, or it could represent a strategy to compensate for interference from the sonar." The article stated that the behavioral response must be widespread. However, the independent scientists conducting Phase III of the LFS SRP did not conclude that the alterations of behavior observed in the LFS SRP Phase III were widespread (see RTC SIC 23 and 24). Therefore; NMFS believes that a SURTASS LFA sonar vessel, operating in accordance with the regulations and applicable LOA is not likely to have a significant (or widespread) impact to biologically important behaviors. This would include biologically important behaviors for the Hawaiian humpback whales, which will be additionally protected by the Navy's implementation of the 145–dB diver mitigation measure for Hawaii waters.

Moreover, recognizing the propagation paths for SURTASS LFA sonar described in the preamble of this document and the operational characteristics of SURTASS LFA sonar requiring operation at close to full power in order to be effective, this recommendation fails the "practicable" test mandated by the MMPA when NMFS prescribes the means of effecting the least practicable impact on marine mammals.

Areas of critical importance to marine mammals, such as breeding areas, may be nominated as an OBIA under these regulations. Additional information on nominating areas can be found elsewhere in this document. By regulation, OBIAs are limited to SPLs below 180 dB.

The reference to "testing" as the proposed action is not totally accurate. As stated in the Final EIS (page 1–1), the Navy's proposed action is the employment of SURTASS LFA sonar with "employment" meaning the use of LFA sonar during routine training and testing as well as the use of the system during military operations. Since the Navy must train in the same way it expects to fight in order to be effective, and because the Navy should not be excluded from large portions of the ocean, a recommendation to restrict the LFA sonar to levels of 130–140 dB cannot be accepted.

Comment MIC11: One organization believes that impacts could be minimized by offering seasonal protection through known migration paths. Many of these species for which migratory paths are available are listed by the IUCN (International Union for the Conservation of Nature) as endangered or threatened species and should be considered.

Response: NMFS believes that known migration paths for marine mammals that have a marine mammal density significantly greater than surrounding waters during a discrete period of time may qualify as an OBIA. NMFS recommends that such areas be the subject of a petition to designate an OBIA. However, to NMFS' knowledge most non-coastal migratory paths for marine mammals extend over broad swaths of the ocean with marine mammal density not much greater than other areas. Since operational restrictions in these broad areas could seriously impact the Navy's ability to carry out its mission if these areas were established as OBIAs (since it would essentially prohibit LFA sonar from operating in extensive areas in the oceans), and since marine mammals (and sea turtles) would be similarly protected from receiving an SPL greater than 180 dB through utilization of the HF/M3 sonar in the vicinity of the SURTASS LFA vessel, based on practicality the establishment of these extensive areas as OBIAs would be unlikely.

Comment MIC12: One organization stated, "the unknowns are so pervasive that * * * the Office of National Marine Sanctuaries has asked the Navy to avoid deploying the LFA within the Monterey Bay National Marine Sanctuary."

Response: In its consultation letter to the Navy dated May 15, 2001, the ONMS requested that the received levels in Monterey Bay NMS not exceed 180 dB throughout the Sanctuary and 145 dB around active marine mammal research projects.

Comment MIC13: Provide a geographic presentation to illustrate the physical reach of anthropogenic sounds from the system to the OBIAs.

Response: The SPL will be restricted to below 180 dB within the OBIAs. The physical reach of anthropogenic sound from the array to the boundary of the OBIA is shown in the Final EIS Figure 2–4. However, the vast majority of the time the vessel will be at a much greater distance away from the OBIA boundaries and the SPL at the boundary will be correspondingly much less than 180 dB.

General Mitigation Concerns

Comment M1C14: The proposed mitigation is fundamentally flawed because it only applies to the 1-km (0.54 nm) radius (180-dB zone), which does not include non-auditory effects (below 180 dB) as evidenced by the Greek and Bahamas strandings. The LFA mitigation zone should not exceed 120 dB. Because sound levels greater than 140 dB can be received at ranges of 200 km (108 nm), the 12-nm (22-km) geographic mitigation is ineffective.

Response: The selection of the 180-dB criterion and the issue on strandings have been discussed in detail in previous RTCs in this document and in the Final EIS Subchapter 1.4.2.1. An analysis by Cudahy and Ellison (2002), subsequent to the release of the Final EIS, on the potential for resonance from SURTASS LFA signals to cause injury supports the conclusion that injury will not occur at distances greater than the 180-dB sound field. While the MMPA requires that take levels be reduced to the lowest level "practicable," there is no scientific basis to require the Navy to mitigate to an SPL of 120 dB, and not practical to limit the source to such low levels that would prevent a marine mammal from receiving an SPL of 120 dB. Because the Navy's analysis indicated that marine mammals may be harassed incidental to SURTASS LFA sonar operations, and that this harassment could not be mitigated to a zero level, the Navy applied for an incidental take authorization.

Comment MIC15: Commenters provided NMFS with a list of suggested mitigation measures that they believed should be incorporated into the rulemaking. These recommendations are addressed here; however, suggested mitigation measures that are actually monitoring or reporting requirements will be addressed in the appropriate sections of this document.

Comment MIC15a: The Navy should reduce the maximum allowable RL below 180 dB.

Response: As indicated previously, limiting SURTASS LFA sonar to received SPLs below 180 dB is not practical considering the requirement of SURTASS LFA sonar operations to detect targets at significant distances in order to protect fleet assets and the crew members on those assets. Since (1) marine mammals will be protected from injury by the tripartite monitoring

system, (2) as indicated in this document, marine mammals will not be injured at levels below 180 dB, and (3) the Navy has applied for an authorization to harass marine mammals incidental to conducting SURTASS LFA sonar operations, this mitigation measure is not practical and, therefore, is not adopted.

Comment MIC15b: LFA sonar should operate only in marine "desert" areas.

Response: Please refer to RTC MIC15a.

Comment MIC15c: Operations should be conducted only in the presence of a full complement of marine mammal observers.

Response: Please refer to RTC MOC1.

Comment MIC15d: Operations should be conducted only in the presence of a full complement of marine mammal observers and passive acoustic monitoring.

Response: Please refer to RTC MOC1.

Comment MIC15e: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, and active acoustic monitoring.

Response: Please refer to RTC MOC1.

Comment MIC15f: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, and aerial surveillance.

Response: Please refer to RTC MOC1.

Comment MIC15g: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, and radio tagging.

Response: Please refer to RTC MOC1.

Comment MIC15h: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, and satellite tagging.

Response: Please refer to RTC MOC1.

Comment MIC15i: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, and a complete census of the area.

Response: Please refer to RTC MOC1.

Comment MIC15j: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, and a complete understanding of the ecology of the species in the area.

Response: Please refer to RTC MOC1.

Comment MIC15k: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, and a complete understanding of the effects of sound on marine mammals.

Response: Please refer to RTC MOC1.

Comment MIC15l: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, and a complete understanding of the effects of sound on the ecosystem.

Response: Please refer to RTC MOC1.

Comment MIC15m: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, and a complete understanding of the effects of sound on commercial species.

Response: Please refer to RTC MOC1.

Comment MIC15n: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, and a complete understanding of the effects of sound on the ocean.

Response: Please refer to RTC MOC1.

Comment MIC15o: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, and a complete understanding of the effects of sound on the atmosphere.

Response: Please refer to RTC MOC1.

Comment MIC15p: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, and a complete understanding of the effects of sound on the geology.

Response: Please refer to RTC MOC1.

Comment MIC15q: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, and a complete understanding of the effects of sound on the universe.

Response: Please refer to RTC MOC1.

Comment MIC15r: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, and a complete understanding of the effects of sound on the multiverse.

Response: Please refer to RTC MOC1.

Comment MIC15s: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, and a complete understanding of the effects of sound on the metaverse.

Response: Please refer to RTC MOC1.

Comment MIC15t: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, and a complete understanding of the effects of sound on the omniverse.

Response: Please refer to RTC MOC1.

Comment MIC15u: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, and a complete understanding of the effects of sound on the megaverse.

Response: Please refer to RTC MOC1.

Comment MIC15v: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, and a complete understanding of the effects of sound on the hyperverse.

Response: Please refer to RTC MOC1.

Comment MIC15w: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, and a complete understanding of the effects of sound on the ultraverse.

Response: Please refer to RTC MOC1.

Comment MIC15x: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, and a complete understanding of the effects of sound on the infinite.

Response: Please refer to RTC MOC1.

Comment MIC15y: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, and a complete understanding of the effects of sound on the infinitesimal.

Response: Please refer to RTC MOC1.

Comment MIC15z: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, and a complete understanding of the effects of sound on the nonexistent.

Response: Please refer to RTC MOC1.

Comment MIC15aa: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, and a complete understanding of the effects of sound on the unknowable.

Response: Please refer to RTC MOC1.

Comment MIC15bb: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, and a complete understanding of the effects of sound on the unimaginable.

Response: Please refer to RTC MOC1.

Comment MIC15cc: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, and a complete understanding of the effects of sound on the inconceivable.

Response: Please refer to RTC MOC1.

Comment MIC15dd: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, a complete understanding of the effects of sound on the inconceivable, and a complete understanding of the effects of sound on the indescribable.

Response: Please refer to RTC MOC1.

Comment MIC15ee: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, a complete understanding of the effects of sound on the inconceivable, a complete understanding of the effects of sound on the indescribable, and a complete understanding of the effects of sound on the undetectable.

Response: Please refer to RTC MOC1.

Comment MIC15ff: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, a complete understanding of the effects of sound on the inconceivable, a complete understanding of the effects of sound on the indescribable, a complete understanding of the effects of sound on the undetectable, and a complete understanding of the effects of sound on the undetectable.

Response: Please refer to RTC MOC1.

Comment MIC15gg: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, a complete understanding of the effects of sound on the inconceivable, a complete understanding of the effects of sound on the indescribable, a complete understanding of the effects of sound on the undetectable, a complete understanding of the effects of sound on the undetectable, and a complete understanding of the effects of sound on the undetectable.

Response: Please refer to RTC MOC1.

Comment MIC15hh: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, a complete understanding of the effects of sound on the inconceivable, a complete understanding of the effects of sound on the indescribable, a complete understanding of the effects of sound on the undetectable, a complete understanding of the effects of sound on the undetectable, and a complete understanding of the effects of sound on the undetectable.

Response: Please refer to RTC MOC1.

Comment MIC15ii: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, a complete understanding of the effects of sound on the inconceivable, a complete understanding of the effects of sound on the indescribable, a complete understanding of the effects of sound on the undetectable, a complete understanding of the effects of sound on the undetectable, and a complete understanding of the effects of sound on the undetectable.

Response: Please refer to RTC MOC1.

Comment MIC15jj: Operations should be conducted only in the presence of a full complement of marine mammal observers, passive acoustic monitoring, active acoustic monitoring, aerial surveillance, radio tagging, satellite tagging, a complete census of the area, a complete understanding of the ecology of the species in the area, a complete understanding of the effects of sound on marine mammals, a complete understanding of the effects of sound on the ecosystem, a complete understanding of the effects of sound on commercial species, a complete understanding of the effects of sound on the ocean, a complete understanding of the effects of sound on the atmosphere, a complete understanding of the effects of sound on the geology, a complete understanding of the effects of sound on the universe, a complete understanding of the effects of sound on the multiverse, a complete understanding of the effects of sound on the metaverse, a complete understanding of the effects of sound on the omniverse, a complete understanding of the effects of sound on the megaverse, a complete understanding of the effects of sound on the hyperverse, a complete understanding of the effects of sound on the ultraverse, a complete understanding of the effects of sound on the infinite, a complete understanding of the effects of sound on the infinitesimal, a complete understanding of the effects of sound on the nonexistent, a complete understanding of the effects of sound on the unknowable, a complete understanding of the effects of sound on the unimaginable, a

system, (2) as indicated in this document, marine mammals will not be injured at levels below 180 dB, and (3) the Navy has applied for an authorization to harass marine mammals incidental to conducting SURTASS LFA sonar operations, this mitigation measure is not practical and, therefore, is not adopted.

Comment MIC15b: LFA sonar should operate only in marine "desert" areas.

Response: While adoption of this mitigation measure presumably would result in lower marine mammal incidental harassment takes than operating in more nutrient-rich waters, this mitigation measure is not practical since the Navy needs to operate in areas with different water characteristics, as stated in the Navy's NEPA documents. This would not be available to the Navy if it were limited to biologically unproductive areas.

Comment MIC15c: The Navy should reduce the source level, duty cycle, and annual transmission hours of LFA sonar.

Response: Source levels, duty cycles, and transmission hours are all based on the need to carry out the Navy's mission successfully. Therefore, imposing these suggested mitigation measures is not considered practical.

Comment MIC15d: NMFS should consider an extension of the safety zone and pre-operation surveys of the local area of operation.

Response: In order to ensure, to the greatest extent practicable, that marine mammals do not receive an SPL equal to, or greater than 180 dB, NMFS has amended the mitigation measures to incorporate an interim operational restriction to include a SURTASS LFA sonar system shutdown within a buffer zone that will extend 1 km (0.54 nm) from the outer limit of the 180-dB safety zone (SURTASS LFA mitigation zone). This may extend up to 2 km (1.1 nm) from the vessel, depending on oceanographic conditions. At this distance, SPLs will be significantly less intense than at 180 dB. Once a marine mammal is detected by the HF/M3 sonar, ramp-up of the HF/M3 sonar will cease or, if transmitting, the SURTASS LFA sonar system signal transmissions will be suspended.

Pre-operation surveys are not practical since the SURTASS LFA sonar vessel normally operates independent from the fleet and too distant from shore to make aerial surveys practical. Observations from the SURTASS LFA vessel prior to operation is a requirement of the monitoring program. If marine mammal abundance is high in the operation area, NMFS expects the Navy to not operate in the area to limit the number of transmission delays due to marine mammal incursions into the safety/buffer zones and will move to another area with lower mammal abundance.

Comment MIC15e: The funding of independent research on resonance effects and other impacts that the Navy and NMFS have not considered previously should be undertaken before operations begin.

Response: Resonance effects have been discussed in RTCs MMIC33 through MMIC38 and, as noted, do not appear to be a concern at SPLs below 180 dB (Cudahy and Ellison, 2002). NMFS has identified a need for the Navy to research the impacts of resonance on marine mammals. This research is already underway by ONR. However, until such research has been concluded, NMFS has implemented two interim operational restrictions to preclude the potential for injury to marine mammals by resonance effects; these include the previously mentioned establishment of the buffer zone shutdown requirement outside the safety zone and limiting the operating frequency of SURTASS LFA to 330 Hz and below, instead of 100 to 500 Hz as proposed. NMFS has determined that a frequency of 330 Hz, which is the upper-bound of the lowest practicable operating frequency for SURTASS LFA sonar, is the highest frequency that SURTASS LFA sonar will be authorized to operate to take marine mammals by harassment. This latter restriction is supported by the testimony of Dr. Darlene Ketten, an expert on the functional morphology of marine mammal hearing, before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Committee on Resources on October 11, 2001, that the consensus of data is that virtually all marine mammal species are potentially impacted by sound sources with a frequency of 300 Hz or higher. Both measures will ensure, to the greatest extent practicable, that marine mammals are not injured by the SURTASS LFA sonar signal. These protective measures will be retained until scientific documentation can be provided by the Navy which indicates they can be safely modified. This is explained elsewhere in this document.

Comment MIC15f: The Navy should replace LFA sonar in whole or in part to the extent practicable with new, advanced passive sonar technologies, which would reduce marine mammal takings incidental to deployment of LFA, or conduct a transparent and thorough alternatives analysis of such technologies before and each year the system is deployed.

Response: Please refer to RTC AC11. According to the Navy, research on improving passive sonar capabilities is intrinsic to the Navy since passive sonar would lower the detection ability by the enemy. Therefore, while the Navy would prefer alternative, passive technologies to be available for deployment, both because of the lower impact to marine mammals and its greater stealth ability to detect submarines, currently there are no feasible passive alternative systems available to accomplish the Navy's needs. This is explained in significant detail in Chapter 1 of the Navy's Final EIS. While the suggestion for an annual review of the availability of passive systems for submarine detection is a good one, NMFS doubts that technology would advance quickly enough that annual review would be required. However, NMFS has added a reporting requirement to the regulations requiring an unclassified review of passive technologies in the Navy's final comprehensive report.

Comment MIC16: NMFS should extend the geographic restrictions to completely cover the range of the endangered northern right whale.

Response: NMFS has established an OBIA for the entire known range for the East Coast population of the North Atlantic right whale. This includes areas in addition to those areas designated as critical habitat for this stock, such as the five areas of high use that were identified in the final recovery plan for right whales (NMFS, 1991; Perry *et al.*, 1999). Insufficient information currently exists on high use areas for the other stocks of North Atlantic right whales to designate these areas for additional mitigation. Once scientists have information on the location and distribution of North Atlantic right whales outside this area, NMFS would consider creating OBIAs to include any high use areas. However, OBIAs will not be based on speculation on the location of animals, as that would require extending OBIAs to vast portions of the North Atlantic and/or North Pacific oceans, which are likely to contain relatively few marine mammals.

Comment MIC17: In order to warn marine mammals of impending LFA sonar operations, the Navy should broadcast a distinctive, unnatural, relatively broadband, LF signal (e.g., a time-reversed Orca call) at levels loud enough to be received by whales at 5 to 10 km from the vessel.

Response: There is no scientific research available suggesting that time-reversed orca calls would be successful in deterring marine mammals from the area of the SURTASS LFA sonar. Tests using standard orca signals have produced mixed results with calls being ignored at times and causing a flight reaction at other times. However, broadcasting a "distinctive, unnatural, relatively broadband LF signal" that would effectively deter marine mammals presumes that all marine mammal species can hear the LF signal and that there would be a cognitive recognition that the signal means that another loud, and possibly annoying, LF sound might be forthcoming. This is unlikely unless the marine mammal can associate a cause and effect between the two noise sources based on earlier experience. Therefore, until such time as research gives some indication that this mitigation measure would be effective, NMFS will not require the Navy to intentionally harass marine mammals by broadcasting loud LF signals in order to deter marine mammals from an area where they might be exposed to the distinctive, narrowband LF signal of SURTASS LFA sonar.

Monitoring Concerns (MOC)

Comment MOC1: Additional screening within the 1-km (0.54-nm) zone should be required to record cetacean sightings for a period of hours before and after operations to determine resident cetacean population levels.

Response: Requiring the tripartite monitoring system to start up several hours prior to, and continue for several hours after the conclusion of, LFA sonar transmissions is neither warranted nor practical. First, the Navy will be operating for the most part in waters that are not areas known for high concentrations of marine mammals; therefore, few, if any, marine mammals would be within the SURTASS LFA mitigation zone. In addition, increasing the time for transmission of the HF/M3 sonar would not be consistent with the goal of reducing noise in the ocean. NMFS believes that this additional noise is simply not warranted. Also, at this time, use of the SURTASS LFA sonar vessel as a full-time platform of opportunity to assess marine mammal populations is not practical since the marine mammal observers aboard the SURTASS LFA sonar vessels will not have the expertise needed for producing scientifically acceptable line transect population assessments and the SURTASS LFA vessel scheduling will preclude conducting the type of line transect surveys required for adequate population assessments. However, this remains an issue that NMFS would like to revisit in the future.

Comment MOC2: Monitoring will continue for a period of no less than 15 minutes after the last SURTASS LFA sonar transmission. Will NMFS make it a condition that if there is observable change in marine mammal behavior that monitoring will continue until such behavior returns to normal?

Response: The length of time that the visual observations will continue will be dependent upon visibility, and the speed and direction of both the whale(s) and the SURTASS LFA sonar vessel. Visual observations are required to be continued from a period 30 minutes prior to first transmission of the SURTASS LFA sonar, continue between transmission pings, and continue for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise. This is a condition contained in the final rule. However, provided conditions remain favorable, observations should continue as long as beneficial observations can be made. Therefore, a modification has been made to these regulations clarifying this point.

Comment MOC3: Thirty minutes is inadequate for pre-transmission observations because sperm whales dive for periods in excess of 45 minutes and northern bottlenose whales dive often for 35 to 40 minutes. Thus, it appears that the species at most risk are those likely to go undetected by the monitoring program.

Response: Visual observations are mainly intended to alert operators of the HF/M3 sonar that marine mammals are in the vicinity of the SURTASS LFA sonar vessel. However, if a marine mammal is sighted within the safety zone, the observer would immediately notify the appropriate person that the SURTASS LFA sonar should not be powered up or transmissions should be suspended immediately. This is practical because, in clear weather, skilled observers can see distances greater than the HF/M3 sonar is capable of reaching. Also, while whales may dive for up to 45 minutes, it is unlikely that the ship's bridge watch would miss a large whale surfacing from its previous dive if it is within a mile or two of the vessel. The monitoring mitigation does not rely solely on visual observations. The HF/M3 sonar was developed specifically to detect the presence of marine mammals underwater both day and night under all weather conditions. Since it is the HF/M3 sonar that is the principal means for detecting marine mammals within the safety and buffer zones of the SURTASS LFA sonar vessel, it is unnecessary to extend the observer period to 45 minutes.

Comment MOC4: Since 20–30 percent of the animals that may be in the safety zone prior to and/or during operations are apparently unlikely to be detected, prevention of serious injuries or mortalities may not be possible. The purported effectiveness of the tripartite approach assumed the HF/M3 sonar (70 percent effective), visual (5 percent effective), and passive acoustic (5 percent effective) monitoring would result in a combined mitigation effectiveness of 80 percent. This methodology is flawed because the detection efficiencies are only additive if they are completely non-redundant.

Response: This comment is based on the modeling of potential impacts in the Draft EIS, which utilized a conservative assumption of 70 percent for the effectiveness of the active acoustic monitoring. The Navy changed the methodology of calculating overall monitoring mitigation effectiveness for the Final EIS (see the Final EIS Subchapter 4.2.7.1 for the calculations) based on comments received on the Draft EIS. As this comment is based on reading the Draft EIS, not the Final EIS, it is no longer applicable. This was not an additive calculation.

NMFS believes that the 66-percent effectiveness of the tripartite monitoring system described in the Final EIS significantly underestimates the capability of the monitoring program. For the purposes of the Final EIS analysis, a percentage of 55 percent was utilized based on the probability of detection of a single, small dolphin with a single ping from the HF/M3 sonar. This was a very conservative assumption. Since an animal is likely to receive several pings between the limits of HF/M3 detection (2 km (1.1 nm)) and the 180–dB safety zone, detectability rises above 95 percent prior to an animal entering the 180–dB SURTASS LFA mitigation zone. (see Navy's Final EIS, 2.3.2.2 for details).

In conclusion, due to the high level of marine mammal detectability, the potential for marine mammals to be injured is considered negligible and, moreover, marine mammal mortality is neither expected nor authorized.

Comment MOC5: The methods that the Navy will use to monitor for marine mammals within 1 km (0.54 nm) distance are limited in their efficacy. Visual monitoring is limited to daylight and good weather. The proposed rule document and Draft EIS state that tripartite monitoring mitigation is only 80 percent effective. As stated in the Final EIS, during tests of the HF/M3 sonar only 11 of 20 small cetaceans traversing the sonar were detected.

Therefore, 45 percent of them may be exposed to injurious levels.

Response: For the purpose of estimating impacts on marine mammals for the Navy application and the NEPA documents, the modeling of potential impacts utilized a conservative assumption of 50 percent for the effectiveness of the active acoustic monitoring and an overall effectiveness of 66 percent with passive acoustic and

Therefore, it is unlikely that any marine mammals will be injured by SURTASS LFA sonar operations.

Visual Monitoring

Comment MOC6: The Navy relies heavily on visual monitoring which is inadequate.

Response: Subchapter 4.2.7.1 of the Final EIS states that visual monitoring is limited to daylight hours and its

4.2.7.1 and in RTC SIC70 in this document.

Active Acoustic Monitoring

Comment MOC10: Will the report on the testing of the effectiveness of the HF/M3 sonar be made public through the **Federal Register**?

Response: The subject report (Ellison and Stein, 2001) is available to the public (*http://www.surtass-lfa-eis.com/Download/index.htm*). In addition, a

being detected. Therefore, animals approaching the mitigation zone from below have an extremely high likelihood of being detected before entering the SURTASS LFA mitigation zone.

Comment MOC12: NMFS should develop performance standards for the detection of marine mammals within the 180–dB safety zone and require the Navy to test and demonstrate the

in the Final EIS calculations. Also it is unlikely that hatchlings would dive to a depth of over 80 m (262 ft) (i.e., the normal depth to the top of the 180–dB sound field), so they are unlikely to get into the 180–dB SURTASS LFA sonar mitigation zone and thereby be harmed.

While no mitigation effort can totally eliminate the possibility of impact on an individual sea turtle, the mitigation procedures, including the new HF/M3

been empirically tested and shown to be up to 50 percent more effective than previously estimated. As noted elsewhere in this document, implementation of these mitigation measures, in addition to other mitigation, ensures that the takings by SURTASS LFA sonar will be at the lowest level practicable, without imposing additional measures that might compromise the effectiveness of

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Therefore, 45 percent of them may be exposed to injurious levels.

Response: For the purpose of estimating impacts on marine mammals for the Navy application and the NEPA documents, the modeling of potential impacts utilized a conservative assumption of 50 percent for the effectiveness of the active acoustic monitoring and an overall effectiveness of 66 percent with passive acoustic and visual monitoring included. However, recent testing of the HF/M3 sonar, as documented in the Final EIS Subchapter 2.3.2.2, has provided empirical support for the conservative assumption found in this document, demonstrating a probability of single-ping detection within the SURTASS LFA sonar mitigation zone for most marine mammals above 95 percent (See Final EIS Figure 2–5).

As part of the determination of the HF/M3 sonar's probability of detection, a dedicated experiment was conducted to verify the system's ability to detect bottlenose dolphins. The tests were conducted in shallow (300 m (984 ft)), acoustically downward-refracting waters that produced a high-clutter environment significantly higher than expected under more normal conditions (*i.e.*, deeper water, predominantly CZ propagation, lower clutter). Trained dolphins were commanded to dive to moored objects 130 m (426.5 ft) below the surface with the HF/M3 system positioned 400 to 1000 m (1312 to 3281 ft) away. The predicted detection rate for these exercises was estimated at approximately 80 percent (per dolphin dive cycle). Detailed analysis of 20 dolphin dives resulted in 11 dolphin detections. The small experimental sample size used here suggests that the differences in predicted and measured performance are reasonable. It should be emphasized that these tests were conducted under environmental conditions that reduce probabilities of detection significantly in comparison to deep-water scenarios. In addition, search zones will typically be at larger depths than those focused on during these tests, also serving to increase probabilities of detection via advantageous thresholding adjustments to lower clutter fields. It should also be noted that these tests were conducted on single dolphins. In the wild, small pelagic odontocetes are normally found in pods ranging upward in size from 7 to 1,000 individuals. Therefore, the probability of at least one of the animals in the pod being detected in at least one "ping" is very high. Once a marine mammal is detected by the HF/M3, the SURTASS LFA sonar shutdown protocols will be implemented. Therefore, it is unlikely that any marine mammals will be injured by SURTASS LFA sonar operations.

Visual Monitoring

Comment MOC6: The Navy relies heavily on visual monitoring which is inadequate.

Response: Subchapter 4.2.7.1 of the Final EIS states that visual monitoring is limited to daylight hours and its effectiveness declines during high sea states. Because of the limitations of both passive acoustic and visual monitoring, the Navy developed the HF/M3 sonar to provide 24-hour, all-weather active acoustic monitoring of an area of approximately 2-km (1.1 nm) radius from the array. In calculating the effectiveness for the various monitoring systems for purposes of the Final EIS, the visual monitoring component of the three-part monitoring system was estimated at 0.09, or 9 percent. At an effectiveness of this level, the Navy cannot be considered to be relying heavily on visual monitoring.

Comment MOC7: When visibility is poor (night/bad weather), how will monitoring 30 minutes prior to LFA transmissions be accomplished? What will happen when visibility doesn't allow visual monitoring to start 30 minutes prior to LFA sonar transmissions?

Response: The 24-hour, all-weather HF/M3 sonar was developed and will be used specifically to address the low effectiveness of visual monitoring. The HF/M3 monitoring program will be above 95 percent effective in detecting most marine mammals prior to entering the 180–dB mitigation zone.

Comment MOC8: Provide details of visual monitoring, such as, qualifications of observer, training, testing/evaluation by NMFS, and effectiveness.

Response: Personnel trained in detecting and identifying marine animals will make observations from the SURTASS LFA sonar vessel. At least one observer, qualified by NMFS, will train, test and evaluate other visual observers. Visual observation effectiveness estimates will be provided to NMFS in accordance with LOA reporting requirements.

Passive Acoustic Monitoring

Comment MOC9: No validation is provided for passive acoustic monitoring in determination of beaked whales in the mitigation zone.

Response: The rationale for determining the effectiveness of passive sonar for detecting beaked whales was addressed in the Final EIS Subchapter 4.2.7.1 and in RTC SIC70 in this document.

Active Acoustic Monitoring

Comment MOC10: Will the report on the testing of the effectiveness of the HF/M3 sonar be made public through the **Federal Register**?

Response: The subject report (Ellison and Stein, 2001) is available to the public (*http://www.surtass-lfa-eis.com/Download/ index.htm*). In addition, a paper on this subject was presented at the 2001 Acoustical Society of America meeting (Stein *et al.*, 2001).

Comment MOC11: How can the monitoring system detect deep-diving whales (such as sperm and beaked whales) that approach from below the vessel? One organization also stated, "We also believe that it is a weak argument to state that the closer an animal is to the vessel, the more likely they will be detected. Cetaceans spend the majority of their lives under the water's surface."

Response: Because cetaceans spend much of their time underwater, the HF/M3 sonar was developed, and will be used, to provide continuous, underwater monitoring of the SURTASS LFA mitigation zone. The scenario for a deep-diving whale to go undetected as it approached the vessel from below was taken into consideration in the analysis of the HF/M3 sonar performance (Ellison and Stein, 2001). The probability of detection of a large baleen whale with a single ping within the SURTASS LFA mitigation zone is above 95 percent, except for a small volume directly under the array. This is defined as a down-ward looking conical volume starting at the array to a depth of 140 m (459 ft) with a radius of 300 m (984 ft). Animals, even those diving, will approach the SURTASS LFA sonar vessel laterally because of their movement and the movement of the SURTASS LFA vessel. The HF/M3 sonar scan rate is every 45 to 60 seconds. Animals closing on the SURTASS LFA vessel at 2.5 m/s (5 knots) will remain in the 1-km to 2-km (0.54- to 1.1-nm) annulus surrounding the HF/M3 sonar for approximately 400 seconds, and will, therefore, theoretically be detectable to the sonar no less than 8 times. For an animal to go undetected, it would have to remain in the small volume below the array (defined above) matching course and speed with the vessel. Even though marine mammals can stay submerged for long periods, it is highly unlikely that they would remain in the small volume beneath the SURTASS LFA array for the 400-second (over 6 minutes) period necessary to avoid being detected. Therefore, animals approaching the mitigation zone from below have an extremely high likelihood of being detected before entering the SURTASS LFA mitigation zone.

Comment MOC12: NMFS should develop performance standards for the detection of marine mammals within the 180–dB safety zone and require the Navy to test and demonstrate the capability of the HF/M3 sonar or some other suitable detection system before finalization of the rule making process. Have any relevant studies of the effects of fish-finder type sonar on marine mammals been conducted?

Response: The Navy has demonstrated the capability of the HF/M3 sonar (Ellison and Stein, 2001; Stein *et al.*, 2001). These documents are available upon request. Recent testing of the HF/M3 sonar, as documented in the Final EIS Subchapter 2.3.2.2 pages 2–17 to 2–22, has validated the Navy's overly conservative assumption, demonstrating a probability of detection within the SURTASS LFA sonar mitigation zone for most marine mammals above 95 percent (See Final EIS Figure 2–5). This is significantly higher than the 55 percent used in the Final EIS.

Testing on marine mammals has been conducted. Schlundt *et al.* (2000) tested two species of marine mammals for TTS from exposure to 1-second pure tones for 0.4, 3, 10, 20, and 75 kHz. The HF/M3 sonar frequency range is 30 to 40 kHz. In the 20 to 75 kHz band, that study and follow-up testing showed no masked TTS at levels of 193 dB at 75 kHz.

Comment MOC13: The Navy provides no estimate of the detectability of sea turtles and, therefore, LFA operations could encounter a significant portion of the population.

Response: The Final EIS (RTC 4–2.4) provides a discussion on why SURTASS LFA sonar operations would not encounter a significant portion of any sea turtle population and the Final EIS (Subchapter 4.1.2) indicates, for example, that less than 3 leatherback sea turtles per year per ocean would be affected by SURTASS LFA sonar. However, the calculations in the Final EIS did not consider the diving depth of the leatherback (an average diving depth of 50 to 84 m (164 to 275.6 ft) and a duration of 9 to 15 minutes), nor the water depth of the 180–dB zone (87 to 157 m (285 to 515 ft)). This means that even though they are considered to be continuous divers and can dive to over 200 m (656 ft), their normal dive patterns would only put them in the 180–dB SURTASS LFA mitigation zone for a fraction of the time that was used in the Final EIS calculations. Also it is unlikely that hatchlings would dive to a depth of over 80 m (262 ft) (i.e., the normal depth to the top of the 180–dB sound field), so they are unlikely to get into the 180–dB SURTASS LFA sonar mitigation zone and thereby be harmed.

While no mitigation effort can totally eliminate the possibility of impact on an individual sea turtle, the mitigation procedures, including the new HF/M3 sonar, would be capable of detecting sea turtles before animals were subject to loud LF sounds, thereby reducing the potential impact of SURTASS LFA sonar operations on even these small numbers of sea turtles. Finally, although HF/M3 testing has not been conducted on sea turtles, and an effectiveness percentage has not been provided in the Final EIS, leatherback sea turtles (*i.e.*, the most probable turtle species to be encountered by SURTASS LFA sonar) are about the size of a dolphin (1–2 m in length). Therefore, based on multiple sweeps, the HF/M3 sonar should have a detection effectiveness for leatherback sea turtles similar to that for a small cetacean.

Comment MOC14: NMFS states efficiency of the HF/M3 sonar is not certain. The HF/M3 sonar is untested. Therefore, it plans to calculate take based only on geographic restrictions. How can NMFS be certain that negligible impacts on marine mammals are at the lowest practicable levels?

Response: The Navy has demonstrated the capability of the HF/M3 sonar (Ellison and Stein, 2001; Stein *et al.*, 2001). These reports are available upon request from NMFS. Recent testing of the HF/M3 sonar, as documented in the Final EIS Subchapter 2.3.2.2, and these reports, has validated the effectiveness of the HF/M3 sonar, demonstrating a single-ping probability of detection within the 180–dB SURTASS LFA mitigation zone for most marine mammals above 95 percent (See Final EIS Figure 2–5). This is substantially greater than the pre-test assumption that the HF/M3 sonar would be 50 percent effective (tripartite monitoring was believed to be 66 percent effective). Since the research on the HF/M3 has been conducted, as suggested in the proposed rule, and as this research has documented the HF/M3 effectiveness at over 95 percent, NMFS has determined that harassment take levels can be assessed taking into account both the geographic mitigation and the monitoring mitigation measures. These take levels can be found in Table 4–10 of the Navy application and Table 4.2–10 of the Final EIS (final column in both tables), but may overestimate the level of impacts since the HF/M3 has been empirically tested and shown to be up to 50 percent more effective than previously estimated. As noted elsewhere in this document, implementation of these mitigation measures, in addition to other mitigation, ensures that the takings by SURTASS LFA sonar will be at the lowest level practicable, without imposing additional measures that might compromise the effectiveness of the Navy's ability to use SURTASS LFA sonar to carry out its mission.

Comment MOC15: The commenter states that "the HF/M3 sonar could use frequencies above 200 kHz to impact odontocetes less."

Response: Because absorption losses are much higher for 200 kHz than at 30 kHz (about 10 times greater), 200-kHz sonar cannot effectively provide the required range of at least 1 km (0.54 nm). Also, except for auditory impacts, there is no evidence to support 200 kHz as causing less impact to odontocetes than 30–40 kHz.

Comment MOC16: Did the Navy have a take authorization for the testing of the HF/M3 sonar on dolphins?

Response: Testing with artificial targets from October 1998 through May 2000 does not require a permit under the MMPA. The August 2000 tests were conducted with bottlenose dolphins under the Navy's authorized Marine Mammal Program (San Diego, CA), and, therefore, did not require any permits.

Comment MOC17: One commenter states that the HF/M3 sonar cannot be compared to a fish-finder because fish-finder sonar is typically focused in a narrow beam below the vessel where it is less likely to disturb marine mammals. One organization believes that it is nonsensical to rely on a monitoring system that is itself harmful to marine mammals as well as unproven in its effectiveness.

Response: Fish-finder sonars are generally forward-looking active sonars for spotting fish schools. Fish-finder transducers have horizontal beamwidths from 10 to 46 degrees at ranges on the order of 1 km (0.54 nm). The HF/M3 sonar utilizes four ITC 1032 transducers with 8-degree horizontal and 10-degree vertical beamwidths, which sweep a full 360 degrees in the horizontal every 45 to 60 seconds with a maximum range of approximately 2 km (1.1 nm). The beamwidth for the HF/M3 sonar is comparable to commercial fish finders.

The HF/M3 sonar effectiveness has been discussed previously in this document. There is no scientific evidence that sonars, similar to the HF/M3, which are in common use in the fishing and maritime industries, harm marine life. In addition, a requirement

to ramp-up the HF/M3 ensures that marine mammals and sea turtles are detected by the HF/M3 sonar at the lowest sound level possible. Once a marine mammal or sea turtle is detected, further increases in power are not initiated until the animal is no longer detected. At that time, ramp-up would continue unless that animal, or another, was detected.

Comment MOC18: The Navy did not injury, not from the potential to incur non-injurious harassment. The concept behind ramp-up of the HF/M3 is to ensure (presuming ramp-up is actually effective), that marine mammals can move out of the HF/M3's 180–dB safety zone (considerably smaller than the SURTASS LFA sonar's 180–dB zone), if it finds the noise annoying, but before it becomes harmful. However, more importantly, ramp-up allows such a powerful output that it should be ramped up.

Response: As stated in the Final EIS Subchapters 2.1.1 and 2.3.2.2, the source level of a SURTASS LFA projector is 215 dB while the source level for the HF/M3 sonar is 220 dB. The rationale for the ramp-up of the HF/M3 sonar is discussed in the previous RTCs.

Comment MOC21: Research is needed

zone, and observers will record interactions and behavioral reactions by marine mammals within the maximum distance possible. For more information see Final EIS Subchapter 5.2.

The assessment of whether any taking of marine mammals occurred within the SURTASS LFA mitigation zone during SURTASS LFA sonar operations will be based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Post-operation acoustic

as noted previously, Navy funding for marine mammal research is expected to increase, not decrease, in the future. NMFS recommends those interested in marine mammal research being funded by ONR view its web site: *http://www.onr.navy.mil/sci_tech/personnel/cnb_sci/ mammal_bio.htm*

Comment MOC25: The LTM Program is inadequate to fill data gaps.

Response: It is not the purpose of the LTM Program to fill all of the data gaps

long-term trends in the vocalizations of marine mammals that are exposed to SURTASS LFA signals (see number 6).

Comment MOC26: A suitable monitoring and research plan/program should be required (provided, made public, and considered in rulemaking) before initial authorization is issued, and reauthorization should be based on a demonstration of suitable progress under the plan. NMFS should determine, and specify in the final

to ramp-up the HF/M3 ensures that marine mammals and sea turtles are detected by the HF/M3 sonar at the lowest sound level possible. Once a marine mammal or sea turtle is detected, further increases in power are not initiated until the animal is no longer detected. At that time, ramp-up would continue unless that animal, or another, was detected.

Comment MOC18: The Navy did not employ the best available mitigation (monitoring) technology because it did not consider the use of Synthetic Aperture/Side Scan Sonar and Range Gated Viewers (laser camera) in lieu of the HF/M3 sonar.

Response: According to the Navy, the two technologies listed are not the best available technology for active acoustic monitoring. Synthetic aperture arrays/side scan sonar does not meet the omni-directional requirement for detection of marine animals. As discussed in Table 1–1 of the Final EIS, the use of laser technology in underwater applications is severely limited in range. For example, the AquaLynx underwater-gated viewing laser-camera system has a range measured in tens of meters, not the 2 km (1.1 nm) range of the HF/M3 sonar.

Ramp-up

Comment MOC19: In response to Comment 30 in the proposed rule regarding ramp-up of the SURTASS LFA sonar, NMFS stated, "Since the HFM3 sonar will be operating for a minimum of 30 minutes prior to initiation of SURTASS LFA sonar, ramp-up of the SURTASS LFA sonar is not necessary." The commenter fails to see how ramp-up of the HF/M3 sonar, which differs in virtually all its characteristics from SURTASS LFA sonar, can serve as a substitute for ramp up of the SURTASS LFA sonar. This commenter is concerned that if NMFS considers that the differing characteristics of the mid-frequency sonars used in the Bahamas make their impact irrelevant to an analysis of the potential impacts of SURTASS LFA sonar, then it is inconsistent to consider the sound characteristics of the HF/M3 sonar to be effective as mitigation for SURTASS LFA sonar. Ramp-up of the HF/M3 sonar might warn away (or attract) HF specialists, but it might have no effect on LF specialists, either to warn or to attract. Another commenter, expressing similar concerns, also believes that the Navy will use the HF/M3 to detect marine mammals and also to repel them with it.

Response: For this action, ramp-up of the HF/M3 is designed to protect marine mammals from the potential to incur an injury, not from the potential to incur non-injurious harassment. The concept behind ramp-up of the HF/M3 is to ensure (presuming ramp-up is actually effective), that marine mammals can move out of the HF/M3's 180–dB safety zone (considerably smaller than the SURTASS LFA sonar's 180–dB zone), if it finds the noise annoying, but before it becomes harmful. However, more importantly, ramp-up allows acousticians monitoring the HF/M3 to locate marine mammals first within the HF/M3's 180–dB zone at the lowest SPLs possible and certainly before high SPLs from the HF/M3 sonar are achieved and secondly, once its own safety zone is secured, to ensure that the SURTASS LFA sonar's 180–dB safety zone is free of marine mammals and sea turtles. This use of ramp-up differs from most uses of ramp-up, which rely solely on visual observations and shut-down only if surface observations detect marine mammal presence. The HF/M3 will not be used to repel marine mammals, since once a marine mammal is detected, ramp-up may not proceed until, under minimal SPLs, marine mammals are no longer detected within the 180–dB safety zone. Once the SURTASS LFA sonar's 180–dB zone is determined to be clear of marine mammals, the SURTASS LFA sonar can be turned on without the need for ramp-up. In this case, once the SURTASS LFA sonar's 180–dB zone has been determined to be free of marine mammals, the frequency of the hearing of the marine mammal is not relevant.

In addition to the reason mentioned in this response (marine mammals would receive no greater protection from injury from ramping up than will be provided under the HF/M3 ramp-up), a requirement for ramping-up of the SURTASS LFA sonar is not practical for several reasons. Of importance to NMFS is that ramping up, at a rate similar to that which is used in seismic (about 6 dB/minute), would likely result in several additional minutes of unnecessary LF sounds in the marine environment, creating more noise to ensure, theoretically at least, that marine mammals have more time to leave an area where they might be annoyed by the sounds. This is simply not warranted. Second, operational times in an area would probably increase to account for ramp-up times between "pings" (6 to 15 minutes).

Comment MOC20: One commenter believes that the difference in power output of the HF/M3 sonar and the LFA sonar means that it is not sufficient to use the HF/M3 device as a "ramp-up" in order to warn cetaceans of the impending loud noise. LFA produces such a powerful output that it should be ramped up.

Response: As stated in the Final EIS Subchapters 2.1.1 and 2.3.2.2, the source level of a SURTASS LFA projector is 215 dB while the source level for the HF/M3 sonar is 220 dB. The rationale for the ramp-up of the HF/M3 sonar is discussed in the previous RTCs.

Comment MOC21: Research is needed on the ramp-up theory to determine if it is useful or harmful to the health of marine mammals. One organization suggests that the Navy conduct research on the "ramp-up" theory, in order that it can be better understood whether or not such an activity is useful or harmful to the health of marine mammals. There is no evidence that ramp-up will allow fish and whales to escape.

Response: NMFS understands that scientific research on ramp-up effectiveness is planned or actually underway, supported through funding by the Minerals Management Service (MMS).

Long-Term Monitoring (LTM)

Comment MOC22: Visual and acoustic monitoring is neither designed to, nor will it, mitigate the effects of any taking of marine mammals that occurs. The purpose of monitoring should be to confirm that animals are taken only in the ways and numbers authorized and that there are no non-negligible population level effects.

Response: The purpose of the visual and acoustic monitoring is to monitor the location of marine mammals with respect to the SURTASS LFA mitigation and buffer zones to ensure appropriate shutdown to avoid injury to marine mammals by the SURTASS LFA transmissions. While visual and passive acoustics are unlikely to significantly mitigate injurious takings by themselves, based on their ability to cue the operator of the HF/M3 sonar to the presence of marine mammals, the tripartite monitoring program and shutdown protocols are expected to be close to 100 percent effective in avoiding injurious takes. This has been explained previously in this document. However, NMFS concurs that monitoring should be used to collect the necessary data to determine incidental takes. Swartz and Hofman (1991), for example, recognized that some forms of take may occur beyond the field of view of an observer at a particular site and that the monitoring program must be designed accordingly. This monitoring will be conducted by the Navy through long-term research. Moreover, the visual, passive and acoustic monitoring will extend beyond the 180–dB safety zone, and observers will record interactions and behavioral reactions by marine mammals within the maximum distance possible. For more information see Final EIS Subchapter 5.2.

The assessment of whether any taking of marine mammals occurred within the SURTASS LFA mitigation zone during SURTASS LFA sonar operations will be based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Post-operation acoustic modeling will provide estimates of any taking beyond the SURTASS LFA mitigation zone.

Comment MOC23: The LTM Program must have a secure budget and a detailed plan for research submitted to NMFS and made available to the public. $1.2M is not enough funding for the LTM Program.

Response: The LTM program had been budgeted by the Navy at a level of $1M per year for 5 years, starting with the issuance of the first LOA. For additional information see the Final EIS (RTC 2–4.12).

Vice Admiral Dennis McGinn, Deputy Chief of Naval Operations for Warfare Requirements and Programs testified before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Committee on Resources on 11 October 2001,

> The Navy funds the majority of all marine mammal research in the world. The Navy provided approximately $7M in FY01 for research directly related to assessing and mitigating the effects of noise from Navy activities on the marine environment. The funding plan for FY02 calls for an increase of approximately $2M to $7M, contingent on final budget approval and recent events.

Comment MOC24: The LOA should contain a condition that the ONR continue at current levels its research activities into the effects of noise on marine mammals. The LTM Program cannot be accepted as a substitute for performing the research to fill data gaps.

Response: The Holder of the LOA for the SURTASS LFA sonar systems will be the CNO, or his duly appointed representative, not ONR. Under the MMPA, NMFS does not have jurisdiction to require a Federal component to commit to certain funding levels, especially one that is determined through the Congressional budget process. Applicants for a small take authorization are required through statements made by Congress when it implemented the small take program under the MMPA to conduct the appropriate research to address impacts and ways to mitigate those impacts. Provided the applicants undertake that research, they are considered to be in compliance with the MMPA. However, as noted previously, Navy funding for marine mammal research is expected to increase, not decrease, in the future. NMFS recommends those interested in marine mammal research being funded by ONR view its web site: *http://www.onr.navy.mil/sci_tech/personnel/cnb_sci/ mammal_bio.htm*

Comment MOC25: The LTM Program is inadequate to fill data gaps.

Response: It is not the purpose of the LTM Program to fill all of the data gaps, but to address those of the most immediate concern. NMFS is recommending that the Navy conduct the following research relative to LFA sonar over the first 5-year authorization period:

1. Systematically observe SURTASS LFA sonar exercises for injured or disabled marine animals. Past correlations between military operations and the stranding of beaked whale, including the Bahamas event, call for closer observation of all sonar operations.
2. Compare the effectiveness of the three forms of mitigation (visual, passive acoustic, HF/M3 sonar).
3. Conduct research on the behavioral reactions of whales to sound levels that were not tested during the research phase, specifically between 155 dB and 180 dB. This should be done in a research format rather than in actual training operations.
4. Conduct research on the responses of sperm and beaked whales to LF-sonar signals. These species are believed to be less sensitive to LF-sonar sounds than the species studied during the LFS–SRP. However, enough questions exist that these species should be studied during the five-year permit period.
5. Conduct research on the habitat preferences of beaked whales, and plan future SURTASS LFA sonar exercises to avoid such areas. Avoidance is the most effective mitigation measure.
6. Conduct passive acoustic monitoring using bottom mounted hydrophones before, during, and after SURTASS LFA sonar operations for the possible silencing of calls of large whales.
7. Continue research with the HF/M3 mitigation sonar. This is the primary means of mitigation, and its efficacy under a range of conditions must continue to be demonstrated. Receiver-Operator-Characteristic curves should be constructed if possible.
8. To determine potential long term, cumulative effects from SURTASS LFA sonar, select a stock of marine mammals that is expected to be regularly exposed to SURTASS LFA sonar and monitor it for population changes throughout the 5-year period. Alternatively, look for long-term trends in the vocalizations of marine mammals that are exposed to SURTASS LFA signals (see number 6).

Comment MOC26: A suitable monitoring and research plan/program should be required (provided, made public, and considered in rulemaking) before initial authorization is issued, and reauthorization should be based on a demonstration of suitable progress under the plan. NMFS should determine, and specify in the final regulation, the operational and other information that will be required to enable the best possible retrospective analyses if changes in demography of any potentially affected marine mammal populations are detected. Minimally, the Navy should maintain records and report dates, times, and locations of each exercise, including the number, duration of and times between transmissions, and all observations of marine mammals made incidentally as well as the product of the required monitoring.

Response: The Navy provided its monitoring plan in its application under section 101(a)(5)(A) of the MMPA and in the Final EIS (Subchapter 2.4). That plan was subject to public review and comment during the ANPR (64 FR 57026, October 22, 1999), and proposed rulemaking (66 FR 15375, March 19, 2001) stages. Public comments on monitoring and research plans were addressed in the proposed rule and in this document.

As noted in §§ 216.189(a)(3) and (a)(4) of this document, NMFS will continue to make determinations on the adequacy of the mitigation, monitoring, and reporting prior to each annual renewal of an LOA. NMFS normally maintains the monitoring and reporting requirements in the LOA, not in the regulations, in order to allow flexibility in responding to monitoring and reporting concerns and/or opportunities. This flexibility would not be available under comment-and-response rulemaking because it could take up to a year to implement any modifications to the monitoring plan. NMFS notes however, that an LOA is as legally binding on a holder as the regulations. It should be noted also that this policy is not unique to the SURTASS LFA sonar, but is followed wherever NMFS believes it needs this flexibility. Elsewhere in this document, NMFS provides a detailed description of the required reporting under this authorization request.

Comment MOC27: Because impacts between approximately 150 and 180 dB are arguably uncertain, monitoring marine mammal exposure to SPLs between 150 and 180 dB is not only

legally required but scientifically imperative. There is no requirement for this monitoring in the proposed rule.

Response: Because it is not feasible to monitor marine mammal behavioral reactions to SURTASS LFA sonar signals from the LFA sonar vessel at the distances that would be expected for SPLs of 150–180 dB, NMFS did not consider this a practical requirement for

information discussed in detail in this document provides NMFS with sufficient information to determine that no injury to marine mammals is likely to occur at distances beyond the range of the tripartite monitoring.

Cudahy and Ellison (2001) stated that the expected threshold for *in vivo* tissue damage for low frequency sound is on the order of 180 to 190 dB and Richardson *et al.* (1995) speculated that

zone during SURTASS LFA operations will be based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Data analysis from the LTM and post-operation acoustic modeling will provide estimates of any taking beyond the SURTASS LFA mitigation zone.

Comment MOC30: Commenters suggested that the following elements should be included in the monitoring

authorization period on those species most likely to be impacted from SURTASS LFA sonar, such as sperm and beaked whales.

Comment MOC30d: Undertake an analysis to determine the changes in the size, range, and productivity of potentially affected species and stocks that could be detected by the survey programs currently being conducted by NMFS, the Navy, MMS and others, and

Comment MOC30g: The HF/M3 sonar recordings can be used to analyze animal movements relative to the LFA array.

Response: To the extent possible, considering the mitigation measure to ensure that the HF/M3 sonar SPL is at the lowest level practicable at the tracked animal, this recommendation will be implemented.

Comment MOC30h: The long-term monitoring plan should include

assessed, but questions whether the SURTASS LFA sonar LTM program (which is monitoring conducted from the SURTASS LFA vessel) would be capable of providing the necessary information to make those determinations. In one year, each of the two SURTASS LFA sonar ships, with each ship located in a different area, would make approximately six active operations totaling 108 days of active

legally required but scientifically imperative. There is no requirement for this monitoring in the proposed rule.

Response: Because it is not feasible to monitor marine mammal behavioral reactions to SURTASS LFA sonar signals from the LFA sonar vessel at the distances that would be expected for SPLs of 150–180 dB, NMFS did not consider this a practical requirement for monitoring under the proposed rule. However, in accordance with the findings of Swartz and Hofman (1991), the scientific value of obtaining this information is important for NMFS to ensure that its determination that the takings would have no more than a negligible impact on affected marine mammal stocks was correct. Therefore, NMFS has made this a key component of the recommended research under the LTM program (see number 3 in RTC MOC25) for the Navy to undertake over the next 5 years. NMFS encourages the Navy to conduct this research at its earliest opportunity.

Comment MOC28: How will the Navy provide actual harassment and non-serious injury estimates, verify estimates predicted from modeling, and verify its assumptions that no serious injury or deaths will occur between 120 and 180 dB? Because there is no pre-, during, or post-transmission monitoring on marine mammals experiencing RLs less than 180 dB, the Navy cannot assume that there will be no serious injury or deaths below 180 dB.

Response: Please see RTC MOC22 regarding the possibility of injury below 180 dB. Visual, passive and active acoustic monitoring will provide information on take levels to a range of up to 3 nm (5.6 km) depending upon conditions. This will provide NMFS and the Navy with information on take levels to SPLs as low as approximately 173 dB. Information on takes by harassment at distances greater than 3 nm (5.6 km) are not practical and, therefore, the Navy will conduct research to assess impacts, including injury. For example, in order to verify the Final EIS assumptions concerning potential impacts below 180 dB SPL, NMFS recommends that the Navy conduct research on the reactions of whales to sound levels that were not tested during the LFS SRP, specifically between 155 and 180 dB as part of its research under the LTM program. This follows the findings of Swartz and Hofman (1991) that determined that it is acceptable to substitute research on impacts to marine mammals in lieu of site-specific monitoring when site-specific monitoring is not feasible or practicable. However, until the results from this research are available, information discussed in detail in this document provides NMFS with sufficient information to determine that no injury to marine mammals is likely to occur at distances beyond the range of the tripartite monitoring.

Cudahy and Ellison (2001) stated that the expected threshold for *in vivo* tissue damage for low frequency sound is on the order of 180 to 190 dB and Richardson *et al.* (1995) speculated that for 10 elongated sonar pulses, the auditory damage risk criteria for marine mammals (based on human studies) might be 183 to 213 dB.

Second, in order to avoid tissue damage at 180 dB, NMFS has incorporated a marine mammal buffer zone 1 km (0.54 nm) beyond the SURTASS LFA mitigation zone (180-dB sound field). This interim operational restriction requires the SURTASS LFA sonar to suspend transmissions immediately whenever a marine mammal is detected by the HF/M3 sonar. Depending upon the size of the animal, this may be as far as 2 km (1.1 nm) from the SURTASS LFA source. This should not be interpreted to mean that marine mammals are considered to be injured at that distance, only that this measure became practical for reducing potential impacts on marine mammals once the HF/M3 tests were conducted indicating its operational efficacy at these greater distances. In addition, NMFS is imposing an interim operational restriction on the frequency of the SURTASS LFA sonar sound to 330 Hz and below. This is based on statements made by Ketten (2001) before Congress on October 11, 2001 (see RTC MIC15e). Both measures will ensure, to the greatest extent practicable, that marine mammals are not injured by the SURTASS LFA sonar signal. These protective measures will be retained until scientific documentation can be provided which indicates they can be modified while still providing sufficient protection for marine mammals.

Comment MOC29: Is the LTM Program only to assess what occurs within the 180-dB zone, noting when an animal enters and the system is shut down? How will behavioral effects be monitored?

Response: The LTM Program is made up of two parts. First is the necessary input data for NMFS-directed reports under the LOA, which has been elaborated upon in the Final EIS (Subchapter 2.4) and elsewhere in these RTCs. The second part involves long-term independent scientific research efforts on topics recommended by NMFS. The assessment of whether any taking of marine mammals occurred within the SURTASS LFA mitigation zone during SURTASS LFA operations will be based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Data analysis from the LTM and post-operation acoustic modeling will provide estimates of any taking beyond the SURTASS LFA mitigation zone.

Comment MOC30: Commenters suggested that the following elements should be included in the monitoring and reporting program:

Comment MOC30a: Augment the proposed passive acoustic monitoring program to determine whether there are differences in the nature or frequency of marine mammal vocalizations following SURTASS LFS sonar transmissions that may be indicative of behavioral disruptions beyond the proposed 180-dB safety zone.

Response: It is not practical from a technical (SURTASS is tuned to detect the signal characteristics of submarines, not marine mammals), logistical, or financial standpoint to conduct this work from the SURTASS LFA sonar vessel. However, it has been shown that this can be accomplished using the Navy's SOSUS seafloor hydrophone arrays. Thus, the Navy will consider this recommendation as part of their research program. There is good potential for partnering with NOAA's Pacific Marine Environmental Laboratory to address the basis of this comment in the northeastern Pacific during future SURTASS LFA operations.

Comment MOC30b: Routinely examine observational data collected during SURTASS LFA sonar exercises to help identify additional marine mammal concentration areas that should be designated as OBIAs.

Response: NMFS will review the reports to determine whether areas in which SURTASS LFA sonar exercises have numerous shutdowns due to marine mammal incursions into the monitoring zone would qualify as a future OBIA candidate. The public will be able to review the annual report for the same reason.

Comment MOC30c: Design and conduct a series of direct experiments to document how representative species and age-sex classes of marine mammals respond to different types and levels of LF sounds.

Response: While this recommendation is beyond the scope for required ship-board monitoring of the SURTASS LFA sonar because it must be conducted independently by scientists operating under a scientific research permit issued under section 104 of the MMPA, NMFS is recommending the Navy conduct research during this

authorization period on those species most likely to be impacted from SURTASS LFA sonar, such as sperm and beaked whales.

Comment MOC30d: Undertake an analysis to determine the changes in the size, range, and productivity of potentially affected species and stocks that could be detected by the survey programs currently being conducted by NMFS, the Navy, MMS and others, and then take such steps as necessary to coordinate and augment the programs to provide the capability for detecting biologically significant changes in representative species and stocks.

Response: At this time, this analysis cannot be conducted because NMFS is not aware of how to assess a cause-and-effect relationship for a short-term noise effect when population level effects to marine mammals from ship noise and collisions, fishery takes and increasing contaminant levels cannot be accurately determined. NMFS believes that as we gain new information from appropriate research we can determine cumulative impacts from all anthropogenic causes, not just one type of sound that is unlikely to be repeated again in the near term. For example, the impacts from anthropogenic noise from the several thousand vessels entering and leaving Los Angeles Harbor, Boston Harbor, or Honolulu Harbor annually should be incorporated into a cumulative impact assessment to determine if SURTASS LFA sonar sound is presumed to be cumulatively affecting marine mammals in those areas.

Comment MOC30e: Maintain a running record of events (detections) occurring before, concurrent, and after LFA sonar deployment.

Response: SURTASS LFA sonar monitoring will begin 30 minutes prior to start-up, continue between transmission pings, and continue for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise. During this time period all detections and behavioral observations by the tripartite monitoring program will be recorded.

Comment MOC30f: Passive and active (HF and LF) acoustics should be recorded for later analysis; passive recordings can be analyzed outside the 180-dB contour for vocalizing animals at distances on the order of 50 km (27 nm).

Response: The passive and active sonar systems will monitor for marine mammals and make recordings. These classified recordings will be available for analysis by scientists with proper security clearances. These data must be requested by these scientists prior to an exercise. However, this will not supersede LOA reporting requirements.

Comment MOC30g: The HF/M3 sonar recordings can be used to analyze animal movements relative to the LFA array.

Response: To the extent possible, considering the mitigation measure to ensure that the HF/M3 sonar SPL is at the lowest level practicable at the tracked animal, this recommendation will be implemented.

Comment MOC30h: The long-term monitoring plan should include monitoring and assessment of both annual assessments of the previous year's data, as well as long-term, retrospective analysis of cumulative SURTASS LFA sonar effects (such as population productivity, distribution, and stranding incident rates).

Response: NMFS agrees that an analysis of the results of previous monitoring is needed whenever a SURTASS LFA sonar exercise takes place within an oceanic area that has been exposed to SURTASS LFA sonar signals within the period of these regulations. These analyses would include a review of stranding data for areas wherein SURTASS LFA sonar was operating at the time.

However, since NMFS, using the best scientific information available, has determined that population level effects are unlikely since no marine mammals are expected to be injured or killed, and no marine mammals are likely to be subject to long-term exposures from SURTASS LFA sonar signals, changes in population productivity or distribution are unlikely to occur due to SURTASS LFA sonar operations. NMFS noted previously the scientific problem with assessing a population level cause-and-effect analysis for SURTASS LFA sonar without also accounting for lethal takings due to ship collisions, fishing mortality, and increasing anthropogenic contaminant levels and intentional harvesting. Therefore, NMFS will continue to monitor population level effects through its marine mammal status reviews required by section 117 of the MMPA. This formal review process would, if warranted, analyze the potential impacts from SURTASS LFA sonar and other sources of anthropogenic noise.

Comment MOC30i: Possible cumulative effects beyond the requested 5-year authorization should be considered in the development of the monitoring and reporting requirements and included as a condition of any authorization issued. Assessment of short- and long-term effects should be made.

Response: NMFS agrees that the cumulative impacts of anthropogenic noise on marine mammals should be assessed, but questions whether the SURTASS LFA sonar LTM program (which is monitoring conducted from the SURTASS LFA vessel) would be capable of providing the necessary information to make those determinations. In one year, each of the two SURTASS LFA sonar ships, with each ship located in a different area, would make approximately six active operations totaling 108 days of active sonar operations or approximately 18 days/mission/year. Second, marine mammal breeding is seasonal, thereby further limiting the period when marine mammals could potentially be exposed during this critical period.

To address cumulative impact, NMFS has recommended that the Navy select a marine mammal stock that is expected to be regularly exposed to SURTASS LFA sounds and monitor it for population changes throughout the 5-year period of these regulations, looking for long-term trends in vocalization patterns. NMFS would also like to work with interested scientists to design a research proposal (research monitoring that is not conducted during standard operations) that could address this concern in a manner that would be scientifically acceptable, humane to the affected marine mammals, and to determine the funding priority for this research in competition with the research proposed by NMFS (described previously).

The LTM program, including research under the LTM, which has a budget of $1M for each of the 5 years, will be described in the LOA. Because of variable factors (such as locations of operations, times of year), priorities of research areas, coordination with other research projects, and funding, it is premature to determine exact research elements at this time.

Comment MOC31: The LFA sonar should be used to monitor the position of baleen whales. This can be compared to the detections by the HF/M3 sonar.

Response: According to the Navy, the SURTASS LFA sonar is designed and acoustically tuned to detect and track submarines, not marine mammals. As the target strength of marine mammals is much less than that of a submarine, the ability to detect a whale is greatly diminished. In addition, the longer pulse lengths of SURTASS LFA signals mean there would be longer times when the receiver is blind due to the signal being transmitted. Also, as explained in the Final EIS, LF signals attenuate greatly in the near-surface zone, where many of the marine mammals usually

reside. Larger animals can be detected by the HF/M3 sonar at up to 2 km (1.1 nm), with probabilities of detection for most marine mammals above 95 percent (Ellison and Stein, 2001) and can be tracked within the 1 km (0.54 nm) buffer zone and 180-dB SURTASS LFA mitigation zone, where SURTASS LFA transmissions would be required to be suspended if a marine mammal was detected. Therefore, the use of the sonar training exercise conducted during the one-year periods of incidental taking authorizations.

Response: NMFS agrees that more timely reporting requirements are needed to ensure that the incidental takings of marine mammals by SURTASS LFA sonar are within reasonable limits established by these regulations. As a result, NMFS has amended the regulations to require the from the deployment of the proposed SURTASS LFA sonar.

Response: See RPTC1 for response. NMFS does not believe that requiring the Navy to submit these reports to interested states is warranted since the Navy has met the Coastal Zone Management Act (CZMA) consistency requirements with respect to all coastal states (with the exception of California) that could be potentially affected by

determined, the LOA may be suspended, modified or revoked in compliance with the requirements of the MMPA, these regulations, and the terms and conditions of the LOA.

Comment RPTC5: Reliance on stranding networks to detect impacts on pelagic animals will not work. It is likely that in the offshore environment LFA operations could cause multiple whale deaths, but this would not likely be observed as coastal strandings. The incident to determine the necessary action. Additional protocols to assist injured marine mammals are neither warranted (because of the unlikely occurrence of an injury) nor practical (considering the distance from shore, the single-vessel nature of SURTASS LFA operations, the lack of veterinary experience in a typical crew, and high freeboard of the typical SURTASS LFA sonar vessel precluding easy access to a marine mammal).

Sound fields in this layer of water would be about 20 dB less than the sound fields in adjacent deeper water. Because of this acoustic attenuation and the restriction that SURTASS LFA sound fields will not exceed 145 dB in known diving areas, participants in activities that may involve submersion below the ocean's surface, such as swimming, surfing, and snorkeling, would not be significantly impacted by exposure to LF sounds transmitted from

reside. Larger animals can be detected by the HF/M3 sonar at up to 2 km (1.1 nm), with probabilities of detection for most marine mammals above 95 percent (Ellison and Stein, 2001) and can be tracked within the 1 km (0.54 nm) buffer zone and 180-dB SURTASS LFA mitigation zone, where SURTASS LFA transmissions would be required to be suspended if a marine mammal was detected. Therefore, the use of the SURTASS LFA array both to track baleen whales and as a comparative test for the accuracy of the HF/M3 sonar is not technically feasible. It is also not necessary because the HF/M3 system has already been successfully tested.

Comment MOC32: The Navy should use independent or NMFS observers with appropriate security clearance on board SURTASS LFA sonar vessels.

Response: Security clearance requirements for personnel onboard SURTASS LFA sonar vessels make this recommendation impractical. Considering the normally rapid turnover of marine mammal observers (as observed in the marine mammal/fishery observer program), the high cost to conduct security clearances, and the several months required for Department of Defense security clearances, NMFS believes that this recommendation is not practical as it is unlikely to be capable of operating efficiently. The alternative that has been accepted by NMFS for this action is for the Navy to hire one or more qualified marine mammal biologists, highly experienced in marine mammal observation techniques, to train appropriate Naval personnel, or Naval civilian personnel, for conducting these observations. The requirements for training and limitations on length of marine mammal watches will be contained in the LOAs and will be similar to LOA requirements for other activities. However, this does not preclude NMFS employees trained in marine mammal observations and holding proper security clearances from participating in cruises to assess the performance of the observer monitoring program.

Reporting Concerns (RPTC)

Comment RPTC1: Data on marine mammals seen in and outside the proposed 180-dB safety zone and any overt responses to the sonar transmissions may provide valuable information validating or invalidating the assumptions upon which the proposed negligible effects determination is based. There is no apparent reason why such raw data should be classified or should not be provided to NMFS within a few days or weeks after conclusion of each LFA sonar training exercise conducted during the one-year periods of incidental taking authorizations.

Response: NMFS agrees that more timely reporting requirements are needed to ensure that the incidental takings of marine mammals by SURTASS LFA sonar are within reasonable limits established by these regulations. As a result, NMFS has amended the regulations to require the Navy to submit information to NMFS on a quarterly basis with the report including all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. This is the standard period of time provided for all small take authorizations. However, this period of time is insufficient to allow the Navy to declassify information that might compromise national security; as a result the quarterly reports will be classified and the information will not be publically available until the annual report. The Navy estimates that there will be approximately 6 such exercises per vessel in a normal year. Therefore, NMFS will receive four quarterly (classified) reports annually from each of the two vessels. In the interim, NMFS will use these quarterly reports to monitor the SURTASS LFA sonar activity to ensure compliance with the terms and conditions of the LOA and regulations.

A draft, unclassified, annual report will contain an analysis of impacts from the individual missions, which will not be possible under the time limitation governing quarterly reports. However, because an annual comprehensive analysis report must be submitted 90 days prior to expiration of an LOA, the number of missions being reported under the first year of these regulations will be limited to those that can be be analyzed within that time period.

Comment RPTC2: Two commenters inquire whether the monitoring reports required by the LOA will be available to the public through publication in the **Federal Register**.

Response: Within 30 days of receipt by NMFS, all annual reports under this action will be available to the public. Notice of availability will be published in the **Federal Register**. However, due to high costs for publication, NMFS does not plan to publish the annual reports themselves in the **Federal Register**.

Comment RPTC3: Section 216.186 should be amended to require that the Navy provide the report required under the LOA to potentially affected states. Sharing this information may assist the states and others in the ongoing monitoring and assessment of impacts from the deployment of the proposed SURTASS LFA sonar.

Response: See RPTC1 for response. NMFS does not believe that requiring the Navy to submit these reports to interested states is warranted since the Navy has met the Coastal Zone Management Act (CZMA) consistency requirements with respect to all coastal states (with the exception of California) that could be potentially affected by LFA (22 states) and territories. However, states can make arrangements with the Navy or NMFS for annual reports for activities taking place in federal waters or an interested state's waters.

Marine Mammal Stranding Reports

Comment RPTC4: The Navy states that it will coordinate with principal marine mammal stranding networks to correlate analysis of any whale strandings with SURTASS LFA sonar operations and with reports to NMFS. What would this coordination entail? Is this reporting in connection with the LTM Program that would be annual?

Response: As mentioned previously, the LTM reporting requirement will be quarterly, as well as annually. NMFS believes that this more timely reporting is needed to ensure that the incidental takings of marine mammals by SURTASS LFA sonar are within the limits established by these regulations. In regard to coordinating the stranding network, the NMFS National Stranding Coordinator and the small take exemption program work closely with each other whenever a stranding occurs. Marine mammal strandings are required to be reported to the National Stranding Coordinator. NMFS makes every effort to determine the cause of strandings. If the cause of a stranding may be acoustical, part of this effort will be to determine the location of the SURTASS LFA sonar vessel in relation to the stranding event. If there is a potential relationship, NMFS will coordinate with the Navy to investigate the event. Because necropsies from stranding specimens take significant time to complete (if fresh tissues are obtained), any results from the investigation will be taken into consideration at the earliest opportunity. Summary reports on strandings are usually made available upon completion either through the NMFS' web site or in the MMPA Annual Report. If a stranding is acoustically related (such as the Bahamas beaked whale stranding), the results of the investigation are likely to be published as a NOAA Technical Memorandum.

However, if a direct causal relationship between the stranding event and SURTASS LFA sonar is determined, the LOA may be suspended, modified or revoked in compliance with the requirements of the MMPA, these regulations, and the terms and conditions of the LOA.

Comment RPTC5: Reliance on stranding networks to detect impacts on pelagic animals will not work. It is likely that in the offshore environment LFA operations could cause multiple whale deaths, but this would not likely be observed as coastal strandings. The Navy cannot monitor marine mammals that receive serious injury, die, and sink.

Response: As indicated throughout this document, serious injury or mortality is unlikely to occur given the high capability of the tripartite monitoring system to detect marine mammals prior to an animal incurring an injury. While NMFS does not expect stranding data to be an important resource for determining impacts to marine mammals from SURTASS LFA sonar, it is one source of information that NMFS will use in its analysis of impacts from SURTASS LFA sonar.

Comment RPTC6: Following LFA exercises, real-time information should be provided for a period of some days to appropriate stranding coordinators, and the Navy should be responsible for coastline surveys for stranded and distressed marine mammals, especially in areas where networks are not well developed.

Response: Considering the offshore nature of SURTASS LFA sonar and the evidence that it is highly unlikely that marine mammals will be injured by SURTASS LFA sonar, real-time data is neither warranted, nor practical. For these same reasons, NMFS believes that requiring the Navy to conduct shoreline surveys is not warranted. If a marine mammal stranding occurs that appears to be acoustically related, NMFS will coordinate information from the Navy, principally time and location of each SURTASS LFA sonar vessel, with stranding data from NMFS' stranding coordinators to determine whether a link might exist between the two events.

Comment RPTC7: Protocols should be prepared for the eventuality that any marine mammal becomes injured.

Response: The marine mammal reporting requirements will require the Navy to report all marine mammals located inside the 180-dB safety zone as an "injury," recognizing that not all of these marine mammals will be injured. However, if a marine mammal shows acute behavioral reactions indicative of an injury, the LOA will require the Navy to follow its protocol for ship strikes and report the incident to NMFS as soon as possible. NMFS will review each incident to determine the necessary action. Additional protocols to assist injured marine mammals are neither warranted (because of the unlikely occurrence of an injury) nor practical (considering the distance from shore, the single-vessel nature of SURTASS LFA operations, the lack of veterinary experience in a typical crew, and high freeboard of the typical SURTASS LFA sonar vessel precluding easy access to a marine mammal).

Comment RPTC8: Establish an extramural, independent board of scientists, regulators, representatives of environmental non-governmental organization (NGOs) and citizen representatives to review monitoring data and relevant research and to make recommendations to NMFS as well as to the Navy for reducing the system's impacts.

Response: As explained in more detail in RTC37 in the proposed rule, NMFS does not believe that a formal board is necessary for reviewing monitoring and research reports. Interested individuals could meet as NGOs and independently or jointly comment to NMFS, based on annual reports, or petition NMFS under the Administrative Procedure Act (APA) to amend regulations based on their interpretation of the reports.

Miscellaneous (Mitigation, Monitoring and Reporting) Concerns (MC)

Comment MC1: What is the Navy's mitigation procedure when operating off beaches where humans swim?

Response: Humans in the water are not at risk from SURTASS LFA sonar transmissions. The Navy sponsored research to study the potential effects of LF sound on humans in the water. Based on this research, in conjunction with guidelines developed from psychological aversion testing, the Navy concluded that LF sound levels at or below 145 dB would not have an adverse effect on recreational or commercial divers. See the Final EIS Subchapters 1.4.1 and 4.3.2.1 for additional details. As discussed in the Final EIS Subchapter 5.1.2, SURTASS LFA sonar operations would be constrained in the vicinity of known recreational and commercial dive sites to ensure that the sound field at such sites does not exceed 145 dB. Other than for very short periods of time, swimming and snorkeling occur in areas that extend from the surface to depths not greater than 2 m (6.5 ft). Applying acoustic theory and detailed measurements to these depths, there would be substantial sound transmission losses occurring in the top layer of water (about 1.8 m [6 ft]) where swimmers would most likely be found. Sound fields in this layer of water would be about 20 dB less than the sound fields in adjacent deeper water. Because of this acoustic attenuation and the restriction that SURTASS LFA sound fields will not exceed 145 dB in known diving areas, participants in activities that may involve submersion below the ocean's surface, such as swimming, surfing, and snorkeling, would not be significantly impacted by exposure to LF sounds transmitted from the SURTASS LFA sonar. This topic was discussed in the Final EIS Subchapter 4.3.2.1 and Chapter 5.

MMPA Concerns

Scope

Comment MMPAC1: One organization states that the Navy has failed to meet the legal standard of the MMPA, as determined in *Kokechik Fishermen's Association* v. *Secretary of Commerce*, 839 F.2d 795 (D.C. Circ. 1988). They note that the Court stated that the Secretary has no authority to disregard incidental takings of certain species or stocks without first determining whether or not the population of each species was the optimum sustainable population (OSP) level, even if the impact is negligible, before issuing a permit that authorizes the take of another species or stock. According to this commenter this meant that NMFS could not issue general permits in the absence of definitive findings that the take of all marine mammals expected to occur in a particular fishery would pass the "will not disadvantage the species" and "consistency with MMPA policies" tests of section 103 of the MMPA. The proposed issuance of an LOA for the SURTASS LFA system is a similar situation. Here NMFS is proposing to allow the incidental take of some species of known status and information at the same time as it would authorize the take of other species for which, due to a lack of information, it can not truly make a negligible impact finding. They oppose this action because they believe that it is contrary to both the court's findings and the MMPA requirements.

Response: The decision in *Kokechik Fishermen's Association* v. *Secretary of Commerce*, 839 F.2d 795 (D.C. Circ. 1988), does not apply to this case because it is factually and legally distinguishable. The incidental take permit challenged in Kokechik was for commercial fishing operations, governed by section 101(a)(2) of the MMPA, whereas the incidental authorization that is the subject of this final rule is for an activity other than commercial fishing. As such, it is

governed by section 101(a)(5). Unlike incidental take permits for commercial fishing, incidental take permits for activities other than commercial fishing are expressly exempt from the requirements of section 103. (See § 101(a)(5)(C)(ii).) The determinations required under section 101(a)(5)(A) of the MMPA are discussed in this document.

Comment MMPAC2: One organization

unpredictable effects on cetacean populations. What the application stated was that the risk continuum was developed to account for the variability of reactions among individuals and that the values utilized to determine significant modification to biologically important behavior were conservative.

Finally, NMFS is charged by section 101(a)(5) of the MMPA to make the appropriate determinations based on whether impacts are negligible at the

impossible to determine the effect of LFA sonar on cetacean populations.

Response: See RTC MMPAC 2. Authorizations, such as the subject of this final rule, for small takes of marine mammals incidental to otherwise lawful activities (other than commercial fishing) under section 101(a)(5)(A) are not subject to the requirements of section 103 or 104 of the MMPA. See § 101(a)(5)(C)(ii) of the MMPA.

Even so, this action has been

take" exemption for a system of this size, potential damage, and geographic (global) scope and no rational interpretation of the MMPA supports the availability of a small take permit. The system "self-admittedly" will cover 80 percent of the world's oceans when fully deployed.

Response: The Navy has not stated that the SURTASS LFA system will cover 80 percent of the world's oceans when fully deployed. The total area that

of one set of regulations for a global program as not being in compliance with the MMPA.

Response: Provided the activity meets the requirements and criteria established by the MMPA, NMFS does not consider the fact that the Navy needs to be able to deploy the system for training, testing and routine military operations anywhere within the world's oceans (except for Arctic and Antarctic waters) should be the sole reason for

the MMPA because the MMPA prohibits the taking of marine mammals unless exempted or permitted. Moreover, because the MMPA also authorizes the taking of marine mammals under section 101(a)(5), provided certain conditions and requirements are met, NMFS applies the precautionary approach through a careful analysis of impacts and implementation of measures that will reduce impacts to marine mammals to the lowest level

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governed by section 101(a)(5). Unlike incidental take permits for commercial fishing, incidental take permits for activities other than commercial fishing are expressly exempt from the requirements of section 103. (See § 101(a)(5)(C)(ii).) The determinations required under section 101(a)(5)(A) of the MMPA are discussed in this document.

Comment MMPAC2: One organization notes that section 101(a)(3)(A) of the MMPA requires the Secretary to make his decision "with due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals." They state that the Navy's application specifies that "no two individuals will react to SURTASS LFA sonar exposure in the same way" indicating that regardless of any scientific research conducted it may detrimentally affect one mammal, but not another and thus will have at best unpredictable effects on cetacean populations.

Response: The comment refers to the requirements of section 101(a)(3)(A) governing waiver of the moratorium in section 101(a). Small take authorizations under section 101(a)(5) of the MMPA are not a "waiver"; therefore, section 101(a)(3)(A) is not applicable to this action. Section 101(a)(5)(A) sets forth the particular criteria and procedures that apply to the authorization of incidental takes of marine mammals pursuant to an otherwise lawful activity other than commercial fishing. See also *Animal Protection Institute of America* v. *Mosbacher*, 799 F. Supp. 173 (D.D.C. 1992), in which the court determined that the Secretary of Commerce, in issuing a permit under section 101(a)(1), was not required to follow the more elaborate administrative proceedings required for issuance of a waiver under section 101(a)(3)(A) of the MMPA.

Second, the quoted statement from the Navy's application was taken out of context. The full text is:

> It is important to recall that risk varies with both level and duration. In terms of biological risk, it is important to note that individuals will vary in their pre-exposure hearing sensitivity, in their actual PTS responses, and in the severity of the consequent biological effects (survivorship and reproduction). No two individuals will react to SURTASS LFA sonar exposure in the same way. The risk continuum estimates that 95 percent of the marine mammals exposed to a single ping at 180 dB could suffer a risk of non-injurious harassment. Based on the above discussion, this is a conservative estimate.

Furthermore, the application did not imply that SURTASS LFA sonar exposure will have, at best, unpredictable effects on cetacean populations. What the application stated was that the risk continuum was developed to account for the variability of reactions among individuals and that the values utilized to determine significant modification to biologically important behavior were conservative.

Finally, NMFS is charged by section 101(a)(5) of the MMPA to make the appropriate determinations based on whether impacts are negligible at the species and stock level, not at the level of the individual animal. This, NMFS has done.

Comment MMPAC3: One organization notes that section 101(a)(3)(A) of the MMPA requires NMFS' decision "in accord with sound principles of resource protection and conservation as provided in the purpose and policies of this Act." In that regard, the Navy application specifies that "[t]he percentage of animals that pass unseen is difficult to determine * * *" This is not in accord with sound principles of resource protection.

Response: See RTC MMPAC 2. However, the quoted statement from the Navy application was taken out of context. The subject of discussion there was the limitation of a visual marine mammal monitoring system that applies to all maritime activities, from marine mammal population assessment surveys to implementing effective shutdown criteria for anthropogenic noise sources. It noted however, that because of the slow speed of the SURTASS LFA sonar vessel, the effective marine mammal survey strip width should be greater than possible for standard biological surveys allowing a greater percentage of animals to be seen than that of typical marine mammal assessment surveys. In that regard, the Navy has proposed, and NMFS has adopted, the tripartite monitoring system that will ensure, to the greatest extent practicable, that marine mammals will be detected prior to incurring an injury. No other maritime activity currently employs this level of mitigation.

Comment MMPAC4: This organization notes that under section 103(b)(1–4) of the MMPA, the Secretary is required to consider the effects harassment will have on the population levels, domestic and international treaty agreements, marine ecosystem health and the conservation of fishery resources. Also, under section 103(c)(2) of the MMPA, permit restrictions apply to the size, sex or age of the animal, and, section 104(b)(2)(A) requires that the issued permit specify the number and kind of animal. It is not possible to determine the size, sex, or age of the cetacean being harassed; thus making it impossible to determine the effect of LFA sonar on cetacean populations.

Response: See RTC MMPAC 2. Authorizations, such as the subject of this final rule, for small takes of marine mammals incidental to otherwise lawful activities (other than commercial fishing) under section 101(a)(5)(A) are not subject to the requirements of section 103 or 104 of the MMPA. See § 101(a)(5)(C)(ii) of the MMPA.

Even so, this action has been determined to be in compliance with all domestic laws and international treaties for which the United States is a signatory. For further information, please refer to Chapter 6 and RTC 6–1.5 of the Navy's Final EIS. Since takings by SURTASS LFA sonar will not result in the death or serious injury of marine mammals, age, sex, and size parameters are not necessary for assessing impacts on populations; all segments of the population are assumed to be affected equally. These regulations, however, specify the number (by percentage) and kind (by species) of marine mammals that might potentially be affected.

Comment MMPAC5: Commenters believe that, under the MMPA, NMFS must give more weight to the interests of marine mammals than the interests of the Navy. One commenter states that the precautionary principle and the conservative bias incorporated into the MMPA, which require the Federal government to give leeway to wildlife when the effects of a proposed action are unknown. The possible effects of LFA are unknown.

Response: In their joint final rule to implement the 1986 amendments to the MMPA and ESA to allow for small takes of depleted species of marine mammals (which includes endangered and threatened species) under section 101(a)(5) of the MMPA (54 FR 40338, September 29, 1989), NMFS and the USFWS addressed how they would make negligible impact determinations under section 101(a)(5) where the potential impacts of an activity are conjectural, speculative, uncertain, or unlikely. Relying on statements in the Congressional Record, the two agencies explained that they would apply a balancing test that weighs the likelihood of occurrence against the severity of the potential impact. NMFS continues to believe that this approach properly implements Congressional intent and has followed this guidance in making its determinations under section 101(a)(5) of the MMPA in this document. The precautionary principle is addressed in RTC MMPAC8.

Comment MMPAC6: LFA sonar is global in scope and impact. Therefore, it is illegal for NMFS to use the "small take" exemption for a system of this size, potential damage, and geographic (global) scope and no rational interpretation of the MMPA supports the availability of a small take permit. The system "self-admittedly" will cover 80 percent of the world's oceans when fully deployed.

Response: The Navy has not stated that the SURTASS LFA system will cover 80 percent of the world's oceans when fully deployed. The total area that would be available for SURTASS LFA sonar to operate includes about 70–75 percent of the world's oceans. However, this in no way equates to affecting 70–75 percent of the world's ocean area. The current authorization is for only two SURTASS LFA sonar vessels—normally one in the Atlantic Ocean/Mediterranean Sea and the other in the Pacific/Indian Ocean. Therefore, SURTASS LFA sonar sound will not simultaneously affect this entire portion of the world's ocean.

The SPL that is capable of potentially causing injury to an animal is within approximately 1 km (0.54 nm) of the ship. For the purposes of analyses using the AIM and the risk continuum, there is a 50 percent risk of significant change in a biologically important behavior for a marine mammal exposed to 165 dB received level. The range from the SURTASS LFA sonar vessel for this received level, which could cause behavioral disruption but not injury, could extend to 25 to 65 km (13.5 to 35.1 nm). The received level at the surface along any straight path away from the ship would not decline logarithmically over distance, as would be expected if the sound spread by spherical spreading alone. The reason is that, for CZ propagation, the sound moves in an undulating path with turning points near the surface and near the bottom. Turning points near the surface, termed caustics, occur approximately every 30 nm. The received level at the surface would be high at the caustics but low in between them because most of the sound energy there would be found at great depth. While the SURTASS LFA sonar ships can operate in much of the world's oceans and their sound can be detected at several hundred miles using sophisticated listening gear, their potential to cause injury or affect behavior is limited to relatively close to the ship. Thus, the impact of SURTASS LFA sonar is not global in scope.

Comment MMPAC7: One organization notes that NMFS has never issued a small take exemption, let alone proposed rules, for an activity that is so global in its impact, and so uncertain in its impact. Others criticized the drafting of one set of regulations for a global program as not being in compliance with the MMPA.

Response: Provided the activity meets the requirements and criteria established by the MMPA, NMFS does not consider the fact that the Navy needs to be able to deploy the system for training, testing and routine military operations anywhere within the world's oceans (except for Arctic and Antarctic waters) should be the sole reason for denial of a small take authorization. Denial of an authorization is not warranted simply because an activity may be global in its area of operations, so long as the activity is confined to a specified geographic region at any one time. A contrary interpretation of the MMPA would require NMFS to deny future authorizations to other "global" activities, such as oil and gas seismic operations, commercial shipping, other military activities, oceanographic research, and future commercial supersonic transportation. All these activities have the potential to cause at least some form of behavioral harassment in marine mammals, and, similar to SURTASS LFA sonar (if there were more than one SURTASS LFA sonar ship at sea at the same time), have the potential to affect several geographic areas at the same time.

Implementing up to 54 sets of regulations, one for each of the designated biogeographic regions (called "provinces" in this document), would be unduly costly, unnecessarily cumbersome and potentially lead to fragmentation. Instead, NMFS has made the regulations generic for operation of SURTASS LFA sonar, and the LOAs, which are effective under the generic regulations, specific, to the extent necessary, for the specified province covered. This approach will accommodate the Navy's requirement to operate SURTASS LFA sonar on a global basis during the 5-year period of authorization (but within a specified geographic region during any single exercise) while meeting the MMPA's requirements and allowing NMFS to conduct a broad-scale analysis of the overall program.

Harm/Injury/Harassment Concerns

Comment MMPAC8: One organization states that since NMFS is moving to adopt the "precautionary principle," the burden of proof is on the Navy to prove that LFA sonar is not harmful.

Response: NMFS has adopted the precautionary approach for the management of living marine resources, not the precautionary principle (NMFS, 1999). NMFS believes that the precautionary approach is at the core of the MMPA because the MMPA prohibits the taking of marine mammals unless exempted or permitted. Moreover, because the MMPA also authorizes the taking of marine mammals under section 101(a)(5), provided certain conditions and requirements are met, NMFS applies the precautionary approach through a careful analysis of impacts and implementation of measures that will reduce impacts to marine mammals to the lowest level practicable. As described in this document, NMFS believes that it has applied the precautionary approach to the greatest extent possible for this action through a requirement for a fully effective monitoring and mitigation program that will protect marine mammals to the greatest extent practicable. These mitigation and monitoring programs are discussed elsewhere in this document. In addition, the Navy met its obligation to perform reasonable research into the potential for SURTASS LFA sonar to affect marine animals through the LFS SRP and the diver studies. As required by section 101(a)(5) of the MMPA, the Navy has provided documentation that SURTASS LFA sonar will not have more than a negligible impact on affected marine mammal species and stocks. NMFS believes that the information provided by the Navy is the best scientific information currently available. Where certain information is not complete, NMFS has added additional safeguards to protect marine mammals and required additional research on marine mammals for the Navy to conduct; this is consistent with the precautionary approach. New research will include research on behavioral reactions between 155 and 180 dB, response of sperm and beaked whales to LFA signals; and passive acoustic monitoring on whale-call silencing. For additional information see the Final EIS Subchapter 1.4 and RTC MOC25 in this document.

Finally, it should be recognized that the Navy does not have the burden to prove that LFA is not harmful. Its burden is to establish that the activity meets the requirements of section 101(a)(5)(A) of the MMPA, that is, negligible impact is the standard, not "no harm." It is NMFS position that the Navy has met this burden, and that is why NMFS issued these regulations for the small take authorization.

Comment MMPAC9: One commenter states that removing TTS from Level A harassment means that it is also removed from consideration of "harm."

Response: Under the MMPA, taking means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or

kill any marine mammal. "Harm" is in the definition of take under the ESA, but not in the "take" definition under the MMPA. "Harm" has been used by the Navy in its SURTASS LFA sonar NEPA documents, and elsewhere, in part because of its responsibilities under section 7 of the ESA. TTS is a taking under the definition of harassment, defined under the MMPA as Level B harassment, as explained elsewhere in this document. However, the Navy

that the onset of PTS results when you add 20 dB to the dB level found to cause the onset of TTS in an animal, but instead means that the onset of PTS is the sound exposure level (SEL), in dB, that would cause 20 dB of TTS.

Comment MMPAC11: Will NMFS confirm that this rule would establish Level A harassment at the theoretical onset of PTS, which for lack of more data might be construed to be 10–15 dB above 192 dB in bottlenose dolphins

Navy's TTS proposal as noted in the CHURCHILL proposed rule on December 12, 2000 (65 FR 77546), that the issue came to general attention. During that time, the issue of TTS being categorized as only Level B harassment was still a proposal by NMFS and open to public comment until January 26, 2001. A final decision on TTS being limited to Level B harassment was not made by NMFS until May 4, 2001 (66 FR 22450). While the Navy was aware

disruption of biologically important behavior. Second, as NMFS has noted previously (66 FR 43442, August 17, 2001; 66 FR 22450, May 4, 2001; and 66 FR 9291, February 7, 2001), for small take authorizations, NMFS considers a Level B harassment taking to have occurred if the marine mammal has a significant behavioral response in a biologically important activity. Under an interpretation of "harassment," as broad as some have suggested the

therefore, are not being "taken" for purposes of the MMPA.

Examples of significantly disrupted behavior would be where pinnipeds flee a haulout beach or rookery en masse due to a disturbance, or animals either leave an area of habitation for a period of time, or diverge significantly from their migratory path to avoid either an acoustic or a visual interference. Non-significant behavioral responses would be when only a few pinnipeds leave the

harassment taking under these regulations.

Comment MMPAC16: LFS SRP information conducted on humpback whales demonstrates that LFA sonar operations have the potential to disturb the behavior of humpback whales, and, therefore, meet the MMPA's definition of Level B harassment. Navy modeling also demonstrated the potential for level B harassment.

Response: Phase III of the LFS SRP

kill any marine mammal. "Harm" is in the definition of take under the ESA, but not in the "take" definition under the MMPA. "Harm" has been used by the Navy in its SURTASS LFA sonar NEPA documents, and elsewhere, in part because of its responsibilities under section 7 of the ESA. TTS is a taking under the definition of harassment, defined under the MMPA as Level B harassment, as explained elsewhere in this document. However, the Navy throughout its documents, has conservatively considered TTS to be "harm," thereby making the commenter's statement inaccurate.

Comment MMPAC10: One organization notes that NMFS states that its scientists and other scientists are in general agreement that TTS is not an injury (i.e., Level A harassment) and that only PTS is considered injury. This assertion directly conflicts with the National Research Council's (NRC) recommendation that "The definition of Level A acoustic harassment should be related to the likelihood that a sound will produce temporary threshold shift (TTS), as well as to the magnitude of the TTS" (NRC, 2000). Because scientists have noted that a range of only 15 to 20 dB exists between the onset of TTS and the onset of PTS (66 FR 15386), NMFS should both modify the definition of Level A acoustic harassment to include TTS and reduce the intensity of the sound field to something less than 180 dB.

Response: The NRC (2000) also stated in the same paragraph as the above quote, "Animals that experience only low levels of TTS are not going to be injured, suggesting TTS as a conservative standard for prevention of injury." This action conforms with this statement by establishing a safety zone at an SPL lower than where TTS would be anticipated to occur.

Without commenters providing scientific data to support the argument that TTS is an injury, NMFS' determination, which is supported by research, provided in response to similar concerns for taking marine mammals incidental to the USS WINSTON S. CHURCHILL (66 FR 22450, May 4, 2001), and the North Pacific Acoustic Laboratory (NPAL) (66 FR 43442, August 17, 2001) remain valid for this action as it is the best science available. Reviewers interested in NMFS' response to this concern should review those documents, in particular RTC MMIC4 and MMPAC5 in the cited NPAL document. In the latter document, NMFS stated that it is precautionary to define the onset of PTS for marine mammals to be 20 dB of TTS. This should not be interpreted to mean that the onset of PTS results when you add 20 dB to the dB level found to cause the onset of TTS in an animal, but instead means that the onset of PTS is the sound exposure level (SEL), in dB, that would cause 20 dB of TTS.

Comment MMPAC11: Will NMFS confirm that this rule would establish Level A harassment at the theoretical onset of PTS, which for lack of more data might be construed to be 10–15 dB above 192 dB in bottlenose dolphins and belugas, thus Level A would not be considered before RL of 207 dB?

Response: At 192 dB, Schlundt *et al.* (2000) found about 6 dB of TTS, the lowest measurable level for TTS. However, the 15–20 dB (not 10–15 dB) difference, mentioned in the proposed rulemaking document, refers to the difference between the SELs that cause the slightest TTS and the onset of PTS. As explained in more detail in RTC PRC6 in the NPAL final rule (66 FR 43442, August 17, 2001) and in RTC 29 in the final rulemaking document for the USS WINSTON S. CHURCHILL (66 FR 22450, May 4, 2001), experiments on chinchillas have shown that this species experiences full recovery from up to 40 dB of TTS (Ahroon *et al.*, 1996) from impulsive noise. However, in the absence of comparable data for marine mammals, NMFS believes it is precautionary to define the onset of PTS for marine mammals to be 20 dB of TTS. This 20 dB level would be considered conservative for chinchillas, and would likely be conservative for marine mammals. For several reasons, scientists have been reluctant to conduct research on captive marine mammals to determine the SEL that would cause PTS.

Comment MMPAC12: A Federal agency notes that the Navy has defined "harm" as the onset of TTS, and that this implies "injury," while NMFS believes that TTS is not an injury, but rather an impairment, and therefore constitutes only Level B harassment. This distinction seems ill-founded.

Response: The biological basis for considering TTS as only Level B harassment has been discussed or referenced previously in this document. The U.S. Navy released the Draft EIS to the public on July 30, 1999 (64 FR 41420) and NMFS published an ANPR on October 22, 1999 (64 FR 57026). When the Navy was writing the Draft EIS, NMFS considered TTS to be both Level A and Level B harassment (63 FR 66069, December 1, 1998). It was not until the period between the release of the Navy's Draft EIS for the shock trial of the USS WINSTON S. CHURCHILL (64 FR 69267, December 10, 1999) and NMFS' independent evaluation of the Navy's TTS proposal as noted in the CHURCHILL proposed rule on December 12, 2000 (65 FR 77546), that the issue came to general attention. During that time, the issue of TTS being categorized as only Level B harassment was still a proposal by NMFS and open to public comment until January 26, 2001. A final decision on TTS being limited to Level B harassment was not made by NMFS until May 4, 2001 (66 FR 22450). While the Navy was aware of the scientific debate, because the comment period on the Navy's Draft EIS ended on October 28, 1999, and no comments were submitted that directly addressed this issue (comments were focused on the validity of terms such as non-injurious harassment and non-serious injury), the Navy's ability to amend the Final EIS on this issue was limited. Additionally, the Navy's Final EIS was released in January, 2001, well prior to NMFS' final determination that TTS was limited to Level B harassment on May 4, 2001 (66 FR 22450). As a result, the Navy retained the more conservative approach and considers TTS to be Level A harassment. Therefore, while TTS is not an injury biologically, NMFS accepts the Navy's conservative determination to consider TTS as a potential injury for this action and will consider all incidental harassment takings that occur within the 180-dB isopleth, under this action, as Level A harassment.

Comment MMPAC13: A number of commenters believe that NMFS has redefined the definition of "harassment." Some are concerned that NMFS' definition of Level B harassment as an action that causes a significant disturbance in a biologically important behavior is not consistent with the MMPA, which states that Level B is the "potential to disturb marine mammals or marine mammals stocks in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." Other commenters are concerned that NMFS and the Navy underestimate the potential for behavioral impacts by narrowing the definition of what behavioral impact is. This new definition narrows the Congressional harassment definition from "disruption" to an unclearly defined "significant disturbance" and "behavioral patterns" to unspecified group of behaviors.

Response: First, for those species of marine mammals capable of hearing sounds from the SURTASS LFA sonar signal, simply hearing the acoustic signal without reacting to that noise is not considered by NMFS to be a disruption of biologically important behavior. Second, as NMFS has noted previously (66 FR 43442, August 17, 2001; 66 FR 22450, May 4, 2001; and 66 FR 9291, February 7, 2001), for small take authorizations, NMFS considers a Level B harassment taking to have occurred if the marine mammal has a significant behavioral response in a biologically important activity. Under an interpretation of "harassment," as broad as some have suggested the MMPA requires, an incidental taking could be presumed to occur for even a single pinniped lifting or turning its head to look at a passing pedestrian, offshore watercraft, aircraft or dolphins riding a boat's bow wave. For those takings that are clearly incidental to an otherwise lawful activity, NMFS believes that such a strict interpretation was not intended by Congress, when it amended the MMPA in 1994 and added a definition for harassment.

The term "Level B harassment" is defined in the MMPA as "any act of pursuit, torment, or annoyance which * * * has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." In this context, a behavioral pattern means a composite of biological traits characteristic of an individual or of a species. Therefore, to disrupt a behavioral pattern, the activity would need to disrupt an animal's normal pattern of biological traits or behavior, not just cause a momentary reaction on the part of a marine mammal. Furthermore, if the only reaction to an activity on the part of the marine mammal is within the normal repertoire of actions that are required to carry out the behavioral pattern for that species of marine mammal, NMFS considers the activity not to have caused an incidental disruption of the behavioral pattern, provided the animal's reaction is not otherwise significant enough to be considered disruptive due to length or severity. For example, if there is a short-term change in breathing rates or a somewhat shortened or lengthened diving sequence that is within the animal's normal range of breathing patterns and diving cycles but there is not a disruption to the animal's overall behavioral pattern (i.e., the changes are not biologically significant), then these responses do not rise to a level requiring a small take authorization or, if under a small take authorization, does not constitute an incidental take. Similarly, bow-riding dolphins are within their normal behavioral patterns and, therefore, are not being "taken" for purposes of the MMPA.

Examples of significantly disrupted behavior would be where pinnipeds flee a haulout beach or rookery en masse due to a disturbance, or animals either leave an area of habitation for a period of time, or diverge significantly from their migratory path to avoid either an acoustic or a visual interference. Non-significant behavioral responses would be when only a few pinnipeds leave the haulout or mill-about, but many pinnipeds are alert to the disruption; or when marine mammals make minor course corrections that are not discernable either to observers or directional plotting, and which require statistical manipulation in order to determine that a course correction has taken place. For the action under consideration in this document, it is the behavioral response of marine mammals to the SURTASS LFA sonar signal (such as an overt avoidance behavior, a more than momentary modification or disruption in communication or feeding patterns through masking, or behavioral response due to an impairment to hearing) that is the biological response that is considered to be a taking by Level B harassment.

Comment MMPAC14: Commenters believe that NMFS' calculation of species "take" is based on a fundamental misinterpretation of law.

Response: See RTC MMPAC 13. The risk continuum developed by the Navy for this activity makes the distinction of whether the response is behaviorally significant, and whether the animal is involved in a biologically important activity at the time, through implementation of the "B," "A," and "K" parameters, which is based on the best science currently available (please refer to the Navy Final EIS (Subchapters 4.2.3.2 and 4.2.5) for definitions and application). Therefore, the estimates of Level B harassment found in Table 4.2–10 of the Final EIS and Table 4–10 of the Navy's application provides the best scientific estimate for Level B harassment takings in accordance with the definition of "harassment."

Comment MMPAC15: A Federal agency interprets the proposed rule as establishing TTS as the lower level for harassment, and thus, take. This interpretation could undermine meaningful consideration of behavioral effects that occur at sound levels below those that may result in TTS.

Response: The preamble to the proposed rule makes clear that NMFS considers all significant behavioral reactions, not just TTS-related reactions by marine mammals that result from SURTASS LFA sonar, to be a Level B harassment taking under these regulations.

Comment MMPAC16: LFS SRP information conducted on humpback whales demonstrates that LFA sonar operations have the potential to disturb the behavior of humpback whales, and, therefore, meet the MMPA's definition of Level B harassment. Navy modeling also demonstrated the potential for level B harassment.

Response: Phase III of the LFS SRP did not demonstrate any significant changes to biologically important humpback whale behavior (see TR1). Also, see RTC MMPAC13 on NMFS' response regarding Level B harassment. However, because there is a potential for incidental harassment, the Navy is seeking authorization for the incidental taking of marine mammals under the MMPA.

Comment MMPAC17: One organization states that any conclusion based on there being no takings that are significant below RLs of 180 dB may be misleading. LFA sonar should be disallowed until this can be proven. Another commenter states that scientific evidence suggests that a level of about 120 dB is a reasonable assumption for serious impact. However, this would include a very large area and is not "relatively small."

Response: There is no requirement in section 101(a)(5)(A) of the MMPA that the area be small, only that there be a specified geographic region.

Both the proposed rule document and the Navy's Final EIS address the potential for significant change in biologically important behavior below 180 dB RL. While there have been several studies that have demonstrated responses of marine mammals to exposure levels ranging from detection threshold to 120 dB (See the Final EIS at 4.2–26 and 4.2–27), NMFS is unaware of any scientific research that suggests that a level of 120 dB is a reasonable assumption for "serious impact."

Comment MMPAC18: The Navy should consider SPL under 150 dB as a more appropriate standard to ensure that the LFA sonar will have a negligible impact on marine mammals and their stocks. This is supported by Tyack (1998) and Tyack and Clark (1998).

Response: It is not clear what was meant by "appropriate standard." However, imposing mitigation to the 150 dB isopleth is neither practicable nor necessary. Based on the LFS SRP, at 150 dB only 2.5 percent of the marine mammals exposed to the LFA sonar sound would likely show a significant behavioral response. Effective mitigation to this distance would have eliminated the need for a small take

authorization. Since that is not possible, the Navy applied for a small take authorization, and, to reduce impacts to the lowest level practicable, designed the HF/M3 sonar to protect marine mammals from injury (i.e., down to the 180 dB isopleth). Based on the risk continuum, NMFS considers a Level B harassment taking will occur at levels between 119 dB and 180 dB and takes that number into consideration in

proposed on March 3, 1982 (47 FR 9027). During the public comment period on the proposed definition, NMFS received and considered a similar comment. NMFS' response (47 FR 21248, May 18, 1982) was as follows:

In discussing the term "small numbers," the House Report recognizes "the imprecision of the term but was unable to offer a more precise formulation because the concept is not capable of being expressed in

Also, the commenters have misinterpreted the modeling in the Final EIS, and thus overstate the effects.

The annual percentages shown in the Final EIS Tables 4.2–11 and 4.2–12 were provided as example scenarios if the Navy were to operate 12 annual operations in the sites listed in row two of the tables. These locations were randomly selected; other site selections can be made by readers by taking a similar number (12) of modeled sites

more likely that SURTASS LFA sonar missions will occur in the open ocean, and that the Navy will rerun AIM when planning missions for new or different areas to avoid certain areas during biologically sensitive seasons, NMFS believes that the estimates of taking by harassment incidental to SURTASS LFA sonar provided in the Final EIS are significantly higher than the more realistic 1 to 2 percent (or less) of affected stocks during a single 20-day

Therefore, only if a SURTASS LFA sonar mission took place offshore California when elephant seals were concentrated in that area would 10.76 percent of that portion of the elephant seal population inhabiting that area be subject to a significant behavioral response. At other times, impacts would be limited to lower levels such as 1 to 2 percent (as noted for offshore Washington).

While it is proper to add the aggregate

SURTASS LFA sonar signal. These percentages are provided in Table 4.2–10 in the Final EIS and Table 4–10 of the application and used by NMFS to estimate incidental harassment levels.

While NMFS presently does not know which areas the Navy plans to conduct its missions in the upcoming year, the Navy will be responsible for incorporating this type of analysis for each biogeographic province in which it is planning to conduct missions in order

authorization. Since that is not possible, the Navy applied for a small take authorization, and, to reduce impacts to the lowest level practicable, designed the HF/M3 sonar to protect marine mammals from injury (i.e., down to the 180 dB isopleth). Based on the risk continuum, NMFS considers a Level B harassment taking will occur at levels between 119 dB and 180 dB and takes that number into consideration in making the negligible impact determinations later in this document.

Small Numbers

Comment MMPAC19: Several commenters believe that fifty percent of the animals within the 165 dB RL zone will be "biologically affected." This hardly constitutes a "small take," and could result in large numbers of marine mammals being harassed or non-seriously injured.

Response: The risk continuum states that at a "single ping equivalent" SPL of 165 dB the risk of a significant change in a biologically important behavior is 50 percent. Thus, for each animal that is exposed to an SPL of 165 dB, it has a 50-percent chance of having a significant change in a biologically important behavior. This is fully explained in Subchapters 4.2.3 through 4.2.5 of the Navy's Final EIS.

This does not mean that 50 percent of the total marine mammal population or stock is potentially affected biologically under the calculations for the risk continuum, but only that portion of the population that is within the acoustic ray path of SURTASS LFA sonar at those times and locations where the SURTASS LFA sonar ray path intersects the portion of the water column wherein marine mammals may reside. Refer to the discussion on acoustic ducting earlier in this document and to either Figure 1 of this document or Figure B–3 of the Navy's Final EIS for a diagram of the ray path expected in approximately 80 percent of SURTASS LFA sonar transmissions.

Comment MMPAC20: One Federal agency believes that NMFS has melded the small numbers criterion and the negligible impact criterion into a single criterion, contrary to Congressional intent. It states that NMFS needs to make separate findings that only small numbers of marine mammals will be taken incidental to the activity in question and that the effects will be negligible.

Response: The regulations at 50 CFR 216.103 define "small numbers" to mean "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." That definition was first proposed on March 3, 1982 (47 FR 9027). During the public comment period on the proposed definition, NMFS received and considered a similar comment. NMFS' response (47 FR 21248, May 18, 1982) was as follows:

> In discussing the term "small numbers," the House Report recognizes "the imprecision of the term but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits. The Committee intends that these provisions be available for persons whose taking of marine mammals is infrequent, unavoidable, or accidental." The NMFS does not believe that the term can be expressed as an absolute number or percentage or be defined in any absolute terms. However, NMFS feels that by defining "small numbers" to mean a portion of a marine mammal species or stock whose taking would have a negligible impact, an upper limit is placed on the term, and the phrase effectively implements the Congressional intent underlining the new section 101(a)(5) of the MMPA.

NMFS continues to believe that its regulatory definition is consistent with Congressional intent.

Comment MMPAC21: Two commenters recommend that NMFS revise its regulatory definition of "small numbers" to reflect the language of, and the intent behind, the statutory provision.

Response: See RTC MMPAC20. NMFS invites interested persons to submit any information regarding an alternative workable interpretation of the term "small numbers" for consideration. This may also be in conjunction with a petition for rulemaking.

Comment MMPAC22a: Several commenters believe that the takings do not meet the MMPA's definition of "small"; and several noted that the abundance of marine mammals within identified species and stocks that may be "taken" by LFA exceeds any reasonable interpretation of the statute's "small number" provision. Takes are not "negligible." For example, during each year of operation and with all of the mitigation and monitoring that the Navy has proposed, more than 16 percent of the blue whales in the eastern North Atlantic, more than 10 percent of the beaked whales in the Mediterranean Sea, and more than 12 percent of the elephant seals in the eastern North Pacific will be affected.

Response: The commenters have focused on three of the four highest modeled levels of take and ignored statements that the AIM accounted for the "worst case" analysis, not the situation that will most likely take place by scheduling SURTASS LFA sonar missions to avoid areas and times of increased marine mammal abundance. Also, the commenters have misinterpreted the modeling in the Final EIS, and thus overstate the effects.

The annual percentages shown in the Final EIS Tables 4.2–11 and 4.2–12 were provided as example scenarios if the Navy were to operate 12 annual operations in the sites listed in row two of the tables. These locations were randomly selected; other site selections can be made by readers by taking a similar number (12) of modeled sites from table 4.2–10. This may result in higher or lower estimates depending upon whether the Navy will operate off the west coast of North America or, for example, the North Korea Strait. Thus, using the example from the commenter, 12.4 percent of the elephant seals will be affected only if SURTASS LFA sonar operated in both offshore central California for one mission (10.76-percent impact) and offshore Washington (1.65 percent impact) on another mission. If one mission operated offshore central California (10.76 percent) while a later mission operated offshore San Nicolas Island (7.90 percent impacted), 18.6 percent of the northern elephant seals would be impacted. However, this scenario would occur *only* if both missions took place during the two relatively short periods that northern elephant seals are concentrated in California waters for either molting or breeding. Most of the time much smaller percentages would be affected as the northern elephant seal is widely scattered across the North Pacific Ocean during the remainder of the year.

Second, the "acoustic modeling sites" used in the AIM were chosen to represent conditions that would model the highest potential for effects from the use of SURTASS LFA sonar (See Final EIS Subchapter 4.2.1). These "worst case scenarios" included areas close to land (where biological densities are higher and where the Navy would not be authorized to take marine mammals at SPLs greater than 180 dB), best sound propagation conditions for the area (which would not always occur), and season of highest marine mammal density (areas the Navy would routinely avoid because of the potential for excessive shutdowns). Moreover, because the Navy will operate no more than two SURTASS LFA sonar vessels during the next five-year period under this authorization, the percentages of marine mammal stocks depicted as examples in Table 4.2–11 and 4.2–12 of the Final EIS are overestimates since they provide an example of take estimates for a hypothetical 12 missions per ocean area, not the now-projected 6 missions per vessel. Given that it is more likely that SURTASS LFA sonar missions will occur in the open ocean, and that the Navy will rerun AIM when planning missions for new or different areas to avoid certain areas during biologically sensitive seasons, NMFS believes that the estimates of taking by harassment incidental to SURTASS LFA sonar provided in the Final EIS are significantly higher than the more realistic 1 to 2 percent (or less) of affected stocks during a single 20-day mission. The negligible impact determination is discussed in later comments.

Comment MMPAC22b: One organization states that although abundance data has not been provided, the magnitude of the numbers involved in such percentages can be grasped considering that there are approximately 40,000 elephant seals in the NMFS' Pacific region, a small sliver of the total area designated here as the "eastern North Pacific." Add to this number the elephant seal numbers projected for each of the other areas, add these to the aggregate numbers for every other marine mammal species, multiply by five (for the number of years of operation authorized by NMFS' rule), and one has the total number of marine mammals that the Navy believes are potentially affected by LFA deployment. Since each animal may be taken a number of times, the number of takes would presumably be even higher.

Response: Abundance data for marine mammals, used in the AIM, was provided by the Navy in Table 4.2–4 of the Final EIS. Also, the commenter has misinterpreted the exercise conducted in that part of the Navy's Final EIS and also the definition of "Eastern North Pacific" in Table 4.2–11, thereby exaggerating the impacts. Furthermore, the Eastern North Pacific is not a "small sliver of the Pacific region designated by NMFS," but instead represents the entire Eastern North Pacific Ocean and encompasses the entire geographic region inhabited by northern elephant seals. This is apparent by noting that the modeled sites randomly selected for this example (as explained in the Final EIS) were: (1) North Kauai, (2) offshore Washington, (3) Gulf of Alaska, and (4) offshore California. Combining the offshore California (10.76 percent of elephant seals) and offshore Washington (1.65 percent of the elephant seals) site models indicates that 12.4 percent (10.76 + 1.65 percent) of the northern elephant seal population might be harassed, if the Navy conducted two missions in the Eastern North Pacific during the period of time when elephant seals are in abundance in offshore California and in Washington waters. Therefore, only if a SURTASS LFA sonar mission took place offshore California when elephant seals were concentrated in that area would 10.76 percent of that portion of the elephant seal population inhabiting that area be subject to a significant behavioral response. At other times, impacts would be limited to lower levels such as 1 to 2 percent (as noted for offshore Washington).

While it is proper to add the aggregate of other species to the total taking expected, a proper analysis would need to take the aggregate for the normal maximum of six missions per vessel per year. Table 4.2–11 and 4.2–12 have provided representative examples, but for 12 missions, not six, in each ocean basin.

Finally, as explained several times in the Navy's Final EIS, the AIM calculates for the probability of animals receiving multiple pings. Therefore, these are not additive to the results found in Tables 4.2–11 and 4.2–12 as the commenter suggests.

Comment MMPAC23: A Federal agency recommends that NMFS estimate the number of marine mammals that potentially could be taken in the course of the proposed 5-year authorization and provide its rationale for concluding that this constitutes a "small number." Another commenter asks what levels NMFS is using to define "small take." They note that on page 15387 the preamble to the proposed rule (66 FR 15375, March 19, 2001) states, "NMFS believes that the potential effect by SURTASS LFA sonar operations will be limited to only small percentages of the affected stocks of marine mammals * * *." Define "small percentage" and the rationale for considering the Final EIS results to constitute "small numbers."

Response: The requirement under the MMPA is to determine that the activity is resulting in the take of "small numbers" of marine mammals; there is no requirement to define "small take." See RTC MMPAC20 regarding how NMFS applies its definition of "small numbers" in 50 CFR § 216.103 under section 101(a)(5)(A) of the MMPA.

The AIM inputs for each species were provided in Table 4.2–4 of the Navy Final EIS and Table 4–4 of the Navy application. These tables provide an estimate of the stock size for each species group and the size of the seasonally resident marine mammals near each AIM site that was used in the modeling. Modeling by the AIM then provides estimates of the percentage of the portion of the marine mammal population(s) that might sustain a biologically significant response to the SURTASS LFA sonar signal. These percentages are provided in Table 4.2–10 in the Final EIS and Table 4–10 of the application and used by NMFS to estimate incidental harassment levels.

While NMFS presently does not know which areas the Navy plans to conduct its missions in the upcoming year, the Navy will be responsible for incorporating this type of analysis for each biogeographic province in which it is planning to conduct missions in order to estimate Level B harassment percentages. This will be done by the Navy in each annual mission intention letter the Navy submits to NMFS using AIM.

Negligible Impact

Comment MMPAC24: Because of lack of information, the Navy cannot prove "no impact" from LFA.

Response: The Final EIS and the Navy's application do not state there would be no impact. If there was no impact, an LOA for the incidental taking of marine mammals would not be required.

Comment MMPAC25: The Navy's request for a "small take" authorization is based on their conclusion that below 180 dB the proposed action will have a negligible effect on the survival and productivity of marine mammals (that is, have no biologically significant effect).

Response: That is correct. In the Final EIS at ES–25, the Navy states,

> In summary, under Alternative 1, the potential impact on any stock of marine mammals from injury is considered negligible, and the effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal. However, because there is some potential for incidental takes, the Navy is requesting a Letter of Authorization (LOA) from NMFS for the taking of marine mammals incidental to the employment of SURTASS LFA sonar during training, testing and routine military operations under the Marine Mammal Protection Act (MMPA), and is consulting with NMFS under Section 7 of the Endangered Species Act (ESA).

Comment MMPAC26: A number of commenters believe that the impact of takings on the species or stocks of marine mammals does not meet the MMPA's definition of "negligible."

Response: In order to allow a taking under section 101(a)(5) of the MMPA, NMFS must find that the total taking by the activity will have a negligible impact on the species or stock. The Navy, as the party seeking an authorization under this section, has the burden to demonstrate, through the best scientific information available, that only a negligible impact is *reasonably* likely to occur. This, NMFS believes,

the Navy, has met, in part, through the LFS SRP, which is discussed elsewhere in this document.

NMFS defines "negligible impact" as the impact resulting from the specified activity that cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock(s) through effects on annual rates of recruitment or survival (50 CFR 216.103). This finding is made in conjunction with a determination of whether the total taking by the specified activity during the specified time period will have an impact on the species or stock that will or may reduce the reproduction or survival rate of that species or stock to a level below that which would be sustainable given normal levels of variability and carrying capacity of the habitat. If the population is involved, then a determination of negligible impact can be made only if the permitted activities are not likely to reduce that population below its MNPL (NMFS, 1995). The determination of negligible impact, therefore, even when the taking is limited to incidental harassment, will take into account the status and the particular biological requirements of the species or stock, as well as the effects of the specified activity on the species or stock. Thus, the fact that a species or stock is increasing or decreasing in abundance, or is being impacted by factors other than the specified activity, will be considered in assessing the impact of the specified activity on the species or stock. Generally speaking, the Navy and NMFS have found that the lower the level of the anticipated taking, the more likely it is that the required negligible impact finding can be made. Large takings will require detailed information about the affected animals and the intensity of the impact to support a negligible impact finding. Minor, brief, infrequent takings may be found to be negligible even if based on limited information.

Comment MMPAC27: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival.

Response: See RTC MMPAC25. The Navy's application and the Final EIS do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC28: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC29: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC30: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC31: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC32: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

data used by NMFS. In that regard, NMFS uses all valid data and information that are available. However, NMFS also notes that Balcomb (2001) is a letter submitted to the Navy, dated February 23, 2001, concerning his untested hypothesis of the cause of the mass stranding of beaked whales in the Bahamas. This letter has not been published or formally peer reviewed. Simmonds and Lopez-Jurado (1991) and Frantzis (1998) were published hypotheses that were not tested using accepted methods and contrary evidence to each was presented in the literature. Regarding Balcomb (2001), NMFS has reviewed the data upon which the author bases his hypothesis and has found that the author has not provided sufficient information to support his hypothesis. Regarding Simmonds and Lopez-Jurado (1991), NMFS has reviewed the data upon which the author bases his hypothesis and has found that the author has not provided sufficient information to support his hypothesis. Regarding Frantzis (1998), NMFS has reviewed the data upon which the author bases his hypothesis and has found that the author has not provided sufficient information to support his hypothesis.

Comment MMPAC33: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC34: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC35: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC36: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC37: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC38: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC39: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC40: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC41: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC42: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC43: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC44: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC45: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC46: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC47: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC48: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC49: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC50: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

Comment MMPAC51: Several commenters believe that the takings do not meet the MMPA's definition of "negligible impact" because the takings will adversely affect the species or stock through effects on annual rates of recruitment or survival. Specifically, they believe that the Navy's Final EIS and application have not adequately addressed the impacts on marine mammal habitat, prey species, and the ecosystem.

Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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Response: See RTC MMPAC25. The Navy's Final EIS and application do not state that there would be no impact. Rather, they state that the impact would be negligible. Also, see RTC MMPAC26.

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the Navy, has met, in part, through the LFS SRP, which is discussed elsewhere in this document.

NMFS defines "negligible impact" as the impact resulting from the specified activity that cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock(s) through effects on annual rates of recruitment or survival (50 CFR 216.103). This finding is made in reference to the marine mammal species or stock (as defined in section 3(11) of the MMPA), and not with reference to the effects on individual animals.

If mitigating measures would render the impacts of a specified activity negligible, when it might not otherwise satisfy that requirement, NMFS may make a negligible impact finding subject to such mitigating measures being successfully implemented (53 FR 8473, March 15, 1988; 54 FR 40338, September 29, 1989).

The analysis of any adverse effects to recruitment or survival must be conducted within the framework of the management goal of the MMPA, (*i.e.*, the maintenance or attainment of an OSP level for each population stock of marine mammals (see section 2(2) and 2(6) of the MMPA and 53 FR 8473, March 15, 1988). As a result, since 1989 (54 FR 40338, September 29, 1989), NMFS has, with later minor modification, applied the definition of "negligible impact" in the following manner: if a request under section 101(a)(5) of the MMPA involves potential impacts to a "depleted" population, then a determination of negligible impact can be made only if the permitted activity is not likely to significantly reduce the increase of that population or prevent it from ultimately achieving its OSP. On the other hand, if a nondepleted population is involved, then a determination of negligible impact can be made only if the permitted activity is not likely to reduce that population below its OSP.

However, this does not mean that an OSP determination is required to make a negligible impact determination, as section 101(a)(5)(C)(ii) clearly exempts issuance of specific regulations from compliance with the formal rulemaking requirements of section 103 of the MMPA. Recognizing the complex and controversial nature of the OSP concept, NMFS has modified this policy so that a determination of negligible impact can be made only if the permitted activity is not likely to significantly reduce the numerical increase of that population or prevent it from ultimately achieving its maximum net productivity level (MNPL)(NMFS, 1995). If a "nondepleted" marine mammal population is involved, then a determination of negligible impact can be made only if the permitted activities are not likely to reduce that population below its MNPL (NMFS, 1995). The determination of negligible impact, therefore, even when the taking is limited to incidental harassment, will take into account the status and the particular biological requirements of the species or stock, as well as the effects of the incidental taking on the rate of recruitment (NMFS, 1995). That said, however, NMFS qualified that by stating that "Qualitative judgments will be made on a case-by-case basis on how the anticipated incidental taking will affect the status and population trends of the species or stocks concerned."

Many factors are used in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to its MNPL (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable or unknown, the size and distribution of the population, and existing impacts and environmental conditions.

Finally, the MMPA clearly indicates that some level of adverse effects involving the taking of marine mammals (both depleted and non-depleted) can be authorized as long as the impact is negligible. This guidance has been followed by NMFS in making its determination on whether takings by harassment incidental to SURTASS LFA sonar operations are negligible.

Comment MMPAC27: Two commenters stated that NMFS cannot make a negligible impact determination since the population stock sizes and other information on many species is lacking. How can NMFS estimate takes, or impact of takes, when stock size, composition, status, trends, and distribution cannot be defined? It is impossible to determine the size, sex or age of the cetaceans harassed; thus making it impossible to determine the effects of the LFA sonar on the cetacean population.

Response: There is no requirement in the MMPA to determine the size, sex or age of impacted marine mammals prior to authorizing an incidental take. While this information is valuable to NMFS scientists when takings involve significant mortality (as in whaling), when takings are limited to incidental harassment that will be limited in both time and scope, this information is not critical. Since takings by SURTASS LFA sonar are not expected to result in the death or injury of marine mammals, age, sex, and size parameters are not necessary for assessing impacts on populations; all segments of the population are assumed to be affected equally.

When information is lacking to define a particular population or stock of marine mammals then impacts are to be assessed with respect to the species as a whole (132 Cong. Rec. S16304–05, October 15, 1986; 54 FR 40338, September 29, 1989). As shown in this document and in the Navy Final EIS, NMFS and the Navy have followed this Congressional instruction when necessary in this action.

Comment MMPAC28: Some commenters note that the scientific results are "speculative" as they are based on research on only 3 species; there are information gaps on many species.

Response: Please refer to the appropriate RTCs in this document regarding data gaps. The Navy's LFS SRP studies filled in data gaps on the potential effects of LF sound on marine life, and the ongoing monitoring and research programs instituted by the Navy will continue to reduce areas of incomplete information and provide invaluable data that are presently unavailable.

Congress (see 132 Cong. Rec. S16304–5, October 15, 1986) noted that

> If the potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. In such a case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact.

When applying this balancing test, NMFS thoroughly evaluates the risks involved and the potential impacts on marine mammal populations (54 FR 40338, September 29, 1989). Determinations are made based on the best available scientific information and later supported or negated through the required monitoring program (NMFS, 1995).

Comment MMPAC29: The response to Comment 46 in the preamble to the proposed rule (66 FR 15375, March 19, 2001)) stated: "NMFS must make its determination under section 101(a)(5)(A) of the MMPA based on the best scientific information available." However, NMFS held the non-peer reviewed LFS SRP results in higher regard than published peer-reviewed work (Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; and Balcomb, 2001).

Response: While NMFS must make its determinations under the MMPA and ESA based on the best scientific information available, the response to the comment cited here was in regard to the Navy meeting its NEPA requirements, not on the validity of the data used by NMFS. In that regard, NMFS uses all valid data and information that are available. However, NMFS also notes that Balcomb (2001) is a letter submitted to the Navy, dated February 23, 2001, concerning his untested hypothesis of the cause of the mass stranding of beaked whales in the Bahamas. This letter has not been published or formally peer reviewed. Simmonds and Lopez-Jurado (1991) and Frantzis (1998) were published scientific correspondences based solely on observations. The three phases of the LFS SRP were based on field research, conducted by independent scientists, which was designed simply to test a specific hypothesis. Some of the results have been peer-reviewed prior to publication (Miller *et al.* (2000) and Croll *et al.* (2001)). See RTC 4–5.18 and 4–5.19 of the Final EIS for more information. However, NMFS reviewed all data available to it when making the decisions found in this document.

Comment MMPAC30: A Federal agency is concerned about the basis for a negligible impact determination because information available clearly indicates that the potential effects of SURTASS LFA sonar operations cannot be described with certainty. NMFS needs to make separate findings that only small numbers of marine mammals will be taken incidental to the activity *and* (not or) that the effects on the distribution, size, and productivity of the affected species and populations will be negligible. NMFS has not examined all of the "best information available" and sufficient gaps in knowledge exist to prevent NMFS from a determination of "negligible impact."

Response: Please refer to the RTCs MMPAC 27 and 28 regarding appropriate action that NMFS needs to take when making negligible impact determinations when faced with unavailable, uncertain or speculative information. In addition, concerns regarding data gaps and alleged ignored evidence have been addressed previously in this document (see RTCs SIC1 though SIC3 for example). RTC MMPAC29 discusses another set of information. NMFS believes that it has used all relevant information and data in making its determinations under this action. Therefore, NMFS is unaware of what relevant "best information available" was not utilized in this action. For the RTCs regarding separate determinations for "small numbers" and "negligible impact," please refer to RTC MMPAC20.

Comment MMPAC31: The Navy failed to meet the legal standard and adequately demonstrate that the take will have a negligible impact on the affected species and stocks of marine mammals because: (1) Only three of more than 48 proposed affected marine mammals were tested; (2) lack of data on abundance, natural history, geographic distribution, migration routes and calving and breeding grounds; (3) specific numbers by type of taking not provided; (4) all marine mammals potentially taken must be considered; and (5) effects of underwater noise on marine mammals are variable and largely unknown for many species.

Response: The information that was necessary for NMFS to agree or disagree with the determinations made by the U.S. Navy that the deployment of SURTASS LFA sonar will have no more than a negligible impact on marine mammals was provided in the Navy's Draft and Final EISs. In particular, the information cited above as lacking can be found in Chapter 3 (specifically refer to Tables 3.2–3 (mysticetes), 3.2–4 (odontocetes), 3.2–5 (otariids) and 3.2–6 (phocids), and Chapter 4 (specifically refer to Tables 4.2–3 (diving behavior), 4.2–4 (distribution, abundance and density) and 4.2–10 (stock percentage affected)). In its Final EIS, the Navy provided estimates of the percentage of marine mammal stocks that might sustain a biologically significant response rather than the number of animals. NMFS concurred in this approach for the Draft and Final EIS because it believes that this is appropriate considering the global nature of SURTASS LFA sonar operations.

In addition, the Final EIS provides a clear explanation of the assumptions made in the AIM and in the Final EIS to account for variability in marine mammal response (both on a species basis and on an individual basis) for all species and stocks of marine mammals. Since the Navy has taken a highly conservative approach at all stages in estimating impacts on marine mammals from LF sounds, complete data on each and every species of marine mammal is not necessary for NMFS to make a negligible impact determination. The fact that the Navy will collect additional data, and conduct more research, over the next 5 years and that NMFS can suspend an authorization if information or data indicates that the takings are having more than a negligible impact, provides assurance that marine mammal species and stocks will not be significantly impacted.

Lowest Level Practicable

Comment MMPAC32: Several commenters believe that NMFS has not ensured that the taking was at the lowest level practicable.

Response: Section 101(a)(5)(A)(ii) of the MMPA requires NMFS to "prescribe regulations setting forth permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impacts on species or stocks and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance * * *." NMFS believes that the mitigation measures and additional interim operational restrictions required by these regulations on the Navy's operation of SURTASS LFA sonar ensures that the takings will be at the lowest level practicable. Mitigation measures include maintaining SURTASS LFA sonar generated sound field below 180-dB at a distance of 12 nm (22 km) miles from any coastline, including islands, OBIAs and other protected areas, designating OBIAs and a process for nominating new OBIAs, establishment of a shutdown protocol to protect marine mammals in the vicinity of the SURTASS LFA source, and the tripartite marine mammal monitoring system ensuring above 95-percent detection capability for marine mammals prior to entry into the 180-dB safety zone. Additional operational restrictions will be included in annual LOAs as an interim requirement pending the results of the Navy's LTM, reporting and research programs. These interim measures include establishment of shut-down criteria of the SURTASS LFA sonar whenever a marine mammal is detected within the 1-km (0.54-nm) buffer zone beyond the SURTASS LFA mitigation zone (180-dB sound field), a requirement not to broadcast the SURTASS LFA sonar signal at a frequency greater than 330 Hz to minimize the possibility of resonance; and planning missions to ensure no greater than 12 percent of any marine mammal stock is incidentally harassed during the period of each LOA's effectiveness (1 year). Additional protection will be afforded marine mammals by the Navy's mandate that SURTASS LFA sonar operations would be constrained in the vicinity of known recreational and commercial dive sites to ensure that the sound field at such sites does not exceed 145 dB.

Mitigation measures suggested by commenters that NMFS believes to be impractical have been addressed in RTCs MIC15 through MIC17 in this document.

Total Taking

Comment MMPAC33: The multiple deployments of LFA sonar in conjunction with potential deployment

of other nations' LF sonar has not been addressed and may have a devastating cumulative effect on marine mammals.

Response: The Navy analyzed the potential impacts from operating two SURTASS LFA sonars within a representative area (Gulf of Oman). This was described in both the Navy's application and in the Navy's Draft and Final EISs. Table 4–14 of the application assesses the percentage of marine mammal stocks within that area that coherent noise criteria policy is needed for use in all oceans involving all sources of anthropogenic noise.

Response: NMFS recognizes that there are many sources of anthropogenic noise in the ocean, including commercial shipping, recreational boating, offshore seismic, maritime construction, and oceanographic/fishery research. When necessary, NMFS works with those who create noise in the marine environment to ensure that regions is too general—it glosses over biogeographic variation that is essential to understand (1) the distribution and life history features of the many and varied species that may be affected by SURTASS LFA sonar operations and (2) the nature and extent of the resulting effects. A Federal agency believes a more narrow geographic scale would be likely to enhance the assessment of effects. One organization notes that while NMFS has divided the world's

plankton, it is the best scientific application available for designating specified geographic regions because no biogeographic concept has been designed for marine mammals and, in general, the distribution of marine organisms at higher trophic levels resembles the general geographic patterns of primary productivity, with the largest aggregations concentrated in coastal areas and zones of upwelling (Longhurst, 1998).

Congressional statement, cited in RTC MMPAC38, that specified geographic regions should not be larger than is necessary to accomplish the specified activity. Considering that the second and third, 5 to 10 km-wide (2.7 to 5.4 nm-wide), CZ "ring" for LFA sonar sounds can be upwards of 100 km (54 nm) and 150 km (81 nm), respectively from the vessel, small specific geographic regions as recommended would be functionally inappropriate.

significant information on each of the 31 areas modeled by the Navy. These modeled areas were provided in Table 4–1 of the application and 4.2–1 in the Final EIS. Additional areas will be modeled when information becomes available and all models will be rerun with the latest information prior to the Navy operating nearby. As mentioned in RTC MMPAC31, information on the biological parameters used in the modeling was provided in the text and

of other nations' LF sonar has not been addressed and may have a devastating cumulative effect on marine mammals.

Response: The Navy analyzed the potential impacts from operating two SURTASS LFA sonars within a representative area (Gulf of Oman). This was described in both the Navy's application and in the Navy's Draft and Final EISs. Table 4–14 of the application assesses the percentage of marine mammal stocks within that area that could potentially be affected. Since this take authorization covers the use of no more than two SURTASS LFA sources, no further analyses are required by NMFS.

Moreover, NMFS is unaware of the use by other nations of SURTASS LFA sonar, or other systems that use an LF source (i.e., 1 kHz or below), except for the SACLANTCEN/NATO TVDS system. The cumulative impacts of the use of this system in addition to a single SURTASS LFA sonar system operating in the same ocean basin was analyzed as described in RTC SIC79.

In addition, under section 101(a)(5)(A) of the MMPA, it is NMFS' responsibility to assess the total taking by the specified activity during the specified time period for making a negligible impact assessment (see 50 CFR 216.102(a)), not the total taking by all low frequency noise sources. Finally, cumulative effects that are reasonably foreseeable were considered in the Navy's Final EIS (see Chapter 4.4) and cumulative effects that are reasonably certain to occur have been considered in the consultation for this activity under section 7 of the ESA.

Other MMPA Concerns

Comment MMPAC34: What are the consequences for LFA sonar transmissions if behavioral changes are observed? At what point is the action considered a "take"?

Response: If a significant behavioral response is observed, NMFS considers a "taking" to have occurred. If behavioral changes are observed, observations are noted and reported to NMFS as required by the regulations and LOA. Because Level B harassment takings are authorized by the regulations and LOA, there would not be any short-term consequences, such as suspension of transmissions.

Comment MMPAC35: There are numerous other sources of noise in the oceans that have not received the level of scrutiny that this sonar has received (*i.e.*, ocean shipping), and the commenter believes that NMFS is obligated under the MMPA to identify such noise sources to review their potential impact on marine mammals. A coherent noise criteria policy is needed for use in all oceans involving all sources of anthropogenic noise.

Response: NMFS recognizes that there are many sources of anthropogenic noise in the ocean, including commercial shipping, recreational boating, offshore seismic, maritime construction, and oceanographic/fishery research. When necessary, NMFS works with those who create noise in the marine environment to ensure that marine mammals are not taken in violation of the MMPA. However, NMFS also recognizes that many sources of maritime noise are by activities that either are not subject to the MMPA (e.g., non-U.S. shipping outside the U.S. EEZ), or do not qualify for authorizations under the MMPA (e.g., non-U.S. shipping within the U.S. Exclusive Economic Zone (EEZ)). For those activities, a new approach may be necessary, either through international bodies, or additional U.S. legislation. In this regard, NMFS expects to complete a draft acoustic policy in the near future and is also planning to convene a workshop on commercial shipping noise and impacts on marine mammals.

Comment MMPAC36: Regulations from this issue (SURTASS LFA sonar deployment) will become the standard for ocean noise management in the U.S., and, by default, worldwide. Giving LFA the "green light" will completely open up the LF noise band to international commercial, industrial, and military exploitation.

Response: Issuance of an LOA to the Navy for this activity will have no effect on activities world-wide that produce low-mid-or high-frequency sounds incidental to conducting its activity. More persistent, anthropogenic noise sources including international commercial shipping (*e.g.*, 6,000 large vessels entering Los Angeles/Long Beach, CA harbor annually), U.S. naval activities, seismic surveys for oil and gas deposits (150 vessels world-wide), international offshore construction, oceanographic research (including mapping ocean and harbor features), and, in certain areas, recreational boating would continue in any case. Positive effects of this activity will be to refine our understanding of appropriate mitigation measures that could be used for other acoustic sources.

Proposed Rule Concerns

Comment MMPAC37: Several commenters believe that the proposed action has not met the requirement of the MMPA for a "specific geographical region." The MMC states that the rationale for concluding that the 16 areas constitute specific geographic regions is too general—it glosses over biogeographic variation that is essential to understand (1) the distribution and life history features of the many and varied species that may be affected by SURTASS LFA sonar operations and (2) the nature and extent of the resulting effects. A Federal agency believes a more narrow geographic scale would be likely to enhance the assessment of effects. One organization notes that while NMFS has divided the world's oceans into 16 areas, each one enormous in size, the MMPA Legislative History specifically rules out this sweeping approach.

Response: NMFS defines "specified geographical region" as "an area within which a specified activity is conducted and which has certain biogeographic characteristics" (50 CFR 216.103). NMFS agrees that the 16 areas designated in the proposed rule document were not based on biogeographic characteristics as specified in the definition, but were based on other considerations by the U.N. Food and Agricultural Organization. In the proposed rule, NMFS invited additional comments on its preliminary determination. No comments were received that provided information or data on an alternative approach; the only comments received were that the proposed designations did not meet the statements made by Congress when the MMPA was amended in 1981. NMFS has reviewed the proposed specified geographic regions and has determined that a better approach is to adopt the biogeographic characteristics of biomes and provinces designed by Longhurst (1998), but with some modifications that were suggested by Longhurst (1998) in order to ensure that the specified geographic regions were in conformance with the MMPA and NMFS' definition found in 50 CFR 216.103. As revised by this final rule, there will be 15 biomes and 54 specific geographic regions under those 15 biomes, called provinces, in which the Navy may potentially operate. In addition, this rule creates several subprovinces for most of the designated provinces that are in coastal areas. Designations smaller than provinces in the offshore biomes are not biologically justified.

NMFS believes that adoption of the Longhurst approach meets the statutory mandate that the taking by the activity be within a "specified geographical region" since a biome is the most likely geographic region to contain the majority of a specific marine mammal stock, especially those that are migratory. While admittedly, the Longhurst schematic was designed for

plankton, it is the best scientific application available for designating specified geographic regions because no biogeographic concept has been designed for marine mammals and, in general, the distribution of marine organisms at higher trophic levels resembles the general geographic patterns of primary productivity, with the largest aggregations concentrated in coastal areas and zones of upwelling (Longhurst, 1998).

What this means for this authorization is that the Navy will be required to notify NMFS annually as to which provinces or subprovinces it intends to operate SURTASS LFA sonar system in the upcoming year, and the extent of take (by harassment) it expects to encounter during a mission. These calculations will be based on new modeling using AIM.

Comment MMPAC38: The conditions and effects within the broad geographic regions proposed by NMFS cannot be considered "substantially the same." Congress clearly intended a more precise and smaller scale.

Response: In 1982, House Report 97–228 stated:

> The specified geographic region should not be larger than is necessary to accomplish the specified activity, and should be drawn in such a way that the effects on marine mammals in the region are substantially the same. Thus, for example, it would be inappropriate to identify the entire Pacific coast of the North American continent as a specified geographic region, but it may be appropriate to identify particular segments of that coast having similar characteristics, both biological and otherwise, as specified geographical regions.

Therefore, NMFS believes that it has met this Congressional intent by its present designations of 15 biomes and 54 provinces as specified geographic regions. These provinces and biomes effectively delineate the area wherein discrete population units reside thereby allowing NMFS to analyze impacts from SURTASS LFA sonar on a species and/or stock basis.

Comment MMPAC39: Several organizations believe that NMFS should establish the specified geographic regions based on physiographic characteristics such as undersea canyons, seamounts and other structures that might attract marine mammals.

Response: NMFS does not believe that the MMPA requires NMFS to designate specific, but minor, geographic regions based on physiographic characteristics such as undersea canyons, seamounts and other structures that might attract marine mammals. NMFS believes that this recommendation ignores the Congressional statement, cited in RTC MMPAC38, that specified geographic regions should not be larger than is necessary to accomplish the specified activity. Considering that the second and third, 5 to 10 km-wide (2.7 to 5.4 nm-wide), CZ "ring" for LFA sonar sounds can be upwards of 100 km (54 nm) and 150 km (81 nm), respectively from the vessel, small specific geographic regions as recommended would be functionally inappropriate.

Comment MMPAC40: A Federal agency recommends that the final rule the species assemblages, their biogeography, and important life history characteristics of each of the proposed regions in sufficient detail to ascertain whether the effects on the diverse marine mammal assemblages throughout each region would be substantially similar.

Response: NMFS does not believe that this recommendation is warranted for this rulemaking document. Detailed information on the life history characteristics of the marine mammal populations in each of the biogeographic areas is presently unavailable, and is likely to be unavailable for decades to come. However, there is no scientific evidence to indicate that marine mammals in one area would react to the noise substantially differently from the same species in another area. Therefore, the best scientific information currently available on a species' life history parameters, that is relevant to the action, has been provided in the Navy's Final EIS (see in particular Subchapter 3.2.4—3.2.6). In addition, this information has been incorporated into the AIM which makes very conservative estimates of impacts on marine mammal species and stocks (see the Final EIS for details). For example, NMFS has no scientific information to indicate that mid- and high-frequency marine mammal hearing specialists would be affected to the same extent as low-frequency hearing specialists by the LF sounds of the SURTASS LFA sonar. However, the Navy has conservatively presumed, for this action, that these species could have a significant behavioral reaction to LF sounds, similar to those species most likely to be affected (*i.e.*, LF-hearing specialists such as the large whales that were studied during the LFS SRP). Therefore, if one considers all species and stocks to be affected (i.e., taken by harassment), there is no need to describe in detail, in this document, all life history parameters of all species within each geographic region.

The Navy, in its application and in both the Draft and Final EIS, provided significant information on each of the 31 areas modeled by the Navy. These modeled areas were provided in Table 4–1 of the application and 4.2–1 in the Final EIS. Additional areas will be modeled when information becomes available and all models will be rerun with the latest information prior to the Navy operating nearby. As mentioned in RTC MMPAC31, information on the biological parameters used in the modeling was provided in the text and numerous tables. Since NMFS has adopted the Navy's Final EIS as its own statement under NEPA as permitted by CEQ regulations (40 CFR 1506.3), it is not necessary to repeat that information here.

Comment MMPAC41: The rule should be in keeping with the requirements of section 101(a)(5)(B) of the MMPA, that LFA sonar operations should be suspended in and near (nominated OBIA) areas until it has been determined that such operations will not have more than a negligible impact on those species and stocks of marine mammals within the OBIA.

Response: OBIAs are mitigation measures that would reduce the potential level of impact on marine mammals to the lowest level practicable, not areas wherein NMFS has not made negligible impact determinations, or that takings would be more than negligible if the Navy were to operate within those areas. Since NMFS has made the necessary determinations under section 101(a)(5)(A) of the MMPA, designation of an OBIA is simply a mitigation measure designed to reduce marine mammal impacts to the lowest level practicable. However, it is highly unlikely that the Navy would conduct SURTASS LFA sonar operations within areas that might qualify in the future as OBIA areas simply because the abundance of marine mammals would increase the likelihood for SURTASS LFA sonar shutdowns due to marine mammal incursions into the safety zone. The Navy would likely find it preferable to move the SURTASS LFA sonar vessel to an area with a lesser density of marine mammals, than to continue incurring delays or suspensions of sonar transmissions.

Suspending operations in nominated OBIAs could be an incentive for opponents to the Navy SURTASS LFA sonar operations to render the small take authorization ineffective simply by nominating large numbers of areas as potential OBIAs, whether or not they might warrant inclusion as an OBIA. NMFS' process for designating OBIAs will prevent this.

Comment MMPAC42: A Federal agency believes that NMFS has not adequately addressed the requirement under the MMPA that a taking not have an unmitigable adverse impact on the availability of stocks of marine mammals for taking for subsistence uses. They note that while the bowhead whale is unlikely to be affected, other species taken by Alaska Natives for subsistence, including beluga whales

state that the MMPA is clear that at least some of these information requirements are to be addressed in regulations rather than LOAs.

Response: The MMPA requires that regulations set forth requirements pertaining to the monitoring and reporting of the taking. These requirements, which were identified in the proposed rule's regulatory text, are found in the regulatory text of this final rule document. Specifically, monitoring

priority research topics to be conducted over the next 5 years. NMFS expects the Navy will undertake a long term study in an area where it expects to conduct missions on a more frequent basis than normal. This will provide the Navy and NMFS with information on long-term trends. Being unable to prove a negative, that is, that there is no long-term impact on marine mammal stocks due to SURTASS LFA sonar, this research is

path of SURTASS LFA sonar will not be subject to high levels of sounds (outside the sonar ray path, intensity will immediately diminish by 30 dB, or by 1,000 times that inside the ray path). Moreover, for a significant portion of the distance between the edge of the safety zone and when the first or second CZ deflects towards surface waters, the CZ, with its higher SPLs, will be below the area of the water column inhabited by marine mammals. All these facts

NMFS believes would clarify (but not change) the LOA conditions.

Comment MMPAC47: A state agency recommends that section 216.187 of the proposed rule should be amended to provide potentially affected states with timely notice of the Navy's application for an approval letter.

Response: NMFS does not consider it necessary to have an annual public review for each LOA. NMFS believes that the determinations made in this

Comment MMPAC48: Only a 45-day period was provided for the public to comment on the proposed rule and Final EIS. An extension is required to June 17, 2001.

Response: The comment period for the proposed rule was extended from the original date of May 3, 2001 to May 31, 2001; a total period of 73 days. The Navy's Final EIS has been available to the public since January 2001.

Comment MMPAC49: The LOA and

Comment MMPAC42: A Federal agency believes that NMFS has not adequately addressed the requirement under the MMPA that a taking not have an unmitigable adverse impact on the availability of stocks of marine mammals for taking for subsistence uses. They note that while the bowhead whale is unlikely to be affected, other species taken by Alaska Natives for subsistence, including beluga whales and several pinniped species, occur within the area where operations could be conducted and are included in the list of species that could be covered by the authorization. They believe LFA sonar could cause localized shifts in the distributions of some stocks, and thus their availability to subsistence hunters.

Response: NMFS did not go into detail on this issue in the preamble to the proposed rule, or in this document, because an analysis of impacts on subsistence uses of marine mammals indicated an impact close to zero. In order to have an unmitigable adverse impact on subsistence hunting, an action must result in a reduction in availability of marine mammals to a level insufficient to meet the subsistence needs of Alaskan Arctic communities for marine mammals by: (1) Causing sufficient numbers of the marine mammal population subject to subsistence use to vacate subsistence hunting areas; or (2) directly displacing subsistence users; or (3) erecting physical barriers between the marine mammals and the subsistence hunters. SURTASS LFA sonar will not be deployed in Arctic waters so it will not impact subsistence hunting in the Bering, Chukchi or Beaufort seas. Beluga whale hunting is restricted to a single animal per year which is taken in northern Cook Inlet, Alaska, and therefore unlikely to be subject to SURTASS LFA sonar sounds, considering significant coastal sound attenuation prior to reaching Cook Inlet, in addition to other LF noise from nearby shipping and oil industry activities masking offshore noises. Sea lions and seals are harvested by natives on Kodiak Island and on the south side of the Aleutian Island Chain. These animals are usually shot at haul-outs or in nearshore areas. Therefore, considering the offshore location of SURTASS LFA sonar operations, it is likely that these nearshore animals would not be affected at all by any SURTASS LFA sonar sound.

Comment MMPAC43: A Federal agency recommends that NMFS consider ways to include the required information on mitigation, monitoring, and reporting requirements into the rule, rather than into the LOA. They state that the MMPA is clear that at least some of these information requirements are to be addressed in regulations rather than LOAs.

Response: The MMPA requires that regulations set forth requirements pertaining to the monitoring and reporting of the taking. These requirements, which were identified in the proposed rule's regulatory text, are found in the regulatory text of this final rule document. Specifically, monitoring requirements include the tripartite monitoring system and the conditions for conducting that monitoring. However, LOAs are issued and authorized under activity-specific regulations, therefore, they carry the same weight under the MMPA as the regulations for ensuring compliance with conditions. If detailed conditions are specified in regulations, modifications to conditions, for example improvements in monitoring and reporting, would require long lead times to implement, considering the lengthy process required for approval of regulations. Having detailed monitoring conditions in regulations would therefore hinder prompt remedial action if NMFS determined that it needed to amend conditions to improve the information being obtained under monitoring and reporting. Delaying the ability to obtain this information for a significant time simply is not warranted. For that reason, the LOA will contain specific conditions and instructions on mitigation, monitoring, and reporting, while the regulations will contain general requirements to comply with the MMPA.

Comment MMPAC44: The Navy cannot measure incidental takes over large ocean areas. There is no means to monitor Level B takes. Neither the proposed rule nor the Final EIS provide data or analyses to support the assumption that intermittent and relatively short-term behavioral disruptions will not affect the survival or productivity of individual marine mammals or the populations they compriso. Before issuing the proposed incidental take authorization, NMFS: (1) Needs to provide an adequate rationale to support this assumption, and/or (2) needs to augment the monitoring program to ensure that the information necessary to confirm the validity of this assumption is obtained.

Response: While the Navy is unable to directly measure or observe effects on marine mammals at ranges much greater than the 180–dB sound field due to inability to observe much farther from the vessel, such monitoring can be conducted under a research monitoring protocol. This is one of the highest priority research topics to be conducted over the next 5 years. NMFS expects the Navy will undertake a long term study in an area where it expects to conduct missions on a more frequent basis than normal. This will provide the Navy and NMFS with information on long-term trends. Being unable to prove a negative, that is, that there is no long-term impact on marine mammal stocks due to SURTASS LFA sonar, this research is the best alternative available and is supported by the findings of Swartz and Hofman (1991).

Not having direct evidence to date, NMFS must rely on supplemental information to support its findings of negligible impact. For example, In Jasny (1998), the author states:

> A modern-day supertanker cruising at seventeen knots * * * fills the frequency band below 500 Hz with a steady sonic blare, reaching levels of 190 dB or more; mid-sized ships such as tugboats and ferries produce sounds of 160 to 170 decibels in the same range. The cumulative output of all these vessels-container ships and tankers, oceanliners and dayboats, icebreakers and barges-is an incessant noise of near-constant loudness, outdone in the lower register only by the occasional earthquake or storm, or by the chance passing of some closer source.

With a single exception (icebreakers), the author has described southern California waters. With approximately 6,000 large vessels entering the Los Angeles-Long Beach harbors annually, long term effects from general LF noise should be evident at this (and similar) locations long before long-term effects could be detected from a short-term (72 hours out of 720 hours (30-day mission)) single source of low frequency noise operating in up to six different oceanic regions and affecting different marine mammal populations annually. Since marine mammal populations have not indicated survival or productivity difficulties in southern California—on the contrary increasing stock sizes of blue and gray whales and pinnipeds have taken place in that area—NMFS has determined that there will not be a more than negligible impact to those marine mammal stocks that are affected by SURTASS LFA sonar sound.

As mentioned elsewhere, NMFS presumes that animals would be affected by LFA sonar for a maximum of 72 hours out of each 30-day mission (presuming maximum 20-percent duty cycle) and that no marine mammal stock would incur an incidental harassment greater than 10 to 12 percent of that stock's size over the course of each LOA's period of effectiveness (1 year). In addition, the sound characteristics of SURTASS LFA sonar are such that marine mammals outside the sonar ray path of SURTASS LFA sonar will not be subject to high levels of sounds (outside the sonar ray path, intensity will immediately diminish by 30 dB, or by 1,000 times that inside the ray path). Moreover, for a significant portion of the distance between the edge of the safety zone and when the first or second CZ deflects towards surface waters, the CZ, with its higher SPLs, will be below the area of the water column inhabited by marine mammals. All these facts support NMFS findings that there will not be more than a negligible impact on marine mammal stocks.

Comment MMPAC45: A Federal agency notes that in the Preliminary Conclusions of the Proposed Rule (March 19, 2001 (66 FR 15375) page 15389 first column), the term "* * * mitigation measures to prevent injury * * *" should be changed to read "* * * mitigation measures to minimize injury (Level A harassment) * * *"

Response: NMFS concurs.

Comment MMPAC46: NMFS indicated that it would provide opportunity for public comment for "substantial modifications" to LOA requirements before such modifications are made, but provides no indication as to what would be viewed as a "substantial modification." The final rule document should specify the nature of non-substantial modifications that could be made without public comment.

Response: This final rule document contains a discussion of the conditions of the LOA including prohibitions, requirements for mitigation, monitoring and reporting. Changes to these conditions would require a public comment period prior to implementation, unless NMFS determines that an emergency exists that poses a significant risk to the well-being of the species/stocks of marine mammals affected (see 50 CFR 216.106(e) and (f)). Non-substantial modifications were identified in the proposed rule and in this final rule. Essentially, non-substantial modifications include: (1) Renewing an LOA for an additional year, (2) listing of planned SURTASS LFA sonar operating areas, or (3) moving the authorized SURTASS LFA sonar system from one ship to another. They would also include amendments to the LOA that NMFS believes would clarify (but not change) the LOA conditions.

Comment MMPAC47: A state agency recommends that section 216.187 of the proposed rule should be amended to provide potentially affected states with timely notice of the Navy's application for an approval letter.

Response: NMFS does not consider it necessary to have an annual public review for each LOA. NMFS believes that the determinations made in this document provide the necessary findings required under the MMPA. Once these findings have been made, it is unnecessary for NMFS to reconsider them annually during the 5-year authorization process unless new scientific information becomes available that is significantly contrary to the science used by NMFS during this rulemaking. As noted in the regulations, NMFS will notify the public within 30 days of issuance of an LOA. That notification would provide notice if the Navy had requested a taking authorization for an area of concern to a State.

However, a state can petition NMFS for a modification whenever it has documentary evidence that the determinations made by NMFS are no longer valid. NMFS notes that procedures are established under the CZMA to address this issue. NMFS recommends that those coastal states with Federally-approved CZMA programs that have concerns over SURTASS LFA sonar, follow the procedures outlined in the regulations (15 CFR part 930). NMFS notes that for states along the U.S. Eastern Seaboard, the OBIA1 restriction for SURTASS LFA sonar operations inside the 200-m (656.2-ft) isobath limits sound levels inside state waters to levels significantly less than other sources for which states have not imposed restrictions on noise under their CZMA authority as required under 15 CFR part 930. However, the regulations note that a state is required to apply its policies uniformly and consistently and not apply policies differently (e.g., holding a Federal agency to a higher standard than a local government or private citizen) and NMFS will give careful consideration to the CZMA regulations whenever it is in receipt of a petition under this subpart.

Comment MMPAC48: Only a 45-day period was provided for the public to comment on the proposed rule and Final EIS. An extension is required to June 17, 2001.

Response: The comment period for the proposed rule was extended from the original date of May 3, 2001 to May 31, 2001; a total period of 73 days. The Navy's Final EIS has been available to the public since January 2001.

Comment MMPAC49: The LOA and regulations are inadequate to protect the North Atlantic right whale per NMFS' mandate. Right whale ship strike data alone suggest that the LFA vessel could transmit while sailing right over a right whale. They simply do not react to ships and other danger. As the potential for biological removal for this stock under the MMPA is zero, the take by LFA transmissions of even one individual could constitute jeopardy under the ESA. What are the take levels for the North Atlantic right whale?

Response: NMFS has completed consultation under section 7 of the ESA. The finding of that consultation was that operation of the SURTASS LFA sonar is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. A copy of the Biological Opinion issued as a result of that consultation is available upon request (see **ADDRESSES**). NMFS believes that through establishment of OBIA1, and implementation of the tripartite monitoring and mitigation program, it is very unlikely that North Atlantic right whales will be affected by SURTASS LFA sonar. Figure 2 illustrates the extent of protection offered by OBIA1 in relation to right whale critical habitat. The potential for even a single right whale to be seriously injured is, therefore, exceedingly remote. Considering the number of other activities, such as commercial shipping and oil and gas exploration (off the east coast of Canada), SURTASS LFA sonar operating off the East Coast of the United States would add an insignificant amount of noise to the already high levels of noise along the coast, if it were to operate in the Northwest Atlantic.

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corridors and its maximum speed is 3 knots. This is well below the maximum allowable speed of 7 knots for whale watch vessels when within one-half mile of a large whale. When not operating SURTASS LFA sonar, the ship will follow standard procedures for avoiding collisions with whales.

Comment MMPAC50: Section 216.191 appears to provide for additional protection through the addition of areas that would be subject to protection additional OBIAs places the burden of proof on the public to show that offshore areas are important for marine mammals breeding, feeding, or migration. This appears to be contrary to the section 101(a)(5)(B) of the MMPA. Sonar operations should be suspended or prohibited in any area where marine mammals occur in above average densities until it is determined that such operations will not have more than a

Response: The holder for the LOA for the SURTASS LFA sonar systems will be the Chief of Naval Operations, or his duly appointed representative.

Comment MMPAC54: One organization states that the proposed LOA is for incidental taking by harassment and non-serious injury only, which is Level B Harassment. They believe that, because NMFS has stated that some Level A harassment still needs to be considered possible, the

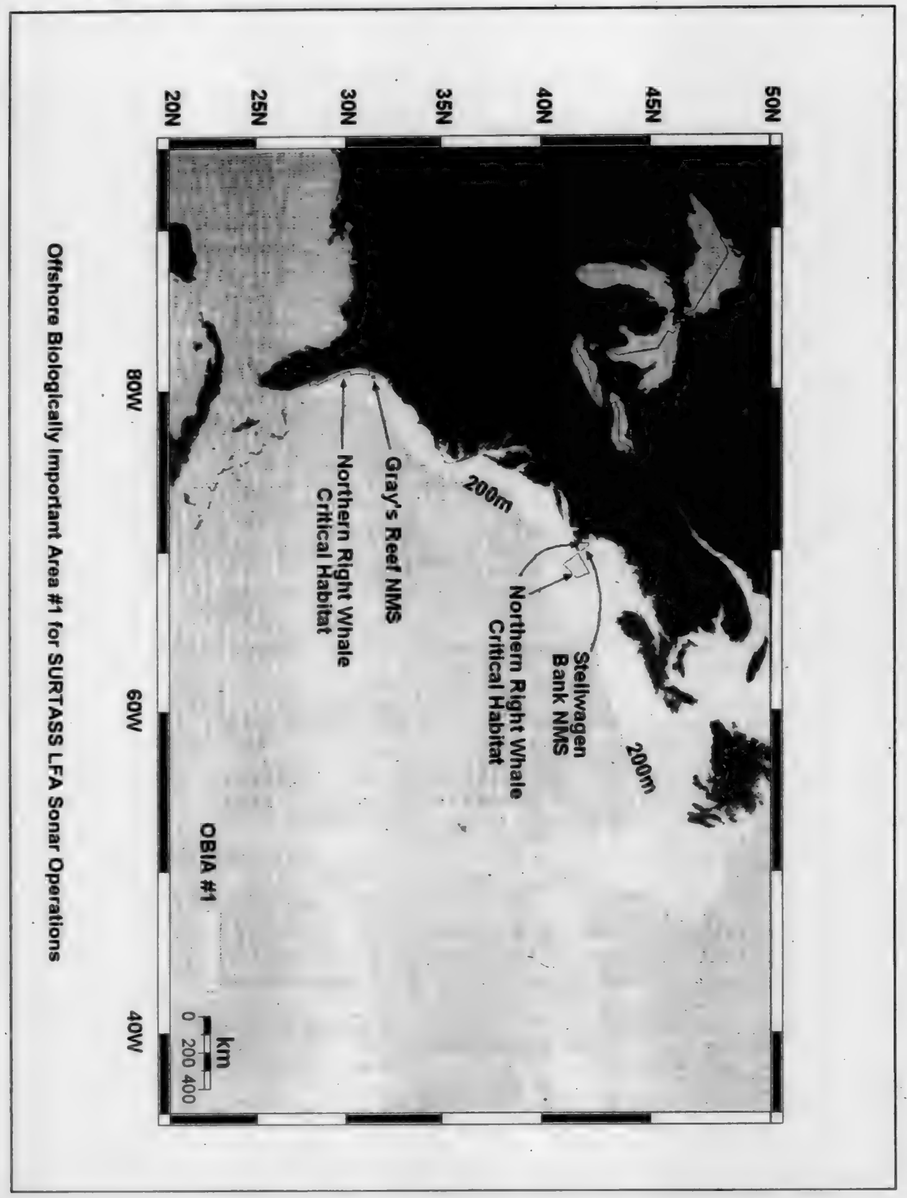

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The potential for a ship strike by the SURTASS LFA vessel is minimal because it will not operate in right whale critical habitats and migration corridors and its maximum speed is 3 knots. This is well below the maximum allowable speed of 7 knots for whale watch vessels when within one-half mile of a large whale. When not operating SURTASS LFA sonar, the ship will follow standard procedures for avoiding collisions with whales.

Comment MMPAC50: Section 216.191 appears to provide for additional protection through the addition of areas that would be subject to protection under § 216.183(d), but does not expressly provide for "additional protection" (e.g., received levels less than 180 db). Section 216.191 should also provide a process for additional protection within areas designated under 216.183(e).

Response: Paragraph 216.191 (in 50 CFR) provides a process for nominating areas as OBIAs, not for adding additional mitigation measures either inside or outside existing or nominated OBIAs. To add additional mitigation measures either inside or outside an OBIA, applicants would need to petition NMFS under the APA as described elsewhere in this document. However, NMFS has amended § 216.183(d) to make it more clear that operating SURTASS LFA sonar with sound levels in excess of 180 dB inside a designated OBIA is prohibited.

Comment MMPAC51: The deferral of action to identify additional OBIAs for up to 8 to 12 months as part of this rulemaking inappropriately increases the possibility that NMFS will authorize SURTASS LFA sonar operations in biologically important areas thus making a finding of negligible impact questionable. The addition of new areas appears to be contingent on NMFS and Navy approval. What will the status of candidate OBIAs be during this period? Will LFA operations be halted?

Response: Please see RTC MMPAC41, especially in regard to making a negligible impact determination. As noted there and in the proposed rulemaking, NMFS is following established rulemaking procedures for designating OBIAs under this action. The establishment of new OBIAs is contingent upon notice-and-comment rulemaking and will not be effective until an amendment to 50 CFR 216.183(e). NMFS will make a preliminary and final determination of establishment of new OBIAs on the best science available. Any interested party or organization, including the Navy, will have the opportunity to comment on any OBIA petition. One criterion to consider will be any national security concerns.

Comment MMPAC52: NMFS's proposed procedure for designation of additional OBIAs places the burden of proof on the public to show that offshore areas are important for marine mammals breeding, feeding, or migration. This appears to be contrary to the section 101(a)(5)(B) of the MMPA. Sonar operations should be suspended or prohibited in any area where marine mammals occur in above average densities until it is determined that such operations will not have more than a negligible impact on those species or stocks.

Response: NMFS has made a negligible impact determination for the Navy's operation of SURTASS LFA sonar for routine training and testing as well as the use of the system during military operations. OBIAs, on the other hand, are established in order to reduce the potential for taking marine mammals to the lowest level practicable as required by § 101(a)(5)(A)(ii)(I). SURTASS LFA sonar operations will be suspended whenever a marine mammal enters the 180 dB safety zone or is detected within 1 km (0.54 nm) of the 180-dB safety zone, independent of the density of marine mammals in that area. It should be recognized that suspension of sonar transmissions due to marine mammal presence interferes with training or other military operations; therefore, it is unlikely that the Navy would intentionally operate in areas of high marine mammal abundance or remain within such an area if it expected significant shutdowns.

Comment MMPAC53: NMFS should describe the procedures to be followed if data become available suggesting that continued operations in an area is having, or may have, more than a negligible impact on marine mammal species or stocks.

Response: The procedure is described in 50 CFR 216.106. If, as a result of information obtained through the LTM requirements, new scientific research under the LTM program, or from other credible sources that becomes available, NMFS determines that the taking either in a single province, several provinces, or in a biome is having more than a negligible impact on affected species or stocks, 50 CFR 216.106(e) requires that LOAs will be withdrawn or suspended, after notice and opportunity for public comment. The requirement for notice and opportunity for public review shall not apply if NMFS determines that an emergency exists that poses a significant risk to the well being of the species or stocks of marine mammals concerned.

LOA Concerns

Comment MMPAC53: Who will be the holder of an LOA?

Response: The holder for the LOA for the SURTASS LFA sonar systems will be the Chief of Naval Operations, or his duly appointed representative.

Comment MMPAC54: One organization states that the proposed LOA is for incidental taking by harassment and non-serious injury only, which is Level B Harassment. They believe that, because NMFS has stated that some Level A harassment still needs to be considered possible, the Navy would need a Level A harassment permit as well.

Response: Separate authorizations are not required under the rulemaking. The Navy has applied for an authorization to take marine mammals by harassment (as that term is defined in the MMPA), which means that marine mammals may be injured (Level A Harassment), but not killed, or they may experience disruptions in behavioral patterns (Level B Harassment). The MMPA does not distinguish between serious and non-serious injury. However, for reasons stated elsewhere in this document, NMFS believes that the potential for any marine mammals to be injured is negligible.

Public Hearing Concerns

Comment MMPAC55: Commenters expressed concern that Navy proponents were at the same table with the NMFS hearing officer at the proposed rule's public hearing.

Response: The NMFS hearing officer at the public hearing explained that responses to public comments and questions would be provided during the hearing if time allowed. Since most questions were expected to be in regard to the SURTASS LFA sonar system and the scientific research program, NMFS believed it would facilitate the hearing process to have the Navy available at the table microphone for reply. No intent should be presumed other than one to facilitate the hearing procedure.

Comment MMPAC56: Commenters questioned why the hearing panel consisted of only one person and why others, who would be expected to be in the decision-making for the final rule, were not in attendance.

Response: NMFS did not state that it would convene a hearing panel, and planned only to have a hearing officer, mainly to ensure that as many people that wished to testify had the opportunity to do so. Since court reporters were contracted to obtain transcripts of the hearings, and because these transcripts are part of NMFS' Record of Decision on this matter, and may be reviewed by decision-makers, attendance by decision-makers at the hearing was not necessary.

Comment MMPAC57: Discuss the validity of the audio demonstration at the public hearing. NMFS tried to stop this acoustic demo at the public hearing.

Response: To allow as many people as possible to speak in the allotted hearing time, NMFS limited the time each individual or group had to present their comments. There were no cases during the public hearings in Los Angeles, Honolulu, or Silver Spring where

opportunity to comment. Also, an international panel comprised of political, scientific, and military experts from all countries with maritime interests regarding this type of technology should be convened by NMFS prior to issuing an LOA.

Response: NMFS received comments from citizens around the world, during the 75-day rulemaking comment period. However, there is no requirement in U.S. law that requires Federal

Response: In its letter of 18 May 1998, the Navy requested assistance from NMFS pursuant to Section 7 of the ESA in providing compilations of listed, proposed, and candidate threatened and endangered species under the jurisdiction of the NMFS. This letter initiated informal consultation with the NMFS under section 7 of the ESA. This letter is included in Appendix A of the both the Draft EIS and Final EIS. Formal consultation commenced on October 4,

for the determination for the potential for injury and for the implementation of geographic and monitoring mitigation measures, non-auditory physiological impacts were analyzed in these documents. Because SURTASS LFA sonar will use extensive mitigation measures (passive acoustic, visual observers, and a new HF/M3 sonar), injury is unlikely.

(3) As noted in RTCs MMIC24a and MMIC25, the data show that 5 of 49

potential impacts to the marine environment would, at best, be speculative at this time.

Comment NEPAC2: The Final EIS, with its official responses, is inadequate to defend the program as presented by NMFS. NMFS must not rely upon the Final EIS for any management standards or rulemaking for human noise in the oceans. By accepting the Final EIS, NMFS has accepted responsibility for all the Final EIS inadequacies.

4.14 are examples of this difference of opinion.

Comment NEPAC5: The comments of the MMC, pertaining to the Navy's SURTASS LFA sonar, and NMFS authority in the matter, are contained in a letter to Joseph Johnson (i.e., NEPA program manager for the SURTASS LFA sonar program) dated October 27, 1999. Their comments, though delivered in a low-key style, are damning in the extreme. See the list from Animal

Comment MMPAC57: Discuss the validity of the audio demonstration at the public hearing. NMFS tried to stop this acoustic demo at the public hearing.

Response: To allow as many people as possible to speak in the allotted hearing time, NMFS limited the time each individual or group had to present their comments. There were no cases during the public hearings in Los Angeles, Honolulu, or Silver Spring where speakers were not allowed to speak or were deterred by NMFS personnel for other reasons. One individual was questioned prior to the Los Angeles hearing when, without introducing himself to the NMFS Hearing Officer, he began to set up speakers and amplification devices. After questioning, and once it was determined that the Federal Government would not be liable for any illnesses resulting from the broadcasts, (illness had been alleged at previous hearings when transmissions were broadcast by the Navy), NMFS allowed the individual to broadcast his demonstration, which was composed of two LF oscillators, one at 250 Hz and the other at 250 to 270 Hz, creating a beat frequency oscillation.

According to the Navy, it is difficult to evaluate the validity of the audio demonstrations presented at the Los Angeles and Silver Spring, MD hearings without specific technical information, which was not provided. It should be noted, however, that these demonstrations were conducted by different people using the same or similar equipment. Both demonstrations reportedly broadcast sound levels in air of 85 dB and 100 dB (re 20 µPa @ 1 m) (actual measurements were not made at the demonstration) which were claimed to be equivalent to the underwater SPL of the SURTASS LFA sonar source at about 10 to 40 mi (16 to 64.4 km). However, according to witnesses to both demonstrations, the levels at the Los Angeles hearing were markedly louder. The validity of the demonstrations is, therefore, unknown.

Other MMPA Concerns

Comment MMPAC 58: Causing short-term behavioral responses in whales is a violation of the MMPA when applied to whale-watching, as determined by NMFS guidelines, and in the case of Hawaii, regulations.

Response: NMFS clarifies that the whale watching industry is not authorized to "take" marine mammals, either intentionally or incidentally, therefore, harassment takings are illegal.

Comment MMPAC59: There are international implications of SURTASS LFA sonar outside the U.S. EEZ and non-U.S. parties were not given an opportunity to comment. Also, an international panel comprised of political, scientific, and military experts from all countries with maritime interests regarding this type of technology should be convened by NMFS prior to issuing an LOA.

Response: NMFS received comments from citizens around the world, during the 75-day rulemaking comment period. However, there is no requirement in U.S. law that requires Federal Government agencies to solicit comments internationally prior to making determinations that affect U.S. actions, especially U.S. military activities. NMFS presumes that if there is sufficient interest in anthropogenic noise sources in the marine environment, appropriate international bodies will convene such a panel.

Comment MMPAC60: A Federal agency notes that the proposed rule on page 15376, column 1, paragraph 1 (66 FR 15375, March 19, 2001) indicates that the Navy has applied for an incidental take authorization to operate the SURTASS LFA sonar for a period of time not to exceed 5 years. Presumably, the Navy plans to use the sonar for an indefinite period of time and the 5-year period is the maximum authorization period under the MMPA. This should be made clear. Also, possible cumulative effects beyond the requested 5-year authorization should be considered in the development of monitoring and reporting requirements for any authorization issue.

Response: In the Final EIS (RTC 4–10.7), the Navy states that the expected life span of each SURTASS LFA sonar is approximately 20 years. NMFS expects that the Navy will apply for consecutive 5-year authorizations as provided under the MMPA and implementing regulations. This will require the Navy to resubmit a new petition for regulations every 5 years. While NMFS can only legally require the Navy to perform monitoring and research during each of the 5-year authorization periods, as part of any reauthorization process, NMFS will review the required reports and research undertaken during the first 5-year authorization and apply this new information to subsequent rulemaking determinations.

ESA Concerns (ESAC)

Comment ESAC1: Did ESA section 7 consultation begin on August 1999 or May 1998? The Final EIS stated that consultation began in August 1999. NMFS letter of 27 January 1999 stated that the Navy requested consultation with the NMFS under Section 7 of the ESA in its letter of 18 May 1998.

Response: In its letter of 18 May 1998, the Navy requested assistance from NMFS pursuant to Section 7 of the ESA in providing compilations of listed, proposed, and candidate threatened and endangered species under the jurisdiction of the NMFS. This letter initiated informal consultation with the NMFS under section 7 of the ESA. This letter is included in Appendix A of the both the Draft EIS and Final EIS. Formal consultation commenced on October 4, 1999.

NEPA Concerns (NEPAC)

Comment NEPAC1: Under NEPA regulations the Navy should prepare a Supplemental EIS (SEIS) based on significant new information (letter from Natural Resources Defense Council dated May 31, 2001 and Earth Island Institute letter dated September 27, 2001). This information includes: (1) The potential for non-auditory physiological impacts on marine mammals induced by acoustic resonance of the LFA sonar signal in the bodies of the animals; (2) Dr. Tepley's document which addresses the issue of resonance effects in air spaces within the sinus and middle ear cavity of marine mammals; (3) correlation between naval maneuvers and other mass strandings and multi-species strandings of beaked whales; (4) the ability of present and future passive sonar technologies to meet the long-range detection requirements; and (5) the operation of LFA sonar with other active sonar systems by domestic and foreign navies including LFA sonar currently being developed by other nations.

Response: CEQ's regulations governing NEPA require Federal agencies to prepare an SEIS if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). NMFS has reviewed the above information and believes that this information does not constitute significant new information that would require the development of an SEIS in accordance with 40 CFR 1502.9(c)(1)(ii). The rationale for this determination is supported by information provided elsewhere in this document and summarized here.

(1 and 2): As discussed previously in several RTCs in this document, the potential impacts of non-auditory physiological impacts, such as tissue damage potentially caused by resonance, will occur at an SPL of 180 dB or higher (Cudahy and Ellison, 2002). Therefore, because the Draft and Final EISs used 180 dB as the criterion for the determination for the potential for injury and for the implementation of geographic and monitoring mitigation measures, non-auditory physiological impacts were analyzed in these documents. Because SURTASS LFA sonar will use extensive mitigation measures (passive acoustic, visual observers, and a new HF/M3 sonar), injury is unlikely.

(3) As noted in RTCs MMIC24a and MMIC25, the data show that 5 of 49 beaked whale stranding events that occurred possibly were related to military maneuvers (Potter, 2001). Two of these were definitely not related to sonar activity: (a) April 3, 1974, four Cuvier's beaked whales at Bonaire, Lesser Antilles, in the area where a naval vessel was dumping ammunition which caused an underwater explosion; and (b) December 17–22, 1974, three Cuvier's beaked whales and one striped dolphin stranded in Corsica. The striped dolphin had bullet wounds. Simmonds and Lopez-Jurado (1991) state that between 1982 and 1989 there were 22 strandings of cetaceans in the Canary Islands, with three being related to military activity. Therefore, the data do not necessarily suggest a high correlation between naval activities and beaked whale strandings, nor do they provide evidence of causation. Strandings were discussed in the Final EIS on pages 3.2–45 to 3.2–47.

(4) As stated in the Final EIS at page 2–2, LFA "is an augmentation to the passive (SURTASS) detection system, and is planned for use when passive performance is inadequate." In many instances passive sonar can provide the detection required. However, under certain conditions, such as areas of high ambient (background) noise (*e.g.*, high shipping density), passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot meet the Navy's requirement to detect quiet, hard-to-find submarines during *all* conditions, particularly at long ranges. Additional discussion of passive sonar technologies can be found in the Final EIS (RTCs 1–2.1, 1–2.2, and 1–2.3 and RTC AC11).

(5) As stated in RTC SIC79 and MMPAC33 in this document, neither the Navy nor NMFS is aware of the use by other nations of SURTASS LFA sonar, or other systems that use a LF source (i.e., 1 kHz or below), except for the SACLANTCEN (NATO) TVDS system. While the U.S. Navy does not intend to operate SURTASS LFA sonar with this NATO system, an analysis of cumulative impacts was conducted in the Navy's Final EIS. Please see RTC SIC79 for more information. Since this is not a reasonably foreseeable future action, additional assessments of the potential impacts to the marine environment would, at best, be speculative at this time.

Comment NEPAC2: The Final EIS, with its official responses, is inadequate to defend the program as presented by NMFS. NMFS must not rely upon the Final EIS for any management standards or rulemaking for human noise in the oceans. By accepting the Final EIS, NMFS has accepted responsibility for all the Final EIS inadequacies.

Response: NMFS believes that the Final EIS document meets the requirements under NEPA and its implementing regulations (40 CFR parts 1500–1508). As a result, NMFS has determined that, in accordance with CEQ regulation at 40 CFR 1506.3(a), the Navy's NEPA statement meets the requirements of the CEQ regulations and has, therefore, adopted the Navy Final EIS as its own NEPA document for this action.

Comment NEPAC3: The EIS, especially the modeling, should be peer-reviewed.

Response: The EIS, and thus its analyses, have met or exceeded all of the review and comment periods required by law. NMFS notes that there is no requirement under NEPA for an EIS to be peer-reviewed. The Navy's Draft EIS was available for review and comment by all, including independent scientists, the comment period was sufficiently long to allow review by scientists, and a number of scientists provided comments to the Navy and/or NMFS. NMFS considers these public review periods to more than satisfy the commenter's concern that scientists provide input into the Navy's proposal, including the AIM. Moreover, as an alternative model has not been suggested, NMFS adopts the Navy's AIM as the best model available for its determination of negligible impact.

Comment NEPAC4: The Final EIS responses to comments demonstrate a range of denials, dismissals, deflections, misstatements, and inaccuracies, with occasionally an objective and factual response. Many comments/questions were ignored. The answers to comments were glib and perfunctory. Examples include Comment 4–4.13, 4–4.14.

Response: Because the commenters failed to identify the specific comments/questions that they claim have been ignored (except RTC 4–4.13 and 4–4.14), no response is possible. RTC 4–4.13 and 4–4.14 were based on scientific input from recognized marine biologists and underwater acousticians. NMFS recognizes that there is often disagreement about a response; however, this is different from being non-responsive. RTCs 4–4.13 and 4–4.14 are examples of this difference of opinion.

Comment NEPAC5: The comments of the MMC, pertaining to the Navy's SURTASS LFA sonar, and NMFS authority in the matter, are contained in a letter to Joseph Johnson (i.e., NEPA program manager for the SURTASS LFA sonar program) dated October 27, 1999. Their comments, though delivered in a low-key style, are damning in the extreme. See the list from Animal Welfare Institute letter of May 29, 2001 to NMFS, page 2, comments of the MMC pertaining to the Navy's SURTASS LFA Sonar Draft EIS.

Response: The MMC's comments on the Draft EIS were addressed by the Navy in the Final EIS Response to Comments. Some of those issues are repeated in this document. NMFS believes the MMC's concerns have been adequately addressed in either the Final EIS or this document.

Comment NEPAC6: Whereas the Final EIS was written by the contractor, eager to sell LFA, and the Navy, anxious to use it, the first responsibility of NMFS is the conservation of ocean resources, not military needs.

Response: CEQ regulations (40 CFR 1506.5(a)) state, "Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate by the cooperating agency, specifying that they have no financial or other interest in the outcome of the project." This disclosure statement has been executed. The contractor assisted in the preparation of the EIS; however, Navy representatives made all decisions for the Navy. Marine Acoustics Incorporated, the contractor who provided support to the Navy for the SURTASS LFA sonar NEPA process is not affiliated with the manufacturer of the SURTASS LFA sonar.

Knowing that the Navy's SURTASS LFA sonar had the potential to take marine mammals incidental to its operation, and, that there was consideration being given at the time that an incidental, small take application would be submitted by the Navy, NMFS agreed to be a cooperating agency on the preparation of the EIS to meet its NEPA obligation required because of rulemaking under the MMPA, not the "military needs" of the Navy. See Comment 45 in the SURTASS LFA sonar proposed rule for a more detailed discussion.

Comment NEPAC7: The Navy has already cut contracts for 23 more LFAS vessels. By limiting the Final EIS to just four test ships while fully intending to use 27 ships or more of the same type, the Navy is guilty of "segmentation."

Response: According to the Navy, it has no plans, nor have any contracts been awarded, for the construction of 23 additional SURTASS LFA sonar vessels.

Comment NEPAC8: Why wasn't the NEPA process commenced in the late 1980s? Why weren't LOAs requested for these tests?

Response: Early LF acoustic research testing was not considered a major Federal action significantly affecting the

Comment NEPAC9b: The Navy failed to investigate the use of the system during "heightened threat conditions."

Response: Use of the system during "heightened threat conditions" is addressed in the Final EIS (RTC 1–1.8 and 1–1.9) and in this document (see RTC AC2).

Comment NEPAC9c: A failure to consider alternatives to the LFA sonar that might achieve the same purpose with less impact to the environment.

environmental groups, the Navy conducted the LFS SRP and diver's studies despite the cost of over $10M. Finally, the funding of the research by the Navy is authorized by federal regulations.

Comment NEPAC10: A conflict of interest exists because two employees of NMFS were involved in the preparation and review of the EIS.

Response: See Final EIS RTC 14–1.1 and Comment 45 of NMFS' proposed

commenter wants to know why the Navy did not follow the Draft EIS comments of NMFS Office of Protected Resources and Office of Habitat Conservation that the Navy initiate consultation under the Magnuson-Stevens Act, or explain in the Final EIS the basis for their conclusion that the proposed action would not adversely affect EFH.

Response: The Navy has determined that the proposed action would have no

regulations specifying migratory corridors. As indicated in this document, because the tripartite mitigation will be above 95-percent effective, it is unnecessary to prohibit Navy SURTASS LFA sonar operations from wide swaths of ocean simply because it is used by a whale stock that is widely dispersed in space and time within that corridor. There is little information available on open ocean whale migration; for example, the actual

whales produce LF sounds, and anatomical evidence strongly suggests that their inner ears are well adapted for LF hearing, all balaenopterid species are considered sensitive to LF sound and at risk from exposure to LF sounds. The eleven species of baleen whales that may be affected by SURTASS LFA sonar are blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), sei (*Balaenoptera*

Response: According to the Navy, it has no plans, nor have any contracts been awarded, for the construction of 23 additional SURTASS LFA sonar vessels.

Comment NEPAC8: Why wasn't the NEPA process commenced in the late 1980s? Why weren't LOAs requested for these tests?

Response: Early LF acoustic research testing was not considered a major Federal action significantly affecting the quality of the human environment under NEPA and was not considered to involve the taking of marine mammals under the MMPA. As the program developed and the building blocks of the operational system were put in place, the project moved out of the classified phase and into a mostly unclassified phase, while it became increasingly apparent that SURTASS LFA operations could possibly affect the marine environment. As additional testing was conducted, appropriate analysis under NEPA was conducted and the potential for MMPA impacts assessed. On several occasions, under proper procedures for handling classified material, the Navy consulted with NMFS under section 7 of the ESA on these activities. Also, the Navy prepared Environmental Assessments for the LFS SRP in June, 1997 (Phase I), November, 1997 (Phase II), and February, 1998 (Phase III). Scientific research permits were issued under section 104 of the MMPA for the LFS SRP.

Comment NEPAC9: The EIS is inadequate for the following reasons:

Comment NEPAC9a: The EIS is less than objective because of the irreversible and irretrievable commitment of hundreds of millions of dollars.

Response: Irreversible and irretrievable commitment of funds is addressed in the Final EIS Chapter 9 and RTC 1–3.5. As stated in the Final EIS, money spent to date related to the SURTASS LFA sonar program falls into several different categories. SURTASS LFA sonar itself was the result of a lengthy research and development program that represented a substantial expenditure of funds. In addition, the Navy contracted for refit/construction of vessels that were capable of carrying the equipment for the passive (listening only) component (SURTASS) as well as the active component (LFA). Also, the LFS SRP was expensive, but it contributed significantly and directly to the EIS process. In any event, the monies expended on the SURTASS LFA sonar program do not bind the Navy to deploy the SURTASS LFA sonar as proposed.

Comment NEPAC9b: The Navy failed to investigate the use of the system during "heightened threat conditions."

Response: Use of the system during "heightened threat conditions" is addressed in the Final EIS (RTC 1–1.8 and 1–1.9) and in this document (see RTC AC2).

Comment NEPAC9c: A failure to consider alternatives to the LFA sonar that might achieve the same purpose with less impact to the environment, such as passive sonar.

Response: Alternatives to SURTASS LFA sonar, including passive sonar, are covered in the Final EIS Subchapters 1.1.3 and 1.2.2 and RTCs 1–2.1, 1–2.2, 1–2.3, and 2–3.3a.

Comment NEPAC9d: Large data gaps exist.

Response: Data gaps are discussed in detail in the Final EIS (RTCs 1–3.6, 2–3.4, 2–3.7, 2–4.2, 3–8.1, 3–8.3, and 4–4.1). In the Final EIS Subchapter 1.4.4, the Navy discusses scientific data gaps regarding the potential for effects of LF sound on marine life. In addition data gap concerns have been addressed in this document.

Comment NEPAC9e: The Final EIS relies on the limited LFS SRP.

Response: The Final EIS did not rely solely on the results of the LFS SRP. This is discussed in detail in Subchapter 1.4 of the Final EIS.

Comment NEPAC9f: The analysis did not consider the increasing stress levels in the oceans.

Response: In the Final EIS Subchapter 4.4 potential cumulative impacts are analyzed in the context of recent changes to ambient sound levels in the world's oceans.

Comment NEPAC9g: The integrity of the Navy's independent researchers is questioned because the Navy funded their time to do the research. There is a conflict of interest because the Navy funded the research.

Response: Recognized experts in the fields of marine biology and bioacoustics independently planned and executed a series of Navy-sponsored scientific field research projects to address the most critical data gaps on the effects of LF sound on the behavioral responses of free-ranging marine mammals. NMFS believes the integrity of the LFS SRP independent researchers is sound.

CEQ regulation 40 CFR 1502.22(a) states that if there is incomplete information relevant to the impact analysis and the choice among alternatives and the cost to obtain it is not exorbitant, the agency (in this case the Navy) shall include this information in the EIS. Because of the concerns of the scientific community and environmental groups, the Navy conducted the LFS SRP and diver's studies despite the cost of over $10M. Finally, the funding of the research by the Navy is authorized by federal regulations.

Comment NEPAC10: A conflict of interest exists because two employees of NMFS were involved in the preparation and review of the EIS.

Response: See Final EIS RTC 14–1.1 and Comment 45 of NMFS' proposed rule document.

CZMA Concerns

Comment CZMA1: Why has NMFS failed to consider the Navy's lack of compliance with the CZMA as an issue in preparing the rule?

Response: Under the CZMA Federal Consistency Regulations, Federal agencies shall review their proposed activities to determine: (1) That there will be no coastal effects, or (2) that Federal activities which affect any coastal use or resources are undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of state's approved management programs. At the Draft EIS stage, which is the document NMFS had for use when drafting the proposed rule, the Navy submitted that document to 23 states and 5 territories that could potentially be affected by SURTASS LFA sonar operations and had approved CZMA programs. Since that time, the Navy has completed the consistency process for all coastal states that could be potentially affected by LFA (22 states) and territories, with the exception of California. The Navy will apply to California prior to planned exercises in their waters. On August 7, 2001, the Maine Coastal Program requested supplemental coordination based on potential effects of the SURTASS LFA sonar operations on the northern right whale and other resources of Maine's coastal zone prior to the Navy's deployment of the system in the Gulf of Maine. The Navy replied on October 2, 2001 stating that SURTASS LFA sonar would not be operated in the Gulf of Maine or in any critical habitats of the northern right whale. The system would not be operated within the 200-meter (656.2-ft) isobath as per the geographic restrictions of OBIA#1 for the eastern seaboard. Therefore, the Navy determined that supplemental consultation is premature.

Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act) Concerns

Comment MAC1: What is the effect of LFA on essential fish habitats (EFH)? A commenter wants to know why the Navy did not follow the Draft EIS comments of NMFS Office of Protected Resources and Office of Habitat Conservation that the Navy initiate consultation under the Magnuson-Stevens Act, or explain in the Final EIS the basis for their conclusion that the proposed action would not adversely affect EFH.

Response: The Navy has determined that the proposed action would have no adverse effects on EFHs (Navy letter, Serial 01C/069 of February 28, 2000) (See the Final EIS, Appendix A (Correspondence)). The potential impacts of the proposed action on fish stocks are discussed in the Final EIS Subchapter 4.1.1 and RTC 4–1.2. The Navy responded to the subject comment by NMFS in the Final EIS (RTC 6–1.4).

Miscellaneous Concerns (MC)

Comment MC1: The link between funding and the LFA invites investigation. One immediate example is the recent adjustment of funds from NMFS in support of right whales. NMFS has recently changed funding priorities, removing support from the disentanglement program, population studies, and a related scarification project, while allocating a very large sum to at least one other scientist closely related to the LFA.

Response: NMFS does not know the identity of the scientist referred to in the comment. Without knowing more, NMFS cannot respond fully to this comment. NMFS funding has been used for a broad spectrum of contract work and internal work on right whales, including the New England Aquarium, Oregon State University, and Woods Hole (including economists). These are for research tasks, specifically for right whale research and recovery actions. Other scientists studying right whales have received funding from the North East Consortium. The Consortium funding is from an independent peer-review, not from NMFS.

Comment MC2: NMFS has made several preliminary determinations relating to the LFA based on impracticality, for example, specifically migration corridors. By definition, it will always be impractical to establish management rules or constraints on anthropogenic noise because all solutions will be impractical to someone. Also, one organization would like NMFS to better address protection measures to minimize potential impacts to humpback whales along their migratory corridors.

Response: What NMFS stated in the preamble to the proposed rule was that it would be impractical to structure regulations specifying migratory corridors. As indicated in this document, because the tripartite mitigation will be above 95-percent effective, it is unnecessary to prohibit Navy SURTASS LFA sonar operations from wide swaths of ocean simply because it is used by a whale stock that is widely dispersed in space and time within that corridor. There is little information available on open ocean whale migration; for example, the actual migration routes of North Pacific humpback whales are generally unknown. Recent research has shown that between Hawaii and Alaska humpback whales tend to follow a migratory corridor that is within 1 degree of magnetic north (Mate *et al.*, 1998). Furthermore, Norris *et al.* (1999) and Abileah *et al.* (1996) have determined "loosely defined" migration corridors are bounded by longitudes 150/155 degrees W. and 160 degrees W. and latitudes 30 degrees N. and 40 degrees N. Migrating humpback whales observed in the Atlantic are usually alone or in small pods of 4 to 5 individuals. Based on this information, it can be estimated that this humpback whale migration route is between approximately 300 to 600 nm (555.6 to 1111.2 km) wide in the Pacific Ocean. Therefore, the density of humpback whales would be expected to be low, and with the proposed mitigation these open ocean migration corridors will not be affected any differently than any other open ocean area.

Comment MC3: NOAA and the Woods Hole Oceanographic Institute (WHOI) have LFA technology on their research ships.

Response: NMFS does not know the commenter's meaning of "LFA technology" however, SURTASS LFA sonar is not onboard NOAA or WHOI vessels. These vessels do, however, have research capabilities using various types of sonar for sea bottom mapping, acoustical measurements of ocean parameters, and living marine resource assessments.

Affected Marine Mammal Species

In the Navy Draft and Final EIS analysis and its small take application, the Navy excluded from take consideration those marine mammal species that either do not inhabit the areas in which SURTASS LFA sonar would operate, do not possess sensory mechanisms that allow the mammal to perceive LF sounds, or are not physically affected by LF sounds. Where data were not available or were insufficient for one species, comparable data for a related species were used, if available. Because all species of baleen whales produce LF sounds, and anatomical evidence strongly suggests that their inner ears are well adapted for LF hearing, all balaenopterid species are considered sensitive to LF sound and at risk from exposure to LF sounds. The eleven species of baleen whales that may be affected by SURTASS LFA sonar are blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae*), northern right (*Eubalaena glacialis*), southern right (*Eubalaena australis*), pygmy right (*Capera marginata*), bowhead (*Balaena mysticetus*), and gray (*Eschrichtius robustus*) whales.

The odontocetes (toothed whales) that may be affected because they inhabit the deeper, offshore waters where SURTASS LFA sonar might operate include both the pelagic (oceanic) whales and dolphins and those coastal species that also occur in deep water including harbor porpoise (*Phocoena phocoena*), beluga, *Stenella spp.*, Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), *Lagenorhynchus spp., Cephalorhynchus spp.*, bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp., Hyperoodon spp., Mesoplodon spp.*, Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

Potentially affected pinnipeds include hooded seals, harbor seals (*Phoca vitulina*), spotted seal (*P. largha*), ribbon seal (*P. fasciata*), gray seal (*Halichoerus grypus*), elephant seals (*Mirounga angustirostris* and *M. leonina*), Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*), southern fur seals (*Arctocephalus spp.*), Steller sea lion (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarctos hookeri*), and South American sea lions (*Otaria flavescens*).

A description of affected marine mammal species, their biology, and the criteria used to determine those species that have the potential for taking by harassment are provided and explained in detail in the Navy application and Draft and Final EISs and, although not repeated here, are considered part of the record of decision on this matter. Additional information is available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/*

functions. This trauma may include minor to severe hemorrhage.

The analysis of potential impacts on marine mammals from SURTASS LFA sonar was developed by the Navy based on the results of a literature review, the Navy's LFS SRP, and a complex, comprehensive program of underwater acoustical modeling. To assess the potential impact on marine mammals by the SURTASS LFA sonar source operating at a given site, it was

abundance, and density are described in detail in the Navy application and the Final EIS and are not discussed further in this document.

Using the AIM model, the Navy developed 31 acoustic modeling scenarios for the major ocean regions (which are described in the application and Final EIS). Locations were carefully selected by the Navy to represent the highest potential effects for each of the three major ocean acoustic regimes

important to note that risk varies with both level and number of exposures.

In the Final EIS and small take application, the Navy calculated the risks for take by injury based on the criterion of 180 dB, which, based on Schlundt *et al.* (2000), is a conservative value for the onset of a minor TTS in hearing. Schlundt *et al.*'s (2000) measurement with bottlenose dolphins and belugas at 1-second duration implies that the TTS threshold for a

volume of water outside this boundary which experiences received levels below 180 dB. In this analysis, the 180-dB SPL boundary is emphasized because it represents a single-ping RL that can be considered to be a scientifically conservative estimate for the potential onset of injury. Therefore, the level of risk for marine mammals depends on their location in relation to SURTASS LFA sonar. As mentioned previously, the Navy scientific team

situations, some Level A harassment takings still need to be considered possible.

Before the biological risk standards could be applied to realistic SURTASS LFA sonar operational scenarios, two factors had to be considered by the Navy: (1) How does risk vary with repeated sound exposure? and (2) how does risk vary with RL? The Navy addressed these questions by developing a function that translates the

A description of affected marine mammal species, their biology, and the criteria used to determine those species that have the potential for taking by harassment are provided and explained in detail in the Navy application and Draft and Final EISs and, although not repeated here, are considered part of the record of decision on this matter. Additional information is available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html* Please refer to these documents for specific information on marine mammal species.

Impacts to Marine Mammals

To understand the effects of LF noise on marine mammals, one must understand the fundamentals of underwater sound and how the SURTASS LFA sonar operates in the marine environment. This description was provided earlier in this document and also by the Navy in Appendix B to the Draft and Final EISs.

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (*i.e.* lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any human-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics, echolocation sounds of odontocetes, and environmental sounds such as surf noise; and (6) very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

The analysis of potential impacts on marine mammals from SURTASS LFA sonar was developed by the Navy based on the results of a literature review, the Navy's LFS SRP, and a complex, comprehensive program of underwater acoustical modeling. To assess the potential impact on marine mammals by the SURTASS LFA sonar source operating at a given site, it was necessary for the Navy to predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving (1) the ability to measure or estimate an animal's location in space and time, (2) the ability to measure or estimate the three-dimensional sound field at these times and locations, (3) the integration of these two data sets to estimate the total acoustic exposure for each animal in the modeled population, (4) converting the resultant cumulative exposures for a modeled population into an estimate of the risk from a significant disturbance of a biologically important behavior, and (5) converting these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

Next, a relationship for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a significant disruption of a biologically important behavior and of injury was developed. This process assessed risk in relation to RL and repeated exposure. The resultant risk continuum is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold. Taken together, the LFS SRP results, the acoustical modeling, and the risk assessment provide an estimate of potential environmental impacts to marine mammals.

The acoustical modeling process was accomplished using the Navy's standard acoustical performance prediction transmission loss model-Parabolic Equation (PE) version 3.4. The results of this model are the primary input to the AIM. AIM was used to estimate marine mammal sound exposures and essentially integrates simulated movements (including dive patterns) of marine mammals, a schedule of SURTASS LFA sonar transmissions, and the predicted sound field for each transmission to estimate acoustic exposure during a hypothetical SURTASS LFA sonar operation. Description of the PE and AIM models, including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density are described in detail in the Navy application and the Final EIS and are not discussed further in this document.

Using the AIM model, the Navy developed 31 acoustic modeling scenarios for the major ocean regions (which are described in the application and Final EIS). Locations were carefully selected by the Navy to represent the highest potential effects for each of the three major ocean acoustic regimes where SURTASS LFA sonar would be employed. These acoustic regimes were: (1) Deep-water convergence zone propagation, (2) near surface duct propagation, and (3) shallow water bottom interaction propagation. These scenarios represent the condition under which, on average, the greatest number of animals could be exposed to the greatest number of pings at the highest RLs and were considered the most severe conditions that could be expected from operation of the SURTASS LFA sonar system. Thus, if SURTASS LFA sonar operations were conducted in an area that was not acoustically modeled, the Navy believes the potential effects would most likely be less than those obtained from the most similar scenario in the analysis. The modeled scenarios were then used by the Navy to estimate the percentages of marine mammal stocks potentially affected.

Risk Analysis

To determine the potential impacts that exposure to LF sound from SURTASS LFA sonar operations could have on marine mammals, biological risk standards were defined by the Navy with associated measurement parameters. Based on the MMPA, the potential for biological risk was defined as the probability for injury or behavioral harassment of marine mammals. In this analysis, behavioral harassment is defined as a significant disturbance in a biologically important behavior. The potential for biological risk is a function of an animal's exposure to a sound that would potentially cause hearing, behavioral, psychological or physiological effects. The measurement parameters for determining exposure were RLs in dB, the pulse repetition interval (time between pings), and the number of pings received.

The Navy interprets the results of the LFS SRP to justify use of unlimited exposure to 119 dB during a mission as the lowest value for risk. Below this level, the risk of a biologically significant response from marine mammals approaches zero. It is important to note that risk varies with both level and number of exposures.

In the Final EIS and small take application, the Navy calculated the risks for take by injury based on the criterion of 180 dB, which, based on Schlundt *et al.* (2000), is a conservative value for the onset of a minor TTS in hearing. Schlundt *et al.*'s (2000) measurement with bottlenose dolphins and belugas at 1-second duration implies that the TTS threshold for a 100-second signal would be approximately 184 dB (Table 1–4, Final EIS). In addition, for the 400-Hz signal, Schlundt *et al.* (2000), found no TTS at 193 dB, the highest level of exposure. As a result, the Navy believes that the 180-dB SPL criterion can be considered conservative. With three levels of mitigation monitoring for detecting marine mammals (described elsewhere in this document), it is unlikely that any marine mammal would get that close before being detected and the SURTASS LFA sonar shut down. However, because the probability is not zero, the Navy has included this scenario in its authorization request.

Because the LFS SRP did not document any extended biologically significant response at maximum RLs up to 150 dB, the Navy determined that there was a 2.5-percent risk of an animal incurring a disruption of biologically important behavior at an SPL of 150 dB, a 50-percent risk at 165 dB, and a 95-percent risk at 180 dB. This analysis of risk is used by the Navy as an alternative to an all-or-nothing use of standard thresholds for the onset of either behavioral change or injury. The subsequent discussion of risk function emphasizes the advantages of using a smoothly varying model of biological risk in relation to sound exposure. These results are analogous to dose-response curves used in toxicology that are accepted as the best practice in disciplines ranging from epidemiology, toxicology, and pharmacology.

An "injury continuum" is not necessary because of the very low numbers of individual marine mammals that could potentially experience high received sound levels, and the high level of effectiveness of the monitoring and shutdown protocols. For this action, all marine mammals exposed to an SPL of 180 dB or above are considered to be injured, even though, as demonstrated in this document, a mammal would need to receive an SPL significantly higher than 180 dB in order to be injured.

When SURTASS LFA sonar transmits, there is a boundary which will enclose a volume of water in which received levels equal or exceed 180 dB, and a volume of water outside this boundary which experiences received levels below 180 dB. In this analysis, the 180-dB SPL boundary is emphasized because it represents a single-ping RL that can be considered to be a scientifically conservative estimate for the potential onset of injury. Therefore, the level of risk for marine mammals depends on their location in relation to SURTASS LFA sonar. As mentioned previously, the Navy scientific team established the threshold for risk of the onset of potential injury as a single ping at 180 dB (Navy, 1999b). Under the Navy proposal, a marine mammal would have to receive one ping greater than or equal to 180 dB to potentially incur an injury.

However, NMFS scientists and other scientists are in general agreement that TTS is not an injury (*i.e.*, does not result in tissue damage) but is an impairment to hearing (*i.e.*, results in an increased elevation (*i.e.*, decreased sensitivity) in hearing) that may last for a few minutes to a few days, depending upon the level and duration of exposure. In addition, there is no evidence that TTS would occur in marine mammals at an SPL of 180 dB. In fact, Schlundt *et al.* (2000) indicates that onset TTS for at least some species occurs at significantly higher SPLs. Therefore, in this document, NMFS makes clear that, although TTS is not an injury (*i.e.*, Level A harassment), because PTS is considered an injury (Level A harassment), and because scientists have noted that the onset of PTS for marine mammals may be 15–20 dB of TTS (*i.e.*, the difference between the SELs that cause the slightest TTS and the onset of PTS), TTS is considered by NMFS to be in the upper portion of the Level B harassment zone (near the lower end of the Level A harassment zone). Therefore, onset PTS, not onset TTS, is considered by NMFS to be the lower end of Level A harassment. NMFS believes that establishing TTS at the upper end of the Level B harassment zone is both precautionary and warranted by the science. However, establishing mitigation measures, such as safety zones, as is done here, should be applied whenever a marine mammal has the potential to incur a TTS in hearing in order to prevent an animal incurring a PTS injury.

While the Navy believes that the probability of a marine mammal occurring within the 180–dB sound field at the onset of a transmission is nearly zero because of the tripartite monitoring mitigation program (described later in this document), because the monitoring may not be 100 percent effective at all times and situations, some Level A harassment takings still need to be considered possible.

Before the biological risk standards could be applied to realistic SURTASS LFA sonar operational scenarios, two factors had to be considered by the Navy: (1) How does risk vary with repeated sound exposure? and (2) how does risk vary with RL? The Navy addressed these questions by developing a function that translates the history of repeated exposures (as calculated in the AIM) into an equivalent RL for a single exposure with a comparable risk. This dual-question method is similar to those adopted by previous studies of risk to human hearing (Richardson *et al.*, 1995; Crocker, 1997).

Effects of Repeated Exposure

It is intuitive to assume that effects would be greater for repeated exposures than for a single ping. However, because no published data on repeated exposures of LF sound on marine mammals exist, the Navy turned to the most applicable human data. Based on the analysis of Richardson *et al.* (1995) and Kryter (1985), the potential for effects of repeated exposure on marine mammals was modeled on the extensive data available for human subjects. Based on discussion in Richardson *et al.* (1995) and consistent with Crocker (1997) and for reasons explained in RTC SIC76, the Navy determined that the best scientific information available is based on human models and, therefore, the formula $L + 5 \log_{10} (N)$ (where L = ping level in dB and N is the number of pings) defines the single ping equivalent (SPE). This formula then is considered appropriate for assessing the risk to a marine mammal from a significant disturbance of a biologically important behavior from LF sound like SURTASS LFA sonar transmissions.

Since the release of the Final EIS, an investigation by Cudahy and Ellison (2002) noted that the expected threshold for *in vivo* tissue damage (including lung damage and hemorrhaging) for LF sound can be on the order of 180 to 190 dB. Vestibular effects could affect balance and equilibrium, but may not result in injury. However, these effects are based on humans. Measurable performance decrements in vestibular function were observed for guinea pigs using 160 dB SPL signals at lung resonance and 190 dB SPL signals at 500 Hz. It should be kept in mind that guinea pigs are not aquatic species and, as such, are not as robust to pressure changes as marine mammals. Finally, as stated in Crum and Mao (1996) and as discussed in the Final EIS (page 10–

137), researchers hypothesized that the received level would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood. However, "non-auditory traumas" are not expected to occur from sound exposure below SPLs of 180 dB. In light of the high detection rate of the HF/M3 sonar ensuring required SURTASS LFA sonar shutdown when

for single SURTASS LFA sonar operations. Tables 4–12 and 4–13 in the application (Tables 4.2–12 and 4.2–13 in the Final EIS) provide an example of annual total estimates of percentages of marine mammal stocks potentially affected by a total of 24 operations (12 in each of the two ocean basins). As mentioned previously however, this number of operations are unlikely during the effectiveness period of these

unlikely to result in significant effects on any species' or stock's reproduction or survival. Therefore, in order for incidental takings by SURTASS LFA sonar under this regulation to be negligible, takings by SURTASS LFA sonar operations during the effective time period (1 year) of any LOA issued for such Navy operations must not exceed 12 percent of any marine mammal stock (2 percent × six 30-day

mitigation zone. Therefore, as soon as a marine mammal (or ESA-listed sea turtle) is detected by the HF/M3 sonar, the SURTASS LFA sonar will either be turned off or not turned on. This is a feasible mitigation measure since recent testing of the HF/M3 sonar indicates effective levels of detection up to 2 km (1.1 nm). At 2 km (1.1 nm), the SPL from the SURTASS LFA sonar will be approximately 173 dB. SURTASS LFA sonar operators would be required to

dB from December through May of each year. However, some of these NMSs, and others not listed here, will have additional mitigation for marine mammals because they are also human dive sites. As such, SPLs will not exceed more than 145 dB in those areas. Other than HIHWNMS, which is fully protected because of the addition of Penguin Bank as an OBIA under this action, the remaining three areas are limited to receiving an SPL no greater

during daylight hours, (2) use passive SURTASS LFA sonar to listen for vocalizing marine mammals; and (3) use high frequency active sonar (i.e., similar to a commercial fish finder) to monitor/locate/track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

Through observation, acoustic tracking and establishment of shut-down criteria, the Navy will ensure, to

137), researchers hypothesized that the received level would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood. However, "non-auditory traumas" are not expected to occur from sound exposure below SPLs of 180 dB. In light of the high detection rate of the HF/M3 sonar ensuring required SURTASS LFA sonar shutdown when any marine mammal approaches or enters the 180–dB LFA mitigation zone, the risks of these traumas to a marine mammal approach zero.

Estimation of Potential Effects to Marine Mammal Stocks

The potential effects on marine mammals from operation of SURTASS LFA sonar will not be the direct removal of animals. Based on AIM modeling results, the primary effects are from the potential for a significant change in biologically important behavior.

To estimate the percentage of marine mammal stocks affected on a yearly basis, the typical annual operating schedule for SURTASS LFA sonar was correlated to the modeled site scenarios. Even though the Navy will not have more than 2 SURTASS LFA systems operating during the next 5 years, its NEPA analysis incorporated four systems with six missions each annually. With two vessels in the Pacific/Indian Ocean area and two vessels in the Atlantic/Mediterranean area, the Navy estimates there could be up to 12 operations in each of these oceanic basin areas. Using a total of 12 operations in each large geographic area (*e.g.*, Eastern North Pacific, Western North Atlantic), the Navy calculated take estimates based on a 20-day exercise (actually under the normal schedule mentioned previously in this document the Navy proposes two 9-day exercises or a total of 18 days, not 20 days of exercise). NMFS concurs with this approach but notes that because only 2 SURTASS LFA sonar vessels will be available through 2007, the Navy's projected incidental harassment levels found in the Final EIS and application are overestimates of potential harassment levels during these regulations. NMFS estimates, therefore, that there would be a total of only 6 active SURTASS LFA sonar missions annually per vessel (or equivalent shorter missions totaling no more than 432 hours of transmission/vessel/year)) during the period of effectiveness of these regulations.

AIM Modeling in Table 4–10 in the application (Table 4.2–10 in the Final EIS) provides estimates of the percentage of stocks potentially affected for single SURTASS LFA sonar operations. Tables 4–12 and 4–13 in the application (Tables 4.2–12 and 4.2–13 in the Final EIS) provide an example of annual total estimates of percentages of marine mammal stocks potentially affected by a total of 24 operations (12 in each of the two ocean basins). As mentioned previously however, this number of operations are unlikely during the effectiveness period of these regulations. It should also be recognized that the scenarios chosen by the Navy are not the only possible combinations of areas where the SURTASS LFA sonar will operate. The potential effects from other scenarios can be estimated by presupposing the areas in which the Navy would conduct SURTASS LFA sonar operations annually in each oceanic basin area, determining from Table 4–10 in the Navy application the percentage of each stock that may potentially be affected, and adding those percentages together for each affected stock. Using updated modeling where appropriate, this is what the Navy will do annually for each LOA requested.

Also, the Navy will rerun AIM when planning missions for new or different areas and, if necessary, modify annual LOA authorization requests with an analysis of take estimates prior to any mission in a new/different area. For this document however, NMFS is adopting the Navy estimates shown in Final EIS Tables 4–12 and 4–13 as the best scientific information currently available. Thus, even though there will be a total of only two systems deployed under this rulemaking, by using these two tables, or by choosing a different combination of potential geographic areas for SURTASS LFA sonar operations derived from Final EIS Table 4–10, any potential scenario of operations can be addressed using the two systems (i.e., each in different oceanic areas, both in same oceanic area, etc.).

As stated previously however, given that it is more likely that SURTASS LFA sonar missions will occur in the open ocean rather than the modeled sites, and that the Navy will rerun AIM when planning missions for new or different areas to avoid certain areas during biologically sensitive seasons, NMFS believes that the estimates of taking by harassment incidental to SURTASS LFA sonar provided in the Final EIS are significantly higher than the more realistic 1 to 2 percent (or less) of affected stocks during a single 30-day mission. Short-term incidental harassment levels between 1 and 12 percent and below are considered by NMFS to comply with the MMPA as Level B harassment at this level is unlikely to result in significant effects on any species' or stock's reproduction or survival. Therefore, in order for incidental takings by SURTASS LFA sonar under this regulation to be negligible, takings by SURTASS LFA sonar operations during the effective time period (1 year) of any LOA issued for such Navy operations must not exceed 12 percent of any marine mammal stock (2 percent × six 30-day missions = 12 percent). However, this 12 percent level should not be interpreted to mean that the Navy will take up to 12 percent of all affected marine mammal stocks. In most cases, with carefully planned SURTASS LFA sonar missions (*e.g.*, to avoid certain biogeographic provinces during seasons of increased marine mammal abundance), the total annual Level B takes are expected to be significantly less than this level. Therefore, NMFS believes that the potential effect by SURTASS LFA sonar operations will be limited to only small numbers of the affected stocks of marine mammals that will have no more than a negligible impact on affected species and stocks of marine mammals. Moreover, the potential effect will be limited to incidental harassment that will not adversely affect the stock through annual rates of recruitment or survival.

Mitigation for Marine Mammals

This document adopts, with modification, the Navy proposal to use visual, passive acoustic, and active acoustic monitoring of the area surrounding the SURTASS LFA sonar array to prevent the incidental injury of marine mammals that might enter the 180-dB SURTASS LFA mitigation zone. The three monitoring systems are described in the following section of this document. If a marine mammal (or ESA-listed sea turtle) is detected within the 180-dB SURTASS LFA sonar mitigation zone, SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions may commence/resume 15 minutes after the marine mammal/sea turtle has left the area of the 180-dB sound field or there is no further detection of the animal within the 180-dB sound field. The protocol established by the Navy for implementing this temporary shut-down is described in the application (pages 10–11). However, NMFS has concluded that the 180-dB safety zone needs to be augmented to ensure to the greatest extent practicable that marine mammals are not subject to potential injury. In that regard, as an added safety measure, NMFS has established an interim "buffer zone" extending an additional 1 km (0.54 nm) beyond the 180-dB LFA

mitigation zone. Therefore, as soon as a marine mammal (or ESA-listed sea turtle) is detected by the HF/M3 sonar, the SURTASS LFA sonar will either be turned off or not turned on. This is a feasible mitigation measure since recent testing of the HF/M3 sonar indicates effective levels of detection up to 2 km (1.1 nm). At 2 km (1.1 nm), the SPL from the SURTASS LFA sonar will be approximately 173 dB. SURTASS LFA sonar operators would be required to estimate SPLs prior to and during each operation to provide the information necessary to modify the operation, including delay or suspension of transmissions, in order not to exceed the mitigation sound field criteria.

NMFS recognizes that there are areas of insufficient knowledge that must be accounted for when estimating the potential effects on marine mammals (e.g., the impacts of resonance on marine mammals, where research is already underway). NMFS also believes the present level of understanding is adequate to place reasonable bounds on potential impacts and provide a logical basis for the decision that safe and proper employment of SURTASS LFA sonar can be managed.

The Navy proposed that the SURTASS LFA sonar operations would be conducted to ensure that the sound field does not exceed 180 dB (i.e., the zone of potential for injury to marine mammals) at a distance of 12 nm (22 km) from any coastline, including islands, nor in OBIAs that are outside the 12-nm (22-km) zone during the biologically important season(s) for that particular area. The 12-nm (22-km) restriction includes almost all marine-related critical habitats and National Marine Sanctuaries (NMSs). However, some parts of NMSs, that are recognized to be important for marine mammals, are outside 12 nm (22 km). For purposes of this rulemaking, and because of their importance for marine mammals, NOAA's Office of National Marine Sanctuaries (ONMS) has recommended the following protective measures for operating SURTASS LFA sonar: (1) For the Monterey Bay NMS, received levels should not exceed 180 dB throughout the NMS; (2) in the Gulf of the Farallones and Cordell Bank NMSs, received levels should not exceed 180 dB, including those areas of the NMSs that extend beyond 12 nm (22 km); (3) for the Olympic Coast NMS, received levels in the NMS should not exceed 180 dB in the area from shore to 23 nm (37.4 km) in the months of December, January, March, and May of each year; and (4) for the Hawaiian Islands Humpback Whale NMS (HIHWNMS), received levels should not exceed 180 dB from December through May of each year. However, some of these NMSs, and others not listed here, will have additional mitigation for marine mammals because they are also human dive sites. As such, SPLs will not exceed more than 145 dB in those areas. Other than HIHWNMS, which is fully protected because of the addition of Penguin Bank as an OBIA under this action, the remaining three areas are limited to receiving an SPL no greater than 180 dB in order to protect marine mammals in those areas.

In addition to establishing a safety zone at 180 dB to protect marine mammals and other noise sensitive marine animals, the Navy will establish a safety zone for human divers at 145 dB re 1 μPa(rms) around all known human commercial and recreational diving sites. Although this geographic restriction is intended to protect human divers, it will also reduce the LF sound levels received by marine mammals that are located in the vicinity of known dive sites.

The Navy has proposed establishing OBIAs for marine mammal protection in its Draft and Final EISs. These areas are defined as those areas of the world's oceans where marine mammals congregate in high densities to carry out biologically important activities such as feeding, migration, breeding, and calving. The U.S. Navy has proposed three sites as OBIAs for SURTASS LFA sonar under these regulations. These areas are: (1) The North American East Coast between 28° N. and 50° N. from west of 40° W. to the 200-m (656-ft) isobath year-round; (2) the Antarctic Convergence Zone, from 30° E. to 80° E to 45° S., from 80° E. to 150° E. to 55° S., from 150° E. to 50° W. to 60° S., from 50° W to 30° E. to 55° S. from October through March; and (3) the Costa Rica Dome, centered at 9° N. and 88° W., year-round. Also, an area included in this document, at the request of NOAA's National Ocean Service, is Penguin Bank off the Island of Kauai, Hawaii, inside the HIHWNMS. In addition, NMFS has established a system for expanding the list of OBIAs. The establishment of OBIAs is not intended to apply to other Navy activities and sonar operations, but has been established in this rule as a mitigation measure to reduce incidental takings by SURTASS LFA sonar.

Monitoring

In order to minimize risks to potentially affected marine mammals that may be present in waters surrounding SURTASS LFA sonar, the Navy will: (1) Conduct visual monitoring from the ship's bridge during daylight hours, (2) use passive SURTASS LFA sonar to listen for vocalizing marine mammals; and (3) use high frequency active sonar (i.e., similar to a commercial fish finder) to monitor/locate/track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

Through observation, acoustic tracking and establishment of shut-down criteria, the Navy will ensure, to the greatest extent practicable, that no marine mammals approach the SURTASS LFA sonar source closely enough to be subjected to potentially harmful sound levels (inside the 180-dB sound field; approximately 1 km (0.54 nm) from the source). The Navy estimates that the probability of detecting a marine mammal approaching the 180-dB sound field of the source array by at least one of these monitoring methods is above 95 percent. However, an effectiveness of 66 percent has been used in the Final EIS take calculations. The Navy's assumption incorporates the 50-percent effectiveness of the HF/M3 sonar (although testing the HF/M3 sonar indicates that it is over 95 percent effective), and an additional conservative 9-percent contribution for visual and 25 percent for passive monitoring. In general, the Navy believes that small, solitary marine mammals would be the most difficult to detect, while large whales and dolphin schools would be much easier to detect.

NMFS has reviewed this Navy proposal and believes that the proposal can be modified to provide additional protection for marine mammals. Because the HF/M3 has the capability to detect marine mammals, and track them, to a distance of 2 km (1.1 nm) from the source, NMFS is requiring the Navy to delay or suspend transmissions whenever a marine mammal is detected by the HF/M3 within the SURTASS LFA safety zone and the 1-km (0.54 nm) buffer zone. Also, NMFS is requiring the Navy to delay transmissions whenever a marine mammal has the potential to receive a calculated SPL of 180 dB within the zone of detectability. This will require, however, both that the marine mammal remains within the zone of detectability between "pings" while the vessel is underway, and that the Navy continue to monitor the SURTASS LFA sonar mitigation and buffer zones between successive pings. Because the time between SURTASS LFA sonar "pings" is 6–15 minutes, and the Navy has already committed to visual and acoustic monitoring for no less than 30 minutes prior to a "ping," monitoring will continue during the

interim period and tracking of marine mammals will continue.

Reporting

During routine operations of SURTASS LFA sonar, technical and environmental data will be collected and recorded. These would include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs.

The LTM Program reporting affected by SURTASS LFA sonar operations, using predictive modeling based on operating locations, dates/times of operations, system characteristics, oceanographic environmental conditions, and animal demographics.

The annual report will also include: (1) Analysis of the effectiveness of the mitigation measures with recommendations for improvements

1. Systematically observe SURTASS LFA sonar training exercises for injured or disabled marine animals. Past correlations between military operations and the stranding of beaked whales, including the Bahamas event, call for closer observation of all sonar operations.

2. Compare the effectiveness of the three forms of mitigation (visual, passive acoustic, HF/M3 sonar).

shorter period of time if contained in LOAs than would be possible if rulemaking were required for each modification. The public would be provided a comparable length of time for commenting on proposed LOA modifications (except when NMFS determines that an emergency exists that impacts on the health and welfare of the marine mammal), whether or not those requirements were contained in

for designating areas of biological importance for marine mammals, proponents must petition NMFS and submit the information described in § 216.191(a). If NMFS makes a preliminary determination that the area is biologically important for marine mammals, NMFS will propose rulemaking to add the recommended area to the list of previously designated areas. Through notice in the **Federal Register**, NMFS will invite information,

system. (There are 8,760 hours in a standard year).

Based on the scientific analyses detailed in the Navy application and further supported by information and data contained in the Navy's Final EIS for SURTASS LFA sonar operations and previously in this document, NMFS concurs with the Navy that the incidental taking of marine mammals resulting from SURTASS LFA sonar operations would result in the take of

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interim period and tracking of marine mammals will continue.

Reporting

During routine operations of SURTASS LFA sonar, technical and environmental data will be collected and recorded. These would include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs.

The LTM Program reporting requirements are two-fold. First, a mission report will be provided to NMFS on a quarterly basis with the report including all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. This is the standard period of time provided for all small take authorizations. Second, the Navy will submit an annual report no later than 90 days prior to expiration of an LOA. These reports are summarized here.

Quarterly Report—On a quarterly basis, the Navy will provide NMFS with a report that includes all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. Specifically, these data will include dates/times of exercises, dates/times of LFA transmissions, locations of vessel, LOA area(s), marine mammal observations (see below for specifics), and records of all delays or suspensions of operations. Marine mammal observations will include animal type and/or species, number of animals sighted, date and time of observations, type of detection (visual, passive acoustic, HF/M3 sonar), bearing from vessel, range from vessel, abnormal behavior (if any), and remarks/narrative (as necessary). Because this period of time is insufficient to allow the Navy to declassify information that might compromise national security, quarterly reports will be classified and the information will not be publically available until the annual report. The Navy will declassify the quarterly information based on national security concerns and provide it in its annual, unclassified report. In the interim, NMFS will use these quarterly reports to monitor the SURTASS LFA sonar activity to ensure compliance with the terms and conditions of the LOA and regulations.

Annual Report—The annual report will provide NMFS with an unclassified summary of the year's quarterly reports and will include the Navy's assessment of whether any taking occurred within the SURTASS LFA mitigation and buffer zones and estimates of the percentage of marine mammal stocks affected by SURTASS LFA sonar operations, using predictive modeling based on operating locations, dates/times of operations, system characteristics, oceanographic environmental conditions, and animal demographics.

The annual report will also include: (1) Analysis of the effectiveness of the mitigation measures with recommendations for improvements where applicable; (2) assessment of any long-term effects from SURTASS LFA sonar operations; and (3) any discernible or estimated cumulative impacts from SURTASS LFA sonar operations.

A notice of availability of the annual report(s) will be published in the **Federal Register** within 30 days of receipt of the annual report.

Comprehensive Report

The Navy is required by these regulations to provide NMFS and the public with a final comprehensive report analyzing the impacts of SURTASS LFA sonar on marine mammal stocks. This report will include an in-depth analysis of all monitoring and research conducted during the 5-year period of these regulations, a scientific assessment of cumulative impacts on marine mammal stocks, and an analysis on the advancement of alternative (passive) technologies as a replacement for LFA sonar. This report will be a key document for NMFS' review and assessment of impacts for any renewal of these regulations.

Research

The Navy will, through a LTM program, provide annual assessments of the potential cumulative impact of SURTASS LFA sonar operations on marine mammals, fund research on impacts of LF sounds on marine mammals, conduct monitoring and reporting to increase knowledge of the species, and coordinate with others on additional research opportunities and activities. This would include cumulative impact analyses of the annually tabulated injuries (if any) and harassments over the next 5 years. The purpose of the LTM program will be to continue scientific data collection once SURTASS LFA sonar is deployed.

While NMFS believes that research conducted to date is sufficient to assess impacts on marine mammals, it believes that it would be prudent to continue research over the course of the period of effectiveness of these regulations. Accordingly, NMFS recommends that the Navy conduct the following research regarding SURTASS LFA sonar over the first 5-year authorization period:

1. Systematically observe SURTASS LFA sonar training exercises for injured or disabled marine animals. Past correlations between military operations and the stranding of beaked whales, including the Bahamas event, call for closer observation of all sonar operations.
2. Compare the effectiveness of the three forms of mitigation (visual, passive acoustic, HF/M3 sonar).
3. Conduct research on the behavioral reactions of whales to sound levels that were not tested during the research phase, specifically between 155 dB and 180 dB. This should be done in a research format rather than in actual training operations.
4. Conduct research on the responses of sperm and beaked whales to LF-sonar signals. These species are believed to be less sensitive to LF-sonar sounds than the species studied prior to the LFS–SRP. However, enough questions exist that these species should be studied during the five-year permit period.
5. Conduct research on the habitat preferences of beaked whales, and plan future SURTASS LFA training exercises to avoid such areas. Avoidance is the most effective mitigation measure.
6. Conduct passive acoustic monitoring using bottom-mounted hydrophones before, during, and after SURTASS LFA sonar operations for the possible silencing of calls of large whales.
7. Continue research with the HF/M3 mitigation sonar. This is the primary means of mitigation, and its efficacy must continue to be demonstrated. ROC curves should be constructed if possible.
8. To determine potential long term, cumulative effects from SURTASS LFA sonar, select a stock of marine mammals that is expected to be regularly exposed to SURTASS LFA sonar and monitor it for population changes throughout the 5-year period. Alternatively, look for long-term trends in the vocalizations of marine mammals that are exposed to SURTASS LFA signals (see item number 6).

LOA Conditions

The regulations have been designed to allow many of the mitigation, monitoring and reporting requirements to be detailed in the LOA, rather than in these regulations. This will provide NMFS the ability to change these protective measures in a prompt manner to changing conditions. While public comment will be provided for substantial modifications to LOA requirements before they are made effective (see RTC MMPAC46), modifications can be implemented in a shorter period of time if contained in LOAs than would be possible if rulemaking were required for each modification. The public would be provided a comparable length of time for commenting on proposed LOA modifications (except when NMFS determines that an emergency exists that impacts on the health and welfare of the marine mammal), whether or not those requirements were contained in regulations. However, for security reasons, locations and times for certain operations may need to be classified and would not be provided to the public in advance.

In the past, NMFS has promulgated regulations for small take authorizations that did not clearly describe LOA conditions. For this activity the following conditions will be in the LOA (in addition to, or in clarification of, those found in these regulations):

(1) Prior to each exercise, the distance from the SURTASS LFA sonar source to the 180-dB isopleth will be determined. That distance will be the established safety zone for that exercise; and

(2) Until research on the effects of resonance and tissue damage on marine mammals from underwater noise has been conducted, NMFS has included two interim operational restrictions to preclude the potential for injury to marine mammals by resonance effects: (a) Establishment of a 1-km (0.5-nm) HF/M3 buffer shutdown zone outside the 180-dB zone and (b) limiting the operating frequency of SURTASS LFA to 330 Hz and below.

These interim operational restrictions will be part of all LOAs issued under this rulemaking and a 30-day public comment period will occur before either one is removed. In order to lift the restriction, the Navy would need to provide empirical and/or documentary evidence that resonance and/or tissue damage from SURTASS LFA sonar transmissions is unlikely to occur in marine mammals at levels less than 190 dB.

Designation of Biologically Important Marine Mammal Areas

This final rule establishes a system for the public to petition NMFS to consider adding an area to the list of biologically important areas for marine mammals. NMFS emphasizes that, in order for designation, an area must be of particular importance for marine mammals as an area for primary feeding, breeding, or migration, and not simply an area occupied by marine mammals. The proposed area should also not be within a previously designated OBIA or other 180-dB exclusion area. In order for NMFS to begin the rulemaking process for designating areas of biological importance for marine mammals, proponents must petition NMFS and submit the information described in § 216.191(a). If NMFS makes a preliminary determination that the area is biologically important for marine mammals, NMFS will propose rulemaking to add the recommended area to the list of previously designated areas. Through notice in the **Federal Register**, NMFS will invite information, suggestions, and comments on the proposal for a period of time not less than 45 days from the date of publication in the **Federal Register**. After review of the comments and information, NMFS will make a final decision on whether to add the recommended area to the list found in § 216.183(d). NMFS will either issue a final rulemaking on the proposal or provide notice in the **Federal Register** of its determination. Proposals for designation of areas will not affect the status of LOAs while the rulemaking is in process. NMFS anticipates that the time between nominating an area and publication of a final determination is likely to take 8–12 months.

Determinations

At present, only two SURTASS LFA sonar systems are available for deployment. According to the Navy, delivery of the third and fourth systems have been postponed until after FY 2007. As a result, under the 5-year window of these regulations, NMFS is authorizing marine mammal harassment takings for only 2 SURTASS LFA sonar systems. An authorization for additional SURTASS LFA sonar systems would require an amendment to these regulations.

With the normal scenario of one vessel operating in the Pacific-Indian Ocean area and one vessel in the Atlantic Ocean-Mediterranean Sea area, there could be up to 9 operations in each of these oceanic areas per year, normally six 30-day active missions using SURTASS LFA sonar (or equivalent shorter missions totaling no more than 432 hours of transmission/vessel/year), and three 30-day passive missions using only SURTASS sonar. The remaining 95 days would probably be spent in port. During a normal 30-day mission, it is estimated there would be two 9-day exercise periods, with up to 20 hours of sonar operations during an exercise day. Based on a 20-percent maximum duty cycle, the system would actually be transmitting for a maximum of 4 hours per day, resulting in 72 hours per 30-day mission and 432 hours per year of active transmission for each system. (There are 8,760 hours in a standard year).

Based on the scientific analyses detailed in the Navy application and further supported by information and data contained in the Navy's Final EIS for SURTASS LFA sonar operations and previously in this document, NMFS concurs with the Navy that the incidental taking of marine mammals resulting from SURTASS LFA sonar operations would result in the take of only small numbers of marine mammals, have no more than a negligible impact on the affected marine mammal stocks or habitats and not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. This determination is supported by the highly effective mitigation measures and interim operating restrictions implemented for all SURTASS LFA sonar operations and the LTM program, including the research to be conducted therein. This includes geographic operation restrictions, mitigation measures to minimize injury to any marine mammals, monitoring and reporting impacts to marine mammals and supplemental research that will result in increased knowledge of marine mammal species, and the potential impacts of LF sound on these species. In addition to ONR-funded marine mammal research (approximately $7M), the Navy intends to spend $1 million annually to fund the LTM program. These latter measures offer the means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing the incidental taking of marine mammals from anthropogenic underwater sound, and evaluating the possible long-term effects from exposing marine mammals to anthropogenic underwater sound.

In summary, the following factors support NMFS' determination that the takings by harassment as a result of the Navy's use of SURTASS LFA sonar would have no more than a negligible impact on any species or stock of marine mammal: (1) The findings of the scientific research program on LF sounds on marine mammals indicated no significant change in biologically important behavior from exposure to sound levels up to 155 dB; (2) the small number of SURTASS LFA sonar systems that would be operating world-wide; (3) the relatively low duty cycle, short mission periods and offshore nature of the SURTASS LFA sonar (where there is lower marine mammal abundance); (4) for convergence zone (CZ) propagation, the characteristics of the acoustic sound path, which deflect the sound below the water depth inhabited by marine

mammals for approximately 75 percent of the distance between the source and the first CZ and between the first CZ and the second CZ (approximately 45 km); (5) that the vessel must be underway while transmitting (in order to keep the receiver array deployed), limiting the duration of exposure for marine mammals to those few minutes when the SURTASS LFA sound energy is moving through that part of the water

For consistency, certain protective measures that were listed under § 216.183 *Prohibitions* have been relocated to § 216.184 *Mitigation*. In new § 216.184, § 216.184(d) has been revised to (1) clarify that operating the SURTASS LFA sonar source at an SPL greater than 180 dB at a distance of 12 nm (22 km) from any coastline is not authorized, and (2) correct the coordinates for the center of the Penguin

vessels, unless under an existing cooperative enforcement agreement with NMFS.

As a result of consultation under section 7 of the ESA, paragraph 216.180(b) has been amended to include the Spitzbergen stock of bowhead whales.

NEPA

On July 30, 1999 (64 FR 41420), the Environmental Protection Agency (EPA)

mammals. Without an authorization under the MMPA, NMFS and the public are unlikely to receive this information. NMFS believes that obtaining this information is extremely important because SURTASS LFA sonar is not the only LF noise source in the world's oceans, and the scientific findings resulting from monitoring and research is likely to be directly applicable to other activities. In addition, this final rule and LOAs issued thereunder,

data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping

areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in § 216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas

mammals for approximately 75 percent of the distance between the source and the first CZ and between the first CZ and the second CZ (approximately 45 km); (5) that the vessel must be underway while transmitting (in order to keep the receiver array deployed), limiting the duration of exposure for marine mammals to those few minutes when the SURTASS LFA sound energy is moving through that part of the water column inhabited by marine mammals; (6) for CZ propagation, the narrow width of the CZ ray path and up to a 1,000-fold decrease in the intensity of the sound immediately outside the ray path, further limiting exposure to marine mammals; and (7) implementation of the mitigation measures and interim operating restrictions that make it unlikely for a marine mammal to be undetected within the 180-dB sound field (and thereby potentially injured) during sonar transmissions. These measures all indicate that while marine mammals will potentially be affected by the SURTASS LFA sonar sounds, these impacts will be short-term and will not affect the survival or reproductive potential for marine mammals on a species or stock basis.

Substantial Changes to the Proposed Rule

The following modifications have been made to the proposed rule.

A paragraph has been added limiting these regulations to a maximum of two SURTASS LFA sonar systems.

The 16 geographic regions have been replaced with a new biogeographic system with 15 biomes and 54 provinces under the 15 biomes.

A paragraph has been added to note that if petitions for OBIAs are received without sufficient information for NMFS to justify proceeding with the petition, NMFS will determine whether the nominated area warrants further study. If it does, NMFS will begin a scientific review of the petition.

A paragraph has been added to prohibit SPLs from exceeding 180 dB within those portions of the Monterey Bay NMS and the Gulf of the Farallones and Cordell Bank NMSs that extend beyond 12 nm (22 km); also, at the Olympic Coast NMS received levels in the NMS should not exceed 180 dB in the area from shore to 23 nm (37.4 km) offshore in the months of December, January, March, and May of each year.

A modification has been made to § 216.183(e) to extend the East Coast OBIA south to 28° N. in order to include the entire southeastern United States critical habitat for the northern right whale.

For consistency, certain protective measures that were listed under § 216.183 *Prohibitions* have been relocated to § 216.184 *Mitigation*. In new § 216.184, § 216.184(d) has been revised to (1) clarify that operating the SURTASS LFA sonar source at an SPL greater than 180 dB at a distance of 12 nm (22 km) from any coastline is not authorized, and (2) correct the coordinates for the center of the Penguin Bank OBIA.

A sentence has been added establishing a "buffer zone" extending an additional 1 km (0.5 nm) beyond the 180-dB safety zone. As soon as a marine mammal (or sea turtle) is detected by the HF/M3 sonar within the buffer zone, the LFA sonar will either be turned off or not turned on.

A sentence has been added requiring the HF/M3 to cease ramp-up once a marine mammal is detected by the HF/M3.

A modification has been made to require monitoring to continue either for 15 minutes after the last transmission of an exercise, or until marine mammal behavior has returned to normal (based upon the observer's determination), whichever is later. If aberrant marine mammal behavior has not been observed before, during, or after the last series of transmissions, observations do not need to continue after 15 minutes.

A paragraph has been added requiring quarterly mission reports with the report including all active-mode SURTASS LFA sonar missions that have been completed 30 days or more prior to the date of the deadline for the report.

A sentence has been added to § 216.186(c) requiring an analysis of passive sonar systems (not previously analyzed) and an assessment of whether any system is feasible as an alternative to SURTASS LFA sonar to be provided at least 240 days prior to expiration of these regulations.

The proposed definition of "single-ping equivalent" has not been implemented and the term "single-ping equivalent" or "SPE" has been replaced by the term "SPL." This change is warranted because the implementation of a 1-km (0.54-nm) buffer zone wherein SURTASS LFA sonar transmissions will be delayed or suspended for marine mammals makes the tracking of marine mammals between "pings" unnecessary.

Paragraph 216.185(c) has been amended by limiting the authority to board U.S. Naval vessels to Federal agencies with jurisdiction, such as NMFS, USFWS and the Coast Guard. As the SURTASS LFA sonar vessel will remain outside 12 nm (22 km) of U.S. coastal waters, state and local agencies do not have jurisdiction to board these vessels, unless under an existing cooperative enforcement agreement with NMFS.

As a result of consultation under section 7 of the ESA, paragraph 216.180(b) has been amended to include the Spitzbergen stock of bowhead whales.

NEPA

On July 30, 1999 (64 FR 41420), the Environmental Protection Agency (EPA) announced receipt of a Draft EIS from the U.S. Navy on the deployment of SURTASS LFA sonar. The public comment period on the Draft EIS ended on October 28, 1999. On February 2, 2001 (65 FR 8788), EPA announced receipt of a Final EIS from the U.S. Navy on the deployment of SURTASS LFA sonar. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of these documents. NMFS has reviewed the Navy's Final EIS and does not have any significant concerns with the findings contained therein. As a result, NMFS hereby adopts the Navy Final EIS as its own as provided by 40 CFR 1506.3 and finds that it is unnecessary to either prepare its own NEPA documentation on the issuance of these regulations nor to recirculate the Navy Final EIS for additional comments. The Navy's Final EIS is available at: *http://www.surtass-lfa-eis.com*.

ESA

On October 4, 1999, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA. NMFS concluded consultation with the Navy on this action on May 30, 2002. The conclusion of that consultation was that operation of the SURTASS LFA sonar system for testing, training and military operations and the issuance by NMFS of a small take authorization for this activity are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. A copy of the Biological Opinion issued as a result of that consultation is available at: *http://www.nmfs.noaa.gov/prot_res/overview/publicat.html*.

Classification

This action has been determined to be significant for purposes of Executive Order 12866. NMFS has determined that this final rule will provide NMFS and the public, through the Navy's monitoring and research program, with information on the SURTASS LFA sonar system's effect on the marine environment, especially on marine

mammals. Without an authorization under the MMPA, NMFS and the public are unlikely to receive this information. NMFS believes that obtaining this information is extremely important because SURTASS LFA sonar is not the only LF noise source in the world's oceans, and the scientific findings resulting from monitoring and research is likely to be directly applicable to other activities. In addition, this final rule, and LOAs issued thereunder, would impose appropriate mitigation measures for protecting marine mammals, sea turtles and other marine life. Without these regulations and LOAs, mitigation measures could not be required of the U.S. Navy. The cost to the Navy to implement the mitigation and monitoring measures cannot be fully determined at this time but these costs would be incurred through implementation of the LTM program that will be required under this final rule. NMFS believes that this cost would be approximately $ 1 million annually.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. As a result no regulatory flexibility analysis was prepared. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impacts of this action.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151, and include applications for LOAs, and reports. Other information requirements in the final rule are not subject to the PRA since they apply only to a single entity and therefore are not contained in a rule of general applicability.

The reporting burden for the approved collections-of-information is estimated to be approximately 120 hours for the annual applications for an LOA, and a total of 120 hours for the quarterly and annual reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 1, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart Q is added to part 216 to read as follows:

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

Sec.

216.180 Specified activity and specified geographical region.
216.181 Effective dates.
216.182 Permissible methods of taking.
216.183 Prohibitions.
216.184 Mitigation.
216.185 Requirements for monitoring.
216.186 Requirements for reporting.
216.187 Applications for Letters of Authorization.
216.188 Letters of Authorization.
216.189 Renewal of Letters of Authorization.
216.190 Modifications to Letters of Authorization.
216.191 Designation of Biologically Important Marine Mammal Areas.

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

§ 216.180 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than two SURTASS LFA sonar systems conducting active sonar operations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in § 216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in § 216.183(d), the incidental taking by harassment may be authorized in the following areas as specified in a Letter of Authorization:

(1) Atlantic Polar Biome:

(i) Boreal Polar Province (1/BPLR)(i.e., LFA sonar 180-dB exclusion zone);

(ii) Atlantic Arctic Province (2/ARCT);

(iii) Atlantic Subarctic Province (3/SARC);

(2) North Atlantic Coastal Biome:

(i) Northeast Atlantic Shelves Province (11/NECS),

(A) North/Irish Sea Subprovince,

(B) English Channel Subprovince,

(C) Southern Outer Shelf Subprovince,

(D) Northern Outer Shelf Subprovince, and

(E) Baltic Subprovince; and

(ii) Northwest Atlantic Shelves Province (15/NWCS),

(A) Newfoundland/Nova Scotia Shelf Subprovince,

(B) Gulf of St. Lawrence Coastal Subprovince,

(C) Gulf of Maine/Bay of Fundy Coastal Subprovince,

(D) Georges Bank/New York Bight Coastal Subprovince,

(E) Middle Atlantic Bight Coastal Subprovince,

(F) South Atlantic Bight Coastal Subprovince;

(3) South Atlantic Coastal Biome:

(i) Benguela Current Coastal Province (22/BENG);

(ii) Brazil Current Coastal Province (20/BRAZ);

(iii) Eastern (Canary) Coastal Province (12/CNRY);

(iv) Southwest Atlantic Shelves Province (21/FKLD);

(v) Guianas Coastal Province (14/GUIA);

(vi) Guinea Current Coastal Province (13/GUIN),

(A) Guiana Coastal Subprovince, and

(B) Central African Coastal Subprovince;

(4) Atlantic Westerly Winds Biome:

(i) Gulf Stream Province (5/GFST);

(ii) North Atlantic Drift Province (4/NADR);

(iii) North Atlantic Subtropical Gyral East Province (18/NASTE); and

(iv) North Atlantic Subtropical Gyral West Province (6/NASTW);

(5) Atlantic Trade Wind Biome:

(i) Caribbean Province (17/CARB);

(A) Gulf of Mexico Subprovince;

(B) Caribbean Sea Subprovince;

(ii) Eastern Tropical Atlantic Province (9/ETRA);

(iii) North Atlantic Tropical Gyral Province (7/NATR);

(iv) South Atlantic Gyral Province (19/SATL);

(A) Bering Sea Subprovince;

(B) Okhotsk Sea Subprovince;

(ii) Reserved;

(12) Pacific Trade Wind Biome:

(i) Archipelagic Deep Basins Province (64/ARCH);

(ii) North Pacific Tropical Gyre West Province (56/NPTGW);

(iii) North Pacific Tropical Gyre East Province (60/NPTGE);

(iv) Pacific Equatorial Divergence Province (63/PEQD);

toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), beluga whale (*Delphinapterus leucas*), *Stenella spp. Lagenorhynchus spp.*, *Cephalorhynchus spp.* melon-headed whale (*Peponocephala spp.*), beaked

the availability of marine mammals for subsistence uses.

§ 216.183 Prohibitions.

Notwithstanding takings authorized by § 216.180 and by a Letter of Authorization issued under §§ 216.106 and 216.188, no person in connection with the activities described in § 216.180 shall:

(a) Take any marine mammal not specified in § 216.180(b);

§ 216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§ 216.106 and 216.188 must be implemented.

(a) Through monitoring described under § 216.185, the Holder of a Letter of Authorization will ensure, to the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.

(d) The HF/M3 source will not increase its sound pressure level once a marine mammal is detected; ramp-up may proceed once marine mammals are no longer detected.

(e) The Holder of a Letter of

(iv) North Atlantic Subtropical Gyral West Province (6/NASTW);
(5) Atlantic Trade Wind Biome:
(i) Caribbean Province (17/CARB);
(A) Gulf of Mexico Subprovince;
(B) Caribbean Sea Subprovince;
(ii) Eastern Tropical Atlantic Province (9/ETRA);
(iii) North Atlantic Tropical Gyral Province (7/NATR);
(iv) South Atlantic Gyral Province (10/SATL);
(v) Western Tropical Atlantic Province (8/WTRA);
(6) Mediterranean/Black Sea Biome:
(i) Mediterranean Sea Province (16A/MEDI);
(ii) Black Sea Province (16B/BLSE);
(7) Indian Ocean Coastal Biome:
(i) Australia/Indonesia Coastal Province (37/AUSW);
(ii) Eastern India Coastal Province (35/INDE);
(iii) Northwestern Arabian Upwelling Province (34/ARAB);
(iv) Eastern Africa Coastal Province (32/EAFR);
(v) Western India Coastal Province (36/INDW);
(vi) Red Sea, Persian Gulf Province (33/REDS);
(8) Indian Ocean Trade Wind Biome:
(i) Indian South Subtropical Gyre Province (31/ISSG);
(ii) Indian Monsoon Gyres Province (30/MONS);
(9) North Pacific Coastal Biome:
(i) Alaska Downwelling Coastal Province (65/ALSK),
(A) Canadian/Alaskan Coastal Subprovince,
(B) Aleutian Stream Coastal Subprovince,
(ii) California Current Province (66/CALC),
(A) Oregon-British Columbia Coastal Subprovince,
(B) Point Conception/Cape Mendicino Coastal Subprovince,
(C) Southern California Bight Subprovince, and
(D) Baja California Subprovince;
(iii) Central American Coastal Province (67/CAMR);
(iv) China Sea Coastal Province (69/CHIN);
(10) South Pacific Coastal Biome:
(i) East Australian Coastal Province (71/AUSE);
(ii) Humboldt Current Coastal Province (68/HUMB);
(A) Chilean Coastal Subprovince and
(B) Peruvian Coastal Subprovince;
(iii) New Zealand Coastal Province (72/NEWZ);
(iv) Sunda/Arafura Shelves Province (70/SUND);
(11) Pacific Polar Biome:
(i) North Pacific Epicontinental Sea Province (50/BERS);
(A) Bering Sea Subprovince;
(B) Okhotsk Sea Subprovince;
(ii) Reserved;
(12) Pacific Trade Wind Biome:
(i) Archipelagic Deep Basins Province (64/ARCH);
(ii) North Pacific Tropical Gyre West Province (56/NPTGW);
(iii) North Pacific Tropical Gyre East Province (60/NPTGE);
(iv) Pacific Equatorial Divergence Province (62/PEQD);
(v) North Pacific Equatorial Countercurrent Province (61/PNEC);
(vi) South Pacific Subtropical Gyre Province (59/SPGS);
(vii) Western Pacific Warm Pool Province (63/WARM);
(13) Pacific Westerly Winds Biome:
(i) Kuroshio Current Province (53/KURO);
(ii) North Pacific Transition Zone Province (54/NPPF);
(iii) Pacific Subarctic Gyres (East) Province (51/PSAGE);
(iv) Pacific Subarctic Gyres (West) Province (52/PSAGW);
(14) Antarctic Westerly Winds Biome:
(i) Subantarctic Water Ring Province (81/SANT),
(A) Atlantic Subantarctic Ring Subprovince;
(B) Indian Ocean Subantarctic Ring Subprovince;
(C) Pacific Ocean Subantarctic Water Ring Subprovince;
(ii) Subtropical Convergence Province (80/SSTC),
(A) Atlantic South Subtropical Convergence Subprovince;
(B) Indian Ocean South Subtropical Convergence Subprovince;
(C) Pacific Ocean South Subtropical Convergence Subprovince;
(iii) Tasman Sea Province (58/TASM);
(15) Antarctic Polar Biome:
(SURTASS LFA sonar exclusion zone);
(i) Antarctic Province (82/ANTA)
(ii) Austral Polar Province (83/APLR).

(b) The incidental take by Level A and Level B harassment of marine mammals under the activity identified in this section is limited to the following species and species groups:

(1) Mysticete whales—blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), northern right whale (*Eubalaena glacialis*), southern right whale (*Eubalaena australis*), pygmy right whale (*Capera marginata*), bowhead whale (*Balaena mysticetus*), and gray whales (*Eschrichtius robustus*).

(2) Odontocete whales—Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), beluga whale (*Delphinapterus leucas*), *Stenella spp. Lagenorhynchus spp.*, *Cephalorhynchus spp.* melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp., Hyperoodon spp., Mesoplodon spp.*), Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(3) Pinnipeds—harbor seals (*Phoca vitulina*), spotted seals (*P. largha*), ribbon seals (*P. fasciata*), gray seals (*Halichoerus grypus*), hooded seal (*Cystophora cristata*), elephant seals (*Mirounga angustirostris* and *M. leonina*). Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*); southern fur seals (*Arctocephalus spp.*), Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarctos hookeri*), and South American sea lions (*Otaria flavescens*).

§ 216.181 Effective dates.

Regulations in this subpart are effective from August 15, 2002 through August 15, 2007.

§ 216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and the availability of marine mammals for subsistence uses.

§ 216.183 Prohibitions.

Notwithstanding takings authorized by § 216.180 and by a Letter of Authorization issued under §§ 216.106 and 216.188, no person in connection with the activities described in § 216.180 shall:

(a) Take any marine mammal not specified in § 216.180(b);

(b) Take any marine mammal specified in § 216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take any marine mammal by receiving a sound pressure level greater than 180 dB while operating under a Letter of Authorization in any geographic area for which a Letter of Authorization has not been issued;

(d) Take a marine mammal specified in § 216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or any Letter of Authorization issued under §§ 216.106 and 216.188.

§ 216.184 Mitigation.

The activity identified in § 216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§ 216.106 and 216.188 must be implemented.

(a) Through monitoring described under § 216.185, the Holder of a Letter of Authorization will ensure, to the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

(b) If a marine mammal is detected within the area subjected to sound pressure levels of 180 dB or greater (safety zone) or within the 1 km (0.5 nm) (buffer) zone extending beyond the 180-dB safety zone, SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the safety and buffer zones; and

(2) There is no further detection of any marine mammal within the safety and buffer zones as determined by the visual and/or passive or active acoustic monitoring described in § 216.185.

(c) The high-frequency marine mammal monitoring sonar (HF/M3) described in § 216.185 will be ramped-up slowly to operating levels over a period of no less than 5 minutes:

(1) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.

(d) The HF/M3 source will not increase its sound pressure level once a marine mammal is detected; ramp-up may proceed once marine mammals are no longer detected.

(e) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar while under a Letter of Authorization, such that the SURTASS LFA sonar sound field exceeds 180 dB (re 1 μPa(rms)):

(1) At a distance of 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(2) Within any offshore area that has been designated as biologically important for marine mammals under § 216.183(f), during the biologically important season for that particular area;

(3) Within the offshore boundaries that extend beyond 12 nm (22 km) of the following National Marine Sanctuaries:

(i) Monterey Bay,

(ii) Gulf of the Farallones, and

(iii) Cordell Bank;

(4) Within 23 nm (37.4 km) during the months of December, January, March, and May of each year in the Olympic Coast National Marine Sanctuary.

(f) The following areas have been designated by NMFS as offshore areas of critical biological importance for marine mammals (by season if appropriate):

Name of area	Location of area	Months of importance
(1) 200-m isobath North American East Coast	From 28° N. to 50° N. west of 40° W	Year-Round.
(2) Antarctic Convergence Zone	30° E. to 80° E to 45° S. 80° E. to 150° E. to 55° S. 150° E. to 50° W. to 60° S. 50° W to 30° E. to 50° S.	October 1 through March 31.
(3) Costa Rica Dome	Centered at 9° N. and 88° W	Year-Round.
(4) Penguin Bank	Centered at 21° N. and 157° 30'W	November 1 through May 1.

§ 216.185 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 must:

(1) Conduct visual monitoring from the ship's bridge during all daylight hours;

(2) Use low frequency passive SURTASS LFA sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise, or, if marine mammals are exhibiting unusual behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations;

(c) Holders of Letters of Authorization for activities described in § 216.180 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization must conduct all monitoring and research required under the Letter of Authorization.

§ 216.186 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each

quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of the vessel during the mission;

(2) Specific areas where active sonar was used and the number of hours active sonar was used in each area;

(3) Number of hours during which active sonar was used that overlapped with areas where marine mammals were potentially affected in each specified geographic region for the 12-month period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service must receive the results of the monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in § 216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under § 216.185, which have been reviewed by NMFS and determined to be acceptable;

operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.180(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 may be substantially modified

requesting an area be added to the list of biologically important areas in § 216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammals within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration;

(d) If a petition is received without sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

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quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of the vessel during the mission;

(2) Information on sonar transmissions as detailed in the Letter of Authorization; and

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, NMFS, no later than 90 days prior to expiration of a Letter of Authorization. This report must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an analysis of new passive technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

§ 216.187 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in § 216.180 must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application for an initial or a renewal of a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the specified geographical region where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each specified geographical region;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage of marine mammal species/stocks potentially affected in each specified geographic region for the 12-month period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, issue a Letter of Authorization:

§ 216.188 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year, but may be renewed annually subject to annual renewal conditions in § 216.189.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity specified in § 216.180 as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.189 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.188 for the activity identified in § 216.180 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.187 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in § 216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under § 216.185, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.184 and 216.185 and the Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the number of marine mammals taken by the activity continues to be small, that the total number of marine mammals taken by the activity specified in § 216.180, as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.188 indicates that a substantial modification to the described work, mitigation or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the list of areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.190 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 and subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.189, without modification, except for the period of validity and a listing of planned

operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.180(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

§ 216.191 Designation of Biologically Important Marine Mammal Areas.

(a) Biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by the public.

(b) In order for the National Marine Fisheries Service to designate offshore areas of biological importance for marine mammals under this rule, proponents must petition NMFS by requesting an area be added to the list of biologically important areas in § 216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammals within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for either primary feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration;

(d) If a petition is received without sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an area is biologically important for marine mammals and is not located within a previously designated area, NMFS will propose to add the area to § 216.184(f) and provide a public comment period of at least 45 days from the date of publication in the **Federal Register**.

(2) The National Marine Fisheries Service will publish its final determination in the **Federal Register**.

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Part III

Department of Education

Office of Special Education and Rehabilitative Services; Applications for New Awards for Fiscal Year (FY) 2002; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Applications for New Awards for Fiscal Year (FY) 2002

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

Page Limit: If you are an applicant, Part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

Research and Innovation to Improve Services and Results for Children with Disabilities—CFDA 84.324, Personnel Preparation to Improve Services and Results for Children with Disabilities—CFDA 84.325, and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326 are included in the pilot project. If you are an applicant for a grant under any of the

between Paper and Electronic Applications) in the application packages.

Research and Innovation to Improve Services and Results for Children with Disabilities [CFDA Number 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

experience the effects of transition as they move into an unfamiliar service delivery system. In turn, this transition process may affect early school success.

The use of scientifically based practices during transitions will boost cognitive ability and early literacy skills and encourage early identification and prevention of reading difficulties. These practices will also improve the ability of the States to meet the statutory and

and improved outcomes for young children with disabilities.

(f) Making it easier for researchers who promote the use of research findings and products to communicate and collaborate with one another.

(g) Improving linkages among researchers and providers to facilitate the exchange of knowledge related to or generated by the Center.

(h) Developing, validating, and disseminating—

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Applications for New Awards for Fiscal Year (FY) 2002

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2002 competitions under three programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act (IDEA), as amended. The three programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (three priorities); (2) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (five priorities); and (3) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (four priorities).

Please note that significant dates for the availability and submission of applications, as well as important fiscal information, are listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the rulemaking procedures in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in project activities qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application an applicant must address only one absolute priority in this notice.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

Page Limit: If you are an applicant, Part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Project Period: Each project funded in this notice is for a project period of up to 60 months.

Instructions for Transmittal of Applications

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The three programs in this announcement: Research and Innovation to Improve Services and Results for Children with Disabilities—CFDA 84.324, Personnel Preparation to Improve Services and Results for Children with Disabilities—CFDA 84.325, and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326 are included in the pilot project. If you are an applicant for a grant under any of the three programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for each of the three programs included in this notice at: *http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application packages.

Research and Innovation to Improve Services and Results for Children with Disabilities [CFDA Number 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for each priority are included in the application package for that competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority (1)—Research and Training Center on Scientifically Based Practices for Successful Early Childhood Transitions (84.324V)

Background

Early school success for young children with disabilities depends on the identification and implementation of scientifically based practices in programs supported by parts B and C of the IDEA. Effective transition services that help young children with disabilities and their families move from one service delivery system to another, such as childcare, healthcare, and early education, can enhance children's development and accomplishments at each subsequent level.

Effective preparation for kindergarten and early school holds promise of success for all children, including young children with disabilities. When children reach their third birthday, they transfer out of early intervention services under part C and into either preschool special education services or into other community-based services or programs. Young children with disabilities and their families experience the effects of transition as they move into an unfamiliar service delivery system. In turn, this transition process may affect early school success.

The use of scientifically based practices during transitions will boost cognitive ability and early literacy skills and encourage early identification and prevention of reading difficulties. These practices will also improve the ability of the States to meet the statutory and regulatory requirements for a smooth and effective transition.

Priority

As authorized under sections 672 and 673 of IDEA, the Assistant Secretary establishes an absolute priority for an Early Childhood Transition Research and Training Center to build on the existing research of successful early intervention and early childhood practices. The Center must identify, validate, and disseminate the most successful practices available for young children, ages birth through five, with disabilities and their families as the children grow and transition from early intervention services under part C into preschool services under part B, and eventually out of preschool special education programs. The Center must provide the conceptual framework and research for practices for implementing IDEA transition requirements.

The Center's activities must include, but are not limited to, the following:

(a) Implementing a research plan to identify and validate strategies that will maximize learning and development as children transition out of (1) early intervention services delivered under IDEA—part C (ages birth through two) and out of (2) preschool services delivered under IDEA—part B (ages three through five).

(b) Studying the multiple factors—including cultural factors—that affect children's transition experiences as these influences relate to later learning success. These factors must include the impact of family, school systems, and community resources.

(c) Identifying early school success predictors that can be documented during transition planning and addressed through IDEA services.

(d) Examining the interaction between young children's development and how service providers and teachers determine children's readiness in all areas of a child's development.

(e) Measuring the effectiveness of transition planning, with regard to the composition of teams that make decisions, types of transition planning services, settings where transition planning takes place, funding sources, and improved outcomes for young children with disabilities.

(f) Making it easier for researchers who promote the use of research findings and products to communicate and collaborate with one another.

(g) Improving linkages among researchers and providers to facilitate the exchange of knowledge related to or generated by the Center.

(h) Developing, validating, and disseminating—

(1) A curriculum for training early childhood transition professionals based on the knowledge gained from the Center's research activities; and

(2) Reports and documents on research findings and products from the Center in formats that are useful for specific audiences, including families, administrators, policymakers, early interventionists, related service personnel, teachers, and individuals with disabilities (see section 661(f)(2)(B) of IDEA).

(i) In planning and implementing its research and training, working together with part C lead agencies; preschool programs; parent training and information centers; community parent resource centers; professional and advocacy organizations; IHEs, including Historically Black Colleges and Universities; agencies and organizations involved in delivery of services to minority infants and toddlers with disabilities, especially those who are African American, Native American, Hispanic, and Asian American; and other agencies and organizations involved in providing services to infants and toddlers with disabilities and their families.

(j) Maintaining a Web site with current information on research findings.

(k) Disseminating findings through collaborative efforts with the Early Childhood Technical Assistance Center and other OSEP-funded projects.

(l) Conducting national and regional meetings, in collaboration with SEAs and LEAs, to assist providers in meeting the needs of young children entering and exiting IDEA service delivery systems.

(m) Using external and internal evaluators to measure and report to OSEP on the progress of the Center.

(n) Meeting with the OSEP project officer and appropriate OSEP staff within the first three months of the project to review the strategic work plan and the approach to dissemination.

(o) Funding each year as research assistants at least three graduate students who have concentrations in early childhood development and early childhood policy issues.

Other Requirements

The Center must also—

(a) Establish, maintain, and meet at least annually with an advisory committee consisting of at least three members from part C lead agencies; three members from State agency preschool programs, one of whom is an early childhood transition coordinator; three parents of young children, ages [illegible] with disabilities; an

systems can be particularly problematic for families of infants, toddlers, and preschoolers with disabilities. Families whose young children are in need of diagnostic services often experience lengthy periods of searching for the appropriate agency or agencies to provide these services. Timely referral to the LEA or part C Lead Agency (LA) can prevent these delays.

IDEA requires SEAs, LEAs, and LAs

minority infants, toddlers, and preschoolers with disabilities, including those who are African American, Native American, Hispanic, and Asian American; and other agencies and organizations involved in providing services to infants, toddlers, and preschoolers with disabilities and their families.

(f) Consult with SEAs and LAs in which either the States' self-assessments

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

risk of, emotional disturbance, as well as students within other disability categories whose behavioral or emotional problems indicate a need for additional interventions. The focus includes students with "acting out" problems, as well as students who exhibit internalizing problems.

The Center must carry out the following activities:

(1) *Synthesize Research:* Conduct a literature review on the nature and

During the fourth or fifth year of the project, the Center must plan for and implement a national conference or other culminating event to foster the dissemination of findings and gauge reactions from affected parties.

(6) *Budget for Trips:* The Center must budget for three trips to Washington, DC during the first year, and two trips to Washington, DC each subsequent year. One trip would be for the purpose of meeting with the OSEP project officer

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Other Requirements

The Center must also—

(a) Establish, maintain, and meet at least annually with an advisory committee consisting of at least three members from part C lead agencies; three members from State agency preschool programs, one of whom is an early childhood transition coordinator; three parents of young children, ages birth through five, with disabilities; an early childhood service provider; and a certified kindergarten or regular education teacher; and

(b) In addition to the two-day Project Directors' Meeting listed in the General Requirements section of this notice, budget for an additional two-day trip annually to Washington, DC. The purposes of this additional trip are (1) to attend an additional Project Directors' meeting; and (2) to meet and collaborate with the OSEP project officer and other funded projects for purposes of cross-project collaboration and information exchange.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority (2)—Center on Early Identification, Child Find, and Referral of Young Children with Disabilities (84.324G)

Background

Locating and accessing appropriate services within various early childhood systems can be particularly problematic for families of infants, toddlers, and preschoolers with disabilities. Families whose young children are in need of diagnostic services often experience lengthy periods of searching for the appropriate agency or agencies to provide these services. Timely referral to the LEA or part C Lead Agency (LA) can prevent these delays.

IDEA requires SEAs, LEAs, and LAs to carry out early identification, child find, and referral of infants, toddlers, and preschoolers with disabilities for evaluation and the provision of services under section 619 of Part B of IDEA, and under part C of IDEA.

Priority

As authorized under sections 672 and 673 of IDEA, the Assistant Secretary establishes a Center to identify and promote the use of effective models for early identification, child find, and referral for infants, toddlers, and young children with disabilities and their families.

The Center must carry out the following activities:

(a)(1) Conduct a comprehensive review and synthesis of the research literature on early identification, child find, and referral of infants, toddlers, and preschoolers with disabilities and those who are suspected of having disabilities; and (2) identify and investigate gaps in knowledge.

(b) Use the review and synthesis to determine the components of scientifically based models of early identification, child find, and referral designed to be implemented by SEAs, LAs, and their agency partners.

(c) Develop, validate, and disseminate effective scientifically based training units for use by SEAs, LAs, and their agency partners and assist these agencies in the implementation and evaluation of the training units. These units must be appropriate for implementation in all communities, including those with families representing diverse cultures.

(d) Through mechanisms including, but not limited to, an accessible Web site, broadly disseminate the training units and Center's findings on scientifically based practices in early identification, child find, and referral.

(e) In planning, developing, and implementing its research and training activities, work together with SEAs; LAs; parent training and information centers; community parent resource centers; professional and advocacy organizations; IHEs, including Historically Black Colleges and Universities; agencies and organizations involved in delivery of services to minority infants, toddlers, and preschoolers with disabilities, including those who are African American, Native American, Hispanic, and Asian American; and other agencies and organizations involved in providing services to infants, toddlers, and preschoolers with disabilities and their families.

(f) Consult with SEAs and LAs in which either the States' self-assessments or OSEP monitoring of the States' systems have identified early identification, child find, and referral as areas in need of improvement.

(g) Meet with the OSEP project officer in the first three months of the project to review the Center's proposed plans for (1) the literature review and (2) the development and implementation of the training units.

(h) Prepare the Center's findings and products in formats that are useful for specific audiences, including families, administrators, early interventionists, related service personnel, teachers, and individuals with disabilities (see section 661(f)(2)(B) of IDEA).

(i) Evaluate the effectiveness and impact of the training units and their implementation.

In carrying out these activities, the Center must examine the following with regard to identification, child find, and referral:

(a) The major characteristics of model programs.

(b) The roles and responsibilities of SEAs, LAs, and their respective partner agencies, such as the States' Departments of Health and Departments of Human Services.

(c) Scientifically based practices for improving the quality, acquisition, and implementation of the major components of these models by agencies responsible for these activities.

(d) Implementation of scientifically based training units with particular attention to areas of high density population, rural areas, and areas of high poverty.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority (3)—Center on Students Requiring Intensive Social, Emotional, and Behavioral Interventions (84.324Q)

Background

In recent years, educators and mental health practitioners have fostered schoolwide efforts that promote for all children good behavior and adherence to a system of rules in schools. Educators and practitioners have been especially supportive of a model that typically incorporates three stages of prevention and intervention:

(1) The first stage, often called "Primary Prevention";

(2) The second stage, typically termed "Secondary Prevention" or "At-Risk Intervention,"; and

(3) The third stage, sometimes called "Tertiary" or "Intensive Intervention."

The third stage addresses the needs of children who have failed to benefit from early intervention or whose unacceptable behavior, lack of maturation, or other weaknesses in social and emotional development indicate a serious deficit.

All who support this increasingly popular model agree that each stage is a necessary component, and a large number of OSEP-funded projects have targeted this tripartite approach. Nevertheless, research continues to document serious limitations in the relative effectiveness of interventions directed to the third group of children, those who require more intensive interventions and services.

Priority

As authorized under section 672 of IDEA, the Assistant Secretary establishes an absolute priority to support a Center to study and disseminate information on effective practices to improve outcomes for students with severe social, emotional, and behavioral deficits. The Center's focus encompasses students with, or at risk of, emotional disturbance, as well as students within other disability categories whose behavioral or emotional problems indicate a need for additional interventions. The focus includes students with "acting out" problems, as well as students who exhibit internalizing problems.

The Center must carry out the following activities:

(1) *Synthesize Research:* Conduct a literature review on the nature and efficacy of specific practices that are used in schools and other settings to improve results for students with social, emotional, and behavioral deficits.

(2) *Conduct Longitudinal Research:* Implement a quantitative and qualitative examination of the effectiveness of interventions for these students in three to five school districts, selected to represent a diversity of conditions, practices, and settings and to produce reliable findings that can be generalized to other settings.

(3) *Disseminate Findings:* Beginning in the second year of funding, implement a plan to provide usable information in suitable formats to other researchers and practitioners. While initially using information based on the literature review, the Center must eventually include information based on findings from the Center's research.

(4) *Establish and Convene an Advisory Group:* Establish and convene an advisory group to help support, guide, and define Center activities. The advisory group must meet at least once a year in Washington, DC. The group must include members of families with children that have disabilities, and representatives of the medical community, educational agencies, mental health agencies, and other agencies that identify and serve children with social, emotional and behavioral deficits.

An applicant should provide evidence of agency support for its proposal but refrain from securing specific commitments to serve on the advisory group until after the award has been made.

(5) *Research Findings and Products:* Produce research findings and products in formats that are useful and accessible for specific audiences including: professional development personnel; parents and other family members of affected children; local, State, and national policymakers; and the broad range of service providers. The Center must collaborate and coordinate dissemination activities with other OSEP-funded research and dissemination Centers that address the emotional and behavioral needs of children.

During the fourth or fifth year of the project, the Center must plan for and implement a national conference or other culminating event to foster the dissemination of findings and gauge reactions from affected parties.

(6) *Budget for Trips:* The Center must budget for three trips to Washington, DC during the first year, and two trips to Washington, DC each subsequent year. One trip would be for the purpose of meeting with the OSEP project officer during the first month of the project award to review the design of the project. A second annual trip is intended to meet the "General Requirements" section of this notice. The third annual trip would be for the purpose of meeting and collaborating with the OSEP project officer on matters other than the design of the project.

Cooperative Agreement

During the first three months of the award, the Center must work with the OSEP project officer to develop a strategic plan that will serve as the centerpiece of the cooperative agreement. The agreement will provide the foundation for all subsequent work in this project. Cooperative agreements are grants in which the Government has a direct interest and works closely with the grantee to ensure that the intentions and requirements of the priority are carried out.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities [CFDA 84.325]

Purpose of Program: The purposes of this program are to (1) help address

The research literature, including the National Academy of Sciences (NAS) report, "Educating Children with Autism" (2001), recommends strategies to enhance these children's development and improve their educational results. The report identifies the need for additional training for educators and other personnel responsible for planning and providing special education, related

(d) Provide site-based training. In providing this training, the Center must—

(1) Identify sites that are—

(A) Distributed across the country in order to reduce both travel time and costs for trainees,

(B) Effectively implementing the scientifically-based methods and practices that have been verified by the Center, and

(C) Willing to provide trainees

Maximum Award

Note: The maximum award amount of $1,000,000 is exclusive of any matching funds provided by SEAs, LEAs, or agencies for site-based professional development.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 2—Center to Guide

preschoolers with disabilities. The purpose of this review is to develop a profile of current training programs for all types of personnel who serve infants, toddlers, and preschoolers with disabilities. The profile must provide detailed descriptions of training programs at the institutional, State, and national levels. The review must include, at a minimum, available information on—

(ii) The extent to which identified discrepancies in supply and demand vary by personnel type and locality; and

(iii) Factors that influence discrepancies in supply and demand, such as salaries and wages, general economic climate, population demographics, licensure and certification standards and requirements, and proximity to relevant training programs.

(b) Identify critical gaps in current

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Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities [CFDA 84.325]

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education to work with children with disabilities; and (2) ensure that those personnel have the skills and knowledge derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Eligible Applicants: Eligible applicants for Absolute Priorities 1, 4 and 5 are: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations. Eligible applicants for Absolute Priority 2 are IHEs. Eligible applicants for Absolute Priority 3 are nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The regulations for this program in 34 CFR part 304; and (c) The selection criteria chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for each priority are included in the application package for that competition.

Priorities

Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—Center for Educating and Providing Early Intervention Services to Children with Autism and Autistic Spectrum Disorders (84.325g)

Background

Increasing numbers of children have been diagnosed with autism and autistic spectrum disorders (ASD), such as autistic disorder, Asperger's disorder, atypical autism, and pervasive developmental disorder (PDD). These children are receiving special education and related services under part B of IDEA and early intervention services under part C of IDEA.

The research literature, including the National Academy of Sciences (NAS) report, "Educating Children with Autism" (2001), recommends strategies to enhance these children's development and improve their educational results. The report identifies the need for additional training for educators and other personnel responsible for planning and providing special education, related services, and early intervention services. A copy of the report can be obtained by writing to NAS at the following address: 2001 Wisconsin Avenue, NW., Washington, DC 20007. The report is also available at the following Web site: *http://www.nap.edu*

In developing this priority, the Assistant Secretary has incorporated several elements that the Assistant Secretary believes are necessary for a Center to be effective in addressing the educational and early intervention needs of children with autism and ASD. These elements include—

(1) Multiple approaches to improving education and early intervention for children with autism and ASD;

(2) Site-based professional development;

(3) Professional development that uses scientifically based methods to maximize the likelihood that the intended results will be achieved;

(4) Follow-up professional development provided in the work settings of the training participants; and

(5) Training provided to teams.

Priority

The Center must do the following:

(a)(1) Synthesize data on methods and practices related to special education and early intervention for children with autism and ASD. (2) Using information in the NAS report "Educating Children with Autism" and other sources, identify an array of methods and practices that may improve education and early intervention for these children.

(b) Verify that scientifically based research shows that the methods and practices in paragraph (a) are effective. This verification may be done by a representative panel of individuals knowledgeable about scientific method and education and about early intervention for children with autism and ASD, or by other methods.

(c) In carrying out activities in (a) and (b) the Center should coordinate with the Center for Children with Other Health Impairments, Tramatic Brain Injury, Orthopedic Impairments, and Developmental Delays Who Have Neurologically Based Disabilities.

(d) Provide site-based training. In providing this training, the Center must—

(1) Identify sites that are—

(A) Distributed across the country in order to reduce both travel time and costs for trainees,

(B) Effectively implementing the scientifically-based methods and practices that have been verified by the Center, and

(C) Willing to provide trainees opportunities to see and engage in the identified methods and practices in authentic settings; and

(2) Develop an outreach program to identify, select, and enroll a variety of trainees. Trainees must include representatives from lead agencies, LEAs, SEAs, early intervention personnel, related service personnel, parent training and information projects, Regional Resource Centers, parents, special and regular educators, parent advocacy groups, and other groups and agencies. Whenever practical, trainees should attend the training in teams.

(e) Provide a range of other training opportunities, through activities such as regional workshops, targeted conferences, summer programs, dissemination of training materials that the Center has developed, and other similar activities.

(f) Provide follow-up training and technical assistance to all trainees who desire to develop and implement practices and methods to improve programs in their home communities.

(g) Include an evaluation component based on clear, measurable performance and outcome goals, if possible, clearly linked to results.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Maximum Award

Note: The maximum award amount of $1,000,000 is exclusive of any matching funds provided by SEAs, LEAs, or agencies for site-based professional development.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 2—Center to Guide Personnel Preparation Policy and Practice in Early Intervention and Preschool Education (Birth to Five)(84.325J)

Background

The cornerstone of successful implementation of the IDEA Amendments of 1997 is the assurance that infants, toddlers, and preschoolers with disabilities are served by an adequate number of highly qualified personnel.

Priority

The Assistant Secretary establishes an absolute priority to support a Center to guide the development of policy and practice for personnel preparation in early intervention and preschool education. The Center is to do this by examining issues and recommending actions to ensure an adequate supply of well-qualified personnel to serve infants, toddlers, and preschoolers with disabilities. These personnel include early intervention service providers, special educators, speech-language pathologists, audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, nutritionists, family therapists, orientation and mobility specialists, pediatricians and other physicians, and paraprofessionals.

The Center must do the following:

(a) Conduct a comprehensive review of literature in the following subject areas:

(1) Licensure and certification standards and requirements, including alternative certification options, for personnel serving infants, toddlers, and preschoolers with disabilities. This review must include, at a minimum, available information across all States and for each type of personnel, on —

(i) Motivations for changes in, and resulting modifications to, licensure standards and requirements; and

(ii) Intended versus actual impacts of these standards and requirements, and changes to these standards and requirements, on personnel quantity and quality.

(2) Preservice preparation for personnel to serve infants, toddlers, and preschoolers with disabilities. The purpose of this review is to develop a profile of current training programs for all types of personnel who serve infants, toddlers, and preschoolers with disabilities. The profile must provide detailed descriptions of training programs at the institutional, State, and national levels. The review must include, at a minimum, available information on—

(i) Mechanisms for entering programs, such as admissions criteria and recruitment strategies;

(ii) Features of programs, such as program level (associate, undergraduate, graduate), faculty-trainee ratios, the ratios of tenure-track faculty to adjunct faculty, internal and external sources of support (including State support and OSEP and other Federal support), training emphasis (for example, multi-age program, multi-age program with early childhood focus, early-intervention program, preschool program), and program history;

(iii) Content features of programs, such as alignment with the principles and requirements of IDEA, alignment with current licensure and certification standards, the extent to which program content reflects research-based knowledge and practice, practicum opportunities, cross-disciplinary arrangements with other relevant programs, and collaborative relationships with service providers for infants, toddlers, and young children with disabilities to provide employment support;

(iv) Demographic characteristics of students, such as age, prior training and experience, racial and cultural diversity, and disability;

(v) Indicators of program quality assurance, such as procedures for assessing program quality (including on-the-job performance of students completing the program); and

(vi) Program outcomes, such as (A) the number of students completing the program; and (B) employment data regarding relevant positions for students completing the program, including the length of employment and proximity to the location of the training program.

(3) Current and projected supply of, and demand for, personnel to serve infants, toddlers, and preschoolers with disabilities. This review must include, at a minimum, available information, at the national, State, and local levels, on—

(i) The extent to which there exists, or will exist, an imbalance between available personnel and demand for personnel;

(ii) The extent to which identified discrepancies in supply and demand vary by personnel type and locality; and

(iii) Factors that influence discrepancies in supply and demand, such as salaries and wages, general economic climate, population demographics, licensure and certification standards and requirements, and proximity to relevant training programs.

(b) Identify critical gaps in current knowledge, and design and conduct a program to address these gaps. The project must identify the most critical gaps on the basis of the review described in paragraph (a). The program to address the gaps must—

(1) Be guided by a conceptual framework that (i) integrates the most pressing needs for expanded knowledge; and (ii) yields information that can be used to develop policies and practices at all levels (Federal, State, and local, as well as in institutions of higher education);

(2) Use a scientifically based research and evaluation methodology that is reviewed and accepted by panels of content, research, and evaluation experts. The project must identify these panels in collaboration with OSEP staff and convene the panels; and

(3) Be designed to enhance, not duplicate, any current research and evaluation efforts, including those supported by OSEP and other Federal agencies.

(c)(1) Develop and disseminate recommendations regarding policy and practice. On the basis of the review conducted under paragraph (a), and the results of the program designed and conducted under paragraph (b), the project must develop recommendations for policy and practice related to: meeting current and projected demand for qualified personnel; establishing quality licensure and certification standards and requirements; and providing effective training programs that produce highly qualified personnel to serve infants, toddlers, and preschoolers with disabilities.

(2) Recommendations regarding policy and practice must be reviewed and accepted by panels of experts in the identified topics. The project must identify these panels in collaboration with OSEP staff and convene the panels.

(3) The project must design and carry out dissemination activities in collaboration with: OSEP technical assistance providers and disseminators; professional organizations representing the various disciplines involved in the provision of services to infants, toddlers and preschoolers with disabilities; and organizations and associations that

represent policymakers at the Federal, State, and local levels.

(4) Dissemination activities must incorporate the use of current communications technology and include information that is available and accessible through a Web site. Documents must be in an accessible form.

(d) Collaborate with OSEP staff in strategic planning throughout the term of the project. The Center must schedule a meeting in Washington, DC with OSEP to review the proposed project activities within one month of the project award date.

(e)(1) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the "General Requirements" section of this notice, and the meeting mentioned in paragraph (d), budget for two additional meetings in Washington, DC to collaborate with the Federal project officer, to share information, and to discuss issues related to the development of models, evaluation, and project implementation issues.

(2) A proposed project must also include in its budget costs associated with convening panels of experts as identified under paragraphs (b) and (c).

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority (3)—Statewide Models for Ensuring That Special Education Students in Inclusive Schools are Served by Highly Qualified Teachers (84.325M)

Background

The percentage of students with disabilities served in settings with nondisabled students is rising. There must be a corresponding increase in the number of regular and special education teachers well prepared to provide these children access to the general education curriculum and opportunities to meet high standards.

Standards for State licensure and certification and for training programs and the preservice training of regular and special educators must be aligned to incorporate the research-based knowledge and skills that regular and special education teachers need to meet the needs of these children.

Priority

The Assistant Secretary announces an absolute priority to establish a support center to develop exemplary models for building statewide systems of training and improved licensure and certification. These systems are needed to ensure that beginning regular and special education teachers are well prepared to meet the learning and behavioral needs of children with disabilities.

The Center must do the following:

(a) Identify States that are committed to—

(1) Establishing a team of decisionmakers—such as, elected officials, faculty at teacher training institutions, personnel directors, and others within the State—that represents the full spectrum of personnel responsible for ensuring that regular and special education teachers are well prepared to effectively promote learning for all students. This team must be committed to support change within the State.

(2) Improving teacher licensure and certification standards for regular and special education teachers. These standards must reflect the research-based knowledge and skills that teacher candidates need to ensure that all students, including children with disabilities, have access to the general education curriculum and meet high academic standards;

(3) Establishing or revising a system of accountability for teacher quality to ensure that personnel licensed or certified in the State demonstrate competency in content and pedagogical knowledge and skills that—

(i) The improved licensure and certification standards require;

(ii) Are research-based; and

(iii) Lead to improved outcomes for children with disabilities.

(4) Working with all institutions of higher education and other entities in the State, including LEAs, that provide preservice preparation and staff development for regular and special education teachers to ensure that all professional development in the State is—

(i) Founded on training program standards that are aligned with improved, research-based certification or licensure standards;

(ii) Designed to incorporate and assess knowledge and skill mastery in research-based content and pedagogy;

(iii) Part of a continuous system that incorporates preservice preparation, mentoring and induction for beginning teachers, and continuing, comprehensive staff development; and

(iv) Designed to establish and promote partnerships between preservice training programs and local schools and LEAs.

(5) Cooperating with the Center to permit ongoing, comprehensive study and documentation of all aspects of the model as it progresses;

(6) Reducing burden and streamlining the process of model development by coordinating efforts with other initiatives and activities in the State, including those supported with Federal funds.

(b) Establish an advisory panel of representatives from national organizations—such as the American Federation of Teachers, National Education Association, Association of American Educators, Education Leaders Council, Council of Chief State School Officers, National Association of State Directors of Teacher Certification, and National Council on Teacher Quality—that together represent the full spectrum of organizations responsible for ensuring that regular and special education teachers are well prepared. These partners must advise the Center and assist it in securing expert support to meet the model development needs of the participating States.

(c) Design and structure the operation and management of the Center to—

(1) Be most responsive to the technical assistance needs identified by the participating States as they proceed with their commitment;

(2) Use current communications technology to plan and implement the activities of the Center;

(3) Identify and describe all aspects and stages of the models as they evolve in each State, including all factors in each State that may influence the process of developing a model;

(4) Provide constructive feedback to each State;

(5) Establish and carry out formal agreements with each State that clearly specify the contributions and responsibilities of the State and the Center. The Assistant Secretary urges each State and the Center to contribute fiscally toward developing a model;

(6) Establish a clearinghouse to provide links to resources and services the State may use to enhance (i) the research-based knowledge and skills; and (ii) the quality of preservice preparation and staff development; and

(7) Disseminate, through a variety of mechanisms, the models developed within each participating State, the factors that influenced the development of the model, and the products and outcomes identified by the Center. Dissemination mechanisms must include collaborative arrangements with appropriate technical assistance and dissemination centers funded by the Department of Education.

(d) Design and conduct a comprehensive evaluation of all aspects of the work of the Center with clearly measurable goals and objectives. This evaluation must be designed to guide refinements to the structure, activities, management, and products of the Center in order to improve the ultimate effectiveness of the Center;

(e) Fund, as project assistants each year, at least three doctoral students who have concentrations in relevant topics such as special education, teacher education, curriculum and instruction, and educational policy;

(f) Obtain and submit with the application for this priority strong letters of commitment from —

(1) *Identified States.* These letters of commitment must respond to paragraphs (a)(1)–(6); and

(2) *National organization partners.* These letters of commitment must describe the resources and expertise the partners will contribute to the work of the Center; and

(g) In addition to the annual two-day Project Directors meeting in Washington, DC mentioned in the "General Requirements" section of this notice, projects must budget for two additional meetings in Washington, DC to collaborate with the Federal project officer to share information and discuss issues related to the development of model, evaluation, and project implementation.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the Center is making a positive contribution and its strategies are demonstrating the potential for disseminating significant new knowledge.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 4—Research and Training Center to Prepare Personnel to Promote Parent and Professional Collaboration (84.325R)

Background

In the fall of 2001, OSERS held seven public forums on the reauthorization of the Individuals with Disabilities Education Act (IDEA). One of the most frequent concerns expressed by parents and professionals centered on their lack of skills and knowledge in trying to develop collaborative working relationships with each other in special education planning. This planning includes initial evaluations, determinations of eligibility, meetings about the Individualized Family Service Plan (IFSP) and Individualized Education Program (IEP), and continuing decisionmaking regarding the children's academic or functional behavior.

Efforts to establish collaborative working relationships in planning for children with disabilities were likely to slip into adversarial conflicts because the two parties lacked the skills to work out disagreements. Moreover, both parties involved in the complex decisionmaking about these children focused on the difficulties of building positive interactions based on mutual trust.

There was a strong feeling that training in collaborative strategies might prevent misunderstandings and differences of opinion in planning for these children and reduce the possibilities of mediation processes, due process hearings, and lawsuits.

In developing this priority, the Assistant Secretary has incorporated several elements that the Assistant Secretary believes are necessary for a center to be effective in improving parent and professional collaboration. These include (1) multiple approaches to improving parent and professional collaboration; (2) site-based professional development; (3) professional development that uses scientifically based methods to maximize the likelihood that the intended results will be achieved; (4) follow-up professional development provided in the work settings of the training participants; and (5) training provided to teams.

Priority

As authorized under sections 672, 673 and 685 of IDEA, the Assistant Secretary announces this absolute priority for the purpose of improving the interaction of parents and professionals in collaboratively planning and implementing early intervention and educational programs for children with disabilities.

The Center must do the following:

(a) Review and synthesize research and examine the current and most-promising practices across the country to improve parent and professional collaboration.

(b) Verify by scientifically based research that practices identified in paragraph (a) are effective. This verification may be done (i) by a representative panel of individuals knowledgeable about scientific method and about building effective parent and professional collaboration, or (ii) by other methods.

(c) If the panel fails to identify methods and practices that are scientifically based, identify for the interim some promising practices to be used for training. However, the Center must implement procedures to develop scientifically based models and approaches for training parents and professionals.

(d) Develop a coordinated program of research to address gaps in knowledge.

(e) Make efforts to establish a cooperative partnership with Consortium for Appropriate Dispute Resolution in Special Education (CADRE) to coordinate activities regarding mediation.

(f) Establish an advisory panel, which may be identical to the evaluation panel referred to in (b) above. A representative from CADRE should be on the advisory panel.

(g) Provide site-based training. In providing this training, the Center must—

(1) Select sites that are (i) distributed across the country in order to reduce both travel time and costs for trainees; (ii) effectively implementing the scientifically based methods and practices that have been verified by the Center; and (iii) willing to serve as

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its

and behavior, though academic skills per se are not always impaired. Many of the problems involve difficulties with memory, organization, and behavior that are not like those experienced by children with ADD/ADHD.

Children identified with OI commonly have concomitant congenital neurological disorders involving the brain that impact learning. For example, spina bifida is the most common

(b) Verify that these methods and practices are effective through scientifically based research that is done by a representative panel of individuals knowledgeable about scientific method and about the education of eligible children with neurologically based disabilities, or by other methods.

(c) In carrying out the activities in (a) and (b) the Center must coordinate with the Center for Educating and Providing

last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed

Absolute Priority 1—Technical Assistance Center on Disproportionate Representation of Culturally and Linguistically Diverse Students in Special Education (84.326E)

Background

The National Academy of Sciences (NAS) recently completed a congressionally mandated study on minorities in special education. The

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(g) Provide site-based training. In providing this training, the Center must—

(1) Select sites that are (i) distributed across the country in order to reduce both travel time and costs for trainees; (ii) effectively implementing the scientifically based methods and practices that have been verified by the Center; and (iii) willing to serve as training sites where trainees will be provided opportunities to see and engage in the identified methods and practices in authentic settings; and

(2) Develop an outreach program to identify, select, and enroll a variety of trainees. These trainees must include personnel from lead agencies, local educational agencies (LEAs), State educational agencies, parent training and information projects, Regional Resource Centers, the National Technical Assistance Center to Parents, parent advocacy groups, and other agencies, groups, and programs. If practical, trainees should attend the training in teams.

(h) Provide follow-up training and technical assistance to all trainees who desire to develop and implement a program to improve parent-professional collaboration in their home community.

(i) Provide a range of other training opportunities, through activities such as regional workshops, targeted conferences, dissemination of training materials that the Center has developed, and similar activities. If possible, the Center should take advantage of training activities using advanced technology.

(j) Develop a plan to conduct several leadership training academies for both parents and professionals related to parent and professional collaboration in order to promote the likely development of new methods and practices.

(k) Train parents and professionals to work together productively at the State and local levels to improve results for children with disabilities. Training should enable participants to work together successfully at school, LEA, and State levels; to identify and implement best practices; to improve policy, implement changes in systems, and promote flexibility and accountability for results, while focusing on successful approaches; and to enhance parental involvement in improving special education and student outcomes.

(l) Conduct an evaluation based on clear, measurable performance and outcome goals that are related to parent and professional collaboration and, if possible, clearly linked to improving results.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the Center is making a positive contribution—and its strategies are demonstrating the potential for disseminating significant knowledge—to improve collaboration.

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 5—Center for Children with Other Health Impairments, Traumatic Brain Injury, Orthopedic Impairments and Developmental Delays Who Have Neurologically Based Disabilities (84.325T)

Background

Children with neurological impairments may be eligible for services under a number of categories under the Individuals with Disabilities Education Act (IDEA). These categories include Other Health Impairments (OHI), Traumatic Brain Injury (TBI), Orthopedic Impairments (OI), and Developmental Delays. Infants and toddlers may also have neurologically based developmental delays or diagnosed conditions that make them eligible for services under part C of IDEA. This priority addresses the needs of a wide range of children with neurological impairments who are eligible under IDEA and who require similar types of educational interventions or early intervention services.

Many children in the OHI category are identified because of Attention Deficit Disorder/Attention Deficit Hyperactive Disorder (ADD/ADHD).

TBI is an acquired neurological disorder that typically impacts learning and behavior, though academic skills per se are not always impaired. Many of the problems involve difficulties with memory, organization, and behavior that are not like those experienced by children with ADD/ADHD.

Children identified with OI commonly have concomitant congenital neurological disorders involving the brain that impact learning. For example, spina bifida is the most common severely disabling birth defect in the United States. Children with spina bifida are often unable to walk, but problems with math and attention are also common. Children with cerebral palsy have difficulties with ambulation, but the neurological basis for the impairment often also impacts learning.

The Assistant Secretary is establishing a Center for educating and providing early intervention services to children with neurological disabilities who are eligible under IDEA. The Center will ensure that parents and professionals have the most current, scientifically based methods and practices for planning and implementing educational and early intervention services to improve results for these children.

In developing this priority, the Assistant Secretary has incorporated several elements that he believes are necessary for a center to be effective in addressing the educational and early intervention needs of children with neurological impairments. These include (1) multiple approaches to improving education and early intervention of children with neurologically based disabilities; (2) site-based professional development; (3) professional development that uses scientifically based methods to maximize the likelihood that the intended results will be achieved; (4) follow-up professional development provided in the work settings of the training participants; and (5) training provided to teams.

Priority

As authorized under sections 673 and 685 of IDEA, the Assistant Secretary announces an absolute priority to establish a Center for educating and providing early intervention services to children with OHI, TBI, OI, and developmental delays who have neurologically based disabilities.

The Center must do the following:

(a)(1) Synthesize available data on methods and practices for serving children with neurologically based disabilities; and (2) identify an array of scientifically based methods and practices that may improve the education of eligible children.

(b) Verify that these methods and practices are effective through scientifically based research that is done by a representative panel of individuals knowledgeable about scientific method and about the education of eligible children with neurologically based disabilities, or by other methods.

(c) In carrying out the activities in (a) and (b) the Center must coordinate with the Center for Educating and Providing Early Intervention Services to Children with Autism and Autistic Spectrum Disorders.

(d) Provide site-based training. In providing this training, the Center must—

(1) Select sites that are (i) reasonably distributed across the country in order to reduce both travel time and costs for trainees; (ii) effectively implementing the scientifically based methods and practices that have been verified by the Center; and (iii) willing to provide trainees opportunities to see and engage in the identified methods and practices in authentic settings, and

(2) Develop an outreach program to identify, select, and enroll a variety of trainees. These trainees must include personnel from lead agencies, local educational agencies, State educational agencies, parent training and information projects, Regional Resource Centers, parent advocacy groups, institutions of higher education, related service providers, and other groups and programs. If practical, trainees should attend the training in teams.

(e) Provide a range of other training opportunities, through activities such as regional workshops, targeted conferences, dissemination of training materials that the Center has developed, and other activities.

(f) Provide follow-up training and technical assistance to all trainees who desire to develop and implement a program to improve the education of eligible children in their home community.

(g) Conduct an evaluation based on clear, measurable performance and outcome goals related to the education and early intervention for children with neurologically based disabilities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities

Purpose of Program: The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for each priority are included in the application package for that competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Priorities

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority 1—Technical Assistance Center on Disproportionate Representation of Culturally and Linguistically Diverse Students in Special Education (84.326E)

Background

The National Academy of Sciences (NAS) recently completed a congressionally mandated study on minorities in special education. The NAS report supports the data in the Twentieth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act: 1998 indicating that African Americans are overrepresented in the mentally retarded category and Native Americans are overrepresented in the learning disabilities category. Both reports have similar data on disproportionate over-or under representation for Hispanics and for Asians and Pacific Islanders.

The NAS report also includes information on the special education placement rate by States of students from culturally diverse backgrounds. The information indicates a wide variation among States and notable inconsistencies within States.

The report concludes by providing practical recommendations that can be implemented by State educational agencies (SEAs) and local educational agencies (LEAs) to reduce disproportionate representation of culturally and linguistically diverse students in special education.

Section 618(c) of IDEA requires States to collect and examine data on students by disability and race to determine if significant disproportionate representation by disability categories or placement exists based on race. There is some evidence that SEAs and LEAs are experiencing difficulty with analyzing and interpreting the data and need assistance in developing plans and strategies to address disproportionate representation.

Priority

This priority establishes a center to provide technical assistance enabling SEAs and LEAs to effectively address and reduce incidences of disproportionate representation of minorities in special education resulting from inappropriate or ineffective educational practices.

The Center's activities must include, but are not limited to, the following:

(a) Collaborating with Project Forum, currently at the National Association of State Directors of Special Education (NASDSE), to determine the level of compliance for each State in collecting

the data required in section 618(c) of IDEA.

(b) Assisting SEAs with analyzing and interpreting the data collected on representation of minorities in special education.

(c) Assisting SEAs with developing a plan to address disproportionality using the recommendations in the NAS report and focusing on effective early intervention, reading, and behavioral

individuals with disabilities, parents, educators, professional organizations and advocacy groups, researchers, and other appropriate groups—to review and advise on the Center's activities and plans. The committee must include membership that represents urban school and minority populations.

(b) In addition to the two-day Project Directors' meeting in Washington, DC mentioned in the General Requirements

students with disabilities would be included in State and local reform and accountability efforts. IDEA required that students with disabilities have access to the general curriculum and that States provide for the participation of students with disabilities in State and district-wide assessments and public reporting of the assessment results. IDEA also required States to establish performance goals for students with

language arts (particularly, with regard to children who do not respond to class-wide interventions), next in mathematics, and then in science;

(2) Work with researchers and developers to incorporate effective educational strategies based on scientifically based research;

(3) Support work to implement research-based information and instructional practice at national, State, and local levels.

determine what changes could strengthen those approaches;

(2) Examine patterns and strategies for implementing effective practices across successful LEAs;

(3) Identify research areas of limited knowledge where further research is needed to identify effective practices; and

(4) Compile documentation to assist other LEAs and other technical assistance providers in implementing

awards. The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the

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the data required in section 618(c) of IDEA.

(b) Assisting SEAs with analyzing and interpreting the data collected on representation of minorities in special education.

(c) Assisting SEAs with developing a plan to address disproportionality using the recommendations in the NAS report and focusing on effective early intervention, reading, and behavioral programs.

(d) Summarizing and disseminating—through a Web site and by other means—reports and documents on research findings and related topics to guide policy and practice.

(e) Conducting national and regional meetings, in collaboration with other centers such as the Regional Resource Centers, to help SEAs and LEAs address disproportionate representation of minorities in special education.

(f) Communicating and collaborating with—

(1) Other technical assistance centers, including the Elementary and Middle School Technical Assistance Center, Regional Resource Centers, Federal Resource Center, projects funded under the priority for "Linking Policy and Practice Audiences with the 1997 Amendments of IDEA," Regional Educational Laboratories, and the planned national center for Reading First technical assistance;

(2) Organizations including NASDSE, the Council for Exceptional Children, 100 Black Men, and the National Association of Bilingual Education (NABE); and

(3) Other projects funded by OSEP concerning effective practices for reducing disproportionate representation.

(g) Communicating and collaborating with reading and behavioral research centers to ensure that LEAs and SEAs incorporate effective scientifically based reading and behavioral strategies into their plans for addressing disproportionate representation.

(h) Collaborating with institutions of higher education—including Historically Black Colleges and Universities, Hispanic-serving institutions, and other minority institutions—and recipients of State Improvement grants to produce quality teachers by designing and implementing scientifically based early intervention, reading, behavioral, and classroom management practices.

The Center must also do the following:

(a) Establish, maintain, and meet at least annually with an advisory committee—consisting of representatives of SEAs and LEAs, individuals with disabilities, parents, educators, professional organizations and advocacy groups, researchers, and other appropriate groups—to review and advise on the Center's activities and plans. The committee must include membership that represents urban school and minority populations.

(b) In addition to the two-day Project Directors' meeting in Washington, DC mentioned in the General Requirements section of this notice, budget for an additional two-day trip annually to Washington, DC (1) to attend an additional Project Directors' meeting and (2) to meet and collaborate with the OSEP project officer and other funded projects for purposes of cross-project collaboration and information exchange; and

(c) Budget for at least a monthly trip to attend appropriate meetings convened by the Department of Education (such as the regional Improving America's Schools conferences), NABE, NASDSE, and other Centers and organizations.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 2—Center to Improve Access to the General Education Curriculum for Students with Disabilities at the Elementary and Middle School Levels (84.326K)

Absolute Priority

Background

The 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA '97) created expectations that students with disabilities would be included in State and local reform and accountability efforts. IDEA required that students with disabilities have access to the general curriculum and that States provide for the participation of students with disabilities in State and district-wide assessments and public reporting of the assessment results. IDEA also required States to establish performance goals for students with disabilities.

The No Child Left Behind Act of 2001 (NCLB), which reauthorized the Elementary and Secondary Education Act (ESEA), further strengthened the accountability for results for children with disabilities. Under NLCB each State must develop and implement a single, statewide accountability system that applies the same high standards of achievement to all students, including students with disabilities, and ensures that all school districts and public schools in the State make adequate yearly progress. The State's definition of adequate yearly progress must include separate annual measurable objectives for continuous and substantial improvement in mathematics and reading for all students and for each of four groups, including students with disabilities.

The overall quality of services children with disabilities receive varies widely by LEAs and across States. Many children are performing below their potential.

In trying to improve this situation, national technical assistance activities can play a pivotal role in building the capacity States need to support schoolwide change.

Identifying effective, scientifically validated practices; disseminating and replicating them through national, State, and local channels; and evaluating their use with children with disabilities has the potential to strengthen the overall education system and to improve achievement for all children, including children with disabilities.

Priority

The purpose of this priority is to increase access to and improve the quality of education in the general curriculum in areas of reading, language arts, mathematics, and science for children with disabilities in elementary and middle schools.

The Center must do the following:

(a) At the national level—

(1) Collaborate with the Office of Educational Research and Improvement's new "What Works Clearinghouse" to identify studies that may represent scientifically valid practices first in the area of reading and language arts (particularly, with regard to children who do not respond to class-wide interventions), next in mathematics, and then in science;

(2) Work with researchers and developers to incorporate effective educational strategies based on scientifically based research;

(3) Support work to implement research-based information and instructional practice at national, State, and local levels.

(b) At the State level, collaborate with the Regional Resource Centers (RRCs) to help States —

(1) Establish measurable annual IEP objectives for continuous and substantial improvement for students with disabilities;

(2) Strengthen efforts to continuously improve access to and the quality of education in the subject areas; and

(3) Assist States in "scaling up" scientifically based practices through existing in-State technical assistance systems.

(c) Disseminate findings and approaches to appropriate audiences through the project's communication mechanism and the collaborative national and State partnerships;

(d) At the local level—

(1) Identify a number of LEAs (i) that have successfully used scientifically based practices to monitor and effect continuous and substantial progress for students with disabilities; and (ii) that are willing to work with other LEAs that have been less successful;

(2) Provide continuous assistance to the LEAs to help them work with less successful LEAs; and

(e) At the local level—

(1) Identify a number of LEAs that have been less successful in their efforts to continuously monitor progress and show evidence of progress—first in reading and language arts, next in mathematics, then in science;

(2) In concert with the successful LEAs, provide training and technical assistance through other means to help schools in less successful LEAs adapt and implement scientifically based practices;

(3) Observe and document the process of change; and

(4) Help less successful LEAs build capacity to solve problems.

(f) Establish an evaluation mechanism to continuously analyze the implementation of scientifically based practices, the outcomes of the technical assistance provided, including effect on student academic outcomes. The evaluation should not only document successful practices, but, also—

(1) Analyze less successful approaches to technical assistance to determine what changes could strengthen those approaches;

(2) Examine patterns and strategies for implementing effective practices across successful LEAs;

(3) Identify research areas of limited knowledge where further research is needed to identify effective practices; and

(4) Compile documentation to assist other LEAs and other technical assistance providers in implementing research-based practices.

(g) Develop training materials to support and train, on site, participating RRCs, States, and LEAs.

(h) Prepare and disseminate information and products for specific audiences, as appropriate, such as parents, administrators, teachers, related-services personnel, researchers, and individuals with disabilities.

(i)(1) Communicate, collaborate, and form partnerships, as appropriate, with entities such as technical assistance providers at national, regional, and local levels; centers that are part of the Special Education Technical Assistance and Dissemination Network; the National Center on Educational Outcomes; OSEP-funded projects; business and professional organizations; and universities.

(2) In particular, the project must build and maintain communication and collaboration with research and demonstration projects that are addressing issues related to the focus of this priority.

(j) Establish, maintain, and meet at least annually with an advisory committee consisting of representatives of SEAs and LEAs, individuals with disabilities, parents, educators and other interested parties—such as, professional organizations, and advocacy groups, researchers, persons conversant with literature on reform and change, and other appropriate groups—to review and advise on the Center's plans, products, and activities.

(k) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the "General Requirements" section of this notice, budget for two additional trips annually to Washington, DC (1) to attend the Technical Assistance and Dissemination Project Directors' meeting and (2) to meet and collaborate with the OSEP project officer and with other projects focusing on access to the general education curriculum.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards. The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 3—Center to Promote Involvement by Minority Institutions in Discretionary Programs under IDEA (CFDA 84.326L)

Background

Congress has concluded that success in educating children with disabilities from minority backgrounds can be improved if we increase the participation by Historically Black Colleges and Universities (HBCUs), and other institutions of higher education whose minority student enrollment is at least 25 percent (OMIs) in awards under IDEA. These awards include grants, cooperative agreements and contracts (section 661(d)(2) of IDEA).

Priority

The purpose of this priority is to improve educational results for children with disabilities by supporting a national center to: (a) Promote the participation by, and increase the number of awards to HBCUs and OMIs in competitions under IDEA designed to prepare personnel; and (b) increase the capacity of HBCUs and OMIs to prepare personnel to work with children with disabilities.

The Center must do the following:

(a) Establish and maintain contacts with HBCUs and OMIs.

(b) Analyze the performance of HBCUs and OMIs as a basis for providing technical assistance to them, especially in (1) recruiting and retaining students in personnel preparation programs; (2) improving the quality of those programs; (3) placing students after graduation; (4) and related activities that contribute to improved results for children with disabilities;

(c) Develop materials and implement strategies that are necessary to carry out the Center's activities.

(d) Prepare and disseminate to the HBCUs and OMIs materials explaining

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personnel preparation competitions under section 673 of IDEA.

(e)(1) Analyze the results of each applicable discretionary grant competition under IDEA in terms of the degree to which HBCUs and OMIs applied, and the degree to which they were successful; and (2) submit this analysis to the Department and the HBCUs and OMIs served by the project.

(f) Disseminate practices found to be effective (1) to assist with the development of new special education personnel preparation programs in HBCUs and OMIs; and (2) to expand existing special education programs.

(g) Provide professional development to faculty to ensure that current research knowledge and methods are used in all special education personnel preparation programs in HBCUs and OMIs.

(h) Increase the participation of faculty from HBCUs and OMIs at national and State policy-setting meetings.

(i) As requested by the Department, provide advice on strategies to further the purposes of part D of IDEA.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

Absolute Priority 4—National Center on Monitoring and Evidence-Based Decisionmaking (CFDA 84.326Y)

Background

Monitoring and enforcement of IDEA has always been a topic of great concern among advocates, LEA and State administrators, and Federal officials. The Assistant Secretary is supporting an effort to implement a focused monitoring system in which data collection and a small number of carefully chosen priorities drive the process, and intervention and enforcement occur according to set criteria. Although this model system is replicable at the State and local levels, there is still a pressing need to assist States in their efforts to design, implement, and manage data systems and compliance-monitoring processes that can support data-based decisions about special education.

Priority

The Assistant Secretary announces an absolute priority for a technical assistance center to support the implementation of focused monitoring and, thereby, help SEAs and LEAs improve results for children with disabilities.

The Center's activities must include, but are not limited to, the following:

(a)(1) Providing technical assistance to States and LEAs to develop effective practices in monitoring and accountability to implement IDEA. (2) This activity must focus on assistance in data management. This includes the process of collecting accurate and effective data and the development of data systems that focus on data-based decisionmaking. (3) In addition, this project must assist States in (i) using special education data to align with State accountability standards and (ii) organizing and presenting data to decisionmakers and policymakers in an understandable and convincing manner.

(b) Identifying effective practices in monitoring and accountability.

(c) Working with OSEP, the RRCs, and the States to effectively communicate and improve results for children through technical assistance, training, and dissemination of information.

(d) Preparing and disseminating through a Web site and by other means reports and documents on research findings and related topics, including a comprehensive analysis of the monitoring literature.

(e) Maintaining communication and collaboration with other Department-funded projects concerning effective practices by States and LEAs that will improve results for children.

(f) Disseminating findings through collaboration with the National Information Center for Children and Youth with Disabilities and the Regional Resource and Federal Centers Network.

(g) Providing technical assistance and support to OSEP's Monitoring and State Improvement Planning Division.

(h) Presenting findings and providing training at national and regional conferences; and

(i) Using an outside evaluator to measure the progress of the Center.

The Center must also do the following:

(a) Establish, maintain, and meet, as needed, with an advisory committee to review and advise on the Center's activities and progress. The advisory committee must consist of individuals whose organizations or perspectives were part of the group that worked with OSEP on focused monitoring. The committee must include, but is not limited to, representatives of SEAs and LEAs, individuals with disabilities, parents, educators, professional organizations, advocacy groups, researchers, and other appropriate groups. The committee also must include membership from otherwise underrepresented populations.

(b) In addition to the annual two-day Project Directors' Meeting mentioned in the "General Requirements" section of this notice, budget for two additional two-day trips annually to Washington, DC (1) to attend a Project Directors' meeting and (2) to meet and collaborate with the OSEP Project Officer and other funded projects for purposes of cross-project collaboration and information exchange.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Number of Awards

Under this priority, the Secretary will make one award for a cooperative agreement.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT, APPLICATION NOTICE FOR FISCAL YEAR 2002

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year) *	Estimated number of awards
84.324V Research and Training Center on Scientifically Based Practices and Succesful Early Childhood Transitions	07/17/02	08/19/02	09/19/02	$700,000	1
84.324G Center on Early Identification, Child Find, and Referral of Young Children with Disabilities	07/17/02	08/19/02	09/19/02	700,000	1
84.324Q Center on Students Requiring Intensive Social, Emotional, and Behavioral Interventions	07/17/02	08/19/02	09/19/02	700,000	1
84.325G Center for Educating and Providing Early Intervention Services to Children with Autism and Austistic Spectrum Disorders	07/17/02	08/19/02	09/19/02	1,000,000	1
84.325J Center to Guide Personnel Preparation Policy and Practice in Early Intervention and Preschool Education (Birth to 5)	07/17/02	08/19/02	09/19/02	600,000	1
84.325M Statewide Models for Ensuring that Special Education Students in Inclusive Schools are Served by Highly Qualified Teachers	07/17/02	08/19/02	09/19/02	1,000,000	1
84.325R Research and Training Center to Prepare Personnel to Promote Parent and Professional Collaboration	07/17/02	08/19/02	09/19/02	550,000	1
84.325T Center for Children with Other Health Impairments, Traumatic Brain Injury, Orthopedic Impairments and Developmental Delays Who Have Neurologically Based Disabilities	07/17/02	08/19/02	09/19/02	650,000	1
84.326E Technical Assistance Center on Disproportionate Representation of Culturally and Linguistically Diverse Students in Special Education	07/17/02	08/19/02	09/19/02	$700,000	1
84.326K Center to Improve Access to the General Education Curriculum for Students with Disabilities at the Elementary and Middle School Levels	07/17/02	08/19/02	09/19/02	1,800,000	1
84.326L Center to Promote Involvement by Minority Institutions in Discretionary Programs under IDEA	07/17/02	08/19/02	09/19/02	1,656,000	1
84.326Y National Center on Monitoring and Evidence-Based Decisionmaking	07/17/02	08/19/02	09/19/02	1,000,000	1

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
Note: The Department of Education is not bound by any estimates in this notice.

For Applications Contact: If you want an application for any competition in this notice, contact Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html;* or you may contact Ed Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from Ed Pubs, be sure to identify the competition in this notice by the appropriate CFDA number.

FOR FURTHER INFORMATION CONTACT: If you want additional information about any competition in this notice, contact the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for these programs.

Electronic Access to This Document

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Register, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use the PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Program Authority: 20 U.S.C. 1405, 1461, 1472, 1473, and 1485.

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–17882 Filed 7–15–02; 8:45 am]

BILLING CODE 4000–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Tuesday,
July 16, 2002

Register, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/legislation/FedRegister*

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[FR Doc. 02–17882 Filed 7–15–02; 8:45 am]

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Federal Register

Tuesday,
July 16, 2002

Part IV

Department of Education

Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.206A]

Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program

ACTION: Notice of clarification, correction, and limited purpose closing date extension for the Jacob K. Javits Gifted and Talented Students Education

proposing projects of up to 5 years (60 months) and annual budgets within an estimated range of between $400,000 and $600,000;

—Priority 2: The Assistant Secretary will consider for funding applications proposing projects of up to 3 years (36 months) and annual budgets within an estimated range of between $200,000 and $300,000; and

—There are no page restrictions

transmitted by July 9, 2002, the Department will consider and review its initial application.

FOR FURTHER INFORMATION CONTACT: Emily McAdams, U.S. Department of Education, Room 5W252, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260–8753 or the following e-mail or Internet address: *emily.mcadams@ed.gov*. If you use a telecommunications device for the deaf

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.206A]

Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program

ACTION: Notice of clarification, correction, and limited purpose closing date extension for the Jacob K. Javits Gifted and Talented Students Education Program fiscal year (FY) 2002 competition.

SUMMARY: The Assistant Secretary publishes this clarification and correction notice to reconcile differences between the **Federal Register** notice announcing this year's Jacob K. Javits Gifted and Talented Students Education Program competition and the Department's application package for this program. This notice also extends the closing date for the limited purpose of allowing program applicants that transmitted their applications by July 9, 2002, to supplement or revise their applications in light of these differences.

SUPPLEMENTARY INFORMATION: On May 24, 2002, the Assistant Secretary published a notice in the **Federal Register** (67 FR 36583 through 36586) inviting applications for new awards for the Jacob K. Javits Gifted and Talented Students Education Program. The notice stated that the application package would be available to eligible entities on May 24, 2002. Some of the information contained in the application package provided to applicants was different from the May 24, 2002 **Federal Register** notice. Although the notice was correct, because these differences may have caused confusion among this year's applicants, the Assistant Secretary hereby provides the following clarifications regarding length of project periods, award amounts, and application length:

—Priority 1: The Assistant Secretary will consider for funding applications proposing projects of up to 5 years (60 months) and annual budgets within an estimated range of between $400,000 and $600,000;

—Priority 2: The Assistant Secretary will consider for funding applications proposing projects of up to 3 years (36 months) and annual budgets within an estimated range of between $200,000 and $300,000; and

—There are no page restrictions applicable to this competition. Thus, the Assistant Secretary will consider for funding applications that are 25 pages long, as well as those that are shorter or longer than 25 pages.

In addition, due to the incorrect closing date provided in the application package, the Assistant Secretary will accept applications that were transmitted on July 9, 2002. Also, because applicants may have been confused by some of the information provided in the application package, the Assistant Secretary will allow applicants that transmitted timely applications by July 9, 2002, to supplement or revise their applications. The Assistant Secretary hereby extends the closing date in this competition for this limited purpose to July 23, 2002. The Department must receive all supplements or revisions by this date. Due to recent disruptions to mail delivery and to ensure timely receipt by the Department, applicants submitting supplements or revisions in response to this notice are strongly encouraged to utilize a commercial delivery method such as Federal Express or United Parcel Service, or a courier service. Applicants using a commercial carrier are directed to follow the appropriate mailing and hand delivery instructions contained in their application package for this competition.

The Assistant Secretary is not requiring applicants to supplement or revise their applications. If an applicant chooses not to supplement or revise its application and its application was transmitted by July 9, 2002, the Department will consider and review its initial application.

FOR FURTHER INFORMATION CONTACT: Emily McAdams, U.S. Department of Education, Room 5W252, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260–8753 or the following e-mail or Internet address: *emily.mcadams@ed.gov*. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 7253 *et seq.*

Dated: July 12, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18032 Filed 7–15–02; 8:45 am]

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Federal Register

Tuesday,
July 16, 2002

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Internet Crimes Against Children Task Force Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1353]

Program Announcement for the Internet Crimes Against Children Task Force Program

AGENCY: Office of Juvenile Justice and

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to help State and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technology to sexually exploit children. Throughout this program announcement, "Internet

and law enforcement officers because it circumvents conventional safeguards and provides sex offenders with virtually unlimited opportunities for unsupervised contact with children.

Today's Internet is also rapidly becoming the new marketplace for offenders seeking to acquire material for their child pornography collections. More insidious than the exchange of sexually explicit material among adults,

discipline from their parents. Other victims bond with the offender, remain susceptible to further manipulation, or resent what they perceive as interference from law enforcement. Investigators who do not fully understand the dynamics of juvenile sexual exploitation risk losing critical information that could help convict perpetrators or identify additional victims. When appropriate, medical and psychological evaluations should be a

individuals seeking sex with underage victims and safely recover and return children enticed from home by sex offenders.

NCMEC's law enforcement training and technical assistance program was developed in partnership with OJJDP, the FBI, USCS, USPIS, and CEOS. NCMEC has also developed an education and awareness campaign that features the Kids and Company curriculum, the Know the Rules teen

Division of Criminal Investigation. These agencies have become regional clusters of ICAC technical and investigative expertise and offer prevention and investigative services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues. Collectively, task force agencies have made more than 800 arrests, seized more than 900 computers, and provided forensic or

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1353]

Program Announcement for the Internet Crimes Against Children Task Force Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: Based on the availability of appropriations, notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications from State and local law enforcement agencies interested in participating in the Internet Crimes Against Children (ICAC) Task Force Program. In an effort to expand ICAC Regional Task Force coverage to areas that do not have a current ICAC Regional Task Force presence, this solicitation is limited to State and local law enforcement agencies in the following States and localities: Georgia, Indiana, Kentucky, Louisiana, Missouri, and the Greater San Francisco Bay area, California. Only one grant will be awarded per State listed above. This program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses committed by offenders who use online technology to victimize children.

DATES: Applications must be received by August 30, 2002.

ADDRESSES: All application packages must be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. (See "Delivery Instructions" below for additional information.) Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application Kit* is also available on OJJDP's Web site at *www.ojjdp.ncjrs.org/grants/2000_app_kit/index.html*. (See "Application Format" in this program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Ron Laney, Director, Child Protection Division, and ICAC Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–3637. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to help State and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technology to sexually exploit children. Throughout this program announcement, "Internet crimes against children" refers to the sexual exploitation of children that is facilitated by computers and includes crimes of child pornography and online solicitation for sexual purposes.

Background

Unlike some adults who view the benefits of the Information Age dubiously, children and teenagers have seized the Internet's educational and recreational opportunities with astonishing speed and casualness. Adapting information technology to meet everyday needs, young people are increasingly going online to meet friends, satisfy information needs, purchase goods and services, and complete school assignments. Currently, 28 million children and teenagers have access to the Internet, and industry experts predict that they will be joined by another 50 million globally by 2005. Although the Internet gives children and teenagers access to civilization's greatest museums, libraries, and universities, it also increases their risk of being sexually exploited or victimized.

Large numbers of young people are encountering sexual solicitations they did not want, sexual material they did not seek, and, in the most serious cases, are being targeted by offenders seeking children for sex. Research conducted by the University of New Hampshire revealed that one in five children between ages 10 and 17 received a sexual solicitation over the Internet in 1999. One in thirty-three received an aggressive solicitation from a solicitor who asked to meet them somewhere, called them on the telephone, or sent them mail, money, or gifts.

Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children and seek victims with little risk of detection. Preferential sex offenders [1] no longer need to lurk in parks and malls. Instead, they can roam from chat room to chat room, trolling for children susceptible to victimization. This alarming activity has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards and provides sex offenders with virtually unlimited opportunities for unsupervised contact with children.

Today's Internet is also rapidly becoming the new marketplace for offenders seeking to acquire material for their child pornography collections. More insidious than the exchange of sexually explicit material among adults, child pornography depicts the sexual assault of children and is often used by child molesters to recruit, seduce, and control future victims. Pornography is used to break down inhibitions, validate sex between children and adults as normal, and control victims throughout their molestation. When offenders lose interest in their victims, pornography is often used as blackmail to ensure the child's silence; when posted on the Internet, pornography becomes an enduring and irretrievable record of victimization and a relentless violation of that child's privacy.

OJJDP recognizes that the increasing online presence of children, the proliferation of child pornography, and the lure of predators searching for unsupervised contact with underage victims present a significant threat to the health and safety of children and a formidable challenge for law enforcement today and into the foreseeable future. Many factors complicate law enforcement's response to these challenges. Conventional definitions of jurisdiction are practically meaningless in the electronic universe of cyberspace, and very few investigations begin and end within the same geographical area. Because they involve multiple jurisdictions, most investigations require close coordination and cooperation between Federal, State, and local law enforcement agencies.

Evidence collection in ICAC investigations invariably requires specialized expertise and equipment. Preferential sex offenders tend to be avid recordkeepers, and their computers, magnetic media, and related equipment can be rich sources of evidence. However, routine forensic examination procedures are insufficient for seizing, preserving, and analyzing this information. In addition, specific legal issues regarding property and privacy rights may be triggered by the seizure of computers and related technology.

Routine interviewing practices are inadequate for collecting testimonial evidence from child victims of Internet crimes. Some children deny they are victims because of embarrassment or fear of ridicule from their peers or

[1] For the purposes of this program, "preferential sex offenders" are defined as individuals whose primary sexual focus is children.

discipline from their parents. Other victims bond with the offender, remain susceptible to further manipulation, or resent what they perceive as interference from law enforcement. Investigators who do not fully understand the dynamics of juvenile sexual exploitation risk losing critical information that could help convict perpetrators or identify additional victims. When appropriate, medical and psychological evaluations should be a part of law enforcement's response to cases involving child victims. In addition to ensuring that injuries or diseases related to the victimization are treated, forensic medical examinations provide crucial corroborative evidence.

These factors will almost routinely complicate the investigative process. Although no two cases raise identical issues of jurisdiction, evidence collection, and victim services, it is logical to presume that investigations characterized by a multijurisdictional, multidisciplinary approach will more likely result in successful prosecutions.

A variety of Federal activities are assisting and can further assist in law enforcement's response to these offenses. For example, the Innocent Images initiative, managed by the Federal Bureau of Investigation's (FBI's) Baltimore Field Division, works specifically on computer-facilitated child sexual exploitation cases. The U.S. Customs Service (USCS) and the U.S. Postal Inspection Service (USPIS) have successfully investigated hundreds of child pornography cases.

The Child Exploitation and Obscenity Section (CEOS) of the U.S. Department of Justice prosecutes Federal violations and offers advice and litigation support to Federal, State, and local prosecutors working on child pornography and sexual exploitation cases.

With support from OJJDP and private-sector funding, the National Center for Missing and Exploited Children (NCMEC) serves as the national resource center and clearinghouse for issues involving missing and exploited children. NCMEC's Training Division coordinates a comprehensive training and technical assistance program that includes prevention and awareness activities. The CyberTipline (*http://missingkids.com*) collects online reports from citizens and Internet Service Providers (ISPs) regarding the computer-facilitated sexual exploitation of children and rapidly forwards this information to the law enforcement agencies with investigative jurisdiction. Brought online in March 1998, the CyberTipline has provided law enforcement officers with information that has enabled them to both arrest individuals seeking sex with underage victims and safely recover and return children enticed from home by sex offenders.

NCMEC's law enforcement training and technical assistance program was developed in partnership with OJJDP, the FBI, USCS, USPIS, and CEOS. NCMEC has also developed an education and awareness campaign that features the Kids and Company curriculum, the Know the Rules teen awareness program, and two pamphlets (*Child Safety on the Information Highway* and *Teen Safety on the Information Highway*) that provide information about safe Internet practices for children and youth. These programs and materials are offered free of charge, and OJJDP encourages communities working on child victimization issues to use them. Additional information regarding NCMEC's services for children, parents, educators, and law enforcement officers can be obtained by calling 800–THE–LOST or by accessing NCMEC's Web site at *http://www.missingkids.com*.

Since fiscal year (FY) 1998, OJJDP has awarded funds to 30 State or local law enforcement agencies to develop regional multijurisdictional and multiagency task forces to prevent, interdict, and investigate ICAC offenses. The following jurisdictions currently receive ICAC Regional Task Force Program funding: Alabama Department of Public Safety; Bedford County, Virginia, Sheriff's Department; Broward County, Florida, Sheriff's Department; Clark County, Nevada, Las Vegas Metropolitan Police Department; Colorado Springs, Colorado, Police Department; Connecticut State Police; Cuyahoga County, Ohio, District Attorney; Dallas, Texas, Police Department; Delaware County, Pennsylvania, District Attorney; Hawaii Office of the Attorney General; Illinois State Police; Knoxville, Tennessee, Police Department; Maryland State Police; Massachusetts Department of Public Safety; Michigan State Police; Nebraska State Patrol; New York State Division of Criminal Justice Services; North Carolina Division of Criminal Investigation; Oklahoma State Bureau of Investigation; Phoenix, Arizona, Police Department; Portsmouth, New Hampshire, Police Department; Sacramento County, California, Sheriff's Office; Saint Paul, Minnesota, Police Department; San Diego, California, Police Department; Seattle, Washington, Police Department; Sedgewick County, Kansas, Sheriff's Office; South Carolina Office of the Attorney General; Utah Office of Attorney General; Wisconsin Department of Justice; and the Wyoming Division of Criminal Investigation. These agencies have become regional clusters of ICAC technical and investigative expertise and offer prevention and investigative services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues. Collectively, task force agencies have made more than 800 arrests, seized more than 900 computers, and provided forensic or investigative assistance in nearly 3,000 cases.

In the 21st century, law enforcement agencies will be increasingly challenged by sex offenders who use computer technology to victimize children. To help meet this challenge, OJJDP is continuing the ICAC Regional Task Force Program, which will competitively award cooperative agreements to State and local law enforcement agencies seeking to improve their investigative responses to the computer-facilitated sexual exploitation of children.

Program Strategy

The ICAC Task Force Program seeks to enhance the nationwide response to child victimization by maintaining and expanding a State and local law enforcement network composed of regional task forces. The program encourages communities to develop multijurisdictional and multiagency responses and provides funding to State and local law enforcement agencies to help them acquire the knowledge, personnel resources, and specialized equipment needed to prevent, interdict, or investigate ICAC offenses. Although the ICAC Task Force Program emphasizes law enforcement investigations, OJJDP encourages jurisdictions to include intervention, prevention, and victim services activities as part of their comprehensive approach.

OJJDP Program Management

During the past 3 years of managing the ICAC Task Force Program, OJJDP has made the following observations:

- The Internet challenges traditional thinking about law enforcement jurisdiction and renders city, county, and State boundaries virtually meaningless. Because of this jurisdictional ambiguity, offenders are often able to frustrate enforcement actions and conceal their criminal activities.
- Nearly all ICAC investigations (95 percent) involve substantial communication and coordination efforts among Federal, State, and local law enforcement agencies. Without

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meaningful case coordination, law enforcement agencies may inadvertently investigate identical suspects and organizations, target undercover operatives of other law enforcement agencies, or disrupt clandestine investigations of other agencies.

• The obvious need for interagency cooperation and coordination has sustained interest in maintaining standards for ICAC undercover investigations. Representatives from Federal, State, and local law enforcement agencies have repeatedly expressed concern about initiating investigations that are based on referrals from outside agencies—referrals that may be predicated on information acquired through inappropriate officer conduct or investigative techniques.

• The clandestine nature of undercover operations, the anonymity of Internet users, and the unclear jurisdictional boundaries of cyberspace significantly exacerbate these investigative concerns. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children. These operations allow law enforcement agencies to go on the offensive and, most importantly, protect children from revictimization. Although carefully managed undercover operations by well-trained officers can be very effective, these operations also generate concerns regarding legal issues, coordination, communication, and resource management.

• Although Internet awareness appears to be growing, many children, teenagers, and parents are not sufficiently informed about the potential dangers and repercussions of releasing personal information to, or meeting with, individuals encountered online.

• Although Federal agencies are responsible for monitoring illegal interstate or telecommunications activities, the protection of children is primarily the responsibility of State and local law enforcement agencies. The production of pornography or the sexual assault of a child—whether originating online or not—usually creates both a jurisdictional interest and a responsibility for State and local authorities.

• Despite the belief that these cases are usually manufactured by undercover operations in which officers pose as minors in chat rooms, most ICAC investigations are initiated in response to a citizen complaint or a request from law enforcement. Unfortunately, these cases often involve multiple victims who require a response by both local law enforcement and victim services.

• The Internet is placing a new demand on forensic resources. Computers are piling up in evidence rooms across the country because existing forensic capacity is inadequate to meet the needs of investigative efforts.

• A generation ago, officers beginning their law enforcement careers would be issued a uniform, service weapon, and notebook. Those items rarely changed during a 20-year career. Today, changes in equipment and software occur seemingly overnight, and officers are hard pressed to stay current not only with the technological changes, but also with a motivated offender community that is adapting these new technologies to exploit children.

To address these observations and concerns, OJJDP's ICAC Task Force Program employs the following management strategies:

• Maintaining and expanding the nationwide network of State and local law enforcement agencies participating in the program.

• Ensuring that ICAC Task Force personnel are adequately trained and equipped.

• Establishing and/or maintaining ICAC Task Force investigative standards to facilitate interagency case referrals.

• Advocating coordination and collaboration among Federal, State, and local law enforcement agencies investigating ICAC offenses.

• Fostering meaningful information sharing to avoid redundant investigations or activities that could disrupt the ongoing investigations of other agencies.

• Maintaining an ICAC Task Force Board composed of local law enforcement executives and prosecutors to advise OJJDP, formulate policy recommendations, and assess the law enforcement community's needs for training and technical assistance with regard to investigating Internet crimes.

• Convening an annual ICAC Task Force training conference to focus on child exploitation, emerging technology, and its relevance to criminal activity and enforcement efforts and to enhance the networking essential for sustaining an effective State and local law enforcement response to online crime.

OJJDP established ICAC Task Force Program Standards through a collaborative process involving the 10 original ICAC Task Force agencies, the FBI, NCMEC, USCS, USPIS, CEOS, and the Executive Office for United States Attorneys. The standards were designed by the Task Force agencies to foster information sharing, coordinate investigations, ensure the probative quality of undercover operations, and facilitate interagency case referrals by standardizing investigative practices. In 2002, the ICAC standards were revised and updated to reflect 20 additional ICAC Regional Task Forces and an expanded ICAC program focus on the protection of children.

OJJDP has also established an ICAC Task Force Board (the Board) to assist in the administration of the ICAC Task Force Program. As a condition of the award, each grantee must designate a policy-level law enforcement official or prosecutor to be a Board member. Although the Board's primary responsibility is to serve as an advisory group to OJJDP, the Board will also encourage case coordination and facilitate information sharing on trends, innovative investigative techniques, and prosecution strategies. Technical advice is provided to the Board by NCMEC, CEOS, the FBI, USCS, and USPIS.

The award also requires that each ICAC Regional Task Force member send at least one investigator and one policy-level official to an ICAC Task Force Program orientation seminar. The seminars, which were developed by OJJDP and NCMEC in consultation with Federal law enforcement agencies, provide information regarding legal issues, specific investigative techniques, undercover operation documentation requirements, behavioral characteristics of preferential sex offenders, and other topics relevant to child exploitation cases.

To learn about the next seminar scheduled at NCMEC's Jimmy Ryce Law Enforcement Training Center in Alexandria, VA, contact NCMEC at *http://www.missingkids.com*. Expenses associated with attendance at the orientation seminar will be reimbursed by OJJDP and NCMEC. Expenses associated with Board responsibilities will be covered by grant funds.

Goal

The program's goal is to enhance the ICAC investigative response of State and local law enforcement agencies.

Objectives

Projects must accomplish the following objectives:

• Develop or expand multiagency, multijurisdictional task forces that include, but are not limited to, representatives from law enforcement, prosecution, victim services, and child protective services agencies. Relevant nongovernment organizations may also be included. OJJDP encourages applicants to invite Federal law enforcement agencies to participate in the task force.

• Institute policies and procedures that comply with the OJJDP ICAC Task Force Program Standards (see "OJJDP Program Management" above). Requests from eligible law enforcement agencies for copies of the ICAC Program Operational and Investigative Standards must be faxed on official letterhead to the Juvenile Justice Clearinghouse at 301–519–5600.

• Enhance investigative capacity by properly equipping and training ICAC Task Force investigators. Task Force investigators should be computer literate, knowledgeable about child exploitation issues, and familiar with Federal and State statutes and caselaw pertaining to ICAC investigations.

• Develop and maintain case management systems to record offenses and investigative results, make or receive outside agency referrals of ICAC cases, and comply with the reporting requirements of the ICAC Task Force Monthly Performance Measures Report.

• Develop response protocols or memorandums of understanding that foster collaboration, information sharing, and service integration among public and private organizations that provide services to sexually exploited children.

Eligibility Requirements

Applicants must be State and/or local law enforcement agencies located in Georgia, Indiana, Kentucky, Louisiana, Missouri, or the Greater San Francisco Bay area, California. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly designated as the primary applicant (for correspondence, award, and management purposes) and the other(s) designated as coapplicant(s).

Selection Criteria

OJJDP is committed to establishing a network of State and local law enforcement agencies to respond to online enticement and child pornography offenses. Within this network, ICAC Task Forces positioned throughout the country will serve as regional sources of technical, educational, and investigative expertise, providing assistance to parents, teachers, law enforcement officers, and other professionals working on child sexual exploitation issues. Therefore, the goal of achieving an equitable geographic distribution of ICAC Task Forces will be considered when applicants are selected. Successful applicants will be expected to serve as regional clusters of ICAC technical and investigative expertise, collaborate with existing ICAC Task Forces, and become part of a nationwide law enforcement network designed to protect children from computer-facilitated victimization.

Applications should include evidence of multidisciplinary, multijurisdictional partnerships among public agencies, private organizations, community-based groups, and prosecutors' offices. Successful applicants will develop or enhance an investigative ICAC response that includes prevention, education, and victim services activities.

OJJDP will convene a peer review panel to evaluate and rank applications and to make funding recommendations to the OJJDP Administrator. Although peer review recommendations are given weight, they are advisory only. Final award decisions will be made by the OJJDP Administrator. OJJDP will negotiate the specific terms of the award with applicants who are being considered. Applicants will be evaluated and rated according to the criteria outlined below.

Problem(s) To Be Addressed (10 points)

Applicants must clearly identify the need for this project in their communities and demonstrate an understanding of the program concept. Applicants must include data that illustrate the size and scope of the problem in their States and local jurisdictions. If statistics or other research findings are used to support a statement or position, applicants must provide the relevant source information.

Goals and Objectives (10 points)

Applicants must establish clearly defined, measurable, and attainable goals and objectives for this program.

Project Design (35 points)

Applicants must explain in clear terms how the State or local task force will be developed and implemented. They must present a clear workplan that contains program elements directly linked to the achievement of the project objectives. The workplan must indicate significant project milestones, product due dates, and the nature of the products to be delivered.

Management and Organizational Capability (30 points)

The management structure and staffing described in the application must be adequate and appropriate for the successful implementation of the project. Applicants must identify responsible individuals and their time commitments and provide a schedule of major tasks and milestones. Applicants must describe how activities that prevent Internet crimes against children will be continued after Federal funding is no longer available. In addition, signed letters of support from State and local prosecution offices and the local district United States Attorney must be provided.

Budget (15 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken. Budgets must allow for required travel, including four trips for one individual to attend the quarterly ICAC Task Force Board meetings. Budgets must also allow for the participation of at least two agency representatives at the annual ICAC Training Conference.

Application Format

The narrative portion of this application (excluding forms, assurances, and appendixes) must not exceed 35 pages and must be submitted on 8½- by 11-inch paper and double spaced on one side in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative and project abstract, including any lists, tables, bulleted items, or quotations. These standards are necessary to maintain fair and uniform consideration among all applicants. If the narrative and abstract do not conform to these standards, OJJDP will deem the application ineligible for consideration.

Project and Award Period

These cooperative agreements will be funded for up to an 18-month budget and project period and will begin July 1, 2002, and end December 31, 2003. Funding beyond the initial project period will be contingent upon the grantee's performance and the availability of funds.

Award Amount

The total amount available for this program is $1.8 million. OJJDP intends to award six cooperative agreements of up to $300,000 each for the 18-month project period.

Performance Measurement

To ensure compliance with the Government Performance and Results Act (GPRA), Public Law 103–62, this solicitation notifies applicants that they are required to collect and report on data that measure the results of the program implemented by this grant. To ensure the accountability of this data (for which the Office of Justice Programs [OJP] is responsible) the following performance measures are provided:

• The number of technical assistance activities involving investigations.

• The number of computer forensic services provided by ICAC Task Forces and Investigative Satellites to nonfederally funded law enforcement agencies.

• The number of members and organizations involved in multidisciplinary task forces at each site.

Under this solicitation, applicants will be required to supply OJJDP with

or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

Applications Sent by Overnight Delivery Service

Allow at least 48 hours for delivery. Send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 800–638–8736 (phone number required by some carriers). In the lower left-hand corner of the envelope, clearly

Lanning, K. 1992. *Child Molesters: A Behavioral Analysis for Law Enforcement Officers Investigating Cases of Child Sexual Exploitation.* Alexandria, VA: National Center for Missing and Exploited Children.

Lanning, K. 1992. *Child Sex Rings: A Behavioral Analysis for Criminal Justice Professionals Handling Cases of Child Sexual Exploitation.* Alexandria, VA: National Center for Missing and

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Whitcomb, D. 1995. *Child Sexual Exploitation: Improving Investigations and Protecting Victims: A Blueprint for Action.* Washington, DC: U.S.

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• The number of computer forensic services provided by ICAC Task Forces and Investigative Satellites to nonfederally funded law enforcement agencies.

• The number of members and organizations involved in multidisciplinary task forces at each site.

Under this solicitation, applicants will be required to supply OJJDP with the above performance information. In addition, OJJDP will measure the performance of the ICAC Task Force Program. Data collection will be covered within the existing ICAC Monthly Performance Report (MPR) forms. MPR is a required data-reporting document that was created by OJJDP to collect ICAC data related to arrests, subpoenas, search warrants, technical assistance (investigative and computer forensic), and prevention and intervention activities performed by ICAC Regional Task Forces and ICAC Investigative Satellites. Data gathered from MPRs will track the number of arrests made and the outcomes of those arrests (plea bargains, prosecutions, etc.), assist in the identification of victims who need resources such as counseling and therapy, and track tips and aid in target area identification.

Data collected from MPRs will provide crucial baseline data necessary for a future evaluation of the ICAC Task Force Program after it has been fully established throughout the country.

Assistance in obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable program results of federally funded programs.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.543. This form is included in OJJDP's *Application Kit*, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to *askncjrs@ncjrs.org*. The kit is also available online at *ojjdp.ncjrs.org*.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice requests that applicants provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

• Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

• Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

• Services of some kind (*e.g.*, technical assistance, research, or evaluation) rendered to the program or project described in the application.

Delivery Instructions

All applicants must submit the original application (signed in blue ink) and five copies. Applications should be unbound and fastened by a binder clip in the top left-hand corner.

OJJDP strongly recommends that applicants number each page of the application. To ensure that applications are received by the due date, applicants should use a mail service that documents the date of receipt. Because OJJDP anticipates sending applicants written notification of application receipt approximately 4 weeks after the solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received after [XXXX] will be deemed late and may not be accepted. The closing date and time apply to all applications. To ensure prompt delivery, please adhere to the following guidelines:

Applications Sent by U.S. Mail

Use registered mail to send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. In the lower left-hand corner of the envelope, clearly write "Internet Crimes Against Children Task Force Program."

Applications Sent by Overnight Delivery Service

Allow at least 48 hours for delivery. Send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 800–638–8736 (phone number required by some carriers). In the lower left-hand corner of the envelope, clearly write "Internet Crimes Against Children Task Force Program."

Applications Delivered by Hand

Deliver by [XXXXX] to the Juvenile Justice Resource Center, 2277 Research Boulevard, Rockville, MD 20850; 301–519–5535. Hand deliveries will be accepted daily between 8:30 a.m. and 5:00 p.m. EST, excluding Saturdays, Sundays, and Federal holidays. Entrance to the resource center requires proper photo identification.

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. EDT on August 30, 2002.

Contact

For further information, contact Ron Laney, Director, Child Protection Division, and ICAC Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–3637, or send an e-mail inquiry to *laney@ojp.usdoj.gov*.

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Dated: July 11, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–17842 Filed 7–15–02; 8:45 am]

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Part VI

Department of Education

Office of Special Education and Rehabilitative Services; Disability and Rehabilitation Research Projects (DRRP) Program; Notices

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities (NFP).

We published a notice of proposed priorities (NPP) for the Persons Aging with Hearing and Vision Loss project and for the Evaluation of the Changing Universe of Disability and Systems Change Activities project in the **Federal Register** on April 26, 2002 (67 FR 20870). This NFP contains two changes from the NPP. Specifically, for the Persons Aging with Hearing and Vision Loss project, we have clarified that the

DRRP will conduct research, development, training, and dissemination activities and evaluate model approaches for improving employment and community integration options, including more viable communication systems, for such individuals who are 55 years of age, or older. In carrying out this purpose the DRRP must:

(1) Investigate the prevalence of age-

the Federal monies available from this NIDRR grant; and

• Identify and investigate a study population that includes a balanced sample of subjects representative of national demographics.

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

This priority supports a DRRP on the Evaluation of the Changing Universe of

• By the end of the fourth year, convene a national conference to disseminate and discuss information about the effect of systems change activities on persons with newly emergent disabilities or changing manifestations of disability or both including those who are unserved and underserved and proposals to address gaps in such activities;

• Serve as a resource to researchers, consumers and consumer groups,

Change: None.

Comment: One commenter, in addition to offering support for the priority, also offered the service of their Unit Director as a resource person to whomever the project is awarded.

Discussion: While NIDRR appreciates the offer of support, it will be up to each applicant to determine with whom they will negotiate involvement in the project.

Change: None.

Comment: One commenter expressed concern that the differential impact of hearing loss on persons with different types

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DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities (NFP).

SUMMARY: The Assistant Secretary announces final priorities for one Persons Aging with Hearing and Vision Loss project and one Evaluation of the Changing Universe of Disability and Systems Change Activities project under the Disability and Rehabilitation Research Projects (DRRP) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in FY 2002 and in later years. We take this action to focus research attention on identified national needs. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

These priorities reflect issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*.

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

We published a notice of proposed priorities (NPP) for the Persons Aging with Hearing and Vision Loss project and for the Evaluation of the Changing Universe of Disability and Systems Change Activities project in the **Federal Register** on April 26, 2002 (67 FR 20870). This NFP contains two changes from the NPP. Specifically, for the Persons Aging with Hearing and Vision Loss project, we have clarified that the terms "deaf" and "blind" refer to moderate to severe hearing and visual impairments and we have added the term "primary caregivers" to the list of examples of the types of stakeholders from whom the DRRP should seek advice. We fully explain these changes in the Analysis of Comments and Changes elsewhere in this notice.

Except for minor revisions, there are no other changes between the NPP and this NFP.

The backgrounds for each of the priorities were published in the NPP.

Analysis of Comments and Changes

In response to our invitation in the NPP, several parties submitted comments on the proposed priorities (eight parties for the Persons Aging with Hearing and Vision Loss project and three parties for the Evaluation of the Changing Universe of Disability and Systems Change Activities). An analysis of the comments and of any changes in the priorities since publication of the NPP is published as an appendix at the end of this notice. We discuss comments under the priority to which they pertain.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

Priorities

Priority 1—Persons Aging With Hearing and Vision Loss

This priority supports one DRRP on Persons Aging with Hearing and Vision Loss. The purpose of this priority is to explore ways to improve outcomes for persons who are blind or who are deaf and who are now experiencing a secondary onset of hearing loss or vision impairment resulting from aging. The terms "deaf" and "blind" as used herein refer to the moderate to severe range of hearing and visual impairments. The DRRP will conduct research, development, training, and dissemination activities and evaluate model approaches for improving employment and community integration options, including more viable communication systems, for such individuals who are 55 years of age, or older. In carrying out this purpose the DRRP must:

(1) Investigate the prevalence of age-related onset of deafness among older American blind individuals and age-related onset of blindness among older American deaf individuals and the impact on the employment and community integration options, including more viable communication systems for each population;

(2) Identify and evaluate technology and service delivery options, such as transportation, housing, and community integration activities for individuals with early onset deafness or blindness and late onset hearing or vision loss and their effectiveness with persons experiencing secondary sensory loss resulting from aging;

(3) Identify and evaluate access to use of technologies, including assistive devices and telecommunication or other existing communication systems, such as tactile interpreter support, needed to assist persons with early onset deafness or blindness and late onset hearing or vision loss and their effectiveness with persons experiencing secondary sensory loss resulting from aging; and

(4) Using available dissemination mechanisms, with appropriate assistive technical modification, disseminate findings, and develop strategies to educate both consumers and providers, especially vocational rehabilitation workers, in use of these techniques.

In addition, the DRRP must:

- Coordinate the efforts of this DRRP with other NIDRR, Office of Special Education Programs (OSEP), and Rehabilitation Services Administration (RSA) projects that address related activities such as Blindness, Deafness, Deaf-Blind, Aging, Accessible Housing, Accessible Transportation, Telecommunication, Independent Living, and Interpreter Training programs;
- Solicit direct input from stakeholders (e.g., persons who are deaf, blind, and deaf-blind; service providers; primary caregivers; and employers) as part of the ongoing planning, development, and implementation of the DRRP's research activities;
- Demonstrate efforts to secure supplementary funding that will permit the DRRP more latitude in exploring additional related studies, in addition to the Federal monies available from this NIDRR grant; and
- Identify and investigate a study population that includes a balanced sample of subjects representative of national demographics.

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

This priority supports a DRRP on the Evaluation of the Changing Universe of Disability and Systems Change Activities. The purpose of the priority is to evaluate the implications over time of systems change activities for populations within the changing universe of disability.

The DRRP must:

(1) Identify and evaluate existing or proposed data systems that can be used to monitor systems change activities at the State or Federal level or both, including policy changes related to the NFI, the Workforce Investment Act of 1998, and the 1999 Olmstead decision (*Olmstead* v. *L.C.*, 527 U.S. 581);

(2) Identify, evaluate, and project the impact of systems change activities and new policies for people with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved;

(3) Develop proposals for new systems or data variables, or changes, as necessary, to existing data systems that will facilitate use of such data to eliminate gaps in the availability of mechanisms to monitor the impact of systems change activities on people with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved;

(4) Disseminate findings and recommendations to modify monitoring data systems or to institute new monitoring approaches; and

(5) Conduct research to identify and evaluate the implications of policy changes or other systems change activities on public and private rehabilitation programs and services for persons with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved.

In carrying out these purposes the applicant must:

- Involve consumers or their families, as appropriate, in all stages of the research and demonstration endeavor;
- Demonstrate culturally appropriate and sensitive methods of data collection, measurements, and dissemination addressing needs of individuals with disabilities from diverse backgrounds;
- By the end of the fourth year, convene a national conference to disseminate and discuss information about the effect of systems change activities on persons with newly emergent disabilities or changing manifestations of disability or both including those who are unserved and underserved and proposals to address gaps in such activities;
- Serve as a resource to researchers, consumers and consumer groups, planners, and policymakers for conceptual and statistical information that addresses the changing universe of disability, including systems change issues.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and, Rehabilitative Services.

Appendix

Analysis of Comments and Changes

Priority 1—Persons Aging With Hearing and Vision Loss

Comment: Three commenters expressed strong support for the priority, and gave examples of how their own current activities reflect sensitivity to the needs of the target populations.

Discussion: NIDRR appreciates the broad support that these comments provide.

Change: None.

Comment: One commenter, in addition to offering support for the priority, also offered the service of their Unit Director as a resource person to whomever the project is awarded.

Discussion: While NIDRR appreciates the offer of support, it will be up to each applicant to determine with whom they will negotiate involvement in the project.

Change: None.

Comment: One commenter expressed concern that the differential impact of hearing loss on persons with different types of visual impairments, such as central or peripheral loss, be noted in the research.

Discussion: NIDRR has given applicants an opportunity to define the scope of the population study in item One of the priority. It is the applicant's responsibility to establish the scope of their definition. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter recommended several research activities for inclusion in any research project on the subject populations, stating that these areas are important and are supported in the literature cited.

Discussion: The applicants are expected to be familiar with the need for new research as well as with relevant past studies. Applicants are responsible for determining which citations of specific research should be incorporated in the application submitted and the peer review process will evaluate the merits of the proposal.

Change: None.

Comment: One commenter suggested that the priority's scope might be enhanced by adding the term "primary caregivers" to the second bullet item.

Discussion: NIDRR agrees this adds clarity to the intent.

Change: The term has been added.

Comment: Two commenters expressed concern about the scope of the definition for the terms "deaf" and "blind" and whether, in each case, NIDRR intends for these terms to be all inclusive. One commenter offered the current Veteran Administration (VA) definition as an example.

Discussion: NIDRR uses the terms "deaf" and "blind" to be inclusive of moderate to severe hearing and visual impairments. NIDRR suggests that the applicants cite whatever references they believe best fits their research intent.

Change: At the end of the second sentence, after the word aging, further clarification is added.

Comment: One commenter suggested that such a study will be incomplete without including similar information from a broader subject base; specifically (a) from persons with both sensory impairments acquired at an early age; (b) persons who acquire these impairments late in life; and (c) from persons with both sensory impairments who are institutionalized.

Discussion: NIDRR believes that it is the applicant's responsibility to determine and defend the inclusion or exclusion of any population segments within the broader populations. The priority encourages the applicant to seek additional research funding

from other sources if the initial efforts support broader endeavors.

Changes: None.

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

Comments: One commenter recommended that the scope of work be expanded to address other policy developments including welfare reform, recent U.S. Supreme Court decisions about the definition of disability, and the Ticket to Work and Work Incentives outcome-based methodologies for evaluation of the impact across time of policy changes for all persons with disabilities.

Discussion: As the commenters indicated, there are many substantive issues to be addressed beyond those specified in this priority. However, past research regarding shifts in the universe of individuals with disabilities has demonstrated difficulties in using available data sources to characterize a diverse and dynamic population. Such data are needed to develop appropriate

General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, and 97, and (b) The program regulations 34 CFR part 350, this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the DRRP Program is to improve the effectiveness of services authorized

to achieve the purposes of the absolute or competitive priority. (3 points)

(b) *Design of research activities* (40 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the

budget, including clearly defined responsibilities, and timelines for accomplishing project tasks. (8 points)

(e) *Collaboration* (5 points).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or

disciplines required to conduct all proposed activities. (2 points)

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project. (2 points)

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas. (2 points)

(i) *Adequacy and accessibility of resources* (10 points).

from other sources if the initial efforts support broader endeavors.

Changes: None.

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

Comments: One commenter recommended that the scope of work be expanded to address other policy developments including welfare reform, recent U.S. Supreme Court decisions about the definition of disability, and the Ticket to Work and Work Incentives Improvement Act.

Discussion: An applicant could propose a study pertaining to these; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Change: None.

Comments: Two commenters noted the extensive scope of data sources available to monitor systems change. These sources reflect variations in types of services provided, agency needs to measure outcomes, target populations and their descriptors, units of analysis, specification of legal definitions of disability under the ADA, and scientific rigor of the measures.

Discussion: Applicants may choose from a variety of methodologies to identify and evaluate appropriate data systems within the scope of the priority.

Change: None.

Comments: Two commenters indicated that a substantial interagency effort is needed to develop a coherent framework and outcome-based methodologies for evaluation of the impact across time of policy changes for all persons with disabilities.

Discussion: As the commenters indicated, there are many substantive issues to be addressed beyond those specified in this priority. However, past research regarding shifts in the universe of individuals with disabilities has demonstrated difficulties in using available data sources to characterize a diverse and dynamic population. Such data are needed to develop appropriate interventions to address the needs of people with newly emergent or changing manifestations of disability.

Change: None.

[FR Doc. 02–17883 Filed 7–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.133A]

National Institute on Disability and Rehabilitation Research—Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, and 97, and (b) The program regulations 34 CFR part 350, this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the DRRP Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). The DRRP supports activities designed to maximize the full inclusion and self-sufficiency of individuals with disabilities, especially the most severe disabilities.

This competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

APPLICATION NOTICE FOR FISCAL YEAR 2002: DISABILITY REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Application available	Deadline for transmittal of applications	Estimated available funds	Maximum award amount (per year)*	Estimated number of awards	Project period (months)
84.133A–7: Persons aging with hearing and vision loss.	(July 16, 2002).	(August 15, 2002	$500,000	$500,000	1	60
84.133A–15: Evaluation of the changing universe of disability and systems change.	(July 16, 2002).	(August 15, 2002).	300,000	300,000	1	60

*Note: We will reject without consideration any application that proposes a budget exceeding the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Note: The Department is not bound by any estimates in this notice.

Priorities

This competition focuses on projects designed to meet the priorities in the notice of final priorities for these programs, published elsewhere in this issue of the **Federal Register**. The priorities are:

Priority 1—Persons Aging With Hearing and Vision Loss

Priority 2—Evaluation of the Changing Universe of Disability and Systems Change Activities

For FY 2002 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

Selection Criteria

We use the following selection criteria to evaluate applications under this program.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

An additional 10 points may be earned by an applicant depending on how well the additional selection criterion is met. The additional selection criteria is found elsewhere in this notice.

(a) *Responsiveness to an absolute or competitive priority* (6 points).

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority. (3 points)

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority. (3 points)

(b) *Design of research activities* (40 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors. The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the art; (7 points)

(B) Each research hypothesis is theoretically sound and based on current knowledge; (8 points)

(C) Each sample population is appropriate and of sufficient size; (8 points)

(D) The data collection and measurement techniques are appropriate and likely to be effective; (9 points)

(E) The data analysis methods are appropriate. (8 points)

(c) *Design of dissemination activities* (8 points).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format. (4 points)

(ii) The extent to which the materials and information to be disseminated and the formats and the methods for dissemination are appropriate to the target population. (2 points)

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities. (2 points)

(d) *Plan of operation* (8 points).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks. (8 points)

(e) *Collaboration* (5 points).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project. (3 points)

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant. (2 points)

(f) *Adequacy and reasonableness of the budget* (5 points).

(1) The Secretary considers the adequacy and the reasonableness of the budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities. (3 points)

(ii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner. (2 points)

(g) *Plan of evaluation* (10 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; (5 points) and

(ii) Are objective, and quantifiable or qualitative, as appropriate. (5 points)

(h) *Project staff* (8 points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2 points)

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities. (2 points)

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project. (2 points)

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas. (2 points)

(i) *Adequacy and accessibility of resources* (10 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The quality of an applicant's past performance in carrying out a grant. (1 point)

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research. (8 points)

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project. (1 point)

Additional Selection Criterion (10 points)

We use the following additional criterion to evaluate applications under each priority.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Application Procedures

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more *75* numbered, double-spaced (no more than 3 lines per vertical inch) 8″ × 11″ pages (on one side only) with one inch margins (top, bottom, and sides).

appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.133A [add program number and title]), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily

Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (*Note:* ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB

budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the

individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure that My Application Will

The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more *75* numbered, double-spaced (no more than 3 lines per vertical inch) 8″ × 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.133A [add program number and title]), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.133A [add program number and title]), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

Part I: Application for Federal Assistance (ED 424 (Rev. 11/30/2004)) and instructions.

Part II: Budget Form—Non-Construction Programs (ED 524) and instructions.

Part III: Application Narrative.

Part IV: Additional Materials.

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (*Note:* ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

You may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* We will not award a grant unless we have received a complete application form.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 2/28/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information.

If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure that My Application Will be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if It Will be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out if My Application is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 11/30/2004

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

Organizational Unit

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. De-

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 8 4 _ _ _ _
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____
6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—Pre-Application ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)
12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
a. Authorized Representative (Please type or print name clearly.)
b. Title
c. Tel. #: _____ Fax #: _____
d. E-Mail Address:
e. Signature of Authorized Representative Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview proce-

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

Total (f)	0	0	0	0	0	0	0	0	0	0	0	0	0	
Year 5										0			0	

Number: 1890-0004
Expires: 02/28/2003
complete the column under multi-year grants should complete
more completing form.

Total (f)	0	0	0	0	0	0	0	0	0	0	0	0	0	
Year 5										0			0	

complete the column under
multi-year grants should complete
more completing form.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

contribution for each applicable budget category.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

(c) Are not presently indicted for or otherwise criminally or civilly

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check ☐ If there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these Instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

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DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
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[FR Doc. 02–17884 Filed 7–15–02; 8:45 am]
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S. 2578/P.L. 107–199
To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

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H.R. 327/P.L. 107–198

Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)

S. 2578/P.L. 107–199

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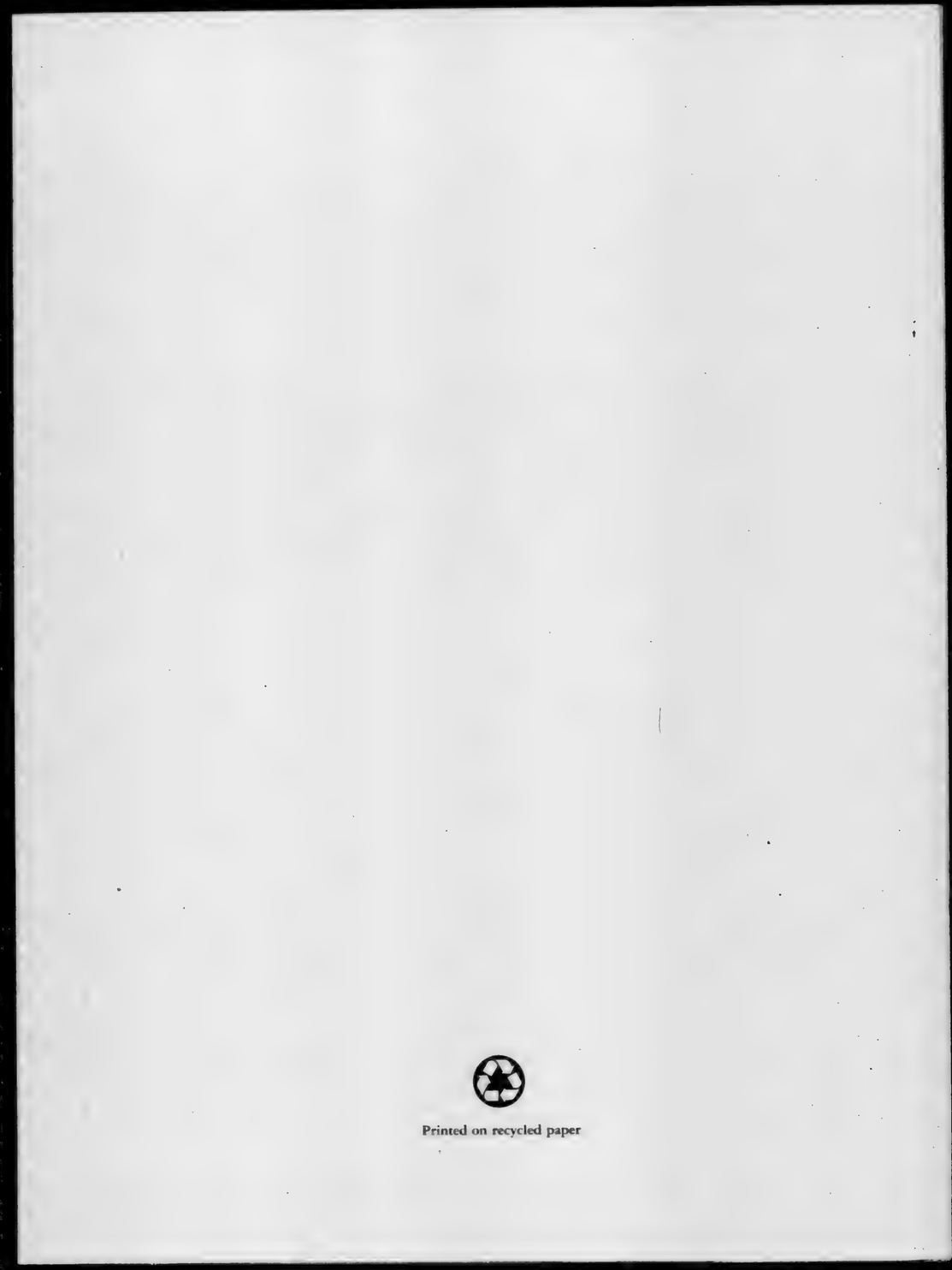

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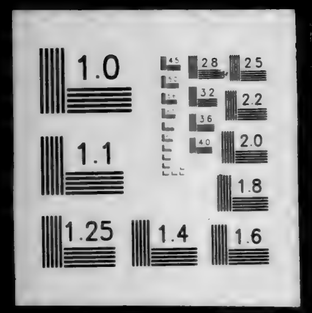

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Determination to Authorize the Furnishing of Emergency Military Counterterrorism Assistance to the

Federal Register
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Wednesday, July 17, 2002

Presidential Documents

Title 3—

The President

Presidential Determination No. 02–24 of June 28, 2002

Presidential Determination to Authorize the Furnishing of Emergency Military Counterterrorism Assistance to the Armed Forces of the Philippines

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists that requires immediate military counterterrorism assistance to the Armed Forces of the Philippines; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except 506(a) of the Act.

I therefore direct the drawdown of up to $10 million of defense articles and services from the inventory and resources of the Department of Defense to the Philippines for counterterrorism assistance.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 28, 2002.

[FR Doc. 02–18162
Filed 7–16–02; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Santa Clara, CA, NAF wage area. This change is necessary

abolishment of the present Alameda-Contra Costa wage area and the establishment of a new Santa Clara wage area.

Waiver of Notice of Proposed

Rules and Regulations

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ61

Prevailing Rate Systems; Definition of Santa Clara, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management is issuing an interim rule that will abolish the Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System wage area and establish a new Santa Clara, CA, NAF wage area. This change is necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland will leave the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. A full-scale survey for the Santa Clara wage area will be conducted in September 2002.

DATES: This interim rule is effective on August 16, 2002. The Office of Personnel Management must receive comments by August 16, 2002.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter, (202) 606–2848; FAX: (202) 606–0824; or e-mail *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) requests that the Office of Personnel Management (OPM) abolish the present Alameda-Contra Costa, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Santa Clara, CA, NAF wage area. This change is necessary because the closure of the Army and Air Force Exchange Service Distribution Center in Oakland will leave the Alameda-Contra Costa wage area without a host activity to conduct a local wage survey. The Santa Clara NAF wage area will consist of Santa Clara County as the survey area. The area of application for the Santa Clara, CA, wage area will include Alameda, Contra Costa, and San Mateo Counties. A full-scale survey for the Santa Clara wage area will be conducted in September 2002.

The Alameda-Contra Costa NAF wage area is presently composed of two survey area counties, Alameda and Contra Costa Counties, and two area of application counties, San Mateo and Santa Clara Counties. The Department of Defense recommended that Santa Clara County be redefined as the sole survey county and that Alameda, Contra Costa, and San Mateo Counties be defined as area of application counties. Santa Clara County meets the minimum regulatory requirements to be an NAF survey area. There are about 90 FWS NAF employees working in Santa Clara County, and Moffett Federal Airfield has the capability to conduct a local wage survey. Santa Clara also meets the regulatory requirement of having a minimum of 1,800 private enterprise employees in establishments within the survey specifications. Since Alameda, Contra Costa, and San Mateo Counties will have continuing NAF employment and do not meet the regulatory criteria under 5 CFR 532.219 to be separate survey areas, they must be areas of application. In defining counties as area of application counties, OPM considers the proximity of the largest activity in each county to the survey area; transportation facilities and commuting patterns; and similarities in overall population, private employment in the major industry categories, and the kinds and sizes of private industrial establishments.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus the abolishment of the present Alameda-Contra Costa wage area and the establishment of a new Santa Clara wage area.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary to abolish the present Alameda-Contra Costa wage area and establish the new Santa Clara wage area as soon as possible to allow DOD time to prepare for the Santa Clara full-scale survey that will be conducted in September 2002.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys [Amended]

2. Appendix B to subpart B is amended by removing, under the State of California, "Alameda-Contra Costa," and adding, under the State of California, after Santa Barbara, "Santa Clara," under the wage area listing with the beginning month as "September," and the fiscal year of full-scale survey as "Even."

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B is amended for the State of California by removing the two occurrences of "Alameda-Contra Costa" from the area of application, and adding "Santa Clara" as a new nonappropriated fund wage area after "Santa Barbara" to read

Counsel, OCC Legislative and Regulatory Activities Division, (202) 874–5090, 250 E St., SW. , Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Supplemental Standards of Ethical Conduct for Employees of the Department of Treasury, at 5 CFR 3101.108, set forth rules that apply to employees of the Office of the

The first issue under the current credit card rules is that employees' credit card-related recusals have limited the flexibility of OCC supervisors to make assignments. The exception to the general prohibition on obtaining credit generally permits covered OCC employees to hold and use national bank credit cards if they recuse themselves from any work involving

conversions to the national bank charter have reduced sharply the credit card options available to those employees.

The Department has found that the imposition of such broad restrictions on obtaining credit cards on covered district and large bank team employees is not necessary for the administration of the OCC's supervisory activities. In situations where these covered employees are unlikely to examine a

Bank Supervision, and the bank is one to which the examiner is assigned or otherwise actually examines. The term "Large Bank Supervision" in the final rule replaces the term "Multinational Division" which is used in the current regulations. This is a technical change to reflect recent changes to the OCC's management structure.

The changes to the Supplemental Regulations narrow the current

administrative and personnel inefficiencies.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. However, this final rule will not have a significant economic impact on a substantial number of small entities in

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B is amended for the State of California by removing the two occurrences of "Alameda-Contra Costa" from the area of application, and adding "Santa Clara" as a new nonappropriated fund wage area after "Santa Barbara" to read as follows:

* * * * *

SANTA CLARA

Survey area

California:
Santa Clara

Area of application. Survey area plus:

California:
Alameda
Contra Costa
San Mateo

* * * * *

[FR Doc. 02–17900 Filed 7–16–02; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF THE TREASURY

5 CFR Part 3101

RIN 3209–AA15

Supplemental Standards for Ethical Conduct for Employees of the Department of Treasury

AGENCY: Department of the Treasury (Department).

ACTION: Final rule; amendment.

SUMMARY: The Department of the Treasury, with the concurrence of the Office of Government Ethics, is issuing this final rule to amend the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Supplemental Regulations) that govern the use of national bank credit cards by employees of the Office of the Comptroller of the Currency (OCC). This final rule amends the Supplemental Regulations to follow more closely the statutory restrictions on the use of national bank credit cards by OCC employees and to increase OCC supervisors' flexibility in making work assignments.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Virginia R. Canter, Senior Counsel (Ethics), Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, (202) 622–0450, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; Barrett Aldemeyer, OCC Ethics Counsel, (202) 874–4460, or MaryAnn Orr Nash, Counsel, OCC Legislative and Regulatory Activities Division, (202) 874–5090, 250 E St., SW. , Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Supplemental Standards of Ethical Conduct for Employees of the Department of Treasury, at 5 CFR 3101.108, set forth rules that apply to employees of the Office of the Comptroller of the Currency (OCC). This final rule amends § 3101.108(b), which prohibits OCC employees from borrowing, including borrowing through the use of a credit card, from a national bank except under very limited circumstances.

Under 18 U.S.C. 213, a bank examiner is prohibited from accepting loans from a bank that he or she examines; 18 U.S.C. 212 correspondingly prohibits a bank from making a loan to someone who examines or has authority to examine the bank.[1] Current Supplemental Regulations implementing section 213 and expanding upon it generally prohibit examiners and the other "covered" OCC employees from seeking or obtaining any loan or other extension of credit from a national bank, including through the use of a credit card. 5 CFR 3101.108(b).

The existing Supplemental Regulations do contain an exception to this prohibition. A covered OCC employee[2] generally is permitted to obtain a credit card from a national bank if: (1) The credit card is obtained on terms and conditions no more favorable than those offered to the general public; (2) the employee is not assigned to examine the bank offering the credit card at the time the credit card is obtained; and (3) the employee recuses himself or herself from examining or otherwise participating in the supervision of the bank. Two issues concerning the scope of the exception have arisen since the issuance of the current rules in 1995. *See* 60 FR 22249–22255.

The first issue under the current credit card rules is that employees' credit card-related recusals have limited the flexibility of OCC supervisors to make assignments. The exception to the general prohibition on obtaining credit generally permits covered OCC employees to hold and use national bank credit cards if they recuse themselves from any work involving those banks. *See* 5 CFR 3101.108(b)(4), as adopted in 1995. In instances where covered OCC employees holding national bank credit cards are involved in OCC licensing, policy and legal staff matters directly involving the bank issuer, the OCC has found that there is little likelihood of a conflict of interest or a loss of impartiality and that the breadth of the restriction unnecessarily hinders the administration of the OCC's programs. Therefore, this final rule refines the application of the credit card rules to covered OCC employees and more closely follows the statutory prohibition.

The second issue is that the current credit card rules have significantly limited the credit card options available to employees who work in district offices and on large bank supervision teams. Under the Supplemental Regulations and the OCC ethics policies (which set forth the procedures that implement the OCC's portion of the Supplemental Regulations), covered district employees may not obtain credit cards from banks headquartered in their district. In addition, large bank team (formerly known as the "Multinational Division") employees[3] may not have credit cards from banks supervised by their large bank team or from banks in the district where they are located. *See* 5 CFR 3101.108(b)(4)(i), as adopted in 1995; *see also* OCC Ethics Policy at 14.

The Department originally adopted the Supplemental Regulations' credit card restrictions on covered OCC district and large bank team employees, in part, to permit the supervisors of those employees to make work assignments free from the constraints that would have otherwise arisen from employees' credit card recusals. At the time they were adopted by the Department, these restrictions did not present a serious obstacle to covered district and large bank team employees obtaining credit cards. Since the issuance of the Supplemental Regulations, industry consolidation and

[1] Under the OCC Ethics Policy, Rules, Policies and Procedures for Employees (October 1999) (OCC Ethics Policy) the term "examiner" does not include supervisory personnel who are not assigned to the examination of banks. The OCC Ethics Policy will be revised to reflect the changes made by this final rule and to clarify that, under 18 U.S.C. 212, "authority to examine" also does not include OCC supervisory personnel. A summary of the OCC Ethics Policy is available on the OCC's website at http://www.occ.treas.gov/ethics.htm.

[2] "Covered" OCC employees include bank examiners and all other employees designated by the Comptroller under OCC ethics policies. See 5 CFR 3101.108(b)(3). Under these policies, "covered employee" means any employee, except an administrative employee, who is required to file financial disclosure reports.

[3] Because they were adopted prior to the recent changes to OCC's management structure, the Supplemental Regulations refer to large bank team employees as employees of the "Multinational Division." This final rule includes a technical correction to make appropriate changes to terminology.

conversions to the national bank charter have reduced sharply the credit card options available to those employees.

The Department has found that the imposition of such broad restrictions on obtaining credit cards on covered district and large bank team employees is not necessary for the administration of the OCC's supervisory activities. In situations where these covered employees are unlikely to examine a bank, the Department believes that the process of obtaining and holding a national bank credit card does not inherently present a conflict of interest or a likelihood of a loss of impartiality.

There are several changes made by these final rule amendments to address these concerns. The final rule changes the general statement of the prohibition on borrowing at 5 CFR 3101.108(b)(1) to omit the reference to credit cards as unnecessary and redundant. The import of the original provision would not be altered by this change.

The final rule also changes the Supplemental Regulations to eliminate the requirement for non-examiners (attorneys, economists, Senior Advisors, etc.) to be recused from matters involving banks from which they hold credit cards. The final rule, at § 3101.108(b)(4)(i), therefore, provides a general exception permitting non-examiners to seek or obtain credit cards from national banks on terms and conditions no more favorable than those offered to the general public. The final rule further changes the Supplemental Regulations to limit credit card recusals to examiners and to require examiners holding national bank credit cards to be recused only from bank *examinations* involving the issuing credit card banks, and not limit their participation in other matters, such as licensing or supervisory policy decisions affecting the bank. The exception in § 3101.108(b)(4)(ii) of the final rule, permitting examiners and their spouses and minor children to hold credit cards from banks the examiner is not assigned to examine, applies only to examiners and their spouses and minor children, and not any other covered OCC employees. The exception is available with respect to a credit card from a bank an examiner is not assigned to examine provided the credit card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner maintains a written recusal from examinations of the bank.

An examiner is "assigned to examine" a bank if the examiner works either: (A) in a district, and the bank is one that he or she examines or that is assigned to his or her Assistant Deputy Comptroller (ADC) or rating official; or (B) in Large Bank Supervision, and the bank is one to which the examiner is assigned or otherwise actually examines. The term "Large Bank Supervision" in the final rule replaces the term "Multinational Division" which is used in the current regulations. This is a technical change to reflect recent changes to the OCC's management structure.

The changes to the Supplemental Regulations narrow the current prohibition on district and large bank team employees by prohibiting only examiners in districts and large banks from holding credit cards issued by banks they are assigned to examine. Because this final rule more clearly connects the credit card restriction to the examiners' actual or likely work assignments, it will provide covered OCC district and large bank team examiners greater access to credit cards without unduly restricting supervisors' flexibility in making assignments or increasing the potential for conflicts of interest.

The final rule elimimates the retail store exception in 5 CFR 3101.108(b)(4)(ii) as heretofore codified to create a uniform OCC credit card policy. With the adoption of this final rule, the need for this exception should diminish because a retail store credit card would be treated as any other national bank credit card—generally permissible for examiners who recuse themselves unless the card is issued by a national bank assigned to the examiners' ADC or by a bank they examine. The final rule also eliminates the exception for mortgage assumptions as codified until now in 5 CFR 3101.108(b)(4)(iii) because this exception arises infrequently and will be better handled by the OCC ethics staff by way of recusal or waiver pursuant to 5 CFR 3101.108(g).

Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the proposed rulemaking requirements of the Administrative Procedure Act (APA). As set forth in the description of the final rule, this rule affects only the OCC and its personnel. Even if this rulemaking were subject to APA proposed rulemaking procedures, the Department finds good cause, pursuant to 5 U.S.C. 553 (b) and (d), to waive the requirements for notice and comment and 30-day delayed effective date because the rule affects only the OCC and its employees (and their immediate families) and operates to relieve a restriction that has resulted in administrative and personnel inefficiencies.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. However, this final rule will not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act. This rule affects the administrative operations of the OCC and it affects OCC employees. Any effect on national banks is merely incidental and creates no cost or burden for a bank.

Executive Order 12866

This final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Extensions of credit, Government employees, OCC employees.

For the reasons set forth in the preamble, the Department of the Treasury, with the concurrence of the Office of Government Ethics, amends 5 CFR part 3101 as follows:

PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

1. The authority citation for part 3101 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 212, 213; 26 U.S.C. 7214 (b); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a) (2) (ii).

2. In § 3101.108, paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

* * * * *

(b) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OCC employee shall seek or obtain credit from any national bank or from an officer, director, employee, or subsidiary of any national bank.

* * * * *

(4) *Exceptions*—(i) *Non-examiners.* A covered OCC employee, other than an examiner, or the spouse or minor child of such a covered OCC employee, may seek or obtain a credit card from a national bank if the credit card is sought

or obtained on terms and conditions no more favorable than those offered to the general public.

(ii) *Examiners.* (A) An examiner, or the spouse or minor child of an examiner to whom the prohibition in paragraph (b)(1) of this section applies, may seek or obtain a credit card from a national bank the examiner is not assigned to examine so long as the credit card is obtained on terms and

Agency's regulation governing deposit production offices. This document corrects a typographical error in the OCC's regulation.

EFFECTIVE DATE: The correction made in this document is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division (202–

Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

or obtained on terms and conditions no more favorable than those offered to the general public.

(ii) *Examiners.* (A) An examiner, or the spouse or minor child of an examiner to whom the prohibition in paragraph (b)(1) of this section applies, may seek or obtain a credit card from a national bank the examiner is not assigned to examine so long as the credit card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner submits to the Chief Counsel or designee a written disqualification from the examination of that bank. Such a recusal would not prevent an examiner from participating in other bank supervision matters outside the scope of an examination, such as licensing or supervisory policy decisions.

(B) For purposes of this section, examiners are assigned to examine a bank if they work:

(*1*) In a district, and the bank is one they examine or that is assigned to their Assistant Deputy Comptroller or rating official; or

(*2*) In Large Bank Supervision or Washington, D.C. Headquarters, and the bank is one to which they are regularly or otherwise assigned.

* * * * *

Dated: June 27, 2002.

David D. Aufhauser,

General Counsel, Department of the Treasury.

Approved: July 9, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–17918 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 02–09]

RIN 1557–AB95

Prohibition Against Use of Interstate Branches Primarily for Deposit Production

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Final rule; correction.

SUMMARY: On June 6, 2002, the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively the Agencies) published a final rule in the **Federal Register** that amended each Agency's regulation governing deposit production offices. This document corrects a typographical error in the OCC's regulation.

EFFECTIVE DATE: The correction made in this document is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division (202–874–5090).

SUPPLEMENTARY INFORMATION: The comma that appears at the end of paragraph (d)(1) of 12 CFR 25.62 should be a semicolon, and paragraph (d)(2) of § 25.62 should begin on a new line. Therefore, in the final rule FR Doc. 02–14130, published on June 6, 2002 (67 FR 38844), make the following correction:

1. On page 38847, in the third column, in § 25.62, paragraphs (d)(1) and (d)(2) are correctly revised to read as follows:

§ 25.62 Definitions.

* * * * *

(d) * * *

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

* * * * *

Dated: July 8, 2002.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 02–17757 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE186, Special Condition 23–119–SC]

Special Conditions; S–TEC on the New Piper Aircraft Corporation, PA 34–200T, Seneca V; Protection for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to S–TEC, One S–TEC Way Municipal Airport, Mineral Wells, Texas 76007, for a Supplemental Type Certificate for New Piper Aircraft Corporation, PA 34–200T, Seneca V airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model Magic manufactured by Meggitt Avionics for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is July 5, 2002. Comments must be received on or before August 16, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE186, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE186. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the

Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE186." The postcard will be date stamped and returned to the commenter.

Background

On November 13, 2001, S–TEC Corporation, One S–TEC Way, Mineral Wells Airport, Mineral Wells, Texas 76067, made an application to the FAA for a new Supplemental Type Certificate for the New Piper Aircraft Corporation PA 34–200T Seneca V airplanes. The Seneca V is currently approved under Type Certificate No. A7SO. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, S–TEC must show that the New Piper Aircraft Company PA 34–200T Seneca V aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the PA 34–200T Seneca V: The Certification Basis that is incorporated by reference for airplane model PA 34–200T Seneca V of the Type Certificate Data Sheet No. A7SO: FAR 23 August 1, 1967, through Amendment 23–6, FAR 23.1301, 1309, 1311, and 1321 as amended by Amendment 23–49, and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101 (b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

S–TEC plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter) [1]	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

[1] The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the

airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The

opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

applicable to certain Boeing Model 737–600, –700, and –800 series airplanes, that currently requires repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. This amendment limits the applicability of the existing

to certain Boeing Model 737–600, –700, and –800 series airplanes, was published in the **Federal Register** on April 4, 2002 (67 FR 16064). That action proposed to continue to require repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent

labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required installation is estimated to be $120 per airplane.

The new replacement that is required in this AD action will take approximately 4 work hours per airplane to accomplish, at an average

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to New Piper Aircraft Corporation PA 34–200T Seneca V airplane. Should S–TEC Corporation, apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for New Piper Aircraft Corporation PA 34–200T Seneca V airplane modified by S–TEC Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on July 5, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate.

[FR Doc. 02–18018 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–367–AD; Amendment 39–12821; AD 2002–14–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, and –800 series airplanes, that currently requires repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. This amendment limits the applicability of the existing requirements, clarifies certain existing requirements, and requires removal of the clamp shell installed previously and replacement of the existing quick-disconnect fuel supply hose, coupling, and strut fitting with new, fixed-B-nut-type parts. Such replacement ends the requirement for repetitive inspections. The actions specified by this AD are intended to prevent major fuel leakage due to excessive wear of the quick-disconnect coupling on the fuel hose, fire in the engine nacelle, and consequent loss of thrust from the affected engine, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of August 21, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 19, 1999 (64 FR 5590, February 4, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1446; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–03–08, amendment 39–11022 (64 FR 5590, February 4, 1999), which is applicable

to certain Boeing Model 737–600, –700, and –800 series airplanes, was published in the **Federal Register** on April 4, 2002 (67 FR 16064). That action proposed to continue to require repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. That action also proposed to limit the applicability of the existing requirements, clarify certain existing requirements, and require removal of the clamp shell installed previously and replacement of the existing quick-disconnect fuel supply hose, coupling, and strut fitting with new, fixed-B-nut-type parts. Such replacement would end the requirement for repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to Proposal

For clarification, the FAA has revised the definition of a "general visual inspection" in this final rule.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 560 airplanes of the affected design in the worldwide fleet. The FAA estimates that 271 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 99–03–08 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $16,260, or $60 per airplane, per inspection cycle.

For airplanes on which it has not already been accomplished during production, the installation of a clamp shell required by AD 99–03–08 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required installation is estimated to be $120 per airplane.

The new replacement that is required in this AD action will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $65,040, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11022 (64 FR 5590, February 4, 1999), and by adding a new airworthiness directive (AD), amendment 39–12821, to read as follows:

2002–14–21 Boeing: Amendment 39–12821. Docket 2000–NM–367–AD. Supersedes AD 99–03–08, Amendment 39–11022.

Applicability: Model 737–600, –700, and –800 series airplanes, listed in Group I or II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000; certificated in any category.

Note 1: This AD applies to Model 737–700 series airplanes in an increased-gross-weight configuration, as listed in the service bulletin referred to in the applicability statement of this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent major fuel leakage due to excessive wear of the quick-disconnect coupling on the fuel hose, fire in the engine nacelle, and consequent loss of thrust from the affected engine, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 99–03–08

Repetitive Inspections and Corrective Actions

(a) For airplanes listed in Group I of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 7 days after February 19, 1999 (the effective date of AD 99–03–08, amendment 39–11022), perform a general visual inspection to detect discrepancies (i.e., fuel leakage, wear of the

lock teeth, or missing lock pins on the coupling nut) of the quick-disconnect coupling on the fuel hose located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Revision 2, dated July 13, 2000.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 500 flight hours, until the installation required by paragraph (b) of this AD is accomplished.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Figures 1 and 3 of the Accomplishment Instructions of the alert service bulletin, as applicable, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Figures 1 and 3 of the Accomplishment Instructions of the alert service bulletin, as applicable, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

Revision 2, dated July 13, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998, was approved previously by the Director of the Federal Register as of February 19, 1999 (64 FR 5590, February 4, 1999).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may

the Lee Airport, Annapolis, MD was published in the **Federal Register** (67 FR 22366–22367). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before June 3, 2002. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

History

On April 16, 2002 a document proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, SIAP to the Aberdeen Field Airport, Smithfield, VA was published in the **Federal Register** (67 FR 18517–18518).

lock teeth, or missing lock pins on the coupling nut) of the quick-disconnect coupling on the fuel hose located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Revision 2, dated July 13, 2000.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 500 flight hours, until the installation required by paragraph (b) of this AD is accomplished.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with TABLE 1. of the Accomplishment Instructions of the alert service bulletin, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

Installation of Clamp Shell and Repetitive Inspections

(b) For airplanes listed in Group I of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 30 days after February 19, 1999, install an Aeroquip Clamp Shell, having part number (P/N) AE20074–165, on the quick-disconnect coupling on the fuel hose, which is located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Revision 2, dated July 13, 2000. Accomplishment of such installation terminates the repetitive inspection requirements of paragraphs (a)(1) and (a)(2) of this AD.

New Requirements of This AD

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 4: Accomplishment of the requirements of paragraphs (a), (b), and (c) of this AD according to Boeing Alert Service Bulletin 737–73A1011, Revision 1, dated April 15, 1999, is acceptable for compliance with those paragraphs.

Repetitive Inspections

(c) For airplanes listed in Groups I and II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 1,000 flight hours after installation of the clamp shell either per paragraph (b) of this AD (for Group I airplanes) or during production (for Group II airplanes), perform the inspection specified in paragraph (a) of this AD.

Note 5: The repetitive inspections required by paragraph (c) of this AD were previously required by paragraph (b) of AD 99–03–08.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Figures 1 and 3 of the Accomplishment Instructions of the alert service bulletin, as applicable, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

Replacement of Existing Parts

(d) For airplanes listed in Groups I and II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 3 years after the effective date of this AD, remove the clamp shell installed per paragraph (b) of this AD (for Group I airplanes) or during production (for Group II airplanes), and replace the existing quick-disconnect fuel hose, coupling, and strut fitting with new, fixed-B-nut-type parts, in accordance with Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000. Such replacement terminates the repetitive inspections required by paragraphs (a)(1), (a)(2), and (c) of this AD, as applicable.

Spares

(e) After the effective date of this AD, no one may install a quick-disconnect fuel supply hose, coupling, or strut fitting with a part number listed in the "Existing Part Number" column of the table under paragraph 2.E. of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000, on any airplane.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–03–08, amendment 39–11022, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998, was approved previously by the Director of the Federal Register as of February 19, 1999 (64 FR 5590, February 4, 1999).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on August 21, 2002.

Issued in Renton, Washington, on July 8, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17550 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–01]

Establishment of Class E Airspace; Annapolis, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Annapolis, MD. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Lee Airport, Annapolis, MD under Instrument Flight Rules (FR).

EFFECTIVE DATE: 0901 UTC October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On May 3, 2002, a document proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Lee Airport, Annapolis, MD was published in the **Federal Register** (67 FR 22366–22367). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before June 3, 2002. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6.2 mile radius of Lee Airport, Annapolis, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

AEA MD E5 Annapolis, MD [NEW]

Lee Airport
(Lat. 38°56′34″ N., long. 76°34′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Lee Airport, Annapolis, MD, excluding the portion that coincides with the Baltimore, MD, and the Mitchellville, MD Class E airspace areas.

Issued in Jamaica, New York on July 1, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–17580 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–02]

Establishment of Class E Airspace; Aberdeen Field Airport, Smithfield, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Aberdeen Field Airport (K31VA), Smithfield, VA. Development of an Area Navigation (RNAV), Standard Instrument Approach Procedure (SIAP), for Aberdeen Field Airport, Smithfield, VA has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to protect aircraft executing the approach to the Aberdeen Field Airport.

EFFECTIVE DATE: 0901 UTC October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On April 16, 2002 a document proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, SIAP to the Aberdeen Field Airport, Smithfield, VA was published in the **Federal Register** (67 FR 18517–18518).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 16, 2002. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001 and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Aberdeen Field Airport, Smithfield, VA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

AEA MD E5 Aberdeen Field Airport, Smithfield, VA [NEW]

Aberdeen Field Airport, Smithfield, VA
(Lat. 37°01′08″ N., long. 76°36′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Aberdeen Field Airport, Smithfield, VA.

Issued in Jamaica, New York on July 1, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–17581 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30355; Amdt. No. 2]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures and Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

regulatory evluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entitis under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Denver, CO, Denver Intl, ILS RWY 16, Amdt 2
Denver, CO, Denver Intl, ILS RWY 17L, Amdt 2
Denver, CO, Denver Intl, ILS RWY 17R, Amdt 2
Denver, CO, Denver Intl, ILS RWY 25, Amdt 2
Denver, CO, Denver Intl, ILS RWY 26, Amdt 2
Denver, CO, Denver Intl, ILS RWY 34, Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 27, Orig CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 33L, Orig CANCELLED
St. Ignace, MI, Mackinac County, RNAV (GPS) RWY 07, Orig
St. Ignace, MI, Mackinac County, RNAV (GPS) RWY 25, Orig
New York, NY, John F. Kennedy Intl, COPTER RHAV (GPS) 028, Orig

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2002, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 fee or more above the surface of the earth.

* * * * *

AEA VA E5 Smithfield, VA [NEW]

Aberdeen Field Airport
(Lat 37°01'15" N., long. 76°35'19" W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Aberdeen Field Airport.

* * * * *

Issued in Jamaica, New York on July 1, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–17578 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.30319; Amdt. No. 3013]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which create the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPS effective in less than 30 days.

Conclusions

The FAA has determined that this regulation only inolvoles an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procrdures (44 FR 11034; February 26, 1979); and (3) does not warrant preparatioun of a regulatory evluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entitis under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 5, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 8, 2002*

Sacramento, CA, Sacramento Intl, NDB RWY 34R, Amdt 1
Sacramento, CA, Sacramento Intl, NDB RWY 34, Amdt 5
Sacramento, CA, Sacramento Intl, ILS RWY 16R, Amdt 14
Sacramento, CA, Sacramento Intl, ILS RWY 16L, Amdt 1
Sacramento, CA, Sacramento Intl, ILS RWY 34L, Amdt 6
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 16R, Orig
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 16L, Orig
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 34R, Orig
Sacramento, CA, Sacramento Intl, RNAV (GPS) RWY 34L, Orig
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) RWY 11, Orig
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) RWY 29, Orig
Denver, CO, Denver Intl, ILS RWY 7, Amdt 2
Denver, CO, Denver Intl, ILS RWY 8, Amdt 3
Denver, CO, Denver Intl, ILS RWY 16, Amdt 2
Denver, CO, Denver Intl, ILS RWY 17L, Amdt 2
Denver, CO, Denver Intl, ILS RWY 17R, Amdt 2
Denver, CO, Denver Intl, ILS RWY 25, Amdt 2
Denver, CO, Denver Intl, ILS RWY 26, Amdt 2
Denver, CO, Denver Intl, ILS RWY 34, Amdt 1
Denver, CO, Denver Intl, ILS RWY 35L, Amdt 3
Denver, CO, Denver Intl, ILS RWY 35R, Amdt 1
Denver, CO, Denver Intl, RNAV (GPS) RWY 7, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 8, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 16, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 17L, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 17R, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 25, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 26, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 34, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 35L, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 35R, Orig
Jacksonville, FL, Jacksonville Intl, VOR RWY 31, Orig-D
Gainesville, FL, Gainesville Regional, LOC/DME BC RWY 10, Orig, CANCELLED
Statesboro, GA, Statesboro-Bulloch County, LOC RWY 32, Amdt 4C, CANCELLED
Statesboro, GA, Statesboro-Bulloch County, NDB RWY 32, Amdt 5
Statesboro, GA, Statesboro-Bulloch County, ILS RWY 32, Orig
Statesboro, GA, Statesboro-Bulloch County, RNAV (GPS) RWY 32, Orig
Hilo, HI, Hilo Intl, VOR–B, Orig–A
Hilo, HI, Hilo Intl, VOR/DME OR TACAN–A, Amdt 7A
Hilo, HI, Hilo Intl, VOR/DME OR TACAN RWY 26, Amdt 5A
Hilo, HI, Hilo Intl, RNAV (GPS) RWY 21, Orig
Hilo, HI, Hilo Intl, RNAV (GPS) RWY 26, Orig
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RWY 15R, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, NDB RWY 22L, Amdt 11A
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 15R, Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 27, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, ILS RWY 33L, Amdt 2
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 15R, Orig Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 22L, Orig
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 27, Orig
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 33L, Orig
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 27, Orig CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 33L, Orig CANCELLED
St. Ignace, MI, Mackinac County, RNAV (GPS) RWY 07, Orig
St. Ignace, MI, Mackinac County, RNAV (GPS) RWY 25, Orig
New York, NY, John F. Kennedy Intl, COPTER RHAV (GPS) 028, Orig
Newburg, NY, Stewart Intl, NDB RWY 9, Amdt 8B
Newburg, NY, Stewart Intl, NDB RWY 9, Orig
Newburg, NY, Stewart Intl, RNAV (GPS) RWY 16, Orig
Newburg, NY, Stewart Intl, GPS RWY 16, Orig, CANCELLED
Newburg, NY, Stewart Intl, RNAV (GPS) RWY 17, Orig
Newburg, NY, Stewart Intl, GPS RWY 27, Orig, CANCELLED
Newburg, NY, Stewart Intl, RNAV (GPS) RWY 34, Orig
Syacuse, NY, Syracuse Hancock Intl, ILS RWY 10, Amdt 10
Syacuse, NY, Syracuse Hancock Intl, ILS RWY 28, Amdt 33
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Y RWY 10, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Z RWY 10, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Y RWY 15, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) Z RWY 15, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) RWY 28, Orig
Syacuse, NY, Syracuse Hancock Intl, RNAV (GPS) RWY 33, Orig
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 10, Orig–B, CANCELLED
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 15, Orig–B, CANCELLED
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 28, Orig–A, CANCELLED
Syacuse, NY, Syracuse Hancock Intl, GPS RWY 33, Orig–C, CANCELLED
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 25R, Orig
Dayton, OH, James M. Cox Dayton Intl, ILS RWY 6L, Amdt 8
Dayton, OH, James M. Cox Dayton Intl, ILS RWY 18, Amdt 9
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 6L, Orig
Dayton, OH, James M. Cox Dayton Intl, GPS RWY 6L, Orig, CANCELLED
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 6R, Orig
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 24L, Orig
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 24R, Orig
Dayton, OH, James M. Cox Dayton Intl, VOR/DME RNAV OR GPS RWY 6R, Amdt 8A, CANCELLED
Dickson, TN, Dickson Muni, VOR/DME RWY 17, Amdt 4B
Smithville, TN, Smithville Muni, NDB RWY 24, Amdt 2, CANCELLED
Cheyenne, WY, Cheyenne, Radar-1, Orig

** * * Effective October 3, 2002*

Flora, IL, Flora Muni, LOC/DME RWY 21, Orig

Flora, IL, Flora Muni, NBD RWY 21, Amdt 5

The FAA published an Amendment in Docket No. 30313, Amdt No. 3009 to Part 97 of the Federal Aviation Regulations 67 FR 40594–40595; dated June 13, 2002) under section 97.23 effective August 8, 2002, which is hereby amended as follows:

San Juan, PR, Luis Munoz Marin Intl, VOR Rwy 26, Amdt 19

The FAA published the following procedures in Docket No. 30313; Amdt. No. 3009 to Part 97 of the Federal Aviation

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 98F–0196]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium Yeast

II. Conclusion

FDA concludes that the data establish the safety and utility of selenium yeast, for use as proposed and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control. FDA is taking these actions because it believes that they are necessary to provide reasonable

that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle

Flora, IL, Flora Muni, NBD RWY 21, Amdt 5

The FAA published an Amendment in Docket No. 30313, Amdt No. 3009 to Part 97 of the Federal Aviation Regulations 67 FR 40594–40595; dated June 13, 2002) under section 97.23 effective August 8, 2002, which is hereby amended as follows:

San Juan, PR, Luis Munoz Marin Intl, VOR Rwy 26, Amdt 19

The FAA published the following procedures in Docket No. 30313; Amdt. No. 3009 to Part 97 of the Federal Aviation Regulations (67 FR 40594–40595: dated, June 13, 2002) under section 97.33 effective August 8, 2002 which are hereby rescinded:

Mammoth Lakes, CA, Mammoth Yosemite, RNAV (GPS) RWY 27, Orig
Mammoth Lakes, CA, Mammoth Yosemite, GPS RWY 27, Orig–A CANCELLED

The FAA published an Amendment in Docket No. 30316, Amdt No. 3011 to Part 97 of the Federal Aviation Regulations (67 FR 43530–43532; dated June 28, 2002) under section 97.23 effective August 8, 2002, which is hereby amended as follows:

New York, NY, John F. Kennedy Intl, COPTER RNAV (GPS) 028, Orig

The FAA published the following procedures in Docket No. 30316, Amdt No. 3011 to Part 97 of the Federal Aviation Regulations (67 FR 43530–43532; dated June 28, 2002) under section 97.23 effective August 8, 2002, which is hereby amended as follows:

Searcy, AR, Searcy Muni, RNAV (GPS) RWY 1, Orig
Searcy, AR, Searcy Muni, RNAV (GPS) RWY 19, Orig
Searcy, AR, Searcy Muni, NDB RWY 1, Amdt 4
Searcy, AR, Searcy Muni, GPS RWY 19, Amdt 1B, CANCELLED
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 18R, Amdt 6
Dallas-Fort Worth, TX, Dallas/Fort Worth International, Converging ILS RWY 18R, Amdt 4
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 18R, Orig

[FR Doc. 02–17581 Filed 7–16–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 700 to 799

Title 15 CFR Parts 300 to 799; Republication

CFR Correction

Title 15 CFR parts 300 to 799, revised as of January 1, 2002, is being republished in its entirety. The earlier issuance inadvertently omitted and duplicated text in § 772.1 appearing on pages 553 through 575 inclusive.

[FR Doc. 02–55518 Filed 7–16–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 99F–0196]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium Yeast

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed to provide for the safe use of selenium yeast as a source of selenium in animal feeds intended for turkeys and swine. This action is in response to a food additive petition filed by Alltech Biotechnology Center.

DATES: This rule is effective July 17, 2002. Submit written objections and request for hearing by September 16, 2002.

ADDRESSES: Submit written objections and requests for a hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6656.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of May 12, 1998 (63 FR 26193), FDA announced that a food additive petition (animal use) (FAP 2238) had been filed by Alltech Biotechnology Center, 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposed to amend the food additive regulations in § 573.920 *Selenium* (21 CFR 573.920) to provide for the safe use of selenium yeast as a source of selenium in animal feeds for poultry, swine, and cattle. Based on the information in the petition, the selenium food additive regulation was amended to include the use of selenium yeast in feed for chickens on June 6, 2000 (65 FR 35823). FDA sought additional data from the sponsor before approving use in other species. After this data was submitted, subsequent amendments to the petition provided information to extend its use in turkeys and swine.

II. Conclusion

FDA concludes that the data establish the safety and utility of selenium yeast, for use as proposed and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (see **ADDRESSES**) written objections by September 16, 2002. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 573.920 is amended by revising paragraph (h) to read as follows:

§ 573.920 Selenium.

* * * * *

(h) The additive selenium yeast is added to complete feed for chickens, turkeys, and swine at a level not to exceed 0.3 part per million. Usage of this additive must conform to the requirements of paragraphs (d)(1), (e), and (f) of this section.

Dated: July 1, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–17959 Filed 7–16–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 00N–1457]

Medical Devices; Apnea Monitor; Special Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to create a separate classification for the apnea monitor. The device currently is included in the generic type of device called breathing frequency monitors. The apnea monitor will remain in class II, but will be subject to a special control. The special control is an FDA guidance document that identifies minimum performance, testing, and labeling recommendations for the device. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a "new" apnea monitor will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control. FDA is taking these actions because it believes that they are necessary to provide reasonable assurance of the safety and effectiveness of the apnea monitor.

DATES: This rule is effective October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Joanna H. Weithershausen, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 22, 2000 (65 FR 57301), FDA published a proposed rule to create a separate classification for the apnea monitor. FDA proposed that the apnea monitor remain in class II, but be subject to a special control. The proposed special control was an FDA guidance document that identified minimum performance, testing, and labeling recommendations for the device.

In the same edition of the **Federal Register**, FDA withdrew its proposed mandatory standard for infant apnea monitors (65 FR 57303) and announced the availability of the draft guidance that FDA intended to serve as the special control for the device (65 FR 57355).

FDA invited interested persons to comment on the proposed rule by December 21, 2000. FDA received no comments. Based on a review of the available information, referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device. FDA has made some revisions to the identification paragraphs in §§ 868.2375 and 868.2377 for clarity. Otherwise, FDA is finalizing the rule as proposed. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the special control guidance.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a "new" apnea monitor will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In the past 10 years, the agency estimates that it has received, on average, approximately four 510(k) submissions per year for breathing frequency monitor devices. FDA estimates that only one or two of these submissions per year pertained to apnea monitor devices.

Based on its review of these 510(k) submissions, FDA believes that presently marketed apnea monitors conform to the guidance and, therefore, the manufacturers of these devices will not have to take further action because of this rule. New manufacturers of apnea monitors will only need to submit 510(k)s, as the statute now requires them to do, and demonstrate that they meet the recommendations of the guidance or in some other way provide equivalent assurances of safety and effectiveness. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will

not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IV. Federalism

FDA has analyzed this final rule in

primarily upon the cessation of breathing timed from the last detected breath. The apnea monitor also includes indirect methods of apnea detection such as monitoring of heart rate and other physiological parameters linked to the presence or absence of adequate respiration.

(b) *Classification.* Class II (special controls). The special control for this

FOR FURTHER INFORMATION CONTACT: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic

(21 U.S.C. 360i). Manufacturers were to submit the summaries and citations to FDA by January 13, 1992. However, because of misunderstandings and uncertainties regarding the information required by the order, and whether the order applied to certain manufacturers' devices, many transitional class III device manufacturers failed to comply with the reporting requirement by

After reviewing the data in the petition and presented before the Panel, and after considering the Panel's recommendation and the comments, FDA, based on the information set forth, issued an order to the petitioner on October 14, 1999, reclassifying the PMMA bone cement, and substantially equivalent devices of this generic type, from class III to class II with the

cardiac arrhythmia, bronchspasm, cardiac arrest, myocardical infarction, pulmonary embolism, cerebrovascular accident, and possible death: Hypotensive reactions can occur between 10 and 165 seconds after application of the PMMA bone cement and can last for 30 seconds to 5 or more minutes. Some hypotensive reactions have progressed to cardiac arrest. The

not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended to read as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2375(a) is revised to read as follows:

§ 868.2375 Breathing frequency monitor.

(a) *Identification.* A breathing (ventilatory) frequency monitor is a device intended to measure or monitor a patient's respiratory rate. The device may provide an audible or visible alarm when the respiratory rate, averaged over time, is outside operator settable alarm limits. This device does not include the apnea monitor classified in § 868.2377.

* * * * *

3. Section 868.2377 is added to subpart C to read as follows:

§ 868.2377 Apnea monitor.

(a) *Identification.* An apnea monitor is a complete system intended to alarm primarily upon the cessation of breathing timed from the last detected breath. The apnea monitor also includes indirect methods of apnea detection such as monitoring of heart rate and other physiological parameters linked to the presence or absence of adequate respiration.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA."

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–17957 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 02P–0294]

Medical Devices; Reclassification of Polymethylmethacrylate (PMMA) Bone Cement

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has reclassified the polymethylmethacrylate (PMMA) bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone from class III to class II (special controls). The agency is also announcing that it has issued an order in the form of a letter to the Orthopedic Surgical Manufacturers Association (OSMA) reclassifying the device. The special control for the device is a guidance document entitled "Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement." The agency is reclassifying this device into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls.

DATES: The reclassification was effective October 14, 1999. The revision of § 888.3027 is effective August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

The 1976 amendments broadened the definition of "device" in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices, i.e., those devices previously regulated as new drugs, including the PMMA bone cement, into class III. The legislative history of the SMDA reflects congressional concern that many transitional devices were being overregulated in class III (H. Rept. 808, 101st Cong., 2d sess. 26–27 (1990); S. Rept. 513, 101st Cong., 2d sess. 27 (1990)). Congress amended section 520(l) of the act (21 U.S.C. 360j(l)) to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices still remaining in class III to determine whether the devices should be reclassified into class II (special controls) or class I (general controls). Accordingly, in the **Federal Register** of November 14, 1991 (56 FR 57960), FDA issued an order under section 520(l)(5)(A) of the act, requiring manufacturers of transitional devices, including the PMMA bone cement (21 CFR 888.3027), to submit to FDA a summary of, and a citation to, any information known or otherwise available to them respecting the devices, including adverse safety or effectiveness information which had not been submitted under section 519 of the act (21 U.S.C. 360i). Manufacturers were to submit the summaries and citations to FDA by January 13, 1992. However, because of misunderstandings and uncertainties regarding the information required by the order, and whether the order applied to certain manufacturers' devices, many transitional class III device manufacturers failed to comply with the reporting requirement by January 13, 1992. Consequently, in the **Federal Register** of March 10, 1992 (57 FR 8462), FDA extended the reporting period to March 31, 1992.

Section 520(l)(5)(B) of the act provides that, after the issuance of an order requiring manufacturers to submit a summary of, and citation to, any information known or otherwise available respecting the devices, but before December 1, 1992, FDA was to publish regulations either leaving transitional class III devices in class III or reclassifying them into class I or II. Subsequently, as permitted by section 520(l)(5)(C) of the act, in the **Federal Register** of November 30, 1992 (57 FR 56586), the agency published a notice extending the period for issuing such regulations until December 1, 1993. Due to limited resources, FDA was unable to publish the regulations before the December 1, 1993, deadline.

II. Recommendation of the Panel

On January 21, 1998, FDA filed the reclassification petition submitted by OSMA, requesting reclassification of the PMMA bone cement from class III to class II. FDA consulted with the Orthopedic and Rehabilitation Devices Panel (the Panel) regarding reclassification of the PMMA bone cement. During an open public meeting on April 28, 1998, the Panel unanimously recommended that FDA reclassify the PMMA bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone from class III to class II. The Panel also recommended that FDA guidance documents, consensus standards, and labeling be the special controls to reasonably assure the safety and effectiveness of the device.

FDA considered the Panel's recommendation and tentatively agreed that the generic type of device, the PMMA bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone, be reclassified from class III into class II. FDA agreed that guidance documents, consensus standards, and labeling are appropriate special controls for the device.

After reviewing the data in the petition and presented before the Panel, and after considering the Panel's recommendation and the comments, FDA, based on the information set forth, issued an order to the petitioner on October 14, 1999, reclassifying the PMMA bone cement, and substantially equivalent devices of this generic type, from class III to class II with the implementation of special controls.

The special controls listed in the order to the petitioner were the following FDA guidance documents, consensus standards, and labeling:

A. FDA Guidance Documents

1. "Use of International Organization for Standardization (ISO) 10993, 'Biological Evaluation of Medical Devices Part I: Evaluation and Testing'."
2. "510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1."
3. "Guidance Document for Testing Orthopedic Bone Cement," and
4. "Guidance Document for the Preparation of Premarket Notification (510(k)) Applications for Orthopedic Devices."

B. Consensus Standards

1. American Society for Testing and Material (ASTM) F 451–95 "Standard Specifications for Acrylic Bone Cement,"
2. ASTM D 638–91 "Standard Test Method for Tensile Properties of Plastics,"
3. ASTM D 732–93 "Standard Test Method for Shear Strength of Plastics by Punch Tool,"
4. ASTM D 790–98 "Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials,"
5. ASTM D 2990–95 "Standard Tensile, Compressive, and Flexural Creep and Creep Rupture of Plastics,"
6. ASTM E 399–90 "Standard Test Method for Plane-Strain Fracture Toughness of Metallic Materials,"
7. ASTM E 647–95a "Standard Test Method for Measurement of Fatigue Crack Growth Rates," and
8. International Organization for Standardization (ISO) 5833:1992 "Implants for surgery—Acrylic resin cements."

C. Labeling

1. Contraindication

Do not use PMMA bone cement in the presence of active or incompletely treated infection that could involve the site where the device will be implanted.

2. Warnings

a. Adverse cardiovascular reactions, including hypotension, hypoxaemia, cardiac arrhythmia, bronchspasm, cardiac arrest, myocardial infarction, pulmonary embolism, cerebrovascular accident, and possible death: Hypotensive reactions can occur between 10 and 165 seconds after application of the PMMA bone cement and can last for 30 seconds to 5 or more minutes. Some hypotensive reactions have progressed to cardiac arrest. The blood pressure of patients should be monitored carefully during and immediately following the application of the PMMA bone cement. In addition, overpressurization of the PMMA bone cement should be avoided during insertion of the PMMA bone cement and implant in order to minimize the occurrence of pulmonary embolism.

b. Surgeon training and experience: The surgeon should be thoroughly familiar with the properties, handling characteristics and application of the PMMA bone cement. Because the handling and curing characteristics of this cement vary with temperature and mixing technique, they are best determined by the surgeon's actual experience.

c. Device volatility and flammability and electrocautery devices: The operating room should be adequately ventilated to eliminate monomer vapors. Ignition of monomer vapors caused by the use of electrocautery devices in surgical sites near freshly implanted bone cement has been reported.

d. Irritation of the respiratory tract, eyes, and the liver: Caution should be exercised during the mixing of the liquid and powder components of the PMMA bone cement to prevent excessive exposure to the concentrated vapors of liquid monomer, which may produce irritation of the respiratory tract, eyes, and possibly the liver. Personnel wearing contact lenses should not mix PMMA bone cement or be near the mixing of the PMMA bone cement.

3. Precautions

a. Contact dermatitis: The liquid monomer has caused contact dermatitis in those handling and mixing PMMA bone cement. Strict adherence to the instructions for mixing the powder and liquid components may reduce the incidence of contact dermatitis.

b. Hypersensitivity reactions: The liquid component of PMMA bone cement is a powerful lipid solvent. It should not contact rubber or latex gloves. Double gloving and strict adherence to the mixing instructions may diminish the possibility of hypersensitivity reactions. The mixed PMMA bone cement should not contact the gloved hand until the cement has

acquired the consistency of dough, about 1 to 2 minutes after mixing.

c. Inadequate postoperative fixation: Inadequate fixation or unanticipated postoperative events may affect the PMMA bone cement-bone interface and lead to micromotion of cement against the bone surface. A fibrous tissue layer may develop between the PMMA bone cement and the bone that may cause loosening of the prosthesis. Thus, loosening or displacement of the prosthesis, superficial or deep wound infection, trochanteric bursitis, short-term cardiac conduction irregularities, heterotopic new bone formation, and trochanteric separation.

c. Other potential adverse events associated with the use of PMMA bone cement include allergic pyrexia, hematuria, dysuria, bladder fistula, delayed sciatic nerve entrapment from

document via your fax machine call the CDRH Facts-On-Demand (FOD) system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number (668) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

IV. Environmental Impact

The agency has determined under 21

analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, or on the

device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement."

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–18036 Filed 7–16–02; 8:45 am]

"constructive ownership rules of section".

2. On page 40159, column 1, in the preamble under the paragraph heading "III. Comments and Changes to § 1.894–1(d)(2)(ii)(B)(*3*): Definition of Related", third paragraph, line 3, the language "(d)(2)(ii)(B)(*ii*) of the final regulations" is corrected to read "(d)(2)(ii)(B)(*1*)(*ii*) of the final regulations".

3. On page 40159, column 2, in the

acquired the consistency of dough, about 1 to 2 minutes after mixing.

c. Inadequate postoperative fixation: Inadequate fixation or unanticipated postoperative events may affect the PMMA bone cement-bone interface and lead to micromotion of cement against the bone surface. A fibrous tissue layer may develop between the PMMA bone cement and the bone that may cause loosening of the prosthesis. Thus, continued, periodic followup is advised for all patients.

d. Exothermic reaction: Polymerization of the PMMA bone cement is an exothermic reaction that occurs while the PMMA bone cement is hardening *in situ*. The released heat may damage bone or other tissue adjacent to the implant.

e. Extrusion: Extrusion of the PMMA bone cement beyond the region of its intended application may occur resulting in the following complications: Hematuria, dysuria, bladder fistula, delayed sciatic nerve entrapment from extrusion of the bone cement beyond the region of its intended application, local neuropathy, local vascular erosion and occlusion, and intestinal obstruction because of adhesions and stricture of the ileum from the heat released during the exothermic polymerization.

f. Use in pregnant women and children: The safety and effectiveness of the PMMA bone cement in pregnant women and in children is not established.

g. Expiration dating: PMMA bone cement should not be used after the expiration date because the effectiveness of the device may be compromised.

h. Disposal: Because of the volatility and flammability of the liquid monomer of the PMMA bone cement, the liquid monomer should be evaporated in a well-ventilated hood or absorbed by an inert material and transferred into a suitable container (one that does not react with the PMMA bone cement) for disposal.

4. Adverse Events

a. Serious adverse events, some with fatal outcome, associated with the use of the PMMA bone cement include myocardial infarction, cardiac arrest, cerebrovascular accident, and pulmonary embolism.

b. The most frequent adverse reactions associated with the use of PMMA bone cement are transitory decreased blood pressure, elevated serum gamma-glutamyl-transpeptidase (GGTP) up to 10 days postoperation, thrombophlebitis, hemorrhage and hematoma, pain and/or loss of function, loosening or displacement of the prosthesis, superficial or deep wound infection, trochanteric bursitis, short-term cardiac conduction irregularities, heterotopic new bone formation, and trochanteric separation.

c. Other potential adverse events associated with the use of PMMA bone cement include allergic pyrexia, hematuria, dysuria, bladder fistula, delayed sciatic nerve entrapment from extrusion of the bone cement beyond the region of its intended application, local neuropathy, local vascular erosion and occlusion, intestinal obstruction because of adhesions and stricture of the ileum from the heat released during the exothermic polymerization.

FDA incorporated the four FDA guidance documents, eight consensus standards, and labeling into a class II special controls guidance entitled "Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement" that issued on August 2, 2001. The guidance document also referenced updated versions of six of the eight consensus standards listed as special controls in the reclassification order. FDA has further revised the guidance document to include the risk to health of polymerization setting problems and to clarify the warnings, precautions, and adverse reactions sections of the labeling. This class II special controls guidance document, is now the special control for this generic device.

Accordingly, as required by 21 CFR 860.136(b)(6) of the regulations, FDA is announcing the reclassification of the generic the PMMA bone cement intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone from class III into class II.

III. Access to Special Controls

Persons interested in obtaining a copy of "Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement" may do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available from the Division of Small Manufacturers, International, and Consumer Assistance (DSMICA) (HFZ-220), Food and Drug Administration, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850. In order to receive the guidance document via your fax machine call the CDRH Facts-On-Demand (FOD) system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number (668) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104-121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104-4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, or on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

The premarket notification information collections addressed in the guidance have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) under OMB control number 0910–0120. The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 888.3027 is revised to read as follows:

§ 888.3027 Polymethylmethacrylate (PMMA) bone cement.

(a) *Identification.* Polymethylmethacrylate (PMMA) bone cement is a device intended to be implanted that is made from methylmethacrylate, polymethylmethacrylate, esters of methacrylic acid, or copolymers containing polymethylmethacrylate and polystyrene. The device is intended for use in arthroplastic procedures of the hip, knee, and other joints for the fixation of polymer or metallic prosthetic implants to living bone.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Polymethylmethacrylate (PMMA) Bone Cement."

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–18036 Filed 7–16–02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8999]

RIN 1545–AY13

Treaty Guidance Regarding Payments with Respect to Domestic Reverse Hybrid Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, June 12, 2002 (67 FR 40157) relating to the eligibility for treaty benefits of items of income paid by domestic entities.

DATES: This correction is effective June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections is under section 894 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8999), that were the subject of FR Doc. 02–14506, is corrected as follows:

1. On page 40159, column 1, in the preamble under the paragraph heading "III. Comments and Changes to § 1.894–1(d)(2)(ii)(B)(*3*): Definition of Related", first paragraph, line 1, the language "constructive ownership rules of sections" is corrected to read "constructive ownership rules of section".

2. On page 40159, column 1, in the preamble under the paragraph heading "III. Comments and Changes to § 1.894–1(d)(2)(ii)(B)(*3*): Definition of Related", third paragraph, line 3, the language "(d)(2)(ii)(B)(*ii*) of the final regulations" is corrected to read "(d)(2)(ii)(B)(*1*)(*ii*) of the final regulations".

3. On page 40159, column 2, in the preamble the paragraph heading "IV. Comments and Changes to § 1.894–1(d)(2)(ii)(C): Commissioner's discretion." is corrected to read "IV. Comments and Changes to § 1.894–1(d)(2)(ii)(C): Commissioner's discretion".

4. On page 40159, column 2, in the preamble under the paragraph heading "IV. Comments and Changes to § 1.894–1(d)(2)(ii)(C): Commissioner's discretion, second paragraph, line 14, the language "following conditions are met: (1) A" is corrected to read "following conditions are met: (1) a".

5. On page 40162, column 2, second signature block, the language "Assistant Secretary of the Treasury (Tax Policy)." is corrected to read "Acting Assistant Secretary of the Treasury (Tax Policy)."

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–17865 Filed 7–16–02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 280

RIN 1010–AC48

Prospecting for Minerals Other Than Oil, Gas, and Sulphur on the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule specifies how to conduct Geological and Geophysical (G&G) prospecting and research for minerals other than oil, gas, and sulphur on the Outer Continental Shelf (OCS) under a permit; requires everyone conducting G&G scientific research on the OCS without a permit to file a notice with us; informs small operators of environmental laws and regulations for safe and sound practices; and rewrites the rule in plain English. These revisions respond to changes in technology and practice.

EFFECTIVE DATE: The rule is effective on August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Meekins, Resource Evaluation Division, at (703) 787–1517.

SUPPLEMENTARY INFORMATION: On December 8, 1999, we published a Notice of Proposed Rulemaking (64 FR 68649), titled "Prospecting for Minerals Other Than Oil, Gas, and Sulphur in the offshore oil and gas resources. The commenter suggests that MMS initiate preparation of an agreement necessary to allow New York access to data under proposed § 280.73.

Response: The requirement that allows coastal States access to data on offshore oil and gas resources appears in the OCS Lands Act. This requirement does not apply to hard minerals. The *Response:* A general area of study is sufficient until a more specific area is known, at which time the RD should be notified.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is not a

213115, Support Activities for Nonmetallic Minerals (except fuels), MMS estimates that there is a total of 127 firms that could conduct geological and/or geophysical prospecting for nonenergy minerals. According to SBA criteria, 121 companies qualify as firms with fewer than 500 employees. MMS estimates that 25 percent (30) of these companies operate offshore.

In addition, because of the small numbers of entities expected to engage in these activities at this time, the number of small businesses that would silent on this issue. We estimate that the new requirements may result in filing one notice per year. Each notice would require 6 hours to prepare, at a cost of $50 per hour, for a total cost of $300 per notice.

Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the

EFFECTIVE DATE: The rule is effective on August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Meekins, Resource Evaluation Division, at (703) 787–1517.

SUPPLEMENTARY INFORMATION: On December 8, 1999, we published a Notice of Proposed Rulemaking (64 FR 68649), titled "Prospecting for Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf." We received several comments on the proposed rule. All comments received were considered in the formulation of the final rule. This final rule revises the regulations at 30 CFR part 280. There are no substantive changes from the proposed to the final rule. However, there were several areas that needed minor clarification.

Clarification of Certain Aspects of the Rule: After further analysis, we are clarifying the rule as follows:

- For consistency, we replaced "in the OCS" with "on the OCS" throughout the rule;
- The rule only applies to activities carried out in Federal waters and not to activities in State waters (*see* § 280.2(a));
- The rule does not apply to gas hydrates, which are covered by regulations in 30 CFR part 251 (*see* § 280.4(d));
- The definition of G&G prospecting activities in § 280.1 applies only to prelease activities and not to postlease activities. Postlease activities are covered in 30 CFR part 282 (see § 280.4(c));
- The definition of OCS in § 280.1 includes areas of the Exclusive Economic Zone, such as the State of Hawaii and United States possessions in the Caribbean and Pacific Ocean, which are islands and technically do not have an OCS (refer to § 280.13—filing locations table); and
- Research activities related to hard minerals require a notice, even though the activities may be federally funded (*see* § 280.11(b)).

Comments on the Rule: We received comments on specific issues from the New York State Department of Environmental Conservation, Division of Mineral Resources; the New York State Department of Environmental Conservation, Division of Water; and the South Carolina Department of Natural Resources. In addition, at the request of the Office of the Solicitor, we have included definitions for "Geological Data and Information" and "Geophysical Data and Information."

Comments and Responses to Miscellaneous Issues

Comment: New York has an agreement regarding access to data on offshore oil and gas resources. The commenter suggests that MMS initiate preparation of an agreement necessary to allow New York access to data under proposed § 280.73.

Response: The requirement that allows coastal States access to data on offshore oil and gas resources appears in the OCS Lands Act. This requirement does not apply to hard minerals. The agreement mentioned under § 280.73 is discretionary. The MMS may disclose proprietary data to State officials but is not under any obligation to do so. A statement has been added to § 280.73(a) that the permittees and third parties who submitted proprietary data, information, and samples will be notified about a proposed disclosure and may provide comments.

Comment: Use of core sampling to detect the presence of heavy metals and other contaminants could potentially fall into the category of G&G scientific research activities requiring an MMS-approved permit or 30-day notice. The commenter suggests that an exemption for State agencies involved in environmental monitoring, research, or remediation be included in § 280.4.

Response: There are no plans to exempt State agencies from this section. The agencies should contact the Regional Director (RD) and describe the sampling for a determination on whether the activity could be construed as hard minerals research. The RD will also be looking for assurance that cores or other information will not be sold to any person involved in hard minerals research or exploration.

Comment: One commenter could not find text in the document that stated whether the MMS had a right to disapprove a scientific exploration activity.

Response: Disapproval of a permit request is addressed in § 280.12(b).

Comment: One commenter seeks a clarification on whether research and monitoring activities related to biological resources require a permit, if ancillary data on sediment type is collected as part of those studies.

Response: This type of activity is not related to hard minerals research or exploration and, therefore, neither a permit nor a notice is required. However, a permit would be required if the data on sediment type were sold to a person involved in hard minerals research or exploration.

Comment: One commenter asserts that it would be too cumbersome if specific coordinates must be identified up front instead of a general area of study since exact sampling areas are not known until the study is in progress.

Response: A general area of study is sufficient until a more specific area is known, at which time the RD should be notified.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This is due to the small amount of activity currently being experienced in offshore prospecting as well as the smaller size of the companies involved as compared to those involved in oil, gas, and sulphur exploration. We estimate that this rule will affect only one entity per year, and that the total cost to regulated entities for complying with the modification of this rule will be approximately $300 per year. For full details, *see* the information under the heading "Regulatory Flexibility Act."

b. This rule does not create inconsistencies with other agencies' actions because there are no changes in requirements. The notification process will allow the customer to know of the operations of other users in the area. In addition, current regulations are consistent with other agencies' actions.

c. This rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule does not raise any novel legal or policy issues. As previously stated, the intent of this rule is to establish consistency in all prelease activities for all minerals on the OCS.

Regulatory Flexibility (RF) Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies; and
- Fewer than 500 employees for drilling companies and for companies that extract minerals other than oil, gas, or natural gas liquids.

Under the SBA's North American Industry Classification System code 213115, Support Activities for Nonmetallic Minerals (except fuels), MMS estimates that there is a total of 127 firms that could conduct geological and/or geophysical prospecting for nonenergy minerals. According to SBA criteria, 121 companies qualify as firms with fewer than 500 employees. MMS estimates that 25 percent (30) of these companies operate offshore.

The changes to 30 CFR part 280 should not have a significant economic effect. The rulemaking may involve small businesses or small entities if they want to perform prospecting activities or scientific research on the OCS.

In many ways, we try to offer customer service at no cost to smaller companies that are active on the OCS. These services include informing customers of environmental laws and regulations, making permit applications available on the Internet, making various offshore maps and stipulations accessible, etc.

There are no changes or effects with respect to the number of people performing the activities nor is there any change with regard to technology or operating costs. Changes in this rule make it parallel to the prelease exploration regulations covering oil, gas, and sulphur (30 CFR part 251). In applying for a permit, we will not require a prospecting plan. Information previously required for a prospecting plan will be submitted as a part of the permit itself. Operators will need to submit a notice for all scientific research not requiring a permit. The rule also breaks out, for clarification, procedures for submission, inspection, and selection of G&G data and information, as well as clarifying the responsibilities of third parties. It also requires us to reimburse permittees or third parties for reasonable costs for reproducing data and information that we request.

We expect that either one company may apply for a prospecting permit or one institution may file a notice of intent to conduct scientific research per year, based on MMS receiving six applications for a prospecting permit in the last 10 years. Previous activities in these areas indicate that most of these entities would be considered small.

The primary economic effect on small businesses is the cost associated with information collection activities. The only major change in reporting requirements would represent a small increase, not for those engaged in the mineral industry but, rather, for those involved in scientific research. This increased reporting requirement relates to the filing of a notice for all scientific research activities not requiring a permit. The current regulations are silent on this issue. We estimate that the new requirements may result in filing one notice per year. Each notice would require 6 hours to prepare, at a cost of $50 per hour, for a total cost of $300 per notice.

In addition, because of the small numbers of entities expected to engage in these activities at this time, the number of small businesses that would experience a significant economic effect is not substantial. As a result, this rule will not have a significant economic effect on a substantial number of small entities.

We should note that this rule only applies to preliminary prelease prospecting activities. As long as sufficient sources for economically recoverable mineral resources exist onshore, the higher costs of offshore development will constrain industry. To develop and produce even the relatively easier minerals (sand and gravel), large investments of up to $15 to $25 million will be necessary for technology and establishing both land-based processing and marketing facilities. Currently, sand and gravel are being dredged from the OCS to support large-scale public works projects to nourish beaches. These projects are authorized and funded by Federal, State, and local governments and, to date, there have been only two or three commercial aggregate producers who have expressed an interest in future OCS development.

Locating and delineating offshore mineral resources can be expensive, depending on how much is already known about an offshore area. A prospecting program to collect seismic information and to collect a number of 20-foot cores of sediment can cost approximately $100,000 to $400,000. Compared to the magnitude of these costs, the costs associated with the requirements of this rule are relatively small. Given the high costs of mineral prospecting, we expect an applicant's time and expense to comply with information collection on a prelease prospecting permit to represent only a small fraction of the total costs of locating, assessing, and developing offshore strategic minerals.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the (5 U.S.C. 804(2)), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. This is based upon the small amount of activity currently being experienced in offshore prospecting, as well as the smaller size of the companies involved as compared with those involved in oil, gas, and sulphur exploration.

Paperwork Reduction Act (PRA) of 1995

We examined the proposed rule and these final regulations under section 3507(d) of the PRA. Because of the changes proposed to the current 30 CFR part280 regulations, we submitted the information collection requirements to OMB for approval as part of the proposed rulemaking process. The information collection requirements in the final regulations remain unchanged from the proposed rule and a submission to OMB is not required.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB approved the requirements to collect information in 30 CFR part 280 under OMB control number 1010–0072, current expiration date of January 31, 2003.

The title of this collection of information is "30 CFR part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur on the OCS." The frequency of response is generally "on occasion" or established in the permit approval. We estimate approximately one or two respondents each year.

We use the collection of information required by these regulations to ensure there is no environmental degradation, personal harm, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling

activities; to monitor progress and activities on the OCS; to acquire G&G data and information; and to determine eligibility for reimbursement.

Responses are mandatory or required to obtain or retain a benefit. We protect proprietary information under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

This rule does not constitute a major

280.21 What must I do in conducting G&G prospecting or scientific research?
280.22 What must I do when seeking approval for modifications?
280.23 How must I cooperate with inspection activities?
280.24 What reports must I file?

Interrupted Activities

280.25 When may MMS require me to stop activities under this part?
280.26 When may I resume activities?

Subpart A—General Information

§ 280.1 What definitions apply to this part?

Definitions in this part have the following meaning:

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

Adjacent State means with respect to any activity proposed, conducted, or approved under this part, any coastal State(s):

authority in section 305(b)(1) of the Coastal Zone Management Act of 1972.

Coastal Zone Management Act means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

Data means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Deep stratigraphic test means drilling

exercise the powers granted to a Governor under the Act.

Hard minerals means any minerals found on or below the surface of the seabed except for oil, gas, or sulphur.

Interpreted geological information means the knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geological data and

activities; to monitor progress and activities on the OCS; to acquire G&G data and information; and to determine eligibility for reimbursement.

Responses are mandatory or required to obtain or retain a benefit. We protect proprietary information under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252. No items of a sensitive nature are collected.

Reporting and Recordkeeping "Hour" Burden: The approved annual burden of this collection of information is 88 hours.

Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens in the final regulations.

Federalism (Executive Order 13132)

According to Executive Order 13132, the rule does not have significant Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The proposed rule does not change, in any way, the role or responsibilities between the Federal, State, and local governmental entities. The rule does not relate to the structure and role of the States and will not have a direct, substantive, or significant effect on States. The rule does not impose costs on States or localities. The proposed rule will not materially alter the budgetary impact of entitlements, grants, user fees, loan programs or raise legal or policy issues.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict an operator's right to collect data and information under the permit terms.

Energy Supply, Distribution, or Use (Executive Order)

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use because it is a modification of an already existing rule and the major modification has to do with notification of scientific research activities not exploration or energy.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandate Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 280

Continental shelf, Freedom of information, Prospecting, Public lands-mineral resources, Reporting and recordkeeping requirements, Research.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS revises 30 CFR part 280 as follows:

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR ON THE OUTER CONTINENTAL SHELF

Subpart A—General Information

Sec.
280.1 What definitions apply to this part?
280.2 What is the purpose of this part?
280.3 What requirements must I follow when I conduct prospecting or research activities?
280.4 What activities are not covered by this part?

Subpart B—How to Apply for a Permit or File a Notice

280.10 What must I do before I may conduct prospecting activities?
280.11 What must I do before I may conduct scientific research?
280.12 What must I include in my application or notification?
280.13 Where must I send my application or notification?

Subpart C—Obligations Under this Part

Prohibitions and Requirements

280.20 What must I not do in conducting Geological and Geophysical (G&G) prospecting or scientific research?
280.21 What must I do in conducting G&G prospecting or scientific research?
280.22 What must I do when seeking approval for modifications?
280.23 How must I cooperate with inspection activities?
280.24 What reports must I file?

Interrupted Activities

280.25 When may MMS require me to stop activities under this part?
280.26 When may I resume activities?
280.27 When may MMS cancel my permit?
280.28 May I relinquish my permit?

Environmental Issues

280.29 Will MMS monitor the environmental effects of my activity?
280.30 What activities will not require environmental analysis?
280.31 Whom will MMS notify about environmental issues?

Penalties and Appeals

280.32 What penalties may I be subject to?
280.33 How can I appeal a penalty?

Subpart D—Data Requirements

Geological Data and Information

280.40 When do I notify MMS that geological data and information are available for submission, inspection, and selection?
280.41 What types of geological data and information must I submit to MMS?
280.42 When geological data and information are obtained by a third party, what must we both do?

Geophysical Data and Information

280.50 When do I notify MMS that geophysical data and information are available for submission, inspection, and selection?
280.51 What types of geophysical data and information must I submit to MMS?
280.52 When geophysical data and information are obtained by a third party, what must we both do?

Reimbursement

280.60 Which of my costs will be reimbursed?
280.61 Which of my costs will not be reimbursed?

Protections

280.70 What data and information will be protected from public disclosure?
280.71 What is the timetable for release of data and information?
280.72 What procedure will MMS follow to disclose acquired data and information to a contractor for reproduction, processing, and interpretation?
280.73 Will MMS share data and information with coastal States?

Subpart E—Information Collection

280.80 Paperwork Reduction Act statement—information collection.

Authority: 43 U.S.C. 1331 *et seq.*, 42 U.S.C. 4332 *et seq.*

Subpart A—General Information

§ 280.1 What definitions apply to this part?

Definitions in this part have the following meaning:

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

Adjacent State means with respect to any activity proposed, conducted, or approved under this part, any coastal State(s):

(1) That is used, or is scheduled to be used, as a support base for geological and geophysical (G&G) prospecting or scientific research activities; or

(2) In which there is a reasonable probability of significant effect on land or water uses from such activity.

Analyzed geological information means data collected under a permit or a lease that have been analyzed. Some examples of analysis include, but are not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of mineral occurrences or hazardous conditions.

Archaeological interest means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and are of archaeological interest.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) that are strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, under the authority in section 305(b)(1) of the Coastal Zone Management Act of 1972.

Coastal Zone Management Act means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

Data means facts and statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Deep stratigraphic test means drilling that involves the penetration into the sea bottom of more than 500 feet (152 meters).

Director means the Director of the Minerals Management Service, U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

Geological data and information means data and information gathered through or derived from geological and geochemical techniques, e.g., coring and test drilling, well logging, bottom sampling, or other physical sampling or chemical testing process.

Geological and geophysical (G&G) prospecting activities means the commercial search for mineral resources other than oil, gas, or sulphur. Activities classified as prospecting include, but are not limited to:

(1) Geological and geophysical marine and airborne surveys where magnetic, gravity, seismic reflection, seismic refraction, or the gathering through coring or other geological samples are used to detect or imply the presence of hard minerals; and

(2) Any drilling, whether on or off a geological structure.

Geological and geophysical (G&G) scientific research activities means any investigations related to hard minerals that are conducted on the OCS for academic or scientific research. These investigations would involve gathering and analyzing geological, geochemical, or geophysical data and information that are made available to the public for inspection and reproduction at the earliest practical time. The term does not include commercial G&G exploration or commercial G&G prospecting activities.

Geological sample means a collected portion of the seabed, the subseabed, or the overlying waters acquired while conducting prospecting or scientific research activities.

Geophysical data and information means any data or information gathered through or derived from geophysical measurement or sensing techniques (*e.g.*, gravity, magnetic, or seismic).

Governor means the Governor of a State or the person or entity lawfully designated by or under State law to exercise the powers granted to a Governor under the Act.

Hard minerals means any minerals found on or below the surface of the seabed except for oil, gas, or sulphur.

Interpreted geological information means the knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geological data and analyzed and processed geologic information.

Interpreted geophysical information means knowledge, often in the form of seismic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

Lease means, depending upon the requirements of the context, either:

(1) An agreement issued under section 8 or maintained under section 6 of the Act that authorizes mineral exploration, development and production; or

(2) The area covered by an agreement specified in paragraph (1) of this definition.

Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which evidence is situated.

Minerals means all minerals authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702). The term includes oil, gas, sulphur, geopressured-geothermal and associated resources.

Notice means a written statement of intent to conduct G&G scientific research that is:

(1) Related to hard minerals on the OCS; and

(2) Not covered under a permit.

Oil, gas, and sulphur means oil, gas, and sulphur, geopressured-geothermal and associated resources, including gas hydrates.

Outer Continental Shelf (OCS) means all submerged lands:

(1) That lie seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); and

(2) Whose subsoil and seabed belong to the United States and are subject to its jurisdiction and control.

Permit means the contract or agreement, other than a lease, issued under this part. The permit gives a person the right, under appropriate statutes, regulations, and stipulations, to conduct on the OCS:

(1) Geological prospecting for hard minerals;

(2) Geophysical prospecting for hard minerals;

(3) Geological scientific research; or

(4) Geophysical scientific research.

Permittee means the person authorized by a permit issued under this part to conduct activities on the OCS.

Person means:

(1) A citizen or national of the United States;

(2) An alien lawfully admitted for

to conduct G&G prospecting or scientific research related to hard minerals on the OCS.

§ 280.2 What is the purpose of this part?

The purpose of this part is to:

(a) Allow you to conduct prospecting activities or scientific research activities on the OCS in Federal waters related to hard minerals on unleased lands or on lands under lease to a third party.

activities, including deep stratigraphic tests, for hard minerals. If you conduct both G&G prospecting activities, you must have a separate permit for each.

§ 280.11 What must I do before I may conduct scientific research?

You may conduct G&G scientific research activities related to hard minerals on the OCS only after you obtain an MMS-approved permit or file

(7) The earliest practical time you expect to make the data and information resulting from your research activity available to the public;

(8) Your plan of how you will make the data and information you collect available to the public;

(9) A statement that you and others involved will not sell or withhold the data and information resulting from your research; and

(10) At your option, the nonexclusive use agreement for scientific research attachment to form MMS–134. (If you submit this agreement, you do not have to submit the material required in paragraphs (c)(7), (c)(8), and (c)(9) of this section.)

§ 280.13 Where must I send my application or notification?

You must apply for a permit or file a notice at one of the following locations:

For the OCS off the * * *	Apply to * * *

(2) Geophysical prospecting for hard minerals;
(3) Geological scientific research; or
(4) Geophysical scientific research.

Permittee means the person authorized by a permit issued under this part to conduct activities on the OCS.

Person means:
(1) A citizen or national of the United States;
(2) An alien lawfully admitted for permanent residence in the United States as defined in section 8 U.S.C. 1101(a)(20);
(3) A private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof, and association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or
(4) Anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal agencies.

Processed geological or geophysical information means data collected under a permit and later processed or reprocessed.
(1) Processing involves changing the form of data as to facilitate interpretation. Some examples of processing operations may include, but are not limited to:
(i) Applying corrections for known perturbing causes;
(ii) Rearranging or filtering data; and
(iii) Combining or transforming data elements.
(2) Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Secretary means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

Shallow test drilling means drilling into the sea bottom to depths less than those specified in the definition of a deep stratigraphic test.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility of the National Register of Historic Places as defined in 36 CFR 60.4, or its successor.

Third party means any person other than the permittee or a representative of the United States, including all persons who obtain data or information acquired under a permit from the permittee, or from another third party, by sale, trade, license agreement, or other means.

You means a person who applies for and/or obtains a permit, or files a notice to conduct G&G prospecting or scientific research related to hard minerals on the OCS.

§ 280.2 What is the purpose of this part?

The purpose of this part is to:
(a) Allow you to conduct prospecting activities or scientific research activities on the OCS in Federal waters related to hard minerals on unleased lands or on lands under lease to a third party.
(b) Ensure that you carry out prospecting activities or scientific research activities in a safe and environmentally sound manner so as to prevent harm or damage to, or waste of, any natural resources (including any hard minerals in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.
(c) Inform you and third parties of your legal and contractual obligations.
(d) Inform you and third parties of:
(1) The U.S. Government's rights to access G&G data and information collected under permit on the OCS;
(2) Reimbursement we will make for data and information that are submitted; and
(3) The proprietary terms of data and information that we retain.

§ 280.3 What requirements must I follow when I conduct prospecting or research activities?

You must conduct G&G prospecting activities or scientific research activities under this part according to:
(a) The Act;
(b) The regulations in this part;
(c) Orders of the Director/Regional Director (RD); and
(d) Other applicable statutes, regulations, and amendments.

§ 280.4 What activities are not covered by this part?

This part does not apply to:
(a) G&G prospecting activities conducted by, or on behalf of, the lessee on a lease on the OCS;
(b) Federal agencies;
(c) Postlease activities for mineral resources other than oil, gas, and sulphur, which are covered by regulations at 30 CFR part 282; and
(d) G&G exploration or G&G scientific research activities related to oil, gas, and sulphur, including gas hydrates, which are covered by regulations at 30 CFR part 251.

Subpart B—How to Apply for a Permit or File a Notice

§ 280.10 What must I do before I may conduct prospecting activities?

You must have an MMS-approved permit to conduct G&G prospecting activities, including deep stratigraphic tests, for hard minerals. If you conduct both G&G prospecting activities, you must have a separate permit for each.

§ 280.11 What must I do before I may conduct scientific research?

You may conduct G&G scientific research activities related to hard minerals on the OCS only after you obtain an MMS-approved permit or file a notice.

(a) *Permit.* You must obtain a permit if the research activities you want to conduct involve:
(1) Using solid or liquid explosives;
(2) Drilling a deep stratigraphic test; or
(3) Developing data and information for proprietary use or sale.

(b) *Notice.* If you conduct research activities (including federally-funded research) not covered by paragraph (a) of this section, you must file a notice with the regional director at least 30 days before you begin. If you cannot file a 30-day notice, you must provide oral notification before you begin and follow up in writing. You must also inform MMS in writing when you conclude your work.

§ 280.12 What must I include in my application or notification?

(a) *Permits.* You must submit to the RD a signed original and three copies of the permit application (form MMS–134) at least 30 days before the startup date for activities in the permit area. If unusual circumstances prevent you from meeting this deadline, you must immediately contact the RD to arrange an acceptable deadline. The form includes names of persons, type, location, purpose, and dates of activity, as well as environmental and other information.

(b) *Disapproval of permit application.* If we disapprove your application for a permit, the RD will explain the reasons for the disapproval and what you must do to obtain approval.

(c) *Notices.* You must sign and date a notice that includes:
(1) The name(s) of the person(s) who will conduct the proposed research;
(2) The name(s) of any other person(s) participating in the proposed research, including the sponsor;
(3) The type of research and a brief description of how you will conduct it;
(4) A map, plat, or chart, that shows the location where you will conduct research;
(5) The proposed projected starting and ending dates for your research activity;
(6) The name, registry number, registered owner, and port of registry of vessels used in the operation;

(7) The earliest practical time you expect to make the data and information resulting from your research activity available to the public;

(8) Your plan of how you will make the data and information you collect available to the public;

(9) A statement that you and others involved will not sell or withhold the data and information resulting from your research; and

(10) At your option, the nonexclusive use agreement for scientific research attachment to form MMS–134. (If you submit this agreement, you do not have to submit the material required in paragraphs (c)(7), (c)(8), and (c)(9) of this section.)

§ 280.13 Where must I send my application or notification?

You must apply for a permit or file a notice at one of the following locations:

For the OCS off the * * *	Apply to * * *
(1) State of Alaska	Regional Supervisor for Resource Evaluation, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, AK 99508–4363.
(2) Atlantic Coast, Gulf of Mexico, Puerto Rico, or U.S. territories in the Caribbean Sea.	Regional Supervisor for Resource Evaluation, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394.
(3) States of California, Oregon, Washington, Hawaii, or U.S. territories in the Pacific Ocean.	Regional Supervisor for Resource Evaluation, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010–6064.

Subpart C—Obligations Under this Part

Prohibitions and Requirements

§ 280.20 What must I not do in conducting Geological and Geophysical (G&G) prospecting or scientific research?

While conducting G&G prospecting or scientific research activities under a permit or notice, you must not:
(a) Interfere with or endanger operations under any lease, right-of-way, easement, right-of-use, notice, or permit issued or maintained under the Act;
(b) Cause harm or damage to life (including fish and other aquatic life), property, or the marine, coastal, or human environment;
(c) Cause harm or damage to any mineral resources (in areas leased or not leased);
(d) Cause pollution;
(e) Disturb archaeological resources;
(f) Create hazardous or unsafe conditions;
(g) Unreasonably interfere with or cause harm to other uses of the area; or
(h) Claim any oil, gas, sulphur, or other minerals you discover while conducting operations under a permit or notice.

§ 280.21 What must I do in conducting G&G prospecting or scientific research?

While conducting G&G prospecting or scientific research activities under a permit or notice, you must:
(a) Immediately report to the RD if you:
(1) Detect hydrocarbon or any other mineral occurrences;
(2) Detect environmental hazards that imminently threaten life and property; or
(3) Adversely affect the environment, aquatic life, archaeological resources, or other uses of the area where you are prospecting or conducting scientific research activities.

(b) Consult and coordinate your G&G activities with other users of the area for navigation and safety purposes.
(c) If you conduct shallow test drilling or deep stratigraphic test drilling activities, you must use the best available and safest technologies that the RD considers economically feasible.

§ 280.22 What must I do when seeking approval for modifications?

Before you begin modified operations, you must submit a written request describing the modifications and receive the RD's oral or written approval. If circumstances preclude a written request, you must make an oral request and follow up in writing.

§ 280.23 How must I cooperate with inspection activities?

(a) You must allow our representatives to inspect your G&G prospecting or any scientific research activities that are being conducted under a permit. They will determine whether operations are adversely affecting the environment, aquatic life, archaeological resources, or other uses of the area.
(b) MMS will reimburse you for food, quarters, and transportation that you provide for our representatives if you send in your reimbursement request to the region that issued the permit within 90 days of the inspection.

§ 280.24 What reports must I file?

(a) You must submit status reports on a schedule specified in the permit and include a daily log of operations.
(b) You must submit a final report of G&G prospecting or scientific research activities under a permit within 30 days after you complete acquisition activities under the permit. You may combine the final report with the last status report and must include each of the following:
(1) A description of the work performed.
(2) Charts, maps, plats and digital navigation data in a format specified by the RD, showing the areas and blocks in which any G&G prospecting or permitted scientific research activities were conducted. Identify the lines of geophysical traverses and their locations including a reference sufficient to identify the data produced during each activity.
(3) The dates on which you conducted the actual prospecting or scientific research activities.
(4) A summary of any:
(i) Hard mineral, hydrocarbon, or sulphur occurrences encountered;
(ii) Environmental hazards; and
(iii) Adverse effects of the G&G prospecting or scientific research activities on the environment, aquatic life, archaeological resources, or other uses of the area in which the activities were conducted.
(5) Other descriptions of the activities conducted as specified by the RD.

Interrupted Activities

§ 280.25 When may MMS require me to stop activities under this part?

(a) We may temporarily stop prospecting or scientific research activities under a permit when the RD determines that:
(1) Activities pose a threat of serious, irreparable, or immediate harm. This includes damage to life (including fish and other aquatic life), property, and any minerals (in areas leased or not leased), to the marine, coastal, or human environment, or to an archaeological resource;
(2) You failed to comply with any applicable law, regulation, order or provision of the permit. This would include our required submission of reports, well records or logs, and G&G data and information within the time specified; or

(3) Stopping the activities is in the interest of national security or defense.
(b) The RD will advise you either orally or in writing of the procedures to temporarily stop activities. We will confirm an oral notification in writing and deliver all written notifications by courier or certified/registered mail. You must stop all activities under a permit immediately upon receipt of an oral or written

(d) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species or if permitted by the National Marine Fisheries Service or another Federal agency;
(e) Meteorological observations and measurements, including the setting of instruments;
(f) Hydrographic and oceanographic

§ 280.33 How can I appeal a penalty?

See 30 CFR § 250.1409 and 30 CFR part 290, subpart A, for instructions on how to appeal any decision assessing a civil penalty under 43 U.S.C. 1350 and 30 CFR part 250, subpart A.

§ 280.34 How can I appeal an order or decision?

See 30 CFR part 290, subpart A, for

(f) Detailed descriptions of any hydrocarbons or other minerals or hazardous conditions encountered during operations, including near losses of well control, abnormal geopressures, and losses of circulation; and
(g) Other geological data and information that the RD may specify.

§ 280.42 When geological data and information are obtained by a third party,

(c) The RD may request that the permittee or third party submit geophysical data and information before making a final selection for retention. Our representatives may inspect and select the data and information on your premises, or the RD can request delivery of the data and information to the appropriate regional office for review.
(d) You must submit the geophysical

is a condition precedent of the sale, trade, license, or other agreement; and
(c) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the RD, in writing within 30 days of the sale, trade, or other agreements, including the identity of the recipient of the data and information; or

(3) Stopping the activities is in the interest of national security or defense.

(b) The RD will advise you either orally or in writing of the procedures to temporarily stop activities. We will confirm an oral notification in writing and deliver all written notifications by courier or certified/registered mail. You must stop all activities under a permit as soon as you receive an oral or written notification.

§ 280.26 When may I resume activities?

The RD will advise you when you may start your permit activities again.

§ 280.27 When may MMS cancel my permit?

The RD may cancel a permit at any time.

(a) If we cancel your permit, the RD will advise you by certified or registered mail 30 days before the cancellation date and will state the reason.

(b) After we cancel your permit, you are still responsible for proper abandonment of any drill site according to the requirements of 30 CFR 251.7(b)(8). You must comply with all other obligations specified in this part or in the permit.

§ 280.28 May I relinquish my permit?

(a) You may relinquish your permit at any time by advising the RD by certified or registered mail 30 days in advance.

(b) After you relinquish your permit, you are still responsible for proper abandonment of any drill sites according to the requirements of 30 CFR 251.7(b)(8). You must also comply with all other obligations specified in this part or in the permit.

Environmental Issues

§ 280.29 Will MMS monitor the environmental effects of my activity?

We will evaluate the potential of proposed prospecting or scientific research activities for adverse impact on the environment to determine the need for mitigation measures.

§ 280.30 What activities will not require environmental analysis?

We anticipate that activities of the type listed below typically will not cause significant environmental impact and will normally be categorically excluded from additional environmental analysis. The types of activities include:

(a) Gravity and magnetometric observations and measurements;

(b) Bottom and subbottom acoustic profiling or imaging without the use of explosives;

(c) Hard minerals sampling of a limited nature such as shallow test drilling;

(d) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species or if permitted by the National Marine Fisheries Service or another Federal agency;

(e) Meteorological observations and measurements, including the setting of instruments;

(f) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(g) Sampling by box core or grab sampler to determine seabed geological or geotechnical properties;

(h) Television and still photographic observation and measurements;

(i) Shipboard hard mineral assaying and analysis; and

(j) Placement of positioning systems, including bottom transponders and surface and subsurface buoys reported in Notices to Mariners.

§ 280.31 Whom will MMS notify about environmental issues?

(a) In cases where Coastal Zone Management Act consistency review is required, the Director will notify the Governor of each adjacent State with a copy of the application for a permit immediately upon the submission for approval.

(b) In cases where an environmental assessment is to be prepared, the Director will invite the Governor of each adjacent State to review and provide comments regarding the proposed activities. The Director's invitation to provide comments will allow the Governor a specified period of time to comment.

(c) When a permit is issued, the Director will notify affected parties including each affected coastal State, Federal agency, local government, and special interest organization that has expressed an interest.

Penalties and Appeals

§ 280.32 What penalties may I be subject to?

(a) *Penalties for noncompliance under a permit.* You are subject to the penalty provisions of section 24 of the Act (43 U.S.C. 1350) and the procedures contained in 30 CFR part 250, subpart N for noncompliance with:

(1) Any provision of the Act;

(2) Any provisions of a G&G or drilling permit; or

(3) Any regulation or order issued under the Act.

(b) *Penalties under other laws and regulations.* The penalties prescribed in this section are in addition to any other penalty imposed by any other law or regulation.

§ 280.33 How can I appeal a penalty?

See 30 CFR § 250.1409 and 30 CFR part 290, subpart A, for instructions on how to appeal any decision assessing a civil penalty under 43 U.S.C. 1350 and 30 CFR part 250, subpart A.

§ 280.34 How can I appeal an order or decision?

See 30 CFR part 290, subpart A, for instructions on how to appeal an order or decision.

Subpart D—Data Requirements

Geological Data and Information

§ 280.40 When do I notify MMS that geological data and information are available for submission, inspection, and selection?

(a) You must notify the RD, in writing, when you complete the initial analysis, processing, or interpretation of any geological data and information. Initial analysis and processing are the stages of analysis or processing where the data and information first become available for in-house interpretation by the permittee or become available commercially to third parties via sale, trade, license agreement, or other means.

(b) The RD may ask if you have further analyzed, processed, or interpreted any geological data and information. When asked, you must respond to us in writing within 30 days.

(c) The RD may ask you or a third party to submit the analyzed, processed, or interpreted geologic data and information for us to inspect or permanently retain. You must submit the data and information within 30 days after such a request.

§ 280.41 What types of geological data and information must I submit to MMS?

Unless the RD specifies otherwise, you must submit geological data and information that include:

(a) An accurate and complete record of all geological (including geochemical) data and information describing each operation of analysis, processing, and interpretation;

(b) Paleontological reports identifying by depth any microscopic fossils collected, including the reference datum to which paleontological sample depths are related and, if the RD requests, washed samples, that you maintain for paleontological determinations;

(c) Copies of well logs or charts in a digital format, if available;

(d) Results and data obtained from formation fluid tests;

(e) Analyses of core or bottom samples and/or a representative cut or split of the core or bottom sample;

(f) Detailed descriptions of any hydrocarbons or other minerals or hazardous conditions encountered during operations, including near losses of well control, abnormal geopressures, and losses of circulation; and

(g) Other geological data and information that the RD may specify.

§ 280.42 When geological data and information are obtained by a third party, what must we both do?

A third party may obtain geological data and information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(a) The third-party recipient of the data and information assumes the obligations under this part, except for the notification provisions of § 280.40(a) and is subject to the penalty provisions of § 280.32(a)(1) and 30 CFR part 250, subpart N; and

(b) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(c) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the RD in writing within 30 days of the sale, trade, or other agreement, including the identity of the recipient of the data and information; or

(d) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the RD, advise the RD, in writing, of the license agreement, including the identity of the recipient of the data and information.

Geophysical Data and Information

§ 280.50 When do I notify MMS that geophysical data and information are available for submission, inspection, and selection?

(a) You must notify the RD in writing when you complete the initial processing and interpretation of any geophysical data and information. Initial processing is the stage of processing where the data and information become available for in-house interpretation by the permittee, or become available commercially to third parties via sale, trade, license agreement, or other means.

(b) The RD may ask whether you have further processed or interpreted any geophysical data and information. When asked, you must respond to us in writing within 30 days.

(c) The RD may request that the permittee or third party submit geophysical data and information before making a final selection for retention. Our representatives may inspect and select the data and information on your premises, or the RD can request delivery of the data and information to the appropriate regional office for review.

(d) You must submit the geophysical data and information within 30 days of receiving the request, unless the RD extends the delivery time.

(e) At any time before final selection, the RD may review and return any or all geophysical data and information. We will notify you in writing of any data the RD decides to retain.

§ 280.51 What types of geophysical data and information must I submit to MMS?

Unless the RD specifies otherwise, you must include:

(a) An accurate and complete record of each geophysical survey conducted under the permit, including digital navigational data and final location maps;

(b) All seismic data collected under a permit presented in a format and of a quality suitable for processing;

(c) Processed geophysical information derived from seismic data with extraneous signals and interference removed, presented in a quality format suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and

(d) Other geophysical data, processed geophysical information, and interpreted geophysical information including, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

§ 280.52 When geophysical data and information are obtained by a third party, what must we both do?

A third party may obtain geophysical data, processed geophysical information, or interpreted geophysical information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(a) The third-party recipient of the data and information assumes the obligations under this part, except for the notification provisions of § 280.50(a) and is subject to the penalty provisions of § 280.32(a)(1) and 30 CFR 250, subpart N; and

(b) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(c) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the RD, in writing within 30 days of the sale, trade, or other agreements, including the identity of the recipient of the data and information; or

(d) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the RD, advise the RD, in writing, of the license agreement, including the identity of the recipient of the data and information.

Reimbursement

§ 280.60 Which of my costs will be reimbursed?

(a) We will reimburse you or a third party for reasonable costs of reproducing data and information that the RD requests if:

(1) You deliver G&G data and information to us for the RD to inspect or select and retain (according to §§ 280.40 and 280.50);

(2) We receive your request for reimbursement and the RD determines that the requested reimbursement is proper; and

(3) The cost is at your lowest rate (or a third party's) or at the lowest commercial rate established in the area, whichever is less.

(b) We will reimburse you or the third party for the reasonable costs of processing geophysical information (which does not include cost of data acquisition) if, at the request of the RD, you processed the geophysical data or information in a form or manner other than that used in the normal conduct of business.

§ 280.61 Which of my costs will not be reimbursed?

(a) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(b) We will not reimburse you or a third party for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

Protections

§ 280.70 What data and information will be protected from public disclosure?

In making data and information available to the public, the RD will follow the applicable requirements of:

(a) The Freedom of Information Act (5 U.S.C. 552);

(b) The implementing regulations at 43 CFR part 2;

(c) The Act; and

(d) The regulations at 30 CFR parts 250 and 252.

(1) If the RD determines that any data or information is exempt from disclosure under the Freedom of Information Act, we will not disclose the data and information unless either:

(i) You and all third parties agree to

(2) We will keep confidential the identity of third-party recipients of data and information collected under a permit. We will not release the identity unless you and the third parties agree to the disclosure.

(3) When you detect any significant hydrocarbon occurrences or environmental hazards on unleased lands during drilling operations, the RD will immediately issue a public

without unduly damaging your competitive position.

§ 280.71 What is the timetable for release of data and information?

We will release data and information that you or a third party submits and we retain according to paragraphs (a) and (b) of this section.

(a) If the data and information are not related to a deep stratigraphic test, we

(4) Monitor the progress and activities carried out under an OCS prospecting permit.

(5) Inspect and select G&G data and information collected under an OCS prospecting permit.

(d) Respondents are Federal OCS permittees and notice filers. Responses are mandatory or are required to obtain or retain a benefit. We will protect information considered proprietary under applicable law and under

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 19, 2001 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled "Regulated Navigation Area; Savannah River, Georgia" (66 FR 32915). The Coast Guard received twenty-two letters commenting on the proposed rule. No public hearing was requested, and none was held.

and property on the navigable waters from hazards associated with LNG activities.

Discussion of Comments and Changes

The Coast Guard received twenty-two comment letters addressing the original notice of proposed rulemaking. These comments and our responses can be found in the SNPRM in the **Federal Register** (66 FR 64778) and the temporary final rule published on

(b) The implementing regulations at 43 CFR part 2;
(c) The Act; and
(d) The regulations at 30 CFR parts 250 and 252.

(1) If the RD determines that any data or information is exempt from disclosure under the Freedom of Information Act, we will not disclose the data and information unless either:
(i) You and all third parties agree to the disclosure; or
(ii) A provision of 30 CFR parts 250 and 252 allows us to make the disclosure.

(2) We will keep confidential the identity of third-party recipients of data and information collected under a permit. We will not release the identity unless you and the third parties agree to the disclosure.

(3) When you detect any significant hydrocarbon occurrences or environmental hazards on unleased lands during drilling operations, the RD will immediately issue a public announcement. The announcement must further the national interest without unduly damaging your competitive position.

§ 280.71 What is the timetable for release of data and information?

We will release data and information that you or a third party submits and we retain according to paragraphs (a) and (b) of this section.

(a) If the data and information are not related to a deep stratigraphic test, we will release them to the public according to items (1), (2), and (3) in the following table:

If you or a third party submits and we retain * * *	The Regional Director will disclose them to the public * * *
(1) Geological data and information	10 years after issuing the permit.
(2) Geophysical data	50 years after you or a third party submit the data.
(3) Geophysical information	25 years after you or a third party submit the information
(4) Data and information related to a deep stratigraphic test.	25 years after you complete the test, unless the provisions of paragraph (b) of this section apply.

(b) This paragraph applies if you are covered by paragraph (a)(4) of this section and a lease sale is held or a noncompetitive agreement is negotiated after you complete a test well. We will release the data and information related to the deep stratigraphic test at the earlier of the following times:
(1) Twenty-five years after you complete the test; or
(2) Sixty calendar days after we issue a lease, located partly or totally within 50 geographic miles (92.7 kilometers) of the test.

§ 280.72 What procedure will MMS follow to disclose acquired data and information to a contractor for reproduction, processing, and interpretation?

(a) When practical, the RD will advise the person who submitted data and information under §§ 280.40 or 280.50 of the intent to provide the data or information to an independent contractor or agent for reproduction, processing, and interpretation.
(b) The person notified will have at least five working days to comment on the action.
(c) When the RD advises the person who submitted the data and information, all other owners of the data or information will be considered to have been notified.
(d) The independent contractor or agent must sign a written commitment not to sell, trade, license, or disclose data or information to anyone without the RD's consent.

§ 280.73 Will MMS share data and information with coastal States?

(a) We can disclose proprietary data, information, and samples submitted to us by permittees or third parties that we receive under this part to the Governor of any adjacent State that requests it according to paragraphs (b), (c), and (d) of this section. The permittee or third parties who submitted proprietary data, information, and samples will be notified about the disclosure and will have at least five working days to comment on the action.
(b) We will make a disclosure under this section only after the Governor and the Secretary have entered into an agreement containing all of the following provisions:
(1) The confidentiality of the information will be maintained.
(2) In any action taken for failure to protect the confidentiality of proprietary information, neither the Federal Government nor the State may raise as a defense:
(i) Any claim of sovereign immunity; or
(ii) Any claim that the employee who revealed the proprietary information was acting outside the scope of his/her employment in revealing the information.
(iii) The State agrees to hold the Federal Government harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data and information and samples.
(iv) The materials containing the proprietary data, information, and samples will remain the property of the Federal Government.
(c) The data, information, and samples available for reproduction to the State(s) under an agreement must be related to leased lands. Data and information on unleased lands may be viewed but not copied or reproduced.
(d) The State must return to us the materials containing the proprietary data, information, and samples when we ask for them or when the State no longer needs them.
(e) Information received and knowledge gained by a State official under paragraph (d) of this section is subject to confidentiality requirements of:
(1) The Act; and
(2) The regulations at 30 CFR parts 280, 281, and 282.

Subpart E—Information Collection

§ 280.80 Paperwork Reduction Act statement—information collection.

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0072. The title of this information collection is "30 CFR Part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf."
(b) We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.
(c) We use the information collected under this part to:
(1) Evaluate permit applications and monitor scientific research activities for environmental and safety reasons.
(2) Determine that prospecting does not harm resources, result in pollution, create hazardous or unsafe conditions, or interfere with other users in the area.
(3) Approve reimbursement of certain expenses.
(4) Monitor the progress and activities carried out under an OCS prospecting permit.
(5) Inspect and select G&G data and information collected under an OCS prospecting permit.
(d) Respondents are Federal OCS permittees and notice filers. Responses are mandatory or are required to obtain or retain a benefit. We will protect information considered proprietary under applicable law and under regulations at § 280.70 and 30 CFR part 281.
(e) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240.

[FR Doc. 02–17879 Filed 7–16–02; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–037]

RIN 2115–AE84

Regulated Navigation Area; Savannah River, Georgia

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area on a portion of the Savannah River to regulate waterway traffic when vessels carrying Liquefied Natural Gas (LNG) are transiting or moored on the Savannah River. This action is necessary because of the size, draft, and volatile cargo of LNG tankships. This rule enhances public and maritime safety by minimizing the risk of collision, allision or grounding and the possible release of LNG.

DATES: This rule is effective on August 16, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–01–037], and are available for inspection or copying at Marine Safety Office Savannah, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James Hanzalik at the Marine Safety Office Savannah; phone (912) 652–4353 extension 205.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 19, 2001 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled "Regulated Navigation Area; Savannah River, Georgia" (66 FR 32915). The Coast Guard received twenty-two letters commenting on the proposed rule. No public hearing was requested, and none was held.

Since immediate action was necessary to protect the public from the dangers associated with transporting LNG, on October 10, 2001 and May 10, 2002, we published two temporary final rules in the **Federal Register** entitled "Regulated Navigation Area: Savannah River, Georgia" (66 FR 51562 and 67 FR 31730, respectively) creating temporary rules while we published a Supplemental Notice of Proposed Rulemaking (SNPRM), received comments and prepared the final rule.

Due in part to the comments we received and changes to the initial NPRM, on December 14, 2001, we published a SNPRM in the **Federal Register** entitled "Regulated Navigation Area; Savannah River, Georgia" (66 FR 64778), offering the public the opportunity to comment on our revised proposal. The Coast Guard received three letters commenting on the supplemental proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Savannah River has a narrow and restricted channel with many bends. The Liquefied Natural Gas (LNG) facility is located at one of these bends on Elba Island. The LNG tankship berth is located adjacent to and parallel with the toe of the shipping channel. Because of these factors, the hazardous nature of LNG and the substantial volume of deep draft vessel traffic in Savannah (approximately 5000 annual transits), the risk of collision or allision involving an LNG tankship must be addressed.

The Elba Island LNG facility has been struck by passing vessels twice in the past 20 years. In both instances the facility was inactive. However, damage to both the facility and vessels was extensive. The potential consequences from this type of allision would be significantly more severe with an LNG tankship moored at the Elba Island dock.

The current temporary final rule expired on June 30, 2002. This final rule is needed to prevent incidents involving LNG tankships while in transit, and while moored at the facility, and is necessary to protect the safety of life and property on the navigable waters from hazards associated with LNG activities.

Discussion of Comments and Changes

The Coast Guard received twenty-two comment letters addressing the original notice of proposed rulemaking. These comments and our responses can be found in the SNPRM in the **Federal Register** (66 FR 64778) and the temporary final rule published on October 10, 2001 (66 FR 51562). The Coast Guard incorporated some of the comments and made content changes and other administrative and numbering corrections in the SNPRM published on December 14, 2001.

We received a total of three comment letters to the SNPRM published on December 14, 2001, that restated the same concerns addressed in the NPRM. The Coast Guard stands by its previous position and comments and has not modified this final rule. In addition to the comments restated, two of these comment letters requested that the Coast Guard extend the temporary final rule for one year "to document the cost of delays and make a reasonable determination of the impact of these proposed regulations." As stated in the comments section of the SNPRM and the regulatory evaluation section of this final rule, the Coast Guard maintains our position that the costs associated with this rule will be minimal and we do not agree that an extension of the temporary rule is necessary. If however, as experience with this rule is gained and costs are documented which warrant a reassessment of this rule, the Coast Guard may review the cost and benefits of the final rule and may revise it.

A third comment letter received in response to the SNPRM suggested that the "Captain of the Port be given the authority to waive portions of the final rule which operational experience has shown to be unnecessary." The final rule allows the Captain of the Port to waive any requirements imposed by this rule, if the Captain of the Port finds that it is in the best interest of safety or in the interest of national security.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of

the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Only an estimated one percent of the annual transits on the Savannah River will be LNG tankships. Further, all LNG transits concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.756 is added to read as follows:

§ 165.756 Regulated Navigation Area; Savannah River, Georgia.

(a) *Regulated Navigation Area (RNA).* The Savannah River between Fort Jackson (32°04.93′ N, 081°02.19′ W) and

including naval and other public vessels, except vessels that are engaged in the following operations:
(1) Law enforcement or search and rescue operations;
(2) Servicing aids to navigation;
(3) Surveying, maintenance, or improvement of waters in the RNA; or
(4) Actively engaged in escort, maneuvering or support duties for the LNG tankship.

horsepower and capable of safely operating in the indirect mode, to escort transiting vessels 1600 gross tons or greater past the moored LNG tankship.
(ii) In addition to the two towing vessels required by paragraph (d)(2)(i) of this section, the operator of the facility where the LNG tankship is moored shall provide at least one standby towing vessel of sufficient capacity to take appropriate actions in an emergency as

the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Only an estimated one percent of the annual transits on the Savannah River will be LNG tankships. Further, all LNG transits will be coordinated and scheduled with the pilots and the Coast Guard Captain of the Port to minimize port disruption and delays for other commercial traffic and the LNG tankships themselves. Finally, requests to enter the Regulated Navigation Area (RNA) may be granted on a case-by-case basis by the Coast Guard Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because LNG vessels will comprise an estimated one percent of the large commercial vessel transits on the Savannah River. Further, the tug escort requirements of this rule for vessels transiting past a moored LNG vessel will only affect an estimated 12 percent of all large commercial vessel transits on the River and are provided by the LNG facility. Delays, if any, will be minimal because vessel speeds would be reduced regardless of tug requirements. Delays for inbound and outbound traffic due to LNG transits will be minimized through pre-transit conferences with the pilots and the Coast Guard Captain of the Port. Finally, the RNA requirements are less burdensome for smaller vessels, which are more likely to be small entities, because of the lower risk associated with these vessels.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.756 is added to read as follows:

§ 165.756 Regulated Navigation Area; Savannah River, Georgia.

(a) *Regulated Navigation Area (RNA).* The Savannah River between Fort Jackson (32°04.93′ N, 081°02.19′ W) and the Savannah River Channel Entrance Sea Buoy is a regulated navigation area. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definitions are used in this section:

Bollard pull is an industry standard used for rating tug capabilities and is the pulling force imparted by the tug to the towline. It means the power that an escort tug can apply to its working line(s) when operating in a direct mode.

Direct Mode is a towing technique which is defined as a method of operation by which a towing vessel generates towline forces by thrust alone at an angle equal to or nearly equal to the towline, or thrust forces applied directly to the escorted vessel's hull.

Indirect Mode is a towing technique that, for the purpose of this section, is defined as a method of operation by which an escorting towing vessel generates towline forces by a combination of thrust and hydrodynamic forces resulting from a presentation of the underwater body of the towing vessel at an oblique angle to the towline. This method increases the resultant bollard pull, thereby arresting and controlling the motion of an escorted vessel.

LNG tankship means a vessel as described in 46 CFR 154.

Made-up means physically attached by cable, towline, or other secure means in such a way as to be immediately ready to exert force on a vessel being escorted.

Make-up means the act of, or preparations for becoming made-up.

Operator means the person who owns, operates, or is responsible for the operation of a facility or vessel.

Savannah River Channel Entrance Sea Buoy means the aid to navigation labeled R W "T" Mo (A) WHIS on the National Oceanic and Atmospheric Administration's (NOAA) Nautical Chart 11512.

Standby means immediately available, ready, and equipped to conduct operations.

Underway means that a vessel is not at anchor, not made fast to the shore, or not aground.

(c) *Applicability.* This section applies to all vessels operating within the RNA, including naval and other public vessels, except vessels that are engaged in the following operations:

(1) Law enforcement or search and rescue operations;

(2) Servicing aids to navigation;

(3) Surveying, maintenance, or improvement of waters in the RNA; or

(4) Actively engaged in escort, maneuvering or support duties for the LNG tankship.

(d) *Regulations.*

(1) *Requirements for vessel operations while a LNG tankship is underway within the RNA:*

(i) Except for a vessel that is moored at a marina, wharf, or pier, and remains moored, no vessel 1600 gross tons or greater is permitted within the RNA without the permission of the Captain of the Port (COTP).

(ii) All vessels under 1600 gross tons shall keep clear of transiting LNG tankships.

(iii) The owner, master, or operator of a vessel carrying liquefied natural gas (LNG) shall:

(A) Comply with the notice requirements of 33 CFR 160. Updates are encouraged at least 12 hours before arrival at the RNA boundaries. The COTP may delay the vessel's entry into the RNA to accommodate other commercial traffic. LNG tankships are further encouraged to include in their notice a report of the vessel's propulsion and machinery status and any outstanding recommendations or deficiencies identified by the vessel's classification society and, for foreign flag vessels, any outstanding deficiencies identified by the vessel's flag state.

(B) Obtain permission from the COTP before commencing the transit into the RNA.

(C) While transiting, make security broadcasts every 15 minutes as recommended by the U.S. Coast Pilot 4 Atlantic Coast. The person directing the vessel must also notify the COTP telephonically or by radio on channel 13 or 16 when the vessel is at the following locations: Sea Buoy, Savannah Jetties, and Fields Cut.

(D) Not enter or get underway within the RNA if visibility during the transit is not sufficient to safely navigate the channel, and/or wind speed is, or is expected to be, greater than 25 knots.

(E) While transiting the RNA, the LNG tankship shall have sufficient towing vessel escorts.

(2) *Requirements for LNG facilities:*

(i) The operator of a facility where a LNG tankship is moored shall station and provide a minimum of two escort towing vessels each with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower and capable of safely operating in the indirect mode, to escort transiting vessels 1600 gross tons or greater past the moored LNG tankship.

(ii) In addition to the two towing vessels required by paragraph (d)(2)(i) of this section, the operator of the facility where the LNG tankship is moored shall provide at least one standby towing vessel of sufficient capacity to take appropriate actions in an emergency as directed by the LNG vessel bridge watch.

(3) *Requirements for vessel operations while a LNG tankship is moored:*

(i) While moored within the RNA, LNG tankships shall maintain a bridge watch of appropriate personnel to monitor vessels passing under escort and to coordinate the actions of the standby-towing vessel required in paragraph (d)(2)(ii) of this section in the event of emergency.

(ii) Transiting vessels 1600 gross tons or greater, when passing a moored LNG tankship, shall have a minimum of two towing vessels, each with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode, made-up in such a way as to be immediately available to arrest and control the motion of an escorted vessel in the event of steering, propulsion or other casualty. While it is anticipated that vessels will utilize the facility provided towing vessel services required in paragraph (d)(2)(i) of this section, this regulation does not preclude escorted vessel operators from providing their own towing vessel escorts, provided they meet the requirements of this part.

(A) Outbound vessels shall be made-up and escorted from Bight Channel Light 46 until the vessel is safely past the LNG dock.

(B) Inbound vessels shall be made-up and escorted from Elba Island Light 37 until the vessel is safely past the LNG dock.

(iii) All vessels of less than 1600 gross tons shall not approach within 70 yards of an LNG tankship.

(e) *LNG Schedule.* The Captain of the Port will issue a Broadcast Notice to Mariners to inform the marine community of scheduled LNG tankship activities during which the restrictions imposed by this section are in effect.

(f) *Waivers.* (1) The COTP may waive any requirement in this section, if the COTP finds that it is in the best interest of safety or in the interest of national security.

(2) An application for a waiver of these requirements must state the compelling need for the waiver and describe the proposed operation and

methods by which adequate levels of safety are to be obtained.

(g) *Enforcement.* Violations of this section should be reported to the Captain of the Port, Savannah, at (912) 652–4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the provisions of this section.

is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in

PART 3—[AMENDED]

2. Part 3 is amended by:

A. Revising all references to "Adjudication Officer", except for in § 3.2600(a), or all references to "Veterans Services Officer" or "Veterans' Services Officer" to read "Veterans Service Center Manager".

B. Revising all references to "Adjudication Division" to read

C. Revising all references to "Veterans Services Officer's" to read "Veterans Service Center Manager's".

D. In § 13.2(a), removing "Office of the Veterans Services Division", and adding, in its place, "Veterans Service Center".

E. In § 13.56(b), removing misspelled word "mange", and adding, in its place, "manage".

F. In § 13.71(a)(3) and (b), removing

as determined by the Veterans Service Center Manager. So much of any monthly remainder of the discontinued payments as equals the amount charged for his or her current care and maintenance in the institution in which treatment or care is furnished may be paid to the institution. This amount may not be more than the amount determined by the Veterans Service Center Manager to be the proper charge

veterans' benefits. Among other remedies, appellants may challenge final Board decisions on the grounds that they were the product of clear and unmistakable error (CUE). 38 U.S.C. 7111; 38 CFR 20.1400–20.1411.

On July 10, 2001, VA published in the **Federal Register** at 66 FR 35902 an interim final rule relating to CUE motions. Essentially, that rule modified 38 CFR 20.1404 to provide that, where

methods by which adequate levels of safety are to be obtained.

(g) *Enforcement.* Violations of this section should be reported to the Captain of the Port, Savannah, at (912) 652–4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the provisions of this section.

Dated: July 3, 2002.

J.S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–18010 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 13

RIN 2900–AL10

Adjudication; Fiduciary Activities—Nomenclature Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations by making nonsubstantive changes. VA is amending its adjudication and fiduciary regulations to replace the titles of Adjudication Division, Adjudication Officer, Veterans Services Division, and Veterans Services Officer, with Veterans Service Center, and Veterans Service Center Manager. Other, nonsubstantive changes are also made. These changes are made for clarity and accuracy.

DATES: *Effective Date:* July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Randy A. McKevitt, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7138.

SUPPLEMENTARY INFORMATION: VA is amending its adjudication and fiduciary regulations to reflect the reorganization of the Adjudication and Veterans Services Divisions into Veterans Service Centers and to reflect the elimination of the positions of the Atjudication Officer and the Veterans Services Officer and the creation of the position of the Veterans Service Center Manager. Other nonsubstantive changes are made for clarity.

Administrative Procedure Act

This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule merely consists of nonsubstantive changes. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, and Vietnam.

38 CFR Part 13

Surety bonds, Trusts and trustees, Veterans.

Approved: July 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 3 and 13 are amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

PART 3—[AMENDED]

2. Part 3 is amended by:

A. Revising all references to "Adjudication Officer", except for in § 3.2600(a), or all references to "Veterans Services Officer" or "Veterans' Services Officer" to read "Veterans Service Center Manager".

B. Revising all references to "Adjudication Division" to read "Veterans Service Center".

3. Section 3.353(b)(2) is revised to read as follows:

§ 3.353 Determinations of incompetency and competency.

* * * * *

(b) * * *

(2) Where the beneficiary is rated incompetent, the Veterans Service Center Manager will develop information as to the beneficiary's social, economic and industrial adjustment; appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter; select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in § 13.57 of this chapter; and authorize disbursement of the benefit.

* * * * *

§ 3.850 [Amended]

4. Section 3.850(d), is amended by removing misspelled word "Goverment", and adding, in its place, "Government".

§ 3.2600 [Amended]

5. Section 3.2600(a) is amended by removing "an Adjudication Officer, Veterans Service Center Manager,", and adding, in its place, "a Veterans Service Center Manager".

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

6. The authority citation for part 13 continues to read as follows:

Authority: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

PART 13—[AMENDED]

7. Part 13 is amended by:

A. Revising all references to "Adjudication Officer", or all references to "Veterans Services Officer" to read "Veterans Service Center Manager".

B. Revising all references to "Veterans Services Officers" to read "Veterans Service Center Managers".

C. Revising all references to "Veterans Services Officer's" to read "Veterans Service Center Manager's".

D. In § 13.2(a), removing "Office of the Veterans Services Division", and adding, in its place, "Veterans Service Center".

E. In § 13.56(b), removing misspelled word "mange", and adding, in its place, "manage".

F. In § 13.71(a)(3) and (b), removing "to the Adjudication Division" wherever it appears.

G. Revising § 13.108.

The revision reads as follows:

§ 13.108 Estate equals or exceeds statutory limit; 38 U.S.C. 5503(b)(1).

(a) *Discontinuance of payments.* When a veteran, who is rated incompetent by VA and has no spouse or child, is receiving hospital treatment, or domiciliary care, or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, the Veterans Service Center Manager will discontinue VA payments, other than insurance, under the provision of § 3.557 of this chapter. In those cases in which the payments have been discontinued, the Veterans Service Center Manager will resume payments when the estate has been reduced to one half the amount specified in § 3.557(b)(4) of this chapter.

(b) *Waiver of discontinuance of payments.* The Veterans Service Center Manager will determine when discontinuance should be waived. Waiver of discontinuance of payments under this paragraph may be granted more than once in any calendar year, but will not exceed a total of 60 days in any calendar year.

(1) The Veterans Service Center Manager may authorize waiver of discontinuance of payments when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority:) 38 U.S.C. 5503(b)(1)(A))

(c) *Apportionment award to dependent parent for care and maintenance.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, an apportionment of the award otherwise payable may be made to a dependent parent based on actual need as determined by the Veterans Service Center Manager. So much of any monthly remainder of the discontinued payments as equals the amount charged for his or her current care and maintenance in the institution in which treatment or care is furnished may be paid to the institution. This amount may not be more than the amount determined by the Veterans Service Center Manager to be the proper charge as fixed by statute or administrative regulation. The Veterans Service Center Manager will determine the amount of either award.

(Authority: 38 U.S.C. 5503(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

(Authority: 38 U.S.C. 501)

[FR Doc. 02–17911 Filed 7–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AK74

Board of Veterans' Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on the Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms an amendment to the Rules of Practice of the Board of Veterans' Appeals (Board) to provide that, when a motion to revise a Board decision on the grounds of clear and unmistakable error (CUE) fails to provide specific allegations of error, the Board will dismiss the motion without prejudice to refiling. This amendment was made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

DATES: *Effective Date:* July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denial of claims for veterans' benefits. Among other remedies, appellants may challenge final Board decisions on the grounds that they were the product of clear and unmistakable error (CUE). 38 U.S.C. 7111; 38 CFR 20.1400–20.1411.

On July 10, 2001, VA published in the **Federal Register** at 66 FR 35902 an interim final rule relating to CUE motions. Essentially, that rule modified 38 CFR 20.1404 to provide that, where the motion does not meet the pleading requirements set forth in VA rules, the motion will be dismissed without prejudice to refiling.

We provided a 60-day comment period that ended on September 10, 2000. We received no comments. Based on the rationale set forth in the interim final rule, we adopt those changes as a final rule.

Administrative Procedure Act

This document without any changes affirm amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

Accordingly, the interim final amending 38 CFR part 20 which was published at 66 FR 35902 on July 10,

Domestic Mail Manual Issue 57

Summary of Rate Case Changes

The following changes were adopted as part of the R2001–1 Omnibus Rate Case. These changes are effective June 30, 2002.

A ADDRESSING

A010 is amended to remove

C840 is amended to remove references to upgradable mail.

D DEPOSIT, COLLECTION, AND DELIVERY

D210.3.4 is amended to show that the destination sectional center facility (DSCF) rate will apply to eligible mail entered at the DSCF under exceptional dispatch. D210.4.0 is revised to show

and amended to include standards for the new per piece pallet and per piece destination entry pallet discounts.

The standards for combining multiple publications or editions in E220.3.0 and E230.4.0 are consolidated into new M230. E220 and E240 are amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E712.1.1b is revised to add a weight limit for BPM flats claiming the barcoded discount. E712.1.4, which excluded BPM flats from eligibility to receive an automation rate, is removed. E712.2.0 is amended to add a new standard for BPM automation flats. E712.2.0e is added to include a

the mail meets the requirements for the rates claimed.

M MAIL PREPARATION AND SORTATION

M011.1.3 is amended to show that a full letter tray is defined as one that is between 75% and 100% full. M011.1.4 is amended to remove references to upgradable mailings, to show that machinable and nonmachinable pieces cannot be part of the same mailing, and to show that ECR letter rate pieces

Approved: July 3, 2002.
Anthony J. Principi,
Secretary of Veterans Affairs.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

Accordingly, the interim final amending 38 CFR part 20 which was published at 66 FR 35902 on July 10, 2001, is adopted as a final rule without change.

[FR Doc. 02–17910 Filed 7–16–02; 8:45 am]
BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document describes the numerous amendments consolidated in the Transmittal Letter for Issue 57 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations; see 39 CFR 111.1. These amendments reflect changes in mail preparation requirements and other rules and regulations.

EFFECTIVE DATE: June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Emmerth, (703) 292–3641.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains the basic standards of the U.S. Postal Service governing its domestic mail services, descriptions of the mail classes and special services and conditions governing their use, and standards for rate eligibility and mail preparation. The document is amended and republished periodically, with each issue sequentially numbered. Interim updates of the DMM are posted monthly on the USPS Postal Explorer Web site (*http://pe.usps.gov*). DMM Issue 57, the next printed edition, is dated June 30, 2002. Issue 57 contains all changes previously published in the **Federal Register** (including the changes to implement the R2001–1 Omnibus Rate Case, published in 67 FR 18684) and all other changes listed below. Announcements were first published in the **Federal Register** and/or various issues of the Postal Bulletin, an official biweekly document published by the Postal Service.

In addition, the revised table of contents of DMM Issue 57 is presented.

Domestic Mail Manual Issue 57

Summary of Rate Case Changes

The following changes were adopted as part of the R2001–1 Omnibus Rate Case. These changes are effective June 30, 2002.

A ADDRESSING

A010 is amended to remove references to upgradable mail and to include a preferred location for addresses on letter-size pieces.

The title of A800 is changed to show the standards apply to all automation-compatible mail, not just mail claimed at automation rates.

A950 is revised to clarify that the mailer's signature on a postage statement certifies the mail meets the requirements for the rates claimed and to change the requirements for filing Form 3553, *Coding Accuracy Support System (CASS) Summary Report*. Mailers are no longer required to submit Form 3553 with each mailing.

C CHARACTERISTICS AND CONTENT

C010 is amended to show that Standard Mail Enhanced Carrier Route (ECR) letters are subject to the standards for mailpiece dimensions and to remove information about the First-Class Mail nonstandard surcharge. C050 is amended to add the nonmachinable characteristics for letters.

C100.2.7 is amended to clarify the guidelines for perforations and tearing guides on cards. C100.4.0 is revised to reflect changes to the nonmachinable surcharge (formerly the "nonstandard surcharge") for some First-Class Mail letters and flats.

C700 is amended to note that mailpieces meeting any of the characteristics listed in C700.2.0 and that are mailed at the DSCF Parcel Select rate are subject to the nonmachinable surcharge.

C810 is amended to remove references to upgradable First-Class Mail and Standard Mail, to increase the weight limit for Standard Mail automation and ECR letters to 3.5 ounces, and to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

C820 is amended to add a weight limit for Bound Printed Matter flats claimed at automation rates.

C830 is deleted. C830 contained standards for upgradable mail, including address placement, OCR read area, fonts, and reflectance. The upgradable preparation for letters is replaced with a machinable preparation; the machinable preparation has no requirements for address placement, OCR read area, etc.

C840 is amended to remove references to upgradable mail.

D DEPOSIT, COLLECTION, AND DELIVERY

D210.3.4 is amended to show that the destination sectional center facility (DSCF) rate will apply to eligible mail entered at the DSCF under exceptional dispatch. D210.4.0 is revised to show that the DSCF rate will not apply to mail entered at airport mail facilities (AMFs).

D230.2.2 and 4.6 are deleted to remove the standards for Periodicals contingency entries.

D500 is amended to include additional circumstances that affect postage refund requests for Express Mail when the service guarantee is not met.

E ELIGIBILITY

E110.3.0 is amended to clarify the eligibility for pieces mailed at First-Class Mail card rates.

E120.2.2 is amended to change the Priority Mail flat rate from the 2-pound rate to the 1-pound rate. E120.2.4 reflects changes to show that keys and identification devices that weigh more than 13 ounces but not more than 1 pound are returned at the 1-pound Priority Mail rate plus the fee shown in R100.10.0. Keys and identification devices that weigh more than 1 pound but not more than 2 pounds are charged the 2-pound Priority Mail rate for zone 4 plus the fee in R100.10.0.

E130 is amended to show that the nonmachinable surcharge will apply to keys and identification devices, certain letter-size and flat-size pieces mailed at single-piece and Presorted rates, and all pieces where the mailer chooses the manual only ("do not automate") preparation option. It also is amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E140 is amended to reorganize the information about rate application into two separate sections: one for cards and letter-size mail (2.0) and one for flat-size mail (3.0). E140.2.0 is amended to replace the basic rate with the new AADC and mixed AADC rates. E140.3.0 is amended to replace the basic rate with the new ADC and mixed ADC rates and to clarify the definition of a piece that is subject to the nonmachinable surcharge. E140 is amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E217.1.0 and 3.0 are amended to reflect references to the new destination area distribution center (DADC) rates and discounts for Outside-County and Outside-County Science-of-Agriculture rates. E217.5.0 is restructured for clarity and amended to include standards for the new per piece pallet and per piece destination entry pallet discounts.

The standards for combining multiple publications or editions in E220.3.0 and E230.4.0 are consolidated into new M230. E220 and E240 are amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E250 is revised in its entirety to clarify standards for all destination entry Periodicals mailings; to include the new destination area distribution center (DADC) entry rates and discounts; and to reflect that for rate eligibility DSCF pieces must be deposited at the DSCF or a USPS-designated facility. E250.1.1 clarifies that for rate eligibility an individual package, tray, sack, or pallet may contain pieces claimed at different destination entry rates and discounts.

New E260 (former G094) describes the standards for the Periodicals Ride-Along classification and rate, which is now a permanent classification. All of G094 is moved except for 2.0 and 3.0. Former 2.0, which contains the rate information, appears in R200. Former 3.0 is deleted, as publishers are no longer required to submit additional documentation with Ride-Along mailings.

E500 is amended to change the Express Mail flat rate from the 2-pound rate to the 1/2-pound rate.

E610.8.0 is amended to remove references to upgradable Standard Mail.

E620 is amended to remove references to upgradable mail and to show that the nonmachinable surcharge may apply to letter-size pieces that weigh 3.3 ounces or less and to all pieces where the mailer chooses the manual only ("do not automate") option. E620.1.2 is amended to remove the requirement that residual volumes must appear on the same postage statement.

E630 is reorganized for clarity. Standards are added to show that ECR letter-size pieces mailed at saturation and high density letter rates must be automation-compatible and must have a delivery point barcode. New language is added to explain the discount for automation-compatible pieces that weigh between 3.3 and 3.5 ounces.

E640 is amended to replace the basic automation letter rate with the new AADC and mixed AADC rates and to add the discount for automation letters that weigh between 3.3 and 3.5 ounces. E640.2.0 is amended to add the discount for ECR basic automation letters that weigh between 3.3 and 3.5 ounces.

E620 and E640 are amended to clarify that signing a postage statement certifies the mail meets the requirements for the rates claimed.

E712.1.1b is revised to add a weight limit for BPM flats claiming the barcoded discount. E712.1.4, which excluded BPM flats from eligibility to receive an automation rate, is removed. E712.2.0 is amended to add a new standard for BPM automation flats. E712.2.0e is added to include a barcoded discount for automation flats. E712.3.0 is amended to clarify that the mailer's signature on the postage statement certifies the mail meets the requirements for the rates claimed.

E713 and E714 are revised in their entirety to reflect the format used for BPM in E712. E713 and E714 are amended to show the new basic rate and to reduce the mailing minimum from 500 pieces to 300 pieces.

E751.1.1 is amended to add provisions to require mail on pallets for 3-digit ZIP Code prefixes to be entered at the SCF. E751.1.4 is amended to clarify that nonmachinable parcels sorted to 3-digit ZIP Code prefixes must be entered at a designated SCF. In E751.2.2 references are added to allow the preparation of 3-digit sacks and 3-digit pallets. E751.5.0 and E753 are amended to change the references from "BMC rate" to "basic rate."

F FORWARDING AND RELATED SERVICES

F010.4.0 is amended to remove references to nonstandard mail. F010.5.2 is amended to show that the nonmachinable surcharge can be charged on Periodicals returned at First-Class Mail single-piece rates. F010.5.3 is amended to show that the First-Class Mail single-piece nonmachinable surcharge is included in the calculation of the weighted fee for returned pieces and is charged on some returned Standard Mail pieces. F010.6.0 is amended to include these same changes.

F030.1.1 is amended to clarify the circumstances under which address notices are not provided by the Postal Service.

G GENERAL INFORMATION

G091.4.0 is revised to clarify that some pieces using NetPost Mailing Online are eligible for the mixed ADC or mixed AADC rate.

L LABELING LISTS

The titles and summaries of labeling lists L001, L800, L802, and L803 are amended to reflect new mail preparation options.

M MAIL PREPARATION AND SORTATION

M011.1.3 is amended to show that a full letter tray is defined as one that is between 75% and 100% full. M011.1.4 is amended to remove references to upgradable mailings, to show that machinable and nonmachinable pieces cannot be part of the same mailing, and to show that ECR letter rate pieces cannot be part of the same mailing as nonletter rate pieces. M012.2.0 is revised to update information about multiline optical character reader (MLOCR) markings. M012.3.3 is revised to include additional rate markings for BPM Presorted barcoded flats and BPM carrier route flats. M012.4.5 is deleted to remove references to upgradable mail.

M020.1.6 is amended to include Media Mail and Library Mail in the requirements for package size. In addition, the maximum weight for packages in sacks is 20 pounds unless otherwise noted, and packages of BPM automation flats must meet the preparation requirements in M820. M020.2.0 is amended to include additional standards for packaging Media Mail and Library Mail. M020.2.1 is amended to remove references to the upgradable preparation for First-Class Mail and Standard Mail and to show that nonmachinable and manual-only pieces must be packaged. M020.2.2 is amended to require that Media Mail and Library Mail pieces meet specific weight limits when placed in sacks or on pallets.

The container labeling requirements in M031.5.0 are amended to revise the Line 2 codes for "carrier routes," "letters," and "machinable" and to add a new Line 2 code for "manual." M032 Exhibit 1.3a is amended to change the content identifier number (CIN) codes for the new machinable and nonmachinable preparation for First-Class Mail and Standard Mail letter-size pieces. The exhibit also is amended to add new CIN codes for Standard Mail ECR letters and designate CIN codes for certain Package Services flat-size pieces. M033.2.0 is amended to clarify standards for filling letter trays.

M041.5.0 is amended to show that the minimum volume for letter trays on pallets can be measured in linear feet or by the number of layers of trays on the pallet. M041.5.5 is amended to clarify the maximum load of a pallet. M045.3.2 is amended to add that pallets with carrier route mail must show whether the mail is barcoded, machinable, or manual. M045.3.3 through 3.5 show revised titles that include Media Mail and Library Mail. M050.4.1 is amended to show that signing a postage statement

certifies the mail meets the requirements for the rates claimed.

M130 is revised to show the packaging, traying, and labeling standards for machinable, nonmachinable, and "manual only" letter-size mail.

The standards for combining multiple publications or editions in M210.6.0 and M220.6.0 are consolidated and relocated in new M230.

Mail or Priority Mail flat-rate envelope is charged the Express Mail ½-pound rate or the Priority Mail 1-pound rate. P013.8.0 is amended to show how to calculate postage for Standard Mail automation rate letter-size pieces and ECR automation-compatible letter-size pieces that weigh more than 3.3 ounces.

P014.5.0 is amended to expand the circumstances under which the Postal Service may deny Express Mail postage

and also to limit this service for Package Services mail to parcels. S918 and S919 also specify that for the purposes of adding Delivery Confirmation or Signature Confirmation service, a parcel is required to meet the definition in C100.5.0 or C700.1.0.

Summary of Other Changes by DMM Module

A ADDRESSING

C820 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

D DEPOSIT, COLLECTION, AND DELIVERY

D010.1.5 is amended and D010.1.8 is added to reflect changes made to Form 5541, *Pickup Service Statement*, and to include the availability of pickup

Bound Printed Matter flats. Effective 9–1–01.

E620.2.0 is amended to clarify that commingled Standard Mail machinable and irregular parcels are eligible for 3/5 rates. Effective 10–4–01.

E650.6.1 and E752.3.0 are revised to allow a new optional level of pallet sort for a limited number of sectional center facility (SCF) service areas. This option is available for Periodicals nonletters

characteristics, markings, and rates that apply to the experimental presorted Priority Mail classification. Effective 7–15–01.

L LABELING LISTS

Labeling lists are periodically updated to reflect changes in mail processing operations. Please see individual lists.

M MAIL PREPARATION AND SORTATION

certifies the mail meets the requirements for the rates claimed.

M130 is revised to show the packaging, traying, and labeling standards for machinable, nonmachinable, and "manual only" letter-size mail.

The standards for combining multiple publications or editions in M210.6.0 and M220.6.0 are consolidated and relocated in new M230.

M610 is revised to show the packaging, traying, and labeling standards for machinable, nonmachinable, and manual only letter-size mail. M630 is revised to show the new Line 2 labeling for trays of ECR letter-size pieces.

M710.2.1 is revised to add provisions for a 3-digit sort level for nonmachinable parcels claiming DSCF rates. M730 and M740 are amended to change references from "BMC rate" to "basic rate" and to include separate preparation standards for Media Mail and Library Mail flats, irregular parcels, and machinable parcels. The option to prepare sacks based on a minimum of 1,000 cubic inches of mail is added for Media Mail and Library Mail.

M810.1.0 is amended to replace references to the automation basic rate for letter-size pieces with the new AADC and mixed AADC rates. M810.2.0 is amended to show the new Line 2 labeling format for First-Class Mail and Standard Mail carrier route automation letters.

M820.1.0 is amended to replace references to the automation basic rate for flat-size pieces with the new ADC and mixed ADC rates. M820.6.1 is revised to provide packaging and sacking standards for flat-size pieces eligible for the Bound Printed Matter automation rates.

P POSTAGE AND PAYMENT METHODS

P011.1.0 is amended to reflect that the nonstandard surcharge is replaced with the new nonmachinable surcharge.

P012.2.0 is amended to require standardized documentation for Bound Printed Matter flats entered at automation rates and to add new rate level abbreviations for the AADC, ADC, mixed AADC, and mixed ADC rates. P012.3.0 is amended to reflect references to the new DADC rate for Periodicals. P012.4.0 is amended to clarify the standards for facsimile postage statements.

P013.1.0 is amended to clarify the rate calculation and computation standards. P013.2.0 is amended to reflect the zoning of Priority Mail rates affecting all pieces over 1 pound. This section also is amended to reflect that each Express Mail or Priority Mail flat-rate envelope is charged the Express Mail ½-pound rate or the Priority Mail 1-pound rate. P013.8.0 is amended to show how to calculate postage for Standard Mail automation rate letter-size pieces and ECR automation-compatible letter-size pieces that weigh more than 3.3 ounces.

P014.5.0 is amended to expand the circumstances under which the Postal Service may deny Express Mail postage refund requests when the service guarantee is not met.

P021.3.1 is amended to note the availability of stamped cards.

P100.4.0 and 5.0 are amended to change "nonstandard surcharge" to "nonmachinable surcharge."

P200.1.5 is amended to include requirements for separating DADC entry pieces if the mailing is not presented with mailing documentation at the time of postal verification. New P200.1.8 contains the standards relocated from P200.2.4 for waiving nonadvertising rates.

P600.2.0 is amended to include standards for the new nonmachinable surcharge for Standard Mail and to add calculations for automation and ECR heavy letters.

P910 is amended to add new rate category abbreviations for the AADC, ADC, mixed AADC, and mixed ADC rates for First-Class Mail and Standard Mail.

P950 is revised in its entirety to clarify the standards that apply to plant-verified drop shipment (PVDS).

P960 is amended to clarify when MLOCR markings must appear on mailpieces and to add new markings for the AADC, ADC, mixed AADC, and mixed ADC rates for First-Class Mail and Standard Mail.

R RATES AND FEES

Module R is revised in its entirety to reflect the new rates and fees for all classes of mail and special services.

S SPECIAL SERVICES

S010 and S500 are amended to reduce the indemnity included in the base price of Express Mail service from $500 to $100.

S020 is amended to increase the maximum amount of a single money order from $700 to $1,000.

S911 and S912 are amended to include the new service enhancement for registered mail and certified mail. This enhancement will allow mailers to obtain delivery information at www.usps.com by entering the article number shown on the mailing receipt.

S918 and S919 are amended to extend Delivery Confirmation and Signature Confirmation to First-Class Mail parcels, and also to limit this service for Package Services mail to parcels. S918 and S919 also specify that for the purposes of adding Delivery Confirmation or Signature Confirmation service, a parcel is required to meet the definition in C100.5.0 or C700.1.0.

Summary of Other Changes by DMM Module

A ADDRESSING

A010.1.2, A010.3.2, and A010.5.3 are revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 9–7–00.

A010.4.3 is revised to remove the requirement that a return address appear on Bound Printed Matter pieces with no ancillary service endorsement or special service. Effective 9–6–01.

A920 is revised to reflect a new option for mailing list owners to have their address lists sequenced electronically. Effective 7–1–01.

A930 is revised to fully describe mail sequencing product options. Effective 9–6–01.

C CHARACTERISTICS AND CONTENT

C010.6.5 is revised to allow more flexibility in designing and producing reusable envelopes. Effective 5–2–02.

C010.8.3 and C050.4.2 are amended to clarify that soft goods weighing more than 5 pounds may be mailed as machinable parcels. Effective 3–8–01.

C023.11.5 is revised to amend the standards for the mailability of magnetized materials. This amendment aligns the postal standards for magnetized materials with the U.S. Department of Transportation (DOT) regulations in Title 49, *Code of Federal Regulations* (49 CFR). Effective 6–14–01.

C200.1.4b is revised to amend the standard for loose enclosures at Periodicals rates. The revised standard allows as permissible enclosures receipts, requests, orders for a subscription, and printed matter (which is part of or accompanied by and related exclusively to a request or order for a subscription) for any Periodicals publication (including publications pending Periodicals authorization), provided other products or services are not advertised, promoted, or offered. Effective 6–14–01.

C200.1.10 is revised to amend the standard for label carriers for Periodicals. This revision allows mailers to put information about any Periodicals publication on the label carrier. Effective 1–10–02.

C700.2.0 is amended to clarify that the nonmachinable surcharge for Parcel Post does not apply to parcels that contain perishable items. Effective 5–3–01.

C820 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

D DEPOSIT, COLLECTION, AND DELIVERY

D010.1.5 is amended and D010.1.8 is added to reflect changes made to Form 5541, *Pickup Service Statement*, and to include the availability of pickup service for international mail. Effective 11–1–01.

D042.2.5, D042.2.6, and D042.2.7 are revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 9–7–00.

D042.2.8 is added to provide procedures to identify when an office business center is considered a commercial mail receiving agency for postal purposes. Effective 12–14–01.

D042.2.6 is revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 3–8–01.

D230 is revised to allow the Postal Service to cancel a Periodicals publication's additional entry authorization when the additional entry is not used for an entire calendar year. Effective 6–14–01.

D500.2.3 is revised to include information about Express Mail Manifesting. Effective 5–2–02.

D910 is revised to clarify the application procedure for post office box service. Effective 8–23–01.

E ELIGIBILITY

E120.1.4 is revised and Exhibit E120.1.4 is added to reflect the standard guidelines for creating package shipping labels. Effective 4–5–01.

E213.3.6 is revised to allow refunds for Periodicals mailings paid at First-Class Mail rates under certain circumstances. Effective 12–13–01.

E260.1.3 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

E500.1.0 is updated to include information on Express Mail delivery and waiver of signature. Effective 7–1–01.

E500.1.8 and E500.1.9 are revised to include information about Express Mail Manifesting. Effective 5–2–02.

E610, E620, E713, E714, E751, E752, and E753 are revised for the new optional 5-digit scheme preparation for Standard Mail machinable and irregular parcels and for Package Services machinable and nonmachinable parcels. Effective 7–12–01.

E610 and E752 are revised to implement mail preparation changes for First-Class Mail, Standard Mail, and Bound Printed Matter flats. Effective 9–1–01.

E620.2.0 is amended to clarify that commingled Standard Mail machinable and irregular parcels are eligible for 3/5 rates. Effective 10–4–01.

E650.6.1 and E752.3.0 are revised to allow a new optional level of pallet sort for a limited number of sectional center facility (SCF) service areas. This option is available for Periodicals nonletters (flats and irregular parcels), Standard Mail flats, and Bound Printed Matter flats prepared on pallets. Effective 3–31–02.

E670.5.11 is revised to reflect an increase for low-cost products mailable at Nonprofit Standard Mail rates. Effective 1–1–01 and 1–1–02.

E670.8.1 is revised to introduce an option to mail at Nonprofit Standard Mail rates via the NetPost Mailing Online experiment. Effective 4–5–01.

E710.3.1 is revised to remove the requirement that a return address appear on Bound Printed Matter pieces with no ancillary service endorsement or special service. Effective 9–6–01.

E712.1.2 is revised to rescind provisions concerning merchandise samples as enclosures with Bound Printed Matter. In its place, E712.1.2b provides for the inclusion of "nonprint" attachments and enclosures so long as such attachments and enclosures are incidental to the qualifying Bound Printed Matter material and have minimal commercial value. Effective 6–14–01.

E751 Exhibits 6.0, 7.0, and 8.0 are amended to add, delete, and change ZIP Codes for Parcel Select destination entry. Effective 2–8–01, 2–22–01, 4–19–01, 5–28–01, 6–28–01, 7–12–01, 7–26–01, 8–23–01, 9–20–01.

F FORWARDING AND RELATED SERVICES

Exhibit F010.4.1 is revised to reflect changes in mail delivery procedures to commercial mail receiving agencies. Effective 9–7–00.

F010.4.7 is added to clarify that undeliverable-as-addressed Mailgrams are treated as First-Class Mail. Effective 10–4–01.

G GENERAL INFORMATION

G030 is amended to clarify the method used to determine postal zones and to update postal zone information. Effective 6–30–02.

G091.2.1, G091.2.2, G091.3.0, and G091.4.1 are revised to introduce an option to mail at Nonprofit Standard Mail rates via the NetPost Mailing Online experiment. Effective 4–5–01.

G095 is added to describe the eligibility, standards, physical characteristics, markings, and rates that apply to the experimental presorted Priority Mail classification. Effective 7–15–01.

L LABELING LISTS

Labeling lists are periodically updated to reflect changes in mail processing operations. Please see individual lists.

M MAIL PREPARATION AND SORTATION

M011.1.0, M031.4.9, M041.5.0, M045.3.0, M920, M930, and M940 are revised to allow a new optional level of pallet sort for a limited number of sectional center facility (SCF) service areas. This option is available for Periodicals nonletters (flats and irregular parcels), Standard Mail flats, and Bound Printed Matter flats prepared on pallets. Effective 3–31–02.

M011.1.3, M011.1.4, M045.2.2, M130.1.7, M210.1.0, M220.1.0, M610.1.0, M620.1.0, M820.1.0, M910, M920, M930, and M940 are revised and M950 is added to provide a new preparation option that allows mailers to combine flat-size automation rate pieces and flat-size Presorted rate pieces of the same mail class within the same package. This new preparation option is called "co-packaging" and is available for First-Class Mail, Periodicals, and Standard Mail. Effective 3–31–02.

M011.1.3 and M013.1.1 are revised and M210.5.0 and M220.5.0 are deleted to remove the option that allows mailers to bedload bundles of Periodicals flats. Effective 3–31–02.

M011, M032, M041, M045, M073, M610, M710, M722, M723, M730, and M740 are revised for the new optional 5-digit scheme preparation for Standard Mail machinable and irregular parcels and for Package Services machinable and nonmachinable parcels. Effective 7–12–01.

M011, M041, M045, M130, M610, M620, M723, M820, M910, M920, M930, and M940 are revised to implement mail preparation changes for First-Class Mail, Standard Mail, and Bound Printed Matter flats. Effective 9–1–01.

M012 is revised to discontinue the use of old markings on Bound Printed Matter, Media Mail, and Library Mail. These markings were changed on January 7, 2001, in conjunction with the R2000–1 Omnibus Rate Case. Mailers were given until January 1, 2002, to change over to the new markings and use any preprinted stationery and packaging. Effective 1–1–02.

M012.3.1 is revised and Exhibit M012.3.1 is added to reflect the standard guidelines for creating package shipping labels. Effective 4–5–01.

M013 is revised to provide mailers with two new optional endorsement lines (OEL). These new format options allow mailers to list carrier route line-of-travel (LOT) information for Periodicals and Standard Mail within an OEL. Effective 6–14–01.

M020 is revised to improve package integrity for Periodicals and Standard

M500.3.0 is revised to include information about Express Mail Manifesting. Effective 5–2–02.

M820.1.0 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

P POSTAGE AND PAYMENT METHODS

P910 is revised to reflect minor revisions to procedures for manifest mailings. Effective 1–1–02.

P920 is revised to clarify the standards for entry of mail under optional procedures. Changes include reorganization of the standards and clarification of record keeping and quality control requirements as well as procedures for applying to mail under

2. The table at the end of § 111.3(f) is amended by adding at the end thereof a new entry to read as follows:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

(f) * * *

Transmittal letter for	Dated	FEDERAL REGISTER

D041 Customer Mail Receptacles
D042 Conditions of Delivery
D070 Drop Shipment
D071 Express Mail and Priority Mail
D072 Metered Mail
D100 First-Class Mail
D200 Periodicals
D210 Basic Information
D230 Additional Entry
D500 Express Mail
D600 Standard Mail
D700 Package Services

G GENERAL INFORMATION
G000 The USPS and Mailing Standards
G010 Basic Business Information
G011 Post Offices and Postal Services
G013 Trademarks and Copyrights
G020 Mailing Standards
G030 Postal Zones
G040 Information Resources
G042 Rates and Classification Service Centers
G043 Address List for Correspondence

M013 is revised to provide mailers with two new optional endorsement lines (OEL). These new format options allow mailers to list carrier route line-of-travel (LOT) information for Periodicals and Standard Mail within an OEL. Effective 6–14–01.

M020 is revised to improve package integrity for Periodicals and Standard Mail by prescribing basic standards for preparing and securing all packages and incorporating standards that pertain individually to packages on pallets, packages in sacks, and packages in trays. Effective 7–1–01.

M031, M045, M920, M930, and M940 are revised to require pallets of Periodicals and Standard Mail containing carrier route mail and/or Presorted rate mail to show "NONBARCODED" or "NBC" in the pallet label. These pallet label standards were originally revised effective January 7, 2001, in conjunction with implementation of the R2000–1 omnibus rate case. Mailers were given until July 15, 2001, to comply. Effective 7–15–01.

M031.3.1 is amended to clarify label holder placement on letter and flat trays. Effective 10–4–01.

M031.4.0 is amended to clarify the required information that must appear on a pallet label. This revision provides descriptions of what should appear on the destination line (Line 1), content line (Line 2), and office of mailing or mailer information line (Line 3) of pallet labels. Effective 6–14–01.

M031.4.7 is amended to correct information about the mailer information line on pallet labels. Effective 7–12–01.

M032.2.3 is revised to show that zebra codes (the series of diagonal or vertical marks on barcoded tray labels) are required only on trays of automation letters and flats. Effective 11–1–01.

M041.5.3 is revised to remove the minimum weight requirement for pallets of Periodicals, Standard Mail, and Package Services mail dropped at a destination delivery unit by the mailer or mailer's agent. Effective 6–14–01.

M050 is revised to change the documentation requirements for Periodicals and Standard Mail mailings sequenced in line-of-travel (LOT) order. Effective 9–6–01.

M500.2.2 is revised to show that the waiver of signature option is not available for Express Mail Custom Designed Service. Effective 12–27–01.

M500.2.2 and M500.3.3 are updated to include information on Express Mail delivery and waiver of signature. Effective 7–1–01.

M500.3.0 is revised to include information about Express Mail Manifesting. Effective 5–2–02.

M820.1.0 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

P POSTAGE AND PAYMENT METHODS

P012.2.4 is revised to allow a new optional level of pallet sort for a limited number of sectional center facility (SCF) service areas. This option is available for Periodicals nonletters (flats and irregular parcels), Standard Mail flats, and Bound Printed Matter flats prepared on pallets. Effective 3–31–02.

P013.6.0, P500.1.1, and P910.4.1 are revised and P910.6.0, P910.7.0, and P910.8.0 are added to include information about Express Mail Manifesting. Effective 5–2–02.

P013.7.1, P013.7.2, and P200.1.2 are revised and P200.4.0 is added to add references to the new Periodicals Accuracy, Grading, and Evaluation (PAGE) Program. PAGE can be used to determine per-copy weights and to substantiate the advertising percentage in Periodicals. Effective 3–7–02.

P014 is revised to clarify the refund policy for metered postage. Effective 1–1–02.

P014 and P022 are revised to reflect changes in the pricing of semipostal stamps and to add a new semipostal stamp. Effective 3–7–02.

P030 is revised in its entirety to include policies and regulations pertaining to more secure postage evidencing systems, such as those digitally printing meters that use a Postal Security Device (PSD), those digitally printing meters that generate information-based indicia (IBI), and PC Postage systems. Effective 1–1–02.

P030 is revised to allow the use of information-based indicia (IBI) to show evidence of postage in the same manner as letterpress and digital meter stamps. This extends the use of IBI to all mail classes except Periodicals. Effective 7–17–01.

P030 is revised to allow zoned-rate metered Priority Mail to be deposited in collection boxes. Effective 10–4–01.

P030.8.3 is deleted because the restrictions on mixed forms of postage evidencing are no longer necessary. Effective 5–2–02.

P030.11.4 is revised to clarify the locations at which metered mail can be deposited. Effective 3–7–02.

P040.2.4 is revised to allow more flexibility in designing and producing reusable envelopes. Effective 5–2–02.

P910 is revised to reflect minor revisions to procedures for manifest mailings. Effective 1–1–02.

P920 is revised to clarify the standards for entry of mail under optional procedures. Changes include reorganization of the standards and clarification of record keeping and quality control requirements as well as procedures for applying to mail under an OP Mailing System. Effective 3–7–02.

R RATES AND FEES

R000 is revised to reflect changes in the pricing of semipostal stamps and to add a new semipostal stamp. Effective 3–7–02.

R200 is revised to include standards for automation flats for the Automation Flat Sorting Machine (AFSM) 100. Effective 6–30–02.

S SPECIAL SERVICES

S010.2.5 and S500.1.1 are revised to include information about Express Mail Manifesting. Effective 5–2–02.

S500.1.4, S500.1.5, and S921.1.9 are revised to show that the waiver of signature option is not available for Express Mail Custom Designed Service and to update the language for the availability of COD service with Express Mail service. Effective 12–27–01.

S913.2.5 is revised to reflect the updated Publication 91, *Confirmation Services Technical Guide*. S919.2.1c, S919.3.3a, and Exhibit S919.2.1c are revised and Exhibit S919.3.3 is added to reflect standard guidelines for mailers designing and printing their own shipping labels. Effective 7–1–01.

S916.3.3 is revised to update authorized agent information to support the revised Form 3849, *Delivery Notice/Reminder/Receipt*, and the electronic record management program. Effective 7–1–01.

I INDEX INFORMATION

I022, Subject Index, is revised and reorganized with new key words and concepts. Effective 9–6–01.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

In consideration of the foregoing, 39 CFR part 111 is amended as set forth below:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. The table at the end of § 111.3(f) is amended by adding at the end thereof a new entry to read as follows:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

(f) * * *

Transmittal letter for issue	Dated	FEDERAL REGISTER publication
. . .	. . .	. . .
57	June 30, 2002	[INSERT CITATION FOR THIS FINAL RULE]

3. Section 111.5 is revised to read as follows:

§ 111.5 Contents of the Domestic Mail Manual.

A ADDRESSING

A000 Basic Addressing
A010 General Addressing Standards
A040 Alternative Addressing Formats
A060 Detached Address Labels (DALs)
A800 Addressing for Barcoding
A900 Customer Support
A910 Mailing List Services
A920 Address Sequencing Services
A930 Other Services
A950 Coding Accuracy Support System (CASS)

C CHARACTERISTICS AND CONTENT

C000 General Information
C010 General Mailability Standards
C020 Restricted or Nonmailable Articles and Substances
C021 Articles and Substances Generally
C022 Perishables
C023 Hazardous Materials
C024 Other Restricted or Nonmailable Matter
C030 Nonmailable Written, Printed, and Graphic Matter
C031 Written, Printed, and Graphic Matter Generally
C032 Sexually Oriented Advertisements
C033 Pandering Advertisements
C050 Mail Processing Categories
C100 First-Class Mail
C200 Periodicals
C500 Express Mail
C600 Standard Mail
C700 Package Services
C800 Automation-Compatible and Machinable Mail
C810 Letters and Cards
C820 Flats
C840 Barcoding Standards for Letters and Flats
C850 Barcoding Standards for Parcels

D DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information
D010 Pickup Service
D020 Plant Load
D030 Recall of Mail
D040 Delivery of Mail
D041 Customer Mail Receptacles
D042 Conditions of Delivery
D070 Drop Shipment
D071 Express Mail and Priority Mail
D072 Metered Mail
D100 First-Class Mail
D200 Periodicals
D210 Basic Information
D230 Additional Entry
D500 Express Mail
D600 Standard Mail
D700 Package Services
D900 Other Delivery Services
D910 Post Office Box Service
D920 Caller Service
D930 General Delivery and Firm Holdout

E ELIGIBILITY

E000 Special Eligibility Standards
E010 Overseas Military Mail
E020 Department of State Mail
E030 Mail Sent by U.S. Armed Forces
E040 Free Matter for the Blind and Other Handicapped Persons
E050 Official Mail (Franked)
E060 Official Mail (Penalty)
E070 Mixed Classes
E080 Absentee Balloting Materials
E100 First-Class Mail
E110 Basic Standards
E120 Priority Mail
E130 Nonautomation Rates
E140 Automation Rates
E150 Qualified Business Reply Mail (QBRM)
E200 Periodicals
E210 Basic Standards
E211 All Periodicals
E212 Qualification Categories
E213 Periodicals Mailing Privileges
E214 Reentry
E215 Copies Not Paid or Requested by Addressee
E216 Publisher Records
E217 Basic Rate Eligibility
E220 Presorted Rates
E230 Carrier Route Rates
E240 Automation Rates
E250 Destination Entry
E260 Ride Along
E270 Preferred Periodicals
E500 Express Mail
E600 Standard Mail
E610 Basic Standards
E620 Presorted Rates
E630 Enhanced Carrier Route Rates
E640 Automation Rates
E650 Destination Entry
E670 Nonprofit Standard Mail
E700 Package Services
E710 Basic Standards
E711 Parcel Post
E712 Bound Printed Matter
E713 Media Mail
E714 Library Mail
E750 Destination Entry
E751 Parcel Select
E752 Bound Printed Matter
E753 Combining Package Services Parcels

F FORWARDING AND RELATED SERVICES

F000 Basic Services
F010 Basic Information
F020 Forwarding
F030 Address Correction, Address Change, FASTforward, and Return Services

G GENERAL INFORMATION

G000 The USPS and Mailing Standards
G010 Basic Business Information
G011 Post Offices and Postal Services
G013 Trademarks and Copyrights
G020 Mailing Standards
G030 Postal Zones
G040 Information Resources
G042 Rates and Classification Service Centers
G043 Address List for Correspondence
G090 Experimental Classifications and Rates
G091 NetPost Mailing Online
G095 Presorted Priority Mail
G900 Philatelic Services

L LABELING LISTS

L000 General Use
L001 5-Digit Scheme—Periodicals Flats and Irregular Parcels, Standard Mail Flats, and BPM Flats
L002 3-Digit ZIP Code Prefix Matrix
L003 3-Digit ZIP Code Prefix Groups—3-Digit Scheme Sortation
L004 3-Digit ZIP Code Prefix Groups—ADC Sortation
L005 3-Digit ZIP Code Prefix Groups—SCF Sortation
L006 5-Digit Metro Scheme
L600 Standard Mail and Package Services
L601 BMCs
L602 ASFs
L603 ADCs—Irregular Standard Mail Parcels
L604 Originating ADCs—Standard Mail Irregular Parcels
L605 BMCs/ASFs—Nonmechinable Parcel Post BMC Presort and OBMC Presort
L606 5-Digit Scheme—Standard Mail and Package Services Parcels
L800 Automation Rate Mailings
L801 AADCs—Letter-Size Mailings
L802 BMC/ASF Entry—Periodicals, Standard Mail, and BPM
L803 Non-BMC/ASF Entry—Periodicals, Standard Mail, and BPM

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards
M010 Mailpieces
M011 Basic Standards
M012 Markings and Endorsements
M013 Optional Endorsement Lines
M014 Carrier Route Information Lines
M020 Packages
M030 Containers
M031 Labels
M032 Barcoded Labels
M033 Sacks and Trays
M040 Pallets
M041 General Standards
M045 Palletized Mailings
M050 Delivery Sequence
M070 Mixed Classes
M071 Basic Information
M072 Express Mail and Priority Mail Drop Shipment
M073 Combined Mailings of Standard Mail and Package Services Parcels
M074 Plant Load Mailings
M100 First-Class Mail (Nonautomation)
M110 Single-Piece First-Class Mail
M120 Priority Mail
M130 Presorted First-Class Mail
M200 Periodicals (Nonautomation)

M210 Presorted Rates
M220 Carrier Route Rates
M230 Combining Multiple Editions or Publications of the Same Publisher
M500 Express Mail
M600 Standard Mail (Nonautomation)
M610 Presorted Standard Mail
M620 Enhanced Carrier Route Standard Mail
M700 Package Services
M710 Parcel Post
M800 Bound Printed Matter

S SPECIAL SERVICES

S000 Miscellaneous Services
S010 Indemnity Claims
S020 Money Orders and Other Services
S070 Mixed Classes
S500 Special Services for Express Mail
S900 Special Postal Services
S910 Security and Accountability
S911 Registered Mail
S912 Certified Mail
S913 Insured Mail
S914 Certificate of Mailing

DATES: This rule is effective on September 16, 2002 without further notice, unless EPA receives adverse comments by August 16, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MBUAPCD	416	Solvents	01/17/01	05/08/01
SCAQMD	1102	Dry Cleaners Using Solvents Other Than Perchloroethylene	11/17/00	05/08/01

On July 20, 2001, these rule submittals were found to meet the completeness criteria in 40 CFR part 51,

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

C. Public Comment and Final Action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the

M210 Presorted Rates
M220 Carrier Route Rates
M230 Combining Multiple Editions or Publications of the Same Publisher
M500 Express Mail
M600 Standard Mail (Nonautomation)
M610 Presorted Standard Mail
M620 Enhanced Carrier Route Standard Mail
M700 Package Services
M710 Parcel Post
M720 Bound Printed Matter
M721 Single-Piece Bound Printed Matter
M722 Presorted Bound Printed Matter
M723 Carrier Route Bound Printed Matter
M730 Media Mail
M740 Library Mail
M800 All Automation Mail
M810 Letter-Size Mail
M820 Flat-Size Mail
M900 Advanced Preparation Options for Flats
M910 Co-Traying and Co-Sacking Package of Automation and Presorted Mailings
M920 Merged Containerization of Packages Using the City State Product
M930 Merged Palletization of Packages Using a 5% Threshold
M940 Merged Palletization of Packages Using the City State Product and a 5% Threshold
M950 Co-Packaging Automation Rate and Presorted Rate Pieces

P POSTAGE AND PAYMENT METHODS

P000 Basic Information
P010 General Standards
P011 Payment
P012 Documentation
P013 Rate Application and Computation
P014 Refunds and Exchanges
P020 Postage Stamps and Stationery
P021 Stamped Stationery
P022 Postage Stamps
P023 Precanceled Stamps
P030 Postage Meters (Postage Evidencing Systems)
P040 Permit Imprints
P070 Mixed Classes
P100 First-Class Mail
P200 Periodicals
P500 Express Mail
P600 Standard Mail
P700 Package Services
P900 Special Postage Payment Systems
P910 Manifest Mailing System (MMS)
P920 Optional Procedure (OP) Mailing System
P930 Alternate Mailing Systems (AMS)
P950 Plant-Verified Drop Shipment (PVDS)
P960 First-Class or Standard Mail Mailings With Different Payment Methods

R RATES AND FEES

R000 Stamps and Stationery
R100 First-Class Mail
R200 Periodicals
R500 Express Mail
R600 Standard Mail
R700 Package Services
R900 Services

S SPECIAL SERVICES

S000 Miscellaneous Services
S010 Indemnity Claims
S020 Money Orders and Other Services
S070 Mixed Classes
S500 Special Services for Express Mail
S900 Special Postal Services
S910 Security and Accountability
S911 Registered Mail
S912 Certified Mail
S913 Insured Mail
S914 Certificate of Mailing
S915 Return Receipt
S916 Restricted Delivery
S917 Return Receipt for Merchandise
S918 Delivery Confirmation
S919 Signature Confirmation
S920 Convenience
S921 Collect on Delivery (COD) Mail
S922 Business Reply Mail (BRM)
S923 Merchandise Return Service
S924 Bulk Parcel Return Service
S930 Handling

I INDEX INFORMATION

I000 Information
I010 Summary of Changes
I020 References
I021 Forms Glossary
I022 Subject Index

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–17890 Filed 7–16–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 247–0347a; FRL–7220–6]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations and dry cleaners using solvent other than perchloroethylene. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 16, 2002 without further notice, unless EPA receives adverse comments by August 16, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

South Coast Air Quality Management District, 21865 E. Copley Dr. Diamond Bar, CA 91765–4182

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
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A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public comment and final action.
III. Background Information
Why were these rules submitted?
IV. Administrative Requirements

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MBUAPCD	416	Solvents	01/17/01	05/08/01
SCAQMD	1102	Dry Cleaners Using Solvents Other Than Perchloroethylene	11/17/00	05/08/01

On July 20, 2001, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

MBUAPCD adopted a version of Rule 416 on April 20, 1994, which EPA approved into the SIP on February 12, 1996. SCAQMD adopted a version of Rule 1102 on December 7, 1990, which EPA approved into the SIP on March 24, 1992. MBUAPCD adopted revisions to Rule 416 on January 17, 2001 and SCAQMD adopted revisions to Rule 1102 on November 17, 2000. Both rules were submitted to EPA for SIP approval on May 8, 2001.

C. What is the Purpose of the Submitted Rule Revisions?

MBUAPCD Rule 416 has been revised to identify all VOCs as being ozone precursors and subject all emission units to 40 lb/day emission limit unless they are granted a higher limit based upon historical operations or upon Best Available Control Technology or New Source Review requirements.

SCAQMD Rule 1102 has been revised to achieve VOC reductions by phasing out transfer machines that use solvents containing VOC and requiring closed-loop machines instead. The amendments exempt all types of dry cleaning machines that use solvents containing Group II exempt compounds other than perchloroethylene except for certain recordkeeping and reporting requirements.

Other minor changes are made to improve clarity and enhance enforceability.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The MBUAPCD and SCAQMD regulate ozone nonattainment areas (see 40 CFR part 81), so Rules 416 and 1102 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. U.S. EPA Region IX—Guidance Document for Correcting Common VOC & Other Rule Deficiencies, Revised August 21, 2001, (A.K.A., "The Little Blue Book").

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules improve the SIP and are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 16, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 16, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why were these rules submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 16, 2002.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(A)(*3*) and (c)(284)(i)(B)(*4*) to read as follows:

follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0112 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: See the listing below for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

Contact person	Pesticide
Barbara Madden	Bifenazate Coumaphos

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Accordingly, Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(A)(*3*) and (c)(284)(i)(B)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(284) * * *

(i) * * *

(A) * * *

(*3*) Rule 416, adopted on September 1, 1974 and amended on January 17, 2001.

(B) * * *

(*4*) Rule 1102, adopted on January 6, 1978 and amended on November 17, 2000.

* * * * *

[FR Doc. 02–17702 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0112; FRL–7183–6]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective July 17, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0112, must be received by EPA on or before August 16, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0112 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: See the listing below for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9366; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

Contact person	Pesticide
Barbara Madden	Bifenazate Coumaphos Dimethenamid Myclobutanil Sulfentrazone
Dan Rosenblatt	Diuron Fenbuconazole Fluroxypyr 1-methylheptyl ester Tebuconazole
Libby Pemberton	Hexythiazox Pendimethalin
Andrew Ertman	Imidacloprid Metolachlor
Andrea Conrath	Emamectin Benzoate Thiabendazole

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0112. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed below. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed

these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Similar objections were filed by NRDC concerning a tolerance for imidacloprid, another pesticide addressed in this notice. Although these objections concern separate rulemaking

phosphorothioate) and its oxygen analog, coumaphoxon (*O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphate in or on honey at 0.1 ppm and beeswax at 100 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of August 16, 2000 (65 FR 49927) (FRL–

by-product at 0.025 ppm; cotton, hulls at 0.004 ppm; cotton, meal at 0.002 ppm; cottonseed at 0.002 ppm; cottonseed oil at 0.006 ppm; meat, fat, and meat by-product of cattle, goats, hogs, and sheep at 0.002 ppm; and milk at 0.002 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of

oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as ppm of the parent compound) in or on dates at 0.1 ppm for an additional 2–year and 2–month period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of October 13, 1998 (63 FR 54594) (FRL–6030–3) (40 CFR 180.448).

methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2- hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on tomato paste at 0.6 ppm, tomato puree at 0.3 ppm and tomatoes at 0.1 ppm for an additional 2–year and 6–month period. These tolerances will expire and are revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of March 10, 1999 (64 FR 11782) (FRL–

these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended until the date listed below. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Bifenazate*. EPA has authorized under FIFRA section 18 the use of bifenazate on greenhouse grown tomatoes for control of spider mites in Texas and Virginia. This regulation extends a time-limited tolerance for combined residues of bifenazate (hydrazine carboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester) and diazenecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester)) in or on tomato at 0.70 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. A time-limited tolerance was originally published in the **Federal Register** of June 29, 2001 (66 FR 34561) (FRL–6788–5) (40 CFR 180.572).

Recently, EPA has received objections to a tolerance it established for bifenazate on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Similar objections were filed by NRDC concerning a tolerance for imidacloprid, another pesticide addressed in this notice. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for bifenazate and imidacloprid while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First, the objections proceeding is not near to conclusion. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has just initiated a 60–day public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with extending the tolerances for bifenazate and imidacloprid.

2. *Coumaphos*. EPA has authorized under FIFRA section 18 the use of coumaphos in beehives for control of varroa mites and small hive beetles in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. This regulation extends time-limited tolerances for the combined residues of the insecticide coumaphos (*O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphorothioate) and its oxygen analog, coumaphoxon (*O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl phosphate in or on honey at 0.1 ppm and beeswax at 100 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of August 16, 2000 (65 FR 49927) (FRL–6738–3) (40 CFR 180.189).

3. *Dimethenamid*. EPA has authorized under FIFRA section 18 the use of dimethenamid on dry bulb onion for control of yellow nutsedge and other broadleaf weeds in New York and Wisconsin. This regulation extends a time-limited tolerance for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on dry bulb onion at 0.01 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004.

EPA has authorized under FIFRA section 18 the use of dimethenamid on sugar beets for control of weeds in Colorado, Minnesota, Nebraska, North Dakota, and Wyoming. This regulation extends the time-limited tolerances for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on beet, sugar at 0.01 ppm; beet, sugar, dried pulp at 0.05 ppm; beet, sugar, molasses at 0.05 ppm; and beet, sugar, tops at 0.01 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of August 24, 2000 (65 FR 51544) (FRL–6738–1) (40 CFR 180.464).

4. *Diuron*. EPA has authorized under FIFRA section 18 the use of diuron in commercial catfish ponds for control of blue-green algae (*Oscillatoria chalybea*) in Alabama and Mississippi. This regulation extends a time-limited tolerance for residues of the herbicide diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea) in or on catfish fillets at 2.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. The time-limited tolerance was originally published in the **Federal Register** of July 30, 1999 (64 FR 41297) (FRL–6087–2) (40 CFR 180.106).

5. *Emamectin benzoate*. EPA has authorized under FIFRA section 18 the use of emamectin benzoate on cotton for control of beet armyworm in New Mexico, Oklahoma, and Texas. This regulation extends the time-limited tolerances for residues of the insecticide emamectin benzoate in or on cotton, gin by-product at 0.025 ppm; cotton, hulls at 0.004 ppm; cotton, meal at 0.002 ppm; cottonseed at 0.002 ppm; cottonseed oil at 0.006 ppm; meat, fat, and meat by-product of cattle, goats, hogs, and sheep at 0.002 ppm; and milk at 0.002 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of January 12, 2000 (65 FR 1796) (FRL–6398–5) (40 CFR 180.505).

6. *Fenbuconazole*. EPA has authorized under FIFRA section 18 the use of fenbuconazole on blueberries for control of mummy berry disease in Georgia. This regulation extends a time-limited tolerance for combined residues of the fungicide fenbuconazole alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile) and its metabolites cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone expressed as fenbuconazole in or on blueberries at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of June 10, 1998 (63 FR 31633) (FRL–5791–5) (40 CFR 180.480).

7. *Fluroxypyr 1-methylheptyl ester*. EPA has authorized under FIFRA section 18 the use of fluroxypyr 1-methylheptyl ester on grass pasture and rangeland for control of sericea lespedeza (*Lespedeza cuneata*) in Kansas. This regulation extends time-limited tolerances for combined residues of the herbicide fluroxypyr 1-methylheptyl ester 1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid in or on grass, forage at 120 ppm; grass hay at 160 ppm; kidney, cattle at 1.5 ppm; kidney, goat at 1.5 ppm; kidney, hog at 1.5 ppm; kidney, horse at 1.5 ppm; kidney, sheep at 1.5 ppm; and milk at 0.30 ppm for an additional 1½year period. These tolerances will expire and are revoked on December 31, 2004. Time-limited tolerances were originally published in the **Federal Register** of September 17, 2001 (66 FR 47964) (FRL–6798–5) (40 CFR 180.535).

8. *Hexythiazox*. EPA has authorized under FIFRA section 18 the use of hexythiazox on dates for control of Banks grass mite in California. This regulation extends a time-limited tolerance for combined residues of the miticide hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as ppm of the parent compound) in or on dates at 0.1 ppm for an additional 2–year and 2–month period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of October 13, 1998 (63 FR 54594) (FRL=6030–3) (40 CFR 180.448).

9. *Imidacloprid*. EPA has authorized under FIFRA section 18 the use of imidacloprid on strawberries for control of white grubs in Connecticut. This regulation extends a time-limited tolerance for combined residues of the insecticide 1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on strawberries at 0.1 ppm for an additional 2–year and 6–month period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of January 20, 1999 (64 FR 3037) (FRL–6051–6) (40 CFR 180.472).

10. *Metolachlor*. EPA has authorized under FIFRA section 18 the use of s-metolachlor on spincah for control of weeds in Colorado, Delaware, New Jersey, Oklahoma, Pennsylvania, Texas, and Virginia. This regulation extends a time-limited tolerance for combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on spinach at 0.3 ppm for an additional 2–year and 6–month period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of November 29, 1996 (61 FR 60617) (FRL–5574–7) (40 CFR 180.368).

EPA has authorized under FIFRA section 18 the use of s-metolachlor on tomatoes for control of weeds in California, Indiana, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Virginia. This regulation extends time-limited tolerances for combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2- hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on tomato paste at 0.6 ppm, tomato puree at 0.3 ppm and tomatoes at 0.1 ppm for an additional 2–year and 6–month period. These tolerances will expire and are revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of March 10, 1999 (64 FR 11782) (FRL–6062–5) (40 CFR 180.368).

11. *Myclobutanil*. EPA has authorized under FIFRA section 18 the use of myclobutanil on sugar beets for control of powdery mildew in Utah. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on dried pulp of sugar beets at 1.0 ppm, sugar beet molassess at 1.0 ppm, refined sugar from sugar beets at 0.70 ppm, sugar beet roots at 0.05 pmm, and sugar beet tops at 1.0 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of January 3, 2001 (66 FR 298) (FRL–6757–9) (40 CFR 180.443).

EPA has authorized under FIFRA section 18 the use of myclobutanil on artichokes for control of powdery mildew in California. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound), in or on atichokes at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on June 30, 2005. The time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL–6025–1) (40 CFR 180.443).

12. *Pendimethalin*. EPA has authorized under FIFRA section 18 the use of pendimethalin on mint for control of kochia and redroot pigweed in Idaho, Oregon, and Washington. This regulation extends a time-limited tolerance for combined residues of the herbicide pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite in or on fresh mint hay and mint oil at 0.1 and 5.0 ppm for an additional 2½ year period. This tolerance will expire and is

revoked on June 30, 2005. The time-limited tolerance was originally published in the **Federal Register** of May 23, 1997 (62 FR 28355) (FRL–5718–5) (40 CFR 180.361).

13. *Sulfentrazone*. EPA has authorized under FIFRA section 18 the use of sulfentrazone on lima beans and cowpeas for control of Hophornbeam Copperleaf in Tennessee. This

FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the

must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to

one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

revoked on June 30, 2005. The time-limited tolerance was originally published in the **Federal Register** of May 23, 1997 (62 FR 28355) (FRL–5718–5) (40 CFR 180.361).

13. *Sulfentrazone.* EPA has authorized under FIFRA section 18 the use of sulfentrazone on lima beans and cowpeas for control of Hophornbeam Copperleaf in Tennessee. This regulation extends a time-limited tolerance for combined residues of the herbicide sulfentrazone and the metabolites 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone in or on succulent bean seed without pod at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of September 21, 1999 (64 FR 51060) (FRL–6097–8) (40 CFR 180.498).

14. *Tebuconazole.* EPA has authorized under FIFRA section 18 the use of tebuconazole on sunflowers for control of rust (*Puccinia helianthi*) in North Dakota. This regulation extends time-limited tolerances for residues of the fungicide tebuconazole (alpha-[2-4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on sunflower oil at 0.4 ppm and sunflower seed at 0.2 ppm for an additional 2½ year period. This tolerance will expire and is revoked on December 31, 2005. The time-limited tolerance was originally published in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5752–4) (40 CFR 180.474).

15. *Thiabendazole.* EPA has authorized under FIFRA section 18 the use of thiabendazole on lentils for control of Ascochyta blight in Idaho, Montana, North Dakota, Oregon, and Washington. This regulation extends a time-limited tolerance for residues of the fungicide thiabendazole in or on lentils at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. The time-limited tolerance was originally published in the **Federal Register** of February 25, 1998 (63 FR 9435) (FRL–5767–6) (40 CFR 180.242).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0112 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0112; to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under FFDCA section 408(l)(6) in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 2002,

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.106 [Amended]

2. In § 180.106, in the table to paragraph (b), amend the entry for "Catfish fillets" by revising the expiration/revocation date "6/30/03" to read "6/30/05."

§ 180.189 [Amended]

3. In § 180.189, in the table to paragraph (b), amend the entries for "Beeswax" and "Honey" by revising the expiration/revocation date "12/31/02" to read "12/31/04."

§ 180.242 [Amended]

4. In § 180.242, in the table to paragraph (b), amend the entry for "Lentils" by revising the expiration/revocation date "12/31/02" to read "12/31/04."

§ 180.361 [Amended]

5. In § 180.361, in the table to paragraph (b), amend the entries for "Mint hay, fresh" and "Mint oil" by revising the expiration/revocation date "12/31/02" to read "6/30/05."

§ 180.368 [Amended]

6. In § 180.368, in the table to paragraph (b), amend the entries for "Spinach," "Tomato, paste," "Tomato, puree," and "Tomato" by revising the expiration/revocation date "6/30/02" to read "12/31/04."

§ 180.443 [Amended]

7. In § 180.443, in the table to paragraph (b), amend the entries for

"Beet, sugar, dried pulp"; "Beet, sugar, molasses"; "Beet, sugar, refined sugar"; "Beet, sugar, roots"; and "Beet, sugar, tops" by revising the expiration/revocation date "12/31/02" to read "12/31/04" and amend the entry for "Artichoke, globe" by revising the expiration/revocation date "6/30/03" to read "6/30/05."

§ 180.448 [Amended]

§ 180.535 [Amended]

15. In § 180.535, in the table to paragraph (b), amend the entries for "Cattle, kidney"; "Goat, kidney"; "Grass, forage"; "Grass, hay"; "Hog, kidney"; "Horse, kidney"; "Milk"; and "Sheep, kidney " by revising the expiration/revocation date "06/30/03" to read "12/31/04."

§ 180.572 [Amended]

follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0093 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, c/o Product Manager (PM) 90, Biopesticides and

document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,

residue. . . ." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines

temporary exemption from a tolerance be extended to December 30, 2005.

Several comments were received in favor of the amendment to allow use of the microbial pesticide in Texas. The growers were of the opinion that the use of this active ingredient is likely to reduce the high levels of naturally occurring aflatoxin-producing strain. *Aspergillus flavus* AF36 has been found at a range of less than 1 to approximately 5% in certain regions of

"Beet, sugar, dried pulp"; "Beet, sugar, molasses"; "Beet, sugar, refined sugar"; "Beet, sugar, roots"; and "Beet, sugar, tops" by revising the expiration/revocation date "12/31/02" to read "12/31/04" and amend the entry for "Artichoke, globe" by revising the expiration/revocation date "6/30/03" to read "6/30/05."

§ 180.448 [Amended]

8. In § 180.448, in the table to paragraph (b), amend the entry for "Dates" by revising the expiration/revocation date "10/31/02" to read "12/31/04."

§ 180.464 [Amended]

9. In § 180.464, in the table to paragraph (b), amend the entries for "Beet, sugar"; "Beet, sugar, dried pulp"; "Beet, sugar, molasses"; "Beet, sugar, tops"; and "Onion, dry bulb" by revising the expiration/revocation date "12/31/02" to read "12/31/04."

§ 180.472 [Amended]

10. In § 180.472, in the table to paragraph (b), amend the entry for "Strawberry" by revising the expiration/revocation date "6/30/02" to read "12/31/04."

§ 180.474 [Amended]

11. In § 180.474, in the table to paragraph (b), amend the entries for "Sunflower, oil" and "Sunflower, seed" by revising the expiration/revocation date "12/31/03" to read "12/31/05."

§ 180.480 [Amended]

12. In § 180.480, in the table to paragraph (b), amend the entry for "Blueberry" by revising the expiration/revocation date "12/31/02" to read "12/31/04."

§ 180.498 [Amended]

13. In § 180:498, in the table to paragraph (b), amend the entry for "Bean, succulent seed without pod (lima bean, cowpea)" by revising the expiration/revocation date "12/31/02" to read "12/31/04."

§ 180.505 [Amended]

14. In § 180.505, in the table to paragraph (b), amend the entries for "Cattle, fat"; "Cattle, meat"; "Cattle, meat byproducts"; "Cotton gin byproducts"; "Cotton, hulls"; "Cotton, meal"; "Cottonseed"; "Cotton, oil"; "Goat, fat"; "Goat, meat"; "Goat, meat byproducts"; "Hog, fat"; "Hog, meat"; "Hog, meat byproducts"; "Milk"; "Sheep, fat"; "Sheep, meat"; and "Sheep, meat byproducts" by revising the expiration/revocation date "12/31/02" to read "12/31/04."

§ 180.535 [Amended]

15. In § 180.535, in the table to paragraph (b), amend the entries for "Cattle, kidney"; "Goat, kidney"; "Grass, forage"; "Grass, hay"; "Hog, kidney"; "Horse, kidney"; "Milk"; and "Sheep, kidney " by revising the expiration/revocation date "06/30/03" to read "12/31/04."

§ 180.572 [Amended]

16. In § 180.572, in the table to paragraph (b), amend the entry for "Tomato" by revising the expiration/revocation date "06/30/03" to read "06/30/05."

[FR Doc. 02–17187 Filed 7–16–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0093; FRL–7185–4]

RIN 2070

Aspergillus flavus AF36; Amendment, Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an existing temporary exemption from the requirement of a tolerance for residues of the atoxigenic microbial pesticide, *Aspergillus flavus* AF36 on cotton consistent with the Experimental Use Permit 69224–EUP–1, which will now allow for application to cotton in certain counties in Arizona and Texas. Interregional Research Project Number 4 (IR-4), on behalf of the USDA/ARS Southern Regional Research Center, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting the temporary tolerance exemption amendment. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* AF36. The temporary tolerance exemption will expire on December 30, 2004.

DATES: This regulation is effective July 17, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0093, must be received by EPA on or before September 16, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0093 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official docket for this action under docket ID number OPP–2002–0093. The official docket consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). Interested parties should consult both the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official docket does not include any information claimed as CBI. The public version of the official docket, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Authority

A. Statutory Authority

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

B. Factual Background

This extension of the temporary exemption from the requirement of a tolerance is associated with an extension of an Experimental Use Permit (69224–EUP–1), which was granted in May 1996 to the Southern Regional Research Center, United States Department of Agriculture, Agricultural Research Service (USDA ARS), 1100 Robert E. Lee Blvd., New Orleans, LA 70179–0687. Both the temporary exemption from tolerance and the Experimental Use Permit in Arizona expire December 30, 2003.

In the **Federal Register** of (March 25 2002, 57 FR 13628) (FRL–6827–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of an amended pesticide tolerance petition (PP 5E4575) by Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, Technology Center of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 on behalf of the USDA/ARS Southern Regional Research Center, 1100 Robert E. Lee Blvd., P.O. Box 19687, New Orleans, LA 70179. This notice included a summary of the petition prepared by the petitioner, Dr. Michael Braverman. It referred to data previously evaluated and summarized by the Agency as published in the **Federal Register** of May 26 1999 (64 FR 28371) (FRL–6081–2), and the extension of the temporary tolerance exemption as published in the **Federal Register** of May 23 2001 (66 FR 28383) (FRL–6781–7). The petition requested that 40 CFR part 180.1206 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36 on cotton in certain counties in Texas in addition to the current exemption from temporary tolerance on cotton in Arizona. This petition also, requested that this temporary exemption from a tolerance be extended to December 30, 2005.

Several comments were received in favor of the amendment to allow use of the microbial pesticide in Texas. The growers were of the opinion that the use of this active ingredient is likely to reduce the high levels of naturally occurring aflatoxin-producing strain. *Aspergillus flavus* AF36 has been found at a range of less than 1 to approximately 5% in certain regions of Texas.

One comment was received requesting the Agency to re-evaluate the science of the proposed program and that the risks associated with the use of the active ingredient be considered before a permanent exemption from a tolerance is issued. The main concerns in this comment were the requirement for uniform standards in the expression of aflatoxin levels found in the crop; the practical significance of the proposed treatment method in reducing aflatoxin contamination; and the significance of the host stress in the expression of pathogenicity by *Aspergillus flavus*.

Considering each of these points, first, the commenter referred to the mixing of units used to measure aflatoxin contamination. This comment specifically referred to the experimental researcher's reports, which include measurement of aflatoxin levels as micrograms per gram of cottonseed rather than the typical expression of micrograms per kilogram of cottonseed. In data submitted to the Agency, there is no indication that the company was in error or misrepresenting the aflatoxin values. In all cases, EPA is careful to pay close scrutiny to the units of measure in data they review and the implications made from the stated values.

Secondly, the efficacy of the pesticidal product to reduce the level of aflatoxin in commercial crops was questioned in the comments. The Agency requires that the company present data to confirm their claim to control a public health hazard. The submitted data are available in the public docket and have been reviewed. These data indicate that when *Aspergillus flavus* AF36 is used, a higher percentage of the treated commodity meets, or is less than, the standards of aflatoxin required by the Food and Drug Administration (FDA), and the aflatoxin contamination in the experimental region is lowered. The growers ultimately decide if the reduced aflatoxin contamination is worth the treatment cost, but all cotton and its by-products sold for food/feed must meet the FDA aflatoxin standard.

Regarding testing of the atoxigenic fungus, *Aspergillus flavus* AF36, on stressed or immunosuppressed species to detect any pathogenic potential in plants, insects, or mammals, EPA's guideline requirements are designed to address the normal immune response to microbial exposure. These tests include non-self/foreign recognition and response or clearance by the immune system over time. EPA is examining new methods that may address the potential of a microbe to infect stressed or immunocompromised hosts. In the interim, special measures have been included in the experimental treatments to reduce exposure to *Aspergillus flavus* AF36 outside of the designated treatment areas. The experimental plan also requires extensive data collection to examine the fate and persistence of *Aspergillus flavus* AF36 as a component of the local fungal population.

Exposure to *Aspergillus flavus* is inevitable, because the fungus normally occurs in the environment. Given the ubiquitous nature of various strains of *Aspergillus flavus*, the precautions associated with this experimental program, data indicating no undue adverse health effects to test rodent species by oral ingestion of *Aspergillus flavus* AF36, as well as the current FDA monitoring of aflatoxin levels, there is a reasonable certainty of no harm resulting from the use of the non-aflatoxin-producing fungus, *Aspergillus flavus* AF36.

III. Toxicological Profile and Risk Assessment

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the data and analyses outlined in the **Federal Register** of May 26 1999 (66 FR 28371), and summarized below, EPA has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of *Aspergillus flavus* AF36 arising from the limited use pattern of the experimental use permit. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

1. *Food.* The cultural practice allows application of the microbial pesticide prebloom to cotton. This precludes the potential for direct residues of *Aspergillus flavus* AF36 *per se* to remain on the treated cotton. Only the seed of the treated commodity, cotton, is likely to be processed as food for cottonseed oil. Residues of *Aspergillus flavus* AF36 or its metabolites are likely to be removed from cotton seed oil during this processing.

In addition, the data submitted demonstrate that the proposed strain of *Aspergillus flavus* AF36, has a low toxicity potential, and, therefore, is likely to pose a minimal to non-existent hazard if used as labeled. The acute oral LD_{50} of rats treated by gavage for 14 days is greater than 5,000 mg/kg. Further, the proposed strain of *Aspergillus flavus*, AF36, does not produce aflatoxin. Aflatoxin is regulated on the by-products of cotton by the Food and Drug Administration. The May 23 2001 **Federal Register** Notice also, discusses that no adverse effects were reported in the annual reports of the Experimental Use Permit 69224–EUP–1, and, in some instances, aflatoxin levels of cotton seed were reduced in treated cotton (May 23, 2001, 66 FR 28383).

2. *Dermal exposure.* Non-occupational dermal exposure and risk to adults, infants and children are not likely if the pesticide is used as labeled. If the microbe exhibits dermal sensitizing properties which is associated with this genus of fungi, the boundaries are likely to maintain distribution near treated areas thus protecting nearby at-risk populations. To further minimize exposure to immunocompromised or sensitive populations, infants and children, the Agency continues to require that the pesticide must not be applied within a boundary of 400 feet of schools, daycare and health care facilities and hospitals.

3. *Inhalation exposure.* Based on the method of application to the soil of cultivated cotton fields, prebloom with set boundaries, non-occupational inhalation exposure and risk to human adults, children and infants are likely to be minimal.

4. *Determination of safety for U.S. population, infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. In this instance, based on the above findings, EPA believes there are reliable data to support the conclusion that there are no threshold effects of concern to infants, children, and adults when *Aspergillus flavus* AF36 is used as labeled, and that no additional margin of exposure is necessary.

5. *Cumulative effects.* This is the only microbe in the genus *Aspergillus* which is in an experimental use program at this time. *Aspergillus* species are naturally occurring ubiquitous fungi, such that exposure to various species is normal. The data submitted to the Agency support the claim that *Aspergillus flavus* AF36 is non-aflatoxin producing. When applied prior to flowering, *Aspergillus flavus* has been shown to exclude aflatoxin-producing fungi competitively from the developing crop and to reduce aflatoxin contamination of cottonseed. Data show that the proposed use will not result in appreciable increases in the long-term populaton of *Aspergillus flavus* on the crop beyond naturally occurring levels. Furthermore, there is no expectation of cumulative effects with other pesticides.

IV. Other considerations

1. *Endocrine disruptors.* EPA does not have any information regarding endocrine effects of this microbial pesticide at this time.

2. *Analytical methods.* Starter cultures are screened on the basis of vegetative incompatibility with the toxigenic strain. *Aspergillus flavus* AF 36 does not demonstrate vegetative compatibility with the aflatoxin-producing S strain. Aflatoxin production is monitored by standard thin layer chromatography (tlc) procedures and visualization via scanning fluorescence densitometry and there is a zero tolerance for aflatoxin. Human pathogens are reported to be within regulatory levels (May 26 1999, 64 FR 28371). Treated cotton and its by-products are screened for aflatoxin prior to introduction into the channels of commerce. FDA does not allow cotton seed products containing aflatoxin above 20 parts per billion (ppb) to be used in dairy rations or above 300 ppb to be used for feeding beef cattle.

3. *Codex maximum residue level.* There is no codex maximum residue level for *Aspergillus flavus* AF36.

V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0093 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0093, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Regulatory Assessment Requirements

This final rule establishes an amended exemption from the temporary tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (October 4 1993, 58 FR 51735). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (May 22 2001, 66 FR 28355). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 16 1994, 59 FR 7629); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (April 23 1997, 62 FR 19885). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the amended temporary tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.)* do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, entitled *Federalism* (August 10 1999, 64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule "as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

bensulide, *S*-propyl dipropylthiocarbamate, known as vernolate, and diphenamid; the fungicide imazalil; and the fungicide/insecticide 6-methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one (oxythioquinox) because these pesticides are no longer registered on certain food uses in the United States. The regulatory actions in this final rule contribute toward the Agency's tolerance reassessment

Categories	NAICS codes	Examples of potentially affected entities
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of August 1,

data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of August 1, 2001 (66 FR 39709), EPA did receive comment regarding the need to retain carbofuran tolerances and fumaric acid tolerance

levels of government, as specified in Executive Order 13132, entitled *Federalism* (August 10 1999, 64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000, 65 FR 67249). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule "as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1206 is revised to read as follows:

§ 180.1206 Aspergillus flavus AF36.

Aspergillus flavus AF36 is temporarily exempt from the requirement of a tolerance in or on cotton. The temporary exemption from a tolerance will expire on December 30, 2004, consistent with the Experimental Use Permit 69224–EUP–1.

[FR Doc. 02–17869 Filed 7–16–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0085; FRL–7182–5]

Atrazine, Bensulide, Diphenamid, Imazalil, 6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one, Phosphamidon S-Propyl dipropylthiocarbamate, and Trimethacarb; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes specific tolerances for residues of the insecticides phosphamidon and trimethacarb; the herbicides atrazine, *S*-(*O,O*-diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl) benzenesulfonamide, known as bensulide, *S*-propyl dipropylthiocarbamate, known as vernolate, and diphenamid; the fungicide imazalil; and the fungicide/insecticide 6-methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one (oxythioquinox) because these pesticides are no longer registered on certain food uses in the United States. The regulatory actions in this final rule contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 75 tolerances which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: This regulation is effective October 15, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0085, must be received by EPA on or before September 16, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0085 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112	Crop production Animal production

Categories	NAICS codes	Examples of potentially affected entities
	311 32532	Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0085. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of August 1, 2001 (66 FR 39709) (FRL–6787–3), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the August 1, 2001 proposal invited public comment for consideration and for support of tolerance retention under FFDCA standards.

This final rule revokes certain FFDCA tolerances for residues of the insecticides phosphamidon and trimethacarb; the herbicides atrazine, bensulide, diphenamid, and vernolate; the fungicide imazalil; and the fungicide/insecticide oxythioquinox in or on specified commodities listed in the regulatory text because these pesticides are not registered under FIFRA for uses on those commodities. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on certain domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on those specified commodities within the United States. No one commented that there was a need for EPA to retain these tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above if: (1) Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained; (2) EPA independently verifies that the tolerance is no longer needed, or (3); the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of August 1, 2001 (66 FR 39709), EPA did receive comment regarding the need to retain carbofuran tolerances and fumaric acid tolerance exemptions, as follows:

1. *Carbofuran.* EPA received a comment from FMC Corporation, who expressed opposition to the proposed revocation of the rice and rice, straw tolerances on the basis of a 1991 settlement agreement reached between FMC and EPA. Also, FMC cited use of carbofuran for control of rice pests in numerous countries and stated that the rice tolerances should be retained to allow importation of carbofuran-treated rice.

Agency response. In 1999, EPA notified FMC Corporation that the Agency would not authorize any further production of granular carbofuran for rice in the 1999 season and beyond. Distribution, sale, and use of existing stocks of granular carbofuran on rice after August 31, 1999, were prohibited except in California, where due to unique transition issues, rice growers in California were permitted to use existing stocks of carbofuran on rice until August 2000. On August 1, 2001 (66 FR 39709), EPA proposed to revoke the tolerances for residues of the insecticide carbofuran and its metabolites in or on rice and rice, straw with an expiration/revocation date of August 31, 2002 to allow treated commodities to pass through the channels of trade. Because in a comment to the proposed rule, FMC Corporation expressed a need for the retention of these tolerances for import purposes and because FMC agreed to support these tolerances according to EPA's guidance on pesticide import tolerances and residue data for imported food published in the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–3), EPA will not revoke the tolerances in 40 CFR 180.254 for rice and rice, straw at this time. When the submitted data have been reviewed, EPA will re-evaluate these tolerances under FFDCA. If these data requirements are not met, EPA will finalize the revocation of the carbofuran rice tolerances.

Concerning fumaric acid, the following comment was received:

2. *Fumaric acid.* EPA received a comment from Keller and Heckman LLP, who on behalf of a client, requested the retention of the current

exemptions for fumaric acid in 40 CFR 180.2. The commenter stated that a client will, in the near future, submit an application for the registration of a pesticide containing fumaric acid. Also, the commenter claimed that since fumaric acid had been reassessed and determined to be safe by EPA and that additional data to support the exemptions need not be required. In

180.220 for use of atrazine and its metabolites on "grass, range" because there are existing 24(c) food-use registrations.

4. *Bensulide.* EPA is revoking the tolerance for residues of the herbicide *S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl) benzenesulfonamide, known as bensulide, and its oxygen analog in or

sheep, meat; and walnuts. In the **Federal Register** of March 17, 1999 (64 FR 13191) (FRL–6067–8), EPA announced receipt of a request for voluntary cancellation of oxythioquinox, also known as chinomethionate. The Agency permitted distribution and sale for 18 months after the effective date of cancellation on October 27, 1999, and end users were

expiration/revocation date of December 31, 2002. Because the tolerance with its revocation date will remain in 40 CFR 180.239, EPA is also revising the commodity name from "apples" to "apple" in order to conform to current Agency administrative practice.

9. *S-Propyl dipropylthiocarbamate.* Because there are no registered uses for *S*-Propyl dipropylthiocarbamate

May 1999. Therefore, the Agency is making the revocations as given in the regulatory text.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer

and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance

exemptions for fumaric acid in 40 CFR 180.2. The commenter stated that a client will, in the near future, submit an application for the registration of a pesticide containing fumaric acid. Also, the commenter claimed that since fumaric acid had been reassessed and determined to be safe by EPA and that additional data to support the exemptions need not be required. In addition, the commenter asked that his comments be considered a petition to establish an inert tolerance exemption in 40 CFR 180.1001(d) as a reinstatement for an exemption revoked in a final rule published in the **Federal Register** of October 26, 1998 (63 FR 57062) (FRL–6035–8).

Agency response. EPA is still evaluating the issues described in the comment. Therefore, at this time, EPA will not take final action on the tolerance exemptions in 40 CFR 180.2 for residues of the fungicide fumaric acid on raw agricultural commodities and on animal products or in 40 CFR 180.1001(d) on the tolerance exemption for the inert use of fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer in pesticide formulations applied to growing crops only.

No comments were received by the Agency concerning the following.

3. *Atrazine.* The Agency is revoking the tolerances in 40 CFR 180.220 for use of atrazine and its metabolites on orchardgrass and orchardgrass hay because atrazine is no longer registered for these uses. EPA proposed these tolerance revocations in the **Federal Register** of August 1, 2001 (66 FR 39709) and also previously on February 5, 1998 (63 FR 5907) (FRL–5743–9). In response to a comment in 1998 from the Washington State Department of Agriculture that active registrations for atrazine use on grass existed, EPA did not take final action on the tolerances in 40 CFR 180.220 for use of atrazine on grass, range; orchardgrass; and orchardgrass, hay as published in the **Federal Register** (63 FR 57067, October 26, 1998) (FRL–6035–6). However, the orchardgrass use for atrazine was canceled in 1989 due to non-payment of maintenance fees and therefore the tolerances should be revoked. EPA believes that sufficient time has passed for exhaustion of stocks for those labeled uses and for treated commodities to have cleared channels of trade. Also, in 40 CFR 180.220, EPA is removing the "(N)" designation from all entries to conform to current Agency administrative practice ("N" designation means negligible residues).

At this time, EPA will not take final action on the tolerance in 40 CFR 180.220 for use of atrazine and its metabolites on "grass, range" because there are existing 24(c) food-use registrations.

4. *Bensulide.* EPA is revoking the tolerance for residues of the herbicide *S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl) benzenesulfonamide, known as bensulide, and its oxygen analog in or on cottonseed in 40 CFR 180.241 because bensulide is not registered under FIFRA for use on cotton. On September 30, 1994, a 6(f)(1) notice of receipt of the voluntary use deletion request by the registrant was published in the **Federal Register** (59 FR 34065) (FRL–4912–1). EPA believes that existing stocks have been used and any treated commodity has passed through the channels of trade.

5. *Diphenamid.* Diphenamid has not had active registrations under FIFRA since 1991. EPA believes that existing stocks have been used and any treated commodity has passed through the channels of trade. EPA is revoking the tolerances in 40 CFR 180.230 for residues of the herbicide diphenamid and its metabolite in or on apples; cattle, fat; cattle, mbyp; cattle, meat; cotton forage; cottonseed; fruiting vegetables; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; milk; okra; peaches; peanut forage; peanut hay; peanuts; potatoes; sheep, fat; sheep, mbyp; sheep, meat; raspberries; soybean forage; soybean hay; soybeans; strawberries; and sweet potatoes. Therefore, the Agency is removing 40 CFR 180.230 in its entirety.

6. *Imazalil.* On May 24, 2000 (65 FR 33703) (FRL–6041–9), the tolerance for cottonseed, formerly codified in 40 CFR 180.413(a) was recodified in 40 CFR 180.413(a)(1). EPA is revoking the tolerance in 40 CFR 180.413(a)(1) for the combined residues of the fungicide imazalil and its metabolite in or on cottonseed because imazalil is not registered under FIFRA for use on cotton. There have been no active registrations for imazalil use on cotton commodities since December 1991.

7. *6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one.* Because the fungicide/insecticide 6-methyl-1,3-dithiolo[4,5-b] quinoxalin-2-one (oxythioquinox) has no registered uses under FIFRA, EPA is revoking the tolerances in 40 CFR 180.338 for residues of oxythioquinox in or on apples; apricots; cattle, fat; cattle, mbyp; cattle, meat; citrus fruits; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; macadamia nuts; milk; pears; sheep, fat; sheep, mbyp; sheep, meat; and walnuts. In the **Federal Register** of March 17, 1999 (64 FR 13191) (FRL–6067–8), EPA announced receipt of a request for voluntary cancellation of oxythioquinox, also known as chinomethionate. The Agency permitted distribution and sale for 18 months after the effective date of cancellation on October 27, 1999, and end users were permitted an additional year for use of existing stocks.

On August 1, 2001 (66 FR 39709), EPA proposed an expiration/revocation date of August 1, 2002, for the 22 tolerances for oxythioquinox in 40 CFR 180.338, to allow any treated commodities to pass through the channels of trade. No comment was received on oxythioquinox. The Agency is revoking these oxythioquinox tolerances effective 90 days following publication of this final rule in the **Federal Register**, which is October 15, 2002.

8. *Phosphamidon.* EPA is revoking the tolerance in 40 CFR 180.239 for residues of the insecticide phosphamidon including all of its related cholinesterase-inhibiting compounds in or on apples with an expiration/revocation date of December 31, 2002, to allow any treated commodities to pass through the channels of trade.

EPA proposed this tolerance revocation for phosphamidon in the **Federal Register** of August 1, 2001 (66 FR 39709) and also, previously on January 21, 1998 (63 FR 3057) (FRL–5743–8). In 1998, comments were received from the Washington State Department of Agriculture and Northwest Wholesale, Inc. which requested that EPA not revoke the tolerance for phosphamidon on apples due to concerns about existing stocks. The Agency did not revoke the tolerance for phosphamidon on apples at that time (63 FR 57062, October 26, 1998) (FRL–6035–8). Subsequently, the Agency was informed by the Washington State Department of Agriculture that based on review of the pests controlled by phosphamidon, efficacy of registered alternatives, estimates of remaining stocks of phosphamidon, and use/disposal of remaining unused stocks, retention of the tolerance for phosphamidon on apples until December 31, 2002, would allow growers to use up existing stocks and allow treated apples to pass through the channels of trade.

Therefore, EPA is revoking the tolerance in 40 CFR 180.239 for residues of phosphamidon including all of its related cholinesterase-inhibiting compounds in or on apples with an expiration/revocation date of December 31, 2002. Because the tolerance with its revocation date will remain in 40 CFR 180.239, EPA is also revising the commodity name from "apples" to "apple" in order to conform to current Agency administrative practice.

9. *S-Propyl dipropylthiocarbamate.* Because there are no registered uses for *S*-Propyl dipropylthiocarbamate (vernolate), EPA is revoking the tolerances in 40 CFR 180.240 for vernolate residues in or on corn, fodder; corn, forage; corn, fresh (inc. sweet)(K+CWHR); corn, grain; peanuts; peanut, forage; peanut, hay; potatoes; soybeans; soybean, forage; soybean, hay; and sweet potatoes. In the notice of receipt of the request for voluntary cancellation of vernolate, EPA agreed that registrants were permitted to sell and distribute existing stocks of vernolate until February 1, 2000; that distributors were permitted to sell and distribute existing stocks of vernolate until February 1, 2001; and that end users are permitted to use existing stocks until February 1, 2002 (March 3, 1999, 64 FR 10296) (FRL–6061–9).

On August 1, 2001 (66 FR 39709), EPA proposed an expiration/revocation date of May 1, 2002 for all vernolate tolerances in 40 CFR 180.240. No comment was received on vernolate. Because that date has passed, the Agency is revoking these vernolate tolerances effective 90 days following publication of this final rule in the **Federal Register**, which is October 15, 2002, to ensure that all affected parties receive notice of EPA's actions.

10. *Trimethacarb.* EPA is revoking the tolerance for residues of the insecticide 3,4,5-trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate, known as trimethacarb, in or on corn, field, grain; corn, fodder; corn, forage; and corn, pop, grain in 40 CFR 180.305 because trimethacarb is no longer registered under FIFRA for use on corn. Therefore, the Agency is removing 40 CFR 180.305 in its entirety.

EPA proposed these tolerance revocations for trimethacarb in the **Federal Register** of August 1, 2001 (66 FR 39709) and also previously on January 21, 1998 (63 FR 3057). In 1998, a comment was received from Drexel Chemical Company which requested that EPA not revoke the tolerances for trimethacarb until Drexel determined the state of existing stocks. As a result of that comment, the Agency did not take action on trimethacarb at that time (October 26, 1998, 63 FR 57062). Subsequently, the Agency was informed by Drexel that end-users would exhaust existing stocks of trimethacarb by mid-May 1999. Therefore, the Agency is making the revocations as given in the regulatory text.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

The tolerance for phosphamidon on apples expires on December 31, 2002. With the exception of the aforementioned pesticide tolerance revocation, the remaining tolerance revocations for atrazine, bensulide, diphenamid, imazalil, 6-methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one (oxythioquinox), *S*-propyl dipropylthiocarbamate (vernolate), and trimethacarb are effective 90 days following publication of this final rule in the **Federal Register**, which is October 15, 2002, to ensure that all affected parties receive notice of EPA's actions. For this final rule, tolerances that were revoked because registered uses did not exist concerned uses which have been canceled for more than a year. Therefore, commodities containing these pesticide residues should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August 2006. As of July 1, 2002, EPA has reassessed over 5,400 tolerances. In this final rule, EPA is revoking a total of 75 tolerances which count as reassessments toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decisions. EPA has developed guidance concerning submissions for import tolerance support (June 1, 2000, 65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select Regulations and Proposed Rules," and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0205 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 16, 2002.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0085 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0085, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.220 [Amended]

2. Section 180. 220 is amended by removing the "(N)" designation wherever it appears in the "Parts per million" column in the table under paragraph (a)(1), and by removing the entries for "Orchardgrass" and "Orchardgrass, hay" from the table in paragraph (a)(2).

§ 180.230 [Removed]

3. Section 180.230 is removed.

4. Section 180.239 is revised to read as follows:

§ 180.239 Phosphamidon; tolerances for residues.

(a) *General.* Tolerances (expressed as phosphamidon) for residues of the insecticide phosphamidon (2-chloro-2-diethylcarbamoyl-1-methylvinyl dimethyl phosphate) including all of its related cholinesterase-inhibiting compounds in or on raw agricultural commodities are established as follows:

Commodity	Parts per million	Expiration/Revocation Date
Apple	1.0	12/31/02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.240 [Removed]

5. Section 180.240 is removed.

§ 180.241 [Amended]

6. Section 180.241 is amended by removing the word "cottonseed."

§ 180.305 [Removed]

7. Section 180.305 is removed.

§ 180.338 [Removed]

8. Section 180.338 is removed.

§ 180.413 [Amended]

9. Section 180.413 is amended by removing the entry for "cottonseed" from the table in paragraph (a)(1).

[FR Doc. 02–17870 Filed 7–16–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0129; FRL–7185–7]

RIN 2070–XXXX

Clethodim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the residues of clethodim in or on alfalfa forage; alfalfa hay; dry bean; Brassica, leafy greens, subgroup

5B; peanut; peanut hay; peanut meal; peppermint tops; spearmint tops; spinach; and turnip greens. The Interregional Research Project Number 4 (IR4) and Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that

2E6396) by IR4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, and pesticide petitions (PP 5F4440 and 5F4572) by Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596–8025. This notice included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant. There were no comments

exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR

assess dietary exposures from clethodim in food as follows:

i. *Acute Exposure.* Acute dietary risk assessments are performed for a fooduse pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity

a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated

5B; peanut; peanut hay; peanut meal; peppermint tops; spearmint tops; spinach; and turnip greens. The Interregional Research Project Number 4 (IR4) and Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 17, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0129, must be received on or before September 16, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the**SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0129 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00 .html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0129. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of April 17, 2002 (67 FR 18890) (FRL–6830–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 1E6351, 2E6394, and 2E6396) by IR4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, and pesticide petitions (PP 5F4440 and 5F4572) by Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596–8025. This notice included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing. The petitions requested that 40 CFR 180.458 be amended by establishing tolerances for residues of the herbicide clethodim, (E)-(±)-2-1-(3-chloro-2-propenyl)oxyiminopropyl-5-2-(ethylthio)propyl-3-hydroxy-2-cycloh exen-1-one and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, in or on Brassica, leafy greens, subgroup 5B at 3.0 part per million (ppm), turnip greens at 3.0 ppm, peppermint and spearmint tops at 5.0 ppm, and spinach at 2.0 ppm.

The petitions also requested that 40 CFR 180.458 be amended by replacing existing timelimited tolerances, with permanent tolerances for residues of the herbicide clethodim, (E)-(±)-2-1-(3-chloro-2-propenyl)oxyiminopropyl-5-2-(ethylthio)propyl-3-hydroxy-2-cycloh exen-1-one and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, in or on alfalfa forage at 6.0 ppm, alfalfa hay at 10 ppm, dry bean at 2.0 ppm, peanut at 3.0 ppm, peanut hay at 3.0 ppm, and peanut meal at 5.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that " there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of clethodim on alfalfa forage at 6.0 ppm, alfalfa hay at 10 ppm, dry bean at 2.5 ppm, Brassica, leafy greens, subgroup at 3.0, peanut at 3.0 ppm, peanut hay at 3.0, peanut meal at 5.0, and turnip tops at 3.0 ppm, peppermint and spearmint tops at 5.0 ppm, and spinach at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clethodim is discussed in Unit III.A. of the **Federal Register** of March 14, 2001 (66 FR 14829) (FRL–6770–8).

B. Toxicological Endpoints

A summary of the toxicological endpoints for clethodim used for human risk assessment is discussed in Unit III.B of the **Federal Register** of March 14, 2001 (66 FR 14829) (FRL–6770–8). Chronic, and short-term, intermediate-term, and long-term aggregate risk assessments are appropriate for clethodim and were performed by EPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.458) for the residues of clethodim, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from clethodim in food as follows:

i. *Acute Exposure.* Acute dietary risk assessments are performed for a fooduse pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, an acute dietary exposure assessment was not performed.

ii. *Chronic Exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic analysis used tolerance level residues for all crops and livestock commodities. The projected % crop treated data (2% for lettuce, broccoli and cauliflower, 15% cabbage, and 1% for brussels sprouts), and the weighted average % crop treated data (3% for cotton, 8% for onions, 3% for peanuts 4% for soybeans, 15% for sugar beets, and 1% for tomatoes) were used for the analysis; 100% crop treated (CT) data were assumed for the leafy Brassica greens, turnip greens, dry bean, peanuts, and the other crops for the analysis. DEEM default concentration factors were used for all commodities. The analysis is considered Tier 2 because percent of crop treated information was used.

iii. *Cancer.* Clethodim has been classified as a group E carcinogen. Therefore, a cancer risk assessment was not performed.

iv. *Anticipated residue and percent crop treated information.*

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant sub- population group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows.

2% for lettuce, broccoli and cauliflower; 15% cabbage, and 1% for brussels sprouts; (weighted average PCT) 3% for cotton, 8% for onions, 3% for peanuts, 4% for soybeans, 15% for sugar beets, and 1% for tomatoes.

The Agency believes that the three conditions listed III.C.1.iv have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant sub-populations is taken into account through EPA's computer-based model for evaluating the exposure of significant sub-populations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant sub-population group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not

have available information on the regional consumption of food to which clethodim may be applied in a particular area.

2. *Dietary exposure from drinking water.*

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for clethodim in drinking water. Because

residential uses. Since DWLOCs address total aggregate exposure to clethodim they are further discussed in the aggregate risk sections III.E.

Summary: Surface and ground water contamination may occur from the sulfoxide and sulfone degradates of clethodim, as well as from parent clethodim. However, the risk of water contamination is primarily associated with clethodim sulfone and clethodim

occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clethodim is currently registered for use on the following noncrop sites: rights of way such as railroads, highways, roads, dividers, medians, pipelines, public utility lines, pumping stations, transformer stations and substations, around airports, electric

assumed that clethodim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency

not required; and the dietary (food and drinking water) and non-dietary (residential) exposure assessments will not underestimate the potential exposures for infants and children.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple

have available information on the regional consumption of food to which clethodim may be applied in a particular area.

2. *Dietary exposure from drinking water.*

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for clethodim in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of clethodim.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCIGROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a % RfD or % PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to clethodim they are further discussed in the aggregate risk sections III.E.

Summary: Surface and ground water contamination may occur from the sulfoxide and sulfone degradates of clethodim, as well as from parent clethodim. However, the risk of water contamination is primarily associated with clethodim sulfone and clethodim sulfoxide rather than parent clethodim based on greater persistence and mobility for the degradates. The drinking water estimates are based on a maximum application rate of 0.5 pounds of active ingredient per acre per year.

Surface Water: Parent clethodim may move from the treated field to surface water or ground water through run-off or leaching which occurs shortly after application (e.g. rainfall). Also, the sulfoxide and sulfone degradates may migrate by runoff or leaching for longer periods of time since they are more persistent. All residues of clethodim (parent and degradates) are very mobile in soil. Tier 1 surface water concentrations for parent clethodim and total toxic residues (parent + sulfoxide + sulfone) estimations are as follows:

Based on the FIRST model, the estimated environmental concentrations (EECs) of clethodim for acute exposure are estimated to be 38.9 parts per billion (ppb), and for chronic exposure the EECs are estimated to be 7.6 ppb for surface water.

Ground Water: Parent clethodim is mobile, but has a short metabolic half-life in soil under aerobic conditions. Therefore, parent compound should not be a ground water concern in most environments. While it is expected that parent clethodim be transformed to sulfoxide or sulfoxone products quickly by soil metabolism ($t_{1/2}$ = 1 to 3 days), it may be more persistent since it is leached below the more biologically active top soil. In such instances (i.e., leaching rainfall shortly after application) parent clethodim concentrations may be higher than estimated. In the event that parent clethodim did reach ground water, the available routes of disappearance would be dilution, some metabolism to persistent degradates, and slow hydrolysis with the rate depending on the pH of the ground water. The estimation for both parent clethodim and total toxic clethodim (parent + sulfoxide+sulfone) is as follows: Based on the SCIGROW model, the EEC for ground water is 0.49 ppb.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clethodim is currently registered for use on the following noncrop sites: rights of way such as railroads, highways, roads, dividers, medians, pipelines, public utility lines, pumping stations, transformer stations and substations, around airports, electric utilities, commercial buildings, manufacturing plants, storage yards, rail yards, fence lines, parkways, greenhouse benches, and around golf courses (not on golf courses). It is possible that the public could be exposed to clethodim residues in these noncrop areas.

Homeowner use of clethodim is not prohibited on the label, therefore the Agency assumes clethodim products are available for use by untrained applicators. A residential handler assessment was performed to determine the risk potential to homeowners. The following assumptions were made in conducting the assessment: clethodim would be applied by low pressure handwand (spot treatment); the highest label rate of 1.3 ounces per gallon was used; five gallons of spray are used; applicators mix, load and apply; and short sleeved shirt and short pants are worn by homeowners.

Clethodim is typically used to control unwanted weeds of all types (grass and broadleaf) through spot treatment, usually resulting in a small treated area. Broadcast treatment is not expected. It is unlikely that adults and children would be exposed to treated areas which would most likely consist of a single spot. Therefore, a non-occupational post-application exposure assessment was not performed.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether clethodim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clethodim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clethodim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to in utero exposure to clethodim.

3. *Conclusion.* There is a complete toxicity data base for clethodim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because there is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to in utero and/or postnatal exposure; a developmental neurotoxicity study is not required; and the dietary (food and drinking water) and non-dietary (residential) exposure assessments will not underestimate the potential exposures for infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, shortterm, intermediateterm, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, clethodim is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clethodim from food will utilize 33% of the cPAD for the U.S. population, 26% of the cPAD for females 1350 years old and 66% of the cPAD for children (16 years old). Based the use pattern, chronic residential exposure to residues of clethodim is not expected. In addition, there is potential for chronic dietary exposure to clethodim in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NONCANCER) EXPOSURE TO CLETHODIM

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population 0.01 33 7.6 0.49 201	Females (13-50 years old) 0.01 26 7.6 0.49 220	Children (1-6 years old) 0.01 66 7.6 0.49 34			

3. *Short-term risk.* Shortterm aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Clethodim is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for clethodim.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated resulted in an aggregate MOE of 29,000 for males (13 to 19 years old). The dietary exposure of all adult population subgroups is comparable to that of the subgroup with the highest exposure (males 13 to 19 years old). This

aggregate MOE does not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of clethodim in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown below in Table 2. Additionally, no incidental oral exposure is anticipated for infants and children, since postapplication exposure is not expected.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CLETHODIM

	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	ShortTerm Ground Water EEC (ppb)
Females (13-50 years old)	29,000	100	38.9	0.49
Children (1-6 years old)	29,000	100	38.9	0.49

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone

Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the

aggregate MOE does not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of clethodim in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown below in Table 2. Additionally, no incidental oral exposure is anticipated for infants and children, since postapplication exposure is not expected.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CLETHODIM

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb) Ground Water EEC (ppb)	ShortTerm DWLOC (ppb)	
US Population	29,000	100	7.6	0.49	30,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term oral, dermal and inhalation aggregate risks are made up of exposures from these routes of exposure.

Although, clethodim is currently registered for use(s) that could result in intermediateterm residential exposure dermal, inhalation and incidental oral exposures were not calculated because neither handler nor post-application intermediate-term exposure for these routes of exposure are expected. Therefore, no intermediate-term risk is expected from these routes of exposure.

5. *Aggregate cancer risk for U.S. population.* Clethodim was negative for carcinogenicity in feeding studies in rats and mice and is classified as "not likely%rdquo; to be a human carcinogen.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to clethodim residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for enforcement of tolerances for clethodim and its metabolites in/on Brassica, leafy greens, subgroup, turnip greens, and other commodities (including livestock). Analytical Method RM26B3 (a modification of RM26B2) has been successfully validated for use with many commodities including livestock commodities and has been submitted to the FDA for publication in PAM II.

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, Environmental Protection Agency, 701 Mapes Road, Fort George G. Mead, MD 20755–5350; telephone number (410) 305–2905; griffith.francis@epa.gov.

B. International Residue Limits

There are no established Codex, Canadian, or Mexican maximum residue limits (MRLs) or tolerance for residues of clethodim in/on the commodities discussed in the subject petition; therefore, there are no questions with respect to Codex/U.S. tolerance compatibility.

V. Conclusion

Therefore, these tolerances are established for residues of clethodim, (E)-(±)-2-1-(3-chloro-2-propenyl)oxyiminopropyl-5-2-(ethylthio)propyl-3-hydroxy-2-cyclohexe n-1-one and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, in or on alfalfa forage at 6.0 ppm, alfalfa hay at 10 ppm, dry bean at 2.5 ppm, Brassica, leafy greens, subgroup at 3.0 ppm, peanut at 3.0 ppm, peanut hay at 3.0 ppm, peanut meal at 5.0 ppm, and turnip greens at 3.0 ppm, peppermint and spearmint tops at 5.0 ppm, and spinach at 2.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object"to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0129 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by email at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0129, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the**Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.458 is amended by removing the entries for "Alfalfa, forage"; "Alfalfa, hay"; "Dry beans"; "Peanuts"; "Peanut, hay"; and "Peanut, meal"; and by adding alphabetically the following commodities to the table in paragraph (a)(1) to read as follows:

Categories	NAICS codes	Examples of Potentially Affected Entities
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also

excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes the FFDCA tolerances for residues of the fungicide benomyl in or on specified commodities listed in the regulatory text because benomyl is no longer registered under

stated agreement with the revocation of benomyl tolerances and also received comments as follows:

1. *Michigan Blueberry Growers Association (MBG).* A comment letter was received from MBG Marketing—Michigan Blueberry Growers Association (MBG). MBG stated that 70% of the Michigan blueberry crop is frozen after harvest and may be stored for several years before it is sold, further

distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.458 is amended by removing the entries for "Alfalfa, forage"; "Alfalfa, hay"; "Dry beans"; "Peanuts"; "Peanut, hay"; and "Peanut, meal" from the table in paragraph (a)(2) and alphabetically adding the following commodities to the table in paragraph (a)(3) to read as follows:

§ 180.458 Clethodim, tolerances for residues.

(a) * * *

(3) * * *

Commodity	Parts per million
Alfalfa, forage	6.0
Alfalfa, hay	10
Bean, dry	2.5
Brassica, leafy greens, subgroup	3.0
Peanut	3.0
Peanut, hay	3.0
Peanut, meal	5.0
Peppermint, tops	5.0
Spearmint, tops	5.0
Spinach	2.0
Turnip, greens	3.0

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0068; FRL–7177–7]

Benomyl; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes all tolerances for residues of the fungicide benomyl because this pesticide active ingredient is no longer registered for food uses in the United States. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 100 tolerances which are counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

DATES: This regulation is effective October 15, 2002; however, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings, identified by docket control number OPP–2002–0068, must be received by EPA on or before September 16, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0068 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **SUPPLEMENTARY INFORMATION.**

B. How can I Get Additional Information, Including Copies of this Document?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register** —Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0068. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes the FFDCA tolerances for residues of the fungicide benomyl in or on specified commodities listed in the regulatory text because benomyl is no longer registered under FIFRA for use on those commodities. The tolerances revoked by this final rule are no longer necessary to cover residues of benomyl in or on domestically treated commodities or commodities treated outside but imported into the United States. Benomyl is no longer used on those specified commodities within the United States, and no comments were received indicating that there was a need for EPA to retain any of the tolerances to cover benomyl residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

In the **Federal Register** of January 15, 2002 (67 FR 1917) (FRL–6816–6), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the January 15, 2002 proposal provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards. If, during the 60–day public comment period, EPA receives comments indicating a need for the tolerance to be retained, EPA will not proceed with the revocation unless: (1) Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, or (3) the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the document published in the **Federal Register** of January 15, 2002, EPA received comment from a private citizen that stated agreement with the revocation of benomyl tolerances and also received comments as follows:

1. *Michigan Blueberry Growers Association (MBG).* A comment letter was received from MBG Marketing—Michigan Blueberry Growers Association (MBG). MBG stated that 70% of the Michigan blueberry crop is frozen after harvest and may be stored for several years before it is sold, further processed or consumed. MBG requested that the tolerance for use of benomyl on blueberry be retained until January 1, 2008, to allow time for existing stocks of benomyl to be used and benomyl-treated blueberries to clear channels of trade.

Agency response. The time frame which MBG has requested regarding the benomyl tolerance for blueberry is in agreement with what was proposed by the Agency on January 15, 2002. Therefore, EPA is revoking the tolerance in 40 CFR 180.294 for blueberry with an expiration/revocation date of January 1, 2008.

2. *Gowan Company.* A comment letter was received from the Gowan Company. Gowan stated that it had applied in June 2001 for registration of products containing the active ingredient benomyl and amended the application twice in January 2002. Gowan requested that, except for the "bean vine forage" tolerance, all tolerances for benomyl not be revoked. Also, Gowan stated its belief that no satisfactory substitutes for benomyl are available at the present time. In addition, Gowan agreed that the terminology for a large number of commodities requires updating.

Agency response. On June 12, 2001, EPA received applications from Gowan Company to register four products containing the active ingredient benomyl. Gowan applied for registration under the "me-too" provisions in FIFRA. On September 21, 2001, the Agency identified several deficiencies in Gowan's applications. Although Gowan submitted a response to these deficiencies in January 2002, their response is incomplete. Furthermore, because benomyl is no longer registered, for purposes of registration under FIFRA, benomyl is a "new chemical" and the "me-too" provisions outlined in section 3 of FIFRA are no longer applicable to an application for registration of benomyl. And so long as there are no registered uses, and no indication that commodities containing residues of the pesticide are being imported, there is no need for the tolerances to be maintained.

In this regard, Gowan's claim that there are no satisfactory substitutes for benomyl is irrelevant. Moreover, if the

commenter is correct that there are no satisfactory alternatives, the continued existence of the tolerance would merely encourage the use of an unregistered pesticide. At any rate, the Agency disagrees with this claim and believes that, for the most part, acceptable alternatives exist. In fact, to facilitate the registration of benomyl alternatives, EPA has expedited the registration

No comment was received which expressed a need for the retention of specific tolerances for import purposes. On August 8, 2001 (66 FR 41589) (FRL–6794–9), EPA published in the **Federal Register** a cancellation order for all benomyl product registrations effective August 8, 2001. The Agency allowed the registrant to sell and distribute benomyl stocks until June 30, 2001 and is

conform to current Agency practice, EPA is revising the commodity terminology for peanut forage (at 15.0 ppm) to peanut, hay. However, because a tolerance currently exists for peanut hay (at 15.0 ppm), the peanut forage tolerance is no longer needed. Therefore, EPA is also revoking the tolerance for peanut forage to become effective 90 days following publication

In the interim, before the tolerance expires and to conform to current Agency practice, EPA is revising tolerance commodity terminology names where necessary in § 180.294(a) and (c) as follows:

Old terminology	New terminology
almond hulls	almond, hulls
apples (PRE- and	apple, postharvest
horses, fat	horse, fat
horses, meat	horse, meat
horses, mbyp	horse, meat byproducts
loganberries	loganberry
mangoes	mango
melons	melon

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within

commenter is correct that there are no satisfactory alternatives, the continued existence of the tolerance would merely encourage the use of an unregistered pesticide. At any rate, the Agency disagrees with this claim and believes that, for the most part, acceptable alternatives exist. In fact, to facilitate the registration of benomyl alternatives, EPA has expedited the registration review for several new uses of the fungicide thiophanate-methyl, including grapes, pistachios, potatoes (foliar application), pears, canola, and celery. The Agency hopes to make a decision on these pending uses in the very near future. The Agency will continue to work with affected parties, including growers, the U.S. Department of Agriculture, and other registrants, to identify emerging alternatives to benomyl. Where emergency conditions, as defined under section 18 of FIFRA, exist, the Agency will work with States, growers, and registrants to try to make benomyl alternatives available prior to registration.

No comment was received which expressed a need for the retention of specific tolerances for import purposes. On August 8, 2001 (66 FR 41589) (FRL–6794–9), EPA published in the **Federal Register** a cancellation order for all benomyl product registrations effective August 8, 2001. The Agency allowed the registrant to sell and distribute benomyl stocks until June 30, 2001 and is allowing those other than the registrant to sell and distribute benomyl stocks until December 31, 2002. The Agency expects existing stocks to be exhausted by December 31, 2003. However, because no active registrations exist and because no commenters expressed a need to retain these tolerances for import purposes, EPA is revoking 100 benomyl tolerances.

Because bean vine forage is no longer a significant livestock feed item and the tolerance is no longer needed, EPA is revoking the tolerance for bean vine forage to become effective 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Also, to conform to current Agency practice, EPA is revising the commodity terminology for peanut forage (at 15.0 ppm) to peanut, hay. However, because a tolerance currently exists for peanut hay (at 15.0 ppm), the peanut forage tolerance is no longer needed. Therefore, EPA is also revoking the tolerance for peanut forage to become effective 90 days following publication of this final rule.

EPA is revoking all other benomyl tolerances in 40 CFR 180.294 with expiration/revocation dates from 3 to 6 years beyond the last date which EPA allowed those other than the registrant to sell and distribute existing stocks of benomyl product in order to allow sufficient time for the passage of benomyl-treated food in channels of trade. (The dates are 2 to 5 years beyond the time when EPA expects benomyl stocks to be exhausted). These dates were determined using available Agency data, U.S. Food and Drug Administration (FDA) data, and food industry data as follows:

Commodity Crop Group	Tolerances	Maximum Years in Trade Channels	Expiration/revocation date
Bulb Vegetables	Garlic	2	1/1/06
Brassica (Cole) Leafy Vegetables	Broccoli; Brussels sprouts; Cabbage; Cabbage, chinese, bok choy; Cabbage, chinese, napa; Cauliflower; Collards; Kale; Kohlrabi; Mustard greens	2	1/1/06
Root and Tuber Vegetables	Beet, sugar, roots; Beet, sugar, tops; Carrot, roots; Rutabaga; Sweet potato, roots; Turnip, roots; Turnip, greens	3	1/1/07
Leafy Vegetables (exc. Brassica)	Celery; Spinach; Dandelion, leaves; Watercress	3	1/1/07
Legume Vegetables	Bean; Soybean	3	1/1/07
Cucurbit Vegetables	Cucumber; Melon; Pumpkin; Squash, summer; Squash, winter	3	1/1/07
Tree Nuts	Almond, hulls; Nut; Pistachio[a]	3	1/1/07
Citrus Fruits	Citrus, dried pulp; Fruit, citrus, postharvest	4	1/1/08
Pome Fruits	Apple, postharvest; Pear, postharvest	4	1/1/08
Stone Fruits	Apricot, postharvest; Cherry, postharvest; Nectarine, postharvest; Peach, postharvest; Plum, postharvest; Plum, prune, fresh, postharvest	4	1/1/08
Berries	Blackberry; Blueberry; Boysenberry; Currant; Dewberry; Loganberry; Raspberry	4	1/1/08
Cereal Grains and Forage, Fodder and Straw of Cereal Grains	Barley, grain; Barley, straw; Corn, sweet, kernel plus cob with husks removed; Corn, sweet, forage; Corn, sweet, stover; Oat, grain; Oat, straw; Rice; Rice, hulls; Rice, straw; Rye, grain; Rye, straw; Wheat, grain; Wheat, straw	4	1/1/08
No group association- Plant commodities	Avocado; Banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded; Grape; Grape, raisin; Mango; Mushroom, postharvest; Papaya; Peanut; Peanut, hay; Pineapple, postharvest; Strawberry	4	1/1/08
No group association- Animal commodities	Cattle, fat; Cattle, meat; Cattle, meat byproducts; Egg; Goat, fat; Goat, meat; Goat, meat byproducts; Hog, fat; Hog, meat; Hog, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Milk; Poultry, fat; Poultry, liver; Poultry, meat; Poultry, meat byproducts, except liver; Sheep, fat; Sheep, meat; Sheep, meat byproducts	4	1/1/08
Fruiting Vegetables	Eggplant; Pepper; Tomato; Tomato, concentrated products	5	1/1/09

[a] Please note that for FQPA reassessment purposes, while there are tolerances for pistachio in 40 CFR 180.294(a) and (c), EPA is counting the pistachio tolerance once; therefore, a total of 100 tolerances will be counted as reassessed.

In the interim, before the tolerance expires and to conform to current Agency practice, EPA is revising tolerance commodity terminology names where necessary in § 180.294(a) and (c) as follows:

Old terminology	New terminology
almond hulls	almond, hulls
apples (PRE- and POST-H)	apple, postharvest
apricots (PRE- and POST-H)	apricot, postharvest
bananas (PRE- and POST-H) (NMT 0.2 ppm shall be present in the pulp after peel is removed and discarded)	banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded
beans	bean
beets, sugar, roots	beet, sugar, roots
beets, sugar, tops	beet, sugar, tops
blackberries	blackberry
blueberries	blueberry
boysenberries	boysenberry
carrots	carrot, roots
cattle, mbyp	cattle, meat byproducts
cherries (PRE- and POST-H)	cherry, postharvest
Chinese cabbage	cabbage, chinese, napa and cabbage, chinese, bok choy
citrus fruit (PRE- and POST-H)	fruit, citrus, postharvest
corn, fresh (inc. sweet K +CWHR)	corn, sweet, kernel plus cob with husks removed
corn, sweet, fodder and forage	corn, sweet, forage and corn, sweet, stover
cucumbers	cucumber
currants	currant
dewberries	dewberry
eggplants	eggplant
eggs	egg
goats, fat	goat, fat
goats, meat	goat, meat
goats, mbyp	goat, meat byproducts
grapes	grape
hogs, fat	hog, fat
hogs, meat	hog, meat
hogs, mbyp	hog, meat byproducts
horses, fat	horse, fat
horses, meat	horse, meat
horses, mbyp	horse, meat byproducts
loganberries	loganberry
mangoes	mango
melons	melon
mushrooms (PRE-and POST-H)	mushroom, postharvest
nectarines (PRE- and POST-H)	nectarine, postharvest
nuts	nut
oats, grain	oat, grain
oats, straw	oat, straw
peaches (PRE- and POST-H)	peach, postharvest
peanuts	peanut
peanut hay	peanut, hay
pears (PRE- and POST-H)	pear, postharvest
peppers	pepper
pineapples (POST-H)	pineapple, postharvest
pistachios	pistachio
plums (including fresh prunes)(PRE- and POST-H)	plum, postharvest and plum, prune, fresh, postharvest
poultry, mbyp	poultry, meat byproducts, except liver
pumpkins	pumpkin
raisins	grape, raisin
raspberries	raspberry
rice straw	rice, straw
rutabagas	rutabaga
sheep, mbyp	sheep, meat byproducts
soybeans	soybean
strawberries	strawberry
sweet potatoes	sweet potato, roots
tomatoes	tomato
tomato products, concentrated	tomato, concentrated products
turnips, roots	turnip, roots
avocados	avocado
dandelions	dandelion, leaves
papayas	papaya
pistachios	pistachio
turnip greens	turnip, greens

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

EPA is delaying the effective date of the revocations for bean vine forage and peanut forage for 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. Consequently, revocation of the tolerances for bean vine forage and peanut forage is effective October 15, 2002. EPA is revoking all other benomyl tolerances with expiration dates which range from January 1, 2006 to January 1, 2009 as previously detailed. EPA believes that by December 31, 2003 all existing stocks of pesticide products labeled for the uses associated with the tolerances revoked in this final rule will have been exhausted, giving ample time, from 2 to 5 years, for any treated fresh commodity and processed food to clear trade channels. Therefore, EPA believes the effective dates in this document are reasonable.

Any commodities listed in the regulatory text of this document that are treated with the pesticide subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the

application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of

accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0068 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection

at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August, 2006. As of July 5, 2002, EPA has reassessed over 5,450 tolerances. In this rule, EPA is revoking 100 tolerances which count as reassessments toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0068 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–2002–0068, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with benomyl. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.294 is amended by revising the tables to paragraphs (a) and (c), to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
Almond, hulls	1.0	1/1/07
Apple, postharvest	7.0	1/1/08
Apricot, postharvest	15.0	1/1/08
Banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded	1.0	1/1/08
Barley, grain	0.2	1/1/08
Barley, straw	0.2	1/1/08
Bean	2.0	1/1/07
Beet, sugar, roots	0.2	1/1/07
Beet, sugar, tops	15.0	1/1/07
Blackberry	7.0	1/1/08
Blueberry	7.0	1/1/08
Boysenberry	7.0	1/1/08
Broccoli	0.2	1/1/06
Brussels sprouts	15.0	1/1/06
Cabbage	0.2	1/1/06
Cabbage, chinese, bok choy	10.0	1/1/06
Cabbage, chinese, napa	10.0	1/1/06

Commodity	Parts per million	Expiration/Revocation Date
Carrot, roots	0.2	1/1/07
Cattle, fat	0.1	1/1/08
Cattle, meat	0.1	1/1/08
Cattle, meat by-products	0.1	1/1/08
Cauliflower	0.2	1/1/06
Celery	3.0	1/1/07
Cherry, postharvest	15.0	1/1/08
Citrus, dried pulp	50.0	1/1/08
Collards	0.2	1/1/06
Sheep, meat	0.1	1/1/08
Sheep, meat by-products	0.1	1/1/08
Soybean	0.2	1/1/07
Spinach	0.2	1/1/07
Squash, summer	1.0	1/1/07
Squash, winter	1.0	1/1/07
Strawberry	5.0	1/1/08
Sweet potato, roots	0.2	1/1/07
Tomato	5.0	1/1/09

Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002, to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 79 tolerances and exemptions which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and

with section 4(b)(2)(A) of FFDCA. The primary registrant of methoxychlor (Kincaid Enterprises, Inc.) has failed to submit the necessary data required to support continued registration of pesticide products containing methoxychlor. As a result, all methoxychlor products are currently suspended. The April 4, 2002 proposal invited public comment for consideration and for support of

shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and the residue does not exceed the level that was authorized at the time of the application or use to be

Commodity	Parts per million	Expiration/Revocation Date
Carrot, roots	0.2	1/1/07
Cattle, fat	0.1	1/1/08
Cattle, meat	0.1	1/1/08
Cattle, meat by-products	0.1	1/1/08
Cauliflower	0.2	1/1/06
Celery	3.0	1/1/07
Cherry, postharvest	15.0	1/1/08
Citrus, dried pulp	50.0	1/1/08
Collards	0.2	1/1/08
Corn, sweet, forage	0.2	1/1/08
Corn, sweet, kernel plus cob with husks removed	0.2	1/1/08
Corn, sweet, stover	0.2	1/1/08
Cucumber	1.0	1/1/07
Currant	7.0	1/1/08
Dewberry	7.0	1/1/08
Egg	0.1	1/1/08
Eggplant	0.2	1/1/09
Fruit, citrus, postharvest	10.0	1/1/08
Garlic	0.2	1/1/06
Goat, fat	0.1	1/1/08
Goat, meat	0.1	1/1/08
Goat, meat by-products	0.1	1/1/08
Grape	10.0	1/1/08
Grape, raisin	50.0	1/1/08
Hog, fat	0.1	1/1/08
Hog, meat	0.1	1/1/08
Hog, meat by-products	0.1	1/1/08
Horse, fat	0.1	1/1/08
Horse, meat	0.1	1/1/08
Horse, meat by-products	0.1	1/1/08
Kale	0.2	1/1/06
Kohlrabi	0.2	1/1/08
Loganberry	7.0	1/1/08
Mango	3.0	1/1/08
Melon	1.0	1/1/07
Milk	0.1	1/1/06
Mushroom, postharvest	10.0	1/1/08
Mustard greens	0.2	1/1/06
Nectarine, postharvest	15.0	1/1/08
Nut	0.2	1/1/07
Oat, grain	0.2	1/1/08
Oat, straw	0.2	1/1/08
Peach, postharvest	15.0	1/1/08
Peanut	0.2	1/1/08
Peanut, hay	15.0	1/1/08
Pear, postharvest	7.0	1/1/08
Pepper	0.2	1/1/09
Pineapple, postharvest	35.0	1/1/08
Pistachio	0.2	1/1/07
Plum, postharvest	15.0	1/1/08
Plum, prune, fresh, postharvest	15.0	1/1/08
Poultry, fat	0.1	1/1/08
Poultry, liver	0.2	1/1/08
Poultry, meat	0.1	1/1/08
Poultry, meat by-products, except liver	0.1	1/1/08
Pumpkin	1.0	1/1/07
Raspberry	7.0	1/1/08
Rice	5.0	1/1/08
Rice, hulls	20.0	1/1/08
Rice, straw	15.0	1/1/08
Rutabaga	0.2	1/1/07
Rye, grain	0.2	1/1/08
Rye, straw	0.2	1/1/08
Sheep, fat	0.1	1/1/08
Sheep, meat	0.1	1/1/08
Sheep, meat by-products	0.1	1/1/08
Soybean	0.2	1/1/07
Spinach	0.2	1/1/07
Squash, summer	1.0	1/1/07
Squash, winter	1.0	1/1/07
Strawberry	5.0	1/1/08
Sweet potato, roots	0.2	1/1/07
Tomato	5.0	1/1/09
Tomato, concentrated products	50.0	1/1/09
Turnip, roots	0.2	1/1/07
Wheat, grain	0.2	1/1/08
Wheat, straw	15.0	1/1/08

* * * * *

(c) * * *

Commodity	Parts per million	Expiration/Revocation Date
Avocado	3.0	1/1/08
Dandelion, leaves	10.0	1/1/07
Papaya	3.0	1/1/08
Pistachio	0.2	1/1/07
Turnip, greens	5.0	1/1/07
Watercress	10.0	1/1/07

* * * * *

[FR Doc. 02–17872 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0118; FRL–7184–4]

RIN 2070–AB78

Methoxychlor; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes all tolerances for residues of methoxychlor because all registrations of pesticides containing methoxychlor are suspended or canceled, and there are insufficient data to find the pesticide safe in accordance with section 4(b)(2)(A) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The primary registrant of methoxychlor (Kincaid Enterprises, Inc.) has failed to submit the necessary data required to support continued registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing methoxychlor. As a result, all methoxychlor products are currently suspended. The regulatory actions specified in this document contribute toward the Agency's tolerance reassessment requirements of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002, to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 79 tolerances and exemptions which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: This regulation is effective October 15, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0118, must be received by EPA on or before September 16, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0118 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Beth Edwards, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5400; e-mail address: edwards.beth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0118. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes all tolerances for residues of methoxychlor. In the **Federal Register** of April 4, 2002 (67 FR 16073) (FRL–6828–8), EPA issued a proposed rule to revoke all methoxychlor tolerances because all registrations of pesticides containing methoxychlor are suspended or canceled, and there are insufficient data to find the pesticide safe in accordance with section 4(b)(2)(A) of FFDCA. The primary registrant of methoxychlor (Kincaid Enterprises, Inc.) has failed to submit the necessary data required to support continued registration of pesticide products containing methoxychlor. As a result, all methoxychlor products are currently suspended. The April 4, 2002 proposal invited public comment for consideration and for support of tolerance retention under FFDCA standards, but no comments were received during the 60–day comment period that changed the Agency's position concerning methoxychlor.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register.** EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is October 15, 2002. For this final rule, EPA believes that all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have already been exhausted since such products have been suspended since June 26, 2000. Similarly, the Agency believes that commodities legally treated with methoxychlor have by this time cleared the channels of trade.

Any commodities listed in 40 CFR 180.120 that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2 1996. EPA is also required to assess the remaining tolerances by August 2006. As of April 29 2002, EPA has reassessed over 4,140 tolerances. In this rule, EPA is revoking a total of 79 tolerances which count as reassessments toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decisions. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up

the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins

requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not

number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5

ACTION: Final rule; request for comments on petitions for reconsideration and delay of effective date.

SUMMARY: This document invites comment on a Emergency Services Interconnection Forum's (ESIF) Petition for Reconsideration (Reconsideration Petition) of the Commission's previous decision in this proceeding and a separately filed Request for Stay (Stay

the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0118 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0118, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.120 [Removed]

2. Section 180.120 is removed.

[FR Doc. 02–17873 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 02–1575]

Enhanced 911 Emergency Calling; Use of Non-Initialized Wireless Phones

AGENCY: Federal Communications Commission.

ACTION: Final rule; request for comments on petitions for reconsideration and delay of effective date.

SUMMARY: This document invites comment on a Emergency Services Interconnection Forum's (ESIF) Petition for Reconsideration (Reconsideration Petition) of the Commission's previous decision in this proceeding and a separately filed Request for Stay (Stay Request) of the effective date of the rules adopted in that decision. That decision considered the problems associated with the inability of a public safety answering point to call back an emergency caller for further critical information when that caller is dialing 911 using a non-service initialized wireless telephone. The Commission now seeks comment on ESIF's Reconsideration Petition in order to establish a record on which to base a final determination on the Petition.

DATES: Comments are due on or before August 2, 2002, and reply comments are due on August 19, 2002.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission 445 12th Street, SW., Washington, DC 20554. Comments may also be filed through the Commission's Electronic Comment Filing System via the Internet to *http://www.fcc.gov/e-file/ecfs.html.*

FOR FURTHER INFORMATION CONTACT: David Siehl, Attorney-Advisor, Wireless Telecommunications Bureau, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 94–102, DA 02–1575; released July 3, 2002. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassettes, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov.*

Synopsis

1. The Commission invites comment on a Petition for Reconsideration (Reconsideration Petition) of the Report and Order (R&O) in this proceeding in

which the Commission addressed the issues associated with the inability of a Public Safety Answering Point (PSAP) to call back a 911 caller who is disconnected prematurely when that caller is using a non-service initialized wireless telephone (non-initialized phone). Non-initialized phones are handsets that are not registered for service with any Commercial Mobile Radio Service carrier and thus lack a Roaming MIN (Mobile Identification Number) ("IRM") range. As a result, the potential impact of the 123–456–7890 code is to remove one million numbers the IRM assignment pool, when IRMs are a finite numbering resource where the first number must be a zero (0) or a one (1).

Administrative Matters

5. The Commission seeks comment on

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1449.

SUPPLEMENTARY INFORMATION: On December 7, 2001 (66 FR 63512), the **Federal Register** published a summary of the final rule in the above captioned proceeding. Instruction 5 of the rules amended § 25.208 by revising paragraph (c), removing paragraph (d), and redesignating paragraph (e) as paragraph (d). In addition to the limits specified in paragraph (c) of this section, the power flux-density across the 200 MHz band 18.6–18.8 GHz produced at the Earth's surface by emissions from a space station under assumed free-space propagation conditions shall not exceed −95 dB (W/m²) for all angles of arrival. This limit may be exceeded by up to 3 dB for elevation angles between 5 and 25 degrees above the horizontal plane.

(d) In addition to the limits specified in paragraph (c) of this section, the power flux-density across the 200 MHz band 18.6–18.8 GHz produced at the Earth's surface by emissions from a space station under assumed free-space propagation conditions shall not exceed −95 dB (W/m²) for all angles of arrival. This limit may be exceeded by up to 3 dB for elevation angles between 5 and 25 degrees above the horizontal plane.

hazardous liquid and carbon dioxide pipelines that affect high consequence areas to operators with less than 500 miles of regulated pipelines. Inadvertently, the date after which prior integrity assessments may qualify for use was incorrectly stated. This document corrects that error.

DATES: This correction takes effect February 15, 2002.

FOR FURTHER INFORMATION CONTACT: L.

which the Commission addressed the issues associated with the inability of a Public Safety Answering Point (PSAP) to call back a 911 caller who is disconnected prematurely when that caller is using a non-service initialized wireless telephone (non-initialized phone). Non-initialized phones are handsets that are not registered for service with any Commercial Mobile Radio Service carrier and thus lack a dialable number. The R&O may be found at 67 FR 36112, May 23, 2002. The Reconsideration Petition was filed by the Emergency Services Interconnection Forum (ESIF), which also separately filed a Request for Stay (Stay Request) of the effective date (October 1, 2002) for 47 CFR 20.18(l)(1)(i) and (l)(2)(i), adopted in the R&O. The Commission also solicits comment on the Stay Request.

2. Section 20.18(l)(1)(i), requires that licensees donating non-service initialized handsets through carrier-sponsored efforts program those handsets with the code 123–456–7890 as the telephone number/mobile identification number to alert PSAPs that a 911 call is being made from a wireless phone that lacks call-back capability. Further, section 20.18(l)(2)(i) requires that all manufacturers of "911-only" handsets manufactured on or after October 1, 2002, program each handset with the same code.

3. The Reconsideration Petition notes a solution not raised in the record to address the lack of call-back capability. The proposed solution is based on a technical standard published jointly by the Telecommunications Industry Association (TIA) and ATIS. The standard suggests the use of a wireless handset's Electronic Serial Number (ESN) or International Mobile Station Equipment Identity (IMEI) to create a surrogate number: "911" plus the last seven digits of the ESN or IMEI expressed as a decimal number. According to the Reconsideration Petition, using this surrogate number provides easier identification of the specific phone used in placing a wireless 911 call. Moreover, the surrogate number allegedly permits (1) the PSAP to prevent the misuse of the 9–1–1 system due to repeated harassing calls made on non-initialized phones, and (2) the identification of legitimate emergency callers making multiple calls.

4. The Reconsideration Petition also asserts that ESIF has identified a problem that was not addressed in the record of this proceeding. According to ESIF, the number requirement, 123–456–7890, in the Commission's new rules also serves as a valid International Roaming MIN (Mobile Identification Number) ("IRM") range. As a result, the potential impact of the 123–456–7890 code is to remove one million numbers the IRM assignment pool, when IRMs are a finite numbering resource where the first number must be a zero (0) or a one (1).

Administrative Matters

5. The Commission seeks comment on the issues raised by the Petition and Request. Pursuant to 47 CFR 1.1200(a), this proceeding is designated a "permit but disclose" proceedings and subject to § 1.1206. *Ex parte* presentations that are made will be allowed but must be disclosed in accordance with the requirements of 47 CFR 1.1206(b).

6. Pursuant to 47 CFR 1.415, 1.419, interested parties may file oppositions to the Request for Stay on or before August 2, 2002. Replies are due August 19, 2002.

7. Pursuant to § 1.429 of the Commission's rules, interested parties may file comments to the Petition for Reconsideration on or before August 2, 2002. Reply comments are due August 19, 2002.

8. Pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary,

9. Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail to *qualexint@aol.com*.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18047 Filed 7–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 101

[FCC 01–323]

Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission adopted an order granting in part and denying in part the petitions for reconsideration of the 18 GHz Order filed by various parties. The Commission, among other things, affirmed its basic findings in the 18 GHz Order and addressed a number of issues raised by parties in their reconsideration petitions. Because an error was made in the publication of the final rule, this document contains a correction to the final rule document which was published in the **Federal Register** on December 7, 2001 (66 FR 63512).

DATES: Effective July 17, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1449.

SUPPLEMENTARY INFORMATION: On December 7, 2001 (66 FR 63512), the **Federal Register** published a summary of the final rule in the above captioned proceeding. Instruction 5 of the rules amended § 25.208 by revising paragraph (c), removing paragraph (d), and redesignating paragraph (e) as paragraph (d) and paragraph (f) as paragraph (e). In redesignating paragraph (e) as paragraph (d), the instructions neglected to revise paragraph (d) of § 25.208(d). This document corrects § 25.208(d).

On page 63515, in the third column, instruction 5 is corrected to read as follows:

5. Section 25.208 is amended by removing paragraph (d), redesignating paragraphs (e) and (f) as paragraphs (d) and (e) and by revising paragraph (c) and newly designated paragraph (d) to read as follows:

§ 25.208 Power flux-density limits.

* * * * *

(c) In the 18.3–18.8 GHz, 19.3–19.7 GHz, 22.55–23.00 GHz, 23.00–23.55 GHz, and 24.45–24.75 GHz frequency bands, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions for all methods of modulation shall not exceed the following values:

(1) −115 dB (W/m²) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane.

(2) −115 + 0.5 (d–5) dB (W/m²) in any 1 MHz band for angles of arrival d (in degrees) between 5 and 25 degrees above the horizontal plane.

(3) −105 dB (W/m²) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(d) In addition to the limits specified in paragraph (c) of this section, the power flux-density across the 200 MHz band 18.6–18.8 GHz produced at the Earth's surface by emissions from a space station under assumed free-space propagation conditions shall not exceed −95 dB (W/m²) for all angles of arrival. This limit may be exceeded by up to 3 dB for no more than 5% of the time.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17993 Filed 7–16–02; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2762; Amdt. 195–76]

RIN 2137–AD24

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With Less Than 500 Miles of Pipelines)

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of January 16, 2002, (67 FR 2136) we published a Final Rule extending the regulations on managing the integrity of hazardous liquid and carbon dioxide pipelines that affect high consequence areas to operators with less than 500 miles of regulated pipelines. Inadvertently, the date after which prior integrity assessments may qualify for use was incorrectly stated. This document corrects that error.

DATES: This correction takes effect February 15, 2002.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by E-mail at *buck.furrow@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: We published a Final Rule document in the **Federal Register** of January 16, 2002, (67 FR 2136), extending the regulations on managing the integrity of hazardous liquid and carbon dioxide pipelines that affect high consequence areas to operators with less than 500 miles of regulated pipelines. In § 195.452(d)(2), the date after which prior assessments may qualify for use was incorrectly published as December 18, 2006. The correct date is February 15, 1997.

In FR Doc. 01–31655, published January 16, 2002, (67 FR 2136), make the following correction: On page 2144, correct the table in the second column by removing the date "December 18, 2006" and adding "February 15, 1997", in its place.

Issued in Washington, D.C. on July 12, 2002.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–18033 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested

Requests to speak at any of the hearings should be mailed to Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff,

of proposed rulemaking (Opportunity for Public Comment).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Repass, Personnel Security

programs meet the highest standards of reliability as well as physical and mental suitability.

In 1989, as part of its ongoing efforts to protect national security, DOE established regulations at 10 CFR part 710, subpart B, "Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's

judgment may be impaired by physical and/or emotional disorders, the use of illegal drugs or the abuse of legal drugs or other substances, the abuse of alcohol, or any other condition or circumstance that may represent a reliability, safety, and/or security concern.

The HRP will require that all individuals working in positions affording unescorted access to certain

tailored alcohol testing program. The government must ensure the unimpaired judgment of persons who perform hands-on work with, or have access to, nuclear explosives or have access to, or responsibility for, special nuclear material, or who otherwise have the potential to cause unacceptable damage to national security. It also must ensure that the persons charged with the

Proposed Rules

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 710, 711, and 712

[Docket No. SO–RM–00–HRP]

RIN 1992–AA29

Human Reliability Program

AGENCY: Office of Security, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) proposes to establish a Human Reliability Program that would consolidate its Personnel Security Assurance Program (PSAP) and Personnel Assurance Program (PAP). The PSAP is an access authorization program for individuals who apply for or occupy certain positions that are critical to the national security. The PSAP requires an initial and annual supervisory review, a medical assessment, management evaluation, and DOE personnel security review of all applicants or incumbents. The PAP is a nuclear explosive safety program using many of the same evaluations of the PSAP to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives. DOE has established many common elements for the administration of the PSAP and PAP. Accordingly, this proposed regulation would consolidate both programs into a single program, incorporating all the important facets of each into an understandable, comprehensive, and concise regulation.

DATES: The comment period for this proposed rule will end on October 15, 2002. Public hearings will be held on September 5, 2002, in Albuquerque, NM; September 10, 2002, in Livermore, CA; September 12, 2002, in Amarillo, TX; and September 17, 2002, in Oak Ridge, TN. All hearings will be held from 9 a.m. to 12 noon and 1 p.m. to 4 p.m.

Requests to speak at any of the hearings should be mailed to Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mailed to the following address: *linda.repass@hq.doe.gov*, or telephoned to (301) 903–4800 by August 22, 2002, for the Albuquerque, NM, hearing; by August 27, 2002, for the Livermore, CA, hearing; by August 29, 2002, for the Amarillo, TX, hearing; and by September 3, 2002, for the Oak Ridge, TN, hearing. Each presentation is limited to no more than 10 minutes to ensure that all persons have an opportunity to speak.

ADDRESSES: Written comments (7 copies) should be addressed to Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Alternatively, comments may be e-mailed to the following address: *linda.repass@hq.doe.gov*. Where possible, commenters should identify the specific section(s) of the proposed rule to which they are responding.

Copies of the public hearing transcripts, written comments, references to technical material pertaining to this notice, and any other docket material may be reviewed and copied at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. The docket material for this rulemaking will be filed under "SO–RM–00–HRP."

The public hearings for this rulemaking will be held at the following addresses: Albuquerque, NM; Albuquerque Marriott, 2101 Louisiana Boulevard, NE; Livermore, CA: Press Room, Trailer 6575 (Greenville Road Entrance) at the Lawrence Livermore National Laboratory, 7000 East Avenue; Amarillo, TX: Ambassador Hotel, 3100 I–40 West; and Oak Ridge, TN: Oak Ridge Mall, Community Room, Rutgers Place Entrance.

For more information concerning public participation in this rulemaking proceeding, see Section IV of this notice of proposed rulemaking (Opportunity for Public Comment).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, (301) 903–4800, or Mr. Charles Westfall, Personnel Assurance Program Manager, Office of Nuclear Weapons Surety, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (301) 903–4051.

For information concerning Subpart B, Medical Standards: Mr. Kenneth O. Matthews, Office of Health Studies, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (301) 903–6398.

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I. Background

Pursuant to the Atomic Energy Act of 1954 (the AEA), the DOE owns, leases, operates or supervises activities at facilities in various locations in the United States. Many of these facilities are involved in researching, testing, producing, disassembling, or transporting nuclear explosives, which, when combined with Department of Defense delivery systems, become nuclear weapons systems. These facilities are often involved in other activities that affect the national security. DOE has long been aware that if certain DOE facilities are compromised, national security would be severely damaged. To guard against such compromise, DOE has taken the initiative to implement security and safety reliability programs designed to ensure that individuals occupying positions affording unescorted access to certain materials, facilities, and programs meet the highest standards of reliability as well as physical and mental suitability.

In 1989, as part of its ongoing efforts to protect national security, DOE established regulations at 10 CFR part 710, subpart B, "Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position." These Personnel Security Assurance Program (PSAP) regulations apply to individuals who occupy positions throughout the DOE complex that involve access to, or responsibility for, special nuclear material or otherwise have the potential to cause unacceptable damage to national security. In 1998, DOE established regulations at 10 CFR part 711, "Personnel Assurance Program (PAP)," which codified longstanding certification procedures pertaining to individuals who occupy positions that involve hands-on work with, or access to, nuclear explosives.

As the PSAP and PAP evolved, significant similarities developed between the two programs in their administration, requirements, and concerns. DOE has concluded that the monetary cost and time requirements of administering two very similar programs with similar goals, the protection of special nuclear material and nuclear explosives, cannot be justified as consistent with good business practices when contrasted with the benefits of consolidation. Accordingly, DOE has determined that a merger of the two programs is appropriate, which would result in more stringent medical assessments and training requirements for individuals in PSAP positions. DOE determined that a new rule, based on the many common elements of the PSAP and PAP, would establish a single unified management structure of both programs while incorporating all the important elements into one comprehensive regulation. By adopting a uniform set of requirements applicable to both categories of employees, DOE expects to have a stronger, more efficient, and effective human reliability program for personnel occupying these positions.

The proposed combined program, named the Human Reliability Program (HRP), is designed to meet the objective of protecting the national security through a system of continuous evaluation of individuals working in positions affording unescorted access to certain materials, facilities, and programs. The purpose of this continuous evaluation is to identify in a timely manner individuals whose judgment may be impaired by physical and/or emotional disorders, the use of illegal drugs or the abuse of legal drugs or other substances, the abuse of alcohol, or any other condition or circumstance that may represent a reliability, safety, and/or security concern.

The HRP will require that all individuals working in positions affording unescorted access to certain materials, facilities, and programs be certified to meet the highest standards of reliability and physical and mental suitability before such access may be granted. The certification of such individuals is subject to immediate review in the event an individual's behavior indicates a reliability or security risk to nuclear explosive operations or national security, during which time the individual will be immediately removed from assigned duties. Immediate removal is an interim, precautionary action and does not constitute a final determination regarding an individual's reliability or access authorization status. Individuals who are removed from HRP duties for non-security issues are entitled to resolve these issues through a formal procedure outlined in proposed sections 712.19 through 712.23. For removal based on a security concern, 10 CFR part 710 provides procedures for resolving issues concerning eligibility for an access authorization. These regulations provide the individual a written statement of the issues, an opportunity to respond, including an opportunity for a hearing before a DOE Hearing Officer, and an opportunity to have the opinion of the hearing officer reviewed at a higher level before a final determination is made.

Most of the provisions of the proposed HRP rule are taken directly from the PSAP and PAP regulations (*see* section-by-section description of the proposed HRP set forth below). However, the proposed HRP rule has several requirements that are new to all individuals and some that are new to certain HRP positions. These include:

1. *Random alcohol testing for all individuals in HRP positions.* DOE believes that the misuse or abuse of alcohol represents a risk that is incompatible with the nature of work performed by individuals in HRP positions. DOE has a compelling interest in ensuring that individuals who hold HRP positions are functioning at the highest level of reliability because they have unescorted access to certain materials, facilities, and programs. This interest outweighs the diminished privacy expectations in respect to intrusions occasioned by a carefully tailored alcohol testing program. The government must ensure the unimpaired judgment of persons who perform hands-on work with, or have access to, nuclear explosives or have access to, or responsibility for, special nuclear material, or who otherwise have the potential to cause unacceptable damage to national security. It also must ensure that the persons charged with the security of these research and production facilities do not pose a risk to the life of the citizenry as the result of impaired perception or judgment that might result from the use of deadly force.

This proposed regulation is consistent with regulations of other Federal agencies charged with overseeing critical activities. On February 15, 1994, the Department of Transportation (DOT) operating agencies promulgated alcohol testing regulations for the aviation, motor carrier, rail, transit, and pipeline transportation industries. In the common preamble for those regulations, the operating agencies discussed the research and recommendations by expert bodies, including the National Highway Transportation Safety Administration, the National Transportation Safety Board, the National Academy of Sciences, and the Transportation Research Board regarding the effects of blood alcohol (59 FR 7302, 7318–19). DOT concluded, based on this body of research, that while impairment of performance of safety-sensitive functions was clearly increased above 0.04 percent alcohol concentration, there was evidence of some impairment at levels as low as 0.02, the lowest level that can be reliably measured. Alcohol affects individuals differently; indeed, any blood alcohol impairs some individuals. Based on this evidence, DOT adopted a standard that requires removal of an employee from a safety-sensitive position at any alcohol concentration of 0.02 percent or greater. Some DOE employees at certain sites already are subject to random alcohol testing pursuant to DOT regulations.

The Nuclear Regulatory Commission (NRC) considers the misuse of alcohol to be a serious and pervasive workplace problem (Barnes, et al., *Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues*, 1988, NUREG/CR–5227, U.S. Nuclear Regulatory Commission, Washington, DC; Moore et al., *Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues*, 1989, NUREG/CR–5227, Supplement 1, U.S. Nuclear Regulatory Commission, Washington, DC). The NRC requires alcohol testing in its

fitness-for-duty program (10 CFR Part 26).

The proposed regulation is supported by scientific research that shows that cognitive and physical task performance decreases as a result of alcohol abuse (Hartwell, Steele, and Rodman, "Workplace alcohol testing programs: prevalence and trends," *Monthly Labor Review*, V121, 1998; Mangione, et al., "Employee drinking practices and work performance," *Journal of Studies on Alcohol*, V59, 1998; Zwerling, et al., "Risk factors for occupational accidents in apprentices," *American Journal of Industrial Medicine*, V20, 1991; Howland, et al., "Effects of moderate alcohol intoxication on divided attention," *Addiction*, V88, 1993; Howland, et al., "Effects of moderate alcohol intoxication on dynamic balance control during postural threat," *Alcoholism: Clinical and Experimental Research*, V20, 1996; Howland, et al., "Effects of moderate alcohol intoxication on recovery of postural equilibrium following imposed oscillation," *Alcoholism: Clinical and Experimental Research*, V20, 1996; Haworth, et al., "Effects of alcohol on simulated aircraft carrier landings performance," *Aviation, Space, and Environmental Medicine*, V62, 1991; Holloway, "Time lags and other observations in the analysis of driver inattention," *Human Factors*, V37, 1995; Moskowitz, et al., "Effects of alcohol on driving performance," *Alcohol, Drugs, and Driving*, V1, 1985; Moskowitz, et al., "Effects of alcohol on driving performance," *Alcohol, Drugs, and Driving*, V3, 1987; Moskowitz, et al., "Effects of alcohol on driving performance," *Alcohol, Drugs, and Driving*, V4, 1988; Moskowitz, et al., "Effects of alcohol on driving performance," *Alcohol, Drugs, and Driving*, V5, 1989; Moskowitz, et al., "Effects of alcohol on driving performance," *Alcohol, Drugs, and Driving*,

fitness-for-duty program (10 CFR Part 26).

The proposed regulation is supported by scientific research that shows that cognitive and physical task performance decreases as a result of alcohol abuse (Hartwell, Steele, and Rodman, "Workplace alcohol testing programs: prevalence and trends," *Monthly Labor Review*, V121, 1998; Mangione, et al., "Employee drinking practices and work performance," *Journal of Studies on Alcohol*, V60, 1999; Ames, Grube, and Moore, "The relationship of drinking and hangovers to workplace problems: An empirical study," *Journal of Studies on Alcohol* V58, 1997; Yesavage and Leirer, "Hangover effects on aircraft pilots 14 hours after alcohol ingestion: A preliminary report," *American Journal of Psychiatry*, V143, 1986).

The job tasks performed by individuals in the HRP are clearly as, or more, safety-sensitive than those performed by workers in the transportation industry and the nuclear power industry and have the added security-sensitive requirements. The potential for (1) an accidental or unauthorized detonation of a nuclear explosive; (2) use of deadly force in guarding or transporting special nuclear materials or nuclear weapons; (3) a criticality incident involving special nuclear material; or (4) the misuse of classified information clearly demonstrates that alcohol abuse poses the same safety and security risks as does drug use. The proposed random alcohol testing is based on the DOT regulations that already are required for transportation workers at many DOE sites. DOE believes that random alcohol testing will enhance the safety and reliability aspects of the HRP and deter the use of alcohol on the job, as well as during a period prior to reporting for work. Individuals in HRP positions also will be subject to testing if they are involved in an incident, unsafe practice or occurrence, or if there is reasonable suspicion that they may be impaired.

2. *Eight-hour abstinence rule for alcohol.* In the past, individuals reporting for nuclear explosive duties have been prohibited from drinking alcohol during the eight hours before their work assignments. This eight-hour abstinence requirement is being retained in the HRP for those employees and is now made applicable to employees in specific positions designated by the Operations Office Manager, the National Nuclear Security Administration (NNSA) Administrator or his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee. This abstinence requirement will be in addition to the random alcohol testing requirement.

3. *Annual Submission of Questionnaire for National Security Positions (QNSP), Part 2.* Previously this has been required only of participants in the PSAP, however; DOE proposes to make this a requirement for all individuals in the HRP. This requirement underscores DOE's continuous commitment to evaluate personnel security concerns that is fundamental to the success of the program. This annual requirement is designed to assist in assuring that HRP individuals and HRP-certified individuals are reliable and trustworthy.

4. *Psychological evaluations.* This requirement has been in effect for PAP individuals and is a new requirement for all other HRP participants. The psychological evaluation, as part of the overall medical assessment, addresses an individual's mental or behavioral state as it relates to security and safety concerns. This evaluation includes the completion of a psychological assessment (test) and a semi-structured interview with the Designated Psychologist, or a psychologist under his or her supervision, who has the latitude to vary the focus and content of questions based on the results of the psychological test and/or the interviewee's response to certain questions. Through this evaluation process, an assessment is made of whether the individual shows at-risk behavior or conditions that raise a security concern or may impact the ability to perform his or her job duties in a safe and reliable manner. Individuals will be subject to an initial psychological evaluation and annual evaluations thereafter. Every third year individuals in an HRP position will be required to have another psychological assessment (test). This process will assist medical personnel in their efforts to monitor participants and ensure that individuals in HRP positions are reliable and trustworthy.

5. *Counterintelligence polygraph examinations.* Individuals occupying either a PAP or PSAP position must submit to a counterintelligence-scope polygraph examination in accordance with the Polygraph Examination Regulation, 10 CFR Part 709. Both the PAP and PSAP regulations were amended to reflect this requirement when the Polygraph Examination Regulation was published on December 17, 1999 (64 FR 70962). This requirement is continued in the HRP rule. Refusal to submit to such a polygraph examination will result in rejection of the initial application for, or removal from, an HRP position, consistent with procedures in 10 CFR part 709.

II. Section-by-Section Discussion

The proposed HRP regulations are organized like the existing PAP regulations in 10 CFR part 711. Subpart A contains the provisions that establish the HRP and the HRP certification requirements; subpart B contains the provisions of the medical standards required for HRP certification. In drafting subpart A, the DOE carefully evaluated the existing provisions in both 10 CFR part 710, subpart B (the PSAP regulations) and part 711, subpart A (the PAP general regulations). Following are descriptions of selected proposed rule provisions:

Section 712.3, Definitions. The definition of "access" combines the PAP definition of "access" and the PSAP definition of "direct access" without substantive change.

The definition of "alcohol use disorder" is taken from PAP regulations. DOE proposes new definitions of "alcohol" and "alcohol abuse." A definition of "evidential-grade breath alcohol device" is proposed, and is not currently found in either the PSAP or PAP regulations. A definition of "random alcohol testing" also is proposed.

The definitions of "contractor" in both the PSAP and PAP regulations would be replaced by the proposed definition of "contractor." The proposed definition is more specific and is derived from the definition of "contractor" in 10 CFR part 1045, DOE's regulations on nuclear classification and declassification.

The term "transfer" is defined as the permanent move of an HRP-certified individual to another site having an HRP position.

Section 712.10, HRP positions. Proposed § 712.10 (a) lists the positions that will be included in the HRP and will require initial and annual certification. These include positions that afford access to Category I special nuclear material (SNM) or have responsibility for the transportation or protection of such material. Other positions included are those with the potential for causing unacceptable damage to national security that have been nominated for HRP designation by management officials and approved by the Administrator of the National Nuclear Security Administration (NNSA), or his or her designee, or by the appropriate Lead Program Secretarial Officer, or his or her designee. These are currently classified as PSAP positions, whereas the positions that afford direct access to the control areas of a nuclear material production reactor have been eliminated from this rule (see 10 CFR 710.55). The HRP also will include all PAP positions (i.e., positions that involve nuclear explosive duties as defined in 10 CFR 711.3).

The proposed HRP also will include positions that afford access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components or Category I quantities of SNM. The proposed category of positions includes many of the same ones currently in PSAP and PAP and may include others not previously in either program.

Section 712.11, General requirements for HRP certification. Proposed § 712.11 describes the certification requirements for all individuals in the HRP. The proposed psychological evaluation requirements, for example, have been in effect for PAP individuals and would be a new requirement for other HRP participants. Under this proposal, all HRP participants will be subject to a psychological evaluation, which consists of a psychological assessment (test) and a semi-structured interview with the designated psychologist or a psychologist under his or her supervision. Every third year, as part of the annual psychological evaluation, a psychological assessment (test) will be required. This process will enable medical personnel to monitor participants.

The proposed provision requiring HRP participants to submit annually the Questionnaire for National Security Position (QNSP), Part 2, currently applies only to participants in the PSAP. Application of this requirement to all HRP participants, including those currently in PAP, is considered an important element in the Department's ongoing process of ensuring that HRP individuals are reliable and trustworthy.

Random alcohol testing is proposed for all HRP positions. As discussed in the preamble, the DOE has a compelling interest in ensuring that individuals who hold an HRP position are functioning at the highest level of reliability. The DOE believes that misuse or abuse of alcohol presents a high level of risk at its research and production facilities. The risk of alcohol abuse or misuse by individuals in HRP positions warrants preventive action and intervention by the DOE to ensure protection of the environment, public health and safety, and national security.

Section 712.12, HRP implementation. Each DOE site or facility must prepare an HRP implementation plan that includes the same four annual components currently used in PSAP: supervisory review, medical assessment, management evaluation, and a DOE security review.

Many, but not all, of the PSAP and PAP positions are in the National Nuclear Security Administration. Section 3213 of the National Nuclear Security Administration Act (Pub. L. 106–65, Title XXXII) provides that no officer or employee of the NNSA, or contractor of the NNSA, may be "subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy" other than the Secretary of Energy (50 U.S.C. 2403). The proposed rule's section on implementation and other provisions has been drafted to satisfy this statutory limitation.

Section 712.13, Supervisory review. The proposed HRP supervisory review section consolidates current PSAP and PAP requirements found in 10 CFR 710.57 and 10 CFR 711.9, respectively.

Section 712.14, Medical assessment. The proposed medical assessment process is largely descriptive of the current process used in both PSAP and PAP. The main difference is the application of the annual PAP psychological evaluations to all individuals currently in PSAP. The psychological evaluation, as part of the overall medical assessment, addresses an individual's mental or behavioral state as it relates to security and safety concerns. This evaluation includes a semi-structured interview and completion of a psychological assessment. Through this evaluation process, an assessment is made as to whether the individual shows at-risk behavior or conditions, such as suicidal tendencies or attempted suicide, inability to deal with stress, hostility or aggression toward fellow workers or authority, uncontrolled anger, moodiness, depression, or other evidence of loss of emotional control. Individuals will be subject to an initial psychological evaluation and annual evaluations thereafter. Additionally, a psychological assessment (test) will be required every third year.

Section 712.15, Management evaluation. The management evaluation conducted for certification and recertification in the HRP will be conducted by the appropriate HRP management official. The management official will review the results of the supervisory review, medical assessment, and drug and alcohol testing, and will forward his or her recommendation to the HRP certifying official. If the evaluation reveals a security concern, the HRP management official must notify the applicable DOE personnel security office. Drug-testing requirements have not changed and are in accordance with 10 CFR part 707, for DOE contractor employees and DOE Order 3792.3 for DOE employees. Random, unannounced alcohol testing is a new requirement and will conform to the DOT procedures (49 CFR part 40, subpart C) already required at many DOE sites.

Section 712.16, DOE security review. As under the PAP and PSAP, security concerns identified at any stage of the certification process will be evaluated and resolved in accordance with DOE's regulations for determining eligibility for access to classified matter or special nuclear material in 10 CFR part 710, subpart A. This proposed rule will make no change to current policies and procedures.

Section 712.17, Instructional requirements. Proposed § 712.17 will require an initial and annual HRP instructional and educational program. The areas of instruction must include the objectives of the HRP, role and responsibilities of each individual in the HRP, procedures for recognizing and reporting security concerns, nuclear explosive duties and safety requirements for individuals in nuclear explosive positions, and procedures for recognizing and responding to behavioral changes and aberrant behavior in the workplace.

Section 712.18, Transferring HRP certification. Proposed § 712.18 describes the process for transferring an individual's HRP certification from one site to another. An individual must be currently certified in the HRP to request such a transfer.

Sections 712.19 through 712.23. The proposed rule's provisions for removing individuals from their HRP duties and resolving reliability concerns, which are not of a security concern, are similar to provisions in the current PAP regulations, 10 CFR 711.11 through 711.16. Under the proposed rule, however, final appeals of decisions to deny or revoke certification will be made by the DOE Deputy Secretary based on a recommendation of the Director, Office of Security. If removal is based on a security concern, the procedure described in 10 CFR part 710, will apply.

Subpart B—Medical standards. Subpart B contains the standards and procedures used to conduct medical assessments of HRP individuals. These standards and procedures were developed through the PAP rulemaking, completed on September 8, 1998 (63 FR 48060), and codified in subpart B to part 711. These provisions will be revised to reflect current DOE organization and

requirements of the National Nuclear Security Administration Act.

III. Regulatory Review

A. Executive Order 12866

Executive Order 12866, 58 FR 51735 (October 4, 1993) provides for a review by the Office of Information and Regulatory Affairs in the Office of

application requirements, or any other type of information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB has defined the term "information" to exclude certifications, consents, and acknowledgments that entail only

reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct

be identified on the outside of the envelope and on the comments themselves with the designated "Human Reliability Program Rule, Docket No. SO–RM–00–HRP." If anyone wishing to provide written comments is unable to provide seven copies, alternative arrangements can be made in advance with the DOE. All comments received on or before the date specified at the

based on the number of persons requesting to speak.

A Departmental official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. Only those persons conducting

Chapter III of Title 10 of the Code of Federal Regulations as set forth below:

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation continues to

requirements of the National Nuclear Security Administration Act.

III. Regulatory Review

A. Executive Order 12866

Executive Order 12866, 58 FR 51735 (October 4, 1993) provides for a review by the Office of Information and Regulatory Affairs in the Office of Management and Budget of a "significant regulatory action," which is defined as an action that may have an affect on the economy of $100 million or more or adversely affect the economy, competition, jobs, productivity, environment, public health or safety, or state, local or tribal governments. DOE has concluded that this proposed rule (10 CFR part 712) is not a significant regulatory action. Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of an initial regulatory flexibility analysis for every rule that must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rulemaking will not directly regulate small businesses or small governmental entities. It will apply principally to individuals who are employees of, or applicants for employment by, some of DOE's prime contractors, which are large businesses. There may be some affected small businesses that are subcontractors, but the rule will not impose unallowable costs. Accordingly, DOE certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

The proposed rule, which consolidates the PAP and PSAP, relates to personnel qualifications that will have no impact on the environment. DOE has determined that this rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations in paragraph A.6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

DOE has determined that this proposed rule does not contain any new or amended recordkeeping, reporting or application requirements, or any other type of information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB has defined the term "information" to exclude certifications, consents, and acknowledgments that entail only minimal burden [5 CFR 1320.3(h)(1)].

E. Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 10, 1999), requires agencies to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined this proposed rule and determined that it would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by the Executive Order.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires a Federal agency to perform a detailed assessment of the costs and benefits of any rule imposing a Federal mandate with costs to state, local, or tribal governments, or to the private sector of $100 million or more. The proposed rule does not impose a Federal mandate requiring preparation of an assessment under the Unfunded Mandates Reform Act of 1995.

G. Executive Order 12988

Section 3(a) of Executive Order 12988, 61 FR 4729 (February 7, 1996) imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

H. Executive Order 13084

Under Executive Order 13084, 63 FR 27655 (May 19, 1998), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

I. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, (Pub. L. No. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Opportunity for Public Comment

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views, or comments on this proposed rule. To help DOE review the submitted comments, commenters are requested to reference the paragraphs [e.g., § 712.13 (c)] to which they refer. Seven copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the comments themselves with the designated "Human Reliability Program Rule, Docket No. SO–RM–00–HRP." If anyone wishing to provide written comments is unable to provide seven copies, alternative arrangements can be made in advance with the DOE. All comments received on or before the date specified at the beginning of this notice, and other relevant information before final action is taken on the proposed rule, will be considered.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Reading Room at the address indicated in the **ADDRESSES** section of this notice.

Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The DOE will make its determination as to the confidentiality of the information and treat it accordingly.

B. Public Hearings

Public hearings will be held at the times, dates, and locations indicated in the **DATES** and **ADDRESSES** section of this notice. DOE invites any person who has an interest in the proposed regulation, or who is a representative of a group or class of persons that has an interest, to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the mailing address or e-mail address or made by calling the telephone number indicated in the **DATES** section of this notice. Requests must be received by the time specified in the **DATES** section of this notice. The person making the request should provide a daytime telephone number. Each person selected to speak at a public hearing will be notified as to his or her approximate speaking time. Seven copies of the statement should be brought to the hearing. If any person wishing to testify cannot meet this requirement, alternative arrangements may be made in advance with Linda Repass, at the address and telephone number indicated in the **DATES** section of this notice. The DOE reserves the right to select persons to be heard at each hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes or less, based on the number of persons requesting to speak.

A Departmental official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. Only those persons conducting the hearing may ask questions. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the same order as the initial statements. Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

The DOE will retain the record of the full hearing, including the transcript, and make it available for inspection and copying in the DOE Freedom of Information Reading Room at the address provided in the **ADDRESSES** section of this notice of proposed rulemaking. Transcripts may be purchased from the court reporter.

If the DOE must cancel a hearing, every effort will be made to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation also will be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

List of Subjects

10 CFR Part 710

Administrative practice and procedures, Classified information, Government contracts, Government employees, and Nuclear materials.

10 CFR Part 711

Administrative practice and procedure, Alcohol abuse, Drug abuse, Government contracts, Government employees, Nuclear safety, Occupational safety and health.

10 CFR Part 712

Administrative practice and procedure, Alcohol abuse, Drug abuse, Government contracts, Government employees, Health, National security, Nuclear safety, Occupational safety and health, Personnel security, and Security concerns.

Issued in Washington, DC, on June 21, 2002.

Spencer Abraham,

Secretary of Energy.

For reasons stated in the preamble, the DOE hereby proposes to amend Chapter III of Title 10 of the Code of Federal Regulations as set forth below:

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation continues to read as follows:

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450; 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865; 3 CFR 1959–1963 Comp., p. 398 as amended; 3 CFR, Chap. IV, sec. 104(c); 38 Stat. 1237 (42 U.S.C. 5814), sec. 105 (a); 88 Stat. 1238 (42 U.S.C. 5815).

Subpart B—[Removed]

2. Subpart B of 10 CFR part 710, is removed.

PART 711—PERSONNEL ASSURANCE PROGRAM

3. The authority citation continues to read as follows:

Authority: 42 U.S.C. 2201 (p), 7191.

4. Part 711 is removed.

5. Part 712, Human Reliability Program is added to read as follows:

PART 712—HUMAN RELIABILITY PROGRAM

Subpart A—Establishment of and Procedures for the Human Reliability Program

General Provisions

Sec.
712.1 Purpose.
712.2 Applicability.
712.3 Definitions.

Procedures

712.10 Designation of HRP positions.
712.11 General requirements for HRP certification.
712.12 HRP implementation.
712.13 Supervisory review.
712.14 Medical assessment.
712.15 Management evaluation.
712.16 DOE security review.
712.17 Instructional requirements.
712.18 Transferring HRP certification.
712.19 Removal from HRP.
712.20 Request for reconsideration or certification review hearing.
712.21 Office of Hearings and Appeals.
712.22 Hearing officer's report and recommendation.
712.23 Final decision by DOE Deputy Secretary

Subpart B—Medical Standards

712.30 Applicability.
712.31 Purpose.
712.32 Designated Physician.
712.33 Designated Psychologist.
712.34 Site Occupational Medical Director.
712.35 Deputy Assistant Secretary for Health Studies.
712.36 Medical assessment process.
712.37 Evaluation for hallucinogen use.
712.38 Maintenance of medical records.

Authority: 42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450; 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as

(2) The proximity to a nuclear explosive and/or Category I SNM that allows the opportunity to divert, steal, tamper with, and/or damage the nuclear explosive or material in spite of any controls that have been established to prevent such unauthorized actions.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol.

Alcohol abuse means consumption of definitions of psychiatric terms and diagnostic criteria of mental disorders.

Deputy Assistant Secretary for Health Studies means the DOE individual with responsibility for policy and quality assurance for DOE occupational medical programs.

Drug abuse means use of an illegal drug or misuse of legal drugs.

Evidential-grade breath alcohol device means a device that conforms to

individual's present health status and health risk factors by means of:

(1) Medical history review;

(2) Job task analysis;

(3) Physical examination;

(4) Appropriate laboratory tests and measurements; and

(5) Appropriate psychological and psychiatric evaluations.

Nuclear explosive means an assembly of fissionable and/or fusionable

been determined that an employee who has been temporarily removed from the HRP meets the certification requirements of this part and can be returned to HRP duties.

Reliability means an individual's ability to adhere to security and safety rules and regulations.

Safety concern means any condition, practice, or violation that causes a substantial probability from which

systems when transporting nuclear explosives, nuclear devices, selected components or Category I quantities of SNM; or

(4) Is not included in paragraphs (a)(1) through (3) of this section but affords the potential to significantly impact national security or cause unacceptable damage and is approved pursuant to paragraph (b) of this section.

(b) The Operations Office Manager

712.34 Site Occupational Medical Director.
712.35 Deputy Assistant Secretary for Health Studies.
712.36 Medical assessment process.
712.37 Evaluation for hallucinogen use.
712.38 Maintenance of medical records.

Authority: 42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450; 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended; 3 CFR Chap. IV.

Subpart A—Establishment of and Procedures for the Human Reliability Program

General Provisions

§ 712.1 Purpose.

This part establishes the policies and procedures for a Human Reliability Program (HRP) in the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA). The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. This objective is accomplished under this part through a system of continuous evaluation that identifies individuals whose judgment and reliability may be impaired by physical or emotional disorders, alcohol abuse, use of illegal drugs or the abuse of legal drugs or other substances, or any other condition or circumstance that may be of a security or safety concern.

§ 712.2 Applicability.

The HRP applies to all applicants for, or current employees of DOE or a DOE contractor or subcontractor in a position defined or designated under § 712.10 of this subpart as an HRP position.

§ 712.3 Definitions.

The following definitions are used in this part:

Accelerated Access Authorization Program means the DOE program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, a counterintelligence-scope polygraph examination in accordance with 10 CFR Part 709, and a review of the applicant's completed "Questionnaire for National Security Positions." (Standard Form 86).

Access means:

(1) A situation that may provide an individual proximity to or control over Category I special nuclear material (SNM); or

(2) The proximity to a nuclear explosive and/or Category I SNM that allows the opportunity to divert, steal, tamper with, and/or damage the nuclear explosive or material in spite of any controls that have been established to prevent such unauthorized actions.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol.

Alcohol abuse means consumption of any beverage, mixture, or preparation, including any medication containing alcohol that results in impaired social or occupational functioning.

Alcohol use disorder means a maladaptive pattern in which a person's intake of alcohol is great enough to damage or adversely affect physical or mental health or personal, social, or occupational function; or when alcohol has become a prerequisite to normal function.

Blood Alcohol Concentration means the measure, expressed as a decimal fraction, of the mass of alcohol in a volume of blood, which can be measured directly from blood or derived from the concentration of alcohol in a breath specimen.

Certification means the formal action the HRP certifying official takes that permits an individual to perform HRP duties after it is determined that the individual meets the requirements for certification under this part.

Contractor means subcontractors at all tiers and any industrial, educational, commercial, or other entity, grantee, or licensee, including an employee, that has executed an agreement with the Federal Government for the purpose of performing under a contract, license, or other arrangement.

Designated Physician means a licensed doctor of medicine or osteopathy who has been nominated by the Site Occupational Medical Director (SOMD) and approved by the Operations Office Manager or designee, with the concurrence of the Deputy Assistant Secretary for Health Studies, to provide professional expertise in occupational medicine for the HRP.

Designated Psychologist means a licensed Ph.D., or Psy.D., or clinical psychologist who has been nominated by the SOMD and approved by the Operations Office Manager or designee, with the concurrence of the Deputy Assistant Secretary for Health Studies, to provide professional expertise in the area of psychological assessment for the HRP.

Diagnostic and Statistical Manual of Mental Disorders means the current version of the American Psychiatric Association's manual containing definitions of psychiatric terms and diagnostic criteria of mental disorders.

Deputy Assistant Secretary for Health Studies means the DOE individual with responsibility for policy and quality assurance for DOE occupational medical programs.

Drug abuse means use of an illegal drug or misuse of legal drugs.

Evidential-grade breath alcohol device means a device that conforms to the model standards for an evidential breath-testing device as listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration.

Flashback means a transient, spontaneous, and often unpredictable recurrence of aspects of a person's use of a hallucinogen that involves dramatic alteration of emotional state, perception, sensation, and behavior.

Hallucinogen means any hallucinogenic drug or substance that has the potential to cause flashbacks.

HRP-certified individual means an individual who has successfully completed the HRP requirements.

HRP certifying official means the DOE Operations Office Manager or the manager's designee who certifies, recertifies, temporarily removes, or reviews the circumstances of an individual's removal from an HRP position.

HRP individual means an individual being considered for assignment to an HRP position.

HRP management official means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for HRP positions.

Illegal drug means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, and 812, but the term does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by Federal law.

Impaired or impairment means a decrease in functional capacity of a person caused by a physical, mental, emotional, substance abuse, or behavioral disorder.

Incident means an unplanned, undesired event that interrupts the completion of an activity and that may include property damage or injury.

Job task analysis means a process that describes systematically the performance requirements of a job and identifies and defines the valid tasks and elements needed to satisfactorily perform the analyzed job.

Medical assessment means an evaluation of an HRP and HRP-certified

individual's present health status and health risk factors by means of:

(1) Medical history review;

(2) Job task analysis;

(3) Physical examination;

(4) Appropriate laboratory tests and measurements; and

(5) Appropriate psychological and psychiatric evaluations.

Nuclear explosive means an assembly of fissionable and/or fusionable materials and main charge high explosive parts or propellants capable of producing a nuclear detonation.

Nuclear explosive duties means work assignments that allow custody of a nuclear explosive or access to a nuclear explosive device or area.

Occurrence means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any DOE or DOE-controlled operation if the deviation has environmental, public health and safety, or national security protection significance, including (but not limited to) incidents involving:

(1) Injury or fatality to any person involving actions of a DOE employee or contractor employee;

(2) An explosion, fire, spread of radioactive material, personal injury or death, or damage to property that involves nuclear explosives under DOE jurisdiction;

(3) Accidental release of pollutants that results from, or could result in, a significant effect on the public or environment; or

(4) Accidental release of radioactive material above regulatory limits.

Operations Office Manager means the manager of any DOE operations office as well as the Manager of the Rocky Flats Office, Manager of the Pittsburgh Naval Reactors Office, Manager of the Schenectady Naval Reactors Office, and, for the Washington, DC area, the Director, Office of Headquarters Security Operations.

Random alcohol testing means the unscheduled, unannounced alcohol testing of randomly selected employees by a process designed to ensure that selections are made in a nondiscriminatory manner.

Reasonable suspicion means a suspicion based on an articulable belief that an individual uses illegal drugs or is under the influence of alcohol, drawn from reasonable inferences from particular facts, as detailed further in Part 707 of this title.

Recertification means the formal action the HRP certifying official takes annually, not to exceed 12 months, that permits an employee to remain in the HRP and perform HRP duties.

Reinstatement means the action the HRP certifying official takes after it has been determined that an employee who has been temporarily removed from the HRP meets the certification requirements of this part and can be returned to HRP duties.

Reliability means an individual's ability to adhere to security and safety rules and regulations.

Safety concern means any condition, practice, or violation that causes a substantial probability from which physical harm, property loss, and/or environmental impact could result.

Security concern means the presence of information regarding an individual applying for or holding an HRP position that may be considered derogatory under the criteria listed in 10 CFR Part 710, Subpart A.

Semi-structured interview means an interview by a Designated Psychologist, or a psychologist under his or her supervision, who has the latitude to vary the focus and content of the questions depending on the interviewee's responses.

Site Occupational Medical Director (SOMD) means the physician responsible for the overall direction and operation of the occupational medical program at a particular site.

Supervisor means an individual who has oversight and responsibility for a person holding an HRP position.

Transfer means an HRP-certified individual moving from one site to another site.

Unacceptable damage means an incident that could result in a nuclear detonation; high-explosive detonation or deflagration from a nuclear explosive; the diversion, misuse, or removal of Category I special nuclear material; or an interruption of nuclear explosive operations with a significant impact on national security.

Unsafe practice means either a human action departing from prescribed hazard controls or job procedures or practices, or an action causing a person unnecessary exposure to a hazard.

Procedures

§ 712.10 Designation of HRP positions.

(a) HRP certification is required for each individual assigned to, or applying for, a position that:

(1) Affords access to Category I SNM or has responsibility for transportation or protection of Category I quantities of SNM;

(2) Involves nuclear explosive duties or has responsibility for working with, protecting, or transporting nuclear explosives, nuclear devices, or selected components;

(3) Affords access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components or Category I quantities of SNM; or

(4) Is not included in paragraphs (a)(1) through (3) of this section but affords the potential to significantly impact national security or cause unacceptable damage and is approved pursuant to paragraph (b) of this section.

(b) The Operations Office Manager and the HRP management official for NNSA and non-NNSA headquarters offices may nominate positions for the HRP that are not specified in paragraphs (a) (1) through (3) of this section or that have not previously been designated HRP positions. All such nominations must be submitted and approved by either the NNSA Administrator, his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee.

(c) Before nominating a position for designation as an HRP position, the Operations Office Manager or the HRP management official for NNSA and non-NNSA headquarters offices must analyze the risks the position poses for the particular operational program. If the analysis shows that more restrictive physical, administrative, or other controls could be implemented that would prevent the position from being designated an HRP position, those controls will be implemented, if practicable.

(d) Nothing in this part prohibits contractors from establishing stricter employment standards for individuals who are nominated to DOE for certification or recertification in the HRP.

§ 712.11 General requirements for HRP certification.

(a) The following certification requirements apply to each individual applying for or in an HRP position:

(1) A DOE "Q" access authorization based on a background investigation, except for security police officers who have been granted an interim "Q" through the Accelerated Access Authorization Program;

(2) The annual submission of SF–86, OMB Control No. 3206–0007, Questionnaire for National Security Positions, Part 2, and an annual review of the personnel security file;

(3) Signed releases, acknowledgments, and waivers to participate in the HRP on forms provided by DOE;

(4) Completion of initial and annual HRP instruction as provided in § 712.17;

(5) Successful completion of an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review for

certification and recertification in accordance with this part;

(6) No use of any hallucinogen in the preceding five years and no experience of flashback resulting from the use of any hallucinogen more than five years before applying for certification or recertification;

(7) A psychological evaluation

designee, or the appropriate Lead Program Secretarial Officer, or his or her designee, will be asked prior to performing any type of work if they have consumed alcohol within the preceding eight-hour period. If they answer "no," they may perform their assigned duties but still may be tested.

(e) An individual whose confirmatory breath alcohol test result is at or above

(e) The Director, Security Policy Staff, within the Office of Security, is responsible for HRP policy and must:

(1) Ensure consistency of the HRP throughout the DOE and NNSA;

(2) Review and comment on all HRP implementation plans to ensure consistency with policy; and

(3) Provide policies and guidance, including instructional materials, to

§ 712.13 Supervisory review.

(a) The supervisor must ensure that each individual tentatively selected for, and each individual occupying an HRP position but not yet HRP certified, executes the appropriate HRP releases, acknowledgments, and waivers. If these documents are not executed:

(1) The request for HRP certification of tentatively selected individuals may

official must immediately notify the applicable DOE personnel security office and the HRP certifying official.

(e) Based on the DOE personnel security office recommendation, the HRP certifying official will make the final decision about whether to reinstate an individual into an HRP position.

(f) If temporary removal is based on a medical concern, the SOMD must report

concern is identified, the Designated Physician or SOMD must immediately notify the HRP management official, who notifies the applicable DOE personnel security office and appropriate HRP certifying official.

(d) Evaluation. The Designated Physician, with the assistance of the Designated Psychologist, must determine the existence or nature of any

certification and recertification in accordance with this part;

(6) No use of any hallucinogen in the preceding five years and no experience of flashback resulting from the use of any hallucinogen more than five years before applying for certification or recertification;

(7) A psychological evaluation consisting of a generally accepted psychological assessment (test) and a semi-structured interview;

(8) An initial and random, unannounced drug test for the use of illegal drugs at least once each 12 months in accordance with DOE policies implementing Executive Order 12564 or the relevant provisions of 10 CFR Part 707 for DOE contractors, and DOE Order 3792.3 "Drug-Free Federal Workplace Testing Implementation Program" for DOE employees;

(9) An initial and random unannounced alcohol test at least once each 12 months using an evidential-grade breath alcohol device, as listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration (49 CFR Part 40); and

(10) Successful completion, if conducted, of a counterintelligence polygraph examination.

(b) Each HRP individual must be certified in the HRP before being assigned to HRP duties and must be recertified annually, not to exceed 12 months between recertifications. For certification:

(1) Individuals in newly identified HRP positions must immediately sign the releases, acknowledgments, and waivers to participate in the HRP and complete initial instruction on the importance of security, reliability, and suitability. If these requirements are not met, the individual must be removed from the HRP position.

(2) All remaining HRP requirements listed in paragraph (a) of this section must be completed in an expedited manner.

(c) Alcohol consumption is prohibited within an eight-hour period preceding scheduled work for individuals performing nuclear explosive duties and for individuals in specific positions designated by either the Operations Office Manager, the NNSA Administrator, his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee.

(d) Individuals reporting for unscheduled nuclear explosive duties and those specific positions designated by either the Operations Office Manager, the NNSA Administrator or his or her designee, or the appropriate Lead Program Secretarial Officer, or his or her designee, will be asked prior to performing any type of work if they have consumed alcohol within the preceding eight-hour period. If they answer "no," they may perform their assigned duties but still may be tested.

(e) An individual whose confirmatory breath alcohol test result is at or above an alcohol concentration of 0.02 percent is not permitted to perform scheduled or unscheduled duties until the individual's alcohol concentration is below 0.02 percent using an evidential-grade breath analysis device.

(f) HRP-certified individuals must be tested for alcohol and/or drugs in accordance with section 712.15(b), (c), (d), and (e) if they are involved in an incident, unsafe practice, or an occurrence, or if there is reasonable suspicion that they may be impaired.

§ 712.12 HRP implementation.

(a) The implementation of the HRP at NNSA sites is the responsibility of the NNSA Administrator or his or her designee and the implementation at non-NNSA sites is the responsibility of the Lead Program Secretarial Officer or his or her designee.

(b) Management officials for each site or facility with HRP positions must prepare an initial HRP implementation plan and submit it by [DATE 90 DAYS AFTER PUBLICATION OF FINAL RULE] to the applicable Operations Office Manager for review and site approval. The implementation plan must:

(1) Be reviewed and updated every two years;

(2) Include the four annual components of the HRP process: supervisory review, medical assessment, management evaluation (which includes random drug and alcohol testing), and a DOE personnel security determination; and

(3) Include the HRP instruction and education component under § 712.17 of this part.

(c) The Deputy Administrator for Defense Programs, NNSA must:

(1) Provide advice and assistance to the Director, Office of Security, regarding policies, standards, and guidance for all nuclear explosive duty requirements; and

(2) Be responsible for implementation of all nuclear explosive duty safety requirements.

(d) The DOE Deputy Secretary, based on a recommendation of the Director, Office of Security, makes the final decision for any appeal of denial or revocation of certification or recertification from HRP.

(e) The Director, Security Policy Staff, within the Office of Security, is responsible for HRP policy and must:

(1) Ensure consistency of the HRP throughout the DOE and NNSA;

(2) Review and comment on all HRP implementation plans to ensure consistency with policy; and

(3) Provide policies and guidance, including instructional materials, to NNSA and non-NNSA field elements concerning the HRP, as appropriate.

(f) The Operations Office Managers must:

(1) Review and approve the HRP implementation plan for NNSA and non-NNSA sites/facilities under their cognizance and forward the plan to the Director, Security Policy Staff; and

(2) Ensure that the HRP is implemented at the NNSA and non-NNSA sites/facilities under their cognizance.

(g) The HRP Certifying Official must:

(1) Approve placement, certification, recertification, temporary removal, and reinstatement of individuals into HRP positions;

(2) Ensure that instructional requirements are implemented;

(3) Immediately notify (for the purpose of limiting access) the appropriate HRP management official of a personnel security action that results in the suspension of access authorization; and

(4) Ensure that the supervisory review, medical assessment, and management evaluation, including drug and alcohol testing, are conducted on an annual basis (not to exceed 12 months).

(h) Individuals assigned to HRP duties must:

(1) Execute HRP releases, acknowledgments, and waivers to facilitate the collection and dissemination of information, the performance of drug and alcohol testing, and medical examinations;

(2) Notify the Site Occupational Medical Director immediately of a physical or mental condition requiring medication or treatment; and

(3) Provide full, frank, and truthful answers to relevant and material questions, and when requested, furnish, or authorize others to furnish, information that DOE deems pertinent to reach a decision regarding HRP certification or recertification.

(4) Report any observed or reported behavior or condition of another HRP-certified individual that could indicate a reliability concern, including those behaviors and conditions listed in § 712.13 (c), to a supervisor, the SOMD, or the HRP-certifying official.

§ 712.13 Supervisory review.

(a) The supervisor must ensure that each individual tentatively selected for, and each individual occupying an HRP position but not yet HRP certified, executes the appropriate HRP releases, acknowledgments, and waivers. If these documents are not executed:

(1) The request for HRP certification of tentatively selected individuals may not be further processed until these requirements are completed; and

(2) The individual is immediately removed from the position.

(b) Each supervisor of HRP-certified personnel must conduct an annual review of each HRP-certified individual during which the supervisor must evaluate information (including security concerns) relevant to the individual's suitability to perform HRP tasks in a reliable and safe manner.

(c) The supervisor must report any concerns resulting from his or her review to the appropriate HRP management official. Types of behavior and conditions that would indicate a concern include, but are not limited to:

(1) Psychological or physical disorders that impair performance of assigned duties;

(2) Conduct that warrants referral for a criminal investigation or results in arrest or conviction;

(3) Indications of deceitful or delinquent behavior;

(4) Attempted or threatened destruction of property or life;

(5) Suicidal tendencies or attempted suicide;

(6) Use of illegal drugs or the abuse of legal drugs or other substances;

(7) Alcohol use disorders;

(8) Recurring financial irresponsibility;

(9) Irresponsibility in performing assigned duties;

(10) Inability to deal with stress, or the appearance of being under unusual stress;

(11) Failure to comply with work directives, hostility or aggression toward fellow workers or authority, uncontrolled anger, violation of safety or security procedures, or repeated absenteeism; and

(12) Significant behavioral changes, moodiness, depression, or other evidence of loss of emotional control.

(d) The supervisor must immediately remove an HRP-certified individual from HRP duties, pursuant to § 712.19, and temporarily reassign the individual to a non-HRP position if the supervisor believes the individual has demonstrated a security or safety concern that warrants such removal. If temporary removal is based on a security concern, the HRP management official must immediately notify the applicable DOE personnel security office and the HRP certifying official.

(e) Based on the DOE personnel security office recommendation, the HRP certifying official will make the final decision about whether to reinstate an individual into an HRP position.

(f) If temporary removal is based on a medical concern, the SOMD must report these restrictions in writing to the appropriate HRP management official, who will immediately notify the appropriate HRP certifying official, who will make the final determination in temporary removal actions.

(g) The supervisor must immediately remove from HRP duties any Federal employee who does not obtain HRP recertification. The supervisor may reassign the individual or realign the individual's current duties.

§ 712.14 Medical assessment.

(a) Purpose. The HRP medical assessment is performed to evaluate whether an individual tentatively selected for, or an incumbent in, an HRP position:

(1) Represents a security concern; or

(2) Has a condition that may prevent the individual from performing HRP duties in a reliable and safe manner.

(b) When performed. (1) The medical assessment is performed initially on individuals tentatively selected for HRP certification and individuals occupying HRP positions who have not yet received HRP certification. The medical assessment is performed annually for HRP-certified individuals, or more often as required by the SOMD.

(2) The Designated Physician will conduct an intermediate evaluation:

(i) If an HRP-certified individual requests an evaluation (i.e., self-referral);

(ii) If an HRP-certified individual is referred by management for an evaluation; or

(iii) As a routine return-to-work evaluation for an HRP-certified individual.

(c) Process. The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP and HRP-certified individuals. In performing this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, available testing results, psychological evaluations, any psychiatric evaluations, a review of current legal drug use, and any other relevant information. This information is used to determine if a reliability, safety, or security concern exists and if the individual is medically qualified for his or her assigned duties. If a security concern is identified, the Designated Physician or SOMD must immediately notify the HRP management official, who notifies the applicable DOE personnel security office and appropriate HRP certifying official.

(d) Evaluation. The Designated Physician, with the assistance of the Designated Psychologist, must determine the existence or nature of any of the following:

(1) Physical or medical disabilities, such as a lack of visual acuity, defective color vision, impaired hearing, musculoskeletal deformities, and neuromuscular impairment;

(2) Mental disorders or behavioral problems, including alcohol and other substance use disorders, as described in the Diagnostic and Statistical Manual of Mental Disorders;

(3) Use of illegal drugs or the abuse of legal drugs or other substances, as identified by self-reporting or by medical or psychological evaluation or testing;

(4) Threat of suicide, homicide, or physical harm; or

(5) Medical conditions such as cardiovascular disease, endocrine disease, cerebrovascular or other neurologic disease, or the use of drugs for the treatment of conditions that may adversely affect the judgment or ability of an individual to perform assigned duties in a reliable and safe manner.

(e) Job task analysis/statement of duties. Employers must provide a job task analysis or statement of duties for each HRP individual or HRP-certified individual to both the Designated Physician and Designated Psychologist before the initial or annual medical assessment and psychological evaluation. Medical assessments and psychological evaluations may not be performed if a job task analysis or statement of duties has not been provided.

(f) Psychological evaluations. Psychological evaluations must be conducted:

(1) For initial HRP certification. This psychological evaluation consists of a psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview. A psychological assessment (test) may also be conducted as warranted.

(3) Every third year. The medical assessment for recertification must include a psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies.

(4) When additional psychological or psychiatric evaluations are required by the SOMD to resolve any concerns.

(g) Return to work after sick leave. HRP-certified individuals who have been on sick leave for five or more consecutive days, or an equivalent time period for those individuals on an alternative work schedule, must report in person to the SOMD before being removed, informs the appropriate HRP management official of the action.

§ 712.15 Management evaluation.

(a) Evaluation components. A management evaluation is required before an individual can be considered for initial certification or recertification in the HRP. This evaluation must be based on a careful review of the results of the supervisory review, medical assessment, and drug and alcohol testing components of the HRP.

(b) Drug testing. (1) Testing is conducted using urine specimens and laboratories certified by the Department of Health and Human Services (HHS) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines).

(2) Testing is conducted for the following drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine.

(3) Initial and confirmatory tests are conducted at the cutoff levels established in the HHS Guidelines.

(4) Specimens are collected under conditions that minimize the possibility of adulteration or substitution of specimens.

(5) Specimens are collected and tested on an annual basis (not to exceed 12 months) for HRP-certified individuals.

(6) Specimens are collected and tested for HRP individuals tentatively selected for HRP certification.

(7) Specimens are collected and tested for HRP-certified individuals who are involved in an incident, unsafe practice, or an occurrence, or if there is reasonable suspicion that they may be impaired.

(c) Alcohol testing. (1) Testing is conducted using breath specimens and evidential breath analysis devices listed on the Conforming Products List of Evidential Breath Measurement Devices published by the National Highway Traffic Safety Administration (49 CFR Part 40).

(2) Testing is conducted at the cutoff levels established in 49 CFR Part 40.

(3) Specimens are collected under conditions that minimize the possibility of adulteration or substitution of specimens.

(4) Specimens are collected and tested on an annual basis (not to exceed 12 months) for HRP-certified individuals.

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(d) Random testing. (1) Testing is conducted using urine specimens and laboratories certified by HHS in accordance with the HHS Guidelines.

(2) Testing is conducted for the following drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine.

(3) Initial and confirmatory tests are conducted at the cutoff levels established in the HHS Guidelines.

(4) Specimens are collected under conditions that minimize the possibility of adulteration or substitution of specimens.

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(e) Random testing. (1) Testing is conducted using breath specimens and evidential breath analysis devices approved for 0.02/0.04 cutoff levels that conforms to the DOT National Highway Traffic Safety Administration (NHTSA) model specifications and the most recent "Conforming Products List" issued by NHTSA.

(2) An individual required to undergo DOT alcohol testing is subject to the regulations of the NHTSA, and, if such

SOMD, agree that such testing is appropriate.

(2) Reasonable suspicion must be based on an articulable belief that an HRP-certified individual is in possession of, or under the influence of, an illegal drug or alcohol, drawn from facts and reasonable inferences from those particular facts. Such a belief may be based on, among other things:

(1) Observable phenomena, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;

(2) A pattern of abnormal conduct or erratic behavior;

(3) Arrest for a drug-related offense or the identification of an individual as the focus of a criminal investigation into illegal drug possession, use, or trafficking;

(4) Information provided by either reliable and credible sources or independently corroborated information;

(5) Newly discovered evidence that the individual has tampered with a drug test during employment with the current employer; or

(6) Information that the individual has caused, or contributed to, an accident that is reasonably believed to be drug- or alcohol-related.

(3) Reasonable suspicion testing must be documented and the documentation must be maintained for a minimum of two years.

(f) Testing for cause. (1) Testing is conducted using urine specimens and laboratories certified by HHS in accordance with the HHS Guidelines.

(2) Testing is conducted for the following drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine.

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(h) Management evaluation. (1) Management evaluation is conducted annually (not to exceed 12 months) for HRP-certified individuals.

(2) Management evaluation is conducted for HRP individuals tentatively selected for HRP certification.

(3) Management evaluation is conducted for HRP-certified individuals who are involved in an incident, unsafe practice, or an occurrence, or if there is reasonable suspicion that they may be impaired.

(i) Management evaluation. (1) Management evaluation is conducted annually (not to exceed 12 months) for HRP-certified individuals.

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(3) Management evaluation is conducted for HRP-certified individuals who are involved in an incident, unsafe practice, or an occurrence, or if there is reasonable suspicion that they may be impaired.

§ 712.16 Security evaluation.

(a) Security evaluation. A security evaluation is required before an individual can be considered for initial certification or recertification in the HRP. This evaluation must be based on a careful review of the results of the supervisory review, medical assessment, and drug and alcohol testing components of the HRP.

(b) Drug testing. (1) Testing is conducted using urine specimens and laboratories certified by the Department of Health and Human Services (HHS) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines).

(2) Testing is conducted for the following drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine.

(3) Initial and confirmatory tests are conducted at the cutoff levels established in the HHS Guidelines.

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(2) An individual required to undergo DOT alcohol testing is subject to the regulations of the NHTSA, and, if such

(4) When additional psychological or psychiatric evaluations are required by the SOMD to resolve any concerns.

(g) Return to work after sick leave. HRP-certified individuals who have been on sick leave for five or more consecutive days, or an equivalent time period for those individuals on an alternative work schedule, must report in person to the SOMD before being allowed to return to normal duties. The SOMD must provide a written recommendation to the appropriate HRP supervisor regarding the individual's return to work. An HRP-certified individual in certain circumstances also may be required to report to the SOMD for written recommendation to return to normal duties after any period of sick leave.

(h) Temporary removal or restrictions. The SOMD may recommend temporary removal of an individual from an HRP position or restrictions on an individual's work in an HRP position if a medical condition or circumstance develops that affects the individual's ability to perform assigned job duties. The SOMD must recommend medical removal or medical restrictions immediately, in writing, to the appropriate HRP management official who will immediately notify the appropriate HRP certifying official. To reinstate or remove such restrictions, the SOMD must make this recommendation, in writing, to the HRP management official who will notify the appropriate HRP certifying official.

(i) Medical evaluation after rehabilitation. (1) Individuals who request reinstatement in the HRP following treatment leading to rehabilitation from alcohol use disorder, use of illegal drugs, or the abuse of legal drugs or other substances must undergo an evaluation, as prescribed by the SOMD, to ensure continued rehabilitation and adequate capability to perform their job duties.

(2) The HRP certifying official may reinstate an individual in the HRP who successfully completes an SOMD-approved drug or alcohol rehabilitation program. Recertification is based on the SOMD's follow-up evaluation and recommendation. The individual is also subjected to unannounced follow-up tests for illegal drugs or alcohol and relevant counseling for three years.

(j) Medication and treatment. HRP-certified individuals are required to immediately report to the SOMD any physical or mental condition requiring medication or treatment. The SOMD determines if temporary removal of the individual from HRP duties is required and, if the individual is temporarily removed, informs the appropriate HRP management official of the action.

§ 712.15 Management evaluation.

(a) Evaluation components. A management evaluation is required before an individual can be considered for initial certification or recertification in the HRP. This evaluation must be based on a careful review of the results of the supervisory review, medical assessment, and drug and alcohol testing. The appropriate HRP management official must evaluate the information and forward his or her recommendation, including any safety concern, to the HRP certifying official. If the management evaluation reveals a security concern, the HRP management official must notify the applicable DOE personnel security office.

(b) Drug testing. All HRP and HRP-certified individuals are subject to testing for the use of illegal drugs, as required by this part. Testing must be conducted in accordance with 10 CFR Part 707, the workplace substance abuse program for DOE contractor employees, and DOE Order 3792.3, "Drug-Free Federal Workplace Testing Implementation Program," for DOE employees. The program must include an initial and random, unannounced drug testing at least once every 12 months and testing of individuals in the HRP if involved in an incident, unsafe practice or occurrence, or based on reasonable suspicion. Failure to appear for unannounced testing within two hours of notification constitutes a refusal to submit to a test. An HRP-certified individual who has been determined to use illegal drugs based on a drug test must be immediately removed from HRP duties, and DOE personnel security must be notified immediately.

(c) Alcohol testing. All HRP and HRP-certified individuals are subject to testing for the use of alcohol, as required by this part. The alcohol testing program must include, as a minimum, an initial and random unannounced alcohol testing at least once every 12 months and testing of individuals in the HRP if involved in an incident, unsafe practice, or occurrence, or based on reasonable suspicion. An HRP-certified individual who has been determined to have a blood alcohol concentration (BAC) of 0.02 percent or greater must be immediately removed from the HRP position, and the HRP management official must be notified.

(1) Breath alcohol testing must be conducted by a certified breath alcohol technician and conform to the DOT procedures (49 CFR Part 40, Alcohol Testing) for use of an evidential-grade breath analysis device approved for 0.02/0.04 cutoff levels that conforms to the DOT National Highway Traffic Safety Administration (NHTSA) model specifications and the most recent "Conforming Products List" issued by NHTSA.

(2) An individual required to undergo DOT alcohol testing is subject to the regulations of the NHTSA, and, if such individual's blood alcohol level exceeds DOT standards, the individual's employer may take appropriate disciplinary action.

(3) The supervisor must immediately remove an HRP-certified individual from his or her HRP position if the individual refuses to submit to a breath alcohol test and immediately notify the HRP management official of the removal. The following constitutes a refusal to submit to a test:

(i) Failure to appear for unannounced testing within two hours of notification;

(ii) Failure to provide an adequate volume of breath in two attempts, without a valid medical excuse; and

(iii) Engaging in conduct that clearly obstructs the testing process, including failure to cooperate with reasonable instructions provided by the testing technician.

(d) Occurrence testing. (1) When an HRP-certified individual is involved in, or associated with, an occurrence requiring immediate reporting to the DOE or the individual's behavior creates the basis for reasonable suspicion, the following procedures must be implemented:

(i) Testing for the use of illegal drugs in accordance with the provisions of the DOE policies implementing Executive Order 12564, and 10 CFR Part 707 or DOE Order 3792.3, which establish workplace substance abuse programs for contractor and DOE employees, respectively.

(ii) Testing for use of alcohol in accordance with this section.

(2) Testing must be performed as soon as possible after an occurrence that requires immediate notification or reporting.

(3) The supervisor must remove an HRP-certified individual from HRP duties if the individual refuses to undergo the testing required by this section.

(e) Testing for reasonable suspicion. (1) If the behavior of an individual in an HRP position creates the basis for reasonable suspicion of the use of an illegal drug or alcohol, that individual must be tested if two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the individual or is the SOMD, agree that such testing is appropriate.

(2) Reasonable suspicion must be based on an articulable belief that an HRP-certified individual is in possession of, or under the influence of, an illegal drug or alcohol, drawn from facts and reasonable inferences from those particular facts. Such a belief may be based on, among other things:

(i) Observable phenomena, such as direct observation of the use or possession of illegal drugs or alcohol, or the physical symptoms of being under the influence of drugs or alcohol;

(ii) A pattern of abnormal conduct or erratic behavior; or

(iii) Information provided by a reliable and credible source that is independently corroborated.

(f) Counterintelligence Polygraph Examination. All HRP individuals and, when selected, all HRP-certified individuals, must submit to and successfully complete a counterintelligence polygraph examination in accordance with 10 CFR Part 709, Polygraph Examination Regulations.

§ 712.16 DOE security review.

(a) A personnel security specialist will perform a personnel security file review of an HRP and HRP-certified individual upon receiving the supervisory review, medical assessment, and management evaluation and recommendation.

(b) If the personnel security file review is favorable, this information must be forwarded to the HRP certifying official. If the review reveals a security concern, or if a security concern is identified during another component of the HRP process, the HRP certifying official must be notified and the security concern evaluated in accordance with the criteria in 10 CFR Part 710. All security concerns must be resolved according to procedures outlined in 10 CFR Part 710, rather than through the procedures in this part.

(c) Any mental or behavioral issues found in a personnel security file that could impact an HRP or HRP-certified individual's ability to perform HRP duties may be provided in writing to the SOMD, Designated Physician, and Designated Psychologist previously identified for receipt of this information. Medical personnel may not share any information obtained from the personnel security file with anyone who is not an HRP certifying official.

§ 712.17 Instructional requirements.

(a) Management officials at each DOE site or facility with HRP positions must establish an initial and annual HRP instruction and education program. The program must provide:

(1) Individuals, supervisors, and managers in HRP positions with the knowledge required to recognize and respond to behavioral change and aberrant behavior that may result in a risk to national security or nuclear explosive safety; and

(2) For all HRP medical personnel, detailed explanation of HRP duties and responsibilities.

(b) The following program elements must be included in initial and annual instruction:

(1) The objectives of the HRP and the role and responsibilities of each individual in the HRP to include recognizing and reporting security concerns, prescription drug usage, return to work requirements, and continuous evaluation of HRP participants;

(2) Instruction regarding the potential security and safety concerns from behavioral changes and aberrant behavior; and

(3) For nuclear explosive responsibilities, detailed explanation of duties and safety requirements.

§ 712.18 Transferring HRP Certification.

(a) An individual must be currently certified in the HRP to request transfer of HRP certification.

(b) Transferring the HRP certification from one site to another requires completion of the following actions before the individual is allowed to perform HRP duties at the new site:

(1) Verify that the individual is currently enrolled in the HRP and is transferring into a designated HRP position;

(2) Transfer the personnel security file to the applicable DOE personnel security office;

(3) Incorporate the individual into the new site's alcohol and drug-testing program;

(4) Incorporate the initial approval dates into the annual HRP requirements; and

(5) Receive site-specific instruction.

(c) HRP-certified individuals on temporary assignment or being detailed to HRP positions at other sites require verification that the individual:

(1) Is currently enrolled in the HRP;

(2) Has met all site-specific instruction; and

(3) Is required to return to the site that maintains the HRP certification for recertification.

§ 712.19 Removal from HRP.

(a) Supervisory responsibilities. A supervisor who has a reasonable belief that an HRP-certified individual is not reliable, based on either a safety or security concern, must immediately remove that individual from those duties pending a determination of the individual's reliability. The supervisor must, at a minimum:

(1) Require the individual to stop performing HRP duties;

(2) Take action to ensure the individual is denied both escorted and unescorted access to the HRP work areas; and

(3) Notify the individual and the HRP management official in writing of the reason for these actions within 24 hours.

(b) Immediate removal of an HRP-certified individual from HRP duties is an interim, precautionary action and does not constitute a determination that the individual is not fit to perform his or her required duties. Removal is not, in itself, cause for loss of pay, benefits, or other changes in employment status.

(c) Temporary removal. (1) If an HRP management official receives a supervisor's written notice of the immediate removal of an HRP-certified individual, that official must direct the temporary removal of the individual pending an evaluation and determination regarding the individual's reliability.

(2) If removal is based on a security concern, the HRP management official must notify the HRP certifying official and the applicable DOE personnel security office for resolution of the security concern under the criteria and procedures in 10 CFR Part 710.

(3) The HRP management official must conduct an evaluation of the circumstances or information that led the supervisor to remove the individual from HRP duties. The HRP management official must prepare a written report of the evaluation that includes the HRP management official's determination of the individual's reliability for continuing HRP certification.

(4) If the HRP management official determines that an individual who has been removed temporarily continues to meet the requirements for certification, the HRP management official must:

(i) Notify the individual's supervisor of the determination and direct that the individual be allowed to return to HRP duties;

(ii) Notify the individual; and

(iii) Notify the HRP certifying official.

(5) If the HRP management official determines that an individual who has been temporarily removed does not meet the requirements for certification, the HRP management official must forward the written report to the HRP certifying official. If the HRP certifying official is not the Operations Office Manager, the HRP certifying official must review the written report and take one of the following actions:

(i) Direct that the individual be reinstated and provide written explanation of the reasons and factual bases for the action;

(ii) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the

accompanied by notification to the individual, in writing, of the procedures pertaining to reconsideration or a hearing on the Operation Office Manager's decision.

§ 712.20 Request for reconsideration or certification review hearing.

(a) An HRP individual or HRP-certified individual who receives

of the individual's choosing and at the individual's own expense.

(d) In conducting the proceedings, the hearing officer must:

(1) Receive all relevant and material information relating to the individual's fitness for HRP duties through witnesses or documentation;

(2) Ensure that the individual is permitted to offer information in his or

(a) Identify the presence of any mental, emotional, physical, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in reliability;

(b) Facilitate the early diagnosis and treatment of disease or impairment and foster accommodation and rehabilitation;

(c) Determine what functions an HRP-certified individual may be able to

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceedings (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceeding (felony or misdemeanor) since the last

must review the written report and take one of the following actions:

(i) Direct that the individual be reinstated and provide written explanation of the reasons and factual bases for the action;

(ii) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability; or

(iii) Recommend to the Operations Office Manager the revocation of the individual's certification and, provide written explanation of the reasons and factual bases for the decision.

(d) The Operations Office Manager, on receiving the HRP management official's written report and the HRP certifying official's recommendation (if any), must take one of the following actions:

(1) Direct that the individual be reinstated and, provide written explanation of the reasons and factual bases for the action;

(2) Direct the revocation of the individual's HRP certification; or

(3) Direct continuation of the temporary removal pending completion of specified actions (e.g., medical assessment, treatment) to resolve the concerns about the individual's reliability.

(e) If the action is revocation, the Operations Office Manager must provide the individual a copy of the HRP management official's report. The Manager may withhold such a report, or portions thereof, to the extent that he or she determines that the report, or portions thereof, may be exempt from access by the employee under the Privacy Act or the Freedom of Information Act.

(f) If an individual is directed by the Operations Office Manager to take specified actions to resolve HRP concerns, he or she must be reevaluated by the HRP management and HRP certifying officials after those actions have been completed. After considering the HRP management and HRP certifying officials' report and recommendation, the Operations Office Manager must direct either:

(1) Reinstatement of the individual; or

(2) Revocation of the individual's HRP certification.

(g) Notification of Operations Office Manager's initial decision. The Operations Office Manager must send by certified mail (return receipt requested) a written decision, including rationale, to an HRP individual or HRP-certified individual who is denied certification or whose certification is revoked. The Operations Office Manager's decision must be accompanied by notification to the individual, in writing, of the procedures pertaining to reconsideration or a hearing on the Operation Office Manager's decision.

§ 712.20 Request for reconsideration or certification review hearing.

(a) An HRP individual or HRP-certified individual who receives notification of an Operation Office Manager's decision to deny or revoke his or her HRP certification may choose one of the following options:

(1) Take no action;

(2) Submit a written request to the Operations Office Manager for reconsideration of the decision to deny or revoke certification. The request must include the individual's response to any information that gave rise to the concern. The request must be sent by certified mail to the Operations Office Manager within 20 working days after the individual received notice of the Operations Office Manager's decision; or

(3) Submit a written request to the Operations Office Manager for a certification review hearing. The request for a hearing must be sent by certified mail to the Operations Office Manager within 20 working days after the individual receives notice of the Operations Office Manager's decision.

(b) If an individual requests reconsideration by the Operations Office Manager but not a certification review hearing, the Operations Office Manager must, within 20 working days after receipt of the individual's request, send by certified mail (return receipt requested) a final decision to the individual. This final decision about certification is based on the individual's response and other relevant information available to the Operations Office Manager.

(c) If an individual requests a certification review hearing, the Operations Office Manager must forward the request to the Office of Hearings and Appeals.

§ 712.21 Office of Hearings and Appeals.

(a) The certification review hearing is conducted by the Office of Hearings and Appeals.

(b) The hearing officer must have a DOE "Q" access authorization when hearing cases involving HRP duties.

(c) An individual who requests a certification review hearing has the right to appear personally before the hearing officer; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and to be accompanied and represented at the hearing by counsel or any other person of the individual's choosing and at the individual's own expense.

(d) In conducting the proceedings, the hearing officer must:

(1) Receive all relevant and material information relating to the individual's fitness for HRP duties through witnesses or documentation;

(2) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence;

(3) Require the testimony of the individual and all witnesses be given under oath or affirmation; and

(4) Ensure that a transcript of the certification review proceedings is made.

§ 712.22 Hearing officer's report and recommendation.

Within 30 calendar days of the receipt of the hearing transcript by the hearing officer or the closing of the record, whichever is later, the hearing officer must forward written findings, a supporting statement of reasons, and recommendation regarding the individual's eligibility for certification or recertification in the HRP position to the Director, Office of Security. The hearing officer's report and recommendation must be accompanied by a copy of the record of the proceedings. The Director, Office of Security shall forward to the DOE Deputy Secretary a recommendation to either revoke, deny, certify, or recertify an individual in the HRP.

§ 712.23 Final decision by DOE Deputy Secretary.

Within 20 working days of the receipt of the Director, Office of Security's recommendation, the Deputy Secretary should issue a final written decision. A copy of this decision must be sent by certified mail (return receipt requested) to the Operations Office Manager and to the individual accompanied by a copy of the hearing officer's report and the transcript of the certification review proceedings.

Subpart B—Medical Standards

§ 712.30 Applicability.

This subpart establishes standards and procedures for conducting medical assessments of DOE and DOE contractor individuals in HRP positions.

§ 712.31 Purpose.

The standards and procedures set forth in this subpart are necessary for DOE to:

(a) Identify the presence of any mental, emotional, physical, or behavioral characteristics or conditions that present or are likely to present an unacceptable impairment in reliability;

(b) Facilitate the early diagnosis and treatment of disease or impairment and foster accommodation and rehabilitation;

(c) Determine what functions an HRP-certified individual may be able to perform and to facilitate the proper placement of individuals; and

(d) Provide for continuing monitoring of the health status of individuals to facilitate early detection and correction of adverse health effects, trends, or patterns.

§ 712.32 Designated Physician.

(a) The Designated Physician must be qualified to provide professional expertise in the area of occupational medicine as it relates to the HRP.

(b) The Designated Physician must:

(1) Be a graduate of an accredited school of medicine or osteopathy;

(2) Have a valid, unrestricted state license to practice medicine in the state where HRP medical assessments occur;

(3) Have met the applicable HRP instruction requirements; and

(4) Be eligible for the appropriate DOE access authorization.

(c) The Designated Physician is responsible for the medical assessments of HRP and HRP-certified individuals, including determining which components of the medical assessments may be performed by other qualified personnel. Although a portion of the assessment may be performed by another physician, physician's assistant, or nurse practitioner, the Designated Physician remains responsible for:

(1) Supervising the evaluation process;

(2) Interpreting the results of evaluations;

(3) Documenting medical conditions or issues that may disqualify an individual from the HRP;

(4) Providing medical assessment information to the Designated Psychologist to assist in determining psychological fitness;

(5) Determining, in conjunction with DOE if appropriate, the location and date of the next required medical assessment; and

(6) Signing a recommendation about the medical fitness of an individual for certification or recertification.

(d) The Designated Physician must immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceedings (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence of a physical or mental health condition since the last designation that might affect his or her ability to perform professional duties.

§ 712.33 Designated Psychologist.

(a) The Designated Psychologist reports to the SOMD and determines the psychological fitness of an individual to participate in the HRP. The results of this evaluation may be provided only to the Designated Physician or the SOMD.

The Designated Psychologist must:

(1) Hold a doctoral degree from a clinical psychology program that includes a one-year clinical internship approved by the American Psychological Association or an equivalent program;

(2) Have accumulated a minimum of three years postdoctoral clinical experience with a major emphasis in psychological assessment (test);

(3) Have a valid, unrestricted state license to practice clinical psychology in the state where HRP medical assessments occur;

(4) Have met the applicable HRP instruction requirements; and

(5) Be eligible for the appropriate DOE access authorization.

(b) The Designated Psychologist is responsible for all psychological evaluations of HRP and HRP-certified individuals, and otherwise as directed by the SOMD. Although a portion of the psychological evaluation may be performed by another psychologist, the Designated Psychologist must:

(1) Supervise the psychological evaluation process and designate which components may be performed by other qualified personnel;

(2) Upon request of management, assess the psychological fitness of HRP individuals and HRP-certified individuals for HRP duties including specific work settings and recommend referrals as indicated; and

(3) Make referrals for psychiatric, psychological, substance abuse, personal or family problems, and monitor the progress of individuals so referred.

(c) The Designated Psychologist must immediately report to the SOMD any of the following about himself or herself:

(1) Initiation of an adverse action by any state medical licensing board or any other professional licensing board;

(2) Initiation of an adverse action by any Federal regulatory board since the last designation;

(3) The withdrawal of the privilege to practice by any institution;

(4) Being named a defendant in any criminal proceeding (felony or misdemeanor) since the last designation;

(5) Being evaluated or treated for alcohol use disorder or drug dependency or abuse since the last designation; or

(6) Occurrence of a physical or mental health condition that might affect his or her ability to perform professional duties since the last designation.

§ 712.34 Site Occupational Medical Director.

(a) The SOMD must nominate a physician to serve as the Designated Physician and a clinical psychologist to serve as the Designated Psychologist. The nominations must be sent through the operations office to the Deputy Assistant Secretary for Health Studies. Each nomination must describe the nominee's relevant training, experience, and licensure, and include a curriculum vitae and a copy of the nominee's current state or district license.

(b) The SOMD must submit a renomination report biennially through the Operations Office Manager to the Deputy Assistant Secretary for Health Studies. This report must be submitted at least 60 days before the second anniversary of the initial designation or of the last redesignation, whichever applies. The report must include:

(1) A statement evaluating the performance of the Designated Physician and Designated Psychologist during the previous designation period; and

(2) A copy of the valid, unrestricted state or district license of the Designated Physician and Designated Psychologist.

(c) The SOMD must submit, annually, to the Deputy Assistant Secretary for Health Studies through the Operations Office Manager, a written report summarizing HRP medical activity during the previous year. The SOMD must comply with any DOE directives specifying the form or contents of the annual report.

(d) The SOMD must investigate any reports of performance issues regarding a Designated Physician or Designated Psychologist, and the SOMD may suspend either official from HRP-related duties. If the SOMD suspends either official, the SOMD must notify the Deputy Assistant Secretary for Health

Studies and provide supporting documentation and reasons for the action.

§ 712.35 Deputy Assistant Secretary for Health Studies.

The Deputy Assistant Secretary for Health Studies or his or her designee must:

(a) Develop policies, standards, and guidance for the medical aspects of the

assessment (test) approved by the Deputy Assistant Secretary for Health Studies and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview, which is conducted annually at the time of the medical examination.

(3) Every third year. The medical assessment for recertification must include a generally accepted

§ 712.37 Evaluation for hallucinogen use.

If DOE determines that an HRP or HRP-certified individual has used any hallucinogen, the individual is not eligible for certification or recertification unless:

(a) Five years have passed since the last use of the hallucinogen; and

(b) The individual has a record of

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE171; Notice No. 23–01–04–SC–A]

Special Conditions: Eclipse Aviation Corporation, Model 500; Fire Extinguishing System for Aft Mounted

submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All

(7) Equivalent level of safety findings, if any; and

(8) Special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Model 500 because of a novel or unusual design feature, special conditions are prescribed under the

Studies and provide supporting documentation and reasons for the action.

§ 712.35 Deputy Assistant Secretary for Health Studies.

The Deputy Assistant Secretary for Health Studies or his or her designee must:

(a) Develop policies, standards, and guidance for the medical aspects of the HRP, including the psychological testing inventory to be used;

(b) Review the qualifications of Designated Physicians and Designated Psychologists, and concur or nonconcur with their designations by sending a statement to the operations office and an informational copy to the SOMD;

(c) Provide technical assistance on medical aspects of the HRP to all DOE elements and DOE contractors; and

(d) Concur or nonconcur with the medical bases of decisions rendered on appeals of HRP certification decisions.

§ 712.36 Medical assessment process.

(a) The Designated Physician, under the supervision of the SOMD, is responsible for the medical assessment of HRP and HRP-certified individuals. In carrying out this responsibility, the Designated Physician or the SOMD must integrate the medical evaluations, psychological evaluations, any psychiatric evaluations, and any other relevant information to determine an individual's overall medical qualification for assigned duties.

(b) Employers must provide a job task analysis or detailed statement of duties for those individuals involved in HRP duties to both the Designated Physician and the Designated Psychologist before each medical assessment and psychological evaluation. HRP medical assessments and psychological evaluations may not be performed if a job task analysis or detailed statement of duties has not been provided.

(c) The medical process by the Designated Physician includes:

(1) Medical assessments for initial certification, annual recertification, and evaluations for reinstatement following temporary removal from the HRP;

(2) Evaluations from self-referrals and referrals by management;

(3) Routine medical contacts, including routine return-to-work evaluations and occupational and nonoccupational health counseling sessions; and

(4) Review of current, legal drug use.

(d) Psychological evaluations must be conducted:

(1) For initial certification. This psychological evaluation consists of a generally accepted, psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies and a semi-structured interview.

(2) For recertification. This psychological evaluation consists of a semi-structured interview, which is conducted annually at the time of the medical examination.

(3) Every third year. The medical assessment for recertification must include a generally accepted psychological assessment (test) approved by the Deputy Assistant Secretary for Health Studies.

(4) Additional psychological or psychiatric evaluations may be required by the SOMD when needed to resolve HRP concerns.

(e) Following absences requiring return-to-work evaluations under applicable DOE directives, the Designated Physician, with assistance from the Designated Psychologist as necessary, must determine whether a psychological evaluation is necessary.

(f) Except as provided in paragraph (g) of this section, the Designated Physician must forward the completed medical assessment of an HRP and HRP-certified individual to the SOMD, who must make a recommendation based on the assessment to the individual's HRP management official. If the Designated Physician determines that a currently certified individual no longer meets the HRP requirements, the Designated Physician must immediately, orally, inform the HRP management official, with a written explanation to follow within 24 hours.

(g) Only the Designated Physician, subject to informing the SOMD, may make a medical recommendation for return to work and work accommodations for HRP-certified individuals.

(h) The following documentation is required after treatment of an individual for any disqualifying condition:

(1) A summary of the diagnosis, treatment, current status, and prognosis to be furnished to the Designated Physician;

(2) The medical opinion of the Designated Physician advising the individual's supervisor whether the individual is able to return to work in either an HRP or non-HRP capacity; and

(3) Any periodic monitoring plan approved by the Designated Physician, the Designated Psychologist, and the SOMD used to evaluate the reliability of the individual.

(i) If the disqualifying condition was of a security concern, the appropriate procedure described in 10 CFR Part 710 will apply.

§ 712.37 Evaluation for hallucinogen use.

If DOE determines that an HRP or HRP-certified individual has used any hallucinogen, the individual is not eligible for certification or recertification unless:

(a) Five years have passed since the last use of the hallucinogen; and

(b) The individual has a record of acceptable job performance and observed behavior.

§ 712.38 Maintenance of medical records.

(a) The medical records of HRP and HRP-certified individuals must be maintained in accordance with the Privacy Act, 5 U.S.C. 552a and DOE implementing regulations in 10 CFR Part 1008; the Department of Labor's regulations on access to individual exposure and medical records, 29 CFR 1910.1020; and applicable DOE directives. DOE contractors also may be subject to § 503 of the Rehabilitation Act, 29 U.S.C. 793, and its implementing rules, including confidentiality provisions in 29 CFR 60–741.23(d).

(b) The psychological record of an HRP and HRP-certified individual is a component of the medical record. The psychological record must:

(1) Contain any clinical reports, test protocols and data, notes of individual contacts and correspondence, and other information pertaining to an individual's contact with a psychologist;

(2) Be stored in a secure location in the custody of the Designated Psychologist; and

(3) Be kept separate from other medical record documents, with access limited to the SOMD and the Designated Physician.

(c) The records of alcohol and drug testing must be maintained in accordance with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records," and 10 CFR Part 707, "Workplace Substance Abuse Programs at DOE Sites."

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE171; Notice No. 23–01–04–SC–A]

Special Conditions: Eclipse Aviation Corporation, Model 500; Fire Extinguishing System for Aft Mounted Engine Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended notice of proposed special conditions.

SUMMARY: This notice amends special conditions that were proposed for the Eclipse Aviation Corporation Model 500 airplane. The original proposed special conditions were published on January 29, 2002 (67 FR 4215). This airplane design includes aft mounted turbine engines. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These amended proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. These special conditions are intended to provide the same level of safety and meet the same intent as previously adopted special conditions for fire extinguishing systems for aft mounted jet engine installations.

DATES: Comments must be received on or before August 16, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, Attention: Rules Docket No. CE171, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE171. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust Street, Kansas City, Missouri, 816–329–4111, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE171." The postcard will be date stamped and returned to the commenter.

Background

On July 12, 2001, Eclipse Aviation Corporation applied for a type certificate for their new Model 500.

The Model 500 design includes turbine engines mounted aft on the fuselage, which means early visual detection of engine fire is precluded. The applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted turbine engine installations, along with the need to protect such installed engines from fires, were not envisioned in the development of part 23; therefore, a special condition regarding fire protection for the engines of the Model 500 is required.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Eclipse Aviation Corporation must show that the Model 500 meets the following:

(1) Applicable provisions of 14 CFR part 23, effective December 18, 1964, as amended by Amendments 23–1 through 23–54 (September 14, 2000).

(2) Part 34 of the Federal Aviation Regulations effective September 10, 1990, plus any amendments in effect on the date of type certification.

(3) Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect on the date of type certification.

(4) Noise Control Act of 1972.

(5) Special conditions that are not relevant to these proposed special conditions, if any;

(6) Exemptions, if any;

(7) Equivalent level of safety findings, if any; and

(8) Special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Model 500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 500 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Eclipse Aviation Corporation Model 500 will incorporate the following novel or unusual design feature:

Turbine engines mounted on the aft of the fuselage. Aft mounted turbine engine installations need to be protected from fire since early visual detection of engine fires is not possible. This notice proposes a special condition for a fire extinguishing system for the engines of the Model 500.

Applicability

As discussed above, these special conditions are applicable to the Eclipse Aviation Corporation Model 500. The engine installation used in the Model 500 does not utilize additional engine compartments other than those addressed in the special conditions. Should Eclipse Aviation Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

The originally published proposed special conditions have been revised to clarify that the intent of the proposed rule is to require a fire extinguishing system (reference 14 CFR part 23, § 23.1195(a)(1)) only if a fire is not controllable, and to remove the references to engine compartments that do not exist in this engine installation.

Engine Fire Extinguishing System

(a) Fires originating in combustor, turbine, and tailpipe sections of the engine installation which contain lines or components carrying flammable fluids must either:

(1) be demonstrated at critical conditions to be controllable by test or a combination of test or analysis; or

(2) a fire extinguishing system must

below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

proposed AD are intended to prevent the balance weight attachment screws from becoming loose. Loose screws could come into contact and interfere with the horizontal stabilizer. This interference could restrict elevator movement and result in loss of elevator pitch control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or

effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Determining whether the elevator has been removed for repair or repaint;

—Inspecting the elevator balance weight attachment screws to determine if they are the correct length;

—Correcting the installation of

Conclusion

The originally published proposed special conditions have been revised to clarify that the intent of the proposed rule is to require a fire extinguishing system (reference 14 CFR part 23, § 23.1195(a)(1)) only if a fire is not controllable, and to remove the references to engine compartments that do not exist in this engine installation configuration. This amended special condition does not change the original technical requirements of the proposed special conditions that were the same as the previous requirements applied to part 23 airplanes with aft mounted turbine engines. The Eclipse Model 500 powerplant installation does not have a traditional jet engine nacelle design and does not perform the function of what is considered a traditional nacelle from a fire hazard standpoint. Areas that a fire extinguishing system would normally protect against fire hazards, such as nacelle compartments that can accumulate (pool) flammable fluids that can ignite and support combustion, do not exist in the Model 500 engine nacelle design. Therefore, this rule requires the applicant to show that the chosen control means is effective for any fire originating in the engine nacelle area under all operating conditions, including worst case critical conditions. If the applicant cannot meet this requirement as proposed, then a fire extinguishing system as defined in this publication will be required. These revised special conditions were coordinated and concurred with by the applicant. This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the Eclipse Model 500 airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Eclipse Aviation Corporation Model 500.

Engine Fire Extinguishing System

(a) Fires originating in combustor, turbine, and tailpipe sections of the engine installation which contain lines or components carrying flammable fluids must either:

(1) be demonstrated at critical conditions to be controllable by test or a combination of test or analysis; or

(2) a fire extinguishing system must serve each engine compartment.

(b) If a fire extinguishing system is installed, the system must comply with the following requirements:

(1) The system must serve each engine compartment;

(2) The system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used; and

(3) For a nacelle, the system must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(c) If a fire extinguishing system is installed, fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or vapors from entering any personnel compartment even though a defect may exist in the extinguishing system.

(d) If fire extinguishing agents are used, the agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures;

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire-extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter;

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning;

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(e) If a fire extinguishing system is installed, system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri on July 5, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate.

[FR Doc. 02–18017 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–21–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 200, 300, and 1900 Series, and Models F90 and A100–1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) 200, 300, and 1900 series, and Models F90 and A100–1 airplanes. This proposed AD would require you to check the airplane logbook to determine if the elevator(s) have been removed from the airplane. If the elevator(s) have been removed, this proposed AD would also require you to inspect the elevator balance weight attachment screws for correct length, and, if necessary, install new screws that are of improved design and rebalance the elevator, depending on the results of the inspection. This proposed AD is the result of the elevator balance weight attachment screws and balance weights being improperly installed when balancing the elevator after it had been removed for repair or repainting. The actions specified by this proposed AD are intended to prevent the balance weight attachment screws from becoming loose. Loose screws could come into contact and interfere with the horizontal stabilizer. This interference could restrict elevator movement and result in loss of elevator pitch control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 16, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2001–CE–21–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, P.O. 9709 E. Central, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–21–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

Raytheon notified FAA of three incidents in which the elevator jammed during takeoff and landing on Models 200, B300, and 1900C airplanes. Investigations showed the cause for the elevator to jam was that the attachment screws and balance weights were not properly installed when the elevators were balanced after they were removed for repair or repainting.

Improperly installed balance weight attachment screws could result in the screws becoming loose and contacting and interfering with the horizontal stabilizer. Interference with the horizontal stabilizer could result in restricted elevator movement.

What Are the Consequences if the Condition Is Not Corrected?

If this condition is not detected and corrected, loose screws could interfere with the horizontal stabilizer, which could cause restricted elevator movement. This condition could result in loss of elevator pitch control.

Is There Service Information That Applies to This Subject?

Raytheon has issued Mandatory Service Bulletin SB 27–3187, Rev. 1, September, 2001.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Determining whether the elevator has been removed for repair or repaint;
—Inspecting the elevator balance weight attachment screws to determine if they are the correct length;
—Correcting the installation of improperly installed screws; and
—Rebalancing the elevators with new attachment bolts.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other 200, 300, and 1900 series, and Models F90 and A100–1 airplanes of the same type design;
—Certain actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to check the airplane logbook to determine if the elevator(s) has/have been removed from the airplane. If the elevator(s) has/have been removed, this proposed AD would also require you to inspect the elevator balance weight attachment screws for correct length, and, if necessary, install new screws that are of improved design and rebalance the elevator, depending on the results of the inspection.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2334 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed check of the airplane logbook:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	None required	$60	$140,040

We estimate the following costs to accomplish the proposed inspection of the elevator balance weight attachment screws that would be required based on the results of the proposed logbook check. We have no way of determining the number of airplanes that may need such inspection:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	None required	$60

Model	Serial Nos.
(13) 200CT	BN–1.
(14) 300 and 300LW	FA–1 through FA–230 and FF–1 through FF–19.
(15) B300	FL–1 through FL–241.
(16) B300C	FM–1 through FM–9 and FN–1.
(17) 1900	UA–2 and UA–3.
(18) 1900C	UB–1 through UB–74 and UC–1 through UC–174.
(19) 1900C (C–12J)	UD–1 through UD–6.
(20) 1900D	UE–1 through UE–358.

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	None required	$60	$140,040

We estimate the following costs to accomplish the proposed inspection of the elevator balance weight attachment screws that would be required based on the results of the proposed logbook check. We have no way of determining the number of airplanes that may need such inspection:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120	None required	$120

We estimate the following costs to accomplish the proposed replacement of the elevator balance weight attachment screws that would be required based on the results of the proposed inspection for airplanes in which the logbook check reveals that further inspection is necessary. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	$16 per bolt × 2 bolts per elevator = $32	$92

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations(14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2001–CE–21–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) F90	LA–2 through LA–236.
(2) A100–1 (U–21J)	BB–3 through BB–5.
(3) A200 (C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(4) A200C (UC–12B)	BJ–1 through BJ–66.
(5) A200CT (C–12D), (C–12F), (RC–12D), (FWC–12D), (RC–12G), (RC–12H), (RC–12K), or (RC–12P).	BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, GR–1 through GR–19, FE–1 through FE–9, FE–25 through FE–36.
(6) B200	BB–734, BB–793, BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, and BB–913 through BB–1652.
(7) B200C	BL–37 through BL–57, BL–61 through BL–72, BL–124 through BL–140.
(8) B200C (C–12F), (C–12R), (UC–12M), or (UC–12F)	BL–73 through BL–112, BL–118 through BL–123, BP–64 through BP–71, BU–1 through BU–12, BV–1 through BV–12, and BW–1 through BW–29.
(9) B200CT	BN–2 through BN–4, FG–1 and FG–2.
(10) B200T and 200T	BT–1 through BT–38.
(11) 200	BB–2, BB–6 through BB–733, BB–735 through BB–792, BB–794 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912.
(12) 200C	BL–1 through BL–23 and BL–25 through BL–36.

Model	Serial Nos.
(13) 200CT	BN–1.
(14) 300 and 300LW	FA–1 through FA–230 and FF–1 through FF–19.
(15) B300	FL–1 through FL–241.
(16) B300C	FM–1 through FM–9 and FN–1.
(17) 1900	UA–2 and UA–3.
(18) 1900C	UB–1 through UB–74 and UC–1 through UC–174.
(19) 1900C (C–12J)	UD–1 through UD–6.
(20) 1900D	UE–1 through UE–358.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the balance weight attachment screws from becoming loose. Loose screws could come into contact and interfere with the horizontal stabilizer. This interference could restrict elevator movement and result in loss of elevator pitch control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the airplane logbook to determine whether the elevator(s) has/have been removed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.	Within the next 200 hours time-in-service (TIS) after the effective date of this AD.	No special procedures required to check the logbook. Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, references this airplane logbook check.
(2) If, by checking the airplane logbook:(i) the pilot can positively show that both elevators have never been removed, then the requirements of paragraphs (d)(2)(ii) and (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). (ii) the pilot identifies that the elevator(s) has/have been removed, or if complete records of elevator(s) do not exist, inspect the elevator balance weight attachment screws to determine if they are the correct length	Within the next 200 hours time-in-service (TIS) after the effective date of this AD.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001.
(3) If, during the inspection required in paragraph (d)(2)(ii) of this AD, the elevator balance weight attachment screws are found to be the correct length, paragraph (d)(4) of this AD does not apply.	Not Applicable	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001.
(4) If, during the inspection required in paragraph (d)(2)(ii) of this AD, the elevator balance weight attachment screw(s) is/are found to be the incorrect the length, remove and rebalance elevator(s) by installing the balance weights with the appropriate new elevator balance weight attachment bolts, part number (P/N) in the range of NAS6703HU12 through NAS6703HU22, that have drilled heads and are secured with safety wire, and re-install the elevator.	Prior to further flight after the inspection required in paragraph (d)(2)(ii) of this AD.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, and the applicable maintenance manual.
(5) Do not install, on any affected airplane, an elevator that has been rebalanced unless it has been rebalanced by installing the balance weights with the appropriate new elevator balance weight attachment bolts, P/N in the range of NAS6703HU12 through NAS6703HU22, that have drilled heads and are secured with safety wire.	As of the effective date of this AD.	Not applicable.

Note 1: The compliance times specified in Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, are different from those required by this AD. The compliance times in this AD take precedence over those in the service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal

decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light

applicable. That NPRM was prompted by reports of cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill. That condition, if not corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Actions Since Issuance of NPRM

• If certain existing temporary repairs are found—Performing repetitive visual inspections for cracking of skins and external doublers and repetitive borescope and HFEC inspections for cracking of internal structure, accomplishing a one-time inspection of existing repairs of certain frames for growth of cracks beyond the repair angles, and replacing frames with new frames if necessary (Condition 3, Option

to Revision 01 of the service bulletin. Based on the new service bulletin and for further clarification, we have reordered and reidentified many of the paragraphs in this supplemental NPRM. We also have considered the commenter's editorial suggestions and, where we agree that they provide clarification, we have incorporated such changes. (Due to the extensive revisions of the original NPRM, we find it is

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 9, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17885 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–57–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, that would have required, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. This new action revises the proposed rule by revising certain procedures and clarifying the proposed requirements. The actions specified by this new proposed AD are intended to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–57–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–57–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD) applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 18, 2000 (65 FR 56270). That NPRM would have required, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. That NPRM was prompted by reports of cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill. That condition, if not corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Actions Since Issuance of NPRM

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. (The original NPRM referred to McDonnell Douglas Service Bulletin DC9–53–290, dated December 14, 1999, as the appropriate source of service information for the proposed actions.) Revision 01 of the service bulletin incorporates changes made to a certain service rework drawing based on Non-Destructive Testing analysis and operator experience. These changes have resulted in the following revisions in Revision 01 of the service bulletin:

- Changes to certain inspection methods and parts to be inspected.
- Clarification of certain inspection procedures, criteria, and areas.
- Revision of kit information and the addition of new kits and parts.
- Deferral of the inspection of certain parts that cannot be inspected without extensive disassembly of the airplane until the permanent repair is done.

Revision 01 of the service bulletin now describes the following procedures:

- A visual inspection to determine if certain temporary repairs have been installed.
- A visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit.
- A high frequency eddy current (HFEC) inspection for cracking of Zees, and replacement of cracked Zees with new parts.
- Visual, borescope, and HFEC inspections for cracking of the skins and frames.

The service bulletin also describes applicable follow-on and corrective actions, which include:

- If no cracks and no previous repairs are found—Repeating the previously accomplished visual, borescope, and HFEC inspections for cracking (Condition 1, Option 1).
- If cracks within certain limits are found—Accomplishing a temporary repair (including installation of external doublers), and performing repetitive visual inspections for cracking of skins and external doublers and repetitive borescope and HFEC inspections for cracking of internal structure (Condition 2, Option 1).
- If certain existing temporary repairs are found—Performing repetitive visual inspections for cracking of skins and external doublers and repetitive borescope and HFEC inspections for cracking of internal structure, accomplishing a one-time inspection of existing repairs of certain frames for growth of cracks beyond the repair angles, and replacing frames with new frames if necessary (Condition 3, Option 1).

For all airplanes except those on which no cracking or previous temporary repair is found, the service bulletin recommends accomplishing a permanent repair (including visual and eddy current inspections, and repair replacement, or rework of various parts, if necessary). The recommended compliance time for such permanent repair varies by condition. Installing the permanent repair eliminates the need to perform repetitive inspections at the pre-permanent-repair intervals, but the service bulletin recommends eventual accomplishment of certain inspections to find cracks of the permanent repair area.

Accomplishment of the actions specified in Revision 01 of the service bulletin is intended to adequately address the identified unsafe condition.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

No Objection to Proposed AD

One commenter, an operator, states that the proposed AD would not apply to its fleet and offers no additional comments on the original NPRM.

Another commenter states that it has no objection to the proposed AD because it is anticipating that all affected airplanes in its fleet will be retired before the compliance time. However, the commenter did offer several comments on the original NPRM.

Refer to Revised Service Information and Clarify Requirements of Proposed AD

One commenter makes numerous suggestions for revisions to the original NPRM. The commenter requests that the FAA revise the proposed AD to refer to Revision 01 of the service bulletin, described previously, "or later approved revisions" as the appropriate source of service information for the proposed actions. The commenter also suggests numerous editorial changes to the original NPRM.

We concur that it is necessary to revise this supplemental NPRM to refer to Revision 01 of the service bulletin. Based on the new service bulletin and for further clarification, we have reordered and reidentified many of the paragraphs in this supplemental NPRM. We also have considered the commenter's editorial suggestions and, where we agree that they provide clarification, we have incorporated such changes. (Due to the extensive revisions of the original NPRM, we find it is necessary to reopen the comment period to give interested parties additional opportunity to comment on the proposal.)

With regard to the commenter's request to refer to "later approved revisions" of the service bulletin, we do not concur. The use of that phrase violates Office of the Federal Register (OFR) regulations regarding approval of materials that are incorporated by reference. An AD may only refer to a service document that is submitted and approved by the OFR for "incorporation by reference." For operators to use later revisions of the referenced document (issued after the publication of the AD), either the AD must be revised to refer to the specific later revisions, or request for approval of the use of the later revisions must be requested as an alternative method of compliance (AMOC) with the AD (e.g., under the provisions of paragraph (j)(1) of this supplemental NPRM). We have made no change to the supplemental NPRM in this regard.

Clarify Compliance Time for Airplanes With Previously Installed Repairs

One commenter requests that we clarify the compliance time in paragraph (g)(1) of the original NPRM. (The provisions of paragraph (g)(1) of the original NPRM are included under paragraph (d)(1) of this supplemental NPRM.) Paragraph (g)(1) of the original NPRM applies to airplanes on which certain temporary repairs have been installed previously. That paragraph refers to other paragraphs in the original NPRM that specify accomplishment of various inspections within 2,000 and 3,500 landings after installation of the temporary repair. The commenter points out that this proposed compliance time may conflict with the initial compliance time in paragraph (a)(1) of the original NPRM—i.e., the later of 40,000 total landings or 5,000 landings after the effective date of the AD. The commenter provides the example that, if a temporary repair was installed before the effective date of the proposed AD, and the initial inspection in the proposed AD was not done until after 3,500 landings after the effective date of the AD, the airplane would be out of

compliance with the proposed AD. The commenter states that the original NPRM should be revised to direct operators to accomplish repetitive inspections of existing temporary repairs at the applicable intervals, commencing at the time of the initial inspections specified in paragraph (a) of the proposed AD.

We have reviewed paragraph (g)(1) of the original NPRM and concur that we

subparagraph. Paragraph (j)(2) of this supplemental NPRM is added to specify that "an AMOC for any inspection or repair required by this [proposed] AD that provides an acceptable level of safety may be used per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the

Cost Impact

There are approximately 809 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

window sill has been accomplished before the effective date of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is

applicable) per Condition 1, Option 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This terminates the repetitive inspections per paragraph (b)(1) of this AD.

Note 6: Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as an additional source of service information for identifying parts to be

compliance with the proposed AD. The commenter states that the original NPRM should be revised to direct operators to accomplish repetitive inspections of existing temporary repairs at the applicable intervals, commencing at the time of the initial inspections specified in paragraph (a) of the proposed AD.

We have reviewed paragraph (g)(1) of the original NPRM and concur that we need to clarify the compliance time for the requirements proposed in that paragraph. We have revised the relevant paragraphs in this supplemental NPRM to specify a compliance time for the general visual inspection of 2,000 landings after the temporary repair, or before further flight after accomplishment of the initial inspections specified in paragraph (a) of this supplemental NPRM, whichever is later, and a compliance time for the borescope and HFEC inspections of 3,500 landings after the temporary repair, or before further flight after accomplishment of the initial inspections specified in paragraph (a) of this supplemental NPRM, whichever is later.

Clarify Appropriate Source of Repair Instructions

One commenter requests that we revise several paragraphs of the original NPRM to refer to the correct section of the service bulletin for repair instructions. As an example, the commenter notes that paragraph (c) of the original NPRM, which describes actions for airplanes with cracking within certain limits, specifies to repair cracks per paragraph (b)(2) of the original NPRM. That paragraph, in turn, specifies accomplishment of the permanent repair specified in Condition 1, Option 2. However, Condition 1, Option 2 of the accomplishment instructions of the service bulletin provides repair instructions for airplanes with no cracks and no previous repairs. The commenter requests that we revise paragraphs (c), (f), (g)(2), and (i) of the original NPRM to refer to the correct source of repair instructions in the service bulletin.

We concur. As explained previously, we have restructured this supplemental NPRM to take into account the changes in Revision 01 of the service bulletin, and this supplemental NPRM contains correct references to the repair instructions in the service bulletin.

Explanation of Other Change Made to the Proposed AD

Paragraph (j) of this supplemental NPRM (which appeared as paragraph (k) of the original NPRM) includes a new subparagraph. Paragraph (j)(2) of this supplemental NPRM is added to specify that "an AMOC for any inspection or repair required by this [proposed] AD that provides an acceptable level of safety may be used per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, to make such findings." For a repair method to be approved, the approval must specifically reference this AD.

Explanation of New Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Revision 01 of the service bulletin described previously, except as discussed below.

Differences Between Supplemental NPRM and Service Information

Operators should note that, although the service bulletin specifies that the manufacturer should be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Also, the service bulletin specifies a "visual" inspection for cracking of the skins and frames. We find that the procedures involved in that inspection constitute a "detailed" inspection. A definition of "detailed inspection" is included in Note 4 of this supplemental NPRM.

Further, though the service bulletin describes procedures for inspections to eventually be performed following installation of the permanent repair, the service bulletin does not clearly identify procedures for addressing any crack found in these follow-on inspections. Therefore, if any crack is found during the follow-on inspections after installation of the permanent repair, the proposed AD would require a repair to be accomplished in accordance with a method approved by the FAA.

Conclusion

Since the changes described previously may expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 809 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed initial inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $137,280, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–57–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes; listed in Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously

To prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the AD and the referenced service bulletin, the AD prevails.

Initial Inspections

(a) Before the accumulation of 40,000 total landings, or within 5,000 landings after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (a)(1) AND (a)(2) of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

(1) Do a general visual inspection to determine if any existing repair of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill has been accomplished before the effective date of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Do inspections to detect cracks or loose or missing fasteners of the cockpit enclosure window sill per paragraphs 3.B.1. through 3.B.6. of the Accomplishment Instructions of the service bulletin. The inspections include a general visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit; a high frequency eddy current (HFEC) inspection for cracking of Zees; and detailed, borescope, and HFEC inspections for cracking of the skins and frames.

Note 4: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Note 5: If any cracked Zee is found during any inspection per paragraph (a)(2) of this AD, refer to paragraph (h) of this AD.

Condition 1 (No Previous Repair and No Crack)

(b) If no previous repair and no crack is found during the inspections required by paragraphs (a)(1) and (a)(2) of this AD: Do the actions specified in paragraph (b)(1) or (b)(2) of this AD, at the times specified in those paragraphs.

Condition 1, Option 1: Repetitive Inspections

(1) Condition 1, Option 1: Repeat the inspections required by paragraph (a)(2) of this AD every 5,000 landings, until paragraph (b)(2) of this AD is done. If any crack is found, determine the applicable Condition as specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, and do the applicable actions required by this AD.

Condition 1, Option 2: Permanent Repair

(2) Condition 1, Option 2: Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 1, Option 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This terminates the repetitive inspections per paragraph (b)(1) of this AD.

Note 6: Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as an additional source of service information for identifying parts to be inspected, and repairing, replacing, or reworking those parts.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (b)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

Condition 2 (Any Crack Within Flyable Limits for Temporary Repair)

(c) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is WITHIN the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (c)(1) OR (c)(2) of this AD.

Note 7: Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as the source for determining flyable limits.

Condition 2, Option 1: Temporary Repair and Repetitive Inspections

(1) Condition 2, Option 1: Do paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 2, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (c)(2)(i) of this AD is done.

Note 8: If any crack is found during any inspection per paragraph (c)(1)(ii) or (c)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the

service bulletin, repeat the inspection every 3,500 landings until paragraph (c)(2)(i) of this AD is done.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (c)(2) of this AD.

Condition 2, Option 2: Permanent Repair

(2) Condition 2, Option 2: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

Condition 3 (Any Crack Outside Flyable Limits for Temporary Repair)

(d) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is OUTSIDE the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (d)(1) OR (d)(2) of this AD.

Condition 3, Option 1: Temporary Repair and Repetitive Inspections

(1) Condition 3, Option 1: Do paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), and (d)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 3, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (d)(2)(i) of this AD is done.

Note 9: If any crack is found during any inspection per paragraph (d)(1)(ii) or (d)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (d)(2)(i) of this AD is done.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (d)(2) of this AD.

Condition 3, Option 2: Permanent Repair

(2) Condition 3, Option 2: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

Condition 4 (Any Crack Outside Flyable Limits for Permanent Repair)

(e) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is OUTSIDE the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (e)(1) OR (e)(2) of this AD.

Condition 4, Option 1: Temporary Repair and Repetitive Inspections

(1) Condition 4, Option 1: Do paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 4, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (e)(2)(i) of this AD is done.

Note 10: If any crack is found during any inspection per paragraph (e)(1)(ii) or (e)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (e)(2)(i) of this AD is done.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (e)(2) of this AD.

Condition 4, Option 2: Permanent Repair

(2) Condition 4, Option 2: Do paragraphs (e)(2)(i) and (e)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

Condition 5 (Any Crack Found During Repair)

(f) If any crack is found during any repair required by this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. For a repair method to be approved, the approval must specifically reference this AD.

Cracks Found During Follow-On Inspections After Permanent Repair

(g) If any crack is found during any inspection required by paragraph (c)(2)(ii), (d)(2)(ii), (e)(2)(ii), or (f)(2) of this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, may approve AMOCs for this AD. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 1852, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, may approve AMOCs for this AD. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 11, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18025 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–U

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

service bulletin, repeat the inspection every 3,500 landings until paragraph (c)(2)(i) of this AD is done.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (c)(2) of this AD.

Condition 2, Option 2: Permanent Repair

(2) Condition 2, Option 2: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 2, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (c)(1)(ii) and (c)(1)(iii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (c)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Condition 3 (Existing Temporary Repairs Per Certain Service Information)

(d) If any temporary repair is found during any inspection required by paragraph (a)(1) of this AD and that repair WAS accomplished per the service information identified in Condition 3 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (d)(1) or (d)(2) of this AD. Also, if the Station Y=83.550 frames have been repaired before the effective date of this AD per DC–9/MD–80 Structural Repair Manual, Section 53–03, Figure 34, or Boeing Service Rework Drawing S5095301127, do a one-time inspection of the frames for crack growth emanating beyond the repair angles. If any crack progression is found, before further flight, replace the frames with new frames per the Accomplishment Instructions of the service bulletin.

Condition 3, Option 1: Repetitive Inspections

(1) Condition 3, Option 1: Do paragraphs . (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this AD at the times specified in those paragraphs.

(i) Within 2,000 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (d)(2)(i) of this AD is done.

Note 9: If any crack outside the flyable limits is found during any inspection per paragraph (d)(1)(i) or (d)(1)(ii) of this AD, refer to paragraph (f) of this AD.

(ii) Within 3,500 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (d)(2)(i) of this AD is done.

(iii) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, or before further flight if more than 8,000 landings have been accumulated since the temporary repair, do the permanent repair specified in paragraph (d)(2)(i) of this AD.

Condition 3, Option 2: Permanent Repair

(2) Condition 3, Option 2: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 3, Option 2 of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (d)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found: Repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Condition 4 (Existing Repairs Per Other Service Information)

(e) If any repair is found during any inspection required by paragraph (a)(1) of this AD, and the repair was not accomplished per the service information identified in Condition 4 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Condition 5 (Crack Outside Flyable Limits for Temporary Repair)

(f) If any crack is found during any inspection required by paragraph (a)(2), (b)(1), (c)(1)(ii), (c)(1)(iii), (d)(1)(i), or (d)(1)(ii) of this AD; AND that crack is OUTSIDE the limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; AND a permanent repair was NOT previously accomplished per this AD: Do paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs.

(1) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(2) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Corrective Actions: Cracking Following Permanent Repair

(g) If any crack or crack progression is found during any inspection required by paragraph (b)(2)(ii), (c)(2)(ii), (d)(2)(ii), or (f)(2) of this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO.

Corrective Action for Cracked Zee

(h) If any cracked Zee is found during any inspection performed per paragraph (a)(2) of this AD: Before further flight, replace the cracked Zee with a new part per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

Previously Accomplished Inspections and Repairs

(i) Inspections and repairs accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, dated December 14, 1999, are acceptable for compliance with the corresponding actions in this AD.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance (AMOC) or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) An AMOC for any inspection or repair required by this AD that provides an acceptable level of safety may be used per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 11, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18025 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. This proposal would require revising the Airplane Flight Manual to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–40–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1119, fax (425) 687–4243. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

sbull; Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–40–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background Information

On October 25, 1999, a Learjet Model 35 airplane operating under part 135 of the Federal Aviation Regulations (14 CFR 135) departed Orlando International Airport en route to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes indicated that the windows of the Model 35 airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks, and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane

flightcrews did not don their oxygen masks when the cabin aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35 and 36 airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Model 35A and 36A airplanes do not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated.

In addition, we have previously issued AD 2001–22–10, amendment 39–12489 (66 FR 54425, October 29, 2001), which applies to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes. That AD requires revising the Emergency Procedures and Abnormal Procedures sections of the AFM to advise the flightcrew to immediately don oxygen masks in the event of significant

revising two sections of the FAA-approved AFM, as described previously in the Explanation of Relevant Service Information section of this proposed AD.

Cost Impact

The FAA estimates that 168 Airbus Model A300 B2 and B4; A300–600; and Model A310 series airplanes of U.S. registry would be affected by this

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–40–AD.

Applicability: All Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category.

loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

(1) For Model A300 series airplanes, revise the Emergency Procedures section of the

flightcrews did not don their oxygen masks when the cabin aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35 and 36 airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Model 35A and 36A airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew and loss of control of the airplane.

Discussion

The FAA has received reports that a review of the emergency procedures in the AFMs for all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes revealed that those AFMs also did not contain the requirement for the flightcrew to immediately don emergency oxygen masks. In light of this, the FAA considers issuance of this AD is necessary to address the identified unsafe condition.

Other Related Rulemaking

The FAA has previously issued AD 2000–23–10, amendment 39–11980 (65 FR 70294, November 22, 2000), which applies to all Lockheed Model 188A and 188C series airplanes. That AD requires a revision of the AFM to add procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated. The requirements of that AD are intended to prevent incapacitation of the flightcrew as a result of lack of oxygen and consequent loss of control of the airplane.

In addition, we have previously issued AD 2001–22–10, amendment 39–12489 (66 FR 54425, October 29, 2001), which applies to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes. That AD requires revising the Emergency Procedures and Abnormal Procedures sections of the AFM to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes. The requirements of that AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane.

We are continuing to review emergency procedures in the AFMs for other airplane models to ensure that the AFMs contain appropriate instructions for donning the flightcrew oxygen masks. We may consider further rulemaking based on the results of these reviews.

FAA's Determination

The FAA finds that it is necessary to require revisions to the Emergency Procedures section (for Model A300 B2 and B4 series airplanes) and the Procedures Following Failure section (for Model A300–600 and A310 series airplanes) of the FAA-approved AFM, as applicable.

Explanation of Relevant Service Information

Airbus issued a facsimile, dated January 30, 2002, which revises the Emergency Procedures and the Procedures Following Failure sections of the FAA-approved AFMs for the respective airplane models referenced above. These AFM revisions specify that flightcrews must don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. Airbus will incorporate the revisions in the next general revision to the AFM for Model A300 B2 and B4, A300–600, and A310 series airplanes.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising two sections of the FAA-approved AFM, as described previously in the Explanation of Relevant Service Information section of this proposed AD.

Cost Impact

The FAA estimates that 168 Airbus Model A300 B2 and B4; A300–600; and Model A310 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,080, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–40–AD.

Applicability: All Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

(1) For Model A300 series airplanes, revise the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"EMERGENCY PROCEDURES

CABIN DEPRESSURIZATION
CREW OXYGEN MASKS ..... ON
CREW COMMUNICATIONS ..... established
PASSENGER OXYGEN ..... as required
EMERGENCY DESCENT ..... as required (see 3.02.00 page 8)"

(2) For Model A300–600 and A310 series airplanes: Revise the Procedures Following Failure section of the FAA-approved AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"PROCEDURES FOLLOWING FAILURE

CABIN PRESS
EXCESS CAB ALT
OXY MASKS ..... ON
DESCENT ..... AS RQRD
IF RAPID DECOMPRESSION EMERG DESCENT PROC ..... APPLY"

Removal of AD From AFM

(b) When the information included in the AFM procedures specified in paragraphs (a)(1) and (a)(2) of this AD has been incorporated into the FAA-approved general revision of the AFM, and the information contained in the general revision is identical to that specified in this AD, this AD may be removed from the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 11, 2002.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18027 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–09]

Proposed Amendment to Class E Airspace; Mount Pocono, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Class E airspace area at Mount Pocono, PA. The development of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) for the Pocono Mountains Municipal Airport (KMPO), Mount Pocono, PA, has made this proposal necessary. Sufficient controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before August 16, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–09, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed,

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Issued in Jamaica, New York, on July 1, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–17579 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 01N–0067]

Dental Devices: Classification of Encapsulated Amalgam Alloy and Dental Mercury and Reclassification of

are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AEA–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Mount Pocono, PA. The development of a SIAP to serve flights operating IFR into the airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL within a 6.4 mile radius of the airport and an 8 mile wide corridor extending to 8.6 miles northwest of the airport is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 CFR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designation and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Mount Pocono, PA [REVISED]

Pocono Mountains Municipal Airport, Mount Pocono, PA
Lat. 41°08′15″ N., long 75°22′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pocono Mountains Municipal Airport and within 4 miles each side of the 295° bearing from the airport extending from the 6.4-mile radius to 8.6 miles northwest of the airport.

* * * * *

Issued in Jamaica, New York, on July 1, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–17579 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–07]

Proposed Amendment to Class E Airspace; Seneca Falls, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Class E airspace area at Seneca Falls, NY. The amendment to a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Finger Lakes Regional Airport (K0G7), Seneca Falls, NY and a change in the airport reference point have made this proposal necessary. Controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before August 16, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–07, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AEA–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Seneca Falls, NY. An amendment to a SIAP based on the GPS and a change in the airport reference point have made this action necessary. The airspace will be defined to accommodate the approach and contain IFR operations to the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Seneca Falls, NY [Revised]

Finger Lakes Regional Airport
(Lat.42°52′50″ N., long. 76°46′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Finger Lakes Regional Airport.

* * * * *

Issued in Jamaica, New York, on July 1, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–17577 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 01N–0067]

Dental Devices: Classification of Encapsulated Amalgam Alloy and Dental Mercury and Reclassification of Dental Mercury; Issuance of Special Controls for Amalgam Alloy; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period for the proposed rule on the classification of encapsulated amalgam alloy and dental mercury, the reclassification of dental mercury, and the issuance of special controls for amalgam alloy. The proposed rule was published in the **Federal Register** of February 20, 2002 (67 FR 7620). The agency is taking this action in response to a request for an extension. The comment period for this information closed on May 21, 2002. Elsewhere in this issue of the **Federal Register**, FDA is reopening for 60 days the comment period on the draft guidance entitled "Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling."

DATES: Submit written or electronic comments on the proposed rule by September 16, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Susan Runner, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 20, 2002 (67 FR 7620), FDA published a proposed rule entitled "Dental Devices: Classification of Encapsulated Amalgam Alloy and Dental Mercury and Reclassification of Dental Mercury; Issuance of Special Controls for Amalgam Alloy."

FDA received an electronic request dated May 20, 2002, requesting that the agency extend the comment period on the proposed rule for 60 days, noting the importance of public health issues involved and explaining that there were apparently technical difficulties with the submission of electronic comments. FDA has determined that it is appropriate to grant this request.

In addition, the rule would clarify that geological data and information, acquired under part 251 and submitted to MMS under part 250, retain proprietary terms under part 251. The rule also expands language that allows selective inspection of G&G data and information that MMS acquires under parts 250 and 251, and uses for specified purposes, by only those

release dates applicable to different parts of data and information obtained under a single permit. Beginning the proprietary term at the time that a permit is issued for all submissions of data or information minimizes such confusion, and aids MMS in managing the release of data and information once the proprietary term expires.

Furthermore, as progressively more data and information are submitted

pursuant to part 251 and later submitted to MMS by a lessee under parts 203 or 250, retain the proprietary terms under part 251 for geological permit data and information, namely, 10 years after MMS issues the permit.

To allow parties who are directly affected by our decisions regarding units, reservoirs, operations, environmental protection, field determinations, and royalty relief to

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity,

250.196. The only entities affected by this rule change are certain geophysical companies, if still in existence, whose data and information being held by us may be released earlier than under current regulations. The Small Business Administration classifies geophysical surveying and mapping services companies under the North American Industry Classification System Code 541360. These changes will have no

FDA received an electronic request dated May 20, 2002, requesting that the agency extend the comment period on the proposed rule for 60 days, noting the importance of public health issues involved and explaining that there were apparently technical difficulties with the submission of electronic comments. FDA has determined that it is appropriate to grant this request.

II. Comments

You may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on classification, reclassification, and special controls for dental amalgam products by September 16, 2002. You must submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–17960 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 251

RIN 1010–AC81

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf—Proprietary Terms and Data Disclosure

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to modify the start date for the 50-year proprietary term for geophysical data, and the start date for the 25-year proprietary term for geophysical information that MMS acquires pursuant to a permit issued under 30 CFR part 251. We propose to change the start of the proprietary terms from the date the data and information are submitted to the date the permit is issued. Although the lengths of the proprietary terms do not change, the net result is the total length of time that geophysical data and information, selected and retained by MMS, are held by MMS before public release will be less than under current practice.

In addition, the rule would clarify that geological data and information, acquired under part 251 and submitted to MMS under part 250, retain proprietary terms under part 251. The rule also expands language that allows selective inspection of G&G data and information that MMS acquires under parts 250 and 251, and uses for specified purposes, by only those persons with a direct interest in related MMS decisions and issues.

DATES: We will consider all comments received by September 16, 2002. We will begin reviewing comments then and may not fully consider comments we receive after September 16, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference AC–81 G&G in your subject line. Include your name and return address in your message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: George Dellagiarino or David Zinzer at (703) 787–1628.

SUPPLEMENTARY INFORMATION: This proposed rule would modify the start date for the proprietary terms for geophysical permit data and information, acquired under part 251, by starting the terms with the date MMS issues the permit. (The proposed rule does not affect the proprietary terms for geophysical data and information related to a deep stratigraphic test.) Currently, the proprietary terms begin when the data and information are submitted to MMS. This change would conform with geological permit data and information whose proprietary terms begin with the date MMS issues the permit. This modification is necessary because MMS may select geophysical data and information numerous times from a single permit.

Current regulations establish a separate release date for each submission of geophysical data or information because the start of the proprietary term occurs with each submission to MMS. This results in complicated and burdensome recordkeeping for submitted data or information over a period of 50 or 25 years (respectively) for each submission. When it is time to release data or information to the public, the dates of submission for the data or information are not readily ascertainable. It also presents confusion to our customers with regard to the separate public release dates applicable to different parts of data and information obtained under a single permit. Beginning the proprietary term at the time that a permit is issued for all submissions of data or information minimizes such confusion, and aids MMS in managing the release of data and information once the proprietary term expires.

Furthermore, as progressively more data and information are submitted electronically, the specific "date of submission" becomes even more difficult to ascertain. Because we will be acquiring these data and information from a consortium on a continuous basis, it will become difficult if not impossible to identify the start date, based on a date of submission, for the proprietary terms. The only readily identifiable date available is the date the permit was issued.

To relieve a substantial administrative recordkeeping burden and to exercise proper management of the release of geophysical data and information, we propose to make this change retroactive to the original establishment date of the regulations at 30 CFR part 251, June 11, 1976.

The original 1976 proprietary term for geophysical data acquired under a permit was 10 years after issuance of the permit. For geophysical information acquired under a permit, the proprietary term was 10 years after submission to the (then U.S. Geological Survey) Supervisor. Effective March 17, 1988, the proprietary term for geophysical data was changed to 50 years after the date on which data are submitted, and for geophysical information the proprietary term was changed to 25 years after the date the information is submitted. These are the current terms for geophysical data and information.

Because these changes were made retroactive to June 1976, companies submitting data and information between June 1976 and March 1988 enjoy the benefit of the proprietary terms of their data and information submitted during that timeframe being extended to 50 years and 25 years, respectively.

The 1988 extension of proprietary terms recognized the longer periods that geophysical data and information remain of some commercial value. MMS believes that the proposed modifications still would adequately protect geophysical data and information because the data and information are protected for 50 and 25 years, respectively, after issuance of the permit.

In addition, we propose to clarify that geological data and information, originally acquired under a permit pursuant to part 251 and later submitted to MMS by a lessee under parts 203 or 250, retain the proprietary terms under part 251 for geological permit data and information, namely, 10 years after MMS issues the permit.

To allow parties who are directly affected by our decisions regarding units, reservoirs, operations, environmental protection, field determinations, and royalty relief to better understand the basis of our decisionmaking process and any related issues, we are also proposing to selectively allow inspection of germane G&G permit and lease data and information that MMS uses to:

(1) Make unitization determinations on two or more leases;

(2) Make competitive reservoir determinations;

(3) Ensure proper plans of development for competitive reservoirs;

(4) Promote operational safety;

(5) Protect the environment;

(6) Make field determinations; or

(7) Determine eligibility for royalty relief.

The disclosure would be restricted to limited inspection of these data and information by those persons with a direct interest in related MMS decisions and issues. Copying, direct access, or other forms of retention by the interested persons will not be allowed. These inspections will occur only at meetings between MMS and the interested persons involved in the above cases.

Procedural Matters

Public Comments Procedure

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. MMS takes all actions that result from the change in the start dates of the proprietary terms, with no costs to outside parties. Similarly, there would be no costs associated to industry concerning our disclosing permitted geophysical information for ensuring proper development.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. There are no other Federal agencies involved in this process, as it relates to release or disclosure of geophysical data and information.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or rights or obligations of their recipients. This rule has no effect on these programs or such rights.

(4) This rule changes the basis for the start of proprietary terms for geophysical data and geophysical information acquired under a permit, retroactive to June 11, 1976. This rule does not raise novel legal or policy issues, although we recognize that this change in the start date may be controversial. Certain geophysical companies, if still in existence, whose data and information being held by us may be released earlier than under current regulations, may have concerns about the change. However, any data to be released will be at least 50 years old, and any information to be released will be at least 25 years old. As previously stated, the intent of this rule is to alleviate administrative recordkeeping burdens and to ensure proper development of fields or reservoirs.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This revised rule would modify the start of the proprietary terms for geophysical data and information and add language to ensure proper development of fields or reservoirs under 30 CFR 251.14 and 250.196. The only entities affected by this rule change are certain geophysical companies, if still in existence, whose data and information being held by us may be released earlier than under current regulations. The Small Business Administration classifies geophysical surveying and mapping services companies under the North American Industry Classification System Code 541360. These changes will have no economic impact on these constituents, as MMS takes all of the actions with no cost to our customers.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA, 5 U.S.C. 804(2). This rule:

(1) Does not have an annual effect on the economy of $100 million or more. This rule would modify the proprietary terms for geophysical data and information for consistency with those for geological data and information and allow for possible limited disclosure of certain permitted information for assuring proper development of a field or competitive reservoir. This rule will not impose any costs on industry.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic areas. The modification to the proprietary term and change in language regarding disclosure of information for proper development will not cause a burden in terms of finance or time for any outside parties.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, ability of United States-based enterprises to compete with foreign-based enterprises as the information to be released will be 25 years old, and any data to be released will be 50 years old. There are no United States- or foreign-based enterprises involved in this rule.

Paperwork Reduction Act (PRA) of 1995

A form OMB–83–I submission to OMB is not required. The proposed rule concerns actions by MMS and does not contain new requirements subject to the PRA. Nor does the proposed rule change the information collection requirements OMB approved for 30 CFR part 250, subpart A (OMB control number 1010–0114, current expiration date of September 30, 2003), or in 30 CFR part 251 (OMB control number 1010–0079, current expiration date of September 30, 2003). The proposed rule would not change the information used by MMS for specified purposes.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The rule would

Service (MMS) proposes to amend 30 CFR parts 250 and 251 as follows:

PART 250–OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

(c) MMS may allow limited inspection, but only to persons with a direct interest in related MMS decisions and issues and who agree to confidentiality of G&G data and information submitted under this part or part 203 of this chapter and that MMS uses:

(i) To make unitization determinations on two or more leases;

(ii) To make competitive reservoir determinations;

(iii) To ensure proper plans of development for competitive reservoirs;

(iv) To promote operational safety;

(v) To protect the environment;

(vi) To make field determinations; or

(vii) To determine eligibility for royalty relief.

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

3. The authority citation for part 251 continues to read as follows:

paragraph (b)(3) is added to read as follows:

§ 251.14 Protecting and disclosing data and information submitted to MMS under a permit.

* * * * *

(b) *Timetable for release of G&G data and information that MMS acquires.* MMS will release or disclose data and information that you or a third party

Paperwork Reduction Act (PRA) of 1995

A form OMB–83–I submission to OMB is not required. The proposed rule concerns actions by MMS and does not contain new requirements subject to the PRA. Nor does the proposed rule change the information collection requirements OMB approved for 30 CFR part 250, subpart A (OMB control number 1010–0114, current expiration date of September 30, 2002), or in 30 CFR part 251 (OMB control number 1010–0048, current expiration date of May 31, 2003).

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. The proposed modification to the proprietary terms affects only our own methods of doing business, and the added language regarding data disclosure would only be of interest to industry. There will be no financial costs to States.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict an operator's right to collect data and information and would have us maintain that data and information as proprietary under the terms of the permit.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use because the rule's purpose is to modify the start of the proprietary terms for geophysical data and information acquired from industry and released by MMS, and to modify language allowing for selected disclosure by MMS of G&G data and information used by MMS for specified purposes.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The rule would have little effect on the judicial system, because it is an administrative action to modify the proprietary terms and support the MMS decisionmaking process for proper development.

National Environment Policy Act (NEPA)

We have analyzed this rule according to the criteria of the NEPA and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. This rule will have no impact regarding the criteria of the NEPA.

Unfunded Mandate Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not create any kind of a mandate for State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA, 2 U.S.C. 1501 *et seq.* is not required.

List of Subjects in 30 CFR Parts 250 and 251

Continental shelf, Freedom of information, Exploration, Development, Minerals Management Service, Oil, Gas, Sulphur, Reporting and recordkeeping requirements, Research, Public lands—mineral resources.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR parts 250 and 251 as follows:

PART 250–OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.196 the following changes are made:

A. Revise the section heading as set forth below.

B. Revise the introductory paragraph as set forth below.

C. Revise the introductory language in paragraph (b) as set forth below.

D. Remove line item (1) from the table in paragraph (b); redesignate line items (2) through (10) as (1) through (9) respectively; and revise redesignated line (9) to read as set forth below.

E. Add new paragraph (c) to read as set forth below.

§ 250.196 Data and information to be made available to the public or for limited inspection.

MMS will protect data and information that you submit under this part, and part 203 of this chapter, as described in this section. Paragraphs (a) and (b) of this section describe what data and information will be made available to the public without the consent of the lessee and under what circumstances and in what time period. Paragraph (c) of this section describes what data and information will be made available for limited inspection without the consent of the lessee and under what circumstances.

* * * * *

(b) MMS will release lease and permit data and information that you submit, but that are not normally submitted on MMS forms, according to the following table:

If	MMS will release	At this time	Special provisions
.	.	.	.
(9) Data and information acquired by a permit under part 251 are submitted by a lessee under 30 CFR part 203 or part 250 and retained by MMS.	G&G data, analyzed geological information, processed and interpreted G&G information.	Geological data and information: 10 years after MMS issues the permit; Geophysical data: 50 years after MMS issues the permit; Geophysical information: 25 years after MMS issues the permit.	None.

(c) MMS may allow limited inspection, but only to persons with a direct interest in related MMS decisions and issues and who agree to confidentiality of G&G data and information submitted under this part or part 203 of this chapter and that MMS uses:

(i) To make unitization determinations on two or more leases;

(ii) To make competitive reservoir determinations;

(iii) To ensure proper plans of development for competitive reservoirs;

(iv) To promote operational safety;

(v) To protect the environment;

(vi) To make field determinations; or

(vii) To determine eligibility for royalty relief.

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

3. The authority citation for part 251 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

4. In § 251.14 the introductory language in paragraph (b) is revised, the table in paragraph (b)(1) is revised, and paragraph (b)(3) is added to read as follows:

§ 251.14 Protecting and disclosing data and information submitted to MMS under a permit.

* * * * *

(b) *Timetable for release of G&G data and information that MMS acquires.* MMS will release or disclose data and information that you or a third party submit and MMS retains in accordance with paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) * * *

If you or a third party submit and MMS retains . . .	The Regional Director will release them to the public . . .
(i) Geological data and information	10 years after MMS issues the permit.
(ii) Geophysical data	50 years after MMS issues the permit.
(iii) Geophysical information	25 years after MMS issues the permit.

* * * * *

(3) MMS may allow limited inspection, but only to persons with a direct interest in related MMS decisions and issues and who agree to confidentiality of G&G data and information submitted under this part and that MMS uses:

(i) To make unitization determinations on two or more leases;

(ii) To make competitive reservoir determinations;

(iii) To ensure proper plans of development for competitive reservoirs;

(iv) To promote operational safety;

(v) To protect the environment;

(vi) To make field determinations; or

(vii) To determine eligibility for royalty relief.

[FR Doc. 02–17880 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–MR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1200

RIN 3095–AB12

Official Seals

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration (NARA) is proposing to revise its regulations on the NARA official seals. This proposal adds our criteria for approving and denying requests submitted by the public and other Federal agencies to use our official seals. It also proposes to require more detailed facts in written requests and includes NARA's conditions for use if a request is approved. This part has been rewritten in plain language format and applies to the public and other Federal agencies.

DATES: Comments are due by September 16, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0319. You may also comment via the Internet to *comments@nara.gov*. See the **SUPPLEMENTARY INFORMATION** section for additional instructions on submitting e-mail comments.

Comments on the information collection contained in this proposed rule should also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Brooke Dickson, NARA Desk Officer, via fax or e-mail to *bdickson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the National Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria. We are proposing to add our criteria for approval as follows:

- The first criterion is that NARA must be participating in the event or activity by providing speakers, space, or other similar services (examples: NARA co-sponsoring a symposium or conference).
- The second criterion for approval is the seal's proposed use must not imply NARA's endorsement of a commercial product or service or of the user's policies or activities. NARA, as a Federal agency, cannot promote or endorse, directly or indirectly, any of the above mentioned activities.

We are also proposing to require more detailed facts in written requests. Detailed and accurate requests enable us to make determinations that do not compromise our provisions for using the official seals as stated in these regulations.

We also propose to add conditions for use if the request is approved. The conditions include that the seal must only be used for the specific purpose for which approval is granted, the approval must not be delegated without our prior approval, and the seal itself must not be altered.

This part has been rewritten in plain language format and applies to the public and other Federal agencies.

Information Collection Subject to the Paperwork Reduction Act

The proposed information collection in § 1200.10, the written request, is subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number for this information collection will be assigned by OMB. NARA invites comments on this proposed information collection.

Comments should be addressed to NARA and OMB (see **ADDRESSES**).

The proposed information collection in § 1200.10 is designed to assist NARA in determining whether to approve requests to use our official seals. It affects the public and other Federal agencies that are requesting to use our official seals. We estimate that we will receive five requests per year from five respondents and that the respondent

1200 of title 36, Code of Federal Regulations, to read as follows:

PART 1200—OFFICIAL SEALS

Subpart A—General

Sec.
1200.1 Definitions.

Subpart B—How are NARA's Official Seals Designed and Used?

1200.2 How is each NARA seal designed?

made on a die so that the seal can be embossed on paper or other medium.

NARA means all organizational units of the National Archives and Records Administration.

Official seal means the original(s) of the seal showing the exact form and content.

Replica or reproduction means a copy of the official seal displaying the form and content.

(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words "THE NATIONAL ARCHIVES OF THE UNITED STATES" encircle the inside of the seal and the date 1934 is at the bottom center.

Comments should be addressed to NARA and OMB (see **ADDRESSES**).

The proposed information collection in § 1200.10 is designed to assist NARA in determining whether to approve requests to use our official seals. It affects the public and other Federal agencies that are requesting to use our official seals. We estimate that we will receive five requests per year from five respondents and that the respondent burden to provide the information will be 20 minutes per request, for a total burden of one hour and 40 minutes.

E-mail Comments

Please submit e-mail comments within the body of your e-mail message or as an attachment. Please also include "Attn: 3095–AB12" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your e-mail message, contact the Regulation Comment Desk at 301–837–2902.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1200

Seals and insignia.

For the reasons set forth in the preamble, NARA proposes to revise part 1200 of title 36, Code of Federal Regulations, to read as follows:

PART 1200—OFFICIAL SEALS

Subpart A—General

Sec.
1200.1 Definitions.

Subpart B—How are NARA's Official Seals Designed and Used?

1200.2 How is each NARA seal designed?
1200.4 How does NARA use its official seals?
1200.6 Who is authorized to apply the official seals on documents or other materials?

Subpart C—Procedures for the Public to Request and Use NARA Seals

1200.8 How do I request to use the official seals?
1200.10 What are NARA's criteria for approval?
1200.12 How does NARA notify me of the determination?
1200.14 What are NARA's conditions for the use of the official seals?

Subpart D—Penalties for Misuse of NARA Seals

1200.16 Will I be penalized for misusing the official seals?

Authority: 18 U.S.C. 506 and 1017; 44 U.S.C. 2104(e), 2116(b), 2302.

Subpart A—General

§ 1200.1 Definitions.

The following definitions apply to this part:

Embossing seal means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

NARA means all organizational units of the National Archives and Records Administration.

Official seal means the original(s) of the seal showing the exact form and content.

Replica or reproduction means a copy of the official seal displaying the form and content.

Subpart B—How Are NARA's Official Seals Designed and Used?

§ 1200.2 How is each NARA seal designed?

NARA's three official seals are illustrated in Figures 1, 2, and 3. A description of each seal is as follows:

(a) *The National Archives and Records Administration seal.* The design is illustrated below in Figure 1 and described as follows:

(1) The seal is centered on a disc with a double-line border.

(2) The words "NATIONAL ARCHIVES AND RECORDS ADMINISTRATION" encircle the inside of the seal and the date 1985 is at the bottom center.

(3) A solid line rendition of a heraldic eagle displayed holding in its left talon 13 arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States.

(4) Displayed above the eagle's head is a partially unrolled scroll inscribed with the words "LITTERA SCRIPTA MANET" one above the other.

Figure 1 – The National Archives and Records Administration Seal

(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words "THE NATIONAL ARCHIVES OF THE UNITED STATES" encircle the inside of the seal and the date 1934 is at the bottom center.

Figure 2 – The National Archives Seal

(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words "NATIONAL ARCHIVES TRUST FUND BOARD" encircle the inside of the seal and the date 1941 is at the bottom center.

Figure 3 – National Archives Trust Fund Board Seal

§ 1200.4 How does NARA use its official seals?

NARA uses its three official seals to authenticate various copies of documents and for informational purposes as follows:

(a) The National Archives and Records Administration seal, dated 1985, is used:

(1) For official business, e.g., stationery;

(2) To authenticate copies of Federal records in NARA's temporary custody and copies of NARA operational records; and

(3) For informational purposes with NARA's prior approval (includes use by NARA employees, the public, and other Federal agencies).

(b) The National Archives seal, dated 1934, is used to authenticate copies of documents in NARA's permanent legal custody.

(c) The National Archives Trust Fund Board seal, dated 1941, is used for Trust Fund documents and publications.

§ 1200.6 Who is authorized to apply the official seals on documents or other materials?

The Archivist of the United States (and the Archivist's designee) is the only individual authorized to apply NARA official seals, embossing seals, and replicas and reproductions of seals to appropriate documents, authentications, and other material. NARA accepts requests to use the

§ 1200.12 How does NARA notify me of the determination?

NARA will notify you by mail of the final decision, usually within 3 weeks from the date we receive your request. If NARA approves your request, we will send you a camera-ready copy of the official seal along with an approval letter that will:

(a) Reference back to the submitted

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 247–0347b; FRL–7220–7]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and South Coast Air Quality Management District

are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions

4101), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to EPA's Water Docket at East Tower Basement (EB Room 57), Waterside Mall, 401 M Street, SW, Washington, DC 20460. You may contact the docket at (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday. Comments may be submitted

OASIS assessment instrument and reduce the burden of OASIS data collection by home health care providers. The meeting is open to the public, but attendance is limited to space available.

DATE: *Meeting Date:* The town hall meeting announced in this notice will be held on Wednesday, July 31, 2002, from 1 p.m. to 4 p.m. (eastern standard time).

§ 1200.6 Who is authorized to apply the official seals on documents or other materials?

The Archivist of the United States (and the Archivist's designee) is the only individual authorized to apply NARA official seals, embossing seals, and replicas and reproductions of seals to appropriate documents, authentications, and other material. NARA accepts requests to use the official seals and approves or denies them based on the criteria identified in § 1200.10.

Subpart C—Procedures for the Public to Request and Use NARA Seals

§ 1200.8 How do I request to use the official seals?

You may only use the official seals if NARA approves your written request. Follow the procedures in this section to request authorization.

(a) Prepare a written request explaining, in detail:

(1) The name of the individual/organization requesting use and how it is associated with NARA;

(2) Which of the three official seals you want to use and how or on what it is going to be displayed. Provide a sample of the document or other material on which the seal is intended to appear. Mark the sample in all places where the seal would be displayed;

(3) How the intended use of the official seal is connected to your work with NARA on an event or activity (example: requesting to use the official NARA seal on a program brochure, poster, or other publicity announcing a co-sponsored symposium or conference.); and

(4) The dates of the event or activity for which you intend to display the seal.

(b) You must submit the request at least six weeks before you intend to use it to the Archivist of the United States (N), 8601 Adelphi Rd., College Park, MD 20740–6001.

(c) The OMB control number _____ has been assigned to the information collection contained in this section.

§ 1200.10 What Are NARA's criteria for approval?

NARA's criteria for approval are as follows:

(a) NARA must be participating in the event or activity by providing speakers, space, or other similar services (example: NARA co-sponsoring a symposium or conference).

(b) The seal is not going to be used on any article or in any manner that reflects unfavorably on NARA or endorses, either directly or by implication, commercial products or services, or a requestor's policies or activities.

§ 1200.12 How does NARA notify me of the determination?

NARA will notify you by mail of the final decision, usually within 3 weeks from the date we receive your request. If NARA approves your request, we will send you a camera-ready copy of the official seal along with an approval letter that will:

(a) Reference back to the submitted request (either through the date or another distinguishing characteristic) indicating approval of the specific use, as defined in the request; and

(b) Include NARA's conditions for use, which are identified in § 1200.14.

§ 1200.14 What are NARA's conditions for the use of the official seals?

If your request is approved, you must follow these conditions:

(a) Use the official seal only for the specific purpose for which approval was granted;

(b) Submit additional written requests for any uses other than the use granted in the approval letter;

(c) Do not delegate the approval to another individual(s) or organization without NARA's prior approval; and

(d) Do not change the official seals themselves. They must visually and physically appear as illustrated in § 1200.2, with no alterations.

(e) Only use the official seal for the time period designated in the approval letter (example: for the duration of a conference or exhibit).

Subpart D—Penalties for Misuse of NARA Seals

§ 1200.16 Will I be penalized for misusing the official seals?

(a) If you falsely make, forge, counterfeit, mutilate, or alter official seals, replicas, reproductions or embossing seals, or knowingly use or possess with fraudulent intent any altered seal, you are subject to penalties under 18 U.S.C. 506.

(b) If you use the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 1017 and to other provisions of law as applicable.

Dated: July 8, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–17962 Filed 7–16–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 247–0347b; FRL–7220–7]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations and dry cleaners using solvent other than perchloroethylene. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 16, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours, You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: MBUAPCD 416 and SCAQMD 1102. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions

are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–17703 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7247–6]

RIN 2040–AD61

Announcement of Preliminary Regulatory Determinations for Priority Contaminants on the Drinking Water Contaminant Candidate List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a document in the **Federal Register** of June 3, 2002, announcing the preliminary regulatory determinations for priority contaminants on the Drinking Water Contaminant Candidate List. EPA inadvertently included the incorrect docket number in the **ADDRESSES** section. The correct docket number is W–01–03.

FOR FURTHER INFORMATION CONTACT: Harriet T. Corbett-Colbert, 202–564–4696.

Correction

The **ADDRESSES** caption in the **Federal Register** document of June 3, 2002, Vol. 67, No. 106, page 38223, first column, should have read:

ADDRESSES: Please send your comments to the W–01–03 Comments Clerk. Submit electronic comments to: *ow-docket@epa.gov*. Written comments should be mailed to: Water Docket (MC–4101), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to EPA's Water Docket at East Tower Basement (EB Room 57), Waterside Mall, 401 M Street, SW, Washington, DC 20460. You may contact the docket at (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday. Comments may be submitted electronically. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review.

This correction notice will not extend the comment period. The comment period ends on August 2, 2002. All comments received under the incorrect docket number will be directed to the appropriate Comments Clerk.

Dated: July 11, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–18146 Filed 7–16–02; 8:45 am]

BILLING CODE 3560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–1227–N]

RIN 0938–ZA40

Medicare Program; Town Hall Meeting on the Outcome Assessment Information Set (OASIS)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to discuss and obtain general comments from the public about the items contained in the OASIS home health assessment instrument. Specifically, the meeting will attempt to elicit the individual comments and experiences of home health stakeholders in using the OASIS and any burden associated with its completion, and their comments about the necessity of individual assessment items. Beneficiaries, providers, physicians, home health agencies and industry representatives, encoding specialists, and other interested parties are invited to this meeting to present their individual views on these issues. We will consider the individual opinions provided during this meeting as we proceed with our efforts to update the OASIS assessment instrument and reduce the burden of OASIS data collection by home health care providers. The meeting is open to the public, but attendance is limited to space available.

DATE: *Meeting Date:* The town hall meeting announced in this notice will be held on Wednesday, July 31, 2002, from 1 p.m. to 4 p.m. (eastern standard time).

ADDRESSES: The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Katie Laschinger, 410–786–2119. You may also send inquiries about this meeting via e-mail to *KLaschinger@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 2002, the Secretary of Health and Human Services announced the launching of a new effort to streamline Medicare's paperwork requirements for home health nurses and therapists so that they can focus more on providing quality care to their patients.

The action is one of several steps announced to address interim recommendations from the Secretary's Advisory Committee on Regulatory Reform. Secretary Thompson created the panel of consumers, physicians, and other health care professionals to help guide HHS' broader efforts to streamline unnecessarily burdensome or inefficient regulations that interfere with the quality of health care for Americans.

Since 1999, Medicare has required home health agencies to complete the OASIS (Outcome Assessment Information Set) at regular intervals both to ensure Medicare pays appropriately and to assess and improve the quality of care provided by the home health agency. Committee members, however, made several recommendations for streamlining the assessment to achieve those goals more efficiently, allowing home health agencies to spend more resources providing care to their patients.

Acting on the committee's recommendations to date, we have already taken steps to revise the OASIS form and its use, and will begin implementation of the changes. These changes will be described at the OASIS town hall meeting. We are now interested in providing interested parties with the opportunity to propose additional changes to OASIS as part of

the process for the regular update of the OASIS instrument, its format, and use.

II. Meeting Format

The meeting will begin with an overview of the goals of the meeting, the recommendations made by the Secretary's Advisory Committee on Regulatory Reform, the Secretary's Committee on Government Reform, and

capacity is limited to the first 250 registrants.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Katie Laschinger at least 10 days before the meeting.

Authority: Section 1891 of the Social Security Act (42 U.S.C. 1395bbb)

1. On April 5, 2002, Maritime Telecommunications Network, Inc. (MTN) filed a motion to extend the comment and reply comment filing deadlines in this proceeding. (*see* Notice of Inquiry in the Matter of Procedures to Govern the Use of Earth Stations on Board Vessels in Bands Shared with Terrestrial Fixed Service, IB Docket No. 02–10, 67 FR 13399, March 22, 2002).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI17

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Listing of the Columbia Basin Distinct

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Christopher Warren, Upper Columbia Fish and Wildlife Office (see **ADDRESSES**) (telephone 509/891–6839; facsimile 509/891–6748; electronic mail: *chris_warren@fws.gov*).

SUPPLEMENTARY INFORMATION:

reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(2) Additional information regarding the range, distribution, and population size of this species;

(3) Biological, commercial trade, or other relevant data regarding any threat (or lack thereof) to the Columbia Basin pygmy rabbit; and

the process for the regular update of the OASIS instrument, its format, and use.

II. Meeting Format

The meeting will begin with an overview of the goals of the meeting, the recommendations made by the Secretary's Advisory Committee on Regulatory Reform, the Secretary's Committee on Government Reform, and our efforts to implement those recommendations to revise the OASIS and its administration by home health agencies. The meeting moderator will be introduced along with members of the OASIS Technical Expert Panel, which is working with us on the long-term review and update of OASIS. The moderator will elicit the individual comments and recommendations of the audience about OASIS, its content, and ways to further reduce the burden of OASIS data collection.

Beginning on July 12, 2002, information about the OASIS town hall meeting will be posted at the following website address: *www.cms.hhs.gov/oasis/hhnew.asp*. At this address, interested parties will find an agenda for the meeting and handouts to be used during the discussions.

We will limit the time for participants to make formal statements according to the number of registered participants. Individuals who wish to make formal statements must contact Katie Laschinger as soon as possible. Those individuals must subsequently submit their formal statement in writing no later than 5 p.m., Wednesday, July 24, 2002. Send written submissions to: Katie Laschinger, Division of Ambulatory and Post Acute Care (DAPAC), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop S3–06–26, Baltimore, Maryland 21244 or *Klaschinger@cms.hhs.gov*. Comments from individuals not registered to speak will be heard after individuals with scheduled statements, if time permits.

III. Registration Instructions

The DAPAC is coordinating meeting registration. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must call or e-mail Katie Laschinger to register at least 72 hours in advance. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter the building. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Katie Laschinger at least 10 days before the meeting.

Authority: Section 1891 of the Social Security Act (42 U.S.C. 1395bbb)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–18149 Filed 7–16–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–10, DA 02–806]

Procedures To Govern the Use of Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 22, 2002, the Federal Communications Commission published a proposed rule document on the variety of issues related to the authorization of satellite earth stations on board vehicles (ESVs). In response to a request for an extension of time, on April 9, 2002, the Commission released an order granting an extension of time for filing comments and reply comments in this proceeding.

DATES: Comments were due on or before May 10, 2002. Reply comments were due on or before June 10, 2002.

ADDRESSES: All comments and reply comments should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. All comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1499.

SUPPLEMENTARY INFORMATION:

1. On April 5, 2002, Maritime Telecommunications Network, Inc. (MTN) filed a motion to extend the comment and reply comment filing deadlines in this proceeding. (*see* Notice of Inquiry in the Matter of Procedures to Govern the Use of Earth Stations on Board Vessels in Bands Shared with Terrestrial Fixed Service, IB Docket No. 02–10, 67 FR 13399, March 22, 2002). MTN contends that the current pleading schedule coincides with the upcoming meeting of the ITU–R Working Group 4–9S in Geneva, at which studies regarding the regulatory, technical and operational aspects of ESVs are expected to be conducted. Because many of these same technical and operational issues are under consideration in this proceeding, MTN asserts that commenters would benefit from additional time to review the results of the ITU–R meeting prior to the filing of comments.

2. Although we do not routinely grant extensions of time, *see* 47 CFR 1.46(a), we believe that extending the pleading cycle in this case will serve the public interest. In the Notice of Inquiry, the Commission indicated that it would note further international developments concerning the ESV service as it considers issues that could arise in the potential licensing of ESVs on a domestic level. Therefore, it is appropriate to extend the comment and reply comment deadlines by 30 days to permit MTN and other members of the public to incorporate the results of the ITU–R meeting in their comments and reply comments so as to help the Commission address the complex issues raised in this proceeding.

3. Pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46, the request of Maritime Telecommunications Network Inc. *is granted.*

4. The deadline for filing comments in this proceeding *was extended* to May 10, 2002.

5. The deadline for filing reply comments in this proceeding *was extended* to June 10, 2002.

Federal Communications Commission.

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 02–17994 Filed 7–16–02; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI17

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Listing of the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended, provide notice of the reopening of the comment period for the proposed listing of the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) as endangered. The comment period has been reopened in order to conduct a peer review of the proposed rule. Comments previously submitted need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final rule.

DATES: The public comment period is reopened and we will accept comments until August 1, 2002. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this action.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, WA 99206.

You may also send comments by electronic mail (e-mail) to: *fw1cbprabbit@r1.fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Upper Columbia Fish and Wildlife Office at the address listed above.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Christopher Warren, Upper Columbia Fish and Wildlife Office (see **ADDRESSES**) (telephone 509/891–6839; facsimile 509/891–6748; electronic mail: *chris_warren@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

The Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) consists of a single, wild colony totaling fewer than 30 individuals in Douglas County, WA, and a small captive population.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we published an emergency rule to list the Columbia Basin pygmy rabbit as endangered on November 30, 2001 (66 FR 59734). The emergency rule provides immediate Federal protection to this species for a period of 240 days. We also published a concurrent proposed rule on November 30, 2001, to list the Columbia Basin pygmy rabbit as endangered under our normal listing procedures (66 FR 59769).

For further information regarding background biological information, previous Federal actions, factors affecting the species, and conservation measures available to the Columbia Basin pygmy rabbit, please refer to our emergency and proposed rules published in the **Federal Register** on November 30, 2001.

Public Comments Solicited

With this notification, we solicit additional information and comments that may assist us in making a final decision on the proposed rule to list the Columbia Basin pygmy rabbit as endangered. We intend that any final listing action resulting from our proposal will be as accurate and effective as possible. Therefore, we request comments and additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) The location of any additional populations of this species, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(2) Additional information regarding the range, distribution, and population size of this species;

(3) Biological, commercial trade, or other relevant data regarding any threat (or lack thereof) to the Columbia Basin pygmy rabbit; and

(4) Current or planned activities or land use practices that could potentially impact the Columbia Basin pygmy rabbit.

Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: Columbia Basin pygmy rabbit" and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Upper Columbia Fish and Wildlife Office, at telephone number 509/891–6839. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Upper Columbia Fish and Wildlife Office (see **ADDRESSES**).

In making any final decision on the proposed action, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from the proposal.

Author

The primary author of this notice is Barbara Behan of the Regional Office, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6131).

Authority

The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 9, 2002.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–18015 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 137
Wednesday, July 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and

(FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has established the Fruit and Vegetable Industry Advisory Committee. The elected Chairperson for the Committee

Administrator, Fruit and Vegetable Programs at (202) 720–4722, or send an E:mail to: *Robert.keeney@usda.gov*. The meeting will be recorded, and information about obtaining a transcript

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC)

Hazards Investigation and the close of the public comment period following the public hearing held in Paterson, New Jersey, on May 30, 2002.

CSB investigators will also update the Board on the status of current CSB investigative efforts. The meeting will conclude with an update on current administrative and contracting matters and the resolution of on-going audit issues.

SUPPLEMENTARY INFORMATION:

Applicable statute and regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise

Notices

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–377]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public to attend. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: The Committee meeting which is open to the public will be held on Wednesday, September 4, 2002, from 8 a.m. to 5:30 p.m.

ADDRESSES: The Committee will meet in the Congressional Room at the Holiday Inn—On the Hill, 415 New Jersey Avenue NW., Washington, DC 20001. To submit comments for review by the Committee please send them to: Sandra Gardei, U.S. Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue, SW., Room 2073, Washington, DC 20250 by August 30, 2002 or E-mail: *Sandra.gardei@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs (202) 720–4722, or E-mail: *Robert.keeney@usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has established the Fruit and Vegetable Industry Advisory Committee. The elected Chairperson for the Committee is Ms. Maureen Marshall of Torrey Farms, New York. The Vice-Chairperson of the Committee is Ms. Karen Caplan of Freida's, Inc., California. The Deputy Administrator of the Agricultural Marketing Service's Fruit and Vegetable Programs, Mr. Robert C. Keeney, is the Committee's Executive Secretary, and Ms. Sandra Gardei is the Designated Official for the Fruit and Vegetable Industry Advisory Committee.

Topics for discussion at the Committee meeting on September 4, 2002, will include the following: USDA programs encouraging increased consumption of fruits and vegetables; pilot project to increase purchases of fresh produce for domestic feeding programs; possible inspection fee increase at destination markets; and a review of the market news service.

Representatives from the U.S. Department of Agriculture and the Committee will seek public comment from parties interested in fruit and vegetable programs. To submit comments for review by the Committee please send them to: Attn: Sandra Gardei, U.S. Department of Agriculture, Agricultural Marketing Services, 1400 Independence Avenue, SW., Room 2073, Washington, DC 20250 by August 30, 2002 or send comments by email to *Sandra.gardei@usda.gov*. The meeting is scheduled from 8 a.m. to 5:30 p.m. on Wednesday, September 4, 2002. It will be held in the Congressional Room at the Holiday Inn—On the Hill, 415 New Jersey Avenue NW., Washington, DC 20001.

Those parties that wish to attend the meeting or speak at the meeting should register on or before August 30, 2002. Space is limited. To register send an E-mail to *Sandra.gardei@usda.gov* or fax your request to 202–720–0016. Registrants and speakers should include their name, address, organization, and daytime telephone number. Identification will be required to be admitted to the meeting. All visitors must be registered with AMS in advance of the meeting.

If you require special accommodations, such as a sign language interpreter, please contact Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs at (202) 720–4722, or send an E:mail to: *Robert.keeney@usda.gov*. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting or you may call 202–720–4722 to obtain a transcript two weeks after the meeting.

Dated: July 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–17991 Filed 7–16–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss projects to fund this fiscal year. Agenda topics will include Project evaluation and selection, Next steps, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106393). The meeting is open to the public.

DATES: The meeting will be held on August 6, 2002, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 7777423, or electronically to *jmhiggins@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 7775461.

Dated: July 11, 2002.

Lesley Thompson,

Acting Forest Supervisor.

[FR Doc. 02–17952 Filed 7–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on August 6, 2002 in Crescent City, California. The purpose of the meeting is to select Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on August 6, 2002 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us*.

SUPPLEMENTARY INFORMATION: This will be the tenth meeting of the committee and will focus on selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: July 10, 2002.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 02–18029 Filed 7–16–02; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The U. S. Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on July 31, 2002, at 2175 K Street, NW., Suite 400 Conference Room, Washington DC. The Board will discuss and deliberate on staff recommendations regarding an update to the CSB strategic plan for FY 2003. The Board will also consider the status of recommendations from prior CSB investigations and the responses from recipients of those recommendations. Additionally, the CSB staff will present to the Board an update on the Reactive Chemical Hazards Investigation and the close of the public comment period following the public hearing held in Paterson, New Jersey, on May 30, 2002.

CSB investigators will also update the Board on the status of current CSB investigative efforts. The meeting will conclude with an update on current administrative and contracting matters and the resolution of on-going audit issues.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the relevant issues and factors. No factual analyses, conclusions, or findings should be considered final.

The meeting is open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our website at: *www.csb.gov*.

Christopher W. Warner,

General Counsel.

[FR Doc. 02–18172 Filed 7–15–02; 2:04 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Notice of Preliminary Results of Antidumping Duty New Shipper Review; Stainless Steel Butt-Weld Pipe Fittings From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to a request from TK Corporation, the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. This new shipper review covers imports of subject merchandise from TK Corporation. The period of review is February 1, 2001 through July 31, 2001.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable statute and regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2001).

Background

On February 23, 1993, the Department published the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. *See Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Korea*, 58 FR 11029 (February 23, 1993). On August 31, 2001, TK Corporation, a producer and exporter of the subject merchandise during the period of review (POR), requested that the Department conduct an antidumping duty new shipper review of the antidumping duty order. TK Corporation certified it did not export subject merchandise to the United States during the period of the investigation (POI) (December 1, 1991 through May 30, 1992), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. TK Corporation also submitted documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume shipped, and the date of the first sale to an unaffiliated customer in the United States. On October 5, 2001, the Department initiated a new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. *See Stainless Steel Butt-Weld Pipe Fittings from Korea: Notice of Initiation of New Shipper Antidumping Duty Review*, 66 FR 51017 (October 5, 2001).

On October 12, 2001, the Department issued its antidumping duty questionnaire. On November 9, 2001, the Department received TK Corporation's Section A response to the questionnaire; TK Corporation filed its Sections B and C responses on November 30, 2001. On January 22, 2002, the Department issued a Sections A-C supplemental questionnaire, to which TK Corporation responded on Februry 6, 2002.

On April 3, 2002 the Department extended the time limit for completion of the preliminary results. *See Notice of Extension of Time Limit of Preliminary*

Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings from Korea, 67 FR 15793 (April 3, 2002).

Period of Review

The POR is February 1, 2001 through July 31, 2001.

Scope of the Review

The products subject to this review

Corporation's U.S. sales. We used only these contemporaneous identical home market sales in calculating the dumping margin.

Export Price

In accordance with section 772(a) of the Tariff Act, export price (EP) is the price at which the subject merchandise is first sold (or agreed to be sold) before

that the home market was viable. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the normal course of trade.

Since no information on the record indicates any comparison market sales to affiliates, we did not use an arm's-length test for comparison market sales.

We made adjustments, where

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we

appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration,

Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings from Korea, 67 FR 15793 (April 3, 2002).

Period of Review

The POR is February 1, 2001 through July 31, 2001.

Scope of the Review

The products subject to this review are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all stainless steel butt-weld pipe fittings covered by the "Scope of the Review" section of this notice, *supra*, which were produced and sold by TK Corporation in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of stainless steel butt-weld pipe fittings.

We relied on six characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: type, grade, seam, size, schedule, and blank/finished. We did not need to perform a twenty-percent difference in merchandise (DIFMER) test or make a DIFMER adjustment because there were contemporaneous home market sales of identical merchandise, based on all six characteristics, to compare to TK Corporation's U.S. sales. We used only these contemporaneous identical home market sales in calculating the dumping margin.

Export Price

In accordance with section 772(a) of the Tariff Act, export price (EP) is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for export to the United States. In accordance with section 772(b) of the Tariff Act, constructed export price (CEP) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Tariff Act. For purposes of this review, TK Corporation has classified its sale(s) as EP sales. *See* November 20, 2001 sections B/C response, at page 106. TK Corporation identified one channel of distribution (direct sales to distributors) for its U.S. sales during the POR. *See* November 9, 2001 section A response at page 9. Based on TK Corporation's description of its U.S. sales process, that it sells the merchandise directly to unaffiliated distributors in the U.S. market, and did not sell in the United States through an affiliated U.S. importer, we preliminarily determine that TK Corporation's U.S. sales were EP sales. We calculated EP in accordance with section 772(a) of the Tariff Act. We based EP on packed prices for export to distributors in the U.S. market. We made deductions for foreign inland freight, international freight, marine insurance, and domestic brokerage.

Normal Value

In accordance with section 773(a)(1)(C) of the Tariff Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared TK Corporation's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because TK Corporation's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the normal course of trade.

Since no information on the record indicates any comparison market sales to affiliates, we did not use an arm's-length test for comparison market sales.

We made adjustments, where applicable, for movement expenses (consisting of inland freight) in accordance with section 773(a)(6)(B) of the Tariff Act. In accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410, we made a circumstance-of-sale adjustment for imputed credit. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) of the Tariff Act. Because TK Corporation failed to include packing overhead in its packing calculation, we made an addition to its packing costs to account for overhead using the overhead ratio TK Corporation used in its computation of variable cost of manufacturing. *See* TK Corporation's February 6, 2002 submission at 19.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the sale from the exporter to the importer.

To determine whether comparison market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. In analyzing the selling activities of the respondents, we did not note any significant differences in functions provided in any of the markets. Based upon the record evidence, we have determined that there is one LOT for all EP sales and the same LOT as for all comparison market sales. Accordingly, because we find the U.S. sales and comparison market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) is warranted.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period February 1, 2001, through July 31, 2001, to be as follows:

Manufacturer / Exporter	Margin (percent)
TK Corporation	0.00

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument 1) a statement of the issue, 2) a brief summary of the argument and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). The Department will issue the final results of this new shipper review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity (in kilograms) of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of merchandise of that manufacturer/exporter made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed company will be the rate established in the final results of the new shipper review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 21.2 percent, the "all others" rate established in the LTFV investigation (58 FR 11029) (February 23, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act.

Dated: July 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18041 Filed 7–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Expedited Reviews.

SUMMARY: On May 22, 2002, the Department of Commerce (the Department) published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order covering softwood lumber products (subject merchandise) from Canada (67 FR 36068), as corrected (67 FR 37775, May 30, 2002).

Included with the amended final affirmative determination and countervailing duty order was an announcement that we would be accepting applications for company-specific expedited reviews. The purpose of such reviews is the calculation of company-specific cash deposit rates. By this notice, the Department is initiating expedited reviews of companies that submitted timely and complete applications pursuant to our announcement.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Farley at (202) 482–0395 or Gayle Longest at (202) 482–3338, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2002).

Background

On May 22, 2002, the Department published the countervailing duty order on softwood lumber from Canada. *See*

67 FR 36070. In that **Federal Register** notice, we indicated that individual exporters of subject merchandise could request expedited reviews for the purpose of establishing individual cash deposit rates. We stated that we had posted, on the IA website, an electronic application form and requested that all applicants submit their review requests in electronic format. All such requests were to be filed with the Department by

of Canadian softwood lumber exports to the United States, present the Department with an enormous challenge. Although ideally we would conduct full-scale reviews—and, in fact, could do so for an extremely limited number of companies—it is simply not possible, as a practical matter, for the Department to conduct such reviews of 100 companies on an expedited basis. Given our statutory obligations, an

Consideration of these issues in the context of expedited reviews would jeopardize the fulfillment of our second mandate—to conduct the reviews in an expeditious manner. We therefore consider it to be appropriate to conduct company-specific analyses of stumpage programs only on the portion of Crown timber that was harvested by the exporter under tenure contracts. Following the investigation

sources and do not have tenure. The second group is comprised of companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts.

For the first group, we will calculate company-specific rates based on the exclusion methodology used in the

combined with the benefit from other programs.

This two-track, streamlined approach will enable us to review the maximum number of companies in the shortest possible time. We expect to issue the final results of review for companies in group one in September, with preliminary results issued by the end of July. We expect to complete the analysis for companies in group two within six

Interbois, Inc.
J. A. Fontaine et fils Inc.
Jackpine Engineered Wood Products Inc.
Jackpine Forest Products Ltd.
Jointfor (3207021 Canada Inc.)
Kalesnikoff Lumber Co. Ltd.
Kenora Forest Products Ltd.
Kootenay Innovative Wood Ltd.
Landmark Truss & Lumber Inc
Les Bois d'Oeuvre Beaudoin & Gauthier Inc.

67 FR 36070. In that **Federal Register** notice, we indicated that individual exporters of subject merchandise could request expedited reviews for the purpose of establishing individual cash deposit rates. We stated that we had posted, on the IA website, an electronic application form and requested that all applicants submit their review requests in electronic format. All such requests were to be filed with the Department by June 21, 2002.

In response, the Department received a total of 100 timely requests for expedited review. A total of 73 of these requests contained all of the information requested by the Department and are therefore timely and complete. By this notice, the Department is initiating reviews of the exporters that filed timely and complete requests for expedited review (*see* listing below).

For those requests that were timely but incomplete, we are providing each applicant with one, and only one, opportunity to file an amended request for expedited review. We will notify these applicants of the deficiencies in their submissions. The amended requests must be received by the Department within two weeks of the date of the Department's notification. We intend to initiate expedited reviews of companies that properly and timely resubmit their applications.

Conduct of Reviews

The concept of expedited reviews in countervailing duty proceedings is very recent; it arose in the context of the Uruguay Round multilateral trade negotiations. Although section 751(a) of the Act provides clear authority for the conduct of such reviews, the Department has not yet had an opportunity to conduct one, either in a proceeding such as this in which the investigation was conducted on an aggregate basis, or in a proceeding in which the investigation was conducted on a company-specific basis. In addition, because aggregate cases are rare, the Department has not yet promulgated regulations governing expedited reviews in such cases. Consequently, we find ourselves in the position of having few guideposts in developing an approach to these reviews that strikes an appropriate balance between our dual mandates of (1) calculating company-specific rates and (2) conducting the reviews on an expedited basis.

In a normal countervailing duty administrative review, the Department examines no more than a handful of respondents. Expedited reviews of potentially 100 lumber exporters, accounting for approximately 50 percent of Canadian softwood lumber exports to the United States, present the Department with an enormous challenge. Although ideally we would conduct full-scale reviews—and, in fact, could do so for an extremely limited number of companies—it is simply not possible, as a practical matter, for the Department to conduct such reviews of 100 companies on an expedited basis. Given our statutory obligations, an undertaking of that magnitude would put an unmanageable strain on the Department's resources. For this reason, the Department recognized at the outset that it could only fulfill its dual mandates of company-specific rates and expeditious processing by developing streamlined methodologies and procedures for these reviews.

In fact, many of the interested parties who have contacted us regarding our approach to these reviews fully understand that we must develop streamlined methodologies and procedures. They have recommended a variety of means to accomplish our twin objectives. Even petitioners, while generally objecting to these reviews, suggested that, were the Department to conduct these reviews, it would need to categorize applicants into various groups based on their respective circumstances. Our approach, as fully set forth below, incorporates many of the suggestions of the interested parties and attempts to protect the equities on all sides.

We begin by discussing how we arrived at our approach. As mentioned above, our approach should provide a practicable balance between our twin objectives of (1) assigning companies individualized rates and (2) conducting the reviews in an expeditious manner.

In addressing the first of these objectives, we note that these reviews cover the same period as the investigation, and are intended solely to provide individual cash deposit rates. Accordingly, we will, to the extent possible, track the methodology used in the investigation. Consequently, we considered measuring the company-specific stumpage benefit by applying the investigation methodology strictly, only substituting company data for aggregate data. Under this approach, we would not revisit issues addressed in the investigation such as the selection of the benchmarks and the allowable adjustments.

Even with this simplification, the investigation methodology applied to a company-specific analysis would still require extensive data collection and an examination of complex issues that did not arise under the aggregate methodology used in the investigation. Consideration of these issues in the context of expedited reviews would jeopardize the fulfillment of our second mandate—to conduct the reviews in an expeditious manner. We therefore consider it to be appropriate to conduct company-specific analyses of stumpage programs only on the portion of Crown timber that was harvested by the exporter under tenure contracts. Following the investigation methodology, this calculation can be done in a relatively straightforward and expeditious manner.

For Crown timber acquired from other sources and for lumber from all sources (except from the United States, the Maritime Provinces, and excluded Canadian companies), we considered the suggestion made by several parties to use the more streamlined exclusion methodology. Under that methodology, the benefit is calculated by multiplying the volume of Crown logs (except those from the exporter's tenure) and lumber (except from the sources listed above) used as inputs by the province-specific stumpage benefit calculated in the investigation. We noted that the advantages of the exclusion methodology, as compared with the full investigation methodology, are that it involves significantly less data collection and requires a less complicated, and less time-consuming, analysis. This allows us to satisfy our second mandate of conducting the reviews expeditiously.

We also considered an additional factor: the degree to which the company utilized inputs from the United States, the Maritime provinces, and Canadian private lands. These sources are easily identifiable, and the Department has already determined that these sources do not give rise to subsidies. For companies that primarily utilize inputs from these sources, because the exclusion methodology is based on the average Province-wide stumpage benefit, the calculated company-specific benefit would not vary significantly whether we utilize the exclusion methodology or do an additional analysis of the companies' own tenures.

Based on the above considerations, and with a view to accommodating as many of the concerns expressed by the parties as possible, we have devised an approach which involves separating the reviews into two groups. The first group includes: (a) Companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order, and (b) companies that source less than a majority of their wood from these sources and do not have tenure. The second group is comprised of companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts.

For the first group, we will calculate company-specific rates based on the exclusion methodology used in the investigation. That is, we will multiply the quantity of Crown logs and the total quantity of lumber inputs by the province-specific stumpage benefit, *i.e.*, the average per-unit price differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province, to obtain the company-specific stumpage benefit. We will not, however, attribute a benefit to lumber acquired from the Maritime Provinces and accompanied by the appropriate certification, from the United States, or from one of the excluded mills. We will divide the total company benefit by the appropriate value of the company's sales to determine the subsidy rate from stumpage and add any benefit from other programs for each company in the first group.

For the second group, we will follow the exclusion methodology as described above with respect to purchases of Crown logs from all sources other than the companies' own tenures, and for purchases of lumber. For logs obtained from a company's own tenure, however, we will follow the investigation methodology, using company-specific data instead of aggregate data to the extent possible. In light of the expedited nature of this process, however, we will not revisit the issues already addressed in the investigation, such as the selection of the benchmark or the types of allowable adjustments. We will request from each company in this group the total amount of Crown timber harvested under its own tenure contract, the fees paid according to species, and the costs incurred in harvesting and maintaining the tenure. To derive a per-unit benefit, we will then compare the per-unit acquisition cost to the benchmark used in the investigation. We will multiply that dollar amount by the quantity of Crown timber harvested by the company to calculate the benefit to the company derived from its own tenure. This benefit will be combined with the benefit, calculated in accordance with the methodology described for group one, for all wood inputs from other sources. To derive the company-specific rate, the resulting total will be divided by the appropriate amount of the company's total sales and combined with the benefit from other programs.

This two-track, streamlined approach will enable us to review the maximum number of companies in the shortest possible time. We expect to issue the final results of review for companies in group one in September, with preliminary results issued by the end of July. We expect to complete the analysis for companies in group two within six to nine months, with preliminary results in November.

We invite comments on our approach and will consider alternative methodologies proposed by interested parties. Parties that file such comments should (1) describe each proposal in detail and (2) explain how it represents a practicable approach that strikes an appropriate balance between the calculation of individualized rates and expeditiousness. All interested parties should submit comments within 10 days of the publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. All submissions should be made in accordance with the filing requirements outlined in section 351.303 of the Department's Regulations, which are available on the Internet at *www.ia.ita.doc.gov*.

Initiation

At this time, we are initiating expedited reviews of the following companies:

Alexandre Côté Ltée.
American Bayridge Corporation
Apollo Forest Products Ltd.
Aspen Planers Ltd.
Blanchette & Blanchette Inc.
Boccam Inc.
Bois Daaquam Inc.
Bois Omega Ltée
Byrnexo Inc.
Cambie Cedar Products Ltd.
Canadian Forest Products Ltd
Cando Contracting Ltd.
City Lumber Sales & Services Limited
Commonwealth Plywood Co. Ltd.
Davron Forest Products Ltd.
Domtar Inc.
Downie Timber Ltd.
Dunkley Lumber Ltd.
E. Tremblay et fils Ltée
Federated Co-operatives Limited
Francois Giguère Inc.
Fraser Pacific Forest Products Inc
Frontier Mills Inc.
Goodfellow Inc.
Gorman Bros. Lumber Ltd.
Greenwood Forest Products (1983) Ltd.
Haida Forest Products Ltd.
Herridge Sawmills Ltd.
Interbois, Inc.
J. A. Fontaine et fils Inc.
Jackpine Engineered Wood Products Inc.
Jackpine Forest Products Ltd.
Jointfor (3207021 Canada Inc.)
Kalesnikoff Lumber Co. Ltd.
Kenora Forest Products Ltd.
Kootenay Innovative Wood Ltd.
Landmark Truss & Lumber Inc
Les Bois d'Oeuvre Beaudoin & Gauthier Inc.
Les Bois S&P Grondin Inc.
Les Industries P.F. Inc.
Les Moulures Jacomau 2000, Inc.
Les Produits Forestiers Dube Inc
Liskeard Lumber Limited
Lonestar Lumber Inc.
Lulumco Inc.
Maibec Industries, Inc.
Materiaux Blanchet Inc.
Meunier Lumber Company Ltd.
MF Bernard Inc.
Mid America Lumber
Mill & Timber Products Ltd.
North Enderby Timber Ltd.
Olav Haavaldsrud Timber Company Limited
R. Fryer Forest Products Limited
Richard Lutes Cedar, Inc.
Riverside Forest Products Limited
Scierie Lapointe & Roy Ltee.
Scierie Nord-Sud Inc.
Scierie West-Brome Inc.
Séchoirs de Beauce Inc.
Selkirk Specialty Wood Ltd.
Slocan Forest Products Ltd.
Tembec Inc.
Terminal Forest Products Ltd.
Tolko Industries Ltd.
Treeline Wood Products Ltd.
Tyee Timber Products Ltd.
Uphill Wood Supply Inc.
Usine Sartigan Inc.
West Bay Forest Products & Manufacturing Ltd.
West Fraser Mills Ltd.
West Can Rail Ltd.
Western Commercial Millwork Inc.

This notice is in accordance with section 751(a) of the Tariff Act of 1930.

Dated: July 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18043 Filed 7–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice, Roundtable on Convergence of Communications Technologies

AGENCY: National Telecommunications and Information Administration, Department of Commerce

ACTION: Notice of Public Meeting

SUMMARY: The National Telecommunications and Information Administration (NTIA) will host a morning roundtable to address issues relating to the convergence of communications technologies, including the Telephone Number

authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology" 47 U.S.C. § 902(M). The roundtable will explore the range of existing or developing convergence technologies, how they may be used, and their implications for consumer data privacy

disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Wendy Lader at least three (3) days prior to the meeting via the contact information provided above.

Dated: July 12, 2002.

These rules are promulgated pursuant to the Commission's rulemaking authority contained in Sections 4a(a), 4i, and 8a(5) of the Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0007 in any correspondence.

Lawrence B. Patent, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms.

ACTION: Notice of Public Meeting

SUMMARY: The National Telecommunications and Information Administration (NTIA) will host a morning roundtable to address issues relating to the convergence of communications technologies, including the Telephone Number Mapping (ENUM) Protocol that facilitates convergence between the Internet and the public-switched telephone network. The roundtable will address how such convergence technologies function, alternatives to ENUM in the competitive marketplace, and policy issues including privacy and security that may arise with use of such convergence technologies.

DATES: The roundtable will be held from 1 p.m. to 5 p.m. on Wednesday, August 14, 2002.

ADDRESSES: The roundtable will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C., in Room 4830. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania Avenues.) The roundtable will be open to the public. To facilitate entry into the Department of Commerce, please have a photo identification and/or a U.S. Government building pass, if applicable.

FOR FURTHER INFORMATION CONTACT: Wendy Lader, Office of Policy Analysis and Development, NTIA, telephone (202) 482–1150, or electronic mail: *wlader@ntia.doc.gov*. Media inquiries should be directed to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: Traditionally, different communications networks and services have required separate addresses or numbers, such as an e-mail address, a telephone number, a fax number, or a cell phone number. Convergence technologies, such as ENUM, Voice-over-IP, and Session Initiation Protocol (SIP), now facilitate or promise to facilitate voice and other communications across these various architectures. ENUM, for example, is intended to map a telephone number from the public-switched telephone network (PSTN) to the Domain Name System (DNS) on the Internet. This mapping system may make it possible to reach a user via e-mail, fax, or phone using the standard telephone number (e.164 number) as the universal communications identifier.

NTIA's morning roundtable will address issues regarding such convergence technologies. As the principal adviser to the President on telecommunications and information policies, NTIA is vested with "[t]he authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology" 47 U.S.C. § 902(M). The roundtable will explore the range of existing or developing convergence technologies, how they may be used, and their implications for consumer data privacy and security. This dialogue with leading U.S. experts in the field will help the U.S. government, among other things, prepare for discussions in international fora. Issues relating specifically to ENUM are currently being addressed in other venues, including the International Telecommunication Union, the Internet Engineering Task Force, and the ENUM Forum.

To solicit views from selected roundtable participants, the morning roundtable will be divided into two parts. The tentative agenda is as follows:

1 pm to 2:30 pm—Convergence Technologies: Their Viability and Utility in a Competitive Marketplace

2:45 pm to 4:15 pm—Privacy, Security, Authentication, and other Policy Issues Relating to Convergence Technologies

4:15 pm to 5 pm—Audience Question and Answer Session

The first session will address such questions as: (1) how the various convergence technologies function, including results from existing testbeds; (2) possible applications of convergence technologies; (3) how ENUM or similar systems would be introduced and implemented in the U.S., including how such systems could open to competition; and (4) whether and how convergence technologies and systems can co-exist.

The second session will address policy issues, particularly in the areas of privacy, security, and authentication, including: (1) what privacy measures might be necessary to protect individual data collected through the use of convergence technologies; (2) whether privacy protections are better left to the competitive marketplace or should be standardized; (3) what security precautions might be necessary to protect user data; and (4) what authentication and authorization requirements might be necessary to ensure the identity of the user.

A final, updated copy of the agenda will be available on NTIA's webpage at *http://www.ntia.doc.gov* before the roundtable.

PUBLIC PARTICIPATION: This meeting will be open to the public. Seating for public attendees is limited and is available on a first-come, first-served basis. The roundtable will be physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Wendy Lader at least three (3) days prior to the meeting via the contact information provided above.

Dated: July 12, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–17956 Filed 7–16–02; 8:45 am]

BILLING CODE 3510–60–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before August 16, 2002.

FOR FURTHER INFORMATION OR A COPY CONTACT: Lawrence B. Patent, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5439; FAX: (202) 418–5536; email: *lpatent@cftc.gov* and refer to OMB Control No. 3038–0021.

SUPPLEMENTARY INFORMATION:

Title: Regulation of Domestic Exchange-Traded Options (OMB Control No. 3038–0007). This is a request for extension of a currently approved information collection.

Abstract: Regulation of Domestic Exchange-Traded Options, OMB Control No. 3038–0007—Extension

The rules require futures commission merchants and introducing brokers (1) to provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation.

These rules are promulgated pursuant to the Commission's rulemaking authority contained in Sections 4a(a), 4i, and 8a(5) of the Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on June 27, 2002 (67 FR 43285).

Burden statement: The respondent burden for this collection is estimated to average .39 hours per response.

Respondents/Affected Entities: 415.

Estimated number of responses: 20,380.

Estimated total annual burden on respondents: 7,985 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0007 in any correspondence.

Lawrence B. Patent, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 11, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–17976 Filed 7–16–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–39]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–39 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–02–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 June 2002

In reply refer to:

Transmittal No. 02-39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Israel

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 June 2002

In reply refer to:
I-02/008738

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-39, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $80 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 78 million
Other	$ 2 million
TOTAL	$ 80 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 2,030 TOW 2A Missiles (includes 30 lot acceptance missiles), publications and logistics support, and other related elements of logistics support.

(iv) Military Department: Army (YZC)

(v) Prior Related Cases, if any: FMS case YKR - $42 million – 1Aug95

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: see Annex attached

(viii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – TOW 2A Missiles

The Government of Israel has requested a possible sale of 2,030 tube-launched, optically-tracked, wire-guided TOW 2A missiles; publications and logistics support; and other related elements of logistics support. The estimated cost is $80 million.

Transmittal No. 02-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

POLICY JUSTIFICATION

Israel – TOW 2A Missiles

The Government of Israel has requested a possible sale of 2,030 tube-launched, optically-tracked, wire-guided TOW 2A missiles; publications and logistics support; and other related elements of logistics support. The estimated cost is $80 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel will augment their land forces with these TOW 2A anti-armor guided missiles. The proposed sale of the missiles will not affect the basic military balance in the region and will provide the Government of Israel a formidable defensive system for their use against armor, combat vehicles and other maneuverable elements.

The prime contractor will be the Raytheon Corporation of Tucson, Arizona.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The TOW anti-armor guided missile system and documentation are Unclassified. Sensitive technology is contained within the missile system software programs. Some performance characteristics and system capabilities which could be derived from the use of the equipment are classified Secret. The hardware is also considered sensitive and knowledge of the modulation frequency and infrared wavelengths could be useful in developing countermeasures. The highest level of classified material which could be disclosed through reverse engineering or testing of the TOW missile is Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–17913 Filed 7–16–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board Meeting

AGENCY: Department of Defense.

ACTION: Notice.

and GaAs Substrates with Chemical Vapor Deposition", Navy Case No. 76470, and U.S. Patent Application Serial No. 09/563,740 entitled "Electronic Devices with Diffusion Barrier and Process for Making Same", filing date: May 3, 2000, Navy Case No. 82111.

DATES: Anyone wishing to object to the granting of this license has (15) days written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Technology Transfer Office, Naval Surface Warfare Center Dahlgren Div, Code B04, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100.

FOR FURTHER INFORMATION CONTACT: Mr. Ramsey D. Johnson, Technology Transfer Manager, Code B04, Naval

of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in

20202–4651 or the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxes to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at

office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee meeting:

DATES: August 7, 2002 from 0830 a.m. to 1715 p.m., and August 8, 2002 from 0830 a.m. to 1205 p.m.

ADDRESSES: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: July 10, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–17914 Filed 7–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; BTG International, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to BTG International, Inc. a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned inventions described in U.S. Patent No. 5,435,264 entitled "Process for Forming Epitaxial BaF2 on GaAs", Navy Case No. 76233, and U.S. Patent No. 5,690,737 entitled "Growth of BaF2 Thin Films on Silicon and GaAs Substrates with Chemical Vapor Deposition", Navy Case No. 76470, and U.S. Patent Application Serial No. 09/563,740 entitled "Electronic Devices with Diffusion Barrier and Process for Making Same", filing date: May 3, 2000, Navy Case No. 82111.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Technology Transfer Office, Naval Surface Warfare Center Dahlgren Div, Code B04, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100.

FOR FURTHER INFORMATION CONTACT: Mr. Ramsey D. Johnson, Technology Transfer Manager, Code B04, Naval Surface Warfare Center Dahlgren Div, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100, telephone (540) 653–2680, E-Mail *Johnsonrd2@nswc.navy.mil* or fax (540) 653–2687.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: July 10, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–17951 Filed 7–16–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Survival, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Survival, Inc. a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned inventions described in U.S. Patent No. 6,376,436 entitled "Chemical Warfare Agent Decontamination Foaming composition and Method", Navy Case No. 82169, and U.S. Patent No. RE 37,207 E entitled "Decontamination Solution and Method", Navy Case No. 82505, and U.S. Patent No. 5,760,089 entitled "Chemical Warfare Agent Decontaminant Solution Using Quaternary Ammonium Complexes", Navy Case No. 77029.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Technology Transfer Office, Naval Surface Warfare Center Dahlgren Div, Code B04, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100.

FOR FURTHER INFORMATION CONTACT: Mr. Ramsey D. Johnson, Technology Transfer Manager, Code B04, Naval Surface Warfare Center Dahlgren Div, 17320 Dahlgren Rd, Dahlgren, VA 22448–5100, tel (540) 653–2680, E-Mail *johnsonrd2@nswc.navy.mil* or fax (540) 653–2687.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: July 10, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–17950 Filed 7–16–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 16, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Officer of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 11, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Annual Report on Appeals Process (SC).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAS or LEAs (primary).

Reporting and Recordkeeping Hour Burden: Responses: 1. Burden Hours: 160.

Abstract: Form RSA–722 is needed to meet specific data collection requirements in Subsections 102(c)(8)(A) and (B) of the Rehab Act of 1973, as amended on the number of requests for mediation, hearings and reviews filed. The information collected is used to evaluate the types of complaints made by applicants for and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2082. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxes to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at 202–708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17915 Filed 7–16–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 11, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Application for New Grants—State Program Improvement Grants for Children With Disabilities.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 2700.

Abstract: This information collection is necessary to make awards authorized by the Individuals with Disabilities Education Act, Part D, Subpart 1—State Program Improvement Grants. Eligible grantees are State Departments of Education in the 50 States, the District of Columbia, or Puerto Rico or an outlying area (Virgin Islands, Guam, American Somoa, and the Northern Mariana Islands). This program was newly authorized by the Individuals With Disabilities Education Act Amendments of 1997 (Public Law 105–17). The purpose of this program is to assist State educational agencies, and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. Appropriations for the first awards under this program become available for obligation on June 15, 2002.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2040. When you access the information collection, click on "Download Attachments" to view. Written requests for information

should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Condition of Assistance

• Letter dated January 18, 2002 to individual, (personally identifiable information redacted), regarding (1) a

minority backgrounds in special education programs and classes.

Part C—Infants and Toddlers With Disabilities

Section 631—Findings and Policy

Topic Addressed: Amendment of Regulations

• Letter dated February 13, 2002 to

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: July 11, 2002.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Seabrook's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 2, 2002.

should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMC@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via his internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–17908 Filed 7–16–02; 8.45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from January 2, 2002 through March 31, 2002.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD) you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from January 2, 2002 through March 31, 2002.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Child With a Disability

- Letter dated January 7, 2002 to individual, (personally identifiable information redacted), clarifying that (1) a State must make clear to the Office of Special Education Programs that it has the authority to enforce the requirements of IDEA under State law and (2) a State may adopt a definition of "adverse effect" provided that the State definition is not implemented in a manner that excludes otherwise eligible children.

Topic Addressed: Special Education

- Letter dated January 30, 2002 to Florida Department of Education Bureau of Instructional Support and Community Services Chief Shan Goff, clarifying that each State must ensure that any child with a disability who needs speech-language pathology services to benefit from special education receives those services, even if the child does not meet the State's criteria to receive speech-language pathology services as a special education service.

Section 603—Office of Special Education Programs

Topic Addressed: Responsibilities of the Office of Special Education Programs

- Letter dated January 18, 2002 to U.S. Congresswoman Patsy Mink clarifying that the U.S. Department of Education is not responsible for monitoring court-ordered decrees and explaining the discretionary grant awards process.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Condition of Assistance

- Letter dated January 18, 2002 to individual, (personally identifiable information redacted), regarding (1) a State's obligation to develop policies and procedures to resolve signed written complaints filed by individual parents of children with disabilities, other individuals, and organizations and (2) OSEP's obligation to monitor each State's compliance with the complaint resolution requirements in the final regulations implementing the IDEA through its continuous improvement monitoring process.

Topic Addressed: Free Appropriate Public Education

- Letter dated February 12, 2002 to individual, (personally identifiable information redacted), clarifying that decisions regarding the provision of services that are appropriate for an individual child must be based on the child's unique needs and not on the disability category in which the child is classified.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter Schools

- Letter dated February 12, 2002 to Connecticut Department of Education Associate Commissioner George Coleman, regarding the categories of charter schools, the eligibility of charter schools for Federal funds, and the responsibilities of charter schools under Part B of IDEA.

Section 615—Procedural Safeguards

Topic Addressed: Prior Written Notice

- Letter dated March 6, 2002 to Texas Education Agency Division of Special Education Senior Director Eugene Lenz, regarding the circumstances under which a parent or a school district is required to provide prior notice and clarifying that no notice provisions other than those expressly contained in the IDEA can be applied to limit the statutory right to a due process hearing.

Section 618—Program Information

Topic Addressed: Disproportionality

- Letter dated January 14, 2002 to individual, (personally identifiable information redacted), regarding the ways in which OSEP and the Office for Civil Rights address the disproportionate representation of students from some racial and ethnic minority backgrounds in special education programs and classes.

Part C—Infants and Toddlers With Disabilities

Section 631—Findings and Policy

Topic Addressed: Amendment of Regulations

- Letter dated February 13, 2002 to U.S. Congresswoman Judy Biggert, regarding the Department of Education's decision to delay the issuance of any new regulations for the Part C program until after the IDEA is reauthorized and to withdraw the Notice of Proposed Rulemaking published in the **Federal Register** on September 5, 2000.

Section 636—Individualized Family Service Plan

Topic Addressed: Early Intervention Services

- Letter dated February 12, 2002 to Kelly C. Wilson, Esq., clarifying (1) that the individualized family service plan (IFSP) may include a particular methodology or instructional approach that is considered by the IFSP team to be integral to the design of an individualized program of services to meet the unique needs of the individual child and (2) that the State is required to provide all services identified in the IFSP and to ensure that those services are implemented according to the IFSP.

Other Letters Relevant to the Administration of Idea Programs

Topic Addressed: Assistance Under Other Federal Programs

- Letter dated February 22, 2002 to President Lee Grossman and Executive Director Rob Beck of the Autism Society of America, clarifying that the Family Educational Rights and Privacy Act, as currently written, does not allow educational agencies and institutions to disclose information from student education records to the Centers for Disease Control without prior written consent of the parent.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: July 11, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–18031 Filed 7–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1636–000]

FPL Energy Seabrook, LLC; Notice of Issuance of Order

July 11, 2002.

FPL Energy Seabrook, LLC (Seabrook) submitted for filing a rate schedule under which Seabrook will engage in the sale of wholesale energy, capacity and ancillary services at market-based rates, and for the reassignment of transmission capacity. Seabrook also requested waiver of various Commission regulations. In particular, Seabrook requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Seabrook.

On July 3, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Seabrook should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Seabrook is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Seabrook, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Seabrook's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 2, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17967 Filed 7–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1747–000 and ER02–1749–000]

PPL Shoreham Energy, LLC and PPL Edgewood Energy, LLC; Notice of Issuance of Order

July 11, 2002.

PPL Shoreman Energy, LLC (Shoreham) and PPL Edgewood, LLC (Edgewood) submitted for filing rate schedules under which Shoreham and Edgewood will engage in the sale of wholesale electric energy, capacity and ancillary services at market-based rates. Shoreham and Edgewood also requested waiver of various Commission regulations. In particular, Shoreham and Edgewood requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Shoreham and Edgewood.

On June 28, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Shoreham or Edgewood should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Shoreham and Edgewood are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Shoreham or Edgewood, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Shoreham's or Edgewood's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 2, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17965 Filed 7–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–517–000, ER02–517–001, and ER02–517–002]

UtiliGroup, Inc.; Notice of Issuance of Order

ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements. Since ENERGY STAR is a

control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Shoreham and Edgewood are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Shoreham or Edgewood, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Shoreham's or Edgewood's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 29, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17966 Filed 7–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1942–000]

Tenaska Virginia Partners, L.P.; Notice of Issuance of Order

July 11, 2002.

Tenaska Virginia Partners, L.P. (TVP) submitted for filing a rate schedule under which TVP will engage in the sales of wholesale energy and capacity at market-based rates and for the reassignment of transmission capacity. TVP also requested waiver of various Commission regulations. In particular, TVP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by TVP.

On July 3, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TVP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, TVP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of TVP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TVP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 2, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17968 Filed 7–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–517–000, ER02–517–001, and ER02–517–002]

UtiliGroup, Inc.; Notice of Issuance of Order

July 11, 2002.

UtiliGroup, Inc. (UtiliGroup) submitted for filing a Petition for Acceptance of Initial Rate Schedule and Blanket Authority. UtiliGroup also requested waiver of various Commission regulations. In particular, UtiliGroup requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by UtiliGroup.

On June 26, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UtiliGroup should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, UtiliGroup is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of UtiliGroup, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UtiliGroup's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 26, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the

internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–17965 Filed 7–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Activities Associated With EPA's Energy Star® Product Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Activities Associated with EPA's ENERGY STAR® Product Labeling, EPA ICR No. 2078.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 16, 2002.

ADDRESSES: Climate Protection Partnerships Division, US EPA (MC–6202J), 1200 Pennsylvania Ave, NW., Washington, DC 20460. ICR may be obtained electronically by contacting Rachel Schmeltz via e-mail at *schmeltz.rachel@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Schmeltz, phone: 202–564–9124, fax: 202–565–2077, *schmeltz.rachel@epa.gov*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are product manufacturers which are Partners in EPA's ENERGY STAR program.

Title: Information Collection Activities Associated with EPA's ENERGY STAR® Product Labeling, EPA ICR No. 2078.01. This is a new collection.

Abstract: ENERGY STAR is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The center piece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements. Since ENERGY STAR is a self-certification program, it is important that program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and that participating products meet specified energy performance criteria based on a standard test method.

As part of our contribution to the overall success of the program, EPA has agreed to facilitate the sale of qualifying products by providing consumers with easy-to-use information about the products. To be effective, EPA must receive qualifying product information from participating manufacturers. Partners will be requested to submit updates to qualifying product information on an annual basis, so as to ensure that EPA information is recent and accurate. The information will be compiled into a complete qualifying products list per product category, posted on the ENERGY STAR Web site, and supplied to those purchasers who request it via phone, fax, or e-mail. In addition, because of the nature of these products, manufacturer of roof products and residential light fixtures will be requested to submit testing reports in order to verify qualification.

In order to monitor progress and support the best allocation of resources, EPA will also ask manufacturers to submit annual shipment data for their ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, if manufacturers already submit this type of information to a third party, such as a trade association, manufacturers are given the option of arranging for shipment data to be sent to EPA via this third party to avoid duplication of efforts and to ensure confidentiality. In using any shipment data received directly from a partner, EPA will mask the source of the data so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year Award.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated total cost for respondents is $8,245,116 and the hourly burden is approximately 129,623 hours. The estimated total cost for the Agency is $413,361 and the hourly burden is approximately 9,549 hours. A grand total of $8,658,477 and an hourly burden of approximately 139,172 hours is expected for all information collection activities under ENERGY STAR product labeling.

EPA collects initial information in the Partnership Agreement (PA), which is completed and submitted by every Partner participating in ENERGY STAR. One overarching PA has been developed by EPA for ENERGY STAR product labeling. It is expected that 118 new Partners will join each year for the three years of this ICR. The reporting burden for information collection requirements associated with completing the PA for each respondent is estimated to be 12.85 hours. This estimate includes times for reviewing the instructions on the PA, completing and reviewing the information requested by the PA, and submitting the PA.

Every manufacturing Partner is required to submit information on each of their qualifying products. Annual updates, notifying EPA of any changes in qualifying product information, are required as well. Thirty-two different product categories are covered by EPA under ENERGY STAR. Each product category has specific qualifying product information that must be submitted by each Partner for at least one qualifying product. Qualifying product information is expected for 3,112 new qualifying

products each year for the three years of this ICR. The qualifying product list for each product category is updated by the Agency once each month, for a total of 384 times annually (32 product categories times 12 months in a year). Approximately twice each month the Agency receives a request for qualifying product information that cannot be fulfilled by the ENERGY STAR Web site. Information packages are developed by the Agency each year and posted on the ENERGY STAR web site. An average of 30 Partners of the Year Award applications are expected each year for the three years of this ICR. The reporting burden for information collection requirements associated with the Partner of the Year Application for each respondent is estimated to be 44.10 hours. This estimate includes reviewing

purposes. As a result of our finding, the budgets from the submitted attainment demonstration SIP must be used for future conformity determinations in the Baton Rouge area.

DATES: These budgets are effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web

whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

opportunity to submit new information on disulfoton alternatives and benefits for uses that are being phased out. Comments concerning the phase out must include specific information on current disulfoton use, timing of applications, target pests, available alternatives, and the cost and efficacy of alternatives, to be considered by the Agency.

"**Federal Register**—Environment Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the disulfoton documents at http://www.epa.gov/pesticides/op/status.htm. You can also access this site from EPA's Office of Pesticide Programs Home Page, http://www.epa.gov/pesticides/, using

products each year for the three years of this ICR. The qualifying product list for each product category is updated by the Agency once each month, for a total of 384 times annually (32 product categories times 12 months in a year). Approximately twice each month the Agency receives a request for qualifying product information that cannot be fulfilled by the ENERGY STAR Web site, for a total of 768 requests. The reporting burden for information collection requirements associated with completing the qualifying product information for each qualifying product submitted by a respondent is estimated to be 19.47 hours. This estimate includes time for reviewing instructions, completing and reviewing the information requested, and submitting the information.

ENERGY STAR Partners for residential light fixtures and roof products are required to submit testing reports for each product determined to by qualified with the ENERGY STAR criteria. It is anticipated that qualifying product information for 654 new roof and residential light fixture products will be received by EPA each year for the three years of this ICR. The reporting burden for information collection requirements associated with testing reports by roof product and residential light fixture Partners for each qualifying product submitted by a respondent is estimated to be 69.75 hours. This estimate includes performing testing in house or by a Third Party, assembling the data into a report format, reviewing it and submitting it.

EPA also requires that manufacturing Partners submit information on their unit shipments of ENERGY STAR labeled products annually. Each year, ENERGY STAR Partners are required to submit unit shipment data for their ENERGY STAR labeled products. There will be an average of 1,143 total Partners each year for the three-years of this ICR. Therefore, 1,143 reports of unit shipment data are expected each year for the three years of this ICR. Unit shipment data will be aggregated for each of the 32 product categories covered by EPA under ENERGY STAR. The reporting burden for information collection requirements associated with unit shipment data for each respondent is estimated to be 26.76 hours. This estimate includes gathering unit shipment data compiling and reviewing unit shipment data by product category, and submitting unit shipment data.

Partners interested in receiving recognition for their efforts on ENERGY STAR are required to submit a Partner of the Year Award application. One set of Partner of the Year award criteria are developed by the Agency each year and posted on the ENERGY STAR web site. An average of 30 Partners of the Year Award applications are expected each year for the three years of this ICR. The reporting burden for information collection requirements associated with the Partner of the Year Application for each respondent is estimated to be 44.10 hours. This estimate includes reviewing the eligibility requirements and instruction on the application, gathering data and information for submission, completing the application, reviewing the information and narrative description required, and submitting the application to EPA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 26, 2002.

Kathleen Hogan,

Director, Climate Protection Partnerships Division.

[FR Doc. 02–17982 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7247–1]

Adequacy Status of Submitted State Implementation Plans (SIP) for Transportation Conformity Purposes: Baton Rouge Attainment Demonstration SIP for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the on-road motor vehicle emissions budgets contained in the Baton Rouge serious ozone nonattainment area attainment demonstration SIP for the Baton Rouge 5-Parish ozone nonattainment area are adequate for transportation conformity purposes. As a result of our finding, the budgets from the submitted attainment demonstration SIP must be used for future conformity determinations in the Baton Rouge area.

DATES: These budgets are effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.* You may also contact Mr. Kenneth W. Boyce, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone (214) 665–7259 or by e-mail at: *boyce.kenneth@.epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA. The word "budgets" refers to the mobile source emission budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X). The word SIP in this document refers to the State Implementation Plan revision submitted to satisfy the attainment demonstration for ozone.

On December 28, 2001, we received the attainment demonstration SIP for the Baton Rouge 5—Parish ozone nonattainment area. There are two motor vehicle emissions budgets found in this plan for 2005. The emissions budget for VOCs is 15.48 tons/day and the emissions budget for NO_X is 34.26 tons/day. On January 23, 2002, the availability of these budgets was posted on EPA's web site for the purpose of soliciting public comments. The comment period closed on February 22, 2002, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region VI sent a letter to the Louisiana Department of Environmental Quality (LDEQ) on July 5, 2002, stating that the motor vehicle emissions budgets in the Baton Rouge 5—Parish ozone nonattainment area are adequate and they must be used for transportation conformity determinations.

Transportation conformity is required by section 176(c) of the Clean Air Act. The EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which EPA determines

whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

On March 2, 1999, the DC Circuit Court of Appeals ruled that budgets contained in submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate. We have described our process for determining the adequacy of submitted SIP budgets in the policy guidance dated May 14, 1999, and titled *Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.* We followed this guidance in making our adequacy determination. You may obtain a copy of this guidance from EPA's conformity web site or by contacting us at the address above.

Dated: July 5, 2002.

Lawrence E. Starfield,

Regional Administrator, Region 6.

[FR Doc. 02–17984 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0055; FRL–7187–7]

Organophosphate Pesticides; Disulfoton; Availability of Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice (or "action") announces the availability of the Interim Reregistration Eligibility Decision (IRED) document and technical support documents for the organophosphate (OP) pesticide, disulfoton. These documents have been developed using a public participation process designed by EPA and the U.S. Department of Agriculture (USDA) to involve the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA) and the reregistration of individual OPs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This notice starts a 30–day public comment period for disulfoton, during which the public is invited to submit comments on the Agency's risk management decision. This comment period will allow growers and other stakeholders one final opportunity to submit new information on disulfoton alternatives and benefits for uses that are being phased out. Comments concerning the phase out must include specific information on current disulfoton use, timing of applications, target pests, available alternatives, and the cost and efficacy of alternatives, to be considered by the Agency.

DATES: Comments on the IRED for disulfoton must be identified by docket ID number OPP–2002–0055 and must be received by EPA on or before August 16, 2002 to be considered by the Agency.

ADDRESSES: You may submit comments by mail, electronically, or in person. Please follow the detailed instructions for each method as described under **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0055 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Manager for disulfoton, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–2201; e-mail address: scheltema.christina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will interest a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environment Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the disulfoton documents at http://www.epa.gov/pesticides/op/status.htm. You can also access this site from EPA's Office of Pesticide Programs Home Page, http://www.epa.gov/pesticides/, using the following links: Reregistration and Special Review, Organophosphates, OP Schedule and Documents, and disulfoton. Available documents include the IRED, supporting technical documents, **Federal Register** notices, and EPA's response to public comments. General information on reregistration and tolerance reassessment, including IREDs, is available at http://www.epa.gov/pesticides/reregistration.

2. *In person.* The Agency has established an official record for the disulfoton IRED under docket ID number OPP–2002–0055. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as references within those documents. The public version of the official record does not include any information claimed as CBI. The public record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The PIRIB telephone number is (703) 305–5805. EPA documents relevant to the 6–phase public participation process for disulfoton are located under a different docket number, OPP 34165, which contains the Agency's preliminary and revised risk assessments for disulfoton, public comments, and the Agency's response to comments.

II. How Can I Respond to this Action?

A. How and to Whom do I Submit Comments?

You may submit comments through the mail, in person, or by e-mail. To ensure proper receipt by EPA, it is imperative that you include docket ID number OPP–2002–0055 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to the following address: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information

modify in any way any determination or requirement set forth in individual pesticide Interim Reregistration Eligibility Decisions (IREDs), or affect regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). This Notice closely relates to a previous **Federal Register** Notice of (May 22 2002, 66 FR 25901) (FRL–7178–9) in which EPA

of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public

pesticides as high priority for tolerance reassessment. EPA has determined that the OPs share a "common mechanism of toxicity," and therefore, that the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP pesticides to determine whether they meet the current health

1. *By mail.* Submit your comments to the following address: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The PIRIB telephone number is: (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any electronic information that you consider to be CBI. Avoid the use of special characters and any form of encryption. EPA will accept electronic submissions submitted in WordPerfect versions 6.1/8.0/9.0 or ASCII file format. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any electronic information that you consider to be CBI. You may claim written information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. You must submit one complete version of the comment that includes any information claimed as CBI, as well as a copy of the comment that does not contain the CBI information for inclusion in the public version of the offical record. Information not marked confidential will be included in the public version of the offical record without prior notice. If you have any questions about CBI or the procedures for making CBI claims, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

III. What Action is the Agency Taking?

A. General Information

For the OP pesticide disulfoton, the Agency is announcing the availability of the IRED document and supporting technical documents. EPA has assessed the risks associated with the use of disulfoton and reached an interim reregistration eligibility decision for disulfoton. The disulfoton IRED and supporting technical documents were developed using the OP public participation process, which was designed to increase transparency and maximize stakeholder involvement and to provide numerous opportunities for public comment. You can read more about the OP public participation process at http://www.epa.gov/pesticides/op/process.htm. Below is a brief summary of EPA's interim decision, which is fully described in disulfoton's IRED document.

B. Disulfoton Decision

EPA has determined that disulfoton is eligible for reregistration, pending a full reassessment of the cumulative risk from all OP pesticides, and provided that all the conditions identified in the IRED document are satisfied, including implementation of risk mitigation measures. Without implementation of the risk mitigation measures, the Agency has determined that disulfoton products may pose unreasonable adverse effects on human health and the environment. Therefore, EPA expects that registrant will implement the risk mitigation measures as soon as possible. The IRED document describes, in detail, what is necessary for implementing the risk mitigation measures, such as submission of label amendments for end-use products and submission of any required data. Mitigation measures for disulfoton include a phase out of disulfoton use on wheat, barley, potatoes, and commercially grown ornamentals by June 2005. Should a registrant fail to implement any of the risk mitigation identified in the IRED document, the Agency may take regulatory action to address risk concerns from the use of disulfoton.

EPA is taking comment on benefits associated with disulfoton use in response to grower concerns about the benefits assessment used to support the interim RED for disulfoton. There will be a 30–day public comment period to allow growers and other stakeholders an opportunity to submit any new use and usage information relevant to the risk management decision for disulfoton. Comments concerning uses being phased out must include specific information oncurrent disulfoton use, timing of applications, target pests, available alternatives, and the cost and efficacy of alternatives, to be considered by the Agency.

C. Next Steps

EPA's next step under FQPA is to consider a cumulative risk assessment and risk management decision encompassing all the OP pesticides, which share a common mechanism of toxicity. Because the Agency has not yet finished its consideration of the cumulative risks for the OPs, the Agency's interim decisions do not fully satisfy the reassessment of the existing food residue tolerances as required by FQPA for disulfoton. When the Agency has considered the cumulative risks for the OPs, tolerances for disulfoton will be reassessed along with the other OP pesticides. At that time, the Agency will complete the FQPA requirements for the OPs and make a final reregistration eligibility decision, which may include further risk mitigation measures.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 5, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–17985 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0111; FRL–7166–8]

Organophosphate Pesticides; Reassessment of Certain Non-Contributing Commodity Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As part of its ongoing review of existing organophosphate (OP) tolerances under the Food Quality Protection Act (FQPA), EPA has determined that 47 OP tolerances can be reassessed at this time. EPA has concluded that these tolerances make, at most, a negligible contribution to the cumulative risk from OP pesticides. These "non-contributor" tolerances have no reported pesticide residue detections in the monitoring data being used in the OP cumulative risk assessment (CRA)(U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP). These non-contributor tolerances meet the FQPA safety standard in section 408(b)(2) of the Federal Food, Drug and Cosmetic Act (FFDCA) and can be reassessed for the purposes of FFDCA section 408 (q). This Notice discusses the concept and basis for this approach to reassessing selected OP tolerances based on available information relating to the OP CRA. Nothing in this Notice is intended to modify in any way any determination or requirement set forth in individual pesticide Interim Reregistration Eligibility Decisions (IREDs), or affect regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). This Notice closely relates to a previous **Federal Register** Notice of (May 22 2002, 66 FR 35991), (FRL–7178–9) in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and requested suggestions on other approaches for identifying tolerances that do not contribute risk to the OP cumulative risk assessment.

DATES: The reassessment of these tolerances is effective as of July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general who are interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of this Notice may also be accessed at http: www.epa.gov/opsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0111. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

The FQPA of 1996 significantly amended the FFDCA, creating a new safety standard for judging the acceptability of tolerances for pesticide residues in food. The new statutory standard allows EPA to approve a new tolerance or leave an existing tolerance in place only if the tolerance is "safe." The statute defines "safe" to mean "that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable data" FFDCA section 408(b)(2)(A)(ii). In making the safety determination, EPA "shall consider, among other relevant factors . . . available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity" FFDCA section 408(b)(2)(D)(v). The FQPA amendments not only made the new safety standard applicable to new tolerances, but also to tolerances in existence when FQPA became law. FQPA set a 10 year schedule for EPA to reassess all existing tolerances, with interim deadlines for completion of 33% and 66% of tolerance reassessments three and 6 years, respectively, after the date of enactment. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if they meet the section 408(b)(2) safety standard. Finally, FQPA instructed EPA to give priority to the review of tolerances which appear to pose the greatest risk to public health.

Consistent with the FQPA mandate, EPA identified organophosphate pesticides as high priority for tolerance reassessment. EPA has determined that the OPs share a "common mechanism of toxicity," and therefore, that the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP pesticides to determine whether they meet the current health and safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA safety standard, and has presented its determinations in documents called "Interim Reregistration Eligibility Decisions (IREDs)." When the pesticide covered by an IRED shares a common mechanism of toxicity with other pesticides, the IRED addresses the aggregate risk of the chemical but does not take a position on the FFDCA standard until the Agency has also considered the potential cumulative risks of the group of pesticides.

In addition to its consideration of individual OP pesticides, EPA has also conducted a preliminary CRA for all of the OPs and sought public comment on the assessment. The Agency recently released the revised OP CRA for public comments. The preliminary and revised OP cumulative risk assessment documents are available at www.epa.gov/pesticides/cumulative. In addition, EPA presented the assessment to its FIFRA Scientific Advisory Panel (SAP) for expert, independent scientific peer review. The SAP provided a generally favorable review of the preliminary assessment. See www.epa.gov/scipoly/sap/index.htm.

EPA has raised with stakeholders during a number of public meetings the concept of reassessing selected OP tolerances because, based on available data and assessments, EPA could determine that they make, at most, no more than a negligible contribution to risk. Most recently, the concept of reassessing such "non-contributors" was an agenda topic for the February, 2002, meeting of the Committee to Advise on Reassessment And Transition (CARAT). In the **Federal Register** of (May 22 2002, 66 FR 35991), EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, and requested suggestions on other approaches for identifying tolerances that do not contribute risk to the OP cumulative risk assessment.

III What Action is the Agency Taking?

A. Reassessment of Non-Contributor Tolerances

In this Notice, EPA identifies non-contributor tolerances and considers these tolerances reassessed for the purposes of FQPA section 408 (q) as of today's date. Pesticide tolerances subject to reassessment under the FQPA section would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be negligible. As part of its preliminary cumulative risk assessment, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to ultimately be subject to regulatory action. For tolerances reassessed as announced in this Notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of

analysis. Foods are washed and inedible portions are removed before analysis but these foods are not further cooked or processed. A complete description of the PDP and all data through 1999 are available on the internet at www.ams.usda.gov/science/pdp.

PDP data are not available for all food commodities with current OP registrations, including a limited

Broccoli
Brussels sprouts
Cauiflower
Peanut
Pea
Spinach

Mevinphos (40 CFR 180.157)

Melon (incl. Cantaloupe, melon, honeydew, and muskmelon, determined on the edible portion with rind removed)

ACTION: Final notice.

SUMMARY: In the **Federal Register** of September 17, 2001 (66 FR 48057) (FRL–6777–1), EPA issued a notice of intent to approve an amended West Virginia Plan for the certification of applicators of restricted use pesticides. In the notice EPA solicited comments from the public on the proposed action to approve the amended West Virginia

III What Action is the Agency Taking?

A. Reassessment of Non-Contributor Tolerances

In this Notice, EPA identifies non-contributor tolerances and considers these tolerances reassessed for the purposes of FQPA section 408 (q) as of today's date. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if it meets the section 408(b) safety standard. This standard is met if EPA finds that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue." In evaluating tolerances under the standard, the FQPA also instructs the Agency to consider the cumulative effects of the pesticide and other substances that have a common mechanism of toxicity. For each of the tolerances being reassessed, the Agency has issued an IRED, which found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has now considered the impact of these cumulative risks in the reassessment of these tolerance and has determined that these tolerances make, at most, only a negligible contribution to the overall risks from OPs. Therefore, these tolerances can be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA believes it is appropriate to consider these tolerances reassessed for the purposes of FQPA section 408(q) as of today's date.

In making the determination that these tolerances contribute negligible (if any) residues and/or risk, EPA considered, among other things, the nature of the use of the pesticide, the data used in conducting aggregate risk assessments for each individual OP, the potential for drinking water contamination, and other data and analyses available to the Agency (such as food residue monitoring and other information that the Agency is using for the CRA). The Agency concludes that these pesticide uses result in minimal or no detectable residues in food, and have no or negligible effects through drinking water. Because a tolerance may apply to more than one raw agricultural commodity (RAC), no tolerance is herein reassessed as a non-contributor unless all of the RAC (food forms) that are part of that tolerance are also considered to be non-contributors. EPA also considered the potential impacts of future OP risk management decisions and determined that such decisions would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be negligible. As part of its preliminary cumulative risk assessment, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to overall risk as a result of the presence of residues of such pesticides in drinking water. Because of the nature of the available data, EPA's estimate employs assumptions that are designed not to understate potential drinking water exposure. The OP preliminary and revised CRA concluded that drinking water was not a significant source of potential exposure. In reaching the determination to reassess these tolerances, EPA has considered this analysis, the public comment and the SAP's advice, as well as the information developed to assess the aggregate exposure from drinking water for each of the individual pesticides being reassessed.

The Agency's assessment of these tolerances is effectively complete and the tolerances are considered reassessed. Nothing in this Notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs, or affect existing or future regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). For any of the uses that may be cancelled pursuant to any such decision, EPA expects that the associated tolerance would be revoked at the appropriate time unless it is properly supported for an import tolerance. In addition, all of these pesticide/use pattern combinations are included in the preliminary CRA and will remain in the CRA even though they involve exposures that pose negligible/minimal risk.

No conclusions about reassessment should be drawn about tolerances that are not identified as non-contributors in this Notice. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described here and in a previous the **Federal Register** Notice of May 22 2002, 66 FR 35991 in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars. Additional tolerances may be reassessed without the need for regulation upon completion of the CRA. In other words, the failure of a tolerance to be identified as a non-contributor in this or any other announcement does not imply that the pesticide/use combination will ultimately be subject to regulatory action. For tolerances reassessed as announced in this Notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of concern.

B. Tolerances With No Residue Detections in PDP

EPA has determined that certain OP tolerances, listed later in the Notice, are reassessed at this time because they make, at most, a negligible contribution to OP risk. The Agency examined the monitoring data being used in the OP cumulative risk assessment and found that no residues were detected for these food commodity/OP combinations, including the parent chemical and the degradates that were tested. The monitoring data being used in the OP cumulative assessment, USDA's PDP data, are the Agency's preferred data for risk assessment. The number of samples analyzed in the PDP for these food commodity/OP combinations ranged from almost 200 to 2,600 samples.

USDA's PDP program has been collecting data on pesticide residues found on foods since 1991, primarily for purposes of estimating dietary exposure to pesticides. For several years, EPA has routinely used the PDP data base in developing assessments of dietary risk. The PDP's sampling procedures were designed to capture actual residues of the pesticide and selected metabolites in the food supply as close as possible to the time of consumption. Data collected close to actual consumption, such as PDP data, depicts a more realistic estimate of exposure, i.e., residues that could be encountered by consumers. The real-world nature of PDP data makes it preferable for the purposes of this assessment than pesticide field trials, which are another data source available to the Agency. Field trial data are designed to test for residues under exaggerated application scenarios, and are primarily used in establishing tolerances.

The PDP is designed to focus on foods highly consumed by children and to reflect foods typically available throughout the year. PDP's commodity testing profile includes not only fresh fruits and vegetables, but also canned and frozen fruits/vegetables, fruit juices, whole milk, wheat, soybeans, oats, corn syrup, peanut butter, rice, poultry, beef, and drinking water. The PDP generally collects foods at wholesale distribution centers and stores them frozen until

analysis. Foods are washed and inedible portions are removed before analysis but these foods are not further cooked or processed. A complete description of the PDP and all data through 1999 are available on the internet at www.ams.usda.gov/science/pdp.

PDP data are not available for all food commodities with current OP registrations, including a limited number of food commodity tolerances that are listed in this Notice. When PDP data are not available for a commodity, EPA uses data when it is appropriate to do so from commodities that are measured by PDP to serve as surrogate data sources. This well established practice of using surrogate, or "translated," data is based upon the concept that families of commodities with similar cultural practices and insect pests are likely to have similar pesticide use patterns. For example, data on peaches can be used as surrogate data for apricots. The practice of translating data from tested sources to similar situations that have not been directly tested has been used for some time by EPA in the development of pesticide-specific dietary exposure assessments when monitoring data are unavailable. The methods of translation, specifically, what commodities may be used to represent other commodities, have been made public. EPA is using translated data where appropriate for the purposes of the OP cumulative risk assessment and tolerance reassessment as discussed in this Notice.

EPA has examined the PDP data that is being used for the OP cumulative risk assessment and found that no residues for the parent pesticide or any tested metabolite were reported for the 47 OP tolerances listed below. As a result, EPA has concluded that these tolerances make, at most, a negligible contribution to the cumulative risk from OP pesticides, and, therefore, these tolerances are considered reassessed. EPA expects to announce as reassessed other tolerances that have no detections in PDP in future Notices as appropriate in light of their individual OP assessments.

The following 47 tolerances are considered reassessed at this time:

Azinphos methyl (40 CFR 180.154)
- Brussels sprouts

Chlorpyrifos (40 CFR 180.342)
- Banana, whole
- Bananas, pulp with peel removed
- Corn, field, grain
- Corn, fresh (inc. sweet, kernel plus cob with husks removed)

Disulfoton (40 CFR 180.183)
- Bean, dry
- Bean, lima
- Bean, snap
- Broccoli
- Brussels sprouts
- Cauiflower
- Peanut
- Pea
- Spinach

Mevinphos (40 CFR 180.157)
- Melon (incl. Cantaloupe, melon, honeydew, and muskmelon, determined on the edible portion with rind removed)
- Pea
- Watermelon

Oxydemeton methyl (40 CFR 180.33ρ)
- Apple
- Apricot
- Bean, lima
- Bean, snap
- Brussels sprouts
- Cabbage
- Eggplant
- Grapefruit
- Grape
- Lemon
- Melon
- Oranges
- Pear
- Plum, prune, fresh
- Pumpkin
- Squash, winter
- Strawberry
- Turnip

Phorate (40 CFR 180.206)
- Bean
- Corn, grain
- Corn, sweet, kernel plus cob with husks removed
- Soybean

Phosalone (40 CFR 180.263)
- Apricot
- Cherry
- Grape
- Peach
- Pear
- Plum, prune, fresh

Phosmet (40 CFR 180.261)
- Pea
- Potato

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 8, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–17987 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–42079A; FRL–6821–3]

West Virginia State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final notice.

SUMMARY: In the **Federal Register** of September 17, 2001 (66 FR 48057) (FRL–6777–1), EPA issued a notice of intent to approve an amended West Virginia Plan for the certification of applicators of restricted use pesticides. In the notice EPA solicited comments from the public on the proposed action to approve the amended West Virginia Plan. The amended Certification Plan contained several statutory and programmatic changes. The approved amendments establish: New requirements for the certification and recertification of pesticide applicators; for the issuance of pesticide business licences; categories for private applicators; additional competency standards and time intervals between re-examination attempts for initial certification; training requirements for registration of non-certified employees; commercial categories and subcategories, and civil penalties private applicators. The plan also contains a speciality subcategory for predator control. Persons certified in this subcategory will not only be required to demonstrate a practical knowledge of predator control, but also must demonstrate a knowledge of the specific label requirements and use restrictions of the 1080 Livestock Protection Collar and M–44 Device. No comments were received and EPA hereby approves the amended West Virginia Plan.

ADDRESSES: The amended West Virginia Certification Plan can be reviewed at the locations listed under Unit I.B. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Magda Rodriguez-Hunt, Pesticides/ Asbestos Programs and Enforcement Branch, Waste and Chemicals Management Division (3WC32), Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2099; telephone number: (215) 814–2128; fax number: (215) 814–3113; e-mail address: rodriguez-hunt.magda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons

who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0136; FRL–7186–4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection

consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that

Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number

requests in electronic form must be identified by docket ID number OPP–2002–0136. Electronic withdrawal requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be

contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed

who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of the Amended State Plan, Other Related Documents, and Additional Information?

To obtain copies of the amended West Virginia Certification Plan, other related documents, or additional information contact:

1. Magda Rodriguez-Hunt at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Robert Frame, Pesticide Regulatory Programs, West Virginia Department of Agriculture, 1900 Kanawha Boulevard, East, Charleston, WV 25305–0190; telephone number: (304) 558–2209; e-mail address: rframe@ag.state.wv.us.

3. Jeanne Heying, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.; telephone number: (703) 308–3240; e-mail address: heying.jeanne@epa.gov.

II. What Action is the Agency Taking?

EPA is approving the amended West Virginia Certification Plan. This approval is based upon the EPA review of the West Virginia Plan and finding it in compliance with FIFRA and 40 CFR part 171. Further, there were no public comments submitted to the earlier **Federal Register** Notice soliciting comments. The amended West Virginia Certification Plan is therefore, approved.

List of Subjects

Environmental protection.

Dated: June 27, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–17878 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0136; FRL–7186–4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**.

DATES: The deletions are effective on January 13, 2003, unless indicated otherwise. The Agency will consider withdrawal requests postmarked on or before January 13, 2003.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before, unless indicated otherwise, January 13, 2003.

ADDRESSES: Withdrawal requests may be submitted by mail,electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the**SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency,1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5761; e-mail address: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov.'To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0136. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of this official record, which includes printed, paper versions of any electronic comments submitted during as applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 A.M. to 4:00 P.M., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Withdrawal Requests?

You may submit withdrawal requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0136 in the subject line on the first page of your response.

1. *By mail.* Submit your withdrawal request to: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your withdrawal request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your withdrawal requestelectronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All withdrawal requests in electronic form must be identified by docket ID number OPP–2002–0136. Electronic withdrawal requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the withdrawal request that includes any information claimed as CBI, a copy of the withdrawal request that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under**FOR FURTHER INFORMATION CONTACT**.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product	Chemical Name	Delete From Label
000655–00028	Lindane Technical Powder	Lindane	Broccoli, brussels sprouts, cabbage, cauliflower, celery, collards, lettuce, kale, kohlrabi, mustard greens, radishes, spinach and Swiss chard
000655–00028	Prentox Lindane Technical Powder	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, lettuce, kale, kohlrabi, mustard greens, radishes, spinach and Swiss chard
004581–00405	TOPSIN M 4.5F for Turf and Ornamentals	Thiophanate-methyl	Sod farms
005481–00225	Technical Lindane	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach and Swiss chard
007501–00034	Gustafson Lindane 30C	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, and radishes
007501–00038	Gustafson Captan Lindane 12.5-25 Seed Protectant	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, radishes, and spinach
019713–00061	Drexel Lindane Technical 1	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach, and Swiss chard
019713–00191	Drexel Lindane Technical 2	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach, and Swiss chard
019713–00262	Drexel 25% Lindane Seed Treater	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, lettuce, radishes, and spinach
019713–00387	Drexel Lindane Flowable	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, lettuce, radishes, and spinach
019713–00401	Drexel Lindane 300 Flowable	Lindane	Broccoli, brussel sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, radishes, spinach, and Swiss chard
034704–00653	Captan Seed Treater with Lindane	Lindane	Cabbage, cauliflower, broccoli, brussel sprouts, radishes, milo, and spinach
034704–00656	Lindane 25 Planter Box Seed Treater	Lindane	Lettuce, milo, and spinach
034704–00674	Lindane 25 EC-LF	Lindane	Broccoli, cabbage, brussel sprouts, cauliflower, lettuce, milo, radishes, and spinach

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product	Chemical Name	Delete From Label
034704–00737	Maneb-Lindane	Lindane	Soybeans
034797–00029	General Purpose Aqueous Insecticide	(Butylcarbityl)(6-propylpiperonyl) ether 80%	Surface spray, space spray, and mosquito adulticide

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product	Chemical Name	Delete From Label
034704–00737	Maneb-Lindane	Lindane	Soybeans
034797–00029	General Purpose Aqueous Insecticide	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds; Pyrethrins	Surface spray, space spray, and mosquito adulticide
066330–00019	Isotox Seed Treater (F)	Lindane	Alfalfa/clover/beans/cabbage/cauliflower/broccoli/brussel sprouts/radishes/carrots/onions/cotton/cucumbers/cantaloupe/watermelon/squash/pumpkin/flax/okra/peas/safflower/sudangrass/spinach/soybean/sugars beets

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 13, 2002, unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
004581	Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19046.
005481	AMVAC Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660.
007501	Gustafson LLC, Box 660065, Dallas, TX 75266.
019713	Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113.
034704	Jane Cogswell, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632.
034797	Qualis Inc., 4600 Park Ave., Des Moines, IA 50321.
066330	Arvesta Corp., 100 First Street, Suite 1700, San Francisco, CA 94105.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before January 13, 2002, unless indicated otherwise.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 8, 2002.

Arnold E. Layne,

Acting Director, Information Resources and Services Division.

[FR Doc. 02–17986 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0130; FRL–7185–6]

Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0130; must be received on or before August 16, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0130; in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0130. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0130 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0130. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2002.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as

in typical growing regions for dry beans. The data collected support the proposed tolerance of 3.0 ppm.

B. Toxicological Profile

1. *Acute toxicity*. A rat acute oral toxicity study with a lethal dose (LD_{50}) of approximately 3,387 milligrams/kilogram (mg/kg) (toxicity category III;

containing cyromazine at 0, 30, 300, or 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day, respectively) for 6–months. No treatment-related effects were observed in survival, clinical signs or body weight parameters. Pronounced effects on hematologic parameters, were manifested as decreases in hematocrit and hemoglobin levels at 300 and 3,000

analysis is 0.0075 milligram/kilogram body weight/day (mg/kg bwt/day). The following assumptions were used in the dietary risk assessment: (i) PCT estimates were utilized for cucurbit vegetables, leafy vegetables (except Brassica), onions, peppers and tomatoes. All other crops 100% crop-treated was assumed; (ii) anticipated residue estimates were used for milk, meat, fat,

utilize 17% of the chronic population dose (cPAD) for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 34% for children (1–6 years old). Other subgroups include non-nursing infants, (1 year old) utilizing 13% of cPAD, and children (7-12 years old) utilizing 26% of the cPAD. EPA generally has no concern for exposures below 100% of

that reliable data support using the standard MOE and uncertainty factor (100 for combined interspecies and intraspecies variability) and that an additional safety factor of 10 is not necessary to be protective of infants and children.

Using the conservative exposure assumptions described above, the aggregate exposure to cyromazine from

Dated: July 2, 2002.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the IR-4 Project, Centre for Minor Crop Pest Management and represents the view of the Centre for Minor Crop Pest Management. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

PP 0E6219

EPA has received a pesticide petition 0E6219 from the IR-4 Project, Centre for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 8920–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.414 by establishing a tolerance for residues of the insecticide, cyromazine, (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the raw agricultural commodity dry bean at 3.0 parts per million (ppm). This notice includes a summary of the petition prepared by Novartis Crop Protection Inc., Greensboro, NC 27419. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyromazine in plants is adequately understood for the purposes of these tolerances.

2. *Analytical method.* Methods AG–408 and AG–417 as listed in the Food and Drug Administration's Pesticide Analytical Manual (PAM), Vol-II are adequate to enforce the proposed tolerance.

3. *Magnitude of residues.* A total of nine residue field tests were conducted in typical growing regions for dry beans. The data collected support the proposed tolerance of 3.0 ppm.

B. Toxicological Profile

1. *Acute toxicity.* A rat acute oral toxicity study with a lethal dose (LD_{50}) of approximately 3,387 milligrams/kilogram (mg/kg) (toxicity category III; moderately toxic). A rat acute dermal toxicity study with a LD_{50} greater than 3,100 mg/kg (toxicity category III; moderately toxic). A rat acute inhalation study with a lethal concentration (LC_{50}) greater than 2.9 mg/kg (toxicity category IV; slightly toxic). A primary eye irritation study in the rabbit that showed no eye irritation. A primary dermal irritation study in the rabbit that showed mild irritation (toxicity category; IV). A dermal sensitization study in the guinea pig that showed no sensitization.

2. *Genotoxicity.* Studies on gene mutation and other genotoxic effects showed no evidence of point mutation in an Ames test; no indication of mutagenic effects in a dominant lethal test; and no evidence of mutagenic effects in a nucleus anomaly test in Chinese hamsters.

3. *Reproductive and developmental toxicity.* In a rat developmental toxicity study, the maternal NOAEL was 100 mg/kg/day. The maternal LOAEL was 300 mg/kg based on decreased body weight gain and clinical observations. The developmental NOAEL was 300 ppm. The developmental LOAEL was 600 mg/kg based upon an increase of minor skeletal variations.

In a rabbit developmental toxicity study, the maternal NOAEL was 10 mg/kg. The maternal LOAEL was 30 mg/kg based upon decreased body weight gain and food consumption. The developmental NOAEL/LOAEL was greater than or equal to 60 mg/kg.

In a multi-generation study in rats, the systemic NOAEL was 30 ppm (1.5 mg/kg). The systemic LOAEL was 1,000 ppm (50 mg/kg) based upon decreased body weights associated with decreased food consumption. The developmental/offspring systemic NOAEL was 1,000 ppm. The developmental/offspring systemic LOAEL was 3,000 ppm (150 mg/kg) based upon decreased body weight at birth through weaning. There were no effects on reproductive parameters at the highest dose tested (3,000 ppm).

4. *Subchronic toxicity.* In a 6–month feeding study in dogs, the NOAEL was 30 ppm (0.75 mg/kg). The LOAEL was 300 ppm (7.5 mg/kg) based upon decreased hematocrit and decreased hemoglobin. Groups of male and female beagle dogs (4/sex/dose) were fed diets containing cyromazine at 0, 30, 300, or 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day, respectively) for 6–months. No treatment-related effects were observed in survival, clinical signs or body weight parameters. Pronounced effects on hematologic parameters, were manifested as decreases in hematocrit and hemoglobin levels at 300 and 3,000 ppm.

5. *Chronic toxicity.* In a 24–month feeding study in rats the NOAEL for the study was 30 ppm (1.5 mg/kg/day). The LOAEL was 300 ppm (15.0 mg/kg) based on decreased body weight. In a 24–month mouse chronic feeding carcinogenicity study the NOAEL was 50 ppm (7.5 mg/kg/day). The LOAEL was 1,000 ppm (150.0 mg/kg) based upon decreased body weight. There was no evidence of carcinogenicity at 3,000 ppm (450 mg/kg). In a 24–month rat chronic feeding carcinogenicity study the NOAEL was greater than 3,000 ppm (150 mg/kg) (highest dose tested). There was no evidence of carcinogenicity at 3,000 ppm.

6. *Animal metabolism.* The metabolism of cyromazine has been adequately characterized in the rat, goat and chicken.

7. *Metabolite toxicology.* EPA has removed melamine, a metabolite of cyromazine, from the tolerance expression as a residue of toxicological concern. For more information on melamine, see the **Federal Register** of September 15, 1999 (64 FR 50043) (FRL–6098–7).

8. *Endocrine disruption.* Cyromazine does not belong to a class of chemicals proven to have adverse effects on the endocrine system. There is no evidence that cyromazine has any effect on endocrine function in developmental or reproduction studies.

C. Aggregate Exposure

1. *Dietary exposure.* EPA has conducted risk assessments to assess dietary exposures from cyromazine. Details of these assessments are in the **Federal Register** of September 15, 1999 (64 FR 50043).

i. *Food—a. Acute risk.* A food-use pesticide is presumed to pose an acute risk if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. There were no toxicological effects attributed to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, there is a reasonable certainty of no harm from acute dietary exposure.

b. *Chronic.* The chronic reference dose (RfD) used for the chronic dietary

analysis is 0.0075 milligram/kilogram body weight/day (mg/kg bwt/day). The following assumptions were used in the dietary risk assessment: (i) PCT estimates were utilized for cucurbit vegetables, leafy vegetables (except Brassica), onions, peppers and tomatoes. All other crops 100% crop-treated was assumed; (ii) anticipated residue estimates were used for milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (iii) all other commodities tolerance level residues were assumed.

ii. *Drinking water exposure—a. Acute.* Because no acute dietary endpoint was determined, cyromazine does not pose an acute risk through drinking water.

b. *Chronic.* EPA has calculated drinking water level of concern (DWLOC) values for chronic (non-cancer) exposure to cyromazine in surface water and ground water. A human health DWLOC is the concentration of a pesticide in drinking water that would result in an acceptable aggregate risk after having factored in all food exposures and other non-occupational exposures for which EPA has reliable data. To calculate the DWLOCs for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to cyromazine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures. The modeling conducted was based on the environmental profile and the maximum seasonal application rate proposed for cyromazine (6 applications at 0.125 lb/acre).

2. *Non-dietary exposure.* Cyromazine is currently registered for commercial outdoor use on landscape ornamentals and commercial interiorscapes. There are no lawn or indoor residential uses and significant residential exposure is not expected.

D. Cumulative Effects

Novartis does not have, at this time, available data to determine whether cyromazine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination

1. *U.S. population.* The aggregate exposure to cyromazine from food will utilize 17% of the chronic population dose (cPAD) for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 34% for children (1–6 years old). Other subgroups include non-nursing infants, (1 year old) utilizing 13% of cPAD, and children (7-12 years old) utilizing 26% of the cPAD. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Based on the chronic dietary (food only) exposures and using default body weights and water consumption figures, chronic DWLOCs for drinking water were calculated. For chronic exposure, based on an adult body weight of 70 kg and 2 liter (2L) consumption of water per day, the DWLOC from chronic dietary exposure in drinking water is 220 ppb. For children (10 kg and consuming 1 liter water/day) the DWLOC is 50 parts per billion (ppb). The estimated chronic drinking water exposure for cyromazine is 28.9 ppb (surface water) and 1.6 ppb (ground water). Thus, the potential residues in drinking water are not greater than the DWLOCs. Therefore, the combined exposure of chronic dietary food and drinking water exposure to cyromazine would be no greater than 100% of the cPAD for children or the general U.S. population.

Due to the nature of the non-dietary use, the commercial use of cyromazine on landscape ornamentals will not result in any significant residential exposure. Therefore, the chronic risk is the sum of food and water and there is reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

The Cancer Peer Review Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Based upon this determination it can be concluded that cyromazine does not pose a cancer risk.

Therefore, based on these risk assessments there is a reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

2. *Infants and children.* The safety factor for infants and children under FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. EPA determined that reliable data support using the standard MOE and uncertainty factor (100 for combined interspecies and intraspecies variability) and that an additional safety factor of 10 is not necessary to be protective of infants and children.

Using the conservative exposure assumptions described above, the aggregate exposure to cyromazine from food will utilize a maximum 34% of the cPAD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the cPAD, because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. As noted above, potential exposure from drinking water is at a level below the DWLOCs. Therefore, based on these risk assessments there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

F. International Tolerances

There are currently no codex, Canadian or Mexican limits for residues of cyromazine on dry beans.

[FR Doc. 02–17688 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0131; FRL–7185–8]

Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0131, must be received on or before August 16, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0131 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public

D. How Should I Handle CBI That I Want to Submit to the Agency?

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whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of clomazone in plants is adequately understood.

2. *Analytical method.* Samples were analyzed using an analytical method consisting of an acid reflux, a C18 solid phase extraction (SPE), a Florisil SPE clean-up followed by gas

effects. Additionally, a standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. No endocrine effects were noted in any of these studies with clomazone.

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

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2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0131. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0131 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0131. Electronic comments may also be filed online at many Federal Depository Libraries.

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the Interregional Research Project Number 4 and represents the view of the Interregional Research Project Number 4. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

PP 2E6407

EPA has received a pesticide petition [2E6407] from the Interregional Research Project Number 4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.425 by establishing a tolerance for residues of the herbicide clomazone, 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodities peppermint tops and spearmint tops at 0.05 part per million (ppm). This notice includes a summary of the petition prepared by FMC, Agricultural Products Group, Philadelphia, PA 19103. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of clomazone in plants is adequately understood.

2. *Analytical method*. Samples were analyzed using an analytical method consisting of an acid reflux, a C18 solid phase extraction (SPE), a Florisil SPE clean-up followed by gas chromatography (GC)-mass selective detection (MSD). Mint oil samples were partitioned with hexane followed by clean-up with two Florisil columns. Analysis was conducted using GC/MS. The method limit of quantitation (LOQ) is 0.05 ppm. The method limit of detection (LOD) is 0.01 ppm.

3. *Magnitude of residues*. IR-4 conducted a residue study consisting of five trials, located in EPA Regions 5 and 10, to determine the magnitude of the residue of clomazone in/on mint and mint oil after Command 3ME was applied once as a pre-emergence broadcast spray at 0.5 pound active ingredient/acre (lb. ai/acre), or at 1.0 lb. ai/acre for processing into mint oil. No quantifiable residues of clomazone were observed in the mint stems or leaves or mint oil.

B. Toxicological Profile

The nature of the toxic effects caused by clomazone is discussed in unit II.B. of the **Federal Register** on March 28, 2001 (66–FR–16917) (FRL–6775–4).

1. *Animal metabolism*. The metabolism of clomazone in animals is adequately understood. Clomazone degrades rapidly and extensively in rats, goats and poultry to a variety of metabolites which were readily excreted from the body via excreta.

2. *Metabolite toxicology*. No clomazone related metabolite residues have been identified as being of toxicological concern. The residue of significance is parent. Clomazone, has been thoroughly investigated in a full battery of studies including acute, genetic, reproduction, developmental and oncogenic tests. These studies have demonstrated that clomazone has low acute toxicity, an overall absence of genotoxicity and does not cause reproductive toxicity, developmental toxicity, or carcinogenicity.

3. *Endocrine disruption*. No specific tests have been conducted with clomazone to determine whether the herbicide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. It should be noted, however, that the chemistry of clomazone is unrelated to that of any compound previously identified as having estrogen or other endocrine effects. Additionally, a standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. No endocrine effects were noted in any of these studies with clomazone.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure, EPA has estimated aggregate exposure based on the theoretical maximum residue contribution (TMRC) from the established tolerances for clomazone. The TMRC is a "worst case" estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.

i. *Food*. Dietary exposure to residues of clomazone in or on food will be limited to residues on cabbage (0.1 ppm), cottonseed (0.05 ppm), cucumber (0.1 ppm), succulent peas (0.05 ppm), peppers (0.05 ppm), pumpkins (0.1 ppm), soybeans (0.05 ppm), winter squash (0.1 ppm), summer squash (0.1 ppm), sweet potato (0.05 ppm), snap beans (0.05 ppm), rice (0.05 ppm), sugar (from cane) (0.05 ppm), tanier, cassava, yams, arracacha (0.05 ppm), and mint (0.05 ppm). Various feedstuffs from cotton, soybeans and sugarcane are fed to animals, thus exposure of humans to residues might result if such residues carry through to meat, milk, poultry, or eggs. No tolerances are proposed for meat, milk, poultry, or eggs since no detectable residues from clomazone have been found in animal feed items from these crops.

ii. *Drinking water*. It is unlikely that there will be exposure to residues of clomazone through drinking water supplies. A field mobility study was conducted at a loamy sand location. Clomazone was found only in the top 0-1 ft. soil samples during the 61–day study period. No clomazone residue <0.02 ppm was detected in the deeper soil levels (1-2, 2-3 and 3-4 ft.). Detectable residues of clomazone were found only in the 0-6 horizon. Should movement into surface water occur, potential for clomazone residues to be detected in drinking water supplies at significant levels is minimal. Accordingly, there is no reasonable expectation that there would be an additional incremental aggregate dietary contribution of clomazone through ground water or surface water. For further information see Unit II.C. of the **Federal Register**.

2. *Non-dietary exposure*. Clomazone is only registered for use on food crops. Since the proposed use on mint is consistent with existing registrations, there will be no non-dietary, non-occupational exposure.

D. Cumulative Effects

Clomazone is an isoxazolidinone [illegible]. No other registered chemical that will be utilized by aggregate exposure to residues of clomazone in/on mint (spearmint tops and peppermint tops) for non-nursing infants (<1 year old), the population subgroup most sensitive, is negligible (i.e., 0.00) and the percent of the RfD that will be utilized by the children (1–6 years old) population subgroup is also negligible

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 12, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–18116 Filed 7–15–02; 10:32 am]

BILLING CODE 6714–01–M

requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive

Correction

In the **Federal Register** of June 18, 2002, in FR Doc. 02–15232, at 67 FR 41420, concerning the announcement of the availability of funds and request for applications for a cooperative agreement to establish a National Poverty Research Center and Area Poverty Research Centers, please correct the following:

(a) Overview

(b) Key Trends and Past Research Analysis

(d) Staff and Organizational Data

(e) Training and Mentoring Emerging Scholars

(f) Budget Narrative

(g) Dissemination Plan

2. *Non-dietary exposure.* Clomazone is only registered for use on food crops. Since the proposed use on mint is consistent with existing registrations, there will be no non-dietary, non-occupational exposure.

D. Cumulative Effects

Clomazone is an isoxazolidinone herbicide. No other registered chemical exists in this class of chemistry. Therefore, given clomazone's unique chemistry low acute toxicity, the absence of genotoxic, carcinogenic, developmental or reproductive effects, and low exposure potential, the expression of cumulative human health effects with clomazone and other natural or synthetic pesticides is not anticipated.

E. Safety Determination

1. *U.S. population.* Using TMRC (a conservative exposure assumption), and based on the completeness and reliability of the toxicology data, it is concluded that aggregate exposure due to existing registered uses, and pending uses of clomazone will utilize less than 1% of the RfD for the U.S. population. Additionally, an analysis concluded that aggregate exposure to clomazone adding mint (spearmint tops and peppermint tops) at 0.05 ppm tolerance level will utilize a negligible percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, It is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to residues of clomazone, including all anticipated dietary exposure.

2. *Infants and children*— Safety factor. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete. Further, for clomazone, the no observed adverse effect level (NOAEL) in the 2–year feeding study which was used to calculate the reference dose (RfD) milligrams/kilogram/day (0.043 mg/kg/day) is already lower than the NOAELs from the reproductive and developmental studies by a factor of more than 10–fold. Therefore, it can be concluded that no additional uncertainty factors are warranted and that the RfD at 0.043 mg/kg/day is appropriate for assessing aggregate risk to infants and children as well as adults.

Using the conservative exposure assumptions described above, FMC has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of clomazone in/on mint (spearmint tops and peppermint tops) for non-nursing infants (<1 year old), the population subgroup most sensitive, is negligible (i.e., 0.00) and the percent of the RfD that will be utilized by the children (1–6 years old) population subgroup is also negligible (0.00). The percent of the RfD utilized for infants and children for mint (spearmint tops and peppermint tops), plus all other current clomazone tolerances is 0.8 and 0.5 respectively.

Based on the above information, FMC has concluded that there is a reasonable certainty that no harm will result to infants, children or adults from dietary food consumption exposure to clomazone residues from mint (spearmint tops and peppermint tops) plus all other clomazone treated human dietary food sources.

F. International Tolerances

There are codex residue limits for residues of clomazone in or on oilseed rape, potatoes, tobacco, soybeans, rice, cottonseed, sugarcane and peas.

[FR Doc. 02–17689 Filed 7–16–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:43 a.m. on Friday, July 12, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 12, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–18116 Filed 7–15–02; 10:32 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011810

Title: CMA–CGM/HL GUMEX-Brasil Cooperative Working Agreement

Parties:

CMA–CGM SA

Hapag-Lloyd Container Linie GmbH

Synopsis: The proposed agreement would authorize CMA–CGM and Hapag-Lloyd to charter space to and from each other on each other's vessels and discuss and agree on rates on a voluntary basis in the trade between ports on the U.S. Gulf Coast and ports in Mexico, Venezuela, Brazil, Argentina, Uruguay, and the Caribbean Sea.

By Order of the Federal Maritime Commission.

Dated: July 12, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–18009 Filed 7–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Harold J. Creel, Jr.,

Chairman.

The Members of the Performance Review Board Are

1. Joseph E. Brennan, Commissioner
2. Delmond J.H. Won, Commissioner
3. Norman D. Kline, Chief Administrative Law Judge
4. Frederick M. Dolan, Jr., Administrative Law Judge
5. Michael A. Rosas, Administrative Law Judge
6. Bryant L. VanBrakle, Secretary
7. Bruce A. Dombrowski, Executive Director
8. Florence A. Carr, Director, Bureau of Trade Analysis
9. Vern W. Hill, Director, Bureau of Enforcement
10. Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing
11. Austin L. Schmitt, Deputy Executive Director

[FR Doc. 02–18008 Filed 7–16–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Cooperative Agreement To Establish a National Poverty Research Center and Area Poverty Research Centers: Correction

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services published a notice in the **Federal Register** of June 18, 2002, regarding the announcement of the availability of funds and request for applications for a cooperative agreement to establish a National Poverty Research Center and Area Poverty Research Centers. The document contained incorrect information in Part IV.

FOR FURTHER INFORMATION CONTACT: Don Oellerich, 202–690–6805.

Correction

In the **Federal Register** of June 18, 2002, in FR Doc. 02–15232, at 67 FR 41420, concerning the announcement of the availability of funds and request for applications for a cooperative agreement to establish a National Poverty Research Center and Area Poverty Research Centers, please correct the following:

Part IV, Section A, General Information, page 41426, second column, correct the second line to read as follows:

2. Double line spacing (except for appendices).

Part IV, Section B, Application Development—National Center, on page 41427, second column, add:

(5) Dissemination Plan

A brief discussion of the plans for developing and maintaining a network for the dissemination of findings to the policy and research communities through newsletters, working papers, special reports and briefings. Other dissemination methods are encouraged.

Part IV, Section C, Application Development—Area Poverty Centers, on page 41428, first column, add:

(6) Dissemination Plan

A brief discussion of the plans for developing and maintaining a network for the dissemination of findings to the policy and research communities through newsletters, working papers, special reports and briefings. Other dissemination methods are encouraged.

Part IV, Section C, Disposition of Applications on page 41428, third column, becomes Part IV, Section E, Disposition of Applications.

Part IV, Section D, The Catalog of Federal Domestic Assistance Number, on page 41428, third column, becomes Part IV, Section F, the Catalog of Federal Domestic Assistance Number.

Part IV, Section E, Components of Complete Application, on page 41428, third column, becomes Part IV, Section G, Components of a Complete Application: National Poverty Research Center and Area Poverty Research Centers.

Part IV, Section G(8), Project Narrative Statement, on page 41428, third column, is corrected to read as follows:

8. Project Narrative Statement for the National Poverty Research Center, organized in 6 sections:

(a) Overview
(b) Research Agenda
(c) Staff and Organizational Data
(d) Training and Mentoring Emerging Scholars
(e) Budget Narrative
(f) Dissemination Plan

Project Narrative for the Area Poverty Research Centers, organized in 7 sections:

(a) Overview
(b) Key Trends and Past Research Analysis
(d) Staff and Organizational Data
(e) Training and Mentoring Emerging Scholars
(f) Budget Narrative
(g) Dissemination Plan

Dated: June 3, 2002.

William F. Raub,

Principal Deputy for Secretary for Planning and Evaluation.

[FR Doc. 02–17990 Filed 7–16–02; 8:45 am]

BILLING CODE 4156–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through June 30, 2004.

For further information, contact Charles N. Rafferty, Ph.D., Executive Secretary, Safety and Occupational Health Study Section, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301/435–3562 FAX 301/480–2644.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 10, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–17945 Filed 7–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel; Notice of Meeting

Dated: July 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17947 Filed 7–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel; Notice of Meeting

response to PA# 99–143, RFA OH–02–007 and RFA OH–02–013.

Contact Person for More Information: Gwendolyn Haile Cattledge, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE MS E–74, Atlanta, GA 30333 telephone (404) 498–2508.

The Director, Management Analysis and Services Office has been delegated the

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the Washington, DC 20503; Attn: Desk Officer for ACF.

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17939 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OMB No.: 0980–0270.

Description: Required by federal statute and regulation. Each State Protection and Advocacy System must prepare and submit to public comment a Statement of Goals and Priorities (SGP). The final version of this SGP for the coming fiscal year is submitted to ADD. The information in the SGP will

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel; Notice of Meeting

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Integrated, Multi-Level Intervention to Improve Adolescent Health Through the Prevention of Sexually Transmitted Diseases, Including HIV, and Teen Pregnancy, Program Announcement 02008.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Integrated, Multi-Level Intervention to Improve Adolescent Health Through the Prevention of Sexually Transmitted Diseases, Including HIV, and Teen Pregnancy, PA# 02008.

Times and Dates: 9 a.m.–9:30 a.m., July 31, 2002 (Open), 9:30 a.m.–4:30 p.m., July 31, 2002 (Closed), 9 a.m.–4:30 p.m., August 1, 2002 (Closed).

Place: Holiday Inn Select—Decatur Conference Plaza, 130 Clairmont Ave., Decatur, GA 30030.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02008.

Contact Person for More Information: Deirdre Kelly Hector and/or Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road NE MS E–07, Atlanta, Georgia 30333, 404–639–8025.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17947 Filed 7–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel; Notice of Meeting

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Research, Program Announcement 99–143, Program for the Initiation and Development of State-Based Surveillance Capacity in Occupational Safety and Health, Request for Applications OH–02–007,Continuation Support for State-Based SENSOR Programs, Request for Applications OH–02–013.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Safety and Health Research, PA# 99–143, Program for the Initiation and Development of State-Based Surveillance Capacity in Occupational Safety and Health, RFA OH–02–007,Continuation Support for State-Based SENSOR Programs, RFA OH–02–013.

Times and Dates: 9 a.m.–9:30 a.m., August 1, 2002 (Open), 9:40a.m.–5 p.m., August 1, 2002 (Closed), 9 a.m.–5 p.m., August 2, 2002 (Closed).

Place: Harbor Court Hotel, 550 Light Street, Baltimore MD 21202. Phone 1–800–824–0075.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 99–143, RFA OH–02–007 and RFA OH–02–013.

Contact Person for More Information: Gwendolyn Haile Cattledge, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE MS E–74, Atlanta, GA 30333 telephone (404) 498–2508.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 11, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–17948 Filed 7–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Protection & Advocacy Program Performance Report

OMB No.: 0980–0160

Description: This information collection is required by federal statute. Each State Protection and Advocacy System must prepare and submit a Program Performance Report for the preceding fiscal year of activities and accomplishments and of conditions in the State. The information in the Annual Report will be aggretated into a national profile of Protection and Advocacy Systems. It will also provide ADD with an overview of program trends and achievements and will enable ADD to respond to administration and congressional requests for specific information on program activities. This information will also be used to submit an Annual Report to Congress as well as to comply with requirements in GPRA.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A PPR	57	1	44	2,508
Estimated Total Annual Burden Hours			44	2,508

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503; Attn: Desk Officer for ACF.

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17939 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Protection and Advocacy Statement of Goals and Priorities.

OMB No.: 0980–0270.

Description: Required by federal statute and regulation. Each State Protection and Advocacy System must prepare and submit to public comment a Statement of Goals and Priorities (SGP). The final version of this SGP for the coming fiscal year is submitted to ADD. The information in the SGP will be aggregated into a national prospective profile of where Protection and Advocacy Systems are going. It will provide ADD with an overview of program direction, and permit ADD to track accomplishments against goals/targets, permitting the formulation of technical assistance and compliance with GPRA.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A SGP	57	1	44	2,508
Estimated Total Annual Burden Hours			44	2,508

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17940 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities State Plan.

OMB No.: 0980–0162.

Description: A Plan developed by the State Council on Developmental Disabilities is required by Federal statute. Each State Council on Developmental Disabilities must develop the plan, provide for public comments in the State, provide for approval by the State's Governor, and finally submit the plan on a five year basis. On an annual basis, the Council must review the plan and make any amendments. The State Plan will be used (1) by the Council as a planning document; (2) by the citizenry on the State as a mechanism for commenting on the plans of the Council; and (3) by the Department as a stewardship tool, for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act and as one basis for providing technical assistance (e.g., during site visits).

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan on Developmental Disabilities	55	1	80	4,400
Estimated Total Annual Burden Hours			80	4,400

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17941 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

State Councils on Developmental Disabilities.

OMB No.: 0980–0212.

Description: For the program of the State Council on Developmental Disabilities, funds are awarded to State Agencies contingent on fiscal requirements in Subtitle B of the Developmental Disabilities Assistance

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17943 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may

the premarket approval application (PMA) for CeeOn Model 911A (PMA P990080) was initially submitted November 30, 1999.

3. *The date the application was approved*: April 5, 2001. FDA has verified the applicant's claim that PMA P990080 was approved on April 5, 2001.

This determination of the regulatory review period establishes the maximum

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17941 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Financial Status Reporting (SF–269) with Supplemental ADD–02 for State Councils on Developmental Disabilities.

OMB No.: 0980–0212.

Description: For the program of the State Council on Developmental Disabilities, funds are awarded to State Agencies contingent on fiscal requirements in Subtitle B of the Developmental Disabilities Assistance and Bill of Rights Act. The SF–269, mandated in the revised OMB Circular A–102, provides no accounting breakouts necessary for proper stewardship. The proposed supplement will allow compliance monitoring and proactive compliance maintenance and technical assistance.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ADD02	55	2	9	990
Estimated Total Annual Burden Hours			9	990

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17942 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Council on Developmental Disabilities Program Performance Report.

OMB No.: 0980–0172

Description: A Developmental Disabilities Council Program Performance Report is required by federal statute. Each State Developmental Disabilities Council must submit an annual report for the preceding fiscal year of activities and accomplishments. Information provided in the Program Performance Report will be used (1) in the preparation of the Annual Report to the President, the Congress, and the National Council on Disabilities and (2) to provide a national perspective on program accomplishments and continuing challenges.

Respondents: State Governments

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Council on Developmental Disabilities Program Performance Report	55	1	44	2,420
Estimated Total Annual Burden Hours			44	2,420

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: July 11, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–17943 Filed 7–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0404]

Determination of Regulatory Review Period for Purposes of Patent Extension; CeeOn Model 911A

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CeeOn Model 911A and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device CeeOn Model 911A. CeeOn Model 911A is indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by phacoemulsification. The lens is intended to be placed in the capsular bag. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CeeOn Model 911A (U.S. Patent No. 5,444,106) from Pharmacia AB, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of CeeOn Model 911A represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CeeOn Model 911A is 1,594 days. Of this time, 1,101 days occurred during the testing phase of the regulatory review period, while 493 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* November 25, 1996. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective November 25, 1996.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* November 30, 1999. FDA has verified the applicant's claim that the premarket approval application (PMA) for CeeOn Model 911A (PMA P990080) was initially submitted November 30, 1999.

3. *The date the application was approved:* April 5, 2001. FDA has verified the applicant's claim that PMA P990080 was approved on April 5, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 956 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 16, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 17, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–17904 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02M–0083, 02M–0082, 02M–0006, 02M–0128, 02M–0075, 02M–0034, 02M–0030, 02M–0060, 02M–0118, 02M–0121, and 02M–0134]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of summaries of safety and effectiveness for premarket approval applications (PMAs) that have been approved by the Center for Devices and Radiological Health (CDRH). This notice is published as required by the Safe Medical Devices Act of 1990. This notice is intended to make summaries of safety and effectiveness available to the public.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–18038 Filed 7–16–02; 8:45 am]

available basis on the days of the workshop beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is sponsoring a public workshop on evaluating methods for reducing pathogens in cellular blood products. Although there are no currently approved methods on the market today

60 days the comment period on the draft guidance entitled "Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling." Elsewhere in this issue of the **Federal Register**, the agency is announcing the extension of the comment period on a proposed rule to classify encapsulated amalgam into class II, to amend the classification regulation for amalgam alloy to provide

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02M–0083, 02M–0082, 02M–0005, 02M–0128, 02M–0076, 02M–0034, 02M–0030, 02M–0060, 02M–0118, 02M–0121, and 02M–0134]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at http://www.fda.gov, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from January 1, 2002, through March 31, 2002. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JANUARY 1, 2002, THROUGH MARCH 31, 2002

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P000012/02M–0083	Roche Molecular Systems, Inc.	COBAS AMPLICOR Hepatitis C Virus Test, version 2.0.	July 3, 2001.
P000010/02M–0082	Roche Molecular Systems, Inc.	AMPLICOR Hepatitis C Virus Test, version 2.0.	July 5, 2001.
P000025/02M–0006	Med-El Corp.	MED-EL COMBI 40+ Cochlear Implant System.	August 20, 2001.
P010013/02M–0128	Novacept, Inc.	NOVASURE Impedance Controlled Endometrial Ablation System.	September 28, 2001.
P010022/02M–0076	Cohesion Technologies, Inc.	COSEAL Surgical Sealant.	December 14, 2001.
P000048/02M–0034	Dornier Medical Systems, Inc.	DORNIER EPOS ULTRA.	January 15, 2002.
P010038/02M–0030	Intelligent Systems Software, Inc.	MAMMOREADER (Computer-Aided Detection System For Mammography).	January 15, 2002.
P010034/02M–0060	CADx Medical Systems, Inc.	SECOND LOOK (Computer-Aided Detection System For Mammography).	January 31, 2002.
P010040/02M–0118	Safeguard Medical Devices, Inc.	The DISINTEGRATOR Insulin Needle Destruction Device.	March 15, 2002.
H010005/02M–0121	Ascension Orthopedics, Inc.	ASCENSION PIP.	March 22, 2002.
P010049/02M–0134	SUB–Q, Inc.	QuickSeal Femoral Arterial Closure System.	March 25, 2002.

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–18038 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Safety and Efficacy of Methods for Reducing Pathogens in Cellular Blood Products Used in Transfusion; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Public Workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Safety and Efficacy of Methods for Reducing Pathogens in Cellular Blood Products Used in Transfusion." The workshop will provide a forum for discussion of the scientific aspects of using state of the art methods for pathogen reduction in cellular blood products.

Date and Time: The 2-day public workshop will be held on August 7 and 8, 2002, from 8 a.m. to 5 p.m.

Location: The workshop will be held at Jack Masur Auditorium, National Institutes of Health, Bldg. 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact:

For information about this notice: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20857, 301–827–6210, FAX 301–594–1944.

For information about the public workshop: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX 301–827–2843, e-mail at wilczek@cber.fda.gov.

Registration: Mail, fax, or e-mail your registration information (including name, professional degree, title, e-mail address, firm name, address, telephone, and fax number) to Joseph Wilczek by July 26, 2002. There is no registration fee for the public workshop. Space is limited, therefore, interested parties are encouraged to register early. There will be onsite registration done on a space available basis on the days of the workshop beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is sponsoring a public workshop on evaluating methods for reducing pathogens in cellular blood products. Although there are no currently approved methods on the market today for pathogen reduction in cellular blood products, FDA is sponsoring this workshop for discussion of the scientific aspects of such methodologies. The objectives of the workshop are to discuss the criteria to define the efficacy of such products and appropriate ways to evaluate their toxicities to the transfusion products and to the recipients of these products. A public discussion of these topics will help the transfusion community better understand the development of these methods for cellular blood products intended for transfusion. The workshop will also help FDA prepare for the review of related applications. The public workshop agenda is posted on the FDA Internet at http://www.fda.gov/cber/scireg.htm.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 per page. The public workshop transcript will also be available on the Internet at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: July 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18037 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0064]

Draft Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period on the draft guidance entitled "Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling." Elsewhere in this issue of the **Federal Register**, the agency is announcing the extension of the comment period on a proposed rule to classify encapsulated amalgam into class II, to amend the classification regulation for amalgam alloy to provide for special controls, and to reclassify dental mercury into class II. The draft guidance document is intended to serve as a special control for these devices. The agency is taking this action in response to a request for an extension.

DATES: Submit written or electronic comments on the guidance by September 16, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Susan Runner, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 20, 2002 (67 FR 7703), FDA published a notice announcing the availability of a draft guidance entitled "Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling." In the same issue of the **Federal Register** (67 FR 7620), the agency published a proposed rule to classify encapsulated amalgam into class II, to amend the classification regulation for amalgam alloy to provide for special controls, and to reclassify dental mercury into class II. The draft guidance document is intended to serve as a special control for these devices.

FDA received an electronic request dated May 20, 2002, requesting that the agency extend the comment period on the proposed rule for 60 days, noting the importance of public health issues involved and explaining that there were apparently technical difficulties with the submission of electronic comments. FDA has determined that it is appropriate to grant this request, and elsewhere in this issue of the **Federal Register** FDA is announcing the reopening of the comment period on the proposed rule. FDA believes that it is also appropriate to reopen the comment period on the guidance document.

You may submit to the Dockets Management Branch (see **ADDRESSES**)

written or electronic comments on the draft guidance entitled "Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling" by September 16, 2002. You must submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See

III. Electronic Access

In order to receive the guidance entitled "Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA" via your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the

heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–17958 Filed 7–16–02; 8:45 am]

(HFM–42), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–2000, FAX 301–827–3079, e-mail: Sherman@cber.fda.gov.

Registration: Mail, fax, or e-mail your registration information (including name, professional degree, title, e-mail address, firm name, address, telephone, and fax number) to Gail Sherman by

DATES: The agency must receive nominations on or before August 16, 2002.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Office of Special Programs, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms.

written or electronic comments on the draft guidance entitled "Special Control Guidance Document on Encapsulated Amalgam, Amalgam Alloy, and Dental Mercury Labeling" by September 16, 2002. You must submit two copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. Comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–17961 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1458]

Medical Devices: Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA." This document describes a means by which apnea monitors may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying apnea monitors into class II (special controls).

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance entitled "Class II Special Controls Document: Apnea Monitors; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: William Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 22, 2000 (65 FR 57355), FDA announced the availability of this draft guidance document and invited interested persons to comment on it by December 21, 2000. FDA also announced in that notice its intention to modify the guidance so that it would apply to apnea monitors for patients of all ages. In that same issue of the **Federal Register** (65 FR 57301), FDA proposed to classify the apnea monitor into class II with this guidance document as the special control. This guidance supersedes the draft guidance entitled "Guidance for Infant/Child Apnea Monitor 510(k) Submissions."

FDA received comments on the draft guidance from one manufacturer. We considered this manufacturer's comments and included some of its suggestions in our revised guidance. We revised the guidance to make it applicable to devices intended for adults as well as infants and children, added information concerning industry's option to submit an abbreviated 510(k) when relying on a class II special controls guidance document, and retitled the guidance to reflect these changes.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on "Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive the guidance entitled "Class II Special Controls Guidance Document: Apnea Monitors; Guidance for Industry and FDA" via your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1178) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in the labeling section of this guidance discussing labeling under 21 CFR 807.87(e) was approved under OMB control number 0910–0120. The collection of information in the labeling section of this guidance discussing labeling under 21 CFR 801.109 was approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–17958 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science and Regulation of Biological Products: From a Rich History to a Challenging Future; Public Symposium

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public symposium.

The Food and Drug Administration (FDA) is announcing a public symposium entitled "Science and Regulation of Biological Products: From a Rich History to a Challenging Future." The purpose of the symposium is to commemorate the 100th anniversary of the enactment of the Biologics Control Act, the first Federal law regulating biological products. The symposium is dedicated to the memory and achievements of Dr. Harry Meyer, Jr., who, together with Dr. Paul Parkman, developed the first licensed rubella virus vaccine. The Center for Biologics Evaluation and Research (CBER) staff and invited guests will present scientific lectures describing the achievements of the past and the challenges of the future in the areas regulated by CBER (blood, vaccines, and therapeutic biological products).

Date and Time: The public symposium will be held on Monday, September 23, 2002, from 8:30 a.m. to 5 p.m., and Tuesday, September 24, 2002, from 8:30 a.m. to 12 noon.

Location: The public symposium will be held at the National Institutes of Health (NIH), Natcher Conference Center, Bldg. 45, 45 Center Dr., Bethesda, MD.

Contact:

For information about this notice: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210, FAX 301–594–1944.

For information about the public symposium: Gail Sherman, Center for Biologics Evaluation and Research (HFM–42), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–2000, FAX 301–827–3079, e-mail: Sherman@cber.fda.gov.

Registration: Mail, fax, or e-mail your registration information (including name, professional degree, title, e-mail address, firm name, address, telephone, and fax number) to Gail Sherman by September 1, 2002. There is no registration fee for the public symposium. Space is limited, therefore, interested parties are encouraged to register early. There will be no onsite registration.

Travel Information: The NIH campus is accessible via the Washington, DC metro system, Red Line, at the Medical Center stop. The Natcher Conference Center is a short walk from the metro station, or you may take one of the many shuttle buses that run from the metro station to the various buildings on the campus. Due to newly imposed security measures, visitors parking is limited and use of private vehicles may cause significant delays in entering the campus.

If you need special accommodations due to a disability, please contact Gail Sherman at least 7 days in advance.

Dated: July 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18039 Filed 7–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission of Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: The agency must receive nominations on or before August 16, 2002.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Office of Special Programs, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl A. Lee, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, at (301) 443–2124.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, viz. the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommending to the Director of the National Vaccine Program that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: Three health professionals, who are not employees of the United States Government and have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines, at least two shall be pediatricians; three members from the general public, at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney

whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for the following three vacancies: One health professional, one individual representing the general public, and one attorney. Nominees will be invited to serve four-year terms beginning October 1, 2002, or January 1, 2003. Selection of nominees will be based on their demonstrated knowledge of childhood vaccines and vaccine safety issues, and their ability to contribute to the accomplishment of the ACCV's duties. Individuals may nominate themselves or other qualified persons. Nominees will be selected with a view to assuring adequate representation of the interests listed above, and a balanced membership in terms of points of view represented and the committee's functions. Every effort will be made to ensure that the ACCV membership includes a fair mix of women and minority members. Therefore, HRSA encourages nominations for appropriately qualified female, minority, or physically disabled candidates.

Dated: June 24, 2002.

Elizabeth M. Duke,

Administrator, HRSA.

[FR Doc. 02–17905 Filed 7–16–02; 8:45 am]

BILLING CODE 4165–15–P

qualified scientist will stay in the intramural research program and pursue a long-term career as a biomedical researcher. The survey will document the actual career outcomes of current and former LRP participants and comparable non-participants. Such information can be used to gauge whether the program is meeting the expectations of program managers and how the program could be improved in

7060 or call non-toll-free (301) 402–5666 or e-mail your request, including your address, to <*lrp@nih.gov*>.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before September 16, 2002.

Dated: July 9, 2002.

Ruth L. Kirschstein,

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following

Bethesda, MD, 20892–4870 which was published in the **Federal Register** on June 12, 2002, 67; Number 113.

The meeting will be held on 6/28/2002; 3–3:30 instead of 6/7/2002. The meeting is closed to the public.

Dated: July 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17932 Filed 7–16–02; 8:45 am]

whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician with special experience in childhood diseases; (2) an attorney with no specific affiliation; and (3) a member from the general public who is a legal representative (parent or legal guardian) of a child who has suffered a vaccine-related injury or death. Nominees will be invited to serve a 3-year term beginning January 1, 2003, and ending December 31, 2005.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically disabled candidates.

Dated: June 24, 2002.

Elizabeth M. Duke,

Administrator, HRSA.

[FR Doc. 02–17905 Filed 7–16–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Loan Repayment and Scholarship; Proposed Collection; Comment Request; Career Survey of Biomedical Researchers Receiving Loan Repayment Benefits

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Loan Repayment and Scholarship (OLRS), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Career Survey of Biomedical Researchers Receiving Loan Repayment Benefits. *Need and Use of Information Collection:* This survey is part of a comprehensive evaluation of the National Institutes of Health (NIH) Intramural Research Loan Repayment Program (LRP), the purpose of which is to evaluate the success of the LRP in raising the probability that a qualified scientist will stay in the intramural research program and pursue a long-term career as a biomedical researcher. The survey will document the actual career outcomes of current and former LRP participants and comparable non-participants. Such information can be used to gauge whether the program is meeting the expectations of program managers and how the program could be improved in the future. It will be used to address the outcome and impact study questions related to short and long term retention, both at NIH and in biomedical research generally.

In addition to informing OLRS about the effectiveness of the program, the results of the LRP evaluation will become the basis for recommendations on how the program could be modified to improve outcomes. Indeed, some of the findings may be useful to the Office of the Director in terms of scientific human resources policy in particular and the Intramural Research Program generally. Also, the information collection will help our nation's leaders in setting policies to ensure a human resources infrastructure for biomedical research. Encouraging the nation's brightest minds to pursue careers in biomedical research, both in public laboratories such as NIH and in non-profit laboratories, is critical to this effort. *Frequency of Response:* One time data collection. *Affected Public:* Individuals. *Type of Respondents:* Current and former NIH biomedical researchers. The annualized cost to respondents is estimated at $10,250. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

ESTIMATES OF ANNUALIZED BURDEN

Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
LRP Program Participant	300	1	.33	100
Comparison Group	450	1	.33	150
Total	750	1	.33	250

Requests for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 6006 Executive Boulevard, Room 303, Bethesda, Maryland 20892–7060 or call non-toll-free (301) 402–5666 or e-mail your request, including your address, to <*lrp@nih.gov*>.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before September 16, 2002.

Dated: July 9, 2002.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 02–17931 Filed 7–16–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, MOD Database.

Date: August 12, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, PhD., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 401–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17935 Filed 7–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, BAC Physical Map RFA.

Date: July 25, 2002.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17936 Filed 7–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, June 7, 2002, 10 a.m. to June 7, 2002, 11 a.m., 1 Democracy, 6701 Democracy Blvd, Suite 707 MSC 4870, Bethesda, MD, 20892–4870 which was published in the **Federal Register** on June 12, 2002, 67; Number 113.

The meeting will be held on 6/28/2002; 3–3:30 instead of 6/7/2002. The meeting is closed to the public.

Dated: July 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17932 Filed 7–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Program Project Review.

Date: July 26, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Consortium for Identification of Environmental Triggers of Diabetes.

Date: August 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817, 301–897–5600.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Diabetes Based Science Education in Tribal Schools.

Date: August 15, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817, 301–897–5600.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Diabetes Based Science Education in Tribal Schools.

Date: August 15, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817, 301–897–5600.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolism Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17933 Filed 7–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–02]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2002–1)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of sale.

SUMMARY: The Department of Housing and Urban Development (HUD) is offering for sale certain multifamily and healthcare mortgage loans that are owned by HUD. The Mortgage Loans are comprised of performing, subperforming and nonperforming mortgage loans. A final listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

remote access by contacting Owusu & Company, HUD's due diligence contractor, at (202) 638–8390.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2002–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, without prejudice to HUD's right to sell the Mortgage Loans at a later date. HUD reserves the right to withdraw the Mortgage Loans from sale at any time prior to the Award Date. HUD reserves the right to reject any bid that does not conform to the requirements of this Notice or the BIP. HUD reserves the right to reject any bid from any party that HUD determines is not financially responsible, or any bid that HUD determines is not in the best interest of HUD. HUD reserves the right to reject any bid that HUD determines is not sufficient to pay the purchase price. HUD reserves the right to reject any bid that HUD determines is from a party that has defaulted on any previous sale or lease with HUD. HUD reserves the right to reject any bid that HUD determines is from a party that has failed to perform any obligation to HUD. HUD reserves the right to reject any bid that HUD determines is from a party that has been debarred, suspended or otherwise restricted by HUD. HUD reserves the right to reject any bid that HUD determines is from a party that has been convicted of a criminal offense

Review Branch, DEA, NIDDK, Room 758 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Diabetes Based Science Education in Tribal Schools.

Date: August 15, 2002.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Francisco O. Calvo, PhD, Chief, Review Branch, DEA, NIDDK, Room 752, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17933 Filed 7–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, July 25, 2002, 8 a.m. to July 25, 2002, 5 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD, 20817 which was published in the **Federal Register** on June 21, 2002, 67; Number 120.

The meeting will be held on 7/30/2002—8 a.m.–5 a.m.; and 7/31/2002 8 a.m. to Adjournment instead of 7/15/2002. The meeting is closed to the public.

Dated: July 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–17934 Filed 7–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–02]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2002–1)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2002–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: Bidder Information Packages are currently available to qualified bidders. Bids for the loans must be submitted on the bid date that currently is scheduled for July 30, 2002. HUD anticipates that awards will be made on or about August 1, 2002. Closings are expected to take place between August 8, 2002 and September 13, 2002.

ADDRESSES: To become a qualified bidder and receive access to the Bidder Information Package (BIP), prospective bidders must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement that are acceptable to HUD. Both documents are available on the HUD website at *www.hud.gov/offices/hsg/comp/assets/hsgloan.cfm*. The executed documents must be mailed and faxed to Cushman & Wakefield at 1801 K Street, NW., Suite 100–L, Washington, DC 20006, Attention: MHLS 2002–1 Sale Coordinator, Fax: (202) 293–9049.

The MHLS 2002–1 due diligence facility is located at 1500 K Street, NW., Suite 625, Washington, DC 20005. The facility will be open from June 17, 2002 through July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625, extension 3369. Hearing or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2002–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing, subperforming and nonperforming mortgage loans. A final listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans have been stratified for bidding purposes into 12 mortgage loan pools. Each pool contains Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP describes in detail the procedure for bidding in MHLS 2002–1. The BIP also includes a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 5% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. HUD anticipates that the awards will be made on August 1, 2002 (Award Date). Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between August 8, 2002 and September 13, 2002.

These are the essential terms of sale. The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Facility

From June 17, 2002 through July 29, 2002, the due diligence facility for MHLS 2002–1 will be open at 1500 K Street, NW, Suite 625, Washington, DC. Qualified bidders will be able to access loan information at the due diligence facility through computer workstations connected to the due diligence system or remotely via a high speed Internet connection. Qualified bidders may make appointments to visit the facility or obtain user IDs and passwords for remote access by contacting Owusu & Company, HUD's due diligence contractor, at (202) 638–8390.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2002–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Additionally, there are no project-based Section 8 Rental Assistance Contracts on any of the mortgaged properties. Therefore, HUD has determined that, pursuant to the Multifamily Mortgage Sale Regulations, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD knows of no Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which reside very low-income tenants who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD and meet the requirements set forth in the BIP. Qualified bidders will receive a password that will permit them to access the BIP through the MHLS 2002–1 website.

The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2002–1:

(1) Any employee of FHA or HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) any individual or entity that is debarred from doing business with FHA or HUD pursuant to Title 24 of the Code of Federal Regulations;

(3) any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2002–1;

(4) any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2002–1;

(5) any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2002–1;

(7) any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD the 1999, 2000 and 2001 audited financial statements for a project securing a Mortgage Loan on or before May 31, 2002; and

(8) any individual or entity and any Related Party (as such term is defined in the Qualification Statement) that is a mortgagor in any of HUD's multifamily housing programs that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before June 28, 2002.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of FHA or HUD at any time during the 2-year period prior to May 1, 2002 with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement and the BIP to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2002–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2002–1, including, but not limited to, the identity of any bidder and their bid price or bid percentage, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2002–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2002–1, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: July 11, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–18113 Filed 7–16–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–04]

Notice of Planned Closing of Rapid City, South Dakota Post-of-Duty Station

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of Planned Closing of Rapid City, South Dakota Post-of-Duty Station.

SUMMARY: This notice advises the public that the HUD Office of Inspector General (OIG) is closing its Rapid City, South Dakota post-of-duty station, and also provides a cost-benefit analysis of the impact of the closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services).

SUPPLEMENTARY INFORMATION:

Background

In 1998, HUD/OIG established a single person post-of-duty station in Rapid City, South Dakota, to conduct an intensive investigation of allegations involving the Pine Ridge Indian Reservation. Specifically, the establishment of the office was intended to minimize substantial anticipated travel costs associated with having staff determining whether to proceed with the closing. Through this notice, HUD/OIG advises the public of the closing of the Rapid City, South Dakota post-of-duty station and provides its cost-benefit analysis of the impact of the closure.

Impact of the Closure of the Rapid City, South Dakota Post-of-Duty Station

HUD/OIG considered the costs and period from the date of publication of this notice.

Dated: July 9, 2002.

Kenneth M. Donohue,

Inspector General.

[FR Doc. 02–17930 Filed 7–16–02; 8:45 am]

BILLING CODE 4210–66–P

DEPARTMENT OF THE INTERIOR

the format of the box to allow checkmark indications for the options of "dry cropped", "fallow", and "idle", in addition to the number of acres.

• Within each subsection (i.e., Cereals, Forage, Vegetables, etc.) in Section III on both forms, "Crop Production", we are placing the items in alphabetical order.

• In Section III on both forms, we are moving "Cantaloupe", "Watermelon", census are also used by the Office of the Inspector General, General Accounting Office, and the Congressional Research Service to independently evaluate our program and to estimate the impacts of proposed legislation. These data are supplied to other Federal and State agencies to evaluate the program and provide data for research.

Description of Respondents: Irrigators and water user entities in the 17 identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 1, 2002.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–17944 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–MN–M

Background

In 1998, HUD/OIG established a single person post-of-duty station in Rapid City, South Dakota, to conduct an intensive investigation of allegations involving the Pine Ridge Indian Reservation. Specifically, the establishment of the office was intended to minimize substantial anticipated travel costs associated with having staff located in the Denver Regional Office perform the investigation. The investigation is now complete, and the need for a separate post-of-duty station in Rapid City is therefore unnecessary. The closing of this post-of-duty station will provide the HUD/OIG with the opportunity to generate cost savings associated with closing this station.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganizations, which may involve the closing of any field or regional office of HUD may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that "[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuations stations)." (See House Conference Report No. 95–1792, October 14, 1978 at 105–106.)

The one-person Rapid City, South Dakota post-of-duty station is a single purpose duty station, and it is being closed based on workload rather than on a reorganization of HUD/OIG field offices. Although notice of the closing of the post-of-duty station is not subject to the requirements of section 7(p), as supported by the legislative history, HUD/OIG nevertheless prepared a cost-benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, HUD/OIG advises the public of the closing of the Rapid City, South Dakota post-of-duty station and provides its cost-benefit analysis of the impact of the closure.

Impact of the Closure of the Rapid City, South Dakota Post-of-Duty Station

HUD/OIG considered the costs and benefits of closing the Rapid City, South Dakota post-of-duty station, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area.

Cost Benefit Analysis

A. *Cost Savings:* The Rapid City, South Dakota post-of-duty station currently costs approximately $2,200 per month for the space rental and associated overhead expenses to operate. Thus, closing the post-of-duty will result in annual savings of at least $26,000. In addition, by closing the office, HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

B. *Additional Costs:* There are no offsetting expenses anticipated. Currently, no Special Agent is assigned to the Rapid City, South Dakota post-of-duty station, and, therefore, relocation costs are not associated with the closure.

C. *Impact on Local Economy:* No appreciable impact on the local economy is anticipated. Another Federal agency has already expressed an interest in taking over the office space that HUD/OIG leases in Rapid City, South Dakota.

D. *Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services:* The establishment of the Rapid City, South Dakota post-of-duty station was based largely on needs associated with HUD/OIG's investigation of the Pine Ridge Indian Reservation, which has since concluded. Further, as was the case prior to 1998, ordinary or less intensive fraud investigations in the Rapid City area can be effectively addressed by agents assigned to the Denver Regional Office.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Rapid City, South Dakota post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: July 9, 2002.

Kenneth M. Donohue,

Inspector General.

[FR Doc. 02–17930 Filed 7–16–02; 8:45 am]

BILLING CODE 4210–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0001).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 et seq.), the Bureau of Reclamation (we, our or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Crop Acreage and Yields and Water Distribution (Water User Crop Census Report [Form 7–332], and Crop and Water Data [Form 7–2045]), OMB Control Number: 1006–001. We request your comments on the revised Crop Acreage and Yields and Water Distribution Forms and specific aspect of the information collection.

DATES: Your written comments must be received on or before September 16, 2002.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: D–5200, P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: You may request copies of the proposed revised forms by writing to the above address or by contacting Jeremy Simons at: (303) 445–2739.

SUPPLEMENTARY INFORMATION: The currently approved collection has been revised to reflect industry standards concerning units used to measure yields for certain copies (i.e., using pounds instead of bales for cotton lint and using pounds instead of tons for hops). Other changes include:

- In Section II–e on both forms, "Acres irrigated by", we are adding the option to choose "Flood" along with the current options of "Sprinkler" and "Drip".
- In Section II–g on both forms, "Acres not irrigated", we are adjusting the format of the box to allow checkmark indications for the options of "dry cropped", "fallow", and "idle", in addition to the number of acres.
- Within each subsection (i.e., Cereals, Forage, Vegetables, etc.) in Section III on both forms, "Crop Production", we are placing the items in alphabetical order.
- In Section III on both forms, we are moving "Cantaloupe", "Watermelon", and "Honey Ball, Honeydew, etc." from the "Vegetables" subsection to the "Fruits" subsection.
- In Section I on Form 7–332, "Irrigator Information", we are including a box that asks for the respondent's telephone number so any potential questions may be directed to that person.
- We are removing the footnotes to both forms and incorporating the footnotes within the body of the instructions that accompany each form.

There have been editorial changes to the current Form 7–332 and Form 7–2045, and to the instructions that accompany these forms. These changes have been made to increase the respondents' understanding of the forms and understanding of the instructions to the forms. The proposed changes will be included starting with the 2003 Crop Acreage and Yields and Water Distribution information collection.

Title: Crop Acreage and Yields and Water Distribution

Forms: Form 7–332, Water User Crop Census Report; and Form 7–2045, Crop and Water Data.

Abstract: The annual crop census is taken on all Bureau of Reclamation projects, along with collection of related statistics, primarily for use as a tool in administering, managing, and evaluating the Federal Reclamation program. The census is used to assist in the administration of repayment and water service contracts, which are used to repay the irrigators' obligation to the Federal Government. The census will provide data to facilitate the required 5-year review of ability-to-pay analysis, which is being incorporated into new repayment and water service contracts. The basis for these reviews is an audit by the Office of the Inspector General, Department of the Interior.

Data from the census are utilized to determine class 1 equivalency computations, i.e., determining the number of acres of class 2 and class 3 land that are required to be equivalent in productivity to class 1 land.

In recent years, the census has provided data which are used to administer international trade agreements, such as the North American Free Trade Agreement. Data from the census are also used by the Office of the Inspector General, General Accounting Office, and the Congressional Research Service to independently evaluate our program and to estimate the impacts of proposed legislation. These data are supplied to other Federal and State agencies to evaluate the program and provide data for research.

Description of Respondents: Irrigators and water user entities in the 17 Western States who receive irrigation water service from Bureau of Reclamation facilities. Also included are entities who receive other water services, such as municipal and industrial water through Bureau of Reclamation facilities.

Frequency of Collection: Annually.

Estimated completion time: Form 7–332, 15 minutes; Form 7–2045, 480 minutes.

Annual responses: Form 7–332, 25,000 responses; Form 7–2045, 225 responses.

Annual burden hours per form: Form 7–332, 6,250; Form 7–2045, 1,800.

Total Annual burden hours: 8,050.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Reclamation, including whether the information will have practical utility; (b) the accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including increased use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 1, 2002.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–17944 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

San Luis Reservoir Low Point Improvement Project, California

AGENCY: U.S. Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), and the California Environmental Quality Act (CEQA), Reclamation and the Santa Clara Valley Water District (District) propose to prepare a joint EIR/EIS for the San Luis Reservoir Low Point Improvement Project (Project). The Project is being proposed by the District to maintain a healthy, clean water supply for the District and other contractors of Reclamation's San Felipe Division. The term "low point" refers to a range of pool elevations in San Luis Reservoir (in Merced County, California) within which seasonal algae blooms can create water quality problems directly affecting the treatability and reliability of deliveries to Central Valley Project (CVP) San Felipe Division contractors (the District is a member of CVP's San Felipe Division). An additional goal of the Project is to increase the operational flexibility of the San Luis Reservoir and to improve the reliability of deliveries to the District and other San Felipe Division contractors. The District will be the lead agency under CEQA.

DATES: Reclamation and the District will seek public input on alternatives, concerns, and issues to be addressed in the EIR/EIS through scoping meetings in August, 2002. Scoping is an early and open process designed to determine the issues and alternatives to be addressed in the EIR/EIS. The schedule and locations of the scoping meetings are as follows:

- Scoping Meeting 1: August 26, 2002, 6:30 to 8:30 p.m., San Jose, California.
- Scoping Meeting 2: August 27, 2002, 6:30 to 8:30 p.m., San Luis Reservoir, California.

The draft EIR/EIS is expected to be available for public review at the end of 2003.

ADDRESSES: Meeting locations are:

- Scoping Meeting 1: Santa Clara Valley Water District, Board Meeting Room, 5750 Almaden Expressway, San

- *Interruption in Water Supply*—If San Luis Reservoir water quality becomes unacceptable for treatment, the supply to the District would be interrupted, which would have a serious water supply, public health and safety, and economic risk to Santa Clara County. Once the reservoir drops to elevation 334 (110 TAF capacity), the Pacheco Pumping Plant is unable to deliver water. This condition would

and safety, and economic losses to agriculture and industry. There are also significant opportunity costs to the CVP and SWP as a result of their inability to fully utilize all of the available storage in the reservoir. These impacts will increase in the future as the low point occurs more frequently and for a longer duration. The following summary includes information on San Luis

contributing factor in algal bloom formation and persistence).

Current Operations

San Luis Reservoir is operated by filling in the wet winter months and draining in the dry summer months. Drawdown typically begins in about March and reaches the low point in August or September. Historically, the SWP and CVP have cooperated to try

maintain a consistent healthy, clean, and affordable water supply that meets or exceeds all applicable water quality standards in a cost-effective manner. Reclamation seeks to maintain and protect the water it delivers to CVP contractors. By resolving the water quality problems associated with the San Luis Reservoir low point, the District will be able to better predict the quality of water it is supplied, ensure

be to protect environmental resources and to identify project related opportunities for environmental improvements by enhancing or restoring the natural benefits of streams and watersheds. Environmental improvements, where feasible, will be a direct component of the project's integrated solution. The Project, where feasible and appropriate, will also provide project-related opportunities for

• Scoping Meeting 2: August 27, 2002, 6:30 to 8:30 p.m., San Luis Reservoir, California.

The draft EIR/EIS is expected to be available for public review at the end of 2003.

ADDRESSES: Meeting locations are:

• Scoping Meeting 1: Santa Clara Valley Water District, Board Meeting Room, 5750 Almaden Expressway, San Jose, California.

• Scoping Meeting 2: San Luis Reservoir Romero Visitor Center, Highway 152, San Luis Reservoir, California.

Written comments on the project scope of alternatives and impacts to be considered should be sent to Mr. Kurt Arends of the Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.

FOR FURTHER INFORMATION CONTACT: [illegible] Moody of Reclamation at 1243 N Street, Fresno, CA 93727, telephone: (559) 487–5179. Additional information can also be found at *http://www.Valleywater.org.*

SUPPLEMENTARY INFORMATION:

Background

The San Luis Reservoir is among the largest reservoirs in the state, and represents a significant component of the District, the CVP, and the State Water Project (SWP) water supply. When water levels in San Luis Reservoir are low, high water temperatures combined with wind-induced mixing can result in algae blooms at the reservoir's water surface, which can extend down more than 30 feet. As reservoir storage drops below about 300,000 acre-feet (approximate elevation 369), algae can be drawn into the San Felipe Division intake structure. This condition can: (1) Cause taste and odor problems; (2) become difficult or impractical to treat; (3) foul drip irrigation systems; and/or (4) eliminate the possibility of delivering any water to the San Felipe Division. To minimize these conditions, the reservoir is currently operated to attempt to maintain reservoir storage above problematic levels.

Recognizing the need to resolve the low point problem, the Low Point Improvement Project was included in the August 28, 2000, CALFED Bay-Delta Program's Programmatic Record of Decision as a complementary conveyance action. The low point problem currently creates water quality, reliability, and operational impacts to the District, other San Felipe Division contractors, the CVP, and the SWP. The results of these impacts are additional operating costs, risks to public health and safety, and economic losses to agriculture and industry. There are also significant opportunity costs to the CVP and SWP as a result of their inability to fully utilize all of the available storage in the reservoir. These impacts will increase in the future as the low point occurs more frequently and for a longer duration. The following summary includes information on San Luis Reservoir, current and future operations, as well as impacts to users.

San Luis Reservoir

Reclamation and the California Department of Water Resources (DWR) jointly own the San Luis Reservoir to store and reregulate CVP and SWP water from the Sacramento-San Joaquin Delta. San Luis Reservoir is an off-stream water storage facility that stores water for both the SWP and CVP; construction was completed in 1967. The State owns a little more than half of the 2,042,000 acre-feet water storage capacity. The reservoir is operated by the DWR; however, operational decisions are coordinated with Reclamation and the CVP. San Luis Reservoir serves as the major storage reservoir and O'Neill Forebay acts as an equalizing basin for the upper stage dual-purpose pumping-generating plant. Pumps located at the base of O'Neill Dam convey water from the Delta-Mendota Canal through an intake channel and discharge it into O'Neill Forebay. The California Aqueduct flows directly into O'Neill Forebay. The pumping-generating units lift the water from O'Neill Forebay and discharge it into the main reservoir. Releases from San Luis Reservoir are made through the Gianelli Pumping-Generating Plant to the San Luis Canal and to the Pacheco Pumping Plant for the San Felipe Division.

Reservoir Water Quality

In the summer months, when water levels are low, water quality deteriorates due to a combination of higher water temperatures, wind-induced nutrient mixing, and algae blooms near the reservoir surface. Algae content is of primary importance during periods of reservoir drawdown, when the surface water elevation drops to within 20 to 30 feet of the inlet to the Pacheco Pumping Plant. Under these conditions, poor water quality may be delivered to the San Felipe Division contractors. Additional factors may also contribute to algae problems in the reservoir. The reservoir is operated as an active offstream storage facility, and therefore, has a relatively short detention time. The reservoir also has an unusual configuration with a very large surface area and a relatively shallow depth (a contributing factor in algal bloom formation and persistence).

Current Operations

San Luis Reservoir is operated by filling in the wet winter months and draining in the dry summer months. Drawdown typically begins in about March and reaches the low point in August or September. Historically, the SWP and CVP have cooperated to try and maintain reservoir elevations above the low point capacity of 300,000 acre-feet.

Future Operations

Although the CVP and SWP have cooperated to try to maintain San Luis Reservoir above 300,000 acre-feet to date, there is no guarantee that they will do so in the future. In fact, as demands on the CVP and SWP continue to grow and Delta export pumping restrictions for environmental purposes occur more frequently, pressure will increase to fully utilize the available storage in San Luis Reservoir.

The State and Federal Governments coordinate implementation of all CALFED projects through the use of a common set of assumptions relative to water supply, hydrology, and operations. The primary method for providing technical consistency is the use of the CALSIM II model for operational studies, which provides a baseline condition for comparing project impacts at current and future levels of development. Preliminary results of CALSIM II operational modeling indicate that San Luis Reservoir will be drawn down below 300,000 acre-feet more frequently and for longer durations in the future.

Impacts to the District

The District has entitlement to 152,500 acre-feet per year of water from the San Felipe Division, which is critical to meeting the demands of 1.6 million residents and important high-technology industries. As storage in the reservoir drops to approximately 300,000 acre-feet, quality, reliability, and operational impacts occur as follows:

• *Water Quality Degradation*—Algae entering the intakes could cause: potential impacts on water treatment plant production rates and increased risk of being unable to meet treated water demands; increased risk of exceeding primary water quality standards for disinfection byproducts and secondary standards for taste and odor; and increased costs of both treating water for taste and odor problems as well as for monitoring and responding as impacts occur.

• *Interruption in Water Supply*—If San Luis Reservoir water quality becomes unacceptable for treatment, the supply to the District would be interrupted, which would have a serious water supply, public health and safety, and economic risk to Santa Clara County. Once the reservoir drops to elevation 334 (110 TAF capacity), the Pacheco Pumping Plant is unable to deliver water. This condition would result in an interruption in supply due to water supply availability. However, it is likely that the water supply would be interrupted prior to reaching this condition due to untreatable water quality. In either case, the potential interruption in water supply creates a major reliability impact to the District and other San Felipe Division contractors. The potential interruption to water supply would also occur at the time of year when water supply demands are at their peak.

• *Reoperation of Water Supply System*—Due to the risks to water quality and reliability from the low point problem, District operations must be modified annually in order to prepare for a worst case scenario. Modifications typically involve reoperating supply and conveyance systems and/or rescheduling CVP deliveries to minimize reliance on CVP supplies during low point conditions. These actions disrupt District operations and result in additional costs.

Impacts to Other San Felipe Division Contractors

The low point problem also results in water quality and reliability impacts to other San Felipe Division contractors, including the San Benito County Water District, which receives San Luis Reservoir supplies from the Hollister Conduit, and the Pajaro Valley Water Management Agency, which is in the process of implementing a pipeline project to connect to the Santa Clara Conduit for future delivery of San Luis Reservoir water.

Impacts to the CVP

The low point will be an ongoing constraint to the operational flexibility and reliability of San Luis Reservoir and will have increasing CVP impacts. Eliminating the low point operating constraint could improve operational flexibility of the CVP.

Project Objectives

The objectives of the Low Point Improvement Project are to:

• Resolve the water quality problems associated with the San Luis Reservoir low point. The District and other San Felipe Division contractors want to maintain a consistent healthy, clean, and affordable water supply that meets or exceeds all applicable water quality standards in a cost-effective manner. Reclamation seeks to maintain and protect the water it delivers to CVP contractors. By resolving the water quality problems associated with the San Luis Reservoir low point, the District will be able to better predict the quality of water it is supplied, ensure the health and safety of its water supply, and maximize the efficiency of its water supply and treatment system. Resolving the water quality problems would reduce the risk of exceeding water quality standards, reduce costs of water treatment, reduce operating costs for monitoring, and reduce the risk of exceeding the capacity of drip irrigation filtering systems.

Improve the reliability of deliveries to the District and other San Felipe Division contractors. There is a need to improve the reliability of water supplies to the San Felipe Division contractors without adversely affecting deliveries of CVP and SWP water. Improving the reliability of water would avoid public health and economic impacts associated with water quality degradation and potential water supply interruptions. Improving water supply reliability would ensure that existing contract allocations to the San Felipe Division are met by Reclamation and that the District and other San Felipe Division contractors meet their water supply obligations.

• Increase the operational flexibility of the San Luis Reservoir. There is a need to eliminate the low point operational constraints on the delivery of water from San Luis Reservoir. Through collaborative efforts, Reclamation, the District, and CVP contractors have occasionally modified operations to minimize the potential of San Luis Reservoir dropping below 300,000 acre-feet. However, these operational changes cannot be sustained over the long term as they reduce the likelihood of deliveries of full contract supplies to CVP contractors. A long-term, regional solution is needed to eliminate the constraints on San Luis Reservoir operations. Resolving the low point problem will increase the effective storage capacity in San Luis Reservoir by allowing the State and Federal projects to continue to draw down San Luis Reservoir in accordance with existing operating rules and regulations without impact to the San Felipe Division.

• Provide opportunities for project-related environmental improvements. In accordance with the District's Ends Policies, an objective of the Project will be to protect environmental resources and to identify project related opportunities for environmental improvements by enhancing or restoring the natural benefits of streams and watersheds. Environmental improvements, where feasible, will be a direct component of the project's integrated solution. The Project, where feasible and appropriate, will also provide project-related opportunities for recreation, hydropower, and flood control benefits. The goal is a multi-purpose project with regional benefits.

Potential Alternatives

A wide range of conceptual alternatives is being considered to address the low point problem. A total of 9 major conceptual alternatives have been identified to date and include:

No Project Alternative

A No Action Alternative that represents existing conditions will be analyzed. The No Action Under Projected Future Conditions will also be analyzed.

Institutional Alternatives

Institutional Alternatives include non-structural measures such as implementation of pumping limitations and amended operation plans or agreements for San Luis Reservoir.

Source Water Quality Control Alternatives

Source Water Quality Control Alternatives would be implemented on-site at San Luis Reservoir. Potential methods under consideration include reservoir aeration, algaecide application, algae harvesting, and managed stratification of waters in San Luis Reservoir.

Water Treatment Alternatives

Potential Water Treatment Alternatives include additional treatment of water supplies by methods such as dissolved air flotation.

Bypass Alternatives

Bypass Alternatives include the construction of pump stations, pipelines, and tunnels that bypass the San Luis Reservoir. Potential routes under consideration include a pipeline originating at the O'Neill Forebay, at the California Aqueduct, or at the Delta-Mendota Canal and proceeding around or under the San Luis Reservoir. The bypass pipelines would terminate at the intake to the San Felipe Division facilities.

Storage Alternatives

Storage Alternatives include expansion of existing District reservoirs,

such as Anderson Reservoir or construction of a new dam and reservoir in the foothills east of the Santa Clara Valley. Potential sites for a new dam and reservoir include Pacheco Reservoir on Pacheco Creek, upstream of the existing Pacheco Reservoir; Packwood Reservoir, east of the existing Anderson Reservoir; Coe Reservoir inside Henry Coe State Park; Los Osos Reservoir

law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves

habitually resided in Montserrat) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Montserrat's TPS designation is effective August 27, 2002, and will remain in effect until August 27, 2003. The 60-day re-registration period begins July 17, 2002, and will remain in effect

Citing the Montserrat Volcano Observatory's March 2002 Hazard Assessment, the Department of State reports that a significant risk of a new eruption exists in the near future caused by the sustained growth of the lava dome of the Soufriere Hills volcano. Recommendation for the Extension of TPS (April 24, 2002). Such continuous dome growth has increased the hazards of pyroclastic flows, explosions,

See the following re-registration instructions.

If I Am Currently Registered for TPS, How Do I Re-Register for An Extension?

Persons previously granted TPS under the Montserrat program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the fee, (2) a Form I–

granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to apply for TPS, although the grounds for denying one form of relief may serve as the basis for denying TPS as well. For example, a person who has been convicted of a particularly serious crime is ineligible for both asylum and TPS. 8 U.S.C.

such as Anderson Reservoir or construction of a new dam and reservoir in the foothills east of the Santa Clara Valley. Potential sites for a new dam and reservoir include Pacheco Reservoir on Pacheco Creek, upstream of the existing Pacheco Reservoir; Packwood Reservoir, east of the existing Anderson Reservoir; Coe Reservoir inside Henry Coe State Park; Los Osos Reservoir south of Henry Coe Park; and Cedar Creek Reservoir southwest of the existing Pacheco Reservoir.

Integrated District Solutions

Integrated District Solutions involve use of existing District facilities such as the groundwater basin, water reuse and recycling, interties with San Francisco Public Utilities Commission, or reconfiguration and reoperation of the District's in-County water transmission and distribution system.

Desalination

Desalination would involve treatment of alternative supplies from San Francisco Bay or Monterey Bay.

Integrated CALFED Solutions

Integrated CALFED Solutions include use of water supplies from an expanded Los Vaqueros Reservoir or use of an enlarged South Bay Aqueduct to facilitate delivery of SCVWD water supplies.

The draft EIR/EIS will focus on the impacts and benefits of implementing the various alternatives. It will contain an analysis of the physical, biological, social, and economic impacts arising from the alternatives. In addition, it will address the cumulative impacts of implementation of the alternatives in conjunction with other past, present, and reasonably foreseeable actions. The following are issues that have been identified by Reclamation to date: water quality; agricultural and municipal water supply reliability and quality; water supply system flexibility and reliability; diversity of water supply sources; construction-related effects on urban areas and natural habitats.

Interests in Assets Held in Trust

An initial review of available data indicates that there are no known Indian Trust lands that would be affected by the project.

Disclosure of Public Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Special Assistance

If special assistance is required, contact Mr. Kevin Moody at Reclamation (559) 487–5179. Please notify Mr. Moody as far in advance of the scoping meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at (559) 487–5933.

Dated: June 25, 2002.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 02–17946 Filed 7–16–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2209–02; AG Order No. 2598–2002]

RIN 1115–AE26

Extension of the Designation of Montserrat Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Montserrat under the Temporary Protected Status (TPS) program will expire on August 27, 2002. This notice extends the Attorney General's designation of Montserrat under the TPS program for 12 months until August 27, 2003, and sets forth procedures necessary for nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) with TPS to re-register for the additional 12-month period. Re-registration is available only to persons who registered during the initial registration period, which ended August 27, 1998, or registered after that date under the late initial registration provisions, and timely re-registered under each subsequent extensions. Nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Montserrat's TPS designation is effective August 27, 2002, and will remain in effect until August 27, 2003. The 60-day re-registration period begins July 17, 2002, and will remain in effect until September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Emily Crowder Frazelle, Program Analyst, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3040, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of Montserrat Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of a designation, or any extension thereof, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide To Extend the TPS Designation for Montserrat?

On August 28, 1997, the Attorney General designated Montserrat under the TPS program for a period of 12 months due to volcanic eruptions that affected the entire island and its residents. 62 FR 45685. The Attorney General has extended Montserrat's TPS designation four times, determining each time that the conditions warranting such designation continued to be met. See 66 FR 40834 (August 3, 2001); 65 FR 58806 (October 2, 2000); 64 FR 48190 (September 2, 1999); 63 FR 45864 (August 27, 1998).

Since the date of the last extension, the Departments of Justice and State have continued to review conditions in Montserrat. A 12-month extension is warranted due to the threat of further volcanic eruptions, the ongoing housing shortage, and the serious health risks from hazardous volcanic ash.

Citing the Montserrat Volcano Observatory's March 2002 Hazard Assessment, the Department of State reports that a significant risk of a new eruption exists in the near future caused by the sustained growth of the lava dome of the Soufriere Hills volcano. Recommendation for the Extension of TPS (April 24, 2002). Such continuous dome growth has increased the hazards of pyroclastic flows, explosions, volcanic mudflow, and fall of ash and small stones. *Id.* The Department of Justice reports that the volcano spews hundreds of tons of sulphur dioxide daily, as well as produces numerous rockfalls and flows of super-heated rocks, ash, and gas. The Immigration and Naturalization Service (INS) Resource Information Center (March 2002). Furthermore, scientists monitoring the volcano have issued a bulletin warning that the volcano remains deadly. *Id.*

The Department of State further notes that emergency measures remain in place in Montserrat, the airport remains closed without a functioning airstrip, and a housing shortage persists. Recommendation for Extension of TPS. In addition to destruction caused by the volcano's eruptions in 1997 and 2000, volcanic ash covers much of the island, posing serious health risks to those who inhale the airborne cristobalite contained in the ash. *Id.* Such reports demonstrate that the volcano eruptions that led to the initial designation of TPS for Montserrat continue to cause health risks as well as create problems with the reconstruction of the island's airport.

Based on this review, the Attorney General, after consultation with appropriate government agencies, finds that the conditions that warranted designation of Montserrat under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption of living conditions in Montserrat as a result of environmental disaster, and Montserrat remains unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B)(i)–(ii). On the basis of these findings, the Attorney General concludes that the TPS designation for Montserrat should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Montserrat TPS Program, Do I Still Re-register for TPS?

Yes. If you already have been granted TPS through the Montserrat TPS program, your status will expire on August 27, 2002. Accordingly, you must re-register for TPS in order to maintain your status through August 27, 2003. See the following re-registration instructions.

If I Am Currently Registered for TPS, How Do I Re-Register for An Extension?

Persons previously granted TPS under the Montserrat program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the fee, (2) a Form I–765, Application for Employment Authorization, and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with the Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus do not pay the fifty dollar ($50) fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but previously were not fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

Submit the completed forms and applicable fee, if any, to the INS district office that has jurisdiction over your place of residence during the 60-day re-registration period that begins July 17, 2002, and will remain in effect until September 16, 2002 (inclusive of such end date).

If	Then
You are applying for employment authorization through August 27, 2003.	You must complete and file Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765, with no filing fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file (1) Form I–765 with no fee; and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Montserrat (or alien having no nationality who last habitually resided in Montserrat) who otherwise is eligible for TPS and has applied for, or plans to apply for, asylum but who has not been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to apply for TPS, although the grounds for denying one form of relief may serve as the basis for denying TPS as well. For example, a person who has been convicted of a particularly serious crime is ineligible for both asylum and TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Montserrat (or Aliens Having No Nationality Who Last Habitually Resided in Montserrat) Who Entered the United States After August 28, 1997, To Apply for TPS?

No. This is a notice of an extension of the TPS designation for Montserrat, not a notice of re-designation of Montserrat under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) must have resided continuously in the United States since August 22, 1997, and have been continuously physically present in the United States since August 28, 1997.

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2. To apply for late initial registration an applicant must:

(1) Be a national of Montserrat (or an alien who has no nationality and who last habitually resided in Montserrat);

(2) Have been continuously physically present in the United States since August 28, 1997;

(3) Have continuously resided in the United States since August 22, 1997; and

(4) Be admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from August 28, 1997, through August 27, 1998, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from

removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of conditions described in 8 CFR 244.2(f)(2). See 8 CFR 244.2(g). Late registration is limited to persons who have been continuously physically present since August 28, 1997, and who have continuously resided in the United States since August 22, 1997. Late registration is also limited to persons who are admissible as immigrants, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act. Late registration is limited to persons who were nonimmigrants or had been granted voluntary departure status or any relief from removal, or had a pending request for reparole or change of status, at the time of the initial registration period. See 8 CFR 244.2(f)(2). Late registration is limited to persons who timely file their application for late registration and who demonstrate that they were prevented from registering during the initial registration period for reasons beyond their control. See 8 CFR 244.2(g). Late registration is limited to persons who are not subject to the bars to late registration listed in 8 CFR 244.2(f)(2). Late registration is limited to persons who are not described in section 208(b)(2)(A) of the Act, and who do not pose a danger to the security of the United States. See 8 CFR 244.2(f)(2).

What Happens to Montserrat's TPS Designation After August 27, 2003?

Before August 27, 2003, the Attorney General will review the designation of Montserrat under the TPS program and determine whether the designation should be extended, terminated, or modified. 8 U.S.C. 1254a(b)(3)(A). Termination of a country's designation under the TPS program will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who previously had not applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on August 27, 2003, the Attorney General will review the designation of Montserrat under the TPS program and determine whether

Rule 10A–1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's

NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17973 Filed 7–16–02; 8:45 am]

BILLING CODE 8010–01–P

Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities

removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the above described conditions. 8 CFR 244.2(g).

Notice of Extension of Designation of Montserrat Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions for designation of TPS for Montserrat continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Montserrat under section 244(b) of the Act is extended for an additional 12-month period from August 27, 2002, to August 27, 2003. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 327 nationals of Montserrat (or aliens who have no nationality and who last habitually resided in Montserrat) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Montserrat (or an alien having no nationality who last habitually resided in Montserrat) who received TPS during the initial designation period must re-register for TPS during the 60-day re-registration period from July 17, 2002 until September 16, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit any fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but previously were not fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who previously had not applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on August 27, 2003, the Attorney General will review the designation of Montserrat under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Montserrat under the TPS program will be available at local INS offices upon publication of this notice and the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS Website at *http://www.ins.usdoj.gov*.

Dated: July 11, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18040 Filed 7–16–02; 8:45 am]

BILLING CODE 4410–10–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

Time and Dates: 8:30 a.m. to 5 p.m., August 19–20, 2002.

Place: Los Angeles Marriott Hotel Downtown, 333 South Figueroa Street, Los Angeles, California

Status: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

Matters To Be Considered: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment

Portions Open to the Public: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Unfinished Business, New Business, Announcements, Adjournment

Portions Closed to the Public: Executive Session.

Contact Person for More Information: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail)

Agency Mission: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Accommodations: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

Language Translation: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to this meeting.

Multiple Chemical Sensitivity/ Environmental Illness: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: July 15, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–18126 Filed 7–15–02; 11:13 am]

BILLING CODE 6820–MA–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 10A–1, SEC File No. 270–425, OMB Control No. 3235–0468

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 10A–1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

There are no recordkeeping retention periods in Rule 10A–1. Because of the one business day reporting periods, recordkeeping retention periods should not be significant.

Filing the notice or report under Rule 10A–1 is mandatory once the conditions noted above have been satisfied. Because these notices and reports discuss potential illegal acts, they are considered to be investigative records and are kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17973 Filed 7–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15c3–1, SEC File No. 270–197, OMB Control No. 3235–0200

Rule 17a–10, SEC File No. 270–154 OMB Control No. 3235–0122

Rule 17a–19 and Form X–17a–19, SEC File No. 270–148, OMB Control No. 3235–0133

Form BDW, SEC File No. 270–17, OMB Control No. 3235–0018

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved information collections under the Securities Exchange Act of 1934 discussed below.

Rule 15c3–1 (17 C.F.R. 240.15c3–1) requires a broker or dealer registered with the Commission to maintain at all times sufficient liquid assets in excess of liabilities to promptly satisfy the claims of customers in the event the broker or dealer fails. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. There are approximately 8,000 broker-dealer respondents registered with the Commission who incur an aggregate burden of 950 hours per year to comply with this rule.

Rule 17a–10 (17 CFR 240.17a–10) requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 (17 CFR section 240.17a–5) to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 1,100 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 13,200 hours.

Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 requires National Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 2,600 total annual filings pursuant to Rule 17a-19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 650 total annual hours.

Broker-dealers and notice-registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 fully registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding fully registered broker-dealers and their registered personnel. It is further estimated that 140 futures commission merchants that are notice-registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW by sending the completed Form BDW to the National Futures Association, which maintains information regarding notice-registered broker-dealers on behalf of the Commission. The annualized compliance burden per year for both fully registered and notice-registered broker-dealers is 260 hours

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Nathan Knuffman, Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: July 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17974 Filed 7–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act

investment program of each Series. The Advisor also evaluates, selects, and recommends subadvisors ("Subadvisors") to manage all or a portion of the assets of each Series. Each Subadvisor is, or will be, an investment adviser registered, or exempt from registration, under the Advisers Act, and performs services pursuant to a written agreement with the Advisor ("Subadvisory Agreement"). As

Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without

shareholders (or, if the Series serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Series and the Contract Owners who have allocated assets to that sub-account), and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

4. Before a Series may rely on the requested order, the operation of the

that is not controlled by that trustee, director or officer), any interest in a Subadvisor, except for: (a) Ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadvisor or an entity that controls, is

Dated: July 9, 2002.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–17974 Filed 7–16–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25655; 812–12640]

The Phoenix Edge Series Fund and Phoenix Variable Advisors, Inc.; Notice of Application

July 10, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 ("Act") from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: The Phoenix Edge Series Fund (the "Fund") and Phoenix Variable Advisors, Inc. (the "Advisor").

Filing Dates: The application was filed on September 26, 2001, and amended on July 9, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, One American Row, P.O. Box 5056, Hartford, CT, 06102–5056.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act as an open-end management investment company. The Fund is presently comprised of twenty-seven series, each with its own investment objectives, policies, and restrictions. Shares of the Fund are currently offered only to the separate accounts of Phoenix Life Insurance Company ("Phoenix"), PHL Variable Insurance Company, and Phoenix Life and Annuity Company to fund benefits under variable annuity and variable life insurance contracts issued by those companies.

2. The Advisor, a Delaware corporation, serves as the investment adviser to certain series of the Fund that use the management structure described in the application (each a "Series" and collectively, the "Series").[1] The Advisor is registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is an indirect, wholly owned subsidiary of Phoenix.

3. The Fund, on behalf of the Series, has entered into an investment advisory agreement with the Advisor (the "Advisory Agreement"), pursuant to which the Advisor serves as the investment adviser to the Series. The Advisory Agreement has been approved by a majority of the Fund's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund or the Advisor ("Independent Trustees"), and each Series' shareholder(s). Under the terms of the Advisory Agreement, the Advisor, subject to oversight by the Board, has supervisory responsibility for the investment program of each Series. The Advisor also evaluates, selects, and recommends subadvisors ("Subadvisors") to manage all or a portion of the assets of each Series. Each Subadvisor is, or will be, an investment adviser registered, or exempt from registration, under the Advisers Act, and performs services pursuant to a written agreement with the Advisor ("Subadvisory Agreement"). As compensation for its services, the Advisor receives a fee from the Fund at annual rates based on a percentage of the applicable Series' average daily net assets. Each Subadvisor will be paid by the Advisor out of the fees received by the Advisor from the Series.

4. The Advisor selects Subadvisors based on continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style. The Advisor monitors compliance of Subadvisors with the investment objectives and related policies of each Series and reviews the performance of each Subadvisor in order to assure continuing quality of performance. The Advisor may recommend to the Board reallocation of Series' assets among Subadvisors, if necessary, or recommend that the Fund employ or terminate particular Subadvisors, to the extent the Advisor deems appropriate to achieve the overall objectives of a particular Series.

5. Applicants request an order to permit the Advisor, subject to oversight by the Board, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Advisor, other than by reason of serving as a Subadvisor to one or more of the Series ("Affiliated Subadvisor"). None of the current Subadvisors is an Affiliated Subadvisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides, in relevant part, that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that shareholders rely on the Advisor to select and monitor the Subadvisors best suited to achieve a Series' investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisors is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of the Subadvisory Agreements would impose expenses and unnecessary delays on the Series, and may preclude the Advisor from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain fully subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series (or, if the Series serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by owners of the variable annuity contracts and variable life insurance contracts ("Contract Owners") who have allocated assets to that sub-account).

2. At all times, a majority of the Board will be Independent Trustees, subject to the suspension of this requirement for the death, disqualification or bona fide resignation of trustees as provided by rule 10e–1 under the Act, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

3. When a Subadvisor change is proposed for a Series with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Series and its shareholders (or, if the Series serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Series and the Contract Owners who have allocated assets to that sub-account), and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

4. Before a Series may rely on the requested order, the operation of the Series in the manner described in the application will be approved by a majority of the Series' outstanding voting securities, (or, if the Series serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by Contract Owners who have allocated assets to that sub-account) or, in the case of a Series whose public shareholders (or Contract Owners through a sub-account of a registered separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 6 below, by the initial shareholder(s) before offering shares of that Series to the public (or to Contract Owners through a sub-account of a registered separate account).

5. The Advisor will provide general management services to the Fund and its Series, including overall supervisory responsibility for the general management and investment of each Series' securities portfolio, and, subject to review and approval by the Board, will: (a) Set the Series' overall investment strategies; (b) evaluate, select and recommend Subadvisors to manage all or part of a Series' assets; (c) allocate and, when appropriate, reallocate a Series' assets among multiple Subadvisors; (d) monitor and evaluate the performance of Subadvisors; and (e) implement procedures reasonably designed to ensure that the Subadvisors comply with the relevant Series' investment objectives, policies and restrictions.

6. Each Series relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Advisor has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisors and recommend their hiring, termination, and replacement.

7. No trustee or officer of the Fund or officer or director of the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer), any interest in a Subadvisor, except for: (a) Ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadvisor or an entity that controls, is controlled by, or is under common control with a Subadvisor.

8. Within 90 days of the hiring of any new Subadvisor, shareholders of the Series (or, if the Series serves as a funding medium for any sub-account of a registered separate account, Contract Owners who have allocated assets to that sub-account) will be furnished all information about the new Subadvisor that would be included in a proxy statement, including any change in such disclosure caused by an addition of a new Subadvisor. To meet this condition, the Series will provide shareholders (or Contract Owners) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–17916 Filed 7–16–02; 8:45 am]
BILLING CODE 8010–01–P

[1] The Applicants also request relief with respect to current or future series of the Fund and any other registered open-end management investment companies and their series that: (a) Are advised by the Advisor or any entity controlling, controlled by, or under common control with the Advisor; (b) use the management structure described in the application; and (c) comply with the terms and conditions in the application ("Future Series," included in the term "Series"). The Fund is the only registered open-end management investment company that currently intends to rely on the requested order. Applicants state that if a Series has the name of any Subadvisor, as defined below, in the Series' name, the Series' name will be preceded by the name of the Advisor (such as "Phoenix," which is the name of the Advisor in conducting its business) or the name of the entity controlling, controlled by, or under common control with the Advisor that serves as the primary adviser to such Series.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46176; File No. SR–Amex–2002–60]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

July 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible

additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All

For the Commission; by the Division of Market Regulation, pursuant to delegated authority.[14]
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–17978 Filed 7–16–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

securities depository"[7] would be required to establish an account at DTC to receive the subject securities from DTC participants by book-entry deliveries. In addition, the reorganization agent would not be permitted to require DTC to deliver any physical securities prior to the third business day following the record date, payment date, or expiration date, as

publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended on April 8, 2002, and expires on July 6, 2002.[3]

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the two years since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–60 and should be submitted by August 7, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2002–60) be, and hereby is, approved on an accelerated basis as a pilot program through October 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17978 Filed 7–16–02; 8:45 am]

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[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, and extended again in October 2001, and in January and April 2002. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); and 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex–2000–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra*, note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46178; File No. SR–DTC–2001–19]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Automated Corporation Action Program Applicable to the Exercise of Warrants, Conversions, and Put Option Privileges

July 10, 2002.

On December 18, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–2001–19) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on May 8, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The Commission has proposed for comment amendments to Rule 17Ad–14 under the Act[3] that will expand the scope of the rule to include reorganization events in addition to tender offers and exchange offers.[4] Under the proposed changes to Rule 17Ad–14, a "reorganization agent"[5] acting on behalf of an issuer in connection with a "reorganization event"[6] which involves securities eligible at a "qualified registered securities depository"[7] would be required to establish an account at DTC to receive the subject securities from DTC participants by book-entry deliveries. In addition, the reorganization agent would not be permitted to require DTC to deliver any physical securities prior to the third business day following the record date, payment date, or expiration date, as applicable, of the reorganization event. These proposed changes to Rule 17Ad–14 would subject transfer agents acting as reorganization agents to requirements under Rule 17Ad–14 similar to those that currently apply to transfer agents acting as depositaries in tender offers and as exchange agents in exchange offers.

In order to be ready for processing changes that will occur if the Commission adopts the proposed amendments to Rule 17Ad–14, DTC is establishing its Automated Corporation Action Program ("ACAP"). The ACAP procedures and ACAP agreement will govern participants' exercises of warrants, conversions, and put options privileges that DTC has made eligible for ACAP ("ACAP reorganization event"). Tender offers and exchange offers will continue to be processed through DTC's Automated Tender Offer Program. Prior to making one of the above-listed reorganization events eligible for ACAP, DTC and the agent will have entered into an ACAP agreement that provides that DTC's ACAP procedures are applicable to the event.[8]

Under the ACAP procedures, participants wishing to exercise warrant, conversion, or put option privileges in an ACAP reorganization event will transmit the acceptance to DTC. DTC will transmit an instruction to the agent in the form of a DTC "agent's message" and will affect a book-entry delivery of the subject securities to the account of the reorganization agent maintained at DTC for this purpose no later than the prescribed deadline for the event. The book-entry delivery into the account will constitute the delivery of the securities required by the terms of the reorganization event. DTC will deliver the certificates evidencing the subject securities no later than three business days after the applicable deadline.

Under the ACAP procedures, DTC's [illegible] requirements of Rule 17Ad–14. These procedures should make the processing of DTC's participants' participation in ACAP reorganization events more efficient and thereby should promote the prompt and accurate clearance and settlement of these transactions. ACAP should also lead to better coordination and cooperation between DTC and transfer agents acting as reorganization [illegible]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45867 (May 2, 2002), 67 FR 30986 (May 8, 2002).

[3] 17 CFR 240.17Ad–14.

[4] Securities Exchange Act Release No. 40386 (August 31, 1998), 63 FR 47209 [File No. S7–25–98].

[5] *Id.* As proposed, a "reorganization agent" would be the transfer agent receiving shares from tendering depository participants and performing payment or exchange functions in connection with a reorganization event.

[6] *Id.* As proposed, a "reorganization event" would mean and include conversions, maturities, full and partial redemptions, calls, put option exercises, and warrant and rights exercises involving corporate and municipal securities of an issuer.

[7] "Qualified registered securities depository" is defined in Rule 17Ad–14 as a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Act to enable book-entry delivery of the securities of the subject company to, and return of those securities from, the transfer agent through the facilities of that securities depository.

[8] DTC and the reorganization agent will enter into an ACAP agreement, the terms of which will apply to all reorganization events for that reorganization agent thereafter made eligible for ACAP. When ACAP is fully automated, it is contemplated that DTC's Participant Terminal System or other electronic means will be used to confirm the agreement between DTC and the reorganization agent with respect to each reorganization event and to confirm any special procedures applicable to an event. Prior to completion of ACAP system automation, event information may be exchanged by telephone, fax, or e-mail.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt rules and procedures governing the execution of complex orders involving options and single stock futures.

The text of the proposed rule change [illegible]

(b) Applicability of Exchange Rules. Except as otherwise provided in this Rule, complex orders shall be subject to all other Exchange Rules that pertain to orders generally.

* * * * *

(2) Complex Order Priority. Notwithstanding the provisions of Rule 713, a complex order, as defined in paragraph (a) of this Rule, may be executed at a total credit or debit price

considered conduct inconsistent with just and equitable principles of trade and a violation of Rule 400.

A trade representing the execution of the options leg of a stock-option *or SSF-option* order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non'option leg(s) at the price(s) agreed upon.

the stock futures leg on an appropriate exchange. Because the stock futures products may not be fungible between markets, the complex order would need to specify the market of execution for the stock futures leg. As with stock/option orders, if the parties are unable to execute the single stock futures leg of the transaction due to a change in market conditions, the Exchange states that it would cancel the options leg of

for this purpose no later than the prescribed deadline for the event. The book-entry delivery into the account will constitute the delivery of the securities required by the terms of the reorganization event. DTC will deliver the certificates evidencing the subject securities no later than three business days after the applicable deadline.

Under the ACAP procedures, DTC's delivery of the agent's message or electronic instruction letter, as the case may be, to the reorganization agent will satisfy the terms of the reorganization event, in the form required by the reorganization event, as to the execution and delivery of either (1) the warrant/conversion/put option form by a DTC participant or (2) an instruction letter by a DTC participant to cover a protect (*i.e.*, surrender securities) if the reorganization agent has accepted a notice of guaranteed delivery from a DTC participant outside of DTC.[9]

If DTC presents a certificate to the reorganization agent which the reorganization agent determines to be nontransferable, DTC will within three business days after notice from the reorganization agent either (i) put the certificate into transferable form or replace it with a transferable certificate for the same quantity of that issue of securities or (ii) return to the reorganization agent all funds and all securities of other issues paid to and issued to DTC in exchange for the nontransferable certificate. If a cash dividend or interest payment is payable on the nontransferable certificate during such three business day period, the reorganization agent may deduct the amount of the payment from the total payment due to DTC with respect to that issue of securities. As is generally the case with securities certificates deposited with DTC, DTC will resolve any problems relating to a nontransferable certificate with the participant that deposited the securities.

II. Discussion

Section 17A(b)(3)(F)[10] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The rule change allows DTC to adopt procedures consistent with the proposed requirements of Rule 17Ad–14. These procedures should make the processing of DTC's participants' participation in ACAP reorganization events more efficient and thereby should promote the prompt and accurate clearance and settlement of these transactions. ACAP should also lead to better coordination and cooperation between DTC and transfer agents acting as reorganization agents for ACAP reorganization events. Therefore, the Commission finds that the rule change is consistent with these obligations under section 17A of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2001–19) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17917 Filed 7–16–02; 8:45 am]

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[9] Upon completion of ACAP automation, DTC participants will be able to submit through ACAP notices of guaranteed delivery to reorganization agents.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46181; File No. SR–ISE–2002–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Execution of Complex Orders Involving Options and Single Stock Futures

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt rules and procedures governing the execution of complex orders involving options and single stock futures.

The text of the proposed rule change appears below. New text is in italics.

Rule 722. Complex Orders

(a) *Complex Orders Defined.* A complex order is any order for the same account as defined below:

* * * * *

(5) *Combination orders with non-equity options legs. One or more legs of a complex order may be to purchase or sell a stated number of units of another security.*

(i) Stock-Option Order. A stock-option order is an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with either [(i)] *(A)* the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock necessary to create a delta neutral position; or [(ii)] *(B)* the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock, as and on the opposite side of the market from, the stock or convertible security portion of the order.

(ii) SSF-Option Order. A SSF-option order is an order to buy or sell a stated number of units of a single stock future or a security convertible into a single stock future ("convertible SSF") coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of stock underlying the single stock future or convertible SSF, or the number of units of stock underlying the single stock future or convertible SSF necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of underlying stock, as and on the opposite side of the market from, the stock underlying the single stock future or convertible SSF portion of the order.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(b) Applicability of Exchange Rules. Except as otherwise provided in this Rule, complex orders shall be subject to all other Exchange Rules that pertain to orders generally.

* * * * *

(2) Complex Order Priority. Notwithstanding the provisions of Rule 713, a complex order, as defined in paragraph (a) of this Rule, may be executed at a total credit or debit price with one other Member without giving priority to bids or offers established in the marketplace that are no better than the bids or offers comprising such total credit or debit; provided, however, that if any of the bids or offers established in the marketplace consist of a Public Customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace. Under the circumstances described above, the option leg of a stock-option order[,] as defined in subparagraph (a)(5)(i)*(A)* of this Rule, *or SSF-option order as defined in subparagraph (a)(5)(ii)(A) of this Rule,* has priority over bids and offers established in the marketplace by Non-Customer orders and market maker quotes that are no better than the price of the options leg, but not over such bids and offers established by Public Customer Orders. The option legs of a stock-option order as defined in subparagraph (a)(5)(ii)*(B), or SSF-option order as defined in subparagraph (a)(5)(ii)(B),* consisting of a combination order with stock *or single stock futures, as the case may be,* may be executed in accordance with the first sentence of this subparagraph (b)(2).

Supplementary Material to Rule 722

.01 This Rule 722 will be in effect until October 18, 2002.

.02 A bid or offer made as part of a stock-option order[,] (as defined in (a)(5)*(i)* above)[,] *or a SSF-option order (as defined in (a)(5)(ii) above)* is made and accepted subject to the following conditions: (1) the [stock-option] order must disclose all legs of the order and must identify the *security (which in the case of a single stock future requires sufficient identification to determine the market(s) on which the single stock future trades) and the* price at which the non-option leg(s) of the order is to be filled; and (2) concurrent with the execution of the options leg of the order, the initiating member and each member that agrees to be a contra-party on the non-option leg(s) of the order must take steps immediately to transmit the non-option leg(s) to a non-Exchange market(s) for execution. Failure to observe these requirements will be considered conduct inconsistent with just and equitable principles of trade and a violation of Rule 400.

A trade representing the execution of the options leg of a stock-option *or SSF-option* order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non'option leg(s) at the price(s) agreed upon.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Last year the Commission approved Exchange rules defining various types of "complex orders," including orders involving multiple options legs and stock/option orders.[3] In addition, the Exchange recently adopted procedures for executing stock/option complex orders.[4] The purpose of this proposed rule change is to authorize the execution of complex orders involving options and single stock futures pursuant to procedures that are virtually identical to the stock/option procedures. The Exchange states that this proposed rule change, if approved by the Commission, would become part of the complex order pilot program approved to operate through October 18, 2002.[5]

The proposed rules would permit Exchange members to enter option-stock future complex orders. As with stock/option orders, the option leg of the transaction would have priority over non-customer orders at the same price. The Exchange states that it would execute the options leg of the trade and the parties then would seek to execute the stock futures leg on an appropriate exchange. Because the stock futures products may not be fungible between markets, the complex order would need to specify the market of execution for the stock futures leg. As with stock/option orders, if the parties are unable to execute the single stock futures leg of the transaction due to a change in market conditions, the Exchange states that it would cancel the options leg of the transaction at the request of a party to the trade.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[6] that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[3] *See* Securities Exchange Act Release No. 44955 (October 18, 2001), 66 FR 53819 (October 24, 2001) (File No. SR–ISE–2001–18).

[4] *See* Securities Exchange Act Release No. 45985 (May 24, 2002), 67 FR 36533 (June 4, 2002) (File No. SR–ISE–2002–14).

[5] *See* Securities Exchange Act Release No. 44955, *supra* note 3.

[6] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change with regard to Rule G–14, on reports of sales or purchases, to increase

amendment to Rule G–14 to require dealers to report their trades within 15 minutes of the time they are effected. The planned implementation date for real-time reporting is now set for mid-2004.

Prior to the implementation of real-time transaction reporting, the MSRB intends to continue to increase transparency in the market using the

and a few trades may be added, deleted or amended as late as a few weeks after trade date.[6] To ensure that subscribers to the report have access to those trades, the MSRB will make available each day an "updated" report containing all trades effected one month previously. This will enable subscribers to see the effect of changes reported by dealers after the one-week report was

the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon filing Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change,

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–18 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17977 Filed 7–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46180; File No. SR–MSRB–2002–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–14, on Reports of Sales or Purchases

July 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 3, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–07) as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change with regard to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change would not change the wording of Rule G–14.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the MSRB has expanded the scope of the public transparency reports in several steps. Each step has provided industry participants and the public successively more information about the market.[3]

In May, 2001, the MSRB announced its plan to begin reporting trades in "real time" on a schedule coordinated with the industry's timetable for migration to an environment of next-day settlement of securities transactions.[4] To attain real-time reporting, the MSRB intends in the future to file an amendment to Rule G–14 to require dealers to report their trades within 15 minutes of the time they are effected. The planned implementation date for real-time reporting is now set for mid-2004.

Prior to the implementation of real-time transaction reporting, the MSRB intends to continue to increase transparency in the market using the currently available data. As its next step, the MSRB is now proposing to disseminate the Daily Comprehensive Report with a one-week delay. The proposed Report would contain details of all municipal securities transactions that were effected during the trading day one week earlier. Data about each trade on the proposed Report would be the same as that on the current Daily Comprehensive Transaction Report. For each trade, the proposed Report, like the current report, would show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and the dealer-reported yield of the transaction, if any. Each transaction would be categorized as a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade.

The current Daily Comprehensive Report began operation on November 1, 2001.[5] The proposed Report, with a one-week delay, would replace the current report that has a two-week delay.

Description of Service

Like the current two-week delayed report, the new Report will be available daily to subscribers. Subscribers to the current two-week delayed report would continue to access the proposed Report via the Internet and download copies from the MSRB's computer using a password-protected FTP account. The MSRB expects that the proposed Report would be available within two weeks of approval by the Commission.

The MSRB will continue the established annual fee for the Service of $2,000. The fee is structured approximately to defray the MSRB's costs for production of daily data sets, operation of telecommunications lines, and subscription maintenance. Subscription fees that have been paid for the two-week delayed report will be applied toward the one-week delayed report.

To enable the MSRB to compile a comprehensive trades database for enforcement purposes, dealers report a small amount of data after trade date, and a few trades may be added, deleted or amended as late as a few weeks after trade date.[6] To ensure that subscribers to the report have access to those trades, the MSRB will make available each day an "updated" report containing all trades effected one month previously. This will enable subscribers to see the effect of changes reported by dealers after the one-week report was disseminated.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–07 and should be submitted by August 7, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17972 Filed 7–16–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 46182; File No. SR–NYSE–2002–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Changes to Effective Dates for Certain Provisions of Recently Amended Rule 472 ("Communications With the Public")

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 5, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. On July 9, 2002, the NYSE filed Amendment No. 1 to the proposed rules change.[3] The NYSE has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon filing Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change that would establish November 6, 2002 as the effective date for certain provisions of NYSE Rule 472 ("Communications with the Public").

First, the proposed rule change would establish, subject to certain conditions described below, November 6, 2002 as the effective date for Rule 472(b)(1), (2) and (3) for members or member organizations that over the three previous years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Rule 472(b)(1), (2) and (3), when effective, will prohibit associated persons, as defined in Rule 472.40 from being subject to the supervision or control of any employees of a member's or member organization's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report by the research department (referred to herein as the "subject company"). Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Second, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MSRB's report summarizing prices for issues that are frequently traded on the inter-dealer market began operation in 1995; in 1998, dealer-customer prices were added in a second summary report; in January 2000, a report with details of trades in frequently traded issues was added; in October 2000, a monthly comprehensive report, covering all transactions effected during the previous month, began operation; and in November 2001, a daily comprehensive report was begun, with trades effected two weeks earlier.

[4] *See* "Real-Time Reporting of Municipal Securities Transactions," *MSRB Reports*, Vol. 21, No. 2 (July 2001) at 31–36.

[5] *See* Release No. 34–44894 (October 2, 2001), 66 FR 51485 (October 9, 2001).

[6] *See* Release No. 34–43060 (July 20, 2000), 65 FR 46188–46189 (July 27, 2000) at note 7. Approximately one percent of the trades in the database have data submitted between one week and one month after trade date.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE provided associated persons until July 16, 2002 to submit plans for liquidation to their member or member organization's legal or compliance department. In Amendment No. 1, NYSE also corrected the several technical errors that appeared in its original filing. *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to James A. Brigagliano, Assistant Director, Division of Market Regulation, Commission, dated July 9, 2002 ("Amendment No. 1").

[4] 17 CFR 240.19b–4(f)(1).

organization's foreign affiliates from a subject company. Rule 472(k)(1)(ii), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that have delayed implementation of Rule 472(b)(1), (2) and (3) would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Third, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company. Rule 472(k)(1)(ii), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that have delayed implementation of Rule 472(k)(1)(ii) would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Fourth, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(1)(iii) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company. Rule 472(k)(1)(iii), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that have delayed implementation of Rule 472(k)(1)(iii) would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Fifth, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(2)(i) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company. Rule 472(k)(2)(i), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that have delayed implementation of Rule 472(k)(2)(i) would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Sixth, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(2)(ii) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company. Rule 472(k)(2)(ii), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that have delayed implementation of Rule 472(k)(2)(ii) would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Finally, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(3) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company. Rule 472(k)(3), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that have delayed implementation of Rule 472(k)(3) would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the MSRB has expanded the scope of the public transparency reports in several steps. Each step has provided industry participants and the public successively more information about the market.[3]

In May, 2001, the MSRB announced its plan to begin reporting trades in "real time" on a schedule coordinated with the industry's timetable for migration to an environment of next-day settlement of securities transactions.[4] To attain real-time reporting, the MSRB intends in the future to file an amendment to Rule G–14 to require dealers to report their trades within 15 minutes of the time they are effected. The planned implementation date for real-time reporting is now set for mid-2004.

Prior to the implementation of real-time transaction reporting, the MSRB intends to continue to increase transparency in the market using the currently available data. As its next step, the MSRB is now proposing to disseminate the Daily Comprehensive Report with a one-week delay. The proposed Report would contain details of all municipal securities transactions that were effected during the trading day one week earlier. Data about each trade on the proposed Report would be the same as that on the current Daily Comprehensive Transaction Report. For each trade, the proposed Report, like the current report, would show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and the dealer-reported yield of the transaction, if any. Each transaction would be categorized as a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade.

The current Daily Comprehensive Report began operation on November 1, 2001.[5] The proposed Report, with a one-week delay, would replace the current report that has a two-week delay.

Description of Service

Like the current two-week delayed report, the new Report will be available daily to subscribers. Subscribers to the current two-week delayed report would continue to access the proposed Report via the Internet and download copies from the MSRB's computer using a password-protected FTP account. The MSRB expects that the proposed Report would be available within two weeks of approval by the Commission.

The MSRB will continue the established annual fee for the Service of $2,000. The fee is structured approximately to defray the MSRB's costs for production of daily data sets, operation of telecommunications lines, and subscription maintenance. Subscription fees that have been paid for the two-week delayed report will be applied toward the one-week delayed report.

To enable the MSRB to compile a comprehensive trades database for enforcement purposes, dealers report a small amount of data after trade date, and a few trades may be added, deleted or amended as late as a few weeks after trade date.[6] To ensure that subscribers to the report have access to those trades, the MSRB will make available each day an "updated" report containing all trades effected one month previously. This will enable subscribers to see the effect of changes reported by dealers after the one-week report was disseminated.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–07 and should be submitted by August 7, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17972 Filed 7–16–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 46182; File No. SR–NYSE–2002–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Changes to Effective Dates for Certain Provisions of Recently Amended Rule 472 ("Communications With the Public")

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 5, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. On July 9, 2002, the NYSE filed Amendment No. 1 to the proposed rules change.[3] The NYSE has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon filing Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change that would establish November 6, 2002 as the effective date for certain provisions of NYSE Rule 472 ("Communications with the Public").

First, the proposed rule change would establish, subject to certain conditions described below, November 6, 2002 as the effective date for Rule 472(b)(1), (2) and (3) for members or member organizations that over the three previous years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Rule 472(b)(1), (2) and (3), when effective, will prohibit associated persons, as defined in Rule 472.40 from being subject to the supervision or control of any employees of a member's or member organization's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report by the research department (referred to herein as the "subject company"). Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Second, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member

business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must

Receipt of Investment Banking Compensation by Foreign Affiliates

Rule 472(k)(1)(ii) requires a member or member organization to disclose in research reports if the member or member organization or its affiliates: (a) managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) received compensation for investment

regard to their foreign affiliates, they are not making the disclosures required by the Rule until November 6, 2002.

Trading Contrary to Recommendations

The Rules contain provisions that restrict the personal trading by research analysts, but it does not completely prohibit ownership of securities that the research analyst covers. One such restriction is found in Rule 472(e)(3),

organization's foreign affiliates from a subject company. Rule 472(k)(1)(ii), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that delay implementation nevertheless would have to disclose in research reports that their foreign affiliates may (a) have managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) have received compensation for investment banking services from the subject company in the last 12 months; or (c) expect to receive or intend to seek compensation for investment banking services from the subject company in the next three months. Members or member organizations that delay implementation of Rule 472(k)(1)(ii) must notify the Exchange, and must also disclose in research reports that, with regard to their foreign affiliates, they are not making the disclosures required by the Rule until November 6, 2002. Further, members and member organizations would remain responsible for complying with the Rule's provisions for investment banking compensation received by the member or member organization and those affiliates based in the United States.

Third, the proposed rule change would establish November 6, 2002, subject to certain conditions described below, as the effective date for Rule 472(e)(3) for those associated persons who must divest certain holdings to comply with their member's or member organization's more restrictive policy that prohibits an associated person's ownership of securities that they cover in research reports. Rule 472(e)(3), when effective, will prohibit an associated person from purchasing or selling a security in a manner contrary to the associated person's most recent published recommendation reflected in the member's or member organization's research report. The Exchange is proposing to delay implementation of Rule 472(e)(3) only for associated persons that meet the following conditions: (1) they are employed by a member or member organization that, as of July 9, 2002, has adopted a policy that bans research analysts' ownership of securities they cover and further requires complete divestiture of existing holdings in those securities; (2) they abide by a reasonable plan of liquidation under which all shares are to be sold by November 6, 2002 and submit that plan to their member's or member organization's legal or compliance department no later than July 16, 2002; (3) they receive written approval of the liquidation plan from their member's or member organization's legal or compliance department; and (4) the member or member organization notifies the Exchange that they have approved plans that delay implementation of the provision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing the proposed rule change to establish November 6, 2002 as the effective date for: (a) Rule 472(b)(1), (2) and (3), subject to certain conditions, for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager *and* generated $5 million or less in gross investment banking revenues from those transactions; (b) Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company; and (c) Rule 472(e)(3), subject to certain conditions, for those associated persons who must divest certain holdings to comply with their member's or member organization's more restrictive policy that prohibits an associated person's ownership of securities they cover.

On May 10, 2002, the Commission approved amendments to NYSE Rules 351 and 472, which place prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company relationships and communications and impose new disclosure requirements on members and member organizations and their associated persons.[5]

At the same time, the Commission also approved a staggered implementation period for the Rules. Most provisions of the Rules become effective on July 9, 2002, including those that restrict supervision and control of associated persons by the investment banking department and those that require disclosure of investment banking compensation received from a subject company.

The "gatekeeper" provisions, described below, become effective September 9, 2002, and Rule 472(k)(1)(i)a.—a requirement to disclose firm ownership of subject company securities—becomes effective on November 6, 2002.

Small Firm Relief

The Rules contain provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. Rule 472(b)(1) prohibits an associated person (also referred to throughout this filing as a "research analyst") from being under the control or supervision of any employee of the investment banking department.

Rule 472(b)(1) also prohibits the investment banking department from reviewing or approving any research report prior to distribution. Rule 472(b)(2) creates an exception to the prohibitions of (b)(1) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, Rule 472(b)(3) restricts communications between a member or member organization and the subject company of a research report, except that a member or member organization may submit sections of the research report to the subject company to verify factual accuracy and may notify the subject company of a ratings change after the "close of trading" on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from a legal or compliance official.

As the Commission noted in its May 10th order, several commenters argued that the "gatekeeper" provisions would impose significant costs, especially for smaller firms that may have to hire additional personnel to comply with the requirements. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the Rules might force some firms out of the investment banking or research business and/or reduce important sources of capital and research coverage for smaller companies.

The NYSE is sensitive to the issues confronted by small firms and, as the Commission's May 10th order noted, along with NASD, is reviewing the issue to explore possible exemptions or accommodations that might be made while preserving the purposes of the Rules. To that end, and in order to provide time to review those issues, the Exchange is proposing to delay implementation of Rules 472(b)(1), (2), and (3) until November 6, 2002 for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the "gatekeeper" provisions of Rules 472(b)(2)(i) and (ii). The Exchange believes that for these members and member organizations, provided they comply with the conditions described, the temporary relief from these provisions will not adversely impact the spirit and intent of the Rule initiative.

Receipt of Investment Banking Compensation by Foreign Affiliates

Rule 472(k)(1)(ii) requires a member or member organization to disclose in research reports if the member or member organization or its affiliates: (a) managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) received compensation for investment banking services from the subject company in the past 12 months; or (c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months.

The Exchange understands that members and member organizations are setting up systems that can track the information required by this provision of the Rule. However, members and member organizations, particularly those with global operations and foreign affiliates, have informed the Exchange that the scope of their operations make it impossible to have systems in place by July 9, 2002, to track all investment banking compensation received by their foreign affiliates.

The Exchange recognizes that the tracking of investment banking compensation received by foreign affiliates requires significant resources, and therefore believes it is appropriate to allow members and member organizations additional time to set up systems to enable compliance with the Rule. Accordingly, NYSE is proposing to delay the implementation date for Rule 472(k)(1)(ii) until November 6, 2002, only as it relates to investment banking compensation received by members' and member organizations' foreign affiliates. Members and member organizations would remain responsible for complying with the Rule's provisions for investment banking compensation received by the member or member organization and those affiliates based in the United States.

Members and member organizations that delay implementation nevertheless would have to disclose in research reports that their foreign affiliates may (a) have managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) have received compensation for investment banking services from the subject company in the last 12 months; or (c) expect to receive or intend to seek compensation for investment banking services from the subject company in the next three months. Members or member organizations that delay implementation of Rule 472(k)(1)(ii) must notify the Exchange, and must also disclose in research reports that, with regard to their foreign affiliates, they are not making the disclosures required by the Rule until November 6, 2002.

Trading Contrary to Recommendations

The Rules contain provisions that restrict the personal trading by research analysts, but it does not completely prohibit ownership of securities that the research analyst covers. One such restriction is found in Rule 472(e)(3), which becomes effective on July 9, 2002. That provision prohibits an associated person from purchasing or selling a security or option or derivative of that security, in a manner contrary to the research analyst's most recent published recommendation reflected in the member's research report. For purposes of this Rule, the restriction applies to the associated person and "household member" as it is defined in the Rule, and to any account in which an associated person or household member has a financial interest, or over which the associated person has discretion or control, except for an investment company registered under the Investment Company Act of 1940.

Several members and member organizations have gone beyond the requirements of the Rule and instituted internal policies that prohibit research analysts from owning securities that they cover. Most of these firms require that research analysts divest themselves, over a certain period of time, of any existing holdings in securities they cover. Consequently, research analysts could face the predicament of violating Rule 472(e)(3) to comply with their firm's more restrictive policy because they could be required by their firm to divest their holdings in a security even as they maintain a buy recommendation in that security. Absent some relief from the Rule, the practical impact of the firm-imposed prohibition would be that research analysts would have to divest all holdings in securities they cover by July 9, 2002, or cease coverage in those securities in which they hold positions.

To alleviate this situation, and to allow an orderly liquidation of holdings, the Exchange is proposing to delay implementation of Rule 472(e)(3) until November 6, 2002, only for associated persons that meet the following conditions: (a) they are employed by a member or member organization that as of July 9, 2002 has adopted a policy that bans research analysts' ownership of securities they cover and further requires complete divestiture of existing holdings in those securities; (b) they abide by a reasonable plan of liquidation under which all shares are to be sold by November 6, 2002 and submit that plan to their member's or

[5] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) ("May 10th order").

member organization's legal or compliance department no later than July 16, 2002; (c) they receive written approval of the liquidation plan from their member's or member organization's legal or compliance department; and (d) the member or member organization notifies the Exchange that they have approved plans that delay implementation of the

change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

rule change under Rule 19b–4(f)(6) of the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to specify that the signing and termination of specialist

provide to agency orders received through the system.

Previously, the Commission approved an amendment to Phlx Rule 229 allowing specialists, subject to certain parameters, to accept non-agency orders over the PACE system.[7] In order to accept non-agency orders, the specialist must, among other things, enter into a Specialist Agreement with the broker-dealer and file such agreement with the

any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the

SR–Phlx–2001–111 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17980 Filed 7–16–02; 8:45 am]

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member organization's legal or compliance department no later than July 16, 2002; (c) they receive written approval of the liquidation plan from their member's or member organization's legal or compliance department; and (d) the member or member organization notifies the Exchange that they have approved plans that delay implementation of the provision.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5)[6] of the Act which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interests.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Rule 19b–4(f)(1) under the Act.[7] Consequently, it has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(1) thereunder.[9]

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–NYSE–2002–23 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17979 Filed 7–16–02; 8:45 am]

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[6] 15 U.S.C. 78f(b)(5).
[7] 17 CFR 240.19b–4(f)(1).
[8] 15 U.S.C. 78s(b)(3)(A).
[9] 17 CFR 240.19b–4(f)(1).
[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46170; File No. SR–Phlx–2001–111]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Termination of Broker-Dealer Agreements on PACE

July 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2002,[3] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to specify that the signing and termination of specialist agreements to execute broker-dealer orders on the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system[5] shall be in accordance with the procedures set forth by the Exchange. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Phlx, the purpose of the proposed rule change is to expressly provide for the signing and termination of Specialist Agreements accepting broker-dealer orders on the PACE system pursuant to the procedures set forth by the Exchange. Phlx equity specialists may choose to participate in PACE with respect to specialty securities. Further, specialists, once on PACE, may choose to accept only agency orders,[6] subject to the appropriate PACE execution parameters, or may choose, in addition, to accept non-agency orders. Phlx Rule 229, describes the minimum PACE execution parameters the specialist is required to

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] The Commission notes that although Phlx officially filed this proposed rule change in 2002, Phlx had submitted a pre-filing in December 2001, at which time it assigned the file number SR–Phlx–2001–111.
[4] 17 CFR 240.19b–4(f)(6).
[5] PACE is the electronic order routing, delivery, execution and reporting system used to access the Phlx Equity Floor.
[6] For purposes of the PACE system, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See Supplementary Material .02 to Phlx Rule 229.

provide to agency orders received through the system.

Previously, the Commission approved an amendment to Phlx Rule 229 allowing specialists, subject to certain parameters, to accept non-agency orders over the PACE system.[7] In order to accept non-agency orders, the specialist must, among other things, enter into a Specialist Agreement with the broker-dealer and file such agreement with the Exchange. Supplementary Material .02 to Phlx Rule 229 describes some of the terms that the Specialist Agreement must contain, however, there is no mention made of the mechanics the specialist must use to secure such an agreement or what additional terms such an agreement may contain. In addition, no explicit mechanism or conditions for terminating such agreements were discussed in Supplementary Material .02 of Phlx Rule 229 or the approval of the earlier proposed rule change.

With this proposed rule change, the Exchange proposes to add language to Supplementary Material .02 of Phlx Rule 229 to clarify that the Exchange has implemented procedures for the signing and termination of Specialist Agreements.[8] Naturally, while the Exchange will change these procedures from time to time, such procedures will not conflict with the then existing requirements in Supplementary Material .02 of Phlx Rule 229.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, because it should promote just and equitable principles of trade, prevent fraudulent and manipulative acts and protect investors and the public interest by more specifically delineating the procedures to be followed by specialists entering into and terminating Specialist Agreements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2001–111 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–17980 Filed 7–16–02; 8:45 am]

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[7] See Securities Exchange Act Release No. 36442 (October 31, 1995) 60 FR 56084 (November 6, 1995) (File No. SR–Phlx–95–32) ("[A]ny specialist who has agreed to facilitate broker-dealer orders on PACE must provide all broker-dealers with the opportunity to submit non-agency orders for execution through PACE on equal terms.").
[8] Currently, the Exchange requires that terminations of these agreements be in writing and submitted to the Exchange at least 24 hours before the effectiveness of the termination.
[9] 15 U.S.C. 78f(b).
[10] 15 U.S.C. 78f(b)(5).
[11] 15 U.S.C. 78s(b)(3)(A).
[12] 17 CFR 240.19b–4(f)(6).
[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Brenda Washington, Lead Analyst, Office HUBZone Empowerment, Small Business Administration, 409 3rd Street, SW., Suite 8000, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Brenda Washington, Lead Analyst, (202) 205–7663 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: HUBZone Empowerment Contracting Program Application.

Form No: 2103.

Description of Respondents: Small Businesses Seeking Certification as a Qualified HUBZone Small Business Concern.

Annual Responses: 20,000.

Annual Burden: 20,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–17954 Filed 7–16–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Brenda Washington, Lead Analyst, Office HUBZone Empowerment, Small Business Administration, 409 3rd Street, SW., Suite 8000, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Brenda Washington, Lead Analyst, (202) 205–7663 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: HUBZone Empowerment Contracting Program Application.

Form No: 2103.

Description of Respondents: Small Businesses Seeking Certification as a Qualified HUBZone Small Business Concern.

Annual Responses: 20,000.

Annual Burden: 20,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–17954 Filed 7–16–02; 8:45 am]

BILLING CODE 8025–01–P

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Brenda Washington, Lead Analyst, Office HUBZone Empowerment, Small Business Administration, 409 3rd Street, SW., Suite 8000, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Brenda Washington, Lead Analyst, (202) 205–7663 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: HUBZone Empowerment Contracting Program Application.

Form No: 2103.

Description of Respondents: Small Businesses Seeking Certification as a Qualified HUBZone Small Business Concern.

Annual Responses: 20,000.

Annual Burden: 20,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–17955 Filed 7–16–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching and Privacy Protection Act of 1988, as Amended

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the Privacy Act, as amended, we are providing notice of a computer matching program that we will conduct with the States that participate in the Interim Assistance Reimbursement (IAR) program. The purpose of this matching program is to assist us in identifying individuals who have received IAR from a State and SSA and to control the benefit through the installment process.

DATES: We will file a report of the subject matching program with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated in paragraph 11 of the attached notice.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–0869, or writing to the Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Brown, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 4–C–5 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1704.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) regarding the conduct of computer matching programs. The amendments require agencies to follow certain procedures, including the publication of this notice, before they may disclose records for a matching program.

B. SSA Matches That Will Be Affected by This Notice

The matching program will involve the exchange of information between SSA and participating States. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; the clarity of the information collection; and the identification of ways to minimize the burden (including the use of automated techniques) on respondents, such as State and local governments, small businesses, and individuals.

1. Interim Assistance Reimbursement (IAR)

OMB No.: 0960–0418.

Description of Respondents: The respondents are applicants for SSI benefits.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,000 hours.

2. Inquiry To File an SSI Child's Low Birth Weight Baby Claim

OMB No.: 0960–0419.

Description of Respondents: The respondents are individuals, such as hospital social workers, who inquire about SSI eligibility for low birth weight babies.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 2,100.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Average Burden: 105 hours.

C. Individuals Who Will Be Affected by This Notice

The individuals who will be affected by this notice are those individuals who receive IAR from a State and SSA.

D. Effect of the Matching Program on Individuals

The matching program will not have an adverse effect on any individual. Form SSA–8125 is used in situations where IAR can be distributed directly to the recipient after the State has deducted the amount of assistance it provided. Form SSA–L8125–F6 is used in situations where a recipient entitled to underpayments has received IAR from a State and SSA will control the benefit through the installment process.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Linda Waters, Program Analyst, Office Government Contracting, Small Business Administration, 409 3rd Street, SW., Suite 8800, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Linda Waters, Program Analyst, (202) 205–7315 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Prime Contracts Program Quarterly Report; Part A, Traditional PCR and Part B, Breakout PCR.
Form No's: 843A, 843B.
Description of Respondents: Procurement Center Representatives.
Annual Responses: 63.
Annual Burden: 1024.

Title: Nomination for the Small Business Prime Contractor and Nomination for the Small Business Subcontractor of the Year Award.
Form No's: 883, 1375.
Description of Respondents: Prime Contractor, Subcontractor Annual Responses: 469.
Annual Burden: 3,752.

Title: PRONet.
Form No: 1167.
Description of Respondents: Small Disadvantaged Businesses.
Annual Responses: 200,000.
Annual Burden: 50,000.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 02–17955 Filed 7–16–02; 8:45 am]
BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses: (OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503; (SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. State Contribution Return—0960–0041

Form SSA–3961 is used by the Social Security Administration (SSA) to identify and account for all contributions due and paid under section 218 of the Social Security Act. The respondents are State Social Security agencies (one agency in each state, Puerto Rico, and the Virgin Islands) and each of approximately 65 interstate instrumentalities.

Type of Request: Extension of an OMB-Approved Information Collection.
Number of Respondents: 117.
Frequency of Response: 8.5.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 50 hours.

2. Report on Individual with Mental Impairment—0960–0058

Form SSA–824 is used by the Social Security Administration to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record librarians and other health professionals.

Type of Request: Extension of an OMB-Approved Information Collection.
Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 36 minutes.
Estimated Annual Burden: 30,000 hours.

3. Missing and Discrepant Wage Reports Letter and Questionnaires-0960–0432

SSA uses the information on Forms SSA–L93, SSA–95 and SSA–97 to secure the employer information missing from its records (or discrepant with Internal Revenue Service (IRS) records) by contacting the involved employers. When secured, SSA is able to properly post the employee's earnings records. Compliance by employers with SSA requests facilitates proper posting of employees' wage records. SSA makes two efforts to obtain wage information from the employer before the case is turned over to the IRS for penalty assessments. The respondents are employers with missing or discrepant wage reports.

Type of Request: Extension of an OMB-Approved Information Collection.
Number of Respondents: 360,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 180,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on 410–965–0454, or by writing to the address listed above.

1. Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516

SSA is required by law to establish procedures for collecting information on whether an SSI recipient who becomes institutionalized (e.g., hospital, nursing home) may be eligible for continued benefits, based on the full federal benefit rate, if a physician certifies that the anticipated period of medical confinement will last no more than 90 days. The individual (or someone acting on his/her behalf) must demonstrate that he/she needs to pay some or all of the expenses of maintaining the home to which he/she expects to return. The respondents are applicants for SSI benefits.

Type of Request: Extension of an OMB-Approved Information Collection.
Number of Respondents: 60,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 5,000 hours.

2. Inquiry To File an SSI Child's Application—0960–0557

The information collected on Form SSRO–3–293 (formerly SSA–293) is used by SSA to document the earliest possible filing date and to determine potential eligibility for Supplemental Security Income (SSI) child's benefits. The respondents are individuals, such as hospital social workers, who inquire about SSI eligibility for low birth weight babies.

Type of Request: Extension of an OMB-Approved Information Collection.
Number of Respondents: 2,100.
Frequency of Response: 1.
Average Burden Per Response: 3 minutes.
Estimated Average Burden: 105 hours.

3. Supplemental Security Income Notice of Interim Assistance Reimbursement (Two Forms)—0960–0546

Form SSA–8125 and SSA–L8125–F6 collect interim assistance reimbursement (IAR) information from the States that provide such assistance. Form SSA–8125 is used in situations where IAR can be distributed directly to the recipient after the State has deducted the amount of assistance it provided. Form SSA–L8125–F6 is used in situations where a recipient entitled to underpayments has received IAR from a State and SSA will control the benefit through the installment process.

The respondents are States that provide IAR to SSI claimants.

Type of Request: Extension of an OMB-Approved Information Collection.

	SSA–8125	SS–L8125–F6
Number of Respondents	50,000	50,000.
Frequency of Response	1	1.
Average Burden Per Response	10 minutes	10 minutes.
Estimated Annual Burden	8,333 hours	8,333 hours.

4. National Employment Activity and Disability Survey—0960–NEW

Background

The Ticket to Work program (TTW) was established by the 1999 Ticket to Work and Work Incentives Improvement Act. The program will provide eligible Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability beneficiaries with a Ticket, which can be used to obtain vocational rehabilitation (VR) or employment services through participating providers, called Employment Networks (ENs).

The reason for the TTW program is that some beneficiaries currently lack the resources necessary to return to work at a level above the Substantial Gainful Activity (SGA) level, either because they do not have easy access to such services, or because they lack the incentive to invest resources in return to work activities because of a variety of factors affecting the decision to work. TTW confers upon a beneficiary a means to access those resources in a less restrictive manner than under the traditional program. The manner in which the program is being implemented is expected to increase beneficiary demand for employment-related services and activities. It is also expected to increase the number and diversity of providers in response to the less restrictive participation requirements and increased consumer demand for services.

The National Employment Activity and Disability Survey

The National Employment Activity and Disability Survey will collect data on the work-related activities of SSI and Old Age, Survivors and Disability Insurance (OASDI) beneficiaries as the TTW program, and other initiatives designed to improve beneficiary employment outcomes, are implemented. The TTW Survey is specifically designed to be a significant resource for the formal evaluation of TTW, but SSA anticipates that the survey will provide useful information for a variety of evaluation and policy analysis purposes, especially related to current efforts that attempt to improve return to work. The survey questionnaire focuses on information about beneficiaries and their work-related activities that cannot be obtained from SSA's administrative records. The survey will provide information about: (1) Beneficiaries who assign their Tickets to ENs, and their experience in the program; (2) beneficiaries who do not assign their Tickets, and the reasons why they do not, including involuntary non-participants; (3) the employment outcomes of Ticket users and other beneficiaries; and (4) the use of employment services by Ticket users and other beneficiaries. The respondents will be selected form SSI and OASDI disabled beneficiaries who meet the Ticket to Work program eligibility requirements.

Type of Request: New OMB Information Collection.
Number of Respondents: 6,557.
Frequency of Response: 1.
Average Burden Per Response: 45 minutes.
Estimated annual Burden: 4,918 hours.

5. Record Of Supplemental Security Income Inquiry—0960–0140

Form SSA–3462 is completed by SSA personnel via telephone or personal interview, and it is used to determine potential eligibility for SSI benefits. The respondents are individuals who inquire about SSI eligibility for themselves or someone else.

Type of Request: Extension of an OMB-Approved Information Collection.
Number of Respondents: 2,341,856.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 195,155 hours.

6. Public Information Campaign Collections—0960–0544

SSA uses the information from public broadcasting systems to determine media interest in broadcasting SSA's public information materials. The respondents are radio and television stations.

Type of Request: Revision of an OMB-approved Information Collection.
Number of Respondents: 8,000.
Frequency of Response: 3.
Average Burden Per Response: 1 minute.
Estimated Annual Burden: 400.

7. State Mental Institution Policy Review—0960–0110

SSA uses the information collected on Form SSA–9584 to determine whether policies and practices of State mental institutions conform with SSA's regulations in the use of benefits and whether an institution is performing other duties and responsibilities required of a representative payee. The

Dated: July 3, 2002.
William J. Lowell,
Director, Office of Defense Trade Controls, Department of State.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Japan of technical data, defense services and defense articles for the manufacture of the T58–GE–8/14 and CT58–110 aircraft gas turbine

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 030–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the design, manufacture and launch of the SpainSat communications satellite for Spain either an Ariane launch vehicle from French Guiana or

7. State Mental Institution Policy Review—0960–0110

SSA uses the information collected on Form SSA–9584 to determine whether policies and practices of State mental institutions conform with SSA's regulations in the use of benefits and whether an institution is performing other duties and responsibilities required of a representative payee. The information also provides a basis for conducting an onsite review of the institution and is used in preparing the subsequent report of findings. The respondents are State mental institutions that serve as representative payees.

Type of Request: Revision of an OMB-approved Information Collection.

Number of Respondents: 125.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 125 hours.

Dated: July 10, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–18140 Filed 7–16–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4063]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: Transmittal dates: As shown on each of the forty-eight letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 3, 2002.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Saudi Arabia of technical data, defense services and defense articles related to the training and maintenance required to operate E–3A and KE–3A Airborne Early Warning and Control Aircraft in Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 132–01.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Turkey of technical data, defense services and defense articles for the manufacture of engine components of the TF39 and J79 Gas Turbine Aircraft Engines for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 172–01.

Hon J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Japan of technical data, defense services and defense articles for the manufacture of the T58–GE–8/14 and CT58–110 aircraft gas turbine engines for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 011–02

Hon J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with Japan.

The transaction described in the attached certification involves the export to Japan of technical data, assistance and defense articles for the manufacture and assembly of Propellant Actuated Devices for F–15J and XT–4 aircraft for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 12–02.

Hon J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Japan related to the launch support and testing of the MTSAT–1R satellite from French Guiana or Japan for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 16–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to South Korea of technical data, defense services and defense articles related to AN/ALQ–165 (Lot II) Aircraft Self-Protection Jammers (ASPJs) for use by the South Korean Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 024–02.

The Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to France, Germany, and the United Kingdom related to the launch of the INMARSAT–4 communications satellite from Cape Canaveral, Florida.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 030–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 11, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Germany of technical data, defense services and defense articles for the manufacture of Aircraft Fuel Gauging Systems, Fuel Level Sensing Systems and Asymmetry Systems for end-use by Germany and Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 033–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, April 26, 2002.

Dear Mr. Speaker: Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Australia of technical data, assistance and training for the design, development, manufacture and maintenance in Australia or the Multi-Role Electronically Scanned Array (MESA) Radar/IFF subsystem for the Royal Australian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 028–01.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 1, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the design, manufacture and launch of the SpainSat communications satellite for Spain either an Ariane launch vehicle from French Guiana or a Sea Launch vehicle from the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 014–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 1, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia beyond those addressed in DTC 39–98 dated March 19, 1998, DTC 98–99 dated August 5, 1999, DTC 014–00 dated March 7, 2000, DTC 034–01 dated March 1, 2001, and DTC 038–01 dated April 30, 2001, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 22–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 1, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a

proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia, Ukraine, Cayman Islands, and Norway beyond those addressed in DTC 16–97 dated July 25, 1997, DTC 6–99 datedApril 16, 1999, DTC 124–99 dated November 10, 1999, DTC 026–00 dated May 1, 2000, DTC 014–00 dated March 7, 2000, DTC 034–01 dated March 1, 2001, DTC 038–01 dated April 30, 2001, and DTC 022–02 dated May 1, 2002, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 031–02. May 17 2002.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached

and civilian aircraft; (6) fifty-five (55) Quartz Rate Sensors for incorporation in an Integrated Electronic Standby Instrument; (7) seventeen (17) high voltage power supply units and parts for use in the Jaguar aircraft; (8) spare parts for the Sea King Helicopters; and (9) driveshaft assemblies for the Indian Advanced Light Helicopter.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia, Ukraine, Cayman Islands, and Norway beyond those addressed in DTC 16–97 dated July 25, 1997, DTC 6–99 datedApril 16, 1999, DTC 124–99 dated November 10, 1999, DTC 026–00 dated May 19,2000, and DTC 048–01 dated April 30, 2001, providing for the Sea Launch joint venture, in which Norway, Ukraine and Russia will participate, to provide commercial space launch services for communications satellites from a modified oil platform in the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 23–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 17, 2002.

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act, and the Administration is treating authorization for the requested re-export consistent with these provisions.

The transaction described in the attached certification involves the transfer of: (1) Temporary export for demonstration purposes of an aircraft Ground Proximity WarningSystem, Personnel Locator System for downed airmen, and a hand-held survivor radio; (2) unclassified technical data related to a Mobile Combat Training Center; (3) a ten-year technical assistance agreement providing for employment in the U.S. of Indian national(s) in the design, manufacture and use of flight simulation devices for military and civilian applications.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 04–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 17, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and unclassified defense articles, including 31 F404/RM12 engines, to Sweden for incorporation into the Gripen Aircraft for end-use by South Africa.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 026–02.

May 17, 2002.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement with Taiwan.

The transaction described in the attached certification involves the transfer of naval architectural and marine engineering services to Taiwan for the basic and detailed development of the Taiwan Navy PFG2 program corvette.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 031–02.

May 17 2002.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Israel of technical data, defense services and defense articles for three Gulfstream V Special Electronic Mission Aircraft for end use by the Government of Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 052–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 20, 2002.

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act, and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the transfer of: (1) Six (6) magnetrons for use in the ground-based Flycatcher radar; (2) unclassified technical data for marketing proposals for the M109 series of self-propelled howitzers, ammunition support vehicles, and fire direction center vehicles; (3) propeller-driven target drones and spare parts for anti-aircraft artillery practice; (4) unclassified technical data for marketing an aircraft ground proximity warning system and a personnel locator system; (5) a technical assistance agreement allowing employment in the U.S. of an Indian national in support of carbon based braking systems for various military and civilian aircraft; (6) fifty-five (55) Quartz Rate Sensors for incorporation in an Integrated Electronic Standby Instrument; (7) seventeen (17) high voltage power supply units and parts for use in the Jaguar aircraft; (8) spare parts for the Sea King Helicopters; and (9) driveshaft assemblies for the Indian Advanced Light Helicopter.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 05–02.

The Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 22, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia, Ukraine, Cayman Islands and Norway beyond those addressed in DTC 16–97 dated July 25, 1997, DTC 6–99 dated April 16, 1999, DTC 124–99 dated November 10, 1999, DTC 026–00 dated May 19, 2000, DTC 048–01 dated April 30, 2001 and DTC 23–02 dated May 1, 2002, providing for the Sea Launch Joint Venture, to provide commercial space launch services from a modified oil platform in the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 123–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives May 22, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia beyond those addressed in DTC 39–98 dated March 19, 1998, DTC 98–99 dated August 5, 1999, DTC 014–00 dated March 7, 2000, DTC 034–01 dated March 1, 2001, DTC 038–01 dated April 30, 2001 and DTC 022–02 dated May 1, 2002, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 124–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Egypt of technical data and assistance in the manufacture of upgrade components for the TPS–63 radar system for end-use by Egypt.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 144–01.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Japan and South Korea for the sale of one MBSAT commercial communications satellite.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 20–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to support the manufacture, sale and overhaul/repair of Auxiliary Power Units (APU) for the CH–47 and SH–60/UH–60 Helicopters in Japan for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 025–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of ten (10)

cathode ray tubes for use in helmet-mounted data display units to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 42–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent

same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of six (6) tuner drives and four (4) servo amplifiers for an existing ship-borne radar system to India.

The United States Government is prepared to authorize the export of these items having

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 057–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a

cathode ray tubes for use in helmet-mounted data display units to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 36–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the transfer of unclassified technical data for the employment in the U.S. of an Indian national as a project engineer working with various types of aircraft engines.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 40–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of one handheld integrated directional receiver and homing system to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 41–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of two (2) Viper E mixed-gas underwater breathing apparatus to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 42–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of unclassified technical data related to a command, control, communications, computers, intelligence and information system to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 47–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the

same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of six (6) tuner drives and four (4) servo amplifiers for an existing ship-borne radar system to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 48–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense services and defense articles for the manufacture of the X300 transmission for use in the MCV–80 high mobility tracked vehicles of NATO countries and Austria, Australia, Egypt, Finland, Kuwait, Malaysia, New Zealand, South Korea, Sweden, Switzerland, Taiwan, Thailand, and the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 53–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with Italy.

The transaction described in the attached certification involves export to Italy of technical data and assistance in the manufacture of the LN–93 Inertial Navigation System for the Future Anti-Air Missile System Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 54–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Mexico of technical data, defense services and defense articles for the manufacture of Line Replaceable Module electrical connector backplanes for end use by the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 55–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture, assembly and testing of the Javelin Control Actuation Section for the Javelin missile for end-use by the United Kingdom's Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 057–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to the Dominican Republic concerning the acquisition, maintenance and support of ten (10) AT–6 trainer aircraft for end-use by the Dominican Republic Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 056–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services and defense articles to Denmark to integrate the Evolved SeaSparrow Missile system onto Danish ships for end-use by the Royal Danish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 059–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance in the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 60–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 61–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 62–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 63–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 64–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 65–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 66–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 67–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 68–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 69–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 70–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 71–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 72–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 73–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 74–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 75–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 76–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 77–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 78–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 79–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 80–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 81–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 82–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 83–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 84–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 85–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 86–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 87–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom for the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance in the manufacture of Sidewinder AIM–9L missile systems for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 090–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to Japan for the overhaul and repair of JFC–26 and JFC–54 fuel controls for aircraft in the inventory of the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 091–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, May 23, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of three (3) Glock 26 9mm pistols to Pakistan.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 102–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 4, 2002.

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested re-export consistent with these provisions.

The transaction described in the attached certification involves the transfer of: (1) unclassified marketing data concerning a special mission military aircraft to the Indian Ministry of Defense; (2) seven (7) timers for use in ejection seats of the Kiran and Jaguar aircraft to the Indian Air Force; (3) unclassified marketing data pertaining to the M113 and Bradley family of vehicles to the Indian Ministry of Defense; (4) two (2) power supply parts for the Light Combat Aircraft Program to the Indian Ministry of Defense; (5) two (2) Traveling Wave Tubes for integration in the radar of the Light Combat Aircraft Program to the Indian Ministry of Defense; (6) amendment to an existing distribution agreement to add India to the approved sales/distribution territory for minor components for helicopters and fixed wing aircraft; (7) technical data concerning a command and control system for Corvette and Fast Patrol Boat size vessels to the Indian Ministry of Defense; (8) technical data concerning a Tethered Aerostat Surveillance System with L–88 (V3) and AN/APS–144 radar sensors to the Indian Ministry of Defense; (9) technical data concerning a Leading Edge Vortex Control (LEVCON) and a Nose Wheel Steering System for the Light Combat Aircraft Program to the Indian Ministry of Defense.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 02–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 4, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a

license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of twenty (20) cathode ray tubes for use in helmet-mounted data display units to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 08–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 4, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of unclassified technical data related to the marketing of upgrades to an existing CS–5060 electronics intelligence (ELINT) system in India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 09–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 4, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data related to the MK 39 Mod 3A Inertial Navigation System for use aboard surface vessels to the Indian Navy.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 50–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 10, 2002.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Italy of technical data, defense services and defense articles related to delivery, final integration, test and assembly of major sub-systems for six Predator, Unmanned Aerial Vehicles (UAVs), for use by the Italian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 147–01.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 12, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves: (1) unclassified technical data and hardware related to the design, analysis, manufacturing, and testing of single cell and dual cell antenna reflectors; (2) unclassified technical data related to the marketing of the TPS–70SS radar system; (3) twelve (12) spare parts kits for maintenance of Sikorsky S–61 Sea King helicopters; (4) an amendment to an existing manufacturing license agreement to re-instate India to the licensed territories for the Quick Fox software code; and (5) temporary export of Generation III single tube night vision goggles with a zoom laser Illuminator.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 06–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 12, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act,

Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data related to the marketing of helicopters with self-sealing fuel cells, armor plating, AN/APX–100 transponder, weapons pylons, FLIR, and rocket pods to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 43–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, *June 12, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith,

are participating countries for purposes of 15 CFR part 2012.

On May 22, 2002, USTR received a request and the necessary supporting information from the government of Australia to be considered as a participating country for purposes of the export certification program.

Accordingly, USTR has determined that, effective August 1, 2002, Australia is a participating country for purposes of 15

(hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and

are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section

Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of an inertial measurement unit from Canada to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 39–02.

Hon. J. Dennis Hastere,
Speaker of the House of Representatives, Jun 12 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data for fan blade design of the Kaveri jet engine test rig to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 43–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, *June 12, 2002.*

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data related to the F124 propulsion engine for the Indian Light Combat Aircraft.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 44–02.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives, June 12, 2002.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Public Law 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data related to the marketing of helicopters with self-sealing fuel cells, armor plating, AN/APX–100 transponder, weapons pylons, FLIR, and rocket pods to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 49–02

[FR Doc. 02–17586 Filed 7–16–02; 8:45 am]
BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Tariff-Rate Quota for Imports of Beef From Australia

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that USTR has determined that Australia, pursuant to its request, is a participating country for purposes of the export certification program for imports of beef under the tariff-rate quota.

DATES: The action is effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Jason Bernstein, Senior Economist for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508; telephone: (202) 395–6127.

SUPPLEMENTARY INFORMATION: The United States maintains a tariff-rate quota on imports of beef as part of its implementation of the Marrakesh Agreement Establishing the World Trade Organization. The in-quota quantity of that tariff-rate quota is allocated in part among a number of countries. As part of the administration of that tariff-rate quota, USTR provided, in 15 CFR part 2012, for the use of export certificates with respect to imports of beef from countries that have an allocation of the in-quota quantity. The export certificates apply only to those countries that USTR determines

are participating countries for purposes of 15 CFR part 2012.

On May 22, 2002, USTR received a request and the necessary supporting information from the government of Australia to be considered as a participating country for purposes of the export certification program. Accordingly, USTR has determined that, effective August 1, 2002, Australia is a participating country for purposes of 15 CFR part 2012. As a result, imports of beef from Australia entered on or after August 1, 2002, will need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate; imports of beef from Australia entered prior to August 1, 2002, will not require an export certificate. In order for the export certificate to be valid, it must satisfy the requirements of 15 CFR part 2012, including being used in the calendar year for which it is in effect.

Robert B. Zoellick,
United States Trade Representative.

[FR Doc. 02–17992 Filed 7–16–02; 8:45 am]
BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revised Noise Exposure Maps Roanoke Regional Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised noise exposure maps submitted by the Roanoke Regional Airport Commission for Roanoke Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Maria Stanco, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, (516) 227–3808.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Roanoke Regional Airport are in compliance with applicable requirements of Part 150, effective June 18, 2002.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Roanoke Regional Airport Commission. The specific maps under consideration are the noise exposure maps identified as Figure 5–1 (2000 DNL Contours) and Figure 5–2 (2005 DNL Contours) in the submission. The FAA has determined that these maps for the Roanoke Regional Airport are in compliance with applicable requirements. This determination is effective on June 18, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Cargo 5 Building–2nd Floor, Dulles, VA 20166.

Roanoke Regional Airport Commission, 5202 Aviation Drive, Roanoke, VA 24012.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued on June 18, 2002 in Jamaica, NY.

Robert B. Mendez,
Manager, Airports Division, Eastern Region.

[FR Doc. 02–18023 Filed 7–16–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent ot Prepare an Environmental Impact Statement and To Conduct Environmental Scoping for Improvements To the O'Hare International Airport, in Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Issuance of A Notice of Intent (NOI) to Prepare an Environmental Impact Statement and to Conduct Public Scoping Meetings.

SUMMARY: This NOI announces the Federal Aviation Administration's (FAA) intention to prepare an Environmental Impact Statement and to conduct public scoping meetings for a number of potential modernization and improvement initiatives at Chicago's O'Hare International Airport. Due both to the anticipated high level of interest in matters pertaining to O'Hare International Airport, and a desire to

fully accommodate potentially interested persons, agencies, and other entities, the FAA will conduct two (2) agency scoping meetings and two (2) public scoping meetings. The agency scoping meetings will be conducted as follows: Monday, August 19, 2002 from 10 a.m. to 1 p.m. at the Illinois Department of Transportation's (IDOT) Auditorium Conference Room located in

and rail line relocations. Finally, the potential acquisition of approximately 539 housing units, 109 businesses, and 433 acres of property outside of the Airport's present boundaries is also envisioned. The purpose and need for the above-identified improvements will be presented and reviewed in FAA's forthcoming EIS. In addition, reasonable alternatives, including the "no-build,"

telephone (202) 833–9339; fax (202) 833–9434; web site *http://222.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** *Specific working group sessions will be held August 12–15.* The plenary agenda will include:

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 194 meeting.

may present a written statement to the committee at any time.

Issued in Washington, DC, on July 11, 2002.

Janice L. Peters,
FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–18013 Filed 7–16–02; 8:45 am]
BILLING CODE 4910–13–M

in this docket. The docket can also be viewed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: In response to the notice published on April 18, 2002 (67 FR 19312–13) one

fully accommodate potentially interested persons, agencies, and other entities, the FAA will conduct two (2) agency scoping meetings and two (2) public scoping meetings. The agency scoping meetings will be conducted as follows: Monday, August 19, 2002 from 10 a.m. to 1 p.m. at the Illinois Department of Transportation's (IDOT) Auditorium Conference Room located in the IDOT Offices at 2300 South Dirksen Parkway in Springfield, Illinois; and on Tuesday, August 20, 2002 from 10 a.m. to 1 p.m. in the Metcalfe Federal Building's Lake Ontario Conference Room (12th floor) at 77 West Jackson Boulevard, in Chicago, Illinois. The public scoping meetings will be conducted as follows: Wednesday, August 21, 2002, from 4 p.m. to 8 p.m. in the Fountain Blue Banquets facility located at 2300 South Mannheim Road, in Des Plaines, Illinois; and on Thursday, August 22, 2002, from 4 p.m. to 8 p.m. in the Avalon Banquets facility located at 1905 East Higgins Road, in Elk Grove Village, Illinois.

FOR FURTHER INFORMATION CONTACT: Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. MacMullen can be contracted by phone at (847) 294–7522 (voice) and at (847) 294–7046 (facsimile).

SUPPLEMENTARY INFORMATION: The FAA has decided to prepare an Environmental Impact Statement (EIS) addressing specific improvements at and adjacent to O'Hare International Airport. As presently conceived, the runway construction component of the O'Hare Modernization Program would involve: a new North Runway 9–27, a relocation of existing Runway 18–36 (Arrival Runway 9R–27L), a relocation of existing Runway 14L–32R (arrival Runway 9L–27R), a relocation of existing Runway 14R–32L (South Runway 9–27), an extension of existing Runway 9R–27L, and an extension of existing Runway 9L–27R. Overall, the proposed project would result in O'Hare International Airport ultimately having a total of eight runways: six parallel east-west runways, and two parallel runways oriented in the northeast-southwest direction. In addition, the O'Hare Modernization Program would also potentially involve relocation of some or all existing navigation aids, placement of new navigation aids, revision to existing air traffic control procedures, provision of a new western access to the Airport, additional terminal facilities, and various roadway and rail line relocations. Finally, the potential acquisition of approximately 539 housing units, 109 businesses, and 433 acres of property outside of the Airport's present boundaries is also envisioned. The purpose and need for the above-identified improvements will be presented and reviewed in FAA's forthcoming EIS. In addition, reasonable alternatives, including the "no-build," use of other existing/proposed airports, alternative O'Hare configurations, and a different number of O'Hare runways alternatives will all be considered.

Federal, State, local agencies, and other interested parties, are invited to make comments and suggestions in order to ensure that the full range of environmental issues related to the above-identified matters are identified. Copies of a scoping document providing additional detail can be obtained by contacting the FAA informational contact listed above. The FAA informational contact person identified above should also receive any scoping comments and suggestions by no later than close of business on Friday, September 13, 2002.

Dated: Issued in Des Plaines, Illinois on July 5, 2002.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 02–18014 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS).

DATES: The meeting will be held August 12–16, 2002, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://222.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** *Specific working group sessions will be held August 12–15.* The plenary agenda will include:

- April 16:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
  - Review Working Group (WG) Progress and Identify Issues for Resolution
  - Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1)
  - GGPS/Wide Area Augmentation System (WAAS) (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - SC–159 Ad Hoc
- Review of EUROCAE activities
- Review/Approve revised DO–235, Assessment of Radio Frequency Interface Relevant to the GNSS, RTCA Paper No. 157–02/SC 159–896
  - Review/Approve Errata to DO–229C, RTCA Paper No. 082–02/ SC159–893.
  - Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–18012 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 194 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation.

DATES: The meeting will be held August 5–7, 2002, staring at 1 p.m. on August 5 and at 1 p.m. on August 7.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 194 meeting. The agenda will include:

- August 5:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve Minutes of Previous Meeting, Working Group Reports)
  - Review and Update revised Controller-Pilot Data Link Communication (CPDLC)
  - Program Determine need for proposed changes, if any, to SC–194 Terms of Reference
  - Determine near and mid-term SC–194 activities
  - Other Business
- August 6:
  - Working Group Meetings as scheduled by WG Leaders
- August 7:
  - Working Group Meetings Continued
  - Closing Plenary Session (Review Agenda, Working Group Reports, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–18013 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4957

Pipeline Safety: Renewal of Information Collection: OMB Approval and Comment Request

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for public comments and OMB approval.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing RSPA/Office of Pipeline Safety (OPS) collection of information for Operator Qualification of Pipeline Personnel. RSPA/OPS published a notice requesting public comment on April 18, 2002 (67 FR 19312–13). RSPA/OPS is offering the public another opportunity to comment on this information collection. It is also requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995. The public is invited to submit comments on ways to minimize the burden associated with collection of information related to the operator qualification requirements in the pipeline safety regulations, as well as other factors listed in the body of this notice.

DATES: Comments on this notice must be received within 30 days of the publication date of this notice to be assured of consideration.

ADDRESS: Interested persons are invited to send comments directly to The Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place Washington, DC 20503 ATTN: Desk Officer for the Department of Transportation.

Comments can be reviewed at the U.S. Department of Transportation Dockets Facility, Plaza 401, 400 Seventh Street, SW., Washington, DC which is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays, when the facility is closed. Documents pertaining to this notice can be viewed in this docket. The docket can also be viewed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: In response to the notice published on April 18, 2002 (67 FR 19312–13) one comment was received. A company which provides records management services for the pipeline industry suggested that RSPA/OPS overestimated the costs of this information collection. Because this was the only comment received, RSPA/OPS does not believe there is enough evidence to reduce the cost estimate of this information collection.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Title: National Operator Qualification of Pipeline Personnel.

Type of Request: Renewal of existing information collection.

Abstract: Congressional concern with the lack of skills of some pipeline personnel was expressed in the Pipeline Safety and Reauthorization Act of 1988 (Pub. L. 100–561). It authorized the Secretary of Transportation to require all individuals responsible for the operation and maintenance of pipeline facilities to be properly qualified to safely perform tasks on pipeline facilities. The operator qualification requirements are described in the pipeline safety regulations at 49 CFR Part 192, subpart N and 49 CFR Part 195, subpart G.

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 50,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 466,667 hours.

Issued in Washington, DC on July 12, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–18035 Filed 7–16–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Railway Company near North Avenue U, in the City of Lubbock, Lubbock County, TX. The line traverses United States Postal Service Zip Code 79415.

WTLR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; [1] (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting

Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representatives: Gary A. Laakso, Vice President Regulatory Counsel, Rail America, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487; and Louis E. Gitomer, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be

Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 545,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 min.
Learning about the law or the form—7 min.
Preparing the form—20 min.
Copying, assembling, and sending the form to the IRS—34 min.
Learning about the law or the form—26 min.
Preparing the form—1 hr., 4 min.
Copying, assembling, and sending the form to the IRS—34 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 691,900 hours.

OMB Number: 1545–0216.

Form Number: IRS Form 5713, Schedules A, B, and C.

Issued in Washington, DC on July 12, 2002.
Stacey L. Gerard,
Associate Administrator for Pipeline Safety.
[FR Doc. 02–18035 Filed 7–16–02; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Revised Natural Gas Transmission Pipeline Incident and Annual Report Forms

AGENCY: Research and Special Programs Administration, Department of Transportation.
ACTION: Notice, Correction.

SUMMARY: In the **Federal Register** of June 5, 2002, (67 FR 38698) the Research and Special Programs Administration published a Notice document to owners and operators of natural gas transmission systems, issuing an Advisory Bulletin to inform gas transmission pipeline owners and operators that revised forms for incident reporting for gas transmission and gathering systems and annual reporting for gas transmission and gathering systems are ready and available for use. The document contained the wrong Advisory Bulletin number. This document corrects the Advisory Bulletin number from ADB–02–01 to the correct number ADB–02–02.
EFFECTIVE DATE: June 5, 2002.
FOR FURTHER INFORMATION CONTACT: Roger Little, (202) 366–4569, or by e-mail, *roger.little@rspa.dot.gov*. This document can be viewed at the OPS home page at *http://ops.dot.gov*.

Issued in Washington, DC on July 12, 2002.
Stacey L. Gerard,
Associate Administrator for Pipeline Safety.
[FR Doc. 02–18034 Filed 7–16–02; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–473 (Sub-No. 1X)]

West Texas & Lubbock Railroad Company, Inc.—Abandonment Exemption—in Lubbock County, TX

West Texas & Lubbock Railroad Company (WTLR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.1-mile line of railroad from milepost 1.1, at University Avenue, eastward to milepost 0.0, at the interchange with The Burlington Northern and Santa Fe Railway Company near North Avenue U, in the City of Lubbock, Lubbock County, TX. The line traverses United States Postal Service Zip Code 79415.

WTLR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines;[1] (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 16, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 29, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 6, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representatives: Gary A. Laakso, Vice President Regulatory Counsel, Rail America, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487; and Louis E. Gitomer, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

WTLR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 22, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WTLR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WTLR's filing of a notice of consummation by July 17, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV*.

Decided: July 10, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 02–17806 Filed 7–16–02; 8:45 am]
BILLING CODE 4915–00–P

[1] WTLR states that it is rerouting the overhead traffic pursuant to a joint relocation project in *West Texas & Lubbock Railroad Company, Inc. and The Burlington and Northern and Santa Fe Railway Company—Joint Relocation Projection Exemption—in Lubbock, TX*, STB Finance Docket No. 34168 (STB served Mar. 4, 2002).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 10, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 16, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0024.
Form Number: IRS Form 843.
Type of Review: Extension.
Title: Claim for Refund and Request for Abatement.
Description: Internal Revenue Code (IRC) sections 6402, 6404, and sections 301.6404–2, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain action by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 545,500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 min.
Learning about the law or the form—7 min.
Preparing the form—20 min.
Copying, assembling, and sending the form to the IRS—28 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 845,525 hours.

OMB Number: 1545–0177.
Form Number: IRS Form 4684.
Type of Review: Extension.
Title: Casualties and Thefts.
Description: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 170,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 58 min.
Learning about the law or the form—26 min.
Preparing the form—1 hr., 4 min.
Copying, assembling, and sending the form to the IRS—34 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 691,900 hours.
OMB Number: 1545–0216.
Form Number: IRS Form 5713, Schedules A, B, and C.
Type of Review: Extension.
Title: International Boycott Report.
Description: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a "boycotting" country. If that entity cooperates with or participates in an international boycott it loses a portion of the foreign tax credit, or deferral of FSC and IC–DISC benefits. The IRS uses Form 5713 to determine if any of the above benefits should be lost. The information is also used as the basis for a report to the Congress.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 3,875.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
5713	22 hr., 0 min	2 hr., 21 min	4 hr., 1 min.
Sch. A (5713)	3 hr., 6 min	12 min	15 min.
Sch. B (5713)	3 hr., 21 min	1 hr., 59 min	2 hr., 7 min.
Sch. C (5713)	5 hr., 15 min	1 hr., 47 min	1 hr., 57 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 104,236 hours.
OMB Number: 1545–0748.
Form Number: IRS Form 2678.
Type of Review: Extension.
Title: Employer Appointment of Agent.
Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers for purposes of employment taxes.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.
Estimated Number of Respondents: 95,200.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (as necessary).
Estimated Total Reporting Burden: 47,600 hours.
OMB Number: 1545–1783.
Regulation Project Number: REG–107184–00 NPRM and Temporary.
Type of Review: Extension.
Title: Guidance Necessary to Facilitate Electronic Tax Administration.
Description: The regulations provide a regulatory statement of IRS authority to prescribe what return information or documentation must be filed with a return, statement or other document required to be made under any provision of the internal revenue laws or regulations. In addition, the regulations eliminate regulatory impediments to electronic filing of Form 1040..
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.
[FR Doc. 02–17919 Filed 7–16–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Texpaid to the United States.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Attn: Nancy Libin, Regulations Division, Room 4011, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Frank Foote, Bureau of Alcohol, Tobacco and Firearms, Room 4011, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Texpaid to the United States.

OMB Number: 1512–0332.

Form Number: ATF F 5620.7 (2147).

Abstract: This form is used by persons who ship liquors and articles of Puerto Rican manufacture texpaid to the United States. The information is used to determine whether or not an applicant for an alcohol or tobacco permit meets the minium qualifications. The form identifies the individual, residence, business background and financial sources for business and criminal records. If the applicant is found not qualified, the permit may be denied.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Texpaid to the United States.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Attn: Nancy Libin, Regulations Division, Room 4011, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Frank Foote, Bureau of Alcohol, Tobacco and Firearms, Room 4011, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Texpaid to the United States.

OMB Number: 1512–0332.

Form Number: ATF F 5620.7 (2147).

Abstract: This form is used by persons who ship liquors and articles of Puerto Rican manufacture texpaid to the United States. The information is used to determine whether or not an applicant for an alcohol or tobacco permit meets the minium qualifications. The form identifies the individual, residence, business background and financial sources for business and criminal records. If the applicant is found not qualified, the permit may be denied.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

cigarette papers and tubes were shipped to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States and that the tax was already paid on these tobacco articles. ATF F 5620.7 (2147) is the claim form that a person who paid the tax on the articles uses to file for a drawback or refund for the tax that has already been paid.

Current Actions: There are no changes

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Requisition For Forms or Publications, ATF F 1370.3 and Requisition For Firearms/Explosives Forms, ATF F 1370.2.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Linda Barnes, Document Services Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Requisition For Forms or Publications and Requisition For Firearms/Explosives Forms.

OMB Number: 1512–0001.

Form Number: ATF F 1370.3 and ATF F 1370.2.

Abstract: These forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms or publications by the general public.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30,000.

Estimated Total Annual Burden Hours: 1,725.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–17995 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Personnel Questionnaire Alcohol and Tobacco Products.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Personnel Questionnaire Alcohol and Tobacco Products.

OMB Number: 1512–0034.

Form Number: ATF F 5000.9.

Abstract: The information on ATF F 5000.9 enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minium qualifications. The form identifies the individual, residence, business background and financial sources for business and criminal records. If the applicant is found not qualified, the permit may be denied.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Total Annual Burden Hours: 10,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–17996 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

OMB Number: 1512–0057.

Form Number: ATF F 487–B (5170.7).

Abstract: ATF F 487–B (5170.7) is used to document the shipment of taxpaid Puerto Rican articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury officials to certify that products are either taxpaid or deferred under the appropriate bond and serves as a method of protection of the revenue.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 100.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–17997 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

OMB Number: 1512–0117.

Form Number: ATF F 5620.7 (2147).

Abstract: ATF 5620.7 (2147) documents that cigars, cigarettes, cigarette papers and tubes were shipped to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States and that the tax was already paid on these tobacco articles. ATF F 5620.7 (2147) is the claim form that a person who paid the tax on the articles uses to file for a drawback or refund for the tax that has already been paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 288.

Estimated Total Annual Burden Hours: 144.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–17998 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Inventory—Export Warehouse

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–17999 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Total Annual Burden Hours: 450.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226,

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Inventory—Export Warehouse Proprietor.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Inventory—Export Warehouse Proprietor.

OMB Number: 1512–0171.

Form Number: ATF F 5220.3.

Abstract: ATF F 5220.3 is used by export warehouse proprietors to record inventories that are required by laws and regulations. The form provides a uniform format for recording inventories and establishes a contingent tax liability on tobacco products.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 50.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–17999 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Theft or Loss of Explosives.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joe Angilloetta, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–4565.

SUPPLEMENTARY INFORMATION:

Title: Report of Theft or Loss of Explosives.

OMB Number: 1512–0185.

Form Number: ATF F 5400.5.

Abstract: Losses or theft of explosives must, by statute, be reported within 24 hours of the discovery of the loss of theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Total Annual Burden Hours: 450.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–18000 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

OMB Number: 1512–0190.

Form Number: ATF F 5100.11.

Abstract: ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 6,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–18001 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Operating Permit Under 26 U.S.C. 5171(d).

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Operating Permit Under 26 U.S.C. 5171 (d).

OMB Number: 1512–0195.

Form Number: ATF F 5110.25.

Abstract: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 20.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–18002 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Special Tax Registration and Return (Alcohol and Tobacco) and the Special Tax Registration and Return (National Firearms Act).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions

should be directed to Timothy DeVanney, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Special Tax Registration and Return (Alcohol and Tobacco) and Special Tax Registration and Return (National Firearms Act).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

Estimated Number of Respondents: 28,000.

Estimated Total Annual Burden Hours: 2,380.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Marks on Wine Containers.

OMB Number: 1512–0503.

Recordkeeping Requirement ID

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

SUPPLEMENTARY INFORMATION:

Title: Application for National Firearm Examiner Academy.

OMB Number: 1512–0549.

Form Number: ATF F 6330.1.

Abstract: The Office of Training and Professional Development has a training program for entry level firearm and toolmark examiners. All law enforcement organizations who rely on

should be directed to Timothy DeVanney, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Special Tax Registration and Return (Alcohol and Tobacco) and Special Tax Registration and Return (National Firearms Act).

OMB Number: 1512–0472.

Form Number: ATF F 5630.5 and ATF F 5630.7.

Abstract: ATF F 5630.5 and ATF F 5630.7 are completed by persons engaged in certain alcohol, tobacco and firearms related businesses, respectively. Both forms are used to register and/or pay a special occupational tax, as required by statute. Upon receipt of the tax, a special tax stamp is issued.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 90,700.

Estimated Total Annual Burden Hours: 72,778.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management), CFO.

[FR Doc. 02–18003 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Request For Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Acquisition, Disposition and Supporting Data).

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Request For Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Acquisition, Disposition and Supporting Data) OMB Number: 1512–0493 Form Number: ATF F 5300.3 Abstract: ATF F 5300.3 gives the user a simplified format to list the required information ATF needs to perform its functions in regard to the law. The respondent saves time because the questions are simple and a return address is supplied. The form is used to maintain a current status of firearms licensees.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension

Affected Public: Business or other for-profit, individuals or households

Estimated Number of Respondents: 28,000.

Estimated Total Annual Burden Hours: 2,380.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management), CFO.

[FR Doc. 02–18004 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Marks on Wine Containers.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Marks on Wine Containers.

OMB Number: 1512–0503.

Recordkeeping Requirement ID Number: ATF REC 5120/3.

Abstract: ATF requires that wine on wine premises be identified by statements of information on labels or contained in marks. ATF uses this information to validate the receipts of excise tax revenue by the Federal Government. All of the required information is drawn from cost accounting records maintained to establish the price of each product. These records are maintained by manufacturers on all products even in the absence of marking requirements. Therefore, ATF does not impose any burden on the respondent. The record retention period is only required as long as the container is used for storing wine. There is no retention period beyond the time the wine is stored in the container.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,560.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management), CFO.

[FR Doc. 02–18005 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for National Firearm Examiner Academy.

DATES: Written comments should be received on or before September 16, 2002 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Thomas Cannon, Career Development Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 565–4570.

SUPPLEMENTARY INFORMATION:

Title: Application for National Firearm Examiner Academy.

OMB Number: 1512–0549.

Form Number: ATF F 6330.1.

Abstract: The Office of Training and Professional Development has a training program for entry level firearm and toolmark examiners. All law enforcement organizations who rely on ballistic and forensic firearms examinations require the services of this technical expertise. The application form allows ATF to process eligible candidates.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 75.

Estimated Total Annual Burden Hours: 13.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2002.

William T. Earle,

Assistant Director (Management), CFO.

[FR Doc. 02–18006 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

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July 17, 2002

Part II

Environmental Protection Agency

40 CFR Part 112
Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7241–5]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule amends the Oil Pollution Prevention regulation to establish requirements for prevention of, preparedness and response to oil discharges at non-transportation-related onshore and offshore facilities. The rule is intended to improve the nation's ability to prevent discharges of oil and to respond to discharges that may occur. The rule applies to facilities that could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines. The rule requires the owner or operator of a facility to prepare and implement a Spill Prevention, Control, and Countermeasure (SPCC) Plan or a Facility Response Plan (FRP). The rule also requires the owner or operator of a facility to report discharges of oil to navigable waters of the United States or adjoining shorelines.

DATES: This rule is effective August 16, 2002.

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. The docket numbers for the final rule are SPCC–1P, SPCC–2P, and SPCC–7. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only,

A. Statutory Authority
B. Background of This Rulemaking
III. Summary of Major Rule Provisions
IV. Discussion of Issues
A. Reorganization of the Rule
B. Plain Language Format
C. "Should to Shall to Must" Clarification
D. Professional Engineers (PEs)
1. State Registration
2. PEs Employed by the Facility
3. Completion of Testing

II. Introduction

A. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or Act), 33 U.S.C. 1251, requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President

rulemaking affects SPCC and FRP requirements. The SPCC requirements were originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the Act. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground storage capacity greater than 1,320

112.21. We have finalized the proposed 1993 prevention requirements, with modifications, in this rule.

In 1996, EPA completed a survey and analysis of SPCC facilities. The survey was designed to ensure that data on the sampled facilities could be statistically extrapolated to the nation as a whole for all facilities regulated by EPA's SPCC regulation. We used the results of that survey and analysis to develop a

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7241–5]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency or we) is amending the Oil Pollution Prevention regulation promulgated under the authority of the Clean Water Act. This rule includes requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans, and for Facility Response Plans (FRPs). The final rule includes new subparts outlining the requirements for various classes of oil; revises the applicability of the regulation; amends the requirements for completing SPCC Plans; and makes other modifications. The final rule also contains a number of provisions designed to decrease regulatory burden on facility owners or operators subject to the rule, while preserving environmental protection. We expect that today's rule will reduce the paperwork burden associated with SPCC requirements by approximately 40%. We have also made the regulation easier to understand and use.

DATES: This rule is effective August 16, 2002.

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. The docket numbers for the final rule are SPCC–1P, SPCC–2P, and SPCC–7. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to review the docket by calling 703–603–9232. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8769 (*fleischman.hugo@epa.gov*); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810)(*epahotline@bah.com*). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323). You may wish to visit the Oil Program's Internet site at *www.epa.gov/oilspill*.

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

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I. Entities Affected by This Rule

Entities Potentially Regulated by this Rule Include:

CATEGORY	NAICS Codes
Crop and Animal Production	111–112.
Crude Petroleum and Natural Gas Extraction	211111.
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116.
Electric Power Generation, Transmission, and Distribution	2211.
Heavy Construction	234.
Petroleum and Coal Products Manufacturing	324.
Other Manufacturing	31–33.
Petroleum Bulk Stations and Terminals	42271.
Gasoline Stations/Automotive Rental and Leasing	4471/5321.
Heating Oil Dealers	454311.
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393.
Elementary and Secondary Schools, Colleges	6111–6113.
Hospitals/Nursing and Residential Care Facilities	622–623.

"NAICS" refers to the North American Industry Classification System, a method of classifying various facilities. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the Standard Industrial Classification (SIC) code. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. It lists the types of entities of which we are now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility could be regulated by this action, you should carefully examine the criteria in §§ 112.1 and 112.20 of title 40 of the Code of Federal Regulations and of today's rule, which explain the applicability of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

A. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or Act), 33 U.S.C. 1251, requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President has delegated the authority to regulate non-transportation-related onshore facilities under section 311(j)(1)(C) of the Act to the U.S. Environmental Protection Agency. Executive Order 12777, section 2(b)(1), (56 FR 54757, October 22, 1991), superseding Executive Order 11735, 38 FR 21243. By this same Executive Order, the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT), and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. *See* Executive Order 12777, section 2(i) regarding authority to redelegate. The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), established the definitions of non-transportation-related and transportation-related facilities. The definitions from the 1971 MOU are included as Appendix A to 40 CFR part 112.

B. Background of This Rulemaking

Part 112 of 40 CFR outlines the requirements for both the prevention of and the response to oil spills. The prevention aspect of the rule requires preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. This rulemaking affects SPCC and FRP requirements. The SPCC requirements were originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the Act. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), or completely buried oil storage capacity greater than 42,000 gallons. Regulated facilities were also limited to those that, because of their location could reasonably be expected to discharge oil in harmful quantities into the navigable waters of the United States or adjoining shorelines.

We have amended the SPCC requirements a number of times, and those amendments are described in an October 22, 1991 **Federal Register** proposed rule. 56 FR 54612. In the October 1991 document, in addition to the description of past amendments, EPA proposed new revisions that involved changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflected changes in the jurisdiction of section 311 of the Act made by amendments to the Act in 1977 and 1978. We have finalized some of those proposed revisions, with modifications, in this rule.

On February 17, 1993, we again proposed clarifications of and technical changes to the SPCC rule. We also proposed facility response planning requirements to implement the Oil Pollution Act of 1990 (OPA). 58 FR 8824. The proposed changes to the SPCC rule included clarifications of certain requirements, response plans for facilities without secondary containment, prevention training, and methods of determining whether a tank would be subject to brittle fracture. We promulgated the facility response planning requirements of the 1993 proposal on July 1, 1994, (59 FR 34070), and they are codified at 40 CFR 112.20–112.21. We have finalized the proposed 1993 prevention requirements, with modifications, in this rule.

In 1996, EPA completed a survey and analysis of SPCC facilities. The survey was designed to ensure that data on the sampled facilities could be statistically extrapolated to the nation as a whole for all facilities regulated by EPA's SPCC regulation. We used the results of that survey and analysis to develop a proposed rule affecting SPCC facilities on December 2, 1997. 62 FR 63812. The survey and analytical results are part of the administrative record for this rulemaking.

The purpose of the 1997 proposal was to reduce the information collection burden imposed by the prevention requirements in the SPCC rule and the FRP rule without creating an adverse impact on public health or the environment. We also proposed changes in information collection requirements for facility response plans, but have withdrawn them in this rulemaking. Those changes would have affected the calculation of storage capacity at certain facilities for response plan purposes. 62 FR 63816. However, see new § 112.1(d)(6). The 1997 SPCC proposals, as modified, are finalized in this rule.

On April 8, 1999, we proposed revision to facility response plan requirements. 64 FR 17227. The main purpose of the proposal was to provide a more specific methodology for planning response resources that can be used by an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. We finalized that proposal on June 30, 2000. 65 FR 40776. The final rule included four new definitions that are applicable to all of part 112.

III. Summary of Major Rule Provisions

For your convenience, we have developed a table showing a summary of the major revisions in this rule. The table does not always use exact rule text, but summarizes rule provisions. For exact rule text, see 40 CFR part 112 (2000) for text of the current rule; for exact text of the revised rule, see the rule text following this preamble.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES

Current SPCC rule	Revised SPCC rule	Comment
Section 112.1: General Applicability		

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, or consume oil and oil products, and might reasonably be expected to discharge oil in harmful quantities into or upon navigable waters of the United States	§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, use, or consume oil and oil products, and might reasonably be expected to discharge oil in quantities that may be harmful into or upon navigable wa-	§ 112.1(b): The revised rule clarifies that users of oil are also subject to the rule. It also expands the scope of the rule to conform with the expanded jurisdiction in the amended Clean Water Act.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.1(d)(6): No counterpart in current rule	§ 112.1(d)(6): Exempts any facility or part thereof from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.	§ 112.1(d)(6): A facility or part thereof used exclusively for wastewater treatment will no longer be subject to prevention planning unless it is used to meet part 112 requirements.
§ 112.1(f): No counterpart in current rule	§ 112.1(f): Notwithstanding any regulatory ex-	§ 112.1(f): This amendment gives the Re-

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, or consume oil and oil products, and might reasonably be expected to discharge oil in harmful quantities into or upon navigable waters of the United States or adjoining shorelines.	§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, use, or consume oil and oil products, and might reasonably be expected to discharge oil in quantities that may be harmful into or upon navigable waters of the United States or adjoining shorelines, or waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or Deepwater Port Act, or affecting certain natural resources.	§ 112.1(b): The revised rule clarifies that users of oil are also subject to the rule. It also expands the scope of the rule to conform with the expanded jurisdiction in the amended Clean Water Act.
§ 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, found in § 112.1(d)(2)(i) is: the completely buried storage capacity of the facility is 42,000 gallons or less of oil. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.	§ 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, § 112.1(d)(2)(i) is: the completely buried storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility does not include the capacity of completely buried tanks, as defined in § 112.2, that are currently subject to all of the technical requirements of 40 CFR part 280 or all of the technical requirements of a State program approved under 40 CFR part 281. Also, the completely buried storage capacity of a facility does not include the capacity of completely buried tanks that are "permanently closed," as defined in § 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.	§ 112.1(d)(2)(i): The revised rule provides that completely buried tanks subject to all of the technical requirements of parts 280 or 281 do not count in the calculation of the 42,000 gallon threshold. It also clarifies that permanently closed tanks do not count in the calculation of that threshold. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.
§ 112.1(d)(2)(ii): The second criterion, found in § 112.1(d)(2)(ii) is: the storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided that no single container has a storage capacity of greater than 660 gallons. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers.	§ 112.1(d)(2)(ii): The second criterion found in § 112.1(d)(2)(ii) is: the aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aboveground storage capacity of a facility does not include the capacity of containers that are "permanently closed," as defined in 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers.	§ 112.1(d)(2)(ii): The revised rule raises the threshold for aboveground storage capacity by eliminating the provision that triggers the requirement to prepare and implement an SPCC Plan if any single container has a capacity greater than 660 gallons. It maintains the greater than 1,320 gallon threshold. The revised rule also establishes a de minimis container capacity size to calculate aboveground storage capacity. Only containers with a capacity of 55 gallons or greater are counted in the calculation of aboveground storage capacity. The revised rule clarifies that permanently closed containers do not count in the calculation of aboveground storage capacity. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity in containers.
§ 112.1(d)(4): No counterpart in current rule	§ 112.1(d)(4): Exempts from the SPCC requirements completely buried storage tanks, as defined in § 112.2, as well as connected underground piping, underground ancillary equipment, and containment systems, when such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281, except that such tanks must be marked on the facility diagram as required by § 112.7(a)(3), if the facility is otherwise subject to this part.	§ 112.1(d)(4): Completely buried storage tanks subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 are no longer required to comply with SPCC provisions, except for the facility diagram. EPA estimates that under this new rule, most gasoline service stations will drop out of the SPCC program.
§ 112.1(d)(5): No counterpart in current rule	§ 112.1(d)(5): The revised rule exempts containers with a storage capacity of less than 55 gallons of oil from all SPCC requirements.	§ 112.1(d)(5): In response to comments, EPA has established a minimum size container for purposes of the regulatory threshold. Containers with a storage capacity of less than 55 gallons of oil are exempt from all SPCC requirements.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.1(d)(6): No counterpart in current rule	§ 112.1(d)(6): Exempts any facility or part thereof from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.	§ 112.1(d)(6): A facility or part thereof used exclusively for wastewater treatment will no longer be subject to prevention planning unless it is used to meet part 112 requirements.
§ 112.1(f): No counterpart in current rule	§ 112.1(f): Notwithstanding any regulatory exemptions, the Regional Administrator may require that the owner or operator of any facility subject to EPA jurisdiction under section 311(j) of the Clean Water Act (CWA), prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA. The rule includes notice and appeal provisions.	§ 112.1(f): This amendment gives the Regional Administrator authority to require preparation of an entire SPCC plan, or applicable part, by an owner or operator of a facility exempted from SPCC requirements when it becomes necessary to achieve the purposes of the CWA. This authority will be exercised on a case-by-case basis. The decision to require a Plan could be based on the presence of environmental concerns not adequately addressed under other regulations, or other relevant environmental factors, for example, discharge history.
Section 112.2—Definitions		
§ 112.2—definition of *facility*: No counterpart in current rule.	§ 112.2—definition of *facility*: "Facility" is defined as any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil transfer, oil distribution, and waste treatment, or in which oil is used. . . "	§ 112.2—definition of *facility*: The revised rule clarifies that a facility may be as small as a piece of equipment, for example, a tank, or as large as a military base.
Section 112.3: Requirement to prepare and implement Spill Prevention, Control, and Countermeasure Plan		
§ 112.3(a): An owner or operator of an onshore or offshore facility in operation on or before January 10, 1974, that has had a discharge to navigable waters or adjoining shorelines, or, due to its location, could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare and fully implement an SPCC Plan, in writing and in accordance with § 112.7. The owner or operator must prepare the Plan within 6 months, and fully implement it as soon as possible, but not later than within 1 year.	§ 112.3(a): An owner or operator (O/O) of an onshore or offshore facility in operation on or before August 16, 2002, that has had a discharge as described in § 112.1(b), or, due to its location, could reasonably be expected to have a discharge as described in § 112.1(b), must prepare a written Plan in accordance with § 112.7 and any other applicable section within 6 months of the effective date of the rule, and implement it as soon as possible, but not later than within 1 year of the effective date of the rule. The O/O of facility that becomes operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003.	§ 112.3(a): For those facilities already in operation on the effective date of the rule, an owner or operator of a facility subject to the rule must prepare an SPCC Plan within the current time frame of six months. He may take up to an additional six months to implement the Plan. The revised rule extends this same time frame to amendments necessary to bring the Plan into compliance with rule revisions. An owner or operator of a facility becoming operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003.
§ 112.3(b): The owner or operator of an onshore and offshore facility that becomes operational after January 10, 1974, and that has had a discharge to navigable waters or adjoining shorelines, or could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare an SPCC Plan. Unless the owner or operator is granted an extension of time to prepare and implement the Plan by the Regional Administrator, he must prepare the Plan within 6 months and fully implement it as son as possible, but not later than within 1 year.	§ 112.3(b): The owner or operator of an onshore or offshore facility that becomes operational after August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), from that facility, must prepare and implement an SPCC Plan before beginning operations.	§ 112.3(b): The owner or operator of a facility that becomes operational after August 18, 2003 must now prepare and implement an SPCC Plan before beginning operations. The time frame in the current rule is up to 6 months for Plan preparation and up to 6 months more for Plan implementation.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a Registered Professional Engineer (PE). By means of this certification the PE, having examined the facility and being familiar with the	§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a PE. By means of this certification the PE attests that: (i) he is familiar with the requirements of the SPCC rule; (ii) he or his agent	§ 112.3(d): The revised rule adds specificity to the PE's attestation. The specificity includes a requirement that the PE consider applicable industry standards and certify that the Plan is prepared in accordance with part 112 requirements. Presently, the PE must attest only that the Plan has been prepared

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of water pollution control activities in and for the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State	§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of oil pollution control activities in the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the	§ 112.4(c): The revised rule changes the requirement from notification to the State agency in charge of water pollution control activities to notification to the State agency in charge of oil pollution control activities. There may be more than one such agency in some States.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a Registered Professional Engineer (PE). By means of this certification the PE, having examined the facility and being familiar with the provisions of the SPCC rule, attests that the SPCC Plan has been prepared in accordance with good engineering practices. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements.	§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a PE. By means of this certification the PE attests that: (i) he is familiar with the requirements of the SPCC rule; (ii) he or his agent has visited and examined the facility; (iii) the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of the SPCC rule; (iv) procedures for required inspections and testing have been established; and, (v) the Plan is adequate for the facility. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements.	§ 112.3(d): The revised rule adds specificity to the PE's attestation. The specificity includes a requirement that the PE consider applicable industry standards and certify that the Plan is prepared in accordance with part 112 requirements. Presently, the PE must attest only that the Plan has been prepared in accordance with good engineering practice. The revised rule allows an agent of the PE, but the PE must review the agent's work, and certify the Plan.
§ 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended as least 8 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours.	§ 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended at least 4 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours.	§ 112.3(e): The revised rule requires the facility owner or operator to maintain a copy of the Plan at the facility if it is attended at least 4 hours a day, in contrast to the current requirement to maintain it at the facility if it is attended at least 8 hours a day.
§ 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain.	§ 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, or any amendment thereto, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain.	§ 112.3(f): The revised rule provides for extension for amendments of the Plan, as well as the entire Plan.
Section 112.4: Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator		
§ 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single discharge to navigable waters or adjoining shorelines, or (2) discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in each of 2 discharges to navigable waters or adjoining shorelines, reportable under section 311(b)(5) of the Clean Water Act, within any 12-month period, the owner or operator of the facility must submit to the Regional Administrator (RA), within 60 days from the time the facility becomes subject to this section, 10 different items of information, plus additional information pertinent to the Plan if the RA requests it.	§ 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or (2) discharged more than 42 U.S. gallons of oil, as described in § 112.1(b), in each of 2 discharge, within any 12-month period, the owner or operator of the facility must submit to the RA, within 60 days from the time the facility becomes subject to this section, 8 different items of information, plus additional information pertinent to the Plan if the RA requests it.	§ 112.4(a): We have revised the geographic scope of the rule in accordance with the CWA amendments, by using the phase "discharge as described in § 112.1(b)." We also raised the threshold for reporting two discharges as described in § 112.1(b), from a "reportable" quantity under the Clean Water Act, to a threshold of more than 42 U.S. gallons, or 1 barrel, in each of those discharges. The 1,000 gallon threshold for a single discharge as described in § 112.1(b) remains unchanged. We also reduced the amount of information that must minimally be submitted to the RA.
§ 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3.	§ 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3.	§ 112.4(b): Section 112.3 in the revised rule allows more time for some facilities for preparation and implementation of a Plan, or any amendments thereto, than in the 1991 proposed rule. Therefore, the implementation of the requirements of § 112.4 is postponed until the new time frames in § 112.3 have passed.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of water pollution control activities in and for the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility.	§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of oil pollution control activities in the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility.	§ 112.4(c): The revised rule changes the requirement from notification to the State agency in charge of water pollution control activities to notification to the State agency in charge of oil pollution control activities. There may be more than one such agency in some States.
§ 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c).	§ 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c), or after on-site review of the Plan.	§ 112.4(d): The revised rule provides that the Regional Administrator may require Plan amendment after on-site review of the Plan.
Section 112.5: Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators		
§ 112.5(b): This section requires an owner or operator to review his Plan at least every 3 years from the date a facility becomes subject to the SPCC rule. As a result of this review and evaluation, the owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge to navigable waters or adjoining shorelines from the facility; and (2) if such technology has been field-proven at the time of the review.	≤§ 112.5(b): This section requires an owner or operator to review his Plan at least every 5 years from the date a facility becomes subject to the SPCC rule; or for an existing facility, 5 years from the date the last review was required under this part. The owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility; and (2) if such technology has been field-proven at the time of the review. Implementation of amendments is required within 6 months following amendment. The owner or operator must document completion of the review and evaluation, and must sign a statement as to whether he will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following will suffice, "I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result."	§ 112.5(b): The revised rule changes the period of review for SPCC Plans from 3 to 5 years. It also requires documentation of completion of the review and evaluation.
§ 112.5(c): This section requires that a Professional Engineer certify any amendments to an SPCC Plan.	§ 112.5(c): This section requires that a Professional Engineer certify any technical amendments to an SPCC Plan.	§ 112.5(c): The revised rule clarifies that a Professional Engineer must certify only technical amendments. PE certification is not required for non-technical amendments, like changes to phone numbers, names, etc.
Section 112.7: Spill Prevention, Control, and Countermeasure Plan general requirements. We have reorganized § 112.7 of the current regulation into §§ 112.7, 112.8, 112.9, 112.10, 112.11, 112.12, 112.13, 112.14, and 112.15 of the final rule based on facility type and type of oil.		

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the fa-	§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discus-	§ 112.7: The revised rule allows differing formats for the Plan, other than the one format now specified. While you may use the format specified in the rule, you may also use other formats, such as State plans, Integrated Contingency Plans, and any other formats acceptable to the Regional Admin-

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7(e)(10): The owner or operator of a facility is responsible for properly instructing personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and	§ 112.7(f): The owner or operator of a facility, at a minimum, must train oil-handling personnel in the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. An owner or	§ 112.7(f): The revised rule mandates training only for oil-handling employees, instead of all employees. It specifies additional topics for the training of these employees. It also specifies that discharge prevention briefings must be conducted at least once a year, instead of at "intervals frequent enough to assure adequate understanding of the

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule.	§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule. If you do not follow the sequence specified in the rule, you must prepare an equivalent prevention Plan acceptable to the Regional Administrator that meets all applicable requirements, and you must supplement it with section cross-referencing the location of requirements listed in the SPCC rule to the equivalent requirements in the other prevention plan.	§ 112.7: The revised rule allows differing formats for the Plan, other than the one format now specified. While you may use the format specified in the rule, you may also use other formats, such as State plans, Integrated Contingency Plans, and any other formats acceptable to the Regional Administrator. If you use another format, you must cross-reference its provisions to the requirement listed in the SPCC rule. Also, if you use another format, you must ensure that the format includes all applicable SPCC requirements, or you must supplement that format to include all applicable SPCC requirements.
§ 112.7(a)(2): No counterpart in current rule	§ 112.7(a)(2): This provision explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend the Plan.	§ 112.7(a)(2): The revised rule explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend your Plan.
§ 112.7(a)(3): No counterpart in current rule	§ 112.7(a)(3): This section requires a facility owner or operator to describe the physical layout of the facility and include a facility diagram in the Plan.	§ 112.7(a)(3): The facility diagram must include completely buried tanks exempted from other SPCC requirements.
§ 112.7(c): This section is the general provision requiring secondary containment.	§ 112.7(c): This section is the general provision requiring secondary containment.	§ 112.7(c): The revised rule maintains the current standard that dikes, berms, or retaining walls must be "sufficiently impervious" to contain oil. We withdrew the proposed standard that such secondary containment must be impermeable for 72 hours.
§ 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.	§ 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful; conduct periodic integrity testing of the containers; and, conduct periodic integrity and leak testing of the valves and piping.	§ 112.7(d): The revised rule adds new requirements for periodic integrity testing of containers, and periodic integrity and leak testing of valves and piping. We clarify that if you have submitted a facility response plan under § 112.20 for a facility, you need not provide for that facility either a contingency plan following the provisions of part 109, nor a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.
§ 112.7(e)(8): This section requires that the owner or operator conduct required inspections in accordance with written procedures developed for the facility. The owner or operator must maintain these written procedures and a record of inspections, signed by the appropriate supervisor or inspector, as part of the SPCC Plan, and maintain them for a period of 3 years.	§ 112.7(e): This section requires that the owner or operator conduct required inspections and tests in accordance with written procedures developed by him or by the certifying engineer for the facility. The owner or operator must maintain these written procedures and a record of inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan, and maintain them for a period of 3 years. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule.	§ 112.7(e): The revised rule allows use of usual and customary business records to serve as a record of tests or inspections, instead of keeping duplicate records. It also allows the owner or operator to keep those records as an appendix to the Plan, or in a separate log, etc., with the Plan, rather than requiring that those records be a part of the Plan. The rule also acknowledges that the certifying engineer, as well as the owner or operator, has a role in the development of inspection procedures.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7(e)(10): The owner or operator of a facility is responsible for properly instructing personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges to navigable waters or adjoining shorelines, or failures, malfunctioning components, and recently developed precautionary measures.	§ 112.7(f): The owner or operator of a facility, at a minimum, must train oil-handling personnel in the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b), or failures, malfunctioning components, and recently developed precautionary measures.	§ 112.7(f): The revised rule mandates training only for oil-handling employees, instead of all employees. It specifies additional topics for the training of these employees. It also specifies that discharge prevention briefings must be conducted at least once a year, instead of at "intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility."
§ 112.7(i): No counterpart in current rule	§ 112.7(i): This section requires evaluation for field-constructed aboveground containers undergoing repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to fracture or other catastrophe. It also requires such evaluation when there has actually been a discharge or failure due to brittle fracture or other catastrophe.	§ 112.7(i): The brittle fracture requirement was triggered by the Ashland Oil tank collapse in 1988 due to brittle fracture.
Section 112.8: Requirements for onshore facilities (excluding production facilities).		
§ 112.7(e)(2)(iii): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events.	§ 112.8(c)(3): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events. The revised rule provides that records required under permits issued in accordance with the National Pollutant Discharge Elimination Systems (NPDES) rules are sufficient for recording stormwater bypass events.	§ 112.8(c)(3): The revised rule allows records required by NPDES permit regulations to record stormwater bypass events to be used for SPCC purposes in lieu of events records specifically prepared for purpose.
§ 112.7(e)(2)(vi): This provision requires that aboveground containers be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing. The owner or operator must keep comparison records where appropriate, and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas.	§ 112.8(c)(6): The revised rule requires that aboveground containers be tested for integrity on a regular schedule, and when material repairs are done. The frequently and type of testing must take into account container size and design (floating roof, skid-mounted, elevated, partially buried, for example). The owner or operator must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other system of non-destructive shell testing. The owner or operator must keep comparison records and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule.	§ 112.8(c)(6): The revised rule requires that an owner or operator test aboveground containers for integrity on a regular schedule, and when material repairs are done. The rationale for adding a testing requirement when material repairs are done is that material repairs might increase the potential for oil discharges. Usual and customary business records may be used for the purpose of integrity testing, instead of records specifically created for this purpose.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7(e)(3)(i): This section requires that buried piping installations have protective wrapping and coating and cathodic protection, if soil conditions warrant.	§ 112.8(d)(1): This section requires that buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40	§ 112.8(d)(1): The revised rule requires that all buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281, for all soil condi-

Revised rule	Current rule	Description of rule	Page
§ 112.8 § 112.12	§ 112.7(e)(1)	Requirements for onshore facilities (excluding production facilities).	.....
§ 112.8(a), § 112.12(a)	n/a	General and specific requirements	.....
§ 112.8(b), § 112.12(b)	§ 112.7(e)(1)	Facility drainage	.....
§ 112.8(c), § 112.12(c)	§ 112.7(e)(2)	Bulk storage containers	.....
§ 112.8(d), § 112.12(d)	§ 112.7(e)(3)	Facility transfer operations, pumping, and facility process	.....
§ 112.9, § 112.13	§ 112.7(e)(5)	Requirements for onshore production facilities	.....
§ 112.9(a), § 112.13(a)	n/a	General and specific requirements	.....
§ 112.9(b), § 112.13(b)	§ 112.7(e)(5)(ii)	Oil production facility drainage	.....
§ 112.9(c), § 112.13(c)	§ 112.7(e)(5)(iii)	Oil production facility bulk storage containers	.....

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7(e)(3)(i): This section requires that buried piping installations have protective wrapping and coating and cathodic protection, if soil conditions warrant.	§ 112.8(d)(1): This section requires that buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281.	§ 112.8(d)(1): The revised rule requires that all buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281, for all soil conditions.
Section 112.9: Requirements for onshore oil production facilities.		
§ 112.7(e)(5)(ii): This section provides requirements for stormwater drainage events.	§ 112.9(b)(1): This section provides requirements for stormwater drainage events.	§ 112.9(b)(1): The revised rule provides that records required by NPDES permit regulations are allowable to record stormwater bypass events for SPCC purposes in lieu of records specifically generated for that purpose.
§ 112.7(e)(5)(iii)(B): This section requires secondary containment for onshore production facilities.	§ 112.9(c)(2): This section requires secondary containment for onshore production facilities.	§ 112.9(c)(2): The revised rule clarifies that the secondary containment must include sufficient freeboard to contain precipitation.

IV. Discussion of Issues

Below is a discussion of the major issues for which we solicited comments in the 1991, 1993, and 1997 proposals. We also discuss the use of industry standards to comply with the rule. Following these issues, we discuss the revisions to each section and the major comments received, as well as responses to those comments. A detailed Response to Comments document addressing all comments is also part of this rulemaking and may be found in the administrative record for this rule.

A. Reorganization of the Rule

Background

In 1991, EPA proposed to reorganize the SPCC rule based on facility type. The purpose of that proposed reorganization was to clarify SPCC Plan requirements for different types of facilities. In this rulemaking, we are dividing the rule into subparts. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and G outline the requirements for different types of facilities storing and using different types of oils. Subpart B is for facilities storing or using petroleum oils or other non-petroleum oils, except those oils covered by subpart C. Subpart C is for facilities storing or using animal fats and oils and greases, or fish and marine mammal oils; and, oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response requirements.

If you have already prepared an SPCC Plan, you were required to follow the sequence of § 112.7 of the current rule, prior to today's revisions. Today, we are reorganizing that portion of the rule into §§ 112.7 through 112.15, based on facility type and type of oil. Under the introduction to § 112.7 of today's rule, if your Plan does not follow the revised sequence, you must supplement it with a section cross-referencing the location of requirements listed in the revised rule and the equivalent requirements in your Plan. To assist you in preparing this cross-reference, the following table lists each requirement in the revised rule, provides the corresponding paragraph of the current rule, and leaves a space where you can show the location of the provision in your Plan. We have put this rule, including the table below, on our website for your convenience. You may download it for your use. *See* our Web site at *www.epa.gov/oilspill*.

Under the revised rule, § 112.7 sets out the general requirements for SPCC Plans for all facilities and all types of oil. Sections 112.8 to 112.11 set out the SPCC Plan requirements for petroleum oil and for non-petroleum oils other than animal fats and vegetable oils. Sections 112.12 to 112.15 set out the SPCC Plan requirements for animal fats and oils and greases, and fish and marine mammal oils; and for oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels.

Revised rule	Current rule	Description of rule	Page
§ 112.7	§ 112.7	General requirements for SPCC Plans for all facilities and all oil types.	
§ 112.7(a)	§ 112.7	General requirements; discussion of facility's conformance with rule requirements; deviations from Plan requirements; facility characteristics that must be described in the Plan; spill reporting information in the Plan; emergency procedures.	
§ 112.7(b)	§ 112.7(b)	Fault analysis	
§ 112.7(c)	§ 112.7(c)	Secondary containment	
§ 112.7(d)	§ 112.7(d)	Contingency planning	
§ 112.7(e)	§ 112.7(e)(8)	Inspections, tests, and records	
§ 112.7(f)	§ 112.7(e)(10)	Employee training and discharge prevention procedures	
§ 112.7(g)	§ 112.7(e)(9)	Security (excluding oil production facilities)	
§ 112.7(h)	§ 112.7(e)(4)	Loading/unloading (excluding offshore facilities)	
§ 112.7(i)	n/a	Brittle fracture evaluation requirements	
§ 112.7(j)	§ 112.7(e)	Conformance with State requirements	

Revised rule	Current rule	Description of rule	Page
§ 112.8 § 112.12	§ 112.7(e)(1)	Requirements for onshore facilities (excluding production facilities).	
§ 112.8(a), § 112.12(a)	n/a	General and specific requirements	
§ 112.8(b), § 112.12(b)	§ 112.7(e)(1)	Facility drainage	
§ 112.8(c), § 112.12(c)	§ 112.7(e)(2)	Bulk storage containers	
§ 112.8(d), § 112.12(d)	§ 112.7(e)(3)	Facility transfer operations, pumping, and facility process	
§ 112.9, § 112.13	§ 112.7(e)(5)	Requirements for onshore production facilities	
§ 112.9(a), § 112.13(a)	n/a	General and specific requirements	
§ 112.9(b), § 112.13(b)	§ 112.7(e)(5)(ii)	Oil production facility drainage	
§ 112.9(c), § 112.13(c)	§ 112.7(e)(5)(iii)	Oil production facility bulk storage containers	
§ 112.9(d), § 112.13(d)	§ 112.7(e)(5)(iv)	Facility transfer operations, oil production facility	
§ 112.10, § 112.14	§ 112.7(e)(6)	Requirements for onshore oil drilling and workover facilities	
§ 112.10(a), § 112.14(a)	n/a	General and specific requirements	
§ 112.10(b), § 112.14(b)	§ 112.7(e)(6)(i)	Mobile facilities	
§ 112.10(c), § 112.14(c)	§ 112.7(e)(6)(ii)	Secondary containment—catchment basins or diversion structures.	
§ 112.10(d), § 112.14(d)	§ 112.7(e)(6)(iii)	Blowout prevention (BOP).	
§ 112.11, § 112.15	§ 112.7(e)(7)	Requirements for offshore oil drilling, production, or workover facilities.	
§ 112.11(a), § 112.15(a)	n/a	General and specific requirements	
§ 112.11(b), § 112.15(b)	§ 112.7(e)(7)(ii)	Facility drainage	
§ 112.11(c), § 112.15(c)	§ 112.7(e)(7)(iii)	Sump systems	
§ 112.11(d), § 112.15(d)	§ 112.7(e)(7)(iv)	Discharge prevention systems for separators and treaters	
§ 112.11(e), § 112.15(e)	§ 112.7(e)(7)(v)	Atmospheric storage or surge containers; alarms	
§ 112.11(f), § 112.15(f)	§ 112.7(e)(7)(vi)	Pressure containers; alarm systems	
§ 112.11(g), § 112.15(g)	§ 112.7(e)(7)(vii)	Corrosion protection	
§ 112.11(h), § 112.15(h)	§ 112.7(e)(7)(viii)	Pollution prevention system procedures	
§ 112.11(i), § 112.15(i)	§ 112.7(e)(7)(ix)	Pollution prevention systems; testing and inspection	
§ 112.11(j), § 112.15(j)	§ 112.7(e)(7)(x)	Surface and subsurface well shut-in valves and devices	
§ 112.11(k), § 112.15(k)	§ 112.7(e)(7)(xi)	Blowout prevention	
§ 112.11(l), § 112.15(l)	§ 112.7(e)(7)(xiv)	Manifolds	
§ 112.11(m), § 112.15(m)	§ 112.7(e)(7)(xv)	Flowlines, pressure sensing devices	
§ 112.11(n), § 112.15(n)	§ 112.7(e)(7)(xvi)	Piping; corrosion protection	
§ 112.11(o), § 112.15(o)	§ 112.7(e)(7)(xvii)	Sub-marine piping; environmental stresses	
§ 112.11(p), § 112.15(p)	§ 112.7(e)(7)(xviii)	Inspections of sub-marine piping	

In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute mandates that most Federal agencies differentiate between and establish separate classes for various types of oils, specifically: animal fats and oils and greases, and fish and marine mammal oils; oils of vegetable origin; petroleum oils, and other non-petroleum oils and greases. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes. In response to EORRA, as noted above, we have divided the requirements of the rule by subparts for facilities storing or using the various classes of oils listed in that act.

Because at the present time EPA has not proposed differentiated SPCC requirements for public notice and comment, the requirements for facilities storing or using all classes of oil will remain the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate among the requirements for the facilities storing or using various classes of oil. 64 FR 17227, April 8, 1999. If after considering these comments, there is adequate justification for differentiation among the requirements for those facilities, we will propose rule changes.

B. Plain Language Format

We have rewritten the SPCC rule in a plain language format to make it clearer and easier to use. A plain language format includes maximum use of the active voice; short, clear sentences; and, in this rule, a summary table of the major regulatory changes. This format is part of the Agency's ongoing efforts in regulatory reinvention. While we have made substantive changes in some provisions, the plain language changes are only editorial. The plain language format used in today's rule may appear different from other rules, but it establishes binding, enforceable legal requirements.

In this preamble, as in the rule text, we often use the pronoun "he" as a generic term. "He" does not necessarily mean a man; it may be a woman, or in some cases, a business organization when referring to an owner or operator.

C. "Should to Shall to Must" Clarification

Background

EPA has always considered that § 112.3 of the SPCC rule requires that SPCC Plans be prepared in accordance with § 112.7, which in turn requires that Plans be prepared in accordance with good engineering practice. However, clarification of the current rule is necessary because of confusion on the part of some facility owners or operators who have interpreted the current rule's use of the words "should" and "guidelines" in § 112.7 as an indication that compliance with the applicable provisions of the rule is optional. The rule used the words "should" and "guidelines" to provide flexibility for facilities with unique circumstances. Those circumstances might be such that mandated regulatory provisions would not be in accord with good engineering practice. Therefore, the rule gave facilities the opportunity to provide alternative methods that achieve equivalent environmental protection, or to show that the provisions were inapplicable based on specific circumstances.

In 1991, we proposed to clarify that misunderstanding by generally substituting "shall" in place of "should" throughout the reorganized rule. In today's final rule, we have editorially changed "shall" to "must" in furtherance of the Agency's "plain language" objectives. The "shall" to "must" is not a substantive change, but merely an editorial change. Nor will the mandatory and what is discretionary. Instead, some recommendations are discussed in the preamble to this document, while others can be found in separate guidance documents or policy statements. When the rule or preamble is silent, or no published guidance or policy documents exist, we will generally use industry standards as guidance for rule compliance.

PE certification. While we generally hardship for small production facilities. As noted above, EPA has always interpreted the "shoulds" as "musts." Further, when a particular requirement is not feasible for a particular facility, under § 112.7(a)(2) that facility may explain the reasons for nonconformance with the requirement, and provide alternate measures that achieve equivalent environmental protection.

preparation is a Federal activity, therefore, it is unnecessary to have State registration; and, (4) such a requirement would reduce the available pool of qualified PEs. One commenter volunteered that the proposal was "superfluous" because the practice of engineering in a State without being professionally registered in that State is unlawful in most States.

Response to comments. We agree with Plans, EPA noted that some organizations objected to the proposals as "challenging the integrity of professional engineers." 56 FR 54619. We also pointed out that some professional organizations believe that such requirements "would impose substantial costs without enhancing the integrity of the certification process." 56 FR 54619.

Comments. Favorable comments. the proposal to require the PE to disclose his relationship to the facility owner, the facility improvements owner, or the facility landowner. Such disclosure would add no environmental protection to the SPCC certification process. Administrative action to correct abuses would be a better approach. We believe that most PEs, whether independent or employees of a facility, being professionals, will uphold the

In 1991, we proposed to clarify that misunderstanding by generally substituting "shall" in place of "should" throughout the reorganized rule. In today's final rule, we have editorially changed "shall" to "must" in furtherance of the Agency's "plain language" objectives. The "shall" to "must" is not a substantive change, but merely an editorial change. Nor will the change add to the information collection burden. We have always included requirements prefaced by "should" in the information collection burden for the rule. We will continue to provide flexibility for an owner or operator who can explain his reasons for nonconformance with rule requirements, and can provide alternate measures from those specified in the rule, which achieve equivalent environmental protection. Section 112.7(a)(2) will provide such flexibility. In the exercise of our authority to inspect facilities and SPCC Plans, we reserve the right to find that such alternate methods do not provide equivalent environmental protection. In such cases, we would require the owner or operator of the facility to amend the SPCC Plan to provide equivalent environmental protection.

Comments. Guidance. Several commenters supported the proposed change. One asked that discretionary provisions might be better placed in a separate guidance document. Several commenters were concerned that there are no guidance documents outlining equivalency as provided in proposed § 112.7(a)(2) and that it may be impossible to prove equivalency to EPA.

PE certification. Other commenters suggested that if the Professional Engineer (PE) certified the Plan as adequate for the facility, then the mandated requirements were unnecessary, as he would have determined that all appropriate equipment and planning is in place.

Substantive change. Some commenters argued that the proposal was a substantive change, contrary to legislative intent, and that we failed to give opportunity for proper notice and comment, as required by the Administrative Procedure Act.

Small production facilities. One commenter suggested that the clarification should not apply to small production facilities, defined as those with less than 3000 barrels of storage capacity, because those facilities would suffer severe hardship as a result.

Response to comments. Guidance. EPA agrees with the comment that recommendations have no place in this rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. Instead, some recommendations are discussed in the preamble to this document, while others can be found in separate guidance documents or policy statements. When the rule or preamble is silent, or no published guidance or policy documents exist, we will generally use industry standards as guidance for rule compliance.

PE certification. While we generally agree that certification by a PE should show that all necessary equipment and planning are in place, we reserve the right to make a determination that additional measures may be necessary to comply with the rule. EPA made it clear in proposed § 112.3(d), which is finalized today, that a PE certification does not relieve the owner or operator of the duty to prepare and fully implement an SPCC Plan in accordance with the rule's requirements.

Substantive change. We disagree that the change is either substantive or contrary to legislative intent. Section 311(j)(1)(C) of the Act authorizes the President and, through delegation, EPA, to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges." That authority is ample to provide the basis for a mandatory SPCC rule, that is, a rule that establishes "requirements * * * to prevent discharges."

We also disagree that the proposed rule failed to provide proper notice and comment. The preamble to the 1991 proposed rule fully explained the rationale for the proposed change (56 FR 54620, October 22, 1991), and numerous commenters responded. Furthermore, we have always interpreted and enforced our rules as mandatory requirements.

EPA recognizes, however, that this clarification may result in certain owners or operators of regulated facilities recognizing for the first time that they have been and are subject to various provisions of part 112. Such owners and operators should, of course, take all necessary steps to come into compliance with this part as soon as possible. In exercising its prosecutorial discretion, the Agency always takes into account the good faith and efforts to comply of an owner or operator who has been in noncompliance with applicable laws and regulations when deciding whether or not to take an enforcement action.

Small production facilities. We disagree that the "should" to "must" change will generally pose a severe hardship for small production facilities. As noted above, EPA has always interpreted the "shoulds" as "musts." Further, when a particular requirement is not feasible for a particular facility, under § 112.7(a)(2) that facility may explain the reasons for nonconformance with the requirement, and provide alternate measures that achieve equivalent environmental protection.

D. Professional Engineers (PEs)

Background. In the preamble to the 1991 proposal (56 FR 54618), EPA posed several questions to commenters regarding how PEs could help to implement the SPCC Plan. An owner or operator of a facility is required to secure the certification of a PE on an SPCC Plan, and on technical amendments to the Plan. By means of this certification, the PE attests that the Plan or the amendment has been prepared in accordance with good engineering practice.

1. State Registration

Background. We solicited comments on the advantages and disadvantages associated with the PE being registered in the State in which the facility is located. EPA noted that "a requirement that a PE be licensed in the State in which the facility is located would allow the State licensing board to more easily address the actions of the PE under its jurisdiction, and that the PE may have greater familiarity with the State and local requirements related to the facility under review." 56 FR 54619.

Comments. Favorable comments. Several commenters supported a requirement that the PE be registered in the State in which the facility is located. The rationales often expressed were that: (1) Letting any PE certify any SPCC Plan effectively removed the PE from the supervision of the State board; and, (2) familiarity with the State and local requirements related to the facility as well as the State itself are essential for viable SPCC Plans. One commenter suggested that when an out-of-State PE prepares the Plan, the Plan should bear the seal of the PE who prepared the Plan along with the seal of a PE registered in the State in which the facility is located, assuring that the proposed Plan conforms to any additional State requirements.

Opposing comments. Opposing commenters argued that: (1) A State licensing board will address the actions of an engineer regardless of the engineer's location when he applies his seal; (2) suggestions that the potential liability of the engineer might be limited if the engineer holds an out-of-State license are specious; (3) SPCC Plan preparation is a Federal activity, therefore, it is unnecessary to have State registration; and, (4) such a requirement would reduce the available pool of qualified PEs. One commenter volunteered that the proposal was "superfluous" because the practice of engineering in a State without being professionally registered in that State is unlawful in most States.

Response to comments. We agree with commenters that it is unnecessary that the PE be registered or licensed in the State in which the facility is located because any abuses will be corrected by the licensing jurisdiction. We also agree that such a requirement might unnecessarily reduce the availability of PEs and increase the cost of certification without any tangible benefits. The professional liability of a PE would likely be unaffected by the place of his registration. When State law precludes a PE from applying his seal if he is not licensed in that State, the question of State registration becomes moot. However, that is not the case in every State.

We also disagree that if a PE is not licensed in the State, he will be unfamiliar with State and local requirements for the facility. Any PE may become familiar with both Federal and State and local requirements for a facility. Therefore, to require that the PE be registered in the State in which the facility is located would impose unnecessary financial burdens on the facility and would challenge the integrity of the PE. Such a requirement would also reduce the pool of PEs available for facilities.

2. PEs Employed by the Facility

Background. EPA asked whether the rule should specify that the PE not be an employee of the facility or have any other direct financial interest in the facility. This request for comment had its origin in a U.S. General Accounting Office (GAO) report issued on February 22, 1989, "Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents" (GAO/RCED–89–65)." The GAO report recommended that EPA evaluate the advantages and disadvantages of requiring facilities to obtain certifications from independent engineers. EPA noted that "not having the PE otherwise associated with the facility may avoid any potential conflicts of interest or appearance of conflicts of interest that could arise from allowing an employee of a regulated party to certify a SPCC Plan." 56 FR 54619. On the other hand, for both the issues of whether to require State registration and whether to allow PEs employed by the facility to certify SPCC Plans, EPA noted that some organizations objected to the proposals as "challenging the integrity of professional engineers." 56 FR 54619. We also pointed out that some professional organizations believe that such requirements "would impose substantial costs without enhancing the integrity of the certification process." 56 FR 54619.

Comments. Favorable comments. Several commenters supported a requirement that the PE not be an employee of the facility or not have a direct financial interest in it. The rationales most often asserted were: (1) A Plan would better satisfy regulatory objectives and better serve the public; (2) the Plan would be less subject to compromise by other factors; (3) Plan certification is less likely to be a coerced or superficial effort, and undue economic and moral pressures would be avoided; (4) more cooperative efforts among regulatory bodies, engineers, and the facility would be possible; (5) more economic and effective Plan development is assured; and, (6) more competent and more professional Plan development is guaranteed.

Opposing comments. Opposing commenters asserted that: (1) Such a proposal would limit the availability of PEs, leading to delays in Plan certification; (2) administrative action to correct abuses would be a better approach; and, (3) such an approach insults the ethical integrity of PE. One commenter suggested that "to suppose a facility employee would break the law and jeopardize his license to practice his profession and do it more willingly than an "independent" engineer has no basis in fact'; (4) an in-house PE may be the person most familiar with the facility; (5) the proposal would place an undue and unnecessary financial burden on the owner or operator of a facility by forcing him to hire an outside engineer; and, (6) it is uncertain whether an independent PE can afford the insurance necessary to certify his work given that the liability incurred might run into the millions of dollars.

Compromise position. One commenter suggested that a compromise position might be that the PE who certifies the Plan would be required to disclose in the Plan certification his relationship to the facility owner, the facility improvements owner, and the facility landowner.

Response to comments. We agree that a proposal to restrict certification by a PE employed by a facility or having a financial interest in it would limit the availability of PEs, possibly leading to delays in Plan certification. Therefore, we will not adopt it. Nor do we favor the proposal to require the PE to disclose his relationship to the facility owner, the facility improvements owner, or the facility landowner. Such disclosure would add no environmental protection to the SPCC certification process. Administrative action to correct abuses would be a better approach. We believe that most PEs, whether independent or employees of a facility, being professionals, will uphold the integrity of their profession and only certify Plans that meet regulatory requirements. We also agree that an in-house PE may be the person most familiar with the facility. EPA believes that a restriction of in-house PE certification might place an undue and unnecessary financial burden on owners or operators of facilities by forcing them to hire an outside engineer.

3. Completion of Testing

Background. The Agency proposed that the PE must attest that required testing has been completed and the Plan meets the requirements of the regulation for the facility. This proposal was advanced to "promote the Agency's intent in the original promulgation of § 112.3(d) that SPCC Plans be certified by a Registered Professional Engineer exercising independent judgment." 56 FR 54619. These new requirements were to be met when a new Plan is prepared after promulgation of the rule, or when an existing Plan is amended, under § 112.5.

Comments. Favorable comments. One commenter supported a requirement that the PE attest to the completion of testing and that the Plan meets regulatory requirements.

Opposing comments. Some opposing commenters believed that the PE should "enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations." Others believed that completion of required testing is the responsibility of the operator and not the PE. Another commenter believed such a requirement would be impossible, because "required testing may take up to a year to complete."

Response to comments. EPA agrees that the PE is not responsible for certifying that all required testing has been completed. Rather, such responsibility belongs to the owner or operator of the facility. Testing may be ongoing long after the Plan is certified. The PE is responsible for certifying that the Plan is adequate and meets all regulatory requirements, including enumeration of all tests that have been

completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. Therefore, we are changing the proposed requirement to a requirement in which the PE attests that the procedures for required inspections and testing have been established, and the Plan is adequate for the facility and meets all regulatory requirements, including enumeration of all tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations.

Response to comments. In general. Several commenters argued that, in general, certification is impractical. One commenter asked for clarification that the certification of an existing Plan is sufficient until the Plan update is required. Another suggested that the rule should only require that the PE be familiar with the operation and design of the type of facility, and that he would have visited and examined one or more facilities of this type.

Response to comments. In general. We disagree that certification is impractical. Certification is a statement that the PE has exercised due care in reviewing the Plan and has found it adequate for the facility. Due care would normally include a site visit to each facility. After the site visit, the PE will have to devise appropriate inspection and testing standards based on the facility's unique characteristics, particular equipment, and the integrity of containment at the facility. Therefore, even if a PE has inspected many facilities of a particular type, that fact does not eliminate the need for a site visit at each facility.

E. Electrical Facilities and Other

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the damage to underground piping." Individual proposals will be discussed under their relevant sections in this preamble. Large facilities were defined for this purpose as facilities with more than 42,000 gallons of SPCC-regulated storage capacity. Conversely, we asked whether such provisions should be discretionary for smaller facilities. The rationale expressed in the question was EPA believes that "larger volumes of oil

Other factors. One commenter suggested that other factors such as proximity to navigable waters or environmentally sensitive areas, as well as the use of good engineering practices should be considered in the regulation of facilities. The commenter argues that these factors might avoid overburdening a large facility with a low potential for impact on a navigable water or exempting a small facility with a high

completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. Therefore, we are changing the proposed requirement to a requirement in which the PE attests that the procedures for required inspections and testing have been established, and the Plan is adequate for the facility. *See* the discussion of § 112.3(d), below.

4. Site Visits

Background. We stated that EPA "believes the current regulatory language (*e.g.*, requiring the engineer to examine the facility) clearly requires the certifying Engineer to visit the facility prior to certifying the SPCC Plan." We added that the proposed change "clarifies this requirement by specifying that the Professional Engineer must be physically present to examine the facility." 56 FR 54619.

Comments. Favorable comments. Many commenters favored the requirement that the PE make a site visit prior to certifying a Plan. Those commenters called such a visit "absolutely necessary." Some argued that a generic plan prepared by an engineer who has never seen the facility is unacceptable.

Opposing comments. Opposing commenters asserted that such visits only involve additional costs and duplication of efforts without any tangible benefits. Many opposing commenters argued that customary engineering practice includes the use of engineering technicians, technologists, graduate engineers, and others to prepare preliminary reports, studies, and evaluations. After preparation of these documents, the PE would then perform a careful review of all pertinent material and then sign and seal the appropriate plans and drawings. Other commenters argued that such a requirement would be impractical, particularly at electrical substations, due to their large number.

Particular cases. One commenter urged that small facilities be exempted from the site visit requirement where "a determination is made that sufficient documentation of site characteristics is available for plan certification." That commenter noted that in many instances sufficient information is available from topographic maps, aerial photographs, soil surveys, hydrologic studies, engineering and construction reports, and local operating personnel to eliminate the need for site visits prior to certification. Another commenter urged an exemption for temporary storage facilities because given their emergency nature, certification is impractical. One commenter asked for clarification that the certification of an existing Plan is sufficient until the Plan update is required. Another suggested that the rule should only require that the PE be familiar with the operation and design of the type of facility, and that he would have visited and examined one or more facilities of this type.

Response to comments. In general. EPA agrees that the rule should not necessarily require a site visit by a certifying PE, but we believe that a site visit should occur before the PE certifies the Plan. We have modified proposed § 112.3(d)(ii) to reflect this position. The PE's agent may perform the visit. We agree that customary engineering practice allows someone under the PE's employ such as an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. Then the PE could legitimately certify the Plan. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

Particular cases. EPA agrees that a PE site visit requirement might be impractical at electrical substations, due to their large number. However, the PE need not go. One of his agents may go, and he may review the agent's work. We disagree with commenters who believe that a site visit is unnecessary at small facilities and temporary storage facilities. Site visits are necessary for those facilities to ensure Plan adequacy and to prevent discharges.

EPA has interpreted the current rule language to contain a requirement that the PE examine the facility. Because of the uncertainty concerning the nature of this requirement, however, we will not require documentation of a site visit by a PE or his agent until after the effective date of this rule. We disagree that the rule should only require that the PE be familiar with the operation and design of the type of facility. We also disagree that merely because the PE has visited and examined one or more facilities of a particular type that no site visit is necessary. A facility may have individual characteristics that differ from those of its type in general, and a site visit by a PE or agent may be necessary to detect those characteristics and accommodate them in the Plan. Such individual characteristics include geographic conditions, possible flow paths, facility design and construction, type of containers, product stored, particular equipment, and the integrity of containment at the facility. Therefore, even if a PE has inspected many facilities of a particular type, that fact does not eliminate the need for a site visit at each facility. After the site visit, the PE will have to devise appropriate inspection and testing standards based on the facility's unique characteristics.

E. Electrical Facilities and Other Operational Users of Oil

Background. In 1991, we proposed that certain facilities having equipment containing oil that is used for operational purposes, such as electrical transformers, would not have to comply with secondary containment requirements and certain other provisions proposed in §§ 112.8(c) and 112.9(d) because such facilities are not bulk storage facilities. EPA asked for comment on this and also asked commenters to identify other possible operational uses of oil, other than electrical transformers, that may not currently use secondary containment as a common industry practice and that should not be subject to bulk storage provisions. 56 FR 54623.

Comments. Use of oil. Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

Response to comments. Use of oil. We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define "bulk storage container" in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also meet the needs of section 311(j)(1)(C) of the CWA. EPA will continue to evaluate whether the general secondary containment requirements found in § 112.7(c) should be modified for small electrical and other types of equipment which use oil for operating purposes. We intend to publish a notice asking for additional data and comment on this issue.

In addition, a facility may deviate from most SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. *See* § 112.7(a)(2). *See also* § 112.7(d).

F. Discretionary Provisions

Background. In the preamble to the 1991 proposal (at 56 FR 54616), we asked for comments as to whether the provisions proposed as recommendations in rule text should be made requirements. We then noted that we were "particularly interested in receiving comments and information on the advisability of establishing" certain provisions as "requirements for large facilities, but as recommendations for small facilities." These provisions were: (1) Proposed § 112.8(d)(4)—"that facilities have all buried piping tested for integrity and leaks annually or have buried piping monitored monthly in accordance with the provisions of 40 CFR part 280." We also recommended that records of testing or monitoring be kept for five years.; and, (2) proposed § 112.8(d)(5)—"that facilities post vehicle weight restrictions to prevent damage to underground piping." Individual proposals will be discussed under their relevant sections in this preamble. Large facilities were defined for this purpose as facilities with more than 42,000 gallons of SPCC-regulated storage capacity. Conversely, we asked whether such provisions should be discretionary for smaller facilities. The rationale expressed in the question was EPA believes that "larger volumes of oil stored at a facility increase the chances of a spill occurring, and that spills from large-capacity facilities may be greater in magnitude than those from smaller facilities, thus posing a greater potential threat to the waters of the United States."

EPA also requested comments on two other practices it proposed as recommendations, but did not include in rule text. Those practices were: (1) "That owners and operators of facilities affix a signed and dated statement to the SPCC Plan indicating that the revision has taken place and whether or not amendment of the Plan is required;" and, (2) "That owners and operators of onshore facilities other than production facilities state the design capabilities of their drainage system in the SPCC Plan if the system is relied upon to control spills or leaks." Concerning the first practice, see also the discussion under § 112.5(b) of today's rule. The rationale for these recommendations was that "these provisions may not for all facilities achieve the standard of provisions based on good engineering practice, which is the basic standard of the regulation. EPA, however believes that implementation of these provisions at most facilities would contribute to the facilities' overall effort to prevent oil discharge and to mitigate those spills that may occur." The Agency also asked whether some of these provisions should be mandatory.

Comments. Large or small facility regulation, in general. EPA received a number of comments on this issue, some directed towards regulation of larger and smaller facilities in general, and others toward specific provisions proposed. Some commenters believed that larger facilities could better bear the costs of regulation than smaller facilities, some of which were financially marginal and might go out of business as a result of environmental regulation.

Storage capacity level. Commenters suggested different storage capacity levels at which to differentiate large from small facilities. Those suggestions ranged from 10,000 to 100,000 gallons in storage capacity. Many, however, supported the 42,000-gallon level.

Other factors. One commenter suggested that other factors such as proximity to navigable waters or environmentally sensitive areas, as well as the use of good engineering practices should be considered in the regulation of facilities. The commenter argues that these factors might avoid overburdening a large facility with a low potential for impact on a navigable water or exempting a small facility with a high potential for impact on a navigable water.

Discretionary provisions. Favorable commenters. Numerous commenters favored discretionary provisions in the interest of maintaining flexibility in the program, noting that what may be appropriate for one facility may not be appropriate for another. Some commenters favored applying discretionary provisions to small facilities only, leaving the provisions as requirements for larger facilities.

Discretionary provisions. Opposing commenters. Some commenters argued that discretionary provisions are inappropriate in a rule as a matter of principle because they complicate mandatory rule documents and enforcement, and they confuse the regulated community. Yet others urged that such provisions were unnecessary in any case because they believe that no risks exist for which the discretionary provisions were proposed.

Response to comments. We will discuss specific comments under the discussion of specific sections. See section IV.G of today's preamble for a discussion of the "Design Capabilities of Drainage Systems, other than Production Facilities." Our general discussion follows.

Large or small facility regulation, in general. We have decided not to regulate facilities differently based merely on storage capacity, provided that the capacity is above the regulatory threshold of over 1,320 gallons. This decision is based on environmental reasons. Small discharges of oil that reach the environment can cause significant harm. Sensitive environments, such as areas with diverse and/or protected flora and fauna, are vulnerable to small spills. EPA noted in a recent denial of a petition for rulemaking: "Small spills of petroleum and vegetable oils and animal fats can cause significant environmental damage. Real-world examples of oil spills demonstrate that spills of petroleum oils and vegetable oils and animal fats do occur and produce deleterious environmental effects. In some cases, small spills of vegetable oils can produce more environmental harm than numerous large spills of petroleum

oils." 62 FR 54508, 54530, October 20, 1997. Describing the outcome of one small spill of 400 gallons of rapeseed oil into Vancouver Harbor, we noted that " * * * 88 oiled birds of 14 species were recovered after the spill, and half of them were dead. Oiled birds usually are not recovered for 3 days after a spill, when they become weakened enough to be captured. Of the survivors, half died production facilities describe the design capabilities of their drainage systems in the SPCC Plan if the system is relied upon to control spills or leaks. 56 FR 54616, October 22, 1991. See also section IV.F of today's preamble for a discussion of other "Discretionary Provisions."

Comments. Favorable comments. Commenters favoring such a current rule will incur minimal additional cost due to the revisions in this rule. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in today's rule, we have provided flexibility in several ways. Many of the provisions we proposed in 1991 that commenters believed were too costly

the costs are too high, but these commenters did not provide specific cost estimates.

Notification. A number of commenters favored the proposal, including some industry commenters. Most industry commenters opposed the proposal either in part or in its entirety. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they

implementation of the Facility Response Plan (FRP) rule alone requires us to solicit additional comments concerning the SPCC proposals.

Response: Additional comments or reproposal. We believe it is unnecessary to repropose the 1991 and 1993 proposals because of mere passage of time. We received numerous comments on every side of most issues. In developing this final rule, we have

of substantial harm and/or significant and substantial harm facilities need to comply with the FRP requirements in 40 CFR 112.20–21.

K. Industry Standards

Throughout the rule we generally allow for the application of industry standards where the standards are both specific and objective, and their application may reduce the risk of

oils." 62 FR 54508, 54530, October 20, 1997. Describing the outcome of one small spill of 400 gallons of rapeseed oil into Vancouver Harbor, we noted that " * * * 88 oiled birds of 14 species were recovered after the spill, and half of them were dead. Oiled birds usually are not recovered for 3 days after a spill, when they become weakened enough to be captured. Of the survivors, half died during treatment. The number of casualties from the rapeseed oil spills was probably higher than the number of birds recovered, because heavily oiled birds sink and dying or dead birds are captured quickly by raptors and scavengers." 62 FR 54525.

A small discharge may also cause harm to human health or life through threat of fire or explosion, or short-or long-term exposure to toxic components.

Other factors. Finally, EPA notes that the rule affords flexibility to an owner or operator of a facility to design a Plan based on his specific circumstances. It allows him to choose methods that best protect the environment. It permits deviations from most of the mandatory substantive requirements of the rule when the facility owner or operator can demonstrate a reason for nonconformance, and can provide equivalent environmental protection by other means. Consequently, both small and large facilities have the opportunity to reduce costs by alternative methods if they can maintain environmental protection. Because smaller facilities may require less complex plans than larger ones, their costs may be less.

Discretionary provisions. We agree that discretionary provisions have no place in this rule because we do not wish to confuse the regulated community and complicate enforcement by blurring what is mandatory and what is discretionary. We will provide guidance or policy statements on various issues, as necessary, that will incorporate some or all of these recommendations. In the absence of such guidance or policy statements, you should look to current industry standards for guidance on technical issues. See also our discussion of industry standards and good engineering practice under section IV.K of today's preamble and under § 112.3(d) in section V of today's preamble.

G. Design Capabilities of Drainage Systems, Other than Production Facilities

Background. In the 1991 preamble, we asked for comments on, but did not propose, a provision that owners or operators of onshore facilities other than production facilities describe the design capabilities of their drainage systems in the SPCC Plan if the system is relied upon to control spills or leaks. 56 FR 54616, October 22, 1991. See also section IV.F of today's preamble for a discussion of other "Discretionary Provisions."

Comments. Favorable comments. Commenters favoring such a requirement asserted that such a description would help identify all paths of escape for discharges at a facility, assess the spill retention capacity of the facility's containment system, and identify the risks to the public of a discharge. Those commenters generally believed that the Professional Engineer should develop the description for the Plan.

Opposing comments. Commenters opposing making the recommendation a requirement argued that it was unnecessary because the rules already require certain descriptions of design capabilities of drainage systems. They asserted that such a requirement would be redundant in that if a drainage system is relied upon to control spills or leaks, then it must have design capabilities to control such spills or leaks.

Response to comments. The question of description of the design capabilities of drainage systems for onshore facilities other than production facilities is adequately covered by rules pertaining to drainage. *See,* for example, §§ 112.7(a)(3) and (4), 112.7(b), 112.8(b), and 112.10(c). Therefore, we will not promulgate any additional requirements on this subject. Those provisions generally require that a facility owner or operator design the facility drainage system to prevent discharges, or if prevention fails, to contain the discharge within the facility.

H. Compliance Costs

Background. We provided an extensive discussion of the costs and benefits of the proposed 1991 rule. 56 FR 54628–54629, October 22, 1991. We requested comments in the 1991 preamble concerning the new compliance costs associated with the proposed rule.

Comments. EPA received numerous comments on this issue. The overwhelming majority of commenters asserted that the proposed rule would impose costs that few could bear. Many argued that such costs were unnecessary or should be applied to large facilities only.

Response to comments. EPA considered cost factors in finalizing the requirements in this rule. We believe that facilities in compliance with the current rule will incur minimal additional cost due to the revisions in this rule. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in today's rule, we have provided flexibility in several ways. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in the deviation provision, § 112.7(a)(2), we permit you to substitute alternate measures that provide equivalent environmental protection if you can explain a reason for nonconformance with the prescribed requirement. We also rely on the use of industry standards in many provisions, rather than mandating any particular procedure, or any particular monitoring or inspection schedule. We assume that most facilities follow industry standards, and therefore will not incur additional costs for many provisions where they do. We recognize, however, that to the extent any facility does not follow current industry standards, it might incur additional costs. Furthermore, we are finalizing other provisions in this rule which will reduce burden in other ways and will exempt certain facilities from having to prepare an SPCC or FRP Plan. EPA has also prepared an assessment of the costs of rule compliance, which is discussed in part VI.F (Regulatory Flexibility Act) of this preamble, and we have included the specific comments related to costs and our responses in relevant sections of this preamble.

I. Contingency Planning and Notification

Background. We requested comments in the 1991 preamble on spill contingency planning needs (at 56 FR 54615) and on proposed facility notification requirements (at 56 FR 54614). You will find a detailed discussion of contingency requirements and facility notification requirements (§ 112.7(d) and proposed § 112.1(e)) in Section V of today's preamble. On those subjects, we briefly summarize the comments and our responses below.

Comments. Contingency planning. Many commenters supported the 1991 proposal. Opposing commenters suggested that such planning should be discretionary because not all facilities need such planning, or that facilities be allowed to use contingency plans prepared for other purposes. Others thought the proposal was premature as we had not at the time finalized response planning requirements in § 112.20. Some said that contingency planning was not practicable because

the costs are too high, but these commenters did not provide specific cost estimates.

Notification. A number of commenters favored the proposal, including some industry commenters. Most industry commenters opposed the proposal either in part or in its entirety. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports.

Response to comments. Contingency planning. Contingency planning is necessary whenever you determine that a secondary containment system for any part of the facility that might be the cause of a discharge as described in § 112.1(b) is not practicable. This requirement applies whether the facility is manned or unmanned, urban or rural, and for large and small facilities. Because we have not finalized either the 1991 or 1993 contingency plan proposals, there are no new costs. We note that we finalized response planning requirements in 1994. Contingency plans prepared for other purposes are acceptable for SPCC purposes if they satisfy all SPCC requirements.

Notification. Withdrawal of proposal. We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

J. Reproposal

Background: In the 1997 proposal, we stated that we would finalize the 1991 and 1993 proposals without seeking additional comments on those proposals.

Comments: Some commenters suggested that we repropose the 1991 proposal "so that the public can view the proposed changes in a comprehensive manner." Other commenters suggested that the time that has elapsed, the changes in operational procedures of the oil and gas industry which have improved the degree of environmental protection, and the new information EPA obtained from its tank survey, justified reproposal. Others cited changes in oil industry personnel as a reason to repropose the rule. Some commenters believed that the implementation of the Facility Response Plan (FRP) rule alone requires us to solicit additional comments concerning the SPCC proposals.

Response: Additional comments or reproposal. We believe it is unnecessary to repropose the 1991 and 1993 proposals because of mere passage of time. We received numerous comments on every side of most issues. In developing this final rule, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. We have also considered changes in the various industries which comprise the universe of SPCC facilities which have occurred since our original proposals. We encourage the use of industry standards to implement the rule, without incorporating any particular standard into the rule, thereby averting possible obsolescence of those standards. We used the results of our 1995 SPCC facility survey to develop our 1997 proposed rule. These results are also part of the administrative record for this rulemaking. We considered all the comments we received in 1997, even if they dealt with issues proposed in 1991 or 1993. We have also considered and responded to all of the comments received in 1991 and 1993 in their respective Comment Response Documents or in the preamble to today's final rule.

Personnel changes. In developing this final rule, as noted above, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. For the past 26 years, owners and operators of regulated facilities have been responsible for training their personnel in applicable regulations, such as 40 CFR part 112. Such responsibility is in effect now, and will continue under the revised rule. New companies and new personnel of those companies are on notice as to applicable rules and proposals. They have also had the opportunity to comment on the 1997 proposal. Furthermore, we have considered cost implications for all three proposals which we are finalizing today.

Response plan requirements. We have no plans to require SPCC facilities for which secondary containment is not practicable to develop response plans. However, we have withdrawn § 112.7(d) as proposed in 1993. Only a contingency plan following the provisions of 40 CFR part 109 and compliance with other provisions of § 112.7(d) is necessary when secondary containment is impracticable. Only onshore facilities that meet the criteria of substantial harm and/or significant and substantial harm facilities need to comply with the FRP requirements in 40 CFR 112.20–21.

K. Industry Standards

Throughout the rule we generally allow for the application of industry standards where the standards are both specific and objective, and their application may reduce the risk of discharges to and impacts to the environment. We recognize that as technology advances, specific standards change. By referencing industry standards throughout the preamble, we anticipate that the underlying requirements of the rule itself will change as new technology comes into use without the need for further amendments. We believe that industry standards today represent good engineering practice and generally are environmentally protective. However, as under the current rule, if an industry standard changes in a way that would increase the risk of a discharge as described in § 112.1(b), EPA will apply and enforce standards and practices that protect the environment, rather than the less protective industry standard.

Under the terms of this rule, when there is no specific and objective industry standard that applies to your facility (for example, whether there is no standard or a standard that uses the terms "as appropriate," "often," "periodically," and so forth), you should instead follow any specific and objective manufacturer's instructions for the use and maintenance or installation of the equipment, appurtenance, or container. If there is neither a specific and objective industry standard nor a specific and objective manufacturer's instruction that applies, then it is the duty of the PE under § 112.3(d) to establish such specific and objective standards for the facility and, under § 112.3(d), he must document these standards in the Plan. If the PE requires the use of a specific standard for implementation of the Plan, the owner or operator must also reference that standard in the Plan.

Throughout this preamble, we list industry standards that may assist an owner or operator to comply with particular rules. The list of those standards is merely for your information. They may or may not apply to your facility, but we believe that their inclusion is helpful because they generally are applicable to the topic referenced. The decision in every case as to the applicability of any industry standard will be one for the PE.

For your convenience, we are including a list of organizations below

that may be helpful in the identification and explanation of industry standards.

Name	Address	Phone #	Web Site/E-mail
American National Standards Institute (ANSI).	11 West 42nd Street, New York, NY 10036.	212–642–4900 212–398–0023 fax.	*www.ansi.org* *ansionline@ansi.org*
American Petroleum Institute (API)	1220 L Street, NW Washington, DC 20005.	202–682–8000 202–682–8232 fax.	*www.api.org* *standards@api.org* *standards2@api.org*

Conservation and Management Act). Hereinafter, a discharge as described above in quantities that may be harmful is also referred to as "a discharge as described in § 112.1(b)."

Comments. Geographic scope of rule. One commenter wrote to support the geographic extension of the rule, noting that the extended definition "will allow for more clarity in determining which facilities are subject to SPCC

Section 112.1(b)—Facilities Covered by the Rule—Non-Transportation-Related Facilities

Background. We have redesignated this section to add four new paragraphs. This section describes generally the type of facilities which are subject to the SPCC rule.

In 1991, EPA proposed changes in § 112.1(b) to reflect changes in the geographic scope of EPA's authority

the President (and EPA, through delegation in Executive Order 12777, 56 FR 54757, October 22, 1991) to issue regulations consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, and consistent with maritime safety and with marine and navigation laws, which establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous

that may be helpful in the identification and explanation of industry standards.

Name	Address	Phone #	Web Site/E-mail
American National Standards Institute (ANSI).	11 West 42nd Street, New York, NY 10036.	212–642–4900 212–398–0023 fax.	*www.ansi.org* *ansionline@ansi.org*
American Petroleum Institute (API)	1220 L Street, NW Washington, DC 20005.	202–682–8000 202–682–8232 fax.	*www.api.org* *standards@api.org* *standards2@api.org*
American Society of Mechanical Engineers (ASME).	Three Park Avenue New York, NY 10016–5990.	800–843–2763 973–882–1717 fax.	*www.asme.org* *infocentral@asme.org*
American Society for Nondestructive Testing (ASNT).	PO Box 28518, 1711 Arlingate Lane Columbus, OH 43228–0518.	800–222–2768 614–274–6899 fax	*www.asnt.org*
American Society for Testing and Materials (ASTM).	100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.	610–832–9585 610–832–9555 fax.	*www.astm.org* *webmastr@astm.org.*
Building Officials and Code Administrators (BOCA) International.	4051 West Flossmoor Road Country Club Hills, IL 60478.	708–799–2300 708–799–4981 fax.	*www.bocai.org* *webmaster@bocai.org.*
International Code Council (ICC)	5203 Leesburg Pike, Suite 708 Falls Church, VA 22041.	703–931–4533 703–379–1546 fax.	*www.intlcode.org* *staff@intlcode.org.*
International Conference of Building Officials (ICBO).	5360 Workman Mill Road Whittier, CA 90601–2298.	888–699–0541 888–329–4220 fax.	*www.icbo.org*
International Fire Code Institute (IFCI)	5360 Workman Mill Road Whittier, CA 90601–2298.	562–699–0124 562–699–8031 fax.	*www.ifci.org* *webmaster@icbo.org*
Manufacturers Standardization Society of The Valve and Fittings Industry Inc. (MSS).	127 Park Street, N.E. Vienna, VA 22180–4602.	703–281–6613 703–281–6671 fax.	*www.mss-hq.com* *info@mss-hg.com*
National Association of Corrosion Engineers (NACE).	1440 South Creek Drive Houston, TX 77084.	281–228–6200 281–226–6300 fax	*www.nace.org*
National Fire Protection Association (NFPA).	1 Batterymarch Park PO Box 9101 Quincy, MA 02269–9101.	617–770–3000 617–770–0700 fax.	*www.nfpa.org* *hazchem@nfpa.org*
Petroleum Equipment Institute (PEI)	P.O. Box 2380 Tulsa, OK 74101–2380	918–494–9696 918–491–9895 fax.	*www.pei.org* *pei@peinet.org.*
Southern Building Code Congress International (SBCCI).	900 Montclair Road Birmingham, AL 35213–1206.	205–591–1853 205–591–0775 fax.	*www.sbcci.org* *info@sbcci.org*
Southwest Research Institute (SwRI)	P.O. Box Drawer 28510 San Antonio, TX 78228–0510.	210–684–5111	*www.swri.org* *action67@swri.org*
Steel Tank Institute (STI)	570 Oakwood Road Lake Zurich, IL 60047.	847–438–8265 847–438–8766 fax.	*www.steeltank.com* *ankiefer@steeltank.com*
Underwriters Laboratories (UL)	333 Pfingsten Road Northbrook, IL 60062–2096.	847–272–8800 847–272–8129 fax.	*www.ul.com* *northbrook@ul.com*
Western Fire Chiefs Association (WFCA)	300 N. Main St. #25 Fallbrook, CA 92028.	760–723–6911 760–723–6912 fax.	*www.wfca.com* *wfcadmin@wfca.com*

V. Section by Section Analysis (Includes: Background, Comments, and Response to Comments)

Subpart A—Applicability, definitions, and general requirements for all facilities

Background. In the reformatted rule, subpart A defines the applicability of part 112, provides definitions applicable to all subparts, and prescribes general requirements that are applicable to all facilities subject to part 112.

Section 112.1(a)(1)—General Applicability of the Rule

Background. We have redesignated § 112.1(a) as § 112.1(a)(1) due to the addition of a new paragraph (a)(2). In 1991, we proposed changes in § 112.1(a) to conform to the 1977 CWA amendments. Those amendments extended the geographic scope of EPA's authority under CWA section 311. Formerly the geographic scope of the rule extended only to navigable waters of the United States and adjoining shorelines. The final rule extends the geographic scope of EPA's authority beyond discharges to navigable waters and adjoining shorelines to include a discharge into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). Hereinafter, a discharge as described above in quantities that may be harmful is also referred to as "a discharge as described in § 112.1(b)."

Comments. Geographic scope of rule. One commenter wrote to support the geographic extension of the rule, noting that the extended definition "will allow for more clarity in determining which facilities are subject to SPCC requirements."

Natural resources. Another commenter was concerned that the extension of the rule to facilities with the potential to affect natural resources "would bring under the scope of 40 CFR 112 a significant number of operating facilities which did not previously require SPCC plans." Still another commenter proposed limiting the scope of natural resource jurisdiction under the rule to resources under the Magnuson Fishery and Conservation Act to avoid "another unnecessary workload on the judicial system over the years."

Response to comments. Geographic scope of rule. EPA believes that the geographic extension of the rule to agree with statutory amendments is the proper course, and has finalized the rule as proposed.

Natural resources. Limiting the scope of natural resource jurisdiction under the rule to natural resources under the Magnuson Fishery Conservation and Management Act would be inconsistent with this statutory language. We also believe that few, if any new facilities, will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

Editorial changes and clarifications. While revisions to the rule published today are not retroactive, any violation of the current rule which occurs before the effective date of today's rule is subject to enforcement and penalties.

Section 112.1(a)(2)—Number and Gender

Background. We added a new § 112.1(a)(2) to make clear that words in the singular include the plural, and words in the masculine include the feminine, and vice versa. This amendment is for clarification purposes only.

Section 112.1(b)—Facilities Covered by the Rule—Non-Transportation-Related Facilities

Background. We have redesignated this section to add four new paragraphs. This section describes generally the type of facilities which are subject to the SPCC rule.

In 1991, EPA proposed changes in § 112.1(b) to reflect changes in the geographic scope of EPA's authority under CWA section 311, as described in the discussion under § 112.1(a)(1). EPA also proposed to change the phrase "harmful quantities" to "quantities that may be harmful, as described in part 110." Amendments to the CWA also reflected the broadening of quantities that may be harmful to include those not only harmful to the "public health or welfare," but also to the environment.

Comments. Facilities. Several commenters argued that EPA jurisdiction, under statutory authority, does not extend to facilities, merely to requirements for oil spill prevention and containment equipment. The commenters' argument noted that the statute doesn't mention jurisdictional criteria relating to proximity to water or oil storage capacity, only EPA rules do. Therefore, the commenters argued, if EPA is successful in its assertion of facility regulation, then every pipe, valve, meter, and flange on the wellsite along with tubing and casing in the hole, stock tanks, drainage ditches, and roads are all subject to EPA jurisdiction and specifications. More importantly, they argued, every facility, in every industry, which at some time or other handles oil or hazardous substances could be subject to EPA rules concerning its spill prevention and containment procedures, methods, or equipment.

Use of oil. Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

Distance to navigable waters. Two commenters proposed that we exempt from the rule facilities more than one mile from surface waters or those located outside the coastal zone.

Response to Comments: Facilities. We disagree that our authority does not extend to facilities. Section 311(j)(1)(C) of the statute authorizes and requires the President (and EPA, through delegation in Executive Order 12777, 56 FR 54757, October 22, 1991) to issue regulations consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, and consistent with maritime safety and with marine and navigation laws, which establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges." This language authorizes the President to issue oil spill prevention rules which pertain to onshore facilities and offshore facilities and not just "equipment."

In order to fulfill the statutory mandate, it is necessary to regulate the facilities from which discharges emanate. Moreover, although the term "facility" is not defined in the statute, both "onshore facility" and "offshore facility" are defined terms in CWA section 311. They have also been defined terms in the SPCC rule since its inception in 1974. In the 1991 proposal, EPA proposed a definition of "facility" to implement the CWA. That definition was based on a Memorandum of Understanding (MOU) between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 (36 FR 24080). The MOU, which has been published as Appendix A to part 112 since December 11, 1973 (38 FR 34164, 34170), defines in detail what constitutes a facility. Thus, there has long been a common understanding of the term. That understanding has been reinforced by frequent use of the term in context within the SPCC rule since it became effective in 1974. To promote clarity and to maintain all definitions in one place, the proposed definition has been finalized in this rulemaking.

While section 311(j)(1)(C) of the Act may not explicitly mention jurisdictional criteria, section 311(b) of the Act does. Section 311(b) establishes as the policy of the United States that there shall be "no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)." Thus, the location or "jurisdictional" criteria contained in § 112.1(b) are appropriate for inclusion in the rule.

Use of oil. We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil of discharge in quantities that may be harmful from the facility. A facility that is more than one mile from navigable waters might well fit within that standard. For example, piping or drainage from that facility might lead directly to navigable water. If discharged oil may reach or does reach navigable waters, adjoining shorelines, or protected resources, the distance are required to be drained and, while awaiting temporary closure, are no threat to the environment through oil spills. Another commenter urged that temporary storage facilities should be exempted from the SPCC rule, and handled under the Facility Response Plan (FRP) rules, found at 40 CFR 112.20–21. A third commenter argued that frac tanks, used to store oil for the

or more of the product is below grade either in the tank or in the pipeline. The commenter argued that tanks in compliance with the UST program, found at 40 CFR part 280, would not pose a significant threat to the environment. In fact, the commenter argued, they might be less likely to cause a spill than one in compliance with the SPCC rule. The commenter

form (item 12) contains information regarding corrosion protection for steel tanks and steel piping which would be relevant for SPCC purposes. Other items on the form may also be relevant for SPCC purposes. We are, however, excluding from the rule completely buried storage tanks (including connected underground piping, underground ancillary equipment, and

on March 11, 1996, because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646. Therefore, we have reserved § 112.6 for future use.

Comments. One commenter suggested that Federal agencies are subject to civil penalties which are imposed under the CWA—including fines.

Response to comments. EPA disagrees

Use of oil. We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define "bulk storage container" in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also the needs of section 311(j)(1)(C) of the CWA.

In addition, a facility may deviate from any inappropriate SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. See § 112.7(a)(2). See also § 112.7(d).

Distance to navigable waters. We do not believe that any rule which exempts facilities beyond any particular distance meets the intent of the statute. The locational standard in the rule is whether there is a reasonable possibility of discharge in quantities that may be harmful from the facility. A facility that is more than one mile from navigable waters might well fit within that standard. For example, piping or drainage from that facility might lead directly to navigable water. If discharged oil may reach or does reach navigable waters, adjoining shorelines, or protected resources, the distance which the discharged oil travels is irrelevant.

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as §§ 112.1(b) and 112.1(b)(1). We have combined the paragraphs and added two new paragraphs. The new paragraphs describe the types of containers subject to the rule, which in addition to the two paragraphs we already proposed, better describe those containers. We also changed plural references in the proposal to singular throughout the section.

Section 112.1(b)(1)—Aboveground Storage Containers

Background. We added this paragraph to clarify that aboveground storage containers are a subset of the containers subject to the rule. In 1991, we noted that containers used for standby storage, temporary storage, or containers that are not permanently closed, are subject to the rule. We also noted that bunkered tanks and partially buried tanks are subject to the rule. The inclusion of this paragraph and paragraph (b)(2), which refers to completely buried tanks, completes the universe of containers subject to the rule.

Section 112.1(b)(2)—Completely Buried Tanks

Background. We added this paragraph to clarify that completely buried tanks are a subset of the containers subject to the rule. See also the discussion under § 112.1(b)(1).

Section 112.1(b)(3)—Standby, Temporary, or Seasonal Storage Facilities

Background. We proposed in 1991 to clarify that tanks used for standby, temporary, or seasonal storage, or that are not otherwise permanently closed, are subject to the SPCC rule. The Agency noted that such tanks are not permanently closed and can reasonably be expected to experience a discharge as described in § 112.1(b). 56 FR 54617. The facilities described in § 112.1(b)(3) are a subset of the facilities described in § 112.1(b)(1) and (b)(2).

Comments. One commenter asserted that temporarily closed tanks should be exempted from the rules because they are required to be drained and, while awaiting temporary closure, are no threat to the environment through oil spills. Another commenter urged that temporary storage facilities should be exempted from the SPCC rule, and handled under the Facility Response Plan (FRP) rules, found at 40 CFR 112.20–21. A third commenter argued that frac tanks, used to store oil for the short periods of time while maintenance or workover operations are underway, should be exempted from the rule because their use is of short duration and does not necessarily increase the potential for discharge. Another commenter stated that it would be impractical to maintain an up-to-date SPCC Plan for temporary storage at remote parts of a large mining operation.

Response to comments. If a tank is not permanently closed, it is still available for storage and the possibility of a discharge as described in § 112.1(b), remains. Nor does a short time period of storage eliminate the possibility of such a discharge. Therefore, a prevention plan is necessary. A tank closed for a temporary period of time may contain oil mixed with sludge or residues of product which could be discharged. Discharges from these facilities could cause severe environmental damage during such temporary storage and are therefore subject to the rule. As to the argument that it is impractical to maintain an up-to-date Plan for temporary facilities at remote parts of mining sites, we disagree. Plans for such storage are analogous to or may be Plans for mobile facilities, which may be general Plans, but still provide environmental protection against a discharge as described in § 112.1(b).

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as § 112.1(b)(2). We have redesignated it as § 112.1(b)(3).

Section 112.1(b)(4)—Bunkered, Partially Buried, and Vaulted Tanks

Background. In 1991, we proposed to clarify that bunkered tanks, partially buried tanks, and tanks in subterranean vaults are considered aboveground tanks for purposes of the SPCC rule. The tanks or containers in these facilities are a subset of the facilities described in § 112.1(b)(1). The Agency explained that compared to completely buried tanks, discharges from these tanks are more likely to enter surface waters regulated under the CWA. 56 FR 54626.

Comments. Partially buried and bunkered tanks. A commenter suggested that partially buried and bunkered tanks should be considered underground storage tanks (USTs) and regulated under that program because ten percent

or more of the product is below grade either in the tank or in the pipeline. The commenter argued that tanks in compliance with the UST program, found at 40 CFR part 280, would not pose a significant threat to the environment. In fact, the commenter argued, they might be less likely to cause a spill than one in compliance with the SPCC rule. The commenter further argued that dual regulation would be unnecessarily burdensome without providing any additional environmental protection.

Vaulted tanks. Several commenters asserted that since vaulted tanks are already regulated by fire and safety authorities, they should not be regulated under the SPCC program. Others argued that vaulted tanks meeting the technical requirements of 40 CFR part 280, or which have engineering controls designed to contain product released from failure or overfill, should likewise be exempted from the SPCC rule. These commenters asserted that a discharge from such tanks would not reach water.

Response to comments. Partially buried and bunkered tanks. We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. The rules differ in important aspects. Tanks which are partially underground pose a risk of a discharge as described in § 112.1(b), which could have an adverse impact on navigable water, adjoining shorelines, or affected resources. Some tanks that are not completely buried contain engineering controls designed to prevent discharges. However, such controls may fail due to human or mechanical error and cause severe environmental damage. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b).

Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b). We will, however, accept UST program forms, e.g., the Notification for Underground Storage Tanks, EPA Form 7530–1, or approved State program equivalents, insofar as such forms contains information relevant to the SPCC program. For example, the UST form (item 12) contains information regarding corrosion protection for steel tanks and steel piping which would be relevant for SPCC purposes. Other items on the form may also be relevant for SPCC purposes. We are, however, excluding from the rule completely buried storage tanks (including connected underground piping, underground ancillary equipment, and containment systems) that are currently subject to all of the technical requirements of 40 CFR part 280 or 281. *See* § 112.1(d)(4).

Vaulted tanks. Vaulted tanks are generally excluded from the scope of 40 CFR part 280. The definition of "underground storage tank" at 40 CFR 280.12(i) excludes from its scope a "storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor." These tanks might reasonably experience a discharge as described in § 112.1(b). Therefore, it is reasonable that they be within the scope of part 112. Merely because these tanks are the subject of local fire and safety regulations does not guarantee that there will be adequate environmental protection to prevent a discharge as described in § 112.1(b), because that is not the purpose of those regulations. Such codes may provide lesser protection than part 112. For example, NFPA 30:2–3.4.3(b) specifically indicates that a dike need only provide containment for the largest tank, while part 112 requires freeboard for precipitation.

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as § 112.1(b)(3). We have redesignated it as § 112.1(b)(4). Section 112.1(b)(3) of the proposed rule uses the term "aboveground storage containers," in place of "aboveground storage tanks." *See 56* FR 54630. We continue to use "containers" in the final rule. We deleted the word "subterranean," which modified vaulted tanks in the proposed rule, because vaulted tanks are considered aboveground tanks under this rule whether they are subterranean or not.

Section 112.1(c)—Federal Agencies—Applicability of Rule

Background. In 1991, we republished the already existing provisions of § 112.1(c), which provide that agencies, departments, and instrumentalities of the Federal government are subject to the rule to the same extent as any person, except for the provisions relating to civil penalties. The provision relating to civil penalties was rescinded on March 11, 1996, because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646. Therefore, we have reserved § 112.6 for future use.

Comments. One commenter suggested that Federal agencies are subject to civil penalties which are imposed under the CWA—including fines.

Response to comments. EPA disagrees that Federal agencies are subject to penalties or fines under the CWA because the Federal government is not a "person" under sections 311(a)(7) or 502 of the CWA. Only "persons" (including owners or operators and persons in charge) are subject to such penalties. Therefore, although Federal agencies must comply with requirements of a CWA section 311 rule in accordance with CWA section 313, they are not subject to civil or criminal penalties or fines. *See U.S. Department of Energy* v. *Ohio,* 503 U.S. 607, 618 (1992) (because the CWA does not define "person" to include the United States, the civil penalty provisions are not applicable).

Section 112.1(d)—Exemptions From Applicability

Section 112.1(d)(1)—Exemptions Based on Jurisdiction

Section 112.1(d)(1)(i)—Exemptions Based on Location

Background. In 1991, we described the facilities, equipment, and operations that are exempt from the SPCC rule because they are not subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. These facilities include those which, due to their location, could not be reasonably expected to have a discharge as described in § 112.1(b).

In making the determination of whether there is a reasonable possibility of a discharge as described in § 112.1(b), we proposed that you may consider only the geographical and locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, *etc.*). We proposed that you could not consider manmade structures such as dikes, equipment, or other structures which may serve to restrain, hinder, or otherwise contain a discharge as described in § 112.1(b), in making that same determination.

Comments. Geographic scope of rule. One commenter agreed that the extension of the geographic scope of the rule will allow for more clarity in determining which facilities are subject to SPCC requirements. The commenter added that the inclusion of natural

resources sets the stage for the implementation of Natural Resource Damage Assessments, as required by the Oil Pollution Act of 1990.

Manmade structures. Other commenters argued that EPA should modify its rules to provide that a facility with no reasonable possibility of discharge because of some combination of natural and manmade features, which

the United States. Once a prohibited discharge of oil occurs and affects such natural resources, the NRDA provisions of OPA sections 1002(b)(2)(A) and 1006 apply. The National Oceanographic and Atmospheric Administration has promulgated a set of regulations which govern the process for conducting NRDAs under the OPA. 15 CFR part 990.

reasonably be expected to have a discharge as described in § 112.1(b)." The proposed phrase in the last sentence of the paragraph which read, "* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines. * * *" becomes "* * * which may serve to restrain, hinder, contain, or otherwise prevent a

311(j) of the Clean Water Act. We published that definition on July 1, 1994. 59 FR 34097. A commenter on the definition of "breakout tank" (*see also* discussion below on "breakout tank") asked for guidance as to which agency, DOT or EPA, regulates such tanks. Because of confusion in the regulated community over which Federal agencies have jurisdiction in complexes, we discuss the issue below.

Otherwise, if you engage in activities subjecting your facility to the jurisdiction of two agencies, your facility would be subject to the more stringent of rules if there were to be a conflict or an inconsistency in those rules. For example, a facility with breakout tanks used solely to relieve surges in a pipeline, and not having another non-transportation-related activity or component, would not be

revision corrects an incorrect citation to the 1971 MOU between EPA and DOT.

Section 112.1(d)(1)(iii)—Exemptions Based on Function—DOT and DOI

Background. We have added a new paragraph to the applicability section of the rule to note the jurisdictional changes resulting from an MOU between DOT, DOI, and EPA redelegating certain functions. The

resources sets the stage for the implementation of Natural Resource Damage Assessments, as required by the Oil Pollution Act of 1990.

Manmade structures. Other commenters argued that EPA should modify its rules to provide that a facility with no reasonable possibility of discharge because of some combination of natural and manmade features, which are present for operational rather than pollution prevention purposes, should be excluded from the scope of the rule. Another commenter urged that the rule allow consideration of manmade structures where the structures are inherent in the design of the facility and serve functional and operational purposes distinct from the containment of oil spills.

Groundwater. Another commenter argued that Congress intended for EPA to develop SPCC requirements that prevent releases to groundwater, in addition to requirements that prevent releases to navigable water. At a minimum, that commenter argued, § 112.1(d)(1)(i) should contain language stating that clear hydrologic connections between groundwater underlying a facility and navigable waters require a facility to develop and implement an SPCC Plan. Yet another commenter, in opposing exemption of USTs from the SPCC program noted that groundwater eventually becomes surface water. The commenter added that, hydrologically, oil released into underground waters may migrate to surface water within minutes or months. The commenter argued that in the absence of emergency response provisions, some USTs could damage the nation's ground and surface water resources.

Response to comments. Geographic scope of rule. We also believe that few, if any, new facilities will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

We have amended this provision to be consistent with the revised statutory language found in sections 311(b)(1) and (c)(1)(A) of the CWA. This rule focuses on preventing discharges to navigable waters, adjoining shorelines, the exclusive economic zone, and natural resources belonging to, appertaining to, or under the exclusive jurisdiction of the United States. Once a prohibited discharge of oil occurs and affects such natural resources, the NRDA provisions of OPA sections 1002(b)(2)(A) and 1006 apply. The National Oceanographic and Atmospheric Administration has promulgated a set of regulations which govern the process for conducting NRDAs under the OPA. 15 CFR part 990.

Manmade structures. To allow consideration of manmade structures (such as dikes, equipment, or other structures) to relieve a facility from being subject to the rule would defeat its preventive purpose. Because manmade structures may fail, thus putting the environment at risk in the event of a discharge, there is an unacceptable risk in using such structures to justify relieving a facility from the burden of preparing a prevention plan. Secondary containment structures should be part of the prevention plan.

Groundwater. EPA agrees with the commenter that groundwater underlying a facility that is directly connected hydrologically to navigable waters could trigger the requirement to produce an SPCC Plan based on geographic or locational aspects of the facility. *See* the discussion below for tanks regulated under 40 CFR part 280 or under a State program approved under 40 CFR part 281.

EPA does not agree with the commenter that 40 CFR part 280 and a State program approved under 40 CFR part 281 (the rules governing most completely buried tanks) lack adequate emergency response provisions for regulated tanks and piping. 40 CFR part 280 and State programs approved under 40 CFR part 281 require corrective action, reporting, and recordkeeping requirements for any release from regulated tanks and piping. Although groundwater underlying a facility may eventually connect hydrologically to navigable waters, the requirements of 40 CFR part 280 and State programs approved under 40 CFR part 281 are intended to address the prevention of releases from underground storage tanks that might have an impact on groundwater and to require rapid response and corrective action at such sites if they compromise groundwater quality.

Editorial changes and clarifications. The proposed phrase in the first sentence which read, "* * * could not reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part," becomes "* * * could not reasonably be expected to have a discharge as described in § 112.1(b)." The proposed phrase in the last sentence of the paragraph which read, "* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines. * * *" becomes "* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in § 112.1(b)."

Section 112.1(d)(1)(ii)—Exemptions Based on Function—DOT

Background. In 1991, we republished, without substantive change, the current exemption for equipment or operations of vessels or transportation-related onshore and offshore facilities that are subject to the authority and control of the U.S. Department of Transportation (DOT). While we received no comments on the proposal, we believe that this provision merits a few words to clarify the understanding of the regulated community. The Executive Order (EO) implementing the Act assigns regulatory jurisdiction to three Federal agencies based on the function of facilities. Section 2(b)(1) of EO 12777 (56 FR 54757, October 22, 1991) delegates to the Administrator of EPA authority in section 311(j)(1)(C) relating to the establishment of procedures, methods, and equipment, and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities. Section 2(b)(2) of the EO delegates similar authority to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports to the Secretary of Transportation. Section 2(b)(3) of the EO delegates similar authority for offshore facilities, including associated pipelines, other than deepwater ports, to the Secretary of the Interior. A Memorandum of Understanding (MOU) among EPA, DOT, and the U.S. Department of the Interior (DOI), found at Appendix B to part 112, redelegated from DOI to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. Similarly the MOU redelegated from DOI to DOT the responsibility for transportation-related offshore facilities, including pipelines, landward of the coastline.

In 1993, we proposed a definition for the term "complex," which is a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act. We published that definition on July 1, 1994. 59 FR 34097. A commenter on the definition of "breakout tank" (*see also* discussion below on "breakout tank") asked for guidance as to which agency, DOT or EPA, regulates such tanks. Because of confusion in the regulated community over which Federal agencies have jurisdiction in complexes, we discuss the issue below.

Complexes. "Complex" is defined at § 112.2 as a "facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act." The jurisdiction over a component of a complex is determined by the activity occurring at that component. An activity might at one time subject a facility to one agency's jurisdiction, and a different activity at the same facility using the same structure or equipment might subject the facility to the jurisdiction of another agency.

Equipment, operations, and facilities are subject to DOT jurisdiction when they are engaged in activities subject to DOT jurisdiction. If those facilities are also engaged in activities subject to EPA jurisdiction, such activities would subject the equipment, operation, or facility to EPA jurisdiction. An example of an activity subject to EPA jurisdiction would be the loading or unloading of oil into a tank truck or railcar. Under an MOU between EPA and DOT (See Appendix A of part 112), transportation-related activities regulated by DOT and non-transportation-related activities regulated by EPA are defined. The MOU provides that highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate, are considered transportation-related activities, subject to DOT jurisdiction.

Another example of activities that might be considered a complex and therefore subject to both sets of rules is that of a breakout tank which is used for both transportation and non-transportation purposes. It is the activity to which the tank is put that determines jurisdiction. If you are an owner or operator of a complex, while you may not choose which agency will regulate your facility, you may choose not to engage in activities which would subject your facility to the jurisdiction of a particular agency if you do not wish to comply with that agency's rules. Otherwise, if you engage in activities subjecting your facility to the jurisdiction of two agencies, your facility would be subject to the more stringent of rules if there were to be a conflict or an inconsistency in those rules. For example, a facility with breakout tanks used solely to relieve surges in a pipeline, and not having another non-transportation-related activity or component, would not be required to have an SPCC Plan.

Which activity would be subject to DOT jurisdiction and which activity which would be subject to EPA jurisdiction is defined by the MOU in Appendix A to part 112. The definitions in the MOU are keyed to the delegations of authority in EO 12777.

Because regulatory jurisdiction is predicated upon the owner's or operator's activities at the facility, an owner or operator might have questions concerning that jurisdiction at his facility. To clarify regulatory jurisdiction, in February 2000, EPA and DOT signed a policy memorandum that described how the two agencies would work together to bring their respective regulations into alignment and, ultimately, to eliminate overlapping jurisdiction over tanks when possible.

Recently, DOT informed EPA of a voluntary initiative to collect information from industry on breakout tanks, beginning in December 2001. In anticipation of receiving the new tank information, DOT is considering updating the National Pipeline Mapping System (NPMS) data standards to reflect the guidelines for tank data submissions. Operators' data submissions will include the location of each tank farm with breakout tanks, information about each tank, and information about the accuracy of the data. The data will be depicted as a geospatial location in a digital file or a point located on a USGS 1:24,000 topographic quad map.

In addition to upgrading the NPMS, DOT is training its inspectors in tank inspection. In the President's Fiscal Year 2002 budget request, DOT expressed its intent to make tanks a priority in its compliance program, particularly where the tanks are in sensitive areas. DOT and EPA have agreed to provide cross-training of their respective personnel. As the two agencies proceed with tank oversight plans, the goal is to ensure that every tank is regulated and no tank is subject to overlapping regulations from two agencies.

Editorial changes and clarifications. "EPA Administrator" becomes "Administrator of EPA." Another revision corrects an incorrect citation to the 1971 MOU between EPA and DOT.

Section 112.1(d)(1)(iii)—Exemptions Based on Function—DOT and DOI

Background. We have added a new paragraph to the applicability section of the rule to note the jurisdictional changes resulting from an MOU between DOT, DOI, and EPA redelegating certain functions. The MOU was published on July 1, 1994 (at 59 FR 34102). The addition of this paragraph is not a substantive change in the rules, but merely an editorial revision to mark the jurisdiction of the respective agencies in this rule. It complements the other paragraphs in § 112.1(d)(1) that describe facilities which are not subject to EPA jurisdiction. Due to the MOU, the referenced facilities, equipment, and operations of DOT and DOI in § 112.1(d)(1)(iii), like the facilities, equipment, and operations described in § 112.1(d)(1)(i) and (ii), are not subject to EPA jurisdiction under section 311(j)(1)(C) of the Act. They are not subject to EPA jurisdiction either because of their location, in the case of DOI facilities, or because of their activities, which are strictly transportation-related, in the case of DOT facilities.

EO 12777 (56 FR 54757, October 22, 1991) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of EO 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) of the CWA defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf was expanded by EO 12777 to include inland lakes, rivers, streams, and any other inland waters.

Under section 2(i) of EO 12777, DOI redelegated, and EPA and DOT accepted, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of the EO. DOI redelegated to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. To DOT, DOI redelegated responsibility for transportation-related facilities, including pipelines, located landward of the coastline. DOT retained jurisdiction for deepwater ports and the associated seaward pipelines. DOI retained jurisdiction over facilities, including pipelines, located seaward of

the coastline, except for deepwater ports and associated seaward pipelines. For purposes of the MOU, the term "coastline" means "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

Section 112.1(d)(2)—Other Exemptions

systems that are part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act; equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks; and, UST systems whose capacity is 110 gallons or less. Also, part 280 does not provide for regulation of USTs piping, underground ancillary equipment, and containment system. Therefore, any of these tank systems may be potentially subject to the SPCC program.

Definitions. EPA proposed to define an UST as any tank which is completely covered with earth. Part 280 includes a broader definition of underground storage tanks, and includes partially

Comments. Completely buried storage tanks. Favorable comments. Commenters overwhelmingly favored eliminating dual regulation of ASTs and USTs. Most agreed that the UST program provides protection comparable to the SPCC program. Several argued that all USTs as defined in part 280, which includes partially buried and bunkered tanks, should be exempted. Others argued that tanks

protection to the SPCC program. While not all aspects of the programs are identical, the UST program ensures protection against discharges as described in § 112.1(b), and protection of the environment. Therefore, dual regulation is unnecessary. In response to commenters asserting that UST rules lack provisions concerning contingency planning; emergency response; certain recordkeeping requirements; and other

requirements (found at 40 CFR 280.61), an owner or operator must take immediate action to prevent further release of the regulated substance and must identify and mitigate fire, explosion, and vapor hazards.

Reporting and recordkeeping. In addition to the reporting requirements mentioned above, there are numerous reporting and recordkeeping requirements in the rules governing

the coastline, except for deepwater ports and associated seaward pipelines. For purposes of the MOU, the term "coastline" means "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

Section 112.1(d)(2)—Other Exemptions

Section 112.1(d)(2)(i)—Completely Buried Storage Tanks Currently Subject to all of the Technical Requirements of 40 CFR PART 280 or State Programs Approved under 40 CFR PART 281

Background. Part 280 and approved State programs. In 1991, we proposed to exempt from the underground storage capacity of facilities in the SPCC rule the storage capacity of buried underground storage tanks (USTs) currently subject to all of the technical requirements of 40 CFR part 280. We proposed this change as § 112.1(d)(2)(i) in 1991. We did not at the time include approved State programs in the proposal because in 1991 few if any States had such programs. In 40 CFR part 281 (published on September 23, 1988 at 53 FR 37212), EPA established regulations whereby a State could receive EPA approval for its State program to operate in lieu of the Federal program. In order to obtain EPA program approval under part 281, a State program must demonstrate that its requirements are no less stringent than the corresponding Federal regulations set forth in part 280, and that it provides adequate enforcement of these requirements. Thus, we have decided to exempt also the storage capacity of USTs subject to all of the technical requirements of State UST programs which EPA has approved. By January 2000, EPA had approved 27 State programs, plus programs in the District of Columbia and Puerto Rico. The rationale for exempting the storage capacity of these facilities from the SPCC regime is because 40 CFR part 280 and the approved State programs under 40 CFR part 281 provide comparable environmental protection for the purpose of preventing discharges as described in § 112.1(b).

Facilities with storage capacity not subject to part 280 or deferred from its provisions.

Storage capacity not subject to part 280. Some UST facilities have storage capacity that is not subject to part 280, for example: any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous wastes and other regulated substances; wastewater treatment tank systems that are part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act; equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks; and, UST systems whose capacity is 110 gallons or less. Also, part 280 does not provide for regulation of USTs storing animal fats and vegetable oils. All of these facilities remain potentially subject to the SPCC program.

Tanks deferred from compliance with part 280 rules. Other facilities with storage capacity subject to part 280 are deferred from current compliance with most of the technical requirements of that part, including: wastewater treatment tank systems; any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); any UST system that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR part 50, Appendix A; airport hydrant fuel distribution systems; UST systems with field-constructed tanks; and, any UST system that stores fuel solely for use by an emergency power generator. All of these facilities remain potentially subject to the SPCC program.

Tanks excluded from part 280 UST definition. Excluded from the definition of "underground storage tank" or "UST" in part 280 are a: (1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; (2) tank used for storing heating oil for consumptive use on the premises where stored; (3) septic tank; (4) pipeline facility (including gathering lines) regulated under: (a) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), (b) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or (c) which is an intrastate pipeline facility regulated under State law comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979; (5) surface impoundment, pit, pond, or lagoon; (6) storm-water or wastewater collection system; (7) flow-through process tank; (8) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or, (9) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. An UST system includes the tank itself, connected underground piping, underground ancillary equipment, and containment system. Therefore, any of these tank systems may be potentially subject to the SPCC program.

Definitions. EPA proposed to define an UST as any tank which is completely covered with earth. Part 280 includes a broader definition of underground storage tanks, and includes partially buried and bunkered tanks. Partially buried tanks and bunkered tanks are excluded from the definition of "completely buried tank" in part 112, and are considered aboveground storage tanks (ASTs) for purposes of the rule, as are tanks in vaults. These tanks are not included in today's exemption because compared to completely buried tanks, partially buried and bunkered tanks are more likely to cause a discharge as described in § 112.1(b).

Although most USTs will be exempt from the SPCC rule (see the above discussion on § 112.1(d)(4)), a facility might have non-exempt USTs for which it must prepare a facility SPCC Plan. If part of your facility is subject to the rule, you must mark the location and contents of all containers, including exempt and non-exempt USTs, on the facility diagram. 40 CFR 112.1(d)(4). The rationale for this requirement is to help response personnel to easily identify dangers from either fire or explosion, or physical impediments during spill response activities. In addition, facility diagrams may be referred to in the event of design modifications. 56 FR 54626.

Capacity calculations. To calculate the 42,000-gallon threshold which subjects a facility operating a completely buried tank to the SPCC rule, you may exclude the storage capacity of any completely buried tank currently subject to all of the technical requirements of 40 CFR part 280 or of an approved State program under 40 CFR part 281. Thus we expect you will count few completely buried tanks containing petroleum products in that calculation. You must count the capacity of completely buried tanks containing products which are not regulated under part 280 or an approved State program under part 281, or which are not currently subject to all of its technical requirements.

Permanently closed tanks. In 1991, EPA proposed that the underground storage capacity of a facility does not include the capacity of underground tanks that are "permanently closed" as defined in § 112.2. Under today's rule, you may exclude the capacity of tanks that are permanently closed, as defined in § 112.2, in completely buried tank capacity calculations.

Comments. Completely buried storage tanks. Favorable comments. Commenters overwhelmingly favored eliminating dual regulation of ASTs and USTs. Most agreed that the UST program provides protection comparable to the SPCC program. Several argued that all USTs as defined in part 280, which includes partially buried and bunkered tanks, should be exempted. Others argued that tanks deferred under the UST program should be exempted from the SPCC program. Another commenter suggested that piping connecting exempted USTs to regulated ASTs should be exempted from the SPCC rules. The commenter added that if such piping is subject to leak detection requirements for USTs under 40 CFR part 280, then it should remain exclusively under UST rules and be exempted from SPCC rules.

Opposing comments. Several commenters, however, opposed the proposed exemption of USTs from the SPCC program. Those commenters argued that the SPCC rules are not duplicative. They asserted that UST rules lack provisions concerning contingency planning; emergency response; periodic training of personnel to deal with emergencies; maintenance of records regarding inspections and tests; maintenance of records regarding discharges to navigable waters or adjoining shorelines; diking of fuel transfer areas; fuel transfer area operational procedures; illumination of fuel transfer areas; stormwater drainage system design; posting of vehicle weight restrictions in areas where there is underground piping and/or design of underground piping to withstand vehicular loadings; a requirement for an application of "good engineering practice," in other words, no requirements that the design and construction of a UST system be overseen by a Professional Engineer; a requirement that management sign the Plan; and, "other topics enumerated in 40 CFR 112.7." One commenter noted that since groundwater becomes surface water eventually, whether within minutes or months, the absence of emergency provisions in the UST program might cause environmental problems. Another commenter argued that the new regulatory scheme would be confusing because a facility might have some containers subject to SPCC and some that are not, as well as containers that may be subject to State regulation.

Response to comments. Completely buried storage tanks. As we noted above, in the discussion of § 112.1(d)(1)(i), the UST program provides comparable environmental protection to the SPCC program. While not all aspects of the programs are identical, the UST program ensures protection against discharges as described in § 112.1(b), and protection of the environment. Therefore, dual regulation is unnecessary. In response to commenters asserting that UST rules lack provisions concerning contingency planning; emergency response; certain recordkeeping requirements; and other alleged deficiencies, we disagree. The UST rules have numerous safeguards addressing the commenter's issues.

Partially buried tanks and bunkered tanks. We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b). Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b).

Contingency planning. While it is true that UST rules do not require contingency planning, spills and overfills of USTs resulting in a discharge to the environment are much less likely as a result of those rules. An owner or operator of an underground storage tank subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 was required to install spill and overfill prevention equipment no later than December 22, 1998. 40 CFR 280.20 and 280.21. The use of this equipment will greatly reduce the likelihood of both small and large releases or discharges of petroleum to the environment through surface spills or overfilling underground storage tanks. In addition, the UST rules place a general responsibility on the owner or operator to ensure that discharges due to spilling and overfilling do not occur. See 40 CFR 280.30.

Emergency response and release reporting. The UST rules also have several requirements related to emergency response and release or discharge reporting. The UST rules generally require that releases of regulated substances be reported to the implementing agency within 24 hours. As part of the initial response requirements (found at 40 CFR 280.61), an owner or operator must take immediate action to prevent further release of the regulated substance and must identify and mitigate fire, explosion, and vapor hazards.

Reporting and recordkeeping. In addition to the reporting requirements mentioned above, there are numerous reporting and recordkeeping requirements in the rules governing underground storage tanks. Among these are: corrective action plans; documentation of corrosion protection equipment; documentation of UST system repairs; and, information concerning recent compliance with release detection requirements. Thus, the UST rules have significant reporting and recordkeeping requirements, including specific requirements related to spills and overfills.

Transportation rules. In addition to the EPA UST rules, the U.S. Department of Transportation has hazardous material regulations related to driver training, emergency preparation, and incident reporting and emergency response. Training regulations, for example, can be found at 49 CFR part 172, and loading and unloading regulations can be found at 49 CFR 177.834 and 49 CFR 177.837. These regulations apply, for example, to truck drivers delivering gasoline or diesel fuel to gas stations with underground storage tanks.

Section 112.1(f). Finally, as a safeguard, today's rule (*see* § 112.1(f) in today's preamble) provides the Regional Administrator with the authority to require any facility subject to EPA jurisdiction under section 311 of the CWA, regardless of threshold or other regulatory exemption, to prepare and implement an SPCC Plan when necessary to further the purposes of the Act.

Regulatory jurisdiction. To eliminate any possible confusion over regulatory jurisdiction, we explain in this preamble (see the above background discussion) which containers in a facility are subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 and which are subject to part 112.

Piping, ancillary equipment, and containment systems. EPA has modified the scope of the proposed exemption for completely buried tanks (which are excluded from the scope of the SPCC rule if they are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281) by clarifying that the exemption includes the connected underground piping, underground ancillary equipment, and containment

systems, in addition to the tank itself. This modification is consistent with the definition of underground storage tank system found at 40 CFR 280.12. In addition, this clarification is responsive to the comment which asked that the piping be included in the exemption.

Deferred tanks. We disagree that we should not regulate tanks which are deferred from compliance with any of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. We proposed this change in 1991 (56 FR 54612) and reiterated it in 1997 (62 FR 63813). We noted that we were considering eliminating the provision in the current rule that requires a facility having an aboveground container in excess of 660 gallons to prepare an SPCC Plan, as long as the total aboveground capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aboveground storage capacity greater

Response to comments. Minimum container size. In response to comments, we are introducing a minimum container size. The 55 gallon container is the most widely used commercial bulk container, and these containers are easily counted. Containers below 55 gallons in capacity are typically end-use consumer containers. Fifty-five gallon containers are also the lowest size bulk container that can be handled by a

the environment, depending on where and when the discharge occurs, we believe that this measure will allow facilities to concentrate on the prevention and containment of discharges of oil from those sources most likely to present a more significant risk to human health and the environment.

Effect on Facility Response Plan facilities. The exemption for containers § 112.1(b). We encourage those facilities exempted from today's rule to maintain SPCC Plans. Likewise, we encourage facilities becoming operable in the future with storage or use capacity below the regulatory threshold to develop Plans. We believe that SPCC Plans have utility and benefit for both the facility and the environment. But, we will no longer by regulation require Plans from exempted facilities.

specifically to the facilities subject to MMS requirements. Until October 22, 1991, the date of the 1991 proposed rule, responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was delegated to

systems, in addition to the tank itself. This modification is consistent with the definition of underground storage tank system found at 40 CFR 280.12. In addition, this clarification is responsive to the comment which asked that the piping be included in the exemption.

Deferred tanks. We disagree that we should not regulate tanks which are deferred from compliance with any of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. These are containers from which a discharge as described in § 112.1(b) may occur, and thus are properly subject to the SPCC rule. Furthermore, if they were not regulated by SPCC rules, they may, in some instances, not be regulated at all.

Effect on Facility Response Plan facilities. The exemption for completely buried tanks subject to all the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 applies to the calculation of storage capacity both for SPCC purposes and for Facility Response Plan (FRP) purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities with large capacity completely buried tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 might no longer be required to have FRPs. Calculations for planning levels for worst case discharges will also be affected. However, the Regional Administrator retains authority to require the owner or operator of any non-transportation-related onshore facility to prepare and submit a FRP after considering the factors listed in § 112.20(f)(2). *See* § 112.20(b)(1).

Editorial changes and clarifications. "Underground storage tanks" becomes "completely buried storage tanks." The phrase "does not include" becomes "excludes." We have amended the rule to clarify that facilities must be subject to "all of" the technical requirements of 40 CFR part 280 or of a State program approved under 40 CFR part 281 to qualify for the SPCC exemption. If a facility is subject to some, but not all of the UST requirements, it may be subject to the SPCC rule. Facilities in this category include those which are excluded from UST requirements, or deferred from compliance with some or all of those requirements.

Section 112.1(d)(2)(ii)—AST Threshold, Minimum Container Size, Permanently Closed Tanks

Background. Regulatory thresholds. In the 1997 preamble, we asked for comment as to whether any change in the level of storage capacity which subjects a facility to this rule is justified. 62 FR 63813. We noted that we were considering eliminating the provision in the current rule that requires a facility having an aboveground container in excess of 660 gallons to prepare an SPCC Plan, as long as the total aboveground capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aboveground storage capacity greater than 1,320 gallons.

In 1991, EPA also proposed that the aboveground storage capacity of a facility does not include the capacity of aboveground storage containers that are "permanently closed" as defined in § 112.2.

Comments. Minimum size container. Numerous commenters suggested a *de minimis* size for containers to be used for AST capacity calculations. Most of the suggestions came in the context of the discussion of the proposed definition of "bulk storage tank." Suggestions for a minimum size ranged from over 55 gallons to 25,000 gallons. The bulk of the commenters favored either a greater than 55-gallon number, or a greater than 660-gallon figure.

Regulatory thresholds. Higher threshold. Commenters offered numerous threshold levels in both 1991 and 1997. Suggestions for the regulatory threshold in 1991 ranged from greater than 1,320 gallons to 120,000 gallons. Many commenters, particularly utilities, favored thresholds in the 10,000–42,000-gallon range. In 1997, when EPA suggested it might consider a greater than 1,320-gallon threshold, many commenters favored that suggestion. Others urged thresholds ranging up to 15,000 gallons.

Lower threshold. A few commenters suggested lowering the threshold. Commenters suggested threshold levels of 110 and 250 gallons. The general rationale for these suggestions was that oil spills causing even a sheen can be devastating. Therefore, these commenters reasoned that sheens from home heating oil tanks of 110 gallons, i.e., two 55-gallon drums, are every bit as important as sheens from crude oil tanks. An advocate for a lower threshold noted that manufacturers now sell, market, and produce fuel containers of 650 gallons designed to avoid compliance with the rule, whether the site is adjacent to navigable waterways or not. The commenter added that most manufacturers market or sell a "listed" tank of 250 gallons, and that under current rules, five of these tanks would not subject a facility to the SPCC rule, yet the risk would be nearly identical to one larger tank of 1,250 gallons depending upon the design of the tank.

Response to comments. Minimum container size. In response to comments, we are introducing a minimum container size. The 55 gallon container is the most widely used commercial bulk container, and these containers are easily counted. Containers below 55 gallons in capacity are typically end-use consumer containers. Fifty-five gallon containers are also the lowest size bulk container that can be handled by a human. Containers above that size typically require equipment for movement and handling. We considered a minimum container size of one barrel. However, a barrel or 42 gallons is a common volumetric measurement size for oil, but is not a common container size. Therefore, it would not be appropriate to institute a 42 gallon minimum container size.

You need only count containers of 55 gallons or greater in the calculation of the regulatory threshold. You need not count containers, like pints, quarts, and small pails, which have a storage capacity of less than 55 gallons. Some SPCC facilities might therefore drop out of the regulated universe of facilities. You should note, however, that EPA retains authority to require any facility subject to its jurisdiction under section 311(j) of the CWA to prepare and implement an SPCC Plan, or applicable part, to carry out the purposes of the Act.

While some commenters had suggested a higher threshold level, we believe that inclusion of containers of 55 gallons or greater within the calculation for the regulatory threshold is necessary to ensure environmental protection. If we finalized a higher minimum size, the result in some cases would be large amounts of aggregate capacity that would not be counted for SPCC purposes, and would therefore be unregulated, posing a threat to the environment. We believe that it is not necessary to apply SPCC or FRP rules requiring measures like secondary containment, inspections, or integrity testing, to containers smaller than 55 gallons storing oil because a discharge from these containers generally poses a smaller risk to the environment. Furthermore, compliance with the rules for these containers could be extremely burdensome for an owner or operator and could upset manufacturing operations, while providing little or no significant increase in protection of human health or the environment. Many of these smaller containers are constantly being emptied, replaced, and relocated so that serious corrosion will likely soon be detected and undetected leaks become highly unlikely. While we realize that small discharges may harm the environment, depending on where and when the discharge occurs, we believe that this measure will allow facilities to concentrate on the prevention and containment of discharges of oil from those sources most likely to present a more significant risk to human health and the environment.

Effect on Facility Response Plan facilities. The exemption for containers of less than 55 gallons applies to the calculations of storage capacity both for SPCC purposes and for FRP purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities might no longer be required to have FRPs. The calculations for planning levels for worst case discharges would also be affected.

Regulatory thresholds. We have decided to raise the current regulatory threshold, as discussed in the 1997 preamble, to an aggregate threshold of over 1,320 gallons. We believe that raising the regulatory threshold is justified because our Survey of Oil Storage Facilities (published in July 1996, and available on our Web site at *www.epa.gov/oilspill*) points to the conclusion that several facility characteristics can affect the chances of a discharge. First, the Survey showed that as the total storage capacity increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Likewise, the Survey also pointed out that as the number of tanks increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Finally, the Survey showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup.

The threshold change will have several benefits. The threshold increase will result in a substantial reduction in information collection associated with the rule overall. Some smaller facilities will no longer have to bear the costs of an SPCC Plan. EPA will be better able to focus its regulatory oversight on facilities that pose a greater likelihood of a discharge as described in § 112.1(b), and a greater potential for injury to the environment if a discharge as described in § 112.1(b) results.

We raise the regulatory threshold realizing that discharges as described in § 112.1(b) from small facilities may be harmful, depending on the surrounding environment. Among the factors remaining to mitigate any potential disasters are that small facilities no longer required to have SPCC Plans are still liable for cleanup costs and damages from discharges as described in § 112.1(b). We encourage those facilities exempted from today's rule to maintain SPCC Plans. Likewise, we encourage facilities becoming operable in the future with storage or use capacity below the regulatory threshold to develop Plans. We believe that SPCC Plans have utility and benefit for both the facility and the environment. But, we will no longer by regulation require Plans from exempted facilities.

While we believe that the Federal oil program is best focused on larger risks, State, local, or tribal governments may still decide that smaller facilities warrant regulation under their own authorities. In accord with this philosophy, we note that this Federal exemption may not relieve all exempted facilities from Plan requirements because some States, local, or tribal governments may still require such facilities to have Plans. While we are aware that some States, local, or tribal governments have laws or policies allowing them to set requirements no more stringent than Federal requirements, we encourage States, local, or tribal governments to maintain or lower regulatory thresholds to include facilities no longer covered by Federal rules where their own laws or policies allow. We believe that CWA section 311(o) authorizes States to establish their own oil spill prevention programs which can be more stringent than EPA's program.

Regulatory safeguard. When a particular facility that is below today's threshold becomes a hazard to the environment because of its practices, or when needed for other reasons to carry out the Clean Water Act, the Regional Administrator may, under a new rule provision, require that facility to prepare and implement an SPCC Plan. See § 112.1(f). This provision acts as a safeguard to an environmental threat from any exempted facility.

Editorial changes and clarifications. The reference to "underground storage tanks" was deleted because it is unnecessary. A reference to the exemption of certain "completely buried" storage tanks from the rules is contained in § 112.1(d)(4).

Section 112.1(d)(3)—Minerals Management Service Facilities

Background. In 1991, EPA proposed to exempt from the SPCC rule facilities subject to Minerals Management Service (MMS) Operating Orders, notices, and regulations. The rationale for the 1991 proposal was to avoid redundancy in regulation, based on EPA's analysis that MMS Operating Orders require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements. Until October 22, 1991, the date of the 1991 proposed rule, responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was delegated to EPA. Under EO 12777 (56 FR 54747, October 22, 1991), responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was redelegated to the U.S. Department of the Interior (DOI). These facilities are generally offshore oil production or exploration facilities.

In 1994, in another Memorandum of Understanding (MOU) found in Appendix B of part 112, EPA, DOI, and DOT redelegated the responsibility to regulate non-transportation-related offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA.

Because of the redelegation of responsibility, some DOI facilities again became subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. We added a reference to the MOU in the rule.

Comments. Most commenters favored the proposed exemption because they believed that MMS orders, notices, and regulations require oil spill prevention and contingency planning equivalent to the environmental protection envisioned by EPA's rules. Two commenters, both States, opposed the proposal. One was concerned with MMS' "historic treatment of identified violations." The other suggested that the more stringent of EPA or MMS regulations apply.

Response to comments. We have retained our original proposal, except for the editorial revision, because we believe that MMS will provide equivalent environmental protection for the facilities under its jurisdiction. MMS regulations require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements.

Editorial changes and clarifications. The term "Operating Orders" becomes "regulations."

Section 112.1(d)(4)—Completely Buried Storage Tanks

Background. This paragraph is a companion paragraph to § 112.1(d)(2)(i) for purposes of SPCC exemption. As in § 112.1(d)(2)(i), we have also exempted connected underground piping, underground ancillary equipment, and containment systems subject to all of the technical requirements of part 280 or a

should be exempted from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. We have therefore amended the rule to reflect that agreement. No longer subject to the rule would be wastewater treatment facilities or parts thereof such as treatment systems at POTWs and industrial facilities treating oily

"petroleum, oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. 40 CFR 403.5(b)(6). EPA believes that the GPR and the more specific categorical pretreatment standards, some of which allow indirect dischargers to adopt a BMP as an alternative way to meet pretreatment standards, will work to

treatment facility is to purify water. Neither an oil production facility, nor an oil recovery or oil recycling facility treats water, instead they treat oil. For purposes of this exemption, produced water is not considered wastewater and treatment of produced water is not considered wastewater treatment. Therefore, a facility which stores, treats, or otherwise uses produced water

and operation and maintenance provisions.

Proposed § 112.1(e)—Facility Notification

Background. In 1991, EPA proposed to require that any facility subject to its jurisdiction under the Clean Water Act which also meets the regulatory storage capacity threshold notify the Agency on a one-time basis of its existence. CWA

wanted copies of the notifications EPA would receive, and at least one suggested requiring updates. One commenter suggested that we gather the information through representative sampling at on-site surveys. Another commenter suggested that we use spill reports already submitted because it makes more sense to regulate those facilities whose practices have led to a spill.

Section 112.1(d)(4)—Completely Buried Storage Tanks

Background. This paragraph is a companion paragraph to § 112.1(d)(2)(i) for purposes of SPCC exemption. As in § 112.1(d)(2)(i), we have also exempted connected underground piping, underground ancillary equipment, and containment systems subject to all of the technical requirements of part 280 or a State program approved under 40 CFR part 281. We also added a clause noting that these exempted tanks must be marked on the facility diagram as provided in § 112.7(a)(3), if the facility is otherwise subject to this part. See the discussion above concerning § 112.1(d)(2)(i).

Editorial changes and clarifications. "Underground storage tanks" becomes "completely buried storage tanks." We also reference 40 CFR part 281.

Section 112.1(d)(5)—Minimum Size Exemption

Background. This is a new section we added in response to comments pertaining to the regulatory threshold/minimum container size issue discussed above. This section clarifies that any aboveground or completely buried container with capacity of less than 55 gallons is not subject to the rule. It is a companion rule to § 112.1(d)(2)(ii) for purposes of SPCC exemption. See the discussion above concerning § 112.1(d)(2)(ii).

Section 112.1(d)(6)—Wastewater Treatment Facility Exemption

Background. In 1991, EPA proposed various changes to § 112.1(d) concerning exemptions to part 112, and received comments on its proposals. Among those comments was one suggesting an exemption for certain treatment systems.

Comments. One commenter suggested that the "§ 112.1 exceptions should be expanded to include facility storage and treatment tanks associated with 'non-contact cooling water systems' and/or 'storm water retention and treatment systems.' Although these tanks are designed to remove spilled oil from manufacturing operations and parking lot runoff, the concentration of oil in the water at any given time would be insignificant. These tanks are typically very large, *i.e.*, in excess of 100,000 gallons, and are typically not contained by diked walls or impervious surfaces. GM believes the cost to contain these structures could be better spent on other SPCC regulatory requirements."

Response to comments. We agree with the commenter that certain wastewater treatment facilities or parts thereof should be exempted from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. We have therefore amended the rule to reflect that agreement. No longer subject to the rule would be wastewater treatment facilities or parts thereof such as treatment systems at POTWs and industrial facilities treating oily wastewater.

Many of these wastewater treatment facilities or parts thereof are subject to NPDES or state-equivalent permitting requirements that involve operating and maintaining the facility to prevent discharges. 40 CFR 122.41(e). The NPDES or state-equivalent process ensures review and approval of the facility's: plans and specifications; operation/maintenance manuals and procedures; and, Stormwater Pollution Prevention Plans, which may include Best Management Practice Plans (BMP).

Many affected facilities are subject to a BMP prepared under an NPDES permit. Some of those plans provide protections equivalent to SPCC Plans. BMPs are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMPs may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. *See* 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMPs as effluent limitations guidelines. NPDES rules provide for BMPs when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA. In addition, each NPDES or state equivalent permit for a wastewater treatment system must contain operation and maintenance requirements to reduce the risk of discharges. 40 CFR 122.41(e).

Additionally, some wastewater is pretreated prior to discharge to a permitted wastewater treatment facility. The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through or interfere with the operation of POTWs. The General Pretreatment Regulations (GPR), which set for the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. The GPR prohibit a user from introducing a pollutant into a POTW which causes pass through or interference. 40 CFR 403.5(a)(1). More specifically, the GPR also prohibit the introduction into of POTW of "petroleum, oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. 40 CFR 403.5(b)(6). EPA believes that the GPR and the more specific categorical pretreatment standards, some of which allow indirect dischargers to adopt a BMP as an alternative way to meet pretreatment standards, will work to prevent the discharge of oil from wastewater treatment systems into navigable waters or adjoining shorelines by way of a POTW.

However, if a wastewater facility or part thereof is used for the purpose of storing oil, then there is no exemption, and its capacity must be counted as part of the storage capacity of the facility. Any oil storage capacity associated with or incidental to these wastewater treatment facilities or parts thereof continues to be subject to part 112. At permitted wastewater treatment facilities, storage capacity includes bulk storage containers, hydraulic equipment associated with the treatment process, containers used to store oil which feed an emergency generator associated with wastewater treatment, and slop tanks or other containers used to store oil resulting from treatment. Some flow through treatment such as oil/water separators have a storage capacity within the treatment unit itself. This storage capacity is subject to the rule. An example of a wastewater treatment unit that functions as storage is a treatment unit that accumulates oil and performs no further treatment, such as a bulk storage container used to separate oil and water mixtures, in which oil is stored in the container after removal of the water in the separation/treatment process.

We do not consider wastewater treatment facilities or parts thereof at an oil production, oil recovery, or oil recycling facility to be wastewater treatment for purposes of this paragraph. These facilities generally lack NPDES or state-equivalent permits and thus lack the protections that such permits provide. Production facilities are normally unmanned and therefore lack constant human oversight and inspection. Produced water generated by the production process normally contains saline water as a contaminant in the oil, which might aggravate environmental conditions in addition to the toxicity of the oil in the case of a discharge.

Additionally, the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil, while eliminating impurities in the oil, including water, whereas the goal of a wastewater

treatment facility is to purify water. Neither an oil production facility, nor an oil recovery or oil recycling facility treats water, instead they treat oil. For purposes of this exemption, produced water is not considered wastewater and treatment of produced water is not considered wastewater treatment. Therefore, a facility which stores, treats, or otherwise uses produced water remains subject to the rule. At oil drilling, oil production, oil recycling, or oil recovery facilities, treatment units subject to the rule include open oil pits or ponds associated with oil production operations, oil/water separators (gun barrels), and heater/treater units. Open oil pits or ponds function as another form of bulk storage container and are not used for wastewater treatment. Open oil pits or ponds also pose numerous environmental risks to birds and other wildlife.

Examples of wastewater treatment facilities or parts thereof used to meet a part 112 requirement include an oil/water separator used to meet any SPCC requirement. Oil/water separators used to meet SPCC requirements include oil/water separators used as general facility secondary containment (*i.e.*, § 112.7(c), secondary containment requirements for loading and unloading (*i.e.*, § 112.7(h)), and for facility drainage (*i.e.*, § 112.8(b) or § 112.9(b)).

Whether a wastewater treatment facility or part thereof is used exclusively for wastewater treatment (i.e., not storage or other use of oil) or used to satisfy a requirement of part 112 will often be a facility specific determination based on the activity associated with the facility or part thereof. Only the portion of the facility (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment and not used to meet any part 112 requirement is exempt from part 112. Storage or use of oil at such a facility will continue to be subject to part 112.

Although we exempt wastewater treatment facilities or parts thereof from the rule under certain circumstances, a mixture of wastewater and oil still is "oil" under the statutory and regulatory definition of the term (33 U.S.C. 1321(a)(1) and 40 CFR 110.2 and 112.2). Thus, while we are excluding from the scope of the rule certain wastewater treatment facilities or parts thereof, a discharge of wastewater containing oil to navigable waters or adjoining shorelines in a "harmful quantity" (40 CFR part 110) is prohibited. Thus, to avoid such discharges, we would expect owners or operators to comply with the applicable permitting requirements, including best management practices and operation and maintenance provisions.

Proposed § 112.1(e)—Facility Notification

Background. In 1991, EPA proposed to require that any facility subject to its jurisdiction under the Clean Water Act which also meets the regulatory storage capacity threshold notify the Agency on a one-time basis of its existence. CWA section 311(m) provides EPA with the authority to require the owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311. Any owner or operator who failed to notify or knowingly submitted false information in a notification would be subject to a civil penalty. This type of notice is separate from the notice required at 40 CFR 110.3 of discharges which may be harmful to the public health or welfare or the environment. We did not propose any changes to the notice requirements in § 110.3.

We proposed that facility notification include, among other items, information concerning the number, size, storage capacity, and locations of ASTs. The proposal would have exempted information regarding the number and size of completely buried tanks, as defined in § 112.2, from the notification requirement. The rationale for notification was that submission of this information would be needed to help us identify our universe of facilities and to help us administer the Oil Pollution Prevention Program by creating a data base of facility-specific information. We also asked for comments regarding the form on which notification would be submitted, and on various possible items of information that could be included besides the ones proposed. Lastly, we asked for comments on alternate forms of facility notification. 56 FR 54614–15.

Comments. Favorable comments. A number of commenters favored the proposal, including some industry commenters. These commenters stated that there was generally no current procedure whereby EPA can identify the universe of sites subject to the SPCC rule, and that an inventory of these facilities is necessary.

Opposing comments. Most industry commenters opposed the proposal either in part or in its entirety.

Sources of information. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports. Some States wanted copies of the notifications EPA would receive, and at least one suggested requiring updates. One commenter suggested that we gather the information through representative sampling at on-site surveys. Another commenter suggested that we use spill reports already submitted because it makes more sense to regulate those facilities whose practices have led to a spill.

Applicability. Other commenters criticized the fact that the proposal would have been applicable to facilities which were not subject to the SPCC rule. Their solution was to limit applicability to facilities currently regulated under part 112.

Terrorism. One commenter suggested that the aggregation of such strategic information in an easily accessed data base like a facility notification data base could provide an intelligence windfall to terrorists and other enemies of our nation.

Small facilities. Commenters for small facilities argued that facility notification would cause a deluge of notifications to be sent to EPA with little or no environmental benefit. Some of these commenters suggested exempting small facilities at various levels of storage capacity, for example, 42,000 gallons or 100,000 gallons.

Notification time line. In particular, commenters questioned various aspects of the proposal. Many questioned the necessity of providing the information within the proposed two months time frame. Some commenters suggested other time periods ranging from "more than two months" to 18 months. However, the bulk of the commenters favored a six month period for facility notification if notification were to be required. Others favored a "phase-in" of the requirements.

Who must notify. Some commenters asked who must notify, the owner or operator. They noted that these might be different persons. One commenter suggested that the operator of the facility, the owner of any improvements at the facility, and the owner of the land at the facility should be required to submit facility notification. The commenter argued that the United States government is the landowner most prejudiced by the absence of a requirement of landowner involvement in the preparation of an SPCC plan because an owner or operator can prepare a minimal SPCC Plan and not even inform the landowner of it.

Location issues. Others questioned the proposed requirement for the name, address, and zip code of the facility, arguing that provision of such information was not always possible,

especially in remote rural areas. Some noted that drilling rigs move from location to location as often as every few months. Commenters suggested alternatives such as use of longitude and latitude, or the Universal Transverse Mercator system, or a mailing address.

Storage capacity. A number of commenters had concerns about the requirement for the total number and size of ASTs, and the total AST capacity

longitude of the facility; location of environmentally sensitive areas and potable water supplies; presence of secondary containment; spill history; leak detection equipment and alarms; age of the tanks; potential for adverse weather; and, for field verification purposes, a requirement to have storage facilities placarded or similarly identified. Most commenters opposed the inclusion of additional items.

impose more stringent standards relating to prevention of oil discharges, or none at all. EPA encourages States to set up their own oil pollution prevention programs because we believe that oil pollution prevention efforts should be a joint Federal-State effort.

Industry standards. Under this rule, a facility is required to at least consider the use of all relevant measures, including the use of industry standards,

Standard to use authority. One commenter favored the proposal and suggested that we look at additional physical characteristics of the facility in order to make a determination to require the owner or operator to prepare an SPCC Plan. Other commenters asserted that the standards for requiring Plans need to be specified, or that "good cause" be the standard.

Response Plans. One commenter

require a partial Plan addressing secondary containment, for example, to prevent future discharges as described in § 112.1(b).

Partial Plans. We clarify that the RA may require partial Plans to cover situations where the preparation of only a partial Plan may be necessary, such as to supplement an existing document other than a Plan or to address a

Section 112.2—Definitions

Background. Definitions proposed in 1993 and 1999, and promulgated in the Facility Response Plan rule of 1994 and 2000 are reprinted in the rule for the convenience of the reader. No substantive changes were made to those definitions and they are not discussed further in this preamble, except where we made editorial changes in today's rule. The discussion for those editorial

especially in remote rural areas. Some noted that drilling rigs move from location to location as often as every few months. Commenters suggested alternatives such as use of longitude and latitude, or the Universal Transverse Mercator system, or a mailing address.

Storage capacity. A number of commenters had concerns about the requirement for the total number and size of ASTs, and the total AST capacity of the facility. Commenters noted that there was no space on the form for containers less than 250 gallons. Other commenters asked if additions to storage capacity would trigger a new notification. Some commenters believed that storage capacity could be measured by SARA Title III information.

Distance to navigable waters. The proposed requirement to detail the distance to the nearest navigable water elicited many comments. Some commenters noted that there was no definition of navigable waters on the form, making it difficult for some responders to answer the question. Others asserted that making the determination on distance to navigable waters was a difficult one due to litigation concerning the definition of the term. Yet other commenters thought that we should specify a minimum distance to navigable waters, on the theory that only facilities within a certain distance would have a reasonable possibility of discharge to such waters.

Classification of facilities. One commenter noted that exploration and production facilities rarely have Dun & Bradstreet numbers, and that the information received from Dun & Bradstreet might be irrelevant for our purposes. Regarding the reporting of Standard Industrial Classification codes (SIC) (now replaced by North American Industry Classification System (NAICS) codes), commenters asserted that EPA used inaccurate codes, that no codes were listed for edible oil facilities, and that the codes listed were misleading in that they did not cover all possible industries regulated.

Use of oil. Permanently closed containers. Facilities using primarily oil-filled equipment, not bulk storage containers, asked whether they too were covered by the notification proposal. Other commenters asked for clarification as to whether permanently closed tanks were covered by the proposal.

Possible additional items. There were numerous comments on various additional items for which EPA had requested comment, but which were not included in the proposal. Possible additional items included: latitude and longitude of the facility; location of environmentally sensitive areas and potable water supplies; presence of secondary containment; spill history; leak detection equipment and alarms; age of the tanks; potential for adverse weather; and, for field verification purposes, a requirement to have storage facilities placarded or similarly identified. Most commenters opposed the inclusion of additional items. Several supported these additions as well as the addition of other information, particularly information concerning tank materials, methods of construction (for example, field-or shop-erected) and substance stored.

Response to comments. Withdrawal of proposal. We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

Section 112.1(e)—Proposed as § 112.1(f)—Compliance With Other Laws

Background. While today's rule is substantially similar to the current one, EPA suggested in the 1991 preamble that facility owners consider industry standards in preparing SPCC Plans. 56 FR 54617.

Comments. State rules. Several States wrote to ask EPA to be as consistent with current State rules as possible. One industry commenter complained that EPA rules were more stringent than some State rules. Other industry commenters opposed either State or Federal regulation, or both.

Industry standards. Several commenters wrote to urge that EPA incorporate industry standards into the rule, on the theory that if EPA wants to require these standards, they must be incorporated into the rule. Others wrote to urge the inclusion of specific standards, such as fire codes or steel tank codes.

Response to comments. State rules. Section 311(o)(2) of the CWA specifically provides that nothing in section 311 "shall be construed as preempting any State or political subdivision thereof from imposing any requirements or liability with respect to the discharge of oil * * *." We are aware that Federal rules often set the standard for State rules, and at least set a floor for State rules. Under CWA section 311(o)(2), States are free to impose more stringent standards relating to prevention of oil discharges, or none at all. EPA encourages States to set up their own oil pollution prevention programs because we believe that oil pollution prevention efforts should be a joint Federal-State effort.

Industry standards. Under this rule, a facility is required to at least consider the use of all relevant measures, including the use of industry standards, as a way to implement those measures. The requirement comes in the language of revised § 112.3(d)(1)(iii) requiring the PE to attest that "the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part." A facility should use industry standards whenever possible in preparing and implementing its SPCC Plan, and should discuss their use in Plans. While facility owners or operators should look to specific industry standards as a guide for preparing SPCC Plans, we do not believe that incorporating specific standards into this rule is appropriate. Such incorporation freezes standards into rules, which may swiftly become outdated or obsolete.

Editorial changes and clarifications. The new introductory language is, "This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans." The new language covers all SPCC requirements, both general and specific. That language replaces "This part provides for * * *." The phrase "Plans prepared in accordance with §§ 112.7, 112.8, 112.9, 112.10, and 112.11" was eliminated because new introductory language makes it unnecessary.

Section 112.1(f)—Proposed as § 112.1(g)—Plans for Exempted Facilities

Background. This is a new section, proposed in 1993, that allows the Regional Administrators (RAs) to require preparation of entire an SPCC Plan, or applicable part, by the owner or operator of an otherwise exempted facility, that is subject to the jurisdiction of EPA under section 311(j) of the CWA. The proposal stems from the 1988 Interagency SPCC Task Force and subsequent GAO report, "Inland Oil Spills" (GAO/RCED–89–65).

Comments. Authority. One commenter called the proposal "arbitrary and capricious" and feared political use of the authority. Some commenters questioned EPA authority for the proposal.

Standard to use authority. One commenter favored the proposal and suggested that we look at additional physical characteristics of the facility in order to make a determination to require the owner or operator to prepare an SPCC Plan. Other commenters asserted that the standards for requiring Plans need to be specified, or that "good cause" be the standard.

Response Plans. One commenter urged a "vastly abbreviated" version of this section in the event that the Regional Administrator requires a small Appalachian facility to prepare a facility response plan in addition to an SPCC Plan, because the "extensive requirements outlined in the appendices and attachments have little applicability" to a small Appalachian oil field storage facility. The commenter added that the availability of secondary containment at most Appalachian facilities mitigates many of the requirements of the complete response plan which is directed towards large oil storage tanks.

Appeals process. Other commenters called for an appeals process, and specification of time frames within which the RA must act.

Response to comments. Authority. EPA believes that it has adequate authority under section 311 of the CWA to require any facility within its jurisdiction to prepare a Plan that could because of its location, cause a discharge as described in § 112.1(b). This authority is broad enough to encompass the storage or use capacity of any exempted facility within EPA's jurisdiction, regardless of size.

Standard to use authority. RAs may invoke this section to carry out the purposes of the Act on a case-specific basis when it is needed to prevent a discharge as described in § 112.1(b), and thus protect the environment. While we expect to use this section sparingly, it is necessary to address gaps in other regulatory regimes that might best be remedied by requiring a facility to have an SPCC Plan. Factors the RAs may consider in making a determination that a facility needs an SPCC Plan include, but are not limited to, the physical characteristics of the facility, the presence of secondary containment, the discharge history of the facility, and the proximity of the facility to sensitive environmental areas such as wetlands, parks, or wildlife refuges. An example of the use of this section might be when a facility is exempted from SPCC rules because its storage capacity is below the regulatory threshold, but the facility has been the cause of repeated discharges as described in § 112.1(b). The RA might require an entire Plan, or might only require a partial Plan addressing secondary containment, for example, to prevent future discharges as described in § 112.1(b).

Partial Plans. We clarify that the RA may require partial Plans to cover situations where the preparation of only a partial Plan may be necessary, such as to supplement an existing document other than a Plan or to address a particular environmental threat. The decision to require a Plan (or partial Plan) could be based on the presence of environmental concerns not adequately addressed under UST or NPDES regulations, or due to other relevant environmental factors. The section may be invoked when the RA determines it is necessary to "carry out the purposes of the Act."

The decision to require a partial Plan is separate from a decision to require an amendment to a Plan. In one case, the assumption is that a Plan doesn't exist; in the other, that an existing Plan needs amendment.

Response Plans. Section 112.1(f) applies only to the total or partial preparation of an SPCC Plan. It does not authorize the Regional Administrator to require you to prepare a facility response plan. We have withdrawn a proposal (see 1993 proposed § 112.7(d)(1)) which would have required you to prepare a response plan when your SPCC facility lacked secondary containment. Therefore, most facilities will incur no response planning costs. Instead, if your facility lacks secondary containment, you must prepare a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). As a result, requirements to prepare a facility response plan are contained solely in § 112.20, and not § 112.1(f).

Appeals process. We agree that an appeals process is appropriate for this section. Therefore we have added a new paragraph (f)(5) to include such a process, and have provided time frames for the process. The appeals process is modeled upon current § 112.4(f), which we reproposed in 1991 and have finalized today.

Editorial changes and clarifications. We deleted the proposed requirement to "submit" a Plan in paragraph (f)(2), because we only require submission of Plans in certain circumstances, such as when there has been a discharge(s) as described in § 112.1(b) over the threshold amount provided for in § 112.4(a), and the RA believes that submission of the Plan is necessary. We do not require Plan submission as a general rule.

Section 112.2—Definitions

Background. Definitions proposed in 1993 and 1999, and promulgated in the Facility Response Plan rule of 1994 and 2000 are reprinted in the rule for the convenience of the reader. No substantive changes were made to those definitions and they are not discussed further in this preamble, except where we made editorial changes in today's rule. The discussion for those editorial changes, and for proposed definitions that were not already finalized in the 1994 and 2000 FRP rule, follows.

Adverse Weather

Editorial changes and clarifications. We have made slight editorial changes to this definition, none of which are substantive. In the first sentence, the phrase "will be considered" becomes "must be considered." In the second sentence, the phrase "as appropriate" is placed in parentheses.

Alteration

Background. In 1993, we proposed a definition of "alteration" in conjunction with the proposed rule for ensuring against brittle fracture. We proposed the definition of "alteration" to mean "any work on a tank or related equipment involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of a tank."

Comments. One commenter suggested that we conform the proposed definition of "alteration" with the API 653 definition, specifically deleting the phase "or related equipment."

Response to comments. Related equipment. We agree with the commenter and will not include the term "or related equipment" in the definition to conform with API Standard 653, which does not include alterations of related equipment as a criterion for brittle fracture evaluation. In the preamble to the 1993 proposal, we gave examples of alteration that included the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height. 58 FR 8843.

Industry Standards. An industry standard that may be helpful in understanding the definition of "alteration" is API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Editorial changes and clarifications. "Tank" becomes "container."

Breakout tank

Background. We proposed this definition and the definition of "bulk storage tank" in 1991 to clarify the distinction between facilities regulated

by DOT and EPA. Breakout tanks are used mainly to compensate for pressure surges or to control and maintain pressure through pipelines. They are also sometimes used for bulk storage. These tanks are frequently in-line, and may be regulated by EPA, DOT, or both. When a breakout tank is used for both storage and for pipeline control, it becomes in itself a "complex," and is

exclude electrical equipment from the definition because such equipment is not bulk storage. Other commenters asked for a minimum size to which the definition should apply.

Response to comments. We agree that electrical equipment is not bulk storage. See the above discussion on the applicability of the rule to electrical and other operating equipment under

Completely Buried Tank—Proposed as "Underground Storage Tank"

Background. In 1991, we proposed adding a definition for "underground storage tank." It differed from the Underground Storage Tank (UST) program definition in 40 CFR part 280 because it excluded tanks which are partially buried or bunkered, as well as some other tanks or containers included

facilities with relatively large completely buried storage capacity, while the bulk of facilities regulated under part 280 are small capacity facilities such as gasoline filling stations. The SPCC program also regulates other types of containers and facilities which part 280 excludes, such as: tanks used for storing heating oil for consumptive use on the premises where

accord with the coverings noted in the definition of "bunkered tank." In the second sentence, the word "subterranean" was deleted from "subterranean vaults" because all vaulted tanks, whether subterranean or aboveground, are counted as aboveground tanks for purposes of this rule.

Contiguous Zone

(NPDES) discharges. The rationale was that any potential environmental impacts of these discharges have been considered in the issuance of a facility's NPDES permit and there is no reason to subject such facilities to dual regulation.

Response to comments. A discharge includes, but is not limited to, any "spilling, leaking, pumping, pouring, emitting, emptying, or dumping," of oil. A discharge as described in § 112.1(b)

by DOT and EPA. Breakout tanks are used mainly to compensate for pressure surges or to control and maintain pressure through pipelines. They are also sometimes used for bulk storage. These tanks are frequently in-line, and may be regulated by EPA, DOT, or both. When a breakout tank is used for both storage and for pipeline control, it becomes in itself a "complex," and is regulated as such. See the discussion on "complexes" in today's preamble at § 112.1(d)(1)(ii).

Comments. A number of commenters suggested that EPA adopt the DOT definition of breakout tank. Another commenter asked for guidance as to which agency, DOT or EPA, regulates such tanks.

Response to comments. On the suggestion of commenters, EPA has adopted a modified version of the DOT definition in 49 CFR 195.2. This revision promotes consistency in the DOT and EPA definitions to aid the regulators and regulated community. We modified the DOT definition by substituting the word "oil" for "hazardous liquid," because our rules apply only to oil. We also use in the definition the term "container" rather than just "tank" to cover any type of container. This terminology is consistent with other terminology used in this rule.

A breakout tank that is used only to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline is subject only to DOT jurisdiction. When that same breakout tank is used for other purposes, such as a process tank or as a bulk storage container, it is no longer solely within the definition of breakout tank, and may be subject to EPA or other jurisdiction with the new use.

EPA and DOT also signed a joint memorandum dated February 4, 2000, clarifying regulatory jurisdiction on breakout tanks. That memorandum is available to the public upon request. It is also available on our Web site at *http://www.epa.gov/oilspill* under the "What's New" section.

Bulk Storage Container—Formerly Bulk Storage Tank

Background. Along with "breakout tank," we proposed this definition in 1991 to help clarify the distinctions between facilities regulated by EPA and those regulated by DOT. The proposed definition was originally for "bulk storage tank." As explained below, we changed the definition to "bulk storage container."

Comments. Many electric utility commenters urged that EPA explicitly exclude electrical equipment from the definition because such equipment is not bulk storage. Other commenters asked for a minimum size to which the definition should apply.

Response to comments. We agree that electrical equipment is not bulk storage. See the above discussion on the applicability of the rule to electrical and other operating equipment under § 112.1(b). See also the definition of "bulk storage container" in § 112.2. For a discussion of minimum size containers to which the rule applies, see the discussion under § 112.1(d)(2)(ii).

Editorial changes and clarifications. "Tank" becomes "container" because "container" is more accurate. Many containers storing oil are not tanks, but provide bulk storage. A bulk storage container may be either aboveground, partially buried, bunkered, or completely buried.

The definition of "bulk storage container" adopted in today's rule should not be confused with the definitions of "container" used in several fire codes. Sometimes those codes limit a container to one below a certain size. See for example, the BOCA National Fire Prevention Code, section F–2302.1 (1999) and NFPA 30 section 1–6 (1996). The definition adopted in today's rule is broader than the definitions in the codes in that it is not limited to a particular amount of storage capacity.

We also clarify in today's rule that oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

Bunkered Tank

Background. We proposed this definition in 1991 to clarify that bunkered tanks are a subset of partially buried tanks, and as such, subject to part 112 as aboveground tanks.

Comments. One commenter wrote that the definition is "undecipherable and should be rewritten." The commenter wrote that the definition should be, "Bunkered tank means a partially buried tank, the portion of which lies above grade is covered with earth, sand, gravel, asphalt, or other material."

Response to comments. EPA agrees that the commenter's proposed definition is clearer, and we have used it with slight editorial changes.

Editorial changes and clarifications. We added a sentence to the definition noting that bunkered tanks are a subset of aboveground storage containers for purposes of this part.

Completely Buried Tank—Proposed as "Underground Storage Tank"

Background. In 1991, we proposed adding a definition for "underground storage tank." It differed from the Underground Storage Tank (UST) program definition in 40 CFR part 280 because it excluded tanks which are partially buried or bunkered, as well as some other tanks or containers included within the part 280 definition, such as containers storing certain hazardous substances. Partially buried and bunkered tanks still have a potential to discharge oil into navigable waters, adjoining shorelines, or affecting natural resources. Therefore, we proposed to retain those tanks within our regulatory jurisdiction, while we proposed to exclude all completely buried tanks storing petroleum that are subject to all of the technical requirements of the UST program (40 CFR part 280 or a State program approved under 40 CFR part 281).

Comments. Consistency with the definition of underground tanks in 40 CFR part 280. One commenter supported the proposal. A number of commenters thought that the definitions of underground tanks in parts 112 and 280 should be consistent.

Vaulted tanks. Commenters divided on whether subterranean vaulted tanks should be considered ASTs or USTs. The commenter opposing the treatment of subterranean vaulted tanks as ASTs in the UST definition argued that discharges from those tanks pose no threat to the environment or public health.

Response to comments. Consistency with the definition of underground tanks in 40 CFR part 280. We disagree that the scope of the part 112 exclusion for underground tanks should be consistent with the scope of the definition of "underground storage tank" in part 280. The programs are designed for different purposes, therefore, the definitions used will necessarily differ. To eliminate confusion with the part 280 definition, we have changed the proposed part 112 definition of "underground storage tank" to "completely buried tank" in this final rule.

Part 280 includes within its UST definition tanks which have a volume up to ninety percent above the surface of the ground, which are considered aboveground tanks for part 112 purposes. Part 280 also regulates underground storage tanks containing hazardous substances, while the SPCC program regulates only facilities storing or using oil as defined in CWA section 311. The SPCC program regulates facilities with relatively large completely buried storage capacity, while the bulk of facilities regulated under part 280 are small capacity facilities such as gasoline filling stations. The SPCC program also regulates other types of containers and facilities which part 280 excludes, such as: tanks used for storing heating oil for consumptive use on the premises where stored; certain pipeline complexes where oil is stored; and, oil-water separators.

Vaulted tanks. Aboveground vaulted tanks are clearly ASTs. While subterranean vaulted tanks may be completely below grade, they may not be completely covered with earth. Because of their design, they pose a threat of discharge into the environment, and are thus excluded from our definition of completely buried tank. Subterranean vaulted tanks are also excluded from the part 280 UST definition of underground tank if the storage tank is situated upon or above the surface of the floor in an underground are providing enough space for physical inspection of the exterior of the tank. Therefore, if subterranean tanks were excluded from our definition of completely buried tank, they would likely not be regulated at all, and thereby be likely to pose a greater threat to the environment.

Other completely buried tanks excluded from the part 280 UST definition. Tanks in underground rooms or above the floor surface, or in other underground areas such as basements, cellars, mine workings, drifts, shafts, or tunnels are also not considered USTs for purposes of the part 280 definition. The purpose of the part 112 definition is to clarify that these are tanks that are technically underground but that, in a practical sense, are no different from aboveground tanks. They are situated so that, to the same extent as tanks aboveground, physical inspection for leaks is possible. Also, some of these tanks are designed such that in case of a discharge, oil would escape to navigable waters or adjoining shorelines, a result which our program seeks to prevent.

Editorial changes and clarifications. The words "completely below grade and * * *" were added to the first sentence of the definition. The purpose of that revision was to distinguish completely buried tanks from partially buried and bunkered tanks, which break the grade of the land, but are not completely below grade. We further clarify that such tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into accord with the coverings noted in the definition of "bunkered tank." In the second sentence, the word "subterranean" was deleted from "subterranean vaults" because all vaulted tanks, whether subterranean or aboveground, are counted as aboveground tanks for purposes of this rule.

Contiguous Zone

Background. The definition of "contiguous zone" was proposed in 1991 to conform with 1978 amendments to the CWA, and the 1990 amendments to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) dealing with the scope of discharges. EPA received no substantive comments. Thus, we have finalized the proposed definition.

The contiguous zone is the area that extends nine miles seaward from the outer limit of the territorial sea. A presidential proclamation of December 17, 1988 (No. 5928, 54 FR 777, January 9, 1989) extended the territorial seas of the United States to 12 nautical miles from the baselines of the United States as determined in accordance with international law. However, the proclamation provided that nothing therein "extends or otherwise alters existing federal or state law or any jurisdiction, rights, legal interests, or obligations derived therefrom * * *."

Contract or Other Approved Means

Editorial changes and clarifications. We corrected the title of the definition to read "contract or other approved means," in place of "contract or other approved." We also changed some plural references to singular ones.

Discharge

Background. The 1991 proposed changes to the definition of "discharge" reflected changes to the statutory definition in the 1978 amendments to the CWA. For clarity, the words "of oil" were added in the first sentence because the definition applies only to discharges of oil.

Comments. One commenter asked for a clarification of the term "discharge." The commenter asked whether a drop of diesel fuel that fell onto the outside casing of a tank during refilling would be considered a "discharge," even if the oil did not reach the ground. Other commenters recommended that the definition include at least an imminent danger that the spilled material would reach a navigable waterway. Another commenter asked EPA to exempt from the definition those discharges regulated under the CWA, such as National Pollutant Discharge Elimination System (NPDES) discharges. The rationale was that any potential environmental impacts of these discharges have been considered in the issuance of a facility's NPDES permit and there is no reason to subject such facilities to dual regulation.

Response to comments. A discharge includes, but is not limited to, any "spilling, leaking, pumping, pouring, emitting, emptying, or dumping," of oil. A discharge as described in § 112.1(b) need not reach the level of an imminent danger to affected lands, waters, or resources to be a discharge. It includes any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any amount of oil no matter where it occurs. It may not be a reportable discharge under 40 CFR part 110 if oil never escapes the secondary containment at the facility and is promptly cleaned up. If the discharge escapes secondary containment, it may become a discharge as described in § 112.1(b), and if that happens, the discharge must then be reported to the National Response Center.

Foreseeable or chronic point source discharges that are permitted under section 402 of the CWA, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of the treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. Other oil discharges in reportable quantities are subject to the requirements of section 311 of the CWA. Such spills or discharges are governed by section 311 even where the discharger holds a valid and effective NPDES permit under CWA section 402. Therefore, a discharge of oil to a publicly owned treatment work (POTW) would not be a discharge under the § 112.2 definition if the discharge is in compliance with the provisions of the permit; or resulted from a circumstance identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402; or if it were a continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402, which is caused by events occurring within the scope of relevant operating or treatment systems. 33 U.S.C. 1321(a)(2); 40 CFR 117.12. Otherwise, the discharge is subject to the provisions of section 311 of the CWA as well as the unpermitted discharge prohibition of section 301(a) of the CWA. 33 U.S.C. 1311(a).

Editorial changes and clarifications. We have revised the citation for the River and Harbor Act of 1899 so that it refers only to the U.S. Code, and have

deleted the reference to the Statutes at Large.

Facility

Background. Because we regulate facilities in the SPCC rule, we proposed a definition of "facility" in 1991. It is based on the Memorandum of Understanding (MOU) between the Secretary of DOT and the EPA

types of activities being carried on at the facility.

Electrical or operational equipment. We disagree with commenters who maintained that electrical equipment "using" oil as opposed to "storing" it should not fall within the definition of "facility" in part 112. Section 311(j)(1)(C) of the CWA, which authorizes EPA to promulgate the SPCC

practice, double-walled piping is the appropriate method of secondary containment according to good engineering practice. In determining whether to install double-walled piping versus an alternative method of secondary containment, you could consider such factors as the additional effectiveness of double-walled piping in preventing discharges, the technical aspects of cathodically protecting any

Navigable Waters

Background. We proposed a revision of the definition of "navigable waters" in 1991. The rationale was to have the part 112 definition track the definition of "navigable waters" in 40 CFR part 110, which deals with the discharge of oil.

Comments. Clarification of the meaning of navigable waters, maps. A

different purposes, and merely because an activity or function is regulated for one purpose (for example, NPDES) does not mean that regulation for another purpose is redundant. The purpose of a permit discharge system is waste treatment and management. The purpose of the SPCC rule is oil pollution prevention.

Offshore Facility

(3) other non-petroleum oils and greases. Animal fats include fats, oils, and greases of animal origin (for example, lard and tallow), fish (for example, cod liver oil), or marine mammal origin (for example, whale oil). Vegetable oils include oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Examples of vegetable oils include: corn oil, rapeseed oil, coconut oil, palm oil, soy

deleted the reference to the Statutes at Large.

Facility

Background. Because we regulate facilities in the SPCC rule, we proposed a definition of "facility" in 1991. It is based on the Memorandum of Understanding (MOU) between the Secretary of DOT and the EPA Administrator, dated November 24, 1971 (36 FR 24080). A discussion of the types of facilities covered is found in Appendix A to this rule.

Comments. Facility boundaries. One commenter asked for clarification as to whether the facility is the petroleum storage site or a single tank at the site.

Electrical or operational equipment. Utility commenters argued that electrical equipment is not a facility because no oil is being stored in the equipment.

Buried pipelines, gathering lines, flowlines, waste treatment equipment. One commenter urged that buried pipelines at mining sites should be excluded from the definition because such pipelines are often put in place without recording their location. The commenter added that typically the lines are emptied and abandoned as part of final reclamation. Other commenters urged the exclusion of gathering lines and flowlines from the definition because of the cost of providing secondary containment and contingency planning for such lines. Another commenter protested the inclusion of waste treatment as a possible activity covered under the definition, and therefore the rule.

Mobile or fixed facilities. One commenter urged that mobile equipment be excluded from the definition because the commenter believed that the SPCC Plan would otherwise have to be amended each time the mobile equipment is moved.

Response to Comments. Facility boundaries. A facility includes any building, structure, installation, equipment, pipe or pipeline in oil well drilling operations, oil production, oil refining, oil storage, and waste treatment, or in which oil is used at a site, whether it is mobile or fixed. It may also include power rights of way connected to the facility. The extent of the facility will vary according to the circumstances of the site. It may be as small as a single container or as large as all of the structures and buildings on a site. Some specific factors to use in determining the extent of a facility may be the ownership or operation of those buildings, structures, equipment, installations, pipes or pipelines, or the types of activities being carried on at the facility.

Electrical or operational equipment. We disagree with commenters who maintained that electrical equipment "using" oil as opposed to "storing" it should not fall within the definition of "facility" in part 112. Section 311(j)(1)(C) of the CWA, which authorizes EPA to promulgate the SPCC rule, does not distinguish between the storage and the usage of oil. The section simply authorizes EPA, as delegated by the President, to establish "requirements to prevent discharges of oil * * * from onshore and offshore facilities, and to contain such discharges * * *." 33 U.S.C. 1321(j)(1)(C). Nor do the definitions of "onshore facility" or "offshore facility" in sections 311(a)(10) of the CWA distinguish between the use or storage of oil. Although the definition of "facility" in section 1001(9) of the OPA is limited by the "purpose" of the facility, no such limitation appears in CWA section 311. Moreover, EPA believes that although much of the electrical equipment may arguably "use" oil, in effect the oil is "stored" in the equipment because it remains in the equipment for such long time frames. We added language to the definition to clarify that such types of equipment are facilities subject to the SPCC rule whether they are storing or using oil. Therefore, we revised the definition to include the words "or in which oil is used." However, we note that a facility which contains only electrical equipment is not a bulk storage facility.

Buried pipelines, gathering lines, flowlines, waste treatment equipment. Buried pipelines that carry oil at mining sites are part of a facility unless they are permanently closed as defined in § 112.2. Such pipelines may otherwise be the source of a discharge as described in § 112.1(b). Likewise, the same rationale applies to gathering lines and flowlines, and waste treatment equipment. Note that any facility or part thereof used exclusively for wastewater treatment and not to satisfy any part 112 requirement is exempted from the rule. The production, recovery, or recycling of oil is not considered wastewater treatment for purposes of the rule. *See* § 112.1(d)(6).

While such gathering lines, flowlines, and waste treatment equipment are subject to secondary containment requirements, the appropriate method of secondary containment is an engineering question. Double-walled piping may be an option, but is not required by these rules. The owner or operator and Professional Engineer certifying the Plan should consider whether pursuant to good engineering practice, double-walled piping is the appropriate method of secondary containment according to good engineering practice. In determining whether to install double-walled piping versus an alternative method of secondary containment, you could consider such factors as the additional effectiveness of double-walled piping in preventing discharges, the technical aspects of cathodically protecting any buried double-walled piping system, the cost of installing double-walled pipe, and the potential fire and safety hazards of double-walled pipes. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in § 112.1(b), including containment that prevents discharge of oil through groundwater that might cause a discharge as described in § 112.1(b). What is practical for one facility, however, might not work for another.

Mobile or fixed facilities. Either mobile or fixed equipment might be the source of a discharge as described in § 112.1(b), and therefore both are included within the definition of "facility." Section 112.3(c) of this rule already provides that it is not necessary to amend your Plan each time a mobile facility moves to a new site.

Editorial changes and clarifications. In the first sentence we added the words "oil gathering, oil processing, oil transfer, oil distribution" to the list of activities listed. The added activities track the activities listed in § 112.1(b). We also clarify that a vessel or a public vessel is not a facility or part of a facility. We deleted the word "may" in the second sentence of the definition regarding site-specific factors of facility boundaries, because it is redundant with the inclusion of the words, "including, but not limited to."

Fish and Wildlife and Sensitive Environments

Editorial changes and clarifications. We made four editorial changes. We deleted the word "either" in the first sentence because it is unnecessary. "Endangered/threatened species" becomes "endangered or threatened species." We also deleted the colon in the last sentence because it is unnecessary. "Discharges of oil" becomes "discharges."

Maximum Extent Practicable

Editorial changes and clarifications. In the first sentence the phrase "the limitations used to determine" becomes "within the limitations used to determine." In the beginning of second sentence, "It considers * * *." becomes "It includes* * *."

Navigable Waters

Background. We proposed a revision of the definition of "navigable waters" in 1991. The rationale was to have the part 112 definition track the definition of "navigable waters" in 40 CFR part 110, which deals with the discharge of oil.

Comments. Clarification of the meaning of navigable waters, maps. A number of commenters asked for a clarification of the definition of navigable waters because of the difficulty of determining which waters fall within the definition. Some asked for EPA maps to aid in this determination.

Navigability, legal authority. Other commenters believed that the definition related to navigability. Some thought the definition was legally unsupportable because it is so broad. One commenter suggested that the term be limited to unobstructed streams that free flow at least fourteen consecutive days per year.

Wetlands. Another commenter believed that the definition should not apply to wetlands because SPCC protections are not needed when wetlands are regulated under a permit program.

Response to comments. Clarification of the meaning of navigable waters, maps. In this definition, we clarify what we mean by navigable waters by describing the characteristics of navigable waters and by listing examples of navigable waters. We also note in the definition that certain waste treatment systems are not navigable waters.

We are unable to provide a map to identify all navigable waters because not all such waters have been identified on a map. However, the rule provides guidelines as to where such waters may be found.

Navigability, legal authority. Navigable waters are not only waters on which a craft may be sailed. Navigable waters include all waters with a past, present, or possible future use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide. Navigable waters also include intrastate waters which could affect interstate or foreign commerce. The case law supports a broad definition of navigable waters, such as the one published today, and that definition does not necessarily depend on navigability in fact.

Wetlands. We disagree that SPCC regulation of wetlands is redundant. The definition includes wetlands, as defined in § 112.2 and discussed below, because wetlands are waters of the United States. Different programs serve different purposes, and merely because an activity or function is regulated for one purpose (for example, NPDES) does not mean that regulation for another purpose is redundant. The purpose of a permit discharge system is waste treatment and management. The purpose of the SPCC rule is oil pollution prevention.

Offshore Facility

Background. EPA proposed in 1991 to revise the definition of "offshore facility" to conform with the CWA and NCP definitions.

Comments. EPA or DOI jurisdiction. One commenter noted that if the definition of offshore facility is taken in context with the definition of navigable waters, then many facilities traditionally subject to EPA jurisdiction would become subject to DOI authority.

CWA definition. Another commenter suggested that the EPA definition should instead be that contained in CWA section 311(a)(11).

Response to comments. EPA or DOI jurisdiction. The 1994 Memorandum of Understanding between DOI, DOT, and EPA addresses the jurisdictional issue to which the commenter refers, transferring to EPA those non-transportation-related offshore facilities landward of the coastline.

CWA definition. EPA agrees with the commenter urging that the EPA definition track the statutory definition. The part 112 definition, except for minor editorial changes, is identical to the CWA definition. There is no difference between the substance of the part 112 definition and the CWA definition.

Editorial changes and clarifications. Permanently moored vessels and other former transportation equipment. We also note that barges which store oil, and have been determined by the Coast Guard to be permanently moored, are no longer vessels, but storage containers that are part of an offshore facility. Likewise, a container, whether onshore or offshore, which was formerly used for transportation, such as a truck or railroad car, which now is used to store oil, is no longer used for a transportation purpose, and is a bulk storage container.

Oil

Background. In 1991, EPA reprinted the definition of oil without suggesting any changes. In response to Edible Oil Regulatory Reform Act (EORRA) of 1995 (33 U.S.C. 2720) requirements, we have reworded the definition to include the categories of oil included in EORRA. Those categories are: (1) Petroleum oils, (2) animal fats and vegetable oils; and, (3) other non-petroleum oils and greases. Animal fats include fats, oils, and greases of animal origin (for example, lard and tallow), fish (for example, cod liver oil), or marine mammal origin (for example, whale oil). Vegetable oils include oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Examples of vegetable oils include: corn oil, rapeseed oil, coconut oil, palm oil, soy bean oil, sunflower seed oil, cottonseed oil, and peanut oil. Other non-petroleum oils and greases include coal tar, creosote, silicon fluids, pine oil, turpentine, and tall oils. Petroleum oils include crude and refined petroleum products, asphalt, gasoline, fuel oils, mineral oils, naphtha, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

EORRA requires that Federal agencies establish separate classes for at least these three types of oils. It further requires agencies to differentiate between those classes of oil in relation to their environmental effects, and their physical, chemical, biological, and other characteristics. EPA has provided new subparts within part 112 to facilitate differentiation between the categories of oil listed in EORRA. In an advance notice of proposed rulemaking, published on April 8, 1999 (64 FR 17227), we requested ideas on how to differentiate among the SPCC requirements for facilities storing or using the various categories of oil. These ideas for further differentiation will be considered in a future rulemaking.

Today's amendments to the definition and the creation of subparts have no effect on information collection, because we already include all types of oil in our information collection burden calculations. Similarly, the definition imposes no new requirements, because all oils have always been subject to the substantive requirements of the rule.

Comments. What is oil. Several commenters favored the proposed 1991 definition, which is identical to the current definition. Some asked for clarification as to its scope, particularly in reference to animal and vegetable oils, synthetic oils, mineral oils, and petroleum derivatives.

Specific substances. Others asked about specific substances like aromatic hydrocarbons and asphaltic cement. One commenter asked if bilge water is oil.

Authority. Some commenters suggested that EPA's authority did not extend beyond petroleum-based oils.

Exclusions. Some commenters sought exclusions from the definition, generally based on contentions that certain oils (such as vegetable oils) are not harmful

to the environment if discharged. One commenter suggested a definition based on the liquidity of oil, founded on a rationale that solid or gaseous oils do not pose a threat to waters of the United States when discharged at a fixed facility. Another commenter urged that we exempt refined petroleum products from the definition because releases from many of these products are

facilities storing or using different types of oil.

Exclusions. While States may choose to regulate all oils or some oils, the CWA definition is designed to prevent the discharge of all oils.

A definition based on liquidity would exclude solid oils, such as certain animal fats, a result that would be inconsistent with Congressional intent.

Oils can foul shorelines and beaches. Oil discharges can create rancid odors. Rancid odors may cause both health impacts and environmental impacts. For example, the 1991 Wisconsin Butter Fire and Spill resulted in a discharge of melted butter and lard. After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous

related. There were no substantive comments.

Partially Buried Tank

Background. In 1991, EPA proposed the definition of "partially buried tank" to clarify the distinction between partially buried tanks and underground storage tanks. We have renamed underground tanks in this rule as "completely buried tanks," i.e., those

which are no longer capable of storing or using oil.

In permanently closed containers and facilities, physical changes have been made so that storage capacity or use is rendered impossible. Therefore, the definition describes those changes which must have occurred before a container or facility is "permanently closed."

Comments. In general. Several

container is permanently closed and no longer used for the storage of oil. Containers that are only closed temporarily may be returned to storage purposes and thus may present a threat of discharge. Therefore, they will continue to be subject to the rule.

Waste disposal. Reference to waste disposal in accordance with Federal and State rules in proposed § 112.2(o)(1) was

to the environment if discharged. One commenter suggested a definition based on the liquidity of oil, founded on a rationale that solid or gaseous oils do not pose a threat to waters of the United States when discharged at a fixed facility. Another commenter urged that we exempt refined petroleum products from the definition because releases from many of these products are regulated by other statutes, such as the Solid Waste Disposal Act. One State commenter noted that animal and vegetable oils are not subject to regulation under that State's statutes regulating oil.

Oil mixed with wastes or hazardous substances. Others asked for clarification as to whether mixed substances, used oil, and waste oils were oil.

Part 280 definition. One commenter noted the difference in definitions between the part 112 definition and the definition in 40 CFR part 280.

Response to comments. What is oil. EPA interprets the definition of oil to include all types of oil, in whatever form, solid or liquid. That includes synthetic oils, mineral oils, vegetable oils, animal fats, petroleum derivatives, etc.

Specific substances. As to certain specific substances, asphaltic cement is oil because it is a petroleum-based product and exhibits oil-like characteristics. A discharge of asphaltic cement may violate applicable water quality standards, or cause a film or sheen or discoloration of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. Aromatic hydrocarbons may or may not be oil, depending on their physical characteristics and environmental effects. Some aromatic hydrocarbons are hazardous substances. Bilge water that contains sufficient oil such that its discharge would violate the standards set out in 40 CFR 110.3 is considered oil. The percentage of oil concentration in the water is not determinative for the purpose of the definition or the discharge standards.

Authority. We disagree that our authority only extends to petroleum-based oils. Our interpretation is consistent with Congressional intent as expressed in section 311(a)(1) of the CWA, which extends to all types of oils in any form. EPA's definition tracks that statutory definition. Our revised definition also reflects EORRA requirements for differentiation. EORRA did not expand or contract the universe of substances that are oils, it only required differentiation, when necessary, between the requirements for facilities storing or using different types of oil.

Exclusions. While States may choose to regulate all oils or some oils, the CWA definition is designed to prevent the discharge of all oils.

A definition based on liquidity would exclude solid oils, such as certain animal fats, a result that would be inconsistent with Congressional intent. Concerning gaseous oils, see our discussion on *Highly volatile liquids* below.

While releases or discharges of some refined petroleum products may be regulated under the Solid Waste Disposal Act as waste products, that program is dedicated more to waste management, and does not regulate storage of non-waste oil.

All oils, including animal fats and vegetable oils, can harm the environment in many ways. Oil can coat the feathers of birds, the fur of mammals and cause drowning and hypothermia and increased vulnerability to starvation and predators from lack of mobility.

Oils can act on the epithelial tissue of fish, accumulate on gills, and prevent respiration. The oil coating of surface waters can interfere with natural processes, oxygen diffusion/reaeration and photosynthesis. Organisms and algae coated with oil may settle to the bottom with suspended solids along with other oily substances that can destroy benthic organisms and interfere with spawning areas.

Oils can increase biological or chemical oxygen demand and deplete the water of oxygen sufficiently to kill fish and other aquatic organisms.

Oils can cause starvation of fish and wildlife by coating food and depleting the food supply. Animals that ingest large amounts of oil through contaminated food or preening themselves may die as a result of the ingested oil. Animals can also starve because of increased energy demands needed to maintain body temperature when they are coated with oil.

Oils can exert a direct toxic action on fish, wildlife, or their food supply. Oils can taint the flavor of fish for human consumption and cause intestinal lesions in fish from laxative properties. Tainted flavor of fish used for human consumption and the causation of rancid odors are public health or welfare concerns within the scope of our rules. Tainted flavor of fish used for human consumption may indicate a disease in the fish which could render them inedible and thus have a substantial impact on the fishermen who harvest them and communities who may rely on them for a food supply.

Oils can foul shorelines and beaches. Oil discharges can create rancid odors. Rancid odors may cause both health impacts and environmental impacts. For example, the 1991 Wisconsin Butter Fire and Spill resulted in a discharge of melted butter and lard. After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous substances the thousands of gallons of melted butter that ran offsite and the mountain of damaged and charred meat products spoiling in the hot sun and creating objectionable odors. The Wisconsin DNR stated that these products posed an imminent threat to human health and the environment. 62 FR 54526.

Highly volatile liquids. We do not consider highly volatile liquids that volatilize on contact with air or water, such as liquid natural gas, or liquid petroleum gas, to be oil. Such substances do not violate applicable water quality standards, do not cause a reportable film or sheen or discoloration upon the surface of water or adjoining shorelines, do not cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, and are not removable. Therefore, there would be no reportable discharge as described in 40 CFR 110.3.

Oil mixed with wastes or hazardous substances. Oil means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Part 280 definition. The definition of petroleum in 40 CFR part 280 is a subset of the part 112 definition of "oil." The part 112 definition of oil is broader than the part 280 definition of petroleum because part 112 regulates all types of oils, whereas part 280 regulates only petroleum.

Oil drilling, production, or workover facilities (offshore)

Background. See the definition of "production facility," into which this definition has been merged.

Oil Production Facilities (Onshore)

Background. See the definition of "production facility," into which this definition has been merged.

Onshore Facility

Background. As proposed, we deleted as unnecessary surplus the reference to the facility not being transportation-related. There were no substantive comments.

Partially Buried Tank

Background. In 1991, EPA proposed the definition of "partially buried tank" to clarify the distinction between partially buried tanks and underground storage tanks. We have renamed underground tanks in this rule as "completely buried tanks," i.e., those tanks completely covered with earth. Partially buried tanks are subject to the SPCC rule the same as aboveground containers.

Comments. One commenter wrote that the definition as proposed was "undecipherable" and should be rewritten. That commenter suggested another definition for clarity. Two other commenters suggested that we adopt the part 280 UST definition for partially buried tank, which includes any tank system such as tank and piping which has a volume of 10 percent or more beneath the surface of the ground.

Response to comments. We agree that the definition could be clearer and have clarified it. We decline to adopt the part 280 UST definition (at 40 CFR 280.12) and to classify partially buried tanks as completely buried tanks, because they are not. The UST definition might also exclude some tanks or containers which would be covered by the SPCC definition. The UST definition includes tanks whose volume (including the volume of underground pipes connected thereto) are 10 percent or more beneath the surface of the ground. The SPCC definition of "partially buried tank" contains no volume percentage and applies to any tank that is partially inserted or constructed in the ground, but not entirely below grade, and not completely covered with earth.

Editorial changes and clarifications. We clarify that partially buried tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into accord with the coverings noted in the definition of "bunkered tank." We added a sentence to the definition noting that partially buried tanks are considered aboveground storage containers for purposes of this part.

Permanently Closed

Background. EPA proposed a definition of "permanently closed" in 1991 to clarify the scope of facilities and tanks or containers excluded from coverage under the SPCC rule. Permanently closed containers are those containers which are no longer capable of storing or using oil. Permanently closed facilities are those facilities which are no longer capable of storing or using oil.

In permanently closed containers and facilities, physical changes have been made so that storage capacity or use is rendered impossible. Therefore, the definition describes those changes which must have occurred before a container or facility is "permanently closed."

Comments. In general. Several commenters favored the proposed definition. Others opposed it as unnecessary, believing that "if a tank is not used for the storage of oil, it simply is not subject to the provisions of the SPCC regulations." Finally, several commenters suggested that the definition specifically exclude temporarily closed tanks.

Waste disposal. Several commenters urged that the part of the proposal that dealt with waste disposal be deleted because waste disposal is already covered under other programs and should not be a concern of spill prevention unless flowable oil is part of the waste.

Non-oil products. One commenter asked for clarification that a container which is no longer used for oil but is used for some non-oil product be considered permanently closed.

Connecting lines. Another commenter asked for clarification as to the meaning of connecting lines. The commenter assumed that connecting lines means the sections of pipe that run between the tank and the nearest block valve.

Explosive vapors. Numerous commenters urged that EPA delete any rules dealing with explosive vapors on the theory that such vapors are regulated by the Occupational Health and Safety Administration (OSHA) program and other programs. Many of these same commenters suggested that placing a sign on a tank indicating that it has been freed of gas is not a good safety practice because gas might subsequently build up within the tank with catastrophic results.

Retroactivity. Several commenters suggested that the requirements for a tank to be permanently closed should not be applied retroactively to tanks previously removed from service. The rationale was that the cost would be prohibitive, although commenters did not provide specific cost estimates, and that it might cause confusion as to which tanks would have to be included in facility capacity calculations. These commenters also asserted that such tanks have been abandoned and empty, sometimes for many years, and pose no threat of discharge.

Response to comments. In general. A definition is necessary to clarify when a container is permanently closed and no longer used for the storage of oil. Containers that are only closed temporarily may be returned to storage purposes and thus may present a threat of discharge. Therefore, they will continue to be subject to the rule.

Waste disposal. Reference to waste disposal in accordance with Federal and State rules in proposed § 112.2(o)(1) was deleted as unnecessary surplus. EPA agrees that other programs adequately handle waste disposal.

Non-oil products. Containers that store products other than oil and never store oil, are not subject to the SPCC rule whether they are "permanently closed" as defined or not. If the containers sometimes store oil and sometimes store non-oil products, they are subject to the rule.

Connecting lines. We agree with the commenter's assumed definition of connecting lines. Connecting lines that have been emptied of oil, and have been disconnected and blanked off, are considered permanently closed.

Explosive vapors. We deleted proposed § 112.2(o)(2) on the suggestion of commenters that references to explosive vapors are an OSHA matter and inappropriate for EPA rules. We modified proposed § 112.2(o)(3) to eliminate the reference to signs warning that "vapors above the LEL are not present," because the operator cannot guarantee that warning remains correct. To help prevent a buildup of explosive vapors, we have revised the definition to provide that ventilation valves need not be closed. We agree with commenters that a sign might be misleading and dangerous.

Retroactivity. We believe that containers that have been permanently closed according to the standards prescribed in the rule qualify for the designation of "permanently closed," whether they have been closed before or after the effective date of the rule. Containers that cannot meet the standards prescribed in the rule will not qualify as permanently closed. We disagree that the cost of such closure is prohibitive. We have simplified the proposal and deleted the proposed requirement to render the tank free of explosive vapor. Therefore, costs are lower. To clarify when a container has been closed, we have amended the rule to require that the sign noting closure show the date of such closure. The date of such closure must be noted whether it occurred before or after the effective date of this provision. Some States and localities require a permit for tank closure. A document noting a State closure inspection may serve as

evidence of container closure if it is dated.

Industry standards. Industry standards that may be useful to effect the permanent closure of containers or facilities include: (1) National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code"; (2) Building Officials and Code Administrators International (BOCA), navigable waters is not practicable for flowlines and gathering lines.

Wells and separators. Other commenters also argued for the exemption of wells and separators.

DOT definition. Another commenter urged consistency between the proposed EPA definition and the DOT definition found at 49 CFR 195.2.

Single oil or gas field, single operator. quick availability of response equipment.

DOT definition. We changed the proposed definition to be more consistent with the DOT definition, found at 49 CFR 195.2, in response to a commenter who urged consistency in EPA and DOT definitions. We added the uses of the piping and equipment detailed in DOT rule to our proposal, for

Natural gas. Because natural gas is not oil, natural gas facilities that do not store or use oil are not covered by this rule. However, you should note, that drip or condensate from natural gas production is an oil. The storage of such drip or condensate must be included in the calculation of oil stored or used at the facility.

Editorial changes and clarifications. trigger a brittle fracture evaluation include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain tank integrity; the re-leveling or jacking of a tank shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by

Spill Prevention, Control, and Countermeasure Plan, SPCC Plan or Plan

Background. In 1997, we reproposed the definition of "SPCC Plan" and withdrew the 1991 proposal. The 1997 proposal would broaden the acceptable formats of SPCC Plans, eliminating the requirement that the Plan meet the format or sequence formerly specified in

evidence of container closure if it is dated.

Industry standards. Industry standards that may be useful to effect the permanent closure of containers or facilities include: (1) National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code"; (2) Building Officials and Code Administrators International (BOCA), "National Fire Prevention Code"; (3) American Petroleum Institute (API) Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks"; and, (4) API Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks."

Editorial changes and clarifications. "Tank" becomes "container." We revised the introduction to the definition to remove the phrase "that has been closed" because the definition would have been circular with that language. Instead the introduction references the events which must have occurred in order for a container to meet the definition.

Person

Background. The definition of "person" proposed in 1991 was substantively unchanged from the current rule.

Comments. We received one comment which urged that we should make clear that the United States is bound by every provision of these rules.

Response to comments. See the discussion above (at § 112.1(c)) for the applicability of the rule to Federal agencies and facilities.

Production Facility

Background. The definition of "production facility" replaces two definitions in the proposed rule, i.e., Oil drilling, production, or workover facilities (offshore), proposed § 112.2(j), and Oil production facilities (onshore), proposed § 112.2(k). We replaced the two proposed definitions with the revised definition for editorial brevity as the proposed definitions contained many identical elements. This editorial effort effects no substantive changes in the requirements for the particular types of production facilities. Each facility must follow the requirements applicable to that facility, which is generally based on its operations, for example, a workover facility.

Comments. Flowlines and gathering lines. Several commenters suggested that flowlines and gathering lines should be deleted from the definition because they believed that the installation of structures and equipment to prevent discharged oil from reaching navigable waters is not practicable for flowlines and gathering lines.

Wells and separators. Other commenters also argued for the exemption of wells and separators.

DOT definition. Another commenter urged consistency between the proposed EPA definition and the DOT definition found at 49 CFR 195.2.

Single oil or gas field, single operator. One commenter asserted that the inclusion of the phrases "in a single oil or gas field" and "operated by a single operator" in the definition is confounding. The commenter urged that the producing segment of the industry needs to be able to combine facilities into one SPCC Plan with an identification of the wells to which that Plan applies. The commenter questioned whether the inclusion of the word "single" would preclude an operator's ability to do so.

Natural gas. Another commenter asked for clarification that natural gas processing facilities are not subject to rules for oil facilities.

Response to comments. Flowlines and gathering lines. Wells and separators. EPA disagrees that flowlines and gathering lines, as well as wells and separators, should be excluded from the definition. These structures or equipment are integral parts of production facilities and should therefore be included in the definition. We also disagree with the argument that because the installation of structures and equipment to prevent discharges around gathering lines and flowlines may not be practicable, EPA will be flooded with contingency plans. First of all, secondary containment may be practicable. In § 112.7(c), we list sorbent materials, drainage systems, and other equipment as possible forms of secondary containment systems. We realize that in many cases, secondary containment may not be practicable. If secondary containment is not practicable, you must provide in your SPCC Plan a contingency plan following the provisions of part 109, and otherwise comply with § 112.7(d). We have deleted the proposed 1993 provision that would have required you to provide contingency plans as a matter of course to the Regional Administrator. Therefore, you will rarely have to submit a contingency plan to EPA. The contingency plan you do provide in your SPCC Plan when secondary containment is not practicable for flowlines and gathering lines should rely on strong maintenance, corrosion protection, testing, recordkeeping, and inspection procedures to prevent and quickly detect discharges from such lines. It should also provide for the quick availability of response equipment.

DOT definition. We changed the proposed definition to be more consistent with the DOT definition, found at 49 CFR 195.2, in response to a commenter who urged consistency in EPA and DOT definitions. We added the uses of the piping and equipment detailed in DOT rule to our proposal, for example, "production, extraction, recovery, lifting, stabilization, separation, or treating" of oil. The terms "separation equipment," used in the proposed definition of "oil production facilities (onshore)", and "workover equipment," used in the proposed definition of "oil drilling, production, or workover facilities (offshore)", were combined into a generic "equipment." However, we also modified the proposed definition to reflect EPA jurisdiction. We added the word "structure," which was not in the DOT definition, to cover necessary parts of a production facility. We also added examples of types of piping, structures, and equipment. These examples are not an exclusive list of the possible piping, structures, or equipment covered under the definition. The new definition encompasses all those facilities that would have been covered under both former proposed definitions. As we proposed in 1991, and as in the current rule, we have retained geographic and ownership limitations.

Single oil or gas field, single operator. "A single geographical oil or gas field" may consist of one or more natural formations containing oil. The determination of its boundaries is area-specific. Such formation may underlie one or many facilities, regardless of whether any natural or man-made physical geographical barriers on the surface intervene such as a mountain range, river, or road. We disagree that the term "a single operator" is confusing. An "owner" or "operator" is defined in § 112.2 as any "person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained such facility immediately prior to abandonment." A "person" is not restricted to a single natural person. "Person" is a defined term in the rule (at § 112.2) which includes an individual, firm, corporation, association, or partnership.

Nothing in the definition would preclude an owner or operator from combining elements of a production facility into one SPCC Plan with an identification of the wells to which that Plan applies.

Natural gas. Because natural gas is not oil, natural gas facilities that do not store or use oil are not covered by this rule. However, you should note, that drip or condensate from natural gas production is an oil. The storage of such drip or condensate must be included in the calculation of oil stored or used at the facility.

Editorial changes and clarifications. One commenter suggested that the definitions proposed were ambiguous because of the use of the words "may include." We have eliminated the potential ambiguity caused by the words "may include" by revising the definition with the words "Production facility means."

Regional Administrator

Background. In 1991, we proposed a definition of "Regional Administrator" that was substantively unchanged from the current rule. In the final rule, we have deleted language concerning the "designee" of the EPA Regional Administrator because the language is unnecessary. Since the Regional Administrator has authority to delegate most functions, the term "designee" is almost always implied. When he does not have authority to delegate a function, the term "designee" is likewise unnecessary. We received no substantive comments.

Repair

Background. In 1993, we proposed a definition of "repair" in conjunction with the proposed rule for brittle fracture evaluation.

Comments. Ordinary maintenance. Two commenters asked for clarification of the term "repair," so that it would exclude ordinary day-to-day maintenance activities which are conducted to maintain the functional integrity of the tank. Another asked that the infinitive "to maintain" be deleted from the definition of repair so that evaluation for brittle fracture would not be required after ordinary, day-to-day maintenance.

Related equipment. Another commenter suggested that we conform the proposed definition of "repair" with the API 653 definition, specifically deleting the phase "or related equipment."

Response to comments. Ordinary maintenance. Some repairs in the nature of ordinary maintenance that do not weaken the integrity of the container might not necessitate brittle fracture evaluation. "Repair" means any work necessary to maintain or restore a container or related equipment to a condition suitable for safe operation. Typical examples of a repair that would trigger a brittle fracture evaluation include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain tank integrity; the re-leveling or jacking of a tank shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. The definition of "repair" also includes reconstruction. Reconstruction means the work necessary to reassemble a container that has been dismantled and relocated to a new site. We have amended the definition to reflect that ordinary, day-to-day maintenance that does not weaken the integrity of the container will not trigger the brittle fracture evaluation requirement.

Related equipment. We agree with the commenter and will not include the term "or related equipment" in the definition to conform with API Standard 653, which does not include repairs of related equipment as a criterion for a brittle fracture evaluation.

Industry standards. Industry standards that may be helpful in understanding the definition of repair (and reconstruction) include API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Editorial changes and clarifications. "Tank" becomes "container."

Spill Event

Background. In 1991, we proposed to modify the definition of "spill event" to correspond to the changes described in the applicability section of this rule (i.e., § 112.1(b)) relating to the expanded scope of CWA jurisdiction.

Comments. One commenter opposed the definition without explaining why. Several commenters argued that the definition should apply only to discharges to navigable waters.

Response to comments. We have withdrawn the proposed definition of "spill event," and have also deleted the term from the rule. We take this action because the term is not mentioned in the CWA and is unnecessary. The term is unnecessary because the word "discharge" is adequate. "Discharge" is the term used in the CWA. A discharge as described in § 112.1(b) is the same as a spill event. As to the comment on EPA jurisdiction, we disagree that our jurisdiction should apply only to discharges to navigable waters because the CWA establishes our jurisdiction beyond navigable waters (see the discussion under § 112.1(b)), and we have the responsibility to protect the environment within the scope of our statutory jurisdiction.

Spill Prevention, Control, and Countermeasure Plan, SPCC Plan or Plan

Background. In 1997, we reproposed the definition of "SPCC Plan" and withdrew the 1991 proposal. The 1997 proposal would broaden the acceptable formats of SPCC Plans, eliminating the requirement that the Plan meet the format or sequence formerly specified in the rule.

Comments. Editorial changes and clarifications. One commenter suggested that the last two sentences in the proposed definition should be deleted because they contain substantive requirements, and relocated to § 112.7. Another commenter thought that the SPCC definition should be revised to say that the Plan documents spill prevention measures and not compliance with the rule, because compliance is determined by comparing the contents of the Plan with the rules.

Response Plan. A few commenters opposed the definition on the theory that it constitutes a type of response plan. Those commenters argued that the thrust of the definition should be on spill containment, not paperwork.

Acceptable formats. Many commenters favored the proposal. Several suggested various formats that might qualify such as Integrated Contingency Plans, State Plans, Electrical Equipment Area Response Plans, Stormwater Pollution Prevention Plans, and others. One commenter thought that EPA should specify acceptable formats. Several commenters suggested that various formats such as Integrated Contingency Plans and State Plans are presumptively acceptable.

Response to comments. Response Plan. We disagree that the proposed definition constitutes a "response plan." The definition results in no substantive changes in response planning requirements.

Acceptable formats. We agree that any equivalent prevention plan acceptable to the Regional Administrator qualifies as an SPCC Plan as long as it meets all Federal requirements (including certification by a Professional Engineer), and is cross-referenced from the requirement in part 112 to the page of the equivalent plan. We do not agree that we should specify acceptable formats. We will give examples of those acceptable formats, but those examples are not meant to be exhaustive.

Examples of an "equivalent prevention plan" might be, for instance, an Integrated Contingency Plan (ICP), a State plan, a Best Management Practice Plan (which is a component of the Stormwater Pollution Prevention Plan),

or other plan that meets all the requirements of part 112 and is supplemented by a cross-reference section identifying the location of elements in part 112 to the equivalent requirement in the other plan. We repeat EPA's commitment to the ICP format, and encourage owners or operators to use it. If the equivalent prevention plan has no requirement that

accessible to responders and inspectors. If you keep the information in an electronic data base, you must also keep a paper or other backup that is immediately accessible for emergency response purposes, or for EPA inspectors, in case the computer is not functioning. Where you place that site-specific information would be a question of allowable formatting, as is

SPCC rule; and (2) is supplemented by a cross-reference section identifying requirements listed in part 112 to the equivalent requirements in the other prevention plan. Partial use of other equivalent prevention plans is also acceptable, if the plan is supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

Written Plans. We agree that a

oil or a mixture of oil and another substance, as long as a discharge from such container could violate the harmful quantity standards in 40 CFR part 110.

Comments. In general. One commenter strongly favored the proposal.

Standard of measurement. One commenter asserted that volume was the proper measure of storage capacity,

because of its integral design, for example electrical equipment or other interior component might take up space, then the shell capacity of the container is reduced to the volume the container might hold. When the integral design of a container has been altered by actions such as drilling a hole in the side of the container so that it cannot hold oil above that point, shell capacity remains the measure of storage capacity because

exempted such facilities or parts thereof from the rule. However, note that certain parts of such facilities may continue to be subject to the rule. *See* the discussion under § 112.1(d)(6).

Secondary containment containers. Containers which are used for secondary containment and not storage or use, are not counted as storage capacity.

Editorial changes and clarifications.

or other plan that meets all the requirements of part 112 and is supplemented by a cross-reference section identifying the location of elements in part 112 to the equivalent requirement in the other plan. We repeat EPA's commitment to the ICP format, and encourage owners or operators to use it. If the equivalent prevention plan has no requirement that a Professional Engineer certify it, it will be necessary to secure proper certification from the Professional Engineer to comply with the SPCC rule.

An equivalent Plan might be a Plan following the SPCC sequence in effect before this final rule became effective. If you choose to use the sequence of the rule currently in effect, you may do so, but you must cross-reference the requirements in the revised rule to the sequence used in your Plan. We have provided a table in section IV.A of today's preamble to help you cross-reference the requirements more easily. If the only change you make is the addition of cross-referencing, you need not have a Professional Engineer certify that change.

Another example of an equivalent plan might include a multi-facility plan for operating equipment. This type of plan is intended for electrical utility transmission systems, electrical cable systems, and similar facilities which might aggregate equipment located in diverse areas into one plan. Examples of operating equipment containing oil include electrical equipment such as substations, transformers, capacitors, buried cable equipment, and oil circuit breakers.

A general, multi-facility plan for operational equipment used in various manufacturing processes containing over the threshold amount of oil might also be acceptable as an SPCC Plan. Examples of operating equipment used in manufacturing that contains oil include small lube oil systems, fat traps, hydraulic power presses, hydraulic pumps, injection molding machines, auto boosters, certain metalworking machinery and associated fluid transfer systems, and oil based heaters. Whenever you add or remove operating equipment in your Plan that materially affects the potential for a discharge as described in § 112.1(b), you must amend your Plan. 40 CFR 112.5(a).

Multi-facility plans would include all elements required for individual plans. Site-specific information would be required for all equipment included in each plan. However, the site-specific information might be maintained in a separate location, such as a central office, or an electronic data base, as long as such information was immediately accessible to responders and inspectors. If you keep the information in an electronic data base, you must also keep a paper or other backup that is immediately accessible for emergency response purposes, or for EPA inspectors, in case the computer is not functioning. Where you place that site-specific information would be a question of allowable formatting, as is the question of what is an "equivalent" plan; an issue subject to RA discretion.

Still another example of an equivalent plan might be a Best Management Practice Plan (BMP) plan prepared under an NPDES permit, if the plan provides protections equivalent to SPCC Plans. Not all BMP plans will qualify, as some BMP plans might not provide equivalent protection. NPDES permits without BMP plans would not qualify.

BMP plans are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMP plans may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. *See* 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMP plans as effluent limitations guidelines. NPDES rules provide for BMP plans when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA.

Any format that contains all the required elements of an SPCC Plan and provides equivalent environmental protection would be presumptively acceptable. The final decision on what is an "equivalent" plan, however, would be at the discretion of the Regional Administrator. "Equivalence" would not mean that an alternate format would be the mirror image of an SPCC Plan, but it would have to contain all the required elements of an SPCC Plan. Required elements include, but are not limited to, provisions for a written plan, secondary containment or a contingency plan following 40 CFR part 109, equivalent inspections and tests, security, personnel training, and certification of the plan by a Professional Engineer. Acceptance of an equivalent plan does not, however, imply any type of approval or submission process. As before, SPCC Plans are generally not submitted to the Regional Administrator. The Regional Administrator could accept an equivalent prevention plan if it: (1) meets all regulatory requirements in the SPCC rule; and (2) is supplemented by a cross-reference section identifying requirements listed in part 112 to the equivalent requirements in the other prevention plan. Partial use of other equivalent prevention plans is also acceptable, if the plan is supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

Written Plans. We agree that a "written" Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a medium that is not readily accessible in an emergency, it must be also available in a medium that is. For example, a Plan might be electronically produced, but computers fail and may not be operable in an emergency. For an electronic Plan or Plan produced in some other medium, therefore, a backup copy must be readily available on paper. At least one version of the Plan should be written in English so that it will be readily understood by an EPA inspector.

Editorial changes and clarifications. The word "guidelines" was replaced with "requirements," as proposed in 1991. EPA agrees with the relocation of the last two sentences of the definition. Therefore, we have transferred those sentences to the introduction of § 112.7, in order to maintain the principle that definitions should not contain substantive requirements. We have also changed the last sentence which was proposed as "* * * provide adequate countermeasures to an oil spill" to read "* * * provide adequate countermeasures to a discharge." We agree that the Plan does not document compliance, but merely spill prevention measures and have deleted the sentence noting that the Plan documents compliance with the rules. Compliance is determined by comparing the contents of the Plan with the regulations.

Storage capacity

Background. In 1991, we proposed a definition of "storage capacity" to clarify that it includes the total capacity of a container capable of storing oil or oil mixtures. We explained that because the percentage of oil in a mixture is determined by the operator and can be changed at will, the total capacity of a container is considered in determining applicability under this part, regardless of whether the container is filled with

oil or a mixture of oil and another substance, as long as a discharge from such container could violate the harmful quantity standards in 40 CFR part 110.

Comments. In general. One commenter strongly favored the proposal.

Standard of measurement. One commenter asserted that volume was the proper measure of storage capacity, not total capacity. Another commenter suggested a "working capacity" standard. Other commenters argued that the definition should apply only to containers meeting the definition of a bulk storage tank, and that only the oil storage capacity of the container be considered. Similarly, a commenter asserted that the "design capacity" of a container is what should count as storage capacity because electrical equipment or other interior components might reduce the volume of oil capable of being stored.

Exclusions—small containers; waste treatment facilities, secondary containment containers. Small containers. Most commenters were opposed to the proposed definition because they either wanted an exclusion for small containers or because they wanted an exclusion for containers containing de minimis amounts of oil. These commenters argued that small containers would not present a significant threat of discharge.

Waste treatment facilities. The rationale of commenters supporting an exemption for waste treatment containers was that some containers had non-usable space at the top of the container; also some containers contain only trace amounts of oil. Therefore, for example, storage tanks used to store or treat wastewaters are likely to have to be considered when determining storage capacity since many wastewaters have incidental oil content prior to treatment. They also argued that the definition would subject publicly owned treatment works (POTWs) to the rule because tanks used to control stormwater surges might contain small amounts of oil from runoff from parking lots and city streets.

Secondary containment containers. Some commenters argued that the definition would apply to tanks used to provide secondary containment when determining the storage capacity of a facility.

Response to comments. Standard of measurement. In most instances the shell capacity of a container will define its storage capacity. The shell capacity (or nominal or gross capacity) is the amount of oil that a container is designed to hold. If a certain portion of a container is incapable of storing oil because of its integral design, for example electrical equipment or other interior component might take up space, then the shell capacity of the container is reduced to the volume the container might hold. When the integral design of a container has been altered by actions such as drilling a hole in the side of the container so that it cannot hold oil above that point, shell capacity remains the measure of storage capacity because such alteration can be altered again at will to restore the former storage capacity. When the alteration is an action such as the installation of a double bottom or new floor to the container, the integral design of the container has changed, and may result in a reduction in shell capacity. We disagree that operating volume should be the measurement, because the operating volume of a tank can be changed at will to below its shell capacity.

The keys to the definition are the availability of the container for drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil, and whether it is available for one of those uses or whether it is permanently closed. Containers available for one of the above described uses count towards storage capacity, those not used for these activities do not. Types of containers counted as storage capacity would include some flow-through separators, tanks used for "emergency" storage, transformers, and other oil-filled equipment.

Exclusions—small containers; waste treatment facilities. Small containers. This definition is applicable to both large and small storage and use capacity. Owners or operators of small facilities above the regulatory threshold are subject to the rule, and need to know how to calculate their storage or use capacity.

However, in the applicability section of the rule, we have excluded containers of less than 55 gallons from the scope of the SPCC rule, addressing the comments of those commenters who argued for a minimum container size. See § 112.1(d)(5). A container above that size that is available for use or storage containing even small volumes of oil must be counted in storage capacity.

Waste treatment facilities. We agree with the commenter that a facility or part thereof (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment system and not to meet any part 112 requirement should not be considered storage capacity because wastewater treatment is neither use nor storage of oil. Therefore, we have exempted such facilities or parts thereof from the rule. However, note that certain parts of such facilities may continue to be subject to the rule. *See* the discussion under § 112.1(d)(6).

Secondary containment containers. Containers which are used for secondary containment and not storage or use, are not counted as storage capacity.

Editorial changes and clarifications. We use the word "container" instead of "tank or container," because a tank is a type of container. We have clarified the definition to provide that the storage capacity of a container is the volume of oil that the container could hold, and have therefore substituted the words "shell capacity" of the container for "total capacity." This is merely a clarification, and not a substantive change. We also deleted the words "for purposes of determining applicability of this part," because the words were unnecessary. We also deleted the last phrase of the proposed definition, "whether the tank or container is filled with oil or a mixture of oil and other substances," because the contents of the container do not affect the definition of its shell capacity.

Transportation-related and non-transportation-related

Background. In 1991, we reproposed the current definition of "transportation-related and non-transportation-related." We received no comments on the proposal. Therefore, we have promulgated the definition as proposed.

United States

Background. In 1991, we proposed to revise the definition of "United States" to conform to the definition enacted in the 1978 amendments to the CWA. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed.

Vessel

Background. In 1991, we reproposed the current definition of vessel. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed. We note that a barge or other watercraft that has been determined by the Coast Guard to be permanently moored to the shore, and used for storage, is no longer being used as a vessel, and does not fit within the definition of vessel. Rather, it becomes a bulk storage container counted as storage capacity. The same concept is found in the rules for mobile facilities at § 112.3(c), which provides that SPCC Plans apply to mobile facilities only

"while the facility is in a fixed (non-transportation) operating mode."

Wetlands

Background. In 1991, we proposed a definition of "wetlands" to define the term as used in the definition of "navigable waters." The definition of wetlands conforms to the definition in 40 CFR part 110 relating to the

Commenters suggested compliance periods ranging from 60 days to 7 years. Many commenters clustered around the suggestion that a 6 month phase-in period be allowed. Many others suggested compliance by the next three-year review, as required by § 112.5(b) at that time.

Extensions. Several commenters asked that extensions of time to prepare

and one half years before the effective date of this rule, and fully implemented it no later than three years before the effective date of this rule. Assuming that he still has not prepared a Plan on the effective date of the rule, he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of

as soon as possible after the 6-month Plan preparation deadline of this rule, but no later than one year after the effective date of this rule.

The owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to penalties for violation of current SPCC regulations. .

Extensions. While we have extended the time period for compliance, we understand that some facilities may still need extensions of time to comply. Extensions may be necessary to secure necessary manpower or equipment, or to construct necessary structures. If you are an owner or operator and an extension is necessary, you may seek one under § 112.3(f). If no Plan

start of operations be required to prepare and fully implement Plans before beginning operations. Our rationale was that our experience showed that many types of failures occur during or shortly following facility startup and virtually all prevention, containment, and countermeasure practices are a part of the facility design or construction.

Comments. Many commenters

"while the facility is in a fixed (non-transportation) operating mode."

Wetlands

Background. In 1991, we proposed a definition of "wetlands" to define the term as used in the definition of "navigable waters." The definition of wetlands conforms to the definition in 40 CFR part 110 relating to the discharge of oil.

Comments. Several commenters opposed the definition because they believe that it includes a series of examples which may or may not be correct. They also alleged that the definition fails to implement the 1987 U.S. Army Corps of Engineers Wetlands Manual or the documents implementing that Manual. Another commenter asked for EPA clarification of what is a wetland, given the "vague and arguable notion of a wetland."

Response to comments. The examples listed in the definition are intended to help the reader with guidelines to identify wetlands. While the examples generally represent types of wetlands, they are not intended to be a categorical listing of such wetlands. There may be examples listed that under some circumstances do not constitute wetlands. We believe that the 1987 Wetlands Manual is a useful source material for wetlands guidance. It would be impossible to specify in a rule every type of situation where wetlands occur. The examples listed in the definition are not exclusive, but provide help in clarifying what may be a wetland.

Section 112.3 Introduction

Background. We have added an introduction to § 112.3 as an editorial device to simplify the language in the paragraphs of this section.

Section 112.3(a)—Time Line for Preparation and Implementation of Plans for Existing Facilities

Background. In 1991, we proposed to require owners or operators of onshore and offshore facilities in operation 60 days after the effective date of this final rule to "maintain a prepared and fully implemented facility SPCC Plan. . . . " We proposed giving these owners or operators 60 days from the date the final rule was published to revise their existing Plans and implement the revisions. The proposed rule also reflected the expanded geographic scope of the rule provided by CWA amendments.

Comments. Time period to prepare and implement a Plan. A number of commenters favored the proposal. Many more favored a "phase-in" period, or a longer period within which to comply. Commenters suggested compliance periods ranging from 60 days to 7 years. Many commenters clustered around the suggestion that a 6 month phase-in period be allowed. Many others suggested compliance by the next three-year review, as required by § 112.5(b) at that time.

Extensions. Several commenters asked that extensions of time to prepare and implement Plans be automatic if Plans must be in effect prior to the commencement of operations. Another suggested that extension requests be considered "routine."

Acquired facilities. One commenter asked how we would treat acquired facilities, whether as new or continuing operation facilities.

Start of operations. One commenter asked when operations start, stating that is not always a clearly defined time. The commenter suggested that instead of requiring a prepared and implemented Plan, we should allow that a response team be in place.

Small facilities. One commenter asserted that the time line for Plan preparation and implementation was unreasonable for small facilities, and asked that facilities with under 10,000-gallon capacity be allowed to operate while developing and implementing a Plan.

Response to comments. Time period to prepare and implement a Plan. We have been persuaded by commenters that a longer phase-in period than 60 days is required for facilities currently in operation or about to become operational within one year after the effective date of this rule.

Facilities currently in operation. For a facility in operation on the effective date of this rule, we changed the dates in the proposed rule for preparation and implementation of plans from 60 days to a maximum of one year to accord with the time frames in the current rule. The owner or operator of a facility in operation on the effective date of this rule will have 6 months to amend his Plan and must fully implement any amendment as soon as possible, but within one year of the effective date of the rule at the latest. The owner or operator of a facility which has had a discharge as described in § 112.1(b), or reasonably could be expected to have one, already has an obligation to prepare and implement a Plan.

For example, an owner or operator whose facility became operational four years before the effective date of this rule is the owner or operator of a facility currently in operation on the effective date of this rule. He is therefore subject to current § 112.3(b), and should have prepared his Plan no later than three and one half years before the effective date of this rule, and fully implemented it no later than three years before the effective date of this rule. Assuming that he still has not prepared a Plan on the effective date of the rule, he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so, and the penalties would accrue from the time the original deadlines passed before the effective date of this rule. The owner or operator of a facility which became operational four years before the effective date of the rule, and who prepared and fully implemented his Plan in compliance with current § 112.3(b), must amend his Plan within 6 months of the effective date of this rule to meet the requirements of the revised rule, and fully implement the amended Plan as soon as possible, but no later than one year after the effective date of the rule.

An owner or operator whose facility became operational 7 months before the effective date of the rule is an owner or operator of a facility currently in operation and is therefore subject to current § 112.3(b). He should have prepared his Plan one month before the effective date of this rule. If he did, he will have 6 months from the effective date of this rule to amend that Plan to meet the requirements of the revised rule, and must fully implement the amended Plan as soon as possible, but within one year of the effective date of this rule. If he has not prepared a Plan by the effective date of the current rule as required, then he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so.

An owner or operator whose facility became operational 4 months before the effective date of this rule is also an owner or operator of a facility currently in operation on the effective date of this rule and therefore subject to the current rule. However, in this case, the 6-month deadline to prepare a Plan under the current § 112.3(b) has not yet passed. Therefore, the owner or operator is subject to the Plan preparation and implementation deadlines in § 112.3(a) of the revised rule. He now has 6 months from the effective date of this rule to prepare a Plan that meets the requirements of this rule. If he had already prepared a Plan under current § 112.3(b), he has 6 months from the effective date of this rule to amend that Plan. In either case, he must fully implement the Plan (or amended Plan)

as soon as possible after the 6-month Plan preparation deadline of this rule, but no later than one year after the effective date of this rule.

The owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to penalties for violation of current SPCC regulations. . Such owner or operator is consequently subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan.

Facilities becoming operational within one year after the effective date of the rule August 13, 2003. If you begin operations after the effective date of the rule through one year after the effective date of this rule August 16, 2002, you will have until one year from the effective date of this rule to prepare and implement your Plan. In other words, if the rule becomes effective on January 1, and you begin operations on January 2, you must prepare and implement your Plan by January 1 of the following year. If you begin operations on June 30, you still have until January 1 of the following year to prepare and implement your plan. If you begin operations on December 31, you still have until January 1 (the next day) of the following year to prepare and implement your Plan. The rationale for the time frame in the rule is that you will have had notice of the Plan preparation and implementation requirements from the publication date of the rule, a period of 30 days plus one year. In addition, you would already have had notice of the general requirement for preparation of an SPCC Plan from the current part 112 regulations. Therefore, the owner or operator of a facility planning to become operational within one year after the effective date of this rule should start working on his Plan in time to have it fully implemented within the year.

New facilities. The owner or operator of a facility that becomes operational more than one year after the effective date of this rule must prepare and implement a Plan before beginning operations.

A year phase-in period is in line with legitimate business and investment expectations. It allows a reasonable period of time for facilities to undertake necessary constructions, purchases of equipment, or to effect changes of procedures. And again, the general requirement for preparation of a Plan already exists in part 112, so new facilities should already have been aware of the need for a Plan.

Extensions. While we have extended the time period for compliance, we understand that some facilities may still need extensions of time to comply. Extensions may be necessary to secure necessary manpower or equipment, or to construct necessary structures. If you are an owner or operator and an extension is necessary, you may seek one under § 112.3(f). If no Plan amendments are necessary after you review today's rule, you must maintain your current Plan and cross-reference its elements to the redesignated requirements.

Acquired facilities. For SPCC purposes, we consider acquired facilities as facilities that are already operating rather than new facilities because these facilities must already have SPCC Plans if they exceed applicable thresholds.

Start of operations. Start of operations is when you begin to store or use oil at a facility. Often this may be a testing or calibration period prior to start up of normal operations. With the extended time line we have provided, no response team is required, but such a team may be a good engineering practice. At a minimum, you must prepare and implement a Plan as required by this rule.

Small facilities. With the extended time line we have provided, all facilities, large or small, have adequate notice and time in which to prepare and implement a Plan.

Editorial changes and clarifications. We deleted the first sentence of the proposed rule from the final rule because it is unnecessary. It is unnecessary because the obligation to have prepared a Plan is incurred under current section § 112.3(b) for the owner or operator of a facility in operation before the effective date of this rule. For the owner or operator of a facility that becomes operational on or after the effective date of this rule, revised § 112.3 provides the time period within which he must prepare and implement a Plan. The deleted sentence read, "Owners or operators of onshore facilities that become operational after September 16, 2002, and could be reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall prepare a facility SPCC Plan in accordance with § 112.7, and in accordance with any of the following sections that apply to the facility: §§ 112.8, 112.9, 112.10, and 112.11."

Section 112.3(b)—Time Line for Preparation and Implementation of Plans for New Facilities

Background. In 1991, we proposed that new facilities contemplating the start of operations be required to prepare and fully implement Plans before beginning operations. Our rationale was that our experience showed that many types of failures occur during or shortly following facility startup and virtually all prevention, containment, and countermeasure practices are a part of the facility design or construction.

Comments. Many commenters suggested various phase-in periods, as discussed above.

Response to comments. We believe that our original rationale is still correct. Experience with the implementation of this regulation shows that many types of failures occur during or shortly following startup and that virtually all prevention, containment, and countermeasure practices are part of the facility design or construction. Therefore, it can be beneficial to the environment and carries out the intent of the statute if a facility Plan is prepared and implemented before startup. However, to provide sufficient notice to new facilities that a Plan must be prepared and implemented before beginning operations, we have delayed implementation of this section until one year after the effective date this rule. If you begin operations within one year of the effective date of this rule, you must comply with the requirements in § 112.3(a). However, if you begin operations more than one year after the effective date of this rule, your facility would be "new" and you would have to prepare and implement an SPCC Plan before you begin operations. If you need an extension to comply, you may seek one under § 112.3(f).

Editorial changes and clarifications. The phrase "* * * could reasonably be expected to discharge oil, as described in § 112.1(b) of this part* * *" becomes "could reasonably be expected to have a discharge as described in § 112.1(b)."

Section 112.3(c)—Time Line for Preparation and Implementation of Plans for Mobile Facilities

Background. In 1991, we proposed that owners or operators of onshore and offshore mobile facilities be required to have a prepared and implemented Plan before beginning operations. Since existing mobile facilities are a subset of existing facilities, we generally assume that these facilities already have a Plan in place, as the rule now requires. 40 CFR 112.3(c). Both new and existing mobile facilities would therefore have to comply with the rule requiring a fully prepared and implemented Plan before beginning operations.

Comments. In general. One commenter believed that requiring Plans

for mobile facilities is unworkable because their physical surroundings are subject to change. Another commenter supported our proposal to allow general Plans for mobile facilities.

Multi-well drilling programs. One commenter asked if Plan updates would be required in a field where a multi-well drilling program is underway. The commenter suggested that updates

the PE attest that he is familiar with the requirements of part 112, that he has visited the facility, that the Plan has been prepared in accordance with good engineering practice and the requirements of part 112, that required testing has been completed, and that the Plan is adequate for the facility.

Comments. Certification requirement. Most commenters supported a presence of those written procedures which require testing.

Non-technical changes. Most supported the idea that non-technical changes to a Plan (for example, the emergency contact list, phone numbers, or names) need not have PE certification.

Time limit for PE certification. One commenter suggested a time limit of

farms with annual revenue between $100,000 and $249,999 have an average annual revenue per farm of $161,430, and $2,201 (the one-time cost to prepare and implement a Plan) represents only 1.36 percent of that annual revenue. Of course, under the revised rule many of these small facilities will not be regulated by the SPCC program at all.

A PE's certification of a Plan means

authority to discipline licensed PEs who fail to comply with State laws and requirements. Other environmental professionals may not have similar expertise nor be held to similar standards as the licensed PE.

It is not always necessary for a PE to visit the facility. Therefore, we have revised § 112.3(d) to a allow site visit by either the PE or his agent. Often it will be sufficient if the PE reviews the work

for their implementation, which is the sole responsibility of the owner or operator. However, the PE may include in the Plan a schedule for testing, with specific time frames for the completion of that testing. See also the discussion in today's preamble (at section IV.D.3) on "Completion of Testing."

Non-technical changes. PE certification is not required for items that do not require engineering

for mobile facilities is unworkable because their physical surroundings are subject to change. Another commenter supported our proposal to allow general Plans for mobile facilities.

Multi-well drilling programs. One commenter asked if Plan updates would be required in a field where a multi-well drilling program is underway. The commenter suggested that updates should be required only after the drilling program is complete.

Response to comments. In general. We agree that the physical surroundings of mobile facilities are subject to change. However, we disagree that changing physical surroundings should exempt mobile facilities from the rule. Mobile facilities may have "general" Plans and need not prepare a new Plan each time the facility is moved to a new site. When a mobile facility is moved, it must be located and installed using the spill prevention practices outlined in the Plan for the facility.

Mobile facilities currently in operation are assumed to have implemented Plans already, because they are currently legally required to do so. Both new and existing mobile facilities must have Plans prepared and fully implemented before operations may begin. If after your review of today's rule, you decide that no amendment to your Plan is necessary, except for cross-referencing, you may continue to operate under your existing Plan, but you must promptly cross-reference the provisions in the Plan to the new format. Extension requests under § 112.3(f) are also available for mobile facilities under the proper conditions.

Multi-well drilling programs. It is not necessary to amend the Plan every time you drill a well in a field containing multiple wells. A general Plan will suffice.

Editorial changes and clarifications. We deleted the phrase "using good engineering practice," in the third sentence of the paragraph because good engineering practice is required of all Plans. See the introduction to § 112.7. Therefore, the phrase was unnecessary.

Section 112.3(d)—Certification by Professional Engineers

Background. The current rule only requires that the Professional Engineer (PE), having examined the facility and being familiar with the provisions of part 112, attest by means of his certification that the Plan has been prepared in accordance with good engineering practices. In 1991, we proposed to add specificity to the meaning of the certification requirements for a PE. We proposed that the PE attest that he is familiar with the requirements of part 112, that he has visited the facility, that the Plan has been prepared in accordance with good engineering practice and the requirements of part 112, that required testing has been completed, and that the Plan is adequate for the facility.

Comments. Certification requirement. Most commenters supported a certification requirement for PEs. Some opposed it on grounds that if all the components of the Plan were specified by rule, then certification is unnecessary. One U.S. territory, U.S. Samoa, noted that it doesn't register PEs, arguably making compliance with the rule difficult for owners or operators of facilities in Samoa.

Other commenters thought a PE certification requirement was unnecessarily burdensome and costly for small facilities, but did not provide cost estimates. One commenter asserted that PE certification should not be required for small facilities, due mainly to the prohibitive cost. The commenter also maintained that most small facilities have tanks that are required by State or local law to have the Underwriters Laboratory Seal of Approval and to have submitted a detailed plan for review and approval to the fire marshal prior to installation.

Certification by other environmental professionals. Several commenters suggested that certification could be effected by another environmental professional, rather than a PE, or by another environmental professional with PE oversight.

Good engineering practice. One commenter noted that EPA specified in the 1991 preamble that the application of good engineering practice will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility. 56 FR 54617–18. The commenter added, however, that we do not define "good engineering practice" for this program, and urged EPA to specify in more detail as to its understanding of the term.

Testing. Some commenters wrote that it would be better for the PE to enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. A few commenters objected to the proposed requirement that the PE attest that required testing has been completed, suggesting instead that the operator is responsible for completion of testing. Another commenter suggested that the PE be allowed to attest to the presence of those written procedures which require testing.

Non-technical changes. Most supported the idea that non-technical changes to a Plan (for example, the emergency contact list, phone numbers, or names) need not have PE certification.

Time limit for PE certification. One commenter suggested a time limit of three years or less on PE certification, suggesting that the PE should be required to reinspect the premises periodically, preferably annually, to ascertain that the Plan continues to be implemented.

PE costs. Some commenters argued that requiring an independent or outside PE for Plan certification would be extremely expensive for facilities located in remote areas. These commenters were principally concerned that we did not fully account for the cost to a facility owner or operator for a PE to visit each facility before certifying a Plan. Requiring the use of an independent or outside PE could be burdensome to facility owners or operators.

Response to Comments. Certification requirement. PE certification of all facilities, both large and small, is necessary because a discharge as described in § 112.1(b) from any size facility may be harmful, and PE review and certification of a Plan may help prevent that discharge. We disagree that PE certification is prohibitively costly for small facilities. A Plan certified by a PE may well save the owner or operator money due to improved facility operations and decreased likelihood of discharge, thus averting potentially costly cleanups. Because a Plan for a smaller facility is likely to be less complicated than a Plan for a larger facility, PE certification costs should likewise be lower for a smaller facility. In our Information Collection Request, estimated total costs for a new facility to prepare and begin implementation of a Plan, including PE certification costs, are $2,201 for a small facility, $2,164 for a medium facility, and $2,540 for a large facility. This cost is incurred only in the year that the facility first becomes subject to the rule. This one-time cost incurred by a small facility is less than 1.5 percent of the average annual revenue for small facilities in all industry categories. The cost for the PE certification alone would represent even less than that. As shown in Chapter 5 of the Economic Analysis for this rulemaking, the average annual revenue for the smallest regulated facilities (under the current rule) ranges from $150,000 to $6,833,000, depending on the industry category. For example,

farms with annual revenue between $100,000 and $249,999 have an average annual revenue per farm of $161,430, and $2,201 (the one-time cost to prepare and implement a Plan) represents only 1.36 percent of that annual revenue. Of course, under the revised rule many of these small facilities will not be regulated by the SPCC program at all.

A PE's certification of a Plan means that the PE is certifying that the facility's equipment, design, construction, and maintenance procedures used to implement the Plan are in accordance with good engineering practices. And this is important because good engineering practices are likely to prevent discharges. PE certification, to be effective for SPCC purposes, must be completed in accordance with the law of the State in which the PE is working. For example, some States require a PE to apply his seal to effectuate a certification. Others do not.

We also disagree that small facilities need not have PE certification for SPCC Plans when the tanks are certified by the Underwriters Laboratory. A Plan consists of more than a certified tank. It contains provisions for secondary containment, integrity testing, and other measures to prevent discharges. Those provisions require PE certification to ensure that they meet the requirements of the rule and that the Plan is effective to prevent discharges.

Finally, by modifying the applicability provision in § 112.1(d)(2), we are today exempting many small facilities from the requirement to prepare and implement a Plan at all, thus saving all prospective PE costs.

In response to the commenter from Samoa, who noted that territory does not register PEs, the rule would allow an SPCC facility there to hire a PE licensed in some other State or U.S. territory.

Certification by other environmental professionals. Certification by a PE, rather than by another environmental professional is necessary to ensure the application of good engineering judgment. A PE must obtain a Bachelor of Engineering degree from an accredited engineering program, pass two comprehensive national examinations, and demonstrate an acceptable level (usually four additional years) of engineering experience. A licensed engineer is also required to practice engineering solely within his areas of competence and to protect the public health, safety, and welfare. All licensed PEs, no matter who their employer, are required by State laws and codes of ethics to discharge their engineering responsibilities accurately and honestly. Furthermore, State governments have and do exercise the authority to discipline licensed PEs who fail to comply with State laws and requirements. Other environmental professionals may not have similar expertise nor be held to similar standards as the licensed PE.

It is not always necessary for a PE to visit the facility. Therefore, we have revised § 112.3(d) to a allow site visit by either the PE or his agent. Often it will be sufficient if the PE reviews the work of other engineering professionals who have visited the facility. Someone would have to visit the facility, but not necessarily the PE. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

Good engineering practice. As we noted in the 1991 preamble (at 56 FR 54617–18), good engineering practice "will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility." We agree with the commenter that the rule needs more specificity in this regard. Therefore, we have amended § 112.3(d)(1)(iii) to specifically include consideration of applicable industry standards as an element of the PE's attestation that the Plan has been prepared in accordance with good engineering practice. We reiterate today, as we did in 1991, that consideration of applicable industry standards is an essential element of good engineering practice. Industry standards include industry regulations; standards, codes, specifications, recommendations, recommended practices, publications, bulletins, and other materials. (See § 112.7(a)(1) and (j).) The owner or operator must specifically document any industry standard used in a Plan to comply with this section. The documentation should include the name of the industry standard, and the year or edition of that standard. However, as discussed above, we have chosen not to incorporate specific industry standards into the rule.

Testing. The proposed rule would have required the PE to certify that required testing was completed. We have been persuaded by comments that the requirement should be that procedures for inspections and tests have been established, not necessarily completed, because the PE is not normally present at time of completion. Nor do we believe it is necessary to impose a requirement that the PE oversee all testing because the PE only shares responsibility with the owner or operator for establishing procedures, not for their implementation, which is the sole responsibility of the owner or operator. However, the PE may include in the Plan a schedule for testing, with specific time frames for the completion of that testing. See also the discussion in today's preamble (at section IV.D.3) on "Completion of Testing."

Non-technical changes. PE certification is not required for items that do not require engineering judgment, such as telephone numbers; names on lists; some, but not all, product changes (see the response to comments of § 112.5(a)); ownership changes; or, any other changes not requiring engineering judgment.

Time limit for PE certification. We disagree that there should be a time limit on PE certification because the rule ensures that the PE reviews the Plan at appropriate times. Thus, current PE certifications remain valid. But new certifications after the effective date of this rule must include the required attestations. If you are an owner or operator you must review your Plan at least every five years (under revisions made in today's rule), and amend it if new technology is warranted. Also, you must amend your Plan to conform with any applicable rule requirements, or at any time you make any change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). All material amendments require PE certification. Therefore, because a Plan will likely require one or more amendments requiring PE review and certification, a time limit on PE certifications is unnecessary. *See* § 112.5(c).

Other PE issues. As to other PE issues, as noted above (see section IV.D.2 of this preamble), the PE need not be independent of the facility. Nor is there a requirement that he not have a financial interest in it. We believe the professional integrity of a PE and the professional oversight of boards licensing PEs are sufficient to prevent any abuses.

It is not necessary that the PE be licensed in the same State as the facility because the SPCC program is national in scope and therefore State expertise is unnecessary. While States may prescribe more stringent requirements than EPA, a PE may familiarize himself with any particular requirements a State may impose and address them in the Plan. *See* § 112.7(j). Furthermore, violations of PE ethics may be handled by the licensing board of the PE's state no matter where the work is done.

EPA maintains that a site visit is necessary, but the visit may be by either the PE or his agent, so long as a visit by

an agent is consistent with good engineering practice. A visit by the PE's agent can generally be sufficient given that the PE will oversee and be responsible for his agent's work.

PE costs. We note that we did not propose a requirement for an independent PE, but requested comments on it. In the final rule, we require either the PE or the PE's agent

facility. Several commenters questioned the meaning of "nearest field office."

Plan availability. Several commenters favored the proposal. One commenter suggested that we amend the rule to provide that the Plan be available "without advance notice," so that it would be fully implemented at all times, not just when an inspection is impending. One commenter thought

his duties. Therefore, the term is unnecessary.

Section 112.3(f)—Extension of Time

Background. In 1991, we proposed to allow only new facilities to apply for extensions of time to comply with the requirements of part 112. The current rule allows any facility to apply for an extension, including existing fixed and

always do so. It may be necessary under some circumstances. The Regional Administrator also retains discretion to request the Plan after on-site review, or after certain discharges. *See* § 112.4(a)(9) and (d). We disagree with the commenter's proposed rewrite of the owner or operator's obligations while the request is pending because the better policy is to require compliance with the

Submission of entire Plan. One commenter thought that meaningful review of the information submitted was impossible without the entire Plan. Two commenters believed that EPA would always request the information it

when reporting discharges under § 112.4(a). We believe the information now required to be submitted is adequate to assess the cause of discharge and the ability of the facility to prevent future discharges. If the RA believes that the entire Plan has utility,

an agent is consistent with good engineering practice. A visit by the PE's agent can generally be sufficient given that the PE will oversee and be responsible for his agent's work.

PE costs. We note that we did not propose a requirement for an independent PE, but requested comments on it. In the final rule, we require either the PE or the PE's agent to visit and examine the facility before the PE certifies the Plan. An agent might include an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. The PE, after reviewing the agent's work, could then legitimately certify the Plan. Also, in the final rule, we allow the PE to be an employee of the facility as well as registered in a different State than the facility is located, in order to approve a Plan. The rationale is that SPCC work is national in scope and therefore State expertise is unnecessary.

Editorial changes and clarifications. "Registered Professional Engineer" becomes "licensed Professional Engineer." The first sentence of the paragraph was proposed as, "No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer." We revised it to read, "A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part." This revision is due to the fact that PEs are licensed by States.

Section 112.3(e)—Location and Availability of Plan

Background. In 1991, we proposed that the Plan be available at the facility if the facility is normally manned at least four hours a day, in lieu of the current requirement that the Plan be available if the facility is manned eight hours a day. If the facility is not attended at least four hours a day, the Plan would have to be available at the nearest field office.

The rationale for the change is that some facilities interpreted the eight hour requirement not to apply to a facility that is only operating seven and one-half hours per day, with a half an hour deducted for lunch. The availability of a Plan can be extremely useful in preventing and mitigating discharges, therefore it must be available most of the time at attended facilities.

Comments. Editorial changes and clarifications. Several commenters questioned the meaning of "normal working hours," asking whose hours that meant, those of EPA or those of the facility. Several commenters questioned the meaning of "nearest field office."

Plan availability. Several commenters favored the proposal. One commenter suggested that we amend the rule to provide that the Plan be available "without advance notice," so that it would be fully implemented at all times, not just when an inspection is impending. One commenter thought that the Plan should always be located at the facility, whether manned or not, perhaps protected by a laminated cover, and at "appropriate control centers."

State and local agencies. Another commenter suggested that the Plan be filed with the local fire department and LEPC (Local Emergency Planning Committee) to facilitate public review. One State suggested there be a Federal requirement that the Plan also be filed with the State.

Response to comments. Nearest field office, normal working hours. The term "nearest field office" in paragraph (e)(1) means the office with operational responsibility for the facility, or the emergency response center for the facility, because those locations ensure accessibility for personnel who need to respond in case of a discharge. The term "normal working hours" in paragraph (e)(2) refers to the working hours of the facility or the field office, not EPA.

Plan availability. Today we have finalized the 1991 proposal that the Plan must be available at the facility if it is normally attended at least four hours per day, or at the nearest field office if it is not so attended. A Plan must always be available without advance notice, because an inspection might not be scheduled. You are not required to locate a Plan at an unattended facility because of the difficulty that might ensue when emergency personnel try to find the Plan. However, you may keep a Plan at an unattended facility. If you do not locate the Plan at the facility, you must locate it at the nearest field office.

State and local agencies. You are not required to file or locate a Plan with a State Emergency Response Commission or Local Emergency Planning Committee or other State or local agency because the distribution would unjustifiably increase the information collection burden of the rule, and not all committees or agencies may want copies of SPCC Plans. Should a State wish to require filing of a Federal SPCC Plan with a State or local committee or agency, it may do so. No Federal requirement is necessary.

Editorial changes and clarifications. In paragraph (e)(2), we deleted the term "or authorized representative" after "Regional Administrator," because the Regional Administrator may delegate his duties. Therefore, the term is unnecessary.

Section 112.3(f)—Extension of Time

Background. In 1991, we proposed to allow only new facilities to apply for extensions of time to comply with the requirements of part 112. The current rule allows any facility to apply for an extension, including existing fixed and mobile facilities. The rationale for limiting extension requests to new facilities was that existing fixed and mobile facilities have had since 1974 to comply with the rule.

Comments. Automatic extensions. Several commenters suggested that we automatically grant extension requests if we are to require a Plan to be in effect prior to commencement of operations.

Existing Plan requirements. Another commenter criticized the proposed requirement to submit the existing Plan with each extension request, because EPA's review of the Plan cannot practically be an element of the extension granting process. Another commenter suggested that the language in paragraph (f)(3) would be better if it said that the existing Plan's provisions remain in effect until they are superseded by changes proposed by the facility, because these words better reflect the intention of the rule.

Amendments. Several commenters urged EPA to allow extensions for preparation and implementation of Plan amendments.

Response to comments. Automatic extensions. Automatic extension requests are not justifiable because we have extended the time within which most facilities have to prepare and implement Plans. *See* § 112.3(a), (b), and (c). Also, under the revised rule, you may request an extension for the preparation and implementation of any Plan, or amendment to any Plan. *See* § 112.3(f).

Existing Plan requirements. We have broadened the scope of extension requests to any facility that can justify the request, because for every type of facility there may be cases in which an extension can be justified. Existing fixed and mobile facilities may experience delays in construction or equipment delivery or may lack qualified personnel, and these circumstances may be beyond the control of, and without the fault of, the owner or operator. We also agree with the commenter that the submission of the entire Plan as a matter of course is unnecessary to evaluate each extension request. Therefore, we have amended the rule to provide that the Regional Administrator may request your Plan if he deems it appropriate. But we do not believe that he will always do so. It may be necessary under some circumstances. The Regional Administrator also retains discretion to request the Plan after on-site review, or after certain discharges. *See* § 112.4(a)(9) and (d). We disagree with the commenter's proposed rewrite of the owner or operator's obligations while the request is pending because the better policy is to require compliance with the rest of the rule that is not affected by the extension request, rather than saying that the existing Plan continues in effect.

Amendments. We have also added a provision for an extension of time to prepare and implement an amendment to the Plan, as well as an entire Plan. We believe that there may be cases in which an extension can be justified for a Plan amendment because the same extenuating circumstances may apply.

Editorial changes and clarifications. In paragraph (f)(3), "letter of request" becomes "written extension request." In the last sentence of that paragraph, "with respect to" becomes "related to."

Section 112.4(a)—Reporting Certain Discharges to EPA

Background. In 1991, we proposed to require more information than is currently required in the rule for reporting certain discharges. If your facility discharged more than 1,000 gallons in a discharge as described in § 112.1(b), or discharged oil in quantities that may be harmful in more than two discharges as described in § 112.1(b) within any consecutive twelve month period, you would have been required to submit certain information to the Regional Administrator.

In 1993, we proposed a modification to § 112.4(d)(1) which would allow the Regional Administrator to require the submission of the listed information in § 112.4(a)(1) at any time, whether or not there had been a discharge as described in § 112.1(b).

In 1997, we proposed a reduction of the amount of information currently required by § 112.4(a). We proposed to eliminate the following information, unless the Regional Administrator specifically requested it: (1) The date and year of initial facility operation; (2) maximum storage or handling capacity of the facility and normal daily throughput; and, (3) a complete copy of the SPCC Plan with any amendments.

Comments. In general. Most commenters favored the 1997 proposal. Several commenters opposed the proposal.

Information submission at any time. One commenter argued that the 1993 proposal allowing EPA to require submission of the information required in § 112.4(a)(1) and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community.

Submission of entire Plan. One commenter thought that meaningful review of the information submitted was impossible without the entire Plan. Two commenters believed that EPA would always request the information it proposed to eliminate.

Discharge threshold. Other commenters proposed a higher threshold for having to report a discharge than is currently required by § 112.4(a). Those thresholds ranged from 25–55 gallons. One commenter suggested that we relax the reporting requirement for very minor releases of petroleum products. Another suggested that if the discharge causes a sheen that dissipates within 24 hours, there should be no obligation to report.

Maps, flow diagrams, and charts. Several commenters suggested that we eliminate the requirement to submit maps, flow diagrams, and charts because those documents "add nothing useful to the inquiry."

Off-site category. Another commenter suggested that we create an "off-site" category of spill reports for discharges reported by a facility that are in a water body adjacent to the reporter's facility, or for discharges that originate off-site, but migrate to the facility.

Calculation of time for discharge reports required by § 112.4(a). Several commenters suggested that we calculate the time for the submission of discharge reports required by § 112.4(a) on a "block" basis, rather than a "rolling" basis.

Response to Comments

Information submission at any time. We agree with the commenter that the 1993 proposal to give the Regional Administrator authority to require submission of the requested information in this section at any time is vague, and have therefore withdrawn that part of the proposal. We will only require such information after the discharges specified in this section.

Submission of entire Plan. CWA section 311(m) provides EPA with the authority to require an owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311; and CWA section 308(a) provides us with authority to require the owner or operator of any "point source" to make such reports as the Administrator may reasonably require. Therefore, we disagree that submission of the entire Plan is always necessary when reporting discharges under § 112.4(a). We believe the information now required to be submitted is adequate to assess the cause of discharge and the ability of the facility to prevent future discharges. If the RA believes that the entire Plan has utility, he can request it. However, we disagree that RAs will always require submission of the Plan, or other information not required, as a matter of course. RAs may use their administrative discretion not to require the submission of Plan information or other additional information.

Discharge threshold. 42 gallons. We agree that a higher threshold of reporting discharges is justifiable because we believe that only larger discharges should trigger an EPA obligation to review a facility's prevention efforts. We also agree that a higher threshold should trigger a facility's obligation to submit information and possibly have to take further prevention measures. Therefore, we have changed the threshold for reporting after two discharges as described in § 112.1(b). Under the revised rule, if you are the owner or operator of a facility subject to this part, you must only submit the required information when in any twelve month period there have been two discharges as described in § 112.1(b), in each of which more than 42 U.S. gallons, or one barrel, has been discharged. We adopted the 42 gallon threshold on a commenter's suggestion. We believe that a 42 gallon threshold is the appropriate one to trigger a facility's information and possibly to have to take further prevention measures. When multiple discharges occur at a facility subject to the SPCC program, such as a generating station, they often involve the discharge of very small amounts of oil, and these discharges tend to come randomly from a lube pipe, an oil level sight glass crack, or some other apparatus, and do not normally indicate a recurring problem with the container. Having two or more of these small discharges does not indicate that the facility's SPCC Plan requires revision. The other reporting threshold of 1,000 gallons in any a single discharge as described in § 112.1(b) remains the same.

We disagree that a sheen caused by a discharge as described in § 112.1(b) over the threshold amount that disappears within 24 hours should not require submission of information. The discharge itself may indicate a serious problem at the facility which needs to be corrected. The discharge report may give us the information necessary to require specific correction measures.

"Sheen" rule. The duty imposed by the CWA to report to the National Response Center all discharges that may be harmful, further described by 40 CFR 110.3, is unchanged. Those discharges include discharges that violate applicable water quality standards; or, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge

period. If discharge #3 occurred on the following February 3, it would again trigger a submission, because discharge #3 would be within 12 months of discharge #2. While the "rolling basis" would trigger more regulatory submissions than the "block basis," we believe that it would enhance environmental protection because it would call potential problems to the

Editorial changes and clarifications. If a particular information request is inapplicable, you may omit it, but must explain why it is inapplicable. Several plural nouns like "names" and "causes" become singular. Wherever the phrase "and/or" appears, we have revised the phrase to read "and." In 1997's proposed § 112.4(a)(6), redesignated as § 112.4(a)(7), "spill" becomes

§ 112.4(a) does not arise until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not for any amendments to the Plan. We did not previously propose to relieve facilities of § 112.4 reporting requirements during Plan amendments or extensions for Plan amendments. An amendment may or may not be directly related to the cause of the discharge as

learn of discharges reported to EPA and to make recommendations as to further procedures, methods, equipment, and other requirements that might prevent such discharges at the reporting facility.

We can only implement State agency suggestions that are within the scope of our authority under section 311 of the CWA.

In general. The commenter is correct that the SPCC program is a Federal

clause empowering the RA to approve the Plan or require amendment.

We also proposed in 1993 allowing the RA to require submission of the information listed in § 112.4(a) at any time. The rationale to get this information was to prevent discharges from happening, in addition to seeking to correct the conditions that may have caused the discharge. See the background and response to comments

"Sheen" rule. The duty imposed by the CWA to report to the National Response Center all discharges that may be harmful, further described by 40 CFR 110.3, is unchanged. Those discharges include discharges that violate applicable water quality standards; or, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Maps, flow diagrams, and charts. In response to comments which questioned the usefulness of such information, we have modified the provision regarding maps, flow diagrams, topographical maps (now required by paragraph (a)(6) of the current rule) to clarify that only the information necessary to adequately describe the facility and discharge, such as maps, flow diagrams, or topographical maps is necessary—not necessarily all of the information listed in the paragraph. To effect this change, we added the words "as necessary" after "topographical maps." "As necessary" means as determined by the owner or operator, subject to the obligations of this rule, unless the RA requests more information. There might be circumstances in which the owner or operator would submit only a brief description of the facility or a map, for example, because flow diagrams and topographical maps were unnecessary to describe the discharge, and would not help the RA to determine whether any amendment to the Plan was necessary to prevent future discharges as described in § 112.1(b).

Off-site category. There is no necessity for an "off-site" category of discharges as described in § 112.1(b) because only a discharge as described in § 112.1(b) that originates in a facility subject to this part counts for purposes of § 112.4(a).

Calculation of time for discharge reports required by § 112.4(a). We believe a "rolling" basis is the appropriate method to calculate a discharge as described in § 112.1(b) for purposes of the rule because discharges as described in § 112.1(b) that are closer in time are more likely to be related in cause. Discharges that are more proximate in time may indicate a problem that needs to be remedied. A "rolling basis" means that each discharge as described in § 112.1(b) triggers the start of a new twelve month period. For example, if discharge #1 occurred on January 1, and if discharge #2 occurred on June 2, discharge #2 would trigger the regulatory submission and would start a new twelve month period. If discharge #3 occurred on the following February 3, it would again trigger a submission, because discharge #3 would be within 12 months of discharge #2. While the "rolling basis" would trigger more regulatory submissions than the "block basis," we believe that it would enhance environmental protection because it would call potential problems to the attention of the Regional Administrator sooner, and allow them to be remedied sooner by a Plan amendment where necessary.

"Block" basis. The other approach would be to use a "block" period. Under this type of calculation, each third discharge as described in § 112.1(b) would not trigger a submission if it occurred within 12 months of discharge #2, but it would start the beginning of a new 12 month period. For example, if discharge #1 occurred on January 1, and discharge #2 on June 2, discharge #2 would trigger a submission. Discharge #3 on the following February 3 would not trigger a submission, but would start a new 12 month period. The principal justification for block reporting is also that discharges more closely related in time are more likely to be related. Our concern with this method is that if the February 3 discharge (i.e., discharge #3) is within twelve months of discharge #2, this situation could indicate that there is a problem that has not been remedied, so the February 3 discharge should trigger a reporting submission.

Maximum storage or handling capacity. In 1997, we proposed deletion of current paragraph (5) (renumbered as paragraph (4) in today's final rule), concerning the maximum storage or handling capacity of the facility and normal daily throughput. We have reconsidered this proposal and decided to withdraw it because the referenced information is necessary information. We have therefore retained the language in the rule. Storage capacity and normal daily throughput are important indicators of the impact of a potential discharge as described in § 112.1(b).

Additional information. If the Regional Administrator requires other information, for example, concerning the spill pathway, or any response measures taken, this request is authorized under renumbered § 112.4(a)(9), current § 112.4(a)(11).

Adjoining shorelines, natural resources, affected natural resources. Discharges into navigable waters are not the only discharges reportable for purposes of this section. We note that any discharge as described in § 112.1(b) is also within the scope of this section's reportable discharges.

Editorial changes and clarifications. If a particular information request is inapplicable, you may omit it, but must explain why it is inapplicable. Several plural nouns like "names" and "causes" become singular. Wherever the phrase "and/or" appears, we have revised the phrase to read "and." In 1997's proposed § 112.4(a)(6), redesignated as § 112.4(a)(7), "spill" becomes "discharge as described in § 112.1(b)." In 1997's proposed § 112.4(a)(8), redesignated as § 112.4(a)(9), "spill event" becomes "discharge."

Section 112.4(b)—Applicability of § 112.4

Background. Under current § 112.4(b), the § 112.4 requirements for spill reporting do not apply until the expiration of the time permitted for the preparation and implementation of a Plan pursuant to § 112.3(a), (b), (c), and (f). In 1991, we proposed that § 112.4 would not apply until the expiration of the time permitted for the preparation and implementation of a Plan under § 112.3(f) only. Section 112.3(f) is the time period in which you are permitted to prepare and implement a Plan under an extension request.

We proposed to delete the references to § 112.3(a), (b) and (c) because the current time periods allowed in these paragraphs for the preparation and implementation of the Plan (before commencement of operation for new facilities or mobile facilities, or after the effective date of the rule for other existing facilities) were proposed for deletion. Because future facilities would generally have a Plan prepared and implemented before beginning operations, there was no longer a need to temporarily relieve facilities of spill reporting obligations under § 112.4(a), unless the Regional Administrator granted an extension under § 112.3(f) to prepare and implement a Plan. We received no comments on this proposal.

In today's rule, however, we have revised § 112.3 to extend the time lines for certain facilities to prepare and implement Plans. To accord with this change, we are maintaining the approach under current § 112.4(b) to provide that the § 112.4 spill reporting requirements will not apply until the expiration of the time permitted for the initial preparation and implementation of a Plan under § 112.3(a), (b), (c), and (f). Today, we have also revised § 112.3(a) to provide an extended time line for preparing a Plan amendment and § 112.3(f) to provide for an extension request for an amendment to a Plan. Therefore, we have also revised § 112.4(b) to provide that the obligation to submit information as required by

§ 112.4(a) does not arise until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not for any amendments to the Plan. We did not previously propose to relieve facilities of § 112.4 reporting requirements during Plan amendments or extensions for Plan amendments. An amendment may or may not be directly related to the cause of the discharge as described in § 112.1(b), and therefore may have little relevance to the duty to submit discharge reports to EPA.

Section 112.4(c)—Supplying Discharge Information to the States

Background. In 1991, we proposed that you must provide the same discharge information that you submit to the Regional Administrator under § 112.4(a) to the State agency in charge of oil pollution control activities. The current rules require that you provide that information to the State agency in charge of water pollution control activities.

Comments. Legal authority. One commenter suggested that we have no legal authority for the proposal. Another commenter asserted that EPA could only implement State agency recommendations if those recommendations fell within the scope of the SPCC rule.

In general. Several commenters suggested the proposal was redundant and unnecessary, because only EPA regulates the SPCC program, not the States.

State agency review. One commenter, a State, favored the proposal and noted that more than one State agency has statutory jurisdiction over oil pollution control in that State. That State and another suggested that all relevant State agencies receive the information. One commenter suggested that EPA should identify the appropriate State agency to which notice is due. One commenter thought the proposed change was misleading. Another commenter, a State, suggested that EPA provide the States money to review the submitted discharge information.

Response to comments. Legal authority. We have ample legal authority to finalize this rule. A similar rule has been in effect since 1974. Section 311(j)(1) of the CWA authorizes the Federal government (and EPA through delegation) to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. * * *" Section 112.4(c) of this rule is a procedure to help prevent discharges that fall within the scope of that statutory provision. It enables States to learn of discharges reported to EPA and to make recommendations as to further procedures, methods, equipment, and other requirements that might prevent such discharges at the reporting facility.

We can only implement State agency suggestions that are within the scope of our authority under section 311 of the CWA.

In general. The commenter is correct that the SPCC program is a Federal program, but we believe that in working with the States, we can improve the Federal program through coordination with State oil pollution prevention programs. Therefore, we believe that the information provided to States is neither redundant nor unnecessary. Nor is the section misleading; it clearly states the obligation of the owner or operator.

State agency review. We modified the 1991 proposal on the commenters' suggestion to include notice to any appropriate State agency in charge of oil pollution control activities, since there may be more than one such agency in some States and all may have need for the information. We do not list such agencies in the rule, as a commenter suggested, because the names and jurisdiction of the State agencies are subject to change. It is the reporter's obligation to learn which State agencies receive the discharge reports. Most States publish documents on an ongoing basis, similar to the **Federal Register**, which publicize relevant regulatory information.

We do not provide State agencies funds to review these discharge reports due to budgetary constraints. While we assume that many States review these reports carefully, we cannot require them to do so. Thus, this action is not an unfunded mandate from the Federal government to the States. But if States do review the reports, they do so at their own expense.

Editorial changes and clarifications. In the last sentence of the paragraph, "discharges of oil" becomes "discharges."

Section 112.4(d)—Amendment of Plans Required by the Regional Administrator

Background. In 1991, we proposed that after review of materials under 112.4(a), the Regional Administrator (RA) might require amendment of the SPCC Plan. We also proposed that the RA might require Plan amendment after reviewing contingency plan materials submitted for approval. See proposed § 112.7(d), 1991.

In 1993, we proposed that the RA would also have authority to require Plan amendment after on-site review of the Plan. In addition, we proposed a clause empowering the RA to approve the Plan or require amendment.

We also proposed in 1993 allowing the RA to require submission of the information listed in § 112.4(a) at any time. The rationale to get this information was to prevent discharges from happening, in addition to seeking to correct the conditions that may have caused the discharge. See the background and response to comments under § 112.4(a) for a discussion of this proposal.

Comments. Regional Administrator approval of Plans. Several commenters criticized the idea of RA approval of the Plan on the theory that it is an unwarranted intrusion into the manner in which operators do business. Another urged an appeal process if EPA approval of Plans is required.

Plan information and amendments. One commenter argued that allowing EPA to require submission of the information required in § 112.4(a) at any time and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community. Several commenters were concerned that EPA would inconsistently require overly stringent measures in some Plans or might require amendments unrelated to discharge potential or which were financially unreasonable. Two commenters urged a time limit on EPA decision making following submission of required information. Another commenter was concerned that no provision required PE certification of amendments required by EPA.

Response to comments. Regional Administrator approval of Plans. We have deleted the provision that would have allowed RA approval of Plans. We have decided not to create a new class of SPCC Plans which require EPA approval, either Plans submitted following certain discharges as required by § 112.4(a) or Plans with contingency plans, because we do not believe such approval is necessary in order to ensure effective Plans.

Plan information and amendments. We agree that allowing EPA to require submission of the information required in § 112.4(a) at any time, and thereafter to require Plan amendments, is vague, and therefore we have withdrawn that part of the proposal. Furthermore, it is unnecessary because sections 308 and 311(m) of the CWA already provides us with adequate authority to request necessary Plan information.

While the RA will not have authority under this section to approve Plans, he has authority to require Plan amendment. We will strive to be as timely as possible in reviewing the

information when submitted, and making decisions on any required amendments. A time limit on the RA's decision making authority would be unnecessary because a facility may continue to operate under its existing Plan while the RA's decision is pending. While we will consider cost in our decision making, amendments may be required on a case-specific basis to help

next paragraph, making such reference redundant.

Editorial changes and clarifications. We have changed the proposed requirement to mail a copy of the notice to the registered agent of a corporation to a requirement that such notice be effected only if the registered agent is known to EPA. The notification requirement for registered agents now tracks the notification requirement for

a day-to-day basis. One commenter suggested that small facilities with less than 5,000 gallon-capacity should be exempted from the need to amend their Plans for the listed acts. Another commenter asserted that instead of being required to amend their Plans before changes are made, operators should be encouraged to incorporate new procedures into their SPCC Plans to prevent and contain potential

amended at fixed time points such as before a design is physically implemented, before startup of operations, after modifications, before new or modified equipment is in operation, or when changes are made. One commenter said that rule language should be clarified to note that the RA may specify a time period longer than six months to implement an

alike to prevent discharges after material changes.

Material changes. A material change is one that may either increase or decrease the potential for a discharge. We agree with the commenter that the rule should be worded to indicate that the examples are for illustration only, because the items in the list may not always trigger amendments, and because the list is not exclusive. Only

is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. Therefore, we have amended the rule to add "or service" after the phrase "changes of product."

Documenting no change or certain activities. We agree that a log book may

information when submitted, and making decisions on any required amendments. A time limit on the RA's decision making authority would be unnecessary because a facility may continue to operate under its existing Plan while the RA's decision is pending. While we will consider cost in our decision making, amendments may be required on a case-specific basis to help prevent discharges. Any technical amendment required would require PE certification. *See* § 112.5(c) .

Editorial changes and clarifications. We have deleted reference to the RA's approval of the submitted Plan in proposed paragraph (d)(2), because the RA will not have authority to approve a Plan. He does, however, have authority to require Plan amendment under today's revision of § 112.4(d).

Section 112.4(e)—Notification and Implementation of Required Amendments

Background. In 1991, we reproposed the current notification provision concerning required Plan amendments, and the time lines for implementation of those amendments.

Comments. Who receives notice. One commenter wanted EPA to notify railroads directly, instead of their registered agents, because of the time lag that might occur between the time the agent received notice and the owner or operator of the facility received notice. Another commenter urged that we also provide notice to the facility operator, the facility improvement owner, and the facility landowner. His rationale for such expanded notice was that a major problem may be addressed by the operator or EPA, without the knowledge and/or consent of the facility improvements owner and the facility landowner.

Appeals procedure. One commenter suggested that we include a reference to the appeal procedure for amendments in this section.

Response to comments. Who receives notice. In reply to the railroad commenter, the rule requires notice only to the owner or operator of the facility, and the registered agent, if any and if known. Notice from EPA to the facility improvements owner and landowner is unnecessary because these matters can and should be handled between the facility owner or operator and the owner or operator of the improvements or the landowner.

Appeals procedure. We have not included a reference to the appeals procedures for required amendments in this section because the appeals procedures follow immediately in the next paragraph, making such reference redundant.

Editorial changes and clarifications. We have changed the proposed requirement to mail a copy of the notice to the registered agent of a corporation to a requirement that such notice be effected only if the registered agent is known to EPA. The notification requirement for registered agents now tracks the notification requirement for registered agents in § 112.1(f). Because we have withdrawn the proposed requirement that a corporation submit that agent's name or address in the submission of information required by § 112.4(a), such agent may not be known to EPA. In the last sentence of the final rule, "amendment of the Plan" becomes "amended Plan."

Section 112.4(f)—Appeals of Required Amendments

Background. In 1991, we reproposed the current appeals procedures for required Plan amendments. We received no substantive comments. Therefore, we have promulgated the procedures as proposed.

Editorial changes and clarifications. We deleted language concerning the "designee" of the EPA Administrator because it is unnecessary. Current delegations allow the Administrator to delegate this function.

Section 112.5(a)—Plan Amendment by an Owner or Operator

Background. In 1991, we proposed to require that an owner or operator amend the Plan before making any change in facility design, construction, operation, or maintenance materially affecting the facility's potential for the discharge of oil into the waters of the United States unless the RA granted an extension. We also listed some examples of facility changes which would require Plan amendment, noting that these examples were not an exclusive list.

Comments. When amendment is necessary. Several commenters favored the proposal. Others provided differing standards for amending Plans. A number of commenters suggested that no amendments should be necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill. Another suggested a standard that amendments should be made "when there are indicia of problems." A commenter suggested a standard that no amendments would be required except for those changes which would cause the spill potential to exceed the Plan's capabilities because day-to-day changes do not affect the worst case spill and the Plan should not have to be amended on a day-to-day basis. One commenter suggested that small facilities with less than 5,000 gallon-capacity should be exempted from the need to amend their Plans for the listed acts. Another commenter asserted that instead of being required to amend their Plans before changes are made, operators should be encouraged to incorporate new procedures into their SPCC Plans to prevent and contain potential discharges which might result from performing needed repairs and replacements. The rationale for the suggestion was that operators will then not "save up" potential amendments due to the burden of preparing an amendment.

Material changes. Many commenters offered opinions on the examples of material changes listed in the rule for which amendments would be required. Some suggested that the rule should read that these are only examples of changes that may trigger amendment. Several commenters suggested that decommissioning a tank should not trigger an amendment because "as a tank is removed, so is the requirement for an SPCC Plan." Another commenter noted that changing a product in a tank or cleaning a tank should not be considered commissioning or decommissioning a tank. One commenter suggested that an amendment to the Plan should be required when there is a change of product stored within the tank.

Documenting no change or certain activities. Another commenter suggested that a log book might be used instead of a Plan amendment to document "routine activities" and measures taken to maintain the spill prevention and response integrity of the facility. Several commenters suggested that an identical replacement of tanks or other equipment should not be considered a material change and therefore amendment should not be required. A utility commenter asked that facilities be allowed to accumulate minor modifications for a period of 6 months, then update the Plan.

EPA approval. Another commenter suggested that we clarify that EPA approval of an amendment made under this section is not required.

Time line for amendment implementation. Numerous commenters opposed the proposed requirement that a Plan be amended before any material changes are made. Commenters suggested various alternative amendment time lines ranging from 90 days to six months following such changes, with a cluster of commenters around the six months alternative. Others suggested that the Plan be

amended at fixed time points such as before a design is physically implemented, before startup of operations, after modifications, before new or modified equipment is in operation, or when changes are made. One commenter said that rule language should be clarified to note that the RA may specify a time period longer than six months to implement an amendment.

Response to comments. When amendment is necessary. We agree with the commenter who suggested that we maintain the current standard for amendments, i.e., when there is a change that materially affects the facility's potential to discharge oil. This position accords with our stance on when Plans should be prepared and implemented. *See* § 112.3. The other suggested standards too narrowly limit the changes which would trigger Plan amendment. We believe that an amendment is necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill because EPA needs this information to determine compliance with the rule. For example, the amount of secondary containment required depends on the storage capacity of a container. Decreases might also affect the way a facility plans emergency response measures and training procedures. A lesser capacity might require different response measures than a larger capacity. The training of employees might be affected because the operation and maintenance of the facility might be affected by a lesser storage capacity.

Likewise, a standard requiring amendment "when there are indicia of problems" is too vague and leaves problems unaddressed which may result in a discharge as described in § 112.1(b). A standard requiring an amendment only when the change would cause the spill potential to exceed the Plan's capabilities (because day-to-day changes do not affect the worst case spill) would have the effect of leaving no documentation of amendments which might affect discharges which do not reach the standard of "worst case spill." While we encourage facilities to incorporate new procedures into Plans which would help to prevent discharges, amendments are still necessary when material changes are made to document those new procedures, and thus facilitate the enforcement of the rule's requirements. We disagree that a small facility should be exempt from making amendments for material changes. Amendments may be necessary at large or small facilities alike to prevent discharges after material changes.

Material changes. A material change is one that may either increase or decrease the potential for a discharge. We agree with the commenter that the rule should be worded to indicate that the examples are for illustration only, because the items in the list may not always trigger amendments, and because the list is not exclusive. Only changes which materially affect operations trigger the amendment requirement. Ordinary maintenance or non-material changes which do not affect the potential for the discharge of oil do not.

We disagree that decommissioning of a container that results in permanent closure of that container is not a material amendment. Decommissioning a container could materially decrease the potential for a discharge and require Plan amendment, unless such decommissioning brings the facility below the regulatory threshold, making the preparation and implementation of a Plan no longer a requirement. We also believe that the oversight of a Professional Engineer is necessary to ensure that the container is in fact properly closed.

We agree that replacement of tanks, containers, or equipment may not be a material change if the replacements are identical in quality, capacity, and number. However, a replacement of one tank with more than one identical tank resulting in greater storage capacity is a material change because the storage capacity of the facility, and its consequent discharge potential, have increased.

Changes of product. We have added to the list of examples, on a commenter's suggestion, "changes of product." We added "changes of product" because such change may materially affect facility operations and therefore be a material change. An example of a change of product that would be a material change would be a change from storage of asphalt to storage of gasoline. Storage of gasoline instead of asphalt presents an increased fire and explosion hazard. A switch from storage of gasoline to storage of asphalt might result in increased stress on the container leading to its failure. Changes of product involving different grades of gasoline might not be a material change and thus not require amendment of the Plan if the differing grades of gasoline do not substantially change the conditions of storage and potential for discharge.

A change in service may also be a material change if it affects the potential for a discharge. A "change in service" is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. Therefore, we have amended the rule to add "or service" after the phrase "changes of product."

Documenting no change or certain activities. We agree that a log book may be used to document non-material, routine activities. However, this is not an appropriate substitute for amendment when you make material changes at the facility.

EPA approval. We agree with the commenter's suggestion that EPA approval of an amendment is not required. However, if the RA is not satisfied that your amendment satisfies the requirements of these rules, he may require further amendment of your Plan.

Time line for amendment implementation. We agree with commenters that we should not require Plan amendment before material changes are made. Therefore, we have revised the proposed rule to provide a maximum of six months for Plan amendment, and a maximum of six more months for amendment implementation. This is the current standard. We note that § 112.3(f) allows the RA to authorize an extension of time to prepare and implement an amendment under certain circumstances.

Editorial changes and clarifications. The phrase in the first sentence which read, "potential to discharge oil as described in § 112.1(b) of this part," becomes "potential for a discharge as described in § 112.1(b). "Tanks" becomes "containers." "Commission or decommission" becomes "commissioning or decommissioning."

Section 112.5(b)—Periodic Review of Plans

Background. In 1991, we reproposed the current rule, which requires that the owner or operator review the Plan at least every three years, and amend it if more effective control and prevention technology would significantly reduce the likelihood of a spill, and if the technology had been field-proven at the time of the review.

In 1997, we withdrew the 1991 proposal, and instead proposed a five-year review time frame, with the same technological conditions. In 1997, we also proposed that the owner or operator certify that he had performed the review.

Comments. Five-year review. Most commenters favored the change from three-to five-year review. Some

commenters noted that a five-year review period would make it easier to coordinate reviews of related plans, such as facility response plans required by part 112. A few opposed it, preferring the current three-year review period. They believed that five-year review might lead to reduced maintenance and consequent environmental harm, especially in the absence of any

required by the RA under § 112.4(a), and perhaps after on-site review of a Plan (*see* § 112.4(d)). Plus the Plan must be implemented at all times. These opportunities ensure that Plans will be current. We also disagree that the length of the tank warranty should be the determining factor for a technological review. Technology changes enough within a five-year period to warrant

beginning or the end of the Plan, or maintain such documentation in a log book appended to the Plan or other appendix to the Plan. You may document completion in one of two ways. If amendment of the Plan is necessary, then you must state as much, and that review is complete. This statement is necessary because Plan amendments may result either from

rules. "Spill event," in the second sentence, becomes "discharge as described in § 112.1(b).

Section 112.5(c)—PE Certification of Technical Amendments

Background. In 1991, we proposed that all amendments to the Plan must be certified by a PE with the exception of changes to the contact list. The current rule requires certification of all

deletion of this provision, and have deleted it.

Section 112.7 Introduction and (a)(1)—General Requirements

Background. In 1991, we reproposed the introduction to § 112.7 to clarify that the rule requires mandatory action, and that it is not just a guideline. In 1997, we reproposed a definition of SPCC Plan that included some substantive

Written Plans. We agree that a "written" Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a

commenters noted that a five-year review period would make it easier to coordinate reviews of related plans, such as facility response plans required by part 112. A few opposed it, preferring the current three-year review period. They believed that five-year review might lead to reduced maintenance and consequent environmental harm, especially in the absence of any requirements for a facility to ensure that personnel are familiar with planning goals and proposed response actions, including personnel who are rotated. One commenter suggested that the longevity of a tank warranty should be the determining factor in the length of review time. Another suggested that there should be no particular time period prescribed because the requirement for an amendment whenever a material change is made is sufficient.

Completion of review. Commenters split almost evenly on the proposed requirement for certification of completion of the review. Opponents of the certification proposal believed generally that it is unnecessary paperwork that will not benefit the environment. One commenter suggested that instead of documenting completion of review, a facility might instead date the Plan to show review and date each amendment. One commenter thought that the certifications should have to be forwarded to the Regional Administrator. Others asked whether the certification could be documented in a log book, instead of in the Plan. Another commenter asked at what management level certification should be required. One commenter believed that Plans amended due to five-year reviews should not require owner or operator certification because any amendments to the Plan have to be reviewed and certified by a PE. Another commenter noted that no specific language was provided for the certification. One commenter urged that the PE should be allowed to document that no change is necessary after reviewing planned changes, or that further study is required, or that an amendment is necessary.

Response to comments. Five-year review. We agree that a five-year review period will make coordination of review of related plans, such as facility response plans required by part 112, easier. We disagree that a five-year review period will lead to reduced maintenance or increased environmental harm. Amendment of a Plan will still be necessary when a material change is made affecting the facility's potential to discharge oil, perhaps after certain discharges as required by the RA under § 112.4(a), and perhaps after on-site review of a Plan (*see* § 112.4(d)). Plus the Plan must be implemented at all times. These opportunities ensure that Plans will be current. We also disagree that the length of the tank warranty should be the determining factor for a technological review. Technology changes enough within a five-year period to warrant required review within such time period whether or not other changes occur. Amendments other than the five-year review amendments may not be based on the need to learn of improved technology. Those amendments might result from deficiencies in the Plan, on the need to make repairs, or to remedy the cause of a discharge.

Calculation of time between reviews. The change in the rule from three-year to five-year reviews requires some explanation as to when a review must be conducted. For example, a facility became subject to the rule on January 1, 1990. The first three-year review should have been conducted by January 1, 1993, the second by January 1, 1996, and the third by January 1, 1999. The next review must be conducted by January 1, 2004, due to the rule change. In other words, an existing facility must complete the review within 5 years of the date the last review must have been completed. A facility becoming operable on or after the effective date of the rule will begin a five-year cycle at the date it becomes subject to part 112.

Completion of review. We disagree that documentation of completion of review has no environmental benefit. Its benefit lies in the fact that it shows that someone reviewed the Plan to determine if better technology would benefit the facility and the Plan is current. Documentation of completion of review is necessary whether or not any amendments are necessary in order to clearly show that the review was done. Mere dating of the Plan or of an amendment does not show that you performed the required review. Documentation of completion of review is a function of the owner or operator, whereas certification of any resulting technical amendment is a function of the PE. We disagree that documentation of completion should be forwarded to the Regional Administrator because it would increase the information collection burden without an environmental benefit. It is sufficient that the review be done. When the Regional Administrator wishes to verify completion of review, he may do so during an on-site inspection.

How to document completion of review. You must add documentation of completion of review either at the beginning or the end of the Plan, or maintain such documentation in a log book appended to the Plan or other appendix to the Plan. You may document completion in one of two ways. If amendment of the Plan is necessary, then you must state as much, and that review is complete. This statement is necessary because Plan amendments may result either from five-year review or from material changes at the facility affecting its potential for discharge, or from on-site review of the Plan. There is no way to know which circumstance causes the amendment without some explanation. If no amendments are necessary, you must document completion of review by merely signing a statement that you have completed the review and no amendments are necessary. You may use the words suggested in the rule to document completion, or make any similar statement to the same effect.

Who documents review. The owner or operator of the facility, or a person at a management level with sufficient authority to commit the necessary resources, must document completion of review.

Time line for amendment implementation. We agree with commenters (see comments on proposed § 112.5(a)) that the preparation and implementation of Plan amendments require more time than proposed. The same rationale applies to the preparation and implementation of amendments required due to five-year reviews. Therefore, we will require adherence to the time lines laid down in § 112.5(b) for amendments. Currently, § 112.5(b) requires that Plan amendments be prepared within six months. It is silent as to time lines for implementation. Therefore, we have revised the rule to clarify that amendments must be implemented as soon as possible, but within the next six months. This is the current standard for implementation of certain other amendments. *See,* for example, §§ 112.3(a) and 112.4(e). We note that § 112.3(f) allows you to request an extension of time to prepare and implement an amendment.

Editorial changes and clarifications. We have changed the word "certification" to a requirement to document completion of the review to avoid the legal effect a certification may have. The intent of the certification proposal was merely to show that an owner or operator performed a review of the Plan every five years. 62 FR 63814, December 2, 1997. A false documentation of completion of review of the Plan is a deficiency in the Plan and may be cited as a violation of these

rules. "Spill event," in the second sentence, becomes "discharge as described in § 112.1(b).

Section 112.5(c)—PE Certification of Technical Amendments

Background. In 1991, we proposed that all amendments to the Plan must be certified by a PE with the exception of changes to the contact list. The current rule requires certification of all amendments.

Comments. A few commenters suggested that the value of PE certification for amendments does not justify the cost. Another commenter questioned when recertification of the entire Plan was required, rather than just the amendment in question. Several commenters suggested that the recertification requirement be limited to those changes that materially affect the facility's potential to discharge oil.

Response to comments. It is the responsibility of the owner or operator to document completion of review, but completion of review and Plan amendment are two different processes. PE certification is not necessary unless the Plan is amended.

We believe that PE certification is necessary for any technical amendment that requires the application of good engineering practice. We believe that the value of such certification justifies the cost, in that good engineering practice is essential to help prevent discharges. Therefore, we have amended the rule to require PE certification for technical changes only. Non-technical changes not requiring the exercise of good engineering practice do not require PE certification. Such non-technical changes include but are not limited to such items as: changes to the contact list; more stringent requirements for stormwater discharges to comply with NPDES rules; phone numbers; product changes if the new product is compatible with conditions in the existing tank and secondary containment; and, any other changes which do not materially affect the facility's potential to discharge oil. If the owner or operator is not sure whether the change is technical or non-technical, he should have it certified.

Former Section 112.7(a)(1)—Certain pre-1974 Discharges

Background. In 1991, we proposed to delete § 112.7(a), which required a description of certain discharges to navigable waters or adjoining shorelines which occurred prior to the effective date of the rule in 1974, because that information was no longer relevant. 56 FR 54620. We received several comments supporting the proposed deletion of this provision, and have deleted it.

Section 112.7 Introduction and (a)(1)—General Requirements

Background. In 1991, we reproposed the introduction to § 112.7 to clarify that the rule requires mandatory action, and that it is not just a guideline. In 1997, we reproposed a definition of SPCC Plan that included some substantive requirements. As noted above (*see* the "SPCC Plan" definition in § 112.2), those substantive requirements have been transferred from the definition of "SPCC Plan" in § 112.2 to this section.

Section 112.7(a)(1) requires a discussion of the facility's conformance with the listed requirements in the rule.

Comments. For a discussion of the "should to shall to must" comments and response to those comments, see the discussion above under that topic in section IV.C of this preamble.

Cross-referencing. Several commenters criticized the requirement for sequential cross-referencing set forth in the 1997 proposed definition of "SPCC Plan," alleging that it is confusing and provides no benefit. Another commenter asked how detailed the cross-referencing must be.

Written Plans. Another commenter proposed that a "written" Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed.

Response to comments. Cross-referencing. We agree that the term "sequential" cross-referencing may be confusing, and have therefore deleted it in favor of a requirement to provide cross-referencing. We disagree that cross-referencing provides no benefit. With the wide variation now allowed in differing formats, we need cross-referencing so that an inspector can tell whether the Plan meets Federal requirements, and whether it is complete. In addition, in order for an owner or operator to do his own check to ensure that his facility meets all SPCC requirements, he must go through the exercise of comparing his Plan to each SPCC requirement. Cross-referencing in the context of the rule means indicating the relationship of a requirement in the new format to an SPCC requirement. The cross-referencing must identify the Federal section and paragraph for each section of the new format it fulfills, for example, § 112.8(c)(3). Note the cross-referencing table we have provided for your convenience in section II.A of this preamble.

Written Plans. We agree that a "written" Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a medium that is not readily accessible in an emergency, it must be also available in a medium that is. For example, a Plan might be electronically produced, but computers fail and may not be operable in an emergency. For an electronic Plan or Plan produced in some other medium, therefore, a backup copy must be readily available on paper. At least one version of the Plan should be written in English so that it will be readily understood by an EPA inspector.

Editorial changes and clarifications. We have transferred all of the proposed substantive requirements in the 1997 proposed definition of "SPCC Plan" to the introduction of this section. We did this because we agree with commenters (*see* the comments on the definition of "SPCC Plan" in § 112.2) that definitions should not contain substantive requirements.

We have revised the introduction to § 112.7 to facilitate use of the active voice and to clearly note that the owner or operator, except as specifically noted, is responsible for implementing the rule.

We also deleted language requiring a "carefully thought-out" SPCC Plan. Such language is unnecessary because the Plan must be prepared in accordance with good engineering practices. Another editorial revision in the introduction is the change from "level with authority" in the last sentence of proposed § 112.7(a) to "level of authority." A third revision is a change from "format" to "sequence." We have transferred the part of the sentence proposed in 1991 dealing with the sequence of the Plan in § 112.7(a)(1) to the introduction of § 112.7.

For consistency with response plan language in § 112.20(h), the language in the introduction referring to alternative SPCC formats has been revised to read "equivalent Plan acceptable to the Regional Administrator." The response plan language in § 112.20(h) on "equivalent response plans" has also been revised to include the "acceptable to the Regional Administrator" language included in the introduction to § 112.7. For a discussion of possible SPCC formats, see the discussion under the definition of "SPCC Plan," above.

We deleted the term "sequentially cross-referenced" because we agree that it may be misunderstood, and instead use the term "cross-referencing" in the revised rule. As noted above, cross-referencing means identifying the requirement in the new format to the section and paragraph of the SPCC requirement. We have also substituted the word "part" for "section" where

Comments. Some commenters supported the 1991 proposal. But others had concerns.

Applicability—1991. Some commenters suggested that the Agency should add language to the rule making clear that a facility may deviate from the express requirements of the rule and may substitute alternatives based on good engineering practice. The

questioned how the RA will determine if the deviation will cause harm to the environment, and therefore lack equivalency. If such a provision is included, the commenter asked for an appeals process similar to the one suggested in § 112.20(c).

RA oversight—1993. One commenter favored the 1993 proposal. Opposing commenters believed that submission of

environmental protection in an alternate manner. For example, a requirement that may be essential for a facility storing gasoline may be inappropriate for a facility storing asphalt; or, the owner or operator may be able to implement equivalent environmental protection through an alternate technology. An owner or operator may consider cost as one of the factors in

found at §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), are not practicable. Those measures are expressly tailored to address the lack of secondary containment at a facility. They include requirements to: explain why secondary containment is not practicable; conduct periodic integrity testing of bulk storage containers; conduct periodic integrity

allowed for the general and specific secondary containment provisions listed above because § 112.7(d) contains the necessary requirements when you find that secondary containment is not practicable. We have amended both this paragraph and § 112.7(d) to clarify this. Instead, the contingency planning and other requirements in § 112.7(d) apply. Deviations are also not available for the general recordkeeping and training

We deleted the term "sequentially cross-referenced" because we agree that it may be misunderstood, and instead use the term "cross-referencing" in the revised rule. As noted above, cross-referencing means identifying the requirement in the new format to the section and paragraph of the SPCC requirement. We have also substituted the word "part" for "section" where "cross-referencing" and meeting "equivalent requirements" are mentioned. We make this change because the rule requires compliance with any applicable provision in the part, not merely § 112.7. We also clarify that the discussion of your facility's conformance with the requirements listed (see § 112.7(a)(1)) means the requirements listed in part 112, not merely the requirements listed in § 112.7.

We also note that if the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up. The discussion must include a schedule for the installation and start-up of these items.

Section 112.7(a)(2)—Deviations from Plan Requirements

Background. In 1991, we proposed to allow deviations from the requirements listed in § 112.7(c) and in §§ 112.8, 112.9, 112.10, and 112.11, as long as the owner or operator explained the reason for nonconformance and provided equivalent environmental protection by another means. The proposal was intended to implement the requirement for "good engineering practice" which is a cornerstone of the rule, and to provide flexibility in meeting the rule's requirements. We clearly noted in the rule that the Regional Administrator would have the authority to overrule any deviation.

In 1993, we reproposed the section, eliminating language referring to the Regional Administrator's (RA's) authority to overrule deviations. Instead, we proposed that whenever you proposed a deviation, you would have to submit the entire Plan to the RA with a letter explaining how your Plan contained equivalent environmental protection measures in lieu of those explicitly required in the rule. The RA would have authority under the 1993 proposal to require amendment of the Plan if he determined that the measures described in the deviation did not provide equivalent protection.

Comments. Some commenters supported the 1991 proposal. But others had concerns.

Applicability—1991. Some commenters suggested that the Agency should add language to the rule making clear that a facility may deviate from the express requirements of the rule and may substitute alternatives based on good engineering practice. The commenters added that we should make clear that the equivalency provision in § 112.7(a)(2) does not require mathematical equivalency of every requirement, but merely the achievement of substantially the same level of overall protection from the risk of discharge at the facility as the specific requirement seeks to achieve. Another commenter was concerned that proving the equivalence of measures to the satisfaction of Regional officials may be difficult. One commenter urged us to expressly state that PEs may substitute alternatives based on good engineering practice.

RA oversight—1991. One commenter opposed the provision allowing the RA to overrule waivers/equivalent measures. As noted above, we withdrew the proposal to allow the RA to explicitly overrule waivers. Instead we substituted a proposed procedure whereby the RA could require you to amend your Plan. One commenter feared that PEs would be reluctant to certify alternate technologies due to the threat of potential liability.

Deviation submission. One commenter opposed the proposed requirement to submit a Plan deviation and urged its deletion to make it consistent with the rest of the SPCC rule. The commenter argued that the deviation and Plan have already been certified by a PE, and there is no reason for EPA to be asked to second guess that certification in every case. The commenter also asserted that it is unduly burdensome to require regulated facilities to prepare a justification and submit a Plan to EPA for every waiver of the technical requirements. Another commenter questioned why the entire Plan should be submitted to the RA for review. The commenter suggested that only the portion or portions of the Plan that do not conform to the standard requirements should be submitted, adding that this step would help EPA to minimize the resources needed to review such waivers. One commenter suggested that the choice of preventive systems in the design and implementation of spill prevention measures should be left to the facility owner or operator. The commenter opposed giving the RA authority to require equivalent protection because he questioned how the RA will determine if the deviation will cause harm to the environment, and therefore lack equivalency. If such a provision is included, the commenter asked for an appeals process similar to the one suggested in § 112.20(c).

RA oversight—1993. One commenter favored the 1993 proposal. Opposing commenters believed that submission of deviations to the RA is unnecessary because PE certification ensures the application of good engineering practice.

Secondary containment. Several commenters suggested that we explicitly say that equivalent protection should be defined to allow a compacted earthen floor and compacted earthen dike to provide secondary containment. The rationale for the comment was that other methods of secondary containment may be prohibitively expensive and unnecessary to protect against spills in primarily rural areas. One commenter suggested that we should clarify that the language of § 112.7(c) applies only to oil storage areas.

Response to comments. Applicability. We generally agree with the commenter that an owner or operator should have flexibility to substitute alternate measures providing equivalent environmental protection in place of express requirements. Therefore, we have expanded the proposal to allow deviations from the requirements in § 112.7(g), (h)(2) and (3), or (i), as well as subparts B, and C, except for the listed secondary containment provisions in § 112.7 and subparts B and C. The proposed rule already included possible deviations for any of the requirements listed in §§ 112.7(c), 112.8, 112.9, 112.10, and 112.11. We have expanded this possibility of deviation to include the new subparts we have added for various classes of oils. We take this step because we believe that the application of good engineering practice requires the flexibility to use alternative measures when such measures offer equivalent environmental protection. This provision may be especially important in differentiating between requirements for facilities storing, processing, or otherwise using various types of oil.

A deviation may be used whenever an owner or operator can explain his reasons for nonconformance, and provide equivalent environmental protection. Possible rationales for a deviation include when the owner or operator can show that the particular requirement is inappropriate for the facility because of good engineering practice considerations or other reasons, and that he can achieve equivalent environmental protection in an alternate manner. For example, a requirement that may be essential for a facility storing gasoline may be inappropriate for a facility storing asphalt; or, the owner or operator may be able to implement equivalent environmental protection through an alternate technology. An owner or operator may consider cost as one of the factors in deciding whether to deviate from a particular requirement, but the alternate provided must achieve environmental protection equivalent to the required measure. The owner or operator must ensure that the design of any alternate device used as a deviation is adequate for the facility, and that the alternate device is adequately maintained. In all cases, the owner or operator must explain in the Plan his reason for nonconformance. We wish to be clear that we do not intend this deviation provision to be used as a means to avoid compliance with the rule or simply as an excuse for not meeting requirements the owner or operator believes are too costly. The alternate measure chosen must represent good engineering practice and must achieve environmental protection equivalent to the rule requirement. Technical deviations, like other substantive technical portions of the Plan requiring the application of engineering judgment, are subject to PE certification.

In the preamble to the 1991 proposal (at 56 FR 54614), we noted that "* * * aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. The Phase One modifications would retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific oil spill contingency plans in lieu of the prevention systems." In keeping with this position, we have deleted the proposed deviation in § 112.7(a)(2) for the secondary containment requirements in §§ 112.7(c) and (h)(1); and for proposed §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c); as well as for the new sections which are the counterparts of the proposed sections, *i.e.*, §§ 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), because a more appropriate deviation provision already exists in § 112.7(d). Section § 112.7(d) contains the measures which a facility owner or operator must undertake when the secondary containment required by § 112.7(c) or (h)(1), or the secondary containment provisions in the rule found at §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), are not practicable. Those measures are expressly tailored to address the lack of secondary containment at a facility. They include requirements to: explain why secondary containment is not practicable; conduct periodic integrity testing of bulk storage containers; conduct periodic integrity and leak testing of valves and piping; provide in the Plan a contingency plan following the provisions of 40 CFR part 109; and, provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful. Therefore, when an owner or operator seeks to deviate from secondary containment requirements, § 112.7(d) will be the applicable "deviation" provision, not § 112.7(a)(2).

Deviation submission. We agree with the commenter that submission of a deviation to the Regional Administrator is not necessary and have deleted the proposed requirement. We take this step because we believe that the requirement for good engineering practice and current inspection and reporting procedures (for example, § 112.4(a)), followed by the possibility of required amendments, are adequate to review Plans and to detect the flaws in them. Upon submission of required information, or upon on-site review of a Plan, if the RA decides that any portion of a Plan is inadequate, he may require an amendment. See § 112.4(d). If you disagree with his determination regarding an amendment, you may appeal. See § 112.4(e).

RA oversight. Once an RA becomes aware of a facility's SPCC Plan as a result of an on-site inspection or the submission of required information, he is to follow the principles of good engineering practice and not overrule a deviation unless it is clear that such deviation fails to afford equivalent environmental protection. This does not mean that the deviation must achieve "mathematical equivalency," as one commenter pointed out. But it does mean equivalent protection of the environment. We encourage innovative techniques, but such techniques must also protect the environment. We also believe that in general PEs will seek to protect themselves from liability by only certifying measures that do provide equivalent environmental protection. But the RA must still retain the authority to require amendments for deviations, as he can with other parts of the Plan certified by a PE.

Not covered under the deviation rule. Deviations under § 112.7(a)(2) are not allowed for the general and specific secondary containment provisions listed above because § 112.7(d) contains the necessary requirements when you find that secondary containment is not practicable. We have amended both this paragraph and § 112.7(d) to clarify this. Instead, the contingency planning and other requirements in § 112.7(d) apply. Deviations are also not available for the general recordkeeping and training provisions in § 112.7, as these requirements are meant to apply to all facilities, or for the provisions of § 112.7(f) and (j). We already provide flexibility in the manner of recordkeeping by allowing the use of ordinary and customary business records. Training and a discussion of compliance with more stringent State rules are essential for all facilities. Therefore, we do not allow deviations for these measures.

Secondary containment. Regarding the secondary containment requirements, the requirement in § 112.7(c) applies not only to oil storage areas, but also to operational areas of the facility where a discharge may occur. Section 112.7(c) may apply to any area of the facility where a discharge is possible. Other secondary containment provisions in this part have more particular applicability, *e.g.*, §§ 112.7(h)(1), 112.8(c)(2), 112.8(c)(11), 112.9(c)(2),112.10(c), and their counterparts in subpart C. We decline to specify that a compacted earthen floor and compacted earthen dike will always satisfy the secondary containment requirements. Those methods may, however, be acceptable if there is no potential for oil to migrate through the compacted earthen floor or dike through groundwater to cause a discharge as described in § 112.1(b).

Editorial changes and clarifications. "Equivalent protection" becomes "equivalent environmental protection" throughout the paragraph.

Section 112.7(a)(3)—Facility Characteristics That Must be Described in the Plan

Background. In 1991, we proposed a new section that would require you to describe the essential characteristics of your facility in the Plan. Those characteristics are discussed below. In the description, you would also be required to provide a facility diagram that included the location and contents of all tanks, regardless of whether the tanks are subject to all the provisions of 40 CFR part 280 or a State program approved under 40 CFR part 281, or otherwise subject to part 112. The rationale for the diagram was that it would assist in response actions.

Responders would have a means to know where all containers are, to help ensure their safety in conducting a response action and aid in the protection of life and property.

Comments. General description of characteristics. Two commenters asked that the requirements proposed for Plan characteristics be listed on a facility basis rather than a tank basis because

Another asserted that it would not be possible to give estimates of oil potentially discharged from flowlines or gathering systems. One commenter argued that mobile facilities should be exempt from this requirement because the exact site information changes with the movement of equipment.

Possible spill pathways. Two commenters wrote that the proposed

because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible.

Some opposing commenters believed that the proposal would preclude bioremediation. Others believed that it was too costly. One commenter suggested that the "costs associated with off-site disposal of oil-saturated

commenters asked how they might identify such suppliers. Yet others believed that such notification was the responsibility of local emergency response agencies.

Response to comments. General description of characteristics. The following characteristics must be described on a per container basis: the storage capacity of the container, type of oil in each container, and secondary

Inspectors and personnel new to the facility need to know the location of all containers subject to the rule. The facility diagram may also help first responders to determine the pathway of the flow of discharged oil. If responders know possible pathways, they may be able to take measures to control the flow of oil. Such control may avert damage to sensitive environmental areas; may protect drinking water sources; and may

may or may not be a material change. See the discussion on § 112.5(a).

Facility diagram—De minimis containers. We have established a de minimis container size of less than 55 gallons. You do not have to include containers less than 55 gallons on the facility diagram.

Facility diagram—Transfer stations, connecting pipes, and USTs. We agree that all facility transfer stations and

Responders would have a means to know where all containers are, to help ensure their safety in conducting a response action and aid in the protection of life and property.

Comments. General description of characteristics. Two commenters asked that the requirements proposed for Plan characteristics be listed on a facility basis rather than a tank basis because otherwise the proposal would be too resource intensive. The commenters did not provide cost estimates.

Facility diagram. Two commenters supported the proposal. Opposing commenters asserted that the diagram would be too costly and add little to the Plan. One commenter said that the requirement was redundant because many States require the same thing. Two commenters opposed marking the contents of the tanks because those contents may change frequently, requiring Plan amendment each time. One commenter suggested that instead the facility maintain a separate list of tank contents when changes occur frequently over a short span of time to eliminate the need to constantly amend the diagram. Other commenters requested a *de minimis* exemption for small containers for the diagram, suggesting levels of 660 gallons or less. Some of these commenters suggested that the diagram be discretionary for storage volumes of less than 10–15,000 gallons. Other commenters asked whether exempt materials would have to be marked as to content, for example, products which are not oil. Some believed that the inclusion of otherwise exempt containers in the diagram was unreasonable. One commenter suggested the diagram should include transfer stations and connecting pipes. Another commenter asked for clarification that underground tanks, whether subject to SPCC or not, need to be included in the diagram.

Unit-by-unit storage capacity. Several commenters asked for clarification of the meaning of the term "unit-by-unit storage capacity." Many commenters asked for specification of a minimum size, and some suggested sizes, ranging from 660 gallons to 10,000 gallons.

Type and quantity of oil stored. We received one comment on this item. The commenter opposed the information requirement because "the way a tank is used changes often and the adequacy of response to an accidental discharge does not depend on the type of oil stored."

Estimates of quantity of oils potentially discharged. The few comments we received opposed this information requirement. One commenter argued that the item requests a "prediction" of future events. Another asserted that it would not be possible to give estimates of oil potentially discharged from flowlines or gathering systems. One commenter argued that mobile facilities should be exempt from this requirement because the exact site information changes with the movement of equipment.

Possible spill pathways. Two commenters wrote that the proposed requirement "could be an infinite number and serves no useful purpose." One commenter asked that the requirement be replaced by a requirement to describe the most likely spill pathways to navigable water.

Spill prevention measures (including loading areas and transfers). One commenter suggested that the beginning of the paragraph be revised to read, "Secondary containment" instead of "Spill prevention measures. . . ." See also the discussion on loading areas under § 112.7(h).

Spill controls and secondary containment. One commenter thought that this paragraph should refer to "other drainage control features and the equipment they protect."

Spill countermeasures. One commenter suggested that this paragraph be revised to read, "Prevention, control, or countermeasure features, other than secondary containment and drainage control, and the equipment which they protect." Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible. One commenter suggested that the contingency planning requirements in this paragraph, as well as in § 112.7(b) and (d)(1), seem unnecessarily complex because the same basic information seems to be required in several different places in the proposed regulation. The commenter went on to suggest that EPA consolidate these requirements. Another commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Disposal of recovered materials. Two commenters supported the proposal in general, but one suggested that it is not feasible nor useful to discuss particular alternatives. One of the favorable commenters suggested that we should encourage recycling of spilled oil rather than mere disposal. Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible.

Some opposing commenters believed that the proposal would preclude bioremediation. Others believed that it was too costly. One commenter suggested that the "costs associated with off-site disposal of oil-saturated soil from a typical secondary containment facility after a contained spill event will cost an operator as much as $4,700, calculated at the cost of $90 per ton of removed soil for transportation and disposal fees and the associated leachate and waste analysis but *excluding* the internal costs associated with the actual excavation work." Other commenters believed that we have no authority to ask the question because the subject matter is regulated either by State law or another Federal program, such as the solid waste program. One commenter asked for an exemption for mobile facilities from this requirement.

Contact list. Several commenters favored the proposal. One commenter suggested that the list name the cleanup contractor with whom the facility has a relationship, not merely the name of any cleanup contractor.

One commenter favored the inclusion of local emergency planning contacts in the required information. Another opposed it as duplicative of information in the HAZWOPER Plan. A commenter requested an exemption for mobile facilities. Another commenter believed we lack authority to request the information. One commenter suggested that the list be restricted to Federal or State agencies that must be notified in case of the accidental discharge of oil. Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Downstream water suppliers. Several commenters suggested that the proposed requirement to include information on downstream water suppliers who must be contacted in case of a discharge to navigable waters should be limited to those "who might reasonably be affected by a discharge." Others asked that the downstream distance be specified. They added that private wells should be excluded from the notice. Several commenters asked how they might identify such suppliers. Yet others believed that such notification was the responsibility of local emergency response agencies.

Response to comments. General description of characteristics. The following characteristics must be described on a per container basis: the storage capacity of the container, type of oil in each container, and secondary containment for each container. The other characteristics may be described on a facility basis. We disagree that these requirements are too resource intensive. The major new requirement in § 112.7(a)(3) is the facility diagram. Based on site inspections and professional judgment, we estimate unit costs for compliance with this section to be $33 for a small facility, $39 for a medium facility, and $5 for a large facility. Large facilities are assumed to already have a diagram that may be attached to the SPCC Plan. The other items mentioned in § 112.7(a)(3)—storage capacity of each container, prevention measures, discharge controls, countermeasures, disposal methods, and the contact list—are already required under the current rule or required by good engineering practice. As described in the Information Collection Request for this rule, the cost of Plan preparation includes these items, e.g., field investigations to understand the facility design and to predict flow paths and potential harm, regulatory review, and spill prevention and control practices.

Providing information on a container-specific basis helps the facility to prioritize inspections and maintenance of containers based on characteristics such as age, capacity, or location. It also helps inspectors to prioritize inspections of higher-risk containers at a facility. Container-specific information helps an inspector verify the capacity calculation to determine whether a Plan is needed; and, helps to formulate contingency planning if such planning is necessary.

Facility diagram. The facility diagram is important because it is used for effective prevention, planning, management (for example, inspections), and response considerations and we therefore believe that it must be part of the Plan. The diagram will help the facility and emergency response personnel to plan for emergencies. For example, the identification of the type of oil in each container may help such personnel determine the risks when conducting a response action. Some oils present a higher risk of fire and explosion than other less flammable oils.

Inspectors and personnel new to the facility need to know the location of all containers subject to the rule. The facility diagram may also help first responders to determine the pathway of the flow of discharged oil. If responders know possible pathways, they may be able to take measures to control the flow of oil. Such control may avert damage to sensitive environmental areas; may protect drinking water sources; and may help responders to prevent discharges to other conduits leading to a treatment facility or navigable waters. Diagrams may assist Federal, State, or facility personnel to avoid certain hazards and to respond differently to others.

The facility diagram is necessary for all facilities, large or small, because the rationale is the same for both. While some States may require a diagram, others do not. SPCC is a Federal program specifying minimum requirements, which the States may supplement with their own more stringent requirements. We note that State plans may be used as SPCC Plans if they meet all Federal requirements, thus avoiding any duplication of effort if the State facility diagram meets the requirements of the Federal one.

Facility diagram—container contents. The facility diagram must include all fixed (*i.e.*, not mobile or portable) containers which store 55 gallons or more of oil and must include information marking the contents of those containers. If you store mobile containers in a certain area, you must mark that area on the diagram. You may mark the contents of each container either on the diagram of the facility, or on a separate sheet or log if those contents change on a frequent basis. Marking containers makes for more effective prevention, planning, management, and response. For example, a responder may take one type of emergency measure for one type of oil, and another measure for another type. As noted above, oils differ in their risk of fire and explosion. Gasoline is highly flammable and volatile. It presents the risk of fire and inhalation of vapors when discharged. On the other hand, motor oil is not highly flammable, and there is no inhalation of vapors hazard associated with its discharge.

In an emergency, the responder may not have container content information unless it is clearly marked on a diagram, log, or sheet. For emergency response purposes, we also encourage, but do not require you to mark on the facility diagram containers that store CWA hazardous substances and to label the contents of those containers. When the contents of an oil container change, this may or may not be a material change. See the discussion on § 112.5(a).

Facility diagram—De minimis containers. We have established a de minimis container size of less than 55 gallons. You do not have to include containers less than 55 gallons on the facility diagram.

Facility diagram—Transfer stations, connecting pipes, and USTs. We agree that all facility transfer stations and connecting pipes that handle oil must be included in the diagram, and have amended the rule to that effect. This inclusion will help facilitate response by informing responders of the location of this equipment. The location of all containers and connecting pipes that store oil (other than de minimis containers) must be marked, including USTs and other containers not subject to SPCC rules which are present at SPCC facilities. Again, this is necessary to facilitate response by informing responders of the location of these containers.

Unit-by-unit storage capacity. For clarity, we have changed the term in § 112.7(a)(3)(i), "unit-by-unit" storage capacity, to "type of oil in each container and its storage capacity." As noted earlier, this requirement applies only to containers of 55 gallons or greater.

Type and quantity of oil stored. We have eliminated proposed § 112.7(a)(3)(ii) because it repeats information requested in revised § 112.7(a)(3)(i). We ask for information concerning storage capacity and type of oil stored in each container in that paragraph.

Estimates of quantity of oils potentially discharged. We have eliminated proposed § 112.7(a)(3)(iii) because it repeats information sought in § 112.7(b) regarding "a prediction of the direction, rate of flow, and total quantity of oil which could be discharged* * * *." We will address the substantive comments under the discussion of that paragraph.

Possible spill pathways. We have eliminated proposed § 112.7(a)(3)(iv) because the proposal repeats information sought in § 112.7(b) regarding "a prediction of the direction, rate of flow, and total quantity of oil which could be discharged.* * *" Again, we will address the substantive comments under the discussion of that paragraph.

Spill prevention measures. We have revised this paragraph to read "discharge prevention measures." We disagree with the commenter that the paragraph should be labeled "secondary containment." The term "discharge prevention measures" is better because

it encompasses both secondary containment and other discharge prevention measures.

Spill controls and secondary containment. We have revised this paragraph to refer to "discharge" controls. In response to a commenter, we have also included a reference to drainage controls in the paragraph because drainage systems or

materials are managed in an environmentally sound manner. Proper disposal also assists response efforts. If a facility lacks adequate resources to dispose of recovered oil and oil-contaminated material during a response, it limits how much and how quickly oil and oil-contaminated material is recovered, thereby increasing the risk and damage to the environment.

preparedness, and response purposes. Furthermore, it is an appropriate question for all facilities, including mobile facilities, because it is necessary to prepare for discharges and to aid in prompt cleanup when they occur. Having a Plan which contains a contact list of response organizations is a procedure and method to contain a discharge of oil as specified in CWA

Editorial changes and clarifications. In the introduction to paragraph (a)(3), "physical plant" becomes "physical layout." "Tanks" becomes "containers." In proposed paragraph (a)(3)(vi), redesignated as paragraph (a)(3)(iii), "spill controls" becomes "discharge or drainage controls." In proposed paragraph (a)(3)(vii), redesignated as paragraph (a)(3)(iv), "spill countermeasures for spill discovery"

responders and others, and any other instructions necessary to facilitate notification of a discharge as described in § 112.1(b). If properly noted, the information and procedures in the Plan should enable a person reporting a discharge to accurately describe information concerning that occurrence to the proper persons in an emergency. Any information or procedure not applicable will not have to be used.

because most SPCC facilities are not required to have a response plan, and the procedures to be used when a discharge occurs are necessary to prepare for an emergency. Because this information would repeat information contained in a response plan submitted under § 112.20, we have excluded from the requirements of this paragraph those facilities which have submitted response plans. *See* § 112.20(h)(3)(i)-

it encompasses both secondary containment and other discharge prevention measures.

Spill controls and secondary containment. We have revised this paragraph to refer to "discharge" controls. In response to a commenter, we have also included a reference to drainage controls in the paragraph because drainage systems or diversionary ponds might be an alternative means of secondary containment. See § 112.7(c)(1)(iii) and (v).

Spill countermeasures. We disagree that the paragraph should be revised to read, "Prevention, control, or countermeasure features, other than secondary containment and drainage control, and the equipment which they protect," because we believe that the language we proposed, as revised, better captures the information we are seeking. Our revised language refers to discovery, response, and cleanup, which are features that are absent from [illegible] commenter's suggestion, and for which a discussion in the Plan is necessary in order to be prepared for any discharges.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

We also disagree that the information required in this paragraph is redundant of information required in §§ 112.7(b) and 112.7(d)(1). Each of the sections mentioned requires discrete and different information. Section 112.7(a)(3)(iv) requires information concerning a facility's and a contractor's capabilities for discharge discovery, response, and cleanup. Section 112.7(b) requires information concerning the potential consequences of equipment failure. Section 112.7(d)(1) requires a contingency plan following the provisions of part 109, which includes coordination requirements with governmental oil spill response organizations.

We disagree that the information should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for discharge discovery, response, and cleanup.

Disposal of recovered materials. This provision applies to all facilities, including mobile facilities, because proper disposal of recovered materials helps prevent a discharge as described in § 112.1(b) by ensuring that the materials are managed in an environmentally sound manner. Proper disposal also assists response efforts. If a facility lacks adequate resources to dispose of recovered oil and oil-contaminated material during a response, it limits how much and how quickly oil and oil-contaminated material is recovered, thereby increasing the risk and damage to the environment.

We disagree that this paragraph would preclude bioremediation efforts, as some commenters suggested. Bioremediation may be a method of proper disposal. The paragraph merely requires that you discuss the methods employed to dispose of recovered materials; it does not require that materials recovered be "disposed" of in any particular manner nor is it an independent requirement to properly dispose of materials. Thus, there is no infringement on or duplication of any other State or Federal program or regulatory authority. Because it does nothing more than require that you explain the method of disposal of recovered materials, we also disagree that this provision is too costly. Also, we assume that good engineering practice will in many cases include a discussion of such disposal already. By describing those methods in the Plan, you help ensure that the facility has done the appropriate planning to be able to dispose of recovered materials, should a discharge occur. We support the recycling of spilled oil to the extent possible, rather than its disposal. For purposes of this rule, disposal of recovered materials includes recycling of those materials.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

Contact list. In response to a comment, we have amended the rule to require that the cleanup contractor listed must be the one with whom the facility has an agreement for response that ensures the availability of the necessary personnel and equipment within appropriate response times. An agreement to respond may include a contract or some less formal relationship with a cleanup contractor. No formal written agreement to respond is required by the SPCC rule, but if you do have one, you must discuss it in the Plan.

We have ample authority to ask for information concerning emergency contacts under the CWA because it is relevant to the statute's prevention, preparedness, and response purposes. Furthermore, it is an appropriate question for all facilities, including mobile facilities, because it is necessary to prepare for discharges and to aid in prompt cleanup when they occur. Having a Plan which contains a contact list of response organizations is a procedure and method to contain a discharge of oil as specified in CWA section 311(j)(1)(C). However, we have eliminated references to specific State and local agencies in the event of discharges in favor of a reference to "all appropriate State and local agencies." "Appropriate" means those State and local agencies that must be contacted due to Federal or State requirements, or pursuant to good engineering practice. You may not always be required to notify fire departments, local emergency planning committees (LEPCs), and State emergency response commissions (SERCs), nor as an engineering practice do they always need to receive direct notice from the facility in the event of a discharge as described in § 112.1(b). At times they might, but they might also receive notice from other sources, such as the National Response Center. Other State and local agencies might also need notice from you.

We have added the word "Federal" to the list of all appropriate contact agencies because there are times when you must notify EPA of certain discharges. See § 112.4(a). There might also be requirements under Federal statutes other than the CWA, for notice in such emergencies.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

We disagree that the information should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency.

Downstream water suppliers. We have deleted the reference to "downstream water suppliers" (i.e., intakes for drinking and other waters) because facilities may have no way to identify such suppliers. We agree with commenters that identifying such suppliers is more a function of State and local emergency response agencies. We note, however, that facilities that must prepare response plans under § 112.20 must discuss in those plans the vulnerability of water intakes (drinking, cooling, or other).

Editorial changes and clarifications. In the introduction to paragraph (a)(3), "physical plant" becomes "physical layout." "Tanks" becomes "containers." In proposed paragraph (a)(3)(vi), redesignated as paragraph (a)(3)(iii), "spill controls" becomes "discharge or drainage controls." In proposed paragraph (a)(3)(vii), redesignated as paragraph (a)(3)(iv), "spill countermeasures for spill discovery" becomes "countermeasures for discharge discovery." In proposed paragraph (a)(3)(ix), redesignated as paragraph (a)(3)(vi), "discharge to navigable waters" becomes "discharge as described in § 112.1(b)."

Section 112.7(a)(4)—Spill Reporting Information in the Plan

Background. In 1991, we proposed that documentation in this paragraph be sufficient to enable a person reporting a spill to provide essential information to organizations on the contact list.

Comments. Several commenters made editorial comments, suggesting the rule refer to "information" rather than "documentation" on the theory that documentation refers to a past event, whereas the rule contemplates a future event. One commenter suggested that the section be qualified to indicate that a form for collecting spill report information be included in the Plan, or for "small size facilities" in the HAZWOPER reporting matrix. Another commenter suggested that a properly prepared SPCC Plan would assist the person reporting the spill to provide the requested information. One commenter asserted the proposed rule was duplicative of State requirements. Several commenters suggested that not all of the information will be available or applicable for a person reporting a discharge. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Response to comments. Documentation. We agree with commenters that the word "documentation" is inappropriate because it refers to a past event. Accordingly, as suggested by commenters, we have revised the rule to provide for "information and procedures" that would assist the reporting of discharges as described in § 112.1(b). "Information" refers to the facts which you must report, and "procedures" refers to the method of reporting those facts. Such procedures must address whom the person relating the information should call, in what order the caller should call potential responders and others, and any other instructions necessary to facilitate notification of a discharge as described in § 112.1(b). If properly noted, the information and procedures in the Plan should enable a person reporting a discharge to accurately describe information concerning that occurrence to the proper persons in an emergency. Any information or procedure not applicable will not have to be used. Available information on a discharge must be reported. Applicable procedures must be followed. And of course, any information that is not available cannot be reported.

State requirements. While it is possible that this information may be duplicative of State requirements, the duplication is eliminated to the extent that you use your State SPCC Plan for Federal SPCC purposes. Where there is no State requirement, there is no duplication.

Response plan exemption. We disagree that this paragraph should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency. However, if your facility has prepared and submitted a response plan to us under § 112.20, there is no need to document this information in your SPCC Plan, because it is already contained in the response plan. See § 112.20(h)(1)(i)-(viii). Therefore, we have amended the rule to exempt those facilities with response plans from the requirements of this paragraph.

Editorial changes and clarifications. We changed "address" to "address or location" because some facilities do not have an exact address. "Spill" and "spilled" becomes "discharge as described in § 112.1(b)" or "discharged" as appropriate in the context, "discharge" being a defined term. "Spill" or "spilled" are not defined terms. "The affected medium" becomes "all affected media."

Section 112.7(a)(5)—Emergency Procedures

Background. In 1991, we proposed this paragraph to ensure that portions of the Plan describing procedures to be used in emergency circumstances are organized in a manner to make them readily usable in an emergency.

Comments. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Response to comments. We disagree this paragraph should be deleted because most SPCC facilities are not required to have a response plan, and the procedures to be used when a discharge occurs are necessary to prepare for an emergency. Because this information would repeat information contained in a response plan submitted under § 112.20, we have excluded from the requirements of this paragraph those facilities which have submitted response plans. See § 112.20(h)(3)(i)-(ix).

Section 112.7(b)—Fault Analysis

Background. In 1991, we proposed only editorial changes to this paragraph dealing with fault analysis. The proposal would require an analysis of the major types of failures possible in a facility, including a prediction of the direction, rate of flow, and total quantity of oil that could be discharged as a result of each such failure.

Comments. Applicability. One commenter wrote that the language in the first sentence of the proposed rule is less clear than current regulations. The commenter asserted that the proposed revision, perhaps inadvertently, does not specify the sections to which the certain "situations" apply. The commenter suggested that current language is clearer and specifically focuses limited resources on situations for which there is a reasonable potential for discharge. The commenter argued that limited resources should not be consumed in developing flow rate, direction and quantity predictions in the SPCC Plan for situations without a reasonable potential for discharge to navigable waters.

Several commenters asserted that the fault analysis required by this paragraph is "too involved for small operators." They suggested that only development of responses to obvious scenarios, such as tank rupture, should be required. Commenters from the utility industry suggested that electrical equipment facilities should be exempt from the requirements in this paragraph. One commenter believed that mobile facilities should be exempt from the requirements in the paragraph because the exact site information changes with the movement of equipment.

Failure factors. One commenter suggested that the rule should also focus on small discharges, not just "major" discharges. Another commenter asked for clarification as to what is a "major failure" and to what degree of sophistication the pathway prediction must be made. Another commenter suggested that the rule should adequately describe how detailed the analysis of potential spill pathways

should be. Another suggested that it would be impossible to give estimates of oil potentially discharged from flowlines or gathering systems.

Response to comments. Applicability. We agree with the commenter that current language is clearer and will retain it. We therefore modified the first sentence contained in the proposed rule. We agree that the Plan must only discuss potential failure situations that

Spill pathways. The level of analysis concerning spill pathways will depend on the geographic characteristics of the facility's site and the possibility of a discharge as described in § 112.1(b) that equipment failure might cause. However, the Professional Engineer should focus on the most obvious spill pathways.

Because this information is facility

removal of an oil discharge in most cases.

We also noted that for some facilities such as electrical substations, compliance with this section might not be practicable. We said that since their purpose was not the storage of oil in bulk, they did not need to comply with the secondary containment requirements designed for bulk storage tanks in §§ 112.8(c) and 112.9(d), but

One commenter asked that we clarify that the secondary containment requirement in this section does not apply to the following equipment at onshore production facilities: flowlines because of the prohibitive cost of construction for miles of lines; fired vessels because of the danger of pooling spilled oil around an ignition source; and, pressurized vessels because a leak from such vessel might be sprayed

of oil to surface waters should be replaced with a standard of preventing the escape of oil to "the environment" or to "navigable waters." Others asked for clarification of the term "impervious," asserting that it is a qualitative term that requires definition by engineering standards. One commenter requested that if an impervious containment system cannot be provided, that facilities be required

Containment or impermeability. Other commenters asserted that the rule should address containment rather than impermeability because they assert that the point of a containment structure is "to keep the discharge from reaching the waters of the United States." In the same vein, two commenters asked EPA to clarify that the leaching of small amounts of oil that does not reach the water table or surface waters meets the

should be. Another suggested that it would be impossible to give estimates of oil potentially discharged from flowlines or gathering systems.

Response to comments. Applicability. We agree with the commenter that current language is clearer and will retain it. We therefore modified the first sentence contained in the proposed rule. We agree that the Plan must only discuss potential failure situations that might result in a discharge from the facility, not any failure situation. The rule requires that when experience indicates a reasonable potential for failure of equipment, the Plan must contain certain information relevant to those failures. "Experience" includes the experience of the facility and the industry in general.

We disagree that the requirement is too difficult for owners or operators of small or mobile facilities, or of flowlines or gathering lines, or of electrical equipment facilities, or other users of oil. We believe that a Professional Engineer may evaluate the potential risk of failure for the aforementioned facilities and equipment and predict with a certain degree of accuracy the result of a failure from each. We note that since we have raised the regulatory threshold, this requirement will not be applicable to many smaller facilities.

Failure factors. To comply with this section, you need only address "major equipment" failures. A major equipment failure is one which could cause a discharge as described in § 112.1(b), not a minor failure possibility. To help clarify the type of equipment failures the rule contemplates, we have added examples of other types of failures that would trigger the requirements of this paragraph. Such other equipment failures include failures of loading/unloading equipment, or of any other equipment known to be a source of a discharge. The analysis required will depend on the experience of the facility and how sophisticated the facility equipment is. If your facility has simpler equipment, you will have less to detail. If you have more sophisticated equipment, you will have to conduct a more detailed analysis. If your facility's experience or industry experience in general indicates a higher risk of failure associated with the use of that equipment, your analysis will also have to be more detailed. This rationale and analytic detail are also applicable to electrical equipment facilities and other facilities that do not store oil, but contain it for operational use. Again, the required explanation will be tailored to the type of equipment used and the experience with that equipment.

Spill pathways. The level of analysis concerning spill pathways will depend on the geographic characteristics of the facility's site and the possibility of a discharge as described in § 112.1(b) that equipment failure might cause. However, the Professional Engineer should focus on the most obvious spill pathways.

Because this information is facility specific, the owner or operator of a mobile facility will not be able to detail spill pathways in the general Plan for the facility each time the facility moves. However, the owner or operator must provide management practices in the general Plan that provide for containment of discharges in spill pathways in a variety of geographic conditions likely to be encountered. In case of a discharge at a particular facility, the owner or operator would then take appropriate action to contain or remove the discharge. For example, the Plan may provide that a rig must be positioned to minimize or prevent discharges as described in § 112.1(b); or it may provide for the use of spill pans, drip trays, excavations, or trenching to augment discharge prevention.

Editorial changes and clarifications. We made minor editorial changes in the proposal's second sentence that reflect a plain language format. We revised the phrase in the proposed second sentence of the paragraph from "each major type of failure" to "each type of major equipment failure."

Section 112.7(c)—Secondary Containment.

Background. The SPCC Task force concluded that aboveground storage tanks without secondary containment could pose a particularly significant threat to the environment. We noted in the 1991 preamble that the proposed rule modifications would "retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific contingency plans in lieu of prevention systems." 56 FR 54614.

In 1991, we proposed to modify the current standard that dikes, berms, or retaining walls must be "sufficiently impervious." We proposed that the current "sufficiently impervious" standard for secondary containment be replaced with a standard requiring that the entire containment system, including walls and floor, must be impervious to oil for 72 hours. The rationale was that a containment system that is impervious to oil for 72 hours would allow time for discovery and removal of an oil discharge in most cases.

We also noted that for some facilities such as electrical substations, compliance with this section might not be practicable. We said that since their purpose was not the storage of oil in bulk, they did not need to comply with the secondary containment requirements designed for bulk storage tanks in §§ 112.8(c) and 112.9(d), but only the secondary containment requirements in § 112.7(c), and that the § 112.7(c) requirement for secondary containment might be satisfied by various means including drainage systems, spill diversion ponds, etc. We added that the alternative requirements contained in proposed § 112.7(d) would fulfill the intent of the CWA when a facility could not provide secondary containment due to the impracticability of installation. 56 FR 54621.

Comments. Editorial changes and clarifications. Several commenters suggested that the reference to prevention of discharges to "surface waters" be changed to prevention of discharges to "navigable waters."

Contingency planning. One commenter suggested revising the rules to allow the use of the contingency plan contemplated in § 112.7(d) instead of secondary containment measures. Another commenter asserted that a contingency plan is not an acceptable substitute for secondary containment and advocated that all facilities be required to have secondary containment.

Applicability of requirement. Numerous electric utility commenters suggested that secondary containment was impractical for their facilities because it might cause a safety hazard. Instead, they argued for the use of contingency planning. One commenter asserted that secondary containment at sites used for the maintenance and operation of the air traffic control system was also impracticable because those sites are often very small, isolated, unmanned, and visited only on a quarterly basis. Another commenter asked that wastewater treatment tanks be exempted from the secondary containment requirement because their use is not to store oil, but to treat water. Other containers not used for storage, but other purposes might include stormwater surge tanks, activated sludge aeration tanks, equalization basins, dissolved and inducted air floatation tanks, oil/water separators, sludge digesters, etc. Another commenter urged that all oil-filled equipment located in a 25-year floodplain be required to have secondary containment.

One commenter asked that we clarify that the secondary containment requirement in this section does not apply to the following equipment at onshore production facilities: flowlines because of the prohibitive cost of construction for miles of lines; fired vessels because of the danger of pooling spilled oil around an ignition source; and, pressurized vessels because a leak from such vessel might be sprayed beyond the area that a reasonable dike might enclose. One commenter suggested that all in-use hydraulic equipment such as cranes, jacks, elevators, forklifts, etc., be exempted from the secondary containment requirement because it would be impractical to provide structures for such equipment. Others suggested that mobile facilities should be exempt from the secondary containment requirement because it would be infeasible to provide it. Similarly, one commenter suggested that the requirement was infeasible for production facilities due to their sometimes remote locations or difficult terrain and soil conditions. Yet another commenter wanted us to clarify that underground piping is not subject to the rule's secondary containment provisions.

One commenter asserted that mining sites should be exempted from the secondary containment requirement because the containment requirements would be "excessive" for such sites and result in "little resultant net environmental benefit." A commenter representing various small facilities asked for exemption from the requirement on the basis that the risk is lower for those facilities.

Methods of secondary containment. As to methods of secondary containment, several commenters urged that the existence of "natural" structures and/or drainage could meet this requirement. Other commenters suggested that vaulted tanks or double-walled tanks in themselves meet the secondary containment requirement. One commenter suggested that we remove sorbent materials or booms from the list of acceptable secondary containment structures because they are not a substitute for impervious dikes and impoundment floors.

72-hour impermeability standard. We received numerous comments on the proposed 72-hour impermeability standard. Several commenters favored the standard. Many were opposed. Of the opponents, some favored the current standard that the dikes, berms or retaining walls be "sufficiently impervious" to contain spilled oil. Other commenters thought that the proposed requirement to prevent escape of oil to surface waters should be replaced with a standard of preventing the escape of oil to "the environment" or to "navigable waters." Others asked for clarification of the term "impervious," asserting that it is a qualitative term that requires definition by engineering standards. One commenter requested that if an impervious containment system cannot be provided, that facilities be required to assure that conduits that may cause substantial migration of free products are appropriately monitored for discharges. Another commenter asked us to specify acceptable liner materials, in lieu of a total imperviousness requirement.

Costs. One commenter suggested that our industry cost estimate for the proposed 1991 regulations—of $441 million in the first year and $71.8 million each subsequent year—was erroneously low, but did not provide his own cost estimates. The commenter came to this conclusion by calculating compliance cost estimates for the following requirements: 72-hour impermeability for secondary containment and diked areas, and installation of containment systems at all truck loading locations. The commenter estimated the cost of the effects of two proposed items for New York oil and gas producers, not all us producers, at in excess of $78 million; he estimated the cost of the proposed 72 hour oil impermeability requirement at $48 million, and if earthen dikes and diked areas cannot meet the secondary containment standards at truck loading areas, at least $30 million.

Alternate impermeability standards. Commenters suggested a number of alternate impermeability standards. One commenter suggested a standard that the containment system be impervious to oil and water for 72 hours. Another commenter suggested that the standard apply only in environmentally sensitive areas. Some suggested that the standard should be inapplicable at facilities that are staffed around the clock, seven days a week. One commenter suggested a phase-in of the requirement. Some thought that the impermeability standard should not apply to heavier oils, particularly number 5 and 6 oils.

Alternate time frames. Others suggested differing time standards in lieu of 72 hours such as 24 hours at manned facilities, 36 hours or increased inspections, "as soon as practicable," "for the duration of the response," or no time limit at all. One commenter asked when the 72 hours begins to run, whether it begins at the time of the discovery of the discharge or the time of occurrence.

Containment or impermeability. Other commenters asserted that the rule should address containment rather than impermeability because they assert that the point of a containment structure is "to keep the discharge from reaching the waters of the United States." In the same vein, two commenters asked EPA to clarify that the leaching of small amounts of oil that does not reach the water table or surface waters meets the impermeability requirement, while a third asked that we clarify that we are concerned only with horizontal rather than vertical discharges of oil.

Sufficient freeboard. See the comments to § 112.8(c)(2) under this topic.

Response to comments. Contingency planning. A contingency plan should not be used routinely as a substitute for secondary containment because we believe it is normally environmentally better to contain oil than to clean it up after it has been discharged. Secondary containment is intended to contain discharged oil so that it does not leave the facility and contaminate the environment. The proper method of secondary containment is a matter of good engineering practice, and so we do not prescribe here any particular method. Under part 112, where secondary containment is not practicable, you may deviate from the requirement, provide a contingency plan following the provisions of 40 CFR part 109, and comply with the other requirements of § 112.7(d). For bulk storage containers, those requirements include both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping. You must also provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful.

Applicability of requirement. Secondary containment is best for most facilities storing or using oil because it is the most effective method to stop oil from migrating beyond that containment. We believe that secondary containment is preferable to a contingency plan at manned and unmanned facilities because it prevents discharges as described in § 112.1(b). At unmanned facilities, it may be even more important because of the lag in time before a discharge may be discovered. Notwithstanding what may be difficult terrain, we believe that some form of secondary containment is practicable at most facilities, including remote production facilities. In fact, it may often be more feasible in remote or rural areas because there are fewer space limitations in such areas. For example,

at some remote mobile or production facilities, owners or operators dig trenches and line them for containment or retention of drilling fluids. Technologies used at offshore facilities to catch or contain oil may also sometimes be used onshore.

While some types of secondary containment (for example, dikes or berms) may not be appropriate at certain facilities, you should consider all reasonable containment and diversionary structures or equipment to prevent a discharge. You must clearly explain in your Plan any type of secondary containment that you do not think is applicable to your facility. You must explain in detail the reasons for your conclusion. You must also explain in detail your reasons for not using alternate measures required by § 112.7(c).

Response to comments. Costs. We note that we have withdrawn the proposed 72 hour standard, and afford various secondary containment options, including earthen dikes and diked areas, if they contain and prevent discharges as described in § 112.1(b). Therefore, there are no new costs. We disagree with the commenters who asserted that we underestimated the cost to comply with the secondary containment and truck loading and including containment that prevents discharge of oil to groundwater that is connected to navigable water. What is practical for one facility, however, might not work for another. If secondary containment is not practicable, then the facility must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

flexibility in how he prevents a discharge as described in § 112.1(b), and any method of containment that achieves that end is sufficient. Should such containment fail, the owner or operator must immediately clean up any discharged oil.

Similarly, because the purpose of the "sufficiently impervious" standard is to prevent discharges as described in

include: (1) NFPA 30; (2) BOCA, National Fire Prevention Code; and, (3) API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Editorial changes and clarifications. In the introduction to paragraph (c), "structures or equipment to prevent discharged oil from reaching a navigable water course" becomes "structures or

response to oil spills without approval by the Regional Administrator. The owner or operator of a facility would also have been required to provide a written commitment of manpower, equipment, and materials required to quickly control and remove any quantity of oil that may be discharged.

1993 proposal. In 1993, we modified the 1991 proposal for a facility that lacks secondary containment to require

at some remote mobile or production facilities, owners or operators dig trenches and line them for containment or retention of drilling fluids. Technologies used at offshore facilities to catch or contain oil may also sometimes be used onshore.

While some types of secondary containment (for example, dikes or berms) may not be appropriate at certain facilities, other types (for example, diversionary systems or remote impounding) might. However, we recognize and repeat, as we noted in the 1991 preamble, that some or perhaps all types of secondary containment for certain facilities with equipment that contain oil, such as electrical equipment, may be contrary to safety factors or other good engineering practice considerations. There might be other equipment, like fired or pressurized vessels, for which safety considerations also preclude some or all types of secondary containment.

Some facilities or equipment that use but do not store oil may or may not, as a matter of good engineering practice, employ secondary containment. Such facilities might include wastewater treatment facilities, whose purpose is not to store oil, but to treat water. Other facilities that may not find the requirement practicable are those that use oil in equipment such as hydraulic equipment. Similarly, flowlines must have a program of maintenance to prevent discharges. *See* § 112.9(d)(3). The maintenance program may or may not include secondary containment. Owners or operators of underground piping must have some form of corrosion protection, but do not necessarily have to use secondary containment for that purpose.

As stated above, for a facility where secondary containment is not practicable, the owner or operator is not exempt from the requirement, but may instead provide a contingency plan and take other measures required under § 112.7(d). For most facilities, however, including small facilities, mobile facilities, production facilities, mining sites, and any other facilities that store or use oil, we believe that secondary containment is generally necessary and appropriate to prevent a discharge as described in § 112.1(b). Without secondary containment, discharges from containers would often reach navigable waters or adjoining shorelines, or affect natural resources.

Methods of secondary containment. The appropriate method of secondary containment is an engineering question. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in § 112.1(b), including containment that prevents discharge of oil to groundwater that is connected to navigable water. What is practical for one facility, however, might not work for another. If secondary containment is not practicable, then the facility must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

Double-walled or vaulted tanks. The term "vaulted tank" has been used to describe both double-walled tanks (especially those with a concrete outer shell) and tanks inside underground vaults, rooms, or crawl spaces. While double-walled or vaulted tanks are subject to secondary containment requirements, shop-fabricated double-walled aboveground storage tanks equipped with adequate technical spill and leak prevention options might provide sufficient equivalent secondary containment as that required under § 112.7(c). Such options include overfill alarms, flow shutoff or restrictor devices, and constant monitoring of product transfers. In the case of vaulted tanks, the Professional Engineer must determine whether the vault meets the requirements for secondary containment in § 112.7(c). This determination should include an evaluation of drainage systems and of sumps or pumps which could cause a discharge of oil outside the vault. Industry standards for vaulted tanks often require the vaults to be liquid tight, which if sized correctly, may meet the secondary containment requirement.

There might also be other examples of such alternative systems.

Completely buried tanks. Completely buried tanks, other than those exempted from this rule because they are subject to all technical Federal or State UST requirements, are subject to the secondary containment requirement. We realize that the concept of freeboard for precipitation is inapplicable to secondary containment for completely buried tanks. The requirement for secondary containment may be satisfied in any of the ways listed in the rule or their equivalent.

72-hour impermeability standard. We are withdrawing the proposal for the 72-hour impermeability standard and will retain the current standard that dikes, berms, or retaining walls must be sufficiently impervious to contain oil. We agree with commenters that the purpose of secondary containment is to contain oil from escaping the facility and reaching the environment. The rationale for the 72-hour standard was to allow time for the discovery and removal of an oil spill. An owner or operator of a facility should have flexibility in how he prevents a discharge as described in § 112.1(b), and any method of containment that achieves that end is sufficient. Should such containment fail, the owner or operator must immediately clean up any discharged oil.

Similarly, because the purpose of the "sufficiently impervious" standard is to prevent discharges as described in § 112.1(b), dikes, berms, or retaining walls must be capable of containing oil and preventing such discharges. Discharges as described in § 112.1(b) may result from direct discharges from containers, or from discharges from containers to groundwater that travel through the groundwater to navigable waters. Effective containment means that the dike, berm, or retaining wall must be capable of containing oil and sufficiently impervious to prevent discharges from the containment system until it is cleaned up. The same holds true for container floors or bottoms; they must be able to contain oil to prevent a discharge as described in § 112.1(b). However, "effective containment" does not mean that liners are required for secondary containment areas. Liners are an option for meeting the secondary containment requirements, but are not required by the rule.

If you are the owner or operator of a facility subject to this part, you must prepare a Plan in accordance with good engineering practice. A complete description of how secondary containment is designed, implemented, and maintained to meet the standard of sufficiently impervious is necessary. In order to document that secondary containment is sufficiently impervious and sufficiently strong to contain oil until it is cleaned up, the Plan must describe how the secondary containment is designed to meet that standard. A written description of the sufficiently impervious standard is not only necessary for design and implementation, but will aid owners or operators of facilities in determining which practices will be necessary to maintain the standard of sufficiently impervious. Control and/or removal of vegetation may be necessary to maintain the impervious integrity of the secondary containment. Repairs of excavations or other penetrations through secondary containment will need to be conducted in accordance with good engineering practices in order to maintain the standard of sufficiently impervious. The owner or operator should monitor such imperviousness for effectiveness, in order to be sure that the method chosen remains impervious to contain oil.

Costs. We note that we have withdrawn the proposed 72 hour standard, and afford various secondary containment options, including earthen dikes and diked areas, if they contain and prevent discharges as described in § 112.1(b). Therefore, there are no new costs. We disagree with the commenters who asserted that we underestimated the cost to comply with the secondary containment and truck loading and unloading area requirements. The revised rule, like the current rule, does not require a specific impermeability for dikes and does not require a specific method of secondary containment at loading and unloading areas, and this flexibility is reflected in our cost estimates. We noted in our 1991 Supplemental Cost/Benefit Analysis that secondary containment for bulk storage tanks is estimated to cost $1,000 for small facilities; $6,400 for medium facilities; and $63,000 for large facilities. Unit cost estimates were developed for a broad mix of facilities (*e.g.*, farms, bulk petroleum terminals) in each size category by experienced engineers with firsthand knowledge of the Oil Pollution Prevention Regulation and the operations of onshore SPCC-regulated facilities. Because our cost estimates must be representative of the many types of facilities that are regulated, they will underestimate the costs for some facility types and overestimate the costs for others. Facilities were assumed to construct secondary containment systems of impervious soil capable of holding 110 percent of the largest tank. In that analysis, we estimated that 78 percent and 88 percent of the regulated community were already in compliance with these requirements, respectively, and would not be affected by the proposed rule change.

Since we last performed these analyses, API has issued several industry standards, including API 653 and 2610, which address many of the provisions in the SPCC rule. As a result, the final rule relies on current industry standards and practices, where feasible. In the final rule, we withdrew the proposed 72-hour impermeability standard for secondary containment and maintained the current requirement that dikes, berms, and oil retaining walls must be sufficiently impervious to contain oil. As a result, the final rule reflects current industry standards and we assume poses no additional requirements on industry.

Sufficient freeboard. See the Response to Comments in § 112.8(c)(2) for a discussion of this topic.

Industry standards. Industry standards that may assist an owner or operator with secondary containment include: (1) NFPA 30; (2) BOCA, National Fire Prevention Code; and, (3) API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Editorial changes and clarifications. In the introduction to paragraph (c), "structures or equipment to prevent discharged oil from reaching a navigable water course" becomes "structures or equipment to prevent a discharge as described in § 112.1(b)." This wording change reflects the expanded scope of the CWA as reflected in § 112.1(b) and is clearer than the proposed language. In the second sentence of the paragraph, we deleted the words "permeate, drain, infiltrate, or otherwise" from the sentence because they were unnecessary. The word "escape" in that sentence is sufficient. Also in that sentence, the reference to "escape to surface waters" becomes "escape from the containment system." This language more clearly reflects the intent of the rule that secondary containment should keep oil from escaping from the facility and reaching navigable waters or adjoining shorelines. In paragraph (c)(2)(i), "curbing, drip pans" becomes "curbing or drip pans."

In response to the commenter's question, we note that a primary containment system is the container or equipment which holds oil or in which oil is used.

Section 112.7(d)—Contingency Planning

Background. 1991 proposal. In 1991, we proposed to add several new requirements to the contingency planning requirement in § 112.7(d). First, we proposed that a facility without secondary containment be required to test a tank for integrity every five years. In contrast, our 1991 proposal for § 112.8(c)(6) provided for testing at least every 10 years for a tank with secondary containment. In addition, we proposed to require a facility without secondary containment to conduct integrity and leak testing of valves and piping at least annually. We also proposed that the contingency plan be submitted to the Regional Administrator for approval.

Instead of referring to 40 CFR part 109 for contingency plan requirements as the current rule does, the 1991 proposal added specific requirements including a description of response plans; personnel needs; methods of mechanical containment; removal of spilled oil; and, access to and availability of sorbents, booms, and other equipment. Additionally, the proposal would have required that the Plan not rely on dispersants and other chemicals for response to oil spills without approval by the Regional Administrator. The owner or operator of a facility would also have been required to provide a written commitment of manpower, equipment, and materials required to quickly control and remove any quantity of oil that may be discharged.

1993 proposal. In 1993, we modified the 1991 proposal for a facility that lacks secondary containment to require a facility response plan as described in § 112.20, instead of the specific requirements proposed in 1991. The response plan would not be submitted to the Regional Administrator for his review, unless otherwise required, but would be maintained at the facility with the SPCC Plan.

Comments. 1991 comments. Many commenters supported the 1991 proposal. Opposing commenters suggested that such planning should be discretionary because not all facilities need such planning, or that facilities be allowed to use contingency plans prepared for other purposes. Others thought the proposal was premature as we had not at the time finalized response planning requirements in § 112.20. One commenter argued that we should delete all of the contingency planning requirements in § 112.7(d) at the point when we require an owner or operator to prepare a response plan. Some said that contingency planning was not practicable because the costs are too high, but commenters did not provide cost estimates. Several commenters criticized the proposed requirement that the contingency plan be submitted to the Regional Administrator, calling it duplicative, time-consuming, and unnecessary. Two commenters suggested that the Contingency Plan prepared under RCRA rules would suffice. Representatives of small facilities asked for a small facility exemption. Others asked for clarification of what a "written commitment" of manpower, equipment, and materials meant. Several commenters asked if PE certification of the contingency plan was necessary. One commenter opposed any requirement to provide contingency planning for buried tanks, piping, or valves for which secondary containment cannot be provided.

Integrity and leak testing. Several commenters supported the proposed integrity and leak testing requirements. Others opposed them, some on the basis that facilities already inspect their tanks regularly. Various commenters suggested exemptions for small containers or containers that are entirely within buildings. Electrical utilities argued that the requirement was

inapplicable for them because they do not store oil and that such testing would cause disruption in electrical service. Mining interests likewise asked for an exemption on the basis that they only store small amounts of oil and the requirements would be very expensive, but did not provide specific cost estimates. Various commenters asked for clarification of the term "integrity

an alternative that provides "equivalent environmental protection." However, we believe that the secondary containment requirement in § 112.7(d) is an important component in preventing discharges as described in § 112.1(b) and is environmentally preferable to a contingency plan prepared under 40 CFR part 109. Thus, we do not believe it is appropriate to

oil discharge and rapid response by the facility to prevent that discharge. Part 109 was originally promulgated to assist State and local government oil spill response agencies to prepare oil removal contingency plans in the inland response zone, where EPA provides the On-Scene Coordinator. The basic criteria for contingency planning listed in § 109.5 apply to any SPCC regulated facility that has adequately justified the

inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Such testing is also applicable to valves and piping. See API Standard 653 for further information on this term.

Leak testing for purposes of the rule is testing to determine the liquid

We have eliminated the proposed frequency of the testing, both for containers and for valves and piping, in favor of testing according to industry standards. Instead, we require "periodic" integrity testing of containers, and "periodic" integrity and leak testing of valves and piping. "Periodic" testing means testing according to a regular schedule

operations may not be adequate to protect all uses. 40 CFR 109.5(d).

Industry standards. Industry standards that may assist an owner or operator with the integrity testing of containers, and the integrity and leak testing of piping and valves include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; (2) API Recommended Practice 575, "Inspection of Atmospheric and Low-

inapplicable for them because they do not store oil and that such testing would cause disruption in electrical service. Mining interests likewise asked for an exemption on the basis that they only store small amounts of oil and the requirements would be very expensive, but did not provide specific cost estimates. Various commenters asked for clarification of the term "integrity testing," and its applicability. Others asked for clarification as to methods of testing. Some argued that testing of valves and gathering lines would be expensive and result in shut-downs of operations. None of these commenters provided specific cost estimates.

1993 proposal. One commenter argued that the response plan proposal was beyond our statutory authority. Others argued that the proposal was expensive and lacking in environmental benefit. One commenter said that the installation of structures or measures achieving equivalent protection should be sufficient to avert the need for a response plan. Another suggested that the current rule, which specifies use of a strong oil spill contingency plan following 40 CFR part 109, is adequate. One commenter asked for an exemption for facilities in areas historically not subject to natural disasters. Electrical utility commenters asked for an exemption because they argued that a response plan was unnecessary for facilities that use, but do not store, oil.

Response to comments. Planning requirements. We note that we did not finalize the 1991 or 1993 contingency planning proposals. Thus there are no new costs for such planning.

Under the current rule, contingency planning is necessary whenever you determine that a secondary containment system for any part of the facility that might be the cause of a discharge as described in § 112.1(b) is not practicable. This requirement applies whether the facility is manned or unmanned, urban or rural, and for large and small facilities. In response to comment, we have revised the rule to exempt from the contingency planning requirement any facility which has submitted a response plan under § 112.20 because such a response plan is more comprehensive than a contingency plan following part 109.

We believe that it may be appropriate for an owner or operator to consider costs or economic impacts in determining whether he can meet a specific requirement that falls within the general deviation provision of § 112.7(a)(2). We believe so because under this section, the owner or operator will still have to utilize good engineering practices and come up with an alternative that provides "equivalent environmental protection." However, we believe that the secondary containment requirement in § 112.7(d) is an important component in preventing discharges as described in § 112.1(b) and is environmentally preferable to a contingency plan prepared under 40 CFR part 109. Thus, we do not believe it is appropriate to allow an owner or operator to consider costs or economic impacts in any determination as to whether he can satisfy the secondary containment requirement. Instead, the owner or operator may only provide a contingency Plan in his SPCC Plan and otherwise comply with § 112.7(d). Therefore, the purpose of a determination of impracticability is to examine whether space or other geographic limitations of the facility would accommodate secondary containment; or, if local zoning ordinances or fire prevention standards or safety considerations would not allow secondary containment; or, if installing secondary containment would defeat the overall goal of the regulation to prevent discharges as described in § 112.1(b).

We disagree that facility response planning is beyond our statutory authority, it is a procedure or method to remove discharged oil. *See* section 311(j)(1)(A) of the CWA. However, while we disagree that such planning is expensive and lacking in environmental benefit, we agree that the current contingency plan arrangements which reference 40 CFR part 109 should be sufficient to protect the environment, and that a facility response plan as described in § 112.20 is therefore unnecessary for a facility that is not otherwise subject to § 112.20. We agree with the commenter that structures or equipment might achieve the same or equivalent protection as response planning for some SPCC facilities. Therefore, we are withdrawing that part of the 1993 proposal related to response planning in proposed § 112.7(d)(1), but are retaining the current contingency planning provisions, which require a contingency plan following the provisions of 40 CFR part 109. We also believe that response plans should be reserved for higher risk facilities, as provided in § 112.20.

In following the provisions of part 109, you must address the oil removal contingency planning criteria listed in 40 CFR 109.5 and ensure that all response actions are coordinated with governmental oil spill response organizations. The absence of secondary containment will place extreme importance on the early detection of an oil discharge and rapid response by the facility to prevent that discharge. Part 109 was originally promulgated to assist State and local government oil spill response agencies to prepare oil removal contingency plans in the inland response zone, where EPA provides the On-Scene Coordinator. The basic criteria for contingency planning listed in § 109.5 apply to any SPCC regulated facility that has adequately justified the impracticability of installing secondary containment, irrespective of whether it is a government agency or the facility is located in the coastal (U.S. Coast Guard) or inland (EPA) response zone. Because the contingency plan involves good engineering practice and is technically a material part of the Plan, PE certification is required.

A contingency plan prepared under RCRA rules might suffice for purposes of the rule if the plan fulfills the requirements of part 109, and the PE certifies that such plan is adequate for the facility. If the RCRA contingency plan satisfies some but not all SPCC requirements, you must supplement it so that it does.

We note that the preamble to the 1993 proposed rule (at 58 FR 8841) suggested that response plans would not have to be submitted to the Regional Administrator unless "otherwise required by the rest of today's proposed rule." However, proposed § 112.7(a)(2) would have required that the owner or operator submit to the Regional Administrator any Plan containing a proposed deviation, including a deviation for the general secondary containment requirements in § 112.7(c). In any case, we agree with commenters that the contingency plan (or any other deviation) should not have to be submitted to the Regional Administrator for his review and approval because we believe that it is sufficient that the contingency plan (or other deviation) be available for on-site inspection. We have therefore withdrawn that part of the proposal. See also the discussion on § 112.7(a)(2).

Integrity and leak testing. In response to a commenter who asked for a clarification of integrity testing, "integrity testing" is any means to measure the strength (structural soundness) of the container shell, bottom, and/or floor to contain oil and may include leak testing to determine whether the container will discharge oil. Facility components that might cause a discharge as described in § 112.1(b) include containers, piping, valves, or other equipment or devices. Integrity testing includes, but is not limited to, testing foundations and supports of containers. Its scope includes both the inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Such testing is also applicable to valves and piping. See API Standard 653 for further information on this term.

Leak testing for purposes of the rule is testing to determine the liquid tightness of valves and piping and whether they may discharge oil. Facilities that store oil, whether they are mines or other businesses, are required to employ integrity testing for their bulk storage containers, and integrity and leak testing for their valves and piping, to help prevent discharges. Containers that do not store oil, but merely use oil, are not subject to the requirement.

We reaffirm the applicability of integrity and leak testing to both large and small facilities, because we believe such testing requirements help prevent discharges as described in § 112.1(b) at those facilities. However, we have modified our proposal in response to comments to only require such testing on a periodic basis instead of at a prescribed frequency. Integrity and leak testing requirements are also applicable for containers and valves and piping that are entirely within buildings, or within mines, because in either case, such containers, or valves and piping may become the source of a discharge as described in § 112.1(b). We have revised the rule to reflect that the requirement applies only to onshore and offshore bulk storage facilities. Therefore, a facility with only oil-filled electrical, operating, or manufacturing equipment need not conduct such testing nor incur any costs for such testing. For other types of facilities, we disagree that testing of valves and gathering lines would be prohibitively costly. In 1991, we estimated tank integrity testing and leak testing costs of buried piping. We estimated the costs as $465 per tank, $155 for equipment, and $310 for installation. Small facilities were assumed to have no buried piping. Medium sized facilities were assumed to bear first year costs for tank installation and testing of $4,704 and subsequent year costs of $1,449. Large facilities were assumed to incur a first year cost of $11,313, and subsequent year costs of $3,519. We assume that this provision represents a negligible additional burden because most facilities are already testing such valves and gathering lines according to industry standards as a matter of good engineering practice. We believe that if such testing is done in accordance with industry standards, costs will be minimized.

We have eliminated the proposed frequency of the testing, both for containers and for valves and piping, in favor of testing according to industry standards. Instead, we require "periodic" integrity testing of containers, and "periodic" integrity and leak testing of valves and piping. "Periodic" testing means testing according to a regular schedule consistent with accepted industry standards. We believe that use of industry standards, which change over time, will prove more feasible than providing a specific and unchanging regulatory requirement. As required by § 112.8(c)(6), integrity testing of containers must be accomplished by a combination of visual testing and some other technique.

Written commitment. A "written commitment" of manpower, equipment, and materials means either a written contract or other written documentation showing that you have made provision for those items for response purposes. Such commitment must be shown by: the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally; an estimate of the equipment, materials, and supplies which would be required to remove the maximum oil discharge to be anticipated; and, development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials, and supplies to be used in responding to such a discharge. 40 CFR 109.5(c).

The commitment also involves making provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including: specification of an oil discharge response operating team consisting of trained, prepared, and available operating personnel; predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under current national and regional contingency plans; a preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response actions; provisions for varying degrees of response effort depending on the severity of the oil discharge; and, specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses. 40 CFR 109.5(d).

Industry standards. Industry standards that may assist an owner or operator with the integrity testing of containers, and the integrity and leak testing of piping and valves include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; (2) API Recommended Practice 575, "Inspection of Atmospheric and Low-Pressure Tanks"; (3) API Standard 570, "Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems)"; (4) American Society of Mechanical Engineers (ASME) B31.3, "Process Piping"; (5) ASME 31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols"; (6) Steel Tank Institute Standard SP001–00, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids"; and, (7) Underwriters Laboratory (UL) Standard 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids."

Editorial changes and clarifications. In the introductory paragraph, "tanks" becomes "containers." We revised the first sentence of the introduction which now reads, "When it is determined * * *," to read, "If you determine * * *." Later in that sentence we change the words "demonstrate such impracticability" to "explain why such measures are not practicable," in referencing the impracticability of secondary containment. Also, in the first sentence of the introduction, we clarify that the requirement for contingency planning and other measures is applicable when secondary containment is not practicable under §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), as well as § 112.7(c) and (h)(1). Additionally in that sentence, the reference to "prevent discharged oil from reaching navigable waters" becomes "to prevent a discharge as described in § 112.1(b)," conforming the geographic scope of the rule to the CWA. At the end of the paragraph we clarify that when secondary containment is not practicable, the contingency plan and written commitment must be provided in the Plan, rather than to the Regional Administrator. We also clarify that if you have submitted a facility response plan under § 112.20 for a facility, you need not provide for that facility either a contingency plan following the provisions of part 109, nor a written commitment of manpower, equipment, and materials required to expeditiously

control and remove any quantity of oil discharged that may be harmful.

In paragraph (d)(1), "A strong oil spill contingency plan following the provision of 40 CFR part 109 * * *," becomes "An oil spill contingency plan following the provisions of part 109 * * *." The word "strong" is unnecessary because in any case the contingency plan must follow the

commenters objected to the cost of a five-year record retention requirement. One commenter favored a two-year record maintenance period. Several favored a phase-in period if five years were to be required so that three-year records could be brought into compliance with the rule. One commenter favored a requirement that records be maintained in accordance

and similar activities required by this part. After publication of this rule, we will list all of the inspections and tests required by part 112 on our website (www.epa.gov/oilspill). The applicability of each inspection and test will depend on the exercise of good engineering practice, because not every one will be applicable to every facility.

Form of records. Records of

Section 112.7(f)—Employee Training and Discharge Prevention Procedures

Background. In 1991, we proposed that you conduct training exercises and that you train new employees within their first week of work. The rationale for these provisions was that a high percentage of discharges are caused by operator error; therefore, training and briefings might help prevent many

facility operations, discharge prevention laws and regulations, and the contents of the facility's SPCC Plan. Finally, the proposal would require that you conduct unannounced drills, at least annually, in which oil-handling personnel would participate.

Comments. 1991 comments. Applicability of training requirements. Numerous commenters suggested that the training requirements should apply

annual spill prevention briefings, as opposed to the current requirement to hold such briefings "at intervals frequent enough to assure adequate understanding of the SPCC Plan." They argued that the current standard is adequate. Some commenters suggested that we require additional training in these briefings such as emergency response training, or training concerning Plan changes.

control and remove any quantity of oil discharged that may be harmful.

In paragraph (d)(1), "A strong oil spill contingency plan following the provision of 40 CFR part 109 * * *." becomes "An oil spill contingency plan following the provisions of part 109 * * *." The word "strong" is unnecessary because in any case the contingency plan must follow the provisions of part 109.

In paragraph (d)(2), we did not finalize the proposed recommendation for the operator to consider financial capability in making his written commitment of manpower, equipment, and materials because we do not wish to confuse the regulated community with discretionary requirements in a mandatory rule. Finally, we changed the reference in paragraph (d)(2) from "to expeditiously control and remove any harmful quantity of oil discharged" to read "to expeditiously control and remove any quantity of oil discharged that may be harmful." We made this change to refer to the statutory standard referring to a quantity of oil "that may be harmful."

Section 112.7(e)—Inspections, Tests, and Records

Background. In 1991, we proposed that records and inspections and test results be kept for a period of five years. Current rules require record, inspection, and test results be maintained for three years. We also proposed that such records might be maintained with the Plan, instead of being part of the Plan.

In 1997, we returned to the three-year record maintenance period in our new proposal. In 1997, we also proposed that usual and customary business records, such as records maintained under API Standards 653 and 2610, would suffice to meet the requirements of this section. Finally we proposed that such records be made a part of the Plan.

Comments. 1991 comments. Maintenance with Plan. Most commenters favored the proposal that records might be maintained with the Plan, rather than as part of it. Two commenters thought the requirements should apply generally only to large facilities.

Form of records. One commenter urged use of electronic records.

Records required. Still another asked that we list all inspections and tests required by part 112. One commenter asked for a requirement to keep records and tests of all major repairs and of employee training.

Time period. Most commenters favored retaining the current three-year time period to maintain records, believing it is adequate. Some commenters objected to the cost of a five-year record retention requirement. One commenter favored a two-year record maintenance period. Several favored a phase-in period if five years were to be required so that three-year records could be brought into compliance with the rule. One commenter favored a requirement that records be maintained in accordance with other State and Federal agency requirements to avoid additional and unnecessary costs.

1997 comments. Maintenance with Plan. A number of commenters criticized the proposal that records must be maintained as part of the Plan, rather than maintained with the Plan, considering that proposal burdensome and providing no benefit to the environment.

Form of records. Several commenters asked that we clarify that use of records maintained under the API standards cited is not required. Another commenter noted that many smaller companies do not use API standards, and that use of such records should be allowed "when available." Several commenters urged that we state that records kept under the NPDES program might suffice for the SPCC program. Other commenters asked whether records in other formats might be acceptable, such as under a facility's QS–9000 or ISO–14000 system, or under standards promulgated by the Underwriters' Laboratories. Other commenters discussed use of NPDES stormwater bypass records. We will talk about those records under the discussion of § 112.8(c)(3)(iv).

Time period. Most commenters favored the proposal to retain the current three-year time period for maintenance of records.

Response to comments. Maintenance with Plan. We agree with commenters that it is not necessary to maintain records as part of the Plan. Therefore, today's rule allows "keeping" of the records "with" the Plan, but not as part of it. In the current rule, such records "should be made part of the SPCC Plan * * *." 40 CFR 112.7(e)(8). Because you continually update these records, this change will eliminate the need to amend your Plan each time you remove old records and add new ones. You still retain the option of making these records a part of the Plan if you choose.

Records required. The rule permits use of usual and customary business records, and covers all of the inspections and tests required by this part as well as any ancillary records. "Inspections and tests" include not only inspections and tests, but schedules, evaluations, examinations, descriptions, and similar activities required by this part. After publication of this rule, we will list all of the inspections and tests required by part 112 on our website (www.epa.gov/oilspill). The applicability of each inspection and test will depend on the exercise of good engineering practice, because not every one will be applicable to every facility.

Form of records. Records of inspections and tests required by this rule may be maintained in electronic or any other format which is readily accessible to the facility and to EPA personnel. Usual and customary business records may be those ordinarily used in the industry, including those made under API standards, Underwriters' Laboratories standards, NPDES permits, a facility's QS–9000 or ISO–14000 system, or any other format acceptable to the Regional Administrator. If you choose to use records associated with compliance with industry standards, such as Underwriters' Laboratories standards, you must closely review the inspection, testing, and recordkeeping requirements of this rule to ensure that any records kept in accordance with industry standards meets the intent of the rule. Some standards have limited recordkeeping requirements and may only address a particular aspect of container fabrication, installation, inspection, and operation and maintenance. The intent of the rule is that you will not have to maintain duplicate sets of records when one set has already been prepared under industry or regulatory purposes that also fully suffices for SPCC purposes. The use of these alternative record formats is optional; you are not required to use them, but you may use them.

Time period. We agree with commenters that maintenance of records for three years is sufficient for SPCC purposes, since that period will allow for meaningful comparisons of inspections and tests taken. Therefore, there will be no new costs. We note, however, that certain industry standards, for example API Standards 570 and 653, may specify record maintenance for more than three years.

Editorial changes and clarifications. As proposed in 1991, we affirm that the certifying engineer, as well as the owner or operator, may be a person who develops inspection procedures. We also affirm that the provision applies to both "inspections" and "tests" undertaken. The tests are usually integral parts of the inspections.

Section 112.7(f)—Employee Training and Discharge Prevention Procedures

Background. In 1991, we proposed that you conduct training exercises and that you train new employees within their first week of work. The rationale for these provisions was that a high percentage of discharges are caused by operator error; therefore, training and briefings might help prevent many discharges and promote a safer facility. This rationale was based on program experience and studies EPA undertook. The 1995 SPCC Survey found that operator error was the most common spill cause for facilities in 9 of the 19 industry categories that reported having spills. Also, the August 1994 draft report of the EPA Aboveground Oil Storage Facilities Workgroup called "Soil and Ground Water Contamination from Aboveground Oil Storage Facilities: A Strategic Study" presented data on causes of discharges from two studies. Both studies showed that error during product transfer activities is one of the biggest known causes of discharges at AST facilities. Two other studies also support our contention: Carter, W.J., "How API Viewed the Needs for Aboveground Storage Tanks," Tank Talk, Vol. 7, July/August 1992, p.2.; and U.S. EPA, "The Technical Background Document to Support the Implementation of OPA Response Plan Requirements," Emergency Response Division, Office of Solid Waste and Emergency Response, February 1993, p.4–19.

In 1993, we proposed to qualify the applicability of the training requirements to only those facilities that transfer or receive greater than or equal to 10,000 gallons of oil in a single operation more than twice per month on average, or greater than or equal to 50,000 gallons in a single operation more than once a month on the average. We further proposed that you require that employees involved in "oil-handling activities," such as the operation or maintenance of oil storage tanks or the operation of equipment related to storage tanks, receive eight hours of facility specific training within one year of the effective date of the rule or at the date that your facility becomes subject to the requirement. In subsequent years, each employee would be required to undergo four hours of refresher training.

Our 1993 proposal would require training for new employees within one week of employment. We also proposed to specify the areas in which you would be required to train employees to include: training in correct equipment operation and maintenance, general facility operations, discharge prevention laws and regulations, and the contents of the facility's SPCC Plan. Finally, the proposal would require that you conduct unannounced drills, at least annually, in which oil-handling personnel would participate.

Comments. 1991 comments. Applicability of training requirements. Numerous commenters suggested that the training requirements should apply only to personnel involved in the operation or maintenance of equipment. They argued that the training requirements need not apply to clerks, secretaries, and similar employees who are not involved in the physical operations of the facility. They also argued that we failed to sufficiently account for training costs in our economic analysis. Another commenter asked for a small facility exemption from training requirements.

Another commenter asked that facilities be allowed to incorporate SPCC training requirements into already existing training programs required by other Federal or State law. One commenter suggested that the rule include a requirement that owners or operators document each training session and spill response drill conducted, and to maintain those records for five years.

Timing of employee training. Some commenters favored the proposed provision for yearly training exercises and suggested that the training be coordinated with local oil spill response organizations or Local Emergency Planning Committees (LEPCs) whenever possible. One commenter cautioned that the annual training should not be considered a full scale SPCC drill.

Opposing commenters suggested no time period for such exercises, or alternative periods, such as every two or three years.

Likewise, many commenters opposed the provision relating to the training of new employees within one week of employment. Opposing commenters argued generally that such a recommendation is impractical, and called for employer discretion in scheduling training. Others suggested varying time periods in lieu of one week. Those suggestions ranged from one month to one year, with alternatives suggested such as "as soon as practical," "prior to operation but before one year," "within one week of job assignment," "a more reasonable time period," "after training," and "until the next annual training for all employees." One commenter asked that we define the term "new employee."

Discharge prevention briefings. Many commenters criticized the proposal for annual spill prevention briefings, as opposed to the current requirement to hold such briefings "at intervals frequent enough to assure adequate understanding of the SPCC Plan." They argued that the current standard is adequate. Some commenters suggested that we require additional training in these briefings such as emergency response training, or training concerning Plan changes.

1993 comments. Applicability of training requirements. In 1993, many commenters asked for clarification of what "oil-handling" personnel meant. Some thought the requirements for training should be limited to those employees engaged in response activities. Others questioned what "on average" meant in determining the threshold applicability of the rule. Still others asked what "a single operation" meant. Some asked that the requirements be limited to facilities with potential to cause "substantial harm" to the environment. Others asked that the requirements be relaxed for facilities with equipment that reduce the potential for discharges. Some suggested differing gallon thresholds for the applicability of the training requirements. One commenter suggested that training be limited to those employees involved in emergency response or countermeasure activities. One commenter asked for an exemption from this requirement for small facilities. Another commenter asked for an exemption for extraction facilities, because, he argued, they have few spills. Another commenter suggested that the 1991 proposal was adequate.

Timing of employee training. Some commenters favored the proposed requirement for eight-hour annual training, with four-hour refresher training in subsequent years. Others opposed it, arguing that employer discretion in this matter will ensure a better result.

Likewise many commenters opposed the requirement that new employees be trained within one week of employment, arguing instead for employer discretion. Some commenters suggested alternate frequencies other than one week, ranging from "prior to assuming duties" to up to six months after hiring.

Content of training. A few commenters supported the specification of training subjects. Some commenters suggested that we require training in the proper operation and maintenance of facility equipment and knowledge of spill procedure protocols. A utility commenter objected to the proposal that its employees be trained in maintenance of oil storage tanks, because its

maintenance activities do not involve the transfer or handling of oil and therefore fall outside the scope of the rule. Alternatively, the commenter suggested, those employees should be given a lower level of "awareness" training. One commenter suggested inclusion of response training.

Unannounced drills. Some commenters favored the proposal and Division, Office of Solid Waste and Emergency Response, February 1993, p.4–19. We have therefore retained the applicability of training to all facilities. The 1993 proposal would have limited training requirements to only certain facilities which received or transferred over the proposed amount of oil. Facilities which receive or transfer less than the proposed amount might also prevent a discharge as described in § 112.1(b). This standard will allow facilities more flexibility to develop training programs better suited to the particular facility. While the rule requires annual discharge prevention briefings, we also agree that the annual briefings required are not drills. In any case, the SPCC rules do not require drills, as explained below.

Unannounced drills. The proposed yearly frequency for unannounced drills is also unnecessary because such drills are already required at FRP facilities, which are higher risk facilities. We do not believe that the risk at all SPCC facilities approaches the same level as at FRP facilities. Therefore, we are not finalizing this proposal, and there are no new costs.

Starter controls on pumps. Several commenters argued that the requirements to lock starter controls on all pumps and to locate them at a site accessible only to authorized personnel are duplicative and do not deter vandals or other unauthorized personnel. Another commenter urged us to exclude some places. Another argued that fences should be topped with barbed wire, or otherwise designed to deter vandalism.

we agree. When you use a fence to protect a facility, the design of the fence should deter vandalism. Methods of deterring vandals might include barbed wire or other devices. If any type of fence is impractical, you may, under § 112.7(a)(2), explain your reasons for nonconformance and provide equivalent environmental protection by some other means.

Valves. Revised § 112.7(g)(2) requires

maintenance activities do not involve the transfer or handling of oil and therefore fall outside the scope of the rule. Alternatively, the commenter suggested, those employees should be given a lower level of "awareness" training. One commenter suggested inclusion of response training.

Unannounced drills. Some commenters favored the proposal and suggested that actual discharge experience should be given credit as a drill. One commenter suggested a frequency schedule for various types of drills.

Some commenters criticized the proposal for at least yearly unannounced drills. One commenter suggested that the frequency of the drills should be at the operator's discretion. Commenters argued that, if required at all, drills should only be applicable to operational or response personnel. Two commenters said that a requirement for unannounced drills for all employees would require them to conduct at least eight or more drills a year. Another commenter suggested training instead of drills, because of the potential for drills to cause expensive shutdowns.

Response to comments. Applicability of training requirements. We believe that training requirements should apply to all facilities, large or small, including all those that store or use oil, regardless of the amount of oil transferred in any particular time. Training may help avert human error, which is a principal cause of oil discharges. "Spills from ASTs may occur as a result of operator error, for example, during loading operations (*e.g.*, vessel or tank truck—AST transfer operation), or as a result of structural failure (*e.g.*, brittle fracture) because of inadequate maintenance of the AST." EPA Liner Study, at 14. The 1995 SPCC Survey found that operator error was the most common spill cause for facilities in 9 of the 19 industry categories that reported having spills. Also, the August 1994 draft report of the EPA Aboveground Oil Storage Facilities Workgroup called "Soil and Ground Water Contamination from Aboveground Oil Storage Facilities: A Strategic Study" presented data on causes of discharges from two studies. Both studies showed that error during product transfer activities is one of the biggest known causes of discharges at AST facilities. Two other studies also support our contention: Carter, W.J., "How API Viewed the Needs for Aboveground Storage Tanks," Tank Talk, Vol. 7, July/August 1992, p.2.; and U.S. EPA, "The Technical Background Document to Support the Implementation of OPA Response Plan Requirements," Emergency Response Division, Office of Solid Waste and Emergency Response, February 1993, p.4–19. We have therefore retained the applicability of training to all facilities. The 1993 proposal would have limited training requirements to only certain facilities which received or transferred over the proposed amount of oil. Facilities which receive or transfer less than the proposed amount might also have discharges which could have been averted through required training. Also the proposed rule would have exempted many facilities that use rather than store oil from its scope. Therefore, we have provided in the rule that all facilities, whether bulk storage facilities or facilities that merely use oil, must train oil-handling employees because all facilities have the potential for a discharge as described in § 112.1(b), and training is necessary to avert such a discharge.

We agree with the commenter that training is only necessary for personnel who will use it to carry out the requirements of this rule. Therefore revised paragraph (f)(1) provides that only oil-handling personnel are subject to training requirements, as we proposed in 1993. Thus there are no new training costs because we have always required such training of oil-handling personnel. "Oil-handling personnel" is to be interpreted according to industry standards, but includes employees engaged in the operation and maintenance of oil storage containers or the operation of equipment related to storage containers and emergency response personnel. We do not interpret the term to include secretaries, clerks, and other personnel who are never involved in operation or maintenance activities related to oil storage or equipment, oil transfer operations, emergency response, countermeasure functions, or similar activities.

You may incorporate SPCC training requirements into already existing training programs required by other Federal or State law at your option or may conduct SPCC training separately.

You must document that you have conducted required training courses. Such documentation must be maintained with the Plan for three years.

Timing of employee training. We agree with commenters who thought it desirable to leave the timing and number of hours of training of oil-handling employees, including new employees, to the employer's discretion. "Proper instruction" of oil-handling employees, as required in the rule, means in accordance with industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). This standard will allow facilities more flexibility to develop training programs better suited to the particular facility. While the rule requires annual discharge prevention briefings, we also agree that the annual briefings required are not drills. In any case, the SPCC rules do not require drills, as explained below.

For purposes of the rule, it is not necessary to define a "new employee" because all oil-handling personnel are subject to training requirements, whether new or not. You do, however, have discretion as to the timing of that training, so long as the timing meets the requirements of good engineering practice.

Discharge prevention briefings. Annual discharge prevention briefings are necessary, but there should be more frequent briefings where appropriate. Such briefings are necessary to refresh employees' memories on facility Plan provisions and to update employees on the latest prevention and response techniques. Training must include the contents of the facility Plan. Although it is desirable, we disagree that we should require SPCC briefings to include emergency response training. That training is already required for those facilities which must prepare response plans.

Content of training. Specifying a minimum list of training subjects is necessary to ensure that facility employees are aware of discharge prevention procedures and regulations. As suggested by a commenter, we have added knowledge of discharge procedure protocols to the list of training subjects because such training will help avert discharges. Therefore, we have specified that training must include, at a minimum: the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. As noted above, we require response training for facilities that must submit response plans, but such training is not necessary for all SPCC facilities.

In response to the utility commenter who asserted that utility employees do not need to be trained in the maintenance of oil storage tanks because such maintenance does not involve the transfer and handling of oil, we note that training must address relevant maintenance activities at the facility. If there is no transfer and handling of oil, such topic need not be covered in training.

Unannounced drills. The proposed yearly frequency for unannounced drills is also unnecessary because such drills are already required at FRP facilities, which are higher risk facilities. We do not believe that the risk at all SPCC facilities approaches the same level as at FRP facilities. Therefore, we are not finalizing this proposal, and there are no new costs.

Editorial changes and clarifications. We changed the title from "Personnel, training, and spill prevention procedures," to "Personnel, training, and discharge prevention procedures." In paragraph (f)(1), "discharges of oil" becomes "discharges." In paragraph (f)(2), "line management" becomes "facility management," and "oil spill prevention" becomes "discharge prevention." In paragraph (f)(3), "spill prevention briefings" becomes "discharge prevention briefings." Also in paragraph (f)(3); "operating personnel" becomes "oil-handling" personnel," to be consistent with language in paragraph (f)(1); and, "spill events" becomes "discharges as described in § 112.1(b)."

Section 112.7(g)—Security (Excluding oil Production Facilities)

Background. In 1991, we proposed to turn into a recommendation the current requirement that a facility should be fully fenced, and gates locked and/or guarded when the facility is not in production or is unattended. We proposed to require that the master flow and drain valves (or other valves that will permit direct outward flow of the tanks' contents) have adequate security to ensure that they remain in a closed position when in non-operating or non-standby status. Thus, the proposal would allow more flexibility in the method of securing the valves than the current rule, which requires that such valves be "securely locked."

The current rule requires that loading/unloading connections be securely capped or blank-flanged when not in service or standby-service "for an extended time." We proposed in 1991 to clarify that "an extended time" means six months or more, based on our Regional experience.

Comments. Editorial changes and clarifications. One commenter asked for the meaning of "plant" as used in proposed § 112.7(g)(1).

Applicability of requirement. One commenter urged an exemption from all security provisions for mobile facilities, because such facilities are manned 24 hours a day while in operation.

Fences. One commenter argued that fences should not be required for all facilities, because it is not practicable in some places. Another argued that fences should be topped with barbed wire, or otherwise designed to deter vandalism.

Starter controls on pumps. Several commenters argued that the requirements to lock starter controls on all pumps and to locate them at a site accessible only to authorized personnel are duplicative and do not deter vandals or other unauthorized personnel. Another commenter urged us to exclude large facilities from the locking requirement because the potential for losing keys or having the locks become inoperative due to freezing conditions is great. A third commenter suggested that the requirement should apply to facilities, and not to pumps.

Loading/unloading connections. One commenter urged that the blank-flanging requirement apply to facilities that are not in service for six months or more, rather than to connections of oil piping. The rationale was that larger facilities have seasonal or contractual variations in use of lines, pumps, racks, and connections. Therefore, it would be costly and impractical to blank off lines only to reopen them in the seventh month. Accordingly, the rule should, per the commenter, recognize normal operating procedures at such facilities and allow flexibility. Another commenter requested that "quick disconnect" fittings qualify as a method of secure capping.

Response to comments. Applicability of requirements. We asked in the 1991 preamble (at 56 FR 54616) for comments as to whether provisions proposed as discretionary measures or recommendations should be made requirements. We were concerned whether these proposed measures represented good engineering practice for all facilities. Specific comments are discussed below. In the case of proposed § 112.7(g)(1) and (5) as requirements, we have decided to retain the requirements as requirements rather than convert those paragraphs into recommendations as proposed. We have done this because we believe that fencing, facility lighting, and the other measures prescribed in the rule to prevent vandalism are elements of good engineering practice in most facilities, including mobile facilities. Where they are not a part of good engineering practice, we have amended the proposed provision allowing deviations, § 112.7(a)(2), to include the provisions in § 112.7(g).

Fences. Fencing helps to deter vandals and thus prevent the discharges that they might cause. In response to the commenter who argued that fences should be topped with barbed wire, or otherwise designed to deter vandalism, we agree. When you use a fence to protect a facility, the design of the fence should deter vandalism. Methods of deterring vandals might include barbed wire or other devices. If any type of fence is impractical, you may, under § 112.7(a)(2), explain your reasons for nonconformance and provide equivalent environmental protection by some other means.

Valves. Revised § 112.7(g)(2) requires you to ensure that the master flow and drain valves and other valves permitting outward flow of the container's contents have adequate security measures. The current rule requires that such valves be securely locked in the closed position when in non-operating or non-standby status. Today's revised rule allows security measures other than locking drain valves or other valves permitting outflow to the surface. Manual locks may be preferable for valves that are not electronically or automatically controlled. Such locks may be the only practical way to ensure that valves stay in the closed position. For electronically controlled or automated systems, no manual lock may be necessary. The rule gives you discretion in the method of securing valves. We believe that this flexibility is necessary due to changes in technology and in the use of manual and electronic valving.

Starter controls on pumps. We disagree that the requirements to have the starter control locked in the off position and be accessible only to authorized personnel are redundant. Restricting access to such pumps prevents unauthorized personnel from accidentally opening the starter control. These measures are necessary to prevent discharges at small as well as large facilities because the threat of discharge is the same regardless of the size of the container, and a small discharge may be harmful to the environment. If the potential for losing keys, weather conditions such as frequent freezing, or other engineering factors render such a measure infeasible, you may use the deviation provisions in § 112.7(a)(2) if you can explain your reasons for nonconformance and provide equivalent environmental protection by some other means.

Loading/unloading connections. In response to comment, we have decided to retain the current time line in § 112.7(g)(4), *i.e.*, "an extended time," instead of specifying a six-month time line, due to the need for operational flexibility at facilities. We define "an extended time" in reference to industry standards or, in the absence of such standards, at a frequency sufficient to prevent any discharge. The appropriate method of securing or blank flanging of

these connections is a matter of good engineering practice, and might include "quick disconnect fittings" as a possible deviation under § 112.7(a)(2). In any case, a secure cap is one equipped with some kind of lock or secure closure device to prevent vandalism. We disagree that the requirements of this paragraph should apply to the owner or operator of a facility instead of the

Editorial changes and clarifications. One commenter asked for a clarification of the term "quick drainage system."

Another commenter recommended that instead of mandatory containment requirements, a facility be allowed to show that procedures are in place to ensure that personnel are present at all times to supervise tank truck loading and unloading. Additionally, that

inspection of trucks or cars for discharges are necessary to help prevent discharges. If you can justify a deviation for secondary containment requirement in paragraph (h)(1) on the basis that it is not practicable from an engineering standpoint, you must provide a contingency plan and take other actions to comply with § 112.7(d). If you seek to deviate from any of the requirements in

form of retention pond for an onshore facility. Whatever method is implemented, it must be capable of containing the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the facility. A discharge from the maximum capacity of any single compartment of a tank car or tank truck includes a discharge from the tank car or tank truck

the loading/unloading area to some means of secondary containment or returns the oil to the facility. For § 112.7(h)(1), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). Also, in paragraph (h)(1), "tank truck"

that we allow testing by acoustic emission testing.

Response to comments. Applicability. The requirement to evaluate field-constructed tanks for brittle fracture whenever a field-constructed aboveground container undergoes repair, alteration, reconstruction, or change in service is necessary because brittle fracture may cause sudden and catastrophic tank failure, resulting in

these connections is a matter of good engineering practice, and might include "quick disconnect fittings" as a possible deviation under § 112.7(a)(2). In any case, a secure cap is one equipped with some kind of lock or secure closure device to prevent vandalism. We disagree that the requirements of this paragraph should apply to the owner or operator of a facility instead of the owner or operator of the piping because a facility might place only some piping out of service for a period of time, and let other piping remain in service. Therefore, the owners or operators of some piping might escape the requirements of the rule and be more likely to discharge oil.

Industry standards. Industry standards that may assist an owner or operator with security purposes include: (1) API Standard 2610, Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities; and, (2) NFPA 30A, Automotive and Marine Service Station Code, Flammable and Combustible Liquids Code.

Editorial changes and clarifications. We agree that the term "plant" has no clear meaning. Therefore, in paragraph (g)(1), we have substituted the term "facility" in its place, which is a defined term in these rules. Also in that paragraph, the phrase "handling, processing and storing oil" becomes "handling, processing or storing oil." In paragraph (g)(2), "tank" becomes "container." In paragraph (g)(3), "pumps" becomes "pump." In paragraph (g)(5), the phrase "Consideration should be given to:" is deleted. We revise the sentence to read, "Provide facility lighting commensurate with the type and location of the facility that will assist in the: * * *"

Section 112.7(h)—Loading/Unloading (Excluding Offshore Facilities)

Background. In 1991, we reproposed the current discharge prevention requirements for loading/unloading racks.

Comments. In general. Several commenters opposed the proposal on the basis that a requirement for a strong contingency plan would be a preferable and more effective alternative. Another commenter asked that we clarify that only facilities routinely used for loading or unloading of tanker trucks from or into aboveground bulk storage tanks are subject to this provision. One commenter believed that the proposed rule regulates items which "should be covered" by DOT rules governing loading, unloading, and vehicle inspection.

Editorial changes and clarifications. One commenter asked for a clarification of the term "quick drainage system."

Another commenter recommended that instead of mandatory containment requirements, a facility be allowed to show that procedures are in place to ensure that personnel are present at all times to supervise tank truck loading and unloading. Additionally, that commenter recommended that all new or renovated loading/unloading areas provide, at a minimum, curbing, sloped concrete, trenching, tanks, or basins which could contain at least five percent by volume of the largest compartment of the tank car or truck. For existing facilities, that commenter suggested that containment might contain a lesser volume, provided that the entire area is constructed of impervious material, no reported releases have occurred, and that loading/unloading activities are supervised.

Alarm or warning systems. One commenter asked whether the requirement to provide a warning light or physical barrier system, or warning signs, applied to tank batteries or just plants. Another suggested that a vehicle brake interlock system or similar system might work just as well. Still another suggested the use of wheel chocks during tank truck transfers.

Vehicle drain closure. Two commenters opposed the proposed requirement that vehicle drains and outlets be examined for leakage and if necessary repaired to prevent liquid leaks during transit. They argued that the facility owner had little or no control over trucks that were owned by others which loaded or unloaded at a facility and could not ensure their compliance with the rules.

Response to comments. In general. This section is applicable to any non-transportation-related or terminal facility where oil is loaded or unloaded from or to a tank car or tank truck. It applies to containers which are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule), and to all facilities, large or small. All of these facilities have a risk of discharge from transfers. Our Survey of Oil Storage Facilities (published in July 1996) showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup. Throughput increases are often associated with transfers of oil.

The requirements contained in this section, including those for secondary containment, warning systems, and inspection of trucks or cars for discharges are necessary to help prevent discharges. If you can justify a deviation for secondary containment requirement in paragraph (h)(1) on the basis that it is not practicable from an engineering standpoint, you must provide a contingency plan and take other actions to comply with § 112.7(d). If you seek to deviate from any of the requirements in paragraphs (h)(2) or (3), you must explain your reasons for nonconformance, as provided in § 112.7(a)(2), and provide measures affording equivalent environmental protection.

We disagree that a contingency plan (whether labeled "strong" or otherwise) is a preferable alternative to secondary containment. Secondary containment is preferable because it may prevent a discharge that may be harmful as described in § 112.1(b). A contingency plan is a plan for action when such discharge has already occurred. However, as noted earlier, if secondary containment is not practicable, you must provide a contingency plan and take other actions as required by § 112.7(d). EPA will continue to evaluate the issue of whether the provisions for secondary containment found in § 112.7(h)(1) should be modified or revised. We intend to publish a notice asking for additional data and comment on this issue.

We disagree that the section regulates activities already under the purview of the U.S. Department of Transportation. We regulate the environmental aspects of loading/unloading transfers at non-transportation-related facilities, which are legitimately part of a prevention plan. DOT regulates other aspects of those transfers, such as safety measures.

Other State or Federal law. We have withdrawn, as unnecessary, proposed § 112.7(h)(1), which would have required that facilities meet the minimum requirements of Federal and State law. Those requirements apply whether they are mentioned or not.

Secondary containment. As noted above, the requirement for secondary containment applies to all facilities, whether with aboveground or completely buried containers. This includes production facilities and small facilities. The method of secondary containment must be one of those listed in the rule (see § 112.7(c)), or some similar system that provides equivalent environmental protection. The choice of method is one of good engineering practice. However, in response to comments, we note that sumps and drip pans are a listed method of secondary containment for offshore facilities. A catchment basin might be an acceptable

form of retention pond for an onshore facility. Whatever method is implemented, it must be capable of containing the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the facility. A discharge from the maximum capacity of any single compartment of a tank car or tank truck includes a discharge from the tank car or tank truck piping and hoses. This is the largest amount likely to be discharged from the oil storage vehicle. A requirement that secondary containment be able to hold only five percent of a potential discharge when procedures are in place to prevent discharges fails to protect the environment if there is human error in one of those procedures. In case of discharge, the secondary containment system must be capable of preventing a discharge from that maximum capacity compartment to the environment. As mentioned above, if secondary containment is not practicable, you may be able to deviate from the requirement if you provide a contingency plan and otherwise comply with § 112.7(d).

Alarm or warning systems. The requirement to provide a warning light or other physical barrier system applies to the loading/unloading areas of facilities. We have amended the rule on the suggestion of a commenter to include "vehicle brake interlock system" and "wheel chocks." The examples listed in the rule of potential warning systems are merely illustrative. Any other alarm or warning system which serves the same purpose and performs effectively will also suffice to meet this requirement.

Vehicle drain closure. We believe that the requirement to check vehicles for discharge is important to help prevent discharges. If the check were not done, the entire contents of the vehicle might be discharged. We further believe that the responsibility for compliance with proposed § 112.7(h)(3), as well as with all provisions of the rule, continues to rest with the owner or operator of the facility when those vehicles are loading or unloading oil at the facility.

Industry standards. Industry standards that may assist an owner or operator with loading and unloading areas include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; and, (2) API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Editorial changes and clarifications. In paragraph (h)(1), for clarity, "plant" is changed to "facility." The phrase "to handle spills" becomes "to handle discharges." A "quick drainage system" is a device which drains oil away from the loading/unloading area to some means of secondary containment or returns the oil to the facility. For § 112.7(h)(1), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). Also, in paragraph (h)(1), "tank truck" becomes "tank car or tank truck." In paragraph (h)(2), "prevent vehicular departure," becomes "prevent vehicles from departing." In paragraph (h)(3), "leakage" becomes "discharge." "Discharge" is a broader term, of which "leakage" is a subset. Also in that paragraph, "examine" becomes "inspect."

Section 112.7(i)—Brittle Fracture Evaluation

Background. In 1993, we proposed to require that you evaluate your field-constructed tanks for brittle fracture if those tanks undergo repair, alteration, or a change in service. You would have been required to evaluate those tanks by adherence to industry standards contained in American Petroleum Institute (API) Standard 653, entitled "Tank Inspection, Repair, Alteration, and Reconstruction." The rationale was to help prevent the failure of field-constructed tanks due to brittle fracture, such as the four million gallon aboveground Ashland Oil tank failure which occurred in January 1988.

Comments. Applicability. Several commenters favored the proposal. One suggested that we incorporate API Standard 653 into our rules to accommodate the possibility of tank failures other than through brittle fracture. One commenter opposed the proposal on the basis that the evaluation was unnecessary for small volume tanks and tanks with secondary containment. Other commenters argued that such testing was unnecessary for steel-bolted tanks because such tanks are too thin to be subject to brittle fracture since material properties are uniform through the thickness. One commenter asked that small facilities be exempted from the proposed requirement.

Editorial changes and clarifications. Two commenters asked what the term "change in service" means. Others asked for clarification of the term "field-erected tank." Another asked for clarification of the term "repair," so that it would exclude ordinary day-to-day maintenance activities which are conducted to maintain the functional integrity of the tank and do not weaken the tank.

Alternatives to brittle fracture evaluation. One commenter suggested that we allow testing by acoustic emission testing.

Response to comments. Applicability. The requirement to evaluate field-constructed tanks for brittle fracture whenever a field-constructed aboveground container undergoes repair, alteration, reconstruction, or change in service is necessary because brittle fracture may cause sudden and catastrophic tank failure, resulting in potentially serious damage to the environment and loss of oil. The requirement must be applicable to large and small facilities alike, because all the field-constructed aboveground containers have a risk of failure. The presence or absence of secondary containment does not eliminate the need for brittle fracture evaluation because the intent of the rule is to prevent a discharge whether or not it will be contained. While the requirement applies to all field-constructed aboveground containers, if you can show that the evaluation is unnecessary for your steel-bolted tanks, you may deviate from the requirement under § 112.7(a)(2) if you can explain your reasons for nonconformance and provide equivalent environmental protection. We note that portions of steel-bolted tanks, such as the bottom or roof, may be welded, and therefore subject to brittle fracture.

The requirement for evaluation of a field-constructed aboveground container must be undertaken when the container undergoes a repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to brittle fracture, or when a discharge or failure has already occurred due to brittle fracture or other catastrophe. Catastrophic failures are failures which may result from events such as lightning strikes, dangerous seismic activity, etc. As a result of a catastrophic failure, the entire contents of a container may be discharged to the environment in the same way as if brittle fracture had occurred.

"Repair" means any work necessary to maintain or restore a container to a condition suitable for safe operation. Typical examples include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain container integrity; the re-leveling or jacking of a container shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. We understand that some repairs (such as repair of tank seals), alterations, or changes in service will not cause a risk of failure due to brittle

fracture; therefore, we have amended the rule to refer to those repairs, alterations, reconstruction, or changes in service that affect the risk of a discharge or failure due to brittle fracture.

"Alteration" means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or

has been a discharge from the container, whether or not there has been a complete failure of the container due to brittle fracture or catastrophe. When a container has failed completely and will be replaced, no brittle fracture or catastrophe evaluation is necessary. The evaluation is only applicable when the original container remains, but the physical condition of the container has

address all SPCC requirements in your Plan. You must include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in part 112 or any applicable more stringent State rule, regulation, or guideline. If a requirement is not applicable to a particular type of facility, we believe

Introduction to Section 112.8

Background. We have inserted an introduction to § 112.8 so that we could list the requirements of that section in the active voice. Those requirements, except as specifically noted, apply to the owner or operator of an onshore facility (except a production facility). The introduction does not result in any substantive change in requirements.

Response to comments. Applicability. We disagree that we should limit the scope of this section to facilities having areas with the potential to receive discharges greater than 660 gallons or areas with tanks regulated under these rules. Small discharges (that is, of 660 gallons or less) as described in § 112.1(b) from diked storage areas can cause great environmental harm. See section IV. F of this preamble for a

phrase "handle such leakage" becomes "control such discharge." We deleted the phrase "or other positive means," because it is confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you have the flexibility to use alternate measures ensuring equivalent environmental protection. The word "examine" becomes "inspect."

Section 112.8(b)(2) Diked Storage

fracture; therefore, we have amended the rule to refer to those repairs, alterations, reconstruction, or changes in service that affect the risk of a discharge or failure due to brittle fracture.

"Alteration" means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configurations of the container. Typical examples include the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height.

Alternatives to brittle fracture evaluation. We have eliminated the incorporation by reference to API Standard 653 from the rule. We have also therefore withdrawn proposed Appendix H, the API Standard 653 brittle fracture flowchart. We believe that API Standard 653 is an acceptable standard to test for brittle fracture. However, an incorporation by reference of any standard might cause the rule to be instantly obsolete should that standard change or should a newer, better method emerge. A potential standard might also apply only to a certain subset of facilities or equipment. Therefore, as with most other requirements in this part, if you explain your reasons for nonconformance, alternative methods which afford equivalent environmental protection may be acceptable under § 112.7(a)(2). If acoustic emission testing provides equivalent environmental protection it may be acceptable as an alternative. That decision, in the first instance, is one for the Professional Engineer and owner or operator.

Industry standards. Industry standards that may assist an owner or operator with brittle fracture evaluation include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; and, (2) API Recommended Practice 920, "Prevention of Brittle Fracture of Pressure Vessels."

Editorial changes and clarifications. A "field-constructed aboveground container" is one that is assembled or reassembled outside the factory at the location of its intended use. A "change in service" is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. The word "reconstruction" was added in the first sentence to conform with the text in API Standard 653. The words "discharge or" were added prior to "failure" and "brittle fracture failure" to make clear that evaluation is necessary when there has been a discharge from the container, whether or not there has been a complete failure of the container due to brittle fracture or catastrophe. When a container has failed completely and will be replaced, no brittle fracture or catastrophe evaluation is necessary. The evaluation is only applicable when the original container remains, but the physical condition of the container has changed due to repair, alteration, or change in service.

Section 112.7(j)—State Rules

Background. In the introduction to § 112.7(e) of the current rule, an owner or operator is required to discuss in the Plan his conformance with § 112.7(c), plus other applicable parts of § 112.7, other effective spill prevention and containment procedures or, if more stringent, with State rules, regulations, and guidelines. In our 1991 proposal, we limited the required discussion of "other effective spill prevention and containment procedures" to those listed in §§ 112.8, 112.9, 112.10, and 112.11, or if more stringent, with State rules, regulations, and guidelines.

Comments. Cross-referencing of requirements. One commenter argued that the proposed requirements should be more clearly limited to those sections which are applicable to the facility in question. For example, the commenter asserted, "requirements in § 112.8 '* * *onshore facilities (excluding production facilities)' should not (by the requirement in § 112.7(i)) be applied to any portion of any production facility."

Consistency in rules. Two States urged that our rules be as consistent as possible with rules in the States. Another State urged that we grant reciprocity to State-approved Plans which have been reviewed under equal or greater adequacy criteria. One commenter complained that EPA rules are in some cases more stringent than some State rules.

Federal and State regulation. Two commenters argued against any State regulation in the SPCC area to avoid duplication. Conversely, another commenter argued against any Federal regulation because the States are better qualified to regulate in the SPCC arena.

Preemption. Another State requested that EPA strive to have similar programs as the States, or at the least not to preempt the States in the regulation of SPCC matters.

Response to comments. Cross-referencing of requirements. In response to the commenter who believed that proposed § 112.7(i) (redesignated in today's rule as § 112.7(j)) might require him to discuss inapplicable requirements, we note that you must address all SPCC requirements in your Plan. You must include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in part 112 or any applicable more stringent State rule, regulation, or guideline. If a requirement is not applicable to a particular type of facility, we believe that it is important for an owner or operator to explain why.

Consistency in rules. As noted above, you may now use a State plan as a substitute for an SPCC Plan when the State plan meets all Federal requirements and is cross-referenced. When you use a State plan that does not meet all Federal requirements, it must be supplemented by sections that do meet all Federal requirements. At times EPA will have rules that are more stringent than States rules, and some States may have rules that are more stringent than those of EPA. If you follow more stringent State rules in your Plan, you must explain that is what you are doing.

Federal and State regulation. Both the States and EPA have authority to regulate containers storing or using oil. We believe State authority to regulate in this area and establish spill prevention programs is supported by section 311(o) of the CWA. Some States have exercised their authority to regulate while others have not. We believe that State SPCC programs are a valuable supplement to our SPCC program.

Preemption. We do not preempt State rules, and defer to State rules, regulations, and guidelines that are more stringent than part 112.

Editorial changes and clarifications. To simplify the rule language, we have amended the proposed rule to state that you must discuss all applicable requirements in the Plan instead of listing all of the sections individually. The phrase "sections of the Plan shall include* * *" becomes "include in your Plan* * *." "Spill" becomes "discharge."

Subpart B—Requirements for Petroleum Oils or Other Non-petroleum Oils, Except Animal Fats and Vegetable Oils

Background. As noted above, we have reformatted the rule to differentiate between various classes of oil as mandated by EORRA. Subpart B prescribes particular requirements for an owner or operator of a facility that stores or uses petroleum oils or non-petroleum oils, except for animal fats and vegetable oils.

Introduction to Section 112.8

Background. We have inserted an introduction to § 112.8 so that we could list the requirements of that section in the active voice. Those requirements, except as specifically noted, apply to the owner or operator of an onshore facility (except a production facility). The introduction does not result in any substantive change in requirements.

Section 112.8(a)—General Requirements—Onshore Facilities (Excluding Production Facilities)

Background. This is a new provision that merely references the general requirements which all facilities subject to this part must meet and the specific requirements that facilities subject to this section must meet. It does not result in any change to substantive requirements.

Editorial changes and clarifications. "Spill prevention" in the 1991 proposal becomes "discharge prevention." We also deleted from the titles of each paragraph the words "onshore" and "excluding production facilities" because the entire section applies to onshore facilities and excludes production facilities from its scope. Finally, the proposed requirement to "address" general and specific requirements and procedures becomes "meet" those requirements and procedures.

Section 112.8(b)(1)—Diked Storage Area Drainage

Background. In 1991, we reproposed the current rule (§ 112.7(e)(1)(i)) on facility drainage from diked areas.

Comments. Applicability. One commenter asked that we limit the scope of this section to facilities having areas with the potential to receive discharges greater than 660 gallons or areas with tanks regulated under these rules. Another commenter said that for facilities with site-wide containment, or that have substantial stormwater draining onto and across the site, the requirement is not practical and may justify reliance on contingency plans instead of containment. That commenter, and another, suggested that certain devices may reduce the potential of a significant spill of floating or other products that can be separated by gravity, such as oil/water separators, underflow uncontrolled discharge devices, and other apparatus.

De minimis amounts of oil. One commenter thought it would be impossible to ensure no oil would be discharged into water from diked areas. The rationale was that oil can be present in water in an amount below the perception threshold of the human eye.

Response to comments. Applicability. We disagree that we should limit the scope of this section to facilities having areas with the potential to receive discharges greater than 660 gallons or areas with tanks regulated under these rules. Small discharges (that is, of 660 gallons or less) as described in § 112.1(b) from diked storage areas can cause great environmental harm. See section IV. F of this preamble for a discussion of the effects of small discharges. We disagree that this section should apply only to areas with tanks regulated under these rules because this rule applies to regulated facilities, not merely areas with regulated tanks or other containers. A facility may contain operating equipment within a diked storage area which could cause a discharge as described in § 112.1(b).

We disagree that the requirement is not practical for facilities with site-wide containment, or that have substantial stormwater draining onto and across the site. Where oil/water separators, underflow uncontrolled discharge devices, or other positive means provide equivalent environmental protection as the discharge restraints required by this section, you may use them, if you explain your reasons for nonconformance. See § 112.7(a)(2). However, you must still ensure that no oil will be discharged when using alternate devices.

De minimis amounts of oil. This rule is concerned with a discharge of oil that would become a discharge as described in § 112.1(b). When oil is present in water in an amount that cannot be perceived by the human eye, the discharge might not meet the description provided in 40 CFR 110.3. Therefore, such a discharge might not be a discharge in a quantity that may be harmful, and therefore not a reportable discharge under part 110. However, a discharge which is invisible to the human eye might also contain components (for example, dissolved petroleum components) which would violate applicable water quality standards, making it a reportable discharge. Therefore, we are keeping the language as proposed, other than making some editorial changes.

Industry standards. Industry standards that may assist an owner or operator with facility drainage include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; and (2), API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Editorial changes and clarifications. "Spill or other excessive leakage of oil" and "leakage" become "discharge." The phrase "handle such leakage" becomes "control such discharge." We deleted the phrase "or other positive means," because it is confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you have the flexibility to use alternate measures ensuring equivalent environmental protection. The word "examine" becomes "inspect."

Section 112.8(b)(2)—Diked Storage Areas—Valves Used; Inspection of Retained Stormwater

Background. In 1991, we reproposed the current rule on the type of valves that must be used to drain diked storage areas. The rule also addresses inspection of retained stormwater.

Comments. Innovative devices. Two commenters believed that the rule would apparently preclude the use of innovative containment devices to control discharges from containment dikes, such as imbiber beads. These beads are inside a small cylinder that filters releases from a containment area. The beads are inserted where a valve would be placed and allow water to pass, but prevent release of oil by closing on contact. Another commenter asked that the rule allow oil-water gravity separation systems instead of valves.

PE certification. One commenter suggested that a section should be added to the rule requiring that Professional Engineers be required to certify the design and construction of the stormwater drainage system and the sanitary sewer system, because the Professional Engineer is in the best position to prepare the spill containment parts of the SPCC Plan.

Response to comments. Innovative devices. This rule does not preclude innovative devices that achieve the same environmental protection as manual open-and-closed design valves. If you do not use such valves, you must explain why. The provision for deviations in § 112.7(a)(2) allows alternatives if the owner or operator states his reasons for nonconformance, and if he can provide equivalent environmental protection by some other means. However, you may not use flapper-type drain valves to drain diked areas. And if you use alternate devices to substitute for manual, open-and-closed design valves, you must inspect and may drain retained stormwater, as provided in § 112.8(c)(3)(ii), (iii), and (iv), if your facility drainage drains directly into a watercourse, lake, or pond bypassing the facility treatment system.

PE certification. PE certification is already required for the design of

stormwater drainage and sanitary sewer systems by current rules because those systems are a technical element of the Plan. Therefore, we are keeping the language as proposed.

Editorial changes and clarifications. In the first sentence, we deleted the phrase "as far as practical" because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if the

and immediate clean-up of spills within such areas. Another commenter urged that we clarify that oil/water separators meet the requirement for drainage control and secondary containment because such units, when properly sized and operated, meet the requirements of good engineering practice for preventing discharges of oil. One commenter suggested that in rural areas where

environmental protection under § 112.7(a)(2).

Areas subject to periodic flooding. We agree with the commenter that the current requirement should remain a requirement and not be converted into a recommendation. We are convinced by the argument that catchment basins will not work during flood events and may cause significant environmental

language is unnecessary because all of the rule applies only to "petroleum" or "oil" areas of the facility. Therefore, we have promulgated the rule language as proposed with a minor editorial change.

Editorial changes and clarifications. We clarify that the reference to the engineering of facility drainage is a reference to paragraph (b)(3).

Section 112.8(b)(5)—Natural Hydraulic

Another commenter argued that the proposed rule should be eliminated because it is duplicative of stormwater regulations. One commenter urged that the rule require that no facilities for oil or hazardous substances be sited in floodplains. Another commenter requested that the rule require that: (1) A facility should identify whether it is in a floodplain in the SPCC Plan; (2) if

the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads, and with the capability to resist effects of buoyancy (44 CFR 60.3(a)(3)); (2) tanks must be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads and the effects of buoyancy (40 CFR 60.3(c)(3)); for structures that are

stormwater drainage and sanitary sewer systems by current rules because those systems are a technical element of the Plan. Therefore, we are keeping the language as proposed.

Editorial changes and clarifications. In the first sentence, we deleted the phrase "as far as practical" because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if the requirement is not practical, you have the flexibility to use measures ensuring equivalent environmental protection. In the second sentence, we clarify that the wastewater treatment plant mentioned therein is an "on-site wastewater treatment plant." Also in that sentence, we clarify that you must inspect and "may drain" retained stormwater, as provided in § 112.8(c)(3)(ii), (iii), and (iv). Finally, in the last sentence, we clarify that drained retained stormwater must be "uncontaminated."

Section 112.8(b)(3)—Drainage Into Secondary Containment; Areas Subject to Flooding

Background. In 1991, we proposed to clarify that only undiked areas that are located such that they have a reasonable potential to be contaminated by an oil discharge are required to drain into a pond, lagoon, or catchment basin. We explained that a good Plan should seek to separate reasonably foreseeable sources of contamination and non-contamination.

We also proposed to make a recommendation of the current requirement that catchment basins not be located in areas subject to periodic flooding.

Comments. One commenter supported the proposal.

Editorial changes and clarifications. One commenter suggested that the rule should be worded to refer to systems "with a potential for discharge," rather than with a "potential for contamination."

Applicability. Two commenters argued that the secondary containment provisions of this paragraph should "remain a recommendation as opposed to a regulation," because a requirement is impracticable for drainage systems from pipelines that move product throughout the facility.

Alternatives. One commenter said that the rule should not be limited to drainage trenches, and that the owners and operators of facilities should have a free choice of design. Another commenter suggested that if areas under aboveground piping and loading/unloading areas are regulated under this section, the operation should have the option of providing spill control by committing to the regular inspection of, and immediate clean-up of spills within such areas. Another commenter urged that we clarify that oil/water separators meet the requirement for drainage control and secondary containment because such units, when properly sized and operated, meet the requirements of good engineering practice for preventing discharges of oil. One commenter suggested that in rural areas where electrical equipment is widely spaced, it may be more practical to provide for individual secondary containment rather than site-wide diversion facilities. Other commenters suggested that the drainage requirements in urban areas would be impossible to meet for transformers located in vaults in large office and apartment buildings, and underneath urban streets because there is no space at such sites to construct the sort of drainage control structures required by the rule.

Areas subject to periodic flooding. One commenter argued that the proposed recommendation should be retained as a requirement because it is highly unlikely that catchment basins would operate effectively during a flood event, and that these facilities could cause significant harm to the environment. Another commenter suggested that drainage systems for existing facilities be engineered (even if it requires pumping of contaminated water to a higher level for storage prior to treatment) so that minimal amounts of contaminated water are retained in areas subject to periodic flooding.

Response to comments. Applicability. We disagree that the rule language should become a recommendation because we believe that it is important to control the potential discharges the rule addresses. Where a drainage system is infeasible, if you explain your reasons for nonconformance, you may provide equivalent environmental protection by an alternate means.

In response to the commenter who questioned the applicability of this paragraph to areas under aboveground piping and loading/unloading areas, we note that both areas are subject to the rule's requirements if they are undiked.

Alternatives. The rule does not limit you to the use of drainage trenches for undiked areas. Other forms of secondary containment may be acceptable. The rule only prescribes requirements for the drainage of diked areas, but does not mandate the use of diked areas. However, if you do use diked areas, the rule prescribes minimum requirements for drainage of those areas. Also, if the requirement is not practical, you may explain your reasons for nonconformance and provide equivalent environmental protection under § 112.7(a)(2).

Areas subject to periodic flooding. We agree with the commenter that the current requirement should remain a requirement and not be converted into a recommendation. We are convinced by the argument that catchment basins will not work during flood events and may cause significant environmental damage. We also agree with the commenter that any drainage system should be engineered so that minimal amounts of contaminated water are retained in areas subject to periodic flooding. Therefore, we have retained the current requirement. We also recommend, but do not require that ponds, lagoons, or other facility drainage systems with the potential for discharge not be located in areas subject to periodic flooding.

Editorial changes and clarifications. We agree that the wording "potential for discharge" meets the intent of the rule better than "potential for contamination" and have made that change.

Section 112.8(b)(4)—Diversion Systems

Background. In 1991, we proposed that diversion systems must retain oil in the facility, rather than return it to the facility after it has been discharged.

Comments. One commenter asked for a clarification that oil "retained" in a facility does not leave the facility boundaries. A second commenter suggested that oil be either retained within the facility or returned to the facility, whichever is applicable. The commenter further suggested that the diversion system apply only to the petroleum areas of the facility such as tanks, pipes, racks, and diked areas because drainage from the rest of the facility should not be contaminated and thus should not have to be diverted.

Response to comments. The rule accomplishes the aim of retaining within the facility minimal amounts of contaminated water in undiked areas subject to periodic flooding. It is better that a diversion system retain rather than allow oil to leave the facility, thus enhancing the prevention goals of the rule. Furthermore, it should be easier to retain discharged oil rather than retrieve oil that has been discharged from the facility. Therefore, we agree with the commenter that "retained" oil is oil that never leaves the facility. We also agree that the rule applies only to drainage from the "petroleum" (or other oil) areas of the facility such as tanks, pipes, racks, and diked areas, because the purpose of the SPCC rule is to prevent discharges of oil, not of all runoff contaminants. Amendment of the rule

language is unnecessary because all of the rule applies only to "petroleum" or "oil" areas of the facility. Therefore, we have promulgated the rule language as proposed with a minor editorial change.

Editorial changes and clarifications. We clarify that the reference to the engineering of facility drainage is a reference to paragraph (b)(3).

Section 112.8(b)(5)—Natural Hydraulic Flow, Pumps

Background. In 1991, we reproposed substantively the current rule (see § 112.7(e)(1)(v)) concerning hydraulic flow and pump transfer for drainage waters.

Comments. We received one editorial comment regarding a grammatical error in the proposal. The commenter suggested that the second sentence of the proposal read, "If pump transfer is needed, two "lift" pumps shall be provided, and at least one of the pumps shall be permanently installed when such treatment is continuous." We received no substantive comments.

Editorial changes and clarifications. We deleted the first sentence from the proposed rule because it is a recommendation. We are not including recommendations in this rule so as to avoid confusion in the regulated community as to what is required and what is not. We agree with the commenter's editorial suggestion regarding the second sentence, and have amended the rule accordingly. In the last sentence of the proposal, the phrase "oil will be prevented from reaching navigable waters of the United States, adjoining shorelines, or other waters that would be affected by discharging oil as described in § 112.1(b)(1) of this part" becomes " to prevent a discharge as described in § 112.1(b). * * *"

Response to comments. We have corrected the grammatical error.

Proposed Section 112.8(b)(6)—Additional Requirements for Events that Occur During a Period of Flooding

Background. In 1991, we proposed a new recommendation that facilities should address the need to comply with Federal, State, and local governmental requirements in areas subject to flooding. We noted that this recommendation was consistent with Federal Emergency Management Agency (FEMA) rules found at 44 CFR part 60 for aboveground storage tanks located in flood hazard areas.

Comments. One commenter suggested that exploration and production tanks located in flood plain areas should be adequately secured through proper mechanical or engineering methods to reduce the chance of loss of product. Another commenter argued that the proposed rule should be eliminated because it is duplicative of stormwater regulations. One commenter urged that the rule require that no facilities for oil or hazardous substances be sited in floodplains. Another commenter requested that the rule require that: (1) A facility should identify whether it is in a floodplain in the SPCC Plan; (2) if it is in a floodplain, the Plan should address minimum FEMA standards; and, (3) if a facility does not meet minimum FEMA standards, the Plan should address appropriate precautionary and mitigation measures for potential flood-related discharges. The commenter also suggested that we consider requiring facilities in areas subject to 500-year events to address minimum FEMA standards. A second commenter supported a requirement for special considerations in the Plan for facilities in areas subject to flooding. That commenter also suggested that we define "areas subject to flooding," and noted that other Federal rules (i.e., RCRA) define this as the 25-year floodplain. Another commenter thought the term "areas subject to flooding" should be explained in terms of a 100-year flood event. A final comment noted that the preamble spoke to a recommendation that facilities address precautionary measures if they are located in areas subject to flooding, while the recommendation text spoke to requirements for events that occur during a period of flooding. The commenter urged reconciliation of the differing language.

Response to comments. We deleted this recommendation because it is more appropriately addressed in FEMA rules and guidance, including the definitions the commenters referenced. We disagree that the proposed recommendation should be made a requirement because flood control plans and design capabilities for discharge systems are provided for under the stormwater regulations, and further Federal regulations would be duplicative.

Other Federal rules also apply, making further SPCC rules unnecessary. Oil storage facilities are considered structures under the National Flood Insurance Program (NFIP), and therefore such structures are subject to the Regulations for Floodplain Management at 44 CFR 60.3. Some of the specific NFIP standards that may apply for aboveground storage tanks include the following: (1) tanks must be designed so that they are elevated to or above the base flood level (100-year flood) or be designed so that the portion of the tank below the base flood level is watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads, and with the capability to resist effects of buoyancy (44 CFR 60.3(a)(3)); (2) tanks must be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads and the effects of buoyancy (40 CFR 60.3(c)(3)); for structures that are intended to be made watertight below the base flood level, a Registered Professional Engineer must develop and/or review the structural design, specifications, and plans for construction, and certify that they have been prepared in accordance with accepted standards and practice (40 CFR 60.3(c)(4)); and, tanks must not encroach within the adopted regulatory floodway unless it has been demonstrated that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge (40 CFR 60.3(d)). Additionally, the NFIP has specific standards for coastal high hazard areas. *See* 40 CFR 60.3(e)(4).

Section 112.8(c)(1)—Construction of and Materials Used for Containers

Background. In 1991, we reproposed without substantive change current § 112.7(e)(2)(i), which requires that no tank be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage such as pressure and temperature. The only changes we proposed were editorial. We also proposed a new recommendation that the construction, materials, installation, and use of tanks conform with relevant industry standards such as API, NFPA, UL, or ASME standards, which are required in the application of good engineering practice for the construction and operation of the tank.

Comments. Several commenters asked that the proposal be recast as a recommendation rather than a rule, arguing that the words of the proposal, when taken in conjunction with § 112.7(a) language requiring the use of good engineering practice in the preparation of Plans, were contradictory. A commenter noted that § 112.8(c)(1) *recommends* that materials, construction, and installation of tanks adhere to industry standards "*which are required in the application of good engineering practice* for the construction and operation of the tank." The commenter asserted that since it is clear in the preamble that the Agency's intent is to make the use of industry standards a recommendation rather than a

requirement, the rule should be modified to reflect that. Another commenter supported the proposal as a requirement on the theory that all tanks should be required to meet industry standards. A third commenter asked for clarification as to whether we intended a recommendation or a requirement.

One commenter asked that we specifically reference steel storage tank The use of the phrase "such as pressure and temperature" already indicates that these are only some examples of such conditions.

Section 112.8(c)(2)—Secondary Containment—Bulk Storage Containers

Background. In 1991, we reproposed current secondary containment requirements with several significant

Seventy-two-hour impermeability standard. Similar to the comments directed toward the proposed requirements for secondary containment in § 112.7(c), some commenters objected to the proposed 72-hour impermeability standard. See the comments and response to comments for § 112.7(c) above.

Response to comments. Secondary containment, in general. A primary

other commercial activities in which the discharger is engaged or due to the operation of treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. "Classic spill" situations are subject to the requirements of CWA section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402. 52 FR 10712, 10714.

and retain the current standard that diked areas must be sufficiently impervious to contain oil. We take this step because we agree with commenters that the purpose of secondary containment is to contain oil from reaching waters of the United States. The rationale for the 72-hour standard was to allow time for the discovery and removal of an oil spill. We believe that an owner or operator of a facility should

§ 112.7(d), if secondary containment is not practicable, you may provide a contingency plan in your SPCC Plan and otherwise comply with that section. In the last sentence, "plant" becomes "facility." Also in that sentence, the phrase "so that a spill could terminate * * *" becomes "so that any discharge will terminate.* * *"

Section 112.8(c)(3)—Drainage of Rainwater

requirement, the rule should be modified to reflect that. Another commenter supported the proposal as a requirement on the theory that all tanks should be required to meet industry standards. A third commenter asked for clarification as to whether we intended a recommendation or a requirement.

One commenter asked that we specifically reference steel storage tank systems standards in the rule.

Response to comments. Requirement v. recommendation. The first sentence of the proposed rule indeed contemplated a requirement, i.e., that no container may be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage, such as pressure or temperature. The second sentence, which was clearly a recommendation, has been deleted from the rule because we have decided to remove all recommendations from the rule language. Rules are mandates, and we do not wish to confuse the regulated community as to what actions are mandatory and what actions are discretionary. The Professional Engineer must, pursuant to § 112.3(d)(1)(iii), certify that he has considered applicable industry standards in the preparation of the Plan. While he must consider such standards, use of any particular standards is a matter of good engineering practice.

Industry standards. Industry standards that may assist an owner or operator with the material and construction of containers include: (1) API Standard 620, "Design and Construction of Large Welded Low-Pressure Storage Tanks"; (2) API Standard 650, "Welded Steel Tanks for Oil Storage"; (3) Steel Tank Institute (STI) F911, "Standard for Diked Aboveground Steel Tanks"; (4) STI Publication R931, "Double Wall Aboveground Storage Tank Installation and Testing Instruction"; (5) UL Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"; (6) UL Standard 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids"; (7) UL Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; and, (8) Petroleum Equipment Institute (PEI) Recommended Practice 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling."

Editorial changes and clarifications. "Bulk storage tanks" becomes "bulk storage containers." We deleted the abbreviation "etc." from the end of the paragraph because it is unnecessary. The use of the phrase "such as pressure and temperature" already indicates that these are only some examples of such conditions.

Section 112.8(c)(2)—Secondary Containment—Bulk Storage Containers

Background. In 1991, we reproposed current secondary containment requirements with several significant additions. We gave notice in the preamble (at 56 FR 54622–23) that "sufficient freeboard" is freeboard sufficient to contain precipitation from a 25-year storm event. We also proposed in rule language that diked areas must be sufficiently impervious to contain spilled oil for at least 72 hours. The current standard is that such diked areas must be "sufficiently impervious" to contain spilled oil.

Comments. Secondary containment, in general. One commenter asked for clarification of what "primary containment system" means. One commenter opposed the requirement for secondary containment on the grounds that impervious containment of a volume greater than the largest single tank may not be necessary for all tanks, and that existing facilities may find it difficult to retrofit. In this vein, another commenter asked for a phase-in of the requirements, and a third asked for variance provisions so that a facility would not have to make small additions to its secondary containment for minimum environmental benefit. Another commenter argued that the requirement should be applied to large facilities only. One commenter believed that the proposal duplicates NPDES stormwater rules. Two commenters believed the requirement should apply only to unmanned facilities. See also the comments and response to comments concerning secondary containment in the discussion of § 112.7(c), above.

Sufficient freeboard. Several commenters said that the standard of a 25-year storm event might be difficult to determine without extensive meteorological studies. Other commenters asked for clarification of the terms "sufficient" and "freeboard," or of the phrase "sufficient freeboard." Likewise, several commenters asked for clarification of the Agency's position that sufficient freeboard would be that which would withstand a 25-year storm event. Two commenters suggested a standard of 110% of tank capacity. Other commenters suggested alternatives for the 25-year storm event, such as a 24-hour, 10 year rain; or a 24-hour, 25-year storm. Another commenter suggested the adequacy of freeboard should be left flexible on a facility-specific basis.

Seventy-two-hour impermeability standard. Similar to the comments directed toward the proposed requirements for secondary containment in § 112.7(c), some commenters objected to the proposed 72-hour impermeability standard. See the comments and response to comments for § 112.7(c) above.

Response to comments. Secondary containment, in general. A primary containment system is the container or equipment in which oil is stored or used. Secondary containment is a requirement for all bulk storage facilities, large or small, manned or unmanned; and for facilities that use oil-filled equipment; whenever practicable. Such containment must at least provide for the capacity of the largest single tank with sufficient freeboard for precipitation. A discharge as described in § 112.1(b) from a small facility may be as environmentally devastating as such a discharge from a large facility, depending on the surrounding environment. Likewise, a discharge from a manned facility needs to be contained just as a discharge from an unmanned one. A phase-in of these requirements is not appropriate because secondary containment is already required under current rules. When secondary containment is not practicable, the owner or operator of a facility may deviate from the requirement under § 112.7(d), explain the rationale in the Plan, provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

Because a pit used as a form of secondary containment may pose a threat to birds and wildlife, we encourage an owner or operator who uses a pit to take measures to mitigate the effect of the pit on birds and wildlife. Such measures may include netting, fences, or other means to keep birds or animals away. In some cases, pits may also cause a discharge as described in § 112.1(b). The discharge may occur when oil spills over the top of the pit or when oil seeps through the ground into groundwater, and thence to navigable waters or adjoining shorelines. Therefore, we recommend that an owner or operator not use pits in an area where such pit may prove a source of such discharges. Should the oil reach navigable waters or adjoining shorelines, it is a reportable discharge under 40 CFR 110.6.

We disagree that the rule is duplicative of NPDES rules. Foreseeable or chronic point source discharges that are permitted under CWA section 402, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. "Classic spill" situations are subject to the requirements of CWA section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402. 52 FR 10712, 10714. Therefore, the typical bulk storage facility with no permitted discharge or treatment facility would not be under the NPDES rules.

The secondary containment requirements of the rule apply to bulk storage containers and their purpose is to help prevent discharges as described in § 112.1(b) by containing discharged oil. NPDES rules, on the other hand, may at times require secondary containment, but do not always. Furthermore, NPDES rules may not always apply to bulk storage facilities. Therefore, the rule is not always duplicative of NPDES rules. Where it is duplicative, an owner or operator of a facility subject to NPDES rules may use that portion of his Best Management Practice Plan as part of his SPCC Plan.

Sufficient freeboard. An essential part of secondary containment is sufficient freeboard to contain precipitation. Whatever method you use to calculate the amount of freeboard that is "sufficient" must be documented in the Plan. We believe that the proper standard of "sufficient freeboard" to contain precipitation is that amount necessary to contain precipitation from a 25-year, 24-hour storm event. That standard allows flexibility for varying climatic conditions. It is also the standard required for certain tank systems storing or treating hazardous waste. See, for example, 40 CFR 265.1(e)(1)(ii) and (e)(2)(ii). While we believe that 25-year, 24-hour storm event standard is appropriate for most facilities and protective of the environment, we are not making it a rule standard because of the difficulty and expense for some facilities of securing recent information concerning such storm events at this time. Recent data does not exist for all areas of the United States. Furthermore, available data may be costly for small operators to secure. Should recent and inexpensive information concerning a 25-year, 24-hour storm event for any part of the United States become easily accessible, we will reconsider proposing such a standard.

Seventy-two-hour impermeability standard. As noted above, we have decided to withdraw the proposal for the 72-hour impermeability standard and retain the current standard that diked areas must be sufficiently impervious to contain oil. We take this step because we agree with commenters that the purpose of secondary containment is to contain oil from reaching waters of the United States. The rationale for the 72-hour standard was to allow time for the discovery and removal of an oil spill. We believe that an owner or operator of a facility should have flexibility in how to prevent discharges as described in § 112.1(b), and that any method of containment that achieves that end is sufficient. Should such containment fail, an owner or operator must immediately clean up any discharged oil. Similarly, we intend that the purpose of the "sufficiently impervious" standard is to prevent discharges as described in § 112.1(b) by ensuring that diked areas can contain oil and are sufficiently impervious to prevent such discharges.

Industry standards. Industry standards that may assist an owner or operator with secondary containment for bulk storage containers include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; (2) BOCA, National Fire Prevention Code; (3) API Standard 2610, "Design Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities"; and, (4) Petroleum Equipment Institute Recommended Practice 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling."

Editorial changes and clarifications. In the first sentence, "spill" becomes "discharge." Also in that sentence, "contents of the largest single tank" becomes "capacity of the largest single container." This is merely a clarification and has always been the intent of the rule. The contents of a container may vary from day to day, but the capacity remains the same. In discussing capacity, we noted in the 1991 preamble that "the oil storage capacity (emphasis added) of the equipment, however, must be included in determining the total storage capacity of the facility, which determines whether a facility is subject to the Oil Pollution Prevention regulation." 56 FR 54623. We discuss this capacity in the context of the general requirements for secondary containment. Thus, it is clear that we have always intended capacity to be the determinative factor in both subjecting a facility to the rule and in determining the need for secondary containment.

We also deleted the phrase "but they may not always be appropriate" from the third sentence of the paragraph because it is confusing when compared to the text of § 112.7(d). Under § 112.7(d), if secondary containment is not practicable, you may provide a contingency plan in your SPCC Plan and otherwise comply with that section. In the last sentence, "plant" becomes "facility." Also in that sentence, the phrase "so that a spill could terminate * * *" becomes "so that any discharge will terminate.* * *"

Section 112.8(c)(3)—Drainage of Rainwater

Background. In 1991, we reproposed the current rule on drainage of rainwater, incorporating the CWA standard, *i.e.*, "that may be harmful," into the proposal.

In 1997, we proposed that records required under NPDES §§ 122.41(j)(2) and 122.41(m)(3) would suffice for purposes of this section, so that you would not have to prepare duplicate records specifically for SPCC purposes. The proposed change would also apply to records maintained regarding inspection of diked areas in onshore oil production facilities prior to drainage. *See* 112.9(b)(1).

Comments. 1991 comments. One commenter in 1991 suggested that we allow use of NPDES records for purposes of this section. Another commenter suggested that records of discharges that do not violate water quality standards are unnecessary.

1997 comments. Many commenters favored the 1997 proposal. One commenter opposed the proposal if the records were not to be required by NPDES. Specifically, the commenter sought an exemption for discharges of rainwater containing animal fats and vegetable oils if such discharges are not regulated under NPDES rules. The commenter believed that an exception should be created for reporting and recording dike bypasses of § 112.7(e)(2)(iii)(D) relating to animal fats and vegetable oil storage, only requiring such reporting and recording if required by an NPDES stormwater permit, because in all cases discharge of contaminated stormwater is not permitted. Asking why EPA should regulate stormwater bypass events if the stormwater is not contaminated, the commenter argued that if stormwater permits do not require reporting and recording of dike bypass events, then EPA should not require an added tier of regulation under SPCC Plans. Other commenters thought that EPA was adopting by reference the NPDES rules and sought clarification on the issue.

Response to comments. We agree with the first 1991 commenter mentioned above and proposed that change in 1997. We disagree with the second 1991 commenter that records of discharges

that do not violate water quality standards are unnecessary. Such records show that the facility has complied with the rule.

We are not adopting the NPDES rules for SPCC purposes, but are only offering an alternative for recordkeeping. The intent of the rule is that you may, if you choose, use the NPDES stormwater discharge records in lieu of records specifically created for SPCC purposes.

complained that the proposal included no discussion of cathodic protection for tank bottoms in contact with soil or fill materials. Others thought facilities with underground tanks subject to part 112 should be required to develop a corrosion protection plan consistent with 40 CFR part 280, the rules for the Underground Storage Tanks Program.

Leak testing. Several commenters opposed the proposed recommendation that such buried tanks be subject to regular "leak testing." Proposed § 112.8(c)(4). Leak testing for purposes of this paragraph is testing to ensure liquid tightness of a container and whether it may discharge oil. We specified leak testing in the proposal, instead of pressure testing, in order to be consistent with many State regulations and because the technology on such testing was rapidly evolving. 56

decided to keep the current requirement to not use partially buried metallic tanks, unless the buried section of such tanks are protected from corrosion. The requirement to not use such tanks, unless they are protected from corrosion, applies to all partially buried metallic tanks, installed at any time.

Editorial changes and clarifications. Bunkered tanks are a subset of partially buried tanks, and are included within

Applicability of integrity testing. Some asked for an exemption for tanks inside buildings. Others asked for an exemption for number 5 and 6 fuel oils, and asphalt, because such oils are heavy and would not flow very far. Some commenters believed the requirement should not apply to small facilities because it is "not standard industry practice" to conduct these tests at small facilities. Another commenter stated

agree with commenters that testing according to industry standards is preferable, and thus will maintain the current standard of regularly scheduled testing instead of prescribing a particular period for testing. Industry standards may at times be more specific and more stringent than our proposed rule. For example, API Standard 653 provides specific criteria for internal inspection frequencies based on the calculated corrosion rate, rather than an

that do not violate water quality standards are unnecessary. Such records show that the facility has complied with the rule.

We are not adopting the NPDES rules for SPCC purposes, but are only offering an alternative for recordkeeping. The intent of the rule is that you may, if you choose, use the NPDES stormwater discharge records in lieu of records specifically created for SPCC purposes. We are not incorporating the NPDES requirements into our rules by reference.

This paragraph applies to discharges of rainwater from diked areas that may contain any type of oil, including animal fats and vegetable oils. The only purpose of this paragraph is to offer a recordkeeping option so that you do not have to create a duplicate set of records for SPCC purposes, when adequate records created for NPDES purposes already exist.

Editorial changes and clarifications. In the introduction to the paragraph (c)(3), "drainage of rainwater" becomes "drainage of uncontaminated rainwater." In paragraph (c)(3)(ii), which read, "* * * run-off rainwater ensures compliance with applicable water quality standards and will not cause a discharge as described in 40 CFR part 110" becomes "* * * retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b)." Also in that paragraph, we deleted the phrase "applicable water quality standards" because such standards are encompassed within the phrase "a discharge as described in § 112.1(b)."

Section 112.8(c)(4)—Completely Buried Tanks; Corrosion Protection

Background. In 1991, we reproposed the current rule requiring that new completely buried metallic storage tank installations (*i.e.*, installed on or after January 10, 1974) must be protected from corrosion by coatings, cathodic protection, or effective methods compatible with local soil conditions. We recommended that such buried tanks be subjected to regular leak testing. The rationale for the recommendation was that testing technology was rapidly advancing and we wanted more information on such technology before making the recommendation a requirement. We also stated a desire to be consistent with many State rules.

Comments. Corrosion protection. One commenter supported the proposal for corrosion protection. Another thought a requirement for corrosion protection "if soil conditions warrant" would be unenforceable. A third commenter complained that the proposal included no discussion of cathodic protection for tank bottoms in contact with soil or fill materials. Others thought facilities with underground tanks subject to part 112 should be required to develop a corrosion protection plan consistent with 40 CFR part 280, the rules for the Underground Storage Tanks Program.

Leak testing. Several commenters opposed the proposed recommendation for leak testing, arguing that owner/operator discretion should be retained. One commenter suggested that practices for annual integrity testing and for the installation of pipes under 40 CFR part 280 should be changed from recommended practices to required practices because recommendations with standards are not usually followed.

Response to comments. Corrosion protection. We agree in principle that all completely buried tanks should have some type of corrosion protection, but as proposed, we will only extend that requirement to new completely buried metallic storage tanks. Because corrosion protection is a feature of the current rule (see § 112.7(e)(2)(iv)), the requirement applies to completely buried metallic tanks installed on or after January 10, 1974. The requirement is enforceable because it is a procedure or method to prevent the discharge of oil. See section 311(j)(1)(C) of the CWA. Most owners or operators of completely buried storage tanks will be exempted from part 112 under this rule because such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. Those tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 will follow the corrosion protection provisions of that rule, which provides comparable environmental protection. Those that remain subject to the SPCC regulation must comply with this paragraph.

The rule requires corrosion protection for completely buried metallic tanks by a method compatible with local soil conditions. Local soil conditions might include fill material. The method of such corrosion protection is a question of good engineering practice which will vary from facility to facility. You should monitor such corrosion protection for effectiveness, in order to be sure that the method of protection you choose remains protective. See § 112.8(d)(1) for a discussion of corrosion protection for buried piping.

Leak testing. The current SPCC rule contains a provision calling for the "regular pressure testing" of buried metallic storage tanks. 40 CFR 112.7(e)(2)(iv). We proposed in 1991 a recommendation that such buried tanks be subject to regular "leak testing." Proposed § 112.8(c)(4). Leak testing for purposes of this paragraph is testing to ensure liquid tightness of a container and whether it may discharge oil. We specified leak testing in the proposal, instead of pressure testing, in order to be consistent with many State regulations and because the technology on such testing was rapidly evolving. 56 FR at 54623.

We are modifying the leak testing recommendation to make it a requirement. We agree with the commenter who argued that such testing should be mandatory because recommendations may not often be followed. Appropriate methods of testing should be selected based on good engineering practice. Whatever method and schedule for testing the PE selects must be described in the Plan. Testing under the standards set out in 40 CFR part 280 or a State program approved under 40 CFR part 281 is certainly acceptable (as we suggested in the proposed rule). "Regular testing" means testing in accordance with industry standards or at a frequency sufficient to prevent leaks.

Editorial changes and clarifications. The first sentence of the proposed rule was deleted because it was surplus, and contained no mandatory requirements. It merely noted that completely buried metallic storage tanks represent a potential for undetected spills. "Buried installation" becomes "completely buried metallic storage tank," to accord with the definition in § 112.2. We clarify that a "new" installation is one installed on or after January 10, 1974, the effective date of the SPCC rule, by deleting the word "new" and substituting the date. We deleted the phrase "or other effective methods," because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if you explain your reasons for nonconformance, you may use alternate methods providing equivalent environmental protection.

Section 112.8(c)(5)—Partially Buried or Bunkered Tanks; Corrosion Protection

Background. In 1991, we proposed changing the current requirement to avoid using partially buried metallic tanks into a recommendation. We proposed that if you do use such tanks, that you must protect them from corrosion.

Comments. One commenter argued that the rule should only apply to new tanks.

Response to comments. Requirement v. recommendation. Due to the risk of discharge caused by corrosion, we

decided to keep the current requirement to not use partially buried metallic tanks, unless the buried section of such tanks are protected from corrosion. The requirement to not use such tanks, unless they are protected from corrosion, applies to all partially buried metallic tanks, installed at any time.

Editorial changes and clarifications. Bunkered tanks are a subset of partially buried tanks, and are included within the rule to clarify that it applies to all partially buried tanks. We did not finalize the proposed phrase "or other effective methods," because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if you explain your reasons for nonconformance, you may use alternate methods providing equivalent environmental protection. The proposed recommendation that "partially buried or bunkered metallic tanks be avoided, since partial burial at the earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface" becomes a requirement to "not use partially buried or bunkered metallic tanks for the storage of oil unless you protect the buried section of the tank from corrosion."

Section 112.8(c)(6)—Integrity Testing

Background. In 1991, we proposed that integrity testing for bulk storage tanks be conducted at least every ten years and when material repairs are conducted. We gave several examples of "material repairs" in the preamble. The current requirement for such testing is that it be "periodic." We also proposed that visual inspection, as a method of testing, must be combined with some other method, because visual testing alone is insufficient for an integrity test. 56 FR at 54623.

In 1997, we added a proposed sentence to the rule which would allow the use of usual and customary business records for integrity testing. We suggested that records maintained under API Standards 653 and 2610 would suffice for this purpose.

Comments. 10-year integrity testing in general. One commenter asked for a clarification of the term "integrity testing." Several commenters favored the proposal for ten-year integrity testing. Other commenters opposed the requirement or favored turning it into a recommendation. Several commenters proposed testing according to accepted industry standards, such as American Petroleum Institute (API), National Fire Protection Association (NFPA), Underwriters Laboratory (UL), or American Society of Mechanical Engineers (ASME).

Applicability of integrity testing. Some asked for an exemption for tanks inside buildings. Others asked for an exemption for number 5 and 6 fuel oils, and asphalt, because such oils are heavy and would not flow very far. Some commenters believed the requirement should not apply to small facilities because it is "not standard industry practice" to conduct these tests at small facilities. Another commenter stated that while most large corporations perform testing at some frequency, most smaller businesses do not. The commenter suggested that exemptions because of size or quantity of oil stored should not be granted because the smaller facilities generally are more in need of testing.

Several commenters suggested that integrity testing should be waived for tanks which can be visually inspected on the bottom and all sides, such as tanks located off the ground on crates, and which have secondary containment. One commenter asked that the requirement apply only when the tank is used to store corrosive materials or where the tank has failed within the last five years. Other commenters asked for a phase-in of the requirement. Utilities asked that the requirement not apply to electrical equipment because no methods exist for integrity testing of such equipment, and because the primary reason for failure of such equipment is not corrosion, but mechanical failure.

Material repairs. Several commenters asked for clarification as to the meaning of "material repairs."

Method of testing. Some commenters favored visual inspection only because it might be used more frequently than any other method of testing. Another commenter asked for clarification if visual inspection meant inspection of both the interior and exterior of a tank. Another commenter suggested that we augment integrity testing procedures with procedures to test the tank bottom for settlement and corrosion, and to test roof supports.

Business records. Most commenters favored the proposal to allow use of usual and customary business records for integrity testing and other purposes. Some commenters argued that the suggested API Standards were unfamiliar to many owners and operators.

Response to comments. 10-year integrity testing in general. Integrity testing is a necessary component of any good prevention plan. A number of commenters supported a requirement for such testing. It will help to prevent discharges by testing the strength and imperviousness of the container. We agree with commenters that testing according to industry standards is preferable, and thus will maintain the current standard of regularly scheduled testing instead of prescribing a particular period for testing. Industry standards may at times be more specific and more stringent than our proposed rule. For example, API Standard 653 provides specific criteria for internal inspection frequencies based on the calculated corrosion rate, rather than an arbitrary time period. API Standard 653 allows the aboveground storage tank (AST) owner or operator the flexibility to implement a number of options to identify and prevent problems which ultimately lead to a loss of tank integrity. It establishes a minimum and maximum interval between internal inspections. It requires an internal AST inspection when the estimated corrosion rate indicates the bottom will have corroded to 0.1 inches. Certain prevention measures taken to prevent a discharge from the tank bottom may affect this action level (thickness). Once this point has been reached, the owner or operator has to make a decision, depending on the future service and operating environment of the tank, to either replace the whole tank, line the bottom, add cathodic protection, replace the tank bottom with a new bottom, add a release prevention barrier, or some combination of the above.

Another benefit from the use of industry standards is that they specify when and where specific tests may and may not be used. For example, API Standard 653 is very specific as to when radiographic tests may be used and when a full hydrostatic test is required after shell repairs. Depending on shell material toughness and thickness a full hydrotest is required for certain shell repairs. Allowing a visual inspection in these cases risks a tank failure similar to the 1988 Floreffe, Pennsylvania event. Testing on a "regular schedule" means testing per industry standards or at a frequency sufficient to prevent discharges. Whatever schedule the PE selects must be documented in the Plan.

Applicability of integrity testing. Integrity testing is essential for all aboveground containers to help prevent discharges. Testing will show whether corrosion has reached a point where repairs or replacement of the container is needed. Prevention of discharges is preferable to cleaning them up afterwards. Therefore, it must apply to large and small containers, containers on and off the ground wherever located, and to containers storing any type of oil. From all of these containers there exists the possibility of discharge. Because electrical, operating, and manufacturing

equipment are not bulk storage containers, the requirement is inapplicable to those devices or equipment. 56 FR 54623. Also, as noted by commenters, methods may not exist for integrity testing of such devices or equipment.

Material repairs. The rationale for testing at the time material repairs are conducted is that such repairs could materially increase the potential for oil

Standards 653 and 2610 for purposes of this section, if you choose. Other usual and customary business records either existing or to be developed in the future may also suffice. Or, you may elect to keep separate records for SPCC purposes. This section requires you to keep comparison records. Section 112.7(e) requires retention of these records for three years. You should note, however, that certain industry standards

include a recommendation that retention systems be designed to hold the contents of an entire tank. We also proposed to change the current requirement to consider the feasibility of installing external heating systems into a recommendation.

Comments. One commenter proposed that instead of requiring a retention system which would hold the entire contents of a tank, that an oil/water

Monitoring. One commenter suggested that a person must be present to monitor gauges when a fast response system is used to prevent container overfilling. Another suggested that the requirement for alarm devices not apply to containers where an operator is present.

Alternatives. One commenter suggested that certain "procedures" might suffice instead of alarm devices.

substantive change in the level of environmental protection required, it is merely editorial. Finally, in the introductory paragraph the phrase "one or more of the following devices" becomes "at least one of the following." Not all of the items listed under this paragraph are devices. For example, regular testing of liquid sensing devices is a procedure. Therefore, the word "devices" was incomplete. In paragraph

commenter noted that reference to a spill event within a diked area is inconsistent with its definition.

Applicability. Some commenters thought the requirement should not apply to small facilities because of the likelihood that the discharge would be smaller.

Extent and methods of cleanup. One commenter suggested that covering soil with plastic film may be an acceptable

equipment are not bulk storage containers, the requirement is inapplicable to those devices or equipment. 56 FR 54623. Also, as noted by commenters, methods may not exist for integrity testing of such devices or equipment.

Material repairs. The rationale for testing at the time material repairs are conducted is that such repairs could materially increase the potential for oil to be discharged from the tank. Examples of such repairs include removing or replacing the annular plate ring; replacement of the container bottom; jacking of a container shell; installation of a 12-inch or larger nozzle in the shell; a door sheet, tombstone replacement in the shell, or other shell repair; or, such repairs that might materially change the potential for oil to be discharged from the container.

Method of testing. The rule requires visual testing in conjunction with another method of testing, because visual testing alone is normally insufficient to measure the integrity of a container. Visual testing alone might not detect problems which could lead to container failure. For example, studies of the 1988 Ashland oil spill suggest that the tank collapse resulted from a brittle fracture in the shell of the tank. Adequate fracture toughness of the base metal of existing tanks is an important consideration in discharge prevention, especially in cold weather. Although no definitive non-destructive test exists for testing fracture toughness, had the tank been evaluated for brittle fracture, for example under API standard 653, and had the evaluation shown that the tank was at risk for brittle fracture, the owner or operator could have taken measures to repair or modify the tank's operation to prevent failure.

For certain smaller shop-built containers in which internal corrosion poses minimal risk of failure; which are inspected at least monthly; and, for which all sides are visible (*i.e.*, the container has no contact with the ground), visual inspection alone might suffice, subject to good engineering practice. In such case the owner or operator must explain in the Plan why visual integrity testing alone is sufficient, and provide equivalent environmental protection. 40 CFR 112.7(a)(2). However, containers which are in contact with the ground must be evaluated for integrity in accordance with industry standards and good engineering practice.

Business records. You may use usual and customary business records, at your option, for purposes of integrity testing recordkeeping. Specifically, you may use records maintained under API Standards 653 and 2610 for purposes of this section, if you choose. Other usual and customary business records either existing or to be developed in the future may also suffice. Or, you may elect to keep separate records for SPCC purposes. This section requires you to keep comparison records. Section 112.7(e) requires retention of these records for three years. You should note, however, that certain industry standards (for example, API Standards 570 and 653) may specify that an owner or operator maintain records for longer than three years.

Industry standards. Industry standards that may assist an owner or operator with integrity testing include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; (2) API Recommended Practice 575, "Inspection of Atmospheric and Low-Pressure Tanks;" and, (3) Steel Tank Institute Standard SP001–00, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids."

Editorial changes and clarifications. In the first sentence, "Aboveground tanks shall be subject to integrity testing * * *" becomes "Test each container for integrity * * *" Also in that sentence, the phraso "or a system of non-destructive shell testing" becomes "or another system of non-destructive shell testing." The last sentence which read, "* * * the outside of the container must be frequently observed by operating personnel for signs of deterioration, leaks, * * *" becomes "* * * you must frequently inspect the outside of the container for signs of deterioration, leaks, * * *" We made that change because the requirements of this paragraph are the responsibility of the owner or operator, not of "operating personnel."

"Integrity testing" is any means to measure the strength (structural soundness) of the container shell, bottom, and/or floor to contain oil and may include leak testing to determine whether the container will discharge oil. It includes, but is not limited to, testing foundations and supports of containers. Its scope includes both the inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas.

Section 112.8(c)(7)—Leakage; Internal Heating Coils

Background. In 1991, we proposed that the current rule on controlling leakage through defective internal heating coils should be modified to include a recommendation that retention systems be designed to hold the contents of an entire tank. We also proposed to change the current requirement to consider the feasibility of installing external heating systems into a recommendation.

Comments. One commenter proposed that instead of requiring a retention system which would hold the entire contents of a tank, that an oil/water separator might work just as well. Another commenter opposed requiring the use of oil/water separators. As to the proposed recommendation to consider use of external heating systems, one commenter objected to the cost which might be incurred. One commenter opposed the proposed recommendation due to the belief that leaks in the aboveground piping can be mitigated through daily inspections and they are often placed within secondary containment. Another commenter asserted that with drainage routed to oil/water separators or holding ponds, leak proof galleys under aboveground piping were redundant and economically unjustified.

Response to comments. The rule does not mandate the use of any specific separation or retention system. Any system that achieves the purpose of the rule is acceptable. That purpose is to prevent discharges as described in § 112.1(b) by controlling leakage.

Editorial changes and clarifications. We deleted the proposed recommendations from the rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. We have included only requirements in the rule.

Section 112.8(c)(8)—Good Engineering Practice—Alarm Systems

Background. In 1991, we reproposed the current rule on "fail-safe" engineering. We added a proposal to allow alternate technologies. We recommended that sensing devices be tested in accordance with industry standards.

Comments. Editorial changes and clarifications. Several commenters objected to the term "fail-safe" engineering because they believe that nothing is ever fail-safe. They suggested using the term "in accordance with good engineering practice," or "consistent with accepted industry practices" instead.

Applicability. One commenter thought the proposed requirement should apply to large facilities only or facilities that were the cause of a reportable spill within the preceding three years. One commenter suggested a phase-in of the requirement.

Monitoring. One commenter suggested that a person must be present to monitor gauges when a fast response system is used to prevent container overfilling. Another suggested that the requirement for alarm devices not apply to containers where an operator is present.

Alternatives. One commenter suggested that certain "procedures" might suffice instead of alarm devices. Another commenter suggested that we need to be specific as to methods of testing.

Response to comments. Applicability. Alarm system devices are necessary for all facilities, large or small, to prevent discharges. Such systems alert the owner or operator to potential container overfills, which are a common cause of discharges. Because this is a requirement in the current rule, no phase-in is necessary.

Monitoring. We agree with the commenter that a person must be present to monitor a fast response system to prevent overfills and have amended the rule accordingly. We disagree that the requirement for alarm devices should not apply when a person is present, because human error, negligence, on inattention may still occur in those cases, necessitating some kind of alarm device.

Alternatives. Under the deviation rule at § 112.7(a)(2), you may substitute "procedures" or other measures that provide equivalent environmental protection as any of the alarm systems mandated in the rule if you can explain your reasons for nonconformance.

Industry standards. Industry standards that may assist an owner or operator with alarm systems, discharge prevention systems, and inventory control include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; (2) API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"; and, (3) API, "Manual of Petroleum Measurement Standards."

Editorial changes and clarifications. Throughout, "tank" becomes "container." In the introductory paragraph, we deleted the words "as far as practical" from the rule text because they are confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you may deviate from a requirement if you explain your reasons for nonconformance and provide equivalent environmental protection. "Spills" becomes "discharges." We agree with the commenter that "fail-safe" engineering is inappropriate and have substituted "in accordance with good engineering practice." The change in terminology does not imply any substantive change in the level of environmental protection required, it is merely editorial. Finally, in the introductory paragraph the phrase "one or more of the following devices" becomes "at least one of the following." Not all of the items listed under this paragraph are devices. For example, regular testing of liquid sensing devices is a procedure. Therefore, the word "devices" was incomplete. In paragraph (i), "manned operation" becomes "attended operation," and "plants" becomes "facilities." In paragraph (iv), the phrase "or their equivalent," was deleted because it is confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you may deviate from a requirement if you explain your reasons for nonconformance, and provide equivalent environmental protection. Proposed paragraph (v), relating to alternative technologies, was deleted because alternative devices are allowed under § 112.7(a)(2).

Section 112.8(c)(9)—Effluent Disposal Facilities

Background. In 1991, we reproposed the current rule on observation of effluent disposal facilities.

Comments. We received only one comment which asked us to clarify that "effluents" mean oil-contaminated water collected within secondary containment areas, and that "disposal facilities" means "treatment facilities."

Editorial changes and clarifications. "Oil spill event" becomes "discharge as described in § 112.1(b)." "System upset" refers to an event involving a discharge of oil-contaminated water. "Effluent" means oil-contaminated water. "Disposal facilities" becomes "effluent treatment facilities."

Section 112.8(c)(10)—Visible Oil Leaks

Background. In 1991, we reproposed the current requirement that visible oil leaks must be promptly corrected. Additionally, we proposed that accumulated oil or oil-contaminated materials must be removed within 72 hours. The 72-hour proposal in this paragraph was consistent with the proposal in § 112.7(c). The rationale was that a 72-hour time period would allow time for discovery and removal of an oil discharge in most cases. We suggested in the preamble to the 1991 proposal that most facilities are attended at some time within a 72-hour time period. 56 FR 54621.

Comments. Editorial changes and clarifications. One commenter asked for clarification of the meaning of "accumulation" of oil. Others asked for clarification of the meaning of "oil contaminated materials." Another commenter noted that reference to a spill event within a diked area is inconsistent with its definition.

Applicability. Some commenters thought the requirement should not apply to small facilities because of the likelihood that the discharge would be smaller.

Extent and methods of cleanup. One commenter suggested that covering soil with plastic film may be an acceptable method to prevent stormwater contamination during remediation. Some commenters suggested that where a spill creates a risk of fire or explosion, the first priority should be to eliminate such threats before undertaking cleanup. Several commenters asked whether removal of accumulations of oil means complete removal. Some commenters feared that a requirement to remove oil-contaminated materials would be interpreted to mean that cleanup of portions of the dike that are oil-stained is required. The commenters were concerned that such a cleanup would undermine the stability of the dike and would be unnecessary. One commenter argued that complete removal would compound landfill disposal problems. Another commenter asked whether the rule contemplates cleanup of soil contaminated by past practices. Some commenters argued that the 72-hour requirement would preclude bioremediation.

72-hour cleanup standard. Some commenters asked how a 72-hour time limit would be calculated. Those commenters suggested that the clock begin to run from the time of the discharge itself, or of its discovery. Others suggested different time periods from "immediately," "as soon as possible," "within 72 hours," "within 96 hours," or "expeditiously." One commenter suggested no time limit. Some commenters noted that a containment system might be designed to contain oil for more than 72 hours before it begins to leak.

One commenter suggested that, depending on site conditions, a 72-hour time limit might jeopardize worker health and safety. Another sought clarification on the need to clean up small discharges as opposed to larger ones within the proposed time limit.

Numerous commenters opposed this requirement because it might preclude bioremediation. Some thought it would be impossible to meet.

Response to comments. Applicability. The requirement to clean up an accumulation of oil is applicable to all facilities, large and small. The damage to the environment may be the same, depending on the amount discharged.

Extent of and methods of cleanup. Prevention of contamination is always the preferred alternative. If you choose, you may spread plastic film over the diked area if it will prevent the occurrence of an accumulation of oil. Of course, you must then dispose of the film properly. We agree with commenters that where a discharge creates a risk of fire or explosion, the first priority should be to eliminate such threat before undertaking cleanup. But once that threat is removed, correction of the source of the discharge and cleanup must begin promptly.

No matter what method of cleanup you choose, you must completely remove the accumulation of oil. Any method that works and complies with all other applicable laws and regulations is acceptable. Bioremediation may be one acceptable method of cleanup. Acceptable methods will depend on weather and other environmental conditions. We do not mean to limit cleanup methods, which will depend on good engineering practice. If the cleanup method you choose would undermine the stability of the dike, you must repair the dike to its previous condition.

72-hour cleanup standard. We have deleted the 72-hour cleanup standard because it would preclude bioremediation. We also agree that under certain circumstances, such a limit might jeopardize worker health and safety. Therefore, we have maintained the current standard that visible discharges must be promptly removed. "Prompt" removal means beginning the cleanup of any accumulation of oil immediately after discovery of the discharge, or immediately after any actions to prevent fire or explosion or other threats to worker health and safety, but such actions may not be used to unreasonably delay such efforts. The size of the accumulation is irrelevant, as any accumulation may migrate to navigable waters or adjoining shorelines.

Editorial changes and clarifications. "Leaks" becomes "discharges." "Tank" becomes "container." "Accumulation of oil" means a discharge that causes a "film or sheen" in a diked area, or causes a sludge or emulsion there. See 40 CFR 110.3(b). The reference to violation of applicable water quality standards in 40 CFR 110.3(b) does not apply here because the rule assumes that the oil will not have reached any waters of the United States or adjoining shorelines, but stays entirely within the diked area of the facility. The term "oil-contaminated materials" is not used in the rule. We eliminate the term "oil-contaminated materials" that was used in the proposed rule because oil must accumulate on something such as materials or soil. Therefore, the term is redundant. Instead we refer to an accumulation of oil, which includes anything on which the oil gathers or amasses within the diked area. Such accumulation may include oil-contaminated soil or any other oil-contaminated material within the diked area impairing the secondary containment system. See also the discussion of "accumulation of oil" included with the response to comments of § 112.9(b)(2). We have removed the term "spill event" from the proposed paragraph and note that we agree with the commenter who noted that reference to a "spill event," or "a discharge as described in § 112.1(b)," within a diked area is inconsistent with that concept.

Section 112.8(c)(11)—Mobile Containers

Background. In 1991, we proposed to require that mobile tanks be positioned or located to prevent oil discharges. We recommended secondary containment for the largest single compartment or tank of any mobile container. We also recommended that these containers not be located where they will be subject to periodic flooding or washout.

Comments. Scope of discharge prevention. One commenter asked that the rule be amended to refer to discharges to navigable waters, instead of discharges.

Time limits. One commenter asked that a mobile or portable container be defined as a container which is in place on a contiguous property for 10 days or less.

Secondary containment. Two commenters supported the secondary containment proposals, but favored making them requirements instead of recommendations. One commenter asked that the secondary containment recommendation for the largest single compartment or container be modified to include tanks which are manifolded together or otherwise have overflow capabilities. Another commenter suggested that secondary containment provide freeboard sufficient to contain precipitation from a 25-year storm event.

Floods. Other commenters asked for a requirement that mobile tanks not be located in areas subject to flooding.

Response to comments. Scope of discharge prevention. We agree that the purpose of the rule is to prevent discharges from becoming discharges as described in § 112.1(b). Therefore, in response to comment, we have modified the proposed rule to require positioning or locating mobile or portable containers to prevent "a discharge as described in § 112.1(b)," rather than "oil discharges." "A discharge as described in § 112.1(b)" is a more inclusive term, tracking the expanded scope of the amended CWA.

Time limits. We decline to place a time limitation in a definition of mobile or portable containers. Mobile or portable containers may be in place for more than ten days and still be mobile. Mobile containers that are in place for less than 10 days may still experience a discharge as described in § 112.1(b).

Secondary containment. In response to comments, we have maintained the secondary containment requirement in the current rule because secondary containment is necessary for mobile containers for the same reason that it is necessary for fixed containers; to prevent discharges from becoming discharges as described in § 112.1(b). Secondary containment must also be designed so that there is ample freeboard for anticipated precipitation. We have therefore amended the rule on the suggestion of a commenter to provide for freeboard. We agree with the commenter that the amount of freeboard should be sufficient to contain a 25-year storm event, but are not adopting that standard because of the difficulty and expense for some facilities in securing recent information concerning 25-year, 24-hour storm events at this time. Should that situation change, we will reconsider proposing such a standard in rule text. Freeboard sufficient to contain precipitation is freeboard according to industry standards, or in an amount that will avert a discharge as described in § 112.1(b). Should secondary containment not be practicable, you may be able to deviate from the requirement under § 112.7(d).

We clarify that the secondary containment requirement relates to the capacity of the largest single compartment or container. Permanently manifolded tanks are tanks that are designed, installed, or operated in such a manner that the multiple containers function as a single storage unit. Containers that are permanently manifolded together may count as the "largest single compartment," as referenced in the rule.

Floods. We deleted the proposed recommendation on siting of mobile containers in this rule because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. These rules contain only mandatory requirements.

Industry standards. Industry standards that may assist an owner or operator with secondary containment for mobile containers include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; and, (2) BOCA, "National Fire Prevention Code."

Editorial changes and clarifications. "Spill event" becomes "a discharge as described in § 112.1(b)." "Tank" becomes "container." We deleted the word "onshore" because the whole section applies only to onshore facilities.

Section 112.8(d)(1)—Buried Piping—Facility Transfer Operations, Pumping, and Facility Process (Onshore) (Excluding Production Facilities)

Background. In 1991, we proposed a new recommendation that all piping installations should be placed aboveground wherever possible. We added a new proposed requirement that would require protective coating and cathodic protection for new or replaced buried piping. The current rule requires such coating and cathodic protection only if soil conditions warrant. We explained in the preamble that we believe that all soil conditions warrant protection of buried piping. We did not propose to make the requirement applicable to all existing piping because of the significant possibility that replacing all unprotected buried piping might cause more discharges than it would prevent. If soil conditions warrant such protection for existing piping, it is already required by the current rule. We also proposed a new recommendation that buried piping installation comply to the extent possible with all the relevant provisions of 40 CFR part 280.

Comments. Aboveground piping recommendation. Two commenters favored the recommendation. Others requested that it be modified to have all piping be aboveground only when appropriate, on the theory that some aboveground piping may become an obstacle to motorized traffic within a facility, or may be a hazard to worker safety because of the possibility of tripping over it.

Corrosion protection. Several commenters supported the proposal to require corrosion protection for all new or replaced buried piping. One commenter believed that corrosion protection should be required, as in the current rule, only where soil conditions warrant. One commenter asked for clarification that the requirement for replaced piping only applies to the section replaced, not necessarily to the entire line of piping. Another commenter believed that corrosion protection was inadequate to protect from discharges, and urged a requirement for double-walled piping or secondary containment and product sensitive leak detection for new facilities. One commenter believed that the recommendation for buried piping installation to comply with 40 CFR part 280 should be a requirement, not a recommendation.

Response to comments. Aboveground piping recommendation. While we have deleted the proposed recommendation from the rule text because we do not wish to confuse the regulated public over what is mandatory and what is discretionary, we still believe that piping should be placed aboveground whenever possible because such placement makes it easier to detect discharges. The decision to place piping aboveground might include consideration of safety and traffic factors.

Corrosion protection. Based on EPA experience, we believe that all soil conditions warrant protection of new and replaced buried piping. EPA's cause of release study indicates that the operational piping portion of an underground storage tank system is twice as likely as the tank portion to be the source of a discharge. Piping failures are caused equally by poor workmanship and corrosion. Metal areas made active by threading have a high propensity to corrode if not coated and cathodically protected. See 53 FR 37082, 37127, September 23, 1988; and "Causes of Release from US Systems," September 1987, EPA 510-R-92-702. If you decide to deviate from the requirement, for example, to provide an alternate means of protection other than coating or cathodic protection, you may do so, but must explain your reasons for nonconformance, and demonstrate that you are providing equivalent environmental protection. A deviation which seeks to avoid coating or cathodic protection, or some alternate means of buried piping protection, on the grounds that the soil is somehow incompatible with such measure(s), will not be acceptable to EPA.

A "new" or "replaced" buried piping installation is one that is installed 30 days or more after the date of publication of this rule in the **Federal Register**. We have deleted the words "new" and "replaced" from the proposed language and substituted this specific date so the effective date is clearer to the regulated community. Under the current rule, you have an obligation to provide buried piping installations with protective wrapping and coating only if soil conditions warrant such measures. Under the revised rule, you must provide such wrapping and coating for new or replaced buried piping installations regardless of soil conditions.

You should consult a corrosion professional before design, installation, or repair of any corrosion protection system. Any corrosion protection you provide should be installed according to relevant industry standards. When piping is replaced, you must protect from corrosion only the replaced section, although protection of the entire line whenever possible is preferable. Equipping only a small portion of piping with corrosion protection may accelerate corrosion rates on connected unprotected piping. While we agree that corrosion protection might not prevent all discharges from buried piping, it is an important measure because it will help to prevent most discharges.

Double-walled piping or secondary containment or sensitive leak detection for buried piping may be acceptable as a deviation from the requirements of this paragraph under § 112.7(a)(2) if you explain your reasons for nonconformance with the requirement and show that the means you selected provides equivalent environmental protection to the requirement. However, we will not require such measures because we did not propose them.

We have deleted the recommendation from the proposed rule that all buried piping installations comply to the extent practicable with 40 CFR part 280, because we are excluding recommendations from this rule to avoid confusion with what is mandatory and what is discretionary. Also, some buried piping now subject to part 112 will be subject only to 40 CFR part 280 or a State program approved under 40 CFR part 281 under this rule. See § 112.1(d)(4).

Industry standards. Industry standards that may assist an owner or operator with corrosion protection for buried piping installations include: (1) National Association of Corrosion Engineers (NACE) Recommended Practice-0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; and, (2) STI Recommended Practice 892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

Editorial changes and clarifications. In the second sentence of paragraph (d)(1), we included a reference to "a State program approved under part 281 of this chapter." In the third sentence, "examine" and "examination" become "inspect" and "inspection."

Section 112.8(d)(2)—Terminal Connections

Background. In 1991, we proposed that when piping is not in service or is in standby service for 6 months or more, the terminal connection at the transfer point must be capped or blank-flanged and marked as to origin. The current rule requires such capping or blank-flanging when the piping is not in "regular" examinations. We also recommended that you conduct annual integrity and leak testing of buried piping, or that you monitor it on a monthly basis. Finally, we recommended that all valves, pipes, and appurtenances conform to relevant industry codes, such as ASME standards. We proposed deletion from the rule of the current requirement for periodic pressure testing for piping every ten years. One commenter believed that the recommendation should not apply to piping of less than ten feet. Others asked for clarification as to the type of testing contemplated. One commenter suggested that the recommendation be clarified to refer only to oil-handling piping and equipment, and not include buried piping unrelated to oil operations. Several commenters suggested that we

other means, including pressure testing. However, we do not require pressure testing or any other specific method. We agree that, subject to good engineering practice, pressure testing every three or four years may be warranted in addition to regular inspection of aboveground valves, piping, and appurtenances. However, we believe that regular inspection is sufficient to help prevent discharges and will not impose any underground piping be subject to engineering evaluations every five years, but we recommend such evaluations be conducted in accordance with industry standards to preserve flexibility in case the time frame changes with changing technology.

If you have vaulted containers, the requirement for integrity and leak testing of buried piping might be the subject of a deviation under § 112.7(a)(2) below on weight restrictions. Some believed the proposed requirement should be a recommendation based on good engineering practices. One thought it made no difference. One commenter proposed as an alternative, marking such piping so it could be temporarily protected or avoided. One commenter suggested that it would be more prudent to require signs where piping is lower than 14 feet and located such that

Section 112.8(d)(2)—Terminal Connections

Background. In 1991, we proposed that when piping is not in service or is in standby service for 6 months or more, the terminal connection at the transfer point must be capped or blank-flanged and marked as to origin. The current rule requires such capping or blank-flanging when the piping is not in service or is in standby service "for an extended time."

Comments. One commenter supported the six-month clarification of an "extended time." Several commenters opposed the requirement to cap or blank-flange piping in standby service because such piping may be needed to be put into service quickly during an emergency to ensure safe operations at the facility. The commenter suggested that the rule be reworded to say "When piping is not in service or is not in standby service."

Response to comments. We have decided to keep the current standard of requiring capping or blank-flanging terminal connections when such piping is not in service or is in standby for an extended time in order to maintain flexibility for variable facilities and engineering conditions. We define "an extended time" in reference to industry standards or at a frequency sufficient to prevent discharges. We disagree with commenters that the requirement should not apply to piping that is not in standby service because some discharges may be caused by loading or unloading oil through the wrong piping or turning the wrong valve when the piping in question was actually out-of-service. Typically, piping that is in standby service is only needed in emergency situations or when there is an operational problem. In the rare situations when such piping is needed immediately, the owner or operator may remove the cap or blank-flange to return the piping to service.

Editorial changes and clarifications. "Examine" becomes "inspect."

Section 112.8(d)(3)—Pipe Supports

Background. In 1991, we reproposed without substantive change the current rule concerning pipe supports.

Comments. We received no comments on this proposal. Therefore, we have promulgated the provision as proposed.

Section 112.8(d)(4)—Inspection of Aboveground Valves and Piping

Background. In 1991, we proposed that you examine all aboveground valves, piping, and appurtenances on at least a monthly basis. This contrasts with the current requirement of "regular" examinations. We also recommended that you conduct annual integrity and leak testing of buried piping, or that you monitor it on a monthly basis. Finally, we recommended that all valves, pipes, and appurtenances conform to relevant industry codes, such as ASME standards. We proposed deletion from the rule of the current requirement for periodic pressure testing for piping where facility drainage is such that a failure might lead to a spill event.

Comments. Monthly examination of aboveground valves, piping, and appurtenances. One commenter supported the visual monthly examination proposal, but suggested that we require a more sophisticated method of testing every three to four years, such as pressure testing. Most other commenters opposed monthly examinations, on grounds of impracticality. Most opposing commenters urged testing on a quarterly or semiannual basis, or per industry standards. Some thought the requirement should be a recommendation, both for large and small facilities. Electrical utility commenters asserted that the monthly testing of millions of pieces of equipment would be extremely burdensome. Several commenters urged that the examination requirement be limited to visual examination because of the cost of other methods.

Buried piping. Several commenters favored the proposed recommendation for annual integrity and leak testing of buried piping or monitoring of such piping on a monthly basis. One commenter was concerned that the recommendation made no concession for piping construction material, length of time in the ground, etc. Several commenters believed that the recommendation should be a requirement because piping often runs outside of secondary containment; buried piping cannot be inspected visually; discharges are common from this piping; and few owners or operators conduct integrity or leak testing of such piping. Some thought it should be a requirement for all facilities, others just for large facilities. One commenter thought that the requirement to inspect buried piping only when exposed is inadequate. The commenter suggested that the piping should be subject to pressure testing. The frequency of the testing would be based on aquifer use.

Opposing commenters believed annual testing or monthly monitoring was unnecessary, generally citing cost and practicability reasons. Some suggested differing time periods for testing, such as every three years, or every ten years. One commenter believed that the recommendation should not apply to piping of less than ten feet. Others asked for clarification as to the type of testing contemplated. One commenter suggested that the recommendation be clarified to refer only to oil-handling piping and equipment, and not include buried piping unrelated to oil operations. Several commenters suggested that we add a requirement to the rule to conduct integrity and leak testing of protected piping at the time of installation, modification, construction, relocation, or replacement, and to conduct an engineering evaluation of in-service unprotected underground piping every five years. Another commenter suggested double-walled piping as an alternative. One commenter suggested that the recommendation was inappropriate for vaulted tanks because of the configuration of the tanks.

Response to comments. Monthly inspection of aboveground valves, piping, and appurtenances. Inspection of aboveground valves, piping, and appurtenances must be a requirement to help prevent discharges. Such valves, piping, and appurtenances often are located outside of secondary containment systems, and often do not have double-wall protection or some form of secondary containment themselves. Therefore, any discharge from such valves, piping, and appurtenances is more likely to become a discharge as described in § 112.1(b). Examination of discharge reports from the Emergency Response Notification System (ERNS) shows that discharges from such valves, piping, and appurtenances are much more common than catastrophic tank failure or discharges from tanks. The requirement must be applicable to large and small facilities covered by this section that store oil, because of the same threat of discharge.

The requirements of this paragraph do not apply to electrical utilities and other facilities with oil-filled equipment because they are not bulk storage facilities.

The final rule maintains the current standard of "regular" inspections, on the suggestion of commenters who noted that at some remote sites monthly inspections are impractical, especially in harsh weather conditions. Furthermore, we agree with commenters that "regular" inspections are inspections conducted "in accordance with accepted industry standards," rather than the monthly proposed standard. You must include appurtenances in the inspection. Inspections may be either visual or by other means, including pressure testing. However, we do not require pressure testing or any other specific method. We agree that, subject to good engineering practice, pressure testing every three or four years may be warranted in addition to regular inspection of aboveground valves, piping, and appurtenances. However, we believe that regular inspection is sufficient to help prevent discharges and will not impose any additional requirements at this time.

Buried piping. We have deleted the text of the proposed recommendation to conduct annual integrity and leak testing of buried piping or monitor buried piping on a monthly basis from the rule because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. This rule contains only mandatory requirements. However, we continue to endorse the recommendation as a discretionary action, and suggest that you conduct such testing according to industry standards.

We agree with a commenter that the proposed recommendation would apply only to "oil-handling" piping and valves, not all such piping and valves, which may be unrelated to oil activities. However, no change in rule text is necessary because the entire rule applies only to procedures, methods, or equipment that are involved with the storage or use of oil. In response to the commenter who urged that the proposed recommendation not apply to buried piping of less than 10 feet in length, we believe that any buried piping, regardless of length, may cause a discharge, and therefore should be tested. Double-walled piping might be an acceptable alternative to integrity and leak testing or monthly monitoring. If you choose double-walled piping as an alternative, you must explain your nonconformance with the rule requirements, and explain how double-walled piping provides equivalent environmental protection. See 112.7(a)(2).

On the suggestion of commenters, we have modified the proposed recommendation for annual testing or monthly monitoring of buried piping into a requirement that you must only conduct integrity and leak testing of such piping at the time of installation, modification, construction, relocation, or replacement. We believe that when piping is exposed for any reason, integrity and leak testing of such exposed piping according to industry standards is appropriate because piping is visible at that point, and testing is easier because the piping is more accessible. The same commenters also recommended that unprotected underground piping be subject to engineering evaluations every five years, but we recommend such evaluations be conducted in accordance with industry standards to preserve flexibility in case the time frame changes with changing technology.

If you have vaulted containers, the requirement for integrity and leak testing of buried piping might be the subject of a deviation under § 112.7(a)(2) if those pipes, valves, and fittings come out of the top of the container and are not buried, or are encased in a double-walled piping system and you thereby significantly reduce the potential for corrosion.

Likewise, we have deleted from rule text the recommendation that all valves, pipes, and appurtenances conform to industry standards, but we endorse its substance.

Industry standards. Industry standards that may assist an owner or operator with inspection and testing of valves, piping, and appurtenances include: (1) API Standard 570, "Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems"; (2) API Recommended Practice 574, "Inspection Practices for Piping System Components"; (3) American Society of Mechanical Engineers (ASME) B31.3, "Process Piping"; and, (4) ASME B31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols."

Editorial changes and clarifications. "Examine" and "examination" become "inspect" and "inspection." We have deleted the reference to "operating personnel" in the first sentence because all of the requirements of this rule, except when specifically noted otherwise, are the responsibility of the owner or operator.

Section 112.8(d)(5)—Vehicular Traffic

Background. In 1991, we reproposed the current rule concerning warnings to vehicular traffic, because of vehicle size, to avoid endangering aboveground piping. We proposed to amend the rule to include avoidance of endangering "other transfer operations" within the scope of the warning. We added a recommendation that weight restrictions should be posted, as applicable, to prevent damage to underground piping.

Comments. Vehicular warnings. Several commenters supported the current requirement to warn vehicular traffic to avoid endangering aboveground piping or other transfer operations because of vehicle size. Others believed that any size or weight restrictions would unnecessarily burden facility operations. See the comments below on weight restrictions. Some believed the proposed requirement should be a recommendation based on good engineering practices. One thought it made no difference. One commenter proposed as an alternative, marking such piping so it could be temporarily protected or avoided. One commenter suggested that it would be more prudent to require signs where piping is lower than 14 feet and located such that vehicles can traverse, and recommended that, in addition to signs, verbal warnings be provided.

Weight restriction posting. Several commenters supported making this recommendation a requirement because good engineering practice will exclude heavy equipment from crossing buried piping which does not have adequate cover to protect the pipe.

Others opposed it on the grounds it would restrict access to vehicles which "have driven over the same piping for a dozen or more years." One commenter thought the recommendation was unnecessary because local building codes or other standards already address the issue of buried piping protection. Some thought the recommendation should be a matter of PE discretion. Several commenters thought that the recommendation should apply to large facilities only because only large facilities will have the type of tanker trucks on site which would potentially damage underground piping. One commenter thought that small facilities should be exempt from the recommendation.

Another commenter believed that the recommendation should be restricted to situations where it is not certain that the underground piping can withstand all anticipated vehicular traffic. Another commenter suggested that if buried piping is placed across a thoroughfare, it should be installed with additional structural protection. The commenter asserted that proper installation is a preventative and is a better alternative than a sign because signs are not always heeded.

One commenter suggested that posting of weight restrictions at airports in open areas would be impractical and impact operations. The commenter argued that the proposal was unreasonable where some buried piping/hydrant systems run under ramp surfaces. A railroad commenter argued that the recommendation is overly broad because railroads have a large amount of piping under track that is built to withstand maximum loads from vehicular traffic, making the posting of signs unnecessary and costly. One commenter argued that the requirement was inapplicable to vaulted tanks

because the concrete vault reduced the risk of vehicular damage.

Response to comments. Vehicular warnings. The requirement to warn vehicular traffic so that no vehicle will endanger aboveground piping or other oil transfer operations applies to all facilities, large or small, because vehicular traffic may endanger aboveground piping or other transfer operations regardless of the size of the vehicle. Vehicular traffic is a common cause of discharges. We have not changed the rule text to limit the requirement to large vehicles because we believe that small vehicles can cause discharges as well. We have not changed the rule text to require signs because we believe that you should have the flexibility to choose the most appropriate method of warning vehicular traffic. We have not changed the rule text to require weight restrictions

because the concrete vault reduced the risk of vehicular damage.

Response to comments. Vehicular warnings. The requirement to warn vehicular traffic so that no vehicle will endanger aboveground piping or other oil transfer operations applies to all facilities, large or small, because vehicular traffic may endanger aboveground piping or other transfer operations at all facilities. Warnings may include verbal warnings, signs, or marking and temporary protection of piping or equipment. No particular height restriction is incorporated into the rule. Rather, aboveground piping at any height must be protected from vehicular traffic unless the piping is so high that all vehicular traffic passes underneath the piping. In this case, or where the requirement is infeasible, you may be able to use the deviation provision in § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection. We have deleted the clause concerning the size of vehicles that may endanger piping or oil transfer operations because the owner or operator may not be able to determine precisely when the size or weight of a vehicle would cause such endangerment.

In response to commenters who suggested that the posting of signs is impractical and might impact operations, or would be very costly, we note that you may deviate from the requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Weight restriction posting. We deleted the proposed recommendation concerning weight restrictions as they relate to underground piping from rule text, but still support it when appropriate. We include only mandatory items in this rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. We decline to make the recommendation a requirement because we believe the appropriate posting of weight restrictions should be a matter of good engineering practice.

Editorial changes and clarifications. We deleted the references to verbal warning or appropriate signs in the rule. Instead, the rule contains an obligation to warn entering vehicular traffic. Warnings may be verbal, by signs, or by other appropriate methods.

Introduction to Section 112.9

Background. We have added an introduction to help rewrite the section in the active voice. Since the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

Section 112.9(a)—General Requirements—Onshore Oil Production Facilities

Background. This is a new provision that merely references the general requirements which all facilities must meet as well as the specific requirements that you must meet if you are an owner or operator of a facility in the category of onshore oil production facilities.

Editorial changes and clarifications. The obligation to "address" general SPCC requirements becomes the obligation to "meet" those requirements. "Spill prevention" becomes "discharge prevention." We also deleted the word "onshore" from the titles of the paragraphs of this section because the entire section applies only to onshore production facilities.

Proposed Section 112.9(b)—Definition—Onshore Oil Production Facilities

Background. This proposed section was merely a reference to the old definition of onshore oil production facility (*see* current § 112.7(e)(5)(i)), which is today incorporated within the new definition of production facility. Therefore, the section is no longer necessary and we have deleted it.

Section 112.9(b)(1), Proposed as § 112.9(c)(1)—Dike Drains and Drainage

Background. In 1991, we reproposed the current rule concerning drainage of diked areas.

Comments. Editorial changes and clarifications. One commenter suggested an editorial change from discharges to "navigable waters," to a discharge as referenced in § 112.1(b)(1).

Applicability. Another commenter urged a small facility exemption from this requirement because the recordkeeping involved was too burdensome.

Engineering methods. One commenter believed that the requirement to have all drains closed on dikes around storage containers might preclude engineering methods designed to handle flow-through conditions at water flood oil production operations, where large volumes of water may be directed to oil storage tanks if water discharge lines on oil-water separators become plugged.

Response to comments. Applicability. We believe that this requirement must be applicable to both large and small facilities to help prevent discharges as described in § 112.1(b). The risk of such a discharge and the accompanying environmental damage may be devastating whether it comes from a large or small facility. We disagree that the recordkeeping is burdensome. If you are an NPDES permittee, you may use the stormwater drainage records required pursuant to 40 CFR 122.41(j)(2) and 122.41(m)(3) for SPCC purposes, thereby reducing the recordkeeping burden.

Engineering methods. "Equivalent" measures referenced in the rule might, depending on good engineering practice, include using structures such as stand pipes designed to handle flow-through conditions at water flood oil production operations, where large volumes of water may be directed to oil storage tanks if water discharge lines on oil-water separators become plugged. Any alternate measures must provide environmental protection equivalent to the rule requirement.

Industry standards. Industry standards that may assist an owner or operator with facility drainage include API Recommended Practice 51, "Onshore Oil and Gas Production Practices for Protection of the Environment."

Editorial changes and clarifications. In response to the commenter's suggestion, the reference to "navigable waters" becomes a reference to "a discharge as described in § 112.1(b)." "Central treating stations" becomes "separation and treating areas." Such areas might be centrally located or located elsewhere at the facility and might include both separation and treatment devices and equipment. The reference to "rainwater is being drained" becomes "draining uncontaminated rainwater." We clarify that accumulated oil on rainwater must be disposed of in accord with "legally approved methods," not "approved methods."

Section 112.9(b)(2)—Proposed as § 112.9(c)(2)—Drainage Ditches, Accumulations of Oil

Background. In 1991, we sought to clarify that oil as well as oil-contaminated soil must be removed from field drainage ditches, road ditches, and the like. The current rule only requires removal of an "accumulation of oil." We also proposed that such accumulations be removed within 72 hours at the most.

Comments. Applicability. One commenter asserted that this section does not apply to crude oil transfers from production fields into tank trucks because any discharges in the transfer process would be caught in a small

sump or catchment basin. Another commenter asked if this section applied to cleanup of oil and oil-contaminated soil from diked areas.

Inspection schedule. Another commenter suggested that we require inspections of field drainage ditches, etc., at monthly intervals and within 24 hours of a 25-year storm event.

Accumulations of oil and oil-contaminated soil. Two commenters argued that EPA lacks authority to require cleanup of contaminated soil. Others asked for clarifications of the terms "accumulation" and "oil-contaminated soil." Another asked what cleanup standard EPA contemplated under this rule. The commenter elaborated, "is accumulated oil and contaminated soil to be removed from diked areas under this provision?"

72-hour cleanup standard. Several commenters argued that the 72-hour standard for cleanup would preclude bioremediation or other cleanup techniques allowed by State and local law. Several commenters suggested other time periods, including "as soon as practical," "within a timely manner." Some suggested no time standard is appropriate. Those commenters generally thought that a 72-hour period might be unrealistic in certain cases.

Response to comments. Applicability. Crude oil transfers from production fields into tank trucks or cars are covered by the general requirements contained in § 112.7(c) and (h), both of which require some form of secondary containment. Cleanup of oil, oil-contaminated soil, and oil-contaminated materials from field drainage ditches, road ditches, or other field drainage system is covered by this paragraph. In response to comment, we note that cleanup of oil from diked areas at onshore production facilities is not specifically covered by the rules. However, the presence of oil in diked areas may impair the quality of the dike or the capacity for secondary containment, and if so, the oil must be removed.

Inspection schedule. We have retained the "regularly scheduled intervals" standard for inspections. This standard means regular inspections according to industry standards or on a schedule sufficient to prevent a discharge as described in § 112.1(b). Whatever schedule for inspections is selected must be documented in the Plan. We decline to specify a specific interval because such an interval might become obsolete with changing technology.

Accumulations of oil and oil-contaminated soil. We have adequate authority to require cleanup of an accumulation of oil, including on soil and other materials, because section 311(j)(1)(C) of the CWA provides EPA with the authority to establish procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. The broad definition of "oil" in CWA section 311(a)(1) covers "oil refuse" and "oil mixed with wastes other than dredged spoil." If field drainage systems allow the accumulation of oil on the soil or other materials at the onshore facility and that oil threatens navigable water or adjoining shorelines, then EPA has authority to establish a method or procedure, i.e., the removal of oil contaminated soil, to prevent that oil from becoming a discharge as described in § 112.1(b). The cleanup standard under this paragraph requires the complete removal of the contaminated oil, soil, or other materials, either by removal, or by bioremediation, or in any other effective, environmentally sound manner.

72-hour cleanup standard. We agree that the 72-hour cleanup standard might preclude bioremediation and have therefore deleted it. Instead we establish a standard of "prompt cleanup." "Prompt" cleanup means beginning the cleanup immediately after discovery of the discharge or immediately after any actions necessary to prevent fire or explosion or other imminent threats to worker health and safety.

Editorial changes and clarifications. "Escaped from small leaks" becomes "resulted from any small discharge." We eliminate the term "oil-contaminated soil" because oil must accumulate on something, such as materials or soil. We retain the term "accumulation of oil," but elaborate on its meaning. "Accumulation of oil" means a discharge that causes a "film or sheen" within the field drainage system, or causes a sludge or emulsion there (*see* 40 CFR 110.3(b)). An accumulation of oil includes anything on which the oil gathers or amasses within the field drainage system. An accumulation of oil may include oil-contaminated soil or any other oil-contaminated material within the field drainage system. *See also* the discussion of "accumulation of oil" included with the response to comments of § 112.8(c)(10).

Proposed Section 112.9(c)(3)—Additional Requirements for Flood Events

Background. In 1991, we proposed a new recommendation for oil production facilities in areas subject to flooding. We recommended that the Plan address additional precautionary measures related to flooding. In the discussion of the proposal, we referenced FEMA requirements.

Comments. One commenter thought this provision should be a requirement rather than a recommendation. Another commenter suggested that exploration and production facilities located in flood plain areas should be adequately secured through proper mechanical/engineering methods to reduce the chance of loss of product. A third commenter suggested the following specific measures to be implemented: (1) Identify whether the facility is located in a floodplain in the Plan; (2) if the facility is located in a floodplain, the Plan should address to what extent it meets the minimum requirements of the National Flood Insurance Program (NFIP); and (3) if a facility does not meet the minimum requirements of the NFIP, the Plan should address appropriate precautionary and mitigation measures for potential flood-related discharges.

Response to comments. We have deleted the recommendation because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. These rules contain only mandatory requirements. However, we support the substance of the recommendation, and suggest that a facility in an area prone to flooding either follow the requirements of the NFIP or employ other methods based on good engineering practice to minimize damage to the facility from a flood.

Section 112.9(c)(1)—Proposed as § 112.9(d)(1)—Materials and Construction—Bulk Storage Containers

Background. In 1991, we reproposed the section on materials and construction of bulk storage containers with an added recommendation that containers conform to relevant industry standards.

Comments. One commenter thought that the recommendation for use of industry standards should be a requirement. The commenter asked that at a date certain, all existing tanks must be upgraded to current standards, and that all new and reconstructed tanks must be subject to applicable codes. Another commenter suggested that the recommendation should not apply to crude oil storage tanks because local industry standards are more appropriate.

Response to comments. Recommendation v. requirement. We are retaining the mandatory requirement to use no container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage, as proposed. We have deleted the recommendation that materials, installation, and use of

new tanks conform with relevant portions of industry standards because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. However, we endorse its substance. In most cases good engineering practice and liability concerns will prompt the use of industry standards. See § 112.3(d)(1)(iii). In addition, a

comprehensive to be applied to oil leases, which might cover hundreds of acres. Another asked how we would determine what is sufficient freeboard.

Drainage. One commenter thought the drainage requirement was duplicative of NPDES requirements.

Response to comments. Secondary containment. The requirement applies to oil leases of any size. Secondary containment is not required for the

confusing when compared to the text of § 112.7(d). Under § 112.7(d), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with the requirements of § 112.7(d). Furthermore, you are also free to provide alternate systems of secondary containment. We do not

nonconformance and provide equivalent environmental protection.

Record maintenance. We have deleted the proposed requirement to maintain records of these inspections for five years, irrespective of ownership, because it is redundant with the general requirement in § 112.7(e) to maintain Plan records. Section 112.7(e) requires record maintenance for three years. However, you should note that certain

Response to comments. Good engineering practice. We agree with the commenter that we should retain this section as a requirement both to improve spill prevention and to avoid confusion among the regulated community because of the similar requirement for bulk storage containers at facilities other than production facilities. Therefore, there are no new costs. Nevertheless, you have flexibility

language consistent with a companion paragraph dealing with good engineering design, *i.e.*, § 112.8(c)(8). In paragraph (c)(4)(i), "regular rounds" becomes "regularly scheduled rounds." "Spills" becomes "discharges." In paragraph (c)(4)(iv), the phrase "where facilities are" becomes "where the facility is." Elsewhere "tank" becomes "container."

Section 112.9(d)(1)—Proposed as

new tanks conform with relevant portions of industry standards because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. However, we endorse its substance. In most cases good engineering practice and liability concerns will prompt the use of industry standards. See § 112.3(d)(1)(iii). In addition, a requirement is not necessary or desirable because local governmental standards on construction, materials, and installation sometimes control industry standards on these matters.

Industry standards. Industry standards that may assist an owner or operator with materials for and construction of onshore bulk storage production facilities include: (1) API Specification 12B, "Bolted Tanks for Storage of Production Liquids'; (2) API Specification 12D, "Field Welded Tanks for Storage of Production Liquids'; (3) API Specification 12F, "Shop Welded Tanks for Storage of Production Liquids'; (4) API Specification 12J, "Oil Gas Separators'; (5) API Specification 12K, "Indirect-Type Oil Field Heaters'; and, (6) API Specification 12L, "Vertical and Horizontal Emulsion Treaters."

Editorial changes and clarifications. "Tank" becomes "container."

Section 112.9(c)(2)—Proposed as § 112.9(d)(2)—Secondary Containment, Drainage

Background. The SPCC Task force concluded that aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. We noted that the proposed rule modifications would "retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific contingency plans in lieu of prevention systems." 56 FR 54614. In 1991, we therefore reproposed the secondary containment requirements for onshore oil production facilities with a clarification. We clarified that secondary containment must include sufficient freeboard to allow for precipitation. The current rule requires that drainage from undiked areas must be safely confined in a catchment basin or holding pond. The proposed rule had modified this requirement to apply only to drainage from undiked areas "showing a potential for contamination."

Comments. Secondary containment. See the discussion under § 112.7(c) of secondary containment in general. One commenter suggested that the requirement was too vague and comprehensive to be applied to oil leases, which might cover hundreds of acres. Another asked how we would determine what is sufficient freeboard.

Drainage. One commenter thought the drainage requirement was duplicative of NPDES requirements.

Response to comments. Secondary containment. The requirement applies to oil leases of any size. Secondary containment is not required for the entire leased area, merely for the contents of the largest single container in the tank battery, separation, and treating facility installation, with sufficient freeboard to contain precipitation. In response to the comment as to how an owner or operator might determine how much freeboard is sufficient, we have revised the rule to provide that freeboard sufficient to contain precipitation is the standard. Freeboard sufficient to contain precipitation is freeboard installed according to industry standards, or in an amount sufficient to avert a discharge as described in § 112.1(b). This standard is consistent with the amount of freeboard required in § 112.8(c)(2).

Drainage. We deleted the proposed reference to undiked areas "showing a potential for contamination" because drainage from any undiked area poses a threat of contamination. When drainage from such areas is covered by stormwater discharge permits, that part of the BMP might be usable for SPCC purposes. There is no redundancy in recordkeeping requirements, because you can use your NPDES records for SPCC purposes.

Industry standards. Industry standards that may assist an owner or operator with secondary containment at onshore production facilities include: (1) API Recommended Practice 51, "Onshore Oil and Gas Production Practices for Protection of the Environment'; (2) NFPA 30, "Flammable and Combustible Liquids Code'; and, (3) BOCA, "National Fire Prevention Code."

Editorial changes and clarifications. "Tank battery and central treating plant installations" becomes "tank battery, separation, and treating facility installations." "Contents of the largest single tank" becomes "capacity of the largest single container." With this change, this paragraph agrees with general secondary containment requirements found in § 112.7(c). The reference to tanks "in use" was deleted because it is redundant. Containment for tanks or containers that are not permanently closed is already required. We deleted the phrase "if feasible, or alternate systems, such as those outlined in § 112.7(c)(1)," because it is confusing when compared to the text of § 112.7(d). Under § 112.7(d), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with the requirements of § 112.7(d). Furthermore, you are also free to provide alternate systems of secondary containment. We do not prescribe the method.

Section 112.9(c)(3)—Proposed as § 112.9(d)(3)—Container Inspection

Background. In 1991, we proposed that you must visually examine all containers of oil at onshore production facilities at least once a year. The current requirement is that you examine these containers "on a scheduled periodic basis." We also proposed that you would be required to maintain the schedule and records of those examinations for a period of five years, irrespective of changes in ownership.

Comments. Frequency of inspection. One commenter favored the proposal. One commenter suggested quarterly rather than annual inspections. Two commenters suggested triennial inspections. Other commenters suggested a frequency in accordance with API recommended standards.

Extent of inspection. Several commenters thought that the inspections should be external only, and should not necessarily include the foundations and supports (as proposed) because of the number of containers that would be taken out of service with that requirement. Another commenter asserted that inspection of foundations and supports might not be possible due to foundation settlement or lack of space to perform the inspection.

Response to comments. Frequency of inspection. We have maintained the current standard for frequency of inspection because we agree that inspections in accordance with industry standards are necessary. Those standards may change with changing technology, therefore, a frequency of "periodically and upon a regular schedule" preserves maximum flexibility and upholds statutory intent.

Extent of inspection. We disagree that the inspection of containers should be limited to external inspection. Internal inspection is also necessary to detect possible flaws that could cause a discharge. The inspection must also include foundations and supports that are on or above the surface of the ground. If for some reason it is not practicable to inspect the foundations and supports, you may deviate from the requirement under § 112.7(a)(2), if you explain your rationale for nonconformance and provide equivalent environmental protection.

Record maintenance. We have deleted the proposed requirement to maintain records of these inspections for five years, irrespective of ownership, because it is redundant with the general requirement in § 112.7(e) to maintain Plan records. Section 112.7(e) requires record maintenance for three years. However, you should note that certain industry standards (for example, API Standard 653 or API Recommended Practice 12R1) may specify that an owner or operator maintain records for longer than three years.

Industry standards. Industry standards that may assist an owner or operator with inspection of containers at onshore production facilities include: (1) API Recommended Practice 12R1, "Recommended Practice for Setting, Maintenance, Inspection, Operation, and Repair of Tanks in Production Service"; and, (2) "API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Editorial changes and clarifications. "Visually examine" becomes "Visually inspect." "All tanks" becomes "each container." "Foundation and supports of tanks above the ground surface" becomes "Foundation and support of each container that is on or above the surface of the ground."

Section 112.9(c)(4)—Proposed as § 112.9(d)(4)—Good Engineering Practice

Background. In 1991, we proposed to convert the current requirement for "fail-safe" engineering (which includes vacuum protection and other measures) of new and old tank battery installations into a recommendation. We also proposed that you reference appropriate industry standards.

Comments. One commenter asserted that we should retain the original requirement to avoid confusion among the regulated community, help improve spill prevention, and because we proposed a similar requirement for bulk storage containers. Another commenter opposed the proposed recommendation because he believed the cost of such engineering would be prohibitive. Two commenters sought an exemption for small facilities on the same rationale. Similarly, some commenters opposed the proposed recommendation on vacuum protection because of the potential cost. None of the commenters provided their own cost estimates. Some commenters opposed the proposed recommendation relating to vacuum protection because of the potential cost, which they estimated as "in excess of $100 per tank."

Response to comments. Good engineering practice. We agree with the commenter that we should retain this section as a requirement both to improve spill prevention and to avoid confusion among the regulated community because of the similar requirement for bulk storage containers at facilities other than production facilities. Therefore, there are no new costs. Nevertheless, you have flexibility as to which measures you use, and may choose the least expensive alternative listed in § 112.9(c)(4). For example, should vacuum protection be too costly, you are free to use another alternative. Furthermore, you may also deviate from the requirement under § 112.7(a)(2) if you can explain nonconformance and provide equivalent environmental protection by some other means. We revised the paragraph on vacuum protection to clarify that the rule addresses any type of transfer from the tank, not merely a pipeline run.

Industry standards. Industry standards that may assist an owner or operator with alarm systems include: (1) API, "Manual of Petroleum Measurement Standards"; (2) API Recommended Practice 51, "Onshore Oil and Gas Production Practices for Protection of the Environment"; (3) API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"; and, (4) NFPA 30, "Flammable and Combustible Liquids Code."

Editorial changes and clarifications. "Fail-safe" engineering becomes "good engineering practice," because fail-safe engineering is a misnomer. The change in terminology does not imply any substantive change in the level of environmental protection required, it is merely editorial. See the comments, and the discussion under "Editorial changes and clarification," § 112.8(c)(8). The same reasoning applies to this paragraph. We deleted the phrase "as far as is practical," because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), you may explain your reasons for nonconformance, and provide equivalent environmental protection by some other means. We deleted the recommendation to reference appropriate industry standards because it was unnecessary. You must discuss actual standards used in the Plan. Section 112.3(d)(1)(iii) also requires the Professional Engineer to certify that he has considered applicable industry standards in the preparation of the Plan. Also in the introductory paragraph, the phraso "Consideration shall be given to providing.* * *" becomes, "You must provide.* * *" This change makes the language consistent with a companion paragraph dealing with good engineering design, *i.e.*, § 112.8(c)(8). In paragraph (c)(4)(i), "regular rounds" becomes "regularly scheduled rounds." "Spills" becomes "discharges." In paragraph (c)(4)(iv), the phrase "where facilities are" becomes "where the facility is." Elsewhere "tank" becomes "container."

Section 112.9(d)(1)—Proposed as § 112.9(e)(1)—Inspection of Aboveground Valves and Piping

Background. In 1991, we proposed that you inspect monthly all aboveground valves and pipelines, and that you maintain records of such inspections for five years. The current requirement is that you examine such valves and pipelines "periodically on a scheduled basis," and maintain the records of such inspections for three years.

Comments. Editorial changes and clarifications. One commenter asked for clarifying language that the rule only applied to valves and piping associated with transfer operations.

Applicability. Two commenters asked for an exemption from the requirements of this paragraph for small facilities.

Frequency of inspections. Several commenters suggested alternate inspection intervals, such as every six months, or every year. Another commenter suggested that monthly inspections are meaningless because some unscrupulous operators might fill out inspection reports on dates when no problems are to be found. Other commenters suggested that we require a performance standard instead of a prescribed monthly inspection. One commenter suggested the proposed inspections standards for § 112.9(e) were excessive for many small facilities. The commenter suggested that a standard defined by the licensed Professional Engineer who certifies the SPCC Plan could reflect the differing requirements that may apply under different equipment configurations as well as differing geographical and meteorological conditions. The commenter added that a generalized performance standard should be included that includes a minimum inspection interval, such as annual inspection, which could be altered to meet specific facility conditions.

Recordkeeping. One commenter thought a five-year record retention period is excessive. Another commenter asked that we clarify that PE certification of these regular inspections and records is not required.

Response to comments. Applicability. The rule must apply equally to large and small facilities because failure to inspect piping and valves at any facility might lead to a discharge as described in § 112.1(b).

Frequency of inspections. We have retained the current inspection frequency of periodic inspections, but editorially changed it to "upon a regular schedule." Our decision accords with the comment which sought a performance standard instead of a

Sudden change in temperature. Another commenter asked for clarification of what "a sudden change in temperature" means. The commenter assumed that it meant a sudden drop that could cause system upsets.

Response to comments. Applicability. The rule applies to any regulated facility with salt water disposal if the potential exists to discharge oil in amounts that may be harmful, as defined in 40 CFR

The commenter suggested that a definition of the term would improve compliance.

Response to comments. Applicability. A program of flowline maintenance is necessary to prevent discharges both at large and small facilities. However, we have deleted the proposed recommendation regarding the specifics of the program from the rule. We took this action because we are not including

requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

Comments. One commenter asked for a definition of "onshore drilling and workover facilities."

Editorial changes and clarifications. The new definition for "production facility" in § 112.2 includes the procedures, methods, and equipment

requirements for secondary containment. We received no comments on the proposal. Therefore, we have promulgated it as proposed, with minor editorial changes.

Industry standards. Industry standards that may assist an owner or operator with secondary containment at onshore oil drilling and workover facilities include: (1) API Recommended Practice 52, "Land Drilling Practices for

Recommended Practice 16E, "Design of Control Systems for Drilling Well Control Equipment"; (2) API Recommended Practice 53, "Blowout Prevention Equipment Systems for Drilling Operations"; (3) API Specification 16A, "Drill Through Equipment"; and, (4) API Specification 16D, "Control Systems for Drilling Well Control Equipment."

Editorial changes and clarifications.

small facilities because failure to inspect piping and valves at any facility might lead to a discharge as described in § 112.1(b).

Frequency of inspections. We have retained the current inspection frequency of periodic inspections, but editorially changed it to "upon a regular schedule." Our decision accords with the comment which sought a performance standard instead of a prescribed monthly inspection. The standard of inspections "upon a regular schedule" means in accordance with industry standards or at a frequency sufficient to prevent discharges as described in § 112.1(b). Whatever frequency of inspections is selected must be documented in the Plan.

Recordkeeping. We agree that a five-year record retention period is longer than necessary and have deleted the proposed requirement in favor of the general requirement in § 112.7(e) to maintain records for three years. However, comparison records for compliance with certain industry standards may require an owner or operator to maintain records for longer than three years. PE certification of these inspections and records is not required.

Editorial changes and clarifications. "Examine" becomes "inspect." We agree with the commenter who asked for clarification that the rule applies only to inspections related to transfer operations and have amended the rule to reflect that. A transfer operation is one in which oil is moved from or into some form of transportation, storage, equipment, or other device, into or from some other or similar form of transportation, such as a pipeline, truck, tank car, or other storage, equipment, or device.

Section 112.9(d)(2)—Proposed as § 112.9(e)(2)—Salt Water Disposal Facilities

Background. In 1991, we reproposed without change the current requirements on the examination of salt water (oil field brine) disposal facilities. The current requirement is that you examine these facilities "often." However, we have recommended weekly examination as an appropriate engineering standard for most facilities. 56 FR 54624. We noted that low temperature conditions, sudden temperature changes, or periods of low flow rates may require more frequent inspections.

Comments. Applicability. One commenter suggested that the requirement to examine these facilities should not apply to storage facilities with de minimis amounts of oil.

Sudden change in temperature. Another commenter asked for clarification of what "a sudden change in temperature" means. The commenter assumed that it meant a sudden drop that could cause system upsets.

Response to comments. Applicability. The rule applies to any regulated facility with salt water disposal if the potential exists to discharge oil in amounts that may be harmful, as defined in 40 CFR 110.3. This standard is necessary to protect the environment.

Sudden change in temperature. A sudden change in temperature means any abrupt change in temperature, either up or down, which could cause system upsets.

Frequency of inspections. Inspections of these facilities must be conducted "often." "Often" means in accordance with industry standards, or more frequently, if as noted, conditions warrant. Whatever frequency of inspections is chosen must be documented in the Plan.

Editorial changes and clarifications. "Examine" becomes "inspect." "Oil discharge" becomes "discharge," because the term "oil" is redundant in the definition of "discharge."

Section 112.9(d)(3)—Proposed as § 112.9(e)(3)—Flowline Maintenance

Background. In 1991, we reproposed the current requirements for flowline maintenance. We proposed a recommendation, rather than a requirement, that the program include certain specifics, because of differences in the circumstances of locations, staffing, and design for production facilities. We suggested that monthly examinations are appropriate for most facilities.

Comments. Applicability. Two commenters asked for a small facility exemption for this recommendation.

Frequency of inspections. Several commenters suggested that the recommendation refer to periodic instead of monthly examinations. Others suggested annual or quarterly inspections. One commenter said that monthly inspection of gathering lines buried in the colder parts of the Appalachian basin is impossible.

Corrosion protection. Several commenters asserted that the provision for corrosion protection for the bare steel pipe used for gathering line systems in the Appalachians is impossible because the cost of coated lines and cathodic protection is prohibitive. None of the commenters provided their own cost estimates.

Transfer operation. One commenter asked for clarification of the term "oil production facility transfer operation." The commenter suggested that a definition of the term would improve compliance.

Response to comments. Applicability. A program of flowline maintenance is necessary to prevent discharges both at large and small facilities. However, we have deleted the proposed recommendation regarding the specifics of the program from the rule. We took this action because we are not including recommendations in the rule in order not to confuse the public over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

Frequency of inspections. In the proposed recommendation we suggested that you conduct monthly inspections for a flowline maintenance program. We now recommend that you conduct inspections either according to industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). Under § 112.3(d)(1)(iii), the Professional Engineer must certify that the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards.

Corrosion protection, flowline replacement. While we have deleted the recommendation from rule text due to reasons explained above and therefore, the rule imposes no new costs, we recommend corrosion protection, we recommend corrosion protection, and flowline replacement when necessary, because those measures help to prevent discharges as described in § 112.1(b).

Transfer operation. A transfer operation is one in which oil is moved from or into some form of transportation, storage, equipment, or other device, into or from some other or similar form of transportation, such as a pipeline, truck, tank car, or other storage, equipment, or device.

Editorial changes and clarifications. "Spills" becomes "discharges." The phrase "from this source" becomes "from each flowline."

Section 112.10—Introduction—Onshore Oil Drilling and Workover Facilities

Background. This paragraph is a new one, not proposed in 1991, but editorially added to allow us to rewrite the section in the active voice. Since the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

Section 112.10(a)—General and Specific Requirements

Background. This is a new paragraph that merely references the general requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

Comments. One commenter asked for a definition of "onshore drilling and workover facilities."

Editorial changes and clarifications. The new definition for "production facility" in § 112.2 includes the procedures, methods, and equipment referenced in this section, making a definition of "onshore drilling and workover facilities" unnecessary. "Spill prevention" becomes "discharge prevention." To "address" requirements becomes to "meet" requirements.

Section 112.10(b)—Mobile Facilities

Background. In 1991, we reproposed the current rule on the location of mobile facilities without substantive change.

Comments. Editorial changes and clarifications. One commenter asked that the requirement be limited to discharges to navigable waters.

Site location. One commenter opposed the requirement on the location of mobile facilities because the facility contractor has absolutely no control over the location of the rig unit. The commenter added that the contractor is instructed by the site owner/operator where to place the rig unit generally, and the sites are where oil and gas are expected to be located. The physical location of the well site is constructed by and maintained by the owner/operator of the lease. The contractor has no input as to site design nor responsibility for its maintenance.

Response to comments. Site location. We agree with the commenter that the contractor is not normally responsible for site location, nor site design or maintenance. Such decisions are the responsibility of the facility owner or operator. The owner or operator of the facility has the responsibility to locate equipment so as to prevent discharges as described in § 112.1(b).

Editorial changes and clarifications. The applicable limitation on discharges in the rule tracks the statute. The commenters requested that discharges be limited to discharges to "navigable waters." However, the correct scope of discharge prevention is not merely navigable waters, but the entire range of protected resources described in § 112.1(b). We therefore use the phrase "a discharge as described in § 112.1(b)."

Section 112.10(c)—Secondary Containment—Catchment Basins or Diversion Structures

Background. In 1991, we reproposed without substantive change the current requirements for secondary containment. We received no comments on the proposal. Therefore, we have promulgated it as proposed, with minor editorial changes.

Industry standards. Industry standards that may assist an owner or operator with secondary containment at onshore oil drilling and workover facilities include: (1) API Recommended Practice 52, "Land Drilling Practices for Protection of the Environment"; (2) NFPA 30, "Flammable and Combustible Liquids Code"; and, (3) BOCA, "National Fire Prevention Code."

Editorial changes and clarifications. "Spills" becomes "discharges." The words "depending on the location" were deleted because they were confusing when compared with the text of § 112.7(d). If a catchment basin or diversion structure or other form of secondary containment is not practicable from the standpoint of good engineering practice, under § 112.7(d) you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

Section 112.10(d)—Blowout Prevention (BOP)

Background. In 1991, we proposed that blowout prevention (BOP) assembly would only be required "when necessary." The rationale was that a BOP assembly is not necessary where pressure is not great enough to cause a blowout (gauge negative) and is not required in all cases. We noted that the necessity of BOP assembly hinges on the "history of the pressures encountered when drilling on the oil reservoir." When that history is unknown, BOP assembly is required.

Comments. Several commenters urged modification of the rule to exclude well service jobs that may not need BOP assembly, such as the installation of a rod pumping unit, or the batch treatment of a well with corrosion inhibitor.

Response to comments. Service jobs. Where BOP assembly is not necessary, as for certain routine service jobs, such as the installation of a rod pumping unit, or the batch treatment of a well with corrosion inhibitor, you may deviate from the requirement under § 112.7(a)(2), and explain its absence in the Plan. When BOP assembly is unnecessary because pressures are not great enough to cause a blowout, it is likewise unnecessary to provide equivalent environmental protection.

Industry standards. Industry standards that may assist an owner or operator with blowout prevention assembly include: (1) API Recommended Practice 16E, "Design of Control Systems for Drilling Well Control Equipment"; (2) API Recommended Practice 53, "Blowout Prevention Equipment Systems for Drilling Operations"; (3) API Specification 16A, "Drill Through Equipment"; and, (4) API Specification 16D, "Control Systems for Drilling Well Control Equipment."

Editorial changes and clarifications. We deleted the phrase "as necessary" from the requirement, because it is confusing when compared to the text of § 112.7(a)(2). When BOP assembly is unnecessary and therefore no alternate measure is required, you may deviate from the requirement under § 112.7(a)(2) if you explain your reasons for nonconformance. We have deleted as surplus the last sentence of the rule requiring that casing and BOP installations must be in accordance with State regulatory requirements. Adherence to State regulatory requirements is mandatory under State law in any case. The phrase "is expected to be encountered" becomes "may be encountered."

Section 112.11—Introduction—Offshore Oil Drilling, Production, or Workover Facilities

Background. We added an introduction as an editorial device to allow us to rewrite the section in the active voice. Because the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

Section 112.11(a)—General and Specific Requirements—Offshore Oil Drilling, Production, or Workover Facilities

Background. This is a new paragraph that merely references the general requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

Comments. State rules. One commenter thought § 112.11 should be deleted because current State rules provide adequate spill protection in inland water areas such as lakes, rivers, and wetlands.

Response to comments. State rules. We disagree with the commenter that these rules are unnecessary because not every State has rules to protect offshore drilling, production, and workover facilities. While some States may have rules, some State rules may not be as stringent as the Federal rules. In any case, Congress has intended us to establish a nationwide Federal program to protect the environment from the

dangers of discharges as described in § 112.1(b) posed by this class of facilities. Therefore, we have retained the section, as modified. We note, however, that if you have a State SPCC plan or other regulatory document acceptable to the Regional Administrator that meets all Federal SPCC requirements, you may use it as an SPCC Plan if you cross reference the State or other requirements to the Federal requirement. If it meets only some, but not all Federal SPCC requirements, you must supplement it so that it meets all of the SPCC requirements.

Editorial changes and clarifications. "Spill prevention" becomes "discharge prevention." The obligation to "address" requirements and procedures becomes the obligation to "meet" them.

Proposed Section 112.11(b)—Definition Reference; MMS Jurisdiction

Background. The proposed 1991 section referenced the definition of "offshore oil drilling, production, and workover facility," which is now encompassed within the definition of "production facility" in § 112.2. A new sentence would have referenced the exemption of facilities subject to Minerals Management Service (MMS) Operating Orders, notices, and regulations from the SPCC rule. MMS jurisdiction is outlined in Appendix B to part 112.

Comments. One commenter suggested that we delete the reference to the proposed definition and to the applicability section.

Response to comments. We agree. Since none of the proposed language is mandatory, we have deleted it because we have included only mandates in this rule so as not to confuse the regulated public over what is required and what is discretionary.

Section 112.11(b)—Proposed as § 112.11(c)—Facility Drainage

Background. In 1991, we reproposed the current section on facility drainage with the modification to require removal of collected material at least once a year. The rationale was to prevent a buildup of accumulated oils. We noted that a protracted removal period could lead to an accidental excess buildup and resultant overflow.

Comments. Two commenters recommended deletion of the proposed requirement to remove collected oil as often as necessary, but at least once a year, because the current requirement is sufficient.

Response to comments. Removal of collected oil. EPA agrees with the commenter's suggestion that the current rule is sufficient to prevent discharges as described in § 112.1(b), and therefore we have deleted the "at least once a year" standard. You must remove collected oil as often as is necessary to prevent such discharges.

Editorial changes and clarifications. "Discharging oil as described in § 112.1(b)(1)" becomes "having a discharge as described in § 112.1(b)." In the second sentence, we deleted the phrase "or equivalent collection system sufficient," because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance, and provide equivalent environmental protection.

Section 112.11(c)—Proposed as § 112.11(d)—Sump Systems

Background. In 1991, we proposed to clarify language in current rule that a regularly scheduled maintenance program is a monthly preventive maintenance program.

Comments. Frequency of inspections. One commenter recommended that a semi-annual inspection and testing program of the liquid removal system, instead of monthly inspection and testing would be preferable.

Response to comments. Frequency of inspections. We have retained the current rule language requiring a "regularly scheduled" preventive maintenance program because we believe that the frequency of maintenance should be in accordance with industry standards or frequently enough to prevent a discharge as described in § 112.1(b). Whatever schedule is chosen must be documented in the Plan.

Editorial changes and clarifications. We deleted the phrase "or equivalent method" from the first sentence because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(d)—Proposed as § 112.11(e)—Discharge Prevention Systems for Separators and Treaters

Background. In 1991, we reproposed without substantive change the current rule on discharge prevention systems for separators and treaters. We received no comments.

Editorial changes and clarifications. "Escape" of oil becomes "discharge" of oil. "Oil discharges" becomes "discharge of oil." We deleted the phrase from the last sentence which allows "using other feasible alternatives to prevent oil discharges," because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(e)—Proposed as § 112.11(f)—Atmospheric Storage or Surge Containers; Alarms

Background. In 1991, we reproposed without substantive change the current paragraph on alarm systems for atmospheric storage or surge containers. We received no comments. Therefore, we have promulgated the rule as proposed, with only minor editorial changes.

Editorial changes and clarifications. "Oil discharges" becomes "discharges." We added the words "that activate an alarm or control the flow" to clarify that these activities, along with "otherwise" controlling discharges, are the purpose of the sensing devices we reference in the paragraph. The phrase "to activate" becomes "that activate," and we add the word "otherwise" before "prevent discharges." We deleted the phrase "or other acceptable alternatives," because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(f)—Proposed as § 112.11(g)—Pressure Containers; Alarm Systems

Background. In 1991, we reproposed the current rule concerning pressure tanks without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. "Tanks" becomes "containers." "Oil discharges" becomes "discharges." We deleted the phrase "or with other acceptable alternatives to prevent discharges," because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(g)—Proposed as § 112.11(h)—Corrosion Protection

Background. In 1991, we reproposed the current paragraph requiring corrosion protection for containers at facilities subject to this section. We added a recommendation that you follow National Association of Corrosion Engineers standards for corrosion protection.

Comments. Industry standards. One commenter suggested that we remove the last sentence, which is advisory, and addresses industry standards of the National Association of Corrosion Engineers, or make it a requirement (at least for new construction). Another commenter suggested that the rule be modified to incorporate other industry recommended practices relative to corrosion control, such as those of STI and API. The commenter specifically recommended STI Recommended Practice R892–89, "Recommended Practice for Corrosion Protection of Underground Steel Piping Associated with Underground Storage and Dispensing Systems," and STI Recommended Practice 893–89, "Recommended Practice for External Corrosion of Shop Fabricated Aboveground Steel Storage Tank Floors."

Response to comments. Industry standards. In response to the comment, we have deleted the recommendation because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. These rules contain only mandatory requirements. We expect that facilities will follow industry standards for corrosion protection as well as other matters (*see* § 112.3(d)(iii)), but decline to prescribe particular standards in the rule text because those standards are subject to change, and we will not incorporate a potentially obsolescent standard into the rules.

Industry standards. Industry standards suggested by a commenter that may assist an owner or operator with corrosion include: (1) National Association of Corrosion Engineer standards; (2) STI Recommended Practice for Corrosion Protection of Underground Steel Piping Associated with Underground Storage and Dispensing Systems," and, (3) STI Recommended Practice 893, "Recommended Practice for External Corrosion of Shop Fabricated Aboveground Steel Storage Tank Floors."

Editorial changes and clarifications. "Tanks" becomes "containers."

Section 112.11(h)—Proposed as § 112.11(i)—Pollution Prevention System Procedures

Background. In 1991, we reproposed without substantive change the current requirements concerning written procedures for inspecting and testing pollution prevention equipment and systems. We received no substantive comments. Therefore, we have promulgated the rule as proposed with minor editorial changes.

Editorial changes and clarifications. "As part of the SPCC Plan" becomes "within the Plan."

Section 112.11(i)—Proposed as § 112.11(j)—Pollution Prevention Systems; Testing and Inspection

Background. In 1991, we reproposed the current rule on testing and inspection of pollution prevention systems. Additionally, we proposed that simulated spill testing must be the preferred method to test and inspect oil spill prevention equipment and systems. We also proposed that pollution prevention systems must be tested at least monthly. The current standard calls for testing and inspection "on a scheduled periodic basis."

Comments. Some commenters suggested that simulation testing on a monthly basis is excessive. Commenters suggested instead testing on a semi-annual or annual basis.

Response to comments. Frequency of testing. We have retained the current requirement for testing on a "scheduled periodic basis" commensurate with conditions at the facility because we believe that testing should follow industry standards or be conducted at a frequency sufficient enough to prevent a discharge as described in § 112.1(b) rather than any prescribed time frame. Whatever frequency is chosen must be documented in the Plan.

Editorial changes and clarifications. In the first sentence, "or other appropriate regulations" becomes "and any other appropriate regulations." In the second sentence, "spill testing" becomes "simulated discharges for testing." We have deleted from the last sentence the phrase "unless the owner or operator demonstrates that another method provides equivalent alternative protection" because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(j)—Proposed as § 112.11(k)—Surface and Subsurface Well Shut-in Valves and Devices

Background. In 1991, we reproposed the current section concerning surface and subsurface well shut-in valves and devices. We proposed an additional requirement that records for each well must be kept for five years. We received no substantive comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. In today's rule, we kept the recordkeeping requirement, but deleted language requiring maintenance of those records for five years. The effect of the deletion is that records become subject to the general three-year recordkeeping requirement. *See* § 112.7(e). You may keep the records as part of the Plan or may keep them with the Plan.

Section 112.11(k)—Proposed as § 112.11(l)—Blowout Prevention

Background. In 1991, we reproposed the current rule concerning blowout prevention without substantive change.

Comments. One commenter suggested that there are occasions when blowout prevention is not warranted or impractical to implement and that there should be an exception for drilling below conductor casing.

Response to comments. Alternatives. The question of whether blowout prevention is warranted or impractical or not for drilling below conductor casing is one of good engineering practice. Acceptable alternatives may be permissible under the rule permitting deviations (§ 112.7(a)(2)) when the owner or operator states the reasons for nonconformance and provides equivalent environmental protection.

Industry standards. Industry standards that may assist an owner or operator with offshore blowout prevention assembly and well control systems include: (1) API Recommended Practice 16E, "Design of Control Systems for Drilling Well Control Equipment"; (2) API Recommended Practice 53, "Blowout Prevention Equipment Systems for Drilling Operations"; (3) API Specification 16A, "Drill Through Equipment"; (4) API Specification 16C, "Choke and Kill Systems"; and, (5) API Specification 16D, "Control Systems for Drilling Well Control Equipment."

Editorial changes and clarifications. "BOP preventor assembly" becomes "BOP assembly." We deleted the last sentence of the paragraph referring to adherence to State rules because we are not incorporating State rules into the SPCC rule and adherence to State rules is required under State law whether we state it or not. The phrase "expected to be encountered" becomes "may be encountered."

Proposed § 112.11(m)—Extraordinary Well Control Measures

Background. In 1991, we proposed to change the current requirements on extraordinary well control measures for emergency conditions to recommendations. The rationale was

that we would review these measures in the context of response planning.

Comments. One commenter suggested that the paragraph should be deleted because it is advisory, or made a requirement.

Response to comments. In response to comment, we have deleted the text of the recommendations from the rules because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. These rules contain only mandatory requirements.

Editorial changes and clarifications. We have rewritten the rule in the active voice. We also deleted the proposed recommendation because this rule contains only mandatory items, and because the recommendation is redundant. Whatever manner of protection is chosen to protect sub-

promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. We have rewritten the rule in the active voice. We also deleted the proposed recommendation because this rule contains only mandatory items, and because the recommendation is redundant. Whatever manner of protection is chosen to protect sub-

to the recommendation, and subsequent sentences.

Response to comments. We have decided to delete the proposed recommendation because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

Subparts C and D

17227, April 8, 1999. After considering these comments, if there is adequate justification for differentiation, we will propose a rule.

Proposed § 112.20(f)(4)—Capacity of Facilities Storing Process Water/ Wastewater for Response Plan Purposes

Background. In 1997, we proposed to add a new paragraph to § 112.20(f) to provide a method for facility response

Administrator already has the authority to accept differing formats for response plans, and the existing facility response plan requirements already provide for cross-referencing. *See* § 112.20(h). Therefore, new rule language was unnecessary, and the proposal tracked current language. Today, we have made only a minor editorial change in rule language.

Comments. Acceptable formats. Most

Appendix C—Substantial Harm Criteria

Background. In 1997, we proposed changes to Appendix C which would track proposed amendments to § 112.20(f)(4) regarding calculating the oil storage capacity of aboveground storage containers storing a mixture of process water/wastewater within 10% or less of oil. Because we have withdrawn the proposed changes to

that we would review these measures in the context of response planning.

Comments. One commenter suggested that the paragraph should be deleted because it is advisory, or made a requirement.

Response to comments. In response to comment, we have deleted the text of the recommendations from the rules because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. However, we endorse its substance. This rule contains only mandatory requirements.

Section 112.11(l)—Proposed as § 112.11(n)—Manifolds

Background. In 1991, we reproposed the current requirements concerning manifolds without substantive change. We received no comments on the proposal. Therefore, we have promulgated the rule as proposed.

Section 112.11(m)—Proposed as § 112.11(o)—Flowlines, Pressure Sensing Devices

Background. In 1991, we reproposed the current requirements concerning pressure sensing devices and shut-in valves for flowlines without substantive change. We received no comments on the proposal. Therefore, we have promulgated the rule as proposed.

Section 112.11(n)—Proposed as § 112.11(p)—Piping; Corrosion Protection

Background. In 1991, we reproposed the current requirements concerning corrosion protection for piping appurtenant to the facility without substantive change. We also proposed to change into a recommendation the current requirement that the method used, such as protective coatings or cathodic protection, be discussed.

Comments. One commenter suggested that we remove the second sentence, which is advisory.

Response to comments. In response to comment, we have deleted the recommendation to discuss the method of corrosion protection, because it is surplus. In your SPCC Plan, you must discuss the method of corrosion protection you use. See 112.7(a)(1).

Section 112.11(o)—Proposed as § 112.11(q)—Sub-Marine Piping; Environmental Stresses

Background. In 1991, we reproposed the current requirements concerning environmental stress against sub-marine piping appurtenant to facilities without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. We have rewritten the rule in the active voice. We also deleted the proposed recommendation because this rule contains only mandatory items, and because the recommendation is redundant. Whatever manner of protection is chosen to protect sub-marine piping must be discussed in the Plan.

Section 112.11(p)—Proposed as § 112.11(r)—Inspections of Sub-Marine Piping

Background. In 1991, we reproposed the current requirements concerning the inspection of sub-marine piping appurtenant to facilities without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. The proposal to require maintenance of records for five years was deleted because under § 112.7(e) of today's rule, all records must be kept for three years. We clarify that you must inspect or test the piping. Because visual inspection of sub-marine piping may not always be possible, we allow testing as an alternative. We encourage inspection or testing pursuant to industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). Whatever inspection schedule you select must be documented in the Plan.

Proposed § 112.11(s)—Written Instructions for Contractors

Background. In 1991, we proposed to change into a recommendation the current requirement that you prepare written instructions for contractors and subcontractors whenever contract activities involve servicing a well, or systems appurtenant to a well or pressure vessel. The current rule requires that you keep the instructions at the facility. We note in the proposed rule that under certain circumstances, you may require the presence of your representative at the facility to intervene when necessary to prevent a discharge as described in § 112.1(b).

Comments. One commenter wrote that the proposal creates two serious problems. First, that since the contractor is hired to perform special services, he is able to do his work more safely if he is allowed to direct his own activities. Second, operators might expose themselves to various types of liability by virtue of the degree of control exercised over contractors. A second commenter suggested editorial revisions to the recommendation, and subsequent sentences.

Response to comments. We have decided to delete the proposed recommendation because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

Subparts C and D

Background. In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute mandates that most Federal agencies differentiate between and establish separate classes for various types of oils, specifically: animal fats and oils and greases, fish and marine mammal oils; oils of vegetable origin; and, other oils and greases, including petroleum and other non-petroleum oils. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

In 1991, EPA proposed to reorganize the SPCC rule based on facility type. The rationale for that reorganization is to clarify SPCC Plan requirements for different types of facilities. While we have reorganized the rule to provide requirements for different types of facilities, we also provide requirements for different types of oil in this rulemaking. To make this change, we have divided the rule into subparts. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of oils. Subpart B is for petroleum oils and non-petroleum oils, except for animal fats and vegetable oils. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subparts B and C are divided into sections to reflect the differing types of facilities for each type of oil. Subpart D is for response requirements.

Therefore, as noted above, we have divided the requirements of the rule by subparts for the various classes of oils listed in EORRA. Because at the present time EPA has not proposed differentiated requirements for public notice and comment, the requirements for facilities storing or using all classes of oil will remain the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate requirements for facilities storing or using the various classes of oil. 64 FR 17227, April 8, 1999. After considering these comments, if there is adequate justification for differentiation, we will propose a rule.

Proposed § 112.20(f)(4)—Capacity of Facilities Storing Process Water/ Wastewater for Response Plan Purposes

Background. In 1997, we proposed to add a new paragraph to § 112.20(f) to provide a method for facility response plan purposes to calculate the oil storage capacity of storage containers storing a mixture of process water/ wastewater with 10% or less of oil. This proposal for certain systems that treat process water/wastewater would be applicable at certain facilities required to prepare a facility response plan. It would have no effect on facilities required to prepare response plans because they transfer oil over water and have a total oil storage capacity greater than or equal to 42,000 gallons. Likewise, the proposal would have no effect on the method of calculating capacity for purposes of SPCC Plans. Under the proposal, we would not count the entire capacity of process water/ wastewater containers with 10% or less of oil in the capacity calculation to determine whether a facility must prepare a facility response plan. We only would count the oil portion of that process water/wastewater contained in § 112.20(f)(2), and therefore response planning is not necessary.

Today, we are withdrawing the proposal because it is no longer necessary. It is unnecessary because we have exempted from part 112 any facility or part thereof (except at oil production, oil recovery, and oil recycling facilities) used exclusively for wastewater treatment and not to satisfy any requirement of part 112. See the discussion under § 112.1(d)(6). The exemption in § 112.1(d)(6) applies to the types of facilities treating wastewater that would have been allowed to calculate a reduced storage capacity if the percentage of oil in the mixture were 10 percent or less.

Section 112.20(h)—Facility Response Plan Format

Background. In 1997, we proposed to amend the requirements for formatting of a facility response plan to clarify that an Integrated Contingency Plan (ICP) or other plan format acceptable to the Regional Administrator is allowable to serve as a facility response plan if it meets all facility response plan requirements. Our intent was to track language in the SPCC rule allowing the Regional Administrator similar authority to accept differing formats for SPCC Plans. However, the Regional Administrator already has the authority to accept differing formats for response plans, and the existing facility response plan requirements already provide for cross-referencing. *See* § 112.20(h). Therefore, new rule language was unnecessary, and the proposal tracked current language. Today, we have made only a minor editorial change in rule language.

Comments. Acceptable formats. Most commenters favored the proposal. One commenter suggested that the rule should specifically mention the ICP. Another requested that State FRP equivalents be accepted. Several commenters criticized the proposal; one calling the ICP concept "over-rated." One commenter thought that the rule makes the ICP mandatory. Another commenter noted that the proposed rule is identical to the current rule.

Partially acceptable formats. One commenter asked if an operator would have to integrate all parts of an ICP with a response plan or if he would have the option to integrate parts of the ICP with the SPCC Plan.

PE certification. One commenter asked how an ICP would work, i.e., whether the PE would be certifying the SPCC portion, the FRP portion, or both.

Response to comments. Acceptable formats. It is not necessary for the rule to mention the ICP or any other format specifically because the rule already allows the Regional Administrator flexibility to accept any format that meets all Federal requirements. *See* § 112.20(h). You may use the ICP, a State response plan, or other format acceptable to the Regional Administrator, at your option. We do not require use of any alternative format, but merely give you the option to do so.

The commenter is correct that the proposed rule is identical to the current rule. The current rule allows the submission of an "equivalent response plan that has been prepared to meet State or other Federal requirements."

Partially acceptable formats. You have the option to integrate any or all parts of an ICP with your response plan. This gives you flexibility in formatting. Similar to SPCC Plans, the Regional Administrator may accept partial use of alternative formats.

PE certification. PE certification is only required for the SPCC portion of any ICP.

Editorial changes and clarifications. We added the words "acceptable to the Regional Administrator" in the first sentence after the words "response plan."

Appendix C—Substantial Harm Criteria

Background. In 1997, we proposed changes to Appendix C which would track proposed amendments to § 112.20(f)(4) regarding calculating the oil storage capacity of aboveground storage containers storing a mixture of process water/wastewater within 10% or less of oil. Because we have withdrawn the proposed changes to § 112.20(f)(4), the proposed changes to Appendix C are also unnecessary. Therefore, we have withdrawn the proposed changes to Appendix C, and it remains unchanged.

Appendix C—Section 2.1—Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfer of Oil

Background. We have corrected the text of the first sentence in the section to correspond with the title, so that it reads "A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. We added the words "or equal to" to track rule language found at § 112.20(f)(1)(i).

Appendix C—Section 2.4—Proximity to Public Drinking Water Intakes at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons

Background. We have revised the title of this section by reversing the order of the words "Storage" and "Oil" in the heading. We have also added the word "oil" to the first sentence so that it reads, "A facility with a total oil storage capacity greater than * * *."

Appendix D—Part A—Section A.2 (Footnote 2)

Background. We have revised footnote 2 to section A.2 of Part A, Appendix D, to reflect the new citation to the SPCC rule's secondary containment requirements.

Appendix F—Section 1.2.7—NAICS Codes

Background. We have revised section 1.2.7 to delete the reference to Standard Industry Classification (SIC) codes, and replace it with a reference to North American Industry Classification System (NAICS) codes. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the SIC codes.

Appendix F—Section 1.4.3 Analysis of the Potential for an Oil Discharge

Background. We have revised the second and last sentences of this section by replacing the word "spill" with "discharge."

Appendix F—Section 1.7.3 (7)—Containment and Drainage Planning

Background. We have revised

must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the

million during the second year, and $74.51 million during subsequent years.

B. Executive Order 12898—Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

Consultation) as of that date. EPA developed this final rule, however, under the period when EO 13084 was in effect; thus, EPA addressed tribal considerations under EO 13084.

Today's rule does not significantly or uniquely affect communities of Indian tribal governments. Overall, the rule significantly reduces the regulatory burden, and the few burden increases in the rule do not uniquely affect Indian

supply, distribution, or use of energy. The overall effect of the rule is to decrease the regulatory burden on facility owners or operators subject to its provisions.

G. Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The R.F.A. generally requires an

facilities are small facilities, and of those, nearly 27,700 are small farms. This rulemaking will increase information collection burden for most facilities in the first year by approximately 0.75 million hours due principally to the estimated burden each facility will incur to read and understand the changes that we are making to the rule. However, the rule will also reduce the overall annual

Appendix F—Section 1.4.3 Analysis of the Potential for an Oil Discharge

Background. We have revised the second and last sentences of this section by replacing the word "spill" with "discharge."

Appendix F—Section 1.7.3 (7)—Containment and Drainage Planning

Background. We have revised paragraph (7) of section 1.7.3 of Appendix F to use the new citation to the SPCC rule's inspection and monitoring requirements for drainage.

Appendix F—Section 1.8.1 Facility Self-Inspection

Background. We have revised section 1.8.1 of Appendix F to use the new citation to the SPCC rule's recordkeeping requirements. The revision also reflects the three-year record maintenance periods for SPCC records and keeps the current five-year period for FRP records.

Editorial changes and clarifications. "Tanks" becomes "each container."

Appendix F—Section 1.8.1.1—Tank Inspection

Background. We have revised section 1.8.1.1 of Appendix F to use the new citation to the SPCC rule's tank inspection requirements.

Appendix F—Section 1.8.1.3 Secondary Containment Inspection

Background. We have revised section 1.8.1.1.4 of Appendix F to use the new citation to the SPCC rule's secondary containment inspection requirements.

Appendix F—Section 1.10 Security

Background. We have revised section 1.10 of Appendix F to use the new citation to the SPCC rule's security requirements.

Appendix F—Section 2.1(6) General Information

Background. We have revised paragraph 2.1(6) to refer to NAICS codes in place of SIC codes.

Appendix F—Section 3.0 Acronyms

Background. We have deleted the acronym for SIC and substituted the acronym for NAICS.

Appendix F-Attachment F–1 Response Plan Cover Sheet

Background. We have deleted the reference to SIC and substituted a reference to NAICS.

VI. Summary of Supporting Analyses

A. Executive Order 12866—OMB Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues. Such issues include proposed measures which would relieve facilities of regulatory mandates and could change the manner in which facilities comply with remaining mandates. Therefore, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The reduction in size of the regulated community due to final rule revisions will lead to a capital cost savings of approximately $29.47 million per year. During the first year, regulated facilities will experience an increase in total paperwork cost burden of $21.93 million due primarily to the need to read the rule. In addition, certain facilities will recalculate their storage capacity to exclude applicable wastewater treatment systems and, therefore, must amend and certify their plans if the storage capacity threshold is still met. In certain cases, however, the wastewater treatment system provision in section 112.1(b)(6) will result in a facility no longer being subject to the any Part 112 requirements. However, during the second year, total paperwork cost burden will decrease by about $60.21 million and beginning in the third year following the rulemaking, the total paperwork cost burden to all regulated facilities will decrease by about $45.03 million. The result is an aggregate cost savings of about $7.56 million during the first year, $89.69 million during the second year, and $74.51 million during subsequent years.

B. Executive Order 12898—Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. EPA has determined that the regulatory changes in this rule will not have a disproportionate impact on minorities and low-income populations.

C. Executive Order 13045—Children's Health

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency has no data that indicate that the types of risks resulting from oil discharges have a disproportionate effect on children, and does not have reason to believe that they do so.

D. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, under the period when EO 13084 was in effect; thus, EPA addressed tribal considerations under EO 13084.

Today's rule does not significantly or uniquely affect communities of Indian tribal governments. Overall, the rule significantly reduces the regulatory burden, and the few burden increases in the rule do not uniquely affect Indian tribal governments.

Nevertheless, we consulted with a representative organization of tribal groups, the Tribal Association on Solid Waste and Emergency Response. That organization did not provide us with any comments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. In proposing modifications to the SPCC rule, EPA encouraged States to supplement the federal SPCC program and recognized that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This rule does not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13211—Energy Effects

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall effect of the rule is to decrease the regulatory burden on facility owners or operators subject to its provisions.

Today's rule does not significantly or uniquely affect communities of Indian tribal governments. Overall, the rule significantly reduces the regulatory burden, and the few burden increases in the rule do not uniquely affect Indian tribal governments.

Nevertheless, we consulted with a representative organization of tribal groups, the Tribal Association on Solid Waste and Emergency Response. That organization did not provide us with any comments.

G. Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The R.F.A. generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will significantly reduce regulatory burden on all facilities, particularly small facilities. For example, the rule exempts approximately 55,000 facilities from its scope. Approximately 41,300 of those facilities are small facilities, and of those, nearly 27,700 are small farms. This rulemaking will increase information collection burden for most facilities in the first year by approximately 0.75 million hours due principally to the estimated burden each facility will incur to read and understand the changes that we are making to the rule. However, the rule will also reduce the overall annual information collection burden by nearly 1.59 million hours a year in the second year and over 1.18 million hours a year in the third year of the information collection request, much of that for the small facilities that make up the large majority of our regulated universe. Further, the rule will reduce costs for both existing and new facilities.

Information collection and other provisions in the final rule that affect capital costs are expected to yield cost savings of about $7.56 million during the first year, $89.69 million during the second year and $74.51 million during subsequent years. The rule also gives all facilities greater flexibility in recordkeeping and other paperwork requirements. Finally, § 112.7(a)(2) of the rule gives small businesses and all other facilities the flexibility to use alternative methods to comply with the requirements of the rule if the facility explains its rationale for nonconformance and provides equivalent environmental protection. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative

that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

the SPCC information collection portion of the rule average $740,000 and net annualized labor and operation and maintenance costs are estimated to be $93.00 million for all of these facilities combined.

The information collection burden of the SPCC rule prior to this rulemaking averaged 2,828,150 hours per year. Under this final rule, the annual average burden over the next three-year ICR

that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Overall, the rule reduces burden and costs on all facilities. After the first and second year, the rule is expected to reduce the information collection burden by over 1.3 million hours annually.

Approximately 55,000 facilities will no longer be subject to the SPCC rule. Of these facilities, EPA estimates that approximately 3,500 existing facilities will no longer be required to maintain SPCC plans, due to the exemption for certain wastewater treatment systems. Other revisions are expected to exempt approximately 51,400 additional facilities 39,623 small facilities (including 27,700 small farms). The exemption for completely buried containers will result in approximately 14,000 facilities no longer subject to the rule, and 37,000 more facilities with some partial information collection reduction. Further, EPA estimates Information collection and capital costs are expected to decrease by over $74.25 million a year in the third year of the SPCC information collection request. In addition to these SPCC-related impacts, this rulemaking is estimated to result in cost savings for as many as 35 facilities that are expected to no longer require facility response plans due to the wastewater treatment system exemption. The result of the changes to the scope of the FRP information collection requirements is a cost savings of approximately $0.23 million per year. The rule also gives all facilities greater flexibility in recordkeeping and other paperwork requirements. Finally, § 112.7(a)(2) of the rule gives small businesses and all other facilities the flexibility to use alternate methods to comply with the requirements of the rule if the facility explains its rationale for nonconformance and describes its method of equivalent environmental protection. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In developing this rule, EPA nevertheless consulted with representative organizations of State, local, and tribal governments. The representative organizations were the Environmental Council of the States, the National Association of Counties, and the Tribal Association on Solid Waste and Emergency Response. None of those organizations provided us with any comments. However, numerous States and local governments did comment on the rule proposals in all three proposed rulemakings. Those commenters submitted a wide variety of comments. EPA responses to those comments may be found in this document and in the Comment Response Documents.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the overall effect of the rule will be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

I. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number *2050–0021*.

EPA does not collect the information required by SPCC regulation on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC Plan data to ensure that facilities comply with the regulation. This includes design and operation specifications, and inspection requirements. EPA reviews SPCC Plans: (1) when it requests a facility to submit a Plan after certain oil discharges or to evaluate an extension request; and, (2) as part of EPA's inspection program. Note that the final rule eliminates the previous requirement to submit the entire Plan after certain discharges, and merely retains the requirement that it be maintained at the facility unless EPA requests a copy. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Act as implemented by 40 CFR part 112.

In the absence of this final rulemaking, EPA estimates that 469,274 facilities would have been subject to the rule in the first year and would have already prepared SPCC Plans. In addition, EPA estimates that approximately 4,700 new facilities would have become subject to the requirements of the rule annually. EPA also estimates that, in the absence of this rulemaking, the average annual public reporting and recordkeeping burden for this collection of information for existing and newly regulated facilities would have ranged between 4.9 to 13.8 hours and 39.4 to 100.4 hours, respectively, depending on facility characteristics (*e.g.*, storage capacity).

Through this rulemaking, we expect to reduce both the number of regulated facilities, as well as the average annual burden for facilities that remain regulated. The number of regulated facilities will be reduced by approximately 55,000. The average annual public reporting for facilities already regulated by the Oil Pollution Prevention regulation is estimated to range between 8.6 and 12.2 hours, while the burden for newly regulated facilities is estimated to range between 35.1 and 65.2 hours as a result of this rulemaking. These average annual burden estimates take into account the varied frequencies of response for individual facilities according to characteristics specific to those facilities, including the frequency of oil discharges and facility modification, but exclude the anticipated burden facilities may incur in the first year to read and understand the changes we are making to the rule.

Under the final rule, an estimated 419,033 existing and newly regulated facilities will be subject to the SPCC information collection requirements of this rule during the first year of the information collection period. The net annualized capital and start-up costs for the SPCC information collection portion of the rule average $740,000 and net annualized labor and operation and maintenance costs are estimated to be $93.00 million for all of these facilities combined.

The information collection burden of the SPCC rule prior to this rulemaking averaged 2,828,150 hours per year. Under this final rule, the annual average burden over the next three-year ICR period is estimated to be 2,208,701 hours, resulting in a 22 percent average reduction. This rulemaking will increase burden for most facilities in the first year (totaling approximately 3.6 million hours) due principally to the estimated burden each facility will incur to read and understand the changes that we are making to the rule. The first-year burden also includes the additional need for certain facilities to amend and certify their SPCC plans to exclude wastewater treatment volumes from their oil storage capacity. Second year burden is expected to total approximately 1.3 million hours. In subsequent years, we estimate that the overall burden will be approximately 1.7 million hours annually, representing a nearly 40 percent reduction versus the average annual burden from the previous information collection period. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

In addition to reducing the information collection burden of SPCC facilities, this final rule also affects the number of facilities that require an FRP. The FRP rule (40 CFR 112.20–21) requires that owners or operators of facilities that could cause "substantial harm" to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to a substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. All facilities subject to this requirement must submit their plans to EPA. In turn, we review and approve plans submitted by facilities identified as "significant and substantial harm" to the environment from oil discharges. Other facilities are not required to prepare FRPs but are required to document their determination that they do not meet the "substantial harm" criteria.

Prior to this rulemaking, EPA estimated that it requires between 99 and 132 hours for facility personnel in a large facility (*i.e.*, total storage capacity greater than 1 million gallons) and between 26 and 46 hours for personnel in a medium facility (*i.e.*, total storage capacity greater than 42,000 gallons and less than or equal to 1 million gallons) to comply with the annual, subsequent-year reporting and recordkeeping requirements of the FRP rule. We have also estimated that prior to this rulemaking newly regulated large and medium facilities will require between 253 and 293 hours and 109 and 142 hours, respectively, to prepare a plan in the first year. In the absence of this rulemaking, EPA estimates that the total number FRP facilities affected in the first year would have been 6,000 existing and 70 new facilities. Through this rulemaking the estimated number of facilities required to maintain FRPs is reduced to 5,965 and the number of new facilities that will be required to prepare and submit FRP plans is reduced to 64 facilities. This reduction in the number of facilities required to prepare, submit, and/or maintain an FRP would result in an average annual information collection burden reduction of 8,513 hours a year (624,252 to 615,739 hours).

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

J. National Technology Transfer and Advancement Act

As noted in the December 7, 1997, proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"). Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Throughout today's preamble, EPA has emphasized that owners or operators of facilities should use applicable industry standards in performing tests, inspections, and in monitoring. Section 112.3(d) provides that a Professional Engineer must certify that the SPCC Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards. We are providing examples of specific standards in today's preamble. However, due to the wide variety of facilities the rule involves, few standards would be applicable to all regulated facilities. Also, those standards change over time. Therefore, we are not incorporating those standards into rule text.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 2002.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: June 28, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part

112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Part 112 is amended by designating §§ 112.1 through 112.7 as subpart A, adding a subpart heading and revising newly designated subpart A to read as follows:

Subpart A—Applicability, Definitions, and General Requirements For All Facilities and All Types of Oils

Sec.

112.1 General applicability.
112.2 Definitions.
112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.
112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.
112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.
112.6 [Reserved].
112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

§ 112.1 General applicability.

(a)(1) This part establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

(2) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

(b) Except as provided in paragraph (d) of this section, this part applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) that has oil in:

(1) Any aboveground container;

(2) Any completely buried tank as defined in § 112.2;

(3) Any container that is used for standby storage, for seasonal storage, or for temporary storage, or not otherwise "permanently closed" as defined in § 112.2;

(4) Any "bunkered tank" or "partially buried tank" as defined in § 112.2, or any container in a vault, each of which is considered an aboveground storage container for purposes of this part.

(c) As provided in section 313 of the Clean Water Act (CWA), departments, agencies, and instrumentalities of the Federal government are subject to this part to the same extent as any person.

(d) Except as provided in paragraph (f) of this section, this part does not apply to:

(1) The owner or operator of any facility, equipment, or operation that is not subject to the jurisdiction of the Environmental Protection Agency (EPA) under section 311(j)(1)(C) of the CWA, as follows:

(i) Any onshore or offshore facility, that due to its location, could not reasonably be expected to have a discharge as described in paragraph (b) of this section. This determination must be based solely upon consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and must exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in paragraph (b) of this section.

(ii) Any equipment, or operation of a vessel or transportation-related onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of EPA, dated November 24, 1971 (Appendix A of this part).

(iii) Any equipment, or operation of a vessel or onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation or the U.S. Department of the Interior, as defined in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(2) Any facility which, although otherwise subject to the jurisdiction of EPA, meets both of the following requirements:

(i) The completely buried storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility excludes the capacity of a completely buried tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, that is currently subject to all of the technical requirements of part 280 of this chapter or all of the technical requirements of a State program approved under part 281 of this chapter. The completely buried storage capacity of a facility also excludes the capacity of a container that is "permanently closed," as defined in § 112.2.

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is "permanently closed," as defined in § 112.2.

(3) Any offshore oil drilling, production, or workover facility that is subject to the notices and regulations of the Minerals Management Service, as specified in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(4) Any completely buried storage tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter, except that such a tank must be marked on the facility diagram as provided in § 112.7(a)(3), if

the facility is otherwise subject to this part.

(5) Any container with a storage capacity of less than 55 gallons of oil.

(6) Any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.

(e) This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.

(f) Notwithstanding paragraph (d) of this section, the Regional Administrator may require that the owner or operator of any facility subject to the jurisdiction of EPA under section 311(j) of the CWA prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA.

(1) Following a preliminary determination, the Regional Administrator must provide a written notice to the owner or operator stating the reasons why he must prepare an SPCC Plan, or applicable part. The Regional Administrator must send such notice to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of such notice to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data and may consult with the Agency about the need to prepare an SPCC Plan, or applicable part.

(3) Within 30 days following the time under paragraph (b)(2) of this section within which the owner or operator may provide information and data and consult with the Agency about the need to prepare an SPCC Plan, or applicable part, the Regional Administrator must make a final determination regarding whether the owner or operator is required to prepare and implement an SPCC Plan, or applicable part. The Regional Administrator must send the final determination to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of the final determination to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(4) If the Regional Administrator makes a final determination that an SPCC Plan, or applicable part, is necessary, the owner or operator must prepare the Plan, or applicable part, within six months of that final determination and implement the Plan, or applicable part, as soon as possible, but not later than one year after the Regional Administrator has made a final determination.

(5) The owner or operator may appeal a final determination made by the Regional Administrator requiring preparation and implementation of an SPCC Plan, or applicable part, under this paragraph. The owner or operator must make the appeal to the Administrator of EPA within 30 days of receipt of the final determination under paragraph (b)(3) of this section from the Regional Administrator requiring preparation and/or implementation of an SPCC Plan, or applicable part. The owner or operator must send a complete copy of the appeal to the Regional Administrator at the time he makes the appeal to the Administrator. The appeal must contain a clear and concise statement of the issues and points of fact in the case. In the appeal, the owner or operator may also provide additional information. The additional information may be from any person. The Administrator may request additional information from the owner or operator. The Administrator must render a decision within 60 days of receiving the appeal or additional information submitted by the owner or operator and must serve the owner or operator with the decision made in the appeal in the manner described in paragraph (f)(1) of this section.

§ 112.2 Definitions.

For the purposes of this part:

Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or remove spilled oil, and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part (as appropriate), ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment is intended to function.

Alteration means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of the container.

Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.

Breakout tank means a container used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline.

Bulk storage container means any container used to store oil. These containers are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce. Oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

Bunkered tank means a container constructed or placed in the ground by cutting the earth and re-covering the container in a manner that breaks the surrounding natural grade, or that lies above grade, and is covered with earth, sand, gravel, asphalt, or other material. A bunkered tank is considered an aboveground storage container for purposes of this part.

Completely buried tank means any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.

Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the CWA.

Contiguous zone means the zone established by the United States under Article 24 of the Convention of the Territorial Sea and Contiguous Zone, that is contiguous to the territorial sea and that extends nine miles seaward from the outer limit of the territorial area.

Contract or other approved means means:

(1) A written contractual agreement with an oil spill removal organization that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization that has identified and ensures adequate

reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water

(v) Tributaries of waters identified in paragraphs (1)(i) through (iv) of this definition;

(vi) The territorial sea; and

(vii) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (1) of this definition.

(2) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of

completely covered with earth, sand, gravel, asphalt, or other material. A partially buried tank is considered an aboveground storage container for purposes of this part.

Permanently closed means any container or facility for which:

(1) All liquid and sludge has been removed from each container and connecting line; and

November 24, 1971, (Appendix A of this part).

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vegetable oil means a non-petroleum oil or fat of vegetable origin, including

2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic area; and/or

(4) Any other specific arrangement approved by the Regional Administrator upon request of the owner or operator.

Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA; discharges resulting from circumstances identified, reviewed, and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit; or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of this part, the term discharge shall not include any discharge of oil that is authorized by a permit issued under section 13 of the River and Harbor Act of 1899 (33 U.S.C. 407).

Facility means any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste treatment, or in which oil is used, as described in Appendix A to this part. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.

Fish and wildlife and sensitive environments means areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge, or exposure to a product of reactions resulting from a discharge.

Maximum extent practicable means within the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It includes the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator.

Navigable waters means the waters of the United States, including the territorial seas.

(1) The term includes:

(i) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:

(A) That are or could be used by interstate or foreign travelers for recreational or other purposes; or

(B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

(C) That are or could be used for industrial purposes by industries in interstate commerce;

(iv) All impoundments of waters otherwise defined as waters of the United States under this section;

(v) Tributaries of waters identified in paragraphs (1)(i) through (iv) of this definition;

(vi) The territorial sea; and

(vii) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (1) of this definition.

(2) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds which also meet the criteria of this definition) are not waters of the United States. Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with EPA.

Non-petroleum oil means oil of any kind that is not petroleum-based, including but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

Offshore facility means any facility of any kind (other than a vessel or public vessel) located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.

Oil means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources.

Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged lands.

Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained the facility immediately prior to such abandonment.

Partially buried tank means a storage container that is partially inserted or constructed in the ground, but not entirely below grade, and not

completely covered with earth, sand, gravel, asphalt, or other material. A partially buried tank is considered an aboveground storage container for purposes of this part.

Permanently closed means any container or facility for which:

(1) All liquid and sludge has been removed from each container and connecting line; and

(2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that it is a permanently closed container and noting the date of closure.

Person includes an individual, firm, corporation, association, or partnership.

Petroleum oil means petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

Production facility means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and located in a single geographical oil or gas field operated by a single operator.

Regional Administrator means the Regional Administrator of the Environmental Protection Agency, in and for the Region in which the facility is located.

Repair means any work necessary to maintain or restore a container to a condition suitable for safe operation, other than that necessary for ordinary, day-to-day maintenance to maintain the functional integrity of the container and that does not weaken the container.

Spill Prevention, Control, and Countermeasure Plan; SPCC Plan, or Plan means the document required by § 112.3 that details the equipment, workforce, procedures, and steps to prevent, control, and provide adequate countermeasures to a discharge.

Storage capacity of a container means the shell capacity of the container.

Transportation-related and non-transportation-related, as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, (Appendix A of this part).

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

The owner or operator of an onshore or offshore facility subject to this section must prepare a Spill Prevention, Control, and Countermeasure Plan (hereafter "SPCC Plan" or "Plan)," in writing, and in accordance with § 112.7, and any other applicable section of this part.

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2003, and must implement the amended Plan as soon as possible, but not later than August 18, 2003. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before August 18, 2003, and fully implement it as soon as possible, but not later than August 18, 2003.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. You may not operate a mobile or portable facility subject to this part unless you have implemented the Plan. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

(d) A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.

(1) By means of this certification the Professional Engineer attests:

(i) That he is familiar with the requirements of this part ;

(ii) That he or his agent has visited and examined the facility;

(iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part;

(iv) That procedures for required inspections and testing have been established; and

(v) That the Plan is adequate for the facility.

(2) Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part.

(e) If you are the owner or operator of a facility for which a Plan is required under this section, you must:

(1) Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended, and

(2) Have the Plan available to the Regional Administrator for on-site review during normal working hours.

(f) *Extension of time.* (1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan, or any amendment thereto, beyond the time permitted for the preparation, implementation, or amendment of a

Plan under this part, when he finds that the owner or operator of a facility subject to this section, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees.

(2) Your name;

(3) Location of the facility;

(4) Maximum storage or handling capacity of the facility and normal daily throughput;

(5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements;

(6) An adequate description of the facility, including maps, flow diagrams, in the State in which the facility is located. The Regional Administrator must specify the terms of such proposed amendment. Within 30 days from receipt of such notice, you may submit written information, views, and arguments on the proposed amendment. After considering all relevant material presented, the Regional Administrator must either notify you of any amendment required or rescind the

a facility. An amendment made under this section must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

(b) Notwithstanding compliance with paragraph (a) of this section, complete a review and evaluation of the SPCC Plan at least once every five years from the date your facility becomes subject to

these items in separate paragraphs, and must explain separately the details of installation and operational start-up. As detailed elsewhere in this section, you must also:

(a)(1) Include a discussion of your facility's conformance with the requirements listed in this part.

(2) Comply with all applicable requirements listed in this part. Your Plan may deviate from the requirements

(iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor);

(v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and

(vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an

Plan under this part, when he finds that the owner or operator of a facility subject to this section, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees.

(2) If you are an owner or operator seeking an extension of time under paragraph (f)(1) of this section, you may submit a written extension request to the Regional Administrator. Your request must include:

(i) A full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;

(ii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay; and

(iii) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition you may present additional oral or written statements in support of your extension request.

(3) The submission of a written extension request under paragraph (f)(2) of this section does not relieve you of your obligation to comply with the requirements of this part. The Regional Administrator may request a copy of your Plan to evaluate the extension request. When the Regional Administrator authorizes an extension of time for particular equipment or other specific aspects of the Plan, such extension does not affect your obligation to comply with the requirements related to other equipment or other specific aspects of the Plan for which the Regional Administrator has not expressly authorized an extension.

§ 112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.

If you are the owner or operator of a facility subject to this part, you must:

(a) Notwithstanding compliance with § 112.3, whenever your facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period, submit the following information to the Regional Administrator within 60 days from the time the facility becomes subject to this section:

(1) Name of the facility;

(2) Your name;

(3) Location of the facility;

(4) Maximum storage or handling capacity of the facility and normal daily throughput;

(5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements;

(6) An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary;

(7) The cause of such discharge as described in § 112.1(b), including a failure analysis of the system or subsystem in which the failure occurred;

(8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence; and

(9) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or discharge.

(b) Take no action under this section until it applies to your facility. This section does not apply until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not including any amendments to the Plan.

(c) Send to the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located a complete copy of all information you provided to the Regional Administrator under paragraph (a) of this section. Upon receipt of the information such State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment, and other requirements necessary to prevent and to contain discharges from your facility.

(d) Amend your Plan, if after review by the Regional Administrator of the information you submit under paragraph (a) of this section, or submission of information to EPA by the State agency under paragraph (c) of this section, or after on-site review of your Plan, the Regional Administrator requires that you do so. The Regional Administrator may require you to amend your Plan if he finds that it does not meet the requirements of this part or that amendment is necessary to prevent and contain discharges from your facility.

(e) Act in accordance with this paragraph when the Regional Administrator proposes by certified mail or by personal delivery that you amend your SPCC Plan. If the owner or operator is a corporation, he must also notify by mail the registered agent of such corporation, if any and if known, in the State in which the facility is located. The Regional Administrator must specify the terms of such proposed amendment. Within 30 days from receipt of such notice, you may submit written information, views, and arguments on the proposed amendment. After considering all relevant material presented, the Regional Administrator must either notify you of any amendment required or rescind the notice. You must amend your Plan as required within 30 days after such notice, unless the Regional Administrator, for good cause, specifies another effective date. You must implement the amended Plan as soon as possible, but not later than six months after you amend your Plan, unless the Regional Administrator specifies another date.

(f) If you appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan, send the appeal to the EPA Administrator in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment under paragraph (e) of this section. You must send a complete copy of the appeal to the Regional Administrator at the time you make the appeal. The appeal must contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from you, or from any other person. The EPA Administrator may request additional information from you, or from any other person. The EPA Administrator must render a decision within 60 days of receiving the appeal and must notify you of his decision.

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.

If you are the owner or operator of a facility subject to this part, you must:

(a) Amend the SPCC Plan for your facility in accordance with the general requirements in § 112.7, and with any specific section of this part applicable to your facility, when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). Examples of changes that may require amendment of the Plan include, but are not limited to: commissioning or decommissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation or maintenance procedures at

a facility. An amendment made under this section must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

(b) Notwithstanding compliance with paragraph (a) of this section, complete a review and evaluation of the SPCC Plan at least once every five years from the date your facility becomes subject to this part; or, if your facility was in operation on or before August 16, 2002, five years from the date your last review was required under this part. As a result of this review and evaluation, you must amend your SPCC Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment. You must document your completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, "I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result."

(c) Have a Professional Engineer certify any technical amendment to your Plan in accordance with § 112.3(d).

§ 112.6 [Reserved]

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

If you are the owner or operator of a facility subject to this part you must prepare a Plan in accordance with good engineering practices. The Plan must have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan. You must prepare the Plan in writing. If you do not follow the sequence specified in this section for the Plan, you must prepare an equivalent Plan acceptable to the Regional Administrator that meets all of the applicable requirements listed in this part, and you must supplement it with a section cross-referencing the location of requirements listed in this part and the equivalent requirements in the other prevention plan. If the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up. As detailed elsewhere in this section, you must also:

(a)(1) Include a discussion of your facility's conformance with the requirements listed in this part.

(2) Comply with all applicable requirements listed in this part. Your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2),112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11),112.13(c)(2), and 112.14(c), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in § 112.4(d) and (e).

(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each container. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes. You must also address in your Plan:

(i) The type of oil in each container and its storage capacity;

(ii) Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, *etc.*);

(iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge;

(iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor);

(v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and

(vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in § 112.1(b).

(4) Unless you have submitted a response plan under § 112.20, provide information and procedures in your Plan to enable a person reporting a discharge as described in § 112.1(b) to relate information on the exact address or location and phone number of the facility; the date and time of the discharge, the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in § 112.1(b); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted.

(5) Unless you have submitted a response plan under § 112.20, organize portions of the Plan describing procedures you will use when a discharge occurs in a way that will make them readily usable in an emergency, and include appropriate supporting material as appendices.

(b) Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), include in your Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b). The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

(1) For onshore facilities:

(i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;

(ii) Curbing;

(iii) Culverting, gutters, or other drainage systems;

(iv) Weirs, booms, or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds; or

(vii) Sorbent materials.

(2) For offshore facilities:

handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

(g) *Security (excluding oil production facilities).* (1) Fully fence each facility

and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit.

(i) If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting to

You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing

watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

(i) High liquid level alarms with an

(1) For onshore facilities:
(i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;
(ii) Curbing;
(iii) Culverting, gutters, or other drainage systems;
(iv) Weirs, booms, or other barriers;
(v) Spill diversion ponds;
(vi) Retention ponds; or
(vii) Sorbent materials.
(2) For offshore facilities:
(i) Curbing or drip pans; or
(ii) Sumps and collection systems.
(d) If you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c) to prevent a discharge as described in § 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under § 112.20, provide in your Plan the following:
(1) An oil spill contingency plan following the provisions of part 109 of this chapter.
(2) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.
(e) *Inspections, tests, and records.* Conduct inspections and tests required by this part in accordance with written procedures that you or the certifying engineer develop for the facility. You must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.
(f) *Personnel, training, and discharge prevention procedures.* (1) At a minimum, train your oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan.
(2) Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management.
(3) Schedule and conduct discharge prevention briefings for your oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.
(g) *Security (excluding oil production facilities).* (1) Fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended.
(2) Ensure that the master flow and drain valves and any other valves permitting direct outward flow of the container's contents to the surface have adequate security measures so that they remain in the closed position when in non-operating or non-standby status.
(3) Lock the starter control on each oil pump in the "off" position and locate it at a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status.
(4) Securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping when not in service or when in standby service for an extended time. This security practice also applies to piping that is emptied of liquid content either by draining or by inert gas pressure.
(5) Provide facility lighting commensurate with the type and location of the facility that will assist in the:
(i) Discovery of discharges occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and
(ii) Prevention of discharges occurring through acts of vandalism.
(h) *Facility tank car and tank truck loading/unloading rack (excluding offshore facilities).* (1) Where loading/unloading area drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading and unloading areas. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.
(2) Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle break interlock system in loading/unloading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.
(3) Prior to filling and departure of any tank car or tank truck, closely inspect for discharges the lowermost drain and all outlets of such vehicles, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit.
(i) If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action.
(j) In addition to the minimal prevention standards listed under this section, include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines.

3. Part 112 is amended adding subpart B consisting of §§ 112.8 through 112.11 to read as follows:

Subpart B—Requirements for Petroleum Oils and Non-Petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)

Sec.
112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).
112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.
112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.
112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

Subpart B—Requirements for Petroleum Oils and Non-Petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)

§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

If you are the owner or operator of an onshore facility (excluding a production facility), you must:
(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section.

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.
(2) Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, you must inspect and may drain uncontaminated retained stormwater, as provided in paragraphs (c)(3)(ii), (iii), and (iv) of this section.
(3) Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.
(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.
(5) Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two "lift" pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in § 112.1(b) in case there is an equipment failure or human error at the facility.
(c) *Bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.
(2) Construct all bulk storage container installations so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.
(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:
(i) Normally keep the bypass valve sealed closed.
(ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).
(iii) Open the bypass valve and reseal it following drainage under responsible supervision; and
(iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.
(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.
(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.
(6) Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.
(7) Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.
(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:
(i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.
(ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.
(iii) Direct audible or code signal communication between the container gauger and the pumping station.
(iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.
(v) You must regularly test liquid level sensing devices to ensure proper operation.
(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).
(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.
(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.
(d) *Facility transfer operations, pumping, and facility process.* (1) Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage, you must undertake additional examination and corrective action as

indicated by the magnitude of the damage.
(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.
(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.
(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also assess the general condition of flexible connections, such as unions, connections at pumping machinery, and extraordinary stress due to settling or vibration.
(5) Warn all vehicles entering the facility to be sure that no part of their load will scrape or hit and damage aboveground piping or other facility equipment.
(6) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.
(7) Provide adequate aboveground protection for buried piping that is exposed for any reason to prevent damage to the piping and to facilitate examination.
(8) Protect buried piping installations against damage by traffic by adequate cover, by concrete slabs, or by other means designed to withstand the type of traffic that may be imposed on them.
(e) *Effluent treatment facilities.* Use good engineering practice to design effluent treatment facilities so that they will equalize hydraulic and load variations that occur during normal operations without violating the effluent limitations prescribed for the facility by the National Pollutant Discharge Elimination System permit. You must properly operate and keep in good working order any effluent treatment facility you install or use to meet the requirements of this part.
(f) *Visible discharges.* Promptly correct visible discharges which result in a loss of oil from containers, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.
(g) *Mobile and portable containers.* Position or locate mobile or portable containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.
(h) *Relocated or reconstructed containers.* Any container that is relocated or reconstructed after August 16, 2002 must be provided with secondary containment in accordance with this section before being put into service. Containers that are relocated or reconstructed before August 16, 2002 are not required to meet the requirements of this section.
(i) *Completely buried metallic storage tanks.* Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.
(j) *Partially buried and bunkered storage tanks.* Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.
(k) *Inspections and records.* Inspect the facility in accordance with the provisions of § 112.7(e). You must also conduct inspections in accordance with the written procedures you develop for the facility. You must keep records of inspections and tests under usual and customary business practices for a period of three years.
(l) *Security.* Fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended. You must ensure that the master flow and drain valves and any other valves permitting direct outward flow of the container's contents to the surface have adequate security measures so that they remain in the closed position when in non-operating or non-standby status. You must lock the starter control on each oil pump in the "off" position and locate it at a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status. You must securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping when not in service or when in standby service for an extended time. This security practice also applies to piping that is emptied of liquid content either by draining or by inert gas pressure. You must provide facility lighting commensurate with the type and location of the facility that will assist in the:
(i) Discovery of discharges occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and
(ii) Prevention of discharges occurring through acts of vandalism.
(m) *Loading/unloading rack.* (1) Where loading/unloading area drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading and unloading areas. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.
(2) Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle break interlock system in loading/unloading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.
(3) Prior to filling and departure of any tank car or tank truck, closely inspect for discharges the lowermost drain and all outlets of such vehicles, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit.
(n) *Brittle fracture evaluation.* If you have a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action.
(o) *Conformance with State and local applicable requirements.* In addition to the minimal prevention standards listed under this section, include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines.

sensing devices that activate an alarm or control the flow, or otherwise prevent discharges.
(f) Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow.
(g) Equip containers with suitable corrosion protection.
(h) Prepare and maintain at the facility a written procedure within the

4. Part 112 is amended by adding subpart C consisting of §§ 112.12 through 112.15 to read as follows:

Subpart C—Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, Including Oils from Seeds, Nuts, Fruits and Kernels

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112.12 Spill Prevention, Control, and Countermeasure Plan requirements for

outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.
(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the

indicated by the magnitude of the damage.

(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

(5) Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

§ 112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) *Oil production facility drainage.* (1) At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in § 112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under § 112.7(c)(1), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in § 112.8(c)(3)(ii), (iii), and (iv). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

(2) Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.

(c) *Oil production facility bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(2) Provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overfill if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) *Facility transfer operations, oil production facility.* (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items.

(2) Inspect saltwater (oil field brine) disposal facilities often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing a discharge.

(3) Have a program of flowline maintenance to prevent discharges from each flowline.

§ 112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.

If you are the owner or operator of an onshore oil drilling and workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b).

(c) Provide catchment basins or diversion structures to intercept and contain discharges of fuel, crude oil, or oily drilling fluids.

(d) Install a blowout prevention (BOP) assembly and well control system before drilling below any casing string or during workover operations. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

§ 112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

If you are the owner or operator of an offshore oil drilling, production, or workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Use oil drainage collection equipment to prevent and control small oil discharges around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and associated equipment. You must control and direct facility drains toward a central collection sump to prevent the facility from having a discharge as described in § 112.1(b). Where drains and sumps are not practicable, you must remove oil contained in collection equipment as often as necessary to prevent overflow.

(c) For facilities employing a sump system, provide adequately sized sump and drains and make available a spare pump to remove liquid from the sump and assure that oil does not escape. You must employ a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(d) At facilities with areas where separators and treaters are equipped with dump valves which predominantly fail in the closed position and where pollution risk is high, specially equip the facility to prevent the discharge of oil. You must prevent the discharge of oil by:

(1) Extending the flare line to a diked area if the separator is near shore;

(2) Equipping the separator with a high liquid level sensor that will automatically shut in wells producing to the separator; or

(3) Installing parallel redundant dump valves.

(e) Equip atmospheric storage or surge containers with high liquid level sensing devices that activate an alarm or control the flow, or otherwise prevent discharges.

(f) Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow.

(g) Equip containers with suitable corrosion protection.

(h) Prepare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.

(i) Conduct testing and inspection of the pollution prevention equipment and systems at the facility on a scheduled periodic basis, commensurate with the complexity, conditions, and circumstances of the facility and any other appropriate regulations. You must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.

(j) Describe in detailed records surface and subsurface well shut-in valves and devices in use at the facility for each well sufficiently to determine their method of activation or control, such as pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms.

(k) Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while the BOP assembly and well control system are on the well.

(l) Equip all manifolds (headers) with check valves on individual flowlines.

(m) Equip the flowline with a high pressure sensing device and shut-in valve at the wellhead if the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves. Alternatively you may provide a pressure relief system for flowlines.

(n) Protect all piping appurtenant to the facility from corrosion, such as with protective coatings or cathodic protection.

(o) Adequately protect sub-marine piping appurtenant to the facility against environmental stresses and other activities such as fishing operations.

(p) Maintain sub-marine piping appurtenant to the facility in good operating condition at all times. You must periodically and according to a schedule inspect or test such piping for failures. You must document and keep a record of such inspections or tests at the facility.

4. Part 112 is amended by adding subpart C consisting of §§ 112.12 through 112.15 to read as follows:

Subpart C—Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, including Oils from Seeds, Nuts, Fruits and Kernels

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112.12 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).
112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.
112.14 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.
112.15 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

Subpart C—Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, including Oils from Seeds, Nuts, Fruits, and Kernels.

§ 112.12 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities)

If you are the owner or operator of an onshore facility (excluding a production facility), you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section.

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.

(2) Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, you must inspect and may drain uncontaminated retained stormwater, subject to the requirements of paragraphs (c)(3)(ii), (iii), and (iv) of this section.

(3) Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.

(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two "lift" pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in § 112.1(b) in case there is an equipment failure or human error at the facility.

(c) *Bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(2) Construct all bulk storage container installations so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:

(i) Normally keep the bypass valve sealed closed.

(ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).

(iii) Open the bypass valve and reseal it following drainage under responsible supervision; and

(iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by

coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and

(v) You must regularly test liquid level sensing devices to ensure proper operation.

(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).

(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not

§ 112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) *Oil production facility drainage.*

pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) *Facility transfer operations, oil production facility.* (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for

drain lines, separators, treaters, tanks, and associated equipment. You must control and direct facility drains toward a central collection sump to prevent the facility from having a discharge as described in § 112.1(b). Where drains and sumps are not practicable, you must remove oil contained in collection equipment as often as necessary to prevent overflow.

(c) For facilities employing a sump

method of activation or control, such as pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms.

(k) Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable of controlling any well-head pressure that

coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.

(6) Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(7) Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

(i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.

(ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(iii) Direct audible or code signal communication between the container gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.

(v) You must regularly test liquid level sensing devices to ensure proper operation.

(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).

(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

(d) *Facility transfer operations, pumping, and facility process.* (1) Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage, you must undertake additional examination and corrective action as indicated by the magnitude of the damage.

(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

(5) Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

§ 112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) *Oil production facility drainage.* (1) At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in § 112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under § 112.7(c)(1), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in § 112.12(c)(3)(ii), (iii), and (iv). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

(2) Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.

(c) *Oil production facility bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(2) Provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overfill if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a

pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) *Facility transfer operations, oil production facility.* (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items.

(2) Inspect saltwater (oil field brine) disposal facilities often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing a discharge.

(3) Have a program of flowline maintenance to prevent discharges from each flowline.

§ 112.14 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.

If you are the owner or operator of an onshore oil drilling and workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b).

(c) Provide catchment basins or diversion structures to intercept and contain discharges of fuel, crude oil, or oily drilling fluids.

(d) Install a blowout prevention (BOP) assembly and well control system before drilling below any casing string or during workover operations. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

§ 112.15 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

If you are the owner or operator of an offshore oil drilling, production, or workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Use oil drainage collection equipment to prevent and control small oil discharges around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and associated equipment. You must control and direct facility drains toward a central collection sump to prevent the facility from having a discharge as described in § 112.1(b). Where drains and sumps are not practicable, you must remove oil contained in collection equipment as often as necessary to prevent overflow.

(c) For facilities employing a sump system, provide adequately sized sump and drains and make available a spare pump to remove liquid from the sump and assure that oil does not escape. You must employ a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(d) At facilities with areas where separators and treaters are equipped with dump valves which predominantly fail in the closed position and where pollution risk is high, specially equip the facility to prevent the discharge of oil. You must prevent the discharge of oil by:

(1) Extending the flare line to a diked area if the separator is near shore;

(2) Equipping the separator with a high liquid level sensor that will automatically shut in wells producing to the separator; or

(3) Installing parallel redundant dump valves.

(e) Equip atmospheric storage or surge containers with high liquid level sensing devices that activate an alarm or control the flow, or otherwise prevent discharges.

(f) Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow.

(g) Equip containers with suitable corrosion protection.

(h) Prepare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.

(i) Conduct testing and inspection of the pollution prevention equipment and systems at the facility on a scheduled periodic basis, commensurate with the complexity, conditions, and circumstances of the facility and any other appropriate regulations. You must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.

(j) Describe in detailed records surface and subsurface well shut-in valves and devices in use at the facility for each well sufficiently to determine their method of activation or control, such as pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms.

(k) Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

(l) Equip all manifolds (headers) with check valves on individual flowlines.

(m) Equip the flowline with a high pressure sensing device and shut-in valve at the wellhead if the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves. Alternatively you may provide a pressure relief system for flowlines.

(n) Protect all piping appurtenant to the facility from corrosion, such as with protective coatings or cathodic protection.

(o) Adequately protect sub-marine piping appurtenant to the facility against environmental stresses and other activities such as fishing operations.

(p) Maintain sub-marine piping appurtenant to the facility in good operating condition at all times. You must periodically and according to a schedule inspect or test such piping for failures. You must document and keep a record of such inspections or tests at the facility.

5. Part 112 is amended by designating §§ 112.20 and 112.21 as subpart D, and adding a subpart heading as follows:

Subpart D—Response Requirements

Sec.
112.20 Facility response plans.
112.21 Facility response training and drills/exercises.

Subpart D—Response Requirements

6. Section 112.20 is amended by revising the first sentence of paragraph (h) to read as follows:

§ 112.20 Facility response plans.

* * * * *

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless you have prepared an equivalent response plan acceptable to the Regional Administrator to meet State or other Federal requirements. * * *

* * * * *

Appendix C—[Amended]

7. Appendix C of part 112 is amended by:

a. Revising the first sentence of section 2.1; and

b. Revising the title and first sentence of section 2.4.

Appendix C to Part 112—Substantial Harm Criteria

c. Revising paragraph (7) and the undesignated paragraph and NOTE following paragraph (7) in section 1.7.3;

d. Revising section 1.8.1;

e. Revising the first two sentences of section 1.8.1.1. introductory text;

f. Revising the next to the last sentence of section 1.8.1.3;

g. Revising the next to last sentence of section 1.10.;

h. Revising paragraph (6) of section

Plan. You must include the inspection records for each container, secondary containment, and item of response equipment at the facility. You must cross-reference the records of inspections of each container and secondary containment required by 40 CFR 112.7(e) in the facility response plan. The inspection record of response equipment is a new requirement in this plan. Facility self-inspection requires two-steps: (1) a checklist of things to inspect; and (2) a method of recording the actual

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Appendix C—[Amended]

7. Appendix C of part 112 is amended by:

a. Revising the first sentence of section 2.1; and

b. Revising the title and first sentence of section 2.4.

Appendix C to Part 112—Substantial Harm Criteria

* * * * *

2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil

A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. * * *

* * * * *

2.4 Proximity to Public Drinking Water Intakes at Facilities with a Total Oil Storage Capacity Greater than or Equal to 1 Million Gallons

A facility with a total oil storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c). * * *

* * * * *

Appendix D—[Amended]

8. Appendix D of part 112 is amended by revising footnote 2 to section A.2 of Part A to read as follows:

Appendix D to Part 112—Determination of a Worst Case Discharge Planning Volume

* * * * *

Part A * * *

* * * * *

A.2 Secondary Containment—Multiple-Tank Facilities

* * * * *

Secondary containment is described in 40 CFR part 112, subparts A through C. Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1).

* * * * *

Appendix F—[Amended]

9. Appendix F of part 112 is amended by:

a. Revising section 1.2.7;

b. Revising the second and last sentences of section 1.4.3;

c. Revising paragraph (7) and the undesignated paragraph and NOTE following paragraph (7) in section 1.7.3;

d. Revising section 1.8.1;

e. Revising the first two sentences of section 1.8.1.1. introductory text;

f. Revising the next to the last sentence of section 1.8.1.3;

g. Revising the next to last sentence of section 1.10.;

h. Revising paragraph (6) of section 2.1;

i. Remove the acronym "SIC" in section 3.0, and add in alphabetical order the acronym "NAICS"; and.

j. Remove the reference to "Standard Industrial Classification (SIC) Code" in Attachment F–1, General Information, and add in in alphabetical order a reference to "North American Industrial Classification System (NAICS) Code."

The revisions read as follows:

Appendix F to Part 112—Facility-Specific Response Plan

* * * * *

1.2.7 Current Operation

Briefly describe the facility's operations and include the North American Industrial Classification System (NAICS) code.

* * * * *

1.4.3 Analysis of the Potential for an Oil Discharge

* * * This analysis shall incorporate factors such as oil discharge history, horizontal range of a potential discharge, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. * * * The owner or operator may need to research the age of the tanks the oil discharge history at the facility.

* * * * *

1.7.3 Containment and Drainage Planning

* * * * *

(7) Other cleanup materials.

In addition, a facility owner or operator must meet the inspection and monitoring requirements for drainage contained in 40 CFR part 112, subparts A through C. A copy of the containment and drainage plans that are required in 40 CFR part 112, subparts A through C may be inserted in this section, including any diagrams in those plans.

Note: The general permit for stormwater drainage may contain additional requirements.

* * * * *

1.8.1 Facility Self-Inspection

Under 40 CFR 112.7(e), you must include the written procedures and records of inspections for each facility in the SPCC Plan. You must include the inspection records for each container, secondary containment, and item of response equipment at the facility. You must cross-reference the records of inspections of each container and secondary containment required by 40 CFR 112.7(e) in the facility response plan. The inspection record of response equipment is a new requirement in this plan. Facility self-inspection requires two-steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. You must note the date of each inspection. You must keep facility response plan records for five years. You must keep SPCC records for three years.

* * * * *

1.8.1.1. Tank Inspection

The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR part 112, subparts A through C. * * *

* * * * *

1.8.1.3 Secondary Containment Inspection

* * * * *

* * * Similar requirements exist in 40 CFR part 112, subparts A through C. * * *

* * * * *

1.10 Security

According to 40 CFR 112.7(g) facilities are required to maintain a certain level of security, as appropriate. * * *

* * * * *

2.1 General Information

* * * * *

(6) North American Industrial Classification System (NAICS) Code: Enter the facility's NAICS code as determined by the Office of Management and Budget (this information may be obtained from public library resources.)

* * * * *

3.0 Acronyms

* * * * *

NAICS: North American Industrial Classification System

* * * * *

Attachments to Appendix F

Attachment F–1—Response Plan Cover Sheet

* * * * *

General Information

* * * * *

North American Industrial Classification System (NAICS) Code:

* * * * *

[FR Doc. 02–16852 Filed 7–16–02; 8:45 am]

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Federal Register

Wednesday,
July 17, 2002

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (Zapus hudsonius preblei); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI46

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow

361, Lakewood, CO 80215 or by facsimile to 303–275–2371. You may hand-deliver written comments to our Colorado Ecological Services Field Office at the address given above. You may send comments by electronic mail (e-mail) to *<fw6_pmjm@fws.gov>*. See the "Public Comments Solicited" section below for file format and other information on electronic filing. You

jumping mouse), and *Z. trinotatus* (the Pacific jumping mouse).

Edward A. Preble (1899) first documented the meadow jumping mouse from Colorado. Krutzch (1954) described the Preble's as a separate subspecies of meadow jumping mouse limited to Colorado and Wyoming. The Preble's is now recognized as 1 of 12 subspecies of meadow jumping mouse (Hafner *et al.* 1981).

lower molar (Klingener 1963, Hafner 1993). However, this molar characteristic is not always reliable due to tooth wear as animals age; specimens showing the tooth fold are presumed to be Preble's, while specimens lacking the fold may be either species (Klingener 1963; Conner and Shenk, in prep.). A recent reevaluation of Preble's and western jumping mouse morphology showed that, by using a combination of

Recently collected specimens are housed at the Denver Museum of Nature and Science and survey reports are filed with the Service's Field Offices in Colorado and Wyoming.

In Wyoming, capture locations of mice confirmed as the Preble's, and locations of mice identified in the field as Preble's and released, extend in a band from the town of Douglas southward along the Laramie Range to

(Ryon 1996). Since at least 1991, the Preble's has not been found in Denver, Adams, or Arapahoe Counties in Colorado. Its absence in these counties is likely due to urban development, which has altered, reduced, or eliminated riparian habitat (Compton and Hugie 1993, Ryon 1996).

Ecology and Life History

Typical habitat for the Preble's

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH46

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed designation includes 19 habitat units totaling approximately 23,248 hectares (ha) (57,446 acres (ac)) found along 1,058.1 kilometers (km) (657.5 miles (mi)) of rivers and streams in the States of Colorado and Wyoming.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If this proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency; and Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will consider all comments on the proposed rule received from interested parties by September 16, 2002. Public hearing requests must be received by September 3, 2002.

ADDRESSES: You may submit written comments and information to Preble's Mouse Comments, Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, CO 80215 or by facsimile to 303–275–2371. You may hand-deliver written comments to our Colorado Ecological Services Field Office at the address given above. You may send comments by electronic mail (e-mail) to <*fw6_pmjm@fws.gov*>. See the "Public Comments Solicited" section below for file format and other information on electronic filing. You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours, at the Colorado Ecological Services Field Office.

FOR FURTHER INFORMATION CONTACT: LeRoy Carlson, Field Supervisor, Colorado Ecological Services Field Office, (see **ADDRESSES** section), (telephone 303–275–2370; facsimile 303–275–2371).

SUPPLEMENTARY INFORMATION:

Background

Much of what is now known about the Preble's meadow jumping mouse (Preble's) is a result of information gained from the early 1990s to the present. Following the Preble's listing as a threatened species in 1998, knowledge about its distribution, habitat requirements, abundance, and population dynamics has grown substantially. However, much of the biology and ecology of the Preble's is still not well understood. Where gaps in knowledge exist, scientists have relied on information from closely related subspecies of the meadow jumping mouse (*Zapus hudsonius*), whose biology and ecology appear similar to the Preble's. Information presented below that is specific to the Preble's is described as being relevant to this subspecies, the Preble's, but when information pertains to what is known about other subspecies of meadow jumping mouse, it will be described as relevant to the species, the meadow jumping mouse. Portions of the following have been adapted from the general biology section of the Preble's Meadow Jumping Mouse Recovery Team's February 27, 2002, Draft Discussion Document on a recovery plan for the Preble's.

Taxonomy and Description

The Preble's is a member of the family Dipodidae (jumping mice) with four living genera, two of which, *Zapus* and *Napaeozapus*, are found in North America (Hall 1981). The three living species within the genus *Zapus* are *Z. hudsonius* (the meadow jumping mouse), *Z. princeps* (the western jumping mouse), and *Z. trinotatus* (the Pacific jumping mouse).

Edward A. Preble (1899) first documented the meadow jumping mouse from Colorado. Krutzch (1954) described the Preble's as a separate subspecies of meadow jumping mouse limited to Colorado and Wyoming. The Preble's is now recognized as 1 of 12 subspecies of meadow jumping mouse (Hafner *et al.* 1981).

The Preble's is a small rodent with an extremely long tail, large hind feet, and long hind legs. The tail is bicolored, lightly-furred, and typically twice as long as the body. The large hind feet can be one-third again as large as those of other mice of similar size. The Preble's has a distinct, dark, broad stripe on its back that runs from head to tail and is bordered on either side by gray to orange-brown fur. The hair on the back of all jumping mice appears coarse compared to other mice. The underside hair is white and much finer in texture. Total length of adult Preble's mice is approximately 180 to 250 millimeters (mm) (7 to 10 inches (in)), and tail length is 108 to 155 mm (4 to 6 in) (Krutzsch 1954, Fitzgerald *et al.* 1994).

The average weight of 120 adult Preble's mice captured early in their active season (prior to June 18) was 18 grams (g) (0.6 ounce (oz)); included were10 pregnant females weighing more than 22 g (0.8 oz) (Meaney *et al.*, in prep.). Upon emergence from hibernation, adult Preble's mice can weigh as little as 14 g (0.5 oz). Through late August and into mid-September, Preble's adults ready for hibernation weighed 25 to 34 g (0.9 to 1.2 oz) (Meaney *et al.*, in prep.), comparable to pre-hibernation weights for the meadow jumping mouse cited by Muchlinski (1988).

While the western jumping mouse is a distinctly separate species from the Preble's, it is similar in appearance and can easily be confused with Preble's. The range of the western jumping mouse in Wyoming and Colorado is generally west of, and at higher elevations than, the range of the Preble's. However, they appear to coexist over portions of their range in southeastern Wyoming and Colorado (Long 1965, Clark and Stromberg 1987, Schorr 1999, Meaney *et al.* 2001). Compared to the western jumping mouse, the Preble's is generally smaller, has a more distinctly bicolored tail, and a less obvious dorsal (back) stripe. Krutzsch (1954) described skull characteristics useful for differentiating the two species. Previously, studies found that the meadow jumping mouse could be distinguished from the western jumping mouse by a fold in the first lower molar (Klingener 1963, Hafner 1993). However, this molar characteristic is not always reliable due to tooth wear as animals age; specimens showing the tooth fold are presumed to be Preble's, while specimens lacking the fold may be either species (Klingener 1963; Conner and Shenk, in prep.). A recent reevaluation of Preble's and western jumping mouse morphology showed that, by using a combination of six skull measurements and this molar characteristic, the Preble's could be distinguished from the western jumping mouse (Conner and Shenk, in prep.).

A genetic study that analyzed tissue samples of meadow jumping mice and western jumping mice from throughout North America concluded that the Preble's is distinct from other subspecies of the meadow jumping mouse and from the western jumping mouse (Riggs *et al.* 1997, Hafner 1997). While results from the genetic study supported the taxonomic status of Preble's, analysis of samples from jumping mice in a few Wyoming and Colorado locations produced unexpected results. In these cases, samples of assumed Preble's mice at lower elevations were later determined to be the western jumping mouse and samples of assumed western jumping mice at higher elevations were later determined to be the Preble's. Hafner (1997) suggested that limited hybridization could have affected the results of the study and Beauvais (2001) stated that zones of co-occurrence of the Preble's and the western jumping mouse in Wyoming provide the opportunity for hybridization. However, Krutzsch (1954) cited significant range overlap between the meadow jumping mouse and the western jumping mouse in North America and indicated that there was no evidence of interbreeding. While the question of possible hybridization between the Preble's and the western jumping mouse has yet to be fully explored, information currently available suggests that any hybridization between the two species is limited in scope.

Geographic Range

The Preble's is found along the foothills in southeastern Wyoming, southward along the eastern edge of the Front Range of Colorado to Colorado Springs, El Paso County (Hall 1981, Clark and Stromberg 1987, Fitzgerald *et al.* 1994). Knowledge about the current distribution of the Preble's comes from collected specimens, and live-trapping locations from both range-wide survey efforts and numerous site-specific survey efforts conducted in Wyoming and Colorado since the mid-1990s. Recently collected specimens are housed at the Denver Museum of Nature and Science and survey reports are filed with the Service's Field Offices in Colorado and Wyoming.

In Wyoming, capture locations of mice confirmed as the Preble's, and locations of mice identified in the field as Preble's and released, extend in a band from the town of Douglas southward along the Laramie Range to the Colorado border, with captures east to eastern Platte County and Cheyenne, Laramie County. In Colorado, the distribution of the Preble's forms a band along the Front Range from Wyoming southward to Colorado Springs, El Paso County, with eastern marginal captures in western Weld County, western Elbert County, and north-central El Paso County.

The Preble's is likely an Ice Age relict (Hafner *et al.* 1981, Fitzgerald *et al.* 1994). Once the glaciers receded from the Front Range of Colorado and the foothills of Wyoming and the climate became drier, the Preble's was confined to the riparian (river) systems where moisture was more plentiful. The semi-arid climate in southeastern Wyoming and eastern Colorado limits the extent of riparian corridors and restricts the range of the Preble's in this region. The Preble's has not been found east of Cheyenne in Wyoming or on the extreme eastern plains in Colorado. The eastern boundary for the subspecies is likely defined by the dry shortgrass prairie, which may present a barrier to eastward expansion (Beauvais 2001).

The western boundary of Preble's range in both States appears related to elevation along the Laramie Range and Front Range. The Service has used 2,300 meters (m) (7,600 feet (ft)) in elevation as the general upward limit of Preble's habitat in Colorado (Service 1998). Recent morphological examination of specimens has confirmed the Preble's to an elevation of approximately 2,300 m (7,600 ft) in Colorado (Meaney *et al.* 2001) and to 2,360 m (7,750 ft) in southeastern Wyoming (Cheri Jones, Denver Museum of Natural Science, *in litt.*, 2001). In a modeling study of habitat associations in Wyoming, Keinath (2001) found suitable habitat predicted in the Laramie Basin and Snowy Range Mountains (west of known Preble's occurrence) but very little suitable habitat predicted on the plains of Goshen, Niobrara, and eastern Laramie Counties (east of known Preble's occurrence).

Although there is little information on past distribution or abundance of the Preble's, surveys have identified various locations where the subspecies was historically present but is now absent (Ryon 1996). Since at least 1991, the Preble's has not been found in Denver, Adams, or Arapahoe Counties in Colorado. Its absence in these counties is likely due to urban development, which has altered, reduced, or eliminated riparian habitat (Compton and Hugie 1993, Ryon 1996).

Ecology and Life History

Typical habitat for the Preble's comprises well-developed plains riparian vegetation with adjacent, undisturbed grassland communities and a nearby water source. Well-developed plains riparian vegetation typically includes a dense combination of grasses, forbs, and shrubs; a taller shrub and tree canopy may be present (Bakeman 1997). When present, the shrub canopy is often *Salix* spp. (willow), although shrub species including *Symphoricarpus* spp. (snowberry), *Prunus virginiana* (chokecherry), *Crataegus* spp. (hawthorn), *Quercus gambelli* (Gambel's oak), *Alnus incana* (alder), *Betula fontinalis* (river birch), *Rhus trilobata* (skunkbrush), *Prunus americana* (wild plum), *Amorpha fruticosa* (lead plant), *Cornus sericea* (dogwood), and others also may occur (Bakeman 1997, Shenk and Eussen 1998).

Preble's have rarely been trapped in uplands adjacent to riparian areas (Dharman 2001). However, in detailed studies of Preble's movement patterns using radio telemetry, Preble's has been found feeding and resting in adjacent uplands (Shenk and Sivert 1999b, Ryon 1999, Schorr 2001). These studies reveal that the Preble's regularly uses uplands at least as far out as 100 m (330 ft) beyond the 100-year floodplain (Ryon 1999; Tanya Shenk, Colorado Division of Wildlife, *in litt.*, 2002). Preble's also can move considerable distances along streams, as far as 1.6 km (1.0 mi) in one evening (Ryon 1999, Shenk and Sivert 1999a).

In a study comparing habitats at Preble's capture locations on the Department of Energy's Rocky Flats Environmental Technology Site (Rocky Flats), Jefferson County, CO, and the U.S. Air Force Academy (Academy), El Paso County, CO, the Academy sites had lower plant species richness at capture locations but considerably greater numbers of the Preble's (Schorr 2001). However, the Academy sites had higher densities of both grasses and shrubs. It is likely that Preble's abundance is not driven by the diversity of plant species, but by the density of riparian vegetation.

The tolerance of the Preble's for exotic plant species is not well understood. Whether or not exotic plant species reduce Preble's persistence at a site may be due in large part to whether plants

create a monoculture and replace native species. There is particular concern about nonnative species such as *Euphorbia esula* (leafy spurge) that may form a monoculture, displacing native vegetation and thus reducing available habitat.

Fifteen apparent Preble's hibernacula (hibernation nests) have been located through radio telemetry, all within 78 m

Meadow jumping mice usually have two litters per year, but there are records

fire may result in adverse impacts to Preble's populations. However, in a review of the effects of grassland fires on small mammals, Kaufman *et al.* (1990) found a positive effect of fire on the meadow jumping mouse in one study and no effect of fire on the species in another study.

of stream and averaged 33 mice per km (53 mice per mi) of stream.

While fecal analyses have provided the best data on the Preble's diet to date, they overestimate the components of the diet that are less digestible. Based on fecal analyses the Preble's eats insects; fungus; moss; pollen; willow; *Chenopodium* sp. (lamb's quarters); *Salsola* sp. (Russian thistle); *Helianthus*

and Jones (1985) described lively social interactions in which several Preble's mice were observed jumping into the air and squeaking and suggested that they formed a gregarious unit. In a recent study, for the month their radio-collars were active, several Preble's mice came repeatedly from different day-nest locations to meet at one spot at night (Shenk, pers. comm., 2002).

Preble's by modifying nest sites, food resources, and hibernation sites, and by fragmenting its habitat. Humans and pets using these trails may alter behavior patterns of the Preble's and cause a decrease in survival and reproductive success.

Habitat fragmentation limits the extent and abundance of the Preble's. In general, as animal populations become fragmented and isolated, it becomes

act as barriers to dispersal. Train and truck accidents within riparian areas may release spills of chemicals, fuels and other substances that may impact the mouse or its habitat. Sewer, water, communications, gas, and electric lines cross Preble's habitat. Their rights-of-way can contribute to habitat disturbance and fragmentation through new construction and periodic maintenance.

create a monoculture and replace native species. There is particular concern about nonnative species such as *Euphorbia esula* (leafy spurge) that may form a monoculture, displacing native vegetation and thus reducing available habitat.

Fifteen apparent Preble's hibernacula (hibernation nests) have been located through radio telemetry, all within 78 m (260 ft) of a perennial stream bed or intermittent tributary (Bakeman and Deans 1997, Shenk and Sivert 1999a, Schorr 2001). Of these, one was confirmed through excavation (Bakeman and Deans 1997); others were left intact to prevent harm to the mice. Hibernacula have been located under willow, chokecherry, snowberry, skunkbrush, *Rhus* spp. (sumac), *Clematis* spp. (clematis), *Populus* spp. (cottonwoods), Gambel's oak, *Cirsium* spp. (thistle), and *Alyssum* spp. (alyssum) (Shenk and Sivert 1999a). At the Academy, four of six hibernacula found by radio-telemetry were located in close proximity to coyote willow (*Salix exigua*) (Schorr 2001). The one excavated hibernaculum, at Rocky Flats, was found 9 m (30 ft) above the stream bed, in a dense patch of chokecherry and snowberry (Bakeman and Deans 1997). The nest was constructed of leaf litter 30 centimeters (cm) (12 in) below the surface in coarse textured soil.

The Preble's constructs day nests composed of grasses, forbs, sedges, rushes, and other available plant material. They may be globular in shape or simply raised mats of litter, and are most commonly above ground but also can be below ground. They are typically found under debris at the base of shrubs and trees, or in open grasslands (Ryon 2001). An individual mouse can have multiple day nests in both riparian and grassland communities (Shenk and Sivert 1999a), and may abandon a nest after approximately a week of use (Ryon 2001).

Hydrologic regimes that support Preble's habitat range from large perennial rivers such as the South Platte River to small temporary drainages only 1 to 3 m (3 to 10 ft) in width, as at Rocky Flats and in montane habitats. Flooding is a common and natural event in the riparian systems along the Front Range of Colorado. This periodic flooding helps create a dense vegetative community by stimulating resprouting from willow shrubs and allows herbs and grasses to take advantage of newly-deposited soil.

Fire is also a natural component of the Colorado Front Range and Wyoming foothills, and Preble's habitat naturally waxes and wanes with fire events. Within shrubland and forest, intensive fire may result in adverse impacts to Preble's populations. However, in a review of the effects of grassland fires on small mammals, Kaufman *et al.* (1990) found a positive effect of fire on the meadow jumping mouse in one study and no effect of fire on the species in another study.

Meadow jumping mice usually have two litters per year, but there are records of three litters per year. An average of five young are born per litter, but the size of a litter can range from two to eight young (Quimby 1951, Whitaker 1963).

The Preble's is long-lived for a small mammal, in comparison with many species of mice and voles that seldom live a full year. Along South Boulder Creek, Boulder County, CO, seven individuals originally captured as adults were still alive 2 years later, having attained at least 3 years of age (Meaney *et al.*, in prep.). However, like many small mammals, the Preble's annual survival rate is low. Preble's survival rates appear to be lower over the summer than over the winter. Over-summer survival rates ranged from 22 to 78 percent and over-winter survival rates ranged from 56 to 97 percent (Shenk and Sivert 1999b; Ensight Technical Services 2000, 2001; Schorr 2001; Meaney *et al.*, in prep.).

The Preble's has a host of known predators including garter snakes (*Thamnophis* spp.), prairie rattlesnakes (*Crotalus viridus*), bullfrogs (*Rana catesbiana*), foxes (*Vulpes vulpes* and *Urocyon cinereoargenteus*), house cats (*Felis catus*), long-tailed weasels (*Mustela frenata*), and red-tailed hawks (*Buteo jamaicensis*) (Shenk and Sivert 1999a, Schorr 2001). Other potential predators include coyotes (*Canis latrans*), barn owls (*Tyto alba*), great horned owls (*Bubo virginianus*), screech owls (*Otus* spp.), long-eared owls (*Asio otus*), northern harriers (*Circus cyaneus*), and large predatory fish.

Other mortality factors of the Preble's include drowning and vehicle collision (Schorr 2001, Shenk and Sivert 1999a). Mortality factors known for the meadow jumping mouse, such as starvation, exposure, disease, and insufficient fat stores for hibernation (Whitaker 1963) also are likely causes of death for the Preble's.

White and Shenk (2000) determined that riparian shrub cover, tree cover, and the amount of open water nearby are good predictors of Preble's densities, and summarized abundance estimates from nine sites in Colorado for field work conducted during 1998 and 1999. Estimates of abundance ranged from 4 to 67 mice per km (6 to 110 mice per mi) of stream and averaged 33 mice per km (53 mice per mi) of stream.

While fecal analyses have provided the best data on the Preble's diet to date, they overestimate the components of the diet that are less digestible. Based on fecal analyses the Preble's eats insects; fungus; moss; pollen; willow; *Chenopodium* sp. (lamb's quarters); *Salsola* sp. (Russian thistle); *Helianthus* spp. (sunflowers); *Carex* spp. (sedge); *Verbascum* sp. (mullein); *Bromus, Festuca, Poa, Sporobolus* and *Agropyron* spp. (grasses); *Lesquerella* sp. (bladderpod); *Equisetum* sp. (rushes); and assorted seeds (Shenk and Eussen 1998, Shenk and Sivert 1999a). The diet shifts seasonally; it consists primarily of insects and fungus after emerging from hibernation, shifts to fungus, moss, and pollen during mid-summer (July-August), with insects again added in September (Shenk and Sivert 1999a). The shift in diet along with shifts in mouse movements suggests that the Preble's may require specific seasonal diets, perhaps related to the physiological constraints imposed by hibernation (Shenk and Sivert 1999a).

The Preble's is a true hibernator, usually entering hibernation in September or October and emerging the following May, after a potential hibernation period of 7 or 8 months. Adults are the first age group to enter hibernation because they accumulate the necessary fat stores earlier than young of the year. Similar to other subspecies of meadow jumping mouse, Preble's do not store food, but survive on fat stores accumulated prior to hibernation (Whitaker 1963). Apparent hibernacula of the Preble's have been located both within and outside of the 100-year floodplain of streams (Shenk and Sivert 1999a, Ryon 2001, Schorr 2001). Those hibernating outside of the 100-year floodplain would likely be less vulnerable to flood-related mortality.

Meadow jumping mice are docile to handle and not antagonistic toward one another (Whitaker 1972). However, meadow jumping mice compete with meadow voles and may be kept at low densities by voles (Boonstra and Hoyle 1986). Introduced species that occupy riparian habitats may displace or compete with the Preble's. House mice (*Mus musculus*) were common in and adjacent to historic capture sites where the Preble's was no longer found (Ryon 1996).

The Preble's is primarily nocturnal or crepuscular but also may be active during the day, when they have been seen moving around or sitting still under a shrub (Shenk 1998). Little is known about social interactions and their significance in the Preble's. Jones

and Jones (1985) described lively social interactions in which several Preble's mice were observed jumping into the air and squeaking and suggested that they formed a gregarious unit. In a recent study, for the month their radio-collars were active, several Preble's mice came repeatedly from different day-nest locations to meet at one spot at night (Shenk, pers. comm., 2002).

Conservation Issues

The Preble's is closely associated with riparian ecosystems that are relatively narrow and represent a small percentage of the landscape. If habitat for the Preble's is destroyed or modified, populations in those areas will decline or be extirpated. The decline in the extent and quality of Preble's habitat is considered the main factor threatening the subspecies (Service 1998, Hafner *et al.* 1998, Shenk 1998). Habitat alteration, degradation, loss, and fragmentation resulting from urban development, flood control, water development, agriculture, and other human land uses have adversely impacted Preble's populations. Habitat destruction may impact individual Preble's directly or by destroying nest sites, food resources, and hibernation sites, by disrupting behavior, or by forming a barrier to movement.

Despite numerous surveys, the Preble's has not recently been found in the Denver and Colorado Springs metropolitan areas, and is believed to be extirpated from these areas as a result of extensive urban development. Given the overlap of the Preble's range with an area of extensive and rapid urban development along the Colorado Front Range, it is likely that significant losses of Preble's populations and habitats have occurred and may continue to occur.

Conversion of native riparian ecosystems to commercial croplands and grazed rangelands was identified as the major threat to Preble's persistence in Wyoming (Clark and Stromberg 1987, Compton and Hugie 1993). Intensive grazing and haying operations may negatively impact the Preble's by removing food and shelter. While some Preble's populations coexist with livestock operations, overgrazing can decimate riparian communities on which the Preble's depends. Similarly, haying operations that allow significant riparian vegetation to remain in place may be compatible with persistent Preble's populations.

Trail systems frequently parallel or intersect riparian communities and thus are common throughout Preble's range. Trail development can alter natural communities and may impact the Preble's by modifying nest sites, food resources, and hibernation sites, and by fragmenting its habitat. Humans and pets using these trails may alter behavior patterns of the Preble's and cause a decrease in survival and reproductive success.

Habitat fragmentation limits the extent and abundance of the Preble's. In general, as animal populations become fragmented and isolated, it becomes more difficult for them to persist. Small, isolated patches of habitat are unable to support as many Preble's mice as larger patches of habitat. When threats to persistence are similar, larger populations are more secure from extirpation than smaller ones.

The structure and function of riparian ecosystems are determined by the hydrology of the waterway. Changes in timing and abundance of water can alter the channel structure, riparian vegetation, and the adjacent floodplain, and may result in changes that are detrimental to the persistence of the Preble's. Similarly, depletion of groundwater also affects the habitat components needed by the Preble's. As groundwater supplies are depleted, more xeric (low moisture) plant communities replace the riparian vegetation. The conversion of habitats from mesic (moderate moisture), shrub-dominated systems to drier grass-dominated systems may preclude the Preble's from these areas.

Alluvial aggregate extraction may produce long-term changes to Preble's habitat by altering hydrology and removing riparian vegetation. In particular, such extraction removes and often precludes reestablishment of habitat components required by the Preble's. Such mining impacts the deposits of alluvial sands and gravels that may be important hibernation locations for the Preble's.

Within the Preble's range, bank stabilization, channelization, and other measures to address flooding and stormwater runoff have increased the rate of stream flow, straightened riparian channels, and narrowed riparian areas (Pague and Grunau 2000). Using riprap and other structural stabilization options to reduce erosion can destroy riparian vegetation, and prevent or delay its re-establishment. These measures can alter the hydrologic processes and plant communities present to the point where Preble's populations can no longer persist.

Transportation and utility corridors frequently cross Preble's habitat and may negatively affect populations. As new roads are built and old roads are maintained, habitat is destroyed or fragmented. Roads and bridges also may act as barriers to dispersal. Train and truck accidents within riparian areas may release spills of chemicals, fuels and other substances that may impact the mouse or its habitat. Sewer, water, communications, gas, and electric lines cross Preble's habitat. Their rights-of-way can contribute to habitat disturbance and fragmentation through new construction and periodic maintenance.

Invasive, noxious plants can encroach upon a landscape and displace native plant species. This change reduces the abundance and diversity of native plants, and may negatively impact cover and food sources for the Preble's. The control of noxious weeds also may impact the Preble's where large-scale removal of vegetation occurs through chemical treatments and mechanical mowing operations.

Pesticides and herbicides are used within the range of the Preble's. Inappropriate use of these chemicals may harm the Preble's directly or when ingested by the Preble's with food or water. Overall, an integrated pest management approach (use of biological, chemical, and mechanical control) may help reduce the threat of chemicals, but allow for the control of target species.

The increasing presence of humans near Preble's habitats may result in increased level of predation that may pose a threat to the Preble's. The striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), red fox (*Vulpes vulpes*), and the domestic and feral cat are found in greater densities in and around areas of human activity; all four of these species feed opportunistically on small mammals. Introduction of non-native sport fish and the bullfrog into waters within Preble's range may result in additional predation. The fact that summer mortality is higher than overwinter mortality underscores the impact that predators can have on the Preble's.

While normal flooding events help maintain the riparian and floodplain communities that provide suitable habitat for the Preble's, increased development and surfaces impervious to water absorption within a drainage can result in more frequent and severe flood events and prevent the re-establishment of riparian communities.

Catastrophic fires can alter habitat dramatically and change the structure and composition of the vegetation communities so that the Preble's may no longer persist. In addition, precipitation falling in a burned area may degrade Preble's habitat by causing greater levels of erosion and sedimentation along creeks. Controlled use of fire may be one

method to maintain appropriate riparian, floodplain, and upland vegetation within Preble's habitat. However, over the past several decades, as human presence has increased through Preble's range, significant effort has been made to suppress fires. Long periods of fire suppression may result in a build-up of fuel and result in a catastrophic fire.

activities related to rodent control, ongoing agricultural activities, landscape maintenance, and ongoing use of perfected water rights, for a period of 36 months (through May 21, 2004). On August 30, 2001, we proposed to amend the special regulations to provide additional exemptions from section 9 take prohibitions for certain noxious weed control and ditch

listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service on Federal

speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas within the geographic area occupied by

time. Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject

propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These physical and biological features include, but are not

method to maintain appropriate riparian, floodplain, and upland vegetation within Preble's habitat. However, over the past several decades, as human presence has increased through Preble's range, significant effort has been made to suppress fires. Long periods of fire suppression may result in a build-up of fuel and result in a catastrophic fire.

Previous Federal Action

The Service included the Preble's as a category 2 candidate species in the 1985 Animal Notice of Review (50 FR 37958) and retained that status in subsequent notices published in the **Federal Register** on January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58810), and November 15, 1994 (59 FR 58982). In 1996 the Service discontinued the practice of maintaining a list of category 2 species and the Preble's did not appear in the February 28, 1996, notice of review (61 FR 7596). Category 2 species were those species for which information in the Service's possession indicated that listing was possibly appropriate, but for which substantive data on biological vulnerability and threats were not available to support a proposed rule.

On August 16, 1994, we received a petition from the Biodiversity Legal Foundation to list the Preble's as endangered or threatened throughout its range and to designate critical habitat within a reasonable amount of time following the listing. On March 15,1995, we published notice of the 90-day finding that the petition presented substantial information indicating that listing the Preble's may be warranted (60 FR 13950), and requested comments and biological data on the status of the Preble's. On March 25, 1997, we issued a proposed rule to list the Preble's as an endangered species (62 FR 14093) and announced a 90-day public comment period. After a review of the best scientific data available and all comments received in response to the proposed rule, we published a final rule on May 13, 1998, designating the Preble's as threatened throughout its range (62 FR 26517). The Service did not designate critical habitat for the species at that time.

On December 3, 1998, we proposed special regulations under section 4(d) of the Act (63 FR 66777) to define conditions under which certain activities that could result in incidental take of the Preble's would be exempt from the section 9 take prohibitions of the Act. On May 22, 2001, we published a final rule (66 FR 28125) adopting certain portions of the proposal that provided exemptions for specified activities related to rodent control, ongoing agricultural activities, landscape maintenance, and ongoing use of perfected water rights, for a period of 36 months (through May 21, 2004). On August 30, 2001, we proposed to amend the special regulations to provide additional exemptions from section 9 take prohibitions for certain noxious weed control and ditch maintenance activities (66 FR 45829).

The final listing rule for the Preble's indicated that designation of critical habitat was not prudent because publication of specific locations would increase the threat of vandalism or intentional destruction of habitat. On June 9, 2000, the Biodiversity Legal Foundation, Biodiversity Associates, Center for Biological Diversity, South Dakota Resources Coalition, David C. Jones, and Dennis Williams filed a suit in the U.S. District Court for the District of Colorado (Civil Action Number 00–D–1180) against the Department of the Interior and the Service over our failure to designate critical habitat for both the Preble's and the Topeka shiner, and for failure to prepare and implement a recovery plan for the Preble's. A court-mediated settlement was reached with the litigants that included a June 4, 2002, date for submission of proposed critical habitat for the Preble's to the **Federal Register** for publication and a June 4, 2003, date for submission of final critical habitat for the Preble's to the **Federal Register**. They agreed to dismiss their claim that the Service failed to prepare a recovery plan for the Preble's and subsequently agreed to extend the date for submission of the proposed critical habitat for the Preble's to July 8, 2001. In early 2000, we formed the Preble's Meadow Jumping Mouse Recovery Team. A recovery plan for the Preble's is currently being drafted. The team's working draft is available to the public as a discussion document.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to conserve the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential to conserve the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not result in any regulatory requirement for these actions.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

In accordance with sections 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. Within the geographic area occupied by the species we designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to conserve the species. We will not

speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas within the geographic area occupied by the species unless at least one of the primary constituent elements are present, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species. Moreover, areas occupied by certain known populations of the Preble's have not been proposed as critical habitat. For example, we did not propose critical habitat for some small scattered populations or habitats in areas highly fragmented by human development.

Our regulations state, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Based on the best available science and commercial data, there appears to be no foundation upon which to make a determination that the conservation needs of the Preble's require designation of critical habitat outside of the geographic area occupied by the species, so we have not proposed to designate critical habitat outside of the geographic area believed to be occupied.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, procedures, and guidance to ensure decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States, Tribes, and counties, scientific status surveys and studies, and biological assessments or other unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act, and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in likely-to-jeopardize findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas essential to conserve the Preble's, we used the best scientific and commercial data available. We have reviewed approaches to the conservation of the Preble's undertaken by the Federal, State, and local agencies operating within the species' range since its listing in 1998, and the identified steps necessary for recovery outlined in the working draft of the recovery plan for the Preble's. We also reviewed available information that pertains to the habitat requirements of this species, including material received since the listing of the Preble's. The material included research published in peer-reviewed articles, academic theses and agency reports; reports from biologists conducting research under section 10(a)(1)(A) recovery permits; the working draft of the recovery plan for the Preble's; information from consulting biologists conducting site assessments, surveys, formal and informal consultations; as well as information obtained in personal communications with Federal, State, and other knowledgeable biologists in Colorado and Wyoming.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These physical and biological features include, but are not limited to—(1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing (or development) of offspring; and (5) habitats protected from disturbance or that are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Preble's include those habitat components essential for the biological needs of reproducing, rearing of young, foraging, sheltering, hibernation, dispersal, and genetic exchange. The Preble's is able to live and reproduce in and near riparian areas located within grassland, shrubland, forest, and mixed vegetation types where dense herbaceous or woody vegetation occurs near the ground level, where available open water exists during their active season, and where there are ample upland habitats of sufficient width and quality for foraging, hibernation, and refugia from catastrophic flooding events. While willows of shrub form are a dominant component in many riparian habitats occupied by the Preble's, the structure of the vegetation appears more important to the Preble's than species composition.

Primary constituent elements associated with the biological needs of dispersal and genetic exchange also are found in areas that provide connectivity or linkage between or within Preble's populations. These areas may not include the habitat components listed above and may have experienced substantial human alteration or disturbance.

The dynamic ecological processes that create and maintain Preble's habitat also are important primary constituent elements. Habitat components essential to the Preble's are found in and near those areas where past and present geomorphological and hydrological processes have shaped streams, rivers, and floodplains, and have created conditions that support appropriate vegetative communities. Preble's habitat is maintained over time along rivers and streams by a natural flooding regime (or

one sufficiently corresponding to a natural regime) that periodically scours riparian vegetation, reworks stream channels, floodplains, and benches, and redistributes sediments such that a pattern of appropriate vegetation is present along river and stream edges, and throughout their floodplains. Periodic disturbance of riparian areas sets back succession and promotes

any of the primary constituent elements are not considered critical habitat.

Criteria Used To Identify Critical Habitat

The Preble's Meadow Jumping Mouse Recovery Team's February 27, 2002, Draft Discussion Document on a recovery plan for the Preble's (Draft Document) identifies specific criteria for reaching recovery and the delisting of

River drainage, 11 in the South Platte River drainage, and 3 in the Arkansas River drainage.

Three large and three medium Preble's populations in Colorado that are designated in the Draft Document as recovery populations are reflected in this critical habitat proposal. The Draft Document defines large populations as maintaining 2,500 mice and usually including at least 80 km (50 mi) of rivers

the continued decline of Preble's populations throughout its range, Preble's populations and the primary constituent elements on which they depend are more likely to persist and remain viable on Federal lands than on non-Federal lands. The likelihood of maintaining stable populations is greatest on these Federal lands, where consistent and effective land management strategies can be more

Services' 1998 mapping of sites occupied or potentially occupied by the Preble's produced in conjunction with the Colorado Department of Natural Resources as part of proposed special regulations under section 4(d) of the Act (63 FR 66777); working maps produced by the Preble's Meadow Jumping Mouse Recovery Team during development of the Draft Document; National Wetland Inventory maps produced by the

Survey efforts to document the Preble's in Wyoming have been more limited than in Colorado and have been focused on—(1) Federal lands (the Medicine Bow-Routt National Forest, some Bureau of Land Management lands, and the F.E. Warren Air Force Base in Laramie County); (2) lands owned by True Ranches; and (3) areas to be impacted by proposed projects, most notably the Medicine Bow Lateral

one sufficiently corresponding to a natural regime) that periodically scours riparian vegetation, reworks stream channels, floodplains, and benches, and redistributes sediments such that a pattern of appropriate vegetation is present along river and stream edges, and throughout their floodplains. Periodic disturbance of riparian areas sets back succession and promotes dense, low-growing shrubs and lush herbaceous vegetation favorable to the Preble's. Where flows are controlled to preclude a natural pattern and other disturbance is limited, a less favorable mature successional stage of vegetation dominated by cottonwoods or other trees may develop. The long-term availability of habitat components favored by the Preble's also depends on plant succession and impacts of drought, fires, windstorms, herbivory, and other natural events. In some cases these naturally-occurring ecological processes are modified or are supplanted by human land uses that include manipulation of water flow and of vegetation.

Primary constituent elements for the Preble's include:

(1) A pattern of dense riparian vegetation consisting of grasses, forbs, and shrubs in areas along rivers and streams that provide open water through the Preble's active season.

(2) Adjacent floodplains and vegetated uplands with limited human disturbance (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreational trails, and urban/wildland interfaces).

(3) Areas that provide connectivity between and within populations. These may include river and stream reaches with minimal vegetative cover or that are armored for erosion control, travel ways beneath bridges, through culverts, along canals and ditches, and other areas that have experienced substantial human alteration or disturbance.

(4) Dynamic geomorphological and hydrological processes typical of systems within the range of the Preble's, *i.e.*, those processes that create and maintain river and stream channels, floodplains, and floodplain benches, and promote patterns of vegetation favorable to the Preble's.

Existing features and structures within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and other features not containing any of the primary constituent elements are not considered critical habitat.

Criteria Used To Identify Critical Habitat

The Preble's Meadow Jumping Mouse Recovery Team's February 27, 2002, Draft Discussion Document on a recovery plan for the Preble's (Draft Document) identifies specific criteria for reaching recovery and the delisting of the Preble's. While elements of this Draft Document may change prior to plan finalization, the concepts described within it apply the best available science on the Preble's and serve as a logical starting point for identifying areas that are essential for the conservation of the Preble's. We anticipate that a draft recovery plan for the Preble's will be published prior to our final designation of critical habitat. To assure that designation of critical habitat for the Preble's and the recovery plan for the Preble's are compatible, the content of the draft recovery plan and comments received on the plan will be reviewed and incorporated, as appropriate, into the final designation of critical habitat.

To recover the Preble's to the point where it can be delisted, the Draft Document identifies the need for a specified number, size, and distribution of wild, self-sustaining Preble's populations across the known range of the Preble's. The distribution of these recovery populations is intended both to reduce the risk of multiple Preble's populations being negatively affected by natural or man-made events at any one time and to preserve the existing genetic variation within the Preble's.

The Draft Document identifies recovery criteria for each of the three major river drainages where the Preble's occurs (the North Platte River drainage in Wyoming, the South Platte River drainage in Wyoming and Colorado, and the Arkansas River drainage in Colorado) and for each subdrainage judged likely to support Preble's. In some cases the Draft Document identifies recovery criteria for subdrainages where trapping for the Preble's has not yet occurred or where limited trapping has not confirmed the presence of the Preble's. Boundaries of drainages and subdrainages have been mapped by the U.S. Geological Survey (USGS). For the Draft Document, 8-digit Hydrological Unit Code (HUC) boundaries were selected to define subdrainages. Hereafter, we refer to these specific subdrainages as "HUCs." A total of 19 HUCs are identified in the Draft Document as occupied or potentially occupied by the Preble's. Of these, 5 are located in the North Platte River drainage, 11 in the South Platte River drainage, and 3 in the Arkansas River drainage.

Three large and three medium Preble's populations in Colorado that are designated in the Draft Document as recovery populations are reflected in this critical habitat proposal. The Draft Document defines large populations as maintaining 2,500 mice and usually including at least 80 km (50 mi) of rivers and streams. It defines medium populations as maintaining 500 mice over at least 16 km (10 mi) of rivers and streams. However, the Draft Document does not delineate specific boundaries of these six recovery populations. In addition, in the remaining 13 HUCs within the Preble's range the Draft Document calls for recovery populations but does not designate their locations. In these cases, the Draft Document only prescribes the need to establish one or more recovery populations of specified minimum size within a HUC. The Draft Document anticipates that, in the future, the locations of these recovery populations will be designated and their boundaries delineated by State and local governments, and other interested parties, working in coordination with the Service. However, to meet the deadline for this critical habitat proposal, we have proposed specific critical habitat units in these areas. In addition, we have proposed specific critical habitat units, as appropriate, in HUCs where recovery populations are called for by the Draft Document, but where their locations have not been specifically designated in the Draft Document.

Beyond proposing critical habitat for sites of likely recovery populations based on the Draft Document, we reviewed other sites of Preble's occurrence, especially on Federal lands, for possible designation as critical habitat. The Draft Document emphasizes the importance of protecting additional Preble's populations, to provide insurance for the Preble's in the event that designated recovery populations cannot be effectively managed or protected as envisioned by the recovery plan, or are decimated by uncontrollable catastrophic events such as fires or flooding. The Draft Document also recommends directing recovery efforts toward public lands rather than private lands where possible and calls upon all Federal agencies to protect and manage for the Preble's wherever it occurs on Federal lands. Given these recommendations from the Draft Plan, the designation of additional areas of critical habitat on Federal land is essential for the conservation of the Preble's. Should unforseen events cause

the continued decline of Preble's populations throughout its range, Preble's populations and the primary constituent elements on which they depend are more likely to persist and remain viable on Federal lands than on non-Federal lands. The likelihood of maintaining stable populations is greatest on these Federal lands, where consistent and effective land management strategies can be more easily employed. Preble's populations on Federal lands could serve as substitute recovery populations should designated recovery populations decline or fail to meet recovery goals. In addition, some Preble's populations on Federal lands have been the subject of ongoing research that could prove vital to the conservation of the Preble's.

For the reasons stated above we have proposed selected stream reaches on Federal lands supporting the Preble's that we believe to be essential to the conservation of the Preble's, even if these areas appear unlikely to be selected for initially designated recovery populations based on the Draft Document. These areas of proposed critical habitat may include short reaches of intervening non-Federal lands that in some cases support all primary constituent elements needed by the Preble's or, if substantially developed, are likely to provide only connectivity between areas of Preble's habitat on nearby Federal lands.

Proposed critical habitat units include only river and stream reaches, and adjacent floodplains and uplands, that are within the known geographic and elevational range of the Preble's, have the primary constituent elements present, and, based on the best available scientific information, are believed to currently support the Preble's.

In Wyoming and at higher elevations along the Front Range in Colorado the geographical distribution of the Preble's has been subject to scrutiny due to the close resemblance, and apparent range overlap, between the Preble's and the western jumping mouse. However, new information obtained since the time of the Preble's listing has not appreciably changed the known range of the Preble's. Based on the most recent information on elevational range of the Preble's we have, with one exception, limited proposed critical habitat to 2,300 m (7,600 ft) in elevation and below.

Presence of primary constituent elements was determined through a variety of sources including, but not limited to—Colorado Division of Wildlife mapping of Preble's Habitat Similarity Models derived from interpretation of aerial photographs; the Services' 1998 mapping of sites occupied or potentially occupied by the Preble's produced in conjunction with the Colorado Department of Natural Resources as part of proposed special regulations under section 4(d) of the Act (63 FR 66777); working maps produced by the Preble's Meadow Jumping Mouse Recovery Team during development of the Draft Document; National Wetland Inventory maps produced by the Service; results of research conducted on a variety of Federal properties by the Forest Service, the Department of Energy, the Air Force, and the Army Corps of Engineers; results of research conducted by the Colorado Division of Wildlife, Colorado Department of Transportation, and the City of Boulder; field assessments of habitat by Service staff; information amassed to support regional Habitat Conservation Plans (HCPs) including those in Boulder, Douglas, and El Paso Counties in Colorado, and for Denver Water properties; coordination with Forest Service personnel from the Medicine Bow-Routt, Arapaho-Roosevelt, and Pike-San Isabel National Forests; and, numerous evaluations of potential Preble's habitat by consulting biologists in support of developers, landowners, and other clients.

Presence of the Preble's was determined based largely on the results of trapping surveys, the majority of which were conducted in the past 6 years. Sites judged to be occupied by the Preble's include those that—(1) have recently been documented to support jumping mice identified by genetic or morphological examination as Preble's; (2) have recently been documented to support jumping mice and for which historical verification of the Preble's exists; or (3) are at appropriate elevation levels for the Preble's, have recently been documented to support jumping mice identified in the field as the Preble's, but where the mice were released alive and not subject to definitive morphological or genetic studies. While, in some cases, proposed critical habitat units extend well beyond these Preble's capture locations, boundaries of these critical habitat units include only those reaches that we believe to be occupied by the Preble's based on the best available information regarding capture sites, the known mobility of the Preble's, and the quality and continuity of habitat components along stream reaches. Where appropriate, we have included details on the known status of the Preble's within specific subdrainages in the in the Proposed Critical Habitat Designation section of this document.

Survey efforts to document the Preble's in Wyoming have been more limited than in Colorado and have been focused on—(1) Federal lands (the Medicine Bow-Routt National Forest, some Bureau of Land Management lands, and the F.E. Warren Air Force Base in Laramie County); (2) lands owned by True Ranches; and (3) areas to be impacted by proposed projects, most notably the Medicine Bow Lateral Pipeline.

We considered several qualitative criteria to judge the current status and probable persistence of Preble's populations in the selection and proposal of specific areas as critical habitat. These included—(1) the quality, continuity, and extent of habitat components present; (2) the state of natural hydrological processes that maintain and rejuvenate suitable habitat components; (3) the presence of lands devoted to conservation, either public lands such as parks, wildlife management areas, and dedicated open space, or private lands under conservation easements; and (4) the landscape context of the site, including the overall degree of current human disturbance and presence, and likelihood of future development based on local planning and zoning.

In those units where we propose critical habitat on Federal lands judged not likely to be initially designated as recovery populations under the Draft Document, we looked for contiguous Federal property along stream reaches occupied by the Preble's of at least 3 miles in length. This corresponds to the minimum size of small populations consistent with recovery criteria in the Draft Document. In some cases shorter reaches on Federal lands were proposed as critical habitat when they were separated from more substantial reaches on Federal lands by only small segments of intervening non-Federal lands.

We also determined whether areas or portions of areas designated as recovery populations in the Draft Document, or otherwise likely to be proposed as critical habitat based on factors described above, do not represent critical habitat due to adequate protection and management under an existing Integrated Natural Resource Management Plan, HCP, or other special management plan. Where regional HCPs are being developed, we evaluated the potential completion schedule of these planning efforts in relation to the likely completion of the final rule designating Preble's critical habitat.

North Platte River Drainage

In order to meet recovery criteria, the Draft Document calls for one large and

two medium recovery populations spread over three of the five HUCs in the North Platte River drainage likely to support the Preble's. The Draft Document calls for three small populations (defined as 5 km (3 mi) or more of occupied habitat) or one medium population in each of the other two HUCs. Two of the five HUCs currently lack confirmed occurrence of Preble's has been shown to inhabit, surveys have captured jumping mice identified in the field as the Preble's from the appropriate elevational range. Therefore, we have proposed critical habitat on Forest Service lands and small parcels of intervening non-Federal lands within the Friend Creek watershed and within the Murphy Canyon watershed.

Suitable habitat in the Horse Creek

required to meet recovery criteria in the Draft Document. This area is limited to the F.E. Warren Air Force Base in Cheyenne.

The Lone Tree-Owl HUC supports primary constituent elements for Preble's both in Wyoming and in Colorado. Based on the recovery criteria of three small or one medium recovery population assigned to this HUC in the Draft Document, we have proposed two

Creek and its tributaries consistent with the medium recovery population designated to meet recovery criteria for this area under the Draft Document. We also assessed Forest Service lands along the Big Thompson River and Little Thompson River for possible inclusion as proposed critical habitat. Potential areas along the Big Thompson River and the North Fork of the Big Thompson River were largely in private ownership,

components needed by the Preble's and the absence of other captures, we limited proposed critical habitat within the Clear Creek HUC to this single population.

The Draft Document calls for a medium recovery population along Cherry Creek in the Middle South Platte-Cherry Creek HUC. Preble's habitat in the upper reaches of the Cherry Creek basin appears extensive.

lack of known Preble's occurrence we have not proposed critical habitat within these HUCs.

Arkansas River Drainage

Within the Fountain Creek HUC the Draft Document calls for a large recovery population along Monument Creek and its tributaries including lands within the Air Force Academy. While the Academy would be an essential part

two medium recovery populations spread over three of the five HUCs in the North Platte River drainage likely to support the Preble's. The Draft Document calls for three small populations (defined as 5 km (3 mi) or more of occupied habitat) or one medium population in each of the other two HUCs. Two of the five HUCs currently lack confirmed occurrence of the Preble's. Therefore, we have proposed critical habitat areas representing large and medium recovery populations on the remaining three HUCs, all of which have extensive areas supporting primary constituent elements required by the Preble's.

Suitable habitat appears to be present throughout the Middle North Platte-Casper HUC. However, survey efforts targeted at the Preble's have occurred on only a limited basis in this subdrainage, with the only known captures of jumping mice at elevations above 2,800 m (7,800 ft) and likely to be western jumping mice. Therefore, while primary constituent elements for the Preble's appear present in this subdrainage and the Preble's probably occurs within this system, we have not proposed critical habitat based on lack of known occurrence.

Suitable habitat components occur throughout the Glendo HUC. We have proposed critical habitat on the Cottonwood Creek watershed consistent with one of the medium recovery populations required to meet recovery criteria for the North Platte River drainage in the Draft Document. In addition, we have proposed critical habitat in the Horseshoe Creek watershed on Forest Service land.

Primary constituent elements required by the Preble's appear widespread within the Lower Laramie HUC. Of two major watersheds we investigated, the complex formed by Chugwater Creek and its tributaries appears to be of better habitat quality and includes more stream miles than the complex formed by Sybille Creek and its tributaries. We have proposed critical habitat on the Chugwater Creek watershed consistent with the one large recovery population required to meet recovery criteria for the North Platte River drainage in the Draft Document. Richeau Creek and Hunton Creek were not included as proposed critical habitat since they are segregated from the main portion of the Chugwater Creek complex by long stretches of less suitable habitat.

In the Lower Laramie HUC, habitat components typically used by the Preble's exist on Federal property on the Medicine Bow-Routt National Forest. While many of these locations are at higher elevations than those that the Preble's has been shown to inhabit, surveys have captured jumping mice identified in the field as the Preble's from the appropriate elevational range. Therefore, we have proposed critical habitat on Forest Service lands and small parcels of intervening non-Federal lands within the Friend Creek watershed and within the Murphy Canyon watershed.

Suitable habitat in the Horse Creek HUC is generally limited to the western half of the subdrainage. Two areas of suitable habitat include the complex formed by Horse Creek and its tributaries and the various tributaries to Bear Creek. The Bear Creek tributaries are generally isolated from each other and from Horse Creek by large sections of unsuitable habitat. The Horse Creek complex is the larger complex and has better quality habitat. Therefore, we have proposed critical habitat on the Horse Creek watershed consistent with one of the two medium recovery populations required to meet recovery criteria for the North Platte River drainage in the Draft Document.

Habitat components suitable for the Preble's appear to be quite limited in the Middle North Platte-Scottsbluff HUC and are largely confined to the westernmost portions of the subdrainage. Some small pockets of suitable habitat are scattered throughout the rest of the subdrainage, but they are quite isolated. Additionally, trapping efforts targeted at the Preble's have occurred on a limited basis in this subdrainage with no surveys providing captures of the jumping mice. Therefore, while there is a high probability that the Preble's occurs within this subdrainage, we have not proposed critical habitat based on lack of known occurrence.

South Platte River Drainage

Recovery criteria in the Draft Document require three small recovery populations or one medium population in the Upper Lodgepole HUC. Suitable habitat for Preble's is generally limited to the western half of the subdrainage. Most trapping efforts in this HUC have been on the Medicine Bow-Routt National Forest at elevations above 2,300 m (7,700 ft). Additionally, one trapping effort at a lower elevation produced a jumping mouse presumed to be a Preble's. We have proposed two critical habitat units in this subdrainage, Lodgepole Creek and Upper Middle Lodgepole Creek, consistent with two of the three small recovery populations identified for the HUC in the Draft Document.

In Crow Creek HUC we have proposed critical habitat consistent with one of the three small recovery populations required to meet recovery criteria in the Draft Document. This area is limited to the F.E. Warren Air Force Base in Cheyenne.

The Lone Tree-Owl HUC supports primary constituent elements for Preble's both in Wyoming and in Colorado. Based on the recovery criteria of three small or one medium recovery population assigned to this HUC in the Draft Document, we have proposed two small areas of critical habitat along Lone Tree Creek, one in Wyoming and one in Colorado.

We have elected not to propose additional critical habitat on Federal property in the Upper Lodgepole, Crow Creek, and Lone Tree-Owl HUCs in southern Wyoming beyond those populations likely to be designated recovery populations under the proposed plan. Within these HUCs, Bureau of Land Management properties are largely upland areas with only small segments of streams. Forest Service lands in the Medicine Bow—Routt National Forest include many suitable-looking streams, but most occur at elevations ranging from 2,200 m (7,300 ft) to 2,400 m (8,000 ft). Although surveys from these riparian areas have produced jumping mice that are potentially the Preble's, it is likely, based on elevation, that many of these are western jumping mice. We will continue to work with the Forest Service regarding potential Preble's populations on their lands and will encourage further survey effort and collection of jumping mouse specimens for species verification.

In the Cache La Poudre HUC, we have proposed critical habitat along the lower portions of the North Fork of the Cache Le Poudre River and its tributaries, consistent with the large recovery population designated in the Draft Document. In addition, further south in this subdrainage we have proposed a second area limited largely to Forest Service lands along the main stem of the Cache Le Poudre River and on selected tributaries. While additional stream reaches that support Preble's populations are present on Forest Service lands in the upper reaches of the North Fork of the Cache Le Poudre and its tributaries, including Bull Creek, Willow Creek, Mill Creek, and Trail Creek, the extent of contiguous stream reaches in Forest Service ownership is very limited. A checkerboard pattern of land ownership convinced us that proposing additional critical habitat centered on Federal lands is not warranted; therefore, we proposed no critical habitat in this area.

In the Big Thompson HUC we proposed critical habitat on Buckhorn Creek and its tributaries consistent with the medium recovery population designated to meet recovery criteria for this area under the Draft Document. We also assessed Forest Service lands along the Big Thompson River and Little Thompson River for possible inclusion as proposed critical habitat. Potential areas along the Big Thompson River and the North Fork of the Big Thompson River were largely in private ownership, with substantial human development occurring in many places. For these reasons we proposed only one additional area as critical habitat, centered on Forest Service lands on portions of Dry Creek and its tributaries. Similarly, Forest Service holdings along the Little Thompson River and its tributaries are highly fragmented by non-Federal lands or represent only short stream reaches near the 7,600-foot elevation. No critical habitat has been proposed on the Little Thompson River.

Within the St. Vrain HUC, the Draft Document designated a medium recovery population on South Boulder Creek as necessary to meet recovery criteria. We included the South Boulder Creek as proposed critical habitat. At the request of representatives from the City of Boulder we considered proposing critical habitat along the St. Vrain River between Hygiene and Lyons. We have little evidence to support designation of critical habitat for the Preble's population on the St. Vrain River as a preferable alternative to that on South Boulder Creek, nor did we find reason to propose critical habitat for a second population on non-Federal lands within this subdrainage. We considered proposing critical habitat for the Preble's on Forest Service lands at higher elevations along the North St. Vrain Creek and the Middle St. Vrain Creek. However, since no trapping efforts targeted at the Preble's have been conducted in these areas and we are aware of no records of the Preble's occurrence in these watersheds, neither has been proposed as critical habitat.

The Department of Energy's Rocky Flats site spans portions of the St. Vrain HUC and the Middle South Platte-Cherry Creek HUC. Rocky Flats has been a focus of research on the Preble's. We have proposed a critical habitat unit consisting of three streams in close proximity to one another on Department of Energy lands within these two subdrainages.

While the Draft Document calls for three small recovery populations or one medium recovery population within the Clear Creek HUC, the Preble's has been captured only along a segment of Ralston Creek above Ralston Reservoir. Based on limited occurrence of habitat components needed by the Preble's and the absence of other captures, we limited proposed critical habitat within the Clear Creek HUC to this single population.

The Draft Document calls for a medium recovery population along Cherry Creek in the Middle South Platte-Cherry Creek HUC. Preble's habitat in the upper reaches of the Cherry Creek basin appears extensive. We propose critical habitat in an area that includes a segment of Cherry Creek, Lake Gulch, and its tributaries. This area was chosen partly because it includes substantial public lands.

Within the Upper South Platte HUC we have proposed critical habitat along West Plum Creek and its tributaries consistent with the large recovery population designated in the Draft Document. An approved HCP exists for The Harding Property on West Plum Creek just upstream from its confluence with Garber Creek. Since the duration of the permit for this HCP is only 3 years, we have included this property in the proposed critical habitat.

We examined other areas of Preble's habitat on Federal lands within the Upper South Platte HUC, and have proposed critical habitat on Corps of Engineers lands upstream of Chatfield Reservoir along the South Platte River and on four areas centered on Forest Service land in the Pike-San Isabel National Forest within the South Platte River watershed. Though Forest Service lands in the Upper South Platte HUC are extensive, much of the South Platte itself is not federally owned. On Forest Service lands on some of the major tributaries of the South Platte River, habitat components required by the Preble's have been degraded by fire, flooding, or both. The Buffalo Creek watershed in particular has been highly degraded by fire, followed by flooding and accompanying erosion and sedimentation. Critical habitat has not been proposed in these areas. Combined, these five areas of proposed critical habitat should help assure that a viable population of the Preble's is maintained in the portion of this HUC upstream of Chatfield Reservoir on the South Platte River.

While the Draft Document calls for either three small populations or one medium population in both the Kiowa and Bijou HUCs, no confirmation of the Preble's currently exists for either of these subdrainages. To our knowledge, no trapping efforts targeted at the Preble's have taken place within likely Preble's habitat in either HUC. While primary constituent elements appear present and it is likely that the Preble's occurs within these systems, based on lack of known Preble's occurrence we have not proposed critical habitat within these HUCs.

Arkansas River Drainage

Within the Fountain Creek HUC the Draft Document calls for a large recovery population along Monument Creek and its tributaries including lands within the Air Force Academy. While the Academy would be an essential part of this recovery population, we have determined that the Academy does not meet the definition of critical habitat since it does not require special management considerations or protection. In determining boundaries of proposed critical habitat we considered whether documented Preble's populations on some reaches remained connected to the larger population present along Monument Creek or, due to fragmentation caused by past development, they have become permanently isolated.

Massive erosion and habitat modification along Pine Creek has likely isolated the Preble's population east of Interstate Highway 25 from that downstream on Monument Creek. Therefore, we have proposed no critical habitat on Pine Creek. A significant barrier to Preble's movement is present on Kettle Creek in the form of a large detention basin just east of Interstate Highway 25 and accompanying outflow structure that channels creek flow under the highway. Recent discussions have addressed possible means of improving connectivity between upstream and downstream Preble's populations along this reach. Since improved connectivity may be pursued and could prove important in meeting the recovery criteria in this HUC, we have proposed critical habitat through this reach of Kettle Creek.

Along the upper reaches of Monument Creek, Monument Lake and the dam that forms it create at least a partial barrier to Preble's movement upstream and downstream. While a current project will likely enhance connectivity for the Preble's population along this reach of Monument Creek, some reaches upstream from Monument Lake have been significantly altered by human activity. Based on our examination of the extent and quality of Preble's habitat upstream from Monument Lake, we have chosen to limit proposed critical habitat to areas downstream of the dam.

The Draft Document calls for either three small recovery populations or one medium recovery population to meet recovery criteria in both the Chico and the Big Sandy HUCs. The Preble's has been documented at a single location

within the Chico HUC, in apparently marginal habitat along an unnamed tributary of Black Squirrel Creek. Subsequent trapping could not relocate the Preble's at the site. Limited trapping of other sites has produced no captures of the Preble's and the extent of appropriate habitat components within the subdrainage appears limited. We have not proposed critical habitat in the

electronic layers depicting 100-year floodplains needed to facilitate GIS mapping are not available for several counties within Preble's range. Where floodplain mapping is available, we have found that it may include local inaccuracies.

While alternative delineation of critical habitat based on geomorphology and existing vegetation could accurately

comments regarding the appropriate outward limits of critical habitat and means of establishing them.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas that are not likely to contribute to Preble's conservation. However, the scale of mapping that we used to approximate our delineation of critical habitat did not allow us to exclude all developed areas such as

as a result, we are not able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will complete our economic analysis, re-open the public comment period, and review public comments before making a final determination of critical habitat. This review, combined with our assessment of the benefits of designating areas as critical habitat, may identify

Proposed Critical Habitat Designation

The proposed critical habitat contained within units discussed below constitutes our best evaluation of areas necessary to conserve the Preble's. Proposed critical habitat may be revised should new information become available prior to the final rule, or may be revised through rule-making (including notice and public comment)

8,116 ha (20,054 ac) of lands in Wyoming and approximately 676.4 km (420.3 mi) of rivers and streams and 15,132 ha (37,392 ac) of lands in Colorado. Lands proposed as critical habitat are under Federal, State, local government, and private ownership. No lands proposed as critical habitat are under Tribal ownership. Estimates reflect the total river or stream length, or area of lands within critical habitat

within the Chico HUC, in apparently marginal habitat along an unnamed tributary of Black Squirrel Creek. Subsequent trapping could not relocate the Preble's at the site. Limited trapping of other sites has produced no captures of the Preble's and the extent of appropriate habitat components within the subdrainage appears limited. We have not proposed critical habitat in the Chico HUC based on our uncertainty that the Preble's exists within any given reach in this area. In the Big Sandy HUC limited trapping efforts targeted at the Preble's have not confirmed Preble's presence. Sites supporting primary constituent elements required by the Preble's appear few. For these reasons we have not proposed critical habitat in the Big Sandy HUC.

Proposed critical habitat for the Preble's was delineated based on the interpretation of multiple sources used during the preparation of this proposed rule. We used GIS-based mapping using ARCInfo that incorporated streams, steam order (Stahler method), roads, and cities from USGS maps, floodplains from Federal Emergency Management Agency maps, and surface management maps depicting property ownership from the Bureau of Land Management (primarily from the early 1990s). Lands proposed as critical habitat were divided into specific mapping units, *i.e.*, critical habitat units, often corresponding to individual HUCs. For the purposes of this proposed rule these units have been described primarily by latitude and longitude, and by section, township, and range, to mark the upstream and the downstream extent of proposed critical habitat along rivers and streams.

We were presented with a decision in designating outward extent of critical habitat into uplands. The Service has typically described Preble's habitat as extending outward 300 ft (90 m) from the 100-year floodplain of rivers and streams (Service 1998). The Draft Document defines Preble's habitat as the 100-year floodplain plus 100 m (330 ft) outward on both sides, but allows for alternative delineations that provide for all the needs of the Preble's and include the alluvial floodplain, transition slopes, and pertinent uplands.

In order to allow normal behavior and to assure that the Preble's and the primary constituent elements on which it depends are protected from disturbance, the outward extent of critical habitat should at least approximate the outward distances described above in relation to the 100-year floodplain. Unfortunately, floodplains have not been mapped for many streams within Preble's range and electronic layers depicting 100-year floodplains needed to facilitate GIS mapping are not available for several counties within Preble's range. Where floodplain mapping is available, we have found that it may include local inaccuracies.

While alternative delineation of critical habitat based on geomorphology and existing vegetation could accurately portray the presence and extent of required habitat components, we lacked an explicit data layer that could support such a delineation. Creation of such a layer through interpretation of aerial photographs and site visits was not possible given the time and resources available for this proposal.

We also considered determining the outward extent of critical habitat based on a distance outward from features such as the stream edge, associated wetlands, or riparian areas. We judged wetlands an inconsistent indicator of habitat extent and found no consistent source of riparian mapping available across the range of the Preble's. We also considered using an outward extent of critical habitat established by a vertical distance above the elevation of the river or stream to approximate the floodplain and adjacent uplands likely to be used by the Preble's.

For this proposal we ultimately settled on delineating the upland extent of critical habitat boundaries as a set distance outward from the river or stream edge (as defined by the ordinary high water mark) varying with the size (order) of a river or stream. We compared known floodplain widths to stream order over a series of sites and approximated average floodplain width for various orders of streams. To that average we added an additional 100 m (330 ft) outward on each side. Based on this calculation, for streams of order 1 and 2 (the smallest streams) we have delineated critical habitat as 110 m (360 ft) outward from the stream edge, for streams of order 3 and 4 we have delineated critical habitat as 120 m (400 ft) outward from the stream edge, and for stream orders 5 and above (the largest streams and rivers) we have delineated critical habitat as 140 m (460 ft) outward from the stream edge. While proposed critical habitat will not include all areas used by individual Preble's over time, we believe that these corridors of critical habitat ranging from 220 m (720 ft) to 280 m (920 ft) in width (plus the river or stream width) will support the full range of primary constituent elements essential for persistence of Preble's populations, and should help protect the Preble's and their habitats from secondary impacts of nearby disturbance. We welcome comments regarding the appropriate outward limits of critical habitat and means of establishing them.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas that are not likely to contribute to Preble's conservation. However, the scale of mapping that we used to approximate our delineation of critical habitat did not allow us to exclude all developed areas such as roads and rural development. In addition, some developed stream reaches serve as important connectors within Preble's populations. Existing structures and features within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and certain other areas are not likely to contain primary constituent elements for the Preble's and, therefore, are not critical habitat. Federal actions limited to these areas would not trigger a section 7 consultation unless they affect the Preble's or primary constituent elements within proposed critical habitat.

Consistent with the Draft Document, we could not depend solely on federally-owned lands to propose critical habitat designation, as these lands are limited in geographic location, size, and habitat quality within the range of the Preble's. In addition to the federally-owned lands, we are proposing critical habitat on non-Federal public lands and privately owned lands, including lands owned by the State of Colorado and State of Wyoming, and by local governments. All non-Federal lands designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and may require special management considerations or protection.

Section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts of designating areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will make available for public review an economic analysis of this proposal; this economic analysis will serve as the basis of our 4(b)(2) analysis and any exclusions. However, this economic analysis is not yet completed; as a result, we are not able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will complete our economic analysis, re-open the public comment period, and review public comments before making a final determination of critical habitat. This review, combined with our assessment of the benefits of designating areas as critical habitat, may identify certain proposed areas that should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from this proposal.

Proposed Critical Habitat Designation

The proposed critical habitat contained within units discussed below constitutes our best evaluation of areas necessary to conserve the Preble's. Proposed critical habitat may be revised should new information become available prior to the final rule, or may be revised through rule-making (including notice and public comment) if new information becomes available after the final rule.

Table 1 provides a summary of land ownership by river or stream length and area of proposed critical habitat in each county for which critical habitat has been proposed. Critical habitat for the Preble's includes approximately 381.7 km (237,2 mi) of rivers and streams and 8,116 ha (20,054 ac) of lands in Wyoming and approximately 676.4 km (420.3 mi) of rivers and streams and 15,132 ha (37,392 ac) of lands in Colorado. Lands proposed as critical habitat are under Federal, State, local government, and private ownership. No lands proposed as critical habitat are under Tribal ownership. Estimates reflect the total river or stream length, or area of lands within critical habitat unit boundaries, without regard to the presence of primary constituent elements. Therefore, given exclusions for developed areas and other areas not supporting the primary constituent elements, the area proposed for designation is actually less than indicated in Table 1.

TABLE 1.—PROPOSED CRITICAL HABITAT FOR THE PREBLE'S MEADOW JUMPING MOUSE BY COUNTY IN WYOMING AND COLORADO, SUMMARIZED BY FEDERAL, STATE, AND OTHER OWNERSHIP

Ownership				
Linear River Kilometers and Hectares by State and County				
	Federal	State	Other	Total
Wyoming	51.4 km (32.0 mi); 1,552 ha (3,836 ac).	12.8 km (7.9 mi); 265 ha (655 ac).	317.5 km (197.3 mi) 6,297 ha (15,561 ac).	381.7 km (237.2 mi); 8,116 ha (20,253 ac)
Albany	42.8 km (26.6 mi); 940 ha (2,323 ac).	5.6 km (3.5 mi); 107 ha (265 ac).	63.3 km (39.3 mi); 1,348 ha (3,334 ac).	111.7 km (69.4 mi); 2,396 ha (5,921 ac)
Converse	3.8 km (2.1 mi); 143 ha (279 ac).	0; 0	1.4 km (0.9 mi); 0	4.8 km (3.0 mi); 113 ha (279 ac)
Laramie	5.0 km (3.1 mi); 496 ha (1,225 ac).	4.4 km (2.7 mi); 98 ha (242 ac).	188.6 km (117.2 mi); 3,617 ha (8,937 ac).	198.0 km (123.0 mi); 4,210 ha (10,403 ac)
Platte	0.1 km (0.1 mi); 4 ha (11 ac).	2.8 km (1.8 mi); 60 ha (148 ac).	64.2 km (39.9 mi); 1,332 ha (3,292 ac).	67.2 km (41.7 mi); 1,397 ha (3,451 ac)
Colorado	215.2 km (133.6 mi); 4,942 ha (12,214 ac).	65.2 km (40.5 mi); 1,405 ha (3,473 ac).	396.1 km (246.1 mi); 8,784 ha (21,706 ac).	676.4 km (420.3 mi); 15,132 ha (37, 392 ac)
Boulder	0	0	12.3 km (7.7 mi); 299 ha (740 ac).	12.3 km (7.7 mi); 299 ha (740 ac)
Douglas	57.5 km (35.7 mi) 1,351 ha (3,479 ac).	13,5 km (8.4 mi); 276 ha (683 ac).	157.7 km (98.0 mi); 3,450 ha (8,524 ac).	228.7 km (142.1 mi); 5,076 ha (12,545 ac)
El Paso	0.2 km (0.1 mi); 16 ha (41 ac).	0.4 km (0.3 mi); 8 ha (21 ac).	55.6 km (34.5 mi); 1,232 ha (3.048 ac).	56.3 km (35.0 mi); 1,259 ha (3,110 ac)
Jefferson	31.8 km (19.7 mi) 611 ha (1,509 ac).	5.1 km (3.2 mi); 82 ha (203 ac).	26.7 km (16.6 mi); 551 ha (1,361 ac).	63.8 km (39.6 mi); 1,244 ga (3,073 ac)
Larimer	124.2 km (77.2 mi); 2,939 ha (6,745 ac).	46.0 km (28.6 mi); 1,038 ha (2,564 ac).	134.8 km (83.3 ac); 3,054 ha (7,547 ac).	305.1 km (189.6 mi); 7,022 ha (17,352 ac)
Teller	1.3 km (0.8 mi); 34 ha (85 ac).	0	0	1.3 km (0.8 mi); 34 ha (85 ac)
Weld	0	0.0; 1 ha (2 ac)	8.9 km (5.6 mi); 196 ha (484 ac).	8.9 km (5.6 mi); 197 ha (486 ac)

Lands proposed as critical habitat are divided into 19 critical habitat units containing all of those primary constituent elements necessary to meet the primary biological needs of the Preble's. We did not include all areas currently occupied by the Preble's. A brief description of each Preble's critical habitat unit and the reasons why they are essential for the conservation of the Preble's are provided below. The units are generally based on geographically distinct river drainages and subdrainages described in the Draft Document. These units have been subject to, or are threatened by, varying degrees of degradation from human use and development. For these reasons, all of the areas we are proposing for critical habitat designation may require special management considerations or protection.

In areas within the range of the Preble's where there has been concern over possible confusion between the Preble's and the western jumping mouse, we have provided comments regarding known occurrence of the Preble's. Unless otherwise noted, references to "morphological examination" refer to Connor and Shenk (in prep.), references to "genetic examination" refer to Riggs *et al.* (1997), and references to "captures presumed to be the Preble's" refer to field surveys where jumping mice presumed to be Preble's were released alive and not subject to morphological or genetic examination.

The following five critical habitat units are located in the North Platte River drainage:

Unit NP1: Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming.

Unit NP1 encompasses approximately 924 ha (2,284 ac) on 43.3 km (26.9 mi) of streams within the Cottonwood Creek watershed. It includes Cottonwood Creek from Harris Park Road upstream to the 2,100-m (7,000-ft) elevation. Tributaries include North Cottonwood Creek up to 2,300-m (7,000-ft) elevation on both creeks. The subunit consists of almost entirely private lands. The Upper Middle Lodgepole Creek subunit includes Middle Lodgepole Creek from the eastern boundary of the Pole Mountain Unit of the Medicine Bow-Routt National Forest upstream to about 2,400-m (7,750-ft) elevation and including the North Branch of Middle Lodgepole Creek. The unit consists of

Unit NP2: Chugwater Creek, Laramie County, Wyoming.

Unit NP2 encompasses approximately 1,770 ha (4,373 ac) on 84.1 km (52.3 mi) of streams within the Chugwater Creek watershed. It extends from several miles downstream of the town of Chugwater, upstream on Chugwater Creek and its tributaries to approximately the 2,100-m (7,000-ft) elevation. Major tributaries within the unit include Middle Chugwater Creek, South Chugwater Creek, Three Mile Creek, Sand Creek, Ricker Creek, Strong

Preble's habitat largely on Federal lands within the Medicine Bow-Routt National Forest. We have proposed this unit as critical habitat based on the primary constituent elements present and captures of jumping mice presumed to be the Preble's.

Unit NP5: Horse Creek, Laramie County, Wyoming.

Unit NP5 encompasses approximately 1,770 ha (4,373 ac) on 84.1 km (52.3 mi)

specimens. A specimen from Cheyenne, within this HUC, was examined by Krutzch (1954) and used in describing the Preble's subspecies. However, genetic examination identified specimens from the Air Force Base as western jumping mice. One 1996 specimen taken from the Air Force Base was identified through morphological examination as a western jumping mouse. Given that the Air Force Base is

The unit includes both public and private lands. It includes portions of the Arapaho-Roosevelt National Forest, as well as Lone Pine State Wildlife Area.

The unit is located in the Cache La Poudre HUC and is proposed to address the large recovery population designated for this area in the Draft Document. The area remains rural and agricultural with habitat components likely to support relatively high

Unit NP1: Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming.

Unit NP1 encompasses approximately 924 ha (2,284 ac) on 43.3 km (26.9 mi) of streams within the Cottonwood Creek watershed. It includes Cottonwood Creek from Harris Park Road upstream to the 2,100-m (7,000-ft) elevation. Tributaries include North Cottonwood Creek and Preacher Creek. The unit includes both public and private lands, including a small portion on the Medicine Bow-Routt National Forest.

This unit is located in the Glendo HUC and is proposed to address the one of two medium recovery populations required to meet recovery criteria for the North Platte River drainage in the Draft Document. The Preble's habitat on this unit appears generally excellent, particularly on the Forest Service lands. This population is essential not only to maintain distribution near the northernmost extreme of known Preble's range, but because the large size of the population (as predicted by amount and quality of habitat) should help ensure viability into the future. Private lands within the unit are used extensively for grazing, which could pose a threat to the Preble's and its habitat if not managed appropriately.

A specimen examined by Krutzch (1954) in describing the subspecies is from Springhill in this HUC. Five recent specimens from this subdrainage have been identified as the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.*, 2002). Captures of jumping mice presumed to be Preble's have occurred at several other locations in this subdrainage.

NP2: Horseshoe Creek, Albany County, Wyoming.

Unit NP2 encompasses approximately 153 ha (377 ac) on 6.5 km (4.1 mi) of streams within the Horseshoe Creek watershed. It includes Horseshoe Creek upstream from Harris Park Road. The unit is entirely on Federal lands within the Medicine Bow-Routt National Forest.

This unit is located in the Glendo HUC and, while unlikely to serve as an initial recovery population under the Draft Document, it encompasses a significant area of habitat entirely on Federal lands. Proposal of critical habitat on this area is based upon captures of jumping mice presumed to be the Preble's on Trail Creek (an upstream tributary to Horshoe Creek) and on primary constituent elements present in this area.

Unit NP3: Chugwater Creek, Albany, Laramie, and Platte Counties, Wyoming.

Unit NP3 encompasses approximately 3,811 ha (9,416 ac) on 179.4 km (111.5 mi) of streams within the Chugwater Creek watershed. It extends from several miles downstream of the town of Chugwater, upstream on Chugwater Creek and its tributaries to approximately the 2,100-m (7,000-ft) elevation. Major tributaries within the unit include Middle Chugwater Creek, South Chugwater Creek, Three Mile Creek, Sand Creek, Ricker Creek, Strong Creek, and Shanton Creek. The unit consists of both public and private lands.

This unit is located in the Lower Laramie HUC and is proposed to address the large recovery population in the North Platte River drainage required to meet the recovery criteria described in the Draft Document. The unit supports excellent Preble's habitat with a complex tributary system and is likely to support a high density of the Preble's. While some isolated portions of this unit may be less suitable, we do not believe those areas are permanently affected by current land use practices or pose such barriers as to segregate portions of this Preble's population. Based on the amount and apparent quality of Preble's habitat contained in this unit, it may support one of the largest populations of the Preble's within its entire range and has a high probability of remaining viable well into the future. Threats are presented by future development, road construction, and road improvements. In addition, the unit is repeatedly crossed by gas pipelines and utility corridors. Haying and grazing may be threats to the Preble's in portions of the unit.

Specimens of Preble's from this HUC include a specimen from Chugwater examined by Krutzch (1954) in describing the subspecies, and specimens from Sybille Creek, Chugwater Creek, and Hunton Creek verified as the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.*, 2002). Capture of jumping mice presumed to be the Preble's has occurred at several other locations in this subdrainage.

Unit NP4: Friend Creek and Murphy Canyon, Albany County, Wyoming.

Unit NP4 encompasses approximately 683 ha (1,689 ac) on 32.0 km (19.9 mi) of streams within two subunits, the Friend Creek and Murphy Canyon watersheds. It consists largely of Federal lands within the Medicine Bow-Routt National Forest but includes small parcels of intervening non-Federal lands.

This unit is located in the Lower Laramie HUC and, while unlikely to serve as an initial recovery population under the Draft Document, it encompasses a significant area of Preble's habitat largely on Federal lands within the Medicine Bow-Routt National Forest. We have proposed this unit as critical habitat based on the primary constituent elements present and captures of jumping mice presumed to be the Preble's.

Unit NP5: Horse Creek, Laramie County, Wyoming.

Unit NP5 encompasses approximately 1,770 ha (4,373 ac) on 84.1 km (52.3 mi) of streams within the Horse Creek watershed. It includes Horse Creek from the Interstate Highway 25 bridge upstream to the 2,100-m (7,000-ft) elevation with major tributaries including Dry Creek, the South Fork of Horse Creek, Mill Creek, and the North Fork of Horse Creek. The unit consists of both public and private lands. It includes lands owned by the University of Wyoming.

The unit is located in the Horse Creek HUC and is proposed to address one of the two medium recovery populations required in the Draft Document to meet recovery criteria in the North Platte River drainage. In general, the habitat appears extremely good with a broad floodplain, patches of dense shrubs, and extensive hay meadows. This population appears to be relatively large, as predicted by the quality and extent of habitat present, and should retain viability into the future. Current and future threats include development, road construction, and utility corridors. Additionally, haying and grazing may be threats to the Preble's in portions of the unit.

This designation is based upon a capture of a mouse verified to be the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.*, 2002) on Horse Creek and other captures presumed to be Preble's on Horse Creek and the South Fork of Horse Creek. We elected to propose critical habitat both upstream and downstream of successful survey locations based on the extensive complex of suitable habitat that is present.

The following 13 critical habitat units are located in the South Platte River drainage:

Unit SP1: Lodgepole Creek and Upper Middle Lodgepole Creek, Laramie County, Wyoming.

Unit SP1 encompasses approximately 265 ha (654 ac) on 20.8 km (13.0 mi) of streams within two subunits in the Lodgepole Creek watershed, Lodgepole Creek and the Upper Middle Lodgepole Creek. The Lodgepole Creek subunit includes Lodgepole Creek from Horse Creek Road (County Road 211) upstream beyond the confluence of North Lodgepole Creek and Middle Lodgepole Creek up to 2,300-m (7,000-ft) elevation on both creeks. The subunit consists of almost entirely private lands. The Upper Middle Lodgepole Creek subunit includes Middle Lodgepole Creek from the eastern boundary of the Pole Mountain Unit of the Medicine Bow-Routt National Forest upstream to about 2,400-m (7,750-ft) elevation and including the North Branch of Middle Lodgepole Creek. The unit consists of public lands including portions of the Medicine Bow-Routt National Forest.

This unit is located in the Upper Lodgepole HUC and is proposed to address two of three small recovery populations included in the recovery criteria for this HUC in the Draft Document. The Lodgepole Creek subunit will likely be threatened in the future by development including road construction. The Upper Middle Lodgepole Creek subunit may be threatened by grazing pressure (particularly during drought conditions) and off-road vehicle use.

Critical habitat on this unit is proposed based on captures of jumping mice on Middle Lodgepole Creek and North Branch of Middle Lodgepole Creek. Although these two trap sites are fairly high in elevation, a specimen was confirmed as the Preble's on the North Branch of Middle Lodgepole Creek through genetic examination and a second specimen was verified to be the Preble's through morphological examination (tooth fold presence) (Jones, *in litt.*, 2001).

Unit SP2: F.E. Warren Air Force Base, Laramie County, Wyoming.

Unit SP2 encompasses approximately 134 ha (331 ac) on 5.7 km (3.6 mi) of streams within the Crow Creek watershed. It includes Crow Creek on the F.E. Warren Air Force Base from the southeastern boundary of the Air Force Base in Cheyenne upstream to the western boundary of the Air Force Base. The unit consists entirely of Federal lands of the Air Force Base.

This unit is located in the Crow Creek HUC and is proposed to address one of three small recovery populations required in the recovery criteria for this HUC in the Draft Document. This unit includes portions of the Air Force Base threatened by water management for flood control, reclamation of landfills, and other Air Force Base operations.

Crow Creek on the Air Force Base has been the subject of repeated past trapping. Trapping efforts by the University of Wyoming, Colorado Natural Heritage Program, and the Wyoming Natural Diversity Database identified mice from the Air Force Base as the Preble's, though without morphological examination of specimens. A specimen from Cheyenne, within this HUC, was examined by Krutzch (1954) and used in describing the Preble's subspecies. However, genetic examination identified specimens from the Air Force Base as western jumping mice. One 1996 specimen taken from the Air Force Base was identified through morphological examination as a western jumping mouse. Given that the Air Force Base is within the normal elevational range of the Preble's, it is likely the Air Force Base is occupied by both the Preble's and the western jumping mouse.

Unit SP3: Lone Tree Creek, Laramie County, Wyoming, Weld County, Colorado.

Unit SP3 encompasses approximately 394 ha (974 ac) on 18.7 km (11.7 mi) of streams within the Lone Tree Creek watershed. It includes two subunits, Lone Tree Creek, Wyoming and Lone Tree Creek, Colorado. The Lone Tree Creek, Wyoming, subunit includes a reach of Lone Tree Creek and a portion of Goose Creek. The subunit consists of both public and private lands. The Lone Tree Creek, Colorado, subunit includes Lone Tree Creek both upstream and downstream of a successful trapping site near Interstate Highway 25. This subunit also consists of both public and private lands.

This unit is located in the Lone Tree-Owl HUC and is proposed to address two of three small recovery populations required in the recovery criteria for this HUC in the Draft Document. Suitable habitat occurs throughout the HUC, although some areas are of lower quality due to heavy grazing. This unit may be threatened by development in the future.

Proposal of critical habitat within this unit is based on captured jumping mice presumed to be the Preble's in Wyoming and Colorado. In the Colorado subunit, a mouse identified in the field as a Preble's was determined by genetic examination to be more similar to a western jumping mouse. Given the low elevation of the capture site 1,900 m (6,200 ft), it is likely that both the Preble's and the western jumping mouse are present within this unit.

Unit SP4: North Fork Cache La Poudre River, Larimer, Colorado.

Unit SP4 encompasses approximately 3,321 ha (8,206 ac) on 141.8 km (88.1 mi) of streams within the North Fork of the Cache La Poudre River watershed. It includes the North Fork of the Cache La Poudre River from Seaman Reservoir upstream to Halligan Reservoir. Major tributaries within the unit include Stonewall Creek, Rabbit Creek (including its North Fork, Middle Fork and South Fork), and Lone Pine Creek. The unit includes both public and private lands. It includes portions of the Arapaho-Roosevelt National Forest, as well as Lone Pine State Wildlife Area.

The unit is located in the Cache La Poudre HUC and is proposed to address the large recovery population designated for this area in the Draft Document. The area remains rural and agricultural with habitat components likely to support relatively high densities of Preble's. Pressure for expanded development is increasing within the area. Portions of the unit are the subject of the Livermore Valley Landowners HCP currently under development.

Specimens from Rabbit Creek and Lone Pine Creek were verified through genetic examination as the Preble's. Jumping mice presumed to be the Preble's have been captured at several locations within the unit.

Unit SP5: Cache La Poudre River, Larimer County, Colorado.

Unit SP5 encompasses approximately 1,912 ha (4,725 ac) on 82.4 km (51.2 mi) of streams within the Cache La Poudre River watershed. It includes the Cache La Poudre River from Poudre Park upstream to the 2,300-m (7,600-ft) elevation (below Rustic). Major tributaries within the unit include Hewlett Gulch, Young Gulch, Skin Gulch, Poverty Gulch, Elkhorn Creek, Pendergrass Creek, and Bennett Creek. The unit is primarily composed of Federal lands of the Arapaho-Roosevelt National Forest, including portions of the Cache La Poudre Wilderness, but includes limited non-Federal lands.

The unit is located in the Cache La Poudre HUC and, while unlikely to serve as a recovery population under the Draft Document, it encompasses a significant area of habitat likely to support a sizeable population of Preble's. Due to Federal ownership, development pressure is minimal; however, the area is subject to substantial recreational use (rafting, kayaking, fishing) in the Cache La Poudre River corridor. Non-Federal lands include existing development that may limit habitat components present. Some such reaches may serve the Preble's mostly as connectors between areas containing all necessary primary constituent elements.

A number of jumping mice, presumed to be the Preble's, have been captured from this unit, with one specimen from Young Gulch was verified through morphological examination as a Preble's.

Unit SP6: Buckhorn Creek, Larimer County, Colorado.

Unit SP6 encompasses approximately 1,537 ha (3,798 ac) on 69.2 km (43.0 mi)

of streams within the Buckhorn Creek watershed. It includes Buckhorn Creek from just west of Masonville, upstream to the 7,600-foot elevation. Major tributaries within the unit include Little Bear Gulch, Bear Gulch, Stringtown Gulch, Fish Creek, and Stove Prairie Creek. The unit includes both public and private lands, and includes portions of the Arapaho-Roosevelt National

streams within the South Boulder Creek watershed. It includes South Boulder Creek from Baseline Road upstream to Eldorado Springs, and includes the Spring Brook tributary. The unit includes both public and private lands. It includes substantial lands owned by the City of Boulder Open Space and Mountain Parks.

This unit is located in the St. Vrain

the Preble's. The site presents an opportunity to study small populations and their viability over time.

The Preble's has been verified to be present through genetic and morphological examination of specimens from within the unit.

Unit SP10: Ralston Creek, Jefferson County, Colorado.

Unit SP10 encompasses

Plum Creek watershed. It includes Plum Creek from Chatfield Reservoir upstream to the confluence with West Plum Creek then continues upstream on West Plum Creek to its headwaters. Major tributaries within the unit include Indian Creek, Jarre Creek, Garber Creek (including North, Middle, and South Garber Creek), Jackson Creek, Spring Creek, Dry Gulch, Bear Creek, Starr

some intervening non-Federal lands along Trout Creek. The Wigwam Creek subunit includes Wigwam Creek and its tributaries, Pine Creek and Cabin Creek on Forest Service lands.

This unit is located in the Upper South Platte HUC and, while unlikely to serve as an initial recovery population under the Draft Document, encompasses five areas of primarily Federal land

Federal lands within the unit are addressed in the El Paso County HCP currently being developed.

Jumping mice presumed to be the Preble's have been captured throughout this unit and specimens from the Academy and within the unit have been verified as the Preble's through genetic and morphological examination.

Effects of Critical Habitat Designation

of streams within the Buckhorn Creek watershed. It includes Buckhorn Creek from just west of Masonville, upstream to the 7,600-foot elevation. Major tributaries within the unit include Little Bear Gulch, Bear Gulch, Stringtown Gulch, Fish Creek, and Stove Prairie Creek. The unit includes both public and private lands, and includes portions of the Arapaho-Roosevelt National Forest.

The unit is located in the Big Thompson HUC and is proposed to address the medium recovery population designated for this area in the Draft Document. Pressure for expanded rural development exists on non-Federal lands within the unit.

Jumping mice presumed to be the Preble's have been captured from various portions of this unit with one specimen from Little Bear Gulch verified through morphological examination as the Preble's.

Unit SP7: Cedar Creek, Larimer County, Colorado.

Unit SP7 encompasses approximately 252 ha (624 ac) on 11.7 km (7.3 mi) of streams within the Cedar Creek watershed, including Dry Creek and Jug Gulch. Cedar Creek is a tributary of the Big Thompson River and enters the Big Thompson River at Cedar Cove. The unit is centered on Federal lands of the Arapaho-Roosevelt National Forest, but includes some stream reaches on non-Federal lands.

This unit is located in the Big Thompson HUC and, while unlikely to serve as an initial recovery population under the Draft Document, it supports a population on mostly Federal lands of the upper Big Thompson River, isolated, at least in terms of riparian connection, from the Preble's population on nearby Buckhorn Creek. This site is upstream of The Narrows of the Big Thompson Canyon, a barrier to Preble's movement, while the confluence of the Big Thompson River and Buckhorn Creek is downstream from The Narrows. However, the close proximity of the headwaters of Jug Gulch within this unit to the headwaters of Bear Gulch within the Buckhorn Creek unit suggests that some individual Preble's mice may pass between the two populations and thus between the two significant watersheds within this HUC.

Jumping mice presumed to be the Preble's have been captured from within this unit. The Little Bear Gulch capture of Preble's, cited above, is from just north of this unit and within the same HUC.

Unit SP8: South Boulder Creek, Boulder County, Colorado.

Unit SP8 encompasses approximately 283 ha (699 ac) on 11.8 km (7.3 mi) of streams within the South Boulder Creek watershed. It includes South Boulder Creek from Baseline Road upstream to Eldorado Springs, and includes the Spring Brook tributary. The unit includes both public and private lands. It includes substantial lands owned by the City of Boulder Open Space and Mountain Parks.

This unit is located in the St. Vrain HUC and is proposed to address the medium recovery population designated for this area in the Draft Document. Portions of the area have been the subject of Preble's research funded by the City of Boulder and, in places, high densities of the Preble's have been documented. A wide floodplain, complex ditch system, and the irrigation of pastures makes habitat within the lower portions of this unit unique. In places, the outward extent of primary constituent elements surpasses the standard distance outward from the stream used to define critical habitat in this proposal. Boundaries of critical habitat on this unit should be refined in cooperation with the City of Boulder prior to the final rule. Pressure for expanded development is occurring on private lands within the unit. Recreational use of the City of Boulder lands is considerable and may adversely impact the Preble's. The entire unit is within the Boulder County HCP currently under development.

The Preble's has been verified through genetic and morphological examination of specimens from several sites within the unit.

Unit SP9: Rocky Flats Environmental Technology Site, Jefferson County, Colorado.

Unit SP9 encompasses approximately 429 ha (1,059 ac) on 19.5 km (12.1 mi) of streams within the Rock Creek, Woman Creek, and Walnut Creek watersheds. The unit includes only Federal lands on the Department of Energy's Rocky Flats.

Portions of this unit are located in the St. Vrain HUC (Rock Creek) and portions are in the Middle South Platte-Cherry Creek HUC (Woman Creek and Walnut Creek). While unlikely to serve as an initial recovery population under the Draft Document, this unit is unique in that it is limited entirely to Federal lands and has been the subject of substantial past research on the Preble's. After cleanup and closure of the Rocky Flats Environmental Technology Site, the property will be transferred to the Service to become part of the National Wildlife Refuge system. Population studies have taken place on the site over a period of years. Streams within the unit are small and habitat components present do not support a high density of the Preble's. The site presents an opportunity to study small populations and their viability over time.

The Preble's has been verified to be present through genetic and morphological examination of specimens from within the unit.

Unit SP10: Ralston Creek, Jefferson County, Colorado.

Unit SP10 encompasses approximately 282 ha (698 ac) on 13.1 km (8.1 mi) of streams within the Ralston Creek watershed. It includes Ralston Creek from Ralston Reservoir upstream to the 7,600-foot elevation. The unit includes both public and private lands including lands in Golden Gate Canyon State Park, White Ranch County Park, and lands owned by Denver Water.

This unit is located in the Clear Creek HUC and is proposed to partially address the criteria of three small recovery populations or one medium recovery population required for this area in the Draft Document. The segment of Ralston Creek that passes through the Cotter Corporation's existing Schwartzwalder Mine serves as a connector between areas supporting primary constituent elements required by the Preble's located in areas upstream and downstream.

The Preble's has been verified through morphological examination of a specimen from the lower portion of this unit.

Unit SP11: Cherry Creek, Douglas County, Colorado.

Unit SP11 encompasses approximately 703 ha (1,738 ac) on 32.1 km (19.9 mi) of streams within the Cherry Creek watershed. It includes Cherry Creek from the downstream boundary of the Castlewood Canyon State Recreation Area, upstream to its confluence with Lake Gulch. Major tributaries within the unit include Lake Gulch and Upper Lake Gulch. The unit includes both public and private lands. It includes portions of the Castlewood Canyon State Recreation Area, as well as Douglas County's recently acquired Green Mountain Ranch property.

This unit is located in the Middle South Platte-Cherry Creek HUC and is proposed to address the medium recovery population designated for this area in the Draft Document. Some development pressure is occurring from expanding rural development within the area. The entire unit is within the Douglas County HCP currently being developed.

Unit SP12: West Plum Creek, Douglas County, Colorado.

Unit SP12 encompasses approximately 3,270 ha (8,080 ac) on 146.6 km (91.1 mi) of streams within the Plum Creek watershed. It includes Plum Creek from Chatfield Reservoir upstream to the confluence with West Plum Creek then continues upstream on West Plum Creek to its headwaters. Major tributaries within the unit include Indian Creek, Jarre Creek, Garber Creek (including North, Middle, and South Garber Creek), Jackson Creek, Spring Creek, Dry Gulch, Bear Creek, Starr Canyon, Gove Creek, and Metz Canyon. The unit is a combination of public and private lands. It includes portions of the Pike-San Isabel National Forest, as well as Chatfield State Recreation Area (Corps of Engineers property), and Colorado Division of Wildlife's Woodhouse Ranch property.

This unit is located in the Upper South Platte HUC and is proposed to address the large recovery population designated for this area in the Draft Document. Aside from a portion of Plum Creek, the area remains rather rural and includes habitat components likely to support relatively high densities of the Preble's. Pressure for expanded rural development is occurring within the area. With the exception of Federal lands, the entire unit is within the Douglas County HCP currently being developed.

Specimens from West Plum Creek, Garber Creek, and Indian Creek have been verified through morphological examination as the Preble's. The unit has been widely surveyed and jumping mice presumed to be the Preble's have been found in several other locations.

Unit SP13: Upper South Platte River, Jefferson and Douglas Counties, Colorado.

Unit SP13 encompasses approximately 1,687 ha (4,168 ac) on 83.1 km (51.6 mi) of streams within the Platte River watershed. It includes five subunits. The Chatfield subunit includes a section of the South Platte River upstream of Chatfield Reservoir within Chatfield State Recreation Area (Corps of Engineers' property). The Bear Creek subunit includes Bear Creek and West Bear Creek, tributaries to the South Platte River on Forest Service lands. The South Platte sub-unit includes a segment of the South Platte River upstream from Nighthawk, including the tributaries Gunbarrel Creek and Sugar Creek. This subunit is centered on Federal lands of the Pike-San Isabel National Forest but includes some intervening non-Federal lands. The Trout Creek subunit includes portions of Trout Creek, a tributary to Horse Creek, and also portions of Eagle Creek, Long Hollow, Fern Creek, Illinois Gulch, and Missouri Gulch. This subunit is centered on Federal lands of the Pike-San Isabel National Forest but includes some intervening non-Federal lands along Trout Creek. The Wigwam Creek subunit includes Wigwam Creek and its tributaries, Pine Creek and Cabin Creek on Forest Service lands.

This unit is located in the Upper South Platte HUC and, while unlikely to serve as an initial recovery population under the Draft Document, encompasses five areas of primarily Federal land spread through the drainage, four within the Pike-San Isabel National Forest boundary. Habitat components present and the likely density of Preble's populations vary. The Trout Creek subunit appears to have high quality Preble's habitat and may provide an opportunity to research relationships between the Preble's and the western jumping mouse, both of which have been verified from a single location in the subunit. Small segments of non-Federal lands in the unit are within the Douglas County HCP currently being developed.

Preble's has been confirmed through morphological examination of a specimen from Trout Creek near the Douglas County-Teller County boundary at 2,310 m (7,590 ft). Other captures of jumping mice from various locations within this unit are presumed to be the Preble's.

The following critical habitat unit is located in the Arkansas River drainage:

Unit A1: Monument Creek, El Paso County, Colorado.

Unit A1 encompasses approximately 1,259 ha (3,110 ac) 56.3 km (35.0 mi) of streams within the Monument Creek watershed. It includes Monument Creek from the confluence of Cottonwood Creek upstream to the southern boundary of the Academy and from the northern boundary of the Academy upstream to the dam at Monument Lake. Major tributaries within the unit include Kettle Creek, Black Squirrel Creek, Monument Branch, Smith Creek, Jackson Creek, Beaver Creek, Teachout Creek, and Dirty Woman Creek. The unit is primarily on private lands. It includes a small portion of the Pike-San Isabel National Forest.

This unit is located in the Fountain Creek HUC and is proposed to address the large recovery population designated for this area in the Draft Document. The area is unique in that it represents the only known Preble's population of significant size within the Arkansas River drainage and the southernmost known occurrence of the Preble's. Development pressure is extremely high on some private lands within the unit. There is concern that development will result in changes in flows from increased stormwater runoff and will affect riparian systems. Non-Federal lands within the unit are addressed in the El Paso County HCP currently being developed.

Jumping mice presumed to be the Preble's have been captured throughout this unit and specimens from the Academy and within the unit have been verified as the Preble's through genetic and morphological examination.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and conservation plans, and through section 7 consultation and section 10 permits.

However, designation of critical habitat can help focus conservation activities for listed species by identifying areas essential to conserve the species. Designation of critical habitat also alerts the public, as well as land-managing agencies, to the importance of these areas. As a result of critical habitat designation, Federal agencies may be able to prioritize landowner incentive programs such as Conservation Reserve Program enrollment and other private landowner agreements that benefit the Preble's. Critical habitat designation also may assist States and local governments in prioritizing their conservation and land management programs.

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7

consultation under the Act. Adverse modification might result from alterations that include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical.

Conference for Proposed Critical Habitat

Section 7(a)(4) of the Act requires

Reinitiation of Prior Consultations

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under "Conference for Proposed Critical Habitat." Following designation of

Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Previous Section 7 Consultations

Many section 7 consultations for Federal actions affecting the Preble's and its habitat have preceded this critical habitat proposal, including, but

military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive

management and protection for the Preble's.

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a) of the Act authorizes us to issue permits for private actions which result in the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by an

exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in

consultation under the Act. Adverse modification might result from alterations that include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical.

Conference for Proposed Critical Habitat

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. The regulations for interagency cooperation regarding proposed critical habitat are codified at 50 CFR 402.10. During a conference on the effects of a Federal action on proposed critical habitat, we make non-binding recommendations on ways to minimize or avoid adverse effects of the action. We document these recommendations and any conclusions reached in a conference report provided to the Federal agency and to any applicant involved.

If requested by the Federal agency and deemed appropriate by us, the conference may be conducted in accordance with the procedures for formal consultation under 50 CFR 402.14. We may adopt an opinion issued at the conclusion of the conference as our biological opinion when the critical habitat is designated by final rule, but only if new information or changes to the proposed Federal action would not significantly alter the content of the opinion.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

A Federal agency may request a conference with us for any previously reviewed action that is likely to destroy or adversely modify proposed critical habitat and over which the agency retains discretionary involvement or control, as described above under "Conference for Proposed Critical Habitat." Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Federal Actions That May Destroy or Adversely Modify Preble's Meadow Jumping Mouse Critical Habitat

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation.

Federal actions that, when carried out, funded or authorized by a federal agency, may destroy or adversely modify critical habitat for the Preble's include, but are not limited to:

(1) Any activity that results in development or alteration of the landscape within a unit, including land clearing; activities associated with construction for urban and industrial development, roads, bridges, pipelines, or bank stabilization; agricultural activities such as plowing, discing, haying, or intensive grazing; off-road vehicle activity; and mining or drilling of wells;

(2) Any activity that results in changes in the hydrology of the unit, including construction, operation, and maintenance of levees, dams, berms, and channels; activities associated with flow control (*e.g.*, releases, diversions, and related operations); irrigation; sediment, sand, or gravel removal; and other activities resulting in the draining or inundation of a unit;

(3) Any sale, exchange, or lease of Federal land that is likely to result in the habitat in a unit being destroyed or appreciably degraded;

(4) Any activity that detrimentally alters natural processes in a unit including the changes to inputs of water, sediment and nutrients, or that significantly and detrimentally alters water quantity in the unit; and

(5) Any activity that could lead to the introduction, expansion, or increased density of exotic plant or animal species that are detrimental to the Preble's and to its habitat.

Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Previous Section 7 Consultations

Many section 7 consultations for Federal actions affecting the Preble's and its habitat have preceded this critical habitat proposal, including, but not limited to:

(1) Activities on Federal lands including those of the Department of Defense, Forest Service, Department of Energy, and Bureau of Land Management;

(2) Activities affecting waters of the United States by the Corps of Engineers under section 404 of the Clean Water Act;

(3) Licensing or relicensing of dams by the Federal Energy Regulatory Commission;

(4) Development, operation, and maintenance of dams, canals, and other means of directing flows by the Corps of Engineers and the Bureau of Reclamation;

(5) Funding and regulation of highway and bridge construction, and improvements by the Federal Highway Administration;

(6) Licensing or construction of communication sites by the Federal Communications Commission;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergence Management Agency; and

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service.

If you have any questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact LeRoy Carlson, Field Supervisor, Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 25486, DFC, Denver, CO 80225–0486 (telephone 303–236–7400; facsimile 303–236–0027).

Relationship of Critical Habitat to Military Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the

military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. Bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

In place at the Air Force Academy in El Paso County, CO are an INRMP, a 1999 Conservation and Management Plan for Preble's Meadow Jumping Mouse on the U.S. Air Force Academy, and a 2000 programmatic section 7 consultation addressing certain activities on the Academy that may affect the Preble's. The conservation and management plan provides guidance for U.S. Air Force management decisions regarding the Preble's and its habitat over five years (2000—2005). While it was based upon the most current scientific knowledge available at the time that it was developed, research regarding Preble's is ongoing at the Academy and the conservation and management plan will be updated as new information is collected.

We have reviewed these measures and have determined that they address the three criteria identified above. Therefore, Academy lands do not meet the definition of critical habitat and are not included in this proposed designation of critical habitat for the Preble's. To date, the Academy is the only Department of Defense installation that has completed a final INRMP that provides for sufficient conservation, management and protection for the Preble's.

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a) of the Act authorizes us to issue permits for private actions which result in the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently a limited number of small HCPs covering the Preble's or its habitat have been approved and regional or county-wide HCPs are being developed in a few instances. We have not proposed to exclude any lands from this critical habitat designation on the basis of existing HCPs. However, HCPs that will likely include proposed critical habitat are currently under development. Should any of these HCPs be approved by the Service prior to finalization of a rule designating critical habitat, we will consider whether the area covered by the HCP does not represent critical habitat due to adequate existing protection and management under the HCP.

In the event that future HCPs covering the Preble's are developed within the boundaries of designated critical habitat after finalization of the critical habitat designation, we will provide technical assistance and work closely with the applicants to identify lands essential for the long-term conservation of the Preble's, ensure that the HCPs provide for protection and management of habitat areas essential to the Preble's by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive analysis and data collection regarding the use of particular habitat areas by the Preble's and a more detailed analysis of the importance of such lands.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating these areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register** and reopen the comment period at the time to accept comments on the economic analysis or, if necessary, further comments on the proposed rule. The economic analysis will be available at *http://www.R6.FWS.GOV/preble*. This economic analysis will serve as the basis of our analysis under section 4(b)(2), and of any exclusions. As this economic analysis is not yet completed, we are not yet able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will review this analysis, public comments on the analysis and this proposed rule, and the benefits of designating areas as critical habitat; we may identify certain proposed areas that should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from this proposal.

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of the Preble's habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices, and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical

habitat for the Preble's, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for

will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rule. Accordingly, the final rule may differ

Management and Budget (OMB). We are preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh

contract, grant, permit, or other Federal authorization. These actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have significant additional effects on these activities in areas of critical habitat occupied by the species.

For actions on non-Federal property concerning take of the Preble's as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Due to current public knowledge of the species' protection, the prohibition against take of the Preble's both within and outside of the proposed areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be

primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Preble's.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and

habitat for the Preble's, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). If you would like to submit comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our Colorado Ecological Services Field Office at 303–275–2370.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rule. Accordingly, the final rule may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

We plan to schedule at least three informal public meetings in Wyoming and Colorado to provide information on and an opportunity for discussion of this proposed rule. The dates, times, and places of these meetings will be publicized by the Service, including announcements in local newspapers.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail comments to: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the Preble's. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As indicated on Table 1 (see "Critical Habitat Designation"), we have proposed designating property owned by Federal, State, and local governments, and private entities.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Activities on Federal lands including the Department of Defense, Forest Service, Department of Energy, and Bureau of Land Management;

(2) Regulations of activities affecting waters of the United States by the Corps of Engineers under section 404 of the Clean Water Act;

(3) Licensing or relicensing of dams by the Federal Energy Regulatory Commission;

(4) Development, operations, and maintenance of dams, canals, and other means of directing flows by the Corps of Engineers and Bureau of Reclamation;

(5) Funding and regulation of highway and bridge construction and improvements by the Federal Highway Administration;

(6) Licensing or construction of communication sites by the Federal Communications Commission;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through

contract, grant, permit, or other Federal authorization. These actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have significant additional effects on these activities in areas of critical habitat occupied by the species.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause—(a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, Tribal, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service will use the economic analysis to further evaluate this situation.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Preble's as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Due to current public knowledge of the species' protection, the prohibition against take of the Preble's both within and outside of the proposed areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the conservation of the Preble's.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Wyoming and Colorado. We will continue to coordinate any future designation of critical habitat for the Preble's with the appropriate State agencies. The designation of critical habitat for the Preble's imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally-sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act and plan public meetings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Preble's.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will complete a NEPA analysis with an Environmental Assessment. The range of the Preble's includes States within the Tenth Circuit; therefore, we are completing an Environmental Assessment and will announce its availability in the **Federal Register**.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. We believe that no tribal lands or tribal trust resources are essential for the conservation of the Preble's.

References Cited

A complete list of all references cited in this final rule is available upon request from the Colorado Fish and

Wildlife Service Field Office (see **ADDRESSES**).

Author

The primary author of this proposed rule is Peter Plage, Biologist, of the Colorado Ecological Services Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "Mouse, Preble's meadow jumping" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

Wyoming Overview General Location of Proposed Critical Habitat Preble's Meadow Jumping Mouse

(Zapus hudsonius preblei)

Wildlife Service Field Office (see **ADDRESSES**).

Author

The primary author of this proposed rule is Peter Plage, Biologist, of the Colorado Ecological Services Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "Mouse, Preble's meadow jumping" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Mouse, Preble's meadow jumping.	*Zapus hudsonius preblei.*	U.S.A. (CO, WY)	Entire	T	636	17.95(a)	NA
*	*	*	*	*	*	*	*

3. Amend § 17.95(a) by adding critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.* * * *

Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)

(1) Critical habitat units are depicted for Wyoming and Colorado. Maps and description follow.

(2) Within these areas, the primary constituent elements for the Preble's include those habitat components essential for the biological needs of reproducing, rearing of young, foraging, sheltering, hibernation, dispersal, and genetic exchange. The primary constituent elements are found in and near riparian areas located within grassland, shrubland, forest, and mixed vegetation types where dense herbaceous or woody vegetation occurs near the ground level, where available open water exists during their active season, and where there are ample upland habitats of sufficient width and quality for foraging, hibernation, and refugia from catastrophic flooding events. Primary constituent elements associated with the biological needs of dispersal and genetic exchange also are found in areas that provide connectivity or linkage between or within Preble's populations. The dynamic ecological processes that create and maintain Preble's habitat also are important primary constituent elements. Primary constituent elements include:

(i) A pattern of dense riparian vegetation consisting of grasses, forbs, and shrubs in areas along rivers and streams that provide open water through the Preble's active season;

(ii) Adjacent floodplains and vegetated uplands with limited human disturbance (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreational trails, and urban/wildland interfaces);

(iii) Areas that provide connectivity between and within populations. These may include river and stream reaches with minimal vegetative cover or that are armored for erosion control, travel ways beneath bridges, through culverts, along canals and ditches, and other areas that have experienced substantial human alteration or disturbance; and

(iv) Dynamic geomorphological and hydrological processes typical of systems within the range of the Preble's, *i.e.*, those processes that create and maintain river and stream channels, floodplains, and floodplain benches, and promote patterns of vegetation favorable to the Preble's.

(3) Existing features and structures within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and other features not containing any of the primary constituent elements are not considered critical habitat.

(4) Critical Habitat Units—Wyoming Index Map Follows:

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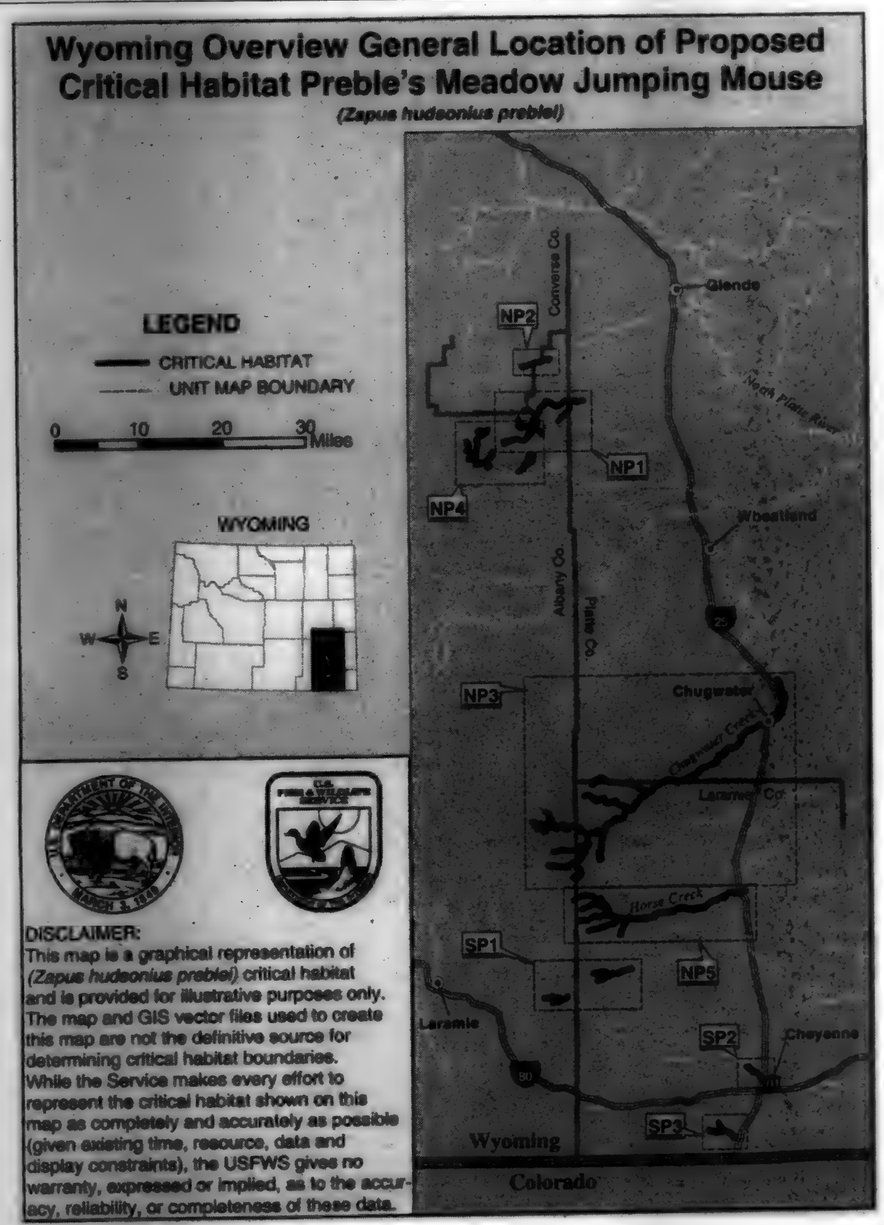

(5) Map Unit NP1: Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming.

(i) This unit consists of the following: 43.3 km (26.9 mi) of streams. Cottonwood Creek from the confluence with Heid Creek at (42 18 44N 105 14 50W, T.27N., R.70W., Sec. 16) upstream to (42 14 34N 105 26 04W, T.26N., R.72W., Sec. 13). Includes Preacher Canyon Creek from its confluence with Cottonwood Creek at (42 17 24N 105 21 12W, T.27N., R.71W., south boundary Sec. 22) upstream to (42 17 39N 105 23 13W, T.27N., R.71W., Sec. 20). Also includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 51N 105 21 23W, T.27N., R.71W., Sec. 28) upstream to (42 16 46N 105 21 59W, T.27N., R.71W., Sec. 28). Also includes North Cottonwood Creek from its confluence with Cottonwood Creek at (42 17 24N 105 21 12W, T.27N., R.71W., south boundary Sec. 22) upstream to (42 16 15N 105 21 57W, T.27N., R.71W., Sec. 33). Also includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 08N 105 21 38W, T.27N., R.71W., Sec. 33) upstream to (42 15 17N 105 20 39W, T.26N., R.71W., Sec. 3). Also includes a confluence North Cottonwood Creek at (42 16 15N 105 21 57W, T.27N., R.71W., Sec. 33) upstream to (42 15 48N 105 22 30W, T.27N., R.71W., Sec. 32). Cottonwood Creek includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 08N 105 21 38W, T.27N., R.71W., Sec. 33) upstream to (42 15 17N 105 20 39W, T.26N., R.71W., Sec. 3). Also includes a

(5) Map Unit NP1: Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming.

(i) This unit consists of the following:

43.3 km (26.9 mi) of streams. Cottonwood Creek from the confluence with Held Creek at (42 18 44N 105 14 50W, T.27N., R.70W., Sec. 16) upstream to (42 14 34N 105 26 04W, T.26N., R.72W., Sec. 12). Includes Preacher Creek from its confluence with Cottonwood Creek at (42 18 43N 105 16 51W, T.27N., R.70W., Sec. 17) upstream to (42 16 39N 105 18 22W, T.27N., R.71W., Sec. 25). Also includes an unnamed tributary from its confluence with Cottonwood Creek at (42 17 24N 105 21 12W, T.27N., R.71W., south boundary Sec. 22) upstream to (42 17 39N 105 23 13W, T.27N., R.71W., Sec. 20). Also includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 51N 105 21 23W, T.27N., R.71W., Sec. 28) upstream to (42 16 46N 105 21 59W, T.27N., R.71W., Sec. 28). Also includes North Cottonwood Creek from its confluence with Cottonwood Creek at (42 16 39N 105 21 21W, T.27N., R.71W., Sec. 28) upstream to (42 16 51N 105 23 59W, T.27N., R.71W., Sec. 30). Which includes an unnamed tributary from its confluence North Cottonwood Creek at (42 16 15N 105 21 57W, T.27N., R.71W., Sec. 33) upstream to (42 15 48N 105 22 30W, T.27N., R.71W., Sec. 32). Cottonwood Creek includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 08N 105 21 38W, T.27N., R.71W., Sec. 33) upstream to (42 15 17N 105 20 39W, T.26N., R.71W., Sec. 3). Also includes a final tributary, Kloer Creek from its confluence with Cottonwood Creek at (42 14 30N 105 25 49W, T.26N., R.72W., Sec. 12) upstream to (42 14 20N 105 26 00W, T.26N., R.72W., Sec. 12).

(ii) Map Unit NP1 follows:

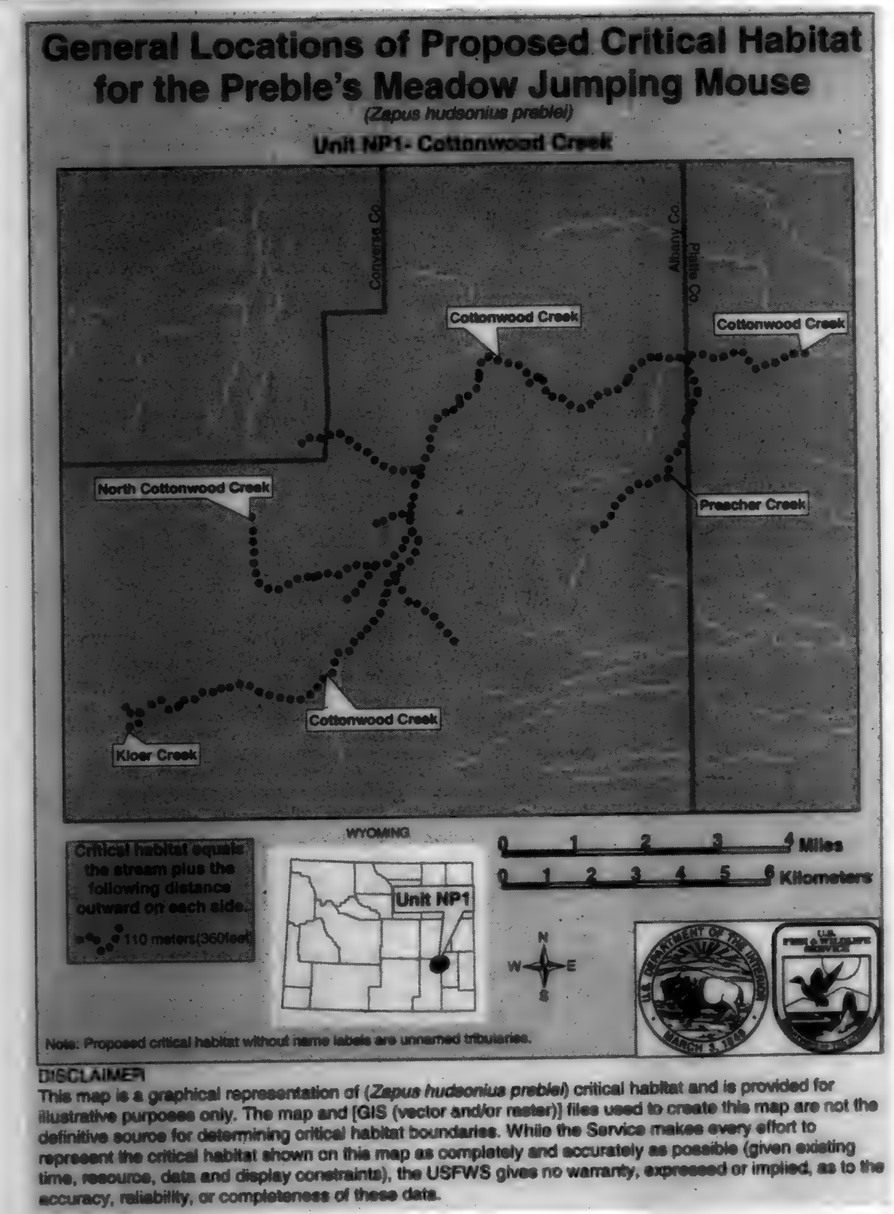

(6) Map Unit NP2: Horseshoe Creek, Albany County, Wyoming.

(i) This unit consists of the following:

6.5 km (4.1 mi) of streams. Horseshoe Creek from the confluence with Soldier Creek at (42 23 07N 105 19 30W, T.28N., R.71W., Sec. 23) upstream to the confluence with Mary Cooper Creek at (42 22 20N 105 23 30W, T.28N., R.71W., Sec. 29).

(ii) Map Unit NP2 follows:

(6) Map Unit NP2: Horseshoe Creek, Albany County, Wyoming.

(i) This unit consists of the following:

6.5 km (4.1 mi) of streams. Horseshoe Creek from the confluence with Soldier Creek at (42 23 07N 105 19 30W, T.28N., R.71W., Sec. 23) upstream to the confluence with Mary Cooper Creek at (42 22 20N 105 23 30W, T.28N., R.71W., Sec. 29).

(ii) Map Unit NP2 follows:

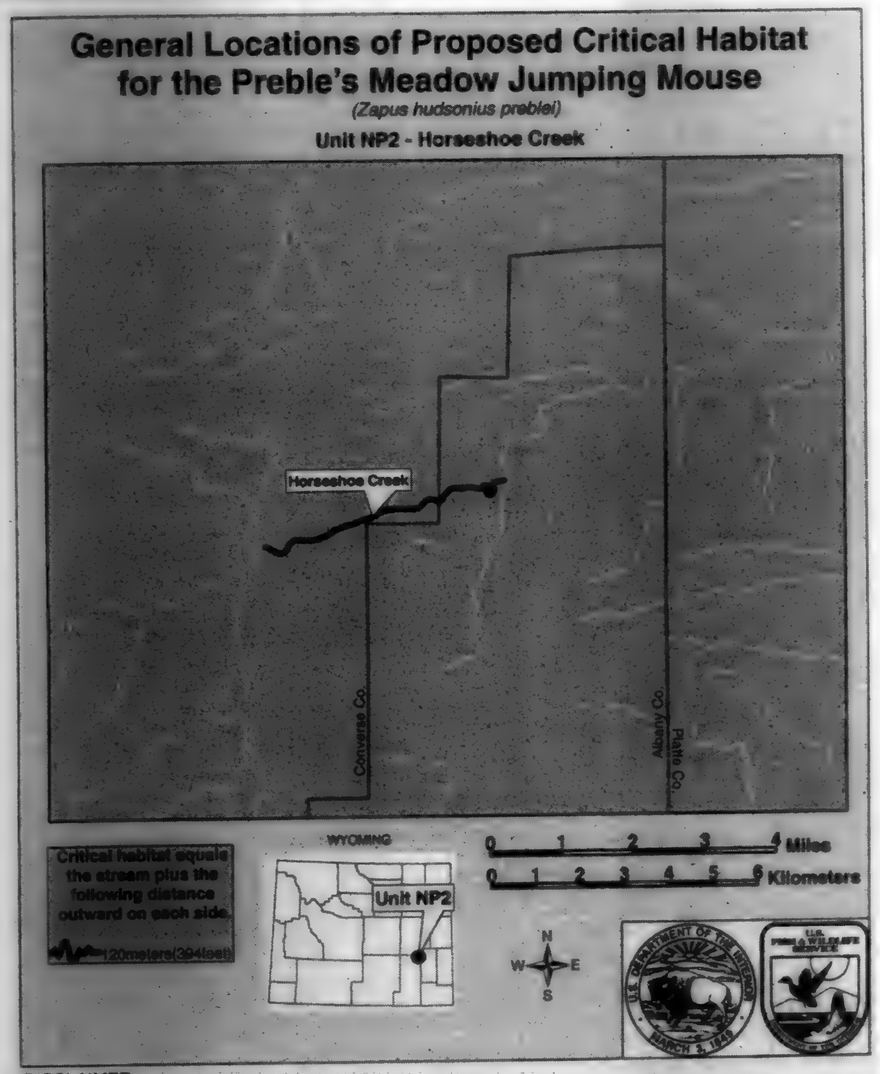

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(7) Map Unit NP3: Chugwater Creek, Albany, Laramie, and Platte Counties, Wyoming.

(i) This unit consists of the following: 179.4 km (111.5 mi) of streams. Chugwater Creek from (41 49 41N 104 48 03W, T.21N., R.66W., north boundary Sec. 5) upstream to Farthing Reservoir (41 32 36N 105 14 31W, T.18N., R.70W., Sec. 9). Includes Spring Creek from its confluence with Chugwater Creek (41 38 10N 105 05 56W, T.19N., R.69W., Sec. 10) upstream to (41 39 00N 105 13 58W, T.19N., R.70W., Sec. 4). Includes Threemile Creek from its confluence with Chugwater Creek (41 36 22N 105 08 23W, T.19N., R.69W., Sec. 20) upstream to (41 37 51N 105 14 59W, T.19N., R.70W., west boundary Sec. 9). Also includes Sand Creek from its confluence with Chugwater Creek (41 34 09N 105 12 37W, T.18N., R.70W., north boundary Sec. 3) upstream to (41 31 12N 105 12 54W, T.18N., R.70W., Sec. 22). Also includes Middle Chugwater Creek from its confluence with Chugwater Creek (41 33 55N 105 14 20W, T.18N., R.70W., Sec. 4) upstream to (41 34 23N 105 21 32W, T.19N., R.71W., Sec. 33). Which includes Shanton Creek from its confluence with Middle Chugwater Creek at (41 34 36N 105 19 05W, T.19N., R.71W., Sec. 35) upstream to (41 34 12N 105 20 41W, T.19N., R.71W., southwest corner Sec. 34). Also includes Strong Creek from its confluence with Middle Chugwater Creek at (41 35 04N 105 19 36W, T.19N., R.71W., Sec. 34) upstream to (41 36 16N 105 20 25W, T.19N., R.71W., Sec. 22). Middle Chugwater Creek also includes an unnamed tributary from its confluence with Middle Chugwater Creek at (41 34 56N 105 20 54W, T.19N., R.71W., Sec. 33) upstream to (41 35 14N 105 22 17W, T.19N., R.71W., Sec. 29). Finally, another unnamed tributary from its confluence with Middle Chugwater Creek at (41 34 43N 105 21 28W, T.19N., R.71W., Sec. 33) upstream to (41 34 47N 105 21 56W, T.19N., R.71W., Sec. 32). Another included tributary of Chugwater Creek is Spring Creek from its confluence with Chugwater Creek at (41 32 57N 105 14 27W, T.18N., R.70W., Sec. 9) upstream to (42 32 03N 105 19 17W, T.18N., R.71W., Sec. 15). South Chugwater Creek is included in the unit from the ending point of Chugwater Creek at Farthing Reservoir (41 32 36N 105 14 31W, T.18N., R.70W., Sec. 9) upstream to (41 30 42N 105 20 03W, T.18N., R.71W., north boundary Sec. 27). Includes Ricker Creek from its confluence with South Chugwater Creek at (41 31 04N 105 16 07W, T.18N., R.70W., Sec. 19) upstream to (41 29 24N 105 16 39W, T.18N., R.70W., Sec. 31).

(ii) Map Unit NP3 follows:

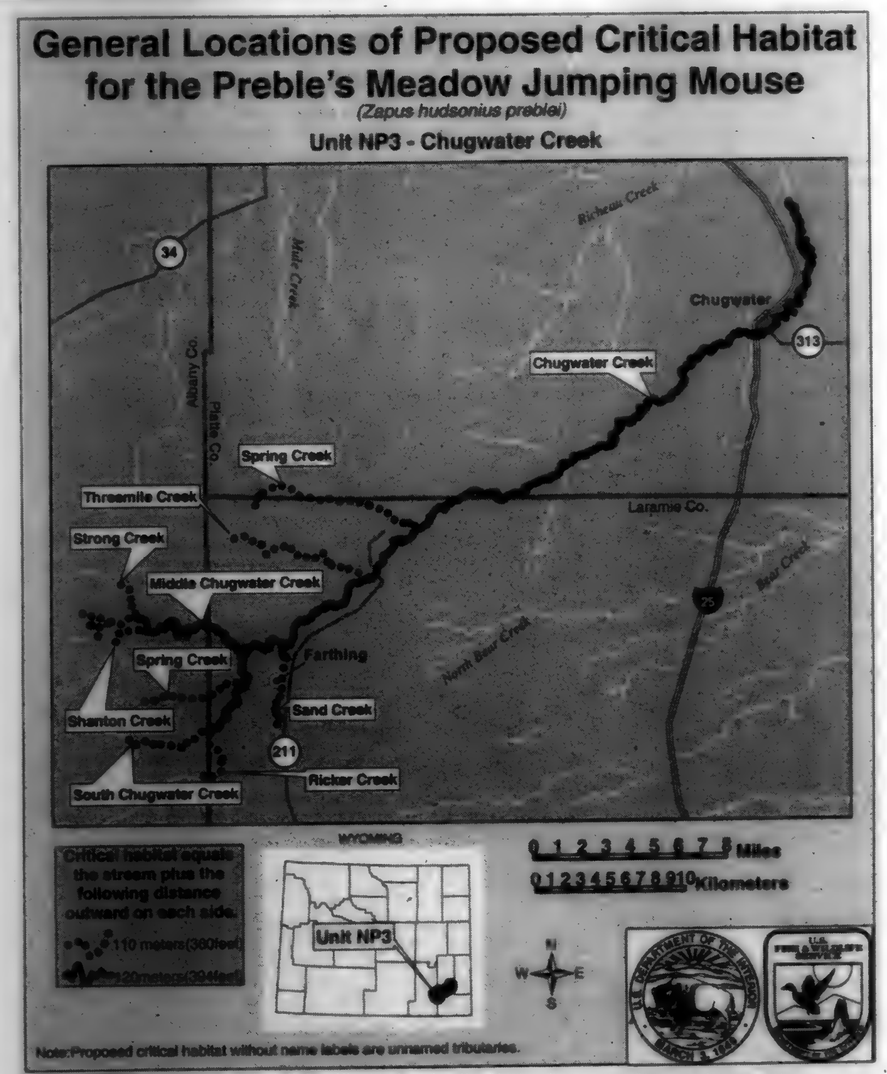

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(8) Map Unit NP4: Friend Creek and Murphy Canyon, Albany County, Wyoming.

(i) This unit consists of the following: 32 km (19.9 mi) of streams. Includes 2 subunits. Subunit Murphy Canyon from its confluence with Sturgeon Creek at (42 11 27N 105 23 58W, T.26N., R.71W., Sec. 30) upstream to (42 13 07N 105 28 30W, T.26N., R.72W., Sec. 22). Also includes an unnamed tributary from its confluence with Bear Creek at (42 12 30N 105 28 35W, T.26N., R.72W., Sec. 22) upstream to (42 13 32N 105 27 37W, T.26N., R.72W., Sec. 15). Includes an unnamed tributary from its confluence with Arapaho Creek at (42 13 11N 105 27 38W, T.26N., R.72W., Sec.15) upstream to (42 13 18N 105 27 53W, T.26N., R.72W., Sec.15). Bear Creek also includes an unnamed tributary from its confluence with Bear Creek at (42 15 23N 105 29 28W, T.26N., R.72W., Sec. 4) upstream to (42 15 48N 105 29 18W, T.27N., R.72W., Sec. 33). Which includes another unnamed tributary from its confluence with the aforementioned unnamed tributary at (42 15 23N 105 29 28W, T.26N., R.72W., Sec. 4) upstream to (42 15 44N 105 29 43W, T.27N., R.72W., Sec. 33). Bear Creek finally includes an unnamed tributary from its confluence

(8) Map Unit NP4: Friend Creek and Murphy Canyon, Albany County, Wyoming.

(i) This unit consists of the following: 32 km (19.9 mi) of streams. Includes 2 subunits. Subunit Murphy Canyon from its confluence with Sturgeon Creek at (42 11 27N 105 23 58W, T.26N., R.71W., Sec. 30) upstream to (42 13 07N 105 21 48W, T.26N., R.71W., north boundary Sec. 21). Includes Clark Draw from its confluence with Murphy Canyon at (42 12 03N 105 22 56W, T.26N., R.71W., Sec. 29) upstream to (42 13 05N 105 22 31W, T.26N., R.71W., north boundary Sec. 20).

Subunit Friend Creek includes Bear Creek from (42 12 02N 105 28 00W, T.26N., R.72W., Sec. 27) upstream to (42 12 46N 105 31 05W, T.26N., R.72W., Sec. 19). Includes Arapaho Creek from its confluence with Bear Creek at (42 12 30N 105 28 35W, T.26N., R.72W., Sec. 22) upstream to (42 13 32N 105 27 37W, T.26N., R.72W., Sec. 15). Includes an unnamed tributary from its confluence with Arapaho Creek at (42 13 11N 105 27 38W, T.26N., R.72W., Sec.15) upstream to (42 13 18N 105 27 53W, T.26N., R.72W., Sec.15). Bear Creek also includes an unnamed tributary from its confluence with Bear Creek at (42 12 22N 105 29 18W, T.26N., R.72W., Sec. 21) upstream to (42 12 11N 105 29 59W, T.26N., R.72W., Sec. 20). Also includes Friend Creek from its confluence with Bear Creek at (42 12 48N 105 30 03W, T.26N., R.72W., Sec.20) upstream to (42 15 48N 105 28 18W, T.27N., R.72W., Sec. 34). Which includes an unnamed tributary from its confluence with Friend Creek at (42 15 03N 105 29 34W, T.26N., R.72W., Sec. 4) upstream to (42 15 48N 105 29 18W, T.27N., R.72W., Sec. 33). Which includes another unnamed tributary from its confluence with the aforementioned unnamed tributary at (42 15 23N 105 29 28W, T.26N., R.72W., Sec. 4) upstream to (42 15 44N 105 29 43W, T.27N., R.72W., Sec. 33). Bear Creek finally includes an unnamed tributary from its confluence with Bear Creek at (42 12 54N 105 30 26W, T.26N., R.72W., Sec. 20) upstream to (42 14 36N 105 31 17W, T.26N., R.72W., Sec. 7). Which includes an unnamed tributary from its confluence with the aforementioned unnamed tributary at (42 13 32N 105 30 55W, T.26N., R.72W., Sec. 17) upstream to (42 13 37N 105 31 24W, T.26N., R.72W., Sec. 18).

(ii) Map Unit NP4 follows:

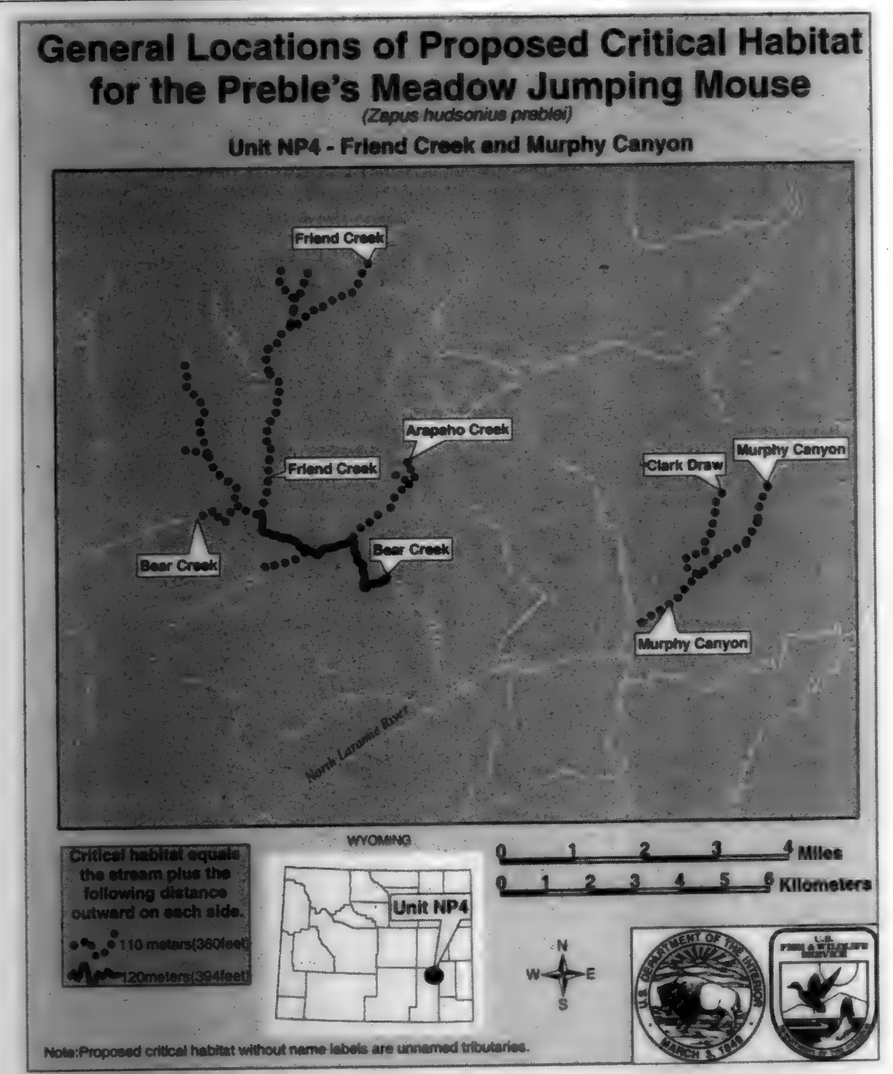

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(9)Map Unit NP5: Horse Creek, Laramie County, Wyoming.

(i) This unit consists of the following: 84.1 km (52.3 mi) of streams. Horse Creek from (41 27 46N 104 52 40W, T.17N., R.67W., Sec. 10) upstream to (41 24 59N 105 15 40W, T.17N., R.70W., Sec. 29). Includes Dry Creek from its confluence with Horse Creek (41 25 12N 105 10 11W, T.16N., R.69W., Sec. 6). Also includes South Fork Horse Creek from its confluence with Horse Creek (41 25 07N 105 10 22W, T.17N., R.70W., Sec. 25) upstream to (41 23 52N 105 14 32W, T.17N., R.70W., Sec. 33). Also includes North Fork Horse Creek from its confluence with Horse Creek (41 25 23N 105 11 38W, T.17N., R.70W., Sec. 23) upstream to (41 27 05N 105 16 32W, T.17N., R.70W., Sec. 18). Which includes Mill Creek from its confluence with North Fork Horse Creek (41 25 40N 105 11 38W, T.17N., R.70W., Sec. 23) upstream to (41 26 06N 105 15 24W, T.17N., R.70W., Sec. 20).

(ii) Map Unit NP5 follows:

(9)Map Unit NP5: Horse Creek, Laramie County, Wyoming.

(i) This unit consists of the following: 84.1 km (52.3 mi) of streams. Horse Creek from (41 27 46N 104 52 40W, T.17N., R.67W., Sec. 10) upstream to (41 24 59N 105 15 40W, T.17N., R.70W., Sec. 29). Includes Dry Creek from its confluence with Horse Creek (41 25 12N 105 08 54W, T.17N., R.69W., Sec. 29) upstream to Highway 211 (41 23 29N 105 10 11W, T.16N., R.69W., Sec. 6). Also includes South Fork Horse Creek from its confluence with Horse Creek (41 25 07N 105 10 22W, T.17N., R.70W., Sec. 25) upstream to (41 23 52N 105 14 32W, T.17N., R.70W., Sec. 33). Also includes North Fork Horse Creek from its confluence with Horse Creek (41 25 27N 105 11 33W, T.17N., R.70W., Sec. 23) upstream to (41 27 05N 105 16 32W, T.17N., R.70W., Sec. 18). Which includes Mill Creek from its confluence with North Fork Horse Creek (41 25 40N 105 11 38W, T.17N., R.70W., Sec. 23) upstream to (41 26 06N 105 15 24W, T.17N., R.70W., Sec. 20).

(ii) Map Unit NP5 follows:

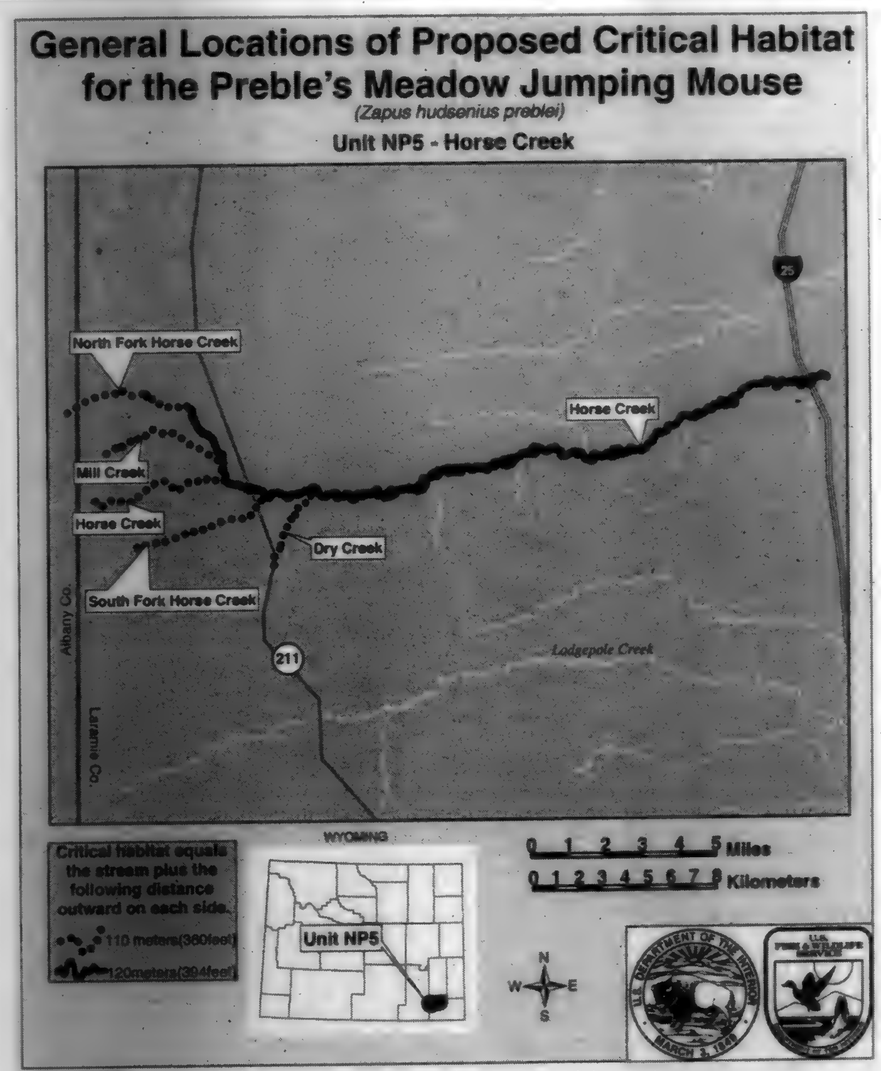

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(10) Map Unit SP1: Lodgepole Creek and Upper Middle Lodgepole Creek, Laramie County, Wyoming.

(i) This unit consists of the following: 20.8 km (13 mi) of streams. Consists of 2 subunits. Subunit Lodgepole Creek, Laramie County, from Highway 211 (41 19 53N 105 08 35W, T.16N., R.69W., Sec. 29) upstream to the confluence of North Lodgepole Creek and Middle Lodgepole Creek (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26) upstream to (41 18 40N 105 13 19W, T.16N., R.70W., Sec. 34).

Subunit Middle Lodgepole Creek, Albany County, includes Middle Lodgepole Creek from the boundary of Medicine Bow National Forest (41 17 06N 105 17 27W, T15N., R.71W., east aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 29N 105 19 31W, T.15N., R.71W., Sec. 14). Also includes North Branch Middle Lodgepole Creek from the aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 58N 105 20 43W, T.15N., R.71W., Sec. 10). Which includes an unnamed tributary from its

(10) Map Unit SP1: Lodgepole Creek and Upper Middle Lodgepole Creek, Laramie County, Wyoming.

(i) This unit consists of the following: 20.8 km (13 mi) of streams. Consists of 2 subunits. Subunit Lodgepole Creek, Laramie County, from Highway 211 (41 19 53N 105 08 35W, T.16N., R.69W., Sec. 29) upstream to the confluence of North Lodgepole Creek and Middle Lodgepole Creek (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26). Includes North Lodgepole Creek from the aforementioned confluence (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26) upstream to (41 19 27N 105 13 54W, T.16N., R.70W., west boundary Sec. 27). Also includes Middle Lodgepole Creek from (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26) upstream to (41 18 40N 105 13 19W, T.16N., R.70W., Sec. 34).

Subunit Middle Lodgepole Creek, Albany County, includes Middle Lodgepole Creek from the boundary of Medicine Bow National Forest (41 17 06N 105 17 27W, T15N., R.71W., east boundary Sec. 12) upstream to the confluence of North Branch Middle Lodgepole Creek and Middle Branch Middle Lodgepole Creek (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12). Includes Middle Branch Middle Lodgepole Creek from the aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 29N 105 19 31W, T.15N., R.71W., Sec. 14). Also includes North Branch Middle Lodgepole Creek from the aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 58N 105 20 43W, T.15N., R.71W., Sec. 10). Which includes an unnamed tributary from its confluence with North Branch Middle Lodgepole Creek (41 16 56N 105 19 11W, T.15N., R.71W., Sec. 11) upstream to (41 17 12N 105 19 36W, T.15N., R.71W., Sec. 11).

(ii) Map Unit SP1 follows:

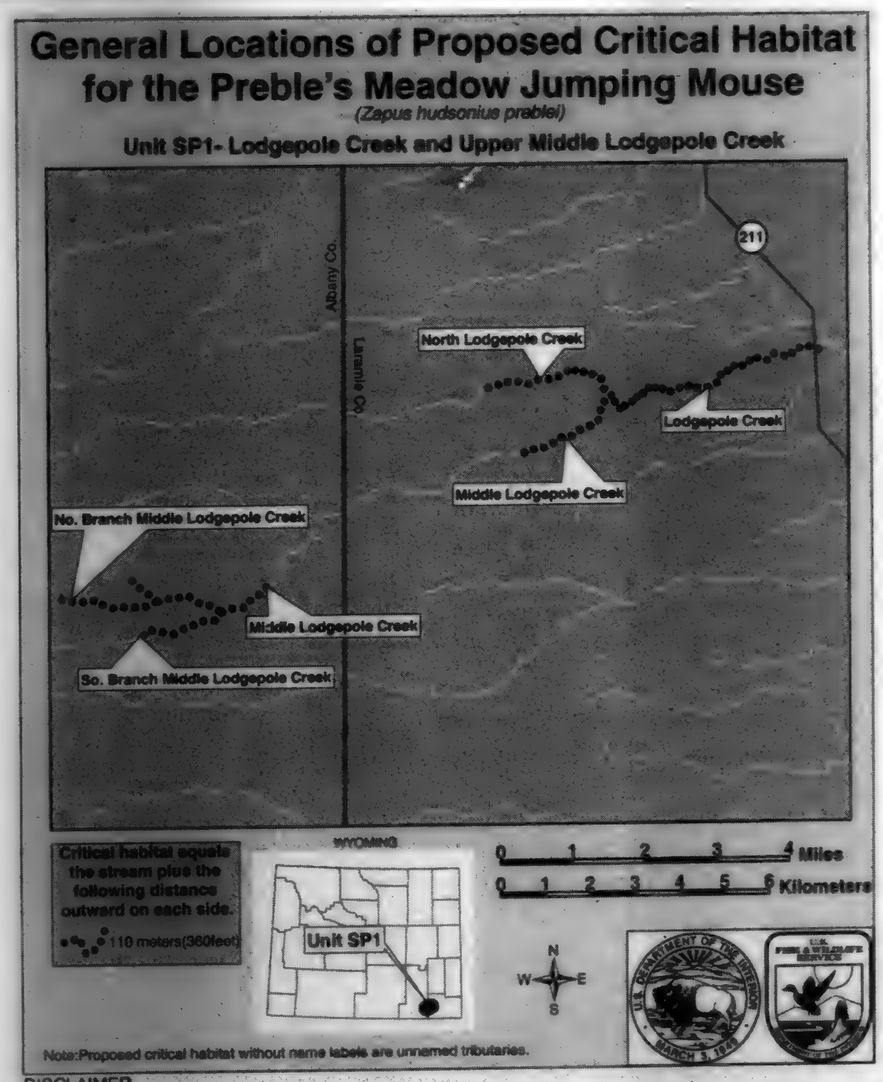

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(11) Map Unit SP2: F.E. Warren Air Force Base, Laramie County, Wyoming.

(i) This unit consists of the following:

5.7 km (3.6 mi) of stream. Crow Creek within the boundary of Warren Air Force Base from (41 08 01N 104 50 21W, T.14N., R.67W., Sec. 36) upstream to (41 09 30N 104 52 48W, T.14N., R.67W., Sec. 27).

(ii) Map Unit SP2 follows:

(11) Map Unit SP2: F.E. Warren Air Force Base, Laramie County, Wyoming.

(i) This unit consists of the following:

5.7 km (3.6 mi) of stream. Crow Creek within the boundary of Warren Air Force Base from (41 08 01N 104 50 21W, T.14N., R.67W., Sec. 36) upstream to (41 09 30N 104 52 48W, T.14N., R.67W., Sec. 27).

(ii) Map Unit SP2 follows:

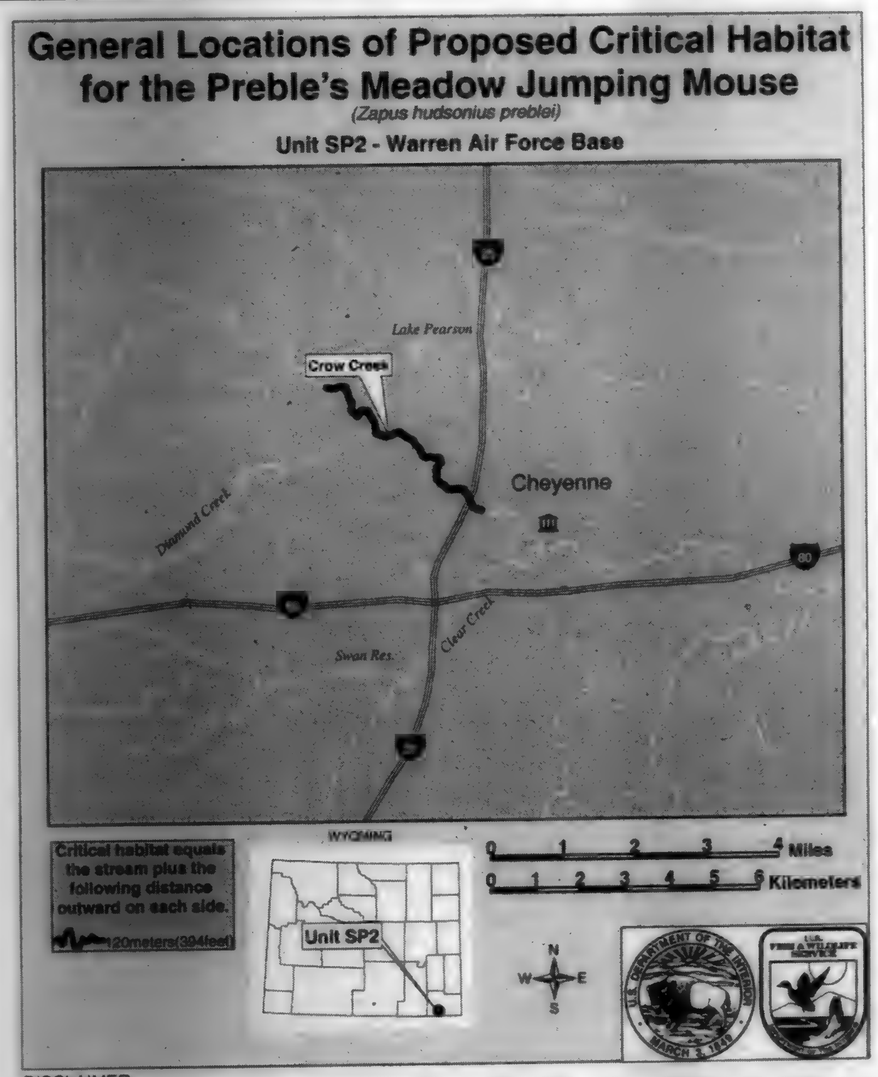

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(12) Map Unit SP3: Lone Tree Creek, Laramie County, Wyoming.

(i) This unit consists of the following:

18.7 km (11.7 mi) of streams. Includes 2 subunits. Subunit Wyoming includes Lone Tree Creek from (41 02 06N 104 54 40W, T.12N., R.67W., Sec. 5) upstream to (41 03 46N 104 56 48W, T.13N., R.68W., Sec. 25). Includes Goose Creek from its confluence with Lone Tree Creek (41 02 55N 104 56 01W, T.13N., R.67W., Sec. 31) upstream to (41 03 01N 104 58 04W, T.13N., R.68W., Sec. 35). Which includes an unnamed tributary from its confluence with Goose Creek (41 02 54N 104 57 41W, T.13N., R.68W., Sec. 36) upstream to (41 02 52N 104 57 59W, T.13N., R.68W., Sec. 35).

Subunit Colorado includes Lone Tree Creek from 40 54 49N 104 54 36W, T.11N., R.67W., south boundary Sec. 17) upstream to (40 58 18N 104 55 11W, T.12N., R.67W., north boundary Sec. 32).

(12) Map Unit SP3: Lone Tree Creek, Laramie County, Wyoming.

(i) This unit consists of the following:

18.7 km (11.7 mi) of streams. Includes 2 subunits. Subunit Wyoming includes Lone Tree Creek from (41 02 06N 104 54 40W, T.12N., R.67W., Sec. 5) upstream to (41 03 46N 104 56 48W, T.13N., R.68W., Sec. 25). Includes Goose Creek from its confluence with Lone Tree Creek (41 02 55N 104 56 01W, T.13N., R.67W., Sec. 31) upstream to (41 03 01N 104 58 04W, T.13N., R.68W., Sec. 35). Which includes an unnamed tributary from its confluence with Goose Creek (41 02 54N 104 57 41W, T.13N., R.68W., Sec. 36) upstream to (41 02 52N 104 57 59W, T.13N., R.68W., Sec. 35).

Subunit Colorado includes Lone Tree Creek from 40 54 49N 104 54 36W, T.11N., R.67W., south boundary Sec. 17) upstream to (40 58 18N 104 55 11W, T.12N., R.67W., north boundary Sec. 32).

(ii) Map Unit SP3 (Wyoming) follows:

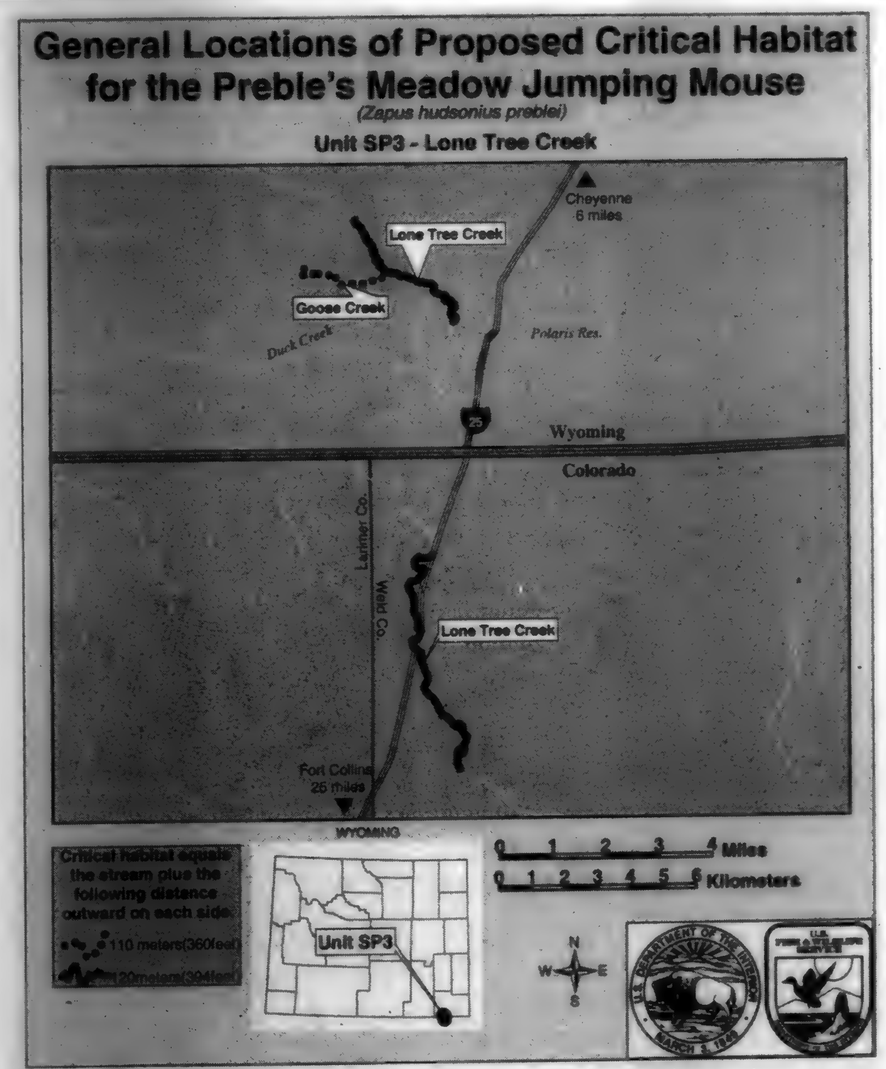

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(13) Critical Habitat Units—Colorado Index Map Follows:

(14) Map Unit SP3: Lone Tree Creek, Weld County, Colorado.

(i) This unit consists of the following:

141.8 km (88.1 mi) of streams and rivers. North Fork Cache La Poudre River from Seaman Reservoir (40 43 03N 105 14 27W, T.9N., R.70W., Sec. 28) upstream to Halligan Reservoir spillway (40 52 49N 105 20 12W, T.11N., R.71W., Sec. 34). Includes Lone Pine Creek from its confluence North Fork Cache La Sec. 28). Which includes Tenmile Creek from its confluence with Stonewall Creek (40 51 48N 105 15 30W, T.10N., R.70W., Sec. 5) upstream to Red Mountain Road (40 53 00N 105 16 09W, T.11N., R.70W., Sec. 31). Also includes Rabbit Creek from its confluence with North Fork Cache La Poudre River (40 48 30N 105 16 04W, T.10N., R.70W., Sec. 30) upstream to the confluence with North and Middle Forks of Rabbit 14W, T.9N., R.71W., Sec. 5). Also includes Middle Fork Rabbit Creek from its confluence with Rabbit Creek (40 49 34N 105 20 47W, T.10N., R 71W., Sec. 21) upstream to 7,600 feet elevation (40 49 46N 105 26 55W, T.10N., R.72W., Sec. 15). This includes an unnamed tributary from its confluence with Middle Fork Rabbit Creek (40 49 56N 105 25 49W, T.10N., R.72W., Sec. 14) upstream to 7,600 feet elevation (40 48

(13) Critical Habitat Units—Colorado Index Map Follows:

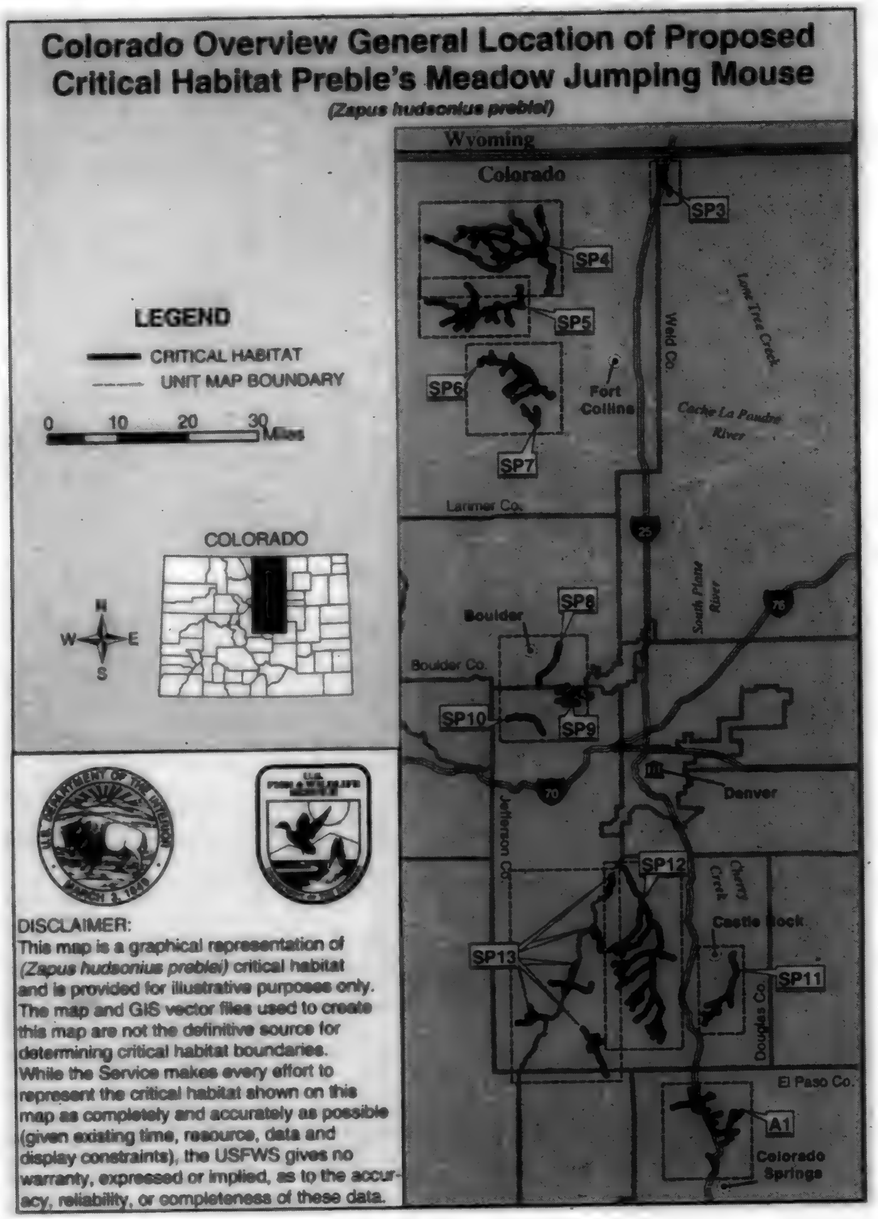

(14) Map Unit SP3: Lone Tree Creek, Weld County, Colorado.

(i) This unit consists of the following: 141.8 km (88.1 mi) of streams and rivers. North Fork Cache La Poudre River from Seaman Reservoir (40 43 03N 105 14 27W, T.9N., R.70W., Sec. 28) upstream to Halligan Reservoir spillway (40 52 49N 105 20 12W, T.11N., R.71W., Sec. 34). Includes Lone Pine Creek from its confluence North Fork Cache La Poudre River (40 47 53N 105 15 28W, T.10N., R.70W., Sec. 32) upstream and continuing upstream into North Lone Pine Creek to 7,600 feet elevation (40 49 58N 105 34 09W, T.01N., R.73W., Sec. 15). Which includes Columbine Canyon from its confluence with North Lone Pine Creek (40 49 48N 105 33 28W, T.10N., R.73W., Sec. 15) upstream to 7,600 feet elevation (40 49 33N 105 33 54W, T.10N., R.73W., Sec. 15). Also includes Stonewall Creek from its confluence with North Fork Cache La Poudre River (40 48 19N 105 15 21W, T.10N., R.70W., Sec. 29) upstream to (40 53 26N 105 15 38W, T.11N., R.70W., Sec. 29). Which includes Tenmile Creek from its confluence with Stonewall Creek (40 51 48N 105 15 30W, T.10N., R.70W., Sec. 5) upstream to Red Mountain Road (40 53 00N 105 16 09W, T.11N., R.70W., Sec. 31). Also includes Rabbit Creek from its confluence with North Fork Cache La Poudre River (40 48 30N 105 16 04W, T.10N., R.70W., Sec. 30) upstream to the confluence with North and Middle Forks of Rabbit Creek (40 49 34N 105 20 47W, T.10N., R 71W., Sec. 21). Also includes South Fork Rabbit Creek from its confluence with Rabbit Creek (40 48 40N 105 19 43W, T.10N., R.71W., Sec. 27) upstream to (40 49 39N 105 24 40W, T.10N., R.72W., north boundary Sec. 24). Which includes an unnamed tributary from its confluence with South Fork Rabbit Creek (40 47 28N 105 20 45W, T.10N., R.71W., Sec. 33) upstream to (40 47 28N 105 23 10W, T.10N., R.71W., Sec. 31). Which in turn has an unnamed tributary from their confluence at (40 47 16N 105 21 45W, T.10N., R.71W., east boundary Sec. 32) upstream to (40 46 54N 105 22 14W, T.9N., R.71W., Sec. 5). Also includes Middle Fork Rabbit Creek from its confluence with Rabbit Creek (40 49 34N 105 20 47W, T.10N., R 71W., Sec. 21) upstream to 7,600 feet elevation (40 49 46N 105 26 55W, T.10N., R.72W., Sec. 15). This includes an unnamed tributary from its confluence with Middle Fork Rabbit Creek (40 49 56N 105 25 49W, T.10N., R.72W., Sec. 14) upstream to 7,600 feet elevation (40 48 48N 105 26 26W, T.10N., R.72W., Sec. 23). This unit includes North Fork Rabbit Creek from its confluence with Rabbit Creek (40 49 34N 105 20 47W, T.10N., R.71W., Sec. 21) upstream to 7,600 feet elevation (40 49 38N 105 29 17W, T.10N., R.72W., Sec. 17). Which includes an unnamed tributary from its confluence with North Fork Rabbit Creek (40 50 45N 105 27 23W, T.10N., R.72W., Sec. 9) upstream to 7,600 feet elevation (40 50 57N 105 28 42W, T.10N., R.72W., Sec. 9).

(ii) Map Unit SP3 (Colorado) follows:

BILLING CODE 4310-55-P

(15) Map Unit SP4: North Fork Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following: 82.4 km (51.2 mi) of streams and rivers. Cache La Poudre River from Poudre Park (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to (40 42 02N 105 34 01W, T.9N., R.73W., west boundary Sec. 34). Includes Hewlett Gulch from its confluence with Cache La Poudre River at Stove Prairie Landing (40 40 58N 105 23 21W, T.8N., R.71W., Sec. 6) upstream to (40 39 32N 105 22 34W, T.8N., R.71W., Sec. 17). Which includes Skin Gulch from its confluence with the aforementioned unnamed tributary at (40 40 33N 105 23 15W, T.8N., R.71W., Sec. 7) upstream to (40 39 41N 105 24 44 04N 105 27 32W, T.9N., R.72W., Sec. 21). Also includes South Fork Cache La Poudre River from its confluence with Cache La Poudre River (40 41 10N 105 26 46W, T.8N., R.72W., Sec. 3) upstream to 7,600 feet elevation (40 38 49N 105 29 20W, T.8N., R.72W., Sec. 20). Which includes Pendergrass Creek from its confluence with South Fork Cache La Poudre River (40 39 54N 105 27 27W,

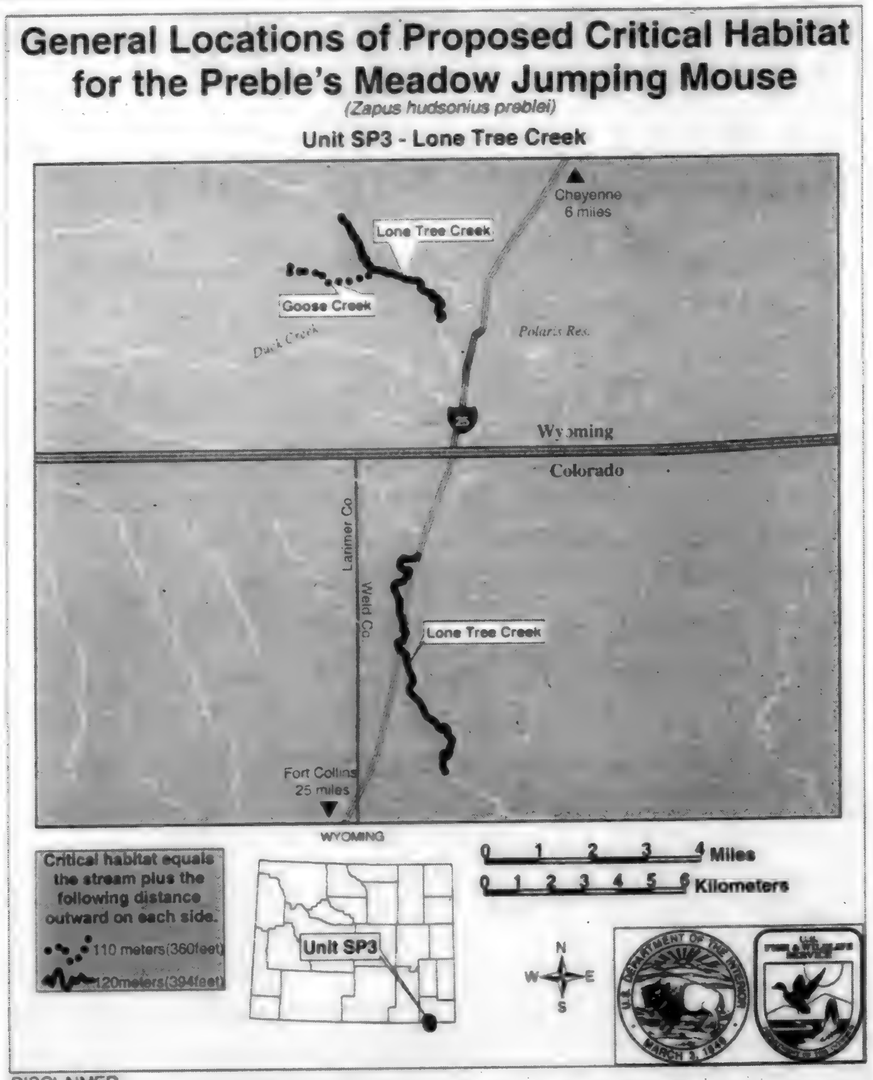

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BILLING CODE 4310-55-C

(15) Map Unit SP4: North Fork Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following: 82.4 km (51.2 mi) of streams and rivers. Cache La Poudre River from Poudre Park (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to (40 42 02N 105 34 01W, T.9N., R.73W., west boundary Sec. 34). Includes Hewlett Gulch from its confluence with Cache La Poudre River (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to the boundary of Arapahoe—Roosevelt National Forest (40 43 45N 105 19 06W, T.9N., R.71W., Sec. 23). Also includes Young Gulch from its confluence with Cache La Poudre River (40 41 25N 105 20 56W, T.8N., R.71W., Sec. 4) upstream to (40 39 13N 105 20 12W, T.8N., R.71W., south boundary Sec. 15). Also includes an unnamed tributary from its confluence with Cache La Poudre River at Stove Prairie Landing (40 40 58N 105 23 21W, T.8N., R.71W., Sec. 6) upstream to (40 39 32N 105 22 34W, T.8N., R.71W., Sec. 17). Which includes Skin Gulch from its confluence with the aforementioned unnamed tributary at (40 40 33N 105 23 15W, T.8N., R.71W., Sec. 7) upstream to (40 39 41N 105 24 13W, T.8N., R.72W., Sec. 13). Unit SP5 also includes Poverty Gulch from its confluence with Cache La Poudre River (40 40 28N 105 25 42W, T.8N., R.72W., Sec. 11) upstream to 7,600 feet elevation (40 39 02N 105 26 38W, T.8N., R.72W., Sec. 22). Also includes Elkhorn Creek from its confluence with Cache La Poudre River (40 41 50N 105 26 24W, T.9N., R.72W., Sec. 34) upstream to (40 44 04N 105 27 32W, T.9N., R.72W., Sec. 21). Also includes South Fork Cache La Poudre River from its confluence with Cache La Poudre River (40 41 10N 105 26 46W, T.8N., R.72W., Sec. 3) upstream to 7,600 feet elevation (40 38 49N 105 29 20W, T.8N., R.72W., Sec. 20). Which includes Pendergrass Creek from its confluence with South Fork Cache La Poudre River (40 39 54N 105 27 27W, T.8N., R.72W., Sec. 15) upstream to 7,600 feet elevation (40 38 34N 105 27 26W, T.8N., R.72W., Sec. 22). Also included in the unit is Bennett Creek from its confluence with Cache La Poudre River (40 40 26N 105 28 37W, T.8N., R.72W., Sec. 9) upstream to 7,600 feet elevation (40 39 18N 105 31 31W, T.8N., R.73W., Sec. 13).

(ii) Map Unit SP4 follows:

(16) Map Unit SP5: Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following: 82.4 km (51.2 mi) of streams and rivers. Cache La Poudre River from Poudre Park (40 41 16N 105 18 25W, T.8N:, R.71W., Sec. 2) upstream to (40 42 02N 105 34 01W, T.9N., R.73W., west boundary Sec. 34). Includes Hewlett Gulch from its confluence with Cache La Poudre River (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to the boundary of Arapahoe—Roosevelt National Forest (40 43 45N 105 19 06W, T.9N., R.71W., Sec. 23). Also includes Young Gulch from its confluence with Cache La Poudre River (40 41 25N 105 20 56W, T.8N., R.71W., Sec. 4) upstream to (40 39 13N 105 20 12W, T.8N., R.71W., south boundary Sec. 15). Also includes an unnamed tributary from its confluence with Cache La Poudre River at Stove Prairie Landing (40 40 58N 105 23 21W, T.8N., R.71W., Sec. 6) upstream to (40 39 32N 105 22 34W, T.8N., R.71W., Sec. 17). Which includes Skin Gulch from its confluence with the aforementioned unnamed tributary at (40 40 33N 105 23 15W, T.8N., R.71W., Sec. 7) upstream to (40 39 41N 105 24 13W, T.8N., R.72W., Sec. 13). Unit SP5 also includes Poverty Gulch from its confluence with Cache La Poudre River (40 40 28N 105 25 42W, T.8N., R.72W., Sec. 11) upstream to 7,600 feet elevation (40 39 02N 105 26 38W, T.8N., R.72W., Sec. 22). Also includes Elkhorn Creek from its confluence with Cache La Poudre River (40 41 50N 105 26 24W, T.9N., R.72W., Sec. 34) upstream to (40 44 04N 105 27 32W, T.9N., R.72W., Sec. 21). Also includes South Fork Cache La Poudre River from its confluence with Cache La Poudre River (40 41 10N 105 26 46W, T.8N., R.72W., Sec. 3) upstream to 7,600 feet elevation (40 38 49N 105 29 20W, T.8N., R.72W., Sec. 20). Which includes Pendergrass Creek from its confluence with South Fork Cache La Poudre River (40 39 54N 105 27 27W, T.8N., R.72W., Sec. 15) upstream to 7,600 feet elevation (40 38 34N 105 27 26W, T.8N., R.72W., Sec. 22). Also included in the unit is Bennett Creek from its confluence with Cache La Poudre River (40 40 26N 105 28 37W, T.8N., R.72W., Sec. 9) upstream to 7,600 feet elevation (40 39 18N 105 31 31W, T.8N., R.73W., Sec. 13).

(ii) Map Unit SP5 follows:

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(16) Map Unit SP5: Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following:

82.4 km (51.2 mi) of streams and rivers. Cache La Poudre River from Poudre Park (40 41 16N 105 18 25W, T.8N:, R.71W., Sec. 2) upstream to (40 42 02N 105 34 01W, T.9N., R.73W., west boundary Sec. 34). Includes Hewlett Gulch from its confluence with Cache La Poudre River (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to the boundary of Arapahoe—Roosevelt National Forest (40 43 45N 105 19 06W, T.9N., R.71W., Sec. 23). Also includes Young Gulch from its confluence with Cache La Poudre River (40 41 25N 105 20 56W, T.8N., R.71W., Sec. 4) upstream to (40 39 13N 105 20 12W, T.8N., R.71W., south boundary Sec. 15). Also includes an unnamed tributary from its confluence with Cache La Poudre River at Stove Prairie Landing (40 40 58N 105 23 21W, T.8N., R.71W., Sec. 6) upstream to (40 39 32N 105 22 34W, T.8N., R.71W., Sec. 17). Which includes Skin Gulch from its confluence with the aforementioned unnamed tributary at (40 40 33N 105 23 15W, T.8N., R.71W., Sec. 7) upstream to (40 39 41N 105 24 13W, T.8N., R.72W., Sec. 13). Unit SP5 also includes Poverty Gulch from its confluence with Cache La Poudre River (40 40 28N 105 25 42W, T.8N., R.72W., Sec. 11) upstream to 7,600 feet elevation (40 39 02N 105 26 38W, T.8N., R.72W., Sec. 22). Also includes Elkhorn Creek from its confluence with Cache La Poudre River (40 41 50N 105 26 24W, T.9N., R.72W., Sec. 34) upstream to (40 44 04N 105 27 32W, T.9N., R.72W., Sec. 21). Also includes South Fork Cache La Poudre River from its confluence with Cache La Poudre River (40 41 10N 105 26 46W, T.8N., R.72W., Sec. 3) upstream to 7,600 feet elevation (40 38 49N 105 29 20W, T.8N., R.72W., Sec. 20). Which includes Pendergrass Creek from its confluence with South Fork Cache La Poudre River (40 39 54N 105 27 27W, T.8N., R.72W., Sec. 15) upstream to 7,600 feet elevation (40 38 34N 105 27 26W, T.8N., R.72W., Sec. 22). Also included in the unit is Bennett Creek from its confluence with Cache La Poudre River (40 40 26N 105 28 37W, T.8N., R.72W., Sec. 9) upstream to 7,600 feet elevation (40 39 18N 105 31 31W, T.8N., R.73W., Sec. 13).

(ii) Map Unit SP5 follows:

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(17) Map Units SP6 and SP7: Buckhorn Creek and Cedar Creek, Larimer County, Colorado.

(i) These units consist of the following:

For SP6, Buckhorn Creek, 69.1 km (43 mi) of streams. Buckhorn Creek from (40 30 20N 105 13 39W, T.6N., R.70W., east boundary Sec. 9) upstream to 7,600 feet elevation (40 34 17N 105 25 28W, T.7N., R.71W., Sec. 4). Also includes Fish Creek from its confluence with Buckhorn Creek (40 32 50N 105 17 05W, T.7N., R.70W., Sec. 30) upstream to 7,600 feet elevation (40 30 56N 105 21 19W, T.6N., R.71W., Sec. 4). Which includes North Fork Fish Creek from its confluence with Fish Creek (40 32 47N 105 18 18W, T.7N., R.71W., west boundary Sec. 25) upstream and elevation (40 30 30N 105 20 48W, T.6N., R.71W., Sec. 4). Also includes Fish Creek from its confluence with Buckhorn Creek (40 32 50N 105 17 05W, T.7N., R.70W., Sec. 30) upstream to 7,600 feet elevation (40 30 56N 105 21 19W, T.6N., R.71W., Sec. 4). Which includes North Fork Fish Creek from its confluence with Fish Creek (40 32 47N 105 18 18W, T.7N., R.71W., west boundary Sec. 25) upstream and 20). Also includes Twin Cabin Gulch from its confluence with Buckhorn Creek (40 34 38N 105 23 11W, T.7N., R.71W., Sec. 18) upstream to 7,600 feet elevation (40 35 44N 105 23 33W, T.7N., R.71W., Sec. 6).

For SP7, Cedar Creek, 11.7 km (7.3 mi) of streams. Cedar Creek from the boundary of Federal land (40 26 46N 105 16 17W, T.6N., R.70W., Sec. 31) upstream to the boundary of Federal

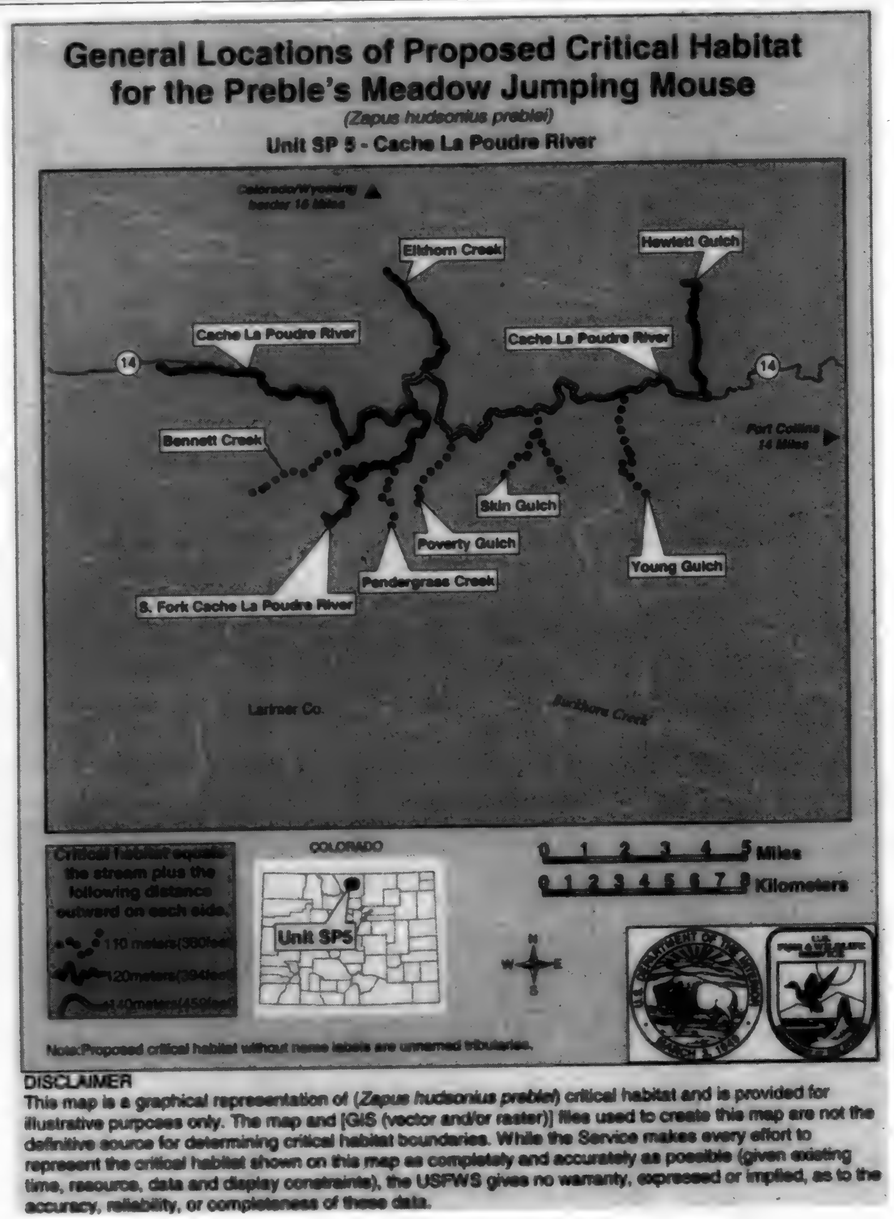

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(17) Map Units SP6 and SP7: Buckhorn Creek and Cedar Creek, Larimer County, Colorado.

(i) These units consist of the following:

For SP6, Buckhorn Creek, 69.1 km (43 mi) of streams. Buckhorn Creek from (40 30 20N 105 13 39W, T.6N., R.70W., east boundary Sec. 9) upstream to 7,600 feet elevation (40 34 17N 105 25 28W, T.7N., R.72W., Sec. 14). Includes Little Bear Gulch from its confluence with Buckhorn Creek (40 31 16N 105 15 32W, T.6N., R.70W., Sec. 5) upstream to (40 30 43N 105 16 33W, T.6N., R.70W., Sec. 6). Also includes Bear Gulch from its confluence with Buckhorn Creek (40 31 15N 105 15 51W, T.6N., R.70W., Sec. 5) upstream to 7,600 feet elevation (40 29 47N 105 19 59W, T.6N., R.71W., Sec. 10). Also includes Stringtown Gulch from its confluence with Buckhorn Creek (40 32 19N 105 16 40W, T.7N., R.70W., Sec. 30) upstream to 7,600 feet elevation (40 30 30N 105 20 48W, T.6N., R.71W., Sec. 4). Also includes Fish Creek from its confluence with Buckhorn Creek (40 32 50N 105 17 05W, T.7N., R.70W., Sec. 30) upstream to 7,600 feet elevation (40 30 56N 105 21 19W, T.6N., R.71W., Sec. 4). Which includes North Fork Fish Creek from its confluence with Fish Creek (40 32 47N 105 18 18W, T.7N., R.71W., west boundary Sec. 25) upstream and following the first unnamed tributary northwest to (40 33 35N 105 19 42W, T.7N., R.71W., Sec. 22). Also includes Stove Prairie Creek from its confluence with Buckhorn Creek (40 34 15N 105 19 45W, T.7N., R.71W., Sec. 15) upstream to the dirt road crossing at (40 35 22N 105 20 16W, T.7N., R.71W., Sec. 10). Also includes Sheep Creek from its confluence with Buckhorn Creek (40 34 15N 105 20 51W, T.7N., R.71W., Sec. 16) upstream to 7,600 feet elevation (40 33 09N 105 21 46W, T.7N., R.71W., Sec. 20). Also includes Twin Cabin Gulch from its confluence with Buckhorn Creek (40 34 38N 105 23 11W, T.7N., R.71W., Sec. 18) upstream to 7,600 feet elevation (40 35 44N 105 23 33W, T.7N., R.71W., Sec. 6).

For SP7, Cedar Creek, 11.7 km (7.3 mi) of streams. Cedar Creek from the boundary of Federal land (40 26 46N 105 16 17W, T.6N., R.70W., Sec. 31) upstream to the boundary of Federal land (40 28 15N 105 18 11W, T.6N., R.71W., Sec. 24). Includes Dry Creek from its confluence with Cedar Creek (40 27 07N 105 16 16W, T.6N., R.70W., Sec. 30) upstream to the boundary of Federal land (40 28 52N 105 16 21W, T.6N., R.70W., Sec. 18). Also includes Jug Gulch from its confluence with Cedar Creek (40 28 15N 105 17 41W, T.6N., R.71W., Sec. 24) upstream to the boundary of Federal land (40 29 07N 105 18 28W, T.6N., R.71W., Sec. 14).

(ii) Map Units SP6 and SP7 follow:

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(18) Map Units SP8, SP9, and SP10: South Boulder Creek, Boulder County, Colorado, Rocky Flats Environmental Technology Site and Ralston Creek, Jefferson County, Colorado.

(i) These units consists of the following:

For SP8, South Boulder Creek, 11.8 km (7.3 mi) of streams. Including South Boulder Creek from Baseline Road (39 59 59N 105 12 53W, T.1S., R.70W., Sec. 19) upstream to (39 53 3N 105 13 17W, T.2S., R.70W., west boundary Sec. 15). Includes unnamed tributary from confluence with Woman Creek (39 52 43N 105 10 8W, T.2S., R.70W., Sec. 13) upstream to (39 52 39N 105 12 9W, T.2S., R.70W., west boundary Sec. 14).

Subunit Walnut Creek from Indiana Street (39 54 5N 105 9 54W, T.2S., R.70W., east boundary Sec. 1) upstream to (39 53 48N 105 11 54W, T.2S., R.70W., west boundary Sec. 15). Includes unnamed tributary from confluence with Rock Creek at (39 54 41 N 105 13 00W, T.2S., R.70W., Sec. 3). Also includes an unnamed tributary from its confluence with Rock Creek at (39 54 27N 105 12 32W, T.2S., R.70W., Sec. 3) upstream to (39 54 6N 105 12 51W, T.2S., R.70W., Sec. 3). Another unnamed tributary from its confluence with Rock Creek at (39 54 23N 105 12 54W, T.2S., R.70W., Sec. 3) upstream to (39 54 18N 105 13 18W, T.2S., R.70W., west boundary Sec.

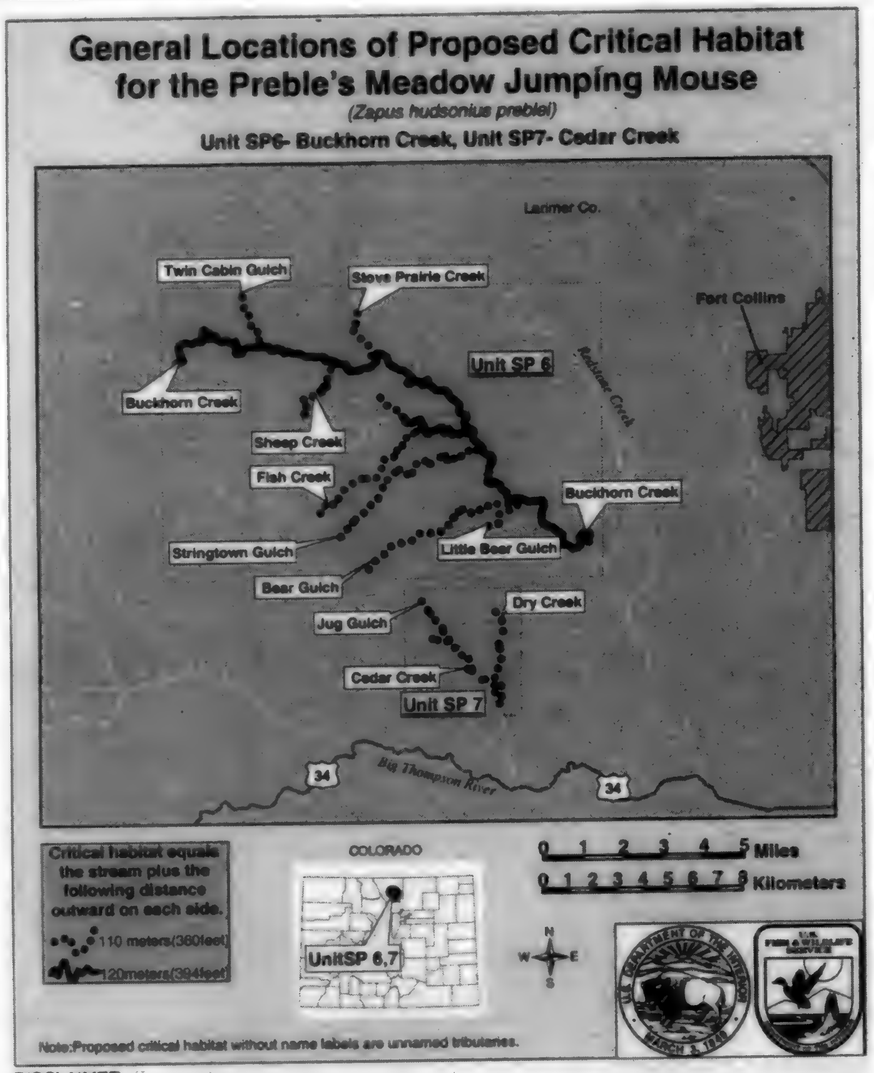

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(16) Map Units SP8, SP9, and SP10: South Boulder Creek, Boulder County, Colorado, Rocky Flats Environmental Technology Site and Ralston Creek, Jefferson County, Colorado.

(i) These units consists of the following:

For SP8, South Boulder Creek, 11.8 km (7.3 mi) of streams. Including South Boulder Creek from Baseline Road (39 59 59N 105 12 53W, T.1S., R.70W. Sec. 3) upstream to near Eldorado Springs, Colorado (39 56 7N 105 16 14W, T.1S., R.70W. Sec. 30) Also Spring Brook from the Community Ditch near Eldorado Springs (39 55 59N 105 16 8W, T.1S., R.70W. Sec. 30) upstream to South Boulder Diversion Canal (39 55 11N 105 16 11W, T.1S., R.70W. Sec. 31).

For SP9, the Rocky Flats Environmental Technology Site, 19.5 km (12.1 mi) of streams. Consists of 3 subunits. Subunit Woman Creek from Indiana Street (39 52 40N 105 9 53W, T.2S., R.70W., east boundary Sec. 13) upstream to (39 53 3N 105 13 17W, T.2S., R.70W., west boundary Sec. 15). Includes unnamed tributary from confluence with Woman Creek (39 52 43N 105 10 8W, T.2S., R.70W., Sec. 13) upstream to (39 52 39N 105 12 9W, T.2S., R.70W., west boundary Sec. 14).

Subunit Walnut Creek from Indiana Street (39 54 5N 105 9 54W, T.2S., R.70W., east boundary Sec. 1) upstream to (39 53 48N 105 11 54W, T.2S., R.70W., Sec. 11). Includes unnamed tributary from its confluence with Walnut Creek (39 54 6N 105 10 40W, T.2S., R.70W., Sec. 1) upstream to (39 53 34N 105 11 29W, T.2S., R.70W., Sec. 11).

Subunit Rock Creek from State Highway 128 (39 54 53N 105 11 37W, T.1S., R.70W., Sec. 35) upstream to (39 54 8N 105 13 18W, T.2S., R.70W., west boundary Sec. 3). Includes an unnamed tributary from its confluence with Rock Creek (39 54 40N 105 12 8W, T.2S., R.70W., east boundary Sec. 3) upstream to (39 54 41 N 105 13 00W, T.2S., R.70W., Sec. 3). Also includes an unnamed tributary from its confluence with Rock Creek at (39 54 27N 105 12 32W, T.2S., R.70W., Sec. 3) upstream to (39 54 6N 105 12 51W, T.2S., R.70W., Sec. 3). Another unnamed tributary from its confluence with Rock Creek at (39 54 23N 105 12 54W, T.2S., R.70W., Sec. 3) upstream to (39 54 18N 105 13 18W, T.2S., R.70W., west boundary Sec. 3. Another unnamed tributary from its confluence with Rock Creek at (39 54 00N 105 13 12W, T.2S., R.70W., Sec. 3) upstream to (39 54 07N 105 13 08W, T.2S., R.70W., Sec. 3).

For SP10, Ralston Creek, 13.1 km (8.1 mi) of streams. Ralston Creek from Ralston Reservoir (39 49 12N 105 15 32W, T.3S., R.70W. Sec. 6) upstream into Golden Gate Canyon State Park to 7,600 feet elevation (39 50 54N 105 21 12W, T.2S., R.71W. Sec. 29).

(ii) Map Units SP8, SP9, and SP10 follow:

(19) Map Unit SP11: Cherry Creek, Douglas County, Colorado.

(i) This unit consists of the following:

32 km (19.9 mi) of streams. Cherry Creek from the northern boundary of Castlewood Canyon State Recreation Area (39 21 56N 104 45 31W, T.8S., R.66W., south boundary Sec. 10) upstream to the confluence with Lake Gulch (39 20 24N 104 45 36W, T.8S., R.66W., Sec. 23). Lake Gulch from the aforementioned confluence upstream to (39 15 38N 104 46 03W, T.9S., R.66W., south boundary Sec. 15). Includes Upper Lake Gulch from its confluence with Lake Gulch (39 17 26N 104 46 07W, T.9S., R.66W., Sec. 3) upstream to (39 13 25N 104 50 18W, T.9S., R.67W., mid-point Sec. 36). Also includes a unnamed tributary from its confluence with Upper Lake Gulch (39 16 06N 104 47 55W, T.9S., R.66W., Sec. 17) upstream to Upper Lake Gulch Road (39 14 45N 104 48 02W, T.9S., R.66W., south boundary Sec. 20). Also includes unnamed tributary from its confluence with Upper Lake Gulch (39 16 01N 104 48

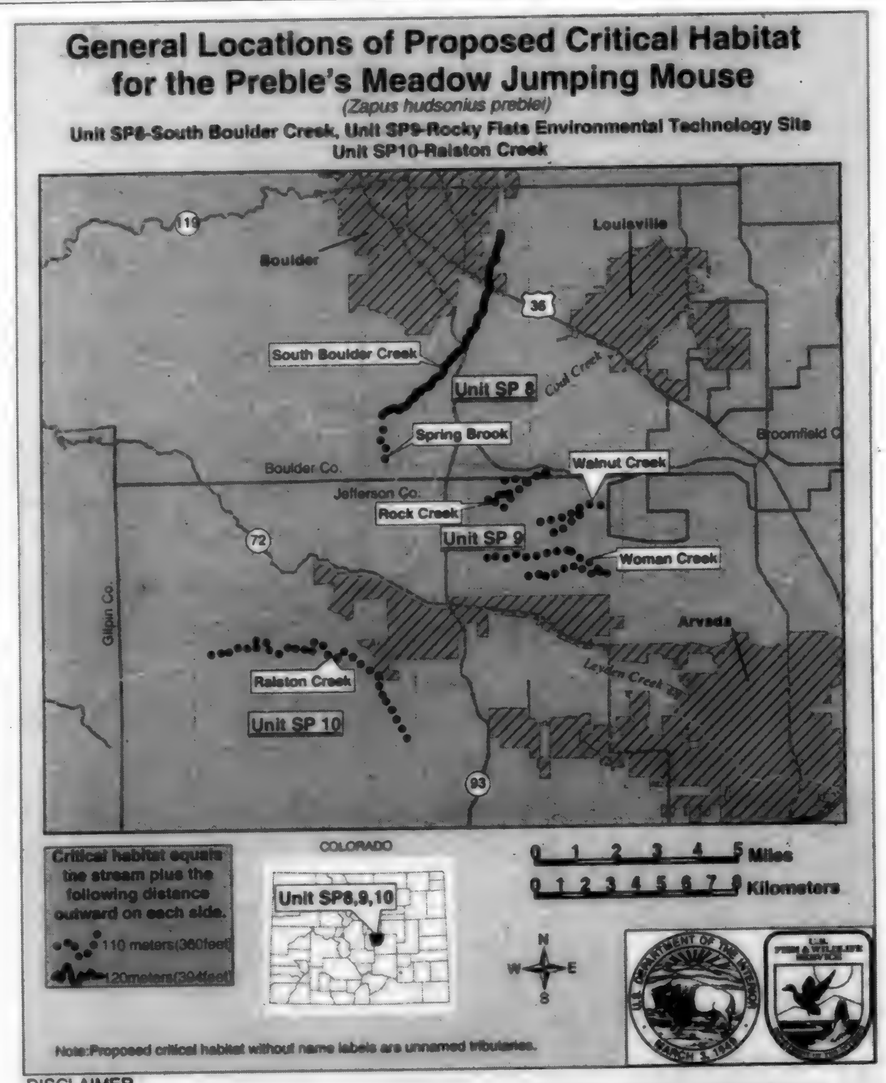

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(19) Map Unit SP11: Cherry Creek, Douglas County, Colorado.

(i) This unit consists of the following:

32 km (19.9 mi) of streams. Cherry Creek from the northern boundary of Castlewood Canyon State Recreation Area (39 21 56N 104 45 31W, T.8S., R.66W., south boundary Sec. 10) upstream to the confluence with Lake Gulch (39 20 24N 104 45 36W, T.8S., R.66W., Sec. 23). Lake Gulch from the aforementioned confluence upstream to (39 15 38N 104 46 03W, T.9S., R.66W., south boundary Sec. 15). Includes Upper Lake Gulch from its confluence with Lake Gulch (39 17 26N 104 46 07W, T.9S., R.66W., Sec. 3) upstream to (39 13 25N 104 50 18W, T.9S., R.67W., mid-point Sec. 36). Also includes a unnamed tributary from its confluence with Upper Lake Gulch (39 16 06N 104 47 55W, T.9S., R.66W., Sec. 17) upstream to Upper Lake Gulch Road (39 14 45N 104 48 02W, T.9S., R.66W., south boundary Sec. 20). Also includes unnamed tributary from its confluence with Upper Lake Gulch (39 16 01N 104 48 02W, T.9S., R.66W., Sec. 17) upstream to (39 15 37N 104 49 51W, T.9S., R.67W., Sec. 13). Includes another unnamed tributary from its confluence with Upper Lake Gulch (39 14 30N 104 49 12W, T.9S., R.66W., Sec. 30) upstream to (39 14 39N 104 50 19W, T.9S., R.67W., Sec. 25).

(ii) Map Unit SP11 follows:

(20) Map Unit SP12: West Plum Creek, Douglas County, Colorado.

(i) This unit consists of the following:

146.6 km (91.1 mi) of streams. Plum Creek from Chatfield Lake (39 32 35N 105 03 02W, T.6S., R.68W., Sec. 7) upstream to its confluence with West Plum Creek and East Plum Creek (39 25 48N 104 58 12W, T.7S., R.68W., Sec. 23). West Plum Creek from the aforementioned confluence (39 25 48N 104 58 12W, T.7S., R.68W., Sec. 23) upstream to its confluence with unnamed tributary from its confluence with West Plum Creek (39 22 20N 104 57 39W, T.8S., R.68W., Sec. 11) upstream to 6320 feet elevation (39 21 27N 104 55 00W, T.8S., R.67W., Sec. 17). Which includes an unnamed tributary from its confluence with this aforementioned unnamed tributary (39 22 06N 104 57 07W, T.8S., R.68W., Sec. 12) upstream to (39 21 43N 104 56 56W, 21 02N 104 58 28W, T.8S., R.68W., Sec. 14) upstream to 7,600 feet elevation (39 17 58N 105 03 56W, T.9S., R.69W., Sec. 1). Includes Spring Creek from its confluence with West Plum Creek at (39 18 59N 104 58 24W, T.8S., R.68W., Sec. 35) upstream to (39 15 21N 105 01 38W, T.9S., R.68W., Sec. 20). Including Dry Gulch from its confluence with Spring Creek (39 17 54N 104 59 57W, T.9S.,

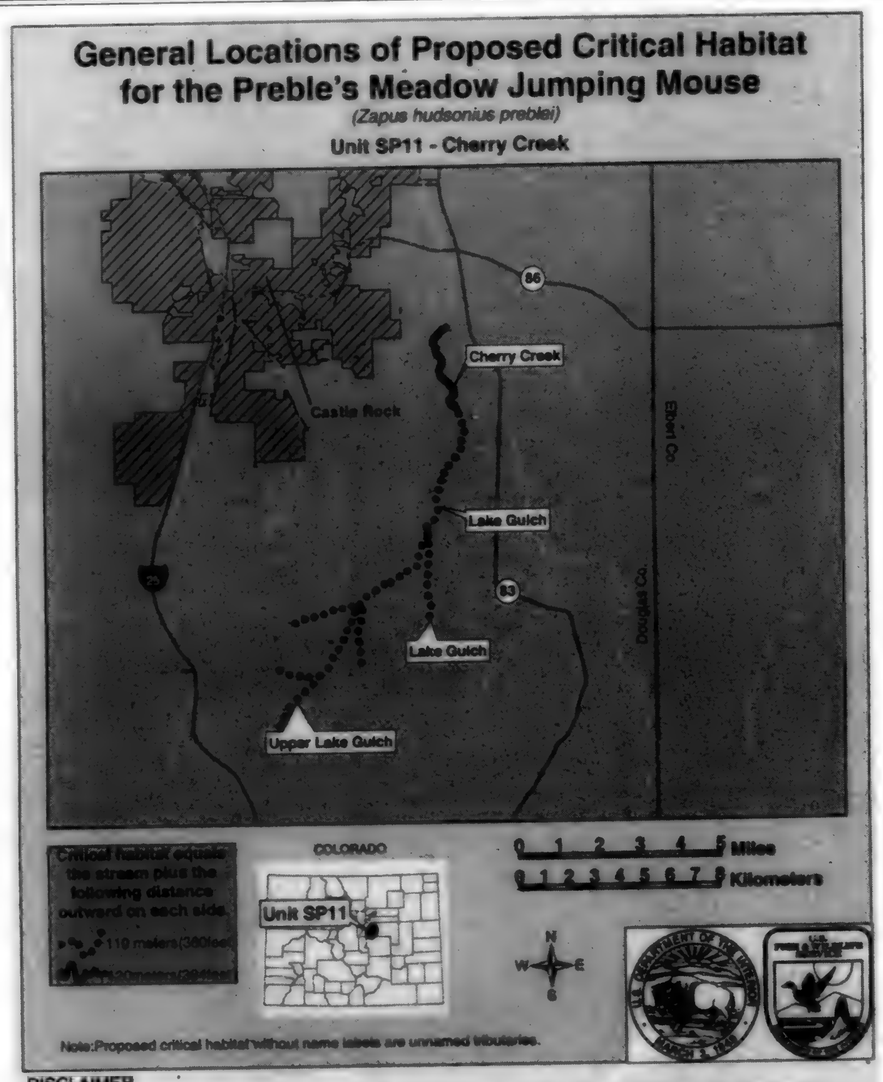

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(20) Map Unit SP12: West Plum Creek, Douglas County, Colorado.

(i) This unit consists of the following: 146.6 km (91.1 mi) of streams. Plum Creek from Chatfield Lake (39 32 35N 105 03 02W, T.6S., R.68W., Sec. 7) upstream to its confluence with West Plum Creek and East Plum Creek (39 25 48N 104 58 12W, T.7S., R.68W., Sec. 23). West Plum Creek from the aforementioned confluence (39 25 48N 104 58 12W, T.7S., R.68W., Sec. 23) upstream to the boundary of Pike—San Isabel National Forest and 7,600 feet elevation (39 13 07N 104 59 18W, T.9S., R.68W., Sec. 34). Includes Indian Creek from its confluence with Plum Creek (39 28 26N 105 00 00W, T.7S., R.68W., Sec. 4) upstream to Silver State Youth Camp (39 22 34N 105 05 10W, T.8S., R.69W., Sec. 2). Indian Creek includes an unnamed tributary from its confluence with Indian Creek at Pine Nook (39 23 00N 105 04 23W, T.8S., R.69W., Sec. 2) upstream to (39 22 10N 105 04 05W, T.8S., R.69W., Sec. 12). Also includes Jarre Creek from its confluence with Plum Creek (39 25 50N 104 58 13W, T.7S., R.68W., Sec. 23) upstream to 7,600 feet elevation (39 21 52N 105 03 15W, T.8S., R.69W., Sec. 12). Jarre Creek includes an unnamed tributary from its confluence with Jarre Creek (39 22 58N 105 01 51W, T.8S., R.68W., Sec. 5) upstream to (39 22 44N 105 02 12W, T.8S., R.68W., Sec. 8). Also includes an unnamed tributary from its confluence with West Plum Creek (39 22 20N 104 57 39W, T.8S., R.68W., Sec. 11) upstream to 6320 feet elevation (39 21 27N 104 55 00W, T.8S., R.67W., Sec. 17). Which includes an unnamed tributary from its confluence with this aforementioned unnamed tributary (39 22 06N 104 57 07W, T.8S., R.68W., Sec. 12) upstream to (39 21 43N 104 56 56W, T.8S., R.68W., south boundary Sec. 12).Unit SP12 also includes Garber Creek from its confluence with West Plum Creek (39 22 16N 104 57 43W, T.8S., R.68W., Sec. 11) upstream to its confluence with South Garber Creek and Middle Garber Creek (39 21 02N 105 02 10W, T.8S., R.68W., Sec. 18). Including South Garber Creek from its confluence with Garber Creek (39 21 02N 105 02 10W, T.8S., R.68W., Sec. 18) upstream to 7,600 feet elevation (39 19 15N 105 03 28W, T.8S., R.69W., Sec. 25). Including Middle Garber Creek from its confluence with Garber Creek (39 21 02N 105 02 10W, T.8S., R.68W., Sec. 18) upstream to (39 19 48N 105 04 07W, T.8S., R.69W., west boundary Sec. 25). Including North Garber Creek from its confluence with Middle Garber Creek (39 20 55N 105 02 32W, T.8S., R.68W., Sec. 18) upstream to 7,600 feet elevation (39 20 45N 105 04 35W, T.8S., R.69W., Sec. 23). Includes Jackson Creek from its confluence with West Plum Creek (39 21 02N 104 58 28W, T.8S., R.68W., Sec. 14) upstream to 7,600 feet elevation (39 17 58N 105 03 56W, T.9S., R.69W., Sec. 1). Includes Spring Creek from its confluence with West Plum Creek at (39 18 59N 104 58 24W, T.8S., R.68W., Sec. 35) upstream to (39 15 21N 105 01 38W, T.9S., R.68W., Sec. 20). Including Dry Gulch from its confluence with Spring Creek (39 17 54N 104 59 57W, T.9S., R.68W., Sec. 4) upstream to 7,600 feet elevation (39 16 08N 105 02 27W, T.9S., R.68W., Sec. 18). Including Bear Creek from its confluence with West Plum Creek (39 17 26N 104 58 20W, T.9S., R.68W., Sec. 2) upstream to 7,600 feet elevation (39 13 58N 105 01 06W, T.9S., R.68W., Sec. 29). Including Gove Creek from its confluence with West Plum Creek (39 14 07N 104 57 40W, T.9S., R.68W., Sec. 26) upstream to 7,600 feet elevation (39 11 50N 104 58 30W, T.10S., R.68W., Sec. 11). Includes Merz Canyon stream from its confluence with Gove Creek (39 13 06N 104 57 30W, T.9S., R.68W., Sec. 36) upstream to 7,600 feet elevation (39 11 21N 104 57 18W, T.10S., R.68W., Sec. 12). Includes Starr Canyon stream from its confluence with West Plum Creek (39 13 07N 104 58 39W, T.9S., R.68W., Sec. 35) upstream to 7,600 feet elevation (39 12 34N 104 58 58W, T.10S., R.68W., Sec. 3).

(ii) Map Unit SP12 follows:

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(21) Map Unit SP13: Upper South Platte River, Jefferson and Douglas Counties, Colorado.

(i) This unit consists of the following: 83.1 km (51.6 mi) of rivers and streams. Consists of 5 subunits. Subunit South Platte River north segment, on the border of Jefferson County and Douglas County from Chatfield Lake (39 31 35N 105 04 49W, T.6S., R.69W., Sec. 14) upstream to the boundary of U.S. Army Corps of Engineers—Chatfield Reservoir and 7,600 feet elevation (39 31 35N 105 04 49W, T.6S., R.69W., Sec. 14). Subunit South Platte River south segment, on the border of Jefferson County and Douglas County from Nighthawk (39 21 05N 105 10 23W, T.8S., R.70W., Sec. 13) upstream to (39 17 27N 105 12 24W, T.9S., R.70W., Sec. 3). Includes Sugar Creek, Douglas County from its confluence with South Platte River at Oxyoke (39 18 22N 105 11 47W, T.8S., R.70W., Sec. 35) upstream to 7,600 feet elevation (39 18 28N 105 08 07W, T.8S., R.69W., Sec. 32). Includes Gunbarrel Creek, Jefferson County and Douglas County from its confluence with Wigwam Creek (39 13 55N 105 18 06W, T.9S., R.71W., Sec. 26) upstream to 7,600 feet elevation (39 14 41N 105 18 17W, T.9S., R.71W., Sec. 23).

Subunit Trout Creek, Douglas County upstream into Teller County from (39 13 02N 105 09 31W, T.9S., R.69W., Sec. 31) upstream to 7,600 feet elevation which is 1.3 km (0.8 mi) into Teller County (39 07 13N 105 05 49W, T.11S., R.69W.,

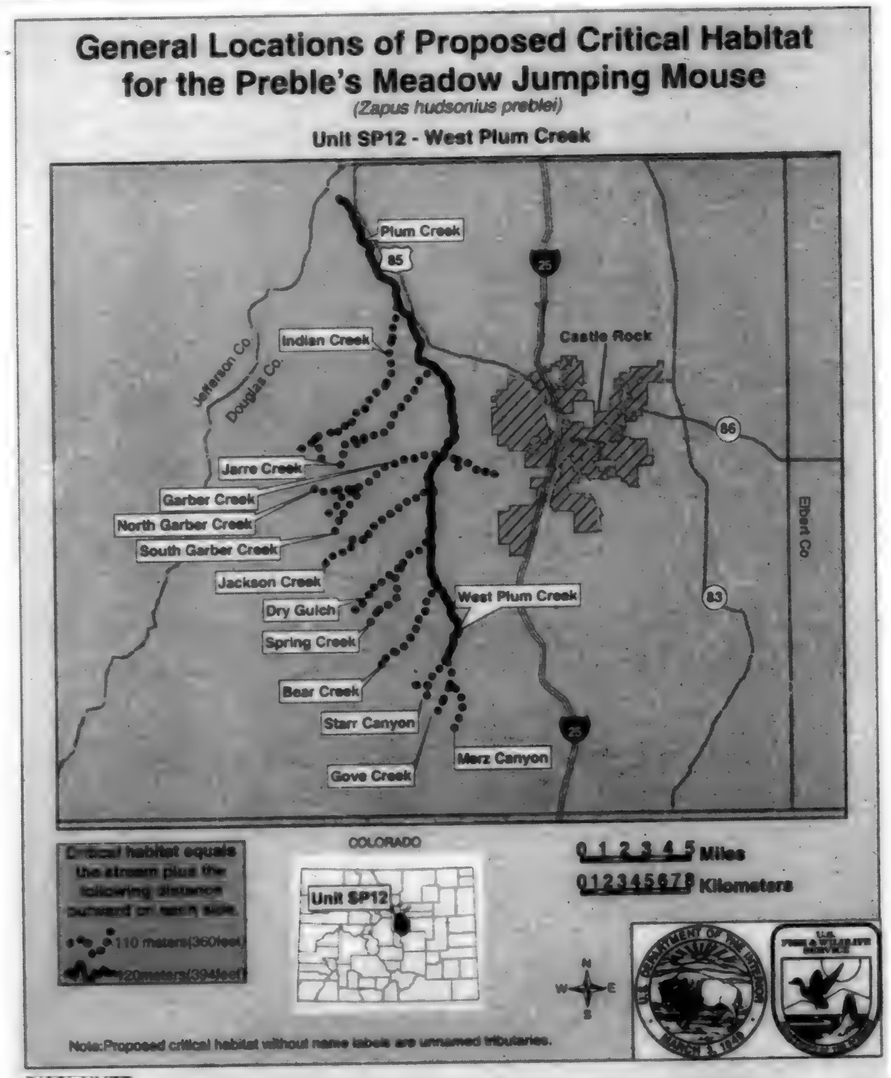

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(21) Map Unit SP13: Upper South Platte River, Jefferson and Douglas Counties, Colorado.

(i) This unit consists of the following: 83.1 km (51.6 mi) of rivers and streams. Consists of 5 subunits. Subunit South Platte River north segment, on the border of Jefferson County and Douglas County from Chatfield Lake (39 31 35N 105 04 49W, T.6S., R.69W., Sec. 14) upstream to the boundary of U.S. Army Corps of Engineers property (39 29 33N 105 05 15W, T.6S., R.69W., south boundary Sec. 26).

Subunit Bear Creek, Douglas County from Pike—San Isabel National Forest boundary (39 25 27N 105 07 40W, T.7S., R.69W., west boundary Sec. 21) upstream to (39 22 32N 105 06 40W, T.8S., R.69W., south boundary Sec. 4). Includes West Bear Creek from its confluence with Bear Creek (39 25 15N 105 07 30W, T.7S., R.69W., Sec. 21) upstream to a confluence with an unnamed tributary (39 24 17N 105 07 38W, T.7S., R.69W., Sec. 33).

Subunit South Platte River south segment, on the border of Jefferson County and Douglas County from Nighthawk (39 21 05N 105 10 23W, T.8S., R.70W., Sec. 13) upstream to (39 17 27N 105 12 24W, T.9S., R.70W., Sec. 3). Includes Sugar Creek, Douglas County from its confluence with South Platte River at Oxyoke (39 18 22N 105 11 47W, T.8S., R.70W., Sec. 35) upstream to 7,600 feet elevation (39 18 28N 105 08 07W, T.8S., R.69W., Sec. 32). Includes Gunbarrel Creek, Jefferson County from its confluence with South Platte River at Oxyoke (39 18 22N 105 11 47W, T.8S., R.70W., Sec. 35) upstream to (39 18 41N 105 14 34W, T.8S., R.70W., Sec. 32).

Subunit Wigwam Creek, Jefferson County from its confluence with South Platte River (39 14 26N 105 15 15W, T.9S., R.70W., Sec. 29) upstream to 7,600 feet elevation (39 13 50N 105 19 51W, T.9S., R.71W., Sec. 27). Includes Pine Creek from its confluence with Wigwam Creek (39 14 25N 105 16 52W, T.9S., R.71W., Sec. 25) upstream to 7,600 feet elevation (39 15 48N 105 17 51W, T.9S., R.71W., Sec. 14). Also includes Cabin Creek from its confluence with Wigwam Creek (39 13 55N 105 18 06W, T.9S., R.71W., Sec. 26) upstream to 7,600 feet elevation (39 14 41N 105 18 17W, T.9S., R.71W., Sec. 23).

Subunit Trout Creek, Douglas County upstream into Teller County from (39 13 02N 105 09 31W, T.9S., R.69W., Sec. 31) upstream to 7,600 feet elevation which is 1.3 km (0.8 mi) into Teller County (39 07 13N 105 05 49W, T.11S., R.69W., Sec. 3). Includes Eagle Creek from its confluence with Trout Creek (39 11 52N 105 08 27W, T.10S., R.69W., Sec. 8) upstream to 7,600 feet elevation (39 12 06N 105 07 12W, T.10S., R.69W., Sec. 9). Also including an unnamed tributary from its confluence with Trout Creek (39 11 07N 105 08 05W, T.10S., R.69W., Sec. 17) upstream to (39 10 18N 105 08 23W, T.10S., R.69W., Sec. 20). Also including Long Hollow from its confluence with Trout Creek (39 10 56N 105 08 01W, T.10S., R.69W., Sec. 17) upstream to 7,600 feet elevation (39 11 30N 105 06 19W, T.10S., R.69W., Sec. 10).

(ii) Map Unit SP13 follows:

(22) Map Unit A1: Monument Creek, El Paso County, Colorado.

(i) This unit consists of the following: 56.3 km (35 mi) of streams. Monument Creek from its confluence with Cottonwood Creek (38 55 36N 104 48 51W, T.13S., R66W., Sec. 7) upstream to the southern property boundary of the U.S. Air Force Academy (38 57 06N 104 49 46W, T.13S., R.66W., Sec. 6). Then upstream to (38 59 14N 104 46 19W, T.12S., R.66W., Sec. 22). Also includes Black Squirrel Creek from the property boundary of the U.S. Air Force Academy (39 00 06N 104 49 00W, T.12S., R.66W., Sec. 18) upstream to (39 02 30N 104 44 34W, T.12S., R.66W., north boundary Sec. 2). Including an unnamed tributary from its confluence with Black Squirrel Creek (39 01 20N 104 47 51W, T.12S., R.66W., Sec. 21) upstream to (39 02 30N 104 50 23W, T.12S., R.67W., Sec. 1) upstream to 6,800 feet elevation (39 02 45N 104 49 54W, T.11S., R.67W., Sec. 36). Also includes Jackson Creek from its confluence with Monument Creek (39 02 33N 104 51 13W, T.11S., R.67W., Sec. 35) upstream to (39 04 30N 104 49 06W, T.11S., R.66W., Sec. 19). Includes an unnamed tributary from its confluence with Jackson Creek (39 04 the U.S. Air Force Academy (39 02 30N

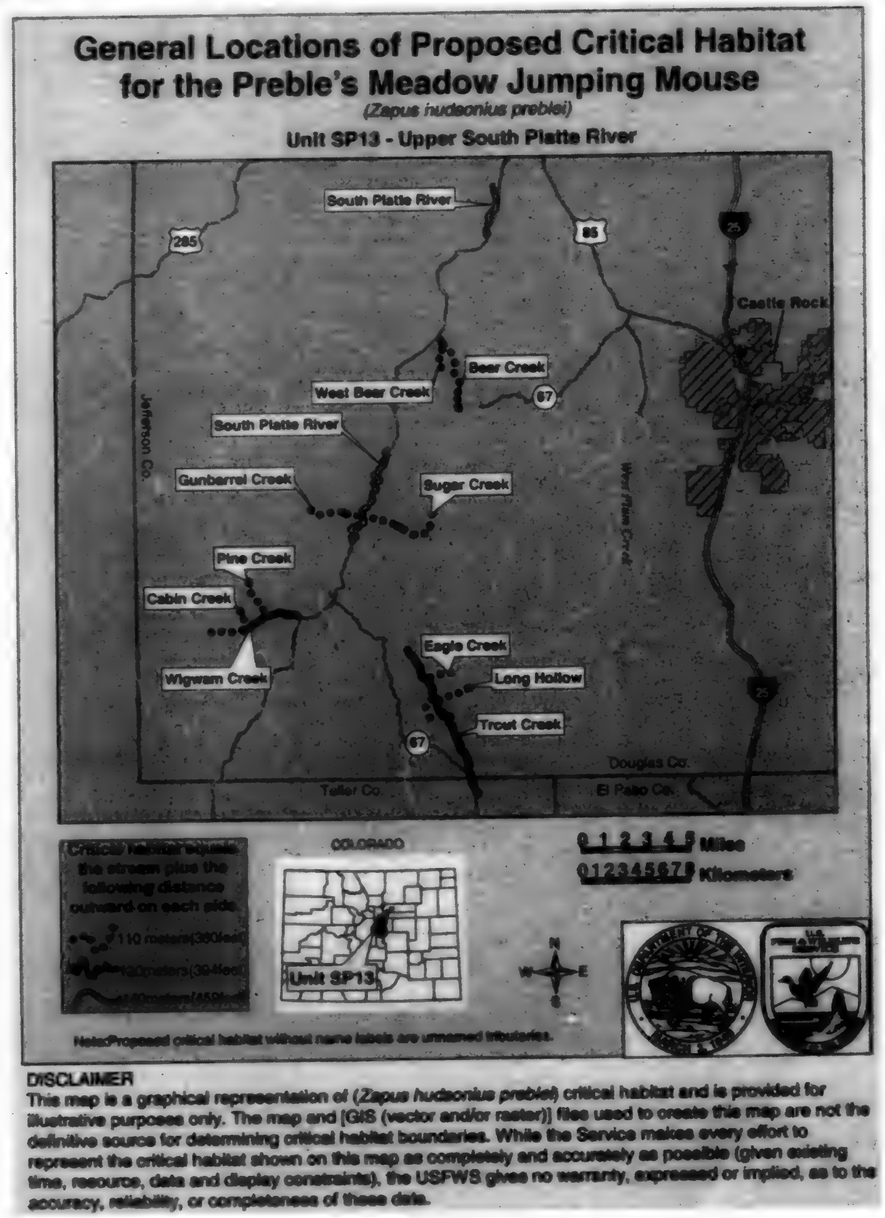

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(22) Map Unit A1: Monument Creek, El Paso County, Colorado.

(i) This unit consists of the following: 56.3 km (35 mi) of streams. Monument Creek from its confluence with Cottonwood Creek (38 55 36N 104 48 51W, T.13S., R66W., Sec. 7) upstream to the southern property boundary of the U.S. Air Force Academy (38 57 06N 104 49 46W, T.13S., R.66W., Sec. 6). Then Monument Creek from the northern property boundary of the U.S. Air Force Academy (39 02 31N 104 51 06W, T.12S., R.67W., north boundary Sec. 2) upstream to Monument Lake (39 05 19N 104 52 41W, T.11S., R.67W., Sec. 15). Includes Kettle Creek from its confluence with Monument Creek (38 57 01N 104 49 42W, T.13S., R.66W., Sec 6) upstream to the property boundary of the U.S. Air Force Academy (38 57 04N 104 49 41W, T.13S., R.66W., Sec 6). Then continues from the property boundary of the U.S. Air Force Academy (38 58 33N 104 47 55W, T.12S., R.66W., Sec. 29) upstream to its intersection with a road at (39 00 06N 104 45 21W, T.12S., R.66W., east boundary Sec. 15). Which includes an unnamed tributary from its confluence with Kettle Creek (38 59 06N 104 46 51W, T.12S., R.66W., Sec. 21) upstream to (38 59 14N 104 46 19W, T.12S., R.66W., Sec. 22). Also includes Black Squirrel Creek from the property boundary of the U.S. Air Force Academy (39 00 06N 104 49 00W, T.12S., R.66W., Sec. 18) upstream to (39 02 30N 104 44 34W, T.12S., R.66W., north boundary Sec. 2). Including an unnamed tributary from its confluence with Black Squirrel Creek (39 01 20N 104 46 17W, T.12S., R.66W., Sec. 10) upstream to (39 02 30N 104 45 39W, T.12S., R.66W., north boundary Sec. 3). Which includes another unnamed tributary from (39 01 49N 104 46 17W, T.12S., R.66W., Sec. 3) upstream to (39 02 30N 104 46 01W, T.12S., R.66W., north boundary Sec. 3). Unit A1 also includes Monument Branch from the property boundary of the U.S. Air Force Academy (39 00 49N 104 49 23W, T.12S., R.66W., Sec. 7) upstream to (39 01 11N 104 48 42W, T.12S., R.66W., east boundary Sec. 7). Also includes Smith Creek from the property boundary of the U.S. Air Force Academy (39 01 30N 104 49 46W, T.12S., R.66W., Sec. 7) upstream to (39 02 23N 104 47 57W, T.12S., R.66W., Sec. 5). Also includes an unnamed tributary from the property boundary of the U.S. Air Force Academy (39 02 30N 104 50 23W, T.12S., R.67W., Sec. 1) upstream to 6,800 feet elevation (39 02 45N 104 49 54W, T.11S., R.67W., Sec. 36). Also includes Jackson Creek from its confluence with Monument Creek (39 02 33N 104 51 13W, T.11S., R.67W., Sec. 35) upstream to (39 04 30N 104 49 06W, T.11S., R.66W., Sec. 19). Includes an unnamed tributary from its confluence with Jackson Creek (39 04 11N 104 50 02W, T.11S., R.67W., Sec. 25) upstream to Higby Road (39 04 41N 104 49 38W, T.11S., R.66W., Sec. 19). Also includes Beaver Creek from its confluence with Monument Creek (39 02 53N 104 52 00W, T.11S., R.67W., Sec. 35) upstream to 7,600 feet elevation (39 03 08N 104 55 29W, T.11S., R.67W., Sec. 31). Also includes Teachout Creek from its confluence with Monument Creek (39 03 45N 104 51 50W, T.11S., R.67W., Sec. 26) upstream to Interstate 25 (39 04 19N 104 51 27W, T.11S., R.67W., Sec. 23). Also includes Dirty Woman Creek from its confluence with Monument Creek (39 04 48N 104 52 48W, T.11S., R.67W., Sec 22) upstream to Highway 105 (39 05 35N 104 51 28W, T.11S., R.67W., Sec 14).

(ii) Map Unit A1 follows:

Federal Register
Wednesday,
July 17, 2002

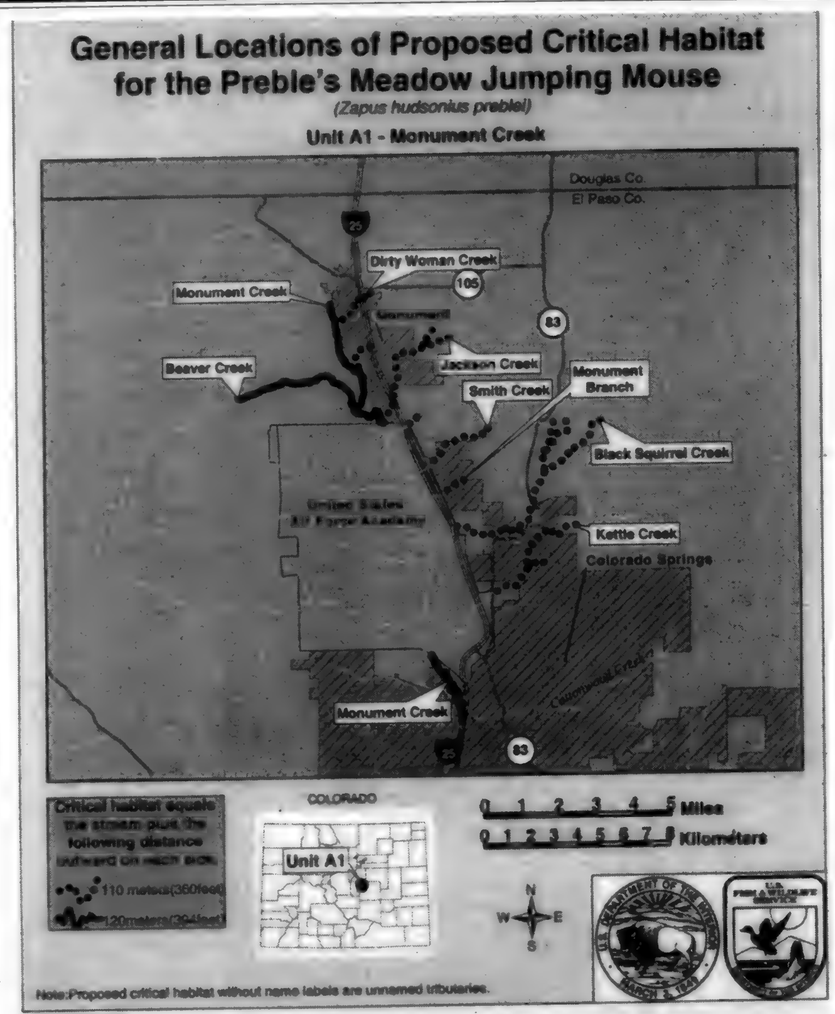

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* * * * *

Dated: July 9, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–17716 Filed 7–15–02; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
July 17, 2002

Part IV

Department of Housing and Urban Development

24 CFR Part 570

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4698–F–02]

RIN 2506–AC10

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Community Development Block Grant (CDBG) regulations to require that grantees receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units. This rule is necessary to ensure that CDBG-assisted demolition of HUD-owned housing units is carried out only with the prior approval of HUD.

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Deputy Assistant Secretary for Grant Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 7282, Washington, DC 20410–7000; telephone (202) 708–3587 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 27, 2001 (66 FR 66800), HUD published a proposed rule to require that grantees receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units. The proposed rule was published in response to a HUD Office of Inspector General (OIG) audit report that found that CDBG grantees had demolished HUD-owned housing units without HUD approval. The OIG audit report found that, because HUD-owned housing units were not specifically identified in the CDBG regulations, grantees did not realize that they were required to receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units. The OIG audit report found that, because grantees did not receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units, HUD was unable to ensure that the demolition was necessary and appropriate.

The proposed rule would require that grantees receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units. The proposed rule would ensure that CDBG-assisted demolition of HUD-owned housing units is carried out only with the prior approval of HUD.

II. Public Comments

The public comment period on the proposed rule ended on January 28, 2002. HUD received one public comment on the proposed rule. The commenter supported the proposed rule. The commenter stated that, because HUD-owned housing units were not specifically identified in the CDBG regulations, grantees did not realize that they were required to receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units. The commenter stated that, because grantees did not receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units, HUD was unable to ensure that the demolition was necessary and appropriate. The commenter stated that the proposed rule would require that grantees receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units. The commenter stated that the proposed rule would ensure that CDBG-assisted demolition of HUD-owned housing units is carried out only with the prior approval of HUD.

III. This Final Rule

This final rule adopts the proposed rule without change. This final rule requires that grantees receive HUD approval before undertaking CDBG-assisted demolition of HUD-owned housing units. This final rule ensures that CDBG-assisted demolition of HUD-owned housing units is carried out only with the prior approval of HUD.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grant, Grant programs-education, Grant program-housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

* * * * *

Dated: June 27, 2002.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4698–F–02]

RIN 2506–AC10

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Community Development Block Grant (CDBG) Entitlement program regulations by requiring grantees to obtain HUD's approval to demolish HUD-owned housing units. The amendment will ensure that HUD receives notification of a grantee's intent to use CDBG funds to demolish HUD-owned housing units. In addition, the application of this rule will aid in preserving the supply of affordable housing that is available to low- and moderate-income persons. This final rule follows publication of a proposed rule on January 22, 2002, which elicited one comment. The one comment supported the rule, which HUD is adopting without change.

DATES: Effective Date: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Director, Entitlement Communities Division, Office of Block Grant Assistance, Room 7282, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The January 22, 2002, Proposed Rule

On January 22, 2002 (67 FR 2958), HUD published a proposed rule to revise the CDBG Entitlement program regulations at 24 CFR 570.201(d), to prohibit grantees from using CDBG funds for the demolition of HUD-owned housing units without prior approval from HUD. Before this amendment, the regulation at § 570.201(d) required that a grantee obtain HUD's approval to demolish HUD-assisted housing units. The preamble to the proposed rule indicated that, although the CDBG regulations did not contain a definition of the term "HUD-assisted housing units," the term had been considered to include various forms of subsidized housing such as section 8 or public housing. It had not been HUD policy to interpret the regulation as including HUD-owned properties. Thus, this amendment to § 570.201(d) will ensure that CDBG-assisted demolition of HUD-owned housing units could be carried out only with the prior approval of HUD.

The proposed rule also stated that HUD believed that the amendment will aid in achieving three primary objectives: (1) Ensure that grantees notify HUD of their plans to demolish HUD-owned housing units; (2) prevent grantees from demolishing, without reasonable cause, HUD-owned housing units; and, (3) ensure that grantees preserve the supply of affordable housing available to low- and moderate-income persons.

II. This Final Rule

This final rule follows publication of the January 22, 2002, proposed rule. The proposed rule invited public comment on the revision to 24 CFR 570.201(d). The comment period closed on March 25, 2002. One comment was received that urged HUD to adopt the rule. Accordingly, because the commenter encouraged the adoption of the rule, and because HUD believes this final rule will achieve the objectives described in the proposed rule of January 22, 2002, and restated above, HUD is adopting the proposed rule without change.

III. The Public Comment

The one comment received in response to the issuance of the proposed rule on January 22, 2002, supported the rule. The commenter stated that it believes "requiring HUD approval before CDBG funds can be used to demolish HUD-owned properties will help ensure the existence of integrated housing opportunities and the continued supply of affordable housing for minority and low- and moderate-income communities." The commenter wrote that HUD oversight of CDBG funds used in the demolition of HUD-owned housing units will help to ensure that grantees do not violate the anti-discrimination provisions of the Fair Housing Act. The commenter further added that adoption of the rule is critical to ensure the financial stability of the FHA mortgage insurance program. According to the commenter, the costs of unnecessary demolitions, often resulting in liens being placed on the property, and the decrease in value of the property after demolition, result in the FHA insurance program suffering significant losses.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact remains available for public inspection weekdays between the hours of 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grant, Grant programs-education, Grant program-housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Section 570.201 is amended by revising paragraph (d) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

* * * * *

Dated: June 27, 2002.

Donna M. Abbenante,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 02–17928 Filed 7–16–02; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Part 2002

Implementation of the Electronic Freedom of Information Act; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2002

[Docket No.FR–4716–F–02]

RIN 2508–AA12

Implementation of the Electronic Freedom of Information Act

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the Electronic Freedom of Information Act Amendments of 1996 (EFOIA) by establishing procedures for the Department's Office of Inspector General (OIG) to follow in making its records available to the public. The rule also establishes procedures for requesting records, and for appealing denials of requests for records. The rule is intended to ensure that the OIG's procedures are consistent with the EFOIA and with the Department's regulations implementing the Freedom of Information Act.

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kelly Colihan, Counsel to the Inspector General, Office of Inspector General, Department of Housing and Urban Development, 451 7th Street, SW., Room 8260, Washington, DC 20410–4500, telephone (202) 708–0430. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 1996, the President signed into law the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Public Law 104–231, 110 Stat. 3048. The EFOIA amended the Freedom of Information Act (FOIA), 5 U.S.C. 552, to address public access to information in an electronic format. The EFOIA requires agencies to provide information in any form requested if it is readily reproducible by the agency in that form. The EFOIA also requires agencies to make certain records available for public inspection in an electronic format.

On March 12, 2002, at 67 FR 11116, HUD published a proposed rule to implement the EFOIA by establishing procedures for the Department's Office of Inspector General (OIG) to follow in making its records available to the public. The proposed rule also established procedures for requesting records, and for appealing denials of requests for records. The proposed rule was intended to ensure that the OIG's procedures are consistent with the EFOIA and with the Department's regulations implementing the Freedom of Information Act.

II. This Final Rule

This final rule adopts the March 12, 2002, proposed rule without change.

III. Findings and Certifications

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969.

Regulatory Flexibility Act

The Secretary has reviewed this final rule before the publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule does not have a significant economic impact on a substantial number of small entities. This final rule establishes procedures for the Department's Office of Inspector General to follow in making its records available to the public. The rule also establishes procedures for requesting records, and for appealing denials of requests for records. The rule is intended to ensure that the OIG's procedures are consistent with the EFOIA and with the Department's regulations implementing the Freedom of Information Act.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 2002

Freedom of Information. .

Accordingly, 24 CFR chapter XII, Part 2002, is amended as follows:

PART 2002—AVAILABILITY OF

15.107 of this title contains provisions for requesting declassification and release of declassified material.

3. Section 2002.3 is revised to read as follows:

§ 2002.3 OIG's overall policy concerning disclosable records and requests for OIG records.

(a) The Office of Inspector General will fully and responsibly disclose its records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, commercial or financial information and other confidential business information, and the need to promote lawful government functions and programs. Records will be disclosed promptly upon receipt of any request that reasonably describes the records sought, unless they are exempt from disclosure. Records will be disclosed without delay when it is apparent that their disclosure is not subject to any exemption. Records will be disclosed in any form requested if they are readily reproducible by the agency in that form. Records will be disclosed in the form in which they are maintained by the agency. Records will be disclosed in the form that is the most efficient for the agency to produce. The agency is not required to create records or to perform research for requesters.

(b) Requests for records, which may be made by any person, including a member of the public, corporation, partnership, or foreign or domestic government, must be addressed to the Office of Inspector General, Department of Housing and Urban Development, 451 7th Street, SW., Room 8260, Washington, DC 20410–4500. Requests must be in writing and must reasonably describe the records requested. Requests must be accompanied by a statement of willingness to pay fees as set forth in this part, or must request a fee waiver. Requests must be submitted in accordance with the procedures established in this part.

(c) Requests for records that are exempt from disclosure may be granted at the discretion of the Office of Inspector General. Records may not be withheld from the public because the agency may lawfully withhold them or because the agency has the discretion to withhold them. Records may be withheld only when the agency reasonably foresees that disclosure would harm an interest protected by an exemption or when disclosure is prohibited by law.

(d) Records that are requested by a member of the public that have been released to any person may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(e) Records that are requested by a member of the public that have been released previously to the public may be made available to the requesting person.

(f) Records that are requested by a member of the public that are published in the Federal Register or made available in reading rooms may be made available to the requesting person by indicating the publication or reading room where the records may be found.

(g) Records that are requested by a member of the public that are not subject to the exemptions in § 2002.5 may be made available to the requesting person.

(h) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law.

(i) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(j) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(k) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(l) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(m) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(n) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(o) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(p) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(q) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(r) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(s) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(t) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(u) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(v) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(w) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(x) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(y) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

(z) Records that are requested by a member of the public that are exempt from disclosure under § 2002.5 may be made available to the requesting person, unless the Office of Inspector General determines that the release was improper.

Inspector General places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors the Office of Inspector General will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from more than one

Inspector General's Internet website at *http://www.hud.gov/oig/oigindex.html*.

6. In § 2002.11, paragraph (a) is revised to read as follows:

§ 2002.11 Review of records, aggregating requests and waiving or reducing fees.

(a) Review of records. Only requesters who are seeking documents for commercial use may be charged for the time HUD spends reviewing records to

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2002

[Docket No.FR–4716–F–02]

RIN 2508–AA12

Implementation of the Electronic Freedom of Information Act

AGENCY: Office of Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends The Office of Inspector General's Freedom of Information Act (FOIA) regulation, and implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA). This final rule follows publication of a March 12, 2002, proposed rule. There were no comments on the proposed rule and HUD is adopting the proposed regulatory amendments without change.

DATES: Effective date: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410, (202) 708–1613 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services).

SUPPLEMENTARY INFORMATION:

Background

HUD regulations at 24 CFR part 15 contain the policies and procedures governing public access to HUD records under the FOIA. Under the Inspector General Act of 1978 (5 U.S.C. App.3), which "create independent and objective units" to perform various investigative and monitoring functions within Executive agencies of the Federal Government, the Office of the Inspector General (OIG) issued 24 CFR part 2002, to explain the procedures for requesting information from the OIG under the FOIA.

On March 12, 2002, HUD published (67 FR 11208) a proposed rule that amends 24 CFR part 2002. Specifically, the proposed rule implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA) (Pub. L. 104–231). Among other things, the proposed rule provides for an electronic reading room, modifies the FOIA timeframes, and establishes multiple "tracks" for processing requests.

This final rule adopts the revisions in HUD's March 12, 2002, proposed rule in their entirety. The public comment period for the proposed rule closed on May 13, 2002. HUD did not receive any public comments on the proposed rule. As a result, HUD is adopting the March 12, 2002, proposed rule without change.

Findings and Certifications

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule contains no anti-competitive discriminatory aspects with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. Rather, this rule would amend OIG's FOIA regulation and implement the statutory requirements of EFOIA.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 2002

Freedom of Information. .

Accordingly, 24 CFR chapter XII, Part 2002, is amended as follows:

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

1. The authority citation for part 2002 is revised to read as follows:

Authority: 5 U.S.C. 552; Electronic Freedom of Information Act (Pub. L. 104–231); Freedom of Information Reform Act of 1986 (Pub. L. 99–579); 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d); Delegation of Authority, Jan. 9, 1981 (46 FR 2389).

2. Section 2002.1 is revised to read as follows:

§ 2002.1 Scope of the part and applicability of other HUD regulations.

(a) General. This part contains the regulations of the Office of Inspector General which implement the Freedom of Information Act (5 U.S.C. 552). It informs the public how to request records and information from the Office of Inspector General and explains the procedure to use if a request is denied. Requests for documents made by subpoena or other order are governed by procedures contained in part 2004 of this chapter. In addition to the regulations in this part, the following provisions of part 15 of this title covering the production or disclosure of material or information apply (except as limited in paragraph (b) of this section) to the production or disclosure of material in the possession of the Office of Inspector General:

§ 15.2—What definitions apply to this part?

§ 15.3—What exemptions are authorized by 5 U.S.C. 552?;

§ 15.108—What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

§ 15.110—What fees will HUD charge?

(b) Limited applicability of section 15.110. For purposes of this part, paragraphs (d) through (k) of § 15.110 are not applicable.

(c) Use of the term "HUD". For purposes of this part, and when the words "HUD" or "Department" are used in this part or §§ 15.2(b), 15.3, 15.108 and 15.110 of this title, the term means the Office of the Inspector General.

(d) Request for declassification and release of classified material. Section 15.107 of this title contains provisions for requesting declassification and release of declassified material.

3. Section 2002.3 is revised to read as follows:

§ 2002.3 OIG's overall policy concerning disclosable records and requests for OIG records.

(a) The Office of Inspector General will fully and responsibly disclose its identifiable records and information consistent with competing public interests, such as national security, personal privacy, grand jury and investigative secrecy, complainant confidentiality, agency deliberative process, as are recognized by FOIA and other federal statutes.

(b) A request for Office of Inspector General records may be made in person during normal business hours at any office where Office of Inspector General employees are permanently stationed. Although oral requests may be honored, a requester may be asked to submit the request in writing. A written request shall be addressed to: The Office of Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410.

(c) Each request must reasonably describe the desired record including the name, subject matter, and number or date, where possible, so that the record may be identified and located. The request should also include the name, address and telephone number of the requester, and the format in which the requester would like the desired record to be reproduced. In order to enable the Office of Inspector General to comply with the time limitations set forth in § 2002.17, both the envelope containing a written request and the letter itself should clearly indicate that the subject is a Freedom of Information Act request.

(d) The request must be accompanied by the fee or an offer to pay the fee as determined in § 15.110.

(e) Copies of available records will be made as promptly as possible. Copying service will be limited to not more than 10 copies of any single page. Records that are published or available for sale need not be reproduced.

(f) To the extent that records are readily reproducible, the Office of Inspector General will send records in the form requested, including electronic format.

4. Section 2002.7 is revised to read as follows:

§ 2002.7 OIG processing of requests.

(a) Multitracking. (1) The Office of Inspector General places each request in one of two tracks. The Office of Inspector General places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors the Office of Inspector General will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from more than one organizational unit. Within each track, the Office of Inspector General processes requests in the order in which they are received.

(2) For requests that have been sent to the wrong office, the Office of Inspector General will assign the request within each track using the earlier of either:

(i) The date on which the request was referred to the appropriate office; or, (ii) The end of the ten (10) working day period in which the request should have been referred to the appropriate office.

(b) Expedited processing. The Office of Inspector General may take your request or appeal out of normal order if the Office of Inspector General determines that you have a compelling need for the records or in other cases as determined by the Office of Inspector General. If the Office of Inspector General grants your request for expedited processing, the Office of Inspector General will give your request priority and will process it as soon as practicable. The Office of Inspector General will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or, (2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

5. Section 2002.9 is revised to read as follows:

§ 2002.9 Where to review records.

(a) You may inspect and copy hardcopy records that section 552(a)(2) of FOIA requires the Office of Inspector General make available to the public in reading rooms. At the Headquarters and DC Offices, this would be at HUD's Library, Room 8141, 451 Seventh St., SW, Washington, DC 20410, and should be coordinated through Counsel's Office to the Inspector General, Room 8260. Local offices may coordinate for local requests.

(b) For records created on or after November 1, 1996, this information is available to you through the Office of Inspector General's Internet website at *http://www.hud.gov/oig/oigindex.html*.

6. In § 2002.11, paragraph (a) is revised to read as follows:

§ 2002.11 Review of records, aggregating requests and waiving or reducing fees.

(a) Review of records. Only requesters who are seeking documents for commercial use may be charged for the time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review (i.e., the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record). HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.110 of this title.

* * * * *

7. In § 2002.15, paragraph (b) is revised to read as follows:

§ 2002.15 Advance Payments.

* * * * *

(b) When HUD acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described in paragraph (a) of this section.

8. In § 2002.17, paragraph (a) is revised to read as follows:

§ 2002.17 Time limitations.

(a) Upon receipt of a request for records, the appropriate Assistant Inspector General or an appointed designee will determine within twenty (20) working days whether to grant the request. The Assistant Inspector General or designee will notify the requestor immediately in writing of the determination and the right of the person to request a review by the Inspector General of an adverse determination.

* * * * *

9. Sections 2002.5, 2002.13, 2002.19, 2002.21, 2002.23 and 2002.25 shall remain as they currently exist.

Dated: July 8, 2002.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. 02–17929 Filed 7–16–02; 8:45 am]

BILLING CODE 4210–78–P

Federal Register

Wednesday,

July 17, 2002

Dated: July 8, 2002.
Kenneth M. Donohue, Sr.,
Inspector General.
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Part VI

Department of Education

Office of Educational Research and Improvement; Fund for the Improvement of Education—Ready To Teach; Digital Educational Programming; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.286B]

Office of Educational Research and Improvement; Fund for the Improvement of Education—Ready To Teach: Digital Educational Programming; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

narrative to the equivalent of no more than 20 pages using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative.
- Use a font that is either 12 point or

produces meaningful effects on student learning. In order to do this, the project preferably employs an experimental design with random assignment. If random assignment is not feasible, the project may employ a quasi-experimental design with carefully matched comparison conditions. For experimental designs, random assignment to the ready to teach

educational programming that: (1) Includes student assessment tools to provide feedback on student academic achievement; (2) includes built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use; (3) is created for, or adaptable to, challenging State academic content

adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2002 Ready to Teach Digital Educational Programming Program be submitted electronically using e-Application available through the Education Department's e-GRANTS

Washington, DC time on the deadline date.

- Keep in mind that e-Application is not operational 24 hours a day every day of the week. Click on Hours of Web Site Operation for specific hours of access during the week.
- You will have access to the e-Application Help Desk for technical support: 1–888–336–8930 (TTY: 1–866–697–2696, local 202–401–8363). The

DEPARTMENT OF EDUCATION

[CFDA No. 84.286B]

Office of Educational Research and Improvement; Fund for the Improvement of Education—Ready To Teach: Digital Educational Programming; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of this program is to support grants to eligible entities to enable them to develop, produce, and distribute innovative educational and instructional programming that is designed for use by elementary schools or middle schools and based on challenging State academic content and student academic achievement standards in reading or mathematics.

For FY 2002 this competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this application notice.

Eligible Applicants: An eligible applicant is a local public telecommunications entity, as defined in section 397(12) of the Communications Act of 1934, that is able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality. Section 397(12) of the Communications Act of 1934 provides that:

The term *public telecommunications entity* means any enterprise which—

(A) Is a public broadcast station or a noncommercial telecommunications entity; and

(B) Disseminates public telecommunications services to the public.

Applications Available: July 17, 2002.

The application package for this competition is available online at: *http://ed.gov/GrantApps/.*

Deadline for Transmittal of Applications: August 15, 2002.

Deadline for Intergovernmental Review: September 15, 2002.

Estimated Available Funds: $2,300,000.

Estimated Range of Awards: $250,000 to $2,300,000 per year.

Estimated Number of Awards: 1 to 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Budget Period: 12 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers will use to evaluate your application. It is strongly suggested that you limit the narrative to the equivalent of no more than 20 pages using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative.
- Use a font that is either 12 point or larger and no smaller than 10 pitch (characters per inch).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Priorities

This competition focuses on projects designed to meet the following priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet the absolute priority.

Absolute Priority

The project shall develop, produce, and distribute digital instructional programming to assist teachers in implementing reading or mathematics instruction for students in kindergarten through grade 8. Programming for reading shall include the essential components of reading instruction as defined in Title I of the Elementary and Secondary Education Act of 1965 as reauthorized by the No Child Left Behind Act of 2001. Programming for mathematics shall include both problem solving and mental computation. The programming developed shall include tools for classroom-based instructional assessment, which evaluates children's learning based on systematic observations by teachers of children performing academic tasks that are part of their daily classroom experience and is used to improve instruction. Applicants may choose to develop programming for certain grades rather than all grades between kindergarten and eighth or for certain types of learners, such as students with limited English proficiency, students with learning disabilities, or students with low levels of readiness for reading or mathematics, rather than all learners.

Competitive Preference

Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets the following competitive preference. These points are in addition to any points the application earns under the selection criteria.

The project shall be designed to determine whether the programming developed with the grant funds produces meaningful effects on student learning. In order to do this, the project preferably employs an experimental design with random assignment. If random assignment is not feasible, the project may employ a quasi-experimental design with carefully matched comparison conditions. For experimental designs, random assignment to the ready to teach program being evaluated versus one or more comparison conditions should occur at the level of students or classrooms or schools. Alternatively, in a quasi-experimental design, students or classrooms or schools that are receiving the ready to teach program are matched with comparable students, classrooms, or schools that are not receiving the ready to teach program. Data from reliable and valid measures of reading or mathematics achievement in children and related instructional practices should be collected before and after participation in the ready to teach program or the comparison condition.

Selection Criteria: We will use a peer review process to select eligible entities to receive grants under this program. Peer reviewers will use the following criteria to evaluate applications. The maximum score for all these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (20 points)

(2) The quality of the plan for developing, producing, and distributing innovative educational and instructional video programming that is based on challenging State academic content standards and can be distributed through digital broadcasting and school digital networks. (30 points)

(3) The extent to which the programming to be developed will include built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use. (20 points)

(4) The extent to which the applicant will enter into multiyear-content development collaborative arrangements with State educational agencies and local educational agencies. (20 points)

(5) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (10 points)

SUPPLEMENTARY INFORMATION:

Background

Grants are awarded under this program to facilitate the development of educational programming that: (1) Includes student assessment tools to provide feedback on student academic achievement; (2) includes built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use; (3) is created for, or adaptable to, challenging State academic content standards and student academic achievement standards; and (4) may be distributed through digital broadcasting and school digital networks.

An entity that receives a grant under this program must enter into multiyear content development collaborative arrangements with State educational agencies, local educational agencies, institutions of higher education, businesses, or other agencies or organizations.

To be eligible to receive a grant under this program, an entity must contribute to the activities assisted under such grant non-Federal matching funds in an amount equal to not less than 100 percent of the amount of the grant. Such matching funds may include funds provided for the transition to digital broadcasting, as well as in-kind contributions.

An entity that receives a grant under this program may not use more than 5 percent of the amount received under the grant for administrative costs.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed requirements. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under the Fund for the Improvement of Education: Ready to Teach Digital Educational Programming Program, which was substantially revised by the No Child Left Behind Act of 2001. The requirements will apply to the FY 2002 grant competition only.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2002 Ready to Teach Digital Educational Programming Program be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://www.e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent them from using the Internet to submit their applications. The reasons(s) must be outlined in a letter addressed to: Tawanna Coles, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522K, Washington, DC 20208–5645. We must receive your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In fiscal year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Fund for the Improvement of Education: Ready to Teach Digital Educational Programming Program (84.286B) is one of the programs included in the pilot project. If you are an applicant under the Ready to Teach Digital Educational Programming Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

- On the deadline date, the deadline time for transmitting applications is 4:30 p.m. Washington, DC time.
- If you wait until the deadline date to submit your application electronically and you are unable to access the e-Application system, you must contact the Help Desk by 4:30 p.m. Washington, DC time on the deadline date.
- Keep in mind that e-Application is not operational 24 hours a day every day of the week. Click on Hours of Web Site Operation for specific hours of access during the week.
- You will have access to the e-Application Help Desk for technical support: 1–888–336–8930 (TTY: 1–866–697–2696, local 202–401–8363). The Help Desk hours of operation are limited to: 8 a.m. to 6 p.m. Washington, DC time Monday through Friday.
- If you submit your application electronically by the transmittal date but also wish to submit a paper copy of your application, then you must mail the paper copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.286B, 7th and D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424 Standard Face Sheet), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424 Standard Face Sheet) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorized Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at 202–260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Ready to Teach Digital Educational Programming Program at: *http://e-grants.ed.gov.*

FOR FURTHER INFORMATION CONTACT: Tawanna Coles, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522K, Washington, DC 20208–5645. Telephone: (202) 219–2143, FAX: 202–208–4046, or via the Internet: *tawanna.coles@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, e.g., Braille, large print, audiotape, or computer diskette, on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at 202–512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access/gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 5484.

Wednesday,
July 17, 2002

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at 202–512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access/gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 5484.

Dated: July 11, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 02–18030 Filed 7–16–02; 8:45 am]

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Federal Register

Wednesday,
July 17, 2002

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2002–03 Duck Hunting Season; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2002

On March 19, 2002, we published in the **Federal Register** (67 FR 12501) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the waterfowl. Participants at the previously announced July 31 and August 1, 2002, meetings will review information on the current status of waterfowl and develop recommendations for the 2002–03 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy,

temperatures to warm up and ice to thaw. Snow and cold may have caused some nest loss in the prairies. In many of the northern survey areas, survey biologists reported that this was the latest spring ice break-up in memory. Break-up was so late in northern Ontario, northern Quebec, and Labrador that survey biologists suspected that it came too late for waterfowl to breed in

The 2001–02 season was the fourth consecutive year of an extended (16 days vs. 9 days) September teal season in the Central and Mississippi Flyways. The Atlantic Flyway also had a 9-day teal season. Harvest estimates are not available at this time.

The Division of Migratory Bird Management is working with the Central, Mississippi, and Atlantic Flyways on a comprehensive review of

Woodcock

Singing-ground and wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2002 indicate that the number of displaying woodcock in the Eastern Region was 1.3 percent lower than levels observed in 2001; however, this decrease was not

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 2002–03 Duck Hunting Season; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2002–03 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This supplement to the proposed rule of March 19, 2002, also provides the final regulatory alternatives for the 2002–03 duck hunting season.

DATES: We will accept all comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons that are postmarked or received in our office by July 30, 2002, and for the forthcoming proposed late-season frameworks by August 30, 2002.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, 1849 C Street, NW, Washington, DC 20240 or fax comments to (703) 358–2272. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Acting Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2002

On March 19, 2002, we published in the **Federal Register** (67 FR 12501) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 11, 2002, we published in the **Federal Register** (67 FR 40128) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2002–03 duck hunting season. The June 11 supplement also provided detailed information on the 2002–03 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the final regulatory alternatives for the 2002–03 duck hunting season. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2002–03 season. We have considered all pertinent comments received through June 21, 2002, on the March 19 and June 11, 2002, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 2002.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 19–20, 2002, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2002–03 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl. Participants at the previously announced July 31 and August 1, 2002, meetings will review information on the current status of waterfowl and develop recommendations for the 2002–03 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit written comments to the Director of the Service on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

The May Breeding Waterfowl and Habitat Survey was delayed and extended due to the unusually cold and late spring and only recently completed. Thus, this information is preliminary and population estimates are not yet available. Habitat conditions in May for breeding waterfowl in Canada and the U.S. are generally worse this year than they were last year, due primarily to lack of water in the prairies and cold spring temperatures in the East.

Most survey areas started this spring with a water deficit left over from the winter. Spring rains helped recharge wetlands in the most of northeast, but conditions remained very dry in the west. Conditions in the southern Saskatchewan prairies were the driest in over 30 years. Much of southern Manitoba also was dry this year, and drought continued in most of Alberta. There were fewer wetlands available to birds, because most temporary and seasonal wetlands were dry. In the Dakotas, Montana, and southern Saskatchewan, birds were forced to crowd onto the remaining semi-permanent and permanent ponds. A bright spot in the prairies was the Dakotas, where permanent wetlands remained in good condition from the wet period of 1993–2001. Preliminary reports and survey results suggest that many ducks over-flew these dry areas in the prairies to the boreal forest, where water levels are more stable.

A further negative impact on nesting waterfowl this year was the cold spring temperatures. Winter-like conditions hit the entire surveyed area in early May, and snowstorms and cold temperatures caused birds to halt migration. Migration was delayed for several weeks, as many birds waited for

temperatures to warm up and ice to thaw. Snow and cold may have caused some nest loss in the prairies. In many of the northern survey areas, survey biologists reported that this was the latest spring ice break-up in memory. Break-up was so late in northern Ontario, northern Quebec, and Labrador that survey biologists suspected that it came too late for waterfowl to breed in these northeastern areas. However, spring break-up was not too late to prevent breeding in the northwestern areas, from the northern portions of the prairie provinces to Alaska. Conditions there were generally good, but the cold temperatures likely had a negative impact on early-nesting species such as mallards, green-winged teal, and pintails. The only region where habitat conditions for breeding waterfowl are better this year than they were last year is Alaska, where conditions went from poor/fair in 2001 to fair/good in 2002. This improvement is a result of the warmer post-thaw temperatures this year than last year. However, because the ice-melt was very rapid when it finally happened, nests may have been flooded out in parts of Alaska and Labrador.

Since the surveys were flown, water conditions have improved in Montana, the western Dakotas, southern Saskatchewan, and southern Alberta. These areas have received from several inches to a foot or more of rain and/or snow. However, this amount of moisture in such a short period of time has resulted in a lot of flooding, and most biologists think that the rain was probably too late to help nesting waterfowl this year. These improved conditions may help some broods, and may lead to improved water conditions next year.

In summary, waterfowl production is expected to be below normal in most southwestern survey areas, except for the Dakotas, where conditions are better. Production in the northwestern survey areas is harder to assess, because habitat conditions are good but cold spring temperatures likely will have a negative impact on early-nesting species. In the eastern survey areas, conditions ranged from good to excellent in the southern regions, to poor in the north where ice-thaw came too late.

Status of Teal

Preliminary estimates for blue-winged teal from surveyed areas total 4.2 million blue-winged teal, which is below the 4.7 million needed to trigger the 16-day teal season in the Central and Mississippi Flyways.

The 2001–02 season was the fourth consecutive year of an extended (16 days vs. 9 days) September teal season in the Central and Mississippi Flyways. The Atlantic Flyway also had a 9-day teal season. Harvest estimates are not available at this time.

The Division of Migratory Bird Management is working with the Central, Mississippi, and Atlantic Flyways on a comprehensive review of teal population and harvest information. The purposes of this review are to (1) evaluate the effects of extending the September teal season from 9 to 16 days in the Central and Mississippi Flyways, (2) evaluate the effects of the 9 day teal season in the Atlantic Flyway (implemented in 1998), and (3) evaluate the effect of all (September and regular season) harvest on teal populations. Progress is continuing on this review.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2002, uncorrected for visibility, was 313,600 cranes. The photo-corrected 3-year average for 1999–2001 was 398,167, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2001–02. About 8,650 hunters participated in these seasons, which was 24 percent higher than the number participating in the previous year. An estimated 13,964 cranes were harvested in the Central Flyway during 2001–02 seasons, which was similar to the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 12,381 cranes for the 2001–02 period. The total North American sport harvest, including crippling losses, was estimated at 28,821, about 13 percent lower than the previous year's estimate. The long-term trend analysis for the Mid-Continent Population during 1982–2000 indicates that harvests have been increasing at a higher rate than the trend in population growth over the same period.

The fall 2001 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 16,559, which was similar to the previous year's estimate of 19,990. Limited special seasons were held during 2001 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a record high harvest of 898 cranes.

Woodcock

Singing-ground and wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2002 indicate that the number of displaying woodcock in the Eastern Region was 1.3 percent lower than levels observed in 2001; however, this decrease was not significant (P>0.10). In the Central Region, there was a 7.9 percent decrease in the number of woodcock heard displaying; however, this change was also not significant. Trends from the Singing-ground Survey during 1992–2002 were –2.1 and –1.5 percent change per year for the Eastern and Central regions, respectively (P<0.01). There were long-term (1968–02) declines (P<0.01) of 2.3 percent per year in the Eastern Region and 1.6 percent per year in the Central Region.

The 2001 recruitment index for the Eastern Region (1.4 immatures per adult female) was the same as the 2000 index, but was 18 percent below the long-term regional average. The recruitment index for the Central Region (1.3 immatures per adult females) was slightly higher than the 2000 index of 1.2 immatures per female, but was 23 percent below the long-term regional average. The index of daily hunting success in the Eastern Region was 2.0 woodcock per successful hunt in both 2000 and 2001, and seasonal hunting success was 8.7 woodcock per successful hunter in both years. In the Central Region, the daily success index increased slightly from 2.0 woodcock per successful hunt in 2000 to 2.1 in 2001; but seasonal hunting success decreased from 10.7 to 10.5 woodcock per successful hunter.

Band-tailed Pigeons and Doves

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2001, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. Additionally, mineral-site counts at 10 selected sites in Oregon indicate a general increase over the most recent 10 years. Call-count surveys conducted in Washington showed a significant increase during 1997–01 and a non-significant increase during 1975–01. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short- or long-term periods.

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over both the most recent 10 years and the entire 37 years of the survey in the Central and

Western Management Units. In the Eastern Unit, a significant decline was detected over 37 years but no significant trend was indicated over the most recent 10 years. In contrast, a significant increase was found for doves seen over the 10-year period, in the Eastern Unit, while no trends were found in the Central and Western Units. Over the 37-year period, no trend was found for

Federal Register) re-opened the public comment period for the proposed regulatory alternatives until June 21, 2002. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the March 19 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written

The Iowa Department of Natural Resources, the Georgia Department of Natural Resources, the Minnesota Department of Natural Resources, the Colorado Division of Wildlife, the Missouri Department of Conservation, and 3 individual commented in support of the proposed correction for the bias in predicted mallard growth rates and revision to the procedure for comparing predicted and observed population

that resulted in overly optimistic projections of population growth. This bias has now been corrected, and we appreciate the support we have received for implementing this revision.

While the AHM population models are a product of science, the specification of harvest-management objectives and regulatory alternatives involve value-based judgements. While decisions regarding management

mallard population levels that were hunted in the past.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that duck season framework dates for 2002–03 be the Saturday nearest September 24th and the last Sunday in January in the "moderate" and "liberal" regulatory alternatives, as noted in the March 19th **Federal Register**, provided that if the

would support elimination of the "very restrictive" alternative. The Council believes closed seasons should not be considered when breeding populations and pond numbers exist at levels at which seasons have been offered in the past. The Pacific Flyway Council also supports duck season framework extensions and evaluation of their impacts to harvest distribution and rates as outlined in the Service's March 19,

Western Management Units. In the Eastern Unit, a significant decline was detected over 37 years but no significant trend was indicated over the most recent 10 years. In contrast, a significant increase was found for doves seen over the 10-year period, in the Eastern Unit, while no trends were found in the Central and Western Units. Over the 37-year period, no trend was found for doves seen in the Eastern and Central Units, while a decline was indicated for the Western Unit. A project is under way to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management. Additionally, a small-scale banding study is being planned to obtain additional information.

The number of white-winged doves in Arizona has been fairly stable since the 1970s. The average number of doves heard per route in 2002 was 26.7. Estimated harvests (99,900 in 2001) are low compared to those occurring several decades ago. In Texas, the range and density of white-winged doves continue to expand. In 2002, the whitewing population in Texas was estimated to be 2,329,000 birds, an increase of 5.7 percent from 2001. A more inclusive count in San Antonio documented more than 1 million birds. An estimated 197,000 whitewings were taken during the special whitewing season in south Texas, with an additional 986,000 birds taken statewide during the regular mourning dove season. The expansion of whitewings northward and eastward from Texas has led to nesting being reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Whitewings are believed to be expanding northward from Florida and have been seen in Georgia, the Carolinas, and Pennsylvania.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. The count in 2002 averaged 0.97 birds per stop, a 43 percent increase over the count in 2001. The estimated harvest during the special 4-day whitewing season was about 2,400 birds.

Review of Public Comments

The preliminary proposed rulemaking (March 19 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and the proposed regulatory alternatives for the 2002–03 duck hunting season. The supplemental proposed rule (June 11 **Federal Register**) re-opened the public comment period for the proposed regulatory alternatives until June 21, 2002. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the March 19 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 19, 2002, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Mississippi Flyway Council supported the proposed correction factor for biases in predicted annual growth rates and revision to the procedure for comparing predicted and observed population sizes.

Written Comments: The Mississippi Department of Wildlife, Fisheries, and Parks cited numerous complaints with the Adaptive Harvest Management (AHM) process, and recommended that the Service temper their use of AHM as the primary decision tool because of its current uncertainty and variability.

The Iowa Department of Natural Resources, the Georgia Department of Natural Resources, the Minnesota Department of Natural Resources, the Colorado Division of Wildlife, the Missouri Department of Conservation, and 3 individual commented in support of the proposed correction for the bias in predicted mallard growth rates and revision to the procedure for comparing predicted and observed population sizes.

The Mississippi Flyway Council reiterated their support for the proposed correction factor for biases in predicted annual growth rates and revision to the procedure for comparing predicted and observed population sizes.

An organization expressed concern about the AHM population models and the reliance on inaccurate population data and models.

Service Response: AHM was developed cooperatively by the Service, the U.S. Geological Survey (USGS), the Flyway Councils, and the States, and since its implementation in 1995 has enjoyed widespread support among both federal and state waterfowl technicians and administrators. Moreover, the AHM process has been subject to extensive, ongoing review from the scientific community since its development in the early 1990's, and no credible technical arguments have been presented that would cause us to abandon the process. AHM represents state-of-the-art science, and its predictive capabilities provide greater insights to population dynamics than that of most other natural-resource management programs. Moreover, AHM's iterative process of resource monitoring, assessment, and decision-making provides a formal mechanism for learning from experience, thus improving future regulatory decisions.

The essential elements of AHM are: (a) unambiguous management objectives; (b) a finite set of regulatory alternatives; (c) alternative models (or hypotheses) of population dynamics, which predict the effect of hunting regulations and uncontrolled environmental factors; and (d) a resource monitoring program. The alternative models are the product of over 50 years of waterfowl research and assessment, and represent descriptions of duck biology that are plausible given the limits of current understanding. The alternative models influence the choice of hunting regulations to the extent that their respective predictions agree with observations from the resource monitoring program. Because of the scrutiny these population models receive, the Service and USGS were able to identify a bias common to all models that resulted in overly optimistic projections of population growth. This bias has now been corrected, and we appreciate the support we have received for implementing this revision.

While the AHM population models are a product of science, the specification of harvest-management objectives and regulatory alternatives involve value-based judgements. While decisions regarding management objectives and regulatory alternatives certainly have biological implications, the decisions are inherently subjective. The AHM process merely provides a way to combine these subjective elements with population biology to produce hunting opportunities consistent with the long-term viability of the waterfowl resource.

To help chart the future course of AHM with as much of a consensus among stakeholders as possible relative to the subjective elements of AHM, we are proposing to convene a task force comprised of recognized state and federal leaders in waterfowl management, whose charge will be to collaborate with the AHM Working Group and Flyway Councils to examine current harvest-management goals, objectives, constraints, and the set of regulatory alternatives and develop policy-level guidance for the Service regarding these non-technical aspects of AHM.

B. Regulatory Alternatives

Council Recommendations: The Atlantic Flyway Council recommended that regulatory alternatives for duck hunting seasons in the Atlantic Flyway for 2002–03 should be the same as those used in 1997–2001, except that the "liberal" and "moderate" regulatory alternatives should have an opening date of the Saturday nearest September 24th and a closing date of the last Sunday in January on an experimental basis. The Atlantic Flyway Council also recommended that annual changes in regulations should be limited to no more than one step up or down among the regulatory alternatives (e.g., from "liberal" to "moderate," "moderate" to "restrictive").

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the AHM regulatory alternatives be modified as follows, beginning in 2002–03: (a) Eliminate the "very restrictive" alternative; (b) limit increments of year-to-year change to single regulation steps; and (c) replace closed seasons for some combinations of population size and pond numbers with the "restrictive" alternative so that seasons could be open at similar mallard population levels that were hunted in the past.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that duck season framework dates for 2002–03 be the Saturday nearest September 24th and the last Sunday in January in the "moderate" and "liberal" regulatory alternatives, as noted in the March 19th **Federal Register**, provided that if the extended framework dates result in a more conservative hunting season, mid-latitude States (all States in the Upper Region except Minnesota, Wisconsin and Michigan) would be allowed an additional 7 days in season length. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the outside framework dates for the regular duck season in the "moderate" and "liberal" alternatives be the Saturday nearest September 24 and the last Sunday in January with no penalty in season length, and that this option be available either Statewide or in individual zones.

The Central Flyway Council recommended the elimination of the "very restrictive" regulatory alternative and the replacement of closed-season cells for some combinations of mallard breeding population size and pond numbers with the "restrictive" alternative in order that seasons could be opened when similar population levels were hunted in the past. The Central Flyway Council also recommended that the Service adopt the proposed 2002–03 regulatory alternatives and species/sex restrictions for the Central Flyway, except for the following modifications: (a) The opening date will be the Saturday closest to September 24th in the "liberal" and "moderate" AHM regulation alternatives, there will be no offset penalties (reduced or restricted bag limits or reduction in season length), and the framework closing date in the Central Flyway will remain the Sunday closest to January 20th; and (b) if the earlier framework dates are selected, the Central Flyway Council recommends the Special September Teal Season be allowed according to established criteria throughout September without penalty (using regular season days).

The Pacific Flyway Council recommended that the Service examine how eliminating the closed season and the "very restrictive" alternative from the set of regulatory alternatives may influence optimal regulations decisions; considering proposed model revisions. If the results of this evaluation are consistent with past analyses conducted by the Mississippi Flyway, the Council would support elimination of the "very restrictive" alternative. The Council believes closed seasons should not be considered when breeding populations and pond numbers exist at levels at which seasons have been offered in the past. The Pacific Flyway Council also supports duck season framework extensions and evaluation of their impacts to harvest distribution and rates as outlined in the Service's March 19, 2002, **Federal Register**.

Written Comments: The Mississippi Flyway Council reiterated their previous recommendations to eliminate the "very restrictive" alternative, limit increments of year-to-year change to single regulation steps, and replace closed seasons for some combinations of population size and pond numbers with the "restrictive" alternative so that seasons could be open at similar mallard population levels that were hunted in the past.

The Nebraska Game and Parks Commission and the Illinois Department of Natural Resources supported elimination of the "very restrictive" alternative and providing for open seasons at similar mallard population levels that were hunted in the past, but opposed limiting increments of year-to-year change to single regulations steps.

The Alabama Department of Conservation and Natural Resources, Iowa Department of Natural Resources, Minnesota Department of Natural Resources, Louisiana Department of Wildlife and Fisheries, Missouri Department of Conservation, one organization, and one individual supported the recommendations to eliminate the "very restrictive" regulatory alternative, limit increments of year-to-year change to single regulations steps, and provide for open seasons at similar mallard population levels that were hunted in the past.

The Florida Fish and Wildlife Conservation Commission, the Pennsylvania Game Commission, and the Maryland Department of Natural Resources supported limiting increments of year-to-year change to single regulations steps.

The South Dakota Department of Game, Fish, and Parks supported elimination of the "very restrictive" alternative and providing for open seasons at similar mallard population levels that were hunted in the past.

One individual supported providing for open seasons at similar mallard population levels that were hunted in the past, but did not support elimination of the "very restrictive" alternative or limiting increments of year-to-year change to single regulations steps.

An organization supported tabling the proposed recommendations from the Flyway Councils until a more solid understanding of the various outcomes can be generated.

One individual opposed the recommendations to eliminate the "very restrictive" regulatory alternative, limit increments of year-to-year change to single regulations steps, and provide for

date and recommended that any framework-date changes be limited to the "liberal" regulatory alternative.

One organization and one individual opposed the extension of the framework opening date. Three individuals opposed any reductions in season length. Eight individuals requested that both season length and bag limit be reduced. One individual requested that

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that the geographic boundaries for the September teal season in Colorado be amended to include Lake and Chaffee Counties and all lands east of I–25.

Service Response: We concur with the Central Flyway Council's

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2002.

Service Response: We concur with the

meaningful increase in harvest, given that the season length is only 30 days. Therefore, we concur with the Council's recommendation.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Central Flyway Council recommended that the hunting area for white-winged doves be expanded from its current area

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room

An organization supported tabling the proposed recommendations from the Flyway Councils until a more solid understanding of the various outcomes can be generated.

One individual opposed the recommendations to eliminate the "very restrictive" regulatory alternative, limit increments of year-to-year change to single regulations steps, and provide for open seasons at similar mallard population levels that were hunted in the past.

The Mississippi Department of Wildlife, Fisheries, and Parks, Louisiana Department of Wildlife and Fisheries, Alabama Department of Conservation and Natural Resources, Georgia Department of Natural Resources, South Dakota Department of Game, Fish, and Parks, Pennsylvania Game Commission, two organizations, and five individuals supported the proposal to extend the duck hunting framework opening and closing dates to the Saturday nearest September 24 and the last Sunday in January.

The Minnesota Department of Natural Resources, Illinois Department of Natural Resources, Nebraska Game and Parks Commission, Kansas Department of Wildlife and Parks, Missouri Department of Conservation, Ohio Department of Natural Resources, Wyoming Game and Fish Department, 10 organizations, and 39 individuals opposed the extension of framework opening and closing dates. The Illinois Department of Natural Resources also indicates that if the Service decides to extend framework dates, they recommend that mid-latitude states be offered 7 additional days in season length for "restrictive" and "moderate" packages.

The Florida Fish and Wildlife Conservation Commission recommended a fixed framework closing date of January 31.

The Maryland Department of Natural Resources recommended fixed framework dates of an October 1 opening, a January 31 closing in the "liberal" regulatory alternative, and a January 20 closing in the other alternatives.

The South Carolina Department of Natural Resources supported the extension of framework dates, except that the closing date should be a fixed date of January 31.

The Oklahoma Department of Wildlife Conservation and 1 individual supported the proposed extension of the framework opening date, but opposed extension of the closing date.

The Connecticut Department of Environmental Protection opposed the extension of the framework opening date and recommended that any framework-date changes be limited to the "liberal" regulatory alternative.

One organization and one individual opposed the extension of the framework opening date. Three individuals opposed any reductions in season length. Eight individuals requested that both season length and bag limit be reduced. One individual requested that the "liberal" regulatory alternative not be used. Four individuals requested a longer duck season with a lower daily bag limit. One individual requested a lower daily bag limit. Five individuals recommended several season-length and/or bag-limit modifications to the regulatory alternatives.

Service Response: We have decided to implement the framework-date extensions for the "moderate" and "liberal" regulatory alternatives as proposed in the March 19, 2002 **Federal Register**. In the absence of more definitive information, we are assuming that harvest rates of mid-continent and eastern mallards will increase by 15 percent and 5 percent, respectively. These projected increases will be taken into account in the selection of a regulatory alternative for the 2002–03 hunting season. Projected changes in mallard harvest rates will be revised next year after estimates of harvest rates resulting from implementation of the framework-date extensions become available. Our ability to predict changes in the mortality and reproductive rates of other duck stocks that might occur as a result of the framework-date extensions is limited. However, changes in harvest of all duck stocks will be closely monitored and regulatory action will be taken if adverse impacts are perceived.

We also considered the requests to modify the set of regulatory alternatives in other ways. However, we have decided not to implement any of these changes until a more comprehensive review of the regulatory alternatives and harvest-management objectives has been completed (see our response under A. General Harvest Strategy).

Therefore, for the 2002–03 hunting season, there will be no modifications to the four regulatory alternatives proposed in the March 19 **Federal Register** (see accompanying table for specifics). Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will propose the choice of regulatory alternative for the 2002–03 hunting season in August.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that the geographic boundaries for the September teal season in Colorado be amended to include Lake and Chaffee Counties and all lands east of I–25.

Service Response: We concur with the Central Flyway Council's recommendation for a geographic boundary change for the September teal season in the Central Flyway portion of Colorado. The change is included in the framework proposed.

iv. Canvasbacks

Council Recommendations: The Pacific Flyway Council recommended annotation in the Service's Canvasback Harvest Strategy that Alaska will retain fixed frameworks in lieu of annual prescriptions.

Service Response: We concur with the Pacific Flyway Council's recommendation.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Georgia and Lake Seminole in Florida be offered an early Canada goose hunting season not to exceed 30 days between September 1–30, with a bag limit not to exceed 5 geese daily (10 in possession). They further recommended that Connecticut's Special September Canada goose season framework be extended from September 25 to September 30.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Minnesota be allowed to continue their experimental special September experimental Canada goose season (1-week extension) in 2002 while the 3-year evaluation is being completed.

Service Response: We concur with the Atlantic Flyway Council's recommended changes. The addition of Georgia and Lake Seminole in Florida will have no impact to migrant Canada geese and would allow the harvest of resident Canada geese during their September teal season. Regarding Connecticut's special September Canada goose season, leg-band recoveries and neck-collar observations suggest few migrants are available. Additionally, this season would be experimental.

We also concur with the extension of Minnesota's experimental special season to allow completion of the evaluation.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2002.

Service Response: We concur with the earlier regular Canada goose season opening dates in Michigan and Wisconsin.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended accepting the 2002 Rocky Mountain sandhill crane population harvest allocation of 833 birds as proposed by the Pacific Flyway. However, during the next revision of the Cooperative Population Management Plan, the Council desires a better definition of what factors will be used to determine when a survey should be considered unreliable.

The Pacific Flyway Council recommended establishing an experimental season for Rocky Mountain Population sandhill cranes for 2002–03, in Uintah County, Utah. The framework for the 30-day season would be September 1 to January 31, 2003, with a bag limit not to exceed 3 daily and 9 per season. Participants must have a valid permit, issued by the appropriate State, in their possession while hunting. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils.

Service Response: The Service concurs with the recommended changes.

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommended that the hunting regulations framework dates for American woodcock in the Eastern Region be changed back to the pre-1997 dates of October 1 to January 31.

Service Response: In 1997, the framework opening date for American woodcock in the Eastern Region was changed from October 1 to October 6. This change, coupled with a reduction in the season length from 45 days to 30 days, was made in an effort to reduce overall harvest. An analysis of daily wing-receipt data suggests that changing the framework opening date back to October 1 likely will not result in a meaningful increase in harvest, given that the season length is only 30 days. Therefore, we concur with the Council's recommendation.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Central Flyway Council recommended that the hunting area for white-winged doves be expanded from its current area in New Mexico and Texas to include the remainder of the Central Flyway States that are in the Central Management Unit. The white-winged dove season should run concurrently with the mourning dove season with an aggregate bag.

Service Response: We concur with the Council's recommendation to allow all Central-Flyway states in the Central Management Unit to select a white-winged dove season that runs concurrently with the mourning dove season with an aggregate bag limit. However, we believe that this change should apply to all States in the Central Management Unit, rather than just those in the Central-Flyway portion of the unit.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

Executive Order 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including

answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned control number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a-j.

Dated: July 9, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2002–03 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2002, and March 10, 2003.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia. All seasons are experimental.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 21). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward

from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any

Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season

period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado,

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive

from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Connecticut, Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), Rhode Island, and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 14 consecutive days during September 16–27 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 10 consecutive days during September 22–30 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 7 consecutive days during September 16–20 may be selected by North Dakota. The daily bag limit may not exceed 5 Canada geese.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15 in Grand County, excluding Shadow Mountain Reservoir, and that portion of Summit County north of U.S. Interstate 70: The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 3, with season and possession limits of 6, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;
2. In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years;
3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and
4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 19) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits: Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 21) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, and Louisiana, may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

In the remainder of the Eastern Management Unit, the season is closed.

Central Management Unit

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than

daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

the Western Population of (tundra) Swans.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may

pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the remainder of the Eastern Management Unit, the season is closed.

Central Management Unit

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, an experimental season may be selected. No more than 200 permits may be issued for this during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. An evaluation of the season must be completed, adhering to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (tundra) Swans.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the

western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast

from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada

south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92

western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending

from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier,

Street West, then south on 263 Street West to its junction with K–49, then south on K–49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS–55, then east on KS–55 to its junction with KS–15, then east on KS–15 to its junction with U.S.-77, then north on U.S.-77 to its junction with Ohio Street, then north on Ohio to its junction with KS–254, then east on KS–254 to its junction with

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road

crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Kansas City/Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on K–68 to its junction with K–33, then north on K–33 to its junction with U.S.-56, then west on U.S.-56 to its junction with K–31, then west-northwest on K–31 to its junction with K–99, then north on K–99 to its junction with U.S.-24, then east on U.S.-24 to its junction with K–63, then north on K–63 to its junction with K–16, then east on K–16 to its junction with K–116, then east on K–116 to its junction with U.S.-59, then northeast on U.S.-59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with K–68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on U.S. 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with K–96, then east on K–96 to its junction with K–296, then south on K–296 to its junction with 247 Street West, then south on 247 Street West to its junction with U.S.-54, then west on U.S.-54 to its junction with 263 Street West, then south on 263 Street West to its junction with K–49, then south on K–49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS–55, then east on KS–55 to its junction with KS–15, then east on KS–15 to its junction with U.S.-77, then north on U.S.-77 to its junction with Ohio Street, then north on Ohio to its junction with KS–254, then east on KS–254 to its junction with KS–196, then northwest on KS–196 to its junction with I–135, then north on I–135 to its junction with U.S.-50.

South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties,

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A; east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion).

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line ; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon line state to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the

Montana

The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernalillo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

Oklahoma

That portion of the State west of I–35.

Texas

Area 1—That portion of the State west of a line beginning at the International Bridge at Laredo, north along I–35 to the Oklahoma border.

Area 2—That portion of the State east and south of a line from the International Bridge at Laredo northerly along I–35 to U.S. 290; southeasterly along U.S. 290 to I–45; south and east on I–45 to State Highway 87, south and east on TX 87 to the channel in the Gulf of Mexico between Galveston and Point Bolivar; EXCEPT: That portion of the State lying within the area bounded by the Corpus Christi Bay Causeway on U.S. 181 at Portland; north and west on U.S. 181 to U.S. 77 at Sinton; north and east along U.S. 77 to U.S. 87 at Victoria; east and south along U.S. 87 to Texas Highway 35; north and east on TX 35 to the west end of the Lavaca Bay Bridge; then south and east along the west shoreline of Lavaca Bay and Matagorda Island to the Gulf of Mexico; then south and west along the shoreline of the Gulf of Mexico to the Corpus Christi Bay Causeway.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

South Dakota

That portion of the State west of U.S. 281.

Montana

The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2002-03 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY				CENTRAL FLYWAY (b)(c)				PACIFIC FLYWAY (b)(c)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	20	30	45	60	20	30	45	60	26	38	60	74	38	60	86	107
Daily Bag/ Possession Limit	3/6	3/6	6/12	6/12	3/6	3/6	6/12	6/12	3/6	3/6	6/12	6/12	4/8	4/8	7/14	7/14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Females)	3/1	3/1	4/2	4/2	3/1	3/1	4/2	4/2	3/1	3/1	5/2	5/2	3/1	3/1	5/2	7/2
Pintail	1	1	1	1	1	ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY										
Black Duck	1	1	1	1	1	TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION										
Scaup (d)	1	1	1	1	1	0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY										
Canvasback	1	1	1	1	1											
Redhead	2	2	2	2	2	2	2	2	1	2	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	1	2	2	2	2	2	2	2
Whistling Ducks	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	1	1	1	1	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	3	1	1	1	1	-	-	-	-

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 12; moderate - 23; liberal - 39; and special - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(d) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 02–17937 Filed 7–16–02; 8:45 am]

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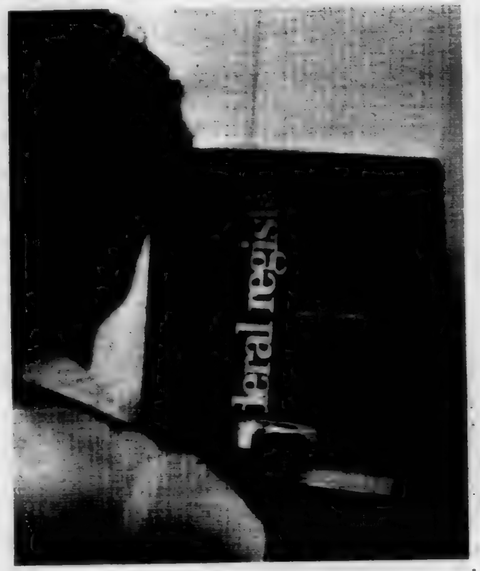

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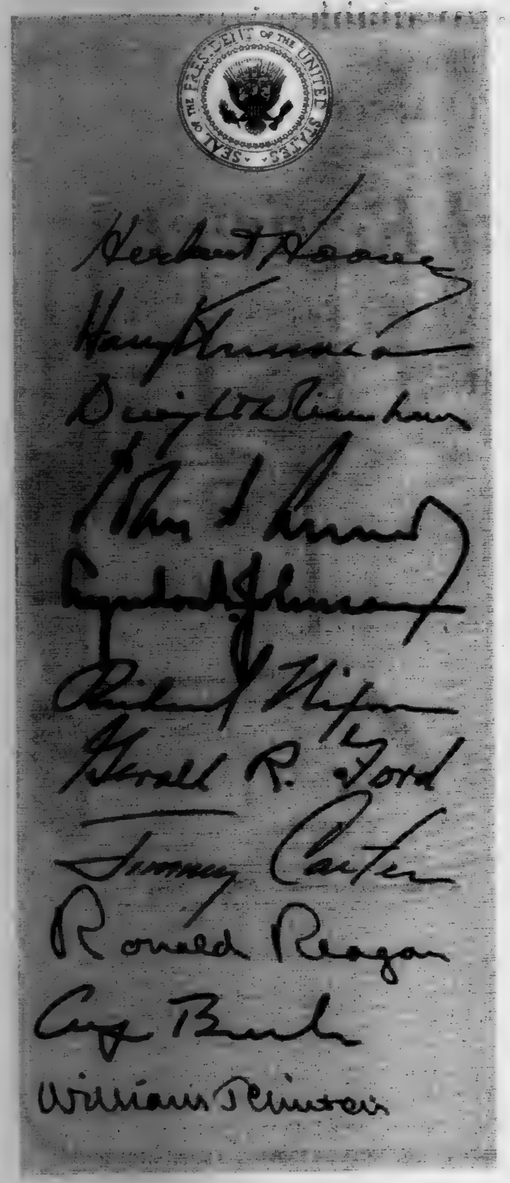

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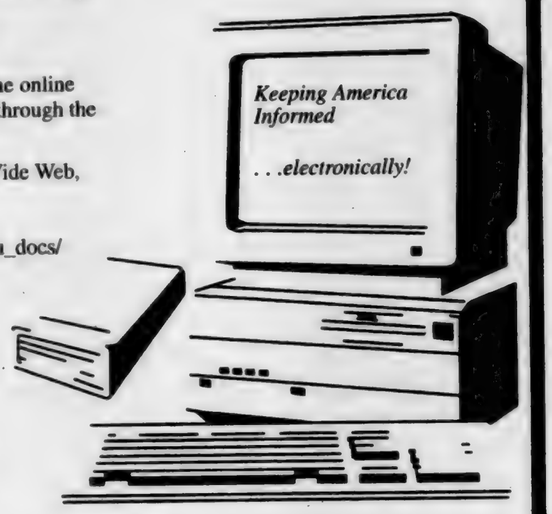

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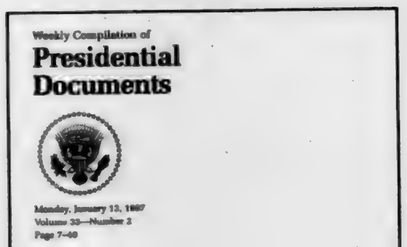

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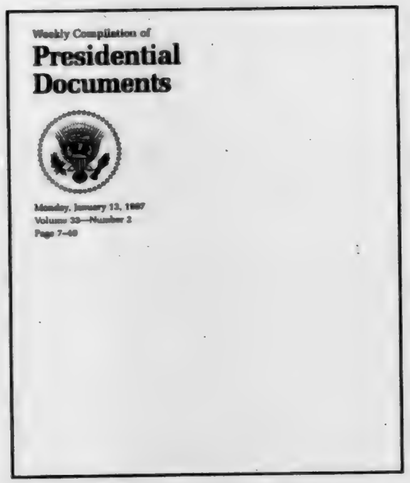

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Federal Register
Vol. 67, No. 138
Thursday, July 18, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

address in your message and "Docket No. 02–072–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in

which BSE exists or in which there is an undue risk of introducing BSE into the United States. Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–072–1]

Change in Disease Status of Israel Because of Bovine Spongiform Encephalopathy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Israel to the list of regions where bovine spongiform encephalopathy (BSE) exists because the disease has been detected in a native-born animal in that region. The effect of this action is a restriction on the importation of ruminants that have been in Israel and meat, meat products, and certain other products of ruminants that have been in Israel. This action is necessary to help prevent the introduction of bovine spongiform encephalopathy into the United States.

DATES: This rule is effective retroactively to June 4, 2002. We will consider all comments that we receive on or before September 16, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–072–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–072–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–072–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of cattle and is not known to exist in the United States. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States. Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraphs (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

On May 28, 2002, Israel reported a suspected case of BSE in a native-born animal, and on June 4, 2002, Israel confirmed that diagnosis in a report to the Office International des Epizooties. Therefore, in order to prevent the introduction of BSE into the United States, we are amending § 94.18(a)(1) by adding Israel to the list of regions where BSE is known to exist. The effect of this action is a restriction on the importation of ruminants that have been in Israel and on the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in Israel. We are making this amendment effective retroactively to June 4, 2002, which is the date that BSE was confirmed in a native-born animal in that region.

In this rule, we are also updating the authority citation for 9 CFR part 94 to reflect the enactment of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of BSE into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

Applicability Date: This rule does not apply to any case already pending at OHA on September 16, 2002. The rule applies to cases arising from:

(a) SBA actions taken or determinations made on or after September 16, 2002, including 8(a) and SDB determinations (part 124), size determinations (part 121), debt collections (part 140), and development cases (part 120);

comments regarding the proposed changes. SBA itself corrected some errors of grammar, form, or punctuation not enumerated here. SBA also found several provisions that were inaccurate or unclear. These provisions are discussed below, in their numerical order.

In the amendatory text for § 124.305(c) (appeal of a suspension

Compliance With the Regulatory Flexibility Act (5 U.S.C. 601–612), the Paperwork Reduction Act (44 U.S.C. Ch. 35), and Executive Orders 12866, 12988, and 13132

SBA has determined that this rule has no significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

For the reasons set forth in the preamble, SBA amends parts 121, 124, and 134 of Title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of BSE into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule(see DATES above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to June 4, 2002; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. In § 94.18, paragraph (a)(1) is amended by adding, in alphabetical order, the word "Israel,".

Done in Washington, DC, this 12th day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–18160 Filed 7–17–02; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 134

RIN 3245–AE71

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) amends its regulations governing proceedings before the Office of Hearings and Appeals (OHA). The SBA also makes conforming changes to several sections of the regulations governing the Small Business Size Determination program and the 8(a) Business Development (8(a) BD) program.

This rule improves the appeals process by revising and clarifying procedures, particularly those on filing, service, and calculating deadlines that have proven to be "stumbling blocks," causing additional litigation and delays; expedites certain procedures; conforms the regulations and procedures developed by case law and prevailing practice; and makes plain language revisions.

DATES: *Effective Date:* This rule is effective on September 16, 2002.

Applicability Date: This rule does not apply to any case already pending at OHA on September 16, 2002. The rule applies to cases arising from:

(a) SBA actions taken or determinations made on or after September 16, 2002, including 8(a) and SDB determinations (part 124), size determinations (part 121), debt collections (part 140), and development cases (part 120);

(b) in NAICS code appeals, solicitations or amendments, issued on or after September 16, 2002, that include NAICS code designations (§§ 121.1102, 134.304(a)(3));

(c) in SBA Employee Dispute Resolution Cases, decisions by appropriate management officials made or overdue on or after September 16, 2002 (Standard Operating Procedure 37 71 02, ¶ 3–6, available at *www.sba.gov/library/soproom.html*); or

(d) SBA orders to show cause (§ 134.202(b) or (c)) issued on or after September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Michael J. Wolter, Attorney-Advisor, Office of Hearings and Appeals, at (202) 401–1420 or *oha@sba.gov*. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339, 24 hours per day, 7 days per week. (If you have any problem using this number, call Customer Service at 1–800–877–0996.)

SUPPLEMENTARY INFORMATION: With this rule, the SBA revises 13 CFR part 134, the rules of procedure governing cases before the Office of Hearings and Appeals, improving and clarifying various procedures; and makes conforming changes to the sections of 13 CFR part 121, the Small Business Size Regulations, and 13 CFR part 124, the 8(a) Business Development program, that relate to OHA appeals. The SBA proposed this rule in the **Federal Register**, 67 FR 11057 (Proposed Rule), on March 12, 2002. The Proposed Rule included "Highlights of [the] Proposed Rule," 67 FR at 11057–11058; a "Section-by-Section Analysis," 67 FR at 11058–11062; the amendatory instructions and text, 67 FR at 11063–11068; and a request for comments, 67 FR at 11057.

The SBA published two corrections to the Proposed Rule: The first, 67 FR 13108, on March 21, 2002, corrected the Regulation Identifier Number (RIN) to that shown here. The second, 67 FR 13294, on March 22, 2002, clarified the amendatory text for § 134.313; and clarified amendatory instruction 50.c., pertaining to § 134.406(c).

During the Proposed Rule's 30-day comment period, SBA received no comments regarding the proposed changes. SBA itself corrected some errors of grammar, form, or punctuation not enumerated here. SBA also found several provisions that were inaccurate or unclear. These provisions are discussed below, in their numerical order.

In the amendatory text for § 124.305(c) (appeal of a suspension from the 8(a) Program), Proposed Rule, 67 FR at 11063, "applicant concern" should read "Participant." This rule corrects an error contained in 63 FR 35726, 35752 (1998 Rule).

In addition to the changes to § 134.202 already discussed in the Proposed Rule, 67 FR at 11059, this rule corrects a typographical error contained in the 1998 Rule at 35766, amendatory instruction 8 (amending § 134.202(d)): "§ 134.305" (concerning size appeal petitions) should read "§ 124.305" (addressing suspension and suspension appeals). The amendatory text for § 134.202(a)(4), Proposed Rule, 67 FR at 11064, included this correction, but the analysis did not explain it.

The analysis for § 134.211(b) states that the rule "would require the moving party, in most motions, to obtain and to state, in the motion itself, the other parties' positions on the motion." Proposed Rule, 67 FR at 11060. Similarly, the amendatory text states that the moving party "must make reasonable efforts to contact all non-moving parties prior to filing the motion to determine whether they oppose the motion, and must set forth in the motion all non-moving parties' positions." Proposed Rule, 67 FR at 11065–11066. This language could be construed to require the moving party to detail each non-moving party's position on the motion; however, the SBA did not intend that. As the Proposed Rule states, SBA's intent is to avoid a 20-day delay to await a response that, if no one opposes the motion, is unnecessary. Proposed Rule, 67 FR at 11060. Therefore, this rule clarifies that, before filing the motion, the moving party must make reasonable efforts to contact any non-moving party to determine whether the party will oppose the motion; and then state in the motion, as to each non-moving party, either whether the party plans to oppose the motion or what efforts the moving party made to learn whether that party plans to oppose the motion.

Compliance With the Regulatory Flexibility Act (5 U.S.C. 601–612), the Paperwork Reduction Act (44 U.S.C. Ch. 35), and Executive Orders 12866, 12988, and 13132

SBA has determined that this rule has no significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule revises some of the rules of practice for SBA administrative proceedings to simplify those rules and make them easier for the few small businesses that engage in administrative litigation with the SBA to understand and to use. Accordingly, this rule is purely procedural and does not affect the operations of small entities.

For purposes of the Paperwork Reduction Act (44 U.S.C. Ch. 35), SBA certifies that this rule imposes no new reporting or record-keeping requirements on firms. This rule revises certain procedures for administrative litigation, and those revisions do not require firms to maintain any records or make any reports to SBA they do not already maintain or make.

OMB has determined this rule is not a "significant" regulatory action within the meaning of Executive Order 12866. The rule is merely procedural and, therefore, will not have an annual economic effect of $100 million or more or have any adverse effect on any sector of the economy or on State, local, or tribal governments or communities.

For purposes of Executive Order 12988, SBA certifies that it has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order. This action has no retroactive or preemptive action.

For purposes of Executive Order 13132, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 124

Government procurement, Hawaiian Natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance, Tribally owned concerns.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

For the reasons set forth in the preamble, SBA amends parts 121, 124, and 134 of Title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.1009, revise paragraph (h) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

* * * * *

(h) Limited reopening of size determinations. In cases where the size determination contains clear administrative error or a clear mistake of fact, SBA may, in its sole discretion, reopen the size determination to correct the error or mistake, provided no appeal has been filed with OHA.

3. Revise § 121.1101 to read as follows:

§ 121.1101 Are formal size determinations subject to appeal?

A formal size determination made by a Government Contracting Area Office or by a Disaster Area Office may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

4. Revise § 121.1102 to read as follows:

§ 121.1102 Are NAICS code designations subject to appeal?

A NAICS code designation made by a procuring activity contracting officer may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a NAICS code designation may be sought in a court.

PART 124—[AMENDED]

5. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

6. In § 124.206, revise paragraph (c) to read as follows:

§ 124.206 What appeal rights are available to an applicant that has been denied admission?

* * * * *

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this chapter with OHA within 45 days after the applicant receives the Administrator's decision. The applicant may not file a petition with OHA pursuant to part 134 of this chapter within 45 days after the contractor receives the Administrator's decision.

PART 134—[AMENDED]

10. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); 28 U.S.C. 2461 note, Pub. L. 104–134, 110 Stat. 1321–373; Pub. L. 105–135, 111 Stat. 2592; Pub. L. 105–147, 111 Stat. 2689; Pub. L. 106–554, 114 Stat. 2763; Pub. L. 107–117, 115 Stat. 2390.

11. Revise § 134.102 to read as follows:

§ 134.102 What cases may be appealed to OHA?

(a) *Appeals from formal size determinations.* A formal size determination made by a Government Contracting Area Office or by a Disaster Area Office may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

(b) *Appeals from NAICS code designations.* A NAICS code designation made by a procuring activity contracting officer may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a NAICS code designation may be sought in a court.

(c) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a procurement.* A concern that submits an offer on a procurement that is set aside for small business concerns, or for which award is to be made on the basis of a certificate of competency, may appeal SBA's determination that it is not a small business for the purpose of that procurement to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(d) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Government program.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of a Government program other than a procurement may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(e) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a SBIC financing.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of SBIC financing may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(f) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a SBDC advising.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of SBDC advising may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(g) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a SCORE counseling.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of SCORE counseling may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(h) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Surety Bond Guarantee.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Surety Bond Guarantee may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(i) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(j) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(k) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(l) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(m) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(n) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(o) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(p) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(q) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(r) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(s) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(t) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(u) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(v) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(w) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(x) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(y) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(z) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(aa) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(bb) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(cc) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(dd) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ee) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ff) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(gg) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(hh) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ii) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(jj) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(kk) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ll) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(mm) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(nn) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(oo) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(pp) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(qq) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(rr) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ss) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

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(uu) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(vv) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ww) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(xx) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(yy) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

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(aaa) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(bbb) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ccc) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ddd) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(eee) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(fff) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ggg) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(hhh) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(iii) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(jjj) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(kkk) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(lll) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(mmm) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(nnn) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ooo) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ppp) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(qqq) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(rrr) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(sss) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ttt) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(uuu) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(vvv) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(www) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(xxx) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(yyy) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(zzz) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(aaaa) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(bbbb) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(cccc) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(dddd) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(eeee) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(ffff) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(gggg) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(hhhh) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(iiii) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Lending Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(jjjj) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Investment Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Small Business Investment Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(kkkk) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Development Company.* A concern that is the subject of SBA's determination that it is not a small business for the purpose of Development Company may appeal that determination to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter.

(llll) *Appeals from SBA's determinations that a concern is not a small business for the purpose of a Small Business Lending Company.* A concern that is the subject of

6. In § 124.206, revise paragraph (c) to read as follows:

§ 124.206 What appeal rights are available to an applicant that has been denied admission?

* * * * *

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this chapter with OHA within 45 days after the applicant receives the Agency decision.

* * * * *

7. Amend § 124.304 as follows:

a. Revise the second sentence of paragraph (b) and remove the last sentence; and

b. Revise the last sentence of paragraph (e).

The revisions read as follows:

§ 124.304 What are the procedures for early graduation and termination?

* * * * *

(b) * * * The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation.

* * * * *

(e) * * * If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days after the Participant receives the Notification, the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

* * * * *

8. In § 124.305, revise the first sentence of paragraph (c) to read as follows:

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

* * * * *

(c) The Participant may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this chapter with OHA within 45 days after the concern receives the Notice of Suspension pursuant to paragraph (b) of this section. * * *

* * * * *

9. In § 124.515, revise paragraph (i) to read as follows:

§ 124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?

* * * * *

(i) The 8(a) contractor may appeal SBA's denial of a waiver request by filing a petition with OHA pursuant to part 134 of this chapter within 45 days after the contractor receives the Administrator's decision.

PART 134—[AMENDED]

10. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

11. Amend § 134.101 as follows:

a. Add new definitions for "Appeal petition" and "NAICS code" in alphabetical order;

b. Revise the definitions for "Party," "Petition," and "Pleading"; and

c. Remove the definition for "SIC code."

The revisions and additions read as follows:

§ 134.101 Definitions.

* * * * *

Appeal petition has the same meaning as petition.

* * * * *

NAICS code means North American Industry Classification System code.

* * * * *

Party means the petitioner, appellant, respondent, or intervenor, and the contracting officer in a NAICS code appeal.

* * * * *

Petition (or *appeal petition*) means a written complaint, a written appeal from an SBA determination, or a written request for the initiation of proceedings before OHA.

Pleading means a petition, an order to show cause commencing a case, an appeal petition, an answer, a response, or any amendment or supplement to those documents.

* * * * *

12. Amend § 134.102 as follows:

a. Revise paragraph (d);

b. In paragraph (k), remove the acronym "SIC" and add the acronym "NAICS" in its place;

c. In paragraph (m), remove the last word "and";

d. Redesignate existing paragraph (n) as paragraph (r); and

e. Add new paragraphs (n) through (q).

The revisions and additions read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(d) The eligibility of any bank or non-bank lender to continue to participate in SBA loan programs under the Act and part 120 of this chapter, or to do so with preferred or certified status, and any other appeal that is specifically authorized by part 120 of this chapter;

* * * * *

(n) Appeals from the following small disadvantaged business (SDB) determinations under part 124 of this chapter:

(1) SBA's determination that an applicant firm does not qualify for certification, or that a certified SDB no longer qualifies for the program; and

(2) A Private Certifier's ownership and control determination made on a firm's application for certification;

(o) The suspension, termination, or non-renewal of cooperative agreements with Women's Business Centers and Small Business Development Centers under the Act and part 130 of this chapter;

(p) Certain matters involving debarments and suspensions under part 145 of this chapter;

(q) The decision of the Appropriate Management Official in SBA Employee Dispute Resolution Process cases (Employee Disputes) under Standard Operating Procedure 37 71 02 (available at http://www.sba.gov/library/soproom.html); and

* * * * *

§ 134.103 [Amended]

13. In § 134.103, paragraph (b), remove the last sentence.

§ 134.201 [Amended]

14. Amend § 134.201 as follows:

a. Designate the first two sentences of the existing text and the last sentence of the existing text as paragraphs (a) and (b), respectively; and

b. In the first sentence of newly designated paragraph (a), remove the acronym "SIC" and add in its place the acronym "NAICS".

15. Revise § 134.202 to read as follows:

§ 134.202 Commencement of cases.

(a) A party other than the SBA may commence a case by filing a written petition within the following time periods:

(1) Except as provided by paragraphs (a)(2) through (a)(5) of this section, no later than 45 days from the date of receipt of the SBA action or determination to which the petition relates;

(2) In debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(3) In applications for an award of fees pursuant to subpart E of this part, no later than 30 days after the decision to which it applies becomes final;

(4) For 8(a) program suspension proceedings, see § 124.305 of this chapter;

(5) For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at www.sba.gov/library/soproom.html.

(b) The SBA may commence a case by issuing to the respondent an appropriate written order to show cause and filing the order to show cause with OHA.

(c) Cases concerning Small Business Investment Company license suspensions and revocations and cease and desist orders must be commenced with an order to show cause containing a statement of the matters of fact and law asserted by the SBA, the legal authority and jurisdiction under which a hearing is to be held, a statement that a hearing will be held, and the time and place for the hearing.

16. Revise § 134.203 to read as follows:

§ 134.203 The petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction;

(2) A copy of the SBA determination being appealed, if applicable, and date received;

(3) A clear and concise statement of the factual basis of the case;

(4) The relief being sought;

(5) The name, address, telephone number, facsimile number, and signature of the petitioner or its attorney;

(6) A certificate of service (see § 134.204(d)); and

(7) In a debt collection case, a statement showing when the petitioner received the SBA notice initiating the debt collection proceeding (see § 140.3 of this chapter).

(b) A petition also must contain additional information or documents as required by the applicable program regulations in this chapter or by other subparts of this part 134. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at www.sba.gov/library/soproom.html.

(c) A petition which does not contain all of the information required by paragraphs (a) and (b) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

17. Amend § 134.204 as follows:

a. Revise the heading of the section;

b. Revise paragraphs (a) through (d);

c. Remove paragraph (e); and

d. Redesignate existing paragraph (f) as new paragraph (e).

The revisions read as follows:

§ 134.204 Filing and service requirements.

(a) *Methods of filing and service.* Pleadings or other submissions must be filed and served by mail, delivery, or facsimile. Mail includes first class (including certified and registered), express, and priority mail. For good cause, the Judge may order that filing or service be effected by one of these methods.

(b) *Filing.* Filing is the receipt of pleadings and other submissions at OHA.

(1) *OHA's address.* OHA accepts filings between the hours of 8:30 a.m. and 5 p.m. eastern time at the following address: Docketing Clerk, Office of Hearings and Appeals, Small Business Administration, 409 Third Street, SW., Suite 5900, Washington, DC 20416–0005. OHA's telephone number is (202) 401–8203. The number for OHA's facsimile machine is (202) 205–7059.

(2) The date of filing for pleadings and other submissions filed by mail, delivery, or facsimile is the date the filing is received at OHA. Any filing received at OHA after 5:00 p.m. eastern time is considered filed as of the next day.

(3) *Exhibits.* An exhibit, whether an original or a copy, must be authenticated or identified to be what it purports to be.

(4) *Copies.* No extra copies of pleadings or other submissions need be filed. If a document is offered as an exhibit, a copy of the document will be accepted by the Judge unless—

(i) a genuine question is raised as to whether it is a true and accurate copy; or

(ii) it would be unfair, under the circumstances, to admit the copy instead of the original.

(c) *Service.* Service is the mailing, delivery, or facsimile to all other parties of a copy of each pleading or other submission filed with OHA.

(1) Complete copies of all pleadings and other submissions filed with OHA must be served upon all other parties or, if represented, their authorized representatives or their attorneys, at their record addresses.

(2) The date of service is as follows: for facsimile, the date the facsimile is sent; for personal delivery by the party, its employee, or its attorney, the date the document is given to the party served; for commercial delivery, the date the document is given to the delivery service; for mail, the date of mailing. The date of mailing is the date of a U.S. Postal Service postmark or any other proof of mailing. If there is insufficient proof of mailing, there is a rebuttable presumption that the mailing was made five days before receipt.

(3) If the SBA is a party, the SBA must be served, as required by the applicable program regulations or by other subparts of this part 134. If the SBA office for service is not specified elsewhere, serve: Office of General Counsel, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at *www.sba.gov/library/soproom.html.*

(d) *Certificate of service.* A certificate of service shows how, when, and to whom service was made. Every pleading and other submission filed with OHA and served on the other parties must include a certificate of service. The certificate should state: "I certify that on [date], I caused the foregoing document to be served by [either "placing a copy in the mail," "sending a copy by facsimile," "personally delivering a copy," or "giving a copy to a delivery service,"] upon the following: [list name, address, telephone number, and facsimile number of each party served]." The certificate must be signed and include the typed name and title of the individual serving the pleading or other submission.

* * * * *

18. Revise § 134.205 to read as follows:

§ 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 15 days after service of the petition or order to show cause, the respondent may file and serve a motion requesting a more definite statement of particular allegations in the petition.

(b) *Stay.* The filing and service of a motion for a more definite statement stays the time for filing and serving an answer or response. The Judge will establish the time for filing and serving an answer or response.

19. Revise § 134.206 to read as follows:

§ 134.205 The answer or response.

(a)(1) Except in a case involving a petition appealing from an SBA determination, a respondent must file and serve an answer within 45 days after the filing of a petition or the service of an order to show cause, except that in debt collection cases, answers are due within 30 days. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at *www.sba.gov/library/soproom.html.*

(2) The answer must contain the following:

(i) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(ii) Any affirmative defenses; and

(iii) The name, address, telephone number, facsimile number, and

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of amendments to pleadings. * * * The proposed amendment must be filed and served with the motion.

(b) *Supplemental pleadings.* Upon

such terms as he or she deems appropriate.

23. Amend § 134.211 as follows:

a. Redesignate existing paragraphs (b) through (d) as paragraphs (c) through (e);

b. Add a new paragraph (b);

c. Revise newly redesignated paragraph (e); and

d. Add a new paragraph (f).

The revisions and additions read as

there is no genuine issue of material fact and the SBA is entitled to a decision in its favor as a matter of law as to any such ground, the Judge will grant the motion for summary decision and dismiss the appeal.

§ 134.213 [Amended]

25. In § 134.213, paragraph (d), remove the words "serve and file" and add the words "file and serve" in their place.

either in the applicable program regulations or in other subparts of this part 134.

* * * * *

30. Revise § 134.227 to read as follows:

§ 134.227 Finality of decisions.

(a) *Initial decisions.* Except as otherwise provided in paragraph (b) of this section, a decision by the Judge on

for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

* * * * *

32. Revise § 134.229 to read as follows:

§ 134.229 Termination of jurisdiction.

Except when the Judge reconsiders a

(i) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(ii) Any affirmative defenses; and

(iii) The name, address, telephone number, facsimile number, and signature of the respondent or its attorney.

(3) Allegations in the petition or order to show cause that are not answered in accordance with paragraph (a)(2)(i) of this section will be deemed admitted unless injustice would occur.

(b) Upon the filing of a petition appealing from an SBA determination, the Judge or the AA/OHA will issue an order informing all known parties of the date the appeal was filed. The respondent must file and serve a response to such a petition within 45 days after the filing of such a petition. The response need not admit or deny the allegations in the petition but shall set forth the respondent's positions in support of the SBA determination. The response must also set forth the name, address, telephone number, facsimile number, and signature of the respondent or its attorney.

(c) If a petition or order to show cause is amended or if respondent is not properly served, the Judge will order the time to file an answer or response extended and will specify the date such answer or response is due. If respondent is not properly served with a petition appealing from an SBA determination, the Judge will issue an order directing that the petitioner serve respondent within a specified time and directing respondent to file and serve a response within 45 days after petitioner timely serves respondent in accordance with the order.

(d) If the respondent fails to timely file and serve an answer or response, that failure will constitute a default. Following such a default, the Judge may prohibit the respondent from participating further in the case. If SBA, as respondent to a petition appealing from an SBA determination, fails to timely file and serve its response or the administrative record (where required), the Judge will issue an order directing SBA to file and serve the administrative record by a specified date.

20. Amend § 134.207 as follows:

a. In paragraph (a), revise the first sentence and add a new sentence at the end;

b. Revise paragraph (b); and

c. Revise paragraph (d).

The revisions read as follows:

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of amendments to pleadings. * * * The proposed amendment must be filed and served with the motion.

(b) *Supplemental pleadings.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading. The proposed supplemental pleading must be filed and served with the motion.

* * * * *

(d) *Answer or response.* In an order permitting the filing and service of an amended or supplemented petition or order to show cause, the Judge will establish the time for filing and serving an answer or response.

21. Revise § 134.208 to read as follows:

§ 134.208 Representation in cases before OHA.

(a) A party may represent itself, or be represented by an attorney. A partner may represent a partnership; a member may represent a limited liability company; and an officer may represent a corporation, trust, association, or other entity.

(b) An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA must file and serve a written notice of appearance.

(c) An attorney seeking to withdraw from a case must file and serve a motion for the withdrawal of his or her appearance.

22. Revise § 134.210 to read as follows:

§ 134.210 Intervention.

(a) *By SBA.* SBA may intervene as of right at any time in any case until 15 days after the close of record, or the issuance of a decision, whichever comes first.

(b) *By interested persons.* Any interested person may move to intervene at any time until the close of record by filing and serving a motion to intervene containing a statement of the moving party's interest in the case and the necessity for intervention to protect such interest. An interested person is any individual, business entity, or governmental agency that has a direct stake in the outcome of the appeal. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

23. Amend § 134.211 as follows:

a. Redesignate existing paragraphs (b) through (d) as paragraphs (c) through (e);

b. Add a new paragraph (b);

c. Revise newly redesignated paragraph (e); and

d. Add a new paragraph (f).

The revisions and additions read as follows:

§ 134.211 Motions.

* * * * *

(b) *Statement of whether motion is opposed.* Except when filing a motion to dismiss or a motion for summary decision, the moving party must make reasonable efforts before filing the motion to contact any non-moving party and determine whether it will oppose the motion and must state in the motion whether each non-moving party will oppose or not oppose the motion. If the moving party cannot determine whether a non-moving party will oppose the motion, the moving party must describe in the motion the efforts made to contact that non-moving party.

* * * * *

(e) *Motion to dismiss.* A respondent may file a motion to dismiss any time before a decision is issued. If an answer or response has not been filed, the motion to dismiss stays the time to answer or respond. If the Judge denies the motion, and an answer or response has not been filed, the respondent must file the answer or response within 20 days after the order deciding the motion.

(f) *Motion for an extension of time.* Except for good cause shown, a motion for an extension of time must be filed at least two days before the original deadline.

24. Amend § 134.212 as follows:

a. In paragraph (c), remove the words "serve and file" and add the words "file and serve" in their place;

b. In paragraph (d), remove the words "serving and filing" and add the words "filing and serving" in their place; and

c. Add a new paragraph (e), to read as follows:

§ 134.212 Summary decision.

* * * * *

(e) *Appeal petitions from SBA determinations (other than 8(a) determinations).* In a case involving an appeal petition, except as provided in subpart D of this part, if SBA has provided multiple grounds for the determination being appealed, SBA may move for summary decision on one or more grounds. If the Judge finds that there is no genuine issue of material fact and the SBA is entitled to a decision in its favor as a matter of law as to any such ground, the Judge will grant the motion for summary decision and dismiss the appeal.

§ 134.213 [Amended]

25. In § 134.213, paragraph (d), remove the words "serve and file" and add the words "file and serve" in their place.

26. Amend § 134.214 as follows:

a. In paragraph (a), add a new sentence at the end; and

b. In paragraph (d), revise the first two sentences.

The revisions and additions read as follows:

§ 134.214 Subpoenas.

(a) * * * Subpoenas are not authorized for proceedings relating to internal Agency determinations, such as Employee Disputes.

* * * * *

(d) *Motion to quash.* A motion to limit or quash a subpoena must be filed and served within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be filed and served within 10 days after service of the motion, unless a shorter time is specified by the Judge. * * *

§ 134.215 [Amended]

27. In § 134.215, paragraph (b), remove the words "serve and file" and add the words "file and serve" in their place.

28. In § 134.217, revise the first sentence and add two new sentences after the first sentence, to read as follows:

§ 134.217 Settlement.

At any time during the pendency of a case, the parties may submit a joint motion to dismiss the appeal if they have settled the case, and may file with such motion a copy of the settlement agreement. If the Judge has express authority, under statute, SBA regulation or SBA standard operating procedures, to review the contents of a settlement agreement for legality, the Judge may order the parties to file a copy of the settlement agreement. Otherwise, upon the filing of a joint motion to dismiss, the Judge will issue an order dismissing the case. * * *

29. In § 134.226, paragraph (b), add a sentence at the end to read as follows:

§ 134.226 The decision.

* * * * *

(b) * * * Time limits for decisions in other types of cases, if any, are indicated either in the applicable program regulations or in other subparts of this part 134.

* * * * *

30. Revise § 134.227 to read as follows:

§ 134.227 Finality of decisions.

(a) *Initial decisions.* Except as otherwise provided in paragraph (b) of this section, a decision by the Judge on the merits is an initial decision. However, unless a request for review is filed pursuant to § 134.228(a), or a request for reconsideration is filed pursuant to paragraph (c) of this section, an initial decision shall become the final decision of the SBA 30 days after its service.

(b) *Final decisions.* A decision by the Judge on the merits shall be a final decision in the following proceedings:

(1) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 (5 U.S.C. 5514 and 31 U.S.C. 3302, 3701, 3711, 3716–3719) and part 140 of this chapter;

(2) Appeals from SBA 8(a) program determinations under the Act and part 124 of this chapter;

(3) Appeals from size determinations and NAICS code designations under part 121 of this chapter; and

(4) In other proceedings as provided either in the applicable program regulations or in other subparts of this part 134.

(c) *Reconsideration.* Except as otherwise provided by statute, the applicable program regulations in this chapter, or this part 134, an initial or final decision of the Judge may be reconsidered. Any party may request reconsideration by filing with the Judge and serving a petition for reconsideration within 20 days after service of the written decision, upon a clear showing of an error of fact or law material to the decision. The Judge also may reconsider a decision on his or her own initiative.

31. Amend § 134.228 as follows:

a. Revise paragraph (a);

b. In paragraph (b), remove the words "serve and file with OHA" and add in their place the words "file and serve".

The revisions read as follows:

§ 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision or a reconsidered initial decision of a Judge, any party, or SBA's Office of General Counsel, may file and serve a request for review by the Administrator. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

* * * * *

32. Revise § 134.229 to read as follows:

§ 134.229 Termination of jurisdiction.

Except when the Judge reconsiders a decision or remands the case, the jurisdiction of OHA will terminate upon the issuance of a decision resolving all material issues of fact and law. If the Judge reconsiders a decision, OHA's jurisdiction terminates when the Judge issues the decision after reconsideration. If the Judge remands the case, the Judge may retain jurisdiction at his or her own discretion, and the remand order may include the terms and duration of the remand.

33. Revise the heading for subpart C to read as follows:

Subpart C—Rules of Practice for Appeals From Size Determinations and NAICS Code Designations

§ 134.301 [Amended]

34. In § 134.301, paragraph (b), remove the acronym "SIC" and add in its place the acronym "NAICS".

35. In § 134.302, revise the introductory text and paragraph (b) to read as follows:

§ 134.302 Who may appeal.

Appeals from size determinations and NAICS code designations may be filed with OHA by the following, as applicable:

* * * * *

(b) Any person adversely affected by a NAICS code designation. However, with respect to a particular sole source 8(a) contract, only the AA/8(a)BD may appeal a NAICS code designation;

* * * * *

36. Revise § 134.303 to read as follows:

§ 134.303 Advisory opinions.

The Office of Hearings and Appeals does not issue advisory opinions.

37. In § 134.304, revise the section heading and paragraph (a) to read as follows:

§ 134.304 Commencement of appeals from size determinations and NAICS code designations.

(a) Appeals from size determinations and NAICS code designations must be commenced by filing and serving an appeal petition as follows:

(1) If the appeal is from a size determination in a pending

procurement or pending Government property sale, then the appeal petition must be filed and served within 15 days after appellant receives the size determination;

(2) If the appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be filed and served

(2) A motion is filed and served establishing good cause for the submission of such evidence. The offered new evidence must be filed and served with the motion.

* * * * *

41. In § 134.309, revise paragraphs (a) and (b) to read as follows:

§ 134.309 Response to an appeal petition.

48. Redesignate existing § 134.318 as new § 134.317 and revise it, to read as follows:

§ 134.317 Return of the case file.

Upon issuance of the decision, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

49. In § 134.402, add two sentences at the end, to read as follows:

record submitted by SBA shall be deemed complete.

(d) Where the Agency files its response to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the response and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD

cross-move for summary decision, as provided in § 134.212.

(b) *Summary decision based on fewer than all grounds.* If SBA has provided multiple grounds for the 8(a) determination being appealed, SBA may move for summary decision on one or more grounds.

(1) *Non-suspension cases.* Except in suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether SBA acted arbitrarily,

actions. This action is necessary to prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 2, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2,

procurement or pending Government property sale, then the appeal petition must be filed and served within 15 days after appellant receives the size determination;

(2) If the appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 30 days after appellant receives the size determination;

(3) If the appeal is from a NAICS code designation, then the appeal petition must be filed and served within 10 days after the issuance of the initial solicitation. If the appeal relates to an amendment affecting the NAICS code, then the appeal petition must be filed and served within 10 days after the issuance of the amendment.

* * * * *

38. Amend § 134.305 as follows:

a. In paragraphs (a)(1), (a)(3), and (c), remove the acronym "SIC" wherever it appears and add in its place the acronym "NAICS';

b. In paragraph (a)(4), before the word "and", add the words "facsimile number,'; and

c. Revise paragraph (d) to read as follows:

§ 134.305 The appeal petition.

* * * * *

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

* * * * *

39. Amend § 134.306 as follows:

a. Revise the section heading;

b. Remove the last sentence of the existing text;

c. Designate the remaining sentence of the existing text as paragraph (a); and

d. Add a new paragraph (b), to read as follows:

§ 134.306 Transmission of the case file and solicitation.

* * * * *

(b) Upon receipt of an appeal petition pertaining to a NAICS code designation, or a size determination made in connection with a particular procurement, the procuring agency contracting officer must immediately send to OHA a paper copy of both the original solicitation relating to that procurement and all amendments.

40. In § 134.308, revise paragraph (a)(2) to read as follows:

§ 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.

(a) * * *

(2) A motion is filed and served establishing good cause for the submission of such evidence. The offered new evidence must be filed and served with the motion.

* * * * *

41. In § 134.309, revise paragraphs (a) and (b) to read as follows:

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, any intervenor, or any person with a general interest in an issue raised by the appeal may file and serve a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* The Judge will issue a Notice and Order informing the parties of the filing of the appeal petition, establishing the close of record as 15 days after service of the Notice and Order, and informing the parties that OHA must receive any responses to the appeal petition no later than the close of record.

* * * * *

§ 134.310 [Amended]

42. In § 134.310, remove the acronym "SIC" and add in its place the acronym "NAICS".

§ 134.311 [Amended]

43. In § 134.311, remove the acronym "SIC" and add in its place the acronym "NAICS".

44. Revise § 134.313 to read as follows:

§ 134.313 Applicability of subpart B provisions.

Except where inconsistent with this subpart C, the provisions of subpart B of this part apply to appeals from size determinations and NAICS code designations.

§ 134.314 [Amended]

45. In § 134.314, remove the acronym "SIC" and add in its place the acronym "NAICS".

46. In § 134.316, add a new sentence at the end of paragraph (b); and add new paragraph (d) to read as follows:

§ 134.316 The decision.

* * * * *

(b) * * * Where a size appeal is dismissed, the Area Office size determination remains in effect.

* * * * *

(d) *Reconsideration.* The decision in a NAICS code appeal may not be reconsidered.

§ 134.317 [Removed]

47. Remove existing § 134.317.

48. Redesignate existing § 134.318 as new § 134.317 and revise it, to read as follows:

§ 134.317 Return of the case file.

Upon issuance of the decision, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

49. In § 134.402, add two sentences at the end, to read as follows:

§ 134.402 Appeal petition.

* * * This section does not apply to suspension appeals. For suspensions, see § 124.305 of this chapter.

§ 134.403 [Amended]

50. Amend § 134.403 as follows:

a. Remove paragraph (a)(3); and

b. In paragraph (b), remove the words "Service should be addressed to" and add in their place the word "Serve".

51. Amend § 134.406 as follows:

a. Revise paragraph (a);

b. In paragraph (b), revise the first sentence;

c. In paragraph (c), revise the first sentence; and remove the last sentence and add two new sentences in its place;

d. Revise paragraph (d); and

e. Revise paragraph (e).

The revisions and additions read as follows:

§ 134.406 Review of the administrative record.

(a) Any proceeding conducted under § 134.401(a) through (d) shall be decided solely on a review of the written administrative record, except as provided in § 134.407 and in suspension appeals. For suspension appeals under § 134.401(e), see § 124.305(d) of this chapter.

(b) Except in suspension appeals, the Administrative Law Judge's review is limited to determining whether the Agency's determination is arbitrary, capricious, or contrary to law. * * *

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker, and those SBA officials that recommended either for or against the decision, relied. * * * The petitioner may object to the absence of a document, previously submitted to, or sent by, SBA, which the petitioner believes was erroneously omitted from the administrative record. In the absence of any objection by the petitioner or a finding by the Judge pursuant to paragraph (e) of this section that the record is insufficiently complete to decide whether the determination was arbitrary, capricious, or contrary to law, the administrative record submitted by SBA shall be deemed complete.

(d) Where the Agency files its response to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the response and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this chapter, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious, or contrary to law. In the event of such a remand, the Judge will not require the SBA to supplement the administrative record other than to supply the reason or reasons for the determination and any documents submitted to, or considered by, SBA in connection with any reconsideration permitted by regulation that occurs during the remand period. After such a remand, in the event the Judge finds that the reasons upon which the determination is based are absent from any supplemented record, the Judge will find the SBA determination to be arbitrary, capricious, or contrary to law. The Administrative Law Judge may also remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this chapter, to the Administrator) for further consideration where it is clearly apparent from the record that SBA made an erroneous factual finding (e.g., SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (e.g., SBA applied the wrong regulatory provision in evaluating the case). A remand under this section will be for a reasonable period.

§ 134.407 [Amended]

52. In § 134.407, paragraph (a) introductory text, remove the word "The" at the beginning and add the words "Except in suspension appeals, the" in its place.

§ 134.408 [Redesignated as § 134.409]

53. Redesignate existing § 134.408 as § 134.409.

54. Add a new § 134.408 to read as follows:

§ 134.408 Summary decision.

(a) *Generally.* In any appeal under this subpart D, either party may move or cross-move for summary decision, as provided in § 134.212.

(b) *Summary decision based on fewer than all grounds.* If SBA has provided multiple grounds for the 8(a) determination being appealed, SBA may move for summary decision on one or more grounds.

(1) *Non-suspension cases.* Except in suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether SBA acted arbitrarily, capriciously, or contrary to law as to any such ground or grounds, and that the SBA is entitled to a decision in its favor as a matter of law, the Judge will grant the motion for summary decision and dismiss the appeal.

(2) *Suspension cases.* In suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether adequate evidence exists that protection of the Federal Government's interest requires suspension, as to any such ground or grounds for the proposed suspension, the SBA is entitled to a decision in its favor as a matter of law, and the Judge will grant the motion for summary decision and dismiss the appeal.

§ 134.409 [Amended]

55. In newly redesignated § 134.409, paragraph (b), remove the last sentence.

Dated: July 5, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–17618 Filed 7–17–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–129–AD; Amendment 39–12823; AD 2002–14–23]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This action requires a one-time inspection of the clutch assembly of the horizontal stabilizer actuator (HSA) to verify that at least one locking tab on the key washer is bent into the locking groove of the clutch nut, and follow-on actions. This action is necessary to prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 2, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–129–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–129–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that, on one airplane, a loose clutch nut has

been found on the clutch assembly of the primary horizontal stabilizer actuator (HSA). Investigation revealed that none of the locking tabs on the key washer for the HSA clutch assembly were bent into the locking groove of the clutch nut. This condition, if not corrected, could result in a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. This action is necessary to prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. This action is necessary to prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

number included in the applicability statement of this AD, unless the HSA assembly has been inspected according to paragraph (a) of this AD and found to have at least one locking tab bent into the locking groove of the clutch nut.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta

been found on the clutch assembly of the primary horizontal stabilizer actuator (HSA). Investigation revealed that none of the locking tabs on the key washer for the HSA clutch assembly were bent into the locking groove of the clutch nut. This condition, if not corrected, could result in a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–27–0088, dated February 1, 2002, which specifies a visual inspection to verify that at least one locking tab on the key washer for the HSA clutch assembly is bent into the locking groove of the clutch nut. The EMBRAER service bulletin refers to Parker Service Bulletin 362200–27–231, dated December 21, 2001, as the appropriate source of service information for accomplishment of this inspection. (A copy of the Parker service bulletin is contained within the EMBRAER service bulletin.) The Parker service bulletin describes procedures for the visual inspection, as well as for follow-on actions. If at least one locking tab is bent into the locking groove of the clutch nut, follow-on actions include an inspection for damage of the O-ring at the base of the HSA motor, replacement of the O-ring if necessary, and an inspection of the sealing surface for damage. If no locking tab is bent into the locking groove of the clutch nut, the Parker service bulletin specifies to replace the HSA assembly with a serviceable HSA assembly. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DAC classified the EMBRAER service bulletin as mandatory and issued Brazilian airworthiness directive 2002–04–01, dated April 24, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the EMBRAER service bulletin described previously, except as discussed below.

Differences Between the Service Information, the Brazilian Airworthiness Directive, and This AD

The EMBRAER service bulletin and the Brazilian airworthiness directive described previously refer to a "visual" inspection. For the purposes of this AD, the FAA has determined that the inspection procedures in the service bulletins constitute a "detailed inspection." Note 2 of this AD defines such an inspection.

Further, the follow-on actions in the service information include inspections for damage (e.g., nicks, tears, scarring) of the O-ring at the base of the HSA motor and the sealing surface of the HSA housing. While the service information does not identify the type of inspections that are necessary, we have determined that detailed inspections are necessary.

Also, the service information does not specify a corrective action if any damage of the sealing surface of the HSA housing is found during the follow-on inspection of that area. We find it necessary to require replacement of the HSA assembly with a serviceable assembly if any damage to the sealing surface of the housing is found. The replacement of the HAS assembly has been coordinated and concurred with by the DAC.

The applicability for the Brazilian airworthiness directive includes "all EMBRAER EMB–135 and –145 series airplanes," but also specifies a preliminary verification of the part numbers and serial numbers of the HSAs installed on those models. However, for this AD, we have determined that it will be more clear to identify affected airplanes in the same way they are identified in the EMBRAER service bulletin. The effectivity of that service bulletin lists airplanes equipped with HSAs having certain part numbers and serial numbers, but does not provide for preliminary verification of HSA part numbers and serial numbers as the Brazilian airworthiness directive does.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–129–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–23 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–12823. Docket 2002–NM–129–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category; equipped with horizontal stabilizer actuator (HSA) assemblies having part numbers and serial numbers as listed in EMBRAER Service Bulletin 145–27–0088, dated February 1, 2002.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a loose or disengaged clutch nut on the HSA clutch assembly, which could result in loss of pitch trim and consequent reduced controllability of the airplane, accomplish the following:

Detailed Inspection and Follow-On Actions

(a) Within 30 days after the effective date of this AD, perform a one-time detailed inspection of the HSA clutch assembly to verify that at least one locking tab on the key washer is bent into the locking groove of the clutch nut, per EMBRAER Service Bulletin 145–27–0088, dated February 1, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: EMBRAER Service Bulletin 145–27–0088 refers to Parker Service Bulletin 362200–27–231, dated December 21, 2001, as the appropriate source of service information for accomplishment of the inspection described in paragraph (a) of this AD. A copy of the Parker service bulletin is contained within the EMBRAER service bulletin.

(1) If at least one locking tab is bent into the locking groove of the clutch nut: Before further flight, perform all applicable follow-on actions per the service bulletin. The follow-on actions include a detailed inspection for damage (e.g., nicks, tears, scarring) of the O-ring at the base of the HSA motor, replacement of the O-ring with a new O-ring if any damage is found, and a detailed inspection for damage (e.g., nicks, tears, scarring) of the sealing surface. If any damage is found on the sealing surface, before further flight, replace the HSA assembly with a serviceable assembly, per the service bulletin.

(2) If no locking tab is bent into the locking groove of the clutch nut: Before further flight, replace the HSA assembly with a serviceable HSA assembly, per the service bulletin.

Spares

(b) As of the effective date of this AD, no person may install on any airplane an HSA assembly with a part number and serial number included in the applicability statement of this AD, unless the HSA assembly has been inspected according to paragraph (a) of this AD and found to have at least one locking tab bent into the locking groove of the clutch nut.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0088, dated February 1, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directive 2002–04–01, dated April 24, 2002.

Effective Date

(f) This amendment becomes effective on August 2, 2002.

Issued in Renton, Washington, on July 11, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18026 Filed 7–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–168–AD; Amendment 39–12803; AD 2002–14–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F

Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount

additional investigation into the cause of the incident on Model MD–11 airplanes, we may consider related rulemaking for Model DC–10 airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, which describes

requirements of paragraph (e) of this AD.

Further, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of "additional examination recommendations," this AD requires that such actions be accomplished in accordance with a method approved by the FAA.

Interim Action

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–03 McDonnell Douglas:

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–168–AD; Amendment 39–12803; AD 2002–14–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and 11F airplanes. This action requires a one-time inspection to detect loose preload-indicating (PLI) washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, and replacement with new parts if necessary. This action is necessary to detect and correct loose PLI washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, which could result in separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane.

DATES: Effective August 2, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–168–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–168–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ronald Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an incident involving a McDonnell Douglas Model MD–11 airplane on which a loud bang was heard when the airplane was on approach with gear down and flaps set at 50 degrees. The airplane shuddered and then rolled left. The flightcrew applied full right-hand aileron to level the wings, missed the approach, and declared an emergency. During landing, the tail of the airplane scraped the runway. Reports indicate that the left-hand inboard flap outboard hinge pulled away from the wing structure where it attaches with two upper and two lower bolts. It was determined that the lower bolts likely failed first. This condition, if not corrected, could result in reduced controllability of the airplane.

The design of the subject area of the airplane is the same on Model DC–10 and MD–11 airplanes. The DC–10 is subjected to lower loads and is less likely to experience this failure. However, Model MD–11 airplanes experience higher loads. In addition, current parts availability only supports the MD–11 fleet. In light of these factors, we have determined that it is appropriate at this time to address the airplane model that has higher loads and has experienced the failure. After additional investigation into the cause of the incident on Model MD–11 airplanes, we may consider related rulemaking for Model DC–10 airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, which describes various procedures for different groups of airplanes, based on the composition of the nuts on the lower bolts of the inboard flap outboard hinge.

Group 1 airplanes have alloy steel nuts, and Group 2 airplanes have Inconel nuts. The procedures for these airplane groups include removing sealant from the head and nut sides of both bolt assemblies, using a wiggle tool to detect looseness of the preload-indicating (PLI) washers, and visually inspecting the nut for corrosion and cracking. Based on the results of the inspection, follow-on and corrective actions include doing a magnetic particle inspection of the bolt to detect cracking and corrosion, replacing discrepant parts with new Inconel and/or alloy steel bolts and nuts and new PLI washers, and applying sealant.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct loose PLI washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, which could result in separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane. This AD requires a one-time inspection to detect loose PLI washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, and replacement with new parts if necessary. This AD also requires that operators report results of inspection findings to the FAA.

Differences Between AD and Service Bulletin

The alert service bulletin specifies that operators may test for looseness of the PLI washers by use of a wiggle tool, "or equivalent." However, this AD requires that any alternative to the wiggle-tool test be accomplished in accordance with a method approved by the FAA. Use of an equivalent tool or test procedure is allowed only if approved as an alternative method of compliance in accordance with the requirements of paragraph (e) of this AD.

Further, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of "additional examination recommendations," this AD requires that such actions be accomplished in accordance with a method approved by the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking. Because the cause of the unsafe condition is not currently known, the intent of the required inspection reports is to enable the FAA to determine the extent of the problem in the affected fleet. Based on the results of these reports, further corrective action may be warranted.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–168–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–03 McDonnell Douglas: Amendment 39–12803. Docket 2002–NM–168–AD.

Applicability: Model MD–11 and –11F airplanes listed as Group 1 or Group 2 airplanes in Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct loose preload-indicating (PLI) washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, which could result in separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane, accomplish the following:

Inspection

(a) At the applicable time specified in paragraph (a)(1) or (a)(2) of this AD, do a detailed inspection (including removing sealant from the head and nut sides of both bolt assemblies) of the nuts and PLI washers of the lower bolts of the inboard flap outboard hinge to detect discrepancies (including loose PLI washers or cracked or corroded nuts, as applicable), in accordance with Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, except as required by paragraphs (b) and (c) of this AD. Before further flight thereafter, do applicable follow-on and corrective actions (including performing a magnetic particle inspection of the bolt to detect cracking and corrosion, replacing discrepant parts with new Inconel and/or alloy steel bolts and nuts and new PLI washers, and applying sealant, as applicable); and, within 600 flight cycles, replace discrepant bolts, nuts, and washers with new parts, as applicable; in accordance with the alert service bulletin.

(1) For Group 1 airplanes: Inspect within 30 days after the effective date of this AD.

(2) For Group 2 airplanes: Inspect within 60 days after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures

Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in

substantial number of small entities because the rule only affects the operations of NASA and its employees. Accordingly, no regulatory flexibility analysis is required.

Executive Order 12866 Determination

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, is not subject to review under section 3(d) of that Order

delegation, to license the use of the Centennial of Flight Commission name on any logo, emblem, seal, or descriptive or designating mark adopted under the Centennial of Flight Commemoration Act, as amended.

DATES: *Effective:* July 18, 2002.

ADDRESSES: Sharon Foster, Executive Director, U.S. Centennial of Flight Commission, NASA Headquarters, Code I–2, 300 E Street SW, Washington, DC

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 5—Delegations and Designations

1. The authority citation for subpart 5 is revised to read as follows:

Authority: 42 U.S.C. 2473; 36 U.S.C. 143.

2. Add § 1204.506 to subpart 5 to read as follows:

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed NADA 141–194 that provides for use of CLINACOX (0.2 percent diclazuril) and BMD (10, 25, 30, 40, 50, 60, or 75 grams per pound (g/lb) bacitracin methylene disalicylate) Type A medicated articles to make two-way combination drug Type C medicated feeds for growing turkeys. The Type C feeds contain 0.91 g/ton diclazuril and

(2) For Group 2 airplanes: Inspect within 60 days after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Exceptions to Paragraph (a) Requirements

(b) Where Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, specifies that testing for looseness of the PLI washers may be accomplished by the use of a wiggle tool, "or equivalent": Either the wiggle tool must be used, or the test must be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(c) Where Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002, specifies to contact Boeing for "additional examination recommendations": Before further flight, these actions, if accomplished, must be performed in accordance with a method approved by the Manager, Los Angeles ACO. For such a method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Reporting Requirement

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD: Send a report of the results (both positive and negative) of the inspection nuts and PLI washers of the lower bolts of the inboard flap outboard hinge to the Manager, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137, fax (562) 627–5210. The report must include the factory serial number of the airplane; inspection results for all four bolts; a description of any discrepancies found; the part numbers for the bolt, nut, and PLI washers; and the total number of landings and flight hours accumulated on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as required by paragraphs (b) and (c) of this AD: The actions must be done in accordance with Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 2, 2002.

Issued in Renton, Washington, on July 10, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18024 Filed 7–17–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

[Notice (02–085)]

RIN 2700—AC54

Delegation of Authority

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA adds section 506 in Part 1204, Subpart 5 delegating the authority of the NASA Administrator to the Assistant Administrator for Public Affairs, without authority for further delegation, to license the use of the Centennial of Flight Commission name on any logo, emblem, seal, or descriptive or designating mark adopted under the Centennial of Flight Commemoration Act, as amended.

DATES: *Effective:* July 18, 2002.

ADDRESSES: Sharon Foster, Executive Director, U.S. Centennial of Flight Commission, NASA Headquarters, Code I–2, 300 E Street SW, Washington, DC 20546–0001..

FOR FURTHER INFORMATION CONTACT: Sharon Foster, Executive Director, U.S. Centennial of Flight Commission, (202) 358–1903.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9 of the Centennial of Flight Commemoration Act (the Act), Public Law 105–389, as amended by Public Law 106–68, authorizes the NASA Administrator to license the use of the Centennial of Flight Commission name on any logo, emblem, seal, or descriptive or designating mark adopted for use by the Administrator, after consultation with the Commission, in connection with the commemoration of the centennial of powered flight. By this rule, the Administrator delegates licensing authority in section 9 to the Assistant Administrator for Public Affairs, without authority for further delegation.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), (b), and (d), NASA has determined that good cause exists for waiving the regular notice of proposed rulemaking, opportunity for public comments, and 30-day delayed effective date for this final rule. This action is being taken because it is in the public interest that this rule, which concerns matters of agency management, personnel, organization, practice, and procedure, be effective on the date of publication.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), NASA has considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Pursuant to 5 U.S.C. 605(b), NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule only affects the operations of NASA and its employees. Accordingly, no regulatory flexibility analysis is required.

Executive Order 12866 Determination

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, is not subject to review under section 3(d) of that Order because it is limited to NASA's organization, management and/or personnel matters, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. NASA has analyzed this rule under that Order and has determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. NASA has determined that the rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. The rule affects only the internal organization of NASA. Accordingly, NASA has not prepared a budgetary impact statement or specifically addressed regulatory alternatives.

List of Subjects in 14 CFR Part 1204, Subpart 5

Administrative practice and procedure, Authority delegations (Government agencies), Civil rights, Labor management relations, Organization and functions (Government agencies), Real property acquisition.

Sean O'Keefe,

Administrator, National Aeronautics and Space Administration.

For the reasons set out in the preamble, NASA amends 14 CFR part 1204, subpart 5, as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 5—Delegations and Designations

1. The authority citation for subpart 5 is revised to read as follows:

Authority: 42 U.S.C. 2473; 36 U.S.C. 143.

2. Add § 1204.506 to subpart 5 to read as follows:

§ 1204.506 Delegation of authority to license the use of the Centennial of Flight Commission name.

(a) *Delegation of authority.* The Assistant Administrator for Public Affairs is delegated the authority of section 9 of the Centennial of Flight Commemoration Act, as amended (Pub. L. 105–389) to license the use of the Centennial of Flight Commission name on any logo, emblem, seal, or descriptive or designating mark adopted for use by the Administrator in commemorating the centennial of powered flight.

(b) *Redelegation.* The authority delegated in paragraph (a) of this section may not be redelegated.

[FR Doc. 02–17989 Filed 7–17–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Diclazuril and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of approved single-ingredient diclazuril and bacitracin methylene disalicylate Type A medicated articles to make two-way combination drug Type C medicated feeds for growing turkeys.

DATES: This rule is effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed NADA 141–194 that provides for use of CLINACOX (0.2 percent diclazuril) and BMD (10, 25, 30, 40, 50, 60, or 75 grams per pound (g/lb) bacitracin methylene disalicylate) Type A medicated articles to make two-way combination drug Type C medicated feeds for growing turkeys. The Type C feeds contain 0.91 g/ton diclazuril and 4 to 50 g/ton bacitracin methylene disalicylate, and they are used for the prevention of coccidiosis caused by *Eimeria adenoeides, E. gallopavonis,* and *E. meleagrimitis,* and for increased rate of weight gain and improved feed efficiency. The NADA is approved as of April 2, 2002, and the regulations are amended in 21 CFR 558.198 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.198 is amended by adding paragraph (d)(2)(ii) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) * * *

(2) * * *

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
•	•	•	•	•
(ii) 0.91 (1 ppm).	Bacitracin methylene disalicylate 4 to 50.	Growing turkeys: As in paragraph (d)(2)(i) of this section; for increased rate of weight gain and improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.	000061

Subpart D—Compromise of Debts

213.24 General.
213.25 Standards for compromise.
213.26 Payment of compromised claims.
213.27 Joint and several liability.
213.28 Execution of releases.

Subpart E—Suspension or Termination of Collection Action

213.29 Suspension—general.
213.30 Standards for suspension.
213.31 Termination—general.

(d) *Claim* means an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. As used in this part, the terms debt and claim are synonymous.

(e) *CFO* means the Chief Financial Officer of USAID or a USAID employee or official designated to act on the CFO's behalf.

(f) *Creditor agency* means the Federal

includes State and local governments and Indian tribes and components of tribal governments.

(m) *Recoupment* is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(n) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as

§ 558.198 Diclazuril.

* * * * *

(d) * * *

(2) * * *

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
•	•	•	•	•
(ii) 0.91 (1 ppm).	Bacitracin methylene disalicylate 4 to 50.	Growing turkeys: As in paragraph (d)(2)(i) of this section; for increased rate of weight gain and improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.	000061

Dated: July 8, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–18119 Filed 7–17–02; 8:45 am]

BILLING CODE 4160–01–S

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 213

Claims Collection

AGENCY: Agency for International Development ("USAID").

ACTION: Final rule.

SUMMARY: USAID is revising its regulation on Claims Collection in its entirety to incorporate applicable statutory and regulatory provisions and to make other changes.

DATES: Effective Date: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Keady, 202–712–5744.

SUPPLEMENTARY INFORMATION:

A. Background

USAID is revising its claim collection procedures to incorporate changes made to the Federal Claims Collection Standards and the Debt Collection Improvement Act of 1996. One principal change in the rule is the provision for the mandatory referral of certain delinquent debt to the Federal Management Service of the Department of the Treasury. The changes will maximize the effectiveness of USAID's claim collection procedures.

B. Regulatory Analysis

Executive Order 12866

USAID has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

Executive Order 12988—Civil Justice Reform

USAID has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, this rule meets the applicable standards in section 3 to mitigate litigation, eliminate ambiguity and reduce burden.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

List of Subjects in 22 CFR Part 213

Administrative practice and procedure, Claims, Federal employees, Fraud, Penalties, Privacy.

Authority and Issuance

For the reasons set out in the preamble, part 213 of Title 22 is revised as follows:

PART 213—CLAIMS COLLECTION

Subpart A—General

Sec.
213.1 Purpose and scope.
213.2 Definitions.
213.3 Loans, guarantees, sovereign and interagency claims.
213.4 Other remedies.
213.5 Fraud claims.
213.6 Subdivision of claims not authorized.
213.7 Omission not a defense.

Subpart B—Collection

213.8 Collection—general.
213.9 Written notice.
213.10 Review requirements.
213.11 Aggressive collection actions; documentation.
213.12 Interest, penalty and administrative costs.
213.13 Interest and charges pending waiver or review.
213.14 Contracting for collection services.
213.15 Use of credit reporting bureaus.
213.16 Use and disclosure of mailing addresses.
213.17 Liquidation of collateral.
213.18 Suspension or revocation of eligibility for loans and loan guarantees, licenses or privileges.
213.19 Installment payments.

Subpart C—Administrative Offset

213.20 Administrative offset of non-employee debts.
213.21 Employee salary offset—general.
213.22 Salary offset when USAID is the creditor agency.
213.23 Salary offset when USAID is not the creditor agency.

Subpart D—Compromise of Debts

213.24 General.
213.25 Standards for compromise.
213.26 Payment of compromised claims.
213.27 Joint and several liability.
213.28 Execution of releases.

Subpart E—Suspension or Termination of Collection Action

213.29 Suspension—general.
213.30 Standards for suspension.
213.31 Termination—general.
213.32 Standards for termination.
213.33 Permitted action after termination of collection activity.
213.34 Debts that have been discharged in bankruptcy.

Subpart F—Discharge of Indebtedness and Reporting Requirements

213.35 Discharging indebtedness—general.
213.36 Reporting to IRS.

Subpart G—Referrals to the Department of Justice

213.37 Referrals to the Department of Justice.

Subpart H—Mandatory Transfer of Delinquent Debt to Financial Management Service (FMS) of the Department of Treasury

213.38 Mandatory transfer of debts to FMS—general.
213.39 Exceptions to mandatory transfer.

Authority: Section 621(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381(a).

Subpart A—General

§ 213.1 Purpose and scope.

This part prescribes standards and procedures for the United States Agency for International Development's (USAID) collection and disposal of claims. These standards and procedures are applicable to all claims and debts for which a statute, regulation or contract does not prescribe different standards or procedures. This part covers USAID's collection, compromise, suspension, termination, and referral of claims to the Department of Justice.

§ 213.2 Definitions.

(a) *Administrative offset* means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(b) *Administrative Wage Garnishment* means the process by which federal agencies require a private sector employer to withhold up to 15% of an employee's disposable pay to satisfy a delinquent debt owed to the federal government. A court order is not required.

(c) *Agency* means the United States Agency for International Development (USAID).

(d) *Claim* means an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. As used in this part, the terms debt and claim are synonymous.

(e) *CFO* means the Chief Financial Officer of USAID or a USAID employee or official designated to act on the CFO's behalf.

(f) *Creditor agency* means the Federal agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(g) *Debtor* means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(h) *Delinquent claim* means any claim that has not been paid by the date specified in the agency's bill for collection or demand letter for payment or which has not been satisfied in accordance with a repayment agreement.

(i) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders) in accordance with 5 CFR parts 581 and 582. Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (Title 26, United States Code) and deductions described in 5 CFR 581.105 (b) through (f). These deductions include, but are not limited to: Social security withholdings; Federal, State and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

(j) *Employee* means a current employee of the Federal Government including a current member of the Armed Forces or a Reserve of the Armed Forces.

(k) *Employee Salary Offset* means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(l) *Person* means an individual, firm, partnership, corporation, association and, except for purposes of administrative offsets under subpart C and interest, penalty and administrative costs under subpart B of this part, includes State and local governments and Indian tribes and components of tribal governments.

(m) *Recoupment* is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(n) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

(o) *Withholding order* means any order for withholding or garnishment of pay issued by USAID or a judicial or administrative body. For the purposes of this part, wage garnishment order and garnishment order have the same meaning as withholding order.

§ 213.3 Loans, guarantees, sovereign and interagency claims.

This part does not apply to:

(a) Claims arising out of loans for which compromise and collection authority is conferred by section 635(g)(2) of the Foreign Assistance Act of 1961, as amended;

(b) Claims arising from investment guaranty operations for which settlement and arbitration authority is conferred by section 635(l) of the Foreign Assistance Act of 1961, as amended;

(c) Claims against any foreign country or any political subdivision thereof, or any public international organization;

(d) Claims where the CFO determines that the achievement of the purposes of the Foreign Assistance Act of 1961, as amended, or any other provision of law administered by USAID require a different course of action; and

(e) Claims owed USAID by other Federal agencies. Such debts will be resolved by negotiation between the agencies.

§ 213.4 Other remedies.

(a) This part does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures, e.g., resolution of audit findings under grants or contracts, informal grant appeals, formal appeals, or review under a procurement contract.

(b) The remedies and sanctions available to the Agency under this part for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or

contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

§ 213.5 Fraud claims.

(a) The CFO will refer claims involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim to the USAID Office of Inspector General (OIG). The OIG has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to the CFO for further action.

(b) The CFO will not administratively compromise, terminate, suspend or otherwise dispose of debts involving fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any party having an interest in the claim without the approval of DOJ.

§ 213.6 Subdivision of claims not authorized.

A claim will not be subdivided to avoid the $100,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

§ 213.7 Omission not a defense.

Failure by USAID to comply with any provision of this part is not available to a debtor as a defense against payment of a debt.

Subpart B–Collection

§ 213.8 Collection—general.

(a) The CFO takes action to collect all debts owed the United States arising out of USAID activities and to reduce debt delinquencies. Collection actions may include sending written demands to the debtor's last known address. Written demand may be preceded by other appropriate action, including immediate referral to DOJ for litigation, when such action is necessary to protect the Government's interest. The CFO may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (e.g., to apply for waiver of the indebtedness or to have an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The CFO maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and its final disposition. Information on an individual may be disclosed only for purposes that are consistent with this part, the Privacy Act of 1974 and other applicable law.

§ 213.9 Written notice.

(a) When the billing official determines that a debt is owed USAID, he or she provides a written notice in the form of a Bill for Collection or demand letter to the debtor. Unless otherwise provided by agreement, contract or order, the written notice informs the debtor of:

(1) The amount, nature and basis of the debt;

(2) The right of the debtor to inspect and copy records related to the debt;

(3) The right of the debtor to discuss and propose a repayment agreement;

(4) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(5) The date on which payment is due which will be not more than 30 days from the date of the bill for collection or demand letter;

(6) The instructions for making electronic payment;

(7) The debt is considered delinquent if it is not paid on the due date;

(8) The imposition of interest charges and, except for State and local governments and Indian tribes, penalty charges and administrative costs that may be assessed against a delinquent debt;

(9) The intention of USAID to use non-centralized administrative offset to collect the debt if appropriate and, if not, the referral of the debt 90 days after the Bill for Collection or demand letter to the Financial Management Service in the Department of Treasury who will collect their administrative costs from the debtor in addition to the amount owed USAID and use all means available to the Federal Government for debt collection including administrative wage garnishment, use of collection agencies and reporting the indebtedness to a credit reporting bureau (see § 213.14);

(10) The address, telephone number, and name of the person available to discuss the debt;

(11) The possibility of referral to the Department of Justice for litigation if the debt cannot be collected administratively.

(b) USAID will respond promptly to communications from the debtor. Response generally will be within 30 days of receipt of communication from the debtor.

§ 213.10 Review requirements.

(a) For purposes of this section, whenever USAID is required to afford a debtor a review within the agency, USAID shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(b) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although USAID will carefully document all significant matters discussed at the hearing.

(c) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(d) In those cases when an oral hearing is not required by this section, USAID shall accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

§ 213.11 Aggressive collection actions; documentation.

(a) USAID takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of USAID's activities. USAID cooperates with other Federal agencies in their debt collection activities.

(b) All administrative collection actions are documented in the claim file, and the basis for any compromise, termination or suspension of collection actions is set out in detail. This documentation, including the Claims Collection Litigation Report required in § 213.34, is retained in the appropriate debt file.

§ 213.12 Interest, penalty and administrative costs.

(a) *Interest.* USAID will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(1) Interest begins to accrue on all debts from the payment due date established in the initial notice to the debtor. USAID will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate)

unless a different rate is necessary to protect the interest of the Government. USAID will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(3) Interest will not be assessed on interest charges, administrative costs or late payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts including charges assessed by Treasury in cross-servicing USAID debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments and Indian tribes. These costs include both direct and indirect costs.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owned by State and local governments and Indian tribes, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(e) *Waivers.* (1) USAID will waive the collection of interest and administrative charges on the portion of the debt that is paid within 30 days after the date on which interest begins to accrue. The CFO may extend this 30-day period on a case-by-case basis where he determines that such action is in the best interest of the Government. A decision to extend or not to extend the payment period is final and is not subject to further review.

(2) The CFO may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where he determines that—

(i) Waiver is justified under the criteria of § 213.24;

(ii) The debt or the charges resulted from the Agency's error, action or inaction, and without fault by the debtor; or

(iii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(3) A decision to waive interest, penalty charges or administrative costs may be made at any time.

§ 213.13 Interest and charges pending waiver or review.

Interest, penalty charges and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Agency; except, that interest, penalty charges and administrative costs will not be assessed where a statute or a regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

§ 213.14 Contracting for collection services.

USAID has entered into a cross-servicing agreement with the Financial Management Service (FMS) of the Department of Treasury. FMS is authorized to take all appropriate action to enforce collection of accounts referred to FMS in accordance with applicable statutory and regulatory requirements. The FMS fee ranges from 3% to 18% of the funds collected and will be collected from the debtor along with the original amount of the indebtedness. After referral, FMS will be solely responsible for the maintenance of the delinquent debtor records in its possessions and for ensuring that accounts are updated as necessary. In the event that a referred debtor disputes the validity of the debt or any terms and conditions related to any debt not reduced to judgment, FMS may return the disputed debt to USAID for its determination of debt validity. FMS may take any of the following collection actions on USAID's behalf:

(a) Send demand letters on U. S. Treasury letterhead and telephone debtors;

(b) Refer accounts to credit bureaus;

(c) Skiptracing;

(d) Purchase credit reports to assist in the collection effort;

(e) Refer accounts for offset, including tax refund, Federal employee salary, administrative wage garnishment, and general administrative offset under the Treasury Offset Program.

(f) Refer accounts to private collection agencies;

(g) Refer accounts to DOJ for litigation;

(h) Report written off/discharged debts to IRS on the appropriate Form 1099;

(i) Take any additional steps necessary to enforce recovery; and

(j) Terminate collection action, as appropriate.

§ 213.15 Use of credit reporting bureaus.

Delinquent debts owed to USAID are reported to appropriate credit reporting bureaus through the cross-servicing agreement with FMS.

(a) The following information is provided to the credit reporting bureaus:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before referring claims to FMS and disclosing debt information to credit reporting bureaus, USAID will have:

(1) Taken reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notified the debtor in writing that:

(i) The designated USAID official has reviewed the claim and has determined that it is valid and overdue;

(ii) That 90 days after the initial billing or demand letter if the debt is not paid, USAID intends to refer the debt to FMS and disclose to a credit reporting agency the information authorized for disclosure by this subpart; and

(iii) The debtor can request a complete explanation of the claim, can dispute the information in USAID's records concerning the claim, and can file for an administrative review, waiver or reconsideration of the claim, where applicable.

(c) Before information is submitted to a credit reporting bureau, USAID will provide a written statement to FMS that all required actions have been taken. Additionally, FMS will, thereafter, ensure that accounts are updated as necessary during the period that FMS holds the account information.

(d) If a debtor disputes the validity of the debt, the credit reporting bureau will refer the matter to the appropriate USAID official. The credit reporting bureau will exclude the debt from its reports until USAID certifies in writing that the debt is valid.

§ 213.16 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt,

the CFO may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to other agencies and to collection agencies only for collection purposes.

collected in a single payment. However, where the CFO determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the CFO may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative

the debtor has been sent written notice in the form of a Bill for Collection or demand letter outlining the type and amount of the debt, the intention of the agency to use administrative offset to collect the debt, and explaining the debtor's rights under 31 U.S.C. 3716.

(2) Offsets may be initiated only after the debtor has been given:

(i) The opportunity to inspect and copy agency records related to the debt;

(c) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the

(4) The CFO will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

(f) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the CFO on a case-by-case basis.

(g) *Non-centralized administrative offset.* (1) Generally, non-centralized

this section, USAID may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any

the CFO may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to other agencies and to collection agencies only for collection purposes.

§ 213.17 Liquidation of collateral.

Where the CFO holds a security instrument with a power of sale or has physical possession of collateral, he may liquidate the security or collateral and apply the proceeds to the overdue debt. USAID will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances require judicial foreclosure. However, collection from other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The CFO will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with any other requirements of law or contract.

§ 213.18 Suspension or revocation of eligibility for loans and loan guarantees, licenses or privileges.

Unless waived by the CFO, USAID will not extend financial assistance in the form of a loan or loan guarantee to any person delinquent on a nontax debt owed to a Federal agency. USAID may also suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the CFO may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with USAID or engaging in programs USAID sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The CFO will report the failure of any surety to honor its obligations to the Treasury Department for action under 31 CFR 332.18.

§ 213.19 Installment payments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalty and administrative costs, as required by § 213.11, will be collected in a single payment. However, where the CFO determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the CFO may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the CFO agrees to accept payment by installments, the CFO may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the CFO determines that a longer period is required. Installment payments of less than $50 per month generally will not be accepted, but may be accepted where the debtor's financial or other circumstances justify.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the CFO determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the CFO will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

Subpart C—Administrative Offset

§ 213.20 Administrative offset of non-employee debts.

This subpart provides for USAID's collection of debts by administrative offset under the Federal Claims Collection Standards, other statutory authorities and offsets or recoupments under common law. It does not apply to offsets against employee salaries covered by §§ 213.21, 213.22 and 213.23 of this subpart. USAID will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract. USAID will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (1) The CFO collects debts by administrative offset only after the debtor has been sent written notice in the form of a Bill for Collection or demand letter outlining the type and amount of the debt, the intention of the agency to use administrative offset to collect the debt, and explaining the debtor's rights under 31 U.S.C. 3716.

(2) Offsets may be initiated only after the debtor has been given:

(i) The opportunity to inspect and copy agency records related to the debt;

(ii) The opportunity for a review within the agency of the determination of indebtedness;

(iii) The opportunity to make a written agreement to repay the debt.

(3) The provisions of paragraphs (a)(1) and (2) of this section may be omitted when:

(i) The offset is in the nature of a recoupement;

(ii) The debt arises under a contract as set forth in Cecile Industries, Inc. v. Cheney, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offsets conducted under paragraph (g) of this section, USAID first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, USAID shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the USAID.

(4) When USAID previously has given a debtor any of the required notice and review opportunities with respect to a particular debt, USAID need not duplicate such notice and review opportunities before administrative offset may be initiated.

(b) *Interagency offset.* The CFO may offset a debt owed to another Federal agency from amounts due or payable by USAID to the debtor, or may request another Federal agency to offset a debt owed to USAID. The CFO through the FMS cross-servicing arrangement may request the Internal Revenue Service to offset an overdue debt from a Federal income tax refund due. The FMS may also garnishment the salary of a private sector employee where reasonable attempts to obtain payment have failed. Interagency offsets from employee's salaries will be made in accordance with the procedures contained in §§ 213.22 and 213.23.

(c) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the appropriate USAID official determines that a debt exists (e.g., contracting officer, grant award official, etc.), when it is affirmed by an administrative appeal or a court having jurisdiction, or when a debtor defaults on a payment agreement, whichever is latest. An offset occurs when money payable to the debtor is first withheld or when USAID requests offset from money held by another agency.

(d) *Alternative repayment.* The CFO may, at the CFO's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the CFO may consider such factors as the amount of the debt, the length of the proposed repayment period, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The CFO may require financial documentation from the debtor before considering the repayment arrangement.

(e) *Review of administrative determination of debt's validity.* (1) A debt will not be offset while a debtor is seeking either formal or informal review of the validity of the debt under this section or under another statute, regulation or contract. However, interest, penalty and administrative costs will continue to accrue during this period, unless otherwise waived by the CFO. The CFO may initiate offset as soon as practical after completion of review or after a debtor waives the opportunity to request review.

(2) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(3) The CFO may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(4) The CFO will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

(f) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the CFO on a case-by-case basis.

(g) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that creditor agencies conduct, at the agency's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt.

(2) Before requesting a payment authorizing agency to conduct a non-centralized administrative offset, USAID's regulations provides that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (a) of this section; and

(ii) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(3) USAID as a payment authorizing agency will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to USAID's program, or would otherwise be contrary to law.

(4) When collecting multiple debts by non-centralized administrative offset, USAID will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(h) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (a) of this section, USAID may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

§ 213.21 Employee salary offset-general.

(a) *Purpose.* This section establishes USAID's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed USAID and debts owed to other Federal agencies by USAID employees. USAID will make every effort reasonably and lawfully possible to administratively collect amounts owed by employees prior to initiating collection by salary offset. An amount advanced to an employee for per diem or mileage allowances in accordance with 5 U.S.C. 5705, but not used for allowable travel expenses, is recoverable from the employee by salary offset without regard to the due process provisions in § 213.22. This section does not apply to debts where collection by salary offset is explicitly provided for or prohibited by another statute.

(c) *References.* The following statutes and regulations apply to USAID's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR part 550, subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 31 CFR parts 900 through 904, the Federal Claims Collection Standards.

§ 213.22 Salary offset when USAID is the creditor agency.

(a) *Due process requirements—Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, USAID will first provide the employee with the opportunity to pay in full the amount owed, unless

such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States that will be collected by

calendar days written notice. Notice will be sent by mail and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed

or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written, signed request directly with the

hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt

the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing

(o) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights that the employee may have under either the procedures in this section or any other provision of law.

(p) *Refunds.* USAID will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear

such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States that will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements that are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to due process requirements—pay and allowances.* The procedural requirements of paragraph (a) of this section are not applicable to overpayments of pay or allowances caused by the following:

(1) Any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee;

(2) Routine intra-agency adjustment in pay or allowances that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred with the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the employee is provided written notice of the nature and amount of the adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if at the time of such adjustment, or as soon thereafter as practical, the employee is provided written notice of the nature and amount of the adjustment.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by mail and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

(4) An explanation of the requirements concerning interest, penalty and administrative costs;

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate USAID official and will be included in the debt file);

(7) The right to a hearing conducted by a hearing official not under the control of USAID, if a request is filed;

(8) The method and time for requesting a hearing;

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the assessment of interest, penalty and administrative costs and the commencement of collection proceedings;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations or evidence may subject the employee to—

(i) Disciplinary procedures under 5 U.S.C. chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written, signed request directly with the Deputy Chief Financial Office, M/FM, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue NW., Washington, DC 20523–4601. The request must state the basis upon which the employee disputes the proposed collection of the debt. The request must be signed by the employee and be received by USAID within 15 days of the employee's receipt of the notification of proposed deductions. The employee should submit in writing all facts, evidence and witnesses that support his/her position to the Deputy Chief Financial Officer within 15 days of the date of the request for a hearing. The Deputy Chief Financial Officer will arrange for the services of a hearing official not under the control of USAID and will provide the hearing official with all documents relating to the claim.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(f) *Form of hearing, written response and final decision.* (1) Normally, a hearing will consist of the hearing official making a decision based upon a review of the claims file and any materials submitted by the debtor. However, in instances where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. Such oral hearings will consist of an informal conference before a hearing official in which the employee and the Agency will be given the opportunity to present evidence, witnesses and argument. If desired, the employee may be represented by an individual of his/her choice. The Agency shall maintain a summary record of oral hearings provided under the procedures in this section.

(2) Written decisions provided after a request for hearing will, at a minimum, state the facts evidencing the nature and origin of the alleged debt; and the

hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request. However, where it appears that the Government's ability to recover the debt may be adversely affected because of the employee's resignation, termination or other action, suspension of recovery is not required. During the period of the suspension, interest, penalty charges and administrative costs will not be assessed against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already provided the debtor under a request for waiver.

(h) *Method and source of collection.* A debt will be collected in a lump sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the CFO and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than $50 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a debt in a lump sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's Bill for Collection or demand letter notice of intention to collect from the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(l) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, USAID will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (e.g., retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 213.20.

(n) *Interest, penalty and administrative cost.* USAID will assess interest, penalties and administrative costs on debts collected under the procedures in this section. Interest, penalty and administrative costs will continue to accrue during the period that the debtor is seeking either formal or informal review of the debt or requesting a waiver. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) Interest will be assessed on all debts not collected by the payment due date specified in the bill for collection or demand letter. USAID will waive the collection of interest and administrative charges on the portion of the debt that is paid within 30 days after the date on which interest begins to accrue.

(2) Administrative costs will be assessed if the debt is referred to Treasury for cross-servicing.

(3) Deductions by administrative offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 90 days from the due date in the bill for collection or demand letter.

(o) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights that the employee may have under either the procedures in this section or any other provision of law.

(p) *Refunds.* USAID will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(q) *Time limit for commencing recovery by salary setoff.* USAID will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

§ 213.23 Salary offset when USAID is not the creditor agency.

(a) USAID will use salary offset against one of its employees that is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the procedural requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met. The creditor agency must also advise USAID of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(b) Requests for salary offset must be sent to the Chief Financial Officer, Office of Financial Management (M/FM), United States Agency for International Development, Ronald Reagan Building , 1300 Pennsylvania Avenue NW., Washington, DC 20523–4601.

(c) *Processing of the claim by USAID.* (1) *Incomplete claims.* If USAID receives an improperly completed request, the requesting (creditor) agency will be requested to supply the required information before any salary offset can be taken.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. USAID will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. USAID will not assess a handling or any other

related charge to cover the cost of its processing the claim.

(d) *Employees separating from USAID before a debt to another agency is collected.* (1) *Employees separating from Government service.* If an employee begins separation action before USAID collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance

§ 213.25 Standards for compromise.

(a) USAID may compromise a claim pursuant to this section if USAID cannot collect the full amount because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection

have on the collection of other similar claims.

(d) To assess the merits of a compromise offer, USAID may obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expense.

(e) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the CFO

determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. The CFO may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least

(e) The CFO will decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

§ 213.31 Termination—general.

The CFO may terminate collection actions including accrued interest, penalty and administrative costs, where the debt principal does not exceed $100,000. If the debt exceeds $100,000,

(d) Screening future applicants for prior indebtedness.

§ 213.34 Debts that have been discharged in bankruptcy.

USAID generally terminates collection activity on a debt that has been discharged in bankruptcy regardless of the amount. USAID may continue collection activity, however, subject to the provisions of the Bankruptcy Code for any payments provided under a plan

related charge to cover the cost of its processing the claim.

(d) *Employees separating from USAID before a debt to another agency is collected.* (1) *Employees separating from Government service.* If an employee begins separation action before USAID collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from USAID in accordance with § 213.22;

(ii) If the total amount of the debt cannot be recovered, USAID will certify to the creditor agency and the employee the total amount of USAID's collection; and

(iii) If USAID is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund, or other similar payments, it will provide such information to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an USAID employee transfers to another Federal agency before USAID collects the total amount due the creditor agency, USAID will certify the total amount of the collection made on the debt. It is the responsibility of the creditor agency to ensure that the collection is resumed by the new employing agency.

Subpart D—Compromise of Debts

§ 213.24 General.

USAID may compromise claims for money or property where the principal balance of a claim, exclusive of interest, penalty and administrative costs, does not exceed $100,000. Where the claim exceeds $100,000, the authority to accept the compromise rests solely with DOJ. The CFO may reject an offer of compromise in any amount. Where the claim exceeds $100,000 and USAID recommends acceptance of a compromise offer, it will refer the claim with its recommendation to DOJ for approval. The referral will be in the form of the Claims Collection Litigation Report (CCLR) and will outline the basis for USAID's recommendation. USAID refers compromise offers for claims in excess of $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530, unless otherwise provided by Department of Justice delegations or procedures

§ 213.25 Standards for compromise.

(a) USAID may compromise a claim pursuant to this section if USAID cannot collect the full amount because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection proceedings. In evaluating the acceptability of the offer, the CFO may consider, among other factors, the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; or

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(b) USAID may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is significant doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, USAID will give proportionate weight to the likely amount of court costs and attorney fees the Government may incur if it is unsuccessful in litigation.

(c) USAID may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, USAID may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) To assess the merits of a compromise offer, USAID may obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expense.

(e) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the CFO determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 213.26 Payment of compromised claims.

The CFO normally will not approve a debtor's request to pay a compromised claim in installments. However, where the CFO determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved.

§ 213.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 213.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, USAID will prepare and execute a release on behalf of the United States. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against USAID and its officials related to the transaction giving rise to the compromised debt.

Subpart E—Suspension or Termination of Collection Action

§ 213.29 Suspension—general.

The CFO may suspend or terminate the Agency's collection actions on a debt where the outstanding debt principal does not exceed $100,000. Unless otherwise provided by DOJ delegations or procedures, the CFO refers requests for suspension of debts exceeding $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. If prior to referral to DOJ, USAID

determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. The CFO may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension.

§ 213.30 Standards for suspension.

(a) The CFO may suspend collection action on a debt when:

(1) The debtor cannot be located;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, the CFO may suspend collection activity on a debt when the debtor's future prospects justify retention of the claim for periodic review, and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) The CFO will suspend collection activity during the time required for waiver consideration or administrative review prior to agency collection of a debt if the statute under which the request is sought prohibits USAID from collecting the debt during that time. The CFO will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail.

(d) The CFO may suspend collection activities on debts of $100,000 or less during the pendency of a permissive waiver or administrative review when there is no statutory requirement where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) The CFO will decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

§ 213.31 Termination—general.

The CFO may terminate collection actions including accrued interest, penalty and administrative costs, where the debt principal does not exceed $100,000. If the debt exceeds $100,000, USAID obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 213.32 Standards for termination.

A debt may be terminated where the CFO determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed; or

(f) The debt against the debtor has been discharged in bankruptcy.

§ 213.33 Permitted actions after termination of collection activity.

Termination of collection activity ceases active collection of the debt. Termination does not preclude the agency from retaining a record of the account for purposes of:

(a) Selling the debt if the CFO determines that such sale is in the best interests of USAID;

(b) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(c) Offsetting against future income or assets not available at the time of termination of collection activity; or

(d) Screening future applicants for prior indebtedness.

§ 213.34 Debts that have been discharged in bankruptcy.

USAID generally terminates collection activity on a debt that has been discharged in bankruptcy regardless of the amount. USAID may continue collection activity, however, subject to the provisions of the Bankruptcy Code for any payments provided under a plan of reorganization. The CFO will seek legal advice by the General Counsel's office if he believes that any claims or offsets may have survived the discharge of a debtor.

Subpart F—Discharge of Indebtedness and Reporting Requirements

§ 213.35 Discharging indebtedness—general.

Before discharging a delinquent debt (also referred to as a close out of the debt), USAID will make a determination that collection action is no longer warranted and request that litigation counsel release any liens of record securing the debt. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When a debt is discharged in full or in part, further collection action is prohibited and USAID must terminate debt collection action.

§ 213.36 Reporting to IRS.

Upon discharge of an indebtedness, USAID will report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. USAID may request FMS to file such a discharge report to the IRS on the agency's behalf.

Subpart G—Referrals to the Department of Justice

§ 213.37 Referrals to the Department of Justice.

(a) The CFO, through the FMS cross-servicing agreement and by direct action, refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor. Unless otherwise provided by DOJ

regulations or procedures, USAID refers for litigation debts of more than $2,500 but less than $1,000,000 to the Department of Justice's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts of over $1,000,000 shall be referred to the Civil Division at the Department of Justice.

(b) The CFO will clearly indicate on the CCLR the actions the DOJ should

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 420

[FHWA Docket No. FHWA–2001–8874]

RIN 2125–AE84

Planning and Research Program Administration

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Background

On November 27, 2001, the FHWA issued a notice of proposed rulemaking

The NPRM was published in the **Federal Register** on November 27, 2001, at 66 FR 59188. The comment period ended on January 28, 2002. We received 9 docket comments, all from State DOTs, in response to the NPRM. Many of the comments support the rule revision and mention that it has added greater clarity to the regulation. A summary of the comments, the FHWA response, their disposition, and the

Section 420.103

In § 420.103, we replaced "designated by the Administrators of the FHWA and the Federal Transit Administration (FTA)" in the definition of transportation management area with "designated by the Secretary of Transportation" to be consistent with legislative language in 23 U.S.C. 134(i).

We added the words "covering no less than one year" to the definition of the

necessary for the formula to reflect the situation where an MPO(s) has received its PL fund allocation based on the State formula to choose to allow the State to perform work for the MPO(s) with PL funds.

One commenter indicated that the provisions in § 420.109(d) and (e) that allow use of excess PL funds for planning outside of metropolitan areas would also be helpful.

Both of these provisions were in the

regulations or procedures, USAID refers for litigation debts of more than $2,500 but less than $1,000,000 to the Department of Justice's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts of over $1,000,000 shall be referred to the Civil Division at the Department of Justice.

(b) The CFO will clearly indicate on the CCLR the actions the DOJ should take on the referred claim.

Subpart H—Mandatory Transfer of Delinquent Debt to Financial Management Service (FMS) of the Department of Treasury

§ 213.38 Mandatory transfer of debts to FMS—general.

(a) USAID's procedures call for transfer of legally enforceable debt to FMS 90 days after the Bill for Collection or demand letter is issued. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. A debt is not considered legally enforceable for purposes of mandatory transfer to FMS if a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited.

(b) Except as set forth in paragraph (a) of this section, USAID will transfer any debt covered by this part that is more than 180 days delinquent to FMS for debt collection services. A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable.

§ 213.39 Exceptions to mandatory transfer.

USAID is not required to transfer a debt to FMS pursuant to §213.37(b) during such period of time that the debt:

(a) Is in litigation or foreclosure;

(b) Is scheduled for sale;

(c) Is at a private collection contractor;

(d) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center;

(e) Is being collected by internal offset; or

(f) Is covered by an exemption granted by Treasury

Dated: July 8, 2002.

Linda Porter,

Authorized Representative, Agency for International Development.

[FR Doc. 02–17608 Filed 7–17–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 420

[FHWA Docket No. FHWA–2001–8874]

RIN 2125–AE84

Planning and Research Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the regulation on planning and research program administration to reflect legislative changes due to enactment of the Transportation Equity Act for the 21st Century (TEA–21). It removes provisions that are no longer necessary, makes several changes in terminology, and incorporates revisions based upon comments received during the notice of proposed rulemaking. Most notable among the changes are renumbering of a State planning and research (SPR) funds section (i) that now allow a State department of transportation (State DOT) to be reimbursed for indirect costs; and changes in the Federal-aid highway program categories from which SPR funds are set aside.

EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: For 23 CFR part 420, subpart A: Mr. Tony Solury, (202) 366–5003, Office of Planning and Environment, HEP–2, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; for 23 CFR part 420, subpart B: Jowell Parks or William Zaccagnino, Office of Program Development and Evaluation, HRPD–1, (202) 493–3166, Federal Highway Administration, Research, Development, and Technology Service Business Unit, 6300 Georgetown Pike, McLean, VA 22101. For legal questions: Reid Alsop, Office of the Chief Counsel, HCC–30, (202) 366–1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the universal resource locator (URL) *http://dmses.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov*.

Background

On November 27, 2001, the FHWA issued a notice of proposed rulemaking (NPRM) in the **Federal Register** (66 FR 59188) to obtain comments from interested persons on proposed revisions to the regulation. Changes to the existing regulation were made to reflect the TEA–21 legislation and to eliminate outdated regulatory references. New language was added to encourage sharing of research results, pooling of funds, and the promotion of new technology. In addition, the phrase "peer review" was changed to "peer exchange" to reflect the underlying philosophy that—rather than an audit—the peer exchange is an opportunity to share best practices and foster excellence in research, development, and technology transfer (RD&T) program management.

The FHWA's regulations for Planning and Research Program Administration were last revised on July 22, 1994, (59 FR 37548) prior to the enactment of the TEA–21 (Public Law 105–178, 112 Stat. 107 (1998)). Section 5119(b) of the TEA–21 repealed the SPR funds section in 23 U.S.C. 307(c) and section 5105 of the TEA–21 added a new SPR funds section 505 to title 23, U.S. Code. Changes in the Federal-aid highway program in the TEA–21 also resulted in changes in the Federal-aid highway program categories from which SPR funds are set aside. Section 1212 of the TEA–21 revised 23 U.S.C. 302 to allow a State DOT to be reimbursed for indirect costs.

Based on experience since the 1994 revision, changes were made to refine definitions and to clarify the meaning and applicability of several sections of the regulation. For example, the phrase "peer review" has been replaced with "peer exchange" to describe the transfer of RD&T related information and best practices between State DOTs, the FHWA, universities and public and private sector transportation organizations. The phrase "transportation pooled fund study" is used to replace the regional and national distinctions and to reflect current practice. Also, the FHWA made further clarification regarding the conditions under which the non-Federal share of an SPR or metropolitan planning (PL) funded project may be waived.

The NPRM was published in the **Federal Register** on November 27, 2001, at 66 FR 59188. The comment period ended on January 28, 2002. We received 9 docket comments, all from State DOTs, in response to the NPRM. Many of the comments support the rule revision and mention that it has added greater clarity to the regulation. A summary of the comments, the FHWA response, their disposition, and the changes made to the rule follow.

Discussion and Analysis of Comments

General

Two commenters expressed displeasure with the question and answer (Q&A) format.

The FHWA has rewritten the rule using the guidelines established in the **Federal Register** Document Drafting Handbook under the section Making Regulations Readable. The handbook's guidance reflects the directives outlined in the June 1, 1998, Presidential Memorandum, "Plain Language in Government Writing," (3 CFR, 1999 Comp., p. 289) available online at *http://www.access.gpo.gov/nara/cfr/waisidx—99/other—99.html*.

Two commenters mentioned that the abbreviation STD was an inappropriate one due to its negative connotations.

The term "State transportation department" is included in section 302 of title 23, U.S. Code. In addition § 1201 of TEA–21 amended 23 U.S.C. 101 to remove "State highway department" and added the term "State transportation department." The abbreviation "STD" was simply derivative. However, we understand and appreciate the commenter's concerns and have changed STD to State DOT where appropriate. In addition, a definition of State DOT has been added in § 420.103. For consistency with the legislation, the definition is the same as that included in section 101 of title 23, U.S.C for State department of transportation, which is defined as that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

In response to a recent assessment of the FHWA's 1998 restructuring, the title Program Manager for Planning and Environment has been changed to Associate Administrator for Planning and Environment and the title Director of Research, Development and Technology has been changed to Associate Administrator for Research, Development and Technology in the final rule.

Section 420.103

In § 420.103, we replaced "designated by the Administrators of the FHWA and the Federal Transit Administration (FTA)" in the definition of transportation management area with "designated by the Secretary of Transportation" to be consistent with legislative language in 23 U.S.C. 134(i).

We added the words "covering no less than one year" to the definition of the term Work Program. We felt it is important to clarify that work programs of less than one year in duration should not be submitted because of administrative burden that would be involved.

Section 420.105

In § 420.105(a)(1), we replaced "intermodal" with "local public transportation" to be consistent with legislative language in 23 U.S.C. 505(a)(2) that states that FHWA planning funds can be used for the planning of future highway programs and local public transportation systems and the planning of financing of such programs and systems, including metropolitan and statewide planning under 23 U.S.C. 134 and 135.

Section 420.109

Regarding the consultation with Metropolitan Planning Organizations (MPOs), one State DOT mentioned that the use of the phrase "consultation with MPOs" was preferred over the use of "in cooperation with MPOs." The State DOT observed that the term "consultation" gives States greater flexibility in working with local governments (§ 420.109).

The term "consultation" used in the regulation is the correct term. The term "cooperation" was inadvertently used in the preamble to discuss changes made in § 420.109. The final rule contains the term "consultation" and not "cooperation."

Four commenters supported the "flexibility" provided in § 420.109 that allows State PL fund distribution formulas to include provisions for using PL funds for activities that benefit all MPOs in the State or for discretionary awards to MPOs.

This flexibility has always been allowed, but was not reflected in the previous regulations. All PL funds apportioned to a State must be made available by the State to the MPOs in accordance with a formula developed by the State in consultation with the MPOs and approved by the FHWA. Therefore, any "hold back" of PL funds by the State for such uses must be reflected in the approved formula. However, it is not necessary for the formula to reflect the situation where an MPO(s) has received its PL fund allocation based on the State formula to choose to allow the State to perform work for the MPO(s) with PL funds.

One commenter indicated that the provisions in § 420.109(d) and (e) that allow use of excess PL funds for planning outside of metropolitan areas would also be helpful.

Both of these provisions were in the previous regulation and are based on legislative provisions. Under the legislation, each State receives a minimum of one-half of one percent of the annual PL fund apportionments regardless of the States population in urbanized areas of 50,000 or more population. In these minimum PL apportionment States, the State DOT may use PL funds not needed for metropolitan planning for transportation planning outside of metropolitan areas after considering the views of the affected MPOs and with the approval of the FHWA. In States that receive more than the one-half of one percent minimum apportionment, the MPOs may make PL funds not needed by them for metropolitan planning available to the State for statewide transportation planning with the approval of the FHWA.

Section 420.113

One State DOT requested that States be allowed the option of continuing to charge pro-rata costs of administrative salaries to SPR funds or of using an indirect cost rate as required in revised § 420.113. This commenter also suggested that the language regarding annual updates and approvals be combined in paragraph (b) of § 420.113 rather than being separated into paragraphs (b) and (c).

Prior to enactment of TEA–21, State DOTs could not claim reimbursement for indirect costs, such as those of supervisory personnel and support staff who did not work directly on grant supported activities, for FHWA funded projects. However, we did allow a share of the salaries of such personnel in the State DOT planning and research units to be charged directly based on the percent of work in these units that was performed with FHWA planning and research funds. One of the basic criteria in the Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments revised May 4, 1995, (available online at *http://www.whitehouse.gov/omb/circulars/a087/toc.html)* is that costs be treated consistently in order to be allowed to be charged to Federal grants. Now that

State DOTs can charge indirect costs to all FHWA projects, it would be inappropriate to continue this pro-rata charge for selected units of the State DOT. In addition there is a potential the portion of these salaries that are charged directly would mistakenly be included with the remainder of the salaries in the State DOTs indirect cost pool. This would result in these costs being recovered both directly and indirectly,

funds expended by the State or MPO. Since these terms are defined in other regulations that are cited in 23 CFR part 420, we have not added the definitions. The requirement that use of in-kind contributions as the match for FHWA planning and research funds is not retroactive. However, it has always been required that the source of matching funds be identified.

One State DOT commented that the

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule addresses the administrative procedures and

principles and criteria contained in Executive Order 13132.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

assigned OMB control number 2125–0039 (expiration date, April 30, 2004).

Executive Order 12630 (Taking of Private Property)

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

State DOTs can charge indirect costs to all FHWA projects, it would be inappropriate to continue this pro-rata charge for selected units of the State DOT. In addition there is a potential the portion of these salaries that are charged directly would mistakenly be included with the remainder of the salaries in the State DOTs indirect cost pool. This would result in these costs being recovered both directly and indirectly, which is not permitted. Therefore, the final rule retains the revision to this provision proposed in the NPRM. Effective with the first State DOT fiscal year beginning after the effective date of this rule indicated above, these salaries may no longer be charged on a pro-rata basis.

Section 420.119

One State DOT asked for clarification of the term "third-party" as opposed to "subrecipient" in § 420.119 and asked if a local government receiving metropolitan planning funds is a subrecipient or a third-party and that definitions of these terms be included in the regulation. This same commenter asked if the "new requirement" that the use of in-kind contributions be approved in advance by the FHWA would be made retroactive for current programs or projects.

Since local governments, which by definition in OMB Circular A–87 and U.S. DOT grant regulations at 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (available online at *http://www.access.gpo.gov/ecfr),* includes agencies such as councils of government and regional planning agencies that provide MPO staff services, receive FHWA planning and research funds through the State DOTs and not directly from the FHWA, local governments and other agencies that receive these funds are subrecipients. As defined in 49 CFR part 18, "third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement." A local government can be both a subrecipient and a "third-party." For example, if the local government receives Federal funds from a State DOT or MPO, it would be a subrecipient of the State or MPO; a local government that donates services (such as collection of traffic data) to a State DOT or MPO without charge would be a third-party and the State DOT or MPO could use the value of the donated services to match the Federal funds expended by the State or MPO. Since these terms are defined in other regulations that are cited in 23 CFR part 420, we have not added the definitions. The requirement that use of in-kind contributions as the match for FHWA planning and research funds is not retroactive. However, it has always been required that the source of matching funds be identified.

One State DOT commented that the provision for waiver of matching in § 420.119(d) would have positive impacts where local match is difficult for an MPO to obtain.

As indicated in § 420.119(d), the waiver provision is not intended for individual situations such as this, but to encourage State DOTs and MPOs to pool their SPR or PL funds to address issues of common concern.

Section 420.207

One State DOT mentioned that it did not support the concept in § 420.207 that RD&T studies funded under previous work programs should be shown in subsequent work programs because it would create extra paperwork. It mentioned that this is a tracking issue and that the work program is not a tracking tool.

The work program is a mandatory requirement used to justify expenditure of State planning and research funds. If there is no commitment of funds on a given study during the work program period and the study is incomplete (*e.g.,* awaiting review of final report, *etc.*), this fact must be noted on the work program until the study is closed out. That is, there must be a reconciliation between the funds spent and the required deliverable or product at some point. This should not require significant additional paperwork, only a line acknowledging the status of the study until it is closed out.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. This final rule will not adversely affect, in a material way, any sector of the economy. In addition, it will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule addresses the administrative procedures and requirements that State DOTs must comply with when using FHWA planning and research funds provided under title 23, U.S. Code. This rule would not impose any direct requirement on small entities that would result in increased economic costs. For these reasons, the FHWA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This final rule updates the existing rule to conform to provisions in the TEA–21 and makes it clearer and easier to understand. The costs of compliance with the provisions of this rule are minor and are eligible for Federal funding.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The rule provides State DOTs the authority and flexibility to manage their federally assisted State planning and research programs using their own procedures to the extent permitted under the principles and criteria contained in OMB Circular A–102, Grants and Cooperative Agreements with State and Local Governments. Accordingly, the FHWA certifies that this rule does not have sufficient federalism implications to warrant the preparation of a full Federalism assessment under the principles and criteria contained in Executive Order 13132.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to FHWA planning and research fund grants.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action contains collection of information requirements for the purposes of the PRA. These information collections are currently approved by the OMB, and there are no burden revisions to them as a result of this action.

The information collection requirements referenced in § 420.105(b) are assigned OMB control numbers 2125–0028 (expiration date, February 28, 2003) and 2125–0032 (expiration date, March 31, 2003).

The FHWA is responsible for transportation planning and research, development and technology (RD&T) work performed by State DOTs with funds provided under the provisions of 23 U.S.C. 505 or other 23 U.S.C. funds, as identified in the definition of FHWA planning and research funds in 23 CFR 420.103, used for such purposes at a State DOT's option. Therefore, the information collection requirements in §§ 420.111, 420.117, and 420.209 for State DOT planning and RD&T activities are assigned an FHWA OMB control number 2125–0039 (expiration date, April 30, 2004). Although 23 CFR part 420 also includes administrative requirements and procedures for funds provided for Metropolitan Planning Organizations (MPOs) to carry out the requirements of 23 U.S.C. 134, the metropolitan planning process is a jointly funded and administered FHWA/Federal Transit Administration (FTA) requirement. The information collection requirements in §§ 420.111 and 420.117, for work performed by the MPOs is assigned an FTA OMB control number 2132–0529 (expiration date, March 31, 2004).

The information collection requirements referenced in § 420.209 are assigned OMB control number 2125–0039 (expiration date, April 30, 2004).

Executive Order 12630 (Taking of Private Property)

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The agency has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 420

Accounting, Grant programs—transportation, Highways and roads, Planning, Reporting and recordkeeping requirements, Research.

Issued on: July 12, 2002.

Mary E. Peters,

Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA revises 23 CFR part 420, to read as set forth below:

PART 420—PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Subpart A—Administration of FHWA Planning and Research Funds

Sec.
420.101 What is the purpose of this part?
420.103 How does the FHWA define the terms used in this part?
420.105 What is the FHWA's policy on use of FHWA planning and research funds?
420.107 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?
420.109 What are the requirements for distribution of metropolitan planning funds?
420.111 What are the documentation requirements for use of FHWA planning and research funds?
420.113 What costs are eligible?
420.115 What are the FHWA approval and authorization requirements?
420.117 What are the program monitoring and reporting requirements?
420.119 What are the fiscal requirements?
420.121 What other requirements apply to the administration of FHWA planning and research funds?

Subpart B—Research, Development, and Technology Transfer Program Management

420.201 What is the purpose of this subpart?
420.203 How does the FHWA define the terms used in this subpart?
420.205 What is FHWA's for policy research, development, and technology transfer funding?
420.207 What are the requirements for research, development, and technology transfer work programs?
420.209 What are the conditions for approval?

PART 420—PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Authority: 23 U.S.C. 103(b)(6), 104(f), 115, 120, 133(b), 134(n), 303(g), 505, and 315; and 49 CFR 1.48(b).

Subpart A—Administration of FHWA Planning and Research Funds

§ 420.101 What is the purpose of this part?
§ 420.103 How does the FHWA define the terms used in this part?
§ 420.105 What is the FHWA's policy on use of FHWA planning and research funds?
§ 420.107 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?
§ 420.109 What are the requirements for distribution of metropolitan planning funds?
§ 420.111 What are the documentation requirements for use of FHWA planning and research funds?
§ 420.113 What costs are eligible?
§ 420.115 What are the FHWA approval and authorization requirements?
§ 420.117 What are the program monitoring and reporting requirements?
§ 420.119 What are the fiscal requirements?
§ 420.121 What other requirements apply to the administration of FHWA planning and research funds?

§ 420.101 What is the purpose of this part?

The purpose of this part is to prescribe policies and procedures for administration of FHWA planning and research funds.

§ 420.103 How does the FHWA define the terms used in this part?

As used in this part:

Administrative costs means costs incurred in performing activities such as general management, supervision, and coordination of a particular program.

Applied research means research activities directed toward the application of scientific knowledge to meet a recognized need.

Basic research means research activities directed toward increasing knowledge in science.

Development means the systematic use of the knowledge or understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Engineering means the application of mathematics, scientific principles, and technical knowledge to the planning, design, construction, maintenance, and operation of efficient and safe highways and roads.

Implementation means the systematic use of the knowledge or understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Research means systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

Technology transfer means the systematic process of sharing knowledge that will lead to the development of useful materials, devices, systems, or methods.

§ 420.105 What is the FHWA's policy on use of FHWA planning and research funds?

(a) The FHWA planning and research funds may be used for transportation planning and research, development and technology transfer activities as authorized by 23 U.S.C. 104(b)(3) used for highway and transit research and development and technology transfer programs, surface transportation planning programs, or development and establishment of management systems under 23 U.S.C. 303; and

(5) Minimum guarantee (MG) funds authorized under 23 U.S.C. 505 used for transportation planning and research, development and technology transfer activities administered by the FHWA, a lead State DOT, or other organization that is supported by two or more participants and that addresses an issue of significant or widespread interest related to highway, public, or intermodal transportation. A transportation pooled fund study is intended to address a new area or provide information that will complement or advance previous

information collection requirements in paragraph (b) of § 420.105 have been approved by the Office of Management and Budget (OMB) under control numbers 2125–0028 and 2125–0032.)

§ 420.107 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?

(a) A State DOT must expend no less than 25 percent of its annual SPR funds requirement or substantially increase its RD&T expenditures over a multi-year period, if an exception is granted for the fiscal year.

(5) Whether Federal funds needed for planning exceed the 75 percent limit for the fiscal year and whether any unused planning funds are available from previous fiscal years.

(d) If the FHWA Associate Administrator for Research, Development, and Technology approves

transportation planning outside of metropolitan planning areas.

(e) In accordance with the provisions of 23 U.S.C. 134(n), any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 in any State may be made available by the MPO(s) to the State DOT for funding statewide planning activities under 23 U.S.C. 135, subject to approval by the FHWA Division Administrator.

(f) Any State PL fund distribution

PART 420—PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Authority: 23 U.S.C. 103(b)(6), 104(f), 115, 120, 133(b), 134(n), 303(g), 505, and 315; and 49 CFR 1.48(b).

Subpart A—Administration of FHWA Planning and Research Funds

§ 420.101 What is the purpose of this part?

This part prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of activities undertaken by State departments of transportation (State DOTs) and their subrecipients, including metropolitan planning organizations (MPOs), with FHWA planning and research funds. Subpart A identifies the administrative requirements that apply to use of FHWA planning and research funds both for planning and for research, development, and technology transfer (RD&T) activities. Subpart B describes the policies and procedures that relate to the approval and authorization of RD&T work programs. The requirements in this part supplement those in 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

§ 420.103 How does the FHWA define the terms used in this part?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

FHWA planning and research funds include:

(1) State planning and research (SPR) funds (the two percent set aside of funds apportioned or allocated to a State DOT for activities authorized under 23 U.S.C. 505);

(2) Metropolitan planning (PL) funds (the one percent of funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134);

(3) National highway system (NHS) funds authorized under 23 U.S.C. 104(b)(1) used for transportation planning in accordance with 23 U.S.C. 134 and 135, highway research and planning in accordance with 23 U.S.C. 505, highway-related technology transfer activities, or development and establishment of management systems under 23 U.S.C. 303;

(4) Surface transportation program (STP) funds authorized under 23 U.S.C. 104(b)(3) used for highway and transit research and development and technology transfer programs, surface transportation planning programs, or development and establishment of management systems under 23 U.S.C. 303; and

(5) Minimum guarantee (MG) funds authorized under 23 U.S.C. 505 used for transportation planning and research, development and technology transfer activities that are eligible under title 23, U.S.C.

Grant agreement means a legal instrument reflecting a relationship between an awarding agency and a recipient or subrecipient when the principal purpose of the relationship is to transfer a thing of value to the recipient or subrecipient to carry out a public purpose of support or stimulation authorized by a law instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5305 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

National Cooperative Highway Research Program (NCHRP) means the cooperative RD&T program directed toward solving problems of national or regional significance identified by State DOTs and the FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

Procurement contract means a legal instrument reflecting a relationship between an awarding agency and a recipient or subrecipient when the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

State Department of Transportation (State DOT) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

Transportation management area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) and designated by the Secretary of Transportation or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Secretary of Transportation.

Transportation pooled fund study means a planning, research, development, or technology transfer activity administered by the FHWA, a lead State DOT, or other organization that is supported by two or more participants and that addresses an issue of significant or widespread interest related to highway, public, or intermodal transportation. A transportation pooled fund study is intended to address a new area or provide information that will complement or advance previous investigations of the subject matter.

Work program means a periodic statement of proposed work, covering no less than one year, and estimated costs that documents eligible activities to be undertaken by State DOTs and/or their subrecipients with FHWA planning and research funds.

§ 420.105 What is the FHWA's policy on use of FHWA planning and research funds?

(a) If the FHWA determines that planning activities of national significance, identified in paragraph (b) of this section, and the requirements of 23 U.S.C. 134, 135, 303, and 505 are being adequately addressed, the FHWA will allow State DOTs and MPOs:

(1) Maximum possible flexibility in the use of FHWA planning and research funds to meet highway and local public transportation planning and RD&T needs at the national, State, and local levels while ensuring legal use of such funds and avoiding unnecessary duplication of efforts; and

(2) To determine which eligible planning and RD&T activities they desire to support with FHWA planning and research funds and at what funding level.

(b) The State DOTs must provide data that support the FHWA's responsibilities to the Congress and to the public. These data include, but are not limited to, information required for: preparing proposed legislation and reports to the Congress; evaluating the extent, performance, condition, and use of the Nation's transportation systems; analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; maintaining a critical information base on fuel availability, use, and revenues generated; and calculating apportionment factors.

(c) The policy in paragraph (a) of this section does not remove the FHWA's responsibility and authority to determine which activities are eligible for funding. Activities proposed to be funded with FHWA planning and research funds by the State DOTs and their subrecipients shall be documented and submitted for FHWA approval and authorization as prescribed in §§ 420.111 and 420.113. (The information collection requirements in paragraph (b) of § 420.105 have been approved by the Office of Management and Budget (OMB) under control numbers 2125–0028 and 2125–0032.)

§ 420.107 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?

(a) A State DOT must expend no less than 25 percent of its annual SPR funds on RD&T activities relating to highway, public transportation, and intermodal transportation systems in accordance with the provisions of 23 U.S.C. 505(b), unless a State DOT certifies, and the FHWA accepts the State DOT's certification, that total expenditures by the State DOT during the fiscal year for transportation planning under 23 U.S.C. 134 and 135 will exceed 75 percent of the amount apportioned for the fiscal year.

(b) Prior to submitting a request for an exception to the 25 percent requirement, the State DOT must ensure that:

(1) The additional planning activities are essential, and there are no other reasonable options available for funding these planning activities (including the use of NHS, STP, MG, or FTA State planning and research funds (49 U.S.C. 5313(b)) or by deferment of lower priority planning activities);

(2) The planning activities have a higher priority than RD&T activities in the overall needs of the State DOT for a given fiscal year; and

(3) The total level of effort by the State DOT in RD&T (using both Federal and State funds) is adequate.

(c) If the State DOT chooses to pursue an exception, it must send the request, along with supporting justification, to the FHWA Division Administrator for action by the FHWA Associate Administrator for Research, Development, and Technology. The Associate Administrator's decision will be based upon the following considerations:

(1) Whether the State DOT has a process for identifying RD&T needs and for implementing a viable RD&T program.

(2) Whether the State DOT is contributing to cooperative RD&T programs or activities, such as the National Cooperative Highway Research Program, the Transportation Research Board, and transportation pooled fund studies.

(3) Whether the State DOT is using SPR funds for technology transfer and for transit or intermodal research and development to help meet the 25 percent minimum requirement.

(4) Whether the State DOT can demonstrate that it will meet the requirement or substantially increase its RD&T expenditures over a multi-year period, if an exception is granted for the fiscal year.

(5) Whether Federal funds needed for planning exceed the 75 percent limit for the fiscal year and whether any unused planning funds are available from previous fiscal years.

(d) If the FHWA Associate Administrator for Research, Development, and Technology approves the State DOT's request for an exception, the exception is valid only for that fiscal year's funds. A new request must be submitted and approved for subsequent fiscal year funds.

§ 420.109 What are the requirements for distribution of metropolitan planning funds?

(a) The State DOTs shall make all PL funds authorized by 23 U.S.C. 104(f) available to the MPOs in accordance with a formula developed by the State DOT, in consultation with the MPOs, and approved by the FHWA Division Administrator. The formula may allow for a portion of the PL funds to be used by the State DOT, or other agency agreed to by the State DOT and the MPOs, for activities that benefit all MPOs in the State, but State DOTs shall not use any PL funds for grant or subgrant administration. The formula may also provide for a portion of the funds to be made available for discretionary grants to MPOs to supplement their annual amount received under the distribution formula.

(b) In developing the formula for distributing PL funds, the State DOT shall consider population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law.

(c) The State DOTs shall inform the MPOs and the FHWA Division Office of the amounts allocated to each MPO as soon as possible after PL funds have been apportioned by the FHWA to the State DOTs.

(d) If the State DOT, in a State receiving the minimum apportionment of PL funds under the provisions of 23 U.S.C. 104(f)(2), determines that the share of funds to be allocated to any MPO results in the MPO receiving more funds than necessary to carry out the provisions of 23 U.S.C. 134, the State DOT may, after considering the views of the affected MPO(s) and with the approval of the FHWA Division Administrator, use those funds for transportation planning outside of metropolitan planning areas.

(e) In accordance with the provisions of 23 U.S.C. 134(n), any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 in any State may be made available by the MPO(s) to the State DOT for funding statewide planning activities under 23 U.S.C. 135, subject to approval by the FHWA Division Administrator.

(f) Any State PL fund distribution formula that does not meet the requirements of paragraphs (a) and (b) of this section shall be brought into conformance with those requirements before distribution on any new apportionment of PL funds.

§ 420.111 What are the documentation requirements for use of FHWA planning and research funds?

(a) Proposed use of FHWA planning and research funds must be documented by the State DOTs and subrecipients in a work program, or other document that describes the work to be accomplished, that is acceptable to the FHWA Division Administrator. Statewide, metropolitan, other transportation planning activities, and transportation RD&T activities may be documented in separate programs, paired in various combinations, or brought together as a single work program. The expenditure of PL funds for transportation planning outside of metropolitan planning areas under § 420.109(d) may be included in the work program for statewide transportation planning activities or in a separate work program submitted by the State DOT.

(b)(1) A work program(s) for transportation planning activities must include a description of work to be accomplished and cost estimates by activity or task. In addition, each work program must include a summary that shows:

(i) Federal share by type of fund;

(ii) Matching rate by type of fund;

(iii) State and/or local matching share; and

(iv) Other State or local funds.

(2) Additional information on metropolitan planning area work programs is contained in 23 CFR part 450. Additional information on RD&T work program content and format is contained in subpart B of this part.

(c) In areas not designated as TMAs, a simplified statement of work that describes who will perform the work and the work that will be accomplished using Federal funds may be used in lieu of a work program. If a simplified statement of work is used, it may be submitted separately or as part of the Statewide planning work program.

(d) The State DOTs that use separate Federal-aid projects in accordance with paragraph (a) of this section must submit an overall summary that identifies the amounts and sources of FHWA planning and research funds available, matching funds, and the amounts budgeted for each activity (e.g., statewide planning, RD&T, each metropolitan area, contributions to NCHRP and transportation pooled fund

undertaken with FHWA planning and research funds. Such approvals and authorizations should be based on final work programs or other documents that describe the work to be performed. The State DOT and its subrecipients also must obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 or 49 CFR 19.25 and for those items of allowable costs which require approval in accordance with the cost principles specified in 49 CFR

activities performed by its staff or by subrecipients with FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b)(1) The State DOT must submit performance and expenditure reports, including a report from each subrecipient, that contain as a minimum:

(i) Comparison of actual performance

collection requirements in § 420.117 have been approved by the OMB and assigned control numbers 2125–0039 for States and 2132–0529 for MPOs.)

§ 420.119 What are the fiscal requirements?

(a) The maximum rate of Federal participation for FHWA planning and research funds shall be as prescribed in title 23, U.S.C., for the specific class of funds used (*i.e.*, SPR, PL, NHS, STP, or

period is not sufficient to match the total expenditure of Federal funds by the recipient/subrecipient, the recipient/subrecipient will need to make up any shortfall with its own funds.

(c) In accordance with the provisions of 23 U.S.C. 120(j), toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose

Organizations.[2] Audits of for-profit contractors are to be performed in accordance with State DOT or subrecipient contract administration procedures.

(b) *Copyrights.* The State DOTs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive

(d) The State DOTs that use separate Federal-aid projects in accordance with paragraph (a) of this section must submit an overall summary that identifies the amounts and sources of FHWA planning and research funds available, matching funds, and the amounts budgeted for each activity (e.g., statewide planning, RD&T, each metropolitan area, contributions to NCHRP and transportation pooled fund studies, etc.).

(e) The State DOTs and MPOs also are encouraged to include cost estimates for transportation planning, research, development, and technology transfer related activities funded with other Federal or State and/or local funds; particularly for producing the FHWA-required data specified in paragraph (b) of § 420.105, for planning for other transportation modes, and for air quality planning activities in areas designated as non-attainment for transportation-related pollutants in their work programs. The MPOs in TMAs must include such information in their work programs. (The information collection requirements in §§ 420.111 have been approved by the OMB and assigned control numbers 2125–0039 for States and 2132–0529 for MPOs.)

§ 420.113 What costs are eligible?

(a) Costs will be eligible for FHWA participation provided that the costs:

(1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;

(2) Are verifiable from the State DOT's or the subrecipient's records;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;

(4) Are included in the approved budget, or amendment thereto; and

(5) Were not incurred prior to FHWA authorization.

(b) Indirect costs of State DOTs and their subrecipients are allowable if supported by a cost allocation plan and indirect cost proposal prepared, submitted (if required), and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the State DOT or subrecipient specified in 49 CFR 18.22(b).

§ 420.115 What are the FHWA approval and authorization requirements?

(a) The State DOT and its subrecipients must obtain approval and authorization to proceed prior to beginning work on activities to be undertaken with FHWA planning and research funds. Such approvals and authorizations should be based on final work programs or other documents that describe the work to be performed. The State DOT and its subrecipients also must obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 or 49 CFR 19.25 and for those items of allowable costs which require approval in accordance with the cost principles specified in 49 CFR 18.22(b) applicable to the entity expending the funds.

(b) Authorization to proceed with the FHWA funded work in whole or in part is a contractual obligation of the Federal government pursuant to 23 U.S.C. 106 and requires that appropriate funds be available for the full Federal share of the cost of work authorized. Those State DOTs that do not have sufficient FHWA planning and research funds or obligation authority available to obligate the full Federal share of a work program or project may utilize the advance construction provisions of 23 U.S.C. 115(a) in accordance with the requirements of 23 CFR part 630, subpart G. The State DOTs that do not meet the advance construction provisions, or do not wish to utilize them, may request authorization to proceed with that portion of the work for which FHWA planning and research funds are available. In the latter case, authorization to proceed may be given for either selected work activities or for a portion of the program period, but such authorization does not constitute a commitment by the FHWA to fund the remaining portion of the work if additional funds do become available.

(c) A project agreement must be executed by the State DOT and the FHWA Division Office for each statewide transportation planning, metropolitan planning area, or RD&T work program, individual activity or study, or any combination administered as a single Federal-aid project. The project agreement may be executed concurrent with or after authorization has been given by the FHWA Division Administrator to proceed with the work in whole or in part. In the event that the project agreement is executed for only part of the work, the project agreement must be amended when authorization is given to proceed with additional work.

(The information collection requirements in § 420.115(c) have been approved by the OMB and assigned control numbers 2125–0529.)

§ 420.117 What are the program monitoring and reporting requirements?

(a) In accordance with 49 CFR 18.40, the State DOT shall monitor all activities performed by its staff or by subrecipients with FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b)(1) The State DOT must submit performance and expenditure reports, including a report from each subrecipient, that contain as a minimum:

(i) Comparison of actual performance with established goals;

(ii) Progress in meeting schedules;

(iii) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;

(iv) Cost overruns or underruns;

(v) Approved work program revisions; and

(vi) Other pertinent supporting data.

(2) Additional information on reporting requirements for individual RD&T studies is contained in subpart B of this part.

(c) Reports required by paragraph (b) of this section shall be annual unless more frequent reporting is determined to be necessary by the FHWA Division Administrator. The FHWA may not require more frequent than quarterly reporting unless the criteria in 49 CFR 18.12 or 49 CFR 19.14 are met. Reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after the end of the reporting period for other reports.

(d) Events that have significant impact on the work must be reported as soon as they become known. The types of events or conditions that require reporting include: problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure must be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(e) Suitable reports that document the results of activities performed with FHWA planning and research funds must be prepared by the State DOT or subrecipient and submitted for approval by the FHWA Division Administrator prior to publication. The FHWA Division Administrator may waive this requirement for prior approval. The FHWA's approval of reports constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations. Reports prepared for FHWA-funded work must include appropriate credit references and disclaimer statements. (The information

collection requirements in § 420.117 have been approved by the OMB and assigned control numbers 2125–0039 for States and 2132–0529 for MPOs.)

§ 420.119 What are the fiscal requirements?

(a) The maximum rate of Federal participation for FHWA planning and research funds shall be as prescribed in title 23, U.S.C., for the specific class of funds used (*i.e.*, SPR, PL, NHS, STP, or MG) except as specified in paragraph (d) of this section. The provisions of 49 CFR 18.24 or 49 CFR 19.23 are applicable to any necessary matching of FHWA planning and research funds.

(b) The value of third party in-kind contributions may be accepted as the match for FHWA planning and research funds, in accordance with the provisions of 49 CFR 18.24(a)(2) or 49 CFR 19.23(a) and may be on either a total planning work program basis or for specific line items or projects. The use of third party in-kind contributions must be identified in the original work program/scope of work and the grant/subgrant agreement, or amendments thereto. The use of third-party in-kind contributions must be approved in advance by the.FHWA Division Administrator and may not be made retroactive prior to approval of the work program/scope of work or an amendment thereto. The State DOT or subrecipient is responsible for ensuring that the following additional criteria are met:

(1) The third party performing the work agrees to allow the value of the work to be used as the match;

(2) The cost of the third party work is not paid for by other Federal funds or used as a match for other federally funded grants/subgrants;

(3) The work performed by the third party is an eligible transportation planning or RD&T related activity that benefits the federally funded work;

(4) The third party costs (*i.e.*, salaries, fringe benefits, *etc.*) are allowable under the applicable Office of Management and Budget (OMB) cost principles (*i.e.*, OMB Circular A–21, A–87, or A–122);[1]

(5) The third party work is performed during the period to which the matching requirement applies;

(6) The third party in-kind contributions are verifiable from the records of the State DOT or subrecipient and these records show how the value placed on third party in-kind contributions was derived; and

(7) If the total amount of third party expenditures at the end of the program period is not sufficient to match the total expenditure of Federal funds by the recipient/subrecipient, the recipient/subrecipient will need to make up any shortfall with its own funds.

(c) In accordance with the provisions of 23 U.S.C. 120(j), toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce may be used as a credit for the non-Federal share of an FHWA planning and research funded project.

(d) In accordance with 23 U.S.C. 505(c) or 23 U.S.C. 104(f)(3), the requirement for matching SPR or PL funds may be waived if the FHWA determines the interests of the Federal-aid highway program would be best served. Waiver of the matching requirement is intended to encourage State DOTs and/or MPOs to pool SPR and/or PL funds to address national or regional high priority planning or RD&T problems that would benefit multiple States and/or MPOs. Requests for waiver of matching requirements must be submitted to the FHWA headquarters office for approval by the Associate Administrator for Planning and Environment (for planning activities) or the Associate Administrator for Research, Development, and Technology (for RD&T activities). The matching requirement may not be waived for NHS, STP, or MG funds.

(e) NHS, STP, or MG funds used for eligible planning and RD&T purposes must be identified separately from SPR or PL funds in the work program(s) and must be administered and accounted for separately for fiscal purposes. In accordance with the statewide and metropolitan planning process requirements for fiscally constrained transportation improvement program (TIPs) planning or RD&T activities funded with NHS, STP, or MG funds must be included in the Statewide and/or metropolitan TIP(s) unless the State DOT and MPO (for a metropolitan area) agree that they may be excluded from the TIP.

(f) Payment shall be made in accordance with the provisions of 49 CFR 18.21 or 49 CFR 19.22.

§ 420.121 What other requirements apply to the administration of FHWA planning and research funds?

(a) *Audits.* Audits of the State DOTs and their subrecipients shall be performed in accordance with OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations.[2] Audits of for-profit contractors are to be performed in accordance with State DOT or subrecipient contract administration procedures.

(b) *Copyrights.* The State DOTs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(c) *Disadvantaged business enterprises.* The State DOTs must administer the transportation planning and RD&T program(s) consistent with their overall efforts to implement section 1001(b) of the Transportation Equity Act for the 21st Century (Pub. L. 105–178) and 49 CFR part 26 regarding disadvantaged business enterprises.

(d) *Drug free workplace.* In accordance with the provisions of 49 CFR part 29, subpart F, State DOTs must certify to the FHWA that they will provide a drug free workplace. This requirement may be satisfied through the annual certification for the Federal-aid highway program.

(e) *Equipment.* Acquisition, use, and disposition of equipment purchased with FHWA planning and research funds by the State DOTs must be in accordance with 49 CFR 18.32(b). Local government subrecipients of State DOTs must follow the procedures specified by the State DOT. Universities, hospitals, and other non-profit organizations must follow the procedures in 49 CFR 19.34.

(f) *Financial management systems.* The financial management systems of the State DOTs and their local government subrecipients must be in accordance with the provisions of 49 CFR 18.20(a). The financial management systems of universities, hospitals, and other non-profit organizations must be in accordance with 49 CFR 19.21.

(g) *Lobbying.* The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities are applicable to all tiers of recipients of FHWA planning and research funds.

(h) *Nondiscrimination.* The nondiscrimination provisions of 23 CFR parts 200 and 230 and 49 CFR part 21, with respect to Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, apply to all programs and activities of recipients, subrecipients, and contractors receiving FHWA planning and research funds

[1] OMB Circulars are available on the Internet at *http://www.whitehouse.gov/omb/circulars/index.html*.

[2] See footnote 1.

whether or not those programs or activities are federally funded.

(i) *Patents.* The State DOTs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for § 401.14(g), in all subgrants or contracts. In addition, State DOTs and their subrecipients must include the following clause, suitably modified to

to MPOs and local governments and must ensure that the requirements of 49 CFR 18.37(a) have been satisfied.

(n) *Subgrants to universities, hospitals, and other non-profit organizations.* The State DOTs and subrecipients are responsible for ensuring that FHWA planning and research funds passed through to universities, hospitals, and other non-profit organizations are expended for eligible activities and for ensuring that

is to answer a question or solve a problem.

Basic research means the study of phenomena, and of observable facts, without specific applications towards processes or products in mind; the primary purpose of this kind of research is to increase knowledge.

Development means the systematic use of the knowledge or understanding gained from research, directed toward the production of useful materials,

utilizing FHWA planning and research funds consistent with the policy specified in § 420.105 and the following general principles in paragraphs (b) through (g) of this section.

(b) The State DOTs must provide information necessary for peer exchanges.

(c) The State DOTs are encouraged to develop, establish, and implement an RD&T program, funded with Federal and State DOT resources that anticipates

advisory panels and in program exchange meetings is encouraged.

§ 420.207 What are the requirements for research, development, and technology transfer work programs?

(a) The State DOT's RD&T work program must, as a minimum, consist of a description of RD&T activities to be accomplished during the program period, estimated costs for each eligible activity, and a description of any

outputs, and to facilitate peer exchanges of its RD&T Program on a periodic basis;

(6) Procedures for documenting RD&T activities through the preparation of final reports. As a minimum, the documentation must include the data collected, analyses performed, conclusions, and recommendations. The State DOT must actively implement appropriate research findings and should document benefits; and

(7) Participation in peer exchanges of

whether or not those programs or activities are federally funded.

(i) *Patents.* The State DOTs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for § 401.14(g), in all subgrants or contracts. In addition, State DOTs and their subrecipients must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

(j) *Procurement.* Procedures for the procurement of property and services with FHWA planning and research funds by the State DOTs must be in accordance with 49 CFR 18.36(a) and (i) and, if applicable, 18.36(t). Local government subrecipients of State DOTs must follow the procedures specified by the State DOT. Universities, hospitals, and other non-profit organizations must follow the procedures in 49 CFR 19.40 through 19.48. The State DOTs and their subrecipients must not use FHWA funds for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended in accordance with the provisions of 49 CFR part 29, subparts A through E.

(k) *Program income.* Program income, as defined in 49 CFR 18.25(b) or 49 CFR 19.24, must be shown and deducted from total expenditures to determine the Federal share to be reimbursed, unless the FHWA Division Administrator has given prior approval to use the program income to perform additional eligible work or as the non-Federal match.

(l) *Record retention.* Recordkeeping and retention requirements must be in accordance with 49 CFR 18.42 or 49 CFR 19.53.

(m) *Subgrants to local governments.* The State DOTs and subrecipients are responsible for administering FHWA planning and research funds passed through to MPOs and local governments, for ensuring that such funds are expended for eligible activities, and for ensuring that the funds are administered in accordance with this part, 49 CFR part 18, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments, and applicable OMB cost principles. The State DOTs shall follow State laws and procedures when awarding and administering subgrants to MPOs and local governments and must onsure that the requirements of 49 CFR 18.37(a) have been satisfied.

(n) *Subgrants to universities, hospitals, and other non-profit organizations.* The State DOTs and subrecipients are responsible for ensuring that FHWA planning and research funds passed through to universities, hospitals, and other non-profit organizations are expended for eligible activities and for ensuring that the funds are administered in accordance with this part, 49 CFR part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and applicable OMB cost principles.

(o) *Suspension and debarment.* (1) The State DOTs and their subrecipients shall not award grants or cooperative agreements to entities who are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 of February 18, 1986 (3 CFR, 1986 Comp., p. 189); and

(2) The State DOTs and their subrecipients shall comply with the provisions of 49 CFR part 29, subparts A through E, for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended.

(p) *Supplies.* Acquisition and disposition of supplies acquired by the State DOTs and their subrecipients with FHWA planning and research funds must be in accordance with 49 CFR 18.33 or 49 CFR 19.35.

Subpart B—Research, Development and Technology Transfer Program Management

§ 420.201 What is the purpose of this subpart?

The purpose of this subpart is to prescribe requirements for research, development, and technology transfer (RD&T) activities, programs, and studies undertaken by State DOTs and their subrecipients with FHWA planning and research funds.

§ 420.203 How does the FHWA define the terms used in this subpart?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and subpart A of this part, are applicable to this subpart. As used in this subpart:

Applied research means the study of phenomena to gain knowledge or understanding necessary for determining the means by which a recognized need may be met; the primary purpose of this kind of research is to answer a question or solve a problem.

Basic research means the study of phenomena, and of observable facts, without specific applications towards processes or products in mind; the primary purpose of this kind of research is to increase knowledge.

Development means the systematic use of the knowledge or understanding gained from research, directed toward the production of useful materials, devices, systems or methods, including design and development of prototypes and processes.

Final report means a report documenting a completed RD&T study or activity.

Intermodal RD&T means research, development, and technology transfer activities involving more than one mode of transportation, including transfer facilities between modes.

Peer exchange means a periodic review of a State DOT's RD&T program, or portion thereof, by representatives of other State DOT's, for the purpose of exchange of information or best practices. The State DOT may also invite the participation of the FHWA, and other Federal, State, regional or local transportation agencies, the Transportation Research Board, academic institutions, foundations or private firms that support transportation research, development or technology transfer activities.

RD&T activity means a basic or applied research project or study, development or technology transfer activity.

Research means a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. Research can be basic or applied.

Technology transfer means those activities that lead to the adoption of a new technique or product by users and involves dissemination, demonstration, training, and other activities that lead to eventual innovation.

Transportation Research Information Services (TRIS) means the database produced and maintained by the Transportation Research Board and available online through the National Transportation Library. TRIS includes bibliographic records and abstracts of on-going and completed RD&T activities. TRIS Online also includes links to the full text of public-domain documents.

§ 420.205 What is the FHWA's policy for research, development, and technology transfer funding?

(a) It is the FHWA's policy to administer the RD&T program activities

utilizing FHWA planning and research funds consistent with the policy specified in § 420.105 and the following general principles in paragraphs (b) through (g) of this section.

(b) The State DOTs must provide information necessary for peer exchanges.

(c) The State DOTs are encouraged to develop, establish, and implement an RD&T program, funded with Federal and State DOT resources that anticipates and addresses transportation concerns before they become critical problems. Further, the State DOTs are encouraged to include in this program development and technology transfer programs to share the results of their own research efforts and promote the use of new technology.

(d) To promote effective use of available resources, the State DOTs are encouraged to cooperate with other State DOTs, the FHWA, and other appropriate agencies to achieve RD&T objectives established at the national level and to develop a technology transfer program to promote and use those results. This includes contributing to cooperative RD&T programs such as the NCHRP, the TRB, and transportation pooled fund studies as a means of addressing national and regional issues and as a means of leveraging funds.

(e) The State DOTs will be allowed the authority and flexibility to manage and direct their RD&T activities as presented in their work programs, and to initiate RD&T activities supported by FHWA planning and research funds, subject to the limitation of Federal funds and to compliance with program conditions set forth in subpart A of this part and § 420.207.

(f) The State DOTs will have primary responsibility for managing RD&T activities supported with FHWA planning and research funds carried out by other State agencies and organizations and for ensuring that such funds are expended for purposes consistent with this subpart.

(g) Each State DOT must develop, establish, and implement a management process that ensures effective use of available FHWA planning and research funds for RD&T activities on a statewide basis. Each State DOT is permitted to tailor its management process to meet State or local needs; however, the process must comply with the minimum requirements and conditions of this subpart.

(h) The State DOTs are encouraged to make effective use of the FHWA Division, Resource Center, and Headquarters office expertise in developing and carrying out their RD&T activities. Participation of the FHWA on advisory panels and in program exchange meetings is encouraged.

§ 420.207 What are the requirements for research, development, and technology transfer work programs?

(a) The State DOT's RD&T work program must, as a minimum, consist of a description of RD&T activities to be accomplished during the program period, estimated costs for each eligible activity, and a description of any cooperative activities including the State DOT's participation in any transportation pooled fund studies and the NCHRP. The State DOT's work program should include a list of the major items with a cost estimate for each item. The work program should also include any study funded under a previous work program until a final report has been completed for the study.

(b) The State DOT's RD&T work program must include financial summaries showing the funding levels and share (Federal, State, and other sources) for RD&T activities for the program year. State DOTs are encouraged to include any activity funded 100 percent with State or other funds for information purposes.

(c) Approval and authorization procedures in § 420.115 are applicable to the State DOT's RD&T work program.

§ 420.209 What are the conditions for approval?

(a) As a condition for approval of FHWA planning and research funds for RD&T activities, a State DOT must develop, establish, and implement a management process that identifies and results in implementation of RD&T activities expected to address high priority transportation issues. The management process must include:

(1) An interactive process for identification and prioritization of RD&T activities for inclusion in an RD&T work program;

(2) Use of all FHWA planning and research funds set aside for RD&T activities, either internally or for participation in transportation pooled fund studies or other cooperative RD&T programs, to the maximum extent possible;

(3) Procedures for tracking program activities, schedules, accomplishments, and fiscal commitments;

(4) Support and use of the TRIS database for program development, reporting of active RD&T activities, and input of the final report information;

(5) Procedures to determine the effectiveness of the State DOT's management process in implementing the RD&T program, to determine the utilization of the State DOT's RD&T outputs, and to facilitate peer exchanges of its RD&T Program on a periodic basis;

(6) Procedures for documenting RD&T activities through the preparation of final reports. As a minimum, the documentation must include the data collected, analyses performed, conclusions, and recommendations. The State DOT must actively implement appropriate research findings and should document benefits; and

(7) Participation in peer exchanges of its RD&T management process and of other State DOTs' programs on a periodic basis. To assist peer exchange teams in conducting an effective exchange, the State DOT must provide to them the information and documentation required to be collected and maintained under this subpart. Travel and other costs associated with the State DOT's peer exchange may be identified as a line item in the State DOT's work program and will be eligible for 100 percent Federal funding. The peer exchange team must prepare a written report of the exchange.

(b) Documentation that describes the State DOT's management process and the procedures for selecting and implementing RD&T activities must be developed by the State DOT and submitted to the FHWA Division office for approval. Significant changes in the management process also must be submitted by the State DOT to the FHWA for approval. The State DOT must make the documentation available, as necessary, to facilitate peer exchanges.

(c) The State DOT must include a certification that it is in full compliance with the requirements of this subpart in each RD&T work program. If the State DOT is unable to certify full compliance, the FHWA Division Administrator may grant conditional approval of the State DOT's work program. A conditional approval must cite those areas of the State DOT's management process that are deficient and require that the deficiencies be corrected within 6 months of conditional approval. The certification must consist of a statement signed by the Administrator, or an official designated by the Administrator, of the State DOT certifying as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) is in compliance with all requirements of 23 U.S.C. 505 and its implementing regulations with respect to the research, development, and technology transfer program, and contemplate no changes in statutes, regulations, or administrative

procedures which would affect such compliance."

(d) The FHWA Division Administrator shall periodically review the State DOT's management process to determine if the State is in compliance with the requirements of this subpart. If the Division Administrator determines that a State DOT is not complying with the requirements of this subpart, or is not performing in accordance with its

filing joint returns who seek relief from joint and several liability.

EFFECTIVE DATE: These regulations are effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles A. Hall, 202–622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information

amended by section 313 of the Community Renewal Tax Relief Act of 2000, which was enacted as part of the Consolidated Appropriations Act, 2001, Public Law 106–554 (114 Stat. 2763)(2000)(CRA).

This document also removes final regulation § 1.6013–5, relating to relief from joint and several liability under former section 6013(e). The final regulation under § 1.6013–5 is obsolete

relief under section 6015(f), would have elected relief under section 6015(b) or (c). Such an assumption would improperly suspend the requesting spouse's statute of limitations on collection when the requesting spouse did not elect relief under section 6015(b) or (c). Thus, the final regulations do not adopt this recommendation.

If, in the course of reviewing a request for relief only under section 6015(f), the

was forced to sign a joint return against his or her will indicates that, in the absence of the threat, the spouse would have filed a separate return. In order to qualify for the earned income credit or the joint return rates, the Code mandates that the spouse file a joint return. If the spouse filed a joint return in order to benefit from the earned income credit, the joint return rates, or other benefits flowing from a joint return, and not due to duress, then the election to file the

specific duress provision in section 6015(c)(3)(C). See the discussion of the abuse exception to actual knowledge (§ 1.6015–3(c)(2)(v)) in section 3.B. of this preamble.

C. Prior Closing Agreement or Offer in Compromise

Section 1.6015–1(c) of the proposed regulations provides that relief is not available if the requesting spouse signed a closing agreement or entered into an

procedures which would affect such compliance."

(d) The FHWA Division Administrator shall periodically review the State DOT's management process to determine if the State is in compliance with the requirements of this subpart. If the Division Administrator determines that a State DOT is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the State DOT. The notice will set forth the reasons for the proposed determination and inform the State DOT that it may reply in writing within 30 calendar days from the date of the notice. The State DOT's reply should address the deficiencies cited in the notice and provide documentation as necessary. If the State DOT and the Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the State DOT may appeal to the Federal Highway Administrator whose action shall constitute the final decision of the FHWA. An adverse decision shall result in immediate withdrawal of approval of FHWA planning and research funds for the State DOT's RD&T activities until the State DOT is in full compliance.

(The information collection requirements in § 420.209 have been approved by the OMB and assigned control number 2125–0039.)

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9003]

RIN 1545–AW64

Relief From Joint and Several Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to relief from joint and several liability under section 6015 of the Internal Revenue Code. The regulations reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and by the Community Renewal Tax Relief Act of 2000. The regulations provide guidance to married individuals filing joint returns who seek relief from joint and several liability.

EFFECTIVE DATE: These regulations are effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles A. Hall, 202–622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1719. Responses to this collection of information are required in order for certain individuals to receive relief from the joint and several liability imposed by section 6013(d)(3).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The burden contained in § 1.6015–5 is reflected in the burden of Form 8857.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6013 of the Internal Revenue Code (Code), relating to the election to file a joint Federal income tax return, and section 6015, relating to relief from the joint and several liability. Section 6015 was added to the Code by section 3201 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998) (RRA), effective for any joint liability that was unpaid as of July 22, 1998, and for any liability that arises after July 22, 1998. Section 6015 was amended by section 313 of the Community Renewal Tax Relief Act of 2000, which was enacted as part of the Consolidated Appropriations Act, 2001, Public Law 106–554 (114 Stat. 2763)(2000)(CRA).

This document also removes final regulation § 1.6013–5, relating to relief from joint and several liability under former section 6013(e). The final regulation under § 1.6013–5 is obsolete due to amendments to section 6013 of the Code by the Internal Revenue Service Restructuring and Reform Act of 1998. The removal of this regulation will not affect taxpayers.

A notice of proposed rulemaking (REG–106446–98) was published in the **Federal Register** (66 FR 3888) on January 17, 2001, with correction dated March 29, 2001 (66 FR 17130). Several comment letters were received, and three of the commentators spoke at the public hearing on May 30, 2001. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

Summary of Comments and Explanation of Revisions

1. Section 1.6015–1

Section 1.6015–1 of the proposed regulations contains general provisions that apply to all three types of relief from joint and several liability.

A. Types of Relief Considered

Section 1.6015–1 of the proposed regulations provides that if a requesting spouse only requests equitable relief under section 6015(f) and does not elect relief under section 6015(b) or (c), the IRS may not grant relief under either section 6015(b) or (c). Several commentators suggested that, regardless of the type of relief requested, the regulations should require that the IRS consider all three types of relief.

Relief under section 6015(b) and (c) must be elected by the requesting spouse. When an election is made, the statute of limitations on collection of the requesting spouse's liability relating to such election is suspended. In addition, the IRS is statutorily prohibited from pursuing certain collection activities until the claim for relief under section 6015(b) or (c) is resolved. When, however, a requesting spouse only requests equitable relief under section 6015(f), the statute of limitations on collection is not suspended, and the IRS is not prohibited from collecting the liability from the requesting spouse. The IRS cannot assume, absent an election under section 6015(b) or (c), that a requesting spouse, in only requesting relief under section 6015(f), would have elected relief under section 6015(b) or (c). Such an assumption would improperly suspend the requesting spouse's statute of limitations on collection when the requesting spouse did not elect relief under section 6015(b) or (c). Thus, the final regulations do not adopt this recommendation.

If, in the course of reviewing a request for relief only under section 6015(f), the IRS determines that the requesting spouse may qualify for relief under section 6015(b) or (c) instead of section 6015(f), the IRS will contact the requesting spouse to see if he or she wishes to amend the claim for relief by affirmatively electing relief under section 6015(b) or (c). If the requesting spouse so chooses, he or she may submit a statement that amends the claim for relief and elects relief under section 6015(b) or (c). The final regulations provide that the amended claim for relief will relate back to the original claim for purposes of determining the timeliness of the claim.

B. Duress

Section 1.6013–4(d) of the proposed regulations provides that if an individual asserts and establishes that he or she signed a return under *legal duress*, the return is not a joint return, and the individual is not jointly and severally liable for the tax shown on the return, or any deficiency in tax with respect to the return.

Two commentators suggested that § 1.6013–4(d) of the proposed regulations improperly denies the benefits of section 6015 to those individuals who establish that they signed returns under duress. The rule in § 1.6013–4(d) reflects well established case law regarding the consequences of filing a joint return under duress. *Compare Stanley* v. *Commissioner*, 45 T.C. 555 (1966), with *Brown* v. *Commissioner*, 51 T.C. 116 (1968). Under section 6013, married taxpayers may elect to file a joint return. If such an election is made, section 6013(d)(3) provides that both spouses are jointly and severally liable for the combined liability of both spouses. The election under section 6013 must be voluntarily made by both spouses. If either spouse involuntarily makes the election under duress, then the election is invalid with respect to both spouses.

One commentator suggested that the invalidation of the joint election when one spouse signs a return under duress inappropriately denies such spouse the benefits of certain credits (e.g., the earned income credit) and the joint filing rates. An allegation that a spouse was forced to sign a joint return against his or her will indicates that, in the absence of the threat, the spouse would have filed a separate return. In order to qualify for the earned income credit or the joint return rates, the Code mandates that the spouse file a joint return. If the spouse filed a joint return in order to benefit from the earned income credit, the joint return rates, or other benefits flowing from a joint return, and not due to duress, then the election to file the joint return was voluntary and valid. If the requesting spouse raises the issue of duress and it is determined that the requesting spouse would owe more tax if he or she filed a married filing separately return, then the requesting spouse may choose not to pursue the issue of duress.

Both commentators suggested that the rule regarding the treatment of returns signed under duress was inconsistent with the language of section 6015(c)(3)(C). Section 6015(c)(3)(C) provides that the limitation on relief under section 6015(c), when the requesting spouse has actual knowledge of the item giving rise to the deficiency, does not apply if the requesting spouse establishes that he or she signed the return under duress. Neither the limitation of section 6015(c)(3)(C), nor any portion of section 6013 or 6015 applies to a return signed under duress, i.e., a return for which no valid joint return election was made. To interpret the rule to allow the benefits of a joint return in the absence of a valid joint return election, as the commentators suggest, would require that the IRS treat joint return elections as valid for purposes of section 6015(c), but invalid for purposes of sections 6015(b) and (f), when the requesting spouse establishes that the return was signed under duress. Placing the duress rule in the regulations under section 6013 results in consistent treatment of a claim of duress that would apply to the three relief provisions under section 6015.

One commentator suggested that, the Treasury and IRS refer to *duress* as opposed to *legal duress* because the term *legal duress* suggests that something more specific than *duress* is intended. In particular, the commentator noted that in some cases courts have declined to define legal duress to include domestic abuse. Although the final regulations use the term, *duress* rather than *legal duress*, Treasury and the IRS believe the terms are synonymous, and *duress* continues to provide a basis for invalidating the joint return election.

Nonetheless, Treasury and the IRS have taken these comments into consideration in interpreting the specific duress provision in section 6015(c)(3)(C). See the discussion of the abuse exception to actual knowledge (§ 1.6015–3(c)(2)(v)) in section 3.B. of this preamble.

C. Prior Closing Agreement or Offer in Compromise

Section 1.6015–1(c) of the proposed regulations provides that relief is not available if the requesting spouse signed a closing agreement or entered into an offer in compromise with the IRS for the same tax year for which he or she seeks relief under section 6015. One commentator suggested that there was no support for this position in the statute. Section 6015(g)(1) provides that "[e]xcept as provided in paragraphs (2) and (3), notwithstanding any other law or rule of law (other than section 6511, 6512(b), 7121, 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section." (Emphasis added). Sections 7121 and 7122 deal with closing agreements and offers in compromise, respectively. Section 301.7121–1(c) of the Regulations on Procedure and Administration provides that a closing agreement is final and will not be set aside in the absence of fraud, malfeasance, or misrepresentation. Section 301.7122–1T(d)(5) of the Temporary Regulations on Procedure and Administration provides a similar rule for the finality of offers in compromise. Thus, the statute and the regulations directly support the position in the proposed regulations that relief under section 6015 is not available if the requesting spouse signed a closing agreement or offer in compromise disposing of the same liability that is the subject of the claim for relief.

Another commentator suggested that the requesting spouse should be given an opportunity to establish that he or she was not a party to the closing agreement or offer in compromise and that such signed documents should not preclude relief. In *Hopkins* v. *Commissioner*, 146 F.3d 729 (9th Cir. 1998), the United States Court of Appeals for the Ninth Circuit held that a claim for relief from joint and several liability under section 6013(e) was precluded if a closing agreement was signed by the requesting spouse for the tax year in question. Nothing in section 6015 nor the legislative history indicates that Congress intended to change the rules regarding the finality of such documents when relief is requested under section 6015. If the requesting spouse did not sign the closing agreement or offer in compromise, then the requesting spouse is not bound by that document, and relief under section

6015 would be available. Thus, there is no need to amend the final regulations to incorporate this comment.

D. Fraudulent Scheme and Fraud

Section 1.6015–1(d) of the proposed regulations provides that if the Secretary establishes that one spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015. Section *item* as any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. One commentator suggested that it was improper to include items that were improperly characterized on the return as erroneous items. The commentator suggested that such a rule would require on the property. *United States* v. *Drye*, 528 U.S. 49 (1999). If under the law of the community property state in which the spouses reside, the IRS can look to community property to collect a liability of one of the spouses, the determination that the other spouse is entitled to relief under section 6015 does not affect the Service's ability to collect the nonrequesting spouse's liability from the community property. See, e.g., *United States* v. *Stelle*, 2000–1 U.S.T.C.

any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of any law or rule of law.

2. Section 1.6015–2

Section 1.6015–2 of the proposed regulations provides the rules regarding relief from joint and several liability under section 6015(b) that are applicable to all qualifying joint filers.

insurance proceeds) that are traceable to items omitted from gross income.

Two commentators suggested that the Treasury and IRS define *normal support* for purposes of this section. Normal support depends on the taxpayer's particular circumstances, including the cost of living, which varies across the country. Thus, a general definition in the final regulations would not be useful. Rules regarding normal support have been developed in case law under

understatement. The commentator suggested that if the requesting spouse did not receive an equitable distribution of assets during the divorce proceedings, the Service should not consider any items received by the requesting spouse that are traceable to items of omitted income as a significant benefit. Such a rule, however, would require the IRS to make a determination of whether the distribution of assets was fair in a divorce proceeding, which may

6015 would be available. Thus, there is no need to amend the final regulations to incorporate this comment.

D. Fraudulent Scheme and Fraud

Section 1.6015–1(d) of the proposed regulations provides that if the Secretary establishes that one spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015. Section 1.6015–3(d)(2)(ii) of the proposed regulations provides that the Service may allocate any item between the spouses if the Service establishes that the allocation is appropriate due to fraud by one or both spouses. Two commentators requested that the Treasury and IRS provide examples to distinguish between a fraudulent scheme and fraud.

Fraudulent scheme in § 1.6015–1(d) refers to a fraudulent transfer of assets. The final regulations clarify that a fraudulent scheme is a scheme to defraud the IRS or another third party, including, but not limited to, creditors, ex-spouses, and business partners. In contrast, *fraud* in § 1.6015–3(d)(2)(ii) encompasses any fraud of either spouse including, but not limited to, the fraudulent alteration of documents, the fraudulent filing of a return or claim for relief, or any other fraud that may be relevant to the claim for relief. The fraudulent scheme and fraud exceptions are very broad and might overlap in some circumstances. It would be misleading to provide discrete examples that attempt to distinguish between a fraudulent scheme and fraud. Thus, the final regulations do not adopt this recommendation.

E. Definition of Item

Section 1.6015–1(g)(3) of the proposed regulations defines *item* as that which is required to be separately listed on an individual income tax return or any required attachments, subject to one exception. The exception provides that interest and dividend income from the same source would be treated as one item. Several commentators suggested that this rule be eliminated because the source of the income should not be relevant. The requesting spouse's ability to receive partial relief from the deficiency relating to an erroneous item when the requesting spouse knew of part but not all of the item addresses the concern for which this rule was originally drafted. Thus, the final regulations adopt this recommendation.

F. Definition of "Erroneous Item"

Section 1.6015–1(g)(4) of the proposed regulations defines *erroneous item* as any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. One commentator suggested that it was improper to include items that were improperly characterized on the return as erroneous items. The commentator suggested that such a rule would require a requesting spouse to know the proper characterization of an item in order for the spouse to receive relief. The proposed regulations, however, do not require a requesting spouse to know the proper characterization of an item for the item to be "erroneous." To the contrary, if the requesting spouse knew of the item that gave rise to an understatement or deficiency, regardless of whether the requesting spouse also knew the item was improperly characterized, the item is "erroneous" under § 1.6015–1(g)(4). To remove improper characterization from the definition of erroneous item might create an inference that requesting spouses are not entitled to relief for an item that was improperly characterized on a return. Such a rule would be inconsistent with the statutory language. Therefore, the final regulations do not adopt this recommendation.

This provision was also amended to clarify that penalties and interest are not erroneous items. Rather, relief from penalties and interest will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, then relief from such penalty will be determined based on whether the requesting spouse was relieved of liability from the erroneous item.

G. Collection

Section 1.6015–1(h) of the proposed regulations provides that the relief provisions of section 6015 do not negate liability that arises under the operation of other laws. One commentator suggested that the regulations adopt a rule that the IRS would not look to community property as a collection source when a requesting spouse with an interest in such community property is granted relief under section 6015. A federal tax lien arising under section 6321 attaches to all property and rights to property of the taxpayer. Whether a taxpayer has an interest in property to which the lien can attach is determined by state law. *Aquilino* v. *United States*, 363 U.S. 509 (1960). Once that property interest is defined, federal law alone determines the consequences resulting from the attachment of the federal lien on the property. *United States* v. *Drye*, 528 U.S. 49 (1999). If under the law of the community property state in which the spouses reside, the IRS can look to community property to collect a liability of one of the spouses, the determination that the other spouse is entitled to relief under section 6015 does not affect the Service's ability to collect the nonrequesting spouse's liability from the community property. See, e.g., *United States* v. *Stolle*, 2000–1 U.S.T.C. ¶50,329 (C.D. Cal. 2000); *Hegg* v. *IRS*, 28 P.3d 1004 (Idaho 2001). The final regulations do not adopt this recommendation because it goes beyond the scope of the statute.

H. Res Judicata

Section 6015(g)(2) provides that, in the case of any election under section 6015(b) or (c), if a decision of a court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the requesting spouse for relief which was not at issue in that proceeding. This exception does not apply if the court determines that the requesting spouse participated meaningfully in the prior proceeding. In other words, a requesting spouse who participated meaningfully in a prior court proceeding concerning the underlying liability for which relief is sought is precluded by section 6015(g)(2) from electing relief under section 6015(b) or (c) after the decision becomes final, whether or not the requesting spouse's eligibility for relief under section 6015(b) or (c) was at issue in the prior proceeding. In addition, under section 6015(g)(2) if the requesting spouse's entitlement to relief from liability under section 6015 for the same tax year was at issue in a prior proceeding, then, regardless of the extent of the requesting spouse's participation in such proceeding, the requesting spouse would be precluded from electing relief under section 6015(b) or (c) after the decision in such proceeding has become final. Thus, § 1.6015–1(e) of the final regulations was amended to emphasize that res judicata will apply if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in the prior proceeding.

I. Scope of Section 6015

The final regulations add § 1.6015–1(g), and redesignate § 1.6015–1(g) and (h) of the proposed regulations as § 1.6015–1(h) and (j), respectively. Section 1.6015–1(g) of the final regulations clarifies that relief under section 6015 will not be available for

any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of any law or rule of law.

2. Section 1.6015–2

Section 1.6015–2 of the proposed regulations provides the rules regarding relief from joint and several liability under section 6015(b) that are applicable to all qualifying joint filers.

A. Knowledge or Reason to Know

Section 1.6015–2(a)(3) of the proposed regulations provides that one of the requirements of relief under section 6015(b) is that the requesting spouse establish that he or she had no knowledge or reason to know of the item giving rise to the understatement. Two commentators pointed out that the underlined language is not consistent with section 6015(b)(1)(C), which articulates the requirement as knowledge or reason to know of the understatement. Both commentators suggested that the rules regarding knowledge under section 6015(b) should be consistent with the knowledge standard developed under former section 6013(e).

The language in § 1.6015–2(a)(3) of the proposed regulations was not intended to reflect a new standard of knowledge in section 6015(b) cases. Indeed, the standards for knowledge or reason to know that were developed under former section 6013(e) should be used in determining a requesting spouse's knowledge or reason to know under section 6015(b). The Treasury and IRS did not intend to suggest a harsher standard of knowledge under section 6015(b) than that which existed under section 6013(e). Therefore, the final regulations adopt this recommendation by amending the language of § 1.6015–2(a)(3) of the proposed regulations to be consistent with the language of section 6015(b)(1)(C).

B. Inequity

Section 1.6015–2(d) of the proposed regulations provides that all of the facts and circumstances are considered in determining whether it was inequitable to hold a requesting spouse liable for the understatement attributable to the nonrequesting spouse. Among the factors considered is whether the requesting spouse significantly benefitted, in excess of normal support, either directly or indirectly from the understatement. Such significant benefit may include transfers of property or rights to property, including transfers that may be received several years after the year of the understatement (e.g., life insurance proceeds) that are traceable to items omitted from gross income.

Two commentators suggested that the Treasury and IRS define *normal support* for purposes of this section. Normal support depends on the taxpayer's particular circumstances, including the cost of living, which varies across the country. Thus, a general definition in the final regulations would not be useful. Rules regarding normal support have been developed in case law under section 6013(e) and are applicable to section 6015(b) as well. The final regulations do not adopt this recommendation.

Another commentator questioned the conclusion in the example within § 1.6015–2(d) of the proposed regulations that life insurance proceeds that are traceable to items of omitted income of the nonrequesting spouse are considered a significant benefit. The commentator pointed to the legislative history as suggesting that Congress intended widows to benefit from the relief provided by the statute, and it is likely that widows would receive such a benefit. The reference to widows in the legislative history to section 6015 is contained in a footnote to the legislative history for section 6015(c). The footnote provides that *no longer married* for purposes of that section includes widowed. The reference to widows is not in the legislative history for section 6015(b) with respect to the rules regarding equity under section 6015(b).

The courts have recognized that the rules regarding knowledge or reason to know and equity under section 6015(b) are consistent with the rules regarding knowledge or reason to know that were developed under section 6013(e). See, e.g., *Von Kalinowski* v. *Commissioner*, T.C. Memo. 2001–21. The rule regarding significant benefit from life insurance proceeds was contained in the regulations under § 1.6013–5. As life insurance proceeds traceable to items of omitted income were considered a significant benefit for purposes of section 6013(e), they are also considered a significant benefit for purposes of section 6015(b). While, the final regulations do not adopt this recommendation, they do clarify that the receipt of property, such as insurance proceeds or the value of life insurance, traceable to items omitted by the nonrequesting spouse must be beyond normal support before they are considered a significant benefit.

One commentator suggested that the final regulations provide that the IRS should consider the entire property settlement, if any, in order to determine whether the requesting spouse significantly benefitted from the understatement. The commentator suggested that if the requesting spouse did not receive an equitable distribution of assets during the divorce proceedings, the Service should not consider any items received by the requesting spouse that are traceable to items of omitted income as a significant benefit. Such a rule, however, would require the IRS to make a determination of whether the distribution of assets was fair in a divorce proceeding, which may have taken place years before and to which the IRS was not a party. Many factors, including equity, are typically considered under state and local laws in determining the distribution of assets in a divorce proceeding. It would be inappropriate for the IRS to pass judgment on the equity of such determinations. The final regulations do not adopt this recommendation.

One commentator suggested that the final regulations adopt a de minimis exception to significant benefit. However, if the benefit was de minimis, it would not be significant. Thus, the final regulations do not adopt this recommendation.

Section 1.6015–2(d) of the proposed regulations also provides a list of factors that may be considered in determining whether it would be inequitable to hold the requesting spouse liable for an understatement. Such factors include the fact that the nonrequesting spouse has not fulfilled support obligations, or that the spouses are divorced, legally separated, or have not been members of the same household for the 12 months directly preceding the election. One commentator suggested that whether the spouses are divorced or legally separated, and the duration of the spouses' separation, should not be relevant to a determination of equity. The language in the proposed regulations was used in an attempt to be consistent with the marital status determination in section 6015(c). After further consideration, the Treasury and IRS have determined that, as the rules regarding equity under section 6015(b) are the same as those developed under section 6013(e), the final regulations should adopt the language that was used in former § 1.6013–5 regarding the couple's marital status. Thus, although the final regulations do not adopt the commentator's recommendation, the final regulations amend the language of § 1.6015–2(d) of the proposed regulations to be consistent with the language regarding equity under former § 1.6013–5, which provided that facts relevant to the determination of equity include whether the requesting spouse was abandoned by the nonrequesting

spouse and whether the spouses are divorced or separated.

Section 1.6015–2(d) of the proposed regulations cross-references Rev. Proc. 2000–15 (2000–1 C.B. 447), for additional guidance on the definition of *inequitable*. Two commentators suggested that this cross-reference was inappropriate because the public did not have an opportunity to comment on the procedures in Rev. Proc. 2000–15. Rev. Proc. 2000–15 was published in the Internal Revenue Bulletin for comment. Thus, the final regulations do not adopt this recommendation.

Section 1.6015–2(d) of the proposed regulations provides that the Service may consider any other factors that it deems appropriate. One commentator suggested that the final regulations provide that the Service may not consider any factors that are not listed in the regulations. The commentator suggested that the Service should not be able to

spouse and whether the spouses are divorced or separated.

Section 1.6015–2(d) of the proposed regulations cross-references Rev. Proc. 2000–15 (2000–1 C.B. 447), for additional guidance on the definition of *inequitable*. Two commentators suggested that this cross-reference was inappropriate because the public did not have an opportunity to comment on the procedures in Rev. Proc. 2000–15. The procedures in Rev. Proc. 2000–15 were originally published in Notice 98–61 (1998–2 C.B. 756). Notice 98–61 was published on December 21, 1998, and the Treasury and IRS specifically requested comments on the procedures prescribed therein. The comment period was extended from April 30, 1999, to June 30, 1999, by Notice 99–29 (1999–1 C.B. 1101). Those procedures were finalized, with minor changes, in Rev. Proc. 2000–15, in January 2000. In addition, as the proposed regulations cross-referenced Rev. Proc. 2000–15, the procedures prescribed therein were again subject to comment during the comment period for the proposed regulations. No such comments were received.

Both §§ 1.6015–2 and 1.6015–4 require a determination of whether it was inequitable to hold a requesting spouse liable, and such a determination should be consistent under both relief provisions. Thus, it is appropriate for the final regulations to cross-reference the procedures for determining whether it is inequitable to hold a requesting spouse liable as outlined in Rev. Proc. 2000–15. The final regulations do not adopt this recommendation.

3. Section 1.6015–3

Section 1.6015–3 of the proposed regulations provides the rules regarding the allocation of a deficiency under section 6015(c) for spouses who are no longer married, legally separated, or not members of the same household.

A. Marital Status

Section 1.6015–3(a) of the proposed regulations provides that spouses who are no longer married, legally separated, or who have not been members of the same household for the 12 months preceding the election may allocate a deficiency between the spouses in proportion to each spouse's share of the deficiency. Section 1.6015–3(b)(1) of the proposed regulations defines *divorced* as a requesting spouse having a decree of divorce that is recognized in the jurisdiction in which the requesting spouse resides. Section 1.6015–3(b)(2) defines *legally separated* as a separation that is recognized under the laws of the jurisdiction in which the requesting spouse resides. Several commentators suggested that the final regulations cross-reference the rules of section 7703, and the regulations thereunder, for a determination of whether a requesting spouse is divorced or legally separated. The final regulations adopt this recommendation.

Section 1.6015–3(b)(3)(i) of the proposed regulations defines *members of the same household* and provides that spouses are considered members of the same household if one of the spouses is temporarily absent from the household, and the household is maintained in anticipation of that spouse's return. Such temporary absences include, but are not limited to, incarceration, hospitalization, business travel, vacation travel, military service, or education away from home. One commentator suggested that the inclusion of incarceration and hospitalization as temporary absences was inappropriate under the circumstances of a typical case where a spouse is requesting relief from joint and several liability. Section 6015(c), however, provides relief to spouses who are divorced, widowed, legally separated, or who were not members of the same household for the 12 months preceding the election. H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess. 252 (1998); S. Rep. No. 105–174 (1998). The Treasury and IRS have interpreted "not members of the same household" as meaning that the spouses live apart and are estranged. Thus, if the spouses live apart due to a temporary absence, but the household is being maintained in anticipation of the absent spouse's return, then the spouses are still considered members of the same household. The exceptions regarding temporary absences are also consistent with the regulations under section 152, regarding temporary absences for purposes of a dependency exemption. The election to allocate liability is not available to spouses who are not divorced, widowed, legally separated, or living apart and estranged. Although the language in the final regulations was modified to more closely track the language of the regulations under section 152, the final regulations do not adopt this recommendation.

One commentator suggested that, because the election to allocate liability was meant to address the situation where spouses were divorced, widowed, or estranged, the final regulations should adopt a rule that spouses who indefinitely maintain separate households (the spouses have jobs in different cities, for example) but who are not estranged are considered members of the same household for purposes of this provision. This clarification is adopted in the final regulations.

In addition, § 1.6015–3(a) of the final regulations clarifies that, for purposes of section 6015(c), the marital status of a deceased requesting spouse is determined on the earlier of the date of the election or the date of the requesting spouse's death in accordance with section 7703(a)(1).

B. Actual Knowledge

Section 1.6015–3(c)(2) of the proposed regulations provides that relief under section 6015(c) is not available if the IRS demonstrates that the requesting spouse had actual knowledge of the item giving rise to the deficiency at the time he or she signed the return. The proposed regulations adopt the holding in *Cheshire* v. *Commissioner*, 115 T.C. 183 (2000), *aff'd*, 282 F.3d 326 (5th Cir. 2002), that, in an omission of income case, the relevant inquiry is whether the requesting spouse had actual knowledge of the item, rather than whether the requesting spouse had actual knowledge of the tax consequences of the item. Several commentators suggested that the regulations provide that actual knowledge of the item means actual knowledge of the proper tax treatment of the item. The legislative history to section 6015(c) provides an example of a requesting spouse who had actual knowledge of a portion of the nonrequesting spouse's self-employment income that was omitted from the return. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 253 (1998). The example provides that the requesting spouse remains liable for the portion of the income tax and self-employment tax deficiency attributable to the portion of the self-employment income of which the requesting spouse had actual knowledge. Id. Nothing in the example indicates that the IRS would have to establish that such spouse had actual knowledge that self-employment income was subject to income tax and self-employment tax in order to invalidate the requesting spouse's section 6015(c) election under section 6015(c)(3)(C). In addition, in many cases, neither spouse may know the proper tax treatment of an item, and both spouses may have equal knowledge regarding the item. The fact that the spouse to whom the item is not attributable does not understand the intricacies of tax law should not be relevant to a determination of whether the spouse had actual knowledge of the item. Therefore, the final regulations do not adopt the recommendation to have the regulations provide that actual knowledge of the item means actual knowledge of the proper tax treatment of the item.

The Tax Court also held that, in an erroneous deduction case, the relevant inquiry is whether the requesting spouse had actual knowledge of the factual circumstances which made the item unallowable as a deduction, rather than whether the requesting spouse knew the proper tax consequences of the item. *King* v. *Commissioner*, 116 T.C. 198 (2001). The final regulations adopt the standard for erroneous deductions set forth in *King* in § 1.6015–3(c)(2)(i)(B)(*1*).

Section 1.6015–3(c)(2)(i)(B)(*2*) of the final regulations also clarifies that if a deduction or credit is fictitious or inflated, the relevant inquiry is whether the requesting spouse had actual knowledge that the expense was not incurred, or not incurred to that extent.

Section 1.6015–3(c)(2)(iii) of the proposed regulations provides that one factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an item giving rise to a deficiency is whether the requesting spouse deliberately avoided learning about the item. Several commentators suggested that this factor was inappropriate in that it would harm those individuals who do not pay attention to the family finances, or who are afraid to confront the nonrequesting spouse about financial matters. This rule, however, addresses situations where the requesting spouse makes a deliberate effort to avoid learning about an item in an attempt to be shielded from liability. For an example of deliberate avoidance, see *United States* v. *Campbell*, 977 F.2d 854 (4th Cir. 1992) (Criminal money laundering case where the Fourth Circuit found that a finding of knowledge may be made by inferences drawn when a party deliberately closes his or her eyes to what would otherwise be obvious, i.e., willful blindness to the existence of a fact).

As discussed above in section 1.B. of this preamble, section 6015(c)(3)(C) provides that the limitation on a requesting spouse's ability to allocate an erroneous item to the nonrequesting spouse when the requesting spouse had actual knowledge of that item does not apply if the requesting spouse establishes that he or she signed the return under duress. When a requesting spouse signs a return under duress, it is not that spouse's return, and accordingly, the spouse is not jointly and severally liable for the tax on that return. Thus, such spouse does not need the relief from joint and several liability provided by section 6015. The final regulations interpret the "duress" provision in section 6015(c)(3)(C) to mean that a requesting spouse in an abusive situation who does not establish that he or she signed the joint return under duress and elects relief from joint and several liability can receive such relief regardless of the requesting spouse's knowledge of the erroneous item at the time the return was signed. Although the requesting spouse may have voluntarily signed the joint return without a direct threat of abuse from the nonrequesting spouse, he or she may have not challenged the content of the joint return due to a long history of abuse from the nonrequesting spouse, resulting in a general fear of the nonrequesting spouse's reprisal. Thus, § 1.6015–3(c)(2)(v) of the final regulations provides that if a requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's reprisal, the actual knowledge limitation in § 1.6015–3(c)(2) will not apply.

C. Disqualified Assets

Section 1.6015–3 of the proposed regulations provides that the portion of a deficiency for which a requesting spouse remains liable will be increased (up to the entire amount of the deficiency) by the value of any disqualified asset that is transferred to the requesting spouse. A disqualified asset is defined as that which is transferred for the purpose of avoidance of tax or payment of tax. Any asset transferred from the date that is 1 year prior to the date the first letter of proposed deficiency (30-day letter) is mailed, is presumed disqualified. The presumption will not apply if the asset is transferred pursuant to a divorce decree or separate maintenance agreement. Two commentators suggested that the use of the terms *divorce decree* and *separate maintenance agreement* is inconsistent with the language of the statute. The final regulations adopt this recommendation by amending the language of the regulation to read "decree of divorce or separate maintenance or written instrument incident to such decree."

One commentator suggested that there should be a de minimis exception to the disqualified asset limitation of $5,000. The Treasury and IRS have determined that a de minimis exception to the disqualified asset rule is inappropriate. The disqualified asset rule limits relief under section 6015(c) when an asset is transferred to the requesting spouse for the purpose of avoidance of tax or payment of tax. The requesting spouse's participation in the attempt to avoid tax or the payment of tax should prevent the spouse from obtaining relief no matter how small the value of the asset. Thus, the final regulations do not adopt this recommendation for a de minimis exception.

One commentator suggested that an example of when a requesting spouse overcomes the disqualified asset presumption in § 1.6015–3(c)(3)(iii) be included in the final regulations. The final regulations adopt this recommendation.

One commentator suggested that some assets should be disqualified, even if they are transferred pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree, if it can be shown that the assets are transferred for the purpose of avoidance of tax or payment of tax. The final regulations adopt this recommendation by clarifying the rule. A disqualified asset is defined as that which is transferred for the purpose of avoidance of tax or payment of tax. Regardless of the situation, if the asset is transferred for that purpose, it is a disqualified asset. The rule regarding a transfer pursuant to a decree of divorce or separate maintenance provides that the "presumption" that an asset is disqualified will not apply if the asset is transferred pursuant to a decree unless the IRS can establish that the asset was transferred for the purpose of avoidance of tax or the payment of tax. If, however, in the absence of a decree, the requesting spouse cannot establish that the purpose of the transfer was not the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the requesting spouse remains liable.

D. Burden of Proof for Allocation

Section 1.6015–3(d)(3) of the proposed regulations provides that a requesting spouse seeking to allocate liability under section 6015(c) has the burden of proof to establish the proper allocation of items. One commentator suggested that the final regulations provide an exception to this rule for cases where the requesting spouse is unable to locate the appropriate documents to establish the proper allocation. Section 6015(c)(2) places the burden on the requesting spouse. The final regulations do not adopt this recommendation.

E. Other Comments on Allocation of Items

Section 1.6015–3(d)(4)(ii) of the proposed regulations provides that any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or addition to tax (other than a tax imposed by section 1 or 55) is allocated entirely to that spouse. One commentator suggested that this rule provides that relief under § 1.6015–4 is not available to circumvent the "no refund" rule of § 1.6015–3(c)(1). Several commentators suggested that this rule be removed. Under Rev. Proc. 2000–15, refunds under section 6015(f) are generally limited to amounts paid pursuant to an installment agreement, on which the requesting spouse is not in default, from the date the claim for relief is filed until a final determination is made. Thus, the requesting spouse is automatically notified at the administrative level. This commentator also suggested that all of the information submitted by the nonrequesting spouse be shared with the requesting spouse, but not vice versa. The commentator suggested that the nonrequesting spouse should only be given information submitted by the requesting spouse if the nonrequesting spouse files his or her own request for relief. Section 6015

requesting spouse is entitled to relief. The nonrequesting spouse's participation is essential to a proper determination of relief. The nonrequesting spouse may participate during the preliminary determination of relief, and if the requesting spouse files an administrative appeal or a petition in court, the nonrequesting spouse may participate in those proceedings as well. In addition, if a requesting spouse files

regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

return. The return is adjusted to reflect only the tax liability of the individual who voluntarily signed the return, and the liability is determined at the applicable rates in section 1(d) for married individuals filing separate returns. Section 6212 applies to the assessment of any deficiency in tax on such return.

§ 1.6013–5 [Removed]

3. Section 1.6013–5 is removed.

E. Other Comments on Allocation of Items

Section 1.6015–3(d)(4)(ii) of the proposed regulations provides that any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or addition to tax (other than a tax imposed by section 1 or 55) is allocated separately to that spouse. One commentator suggested that such items should be allocated proportionately between the spouses instead of solely to one spouse or the other. Section 6015(d)(2) provides that if a deficiency is attributable to the disallowance of a credit, or any tax (other than tax imposed by section 1 or 55) required to be included with the joint return, and the item is allocated to one individual, the deficiency shall be allocated to that individual. The item will not be subject to the proportionate allocation in section 6015(d)(1). The statutory language of section 6015(d)(2) suggests that separate treatment of items is only appropriate when the item is allocable solely to one spouse or the other. Thus, the final regulations adopt this recommendation by providing that the allocation of taxes and credits attributable to both spouses will be determined by the IRS on a case-by-case basis.

F. Child's Liability

Section 1.6015–3(d)(4)(iii) of the proposed regulations provides that any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse will be allocated jointly to both spouses. If one of the spouses has sole custody of the child, the proposed regulations provided that the liability will be allocated solely to that spouse. One commentator suggested that the liability should be allocated based on the child's residence; another commentator suggested that the liability be allocated based on which parent is in control of the child's finances; and a third commentator suggested that it is not clear to which spouse a child's liability should be allocated. The final regulations address these recommendations, in part, by removing the exception to allocating the child's liability jointly to both parents when only one parent has custody of the child.

4. Section 1.6015–4

Section 1.6015–4 of the proposed regulations provides the rules regarding equitable relief from joint and several liability under section 6015(f). Section 1.6015–4(b) of the proposed regulations provides that relief under § 1.6015–4 is not available to circumvent the "no refund" rule of § 1.6015–3(c)(1). Several commentators suggested that this rule be removed. Under Rev. Proc. 2000–15, refunds under section 6015(f) are generally limited to amounts paid pursuant to an installment agreement, on which the requesting spouse is not in default, from the date the claim for relief is filed until a final determination is made. The rule regarding installment payments is intended to encourage individuals to remain current on their installment agreements. Therefore, the Treasury and IRS determined that limited refunds would be appropriate to encourage such compliance. Section 6015(g)(3), however, precludes the allowance of a credit or refund under section 6015(c). It would be inappropriate to circumvent the rule of section 6015(g)(3) by giving equitable relief in the form of a refund when the requesting spouse qualifies for relief under section 6015(c). Thus, the final regulations do not adopt this recommendation.

5. Section 1.6015–5

Section 1.6015–5(b)(2) of the proposed regulations defines *collection activity* as, among other things, an administrative levy or seizure described by section 6331. Section 1.6015–5(b)(2) of the final regulations provides that the term *collection activity* includes a collection due process (CDP) notice under section 6330. That notice, which occurs in all cases before levy or seizure except in the case of levies on state tax refunds and in jeopardy situations, provides taxpayer notice of the Service's intent to levy and the taxpayer's right to a pre-levy CDP hearing. This change is consistent with the legislative history of section 6015(e). See H.R. Conf. Rep. No. 599, 105th Cong. 2d Sess. 250–251 (1998).

6. Section 1.6015–6

Section 1.6015–6 of the proposed regulations provides rules regarding the nonrequesting spouse's right to notice and to participate in the administrative determination of whether the requesting spouse is entitled to relief under any of the provisions of section 6015. Some commentators suggested that the proposed regulations are overly broad in providing rights to the nonrequesting spouse, while other commentators suggested that the proposed regulations unnecessarily limit the rights of the nonrequesting spouse. One commentator suggested that the IRS have minimal contact with the nonrequesting spouse and that the nonrequesting spouse not be automatically notified at the administrative level. This commentator also suggested that all of the information submitted by the nonrequesting spouse be shared with the requesting spouse, but not vice versa. The commentator suggested that the nonrequesting spouse should only be given information submitted by the requesting spouse if the nonrequesting spouse files his or her own request for relief. Section 6015 specifically provides the nonrequesting spouse with two opportunities to participate in the determination of whether the requesting spouse is entitled to relief (once at the administrative level under section 6015(h)(2), and once when the petition has been filed in the Tax Court under section 6015(e)(4)). The nonrequesting spouse's participation is necessary to ensure that relief is only granted in meritorious cases. The final regulations do not adopt these recommendations.

Section 1.6015–6(a)(1) of the proposed regulations provides that, at the request of one spouse, the IRS will omit from shared documents the spouse's new name, address, employer, telephone number, and any other information that would reasonably identify the spouse's location. One commentator suggested that this information always be omitted from shared documents regardless of whether a spouse requests such treatment. The final regulations do not adopt this recommendation. Instead, this statement is removed from the final regulations. To address this concern, however, the Internal Revenue Manual provides that the IRS will omit from shared documents any information that could reasonably identify a spouse's location.

A commentator made several suggestions to help ensure that the nonrequesting spouse will have a meaningful opportunity to participate in the administrative determination. One suggestion is that the nonrequesting spouse have access to all information submitted by the requesting spouse, including the basis for relief. Under the proposed regulations, the IRS has the discretion to share information submitted by one spouse with the other spouse. It is the Service's practice to share information at the request of one of the spouses. The final regulations adopt this recommendation by clarifying that information will be shared on request as long as the information would not impair tax administration.

Another suggestion was that the nonrequesting spouse be afforded administrative appeal rights if the nonrequesting spouse disagrees with the Service's determination that the requesting spouse is entitled to relief. The nonrequesting spouse's participation is essential to a proper determination of relief. The nonrequesting spouse may participate during the preliminary determination of relief, and if the requesting spouse files an administrative appeal or a petition in court, the nonrequesting spouse may participate in those proceedings as well. In addition, if a requesting spouse files a petition in Tax Court, the IRS is precluded from settling with the requesting spouse unless the nonrequesting spouse agrees to the settlement. See *Corson* v. *Commissioner*, 114 T.C. 354 (2000). The nonrequesting spouse is afforded a meaningful opportunity to participate in the administrative determination of relief, as well. Thus, the final regulations do not prohibit the nonrequesting spouse from administratively appealing the IRS's determination that the requesting spouse is entitled to relief from joint and several liability.

7. Section 1.6015–7

Section 1.6015–7 of the final regulations reflects changes to section 6015 that were made by section 313 of the CRA with respect to waivers and the 90-day period for filing a Tax Court petition.

Section 1.6015–7(c)(1) of the final regulations reflects the fact that when the requesting spouse elects relief under § 1.6015–2 or 1.6015–3, the IRS is restricted from taking collection actions until a decision of the Tax Court becomes final. Section 1.6015–7(c)(1) also reflects the fact that section 6015(e)(1)(B)(i) provides that rules similar to the rules of section 7485 will apply with respect to collection actions. Section 7485 provides that the IRS may begin collection activity upon the filing of a notice of appeal from a Tax Court decision unless the taxpayer files an appeal bond. Because refunds may be limited under section 6015, a requesting spouse may be denied a refund of amounts collected during the pendency of an appeal proceeding, even if he or she is granted relief on appeal. Therefore, the IRS has determined that at this time it will not begin any collection activities against the requesting spouse upon the filing of a notice of appeal unless the expiration of the statute of limitations on collection is imminent, or that collection will be jeopardized by delay.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

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List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6015–1 also issued under 26 U.S.C. 6015(h).

Section 1.6015–2 also issued under 26 U.S.C. 6015(h).

Section 1.6015–3 also issued under 26 U.S.C. 6015(h).

Section 1.6015–4 also issued under 26 U.S.C. 6015(h).

Section 1.6015–5 also issued under 26 U.S.C. 6015(h).

Section 1.6015–6 also issued under 26 U.S.C. 6015(h).

Section 1.6015–7 also issued under 26 U.S.C. 6015(h).

Section 1.6015–8 also issued under 26 U.S.C. 6015(h).

Section 1.6015–9 also issued under 26 U.S.C. 6015(h). * * *

2. In § 1.6013–4, paragraph (d) is added to read as follows:

§ 1.6013–4 Applicable rules.

* * * * *

(d) *Return signed under duress.* If an individual asserts and establishes that he or she signed a return under duress, the return is not a joint return. The individual who signed such return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to the return. The return is adjusted to reflect only the tax liability of the individual who voluntarily signed the return, and the liability is determined at the applicable rates in section 1(d) for married individuals filing separate returns. Section 6212 applies to the assessment of any deficiency in tax on such return.

§ 1.6013–5 [Removed]

3. Section 1.6013–5 is removed.

4. Sections 1.6015–0 through 1.6015–9 are added to read as follows:

§ 1.6015–0 Table of contents.

This section lists captions contained in §§ 1.6015–1 through 1.6015–9.

§ 1.6015–1 Relief from joint and several liability on a joint return.

(a) In general.
(b) Duress.
(c) Prior closing agreement or offer in compromise.
(1) In general.
(2) Exception for agreements relating to TEFRA partnership proceedings.
(3) Examples.
(d) Fraudulent scheme.
(e) Res judicata and collateral estoppel.
(f) Community property laws.
(1) In general.
(2) Example.
(g) Scope of this section and §§ 1.6015–2 through 1.6015–9.
(h) Definitions.
(1) Requesting spouse.
(2) Nonrequesting spouse.
(3) Item.
(4) Erroneous item.
(5) Election or request.
(i) [Reserved]
(j) Transferee liability.
(1) In general.
(2) Example.

§ 1.6015–2 Relief from liability applicable to all qualifying joint filers.

(a) In general.
(b) Understatement.
(c) Knowledge or reason to know.
(d) Inequity.
(e) Partial relief.
(1) In general.
(2) Example.

§ 1.6015–3 Allocation of liability for individuals who are no longer married, are legally separated, or are not members of the same household.

(a) Election to allocate liability.
(b) Definitions.
(1) Divorced.
(2) Legally separated.
(3) Members of the same household.
(i) Temporary absences.
(ii) Separate dwellings.
(c) Limitations.
(1) No refunds.
(2) Actual knowledge.
(i) In general.
(A) Omitted income.
(B) Deduction or credit.

(1) Erroneous deductions in general.
(2) Fictitious or inflated deduction.
(ii) Partial knowledge.
(iii) Knowledge of the source not sufficient.
(iv) Factors supporting actual knowledge.
(v) Abuse exception.
(3) Disqualified asset transfers.
(i) In general.
(ii) Disqualified asset defined.
(iii) Presumption.
(4) Examples.
(d) Allocation.
(e) In general.

§ 1.6015–6 Applicable liabilities.

(a) In general.
(b) Liabilities paid on or before July 22, 1998.
(c) Examples.

§ 1.6015–9 Effective date.

§ 1.6015–1 Relief from joint and several liability on a joint return.

(a) *In general.* (1) An individual who qualifies and elects under section 6013 to file a joint Federal income tax return

(b) *Duress.* For rules relating to the treatment of returns signed under duress, see § 1.6013–4(d).

(c) *Prior closing agreement or offer in compromise*—(1) *In general.* A requesting spouse is not entitled to relief from joint and several liability under § 1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into a closing agreement with the

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. H and W file joint returns for taxable years 2002–2004, on which they claim losses attributable to H's limited partnership interest in Partnership A. In January 2006, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) regarding Partnership A's 2002–2004 taxable years, and sends H and W a

In contrast, W may claim relief from joint and several liability as to the disallowed losses and accuracy-related penalty attributable to Partnership B for taxable year 2002 or any subsequent year(s). This is because this portion of the closing agreement pertains to partnership and affected items and was entered into at a time when W was a party to the pending partnership-level proceeding regarding Partnership B. Consequently, W never had the opportunity to raise the innocent spouse defense in the course of that TEFRA partnership proceeding. (See

interest income from his individual bank account. The remainder of the deficiency is attributable to $30,000 of W's disallowed business expense deductions. Under the laws of State A, H and W each own ½ of all income earned and property acquired during the marriage.

(ii) In November 2005, H and W divorce and W timely elects to allocate the deficiency. Even though the laws of State A provide that ½ of the interest income is W's, for purposes of relief under this section, the $20,000 unreported interest income is

(1) Erroneous deductions in general.
(2) Fictitious or inflated deduction.
(ii) Partial knowledge.
(iii) Knowledge of the source not sufficient.
(iv) Factors supporting actual knowledge.
(v) Abuse exception.
(3) Disqualified asset transfers.
(i) In general.
(ii) Disqualified asset defined.
(iii) Presumption.
(4) Examples.
(d) Allocation.
(1) In general.
(2) Allocation of erroneous items.
(i) Benefit on the return.
(ii) Fraud.
(iii) Erroneous items of income.
(iv) Erroneous deduction items.
(3) Burden of proof.
(4) General allocation method.
(i) Proportionate allocation.
(ii) Separate treatment items.
(iii) Child's liability.
(iv) Allocation of certain items.
(A) Alternative minimum tax.
(B) Accuracy-related and fraud penalties.
(5) Examples.
(6) Alternative allocation methods.
(i) Allocation based on applicable tax rates.
(ii) Allocation methods provided in subsequent published guidance.
(iii) Example.

§ 1.6015–4 Equitable relief.

§ 1.6015–5 Time and manner for requesting relief.

(a) Requesting relief.
(b) Time period for filing a request for relief.
(1) In general.
(2) Definitions.
(i) Collection activity.
(ii) Section 6330 notice.
(3) Requests for relief made before commencement of collection activity.
(4) Examples.
(5) Premature requests for relief.
(c) Effect of a final administrative determination.

§ 1.6015–6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.

(a) In general.
(b) Information submitted.
(c) Effect of opportunity to participate.
(2) Waiver of the restrictions on collection.

§ 1.6015–7 Tax Court review.

(a) In general.
(b) Time period for petitioning the Tax Court.
(c) Restrictions on collection and suspension of the running of the period of limitations.
(1) Restrictions on collection under § 1.6015–2 or 1.6015–3.
(2) Waiver of the restrictions on collection.
(3) Suspension of the running of the period of limitations.
(i) Relief under § 1.6015–2 or 1.6015–3.
(ii) Relief under § 1.6015–4.
(4) Definitions.
(i) Levy.
(ii) Proceedings in court.
(iii) Assessment to which the election relates.

§ 1.6015–8 Applicable liabilities.

(a) In general.
(b) Liabilities paid on or before July 22, 1998.
(c) Examples.

§ 1.6015–9 Effective date.

§ 1.6015–1 Relief from joint and several liability on a joint return.

(a) *In general.* (1) An individual who qualifies and elects under section 6013 to file a joint Federal income tax return with another individual is jointly and severally liable for the joint Federal income tax liabilities for that year. A spouse or former spouse may be relieved of joint and several liability for Federal income tax for that year under the following three relief provisions:

(i) Innocent spouse relief under § 1.6015–2.

(ii) Allocation of deficiency under § 1.6015–3.

(iii) Equitable relief under § 1.6015–4.

(2) A requesting spouse may submit a single claim electing relief under both or either §§ 1.6015–2 and 1.6015–3, and requesting relief under § 1.6015–4. However, equitable relief under § 1.6015–4 is available only to a requesting spouse who fails to qualify for relief under §§ 1.6015–2 and 1.6015–3. If a requesting spouse elects the application of either § 1.6015–2 or 1.6015–3, the Internal Revenue Service will consider whether relief is appropriate under the other elective provision and, to the extent relief is unavailable under either, under § 1.6015–4. If a requesting spouse seeks relief only under § 1.6015–4, the Secretary may not grant relief under § 1.6015–2 or 1.6015–3 in the absence of an affirmative election made by the requesting spouse under either of those sections. If in the course of reviewing a request for relief only under § 1.6015–4, the IRS determines that the requesting spouse may qualify for relief under § 1.6015–2 or 1.6015–3 instead of § 1.6015–4, the Internal Revenue Service will correspond with the requesting spouse to see if the requesting spouse would like to amend his or her request to elect the application of § 1.6015–2 or 1.6015–3. If the requesting spouse chooses to amend the claim for relief, the requesting spouse must submit an affirmative election under § 1.6015–2 or 1.6015–3. The amended claim for relief will relate back to the original claim for purposes of determining the timeliness of the claim.

(3) Relief is not available for liabilities that are required to be reported on a joint Federal income tax return but are not income taxes imposed under Subtitle A of the Internal Revenue Code (e.g., domestic service employment taxes under section 3510).

(b) *Duress.* For rules relating to the treatment of returns signed under duress, see § 1.6013–4(d).

(c) *Prior closing agreement or offer in compromise*—(1) *In general.* A requesting spouse is not entitled to relief from joint and several liability under § 1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into a closing agreement with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from joint and several liability under § 1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(2) *Exception for agreements relating to TEFRA partnership proceedings.* The rule in paragraph (c)(1) of this section regarding the unavailability of relief from joint and several liability when the liability to which the claim for relief relates was the subject of a prior closing agreement entered into by the requesting spouse, shall not apply to an agreement described in section 6224(c) with respect to partnership items (or any penalty, addition to tax, or additional amount that relates to adjustments to partnership items) that is entered into while the requesting spouse is a party to a pending partnership-level proceeding conducted under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding). If, however, a requesting spouse enters into a closing agreement pertaining to any penalty, addition to tax, or additional amount that relates to adjustments to partnership items, at a time when the requesting spouse is not a party to a pending TEFRA partnership proceeding (*e.g.*, in connection with an affected items proceeding), then the provisions of paragraph (c)(1) shall apply. Similarly, if a requesting spouse enters into a closing agreement with respect to both partnership items (including affected items) and nonpartnership items, while the requesting spouse is a party to a pending TEFRA partnership proceeding, the provisions of paragraph (c)(1) shall apply to the portion of the closing agreement that relates to nonpartnership items and the provisions of this paragraph (c)(2) shall apply to the remainder of the closing agreement.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. H and W file joint returns for taxable years 2002–2004, on which they claim losses attributable to H's limited partnership interest in Partnership A. In January 2006, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) regarding Partnership A's 2002–2004 taxable years, and sends H and W a notice under section 6223(a)(1). In September 2007, H files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge in April 2008. In August 2008, H and W enter into a closing agreement with the Internal Revenue Service, in which H and W agree to the disallowance of some of the claimed losses from Partnership A for taxable years 2002 through 2007. W may not later claim relief from joint and several liability under section 6015 as to the disallowed losses attributable to Partnership A for taxable years 2002 to 2007. This is because at the time W entered into the closing agreement, H's partnership items attributable to Partnership A had converted to nonpartnership items as a result of H's filing of the bankruptcy petition. The conversion of H's items also terminated W's status as a partner in the TEFRA partnership proceeding regarding Partnership A. Consequently, the closing agreement did not pertain to partnership items and W was not a party to a pending partnership-level proceeding regarding Partnership A when she entered into the closing agreement. Accordingly, the exception in paragraph (c)(2) of this section for agreements relating to TEFRA partnership proceedings does not apply.

Example 2. H and W file a joint return for taxable year 2002, on which they claim $25,000 in losses attributable to H's general partnership interest in Partnership B. In November 2003, the Service proposes a deficiency in tax relating to H's and W's 2002 joint return arising from omitted taxable interest income in the amount of $2,000 that is attributable to H. In July 2005, the Internal Revenue Service commences a TEFRA partnership proceeding regarding Partnership B's 2002 and 2003 taxable years, and sends H and W a notice under section 6223(a)(1). In March 2006, H and W enter into a closing agreement with the Service. The closing agreement provides for the disallowance of the claimed losses from Partnership B in excess of H's and W's out-of-pocket expenditures relating to Partnership B for taxable year 2002 and any subsequent year(s) in which H and W claimed losses from Partnership B. In addition, H and W agree to the imposition of the accuracy-related penalty under section 6662 with respect to the disallowed losses attributable to partnership B. In the closing agreement, H and W also agree to the deficiency resulting from the omitted interest income for taxable year 2002. W may not later claim relief from joint and several liability under section 6015 as to the deficiency in tax attributable to the omitted income of $2,000 for taxable year 2002, because this portion of the closing agreement pertains to nonpartnership items. In contrast, W may claim relief from joint and several liability as to the disallowed losses and accuracy-related penalty attributable to Partnership B for taxable year 2002 or any subsequent year(s). This is because this portion of the closing agreement pertains to partnership and affected items and was entered into at a time when W was a party to the pending partnership-level proceeding regarding Partnership B. Consequently, W never had the opportunity to raise the innocent spouse defense in the course of that TEFRA partnership proceeding. (See § 1.6015–5(b)(5) relating to premature claims).

(d) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015, and section 6013(d)(3) applies to the return. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Service or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Res judicata and collateral estoppel.* A requesting spouse is barred from relief from joint and several liability under section 6015 by res judicata for any tax year for which a court of competent jurisdiction has rendered a final decision on the requesting spouse's tax liability if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in that proceeding and could have raised relief under section 6015. A requesting spouse has not meaningfully participated in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding. Also, any final decisions rendered by a court of competent jurisdiction regarding issues relevant to section 6015 are conclusive and the requesting spouse may be collaterally estopped from relitigating those issues.

(f) *Community property laws*—(1) *In general.* In determining whether relief is available under § 1.6015–2, 1.6015–3, or 1.6015–4, items of income, credits, and deductions are generally allocated to the spouses without regard to the operation of community property laws. An erroneous item is attributed to the individual whose activities gave rise to such item. See § 1.6015–3(d)(2).

(2) *Example.* The following example illustrates the rule of this paragraph (f):

Example. (i) H and W are married and have lived in State A (a community property state) since 1987. On April 15, 2003, H and W file a joint Federal income tax return for the 2002 taxable year. In August 2005, the Internal Revenue Service proposes a $17,000 deficiency with respect to the 2002 joint return. A portion of the deficiency is attributable to $20,000 of H's unreported interest income from his individual bank account. The remainder of the deficiency is attributable to $30,000 of W's disallowed business expense deductions. Under the laws of State A, H and W each own ½ of all income earned and property acquired during the marriage.

(ii) In November 2005, H and W divorce and W timely elects to allocate the deficiency. Even though the laws of State A provide that ½ of the interest income is W's, for purposes of relief under this section, the $20,000 unreported interest income is allocable to H, and the $30,000 disallowed deduction is allocable to W. The community property laws of State A are not considered in allocating items for this purpose.

(g) *Scope of this section and §§ 1.6015–2 through 1.6015–9.* This section and §§ 1.6015–2 through 1.6015–9 do not apply to any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of law or rule of law.

(h) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who filed a joint return and elects relief from Federal income tax liability arising from that return under § 1.6015–2 or 1.6015–3, or requests relief from Federal income tax liability arising from that return under § 1.6015–4.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual with whom the requesting spouse filed the joint return for the year for which relief from liability is sought.

(3) *Item.* An item is that which is required to be separately listed on an individual income tax return or any required attachments. Items include, but are not limited to, gross income, deductions, credits, and basis.

(4) *Erroneous item.* An erroneous item is any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. For example, unreported income from an investment asset resulting in an understatement or deficiency in tax is an erroneous item. Similarly, ordinary income that is improperly reported as capital gain resulting in an understatement or deficiency in tax is also an erroneous item. In addition, a deduction for an expense that is personal in nature that results in an understatement or deficiency in tax is an erroneous item of deduction. An erroneous item is also an improperly reported item that affects the liability on other returns (e.g., an improper net operating loss that is carried back to a prior year's return). Penalties and interest are not erroneous items. Rather, relief from penalties and interest will

generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, see § 1.6015–3(d)(4)(iv)(B).

(5) *Election or request.* A qualifying election under § 1.6015–2 or 1.6015–3, or request under § 1.6015–4, is the first timely claim for relief from joint and several liability for the tax year for this section if the requesting spouse elects the application of this section in accordance with §§ 1.6015–1(h)(5) and 1.6015–5, and—

(1) A joint return was filed for the taxable year;

(2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse;

(3) The requesting spouse establishes that in signing the return he or she did not know, and had no reason to know, of the understatement. For purposes of this paragraph (b)(3), the requesting spouse will be considered to have known of the understatement if he or she knew of the item giving rise to the deficiency (or portion thereof) attributable to the erroneous item. For example, if H knew that W received $1,000 of dividend income and did not know that W received an additional $4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the $1,000 of dividend income of which H had actual knowledge. A requesting spouse's actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the requesting property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have

§ 1.6015–3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.

(a) *Election to allocate deficiency.* A requesting spouse may elect to allocate a deficiency if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time

dwellings are considered members of the same household if the spouses are not estranged or one spouse is temporarily absent from the other's household within the meaning of paragraph (b)(3)(i) of this section.

(c) *Limitations*—(1) *No refunds.* Relief under this section is only available for unpaid liabilities resulting from understatements of liability. Refunds are not authorized under this section.

(2) *Actual knowledge*—(i) *In general.*

generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, see § 1.6015–3(d)(4)(iv)(B).

(5) *Election or request.* A qualifying election under § 1.6015–2 or 1.6015–3, or request under § 1.6015–4, is the first timely claim for relief from joint and several liability for the tax year for which relief is sought. A qualifying election also includes a requesting spouse's second election to seek relief from joint and several liability for the same tax year under § 1.6015–3 when the additional qualifications of paragraphs (h)(5)(i) and (ii) of this section are met—

(i) The requesting spouse did not qualify for relief under § 1.6015–3 when the Internal Revenue Service considered the first election solely because the qualifications of § 1.6015–3(a) were not satisfied; and

(ii) At the time of the second election, the qualifications for relief under § 1.6015–3(a) are satisfied.

(i) [Reserved]

(j) *Transferee liability*—(1) *In general.* The relief provisions of section 6015 do not negate liability that arises under the operation of other laws. Therefore, a requesting spouse who is relieved of joint and several liability under § 1.6015–2, 1.6015–3, or 1.6015–4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws. For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder. In addition, the requesting spouse's property may be subject to collection under Federal or state property laws.

(2) *Example.* The following example illustrates the rule of this paragraph (j):

Example. H and W timely file their 1998 joint income tax return on April 15, 1999. H dies in March 2000, and the executor of H's will transfers all of the estate's assets to W. In July 2001, the Internal Revenue Service assesses a deficiency for the 1998 return. The items giving rise to the deficiency are attributable to H. W is relieved of the liability under section 6015, and H's estate remains solely liable. The Internal Revenue Service may seek to collect the deficiency from W to the extent permitted under Federal or state transferee liability or property laws.

§ 1.6015–2 Relief from liability applicable to all qualifying joint filers.

(a) *In general.* A requesting spouse may be relieved of joint and several liability for tax (including additions to tax, penalties, and interest) from an understatement for a taxable year under this section if the requesting spouse elects the application of this section in accordance with §§ 1.6015–1(h)(5) and 1.6015–5, and—

(1) A joint return was filed for the taxable year;

(2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse;

(3) The requesting spouse establishes that in signing the return he or she did not know and had no reason to know of the understatement; and

(4) It is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement.

(b) *Understatement.* The term *understatement* has the meaning given to such term by section 6662(d)(2)(A) and the regulations thereunder.

(c) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. For rules relating to a requesting spouse's actual knowledge, see § 1.6015–3(c)(2). All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(d) *Inequity.* All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000–15 (2000–1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

(e) *Partial relief*—(1) *In general.* If a requesting spouse had no knowledge or reason to know of only a portion of an erroneous item, the requesting spouse may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion.

(2) *Example.* The following example illustrates the rules of this paragraph (e):

Example. H and W are married and file their 2004 joint income tax return in March 2005. In April 2006, H is convicted of embezzling $2 million from his employer during 2004. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. H and W had a joint bank account into which H and W deposited all of their reported income. Each month during 2004, H transferred an additional $10,000 from the individual account to H and W's joint bank account. W paid the household expenses using this joint account, and regularly received the bank statements relating to the account. W had no knowledge or reason to know of H's embezzling activities. However, W did have knowledge and reason to know of $120,000 of the $2 million of H's embezzlement income at the time she signed the joint return because that amount passed through the couple's joint bank account. Therefore, W may be relieved of the liability arising from $1,880,000 of the unreported embezzlement income, but she may not be relieved of the liability for the deficiency arising from $120,000 of the unreported embezzlement income of which she knew and had reason to know.

§ 1.6015–3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.

(a) *Election to allocate deficiency.* A requesting spouse may elect to allocate a deficiency if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. For purposes of this section, the marital status of a deceased requesting spouse will be determined on the earlier of the date of the election or the date of death in accordance with section 7703(a)(1). Subject to the restrictions of paragraph (c) of this section, an eligible requesting spouse who elects the application of this section in accordance with §§ 1.6015–1(h)(5) and 1.6015–5 generally may be relieved of joint and several liability for the portion of any deficiency that is allocated to the nonrequesting spouse pursuant to the allocation methods set forth in paragraph (d) of this section. Relief may be available to both spouses filing the joint return if each spouse is eligible for and elects the application of this section.

(b) *Definitions*—(1) *Divorced.* A determination of whether a requesting spouse is divorced for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(2) *Legally separated.* A determination of whether a requesting spouse is legally separated for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(3) *Members of the same household*—(i) *Temporary absences.* A requesting spouse and a nonrequesting spouse are considered members of the same household during either spouse's temporary absences from the household if it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include, but are not limited to, absence due to incarceration, illness, business, vacation, military service, or education.

(ii) *Separate dwellings.* A husband and wife who reside in the same dwelling are considered members of the same household. In addition, a husband and wife who reside in two separate dwellings are considered members of the same household if the spouses are not estranged or one spouse is temporarily absent from the other's household within the meaning of paragraph (b)(3)(i) of this section.

(c) *Limitations*—(1) *No refunds.* Relief under this section is only available for unpaid liabilities resulting from understatements of liability. Refunds are not authorized under this section.

(2) *Actual knowledge*—(i) *In general.* If, under section 6015(c)(3)(C), the Secretary demonstrates that, at the time the return was signed, the requesting spouse had actual knowledge of an erroneous item that is allocable to the nonrequesting spouse, the election to allocate the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item. The Service, having both the burden of production and the burden of persuasion, must establish, by a preponderance of the evidence, that the requesting spouse had actual knowledge of the erroneous item in order to invalidate the election.

(A) *Omitted income.* In the case of omitted income, knowledge of the item includes knowledge of the receipt of the income. For example, assume W received $5,000 of dividend income from her investment in X Co. but did not report it on the joint return. H knew that W received $5,000 of dividend income from X Co. that year. H had actual knowledge of the erroneous item (i.e., $5,000 of unreported dividend income from X Co.), and no relief is available under this section for the deficiency attributable to the dividend income from X Co. This rule applies equally in situations where the other spouse has unreported income although the spouse does not have an actual receipt of cash (e.g., dividend reinvestment or a distributive share from a flow-through entity shown on Schedule K–1, "Partner's Share of Income, Credits, Deductions, etc.").

(B) *Deduction or credit—(1) Erroneous deductions in general.* In the case of an erroneous deduction or credit, knowledge of the item means knowledge of the facts that made the item not allowable as a deduction or credit.

(2) *Fictitious or inflated deduction.* If a deduction is fictitious or inflated, the IRS must establish that the requesting spouse actually knew that the expenditure was not incurred, or not incurred to that extent.

(ii) *Partial knowledge.* If a requesting spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. For example, if H knew that W received $1,000 of dividend income and did not know that W received an additional $4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the $1,000 of dividend income of which H had actual knowledge. A requesting spouse's actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the requesting spouse had actual knowledge of an erroneous item. For example, assume H did not know W's dividend income from X Co. was taxable, but knew that W received the dividend income. Relief is not available under this section. In addition, a requesting spouse's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the requesting spouse had actual knowledge of the item. For example, assume that H knew of W's dividend income, but H failed to review the completed return and did not know that W omitted the dividend income from the return. Relief is not available under this section.

(iii) *Knowledge of the source not sufficient.* Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. For example, assume H knew that W owned X Co. stock, but H did not know that X Co. paid dividends to W that year. H's knowledge of W's ownership in X Co. is not sufficient to establish that H had actual knowledge of the dividend income from X Co. In addition, a requesting spouse's actual knowledge may not be inferred when the requesting spouse merely had reason to know of the erroneous item. Even if H's knowledge of W's ownership interest in X Co. indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H's reason to know. Similarly, the IRS need not establish that a requesting spouse knew of the source of an erroneous item in order to establish that the requesting spouse had actual knowledge of the item itself. For example, assume H knew that W received $1,000, but he did not know the source of the $1,000. W and H omit the $1,000 from their joint return. H has actual knowledge of the item giving rise to the deficiency ($1,000), and relief is not available under this section.

(iv) *Factors supporting actual knowledge.* To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the IRS may rely upon all of the facts and circumstances. One factor that may be relied upon in

demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item, and the requesting spouse's election would be

the deficiency) by the value of any disqualified asset that was transferred to the requesting spouse. For purposes of this paragraph (c)(3), the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(ii) *Disqualified asset defined.* A disqualified asset is any property or right to property that was transferred from the nonrequesting spouse to the

the joint return, H had actual knowledge of W's self-employment income. The fact that H was unaware of the tax consequences of that income (i.e., that an individual is required to pay self-employment tax on that income) is not relevant.

Example 2. Actual knowledge not inferred from a requesting spouse's reason to know. (i) H has long been an avid gambler. H supports his gambling habit and keeps all of his gambling winnings in an individual bank account, held solely in his name. W knows about H's gambling habit and that he keeps

H received any income from the business. W's election to allocate to H the deficiency attributable to the $30,000 of unreported plumbing income is valid.

(ii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W knew that H received $20,000 of plumbing income. W's election to allocate to H the deficiency attributable to the $20,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $10,000 of unreported deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred any medical expenses.

(iii) Assume the same facts as in paragraph (i) of this *Example 6* except that the Internal Revenue Service disallowed $400 of the $1,000 medical expense deduction. At the time W signed the return, W knew that H had incurred some medical expenses but did not know the exact amount. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is

divorce. According to a decree of divorce, H must transfer ½ of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of ½ of H's interest in mutual fund A took place after the 30-day letter was mailed, the mutual fund interest is not presumed to be a disqualified asset because the transfer of H's interest in the fund was made pursuant to a decree of divorce.

Example 8. Overcoming the disqualified asset presumption. (i) H and W are married

demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item, and the requesting spouse's election would be invalid with respect to that entire item. Another factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item. For purposes of this paragraph, a requesting spouse will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, a requesting spouse who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the requesting spouse's name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse asserted dominion and control over the item. For example, assume H and W live in State A, a community property state. After their marriage, H opens a bank account in his name. Under the operation of the community property laws of State A, W owns ½ of the bank account. However, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(iv) because the account is not held in her name and there is no other indication that she asserted dominion and control over the item.

(v) *Abuse exception.* If the requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's retaliation, the limitation on actual knowledge in this paragraph (c) will not apply. However, if the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, § 1.6013–4(d) applies.

(3) *Disqualified asset transfers*—(i) *In general.* The portion of the deficiency for which a requesting spouse is liable is increased (up to the entire amount of the deficiency) by the value of any disqualified asset that was transferred to the requesting spouse. For purposes of this paragraph (c)(3), the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(ii) *Disqualified asset defined.* A disqualified asset is any property or right to property that was transferred from the nonrequesting spouse to the requesting spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax (including additions to tax, penalties, and interest).

(iii) *Presumption.* Any asset transferred from the nonrequesting spouse to the requesting spouse during the 12-month period before the mailing date of the first letter of proposed deficiency (e.g., a 30-day letter or, if no 30-day letter is mailed, a notice of deficiency) is presumed to be a disqualified asset. The presumption also applies to any asset that is transferred from the nonrequesting spouse to the requesting spouse after the mailing date of the first letter of proposed deficiency. The presumption does not apply, however, if the requesting spouse establishes that the asset was transferred pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree. If the presumption does not apply, but the Internal Revenue Service can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the requesting spouse remains liable. If the presumption applies, a requesting spouse may still rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

(4) *Examples.* The following examples illustrate the rules in this paragraph (c):

Example 1. Actual knowledge of an erroneous item. (i) H and W file their 2001 joint Federal income tax return on April 15, 2002. On the return, H and W report W's self-employment income, but they do not report W's self-employment tax on that income. H and W divorce in July 2003. In August 2003, H and W receive a 30-day letter from the Internal Revenue Service proposing a deficiency with respect to W's unreported self-employment tax on the 2001 return. On November 4, 2003, H files an election to allocate the deficiency to W. The erroneous item is the self-employment income, and it is allocable to W. H knows that W earned income in 2001 as a self-employed musician, but he does not know that self-employment tax must be reported on and paid with a joint return.

(ii) H's election to allocate the deficiency to W is invalid because, at the time H signed the joint return, H had actual knowledge of W's self-employment income. The fact that H was unaware of the tax consequences of that income (i.e., that an individual is required to pay self-employment tax on that income) is not relevant.

Example 2. Actual knowledge not inferred from a requesting spouse's reason to know. (i) H has long been an avid gambler. H supports his gambling habit and keeps all of his gambling winnings in an individual bank account, held solely in his name. W knows about H's gambling habit and that he keeps a separate bank account, but she does not know whether he has any winnings because H does not tell her, and she does not otherwise know of H's bank account transactions. H and W file their 2001 joint Federal income tax return on April 15, 2002. On October 31, 2003, H and W receive a 30-day letter proposing a $100,000 deficiency relating to H's unreported gambling income. In February 2003, H and W divorce, and in March 2004, W files an election under section 6015(c) to allocate the $100,000 deficiency to H.

(ii) While W may have had reason to know of the gambling income because she knew of H's gambling habit and separate account, W did not have actual knowledge of the erroneous item (i.e., the gambling winnings). The Internal Revenue Service may not infer actual knowledge from W's reason to know of the income. Therefore, W's election to allocate the $100,000 deficiency to H is valid.

Example 3. Actual knowledge and failure to review return. (i) H and W are legally separated. In February 1999, W signs a blank joint Federal income tax return for 1998 and gives it to H to fill out. The return was timely filed on April 15, 1999. In September 2001, H and W receive a 30-day letter proposing a deficiency relating to $100,000 of unreported dividend income received by H with respect to stock of ABC Co. owned by H. W knew that H received the $100,000 dividend payment in August 1998, but she did not know whether H reported that payment on the joint return.

(ii) On January 30, 2002, W files an election to allocate the deficiency from the 1998 return to H. W claims she did not review the completed joint return, and therefore, she had no actual knowledge that there was an understatement of the dividend income. W's election to allocate the deficiency to H is invalid because she had actual knowledge of the erroneous item (dividend income from ABC Co.) at the time she signed the return. The fact that W signed a blank return is irrelevant. The result would be the same if W had not reviewed the completed return or if W had reviewed the completed return and had not noticed that the item was omitted.

Example 4. Actual knowledge of an erroneous item of income. (i) H and W are legally separated. In June 2004, a deficiency is proposed with respect to H's and W's 2002 joint Federal income tax return that is attributable to $30,000 of unreported income from H's plumbing business that should have been reported on a Schedule C. No Schedule C was attached to the return. At the time W signed the return, W knew that H had a plumbing business but did not know whether

H received any income from the business. W's election to allocate to H the deficiency attributable to the $30,000 of unreported plumbing income is valid.

(ii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W knew that H received $20,000 of plumbing income. W's election to allocate to H the deficiency attributable to the $20,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $10,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W did not know the exact amount of H's plumbing income. W did know, however, that H received at least $8,000 of plumbing income. W's election to allocate to H the deficiency attributable to $8,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the remaining $22,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iv) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported $26,000 of plumbing income on the return and omitted $4,000 of plumbing income from the return. At the time W signed the return, W knew that H was a plumber, but she did not know that H earned more than $26,000 that year. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income is valid because she did not have actual knowledge that H received plumbing income in excess of $26,000.

(v) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported only $20,000 of plumbing income on the return and omitted $10,000 of plumbing income from the return. At the time W signed the return, W knew that H earned at least $26,000 that year as a plumber. However, W did not know that, in reality, H earned $30,000 that year as a plumber. W's election to allocate to H the deficiency attributable to the $6,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

Example 5. Actual knowledge of a deduction that is an erroneous item. (i) H and W are legally separated. In February 2005, a deficiency is asserted with respect to their 2002 joint Federal income tax return. The deficiency is attributable to a disallowed $1,000 deduction for medical expenses H claimed he incurred. At the time W signed the return, W knew that H had not incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is invalid because W had actual knowledge that H had not incurred any medical expenses.

(ii) Assume the same facts as in paragraph (i) of this *Example 6* except that, at the time W signed the return, W did not know whether H had incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred any medical expenses.

(iii) Assume the same facts as in paragraph (i) of this *Example 6* except that the Internal Revenue Service disallowed $400 of the $1,000 medical expense deduction. At the time W signed the return, W knew that H had incurred some medical expenses but did not know the exact amount. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred medical expenses (in excess of the floor amount under section 213(a)) of more than $600.

(iv) Assume the same facts as in paragraph (i) of this *Example 6* except that H claims a medical expense deduction of $10,000 and the Internal Revenue Service disallows $9,600. At the time W signed the return, W knew H had incurred some medical expenses but did not know the exact amount. W also knew that H incurred medical expenses (in excess of the floor amount under section 213(a)) of no more than $1,000. W's election to allocate to H the deficiency attributable to the portion of the overstated deduction of which she had actual knowledge ($9,000) is invalid. W's election to allocate the deficiency attributable to the portion of the overstated deduction of which she had no knowledge ($600) is valid.

Example 6. Disqualified asset presumption. (i) H and W are divorced. In May 1999, W transfers $20,000 to H, and in April 2000, H and W receive a 30-day letter proposing a $40,000 deficiency on their 1998 joint Federal income tax return. The liability remains unpaid, and in October 2000, H elects to allocate the deficiency under this section. Seventy-five percent of the net amount of erroneous items are allocable to W, and 25% of the net amount of erroneous items are allocable to H.

(ii) In accordance with the proportionate allocation method (see paragraph (d)(4) of this section), H proposes that $30,000 of the deficiency be allocated to W and $10,000 be allocated to himself. H submits a signed statement providing that the principal purpose of the $20,000 transfer was not the avoidance of tax or payment of tax, but he does not submit any documentation indicating the reason for the transfer. H has not overcome the presumption that the $20,000 was a disqualified asset. Therefore, the portion of the deficiency for which H is liable ($10,000) is increased by the value of the disqualified asset ($20,000). H is relieved of liability for $10,000 of the $30,000 deficiency allocated to W, and remains jointly and severally liable for the remaining $30,000 of the deficiency (assuming that H does not qualify for relief under any other provision).

Example 7. Disqualified asset presumption inapplicable. On May 1, 2001, H and W receive a 30-day letter regarding a proposed deficiency on their 1999 joint Federal income tax return relating to unreported capital gain from H's sale of his investment in Z stock. W had no actual knowledge of the stock sale. The deficiency is assessed in November 2001, and in December 2001, H and W divorce. According to a decree of divorce, H must transfer ½ of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of ½ of H's interest in mutual fund A took place after the 30-day letter was mailed, the mutual fund interest is not presumed to be a disqualified asset because the transfer of H's interest in the fund was made pursuant to a decree of divorce.

Example 8. Overcoming the disqualified asset presumption. (i) H and W are married for 25 years. Every September, on W's birthday, H gives W a gift of $500. On February 28, 2002, H and W receive a 30-day letter from the Internal Revenue Service relating to their 1998 joint individual Federal income tax return. The deficiency relates to H's Schedule C business, and W had no knowledge of the items giving rise to the deficiency. H and W are legally separated in June 2003, and, despite the separation, H continues to give W $500 each year for her birthday. H is not required to give such amounts pursuant to a decree of divorce or separate maintenance.

(ii) On January 27, 2004, W files an election to allocate the deficiency to H. The $1,500 transferred from H to W from February 28, 2001 (a year before the 30-day letter was mailed) to the present is presumed disqualified. However, W may overcome the presumption that such amounts were disqualified by establishing that such amounts were birthday gifts from H and that she has received such gifts during their entire marriage. Such facts would show that the amounts were not transferred for the purpose of avoidance of tax or payment of tax.

(d) *Allocation*—(1) *In general.* (i) An election to allocate a deficiency limits the requesting spouse's liability to that portion of the deficiency allocated to the requesting spouse pursuant to this section.

(ii) Only a requesting spouse may receive relief. A nonrequesting spouse who does not also elect relief under this section remains liable for the entire amount of the deficiency. Even if both spouses elect to allocate a deficiency under this section, there may be a portion of the deficiency that is not allocable, for which both spouses remain jointly and severally liable.

(2) *Allocation of erroneous items.* For purposes of allocating a deficiency under this section, erroneous items are generally allocated to the spouses as if separate returns were filed, subject to the following four exceptions:

(i) *Benefit on the return.* An erroneous item that would otherwise be allocated to the nonrequesting spouse is allocated to the requesting spouse to the extent that the requesting spouse received a tax benefit on the joint return.

(ii) *Fraud.* The Internal Revenue Service may allocate any item between the spouses if the Internal Revenue Service establishes that the allocation is

appropriate due to fraud by one or both spouses.

(iii) *Erroneous items of income.* Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the services producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, section and the exceptions in paragraph (c)(2)(iv) of this section. For rules regarding the effect of community property laws, see § 1.6015–1(f) and paragraph (c)(2)(iv) of this section.

(iv) *Erroneous deduction items.* Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(3) *Burden of proof.* Except for establishing actual knowledge under paragraph (c)(2) of this section, the requesting spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of

income tax return on April 15, 2002. On August 16, 2004, a $54,000 deficiency is assessed with respect to their 2001 joint return. H and W divorce on October 14, 2004, and W timely elects to allocate the deficiency. Five erroneous items give rise to the deficiency—

(A) A disallowed $15,000 business deduction allocable to H;

(B) $20,000 of unreported income allocable to H;

(C) A disallowed $5,000 deduction for educational expense allocable to H;

(D) A disallowed $40,000 charitable contribution deduction allocable to W; and

(E) A disallowed $40,000 interest deduction allocable to W.

(ii) In total, there are $120,000 worth of erroneous items, of which $80,000 are attributable to W and $40,000 are attributable to H.

W's items		H's items	
$40,000	charitable deduction	$15,000	business deduction
40,000	interest deduction	20,000	unreported income

appropriate due to fraud by one or both spouses.

(iii) *Erroneous items of income.* Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the services producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations of paragraph (c) of this section. In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (c)(2)(iv) of this section. For rules regarding the effect of community property laws, see § 1.6015–1(f) and paragraph (c)(2)(iv) of this section.

(iv) *Erroneous deduction items.* Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. Deduction items unrelated to a business or investment are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(3) *Burden of proof.* Except for establishing actual knowledge under paragraph (c)(2) of this section, the requesting spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The requesting spouse must also establish the proper allocation of the erroneous items.

(4) *General allocation method*—(i) *Proportionate allocation.* (A) The portion of a deficiency allocable to a spouse is the amount that bears the same ratio to the deficiency as the net amount of erroneous items allocable to the spouse bears to the net amount of all erroneous items. This calculation may be expressed as follows:

$$X = (\text{deficiency}) \times \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

where X = the portion of the deficiency allocable to the spouse.

(B) The proportionate allocation applies to any portion of the deficiency other than—

(*1*) Any portion of the deficiency attributable to erroneous items allocable to the nonrequesting spouse of which the requesting spouse had actual knowledge;

(*2*) Any portion of the deficiency attributable to separate treatment items (as defined in paragraph (d)(4)(ii) of this section);

(*3*) Any portion of the deficiency relating to the liability of a child (as defined in paragraph (d)(4)(iii) of this section) of the requesting spouse or nonrequesting spouse;

(*4*) Any portion of the deficiency attributable to alternative minimum tax under section 55;

(*5*) Any portion of the deficiency attributable to accuracy-related or fraud penalties;

(*6*) Any portion of the deficiency allocated pursuant to alternative allocation methods authorized under paragraph (d)(6) of this section.

(ii) *Separate treatment items.* Any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or an addition to tax (other than tax imposed by section 1 or section 55) that is required to be included with a joint return (a separate treatment item) is allocated separately to that spouse. If such credit or tax is attributable in whole or in part to both spouses, then the IRS will determine on a case by case basis how such item will be allocated. Once the proportionate allocation is made, the liability for the requesting spouse's separate treatment items is added to the requesting spouse's share of the liability.

(iii) *Child's liability.* Any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse is allocated jointly to both spouses. For purposes of this paragraph, a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse.

(iv) *Allocation of certain items*—(A) *Alternative minium tax.* Any portion of a deficiency relating to the alternative minimum tax under section 55 will be allocated appropriately.

(B) *Accuracy-related and fraud penalties.* Any accuracy-related or fraud penalties under section 6662 or 6663 are allocated to the spouse whose item generated the penalty.

(5) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to elect to allocate the deficiency, that any election is timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse has actual knowledge of the erroneous items allocable to the other spouse. The examples are as follows:

Example 1. Allocation of erroneous items. (i) H and W file a 2003 joint Federal income tax return on April 15, 2004. On April 28, 2006, a deficiency is assessed with respect to their 2003 return. Three erroneous items give rise to the deficiency—

(A) Unreported interest income, of which W had actual knowledge, from H's and W's joint bank account;

(B) A disallowed business expense deduction on H's Schedule C; and

(C) A disallowed Lifetime Learning Credit for W's post-secondary education, paid for by W.

(ii) H and W divorce in May 2006, and in September 2006, W timely elects to allocate the deficiency. The erroneous items are allocable as follows:

(A) The interest income would be allocated ½ to H and ½ to W, except that W has actual knowledge of it. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W remains jointly and severally liable for it.

(B) The business expense deduction is allocable to H.

(C) The Lifetime Learning Credit is allocable to W.

Example 2. Proportionate allocation. (i) W and H timely file their 2001 joint Federal income tax return on April 15, 2002. On August 16, 2004, a $54,000 deficiency is assessed with respect to their 2001 joint return. H and W divorce on October 14, 2004, and W timely elects to allocate the deficiency. Five erroneous items give rise to the deficiency—

(A) A disallowed $15,000 business deduction allocable to H;

(B) $20,000 of unreported income allocable to H;

(C) A disallowed $5,000 deduction for educational expense allocable to H;

(D) A disallowed $40,000 charitable contribution deduction allocable to W; and

(E) A disallowed $40,000 interest deduction allocable to W.

(ii) In total, there are $120,000 worth of erroneous items, of which $80,000 are attributable to W and $40,000 are attributable to H.

W's items		H's items	
$40,000	charitable deduction	$15,000	business deduction
40,000	interest deduction	20,000	unreported income
		5,000	education deduction
$80,000		$40,000	

(iii) The ratio of erroneous items allocable to W to the total erroneous items is ⅔ ($80,000/$120,000). W's liability is limited to $36,000 of the deficiency (⅔ of $54,000). The Internal Revenue Service may collect up to $36,000 from W and up to $54,000 from H (the total amount collected, however, may not exceed $54,000). If H also made an election, there would be no remaining joint and several liability, and the Internal Revenue Service would be permitted to collect $36,000 from W and $18,000 from H.

Example 3. Proportionate allocation with joint erroneous item. (i) On September 4, 2001, W elects to allocate a $3,000 deficiency for the 1998 tax year to H. Three erroneous items give rise to the deficiency—

(A) Unreported interest in the amount of $4,000 from a joint bank account;

(B) A disallowed deduction for business expenses in the amount of $2,000 attributable to H's business; and

(C) Unreported wage income in the amount of $6,000 attributable to W's second job.

H's items		W's items	
$2,000	business deduction	$6,000	wage income

Total allocable items: $8,000

(ii) The erroneous items total $12,000. Generally, income, deductions, or credits from jointly held property that are erroneous items are allocable 50% to each spouse. However, in this case, both spouses had actual knowledge of the unreported interest income. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W and H remain jointly and severally liable for this portion. Assume that this portion is $1,000. W may allocate the remaining $2,000 of the deficiency.

(iii) The ratio of erroneous items allocable to W to the total erroneous items is ¾ ($6,000/$8,000). W's liability is limited to $1,500 of the deficiency (¾ of $2,000) allocated to her. The Internal Revenue Service may collect up to $2,500 from W (¾ of the total allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest) and up to $3,000 from H (the total amount collected, however, cannot exceed $3,000).

(iv) Assume H also elects to allocate the 1998 deficiency. H is relieved of liability for ¾ of the deficiency, which is allocated to W. H's relief totals $1,500 (¾ of $2,000). H remains liable for $1,500 of the deficiency (¼ of the allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest).

Example 4. Separate treatment items (STIs). (i) On September 1, 2006, a $28,000 deficiency is assessed with respect to H's and W's 2003 joint return. The deficiency is the result of 4 erroneous items—

(A) A disallowed Lifetime Learning Credit of $2,000 attributable to H;

(B) A disallowed business expense deduction of $8,000 attributable to H;

(C) Unreported income of $24,000 attributable to W; and

(D) Unreported self-employment tax of $14,000 attributable to W.

(ii) H and W both elect to allocate the deficiency.

(iii) The $2,000 Lifetime Learning Credit and the $14,000 self-employment tax are STIs totaling $16,000. The amount of erroneous items included in computing the proportionate allocation ratio is $32,000 ($24,000 unreported income and $8,000 disallowed business expense deduction). The amount of the deficiency subject to proportionate allocation is reduced by the amount of STIs ($28,000 − $16,000 = $12,000).

(iv) Of the $32,000 of proportionate allocation items, $24,000 is allocable to W, and $8,000 is allocable to H.

W's share of allocable items	H's share of allocable items
¾ ($24,000/$32,000)	¼ ($8,000/$32,000)

(v) W's liability for the portion of the deficiency subject to proportionate allocation is limited to $9,000 (¾ of $12,000) and H's liability for such portion is limited to $3,000 (¼ of $12,000).

(vi) After the proportionate allocation is completed, the amount of the STIs is added to each spouse's allocated share of the deficiency.

W's share of total deficiency		H's share of total deficiency	
$ 9,000	allocated deficiency	$3,000	allocated deficiency
14,000	self-employment tax	2,000	Lifetime Learning Credit
$23,000		$5,000	

(vii) Therefore, W's liability is limited to $23,000 and H's liability is limited to $5,000.

Example 5. Requesting spouse receives a benefit on the joint return from the nonrequesting spouse's erroneous item. (i) In 2001, H reports gross income of $4,000 from his business on Schedule C, and W reports $50,000 of wage income. On their 2001 joint Federal income tax return, H deducts $20,000 of business expenses resulting in a net loss

from his business of $16,000. H and W divorce in September 2002, and on May 22, 2003, a $5,200 deficiency is assessed with respect to their 2001 joint return. W elects to allocate the deficiency. The deficiency on the joint return results from a disallowance of all of H's $20,000 of deductions.

(ii) Since H used only $4,000 of the disallowed deductions to offset gross income from his business, W benefitted from the other $16,000 of the disallowed deductions used to offset her wage income. Therefore, subject to tax at the 20% marginal rate). The remaining $3,100 of the deficiency is attributable to $10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the

(b) *Time period for filing a request for relief*—(1) *In general.* To elect the application of § 1.6015–2 or 1.6015–3, or to request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax

July 10, 2000. An election or request for relief must be made by January 11, 2002, which is two years after the Internal Revenue Service sent the section 6330 notice.

Example 2. The Internal Revenue Service offsets an overpayment against a joint liability for 1995 on January 12, 1998. The offset only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2001, W elects relief with respect to the unpaid portion of the 1995 liability. W's election is timely because the Internal Revenue Service has not

February 2001, she starts her own business from which she earns $100,000 of net income for the year. H and W file a joint return for tax year 2001, on which they claim $20,000 in losses from their investment in P, and they omit W's self-employment tax. In March 2003, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) and sends H and W a notice under section 6223(a)(1). In September 2003, the Internal Revenue Service audits H's and

(b) *Information submitted.* The Internal Revenue Service will consider all of the information (as relevant to each particular relief provision) that the nonrequesting spouse submits in determining whether relief from joint and several liability is appropriate, including information relating to the following—

(1) The legal status of the requesting and nonrequesting spouses' marriage;

(2) The extent of the requesting

from his business of $16,000. H and W divorce in September 2002, and on May 22, 2003, a $5,200 deficiency is assessed with respect to their 2001 joint return. W elects to allocate the deficiency. The deficiency on the joint return results from a disallowance of all of H's $20,000 of deductions.

(ii) Since H used only $4,000 of the disallowed deductions to offset gross income from his business, W benefitted from the other $16,000 of the disallowed deductions used to offset her wage income. Therefore, $4,000 of the disallowed deductions are allocable to H and $16,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,160 (4/5 of $5,200). If H also elected to allocate the deficiency, H's election to allocate the $4,160 of the deficiency to W would be invalid because H had actual knowledge of the erroneous items.

Example 6. Calculation of requesting spouse's benefit on the joint return when the nonrequesting spouse's erroneous item is partially disallowed. Assume the same facts as in Example 5, except that H deducts $18,000 for business expenses on the joint return, of which $16,000 are disallowed. Since H used only $2,000 of the $16,000 disallowed deductions to offset gross income from his business, W received benefit on the return from the other $14,000 of the disallowed deductions used to offset her wage income. Therefore, $2,000 of the disallowed deductions are allocable to H and $14,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,550 (7/8 of $5,200).

(6) *Alternative allocation methods*—(i) *Allocation based on applicable tax rates.* If a deficiency arises from two or more erroneous items that are subject to tax at different rates (e.g., ordinary income and capital gain items), the deficiency will be allocated after first separating the erroneous items into categories according to their applicable tax rate. After all erroneous items are categorized, a separate allocation is made with respect to each tax rate category using the proportionate allocation method of paragraph (d)(4) of this section.

(ii) *Allocation methods provided in subsequent published guidance.* Additional alternative methods for allocating erroneous items under section 6015(c) may be prescribed by the Treasury and IRS in subsequent revenue rulings, revenue procedures, or other appropriate guidance.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(6):

Example. Allocation based on applicable tax rates. H and W timely file their 1998 joint Federal income tax return. H and W divorce in 1999. On July 13, 2001, a $5,100 deficiency is assessed with respect to H's and W's 1998 return. Of this deficiency, $2,000 results from unreported capital gain of $6,000 that is attributable to W and $4,000 of capital gain that is attributable to H (both gains being subject to tax at the 20% marginal rate). The remaining $3,100 of the deficiency is attributable to $10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the total amount of 20% tax rate items ($10,000), 60% is allocable to W and 40% is allocable to H. Therefore, 60% of the $2,000 deficiency attributable to these items (or $1,200) is allocated to W. The remaining 40% of this portion of the deficiency ($800) is allocated to H. The only 31% tax rate item is allocable to H. Accordingly, H is liable for $3,900 of the deficiency ($800 + $3,100), and W is liable for the remaining $1,200.

§ 1.6015–4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under § 1.6015–2 or 1.6015–3 may request equitable relief under this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of § 1.6015–3(c)(1) (i.e., no refunds under § 1.6015–3). Therefore, relief is not available under this section to obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015–3.

(c) For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000–15 (2000–1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

§ 1.6015–5 Time and manner for requesting relief.

(a) *Requesting relief.* To elect the application of § 1.6015–2 or 1.6015–3, or to request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857, "Request for Innocent Spouse Relief" (or other specified form); submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner prescribed by the Treasury and IRS in forms, relevant revenue rulings, revenue procedures, or other published guidance (see § 601.601(d)(2) of this chapter).

(b) *Time period for filing a request for relief*—(1) *In general.* To elect the application of § 1.6015–2 or 1.6015–3, or to request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Definitions*—(i) *Collection activity.* For purposes of this paragraph (b), collection activity means a section 6330 notice; an offset of an overpayment of the requesting spouse against a liability under section 6402; the filing of a suit by the United States against the requesting spouse for the collection of the joint tax liability; or the filing of a claim by the United States in a court proceeding in which the requesting spouse is a party or which involves property of the requesting spouse. Collection activity does not include a notice of deficiency; the filing of a Notice of Federal Tax Lien; or a demand for payment of tax. The term *property of the requesting spouse,* for purposes of this paragraph (b), means property in which the requesting spouse has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the nonrequesting spouse.

(ii) *Section 6330 notice.* A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the Service's intent to levy and of their right to a collection due process (CDP) hearing.

(3) *Requests for relief made before commencement of collection activity.* An election or request for relief may be made before collection activity has commenced. For example, an election or request for relief may be made in connection with an audit or examination of the joint return or a demand for payment, or pursuant to the CDP hearing procedures under sections 6320 in connection with the filing of a Notice of Federal Tax Lien. For more information on the rules regarding collection due process for liens, see the Treasury regulations under section 6320. However, no request for relief may be made before the date specified in paragraph (b)(5) of this section.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. On January 11, 2000, a section 6330 notice is mailed to H and W regarding their 1997 joint Federal income tax liability. The Internal Revenue Service levies on W's employer on June 5, 2000. The Internal Revenue Service levies on H's employer on July 10, 2000. An election or request for relief must be made by January 11, 2002, which is two years after the Internal Revenue Service sent the section 6330 notice.

Example 2. The Internal Revenue Service offsets an overpayment against a joint liability for 1995 on January 12, 1998. The offset only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2001, W elects relief with respect to the unpaid portion of the 1995 liability. W's election is timely because the Internal Revenue Service has not taken any collection activity after July 22, 1998; therefore, the two-year period has not commenced.

Example 3. Assume the same facts as in *Example 2,* except that the Internal Revenue Service sends a section 6330 notice on January 22, 1999. W's election is untimely because it is filed more than two years after the first collection activity after July 22, 1998.

Example 4. H and W do not remit full payment with their timely filed joint Federal income tax return for the 1989 tax year. No collection activity is taken after July 22, 1998, until the United States files a suit against both H and W to reduce the tax assessment to judgment and to foreclose the tax lien on their jointly-held business property on July 1, 1999. H elects relief on October 2, 2000. The election is timely because it is made within two years of the filing of a collection suit by the United States against H.

Example 5. W files a Chapter 7 bankruptcy petition on July 10, 2000. On September 5, 2000, the United States files a proof of claim for her joint 1998 income tax liability. W elects relief with respect to the 1998 liability on August 20, 2002. The election is timely because it is made within two years of the date the United States filed the proof of claim in W's bankruptcy case.

(5) *Premature requests for relief.* The Internal Revenue Service will not consider premature claims for relief under § 1.6015–2, 1.6015–3, or 1.6015–4. A premature claim is a claim for relief that is filed for a tax year prior to the receipt of a notification of an audit or a letter or notice from the IRS indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings. A premature claim is not considered an election or request under § 1.6015–1(h)(5).

(c) *Effect of a final administrative determination*—(1) *In general.* A requesting spouse is entitled to only one final administrative determination of relief under § 1.6015–1 for a given assessment, unless the requesting spouse properly submits a second request for relief that is described in § 1.6015–1(h)(5).

(2) *Example.* The following example illustrates the rule of this paragraph (c):

Example: In January 2001, W becomes a limited partner in partnership P, and in February 2001, she starts her own business from which she earns $100,000 of net income for the year. H and W file a joint return for tax year 2001, on which they claim $20,000 in losses from their investment in P, and they omit W's self-employment tax. In March 2003, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) and sends H and W a notice under section 6223(a)(1). In September 2003, the Internal Revenue Service audits H's and W's 2001 joint return regarding the omitted self-employment tax. H may file a claim for relief from joint and several liability for the self-employment tax liability because he has received a notification of an audit indicating that there may be an outstanding liability on the joint return. However, his claim for relief regarding the TEFRA partnership proceeding is premature under paragraph (b)(5) of this section. H will have to wait until the Internal Revenue Service sends him a notice of computational adjustment or assesses the liability resulting from the TEFRA partnership proceeding before he files a claim for relief with respect to any such liability. The assessment relating to the TEFRA partnership proceeding is separate from the assessment for the self-employment tax; therefore, H's subsequent claim for relief for the liability from the TEFRA partnership proceeding is not precluded by his previous claim for relief from the self-employment tax liability under this paragraph (c).

§ 1.6015–6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.

(a) *In general.* (1) When the Internal Revenue Service receives an election under § 1.6015–2 or 1.6015–3, or a request for relief under § 1.6015–4, the Internal Revenue Service must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability. A nonrequesting spouse is not required to submit information under this section. Upon the request of either spouse, the Internal Revenue Service will share with one spouse the information submitted by the other spouse, unless such information would impair tax administration.

(2) The Internal Revenue Service must notify the nonrequesting spouse of the Service's preliminary and final determinations with respect to the requesting spouse's claim for relief under section 6015.

(b) *Information submitted.* The Internal Revenue Service will consider all of the information (as relevant to each particular relief provision) that the nonrequesting spouse submits in determining whether relief from joint and several liability is appropriate, including information relating to the following—

(1) The legal status of the requesting and nonrequesting spouses' marriage;

(2) The extent of the requesting spouse's knowledge of the erroneous items or underpayment;

(3) The extent of the requesting spouse's knowledge or participation in the family business or financial affairs;

(4) The requesting spouse's education level;

(5) The extent to which the requesting spouse benefitted from the erroneous items;

(6) Any asset transfers between the spouses;

(7) Any indication of fraud on the part of either spouse;

(8) Whether it would be inequitable, within the meaning of §§ 1.6015–2(d) and 1.6015–4, to hold the requesting spouse jointly and severally liable for the outstanding liability;

(9) The allocation or ownership of items giving rise to the deficiency; and

(10) Anything else that may be relevant to the determination of whether relief from joint and several liability should be granted.

(c) *Effect of opportunity to participate.* The failure to submit information pursuant to paragraph (b) of this section does not affect the nonrequesting spouse's ability to seek relief from joint and several liability for the same tax year. However, information that the nonrequesting spouse submits pursuant to paragraph (b) of this section is relevant in determining whether relief from joint and several liability is appropriate for the nonrequesting spouse should the nonrequesting spouse also submit an application for relief.

§ 1.6015–7 Tax Court review.

(a) *In general.* Requesting spouses may petition the Tax Court to review the denial of relief under § 1.6015–1.

(b) *Time period for petitioning the Tax Court.* Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review a denial of relief under § 1.6015–1 within 90 days after the date notice of the Service's final determination is mailed by certified or registered mail (90-day period). If the IRS does not mail the requesting spouse a final determination letter within 6 months of the date the requesting spouse files an election under § 1.6015–2 or 1.6015–3, the requesting spouse

may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day period. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under another section of the Internal Revenue Code such as section 6213(a) or 6330(d).

(c) *Restrictions on collection and suspension of the running of the period* requesting spouse will terminate on the date that is 60 days after the date the waiver is filed with the Internal Revenue Service.

(ii) *Relief under § 1.6015–4.* If a requesting spouse seeks only equitable relief under § 1.6015–4, the restrictions on collection of paragraph (c)(1) of this section do not apply. Accordingly, the request for relief does not suspend the running of the period of limitations on

August 31, 1998, W files a request for relief from joint and several liability. The liability arose prior to July 22, 1998. Section 6015 is applicable to the $2,000 that remained unpaid as of July 22, 1998, and section 6013(e) is applicable to the $3,000 that was paid prior to July 22, 1998.

§ 1.6015–9 Effective date.

Sections 1.6015–0 through 1.6015–9 are applicable for all elections under § 1.6015–2 or 1.6015–3 or any requests

This document stays the effectiveness of 30 CFR 57.5060(d), 57.5060(e), 57.5060(f), and 57.5062. Section 57.5060(d) permits miners to work in areas where diesel particulate matter exceeds the applicable concentration limit with advance approval from the Secretary; § 57.5060(e) prohibits the use of personal protective equipment to comply with the concentration limits; and § 57.5060(f) prohibits the use of administrative controls to comply with

District of Columbia Circuit. The United Steelworkers of America (USWA) has intervened in the Anglogold case.

While these challenges were pending, the Anglogold petitioners filed with MSHA an application for reconsideration and amendment of the final rule and to postpone the effective date of the final rule pending judicial review. The Georgia Mining petitioners similarly filed with MSHA a request for an administrative stay or postponement

established in the final rule become effective. Sampling and data analyses are completed, and MSHA is in the process of developing the final report.

III. Outcome of Second Partial Settlement

Settlement negotiations continued on the remaining unresolved issues in the litigation. On July 15, 2002, the parties signed an agreement that is the basis for this **Federal Register** document

may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day period. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under another section of the Internal Revenue Code such as section 6213(a) or 6330(d).

(c) *Restrictions on collection and suspension of the running of the period of limitations*—(1) *Restrictions on collection under § 1.6015–2 or 1.6015–3.* Unless the Internal Revenue Service determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, began, or prosecuted against a requesting spouse electing the application of § 1.6015–2 or 1.6015–3 for the collection of any assessment to which the election relates until the expiration of the 90-day period described in paragraph (b) of this section, or if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Notwithstanding the above, if the requesting spouse appeals the Tax Court's decision, the Internal Revenue Service may resume collection of the liability from the requesting spouse on the date the requesting spouse files the notice of appeal, unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. Jeopardy under this paragraph (c)(1) means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

(2) *Waiver of the restrictions on collection.* A requesting spouse may, at any time (regardless of whether a notice of the Service's final determination of relief is mailed), waive the restrictions on collection in paragraph (c)(1) of this section.

(3) *Suspension of the running of the period of limitations*—(i) *Relief under § 1.6015–2 or 1.6015–3.* The running of the period of limitations in section 6502 on collection against the requesting spouse of the assessment to which an election under § 1.6015–2 or 1.6015–3 relates is suspended for the period during which the Internal Revenue Service is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter. However, if the requesting spouse signs a waiver of the restrictions on collection in accordance with paragraph (c)(2) of this section, the suspension of the period of limitations in section 6502 on collection against the requesting spouse will terminate on the date that is 60 days after the date the waiver is filed with the Internal Revenue Service.

(ii) *Relief under § 1.6015–4.* If a requesting spouse seeks only equitable relief under § 1.6015–4, the restrictions on collection of paragraph (c)(1) of this section do not apply. Accordingly, the request for relief does not suspend the running of the period of limitations on collection.

(4) *Definitions*—(i) *Levy.* For purposes of this paragraph (c), levy means an administrative levy or seizure described by section 6331.

(ii) *Proceedings in court.* For purposes of this paragraph (c), proceedings in court means suits filed by the United States for the collection of Federal tax. Proceedings in court does not refer to the filing of pleadings and claims and other participation by the Internal Revenue Service or the United States in suits not filed by the United States, including Tax Court cases, refund suits, and bankruptcy cases.

(iii) *Assessment to which the election relates.* For purposes of this paragraph (c), the assessment to which the election relates is the entire assessment of the deficiency to which the election relates, even if the election is made with respect to only part of that deficiency.

§ 1.6015–8 Applicable liabilities.

(a) *In general.* Section 6015 applies to liabilities that arise after July 22, 1998, and to liabilities that arose prior to July 22, 1998, that were not paid on or before July 22, 1998.

(b) *Liabilities paid on or before July 22, 1998.* A requesting spouse seeking relief from joint and several liability for amounts paid on or before July 22, 1998, must request relief under section 6013(e) and the regulations thereunder.

(c) *Examples.* The following examples illustrate the rules of this section:

Example 1. H and W file a joint Federal income tax return for 1995 on April 15, 1996. There is an understatement on the return attributable to an omission of H's wage income. On October 15, 1998, H and W receive a 30-day letter proposing a deficiency on the 1995 joint return. W pays the outstanding liability in full on November 30, 1998. In March 1999, W files Form 8857, requesting relief from joint and several liability under section 6015(b). Although W's liability arose prior to July 22, 1998, it was unpaid as of that date. Therefore, section 6015 is applicable.

Example 2. H and W file their 1995 joint Federal income tax return on April 15, 1996. On October 14, 1997, a deficiency of $5,000 is assessed regarding a disallowed business expense deduction attributable to H. On June 30, 1998, the Internal Revenue Service levies on the $3,000 in W's bank account in partial satisfaction of the outstanding liability. On August 31, 1998, W files a request for relief from joint and several liability. The liability arose prior to July 22, 1998. Section 6015 is applicable to the $2,000 that remained unpaid as of July 22, 1998, and section 6013(e) is applicable to the $3,000 that was paid prior to July 22, 1998.

§ 1.6015–9 Effective date.

Sections 1.6015–0 through 1.6015–9 are applicable for all elections under § 1.6015–2 or 1.6015–3 or any requests for relief under § 1.6015–4 filed on or after July 18, 2002.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

5. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.6015–5	1545–1719
. . . . .	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 3, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–17866 Filed 7–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB11

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; stay of effectiveness.

SUMMARY: The Mine Safety and Health Administration is staying the effectiveness of certain provisions of the final rule addressing "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," published in the **Federal Register** on January 19, 2001 (66 FR 5706) and amended on February 27, 2002 (67 FR 9180).

This document stays the effectiveness of 30 CFR 57.5060(d), 57.5060(e), 57.5060(f), and 57.5062. Section 57.5060(d) permits miners to work in areas where diesel particulate matter exceeds the applicable concentration limit with advance approval from the Secretary; § 57.5060(e) prohibits the use of personal protective equipment to comply with the concentration limits; and § 57.5060(f) prohibits the use of administrative controls to comply with the concentration limits. Section 57.5062 addresses the diesel particulate matter control plan.

DATES: Effective July 20, 2002, MSHA is staying § 57.5060(d), § 57.5060(e), § 57.5060(f), and § 57.5062 until completion of further rulemaking to address these provisions.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances; MSHA, 1100 Wilson Boulevard, Room 2313, Arlington, Virginia 22209–2296. Mr. Nichols can be reached at *nichols-marvin@MSHA.gov* (e-mail), 202–693–9442 (Voice), or 202–693–9441 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 2001, MSHA published a final rule addressing diesel particulate matter (DPM) exposure of underground metal and nonmetal miners (66 FR 5706). The final rule establishes new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines and, among other things, requires operators of underground mines to train miners about the hazards of being exposed to DPM. The effective date of the rule was listed as March 20, 2001 (66 FR 5706). Section 57.5060 of the rule establishes an interim concentration limit of 400 micrograms of total carbon per cubic meter of air to become applicable after July 19, 2002, and a final concentration limit of 160 micrograms to become applicable after January 19, 2006 (66 FR 5706, 5708, 5907).

On January 29, 2001, Anglogold (Jerritt Canyon) Corp. and Kennecott Greens Creek Mining Company filed a petition for review of the rule in the District of Columbia Circuit. On February 7, 2001, the Georgia Mining Association, the National Mining Association, the Salt Institute, and MARG Diesel Coalition filed a similar petition in the Eleventh Circuit. On March 14, 2001, Getchell Gold Corporation petitioned for review of the rule in the District of Columbia Circuit. The three petitions have been consolidated and are pending in the District of Columbia Circuit. The United Steelworkers of America (USWA) has intervened in the Anglogold case.

While these challenges were pending, the Anglogold petitioners filed with MSHA an application for reconsideration and amendment of the final rule and to postpone the effective date of the final rule pending judicial review. The Georgia Mining petitioners similarly filed with MSHA a request for an administrative stay or postponement of the effective date of the rule.

On March 15, 2001 MSHA delayed the effective date of the rule until May 21, 2001, in accordance with a January 20, 2001 memorandum from the President's Chief of Staff (66 FR 15032). The delay was necessary to give Department officials the opportunity for further review and consideration of new regulations. *Ibid.* On May 21, 2001 (66 FR 27863), MSHA published a notice in the **Federal Register** delaying the effective date of the final rule until July 5, 2001. The purpose of this delay was to allow the Department the opportunity to engage in further negotiations to settle the legal challenges to this rule..

II. Outcome of First Partial Settlement

As a result of a partial settlement agreement, MSHA published two documents in the **Federal Register** on July 5, 2001, addressing the January 19, 2001 DPM final rule. One document (66 FR 35518) delayed the effective date of § 57.5066(b) regarding the evidence and the tagging provisions of the Maintenance standard; clarified the effective dates of certain provisions of the final rule; and gave correction amendments.

The second document (67 FR 9180) addressed a proposed rule to clarify § 57.5066(b)(1) and (b)(2) of the maintenance standards and to add a new paragraph (b)(3) to § 57.5067 regarding the transfer of existing equipment from one underground mine to another underground mine. MSHA finalized these changes to the January 19, 2001 rule and published them in the **Federal Register** on February 27, 2002 (67 FR 9180). The final rule was effective on March 29, 2002.

Also, MSHA agreed to conduct joint sampling with industry and labor at 31 underground mines to determine existing concentration levels of DPM; assess the performance of the SKC sampler and the NIOSH Analytical Method 5040; assess the feasibility of achieving compliance with the standard's concentration limits at the 31 mines; and, to assess the impact of interferences on the sample in the metal and nonmetal underground mining environment before the limits established in the final rule become effective. Sampling and data analyses are completed, and MSHA is in the process of developing the final report.

III. Outcome of Second Partial Settlement

Settlement negotiations continued on the remaining unresolved issues in the litigation. On July 15, 2002, the parties signed an agreement that is the basis for this **Federal Register** document delaying certain effective dates.

As of July 20, 2002, MSHA will enforce the following provisions of the final rule as published on January 19, 2001 (66 FR 5706): § 57.5060(a), addressing the interim concentration limit of 400 micrograms of total carbon per cubic meter of air; § 57.5061, addressing compliance determinations; and § 57.5071, addressing environmental monitoring. MSHA will continue to enforce § 57.5065, Fueling practices; § 57.5066, Maintenance standards; § 57.5067, Engines; § 57.5070, Miner training; and § 57.5075, Diesel particulate records, as they relate to the requirements of the rule that are in effect on July 20, 2002.

The settlement agreement provides as follows:

Settlement Agreement

To settle the DPM litigation now pending in the D.C. Circuit, the parties agree as follows:

The industry parties contend that the interim standard of 400 micrograms per cubic meter is not justified or feasible to achieve at the majority of mines with engineering controls alone, and will pose significant compliance problems and necessitate the availability of agency-approved time extensions, based on individual mine conditions. They further contend that the final standard of 160 micrograms per cubic meter of air must be revoked because it is not feasible under any foreseeable circumstances, even taking into consideration its delayed implementation. The United Steelworkers of America ("the union") contend that the interim standard is feasible and that it should remain in effect. They also contend that achievement of the 160 micrograms per cubic meter of air standard is feasible. In light of these divergent positions, and in consideration of practical compliance questions raised during the joint industry/labor/government study, the parties will take the steps set forth below.

I. MSHA Actions With Respect to the DPM Standard for Underground Metal and Nonmetal Mines

§ 57.5060 Limit on Concentration of Diesel Particulate Matter

a. The interim concentration limit restricting total carbon to 400 micrograms per cubic meter of air becomes effective on July 20, 2002.

b. As discussed below, MSHA will issue citations for violations of the interim concentration limit only after MSHA and NIOSH are satisfied with the performance characteristics of the SKC sampler and the availability of practical mine worthy filter technology and MSHA has had the opportunity to train inspectors, conduct baseline sampling and provide compliance assistance at underground metal and nonmetal mines using diesel-powered equipment. MSHA will consult with NIOSH, [illegible] representatives on the publish a notice of proposed and expedited rulemaking, proposing to adapt this provision to the interim concentration limit as well, include consideration of economic feasibility, and to allow for annual renewals of such special extensions, upon application to and approval by the Secretary. It is anticipated that this rulemaking will be concluded before July 20, 2003.

f. Section 57.5060(d) permits miners engaged in specific activities such as inspection, maintenance, or repair activities, with the advance approval of the Secretary, observation of mining equipment including installed controls and multiple samples to determine what additional feasible steps will achieve compliance or achieve substantial reductions toward compliance. However, if Technical Support has previously evaluated the same piece of equipment in substantially similar circumstances, it will make an abbreviated evaluation of the steps needed to reasonably assure compliance.

b. MSHA will employ an enforcement policy for the interim concentration limit that will use elemental carbon (EC) as an analyte

dismissing the pending DPM litigation upon completion of the rulemakings described in the settlement above (Case Nos. 01–1046, 01–1124, and 01–1146 (D.C. Cir.)) pursuant to Fed. R. App. P. 42(b). Each party will bear its own costs and fees.

IV. Stay of Effectiveness

As a result of the parties' settlement negotiations, MSHA has determined that the provisions subject to a stay should be revised and has developed an enforcement policy for the interim concentration limit that involves

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0105; FRL–7186–2]

Indoxacarb; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes

Background and Purpose

The Coast Guard published a permanent security zone in the **Federal Register** on June 7, 2002 (67 FR 39294). This rule added § 165.908 to title 33 of the Code of Federal Regulations.

Need for Correction

As published, the location of the security zone was described incorrectly. While the landmarks included in the

b. As discussed below, MSHA will issue citations for violations of the interim concentration limit only after MSHA and NIOSH are satisfied with the performance characteristics of the SKC sampler and the availability of practical mine worthy filter technology and MSHA has had the opportunity to train inspectors, conduct baseline sampling and provide compliance assistance at underground metal and nonmetal mines using diesel-powered equipment. MSHA will consult with NIOSH, industry and labor representatives on the performance of the SKC sampler and the availability of practical mine worthy filter technology. The following timetable is MSHA's current projection for its efforts to implement the interim concentration limit:

- July 20, 2002–July 19, 2003—MSHA MNM compliance specialists will provide compliance assistance to underground MNM operators covered by the standard. Compliance assistance will be in the form of DPM baseline sampling (compliance assistance only; results not citable) and information on feasible DPM controls, including practical mine worthy filters. During this period operators shall develop and implement a suitable written compliance strategy for their mines. MSHA will retain the discretion to take appropriate enforcement actions against operators who refuse either to cooperate in good faith with MSHA's compliance assistance, or to take good faith steps to develop and implement a written compliance strategy for their mines. MSHA will provide guidance on steps an operator may take—such as sampling to determine DPM levels, developing a plan to control emissions, and ordering engineering controls—to demonstrate good faith and thereby avoid citations.
- After July 19, 2003—MSHA MNM compliance specialists will issue citations for failure to comply with the 400 micrograms per cubic meter of air interim limit.

c. Throughout this implementation schedule, MSHA will continue to work with NIOSH to make sure the performance characteristics of the SKC sampler are satisfactory and with equipment manufacturers, mine operators, and representatives of miners to improve practical mine worthy filter technology, including the availability of after-treatment control technology for diesel powered engines, particularly for engines of less than 50 hp and 250 hp or greater.

d. After appropriate consultations and clearances, MSHA will publish a notice of proposed and expedited rulemaking to change the surrogate to elemental carbon for both the interim standard and the final standard which takes effect after January 19, 2006. Among the factors to be considered, MSHA will consider technological and economic feasibility in determining an appropriate final standard including the data from the Joint MSHA/Industry Study: Determination of DPM Levels in Underground Metal and Nonmetal Mines (Joint Study).

e. Section 57.5060(c) allows mine operators to apply for additional time to come into compliance with the final concentration limit due to technological constraints. MSHA will publish a notice of proposed and expedited rulemaking, proposing to adapt this provision to the interim concentration limit as well, include consideration of economic feasibility, and to allow for annual renewals of such special extensions, upon application to and approval by the Secretary. It is anticipated that this rulemaking will be concluded before July 20, 2003.

f. Section 57.5060(d) permits miners engaged in specific activities such as inspection, maintenance, or repair activities, with the advance approval of the Secretary, to work in concentrations of DPM that exceed the interim and final limits. Section 57.5060(e) limits the circumstances under which personal protective equipment may be used to comply with the DPM concentration limits and § 57.5060(f) prohibits the use of administrative controls. In conjunction with the rulemaking for changing the surrogate, MSHA will publish a notice of proposed rulemaking to amend these three provisions, as follows: MSHA will continue to require mine operators to establish, use and maintain all feasible engineering control methods. Consistent with MSHA's longstanding enforcement policy for its existing exposure-based standards applicable to metal and nonmetal mines, MSHA will require mine operators to supplement feasible engineering and administrative control methods with personal protective equipment, in the event that controls do not reduce the concentration level to the required limit or are not feasible or do not produce significant reductions in DPM exposures. As a part of this rulemaking, MSHA will consider the advisability of requiring periodic application to the Secretary, before respirators are used. Rotation of employees will not be allowed as an administrative control for compliance with this standard.

Section 57.5061 Compliance Determinations

a. To implement § 57.5061(a) MSHA will consider a single personal sample an adequate basis for a compliance determination. It is MSHA's intent to provide maximum assistance to operators to help them achieve compliance with both the interim and final limits of the DPM standard. When MSHA begins to fully enforce the DPM standard, it will issue a citation as it does for all other contaminant sampling under the M/NM standards. MSHA expects the mine operator to begin the abatement process by first looking at routine steps to improve DPM exposure levels. MSHA will resample at the request of an operator who has taken such abatement steps to see what progress has been made to lower compliance levels. If an operator has taken additional samples which indicate possible compliance, MSHA will resample with an additional single sample and if that sample is in compliance MSHA will accept that the violation has been abated. If routine and usually effective steps such as improved maintenance, administrative controls or the implementation of a standard filter program do not achieve abatement, MSHA, at the operator's request, will assign the mine for a technical compliance evaluation. That evaluation will include a mine visit, observation of mining equipment including installed controls and multiple samples to determine what additional feasible steps will achieve compliance or achieve substantial reductions toward compliance. However, if Technical Support has previously evaluated the same piece of equipment in substantially similar circumstances, it will make an abbreviated evaluation of the steps needed to reasonably assure compliance.

b. MSHA will employ an enforcement policy for the interim concentration limit that will use elemental carbon (EC) as an analyte to ensure that a citation based on the 400 micrograms per cubic meter of air limit of TC is valid and not the result of interferences. Under this policy, MSHA would first develop an appropriate error factor to account for variability in sampling and analysis from such things as pump flow rate, filters, and the NIOSH 5040 method. If the TC measurement is below 400 micrograms per cubic meter of air plus the error factor (for example, 440 if the error factor is determined to be 10%), MSHA's policy would be not to issue a citation. MSHA will consult with industry and labor representatives before establishing an appropriate error factor.

c. If the TC measurement is above the error factor level, however, MSHA would look at the EC measurement from the sample, obtained through the NIOSH 5040 method, and multiply EC by a factor of 1.3 to produce a statistical estimate of what TC should be without interferences. If the TC measurement is above this estimate, as a matter of enforcement discretion, MSHA would not issue a citation when the EC measurement times the multiplier is below the error factor level. (For example, 440 if the error factor is determined to be 10%.)

The 1.3 multiplier that MSHA will use to estimate TC (*i.e.*, EC × 1.3 = estimated TC) is derived from NIOSH's determination that TC is 60–80% EC.

MSHA will announce its enforcement policy in a program policy letter.

d. To implement § 57.5061(c), MSHA will conduct personal sampling for purposes of making compliance determinations for the interim and final concentration limits.

Section 57.5062 Diesel Particulate Matter Control Plan

Together with the proposed rulemaking for changing the surrogate, MSHA will publish a notice of proposed rulemaking to revise § 57.5062.

Other Provisions of the DPM Standard

While taking the steps discussed above, MSHA will continue to enforce provisions of the final rule currently in effect, which address fueling practices, maintenance of diesel-powered equipment, engine requirements, miner training, and recordkeeping. *See* 67 FR 9180 (Feb. 27, 2002); 66 FR 35518 (July 5, 2001).

II. Parties' Actions in Litigation

The parties note that provisions of the DPM standard will not be deleted until they are modified or superseded by new rulemaking.

MSHA will inform the court of this settlement agreement. The parties will subsequently file a signed agreement dismissing the pending DPM litigation upon completion of the rulemakings described in the settlement above (Case Nos. 01–1046, 01–1124, and 01–1146 (D.C. Cir.)) pursuant to Fed. R. App. P. 42(b). Each party will bear its own costs and fees.

IV. Stay of Effectiveness

As a result of the parties' settlement negotiations, MSHA has determined that the provisions subject to a stay should be revised and has developed an enforcement policy for the interim concentration limit that involves extensive compliance assistance. A stay of the provisions is necessary to prevent confusion while MSHA carries out this enforcement policy. A stay should not decrease protection of miners and may further a full settlement of the court challenge. Accordingly, this stay meets the requirements of 5 U.S.C. 705 which states, "When an agency finds that justice so requires, it may postpone the effective date of action taken by it pending judicial review.")

By a separate document in the **Federal Register**, MSHA will initiate rulemaking on these provisions.

Dated: July 16, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–18310 Filed 7–17–02; 1:49 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–004]

RIN 2115–AA97

Security Zones; Captain of the Port Detroit Zone, Selfridge Air National Guard Base, Lake St. Clair

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule on June 7, 2002, creating a permanent security zone on the navigable waters of Lake St. Clair to protect the Selfridge Air National Guard Base from possible acts of terrorism. The location of the security zone designated by some of the coordinates in that rule was incorrect. This document corrects the description of the location and the section number of the security zone.

DATES: This correction becomes effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a permanent security zone in the **Federal Register** on June 7, 2002 (67 FR 39294). This rule added § 165.908 to title 33 of the Code of Federal Regulations.

Need for Correction

As published, the location of the security zone was described incorrectly. While the landmarks included in the final rule were correct, some of the coordinates were incorrect. In addition, the section number used in the amendatory instruction for the rule was incorrect. This rule corrects the coordinates and section number.

Correction of Publication

In rule FR Doc. 02–14268 published on June 7, 2002 (67 FR 39294) make the following corrections:

1. On page 39294, in the third column, on line 65, remove both latitude figures "42°37.8′ N" and add, in their respective places, latitude figure "42°37.7′ N".

2. On page 39295, in the first column, on lines 2 and 3, remove the coordinates and words "42°36.8′ N, 082°47.2′ W; then southwest to 42°36.4′ N, 082°47.9′ W" and add, in their place, the coordinates and words "42°37.05′ N, 082°48.3′ W; then southwest to 42°36.6′ N, 082°48.7′ W".

§ 165.908 [Corrected]

3. On page 39296, in the first column, in lines 3 and 4, remove both latitude figures "42°37.8′ N" and add, in their respective places, latitude figure "42°37.7′ N". On the same page and in the same column, in lines 7 through 9, remove the coordinates and words "42°36.8′ N, 082°47.2′ W; then southwest to 42°36.4′ N, 082°47.9′ W" and add, in their place, the coordinates and words "42°37.05′ N, 082°48.3′ W; then southwest to 42°36.6′ N, 082°48.7′ W".

4. On page 39295, in the third column, on line 56, remove section number "165.910" and add, in its place, section number "165.908".

Dated: July 9, 2002.

P.G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–18011 Filed 7–17–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0105; FRL–7186–2]

Indoxacarb; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of indoxacarb in or on alfalfa forage, alfalfa hay, peanut, peanut hay, potato, soybean seed, soybean aspirated grain fractions, and soybean hulls. Additionally, this regulation is increasing the tolerance levels for head lettuce, milk, milk fat, meat, fat, and meat by-products of cattle, goat, hog, horse, and sheep. E. I. Du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective July 18, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0105, must be received on or before September 16, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0105 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Geri McCann, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0716; e-mail address: *mccann.geri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production

Categories	NAICS codes	Examples of potentially affected entities
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide

includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special

toxic effects caused by indoxacarb are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	DPX-MP062 NOAEL = M 3.1 milligrams/kilogram/day (mg/kg/day) F 2.1 mg/kg/day LOAEL = M 6.0 mg/kg/day, F 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency

Categories	NAICS codes	Examples of potentially affected entities
	112 311 32532	Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0105. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of (67 FR 3700, January 25 2002) (FRL–6819–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996 (Public Law 104–170), announcing the filing of a pesticide petition (PP 1F6301) by E. I. Du Pont de Nemours and Company. This notice included a summary of the petition prepared by E. I. Du Pont de Nemours and Company, the registrant. The Agency received one e-mail letter from consumers/growers that believe there should be zero pesticide levels on human and animal foods.

The petition requested that 40 CFR 180.564 be amended by establishing a tolerance for combined residues of the insecticide indoxacarb [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantimomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate], in or on alfalfa, forage at 10 parts per million (ppm), alfalfa, hay at 50 ppm, peanut at 0.01 ppm, peanut, hay at 40 ppm, potato at 0.01 ppm, soybean, seed at 0.80 ppm, aspirated grain fractions at 45 ppm, and soybean, hulls at 4.0 ppm. Additionally, the petition requested an increase in tolerance levels for head lettuce, milk, milk fat, meat, fat, and meat by-products of cattle, goat, hog, horse, and sheep based on a proposed increase in the labeled use rate for head lettuce and on potential changes in residue levels in livestock diets. The proposed increases are for head lettuce at 5.0 ppm, meat of cattle, goat, hog, horse, and sheep at 0.05 ppm, fat of cattle, goat, hog, horse, and sheep at 1.5 ppm, meat by-products of cattle, goat, hog, horse, and sheep at 0.03 ppm, milk at 0.15 ppm, and milk, fat at 4.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of indoxacarb on alfalfa, forage at 10 ppm, alfalfa, hay at 50 ppm, peanut at 0.01 ppm, peanut, hay at 40 ppm, potato at 0.01 ppm, soybean, seed at 0.80 ppm, aspirated grain fractions at 45 ppm, soybean, hulls at 4.0 ppm, lettuce, head at 5.0 ppm, meat of cattle, goat, hog, horse, and sheep at 0.05 ppm, fat of cattle, goat, hog, horse, and sheep at 1.5 ppm, meat by-products of cattle, goat, hog, horse, and sheep at 0.03 ppm, milk at 0.15 ppm, and milk, fat at 4.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance(s) follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the

toxic effects caused by indoxacarb are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	DPX-MP062 NOAEL = M 3.1 milligrams/kilogram/day (mg/kg/day) F 2.1 mg/kg/day LOAEL = M 6.0 mg/kg/day, F 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency
870.3150	90–Day oral toxicity in nonrodents	DPX-JW062 NOAEL = 5.0 mg/kg/day LOAEL = 19 mg/kg/day based on hemolytic anemia, as indicated by decrease in HGB, RBCs; increases in platelets, increased reticulocytes; and secondary histopathologic findings indicative of blood breakdown (pigment in Kupffer cells, renal tubular epithelium, and spleen and bone marrow macrophages); increase in splenic EMH; and RBC hyperplasia in bone marrow in dogs
870.3200	21/28–Day dermal toxicity	DPX-MP062 NOAEL = 2,000 mg/kg/day LOAEL = < 2,000 mg/kg/day in rats DPX-MP062 NOAEL = 50 mg/kg/day LOAEL = 500 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in F, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight M only, gross discoloration), clinical signs of toxicity in both sexes in rats
870.3700	Prenatal developmental in rodents	DPX-MP062 Maternal NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased mean body weights, body weight gains, food consumption Developmental NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased fetal weights DPX-JW062 Maternal NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on mortality, clinical signs, and decreased mean body weights, body weight gains, and food consumption Developmental NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on decreased numbers of live fetuses/litter DPX-JW062 Maternal NOAEL = 1.1 mg/kg/day LOAEL = 2.2 mg/kg/day based on decreased mean body weights, body weight gains, food consumption, and food efficiency Developmental NOAEL = 1.1 mg/kg/day LOAEL = 2.2 mg/kg/day based on decreased fetal body weights

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in nonrodents	DPX-JW062 - rabbits Maternal NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on slight decreases in maternal body weight gain and food consumption Developmental NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on decreased fetal body weights and reduced ossification of the

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5375	Cytogenetics	DPX-MP062 No evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 15.7–1,000 µg/mL (+S9) DPX-JW062 No evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 19–300 µg/mL (-S9) 19–150 µg/mL (+S9) partial insoluble and cytotoxicity >150

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in nonrodents	DPX-JW062 - rabbits Maternal NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on slight decreases in maternal body weight gain and food consumption Developmental NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on decreased fetal body weights and reduced ossification of the sternebrae
870.3800	Reproduction and fertility effects	DPX-JW062 Parental/Systemic NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decreased body weights, body-weight gains, and food consumption of F0 females, and increased spleen weights in the F_0 and F_1 females Reproductive NOAEL = 6.4 mg/kg/day LOAEL = 6.4 mg/kg/day Offspring NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decrease in the body weights of the F1 pups during lactation
870.4100	Chronic toxicity rodents	DPX-JW062 NOAEL = M 5, F 2.1 mg/kg/day LOAEL = M 10, F 3.6 mg/kg/day based on decreased body weight, body weight gain, and food consumption and food efficiency; decreased HCT, HGB and RBC at 6 months in F only No evidence of carcinogenic potential
870.4100	Chronic toxicity dogs	DPX-JW062 NOAEL = M 2.3, F 2.4 mg/kg/day LOAEL = M 18, F 19 mg/kg/day based on decreased HCT, HGB nd RBC; increased Heinz bodies and reticulocytes and associated secondary microscopic changes in the liver, kidneys, spleen, and bone marrow; increased absolute and relative liver weights
870.4200	Carcinogenicity rats	DPX-JW062 (see 870.4100—Chronic toxicity rodents above) No evidence of carcinogenicity
870.4300	Carcinogenicity mice	DPX-JW062 NOAEL = M 2.6, F 4.0 mg/kg/day LOAEL = M 14, F 20 mg/kg/day based on decreased body weight, body weight gain, and food efficiency and clinical signs indicative of neurotoxicity No evidence of carcinogenicity
870.5100	Gene mutation	DPX-MP062 strains TA97a, TA98, TA100, and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10–5,000 µg/plate DPX-JW062 strains TA97a, TA98, TA100, and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10–5,000 µg/plate
870.5300	Gene mutation	DPX-MP062 negative for mutagenic activity for the following concentration ranges: 3.1–250 µg/mL (−S9) 3.1–250 µg/mL (+S9) DPX-JW062 negative for mutagenic activity for the following concentration ranges: Negative;100–1,000 µg/mL (−S9,) 100–1,000 µg/mL (+S9) precipitate > 1,000 µg/mL

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5375	Cytogenetics	DPX-MP062 No evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 15.7–1,000 µg/mL (+S9) DPX-JW062 No evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 19–300 µg/mL (-S9) 19–150 µg/mL (+S9) partial insoluble and cytotoxicity >150 µg/mL
870.5395	Cytogenetics	DPX-MP062 No evidence of mutagenicity for the following dose ranges: 3,000–4,000 mg/kg - males; 1,000–2,000 mg/kg - females DPX-JW062 No evidence of mutagenicity at 2,500 or 5,000 mg/kg
870.5550	Other effects	DPX-MP062 No evidence of mutagenic activity at the following concentration range: 1.56–200 µg/mL; cytotoxicity was seen at concentrations of >100 µg/mL DPX-JW062 No evidence of mutagenic activity at the following concentration range: 0.1–50 µg/mL, cytotoxicity observed at >50 µg/mL
870.6200	Acute neurotoxicity screening battery	DPX-MP062 NOAEL = M 100, F 12.5 mg/kg LOAEL = M 200 mg/kg based on decreased body weight gain, decreased food consumption, decreased forelimb grip strength, and decreased foot splay F 50 mg/kg based on decreased body weight, body weight gain, and food consumption DPX-JW062 NOAEL > M 2,000 mg/kg = F > 500 mg/kg LOAEL > M 2,000 mg/kg = F > 500 mg/kg based on clinical signs, decreased body weight gains and food consumption, and FOB effects
870.6200	Subchronic neurotoxicity screening battery	DPX-MP062 NOAEL = M 0.57, F 0.68 mg/kg/day LOAEL = M 5.6, F 3.3 mg/kg/day based on decreased body weight and alopecia
870.7485	Metabolism and pharmacokinetics	Both DPX-MP062 and DPX-JW062 were extensively metabolized and the metabolites were eliminated in urine, feces, and bile. The metabolite profile for DPX-JW062 was dose dependent and varied quantitatively between males and females. Differences in metabolite profiles were also observed for the different label positions (indanone and trifluoromethoxyphenyl rings). All biliary metabolites undergo further biotransformation in the gut. The proposed metabolic pathway for both DPX-MP062 and DPX-JW062 has multiple metabolites bearing one of the two ring structures. (see 870-4100 chronic toxicity rodents above).

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is

retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-term Inhalation (1 week—several months) (Occupational/ Residential)	Oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	90–Day rat subchronic toxicity study LOAEL = 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency

retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for indoxacarb used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary Females 13–50 years of age	NOAEL = 2.0 mg/kg/day UF = 100 Acute RfD = 0.02 mg/kg	FQPA SF = 1 aPAD = acute RfD FQPA SF = 0.02 mg/kg/day	Developmental rat toxicity study Developmental LOAEL = 4.0 mg/kg/day based on decreased fetal body weight
Acute dietary general population including infants and children	NOAEL = 12.5 mg/kg UF = 100 Acute RfD = 0.12 mg/kg	FQPA SF = 1 aPAD = acute RfD FQPA SF = 0.12 mg/kg/day	Acute oral rat neurotoxicity study LOAEL = 50 mg/kg based on decreased body weight and body weight gain in females
Chronic dietary all populations	NOAEL = 2.0 mg/kg/day UF = 100 Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1 cPAD = chr RfD FQPA SF = 0.02 mg/kg/day	90–Day rat subchronic toxicity study 90–Day rat neurotoxicity study, chronic/carcinogenicity rat study LOAEL = 3.3 mg/kg/day based on decreased body weight, alopecia, body weight gain, food consumption and food efficiency; decreased hematocrit, hemoglobin and red blood cells only at 6 months. 3.3 mg/kg/day is the lowest LOAEL of the three studies
Short-term oral (1–7 days) (Residential)	Oral study NOAEL= 2.0 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental rat toxicity study Maternal LOAEL = 4.0 mg/kg/day based on decreased mean maternal body weights, body weight gains, and food consumption
Intermediate-term Oral (1 week—several months) (Occupational/ Residential)	Oral study NOAEL= 2.0 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	90–Day rat subchronic toxicity study LOAEL = 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency
Short-(1–7 days), intermediate (1 week—several months), and long (several months—lifetime) Term dermal (Occupational/ Residential)	Dermal study NOAEL= 50 mg/kg/day	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	28–Day rat dermal toxicity study LOAEL = 500 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight males only, gross discoloration), and clinical signs of toxicity in both sexes
Short-term inhalation (1–7 days) (Occupational/ Residential)	Oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Rat developmental toxicity study. Maternal LOAEL = 4.0 mg/kg/day based on decreased mean maternal body weights, body weight gains, and food consumption

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-term Inhalation (1 week—several months) (Occupational/ Residential)	Oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	90–Day rat subchronic toxicity study LOAEL = 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency
Long-term inhalation (several months - lifetime) (Occupational/ Residential)	Oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate =100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	90–Day rat subchronic toxicity study, 90–day rat neurotoxicity study, chronic/carcinogenicity rat study LOAEL = 3.3 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency; decreased hematocrit, hemoglobin and red blood cells only at 6 months
Cancer (oral, dermal, inhalation)	"Not likely" to be carcinogenic to humans	N/A	No evidence of carcinogenicity in either the rat or mouse in acceptable carcinogenicity studies and no evidence of mutagenicity.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.564) for the combined residues of indoxacarb, in or on a variety of raw agricultural commodities. Including tolerances already established for: Apple at 1.0 ppm, apple, wet pomace at 3.0 ppm, brassica, head and stem, subgroup at 5.0 ppm, cattle, goat, horse, sheep, and hog fat at 0.75 ppm, cattle, goat, horse, sheep, and hog meat at 0.03 ppm, cattle, goat, horse, sheep, and hog meat by-products at 0.02 ppm, corn, sweet, forage at 10 ppm, corn, sweet, kernel plus cob with husk removed at 0.02 ppm, corn, sweet stover at 15 ppm, cotton gin by-products at 15 ppm, cotton, undelinted seed at 2.0 ppm, lettuce, head at 4.0 ppm, lettuce, leaf at 10.0 ppm, milk at 0.10 ppm, and milk, fat at 3.0 ppm, pear at 0.20 ppm, and vegetables, fruiting, group at 0.50 ppm. Risk assessments were conducted by EPA to assess dietary exposures from indoxacarb in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An acute Tier 2 (partially refined analysis) dietary assessment was performed with use of anticipated residues (ARs) from field trial data, processing factors (where applicable), and assumed 100% crop treated (CT). ARs for meat, milk, poultry, and eggs (MMPE) raw agricultural commodities (RACs) were calculated also.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the Dietary Exposure Evaluation Model (DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic exposure estimates are expressed in mg/kg bwt/day and as a percent of the cPAD. The chronic dietary assessment assumed tolerance level residues, DEEM™ default processing factors, and 100% CT (Tier 1).

iii. *Cancer.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as "not likely to be carcinogenic in humans" by the Agency; therefore, no carcinogenic dietary risk analysis was performed.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for indoxacarb, in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical, chemical, and environmental fate characteristics of indoxacarb.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The FIRST model is a meta-model of the PRZM/EXAMS model that uses a specific high-end runoff scenario

for pesticides. PRZM/EXAMS incorporate an index reservoir environment in place of the pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity,

The reproduction toxicity study with JW062 can be used to satisfy the requirement for an indoxacarb study because: Systemic toxicity is at similar doses and of similar magnitude to that observed in subchronic feeding studies with both indoxacarb and JW062; based on the data base, the EPA determined that there was support for using data from dietary studies conducted with JW062 to satisfy the data requirements

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on

as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different

pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to indoxacarb will

for pesticides. PRZM/EXAMS incorporate an index reservoir environment in place of the pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to indoxacarb they are further discussed in the aggregate risk sections.

Based on the PRZM/EXAMS and SCI-GROW models, the estimated environmental concentrations (EECs) of indoxacarb for acute exposures are estimated to be 13.86 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 2.47 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Indoxacarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no evidence for either qualitative or quantitative susceptibility. In all developmental studies, the developmental endpoint occurs at the maternal LOAEL or above. Although there is no rabbit developmental toxicity study with indoxacarb, a study is not required since: Studies both using methyl cellulose comparing JW062 in the rabbit and rat demonstrate that the toxicity profiles for the rat and rabbit are similar and that the rat is the more sensitive species; range finding studies in the rat comparing indoxacarb and JW062 indicate that the maternal and external developmental toxicity are comparable; a dietary developmental toxicity study in the rat with JW062 had comparable toxicity to the gavage indoxacarb rat developmental toxicity study. Developmental toxicity only occurred at levels at or above maternal toxicity.

The reproduction toxicity study with JW062 can be used to satisfy the requirement for an indoxacarb study because: Systemic toxicity is at similar doses and of similar magnitude to that observed in subchronic feeding studies with both indoxacarb and JW062; based on the data base, the EPA determined that there was support for using data from dietary studies conducted with JW062 to satisfy the data requirements for indoxacarb.

The Agency has required a developmental neurotoxicity study as confirmatory data due to:

- Clinical signs of neurotoxicity in several studies, males and females, mice and rats, at some doses that do not cause mortality.
- Signs of neurotoxicity in the acute neurotoxicity study rat with indoxacarb (males and females), mortality in males at neurotoxic doses.
- Clinical signs of neurotoxicity in the 90–day toxicity study rat indoxacarb (females), mortality.
- Clinical signs of neurotoxicity in the 90–day toxicity study mouse with the racemic mixture, JW062 (males and females), no mortality in females at neurotoxic doses, mortality in males.
- Clinical signs of neurotoxicity in the 18 month carcinogenicity study mouse with JW062 (males and females) high and mid dose, mortality at the high but no mortality at the mid dose.
- Clinical signs of neurotoxicity in the developmental toxicity study rat with JW062 (using methyl cellulose as the vehicle), at doses causing mortality.

3. *Conclusion.* The Agency concluded that the FQPA safety factor could be reduced to 1X for indoxacarb.

- There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.
- The requirement of a developmental neurotoxicity study is not based on the criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study - and a safety factor (e.g., neuropathy in adult animals; central nervous system malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) and therefore, does not warrant an FQPA safety factor; and
- The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children There are no registered residential uses at the current time.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to indoxacarb will occupy 7% of the aPAD for the U.S. population, 41% of the aPAD for females 13 years and older, 6% of the aPAD for all infants less than 1 year old and 12% of the aPAD for children 1 to 6 years old, the children population at greatest exposure. In addition, there is potential for acute dietary exposure to indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.12	7	13.86	0.02	3,900
Females 13 +	0.12	41	13.86	0.02	350
All infants less than 1 year	0.12	6	13.86	0.02	1,100
Children 1 to 6	0.12	12	13.86	0.02	1,100

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to indoxacarb from food will utilize 33% of the cPAD for the U.S. population, 48% of the cPAD for infants less than 1 year old and 85% of the cPAD for children 1 to 6 years old, the subpopulation at greatest exposure. There are no residential uses for indoxacarb that result in chronic residential exposure to indoxacarb. Based on the use pattern, chronic residential exposure to residues of indoxacarb is not expected. In addition, there is potential for chronic dietary exposure to indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO INDOXACARB

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.02	33	3.65	0.02	470
All infants less than 1 year old	0.02	48	3.65	0.02	100
Children 1 to 6	0.02	85	3.65	0.02	30

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not

registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified

of cattle, goat, hog, horse, and sheep based on a proposed increase in the labeled use rate for head lettuce and on potential changes in residue levels in livestock diets. The proposed increases are for head lettuce at 5.0 ppm, meat of cattle, goat, hog, horse, and sheep at 0.05 ppm, fat of cattle, goat, hog, horse, and sheep at 1.5 ppm, meat by-products of cattle, goat, hog, horse, and sheep at 0.03 ppm, milk at 0.15 ppm, and milk,

40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the

the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may

action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since

that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as "not likely to be carcinogenic in humans" by the Agency; therefore, indoxacarb is not expected to pose a carcinogenic risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to indoxacarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC/UV Method AMR 2712–93) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of indoxacarb; therefore, international harmonization is not an issue at this time.

V. Conclusion

Therefore, tolerances are established for combined residues of indoxacarb [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate], in or on alfalfa, forage at 10 ppm, alfalfa, hay at 50 ppm, peanut at 0.01 ppm, peanut, hay at 40 ppm, potato at 0.01 ppm, soybean, seed at 0.80 ppm, aspirated grain fractions at 45 ppm, soybean, hulls at 4.0 ppm. Additionally, the petition requested an increase in tolerance levels for head lettuce, milk, milk fat, meat, fat, and meat by-products of cattle, goat, hog, horse, and sheep based on a proposed increase in the labeled use rate for head lettuce and on potential changes in residue levels in livestock diets. The proposed increases are for head lettuce at 5.0 ppm, meat of cattle, goat, hog, horse, and sheep at 0.05 ppm, fat of cattle, goat, hog, horse, and sheep at 1.5 ppm, meat by-products of cattle, goat, hog, horse, and sheep at 0.03 ppm, milk at 0.15 ppm, and milk, fat at 4.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0105 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0105 to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 3, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 is revised to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.564 is amended by revising the table in paragraph (a) to read as follows:

§ 180.564 Indoxacarb, tolerances for residues.

(a) * * *

Commodity	Parts per million
Apple	1.0
Apple, wet pomace	3.0
Brassica, head and stem, subgroup	5.0
Alfalfa, forage	10
Alfalfa, hay	50
Cattle, fat	1.5
Cattle, meat	0.05
Cattle, meat byproducts	0.03
Corn, sweet, forage	10
Corn, sweet, kernel plus cob with husk removed	0.02

phoning the Docket Office at (703) 603–9230. Refer to RCRA Docket Number F–2001–WVLP–FFFFF and F–2002–WVLF–FFFFF for the proposed and final rule dockets, respectively. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15 per page. Project materials are also available for review on the World Wide Web at: *http://www.epa.gov/projectxl/*

C. Is an Information Collection Request Required for this Rule Under the Paperwork Reduction Act ?
D. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?
E. How Does the Congressional Review Act Apply to this Rule?
F. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
G. How Does this Rule Comply With

that provide alternative approaches to regulatory requirements, both to assess whether they provide benefits at the specific facility affected, and whether these projects should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or State-specific basis, that represent one of several possible policy approaches

Commodity	Parts per million
Apple	1.0
Apple, wet pomace	3.0
Brassica, head and stem, subgroup	5.0
Alfalfa, forage	10
Alfalfa, hay	50
Cattle, fat	1.5
Cattle, meat	0.05
Cattle, meat byproducts	0.03
Corn, sweet, forage	10
Corn, sweet, kernel plus cob with husk removed	0.02
Corn, sweet, stover	15
Cotton gin byproducts	15
Cotton, undelinted seed	2.0
Goat, fat	1.5
Goat, meat	0.05
Goat, meat byproducts	0.03
Hog, fat	1.5
Hog, meat	0.05
Hog, meat byproducts	0.03
Horse, fat	1.5
Horse, meat	0.05
Horse, meat byproducts	0.03
Lettuce, head	5.0
Lettuce, leaf	10
Milk	0.15
Milk, fat	4.0
Pear	0.20
Peanut	0.01
Peanut, hay	40
Potato	0.01
Sheep, fat	1.5
Sheep, meat	0.05
Sheep, meat byproducts	0.03
Soybean, aspirated grain fractions	45
Soybean, hulls	4.0
Soybean, seed	0.80
Vegetable, fruiting, group	0.50

* * * * *

[FR Doc. 02–18173 Filed 7–17–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRN–7247–4]

RIN 2090–AA30

Project XL Site-Specific Rulemaking for Implementing Waste Treatment Systems at Two Virginia Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is promulgating a site-specific rule proposed on December 28, 2001, to implement a project under the EPA's Project eXcellence and Leadership Program (Project XL). The rule provides site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA) for two Virginia landfills (referred to collectively as the "Virginia Project XL Landfills"): The Maplewood Recycling and Waste Disposal Facility, located in Amelia County, Virginia (Maplewood Landfill); and the King George County Landfill and Recycling Facility, located in King George County, Virginia (King George Landfill). On September 29, 2000, EPA, USA Waste of Virginia, Inc., and King George Landfills, Inc., signed the Final Project Agreement (FPA) for this project, which would allow for the addition of liquids to these landfills.

The addition of liquids to landfills accelerates the biodegradation of landfill waste and is allowed for certain prescribed liner designs under current RCRA municipal solid waste landfill (MSWLF) regulations. The principal objectives of this XL project are two-fold: To demonstrate that the alternative liner designs at the Virginia Project XL Landfills will also safely accelerate the biodegradation of landfill waste and thereby decrease the time it takes for the waste to reach stabilization in the landfill, facilitate the management of leachate and other liquid wastes, and promote recovery of landfill gas; and to assess the effects of applying differing amounts of liquids to landfills.

The Virginia Project XL Landfills comprise two of several landfills, located in different geographic and climactic regions across the country, that under Project XL are testing this bioreactor technology over alternative liner designs. In order to carry out this project, the Virginia Project XL Landfills need relief from certain requirements in EPA regulations which set forth design and operating criteria for MSWLFs, requirements which would otherwise preclude the addition of liquids at these landfills. Today's rule will allow the Virginia Project XL Landfills to apply collected, non-containerized non-hazardous bulk liquids (including landfill leachate) to the landfills.

DATES: This regulation is effective on July 18, 2002.

ADDRESSES: A docket containing supporting information used in developing this final rule is available for public inspection and copying at EPA's RCRA docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA Docket Number F–2001–WVLP–FFFFF and F–2002–WVLF–FFFFF for the proposed and final rule dockets, respectively. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15 per page. Project materials are also available for review on the World Wide Web at: *http://www.epa.gov/projectxl/virginialandfills/index.htm.*

A duplicate copy of the docket is available for inspection and copying at the EPA Region 3 Library located at 1650 Arch Street, Philadelphia, PA 19103. Appointments can be scheduled by phoning the Library at (215) 814–5254.

FOR FURTHER INFORMATION, CONTACT: Mr. Steven J. Donohue at the U.S. Environmental Protection Agency, Region 3, (3EI00), 1650 Arch Street, Philadelphia, Pennsylvania 19103. Mr. Donohue may be contacted at (215) 814–3215. Further information on today's action may also be obtained on the World Wide Web at *http://www.epa.gov/projectxl/.* Questions to EPA regarding today's action can be directed to Mr. Donohue at (215) 814–3215 *donohue.steven@epa.gov.*

SUPPLEMENTARY INFORMATION

Outline of Today's Document

The information presented in this preamble is arranged as follows:

I. Authority
II. Background
A. What is Project XL?
B. What Are Bioreactor Landfills?
III. The Virginia Project XL Landfills
A. Overview
B. What did EPA Propose and What Comments were Received?
C. Description of the Project
D. What Kind of Liner Is Required by Current Federal Regulations?
E. How Are the Liners at the Virginia Project XL Landfills Constructed?
F. What Are the Environmental Benefits Expected Through Project XL?
G. How Have Various Stakeholders Been Involved in this Project?
H. Will this Project Result in Cost Savings and Paperwork Reduction?
I. How Long Will this Project Last and When Will it Be Complete?
J. Why is this Rule Immediately Effective?
IV. What Regulatory Changes Are Being Made to Implement this Project?
A. Existing Liquid Restrictions for MSWLFs (40 CFR 258.28)
B. Site-Specific Rule
V. Regulatory Assessment Requirements
A. How Does this Rule Comply With Executive Order 12866: Regulatory Planning and Review?
B. Is a Regulatory Flexibility Analysis Required?
C. Is an Information Collection Request Required for this Rule Under the Paperwork Reduction Act ?
D. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?
E. How Does the Congressional Review Act Apply to this Rule?
F. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
G. How Does this Rule Comply With Executive Order 13132: Federalism?
H. How Does this Rule Comply with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments?
I. How Does this Rule Comply with the National Technology Transfer and Advancement Act?
J. Does this Rule Comply with Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use?

I. Authority

This rule is being promulgated under the authority of Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6907, 6912, 6945, and 6949a).

II. Background

A. What is Project XL?

Project XL is an EPA initiative developed to allow regulated entities to achieve better environmental results at less cost. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995 (*see* 60 FR 27282, May 23, 1995). Detailed descriptions of Project XL have been published previously in numerous public documents which are generally available electronically via the Internet at *http://www.epa.gov/projectxl/.* Briefly, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve environmental performance that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Project XL is intended to allow EPA to experiment with new or pilot projects that provide alternative approaches to regulatory requirements, both to assess whether they provide benefits at the specific facility affected, and whether these projects should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or State-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

On September 29, 2000, EPA's Region 3 and Office of Solid Waste, joined by Virginia Department of Environmental Quality, and USA Waste of Virginia, Inc. signed the Final Project Agreement (FPA) for the project (*see* Docket No. F–2001–WVLP–FFFFF, Item 2.2, or the Internet at *http://www.epa.gov/ProjectXL/virginialandfills/fpa.pdf.*) The FPA is a non-binding written agreement between the project sponsor and regulatory agencies which describes the project in detail, discusses criteria to be met, identifies performance goals and indicators, and outlines the administration of the agreement.

B. What Are Bioreactor Landfills?

A bioreactor landfill is generally defined as a landfill operated to transform and stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance microbiological processes. Bioreactor landfills often employ addition of liquids such as leachate. A byproduct of the waste decomposition process is landfill gas, which includes methane, carbon dioxide, hazardous air pollutants and volatile organic compounds (VOC). Landfill gases are produced sooner in a bioreactor than in a conventional landfill. Therefore, bioreactors typically incorporate state-of-the-art landfill gas collection systems to collect and control landfill gas upon start up of the liquid addition process.

On April 6, 2000, EPA published a document in the **Federal Register** requesting information on bioreactor landfills, because the Agency is considering whether and to what extent the Criteria for Municipal Solid Waste Landfills, 40 CFR part 258, should be revised to allow for leachate recirculation over alternative liners in MSWLFs (65 FR 18015). EPA is seeking information about liquid additions and leachate recirculation in MSWLFs to the extent currently allowed, *i.e.*, in MSWLFs designed and constructed with

a composite liner as specified in 40 CFR 258.40(a)(2).

Proponents of bioreactor technology note that operating MSWLFs as bioreactors provides a number of environmental benefits, including an increased rate of waste decomposition, which in turn would extend the operating life of the landfill and lessen the need for additional landfill space or other disposal options. Bioreactors also

Development Areas" 1 and 2 (leachate recirculation areas) and 3, 4, and 11 (monitored control areas without leachate recirculation). The total size of the Phase 1, 2, 3, 4 and 11 Phase Development Areas is approximately 48 acres. During dry periods of lower or no leachate generation, liquids other than leachate could also be added, including non-hazardous liquids such as storm water and truck wash water. The liquids

the benefits identified in the FPA. Although the process of recirculating leachate provides much of the moisture needed to enhance biological degradation of waste, research reported in "Active Municipal Waste Landfill Operations: A Biochemical Reactor" (Reinhart, 1995, see Docket No. F–2001–WVLP–FFFFF, Item 4.1) found that the quantity of liquid needed to reach water holding or field capacity of the waste to potentially maximize the rate of

calculated to be about 110,000 gallons per day, which is much greater than the average application rate of either 10,960 gallons per day or the 22,000 gallons per day for Maplewood and King George Landfills, respectively. The exact number and length of the trenches will be determined during the implementation of the project but at a minimum will be adequate to provide for the average application rates.

EPA's RCRA MSWLF operating

Maplewood Landfill is located in Amelia County, Virginia, approximately 30 miles southwest of Richmond, Virginia. The Maplewood Landfill will cover a total area of about 404 acres upon completion. Construction of the first phases started in 1992. Construction of the most recent phase was completed in 1997. The King George County Landfill is located in King George County, Virginia,

revisions. The recycling advocacy group submitted extensive comments critical of landfilling solid waste and bioreactor technology in general, and the VA Landfills XL Project and site-specific rule in particular.

Generally, some of the recycling advocacy group comments addressed the legal basis or adequacy of EPA's existing municipal solid waste landfill (MWSLF) criteria, 40 CFR part 258,

a composite liner as specified in 40 CFR 258.40(a)(2).

Proponents of bioreactor technology note that operating MSWLFs as bioreactors provides a number of environmental benefits, including an increased rate of waste decomposition, which in turn would extend the operating life of the landfill and lessen the need for additional landfill space or other disposal options. Bioreactors also decrease, or at times eliminate, the quantity of leachate requiring treatment and offsite disposal. Several studies have shown that leachate quality improves over time when leachate is recirculated on a regular basis. For all of these reasons, bioreactors are expected to decrease potential environmental risks and costs associated with leachate management, treatment and offsite disposal. Additionally, use of bioreactor techniques is expected to shorten the length of time the liner will be exposed to leachate and this should lower the long term potential for leachate migration into the subsurface environment. Bioreactors are also expected to reduce post-closure care costs and risks, due to the accelerated, controlled settlement of the solid waste during landfill operation. Finally, bioreactors provide for greater opportunity for recovery of methane gas for energy production since a larger quantity of methane is produced earlier than in a normal MSWLF.

Several additional related XL pilot projects involving operation of landfills as bioreactors are being implemented throughout the country. These additional bioreactor projects will enable EPA to evaluate benefits of different alternative liners and leachate recirculation systems under various climatic and operating conditions. As expressed in the above-referenced April 2000 **Federal Register** document, EPA is interested in assessing the performance of landfills operated as bioreactors, and these XL projects are expected to contribute valuable data.

The Virginia Project XL Landfills and other XL projects will provide additional information on the performance of MSWLFs when liquids are added to the landfill. The Agency is also interested in assessing how different types of alternative liners perform when liquids are added to the landfill, including maintaining a hydraulic head at acceptable levels.

III. The Virginia Project XL Landfills

A. Overview

The Virginia Project XL Landfills consists of the Maplewood Landfill and the King George Landfill. The Maplewood Landfill is located in Amelia County, Virginia, approximately 30 miles southwest of Richmond, Virginia. The Maplewood Landfill will cover a total area of about 404 acres upon completion. Construction of the first phases started in 1992. Construction of the most recent phase was completed in 1997. The King George County Landfill is located in King George County, Virginia, approximately 50 miles north-northeast of Richmond, Virginia. The King George Landfill will cover a total area of about 290 acres upon completion. The first phase of liner system construction began in 1996. Construction of additional liner system areas has been performed every year since 1996.

The Maplewood Landfill is owned and operated by USA Waste of Virginia, Inc., and the King George Landfill is owned by King George County and operated by King George Landfills, Inc. USA Waste of Virginia, Inc. and King George Landfills, Inc. are both subsidiaries of Waste Management, Inc., and will be referred to collectively hereinafter as "Waste Management." Maplewood Landfill and King George Landfill, both of which are municipal solid waste landfills (MSWLFs), will hereinafter be referred to collectively as the "Virginia Project XL Landfills."

B. What did EPA Propose and What Comments were Received?

Today's action finalizes the site-specific rule for the Virginia Project XL Landfills without modification of the proposed rule. EPA proposed adding a new subsection (c) to 40 CFR 258.41 that would apply only to the Virginia Project XL Landfills and allow the owner/operator to add non-hazardous bulk or non-containerized liquids, including leachate, to Cell 3 of the King George Landfill and Phases 1 and 2 of the Maplewood Landfill, as long as these areas meet the maintenance, operational, monitoring and other requirements set forth in § 258.41(c). See Section IV of this preamble for a full description of the regulatory relief provided for this project.

As a result of the December 28, 2001, proposed rule for the Virginia Project XL Landfills, EPA received two comments from two national organizations, one representing the solid waste management industry and one from a recycling advocacy group. EPA's Response to Comments document ("Response") and the comment letters are in the RCRA Docket No. F–2002–WVLF–FFFFF for this final rule. The solid waste management trade association supported this Virginia XL Project and did not call for any revisions. The recycling advocacy group submitted extensive comments critical of landfilling solid waste and bioreactor technology in general, and the VA Landfills XL Project and site-specific rule in particular.

Generally, some of the recycling advocacy group comments addressed the legal basis or adequacy of EPA's existing municipal solid waste landfill (MWSLF) criteria, 40 CFR part 258, which are beyond the scope of today's rulemaking. Other comments called for EPA to establish uniform design and operating criteria for all bioreactor landfills. These comments are also beyond the scope of today's rulemaking, which addresses only the Maplewood and King George County landfills. This commenter also addressed the adequacy of landfill gas monitoring, collection, control and reporting requirements for the XL Project. The proposed rule did not include any flexibility to existing regulations addressing these requirements, rather requirements pertaining to landfill gas are governed by Clean Air Act regulations and facility-specific permits (*see* Section III.C., below). Finally, the comments suggested testing changes for the XL Project. As explained in greater detail in the Response and in Section IV.B.(below), EPA believes the monitoring, testing and reporting requirements contained in this rule, the Final Project Agreement and State solid waste and air permits will provide sufficient information to characterize the bioreactor operations at the Virginia Project XL Landfills and protect human health and the environment.

C. Description of the Project

This rule will allow for the addition of liquid wastes to certain areas of the Maplewood Landfill and the King George Landfill.

The goal for the Maplewood Landfill is to recirculate as much leachate as is generated at the facility. Based on facility records, the facility generated approximately 3,000,000 gallons of leachate in 1999 (a relatively dry year). Under this XL project, between 3,000,000 and 4,000,000 gallons of liquid will be applied at the landfill per year. The liquid application rate will be an average of 10,960 gallons per day, based on an application rate of 4,000,000 gallons per year. In order to comply with the requirements of the rule and provide the appropriate test conditions for biodegradation of the waste, the exact liquid application rate will be determined by Waste Management during implementation of the project. The project area in the Maplewood Landfill will be in "Phase

Development Areas" 1 and 2 (leachate recirculation areas) and 3, 4, and 11 (monitored control areas without leachate recirculation). The total size of the Phase 1, 2, 3, 4 and 11 Phase Development Areas is approximately 48 acres. During dry periods of lower or no leachate generation, liquids other than leachate could also be added, including non-hazardous liquids such as storm water and truck wash water. The liquids will be applied in trenches, excavated into the surface of the landfill in the Phases 1 and 2 areas (approximately 10 acres in size). Phases 3, 4, and 11 will be used as control cells—no liquid will be applied to these areas, only rainwater that naturally falls and percolates beneath the landfill surface will enter the waste in these areas or phases.

The goal for the King George County Landfill is to recirculate as much leachate as is generated at the facility and to add sufficient additional liquid to make a total liquids application of between 7,000,000 and 8,000,000 gallons per year. Based on facility records for the past three years, the facility generates approximately 3,500,000 gallons of leachate per year. Based on estimates of storm water runoff quantities and the storage capacity of the storm water management ponds at the site, approximately 8,000,000 gallons or more of storm water is expected to be made available for application to the landfill waste. The liquid application rate will be, on average, about 22,000 gallons per day based on an estimated application rate of 8,000,000 gallons per year. In order to comply with the requirements of the rule and provide the appropriate test conditions for biodegradation of the waste, the exact liquid application rate will be determined by Waste Management during implementation of the project.

The overall study area in the King George Landfill will be established within the Municipal Solid Waste Cells 2, 3, and 4. The total size of Cells 2, 3, and 4 is approximately 59 acres. Liquid will be applied only in Cell 3, approximately 10 acres in size. Cells 2 and 4 will be control cells in which no liquids will be applied. Cell 1 was being filled with waste in July 2001.

As stated earlier, the bioreactor program that will be implemented at the King George County Landfill involves application to the waste of about twice the quantity of liquid that is applied at the Maplewood Landfill. In the bioreactor at this landfill, conditions will be established that are intended to significantly increase the rate of degradation of waste during the operating life of the landfill to achieve the benefits identified in the FPA. Although the process of recirculating leachate provides much of the moisture needed to enhance biological degradation of waste, research reported in "Active Municipal Waste Landfill Operations: A Biochemical Reactor" (Reinhart, 1995, see Docket No. F–2001–WVLP–FFFFF, Item 4.1) found that the quantity of liquid needed to reach water holding or field capacity of the waste to potentially maximize the rate of biodegradation is typically much greater than the quantity of leachate generated at a MSWLF. As part of the comparison of different rates of liquid addition inherent in this project, sources of liquid other than leachate will be used to supply the additional quantity of liquid needed at the King George Landfill. These sources could include storm water, truck wash water and other non-hazardous liquid waste. For this project, these liquids may be discharged into the landfill leachate storage tanks to supplement the leachate and the resulting mixture will then be distributed over the bioreactor test area.

The liquids application system at the Virginia Project XL Landfills will be constructed using typical trench construction methods and may include other methods developed during the implementation of the program. The construction methods are described in detail in the Application for Project XL Landfill Bioreactor Systems King George County Landfill and Maplewood Recycling and Waste Disposal Facility, submitted to U.S. EPA, prepared by GeoSyntec Consultants, May 30, 2000 (see Docket No. F–2001–WVLP–FFFFF, Item 5.1).

The liquids infiltration or "application capacity" of each landfill is the amount of liquid that can be expected to flow by gravity from all of the trenches. This quantity has been estimated using the methodology described in "Analysis Procedures for Design of Leachate Recirculation Systems," (T.B. Maier, June 1998, see Docket No. F–2001–WVLP–FFFFF, Item 4.2). This method involves estimating the moisture content of the waste (typically 15 to 25 percent without liquid application), the hydraulic properties of the waste, the moisture retention capacity (field capacity) of the waste (typically 40 percent), and the depth of liquid in the trench. Using this information, the infiltration rate of liquid into the waste from one 400 foot long trench is calculated; the total application capacity equals the combined infiltration rate of all six trenches. As shown in the May 2000, GeoSyntec Report, the total application capacity of the group of six trenches is calculated to be about 110,000 gallons per day, which is much greater than the average application rate of either 10,960 gallons per day or the 22,000 gallons per day for Maplewood and King George Landfills, respectively. The exact number and length of the trenches will be determined during the implementation of the project but at a minimum will be adequate to provide for the average application rates.

EPA's RCRA MSWLF operating criteria require that MSWLFs be designed and constructed with a leachate collection system that can ensure a hydraulic head (leachate layer) above the liner of 30 centimeters (cm) or less, *i.e.*, approximately 12 inches. The operator must monitor the depth of liquid (or thickness of "head") and ensure no more than 30 cm of head is on the liner. The impact of the liquid application activities on the thickness of head on the liner systems was evaluated using the Hydrologic Evaluation of Landfill Performance (HELP) model (*see* the May 2000, GeoSyntec Report). First, the hydrologic evaluation was performed assuming that no liquid is applied; then the evaluation was performed for the liquid application condition under the assumptions that 4,000,000 and 8,000,000 gallons per year will be recirculated at the Maplewood and King George Landfills, respectively. These calculations show that a head of 30 cm or less is expected on both the Maplewood and the King George liner. The King George Landfill is expected to maintain a lower head than the Maplewood Landfill because the drainage layer material at the King George landfill is approximately 100 times more permeable than the drainage layer material at the Maplewood landfill. This is why the King George Landfill was selected for an application rate of twice the volume of liquids that will be applied to the Maplewood Landfill.

The primary liner system of both landfills is underlain by a secondary liner and leachate collection system. Sumps are located at the low point of each cell in each system and will be monitored for the depth of liquid on a monthly basis. As needed and required, liquid in the sumps is collected and controlled as leachate. Samples are collected to evaluate the characteristics of the liquids. If the test results from the sampled liquid or the monitoring of the leachate level indicate that there is a potential leak in the primary liner system, then the need for a larger pump will be evaluated and the liquid level in the primary system will be further evaluated and monitored to minimize the liquid depth above the primary

liner. The liner leakage rate will be evaluated and the leachate injection rate may be reduced, if necessary, to control the rate of flow into the secondary leachate collection system. Waste Management will monitor the depth of liquid on the liners of both landfills throughout the XL project period, and will ensure that less than the 30 cm maximum head is maintained, in accordance with regulations. This rule

trenches and a phreatic or subsurface leachate/water table surface in the landfill cell associated with the addition of liquids in the trench. The calculated FOS for the existing conditions and under the leachate recirculation scenarios remained unchanged in both the Virginia Project XL Landfills since the critical failure surface is located outside the areas that will be wetted by liquid addition during the bioreactor

permit (9 VAC 5–80–50 *et. seq.*), for the King George Landfill. Both the Title V permit and the underlying NSR permit issued by VADEQ are considered Federally enforceable. An NSR permit for the Maplewood Landfill was issued on March 29, 2002. A draft Title V permit is currently being revised by VADEQ. This rule is conditional upon the issuance of a FESOP. The FPA stated that the landfill gas monitoring,

a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar agreement for the King George Landfill.

D. What Kind of Liner is Required by Current Federal Regulations?

Currently, the Federal regulations outline two methods for complying with liner requirements for municipal solid

clayey soil liner with a permeability (k) of $< 1\times10^{-5}$ cm/sec.

The 60 mil HDPE upper liner component of both landfills' liners meets the specified upper membrane liner component under RCRA (40 CFR 258.40(b). However, instead of a lower liner component comprising at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, the Virginia Project XL Landfills

2. Minimizing Leachate/Groundwater-Associated Concerns

Research reported in "Active Municipal Waste Landfill Operations: A Biochemical Reactor" (Reinhart, 1995, see Docket No. F–2001–WVLP–FFFFF, Item 4.1), has shown that bioreactor processes tend to reduce the concentration of many pollutants in leachate, including organic acids and other soluble organic pollutants.

liner. The liner leakage rate will be evaluated and the leachate injection rate may be reduced, if necessary, to control the rate of flow into the secondary leachate collection system. Waste Management will monitor the depth of liquid on the liners of both landfills throughout the XL project period, and will ensure that less than the 30 cm maximum head is maintained, in accordance with regulations. This rule will not alter Waste Management's obligation to maintain less than 30 cm of head on the liners at the Virginia Project XL Landfills.

It is necessary that the on-site leachate storage structures at both the Virginia Project XL Landfills have enough capacity to store the leachate needed for later application to the test areas in the landfills. Liquid will be collected and stored for application when conditions are relatively dry. The storage capacity of the leachate tanks at the Maplewood Landfill is approximately 500,000 gallons, this represents approximately a two months supply of leachate at a application rate of 4 million gallons per year.

During operation of the bioreactor system, leachate storage structures will also be used to temporarily store leachate at times when it is not or cannot be recirculated. At a minimum, the tanks will need to store the quantity of leachate generated over a period of several days. The May 2000, GeoSyntec Report states that the Maplewood Landfill generated approximately 3 million gallons of leachate in 1999. The 500,000 gallon storage at Maplewood Landfill represents over a two month storage capacity of leachate at a generation rate of 3 million gallons per year. Therefore, the facility has adequate leachate storage capacity for operation of the bioreactor system. As a contingency, when leachate generation exceeds the rate of recirculation in and storage capacity, leachate can be hauled off-site as is currently being done.

In the May 2000, GeoSyntec Report, Waste Management's consultant evaluated the physical stability of the waste at the Virginia Project XL Landfills under bioreactor operating conditions. GeoSyntec Consultants submitted this engineering evaluation to the Virginia Department of Environmental Quality (VADEQ) as a part of their application for a permit modification for the bioreactor testing at the Virginia Project XL Landfills. A static stability analysis conducted for the slopes of the Virginia Project XL Landfills shows a factor of safety (FOS) of greater than the minimum value of 1.5 was maintained even with the addition of the liquid application trenches and a phreatic or subsurface leachate/water table surface in the landfill cell associated with the addition of liquids in the trench. The calculated FOS for the existing conditions and under the leachate recirculation scenarios remained unchanged in both the Virginia Project XL Landfills since the critical failure surface is located outside the areas that will be wetted by liquid addition during the bioreactor testing or the added liquid does not change the location of the critical surface. The GeoSyntec stability evaluation can be found in the rule docket (*see* Docket No. F–2001–WVLP–FFFFF, Items 4.5 and 4.6).

EPA and Waste Management expect that the addition of liquids to the landfills will accelerate the production of landfill gases; indeed, one of the benefits of bioreactor landfills is that the time interval during which landfill gas is generated should be compressed, thereby facilitating its collection and potential conversion to a useful energy source. Landfill gas generation will start sooner and end sooner in landfills where liquids are recirculated. EPA's Standards of Performance for Municipal Solid Waste Landfills, 40 CFR part 60, subpart WWW, requires large landfills that meet the emissions threshold to perform landfill gas monitoring and install a collection and control system as specified in the regulation in areas where wastes are over a certain age. Effective November 1999, Waste Management installed, and is operating, an active (*i.e.*, vacuum induced) landfill gas collection system in Phases 1, 2 and 3 at the Maplewood Landfill. An active gas collection system became operational at the King George Landfill on December 10, 2000.

This XL project will comply with the subpart WWW performance standards for MSWLFs under the Federal Clean Air Act. Waste Management will continue to provide subpart WWW-compliant landfill gas monitoring, collection and control during and following the application of liquids at the landfills. Waste Management's obligations with respect to landfill gas is set forth in a Federally Enforceable State Operating Permit (FESOP). The VADEQ is the regulatory agency which, under the Federal Clean Air Act, has air permitting authority for both landfills. The VADEQ has issued a New Source Review (NSR) permit (9 VAC 5–80–10) for the King George Landfill which contains the enforceable parameters and requirements reflecting the New Source Performance Standards (NSPS)—compliant gas collection, control and monitoring. In addition, on July 31, 2001, VADEQ issued a Title V Operating permit (9 VAC 5–80–50 *et. seq.*), for the King George Landfill. Both the Title V permit and the underlying NSR permit issued by VADEQ are considered Federally enforceable. An NSR permit for the Maplewood Landfill was issued on March 29, 2002. A draft Title V permit is currently being revised by VADEQ. This rule is conditional upon the issuance of a FESOP. The FPA stated that the landfill gas monitoring, collection and control include at least the following provisions:

1. Waste Management will enhance the gas collection and control systems at the landfills (*e.g.*, using additional extraction wells or trenches or by enhancing the cover over affected areas). This will be done at the discretion of Waste Management, or as directed by VADEQ, if it is determined that there is a potential to exceed the applicable air quality permit requirements or NSPS during evaluation of routine monitoring data or if odor problems or air quality problems occur. The system will be expanded as needed (*e.g.*, using additional extraction wells or trenches or by placing additional cover or tarps over affected areas) to ensure compliance with the applicable air quality permit requirements.

2. The performance of the landfill gas extraction systems at the Virginia Project XL Landfills will be documented and assessed by obtaining monitoring data from the gas extraction wells and the landfill surface for parameters such as methane, carbon dioxide, oxygen, non-methane organic compounds (NMOCs) and other constituent concentrations, in accord with 40 CFR part 60, subpart WWW. The gas temperature at the well heads will also be monitored as required by subpart WWW.

3. A baseline round of air monitoring at each landfill will be completed prior to the introduction of liquids, and the monitoring will continue for the duration of the project.

4. Collected landfill gas will be controlled through the use of an active gas control system at both sites.

The site stakeholders, listed in Section III.G. of today's rule (below), recognize that the increased production of landfill gas may result in an increase in the flow rate of NO_X emissions from any flares or other gas processing equipment installed as part of the project. Air quality permits for these emissions may need to be amended to allow the implementation of the XL project. In the FPA, Waste Management committed to exploring alternative uses for the collected gas other than flaring and on September 1, 2001, Waste Management signed an agreement with a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar agreement for the King George Landfill.

D. What Kind of Liner is Required by Current Federal Regulations?

Currently, the Federal regulations outline two methods for complying with liner requirements for municipal solid waste landfills. The first method is a performance standard set out under 40 CFR 258.40(a)(1). This standard allows installation of any liner configuration provided the liner design is approved by the director of an approved State (defined in § 258.2) and the design ensures that certain constituent concentrations are not exceeded in the uppermost aquifer underlying the landfill facility at the point of compliance.

The second method is set out in 40 CFR 258.40(a)(2) and (b). § 258.40(b) specifies a liner design which consists of two components: (1) An upper component comprising a minimum of 30 mil flexible membrane liner (60 mil if High Density Polyethylene (HDPE) is used); and (2) a lower component comprising at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

E. How Are the Liners at the Virginia Project XL Landfills Constructed?

Both the Maplewood Landfill and the King George County Landfill were constructed to meet or exceed the performance standard set forth in 40 CFR 258.40(a)(1). The liner under each landfill was built with a geomembrane double synthetic liner system, with primary leachate collection and leak detection (secondary collection) layers.

- The King George County liner and leachate collection system consists, from top to bottom, 1.5 feet of protective cover, leachate drainage material, 16 oz./square yard nonwoven geotextile, 60 mil textured HDPE primary geomembrane liner, a geosynthetic clay liner, geocomposite drainage layer, 60 mil textured HDPE secondary geomembrane liner, geosynthetic clay liner, 40 mil textured HDPE tertiary geomembrane liner and 1 foot of geologic buffer material with a permeability (k) of $< 1\times10^{-5}$ cm/sec.
- The Maplewood Landfill liner and leachate collection system consists of, from top to bottom, 1.5 feet of primary granular drainage layer, 60 mil HDPE geomembrane, geonet layer, 60 mil HDPE geomembrane, bentonite geocomposite, underlain by 1.5 feet of a clayey soil liner with a permeability (k) of $< 1\times10^{-5}$ cm/sec.

The 60 mil HDPE upper liner component of both landfills' liners meets the specified upper membrane liner component under RCRA (40 CFR 258.40(b). However, instead of a lower liner component comprising at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, the Virginia Project XL Landfills were built with a second geosynthetic 60 mil HDPE layer. Additionally, beneath the double liner system at the King George County is a third 40 mil HDPE liner, underlain by one foot of soil compacted to a permeability (k) of $< 1\times10^{-5}$ cm/sec., and the double liner system at the Maplewood Landfill is underlain by 18 inches of soil compacted to a permeability (k) of $< 1\times10^{-5}$ cm/sec. The liner systems for the two landfills are illustrated in Figure 2 of the FPA.

While the Virginia Project XL Landfills do not have a composite liner as specified in the Design Criteria § 258.40(b), the alternative liner systems meet or exceed the performance requirements for municipal solid waste landfills. Indeed, these landfills' double-liner systems provide a high level of protection to the environment against potential impacts caused by leakage of leachate.

F. What Are the Environmental Benefits Expected Through Project XL?

The expected superior environmental benefits from the Virginia Landfills XL Project include: (1) Landfill life extension; (2) minimizing the potential for long-term leachate-associated groundwater and offsite surface water concerns; and (3) increasing landfill gas control, minimizing fugitive methane and VOC emissions and minimizing the duration of gas generation.

1. Landfill Life Extension

The life of a landfill, when operated as a bioreactor, should be extended by the biodegradation of the waste. The accelerated biodegradation increases the apparent density and decreases the volume of the in-place waste remaining in the landfill. Reducing the volume of waste translates into either longer landfill life and/or less need for additional landfill space. Thus, a bioreactor landfill will be able to accept more waste over its working lifetime (subject to applicable State regulatory requirements) and less landfill space may be needed to accommodate the same amount of waste.

2. Minimizing Leachate/Groundwater-Associated Concerns

Research reported in "Active Municipal Waste Landfill Operations: A Biochemical Reactor" (Reinhart, 1995, see Docket No. F–2001–WVLP–FFFFF, Item 4.1), has shown that bioreactor processes tend to reduce the concentration of many pollutants in leachate, including organic acids and other soluble organic pollutants. Bioreactor operations brings pH to near-neutral conditions and generally, metals are much less mobile under these condition. Reinhart found that metals were largely precipitated and immobilized in the waste of bioreactor landfills. Discussions between Waste Management, the VADEQ, and the host communities for the Maplewood Landfill and the King George County Landfills, indicated that groundwater-related issues are of primary concern to the stakeholders, including minimizing the long-term threat to groundwater quality. This project should provide for accelerated biodegradation of the waste in the landfills and, thereby, minimize the potential for the waste to present a long-term threat to groundwater quality. Routine groundwater monitoring is, and will continue to be, performed to verify containment. Cleaner leachate also translates into decreased load on the offsite publicly owned treatment works (POTWs) where the leachate from these landfills is now being treated. As described in Section 1.2 of the FPA, both the Maplewood and King George County Landfills were constructed with double-liner systems, which are highly efficient at preventing leakage of leachate from landfills.

3. Maximizing Landfill Gas Control and Minimizing Fugitive Methane and VOC Emissions

Landfill gas contains roughly 50% methane, a potent greenhouse gas. In terms of climate effects, methane is second in importance only to carbon dioxide as a greenhouse gas. Landfill gas also contains volatile organic compounds (VOC's) which are air pollutants of local concern. While the rate of gas generation will be increased by adding liquids to the landfills, the period of post closure landfill gas generation will be compressed. The existing, active gas collection systems in operation at both landfills are expected to efficiently collect and control landfill gas. The systems will be maintained and monitored in accordance with the terms of 40 CFR part 60, subpart WWW and all applicable permits. In addition, as noted above, Waste Management has signed an agreement with a private

energy development company to construct a power plant fueled by landfill gas at the Maplewood Landfill and is negotiating a similar gas/energy recovery agreement for the King George Landfill.

It is also anticipated that the information obtained from this XL project will provide the EPA and the waste disposal industry with data concerning the use of bioreactor

If requested, Waste Management has also agreed to provide site tours and briefings to better educate any interested citizens or stakeholders. Transcripts and video tape recordings of all public meetings and hearings will be maintained at the repositories. A repository for the project will be maintained by VADEQ at 629 East Main Street, Richmond, VA, 23219 c/o Paul Farrell, (804) 698–4214. Additional

- accelerating the rate of decomposition of the waste placed in certain areas of the two Virginia Project XL Landfills, which is expected to extend the life of the landfill;
- improving the quality of leachate generated in those specific areas of the landfills, which is expected to decrease leachate treatment and disposal costs; and
- increasing methane generation and

supersede the superior environmental benefits that are being achieved under this XL project. Or, during the project duration, EPA may decide to change the Federal rule allowing recirculation over alternative liners and the addition of outside bulk liquids for all Subtitle D landfills. In that event, the FPA and site-specific rule for this project will no longer be needed.

I. Why is this Rule Immediately

bioreactor landfill project under Project XL, which amended § 258.28(a). The amendment allows bulk liquid wastes to be added to a MSWLF if "the MSWLF unit is a Project XL MSWLF and meets the applicable requirements of § 258.41" (66 FR 42441–42449, August 13, 2001). Therefore, the regulatory relief needed for the VA Project XL Landfills is a site-specific amendment to 40 CFR 258.41.

B. Site-Specific Rule

leachate to be recirculated in the landfill unit, and Waste Management will still be required to ensure that leachate collection systems at the landfills maintain the leachate head over the liner at a depth of less than 30 cm.

Today's rule does not provide any regulatory flexibility with respect to monitoring requirements, rather it adds monitoring to that which would be required for these landfills if they continued operating as conventional

energy development company to construct a power plant fueled by landfill gas at the Maplewood Landfill and is negotiating a similar gas/energy recovery agreement for the King George Landfill.

It is also anticipated that the information obtained from this XL project will provide the EPA and the waste disposal industry with data concerning the use of bioreactor techniques at MSWLF sites throughout the United States, in accord with the Agency's April 6, 2000, Request for Information and Data regarding Alternative Liner Performance, Leachate Recirculation, and Bioreactor Landfills (65 FR 18014, April 6, 2000).

G. How Have Various Stakeholders Been Involved in This Project?

Initial public meetings were held on August 1, 2000 (King George County) and August 2, 2000 (Amelia County) to solicit comments from the public on the intent of the sponsors to participate in Project XL. Additional public meetings were also held during the week of September 4, 2000 in King George and Amelia Counties to discuss the draft FPA with the citizens from these localities. Since both landfills have valid State operating permits, the VADEQ intends to amend the permits to allow the construction and operation of the bioreactor systems as an experimental process. Before VADEQ issues a permit amendment, a local public hearing will be held to solicit comments on the draft permit amendments from concerned citizens. The details of the permit amendments for each landfill are outlined in advertisements along with contact information and document viewing locations. The public hearing is also advertised in a local paper. The VADEQ has a standardized mailing list of State agencies to whom a draft permit or notice of permit amendment can be sent to solicit comments. Conditions may be imposed due to additional State requirements or as a result of public comment.

In accord with VADEQ regulatory requirements, Virginia will hold public meetings and hearings on the proposed amendments to the solid waste construction and operating permits for the Virginia Project XL Landfills. If requested, these public hearings will be supplemented with additional stakeholder meetings. A stakeholder mailing list maintained by Waste Management will be updated as necessary to include private citizens and other interested parties. Periodically, progress reports and other relevant information will be distributed. If requested, Waste Management has also agreed to provide site tours and briefings to better educate any interested citizens or stakeholders. Transcripts and video tape recordings of all public meetings and hearings will be maintained at the repositories. A repository for the project will be maintained by VADEQ at 629 East Main Street, Richmond, VA, 23219 c/o Paul Farrell, (804) 698–4214. Additional copies of the repository records will be maintained in the James Hamner Memorial Library, 16351 Dunn Street Amelia, Virginia 23002 and in the L.F. Smoot Lewis Memorial Library, 9533 Kings Highway, King George, Virginia 22485. An Internet Web site for this XL project is also maintained at: *http://www.epa.gov/ProjectXL/virginialandfills/index.htm*. Throughout project development, EPA will continue to update the website as the project is implemented. The FPA also includes a detailed description of stakeholder involvement with this XL project (*see* Docket No. F–2001–WVLP–FFFFF, Item 2.2, or on the Web site).

Waste Management will periodically meet with a representative from each local landfill advisory committee or the entire stakeholder group to discuss issues of concern and to disseminate information. To solicit additional stakeholder involvement, Waste Management may perform its own outreach including contacting nationwide professional and citizen groups that may have an interest in bioreactor technology and will attempt to disseminate information to its members, as well as, attend national workshops or seminars.

The following have been identified as VA Project XL Landfill stakeholders:

Direct Participants:
- U.S. Environmental Protection Agency
- Virginia Department of Environmental Quality
- Waste Management, Inc.
- King George County Landfill
- Maplewood Landfill
- Maplewood Recycling Waste Disposal Facility

Commentors:
- Members of Local Landfill Advisory Committees

H. Will This Project Result in Cost Savings and Paperwork Reduction?

EPA did not prepare an economic assessment of the impacts of today's rule. EPA notes, however, that Waste Management volunteered for this pilot project which will affect only two facilities and is expected to result in an overall cost savings by:

- accelerating the rate of decomposition of the waste placed in certain areas of the two Virginia Project XL Landfills, which is expected to extend the life of the landfill;
- improving the quality of leachate generated in those specific areas of the landfills, which is expected to decrease leachate treatment and disposal costs; and
- increasing methane generation and recovery efficiency, which is expected to facilitate the use of the methane for energy generation.

No appreciable direct reduction in paperwork is anticipated at the Virginia Project XL Landfills.

I. How Long Will This Project Last and When Will It Be Complete?

As with all XL projects testing alternative environmental protection strategies, the term of this XL project is limited. Today's rule will be in effect for ten (10) years. In the event that EPA determines that this project should be terminated before the end of the ten year period and that the site-specific rule should be rescinded, the Agency may withdraw this rule through a subsequent rulemaking. This will allow all interested persons and entities the opportunity to comment on the proposed termination and withdrawal of regulatory authority. In the event of an early termination of the project term, EPA or the State will establish an interim compliance period, not to exceed six months, such that Waste Management will be returned to full compliance with the existing requirements of 40 CFR part 258. In accordance with 9 VAC 20–80–480.G, VADEQ expects to utilize an experimental permit to provide for operation of the VA Project XL Landfills as bioreactors. If the XL project proves to be feasible, VADEQ expects to modify the permit for the facility to provide for the ten year XL project term.

The FPA allows any party to the agreement to withdraw from the agreement at any time before the end of the ten year period. It also sets forth several conditions that could trigger an early termination of the project, as well as procedures to follow in the event that EPA, the State or local agency seeks to terminate the project (FPA, section 11).

For example, an early conclusion will be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable during the project term which might render the project impractical, or might contain regulatory requirements that

supersede the superior environmental benefits that are being achieved under this XL project. Or, during the project duration, EPA may decide to change the Federal rule allowing recirculation over alternative liners and the addition of outside bulk liquids for all Subtitle D landfills. In that event, the FPA and site-specific rule for this project will no longer be needed.

J. Why is this Rule Immediately Effective?

Under 5. U.S.C. 553(d), the rulemaking section of the Administrative Procedure Act, EPA is making this rule effective upon publication. Under 5 U.S.C. 553(d)(1), EPA is making this rule immediately effective because the rule relieves a restriction in that it allows the Virginia Project XL Landfills to add liquids to the landfills that are currently not allowed under 40 258.28(a) (1) and (2) and § 258.40(b). In addition, under 5 U.S.C. 553(d)(3), EPA finds good cause exists to make this rule effective immediately because the Virginia Project XL Landfills are the only regulated entity affected by the rule, sought the conditional relief provided in this rule, and have had full notice of the rule. Making the rule immediately effective will allow the Virginia Project XL Landfills to proceed sooner with the bioreactor project.

IV. What Regulatory Changes Are Being Made To Implement this Project?

A. Existing Liquid Restrictions for MSWLFs (40 CFR 258.28)

This site specific rule grants regulatory relief from certain requirements of RCRA that restrict application of liquids in these MSWLFs, because as previously described, both the Maplewood and King George landfills were constructed with alternative liners pursuant to 40 CFR 258.40(a)(1). When the FPA for this project was signed, RCRA regulations, 40 CFR 258.28(a) allowed bulk or noncontainerized liquid waste to be added to a MSWLF only if the following two conditions were met:

—The liquids comprise household waste (other than septic waste), or leachate from the landfill itself, or gas condensate derived from the landfill, and

—The MSWLF has been built with a liner designed as prescribed in the design standard set forth in 40 CFR 258.40 (a)(2) (i.e., not the performance standard set forth in 40 CFR 258.40(a)(1)).

Since then, EPA promulgated a site-specific rule for the Yolo County, CA, bioreactor landfill project under Project XL, which amended § 258.28(a). The amendment allows bulk liquid wastes to be added to a MSWLF if "the MSWLF unit is a Project XL MSWLF and meets the applicable requirements of § 258.41" (66 FR 42441–42449, August 13, 2001). Therefore, the regulatory relief needed for the VA Project XL Landfills is a site-specific amendment to 40 CFR 258.41.

B. Site-Specific Rule

Today's rule will allow the owner/operator of the Virginia Project XL Landfills to add non-hazardous bulk or non-containerized liquids, including: leachate, storm water and truck wash water ("liquids") to Cell 3 of the King George Landfill and Phases 1 and 2 of the Maplewood Landfill, as long as these areas meet the maintenance, operational, monitoring and other requirements set forth in § 258.41(c). The owner/operator of the Maplewood Landfill will add liquids primarily consisting of leachate from the landfill, while the owner/operator of the King George Landfill will add leachate generated at this facility plus other liquids, including non-containerized liquids such as storm water, truck wash water and other non-hazardous liquid waste. Further information on the liquids that will be added to the Maplewood and King George Landfills can be found in the FPA in Section 2.2.2.1 and 2.2.2.2, respectively. Today's rule will add a new subsection to the rules in § 258.41. New § 258.41(c) will specifically apply to the Maplewood Landfill, in Amelia County, Virginia, and the King George Landfill, in King George County, Virginia, and will allow liquids to be applied to these two landfills.

This rule imposes certain minimum monitoring, reporting, and control requirements on Waste Management, which, among other things, will ensure that the project is protective of human health and the environment and facilitate EPA's evaluation of the project. The project monitoring and reporting requirements are listed in the FPA (sections 2.2.1.4, 2.2.1.5, 2.2.2.4, and 2.2.2.5, Table 6 and 6A) and specify that Waste Management provide semi-annual reporting of the monitoring data to stakeholders and regulators in order to facilitate project evaluation.

Existing regulation also requires a leachate collection system as specified in § 258.40(a)(2) to ensure that contaminant migration to the aquifer is controlled. (56 FR 50978–51056, Oct. 9, 1991). This rule will not change the requirement in § 258.28(a)(2) that a leachate collection system (as described in § 258.40(a)(2)) be in place in order for leachate to be recirculated in the landfill unit, and Waste Management will still be required to ensure that leachate collection systems at the landfills maintain the leachate head over the liner at a depth of less than 30 cm.

Today's rule does not provide any regulatory flexibility with respect to monitoring requirements, rather it adds monitoring to that which would be required for these landfills if they continued operating as conventional MSWLFs. In addition to the monitoring required in part 258, for example, the Virginia Project XL Landfills must monitor and report whether surface seeps are occurring and determine whether they are attributable to operation of the liquid application system; perform a monthly analysis of leachate quality in both test and control areas; and at least monthly, monitor the gas temperature at well heads. EPA believes this additional information will provide the necessary indicators of any increased risk to human health or the environment in a timely manner and will enable Waste Management, VADEQ and/or EPA to take whatever steps are necessary, including suspension or termination of the project. to reduce or eliminate any such risk. EPA also believes that this additional information will be valuable in assessing the benefits of bioreactor operation.

V. Regulatory Assessment Requirements

A. How Does This Rule Comply With Executive Order 12866: Regulatory Planning and Review?

Because this rule affects only two facilities, it is not a rule of general applicability and therefore not subject to OMB review under Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

B. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and public comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The project sponsor, Waste Management Inc., is the regulated entity for this pilot project. They are not

a small business. This rule does not apply to small businesses, small not-for-profit enterprises, nor small governmental jurisdictions. Further, it is a site-specific rule with limited applicability to only two landfills in the nation. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

meaningful and timely input in the development of the EPA regulatory proposal with significant Federal mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. As used here, "small government" has the same meaning as that contained under 5 U.S.C. 601(5), that is, governments of cities, counties, towns, townships, villages, school

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to potentially effective and feasible alternatives considered by the Agency.

H. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by

J. Does This Rule Comply With Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use?

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under

alternative liner as defined in § 258.40(a)(1) in accord with their current installed design in order to maintain the integrity of the liner system and keep it and the leachate collection system in good operating order. The operator of the landfill shall ensure that the addition of any liquids does not result in an increased leakage rate, and does not result in liner slippage, or otherwise compromise the integrity of the landfill and its liner

a small business. This rule does not apply to small businesses, small not-for-profit enterprises, nor small governmental jurisdictions. Further, it is a site-specific rule with limited applicability to only two landfills in the nation. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It is exempt from OMB review under the Paperwork Reduction Act because it is a site specific rule, directed to fewer than ten persons. 44 U.S.C. 3502(3), (10); 5 CFR 1320.3(c), 1320.4 and 1320.5.

D. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments in the aggregate or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposal with significant Federal mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. As used here, "small government" has the same meaning as that contained under 5 U.S.C. 601(5), that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

As discussed above, this rule will have limited application. It applies only to the Maplewood and King George County Landfills. This rule will result in a cost savings for Waste Management when compared with the costs it would have had to incur if required to adhere to the requirements contained in the current rule. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or Tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. How Does the Congressional Review Act Apply to This Rule?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

F. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant," as defined in Executive Order 12886; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to potentially effective and feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule will allow for the addition of bulk or non-containerized liquid amendments over a liner that does not meet the design requirements in 40 CFR. 258.40(b), however, the liner systems meet or exceed the performance requirements for municipal solid waste landfills. Indeed, these landfills' double-liner systems provide a high level of protection to the environment against potential impacts caused by leakage of leachate. Therefore, no additional risk to public health, including children's health, is expected to result from this rule.

G. How Does This Rule Comply With Executive Order 13132: Federalism?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The phrase, "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule will only affect two local governmental entities and a State, and will provide regulatory flexibility for the State and local governmental entities concerned. Thus, Executive Order 13132 does not apply to this rule.

H. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

I. How Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless such practice is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking however, does not involve any technical standards; therefore EPA did not consider the use of any voluntary consensus standards.

J. Does This Rule Comply With Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use?

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 258

Environmental protection, Landfill, Solid waste.

Dated: July 12, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth, part 258 of Chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS [AMENDED]

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart D—Design Criteria

2. Amend 258.41 to add a new paragraph (c) to read as follows:

§ 258.41 Project XL Bioreactor Landfill Projects.

* * * * *

(c) *Virginia Landfills XL Project Requirements.* Paragraph (c) of this section applies solely to two Virginia landfills operated by the Waste Management, Inc. or its successors: The Maplewood Recycling and Waste Disposal Facility, located in Amelia County, Virginia ("Maplewood Landfill"); and the King George County Landfill and Recycling Facility, located in King George County, Virginia ("King George Landfill") collectively hereinafter, "the VA Project XL Landfills or landfill." The VA Project XL Landfills are allowed to add non-hazardous bulk or non-containerized liquids including, leachate, storm water and truck wash water, hereinafter, "liquid or liquids", to Cell 3 of the King George Landfill (hereinafter "Cell 3") and Phases 1 and 2 of the Maplewood Landfill (hereinafter "Phases 1 and 2") under the following conditions:

(1) The operator of the landfill shall maintain the liners underlying Cell 3 and Phases 1 and 2, which were designed and constructed with an alternative liner as defined in § 258.40(a)(1) in accord with their current installed design in order to maintain the integrity of the liner system and keep it and the leachate collection system in good operating order. The operator of the landfill shall ensure that the addition of any liquids does not result in an increased leakage rate, and does not result in liner slippage, or otherwise compromise the integrity of the landfill and its liner system, as determined by the State Director. In addition, the leachate collection system shall be operated, monitored and maintained to ensure that less than 30 cm depth of leachate is maintained over the liner.

(2) The operator of the landfill shall ensure that the concentration values listed in Table 1 of § 258.40 are not exceeded in the uppermost aquifer at the relevant point of compliance for the landfill, as specified by the State Director, under § 258.40(d).

(3) The operator of the landfill shall monitor and report whether surface seeps are occurring and determine whether they are attributable to operation of the liquid application system. EPA and VADEQ shall be notified in the semi-annual report of the occurrence of any seeps.

(4) The operator of the landfill shall determine on a monthly basis the leachate quality in test and control areas with and without liquid addition. The operator of the landfill shall collect monthly samples of the landfill leachate and analyze them for the following parameters: pH, Conductivity, Dissolved Oxygen, Dissolved Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand, Organic Carbon, Nutrients (ammonia, total kjeldahl nitrogen, total phosphorus), Common Ions, Heavy Metals and Organic Priority Pollutants.

(5) The operator of the landfill shall determine on a semi-annual basis the total quantity of leachate collected in test and control areas; the total quantity of liquids applied in the test areas and determination of any changes in this quantity over time; the total quantity of leachate in on-site storage structures and any leachate taken for offsite disposal.

(6) Prior to the addition of any liquid to the landfill, the operator of the landfill shall perform an initial characterization of the liquid and notify EPA and VADEQ of the liquid proposed to be added. The parameters for the initial characterization of liquids shall be the same as the monthly parameters for the landfill leachate specified in paragraph (c)(4) of this section. The operator shall annually test all liquids

added to the landfill and compare these results to the initial characterization.

(7) The operator of the landfill shall ensure that Cell 3 and Phases 1 and 2 are operated in such a manner so as to prevent any landfill fires from occurring. The operator of the landfill shall monitor the gas temperature at well heads, at a minimum, on a monthly basis.

(8) The operator of the landfill shall perform an annual surface topographic survey to determine the rate of the settlement of the waste in the test and control areas.

(9) The operator of the landfill shall monitor and record the frequency of odor complaints during and after liquid application events. EPA and VADEQ shall be notified of the occurrence of any odor complaints in the semi-annual report.

(10) The operator of the landfill shall collect representative samples of the landfill waste in the test areas on an annual basis and analyze the samples for the following solid waste stabilization and decomposition parameters: Moisture Content, Biochemical Methane Potential, Cellulose, Lignin, Hemi-cellulose, Volatile Solids and pH.

(11) The operator of the landfill shall report to the EPA Regional Administrator and the State Director on the information described in paragraphs (c)(1) through (10) of this section on a semi-annual basis. The first report is due within 6 months after the effective date of this section. These reporting provisions shall remain in effect for the duration of the project term.

(12) Additional monitoring, record keeping and reporting requirements related to landfill gas will be contained in a Federally Enforceable State Operating Permit ("FESOP") for the VA Project XL Landfills issued pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.* Application of this site-specific rule to the VA Project XL Landfills is conditioned upon the issuance of such a FESOP.

(13) This section applies until July 18, 2012. By July 18, 2012, the VA Project XL Landfills must return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through this section. If EPA Region 3's Regional Administrator, the Commonwealth of Virginia and Waste Management agree to an amendment of the project term, the parties must enter into an amended or new Final Project Agreement for any such amendment.

(14) The authority provided by this section may be terminated before the end of the 10 year period in the event of noncompliance with the requirements of paragraph (c) of this section, the determination by the EPA Region 3's Regional Administrator that the project has failed to achieve the expected level of environmental performance, or the promulgation of generally applicable requirements that would apply to all landfills that meet or exceed the performance standard set forth in § 258.40(a)(1). In the event of early termination EPA in consultation with the Commonwealth of Virginia will determine an interim compliance period to provide sufficient time for the operator to return the landfills to compliance with the regulatory requirements which would have been in effect absent the authority provided by this section. The interim compliance period shall not exceed six months.

[FR Doc. 02–18175 Filed 7–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7246–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Compass Industries Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a Notice of Deletion of the Compass Industries Landfill Superfund Site (Site), located in the Chandler Park area west of Tulsa, Tulsa County, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed.

EFFECTIVE DATE: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Katrina Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION: A Notice of intent to Delete for this Site was published in the **Federal Register** on May 16, 2002 (67 FR 34886). The closing date for comments on the Notice of Intent to Delete was June 17, 2002. No comments were received, therefore EPA has not prepared a Responsiveness Summary.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 28, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(e)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Oklahoma ("OK") by removing the site entry for "Compass Industries Landfill (Avery Drive), Tulsa."

[FR Doc. 02–17983 Filed 7–17–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–02–12541]

RIN 2127–AI00

Anthropomorphic Test Devices; Six-Year-Old Crash Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the final rule that adopted a new, more advanced 6-year-old child dummy (HIII–6C). That final rule was published January 13, 2000 (65 FR 2059, Docket No. NHTSA–99–6714). Adopting the dummy was the first step toward using the dummy to evaluate the safety of air bags for children. The petitions are granted in part and denied in part.

DATES: *Effective Date:* The amendments made in this rule are effective August 19, 2002.

Petitions: Petitions for reconsideration must be received by September 3, 2002.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Stan Backaitis, Office of Crashworthiness Standards, at 202–366–4912.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Summary of Decision

Most of the issues raised in the petitions were minor and involved technical changes to either the dummy specifications or to the drawing package. In some cases, the petitioners requested the specifications be tightened to ensure more accurate measurements in the tests in which the dummy is used to measure injury criteria. More significant issues were raised regarding the thoracic peak force criteria, the need for a specified mass moment of inertia (MMI) and resonant frequency of the impactors, and the need for a post-test calibration.

Our review of the petitions also uncovered several minor errors in the drawings package that are resolved here. In addition, issues raised in the petitions for reconsideration of the final rule incorporating the Hybrid III 3-year-old child dummy into 49 CFR part 572 on the acceptable materials for load cells are addressed in this document since the same force and moment measuring load cells or load cells of similar construction are used in both dummies.

Further changes to the dummy will be designated as beta, gamma, etc., to assure that modifications can be easily tracked and identified. The new dummy is defined by a drawing and specification package, an updated procedures document for disassembly, assembly and inspection (PADI), and performance parameters including associated calibration procedures.

II. Summary of Petitions for Reconsideration

Petitions for reconsideration were received from the Alliance of Automobile Manufacturers (Alliance), Toyota, Denton (a manufacturer of load cells), and TRW (a manufacturer of air bags). One dummy manufacturer, FTSS also filed a petition which was dated February 28, 2000, the deadline for filing petitions. The petition was apparently never received by the agency. In a letter dated April 17, 2000, FTSS resubmitted its February 28 petition. This document was not placed into the docket until July 20, 2000. Because we cannot determine why FTSS' timely petition was not placed in the docket until well after the date for filing petitions had passed, this document addresses the concerns raised in the FTSS petition.

Significant issues were raised regarding the thoracic peak force criteria, the pendulum MMI and free air resonance frequency of the impactors, and the post-test calibration requirements. Additionally, petitioners raised issues related to the specifications for dummy clothing, the thoracic hysteresis corridor, the corridor for the knee impactor, the torso flexion test, and the instrumentation for measuring neck tension and extension. Finally, some petitioners pointed out apparent errors in the drawing package.

III. Thoracic Peak Force Criterion

The final rule provided a requirement for peak thoracic force in the compression transition zone (defined as sternum displacement relative to the spine between 12.5 mm and 38 mm) not to exceed 5% of the value of the peak force (1150–1380 N) measured in the specified maximum displacement zone. The Alliance and TRW both argued that this criterion was not proposed in the NPRM. Additionally, they argued that most of the dummy tests used to support the rulemaking measured peak forces in the transition zone that exceeded the new criterion. The Alliance stated that the new criterion does not improve the fit of the dummy response into the biomechanical corridor. Instead, it believed a peak force that did not exceed 1,560 N in the transitional zone between 12.5 mm and 38 mm of sternum displacement would better represent the demonstrated dummy responses. After discounting the outliers and dummy tests based on earlier versions of the dummy, the Alliance amended its position on the acceptable level of peak force and urged the agency to adopt a peak force of 1500 N. With this level, it determined that a much greater proportion of the data could stay within the biomechanical corridors.

While the Alliance and TRW are correct that a peak force specification was not explicitly proposed in the NPRM for the H–III6C, the issue of peak force specification in the transition zone was raised by TRC in its comments on the NPRM for the H–III6C dummy in general terms and in considerably more detail in its response to the NPRM for the 5th percentile adult female dummy (H–III5F), which did specify peak force in the transition zone. Peak acceleration response requirements for the dummy's thorax is a function of the impact force applied to the sternum as measured by the accelerometer mounted on the impactor. If the impactor force has a wide variation, the level of thoracic response variation would be expected to increase proportionally. The force levels within the maximum deflection zone, as specified in the final rule, allow thorax acceleration level variations of approximately ± 1 g, based on the mean weight of the upper torso of 26.5 lb. The specification in the final rule that the maximum force in the transition zone not exceed the force measured in the specified deflection corridor by more than 5% allows a maximum force in the transition zone of 1450 N. A thorax with this type of response could be responsible for adding one more g to thorax acceleration measurements. The Alliance's original request to increase the maximum allowable force in the transition zone to 1560 N would likely cause the dummy's upper thoracic response to increase by still another g. However, the revised suggestion that the

peak force be limited to 1500 N would reduce the latter increase to approximately 0.5 g. Thus, we agree with the Alliance that the additional 50 N may generate a slightly higher, but inconsequential, g level thorax response. While the small increase is not particularly desirable, it is a tolerable change with some positive safety aspects. Users who employ test dummies with elevated peak forces in

stated that the final rule failed to specify a procedure for measuring free air resonance.

As noted above, parameters for minimum free air resonance frequency and MMI were specified in the final rule because we believed they were necessary parameters for defining a generic impactor. The NPRM had merely specified that the impactor be perfectly cylindrical in shape and of a

undistorted longitudinal axis. Typically, longitudinally oriented accelerometers mounted at the end of the beam have less than three percent cross axis sensitivity. Accordingly, the effects on the signal of a longitudinally oriented accelerometer during the dummy impact would be nearly imperceptible. In contrast, resonance along the axis of the impactor is of primary interest for the thorax and knee tests, because

text has been changed to specify a minimum MMI of 160 kg cm².

As for TRW's request that the agency specify a procedure for measuring free air resonance, we have placed a test procedure in the Docket No. 6714–14 and in the PADI document that explains how NHTSA conducts impact tests to determine the resonance of the impactor. Other methods for making such a determination, both analytical

dummy on September 3, 1998 (63 FR 46981, Docket No. NHTSA–98–4283) we decided to specify that the dummy conform to this part in every respect before its use in any test, but not after. We stated our intention to make the same change for the other dummies. The NPRMs for the Hybrid III 3-year-old child test dummy (64 FR 4385, January 28, 1999, Docket No. NHTSA–99–5032) and the 12-month-old infant dummy

proposed in the NPRM. The petitioner also asked for a justification for the broader corridor if the change was intentional.

The broader corridor is not the result of a typographical error. Instead, our review of the test data that had been used to establish the corridor specified in the NPRM led us to believe that the hysteresis corridor could be broadened slightly without degrading the dummy response. The change in specifications

peak force be limited to 1500 N would reduce the latter increase to approximately 0.5 g. Thus, we agree with the Alliance that the additional 50 N may generate a slightly higher, but inconsequential, g level thorax response. While the small increase is not particularly desirable, it is a tolerable change with some positive safety aspects. Users who employ test dummies with elevated peak forces in compliance tests will run a greater risk of exceeding the acceleration tolerance levels specified for the thorax in those tests. We also note that the biomechanical impact response corridors for the human thorax allow a localized peak force to rise to 1500 N just before the sternum compression reaches the minimum required value of 38 mm. Accordingly, a limited increase in force levels is justified on a biomechanical response basis. For these reasons, we have decided to amend the regulatory text to allow a maximum peak force in the compression transition zone of 1500 N.

IV. Pendulum Mass Moment of Inertia and Free Air Resonance Frequency of Impactors

In its comments on the NPRM, TRC requested that the agency specify a generic impactor for use in the calibration tests. A generic impactor definition would allow users to construct various size impactors using the building block concept. This approach is consistent with the intent, expressed first in the NPRM and then in the final rule, that sensors be defined generically so as to avoid being unnecessarily design-restrictive. TRC stated, and we agreed, that the impactor should not be defined by a specific design, but rather by relevant engineering parameters. The relevant parambters are mass, stiffness, MMI, CG location, and minimum free air resonance frequency. The Alliance stated in its petition that the specifications for free air resonance frequency and MMI were not proposed in the NPRM. It did not challenge any of the other parameters that serve as the basis for a generic impactor. It also claimed that we had failed to provide data or a clear explanation demonstrating that these parameters were necessary. The Alliance further noted that when its members reviewed their own data they determined the parameters were irrelevant. It provided summaries of its members' data to support its position. The Alliance concluded that the two parameters (free air resonance and MMI) should be deleted until substantial data to justify their need had been generated. TRW stated that the final rule failed to specify a procedure for measuring free air resonance.

As noted above, parameters for minimum free air resonance frequency and MMI were specified in the final rule because we believed they were necessary parameters for defining a generic impactor. The NPRM had merely specified that the impactor be perfectly cylindrical in shape and of a certain diameter. This specification approach had been used in most SAE user's manuals. However, in practice, the probes are often not perfectly cylindrical and may be made up of multiple pieces, indicating that in the real world both SAE and existing agency specifications are insufficient for a generic impactor definition. We did not propose parameters for minimum free air resonance frequency and MMI in the NPRM because this generic impactor definition was developed partly in recognition of comments provided by TRC that the impactor specified in the NPRM was inconsistent with the probes regularly used by test laboratories. While we believe our explanation in the final rule as to why the parameters were necessary was sufficient, we are happy to further explain our rationale here. The definition uses three principles as guides:

- Because the overall shape and materials of the impactor may differ among users, its mass, size, MMI, natural resonance, and the shape of the impacting face are the only reliable indicators to assure that an impactor will be sufficiently rigid, capable of repeatable and non-distorted impact measurements;
- The minimum resonance requirement is needed to assure that a multiple-piece impactor does not produce separate interactions between its constituent parts that could distort the responses produced by the dummy; and
- The mounting structure for the accelerometer must be sufficiently rigid and not affect the pendulum-mounted accelerometer output (this requirement is also in SAE recommended practice J211).

We have examined the pendulum response data provided by the Alliance. Those data indicate that the pendulum has two resonant frequencies: One at 430 Hz and one at 6 kHz. The 430 Hz response is the result of beam bending(first mode) about the CG of the impactor, and the 6kHz response is the natural resonance of the impactor along its longitudinal axis (second mode). During beam bending, the ends of the beam experience maximum lateral translation with respect to the beam's undistorted longitudinal axis. Typically, longitudinally oriented accelerometers mounted at the end of the beam have less than three percent cross axis sensitivity. Accordingly, the effects on the signal of a longitudinally oriented accelerometer during the dummy impact would be nearly imperceptible. In contrast, resonance along the axis of the impactor is of primary interest for the thorax and knee tests, because vibrational characteristics of the impactor in the longitudinal direction could greatly affect the measured impact response. The 6 kHz response found in the data submitted by the Alliance demonstrates that our specified parameter for free air resonance is both practicable and relevant. Accordingly, we have decided to amend the regulatory text by specifying that the minimum free air resonance requirements for the thoracic and knee impactors be measured in line with the longitudinal axis of the impactor.

The data provided by the Alliance supporting their position that the MMI should not be specified at this time actually demonstrates the need for such a requirement. The data show a very wide spread of MMI values among various impactors. The moment of inertia of DaimlerChrysler's thoracic impactor is about six times lower than those of TRW, TRC, GM, and FTSS. Likewise, the moment of inertia of GM's knee impactor is approximately eight times that of FTSS. Other than the DaimlerChrysler thoracic impactor and the FTSS knee impactor, all the impactors in the data set were well above the minimum moment of inertia values specified in the final rule. Upon our request, DaimlerChrysler lent the agency the thoracic impactor for performance evaluation. We conducted an assessment of the probe at our Vehicle Research and Testing Center (VRTC) and found that the 164 kg cm^2 MMI presented in the Alliance petition was marginal in impact response. During its free flight, the probe had difficulty maintaining a stable trajectory and barely met the kinematic alignment specifications at impact with the dummy. While this may be largely a result of the probe's low moment of inertia, it is possible that an optimized probe's guidance and suspension system could resolve the problem. Thus, we concluded that a minimum moment of inertia of 160 kg cm^2 is barely sufficient as long as the probe's guidance and suspension systems can assure a stable free flight and impact alignment specifications at contact with the dummy. Accordingly, the regulatory

text has been changed to specify a minimum MMI of 160 kg cm^2.

As for TRW's request that the agency specify a procedure for measuring free air resonance, we have placed a test procedure in the Docket No. 6714–14 and in the PADI document that explains how NHTSA conducts impact tests to determine the resonance of the impactor. Other methods for making such a determination, both analytical and experimental, may be equally suitable for this purpose. Accordingly, we are not specifying a particular procedure in the regulatory text.

Although not addressed in its petition for reconsideration of the final rule adopting the H–III6C, the Alliance argued in the petitions for reconsideration of the final rules on the CRABI 12-month-old test dummy, the Hybrid III three-year-old child dummy and the H–III5F dummy that the provisions for concentricity and symmetry about the longitudinal axis are unrealistic since the pendulum is often fitted with velocity vanes or other hardware, causing asymmetry. The Alliance recommended revision of the probe specification to read, "The primary test probe, less any additional hardware, for [body region] impacts shall be of rigid metallic construction." FTSS supported the Alliance petitions, stating that the addition of velocity vanes, cable attachment points, or other hardware will result in asymmetry and cause the center of gravity (CG) to be slightly offset from the geometrical center of the probe. FTSS recommended a limitation on the CG offset from the longitudinal axis.

NHTSA agrees with the Alliance and FTSS that the test probe specification should include provisions for mounting velocity vanes and suspension hardware if a cable system is used for impacts. However, the agency does not agree with FTSS that the possible CG offset from the longitudinal axis is needed and should be specified. NHTSA believes the specifications in the final rule for MMI in pitch and yaw provide sufficient controls to assure stable kinematics during the probe's free flight and impact with the dummy.

Accordingly, the agency is revising § 572.127 (a) and (b) to allow asymmetrical attachments needed for probe suspension and guidance as well as velocity vanes.

V. Post-test Calibration Requirements

The NPRM proposed that conformance of the dummy's structural properties would be checked before and after any compliance testing. When we published the NPRM for the Hybrid III 5th percentile adult small female dummy on September 3, 1998 (63 FR 46981, Docket No. NHTSA–98–4283) we decided to specify that the dummy conform to this part in every respect before its use in any test, but not after. We stated our intention to make the same change for the other dummies. The NPRMs for the Hybrid III 3-year-old child test dummy (64 FR 4385, January 28, 1999, Docket No. NHTSA–99–5032) and the 12-month-old infant dummy (CRABI) (64 FR 10965, March 8, 1999, Docket No. NHTSA–99–5156) proposed the same specification as the one proposed for the small adult female dummy. A full explanation of the agency's rationale can be found in the NPRM for the small adult female dummy. The agency rationale for the change in when to check for structural conformance is as applicable for the H–III6C as it is for the other dummies. Accordingly, in the Final Rule, section 572.121(c) was changed to adopt the language used in the NPRMs for the other pending dummy rulemakings.

All commenters on the NPRM for the H–III6C dummy, as well as all petitioners on the final rule, commented on this issue when it was first proposed as part of the NPRM for the 5th percentile adult female dummy. The comment period for that NPRM closed over a month before the final rule was issued on the H–III6C dummy and those comments were considered in determining whether to eliminate the post-test calibration requirements for the H–III6C dummy. The commenters' concerns with the proposed regulatory text were addressed in the final rule for the 5th percentile adult female dummy. No new issues or concerns have been raised in the context of the petitions for reconsideration of the final rule on the H–III6C dummy other than an allegation that the provision was outside of the scope of the NPRM. However, since the comments on the new language were received and considered before the final rule was issued, we do not believe that commenters were denied an opportunity to comment on the issue.

VI. Other Issues

1. Thoracic Hysteresis Corridor

The Alliance noted that the internal hysteresis corridor of the rib cage was specified in the NPRM at "not less than 69 percent but not more than 85 percent." As pointed out by the Alliance, the final rule adopted a slightly broader corridor of not less than 65 percent and not more than 85 percent. Assuming the change was a typographical error, the Alliance requested the agency revise the specification to the narrower corridor proposed in the NPRM. The petitioner also asked for a justification for the broader corridor if the change was intentional.

The broader corridor is not the result of a typographical error. Instead, our review of the test data that had been used to establish the corridor specified in the NPRM led us to believe that the hysteresis corridor could be broadened slightly without degrading the dummy response. The change in specifications was intended to make it easier for dummy users to comply with the calibration specifications for the dummy. While we have no objection to narrowing the corridor to the parameters specified in the NPRM, we do not see a need to do so. Companies not represented by the Alliance will also need to comply with the calibration requirements of part 572. These companies may wish to take advantage of the broader corridor. Accordingly, no change is being made to the corridor specified in the final rule.

2. Knee Impact Corridor

The Alliance noted that the upper force limit of the knee impact test contains a conversion error and should be 3.0 kN (674 lbf) rather than 3.0 kN (625 lbf). The Alliance is correct. The regulatory test has been changed to specify the proper force in pounds-force.

3. Neck Flexion/Extension Test Instrumentation

NHTSA did not specify using a rotary potentiometer to measure head rotation for head/neck calibration testing because there are number of methods to measure rotation, all of which are acceptable. The Alliance petitioned the agency to specify a channel frequency class (CFC) of 60 that would apply if a rotary potentiometer is used to measure head rotation.

SAE J211, recommended practice for impact test instrumentation, does not designate a CFC for this application. However, the SAE user's manual for the H-III6 does specify a CFC 60 and NHTSA used a CFC 60 to filter the head rotation signal measured by potentiometers. Thus, it appears that both industry and NHTSA have reached a consensus that a channel frequency class of 60 is appropriate if a rotary potentiometer is used to generate data for this purpose. It should also be noted that our review of the raw data found no high frequency signals which would require a channel frequency class higher than 60. Accordingly, we believe it is appropriate to specify a CFC 60 filter if a potentiometer is used to measure head rotation. We reiterate our position that

head rotation may be measured using methods other than a potentiometer.

4. Torso Flexion Test

Section 572.135 specifies procedures for the torso flexion test. The temperature range for the test is specified at 66 to 78 degrees F. The Alliance and FTSS stated that this range is too wide and could result in test variability because of the sensitivity of and thorax is due to a greater temperature sensitivity of these components, which highly influences the head kinematics and chest compression in crash tests. However, impact responses of the head, torso flexion, and femurs are not sensitive to temperature variations in the 66 to 78 degrees F range, and therefore allow a wider temperature spread. Thus, specifying a narrower temperature range clothing manufacturer and due to repeated washings. Generally, we do not believe there would be a problem with some amount of variation. We do believe it is appropriate, however, to specify a particular neck opening since shirts come with various neck styles (e.g., v-necked, round-necked) and because the different neck openings could have an effect on calibration. Accordingly, we are adding a

package or changes that are so nominal as to have no detrimental effects on the dummy's impact response. Accordingly, the drawings have been changed, as reflected in Table 1.

In addition to the concerns raised by Denton, several minor inconsistencies and call-out errors were noted either by petitioners or by agency staff in the review process. Accordingly, the changes noted in Table 1 have been made to the drawing package. We are also issuing a new drawing series 127–DRL, which will summarize all of changes made to the drawing package for this dummy. We are providing this new drawing series to provide dummy users with a clear picture of corrections to the drawings. No changes have been made to the dummy. The first drawing is 127–DRL–1. Subsequent drawing changes will be summarized in a drawing bearing the number 127–DRL in dated sequence (e.g., 127–DRL–2). This drawing series will be maintained and updated as long as 49 CFR part 572, subpart N remains in effect.

TABLE 1

head rotation may be measured using methods other than a potentiometer.

4. Torso Flexion Test

Section 572.135 specifies procedures for the torso flexion test. The temperature range for the test is specified at 66 to 78 degrees F. The Alliance and FTSS stated that this range is too wide and could result in test variability because of the sensitivity of the dummy materials to temperature. The Alliance noted, for example, that the dummy's lumbar spine should be maintained at 69 to 72 degrees F for proper behavior. The Alliance and FTSS recommended that the agency change the temperature range specification to 69 to 72 degrees F to be consistent with other dummy component tests.

To determine whether there is a need for a narrower temperature range in torso flexion tests, NHTSA's Vehicle Research and Test Center (VRTC) performed two series of temperature sensitivity tests on the HIII–3C dummy: One at a temperature range between 66 and 78 degrees F, and the other between 69 and 72 degrees F. In both series of tests, the average resistance force to flexion was slightly higher at the lower temperature.[1] However, the test results also indicated a resistance force difference of less than 2 pounds over the full temperature range for both series. In addition, plots of force vs. angle showed a very consistent and uniform slope with considerable overlap of measurements over the entire range of temperatures tested, indicating that temperature is not a significant factor. Based on these test data, VRTC concluded that variations in temperature have virtually no influence on the test results due to torso flexion in a crash test.

Although these tests were performed with the HIII–3C dummy and not the HIII–6C dummy, the agency believes that the similarities of design and test methods between the HIII–3C and HIII–6C dummies would lead to the same temperature sensitivity conclusions for the HIII–6C dummy.

To address the petitioners' concern with the "consistency" of temperature specifications, the agency has reviewed all temperature ranges for crash test dummies currently specified in 49 CFR part 572. Except for the Hybrid III neck and thorax, all specifications for Hybrid II, Hybrid III, and side impact (SID) dummies call for a test temperature range of 66 to 78 degrees F. The narrower temperature specification (69 to 72 degrees F) for the Hybrid III neck and thorax is due to a greater temperature sensitivity of these components, which highly influences the head kinematics and chest compression in crash tests. However, impact responses of the head, torso flexion, and femurs are not sensitive to temperature variations in the 66 to 78 degrees F range, and therefore allow a wider temperature spread. Thus, specifying a narrower temperature range exclusively for the torso flexion test for the HIII–6C dummy would create an inconsistency with respect to all other dummy torso flexion tests in part 572.

Moreover, to change the temperature specifications to a narrower range for dummies that already have a temperature specification of 66 to 78 degrees F, the agency would have to initiate rulemaking to determine the desirability of such a change. The agency notes that there are a number of dummy users, other than the petitioners, who may neither see a need for nor want to have a narrower temperature range specification. Some test facilities do not have the torso flexion test fixtures set up in a tight temperature control environment. These facilities would have to make capital expenditures to accommodate a narrower range specification.

In addition, the agency would have to provide a rationale for narrowing the temperature specification. Inasmuch as VRTC could not show a need for a narrower temperature range, and the petitioners have not provided data that would support the need for such a change, the agency would not be able to justify the requested revision.

In view of these considerations, the agency is denying this part of the Alliance and FTSS petitions.

5. Dummy Clothing

The final rule specifies that the dummy be clothed in "a light-weight cotton stretch, short-sleeve shirt and above-the-knee pants." The Alliance maintained in its petition that this does not describe the clothing currently used by the automotive industry. Accordingly, it petitioned the agency to require that the dummy be clothed in "a thermal knit, waffle-weave polyester and cotton underwear or equivalent, a size 5 long-sleeved shirt having a mass not exceeding 0.090 kg, and a size 4 pair of long pants having a mass not more than 0.090 kg, and cut off just far enough above the knee to allow the knee target to be visible."

We do not believe we need to specify the weave or type of fabric of the dummy clothing, although we have no objection to designating sizes. We note, however, that size can vary based on clothing manufacturer and due to repeated washings. Generally, we do not believe there would be a problem with some amount of variation. We do believe it is appropriate, however, to specify a particular neck opening since shirts come with various neck styles (e.g., v-necked, round-necked) and because the different neck openings could have an effect on calibration. Accordingly, we are adding a requirement that the shirt have a neck opening that is large enough to fit over the dummy's head, but small enough to prevent contact between shoulder belts and the dummy's torso skin.

6. Changes in "N" Figures

The following changes are being made to the figures included as part of 49 CFR part 572, Subpart N to correct inaccuracies or ambiguities in those figures.

- Figure N2: (1) Relocate the 26.1 mm reference to the centerline of the posterior attachment bolt to reflect dimensional proportionality; (2) change reference from "Neck Flexion Pendulum 46 CFR 572.33 FIG 22" to "Neck Flexion Pendulum 49 CFR 572.33 FIG 22"; and (3) add part number for bolt "#9001265 Screw, SHCS #10–24 x 7/16".
- Figure N3: (1) relocate the 26.1 mm reference to the centerline of the posterior attachment bolt to reflect dimensional proportionality; and (2) add part number for bolt "#9001265 Screw, SHCS #10–24 x 7/16".
- Figure N5: change bracket dimensions from "89.9 mm (3.54 in) x 161.3 mm (6.35 in) x 31.8 mm (1.251 in)" to "90.4 mm (3.56 in) x 175.5 mm (6.91 in) x 31.8 mm (1.25 in)".
- Figure N6: (1) remove note SA572-S4; and (2) change the weight tolerance on the knee probe from "0.82 ± 0.01 kg (1.80 ± .02 lb)" to "0.82 ± 0.02 kg (1.80 ± .05 lb)".

7. Errors and Corrections in Drawings

In its petition for reconsideration, Denton noted that drawings SA572–S12, SA572–S13–L&R, and SA572–S26,[2] which provide a generic description of the load cells used for the H–III6 dummy, contain specification problems. Denton maintains that the specifications provided in those drawings will render many acceptable load cells obsolete. The Alliance has supported Denton's petition to change those drawings.

The changes suggested by Denton reflect either errors in the drawing package or changes that are so nominal as to have no detrimental effects on the dummy's impact response. Accordingly, the drawings have been changed, as reflected in Table 1.

In addition to the concerns raised by Denton, several minor inconsistencies and call-out errors were noted either by petitioners or by agency staff in the review process. Accordingly, the changes noted in Table 1 have been made to the drawing package. We are also issuing a new drawing series 127–DRL, which will summarize all of changes made to the drawing package for this dummy. We are providing this new drawing series to provide dummy users with a clear picture of corrections to the drawings. No changes have been made to the dummy. The first drawing is 127–DRL–1. Subsequent drawing changes will be summarized in a drawing bearing the number 127–DRL in dated sequence (*e.g.*, 127–DRL–2). This drawing series will be maintained and updated as long as 49 CFR part 572, subpart N remains in effect.

[1] The test results can be found in Docket No. NHTSA–2000–7051.

[2] In this petition for reconsideration Denton noted a problem with drawing SA572–S25. That drawing depicts a shoulder load cell for the HIII–3C dummy. We contacted Denton for clarification, and Denton agreed that its concern was with drawing SA572–S26.

TABLE 1

Drawing/Part No.	Description	Revision description
127–SBL	6 year H3 standard build level	Deleted drawing.
SA572–127DRL–1	Drawing revision list	New drawing.
127–0000	Hybrid III 6 year old complete assembly.	Corrected location of "I" dimension (on sheet 5 of 6), all sheets revised to change letter "K".
127–1009	Skin cap, skull	Added "reference" to item 1, corrected title.
127–2011	Sternum pad	Corrected angle dimensions.
127–2550	Chest—accelerometer assembly (SA572–S4).	Corrected accelerometer mount drawing number from 127–2110 to 127–2150.
127–4002	Upper leg flesh	Defined angular orientation of 0.5 dia. "Posts"; Assigned missing hole diameters for load cell installation.
127–8210	6 yr old abdominal insert	Changed dimension 1.40 to 1.90 (notch depth), changed dimension 3.81 to 4.30 (overall height).
SA572–S4	Uniaxial piezorestive accelerometer.	Changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5, corrected metric equivalents, and added dimensions.
SA572–S10	Femur load cell	Revised tolerance format, changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5, changed reference note from "Subpart E" to "Subpart N", added material note, changed output at capacity from 1 mV/V min. to 0.75 mV/V min., added "weight includes . . ." note, and removed "+" from the Fz axis.
SA572–S11	Upper neck load cell	Revised tolerance format, changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5, added material note, changed output at capacity from 1 mV/V min. to 0.75 mV/V min.
SA572–S12	Lumbar load cell	Changed hole dimension from 0.75/.1905 x .37/.89 to 0.63/16.0 x .35/8.9, changed weight from 1.3 lb/0.59 kg max to 1.35 lb/0.61 kg max, revised tolerance format, changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5, changed reference note from "Subpart E" to "Subpart N", added material note, changed output at capacity from 1 mV/V min. to 0.75 mV/V min., added "weight includes . . ." note, and revised hole dimensions.
SA572–S13–L&R	Anterior-superior iliac spine load cell.	Changed output at capacity from 1 mV/V min. to 0.75 mV/V min., revised tolerance format, changed reference note from "Subpart E" to "Subpart N", added material note, changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5, and added "weight includes . . ." note.
SA572–S26	Lower neck load cell	Revised tolerance format, changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5, added material note, changed output at capacity from 1 mV/V min. to 0.75 mV/V min., added "(does not include cables)" to the weight note, added hole dimensions, and changed reference note from subpart E to subpart N.
SA572–S50	Chest potentiometer	Changed single decimal tolerance from ± 0.1/2.54 to ± 0.1/2.5, added/corrected metric equivalents, added "Dia. Of hard shell housing" and "in rotary rigid shaft" to notes, added "signal connector pins" note, and added "locating" and "0" to pin note.
SA572–S80	S4 triaxial accelerometer mounting block.	Changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5, corrected metric equivalents, revised hole note, and relocated holes.
TE–2208–001	Neck adapter bracket—6 year old	Added part #9001265 and note #3, changed single decimal place tolerance from ± 0.1/2.54 to ± 0.1/2.5.
9001373	Bushing, shoulder	New drawing.
9000000 & 6000000	Hardware used on 3YR. 6YR. & 5th female.	Added part #9001265, removed part #9001373.

8. Availability of Drawings and Specifications Package and PADI

The drawings and specifications package and the PADI document referred to in this final rule are available for viewing and copying at the Department's public docket area, located at Plaza 401, 400 Seventh St., SW., Washington, DC. Additionally, these documents may be downloaded from the docket website, DMS.DOT.GOV. After accessing the website, click under the "Search" heading, and then under the "search form" to conduct a web search for the documents. When filling out the search form, enter NHTSA as the appropriate agency. Select "rulemaking" as the appropriate category, and "Crashworthiness Drawings and Equipment" as the appropriate subcategory. Enter the name of the test dummy under the "subject" category and then conduct your search by

clicking on the "search" heading. This will retrieve the entire PADI and drawings and specifications package for the H–III6C. The PADI and each drawing may be individually retrieved once you have accessed that docket. The drawings and specifications package and the PADI document are also available from Reprographic Technologies, 9107 Gaither Rd., Gaithersburg, MD 20877, (301)419–

criteria specified in this rule. It may indirectly affect vehicle and child seat manufacturers if it is incorporated by reference into the advanced air bag rulemaking or a future Child Seating Systems (FMVSS No. 213) rulemaking.

The total cost of an uninstrumented H–III6C dummy is approximately $30,000. Instrumentation will add approximately $25,000 to $41,000 to the cost, depending on the number of data

document will not affect the cost of the dummy.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have

Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this proposal will not have a significant economic impact on a substantial number of small entities.

- SAE Recommended Practice J211–1995, "Instrumentation for Impact Tests—Parts 1 and 2", dated March, 1995; and
- SAE J1733 Information Report, titled "Sign Convention for Vehicle Crash Testing", dated December 1994.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)

List of Subjects in 49 CFR Part 572

Incorporation by reference. Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for part 572 continues to read as follows:

clicking on the "search" heading. This will retrieve the entire PADI and drawings and specifications package for the H–III6C. The PADI and each drawing may be individually retrieved once you have accessed that docket. The drawings and specifications package and the PADI document are also available from Reprographic Technologies, 9107 Gaither Rd., Gaithersburg, MD 20877, (301)419–5070.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule is not considered a significant regulatory action under section 3(f) of the Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document amends 49 CFR part 572, subpart N. This rule indirectly imposes requirements on only those businesses that choose to manufacture or test with the dummy, in that the agency will only use dummies for compliance testing that meet all of the criteria specified in this rule. It may indirectly affect vehicle and child seat manufacturers if it is incorporated by reference into the advanced air bag rulemaking or a future Child Seating Systems (FMVSS No. 213) rulemaking.

The total cost of an uninstrumented H–III6C dummy is approximately $30,000. Instrumentation will add approximately $25,000 to $41,000 to the cost, depending on the number of data channels the user chooses to collect. The amendments made in this document will not affect the cost of the dummy.

Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

Executive Order 13132

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this rule does not have sufficient federalism implications to warrant consultation and the preparation of a Federalism Assessment. The amendments made in this document will not affect the cost of the dummy.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It does indirectly involve decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to help vehicle and air bag manufacturers to take steps to reduce that risk.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this rule will have any retroactive effect. This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this proposal will not have a significant economic impact on a substantial number of small entities. The amendments made in this document will not affect the cost of the dummy. The rule does not impose or rescind any requirements for anyone. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

National Environmental Policy Act

We have analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not propose any new information collection requirements.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The H–III6C dummy that is the subject of this document was developed under the auspices of the SAE. All relevant SAE standards were reviewed as part of the development process. The following voluntary consensus standards have been used in developing the dummy:

- SAE Recommended Practice J211–1995, "Instrumentation for Impact Tests—Parts 1 and 2", dated March, 1995; and
- SAE J1733 Information Report, titled "Sign Convention for Vehicle Crash Testing", dated December 1994.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. Further, it will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. The amendments made in this document will not affect the cost of the dummy. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 572

Incorporation by reference. Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. By revising the title of subpart N to read as follows:

Subpart N—Six-year-old Child Test Dummy, Beta Version

3. By revising § 572.120(a)(1), (a)(2), and (c)(1) to read as follows:

§ 572.120 Incorporation by reference.

(a) * * *

(1) A drawings and inspection package entitled "Parts List and Drawings, Hybrid III Six-year-old Child Test Dummy (H-III6C, Beta Version) (June 2002)", consisting of:

(i) Drawing No. 127–1000, 6-year H3 Head Complete,

(ii) Drawing No. 127–1015, Neck Assembly,

(iii) Drawing No. 127–2000, Upper Torso Assembly,

(iv) Drawing No. 127–3000, Lower Torso Assembly,

(v) Drawing No. 127–4000–1 and 4000–2, Leg Assembly,

(vi) Drawing No. 127–5000–1 and 5000–2, Arm Assembly, and

(vii) The Hybrid III Six-year-old Child Parts/Drawing List.

(2) A procedures manual entitled "Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 6-year-old Child Crash Test Dummy (H-III6C), Beta Version, June 2002";

* * * * *

(c) * * *

(1) The drawings and specifications package and the PADI document referred to in subparagraph (a) are accessible for viewing and copying at the Department of Transportation Docket's public area, Plaza 401, 400 Seventh St., SW, Washington, DC 20590, and may be downloaded from dms.dot.gov. They are also available from Reprographic Technologies, 9107 Gaither Rd, Gaithersburg, MD 200877, (301) 419–5070.

* * * * *

4. By revising § 572.124(b) and (c) to read as follows:

§ 572.124 Thorax assembly and test procedure

* * * * *

(b) When the anterior surface of the thorax of a completely assembled dummy (drawing 127–0000) is impacted by a test probe conforming to section 572.127(a) at 6.71 ± 0.12 m/s (22.0 ± 0.4 ft/s) according to the test procedure in paragraph (c) of this section:

(1) The maximum sternum displacement (compression) relative to the spine, as measured by the sternum potentiometer, is 28.4–34.4 mm (1.12–1.35 in).

(2) The maximum acceleration of the upper spine, as measured by the upper spine accelerometer, is 30–45 g's.

(3) The maximum acceleration of the lower spine, as measured by the lower spine accelerometer, is 30–45 g's.

(4) The maximum acceleration of the sternum, as measured by the sternum accelerometer, is 30–45 g's.

(5) The maximum deflection of the upper rib, as measured by the upper rib potentiometer, is 22.0–28.0 mm (0.87–1.10 in).

(6) The maximum deflection of the middle rib, as measured by the middle rib potentiometer, is 22.0–28.0 mm (0.87–1.10 in).

(7) The maximum deflection of the lower rib, as measured by the lower rib potentiometer, is 22.0–28.0 mm (0.87–1.10 in).

(8) The maximum upper shoulder load, as measured by the upper shoulder load cell, is 1.0–1.5 kN (225–337 lbs).

(9) The maximum lower shoulder load, as measured by the lower shoulder load cell, is 1.0–1.5 kN (225–337 lbs).

(10) The maximum upper rib moment, as measured by the upper rib moment transducer, is 110–160 N-m (81–118 ft-lbs).

(11) The maximum middle rib moment, as measured by the middle rib moment transducer, is 110–160 N-m (81–118 ft-lbs).

(12) The maximum lower rib moment, as measured by the lower rib moment transducer, is 110–160 N-m (81–118 ft-lbs).

(c) The thorax assembly is impacted by a test probe conforming to section 572.127(a) at 6.71 ± 0.12 m/s (22.0 ± 0.4 ft/s) according to the following procedure:

(1) The maximum sternum displacement (compression) relative to the spine, as measured by the sternum potentiometer, is 28.4–34.4 mm (1.12–1.35 in).

(2) The test probe is aligned horizontally and so that it impacts the thorax at the midsagittal plane.

(3) The test probe is aligned so that it impacts the thorax at the midsagittal plane.

(4) Impact the thorax with the test probe so that at the moment of contact the probe's longitudinal center line falls within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(5) Guide the test probe during impact so that there is no significant lateral, vertical or rotational movement.

(6) No suspension hardware, suspension cables, or any other restraining devices are attached to the test probe during impact.

(7) The test probe has a mass of 23.4 ± 0.2 kg (51.6 ± 0.4 lbs), a diameter face with an edge radius of 7.6/12.7 mm (0.3/0.5 in). The impactor shall have a 101–103 mm (4.0–4.1 in) diameter cylindrical surface extending for a minimum of 12.5 mm (0.5 in) to the rear from the impact face. The probe's end opposite to the impact face has provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. The impact probe shall have

(3) Thorax:
(i) Rib acceleration—Class 1000;
(ii) Spine and pendulum accelerations—Class 180;
(iii) Sternum deflection —Class 600.
(4) Lumbar:
(i) Forces—Class 1000;
(ii) Moments —Class 600;
(iii) Flexion —Class 60 if data channel is used.
(5) Pelvis accelerations —Class 1000.
(6) Femur forces—Class 600.
(7) Coordinate signs for

Information Report, SAE J1733, 1994–12.

(m) The mountings for sensing devices shall have no resonance frequency less than 3 times the frequency range of the applicable channel class.

(n) Limb joints must be set at one G, barely restraining the weight of the limb when it is extended horizontally. The force needed to move a limb segment shall not exceed 2G throughout the

assembled dummy shall be separated in time by period of not less than 30 minutes unless otherwise noted.

(p) Surfaces of dummy components may not be painted except as specified in this subpart or in drawings subtended by this subpart.

7. By revising Figures N1, N2, N3, and N6 to read as follows:

Figures to Subpart N

§ 572.124 Thorax assembly and test procedure

* * * * *

(b) When the anterior surface of the thorax of a completely assembled dummy (drawing 127–0000) is impacted by a test probe conforming to section 572.127(a) at 6.71 ± 0.12 m/s (22.0 ± 0.4 ft/s) according to the test procedure in paragraph (c) of this section:

(1) The maximum sternum displacement (compression) relative to the spine, measured with chest deflection transducer (drawing SA572-S50), must be not less than 38.0 mm (1.50 in) and not more than 46.0 mm (1.80 in). Within this specified compression corridor, the peak force, measured by the probe in accordance with section 572.127, shall not be less than 1150 N (259 lbf) and not more than 1380 N (310 lbf). The peak force after 12.5 mm (0.5 in) of sternum displacement but before reaching the minimum required 38.0 mm (1.5 in) sternum displacement limit shall not exceed 1500 N (337.2 lbf).

(2) The internal hysteresis of the ribcage in each impact as determined by the plot of force vs. deflection in paragraph (b)(1) of this section shall be not less than 65 percent but not more than 85 percent.

(c) *Test procedure.* The test procedure for the thorax assembly is as follows:

(1) Soak the dummy in a controlled environment at any temperature between 20.6° and 22.2°C (69° and 72°F) and a relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Seat and orient the dummy, wearing tight-fitting underwear or equivalent consisting of a size 5 short-sleeved shirt having a weight less than 0.090 kg (0.2 lb) and an opening at the top just large enough to permit the passage of the head with a tight fit, and a size 4 pair of long pants having a weight of less than 0.090 kg (0.2 lb) with the legs cut off sufficiently above the knee to allow the knee target to be visible, on a seating surface without back support as shown in Figure N4, with the limbs extended horizontally and forward, parallel to the midsagittal plane, the midsagittal plane vertical within ± 1 degree and the ribs level in the anterior-posterior and lateral directions within ± 0.5 degrees.

(3) Establish the impact point at the chest midsagittal plane so that the impact point of the longitudinal centerline of the probe coincides with the midsagittal plane of the dummy within ± 2.5 mm (0.1 in) and is 12.7 ± 1.1 mm (0.5 ± 0.04 in) below the horizontal-peripheral centerline of the No. 3 rib and is within 0.5 degrees of a horizontal line in the dummy's midsagittal plane.

(4) Impact the thorax with the test probe so that at the moment of contact the probe's longitudinal center line falls within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(5) Guide the test probe during impact so that there is no significant lateral, vertical or rotational movement.

(6) No suspension hardware, suspension cables, or any other attachments to the probe, including the velocity vane, shall make contact with the dummy during the test.

* * * * *

5. By amending § 572.126 and by revising paragraph (b) and adding paragraph (c)(6) to read as follows:

§ 572.126 Knees and knee impact test procedure.

* * * * *

(b) When the knee assembly, consisting of knee machined (drawing 127–4013), knee flesh (drawing 127–4011), lower leg (drawing 127–4014), the foot assembly (drawing 127–4030–1(left) and -2 (right)) and femur load transducer (drawing SA572-S10) or its structural replacement (drawing 127–4007) is tested according to the test procedure in section 572.127(c), the peak resistance force as measured with the test probe mounted accelerometer must be not less than 2.0 kN (450 lbf) and not more than 3.0 kN (674 lbf).

(c) *Test procedure.* * * *

(6) No suspension hardware, suspension cables, or any other attachments to the probe, including the velocity vane, shall make contact with the dummy during testing.

6. By revising § 572.127(a), (b), (k), (l), (m), (n), (o), and (p) to read as follows:

§ 572.127 Test conditions and instrumentation

(a) The test probe for thoracic impacts, except for attachments, shall be of rigid metal or metal alloy construction and concentric about its longitudinal axis. Any attachments to the impactor, such as suspension hardware, velocity vanes, etc., must meet the requirements of § 572.124(c)(6). The impactor shall have a mass of 2.86 ± 0.02 kg (6.3 ± 0.05 lb) and a minimum mass moment of inertia of 160 kg-c² (0.141 lb-in-sec²) in yaw and pitch about the CG of the probe. One third of the weight of suspension cables and any attachments to the impact probe must be included in the calculation of mass, and such components may not exceed five percent of the total weight of the probe. The impacting end of the probe, has a flat, continuous, and non-deformable 101.6 ± 0.25 mm (4.00 ± 0.01 in) diameter face with an edge radius of 7.6/12.7 mm (0.3/0.5 in). The impactor shall have a 101–103 mm (4.0–4.1 in) diameter cylindrical surface extending for a minimum of 12.5 mm (0.5 in) to the rear from the impact face. The probe's end opposite to the impact face has provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. The impact probe shall have a free air resonant frequency of not less than 1000 Hz limited to the direction of the longitudinal axis of the impactor.

(b) The test probe for knee impacts, except for attachments, shall be of rigid metal or alloy construction and concentric about its longitudinal axis. Any attachments to the impactor, such as suspension hardware, velocity vanes, etc., must meet the requirements of § 572.126(c)(6). The impactor shall have a mass of 0.82 ± 0.02 kg (1.8 ± 0.05 lb) and a minimum mass moment of inertia of 34 kg-cm2 (0.03 lb-in-sec2) in yaw and pitch about the CG of the probe. One third of the weight of suspension cables and any attachments to the impact probe must be included in the calculation of mass, and such components may not exceed five percent of the total weight of the probe. The impacting end of the probe, has a flat, continuous, and non-deformable 76.2 ± 0.2 mm (3.00 ± 0.01 in) diameter face with an edge radius of 7.6/12.7 mm (0.3/0.5 in). The impactor shall have a 76–77 mm (3.0–3.1 in) diameter cylindrical surface extending for a minimum of 12.5 mm (0.5 in) to the rear from the impact face. The probe's end opposite to the impact face has provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. The impact probe shall have a free air resonant frequency of not less than 1000 Hz limited to the direction of the longitudinal axis of the impactor.

* * * * *

(k) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part must be recorded in individual data channels that conform to SAE Recommended Practice J211, Rev. Mar95 "Instrumentation for Impact Tests," except that the lumbar measurements are based on CFC 600, with channel classes as follows:

(1) Head acceleration—Class 1000.

(2) Neck:

(i) Forces—Class 1000;

(ii) Moments—Class 600;

(iii) Pendulum acceleration—Class 180;

(iv) Rotation—Class 60 (if used).

(3) Thorax:

(i) Rib acceleration—Class 1000;

(ii) Spine and pendulum accelerations—Class 180;

(iii) Sternum deflection —Class 600.

(4) Lumbar:

(i) Forces—Class 1000;

(ii) Moments —Class 600;

(iii) Flexion —Class 60 if data channel is used.

(5) Pelvis accelerations —Class 1000.

(6) Femur forces—Class 600.

(l) Coordinate signs for instrumentation polarity shall conform to the Sign Convention For Vehicle Crash Testing, Surface Vehicle Information Report, SAE J1733, 1994–12.

(m) The mountings for sensing devices shall have no resonance frequency less than 3 times the frequency range of the applicable channel class.

(n) Limb joints must be set at one G, barely restraining the weight of the limb when it is extended horizontally. The force needed to move a limb segment shall not exceed 2G throughout the range of limb motion.

(o) Performance tests of the same component, segment, assembly, or fully assembled dummy shall be separated in time by period of not less than 30 minutes unless otherwise noted.

(p) Surfaces of dummy components may not be painted except as specified in this subpart or in drawings subtended by this subpart.

7. By revising Figures N1, N2, N3, and N6 to read as follows:

Figures to Subpart N

* * * * *

BILLING CODE 4910–59–P

Figure N 1

HEAD DROP TEST SET-UP SPECIFICATIONS

Figure N 2

NECK FLEXION TEST SET-UP SPECIFICATIONS

Figure N 1

HEAD DROP TEST SET-UP SPECIFICATIONS

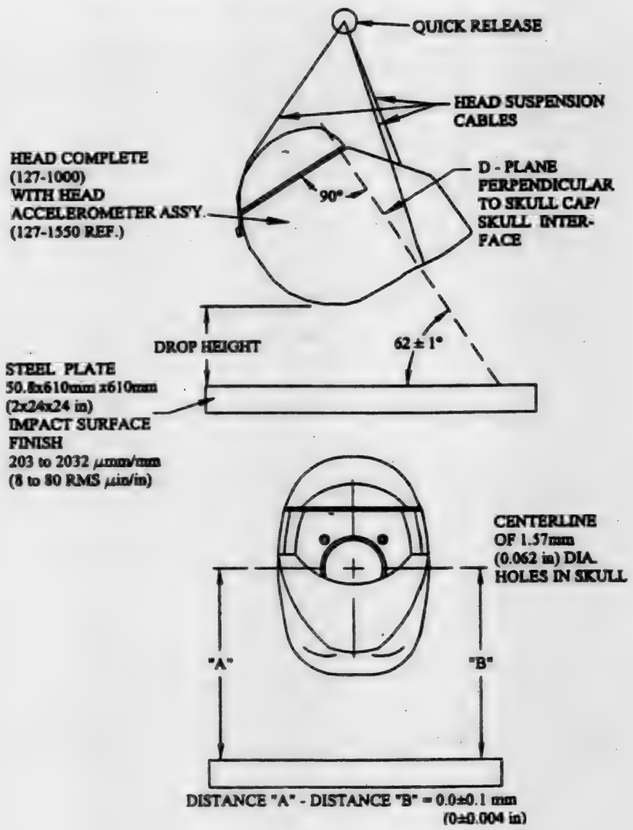

Figure N 2

NECK FLEXION TEST SET-UP SPECIFICATIONS

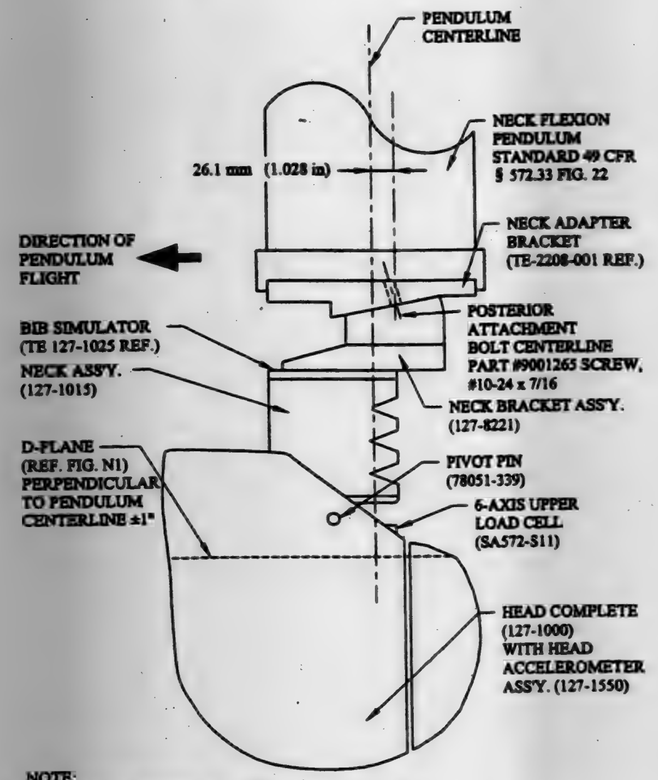

NOTE:
PENDULUM SHOWN IN VERTICAL ORIENTATION

Figure N 3

NECK EXTENSION TEST SET-UP SPECIFICATIONS

Figure N 3

NECK EXTENSION TEST SET-UP SPECIFICATIONS

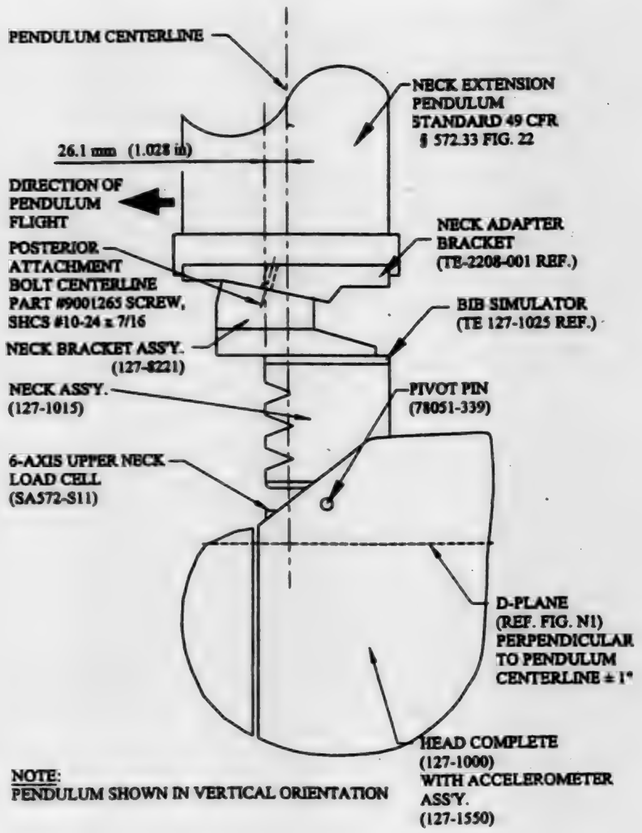

FIGURE N 6

KNEE IMPACT TEST SET-UP SPECIFICATIONS

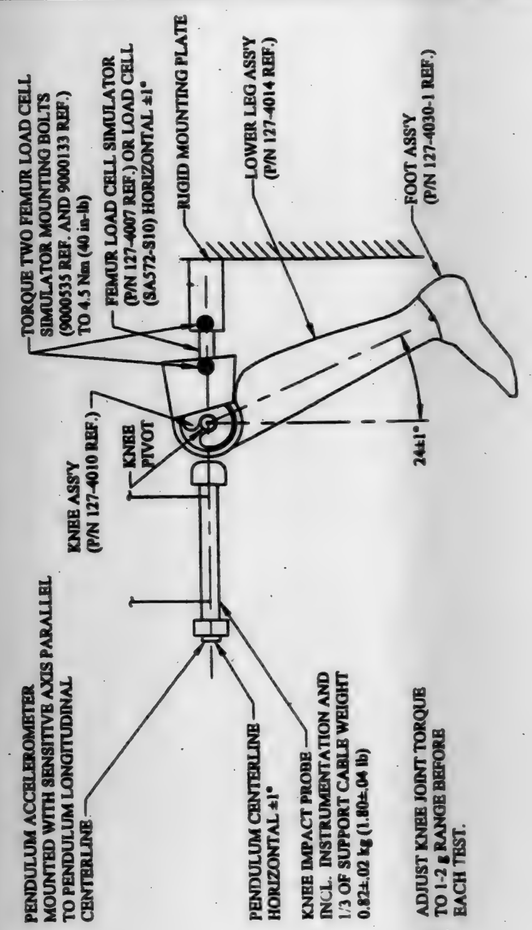

Issued: June 19, 200-

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–16874 Filed 7–17–02; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 070202C]

Fisheries Off West Coast States and in the Western Pacific; West Coast

chinook salmon would be reached by June 7. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from U.S.–Canada Border to Cape Falcon, OR would open May 1 and run

fishermen through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the state agencies have insufficient time to allow for prior notice and the opportunity for public

2002, with a vessel trip limit of 250 chinook salmon for the 8–day open period. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to fully access the chinook and coho quotas. This action was necessary to conform to the 2002 management goals.

On June 26, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook

32,500–chinook quota, except for a selective fishery for marked coho scheduled at the end of the season with a 5000 marked coho quota.

cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishermen through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 070202C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustment 2-Closure of the Commercial Fishery from U.S.-Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the area from U.S.-Canada Border to Cape Falcon, OR was closed on June 7, 2002, at 2359 hours local time (l.t.). The Northwest Regional Administrator, NMFS (Regional Administrator), determined that the quota of 50,000 chinook salmon had been reached. This action was necessary to conform to the 2002 management goals.

DATES: Closure in the area from U.S.-Canada Border to Cape Falcon, OR, effective 2359 hours local time (l.t.), June 7, 2002, until 0001 hours l.t., July 1, 2002. Comments will be accepted through August 2, 2002.

ADDRESSES: Comments on these actions must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or

Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018.

Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator closed the commercial fishery in the area from U.S.-Canada Border to Cape Falcon, OR, effective Friday, June 7, 2002, at 2359 hours l.t. Information provided on June 5 estimated that the quota of 50,000 chinook salmon would be reached by June 7. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from U.S.–Canada Border to Cape Falcon, OR would open May 1 and run through the earlier of June 30 or a 50,000–chinook quota.

On June 5, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the quota would be reached by June 7. As a result, the States of Oregon and Washington recommended, and the Regional Administrator concurred, that the commercial fishery in the area from U.S.-Canada Border to Cape Falcon, OR close effective at midnight on Friday, June 7, 2002. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishermen through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the state agencies have insufficient time to allow for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because not closing the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and reduced yield of the stocks. The 30–day delay in effectiveness required under U.S.C. 553(d)(3) is also hereby waived due to the immediate need to stop a fishery upon attainment of a quota.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18150 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 070902D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustment 3–Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to close at midnight, July 8, 2002, with a vessel trip limit of 250 chinook salmon for the 8–day open period. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to fully access the chinook and coho quotas. This action was necessary to conform to the 2002 management goals.

DATES: The inseason adjustment in the area from the U.S.-Canada Border to Cape Falcon, OR, is effective 0001 hours local time (l.t.), July 1, 2002, through 2359 hours l.t. July 8, 2002, after which the fishery will remain closed until opened through an additional inseason action or until the effective date of the year 2003 management measures, which will be published in the **Federal Register** for the west coast salmon fisheries. Comments will be accepted through August 2, 2002.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, to open on July 1 and close at midnight, July 8, 2002, with a vessel trip limit of 250 chinook salmon for the 8–day open period. Information provided to NMFS on June 26 regarding the available catch and effort data indicated that these management measures should be implemented to fully access the chinook and coho quotas. Modification of fishing seasons are authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 1 and run through the earlier of September 8 or a 32,500–chinook quota, except for a selective fishery for marked coho scheduled at the end of the season with a 5000 marked coho quota.

On June 26, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached prematurely, potentially foreclosing opportunity of fishers to conduct the selective fishery for marked coho later in the season. There was also concern about placing an oversupply of chinook salmon on the market in a short time period, thus reducing the price of salmon and economic value of the fishery. As a result, the states of WA and OR recommended, and the Regional Administrator concurred, that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR would open on July 1 and close at midnight, July 8, 2002, with the provision that no vessel may possess, land, or deliver more than 250 chinook for the entire 8 day open period. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures. The State of Oregon added a landing restriction for this fishery in their regulations requiring that fishers fishing within this area, and intending to land salmon south of Cape Falcon, notify the ODFW before they leave the area at the following phone number (541) 867–0300, Ext. 252.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishermen through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries and the time and trip limits to which the fishery must be adjusted to reduce the tempo of the fishery. Such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

Moreover, the AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18151 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071502A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch for the Central Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A). These procedures are unnecessary and contrary to the public interest because implement this action to avoid exceeding the 2002 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A). These procedures are unnecessary and contrary to the public interest because

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery

Dated: July 15, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18161 Filed 7–15–02; 2:23 pm]

BILLING CODE 3510–22–S

Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act, Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the Central Aleutian District was established as 2,831 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,531 mt and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2002 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the 2002 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18145 Filed 7–15–02; 2:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071202G]

Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska.

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of "other rockfish" in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of "other rockfish" in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the "other rockfish" 2002 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 15, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2002 TAC allocation of "other rockfish" for the Western Regulatory Area was established as 90 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 6, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the "other rockfish" TAC in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of "other rockfish" in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to overharvesting the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18161 Filed 7–15–02; 2:23 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 138
Thursday, July 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Chapter III

[020711168–2168–01]

RIN: 0625–AA50

Steel Import Licensing and Surge Monitoring

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Department of Commerce is issuing, and requesting public comment on, a proposed rule to establish a steel licensing and surge monitoring system as instructed by the President in his announcement of safeguard remedies on certain steel products.

DATES: Written comments must be received on or before 5 p.m. Eastern daylight savings time on August 19, 2002. Please keep written comments to five pages or less.

ADDRESSES: Written comments should be sent to Roland L. MacDonald, Director of Policy and Analysis, Import Administration, Room 3713, Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill (202) 482–3791; Julie Al-Saadawi (202) 482–1930; or Laura Merchant (202) 482–0367.

SUPPLEMENTARY INFORMATION: On March 5, 2002, President Bush announced the imposition of safeguard measures on certain steel products pursuant to Section 203 of the Trade Act of 1974 (see 67 FR 10593; a copy of the President's proclamation is available on the White House website: *http://www.whitehouse.gov/news/releases/2002/03/20020305-7.html*). These measures, in the form of tariffs ranging from 8 to 30 percent on a number of steel products and a tariff-rate quota on slabs, were the result of a section 201 investigation requested by the President and initiated by the International Trade Commission (ITC) in June 2001. The effective date of the safeguard measures was March 20, 2002.

A number of countries were exempted from the safeguard measures because of international commitments under bilateral free trade agreements, NAFTA and the WTO. However, in granting these exemptions, the President made clear that the exclusionary status would be revoked for developing countries, in full or part, if a surge in imports from that exempted country were to undermine the effectiveness of the safeguard measure. The President also stated that the United States Trade Representative (USTR):

> is authorized to determine whether a surge in imports of a product that is the product of a country listed in subdivision (d)(i) undermines the effectiveness of the pertinent safeguard measure and, if so, upon publication of a notice in the **Federal Register**, to revise subdivision (d) of Note 11 in the Annex to this proclamation to indicate that such product from such country is not excluded from such safeguard measure.

The President instructed USTR to review import data on a quarterly basis for signs of material increases in imports, which would then be the basis for immediate consultations and possible inclusion in the safeguard measure. To assist this effort, the President instructed the Secretary of the Treasury and the Secretary of Commerce to:

> establish a system of import licensing to facilitate the monitoring of imports of certain steel products. * * * [and] the Secretary of Commerce, within 120 days of the effective date of the safeguard measures established by the Proclamation, to publish regulations in the **Federal Register** establishing such a system of import licensing.

The Secretary of Commerce has delegated the responsibility for issuing these regulations to the Import Administration. In fulfillment of the President's instructions, the International Trade Administration is today publishing this proposed rule and request for comment to establish an internet-based steel licensing and surge monitoring system. The system will be comprised of three parts:

(1) An online registration system for steel importers;

(2) An automatic steel license issuance system; and

(3) An import surge monitoring website.

Although portions of these systems will be linked, for security purposes and the protection of proprietary information collected, the three systems will operate separately on a stand-alone basis. There will be an alternative backup method in place at Commerce, such as a telephone or fax system, should there be a malfunction of the internet-based system.

All imports of steel products listed in the President's section 201 relief determination, including those products subject to country exemptions or product exclusions will be required to obtain a steel import license and provide the license number to U.S. Customs on the entry summary. The only exceptions are the low-valued imports described below under "informal entries". Information gathered from these licenses will be used to ensure that the purpose of the 201 relief is not undermined. An interagency group will assist USTR with analysis required of the data collected beyond the data posted for the surge monitor.

Steel Import Licensing System. The steel import licensing system includes both the online registration system for importers and the automatic steel import license issuance system. In order to obtain a steel import license, an importer or the importer's agent or customs broker, must first register with the Department of Commerce (Commerce) and be assigned a user identification number. This identification number will be required to log on to the steel import license issuance system. A single user identification number will be issued to an importing company or brokerage house. Operating units within the company (*e.g.*, individual branches, divisions or employees) will all use the same company user identification code. The steel import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

Any company or broker with a United States address may register and obtain a user identification number. There is no fee to register and a user identification number will be issued within two (2) business days. As part of the registration process, the importer, agent or customs broker will be required to provide certain general information. Such information will include the applicant company name, Employer Identification Number (EIN) or the Customs ID number (where no EIN is available), address, phone number, contact information and email address for both the company headquarters and any branch offices that will be applying for steel licenses. This information will be used solely for the purposes of administering the steel import licensing and surge monitoring programs. The information will not be released by Commerce, except as required by U.S. law. Commerce will begin registering and issuing user identification numbers at least two weeks prior to the implementation date of the steel licensing program. Should a company prefer to apply for an ID non-electronically, a fax/phone option will be available at Commerce during regular business hours. The user ID will be needed to apply for the license. One option for the user ID may be the Employer Identification Number or Customs ID number (where there is no EIN).

Steel import licenses will be issued to registered importers, customs brokers or their agents through an automatic steel import licensing system. The separately issued user identification number discussed above will be required to access the system. There will be no fee charged to apply for the import licenses.

Steel import licenses will be issued automatically after the completion of the application form. In order to obtain the license, the applicant must report the following information about the steel import transaction:

(1) Applicant company name and address;
(2) Applicant contact name, phone number, fax number and email address;
(3) Importer name;
(4) Exporter name;
(5) Manufacturer name;
(6) Country of origin;
(7) Country of exportation;
(8) Expected date of export;
(9) Expected date of import;
(10) Expected port of entry;
(11) Customs entry number;
(12) Current HTS number (from Chapters 72, 73, or 99);
(13) Original HTS number in Chapter 72 or 73 (if HTS number in 12 above is a Chapter 99 product);
(14) Quantity (in kilograms); and
(15) Customs value (U.S. $).

Much of the information requested on the application form will be filled out automatically based on information provided in the registration process (*e.g.*, applicant company name and address) or will be self-generated from other information reported in the form (*e.g.*, product description, section 201 remedy category or average unit value). Other information will be available from flip down lists in the application form (*e.g.*, HTS numbers covered by the section 201 remedy, country of origin, port of entry) and will not have to be typed. A sample copy of the steel import license is available for viewing on Import Administration's website (*http://ia.ita.doc/steel/license/*). As currently proposed, a Customs entry number must be reported in order to obtain a license. Parties are encouraged to comment on whether the Customs entry number should remain a required field or if it should only be required if available at the time of filing. Parties are also encouraged to comment whether applicants should be allowed to enter "unknown" in the fields for exporter and manufacturer name.

Upon completion of the application form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue a steel import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the "license form"). Applicants can print the license form themselves only at that time. For security purposes, users will not be able to retrieve licenses themselves from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

The steel import license will be required on every entry of covered steel products (except informal entries covered below). As currently envisioned, a single license could cover multiple products as long as the importer, exporter, manufacturer, and country of origin and exportation are the same. However, separate licenses would be required if any of the above information differed with respect to a given set of covered imported steel products. As a result, a single Customs entry may require more than one steel import license. The applicable license number(s) must cover the total quantity of steel entered and should match the information provided on the Customs entry summary. There is no requirement to present physical copies of the license forms at the time of entry summary; however, copies must be maintained in accordance with Customs' normal requirements.

Commerce is examining two alternative licensing procedures: a single license per entry and a multiple entry license. Under the multiple entry option, the license could be obtained for the quantity of goods to be imported over an extended period (up to 30 days) and the same license number would be reported until the quantity is exhausted or the license has expired. Parties interested in such alternative licensing procedures should submit comments on the requirements of such licenses and the ways in which the necessary accuracy of such information can be ensured.

Certain aggregate information collected from the license application system will be posted on the steel import surge monitoring website. Subject to comment received, only the aggregate information described below will be available to the public. All other information including copies of the licenses and the names of importers, exporters, and manufacturers, will be considered business proprietary information and will not be released to the public. Its use will be strictly limited to the administration of the section 201 remedies imposed by the President and it will not be kept longer than the period of time legally required beyond the expiration of these remedies.

In addition to the sample steel import license, prototype versions of the online registration system and the automatic steel import license issuance system are available for test use on Import Administration's website (*http://ia.ita.doc.gov/steel/license/*). Interested parties are encouraged to test the system and comment on any concerns about the system or provide suggested improvements.

Steel Import Surge Monitoring System. Commerce will create a stand-alone steel import surge monitoring website. This website will report certain aggregate information on imports of section 201 product categories obtained from the steel licenses. Aggregate information will be reported on a monthly basis by country of origin and section 201 product category and will include import quantity (metric tons), import Customs value (U.S. dollars) and average unit value (dollars per metric ton). Reported monthly import data will be refreshed each week with new data on licenses issued in the prior week. This data collected may be adjusted periodically for canceled or unused steel import licenses, if deemed appropriate for accurate monitoring purposes. Parties are encouraged to comment whether additional aggregate data should be reported (*e.g.*, port of entry data) and any disclosure concerns

they may have over the currently proposed system (*e.g.*, as currently proposed Commerce will not adjust, range or redact any aggregate information reported by the monitoring system)

The monitoring system will also present a range of historical data for comparison purposes. This will include comparisons to the previous month and to the same month in the previous year,

information at entry summary. Customs intends to propose that an entry summary not completed in the allowed filing period will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry. In accordance with 19 USC 1623(c), Customs will publish guidelines establishing standards for setting the terms and conditions for mitigation of these claims.

filing of required Customs documentation.

Classification

Regulatory Flexibility Act. The Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities as that term is

ample opportunity and time to apply. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the requirements in this proposed rule to ITA Office of Policy at the **ADDRESSES** above and to OMB at the

the DEA Deputy Administrator that the placement of BZP and TFMPP into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of a Schedule I substance on the manufacture, distribution, and possession of BZP and TFMPP.

FOR FURTHER INFORMATION CONTACT:

The safety for use of these two substances has not been determined. They are available primarily as chemical intermediates in syntheses. The two substances are similar in chemical structure and are often found and abused together in tablets or powder form.

What Information Was Considered In Respect to Making the Finding of Imminent Hazard to the Public Health?

they may have over the currently proposed system (*e.g.*, as currently proposed Commerce will not adjust, range or redact any aggregate information reported by the monitoring system)

The monitoring system will also present a range of historical data for comparison purposes. This will include comparisons to the previous month and to the same month in the previous year, three month rolling averages along with similar comparisons to the immediately preceding period, the same period from the preceding year, and monthly import data on each complete section 201 product category. A sample version of the steel import surge website is available for viewing on Import Administration's website (*http://ia.ita.doc.gov/steel/license/*).

At present, Commerce is still considering whether similar aggregate data on excluded products will be reported on the monitoring system website given the more specific nature of these products. As currently envisioned, such information would only be available for review by the appropriate government agencies. However, we encourage parties to comment on whether some sort of aggregate data on these products could or should be reported on the monitoring website (*e.g.*, quantity by country of origin and remedy product category).

Duration of the Steel Import License. The steel import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of the entry summary documents. The steel import license is valid for up to 45 days; however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary documents will be accepted. Special timing issues surrounding withdrawal of products from a warehouse, FTZ issues, and temporary imports will be handled separately.

Handling of Steel to Foreign Trade Zones. Commerce proposes to require a license for steel shipped into a U.S. FTZ. Because a Custom entry number would not be available for shipments entering the FTZ, an alternate code would be entered in the Customs entry number field on the license application. Upon withdrawal from the FTZ as an import into the U.S., another license would be required filed in the standard fashion with a Customs entry number identifier.

U.S. Customs Requirements. U.S. Customs intends to publish a separate Notice of Proposed Rulemaking (NPRM), setting requirements for the timely filing of the steel import license information at entry summary. Customs intends to propose that an entry summary not completed in the allowed filing period will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry. In accordance with 19 USC 1623(c), Customs will publish guidelines establishing standards for setting the terms and conditions for mitigation of these claims.

Hours of Operation. As currently proposed, parties will be able to access the system 24 hours a day, 7 days a week. If the system is down for an extended period of time, parties will be able to obtain licenses from Commerce via fax during regular business hours. Should the system be inaccessible for an extended period of time, Customs may consider this as part of mitigation.

Informal Entries. No import license shall be required on informal entries of steel products, such as merchandise valued at less than $2,000. For additional information, refer to 19 CFR 143.21–28.

Interim Monitoring. Census added a special section 201 monitoring report to its monthly early release of steel import data. This special section includes two summary reports that provide preliminary section 201 import figures for each of the section 201 product categories as well as figures for each of the top 20 excluded countries. Full reports covering imports of steel products subject to section 201 remedies are also made available by Census. These two full reports, one sorted by country of origin, the other, by section 201 product category provide aggregate import information by product category for all countries starting with the early release of April import data on May 29, 2002. All information is posted on Census' website (*http://www.census.gov/foreign-trade/Press-Release/steel—index.html*).

The new early release import data reported by Census provides the Administration and the public with an interim means of monitoring potential import surges from excluded countries until the steel licensing and surge monitoring system is operational. Once the new steel licensing and surge monitoring program is in place, the early release data reported by Census will then act as a check on the accuracy of the data collected under the steel licensing program.

Duration. The licensing program will be in effect for the duration of the safeguard measures only. The licenses, however, will be valid for 10 business days after the expiration of the safeguard measures to allow for the final filing of required Customs documentation.

Classification

Regulatory Flexibility Act. The Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* A summary of the factual basis for this certification is below.

This proposed rule will not have a significant impact on a substantial number of companies. In most cases, brokerage companies will apply for the license for the steel importers. Most brokerage companies that are currently involved in filing documentation for importing goods into the U.S., are accustomed to Customs' automated systems. Today, more than 99% of the Customs filings are handled electronically. Therefore, the web-based nature of this simple license application should not be a significant obstacle to any firm in completing this new requirement. However, should a company need to apply for an ID or license non-electronically, a fax/phone option will be available at Commerce during regular business hours. There is no cost to register for a company-specific ID user code and no cost to file for the license. Each license form is expected to take about 10 minutes to complete using much of the same information used to complete the Customs Entry Summary documentation. This is the one additional requirement of the importers' broker to fulfill U.S. entry requirements to import each covered steel product shipment. Commerce estimates that approximately 400 brokerage companies and importers will apply for steel import licenses annually. Of this number, Commerce estimates that fewer than 5% of brokerage companies would be considered small entities. Commerce estimates about 1%, or $33,333.00, represents the amount that small entities will incur as a result of this proposed rule.

Paperwork Reduction Act. This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements will be submitted to OMB for approval. Public reporting burden for these collections of information is estimated at 10 minutes. The licensing system requests information already required of an importer, approval is automatic, and the importer will have

ample opportunity and time to apply. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the requirements in this proposed rule to ITA Office of Policy at the ADDRESSES above and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: ITA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a valid OMB Control Number.

Executive Order 12866

It has been determined that this rule is not significant for purposes of EO 12866.

Executive Order 12866

This rule does not contain policies with federalism implications as that term is defined in EO 13132.

Dated: July 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18042 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–226 N]

Schedules of Controlled Substances: Temporary Placement of Benzylpiperazine and Trifluoromethylphenylpiperazine into Schedule I

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of intent.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place N-Benzylpiperazine (BZP) and 1-(3-trifluoromethylphenyl) piperazine (TFMPP) into Schedule I of the Controlled Substances Act (CSA)pursuant to the temporary scheduling provisions of the CSA. This intended action is based on a finding by the DEA Deputy Administrator that the placement of BZP and TFMPP into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of a Schedule I substance on the manufacture, distribution, and possession of BZP and TFMPP.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is Temporary Scheduling?

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General may extend the temporary scheduling for up to six months. A substance may be temporarily scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Deputy Administrator of DEA (28 CFR 0.100).

What Criteria Must Be Considered in Determining Temporary Scheduling?

In making a finding that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) its history and current pattern of abuse; (5) The scope, duration and significance of abuse; and (6) What, if any, risk there is to the public health.

What Are BZJP TFMPP?

BZP and TFMPP are piperazine derivatives. BZP was first synthesized in 1944 as a potential antiparasitic agent. DEA is not aware of therapeutic applications for BZP or TFMPP. BZP and TFMPP have no accepted medical use in treatment in the United States. The safety for use of these two substances has not been determined. They are available primarily as chemical intermediates in syntheses. The two substances are similar in chemical structure and are often found and abused together in tablets or powder form.

What Information Was Considered In Respect to Making the Finding of Imminent Hazard to the Public Health?

DEA, as required by 21 U.S.C. 811(h)(3), considered the following three factors set forth in paragraphs (4), (5) and (6) of 21 U.S.C. 811(c). The information relevant to the three factors is summarized below.

21 U.S.C. 811(c)(4) Its History and Current Pattern of Abuse

Abuse of BZP was first reported in late 996 in California. BZP and TFMPP are being encountered in several regions of the U.S. and their abuse has spread rapidly from the states where they were initially encountered. Over the past few years, in the United States, BZP and TFMPP have increasingly been found in similar venues as the popular club drug 3,4-methylenedioxymethamphetamine (MDMA, also known as Ecstasy). BZP and TFMPP are also sold as MDMA and are targeted to the youth population. The tablet form often bears imprints commonly seen on MDMA tablets such as a fly, crown, heart, butterfly, or bull's head logos in pink, tan, white, or green. BZP and TFMPP have also been found in powder form or liquid form packaged in small convenience sizes sold on the Internet. Illicit distributions occur through smuggling of bulk powder through organizations with connections to overseas sources of supply. The bulk powder is then processed into capsule, tablet, or pill form and distributed through organized networks. These organizations also distribute other controlled substances such as MDMA, 2C–B, marijuana and anabolic steroids.

21 U.S.C. 811(c)(5) the Scope, Duration, and Significance of Abuse

The increasing abuse of BZP and TFMPP in the United States is evidenced by increasing encounters by law enforcement agencies. DEA, State and local enforcement agencies reported BZP and TFMPP in drug exhibits seized in the states of California, Connecticut, Florida, Illinois, Indiana, Iowa, Louisiana, Minnesota, Nevada, Texas, Virginia, and Wisconsin. In the past year, thirty-one seizures were reported and amounted to over 21,000 tablets and 1000 pounds of powder. BZP asnd TFMPP are being promoted as legal alternatives to MDMA. They are often

sold as "Ecstasy", or as "BZP", "A2", "legal E" or "legal X". BZP and TFMPP, with their easy availability and their so-called legal status, are becoming drugs of abuse in the United States.

21 U.S.C. 811(c)(6) What If Any, Risk There Is To the Public Health

As with amphetamine and MDMA, the effects of BZP are stimulant-like and those of TFMPP are hallucinogen-like.

consideration before a final order is published.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h) and 28 CFR 0.100, the Deputy Administrator has considered all the available data and the three factors required for a determination to temporarily schedule BZP and TFMPP under the CSA and finds that placement of BZP and TFMPP into Schedule I of

warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

Dated: July 9, 2002.

John B. Brown, III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Deputy Administrator of DEA (28 CFR 0.100).

What Criteria Must Be Considered in Determining Temporary Scheduling?

In making a finding that placing a

use in humans has never been demonstrated.

What Information Was Considered in Respect to Making the Finding of Imminent Hazard to the Public Health?

DEA, as required by 21 U.S.C. 811(h)(3), considered the following three factors set forth in paragraphs (4), (5) and (6) of 21 U.S.C. 811(c) in its decision to temporarily schedule 2C-T-

sold as "Ecstasy", or as "BZP", "A2", "legal E" or "legal X". BZP and TFMPP, with their easy availability and their so-called legal status, are becoming drugs of abuse in the United States.

21 U.S.C. 811(c)(6) What If Any, Risk There Is To the Public Health

As with amphetamine and MDMA, the effects of BZP are stimulant-like and those of TFMPP are hallucinogen-like. The risks to the public health associated with MDMA and amphetamine, both substances with high potential for abuse, are well known and documented. BZP acts as a stimulant similar in effect to MDMA or amphetamine, producing euphoria and inducing cardiovascular effects in humans, including increased heart rate, systolic blood pressure and pulse rate. TFMPP, at approximately 100 mg. produces hallucinogenic effects similar to those produced by MDMA. TFMPP is a serotonin releasing agent and binds to serotonin receptors in the brain. In 2001, a report from University in Zurich, Switzerland details the death of a young female which was attributed to the combined use of benxypiperazine and MDMA.

The above data show that the continued, uncontrolled tablet production, distribution and abuse of BZP and TFMPP pose an imminent hazard to the public safety. There are no recognized therapeutic uses of these substances in the United States.

What Other Factors Were Taken Into Consideration?

Additionally, DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812). The data available and reviewed for BZP and TFMPP indicate that they have a high potential for abuse, no currently accepted medical use in treatment in the United States and are not safe for use under medical supervision.

What Is the Role of the Assistant Secretary for Health in the Temporary Scheduling?

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Deputy Administrator has notified the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of his intention to temporarily place BZP and TFMPP into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for BZP or TFMPP under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h) and 28 CFR 0.100, the Deputy Administrator has considered all the available data and the three factors required for a determination to temporarily schedule BZP and TFMPP under the CSA and finds that placement of BZP and TFMPP into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

When Will This Rule Take Effect?

Because the Deputy Administrator finds that it is necessary to temporarily place BZP and TFMPP into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication of the **Federal Register**. BZP and TFMPP will be subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, importing, exporting and possession of a Schedule I controlled substance. Further, it is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexible Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action provides notice of intent to temporarily place N–Benzylpiperazine (BZP) and 1–(3–trifluoromethylphenyl)piperazine (TFMPP) into Schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This rule will not substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Record keeping requirements.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Deputy Administrator hereby intends to order that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11 is to be amended by adding paragraphs (g)(3) and (4) to read as follows:

* * * * *

(g) * * *

(3) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers—7493.

(4) 1–(3-trifluoromethylphenyl) piperazine (other name: TFMPP), its optical isomers, salts and salts of isomers—7494.

* * * * *

Dated: July 9, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–17901 Filed 7–17–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–227N]

Schedules of Controlled Substances: Temporary Placement of 2,5-Dimethoxy-4-(n)-propylthiophenethylamine into Schedule I

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of intent.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This intended action is based on a finding by the DEA Deputy Administrator that the placement of 2C-T-7 into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of a Schedule I substance on the manufacture, distribution, and possession of 2C-T-7.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is Temporary Scheduling?

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to 6 months. A substance may be temporarily scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Deputy Administrator of DEA (28 CFR 0.100).

What Criteria Must Be Considered in Determining Temporary Scheduling?

In making a finding that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) History and current pattern of abuse; (5) The scope, duration and significance of abuse; and (6) What, if any, risk there is to the public health.

What Is 2,5-Dimethoxy-4-(n)-propylthiophenethylamine?

2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), a phenethylamine, is structurally related to the Schedule I phenethylamine 4-bromo-2,5-dimethoxyphenethylamine (2C-B), and other hallucinogens (e.g., 2,5-dimethoxy-4-methylamphetamine (DOM), and 1-(4-bromo-2,5-dimethoxyphenyl-2-aminopropane (DOB)) in Schedule I of the CSA. 2C-T-7 has those structural features of phenethylamines which are necessary for stimulant and/or hallucinogenic activity; 2C-T-7 is a sulfur analogue of 2CB. Based on these structural features. 2C-T-7 is likely to have a pharmacological profile similar to 2CB and other Schedule I hallucinogens. The similarity in the effects of 2C-T-7 and 2CB has been supported by Shulgin and Shulgin (Pikal: A Chemical Love Story; pp. 569–570, 1991) and by "self-reports" on the Internet. Shulgin and Shulgin (1991) reported that at an oral dose of 20 mg or 30 mg, 2C-T-7 produced visual hallucinations. They concluded that in terms of being an acceptable hallucinogen, 2C-T-7 was comparable to 2CB and mescaline. Self-reports on the Internet have described the hallucinations resulting from the self-administration of 2C-T-7 as being very 2CB-like; consisting of persistent multiple images, overlaid patterns, and trails. The subjective effects of 2C-T-7 have also been described as being similar to those of 2CB; mood lifting, sense of well being, emotionally, volatility, increased appreciation of music, and psychedelic ideation.

DEA is not aware of any approved therapeutic use of 2C-T-7 in the United States. The safety of this substance for use in humans has never been demonstrated.

What Information Was Considered in Respect to Making the Finding of Imminent Hazard to the Public Health?

DEA, as required by 21 U.S.C. 811(h)(3), considered the following three factors set forth in paragraphs (4), (5) and (6) of 21 U.S.C. 811(c) in its decision to temporarily schedule 2C-T-7. The information relevant to the three factors is summarized below.

21 U.S.C. 811(c)(4) Its History and Current Pattern of Abuse

The abuse of stimulant/hallucinogenic substances in popular all night dance parties (raves) and in other venues has been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance MDMA and its analogues, collectively known as Ecstasy, are the most popular drugs abused at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. These raves have also become venues for the trafficking and abuse of "new non-controlled" substances in place of or in addition to "Ecstasy." 2C-T-7 is one such substance.

Illicit use of 2C-T-7 was first reported in Germany in 1997. 2C-T-7 was placed under the control of German law on January 20, 1998. In October of 1999, 2C-T-7 tablets were being sold in the Netherlands under the trade name "Blue Mystic". Illicit use of 2C-T-7 was reported in Sweden in January of 2000. Currently 2C-T-7 is controlled under the Swedish law pertaining to goods which are dangerous to the public. French Customs authorities reported seizing tablets in 2001 that contained 10 mg of 2C-T-7.

Abuse of 2C-T-7 in the United States was first reported in 1997; an individual posted his experience associated with the oral ingestion of 20 mg of 2C-T-7 on the Lycaeum website on the Internet. In the year 2000, the abuse of 2C-T-7 by young adults began to spread in the United States as evidenced by widespread discussion on drug website forums and the sale of the substance from an Internet company. The information being discussed on these websites includes the route of administration, recommended doses, and narratives from individuals describing their experiences and effects after self-administering 2C-T-7.

Self-reported experiences and other information posted on these websites indicate that 2C-T-7 is being abused orally (10–50 mg) or intranasally; the

oral route is the most common route of abuse. The powder is being mixed in liquids or placed in gelatin capsules. Information posted on these websites indicates that 2C-T-7 is being taken alone or with other drugs; such as MDMA, ketamine, cannabis, N,N-disopropyl-5-methoxytryptamine ("Foxy Methoxy") and N,N-dipropyltryptamine (DPT).

Information gathered by DEA

administration. The co-abuse of 2C-T-7 with MDMA will pose a significant health risk if 2C-T-7 popularity increases in the same venues as with MDMA. The co-abuse of 2C-T-7 with MDMA has resulted in lethal effects. The other two 2C-T-7 related deaths resulted from the co-abuse of 2C-T-7 with MDMA. They both occurred in April of 2001. One young man died in Tennessee while another man died in

sanctions applicable to the manufacture, distribution, possession, importing and exporting of a Schedule I controlled substance under the CSA. Further, it is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Recordkeeping requirements.

of the DEA by Department of Justice regulations (28 CFR 0.100), the Department Administrator hereby intends to order that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers—7348.

* * * * *

Dated: July 9, 2002.

John B. Brown, III,

oral route is the most common route of abuse. The powder is being mixed in liquids or placed in gelatin capsules. Information posted on these websites indicates that 2C-T-7 is being taken alone or with other drugs; such as MDMA, ketamine, cannabis, N,N-disopropyl-5-methoxytryptamine ("Foxy Methoxy") and N,N-dipropyltryptamine (DPT).

Information gathered by DEA indicates that 2C-T-7 has been purchased in powder form over the Internet and distributed as such. In the United States, capsules containing 2C-T-7 powder also have been encountered; whereas in the Netherlands ("Blue Mystics"), and in Canada ("Red Raspberry") the bulk powder is being processed into tablets.

21 U.S.C. 811(c)(5) the Scope, Duration and Significance of Abuse

State and local law enforcement agencies reported 2C-T-7 exhibits seized in the states of Texas and Wisconsin. In Wisconsin, two unrelated exhibits were submitted to the Wisconsin State Crime Laboratory for analysis; the first exhibit consisted of two clear capsules containing 16 to 18 milligrams of white powder and two paper packets. One packet contained 450 milligrams of tan powder and the other paper packet contained 869 milligrams. The powder in these exhibits was identified as 2C-T-7. These two capsules were sold to an informant as "Tweety-Bird Mescaline." The second exhibit analyzed by the Wisconsin State Crime Laboratory was shown to be a mixture of 2C-T-7 and N,N-dipropyltryptamine (DPT). 2C-T-7 has also appeared in illicit traffic in Tennessee, Washington, and Oklahoma, as evidenced by the 2C-T-7 related deaths in these states. It is being sold under the "street names" Blue Mystic, T7, Beautiful, Tweety-Bird Mescaline or Tripstay. To date, DEA has not identified a clandestine laboratory synthesizing 2C-T-7.

21 U.S.C. 811(c)(6) What, If Any, Risk There Is to Public Health

2C-T-7 shares those structural similarities with 2CB and other phenethylamines (i.e., DOB, and DOM), which makes it likely to produce similar public health risks. Sensory distortion and impaired judgment can lead to serious consequences for both the user and the general public. 2C-T-7 can have lethal effects when abused alone or in combination with other illicit drugs. To date, three deaths have been associated with the abuse of 2C-T-7. The first death occurred in Oklahoma during April of 2000; a young healthy male overdosed on 2C-T-7 following intranasal administration. The co-abuse of 2C-T-7 with MDMA will pose a significant health risk if 2C-T-7 popularity increases in the same venues as with MDMA. The co-abuse of 2C-T-7 with MDMA has resulted in lethal effects. The other two 2C-T-7 related deaths resulted from the co-abuse of 2C-T-7 with MDMA. They both occurred in April of 2001. One young man died in Tennessee while another man died in the state of Washington.

What Other Factors Were Taken Into Consideration?

Additionally, DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812). The data available and reviewed for 2C-T-7 indicate that it has a high potential for abuse, no currently accepted medical use in treatment in the United States and is not safe for use under medical supervision.

What Is The Role of the Assistant Secretary for Health in Temporary Scheduling?

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Deputy Administrator has notified the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of his intention to temporarily place 2C-T-7 into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for 2C-T-7 under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published.

Based on the above data, the continued distribution and abuse of 2C-T-7 poses an imminent risk to the public safety. There are no recognized therapeutic uses of this substance in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Deputy Administrator has considered the available data and the three factors required for a determination to temporarily schedule 2C-T-7 under the CSA and finds that placement of 2C-T-7 into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Because the Deputy Administrator finds that it is necessary to temporarily place 2C-T-7 into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication in the **Federal Register**. 2C-T-7 will be subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, possession, importing and exporting of a Schedule I controlled substance under the CSA. Further, it is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action provides a notice of intent to temporarily place 2C-T-7 into Schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Recordkeeping requirements.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Department Administrator hereby intends to order that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is to be amended by adding paragraph (g)(5) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers—7348.

* * * * *

Dated: July 9, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–17902 Filed 7–17–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 138
Thursday, July 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–02–005]

Notice of Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intent to request an approval of information collection for the AMS Research and Promotion Customer Survey.

DATES: Comments received by September 16, 2002 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0256, Room 3932-South, Washington, DC 20250; 202–720–4476, 202–720–5631 (fax).

SUPPLEMENTARY INFORMATION:

Title: AMS Research and Promotion Customer Survey.

OMB Number: 0581–New.

Expiration Date of Approval: 3 years from date of OMB approval.

Type of Request: New Information Collection.

Abstract: The Agricultural Marketing Service (AMS) has oversight responsibility of 14 national commodity research and promotion boards. These boards are responsible for carrying out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for Beef, Blueberries, Cotton, Dairy, Fluid Milk, Eggs, Honey, Popcorn, Pork, Soybeans, Mushrooms, Peanuts, Potatoes, and Watermelon. The programs are carried out under the authority of either a generic statute research and promotion statute or free-standing research and promotion statutes. The statutes are as follows: The Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7411–7425; The Beef Promotion and Research Act of 1985, 7 U.S.C. 2901–2911; The Cotton Research and Promotion Act, 7 U.S.C. 2101–2118; The Dairy Production Stabilization Act of 1983, 7 U.S.C. 4501–4514; The Fluid Milk Promotion Act of 1990, 7 U.S.C. 6401–6417; The Egg Research and Consumer Information Act, 7 U.S.C. 2701–2718; The Honey Research, Promotion, and Consumer Information Act, 7 U.S.C. 4601–4613; The Popcorn, Promotion, Research, and Consumer Information Act, 7 U.S.C. 7481–7491; The Pork Promotion, Research, and Consumer Information Act of 1985, 7 U.S.C. 4801–4819, The Soybean Promotion, Research, and Consumer Information Act, 7 U.S.C. 6301–6311; The Mushroom Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6101–6112; The Potato Research and Promotion Act, 7 U.S.C. 2611–2627; and The Watermelon Research and Promotion Act, 7 U.S.C. 4901–4916. The funding for these programs is industry-specific, but usually through assessments on producers, handlers, importers, or others in the marketing chain.

In 1996, AMS developed a survey to assess its work in six important service areas: meeting deadlines; providing clear and accurate information; maintaining open, constructive working relationships; providing up-to-date information on Government activities; supplying prompt, courteous service; and professionalism and helpfulness of staff.

This year, AMS has developed a similar survey, the Research and Promotion Customer Survey, to gather feedback from the commodity boards' members, alternates, staff, and others to determine how well AMS has been accomplishing its mission.

The information collected will be used and analyzed by AMS. The surveys will be distributed by mail or in person to the aforementioned representative groups. Respondents may return the surveys by mail or by fax to the address or fax number indicated on the survey form.

Several versions of the survey will be used, each with a different return address and contact information. This will enable the respondents to mail or fax surveys directly to the AMS program that oversees their boards.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .05 hours per response.

Respondents: Research and promotion board members and alternates, board staff employees, and contractors of the boards.

Estimated Number of Respondents: 400.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Angela C. Snyder, 1400 Independence Avenue, SW., STOP 0256, Room 3932—South, Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 12, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18153 Filed 7–17–02; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Timberline Express Chairlift, Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal submitted by RLK and Company, concessionaire for the Timberline Lodge and Ski Area, to construct a new chairlift and develop a new ski trail system. The construction of the chairlift and ski trails would affect approximately 55 acres within the Zigzag River and Salmon River watersheds on the Zigzag Ranger District and includes a 25-acre expansion of the special use permit boundary. Implementation of this project is scheduled for fiscal year 2004. The Proposed Action would be in compliance with the 1990 Mt. Hood National Forest Land and Resource Management Plan as amended by the Northwest Forest Plan, which provides the overall guidance for management of this area. The Mt. Hood National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by September 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the Proposed Action to Paul Koehler, Project Coordinator, Zigzag Ranger District, 70220 E Hwy 26, Zigzag OR, 97049, (phone: 503–622–3191 x614). Comments may also be sent by e-mail to *pdkoehler@fs.fed.us*. Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Paul Koehler (address and phone number listed above), or to Mike Redmond, Environmental Coordinator, 16400 Champion Way, Sandy, Oregon, 97055–7248, (phone: 503–668–1776).

SUPPLEMENTARY INFORMATION: The project area is located at Timberline Ski Area, approximately 2 miles north of Government Camp, in Section 7 and 18, T.3S., R.9E., Willamette Meridian, Clackamas County, Oregon. This analysis will evaluate a range of alternatives for implementation of the project activities including a no-action alternative. The project area does not include any designated wilderness, classified roadless areas, wild and scenic rivers, or late successional reserves.

Some of the preliminary issues that have been identified include: Impacts to riparian areas from lift line and ski trail construction; Impacts to mature forests from ski trail and lift line clearing, and; Impacts to heritage resources from the construction of the lift terminals.

The scoping process will include the following: Identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives.

The draft EIS is planned to be filed with the Environmental Protection Agency (EPA) and available for public review by January 2003. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the NOA appears in the **Federal Register.** Copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. It is important that those interested in this proposal on the Mt. Hood National Forest participate at that time.

Comments received in response to this Proposed Action, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requestor that the comments may be resubmitted with or without names and addresses within thirty days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objects are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by June 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The responsible official is Gary Larsen, Mt. Hood National Forest Supervisor. The responsible official will decide which, if any, of the alternatives will be implemented. The Timberline Express Chairlift and Ski Trail System Construction decision and rationale will be documented in a Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: July 25, 2002.

Kathryn J. Silverman,

Deputy Forest Supervisor, Mt. Hood National Forest.

[FR Doc. 02–18104 Filed 7–17–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a project proposed by Great River Energy (GRE) of Elk River, Minnesota. The project consists of a short reroute of an existing GRE 230 kV transmission line to separation of the line onto separate transmission structures of the double-circuited portion of the 230 kV line will allow for additional transmission capacity in the Coal Creek-Stanton area. This will facilitate increased coal-fired generation in the area.

RUS, in accordance with its environmental policies and procedures, requires that GRE prepare an environmental report reflecting the

adjourn at 8 p.m. on August 8, 2002, at the Crowne Plaza, 200 East Amite, Jackson, Mississippi 39201. The Committee will plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed

Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that part of the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section

Dated: July 25, 2002.

Kathryn J. Silverman,

Deputy Forest Supervisor, Mt. Hood National Forest.

[FR Doc. 02–18104 Filed 7–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Monday, July 29, 2002 at the City of Morton Community Center, 700 West Main, Morton, Washington. The meeting will begin at 9 a.m. and continue until 5 p.m. The purpose of the meeting is to:

(1) Review and recommend for funding Title II projects for fiscal year 2003.

(2) Provide for a Public Open Forum.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides an opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (2) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: July 12, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–18106 Filed 7–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Great River Energy; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a project proposed by Great River Energy (GRE) of Elk River, Minnesota. The project consists of a short reroute of an existing GRE 230 kV transmission line to facilitate access to coal reserves of the Falkirk Mining Company, and a short segment of additional 230 kV line to provide for separation of the circuits on an existing double-circuited transmission line. The project is located approximately 4.5 miles south and 4 miles west of Underwood in McLean County, North Dakota. RUS may provide financial assistance to GRE for this project.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental, Staff, Stop 1571, 1400 Independence Avenue SW., Washington, DC 20250–1571, telephone: (202) 720–1414; Fax: (202) 720–0820 e-mail: *nislam@rus.usda.gov.* Information is also available from Ms. Carole Schmidt, Environmental Scientist, Great River Energy, 17845 E. Highway 10, P.O. Box 800, Elk River, MN 55330–0800, telephone: (763) 241–2272; e-mail: *cschmidt@GREnergy.com.*

SUPPLEMENTARY INFORMATION: GRE currently owns a 230 kV transmission line that runs between two of its generating facilities—Coal Creek Station (Coal Creek) and Stanton Station (Stanton). A 4.5-mile portion of this line is double-circuited. The purpose of this project is two fold: (1) To reroute a portion of this transmission line to allow access to coal reserves in the area of the line, and (2) to separate the two circuits onto separate transmission structures to allow for additional transmission capacity in the Coal Creek-Stanton area. The relocation will maintain transmission capabilities between Coal Creek and the Stanton area. GRE also intends to place an optical ground wire (fiber optic cable) between Coal Creek and Stanton area to provide a high-speed telecommunications link between the two sites. Portions of the fiber optic cable will be installed in underground conduit. The conduit will be installed by trenching at a depth of approximately 36 inches. A right-of-way of 120 feet will be needed for the line. A combination of single-pole and H-frame structures will be used for the transmission line. The proposed rerouted portion of the line and separation of the line onto separate transmission structures of the double-circuited portion of the 230 kV line will allow for additional transmission capacity in the Coal Creek-Stanton area. This will facilitate increased coal-fired generation in the area.

RUS, in accordance with its environmental policies and procedures, requires that GRE prepare an environmental report reflecting the potential impacts of the proposed facilities. The environmental report that includes input from federal, state, and local agencies has been reviewed and accepted as RUS' Environmental Analysis (EA) for the project in accordance with 7 CFR 1794.41. GRE published notices of the availability of the EA and solicited public comments per 7 CFR 1794.42. The 30-day comment period on the EA for the proposed project ended May 20, 2002. No comments were received on the EA. GRE, however, received comments on the environmental report from federal, state, and local agencies. GRE has agreed to follow Federal, State, and local agency recommendations and secure all permits prior to constructing and during operation of the proposed facilities.

Based on the EA and the GRE's commitments to follow all agency recommendations, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural and historic properties, threatened and endangered species and their critical habitat, and water quality. RUS has also determined that there would be no negative impacts of the proposed project on minority communities and low-income communities as a result of construction of the project. RUS believes that there are no significant potential environmental conflicts related to this project.

Dated: July 12, 2002.

Alfred Rodgers,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–18044 Filed 7–17–02; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on August 8, 2002, at the Crowne Plaza, 200 East Amite, Jackson, Mississippi 39201. The Committee will plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 10, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–18054 Filed 7–17–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, August 1, 2002. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to discuss the criteria for moving applicants to consensus/site visit, review of stage 1 process, review of stage 1 data and selection of applicants for consensus, review proposed modifications to Judges Survey, discuss internal suppliers, discuss flowchart for November process—workload planning, review of senior training and discuss summary of Improvement Day. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Virginia Davis no later than Monday, July 29, 2002, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene August 1, 2002 at 8 a.m. and adjourn at 4:30 p.m. on August 1, 2002. It is estimated that the closed portion of the meeting will last from 8 a.m. until 1 p.m. and the open portion of the meeting will last from 1 p.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that part of the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: July 15, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–18163 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce DOC).

ACTION: Notice and request for letters of application.

SUMMARY: The Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Sport Diving, Sport Fishing, Local Conservation, Regional Conservation, Education K–12, Education University, Research Living Resources, and Research Non-living Resources.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 3-

year terms, pursuant to the Council's Charter.

DATES: Applications are due by July 31, 2002.

ADDRESSES: Application information may be obtained from Becky Shortland, Council Coordinator, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; telephone 912/598–2345;

Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the following nine vacant seats on its Sanctuary Advisory Council (Council): Business/Commerce, Citizen-At-Large, Commercial Shipping, Conservation, Fishing, Native Hawaiian, Ocean Recreation, Tourism, and Whale Watching. Applicants are chosen based upon their particular expertise and experience in relation to the seat for

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary,

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062702D]

Endangered Species; File No. 1189

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1189, issued April 22, 1999, (64 FR 23281) authorizes the permit holder to capture 300 shortnose sturgeon by gill net or trot line then measure, tag weigh and release them. Twenty of these may be surgically implanted with radio/sonic tags and tracked. Mortalities are not to exceed one shortnose sturgeon per year. This

grouper fishery and coastal migratory pelagics fishery annually for public display purposes. Less than 10 non-egg-bearing spiny or slipper lobster also would be collected on each cruise. Two cruises will be made annually in Federal waters off Georgia. Specimens will be displayed at MECA, which is located on Skidaway Island, near Savannah, GA.

DATES: The newly issued EFP is

year terms, pursuant to the Council's Charter.

DATES: Applications are due by July 31, 2002.

ADDRESSES: Application information may be obtained from Becky Shortland, Council Coordinator, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; telephone 912/598–2345; *becky.shortland@noaa.gov*. Applications should be sent to Reed Bohne, Manager, Gray's Reef National Marine Sanctuary (same address).

FOR FURTHER INFORMATION CONTACT: Contact Becky Shortland, Council Coordinator, 10 Ocean Science Circle, Savannah, GA 31410; telephone 912/598–2345; *becky.shortland@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council was established in August 1999 to provide advice and recommendations on management and protection of the Sanctuary. The Council, through its members, also serves as liaison to the community regarding sanctuary issues and represents community interests, concerns, and management needs to the Sanctuary and NOAA (National Oceanic and Atmospheric Administration, U.S. Department of Commerce). Gray's Reef NMS is one of the largest near shore live-bottom reefs off the Southeastern United States, encompassing approximately 17 square nautical miles. The area earned sanctuary designation in 1981.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number)

Dated: July 5, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–18159 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the following nine vacant seats on its Sanctuary Advisory Council (Council): Business/Commerce, Citizen-At-Large, Commercial Shipping, Conservation, Fishing, Native Hawaiian, Ocean Recreation, Tourism, and Whale Watching. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by August 15, 2002.

ADDRESSES: Application kits may be obtained on our Website *www.hihwnms.nos.noaa.gov* or from Amy Glester at the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalanianaole Hwy, Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Amy Glester at (808) 397–2655, or amy.glester@noaa.gov.

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 (the current Council has served since July 1998) to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, state, and federal governmental jurisdictions.

The Council is supported by three subcommittees: A Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 5, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 02–18158 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–30–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070202B]

New England Fishery Management Council; Public Meeting Cancellation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has cancelled the public meeting of its Monkfish Oversight Committee that was scheduled for July 22, 2002 at 9:30 a.m.

SUPPLEMENTARY INFORMATION: The initial notice was published in the **Federal Register** on July 8, 2002 (67 FR 45095). All other information contained in the previously published notice remains unchanged. The meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: July 15, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18147 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062702D]

Endangered Species; File No. 1189

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that James P. Kirk, Engineer Research and Development Center, Waterways Experiment Station, EE-A, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, has requested a modification to scientific research Permit No. 1189.

DATES: Written or telefaxed comments must be received on or before August 19, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1189 is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1189, issued April 22, 1999, (64 FR 23281) authorizes the permit holder to capture 300 shortnose sturgeon by gill net or trot line then measure, tag weigh and release them. Twenty of these may be surgically implanted with radio/sonic tags and tracked. Mortalities are not to exceed one shortnose sturgeon per year. This permit is due to expire on December 31, 2002.

The permit holder previously requested the addition of trawling to the capture methods and now requests authorization to extend the permit for two more years with the same level of take for each year. This will give the researcher time to fully take advantage of the use of trawling to capture younger shortnose sturgeon.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 12, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18148 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040402C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an exempted fishing permit.

SUMMARY: NMFS announces the issuance of an exempted fishing permit (EFP) for the University of Georgia's Marine Education Center and Aquarium (MECA)(applicant), located on Skidaway Island, GA. The EFP authorizes the applicant, with certain conditions, to collect up to 200 juvenile (undersized) individuals in the snapper-grouper fishery and coastal migratory pelagics fishery annually for public display purposes. Less than 10 non-egg-bearing spiny or slipper lobster also would be collected on each cruise. Two cruises will be made annually in Federal waters off Georgia. Specimens will be displayed at MECA, which is located on Skidaway Island, near Savannah, GA.

DATES: The newly issued EFP is effective July 1, 2002, through June 30, 2004.

ADDRESSES: Copies of the EFP are available from Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax: 727–570–5583; e-mail: *peter.eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The EFP authorizes the applicant, with certain conditions, to collect up to 200 juvenile (undersized) individuals in the snapper-grouper and coastal migratory pelagics fisheries annually for public display purposes. Less than 10 non-egg-bearing spiny or slipper lobster also would be collected on each cruise. Two cruises will be made annually in Federal waters off Georgia during the period July 1, 2002, through June 30, 2004.

The applicant, MECA, located at Skidaway Island, is a public, non-profit, educational institution established to promote an awareness, understanding, and appreciation of the diverse natural resources associated with Georgia's ocean, estuaries, rivers, streams, and other aquatic environments.

MECA provides a variety of education programs–short academic classes and summer science camps for school children, classes for college students and teachers, and programs for visiting adult groups. The saltwater aquarium exhibits local marine fishes and invertebrates, and is used as an educational tool in these program.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plan (FMP) for the Snapper-Grouper Fisheries of the South Atlantic Region, the FMP for the Coastal Migratory Pelagic Resources (Mackerels), and the FMP for the Spiny Lobster Fishery of the Gulf of Mexico

and South Atlantic. The applicant requires authorization to harvest and possess juvenile mackerels, snapper-grouper species, and spiny lobster taken from Federal waters off Georgia.

The EFP has a number of conditions concerning the harvest of prohibited species and corals, the gear that can be employed, and bycatch restrictions. The EFP requires an annual report to NMFS that lists taken specimens.

A notice of receipt of the application for this permit was published in the **Federal Register** on April 11, 2002 (67 FR 17673). The notice included a request for public comments. No public comments were received. Also, consistent with the requirements of 50 CFR 600.745(b)(3)(i), NMFS provided copies of the EFP to the State of Georgia, the South Atlantic Fishery Management Council, and the U.S. Coast Guard along with information on the EFP's effect on target species. All of the consulted entities supported the issuance of the EFP.

Failure of the permittee to comply with the terms and conditions of the EFP may be grounds for revocation, suspension, or modification of this permit, as well as civil or criminal sanctions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18152 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070802C]

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; authorized distributor permit.

SUMMARY: NMFS announces the renewal of permits to Northwest Food Strategies (NFS) authorizing this organization to distribute Pacific salmon and Pacific halibut to economically disadvantaged individuals under the prohibited species donation (PSD) program. These salmon and halibut are caught incidentally during directed groundfish trawl fishing operations off Alaska. This action is necessary to comply with provisions of the PSD program and is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: Effective August 16, 2002, through August 16, 2005.

ADDRESSES: Copies of the PSD permits for salmon and halibut may be obtained from the Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–21668, Attn: Lori Gravel-Durall.

FOR FURTHER INFORMATION CONTACT: Melanie N. Brown, 907–586–7228 or email at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). These FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679. Fishing for Pacific halibut in waters in and off Alaska is governed by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea and by regulations adopted by the International Pacific Halibut Commission (IPHC) and approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (16 U.S.C. 773–773k). Regulations of the IPHC are published as annual management measures in the **Federal Register** each year pursuant to regulations at 50 CFR 300.62.

NMFS approved Amendments 26/29 to the BSAI and the GOA FMPs, respectively, on July 10, 1996, and implemented a salmon donation program. NMFS approved the superseding Amendments 50/50 to the FMPs on May 6, 1998, and authorized the PSD program for salmon and Pacific halibut. A final rule implementing Amendments 50/50 was published in the **Federal Register** on June 12, 1998 (63 FR 32144). A full description of, and background information on, the PSD program may be found in the preamble to the proposed rules for Amendments 26/29, and 50/50 (61 FR 24750, May 16, 1996, and 63 FR 10583, March 4, 1998, respectively).

Regulations at § 679.26 authorize the voluntary distribution of Pacific salmon and Pacific halibut taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through an authorized distributor. The Regional Administrator, Alaska Region, NMFS (Regional Administrator), may select one or more tax-exempt organizations to be authorized distributors, as defined by § 679.2, based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS must announce the selection of authorized distributor(s) in the **Federal Register** and issue the selected distributor(s) PSD permits.

On June 3, 2002, the Regional Administrator received an application from NFS to renew an existing PSD permit issued to NFS on August 16, 1999 (64 FR 44502, August 16, 1999), that authorizes the voluntary distribution of Pacific salmon taken incidentally in groundfish trawl fisheries off Alaska through August 16, 2002.

On July 1, 2002, the Regional Administrator also received an application from NFS to renew an existing PSD permit issued to NFS on January 1, 2001 (66 FR 13294, March 5, 2001), that authorizes the voluntary distribution of Pacific halibut taken incidentally in groundfish trawl fisheries off Alaska and delivered to shoreside processors through December 31, 2003. Even though the halibut permit expires in 2003, the applicant requested that the halibut permit be renewed at this time. Concurrent issuance of the Pacific salmon and Pacific halibut permits would reduce permit application costs and enhance administrative efficiency because both permits would be effective for the same 3–year time period.

The Regional Administrator reviewed the applications and determined that they provide the required information and that NFS meets the requirements for an authorized distributor of Pacific salmon and Pacific halibut. As required by

§ 679.26(b)(2), the Regional Administrator based his selection on the following criteria:

1. *The number and qualifications of applicants for PSD permits.* As of the date of this notice, only NFS has submitted completed applications to distribute salmon and halibut taken incidentally in the Alaska groundfish trawl fisheries. NFS has been coordinating the distribution of salmon taken incidentally in trawl fisheries since 1993 and of halibut taken incidentally since 1998 under exempted fishing permits and the PSD program. NFS employs independent seafood quality control experts to ensure product quality and has received support from cold storage facilities and common carriers servicing the areas where salmon and halibut donations will take place.

2. *The number of harvesters and the quantity of fish that applicants can effectively administer.* For salmon, the number of processors and vessels currently participating in the PSD program administered by NSF include: 3 shoreside processors, 12 catcher/processor vessels, and 37 catcher vessels. Three shoreside processors participate in the halibut donation program. According to its application, NFS has the capacity to receive and distribute salmon and halibut from as many as 40 processors and their associated catcher vessels. In 1999, 2000, and 2001, NFS received 41,265 pounds, 90,560 pounds, and 42,166 pounds, respectively, of salmon for distribution to food bank organizations. During these same years, NFS received 4,476 pounds, 14,120 pounds, and 43,062 pounds, respectively, of halibut for distribution to food bank organizations. NMFS does not have information to convert accurately the salmon weights to numbers of salmon. Nonetheless, assuming a recovery rate of 30 percent and an average recovered weight of 8 pounds per fish, the above poundages could represent between 5,158 and 11,320 salmon.

3. *The anticipated level of salmon and halibut incidental catch based on salmon and halibut incidental catch from previous years.* During 2000 and 2001, about 65,070 and 95,073 salmon, respectively, were caught incidentally in the BSAI groundfish trawl fisheries. Another 37,700 and 21,167 salmon, respectively, were taken in the GOA trawl fisheries. During 2000 and 2001, 3,208 and 3,245 metric tons (mt) of halibut mortality, respectively, occurred in the BSAI groundfish trawl fisheries. During 2000 and 2001 in the GOA, 1,888 and 2,197 mt of halibut mortality, respectively, occurred in the groundfish trawl fisheries.

Pacific halibut bycatch amounts are constrained by an annual prohibited species catch limit in the BSAI and GOA. Future halibut bycatch levels will likely be similar to those experienced in 2000 and 2001. Salmon prohibited species bycatch limits are established for the BSAI pollock fisheries that, when attained, result in the closure of specified fishing grounds for a specified period of time. Salmon bycatch limits are not established for the GOA. In general, salmon bycatch amounts tend to be more variable between years, making accurate prediction of future incidental take amounts difficult.

4. *The potential number of vessels and processors participating in the groundfish trawl fisheries.* In 2001 about 11 shoreside processors in the BSAI and 18 shoreside processors in the GOA processed catch from trawl vessels. In 2001, approximately 181 trawl catcher vessels, 39 trawl catcher/processors, and 11 motherships and floating processors participated in the Alaska groundfish fisheries.

The PSD permits are issued to NFS for a 3–year period unless suspended or revoked. They may not be transferred, but they may be renewed following the application procedures in § 679.26.

If the authorized distributor modifies any information on the PSD permit application submitted under § 679.26(b)(1)(xi) or (b)(1)(xiii), the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

These permits may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or of other regulations in 50 CFR part 679.

Classification

This action is taken under 50 CFR § 679.26.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: July 12, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18164 Filed 7–17–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 45096.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, August 1, 2002.

CHANGES IN THE MEETING: The time of the open meeting to discuss Commodity Futures Trading Commission Roundtable on Clearing Issues has been changed from 10 a.m. to 1 p.m.–5 p.m., August 1, 2002.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–18284 Filed 7–16–02; 1:08 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.358A]

Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice extending application deadline.

SUMMARY: Under the Small, Rural School Achievement Program, we will award grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we are extending the deadline for eligible LEAs to apply for fiscal year (FY) 2002 funding under the program.

Application Deadline: All applications must be received electronically by July 24, 2002, 4:30 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: On June 7, 2002, we published in the **Federal Register** (67 FR 39375–39376) a notice establishing a July 9, 2002 deadline for LEAs to apply for funding under the program. Some LEAs have informed us that they failed to meet this deadline because of natural disasters, changes in personnel, or other circumstances. In order to afford as many eligible LEAs as possible an opportunity to receive funding under this program, we are extending the application deadline until July 24, 2002, 4:30 p.m. Eastern time.

Any eligible LEA that seeks funding under this program and that failed to submit an application by the previously established deadline may apply for funds by the deadline in this notice. An LEA that previously submitted an application by the original application deadline should not re-apply for funding in response to this notice. If you have received a PR-award number (for example, S358A025999), you have already applied for funding and should not respond to this notice.

Electronic Submission of Applications: To receive its share of FY 2002 funding, an eligible LEA must submit an electronic application to the Department by July 24, 2002, 4:30 p.m. Eastern time. Submission of an electronic application involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS).

You can access the electronic application for the Small, Rural School Achievement Program at: *http://e-grants.ed.gov.*

Once you access this site, you will receive specific instructions regarding

Dated: July 15, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18166 Filed 7–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds (202) 205–5507 (Press 3). If you use a telecommunications device for the deaf (TTD) you may call the Federal Information Relay Service (FIRS) number at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1400 *et seq.*

Dated: July 12, 2002.

Robert H. Pasternack,

instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18097 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–320–002]

Chandeleur Pipe Line Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 5, 2002,

System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS).

You can access the electronic application for the Small, Rural School Achievement Program at: *http://e-grants.ed.gov.*

Once you access this site, you will receive specific instructions regarding the information to include in your application.

The regular hours of operation of the e-Grants Web site are from 6 a.m. until 12 midnight (Washington, DC time) on Mondays, Tuesdays, Thursdays and Fridays; and from 6 a.m. until 7 p.m. on Wednesdays and Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays.

Note: On the application deadline date, the e-Grants Web site is available only until 4:30 p.m. Eastern time. Eligible LEAs are encouraged to submit their applications prior to the deadline date.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *reap@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Electronic Access To This Document: You may view this document, as well as other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: Section 6212 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Dated: July 15, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18166 Filed 7–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Report of the Findings and Recommendations of the President's Commission on Excellence in Special Education

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of request for public comment on the Report of the President's Commission on Excellence in Special Education.

SUMMARY: The Secretary of Education invites written comments from the public on the Report of the Findings and Recommendations of the President's Commission on Excellence in Special Education.

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Address all comments concerning the Commission Report to Thomas Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education.

Due to recent problems with the receipt of surface mail, we encourage you to use either the Internet or Facsimile Transmission (Fax), as follows, to submit your comments, in order to ensure that the comments are received for consideration by the Department:

Internet. Comments submitted through the Internet should be sent to the following address: *Comments@ed.gov.*

You must use the term "Commission Report on Special Education" in the subject line of your electronic message.

Facsimile Transmission (Fax). If you prefer, you may send your comments by Fax to (202) 260–0416.

If neither the Internet nor Fax are available to you, you may submit your comments via surface mail to: Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 3086, Washington DC 20202.

To ensure that we do not receive duplicate copies of comments, please submit your comments only one time—using either the Internet or Fax, or, if necessary, surface mail.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds (202) 205–5507 (Press 3). If you use a telecommunications device for the deaf (TTD) you may call the Federal Information Relay Service (FIRS) number at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2001, the President established the President's Commission on Excellence in Special Education (Commission) under Executive Order 13227. The Commission was established to recommend policies for improving the educational performance of students with disabilities, and its work was intended to inform the process for preparing for the reauthorization of the Individuals with Disabilities Education Act (IDEA).

The Commission's final report was submitted to the President on July 1, 2002, and is currently posted on the following Web site: *http://www.ed.gov/inits/commissionsboards/whspecialeducation/.*

Public comment on the Commission Report will assist the Department as it formulates its proposals for the reauthorization of the IDEA.

Invitation to Comment: We invite your comments on the Commission's findings and recommendations and on the entire Report written by the Commission.

In submitting your comments, please identify whether you are involved in special education, regular education or early intervention, as well as your role, if any, in that area (*e.g.*, parent, teacher, service provider, administrator, or researcher).

Thank you for your interest in achieving excellence in special education.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1400 *et seq.*

Dated: July 12, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–18165 Filed 7–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–330–002]

ANR Pipeline Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 1, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub Eighteenth Revised Sheet No. 19. ANR requests that this tariff sheet be made effective August 1, 2002.

ANR states that this tariff sheet is being filed in compliance with the Commission's Order issued on May 31, 2002 in the above referenced docket. ANR Pipeline Company, 99 FERC ¶ 61, 240 (2002) ("May 31st Order"). The May 31st Order required that ANR establish a separately stated charge for lost and unaccounted for gas on ANR's Link Lateral.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18097 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–336–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 2, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Third Revised Sheet No. 34 to be effective July 1, 2002.

Chandeleur asserts that the purpose of this filing is to comply with OMTR Letter Order issued June 26, 2002, in RP02–336–000.

Chandeleur states that the purpose of this filing is to comply with OMTR directives as set forth in Letter Order issued on June 26, 2002 in Docket No. RP02–336–000 wherein Chandeleur was directed to file revised sheets reflecting textual corrections as indicated on previously-submitted red-lined sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18089 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–346–001]

CMS Trunkline Gas Company, LLC; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 3, 2002, CMS Trunkline Gas Company, LLC

(Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective July 1, 2002:

Sub Original Sheet No. 130A

Trunkline states that this filing is being made to comply with the Commission's Order Accepting Tariff Sheets Subject to Condition issued June

Adjustment) of the General Terms and Conditions (GT&C) of TLNG's FERC Gas Tariff, First Revised Volume No. 1–A. The revised tariff sheet reflects a 0.12% increase to the currently effective fuel reimbursement percentage and a $0.0130 per Dt. increase for the electric power cost adjustment under Rate Schedules FTS and ITS.

TLNG states that copies of this filing are being served on all affected

Columbia Gulf states on May 24, 2002, it made a filing with the Federal Energy Regulatory Commission (Commission) seeking approval of a Rate Schedule FTS–1 negotiated rate agreement with Encana Energy Services, Inc. in Docket No. RP96–389–052. On June 26, 2002, the Commission issued an order on the filing, approving the service agreement effective November 1, 2002, and directing Columbia Gulf to

Duke Energy Hot Spring, LLC (Duke Hot Spring), Duke Energy Southaven, LLC (Duke Southaven), and Duke Energy North America, LLC (collectively, DENA) filed a Complaint against the Entergy Operating Companies and Entergy Services, Inc. (Entergy Services) (collectively, Entergy). The Complaint asserts that Entergy, in violation of its Open Access Transmission Tariff (OATT) and Commission pricing policy,

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–233–001]

Florida Gas Transmission Company; Notice of Compliance Filing

July 12, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–322–001 and RP00–577–001]

Garden Banks Gas Pipeline, LLC; Notice of Compliance Filing

July 12, 2002.

(Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective July 1, 2002:

Sub Original Sheet No. 130A

Trunkline states that this filing is being made to comply with the Commission's Order Accepting Tariff Sheets Subject to Condition issued June 27, 2002 in the subject docket.

Trunkline states that copies of this filing are being served on all affected shippers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18098 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–379–000]

CMS Trunkline LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 12, 2002.

Take notice that on July 1, 2002, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Second Revised Sheet No. 5, to be effective August 1, 2002.

(TLNG) states that this filing is made in accordance with Section 19 (Fuel Reimbursement Adjustment) and Section 20 (Electric Power Cost Adjustment) of the General Terms and Conditions (GT&C) of TLNG's FERC Gas Tariff, First Revised Volume No. 1–A. The revised tariff sheet reflects a 0.12% increase to the currently effective fuel reimbursement percentage and a $0.0130 per Dt. increase for the electric power cost adjustment under Rate Schedules FTS and ITS.

TLNG states that copies of this filing are being served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18099 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–056]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 8, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective June 26, 2002:

Second Revised Sheet No. 316

Columbia Gulf states on May 24, 2002, it made a filing with the Federal Energy Regulatory Commission (Commission) seeking approval of a Rate Schedule FTS–1 negotiated rate agreement with Encana Energy Services, Inc. in Docket No. RP96–389–052. On June 26, 2002, the Commission issued an order on the filing, approving the service agreement effective November 1, 2002, and directing Columbia Gulf to file a tariff sheet identifying the agreement as a non-conforming agreement in compliance with Section 154.112(b) of the Commission's regulations.

Columbia Gulf states that copies of its filing have been served to each parties listed on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18100 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–107–000]

Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, Duke Energy North America, LLC, Complainants, v. Entergy Services, Inc. Entergy Operating Companies, Respondents; Notice of Complaint

July 12, 2002.

Take notice that on July 10, 2002, Duke Energy Hinds, LLC (Duke Hinds), Duke Energy Hot Spring, LLC (Duke Hot Spring), Duke Energy Southaven, LLC (Duke Southaven), and Duke Energy North America, LLC (collectively, DENA) filed a Complaint against the Entergy Operating Companies and Entergy Services, Inc. (Entergy Services) (collectively, Entergy). The Complaint asserts that Entergy, in violation of its Open Access Transmission Tariff (OATT) and Commission pricing policy, has unjustly and unreasonably double-charged for transmission service by charging a rate based on both the network average embedded costs and incremental costs. Moreover, Entergy is unjustly and unreasonably failing to provide interest on the funds advanced by DENA for various network upgrades.

Copies of the Complaint have been served by e-mail, messenger, or overnight delivery on Entergy.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before July 30, 2002, will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before July 30, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18084 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–233–001]

Florida Gas Transmission Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 3, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective July 1, 2002:

Substitute Tenth Revised Sheet No. 102B

Substitute Sixth Revised Sheet No. 173

FGT states that these tariff sheets are being filed in compliance with the Commission Order issued June 27, 2002 in the Docket No. RP02–233–000. FGT states that on April 26, 2002, FGT filed revised tariff sheets to comply with Order No. 587-N (April 26 Filing). Subsequently, on June 27, 2002, the Commission issued an order on FGT's filing finding that FGT's tariff revisions generally complied with Order No. 587-N but requiring certain tariff revisions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18096 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–322–001 and RP00–577–001]

Garden Banks Gas Pipeline, LLC; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 5, 2002 Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the tariff sheets listed on Attachment A to the filing.

Garden Banks states that the purpose of this filing is to comply with the Commission's June 5, 2002 order on Garden Banks' Order No. 637 pro forma compliance filing. Garden Banks is proposing an effective date of September 1, 2002 with the understanding that, in accordance with Ordering Paragraph (B) of the June 5 Order, Garden Banks may not place the revised tariff sheets into effect before further order of the Commission.

Garden Banks states that a copy of this filing has been served to all parties on the official service list compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18085 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–467–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 12, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–410–003 and RP01–6–003

Mississippi River Transmission Corporation; Notice of Compliance Filing

tendered for filing as part of to its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on the Appendix to the filing, to become effective October 1, 2002, December 1, 2002 and July 1, 2003.

Mojave states that the tariff sheets are being filed to comply with the Commission's Order No. 637 compliance order issued June 5, 2002 in this proceeding.

20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section

the order accepting the tariff sheets subject to Transwestern filing revised tariff sheets in accordance with such order. The instant filing is made in compliance with Order No. 587–N and the June 27 Order in Docket No.RP02–236–000 issued June 27, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–467–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 5, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the pro forma tariff sheets listed in Appendix A of the filing.

Midwestern states that this filing is a revised pro forma compliance filing with the Commission's Orders No. 637, 637–A, and 637–B. Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10,156 (Feb. 25,2000); III FERC Stats. & Regs. Regulations Preambles 31,091 (Feb. 9, 2000); Order No. 637–A, 65 FR 35,706 (June 5, 2000), III FERC Stats. & Regs. Regulations Preambles 31,099 (May 19, 2000), order denying reh'g., Order 637–B, 92 FERC ¶ 61,062 (2000).

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted Shippers, interested state regulatory commissions, and all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18087 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–410–003 and RP01–8–003

Mississippi River Transmission Corporation; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 1, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, tariff sheets to comply with the policy directives of the Commission's June 5, 2002 "Order on Order No. 637 Settlement."

MRT states that the purpose of this filing is to comply with the Commission's June 5, 2002 Order in Docket Nos. RP00–410–000 and RP01–8–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18086 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–338–001]

Mojave Pipeline Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 5, 2002, Mojave Pipeline Company (Mojave) tendered for filing as part of to its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on the Appendix to the filing, to become effective October 1, 2002, December 1, 2002 and July 1, 2003.

Mojave states that the tariff sheets are being filed to comply with the Commission's Order No. 637 compliance order issued June 5, 2002 in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18094 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–077]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

July 12, 2002.

Take notice that on July 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Pittsfield Generating Company L P. Tennessee requests that the Commission grant such approval effective August 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18091 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18092 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–048]

TransColorado Gas Transmission Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Seventh Revised Sheet No. 21, Twenty-Ninth Revised Sheet No. 22 and Twentieth Revised Sheet No. 22A, to be effective July 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, and acceptance .

TransColorado states that the tendered tariff sheets propose to reviseTransColorado's Tariff to reflect four amended contracts with Sempra Energy Trading, National Fuel Marketing Company, Williams Energy Marketing & Trading Company and Dynegy Marketing & Trade. A corrected term of contract for Western Gas Resources, Inc. was also reflected. In addition, one expired contract with Rocky Mountain Natural Gas was deleted.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–236–001]

Transwestern Pipeline Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 3, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 1, 2002:

Fourth Revised Sheet No. 50
Substitute Fifth Revised Sheet No. 95B.01
Substitute Seventh Revised Sheet No. 95C
Substitute Second Revised Sheet No. 95H.01

Transwestern states that on March 11, 2002, in Docket No. RM96–1–019, the Commission issued Order No. 587–N. Transwestern made its tariff filing implementing provisions of Order 587–N on April 29, 2002, to become effective by July 1, 2002 (April 29 Filing). On June 27, 2002, the Commission issued the order accepting the tariff sheets subject to Transwestern filing revised tariff sheets in accordance with such order. The instant filing is made in compliance with Order No. 587–N and the June 27 Order in Docket No.RP02–236–000 issued June 27, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18088 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–023]

Transwestern Pipeline Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on July 8, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective June 1, 2002:

Third Revised Sheet No. 9A
First Revised Sheet No. 20D
Thirteenth Revised Sheet No. 29

Transwestern states that the above sheets are being filed in compliance with the Commission's June 28, 2002 order in Docket No. RP97–288–020. Additionally, Transwestern states it is adding the requirement by the Commission that Transwestern file the term of the negotiated rate service agreement in its tariff. On June 28, 2002, Transwestern states, it filed tariff sheets

containing information related to negotiated rate agreements with Calpine Energy Services, L.P. and Sempra Energy Trading Corp. That filing included the term on the tariff rate sheets for all current negotiated rate service agreements.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18101 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–376–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

July 12, 2002.

Take notice that on June 28, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective August 1, 2002.

Williston Basin states the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant transportation, gathering, and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18090 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–463–004, and RP00–500–002

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 12, 2002.

Take notice that on June 28, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

Williston Basin states that the revised tariff sheets are being filed to comply with the requirements of the Commission's June 17, 2002 "Order on Rehearing and Compliance Filing" in the above referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18095 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–103–000, et al.]

City of Vernon, California, et al.; Electric Rate and Corporate Regulation Filings

July 10, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. City of Vernon, California

[Docket No. EL02–103–000]

Take notice that on June 28, 2002, the City of Vernon, California (Vernon) tendered for filing changes to its Transmission Revenue Balancing Account Adjustment (TRBA Adjustment) and to Appendix I of its Transmission Owner Tariff (TO Tariff).

Vernon requests a July 1, 2002 effective date for its filing, unless, as discussed in its filing, the Commission approves and implements changes in the California Independent System Operator Corporation (ISO) FERC Electric Tariff that would provide for a different effective date for the periodic changes to Participating Transmission Owner TRBA Adjustments, as has or may be sought by the ISO.

Vernon states that copies of this filing have been served on the California Independent System Operator Corporation and the three other Participating Transmission Owners, as well as served upon all individuals on the service list in Commission Docket No. EL00–105.

Comment Date: July 26, 2002.

2. California Power Exchange Corporation

[Docket No. EL02–104–000]

Take notice that on July 3, 2002, the California Power Exchange Corporation (CalPX) filed with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order. The Petition requests that the Commission issue a declaratory order setting forth several principles governing the Reorganized PX that will emerge from CalPX's current bankruptcy proceeding. The various regulatory issues arise from two Reorganization Plans that have been filed in the Bankruptcy Court, one plan by CalPX and the other by the Official Committee of Participant Creditors.

Comment Date: July 25, 2002.

3. California Independent System Operator Corporation

[Docket No. ER99–1770–002]

Take notice that on June 21, 2002, California Independent System Operator Corporation (ISO) submitted a compliance filing to the Commission's Order "Granting in Part and Denying in Part Rehearing and Directing Compliance Filing" dated May 22, 2002 in the above-captioned docket.

Comment Date: July 22, 2002.

4. New York Independent System Operator, Inc.

[Docket Nos. ER01–3155–004, EL01–45–012 and ER01–1385–013]

Take notice that on July 2, 2002, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Mitigation Measures, Attachment H to the NYISO Market Administration and Control Area Services Tariff (Services Tariff), to comply with the Commission's Order on Compliance Filing issued on May 31, 2002, in the above-captioned docket. The NYISO has requested an effective date of June 1, 2002, for the filing.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Comment Date: July 23, 2002.

5. PacifiCorp

[Docket No. ER02–653–002]

Take notice that PacifiCorp on July 2, 2002, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations and in compliance with the Commission's orders previously issued in this proceeding, Fourth Revised Volume No. 11 (Tariff) incorporating proposed changes to its Open Access Transmission Tariff due to retail direct access in the state of Oregon and generation interconnection requirements.

Comment Date: July 23, 2002.

6. Florida Power & Light Company

[Docket Nos. ER02–700–003

Take notice that on July 2, 2002, Florida Power & Light Company (FPL) filed, pursuant to the Commission's Order issued on June 14, 2002 in Docket Nos. ER02–700–001 and ER02–700–002, a compliance filing making the required changes to the Interconnection & Operation Agreement between FPL and Okeechobee Generating Company, LLC.

Comment Date: July 23, 2002.

7. Florida Power & Light Company

[Docket Nos. ER02–766–003]

Take notice that on July 2, 2002, Florida Power & Light Company (FPL) filed, pursuant to the Federal Energy Regulatory Commission's (Commission) Order issued on June 14, 2002 in Docket Nos. ER02–766–001 and ER02–766–002, a compliance filing making the required changes to the Interconnection & Operation Agreement between FPL and DeSoto County Generating Company, LLC.

Comment Date: July 23, 2002.

8. Zion Energy, LLC

[Docket No. ER02–2178–000]

Take notice that on June 27, 2002, Zion Energy, LLC (Zion) tendered for filing an executed power sales agreement under which it will make wholesale sales of electric energy to Calpine Energy Services, L.P. at market-based rates.

Comment Date: July 22, 2002.

9. Entergy Services, Inc.

[Docket No. ER02–2243–000]

Take notice that on July 2, 2002, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an unexecuted, amended and restated Interconnection and Operating Agreement with Reliant Energy Choctaw County LLC (Reliant), and a Generator Imbalance Agreement with Reliant (the First Revised Interconnection Agreement).

Comment Date: July 23, 2002.

10. Portland General Electric Company

[Docket No. ER02–2244–000]

Take notice that on July 2, 2002, pursuant to Section 205 of the Federal Power Act, Portland General Electric Company (PGE) tendered for filing with the Federal Energy Regulatory Commission a proposed revision to FERC Rate Schedule No. 210, PGE's currently effective rate schedule for the 1964 Pacific Northwest Coordination Agreement (PNCA). PGE has filed a revised tariff sheet to reflect an extension of the term of the PNCA from June 30, 2003 to July 31, 2003. PGE requests that the Commission accept the change effective August 1, 2002.

Copies of this filing have been served upon all parties to the PNCA.

Comment Date: July 23, 2002.

11. New York State Electric & Gas Corporation

[Docket No. ER02–2245–000]

Take notice that on July 2, 2002 New York State Electric & Gas Corporation (NYSEG) tendered for filing an Agreement with Groton Electric Cooperative, Inc. (Groton), for Facilities Agreement.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer. NYSEG requests an effective date of August 1, 2002.

Copies of the filing were served upon the Village of Groton Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: July 23, 2002.

12. Mountain View Power Partners, LLC

[Docket No. ER02–2246–000]

Take notice that on July 2, 2002, Mountain View Power Partners, LLC (Mountain View) filed an Amended and Restated Master Agreement and a Confirmation entered into thereunder for power sales with PG&E Energy Trading-Power, L.P. under Mountain View's market-based rate tariff.

Comment Date: July 23, 2002.

13. Mountain View Power Partners II, LLC

[Docket No. ER02–2247–000]

Take notice that on July 2, 2002, Mountain View Power Partners II, LLC (Mountain View II) filed an Amended and Restated Master Agreement and a Confirmation entered into thereunder for power sales with PG&E Energy Trading-Power, L.P. under Mountain View II's market-based rate tariff.

Comment Date: July 23, 2002.

14. Duke Energy Corporation

[Docket No. ER02–2248–000]

Take notice that on July 2, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission (collectively, Duke), tendered for filing a Balancing Agreement (Agreement) between Duke and the City of Concord, North Carolina (Customer) under Duke's Open Access Transmission Tariff. Duke seeks an effective date of June 17, 2002 for the Agreement.

Comment Date: July 23, 2002

15. PJM Interconnection, L.L.C.

[Docket No. ER02–2249–000]

Take notice that on July 2, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy

Comment Date: July 24, 2002.

17. South Carolina Electric & Gas Company

[Docket No. ER02–2252–000]

Take notice that on July 3, 2002 South Carolina Electric & Gas Company (SCE&G) submitted for filing a service agreement between SCE&G and UBS Warburg Energy (UBS Warburg), a

20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on

structures to groundwater that has a direct hydrologic connection to waters of the United States. The permit also contains a number of specific requirements to protect water quality. In addition, the permit requires each EPO covered by the permit to develop and implement a site-specific Comprehensive Nutrient management Plan (CNMP) that includes the following elements as appropriate to the needs and circumstances of the permitted

(facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act, 33 U.S.C. section 1342, EPA proposed and solicited public comment

changes were made to the permit to clarify permit requirements.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and

Transmission Tariff. Duke seeks an effective date of June 17, 2002 for the Agreement.

Comment Date: July 23, 2002

15. PJM Interconnection, L.L.C.

[Docket No. ER02–2249–000]

Take notice that on July 2, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) the following two executed service agreements: (1) an umbrella agreement for short-term firm point-to-point transmission service with Con Edison Energy, Inc. (Con Edison); and (2) an umbrella agreement for non-firm point-to-point transmission service with Con Edison.

PJM requested a waiver of the Commission's notice regulations to permit the effective date of June 3, 2002 for the agreements, the date that the agreements were executed. Copies of this filing were served upon Con Edison, as well as the state utility regulatory commissions within the PJM region.

Comment Date: July 23, 2002.

16. Reliant Energy HL&P

[Docket No. ER02–2251–000]

Take notice that on July 3, 2002, Reliant Energy HL&P tendered for filing a revised Transmission Service Tariff for Transmission Service To, From and Over Certain Interconnections, FERC Electric Tariff, Fourth Revised Volume No. 1 (TFO Tariff). Under the revised TFO Tariff, Reliant Energy HL&P will provide transmission service to, from and over certain interconnections. These interconnections include two high-voltage, direct-current interconnections, one with Southwestern Electric Power Company and one with the Southwest Power Pool, and an alternating current interconnection at the Valley Switching Station, located in Fannin County, Texas. Reliant Energy HL&P proposes to update the current TFO Tariff to be consistent with the new structure of the electric industry in Texas and to update the rate level to be consistent with Reliant Energy HL&P's rates for transmission service within the Electric Reliability Council of Texas (ERCOT), approved by the Public Utility Commission of Texas.

Reliant Energy HL&P states that this filing has been served upon the Public Utility Commission of Texas, all customers receiving service under the current TFO Tariff, and parties in Docket Nos. TX02–2 and ER02–1654. Notice of this filing has also been sent to all registered qualified scheduling entities in ERCOT.

Comment Date: July 24, 2002.

17. South Carolina Electric & Gas Company

[Docket No. ER02–2252–000]

Take notice that on July 3, 2002 South Carolina Electric & Gas Company (SCE&G) submitted for filing a service agreement between SCE&G and UBS Warburg Energy (UBS Warburg), a service agreement between SCE&G and Progress Ventures, Inc. (Progress), and a service agreement between SCE&G and TXU Energy Trading Company (TXU) (collectively, the Agreements) under SCE&G's FERC Electric Tariff, Second Revised Volume No. 2. SCE&G has requested an effective date for the Agreements of June 4, 2002.

SCE&G states that a copy of the filing has been served on UBS Warburg, Progress, TXU and the South Carolina Public Service Commission.

Comment Date: July 24, 2002.

18. PJM Interconnection, L.L.C.

[Docket No. ER02–2253–000]

Take notice that on July 3, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing two executed interim interconnection service agreements between PJM and Liberty Generating Company, L.L.C. and two executed interconnection service agreements between PJM and Reliant Energy Seward, L.L.C. and FPL Energy MH 50, L.P. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: July 24, 2002.

19. Western Systems Power Pool, Inc.

[Docket No. ER02–2254–000]

Take notice that on July 2, 2002, the Western Systems Power Pool, Inc. (WSPP) submitted changes to the WSPP Agreement that modified certain limited commercial terms pertaining to the sale of power. WSPP seeks an effective date of September 1, 2002, for these changes.

Copies of the transmittal letter have been served on all state commissions within the United States. This filing also has been posted on the WSPP homepage (*www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: July 23, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18083 Filed 7–17–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7247–2]

Notice of Final NPDES General Permit for Egg Production Operations in New Mexico, Oklahoma, and on Indian Lands in New Mexico and Oklahoma NMG800000 and OKG800000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Issuance of NPDES general permit.

SUMMARY: EPA Region 6 today issues a National Pollutant Discharge Elimination System (NPDES) general permit regulating discharges, or potential discharges, from egg production operations (EPOs). The permit prohibits the discharge of process wastewater pollutants to waters of the United States, except when a catastrophic rainfall event causes an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain (1) all process generated wastewater resulting from the operation of the EPO, plus (2) all runoff from a 25 year, 24-hour rainfall event for the location of the EPO. The permit prohibits the discharge of process wastewater pollutants from retention or control

structures to groundwater that has a direct hydrologic connection to waters of the United States. The permit also contains a number of specific requirements to protect water quality. In addition, the permit requires each EPO covered by the permit to develop and implement a site-specific Comprehensive Nutrient management Plan (CNMP) that includes the following elements as appropriate to the needs and circumstances of the permitted facility: Animal outputs; manure handling and storage; land application of manure and wastewater; site management; record keeping; and other manure and/or wastewater utilization options.

This general permit is available for any EPO that has agreed to participate in the United Egg Producers (UEP) XL Project and has met the qualification requirements specified in the permit. The XL project requires an EPO to implement a multi-media environmental management system (EMS) which controls a range of significant environmental impacts including those not subject to regulation under the Clean Water Act, such as odor and pest control. The XL project also includes a third-party auditing component and on-farm management practices most likely to result in superior environmental performance. Each facility's EMS will be required to pass the independent third-party audit before the facility can apply for coverage under the general permit.

DATES: This permit shall become effective on August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2145. Copies of the complete final permit and Response to Comments may be obtained from Ms. Smith. The permit and Response to Comments can also be found on the Internet at *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

SUPPLEMENTARY INFORMATION:

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of egg production operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act, 33 U.S.C. section 1342, EPA proposed and solicited public comment on NPDES General Permit NMG800000 and OKG800000 at 66 FR 50646 (October 4, 2001). Region 6 received written comments from the National Resources Defense Council (NRDC), the New Mexico Environment Department (NMED) and the Pueblo of Sandia. In addition, Oklahoma Department of Environmental Quality (ODEQ) and the Pueblo of San Juan conditionally certified the permit. As a result of these comments and conditions of certification, several changes were made in the final permit.

Permit coverage was expanded to include EPOs having liquid manure handling systems and/or unlimited continuous flow watering systems, allowing such EPOs to have the opportunity to participate in the UEP XL Project. Since new source performance standards were promulgated for these liquid manure EPOs in 1974, all EPOs having liquid manure handling systems that are eligible for coverage under this permit will be considered "new sources" and subject to an environmental review under the National Environmental Policy Act (NEPA). A permit requirement has been added that these "new sources" must furnish proof that they have gone through the NEPA review and have been issued an Environmental Impact Statement or Finding of No Significant Impact by Region 6.

To comply with ODEQ's conditional certification, Oklahoma EPOs located in certain areas, such as the entire watershed of Outstanding Resource Waters or State-designated Scenic Rivers, as well as other locations specified in the certification, are not eligible for coverage under this general permit. In addition, the Pueblo of San Juan's conditions of certification, including the requirement to submit a monitoring plan in accordance with the San Juan Pueblo Water Quality Monitoring Plan, were added for EPOs located on Pueblo of San Juan lands. Since the Pueblo of Isleta denied certification, EPOs located on Pueblo of Isleta lands are not eligible for coverage under this general permit. In response to comments, several additional minor changes were made to the permit to clarify permit requirements.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Region received certification from the States of New Mexico, Oklahoma, and the Pueblos of Sandia and San Juan. The Pueblo of Isleta denied certification and the Pueblos of Acoma, Nambe, Picuris, Pojoaque, Santa Clara, and Tesuque waived certification.

B. Endangered Species Act

EPA Region 6 is currently engaged in consultation under section 7 of the Endangered Species Act with the U.S. Fish and Wildlife Service regarding this permit action. While EPA is issuing the permit at this time, EPA may decide that changes to the permit are warranted based on the results of the consultation when it is completed. A reopener provision to this effect has, therefore, been included in Part I.H of the permit.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this

general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C.

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide

indirectly acquire control of Lowry State Bank, Lowry, Minnesota.

Board of Governors of the Federal Reserve System, July 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18058 Filed 7–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or

Board of Governors of the Federal Reserve System, July 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18057 Filed 7–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Public Workshop

AGENCY: Federal Trade Commission.

ACTION: Notice of public workshop and opportunity for comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces a workshop on September 9th and 10, 2002, on "Health Care and

general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As discussed below, the permit being proposed to be reissued is not a "rule" subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Coastal Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law * * *"

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

Dated: July 2, 2002.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 02–17981 Filed 7–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Agency: Federal Election Commission.

Date & Time: Tuesday, July 23, 2002 at 10 a.m.

Place: 999 E Street, NW., Washington, DC.

Status: This meeting will be closed to the public.

Items to Be Discussed:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date & Time: Thursday, July 25, 2002 at 10 a.m.

Place: 999 E Street, NW., Washington, DC (Ninth Floor).

Status: This meeting will be opened to the public.

Items to Be Discussed:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–08: David Vitter for Congress Committee by William J. Vanderbrook, Treasurer.

Final Rules and Explanation and Justification for the Reorganization of the Contribution and Expenditure Definitions (11 CFR 100.7 and 100.8).

Administrative Matters.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–18260 Filed 7–16–02; 12:00 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 1, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Kari A. M. and Peter J. Nelson, Glenwood, Minnesota, and Paul K. Martinson, Eden Prairie, Minnesota; and Eric W. and Kirsten R.M. Nelson, Glenwood, Minnesota; to gain control of Financial Services of Lowry, Inc., Lowry, Minnesota, and thereby indirectly acquire control of Lowry State Bank, Lowry, Minnesota.

Board of Governors of the Federal Reserve System, July 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18058 Filed 7–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. KBC Bank NV, Brussels, Belgium; to become a bank holding company by acquiring 34 percent of the voting shares of Nova Ljubljanska Banka d.d., Ljubljana, Slovenia, and thereby indirectly acquiring voting shares of LBS Bank, New York, NewYork.

Board of Governors of the Federal Reserve System, July 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18057 Filed 7–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Salin Bancshares, Inc., Indianapolis, Indiana; to acquire Blue River Federal Savings Bank, Edinburgh, Indiana, and thereby engage in owning and operating a savings and loans association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–18059 Filed 7–17–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Public Workshop

AGENCY: Federal Trade Commission.

ACTION: Notice of public workshop and opportunity for comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces a workshop on September 9th and 10, 2002, on "Health Care and Competition Law and Policy." The workshop will focus on the implications of competition law and policy for health care financing and delivery. The workshop will include consideration of the impact of competition law and policy on the cost, quality, and availability of health care, and the incentives for innovation in the field. The workshop will be held at and administered by the FTC.

DATES: A two-day workshop will be held on September 9th and 10th, 2002. Any interested person may submit written comments responsive to any of the topics to be addressed; such comments should be submitted no later than September 30, 2002.

ADDRESSES: When in session, the workshop will held in Room 432 at the FTC headquarters, 600 Pennsylvania Avenue, NW., Washington, DC. All interested parties are welcome to attend.

Written comments should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments Regarding Competition Law and Policy & Health Care." Electronic submissions may be sent by electronic mail to *hcclp@ftc.gov.* Alternatively, electronic submissions may be filed on 3½ inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: David Hyman, Special Counsel, Office of General Counsel, 600 Pennsylvania Avenue, NW., Room 568, Washington, DC 20580; telephone (202) 326–2622; e-mail: *dhyman@ftc.gov.* Detailed agendas for the workshop will be available on the FTC Home Page (*http://www.ftc.gov/ogc/healthcare/index.htm*) and through Angela Wilson, Staff Assistant, at (202) 326–3190 shortly before the workshop is held.

SUPPLEMENTARY INFORMATION: Health care spending in the United States totals

approximately $1.2 trillion per year, or 14 percent of GDP. Federal, state, and local governments account for roughly 46 percent of health care spending. Health care is the second-largest budget item for many states. It is exceedingly important that competition law and policy support and encourage efficient delivery of health care products and services. Competition law and policy should also encourage innovation in the

of cases involving physician groups.[3] Other activity includes a forthcoming report from the Commission on generic drug competition, and a recent advisory opinion from the Bureau of Competition regarding "partial integration" of a physician group in the Denver area.[4] The antitrust bar and academic commentators also have raised numerous questions about the messenger model for negotiation with

interested parties will be invited to give their perspective on the following general issues: the effect of competition law and policy on the health care industry, including the cost, quality, and availability of goods and services and the incentives for innovation; the current enforcement environment; the manner in which non-price competition (including but not limited to quality of care) is factored into competition law and policy; the consistency of

Center for Environmental Health (NCEH): Increase the understanding of the relationship between environmental exposures and health effects.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 of the Public Health Service Act, [42 U.S.C. section 241], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

the National Environmental Public Health Tracking (surveillance) Program (Program Announcement 02179); preference may be given to the establishment of Centers of Excellence in different geographic areas of the United States. Matching funds are not required for this program announcement.

E. Program Requirements

In conducting activities to achieve the

health effect, and an environmental exposure and/or hazard in collaboration with environmental public health tracking program partners (see information about State and local health departments and Program Announcement 02179 in Appendix I) This will require the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will

approximately $1.2 trillion per year, or 14 percent of GDP. Federal, state, and local governments account for roughly 46 percent of health care spending. Health care is the second-largest budget item for many states. It is exceedingly important that competition law and policy support and encourage efficient delivery of health care products and services. Competition law and policy should also encourage innovation in the form of new and improved drugs, treatments, and delivery options. Developing and implementing competition policy for health care raises complex and sensitive issues.

The Commission has considerable experience in the application of competition law and policy to health care.[1] This workshop will assist the Commission by providing timely information from varying perspectives on the impact of competition law and policy on the coverage and delivery markets in health care and on consumer/patient welfare. The goal is to promote dialogue, learning, and consensus building among all interested parties (including, but not limited to, the business, consumer, government, legal, provider, insurer, and health policy/health services/health economics communities). In addition to officials from the FTC, providers, academics, consumer representatives, employers insurers, and managed care organizations will be invited to participate.

Issues arising from the application of competition law and policy to health care have tremendous significance for the U.S. economy and consumer/patient welfare. The economic significance of health care is enormous, and will become even more so in the coming years. Consumer/patient welfare is maximized by a health care system that efficiently delivers to Americans the services they desire.

The Commission has an important role to play in this regard, through its dual areas of regulatory oversight of competition and consumer protection. Recent enforcement actions include several cases involving the pharmaceutical industry,[2] and a number of cases involving physician groups.[3] Other activity includes a forthcoming report from the Commission on generic drug competition, and a recent advisory opinion from the Bureau of Competition regarding "partial integration" of a physician group in the Denver area.[4] The antitrust bar and academic commentators also have raised numerous questions about the messenger model for negotiation with payers, "virtual" integration of physician groups, and the future direction of competition law and policy in an evolving health care market.

Antitrust analysis traditionally has focused on restrictions to price competition. Competition routinely takes place, however, on both price and non-price parameters. Some have suggested that competition policy has given insufficient weight to non-price competition when analyzing particular transactions. Others have argued that competition policy must co-exist with other complicated laws and policies, and that the multitude of statutory commands sends inconsistent signals to providers who are simply trying to obey the law.

The application of competition law and policy to health care raises complex issues. These issues likely will become even more significant in the coming years, as health care accounts for an increasing share of GDP and of federal, state, and local budgets. Thus, a workshop to explore these issues is timely. the workshop is intended to further fact gathering, learning, dialogue, and discussion among the affected parties, and result in a greater understanding of and consensus about the approaches to policy in these areas that are most likely to benefit patients/consumers.

The workshop on September 9th and 10th, 2002, will provide a "snapshot" of the coverage and delivery markets, and review the results of an empirical study of antitrust litigation during the past fifteen years, and the Commission's recent activity in the area. A variety of interested parties will be invited to give their perspective on the following general issues: the effect of competition law and policy on the health care industry, including the cost, quality, and availability of goods and services and the incentives for innovation; the current enforcement environment; the manner in which non-price competition (including but not limited to quality of care) is factored into competition law and policy; the consistency of competition law and policy with the requirements and incentives created by other federal and state laws and policies; and whether the 1996 Statements of Antitrust Enforcement Policy in Health Care joint issued by the Commission and the Department of Justice need to be updated. This list is not exhaustive, and parties submitting written comments do not have to address each issue.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18115 Filed 7–17–02; 8:45 am]

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[1] *See, e.g.*, Health Care Services and Products Division, FTC Antitrust Actions in Health Care Services and Products, *http://www.ftc.gov/bc/hcindex/hcupdate020118.pdf*.

[2] See, e.g., Schering Plough Corp., Dkt No. 9297 (June 27, 2002) (Initial Decision) (available at *http://www.ftc.gov/os/caselist/d9297.htm*) (claims resolved as to American Home Products with a consent order on Apr. 2, 2002); Biovail Corp. (consent order accepted for public comment, Apr. 23, 2002); Hoechst Marion Roussel, Inc., Dkt. No. 9293 (May 8, 2001) (consent order); Abbott Laboratories, No. C–3945 (May 22, 2000) (consent order) and Geneva Pharmaceuticals, Inc., No. C–3946 (May 22, 2000) (consent order); FTC v. Mylan Laboratories et al., (D.D.C., filed Dec. 22, 1998; amended complaint filed Feb. 8, 1999) Civ. No. 1:98CV031149 (*http://www.ftc.gov/os/1999/9902/mylanamencmp.htm*).

[3] See, e.g., Obstetrics and Gynecology Medical Corporation of Napa Valley, No. C–4046 (May 14, 2002) (consent order); Physician Integrated Services of Denver Inc., (consent order accepted for public comment, May 13, 2002); Aurora Associated Primary Care Physicians, L.L.C., (consent order accepted for public comment, May 13, 2002).

[4] Staff Advisory Opinion Re MedSouth, Inc., reflected in letter dated February 19, 2002, from Jeffrey W. Brennan, Assistant Director, Bureau of Competition, to John J. Miles, Ober, Kaler, Grimes & Shiver, *http://www.ftc.gov/bc/adopa/medsouth.htm*.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02180]

Centers of Excellence for Environmental Public Health Tracking; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to support Centers of Excellence for Environmental Public Health Tracking. This program addresses the "Healthy People 2010" focus areas of Environmental Health and Public Health Infrastructure.

The purpose of the program is to provide expertise and support to State and local health departments in (1) the development and utilization of data from State and national environmental public health tracking (surveillance) networks and (2) the investigation of the potential links between health effects and the environment.

Additional information about the National Environmental Public Health Tracking (surveillance) Network is provided in Appendix I.

Measurable outcomes of the program will be in alignment with the following performance goal for the National

Center for Environmental Health (NCEH): Increase the understanding of the relationship between environmental exposures and health effects.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 of the Public Health Service Act, [42 U.S.C. section 241], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Assistance will be provided only to United States Schools of Public Health accredited by the Council on Education of Public Health that are associated with or have access to programs in environmental epidemiology, environmental sciences, health education, health communication, clinical medicine, and medical informatics. Eligibility is limited to these applicants because they provide (1) the technical expertise in the wide range of disciplines needed to further develop the theoretical and scientific base for environmental public health tracking (surveillance) and develop and test for new methodology essential to support State and local programs; and (2) a training ground for the nation's future environmental public health workforce. This wide range of disciplines and expertise is often unavailable or difficult to access by State or local public health agencies, yet will be required for an environmental public health tracking network to fulfill all the critical functions of a public health surveillance system.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $2,000,000 is available in FY 2002 to fund approximately three awards. It is expected that the average award will be $650,000, ranging from $550,000 to $750,000. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

These Centers will serve as sources of expertise for recipients of funding for the National Environmental Public Health Tracking (surveillance) Program (Program Announcement 02179); preference may be given to the establishment of Centers of Excellence in different geographic areas of the United States. Matching funds are not required for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement a work plan to address recipient activities 1.b through 1.j.

b. Attend workgroups with Environmental Public Health Tracking (surveillance) Program partners to develop standardized data definitions; examine the availability and applicability of existing data standards and data exchange messages (Industry standards include, but are not limited to the Health Level Seven (HL7) Reference Information Model and its vocabularies.); define new data specifications based on these standards as needed in collaboration with national standards setting organizations; define a logical data model and data exchange messages for implementing the Environmental Public Health Tracking (surveillance) Network; and set standards for completeness, timeliness, and quality for the Statewide and National Environmental Public Health Tracking (surveillance) Network.

c. Evaluate current surveillance methodology and develop innovative, cost-effective data collection strategies (including consideration of non-traditional data sources) that State and local health departments can use to obtain valid, high quality data on environmental health effects, exposures, and hazards.

d. Develop data linkage methods for combined analysis of health and environmental data that could be utilized by State and local environmental public health programs in building an environmental public health tracking (surveillance) network.

e. Develop statistical algorithms for State and local environmental public health programs to analyze trends and detect patterns of health effects occurrence, population exposure, or hazard levels in the environment that may indicate a problem.

f. Conduct an epidemiology study examining the relationship between a health effect, and an environmental exposure and/or hazard in collaboration with environmental public health tracking program partners (see information about State and local health departments and Program Announcement 02179 in Appendix I) This will require the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will initially review and approve the protocol with a minimum of an annual review until the research project is completed.

g. Examine the feasibility of using the Environmental Public Health Indicators (EPHI) Project (see list of other selected references in Appendix I) for surveillance in collaboration with State and local health departments participating in the National Environmental Public Health Tracking Program (Program Announcement 02179—see Appendix I). The applicant should support State/local health departments in determining how proposed EPHI fit into identified State and local priorities, examining whether the proposed EPHI are realistic in terms of available data and integration of these data, assessing whether the selected measures could be useful for State or local program and policy planning, and determining the accuracy of selected measures for community health assessment.

h. Communicate project accomplishments, barriers, and lessons learned with Environmental Public Health Tracking (surveillance) Program partners, and other critical stakeholders by attending stakeholders meetings and quarterly conference calls, and by posting information and query responses to an environmental public health tracking (surveillance) Web site.

i. Provide support to State and local health departments participating in the National Environmental Public Health Tracking Program (Program Announcement 02179—see Appendix I) by developing, disseminating, and evaluating communication strategies for health effect, exposure, and hazard information from an environmental public health tracking (surveillance) network that take into account risk perception differences among various audiences.

j. In collaboration with State and local health departments participating in the National Environmental Public Health Tracking Program, develop training tools and provide training to State and local partners. Training activities should focus on two of the following areas: public health surveillance methods,

environmental assessment, biomonitoring, evaluation, or risk communication.

2. CDC Activities

a. Foster relationships among Centers of Excellence and State and local health departments by assisting in the sharing of information through an environmental public health tracking (surveillance) web site, an annual

F. Content

Pre-application conference call: Two pre-application conference calls will be scheduled for interested applicants. These will occur August 1, 2002 from 3–5 p.m. (eastern standard time [EST]) and August 2, 2002 from 1–3 p.m. (EST). The purpose of these calls is to review program requirements and to respond to any questions regarding the program announcement. Two calls are scheduled

included. All materials should be provided in an unbound, one-sided, print format, suitable for photocopying.

The applicant should provide a detailed description of first-year objectives and activities and briefly describe future-year objectives and activities. The application must contain the following:

1. Executive Summary (Two Pages, Double-spaced)

announcement. Forms may not be submitted electronically.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications

submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Methods (35 points)

The extent to which the applicant has clearly described the proposed methods to carrying out the various activities listed under section E. This includes a

health effect surveillance, the measuring or estimating of exposures, and environmental hazard information systems. The extent to which the applicant recognizes the utility, complexity, and challenges relating to the development of a state-wide and national environmental public health tracking (surveillance) network with direct electronic reporting and linkage capabilities, analysis requirements, impact on public health infrastructure

environmental assessment, biomonitoring, evaluation, or risk communication.

2. CDC Activities

a. Foster relationships among Centers of Excellence and State and local health departments by assisting in the sharing of information through an environmental public health tracking (surveillance) web site, an annual stakeholders meeting, and direct interactions.

b. Convene workgroups to: develop standardized data definitions; examine the availability and applicability of existing data standards and data exchange messages (Industry standards include, but are not limited to the HL7 Reference Information Model and its vocabularies); define new data specifications based on these standards as needed in collaboration with national standards setting organizations; define a logical data model and data exchange messages for implementing the Environmental Public Health Tracking (surveillance) Network; and set standards for completeness, timeliness, and quality for the Statewide and National Environmental Public Health Tracking (surveillance) Network.

c. Participate in designing, developing, and evaluating surveillance methods.

d. Participate in the development of statistical algorithms to analyze trends and detect patterns of health effects occurrence, population exposure, or hazard levels in the environment that may indicate a problem.

e. Participate in the protocol development, study implementation, data analysis, interpretation of results, and dissemination of epidemiology study findings including report writing and oral presentation.

f. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will initially review and approve the protocol with a minimum of annual review until the research project is completed.

g. Provide assistance in development of training materials on surveillance methods, evaluation, risk communication, and other topics for State and local agencies and other Environmental Public Health Tracking (surveillance) Program partners.

h. Assist with dissemination of information about strategies for communicating health effect, exposure, and hazard information from an environmental public health tracking (surveillance) network.

F. Content

Pre-application conference call: Two pre-application conference calls will be scheduled for interested applicants. These will occur August 1, 2002 from 3–5 p.m. (eastern standard time [EST]) and August 2, 2002 from 1–3 p.m. (EST). The purpose of these calls is to review program requirements and to respond to any questions regarding the program announcement. Two calls are scheduled in order to provide all applicants the opportunity to gather information and ask questions. It is not necessary to participate in both calls, though applicants are welcome to do so if they desire. To register to participate, applicants should send an e-mail or write Regina Seider at *rseider@cdc.gov <mailto:rseider@cdc.gov>* or CDC/NCEH/EHHE, 1600 Clifton Rd. NE, MS–E19, Atlanta GA 30333.

Letter of Intent (LOI)

A LOI is required for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced fonts. Your letter of intent will be used to enable CDC to determine level of interest in the announcement and estimate potential review workload, and should include the following information:

1. Program announcement number and title
2. Name, organization, address, telephone number, fax number, and e-mail address of the Principal Investigator(s)
3. List of key collaborators and affiliations.

Applications

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one side, with one-inch margins, and unreduced fonts.

Applicants should also submit appendices including curriculum vitae, letters of support, and other similar supporting information. The total appendices should not exceed 25 pages, printed on one side.

All pages in the application should be clearly numbered and a complete index to the application and any appendices included. All materials should be provided in an unbound, one-sided, print format, suitable for photocopying.

The applicant should provide a detailed description of first-year objectives and activities and briefly describe future-year objectives and activities. The application must contain the following:

1. Executive Summary (Two Pages, Double-spaced)

Provide a clear concise summary of the application, which includes a description of the activities to be undertaken.

2. The Narrative

Should specifically address the "Program Requirements" and should contain the following sections:

a. Understanding of the problem
b. Collaborative relationships
c. Goals and objectives
d. Methods
e. Project management and staffing

3. Budget and Justification

a. Provide a detailed budget and line-item justification of all proposed operating expenses consistent with the program activities described in this announcement.

b. The annual budget should include funding for three staff members to make three trips to Atlanta, for three days for stakeholders meetings or workshops and one two-day trip to Atlanta for a reverse site visit.

c. If applicable, applicants requesting monies for contracts should include the name of the person or firm to be contracted, a description of services to be performed, an itemized and detailed budget including justification, the period of performance and the method of selection.

d. Funding levels for years two to three should be estimated.

G. Submission and Deadline

Letter of Intent (LOI)

On or before August 5, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. Forms may also be obtained by contacting the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Forms may not be submitted electronically.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Executive Summary
Narrative
Appendices

The application must be received by 5 p.m. EST, August 22, 2002. Submit the application to: Technical Information Management Section, PA 02180, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 p.m. EST on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Methods (35 points)

The extent to which the applicant has clearly described the proposed methods to carrying out the various activities listed under section E. This includes a description of the rationale for selection of specific approaches and sound scientific methods for conducting surveillance, evaluations, and other activities. The extent to which the applicant describes methods to evaluate training, communications strategies, the impact of new surveillance and linkage methods and statistical algorithms on State/local health departments' ability to implement environmental public health tracking (surveillance).

In order to address CDC policy requirements, the following should also be addressed: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants includes the process of establishing partnerships with community or communities and recognition of mutual benefits.

2. Project Management and Staffing (20 points)

The extent to which roles and responsibilities are clearly delineated and management of coordination across various groups described. The extent to which the proposed staffing and staff experience and backgrounds as they relate to their roles and responsibilities indicate that the applicant is capable of carrying out this program. The resumes\curricula vita of key personnel should be included in the application.

3. Understanding of the Problem (15 points)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of issues relating to health effect surveillance, the measuring or estimating of exposures, and environmental hazard information systems. The extent to which the applicant recognizes the utility, complexity, and challenges relating to the development of a state-wide and national environmental public health tracking (surveillance) network with direct electronic reporting and linkage capabilities, analysis requirements, impact on public health infrastructure and capacity, and the importance of information dissemination.

4. Collaborative Relationships (15 points)

The extent to which the applicant identifies key partners to carry out proposed activities and provides evidence that these organizations/agencies support and will be actively involved in carrying out the project. Letters of support from appropriate personnel, such as department chairs, must be provided if applicant is utilizing affiliate institutions to provide expertise in environmental epidemiology, environmental sciences, health education, health communication, clinical medicine, or medical informatics. The extent to which the applicant describes past and current collaborations with State and local health and environmental agencies, professional organizations, community-based organizations, and other relevant organizations will be considered.

5. Goals and Objectives: (15 points)

The extent to which the applicant clearly describes (a) short- and long-term goals; (b) project objectives that are specific, measurable and realistic; (c) an implementation schedule that is reasonable and appropriately reflects major steps in recipient activities.

6. Budget and Justification (Not Scored)

The extent to which the proposal demonstrates appropriateness and justification of the requested budget relative to the activities proposed.

7. Human Subjects Protection (Not Scored)

The extent to which the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable).

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness). The progress report shall include the following items:

a. A brief project description

Announcement, PA 02180, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2724, Email address: *srowell@cdc.gov*.

For program technical assistance, contact: Amanda Niskar, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Rd, NE., MS–E19, Atlanta, GA 30338, Telephone

with known or possible associations with environmental exposures. Health effects may include: birth defects, developmental disabilities, asthma, chronic respiratory disease, cancer, and neurological diseases. This list is not comprehensive. Additional environmentally related health effects targeted by "Healthy People 2010" and of interest to this program include health effects such as lead poisoning, pesticide poisoning, methemoglobinemia, and carbon monoxide poisoning.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02184]

Monitoring Trends in Prevalence of Sexually Transmitted Disease (STD), Tuberculosis (TB), and Human Immunodeficiency Virus (HIV) Risk

data with human exposure data and environmental hazard data; and (2) to increase environmental public health capacity at the local, state, and national level.

This program deals specifically with chronic diseases and other non-infectious health effects that may be related to exposure to chemicals, physical agents, biomechanical stressors, or biologic toxins in the environment. Appendix I provides

collaboration across categorical programs. For example, currently all states have received funding from CDC to move toward implementation of the National Electronic Disease Surveillance System (NEDSS) (which to date has focused on infectious disease reporting) and bioterrorism preparedness. Appendix II contains the Internet addresses for NEDSS, the Public Health Information Technology Functions and Specifications (for Emergency

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness). The progress report shall include the following items:

a. A brief project description

b. A comparison of actual accomplishments to the goals and objectives established for the period

c. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity for the project

d. A financial summary of obligated dollars to date as a percentage of total available dollars

e. Other pertinent information (i.e. curriculum vitae for new key personnel).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Home Page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Sonia Rowell, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement, PA 02180, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2724, Email address: *srowell@cdc.gov.*

For program technical assistance, contact: Amanda Niskar, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Rd, NE., MS–E19, Atlanta, GA 30338, Telephone number: (404) 498–1371, Email address: *aniskar@cdc.gov.*

Dated: July 11, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

Appendix I

National Environmental Public Health Tracking Network

Public health surveillance is the ongoing, systematic collection, analysis, interpretation, and dissemination of data on health effects in a population for the purpose of preventing and controlling morbidity and mortality. An environmental public health tracking (surveillance) network allows linkage and reporting of data available from health effects surveillance data, exposure data (measures of contaminants in the human body), and environmental hazard data (measures of contaminants in the environment). A coordinated and integrated environmental public health tracking (surveillance) network will (1) provide information on levels of contaminants in the environment from available monitoring data, levels of actual exposure in the population, health effect rates, and spatial and temporal trends; (2) facilitate research on possible associations between health effects and exposures/hazards; and (3) measure the impact of interventions such as regulatory and prevention strategies. With this information, federal, state and local agencies will be better prepared to develop and evaluate effective public health action to prevent or control diseases across our nation. Thacker *et al.*, 1996, have provided additional information about environmental public health tracking (surveillance).

In fiscal year 2002, Congress appropriated funds to the Centers for Disease Control and Prevention (CDC) for "development and implementation of a nationwide environmental public health tracking network and capacity development in environmental health in state and local health departments". Toward this end, CDC is currently soliciting proposals from State and local health departments. Applicants for funding as Centers for Excellence in Environmental Public Health Tracking should refer to Program Announcement 02179 for additional information about the program activities to be conducted by State and local health departments. (Internet address provided in reference list)

It is important to note that the national Environmental Public Health Tracking Program deals specifically with non-infectious diseases and other health effects with known or possible associations with environmental exposures. Health effects may include: birth defects, developmental disabilities, asthma, chronic respiratory disease, cancer, and neurological diseases. This list is not comprehensive. Additional environmentally related health effects targeted by "Healthy People 2010" and of interest to this program include health effects such as lead poisoning, pesticide poisoning, methemoglobinemia, and carbon monoxide poisoning.

The applicant should also refer to "Healthy People 2010" for a list of targeted environmental factors included in the Environmental Health focus area. These include objectives for reducing human exposure to pesticides, heavy metals, persistent chemicals (such as dioxin), organochlorine compounds, air contaminants (outdoor and indoor), and other environmental contaminants.

References

- Thacker SB, Stroup DF, Parrish RG, Anderson HA. Surveillance in Environmental Public Health: Issues, Systems, and Sources. American Journal of Public Health, 86(5):633–8; 1996.
- "Healthy People 2010": *http://www.health.gov/healthypeople.*
- National Environmental Public Health Tracking Program, Program Announcement 02179: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*
- PEW Environmental Health Commission Reports: "America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network": *http://healthyamericans.org/resources/reports/healthgap.pdf.*

Other Selected References

- CDC Environmental Public Health Indicators Project: *http://www.cdc.gov/nceh/tracking/indicators.htm.*
- CDC National Electronic Disease Surveillance System (NEDSS): *http://www.cdc.gov/nedss.*
- CDC Updated Guidelines for Evaluating Public Health Surveillance Systems: *http://www.cdc.gov/mmwr/pdf/rr/rr5013.pdf.*
- Environmental Protection Agency's National Environmental Information Exchange Network: The Information Integration Initiative: *http://www.epa.gov/oei/iiilive.htm.*

—National Environmental Information Exchange Grant Program: *http://www.epa.gov/neengprg.*
—State/EPA Information Management Workgroup: *http://www.epa.gov/oei/imwg/.*
—Environmental Data Standards Council: *http://www.epa.gov/edsc.*

- Public Health Data Conceptual Model: *http://www.cdc.gov/nedss/DataModels/index.html.*
- Public Health Information Technology Functions and Specifications (for Emergency Preparedness and Bioterrorism): *http://www.cdc.gov/cic/functions-specs.*

[FR Doc. 02–18110 Filed 7–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02184]

Monitoring Trends in Prevalence of Sexually Transmitted Disease (STD), Tuberculosis (TB), and Human Immunodeficiency Virus (HIV) Risk Behaviors Among Men Who Have Sex With Men (MSM): Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year (FY) 2002 funds for a competitive cooperative agreement for Monitoring Trends in Prevalence of STD, TB, and HIV Risk Behaviors among (MSM) in facilities providing health services to this population was published on July 9, 2002, Volume 67, Number 131, pages 45520–45523. The notice is amended as follows: On page 45521, column 3, Paragraph "F. Content", Letter of Intent (LOI), and on page 45522, column 1, Paragraph "G. Submission and Deadline", the following change is made: An (LOI) is not required for this program.

Dated: July 11, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18108 Filed 7–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02179]

National Environmental Public Health Tracking Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to support development of a National Environmental Public Health Tracking (Surveillance) Program. This program addresses the "Healthy People 2010" focus areas of Environmental Health and Public Health Infrastructure.

The purpose of this program is to (1) develop plans and components of a standards-based, coordinated, and integrated environmental public health tracking (surveillance) system at the state and national level that allows linkage and reporting of health effects data with human exposure data and environmental hazard data; and (2) to increase environmental public health capacity at the local, state, and national level.

This program deals specifically with chronic diseases and other non-infectious health effects that may be related to exposure to chemicals, physical agents, biomechanical stressors, or biologic toxins in the environment. Appendix I provides background information about environmental public health tracking (surveillance) and further describes the health effects and environmental factors targeted by this program. The need for an environmental public health tracking (surveillance) network was well documented by the Pew Environmental Health Commission in its report "America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network". The Internet address of this report is available in Appendix II.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Increase the understanding of the relationship between environmental exposures and health effects.

This program announcement contains two separate projects, Part A and Part B, in order to accommodate differences in existing environmental public health capacity and infrastructure at the state and local level. The applicant can only apply for Part A or Part B, but not both. These projects will move the nation toward improved environmental public health surveillance and response capacity for development of the National Environmental Public Health Tracking (surveillance) Network:

Part A: Planning, capacity building, and developing or enhancing health effect, exposure, and/or hazard surveillance systems that can be integrated into a statewide and national environmental public health tracking (surveillance) network.

Part B: Developing a blueprint for environmental public health tracking, developing or enhancing exposure and/or health effect surveillance systems and conducting projects to (1) demonstrate feasibility, (2) develop surveillance methods, and (3) assess the utility of linking and reporting health effect data with exposure and/or hazard data for the purpose of guiding appropriate public health action or practice.

Both the CDC and the Environmental Protection Agency (EPA) have other large ongoing efforts to develop, standardize, and promote electronic reporting of data and to improve collaboration across categorical programs. For example, currently all states have received funding from CDC to move toward implementation of the National Electronic Disease Surveillance System (NEDSS) (which to date has focused on infectious disease reporting) and bioterrorism preparedness. Appendix II contains the Internet addresses for NEDSS, the Public Health Information Technology Functions and Specifications (for Emergency Preparedness and Bioterrorism), and a list of state NEDSS coordinators. The Internet addresses for information on EPA's National Environmental Information Exchange Network are also provided in Appendix II.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 of the Public Health Service Act, [42 U.S.C. 241], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia. In consultation with States, assistance may be provided to the local health departments of Chicago IL, Houston TX, New York City, NY, Philadelphia PA, and Los Angeles County CA. Competition is limited to accommodate legislative appropriations language, which specifies capacity development of environmental health at state and local health departments.

These state/local health departments are invited to apply under either Part A or Part B of this announcement, but not both. Only one application will be accepted from eligible applicants.

The intent of this announcement is to build partnerships between and within environmental and health agencies/departments/staff, applicants under both Part A and Part B must demonstrate that their program will be a collaborative effort by including the following with their application:

1. A letter of intent signed by both the state (or local) Secretary/Director of Health or equivalent and the state (or local) Secretary/Director of Environmental Quality/Protection/Natural Resources or the equivalent agency/department confirming that partnerships exist or will be developed:

a. Across Health and Environmental Agencies/Departments. (Evidence of a partnership may be a confirmation of an existing memorandum of understanding (MOU) between Health and Environment that covers activities related to this program announcement).

b. Between appropriate organizational units within each Agency/Department.

c. If Health and Environment are organized under one State/local agency/department, a letter of intent from the Secretary/Director or equivalent of that agency/department confirming that partnerships exists or will be developed across appropriate organizational units within the Agency/Department is required.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

d. Establish a planning consortium consisting of technical experts, community members and other key stakeholders who can provide substantive recommendations on planning and implementing a coordinated and integrated environmental public health tracking (surveillance) network. This group should meet at least quarterly to assist in planning.

public health tracking logic model(s) as addressed in Activity m. below. These will follow data and technical specifications derived from industry standards for data types, code sets and vocabularies, messages for data exchange, and technology systems standards as available.

k. Discuss project accomplishments, barriers, and lessons learned with Environmental Public Health Tracking (surveillance) Program partners and policy planning, and determine the accuracy of selected measures for community health assessment.

Part B

a. Develop and implement a work plan to address recipient activities 1.b through 1.o for Part B funding.

b. Prioritize state and local needs related to tracking of health effects, exposures, and hazards with the goal of incorporating these data into an

health effects, exposures, and/or hazards. This effort can supplement existing activities, but funding associated with this effort should not supplant existing funding.

h. Develop a plan for staged development of a standards-based environmental public health tracking (surveillance) network that allows direct electronic data reporting and linkage within and across health effect,

b. Between appropriate organizational units within each Agency/Department.

c. If Health and Environment are organized under one State/local agency/department, a letter of intent from the Secretary/Director or equivalent of that agency/department confirming that partnerships exists or will be developed across appropriate organizational units within the Agency/Department is required.

2. Designation of public health liaison within the environmental agency/department and an environmental liaison within the health agency/department.

3. Eligible local health departments must provide assurances that activities related to this program will be coordinated with the State Health Department.

4. If the applicant is a bona fide agent of the State/local health department, a letter from the State/local health department designating the applicant as such must be provided.

These documents should be placed directly behind the face page (first page) of your application. Applications that fail to submit evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Part A

Approximately $6,000,000 is available in FY 2002 to fund approximately ten awards. It is expected that the average award will be $500,000, ranging from $400,000 to $600,000. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12–month budget period within a project period of up to three years. Funding estimates may change.

Part B

Approximately $4,000,000 is available in FY 2002 to fund approximately five awards. It is expected that the average award will be $700,000, ranging from $600,000 to $800,000. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

Part A

a. Develop and implement a work plan to address recipient activities 1.b through 1.o for Part A funding.

b. Evaluate existing environmental public health capacity and health surveillance and environmental monitoring and biomonitoring activities.

(1) Assess the capacity of health/environmental staff to analyze and build an environmental public health tracking network and to respond to potential environmental health problems. Identify training needs.

(2) Develop a comprehensive inventory of existing hazard and exposure monitoring and non-infectious health effect surveillance systems maintained at the state and local level.

(a) Describe the purpose and operation of the system and the resources used to operate the system as discussed in CDC's Updated Guidelines for Evaluating Public Health Surveillance Systems (Internet address for this document is listed in Appendix II) and refer to Appendix IV for Guidance for Preliminary Inventory and Future Assessment of Health Surveillance and Environmental Monitoring Information Systems.

(b) Describe how these systems have been used to affect public health action and policy.

(c) Evaluate existing organization, personnel, and technical infrastructure against CDC's Public Health Information Technology Functions and Specifications (for Emergency Preparedness and Bioterrorism) and NEDSS and EPA National Environmental Information Exchange Network architecture and specifications, and identify issues to be addressed for integrating/linking data and establishing the Environmental Public Health Tracking (surveillance) Network.

c. Develop partnerships with local, state, tribal, and Federal governments; health care providers; non-governmental organizations; and private for profit and nonprofit groups whose participation is critical to the success of the program. Partners should participate in the planning of a coordinated and integrated environmental public health tracking (surveillance) network.

d. Establish a planning consortium consisting of technical experts, community members and other key stakeholders who can provide substantive recommendations on planning and implementing a coordinated and integrated environmental public health tracking (surveillance) network. This group should meet at least quarterly to assist in planning.

e. Identify needs and concerns of governmental and non-governmental data users and stakeholders. Refer to the Protocol for Assessing Community Excellence in Environmental Health (PACE EH) for examples of how to generate citizen input (The PACE EH website is listed in Appendix II).

f. Prioritize state/local/other stakeholders' needs related to tracking of health effects, exposures, and hazards.

g. Examine existing state legislation and/or regulations to determine if additional authority is required to collect new data, integrate data, and share data (with appropriate security and confidentiality restrictions).

h. Develop training tools and provide training to state and local staff on surveillance methods, environmental assessment, biomonitoring, evaluation, risk communication, and other topics in collaboration with the Centers of Excellence for Environmental Public Health Tracking (see Appendix III).

i. Develop/enhance priority health effects, exposure, and/or hazard surveillance systems identified in Activity f. This effort can supplement existing activities, but funding associated with this effort should not supplant existing funding.

j. Develop a plan for staged development of a standard-based environmental public health tracking (surveillance) network that allows direct electronic data reporting and linkage within and across health effect, exposure, and hazard data and can interoperate with other public health systems. It is expected that the architecture and information technology functions and specifications used for enhancing existing data systems and developing an overall plan for the Environmental Public Health Tracking (surveillance) Network will be compatible with those being developed under other programs such as NEDSS, Bioterrorism, and EPA's National Environmental Information Exchange Network. (See Appendix II for the Internet addresses and a list of state NEDSS coordinators). The Environmental Public Health Tracking (surveillance) Network should be based on specifications and an environmental public health tracking logic model(s) as addressed in Activity m. below. These will follow data and technical specifications derived from industry standards for data types, code sets and vocabularies, messages for data exchange, and technology systems standards as available.

k. Discuss project accomplishments, barriers, and lessons learned with Environmental Public Health Tracking (surveillance) Program partners and other critical stakeholders by attending quarterly conference calls, attending meetings, and by posting information and queries to an environmental public health tracking website.

l. Develop and evaluate strategies for communicating information generated by an environmental public health tracking network and related program activities to diverse audiences.

m. Attend workgroups with Environmental Public Health Tracking (surveillance) Program partners (Appendix III) to develop standardized data definitions; examine the availability and applicability of existing data standards and data exchange messages (Industry standards include, but are not limited to the Health Level Seven (HL7) Reference Information Model and its vocabularies.); define new data specifications based on these standards as needed in collaboration with national standards setting organizations; define a logical data model and data exchange messages for implementing the Environmental Public Health Tracking (surveillance) Network; and set standards for completeness, timeliness, and quality for the Statewide and National Environmental Public Health Tracking (surveillance) Network.

n. Evaluate new/improved surveillance methods, training activities, and the impact of increased capacity on the applicant's ability to progress toward development of an integrated environmental public health tracking (surveillance) network. Refer to the Morbidity and Mortality Weekly Report titled "Framework for Program Evaluation in Public Health" (See Appendix II for website).

o. Examine the feasibility of using the Environmental Public Health Indicators (EPHI) Project for surveillance in collaboration with Centers of Excellence for Environmental Public Health Tracking (Appendix III). (See Appendix II for CDC EPHI Project website). Determine how proposed EPHIs fit into identified state and local priorities, examine whether the proposed EPHIs are realistic in terms of available data and integration of these data, assess whether the selected measures could be useful for state or local program and policy planning, and determine the accuracy of selected measures for community health assessment.

Part B

a. Develop and implement a work plan to address recipient activities 1.b through 1.o for Part B funding.

b. Prioritize state and local needs related to tracking of health effects, exposures, and hazards with the goal of incorporating these data into an environmental public health tracking (surveillance) network. This effort should take into account gaps in types of health effect surveillance, environmental exposure, and hazard information systems currently available to the applicant, the timeliness of reporting, completeness (in terms of population, facility, locales covered), data quality, technical infrastructure, compatibility with NEDSS and EPA's National Environmental Information Exchange Network, inclusion of data elements that would allow linkage to data sets, and stakeholders' needs (see Appendix IV for Guidance for Preliminary Inventory and Future Assessment of Health Surveillance and Environmental Monitoring Information Systems). The applicant may refer to (PACE EH) for examples of how to generate citizen input. (Appendix II).

c. Develop partnerships related to the development and implementation of the environmental public health tracking (surveillance) network with local, state, tribal, and Federal governments, health care providers and non-governmental organizations and other for-profit and nonprofit groups.

d. Establish a planning consortium consisting of technical experts, community members and other key stakeholders who can provide substantive recommendations on planning and implementing a coordinated and integrated environmental public health tracking (surveillance) network. This group should meet at least quarterly.

e. Examine existing state/local legislation and/or regulations to determine if additional authority is required to collect new data, integrate data, and share data (with appropriate security and confidentiality restrictions).

f. Develop training tools and provide training to state and local staff on surveillance practices, environmental assessment, biomonitoring, evaluation, and risk communication in collaboration with Centers of Excellence for Environmental Public Health Tracking (Appendix III).

g. As needed, enhance environmental public health capacity and tracking of health effects, exposures, and/or hazards. This effort can supplement existing activities, but funding associated with this effort should not supplant existing funding.

h. Develop a plan for staged development of a standards-based environmental public health tracking (surveillance) network that allows direct electronic data reporting and linkage within and across health effect, exposure, and hazard data and can interoperate with other public health systems. It is expected that the architecture and information technology functions and specifications used for enhancing existing data systems and developing an overall plan for the Environmental Public Health Tracking (surveillance) Network will be compatible with those being developed under other programs such as NEDSS, Bioterrorism, and EPA's National Environmental Information Exchange Network. (See Appendix II for the Internet addresses and a list of state NEDSS coordinators). The Environmental Public Health Tracking (surveillance) Network should be based on specifications and an environmental public health tracking logic model(s) as addressed in Activity m. These will follow data and technical specifications derived from industry standards for data types, code sets and vocabularies, messages for data exchange, and technology systems standards as available.

i. Implement a project to demonstrate (a) an approach for instituting direct electronic reporting and linkage of health effect data with exposure and/or hazard data and (b) the utility of this linked data in guiding public health policy and practice. This project should include at a minimum: one or more health effects with a possible relationship to the environment, one or more measures of human exposure, and/or one or more types of environmental hazard (as defined in section A and Appendix I). Selection of health effects/exposures/hazards should be in line with state/local priorities. Additionally, the project should include the analysis and dissemination of data in a timely manner for use in public health practice or environmental protection programs.

j. Conduct a comprehensive evaluation of this project and use lessons learned to guide/modify the applicant's plan for establishing an environmental public health tracking (surveillance) network. Refer to the Morbidity and Mortality Weekly Report titled "Framework for Program Evaluation in Public Health" (See Appendix II for website).

k. Discuss project accomplishments, barriers, and lessons learned with Environmental Public Health Tracking (surveillance) Program partners and other critical stakeholders by attending quarterly conference calls, attending meetings, and by posting information and queries to an environmental public health tracking website.

l. Develop and evaluate strategies for communicating information generated by an environmental public health tracking (surveillance) network and related program activities to diverse audiences.

m. Attend workgroups with Environmental Public Health Tracking (surveillance) Program partners to develop standardized data definitions; examine the availability and applicability of existing data standards and data exchange messages (Industry standards include, but are not limited to the HL7 Reference Information Model and its vocabularies.); define new data specifications based on these standards as needed in collaboration with national standards setting organizations; define a logical data model and data exchange messages for implementing the Environmental Public Health Tracking (surveillance) Network; and set standards for completeness, timeliness, and quality for the Statewide and National Environmental Public Health Tracking (surveillance) Network.

n. Examine the feasibility of using EPHI Project for surveillance in collaboration with Centers of Excellence for Environmental Public Health Tracking (Appendix III). (*See* Appendix II for CDC EPHI Project website). Determine how proposed EPHIs fit into identified state and local priorities, examine whether the proposed EPHIs are realistic in terms of available data and integration of these data, assess whether the selected measures could be useful for state or local program and policy planning, and determine the accuracy of selected measures for community health assessment.

o. Collaborate as needed with environmental public health tracking partners (Appendix III) on epidemiology studies.

2. CDC Activities

a. Provide technical assistance in work plan development, and the design and implementation of program activities, including analysis and dissemination of data.

b. Provide coordination between and among recipient organizations by assisting in the sharing of information through an environmental public health tracking website, an annual stakeholders meeting, and direct interactions.

c. Coordinate activities at the national level between Centers, Institutes and Offices at CDC and the Agency for Toxic Substances and Disease Registry and with other Federal Agencies such as the Environmental Protection Agency.

d. Ensure involvement of other key governmental and non-governmental partners in planning and development of the Environmental Public Health Tracking (surveillance) Network. These may include the Council of State and Territorial Epidemiologists, the Environmental Council of States, the Association of Public Health Laboratories, the Association of State and Territorial Health Officials, the National Association of City and County Health Officers, the National Association of Health Data Organizations, the American Lung Association, the American Medical Association, the American Water Works Association, Chronic Disease Directors, the North American Association of Central Cancer Registries, the National Birth Defects Prevention Network, and others.

e. Convene workgroups to develop standardized data definitions; examine the availability and applicability of existing data standards and data exchange messages (Industry standards include, but are not limited to the HL7 Reference Information Model and its vocabularies.); define new data specifications based on these standards as needed in collaboration with national standards setting organizations; define a logical data model and data exchange messages for implementing the Environmental Public Health Tracking (surveillance) Network; and set standards for completeness, timeliness, and quality for the Statewide and National Environmental Public Health Tracking (surveillance) Network.

f. Provide assistance in development of training materials on surveillance methods, evaluation, risk communication, and other topics.

g. Participate in the protocol development, study implementation, data analysis, interpretation of results, and dissemination of epidemiology study findings including report writing and oral presentation.

F. Content

Pre-Application Conference Call

Two pre-application conference calls are scheduled for interested applicants. These will occur August 1, 2002, from 1 to 3 p.m. (eastern standard time [EST]) and August 2, 2002, from 3 to 5 p.m. (EST). The purpose of these calls is to discuss program requirements and to respond to any questions regarding the program announcement. Two calls are scheduled in order to provide all applicants the opportunity to gather information and ask questions. It is not necessary to participate in both calls, though applicants are welcome to do so if they desire. To confirm your intent to participate and receive a meeting agenda and call-in instructions, applicants should send an e-mail or write Regina Seider at rseider@cdc.gov or 1600 Clifton Rd., NE, MS E19, Atlanta, GA 30333.

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced fonts. Your letter of intent will be used to enable CDC to determine level of interest in the announcement and estimate potential review workload, and should include the following information:

a. Number and title of the announcement.

b. Name, organization, address, telephone number, fax number, and e-mail address of the Principal Investigator(s).

c. Indication as to whether the applicant will be applying for Part A or Part B.

d. If applying for Part B, applicants should include a very brief description of the data linkage demonstration project being proposed.

Applications

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 pages, double-spaced, printed on one side, with one-inch margins, and unreduced fonts.

Applicants should also submit appendices including curriculum vitae, letters of support, organizational charts, and other similar supporting information. The total appendices should not exceed 25 pages, printed on one side.

All pages in the application should be clearly numbered and a complete index to the application and any appendices included. All materials should be provided in an unbound, one-sided, with one-inch margins, suitable for photocopying.

The applicant should provide a detailed description of first-year objectives and activities and briefly describe future-year objectives and activities. The application should contain the following:

Applicants for Part A or Part B

1. Executive Summary (2 pages, double-spaced)

Provide a clear concise summary of the application, which includes a description of the type of federal assistance requested (Part A or B) and the activities to be undertaken.

2. The Narrative

Should specifically address the "Program Requirements" and should contain the following sections:

a. Understanding of the need for environmental public health tracking (surveillance);

b. Existing resources and needs;

c. Collaborative relationships;

d. Operational plan and methods;

e. Organizational and program personnel capability;

3. Budget and Justification

a. Provide a detailed budget and line item justification of all proposed operating expenses consistent with the program activities described in this announcement.

b. The annual budget should include funding for three staff members to make three three-day trips to Atlanta for stakeholders/workgroup meetings and one two-day trip to Atlanta for a reverse site visit.

c. If applicable, applicants proposed contracts should include the name of the person or firm to be contracted, a description of services to be performed, an itemized and detailed budget including justification, the period of performance and the method of selection.

d. Funding levels for years two and three should be estimated.

G. Submission and Deadline

Letter of Intent (LOI)

On or before August 5, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*. Forms may also be obtained by contacting the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Executive Summary
Narrative
Appendices

Application must be received by 5 p.m. EST, August 22, 2002. Applications may not be submitted electronically.

Submit the application to: Technical Information Management Section, PA#02179, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. EST on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications, which do not meet the above criteria, will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application individually against the following criteria:

Applications for Part A

1. Operational Plan and Methods (30 points)

The extent to which the applicant has clearly described a proposed approach to carrying out the activities listed under Section E. This includes: (1) Descriptions of project objectives that are specific, measurable and realistic; inclusion of an implementation schedule/timeline that is reasonable and appropriately reflects major steps in recipient activities; (2) sound scientific methods for conducting needs assessments, evaluations, systems analysis and design, data linkage and other activities; (3) commitment to using existing standards and specifications referred to in recipient activities and to the development of specifications with environmental health tracking partners and standards setting organizations; and (4) a plan for coordination across existing surveillance activities to promote the development of a state-wide and national network of integrated and interoperable public health systems.

In order to address CDC Policy Requirements, the following should also be addressed: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Existing Resources and Needs (20 points)

The extent to which the applicant has described the need for funding under Part A including the following: (1) A description of results from any previous needs assessments and inventories of hazard, exposure, and health tracking (surveillance) or a preliminary

assessment and inventory of current needs and systems, (2) level of integration of current surveillance systems, (3) coordination with other state programs/initiatives to improve surveillance, (4) a description of existing and potential data sources, and (5)a description of existing computer hardware and software. (Guidance for Preliminary Inventory and Future Assessment of Health Surveillance and Environmental Monitoring Information Systems is included in Appendix IV.)

3. Collaborative Relationships (20 points)

The extent to which the applicant describes past, current and proposed collaborations with relevant organizations and agencies within the state/local government/tribal government (if applicable) and provides evidence that these organizations/agencies are willing to support and be actively involved in carrying out the project.

The extent to which the applicant describes past, current and proposed collaborations with other relevant organizations such as state medical associations, national organizations, and the Federal Government.

4. Understanding the Need for Environmental Public Health Tracking (Surveillance) (15 points)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the utility of environmental public health tracking (surveillance), the complexity of developing a state-wide (or local if applicant is not a state) network with direct electronic reporting and linkage capabilities, integration and standardization principles, and the importance of data dissemination.

5. Organizational and Program Personnel Capability (15 points).

The extent to which the proposed staffing, organizational structure, staff experience and background, job descriptions indicate that the applicant is capable of carrying out this program. The resumes/curricula vita of key personnel should be included in the application. The applicant should document commitment of staff and resources from both environment and health to the project. The resource documentation may be in the form of percent time dedicated to the project, in kind resources, travel, etc.

Applications for Part B

1. Operational Plan and Methods (35 points)

The extent to which the applicant has clearly described a proposed approach to carrying out the activities listed under Section E. This includes: (1) descriptions of project objectives that are specific, measurable and realistic; (2) inclusion of an implementation schedule/timeline that is reasonable and appropriately reflects major steps in recipient activities; (3) a protocol for conducting the pilot project that is methodologically sound, includes key stakeholders, and provides adequate justification for selection of the specific hazard/exposure/health effect data to be linked; (4) sound scientific methods for conducting needs assessments, evaluations, systems analysis and design, data linkage and other activities; (5) commitment to using existing standards and specifications referred to in recipient activities and to the development of specifications with environmental health tracking partners and standards setting organizations; and (6) a plan for coordination and integration across surveillance activities to promote the development of a state-wide and national network of interoperable public health systems.

In order to address CDC Policy Requirements, the following should also be addressed: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

1. Existing Resources and Needs (20 points)

The extent to which the applicant has described the need for funding under Part B including the following: (1) A description of results from any previous needs assessments and inventories of hazard, exposure, and health tracking (surveillance) or a preliminary assessment and inventory of current needs and systems, (2) level of integration of current surveillance systems, (3) coordination with other programs/initiatives to improve surveillance, (4) a description of existing and potential data sources, and (5) a description of the needed computer hardware and software to replace or upgrade existing resources. (See Appendix IV for Guidance for Preliminary Inventory and Future Assessment of Health Surveillance and Environmental Monitoring Information Systems).

3. Collaborative Relationships (20 points)

The extent to which the applicant describes past, current and proposed collaborations with relevant organizations and agencies within the State/local government/tribal government (if applicable) and provides evidence that these organizations/agencies are willing to support and be actively involved in carrying out the project. The extent to which the applicant describes past, current and proposed collaborations with other relevant external organizations such as state medical associations, national organizations, and the Federal Government.

1. Organizational and Program Personnel Capability (15 points)

The extent to which the proposed staffing, organizational structure, staff experience and background, and job descriptions indicate that the applicant is capable of carrying out this program. The resumes/curricula vitae of key personnel should be included in the application. The applicant should document commitment of staff and resources from both environment and health to the project. The resource documentation may be in the form of percent time dedicated to the project, in kind resources, travel, etc.

5. Understanding of the Need for Environmental Public Health Tracking (Surveillance) (10 points)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the utility of an environmental public health tracking (surveillance), the complexity of developing a state-wide (or local if applicant is not a state) network with direct electronic reporting and linkage capabilities, and the importance of data dissemination.

Part A and Part B

6. Budget and Justification (Not scored)

The extent to which the proposed demonstrates appropriateness and justification of the requested budget relative to the activities proposed.

7. Human Subjects Review (Not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable).

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness). The progress report shall include the following items:

a. A brief project description.

b. A comparison of actual accomplishments to the goals and objectives established for the period.

c. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity for the project.

d. A financial summary of obligated dollars to date as a percentage of total available dollars.

e. Other pertinent information (i.e. curriculum vitae for new key personnel).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment IV of the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, applications, and associated forms can be found on the CDC Home Page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Mike Smiley, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000 Atlanta, GA 30341–4146, Telephone number: (770) 488–2718, *Email address: msmiley@cdc.gov.*

For program technical assistance, contact: Sandy Thames, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, MS–E19, Atlanta, GA 30338, Telephone number:(404) 498–1805, Email address: *sthames@cdc.gov.*

Dated: July 11, 2002.

Sandra R. Manning,

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Appendix I

Background and Scope of Program

Public health surveillance is the ongoing, systematic collection, analysis, interpretation, and dissemination of data on health effects in a population for the purpose of preventing and controlling morbidity and mortality. An environmental public health tracking (surveillance) network allows linkage and reporting of data available from health effects surveillance data, exposure data (measures of contaminants in the human body), and environmental hazard data (measures of contaminants in the environment). A coordinated and integrated environmental public health tracking (surveillance) network will (1) provide information on levels of contaminants in the environment from available monitoring data, levels of actual exposure in the population, health effect rates, and spatial and temporal trends; (2) facilitate research on possible associations between health effects and exposures/hazards; and (3) measure the impact of interventions such as regulatory and prevention strategies. With this information, federal, state and local agencies will be better prepared to develop and evaluate effective public health action to prevent or control diseases across our nation. The applicant may want to review additional references listed in Appendix II.

In fiscal year 2002, Congress appropriated funds to the Centers for Disease Control and Prevention (CDC) for "development and implementation of a nationwide environmental public health tracking network and capacity development in environmental health in state and local health departments". Toward this end, CDC is currently soliciting applications from state and local health departments through this program announcement.

It is important to note that this program announcement deals specifically with non-infectious diseases and other health effects that may be associated with environmental exposures. Health effects may include: birth defects, developmental disabilities, asthma and chronic respiratory disease, cancer, and neurological diseases. Additional environmentally related health effects targeted by "Healthy People 2010" and of interest to this program include health effects such as lead poisoning, pesticide poisoning, methemoglobinemia, and carbon monoxide poisoning. The applicant should refer to "Healthy People 2010" (objective 8–27 and related objectives from other focus areas [page 8–32]) for a complete list of "Healthy People 2010" targeted health effects. (The Internet address for "Healthy People 2010" is listed in Appendix II).

Environmental factors targeted by the National Environmental Public Health Tracking Program include chemicals, physical agents, biomechanical stressors, and biological toxins. The applicant should review the Environmental Health focus area of "Healthy People 2010" and the Pew Environmental Health Commission report, "America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network", for more information about targeted environmental factors. "Healthy People 2010" objectives for reducing human exposure to pesticides, heavy metals, persistent chemicals (such as dioxin), organochlorine compounds, air contaminants (outdoor and indoor), and other non-infectious agents contaminating the environment are pertinent to this environmental public health tracking initiative.

This program offers applicants an opportunity to form partnerships between state and local health and environmental agencies and to bridge across programs within each to achieve common goals. Appendix II provides examples of other CDC surveillance and capacity building projects and links to website descriptions for these projects. Additionally, the National Environmental Public Health Tracking program also offers applicants an opportunity to form partnerships to develop and carry out action plans with non-governmental organizations such as CDC funded Centers of Excellence for Environmental Public Health Tracking (Appendix III), the health insurance industry, health provider organizations, and non-traditional sources of data.

Appendix II

References

- CDC Environmental Public Health Indicators Project: *http://www.cdc.gov/nceh/tracking/indicators.htm*
- CDC National Electronic Disease Surveillance System (NEDSS): *http://www.cdc.gov/nedss.*
  Public Health Data Conceptual Model: *http://www.cdc.gov/nedss/DataModels/index.html.*

- CDC Updated Guidelines for Evaluating Public Health Surveillance Systems: *http://www.cdc.gov/mmwr/pdf/rr/rr5013.pdf.*
- Environmental Protection Agency's National Environmental Information Exchange Network: The Information Integration Initiative: *http://www.epa.gov/oei/iiilive.htm.*
  National Environmental Information Exchange Grant Program: *http://www.epa.gov/neengprg.*
  State/EPA Information Management Workgroup: *http://www.epa.gov/oei/*
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- Guidelines for Evaluating Surveillance Systems. MMWR 1988;37(S–5).
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- Lee LM, Thacker SB. Public health surveillance and the prevention of injury. In: Rivara FP, Cummings P, Koepsell TD, Grossman DC, Maier RV (eds.). Injury Prevention: What Works? A Summary of Epidemiological Research on the Effectiveness of Selected Injury Prevention Strategies. Supplement to Epidemiologic Reviews 2001;23:60–69.
- Lee LM, Thacker SB. Public health surveillance and the prevention of injury. Am J Prev Med 2001;21(4S):48–57.
- Lee LM, Thacker SB. Public health surveillance and the prevention of injury. In: Rivara FP, Cummings P, Koepsell TD, Grossman DC, Maier RV (eds.). Injury Control: A Guide to Research and Program Evaluation. New York: Cambridge University Press, 2001:77–89

- CDC Updated Guidelines for Evaluating Public Health Surveillance Systems: *http://www.cdc.gov/mmwr/pdf/rr/rr5013.pdf.*
- Environmental Protection Agency's National Environmental Information Exchange Network: The Information Integration Initiative: *http://www.epa.gov/oei/iiilive.htm.*
  National Environmental Information Exchange Grant Program: *http://www.epa.gov/neengprg.*
  State/EPA Information Management Workgroup: *http://www.epa.gov/oei/imwg/.*
  Environmental Data Standards Council: *http://www.epa.gov/edsc .*
- Healthy People 2010: *http://www.health.gov/healthypeople.*
- PEW Environmental Health Commission Reports: "America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network": *http://healthyamericans.org/resources/reports/healthgap.pdf.*
- Protocol for Assessing Community Excellence in Environmental Health (PACE EH) (*Note:* First copy is free to all Local Public Health Agencies): *http://www.naccho.org/prod87.cfm.*
- Public Health Information Technology Functions and Specifications (for Emergency Preparedness and Bioterrorism): *http://www.cdc.gov/cic/function-specs.*
- Morbidity and Mortality Weekly Report: Sept 17, 1999: 48(rr–11): "Framework for Program Evaluation in Public Health": *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4811a1.htm.*
- Thacker SB, Stroup DF, Parrish RG, Anderson HA. Surveillance in Environmental Public Health: Issues, Systems, and Sources. "American Journal of Public Health", 86(5):633–8; 1996.

Related Projects

- Adult Blood Lead Epidemiology and Surveillance Program: *http://www.cdc.gov/niosh/ables.html.*
- Assessment Initiative: *http://www.cdc.gov/epo/dphsi/ai/index.htm.*
- ATSDR's Geographic Analysis Tool for Health and Environmental Research (GATHER): *http://gis.cdc.gov/atsdr.*
- Behavioral Risk Factor Surveillance System (BRFSS): *http://www.cdc.gov/nccdphp/brfss/index.htm.*
- Birth Defects Surveillance: *http://www.cdc.gov/ncbddd/bd/bdsurv.htm.*
- Childhood Lead Poisoning Prevention Branch: *http://www.cdc.gov/nceh/lead/lead.htm.*
- Chronic Disease Indicators: *http://cdi.hmc.psu.edu.*
- Council of State and Territorial Epidemiologists, Environmental Health Indicators: *http://www.cste.org/pdffiles/Environmentalpublichealthindicators.pdf.*
- Environmental Health Services Branch, CDC: *http://www.cdc.gov/nceh/ehs/default.htm.*
- Evaluation of State Websites for Data Dissemination: *http://www.cdc.gov/epo/dphsi/ASB/orcmacro.htm.*
- Hazardous Substances Emergency Events Surveillance: *http://www.atsdr.cdc.gov/HS/HSEES.*
- National Asthma Control Program: *http://www.cdc.gov/nceh/airpollution/asthma/default.htm.*
- National Program of Cancer Registries: *http://www.cdc.gov/cancer/npcr/index.htm.*
- NCHS Surveys and Data Collection Systems: *http://www.cdc.gov/nchs/express.htm.*
- Population-based Surveillance of Autism Spectrum Disorders and Other Developmental Disabilities: *http://www.cdc.gov/ncbddd/dd/ddautism.htm#state.*
- The Dataweb: *http://www.thedataweb.org.*
- Youth Risk Behavior Surveillance System (YRBSS): *http://www.cdc.gov/nccdphp/dash/yrbs.*

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Rhode Island	Thomas Bertrand	Rhode Island Department of Health, 3 Capitol Hill, Room 106, Providence, RI 02908, tomb@doh.state.ri.us, 401–222–3283.
South Carolina	James Gibson	South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, gibsonjj@columb60.dhec.state.sc.us, 803–898–0861.
South Carolina	Ken Stuber	Consultant, Bureau of Disease Control, South Carolina Department of Health and Environmental Control, P.O. Box 101106, Columbia, SC 29211, stuberk@columb20.dhec.state.sc.us, 803–256–4406.
South Dakota	Debra Nold	BIT-Programmer, State of South Dakota, 500 East Capitol, Pierre, SD 57501, debra.nold@state.sd.us, 605–773–6832.
Tennessee	Allen Craig	State of Tennessee Department of Health, 425 5th Avenue, North, Nashville, TN 37247, acraig@mail.state.tn.us, 615–741–7247.
Texas	Julie Rawlings	Texas Department of Health, 1100 West 49th Street, Austin, TX 78756–3199, julie.rawlings@tdh.state.tx.us, 512–458–7228.

NEDSS CONTACTS—Continued

State	Contact	Address/Email/Phone
Utah	Abdoul Shmohamed	Epidemiologist II, NEDSS Project Coordinator, Utah Department of Health, 288 North 1460 West, P.O. Box 142104, Salt Lake City, Utah 84114–210, Ashmoham@doh.state.ut.us, 801–538–6191.
Utah	Charles Brokopp	Utah Department of Health/Box 142102, 288 North 1460 West, Salt Lake City, UT 84114–2104, cbrokopp@doh.state.ut.us, 801–538–6129.
Utah	Sam LeFevre	Utah Department of Health/Box 142102, 288 North 1460 West, Salt Lake City, UT 84114–2104.
Vermont	Arthur Limacher	Chief of Information Services, Vermont Department of Health, 108 Cherry Street, P.O. Box 70, Burlington, VT 05402–0070, alimach@vdh.state.vt.us, 802–863–7294.
Vermont	Patsy Tassler	Vermont Department of Health, 108 Cherry St., Burlington, VT 05401, 802–863–7240.
Virginia	Diane Woolard	Director, Virginia Department of Health, P.O. Box 2448, Room 113, Richmond, VA 23218, dwoolard@vdh.state.va.us, 804–786–6261.
Washington	Gregory Smith	NEDSS Development Director, DOH/EHSPHL, 1101 Eastside St., Olympia, WA 98504, Greg.Smith@DOH.WA.GOV, 360–236–4099.
Washington	Jac Davies	Washington State Department of Health Epidemiology, Health Statistics and Public Health Lab, 1102 SE Quince Street, PO Box 47811, Olympia, WA 98504–7811, jac.davies@doh.wa.gov, 206–361–4883.
West Virginia	Judy Ray	Health Information Systems Coordinator, West Virginia Department of Health and Human Resources, 350 Capitol Street, Room 702, Charleston, WV 25301, judyray@wvdhhr.org, 304–558–0056.
West Virginia	Loretta Haddy	West Virginia Department of Health and Human Resources, 350 Capitol Street, Room 125, Charleston, WV 25301–3715, lorettahaddy@wvdrrh.org, 304–558–5358.
Wisconsin	Larry Hanrahan	State of Wisconsin Dept of Health and Family Services, 1 W. Wilson Street, Room 150, PO Box 2659, Madison, WI 53701–2659 hanralp@dhfs.state.wi.us, 608–267–7173.
Wisconsin	Mary Proctor	State of Wisconsin Dept of Health and Family Services, 1 W. Wilson Street, Room 150, PO Box 2659, Madison, WI 53701–2659.
Wyoming	Karl Musgrave	Wyoming Department of Health, 2300 Capitol Avenue, Hathaway Building, 4th floor, Cheyenne, WY 82002, kmusgr@state.wy.us, 307–777–7172.
Wyoming	Ken Gillaspie	NEDSS Coordinator, Wyoming Department of Health, 2300 Capitol Avenue, Hathaway Building, Room 437, kgilla@state.wy.us, 307–777–7146.

Appendix III

Centers of Excellence for Environmental Public Health Tracking

In fiscal year 2002, Congress appropriated funds to CDC for development and implementation of a nationwide environmental public health tracking (surveillance) network and infrastructure and capacity development in environmental health at State and local health Departments. Toward this end, CDC is currently soliciting applications (Program Announcement 02180) from U.S. Schools of Public Health accredited by the Council on Education of Public Health to collaborate with CDC, state health departments, and other relevant agencies and organizations to:

1. Participate in the development of definitions, standards, and systems models related to environmental public health tracking (surveillance);
2. Evaluate current surveillance methodology and develop innovative, cost-effective data collection strategies;
3. Develop data linkage methods for combined analysis of health and environmental data;
4. Develop statistical algorithms for state and local environmental public health programs to analyze trends and detect patterns of health effect occurrence, population exposure, or hazard levels in the environment that may indicate a problem;
5. Collaborate with CDC and state and local health departments to conduct an epidemiology study examining the relationship between a health effect and an environmental exposure and/or hazard;
6. Support health departments in determining the feasibility of using proposed Environmental Public Health Indicators in public health practice;
7. Communicate with CDC and state and local environmental public health tracking (surveillance) network partners about project accomplishments, barriers, and lessons learned;
8. Develop and evaluate strategies for communicating environmental health effect, exposure, and hazard information that take into account risk perspective differences among various audiences;
9. Provide training as needed to state and local partners funded under CDC's Environmental Public Health Tracking (surveillance) Program and other critical stakeholders on surveillance methods, environmental assessment, biomonitoring, evaluation, and risk communication.

The purpose of funding these Centers is to provide expertise and support to CDC and State and local health departments in (1) the development and utilization of data from state and national environmental public health tracking (surveillance) networks and (2) the investigation of the potential links between health effects and the environment.

Appendix IV

Guidance for Preliminary Inventory and Future Assessment of Health Surveillance and Environmental Monitoring Information Systems

A. Preliminary inventory included in this application: The applicant should briefly describe any surveillance/ongoing monitoring systems currently operating within the state/locale that systematically collect data on the occurrence or levels of the following:

1. Non-infectious diseases and other health effects described in Section A of the program announcement or Appendix I.
2. Human exposures to chemical or physical agents, biomechanical stressors, and biological toxins.
3. Environmental hazards including chemical or physical agents, biomechanical stressors, biologic toxins (e.g., criteria air pollutants, noise, harmful algal blooms). The description should address the following features of each system:

1. Coverage—statewide, regional, specific to a subpopulation.
2. Source—vital statistics, medical records, Medicaid, insurance databases, area environmental monitoring, facility monitoring.
3. Reference year—year system began operation.
4. Timeliness—length of time between diagnosis/testing/environmental sampling and reporting to appropriate state/local agency.

3. Describe the administration and operation of the health department's network, including staff and resources currently in place to support it, functions performed, and relationship to the state government's network administration and support.
4. Describe surveillance systems software development capacity, including resources in place to support this capacity, and description of current activities.
5. Identify current sources of support for surveillance and related IT (e.g., Federal

provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA#02121.

Contact Person for More Information: Dr. Lynda Doll, Associate Director for Science, National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta,

provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02072 & PA# 02123.

Contact Person for More Information: Dr. Joanne Klevens, Epidemiologist, National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia

provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02151.

Contact Person for More Information: Dr. Ann Dellinger, Epidemiologist, National Center for Injury Prevention and Control,

DATES: Submit written or electronic comments on the collection of information by September 16, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edocketHome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug

1. Coverage—statewide, regional, specific to a subpopulation.
2. Source—vital statistics, medical records, Medicaid, insurance databases, area environmental monitoring, facility monitoring.
3. Reference year—year system began operation.
4. Timeliness—length of time between diagnosis/testing/environmental sampling and reporting to appropriate state/local agency.
5. Types of data elements—general categories such as geographic coordinates, demographics, measurements.
6. Mode of reporting—active vs. passive system; electronic (diskette, web-based, etc) vs. paper, etc).
7. Use of data—Has data been analyzed and reported to appropriate stakeholders? Has it been used in planning public health actions, hazard mitigation, special studies, etc?

B. Future assessment of health surveillance and environmental monitoring information systems: Future assessment of current surveillance information systems should include the following information on personnel, management practices and technical infrastructure.

1. A description of the health department and environmental department information technology (IT) infrastructure and architecture.

a. Describe relevant policies; the organization and decision-making processes; and decision-making responsibility and authority for surveillance and related IT in the health and environmental departments. Describe how they relate to state policies, etc. How does the loci of decision-making for surveillance and IT relate to one another and how are decisions made regarding IT for surveillance. Also, provide a description of how cross-program decisions are made.

b. Describe current technical infrastructure, including comments on: (1) whether the health department and environmental departments have a local area network that supports TCP/IP; (2) whether the health department and environmental department have firewalls; (3) what kind and version of server is used in the health department and environmental department (*e.g.*, NT, Unix, other); (4) are local health departments included in state health department intranet? Are local environmental departments included in state environmental intranet? If so, through what kind of connection?

2. Comprehensive description of public health surveillance and environmental monitoring information systems.

a. Describe the purpose, scope, and capabilities of each system.

b. Describe the technical characteristics of each system, including information about the number and kind of platforms and technologies, and tools used (specifically, include information about communications and networking technologies).

c. Enumerate and describe functions of personnel dedicated to each system (*e.g.*, epidemiologists, programmers, data base managers, data entry personnel, support staff).

d. Examine the comparability of data element specifications, data sources, and methods of data collection.

3. Describe the administration and operation of the health department's network, including staff and resources currently in place to support it, functions performed, and relationship to the state government's network administration and support.

4. Describe surveillance systems software development capacity, including resources in place to support this capacity, and description of current activities.

5. Identify current sources of support for surveillance and related IT (*e.g.*, Federal funds other than the Environmental Public Health Tracking (surveillance) Network, State funds, etc.).

6. Describe interaction between state public health surveillance and environmental monitoring information systems and local health departments.

C. Additional guidance: Applicants should contact their State NEDSS Coordinator to determine if information obtained through NEDSS assessment and planning activities can contribute to the activities required in this program announcement.

[FR Doc. 02–18111 Filed 7–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: New Investigator Awards for Unintentional, Violence, and Acute Case, Disability, and Rehabilitation Related Prevention Research, Program Announcement #02121; Correction

SUMMARY: This notice was published in the **Federal Register** on July 8, 2002, Volume 67, Number 130, Pages 45123–45124. The meeting times have been revised. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): New Investigator Awards for Unintentional, Violence, and Acute Case, Disability, and Rehabilitation Related Prevention Research, Program Announcement #02121.

Action: The meeting times have been revised as follows:

Times and Dates: 6:30 p.m.–7 p.m., July 28, 2002 (Open), 7 p.m.–9:30 p.m., July 28, 2002 (Closed), 9 a.m.–5 p.m., July 29, 2002 (Closed).

Place: The Westin Hotel (Atlanta Airport) 4736 Best Road, Atlanta, GA 30337 Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA#02121.

Contact Person for More Information: Dr. Lynda Doll, Associate Director for Science, National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia 30341; (770) 488–1430.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 12, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–18103 Filed 7–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Multi-Level Parent Training Effectiveness Trial, Program Announcement #02072, and Parenting Program Attrition and Compliance Efficacy Trial, Program Announcement #02123; Correction

SUMMARY: This notice was published in the **Federal Register** on July 9, 2002, Volume 67, Number 131, Page 45524. The meeting times have been revised.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Multi-Level Parent Training Effectiveness Trial, Program Announcement #02072, and Parenting Program Attrition and Compliance Efficacy Trial, Program Announcement #02123.

Action: The meeting times have been revised as follows:

Times and Dates: 6:30 p.m.–7 p.m., July 28, 2002 (Open); 7 p.m.–9:30 p.m., July 28, 2002 (Closed); 8:30 a.m.–5 p.m., July 29, 2002 (Closed).

Place: The Westin Hotel (Atlanta Airport) 4736 Best Road, Atlanta, GA 30337; Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with

provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02072 & PA# 02123.

Contact Person for More Information: Dr. Joanne Klevens, Epidemiologist, National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia 30341; (770) 488–4330.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 12, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–18107 Filed 7–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A Research Study To Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults, Program Announcement #02151; Correction

SUMMARY: This notice was published in the **Federal Register** on July 9, 2002, Volume 67, Number 131, Page 45524. The meeting times have been revised.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Research Study to Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults, Program Announcement #02151.

Action: The meeting times have been revised as follows:

Times and Dates: 6:30p.m.–7 p.m., July 28, 2002 (Open) 7 p.m.–9:30p.m., July 28, 2002 (Closed) 9 a.m.–5 p.m., July 29, 2002 (Closed)

Place: The Westin Hotel (Atlanta Airport) 4736 Best Road, Atlanta, GA 30337 Phone: (404) 762–7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02151.

Contact Person for More Information: Dr. Ann Dellinger, Epidemiologist, National Center for Injury Prevention and Control, CDC, 2495 Flowers Road, Atlanta, Georgia 30341; (770) 488–4811.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 12, 2002.

Joe Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–18109 Filed 7–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0302]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal meetings with sponsors and applicants for Prescription Drug User Fee Act of 1992 (PDUFA) products.

DATES: Submit written or electronic comments on the collection of information by September 16, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products—(OMB Control Number 0910–0429)—Extension

This information collection approval request is for an FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of Prescription Drug User Fee Act (PDUFA) products. The guidance

valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires September 30, 2002; and FDA Form 356h, OMB control number 0910–0001, expires March 31, 2005, OMB control number 0910–338, which expires March 31, 2003.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of

raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;

annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief

information packages to CDER annually, and approximately 155 respondents submitted approximately 341 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be

As stated earlier, the guidance provides information on how the agency will interpret and apply section 119(a) of the Modernization Act, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47

Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products—(OMB Control Number 0910–0429)—Extension

This information collection approval request is for an FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of Prescription Drug User Fee Act (PDUFA) products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (the Modernization Act), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. The agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an end-of-phase 2 meeting and a pre-NDA meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting for OMB approval additional estimates.

A. Request for a Meeting

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA's regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an investigational new drug application (IND), new drug application (NDA), or biologics license application (BLA) must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires September 30, 2002; and FDA Form 356h, OMB control number 0910–0001, expires March 31, 2005, OMB control number 0910–338, which expires March 31, 2003.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product;
- The type of meeting being requested;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes from the meeting;
- A preliminary proposed agenda;
- A draft list of questions to be raised at the meeting;
- A list of individuals who will represent the sponsor or applicant at the meeting;
- A list of agency staff requested to be in attendance;
- The approximate date that the information package will be sent to the agency; and
- Suggested dates and times for the meeting.

This information will be used by the agency to determine the utility of the meeting, to identify agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

B. Information Package

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. The agency regulations currently permit such requests and recommend the submission of an information package before an end-of-phase 2 meeting (§§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a pre-NDA meeting (§ 312.47(b)(2)).

Description of respondents: A sponsor or applicant for a drug or biological product who requests a formal meeting with the agency regarding the development and review of a PDUFA product.

Burden estimate: Provided below is an estimate of the annual reporting burden for the submission of meeting requests and information packages under the guidance.

A. Request for a Formal Meeting

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 500 sponsors and applicants (respondents) request approximately 1,253 formal meetings with CDER annually, and approximately 176 respondents request approximately 388 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

B. Information Package

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 450 respondents submitted approximately 1,118 information packages to CDER annually, and approximately 155 respondents submitted approximately 341 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the agency.

As stated earlier, the guidance provides information on how the agency will interpret and apply section 119(a) of the Modernization Act, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning end-of-phase 2 meetings and pre-NDA meetings have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting for OMB approval these additional estimates.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Meeting Requests and Information Packages	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Meeting requests					
CDER	500	2.5	1,250	10	12,500
CBER	176	2.2	387.2	10	3,872
Total					16,372
Information packages					
CDER	450	2.5	1,125	18	20,250
CBER	155	2.2	341	18	6,138
Total					26,388
Meeting requests					16,372
Information packages					26,388
Total					42,760

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18120 Filed 7–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0303]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal dispute resolution.

DATES: Submit written or electronic comments on the collection of information by September 16, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Dispute Resolution: Appeals Above the Division Level—(OMB Control Number 0910–0432)—Extension

This information collection approval request is for an FDA guidance on the procedures for formal dispute resolution between FDA and sponsors or applicants regarding the development and review of Prescription Drug User Fee Act (PDUFA) products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal dispute resolution meetings. The guidance provides information on how the agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (the Modernization Act), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. The agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an end-of-phase 2 meeting and a pre-NDA meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting for OMB approval additional estimates.

A. Request for a Meeting

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA's regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an investigational new drug application (IND), new drug application (NDA), or biologics license application (BLA) must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires September 30, 2002; and FDA Form 356h, OMB control number 0910–0001, expires March 31, 2005, OMB control number 0910–338, which expires March 31, 2003.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product;
- The type of meeting being requested;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes from the meeting;
- A preliminary proposed agenda;
- A draft list of questions to be raised at the meeting;
- A list of individuals who will represent the sponsor or applicant at the meeting;
- A list of agency staff requested to be in attendance;
- The approximate date that the information package will be sent to the agency; and
- Suggested dates and times for the meeting.

This information will be used by the agency to determine the utility of the meeting, to identify agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

B. Information Package

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency, CDER, and CBER. All agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in parts 312 (OMB control number 0910–0014), 314 (OMB control number 0910–0001), and part 601 (21 CFR part 601) (OMB control number 0910–0315), which specify the information that manufacturers must submit so that FDA may properly monitor the safety, effectiveness, and quality of drugs and biologics. The guidance recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. The agency regulations currently permit such requests and recommend the submission of an information package before an end-of-phase 2 meeting (§§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a pre-NDA meeting (§ 312.47(b)(2)).

CDER and CBER have determined and the guidance recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the Center may quickly and

approximately seven sponsors and applicants (respondents) submit requests for formal dispute resolution to CDER annually, and approximately one respondent submits requests for formal dispute resolution to CBER annually. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 10 requests annually and CBER receives approximately 1 request annually. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with this guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 96 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level (OMB Control Number 0910–0430)—Extension

This information collection approval request is for an FDA guidance on the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that cannot be resolved at the division level. The guidance describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist center officials in resolving the issue(s) presented. The guidance provides information on how the agency will interpret and apply provisions of the existing regulations regarding internal agency review of decisions § 10.75 (21 CFR 10.75) and dispute resolution during the investigational new drug application (IND) process (21 CFR 312.48) and the new drug application/abbreviated new drug application (NDA/ANDA) process (21 CFR 314.103). In addition, the guidance provides information on how the agency will interpret and apply the specific Prescription Drug User Fee Act (PDUFA) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in parts 10, 312, and 314 (21 CFR parts 10, 312, and 314), establish procedures for the resolution of scientific and procedural disputes between interested persons and the agency, CDER, and CBER. All agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in parts 312 (OMB control number 0910–0014), 314 (OMB control number 0910–0001), and part 601 (21 CFR part 601) (OMB control number 0910–0315), which specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. While FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of particular information regarding the request itself and the data and information relied on by the requestor in the appeal would facilitate timely resolution of the dispute. The guidance describes the following collection of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

FDA's regulations (§§ 312.23(11)(d), 314.50, 314.94, and 601.2) state that information provided to the agency as part of an IND, NDA, ANDA, or BLA is to be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs, ANDAs, and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires September 30, 2002; and FDA Form 356h, OMB control number 0910–0001, expires March 31, 2005.

In the guidance document, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted as an amendment in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the appropriate agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the guidance recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the Center may quickly and efficiently respond to the request: (1) A brief but comprehensive statement of each issue to be resolved, including a description of the issue, the nature of the issue (i.e., scientific, procedural, or both), possible solutions based on information in the administrative file, whether informal dispute resolution was sought prior to the formal appeal, whether advisory committee review is sought, and the expected outcome; (2) a statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last agency official that attempted to formally resolve the matter; (3) a list of documents in the administrative file, or additional copies of such documents, that are deemed necessary for resolution of the issue(s); and (4) a statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The information that the agency suggests submitting with a formal request for dispute resolution consists of: (1) Statements describing the issue from the perspective of the person with a dispute, (2) brief statements describing the history of the matter, and (3) the documents previously submitted to FDA under an OMB approved collection of information.

Based on FDA's experience with dispute resolution, the agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance will be minimal.

Description of respondents: A sponsor, applicant, or manufacturer of a drug or biological product regulated by the agency under the act or section 351 of the Public Health Service Act who requests formal resolution of a scientific or procedural dispute.

Burden estimate: Provided below is an estimate of the annual reporting burden for requests for dispute resolution. Based on data collected from review divisions and offices within CDER and CBER, FDA estimates that approximately seven sponsors and applicants (respondents) submit requests for formal dispute resolution to CDER annually, and approximately one respondent submits requests for formal dispute resolution to CBER annually. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 10 requests annually and CBER receives approximately 1 request annually. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with this guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 96 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Request for Formal Dispute Resolution	Number of Respondents	Number of Responses per Response	Total Annual Responses	Hours per Response	Total Hours
CDER	7	1.4	10	8	80
CBER	1	2	2	8	16
Total					96

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18121 Filed 7–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0282]

Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for filing a notice of participation with FDA.

DATES: Submit written or electronic comments comments on the collection of information by September 16, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Notice of Participation—21 CFR 12.45 (OMB Control Number 0910–0191)—Extension

The regulations in § 12.45 (21 CFR 12.45), issued under section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371), sets forth the format and procedures for any interested person to file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation, state their specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. Section 12.45 also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or in the case of a hearing before a Public Board of Inquiry (21 CFR 13.25), concerning disclosure of data and information by participants. In accordance with § 12.45(e) the presiding officer may omit a participant's appearance.

The presiding officer and other participants will use the collected information in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation.

The respondents are individuals or households, State or local governments, not-for-profit institutions, and businesses or other for-profit groups and institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	340	1	340	3	1,020

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeepers	Total Annual Records	Hours per Recordkeeper	Total Hours
1210.15	8	1	8	0.5	4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the number of current permit holders and Claim Based on an Authoritative Statement of a Scientific Body.".

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The presiding officer and other participants will use the collected information in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation.

The respondents are individuals or households, State or local governments, not-for-profit institutions, and businesses or other for-profit groups and institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	340	1	340	3	1,020

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate past notices filed in which each notice of participation filed took an estimated 3 hours to complete.

Dated: July 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18122 Filed 7–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02N–0102 and 02N–0112]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. This document also corrects some inadvertent typographical errors that published in the **Federal Register** of June 28, 2002 (67 FR 43633).

DATES: Submit written comments on the collection of information by August 19, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations Under the Federal Import Milk Act (FIMA) Part 1210 (21 CFR Part 1210) (OMB Control Number 0910–0212)—Extension

FIMA (21 U.S.C. 141–149) provides that milk or cream may be imported into the United States only by the holder of a valid import milk permit. Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50 °F. The regulations in § 1210.15 require that dairy farmers and plants maintain pasteurization records. The regulations in § 1210.22 require that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 1815/Permits granted on certificates	1210.23	8	1	8	0.5	4
FDA 1993/Application for permit	1210.20	8	1	8	0.5	4
FDA 1994/Tuberculin test	1210.13	1	1	1	1	1
FDA 1995/Physical examination of cows	1210.12	1	1	1	1	1
FDA 1996/Sanitary inspection of daily farms	1210.11	8	200	1,600	1.5	2,400
FDA 1997/Sanitary inspection of plants	1210.14	8	1	8	2	16
Totals						2,426

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeepers	Total Annual Records	Hours per Recordkeeper	Total Hours
1210.15	8	1	8	0.5	4

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the number of current permit holders and the number of inquiries that FDA has received regarding requests for applications in the next 3 years.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by FDA (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product and shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995.

In FR Doc. 02–16343, appearing on page 43633 in the **Federal Register** of Friday, June 28, 2002, for Docket No. 02N–0102 the following corrections are made.

1. On page 43633, in the third column, the title "Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body" is corrected to read "Agency Information Collection Activities; Comment Request; Notification of a Health Claim Based on an Authoritative Statement of a Scientific Body".

2. On page 43634, in the first and second columns, the title "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body" is corrected to read "Guidance for Industry: Notification of a Health Claim Based on an Authoritative Statement of a Scientific Body.".

Dated: July 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18123 Filed 7–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Small Business Technologies for Enhanced Visual Function.

Date: August 2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18135 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Heart Oxidant Stress.

Date: July 23, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Roy L White, PhD, Review Branch, Room 7196, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, USC 7924, Bethesda, ED 20892. 301–435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Dos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18127 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Trials Review.

Date: July 29, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Roy L White, PhD, Review Branch, Room 7196, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, USC 7924, Bethesda, ED 20892. 301–435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18128 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Alcohol Research Grants.

Date: July 29, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 Rockledge Drive, Room 3037, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ronald Suddath, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6700 Rockledge Drive, Room 3037, Bethesda, MD 20892, (301) 443–9737.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Alcohol Research Grants.

Date: July 30, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 Rockledge Drive, Room 3037, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ronald Suddath, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6700 Rockledge Drive, Room 3037, Bethesda, MD 20892, (301) 443–9737.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Alcohol Research Grants.

Date: July 31, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 Rockledge Drive, Room 3037, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ronald Suddath, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6700 Rockledge Drive, Room 3037, Bethesda, MD 20892, (301) 443–9737.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Lung Oxidant Stress.

Date: July 23, 2002.

Time: 10 a.m to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roy L. White, PhD, Review Branch, Room 7196, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, 301–435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18137 Filed 7–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Hematopoietic Cell Lineage Genome Anatomy Projects.

Date: August 7, 2002.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797. *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Mentored Clinical Scientist Development Award.

Date: August 7, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797. *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Progenitor Cell Genome Anatomy Projects.

Date: August 7, 2002.

Time: 12 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797. *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18128 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetign will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Bench to Bedside Research Complications in Type 1 Diabetes.

Date: August 7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Marie E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637. *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18129 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R01 Application Review.

Date: August 2, 2002.

Time: 10 a.m to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18130 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 9, 2002.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Emphasis Panel, Building Translational Research in Behavioral Science.

Date: July 30, 2002.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nil.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Viral Genetics in HIV/CNS Disease; Implications for Pathogenesis.

Date: August 5, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hournam H Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18132 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 12, 2002, 9:30 a.m. to July 12, 2002, 4 p.m., St. Gregory Hotel, 2033 M Street, NW., Washington, DC, 20036–3305 which was published in the **Federal Register** on June 26 2002, 67 FR 43134–35.

The meeting will be held on July 12, 2002, from 9:30 a.m. to 4 p.m., at the Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW, Washington, DC. The meeting is closed to the public.

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18133 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 11, 2002, 11:30 a.m. to July 11, 2002, 12:45 p.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD, 20892 which was published in the **Federal Register** on July 1, 2002, 67 FR 44222–23.

The meeting will be held on August 1, 2002, from 10:30 a.m. to noon, at the Neuroscience Center as a telephone

review. The meeting is closed to the public.

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18134 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP for AARR–4 Member Conflicts (1).

Date: July 31, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (01).

Date: August 1–2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nil.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (02).

Date: August 1–2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nil.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GNM (02).

Date: August 1–2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nil.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18135 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (01).

Date: August 1–2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nil.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (02).

Date: August 1–2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nil.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GNM (02).

Date: August 1–2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nil.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18135 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

review. The meeting is closed to the public.

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18134 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Development of Gene SNP's as a Web Accessible Highly Annotated Regulational Database—RFP–ES–02–10.

Date: August 19, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Studies To Evaluate The Toxicologic and Carcinogenic Potential of Selected Chemicals—RFP ES–02–04.

Date: August 20, 2002.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, East Campus, Conference Room 3162, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Research to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfound Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director Office of Federal Advisory Committee Policy.

[FR Doc. 02–18136 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 28, 2002, 2:30 p.m. to June 28, 2002, 5 p.m., Radisson Barcelo, 2121 P Street, NW., Washington, DC, 20037 which was published in the **Federal Register** on June 12, 2002, 67 FR 40326–40329.

The meeting will be held on July 26, 2002, from 1 p.m. to 2:30 p.m. at the NIH, 6701 Rockledge Drive, Bethesda, MD. The meeting is closed to the public.

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18131 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP for AARR–4 Member Conflicts (1).

Date: July 16, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN–5 (3) Telephone Review.

Date: July 18, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP for AARR–3 Member Conflicts.

Date: July 22, 2002.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP for AARR–5 Member Conflicts.

Date: July 30, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP for AARR–2 Membes Conflicts.

Date: July 31, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IMS (02).

Date: August 1, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applictions.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, (HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18138 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (01).

Date: July 18, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 512, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–N (02).

Date: July 23, 2002.

Time: 10 a.m. to 11:15 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3554, *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GNM (05).

Date: July 25, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC (04).

Date: July 25, 2002.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zakir Bengali, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GNM (03).

Date: July 26, 2002.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD., Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALY (03).

Date: July 30, 2002.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RAD (01).

Date: July 31, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–U (03).

Date: August 2, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Randolph Addison, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144,

MSC 7840, Bethesda, MD 20892, (301) 435–1025, *addisonr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory

Tuesday, August 20, 2002. If the bids are mailed, please mark on the envelope containing all the sealed bids with the following:

Attention: Mr. John Rodi

Contains Sealed Bids for Sale 184

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a

TX7C High Island Area, East Addition, South Extension (revised November 1, 2000)

TX8 Sabine Pass Area (revised November 1, 2000)

Outer Continental Shelf Official Protraction Diagram (These 7 diagrams sell for $2.00 each)

NG14–03 Corpus Christi (revised November 1, 2000)

NG14–06 Port Isabel (revised

included in the Final Notice of Sale 184 Package.

Areas Not Available for Leasing

The following whole and partial blocks are not offered for lease in this sale:

- High Island Area Block 170 (an unleased block, but currently under appeal);
- High Island Area, East Addition, South Extension, Blocks A–375 and A–

Rental Rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas is made, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty Rates: 16⅔ percent royalty rate for blocks in water depths of less

whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Please note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing in Western Gulf of Mexico OCS Oil and Gas Sale 184" included in the Final Notice of Sale 184 Package.

MSC 7840, Bethesda, MD 20892, (301) 435–1025, *addisonr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18139 Filed 7–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 184

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final Notice of Sale 184.

SUMMARY: On August 21, 2002, MMS will open and publicly announce bids received for blocks offered in Sale 184, Western Gulf of Mexico, pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR part 256).

The Final Notice of Sale 184 Package contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

DATES: Public bid reading will begin at 9 a.m., Wednesday, August 21, 2002, in the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans time, unless otherwise specified.

ADDRESSES: Bidders can obtain a "Final Notice of Sale 184 Package" containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region's Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region's Internet site at *http://www.gomr.mms.gov.*

Filing of Bids

Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, prior to the Bid Submission Deadline of 10 a.m., Tuesday, August 20, 2002. If the bids are mailed, please mark on the envelope containing all the sealed bids with the following:

Attention: Mr. John Rodi
Contains Sealed Bids for Sale 184

If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, August 20, 2002. In the event of an unexpected event significantly disruptive to bid submission, such as flooding or travel restrictions, the MMS Gulf of Mexico regional office may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 for information about the possible extension of the Bid Submission Deadline due to such an event.

Areas Offered for Leasing

The MMS is offering for leasing all blocks and partial blocks listed in the document "Blocks Available for Leasing in the Gulf of Mexico OCS Oil and Gas Lease Sale 184" included in the Final Notice of Sale 184 Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Region's Public Information Unit):

Outer Continental Shelf Leasing Maps—Texas Map Numbers 1 Through 8 (These 16 maps sell for $2.00 each)

TX1 South Padre Island Area (revised November 1, 2000)
TX1A South Padre Island Area, East Addition (revised November 1, 2000)
TX2 North Padre Island Area (revised November 1, 2000)
TX2A North Padre Island Area, East Addition (revised November 1, 2000)
TX3 Mustang Island Area (revised November 1, 2000)
TX3A Mustang Island Area, East Addition (revised November 1, 2000)
TX4 Matagorda Island Area (revised November 1, 2000)
TX5 Brazos Area (revised November 1, 2000)
TX5B Brazos Area, South Addition (revised November 1, 2000)
TX6 Galveston Area (revised November 1, 2000)
TX6A Galveston Area, South Addition (revised November 1, 2000)
TX7 High Island Area (revised November 1, 2000)
TX7A High Island Area, East Addition (revised November 1, 2000)
TX7B High Island Area, South Addition (revised November 1, 2000)
TX7C High Island Area, East Addition, South Extension (revised November 1, 2000)
TX8 Sabine Pass Area (revised November 1, 2000)

Outer Continental Shelf Official Protraction Diagram (These 7 diagrams sell for $2.00 each)

NG14–03 Corpus Christi (revised November 1, 2000)
NG14–06 Port Isabel (revised November 1, 2000)
NG15–01 East Breaks (revised November 1, 2000)
NG15–02 Garden Banks (revised November 1, 2000)
NG15–04 Alaminos Canyon (revised November 1, 2000)
NG15–05 Keathley Canyon (revised November 1, 2000)
NG15–08 Sigsbee Escarpment (revised November 1, 2000)

Please Note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) formats) containing all of the Gulf of Mexico Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Region's Public Information Unit for a price of $15.00. The Leasing Maps and Official Protraction Diagrams are also available via the Internet. *See also* 66 FR 28002, published on May 21, 2001, for the current status of Central and Western Gulf of Mexico Leasing Maps and Official Protraction Diagrams. In addition, Supplemental Official OCS Block Diagrams (SOBDs) for these blocks are available for blocks which contain the "U.S. 200 Nautical Mile Limit" line and the "U.S.-Mexico Maritime Boundary" line. These SOBDs are also available from the MMS Gulf of Mexico Region's Public Information Unit and via the Internet. For additional information, please call Mr. Charles Hill (504) 736–2795.

All blocks are shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this sale is shown in the document "List of Blocks Available for Leasing, Sale 184" included in the Final Notice of Sale 184 Package. Some of these blocks may be partially leased or deferred, or transected by administrative lines such as the Federal/State jurisdictional line, or partially included in the Flower Garden Banks National Marine Sanctuary (in accordance with the President's June 1998 withdrawal directive, portions of blocks lying within National Marine Sanctuaries are no longer available for leasing). Information on the unleased portions of such blocks is also found in the document titled "Western Gulf of Mexico Lease Sale 184—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred,"

included in the Final Notice of Sale 184 Package.

Areas Not Available for Leasing

The following whole and partial blocks are not offered for lease in this sale:

- High Island Area Block 170 (an unleased block, but currently under appeal);
- High Island Area, East Addition, South Extension, Blocks A–375 and A–398 (at the Flower Garden Banks), and the portions of other blocks within the boundary of the Flower Garden Banks National Marine Sanctuary; portions of High Island Area, East Addition, South Extension, Blocks A–366, A–383, A–399, and A–401; High Island Area, South Addition, Block A–513; and Garden Banks Area Blocks 134 and 135;
- Mustang Island Area Blocks 793, 799, and 816 (blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel);
- Whole and partial blocks which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

Whole Blocks: Sigsbee Escarpment (Area NG15–08) Blocks 11, 57, 103, 148, 149, 194, 239, 284, and 331 through 341; and

Partial Blocks: Keathley Canyon (Area NG15–05) Blocks 978 through 980; and Sigsbee Escarpment (Area NG15–08) Blocks 12 through 14; 58 through 60; 104 through 106; 150, 151, 195, 196, 240, 241; 285 through 298; and 342 through 349.

Lease Terms and Conditions

Primary lease terms, primary lease term extensions, minimum bids, rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map "Lease Terms and Economic Conditions, Sale 184, Final" for leases resulting from this sale:

Primary Lease Terms: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in water depths of 800 meters or deeper;

Primary Lease Term Extensions: Extensions may be granted for eligible blocks in water depths less than 400 meters as specified in Notice To Lessees and Operators (NTL) 2000–G22, effective December 22, 2000;

Minimum Bids: $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper;

Rental Rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas is made, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty Rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month in which the production is obtained;

Minimum Royalty: After the start of royalty-bearing production: $5 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year;

Royalty Suspension Areas: Royalty suspension, subject to gas price thresholds, will apply for blocks in water depths less than 200 meters where new deep gas (15,000 feet or greater subsea) is drilled and commences production within 5 years from lease issuance, and, subject to both oil and gas price thresholds, will apply in water depths of 400 meters or deeper; see the map titled "Lease Terms and Economic Conditions, Sale 184, Final" for specific areas and the document contained within the Final Notice of Sale 184 Package titled "Royalty Suspension Provisions, Sale 184" for the specific details regarding royalty suspension eligibility, applicable price thresholds, and implementation.

Stipulations

The map titled "Stipulations and Deferred Blocks, Sale 184, Final" depicts the blocks where five lease stipulations apply: 1. Topographic Features; 2. Military Areas; 3. Operations in the Naval Mine Warfare Area; 4. Law of the Sea Convention Royalty Payment; and 5. Protected Species. The texts of the stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 184, Final" included in the Final Notice of Sale 184 Package. Also shown on this map are the deferred blocks noted above.

Rounding

The following procedure must be used to calculate minimum bid, rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount to determine the correct minimum bid, rental, or minimum royalty.

Please note: For the minimum bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing in Western Gulf of Mexico OCS Oil and Gas Sale 184" included in the Final Notice of Sale 184 Package.

Method of Bidding

For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 184, not to be opened until 9 a.m., Wednesday, August 21, 2002." The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the Final Notice of Sale 184 Package.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 67 FR 18033 on April 12, 2002. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region's Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, *e.g.*, 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the ⅛th bonus on all high bids. A statement to this effect must be included on each bid (*see* the document "Bid Form and Envelope" contained in the Final Notice of Sale 184 Package).

Bid Deposit

Submitters of high bids must deposit the ⅛th bonus by using electronic funds transfer procedures, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the Final Notice of Sale 184 Package. All

payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 2 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Please note: Certain bid submitters (*i.e.*, those that do NOT currently own or operate

pay by EFT the balance of the cash bonus bid along with the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Region's Adjudication Unit, a currently valid certification

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance

at the University of Washington, and the Archaeology Department at the Burke Museum, the review committee will meet on November 8, 9 and 10, 2002, in the Walker-Ames Room in Kane Hall, University of Washington, Seattle, WA. Information about Kane Hall can be found online at http://www.washington.edu/classroom/kanehall.

The agenda for the meeting will include Federal agency compliance;

final meeting dates, the meeting agenda, and other meeting details will be published in the Federal Register at least 90 days prior to the Minneapolis, MN, meeting.

Dated: June 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–18050 Filed 7–17–02; 8:45 am]

BILLING CODE 4310–70–S

Marion County

Ables, Alfred and Jane, House, 230 E. Fifth Ave., Buena Vista, 02000841

Illinois

Cook County

Woman's Christian Temperance Union Administration Building, 1730 Chicago Ave., Evanston, 02000849

Du Page County

Henderson, Frank B., House, 301 S.

payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 2 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

Please note: Certain bid submitters (*i.e.*, those that do NOT currently own or operate an OCS mineral lease OR those that have ever defaulted on a 1/5th bonus payment (EFT or otherwise)) are required to guarantee (secure) their 1/5th bonus payment prior to the submission of bids. For those who must secure the EFT 1/5th bonus payment, one of the following options may be used: 1. Provide a third-party guaranty; 2. Amend Development Bond Coverage; 3. Provide a Letter of Credit; or 4. Provide a lump sum payment via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated Final Notice of Sale 184 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560 of July 12, 1999), is available from the MMS Gulf of Mexico Region's Public Information Unit or via the Internet.

Successful Bidders

As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the cash bonus bid along with the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Region's Adjudication Unit, a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR part 12, subpart D. A copy of the Debarment Certification Form is contained in the Final Notice of Sale 184 Package.

Affirmative Action

The MMS *requests* that the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985), be on file in the MMS Gulf of Mexico Region's Adjudication Unit prior to bidding. In any event, these forms are required to be on file in the MMS Gulf of Mexico Region's Adjudication Unit prior to execution of any lease contract. Bidders must also comply with the requirements of 41 CFR part 60.

Information to Lessees:

The Final Notice of Sale 184 Package contains a document titled "Information To Lessees." These Information To Lessees items provide information on various matters of interest to potential bidders.

Dated: July 3, 2002.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 02–18056 Filed 7–17–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee.

General Information: The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101-601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act (NAGPRA).

Persons wishing further information concerning review committee meetings may contact Dr. Robert Stearns, Manager, National NAGPRA Program, 1849 C Street NW-350 NC, Washington, DC 20240, telephone (202) 343-5266, facsimile (202) 343-5260, e-mail robert__stearns@nps.gov. Transcripts of review committee meetings are available for public inspection approximately eight weeks after each meeting at the office of the Manager, National NAGPRA Program, Native American Graves Protection and Repatriation Review Committee, 800 North Capitol Street NW, Suite 350, Washington, DC 20001. The protocol for review committee meetings is posted on the National NAGPRA Website (www.cr.nps.gov/nagpra; click "Review Committee," then click "Procedures").

Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations that are considering visits to museums or Federal agencies in review committee meeting locations for the purpose of transfers of repatriated human remains and cultural items may wish to schedule transfers to coincide with review committee meetings. Note that repatriation transfers may be supported by "repatriation awards" administered under the NAGPRA grants program. Information about NAGPRA grants is posted on the National NAGPRA Website (www.cr.nps.gov/nagpra; click "NAGPRA Grants").

Seattle, WA, meeting, November 8-10, 2002: At the invitation of the Native American Law Center, American Indian Studies Center, Department of Anthropology, and Museology Program at the University of Washington, and the Archaeology Department at the Burke Museum, the review committee will meet on November 8, 9 and 10, 2002, in the Walker-Ames Room in Kane Hall, University of Washington, Seattle, WA. Information about Kane Hall can be found online at http://www.washington.edu/classroom/kanehall.

The agenda for the meeting will include Federal agency compliance; implementation of the statute in the northwestern United States; and regulations on Section 10.7, disposition of unclaimed human remains, funerary objects, sacred objects or objects of cultural patrimony, Section 10. 11, disposition of culturally unidentifiable human remains, and Section 10.13, future applicability.

Meeting sessions will begin at 8:30 a.m. each day, and will end no later than 5:00 p.m. on November 8 and 9, and no later than 2:00 p.m. on November 10. The meeting is open to the public. Meeting space is limited and persons will be accommodated on a first-come, first-served basis. Persons wishing to make a public presentation to the review committee should submit a request to do so by October 9, 2002, and include a written abstract of your presentation and your contact information. Persons may also submit written statements for consideration by the review committee by October 19, 2002. Requests and statements should be addressed to the review committee in care of the "Designated Federal Official, NAGPRA Review Committee", National NAGPRA program, and should be sent (1) by mail to the Manager, National NAGPRA Program, National Park Service, 1849 C Street NW-350NC, Washington, DC 20240; or (2) by commercial delivery address to the Manager, National NAGPRA Program, National Park Service, 800 North Capitol Street NW, Suite 350, Washington, DC 20001.

Increased security in the Washington, DC, area may cause delays in the delivery of U.S. Mail to Government offices. In addition to mail or commercial delivery, a copy of the mailed request may also be faxed to the review committee in care of the Manager "Designated Federal Official, NAGPRA Review Committee", National NAGPRA Program, at (202) 343-5260.

No special lodging arrangements have been made for this meeting. Accommodations are available in the Seattle community.

Minnesota meeting, spring 2003: The review committee will meet in the spring 2003, tentatively May 9-11, 2003, in Minneapolis, MN. A notice including final meeting dates, the meeting agenda, and other meeting details will be published in the Federal Register at least 90 days prior to the Minneapolis, MN, meeting.

Dated: June 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–18050 Filed 7–17–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 7, 2002. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW, Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by August 2, 2002.

Paul R. Lusignan,

Acting Keeper of the National Register of Historic Places.

FLORIDA

Duval County

St. George Episcopal Church, (Florida's Carpenter Gothic Churches MPS), 10560 Ft. George Rd. E, Jacksonville, 02000839

Hillsborough County

J.J. Newbury Co. Building, Old, 815–819 N. Franklin St., Tampa, 02000837

Leon County

Killearn Plantation Archeological and Historic District, 3540 Thomasville Rd., Tallahassee, 02000836

Polk County

Thompson and Company Cigar Factory, (Bartow MPS), 255 N. Third St., Bartow, 02000838

Georgia

Candler County

Metter High School, Jct. of College St. and Vertia St., Metter, 02000840

Jenkins County

Millen High School, 100 Cleveland Ave., Millen, 02000842

Marion County

Ables, Alfred and Jane, House, 230 E. Fifth Ave., Buena Vista, 02000841

Illinois

Cook County

Woman's Christian Temperance Union Administration Building, 1730 Chicago Ave., Evanston, 02000849

Du Page County

Henderson, Frank B., House, 301 S. Kenilworth, Elmhurst, 02000844

Jackson County

Giant City Stone Fort Site, Stone Fort Rd., Makanda, 02000848

Lake County

Karcher Hotel, 405 Washington St., Waukegan, 02000845

Macon County

Transfer House, 1 Central Park East, Decatur, 02000843

Madison County

Brooks Catsup Bottle Water Tower, 800 Morrison Ave., Collinsville, 02000847

Mercer County

Thompson, James S., House, 804 North St., New Boston, 02000846

MAINE

Oxford County

First Universalist Society of West Sumner, 1114 Main St., Sumner, 02000850

MISSISSIPPI

Chickasaw County

Okolona College, US 245 N, 1.1 mi N of jct. with MS 41 and MS 32, Okolona, 02000853

Coahoma County

WROX Building, 257 Delta Ave., Clarksdale, 02000854

Forrest County

Hub City Historic District (Boundary Increase), Roughly along Main, Market, Newman and Walnut Sts., Hattiesburg, 02000855

Parkhaven Historic District, Roughly along S. 22nd Ave. and S. 21st Ave., from Hardy to Mamie Sts., Hattiesburg, 02000856

Harrison County

Benton, Thomas and Melinda, House, 14115 Rippy Rd., Gulfport, 02000857

Hewes, Finley B., House, 604 E. Beach Blvd., Gulfport, 02000852

Noxubee County

Scales, William Henry, House, 1106 Magnolia Dr., Macon, 02000858

MISSOURI

Greene County

Mid-town Historic District (Boundary Increase I), Roughly along N. Robberson Ave. and N. Jefferson Ave., Springfield, 02000851

NEBRASKA

Dawes County

Hotel Chadron, 115 Main St., Chadron, 02000859

WASHINGTON

King County

Gas Works Park, 2000 N. Northlake Way, Seattle, 02000862

Pagani, Luigi and Aurora, House, 32907 Marino St., Black Diamond, 02000861

CONNECTICUT

Hartford County

Union Village Historic District, Roughly bounded by Union Pond, Oakland St., RR Right of Way, Marble St., Hockanum R., Manchester, 02000831

MISSOURI

Charlton County

Dalton Vocational School Historic District, jct. of Fourth St. and MO J, Dalton,

initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 26, 2002. The Commission's views are due at Commerce within five business days thereafter, or by September 3, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the

administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 12, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–18125 Filed 7–17–02; 8:45 am]

BILLING CODE 7020–02–P

EPA Headquarters, Washington, DC 20460, e-mail: *WICK.ANNE@EPA.GOV.*

Bruce S. Gelber,

Chief, Environment & Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 02–18102 Filed 7–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

NEBRASKA

Dawes County

Hotel Chadron, 115 Main St., Chadron, 02000859

WASHINGTON

King County

Gas Works Park, 2000 N. Northlake Way, Seattle, 02000862
Pagani, Luigi and Aurora, House, 32907 Merino St., Black Diamond, 02000861
Rector Hotel, 619–621 Third Ave., Seattle, 02000863

Spokane County

Hillyard Historic Business District, N. 4912–5220 Market St., E. 3108–3117 Olympia Ave., Spokane, 02000860

A request for REMOVAL has been made for the following resources:

MISSISSIPPI

Pike County

Lieb-Rawls House (Magnolia MRA) 303 Magnolia St., Magnolia, 84000051

Tishomingo County

Edwards, R.D., House (Iuka MPS) 601 Indian Creek Rd., Iuka, 91000933

[FR Doc. 02–18048 Filed 7–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 29, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington, DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by August 2, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Randolph County

St. Mary's AME Church—Pocahontas Colored School, 1708 Archer St., Pocahontas, 02000830

CONNECTICUT

Hartford County

Union Village Historic District, Roughly bounded by Union Pond, Oakland St., RR Right of Way, Marble St., Hockanum R., Manchester, 02000831

MISSOURI

Charlton County

Dalton Vocational School Historic District, jct. of Fourth St. and MO J, Dalton, 02000832

Greene County

Walnut Street Historic District (Boundary Increase I), Roughly along E Walnut St., from the 700 and 800 Blocks, Springfield, 02000833

WISCONSIN

Sauk County

Gust Brothers' Store, 101 Fourth St., Baraboo, 02000834

A request for a MOVE has been made for the following resource:

285 Prospect St., within the,

CONNECTICUT

New Haven County

Prospect Hill Historic District Off CT 10 New Haven, 79002670

[FR Doc. 02–18049 Filed 7–17–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1013 (Preliminary)]

Saccharin From China

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1013 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 26, 2002. The Commission's views are due at Commerce within five business days thereafter, or by September 3, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 11, 2002.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on July 11, 2002, by counsel for PMC Specialties Group, Inc., Cincinnati, Ohio.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 1, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact D.J. Na (202–708–4727) not later than July 29, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 6, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 12, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–18125 Filed 7–17–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Public Meeting Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency will hold a public meeting on Thursday, July 25, 2002 at 10 a.m. in the 12th floor conference room, 1425 New York Avenue, NW., Washington, DC. The subject of the meeting will be implementation of the provisions of the seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999. (*United States* v. *Caterpillar*, Case No. 1:98CV02544; *United States* v. *Navistar International Transportation Corporation*, Case No. 1:98CV02545; *United States* v. *Cummins Engine Company*, Case No. 1:98CV02546; *United States* v. *Detroit Diesel Corporation*, Case No. 1:98CV02548; *United States* v. *Volvo Truck Corporation*, Case No. 1:98CV02547; *United States* v. *Mack Trucks, Inc.*, Case No. 1:98CV01495; and *United States* v. *Renault Vehicles Industries, S.A.*, Case No. 1:98CV02543). In supporting entry by the court of the decrees, the United States committed to meet with states, industry groups, environmental groups, and concerned citizens to discuss consent degree implementation issues. This is the seventh of a series of public meetings held quarterly during the first year of implementation of the consent decrees and at least annually thereafter.

Further meetings will be announced in the **Federal Register** and/or on EPA's Diesel Engine Settlement web page at: *http://www.epa.gov/compliance/resources/cases/civil/caa/diesel.*

Interested parties may contract the Environmental Protection Agency prior to the meeting at the address listed below with questions or suggestions for topics of discussion. For further information, please contact: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), EPA Headquarters, Washington, DC 20460, e-mail: *WICK.ANNE@EPA.GOV.*

Bruce S. Gelber,

Chief, Environment & Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 02–18102 Filed 7–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June and July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,335; Northern Indiana Public Service Co (NIPSCO), Merrillville, IN
TA–W–41,362; Vesuvius USA, Maple Grove Plant, Bettsville, OH
TA–W–41,399; BBA Nonwovens, Simpsonville, Inc., Lewisburg, PA
TA–W–41,405; Reilly Industries, Provo, UT
TA–W–41,413; T and T Land and Timber, Rexford, MT

TA–W–41,250; Tuthill Vacuum Systems, Canton, MA
TA–W–41,323; Hoffman Materials, Inc., Carlisle, PA
TA–W–41,418; RHO Industries, Buffalo, NY
TA–W–41,316; Quality Components, Klamath Falls, OR
TA–W–40,060; Lynchburg Foundry Co. A Div. Of Intermet Corp., Radford, VA
TA–W–40,259; National Refractories and Minerals Corp., Columbiana, OH
TA–W–41,147; Boeing Commercial Aircraft Group, Salt Lake City, UT
TA–W–41,331; Ashland Specialty Chemical Co., Pittsburgh, PA
TA–W–41,450; Columbia River Egg Farm, Rufus, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of June and July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for

Carey Industries, Inc., Danbury, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 5th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18067 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

employment on or after August 10, 2000, through February 7, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18067 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

TA–W–41,250; Tuthill Vacuum Systems, Canton, MA
TA–W–41,323; Hoffman Materials, Inc., Carlisle, PA
TA–W–41,418; RHO Industries, Buffalo, NY
TA–W–41,316; Quality Components, Klamath Falls, OR
TA–W–40,060; Lynchburg Foundry Co. A Div. Of Intermet Corp., Radford, VA
TA–W–40,259; National Refractories and Minerals Corp., Columbiana, OH
TA–W–40,617; Bull Moose Tube Co., Gerald, MO
TA–W–41,130; Tri-Star Refractories, Inc., A Subsidiary of RHI Refractories Holding Co., Cincinnati, OH
TA–W–41,260; Laird Technologies, Asheboro, NC
TA–W–41,322 & A; North American Refractories, A Subsidiary of RHI Holding, Indiana Hill Plant, Ione, CA and Ione Plant, Ione, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,029; Parker Hannifin Corp., Precision Rebuilding Div., Reading, PA
TA–W–41,357; Stream International, Beaverton, OR
TA–W–41,222; Bechtel Jacob Co LLC, Piketon, OH
TA–W–41,315; Metal Processing Corp., Maple Heights, OH
TA–W–41,415; Electronic Data Systems, Maynard, MA
TA–W–41,341 & A; Clarinda Co., Clarinda, IA and Atlantic, IA
TA–W–41,430; Alcatel USA, Repair/ Returns, Ogdensburg, NY
TA–W–41,419; BioMerieux, Inc., Instrument Service Dept., Oklahoma City, OK

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,400; Howmet Castings, Wichita Falls, TX

The investigation revealed that criteria (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,401; ConAgra Foods, ConAgra Grocery Products Co., Milton, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,310; Baldwin Graphic Systems, Shelton, CT
TA–W–41,147; Boeing Commercial Aircraft Group, Salt Lake City, UT
TA–W–41,331; Ashland Specialty Chemical Co., Pittsburgh, PA
TA–W–41,450; Columbia River Egg Farm, Rufus, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,901; Integrated Logistics Solutions, New Hyde Park, NY: September 25, 2000.
TA–W–41,148; Brook Manufacturing Co., Union, MS: February 21, 2001.
TA–W–41,380; American Tissue Mills of Neenah, Neenah, WI: March 19, 2001.
TA–W–41,424; Ibiden Graphite of America Corp., Portland, OR: March 11, 2001.
TA–W–39,586; Moltech Power Systems, El Paso, TX: June 21, 2000.
TA–W–40,967; Tip Top Tees, Lanes, SC: December 28, 2000.
TA–W–41,132; B/E Aerospace, Inc., Cabin Interior Structures Group, Jacksonville, FL: February 25, 2001.
TA–W–41,273; Regal Garment Corp., New York, NY: March 7, 2001.
TA–W–41,343; Camfil Farr, Jonesboro, AR: March 28, 2001.
TA–W–40,351 & A; Quitman Manufacturing Co., Quitman, GA and Barwick Manufacturing, Barwick, GA: March 6, 2001.
TA–W–41,358; Owens-Brigham Medical Co., Headquarters, Morganton, NC: March 26, 2001
TA–W–41,379; Williamson Dickie Manufacturing Co., McAllen #9, McAllen, TX: April 9, 2001
TA–W–41,391; Victor Forstmann, Inc., Dublin, GA: March 22, 2001
TA–W–41,395; H.J. Seagrott Co., Inc., Berlin, NY: March 18, 2001
TA–W–41,440; Jervis B. Webb Col, New Hudson, MI: April 9, 2001
TA–W–41,443; Carter Footwear, Inc., Wilkes-Barre, PA: January 20, 2002
TA–W–41,444; Joseph Timber Co., Joseph, OR: March 7, 2001.
TA–W–41,456; New Images, Inc., Reidsville, NC: March 27, 2001.
TA–W–40,460; Radax Industries, Webster, NY: October 22, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of June and July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05879; ConAgra Foods, ConAgra Grocery Products Co., Milton, PA
NAFTA–TAA–05358; Do Group Holding, Inc., Systems—Marked Tree Div., Marked Tree, AR
NAFTA–TAA–05720; Hershey Chocolate & Confectionary Corp., Jolly Rancher Div., Wheat Ridge, CO
NAFTA–TAA–06011; McCain Foods USA, Inc., Anchor Appetizer Group, Appleton, WI
NAFTA–TAA–06017; Ashland Specialty Chemical Co., Pittsburgh, PA.
NAFTA–TAA–06045; BBA Nonwovens Simpsonville, Inc., Lewisburg, PA
NAFTA–TAA–06256; Alexander Garment, Hialeah, FL

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–6160; Square D Co., Schneider Electric, Lincoln, NE

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06073; American Tissue Mills of Neenah, Neenah, WI: January 17, 2001.
NAFTA–TAA–05443; Barranco Apparel Group, Ruth of Carolina Div., Hendersonville, NC: October 11, 2000.
NAFTA–TAA–06070; Williamson Dickie Manufacturing Co., McAllen#9, McAllen, TX: April 9, 2001.
NAFTA–TAA–06072; Germantown (USA) Co., West Chester, PA: March 10, 2001.
NAFTA–TAA–06081; Cummins, Inc., Cummins Power Generation, Fridley, MN: April 2, 2002.
NAFTA–TAA–06204; Victor Forstmann, Inc., Dublin, GA: March 20, 2001.

I hereby certify that the aforementioned determinations were issued during the months of June and July, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 10, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18071 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,788]

Carey Industries, Inc., Danbury, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002 in response to a petition filed by a company official on behalf of workers at Carey Industries, Inc., Danbury, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 5th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18070 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,917]

Curtron Curtains, Inc., Curtron Manufacturing, Travelers Rest, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 7, 2002, applicable to workers of Curtron Curtains, Inc., located in Travelers Rest, South Carolina. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9327).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that production workers wages at the Travelers Rest, South Carolina plant are reported to the Unemployment Insurance (UI) tax account for Curtron Manufacturing. Wages for workers at the plant engaged in the distribution of curtains produced at the same plant are reported to the UI tax account for Curtron Curtains, Inc.

The intent of the Department's certification is to provide coverage to all workers of the firm adversely affected by increased imports. Therefore, the Department is amending the certification to include workers of the firm whose wages are reported to the UI tax account for Curtron Manufacturing, Travelers Rest, South Carolina.

The amended notice applicable to TA–W–39,917 is hereby issued as follows:

All workers of Curtron Curtains, Inc., and Curtron Manufacturing, Travelers Rest, South Carolina, engaged in employment related to the production of curtains, who became totally or partially separated from employment on or after August 10, 2000, through February 7, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18067 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 910]

Delphi Harrison Thermal Systems, Lockport, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2001, in response to a worker petition that was filed on behalf of workers at Delphi Harrison Thermal Systems, Lockport, New York.

A NAFTA–TAA petition filed on behalf of the workers at the subject firm was terminated (NAFTA–6089, signed July 5, 2002).

This case is being terminated because the separated workers have been rehired since the filing of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of July 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18066 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,267 and TA–W–40,267A]

Lamb Technicon, a Division of Unova, Warren, MI; Lamb Technicon, A Division of Unova, Lake Orion, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 1, 2002, applicable to workers of Lamb Technicon, a

Division of Unova, Warren, Michigan. The notice was published in the **Federal Register** on March 20, 2002 (67 FR 13013).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Lake Orion, Michigan location of the subject firm when it closed in February, 2002. The of the subject firm regarding their purchases of magnesium oxide during the relevant period.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Source, El Paso, Texas, who became totally or partially separated from employment on or after July 26, 2000, through September 28, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 9th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

Signed at Washington, DC this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18064 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

The petitioner alleges that a customer of the subject plant is relocating to China and other countries in Southeastern Asia.

The shift in production to China and other countries by the customer is not a relevant factor in meeting the eligibility requirement of section 250 of the Trade Act.

The company further states that several companies (did not identify companies) located in the proximity of

Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 22, 2002, and was published in the **Federal Register** on May 2, 2002 (67 FR 22113).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was

Division of Unova, Warren, Michigan. The notice was published in the **Federal Register** on March 20, 2002 (67 FR 13013).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Lake Orion, Michigan location of the subject firm when it closed in February, 2002. The Lake Orion, Michigan workers were engaged in the production of automated metal removal equipment, transfer lines and dial transfers.

Accordingly, the Department is amending the certification to include workers of Lamb Technicon, A Division of Unova, Lake Orion, Michigan.

The intent of the Department's certification is to include all workers of Lamb Technicon who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,267 is hereby issued as follows:

All workers of Lamb Technicon, a Division of Unova, Warren, Michigan (TA–W–40,267) and Lake Orion, Michigan (TA–W–40,267A) who became totally or partially separated from employment on or after October 12, 2000, through March 1, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18069 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,947]

Martin Marietta Magnesia Specialties, Inc., Manistee, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 3, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 27, 2002, and was published in the **Federal Register** on April 5, 2002 (67 FR 16441).

Based on additional information provided by the company, the Department of Labor will conduct a survey of an additional major customer of the subject firm regarding their purchases of magnesium oxide during the relevant period.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 17th day of June, 2002

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18068 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,783]

Plasticsource, Inc., Kelly Staff Leasing, Kelly Services, Inc., El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 28, 2001, applicable to workers of PlasticSource, Inc. located in El Paso, Texas. The notice was published in the **Federal Register** on October 19, 2001 (66 FR 53251).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that temporary workers of Kelly Services, Inc. were employed at PlasticSource, Inc. to produce automotive headlamp parts and vacuum cleaner parts at the El Paso, Texas location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Kelly Services, Inc. employed at PlasticSource, Inc., El Paso, Texas.

The intent of the Department's certification is to include all workers of PlasticSource, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,783 is hereby issued as follows:

All workers of PlasticSource, El Paso, Texas, and workers of Kelly Staff Leasing and Kelly Services, Inc. producing headlamp parts and vacuum cleaner parts at Plastic Source, El Paso, Texas, who became totally or partially separated from employment on or after July 26, 2000, through September 28, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 9th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18065 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,137]

Weitech, Inc., Including Temporary Workers of Labor Ready, Sisters, OR; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 24, 2001, applicable to workers of Weitech, Inc., Sisters, Oregon. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Labor Ready were employed at Weitech, Inc. to produce electronic pest repellers at the Sisters, Oregon location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Labor Ready employed at Weitech, Inc., Sisters, Oregon.

The intent of the Department's certification is to include all workers of Weitech, Inc. adversely affected by imports.

The amended notice applicable to TA–W–39,137 is hereby issued as follows:

All workers of Weitech, Inc., Sisters, Oregon including temporary workers of Labor Ready, Sisters, Oregon engaged in employment related to the production of electronic pest repellers at Weitech, Inc., Sisters, Oregon who became totally or partially separated from employment on or after April 5, 2000, through August 24, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18064 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5480]

AA Precisioneering, Inc., Meadville, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 22, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 26, 2002, and was published in the **Federal Register** on May 17, 2002 (67 FR 35144).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of tools, dies, specialty tooling and injection molds at AA Precisioneering, Inc., Meadville, Pennsylvania was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no increased company imports of tools, dies, specialty tooling and injection molds from Mexico or Canada, nor did the subject firm shift production from AA Precisioneering, Inc, Meadville, Pennsylvania to Mexico or Canada. The survey conducted by the Department of Labor revealed that customers did not purchase products like or directly competitive with those produced at the Meadville plant from Canada or Mexico during the relevant period.

The petitioner alleges that a customer of the subject plant is relocating to China and other countries in Southeastern Asia.

The shift in production to China and other countries by the customer is not a relevant factor in meeting the eligibility requirement of section 250 of the Trade Act.

The company further states that several companies (did not identify companies) located in the proximity of the subject firm have been certified for NAFTA-Transitional Adjustment Assistance (NAFTA) that sold similar products to the same customer as the subject firm.

The alleged NAFTA certifications of companies in the proximity of the subject firm may have been made for different reasons, such as a different product line, other customer(s) increasing their imports from Canada or Mexico or a shift in plant production to Canada or Mexico. Further review of the customer survey conducted by the Department of Labor during the initial investigation shows that the customer at issue did not report importing products like or directly competitive with what the subject plant produced from Canada or Mexico during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of June 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18079 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5918]

Britax Heath Techna, Inc. Aircraft Interior Systems, Bellingham, WA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 23, 2002, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 22, 2002, and was published in the **Federal Register** on May 2, 2002 (67 FR 22113).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to retrofitting various commercial aircraft interior components and services at Britax Heath Techna, Inc., Aircraft Interior Systems, Bellingham, Washington, was denied based on the workers not producing an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

The petitioner alleges that the company was engaged in the production of a product. The petitioner indicated that the subject firm in combination of retrofitting aerospace interior components, also produced (OEM) Original Engineered Manufacturing Aerospace components. The petitioner further alleges that firm sales declined due to a decline in orders from foreign customers and a major U.S. aircraft manufacturer.

The Department of Labor upon further review of the initial decision and further contact with the company concurs with the petitioner that a portion of the work performed by the workers at the subject plant consisted of activities related to the production of a product (OEM Aerospace components).

A review of company data supplied during initial investigation and further contact with the company shows that there were no company imports of OEM Aerospace components from Mexico or Canada, nor did the subject firm shift production from Bellingham, Washington to Mexico or Canada.

Further review of data supplied during the initial investigation, in conjunction with data recently supplied by the company, show that the subject firm's customers are located worldwide, with the overwhelming majority of sales directed towards foreign customers. Based on information provided by the company, a significant portion of the

declines in sales and production at the subject firm are attributed to a worldwide slow down in the airline industry during the relevant period, which thus impacted the retrofitting aerospace interior components business. The events of September 11, 2001 further impacted the demand for the subject firm's products.

Therefore, imports from Canada or Mexico of products "like or directly

Signed in Washington, DC this 5th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18076 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training

January 23, 2002 in response to a petition filed on the same date on behalf of workers at JTD, Incorporated, Tigard, Oregon.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 5th day of

subject matter of the petitions to the Director of DTAA at the address shown below not later than July 29, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Keystone Tool and Machine	Carlisle, PA	04/28/2002	NAFTA–6,137	Custom made molds, machines, parts.

declines in sales and production at the subject firm are attributed to a worldwide slow down in the airline industry during the relevant period, which thus impacted the retrofitting aerospace interior components business. The events of September 11, 2001 further impacted the demand for the subject firm's products.

Therefore, imports from Canada or Mexico of products "like or directly competitive" with what the subject plant produced did not "contribute importantly" to the layoffs at the subject plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18080 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA 5827]

Carey Industries, Inc., Danbury, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on January 29, 2002 in response to a petition filed by a company official on behalf of workers at Carey Industries, Inc., Danbury, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18076 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA 6206]

IEC Electronics Corporation, Newark, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on May 14, 2002, in response to a petition filed on behalf of workers at IEC Electronics Corporation, Newark, New York. The workers produce printed circuit boards.

A negative determination applicable to the petitioning group of workers was issued on March 27, 2002 (NAFTA–5649). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of June 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18075 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5762]

JTD, Incorporated, Tigard, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on January 23, 2002 in response to a petition filed on the same date on behalf of workers at JTD, Incorporated, Tigard, Oregon.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 5th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18077 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Director of DTAA not later than July 29, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than July 29, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Keystone Tool and Machine (Wkrs).	Carlisle, PA	04/28/2002	NAFTA–6,137	Custom made molds, machines, parts.
Milco Industries (TGWA)	Bloomsburg, PA	04/24/2002	NAFTA–6,138	Under garments.
Dispatch Printing (GCIU)	Erie, PA	04/23/2002	NAFTA–6,139	Printed foils.
Louisville Ladder Group, LLC (Co.).	Louisville, KY	04/22/2002	NAFTA–6,140	Aluminum and fiberglass ladders.
Smiths Group—Portex, Inc. (Co.).	Fort Myers, FL	04/22/2002	NAFTA–6,141	Anesthesia circuits.
Watkins Motor Lines (Wkrs)	Charlotte, NC	04/23/2002	NAFTA–6,142	Truck Drivers.
3M (PACE)	St. Paul, MN	04/24/2002	NAFTA–6,143	Tape.
Monona Wire (Wkrs)	Monona, IA	04/24/2002	NAFTA–6,144	Wiring harnesses.
Execumold, Inc. (Wkrs)	Erie, PA	04/23/2002	NAFTA–6,145	Plastic injection mold.
Springs Window Fashions (Co.).	Montgomery, PA	04/23/2002	NAFTA–6,146	Window blinds.
Electronic Data System—EDS (Co.).	Einchester, KY	04/24/2002	NAFTA–6,147	Electronic service.
Stanley Furniture Company (Wkrs).	Stanleytown, VA	04/24/2002	NAFTA–6,148	Furniture.
InterMetro Industries (Co.)	Carol Stream, IL	04/24/2002	NAFTA–6,149	Distribution center.
Stabilit America (Wkrs)	Allentown, PA	04/26/2002	NAFTA–6,150	Fiberglass panels.
Grand Processing (Co.)	Brooklyn, NY	04/22/2002	NAFTA–6,151	Fabric and garments.
Telect (Co.)	Liberty Lake, WA	04/19/2002	NAFTA–6,152	Fiber patchcordo.
Holiday Products—Rauch Industries (Co.).	El Paso, TX	04/16/2002	NAFTA–6,153	Christmas ornaments.
Enterasys Network (Wkrs)	Salt Lake City, UT	04/27/2002	NAFTA–6,154	Internet switches and routers.
Tyco Electronics (Wkrs)	Jonestown, PA	04/29/2002	NAFTA–6,155	Electrical connectors.
Textron Golf and Turfcare (UAW).	Racine, WI	04/26/2002	NAFTA–6,156	Lawn and turf products.
Astechnologies (Wkrs)	Monroe, MI	04/29/2002	NAFTA–6,157	Laminated composite boards.
Fruit of the Loom (Co.)	Fayette, AL	04/29/2002	NAFTA–6,158	Yarn.
Eag Electronics (Wkrs)	Fairview, PA	05/06/2002	NAFTA–6,159	Chasmlines, wire hamesses.
Square D Company (Co.)	Lincoln, NE	05/06/2002	NAFTA–6,160	Circuit breakers.
Superior Essex (Wkrs)	Elizabethtown, KY	05/06/2002	NAFTA–6,161	Copper telephone wire.
Ponderosa Pulp Products (Wkrs).	Oshkosh, WI	05/03/2002	NAFTA–6,162	Deinked pulp.
Sights Denim Systems (Co.)	Hendeson, KY	05/06/2002	NAFTA–6,163	Denim garments
Philips (Wkrs)	Knoxville, TN	04/30/2002	NAFTA–6,164	Projection television sets.
Regal Originals (Co)	New York, NY	05/03/2002	NAFTA–6,165	Dresses.
Perfection—Schwank, Inc. (Co.).	Waynesboro, GA	05/03/2002	NAFTA–6,166	Heater production.
Weatherford (Wkrs)	Grand Junction, CO	05/03/2002	NAFTA–6,167	Air compressors.
A and M Thermometer—Accuracy Scientific (Co.).	Asheville, NC	05/01/2002	NAFTA–6,168	Glass thermometers.
Schlumberger (Wkrs)	San Carlos, CA	04/04/2002	NAFTA–6,169	Meters.
Corcom—A tyco Company (Wkrs).	El Paso, TX	05/02/2002	NAFTA–6,170	Radio frequently filters and relays.
Northrop Grumman (Co.)	Sacramento, CA	04/26/2002	NAFTA–6,171	Electrical wire hamesses.
United States Mfg. (Wkrs)	Pasadena, CA	04/26/2002	NAFTA–6,172	Orthotics, prostetics, orthopedics.
AmeriSteel Corp. (Co.)	Jackson, TN	04/30/2002	NAFTA–6,173	Zinc oxide.
Transylvania Vocation Services—TVS (Wkrs).	Brevard, NC	05/03/2002	NAFTA–6,174	Payroll Services.
Wabash Aluminum Alloys (13057).	East Syracuse, NY	04/29/2002	NAFTA–6,175	Aluminum ingot.
Derlan Precision Gear, (Wkrs)	Bedford Park, IL	03/06/2002	NAFTA–6,176	Gears, transmissions for helicopters.
U.S. Timber Company (Wkrs)	Craigmont, ID	04/22/2002	NAFTA–6,177	Lumber.
Q & Q Sewing (Wkrs)	Andrews, SC	05/07/2002	NAFTA–6,178	T-shirts.
Worthintgon Steel (USWA)	Malvern, PA	05/07/2002	NAFTA–6,179	Cold-rolled steel.
Sunrise Medical—Jay Mfg. (Co.).	Longmont, Co	05/13/2002	NAFTA–6,180	Walkers, canes, crutches.
VF Imagewear (Co.)	Mt. Pleasant, TN	05/13/2002	NAFTA–6,181	Uniforms.
Agilent Technologies (Wkrs)	Rohnert Park, CA	04/24/2002	NAFTA–6,182	Test and measurement electronic products.
Union of Needletrades, Industrial (UNITE).	Union City, GA	04/20/2002	NAFTA–6,183	Union workers.
Mantua Industries (Wkrs)	Woodbury Heights, NJ	04/16/2002	NAFTA–6,184	Women's clothes.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Pillowtex Corp. (UNITE)	Columbus, GA	05/10/2002	NAFTA–6,185	Terry bath and hand towels.
Emerson Process Management—Rosemout (Co.).	Anaheim, CA	05/10/2002	NAFTA–6,186	Gas analyzers.
Conaywell Int'l (Allied Signal) (Co.).	Torrance, CA	04/24/2002	NAFTA–6,187	Turbochargers.
Martin Color (Co.)	Laurens, SC	05/09/2002	NAFTA–6,188	Yarn for carpet.
[illegible]	[illegible]	05/09/2002	NAFTA–6,189	Plastic lenses for eye wear.

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5572]

Regal Manufacturing Company, Textured Yarn Department, Hickory, NC; Dismissal of Application for Reconsideration

Signed in Washington, DC this 1st day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18074 Filed 7–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

subject plant production to Mexico. The petitioner further believes that the subject firm imports electrical connectors to the United States. The petitioner attached shipping invoices to depict various imports by the company.

Based on information provided during the initial investigation and recent contact with the company, no shifts in plant production occurred during the relevant period. All subject plant production was shifted to other

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Pillowtex Corp. (UNITE)	Columbus, GA	05/10/2002	NAFTA–6,185	Terry bath and hand towels.
Emerson Process Management—Rosemout (Co.).	Anaheim, CA	05/10/2002	NAFTA–6,186	Gas analyzers.
Coneywell Int'l (Allied Signal) (Co.).	Torrance, CA	04/24/2002	NAFTA–6,187	Turbochargers.
Martin Color (Co.)	Laurens, SC	05/09/2002	NAFTA–6,188	Yarn for carpet.
Essilor of America (Co.)	St. Petersburg, FL	05/08/2002	NAFTA–6,189	Plastic lenses for eye wear.
Newell Rubbermaid (Co.)	Santa Monica, CA	04/30/2002	NAFTA–6,190	Rubber products.
John Deere Commercial Worksite (Wkrs).	Loudon, TN	05/07/2002	NAFTA–6,191	Buckets, lower link and upper links.
LNP Engineering Plastics (Co.).	Santa Ana, CA	05/09/2002	NAFTA–6,192	Thermoplastic pellets.
Kimble Glass (Wkrs)	Vineland, NJ	05/09/2002	NAFTA–6,193	Glass.
Domtar A.W. (Co.)	Port Edwards, WI	05/08/2002	NAFTA–6,194	Paper.
Invensys Sensor System (Wkrs).	El Paso, TX	05/08/2002	NAFTA–6,195	Potentiometers, switches, resistors.
Bemis Mfg. (Wkrs)	Crannon, WI	05/07/2002	NAFTA–6,196	Toilet seats.
PW, Pipe (Wkrs)	Hillsboro, OR	05/06/2002	NAFTA–6,197	Water pipe sewer.
General Electronic (IUE)	Fort Wayne, IN	05/13/2002	NAFTA–6,198	Frame motors and transformers.
Hahn Equipment Company (UAW).	Evansville, IN	05/10/2002	NAFTA–6,199	Commercial Lawn Equipment
Firestrol (Comp)	Cary, NC	05/16/2002	NAFTA–6,200	Electrical Controls.

[FR Doc. 02–18063 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5676 and NAFTA–5676A]

Nortel Networks, Qtera/Operations, Boca Raton, Florida; and Nortel Networks, Qtera/Operations, Support Services Worker Located in New Jersey; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on February 19, 2002, applicable to workers of Nortel Networks, Qtera/Operations, Boca Raton, Florida. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9324).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activity related to the production of optical networking systems. The company has reported to the State that it employed a worker in New Jersey to provide support services related to the production of articles produced in Boca Raton, Florida.

The intent of the Department's certification is to include all workers of Nortel Networks, Qtera/Operations, Boca Raton, Florida, adversely affected by the shift in production to Mexico. Accordingly, the Department is amending the certification to expand coverage to include workers of Nortel Networks, Qtera/Operations providing support services in New Jersey.

The amended notice applicable to NAFTA–5676 is hereby issued as follows:

"All workers at Nortel Networks, Qtera/Operations, Boca Raton, Florida, and support staff workers located in New Jersey, engaged in employment related to the production of optical networking systems, who became totally or partially separated from employment on or after December 6, 2000 through February 19, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, DC this 2nd day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18073 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—06166]

Perfection-Schwank, Inc., Waynesboro, GA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 3, 2002, in response to a petition filed by a company official on behalf of workers at Perfection-Schwank, Inc., Waynesboro, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 27th day of June, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18072 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5572]

Regal Manufacturing Company, Textured Yarn Department, Hickory, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Regal Manufacturing Company, Textured Yarn Department, Hickory, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–5572; Regal Manufacturing Company, Textured Yarn Department, Hickory, North Carolina (May 14, 2002)

Signed at Washington, DC, this 16th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18062 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4710]

Textron Fastening Systems, Automotive Solutions Group, Xact Products Division, Brooklyn, MI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 3, 2001 in response to a petition filed by the company on behalf of workers at Textron Fastening Systems, Automotive Solutions Group, Xact Products Division, Brooklyn, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 1st day of July, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–18074 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05836]

Tyco Electronics Corporation, Jacobus, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked March 22, 2002, an employee requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 28, 2002, and was published in the **Federal Register** on March 20, 2002 (67 FR 13011).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of electrical connectors at Tyco Electronics Corporation, Jacobus, Pennsylvania including an offsite warehouse at Shrewsbury, Pennsylvania was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. The company did not shift production of electrical connectors to Canada or Mexico and did not import electrical connectors from Canada or Mexico. The predominant cause of worker separations at the subject plant is due to a domestic shift of production to other affiliated domestic locations.

The petitioner appears to be alleging that the company shifted a portion of subject plant production to Mexico. The petitioner further believes that the subject firm imports electrical connectors to the United States. The petitioner attached shipping invoices to depict various imports by the company.

Based on information provided during the initial investigation and recent contact with the company, no shifts in plant production occurred during the relevant period. All subject plant production was shifted to other domestic sources. The information supplied by the company further indicates that they did not import any products like or directly competitive with what the subject plant produced.

The petitioner attached three shipping invoices to illustrate the various products imported by the company. Two of the three shipping invoices consisted of products imported from countries other than Canada or Mexico to the subject plant. The third invoice shows that the company imports some type of product from Mexico. The company was contacted concerning the invoices and indicated that the imported products were component parts used to produce the finished electrical connectors. The imported products, must be like or directly competitive with what the subject plant produces to meet the eligibility requirements for NAFTA–TAA under section 250 of the Trade Act of 1974.

Conclusion

After review of the application for reconsideration and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of July 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–18078 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0233 (2002)]

Construction Records for Rigging Equipment; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden — (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

The Rigging Equipment in

Agency's functions, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

National Aeronautics and Space Administration (NASA)

[Notice: (02 –089)]

OMB Review Under the Paperwork Reduction Act

ACTION: Notice of information collection.

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the proposed collection entitled Representative Fee Request. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 16, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or EMail).

SUPPLEMENTARY INFORMATION:

I. Background

Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act (FECA) and under the Longhshore and Harbor Workers' Compensation Act (LSHWC). The fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection request sets forth the criteria for the information which must be presented by the respondent in order to have the fee approved by the OWCP. The information collection does not have a particular form or format; the respondent may present the information in any format which is convenient and which meets all the required information criteria. The information collection is currently approved by the Office of Management and Budget (OMB) for use through December 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and .
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to carry out its responsibility to approve representative fees under the two Acts. OWCP has reestimated the burden hours per response for FECA representatives only, from 90 minutes to 60 minutes. There is no change in the requirements or method of collection since the last clearance.

Type of Review: Extension.
Agency: Employment Standards Administration.
Titles: Representative Fee Request.
OMB Number: 1215–0078.
Affected Public: Businesses or other for-profit; individuals or households.
Total Respondents/Responses: 10,000.
Total Hours: 7,850.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operation/maintenance): $16,427.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 11, 2002.

Margaret J. Sherrill,
Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–18061 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0233 (2002)]

Construction Records for Rigging Equipment; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Request for comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified in paragraphs (b)(1), (b)(6)(i), (c)(15)(iii), (e)(1)(i), (ii), (iii), and (f)(2) of the Rigging Equipment for Construction Standard (29 CFR 1926.251). These paragraphs require affixing identification tags or markings on rigging equipment, developing and maintain inspection records; and retaining proof-testing certificates.

DATES: Submit written comments on or before September 16, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0233(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Rigging Equipment Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/com-links.html* and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed

and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden — (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

The Rigging Equipment in Construction Standard (i.e., "the Standard") specifies the seven paperwork requirements. The following section describes who uses the information collected under each requirement, as well as how they use it.

- *Alloy Steel Chains, Paragraph (b)*

Paragraph (b)(1) requires that alloy steel chains have permanently affixed durable identification tags stating size, grade, rated capacity and sling manufacturer. Paragraph (b)(6)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (b)(6)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain was inspected and make the record available for examination.

- *End Attachments, Paragraph (c)*

Paragraph (c)(15)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

- *Synthetic Webbing (Nylon, Polyester, and Polypropylene), Paragraph (e)*

Paragraphs (e)(1)(i), (ii), and (iii) requires that synthetic web slings be marked or coded to show the manufacturer's trademark, rated capacity for the type of hitch and type of synthetic web material.

- *Shackles and Hooks, Paragraph (f)*

Paragraph (f)(2) requires that all hooks for which no applicable manufacturer's recommendations are available be tested to twice the intended safe working load before they are put into use. The employer shall maintain a record of the dates and results of the tests.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues.

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirements specified in these paragraphs of the Rigging Equipment Standard (29 CFR 1926.251). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.
Title: Rigging Equipment for Material Handling.
OMB Number: 1218–0233.
Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.
Number of respondents: 132,737.
Frequency of Response: On occasion.
Total Responses: 301,618.
Average Time per Response: Average 3 minutes for an employer to maintain and disclose a certificate to 30 minutes for employer to acquire information and make a tag for a sling.
Estimated Total Burden Hours: 56,235.
Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on July 12, 2002.

John L. Henshaw,
Assistant Secretary of Labor.

[FR Doc. 02–18124 Filed 7–17–02; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

National Aeronautics and Space Administration (NASA)

[Notice: (02 –089)]

OMB Review Under the Paperwork Reduction Act

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). NASA will utilize the information collected to determine whether the Agency's recruitment efforts are reaching all segments of the country.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Voluntary On-Line Job Applicant Racial and Ethnic Data Collection.
OMB Number: 2700–.
Type of review: New collection.
Need and Uses: Information is used by NASA personnel staff to determine if recruitment efforts are reaching all segments of the country, as required by Federal law.
Affected Public: Individuals or households; Federal government.
Number of Respondents: 40,000.
Responses Per Respondent: 1.
Annual Responses: 40,000.
Hours Per Request: 5 min/request.
Annual Burden Hours: 3,334.
Frequency of Report: On occasion.

David B. Nelson,
Deputy chief Information Officer, Office of the Administrator.

[FR Doc. 02–18141 Filed 7–17–02; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Rupture of Piney Point Oil Pipeline

Time and Place: 9:30 a.m, Tuesday, July 23, 2002.
Place: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.
Status: The two items are open to the

Domestic Licenses for Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Reports are submitted as events occur. Registration certificates may be submitted at any time. Changes to the information on the registration certificate are submitted as they occur.

5. *Who will be required or asked to*

NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 10th day of July 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,
NRC Clearance Officer, Office of the Chief

accessing the documents located in ADAMS, please contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The license renewal application for the Robinson Nuclear Plant is also available to local residents at the Hartsville Memorial Library, in Hartsville, SC.

Dated at Rockville, Maryland, this 15th day

completing the comprehensive written examination for the February 2000 through January 2002 licensed operator requalification program. This requested exemption would allow an extension of approximately 6 months beyond the 24-month limit for completion of the written examinations as required by of 10 CFR 55.59(c). Exelon's letters constitute a request for exemption under 10 CFR 55.11 which states: "The Commission may, upon application by

requalification training topics contained in the current (February 2002–January 2004) 24-month requalification period.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 46218)

This exemption is effective upon issuance. This exemption expires on August 2, 2002.

Dated at Rockville, Maryland this 12th day

NATIONAL TRANSPORTATION SAFETY BOARD

Rupture of Piney Point Oil Pipeline

Time and Place: 9:30 a.m, Tuesday, July 23, 2002.

Place: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

Status: The two items are open to the public.

Matters to Be Considered:

7285A Pipeline Accident Report—Rupture of Piney Point Oil Pipeline and Release of Fuel Oil near Chalk Point, Maryland, April 7, 2000.

7480 Highway Accident Report—Collision Between Amtrak Train 97 and Molnar Worldwide Heavy Haul Company Tractor-Trailer Combination Vehicle at Highway-Rail Grade Crossing in Intercession City, Florida, on November 17, 2000.

News Media Contact: Telephone: (202) 314–6100. Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, July 19, 2002.

For Further Information Contact: Vicky D'Onofrio, (202) 314–6410.

Dated: July 12, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–18045 Filed 7–17–02; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 . U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 31, General Domestic Licenses for Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Reports are submitted as events occur. Registration certificates may be submitted at any time. Changes to the information on the registration certificate are submitted as they occur.

5. *Who will be required or asked to report:* Persons receiving, possessing, using, or transferring byproduct material in certain items.

6. *An estimate of the number of responses:* 72,049 (14,787 NRC licensees + 57,262 Agreement States).

7. *The estimated number of annual respondents:* Approximately 7,600 NRC general licensees and 22,800 Agreement State general licensees.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 45,825 (10,393 hours for NRC licensees [1902 recordkeeping and 8491 reporting or an average of 0.6 hours per response] and 35,432 hours for Agreement State licensees [5705 recordkeeping and 29,727 reporting or an average of 0.5 hours per response].

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material. General licensees are required to keep records and submit reports identified in Part 31 in order for NRC to determine with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 19, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0016), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 10th day of July 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–18155 Filed 7–17–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light (CP&L), H.B. Robinson Steam Electric Plant, Unit No. 2; Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–23 for an Additional 20-Year Period

On June 17, 2002, the U.S. Nuclear Regulatory Commission received, by letter dated June 14, 2002, an application from the Carolina Power & Light (CP&L) Company, filed pursuant to section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, which would authorize the applicant to operate the H. B. Robinson Steam Electric Plant (HBRSEP), Unit 2, for an additional 20-year period. In this application, HBRSEP, Unit No. 2, is referred to as the Robinson Nuclear Plant (RNP). The current operating license for RNP expires on July 31, 2010. RNP is a pressurized water reactor designed by Westinghouse Electric Company and is located in Hartsville, South Carolina. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html.* In addition, the application is available on the NRC Web page at *http://www.nrc.gov/NRC/REACTOR/LR/index.html.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The license renewal application for the Robinson Nuclear Plant is also available to local residents at the Hartsville Memorial Library, in Hartsville, SC.

Dated at Rockville, Maryland, this 15th day of July, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impact Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18240 Filed 7–17–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Exelon Generation Company, LLC, (Dresden Nuclear Station Units 2 and 3); Exemption

I

Exelon Generation Company, LLC, (Exelon) is the holder of Facility Operating License Nos. DPR–19 and DPR–25, which authorizes operation of the Dresden Nuclear Power Station, Units 2 and 3 (Dresden), at steady state core power levels not to exceed 2957 megawatts thermal per unit. Dresden's two boiling water reactors are located in Morris, Illinois. The licenses provide, among other things, that Dresden is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Pursuant to 10 CFR 55.59(c), a facility's licensed operator requalification program must be conducted for a continuous period not to exceed two years (24 months) and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs. Each two-year requalification program must include a comprehensive written examination and annual operating tests.

III

By letter dated July 2, 2002, as supplemented by letter dated July 8, 2002, Exelon requested a one-time exemption from the requirements of 10 CFR 55.59(c). Specifically, for Dresden, Exelon has requested a one-time extension to August 2, 2002, for completing the comprehensive written examination for the February 2000 through January 2002 licensed operator requalification program. This requested exemption would allow an extension of approximately 6 months beyond the 24-month limit for completion of the written examinations as required by of 10 CFR 55.59(c). Exelon's letters constitute a request for exemption under 10 CFR 55.11 which states: "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest." The exemption is being requested due to circumstances which led Dresden to inadvertently schedule the comprehensive requalification written examinations at an interval greater than the required 24 months.

IV

The Commission has determined that, pursuant to 10 CFR 55.11, granting an exemption to Exelon from the requirements in 10 CFR 55.59(c), by allowing Dresden a one-time extension of the two-year requirement to conduct a comprehensive requalification written examination, is authorized by law and will not endanger life or property and is otherwise in the public interest. Although the 24-month requirement at Dresden for conducting a comprehensive written examination was exceeded, operator performance continues to be satisfactory, as demonstrated both in the plant and during other written examinations, operating tests, and periodic simulator evaluations. Granting this exemption will allow the makeup of the Dresden operating crews to remain unchanged, thereby maintaining effective crew teamwork, which will contribute to continued safe plant operations.

Accordingly, the Commission hereby grants Exelon an exemption on a one-time only basis from the two-year requirement of 10 CFR 55.59(c) for conducting a comprehensive licensed operator requalification written examination at Dresden by granting an extension of the examination completion date to August 2, 2002. The NRC understands that, following the completion of that examination, the next comprehensive licensed operator requalification written examination at Dresden will be administered at the completion of the current 24-month requalification period (i.e., examination administered in January/February 2004), and will include a comprehensive sampling of licensed operator requalification training topics contained in the current (February 2002–January 2004) 24-month requalification period.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 46218)

This exemption is effective upon issuance. This exemption expires on August 2, 2002.

Dated at Rockville, Maryland this 12th day of July, 2002.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18154 Filed 7–17–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration (A. O. Smith Corporation, Class A Common Stock, $5.00 Par Value) from the American Stock Exchange LLC File No. 1–475

July 12, 2002.

A. O. Smith Corporation, a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Common Stock, $5.00 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on February 14, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board considered the following: (i) The substantial costs associated with dual trading; (ii) the Company's common stock is traded on the New York Stock Exchange, Inc. ("NYSE"); and (iii) the Company does not believe that continued listing on the Amex provides sufficient benefit to the Company and the shareholders of the Security to outweigh these disadvantages.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and shall not affect its obligation to be registered under Section 12(b) the Act.[3]

Any interested person may, on or before August 2, 2002, submit by letter to the Secretary of the Securities and

current and future needs, and it is not in the best interest of the Company to continue listing its Security on the PCX.

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the Security's withdrawal from listing on the PCX and shall not affect its obligation to be registered under Section

change as described in Items I, II, and III below, which Items were prepared by NASD. On June 25, 2002, NASD filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement Of The Terms Of Substance Of The Proposed Rule Change

1000. Membership, Registration and Qualification Requirements

* * * * *

1020. Registration of Principals

* * * * *

1022. Categories of Principal Registration

(a)–(e) No change.

(f) Registered Options *and Security* Principals

passed an examination testing him with respect to both put and call options.]

(3)[(4)] Each person required to register and qualify as a Registered Options *and Security Futures* Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Corporate Securities and [also be or become qualified

any other examination covering security futures that is acceptable to NASD) is not required to complete a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures to supervise such products, except as otherwise required by Rule 1120 generally or by the member firm.

IM–1022–1. Registered Options *and Security Futures* Principals

Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and shall not affect its obligation to be registered under Section 12(b) the Act.[3]

Any interested person may, on or before August 2, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–18081 Filed 7–17–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (World Fuel Services Corporation, Common Stock, $.01 Par Value) File No. 1–9533

July 12, 2002.

World Fuel Services Corporation, a Florida corporation, ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on May 30, 2001 to withdraw its Security from listing on the Exchange. The Board determined that the coverage provided by its current listing of the Security on the New York Stock Exchange, Inc. ("NYSE") was appropriate for its current and future needs, and it is not in the best interest of the Company to continue listing its Security on the PCX.

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the Security's withdrawal from listing on the PCX and shall not affect its obligation to be registered under Section 12(b) the Act.[3]

Any interested person may, on or before August 2, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–18082 Filed 7–17–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46186; File No. SR–NASD–2002–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Relating to NASD Rules 1022, 1032, 2210, 3010, 3370, IM–1022–1, and IM–1022–2 and new Rules 2865 and IM–2210–7.

July 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2002, NASD[3] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items were prepared by NASD. On June 25, 2002, NASD filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement Of The Terms Of Substance Of The Proposed Rule Change

The proposed rule change will adopt new rules and amend existing rules to prepare for the trading of security futures. Specifically, the proposed rule change: (1) Amends Rule 1022 (Categories of Principal Registration), Interpretive Material 1022–1 (Registered Options Principals), Interpretive Material 1022–2 (Limited Principal-General Securities Sales Supervisor), and Rule 1032 (Categories of Representative Registration) to expand several registration categories to include engaging in and supervising security futures transactions; (2) amends Interpretive Material 2110–3 (Front Running Policy) to add block trading in single stock futures to the prohibition against front running; (3) amends Rule 2210 (Communications with the Public) and creates new Interpretive Material 2210–7 (Guidelines for Communications with the Public Regarding Security Futures) to regulate communications with the public regarding security futures; (4) amends Interpretive Material 2310–2 (Fair Dealing with Customers) to refer to new proposed Rule 2865 regarding security futures sales practices; (5) creates new Rule 2865 to regulate security futures sales practices; (6) amends Rule 3010(b)(2) (the Taping Rule) to recognize the ability of futures regulators to expel a member for futures-related sales practice violations; (7) amends Rule 3010(e) (Supervision) to require firms to check the backgrounds of job applicants who have previously worked in the futures industry; (8) amends Rule 3050 (Transactions for or by Associated Persons) to require associated persons to notify their member firm when they open certain futures accounts; and (9) amends Rule 3370 (Prompt Receipt and Delivery of Securities) to extend to security futures. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

[3] 15 U.S.C. 78*l*(b).
[4] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*s*(b).
[4] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*s*(b)(1).
[2] 17 CFR 240.19b–4.
[3] At the time of filing, the National Association of Securities Dealers, Inc. was acting through its wholly owned subsidiary, NASD Regulation, Inc. Since that time, the National Association of Securities Dealers, Inc. has been officially renamed "NASD," and its wholly owned subsidiary, NASD Regulation, Inc., has been collapsed into NASD.
[4] *See* letter form Patrice M. Glinicki, Vice President and Deputy General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated June 25, 2002.

1000. Membership, Registration and Qualification Requirements

* * * * *

1020. Registration of Principals

* * * * *

1022.Categories of Principal Registration

(a)–(e) No change.

(f) Registered Options *and Security Futures* Principals

(1) Every member of the Association [which] *that* is engaged in, or [which] *that* intends to engage in transactions in *security futures or* put or call options with the public shall have at least one Registered Options *and Security Futures* Principal who shall have satisfied the requirements of this subparagraph. *As to options transactions,* each [such] member shall also designate a Senior Registered Options Principal and a Compliance Registered Options Principal in accordance with the provisions of Rule 2860(b)(20) and identify such persons to the Association. [A member which has a Registered Options Principal qualified in either put or call options shall not engage in both put and call option transactions until such time as it has a Registered Options Principal qualified in both such options.] Every person engaged in the management of the day-to-day *options or security futures* activities of a member shall also be registered as a Registered Options *and Security Futures* Principal. [In the event any Registered Options Principal ceases to act in such capacity, such fact shall be reported promptly to the Association together with a brief statement of the reasons therefor.]

(2) Each person required by subparagraph (f)(1) [hereof] to be a Registered Options *and Security Futures* Principal shall pass the appropriate Qualification Examination for Registered Options *and Security Futures* Principal, or an equivalent examination acceptable to NASD [Corporation], for the purpose of demonstrating an adequate knowledge of options *and security futures* trading generally, the Rules of the Association applicable to trading of option *and security futures* contracts and the rules of *registered clearing agencies for options and security futures* [the Options Clearing Corporation], and be registered as such before engaging in the duties or accepting the responsibilities of a Registered Options *and Security Futures* Principal.

[(3) A person shall not qualify as a Registered Options Principal for both put and call options unless he has passed an examination testing him with respect to both put and call options.]

(3)[(4)] Each person required to register and qualify as a Registered Options *and Security Futures* Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Corporate Securities and [also be or become qualified pursuant to Rule 1032(d) as] a Registered Options *and Security Futures* Representative.

(4)[(5)] A person registered solely as a Registered Options *and Security Futures* Principal shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in subparagraph (1) [hereof].

(5)[(6)] *Any person who is registered with NASD as a Registered Options and Security Futures Principal may not supervise security futures activities unless such person has, prior to December 31, 2006, completed a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures. After a revised examination that includes security futures products is offered, a person associated with a member that passes such a revised Qualification Examination for Registered Options and Security Futures Principal (or any other examination covering security futures that is acceptable to NASD) is not required to complete a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures to supervise activities in such products, except as otherwise required by Rule 1120 generally or by the member firm.*

(g) Limited Principal—General Securities Sales Supervisor

(1)–(2) No change

(g)(3) Any person who is registered with NASD as a Limited Principal—General Securities Sales Supervisor may not act in a limited principal capacity with regard to security futures products unless such person has, prior to December 31, 2006, completed a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures. After a revised examination that includes security futures products is offered, a person associated with a member that passes such a revised Qualification Examination for Limited Principal—General Securities Sales Supervisor (or any other examination covering security futures that is acceptable to NASD) is not required to complete a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures to supervise such products, except as otherwise required by Rule 1120 generally or by the member firm.

IM–1022–1. Registered Options *and Security Futures* Principals

Members having a single Registered Options *and Security Futures* Principal are required promptly to notify the Association in the event such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of an Options *and Security Futures* Principal.

Following receipt of such notification, the Association will require members to agree, in writing, to refrain from engaging in any options- *or security futures*-related activities [which] *that* would necessitate the prior or subsequent approval of an Options *and Security Futures* Principal including, among other things, the opening of new options *or security futures* accounts or the execution of discretionary orders for option *or security futures* contracts until such time as a new Registered Options *and Security Futures* Principal has been qualified.

Members failing to qualify a new Registered Options *and Security Futures* Principal within two weeks following the loss of their sole Registered Options *and Security Futures* Principal, or by the earliest available date for administration of the [Series 4] *Registered* Options *and Security Futures* Principal examination, whichever is longer, shall be required to cease doing an options *and security futures* business; provided, however, they may effect closing transactions *in options and offsetting transactions in security futures* [in order] to reduce or eliminate existing open options or *security futures* positions in their own account as well as the accounts of their customers.

IM–1022–2. Limited Principal—General Securities Sales Supervisor

Limited Principal—General Securities Sales Supervisor is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals could be required to separately qualify pursuant to the rules of the NASD, MSRB, NYSE and the options exchanges. While persons may continue to separately qualify with all relevant self-regulatory organizations, the Limited Principal—

General Securities Sales Supervisor Examination permits qualification as a supervisor of sales of all securities by one examination. Persons registered as Limited Principals—General Securities Sales Supervisor may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also

persons seeking to become a General Securities Representative will be required to pass such revised examination (or any other examination covering security futures that is acceptable to NASD) to act as a General Securities Representative with regard to security futures products. Only persons registered as a General Securities Representative prior to the time that the new examination is available, will be

December 31, 2006, completed a firm-element continuing education requirement that addresses security futures. After a new examination that includes security futures products is offered, a person associated with a member who passes such a revised Qualification Examination for Limited Representative—Options and Security Futures (or any other examination covering security futures that is

transaction has been made publicly available.

* * * * *

These prohibitions also do not include situations in which a member or person associated with a member receives a customer's order of block size relating to both an option and the underlying security *or both a security future and the underlying security.* In such cases, the member and person associated with a member may position

or initial, prior to use or filing with the Association, by a registered principal of the member. This requirement may be met, only with respect to corporate debt and equity securities that are the subject of research reports as the term is defined in Rule 472 of the New York Stock Exchange, by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange. *This requirement may be met, only with respect to advertising*

recommended, unless the extent of such ownership is nominal;

(B)(i)c. No Change

(B)(ii)–(B)(iv) No Change

* * * * *

IM–2210–7. Guidelines for Communications with the Public Regarding Security Futures

(a) Association Approval Requirements and Review Procedures

(1) As set forth in paragraph (c)(2) of

General Securities Sales Supervisor Examination permits qualification as a supervisor of sales of all securities by one examination. Persons registered as Limited Principals—General Securities Sales Supervisor may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as Limited Principals—General Securities Sales Supervisor.

Functions that may be performed by Limited Principals—General Securities Sales Supervisors. Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, [and] direct participation programs, *and security futures* may be registered solely as a Limited Principal—General Securities [Sale] *Sales* Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as Limited Principals—General Securities Sales Supervisor as long as they supervise only sales activities. Qualification as a General Securities Representative is a prerequisite for registration as a Limited Principal—General Securities Sales Supervisor.

* * * * *

1032. Categories of Representative Registration

(a) General Securities Representative

(1) No change

(2)(A)–(D) No change

(2)(E) *A person who is registered with NASD as a General Securities Representative may not act as a General Securities Representative with regard to security futures products unless such person has, prior to December 31, 2006, completed a firm-element continuing education requirement that addresses security futures products. After a new examination that includes security futures products is offered, a person associated with a member who passes such a revised Qualification Examination for General Securities Representative (or any other examination covering security futures that is acceptable to NASD) is not required to complete a firm-element continuing education requirement that addresses security futures to act as a General Securities Representative with regard to such products, except as otherwise required by Rule 1120 generally or by the member firm. Once the new examination that includes security futures becomes available, persons seeking to become a General Securities Representative will be required to pass such revised examination (or any other examination covering security futures that is acceptable to NASD) to act as a General Securities Representative with regard to security futures products. Only persons registered as a General Securities Representative prior to the time that the new examination is available, will be eligible to use a firm-element continuing education program in lieu of passing the revised examination or module to engage in a security futures business.*

(a)(2)(E)–(I) Renumbered accordingly

(a)(3) A person registered as a General Securities Representative shall not be qualified to function as a Registered Options *and Security Futures* Representative unless he *or she* is also qualified and registered as such pursuant to the provisions of paragraph (d) [hereof].

(b) and (c) No change

(d) Limited Representative—Options *and Security Futures*

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Association as a Limited Representative—Options *and Security Futures* if:

(A) such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option *or security futures* contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a broker, dealer or public customer; and

(B) such person passes an appropriate qualification examination for Limited Representative—Options *and Security Futures*.

(2) Each person seeking to register and qualify as a Limited Representative—Options *and Security Futures* must, concurrent with or before such registration may become effective, become registered pursuant to the Rule 1032 Series, either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities.

(3) A person registered as a Limited Representative—Options *and Security Futures* shall not be qualified to function in any area not described in subparagraph (1)(A) [hereof].

(4) *Any person who is registered with NASD as a Limited Representative—Options and Security Futures may not act as a limited representative with regard to security futures products unless such person has, prior to December 31, 2006, completed a firm-element continuing education requirement that addresses security futures products. After a new examination that includes security futures products is offered, a person associated with a member who passes such a revised Qualification Examination for Limited Representative—Options and Security Futures (or any other examination covering security futures that is acceptable to NASD) is not required to complete a firm-element continuing education requirement that addresses security futures to act as a limited representative with regard to such products, except as otherwise required by Rule 1120 generally or by the member firm.*

(e)–(h) No change

* * * * *

1060. Persons Exempt From Registration

* * * * *

(4) persons associated with a member whose functions are related solely and exclusively to:

(A) effecting transactions on the floor of a national securities exchange and who are registered as floor members of such exchange;

(B) transaction in municipal securities; [or]

(C) transactions in commodities; *or*

(D) *transactions in security futures, provided that any such person is registered with a registered futures association.*

* * * * *

IM–2110–3. Front Running Policy

* * * * *

(a) an order to buy or sell an option *or a security future* when such member or person associated with a member causing such order to be executed has material, non-public market information concerning an imminent block transaction in the underlying security, or when a customer has been provided such material, non-public market information by the member or any person associated with a member; or

(b) an order to buy or sell an underlying security when such member or person associated with a member causing such order to be executed has material, non-public market information concerning an imminent block transaction in an option *or a security future* overlying that security, or when a customer has been provided such material, non-public market information by the member or any person associated with a member; prior to the time information concerning the block transaction has been made publicly available.

* * * * *

These prohibitions also do not include situations in which a member or person associated with a member receives a customer's order of block size relating to both an option and the underlying security *or both a security future and the underlying security*. In such cases, the member and person associated with a member may position the other side of one or both components of the order. However, in these instances, the member and person associated with a member would not be able to cover any resulting proprietary position(s) by entering an offsetting order until information concerning the block transaction involved has been made publicly available.

The application of this front running policy is limited to transactions that are required to be reported on the last sale reporting systems administered by Nasdaq, Consolidated Tape Association (CTA), or Option Price Reporting Authority (OPRA). *The front running policy also applies to security futures transactions regardless of whether such products are reported pursuant to such systems.* Information as to a block transaction shall be considered to be publicly available when it has been disseminated via the tape or high speed communications line of one of those systems, *a similar system of a national securities exchange under Section 6 of the Act, an alternative trading system under Regulation ATS,* or *by* [of] a third-party news wire service.

A transaction involving 10,000 shares or more of an underlying security, or options *or security futures* covering such number of shares is generally deemed to be a block transaction, although a transaction of less than 10,000 shares could be considered a block transaction in appropriate cases. A block transaction that has been agreed upon does not lose its identity as such by arranging for partial executions of the full transaction in portions which themselves are not of block size if the execution of the full transaction may have a material impact on the market. In this situation, the requirement that information concerning the block transaction be made publicly available will not be satisfied until the entire block transaction has been completed and publicly reported.

* * * * *

2210. Communications with the Public

(a) No change

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member. This requirement may be met, only with respect to corporate debt and equity securities that are the subject of research reports as the term is defined in Rule 472 of the New York Stock Exchange, by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange. *This requirement may be met, only with respect to advertising and sales literature concerning security futures, by the signature or initial of a Registered Options and Security Futures Principal.*

(b)(2) and (c)(1) No change

(c)(2) Advertisements concerning collateralized mortgage obligations, *advertisements concerning security futures,* and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(c)(3)–(c)(9) No Change

(d)(1) No Change

(d)(2)(A) No Change

(B)(i)a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option *or security future,* or that the member or associated persons will sell to or buy from customers on a principal basis;

(B)(i)b. that the member and/or its officers or partners own options, *security futures,* rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

(B)(i)c. No Change

(B)(ii)–(B)(iv) No Change

* * * * *

IM–2210–7. Guidelines for Communications with the Public Regarding Security Futures

(a) Association Approval Requirements and Review Procedures

(1) As set forth in paragraph (c)(2) of Rule 2210, all advertisements concerning security futures shall be submitted to the Advertising/Investment Companies Regulation Department of NASD at least ten days prior to use for approval and, if changed by NASD, shall be withheld from circulation until any changes specified by NASD have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, Association approval.

(2) The requirements of this paragraph (a) shall not be applicable to:

(A) advertisements submitted to another self-regulatory organization having comparable standards pertaining to such advertisements, and

(B) advertisements in which the only reference to security futures is contained in a listing of the services of a member organization.

(b) Disclosure Statement

(1) All communications concerning security futures shall be accompanied or preceded by the security futures risk disclosure statement unless they meet the following requirements:

(A) Such communications shall be limited to general descriptions of the security futures being offered.

(B) Such communications shall contain contact information for obtaining a copy of the security futures risk disclosure statement.

(C) Such communications shall not contain recommendations or past or projected performance figures, including annualized rates of return.

(2) Communications concerning security futures that meet the requirements of subparagraph (1) may have the following characteristics:

(A) the text of the communication may contain a brief description of security futures, including a statement that identifies registered clearing agencies for security futures. The text may also contain a brief description of the general attributes and method of operation of the security exchange or notice-registered securities exchange on which such security futures are traded, including a discussion of how a security future is priced;

(B) the communication may include any statement required by any state law or administrative authority; and

(C) advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

(c) Projections

Notwithstanding the provisions of Rule 2210(d)(2)(N), security futures sales literature and correspondence may contain projected performance figures (including projected annualized rates of return), provided that:

(1) all such sales literature and correspondence must be accompanied or preceded by the security futures risk disclosure statement;

(2) such projections must be based on the same type of hypothetical data as required by Rule 2210(d)(2)(N);

(3) such projections must be accompanied by a statement of the assumptions underlying the projections;

(4) such communications disclose all relevant costs, including commissions, fees, and daily margin obligations (as applicable);

(5) if such communications contain hypothetical performance figures that are limited to the most profitable trades or to certain trades, such communications must also provide performance results for all trades covered by the communication and must clearly identify the limited nature of the trades;

(6) if such communications contain hypothetical performance figures that do not reflect all actual trades over a specified period of time, such communications must also provide performance results for all actual trades over the specified period and must clearly identify the limited nature of the trades; and

(7) if such communications contain hypothetical performance figures that are limited to the most profitable trades or to certain trades, such communications may not project or predict potential results in trading other contracts or in trading the same contracts under other trading conditions, including conditions involving greater price volatility, less liquidity, or wider bid/asset spreads.

(d) Recommendations

Any recommendation contained in sales literature or correspondence must have a reasonable basis and must be suitable for the person to whom it is directed or who is likely to receive it. Such communications must disclose any material conflicts of interest on the part of the member at the time of the recommendation.

(e) Supervision

Each member shall establish, maintain, and enforce written procedures to supervise the types of communications described in this Rule and to ensure compliance with this Rule.

(f) Filing Requirements

Each member shall file with the Association, or a designee of the Association, all communications described in this Rule, unless specifically exempted from filing, at least ten days prior to first use. Any changes specified by the Association must be made before use, and if expressly disapproved, the communication may not be used.

(g) Recordkeeping

Each member shall maintain records of all communications described in this Rule, unless specifically exempted from filing, for a period of three years from the date of last use.

(h) Definitions

For purposes of this Rule, the term "security future" shall have the definition specified in Section 3(a)(55) of the Act.

2310. Recommendations to Customers (Suitability)

(a) No member or associated person shall recommend to a customer the purchase, sale or exchange of any security without having reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, the member shall make reasonable efforts to obtain information concerning: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

(b) No change

(c) No member shall recommend to any customer the opening of a margin account unless such member has reasonable grounds to believe that the customer is able to meet the margin requirements that may be imposed pursuant to Regulation T of the Board of Governors of the Federal Reserve System, Rule 431 of the Commission, and the rules of the Association.

(d) No change

to security futures contained in Rule 2865.

(e)(1) and (e)(2) are renumbered as (e)(2) and (e)(3) respectively.

* * * * *

2865. Security Futures

(a) For purposes of this Rule, the term "security future" shall have the definition specified in Section 3(a)(55) of the Act.

(b) Delivery of Security Futures Risk Disclosure Statement

(1) Every member shall deliver the current risk disclosure statement required by Section 6(h)(5) of the Act to each customer before the customer's first transaction in security futures.

(2) Every member shall obtain from each customer a written acknowledgment of receipt of the risk disclosure statement required by Section 6(h)(5) of the Act prior to the customer's first transaction in security futures.

(c) Suitability

(1) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, the member shall make reasonable efforts to obtain information concerning: (A) the customer's financial status; (B) the customer's tax status; (C) the customer's investment objectives; and (D) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

(2) No member or associated person shall recommend to a customer the purchase, sale or exchange of any security future without having reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(d) Trading Restrictions

(1) Pursuant to Section 6(h)(3)(C) of the Act, the Association may impose such restrictions on the trading of security futures as are necessary or appropriate in the public interest or for the protection of investors, including but not limited to, prohibiting the trading of security futures on a particular underlying security, limiting the aggregate size of open positions in security futures covering the same underlying security, establishing margin requirements, and imposing position limits on security futures.

(2) Pursuant to Section 6(h)(3)(D) of the Act, the Association may impose such restrictions on the trading of security futures as are necessary or appropriate in the public interest or for the protection of investors during the period of any emergency declared by the Commission pursuant to Section 12(k)(2) of the Act.

(e) Margin

(1) Pursuant to Section 6(h)(3)(B) of the Act, the Association may impose such margin requirements on security futures as are necessary or appropriate in the public interest or for the protection of investors.

(2) Pursuant to Section 6(h)(3)(D) of the Act, the Association may impose such margin requirements on security futures as are necessary or appropriate in the public interest or for the protection of investors during the period of any emergency declared by the Commission pursuant to Section 12(k)(2) of the Act.

(f) Prohibitions

(1) Pursuant to Section 6(h)(3)(A) of the Act, the Association may prohibit the trading of any security future that is readily susceptible to manipulation of the price, or to facilitate the conduct of any manipulative, fraudulent or deceptive activity.

(2) Pursuant to Section 6(h)(3)(D) of the Act, the Association may prohibit the trading of any security future during the period of any emergency declared by the Commission pursuant to Section 12(k)(2) of the Act.

(g) Position Limits

(1) Pursuant to Section 6(h)(3)(E) of the Act, the Association may impose such position limits on security futures as are necessary or appropriate in the public interest or for the protection of investors.

(2) Pursuant to Section 6(h)(3)(D) of the Act, the Association may impose such position limits on security futures as are necessary or appropriate in the public interest or for the protection of investors during the period of any emergency declared by the Commission pursuant to Section 12(k)(2) of the Act.

(h) Exercise Limits

(1) Pursuant to Section 6(h)(3)(E) of the Act, the Association may impose such exercise limits on security futures as are necessary or appropriate in the public interest or for the protection of investors.

(2) Pursuant to Section 6(h)(3)(D) of the Act, the Association may impose such exercise limits on security futures as are necessary or appropriate in the public interest or for the protection of investors during the period of any emergency declared by the Commission pursuant to Section 12(k)(2) of the Act.

(i) Reporting Requirements

(1) Pursuant to Section 6(h)(3)(F) of the Act, the Association may require reports as to any security future covered by such security futures, or otherwise necessary in the public interest or for the protection of investors. During the period of any such restriction, no member shall effect any security futures transaction in contravention of such restriction.

(9)–(10) Reserved

(11) Delivery of Security Futures Risk Disclosure Statement

(A) Every member shall deliver the current risk disclosure statement required by Section 6(h)(5) of the Act to each customer before the customer's first transaction in security futures.

(B) Every member shall obtain from each customer a written acknowledgment of receipt of the risk disclosure statement required by Section 6(h)(5) of the Act prior to the customer's first transaction in security futures.

(12) Suitability

(A) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, the member shall make reasonable efforts to obtain information concerning: (i) the customer's financial status; (ii) the customer's tax status; (iii) the customer's investment objectives; and (iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

(B) No member or associated person shall recommend to a customer the purchase, sale or exchange of any security future without having reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(13)–(14) Reserved

(15) Statements of Account

(A) Statements of account showing security and money positions, entries, dates, whether the transaction was a purchase or a sale transaction, whether the transaction was an opening or offsetting transaction, and whether the transaction was effected on a principal or agency basis.

(13)–(14) Reserved

(B) the communication may include any statement required by any state law or administrative authority; and

(C) advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

(c) Recordkeeping

Consistent with paragraph (b)(2) of Rule 2210, a member shall keep a separate file of all advertisements and sales literature concerning security futures, including the name(s) of the person(s) who prepared them and approved their use for a period of three years from the date of each use. In addition, members shall meet the same recordkeeping requirements for all correspondence concerning security futures. In the case of sales literature concerning security futures, a member shall record the source of any recommendation contained therein.

(d) Specific Standards

(1) The special risks attendant to security futures transactions and the complexities of certain security futures investment strategies shall be reflected in any communications that discuss the uses or advantages of security futures. Any statement referring to the potential opportunities or advantages presented by security futures shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided.

(2) Security futures communications shall include a warning to the effect that security futures are not suitable for all investors and such communications shall not contain suggestions to the contrary.

(3) Security futures communications shall state that supporting documentation for any claims (including any claims made on behalf of security futures programs or the security futures expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

(4) No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are not legible, are misleading, or are inconsistent with the content of the material.

(5) Statements suggesting the certain availability of a secondary market for security futures shall not be made.

(e) Projections

Notwithstanding the provisions of Rule 2210(d)(2)(N), security futures sales literature and correspondence may contain projected performance figures (including projected annualized rates of return), provided that:

(1) all such sales literature and correspondence must be accompanied or preceded by the security futures risk disclosure statement;

(2) no suggestion of certainty of future performance is made;

(3) parameters relating to such performance figures are clearly established;

(4) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

(5) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(6) all material assumptions made in such calculations are clearly identified;

(7) the risks involved in the proposed transactions are also disclosed; and

(8) in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(f) Historical Performance

Security futures sales literature and correspondence may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(1) all such sales literature and correspondence must be accompanied or preceded by the security futures risk disclosure statement;

(2) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(3) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(4) such communications disclose all relevant costs, including commissions, fees, and daily margin obligations (as applicable);

(5) whenever such communications contain annualized rates of return, such communications shall disclose all material assumptions used in the process of annualization;

(6) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(7) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(8) a principal qualified to supervise security futures activities determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(g) Security Futures Programs

In communications regarding a security futures program (i.e., an investment plan employing the systematic use of one or more security futures strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

(h) Standard Forms of Worksheets

Such worksheets must be uniform within a member firm. If a member has adopted a standard form of worksheet for a particular security futures strategy, nonstandard worksheets for that strategy may not be used.

(i) Recordkeeping

Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

* * * * *

IM–2310–2. Fair Dealing With Customers

(a)(1) to (e) (opening paragraph) No change

(e)(1) Security Futures

Members must comply with the Rules, regulations and procedures applicable to security futures contained in Rule 2865.

(e)(1) and (e)(2) are renumbered as (e)(2) and (e)(3) respectively.

* * * * *

2865. Security Futures

(a) For purposes of this Rule, the term "security future" shall have the definition specified in Section 3(a)(55) of the Act.

(b) Requirements

(1) General

(A) Applicability—This Rule shall be applicable to the trading of security futures.

(B) Paragraphs (12) and (15) shall apply only to security futures carried in securities accounts.

(C) Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of the By-Laws and Rules and all other interpretations and policies of the Board of Governors shall also be applicable to the trading of security futures.

(2) Definitions

(A) The terms "Beneficial Owner," "Control," and "Controls," "Is Controlled by" or "Is Under Common Control With" shall have the same meanings as in Rule 2860.

(B) The term "principal qualified to supervise security futures activities" means a Registered Options and Security Futures Principal who, consistent with Rule 1022, has either completed a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures or has passed a revised qualification examination for Registered Options and Security Futures Principals that covers security futures, or a Limited Principal—General Securities Sales Supervisor who, consistent with Rule 1022, has either completed a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures or has passed a revised qualification examination for Limited Principal—General Securities Sales Supervisor.

(3)–(7) Reserved

(8) Restrictions on Security Futures Transactions

NASD may impose from time to time such restrictions on security futures transactions that it determines are necessary in the interest of maintaining a fair and orderly market in security futures, or in the underlying securities covered by such security futures, or otherwise necessary in the public interest or for the protection of investors. During the period of any such restriction, no member shall effect any security futures transaction in contravention of such restriction.

(9)–(10) Reserved

(11) Delivery of Security Futures Risk Disclosure Statement

(A) Every member shall deliver the current security futures risk disclosure statement to each customer at or prior to the time such customer's account is approved for trading security futures. Thereafter, each new or revised security futures risk disclosure statement shall be distributed to every customer having an account approved for such trading or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into a security futures transaction. NASD will advise members when a new or revised current security futures risk disclosure statement is available.

(B) Where a broker or dealer enters its orders with another member in a single omnibus account, the member holding the account shall take reasonable steps to assure that such broker or dealer is furnished reasonable quantities of the current security futures risk disclosure statement.

(C) Where an introducing broker or dealer enters orders for its customers with, or clears transactions through, a member on a fully disclosed basis and that member carries the accounts of such customers, the responsibility for delivering the current security futures risk disclosure statement as provided in this paragraph (b)(11) shall rest with the member carrying the accounts. However, such member may rely upon the good faith representation of the introducing broker or dealer that the current security futures risk disclosure statement has been delivered in compliance with paragraph (b)(11).

(12) Confirmations

Every member shall promptly furnish to each customer a written confirmation of each transaction in security futures for such customer's account. Each such confirmation shall show the market on which the security futures position was executed, whether the security futures position is a long or short position, the underlying security or narrow-based index, the expiration date, the quantity of the underlying security or narrow-based index, the number of security futures contracts, the amount of initial and maintenance margin required, the commission, the trade and settlement dates, whether the transaction was a purchase or a sale transaction, whether the transaction was an opening or offsetting transaction, and whether the transaction was effected on a principal or agency basis.

(13)–(14) Reserved

(15) Statements of Account

(A) Statements of account showing security and money positions, entries, interest charges, and any special charges that have been assessed against such account during the period covered by the statement shall be sent no less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to a security futures contract and quarterly to all customers having an open security futures position or money balance. Interest charges and any special charges assessed during the period covered by the statement need not be specifically delineated if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to security futures customers having a general (margin) account, such statements shall also provide the mark-to-market price and market value of each security futures position and other security positions in the general (margin) account, the total market value of all positions in the account, the outstanding debit or credit balance in the account, and the general (margin) account equity. The statements shall bear a legend stating that further information with respect to commissions and other charges related to the execution of security futures transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request. The statements shall also bear a legend requesting the customer promptly to advise the member of any material change in the customer's investment objectives or financial situation.

(B) For purposes of this subparagraph (15), general (margin) account equity shall be computed by subtracting the total of the "short" security values and any debit balance from the total of the "long" security values and any credit balance.

(16) Opening of Accounts

(A) Approval Required

No member or person associated with a member shall accept an order from a customer to purchase or sell a security future, or approve the customer's

account for the trading of security futures, unless the broker or dealer furnishes or has furnished to the customer the appropriate security futures risk disclosure statement and the customer's account has been approved for security futures trading in accordance with the provisions of subparagraphs (B) through (D) hereof.

(B) Diligence in Opening Accounts

f. Dates of verification of currency of account information.

(iii) Members should consider using a standard account approval form to ensure the receipt of all the required information.

(iv) Refusal of a customer to provide any of the information specified in subparagraph (i) shall be so noted on the customer's records at the time the account is opened. Information

security futures and, that the customer has received a copy of the current security futures risk disclosure statement. In addition, the customer should indicate on such written agreement that the customer is aware of and agrees not to violate applicable security futures position limits.

(17) Maintenance of Records

(A) In addition to the requirements of

and promptly retrievable. Other records necessary to the proper supervision of accounts shall be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

(18) Discretionary Accounts

(A) Authorization and Approval

designation and number of the security futures contracts, the price of the contract, and the date and time when such transaction was effected.

(C) Security Futures Programs

Where the discretionary account uses security futures programs involving the systematic use of one or more security futures strategies, the customer shall be furnished with a written explanation of the nature and risks of such programs.

inconsistent with just and equitable principles of trade and a violation of Rule 2110.

(22)–(23) Reserved

(24) Security Futures Transactions and Reports by Market Makers in Listed Securities

Every member that is an off-board market maker in a security listed on a national securities exchange shall report to NASD in accordance with such

account for the trading of security futures, unless the broker or dealer furnishes or has furnished to the customer the appropriate security futures risk disclosure statement and the customer's account has been approved for security futures trading in accordance with the provisions of subparagraphs (B) through (D) hereof.

(B) Diligence in Opening Accounts

In approving a customer's account for security futures trading, a member or any person associated with a member shall exercise due diligence to ascertain the essential facts relative to the customer, the customer's financial situation and investment objectives. Members shall establish specific minimum net equity requirements for initial approval and maintenance of customers' security futures accounts. Based upon such information, a principal qualified to supervise security futures activities shall specifically approve or disapprove in writing the customer's account for security futures trading. For account approvals, the written record shall include the reasons for approval.

(i) With respect to security futures customers who are natural persons, members shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

a. Investment objectives (e.g., safety of principal, income, growth, trading profits, or speculation);

b. Employment status (name of employer, self-employed, or retired);

c. Estimated annual income from all sources;

d. Estimated net worth (exclusive of family residence);

e. Estimated liquid net worth (cash, securities, or other);

f. Marital status and number of dependents;

g. Age; and,

h. Investment experience and knowledge (e.g., number of years, size, frequency and type of transactions) for futures, commodities, options, stocks, bonds, and other financial instruments.

(ii) In addition, a customer's account records shall contain the following information, if applicable:

a. Source or sources of background and financial information (including estimates) concerning the customer;

b. Discretionary authorization agreement on file, name, relationship to customer, and experience of person holding trading authority;

c. Date disclosure document(s) furnished to customer;

d. Name of registered representative;

e. Name of principal approving account and date of approval; and

f. Dates of verification of currency of account information.

(iii) Members should consider using a standard account approval form to ensure the receipt of all the required information.

(iv) Refusal of a customer to provide any of the information specified in subparagraph (i) shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with the other information available in determining whether to approve the account for security futures trading.

(v) A record of the information obtained pursuant to this subparagraph (B) and of the approval or disapproval of each account shall be maintained by the member as part of its records in accordance with paragraph (b)(17) herein.

(C) Verification of Customer Background and Financial Information

For every natural person whose account has been approved for security futures trading, the background and financial information upon which the account was approved shall be sent to the customer for verification within fifteen days (15) after the customer's account has been approved for security futures trading. This verification requirement shall not apply if the background and financial information is included in the customer's account agreement or if the member has previously verified the customer's information in connection with an options account. A copy of the background and financial information on file with a member also shall be sent to the customer for verification within fifteen (15) days after the member becomes aware of any material change in the customer's financial situation.

Members shall satisfy the initial and subsequent verification of customer background and financial information by sending to the customer the information required in paragraph (B)(i)(a) through (i)(f) hereof, as contained in the member's records and providing the customer with an opportunity to correct or complete the information. In all cases, absent advice from the customer to the contrary, the information will be deemed to be verified.

(D) Account Agreement

Within fifteen (15) days after a customer's account has been approved for security futures trading, a member shall obtain from the customer a written agreement that the customer is aware of and agrees to be bound by the Rules of NASD applicable to the trading of security futures and, that the customer has received a copy of the current security futures risk disclosure statement. In addition, the customer should indicate on such written agreement that the customer is aware of and agrees not to violate applicable security futures position limits.

(17) Maintenance of Records

(A) In addition to the requirements of Rule 3110, every member shall maintain and keep current a separate central log, index, or other file for all security futures-related complaints, through which these complaints can easily be identified and retrieved. The central file shall be located at the principal place of business of the member or such other principal office as shall be designated by the member. At a minimum, the central file shall include: (i) identification of complainant; (ii) date complaint was received; (iii) identification of registered representative servicing the account; (iv) a general description of the matter complained of; and (v) a record of what action, if any, has been taken by the member with respect to the complaint. For purposes of this subparagraph, the term "security futures-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with security futures. Each security futures-related complaint received by a branch office of a member shall be forwarded to the office in which the separate, central file is located not later than 30 days after receipt by the branch office that is the subject of the complaint. A copy of every security futures-related complaint shall also be maintained at the branch office that is the subject of the complaint.

(B) Background and financial information of customers who have been approved for security futures trading shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch office. Copies of account statements of security futures customers shall also be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable. Other records necessary to the proper supervision of accounts shall be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No member or person associated with a member shall exercise any discretionary power with respect to trading in security futures in a customer's account, or accept orders for security futures for an account from a person other than the customer, except in compliance with the provisions of Rule 2510 and unless:

a. The written authorization of the customer required by Rule 2510 shall specifically authorize security futures trading in the account; and

b. the account shall have been accepted in writing by a principal qualified to supervise security futures activities.

(ii) When analyzing an account to determine if it should be approved for security futures trading, a principal qualified to supervise security futures activities shall have a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other principal qualified to supervise security futures activities, provided that if the branch officer is not a principal qualified to supervise security futures activities, such approval shall be confirmed within a reasonable time by a principal qualified to supervise security futures activities. Each discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of security futures contracts in a specified security shall be executed.

(B) Record of Transactions

A record shall be made of every transaction in security futures contracts in respect to which a member or person has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the security futures contracts, the price of the contract, and the date and time when such transaction was effected.

(C) Security Futures Programs

Where the discretionary account uses security futures programs involving the systematic use of one or more security futures strategies, the customer shall be furnished with a written explanation of the nature and risks of such programs.

(19) Suitability

(A) No member or person associated with a member shall recommend to any customer any transaction or trading strategy for the purchase or sale of a security future unless such member or person associated with the member has reasonable grounds to believe upon the basis of information furnished by the customer after reasonable inquiry by the member or person associated with the member concerning the customer's investment objectives, financial situation and needs, and any other information known by the member or associated person, that the recommended transaction or trading strategy is not unsuitable for the customer.

(B) No member or person associated with a member shall recommend to a customer a transaction in any security future unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the security future.

(20) Reserved

(21) Violation of By-Laws and Rules of NASD or a Registered Clearing Agency

(A) In Association disciplinary proceedings, a finding of violation of any provision of the rules, regulations, or by-laws of a registered clearing agency under Section 17A(b)(8) of the Act by any member or person associated with a member engaged in security futures transactions cleared by such registered clearing agency, may be deemed to be conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110.

(B) In Association disciplinary proceedings, a finding of violation of any provision of the Rules, regulations or By-Laws of NASD by any member or person associated with a member engaged in security futures transactions may be deemed to be conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110.

(22)–(23) Reserved

(24) Security Futures Transactions and Reports by Market Makers in Listed Securities

Every member that is an off-board market maker in a security listed on a national securities exchange shall report to NASD in accordance with such procedures as may be prescribed by the Board of Governors, transactions involving 50 or more security futures contracts on such listed securities that are either directly for the benefit of (A) the member or (B) any employee, partner, officer, or director of the member who, by virtue of his or her position with the member, is directly involved in the purchase or sale of the underlying security for the firm's proprietary account(s) or is directly responsible for supervision of such persons; or who by virtue of his or her position in the firm, is authorized to, and regularly does, obtain information on the proprietary account(s) of the member in which the underlying security is traded. This subparagraph shall apply to all security futures transactions including those executed on an exchange to which the member may belong.

(25) Trading Ahead of Customer Orders

Every member shall exercise due care to avoid trading ahead of a customer's security futures order. A member must exercise the due care required by this subsection when the member has gained knowledge of or reasonably should have gained knowledge of the customer's order prior to the transmission to a securities exchange of the member's order for a proprietary account, or for any account in which it or any person associated with it is directly or indirectly interested.

* * * * *

3010. Supervision

(a) No change

(b)(1)–(b)(2)(ix) No change

(b)(2)(x) For purposes of this Rule, the term "disciplined firm" means either a member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer; or a futures commission merchant or introducing broker that has been

formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those

employer, together with any amendments thereto. The member shall review the Form 8–T as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to NASD that it has made reasonable efforts to comply with the requirement. In conducting its review of a Form 8–T and any amendments, a member shall take such action as may be deemed

the security on behalf of the customer for delivery by settlement date. This requirement shall not apply, however, to transactions in corporate debt securities or transactions in security futures, as defined in Section 3(a)(55) of the Act.

(B) Proprietary Short Sales

No member shall effect a "short" sale for its own account in any security unless the member or person associated

authorizes the trading of futures on individual stocks and narrow-based stock indices. Under the CFMA, security futures are defined as "securities" under section 3(a)(10) of the Exchange Act. As a result, NASD is modifying existing rules that cover securities and developing new rules to accommodate these new securities products.[5]

The regulatory framework established by the CFMA for the markets and intermediaries trading security futures

The proposed securities futures rule, Rule 2865, is based principally upon NASD's options rule, Rule 2860.[11] For purposes of clarity, NASD has styled the rule as a separate, stand-alone rule from its options rule; however, to facilitate compliance by member firms that are familiar with NASD's options rule, NASD has maintained the same structure and, where possible, much of the same rule text.

In reviewing NASD's options rule and

rules will apply based upon the type of account used for the security futures. Thus, the paragraphs of the security futures rule pertaining to customer account statements and confirmations apply only to security futures held in securities accounts. Fully registered firms that hold security futures in an FCM account would follow the rules of the CFTC addressing customer account statements and confirmations.

Liquidation of Positions and

formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those charges; or a futures commission merchant or introducing broker that, in connection with sales practices involving the offer, purchase, or sale of security futures is subject to an order of the Securities and Exchange Commission revoking its registration as a broker or dealer.

(b)(2)(xi) No change

(c)–(d) No change

(e) Qualifications Investigated

Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association. Where an applicant for registration has previously been registered with NASD, the member shall *review* [obtain from the Central Registration Depository or from the applicant] a copy of the Uniform Termination Notice of Securities Industry Registration (Form U–5) filed with the Association by such person's most recent previous NASD member employer, together with any amendments thereto that may have been filed pursuant to Article V, Section 3 of the Association's By-Laws. The member shall *review* [obtain] the Form U–5 as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to the Association that it has made reasonable efforts to comply with the requirement. [A member receiving a Form U–5 pursuant to this Rule shall review] *In conducting its review of* the Form U–5 and any amendments thereto, *a member* [and] shall take such action as may be deemed appropriate.

Where an applicant for registration has been previously registered with a registered futures association ("RFA") member that is or has been registered as a broker/dealer pursuant to Section 15(b)(11) of the Act ("notice-registered broker/dealer") with the SEC to trade security futures, the member shall review a copy of the Notice of Termination of Associated Person (Form 8–T) filed with the RFA by such person's most recent previous RFA member employer, together with any amendments thereto. The member shall review the Form 8–T as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to NASD that it has made reasonable efforts to comply with the requirement. In conducting its review of a Form 8–T and any amendments, a member shall take such action as may be deemed appropriate.

(f) and (g) No change

* * * * *

3050. Transactions for or by Associated Persons

(a)–(c) No change

(d) Obligations of Associated Persons Concerning an Account with a *Notice-Registered Broker/Dealer,* Investment Adviser, Bank, or Other Financial Institution.

A person associated with a member who opens a securities account or places an order for the purchase or sale of securities with *a broker/dealer that is registered pursuant to Section 15(b)(11) of the Act ("notice-registered broker/dealer"),* a domestic or foreign investment adviser, bank, or other financial institution, except a member, shall:

(1) notify his or her employer member in writing, prior to the execution of any initial transactions, of the intention to open the account or place the order; and

(2) upon written request by the employer member, request in writing and assure that the *notice-registered broker/dealer,* investment adviser, bank, or other financial institution provides the employer member with duplicate copies of confirmations, statements, or other information concerning the account or order; provided, however, that if an account subject to this paragraph (d) was established prior to a person's association with a member, the person shall comply with this paragraph promptly after becoming so associated.

* * * * *

3370. Prompt Receipt and Delivery of Securities

(a) No change

(b) Sales

(1) No change

(2) "Short Sales"

(A) Customer short sales

No member or person associated with a member shall accept a "short" sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. This requirement shall not apply, however, to transactions in corporate debt securities *or transactions in security futures, as defined in Section 3(a)(55) of the Act.*

(B) Proprietary Short Sales

No member shall effect a "short" sale for its own account in any security unless the member or person associated with a member makes an affirmative determination that the member can borrow the securities or otherwise provide for delivery of the securities by the settlement date. This requirement will not apply to transactions in corporate debt securities, *to transactions in security futures, as defined in Section 3(a)(55) of the Act,* to bona fide market making transactions by a member in securities in which it is registered as a Nasdaq market maker, to bona fide market maker transactions in non-Nasdaq securities in which the market maker publishes a two-sided quotation in an independent quotation medium, or to transactions [which] *that* result in fully hedged or arbitraged positions.

(3)–(4) No change

(5)(A)(i) through (iii) No change

(iv) Short a security and long a single stock future of the underlying security.

Example: Long 1 single stock future of MNOP.

- *With the circumstances as above (and assuming a contract size of 100) 100 shares would be exempt.*
- *Even if the expiration date for the single stock future was more than 90 calendar days, 100 shares would be exempt.*

* * * * *

II. Self-Regulatory Organization's Statement Of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commodity Futures Modernization Act of 2000 ("CFMA") authorizes the trading of futures on individual stocks and narrow-based stock indices. Under the CFMA, security futures are defined as "securities" under section 3(a)(10) of the Exchange Act. As a result, NASD is modifying existing rules that cover securities and developing new rules to accommodate these new securities products.[5]

The regulatory framework established by the CFMA for the markets and intermediaries trading security futures provides the SEC and Commodity Futures Trading Commission ("CFTC") with joint jurisdiction. Broker/dealers that wish to conduct a business in security futures are required to notice register as Futures Commission Merchants ("FCMs") or Introducing Brokers ("IBs") with the CFTC.[6] Similarly, FCMs and IBs that wish to conduct a business in security futures are required to notice register as broker/dealers with the SEC.[7] FCMs and IBs that are notice-registered with the SEC do not, however, need to become members of NASD. NASD's proposed rules on security futures apply only to NASD members.

a. Security Futures Rule

One of the underpinnings of the CFMA is that the regulation of security futures should be comparable to the regulation of options.[8] NASD and the National Futures Association ("NFA")[9] are required under the CFMA to develop rules regulating activity in security futures.[10]

[5] NASD also has filed a proposed rule change to add NASD Rule 3115 and to amend NASD Rule 3340 to establish record-keeping requirements for Alternative Trading Systems ("ATSs") that trade security futures, and to require ATSs to coordinate trading halts with markets trading the underlying securities and markets trading related securities. (SR–NASD–2001–47). *See* Securities Exchange Act Release No. 44623 (July 30, 2001), 66 FR 41076 (August 6, 2001).

[6] 66 FR 43227 (August 17, 2001).

[7] Securities Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45138 (August 27, 2001).

[8] For example, the CFMA establishes that margin requirements for security futures be consistent with comparable option contracts and that listing standards for security futures be no less restrictive than comparable listing standards for options traded on a national securities exchange or a national securities association. See Sections 7(c)(2) and 6(h)(3)(C) of the Act, 15 U.S.C. 78g(c)(2), 78f(h)(3)(C).

[9] The NFA is currently the only registered futures association under the Commodity Exchange Act ("CEA"). Under the CFMA, the NFA, as a registered futures association is a limited-purpose national securities association. The function of a limited-purpose national securities association is limited to carrying out the purposes of the securities laws applicable to securities futures and to regulating the activities of its members that have notice-registered with the SEC to trade security futures. *See* Section 15A(k) of the Act, 15 U.S.C. 78o–3(k).

[10] Sales practice rules for security futures, and specifically the suitability rule, are subject to the CFMA's requirement that the NFA's rules on these subjects be reasonably comparable to NASD's rules. Section 15A(k)(2)(B)(i) of the Act, 15 U.S.C. 78o–3(k)(2)(B)(i). NASD believes that it is important for NASD's and the NFA's rules to be comparable in these areas.

The proposed securities futures rule, Rule 2865, is based principally upon NASD's options rule, Rule 2860.[11] For purposes of clarity, NASD has styled the rule as a separate, stand-alone rule from its options rule; however, to facilitate compliance by member firms that are familiar with NASD's options rule, NASD has maintained the same structure and, where possible, much of the same rule text.

In reviewing NASD's options rule and the security futures rules of the NFA, NASD determined that it was not necessary to replicate every provision in the options rules for security futures. Certain concepts for options are not relevant for security futures. For example, provisions pertaining to the "exercise" of options were not carried forward into the security futures rule because security futures are not "exercised" as options are. NASD also has eliminated sections pertaining to "Transactions with Issuers" and "Restricted Stock," and have not included provisions concerning position limits and the reporting of security futures positions, which will instead be addressed by each exchange or market trading security futures, as appropriate.

NASD's security futures rule applies to all NASD member firms. Many of these members will be broker/dealers that notice register with the CFTC as an FCM or IB. Other members will be fully registered with both the SEC and CFTC ("fully registered firms"). In a joint notice of proposed rulemaking,[12] the SEC and CFTC requested comment on whether the application of the customer account statement and confirmation rules should depend on the type of account in which security futures are held (e.g., in a securities account at a broker/dealer, or a futures account at an FCM).[13] The proposed rule change adopts what appears to be the resolution of this issue—namely, that the customer account statement and confirmation rules will apply based upon the type of account used for the security futures. Thus, the paragraphs of the security futures rule pertaining to customer account statements and confirmations apply only to security futures held in securities accounts. Fully registered firms that hold security futures in an FCM account would follow the rules of the CFTC addressing customer account statements and confirmations.

Liquidation of Positions and Restrictions on Access

NASD proposes provisions on liquidation of positions and restrictions on access that are substantively similar to those in NASD's options rule.

Restrictions on Security Futures Transactions

NASD proposes restrictions on security futures transactions that are substantively similar to those in NASD's options rule.

Delivery of Security Futures Risk Disclosure Statement

The proposed rule change requires every member to deliver the security futures risk disclosure statement to each customer at or prior to the time such customer's account is approved for trading security futures. In general, the requirements for delivery of the security futures risk disclosure statement are comparable to the requirements for the delivery of the options disclosure document. The security futures risk disclosure statement will discuss the risks of security futures; will describe how security futures trade; and will address margin for security futures, effects of leverage, settlement procedures, customer account protections, and tax consequences.

Confirmations

The proposed rule change requires each member promptly to furnish each customer with a written confirmation of each security futures transaction. The proposed rule change also specifies the items that must be included on the confirmation. In general, the provisions addressing confirmations of security futures transactions are comparable to the provisions currently in place for options.

Discretionary Accounts

The proposed rule change adopts discretionary account procedures for security futures that are comparable to those for options. Notably, as with options, the procedures require that the written authorization of the customer required by NASD Rule 2510 specifically authorize security futures

[11] The Commission published a group of new NFA rules and amendments to NFA rules governing security futures on September 27, 2001. *See* Securities Exchange Act Release No. 44823 (September 20, 2001), 66 FR 49439 (September 27, 2001). The NFA's rules also were modeled after NASD's options rules. In developing NASD's security futures rule, we have sought to adopt requirements that are consistent with those of the NFA to avoid regulatory disparity between firms subject to the jurisdiction of the NFA and NASD.

[12] Securities Exchange Act Release No. 44854 (September 25, 2001), 66 FR 50768 (October 4, 2001).

[13] *Id.* at 50791.

trading in the account. The implication of this requirement is that all discretionary accounts, even those that are permitted to trade options, cannot trade security futures unless a new written discretionary account authorization specifically authorizing trading of security futures is on file. Although there are many similarities between options and security futures, NASD does not believe that existing

similar to NASD's suitability standard for options.[14] This heightened standard recognizes that security futures carry a higher degree of risk to a customer than many other securities products. Specifically, under the proposed rule change, if an associated person recommends a security futures transaction, the proposed suitability rule imposes the additional requirement that the associated person have a

ahead of customer security futures orders in a proprietary account or in any account in which the member or an associated person has an interest. The prohibition against trading ahead applies only to customer orders of which the member is aware or reasonably should be aware.

This provision is based on the NFA's Interpretive Notice regarding obligations to customers and other market

approve advertisements and sales literature concerning security futures.

The proposed rule contains a pre-use filing requirement for advertisements concerning security futures.[18] As with the pre-use filing requirements for options communications, a member must file its security futures advertisements with NASD's Advertising/Investment Companies Regulation Department ("Department") at least 10 days before the member can

unsuitable for many investors. Third, the proposed rule requires that communications state that, upon request, the firm will provide documents that support any claims, comparisons, recommendations, statistics, or other technical data used in the communication. All three of these disclosure requirements are similar to the requirements for options communications.[20]

Because security futures

As part of this change, NASD is working with other self-regulatory organizations to develop new and revised qualification examinations that will test applicants on security futures-related topics. NASD anticipates that the new and revised qualification examinations will be completed six months after retail trading in security futures commences.

The proposed rule change broadens the following qualifications categories to include security futures activities:

trading in the account. The implication of this requirement is that all discretionary accounts, even those that are permitted to trade options, cannot trade security futures unless a new written discretionary account authorization specifically authorizing trading of security futures is on file. Although there are many similarities between options and security futures, NASD does not believe that existing discretionary account authorizations should be expanded to include these new products. While NASD recognizes requiring new discretionary account forms specifically authorizing trading in security futures may be of some burden to firms, NASD believes that customer protections achieved by such a requirement outweigh the burden. NASD notes that the NFA does not require discretionary accounts to have specific written authorization to trade security futures; however, NASD also notes that the discretionary accounts under the NFA's jurisdiction are already specifically authorized to trade other types of futures.

Statements of Account

The proposed rule change requires members to deliver a customer account statement no less frequently than each month where there has been an entry during the preceding month with respect to a security futures contract and quarterly to all customers that have an open security futures position or money balance. The proposed customer account statement provision is comparable to the existing provision for options.

Opening of Accounts

NASD proposes an account opening rule that contains specific procedures that a member must follow to approve a customer account to trade security futures. These procedures include review by an appropriately qualified principal (a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor), specific guidance as to what information the member must ask the customer to provide, and a requirement for the member to furnish its customer with the security futures risk disclosure statement at or before the time that the member accepts an order from the customer to purchase or sell a security future. These account-opening procedures are similar to existing procedures for options.

Suitability

The proposed rule change includes a suitability rule that employs a heightened suitability standard that is similar to NASD's suitability standard for options.[14] This heightened standard recognizes that security futures carry a higher degree of risk to a customer than many other securities products. Specifically, under the proposed rule change, if an associated person recommends a security futures transaction, the proposed suitability rule imposes the additional requirement that the associated person have a reasonable basis for believing "that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the security future."[15] NASD believes that the proposed suitability rule will require associated persons of broker/dealers to consider carefully whether to recommend a security futures transaction to a customer. In addition, NASD has expanded the security futures suitability standard to address trading strategies as well as individual trades. The expansion of the suitability standard to include a recommended "trading strategy" makes the proposed rule change consistent with the suitability standard for security futures adopted by the NFA.[16]

Security Futures Transactions and Reports by Market Makers in Listed Securities

NASD proposes a provision addressing security futures transactions and reports by market makers in listed securities that is comparable to the existing provision for options. This provision requires members that are off-board market makers in securities listed on a national securities exchange to regularly report security futures transactions involving 50 or more contracts on such listed securities that are for the benefit of a member that is an off-board market maker in such securities or are for the benefit of certain associated persons of such a member.

Trading Ahead

The proposed rule change requires members to exercise due care to avoid trading ahead of customer orders in the same security futures contract. The proposed provision imposes an obligation on members not to trade ahead of customer security futures orders in a proprietary account or in any account in which the member or an associated person has an interest. The prohibition against trading ahead applies only to customer orders of which the member is aware or reasonably should be aware.

This provision is based on the NFA's Interpretive Notice regarding obligations to customers and other market participants.[17] The NFA's Interpretive Notice gives two examples of when a firm would reasonably not be aware of a customer's order: (1) When a customer's order originates in a different branch office than the firm's proprietary order, and (2) when the firm's trading department does not have access to information about customer orders. NASD believes that these two situations are also examples of when a firm would not violate the proposed NASD rule. Moreover, these two examples are not exhaustive. NASD anticipates that there are additional situations in which a firm reasonably would not be aware of a customer's order and therefore the firm would not violate the rule if it transmits a proprietary order to a securities exchange before a customer's order. NASD cannot enumerate all such situations at this time because, among other things, they may depend on the trading rules of a securities exchange that trades security futures.

b. Advertising Rule for Security Futures

NASD proposes amendments to the rule governing communications with the public, Rule 2210 ("Advertising Rule") to address security futures. The amendments, which are primarily contained in proposed Interpretive Material, establish advertising standards that are similar but not identical to the standards for options. The proposed rule change bases the security futures advertising provisions on the general advertising rule because NASD believes it will be easier for members to follow a modification of the general advertising rule rather than referring to a stand-alone security futures advertising rule.

Contrary to the requirement that a principal approves advertisements and sales literature under Rule 2210(b), however, the proposed rule specifies that advertisements and sales literature concerning security futures must be approved by a Registered Options and Security Futures Principal (Series 4). In particular, a General Securities Principal (Series 24) is not authorized to approve advertisements and sales literature concerning security futures.

The proposed rule contains a pre-use filing requirement for advertisements concerning security futures.[18] As with the pre-use filing requirements for options communications, a member must file its security futures advertisements with NASD's Advertising/Investment Companies Regulation Department ("Department") at least 10 days before the member can use the communication.[19] Under the proposed rule change, the Department will review the advertisement and will either approve it, disapprove it, or specify changes that the firm must make to use the communication.

The proposed rule restricts the content of communications, which includes advertisements, sales literature, and correspondence that are not accompanied or preceded by the security futures risk disclosure statement. Such communications may not contain statements of historical performance or projections. In addition, communications must be limited to general descriptions of security futures. These restrictions are similar to the advertising restrictions for options.

The proposed rule requires three specific disclosures about security futures. First, if the communication refers to the potential advantages of security futures, the communication must balance the mention of advantages with a reference, in the same degree of specificity, about the corresponding risks. This requirement of a closely balanced presentation of advantages and risks is a more exacting standard than is contained in NASD's general standard for communications with the public, which prohibits exaggerated, unwarranted, or misleading statements. *See* NASD Rule 2210(d)(1)(B). Second, the communication must include a warning that security futures are not suitable for all investors. NASD believes that the riskiness of security futures and the high leverage involved in these products makes security futures unsuitable for many investors. Third, the proposed rule requires that communications state that, upon request, the firm will provide documents that support any claims, comparisons, recommendations, statistics, or other technical data used in the communication. All three of these disclosure requirements are similar to the requirements for options communications.[20]

Because security futures communications will be subject to NASD's general advertising rule, several general and specific standards will apply to security futures communications. Exaggerated, unwarranted, or misleading statements about security futures are not allowed. Communications must be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any security future. Moreover, no material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the communication to be misleading. Communications with the public cannot contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events that are unwarranted.

If a communication with the public makes a recommendation, the member must have a reasonable basis for the recommendation and must disclose, if applicable, several facts about its financial holdings in the issuer of a security related to its recommendation.

The proposed rule change contains requirements for sales literature or correspondence that contain projections or historical performance information. These sections are similar to provisions in the options advertising rule and also are substantially similar to the NFA's requirement regarding communications with the public for security futures.[21]

c. Qualifications of Registered Persons

The securities industry has a wide array of qualification examinations that registered persons can take to qualify to engage in various aspects of the securities business. To accommodate the introduction of security futures, NASD proposes a rule change to modify several registration categories. In general, where a registration category permits an individual to engage in an options business, NASD has modified the category to permit security futures. As part of this change, NASD is working with other self-regulatory organizations to develop new and revised qualification examinations that will test applicants on security futures-related topics. NASD anticipates that the new and revised qualification examinations will be completed six months after retail trading in security futures commences.

The proposed rule change broadens the following qualifications categories to include security futures activities:

- Registered Options Principal (Series 4) becomes Registered Options and Security Futures Principal[22]
- Limited Principal—General Securities Sales Supervisor (Series 9/10)
- General Securities Representative (Series 7)[23]
- Limited Representative—Options (Series 42) becomes Limited Representative-Options and Security Futures.[24]

For persons who currently are registered in one of these registration categories, or who become registered in one of these registration categories prior to the implementation of new examinations addressing security futures, NASD is instituting a firm-element continuing education requirement. NASD will require each registered person (or persons that take certain qualification examinations prior to such examinations being updated to include security futures questions) to complete a firm-element continuing education program on security futures prior to conducting a business in security futures. NASD will, pursuant to NASD Rule 1120(b)(4), specify the content of the continuing education program.[25]

[14] *See* NASD Rule 2860(b)(19). In addition, we propose to add a cross-reference in the Fair Dealing with Customers Interpretative Material, IM–2310–2, which relates to NASD's suitability rule. The cross-reference will refer readers to the suitability provision of NASD's new security futures rule.

[15] *See* Proposed NASD Rule 2860(b)(19).

[16] NFA Rule 2–30(j)(4).

[17] National Futures Association Manual, ¶ 9041 (Vol. 7, No. 2, 2001); <*http://www.nfa.futures.org/compliance/manual/M11Interp_41.html*>.

[18] Although many of the provisions of the proposed advertising rule for security futures are similar to the options advertising rule, the definitions of "options advertisement," "educational material," and "sales literature" differ from the definitions that will apply to security futures. Because the security futures rule will follow NASD's general advertising rule, the definition of "advertisement" is essentially material that is disseminated via mass media channels. *See* NASD Rule 2210(a)(1). "Sales literature" is defined to include circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, and reprints or excerpts of any other advertisement, sales literature, or published article that is distributed or made generally available to customers or the public. *See* NASD Rule 2210(a)(2).

[19] In particular circumstances, the Department may allow a shorter period than 10 days for its review.

[20] *See* NASD Rules 2220(d)(2)(A)(i), (ii), 2220(d)(2)(D)(i).

[21] NFA Rule 2–29(j)(12). *See* Securities Exchange Act Release No. 44823 (September 20, 2001) 66 FR 49439 (September 27, 2001).

[22] The proposed rule change also deletes a few outdated concepts from the provisions of Rule 1022(f). These deletions are unrelated to security futures.

[23] Specifically, a Series 43 examination will be offered for registered representatives wishing to engage in a security futures business. Once the Series 43 is developed, new applicants will choose to take only the Series 7, or, if they intend to engage in security futures business, the Series 7 and Series 43 examination. After the Series 43 examination is developed, persons taking only the Series 7 will not be permitted to engage in a security futures business. Completing a firm-element continuing education program will be an option available only for persons that are registered as a general securities representative before the Series 43 examination becomes available.

[24] The Series 42 examination has alternative prerequisite examinations, the Limited Representative—Corporate Securities or Limited Representative—Government Securities examinations.

[25] NASD has not previously specified the content of firm-element continuing education and does not intend to do so in the future absent extraordinary circumstances. The introduction of security futures in the United States, however, presents extraordinary circumstances because these products have been banned from trading here for more than 19 years. Under these circumstances, NASD has concluded that using its authority set forth in Rule 1120(b)(4) to specify content of the firm element is appropriate.

NASD's proposal, in effect, allows Registered Options Principals, Limited Principals—General Securities Sales Supervisors, General Securities Representatives, and Limited Representatives—Options to be "grandfathered" so that they will not be required to retake any expanded qualification examinations to sell or supervise security futures products. The "grandfathering" privilege will be who presently engage solely in a commodities business, will seek to expand their activities into security futures. The proposed rule change is necessary to avoid having such person be required to register with NASD as a representative . NASD believes that so long as such individuals are registered with a registered futures association, and such person's securities activities

e. Taping Requirement of the Supervision Rule

NASD Rule 3010(b)(2) (the "Taping Rule") requires certain NASD members to tape record "all telephone conversations between the member's registered persons and both existing and potential customers" [29] and maintain other special written procedures for supervising the telemarketing activities

f. Qualifications of Job Applicants

NASD Rule 3010(e) provides that members have a responsibility to investigate the good character, business repute, qualifications, and experience of a job applicant before the member applies to register that applicant with NASD. When the job applicant previously has been registered with NASD, the member must obtain a copy

g. Front Running Policy

NASD's front running policy, IM–2110–3, prohibits members and associated persons from trading options or an underlying security when they have material, non-public market information concerning an imminent block transaction in the underlying security or in the overlying option. The front running policy applies to

NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that these rule changes are necessary to implement the requirements of the CFMA and to establish new regulations that allow broker/dealers, FCMs, and IBs to trade security futures consistent with the

NASD's proposal, in effect, allows Registered Options Principals, Limited Principals—General Securities Sales Supervisors, General Securities Representatives, and Limited Representatives—Options to be "grandfathered" so that they will not be required to retake any expanded qualification examinations to sell or supervise security futures products. The "grandfathering" privilege will be limited to associated persons who are registered as Series 4, 7, 9/10, or 42.

As an alternative to continuing education, or because registered personnel will be expanding the scope of their securities business, NASD anticipates that certain existing registrants may take revised qualification examinations covering security futures. NASD has modified the registration categories to provide it with the flexibility to accept, for certain registration categories, other examinations that address security futures. For example, if a person has passed the Series 7 and subsequently takes the revised Series 3 (containing questions on security futures), NASD does not believe that it should be necessary for such person to complete a firm-element continuing education program as a prerequisite to engaging in a security futures business. In that case, the successful completion of the revised Series 3 demonstrates proficiency in security futures products. Once revised examinations are developed, NASD will announce in a Notice to Members or other publication the examinations that can be used to demonstrate proficiency in security futures for each registration category. In response to the SEC staff's request that NASD establish a sunset date, NASD has selected December 31, 2006 as a sunset date for the continuing education provisions. After that date, registrants who have passed a qualifications examination that does not include security futures, and who have not already completed a firm-element continuing education program on security futures, will be required to retake an examination to function in a registration category with respect to security futures.

In addition, NASD has amended Rule 1060(a) to exempt from registration with NASD persons associated with a member whose functions are related solely and exclusively to transactions in security futures, provided that such persons are registered with a registered futures association. The proposed rule change recognizes that certain persons in a firm that is fully registered as a broker/dealer and either an FCM or IB, who presently engage solely in a commodities business, will seek to expand their activities into security futures. The proposed rule change is necessary to avoid having such person be required to register with NASD as a representative . NASD believes that so long as such individuals are registered with a registered futures association, and such person's securities activities are limited solely to security futures, there should be no additional requirement for such persons to register with NASD. As a result of this change, for example, a person who is a Series 3 registered person with the NFA will not be required to take the Series 7 or Series 62 simply because such person intends to engage in a security futures business.

d. Short Sale Restrictions

The CFMA exempts transactions in security futures from the short sale provisions of Section 10(a) of the Exchange Act.[26] To harmonize NASD's rules with the amended short sale provision in the Exchange Act, NASD proposes to amend the affirmative determination provisions of NASD Rule 3370.[27] Rule 3370 generally requires an NASD member, prior to accepting a short sale order from a customer in any security, to make an affirmative determination that the member can borrow or otherwise provide for delivery of the security by the settlement date. NASD proposes to amend the affirmative determination requirement to exempt security futures from the application of the rule.[28] The proposed amendment would eliminate a member's affirmative determination obligation with respect to any short sale of a security future.

NASD further proposes to amend the definition of "bona fide fully hedged" positions to include certain long single stock futures positions in connection with short positions in the underlying stock. The amendment will treat long single stock futures positions similar to in-the-money call options, which are included in the categories of bona fide fully hedged positions.

e. Taping Requirement of the Supervision Rule

NASD Rule 3010(b)(2) (the "Taping Rule") requires certain NASD members to tape record "all telephone conversations between the member's registered persons and both existing and potential customers"[29] and maintain other special written procedures for supervising the telemarketing activities of all of its registered persons. NASD members become subject to the Taping Rule if a certain percentage of their registered persons have been employed by a disciplined firm within the last three years. The Taping Rule prevents registered persons who have been employed by disciplined firms from clustering together at a different firm. A disciplined firm is one that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from NASD membership, expelled from any other securities industry SRO, or is subject to an order of the SEC revoking its registration as a broker/dealer.

In the futures industry, the NFA's taping rule requires NFA members that have a certain percentage of associated persons who have been employed by disciplined firms to tape record telephone conversations between associated persons and customers. The NFA has a three-fold definition of a disciplined firm that includes the following: (1) The firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material; (2) the charges have been resolved; and (3) the firm has been closed down and permanently barred from the industry as a result of those charges.[30]

NASD proposes to broaden the scope of its Taping Rule to include FCMs and IBs that will be selling security futures within the group of intermediaries that can potentially meet the definition of a disciplined firm. The proposed rule change borrows the NFA's definition of a disciplined firm and adds it to NASD's existing definition.

[26] *See* Section 10(a)(2) of the Act; 15 U.S.C. 78j(a)(2).

[27] For Nasdaq National Market securities, NASD's rules currently include an additional short sale restriction: the bid test. *See* NASD Rule 3350(a). We believe that the bid test has no application to security futures, and we are not proposing any amendments to Rule 3350.

[28] Currently, the affirmative determination requirement of Rule 3370 does not apply to options transactions.

[29] Rule 3010(b)(2)(iii). NASD has pending with the Commission a separate proposed rule change to Rule 3010(b)(2) that, among other changes, would permit firms that become subject to the Taping Rule a one-time opportunity to adjust their staffing level to fall below the prescribed threshold levels and thus avoid application of the Taping Rule. *See* Securities Exchange Act Release No. 46067 (June 12, 2002), 67 FR 41561 (June 18, 2002).

[30] NFA Rule 2–9: Enhanced Supervisory Requirements—Interpretive Notice.

f. Qualifications of Job Applicants

NASD Rule 3010(e) provides that members have a responsibility to investigate the good character, business repute, qualifications, and experience of a job applicant before the member applies to register that applicant with NASD. When the job applicant previously has been registered with NASD, the member must obtain a copy of the applicant's Uniform Termination Notice of Securities Industry Registration (Form U–5) that was filed by the applicant's most recent member employer.

NASD proposes to add a requirement that would apply when a job applicant has been most recently employed by an FCM or an IB that is registered to trade securities futures, meaning the FCM or IB has notice-registered with the SEC pursuant to section 15(b)(11) of the Act.[31] In such a case, the hiring firm would be required to review a copy of CFTC Form 8-T, Notice of Termination of Associated Person, NFA Associate, Branch Office Manager, Designated Supervisor or Principal. The Form 8–T asks for the same types of information as does the Form U–5.

The purpose of this proposed amendment is to modify an NASD member's obligation to review a job applicant's employment experience to include an applicant's experience while with a notice-registered broker/dealer. An individual's experience at such a firm may bear on his or her fitness to be sponsored by an NASD member. NASD anticipates that NASD members will be able to review the CFTC Form 8–T by requesting it from the applicant or the applicant's previous employer.

NASD is also amending Rule 3010(e) to provide members with greater flexibility in complying with its requirements. Currently, Rule 3010(e) requires members to obtain actual copies of the Form U–5 and amendments. When NASD replaced the Legacy Central Registration Depository ("CRD") system with Web CRD[SM] in August 1999, members received the ability to review Form U–5s and amendments via an internet connection. The Web CRD system allows members, with the applicant's consent, to review the Form U–5 by using a pre-hire search function. The proposed rule change recognizes the ability of members to use the advanced functionality of Web CRD to review Form U–5s. Members, however, will be expected to be able to demonstrate compliance with the Rule.

[31] Securities Exchange Act Release No. 44730, 66 FR 45138 (August 27, 2001).

g. Front Running Policy

NASD's front running policy, IM–2110–3, prohibits members and associated persons from trading options or an underlying security when they have material, non-public market information concerning an imminent block transaction in the underlying security or in the overlying option. The front running policy applies to member's proprietary accounts, accounts in which a member or an associated person has an interest, discretionary accounts, and—when the member or a person associated with a member shares material, non-public market information with a customer—the customer's account.

NASD proposes to amend the front running policy to include security futures by having the rule apply to security futures in the same manner that it applies to options. For example, when a member has material, non-public market information concerning an imminent block transaction in a stock, the member will not be able to trade the single-stock future overlying that stock in its proprietary account, other accounts in which it has an interest, or discretionary accounts. The purpose of this proposed amendment is to prohibit broker/dealers from trading security futures at a profit when they have material, non-public market information concerning a stock or from trading a stock at a profit when they have material, non-public market information concerning a security future. Once the material, non-public market information has been made publicly available, however, the restrictions of the front running policy will no longer apply.

h. Transactions for or by Associated Persons

NASD Rule 3050 requires associated persons who seek to open accounts or place securities orders with an NASD firm that is not their employer to notify both their employer firm and the executing firm before they engage in such actions. This rule allows NASD firms to monitor the securities activities of their employees for the purpose of complying with several securities laws and regulations. NASD proposes to broaden the scope of the rule to require associated persons to notify their employer firm when they open an account with an FCM or IB that is registered to trade security futures.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that these rule changes are necessary to implement the requirements of the CFMA and to establish new regulations that allow broker/dealers, FCMs, and IBs to trade security futures consistent with the CFMA.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date Of Effectiveness of the Proposed Rule Change And Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–2002–40 and should be submitted by August 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated

The number assigned to this disaster for physical damage is 342911 for Indiana and 343011 for Ohio.

The number assigned to this disaster for economic injury is 9Q5200 for Indiana and 9Q5300 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 2002.

Hector V. Barreto,

Administrator.

DEPARTMENT OF STATE

[Public Notice 4066]

Culturally Significant Objects Imported for Exhibition Determinations: "Mondrian (1892–1914): The Path to Abstraction"

AGENCY: Department of State.

ACTION: Notice.

Corrections

Federal Register
Vol. 67, No. 138
Thursday, July 18, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are

Thursday, July 11, 2002, make the following corrections:

1. On page 45959, in the third column, under **ADDRESSES:** in the ninth line, the e-mail address is

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–2002–40 and should be submitted by August 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18142 Filed 7–17–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3429]

State of Indiana; Disaster Loan Areas

Allen County and the contiguous counties of Adams, DeKalb, Huntington, Noble, Wells and Whitley in the State of Indiana; and Defiance, Paulding and Van Wert Counties in the State of Ohio constitute a disaster area due to damages caused by severe thunderstorms, hail and wind that occurred on June 26, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 6, 2002, and for economic injury until the close of business on April 8, 2003, at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

[32] 17 CFR 200.30–3(a)(12).

The number assigned to this disaster for physical damage is 342911 for Indiana and 343011 for Ohio.

The number assigned to this disaster for economic injury is 9Q5200 for Indiana and 9Q5300 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18156 Filed 7–17–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas; (Amendment #2); Disaster Loan Areas

In accordance with notices received from the Federal Emergency Management Agency, dated July 6 and July 8, 2002, the above numbered declaration is hereby amended to include Atascosa, Brown, Caldwell, Eastland, Frio, Goliad, Gonzales, Guadalupe, Karnes, La Salle, Real, Taylor, Travis and Wilson Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Bastrop, Bee, Callahan, Coleman, Comanche, De Witt, Dimmit, Duval, Erath, Fayette, Fisher, Jones, Lavaca, Live Oak, McCulloch, McMullen, Mills, Nolan, Palo Pinto, Refugio, Runnels, San Saba, Shackleford, Stephens, Victoria, Webb and Williamson Counties in Texas. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 9, 2002.

Becky C. Brantley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18157 Filed 7–17–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4066]

Culturally Significant Objects Imported for Exhibition Determinations: "Mondrian (1892–1914): The Path to Abstraction"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Mondrian (1892–1914): the Path to Abstraction," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about August 18, 2002 to on or about December 8, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 12, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–18144 Filed 7–17–02; 8:45 am]

BILLING CODE 4710–08–P

Corrections

Federal Register
Vol. 67, No. 138
Thursday, July 18, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Hold An Environmental Scoping Meeting To Solicit Citizen Input Into a Study of an Environmental Dredging Project on the Mahoning River in Ohio

Correction

In notice document 02–17470 beginning on page 45959 in the issue of Thursday, July 11, 2002, make the following corrections:

1. On page 45959, in the third column, under **ADDRESSES:** in the ninth line, the e-mail address is corrected to read as set forth below, "*lrp.mahdredge@usace.army.mil*".

2. On page 45959, in the same column, under **FOR FURTHER INFORMATION CONTACT:**, in the fifth line, " (412) 395–7213" should read "(412) 395–7212".

3. On the same page, in the same column, under the same heading, in the sixth line, the e-mail address is corrected to read as set forth below, "*lrp.mahdredge@usace.army.mil*".

4. On page 45960, in the first column, in the 15th line, "dure" should read "due".

[FR Doc. C2–17470 Filed 7–17–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9001]

RIN 1545–BA56

Disclosure of Return Information to Officers and Employees of the Department of Agriculture for Certain Statistical Purposes and Related Activities

Correction

In rule document 02–15351 beginning on page 41621 in the issue of Wednesday, June 19, 2002 make the following correction:

On page 41621, in the third column, in the ninth line, "(§ 301.6103(j)(5)–(1)" should read "(§ 301.6103(j)(5)–1)".

[FR Doc. C2–15351 Filed 7–17–02; 8:45 am]

BILLING CODE 1505–01–D

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Part II

Department of Housing and Urban Development

24 CFR Part 5

Temporary Assistance for Needy Families (TANF) Program; Conforming Changes to Annual Income Requirements for HUD's Public Housing and Section 8 Assistance Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4635–F–02]

RIN 2501–AC77

Temporary Assistance for Needy Families (TANF) Program; Conforming Changes to Annual Income

A. HUD's Annual Income Requirements

HUD's regulations at 24 CFR part 5, subpart F, establish requirements governing the determination of annual income of families who apply for, or receive assistance under, the Section 8 and public housing programs. The HUD regulations define "annual income" to mean all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family

are not otherwise excluded under § 5.609(c).

Second, the rule would clarify the definition of "welfare assistance" at § 5.603. Specifically, the April 20, 2001, rule proposed to clarify that welfare assistance includes TANF "assistance," as that term is defined by the HHS regulation at 45 CFR 260.31.

HUD proposed these clarifications to make the annual income requirements easier to understand for program

program definition of assistance, not to add additional exclusions to the definition of annual income. The rule provides that annual income includes TANF payments, but only to the extent such payments meet the definition of "assistance" under regulations promulgated by HHS at 45 CFR 260.31, and are not otherwise excluded under 24 CFR 5.609(c). Therefore, if a specific type of assistance does not meet the

Comment: The proposed rule also invited comments on the utility of HUD's previous guidance (PIH 2000–11) on the development of cooperative agreements between PHAs and welfare offices, and on whether other guidance and training is needed to further public housing and welfare coordination. One commenter thought it would be helpful to request that PHAs, on a voluntary basis, submit to HUD copies of

V. Findings and Certifications

Environmental Impact

This final rule involves the discretionary establishment of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, which does not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly,

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4635–F–02]

RIN 2501–AC77

Temporary Assistance for Needy Families (TANF) Program; Conforming Changes to Annual Income Requirements for HUD's Public Housing and Section 8 Assistance Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies HUD's annual income requirements for its public housing and Section 8 assistance programs. Specifically, the final rule clarifies that annual income includes payments under the Temporary Assistance for Needy Families (TANF) program, but only to the extent such payments qualify as "assistance" under the TANF program regulations issued by the Department of Health and Human Services (HHS) and are not otherwise excluded under HUD's regulation. This final rule follows publication of an April 20, 2001, proposed rule and takes into consideration public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Senior Programs Manager, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4222, Washington, DC 20410; telephone (202) 708–0744 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 20, 2001 (66 FR 20368), HUD published a proposed rule to update and clarify HUD's annual income requirements for its public housing and Section 8 assistance programs. The changes are intended to ensure greater conformity between HUD's annual income requirements and the TANF program regulations, and to make the annual income requirements easier to understand for both program participants and public housing agencies.

A. HUD's Annual Income Requirements

HUD's regulations at 24 CFR part 5, subpart F, establish requirements governing the determination of annual income of families who apply for, or receive assistance under, the Section 8 and public housing programs. The HUD regulations define "annual income" to mean all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;

(2) Are anticipated to be received from a source outside the family during the upcoming 12 month period; and

(3) Are not excluded under § 5.609(c).

Section 5.609(b)(6) establishes the requirements determining the amount of income when the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual costs of these items. The term "welfare assistance" is defined at § 5.603. Specifically, this term is defined to mean "[w]elfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State, or local governments."

B. "Assistance" Under the Temporary Assistance for Needy Families (TANF) Program

HUD's definition of "welfare assistance" at § 5.603 includes assistance provided under the Temporary Assistance for Needy Families (TANF) program. The TANF block grant program replaced the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

II. HUD's Proposed Rule

On April 20, 2001, HUD published a proposed rule that would make two changes designed to clarify the relationship between HUD's annual income requirements for its Section 8 and public housing programs, and the TANF program definition of "assistance." First, the rule would clarify that the term "welfare assistance," for purposes of calculating annual income, includes TANF payments, but only to the extent such payments meet the definition of "assistance" under 45 CFR 260.31 and are not otherwise excluded under § 5.609(c).

Second, the rule would clarify the definition of "welfare assistance" at § 5.603. Specifically, the April 20, 2001, rule proposed to clarify that welfare assistance includes TANF "assistance," as that term is defined by the HHS regulation at 45 CFR 260.31.

HUD proposed these clarifications to make the annual income requirements easier to understand for program participants and public housing agencies. The amendments were also designed to ensure greater conformity between the annual income requirements and the TANF program regulations.

III. This Final Rule

This final rule follows publication of the April 20, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. This final rule adopts the proposed rule and makes no changes.

IV. Discussion of Public Comments on the April 20, 2001, Proposed Rule

The public comment period on the April 20, 2001, proposed rule closed on June 19, 2001. HUD received three comments, two from public housing agencies (PHAs) and one from a nonpartisan research organization.

This section of the preamble presents a summary of the significant issues raised by the public commenters on the April 20, 2001, proposed rule and HUD's responses to these comments.

One commenter wrote to express support for the proposed change to the definition of the term "welfare assistance" to include the TANF program definition of "assistance" under HHS regulation 45 CFR 260.31. The commenter wrote that the proposed changes will reduce conflicting interpretations of "welfare assistance" given to families who receive both TANF and housing assistance.

Comment: Modification to exclude TANF-funded food assistance for legal immigrants. One commenter, who expressed support for the proposed rule, recommended one modification to the proposed rule. The suggested modification was to exclude TANF-funded food assistance for legal immigrants that some states have chosen to provide after the 1996 restrictions.

HUD Response: HUD declines to adopt the suggestion to specifically exclude this type of assistance. The purpose of this rule is to clarify the relationship between HUD's annual income requirements for assisted housing purposes and the TANF program definition of assistance, not to add additional exclusions to the definition of annual income. The rule provides that annual income includes TANF payments, but only to the extent such payments meet the definition of "assistance" under regulations promulgated by HHS at 45 CFR 260.31, and are not otherwise excluded under 24 CFR 5.609(c). Therefore, if a specific type of assistance does not meet the definition of assistance under the TANF regulation, then it would be excluded for HUD purposes.

Comment: HUD should clarify the interaction of the revised definition of "welfare assistance" with existing rules. The commenter suggested that HUD clarify the interaction of the revised definition of "welfare assistance" with existing rules on exclusions from income. In addition, the clarification should be included in the preamble to the final rule as well as in the implementing instructions.

HUD Response: The preamble to the proposed rule clarified that "welfare assistance" included TANF payments, but only to the extent such payments meet the definition of "assistance" under 45 CFR 260.31 and are not otherwise excluded under 24 CFR 5609(c). This is also reflected in the revised regulation at 24 CFR 5.609(b)(6)(i)(B). HUD believes that this language is sufficient to address the interaction of the revised definition of "welfare assistance" with existing regulations. As a result, HUD has not adopted this suggestion.

Comment: HUD should give specific examples (without limitation) of the types of common TANF payments that would be excluded from income by the new rule. The commenter used as an example that the proposed rule would exclude TANF funded one-time payments such as utility arrears, because such one-time or short-term payments are excluded from the TANF definition of assistance. The commenter would like to see other specific examples of payments that are excluded.

HUD Response: HUD has not adopted this suggestion. HUD will not give specific examples within the regulation. The TANF program regulations are discussed in the preamble, and will only be referenced by citation in the HUD regulations. It is important that PHAs and local TANF agencies work closely if there are questions related to interpretation of HUD or TANF regulations. HUD will also consider developing additional guidance on this subject which would be available on the HUD website and in future issuances.

Comment: The proposed rule also invited comments on the utility of HUD's previous guidance (PIH 2000–11) on the development of cooperative agreements between PHAs and welfare offices, and on whether other guidance and training is needed to further public housing and welfare coordination. One commenter thought it would be helpful to request that PHAs, on a voluntary basis, submit to HUD copies of cooperative agreements to share ideas with other PHAs. Further, the commenter suggested that there is a great need for further guidance and training for PHAs and welfare agencies on areas of beneficial coordination such as Family Self-Sufficiency (FSS), earnings disregards and other rent-based work incentives, Section 3 requirements, etc.

HUD Response: HUD appreciates the comments and will take them into consideration.

Comment: The proposed clarification does not show the exclusions as defined under the new definition of "Welfare Assistance." One commenter noted that the "welfare assistance" definition underwent a change in the year 2000, which excluded (for the purposes of the FSS program only) the following:

(1) Amounts solely directed to meet housing expenses.

(2) Amounts for health care.

(3) Food stamps and emergency rental and utilities assistance.

(4) SSI, SSDI, or Social Security.

The commenter wrote that HUD's proposed clarification does not show any of the above line items as being excluded. The commenter stated, "welfare assistance, if once again included in the above items, may cause many families who are moving toward self sufficiency to be derailed." The commenter would like to see these items remain excluded from the definition of "welfare assistance" for the FSS program.

HUD Response: The definition for "welfare assistance" for purposes of the FSS program only (24 CFR 984.103) was changed by the final rule (Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs, published in the **Federal Register** on March 29, 2000 (65 FR 16692)), to refer only to cash maintenance payments for ongoing basic needs, funded under Federal or State welfare programs such as the TANF program. This definition, for purposes of the FSS program only, remains unchanged and is not affected by this final rule.

V. Findings and Certifications

Environmental Impact

This final rule involves the discretionary establishment of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, which does not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule would not impose any Federal mandates on any State, local, or tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for these programs are 14.850 and 14.871.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart F—Section 8 and Public Housing; Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

2. The authority citation for subpart F continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

3. In § 5.603(b), revise the definition of *"Welfare assistance"* to read as follows:

§ 5.603 Definitions.

* * * * *

(b) * * *

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

* * * * *

4. Revise § 5.609(b)(6) to read as follows:

§ 5.609 Annual income.

* * * * *

(b) * * *

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

* * * * *

Dated: July 8, 2002.

Mel Martinez,

Secretary.

[FR Doc. 02–18051 Filed 7–17–02; 8:45 am]

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Federal Register

Thursday,
July 18, 2002

Part III

Department of Housing and Urban Development

24 CFR Part 17
Administrative Wage Garnishment; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 17

[Docket No. FR–4711–F–02]

RIN 2501–AC85

Administrative Wage Garnishment

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

1982. Section 31001(o) of the DCIA authorizes collection of Federal agency debt by administrative wage garnishment (section 31001(o) is codified at 31 U.S.C. 3720D). The DCIA authorizes Federal agencies to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-

apply only to individuals who are not federal employees.

II. This Final Rule

This final rule adopts the proposed change made to HUD's regulations at 24 CFR part 17, subpart C to adopt 31 CFR 285.11 in its entirety. The public comment period for the proposed rule closed on May 7, 2002. HUD did not receive any public comments on the proposed rule. As a result, with the

insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

§ 17.150 Scope.

(a) The standards set forth in §§ 17.150 through 17.161 are the Department's procedures for requesting the Department of the Treasury to offset Federal payments due debtors who have a past-due debt obligation to the Department. These procedures apply to the collection of debts under common law, 31 U.S.C. 3716 or other statutory authority.

(b) The Secretary will use the

debt is past due and legally enforceable, the Secretary will notify the Department of the Treasury after the Administrative Judge's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Chief Financial Officer. No referral will be made to the IRS or the Department of the Treasury if review of the debt by the Administrative Judge reverses the initial decision that the debt is past due and

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 17

[Docket No. FR–4711–F–02]

RIN 2501–AC85

Administrative Wage Garnishment

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the authority established under the Debt Collection Improvement Act of 1996 (DCIA) for HUD to collect the Department's past due indebtedness through administrative wage garnishment. The final rule adopts, without change, the hearing procedures issued by the Department of the Treasury implementing administrative wage garnishment under the DCIA. This final rule applies only to individuals who are not Federal employees. The final rule amends procedures for the collection of claims to conform to HUD regulations to applicable provisions of the DCIA. This final rule follows publication of a March 8, 2002, proposed rule. There were no comments on the proposed rule, and HUD is adopting the proposed regulatory amendments, with minor technical corrections, but no substantive change.

DATES: *Effective Date:* August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Samuel B. Rothman, Senior Attorney, Office of General Counsel, Room 9253, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–4184 (this is not a toll-free number). Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1984 HUD has had regulations (subpart C of 24 CFR part 17) that govern various types of administrative offset (*i.e.*, offset conducted administratively rather than through a court of record). These regulations, issued pursuant to the Debt Collection Act of 1982 (31 U.S.C. 3701 et seq.) and the Federal Claims Collection Standards, were promulgated jointly by the General Accounting Office and the Department of Justice (4 CFR parts 101–105).

In 1996, Congress enacted the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–1358, approved April 26, 1996) (DCIA), which amended the Debt Collection Act of 1982. Section 31001(o) of the DCIA authorizes collection of Federal agency debt by administrative wage garnishment (section 31001(o) is codified at 31 U.S.C. 3720D). The DCIA authorizes Federal agencies to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees.

The DCIA directed the Secretary of the Treasury to issue implementing regulations (see 31 U.S.C. 3720D(h)). On May 6, 1998 (63 FR 25136), the Department of the Treasury published a final rule implementing the statutory administrative wage garnishment requirements at 31 CFR 285.11. Paragraph (f) of 31 CFR 285.11 provides that "[a]gencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference."

On March 8, 2002, HUD published a proposed rule (67 FR 10818) to implement the authority established under the DCIA for HUD to collect the Department's past due indebtedness through administrative wage garnishment. The March 8, 2002, rule proposed to adopt, without change, the hearing procedures issued by the Department of the Treasury implementing administrative wage garnishment under the DCIA and to amend procedures for the collection of claims to conform to HUD regulations to applicable provisions of the DCIA. The March 8, 2002, rule also proposed to amend HUD's regulations at 24 CFR part 17, subpart C, to adopt 31 CFR 285.11 in its entirety and to establish a new § 17.170 that would contain a cross-reference to 31 CFR 285.11 and would provide that, to the extent situations arise that are not covered by 31 CFR 285.11, those situations would be governed by the HUD hearing procedures in 24 CFR part 26, subpart A.

Additionally, the March 8, 2002, rule proposed to amend the existing regulations that govern income tax refund offset to include offset against other eligible Federal payments. Under the DCIA the Treasury Department serves as a coordinator for Federal debt collection through its Treasury Offset Program and HUD's rule proposed to recognize that status by adding the phrase "and the Department of the Treasury" immediately after references to the IRS in the existing regulations. The proposed rule advised that it would apply only to individuals who are not federal employees.

II. This Final Rule

This final rule adopts the proposed change made to HUD's regulations at 24 CFR part 17, subpart C to adopt 31 CFR 285.11 in its entirety. The public comment period for the proposed rule closed on May 7, 2002. HUD did not receive any public comments on the proposed rule. As a result, with the exception of making minor technical corrections, HUD is adopting the March 8, 2002, proposed rule without change.

Technical Corrections

The Department is correcting references in the rule to better reflect the transition of the Tax Refund Offset Program (TRO) of the Internal Revenue Service (IRS) to the Treasury Offset Program (TOP) of the Department of Treasury. Accordingly, in the rule, HUD substitutes "Department of the Treasury" for "IRS" since TOP replaced TRO and agencies no longer certify delinquent debts to the IRS nor provide any direct notice or certification to IRS regarding tax refund offsets.

III. Findings and Certifications

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule does not have a significant economic impact on a substantial number of small entities. Although many small employers will be subject to the requirements of this final rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on an entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this final rule.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule would not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 17 as follows:

PART 17—ADMINISTRATIVE CLAIMS

1. The authority citation for 24 CFR part 17, subpart C is revised to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

2. The undesignated center heading immediately preceding § 17.150 is revised to read as follows:

IRS Tax Refund and Federal Payment Offset Provisions and Administrative Wage Garnishment

3. Revise § 17.150 to read as follows:

§ 17.150 Scope.

(a) The standards set forth in §§ 17.150 through 17.161 are the Department's procedures for requesting the Department of the Treasury to offset Federal payments due debtors who have a past-due debt obligation to the Department. These procedures apply to the collection of debts under common law, 31 U.S.C. 3716 or other statutory authority.

(b) The Secretary will use the Department of the Treasury's Federal payment offset to collect claims which are certain in amount, past due and legally enforceable, and which are eligible for tax refund or Federal payment offset under regulations issued by the Secretary of the Treasury.

(c) The Secretary will report debts to the Department of the Treasury for the purpose of using the offset procedures described in §§ 17.150 through 17.161. Debts of less than $100.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of lapse of statute of limitations but otherwise valid, the debt will be reported to the IRS as a cancelled debt on Form 1099C. (Form 1099C is an information return which Government agencies file with the IRS and the Department of the Treasury to report forgiven debt, and the forgiven amount is considered income to the taxpayer.) (See § 17.159.)

4. Amend § 17.151 by revising the introductory text and paragraph (b) to read as follows:

§ 17.151 Notice requirements before offset.

A request for deduction from a Federal payment will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 65 calendar days written notice. This Notice of Intent will state:

* * * * *

(b) That unless the debt is repaid within 65 days from the date of the Notice, the Secretary intends to collect the debt by requesting the Department of Treasury to reduce any amounts payable to the debtor by an amount equal to the amount of the debt and all accumulated interest and other charges;

* * * * *

5. Amend § 17.153 by revising paragraph (c) to read as follows:

§ 17.153 Determination of the Administrative Judge.

* * * * *

(c) If the Administrative Judge's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the Department of the Treasury after the Administrative Judge's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Chief Financial Officer. No referral will be made to the IRS or the Department of the Treasury if review of the debt by the Administrative Judge reverses the initial decision that the debt is past due and legally enforceable.

6. Amend § 17.154 by revising paragraph (a) to read as follows:

§ 17.154 Postponements, withdrawals and extensions of time.

(a) *Postponements and withdrawals.* The Secretary may, for good cause, postpone or withdraw referral of the debt to the Department of Treasury. (For example, a delay in the mail between the debtor and the Secretary could normally warrant a postponement; a mathematical error or computer malfunction could be the reason for a withdrawal.)

* * * * *

7. Revise § 17.156 to read as follows:

§ 17.156 Stay of offset.

If the debtor timely notifies the Secretary that he or she is exercising a right described in § 17.152(a) and timely submits evidence in accordance with § 17.152(b), any notice to the IRS or the Department of the Treasury will be stayed until the issuance of a written decision by the Administrative Judge which determines that a debt or part of a debt is past-due and legally enforceable.

8. Revise § 17.157 to read as follows:

§ 17.157 Application of offset funds: Single debt.

If the debtor does not timely notify the Secretary that he or she is exercising a right described in § 17.152, the Secretary will notify the Department of the Treasury of the debt no earlier than 65 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by the Department of the Treasury as a Federal payment. Normally, recovered funds will be applied first to costs of collection, then to any special charges provided for in HUD regulations or contracts, then to interest and finally, to the principal owed by the debtor.

9. Revise § 17.159, including the section heading, to read as follows:

§ 17.159 Application of offset funds: Federal payment is insufficient to cover amount of debt.

If an offset of a Federal payment is insufficient to satisfy a debt, the Secretary will continue the certification to the Department of the Treasury to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known by the officials of the Department who were responsible for discovering and collecting such debts.

* * * * *

11. Amend § 17.161 by revising paragraph (c) to read as follows:

Administrative Wage Garnishment

§ 17.170 Administrative wage garnishment.

(a) *General.* The Secretary may collect a debt by using administrative wage garnishment. Regulations in 31 CFR 285.11 governs collection through administrative wage garnishment. To the extent situations arise that are not covered by 31 CFR 285.11, those

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§ 17.159 Application of offset funds: Federal payment is insufficient to cover amount of debt.

If an offset of a Federal payment is insufficient to satisfy a debt, the Secretary will continue the certification to the Department of the Treasury to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS as a cancelled debt in accordance with § 17.150(d).

10. Amend § 17.160 by revising the section heading and paragraph (a) to read as follows:

§ 17.160 Time limitation for notifying the Department of the Treasury to request offset of Federal payments due.

(a) The Secretary may not initiate offset of Federal payments due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known by the officials of the Department who were responsible for discovering and collecting such debts.

* * * * *

11. Amend § 17.161 by revising paragraph (c) to read as follows:

§ 17.161 Correspondence with the Department.

* * * * *

(c) All other correspondence shall be addressed to the Department Claims Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

12. Add new undesignated center heading following § 17.161 and add new § 17.170 to read as follows:

Administrative Wage Garnishment

§ 17.170 Administrative wage garnishment.

(a) *General.* The Secretary may collect a debt by using administrative wage garnishment. Regulations in 31 CFR 285.11 governs collection through administrative wage garnishment. To the extent situations arise that are not covered by 31 CFR 285.11, those situations shall be governed by part 26, subpart A of this title.

(b) *Hearing official.* Any hearing required to establish the Secretary's right to collect a debt through administrative wage garnishment shall be conducted by an Administrative Judge of the HUD Board of Contract Appeals.

Dated: July 11, 2002.

Mel Martinez,

Secretary.

[FR Doc. 02–18052 Filed 7–17–02; 8:45 am]

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the **Federal Register** and Code of Federal Regulations.
3. The important elements of typical **Federal Register** documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 23, 2002—9:00 a.m. to noon
WHERE: Office of the Federal Register
Conference Room
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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 02–25 of July 9, 2002

Delegation of Authority Under Sections 2(d) and 2(f) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, I hereby delegate the functions and authorities conferred upon the President by sections 2(d) and 2(f) of the Migration and Refugee Assistance Act (MRAA) of 1962, as amended, 22 U.S.C. §2601, insofar as they relate to actions taken under the authority of section 2(b)(2) of the MRAA, to the Secretary of State, who should insure timely performance of any duties and obligations of the delegated authority and who is authorized to redelegate these functions and authorities consistent with applicable law. The Secretary of State, or his or her delegate, is directed to provide notice to the President of any use of the functions and authorities delegated by this determination.

This delegation of authority supplements Presidential Determination No. 99–6, Delegation of Authority Under Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended (November 30, 1998).

Any reference in this memorandum to section 2 of the MRAA, as amended, shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this Determination in the **Federal Register**.

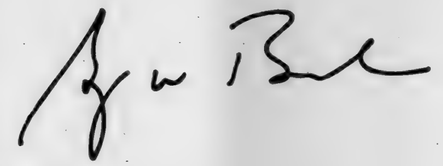

THE WHITE HOUSE,
Washington, July 9, 2002.

[FR Doc. 02–18445
Filed 7–18–02; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request

place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect final

Rules and Regulations

Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–4 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2001–02 Crop Natural (sun-dried) Seedless and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2001–02 crop Natural (sun-dried) Seedless (NS) and Other Seedless (OS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

EFFECTIVE DATE: August 19, 2002. This rule applies to acquisitions of NS and OS raisins from the 2001–02 crop until the reserve raisins from that crop are disposed of under the marketing order.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect final free and reserve percentages for NS and OS raisins for the 2001–02 crop year, which began August 1, 2001, and ends July 31, 2002. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect final volume regulation percentages for 2001–02 crop NS and OS raisins covered under the order. The percentages were established through an interim final rule published on April 3, 2002 (67 FR 15707). The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages were recommended by the Committee on February 14, 2002. One Committee member opposed the NS raisin percentages. He believes that the Committee failed to properly consider certain factors in its deliberations, particularly the impact of additional free tonnage on a weakening market. Another Committee member opposed the OS percentages. That handler claims he has developed a specialty market for OS raisins and indicated that he cannot meet his market needs under the volume regulation percentages.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 14, 2001, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which

a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As

at 7,073 tons, which is almost double the 10-year average of 3,786 tons. Combining the carry-in inventory of 4,273 tons with the 7,073-ton crop estimate resulted in a total available supply of 11,346 tons. With the estimated supply significantly higher (over 500 percent) than the 1,692-ton trade demand, the Committee determined that volume regulation for OS raisins was warranted. The

for NS and OS raisins to release slightly less than their full trade demands. Specifically, interim percentages were announced for both NS and OS raisins at 62.75 percent free and 37.25 percent reserve. The interim percentages were based on revised crop estimates. The NS crop estimate was increased from 359,341 to 372,499 tons, and the OS crop estimate was decreased from 5,000 to 4,416 tons. Pursuant to § 989.54(d),

raisins, or about 363,940 tons of packed raisins, that were actually under the control of handlers for free use or primary markets. This is about 131 percent of the quantity of NS raisins shipped during the 2000–01 crop year (295,477 natural condition tons or 277,030 packed tons).

For OS raisins, a total of 1,108 tons were made available to handlers through 10 plus 10 offers in February 2002, and 407 tons were purchased.

of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Since 1949, the California raisin

The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now

a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to a 5-year rolling average, dropping the high and low figures, of free tonnage shipments during the months of August, September, and October. In accordance with these provisions, the Committee computed and announced 2001–02 trade demands for NS and OS raisins at 235,850 tons and 1,692 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	NS Raisins	OS Raisins
Prior year's shipments ..	295,477	5,544
Multiplied by 90 percent	0.90	0.90
Equals adjusted base ...	265,929	4,990
Minus carryin inventory	116,131	4,273
Plus desirable caryout ..	86,052	975
Equals computed trade demand	235,850	1,692

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on September 20, 2001, and announced a preliminary crop estimate for NS raisins of 359,341 tons, which is comparable to the 10-year average of 344,303 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 116,131 tons, plus 32,193 tons of reserve raisins released to handlers for free use in September 2001 through an export program, plus the 359,341-ton crop estimate resulted in a total available supply of 507,665 tons, which was significantly higher (about 115 percent) than the 235,850-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for Naturals, which released 85 percent of the computed trade demand since the field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 56 percent free and 44 percent reserve.

Also at its September 20, 2001, meeting, the Committee announced a preliminary crop estimate for OS raisins at 7,073 tons, which is almost double the 10-year average of 3,786 tons. Combining the carry-in inventory of 4,273 tons with the 7,073-ton crop estimate resulted in a total available supply of 11,346 tons. With the estimated supply significantly higher (over 500 percent) than the 1,692-ton trade demand, the Committee determined that volume regulation for OS raisins was warranted. The Committee announced preliminary percentages for OS raisins, which released 85 percent of the computed trade demand since field price had been established. The preliminary percentages were 20 percent free and 80 percent reserve.

In addition, preliminary percentages were also announced for Dipped Seedless, Oleate and Related Seedless, and Zante Currant raisins. The Committee ultimately determined that volume regulation was only warranted for NS and OS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Modification to Marketing Policy Regarding OS Raisins

Pursuant to § 989.54(f) of the order, the Committee met on December 11, 2001, and revised its marketing policy regarding OS raisins due to a major change in economic conditions. The 7,073-ton crop estimate was reduced to 5,000 tons, and the 1,692-ton trade demand was increased to 2,800 tons. This resulted in volume regulation percentages at 48 percent free and 52 percent reserve to release 85 percent of the 2,800-ton trade demand.

The Committee took this action in response to concerns raised by OS handlers who were facing difficulties under the preliminary percentages of 20 percent free and 80 percent reserve. Volume regulation has not been implemented for OS raisins since the 1994–95 season. Some handlers who developed markets since that time, in the absence of volume regulation, were having difficulties meeting their customers' needs. The merits of suspending volume regulation were deliberated by the Committee. However, the majority of Committee members supported some level of regulation. The Committee ultimately determined that the OS trade demand should be increased to 2,800 tons which resulted in less restrictive volume regulation percentages.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), the Committee met on February 14, 2002, and recommended interim percentages for NS and OS raisins to release slightly less than their full trade demands. Specifically, interim percentages were announced for both NS and OS raisins at 62.75 percent free and 37.25 percent reserve. The interim percentages were based on revised crop estimates. The NS crop estimate was increased from 359,341 to 372,499 tons, and the OS crop estimate was decreased from 5,000 to 4,416 tons. Pursuant to § 989.54(d), the Committee also recommended final percentages to release the full trade demands for NS and OS raisins. Final percentages compute to 63 percent free and 37 percent reserve for both varietal types. The Committee's calculations to arrive at final percentages for NS and OS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS Raisins	OS Raisins
Trade demand	235,850	2,800
Divided by crop estimate	372,499	4,416
Equals free percentage	63	63
100 minus free percentage equals reserve percentage	37	37

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for NS and OS raisins by the establishment of final percentages, which released 100 percent of the trade demands and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

The "10 plus 10 offers" for NS raisins were held in November 2001. A total of 59,095 tons was made available to raisin handlers, and 4,000 tons of raisins were purchased. Adding the 4,000 tons of 10 plus 10 raisins to the 235,850-ton trade demand figure, plus 116,131 tons of 2000–01 carryin inventory, plus 32,193 tons of reserve raisins released for free use in September 2001 through an export program, equates to about 388,174 tons of natural condition raisins, or about 363,940 tons of packed raisins, that were actually under the control of handlers for free use or primary markets. This is about 131 percent of the quantity of NS raisins shipped during the 2000–01 crop year (295,477 natural condition tons or 277,030 packed tons).

For OS raisins, a total of 1,108 tons were made available to handlers through 10 plus 10 offers in February 2002, and 407 tons were purchased. Adding the 407 tons of 10 plus 10 raisins to the 2,800-ton trade demand figure, plus 4,273 tons of 2000–01 carryin inventory equates to 7,480 tons of natural condition raisins, or about 6,843 tons of packed raisins, that were actually under the control of handlers for free use or primary markets. This is about 135 percent of the quantity of OS raisins shipped during the 2000–01 crop year (5,544 tons natural condition tons or 5,072 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets which is consistent with the USDA's Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule continues in effect final volume regulation percentages for 2001–02 crop NS and OS raisins. The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for NS raisins because the crop estimate of 372,499 tons combined with the carryin inventory of 116,131 tons, plus 32,193 tons of reserve raisins released for free use in September 2001 through an export program, plus 34,414 tons of reserve raisins released to-date for free use through another export program, results in a total available supply of 555,237 tons, which is 135 percent higher than the 235,850-ton trade demand. Volume regulation is warranted for OS raisins this season because the crop estimate of 4,416 tons combined with the carryin inventory of 4,273 tons results in a total available supply of 8,689 tons, which is significantly higher than the 2,800-ton trade demand.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in other products such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1992–93 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Producer prices dropped dramatically for the 2000–01 season due primarily to record-size production.

NATURAL SEEDLESS PRODUCER PRICES

Crop Year	Deliveries (natural condition tons)	Producer Prices
2000–01	432,616	[1] $570.82
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	926.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Return to date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to a low of 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.55 pounds in 2000. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit through out the year.

While the overall demand for raisins has been decreasing (as reflected in the decline in commercial shipments), production has been increasing. Deliveries of dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Estimated production is more moderate at 372,499 tons in 2001–02. However, with 2000–01 carryin inventory totaling 116,131 tons, total available supply is quite large.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and the establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, grower prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances grower returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price growers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve percentages impacts the production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 37 percent reserve limits the total free tonnage to 234,674 natural condition tons (.63 × 372,499 tons) and carryin is 116,131 natural condition tons, and purchases from reserve total 74,193 natural condition tons (which includes anticipated reserve raisins released through the export program and other purchases), then the total free supply is estimated at 424,998 natural condition tons. The econometric model estimates prices to be $123 per ton higher than under an unregulated scenario. This price increase is beneficial to all growers regardless of size and enhances growers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Regarding OS raisins, OS raisin production is much smaller than NS raisin production. Volume regulation is warranted this season because the available supply significantly exceeds the trade demand. In assessing the impact of OS regulation, the Committee addressed concerns raised by some handlers who were facing difficulties under the initial preliminary percentages of 20 percent free and 80 percent reserve. Volume regulation has not been implemented for OS raisins since the 1994–95 season. Some handlers who developed markets since that time, in the absence of volume regulation, were having difficulties meeting their customers' needs under the preliminary percentages established. The merits of suspending volume regulation were deliberated by the Committee. However, the majority of Committee members supported some level of regulation. The Committee ultimately determined that the OS trade demand should be increased to 2,800 tons which resulted in less restrictive volume regulation percentages.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended that only two of the ten raisin varietal types defined under the order be subject to volume regulation this season.

The free and reserve percentages established by this rule release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

An interim final rule concerning this action was published in the **Federal Register** on April 3, 2002 (64 FR 15707). Copies of the rule were mailed by Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on June 3, 2002. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 15707 on April 3, 2002, is adopted as a final rule without change.

Dated: July 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18257 Filed 7–18–02; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") amends its Appliance Labeling Rule ("Rule") by publishing new ranges of comparability to be used on required labels for standard and compact dishwashers. The Commission is also publishing minor and conforming changes to the requirements for EnergyGuide labels for dishwashers.

EFFECTIVE DATES: The amendments to § 305.11, Appendix C2 to part 305 (ranges for standard-size dishwashers), and Appendix L to part 305 will become effective September 17, 2002. The amendments to Appendix C1 to part 305 establishing new ranges of comparability for compact dishwashers will become effective March 22, 2003.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–2889); *hnewsome@ftc.gov*.

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA").[1] The Rule covers several categories of major household appliances including dishwashers.

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "Energy Guide" label and in catalogs. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels consistent with these changes, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

I. 2002 Dishwasher Data

A. New Ranges

The Commission has analyzed the annual data submissions for dishwashers. The data submissions show significant change in the high or low ends of the range of comparability scale for standard and compact models.[3] Accordingly, the Commission is publishing new ranges of comparability for standard and compact dishwashers. These new ranges of comparability

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for dishwashers are usually due June 1. For reasons detailed in the **Federal Register** on May 17, 2002 (67 FR 35006), this submission date was changed to June 17 for 2002 submissions.

[3] The Commission's classification of "Standard" and "Compact" dishwashers is based on internal load capacity. Appendix C of the Commission's Rule defines "Compact" as including countertop dishwasher models with a capacity of fewer than eight (8) place settings and "Standard" as including portable or built-in dishwasher models with a capacity of eight (8) or more place settings. The Rule requires that place settings be determined in accordance with appendix C to 10 CFR Part 430, subpart B, of DOE's energy conservation standards program.

supersede the current ranges for compact-sized dishwashers (Appendix C1), which were published on September 28, 2001, and for standard dishwashers (Appendix C2), which were published on August 25, 1997. As of the effective date of these new ranges, manufacturers of these dishwashers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels for

of comparability based on the new DOE test. In other words, the Commission is exercising discretion to not take law enforcement action against manufacturers that have waited to account for the new test procedure on their labels until the Commission provided notice about new ranges for dishwashers. In this document, the Commission has now published new ranges of comparability. Accordingly,

V. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information

(i) * * *

(H) * * *

(*2*) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the number of loads per week, the year, and the energy cost figures):

[Clothes Washers, or Dishwashers] using more energy cost more to operate. This [Electric cost figure will be boxed] when used with an electric water heater [Gas cost figure will be boxed] when used with a natural gas water heater.

Based on [5 washloads a week for dishwashers, or 8 washloads a week for clothes washers], and a [Year] U.S. Government national average cost of $—— per KWh for electricity and $—— per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

3. Appendix to Part 305 is revised to read as follows:

Appendix C1 to Part 305—Compact Dishwashers

Range Information

"Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with appendix C to 10 CFR Part 430, subpart B. Load patterns shall conform to the operating normal for the

supersede the current ranges for compact-sized dishwashers (Appendix C1), which were published on September 28, 2001, and for standard dishwashers (Appendix C2), which were published on August 25, 1997. As of the effective date of these new ranges, manufacturers of these dishwashers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels for compact-sized dishwashers on the 2002 Representative Average Unit Costs of Energy for electricity (8.28 cents per Kilo Watt-hour) and natural gas (65.6 cents per therm) that were published by DOE on April 24, 2002 (67 FR 20104) and by the Commission on June 7, 2002 (67 FR 39269).

B. Effective Dates

Section 326(c) of EPCA states that the Commission cannot require that labels be changed more often than annually to reflect changes in the ranges of comparability.[4] Because the effective date of the **Federal Register** document establishing the current ranges of comparability for compact-sized dishwashers was March 22, 2002, the effective date of today's revised ranges of comparability for compact-sized dishwashers will be March 22, 2003. All other amendments announced in this document, including the changes to the range for standard dishwashers in Appendix C2, will become effective September 17, 2002.

II. Labeling Under the New DOE Test Procedure

On December 18, 2001 (66 FR 65094), DOE published amendments to the test procedure that manufacturers must use to determine the energy use of their dishwashers. This new test became effective June 17, 2002. Among other things, the amended DOE test procedure reduces the number of annual cycles manufacturers must use in calculating their dishwashers' energy consumption. These changes uniformly have decreased the disclosed energy consumption for dishwashers. Under EPCA, all energy use representations (including information on the EnergyGuide labels) must reflect the amended test procedure beginning 180 days after the change in the procedure is prescribed (*i.e.*, June 17, 2002).[5] In a May 17, 2002 document (67 FR 35006), however, the Commission announced that it does not expect manufacturers to change their labels this year to reflect the amended test procedure until after the Commission publishes new ranges of comparability based on the new DOE test. In other words, the Commission is exercising discretion to not take law enforcement action against manufacturers that have waited to account for the new test procedure on their labels until the Commission provided notice about new ranges for dishwashers. In this document, the Commission has now published new ranges of comparability. Accordingly, manufacturers now have the necessary information to label their products to reflect the products' energy use based on the results of the new test procedures and the new ranges of comparability (also based on data derived from the new test procedure).

III. Minor, Conforming Changes to the EnergyGuide Label

The new ranges published here and the new DOE test procedure also require a change to the explanatory information provided on EnergyGuide labels for dishwashers. Currently, § 305.11(a)(5)(i)(H)(*2*) of the Rule requires dishwasher labels to contain language indicating that the information on the label is based on "six washloads a week." Because the new DOE test procedure requires manufacturers to assume 264 cycles per year instead of 322 in their calculation, the explanatory language on the EnergyGuide label must now be changed to state that the information is based on "five washloads" a week. The Commission is amending the requirements in § 305.11 and sample label 4 in Appendix L to effect these minor and conforming changes. The Commission is also amending cost information in sample label 4 to reflect this year's energy cost information as published by DOE (67 FR 20104) and the Commission (67 FR 39269).

IV. Administrative Procedure Act

The amendments published in this document involve routine, technical and minor, or conforming changes to the labeling requirements in the Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels. The minor or conforming amendments require changes to the EnergyGuide label so that the information is accurate and reflects recent changes that DOE has made to the test procedures for these products. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

V. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

In a June 13, 1988 document (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[6] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget ("OMB") and assigned OMB Control No. 3084–0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.11(a)(5)(i)(H)(*2*) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(i) * * *

(H) * * *

(*2*) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the number of loads per week, the year, and the energy cost figures):

[Clothes Washers, or Dishwashers] using more energy cost more to operate. This model's estimated yearly operating cost is: [Electric cost figure will be boxed] when used with an electric water heater [Gas cost figure will be boxed] when used with a natural gas water heater.

Based on [5 washloads a week for dishwashers, or 8 washloads a week for clothes washers], and a [Year] U.S. Government national average cost of $—— per KWh for electricity and $—— per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

* * * * *

3. Appendix to Part 305 is revised to read as follows:

Appendix C1 to Part 305—Compact Dishwashers

Range Information

"Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with appendix C to 10 CFR Part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity Compact	Range of estimated annual energy consumption (k Wh/yr.)	
	Low	High
Compact	176	176

Cost Information

When the above ranges of comparability are used on Energy Guide labels for compact-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2002 Representative Average Unit Costs for electricity (8.28¢ per kilo Watt-hour) and natural gas (65.6¢ per therm), and the text below the box must identify the costs as such.

* * * * *

4. Appendix C2 to Part 305 is revised to read as follows:

Appendix C2 to Part 305—Standard Dishwashers

Range Information

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (k Wh/yr.)	
	Low	High
Standard	312	573

Cost Information

When the above ranges of comparability are used on Energy Guide labels for standard-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2002 Representative Average Unit Costs for electricity (8.28¢ per kilo Watt-hour) and natural gas (65.6¢ per therm), and the text below the box must identify the costs as such.

5. Appendix L to part 305 is amended by revising Sample Label 4 to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 6750–01–M

[4] 42 U.S.C. 6296(c).

[5] 42 U.S.C. 6293(c).

[6] 44 U.S.C. 3501–3520.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 02–37]

RIN 1515—AC86

Import Restrictions Imposed on Pre-Classical and Classical Archaeological

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the

certain archaeological material from Cyprus as described below.

It is noted that emergency import restrictions on Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus were previously imposed and are still in effect. (See T.D. 99–35, published in the **Federal Register** (64 FR 17529) on April 12, 1999.) These emergency import restrictions are separate and independent from the

Based on standard U.S. Government tests

ENERGYGUIDE

Dishwasher
Capacity: Standard

XYZ Corporation
Model(s) MR328, XI12, NAA83

Compare the Energy Use of this Dishwasher with Others Before You Buy.

This Model Uses 500kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy 312

Uses Most Energy 573

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size dishwashers are used in this scale.

Dishwashers using more energy cost more to operate. This model's estimated yearly operating cost is:

$41 When used with an electric water heater

$27 When used with a natural gas water heater

Based on five washloads a week, and a 2002 U.S. Government national average cost of 8.28¢ per kWh for electricity and 65.6¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 4

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–18114 Filed 7–18–02; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 02–37]

RIN 1515—AC86

Import Restrictions Imposed on Pre-Classical and Classical Archaeological Material Originating in Cyprus

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological material originating in Cyprus and representing the pre-Classical and Classical periods of its cultural heritage, ranging in date from approximately the 8th millennium B.C. to approximately 330 A.D. These restrictions are being imposed pursuant to an agreement between the United States and the Republic of Cyprus that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document amends the Customs Regulations by adding Cyprus to the list of countries for which an agreement has been entered into for imposing import restrictions. The document also contains the Designated List of Archaeological Material that describes the types of articles to which the restrictions apply.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) ("the Act").

This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and to achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations as well as pursuant to bilateral agreements between the United States and other countries. More information on import restrictions can be found on the International Cultural Property Protection web site (http://exchanges.state.gov/culprop).

Import restrictions are now being imposed on certain archaeological material of Cyprus representing the pre-Classical and Classical periods of its cultural heritage as the result of a bilateral agreement entered into between the United States and the Republic of Cyprus. This agreement was entered into on July 16, 2002, pursuant to the provisions of 19 U.S.C. 2602. Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Cyprus. This document amends the regulations by imposing import restrictions on certain archaeological material from Cyprus as described below.

It is noted that emergency import restrictions on Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus were previously imposed and are still in effect. (See T.D. 99–35, published in the **Federal Register** (64 FR 17529) on April 12, 1999.) These emergency import restrictions are separate and independent from the restrictions published in this document.

Material Encompassed in Import Restrictions

In reaching the decision to recommend protection for the cultural patrimony of Cyprus, the Associate Director for Educational and Cultural Affairs of the former United States Information Agency determined that, pursuant to the requirements of the Act, the cultural patrimony of Cyprus is in jeopardy from the pillage of archaeological materials which represent its pre-Classical and Classical heritage. Dating from approximately the 8th millennium B.C. to approximately 330 A.D., categories of restricted artifacts include ceramic vessels, sculpture, and inscriptions; stone vessels, sculpture, architectural elements, seals, amulets, inscriptions, stelae, and mosaics; metal vessels, stands sculpture, and personal objects. These materials are of cultural significance because Cypriot culture is among the oldest in the Mediterranean. While Cypriot culture derives from interactions with neighboring societies, it is uniquely Cypriotic in character and represents the history and development of the island about which important information continues to be found through *in situ* archaeological research.

The restrictions imposed in this document apply to objects from throughout the island of Cyprus.

Designated List

The bilateral agreement between Cyprus and the United States covers the categories of artifacts described in a Designated List of Archaeological Material from Cyprus, which is set forth below. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certificate issued by the Government of the Republic of Cyprus or documentation demonstrating that the articles left the country of origin prior to the effective date of the import restriction.

Archaeological Material From Cyprus Representing Pre-Classical and Classical Periods Ranging in Date From Approximately the 8th Millennium B.C. to Approximately 330 A.D.

I. Ceramic

A. Vessels

1. Neolithic and Chalcolithic (c. 7500–2300 B.C.)—Bowls and jars, including spouted vessels. Varieties include Varieties include White Painted I–II wares, Black Slip I–II wares, Bichrome II–III wares, and Black-on-Red ware. Approximately 7–30 cm in height.

6. Cypro-Archaic I–II (c. 750–475 B.C.)—Forms include bowls, plates, jugs and juglets, cups, kraters, amphoriskoi, oinochoe, and amphorae. Many of the forms are painted with bands, lines, concentric circles, and other geometric and floral patterns. Animal designs Red-Drab Polished ware, and Base Ring ware. Approximately 10–25 cm in height.

(b) Cypro-Geometric to Cypro-Archaic (c. 1050–475 B.C.)—Figurines show a greater diversity of form than earlier figurines. Female figurines are still common, but forms also include male horse-and-rider figurines; warrior figures; animals such as birds, bulls and pigs; tubular figurines; boat models; and

human heads, fiddle-shaped human figures, steatopygous female figures, cruciform idols with incised decoration, and animal figures. Andesite and limestone are commonly used in these periods. Approximately 5–30 cm in height.

2. Cypro-Classical (c. 475–325 B.C.)—Small scale to life-size human figures, whole and fragments, in limestone and

H. Floor Mosaics

Floor mosaics date as early as the 4th century B.C. in domestic and public contexts and continue to be produced through the 3rd century A.D. Examples include the mosaics at Nea Paphos, Kourion, and Kouklia.

III. Metal

A. Copper/Bronze

1. Vessels—Dating from the Bronze

on the above-listed cultural property of Cyprus is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to the Administrative Procedure Act, (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

Archaeological Material From Cyprus Representing Pre-Classical and Classical Periods Ranging in Date From Approximately the 8th Millennium B.C. to Approximately 330 A.D.

I. Ceramic

A. Vessels

1. Neolithic and Chalcolithic (c. 7500–2300 B.C.)—Bowls and jars, including spouted vessels. Varieties include Combed ware, Black Lustrous ware, Red Lustrous ware, and Red-on-White painted ware. Approximately 10–24 cm in height.

2. Early Bronze Age (c. 2300–1850 B.C.)—Forms are hand-made and include bowls, jugs, juglets, jars, and specialized forms, such as askoi, pyxides, gourd-shape, multiple-body vessels, and vessels with figurines attached. Cut-away spouts, multiple spouts, basket handles, and round bases commonly occur. Incised, punctured, molded, and applied ornament, as well as polishing and slip, are included in the range of decorative techniques. Approximately 13–60 cm in height.

3. Middle Bronze Age (c. 1850–1550 B.C.)—Forms are hand-made and include bowls, jugs, juglets, jars, zoomorphic askoi, bottles, amphorae, and amphoriskoi. Some have multiple spouts and basket or ribbon handles. Decorative techniques include red and brown paint, incised or applied decoration, and polishing. Varieties include Red Polished ware, White Painted ware, Black Slip ware, Red Slip ware, and Red-on-Black ware. Approximately 4–25 cm in height.

4. Late Bronze Age (c. 1550–1050 B.C.)—Forms include bowls, jars, jugs and juglets, tankards, rhyta, bottles, kraters, alabastra, stemmed cups, cups, stirrup jars, amphorae, and amphoriskoi. A wide variety of spouts, handles, and bases are common. Zoomorphic vessels also occur. Decorative techniques include painted design in red or brown, polishing, and punctured or incised decoration. Varieties include White Slip, Base Ring ware, White Shaved ware, Red Lustrous ware, Bichrome Wheel-made ware, and Proto-White Painted ware. Some examples of local or imported Mycenaean Late Helladic III have also been found. Approximately 5–50 cm in height.

5. Cypro-Geometric I–III (c. 1050–750 B.C.)—Forms include bowls, jugs, juglets, jars, cups, skyphoi, amphorae, amphoriskos, and tripods. A variety of spouts, handles and base forms are used. Decorative techniques include paint in dark brown and red, ribbing, polish, and applied projections. Varieties include White Painted I–II wares, Black Slip I–II wares, Bichrome II–III wares, and Black-on-Red ware. Approximately 7–30 cm in height.

6. Cypro-Archaic I–II (c. 750–475 B.C.)—Forms include bowls, plates, jugs and juglets, cups, kraters, amphoriskoi, oinochoe, and amphorae. Many of the forms are painted with bands, lines, concentric circles, and other geometric and floral patterns. Animal designs occur in the Free Field style. Molded decoration in the form of female figurines may also be applied. Red and dark brown paint is used on Bichrome ware. Black paint on a red polished surface is common on Black-on-Red ware. Other varieties include Bichrome Red, Polychrome Red, and Plain White. Approximately 12–45 cm in height.

7. Cypro-Classical I–II (c. 475–325 B.C.)—Forms include bowls, shallow dishes, jugs and juglets, oinochoai, and amphorae. The use of painted decoration in red and brown, as well as blue/green and black continues. Some vessels have molded female figurines applied. Decorative designs include floral and geometric patterns. Burnishing also occurs. Varieties include Polychrome Red, Black-on-Red, Polychrome Red, Stroke Burnished, and White Painted wares. Approximately 6–40 cm in height.

8. Hellenistic (c. 325 B.C.–50 B.C.)—Forms include bowls, dishes, cups, unguentaria, jugs and juglets, pyxides, and amphorae. Most of the ceramic vessels of the period are undecorated. Those that are decorated use red, brown, or white paint in simple geometric patterns. Ribbing is also a common decorative technique. Some floral patterns are also used. Varieties include Glazed Painted ware and Glazed ware. Imports include Megarian bowls. Approximately 5–25 cm in height.

9. Roman (c. 50 B.C.–330 A.D.)—Forms include bowls, dishes, cups, jugs and juglets, unguentaria, amphora, and cooking pots. Decorative techniques include incision, embossing, molded decoration, grooved decoration, and paint. Varieties include Terra Sigillata and Glazed and Green Glazed wares. Approximately 5–55 cm in height.

B. Sculpture

1. Terracotta Figurines (small statuettes)

(a) Neolithic to Late Bronze Age (c. 7500–1050 B.C.)—Figurines are small, hand-made, and schematic in form. Most represent female figures, often standing and sometimes seated and giving birth or cradling an infant. Features and attributes are marked with incisions or paint. Figurines occur in Red-on-White ware, Red Polished ware, Red-Drab Polished ware, and Base Ring ware. Approximately 10–25 cm in height.

(b) Cypro-Geometric to Cypro-Archaic (c. 1050–475 B.C.)—Figurines show a greater diversity of form than earlier figurines. Female figurines are still common, but forms also include male horse-and-rider figurines; warrior figures; animals such as birds, bulls and pigs; tubular figurines; boat models; and human masks. In the Cypro-Archaic period, terra cotta models illustrate a variety of daily activities, including the process of making pottery and grinding grain. Other examples include musicians and men in chariots. Approximately 7–19 cm in height.

(c) Cypro-Classical to Roman (c. 475 B.C.–330 A.D.)—Figurines mirror the classical tradition of Greece and Roman. Types include draped women, nude youths, and winged figures. Approximately 9–20 cm in height.

2. Large Scale Terracotta Figurines—Dating to the Cypro-Archaic period (c. 750–475 B.C.), full figures about half life-size, are commonly found in sanctuaries. Illustrated examples include the head of a woman decorated with rosettes and a bearded male with spiral-decorated helmet. Approximately 50–150 cm in height.

3. Funerary Statuettes—Dating to the Cypro-Classical period (c. 475–325 B.C.), these illustrate both male and female figures draped, often seated, as expressions of mourning. Approximately 25–50 cm in height.

C. Inscriptions

Writing on clay is restricted to the Late Bronze Age (c. 1550–1050 B.C.). These occur on clay tablets, weights, and clay balls. Approximately 2–7 cm in height.

II. Stone

A. Vessels

Ground stone vessels occur from the Neolithic to the Hellenistic period (c. 7500–50 B.C.). Early vessels are from local hard stone. Most are bowl-shaped; some are trough-shaped with spouts and handles. Neolithic vessels often have incised or perforated decoration. Late Bronze Age vessels include amphoriskoi and kraters with handles. Sometimes these have incised decoration. Alabaster was also used for stone vessels in the Late Bronze Age and Hellenistic period. In the latter period, stone vessels are produced in the same shapes as ceramic vessels: amphorae, unguentaria, etc. Approximately 10–30 cm in height.

B. Sculpture

1. Neolithic to Chalcolithic (c. 7500–2300 B.C.)—Forms include small scale human heads, fiddle-shaped human figures, steatopygous female figures, cruciform idols with incised decoration, and animal figures. Andesite and limestone are commonly used in these periods. Approximately 5–30 cm in height.

2. Cypro-Classical (c. 475–325 B.C.)—Small scale to life-size human figures, whole and fragments, in limestone and marble, are similar to the Classical tradition in local styles. Examples include the limestone head of a youth in Neo-Cypriote style, votive female figures in Proto-Cypriot style, a kouros in Archaic Greek style, statues and statuettes representing Classical gods such as Zeus and Aphrodite, as well as portrait heads of the Greek and Roman periods. Approximately 10–200 cm in height.

C. Architectural Elements

Sculpted stone building elements occur from the 5th century B.C. through the 3rd century A.D. These include columns and column capitals, relief decoration, chancel panels, window frames, revetments, offering tables, coats of arms, and gargoyles.

D. Seals

Dating from the Neolithic (7500 B.C.) through 3rd century A.D., conical seals, scarabs, cylinder seals, and bread stamps are incised with geometric decoration, pictoral scenes, and inscriptions. Approximately 2–12 cm in height.

E. Amulets and Pendants

Dating to the Chalcolithic period, these pendants are made of picrolite and are oval or rectangular in form. Approximately 4–5 cm in length.

F. Inscriptions

Inscribed stone materials date from the 6th century B.C. through the 3rd century A.D. During the Cypro-Classical period, funerary stelae, and votive plaques were inscribed. From the 1st to the 3rd century A.D. funerary plaques, mosaic floors, and building plaques were inscribed.

G. Funerary Stelae (uninscribed)

Funerary stelae date from the 6th century B.C. to the end of the Hellenistic period (c. 50 B.C.). Marble and other stone sculptural monuments have relief decoration of animals or human figures seated or standing. Stone coffins also have relief decoration. Approximately 50–155 cm in height.

H. Floor Mosaics

Floor mosaics date as early as the 4th century B.C. in domestic and public contexts and continue to be produced through the 3rd century A.D. Examples include the mosaics at Nea Paphos, Kourion, and Kouklia.

III. Metal

A. Copper/Bronze

1. Vessels—Dating from the Bronze Age (c. 2300 B.C.) through the 3rd century A.D., bronze vessel forms include bowls, cups, amphorae, jugs, juglets, pyxides, dippers, lamp stands, dishes, and plates. Approximately 4–30 cm in height.

2. Bronze Stands—Dating from the Late Bronze Age (c. 1550 B.C.) through the end of the Classical period (c. 325 B.C.), are bronze stands with animal decoration.

3. Sculpture—Dating from the Late Bronze Age (c. 1550) to the end of the Hellenistic period (c. 50 B.C.), small figural sculpture includes human forms with attached attributes such as spears or goblets, animal figures, animal- and vessel-shaped weights, and Classical representations of gods and mythological figures. Approximately 5–25 cm in height.

4. Personal Objects—Dating from the Early Bronze Age (c. 2300 B.C.) to the end of the Roman period (330 A.D.), forms include toggle pins, straight pins, fibulae, and mirrors.

B. Silver

1. Vessels—Dating from the Bronze Age (c. 2300 B.C.) through the end of the Roman period (330 A.D.), forms include bowls, dishes, coffee services, and ceremonial objects such as incense burners. These are often decorated with molded or incised geometric motifs or figural scenes.

2. Jewelry—Dating from the Cypro-Geometric period (c. 1050 B.C.) through the end of the Roman period (330 A.D.), forms include fibulae, rings, bracelets, and spoons.

C. Gold Jewelry

Gold jewelry has been found on Cyprus from the Early Bronze Age (c. 2300 B.C.) through the end of the Roman period (330 A.D.). Items include hair ornaments, bands, frontlets, pectorals, earrings, necklaces, rings, pendants, plaques, beads, and bracelets.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document imposing import restrictions on the above-listed cultural property of Cyprus is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to the Administrative Procedure Act, (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

2. In § 12.104g, paragraph (a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties, is amended by adding Cyprus in appropriate alphabetical order as follows:

State	Cultural property	T.D. No.
Cyprus	Archaeological Material of pre-Classical and Classical periods ranging approximately from the 8th millennium B.C. to 330 A.D..	T.D. 02–37

* * * * *

summary. Section 520.905b is also being

(c) *Special considerations.* See

Injection as a treatment for various bacterial diseases in cattle and swine. The supplemental ANADA provides for the subcutaneous administration of this oxytetracycline injectable solution to cattle, and for its use in lactating dairy cattle. The supplemental application is approved as of April 8, 2002, and the regulations are amended in 21 CFR 522.1660d to reflect the approval. The basis of approval is discussed in the

Dated: July 11, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–18178 Filed 7–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by September 17, 2002. Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the Internal Revenue

State	Cultural property	T.D. No.
Cyprus	Archaeological Material of pre-Classical and Classical periods ranging approximately from the 8th millennium B.C. to 330 A.D..	T.D. 02–37

* * * * *

Dated: July 16, 2002.
Robert C. Bonner,
Commissioner of Customs.
Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02–18342 Filed 7–17–02; 10:29 am]
BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fenbendazole Granules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for change from prescription to over-the-counter marketing status for the oral use in dogs of fenbendazole granules for removal of certain internal parasites.

DATES: This rule is effective July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed a supplement to NADA 121–473 that provides for oral use in dogs of PANACUR–C (fenbendazole) Granules 22.2% for removal of certain internal parasites. The supplemental NADA provides for change from prescription to over-the-counter marketing status. The supplemental NADA is approved as of March 19, 2002, and the regulations are amended in 21 CFR 520.905b to reflect the approval. The basis of approval is discussed in the freedom of information summary. Section 520.905b is also being revised to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.905b is amended by redesignating paragraph (c) as paragraph (d); by adding new paragraph (c); by removing the last sentence in newly designated paragraphs (d)(1)(iii) and (d)(2)(iii); by revising paragraphs (a), and newly designated (d)(1)(i), (d)(2)(i), and (d)(3)(i) to read as follows:

§ 520.905b Fenbendazole granules.

(a) *Specifications.* Each gram of granules contains 222 milligrams (mg) fenbendazole.

* * * * *

(c) *Special considerations.* See § 500.25 of this chapter.

(d) *Conditions of use*—(1) *Horses*—(i) *Amount.* 5 mg/kilogram (kg) for large strongyles, small strongyles, and pinworms; 10 mg/kg for ascarids.

* * * * *

(2) *Dogs*—(i) *Amount.* 50 mg/kg daily for 3 consecutive days.

* * * * *

(3) *Zoo and wildlife animals*—(i) *Amount.* 10 mg/kg per day for 3 days.

* * * * *

Dated: July 8, 2002.
Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 02–18177 Filed 7–18–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Pliva d.d. The supplemental ANADA provides for the subcutaneous administration of an oxytetracycline injectable solution to cattle, and for its use in lactating dairy cattle.

DATES: This rule is effective July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pliva d.d., Ulica grada Vukovara 49, 10000 Zagreb, Croatia, filed a supplement to approved ANADA 200–232 that provides for the use of GEOMYCIN 200 (oxytetracycline) Injection as a treatment for various bacterial diseases in cattle and swine. The supplemental ANADA provides for the subcutaneous administration of this oxytetracycline injectable solution to cattle, and for its use in lactating dairy cattle. The supplemental application is approved as of April 8, 2002, and the regulations are amended in 21 CFR 522.1660d to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (d)(1)(iii) in the second sentence by numerically adding "011722,"; in the eighth sentence by removing "011722,"; and in the ninth sentence by removing "sponsor 000069" and by adding in its place "sponsors 000069 and 011722".

Dated: July 11, 2002.
Andrew J. Beaulieu,
Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
[FR Doc. 02–18178 Filed 7–18–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9004]

RIN 1545–AW98

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to safe harbor transfers of noneconomic residual interests in real estate mortgage investment conduits (REMICs). The final regulations provide additional limitations on the circumstances under which transferors may claim safe harbor treatment.

DATES: *Effective Date:* These regulations are effective July 19, 2002.

Applicability Date: For dates of applicability, *see* § 1.860E–(1)(c)(10).

FOR FURTHER INFORMATION CONTACT: Courtney Shepardson at (202) 622–3940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this final rule has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1675.

The collection of information in this regulation is in § 1.860E–1(c)(5)(ii). This information is required to enable the IRS to verify that a taxpayer is complying with the conditions of this regulation. The collection of information is mandatory and is required. Otherwise, the taxpayer will not receive the benefit of safe harbor treatment as provided in the regulation. The likely respondents are businesses and other for-profit institutions.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by September 17, 2002. Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated total annual reporting burden is 470 hours, based on an estimated number of respondents of 470 and an estimated average annual burden hours per respondent of one hour.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations regarding the proposed amendments to 26 CFR part 1 under section 860E of the Internal Revenue Code (Code). The regulations provide the circumstances under which a transferor of a noneconomic REMIC residual interest meeting the investigation and representation requirements may avail itself of the safe harbor by satisfying either the formula test or the asset test.

Final regulations governing REMICs, issued in 1992, contain rules governing the transfer of noneconomic REMIC residual interests. In general, a transfer of a noneconomic residual interest is disregarded for all tax purposes if a significant purpose of the transfer is to

enable the transferor to impede the assessment or collection of tax. A purpose to impede the assessment or collection of tax (a wrongful purpose) exists if the transferor, at the time of the transfer, either knew or should have known that the transferee would be unwilling or unable to pay taxes due on its share of the REMIC's taxable income.

Under a safe harbor, the transferor of a REMIC noneconomic residual interest the transferor may invoke the safe harbor if the transferee meets a two-prong test (the asset test). A transferee generally meets the first prong of this test if, at the time of the transfer, and in each of the two years preceding the year of transfer, the transferee's gross assets exceed $100 million and its net assets exceed $10 million. A transferee generally meets the second prong of this test if it is a domestic, taxable

1(c)(8)(i) provides that the transferee is presumed to pay tax at a rate equal to the highest rate of tax specified in section 11(b). Some commentators were concerned that this presumed rate of taxation was too high because it does not take into consideration taxpayers subject to the alternative minimum tax rate. In light of the comments received, this provision has been amended in the final regulations to allow certain

FASITs, § 1.860H–6(g) of the proposed regulations will be adopted in substantially its present form, with the result that the final regulations contained in this document will also govern transfers of FASIT ownership interests with substantially the same applicability date as is contained in this document.

Effect on Other Documents

Rev. Proc. 2001–12 (2001–3 I.R.B.

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

* * * * *

(c) * * *
(5) Asset test.
(6) Definitions for asset test.
(7) Formula test.
(8) Conditions and limitations on formula test.

(ii) The transferee must be an eligible corporation (defined in paragraph (c)(6)(i) of this section) and must agree in writing that any subsequent transfer of the interest will be to another eligible corporation in a transaction that satisfies paragraphs (c)(4)(i), (ii), and (iii) and this paragraph (c)(5). The direct or indirect transfer of the residual interest to a foreign permanent establishment (within the meaning of an applicable income tax treaty) of a

enable the transferor to impede the assessment or collection of tax. A purpose to impede the assessment or collection of tax (a wrongful purpose) exists if the transferor, at the time of the transfer, either knew or should have known that the transferee would be unwilling or unable to pay taxes due on its share of the REMIC's taxable income.

Under a safe harbor, the transferor of a REMIC noneconomic residual interest is presumed not to have a wrongful purpose if two requirements are satisfied: (1) the transferor conducts a reasonable investigation of the transferee's financial condition (the investigation requirement); and (2) the transferor secures a representation from the transferee to the effect that the transferee understands the tax obligations associated with holding a residual interest and intends to pay those taxes (the representation requirement).

The IRS and Treasury have been concerned that some transferors of noneconomic residual interests claim they satisfy the safe harbor even in situations where the economics of the transfer clearly indicate the transferee is unwilling or unable to pay the tax associated with holding the interest. For this reason, on February 7, 2000, the IRS published in the **Federal Register** (65 FR 5807) a notice of proposed rulemaking (REG–100276–97; REG–122450–98) designed to clarify the safe harbor by adding the "formula test," an economic test. The proposed regulation provides that the safe harbor is unavailable unless the present value of the anticipated tax liabilities associated with holding the residual interest does not exceed the sum of: (1) The present value of any consideration given to the transferee to acquire the interest; (2) the present value of the expected future distributions on the interest; and (3) the present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

The notice of proposed rulemaking also contained rules for FASITs. Section 1.860H–6(g) of the proposed regulations provides requirements for transfers of FASIT ownership interests and adopts a safe harbor by reference to the safe harbor provisions of the REMIC regulations.

In January 2001, the IRS published Rev. Proc. 2001–12 (2001–3 I.R.B. 335) to set forth an alternative safe harbor that taxpayers could use while the IRS and the Treasury considered comments on the proposed regulations. Under the alternative safe harbor, if a transferor meets the investigation requirement and the representation requirement but the transfer fails to meet the formula test, the transferor may invoke the safe harbor if the transferee meets a two-prong test (the asset test). A transferee generally meets the first prong of this test if, at the time of the transfer, and in each of the two years preceding the year of transfer, the transferee's gross assets exceed $100 million and its net assets exceed $10 million. A transferee generally meets the second prong of this test if it is a domestic, taxable corporation and agrees in writing not to transfer the interest to any person other than another domestic, taxable corporation that also satisfies the requirements of the asset test. A transferor cannot rely on the asset test if the transferor knows, or has reason to know, that the transferee will not comply with its written agreement to limit the restrictions on subsequent transfers of the residual interest.

Rev. Proc. 2001–12 provides that the asset test fails to be satisfied in the case of a transfer or assignment of a noneconomic residual interest to a foreign branch of an otherwise eligible transferee. If such a transfer or assignment were permitted, a corporate taxpayer might seek to claim that the provisions of an applicable income tax treaty would resource excess inclusion income as foreign source income, and that, as a consequence, any U.S. tax liability attributable to the excess inclusion income could be offset by foreign tax credits. Such a claim would impede the assessment or collection of U.S. tax on excess inclusion income, contrary to the congressional purpose of assuring that such income will be taxable in all events. *See*, e.g., sections 860E(a)(1), (b), (e) and 860G(b) of the Code.

The Treasury and the IRS have learned that certain taxpayers transferring noneconomic residual interests to foreign branches have attempted to rely on the formula test to obtain safe harbor treatment in an effort to impede the assessment or collection of U.S. tax on excess inclusion income. Accordingly, the final regulations provide that if a noneconomic residual interest is transferred to a foreign permanent establishment or fixed base of a U.S. taxpayer, the transfer is not eligible for safe harbor treatment under either the asset test or the formula test. The final regulations also require a transferee to represent that it will not cause income from the noneconomic residual interest to be attributable to a foreign permanent establishment or fixed base.

Section 1.860E–1(c)(8) provides computational rules that a taxpayer may use to qualify for safe harbor status under the formula test. Section 1.860E–1(c)(8)(i) provides that the transferee is presumed to pay tax at a rate equal to the highest rate of tax specified in section 11(b). Some commentators were concerned that this presumed rate of taxation was too high because it does not take into consideration taxpayers subject to the alternative minimum tax rate. In light of the comments received, this provision has been amended in the final regulations to allow certain transferees that compute their taxable income using the alternative minimum tax rate to use the alternative minimum tax rate applicable to corporations.

Additionally, § 1.860E–1(c)(8)(iii) provides that the present values in the formula test are to be computed using a discount rate equal to the applicable Federal short-term rate prescribed by section 1274(d). This is a change from the proposed regulation and Rev. Proc. 2001–12. In those publications the provision stated that "present values are computed using a discount rate equal to the applicable Federal rate prescribed in section 1274(d) compounded semiannually" and that "[a] lower discount rate may be used if the transferee can demonstrate that it regularly borrows, in the course of its trade or business, substantial funds at such lower rate from an unrelated third party." The IRS and the Treasury Department have learned that, based on this provision, certain taxpayers have been attempting to use unrealistically low or zero interest rates to satisfy the formula test, frustrating the intent of the test. Furthermore, the Treasury Department and the IRS believe that a rule allowing for a rate other than a rate based on an objective index would add unnecessary complexity to the safe harbor. As a result, the rule in the proposed regulations that permits a transferee to use a lower discount rate, if the transferee can demonstrate that it regularly borrows substantial funds at such lower rate, is not included in the final regulations; and the Federal short-term rate has been substituted for the applicable Federal rate. To simplify taxpayers' computations, the final regulations allow use of any of the published short-term rates, provided that the present values are computed with a corresponding period of compounding. With the exception of the provisions relating to transfers to foreign branches, these changes generally have the proposed applicability date of February 4, 2000, but taxpayers may choose to apply the interest rate formula set forth in the proposed regulation and Rev. Proc. 2001–12 for transfers occurring before August 19, 2002.

It is anticipated that when final regulations are adopted with respect to FASITs, § 1.860H–6(g) of the proposed regulations will be adopted in substantially its present form, with the result that the final regulations contained in this document will also govern transfers of FASIT ownership interests with substantially the same applicability date as is contained in this document.

Effect on Other Documents

Rev. Proc. 2001–12 (2001–3 I.R.B. 335) is obsolete for transfers of noneconomic residual interests in REMICs occurring on or after August 19, 2002.

Special Analyses

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that it is unlikely that a substantial number of small entities will hold REMIC residual interests. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that sections 553(b) and 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations.

Drafting Information

The principal author of these regulations is Courtney Shepardson. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

26 CFR Part 602

Reporting and record keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.860A–0, entries in the outline for § 1.860E–1(c)(5) through (c)(10) are added to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * * *

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

* * * * * *

(c) * * *

(5) Asset test.

(6) Definitions for asset test.

(7) Formula test.

(8) Conditions and limitations on formula test.

(9) Examples.

(10) Effective dates.

* * * * * *

Par. 3. Section 1.860E–1 is amended as follows:

1. Paragraph (c)(4)(i) is amended by removing the language "and" at the end of the paragraph.

2. Paragraph (c)(4)(ii) is amended by removing the period at the end of the paragraph and adding a semicolon in its place.

3. Paragraphs (c)(4)(iii) and (c)(4)(iv) are added.

4. Paragraphs (c)(5) through (c)(10) are added.

The additions read as follows:

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

* * * * * *

(c) * * *

(4) * * *

(iii) The transferee represents that it will not cause income from the noneconomic residual interest to be attributable to a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of the transferee or another U.S. taxpayer; and

(iv) The transfer satisfies either the asset test in paragraph (c)(5) of this section or the formula test in paragraph (c)(7) of this section.

(5) *Asset test.* The transfer satisfies the asset test if it meets the requirements of paragraphs (c)(5)(i), (ii) and (iii) of this section.

(i) At the time of the transfer, and at the close of each of the transferee's two fiscal years preceding the transferee's fiscal year of transfer, the transferee's gross assets for financial reporting purposes exceed $100 million and its net assets for financial reporting purposes exceed $10 million. For purposes of the preceding sentence, the gross assets and net assets of a transferee do not include any obligation of any related person (as defined in paragraph (c)(6)(ii) of this section) or any other asset if a principal purpose for holding or acquiring the other asset is to permit the transferee to satisfy the conditions of this paragraph (c)(5)(i).

(ii) The transferee must be an eligible corporation (defined in paragraph (c)(6)(i) of this section) and must agree in writing that any subsequent transfer of the interest will be to another eligible corporation in a transaction that satisfies paragraphs (c)(4)(i), (ii), and (iii) and this paragraph (c)(5). The direct or indirect transfer of the residual interest to a foreign permanent establishment (within the meaning of an applicable income tax treaty) of a domestic corporation is a transfer that is not a transfer to an eligible corporation. A transfer also fails to meet the requirements of this paragraph (c)(5)(ii) if the transferor knows, or has reason to know, that the transferee will not honor the restrictions on subsequent transfers of the residual interest.

(iii) A reasonable person would not conclude, based on the facts and circumstances known to the transferor on or before the date of the transfer, that the taxes associated with the residual interest will not be paid. The consideration given to the transferee to acquire the noneconomic residual interest in the REMIC is only one factor to be considered, but the transferor will be deemed to know that the transferee cannot or will not pay if the amount of consideration is so low compared to the liabilities assumed that a reasonable person would conclude that the taxes associated with holding the residual interest will not be paid. In determining whether the amount of consideration is too low, the specific terms of the formula test in paragraph (c)(7) of this section need not be used.

(6) *Definitions for asset test.* The following definitions apply for purposes of paragraph (c)(5) of this section:

(i) *Eligible corporation* means any domestic C corporation (as defined in section 1361(a)(2)) other than—

(A) A corporation which is exempt from, or is not subject to, tax under section 11;

(B) An entity described in section 851(a) or 856(a);

(C) A REMIC; or

(D) An organization to which part I of subchapter T of chapter 1 of subtitle A of the Internal Revenue Code applies.

(ii) *Related person* is any person that—

(A) Bears a relationship to the transferee enumerated in section 267(b) or 707(b)(1), using "20 percent" instead of "50 percent" where it appears under the provisions; or

(B) Is under common control (within the meaning of section 52(a) and (b)) with the transferee.

(7) *Formula test.* The transfer satisfies the formula test if the present value of the anticipated tax liabilities associated

with holding the residual interest does not exceed the sum of—

(i) The present value of any consideration given to the transferee to acquire the interest;

(ii) The present value of the expected future distributions on the interest; and

(iii) The present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

(8) *Computational rules and limitations on formula test.* The following rules apply for purposes of paragraph (c)(7) of this section:

(i) *Present value.* The present value of the anticipated tax liabilities and the present value of the anticipated tax savings are calculated by using a discount rate equal to the applicable Federal rate prescribed in section 1274(d) compounded semiannually. A lower discount rate may be used if the transferee can demonstrate that it regularly borrows, in the course of its trade or business, substantial funds at such lower rate from an unrelated third party.

(ii) *Tax rate.* The transferee is presumed to pay tax at a rate equal to the highest rate of tax specified in section 11(b). However, if the transferee is subject to the alternative minimum tax under section 55 in the year it receives the transfer, is not subject to the alternative minimum tax in subsequent years, and has been subject to the alternative minimum tax in no more than two of the five preceding years, the transferee is presumed to pay tax at a rate equal to the alternative minimum tax rate applicable to corporations.

(iii) *Period over which taxes and tax savings are taken into account.* The anticipated tax liabilities and the anticipated tax savings are taken into account over the lesser of the life of the REMIC or the period ending with the last taxable year of the transferee in which the transferee has gross assets for financial reporting purposes of at least $100 million or net assets for financial reporting purposes of at least $10 million.

(iv) *Treatment of certain transfers to foreign persons.* If the transferee is a foreign person at the time of transfer, the anticipated tax liabilities include the tax that would be imposed on any subsequent transfer of the interest to a U.S. person in a transaction that would not satisfy the requirements of paragraphs (c)(5)(ii) and (iii) of this section. The tax that would be imposed on such a subsequent transfer is determined under the principles of this paragraph (c)(8).

(v) *Treatment of certain transfers to tax-exempt entities.* If the transferee is a tax-exempt entity at the time of transfer, the anticipated tax liabilities include the tax that would be imposed on any subsequent transfer of the interest to a taxable U.S. person in a transaction that would not satisfy the requirements of paragraphs (c)(5)(ii) and (iii) of this section. The tax that would be imposed on such a subsequent transfer is determined under the principles of this paragraph (c)(8).

(9) *Examples.* The following examples illustrate the rules of paragraph (c)(5) of this section:

Example 1. (i) *Facts.* In 2002, M, a domestic C corporation that is not subject to the alternative minimum tax under section 55, transfers a noneconomic residual interest in a REMIC to U, a domestic C corporation that is not subject to the alternative minimum tax under section 55. M has gross assets for financial reporting purposes of $150 million and net assets for financial reporting purposes of $15 million in 2000, 2001, and 2002. U has gross assets for financial reporting purposes of $120 million and net assets for financial reporting purposes of $12 million in 2000, 2001, and 2002. U has been subject to the alternative minimum tax in no more than one of the five preceding years. U will be subject to the alternative minimum tax in no more than one of the five years following the transfer. The REMIC is expected to generate $100 million of taxable income in each of the years 2003 through 2007. U's anticipated tax liabilities associated with the REMIC's taxable income are $35 million in each of the years 2003 through 2007. U's anticipated tax savings associated with the REMIC's losses are $35 million in each of the years 2003 through 2007. U's financial circumstances, including the aggregate tax liabilities it has assumed with respect to REMIC residual interests, would cause a reasonable person to conclude that U will be unable to meet its tax liabilities when due. The transfers in the last month of the year fail to satisfy the investigation requirement in paragraph (c)(4)(i) of this section and the asset test requirement of paragraph (c)(5)(iii) of this section because Bank has reason to know that U will not be

parties. No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

A. Overview

for advance determination with the IRS that are subject to the requirements under section 410. Section 1.7476–1(c)(5) provides that in the case of an organization described in section 410(c)(1), which includes governmental plans within the meaning of section 414(d), section 410 will be considered to apply to a plan year of such organization for any plan year in which section 410(c)(2) applies to the plan.

Section 410(c)(1)(A) provides that the

than 10 days nor more than 24 days prior to the date that the application for a determination is made. One commentator requested clarification on whether the time period for providing notice by electronic mail is the same time period for when notice is given by a means other than postal mailing. In the interest of simplification, the final regulations provide a single time period for providing the notice. Under these final regulations, the notice must be

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
Approved: July 10, 2002
Pamela F. Olson,
Acting Assistant Secretary of the Treasury.
[FR Doc. 02–18021 Filed 7–18–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

with holding the residual interest does not exceed the sum of—

(i) The present value of any consideration given to the transferee to acquire the interest;

(ii) The present value of the expected future distributions on the interest; and

(iii) The present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

(8) *Conditions and limitations on formula test.* The following rules apply for purposes of the formula test in paragraph (c)(7) of this section.

(i) The transferee is assumed to pay tax at a rate equal to the highest rate of tax specified in section 11(b)(1). If the transferee has been subject to the alternative minimum tax under section 55 in the preceding two years and will compute its taxable income in the current taxable year using the alternative minimum tax rate, then the tax rate specified in section 55(b)(1)(B) may be used in lieu of the highest rate specified in section 11(b)(1).

(ii) The direct or indirect transfer of the residual interest to a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of a domestic transferee is not eligible for the formula test.

(iii) Present values are computed using a discount rate equal to the Federal short-term rate prescribed by section 1274(d) for the month of the transfer and the compounding period used by the taxpayer.

(9) *Examples.* The following examples illustrate the rules of this section:

Example 1. Transfer to partnership. X transfers a noneconomic residual interest in a REMIC to Partnership *P* in a transaction that does not satisfy the formula test of paragraph (c)(7) of this section. *Y* and *Z* are the partners of *P*. Even if *Y* and *Z* are eligible corporations that satisfy the requirements of paragraph (c)(5)(i) of this section, the transfer fails to satisfy the asset test requirements found in paragraph (c)(5)(ii) of this section because *P* is a partnership rather than an eligible corporation within the meaning of (c)(6)(i) of this section.

Example 2. Transfer to a corporation without capacity to carry additional residual interests. During the first ten months of a year, Bank transfers five residual interests to Corporation *U* under circumstances meeting the requirements of the asset test in paragraph (c)(5) of this section. Bank is the major creditor of *U* and consequently has access to *U*'s financial records and has knowledge of *U*'s financial circumstances. During the last month of the year, Bank transfers three additional residual interests to *U* in a transaction that does not meet the formula test of paragraph (c)(7) of this section. At the time of this transfer, *U*'s financial records indicate it has retained the previously transferred residual interests. *U*'s financial circumstances, including the aggregate tax liabilities it has assumed with respect to REMIC residual interests, would cause a reasonable person to conclude that *U* will be unable to meet its tax liabilities when due. The transfers in the last month of the year fail to satisfy the investigation requirement in paragraph (c)(4)(i) of this section and the asset test requirement of paragraph (c)(5)(iii) of this section because Bank has reason to know that *U* will not be able to pay the tax due on those interests.

Example 3. Transfer to a foreign permanent establishment of an eligible corporation. R transfers a noneconomic residual interest in a REMIC to the foreign permanent establishment of Corporation *T*. Solely because of paragraph (c)(8)(ii) of this section, the transfer does not satisfy the formula test of paragraph (c)(7) of this section. In addition, even if *T* is an eligible corporation, the transfer does not satisfy the asset test because the transfer fails the requirements of paragraph (c)(5)(ii) of this section.

(10) *Effective dates.* Paragraphs (c)(4) through (c)(9) of this section are applicable to transfers occurring on or after February 4, 2000, except for paragraphs (c)(4)(iii) and (c)(8)(iii) of this section, which are applicable for transfers occurring on or after August 19, 2002. For the dates of applicability of paragraphs (a) through (c)(3) and (d) of this section, see § 1.860A–1.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.860E–1	1545–1675
. . . . .	.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 10, 2002

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–18021 Filed 7–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 601

[TD 9006]

RIN 1545–AY68

Notice to Interested Parties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the notice to interested parties requirement. Before the IRS can issue an advance determination regarding the qualification of a retirement plan, a plan sponsor must provide evidence that it has notified all persons who qualify as interested parties that an application for an advance determination will be filed with the IRS. These regulations set forth standards by which a plan sponsor may satisfy the notice to interested parties requirement. The final regulations affect retirement plan sponsors, plan participants and other interested parties with respect to a determination letter application, and certain representatives of interested parties.

DATES: Effective Date: These regulations are effective on July 19, 2002.

Applicability Date: These regulations apply to applications made on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1 and 601 under section 7476 of the Internal Revenue Code of 1986 (Code). On May 21, 1976, final regulations (TD 7421) under section 7476 were published in the **Federal Register** (41 FR 20874). These final regulations provide guidance on the nature and method of giving notice to interested parties. On January 17, 2001, a notice of proposed rulemaking (REG–129608–00) was published in the **Federal Register** (66 FR 3954), setting forth the proposed new standards for delivery of the notice to interested

parties. No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

A. Overview

Section 7476(b)(2) provides that, with respect to a pleading filed by a petitioner for a request for a determination on the qualified status of a retirement plan under section 7476(a), the United States Tax Court may find the pleading to be premature unless the petitioner establishes to the satisfaction of the Court that he has complied with the requirements prescribed by the regulations of the Secretary regarding the notice to interested parties of the filing of the request for a determination. Section 3001(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that before issuing an advance determination regarding the qualification of a retirement plan, the Secretary of Treasury shall require that an applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party of the application for a determination. The final regulations amend §§ 1.7476–2 and 601.201 regarding the nature and method of giving notices to interested parties. The final regulations generally adopt the standards in the proposed regulations. These final regulations provide that the notice may be provided by any method reasonably calculated to ensure that each interested party is notified of the application for determination. Whether a particular method of delivery satisfies this standard is determined on the basis of all the facts and circumstances. The final regulations retain the safe harbor provided in the proposed regulations for plans using an electronic medium to deliver the notice to interested parties. Under that safe harbor, a plan sponsor will be treated as satisfying the requirements under § 1.7476–2(c)(1) if the plan sponsor delivers the notice using an electronic medium under a system that satisfies the requirements of § 1.402(f)-1 Q&A–5.

B. Application of the Notification Requirement to Governmental Plans

Section 1.7476–1(b)(7) provides that § 1.7476–1(b), relating to the definition of interested parties, applies only to retirement plans filing an application for advance determination with the IRS that are subject to the requirements under section 410. Section 1.7476–1(c)(5) provides that in the case of an organization described in section 410(c)(1), which includes governmental plans within the meaning of section 414(d), section 410 will be considered to apply to a plan year of such organization for any plan year in which section 410(c)(2) applies to the plan.

Section 410(c)(1)(A) provides that the provisions of section 410 (other than section 410(c)(2)) do not apply to governmental plans within the meaning of section 414(d). Section 410(c)(2) provides that a governmental plan will be treated as meeting the requirements under section 410 for purposes of section 401(a). Prior to 1997, section 410(c)(2) provided that, in order to be treated as satisfying the requirements of section 410, a governmental plan must meet the requirements under section 401(a)(3) as in effect on September 1, 1974, relating to minimum participation standards. Section 1505(a)(1) of the Taxpayer Relief Act of 1997 (TRA "97) (Public Law 105–34, 111 Stat. 788) added section 401(a)(5)(G), which provides that the nondiscrimination and minimum participation requirements under section 401(a)(3) and (4) do not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof). Thus, section 410 no longer applies to such governmental plans.

One commentator requested clarification that the notice to interested parties requirement under section 7476 no longer applies to governmental plans after TRA "97. Section 1.7476–1(b)(7) of the regulations limits the applicability of the notice to interested parties requirement to retirement plans that are subject to section 410 of the Code. Because a governmental plan established and maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof) is not subject to section 410 of the Code, it is also not subject to the notice to interested parties requirement.

C. Miscellaneous Comments

Proposed regulations under § 601.201(o)(3)(xv) provide that when the notice is given other than by mailing, it should be given not less than 7 days nor more than 21 days prior to the date that the application for a determination is made. When the notice is provided by mailing, prior final regulations under § 601.201(o)(3)(xv) provide that the notice be given not less than 10 days nor more than 24 days prior to the date that the application for a determination is made. One commentator requested clarification on whether the time period for providing notice by electronic mail is the same time period for when notice is given by a means other than postal mailing. In the interest of simplification, the final regulations provide a single time period for providing the notice. Under these final regulations, the notice must be given not less than 10 days nor more than 24 days prior to the date that the application for a determination is made. This time period applies to all methods of delivering the notice to interested parties. Taxpayers may continue to rely on the prior time periods until the applicability date of this Treasury decision.

Section 601.201(o)(3)(xvii) describes the procedures for providing additional informational material required by § 601.201(o)(3)(xviii), (xix), and (xx), to the extent that such information is not provided in the notice to interested parties. Such materials may include an updated copy of the plan and related trust agreement or the determination letter application. One commentator suggested that § 601.201(o)(3)(xvii) be revised to provide that any reasonable delivery method should be available for providing additional information to interested parties. The final regulations amend § 601.201(o)(3)(xvii) to clarify that the procedure for making materials related to an application for determination available to interested parties may include any delivery method or a combination thereof that reasonably ensures accessibility to all interested parties.

Section 601.201(o)(3)(xxi) provides that the notice to interested parties will be deemed given when it is given in person, posted as prescribed in the regulations under section 7476, or received through the mail. One commentator suggested that § 601.201(o)(3)(xxi) be revised to reflect the new standards by which a plan sponsor may satisfy the notice to interested parties requirement. The final regulations amend § 601.201(o)(3)(xxi) to clarify that the notice to interested parties required by § 601.201(o)(3)(xiv) shall be deemed given when the notice is posted or sent to the person in the manner prescribed in the regulations under section 7476.

Effective Date

These regulations apply to applications made on or after January 1, 2003. For applications made prior to that date, taxpayers may continue to rely on the standards set forth in the

prior final regulations or the proposed regulations published in the **Federal Register** on January 17, 2001 (66 FR 3954).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section

2. Paragraph (e) is added.

The revisions and addition read as follows:

§ 1.7476–2 Notice to interested parties.

* * * * *

(b) *Nature of notice.* The notice required by this section shall—

(1) Contain the information and be given within the time period prescribed in § 601.201(o)(3) of this chapter; and

(2) Be given in a manner prescribed in notice required under this section to interested parties.

(ii) Employer B has multiple worksites. Employer B's employees located at worksites 1 through 4 have reasonable access to computers at their workplace. However, Employer B's employees located at worksite 5 do not have access to computers.

(iii) For present employees with reasonable access to computers (worksites 1 through 4), Employer B provides the notice by posting the notice on Employer B's web site (Internet or intranet). Employees at worksites 1

(e) *Effective date.* (1) The provisions of this section shall apply to applications referred to in § 1.7476–1(a) made on or after January 1, 2003.

(2) For applications made on or after June 21, 1976 and before January 1, 2003, § 1.7476–2 (as it appeared in the April 1, 2002 edition of 26 CFR part 1) applies.

PART 601—STATEMENT OF PROCEDURAL RULES

to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and must be available until the earlier of the filing of a pleading commencing a declaratory judgment action under section 7476 with respect to the qualification of the plan or the ninety-second day after the day the notice of final determination is mailed to the applicant.

* * * * *

city of Biloxi/Gulfport including Harrison County, should be decreased to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This final rule increases or decreases the maximum lodging amounts in the prescribed areas.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Jodey P. Garner, Office of Governmentwide Policy, Travel

prior final regulations or the proposed regulations published in the **Federal Register** on January 17, 2001 (66 FR 3954).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 601

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 601 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.7476–1 is amended by adding paragraph (e) to read as follows:

§ 1.7476–1 Interested parties.

* * * * *

(e) *Effective date.* The provisions of this section apply to applications referred to in paragraph (a) of this section made on or after June 21, 1976.

Par. 3. Section 1.7476–2 is amended as follows:

1. Paragraphs (b), (c), and (d) are revised.
2. Paragraph (e) is added.

The revisions and addition read as follows:

§ 1.7476–2 Notice to interested parties.

* * * * *

(b) *Nature of notice.* The notice required by this section shall—

(1) Contain the information and be given within the time period prescribed in § 601.201(o)(3) of this chapter; and

(2) Be given in a manner prescribed in paragraph (c) of this section.

(c) *Method of giving notice.* (1) In the case of a present employee, former employee, or beneficiary who is an interested party, the notice may be provided by any method reasonably calculated to ensure that each interested party is notified of the application for a determination. If an interested party who is a present employee is in a unit of employees covered by a collective-bargaining agreement between employee representatives and one or more employers, notice shall also be given to the collective-bargaining representative of such interested party by any method that satisfies this paragraph. Whether the notice is provided in a manner that satisfies the requirements of this paragraph is determined on the basis of all the relevant facts and circumstances. Because the facts and circumstances differ depending on the interested party, it may be necessary to use more than one method of delivery in order to ensure timely and adequate notice to all interested parties.

(2) If the notice to interested parties is delivered using an electronic medium under a system that satisfies the requirements of § 1.402(f)-1 Q&A–5, the notice is deemed to be provided in a manner that satisfies the requirements of paragraph (c)(1).

(d) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. (i) Employer A is amending Plan C and applying for a determination letter. Plan C is not maintained pursuant to one or more collective bargaining agreements and is not being terminated. As part of the determination letter application process, Employer A provides the notice required under this section to interested parties. For present employees, Employer A provides the notice by posting the notice at those locations within the principal places of employment of the interested parties which are customarily used for employer notices to employees with regard to employment and employee benefit matters.

(ii) In this *Example 1*, Employer A satisfies the notice to interested parties requirement described in this section.

Example 2. (i) Employer B is amending Plan D and applying for a determination letter. As part of the determination letter application process, Employer B provides the notice required under this section to interested parties.

(ii) Employer B has multiple worksites. Employer B's employees located at worksites 1 through 4 have reasonable access to computers at their workplace. However, Employer B's employees located at worksite 5 do not have access to computers.

(iii) For present employees with reasonable access to computers (worksites 1 through 4), Employer B provides the notice by posting the notice on Employer B's web site (Internet or intranet). Employees at worksites 1 through 4 customarily receive employer notification with regard to employment and employee benefit matters from the Employer B's web site. For present employees without access to computers (worksite 5), Employer B provides the notice by posting the notice at worksite 5 in a location that is customarily used for employer notices to employees with regard to employment and employee benefit matters.

(iv) Employer B also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present employees of Employer B covered by a collective-bargaining agreement between employee representatives and Employer B, using the e-mail address previously provided to Employer B by such collective-bargaining representative.

(v) In this *Example 2*, Employer B satisfies the notice to interested parties requirement described in this section.

Example 3. (i) Employer C is terminating Plan E and applying for a determination letter as to whether the plan termination affects the continuing qualification of Plan E. As part of the determination letter application process, Employer C provides the notice required under this section to interested parties.

(ii) All of Employer C's employees have reasonable access to computers. Each employee has an e-mail address where he or she can receive messages from Employer C. Employees of Employer C customarily receive employer notices regarding employment and employee benefit matters by e-mail.

(iii) For present employees, Employer C provides the notice by sending the notice by e-mail.

(iv) Employer C also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present employees of Employer C covered by a collective-bargaining agreement between employee representatives and Employer C, using the e-mail address previously provided to Employer C by such collective-bargaining representative.

(v) In addition, Employer C sends the notice by e-mail to each interested party who is a former employee or beneficiary, using the e-mail address previously provided to Employer C by such interested party. For any former employee or beneficiary who did not provide an e-mail address, Employer C sends the notice by regular mail to the last known address of such former employee or beneficiary.

(vi) In this *Example 3*, Employer C satisfies the notice to interested parties requirement described in this section.

(e) *Effective date.* (1) The provisions of this section shall apply to applications referred to in § 1.7476–1(a) made on or after January 1, 2003.

(2) For applications made on or after June 21, 1976 and before January 1, 2003, § 1.7476–2 (as it appeared in the April 1, 2002 edition of 26 CFR part 1) applies.

PART 601—STATEMENT OF PROCEDURAL RULES

Par. 4. The authority citation for part 601 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 601.201 is amended as follows:

1. In paragraph (o)(3)(xv), the first two sentences are removed and a new sentence is added in their place.
2. In paragraph (o)(3)(xvi), the introductory text is revised.
3. Paragraph (o)(3)(xvii) is revised.
4. In paragraph (o)(3)(xxi), the second sentence is revised.

The revisions and addition read as follows:

§ 601.201 Rulings and determination letters.

* * * * *

(o) * * *

(3) * * *

(xv) When the notice referred to in paragraph (o)(3)(xiv) of this section is given in the manner set forth in § 1.7476–2(c) of this chapter, such notice must be given not less than 10 days nor more than 24 days prior to the date the application for a determination is made. * * *

(xvi) The notice referred to in paragraph (o)(3)(xiv) of this section shall be given in the manner prescribed in § 1.7476–2 of this chapter and shall contain the following information:

* * * * *

(xvii) The procedure referred to in paragraph (o)(3)(xvi)(i) of this section whereby the additional informational material required by paragraphs (o)(3)(xviii), (xix), and (xx) of this section will (to the extent not included in this notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials. The procedure referred to in paragraph (o)(3)(xvi)(i) of this section must be immediately available to all interested parties and must be designed to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and must be available until the earlier of the filing of a pleading commencing a declaratory judgment action under section 7476 with respect to the qualification of the plan or the ninety-second day after the day the notice of final determination is mailed to the applicant.

* * * * *

(xxi) * * * The notice to interested parties required by paragraph (o)(3)(xiv) of this section shall be deemed given when the notice is posted or sent to the person in the manner prescribed in § 1.7476–2 of this chapter. * * *

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 10, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–18020 Filed 7–18–02; 8:45 am]

BILLING CODE 4830–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 106]

RIN 3090–AH64

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveal that the maximum per diem rate for the State of Florida, city of Jacksonville/Mayport including Duval County and Mayport Naval Station, the State of Georgia, city of Savannah including Chatham County, and the State of South Carolina, city of Charleston/Berkeley County including Charleston and Berkeley Counties, should be increased; and the maximum per diem rate for the State of Alabama, city of Huntsville including Madison County, and the State of Mississippi, city of Biloxi/Gulfport including Harrison County, should be decreased to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This final rule increases or decreases the maximum lodging amounts in the prescribed areas.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Jodey P. Garner, Office of Governmentwide Policy, Travel Management Policy, at 202–501–4857.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts are being changed in Huntsville, Alabama; Savannah, Georgia; Charleston/Berkeley County, South Carolina; Jacksonville/Mayport, Florida; and Biloxi/Gulfport, Mississippi.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose record keeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the

the column entitled "Maximum lodging amount" is revised to read "67" and the column entitled "Maximum per diem rate" is revised to read "105".

b. At the entry for Jacksonville/Mayport, Florida, including Duval County and Mayport Naval Station, the column entitled "Maximum lodging amount" is revised to read "81" and the column entitled "Maximum per diem rate" is revised to read "115".

amount" is revised to read "61" and the column entitled "Maximum per diem rate" is revised to read "99".

e. At the entry for Charleston/Berkeley County, South Carolina, including Charleston and Berkeley Counties, the column entitled "Maximum lodging amount" is revised to read "106" and the column entitled "Maximum per diem rate" is revised to read "148".

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. In Chapter 301, amend the table in Appendix A as follows:

a. At the entry for Huntsville, Alabama, including Madison County, the column entitled "Maximum lodging amount" is revised to read "67" and the column entitled "Maximum per diem rate" is revised to read "105".

b. At the entry for Jacksonville/Mayport, Florida, including Duval County and Mayport Naval Station, the column entitled "Maximum lodging amount" is revised to read "81" and the column entitled "Maximum per diem rate" is revised to read "115".

c. At the entry for Savannah, Georgia, including Chatham County, the column entitled "Maximum lodging amount" is revised to read "89" and the column entitled "Maximum per diem rate" is revised to read "127".

d. At the entry for Biloxi/Gulfport, Mississippi, including Harrison County, the column entitled "Maximum lodging amount" is revised to read "61" and the column entitled "Maximum per diem rate" is revised to read "99".

e. At the entry for Charleston/Berkeley County, South Carolina, including Charleston and Berkeley Counties, the column entitled "Maximum lodging amount" is revised to read "106" and the column entitled "Maximum per diem rate" is revised to read "148".

The revised pages containing the amendments to the table set forth above read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

BILLING CODE 6820–14–P

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
CONUS, Standard rate: (Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302-2, 302-4, and 302-5 of this subtitle.)		55		30		85
ALABAMA						
Birmingham	Jefferson	59		38		97
Decatur	Morgan	69		30		99
Gulf Shores:	Baldwin					
(May 15-September 4)		101		34		135
(September 5-May 14)		64		34		98
Huntsville	Madison	67		38		105
Montgomery	Montgomery	57		38		95
ARIZONA						
Casa Grande	Pinal					
(January 1-April 30)		80		34		114
(May 1-December 31)		65		34		99
Chinle	Apache					
(May 1-October 31)		98		34		132
(November 1-April 30)		55		34		89
Flagstaff	All points in Coconino County not covered under Grand Canyon per diem area					
(May 1-October 31)		67		34		101
(November 1-April 30)		55		34		89
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County					
(May 1-October 21)		106		42		148
(October 22 –April 30)		94		42		136
Kayenta	Navajo					
(April 15-October 15)		98		30		128
(October 16-April 14)		65		30		95
Phoenix/Scottsdale	Maricopa					
(January 1-April 15)		107		42		149
(April 16-May 31)		79		42		121
(June 1-August 31)		59		42		101
(September 1-December 31)		90		42		132
Tucson	Pima County; Davis-Monthan AFB					
(January 1-April 15)		85		38		123
(April 16-December 31)		58		38		96
Yuma	Yuma	68		34		102
ARKANSAS						
Hot Springs	Garland	60		30		90

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(May 1-September 30)		115		38		153
(October 1-April 30)		59		38		97
Jacksonville/Mayport	Duval; Mayport Naval Station	81		34		115
Key West	Monroe					
(January 1-April 30)		180		46		226
(May 1-December 31)		109		46		155
Kissimmee	Osceola					
(February 1-April 30)		77		34		111
(May 1-January 31)		64		34		98
Lakeland	Polk	71		34		105
Leesburg	Lake					
(November 1-April 15)		68		30		98
(April 16-October 31)		55		30		85
Miami	Dade					
(January 1-April 15)		89		42		131
(April 16-December 31)		75		42		117
Naples	Collier					
(December 16-April 15)		109		38		147
(April 16-December 15)		69		38		107
Ocala	Marion	59		30		89
Orlando	Orange	95		42		137
Palm Beach (also the cities of Boca Raton, Delray Beach, Jupiter, Palm Beach Gardens, Palm Beach Shores, Singer Island and West Palm Beach)	Palm Beach					
(January 1-April 30)		129		46		175
(May 1-December 31)		70		46		116
Panama City	Bay	74		38		112
Pensacola	Escambia	60		30		90
Punta Gorda	Charlotte					
(December 15-April 15)		75		38		113
(April 16-December 14)		55		38		93
Sarasota	Sarasota					
(January 1-April 30)		80		38		118
(May 1-December 31)		70		38		108
Sebring	Highlands	64		30		94
St. Augustine	St. Johns	65		38		103
Stuart	Martin	57		38		95
Tallahassee	Leon	65		34		99
Tampa/St. Petersburg	Pinellas and Hillsborough					
(January 1-April 30)		105		38		143
(May 1-December 31)		89		38		127
Vero Beach	Indian River					
(December 15-April 15)		99		38		137
(April 16-December 14))		59		38		97
GEORGIA						
Albany	Dougherty	57		34		91
Athens	Clarke	69		34		103

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Atlanta	Fulton and Gwinnett	93		38		131
Clayton County	Clayton	64		30		94
Cobb County	Cobb	78		34		112
Columbus	Muscogee	63		34		97
Conyers	Rockdale	69		34		103
DeKalb County	DeKalb	78		34		112
Savannah	Chatham	89		38		127
IDAHO						
Boise	Ada	61		38		99
Coeur d'Alene	Kootenai	56		34		90
Ketchum	Blaine (except Sun Valley)					
(May 1-November 30)		84		42		126
(December 1-April 30)		74		42		116
McCall	Valley	62		38		100
Sun Valley	City limits of Sun Valley (see Blaine County)	149		42		191
ILLINOIS						
Aurora	Kane (except Elgin)	66		30		96
Chicago	Cook and Lake	155		46		201
Du Page County	Du Page	89		38		127
Elgin	City limits of Elgin (see Kane County)	60		30		90
Rockford	Winnebago	60		30		90
INDIANA						
Carmel	Hamilton	65		38		103
Ft. Wayne	Allen	58		30		88
Indianapolis	Marion County; Fort Benjamin Harrison	70		42		112
Lafayette	Tippecanoe	59		30		89
Michigan City	La Porte	65		34		99
Nashville	Brown					
(April 1-November 15)		75		38		113
(November 16-March 31)		59		38		97
South Bend	St. Joseph	61		34		95
Valparaiso/Burlington Beach	Porter	89		34		123
IOWA						
Cedar Rapids	Linn	60		34		94
Des Moines	Polk	67		34		101
KANSAS						
Kansas City/Overland Park	Wyandotte and Johnson	85		38		123
Wichita	Sedgwick	59		38		97
KENTUCKY						
Covington	Kenton	80		38		118
Lexington	Fayette	65		30		95
Louisville	Jefferson	69		38		107
LOUISIANA						
Baton Rouge	East Baton Rouge Parish	78		38		116

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Sault Ste Marie	Chippewa					
(May 15-October 15)		63		34		97
(October 16-May 14)		55		34		89
South Haven	Van Buren	76		34		110
Traverse City	Grand Traverse	125		42		167
Warren	Macomb	79		34		113
MINNESOTA						
Anoka County	Anoka	65		34		99
Dakota County	Dakota	80		34		114
Duluth	St. Louis					
(June 1-October 31)		85		42		127
(November 1-May 31)		56		42		98
Minneapolis/St. Paul	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County	95		46		141
Rochester	Olmsted	73		34		107
MISSISSIPPI						
Bay St. Louis	Hancock					
(April 1-October 31)		69		38		107
(November 1-March 31)		55		38		93
Biloxi/Gulfport	Harrison	61		38		99
Robinsonville	Tunica	59		34		93
MISSOURI						
Branson	Taney					
(April 1-December 31)		62		34		96
(January 1-March 31)		55		34		89
Hannibal	Marion	57		30		87
Jefferson City	Cole	60		30		90
Kansas City	Jackson, Clay and Kansas City International Airport	85		42		127
Osage Beach	Camden	89		30		119
Platte	Platte (except Kansas City International Airport)	61		34		95
Springfield	Greene	63		30		93
St. Louis	St. Louis and St. Charles	90		46		136
MONTANA						
Big Sky	Gallatin (except West Yellowstone)	125		46		171
Polson/Kalispell	Lake and Flathead					
(June 1-September 15)		64		30		94
(September 16-May 31)		55		30		85
West Yellowstone	City limits of West Yellowstone (see Gallatin County)					
(June 1-September 30)		92		34		126
(October 1-May 31)		55		34		89

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(April 1-December 31)						
(January 1-March 31)		79		42		121
North Kingstown	Washington	89		30		119
Providence	Providence	89		42		131
SOUTH CAROLINA						
Aiken	Aiken	65		30		95
Charleston/Berkeley County	Charleston and Berkeley	106		42		148
Columbia	Richland	65		30		95
Greenville	Greenville	65		38		103
Hilton Head	Beaufort					
(March 15-September 30)		95		42		137
(October 1-March 14)		75		42		117
Myrtle Beach	Horry County; Myrtle Beach AFB					
(March 1-November 30)		99		42		141
(December 1-February 28)		59		42		101
SOUTH DAKOTA						
Custer	Custer					
(June 15-August 19)		70		30		100
(August 20-June 14)		55		30		85
Hot Springs	Fall River					
(June 15-October 15)		108		30		138
(October 16-June 14)		79		30		109
Rapid City	Pennington					
(May 15-September 30)		99		34		133
(October 1-May 14)		55		34		89
Sturgis	Meade					
(June 15-August 15)		79		30		109
(August 16-June 14)		55		30		85
TENNESSEE						
Alcoa/Townsend	Blount	63		34		97
Gatlinburg	Sevier					
(May 1-October 31)		78		38		116
(November 1-April 30)		70		38		108
Memphis	Shelby	75		38		113
Murfreesboro	Rutherford	57		30		87
Nashville	Davidson	82		42		124
Williamson County	Williamson	60		30		90
TEXAS						
Amarillo	Potter	57		30		87
Arlington	Tarrant	77		34		111
Austin	Travis	80		38		118
Bryan	Brazos (except College Station)	60		30		90
College Station	City limits of College Station (see Brazos County)	69		34		103
Corpus Christi	Nueces	59		38		97
Dallas	Dallas	89		46		135
El Paso	El Paso	78		38		116

Dated: July 11, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02-18235 Filed 7-18-02; 8:45 am]

BILLING CODE 6820-14-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on

all comments and material received during the comment period. We may change this temporary final rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be

is temporarily restoring the rates that were effective before August 13, 2001. The Coast Guard believes that this measure is in the best interest of the public. This measure will mitigate the effects, if any, of the Coast Guard's disparate treatment of the pilots in District Two, when accounting for hours of delay and detention. It should be noted, however, that this temporary final rule will not be retroactive and future rates will not be adjusted as a

is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant

Taking of Private Property

This temporary rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary final rule meets applicable standards in sections 3(a)

Dated: July 11, 2002.
Stephen A. Perry,
Administrator of General Services.
[FR Doc. 02–18235 Filed 7–18–02; 8:45 am]
BILLING CODE 6820–14–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG–2002–12840]

RIN 2115–AG46

Basic Rates and Charges on Lake Erie and the Navigable Waters From Southeast Shoal to Port Huron, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: This temporary final rule amends the rates charged for Great Lakes pilotage on the Designated Waters of Area 5 in District Two and restores them to those effective before August 13, 2001. The Lake Pilots Association, representing pilots in District Two, challenged the ratemaking effective on and after that date, and sued. The Coast Guard, while not agreeing with the allegations in the complaint, did learn during the course of litigation that it had inadvertently accounted for hours of delay and detention in District Two differently from how it was done in Districts One and Three. The Coast Guard is currently working on an updated ratemaking that will, among other things, correct this error. In the interim, it is considered in the best interest of the public to temporarily return the rates (in District Two, Area 5) to those effective prior to August 13, 2001. This temporary final rule will not be retroactive and future rates will not be adjusted as a result of this action.

DATES: This temporary final rule is effective from July 19, 2002, to July 21, 2003. Comments and related material must reach the Docket Management Facility on or before September 17, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket [USCG–2002–12840], please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this temporary rule. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call Paul Wasserman, Office of Maritime and International Law, Commandant (G–LMI), U.S. Coast Guard, telephone 202–267–0093. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this temporary rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this temporary rule [USCG–2002–12840], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary final rule, and it takes effect immediately. Delay in implementing this rule would be contrary to the public interest. In 2001, the Coast Guard amended existing ratemaking requirements for Great Lakes Pilotage and inadvertently accounted for hours of delay and detention in District Two in a manner different from Districts One and Three. Due to the impact on and disparate treatment among the districts, it is necessary to immediately correct this situation. This rule simply, and temporarily, restores the rates that were effective before the amendment, while we further evaluate the situation. Therefore, the Coast Guard finds under 5 U.S.C. 553(b)(B) and (d)(3), respectively, that neither notice-and-comment rulemaking nor 30 days' notice of effective date is required.

Background and Purpose

On July 12, 2001, the Coast Guard published a final rule in the **Federal Register** [66 FR 36484] amending the ratemaking for the Great Lakes Pilotage. The new rates became effective August 13, 2001. They were challenged in court by the Lake Pilots Association, representing the pilots in District Two, Lake Erie. While preparing our defense, we discovered that we had inadvertently accounted for hours of delay and detention in District Two differently from how we had in Districts One and Three. We also noticed minor errors in computing the rates in District Two. We are undertaking a study to address, among other things, the issue of how we should count hours of delay and detention when computing bridge-hours in all three Districts.

Discussion of Temporary Final Rule

While not agreeing with the allegations contained in the complaint of the Lake Pilots Association, for the reasons stated, the Coast Guard agreed to the relief sought in the lawsuit and is temporarily restoring the rates that were effective before August 13, 2001. The Coast Guard believes that this measure is in the best interest of the public. This measure will mitigate the effects, if any, of the Coast Guard's disparate treatment of the pilots in District Two, when accounting for hours of delay and detention. It should be noted, however, that this temporary final rule will not be retroactive and future rates will not be adjusted as a result of this action. Simultaneously, it is anticipated that this measure will resolve the lawsuit initiated by those pilots and so enable the Coast Guard to concentrate its efforts on addressing the system-wide concerns raised by the public with the input of all parties affected by rates for pilotage. During the effective period of this temporary final rule, we will devote our energy to promulgating a new ratemaking.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)].

Because the rates are being restored to already-approved rates, the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. However, a detailed Regulatory Assessment is available in the docket from the rulemaking that established those previous rates [Saint Lawrence Seaway Development Corporation (RIN 2135–AA08)].

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we have considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons stated under *Regulatory Information* and because this rule does not affect small entities, it was not preceded by an NPRM and therefore is exempt from the requirements of the Regulatory Flexibility Act. Although it is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Small businesses may send, to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards, comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary final rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this temporary final rule will not result in such an expenditure, the effects of this rule are discussed elsewhere in this preamble.

Taking of Private Property

This temporary rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This temporary final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** [66 FR 36361 (July 11, 2001)] requesting comments on how to best carry out the Order. We invite your comments on how this rule might affect tribal governments, even if the effect may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this temporary final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule amends the rates charged for

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm); 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

2. In § 401.407, suspend paragraph (b) and temporarily add paragraph (c) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

General Counsel, Assistant Secretary for Transportation Policy, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Budget and Programs, Associate Deputy Secretary, Federal Aviation Administrator, and Assistant Secretary for Administration, in that order.

The Federal Vacancies Reform Act of

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A), and it may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(2) as a change in internal policy.

List of Subjects in 49 CFR Part 1

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622, 635, 640, and 654

[Docket No. 010410086–2165–02; I.D. 020801A]

RIN 0648–AN83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule amends the rates charged for Great Lakes pilotage, restoring them to the rates previously in effect. It is procedural in nature and therefore is categorically excluded. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 401

Administrative practice and procedure; Great Lakes; Navigation (water); Penalties; Reporting and recordkeeping requirements; Seamen.

For reasons discussed in the preamble, the Coast Guard temporarily amends 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm); 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

2. In § 401.407, suspend paragraph (b) and temporarily add paragraph (c) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(c) *Area 5 (Designated Waters):*

Any point on or in:	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit river	Detroit pilot boat	St. Clair river
Toledo or any port on Lake Erie west of Southeast Shoal	$988	$583	$1,282	$988	N/A
Port Huron Change Point	[1] 1,720	[1] 1,993	1,293	1,005	$715
St. Clair River	[1] 1,720	N/A	1,293	1,293	583
Detroit or Windsor Or the Detroit River	988	1,282	583	N/A	1,293
Detroit Pilot Boat	715	988	N/A	N/A	1,293

[1] When pilots are not changed at the Detroit pilot boat.

Dated: July 12, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–18345 Filed 7–17–02; 10:29 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–857, MM Docket No. 01–2, RM–10035]

Television Broadcast Service; New Iberia, LA; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of April 11, 2001 (66 FR 18734), a document changing the TV Table of Allotments to reflect the substitution of TV channel 53 for TV channel 36-at New Iberia, Louisiana. However, TV channel 53 was inadvertently published as 56-. This document corrects that error.

DATES: Effective July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION:

Background

The FCC published a document in the **Federal Register** of April 11, 2001, (66 FR 18734) removing TV channel 36- and adding TV channel 53 at New Iberia, Louisiana. TV channel 56 was inadvertently published in lieu of TV channel 53 at New Iberia, Louisiana. This correction removes TV channel 56- and correctly adds TV channel 53-in § 73.606(b) of the Commission's Rules.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Corrected]

2. Section 73.606(b), the Table of Television Allotments under Louisiana, is amended by removing TV channel 56- and adding TV channel 53-at New Iberia.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–18179 Filed 7–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA27

Organization and Delegation of Powers and Duties; Secretarial Succession

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to alter the order of Secretarial succession for the Department in order to be consistent with the Vacancies Act.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Laura Aguilar, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street SW., Room 10102, Washington, DC 20590; Telephone: (202) 366–0365.

SUPPLEMENTARY INFORMATION: In 49 CFR 1.26, the order of succession to act as Secretary of Transportation is set forth as follows: The Deputy Secretary, General Counsel, Assistant Secretary for Transportation Policy, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Budget and Programs, Associate Deputy Secretary, Federal Aviation Administrator, and Assistant Secretary for Administration, in that order.

The Federal Vacancies Reform Act of 1998 (Vacancies Act) specifies who may serve in an acting capacity for a vacant position that is subject to a nomination by the President by and with the consent of the Senate (a "PAS" position). The Vacancies Act is the exclusive means for temporarily authorizing an acting official to perform the functions and duties of a PAS position unless otherwise authorized by statute. The Administration interprets the Vacancies Act to mean that if there is no statutory provision that enables the head of an agency to establish an order of succession, only the President of the United States may do so.

Section 102 of title 49, United States Code, authorizes the Secretary to prescribe the order of succession for the Assistant Secretaries and the General Counsel. The Department's order of Secretarial succession is not consistent with the Vacancies Act since it also includes the Associate Deputy Secretary and the Federal Aviation Administrator. Therefore, we are amending the Secretarial Order of Succession to make it consistent with 49 U.S.C. 102 and the Vacancies Act.

Section 102 of title 49, United States Code, authorizes the Secretary to prescribe the order of succession for the Assistant Secretaries and the General Counsel. Under the Vacancies Act, only the President is authorized to designate officers in the line of Secretarial succession that are not specified in the enabling statute. In other words, only the President may designate officers beyond the General Counsel and the Assistant Secretaries. In a Memorandum for the Secretary of Transportation entitled "Designation of Officers of the Department of Transportation," dated March 19, 2002, the President supplemented the Secretarial succession to include: the Associate Deputy Secretary of Transportation; the Under Secretary of Transportation for Security; the Federal Aviation Administrator; the Federal Aviation Administration Regional Administrator, Southwest Region; and the Federal Aviation Administration Regional Administrator, Great Lakes Region, in that order. This final rule codifies the President's Memorandum.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b)(3)(A), and it may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(2) as a change in internal policy.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

Issued this 10th day of July, 2002, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597.

2. In § 1.26, paragraphs (a)(3) through (a)(12) are revised to read as follows:

§ 1.26 Secretarial succession.

(a) * * *

(3) Assistant Secretary for Budget and Programs.

(4) Assistant Secretary for Governmental Affairs.

(5) Assistant Secretary for Transportation Policy.

(6) Assistant Secretary for Aviation and International Affairs.

(7) Assistant Secretary for Administration.

(8) Associate Deputy Secretary.

(9) Under Secretary of Transportation for Security.

(10) Federal Aviation Administrator.

(11) Federal Aviation Administration Regional Administrator, Southwest Region.

(12) Federal Aviation Administration Regional Administrator, Great Lakes Region.

* * * * *

[FR Doc. 02–18053 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622, 635, 640, and 654

[Docket No. 010410086–2165–02; I.D. 020801A]

RIN 0648–AN83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment to the Fishery Management Plans of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the Generic Amendment Addressing the Establishment of the Tortugas Marine Reserves in the Fishery Management Plans of the Gulf of Mexico (Tortugas Amendment), as prepared by the Gulf of Mexico Fishery Management Council (Gulf of Mexico Council). This action will provide enhanced protections for existing marine reserves in the vicinity of the Dry Tortugas, Florida, and is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule complements regulations previously issued by NOAA under the authority of the National Marine Sanctuary Act by better informing the public of applicable restrictions and providing enhanced enforcement authority and stricter penalties for violations. Consistent with NOAA's existing regulations, these regulations prohibit fishing for any species and anchoring by fishing vessels within the reserves. The intended effect is to inform the public of these restrictions and to further protect and conserve important marine resources.

DATES: This final rule is effective August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, phone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico fisheries for coastal migratory pelagics, coral and coral reefs, red drum, reef fish, shrimp, spiny lobster, and stone crab are managed under fishery management plans (FMPs) prepared by the Gulf of Mexico Council and approved and implemented by NMFS. These FMPs were prepared solely by the Gulf of Mexico Council, with the exception of the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the Gulf of Mexico Council and the South Atlantic Fishery Management Council (South Atlantic Council).

The Tortugas Amendment amends the following FMPs: Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico; Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico; Fishery Management

Comment: An environmental organization supported all the measures in the proposed rule, including a prohibition on fishing for highly migratory species. They stated that they would vigorously oppose anything less than the protections currently included in the proposed rule. They commented that the proposed measures were crucial to help maintain and rebuild fish populations; protect corals and maintain

increased costs because of further restrictions on their activities within the marine reserves, they and non-consumptive users are expected to realize long-term benefits resulting from the maintenance of healthy and diverse marine ecosystems. It is noted that following NMFS' publication in the **Federal Register** of the notice of availability of the Tortugas Amendment for public comment, the FKNMS

connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(2) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″
	24°33′00″	83°09′00″

migratory pelagics and spiny lobster that were prepared jointly by the Gulf of Mexico Council and the South Atlantic Fishery Management Council (South Atlantic Council).

The Tortugas Amendment amends the following FMPs: Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico; Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico; Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico; Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico; Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico; Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic. All of these FMPs, except the FMPs for spiny lobster and stone crab, are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. The FMP for spiny lobster is implemented by regulations at 50 CFR part 640; the FMP for stone crab is implemented by regulations at 50 CFR part 654.

On March 7, 2001, NMFS published a notice of availability of the Tortugas Amendment and requested comments on the amendment (66 FR 13692). On June 6, 2001, NMFS approved those Tortugas Amendment measures that amend the FMPs for coral and coral reefs, red drum, stone crab, shrimp, and reef fish. On July 19, 2001, NMFS announced the availability of the Tortugas Amendment management measures that would amend the FMPs for coastal migratory pelagic resources and for spiny lobster and requested comments on those measures (66 FR 37635). NMFS approved those measures on October 16, 2001. A proposed rule to implement all measures included in the Tortugas Amendment, with a request for comments through March 25, 2002, was published on February 7, 2002 (67 FR 5780). The background and rationale for the measures in the Tortugas Amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

NMFS received three general comments in support of the Tortugas Amendment during the public comment period on the amendment. NMFS has approved the amendment. One comment supporting the specific aspects of the proposed rule was received during the comment period on the proposed rule.

Comment: An environmental organization supported all the measures in the proposed rule, including a prohibition on fishing for highly migratory species. They stated that they would vigorously oppose anything less than the protections currently included in the proposed rule. They commented that the proposed measures were crucial to help maintain and rebuild fish populations; protect corals and maintain a functioning ecological whole system; and to provide effective enforcement of the current no-take regulations in that area.

Response: NMFS notes that fishing for any species, including highly migratory species, and anchoring by fishing vessels is prohibited in the Tortugas marine reserves.

Classification

The Administrator, Southeast Region, NMFS determined that the Tortugas Amendment is necessary for the conservation and management of fisheries resources in the Gulf of Mexico and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared a final supplemental environmental impact statement (FSEIS) for the Tortugas Amendment that was filed with the Environmental Protection Agency for public review and comment. A notice of its availability for public comment for 30 days was published in the **Federal Register** on March 16, 2001 (66 FR 15241). According to the FSEIS, the elimination of consumptive uses within the marine reserves will protect essential fish habitat from fishery-related impacts and eliminate fishing mortality. Establishment of the marine reserves may result in many benefits to the ecosystem, including increased size and abundance of marine species. This may potentially improve reproductive success which could enhance recruitment to other areas of the Gulf of Mexico and the Florida Keys. The FSEIS states that although commercial and recreational fishermen could experience increased costs because of further restrictions on their activities within the marine reserves, they and non-consumptive users are expected to realize long-term benefits resulting from the maintenance of healthy and diverse marine ecosystems. It is noted that following NMFS' publication in the **Federal Register** of the notice of availability of the Tortugas Amendment for public comment, the FKNMS regulations became effective, thereby prohibiting all commercial and recreational fishing in the marine reserve areas. Accordingly, this final rule should not impact commercial and recreational fishermen in terms of a new prohibition on fishing and anchoring in the reserves.

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

50 CFR Part 654

Fisheries, Fishing.

Dated: July 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622, 635, 640, and 654 are amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (d) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(d) *Tortugas marine reserves.* The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(1) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(2) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″
A	24°33′00″	83°09′00″

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

4. In § 635.21, paragraph (a)(4) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(4) No person may fish for, catch, possess or retain any Atlantic highly migratory species or anchor a fishing vessel, issued a permit or required to be permitted under this part, in the areas designated at § 622.34(d) of this chapter.

* * * * *

5. In § 635.71, paragraph (a)(30) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(30) Deploy or fish with any fishing gear from a vessel or anchor a fishing vessel, permitted or required to be permitted under this part, in any closed area as specified at § 635.21.

* * * * *

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

6. The authority citation for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 640.7, paragraph (v) is added to read as follows:

§ 640.7 Prohibitions.

* * * * *

(v) Fish for any species or anchor a fishing vessel in a marine reserve as specified in § 640.26.

8. Section 640.26 is added to subpart B to read as follows:

§ 640.26 Tortugas marine reserves.

The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(b) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″
A	24°33′00″	83°09′00″

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

9. The authority citation for part 654 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

10. In § 654.7, paragraph (o) is added to read as follows:

§ 654.7 Prohibitions.

* * * * *

(o) Fish for any species or anchor a fishing vessel in a marine reserve as specified in § 654.28.

11. Section 654.28 is added to subpart B to read as follows:

§ 654.28 Tortugas marine reserves.

The following activities are prohibited within the Tortugas marine reserves: Fishing for any species and anchoring by fishing vessels.

(a) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11438, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

(b) *Tortugas South.* The area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°33′00″	83°09′00″
B	24°33′00″	83°05′00″
C	24°18′00″	83°05′00″
D	24°18′00″	83°09′00″

Point	North lat.	West long.
A	24°33′00″	83°09′00″

[FR Doc. 02–18308 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that an

DEPARTMENT OF COMMERCE

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50 CFR Part 660

whiting OY is 129,600 mt (mt) and the commercial OY is 106,920 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2002 allocations, which are based on the 2002 commercial OY, are 36,353 mt (34 percent) for the catcher/processor sector, 25,661 (24 percent) for the mothership sector, and 44,906 mt (42 and retained, possessed or landed by a catcher vessel participating in the shore-based sector of the whiting fishery. On September 1, 2002, further taking and retaining, possessing or landing of whiting will be prohibited, unless otherwise announced in the **Federal Register**. If a vessel fishes shoreward of the 100–fm (183–m) contour in the Eureka area (43°–40°30′ N. lat.) at any time during a fishing trip, the 10,000–lb (4,536–kg) trip limit applies, as

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management

Point	North lat.	West long.
A	24°33'00"	83°09'00"

[FR Doc. 02–18308 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 071202D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of General category daily retention limit.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily catch limit should be adjusted in order to allow for maximum utilization of the proposed 2002 General category June through August subquota. Therefore, NMFS increases the daily retention limit from one to two large medium (73 to less than 81 inches (185 to less than 206 cm)) or giant (81 inches or greater (206 cm or greater)) BFT for the remainder of the June through August time-period.

DATES: Effective July 18 through August 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. BFT fishing category quotas and General category effort controls (including time-period subquotas and Restricted-Fishing Days (RFDs)) are specified annually under §§ 635.23(a) and 635.27(a). The 2002 BFT quotas and General category effort controls were proposed June 25, 2002 (67 FR 43266, June 27, 2002).

Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit is appropriate and necessary to allow full use of the June through August subquota while ensuring an August fishery. Therefore, NMFS adjusts the daily retention limit for the remainder of the June through August subquota time-period to two large medium or giant BFT per vessel. This adjustment does not affect the proposed RFDs for August (August 10, 11, and 12), on which the daily retention in the General category would be zero, and on which General category vessels would not be allowed to fish for BFT.

The intent of this adjustment is to allow for maximum utilization of the June through August subquota (specified under §635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Fishery Management Plan for Atlantic tunas, swordfish, and sharks.

While catch rates have been low so far this season, NMFS recognizes that they may increase. In addition, due to the temporal and geographical nature of the fishery, certain gear types and areas are more productive at various times during the fishery. In order to ensure that the June through August subquota is not filled prematurely and to ensure equitable fishing opportunities in all areas and for all gear types, NMFS has not waived the proposed RFDs in August, which correspond to market closures in Japan, and could promote better ex-vessel prices.

Classification

This action is taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 15, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18190 Filed 7–15–02; 4:10 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077–01; I.D. 071202E]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Primary Season and Resumption of Trip Limits for the Shore-based Fishery for Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 2002 primary season for the shore-based fishery for Pacific whiting (whiting) at 0800 local time (l.t.) July 17, 2002, because the allocation is projected to be reached. This action is intended to keep the harvest of whiting at the 2002 allocation levels.

DATES: Effective from 0800 l.t. July 17, 2002, until the effective date of the 2003 specification and management measures for the Pacific Coast groundfish fishery which will be published in the **Federal Register**, unless modified, superseded or rescinded. Comments will be accepted through August 5, 2002.

ADDRESSES: Submit comments to D. Robert Lohn, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On April 15, 2002 (67 FR 18117), the levels of allowable biological catch, the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2002 the whiting OY is 129,600 mt (mt) and the commercial OY is 106,920 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2002 allocations, which are based on the 2002 commercial OY, are 36,353 mt (34 percent) for the catcher/processor sector, 25,661 (24 percent) for the mothership sector, and 44,906 mt (42 percent) for the shoreside sector.

When each sector's allocation is reached, the primary season for that sector is ended. The shore-based sector is composed of vessels that harvest whiting for delivery to land-based processors. The regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for the shore-based sector as the period(s) when the large-scale target fishery is conducted (when trip limits under 50 CFR 660.323(b) are not in effect). Before and after the primary seasons, per-trip limits are in effect for whiting.

The best available information on July 15, 2002, indicates that 39,460 mt had been taken through July 13, 2002, and that the 44,906 mt shore-based allocation would be reached by 0800 l.t. July 17, 2002. This **Federal Register** document announces the date that the primary season for the shore-based sector ends, and that per-trip limits are reinstated. Per-trip limits are intended to accommodate small bait and fresh fish markets, and bycatch in other fisheries. To minimize incidental catch of chinook salmon by vessels fishing shoreward of the 100 fm (183 m) contour in the Eureka area, at any time during a fishing trip, a limit of 10,000-lb (4,536 kg) of whiting is in effect year-round, except when landings of whiting are prohibited.

On July 5,2002 (67 FR 44778), NMFS announced fishery restrictions that eliminated the per-trip limits for whiting beginning September 1, 2002. Therefore, the 20,000-lb (9,072 kg) trip limit that was in place before the start of the primary season is reinstated from the end of the primary season to September 1, at which time further taking and retaining, possessing or landing of whiting will be prohibited, unless otherwise announced in the **Federal Register**.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(C), NMFS herein announces:

Effective 0800 l.t. July 17, 2002, until September 1, 2002, no more than 20,000 lb (9,072 kg) of whiting may be taken and retained, possessed or landed by a catcher vessel participating in the shore-based sector of the whiting fishery. On September 1, 2002, further taking and retaining, possessing or landing of whiting will be prohibited, unless otherwise announced in the **Federal Register**. If a vessel fishes shoreward of the 100–fm (183–m) contour in the Eureka area (43°–40°30′ N. lat.) at any time during a fishing trip, the 10,000–lb (4,536–kg) trip limit applies, as announced in the annual management measures at paragraph IV, B (3)(c)(ii), except when the whiting fishery is closed.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(C) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2002.

Virginia M. Fay

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18262 Filed 7–16–02; 3:37 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071502C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of pelagic shelf rockfish for the West Yakutat District was established as 640 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for pelagic shelf rockfish in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 630 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause

to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–2062–02; I.D. 121701A]

RIN 0648–AP69

Fisheries of the Exclusive Economic

harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the Western Regulatory Area will be reached before

3486), and corrected July 10, 2002 (67 FR 45672). The July 10, 2002, correction to the emergency interim rule implements a registration process for the 2002 B season HLA directed fishery for Atka mackerel and clarified the requirements for registration in the Atka mackerel HLA directed fishery for the B season starting September 1, 2002. However, its Classification section did not address the information requirement for the registration process.

the first paragraph of the Classification section:

Classification

The correction of an emergency interim rule published July 10, 2002 (67 FR 45671, FR Doc. 02–17045), contained a collection-of-information requirement subject to the PRA that has been approved by the Office of Management and Budget (OMB) under OMB control

ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a

to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 16, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18261 Filed 7–16–02; 3:37 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 071502B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2002, through 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the Western Regulatory Area was established as 2,610 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for Pacific ocean perch in the Western Regulatory Area will be reached before the end of the fishing season or year. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,470 mt, and is setting aside the remaining 140 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18263 Filed 7–16–02; 3:37 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–2062–02; I.D. 121701A]

RIN 0648–AP69

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures and 2002 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries off Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects the correction to an emergency interim rule published July 10, 2002, by adding information that should have been included in the correction. The emergency interim rule, published January 8, 2002, implements Steller sea lion protection measures and 2002 harvest specifications for the Alaska groundfish fishery. The correction was needed to afford Atka mackerel fishery participants an additional opportunity to register for the 2002 B season harvest limit area (HLA) fishery in the Aleutian Islands subarea. Through an oversight, the correction to the emergency rule did not reference collection-of-information requirements subject to the Paperwork Reduction Act, which had been submitted under the January 8, 2002, emergency interim rule. Therefore, this document is being published to address this issue.

DATES: Effective July 10, 2002.

ADDRESSES: Send comments on collection-of-information requirements to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Melanie Brown, NMFS, 907–586–7228 or e-mail at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: An emergency interim rule was published January 8, 2002 (67 FR 956), amended and corrected May 1, 2002 (67 FR 21600), extended May 16, 2002 (67 FR 34860), and corrected July 10, 2002 (67 FR 45672). The July 10, 2002, correction to the emergency interim rule implements a registration process for the 2002 B season HLA directed fishery for Atka mackerel and clarified the requirements for registration in the Atka mackerel HLA directed fishery for the B season starting September 1, 2002. However, its Classification section did not address the information requirement for the registration process.

Need for Correction

This document inadvertently omitted required PRA text and must be corrected by adding it.

Correction

Accordingly, the correction to the emergency rule on July 10, 2002, FR Doc. 02–17045 is further corrected as follows:

On page 45672, column 2, under Classification add the following text as the first paragraph of the Classification section:

Classification

The correction of an emergency interim rule published July 10, 2002 (67 FR 45671, FR Doc. 02–17045), contained a collection-of-information requirement subject to the PRA that has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0206. For the Federal Fisheries Permit registration, the estimated response time is 21 minutes. The response-time estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–18264 Filed 7–18–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 139
Friday, July 19, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final

preserved pork also would be added to the regulations.

DATES: Written comments must be received by August 19, 2002.

ADDRESSES: Send a copy of your comments to Kenneth R. Payne, Chief;

a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Department would rule on the petition. The Act provides that the district court

has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the

The Act and § 1230.71 of the Order contain provisions for adjusting the initial rate of assessment. The Delegate Body has the responsibility to recommend the rate of assessment to the Department. The 2002 Delegate Body, at its annual meeting on March 1–2, 2002, in Denver, Colorado, voted to recommend to the Department that the rate of assessment of 0.45 percent be decreased to 0.40 percent. There were 167 Delegate Body members appointed

components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by the

Proposed Rules

Federal Register
Vol. 67, No. 139
Friday, July 19, 2002

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–02–09]

Pork Promotion, Research, and Consumer Information Order: Rules and Regulations—Decrease in Assessment Rate and Decrease of Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this proposed rule would decrease the current rate of assessment of 0.45 percent of the market value of porcine animals to 0.40 percent, and decrease the amount of assessment per pound due on imported pork and pork products (two- to four-hundredths of a cent per pound) to reflect the combined effect of the increase in the 2001 average price for domestic barrows and gilts (about 7 percent) and the proposed decrease in the assessment rate. The assessment decrease would decrease annual funding of the promotion, research, and consumer information program by an estimated $5 million to $6 million with an estimated $290,000 decrease in importer assessments. The assessment decrease reflects the National Pork Producers Delegate Body's (Delegate Body) desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also would bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. A Harmonized Tariff Schedule (HTS) number for prepared or preserved pork also would be added to the regulations.

DATES: Written comments must be received by August 19, 2002.

ADDRESSES: Send a copy of your comments to Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Comments may also be submitted electronically to: *porkcomments@usda.gov* or by facsimile at 202/720–1125. All comments should reference the docket number LS–02–09, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-pork.htm* or during regular business hours, 8:00 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Office of Management and Budget has waived the review process required by Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Department of Agriculture (Department) stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Department would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Department's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 81,000 pork producers and 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This proposed rule would decrease the rate of the assessment from 0.45 percent of the market value of porcine animals to 0.40 percent, and would decrease the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.45 percent to 0.40 percent and decreasing the assessment on imported pork and pork products would result in an estimated decrease in assessments of $5 million to $6 million over a 12-month period. Of that amount, approximately $290,000 would be attributed to the decrease in importer assessments. The gross market value of all swine marketed in the United States during 2000 exceeded $11.7 billion. This decrease would reduce the assessment burden on producers. The adjustment in importer assessments also would bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. A HTS number for prepared or preserved pork also would be added to the regulations. Therefore, the economic impact of the proposed assessments will not be a significant part of the total market value of swine. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, 62 FR 26205, 63 FR 45936, 64 FR 44643, and 66 FR 67071) and assessments began on November 1, 1986. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635), and to 0.45 percent effective September 3, 1995 (60 FR 29963). Based on the assessment rate of 0.45 percent, the total annual assessments collected during 2001 were approximately $57.4 million. Assessments on imported pork and pork products accounted for about $3.7 million of the total.

The Order requires that producers pay to the National Pork Board an assessment of 0.45 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork producers were produced.

The Act and § 1230.71 of the Order contain provisions for adjusting the initial rate of assessment. The Delegate Body has the responsibility to recommend the rate of assessment to the Department. The 2002 Delegate Body, at its annual meeting on March 1–2, 2002, in Denver, Colorado, voted to recommend to the Department that the rate of assessment of 0.45 percent be decreased to 0.40 percent. There were 167 Delegate Body members appointed by the Secretary in 2002. At the Delegate Body meeting 144 delegates were present during voting and voted 50,750.1 valid share votes. States and importers are allotted one share per $1,000 of the aggregated amount of assessment collected. There were 29,974.9 share votes cast in favor of the 0.05 percent decrease.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the rate of assessment or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

This proposed rule would decrease the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule December 28, 2001, and effective on January 28, 2002 (66 FR 67071). The assessment decrease reflects the Delegate Body's desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also would bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. A HTS number for prepared or preserved pork also would be added to the regulations.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Agricultural Handbook No. 697 "Conversion Factors and Weights and Measurers." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by the Department's, AMS, Livestock and Grain Market News (LGMN) Branch. Finally, the equivalent value is multiplied by the applicable assessment rate due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

Since the last adjustment was made in the amount of the assessment due on live hogs and imported pork and pork products (66 FR 67071), there has been a change in the way LGMN Branch reports hog prices. Due to the implementation of the Livestock Mandatory Price Reporting Program, LGMN no longer report hogs on a live basis because most of the industry moved to buying hogs on a carcass basis. Thus, the Iowa-Southern Minnesota hog reports are now reported on a carcass basis defined by muscle and fat. Previously, these reports were quoted for 49–52 percent lean yield barrows and gilts weighing an average of 240–280 pounds live weight. Therefore, the only consistent price available for hogs for calendar year 2001 is the average base carcass price for 51–52 percent lean hogs derived from the National Base Lean Hog Carcass Slaughter Cost Report. To convert this figure to a live basis, it must be multiplied by 74 percent, the average dressing percentage of porcine animals in the United States as recognized by the industry.

The average annual market price increased from $42.70 per hundredweight in 2000 to $45.87 per hundredweight in 2001, an increase of about 7 percent. The combined effect of the proposed assessment rate decrease and the increase in the average annual market price would result in a decrease in assessments for all HTS numbers listed in the table in § 1230.110(b), 66 FR 67071; December 28, 2001, of an amount equal to two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths to nine-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of pork and pork products imported during 2001, the proposed decreases in the assessment amounts would result in an estimated $290,000 decrease in importer assessments over a 12-month period. In addition, this rule

This proposed rule provides for a 30-day comment period which is deemed appropriate because the proposed rule provides for a decrease in the assessment rate and it is intended to implement this change, if adopted, as soon as possible so that the funds representing the decrease will be available to pork producers and the pork industry at the earliest possible date.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

3. Section 1230.112 is revised to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.40 percent of market value.

Dated: July 15, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Office of Management and Budget has waived the review process required by Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking on the subject matter of this rule.

OMB Control Number: 0560–0210.

Type of Request: Request for a reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: Apple operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify: (1) The pounds

expressed in cents per kilogram, four-hundredths to nine-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of pork and pork products imported during 2001, the proposed decreases in the assessment amounts would result in an estimated $290,000 decrease in importer assessments over a 12-month period. In addition, this rule adds a new HTS number—1602.49.9000—to the table in § 1230.110(b). This HTS number has been assigned to prepared or preserved pork. In 2001, over 2,114 metric tons of prepared or preserved pork products were imported into the United States as reported by the Department of Commerce.

This proposed rule provides for a 30-day comment period which is deemed appropriate because the proposed rule provides for a decrease in the assessment rate and it is intended to implement this change, if adopted, as soon as possible so that the funds representing the decrease will be available to pork producers and the pork industry at the earliest possible date.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.40 percent Customs Entered Value.
0103.91.0000	0.40 percent Customs Entered Value.
0103.92.0000	0.40 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and Pork Products	Assessment	
	cents/lb	cents/kg
0203.11.0000	.25	.551150
0203.12.1010	.25	.551150
0203.12.1020	.25	.551150
0203.12.9010	.25	.551150
0203.12.9020	.25	.551150
0203.19.2010	.29	.639334
0203.19.2090	.29	.639334
0203.19.4010	.25	.551150
0203.19.4090	.25	.551150
0203.21.0000	.25	.551150
0203.22.1000	.25	.551150
0203.22.9000	.25	.551150
0203.29.2000	.29	.639334
0203.29.4000	.25	.551150
0206.30.0000	.25	.551150
0206.41.0000	.25	.551150
0206.49.0000	.25	.551150
0210.11.0010	.25	.551150
0210.11.0020	.25	.551150
0210.12.0020	.25	.551150
0210.12.0040	.25	.551150
0210.19.0010	.29	.639334
0210.19.0090	.29	.639334
1601.00.2010	.34	.749564
1601.00.2090	.34	.749564
1602.41.2020	.37	.815702
1602.41.2040	.37	.815702
1602.41.9000	.25	.551150
1602.42.2020	.37	.815702
1602.42.2040	.37	.815702
1602.42.4000	.25	.551150
1602.49.2000	.34	.749564
1602.49.4000	.29	.639334
1602.49.9000	.29	.639334

3. Section 1230.112 is revised to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.40 percent of market value.

Dated: July 15, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18258 Filed 7–18–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

RIN 0560–AG63

Apple Market Loss Assistance Payment Program II

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule establishes the Apple Market Loss Assistance Payment Program II. The program will provide direct payments to apple producers to provide relief due to the low prices received for their 2000 crop.

DATES: Comments on this rule must be received on or before August 19, 2002, to be assured consideration. Comments on the information collections in this rule must be received by September 17, 2002 to be assured consideration.

ADDRESSES: Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–7901 or e-mail: *danielle_cooke@wdc.usda.gov.* Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at *http://www.fsa.usda.gov/dafp/psd/.*

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, FSA; telephone (202) 720–1919

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking on the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with this rule. Before any judicial action may be brought concerning this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking on the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies are: 10.075—Special Apple Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request to OMB for the approval of the Apple Market Loss Assistance Payment Program application as necessary for the proper functioning of the program.

Title: Apple Market Loss Assistance Payment Program.

OMB Control Number: 0560–0210.

Type of Request: Request for a reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: Apple operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify: (1) The pounds of apples produced and harvested during the 2000 crop year; (2) receipt of no other payments by the apple operation for the market loss of apples from any other Federal program, except Federal Crop Insurance; and (3) that they understand the apple operation may be randomly selected by the Commodity Credit Corporation (CCC) to provide documentation during a spot check to verify claims. The information collection will be used by CCC to determine the program eligibility of apple operations. CCC considers the information collected essential to prudent eligibility determinations and payment calculations. Additionally, without accurate information on apple operations, the national payment rate would be inaccurate, payments could be made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Apple Operations.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10,840 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Grady Bilberry, Director, Price Support

Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512 or telephone (202) 720–7901.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule

actively engaged during the 2000 crop year. At the close of the sign-up period, a national per-pound payment rate will be determined by dividing the available $75,000,000 by the total pounds of apples from all applicants, with no operation exceeding 5,000,000 pounds. Because outlays for this program are fixed, the national average payment rate and individual payments can only be calculated after the total eligible

1470.113 Misrepresentation and scheme or device.
1470.114 Estates, trusts, and minors.
1470.115 Death, incompetency, or disappearance.
1470.116 Maintenance and inspection of records.
1470.117 Refunds; joint and several liability.

Subpart B—Apple Market Loss Payment Program II

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Verifiable production records means

programs, except an indemnity provided under a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Apply for payments during the application period.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for

Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512 or telephone (202) 720–7901.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Section 741 of Public Law 107–76 directs the Secretary of Agriculture to use $75 million of funds of the Commodity Credit Corporation (CCC) to provide assistance to producers for the 2000 crop of apple production.

During the past few years a number of factors have produced a serious economic crisis that threatens the existence of apple producers throughout the United States. Apples are grown in every state in the continental United States, and are grown commercially in 36 states. Twenty years of increasing world production, stagnant domestic consumption, natural disasters and low-priced juice imports have altered the blueprint for economic success in the apple industry.

This rule would address the situation by establishing a new program. The payments provided by this rule will offset a portion of the per-bushel losses producers have incurred marketing apples in the U.S. Those eligible will receive an immediate payment to help pay operating expenses and meet other financial obligations.

The Act, as amended by Public Law 107–117, provides that producers of apples can receive a payment on a per-pound basis for 2000 crop production from a qualifying operation, up to a maximum of 5,000,000 pounds per separate apple operation. To be eligible, apple producers must: (1) Have produced and harvested apples during the 2000 crop year, (2) not have received a payment from any other Federal program, other than crop insurance, for the same market loss, and (3) apply for cash payments during the application period for each apple operation. Public Law 107–76 also specified that benefits under the program would not be subject to limitations, other than those provided for in the statute. Therefore, producers do not have to be actively engaged in the business of producing and marketing agricultural products at the time of application if the producer was actively engaged during the 2000 crop year. At the close of the sign-up period, a national per-pound payment rate will be determined by dividing the available $75,000,000 by the total pounds of apples from all applicants, with no operation exceeding 5,000,000 pounds. Because outlays for this program are fixed, the national average payment rate and individual payments can only be calculated after the total eligible quantity of apple production has been determined. Information provided on applications will be subject to verification by FSA. Applications to be verified will be selected randomly. Penalties for false certifications can be easily assessed and are expected to minimize such certifications. Apple operations may, during the applicable period, apply in person at FSA county offices during regular business hours. Alternatively, program applications may be obtained by mail, telephone, and facsimile from their designated FSA county office or obtained via the Internet. The Internet website is located at *www.fsa.usda.gov/dafp/psd/*.

List of Subjects in 7 CFR Part 1470

Apple, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 1470 is proposed to be amended as follows:

PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

1. The authority citation for part 1470 is revised to read as follows:

Authority: Sec. 811, Pub. L. 106–387, 114 Stat. 1549; Sec. 741, Pub. L. 107–76, 115 Stat. 704; Sec. 102, Pub. L. 107–117, 115 Stat. 2230.

2. Redesignate §§ 1470.1 through 1470.16 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Apple Market Loss Payment Program

3. Add subpart B to part 1470 to read as follows:

Subpart B—Apple Market Loss Assistance Payment Program II

Sec.

1470.101 Applicability.
1470.102 Administration.
1470.103 Definitions.
1470.104 Time and method of application.
1470.105 Eligibility.
1470.106 Proof of production.
1470.107 Availability of funds.
1470.108 Applicant payment quantity.
1470.109 Payment rate and apple operation payment.
1470.110 Offsets and withholdings.
1470.111 Assignments.
1470.112 Appeals.
1470.113 Misrepresentation and scheme or device.
1470.114 Estates, trusts, and minors.
1470.115 Death, incompetency, or disappearance.
1470.116 Maintenance and inspection of records.
1470.117 Refunds; joint and several liability.

§ 1470.101 Applicability.

(a) The regulations in this subpart are applicable to producers of the 2000 crop of apples. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program II in accordance with section 741 of Public Law 107–76, as amended by Public Law 107–117. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

§ 1470.102 Administration.

(a) The Apple Market Loss Assistance Payment Program II shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

§ 1470.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Apple Market Loss Assistance Payment Program II established by this subpart.

Administrator means the FSA Administrator.

Apple operation means any person or group of persons who, as a single unit as determined by CCC, produces and market apples in the United States.

Application means Form CCC–891, the Apple Market Loss Assistance Payment Application.

Application period means the date established by the Deputy Administrator for producers to apply for program benefits.

CCC means the Commodity Credit Corporation.

County committee means the FSA county committee.

County office means the local FSA office.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

Eligible production means apples that were produced in the United States anytime during the 2000 crop year, up to a maximum of 5,000,000 pounds per apple operation.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Payment pounds means the pounds of apples for which an operation is eligible to be paid under this subpart.

Person means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

§ 1470.104 Time and method of application.

(a) Apple producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office.

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in § 1470.103. Applications should be submitted to the FSA county office serving the county where the apple operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in the risk of an apple operation's total production must certify to the information on the Application before the Application will be considered complete.

(d) The apple operation requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 1470.105 Eligibility.

(a) To be eligible to receive a payment under this subpart, an apple operation must:

(1) Have produced apples in the United States at some time during the 2000 crop year;

(2) Not have been compensated for the same market loss by any other Federal programs, except an indemnity provided under a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Apply for payments during the application period.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution, or their duly authorized representatives must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) All payments under this part are subject to the availability of funds.

§ 1470.106 Proof of production.

(a) Apple operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced during the 2000 crop year to verify production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The 2000 crop year production must be documented using actual records.

(b) All persons involved in such apple operation producing apples during the 2000 crop year shall provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on the Application. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, apple operations will be determined ineligible for benefits.

§ 1470.107 Availability of funds.

The total available program funds shall be $75 million as provided by

section 741 of Public Law 107–76 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

§ 1470.108 Applicant payment quantity.

(a) The applicant's payment quantity of apples will be determined by CCC, based on the production of the 2000

§ 1470.113 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent

payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to

Management activities classified within the "Support Activities for Forestry" industry (North American Industry Classification System (NAICS) 115310). The current size standard is $6 million. This action is warranted in light of increased emphasis by the Federal Government on removing biomass fuel from the nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance

these areas. USFS and BLM now rely heavily on contractors for fighting these fires. In fact, these agencies plan on expanding their use of private sector contractors by increasing their contract requirements and by moving toward a nationwide approach, especially in the area of fire suppression. These agencies require contractors to provide specialized long-term (five to seven years) certifiable training to fire-crew

Because Forest Fire Suppression and Fuels Management activities generated significant private sector activity only recently, the U. S. Bureau of the Census has not published specific information on firms engaged in these activities. Also, currently available Census Bureau data on the Support Activities for Forestry industry do not capture the significant increases in Forest Fire Suppression and Fuels Management activities. For example, contract awards

section 741 of Public Law 107–76 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

§ 1470.108 Applicant payment quantity.

(a) The applicant's payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5,000,000 pounds per distinct operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

§ 1470.109 Payment rate and apple operation payment.

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and shall be calculated, to the extent practicable, by dividing the $75 million available for the Apple Market Loss Assistance Payment Program II by the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is expended.

§ 1470.110 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of 7 CFR part 1403.

§ 1470.111 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

§ 1470.112 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

§ 1470.113 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.117(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1470.114 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1470.115 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

§ 1470.116 Maintenance and inspection of records.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1470.117 Refunds; joint and several liability.

(a) In the event of an error on an Application, a failure to comply with any term, requirement, or condition for payment arising under the Application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this chapter.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

Signed in Washington, DC, on June 28, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–18218 Filed 7–18–02; 8:45 am]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE89

Small Business Size Standards; Forest Fire Suppression and Fuels Management Services

AGENCY: U. S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to establish a $15 million size standard for the Forest Fire Suppression and Fuels Management activities classified within the "Support Activities for Forestry" industry (North American Industry Classification System (NAICS) 115310). The current size standard is $6 million. This action is warranted in light of increased emphasis by the Federal Government on removing biomass fuel from the nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires.

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via E-mail to *SIZESTANDARDS@sba.gov*. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA has received requests from firms in the Forestry industry to either increase the $6 million size standard for the Support Activities for Forestry industry, or create a separate size standard under this industry for Forest Fire Suppression and Fuels Management Services. [Effective February 22, 2002, the size standard for NAICS 115310 increased from $5 million to $6 million as part of an inflation adjustment to SBA's monetary size standards (see 67 FR 3041, dated January 23, 2002)]. These firms believe that this action is warranted in light of increased emphasis by the Federal Government on removing biomass fuels from the nation's forests, the dramatic increase in funding for this effort, and the Government's growing reliance upon the private sector to perform fuels management tasks and to suppress forest fires. Funding for these requirements increased from $500 million in fiscal year 1999 to $1.9 billion in fiscal year 2001. For fiscal year 2002, the funding level is proposed to increase to $2.2 billion. To meet the various fire suppression and fuels management requirements issued by the United States Forest Service (USFS) and Bureau of Land Management (BLM), firms need to invest in new capital equipment, such as fire engines, helicopters, brush cutters, and yarders. In addition, the massive buildup of biomass fuels in the forest and severe droughts in the Southeastern and Western sections of the United States have resulted in devastating wildfires in these areas. USFS and BLM now rely heavily on contractors for fighting these fires. In fact, these agencies plan on expanding their use of private sector contractors by increasing their contract requirements and by moving toward a nationwide approach, especially in the area of fire suppression. These agencies require contractors to provide specialized long-term (five to seven years) certifiable training to fire-crew chiefs and to crews, as well as to obtain USFS certification for fire-fighting equipment. In addition, because the contractors have fire-fighting crews and equipment meeting USFS certification standards, USFS and BLM have begun to include "prescribed burn" services in their fuels management requirements. These factors caused company revenues to dramatically increase over the last three years to the point where many businesses involved in these activities exceed or may soon exceed the current $6 million size standard, causing the pool of eligible small businesses in this activity to seriously decline. If this continues, these firms argue, Federal agencies could be hampered in using Government procurement preference programs for small business. One organization representing this industry recommends a 500-employee size standard. It claims that an employee-based size standard would allow firms "to better manage their resources and plan for capital expansion." It also states that the Logging industry, a related industry, currently has an employee-based size standard and the two industries should have the same size standard. This organization also recommends, as an alternative, a $27.5 million size standard. To support this recommended size standard, it estimates the amount of revenues generated by a firm that provides 20 fire crews (a crew consists of 20 people) for 90 days for forest fire suppression services. Revenues from that effort alone could amount to $10.8 million.

In recent years USFS and BLM have come to rely heavily on the private sector in the forestry industry to suppress forest fires and perform fuels management duties. As a result, the firms in the forest industry choosing to go into this industry need to invest in capital equipment and develop professional fire crews and fire chiefs certifiable by USFS. Since firms in this emerging industry utilize significantly more capital equipment and specially-trained personnel than for other forestry activities, SBA is proposing a size standard for Forest Fire Suppression and Fuels Management that is separate from other forestry activities.

Because Forest Fire Suppression and Fuels Management activities generated significant private sector activity only recently, the U. S. Bureau of the Census has not published specific information on firms engaged in these activities. Also, currently available Census Bureau data on the Support Activities for Forestry industry do not capture the significant increases in Forest Fire Suppression and Fuels Management activities. For example, contract awards in these activities to firms in the state of Oregon alone, increased from $29 million in fiscal year 1998 to $173 million in fiscal year 2000. Consequently, SBA cannot rely on the Census Bureau data to assess the size standard for the Support Activities for Forestry industry or for Forest Fire Suppression and Fuels Management. SBA conducted an extensive review of the Support Activities for Forestry industry and several other closely related forestry industries and concluded that the Census Bureau data could not support a change to the current $6 million size standard. Therefore, SBA collected data from firms in the industry and from USFS and BLM to assess the size standard for Forest Fire Suppression and Fuels Management. The information consisted of Federal funding for Federal, state, and local communities' initiatives, procurement statistics and procurement forecasts, company revenues and employees, and capital investments. If this rule is adopted, SBA will monitor U. S. Bureau of the Census data, as well as Federal procurement and other industry data to continue to assess the impact that this increased funding is having on the structure of small businesses in these activities.

Since Forest Fire Suppression and Fuels Management is a segment of the Support Activities for Forestry industry, SBA is adding a footnote to the table of size standards defining the activities covered. It explains that firms in this industry provide services to fight forest fires and that these firms usually have fire-fighting crews and equipment. It also includes firms that provide services to clear land of hazardous materials that fuel forest fires and that the treatments used include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling. SBA invites comment on this definition so that it is inclusive of all activities currently performed in these areas.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards. SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's web site at http:/

www.sba.gov/library/soproom.html) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other

the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard

this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller

numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per

SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a

BLM expand their contracting for these activities to other parts of the country.

SBA obtained size data on 15 firms. The average firm performing Forest Fire Suppression and Fuels Management have yearly revenues of $6 million and 164 employees. These levels are significantly greater than the $950,000 average revenue size and 11 employee average size of the nonmanufacturing anchor group. These data, although limited, indicate that firms engaged in

www.sba.gov/library/soproom.html) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act, 15 U.S.C. 632 (a)(3), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristic. SBA has in place two "base" or "anchor" size standards that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the "typical industry."

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry'average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs as an evaluation factor. SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50 percent of total industry receipts are generated by firms of $7.5 million in receipts and less This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50 percent of total industry receipts. Viewed in isolation, this higher figure of the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent, and 70 percent, as well as the 50 percent comparison discussed above. Usually, SBA uses information based on the most recent economic census conducted by the Department of Commerce's Bureau of the Census. In this particular case, the change in Federal policy, the massive infusion of Federal monies, and the increased reliance upon the private sector for these services occurred since 1997, the date of the last economic census. This information, along with information specific to Forest Fire Suppression and Fuels Management segment under NAICS Code 115310 is not reflected in the latest census data. Therefore, SBA gathered the pertinent data from the various firms in this industry, which it will use along with the Census data.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. SBA uses nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compares the proportion of industry receipts generated by the four largest firms in the industry'generally referred to as the "four-firm concentration ratio"with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review, while its comparison groups also average less than 40 percent.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Size Standard for the Forest Fire Suppression and Fuels Management and Sub-Industry: The U.S. Bureau of the Census has not published specific data on firms engaged in Forest Fire Suppression and Fuels Management since these activities have historically been a small segment of the Support Activities for Forestry industry. Consequently, the analysis of data collected on businesses engaged in Forest Fire Suppression and Fuels Management cannot be fully evaluated in terms of the methodology described above.

To assess a size standard for Forest Fire Suppression and Fuels Management, SBA collected data from firms in the northwestern part of the United States. Changes in contracting for these forestry services are impacting the entire industry, especially in the northwestern part of the country. Because the Government owns a vast proportion of the lands in the northwest, and because of the increased emphasis on Forest Fire Suppression and Fuels Management on Federal lands, the problem of small businesses rapidly outgrowing the size standard arose in these states. This issue is not limited to the Northwest, as the Federal Government has begun expanding it emphasis on contracting for these services to the remainder of the country. USFS and BLM expect similar situations to develop nationwide where small businesses may rapidly outgrow the current size standard.

The issue of increased contracting began in the northwestern part of the country. Although these firms represent a limited segment of the industry, the Federal Government currently expends a large proportion its forestry contract dollars in this part of the country. In fiscal year 2000, 41 percent of award dollars for Support Activities for Forestry were awarded to firms in the state of Oregon. SBA believes that the firms in the northwest represent the types of firms that will engage in Fuels Management and Fire Suppression throughout the country as USFS and BLM expand their contracting for these activities to other parts of the country.

SBA obtained size data on 15 firms. The average firm performing Forest Fire Suppression and Fuels Management have yearly revenues of $6 million and 164 employees. These levels are significantly greater than the $950,000 average revenue size and 11 employee average size of the nonmanufacturing anchor group. These data, although limited, indicate that firms engaged in these activities tend to be greater in size than the typical nonmanufacturing industry and a size standard well above $6 million is supportable.

In addition, SBA found that start up costs for Forest Fire Suppression and Fuels Management firms are much higher than those in the nonmanufacturing anchor group. These firms must invest in a variety of equipment, purchase specialized tools and safety gear, and provide specialized training to forest firefighters. The capital equipment includes yarders, earth moving equipment, custom fire trucks, helicopters, and communication equipment and mobile units. Fire hoses, fire-retardant clothing for their crews, and other fire-fighting equipment usually last no more than 18 months and often must be replaced two or three times a year, depending on the intensity of the fire season. Furthermore, each year at the start of the fire season and again at the time of a forest fire these firms must meet USFS certification requirement for their equipment and fire crews. Because of the dangers and risks associated with fighting forest fires and performing prescribed burns, these firms also incur higher insurance costs than firms in the nonmanufacturing anchor group. These equipment costs, training costs, and certification requirements influence the size of firms that engage in Fire Suppression and Fuels Management activities and support a size standard much higher than $6 million.

Federal procurement trends also support an increase to the current size standard and the creation of a specific size standard for Forest Fire Suppression and Fuels Management. Most Federal procurement actions reported in the Support Activities for Forestry industry are for Forest Fire Suppression and Fuels Management. Award dollars to small businesses in these industries have decreased 20 percent from fiscal year 1998 to fiscal year 2000. In addition, awards to small businesses in the Forest Fire Suppression and Fuels Management industry have decreased from 89 percent in fiscal year 1998 to approximately 50 percent in fiscal year

2000. As mentioned above, Federal funding in this area has drastically increased from $500 million in fiscal year 1999 to $1.9 billion in fiscal year 2001. For fiscal year 2002, funding is expected to top $2.2 billion. The rapid drop in small business awards has alarmed Federal agencies.

BLM and the USFS are extremely concerned that the increased Federal emphasis on forest management with its

SBA recognizes that firms performing Forest Fire Suppression and Fuels Management activities have higher capital costs because of the equipment and personnel training investments. In many ways, they are similar to firms in the construction industry, i.e., firms in NAICS Subsector 234, Heavy Construction, having a $28.5 million size standard, and firms under NAICS 235930, Excavation Contractors, having

other factors that may show whether a firm can exercise a controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm below the proposed size standard in the Forest Fire Suppression and Fuels Management Activities would be of a sufficient size to dominate its field of operation. For Forest Fire Suppression

standard was too high for Fire Suppression and Fuels Management.

Like firms in Fire Suppression and Fuels Management, Excavation Contractors, which have an $12 million size standard, are engaged in clearing land and making substantial investments in capital equipment. However, firms involved in Fire Suppression and Fuels Management also have the added costs of intensive

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible

procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those for contracts awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Other Federal agencies use SBA size standards for a variety of

2000. As mentioned above, Federal funding in this area has drastically increased from $500 million in fiscal year 1999 to $1.9 billion in fiscal year 2001. For fiscal year 2002, funding is expected to top $2.2 billion. The rapid drop in small business awards has alarmed Federal agencies.

BLM and the USFS are extremely concerned that the increased Federal emphasis on forest management with its massive monetary infusion into their agencies, plus their growing reliance on private industry, caused many small businesses to outgrow the current size standard of $6 million. These two Federal agencies do not have the personnel to meet the increasing requirements placed upon them. They have begun to rely on the private sector and have increased the amount of contracting for all forestry activities, mostly for Fire Suppression and Fuels Management. Historically, the contractors that performed on these contracts have been small businesses. As these small business contractors take on significant amounts of new work over a relatively short period of time, several contractors exceeded the $6 million size standard and more will likely exceed the size standard over the next two years.

In addition, these Federal agencies, along with several firms, expressed concern over the fact that the Forest Fire Suppression and Fuels Management industry is relatively small (200 to 300 firms), unique, and most of this industry's revenues are derived from Federal contracts. Firms in the northwestern part of the United States point out that the Federal Government owns most of the land in the western part of the country, and that USFS and BLM manage this land. For most of these firms, their industry's economic viability relies heavily upon the actions of the Federal Government.

These circumstances strongly reinforce the industry structure factors in arguing for a separate size standard for Forest Fire Suppression and Fuels Management for a higher size standard higher than $6 million.

The considerations described above support a higher size standard for Fuels Management and Fire Suppression but do not provide sufficient information to indicate what range of size standards would be appropriate for these activities. Therefore, SBA decided to select a size standard for Forest Fire Suppression and Fuels Management that is similar to the size standard for industries that perform similar activities with equipment used in Forest Fires Suppression and Fuels Management.

SBA recognizes that firms performing Forest Fire Suppression and Fuels Management activities have higher capital costs because of the equipment and personnel training investments. In many ways, they are similar to firms in the construction industry, i.e., firms in NAICS Subsector 234, Heavy Construction, having a $28.5 million size standard, and firms under NAICS 235930, Excavation Contractors, having a $12 million size standard. Firms in these industries have large investments in capital equipment like firms in Forest Fire Suppression and Fuels Management. SBA believes that adopting a $12 million size standard similar to that of Excavation Contractors is too low because of the additional mandated training investments for fire crews and fire crew chiefs. However, the $28.5 million size standard is extremely high for Forest Fire Suppression and Fuels Management, as it would make nearly all firms in this industry small. Given the uncertainty of industry data provided and the fact that firms performing Forest Fire Suppression and Fuels Management have rapidly increasing revenues that exceed or will soon exceed $12 million, SBA is proposing a $15 million size standard. This size standard is about one-half the Heavy Construction size standard, but sufficiently above the Excavation Contractor's size standard to account for additional training and certification costs to businesses engaged in Forest Fire Suppression and Fuels Management.

SBA recognizes how this industry is developing. The structure of this industry is Federally dependent and the increased Government contracting for these services has caused rapid growth in these firms. Therefore, SBA considers that at the proposed $15.0 million size standard firms will be able to grow to an appropriate level without losing their small business status, but not to a level where a few firms would be able to control a significant portion of Federal contracts at the expense of other small businesses.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm below the proposed size standard in the Forest Fire Suppression and Fuels Management Activities would be of a sufficient size to dominate its field of operation. For Forest Fire Suppression and Fuels Management Services, a firm with a $15 million size standard would generate approximately 2 percent of receipts based on fiscal year 2000 funding levels. These levels of market share effectively preclude any ability for a firm at or below the proposed size standards to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered several alternative size standards. One of the Fuels Management industry groups recommends a $27.5 million size standard for Forest Fire Suppression and Fuels Management. The $27.5 million size standard equates to the previous size standard for the General Construction and Heavy Construction subsectors. [Effective February 22, 2002, the $27.5 size standard increased to $28.5 million as part of an inflation adjustment to SBA's monetary size standards (see 67 FR 3041, dated January 23, 2002)]. Firms in these subsectors usually have major capital equipment investments, similar to those in the Fire Suppression and Fuels Management industry. Firms involved in the General and Heavy Construction subsectors are primarily responsible for an entire construction project. These construction projects tend to be large in dollar value and, because of the nature of construction industry, lend themselves to a substantial amount of subcontracting. The regulation at 13 CFR 125.6, as implemented under the Federal Acquisition Regulations, 52–219–14, Limitation in Subcontracting Clause, qualifying small firms are permitted to subcontract out up to 85 percent of the cost of the contract. Unlike these types of construction firms, companies involved in Fire Suppression and Fuels Management must perform greater than 50 percent of the contract costs with its own employees. These types of contracts do not lend themselves to much subcontracting and normally have a lower dollar award threshold than general construction awards. In addition, by adopting a $27.5 million size standard, SBA would be making all but approximately 20 firms in the entire Support Activities for Forestry industry small. Therefore, SBA decided that a $27.5 million size standard was too high for Fire Suppression and Fuels Management.

Like firms in Fire Suppression and Fuels Management, Excavation Contractors, which have an $12 million size standard, are engaged in clearing land and making substantial investments in capital equipment. However, firms involved in Fire Suppression and Fuels Management also have the added costs of intensive training and certification for crew chiefs and crews, and certification costs for their equipment at the time of contract award and at the time of each fire. Because of these training and certification costs, SBA decided that a $12 million size standard was too low.

The Fuels Management group also recommends the 500-employee Logging industry size standard for Forest Fire Suppression and Fuels Management. SBA did not accept this recommendation for two reasons. First, businesses engaged in Forest Fire and Fuels Management are not primarily logging firms. A search of logging firms registered in SBA's PRO-Net data base lists only 25 businesses out of 126 that are involved in Forest Fire Suppression or Fuels Management Services. Of these 25, none had more than 100 employees. Second, almost all firms engaged in Forest Fires Suppression and Fuels Management employ much fewer than 500 employees. SBA's PRO-Net data base lists only 7 businesses that has more than 100 employees engaged in Forest Fire Suppression and Fuels Management Services. SBA is concerned that a 500-employee size standard may have the effect of allowing a few firms to grow into well-established mid-sized firms at the expense of much smaller firms.

SBA welcomes public comments on its proposed size standard for the Forest Fire Suppression and Fuels Management industry. SBA is concerned with how the proposed size standards may negatively impact those qualified under the current size standards. Comments supporting an alternative to the proposal, including the option of retaining the size standards at $6 million, $27.5 million or 500-employees size standards discussed above, should explain why the alternative would be preferable to the proposed size standard, and how the alternative impacts current small businesses.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a size standard for Forest Fire Suppression and Fuels Management is needed to better define small businesses engaged in these activities.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, approximately 50 to 60 additional firms will obtain small business status and become eligible for these programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those for contracts awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses sufficient to evaluate the impact of size standards changes. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs, (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards, and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Under this program SBA estimates that $100,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 50 to 60 additional businesses will likely result in only one or two small business guaranteed loans to businesses in this industry.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

Awards to small businesses for Forest Fire Suppression and Fuels Management have decreased 27 percent over the last three fiscal years. Small business award dollars to firms in the Forestry Services Activities, most of which were for Forest Fire Suppression and Fuels Management, amounted to

$185 million. If this rule becomes final, small business status would be restored to several firms that have lost small business status because of the rapid growth in federal funding and contracting in this industry. SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year ($185 million × 27 percent) under the small business set-aside program, contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have

in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small

keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What Is the Need for and Objective of the Rule?

A separate size standard for the Forest

known and being considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and SBA's knowledge of contracting in these areas, SBA estimates that small business coverage could increase by 12 percent of total revenues in this activity. These revenue estimates were calculated from the size distributions of the parent industries in

Support Activities for the Forestry industry. In researching firms engaged in Forest Fire Suppression and Fuels Management Services, SBA concluded that no single size standard could adequately define small business in the whole industry. The size standard would be either too low for Forest Fire Suppression and Fuels Management Services or too high for other industry activities, such as forestry consulting, timber valuation, and timber pest

$185 million. If this rule becomes final, small business status would be restored to several firms that have lost small business status because of the rapid growth in federal funding and contracting in this industry. SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million per year ($185 million × 27 percent) under the small business set-aside program, the 8(a) and HUBZone Programs, or unrestricted contracts.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Other than small businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 50 to 60 additional firms could become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or small disadvantaged businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers cannot be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standard Forest Fire Suppression and Fuels Management is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in Forest Fire Suppression and Fuels Management Services. As described in the above Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses engaged in Forest Fire Suppression and Fuels Management competing for Federal Government procurements reserved for small business, and small disadvantaged businesses and HUBZone businesses eligible for price preferences, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for Forest Fire Suppression and Fuels Management services may be set aside for small business as the pool of eligible small businesses expands. As discussed in the preamble, SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $50 million.

The proposed size standard may affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with USFS and BLM regarding a possible increase to the Forest Fire Suppression and Fuels Management size standard. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule on the Forest Fire Suppression and Fuels Management Services industry addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What Is the Need for and Objective of the Rule?

A separate size standard for the Forest Fire Suppression and Fuels Management industry more appropriately defines the size of businesses in this industry activity that SBA believes should be eligible for Federal small business assistance programs. The significant increase in Federal funding and the Federal Government's increased use of contractors to perform these services have caused small businesses to grow beyond the current size standard. Other small businesses are likely to outgrow the current size standard within the next two years. A review of the latest available industry data and information on recent trends in the Forestry industry provided by businesses and associations in the Forestry industries, USFS, and BLM indicate that these growing businesses are relatively small and should continue to be eligible for small business programs. SBA welcomes additional data and information on the Forest Fire Suppression and Fuels Management Services industry that may be useful in assessing the size standard and the impact of the proposed size standard on small businesses.

(2) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that 200 to 300 businesses are engaged in Forest Fire Suppression and Fuels Management activities. These businesses come from the Forestry and Logging Subsector, and Support Activities for Forestry (NAICS codes 113110, 113210, 113310, and 115310). As this is an emerging industry, SBA developed its estimate from discussions with, and information provided by the USFS, BLM, and industry groups. From these discussions, SBA estimates approximately 50% of these firms are small businesses, many of which may be currently at or just below the $6.0 million threshold. If this rule were adopted, 50 to 60 additional businesses would be considered small as a result of this rule. Although this may not represent a substantial number of small businesses, SBA is preparing an IRFA to ensure that the impact on small businesses of higher size standards are known and being considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and SBA's knowledge of contracting in these areas, SBA estimates that small business coverage could increase by 12 percent of total revenues in this activity. These revenue estimates were calculated from the size distributions of the parent industries in which Forest Fire Suppression and Fuels Management service firms are presently classified.

In lieu of survey data on Forest Fire Suppression and Fuels Management businesses, SBA welcomes additional data and comments on the impact of the proposed size standard on small businesses in this sub-industry.

(3) What Are the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

(5) What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

As discussed in the preamble, SBA considered several alternative size standards and their implications on small businesses. First, SBA considered retaining a single size standard for the Support Activities for the Forestry industry. In researching firms engaged in Forest Fire Suppression and Fuels Management Services, SBA concluded that no single size standard could adequately define small business in the whole industry. The size standard would be either too low for Forest Fire Suppression and Fuels Management Services or too high for other industry activities, such as forestry consulting, timber valuation, and timber pest control. Establishing two size standards for this industry would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA considered maintaining the $6 million size standard for Forest Fire Suppression and Fuels Management, however as discussed in the preamble, circumstances strongly reinforce the industry structure factors in arguing for a size standard higher than $6 million.

For the Forest Fire Suppression and Fuels Management sub-industry, SBA assessed the higher size standards of $27.5 million and 500 employees, as requested by several organizations. Both size standards were viewed as too high for these activities and the types of firms performing Forest Fire Suppression and Fuels Management services. Almost all firms currently providing these services to USFS and BLM are significantly smaller than $27.5 million and 500 employees. Adopting size standards at either of these levels may result in Federal contracting being concentrated among a few firms, and therefore, diminish opportunities for currently defined small businesses.

SBA also considered establishing a $12 million size standard for this sub-industry, and believed that adopting this size standard, similar to that of Excavation Contractors, is too low because of the additional mandated training investments for fire crews and fire crew chiefs. SBA found that firms performing Forest Fire Suppression and Fuels Management services have rapidly increasing revenues due to these requirements that in many cases will soon force them to exceed the $12 million size standard.

By establishing the size standard at $15 million, SBA will minimize the impact on the small businesses in this emerging industry. Increased Federal funding and requirements have caused many firms to outgrow the $6 million size standard, thus reducing small business competition for these services. On the other hand, if SBA established the size standard at $28.5 million or 500 employees, almost all firms in this sub-industry would be considered small businesses.

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. Those comments should describe the alternative and explain why it is preferable to the proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—

121 of title 13 of the Code of Federal Regulations as follows:

PART 121—[AMENDED]

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, amend the table

Elsewhere Classified)" to read "NAICS industry descriptions";

b. Under the heading "Subsector 115—Support Activities for Agriculture and Forestry," revise the entry for 115310; and

c. Add footnote 16 to the end of the table.

The revisions and additions read as follows:

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the

United States. Therefore, the proposed AD would require the following inspections initially, repetitively, and before installing any tail rotor gearbox that has been previously installed on another helicopter and has not been inspected:

• Inspect the tail rotor spider for end play. Remove the change rod bearing if the tail rotor spider is not within allowable tolerances.

• Inspect each bearing for spalling,

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. Those comments should describe the alternative and explain why it is preferable to the proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—[AMENDED]

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, amend the table "Small Business Size Standards by NAICS Industry" as follows:

a. In the middle column, revise the heading "Description (N.E.C.=Not Elsewhere Classified)" to read "NAICS industry descriptions";

b. Under the heading "Subsector 115—Support Activities for Agriculture and Forestry," revise the entry for 115310; and

c. Add footnote 16 to the end of the table.

The revisions and additions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS industry descriptions	Size standards in number of employees or million of dollars
	Subsector 115—Support Activities for Agriculture and Forestry	
115310	Support Activities for Forestry	$6.0
EXCEPT	Forest Fire Suppression and Fuels Management [16]	15.0

Footnotes

* * *

[16] *NAICS code 115310 (support Activities for Forestry)*—Forest Fire Suppression and Fuels Management, a component of Support Activities for Forestry, includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. This component also includes Fuels Management firms that provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

Dated: April 29, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18112 Filed 7–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–35–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters. This proposal would require inspecting the tail rotor pitch change rod (change rod) bearing and replacing the bearing if the bearing does not meet the specified tolerance. Also, this proposal would require inspecting the bearing for spalling, friction, and grinding and removing any unairworthy bearing. This proposal is prompted by the seizure of a bearing on an ECF Model SA330 helicopter. The actions specified by this proposed AD are intended to prevent bearing wear, bearing seizure of the change rod, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332C, AS332C1, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters. The DGAC advises that the pitch change rod bearing seized on a Model SA330 helicopter.

ECF has issued Eurocopter France Alert Service Bulletin (ASB) Nos. 05.81, Revision 2, and 05.00.29, Revision 3, both dated January 18, 2001, which specify modifying the operational and bearing check procedure for the change rod equipped with bearing, part number (P/N) 330A33–9903–20. The DGAC classified ASB No. 05.00.29, Revision 3, dated January 18, 2001, as mandatory and issued AD No. 1990–230–041(A) R4, dated February 21, 2001, to ensure the continued airworthiness of the ECF Model AS332 helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require the following inspections initially, repetitively, and before installing any tail rotor gearbox that has been previously installed on another helicopter and has not been inspected:

- Inspect the tail rotor spider for end play. Remove the change rod bearing if the tail rotor spider is not within allowable tolerances.
- Inspect each bearing for spalling, friction, grinding, damaged bearing sealing flanges, overheating at the bearing inner and outer races and the flanges, deposits of corrosion, and shearing or wear marks on the lockwasher, and remove any unairworthy bearing.
- If a bearing is removed, before replacing the bearing, inspect the change rod for visible wear marks or scoring on the bearing journal circumference. If wear marks or circular scoring is found, repair or replace the bearing housing.

The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours to inspect and replace a bearing, and that the average labor rate is $60 per work hour. Required replacement parts would cost approximately $120. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1080, assuming one bearing is replaced on each helicopter.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–35–AD.

Applicability: Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters with a tail rotor pitch change rod (rod) and a bearing, part number 330A33–9903–20, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 20 hours time-in-service (TIS) or 1 month, whichever occurs first, or before installing any tail rotor gearbox previously installed on another helicopter and not inspected within the previous 250 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 250 hours TIS or 18 months, whichever occurs first.

To prevent bearing wear, bearing seizure of the change rod, loss of tail rotor effectiveness and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the axial end play of the tail rotor pitch change spider assembly in accordance with the Accomplishment Instructions, paragraph 2.B.1. of Eurocopter France (ECF) Alert Service Bulletin No. 05.81, Revision 2, dated January 18, 2001 (ASB 330) for the ECF Model 330 helicopters or Eurocopter France Alert Service Bulletin No. 05.00.29, Revision 3, dated January 18, 2001 (ASB 332) for the Model 332 helicopters. If the axial end play is not within allowable tolerances, remove the rod bearing from service.

(b) Inspect each bearing for spalling, friction, grinding, damaged bearing sealing flanges, overheating at the bearing inner and outer races and the flanges, deposits of corrosion, and shearing or wear marks on the lockwasher in accordance with the Accomplishment Instructions, paragraph 2.B.2., of ASB 330 or ASB332, as applicable. Remove from service any unairworthy bearing.

(c) If a bearing is removed from service, before replacing the bearing with an

agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26,

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be

environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to

(b) Inspect each bearing for spalling, friction, grinding, damaged bearing sealing flanges, overheating at the bearing inner and outer races and the flanges, deposits of corrosion, and shearing or wear marks on the lockwasher in accordance with the Accomplishment Instructions, paragraph 2.B.2., of ASB 330 or ASB332, as applicable. Remove from service any unairworthy bearing.

(c) If a bearing is removed from service, before replacing the bearing with an airworthy bearing:

(1) Inspect the change rod for visible wear marks or scoring on the bearing journal circumference. If marks or scoring is found, remove the change rod from service.

(2) Inspect the bearing housing for visible wear marks or circular scoring. If wear marks or circular scoring is found, repair or replace the bearing housing in accordance with the Accomplishment Instructions, paragraph 2.B.3., of ASB 330 or ASB 332, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits will not be issued.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 1990–230–041(A) R4, dated February 21, 2001.

Issued in Fort Worth, Texas, on July 5, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–18196 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes Equipped With General Electric Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all Boeing Model 777–200 series airplanes equipped with General Electric engines. That action would have required installation of a high-temperature silicone foam seal on the aft fairing of the strut. Since issuance of the NPRM, the Federal Aviation Administration (FAA) has received new information that indicates that the unsafe condition would not be prevented by the proposed action. Subsequently, the FAA has issued new rulemaking that positively addresses the unsafe condition identified in the NPRM and eliminates the need for the actions proposed by the NPRM. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Boeing Model 777–200 series airplanes equipped with General Electric engines, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on October 30, 2001 (66 FR 54727). The proposed rule would have required installation of a high-temperature silicone foam seal on the aft fairing of the strut. That action was prompted by reports indicating that, during routine inspections of the aft fairing of the strut, evidence of an elevated temperature in the interior cavity of the aft fairing was found on several Boeing Model 777–200 series airplanes equipped with General Electric engines. The proposed actions were intended to prevent primary engine exhaust from entering the aft fairing of the strut, elevating the temperature in the aft fairing of the strut, and creating a potential source of ignition, which could lead to an uncontrolled fire in the aft fairing of the strut. Such a fire would expose the wing fuel tank to high-temperature gasses and flames and result in a potential ignition source for the fuel tank, and reduced structural integrity of the wing.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, one operator reported significant heat damage to the forward end of the diagonal brace on an airplane that had the high-temperature silicone foam seal installed. Investigation revealed that the foam seal was not a sufficient barrier to the heat of the primary engine exhaust. Thus the exhaust entered the aft fairing of the strut through a gap in the heat shield, elevating the temperature and resulting in heat damage to the primary fire seal, heat shield seal, and secondary fluid seal. The damaged seals allowed the exhaust to pass into the aft fairing cavity causing heat damage to the diagonal brace assembly.

As a result of this incident, the FAA has determined that the unsafe condition would not be prevented by the installation of the high temperature silicone foam seal alone, which the NPRM proposed to require.

Other Relevant Rulemaking

On March 29, 2002, the FAA issued AD 2002–07–07, amendment 39–12701 (67 FR 16991, April 9, 2002), applicable to certain Boeing Model 777–200 series airplanes equipped with General Electric GE90 series engines. That AD requires repetitive inspections of the diagonal brace and forward seals of the aft fairing of the strut to find discrepancies, and corrective actions, if necessary. The actions required by that AD are intended to prevent primary engine exhaust from entering the aft fairing of the strut and elevating the temperature, which could lead to heat damage of the seals and diagonal brace. Such damage could result in cracking and fracture of the forward attachment point of the diagonal brace, loss of the diagonal brace load path, and consequent separation of the strut and engine from the airplane.

FAA's Conclusions

In AD 2002–07–07, the FAA stated that it was considering withdrawing NPRM 2001–NM–93–AD. Upon further consideration, the FAA has determined that the unsafe condition addressed by that NPRM would NOT be prevented by the actions that would be required by that proposed AD, but WOULD be prevented by the actions required by AD 2002–07–07. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001–NM–93–AD, published in the **Federal Register** on October 30, 2001 (66 FR 54727), is withdrawn.

Issued in Renton, Washington, on July 11, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18200 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes. This proposal would require replacing the main pitot static tube on each side of the airplane with a new improved pitot static tube, and installing a gasket between the tube and the airplane structure. This action is necessary to prevent ice from blocking the pitot system, due to the pitot tube not having enough heating capacity to stay above freezing temperature, which could result in erroneous airspeed indications This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–104–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–104–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on all Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes. The LFV advises that operators have reported a number of events involving incorrect airspeed indications. A typical scenario is that, during descent from cruise altitude, one or more airspeed indicators incorrectly show gradually decreasing airspeed. At lower altitudes, the correct airspeed is again displayed, and on the ground, no faults can be found. System analysis indicates that, in the scenario described above, a freezing temperature is present in the pitot pressure lines inside the pitot static tube. This condition, if not corrected, could result in ice blocking the pitot system, due to the pitot tube not having enough heating capacity to stay above freezing temperature, which could result in erroneous airspeed indications.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–34–060 (for Model SAAB 2000 series airplanes) and Service Bulletin 340–34–145 (for Model SAAB SF340A and SAAB 340B series airplanes), both dated October 1, 2001, which describe procedures for replacing the main pitot static tube on each side of the airplane with a new improved pitot static tube with increased heating. The service bulletins also describe procedures for installing a new gasket between the tube

and the airplane structure that will increase thermal insulation. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LFV classified these service bulletins as mandatory and issued Swedish airworthiness directive 1–166 (for all Model SAAB 2000 series airplanes), dated October 1, 2001; and Swedish airworthiness directive 1–167 (for all

rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

Issued in Renton, Washington, on July 11, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18213 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

ADDRESSES: Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement

Why Is DEA Interested in Learning About Chemical Mixtures Containing GBL?

DEA is in the process of establishing regulations that define which chemical mixtures are exempt from CSA regulatory controls. The CSA defines the term "chemical mixture" as "a combination of two or more chemical substances, at least one of which is not a List I chemical or a List II chemical, except that such term does not include

and the airplane structure that will increase thermal insulation. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LFV classified these service bulletins as mandatory and issued Swedish airworthiness directive 1–166 (for all Model SAAB 2000 series airplanes), dated October 1, 2001; and Swedish airworthiness directive 1–167 (for all Model SAAB SF340A and SAAB 340B series airplanes), dated October 1, 2001; in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 312 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $13,400 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,330,560, or $13,880 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 2002–NM–104–AD.

Applicability: All Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from blocking the pitot system, due to the pitot tube not having enough heating capacity to stay above freezing temperature, which could result in erroneous airspeed indications, accomplish the following:

Replacement

(a) Within 12 months from the effective date of this AD, replace the main pitot static tube on each side of the airplane with a new improved pitot static tube, and install a gasket between the tube and the airplane structure; per the Accomplishment Instructions of Saab Service Bulletin 340–34–145 (for Model 340A and 340B series airplanes) or Saab Service Bulletin 2000–34–060 (for Model 2000 series airplanes), both dated October 1, 2001; as applicable.

Spares

(b) As of the effective date of this AD, no person shall install any static pitot tube having part number 856ML1 or 856ML2, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directives 1–166 and 1–167, both dated October 1, 2001.

Issued in Renton, Washington, on July 11, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18213 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–222A]

RIN 1117–AA84

Chemical Mixtures Containing gamma-Butyrolactone

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) is soliciting information on chemical mixtures that contain the List I chemical gamma-butyrolactone (GBL). Specifically, DEA is interested in learning what products contain GBL, and what concentrations of GBL and other chemicals are used in their formulations. DEA is also interested in how chemical mixtures containing GBL are packaged, distributed, used, and their availability at the retail level. DEA is seeking this information to help determine whether there are chemical mixtures (as defined in 21 U.S.C. 804(40)) containing GBL which should be exempt from the regulations governing listed chemicals, pursuant to 21 U.S.C. 802(39)(A)(v). Exempt chemical mixtures are those formulations that contain any listed chemical, but are not subject to the regulatory controls of the Controlled Substances Act (CSA) that pertain to listed chemicals.

On September 16, 1998, DEA published a notice of proposed rulemaking in the **Federal Register** (63 FR 49506) that proposed regulations to define exempt chemical mixtures. Because GBL was not then a listed chemical, regulations defining potential exempt chemical mixtures were not proposed. The information being requested in this advance notice of proposed rulemakig (ANPRM) will be used to help propose regulations to define what chemical mixtures containing GBL may be exempt.

DATES: Written comments must be submitted on or before September 17, 2002.

ADDRESSES: Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is GBL and How Is It Used?

GBL is gamma-butyrolactone, an important industrial chemical. It is also a List I chemical used in the illicit production of gamma-hydroxybutric acid (GHB), a Schedule I controlled substance (21 U.S.C. 812(c)). GBL is produced domestically in tens of thousands of tons per year. The legitimate manufacturers of GBL consume most of it for conversion into other industrial chemicals. The remaining amount is used in other industries with application to agriculture, electronics, textiles, coatings, and various other areas. Pure GBL has no household uses and is not available for sale at the retail level. However, it may be a component in some products sold at the retail level such as paint strippers.

How and Why Is GBL Regulated by DEA?

GBL has been identified as the principal precursor used in the clandestine manufacture of the Schedule I controlled substance GHB. Public Law 106–172, the "Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999," amended 21 U.S.C. 802(34) be designating GBL as a List I chemical. Since February 18, 2000, GBL has been subject to CSA regulatory controls. The CSA requires that all handlers of GBL must register as set forth in Title 21, Code of Federal Regulations (CFR), part 1309 and keep records and make reports as set forth in 21 CFR part 1310. Currently, only, GBL, but not its chemical mixtures, is subject to these controls. Until regulations which delineate criteria and procedures for exempting specific GBL-containing chemical mixtures are finalized, according to 21 U.S.C. 802(39)(4)(v), DEA has treated GBL-containing chemical mixtures as being exempt from the chemical regulatory requirements of the CSA.

Why Is DEA Interested in Learning About Chemical Mixtures Containing GBL?

DEA is in the process of establishing regulations that define which chemical mixtures are exempt from CSA regulatory controls. The CSA defines the term "chemical mixture" as "a combination of two or more chemical substances, at least one of which is not a List I chemical or a List II chemical, except that such term does not include any combination of a List I chemical or a List II chemical with another chemical that is present solely as an impurity." The CSA further allows exemption of chemical mixtures "based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered."

A notice of proposed rule making (NPRM) regarding the exemption of chemical mixtures was published in the **Federal Register** on September 16, 1998 (63 FR 49506). The NPRM proposed regulations to identify if a chemical mixture is automatically exempt from CSA regulatory controls. When the NPRM was published, GBL was not a regulated chemical. Therefore, regulations addressing the exemption of chemical mixtures containing GBL were not proposed.

The NPRM proposed a concentration limit for each listed chemical. If a listed chemical is found in a chemical mixture at or below the concentration limit, the mixture is exempt. Also proposed were categories of exempt chemical mixtures and an application process. The application process is a means to exempt chemical mixtures not automatically exempted by regulation. These approaches were well received by the regulated industry and may be proposed to identify exempt chemical mixtures containing GBL.

What Is DEA Requesting in This ANPRM?

To propose regulations in line with the above approaches, DEA is interested in learning about formulations that contain GBL. While some formulations containing GBL have been identified, DEA is not aware of the entire scope of mixtures containing GBL, including how they are used, traded, and their chemical composition. DEA invites all interested persons to provide the Administration with any information on chemical mixtures containing GBL. Both quantitative and qualitative information is requested. If the concentration of a chemical(s) varies in a formulation, DEA

is interested in the range of concentrations. Also of interest is how the mixtures are packaged, distributed, type of application, and the target market (e.g., type of industry, availability at retail, Internet sales). This information will be used to propose regulations to exempt those chemical mixtures that, according to 21 U.S.C. 802(39)(A)(v), are "formulated in such a way that it cannot be easily used in the

Division (Philadelphia, PA), Bureau of Alcohol, Tobacco and Firearms, The Curtis Center, Suite 875, Independence Square West, Philadelphia, PA 19106; telephone 215–597–5288 or e-mail *JCBrady@phila.atf.treas.gov.*

Correction

In proposed rule FR Doc. 02–16972, beginning on page 45437 in the issue of July 9, 2002, make the following

Address e-mail comments to: *RIN,3090-AH10@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Holcombe, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule updates, streamlines, and clarifies FPMR part

§ 101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on sale of personal property previously contained in this part, *see* FMR part 38 (41 CFR part 102–38).

CHAPTER 102—[AMENDED]

2. Part 102–38 is added to subchapter B of chapter 102 to read as follows:

102–38.120 When may we sell personal property at fixed prices (fixed price sale)?
102–38.125 May we sell personal property at fixed prices to State agencies?

Advertising

102–38.130 Must we publicly advertise sales of Federal personal property?
102–38.135 What constitutes a public advertisement?
102–38.140 What must we include in the public notice on sale of personal

Mistakes in Bids

102–38.260 Who makes the administrative determinations regarding mistakes in bids?
102–38.265 Must we keep records on administrative determinations?
102–38.270 May a bidder protest the determinations made on sales of personal property?

Subpart D—Completion of Sale

Awards

is interested in the range of concentrations. Also of interest is how the mixtures are packaged, distributed, type of application, and the target market (e.g., type of industry, availability at retail, Internet sales). This information will be used to propose regulations to exempt those chemical mixtures that, according to 21 U.S.C. 802(39)(A)(v), are "formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered."

Such information may be submitted to the address listed above and is requested by September 17, 2002. Information designated as confidential or proprietary will be treated accordingly. The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), is governed by section 310(c) of the CSA (21 U.S.C. 830(c)) and the Department of Justice procedures set forth in 28 CFR 16.7.

Dated: July 1, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 02–17903 Filed 7–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512–AC62

[Re: Notice No. 947]

Establishment of the Oak Knoll District Viticultural Area (2002R–046P); Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of July 9, 2002. In Notice No. 947, Establishment of the Oak Knoll District Viticultural Area, the address listed for submitting comments to the Bureau of Alcohol, Tobacco and Firearms by e-mail is incorrect. This notice contains the correct address for submitting comments by e-mail.

DATES: Comments on Notice No. 947 must be received by September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Joanne Brady, Specialist, Regulations Division (Philadelphia, PA), Bureau of Alcohol, Tobacco and Firearms, The Curtis Center, Suite 875, Independence Square West, Philadelphia, PA 19106; telephone 215–597–5288 or e-mail *JCBrady@phila.atf.treas.gov*.

Correction

In proposed rule FR Doc. 02–16972, beginning on page 45437 in the issue of July 9, 2002, make the following correction. On page 45438, in the third column, under the *Submitting Comments* heading, correct the fourth paragraph to read as follows:

"*By e-mail*: Comments may be submitted by e-mail to *nprm@atfhq.atf.treas.gov*. E-mail comments must:

(1) Contain your name, mailing address, and e-mail address;

(2) Reference this notice number; and

(3) Be legible when printed.

We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals."

Signed: July 12, 2002.

William H. Foster,

Deputy Chief, Regulations Division.

[FR Doc. 02–18321 Filed 7–16–02; 8:45 am]

BILLING CODE 4810–31–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–45 and 102–38

[FPMR Amendment H–]

RIN 3090–AH10

Sale of Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by revising coverage on the sale of personal property and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Your comments must reach us by August 19, 2002, to be considered in the formulation of a final rule.

ADDRESSES: Written comments should be submitted to: Rodney Lantier, Regulatory Secretariat (MVP), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW, Washington, DC 20405.

Address e-mail comments to: *RIN,3090-AH10@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Holcombe, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule updates, streamlines, and clarifies FPMR part 101–45 and moves the part into the Federal Management Regulation (FMR). The proposed rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–45 and 102–38.

Government property management, Surplus Government property.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. Part 101–45 is revised to read as follows:

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Authority: 40 U.S.C. 484 and 486(c).

§ 101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on sale of personal property previously contained in this part, *see* FMR part 38 (41 CFR part 102–38).

CHAPTER 102—[AMENDED]

2. Part 102–38 is added to subchapter B of chapter 102 to read as follows:

PART 102–38—SALE OF PERSONAL PROPERTY

Subpart A—General Provisions

Sec.
102–38.5 What does this part cover?
102–38.10 What is the governing authority for this part?
102–38.15 Who must comply with these sales provisions?
102–38.20 Must we follow the regulations of this part when selling all personal property?
102–38.25 To whom do "we", "you", and their variants refer?
102–38.30 How do we request a deviation from the provisions of this part?

Definitions

102–38.35 What definitions apply to this part?

Responsibilities

102–38.40 Who may sell personal property?
102–38.45 What are our responsibilities in selling personal property?
102–38.50 What must we do when we suspect non-compliance with the provisions of this part?
102–38.55 What must we do when selling personal property?
102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?
102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?
102–38.70 May we abandon, destroy, or donate personal property either prior to or after trying to sell it?

Subpart B—Sales Process

Methods of Sale

102–38.75 How may we sell personal property?
102–38.80 Which method of sale should we use?

Competitive Sales

102–38.85 What is a sealed bid sale?
102–38.90 What is a spot bid sale?
102–38.95 What is an auction?

Negotiated Sales

102–38.100 What is a negotiated sale?
102–38.105 Under what conditions may we negotiate sales of personal property?
102–38.110 Who approves our determinations to conduct negotiated sales?
102–38.115 What are the specific reporting requirements for negotiated sales?
102–38.120 When may we sell personal property at fixed prices (fixed price sale)?
102–38.125 May we sell personal property at fixed prices to State agencies?

Advertising

102–38.130 Must we publicly advertise sales of Federal personal property?
102–38.135 What constitutes a public advertisement?
102–38.140 What must we include in the public notice on sale of personal property?

Pre-Sale Activities

102–38.145 Must we allow for inspection of the personal property to be sold?
102–38.150 How long is the inspection period?

Offer To Sell

102–38.155 What is an offer to sell?
102–38.160 What must be included in the offer to sell?
102–38.165 Are the terms and conditions in the offer to sell binding?

Subpart C—Bids

Buyer Eligibility

102–38.170 May we sell Federal personal property to anyone?
102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?
102–38.180 May we sell Federal personal property to a Federal employee?
102–38.185 May we sell Federal personal property to State or local governments?

Acceptance of Bids

102–38.190 What is considered a responsive bid?
102–38.195 Must bidders use authorized bid forms?
102–38.200 Who may accept bids?
102–38.205 Must we accept all bids?
102–38.210 What happens when bids have been rejected?
102–38.215 When may we disclose the bid results to the public?
102–38.220 What must we do when the highest bids received have the same bid amount?
102–38.225 What are the additional requirements in the bid process?

Bid Deposits

102–38.230 Is a bid deposit required to buy personal property?
102–38.235 What types of payment may we accept as bid deposits?
102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

Late Bids

102–38.245 Do we consider late bids for award?
102–38.250 How do we handle late bids that are not considered?

Modification or Withdrawal of Bids

102–38.255 May we allow a bidder to modify or withdraw a bid?

Mistakes in Bids

102–38.260 Who makes the administrative determinations regarding mistakes in bids?
102–38.265 Must we keep records on administrative determinations?
102–38.270 May a bidder protest the determinations made on sales of personal property?

Subpart D—Completion of Sale

Awards

102–38.275 To whom do we award the sales contract?
102–38.280 What happens when there is no award?

Transfer of Title

102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

Payments

102–38.290 What types of payment may we accept?

Disposition of Proceeds

102–38.295 May we retain sales proceeds?
102–38.300 What happens to the remaining portion of the proceeds if we are authorized to retain only a portion of the proceeds from the sale of personal property?

Disputes

102–38.305 How do we handle disputes involved in the sale of Federal personal property?
102–38.310 Are we required to use the Disputes clause in the sale of personal property?
102–38.315 Are we required to use the Alternative Disputes Resolution for sales contracts?

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Subpart G—Sales to State and Local Governments

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102–38.355 Do the regulations of this part apply to SASPs?

Authority: 40 U.S.C. 484 and 40 U.S.C. 486(c).

Subpart A—General Provisions

§ 102–38.5 What does this part cover?

This part prescribes the policies governing the sale of Federal personal property, including:

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

§ 102–38.25 To whom do "we", "you", and their variants refer?

Unless otherwise indicated, use of pronouns "we", "you", and their variants throughout this part refer to the holding agency responsible for the sale of the property.

§ 102–38.30 How do we request a deviation from the provisions of this part?

Refer to § 102–2.60 of this chapter for

§ 102–38.45 What are our responsibilities in selling personal property?

Your responsibilities in selling personal property are to:

(a) Ensure the sale complies with the provisions of the Property Act and regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are

buyer's designee. When specified in the terms and conditions of sale, you may charge costs for storage when the buyer is delinquent in removing the property.

§ 102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to GSA. When a need is expressed by a Federal agency, you

(13) Certificate of independent price determinations;

(14) Covenant against contingent fees;

(15) Limitation on Government's liability; and

(16) Award of contract.

(b) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property. The Government reserves the right to reject any or all bids.

Negotiated Sales

§ 102–38.100 What is a negotiated sale?

A negotiated sale is a sale where the

Subpart A—General Provisions

§ 102–38.5 What does this part cover?

This part prescribes the policies governing the sale of Federal personal property, including:

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

Note to § 102–38.5: You must follow additional guidelines in part 101–42 of this title for the sale of personal property that has special handling requirements or property containing hazardous materials, such as firearms, munitions list items (as defined in § 102–36.40 of this chapter), animals, medical devices, all terrain vehicles, precious metals, etc. Additional requirements for the sale of aircraft and aircraft parts are provided in part 101–37 of this title.

§ 102–38.10 What is the governing authority for this part?

Sections 203 and 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 and 486(c)), as amended (Property Act), provide the authority for the regulations in this part governing the sale of Federal personal property.

§ 102–38.15 Who must comply with these sales provisions?

All agencies in the executive, legislative, and judicial branches of the Government must comply with these sales provisions, except the Senate, House of Representatives, and activities under the direction of the Architect of the Capitol.

§ 102–38.20 Must we follow the regulations of this part when selling all personal property?

Generally, yes, you must follow the regulations of this part when selling all personal property, however:

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use; and

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions.

§ 102–38.25 To whom do "we", "you", and their variants refer?

Unless otherwise indicated, use of pronouns "we", "you", and their variants throughout this part refer to the holding agency responsible for the sale of the property.

§ 102–38.30 How do we request a deviation from the provisions of this part?

Refer to § 102–2.60 of this chapter for information on how to obtain a deviation from this part.

Definitions

§ 102–38.35 What definitions apply to this part?

The following definitions apply to this part:

Bid means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder means any entity that is responding to or has responded to an offer to sell.

Estimated fair market value means the selling agency's best estimate of what the property would be sold for if offered for public sale.

Identical bids means bids for the same item of property having the same total price.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories:

(1) Battleships;

(2) Cruisers;

(3) Aircraft carriers;

(4) Destroyers; and

(5) Submarines.

State Agency for Surplus Property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act (40 U.S.C. 484(j)).

State or local government means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

Responsibilities

§ 102–38.40 Who may sell personal property?

You may sell personal property as the holding agency or on behalf of another agency when so requested, or have GSA, a contractor, or another Federal agency conduct the sale for you, provided that only authorized Federal officials approve the sale.

§ 102–38.45 What are our responsibilities in selling personal property?

Your responsibilities in selling personal property are to:

(a) Ensure the sale complies with the provisions of the Property Act and regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

§ 102–38.50 What must we do when we suspect non-compliance with the provisions of this part?

If you suspect non-compliance with the provisions of this part, you must:

(a) Refer any violations of the regulations in this part, or fraud, bribery or criminal collusion against the Government to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to GSA, Property Management Division (FBP), Washington, DC, 20406, a report of any compliance investigations concerning violations of these provisions. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), Washington, DC 20405.

§ 102–38.55 What must we do when selling personal property?

When selling personal property, you must ensure that:

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102–38.100 through 102–38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

You are responsible for the care and handling costs of the personal property until it is removed by the buyer or the buyer's designee. When specified in the terms and conditions of sale, you may charge costs for storage when the buyer is delinquent in removing the property.

§ 102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to GSA. When a need is expressed by a Federal agency, you must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

§ 102–38.70 May we abandon, destroy, or donate personal property either prior to or after trying to sell it?

(a) Yes, you may abandon, destroy, or donate personal property either prior to or after trying to sell it, but only when you have made a written determination that:

(1) The personal property has no commercial value; or

(2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102–36.305 through 102–36.330 of this chapter that are applicable to the abandonment, destruction, or donation of personal property in general, and excess personal property in particular.

Subpart B—Sales Process

Methods of Sale

§ 102–38.75 How may we sell personal property?

(a) You may sell personal property upon such terms and conditions as the Administrator of General Services deems proper to promote fairness, openness, and timeliness. In selling personal property, you must document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

(1) Inspection;

(2) Condition and location of property;

(3) Eligibility of bidders;

(4) Consideration of bids;

(5) Bid deposits and payments;

(6) Submission of bids;

(7) Bid price determination;

(8) Title;

(9) Delivery, loading, and removal of property;

(10) Default, returns, or refunds;

(11) Modifications, withdrawals, or late bids;

(12) Requirements to comply with applicable laws and regulations;

(13) Certificate of independent price determinations;

(14) Covenant against contingent fees;

(15) Limitation on Government's liability; and

(16) Award of contract.

(b) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

§ 102–38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102–38.100 through 102-38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as:

(1) Type and quantity of property;

(2) Location of property;

(3) Potential market;

(4) Cost to prepare and conduct the sale;

(5) Available facilities; and

(6) Sales experience of the selling activity.

(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

Competitive Sales

§ 102–38.85 What is a sealed bid sale?

A sealed bid sale is a sale where bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102–38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102–38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property. The Government reserves the right to reject any or all bids.

Negotiated Sales

§ 102–38.100 What is a negotiated sale?

A negotiated sale is a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

§ 102–38.105 Under what conditions may we negotiate sales of personal property?

You may negotiate sales of personal property when:

(a) The personal property has an estimated fair market value of less than $15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and that the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, e.g., sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by the Federal Property and Administrative Services Act of 1949, as amended, or other law.

§ 102–38.110 Who approves our determinations to conduct negotiated sales?

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

§ 102–38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must:

(a) In accordance with section 203(e)(6) of the Property Act (40 U.S.C. 484(e)(6)), and in advance of the sale, submit to the oversight committees for GSA in the Senate and House, explanatory statements for each sale by negotiation of any personal property

§ 102–38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target

(c) Description of property being offered for sale;

(d) Selling agency;

(e) Location of property;

(f) Time and place for receipt of bids;

(g) Acceptable forms of bid deposits and payments; and

(h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.185 May we sell Federal personal property to State or local governments?

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sale to State or local governments are contained in Subpart G of this part.

Acceptance of Bids

§ 102–38.190 What is considered a responsive bid?

payment, *etc.*) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

§ 102–38.225 What are the additional requirements in the bid process?

§ 102–38.250 How do we handle late bids that are not considered?

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

Modification or Withdrawal of Bids

§ 102–38.255 May we allow a bidder to modify or withdraw a bid?

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the

§ 102–38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must:

(a) In accordance with section 203(e)(6) of the Property Act (40 U.S.C. 484(e)(6)), and in advance of the sale, submit to the oversight committees for GSA in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of $15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed price or for any sale made without advertising when authorized by law other than section 203(e) of the Property Act; and

(b) Report annually to GSA, Personal Property Management Policy Division (MTP), Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of $5,000. You may submit the report electronically or manually (*see* § 102–38.330).

§ 102–38.120 When may we sell personal property at fixed prices (fixed price sale)?

You may sell personal property at fixed prices (fixed price sale) when the head of your agency determines in writing that such sale serves the best interests of the Government. You must publicize such sale to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You may also establish additional terms and conditions that must be met by the successful purchaser.

§ 102–38.125 May we sell personal property at fixed prices to State agencies?

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, see Subpart G of this part.

Advertising

§ 102–38.130 Must we publicly advertise sales of Federal personal property?

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

§ 102–38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

§ 102–38.140 What must we include in the public notice on sale of personal property?

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as:

(a) Date, time and location of sale;

(b) General categories of property being offered for sale;

(c) Inspection period;

(d) Method of sale (*i.e.*, spot bid, sealed bid, auction);

(e) Selling agency; and

(f) Who to contact for additional information.

Pre-Sale Activities

§ 102–38.145 Must we allow for inspection of the personal property to be sold?

Yes, you must allow for an electronic or physical inspection of the personal property to be sold. You must allow prospective bidders sufficient time for inspection.

§ 102–38.150 How long is the inspection period?

The length of the inspection period allowed depends upon whether the inspection is done electronically or physically. You should consider such factors as the circumstances of sale, volume of property, location of the property, and accessibility of the sales facility. Normally, you should provide at least 7 calendar days to ensure potential buyers have the opportunity to perform needed inspection.

Offer To Sell

§ 102–38.155 What is an offer to sell?

An offer to sell is a notice listing the terms and conditions for bidding on an upcoming sale of personal property, where prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is awarded.

§ 102–38.160 What must be included in the offer to sell?

The offer to sell must include:

(a) Sale date and time;

(b) Method of sale;

(c) Description of property being offered for sale;

(d) Selling agency;

(e) Location of property;

(f) Time and place for receipt of bids;

(g) Acceptable forms of bid deposits and payments; and

(h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.165 Are the terms and conditions in the offer to sell binding?

Yes, the terms and conditions in the offer to sell are normally incorporated into the sales contract, and therefore binding upon both the buyer and the seller once a bid is awarded.

Subpart C—Bids

Buyer Eligibility

§ 102–38.170 May we sell Federal personal property to anyone?

Generally, you may sell Federal personal property to anyone. However, certain persons or entities are debarred or suspended from purchasing Federal property. You must not enter into a contract with such a person or entity unless your agency head or designee responsible for the disposal action determines that there is a compelling reason for such an action.

§ 102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?

Refer to the List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure you do not solicit from or award contracts to these persons or entities. The list is available through subscription from the U.S. Government Printing Office, or electronically on the Internet at *http://epls.arnet.gov*. For policies, procedures, and requirements for debarring/suspending a person or entity from the purchase of Federal personal property, follow the procedures in the Federal Acquisition Regulation (FAR) subpart 9.4 (48 CFR part 9, subpart 9.4).

§ 102–38.180 May we sell Federal personal property to a Federal employee?

Yes, you may sell Federal personal property to any Federal employee whose agency does not prohibit their employees from purchasing such property. For purposes of this section, the term "Federal employee" also applies to an immediate member of the employee's household.

§ 102–38.185 May we sell Federal personal property to State or local governments?

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sale to State or local governments are contained in Subpart G of this part.

Acceptance of Bids

§ 102–38.190 What is considered a responsive bid?

A responsive bid is a bid that complies with the terms and conditions of the sales offering, and satisfies the requirements as to the method and timeliness of submission. Only responsive bids may be considered for award.

§ 102–38.195 Must bidders use authorized bid forms?

No, bidders do not have to use authorized bid forms; however if a bidder uses his/her own bid form to submit a bid, the bid may be considered only if:

(a) The bidder accepts all the terms and conditions of the offer to sell; and

(b) Award of the bid would result in a binding contract.

§ 102–38.200 Who may accept bids?

Authorized agency representatives may accept bids for your agency. These individuals should meet your agency's requirements for approval of Government contracts.

§ 102–38.205 Must we accept all bids?

No, the Government reserves the right to accept or reject any or all bids. You may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

§ 102–38.210 What happens when bids have been rejected?

You may re-offer items for which all bids have been rejected at the same sale, if possible, or another sale.

§ 102–38.215 When may we disclose the bid results to the public?

You may disclose bid results to the public after the sales award of any item or lot of property. On occasions when there is open bidding, usually at a spot bid sale or auction, all bids are disclosed as they are submitted. No information other than names will be disclosed regarding the bidder(s).

§ 102–38.220 What must we do when the highest bids received have the same bid amount?

When the highest bids received have the same bid amount, you must consider other factors of the sale (*e.g.*, timely removal of the property, terms of payment, *etc.*) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

§ 102–38.225 What are the additional requirements in the bid process?

All sales except fixed price sales must contain a certification of independent price determination. If there is suspicion of false certification or an indication of collusion, you must refer the matter to the Department of Justice.

Bid Deposits

§ 102–38.230 Is a bid deposit required to buy personal property?

No, a bid deposit is not required to buy personal property. However, should you require a bid deposit to protect the Government's interest, a deposit of 20 percent of the total amount of the bid is generally considered reasonable.

§ 102–38.235 What types of payment may we accept as bid deposits?

In addition to the acceptable types of payments in § 102–38.290, you may also accept a deposit bond. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the offer to sell, such as the Standard Form (SF) 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property, SF 151, Deposit Bond—Annual, Sale of Government Personal Property, and SF 28, Affidavit of Individual Surety. For information on how to obtain these forms, see § 102–2.135 of this chapter.

§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

(a) When a bid deposit is secured by a deposit bond and the bidder defaults, you must issue a notice of default to the bidder and the surety company.

(b) When a bid deposit is secured by a deposit bond and the bidder wants to withdraw his/her bid, then you should return the deposit bond to the bidder.

Late Bids

§ 102–38.245 Do we consider late bids for award?

Consider late bids for award only when the bids were delivered timely to the address specified and your agency caused the delay in delivering the bids to the official designated to accept the bids.

§ 102–38.250 How do we handle late bids that are not considered?

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

Modification or Withdrawal of Bids

§ 102–38.255 May we allow a bidder to modify or withdraw a bid?

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the sale or the time set for the opening of the bids. After the start of the sale, or the time set for opening the bids, the bidder will not be allowed to withdraw his/her bid.

(b) You may consider late modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the Government.

Mistakes in Bids

§ 102–38.260 Who makes the administrative determinations regarding mistakes in bids?

The administrative procedures for handling mistakes in bids are contained in FAR part 14, subpart 14.407, Mistakes in Bids (48 CFR part 14). Your agency head, or his/her designee, may delegate the authority to make administrative decisions regarding mistakes in bids to a central authority in your agency, who must not re-delegate this authority.

§ 102–38.265 Must we keep records on administrative determinations?

Yes, you must:

(a) Maintain records of all administrative determinations made, to include the pertinent facts and the action taken in each case. A copy of the determination must be attached to its corresponding contract; and

(b) Provide a signed copy of any related determination with the copy of the contract you file with the Comptroller General.

§ 102–38.270 May a bidder protest the determinations made on sales of personal property?

Yes, protests regarding the validity or the determinations made on the sale of personal property may be submitted to the Comptroller General.

Subpart D—Completion of Sale

Awards

§ 102–38.275 To whom do we award the sales contract?

You must award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid under § 102–38.205.

§ 102–38.280 What happens when there is no award?

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this chapter.

Transfer of Title

§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

(a) You sold property under the fixed price sale authority pursuant to part 102–38 of this chapter or;

(b) You sold property acquired with non-appropriated funds as defined in § 102–36.40 of this chapter;

(c) You sold property that was contractor inventory and the contract provisions authorize the proceeds of sale to be credited to the cost of the contract or subcontract;

(d) You sold property to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this chapter or;

(e) You sold property under the authority of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651 *et seq.*).

Subpart E—Other Governing Statutes

§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

Yes, in addition to the Property Act the sale of Federal personal property is governed by other statutory requirements, specifically antitrust

fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this chapter (see § 102–39.75).

§ 102–38.335 Is there any additional personal property sales information that we must submit to GSA?

Yes, you must report to GSA's Asset Disposition and

Dated: June 28, 2002.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Matters To Be Discussed: In July 2001, the U.S. Department of Labor (DOL) began a new federal compensation program under the Energy Employees' Occupational Illness Compensation Program Act (the Act). The compensation program serves employees of the U.S. Department of Energy (DOE), its contractors, or subcontractors, and the employees of Atomic Weapons Employers designated by DOE, and survivors of these

§ 102–38.280 What happens when there is no award?

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this chapter.

Transfer of Title

§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

(a) Generally, no specific form or format is designated for transferring title from the Government to the buyer for personal property sold. For internal control and accountability, you must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional certifications to comply with specific conditions and restrictions of the sale.

(b) For sales of vehicles, you must issue to the purchaser a Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, or a SF 97A, the United States Government Certificate to Obtain a Non-Repairable or Salvage Certificate, as appropriate, as evidence of transfer of title. For information on how to obtain these forms, see § 102–2.135 of this chapter.

Payments

§ 102–38.290 What types of payment may we accept?

You must adopt a payment policy that protects the Government against fraud. Acceptable payments include, but are not limited to, the following:

(a) U.S. currency or any form of credit instrument made payable on demand in U.S. currency, *e.g.*, cashier's check, money order. Promissory notes and postdated credit instruments are not acceptable.

(b) Irrevocable commercial letters of credit issued by a United States bank payable to the Treasurer of the United States or to the Government agency conducting the sale.

(c) Credit or debit cards.

Disposition of Proceeds

§ 102–38.295 May we retain sales proceeds?

Generally, no, you may not retain sales proceeds. You must deposit all proceeds from the sale of personal property as miscellaneous receipts in the U.S. Treasury. However, you may retain sales proceeds if one of the following applies:

(a) You have statutory authority to retain proceeds from sales of personal property;

(b) You sold property acquired with non-appropriated funds as defined in § 102–36.40 of this chapter;

(c) You sold property that was contractor inventory and the contract provisions authorize the proceeds of sale to be credited to the cost of the contract or subcontract;

(d) You sold property to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this chapter; or

(e) You sold property related to waste prevention and recycling programs, under the authority of Section 608 of Public Law 105–277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681–514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

§ 102–38.300 What happens to the remaining portion of the proceeds if we are authorized to retain only a portion of the proceeds from the sale of personal property?

If you are authorized by law or another provision to retain a portion of the sales proceeds to cover your direct costs, you must deposit any remaining unused balance as miscellaneous receipts in the U.S. Treasury. Also, any unused balance not applied toward the purchase of replacement property under § 102–38.295(d) must be deposited as miscellaneous receipts in the U.S. Treasury.

Disputes

§ 102–38.305 How do we handle disputes involved in the sale of Federal personal property?

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), and the Federal Acquisition Regulation (FAR) 48 CFR part 33.

§ 102–38.310 Are we required to use the Disputes clause in the sale of personal property?

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233–1 (48 CFR part 52) is included in all offers to sell and contracts for the sale of personal property.

§ 102–38.315 Are we required to use the Alternative Disputes Resolution for sales contracts?

No, you are not required to use the Alternative

Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651 *et seq.*).

Subpart E—Other Governing Statutes

§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

Yes, in addition to the Property Act the sale of Federal personal property is governed by other statutory requirements, specifically antitrust requirements that are discussed in § 102–38.325.

Antitrust Requirements

§ 102–38.325 What are the requirements pertaining to antitrust laws?

When the sale of personal property has an estimated fair market value of $3 million or more, or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property. You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

Subpart F—Reporting Requirements

§ 102–38.330 Are there any reports that we must submit to GSA?

Yes, there are two sales reports you must submit to GSA, Personal Property Management Policy Division (MTP), Washington, DC 20405:

(a) *Negotiated sales report.* Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of $5,000 (*see* § 102–38.115). For each negotiated sale meeting that criterion, provide the following:

(1) Description of the property (including quantity and condition);

(2) Acquisition cost and date (if not known, estimate and so indicate);

(3) Estimated fair market value (including date of estimate and name of estimator);

(4) Name and address of purchaser;

(5) Date of sale;

(6) Gross and net sales proceeds; and

(7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report.* Within 90 calendar days after the close of each fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this chapter (see § 102–39.75).

§ 102–38.335 Is there any additional personal property sales information that we must submit to GSA?

Yes you must report to GSA's Asset Disposition and

Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

Subpart G—Sales to State and Local Governments

§ 102–38.340 How may we sell personal property to State and local governments?

You may sell Government personal property to State and local governments through:

(a) Competitive sale to the public;

(b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or

(c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property (SASP) wants to buy it?

No, you are not required to withdraw the item from public sale if the property has been advertised.

§ 102–38.350 Are State and local governments subject to the same payment requirements as public buyers?

Generally, yes, State and local governments have the same general payment requirements as other buyers, and payment must be made within 30 calendar days after purchase. However, you may waive the requirement for bid deposits and payments prior to removal of the property. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), from the date of written demand for payment.

§ 102–38.355 Do the regulations of this part apply to SASPs?

Yes, SASPs must follow the regulations in this part when conducting sales on behalf of GSA of Government personal property in their custody.

Dated: June 28, 2002.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 02–17495 Filed 7–18–02; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Meetings

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule; notice of meetings and opportunity to comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), announces public meetings to present the U.S. Department of Health and Human Services (HHS) proposed rule for adding classes of employees to the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

SUPPLEMENTARY INFORMATION:

Time and Date: 7 p.m.–9 p.m., July 23, 2002.

Place: Buffalo Niagara Marriott, 1340 Millersport Highway, Amherst, New York. Telephone: 716/689–6900.

Time and Date: 7 p.m.–9 p.m., July 25, 2002.

Place: Sharonville Convention Center, 11355 Chester Road, Sharonville, Ohio. Telephone: 513/771–7744.

Time and Date: 7 p.m.–9 p.m., August 7, 2002.

Place: Red Lion Hotel, Richland Hanford House, 802 George Washington Way, Richland, Washington. Telephone: 509/943–7611.

Time and Date: 7 p.m.–9 p.m., August 8, 2002.

Place: Espanola Senior Citizens Center, 735 Vietnam Veterans' Memorial Park Road, Espanola, New Mexico. Telephone: 505/753–9850.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 150 people.

Matters To Be Discussed: In July 2001, the U.S. Department of Labor (DOL) began a new federal compensation program under the Energy Employees' Occupational Illness Compensation Program Act (the Act). The compensation program serves employees of the U.S. Department of Energy (DOE), its contractors, or subcontractors, and the employees of Atomic Weapons Employers designated by DOE, and survivors of these employees. The compensation program covers claims for current or former employees who developed chronic beryllium disease, beryllium sensitization, silicosis, or cancers associated with certain defined occupational exposures occurring in the performance of duty for U.S. nuclear weapons programs. Claims for cancer have to meet conditions related to one of two general requirements: either (1) the cancer of the employee has to be found to have been at least as likely as not caused by radiation doses incurred by the employee in the performance of duty for the nuclear weapons programs, or (2) the employee must be a member of the "Special Exposure Cohort" and have developed one of 22 specific cancer types, referred to as "specified cancers."

The Act defined the initial membership of the Special Exposure Cohort to include qualified employees who worked at any of three gaseous diffusion plants of the U.S. Department of Energy or a nuclear weapons test site in Amchitka, Alaska. However, the Act also allows classes of employees from facilities of DOE or of Atomic Weapons Employers to petition to be added to the Special Exposure Cohort. The outcome of the petitions will be decided by the Secretary, HHS. The procedures for making and deciding such petitions are described in a rule (a regulation) recently proposed by HHS for public comment (42 CFR part 83: "Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation program Act of 2000:" Notice of Proposed Rulemaking; 67 FR 42962; June 25, 2002). The public comment period ends on August 26, 2002.

Purpose: The purpose of these public meetings is to present and explain the recent proposed rule by the HHS on how it would consider petitions to add classes of employees to the "Special Exposure Cohort" established under the Energy Employees" Occupational Illness Compensation Program Act. The meetings will allow members of the public to comment in person on this proposed regulation.

Matters To Be Discussed: HHS staff will give a summary presentation of the proposed rule. The public attending these meetings will have the opportunity to ask questions about the HHS rule and to comment on the rule. The public attending these meetings will also be encouraged to submit written comments to the regulatory record (docket). Official transcripts of the meetings, including all public

Channel 297C at Fallon, Nevada, as the community's fourth local FM transmission service. Channel 297C can be allotted to Fallon in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.25 kilometers (113.2 miles) south east to avoid a short-spacing to the vacant allotment site for Channel 297C at Alturas, California. The coordinates for Channel 297C at Fallon

KORQ(FM), Channel 241C2, Winters, Texas.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 284C at Channing, Texas, as the community's first local aural transmission service. Channel 284C can be allotted to Channing in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.0 kilometers (23.6

avoid shot-spacings to the licensed sites for Station KGFT(FM), Channel 264C, Pueblo, Colorado, and Station KMOZ–FM, Channel 264C1, Grand Junction, Colorado. The coordinates for Channel 265C2 at Gunnison are 38–37–00 North Latitude and 107–01–00 West Longitude.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 290A at Rotan, Texas, as the

Matters To Be Discussed: HHS staff will give a summary presentation of the proposed rule. The public attending these meetings will have the opportunity to ask questions about the HHS rule and to comment on the rule. The public attending these meetings will also be encouraged to submit written comments to the regulatory record (docket). Official transcripts of the meetings, including all public comments on the proposed rule presented orally during the meetings, will be included in the public comment record (the 'docket') developed as part of the HHS rule making. HHS will consider comments received during the public comment period, which concludes on August 26, 2002, before issuing a final rule establishing procedures for adding classes of employees to the Special Exposure Cohort.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: July 15, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18361 Filed 7–18–02; 8:45 am]

BILLING CODE 4163–19–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1553 et al.]

Radio Broadcasting Services; Gunnison, CO; Elkhart, KS; Austin, NV; Baker, NV; Battle Mountain, NV; Eureka, NV; Fallon, NV; Cimarron, NM; Red Oak, OK; Channing, TX; Eldorado, TX; Escobares, TX; Matador, TX; Memphis, TX; Milano, TX; Ozona, TX; Rotan, TX; Wellington, TX; Moab, UT; and Salina, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes 20 new allotments in Gunnison, CO; Elkhart, KS; Austin, NV; Baker, NV; Battle Mountain, NV; Eureka, NV; Fallon, NV; Cimarron, NM; Red Oak, OK; Channing, TX; Eldorado, TX; Escobares, TX; Matador, TX; Memphis, TX; Milano, TX; Ozona, TX; Rotan, TX; Wellington, TX; Moab, UT; and Salina, UT. The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 263C1 at Elkhart, Kansas, as the community's first local aural transmission service. Channel 263C1 can be allotted to Elkhart in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 263C1 at Elkhart are 37–00–29 North Latitude and 101–53–23 West Longitude. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before August 26, 2002, and reply comments on or before September 10, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Mr. Willison H. Gormly, Sierra Grande Broadcasting, P.O. Box 51, Des Moines, New Mexico 88418–0051 (Petitioner for Elkhart, Kansas; Austin, Baker, Battle Mountain, Eureka, and Fallon, Nevada; Cimarron, New Mexicao; Moab and Salina, Utah; and Gunnison, Colorado); Ms. Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214 (Petitioner for Eldorado and Memphis, Texas); Ms. Linda Crawford, 3500 Maple Ave., #1320, Dallas, Texas 75219 (Petitioner for Channing, Ozona, and Rotan, Texas); Mr. Charles Crawford, 4553 Bordeaux Ave., Dallas, Texas 75205 (Petitioner for Escobares, Texas); Mr. Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 77345 (Petitioner for Wellington and Matador, Texas; and Red Oak, Oklahoma); and Mr. David P. Garland, 1110 Hackney Street, Houston, Texas 77023 (Petitioner for Milano, Texas).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–158, MB Docket No. 02–159, MB Docket No. 02–160, and MB Docket No. 02–161, MB Docket No. 02–162, MB Docket No. 02–163, MB Docket No. 02–164, MB Docket No. 02–165, and MB Docket No. 02–166, MB Docket No. 02–167, MB Docket No. 02–168, MB Docket No. 02–169, MB Docket No. 02–170, MB Docket No. 02–171, MB Docket No. 02–172, MB Docket No. 02–173, MB Docket No. 02–174, MB Docket No. 02–175, MB Docket No. 02–176, and MB Docket No. 02–177, adopted August 26, 2002, and released September 10, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, Room CY–B402, Washington, DC 20554.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 227C at Austin, Nevada, as the community's first local aural transmission service. Channel 227C can be allotted to Austin in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 227C at Austin are 39–29–36 North Latitude and 117–04–07 West Longitude.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 296C at Baker, Nevada, as the community's first local aural transmission service. Channel 296C can be allotted to Baker in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 296C at Baker are 38–51–12 North Latitude and 114–18–06 West Longitude.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 231C at Battle Mountain, Nevada, as the community's second local FM transmission service. Channel 231C can be allotted to Battle Mountain in compliance with the Commission's minimum distance separation requirements with a site restriction of 8 kilometers (5 miles) west to avoid a short-spacing to the licensed site of Station KLKO(FM), Channel 229C2 at Elko, Nevada. The coordinates for Channel 231C at Battle Mountain are 40–36–39 North Latitude and 117–01–24 West Longitude.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 300C at Eureka, Nevada, as the community's first local aural transmission service. Channel 300C can be allotted to Eureka compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 300C at Eureka are 39–40–46 North Latitude and 115–57–35 West Longitude.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 297C at Fallon, Nevada, as the community's fourth local FM transmission service. Channel 297C can be allotted to Fallon in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.25 kilometers (113.2 miles) south east to avoid a short-spacing to the vacant allotment site for Channel 297C at Alturas, California. The coordinates for Channel 297C at Fallon are 39–18–54 North Latitude and 118–38–18 West Longitude.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 236C2 at Cimarron, New Mexico, as the community's first local aural transmission service. Channel 236C2 can be allotted to Cimarron in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.5 kilometers (0.3 miles) south to avoid a short-spacing to the licensed site of Station KRDO–FM, Channel 236C2, Colorado Spring, Colorado. The coordinates for Channel 236C2 at Cimarron are 38–34–24 North Latitude and 109–32–57 West Longitude.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 234C at Moab, Utah, as the community's second local FM transmission service. Channel 246C1 can be allotted to Moab in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 246C1 at Moab are 38–34–24 North Latitude and 109–32–57 West Longitude.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 276C at Salina, Utah, as the community's first local aural transmission service. Channel 276C can be allotted to Salina in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 276C at Salina are 38–57–28 North Latitude and 111–51–33 West Longitude.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 241A at Eldorado, Texas, as potentially the community's fourth local FM transmission service. Channel 241A can be allotted to Eldorado in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.9 miles) southwest to avoid a short-spacing to the licensed site of Station KORQ(FM), Channel 241C2, Winters, Texas.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 284C at Channing, Texas, as the community's first local aural transmission service. Channel 284C can be allotted to Channing in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.0 kilometers (23.6 miles) northwest to avoid short-spacings to the licensed sites of Station KQFX(FM), Channel 282C1, Borger, Texas, and Station KLGD(FM), Channel 285C1, Tulia, Texas. The coordinates for Channel 284C at Channing are 35–58–15 North Latitude and 102–33–43 West Longitude.

The Commission requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 284A at Escobares, Texas, as the community's first local aural transmission service. Channel 284A can be allotted to Escobares in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) northeast to avoid a short-spacing to the licensed site of Station XHMF–FM, Channel 283C, Monterrey, Mexico. The coordinates for Channel 284A at Escobares are 26–26–29 North Latitude and 98–54–14 West Longitude. Since Escabares is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government has been requested.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 275C3 at Ozona, Texas, as the community's third local FM transmission service. Channel 275C3 can be allotted to Ozona in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 275C3 at Ozona are 30–42–30 North Latitude and 101–12–06 West Longitude. Since Ozona is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Commission requests comments on a petition filed by Sierra Grande Broadcasting proposing the allotment of Channel 265C2 at Gunnison, Colorado, as the community's third local FM transmission service. Channel 265C2 can be allotted to Gunnison in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7 miles) northwest to avoid shot-spacings to the licensed sites for Station KGFT(FM), Channel 264C, Pueblo, Colorado, and Station KMOZ–FM, Channel 264C1, Grand Junction, Colorado. The coordinates for Channel 265C2 at Gunnison are 38–37–00 North Latitude and 107–01–00 West Longitude.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 290A at Rotan, Texas, as the community's first local aural transmission service. Channel 290A can be allotted to Rotan in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 290A at Rotan are 32–51–07 North Latitude and 100–27–55 West Longitude.

The Commission requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 248A at Wellington, Texas, as the community's second local commercial FM transmission service. Channel 248A can be allotted to Wellington in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 kilometers (8.7 miles) northwest to avoid a short-spacing to the allotment site for Channel 248C1, Archer City, Texas. The coordinates for Channel 248A at Wellington are 34–56–51 North Latitude and 100–19–10 West Longitude.

The Commission requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 227A at Red Oak, Texas as the community's first local aural transmission service. Channel 227A can be allotted to Red Oak in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.8 kilometers (7.9 miles) south to avoid a short-spacing to the licensed site of Station KKNG–FM, Channel 227C1, New Castle, Oklahoma. The coordinates for Channel 227A at Red Oak are 34–50–34 North Latitude and 95–07–42 WL West Longitude.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 292A at Memphis, Texas, as potentially the community's third local FM transmission service. Channel 292A can be allotted to Memphis in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 292S at Memphis are 34–43–29 North Latitude and 100–32–01 West Longitude.

The Commission requests comments on a petition filed by Maurice Salsa

proposing the allotment of Channel 227C3 at Matador, Texas, as the community's first local FM transmission service. Channel 227C3 can be allotted to Matador in compliance with the Commission's minimum distance separation requirements with a site restriction of. The coordinates for Channel 227C3 at Matador are 3–10–06 North Latitude and 100–43–57 West Longitude.

by adding Austin, Channel 227C; by adding Baker, Channel 296C, by adding Channel 231C at Battle Mountain; by adding Eureka, Channel 300C; and by adding Channel 297C at Fallon.

5. Section 73.202(b), the Table of FM allotments under New Mexico, is amended by adding Cimarron, Channel 236C2.

6. Section 73.202(b), the Table of FM allotments under Okalahoma, is

The experiment would occur within a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area (GOM/GB RMA), well within the Northern Shrimp Small Mesh Exemption Area; specifically, from the shore at 44°18′ N. lat., 69°00′ W. long., south to 43°35.3′ N. lat., 69°00′ W. long., southwesterly to 43°00′ N. lat., 70°30′ W. long., then northerly to the shore at 43°21′ N. lat., 70°30′ W. long. The experimental

The field work would require 276 total hours of towing; 2 and one-half-inch (6.35–cm) versus 3–inch (7.62–cm) codend gear trials would entail 36 total hours of trawling activity (6 days paired towing with 6 half-hour tows per day for each of the two vessels), followed by 240 total hours of towing during the remaining sea trials (4 days each per month for 3 months for two vessels towing an average of 10 hours per day).

species catch rates are low. Nonetheless, the applicant expects that the average bycatch levels would not exceed acceptable thresholds.

All of the paired tow trips and 25 percent of the remaining 24 trips would have an MEDMR sea sampler on board and the catch would be measured according to NMFS sea sampling methodology and recorded on NMFS logbooks. For all trips without a sea

objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. NMFS announces that the Regional Administrator proposes to issue EFPs that would allow two vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United

proposing the allotment of Channel 227C3 at Matador, Texas, as the community's first local FM transmission service. Channel 227C3 can be allotted to Matador in compliance with the Commission's minimum distance separation requirements with a site restriction of. The coordinates for Channel 227C3 at Matador are 3–10–06 North Latitude and 100–43–57 West Longitude.

The Commission requests comments on a petition filed by David P. Garland proposing the allotment of Channel 274A at Milano, Texas, as the community's first local aural transmission service. Channel 274A can be allotted to Milano in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) southwest to avoid short-spacings to the licensed sites of Station KBRQ(FM), Channel 273C1, Hillsboro, Texas, and Station KTFM(FM), Channel 274C1, San Antonio, Texas. The coordinates for Channel 274A at Milano are 30–38–10 North Latitude and 96–57–10 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 265C2 at Gunnison.

3. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Elkhart, Channel 263C1.

4. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Austin, Channel 227C; by adding Baker, Channel 296C, by adding Channel 231C at Battle Mountain; by adding Eureka, Channel 300C; and by adding Channel 297C at Fallon.

5. Section 73.202(b), the Table of FM allotments under New Mexico, is amended by adding Cimarron, Channel 236C2.

6. Section 73.202(b), the Table of FM allotments under Okalahoma, is amended by adding Red Oak, Channel 227A.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding by adding Channing, Channel 284C; by adding Channel 241A at Eldorado; by adding Escobares, Channel 284A; by adding Matador, Channel 227C3; by adding Channel 292A at Memphis; by adding Milano, Channel 274A; by adding Channel 275C3 at Ozona; and by adding Rotan, Channel 290A.

8. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Channel 234C1 at Moab; and by adding Salina, Channel 276C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–18251 Filed 7–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 070602D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. NMFS announces that the Regional Administrator proposes to issue EFPs that would allow two vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. EFPs would allow exemptions to gear restrictions and to the Days-at-Sea (DAS) requirements of the FMP. The experiment proposes to compare two experimental trawl net configurations (2½–inch (6.35–cm) diamond and 3–inch (7.62–cm) diamond codend mesh sizes in a net with a finfish excluder device and a raised footrope with no sweep) to compare various dropper chain lengths and locations on the footrope and to fish this gear in a variety of bottom types and depths to selectively fish for whiting (*Merluccius bilinearis*), while maintaining low levels of regulated Northeast multispecies bycatch.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before August 5, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Whiting EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: The Maine Division of Marine Resources (MEDMR) submitted an application for EFPs on June 14, 2002, with final revisions received on June 27, 2002. The EFPs would facilitate the collection of data on experimental gear performance for use in addressing whiting conservation issues (juvenile whiting bycatch) and reductions in regulated Northeast multispecies bycatch in the Gulf of Maine whiting fishery (Maine whiting fishery). MEDMR also intends to present the findings of the data from the experiment to the New England Fishery Management Council (Council) for its consideration when evaluating year–4 default measures and long-term management options for the whiting resource.

The experiment would occur within a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area (GOM/GB RMA), well within the Northern Shrimp Small Mesh Exemption Area; specifically, from the shore at 44°18′ N. lat., 69°00′ W. long., south to 43°35.3′ N. lat., 69°00′ W. long., southwesterly to 43°00′ N. lat., 70°30′ W. long., then northerly to the shore at 43°21′ N. lat., 70°30′ W. long. The experimental fishing area would exclude any seasonal or year-round closures overlapping it in time or area and would operate for 3 months, from mid-July through mid-October 2002. Field testing of the proposed gear modification through the gear trials would take place for approximately 6 days a month from July through mid-October 2002 to allow for weather contingencies and to capture seasonal variability in target species distribution and abundance.

The experiment is a continuation of, and intends to build on, previous gear studies (i.e., a gear testing component of the traditional Separator Trawl Whiting Experimental Fishery) that tested and assessed gear selectivity factors designed to address bycatch issues in the Maine whiting fishery. The main purpose of this four-phase study is as follows: (1) To obtain better video footage of the gear and its interactions with fish and habitat (singular and combined effects); (2) to compare 2 and one-half-inch (6.35–cm) diamond codend mesh against 3-inch (7.62–cm) diamond codend mesh, each with 2–inch (5.08–cm) grate bar spacings in combination with 42–inch (106.7–cm) dropper chains on a raised footrope trawl net configuration; (3) to test various dropper chain configurations for balance with the number of headrope floats for best net stability; and (4) to tow the best net configuration over a variety of bottom types and depths under commercial conditions to ensure that the net will continue to work well with heavier catches.

The field work would require 276 total hours of towing; 2 and one-half-inch (6.35–cm) versus 3–inch (7.62–cm) codend gear trials would entail 36 total hours of trawling activity (6 days paired towing with 6 half-hour tows per day for each of the two vessels), followed by 240 total hours of towing during the remaining sea trials (4 days each per month for 3 months for two vessels towing an average of 10 hours per day).

Projected whiting landings based on MEDMR sea sampling data during July and August 1999 are estimated at upper catch rates of between 18,960 lb (8,600.11 kg) and 31,680 lb (14,369.80 kg) of whiting total (based upon an average catch per unit effort of between 790 lb (358.34 kg) and 1,320 lb (598.74 kg) per trip). Lower catch rates are estimated at 42 lb (19.05 kg)/trip or 1,008 lb 457.22 kg) total catch for the 24 gear trial trips, excluding the 12 paired tow trips where minimal catch would be retained. These catch levels are well within the possession/landing limits for vessels using small mesh within the GOM/GB RMA. Landed catch would not exceed current restrictions, depending on mesh size being used. Thus, the experimental gear trials are expected to have very little incremental impact on the whiting resource. Participants may retain whiting and Atlantic herring (*Clupea harengus*) for commercial sale up to the applicable landing limits.

Historically, the Maine whiting fishery, through its use of the separator trawl (the control gear in this experiment), has experienced low levels of regulated multispecies bycatch. One of the objectives of the experiment is to demonstrate that the proposed gear combinations of separator grate, mesh size and raised footrope trawl configuration can selectively fish for whiting, while avoiding impacts on regulated finfish species. The applicant notes that the proportion of bycatch to the total catch (percent bycatch) may exceed acceptable levels when target species catch rates are low. Nonetheless, the applicant expects that the average bycatch levels would not exceed acceptable thresholds.

All of the paired tow trips and 25 percent of the remaining 24 trips would have an MEDMR sea sampler on board and the catch would be measured according to NMFS sea sampling methodology and recorded on NMFS logbooks. For all trips without a sea sampler, the captain would record total catch, catch of whiting, and catch in numbers and weight of each regulated species for each tow in a logbook supplied by MEDMR. Any sub-legal sized fish would be measured by the sea samplers and returned immediately to the water.

The applicant plans to conduct public outreach meetings to present the gear research findings to the remainder of the fleet that did not participate in the experimental fishery. It is intended that the results of this gear work will be the basis for a request to the Council for a Maine whiting fishery exemption within an appropriate area and under certain gear restrictions.

EFPs would exempt two vessels from the DAS requirements and gear restrictions of the FMP found at 50 CFR part 648, subpart F.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18265 Filed 7–18–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 139
Friday, July 19, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee (RAC); Notice of Meeting

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Yellow River Watershed Structure No.

taken until 30 days after the date of this publication in the **Federal Register.**

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12373, which requires intergovernment consultation with State and local officials].

Leonard Jordan,

State Conservationist.

criteria. This will essentially eliminate the risk to loss of life for individuals in 45 homes, 2 businesses, 2 recreational facilities, and 5 roads [7 bridges] downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public

planning term, technical advisory, and public meetings.

An Interdisciplinary Planning Team provided for the "technical" administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS–National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary

Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee

AGENCY: Forest Service, USDA

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, August 8, 2002. The meeting is scheduled to begin at 9 a.m. and will conclude at approximately 4 p.m. The meeting will be held at the Salem Office of the Bureau of Lane Management Office; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Report on status of 2002 projects; (2) Recommendations on 2003 Projects; and (3) Public Forum.

The Public Forum is tentatively scheduled to begin at 9:30 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged; particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the August 8th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: July 10, 2002.

Y. Robert Iwamoto,

Acting Forest Supervisor.

[FR Doc. 02–18201 Filed 7–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee (RAC); Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou Resource Advisory Committee (RAC) will meet on Tuesday, August 20, and Wednesday, August 21, 2002. Tuesday's meeting is scheduled to begin at 10 a.m. and conclude at approximately 5 p.m. Wednesday's meeting will begin at 8:30 a.m. and will conclude at approximately 12 noon. The meeting will be held at the Harbor Sanitary District Office, 16408 Lower Harbor Rd., Brookings, Oregon. The tentative agenda for August 20 includes: (1) Review and recommendation of projects for fiscal year 2003 funding and (2) Public Forum. The public forum is tentatively scheduled to begin at 11 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. The tentative agenda for August 21 includes: (1) Review and recommendation of projects for fiscal year 2003 funding (2) Public Forum. The public forum is tentatively scheduled to begin at 9 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged particularly if the material cannot be presented within the time limits for the public forum. Written comments may be submitted prior to the August 20 and 21 meetings by sending them to the Designated Federal Official, Tom Reilly at the address given below.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official Tom Reilly; Rogue and Siskiyou National Forests; P.O. Box 520, Medford, Oregon 97501; (541) 858–2200.

Dated: July 15, 2002.

Tom Reilly,

Acting Forest Supervisor, Rogue River and Siskiyou National Forests.

[FR Doc. 02–18238 Filed 7–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Yellow River Watershed Structure No. 14: Gwinnett County, GA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations [40 CFR Part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR Part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Yellow River Watershed Structure No. 14, Gwinnett County, Georgia.

FOR FURTHER INFORMATION CONTACT: Jimmy Bramblett, Water Resources Specialist, Natural Resources Conservation Service, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone (706) 546–2073, E-Mail *jimmy,bramblett@ga.usda.gov.*

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Leonard Jordan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact [FONSI] has been forwarded to the U.S. Environmental Protection Agency and to various Federal, States, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jimmy Bramblett at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12373, which requires intergovernment consultation with State and local officials].

Leonard Jordan,

State Conservationist.

Introduction

The Yellow River Watershed is a federally assisted action authorized for planning under Public Law 106–472, the Small Watershed Rehabilitation Act, which amends Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Yellow River Watershed Structure No. 14 [Y–14], to meet current dam safety criteria in Georgia. The plan calls for construction of a roller-compacted concrete emergency spillway over the top of an existing earthen embankment. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Construct a roller-compacted concrete emergency spillway over the top of an existing earthen embankment. This constructed emergency spillway is designed to bring the existing dam into compliance with current dam safety criteria in Georgia. The current emergency spillway will be removed from service by constructing a berm from material excavated on the existing embankment.

2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Installing a roller-compacted emergency spillway will bring Yellow River Watershed Structure No. 14 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 45 homes, 2 businesses, 2 recreational facilities, and 5 roads [7 bridges] downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 25 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be complemented with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Seven alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Gwinnett County Government, Gwinnett County Soil and Water Conservation District, and the Upper Ocmulgee River Resource Conservation and Development Council. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Yellow River Watershed. Gwinnett County agreed to serve as "lead sponsor" being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process. Meetings with the project sponsors were held throughout the planning process, and project sponsors provided representation at planning term, technical advisory, and public meetings.

An Interdisciplinary Planning Team provided for the "technical" administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS–National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing and Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were evaluated at Planning Team meetings held on 1/27/02, 2/14/02, 2/27/02, 3/20/02, 5/29/02, 6/12/02, and 6/26/02. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

A Technical Advisory Group was developed to aid the Planning Team with the planning process. The following agencies were involved in developing this plan and provided representation on the Technical Advisory Group:

- Gwinnett County Government
- Gwinnett County Soil and Water Conservation Districts
- Georgia Department of Natural Resources, Environmental Protection Division [EPD], Safe Dams Program
- Georgia Department of Natural Resources, Wildlife Resources Division [WRD], Game and Fisheries Section
- United States Environmental Protection Agency [EPA], Region IV
- USDA, Natural Resources Conservation Service [NRCS]
- USDA, Fish and Wildlife Service [F&WS]
- US Army Corps of Engineers [COE]

A meeting and field tour with the Technical Advisory Group was held on February 27, 2002 to assess proposed measures and their potential impact on resources of concern. A review of National Environmental Policy Act [NEPA] concerns was initiated at this meeting. Effects of proposed measures on NEPA concerns reviewed were documented. Additional field tours were held with the COE on March 11, 2002 to determine the most efficient 404 permitting process.

Suzanne Kenyon, Cultural Resources Specialist with the NRCS-National Water Management Center, visited the project site in the fall of 2001. She provided a methodology for considering culturally significant resources, which was followed in this planning process. An inventory of the watershed, and associated downstream impacted area was completed with no culturally important or archaeological sites noted. The area of potential effect was provided to the Georgia State Historic Preservation Office with passive

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: August 18, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800,

Services

Service Type/Location: Administrative Services, Federal Trade Commission, Washington, DC.
NPA: Sheltered Occupational Center of Northern Virginia, Inc., Arlington, Virginia.
Contract Activity: Federal Trade Commission, Washington, DC.
Service Type/Location: Janitorial/Custodial, Building 2155, Fort Polk, Louisiana.
NPA: Vernon Sheltered Workshop, Leesville, Louisiana.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

Manning at (202) 482–5253, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to

issued a preliminary decision on the remaining 75 scope exclusion requests filed in a number of the on-going cold-rolled steel investigations (*see* the June 13, 2002, memorandum regarding "Preliminary Scope Rulings in the Antidumping Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand,

project site in the fall of 2001. She provided a methodology for considering culturally significant resources, which was followed in this planning process. An inventory of the watershed, and associated downstream impacted area was completed with no culturally important or archaeological sites noted. The area of potential effect was provided to the Georgia State Historic Preservation Office with passive concurrence provided.

Public Participation

A public meeting was held on March 20, 2002 to explain the Small Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the Y–14 project area. Potential alternative solutions to bring Y–14 into compliance with current dam safety criteria were also presented. Through a voting process, meeting participants provided input on issues and concerns to be considered in the planning process, and identified the most socially acceptable alternative solution.

A second public meeting was held on June 26, 2002 to summarize planning accomplishments, convey results of the reservoir sedimentation survey, and present various structural alternatives. The roller compacted concrete alternative was identified as the most complete, acceptable, efficient, and effective plan for the watershed.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional or national impacts on the environment. Therefore, based on the above finding, I have determined that an environmental impact statement for the recommended plan of action on Yellow River Watershed Structure No. 14 is not required.

Dated: July 8, 2002.

Leonard Jordan,

State Conservationist.

[FR Doc. 02–18228 Filed 7–18–02; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: August 18, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Case, Crash Rescue Kit, 4210–00–NSH–0001.
NPA: Development Workshop, Inc., Idaho Falls, Idaho.
Contract Activity: Bureau of Land Management, NIFS, Boise, Idaho, Boise, Idaho.

Services

Service Type/Location: Administrative Services, Federal Trade Commission, Washington, DC.
NPA: Sheltered Occupational Center of Northern Virginia, Inc., Arlington, Virginia.
Contract Activity: Federal Trade Commission, Washington, DC.
Service Type/Location: Janitorial/Custodial, Building 2155, Fort Polk, Louisiana.
NPA: Vernon Sheltered Workshop, Leesville, Louisiana.
Contract Activity: Directorate of Contracting, Fort Polk, Louisiana.
Service Type/Location: Mattress Resizing, Defense Supply Center—Philadelphia, Philadelphia, Pennsylvania.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, Pennsylvania.

G. John Heyer,

General Counsel.

[FR Doc. 02–18275 Filed 7–18–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 18, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740

SUPPLEMENTARY INFORMATION: On May 31, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 38066) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, FAA, Air Traffic Control Tower, Detroit Metropolitan Airport, Detroit, Michigan.
NPA: Jewish Vocational Service and Community Workshop, Inc., Southfield, Michigan.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Custodial, Marine Corps Reserve Center, Brook Park, Ohio.
NPA: Goodwill Industries of Greater Cleveland, Inc., Cleveland, Ohio.
Contract Activity: Officer in Charge of Contracts, Crane, Indiana.
Service Type/Location: Mail Support Services, Department of Justice, Drug Enforcement Agency, Newark, New Jersey.
NPA: The First Occupational Center of New Jersey, Orange, New Jersey.
Contract Activity: Drug Enforcement Agency, Washington, DC.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 02–18276 Filed 7–18–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–804]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482–0651, or Mark Manning at (202) 482–5253, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2001).

Final Determination

We determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Australia are being, or are likely to be, sold in the United States at less than fair value (LFTV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Background

On May 9, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Australia*, 67 FR 31192 (May 9, 2002) (*Preliminary Determination*). *See also Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

Since the preliminary determination, the following events have occurred. We gave interested parties an opportunity to comment on the preliminary determination. With respect to scope, in the preliminary LTFV determinations in these cases, the Department preliminarily excluded certain porcelain enameling steel from the scope of these investigations. *See Scope Appendix to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 67 FR 31181 (May 9, 2002) (*Scope Appendix—Argentina Preliminary LTFV Determination*). On June 13, 2002, we issued a preliminary decision on the remaining 75 scope exclusion requests filed in a number of the on-going cold-rolled steel investigations (*see* the June 13, 2002, memorandum regarding "Preliminary Scope Rulings in the Antidumping Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea" (*Preliminary Scope Rulings*), which is on file in the Central Records Unit (CRU), room B–099 of the main Department building. We gave parties until June 20, 2002, to comment on the preliminary scope rulings, and until June 27, 2002, to submit rebuttal comments. We received comments and/or rebuttal comments from petitioners and respondents from various countries subject to these investigations of cold-rolled steel. In addition, on June 13, 2002, North American Metals Company (an interested party in the Japanese proceeding) filed a request that the Department issue a "correction" for an already excluded product. On July 8, 2002, the petitioners objected to this request.

At the request of multiple respondents, the Department held a public hearing with respect to the *Preliminary Scope Rulings* on July 1, 2002.

We gave interested parties an opportunity to comment on the preliminary determination. No case or rebuttal briefs were submitted.

Critical Circumstances

In letters filed on December 7, 2001, and January 14, 2002, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cold-rolled steel from Australia and other countries. On April 18, 2002, the Department published in the **Federal Register** its preliminary determination that critical circumstances exist for imports of cold-rolled steel from Australia and other countries. *See Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) and Memorandum from Bernard

Carreau to Faryar Shirzad, "Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Australia, India, the Netherlands, and the Republic of Korea—Preliminary Affirmative Determinations of Critical Circumstances," dated April 10, 2002.

We received no comments from the petitioners or the respondent regarding

24.06 percent, the rate derived from the petition. *See Initiation Notice*. Also, the Department applied the petition margin of 24.06 percent as the "all others" rate. The interested parties did not object to the use of adverse facts available, or to the Department's choice of facts available. For this final determination, we are continuing to apply total adverse facts available to BHP.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial

low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this

called columbium), or 0.15 % of vanadium, or 0.15 % of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded.

The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- *SAE grades* (formerly also called AISI

based on an alloy ASTM specification (sample specifications: ASTM A506, A507);

- *Non-rectangular shapes*, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- *Silicon-electrical steels*, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 %

Carreau to Faryar Shirzad, "Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Australia, India, the Netherlands, and the Republic of Korea—Preliminary Affirmative Determinations of Critical Circumstances," dated April 10, 2002.

We received no comments from the petitioners or the respondent regarding our preliminary finding that critical circumstances exist for imports of cold-rolled steel from Australia. Therefore, we have not changed our determination and continue to find that critical circumstances exist for imports of cold-rolled steel from Australia. Regarding the other countries for which we preliminarily found affirmative critical circumstances, we will make final determinations concerning critical circumstances for these countries when we make our final dumping determinations in those investigations.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation is contained in the "Scope Appendix" attached to this final determination notice. For a complete discussion of the comments received on the *Preliminary Scope Rulings, see* the memorandum regarding "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the CRU.

Analysis of Comments Received

As noted above, there were no case or rebuttal briefs submitted in this investigation, nor was there a hearing.

Use of Facts Available

In the *Preliminary Determination*, the Department applied total adverse facts available to the mandatory respondent, Broken Hill Propriety Limited Steel (BHP JLA), and BHP Steel Americas (BHPSA) (collectively known as BHP), because BHP chose not to participate in the investigation. As a result, the Department assigned BHP the rate of 24.06 percent, the rate derived from the petition. *See Initiation Notice*. Also, the Department applied the petition margin of 24.06 percent as the "all others" rate. The interested parties did not object to the use of adverse facts available, or to the Department's choice of facts available. For this final determination, we are continuing to apply total adverse facts available to BHP.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all entries of cold-rolled steel from Australia that are entered, or withdrawn from warehouse, for consumption on or after February 9, 2002, which is 90 days prior to the date the *Preliminary Determination* was published in the **Federal Register**, because of our affirmative critical circumstances finding in accordance with section 735(a)(3) of the Act. Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following percentage margins exist for the period July 1, 2000 through June 30, 2001:

Manufacturer/exporter	Margin (percent)
BHP	24.06
All Others	24.06

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Scope of the AD/CVD Investigations on Certain Cold-Rolled Steel Products

For a complete discussion of the comments received on the *Preliminary Scope Rulings, see* the "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," on file in the CRU. This memorandum can also be accessed directly on the Web at *http://ia.ita.doc.gov/frn/summary/list.htm*. The paper copy and electronic version are identical in content.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as

low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the HTSUS, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 % or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 % of manganese, or 2.25 % of silicon, or 1.00 % of copper, or 0.50 % of aluminum, or 1.25 % of chromium, or 0.30 % of cobalt, or 0.40 % of lead, or 1.25 % of nickel, or 0.30 % of tungsten, or 0.10 % of molybdenum, or 0.10 % of niobium (also called columbium), or 0.15 % of vanadium, or 0.15 % of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded.

The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- *SAE grades* (formerly also called AISI grades) above 2300;
- *Ball bearing steels*, as defined in the HTSUS;
- *Tool steels*, as defined in the HTSUS;
- *Silico-manganese steel*, as defined in the HTSUS;
- *Silicon-electrical steels*, as defined in the HTSUS, that are grain-oriented;
- *Silicon-electrical steels*, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 %;
- *All products (proprietary or otherwise) based on an alloy ASTM specification* (sample specifications: ASTM A506, A507);
- *Non-rectangular shapes*, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- *Silicon-electrical steels*, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 %, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- *Certain shadow mask steel*, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- *Certain flapper valve steel*, which is hardened and tempered, surface polished, and which meets the following characteristics:
  Thickness: ≤1.0mm
  Width: L ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERITES

Tensile Strength	≥162 Kgf/mm²
Hardness	≥ 475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm Surface Roughness

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤0.310	Rz ≤ 0.6
0.310 < t ≤0.440	Rz ≤ 0.7
0.440 < t ≤0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

- *Certain ultra thin gauge steel strip*, which meets the following characteristics:
  Thickness: ≤0.100 mm ± 7%

Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides <1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max.
Extra Bright	5(0.1)	0(0)	7(0.2)

Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm m

- *Certain silicon steel,* which meets the following characteristics:

Thickness: 0.024 inch ± 0.0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %						
Max. Weight %	0.004	0.4	0.09	0.009	0.65	0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical
	1500 minimum

- *Certain aperture mask steel,* which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	A1
Weight %	<0.01	0.004 to 0.007	≤0.007

- *Certain annealed and temper-rolled continuously cast steel,* which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20			0.03					0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming, 0.018 Max.)		0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides <1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max.
Extra Bright	5(0.1)	0(0)	7(0.2)

- *Certain annealed and temper-rolled cold-rolled continuously cast steel,* in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:

Element	C	Mn	P	S
Max. Weight D0.13	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+/−10 % of theoretical thickness)
Width	787 mm to 813 mm
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15 % in 2 inches

- *Concast cold-rolled drawing quality sheet steel,* ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 max. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.
- *Certain single reduced black plate,* meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).
- *Certain single reduced black plate,* meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.
- *Certain single reduced black plate,* meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).
- *Certain cold-rolled black plate bare steel strip,* meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P S	
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ± 0.0003 inch
Hardness	T2/HR 30T 50—60 aiming
Elongation	≥ 15 %
Tensile Strength	51,000.0 psi ± 4.0 aiming

- *Certain cold-rolled black plate bare steel strip,* in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch)
Width	10 inches (+¼ to ⅜ inch/-0)
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15% in 2 inches

- *Certain "blued steel" coil* (also known as "steamed blue steel" or "blue oxide"), with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;
- *Certain cold-rolled steel sheet,* coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤ 0.019 inch
Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004	0.010	0.012
Min. Weight %			

- *Certain cold-rolled steel,* which meets the following characteristics

Width: > 66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %	21 (if 1.000–1.199 thickness range)
	22 (if 1.200–1.599 thickness range)
	23 (if 1.600–1.999 thickness range)
	24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element %	C	Si	Mn

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004	0.010	0.012
Min. Weight %			

• *Certain cold-rolled steel,* which meets the following characteristics
Width: > 66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800—2.000
Min. Yield Point (MPa)	265
Max. Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• *Certain band saw steel,* which meets the following characteristics:
Thickness: ≤ 1.31 mm
Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:
Carbide: Fully spheroidized having > 80 % of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.
• *Certain transformation-induced plasticity (TRIP) steel,* which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thicknes range (mm)	1.000—2.300 (inclusive)
Min. Yied Point (MPa)	320
Max. Yied Point (MPa)	460
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000—1.199 thickness range) 25 (if 1.200—1.599 thickness range) 26 (if 1.600—1.999 thickness range) 27 (if 2.000—2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weitht %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yied Point (MPa)	340
Max. Yied Point (MPa)	520
Min. Tensile Strength (MPa)	690

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element %	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weitht %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 9inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

• *Certain cold-rolled steel,* which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max. Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max. Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, V, Ti, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–0.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥35

• *Porcelain enameling sheet,* drawing quality, in coils, 0.014 inch in thickness, + 0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.
• *Cold-rolled steel strip to specification SAE 4130,* with the following characteristics:
HTSUS item number 7226.92.80.50
Width up to 24 inches
Gauge of "0.050—0.014 inches," and gauge tolerance of +/−0.0018 inches
• *Tinplate, rolled steel strip (SORRITEX),* with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	0.70–0.80	0.20–0.35	0.30–0.45	max. 0.020	max. 0.016		1.90–2.10

Typical material properties: Hardened and tempered
Tensile Strength: 1450 N/mm² for thickness < 2 mm and 1370 N/mm² for thickness > 2 mm
Width tolerance: B1 = +/−0.35 mm
Thickness tolerance: T1(+/−0.039 mm)
Flatness: P4 (max. deviation 0.1% of width of strip)
Straightness: (+/−0.25 mm/1000 mm)
Dimensions:
Widths: 6.3–412.8 mm

Physical and Mechanical Properties

Thickness (mm)	0.7
Elongation %	≥35

• *Porcelain enameling sheet*, drawing quality, in coils, 0.014 inch in thickness, + 0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.
• *Cold-rolled steel strip to specification SAE 4130*, with the following characteristics:
HTSUS item number 7226.92.80.50
Width up to 24 inches
Gauge of "0.050—0.014 inches," and gauge tolerance of +/−0.0018 inches
• *Texture-rolled steel strip (SORBITEX)*, with the following characteristics:
Thickness: 0.0039 to 0.0600 inches
Width: 0.1180 to 7.8700 inches (3–200 mm)

Chemical Composition

C	Si	Mn	P	S	Al	Cr	Ni	Cu
0.76–0.96%	0.10–0.35%	0.30–0.60%	< .025%	< .020%	< .060%	< .30%	< .20%	< .20%

Tensile strength ranges:245,000 to 365,000 psi.
HTSUS 7211.29.20.30 and HTSUS 7211.29.45.00
• *Reed steel*, with the following characteristics:
Grades Eberle 18, 18C (SAE 1095 modified alloyed steel)
HTSUS 7211.90.00

Physical Characteristics

Thickness	0.0008 to 0.04 inches (0.0203 to 1.015 mm)
Width	0.276 to 0.472 inches (7 mm to 12.0 mm), with width tolerances of +/−0.04 to 0.06 mm
Tensile strength	1599 Mpa to 2199 Mpa

Chemical Composition

C	Si	Mn	P	S	Cr
0.95–1.05%	0.15–0.30	.025–0.50%	less than 0.015%	less than 0.012%	less than 0.40%

Surface: Rmax 1.5 to 3.0 micrometers
Straightness: Max. deviation of 0.56mm/m
Flatness: Deviation of 0.1 to 0.3% of the width
• Feeler gauge steel, with the following characteristics:
Polished surface and deburred or rounded edges
Grades Eberle 18, 18C (SAE 1095 modified alloyed steel)
HTSUS 7211.90.00

Physical and Mechanical Properties

Max. width	0.4975 inches
Thickness Range	0.001–0.045 inches
Thickness tolerances	T2–T4 international standard
Tensile strength UTS	246–304 ksi

• *Wood Band Saw Steel with Nickel Content Exceeding 1.25% by Weight*, with the following characteristics:
Both variety 1 and variety 2 are classified under HTSUS item number 7226.99.00.00

Variety #1

Nickel-alloyed Band Saw Steel, which meets the following characteristics:
Thickness: >1,1 mm, ≤3.00 mm
Width: < 400 mm

Chemical Composition

Element / Weight %	C 0.70–0.80	Si 0.20–0.35	Mn 0.30–0.45	P max. 0.020	S max. 0.006	Cr 0.05–0.20	Ni 1.90–2.10	Cu max. 0.15	Al 0.02–0.04

Microstructure: Tempered Martensite with Bainite, no surface decarburization.
Mechanical Properties:
Hardness: 446 +12/−23 HV respectively 45 +1/−2 HRC
Surface Finish: bright, polished
Edges: treated edges
Cross Bow: max. 0.1 mm per mm width

Variety #2

UHB15N20 band saw steel according to the alloy composition:

Chemical Composition

Element / Weight %	C 0.70–0.80	Si 0.20–0.35	Mn 0.30–0.45	P max. 0.020	S max. 0.016	Cr	Ni 1.90–2.10

Typical material properties: Hardened and tempered
Tensile Strength: 1450 N/mm² for thickness < 2 mm and 1370 N/mm² for thickness > 2 mm
Width tolerance: B1 = +/−0.35 mm
Thickness tolerance: T1(+/−0.039 mm)
Flatness: P4 (max. deviation 0.1% of width of strip)
Straightness: (+/−0.25 mm/1000 mm)
Dimensions:
Widths: 6.3–412.8 mm
Thickness: 0.40 to 3.05 mm
• *2% nickel T5 tolerances and ra less than 8 my*, with the following characteristics:
Thickness: 0.5–3.5 mm
Width: 50–650 mm

Chemical Composition

Element / Weight % in	C 0.70–0.08	Si 0.15–0.35	Mn 0.30–0.05	P max. 0.020	S max. 0.010	Al max. −0.020	Cr 0.05–0.030	Ni 1.90–0.020

High precision T5 tolerance
Roughness: Ra (RMS) max. 8 inches
The product is classified under HTSUS item number 7226.92.50.00
• *Ski-edge profile steel*, with the following characteristics:
For both Grade SAE 1070 and German Grade SAE X35CrMo17:
HTSUS item numbers 7228.60.80 and 7216.69.00
Hardened and tempered, HRC 44–52
Surface: bright finished, sandblasted or primer coated
Stamped condition

Dimensions

	Width mm	Width mm	Thickness mm	Thickness mm
Ski 39	6	1.90	2	0.50
Ski 40	6	1.70	2	0.50
Ski 129	7.70	2.00	2.20	0.60

Chemical Composition for Grade SAE 1070

Element / % in Weight	C 0.65–0.75	Si max. 0.40	Mn max. 0.60–0.90	P max. 0.04	S max. 0.05

Chemical Composition for German Grade SAE ×35CrMo17

Element / % in Weight	C 0.33–0.45	Si max. 1.0	Mn max. 1.50	P max. 0.04	S max. 0.025	CR 15.5–17.5	Mo 0.8–1.3	Ni max. 1.0

Note that this is an angle shape or section steel that is not covered by this scope.
• *Flat wire*, with the following characteristics:
SAE 1074 alloyed, annealed, skin passed
Hardened and tempered
Formed edges
Widths of less than 12.7 mm
Thickness from 0.50–2.40 mm
• *Shadow/aperture mask steel*, which is Aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and meets the following characteristics:
Thickness: 0.001 to 0.010 inch
Width: 15 to 35 inches
Increased tensile strength of 800 to 1,200 N/mm²

Chemical Composition

Element / Weight %	C < 0.01%	N 0.01–0.017%	Mn 0.06–0.85%

HTSUS item numbers 7209.18.25.10 or 7211.23.60.75, depending on the width of the material.
• *Grade 13C cement kiln steel*, with the following specifications:

Chemical Composition

Element	C	Si	Mn	P	S

Chemical Composition—Continued

Weight %	0.65	0.25	0.65	max. 0.020	max. 0.010

Microstructure: Fine grained and homogenous. Matrix of tempered martensite with a small amount of undissolved carbides
Decarburization: No free ferrit is allowed; Total decarburization should not exceed 4% per plane
Mechanical Properties: Tensile strength: 1200–1700 N/mm², (Standard 1280 +/− 80 N/mm²)
Surface Finish: Gray hardened condition. Ra/CLA—max. 0.25 m. Cut off 0.25 mm Rmax—max. 2.5 m
Edge Condition: Slit edges free from cracks and damages
Dimensions:
Thickness: 0.4–1.40 mm, Tolerance: T1
Width: 250–1200 mm, Tolerance: B1

(*Preliminary Scope Rulings*), which is on file in the Central Records Unit (CRU), room B-099 of the main Department building. We gave parties until June 20, 2002, to comment on the preliminary scope rulings, and until June 27, 2002, to submit rebuttal comments. We received comments and/or rebuttal comments from petitioners and respondents from various countries subject to these investigations of cold-

preliminarily found affirmative critical circumstances, we will make final determinations concerning critical circumstances for these countries when we make our final dumping determinations in those investigations.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality

for consumption on or after February 9, 2002, which is 90 days prior to the date the *Preliminary Determination* was published in the **Federal Register**, because of our affirmative critical circumstances finding in accordance with section 735(a)(3) of the Act. Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as

CHEMICAL COMPOSITION—Continued

Weight %	0.65	0.25	0.85	max. 0.020	max. 0.010

Microstructure: Fine grained and homogenous. Matrix of tempered martensite with a small amount of undissolved carbides
Decarburization: No free ferrit is allowed; Total decarburization should not exceed 4% per plane
Mechanical Properties: Tensile strength: 1200–1700 N/mm², (Standard 1280 +/– 80 N/mm²)
Surface Finish: Gray hardened condition. Ra/CLA—max. 0.25 m. Cut off 0.25 mm Rmax—max. 2.5 m
Edge Condition: Slit edges free from cracks and damages
Dimensions:
Thickness: 0.4–1.40 mm, Tolerance: T1
Width: 250–1200 mm, Tolerance: B1
Flatness: Unflatness Across Strip: max. 0.4% of the nominal strip width
Coil Size: Inside Diameter: 600 mm
Coil Weight: max. 6.5 kg/mm strip width

- *Certain valve steel (type 2)*, with the following specifications: Hardened tempered high-carbon strip, characterized by high fatigues strength and wear resistanco, hardness combined with ductility, surface and end-finishes, and good blanking and forming properties.

HTSUS item number: 7211.90.00.00
Typical size ranges:
Thickness: 0.15–1.0 mm
Width: 10.0–140 mm

CHEMICAL COMPOSITION

Element Weight %	C 0.7–0.8	Si 0.2–0.35	Mn 0.3–0.45	P Max. 0.020	S Max. 0.016	Ni 1.9–2.1	Cr

The merchandise subject to this investigation is typically classified in the HTSUS at item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS item numbers are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. 02–18293 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-826]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482-0651, or Mark Manning at (202) 482-5253, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2001).

Final Determination

We determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from India are being, or are likely to be, sold in the United States at less than fair value (LFTV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Background

On May 9, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From India*, 67 FR 31218 (May 9, 2002) (*Preliminary Determination*). *See* also *Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

Since the preliminary determination, the following events have occurred. We gave interested parties an opportunity to comment on the preliminary determination.. With respect to scope, in the preliminary LTFV determinations in these cases, the Department preliminarily excluded certain porcelain enameling steel from the scope of these investigations. *See Scope Appendix to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 67 FR 31181 (May 9, 2002) (*Scope Appendix - Argentina Preliminary LTFV Determination*). On June 13, 2002, we issued a preliminary decision on the remaining 75 scope exclusion requests filed in a number of the on-going cold-rolled steel investigations ("Preliminary Scope Rulings in the Antidumping Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea" (*Preliminary Scope Rulings*), which is on file in the Central Records Unit (CRU), room B-099 of the main Department building. We gave parties until June 20, 2002, to comment on the preliminary scope rulings, and until June 27, 2002, to submit rebuttal comments. We received comments and/or rebuttal comments from petitioners and respondents from various countries subject to these investigations of cold-rolled steel. In addition, on June 13, 2002, North American Metals Company (an interested party in the Japanese proceeding) filed a request that the Department issue a "correction" for an already excluded product. On July 8, 2002, the petitioners objected to this request.

At the request of multiple respondents, the Department held a public hearing with respect to the *Preliminary Scope Rulings* on July 1, 2002.

We gave interested parties an opportunity to comment on the preliminary determination. No case or rebuttal briefs were submitted.

Critical Circumstances

In letters filed on December 7, 2001, and January 14, 2002, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cold-rolled steel from India and other countries. On April 18, 2002, the Department published in the **Federal Register** its preliminary determination that critical circumstances exist for imports of cold-rolled steel from India and other countries. *See Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) and Memorandum from Bernard Carreau to Faryar Shirzad, "Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Australia, India, the Netherlands, and the Republic of Korea Preliminary Affirmative Determinations of Critical Circumstances," dated April 10, 2002.

We received no comments from the petitioners or the respondent regarding our preliminary finding that critical circumstances exist for imports of cold-rolled steel from India. Therefore, we have not changed our determination and continue to find that critical circumstances exist for imports of cold-rolled steel from India. Regarding the other countries for which we preliminarily found affirmative critical circumstances, we will make final determinations concerning critical circumstances for these countries when we make our final dumping determinations in those investigations.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation is contained in the "Scope Appendix" attached to the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, published concurrently with this notice. For a complete discussion of the comments received on the *Preliminary Scope Rulings*, *see* the memorandum regarding "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the CRU.

Analysis of Comments Received

As noted above, there were no case or rebuttal briefs submitted in this investigation, nor was there a hearing.

Use of Facts Available

In the Preliminary Determination, the Department applied total adverse facts available to the mandatory respondent, Ispat Industries, Ltd. (Ispat). Specifically, the Department assigned Ispat the rate of 153.65 percent, the rate derived from the petition. *See Initiation Notice*. Also, the Department applied the petition margin of 153.65 percent as the "all others" rate. The interested parties did not object to the use of adverse facts available, nor to the Department's choice of facts available. For this final determination, we are continuing to apply total adverse facts available to Ispat.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all entries of cold-rolled steel from India that are entered, or withdrawn from warehouse, for consumption on or after February 9, 2002, which is 90 days prior to the date the *Preliminary Determination* was published in the **Federal Register**, because of our affirmative critical circumstances finding in accordance with section 735(a)(3) of the Act. Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following percentage margins exist for the period July 1, 2000 through June 30, 2001:

Manufacturer/Exporter	Margin (percent)
Ispat	153.65
All Others	153.65

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 10, 2002.
Faryar Shirzad,
Assistant Secretary for Import Administration.

[FR Doc. 02–18294 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-827]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482-0651, or Mark Manning at (202) 482-5253, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2001).

Final Determination

We determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Japan are being, or are likely to be, sold in the United States at less than fair value (LFTV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Background

On May 9, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Japan*, 67 FR 31223 (May 9, 2002) (*Preliminary Determination*). *See* also *Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

Since the preliminary determination, the following events have occurred. We gave interested parties an opportunity to comment on the preliminary determination.. With respect to scope, in the preliminary LTFV determinations in these cases, the Department preliminarily excluded certain porcelain enameling steel from the scope of these investigations. *See Scope Appendix to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 67 FR 31181 (May 9, 2002) (*Scope Appendix - Argentina Preliminary LTFV Determination*). On June 13, 2002, we issued a preliminary decision on the remaining 75 scope exclusion requests filed in a number of the on-going cold-rolled steel investigations ("Preliminary Scope Rulings in the Antidumping Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea" (*Preliminary Scope Rulings*) on July 1, 2002.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation, as well as final decisions on all of the scope exclusion requests submitted in the

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of cold-rolled steel from Japan that are entered, or withdrawn from warehouse, for consumption on or after May 9, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall

Dated: July 10, 2002.
Faryar Shirzad,
Assistant Secretary for Import Administration.

[FR Doc. 02–18295 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

Since the preliminary determination,

Dated: July 10, 2002.
Faryar Shirzad,
Assistant Secretary for Import Administration.
[FR Doc. 02–18294 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–859]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
EFFECTIVE DATE: July 19, 2002.
FOR FURTHER INFORMATION CONTACT: Mark Hoadley at (202) 482–0666, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.
SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations codified at 19 CFR Part 351 (2001).

Final Determination

We determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Japan are being, or are likely to be sold, in the United States at less than fair value (LFTV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Background

On May 9, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Japan*, 67 FR 31222 (May 9, 2002) (*Preliminary Determination*). This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

Since the preliminary determination, the following events have occurred. We gave interested parties an opportunity to comment on the preliminary determination. No case or rebuttal briefs were submitted. With respect to scope, in the preliminary LTFV determinations in these cases, the Department preliminarily excluded certain porcelain enameling steel from the scope of these investigations. *See Scope Appendix to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 67 FR 31181 (May 9, 2002) (*Scope Appendix - Argentina Preliminary LTFV Determination*). On June 13, 2002, we issued a preliminary decision on the remaining 75 scope exclusion requests filed in a number of the on-going cold-rolled steel investigations (*see* the June 13, 2002, memorandum regarding "Preliminary Scope Rulings in the Antidumping Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea" (*Preliminary Scope Rulings*), which is on file in the Department's Central Records Unit (CRU), room B–099). We gave parties until June 20, 2002 to comment on the preliminary scope rulings, and until June 27, 2002 to submit rebuttal comments. We received comments and/or rebuttal comments from petitioners and respondents from various countries subject to these investigations of cold-rolled steel. In addition, on June 13, 2002, North American Metals Company (an interested party in the Japanese proceeding) filed a request that the Department issue a "correction" for an already excluded product. On July 8, 2002, the petitioners objected to this request. At the request of multiple respondents, the Department held a public hearing with respect to the *Preliminary Scope Rulings* on July 1, 2002.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation, as well as final decisions on all of the scope exclusion requests submitted in the context of the concurrent cold-rolled steel investigations is contained in the "Scope Appendix" attached to the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, published concurrently with this notice. For a complete discussion of the comments received on the *Preliminary Scope Rulings*, *see* the memorandum regarding "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the CRU.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination. We did not hold a hearing because none was requested.

Use of Facts Available

In the preliminary determination, the Department applied total adverse facts available to each mandatory respondent. Specifically, the Department assigned the mandatory respondents, Kawasaki Steel Corporation and Nippon Steel Corporation, the rate of 115.22 percent, the highest rate derived from the petition. *See Preliminary Determination*. The Department based the "all others" rate on the simple average of the margins in the petition, which is 112.56 percent. The interested parties did not object to the use of adverse facts available, nor to the Department's choice of facts available. Therefore, for this final determination, we are continuing to apply total adverse facts available to each mandatory respondent.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of cold-rolled steel from Japan that are entered, or withdrawn from warehouse, for consumption on or after May 9, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following percentage margins exist:

Manufacturer/Exporter	Margin (percent)
Kawasaki Steel Corporation	115.22
Nippon Steel Corporation	115.22
All Others	112.56

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threatening material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 10, 2002.
Faryar Shirzad,
Assistant Secretary for Import Administration.
[FR Doc. 02–18295 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–819]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
EFFECTIVE DATE: July 19, 2002.
FOR FURTHER INFORMATION CONTACT: Matthew Renkey at (202) 482–2312, or Elfi Blum at (202) 482–0197, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.
SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (2001).

Final Determination

We determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Thailand are being, or are likely to be sold, in the United States at less than fair value (LFTV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Background

On May 9, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Thailand*, 67 FR 31261 (May 9, 2002) (*Preliminary Determination*). This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

Since the preliminary determination, the following events have occurred. We gave interested parties an opportunity to comment on the preliminary determination. No case or rebuttal briefs were submitted. With respect to scope, in the preliminary LTFV determinations in these cases, the Department preliminarily excluded certain porcelain enameling steel from the scope of these investigations. *See Scope Appendix to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 67 FR 31181 (May 9, 2002) (Scope Appendix - Argentina Preliminary LTFV Determination)*. On June 13, 2002, we issued a preliminary decision on the remaining 75 scope exclusion requests filed in a number of the on-going cold-rolled steel investigations (*see* the June 13, 2002, memorandum regarding "Preliminary Scope Rulings in the Antidumping Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea" (*Preliminary Scope Rulings*), which is on file in the Department's Central Records Unit (CRU), room B–099). We gave parties until June 20, 2002 to comment on the preliminary scope rulings, and until June 27, 2002 to submit rebuttal comments. We received comments and/or rebuttal comments from petitioners and respondents from various countries subject to these investigations of cold-rolled steel. In addition, on June 13, 2002, North American Metals Company (an interested party in the Japanese proceeding) filed a request that the Department issue a "correction" for an already excluded product. On July 8, 2002, the petitioners objected to this request.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corp., Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

At the request of multiple respondents, a hearing with respect to the *Preliminary Scope Rulings* was held on July 1, 2002.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation, as well as

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of cold-rolled steel from Thailand that are entered, or withdrawn from warehouse, for consumption on or after May 9, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall

Dated: July 10, 2002.
Faryar Shirzad,
Assistant Secretary for Import Administration.
[FR Doc. 02–18296 Filed 7–18–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

We gave interested parties an opportunity to comment on the

based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), based on the Harmonized Tariff Schedules of the United States (HTSUS) number that corresponds to the subject merchandise, we obtained information from a variety

Use of Facts Available (FA)

In the *Preliminary Determination*, the Department applied total adverse facts available to the sole mandatory respondent SSAB and the one voluntary respondent, Sandvik. Specifically, the Department assigned the sole mandatory respondent and the one voluntary respondent the rate of 40.54 percent, the rate derived from the petition. *See Preliminary Determination*, 67 FR at

At the request of multiple respondents, a hearing with respect to the *Preliminary Scope Rulings* was held on July 1, 2002.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation, as well as final decisions on all of the scope exclusion requests submitted in the context of the concurrent cold-rolled steel investigations is contained in the "Scope Appendix" attached to the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, published concurrently with this notice. For a complete discussion of the comments received on the *Preliminary Scope Rulings*, see the memorandum regarding "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the CRU.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination. We did not hold a hearing because none was requested.

Use of Facts Available

In the *Preliminary Determination*, the Department applied total adverse facts available to the sole mandatory respondent, Thai Cold-Rolled Steel Sheet Public Company, Limited (TCR). Specifically, the Department assigned TCR the rate of 142.78 percent, which was derived from the highest rate in the amended petition. *See Preliminary Determination*, 67 FR at 31262. The Department based the "all others" rate on the simple average of the margins in the amended petition, which is 127.44 percent. The interested parties did not object to the use of adverse facts available, nor to the Department's choice of facts available. Therefore, for this final determination, we are continuing to apply total adverse facts available to the mandatory respondent.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of cold-rolled steel from Thailand that are entered, or withdrawn from warehouse, for consumption on or after May 9, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following percentage margins exist:

Manufacturer/Exporter	Margin (percent)
Thai Cold-Rolled Steel Sheet Public Company, Limited	142.78
All Others	127.44

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threatening material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18296 Filed 7–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra at (202) 482–3965 or Jim Neel at (202) 482–3146 AD/CVD Enforcement Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Final Determination

We determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Sweden are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Background

On May 9, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Sweden*, 67 FR 31251 (May 9, 2002) (*Preliminary Determination*). *See* also *Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*).

We gave interested parties an opportunity to comment on the preliminary determination. Bohler-Uddeholm was the only party to submit case briefs in this proceeding, and all of these pertained to the scope segment of the investigation. All timely scope-related comments are on the record, but will be addressed in the *Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea* (scope memorandum).

On June 28, 2002, Bohler-Uddeholm submitted a case brief on the record of the investigation, however this brief contained only scope comments. The deadline for submitting case briefs with respect to scope issues was June 20, 2002 and rebuttal comments on scope were due June 27, 2002. On July 3, the petitioners filed a request that the Department reject the June 28 Bohler-Uddeholm brief as untimely. Because Bohler-Uddeholm's June 28 submission contained only scope comments, we rejected the comments as untimely filed and did not retain it on the record of this proceeding. *See* the memo to the file regarding the Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Sweden, dated July 2, 2002.

The Department did not receive any comments regarding our preliminary determination.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), based on the Harmonized Tariff Schedules of the United States (HTSUS) number that corresponds to the subject merchandise, we obtained information from a variety of sources and found that sixteen producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, SSAB Svenskt Stal AB (SSAB) represented a significantly large percent of the imports during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. *See Respondent Selection Memo.*

We designated SSAB as the mandatory respondent and sent it the antidumping questionnaire. On December 7, 2001, SSAB stated that it did not intend to participate in this investigation. On December 7, 2001 we selected AB Sandvik Steel as a voluntary respondent pursuant to 19 CFR section 351.204(d)(2). *See Preliminary Determination*[1], 67 FR at 31253.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation is contained in the "Scope Appendix" attached to the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, published concurrently with this notice. For a complete discussion of the comments received on the *Preliminary Scope Rulings*, *see* the scope memorandum dated July 10, 2002, which is on file in the CRU.

[1] After Sandvik informed the Department that it would not participate in this investigation, Sandvik requested the removal of its submissions from the record of this proceeding. In a letter to Sandvik dated April 25, 2002, the Department certified the removal and destruction of all proprietary copies of Sandvik's questionnaire responses. Additionally, the Department informed Sandvik that its withdrawal from the investigation would result in the use of facts available pursuant to section 776 of the Act.

Use of Facts Available (FA)

In the *Preliminary Determination*, the Department applied total adverse facts available to the sole mandatory respondent SSAB and the one voluntary respondent, Sandvik. Specifically, the Department assigned the sole mandatory respondent and the one voluntary respondent the rate of 40.54 percent, the rate derived from the petition. *See Preliminary Determination*, 67 FR at 31253–54. The Department also applied the petition margin of 40.54 as the "all others" rate, as a result of no other rate being available. The interested parties did not object to the use of adverse facts available, nor to the Department's choice of facts available. For this final determination, we are continuing to apply total adverse facts available to SSAB and Sandvik.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend the liquidation of all entries of certain cold-rolled steel from Sweden that are entered, or withdrawn from warehouse, for consumption on or after May 9, 2002, the date of publication of the Preliminary Determination in the Federal Register. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Sweden*, 67 FR 31251 (May 9, 2002). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
SSAB Svenskt Stal AB	40.54
AB Sandvik Steel	40.54
All Others	40.54

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department

will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder

instrument is intended to be used to understand chemical composition and electronic bonding at the nanoscale. Materials to be investigated are metals, ceramics, semiconductors and superconductors. *Application accepted by Commissioner of Customs:* June 13, 2002.

Docket Number: 02–026. *Applicant:* University of North Carolina at Chapel Hill, Department of Physics &

experiments will be carried out on rocks with very low strengths. Also, experiments will be carried out on rock and mineral samples jacketed in iron tubing, and to study the rate of melt migration through partially molten rocks and the rate of hydrogen diffusion into silicate minerals, particularly olivine. The instrument will also be used for educational purposes in the following courses: (1) Solid-Earth

information collection requirement concerning progress payments. A request for public comments was published in the **Federal Register** at 67 FR 34683, on May 15, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical

the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, in all correspondence.

Dated: July 16, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–18304 Filed 7–18–02; 8:45 am]

traditional (e.g., NATO allies) and non-traditional (e.g., that Afghan Northern Alliance). The Board will then recommend steps to pursue and implement the new and enhanced operational capabilities it identifies.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5

will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

DATED: July 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–18297 Filed 7–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–025. *Applicant:* Lawrence Berkeley National Laboratory, One Cyclotron Road, Procurement M/S 937–200, Berkeley, CA 94720. *Instrument:* Electron Microscope, Model Tecnai G² F20 U–TWIN STEM. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to understand chemical composition and electronic bonding at the nanoscale. Materials to be investigated are metals, ceramics, semiconductors and superconductors. *Application accepted by Commissioner of Customs:* June 13, 2002.

Docket Number: 02–026. *Applicant:* University of North Carolina at Chapel Hill, Department of Physics & Astronomy, CB# 3255, Chapel Hill, NC 27599–3255. *Instrument:* Electron Microscope, Model JEM–2010F FasTEM. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to study carbon nanotubes and other nanostructured materials such as diamond thin films to (1) reveal the atomics structure and the morphological evolutions of carbon nanotubes produced under various different conditions and (2) manipulate the structures in situ to achieve the desired properties and performance. *Application accepted by Commissioner of Customs:* June 21, 2002.

Docket Number: 02–27. *Applicant:* Pennsylvania State University, 195 Materials Research Institute Building, University Park, PA 16802. *Instrument:* Electron Microscope, Model JEM–2010F FasTEM. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to study an array of interfacial dopants by systematically varying dopant effective charge, ionic radius and electronegativity. The structure and chemistry of materials from the atomic to nanometer length scales will be studied, with particular emphasis on the structure of material defects. Experiments to be conducted include: (1) Quantification of interfacial segregation in oxide ceramics and correlation of segregation with interface crystallography, (2) high-resolution imaging of carbon nanotubes and (3) phase identification of catalysts. *Application accepted by Commissioner of Customs:* June 24, 2002.

Docket Number: 02–28. *Applicant:* University of Minnesota, Department of Geology & Geophysics, 310 Pillsbury Drive SE, ste 108, Minneapolis, MN 55455. *Instrument:* High-Pressure/High-Temperature Materials Testing Apparatus with Torsion Module. *Manufacturer:* Australian Scientific Instruments Pty Ltd, Australia. *Intended Use:* The instrument is intended to be used to study the mechanical properties of rocks and silicate minerals and to investigate the strength of the minerals olivine, clinopyroxene, plagioclase and enstatite to temperatures of 1650 K, to hyrdrostatic pressure of 700 Mpa, and to uniaxial loads of 100 kN. Both compressive creep and triaxial torsion experiments will be carried out on rocks with very low strengths. Also, experiments will be carried out on rock and mineral samples jacketed in iron tubing, and to study the rate of melt migration through partially molten rocks and the rate of hydrogen diffusion into silicate minerals, particularly olivine. The instrument will also be used for educational purposes in the following courses: (1) Solid-Earth Geophysics III: Rock and Mineral Physics and (2) Geodynamics II: The Fluid Earth. *Application accepted by Commissioner of Customs:* June 30, 2002.

Docket Number: 02–29. *Applicant:* University of Delaware, 223 Sharp Lab, Newark, DE 19716. *Instrument:* Electron Microscope, Model JEM–3010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used in microstructural investigations of magnetic materials such as FePt, CoPt, SmCo and NdFeB to develop an understanding of the effect of process parameter on the magnetic materials being developed for permanent magnet and magnetic recording technologies. *Application accepted by Commissioner of Customs:* July 3, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–18292 Filed 7–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010]

Federal Acquisition Regulation; Submission for OMB Review; Progress Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0010).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning progress payments. A request for public comments was published in the **Federal Register** at 67 FR 34683, on May 15, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit on or before August 19, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certification and supporting information are necessary for the administration of statutory and regulatory limitation on the amount of progress payments under a contract. The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of statutory and regulatory requirements concerning progress payments.

B. Annual Reporting Burden

Respondents: 27,000.
Responses Per Respondent: 32.
Annual Responses: 864,000.
Hours Per Response: .55.
Total Burden Hours: 475,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, in all correspondence.

Dated: July 16, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–18304 Filed 7–18–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Summer Study will meet in closed session on August 5–16, 2002, at the Beckman Center, Irvine, CA. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from two ongoing Task Force activities: Missile Defense and Special Operations and Joint Forces in Support of Countering Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Board will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight by examining five areas: Counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

The Board will also review all elements of the future joint force, including Special Operation Forces that can contribute to military campaigns. They will address how to: Enhance and best integrate information, maneuver and fires (kinetic and other, lethal and otherwise); deploy, sustain and protect the joint force in these missions, particularly in remote locations and in the face of counter-access measures; and, exploit and leverage the contributions of coalition partners both traditional (e.g., NATO allies) and non-traditional (e.g., that Afghan Northern Alliance). The Board will then recommend steps to pursue and implement the new and enhanced operational capabilities it identifies.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public

Dated: July 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–18187 Filed 7–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of the Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. The Secretary of the Army appoints its 11 members. This notice is to solicit nominations for seven (7) appointments or reappointments to two-year terms that will begin January 1, 2003.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of the Army (Civil Works) (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of Public Law 99–662. The substance of those provisions is as follows:

a. Selection. Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. Service. The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment. The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members

Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support Executive Advisory Committee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–

conference facilities, etc.) for all attendees, we request your attendance notification with this office by August 8, 2002. Corporate casual is meeting attire.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–18273 Filed 7–18–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

of the Comprehensive Everglades Restoration Plan (CERP) as authorized in Title VI of WRDA 2000 (Pub. L. 105–541, Section 601). Therefore, these two projects were included in the CERP Design Agreement between the Corps and the local sponsor, SFWMD, and required design studies are now proceeding.

b. Project Scope: The Pilot project will determine the feasibility of ASR

d. Issues: The DEIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, cultural resources, water availability, flood protection, and other potential impacts identified through scoping, public involvement, and interagency coordination.

e. Scoping: An initial public

Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment. The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarifeid as follows:

(1) Carriers and Shippers. The law uses the terms "primary users and shippers." Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers have been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) Geographical Representation. The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation. Waterway commerce has been aggregated into six commodity categories based on "inland" ten-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. Nomination. Reflecting preceding selection criteria, the current representation by the seven (7) Board members whose terms expire December 31, 2002 is one member representing region 1, one member representing region 2, two members representing region 3, one member representing region 4, one member representing region 5, and one member representing region 6. Also, these Board members represent five carriers, one shipper, and one shipper/carrier. Two of the seven members whose terms expire December 31, 2002, are eligible for reappointment. Nominations to replace Board members whose terms expire December 31, 2002, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented.

(2) State whether the nominee is representing carriers, shippers or both.

(3) Provide information on the nominee's personal qualifications.

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice (66 FR 36757) published on July 13, 2001 have been retained for consideration. Renomination is not required but may be desirable.

e. Deadline for Nominations. All nominations must be received at the address shown above no later than August 31, 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–18274 Filed 7–18–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support Executive Advisory Committee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. The U.S. Army, Operations Support Command, will host this meeting. The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include: ARMS Loan Program; Effects of TIM on Consideration; Security Issues; and Arsenal Support Program Initiative Update. This meeting is open to the public.

Date of Meeting: August 28–29, 2002.

Place of Meeting: Isle of Capri Hotel, 1777 Isle Parkway, Bettendorf, IA 52722.

Time of Meeting: 8:30 a.m.–5 p.m. on August 28 and 7:30 a.m.–12 p.m. on August 29.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Perez, U.S. Army Operations Support Command, and Attn: AMSOS–CCM–I, Rock Island Arsenal, IL 61299, phone (309) 782–3360.

SUPPLEMENTARY INFORMATION: A block of rooms has been reserved at the Isle of Capri Hotel for the nights of August 27–28, 2002. The Isle of Capri Hotel is located at 1777 Isle Parkway, Bettendorf, Iowa 52722, local phone (563) 359–7280. Please make your reservations by calling 800–724–5825. Be sure to mention the guest code acronym ARMS Meeting. Reserve your room prior to August 8th to get the Government Rate of $55.00 a night. Also notify this office of your attendance by notifying Mike Perez, *perezm@osc.army.mil,* and (309) 782–3360 (DSN 793–3360). *To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by August 8, 2002.* Corporate casual is meeting attire.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–18273 Filed 7–18–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Lake Okeechobee Aquifer Storage and Recovery Pilot Project at Three Sites Adjacent to Lake Okeechobee, With Components in Martin, Okeechobee, and Glades Counties, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Pilot Project Design Report and Draft Environmental Impact Statement (DEIS) for the Lake Okeechobee Aquifer Storage and Recovery (ASR) Pilot Project. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the Lake Okeechobee ASR Pilot Project. This project will determine the feasibility of using ASR technology for water storage and the treatment regimes needed for an operational ASR well system. It will also collect scientific data to address the uncertainties associated with the ASR technology and for future optimization and design studies.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Weiss, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, telephone (904) 899–5025.

SUPPLEMENTARY INFORMATION:

a. Authorization: Section 101(a)(16) of the Water Resources Development Act of 1999 (WRDA 1999) (Pub. L. 106–53) authorized construction of two pilot projects, Lake Okeechobee ASR and Hillsboro ASR. Although these two pilot projects were authorized separate from the Central and Southern Florida Project, they are also integral elements of the Comprehensive Everglades Restoration Plan (CERP) as authorized in Title VI of WRDA 2000 (Pub. L. 105–541, Section 601). Therefore, these two projects were included in the CERP Design Agreement between the Corps and the local sponsor, SFWMD, and required design studies are now proceeding.

b. Project Scope: The Pilot project will determine the feasibility of ASR technology for water storage at each site, the water quality characteristics of source waters, native subsurface waters and recovered waters, appropriate water treatment requirements, and recommend operational goals for a full scale ASR project at Lake Okeechobee. As proposed, the pilot project would include construction at 3 locations of one ASR well, a surface water intake and discharge system, pre-injection and post recovery water treatment facilities, and other associated piping, treatment systems, and surface facilities. Each ASR well will be used to store and recover freshwater in the upper Floridian Aquifer System. After preliminary analysis of collected data, one site will be chosen for construction of 2 additional ASR wells and associated pumps, piping, water treatment facilities and monitoring wells, in order to test the effects of a multi-well facility.

Operational plans for the test pilot are to collect surface water from adjacent canal or tributaries, treat collected water to applicable drinking water quality standards, and inject water into the Floridian Aquifer System for a minimum of two cycle tests. Each cycle test includes a period of water storage followed by a period of recovery and discharge. Recovered water will be monitored and treated, if needed, to insure compliance with appropriate water quality standards prior to discharge into surface water or canal.

c. Preliminary Alternatives: Formulation of alternative plans will involve the selection of the most suitable site for the ASR wells, surface water collection system configuration, water treatment technologies, investigation of intake and discharge sites, and investigation of best configuration of surface facilities of the project. The DEIS will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific technologic performance measures.

d. Issues: The DEIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, cultural resources, water availability, flood protection, and other potential impacts identified through scoping, public involvement, and interagency coordination.

e. Scoping: An initial public workshop was held in West Palm Beach on January 2001 to introduce the Lake Okeechobee pilot project plan and gather comments. In addition, a public workshop was held in West Palm Beach on January 2002 to identify public concerns related to ASR technology and regional implementation. A scoping letter will be issued in July 2002 to interested parties. All parties are invited to participate in the scoping process by identifying any additional concern on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time, there is no plan for a public scoping meeting.

f. Public Involvement: We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Services (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

h. Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; certification of state lands, easements and right of ways, and determination of Coastal Zone Management Act consistency.

i. Agency Role: As the cooperating agency, non-Federal sponsor, and leading local expert, SFWMD will provide information and assistance on the resources to be impacted and alternatives.

j. DEIS Preparation: The integrated Pilot Project Design Report, including a DEIS, is currently estimated for publication in November 2003.

Dated: July 10, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–18272 Filed 7–18–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is

achievement and narrowing achievement gaps.

Eligible Applicants: LEAs in the following States are eligible to apply for Local-Flex: Alaska, Arkansas, California, Connecticut, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Local-Flex proposal. LEAs that fail to provide the notification may still submit an application by the application deadline.

SUPPLEMENTARY INFORMATION: Sections 6151 through 6156 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (P.L. 107–110), authorize the Secretary of Education to enter into local flexibility demonstration

access at: *www.access.gpo.gov/nara/index.html.*

Program Authority: Sections 6151 through 6156 of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L. 107–110).

Dated: July 15, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18306 Filed 7–18–02; 8:45 am]

Discussion: Recognizing that States are in the process of developing State AYP definitions to meet the requirements in the reauthorized ESEA we are requesting LEAs to submit the best available disaggregated baseline data. These data should be based on assessments consistent with section 1111(b)(3) of the predecessor ESEA.

Changes: We have clarified that, in submitting baseline academic data, LEAs must provide student achievement

this process, an SEA initially decided whether it intended to apply for State-Flex authority and to preclude its LEAs from entering into Local-Flex agreements with the Secretary. If an SEA chose not to notify the Department, by May 8, 2002, that it intended to apply for State-Flex, its LEAs may participate in the Local-Flex competition.

Once an LEA in a State has entered into a Local-Flex agreement, an SEA

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,393,327 entitled "Microelectronic Stimulator Array", Navy Case No. 82,449.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404

Dated: July 12, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–18202 Filed 7–18–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Local Flexibility Demonstration Program: Office of Elementary and Secondary Education, Department of Education; Notice Inviting Applications for the Local Flexibility Demonstration Program

Purpose of the Program: To provide local educational agencies (LEAs) with high-quality local flexibility demonstration proposals an opportunity to enter into local flexibility demonstration agreements ("Local-Flex" agreements) with the Secretary. The LEAs that the Secretary selects to participate in the Local-Flex program will have the flexibility to consolidate certain Federal formula grant funds in order to assist them in meeting the State's definition of adequate yearly progress and the LEA's specific measurable goals for improving student achievement and narrowing achievement gaps.

Eligible Applicants: LEAs in the following States are eligible to apply for Local-Flex: Alaska, Arkansas, California, Connecticut, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

By statute, the Secretary may enter into Local-Flex agreements with no more than three LEAs in a State. Therefore, any consortium that seeks a Local-Flex agreement may include no more than three LEAs. Furthermore, only LEAs that receive formula grant funds from their State educational agency (SEA) under the Federal programs subject to consolidation may seek Local-Flex authority.

LEAs in the following States may *not* apply at this time because their SEA indicated, by May 8, 2002, an intent to apply for State-Flex authority: Alabama, Arizona, Colorado, Delaware, Florida, Illinois, Massachusetts, Nebraska, Pennsylvania, Tennessee, and Texas. In addition, the District of Columbia, Hawaii, Puerto Rico, and the outlying areas are not eligible to apply for Local-Flex because, for purposes of this program, the legislation considers a state-wide LEA to be an SEA.

Under the legislation, a State generally cannot receive State-Flex authority if one of its LEAs has entered into a Local-Flex agreement with the Secretary. If an LEA enters into a Local-Flex agreement with the Secretary, its SEA may subsequently seek State-Flex authority only if that LEA agrees to be part of the SEA's State-Flex proposal.

Applications Available: September 17, 2002.

Deadline for Transmittal of Applications: September 17, 2002.

Notification of Intent to Apply for Local-Flex: We will be able to develop a more efficient process for reviewing Local-Flex applications if we have a better understanding of the number of LEAs that intend to seek participation in the program. Therefore, we strongly encourage each potential applicant to send, by August 19, 2002, a notification of its intent to apply for participation in the Local-Flex program to the following address: *LocalFlex@ed.gov.*

The notification of intent to apply for participation in Local-Flex is *optional* and should not include information regarding the potential applicant's Local-Flex proposal. LEAs that fail to provide the notification may still submit an application by the application deadline.

SUPPLEMENTARY INFORMATION: Sections 6151 through 6156 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (P.L. 107–110), authorize the Secretary of Education to enter into local flexibility demonstration agreements ("Local-Flex" agreements) with up to eighty LEAs. The Secretary will select Local-Flex LEAs on a competitive basis in accordance with the selection criteria contained in a notice published elsewhere in this issue of the **Federal Register**. The application requirements and a description of the application process are also provided in that notice.

The Secretary intends to select up to forty LEAs for participation in Local-Flex under this competition, and will select the remaining LEAs in a subsequent competition.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *LocalFlex@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Applications: You may obtain a copy of the application on the Department's Web site at: *http://www.ed.gov/flexibility/#prog.*

You may also obtain a copy of the application from the contact person identified under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *www.access.gpo.gov/nara/index.html.*

Program Authority: Sections 6151 through 6156 of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L. 107–110).

Dated: July 15, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18306 Filed 7–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Local Flexibility Demonstration Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final application requirements, selection criteria, and application process.

SUMMARY: The Secretary announces final application requirements, selection criteria, and the application process for the Local Flexibility (Local-Flex) Demonstration Program.

EFFECTIVE DATE: August 19, 2002.

SUPPLEMENTARY INFORMATION: On February 22, 2002, we published in the **Federal Register** (67 FR 8442–8444) a notice of proposed application requirements, selection criteria, and application process for the Local-Flex program, which is authorized under sections 6151 through 6156 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). This notice announces final application requirements, selection criteria, and the application process for the program.

Note: This notice does not solicit applications. A notice inviting applications under the Local-Flex competition is published separately in this issue of the **Federal Register**.

Analysis of Comments and Changes

Four parties submitted various comments in response to the notice of proposed application requirements, selection criteria, and application process.

Comment: One commenter suggested that we revise the language concerning the baseline academic data that local educational agencies (LEAs) would submit with their applications. This commenter suggested that LEAs should provide as their baseline the results under their adequate yearly progress (AYP) definition under the predecessor ESEA.

Discussion: Recognizing that States are in the process of developing State AYP definitions to meet the requirements in the reauthorized ESEA we are requesting LEAs to submit the best available disaggregated baseline data. These data should be based on assessments consistent with section 1111(b)(3) of the predecessor ESEA.

Changes: We have clarified that, in submitting baseline academic data, LEAs must provide student achievement data from assessments consistent with section 1111(b)(3) of the predecessor ESEA.

Comment: One commenter suggested that after revising its goals based on the State's new AYP definition, an LEA should be required to submit its revised goals to the Secretary.

Response: The Secretary had intended that an LEA be required to submit these revised goals as part of a proposed amendment to its Local-Flex agreement.

Changes: We have clarified that an LEA must not only revise its goals, as necessary, after the State develops the State AYP definition, but that it must also submit the revised goals to the Secretary as part of a proposed amendment to its Local-Flex agreement. We have also clarified that LEAs must submit any revised strategies for reaching those goals.

Comment: Two commenters expressed concern about the relationship between LEAs that have entered into Local-Flex agreements and State educational agencies (SEAs) that subsequently seek State-Flex authority under sections 6141 through 6144 of the ESEA. One of the commenters indicated that an SEA seeking State-Flex authority should not be required to incorporate Local-Flex agreements into its State-Flex proposal, and the other commenter said that an LEA should not be forced to incorporate its Local-Flex agreement into its SEA's State-Flex proposal.

Response: Under the legislation, the Secretary may enter into Local-Flex agreements only with LEAs in States that do not have State-Flex authority. Furthermore, if an SEA notified the Secretary, by May 8, 2002, that it intended to apply for State-Flex authority, an LEA in that State is precluded from applying for Local-Flex until the Department makes a final determination concerning the SEA's State-Flex application. The May 8, 2002 notification deadline essentially gave SEAs an opportunity to seek State-Flex before permitting their LEAs to seek Local-Flex authority.

The application process that we described in the February 28, 2002 **Federal Register** notice is consistent with the statutory provisions. Under this process, an SEA initially decided whether it intended to apply for State-Flex authority and to preclude its LEAs from entering into Local-Flex agreements with the Secretary. If an SEA chose not to notify the Department, by May 8, 2002, that it intended to apply for State-Flex, its LEAs may participate in the Local-Flex competition.

Once an LEA in a State has entered into a Local-Flex agreement, an SEA may subsequently receive State-Flex authority only if any LEA in the State with a Local-Flex agreement agrees to be part of the SEA's State-Flex proposal.

Changes: In the notice inviting applications published elsewhere in this issue of the **Federal Register**, we have clarified that if an LEA has entered into a Local-Flex agreement with the Secretary and its SEA later seeks to apply for State-Flex authority, the SEA may not force the LEA to be part of the State-Flex proposal. The SEA may seek State-Flex only if each of its LEAs that has a Local-Flex agreement with the Secretary agrees to be part of the SEA's submission. SEAs and LEAs are encouraged to work cooperatively to minimize potential disputes regarding the implementation of State-Flex and Local-Flex.

Comment: One commenter suggested that applicants be required to submit the following information to enable the Secretary to evaluate whether they are focusing on serving the needs of students most at risk of educational failure: (1) The number and percentage of schools in the district that qualify for schoolwide programs; (2) The amount of local education funds spent per pupil at Title I schools compared to the per-pupil spending at non-Title I schools; and (3) Any formula the district would use to target consolidated Federal funds to students most at risk of education failure.

Discussion: An applicant must submit detailed baseline academic data and specific measurable goals, with annual objectives, that it seeks to achieve by consolidating and using funds in accordance with the terms of its proposed agreement. The goals must relate to raising student achievement and narrowing achievement gaps relative to the baseline data that are submitted. In addition, the applicant must propose specific strategies for reaching the stated goals. On the basis of the application requirements and the selection criteria that will be used for this competition, we will be able to focus Local-Flex agreements on LEAs serving the need of students most at risk of educational failure competition.

Changes: None.

Comment: One commenter suggested that each applicant be required to describe how its proposed Local-Flex plan will meet the general purposes of the programs included in the consolidation. This commenter also urged us to require each applicant to document parental involvement in the planning process, to explain how the applicant will continue to comply with all applicable civil rights requirements, applicants may also submit other disaggregated data, such as migrant status, which are required for reporting assessment results under section 1111(b)(3) of the reauthorized ESEA.

Changes: None.

Comment: One commenter suggested that under the "Quality of the Local-Flex Plan" selection criteria, we add a factor about the extent to which the LEA included parents in the development of its Local-Flex proposal, particularly including data from assessments under section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, an LEA must provide data for both mathematics and reading or language arts, and the LEA must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically

a proposed amendment to its Local-Flex agreement.

(c) *Strategies for meeting its goals and the general purposes of the consolidated programs.* Each applicant must propose a five-year plan that contains specific strategies for reaching its stated goals. In particular, the plan must describe how the applicant will consolidate and use funds received under Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruitment); Subpart 1 of

valid, and reliable, and provide disaggregated results.

(ii) The extent to which the proposal identifies achievement gaps among different groups of students.

(iii) The extent to which the Local-Flex agreement will focus on serving or otherwise addressing the needs of students most at risk of educational failure.

(iv) The extent to which the additional flexibility provided under the

(v) The extent to which the LEA included parents, especially parents of children most at risk of educational failure, in the development of the Local-Flex proposal.

(d) *Adequacy of the Resources.* (15 points) The Secretary considers the adequacy of the resources for the proposed Local-Flex agreement. In considering the adequacy of the resources, the Secretary considers the following factors:

Comment: One commenter suggested that each applicant be required to describe how its proposed Local-Flex plan will meet the general purposes of the programs included in the consolidation. This commenter also urged us to require each applicant to document parental involvement in the planning process, to explain how the applicant will continue to comply with all applicable civil rights requirements, and to include in its application a description of the accounting procedures and safeguards that it would employ to ensure proper disbursement of, and accounting for, Federal funds.

Discussion: In the February 22, 2002 **Federal Register** notice, we did not include all of the statutory application requirements. We did not believe that it was necessary to seek public comments on some of the more explicit requirements included in the legislation. However, all of the statutory application requirements, including those addressed in this notice, are discussed in the application package.

The comments referenced in the preceding paragraph concerning parental involvement and fiscal responsibility are addressed in the application package. We have made changes to the application requirements and selection criteria in this notice to address the comment concerning the general purposes of the programs included in the consolidations. With respect to the comment on civil rights compliance, all applicants, as mandated by the legislation, will be required to submit an assurance that they are complying with all applicable civil rights requirements.

Changes: We have modified the application requirements to state expressly that each applicant must, as part of its five-year proposal, describe how it will meet the general purposes of the programs that are consolidated. In addition, we have modified the "Quality of the Local-Flex Plan" selection criterion to include a factor relating to the general purposes of the consolidated programs.

Comment: One commenter suggested that under the application requirements, migrant status should be listed as one of the subgroups by which the baseline academic data should be disaggregated.

Discussion: We do not agree because migrant status is not one of the required subgroups for determining AYP under Part A of Title I. Given that an LEA's progress in implementing Local-Flex will be measured on the basis of its AYP status, we believe that it is important to obtain, at a minimum, disaggregated baseline data that reflect the AYP subgroups. While it is not mandatory, applicants may also submit other disaggregated data, such as migrant status, which are required for reporting assessment results under section 1111(b)(3) of the reauthorized ESEA.

Changes: None.

Comment: One commenter suggested that under the "Quality of the Local-Flex Plan" selection criteria, we add a factor about the extent to which the LEA included parents in the development of its Local-Flex proposal, particularly parents of subgroups of significant size.

Discussion: We agree that the selection criteria should include a factor relating to parental involvement in the development of the Local-Flex proposals, particularly the parents of students most at risk of educational failure.

Changes: We have modified the "Quality of the Local-Flex Plan" criterion to add a factor relating to the involvement of parents, particularly the parents of students most at risk of educational failure, in the development of the Local-Flex proposal.

Comment: One commenter stated that the overall application process should outline a process for reviewing and deciding issues of continued participation in Local-Flex if the LEA does not meet its stated targets for student achievement over a two-to three-year period.

Discussion: The legislation states that the Secretary must, after providing notice and an opportunity for a hearing, promptly terminate a Local-Flex agreement if an LEA fails to make adequate yearly progress for two consecutive years. The legislation also provides that, after providing notice and an opportunity for a hearing, the Secretary may terminate a Local-Flex agreement if there is evidence that an LEA has failed to comply with the terms of the agreement.

The Secretary does not believe that it is necessary to issue, at this time, additional guidance on the termination of a Local-Flex agreement.

Changes: None.

I. Application Requirements

In order that the Secretary can select Local-Flex participants in accordance with section 6151 of the ESEA, Local-Flex applicants must submit the following information, together with the other information set forth in the legislation and outlined in the Local-Flex application package.

(a) *Baseline academic data.* Each LEA seeking to enter into a Local-Flex agreement with the Secretary must provide, as part of its proposed agreement, student achievement data for the most recent available school year, including data from assessments under section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, an LEA must provide data for both mathematics and reading or language arts, and the LEA must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories, among others, by which an LEA will disaggregate data for determining AYP under section 1111(b)(2) of the reauthorized ESEA. Furthermore, these are the categories, among others, by which an LEA had to disaggregate data for reporting assessment results under section 1111(b)(3) of the predecessor ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, LEAs may also submit baseline achievement data that are further disaggregated by gender and by migrant status, or baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

(b) *Specific, measurable education goals.* Each applicant must submit a five-year Local-Flex plan that contains specific, measurable educational goals, with annual objectives, that the LEA seeks to achieve by consolidating and using funds in accordance with the terms of its proposed agreement. The goals must relate to raising student achievement and narrowing achievement gaps relative to the baseline achievement data and other baseline data that are submitted.

At the time an LEA submits its initial proposed Local-Flex agreement, the goals in its proposal will not have to relate to the State's definition of AYP under section 1111(b)(2) of the ESEA because those definitions are just being developed. However, as soon as its State definition of AYP is submitted to and approved by the Secretary, each LEA that has entered into a Local-Flex agreement must revise its goals, as necessary, based on that definition. (**NOTE:** State definitions of AYP under section 1111(b)(2) of the ESEA must be submitted no later than January 31, 2003, and implemented by the end of the 2002–2003 school year.) The LEA must submit its revised goals as part of a proposed amendment to its Local-Flex agreement.

(c) *Strategies for meeting its goals and the general purposes of the consolidated programs.* Each applicant must propose a five-year plan that contains specific strategies for reaching its stated goals. In particular, the plan must describe how the applicant will consolidate and use funds received under Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruitment); Subpart 1 of Part D of Title II (Enhancing Education Through Technology); Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities); and Subpart 1 of Part A of Title V (Innovative Programs).

As part of its five-year plan, an applicant must also describe how it will meet the general purposes of the programs that are consolidated under the Local-Flex agreement. In particular, an applicant must describe how its proposed plan would—

(i) Improve teacher and principal quality and increase the number of highly qualified teachers in classrooms (Title II, Part A);

(ii) Improve teaching and student academic achievement through the use of technology in schools (Title II, Part D);

(iii) Support programs that prevent violence in and around schools and that prevent the illegal use of alcohol, tobacco, and drugs (Title IV, Part A);

(iv) Support local education reform efforts that are consistent with and support statewide education reform efforts (Title V, Part A).

Once a Local-Flex LEA's State definition of AYP has been established and the LEA has modified its goals, as necessary, to reflect that definition, the LEA must modify, as appropriate, the strategies that it would implement to reach its revised educational goals. The LEA must submit these modifications as part of a proposed amendment to its Local-Flex agreement.

II. Selection Criteria

The Secretary will use the following criteria to select the LEAs with which he will enter into Local-Flex agreements:

(a) *Identification of the Need for the Local-Flex Agreement.* (25 points) The Secretary considers the LEA's description and analysis of its need for a Local-Flex agreement. In determining the quality of the description and analysis, the Secretary considers the following factors:

(i) The extent to which the LEA's baseline achievement data and data on other academic indicators are objective, valid, and reliable, and provide disaggregated results.

(ii) The extent to which the proposal identifies achievement gaps among different groups of students.

(iii) The extent to which the Local-Flex agreement will focus on serving or otherwise addressing the needs of students most at risk of educational failure.

(iv) The extent to which the additional flexibility provided under the Local-Flex agreement would enable the LEA to meet more effectively the State's definition of adequate yearly progress and specific, measurable goals for improving student achievement and narrowing achievement gaps.

(b) *Quality of the Educational Goals.* (25 points) The Secretary considers the quality of the goals that the LEA sets in its proposed Local-Flex agreement. In determining the quality of the LEA's goals, the Secretary considers the following factors:

(i) The extent to which the goals in the proposed Local-Flex agreement are clearly specified and measurable.

(ii) The significance of the improvement in student achievement and in narrowing achievement gaps proposed in the agreement.

(iii) The extent to which the goals relate to the needs identified in the LEA's baseline achievement data and data on other academic indicators.

(iv) The extent to which the goals support the intent and purposes of the Local-Flex program.

(c) *Quality of the Local-Flex Plan.* (35 points) The Secretary considers the quality of the LEA's Local-Flex plan. In determining the quality of the Local-Flex plan, the Secretary considers the following factors:

(i) The extent to which the LEA will use funds consolidated under the Local-Flex agreement to address the needs identified in the baseline achievement data in order to assist the LEA in achieving its educational goals.

(ii) The extent to which the LEA's Local-Flex plan constitutes a coherent, sustained approach for reaching the LEA's goals, and to which the timelines for implementing strategies in the plan are reasonable.

(iii) The extent to which the LEA will use achievement data and data on other academic indicators to manage the proposed activities and to monitor progress toward reaching its goals on an ongoing basis.

(iv) The extent to which the LEA demonstrates that it will meet the general purposes of the programs that would be consolidated under its Local-Flex agreement;

(v) The extent to which the LEA included parents, especially parents of children most at risk of educational failure, in the development of the Local-Flex proposal.

(d) *Adequacy of the Resources.* (15 points) The Secretary considers the adequacy of the resources for the proposed Local-Flex agreement. In considering the adequacy of the resources, the Secretary considers the following factors:

(i) The extent to which the funds that the LEA proposes to consolidate under the Local-Flex agreement are adequate to support the strategies in its Local-Flex plan.

(ii) The extent to which the funds that the LEA proposes to consolidate under the Local-Flex agreement will be integrated with other resources to meet the goals of the proposed agreement.

(iii) The extent to which costs that the LEA will incur under the Local-Flex agreement are reasonable in relationship to the goals that will be achieved under the agreement.

III. Application Process

The Secretary will conduct two separate Local-Flex competitions. A notice inviting applications for the initial group of Local-Flex LEAs is published elsewhere in this issue of the **Federal Register**. Depending on the number and quality of the applications submitted, the Secretary intends to select up to 40 LEAs with which to enter into Local-Flex agreements during the initial competition. The Secretary will reserve the remaining Local-Flex slots for a subsequent Local-Flex competition.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *LocalFlex@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/*

4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five

0060), beginning at 1 p.m. on July 25 and ending approximately 1 p.m. July 26.

Jerrilynne Purdy, acting for the Dispute Resolution Service, will convene the Conference. She will be available to communicate in private with any participant prior to the conference. If a participant has any questions regarding the conference, please call Ms. Purdy at 202–208–2232

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18288 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL02–105–000 and EC02–91–000]

UBS AG; Notice of Filing

July 11, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–51–005, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

July 11, 2002.

using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: Sections 6151 through 6156 of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L. 107–110).

Dated: July 15, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18307 Filed 7–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, August 1, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Discussion and approval of new quarterly update schedule and priorities.
2. End-state discussion on surface water regulatory issues.
3. Review and discuss draft recommendation language: end-state issues related to surface and subsurface soil remediation.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on July 12, 2002.

Belinda Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–18245 Filed 7–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–97–000]

East Kentucky Power Cooperative, Inc. v. Louisville Gas and Electric Company and Kentucky Utilities; Notice of Conference

July 15, 2002.

Pursuant to Rule 601 of the Commission's Rules and Practice and Procedure 18 CFR 385.601, the Dispute Resolution Service will convene a Conference on Thursday and Friday, July 25 and 26, 2002, to discuss how Alternative Dispute Resolution processes and procedures may assist the participants in resolving disputes arising in the above docketed proceeding. The conference will be held at the Sheraton Suites Lexington, 2601 Richmond Rd, Lexington, KY (859–268–0060), beginning at 1 p.m. on July 25 and ending approximately 1 p.m. July 26.

Jerrilynne Purdy, acting for the Dispute Resolution Service, will convene the Conference. She will be available to communicate in private with any participant prior to the conference. If a participant has any questions regarding the conference, please call Ms. Purdy at 202–208–2232 or email *jerrilynne.purdy@ferc.gov*. Parties may also communicate with Richard Miles, the Director of the Commission's Dispute Resolution Service at 1–877FERC ADR (337–2237) or email *richard.miles@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18285 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–53–025]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Filing of Refund Report

July 15, 2002.

Take notice that on June 28, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing a report regarding Kansas ad valorem tax refunds. KMIGT states that this filing is being made in compliance with Commission order issued March 18, 2002 in Docket Nos. RP98–53–024, *et al.* Among other things, that order approved a settlement of these matters and extended the deadline for KMIGT's report to July 1, 2002. KMIGT states that a copy of this filing was served on all intervenors in the subject proceedings, the Appendix B parties, and relevant state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before August 2, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18288 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–410–003 and RP01–8–003]

Mississippi River Transmission Corporation; Notice of Compliance Filing

July 15, 2002.

Take notice that on July 1, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, tariff sheets to comply with the policy directives of the Commission's June 5, 2002 "Order on Order No. 637 Settlement."

MRT states that the purpose of this filing is to comply with the Commission's June 5, 2002 Order in Docket Nos. RP00–410–000 and RP01–8–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18289 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL02–105–000 and EC02–91–000]

UBS AG; Notice of Filing

July 11, 2002.

Take notice that on July 1, 2002, UBS AG (UBS) filed with the Federal Energy Regulatory Commission (Commission) an application requesting that the Commission disclaim jurisdiction over certain acquisitions by UBS in the course of its banking business of securities issued by public utilities. In the alternative, UBS seeks authorization pursuant to Section 203 of the Federal Power Act for such acquisitions

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18286 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–51–005, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

July 11, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The Detroit Edison Company

[Docket Nos. EL01–51–005 and ER01–1649–005]

Take notice that on July 3, 2002, The Detroit Edison Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance filing in accordance with the Commission's order in *Detroit Edison Company*, 99 FERC ¶ 61,268 (2002).

Comment Date: July 24, 2002.

2. State of California, ex. rel. Bill Lockyer, Complainant, v. British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co., All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and California Independent System Operator, Respondents

[Docket No. EL02–71–002]

Take notice that on July 8, 2002, PacifiCorp tendered for filing its report showing PacifiCorp's purchases from the California Independent Service Operator (CAISO), California Power Exchange (PX) and California Energy Resources Scheduling Division of the California Department of Water Resources (CDWR) markets for the quarters ending December 31, 2000; March 31, 2001; June 30, 2001; September 30, 2001; December 31, 2001 and March 31, 2002.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: July 29, 2002.

3. State of California, ex. rel. Bill Lockyer, Complainant, v. British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co., All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and California Independent System Operator, Respondents

[Docket No. EL02–71–002]

Take notice that on July 8, 2002, PacifiCorp tendered for filing its report showing PacifiCorp's purchases from the California Independent Service Operator (CAISO), California Power Exchange (PX) and California Energy Resources Scheduling Division of the California Department of Water Resources (CDWR) markets for the quarters ending December 31, 2000; March 31, 2001; June 30, 2001; September 30, 2001; December 31, 2001 and March 31, 2002.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: July 29, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–73–002, et al.]

Griffiss Local Development Corporation, et al. Electric Rate and Corporate Regulation Filings

July 12, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Griffiss Local Development Corporation

[Docket Nos. EL99–73–002 and ER99–3855–002]

Take notice that on July 3, 2002, Griffiss Local Development Corporation tendered for filing its report showing its purchases from the New York Independent System Operator (NYISO) and Niagara Mohawk Power Corporation markets for the quarters ending December 31, 2000; March 31, 2001; June 30, 2001; September 30, 2001; December 31, 2001 and March 31, 2002.

Copies of this filing were supplied to the New York Public Service Commission and the New York Independent System Operator.

Comment Date: July 24, 2002.

2. Griffiss Local Development Corporation

[Docket Nos. EL99–73–003 and ER99–3855–003]

Take notice that on July 3, 2002, Griffiss Local Development Corporation tendered for filing its report showing its purchases from the New York Independent System Operator (NYISO) and Niagara Mohawk Power Corporation markets for the quarters ending December 31, 2000; March 31, 2001; June 30, 2001; September 30, 2001; December 31, 2001 and March 31, 2002.

Copies of this filing were supplied to the New York Public Service Commission and the New York Independent System Operator.

Comment Date: July 24, 2002.

3. California Independent System Operator Corporation

[Docket No. ER02–651–002]

Take notice that on July 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing revised ISO Tariff sheets to comply with the Commission's June 3, 2002 Order in the above-referenced docket.

The ISO states that the filing has been served on each person designated on the

Comment Date: July 22, 2002.

7. David Sholk

[Docket No. ER02–1725–001]

Take notice that on June 25, 2002, David Sholk filed an amendment to Docket No. ER02–1725–000. The amendment includes a proposed David Sholk Electric Rate Tariff.

Comment Date: July 26, 2002.

8. PJM Interconnection, L.L.C.

Management District and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 20, 2002.

Comment Date: July 24, 2002.

11. California Independent System Operator Corporation

[Docket No. ER02–2258–000]

Take notice that on July 3, 2002, the

3. State of California, ex. rel. Bill Lockyer, Complainant, v. British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co., All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and California Independent System Operator, Respondents

[Docket No. EL02–71–002]

Take notice that on July 5, 2002, IDACORP Energy L.P. (IDACORP Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission), a supplement report to its June 28, 2002 submittal for Fourth Quarter, 2000 through Fourth Quarter 2001.

Comment Date: July 26, 2002

4. State of California, ex. rel. Bill Lockyer, Complainant, v. British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co., All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and California Independent System Operator, Respondents

[Docket No. EL02–71–002]

Take notice that on July 5, 2002, Strategic Energy L.L.C. tendered for filing with the Federal Energy Regulatory Commission (Commission), new Quarterly Transaction Reports showing non-aggregated data for transactions made during the period October 2, 2000 to the date of the Commission's order issued in this proceeding.

Comment Date: July 26, 2002.

5. UBS AG

[Docket Nos. EL02–105–000 and EC02–91–000]

Take notice that on July 1, 2002, UBS AG (UBS) filed with the Federal Energy Regulatory Commission (Commission) an application requesting that the Commission disclaim jurisdiction over certain acquisitions by UBS in the course of its banking business of securities issued by public utilities. In the alternative, UBS seeks authorization pursuant to Section 203 of the Federal Power Act for such acquisitions

Comment Date: July 22, 2002.

6. PJM Interconnection, L.L.C.

[Docket No. EL02–106–000]

Take notice that on July 1, 2002, PJM Interconnection, L.L.C. (PJM), pursuant to Section 206 of the Federal Power Act, submitted amendments to the Transmission Owners Agreement specifying that license plate rates will remain in effect until December 31, 2004 in the PJM control area.

Copies of this filing have been served upon all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: July 22, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18215 Filed 7–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–73–002, et al.]

Griffiss Local Development Corporation, et al. Electric Rate and Corporate Regulation Filings

July 12, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Griffiss Local Development Corporation, Niagara Mohawk Power Corporation, Griffiss Local Development Corporation, and Oneida County Industrial Development Agency

[Docket Nos. EL99–73–002 and ER02–2285–000]

Take notice that on June 24, 2002, Griffiss Local Development Corporation (GLDC) and Oneida County Industrial Development Agency (Oneida IDA), on behalf of Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Joint Settlement proposal resolving all issues in this proceeding and an Explanatory Statement in support thereof; and a proposed new rate schedule to be filed by Niagara Mohawk upon acceptance of Joint Proposal and to be designated as Niagara Mohawk's Rate Schedule FERC No. 315. On June 25, 2002, Griffiss filed a supplement to the Joint Settlement proposal. These two filings were both filed under Docket No. EL99–73–000.

Also, take notice that on June 24, 2002, Niagara Mohawk, GLDC and Oneida IDA filed Original Sheet Nos. 1–18, Rate Schedule No. 315, Settlement Service Agreement Administered Under Service Classification No. 12, effective January 1, 2002.

Comment Date: July 26, 2002.

2. Cleco Power LLC

[Docket Nos. ER01–1099–000, ER01–1099–001, ER01–1099–002, ER01–2147–000, ER01–3095–000, and ER02–1042–000]

Take notice that on July 3, 2002, Cleco Power LLC (Cleco Power) tendered for filing a letter requesting that Cleco Power be allowed to comply with the new electronic filings requirements under Order 2001 rather than file individual standard form service agreements in paper copy as previously directed by the Commission in the above referenced dockets.

Comment Date: July 24, 2002.

3. California Independent System Operator Corporation

[Docket No. ER02–651–002]

Take notice that on July 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing revised ISO Tariff sheets to comply with the Commission's June 3, 2002 Order in the above-referenced docket.

The ISO states that the filing has been served on each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: July 24, 2002.

4. Central Illinois Light Company

[Docket No. ER02–708–003]

Take notice that on July 3, 2002, Central Illinois Light Company (CILCO), tendered for filing with the Federal Energy Regulatory Commission (Commission) amendments to CILCO's Ancillary Service Tariff to comply with the Commission's June 3, 2002 Order in this docket.

CILCO requested an effective date of February 1, 2002 for these amendments. Copies of the filing were served on the Illinois Commerce Commission and the service list in this docket.

Comment Date: July 24, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–003]

Take notice that on July 3, 2002, The Empire District Electric Company (Empire), in compliance with the Federal Energy Regulatory Commission's (Commission) May 31, 2002 Order in this proceeding, submitted a compliance filing notifying the Commission that it intended to participate in the regional transmission organization that will result from the planned consolidation of Southwest Power Pool, Inc. and the Midwest Independent Transmission System Operator, Inc.

A copy of the filing was served upon the parties on the official Commission service list in this docket and on the public utility commissions for each state in which Empire owns transmission facilities.

Comment Date: July 24, 2002.

6. Dearborn Industrial Generation, LLC

[Docket No. ER02–1689–002]

Take notice that on July 2, 2002, Dearborn Industrial Generation, LLC (DIG) filed a revised Market-Based Rate Tariff and Code of Conduct. Upon review of the subject tariff, we have noticed a typographical error. In Part II, paragraph 2 the word "serve" was omitted from the third sentence.

Comment Date: July 22, 2002.

7. David Sholk

[Docket No. ER02–1725–001]

Take notice that on June 25, 2002, David Sholk filed an amendment to Docket No. ER02–1725–000. The amendment includes a proposed David Sholk Electric Rate Tariff.

Comment Date: July 26, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–2255–000]

Take notice that on July 3, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing one executed interim interconnection service agreement and one executed interconnection service agreement between PJM and PSEG Power, L.L.C. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: July 24, 2002.

9. PJM (East) Interconnection, L.L.C.

[Docket No. ER02–2256–000]

Take notice that on July 3, 2002, the PJM (East) Transmission Owners Agreement Administrative Committee (TOAC) submitted for filing an amendment to the PJM Transmission Owners Agreement of June 2, 1997, on file with the Federal Energy Regulatory Commission (Commission) as PJM Interconnection LLC Rate Schedule No. 33. The amendment revises the TOA so as to permit a category of Transmission Owner whose obligation to participate in certain TOA activities under the PJM Operating Agreement is limited consistent with the limited nature of its ownership of transmission facilities.

Copies of this filing have been served on PJM Interconnection, LLC, the PJM (East) Transmission Owners, and the state electric regulatory commissions in the PJM (East) control area.

Comment Date: July 24, 2002.

10. California Independent System Operator Corporation

[Docket No. ER02–2257–000]

Take notice that on July 3, 2002, the California Independent System Operator Corporation, (ISO) tendered for filing a Participating Generator Agreement between the ISO and Monterey Regional Waste Management District for acceptance by the Federal Energy Regulatory Commission.

The ISO states that this filing has been served on Monterey Regional Waste Management District and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 20, 2002.

Comment Date: July 24, 2002.

11. California Independent System Operator Corporation

[Docket No. ER02–2258–000]

Take notice that on July 3, 2002, the California Independent System Operator Corporation, (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and the Monterey Regional Waste Management District for acceptance by the Federal Energy Regulatory Commission.

The ISO states that this filing has been served on the Monterey Regional Waste Management District and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective June 20, 2002.

Comment Date: July 24, 2002.

12. PPL Electric Utilities Corporation

[Docket No. ER02–2259–000]

Take notice that on July 3, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing an Interconnection Agreement between PPL Electric Utilities and Masonic Homes.

Comment Date: July 24, 2002.

13. Public Service Company of New Mexico

[Docket No. ER02–2260–000]

Take notice that on July 3, 2002, Public Service Company of New Mexico (PNM) submitted for filing two executed service agreements for firm point-to-point transmission service with PNM's Wholesale Power Marketing (PNMM), under the terms of PNM's Open Access Transmission Tariff. The first agreement is for 173 MW of firm point-to-point transmission service from Palo Verde Nuclear Generating Station 500kV Switchyard (Palo Verde) to the Westwing 345kV Switching Station (Westwing) for calendar year 2001. The second agreement is for 293 MW of firm point-to-point transmission service from Palo Verde to Westwing for calendar year 2002. PNM requests January 1, 2001 and January 1, 2002 respectively, as the effective date for each agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to PNMM, the New Mexico Public

Regulation Commission and the New Mexico Attorney General.

Comment Date: July 24, 2002.

14. The Detroit Edison Company

[Docket No. ER02–2261–000]

Take notice that on July 3, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Power Sales Tariff (the Tariff). Detroit Edison requests that the Service Agreements be made effective as of June 1, 2002.

Comment Date: July 24, 2002.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2262–000]

Take notice that on July 3, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Withdrawal of Rate Schedule FERC No. 1 and Rate Schedule FERC No. 2 and Service Agreement No. 1 under Rate Schedule FERC No. 2.

Comment Date: July 24, 2002.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2263–000]

Take notice that on July 3, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Withdrawal of Rate Schedule FERC No. 1 and Rate Schedule FERC No. 2 and Service Agreement No. 1 under Rate Schedule FERC No. 2.

Comment Date: July 24, 2002.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2264–000]

Take notice that on July 3, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Withdrawal of Rate Schedule FERC No. 1 and Rate Schedule FERC No. 2 and Service Agreement No. 1 under Rate Schedule FERC No. 2.

Comment Date: July 24, 2002.

18. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2265–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholasville Kentucky (Rate Schedule FERC No 157). The amendment removes contractual language between the City of Nicholasville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

Comment Date: July 26, 2002.

25. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2272–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person

deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of

Regulation Commission and the New Mexico Attorney General.
Comment Date: July 24, 2002.

14. The Detroit Edison Company

[Docket No. ER02–2261–000]

Take notice that on July 3, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and the following parties: CMS MST Michigan LLC; FirstEnergy Solutions Corp.; and Quest Energy LLC.
Comment Date: July 24, 2002.

15. Cleco Power LLC

[Docket No. ER02–2262–000]

Take notice that on July 3, 2002, Cleco Power LLC (Cleco) filed a service agreement with Acadia Power Partners, LLC for ancillary services under Cleco's open access transmission tariff (OATT). The Service Agreement is designated as Cleco Power LLC Service Agreement No. 61 to its OATT, FERC Electric Tariff, Original Volume No. 1.
Comment Date: July 24, 2002.

16. San Diego Gas & Elec. Company, et al.

[Docket No. ER02–2263–000]

Take notice that on July 3, 2002, Southern California Edison Company (SCE) filed a Market-Based Rate Tariff in order to comply with the Federal Energy Regulatory Commission's Order of December 19, 2001. A copy of this compliance filing has been served on the parties included on the Secretary's official service list for this proceeding.
Comment Date: July 24, 2002.

17. Edison Sault Electric Company, Madison Gas and Electric Company, Upper Peninsula Power Company, Wisconsin Electric Power Company, Wisconsin Power and Light Company, and Wisconsin Public Service Corporation

[Docket No. ER02–2264–000]

Take notice that on July 5, 2002, Edison Sault Electric Company, Madison Gas and Electric Company, Upper Peninsula Power Company, Wisconsin Electric Power Company, Wisconsin Power and Light Company, and Wisconsin Public Service Corporation tendered for filing a Limited Redispatch Agreement and Amendment No. 1 to the Limited Redispatch Agreement as a bilateral agreement pursuant to the congestion management provisions of Attachment K of the Midwest ISO's open access transmission tariff to create new Firm Transmission Service.
Comment Date: July 26, 2002.

18. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2265–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 162). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002

19. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2266–000]

Take notice that on July 5, 2002 , Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 191). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

20. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2267–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 193). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

21. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2268–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholasville Kentucky (Rate Schedule FERC No 157). The amendment removes contractual language between the City of Nicholasville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

22. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2269–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Bardwell Kentucky (Rate Schedule FERC No 186). The amendment removes contractual language between the City of Bardwell and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

23. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2270–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Barbourville Kentucky (Rate Schedule FERC No 184). The amendment removes contractual language between the City of Barbourville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

24. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2271–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Bardstown Kentucky (Rate Schedule FERC No 185). The amendment removes contractual language between the City of Bardstown and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

25. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2272–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 194). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

26. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–2273–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Frankfort Kentucky (Rate Schedule FERC No 190). The amendment removes contractual language between the City of Frankfort and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.
Comment Date: July 26, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–18214 Filed 7–18–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

July 15, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project Nos. 10942–000, 10100–002 and 0416–003	7–11–02	David Turner.
2. Project No. 10311–000	7–11–02	Nancy Kochan.
3. Project No. 477–000	7–11–02	Dick Prather.
4. Project No. 10311–000	7–11–02	Robert G. Whitlam.
5. Project No. 1494–232	7–11–02	Joe Harwood.
6. Project No. 1494–000	7–15–02	Mike Brady.
7. EC02–49–001, EL02–96–001	7–15–02	Anthony J. Alexander.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–18287 Filed 7–18–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–4]

Environmental Impacts Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 8, 2002 through July 12, 2002 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

EIS No. 020295, Final EIS, FRC, WA, Warm Creek (No. 10865) and Clearwater Creek (No. 11485) Hydroelectric Project, Issuance of Licenses, Pend Oreille County, WA, Wait Period Ends: August 19, 2002, Contact: Hector Perez (202) 219–2843.

EIS No. 020296, Final EIS, AFS, ID, Lick Creek Project, Implementation, Harvesting Timber and Managing Existing Vegetation, Implementation, Carson National Forest, El Rito Ranger District, Taos County, NM, Wait Period Ends: August 19, 2002, Contact: Kurt Winchester (505) 581–4554.

EIS No. 020295, Final EIS, FRC, WA, Warm Creek (No. 10865) and Clearwater Creek (No. 11485) Hydroelectric Project, Issuance of Licenses, Pend Oreille County, WA, Wait Period Ends: August 19, 2002, Contact: Hector Perez (202) 219–2843.

EIS No. 020302, Draft Supplement, COE, CA, Bel Marin Key Unit V Expansion of the Hamilton Wetland Restoration Project, New and Updated Information, Application for Approval of Permits, Novato Creek, Marin County, CA, Comment Period Ends: September 03, 2002, Contact: Eric Easterling (415) 977–8448.

EIS No. 020303, Draft EIS, AFS, AK, Kosciusko Island Project, Timber Harvest, Implementation, Tongass National Forest, Thorne Bay Ranger District, Prince of Wales Island, AK, Comment Period Ends: September 03, 2002, Contact: Glenn Pierce (907) 826–1629.

EIS No. 020302, Draft Supplement, COE, CA, Bel Marin Key Unit V Expansion of the Hamilton Wetland Restoration Project, New and Updated Information, Application for Approval of Permits, Novato Creek, Marin County, CA, Comment Period Ends: September 03, 2002, Contact: Eric Easterling (415) 977–8448.

EIS No. 020303, Draft EIS, AFS, AK, Kosciusko Island Project, Timber Harvest, Implementation, Tongass National Forest, Thorne Bay Ranger District, Prince of Wales Island, AK, Comment Period Ends: September 03, 2002, Contact: Glenn Pierce (907) 826–1629.

EIS No. 020304, Draft EIS, AFS, OR, Lookout Project, Timber Harvest, Fuel Treatment, Implementation, Ochoco National Forest, Lookout Mountain Ranger District, Crook and Wheeler Counties, OR, Comment Period Ends: September 03, 2002, Contact: William E. Fish (541) 477–6900.

Amended Notices

EIS No. 020248, Draft EIS, COE, CA, Bolinas Lagoon Ecosystem Restoration, Proposal to Removal up to 1.5 Million Cubic Yard of Sediment from the bottom of Lagoon to Allow

Dated: July 16, 2002.
Joseph C. Montgomery,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 02–18282 Filed 7–18–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8631–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or http://www.epa.gov/compliance/nepa/.

Weekly receipt of Environmental Impact Statements filed July 8, 2002 through July 12, 2002 pursuant to 40 CFR 1506.9.

EIS No. 020305, Draft EIS, AFS, NM, Patriot Extension Project, Transport 510.00 dekatherms per day (dth/day) of Natural Gas, TN, VA and NC.
Summary: EPA has environmental concerns regarding potential impacts to wetlands, nosie and air quality, as well as concerns over environmental justice and the need for an improved alternatives analysis. Specific concerns include sidecasting of spoil in wetlands, compressor station noise, crossing of numerous waterbodies including

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–18287 Filed 7–18–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–4]

National Advisory Council for Environmental Policy and Technology; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's National Advisory Council for Environmental Policy and Technology (NACEPT) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App 9(c). The purpose of NACET is to provide advice and recommendations to the Administrator of EPA on issues associated with environmental management, technology and policy. It is determined that NACEPT is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Mark Joyce, U.S. EPA, (mail code 1601–A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–9802, or joyce.mark@epa.gov.

Dated: July 9, 2002.

Tim Sherer,
Acting Director, Office of Cooperative Environmental Management.
[FR Doc. 02–18278 Filed 7–18–02; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.compliance/nepa/*

Weekly receipt of Environmental Impact Statements
Filed July 08, 2002 Through July 12, 2002
Pursuant to 40 CFR 1506.9.

EIS No. 020294, Final EIS, AFS, NM, Agua/Caballos Timber Sale, Harvesting Timber and Managing Existing Vegetation, Implementation, Carson National Forest, El Rito Ranger District, Taos County, NM, Wait Period Ends: August 19, 2002, Contact: Kurt Winchester (505) 581–4554.

EIS No. 020295, Final EIS, FRC, WA, Warm Creek (No. 10865) and Clearwater Creek (No. 11485) Hydroelectric Project, Issuance of License for the Construction and Operation, Located in the Middle Fork Nooksack River (MFNR) Basin, WA, Wait Period Ends: August 19, 2002, Contact: Timothy Looney (202) 219–2852.

EIS No. 020296, Final EIS, AFS, ID, Hidden Cedar Project, Road Construction and Watershed Restoration, Idaho Panhandle National Forest, St. Joe Ranger District, Benewah, Shoshone, Clearwater and Latah Counties, ID, Wait Period Ends: August 19, 2002, Contact: George Bain (208) 245–2531.

EIS No. 020297, Draft EIS, FHW, NC, US 321 Highway Improvement Project (TIP), From NC–1500 (Blackberry Road) North to US 221 in Blowing Rock, Funding and COE Section 404 Permit, Town of Blowing Rock, Caldwell and Watauga Counties, NC, Comment Period Ends: September 03, 2002, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 020298, Draft EIS, NPS, AZ, Navajo National Monument, General Management Plan, Development Concept Plan, Implementation, Navajo Counties, AZ, Comment Period Ends: September 30, 2002, Contact: Rosemari Knoki (928) 672–2700.

This document is available on the Internet at: *http://planning.den.nps.gov/plans.cfm.*

EIS No. 020299, Final EIS, AFS, ID, Whiskey Campo Resource Management Project, Implementation, Elmore County, ID, Wait Period Ends: August 19, 2002, Contact: David Rittenhouse (208) 373–4100.

EIS No. 020300, Draft EIS, SFW, NM, Rio Grande Silvery Minnow (Hybognathus amarus), To be Designation for Critical Habitat, Implementation, Bernalillo, Sandoval, Socorro, Valencia Counties, NM, Comment Period Ends: September 04, 2002, Contact: Joy Nicholopoulos (505) 346–2525.

This document is available on the Internet at: *http://ifw2es.fws.gov.*

EIS No. 020301, Draft EIS, AFS, AK, Kosciusko Island Timber Sale(s), Harvesting Timber, Tongass National Forest, Thorne Bay Ranger District, Kosciusko Island, AK, Comment Period Ends: September 03, 2002, Contact: Glenn Pierce (907) 826–1629.

EIS No. 020302, Draft Supplement, COE, CA, Bel Marin Key Unit V Expansion of the Hamilton Wetland Restoration Project, New and Updated Information, Application for Approval of Permits, Novato Creek, Marin County, CA, Comment Period Ends: September 03, 2002, Contact: Eric Jolliffe (415) 977–8543.

This document is available on the Internet at: *http://www.coastalconservancy.ca.gov/belmarin.*

EIS No. 020303, Final Supplement, COE, MO, St. Johns Bayou and New Madrid Floodway Project, Channel Enlargement and Improvement, Revised Information to Formulate and Analyze Additional Alternatives, Flood Control and National Economic Development (NED), New Madrid, Mississippi and Scott Counties, MO, Wait Period Ends: August 19, 2002, Contact: Shawn Phillips (901) 544–3321.

EIS No. 020304, Final EIS, NOA, CA, San Francisco Bay National Estuarine Research Reserve, Proposes to Designate Three Sites: China Camp State Park, Brown's Island Regional Parks District, and Rush Ranch Open Space Preserve, Contra Costa, Marin and Solano Counties, CA, Wait Period Ends: August 19, 2002, Contact: Laurie McGilvray—ext 15 (301) 713–3132.

EIS No. 020305, Draft EIS, FHW, CA, Riverside County Integrated Project, Winchester to Temecula Corridor a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, County of Riverside, CA , Comment Period Ends: September 20, 2002, Contact: Mary Ann Rondinella (916) 498–5040.

This document is available on the Internet at: *http://www.rcip.org.*

EIS No. 020306, Draft EIS, FHW, CA, Riverside County Integrated Project, Hemet to Corona/Lake Elsinore Corridor a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, County of Riverside, CA, Comment Period Ends: September 20, 2002, Contact: Mary Ann Rondinella (916) 498–5040.

This document is available on the Internet at: *http://www.rcip.org.*

EIS No. 020307, Draft Supplement, AFS, OR, Deep Vegetation Management Project, Implementation, Additional Information on Four Alternatives, Ochoo National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR, Comment Period Ends: September 03, 2002, Contact: William E. Fish (541) 477–6900.

Amended Notices

EIS No. 020248, Draft EIS, COE, CA, Bolinas Lagoon Ecosystem Restoration, Proposal to Removal up to 1.5 Million Cubic Yard of Sediment from the bottom of Lagoon to Allow Restoration of Tidal Movement and Eventual Restoration of Tidal Habitat, Marin County, CA , Comment Period Ends: August 15, 2002, Contact: Roger Golden (415) 977–8703. Revision of FR Notice Published on 06/21/2002: CEQ Comment Period Ending 08/05/2002 has been Reestablished to 08/15/2002. Due to Incomplete Distribution of the DEIS at the time of Filing with USEPA under Section 1506.9 of the CEQ Regulations.

EIS No. 020282, Final EIS, COE, NJ, Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS, US Army COE Section 10 and 404 Permit Issuance, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ , Comment Period Ends: October 03, 2002, Contact: Steven Schumach (212) 264–0183. Revision of FR Notice published on 07/05/2002: CEQ Wait Period Ending 08/19/2002 has been Extended to 10/03/2002.

EIS No. 990029, Draft EIS, FAA, OH, Cancelled—Toledo Express Airport (TOL), Proposed Noise Compatibility Plan Air Traffic Actions and Proposed Aviation Related Industrial Development, Airport Layout Plan and Funding, Lucas County, OH. Date: March 17, 1999, Contact: Wally Welter (847) 294–8091. Revision of FR Notice Published on 02–05–1991: Officially Cancelled by the preparing agency by letter Dated 06/05/2002.

EIS No. 020236, Draft EIS, IBR, NM City of Albuquerque Drinking Water Project, To Provide a Sustainable Water Supply for Albuquerque through Direct and Full Consumptive Use of the City's San Juan-Chama (SJC) Water for Potable Purposes, Funding, Right-of-Way and COE Section 404 Permits, City of Albuquerque, NM, Comment Period Ends: August 13, 2002, Contact: Lori Robertson (505) 248–5326. Correction to Internet Site it should be: *http://www.uc.usbr.gov.*

Dated: July 16, 2002.

Joseph C. Montgomery,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 02–18282 Filed 7–18–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65361–MT Rating EC2, Black Ant Salvage Project, Salvage of 739 Acres of Dead Merchantable Trees from the Lost Fork Fire of 2001, Lewis and Clark National Forest, Meagher Basin County, MT.

Summary: EPA expressed environmental concerns due to impacts on soils stated to have high to very high erosion hazards in watersheds of 303(d) listed streams, when a winter logging alternative is available that reduces the impacts. EPA requested additional cumulative effects information and mitigation measures to reduce impacts of the management actions.

ERP No. D–AFS–J65362–MT Rating EC2, Pipestone Timber Sale and Restoration Project, Timber Harvest, Prescribed Fire Burning, Watershed Restoration and Associated Activities, Kootenai National Forest, Libby Ranger District, Lincoln Lincoln County, MT.

Summary: EPA expressed environmental concerns about adverse impacts to water quality and recommends consideration of logging methods that reduce ground disturbance in areas with sensitive soils and greater erosion and sediment production potential. EPA will evaluate potential water quality issues and consistency with TMDL development on private industrial timber land in the 303(d) listed Bobtail Creek drainage.

ERP No. D–FRC–E03009–00 Rating EC2, Patriot Project, Construction and Operation of Mainline Expansion and Patriot Extension in order to Transport 510.00 dekatherms per day (dth/day) of Natural Gas, TN, VA and NC.

Summary: EPA has environmental concerns regarding potential impacts to wetlands, nosie and air quality, as well as concerns over environmental justice and the need for an improved alternatives analysis. Specific concerns include sidecasting of spoil in wetlands, compressor station noise, crossing of numerous waterbodies including potential contaminated sediments, and proximity/safety of numerous homes within 25–50 ft of the proposed pipeline route.

ERP No. D–FRC–L05225–OR Rating EC2, North Umpqua Hydroelectric Project (FERC Project 1927), New License Issuance for the existing 185.5–megawatt (MW) Facility, North Umpqua River, Douglas County, OR.

Summary: EPA expressed environmental concerns with the proposed project in that a number of plans, analyses and surveys needed to define project baseline conditions, expected environmental effects and needed mitigation measures have not been completed. EPA recommends that this work be completed and incorporated in the EIS. EPA also recommends that a monitoring and evaluation plan be developed and included in the EIS along with evidence that required government-to-government consultations with affected Tribal governments have been undertaken and completed.

ERP No. D–FRC–L05226–ID Rating EO2, C.J. Strike Hydroelectric Project (FERC NO. 2055), New License Issuance, Snake and Bruneau Rivers, Owyhee and Elmore Counties, ID.

Summary: EPA expressed environmental objections to three of the alternatives evaluated in the EIS as they would not result in any appreciable improvement to instream or riparian environmental conditions. EPA expressed concerns with the Run-of-River alternative due to the lack of a strategy for complying with applicable water quality standards. EPA recommended that the EIS include project impacts and mitigation, the white sturgeon conservation strategy, government-to-government consultation with tribes, and issues identified during scoping.

ERP No. D–TVA–E65059–00 Rating EC1, Pickwick Reservoir Land Management Plan (Plan), Proposal to use the Plan to Guide Land-Use Approvals, Private Water Use Facility Permitting and Resource Management Decisions, Colbert and Lauderdale Counties, AL and Tishomingo County, MS and Hardin County, TN,.

Summary: EPA has environmental concerns and recommends that TVA select an updated land management plan based on the management goals for Pickwick Reservoir considering existing reservoir water quality, shoreline development, natural resources, public comments, and the potential impacts of further development. EPA also recommends that TVA develop a specific watershed protection plan for the reservoir for TVA-owned and managed lands and be an important stakeholder in the community regarding larger watershed issues.

ERP No. DA–FRC–L05208–WA Rating EO2, Rocky Creek Hydroelectric Project, (FERC No. 10311–002) Construction and Operation of a 8.3–megawatt (Mw) Project, Application for License, Rocky Creek, Skagit County, WA.

Summary: EPA expressed environmental objections over potential significant impacts to aquatic and riparian habitat, as well as water quality. EPA recommended additional analyses to define the affected environment, define project impacts and identify mitigation measures to be incorporated in the FSEIS. EPA recommended selection of the No Action alternative.

Final EISs

ERP No. F–COE–E36180–MS

Yalobusha River Watershed, Demonstration Erosion Control Project, Construction of Six Floodwater-Retarding Structures, Yazoo Basin, Webster, Calhoun and Chickasaw Counties, MS.

Summary: EPA expressed environmental concerns regarding the long-term effects of the selected channelization and reservoir alternative, and suggest that these concerns could be addressed if measures protective of the environmental quality of Grenada Lake are implemented.

ERP No. F–DOD–A11076–00

Assembled Chemical Weapons Destruction Technologies at One or More Sites: Design, Construction and Operation of One or More Pilot Test Facilities, Anniston Army Depot, AL; Pine Bluff Arsenal, AR; Blue Grass Army Depot, KY and Pueblo Chemical Depot, CO.

Summary: EPA expressed environmental concern and requested that the Record of Decision contain commitments for further monitoring on air releases and the impacts to human health, and nearby agricultural areas.

ERP No. F–IBR–K39070–CA

American River Pump Station Project, Providing Placer County Water Agency (PCWA) with the Year-Round Access to its Middle Fork Project (MFP) Water Entitlements from the American River, Placer County, CA.

Summary: EPA's previous concerns on the adequacy of documentation regarding air quality impacts, water quality and quantity, and cumulative impacts have been addressed in the FEIS. EPA encouraged the Bureau of Reclamation to continue to work with Placer County and other entities to minimize secondary and cumulative impacts that may occur as a result of the project.

ERP No. F–SFW–K64019–NV

Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Implementation, Churchill and Washoe Counties, NV.

Summary: EPA supported the new preferred Alternative E and agrees that it will best serve the protection and enhancement of natural diversity. EPA encouraged the Service to continue to work with the state and local jurisdictions to implement policies and projects that will improve overall water quality. EPA recommended that the Service explore ways to blend the different water sources leading to the wetlands to help meet state water quality standards. EPA encouraged the consideration of mitigation actions identified in the FEIS to reduce wildlife exposure to toxic contamination.

Dated: July 16, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–18283 Filed 7–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–2]

National Beach Guidance and Required Performance Criteria for Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is publishing the National Beach Guidance and Required Performance Criteria for Grants. This document provides performance criteria for monitoring and assessment of coastal recreation waters adjacent to beaches, and prompt public notification of any exceedance or likelihood of exceedance of applicable water quality standards for pathogens and pathogen indicators for coastal recreation waters. This document also outlines the eligibility requirements for monitoring and notification program implementation grants under Clean Water Act (CWA) section 406(b). This document is intended to be used by potential grant recipients to implement effective programs for monitoring and assessing coastal recreation waters. The document will also serve as requirements for Federal agencies to implement beach monitoring and notification programs when States do not implement a program consistent with the performance criteria.

ADDRESSES: Interested persons may obtain a copy of the document from the EPA Web site at *http://www.epa.gov/waterscience/beaches/* by contacting the Office of Water Resources Center at 202–260–7786 (e-mail: *center.water-resource@epa.gov*); mailing address is: Office of Water Resources Center, U.S. Environmental Protection Agency, RC–4100, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please request the National Beach Guidance and Required Performance Criteria for Grants (EPA–823–B–02–004), June 2002.

FOR FURTHER INFORMATION CONTACT: Charles Kovatch, EPA, Standards and Health Protection Division (4305T), 1200 Pennsylvania Ave., NW, Washington, DC 20460, or call at (202) 566–0399 or e-mail at *Kovatch.Charles@epa.gov*.

SUPPLEMENTARY INFORMATION:

What Does the BEACH Act Require?

The BEACH Act was passed on October 10, 2000. The BEACH Act amended the CWA to add section 406, which authorizes EPA to award grants to states and tribes to develop and implement a program to monitor and assess, for pathogens and pathogen indicators, coastal recreation waters adjacent to beaches or similar points of access that are used by the public and to notify the public if applicable water quality standards for pathogens and pathogen indicators are exceeded. EPA may award an implementation grant only if the applicant meets all of the statutory requirements for implementation grants. One of these requirements is that the applicant must implement a monitoring and public notification program that is consistent with performance criteria published by EPA under the Act. The BEACH Act also requires EPA to implement a monitoring and notification program for coastal recreation waters for states and tribes that do not have a program consistent with EPA's performance criteria, using grant funds that would otherwise have been available to those states and tribes. A complete copy of the BEACH Act can be found at *http://www.epa.gov/waterscience/beaches/technical.html*.

What Is the Purpose of the Document?

This document sets forth performance criteria for (1) monitoring and assessing coastal recreation waters adjacent to beaches (or similar points of access used by the public) to determine attainment of applicable water quality standards for pathogen indicators and (2) promptly notifying the public of any exceedance or likelihood of exceedance of applicable water quality standards for pathogen indicators for coastal recreation waters. EPA is required to publish such performance criteria under CWA section 406(a). Section 406(b) authorizes EPA to award grants to states and tribes to implement a monitoring and notification program, but only if the program meets certain requirements (*see* CWA section 406(b)(2)(A)(i)–(v)). One of these requirements is that the monitoring and notification programs must be consistent with EPA's performance criteria.

The performance criteria provide the basis for EPA's evaluation of grant applications when deciding whether to award monitoring and notification program implementation grants under section 406(b). This document is intended to be used by potential grant recipients to implement effective monitoring and notification programs that will be eligible for grants under section 406.

This document also includes EPA's recommendations for implementing programs consistent with the performance criteria. In addition, this document also can serve as a reference guide for how and when to conduct preliminary beach assessments because it outlines protocols for water sample collection, sample handling, and laboratory analysis. It also provides information about using predictive models to estimate indicator levels and includes procedures for notifying the public about beach advisories, closings, and openings.

How Is the Document Organized?

The chapters in this document cover the following topics. *Chapter 1* discusses human health concerns associated with exposure to pathogens and discusses the establishment of water quality standards for bacteria. *Chapter 2* summarizes the basic requirements that an applicant must meet to receive a program implementation grant. The chapter identifies relevant sections of the BEACH Act, briefly describes the corresponding performance criteria that EPA has developed, and provides additional grant-related information. *Chapter 3* describes the risk-based evaluation process that EPA recommends for states and tribes to classify and prioritize their recreation beaches. This step-by-step approach allows states and tribes to assess the relative human health risks and usage of their beaches and to assign an appropriate management ranking to each of them. *Chapter 4* discusses the performance criteria related to monitoring and assessment and provides detailed technical guidance. *Chapter 5* describes the performance criteria and technical guidance related to the public notification and risk communication portions of a beach program. The appendices include detailed technical information associated with the five chapters:

Dated: July 15, 2002

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 02–18280 Filed 7–18–02; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0034; FRL–7187–5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Mississippi Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 17, 2001, the State of Mississippi submitted an application for EPA final approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Mississippi's application, provides a 45-day public comment period to solicit comments on whether the State of Mississippi application meets the requirements for EPA approval, and provides an opportunity to request a public hearing on the application. Submittal of the application for final approval by Mississippi was initiated consistent with 40 CFR 745.327(a)(1)(ii), which stipulates that the State shall apply for final approval within 180 days prior to expiration of its interim approval, which in Mississippi's case will be June 28, 2002. The State of Mississippi has been operating its lead-based paint program under an interim approval since June 28, 1999, during which time, the State has worked to address issues raised by EPA concerning the State's audit privilege/penalty mitigation statute. However, due to statutory deficiencies which remain in Mississippi's audit privilege/penalty mitigation statute, EPA is proposing to disapprove their application for final approval.

DATES: Comments must be received on or before September 3, 2002. Public hearing requests must be received on or before September 3, 2002. All correspondence must include the docket ID number OPPT–2002–0034.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0034 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Rose Anne Rudd, Pesticides and Toxic Substances Branch, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303; telephone number: (404) 562–8998; e-mail address: rudd.roseanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the State of Mississippi. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that

might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

number for the regional office is (404) 562–8956.

3. *Electronically.* You may submit your comments electronically by e-mail to: rudd.roseanne@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA,

enforcement authority, Mississippi law must allow state officials unfettered access to evidence of criminal conduct regardless of whether that evidence is contained in an environmental self-evaluation report. Criminal privilege impairs the state's ability to access evidence of criminal conduct needed for criminal investigations, grand jury proceedings, and prosecutions. Requirements such as an *in camera*

reviewed by EPA within 180 days of receipt of a complete application. Due to the statutory deficiencies contained in Mississippi's audit privilege/penalty mitigation statute and its application to the lead-based paint training and certification program, EPA proposes to disapprove the application for final approval.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing

own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of

might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0034. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at the regional office library, Sam Nunn Atlanta Federal Center, 9th Floor - Tower, 61 Forsyth Street, S.W., Atlanta, GA. The telephone number for the library is (404) 562–8190.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0034 in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Rose Anne Rudd, Pesticides and Toxic Substances Branch, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303.

2. *In person or by courier.* Deliver your comments and hearing requests to: Pesticides and Toxic Substances Branch, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303. The regional office is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The telephone number for the regional office is (404) 562–8956.

3. *Electronically.* You may submit your comments electronically by e-mail to: rudd.roseanne@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0034. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Actions Have Been Taken?

By cover letter dated March 3, 1998, the State of Mississippi submitted an application for the authorization of its State Lead-Based Paint Training and Certification Program ("Lead-Based Paint Program") pursuant to section 404 of TSCA (15 U.S.C. 2684) (63 FR 38647). Following this submission, EPA identified issues arising from the State of Mississippi's audit privilege/penalty mitigation statute (Miss. Code Ann. 49–2–71 and 49–17–43) which unduly restricts the State's ability to fully administer and enforce its lead-based paint program and prevents the State from obtaining authorization.

By letter dated December 17, 1998, EPA informed the State that EPA could grant interim, instead of final, approval of the State's Lead-Based Paint Program. Subsequently, on June 28, 1999, the State of Mississippi withdrew the March 3, 1998, request for final approval, and asked that the application be considered instead as a submittal for interim approval.

The State of Mississippi has been operating its Lead-Based Paint Program under interim approval since June 28, 1999. Interim approval expires on June 28, 2002. EPA has worked with the State to remedy deficiencies in the State's statutes. However, two deficiencies at Miss. Code Ann. 49–2–71 and 49–17–43(g) have not been corrected which impair the State's ability to provide adequate enforcement in criminal proceedings and investigations, and in assessment of appropriate penalties.

The Mississippi Audit Privilege/Penalty Mitigation Statute at Miss. Code Ann. 49–2–71 creates a privilege for self-evaluation reports and is applicable to criminal proceedings and investigations. Under this statute, self-evaluation reports are not admissible in any legal or investigative action in a criminal proceeding and are not subject to discovery. To have adequate criminal enforcement authority, Mississippi law must allow state officials unfettered access to evidence of criminal conduct regardless of whether that evidence is contained in an environmental self-evaluation report. Criminal privilege impairs the state's ability to access evidence of criminal conduct needed for criminal investigations, grand jury proceedings, and prosecutions. Requirements such as an *in camera* hearing prior to the use of a self-evaluation report will significantly impede criminal enforcement. The statute unduly restricts criminal enforcement authority; therefore, Mississippi's Lead-Based Paint Program does not provide adequate enforcement authority.

The Mississippi penalty mitigation provisions at Miss. Code Ann. 49–17–43(g) unduly limit Mississippi's authority to assess appropriate penalties. The penalty mitigation provisions in this statute mandate assessment of a de minimis or zero penalty when a person discovers noncompliance through a voluntary self-evaluation, discloses that information, and meets all other conditions of the statute. The statute does not provide sufficient flexibility or discretion for assessment of appropriate penalties. Although the statute contains exceptions and conditions, EPA has consistently maintained that another exception must be created. The penalty reduction provision should not apply in a case involving repeat violations. Application of the penalty reduction provision to repeat violations would not yield a penalty appropriate to the violation, as a de minimis or zero penalty would provide no incentive for a person to fully implement measures to prevent future violations. Accordingly, the application of the penalty mitigation provision to the Lead-Based Paint Program renders the requisite enforcement authority inadequate.

As a result, EPA believes that it cannot grant final approval of the State of Mississippi's Lead-Based Paint Program and has initiated the process to withdraw Mississippi's interim authorization pursuant to 40 CFR 745.324(i). The action to withdraw Mississippi's program is independent of the proposed action to disapprove Mississippi's final application outlined in Unit II. B. of this document.

B. What Action is the Agency Taking?

The State of Mississippi has submitted an application to EPA Region IV, under section 404 of TSCA and has requested final approval of its lead-based paint training and certification program. This application will be reviewed by EPA within 180 days of receipt of a complete application. Due to the statutory deficiencies contained in Mississippi's audit privilege/penalty mitigation statute and its application to the lead-based paint training and certification program, EPA proposes to disapprove the application for final approval.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving or disapproving the application. Therefore, by this notice EPA is soliciting public comment on whether the State of Mississippi application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

C. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), titled Lead Exposure Reduction.

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9) EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of Mississippi's proposed final program has been provided by the applicant.

Mississippi Lead-Based Paint Training and Certification Program

The State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), is seeking final authorization from EPA to administer and enforce its own lead-based paint activities program. Regulations setting out the procedures and requirements for these activities were adopted by the Commission on Environmental Quality on January 22, 1998. Requirements under the regulations were applicable beginning August 31, 1998. The authority to administer and enforce a State program was provided for in the "Lead-Based Paint Activity Accreditation and Certification Act" passed by the Mississippi Legislature during the 1997 regular session.

The State lead-based paint program regulations are applicable to persons engaged in lead-based paint activities in target housing and child-occupied facilities. The State certification program requirements include the certification of firms, inspectors, risk assessors, supervisors, project designers and workers. Each certification discipline must meet required academic and/or experience requirements of the

State program regulations. Individuals must successfully pass the third party exam applicable to the certification discipline in order to be certified. The State program sets forth work practice standards for persons performing lead-based paint activities. The State program requires the filing of a project notification, in writing, prior to the commencement of any lead-based paint abatement activity.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 9, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region IV.

[FR Doc. 02–18223 Filed 7–18–02; 8:45 am]

BILLING CODE 6560–50–S

to the Paperwork Reduction Act, contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers.

agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper

Opinion and Order on Reconsideration, issued in CC Docket No. 95–116, the Commission implements new and/or modified requirements. (1) In order to calculate a multi-region carrier's share of LNP administration costs, the agency needs a certification if that carrier cannot divide its revenue by LNP region and instead chooses to allocate such revenue by subscriber percentages. (2) To ensure that a non-LNP capable incumbent LEC participating in an

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 26, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim

State program regulations. Individuals must successfully pass the third party exam applicable to the certification discipline in order to be certified. The State program sets forth work practice standards for persons performing lead-based paint activities. The State program requires the filing of a project notification, in writing, prior to the commencement of any lead-based paint abatement activity.

All initial and refresher lead-based paint activities training programs must be accredited. The State program requires training programs to notify the State prior to conducting a training course. Full approval of a training program's lead-based paint activities course is contingent on a satisfactory on-site course audit. The State program provides for the suspension, revocation, or modification of training program accreditation and certifications of individuals and firms.

The State lead program also conducts outreach and compliance assistance activities. The objective of the activities is to educate the public and regulated community of the hazards of lead-based paint. The activities also inform the public and regulated community of the regulatory requirements applicable to lead-based paint activities.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the Agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 9, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region IV.

[FR Doc. 02–18223 Filed 7–18–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 5, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) as it pertains to the Paperwork Reduction Act, contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers.

Form No.: FCC Form 478.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, State, local or tribal government.

Number of Respondents: 28,414.

Estimated Time Per Response: 7 hours per submission; 14 hours for other requirements.

Frequency of Response: On occasion and semi-annual reporting requirements, recordkeeping requirements, third party disclosure requirements.

Total Annual Burden: 135,126 hours.

Total Annual Cost: N/A.

Needs and Uses: The goal of section 258 is to eliminate the practice of "slamming", which is the unauthorized change of a subscriber's preferred carrier. The rules and requirements implementing section 258 can be found in 47 CFR part 64. The purpose of the rules is to improve the carrier change process for consumers and carriers alike, while making it more difficult for unscrupulous carriers to perpetrate slams. In addition, each telephone exchange carrier and/or telephone toll provider is required to submit a semi-annual report on the number of slamming complaints it receives.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18182 Filed 7–18–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

July 10, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0742.

Title: Telephone Number Portability (47 CFR part 52, subpart C, Sections 52.21–52.33) and CC Docket No. 95–116.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,858 respondents; 1,975 responses.

Estimated Time Per Response: .50 " 149 hours (average).

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion and annual reporting requirements.

Total Annual Burden: 13,613 hours.

Total Annual Cost: $76,635.

Needs and Uses: 47 CFR part 52, subpart C, implements the statutory requirement that LECs provide number portability. In the Memorandum Opinion and Order on Reconsideration, issued in CC Docket No. 95–116, the Commission implements new and/or modified requirements. (1) In order to calculate a multi-region carrier's share of LNP administration costs, the agency needs a certification if that carrier cannot divide its revenue by LNP region and instead chooses to allocate such revenue by subscriber percentages. (2) To ensure that a non-LNP capable incumbent LEC participating in an extended area service calling plan with an LNP-capable carrier complies with LNP cost recovery law and rules, the agency needs the collection by tariff if such a carrier seeks to recover its query and LNP administration costs.

The information is collected and required by the Commission and will be used to implement Section 251 of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18249 Filed 7–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

July 15, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 26, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232 or via internet at *Kim_A._Johnson@omb.eop.gov*, and Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by July 26, 2002.*

OMB Control Number: 3060–XXXX.

Type of Review: New collection.

Title: Letter Re: In the matter of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Respondents: Business or other for-profit, not for-profit institutions, state, local or tribal government.

Number of Respondents: 6.

Estimated Time Per Response: 8 hours.

Frequency of Response: On-time reporting requirement.

Total Annual Burden: 48 hours.

Total Annual Cost: N/A.

Needs and Uses: The Chief of the Wireless Telecommunications Bureau seeks information from six of the nation's Incumbent Local Exchange Carriers (ILECs) regarding the status of their Automatic Location Information databases in order to assist Commercial Mobile Radio Carriers planning their transition to E911.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18250 Filed 7–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC 02–44–G (Auction No. 44); DA 02–1491]

Auction No. 44 Revised Schedule, License Inventory, and Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

Room CY–A257, Washington, DC 20554. The *Auction No. 44 Revised Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

1. By the *Auction No. 44 Revised Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau")

Eligible Bidders

4. Pursuant to the Auction Reform Act, only those entities that were qualified bidders for Auction No. 44 are eligible to participate in the rescheduled Auction No. 44. Accordingly, only the 128 qualified bidders identified in the *Auction No. 44 Qualified Bidders Public Notice*, are eligible to participate in Auction No. 44.

which they have an interest. As discussed further in Auction Registration Information, after completing the procedures set forth in the *Auction No. 44 Revised Procedures Public Notice*, the Bureau will issue a public notice providing a final list of all qualified bidders, their license selections, upfront payments, and bidding eligibility.

9. To obtain a full or partial return of

Early Departure From Auction No. 44 and Upfront Payment Refunds

12. Due to the changes made to Auction No. 44 by the Auction Reform Act, the Bureau will permit any qualified bidder not eligible to bid on A, B or E block licenses to forgo further participation and depart from Auction No. 44 following the release of the *Auction No. 44 Revised Procedures Public Notice* but no later than 6 p.m.

instructions submitted by the payer(s) of record, upfront payment(s) will be returned to the payer(s) of record as identified on the FCC Form 159 that accompanied the upfront payment(s). Please call Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496 with any questions regarding wire transfer procedures.

15. The Commission will honor requests for early departure and will refund full upfront payments that

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC 02–44–G (Auction No. 44); DA 02–1491]

Auction No. 44 Revised Schedule, License Inventory, and Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document revises the schedule, license inventory, and procedures for Auction No. 44 in order to comply with the recently enacted Auction Reform Act of 2002. Auction No. 44 will start on August 27, 2002 and offer licenses for the C and D block in the Lower 700 MHZ band. This document identifies the qualified bidders eligible to participate in the rescheduled Auction No. 44 and procedures for the qualified bidders to follow.

DATES: Auction No. 44 is scheduled to begin on August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418–0660; Linda Sanderson, Auctions Operations Branch, at (717) 338–2888. Auctions Accounting Group: Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496. Media Contact: Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 44 Revised Procedures Public Notice* released June 26, 2002. The complete text of the *Auction No. 44 Revised Procedures Public Notice*, including attachment, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 44 Revised Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

1. By the *Auction No. 44 Revised Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") revises the schedule, license inventory, and procedures for Auction No. 44 in order to comply with the recently enacted Auction Reform Act of 2002, Public Law 107–195. With the exception of the changes set forth in the *Auction No. 44 Revised Procedures Public Notice*, the Commission's competitive bidding rules and the procedures, terms and conditions previously announced in the *Auction No. 44 Procedures Public Notice*, 67 FR 20773 (April 26, 2002), will apply in Auction No. 44.

2. Pursuant to the Auction Reform Act, the Commission will commence Auction No. 44 on August 27, 2002 with an inventory of 740 licenses in the Lower 700 MHz C and D blocks, or the 710–716/740–746 MHz and 716–722 MHz bands. The Auction Reform Act provides that the Commission may not commence Auction No. 44 on June 19, 2002 as previously scheduled. The Auction Reform Act defines the entities that are eligible to bid in a rescheduled auction of the C and D block licenses. The Auction Reform Act also directs the Commission to return certain payments to certain bidders within one month of its enactment.

New Auction Start Date

3. Auction No. 44 will begin on August 27, 2002. A complete list of all relevant dates appears at the end of the *Auction No. 44 Revised Procedures Public Notice*.

Eligible Bidders

4. Pursuant to the Auction Reform Act, only those entities that were qualified bidders for Auction No. 44 are eligible to participate in the rescheduled Auction No. 44. Accordingly, only the 128 qualified bidders identified in the *Auction No. 44 Qualified Bidders Public Notice*, are eligible to participate in Auction No. 44.

Continuing Application of Anti-Collusion Rule

5. All parties that submitted short-form applications to participate in Auction No. 44, including but not limited to qualified bidders, are reminded that they remain subject to the Commission's anti-collusion rule until the post-auction down payment deadline.

Revised Auction No. 44 License Inventory

6. In compliance with the Auction Reform Act, rescheduled Auction No. 44 will offer 740 C and D block licenses in the Lower 700 MHZ bands. The C block is a 12-megahertz spectrum block, consisting of a pair of 6-megahertz segments, which is licensed over 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") (sometimes collectively referred to as Cellular Market Areas ("CMAs")). The D block is a 6-megahertz unpaired spectrum block, which is licensed over six 700 MHz Economic Area Groupings ("700 MHz EAGs"). A complete revised list of licenses available in Auction No. 44 and their descriptions is included in Attachment A of the *Auction No. 44 Revised Procedures Public Notice*.

7. The following table contains the block/frequency cross-reference for the 710–716/740–746 MHz and 716–722 MHz Bands:

Block	Frequencies (MHz)	Bandwidth (MHz)	Pairing	Geographic area type	Number of licenses
C	710–716, 740–746	12 MHz	2 x 6 MHz	MSA/RSA	734
D	716–722	6 MHz	Unpaired	700 MHz EAG	6

Return of Upfront Payments for Qualified Bidders Eligible To Bid on A, B, or E Blocks

8. In compliance with the Auction Reform Act, the Commission will honor timely requests for the return of upfront payments to payer(s) of record for qualified bidders eligible to bid on A, B or E block licenses, *i.e.*, qualified bidders that selected licenses in the A, B or E blocks and have upfront payments that purchased sufficient eligibility to bid on at least one of the licenses in those blocks (*i.e.*, an upfront payment of at least $3,069,000). Qualified bidders are reminded that, pursuant to the *Auction No. 44 Procedures Public Notice*, they only may bid on licenses when they have sufficient bidding units of eligibility. Full or partial return of upfront payments will reduce the qualified bidder's eligibility by one bidding unit for each dollar returned. No qualified bidder will be able to increase its eligibility after 6 p.m. ET, July 26, 2002, the deadline for selecting additional licenses (*see* Selecting Additional Licenses) and supplementing upfront payments (*see* Supplementing Upfront Payments). Qualified bidders should take all available precautions to assure that upfront payments held by the Commission provide sufficient eligibility to bid on all the licenses in which they have an interest. As discussed further in Auction Registration Information, after completing the procedures set forth in the *Auction No. 44 Revised Procedures Public Notice*, the Bureau will issue a public notice providing a final list of all qualified bidders, their license selections, upfront payments, and bidding eligibility.

9. To obtain a full or partial return of upfront payment(s) to payer(s) of record for a qualified bidder eligible to bid on A, B or E block licenses, the qualified bidder's authorized representative or contact person identified on FCC Form 175 must send electronic mail containing the following information to *auction44@fcc.gov*, following the release of the *Auction No. 44 Revised Procedures Public Notice* but no later than 6 p.m. ET on July 3, 2002:

- A subject line indicating a request for Auction No. 44 upfront payment return;
- The qualified bidder's name;
- The total amount of the upfront payment for the qualified bidder to be returned;
- The name, street address, and telephone number of the party sending the email; and
- For each payer of record to receive a return payment, the following wire transfer information: Amount of Wire Transfer, Name and Address of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder, FCC Registration Number (FRN), Taxpayer Identification Number, Correspondent Bank (if applicable), ABA Number, and Account Number.

10. All returns will be made by wire transfer. Absent other sufficient written instructions submitted by the payer(s) of record, upfront payment(s) will be returned to the payer(s) of record as identified on the FCC Form 159 that accompanied the upfront payment(s). Please call Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496 with any questions regarding wire transfer procedures.

11. The Commission will honor requests for returns of upfront payment from qualified bidders that comply with these procedures and that are received after the release of the *Auction No. 44 Revised Procedures Public Notice* but no later than 6 p.m. ET July 3, 2002. Qualified bidders intending to make use of these procedures are urged to do so promptly to avoid last minute errors. UNTIMELY REQUESTS WILL NOT BE HONORED.

Early Departure From Auction No. 44 and Upfront Payment Refunds

12. Due to the changes made to Auction No. 44 by the Auction Reform Act, the Bureau will permit any qualified bidder not eligible to bid on A, B or E block licenses to forgo further participation and depart from Auction No. 44 following the release of the *Auction No. 44 Revised Procedures Public Notice* but no later than 6 p.m. ET July 3, 2002. The Bureau provides this procedure because qualified bidders could not have anticipated the statutorily mandated changes in Auction No. 44 at the time they submitted their applications to participate. The upfront payments of any qualified bidders departing from Auction No. 44 will be refunded in full to the payer(s) of record. Qualified bidders not eligible to bid on A, B or E block licenses that depart using this procedure may obtain only full—NOT partial—refunds of upfront payments. Qualified bidders departing from Auction No. 44 may NOT supplement their upfront payments (*see* Supplementing Upfront Payments). Consequently, qualified bidders departing from Auction No. 44 and having upfront payments refunded will have zero bidding units of eligibility and no longer be eligible to bid on any licenses in Auction No. 44. Any qualified bidders departing from Auction No. 44 remain subject to the Commission's anti-collusion rule until the post-auction down payment deadline.

13. To forgo further participation and have the upfront payment refunded, a qualified bidder's authorized representative or contact person identified on FCC Form 175 must send electronic mail containing the following information to *auction44@fcc.gov* following the release of the *Auction No. 44 Revised Procedures Public Notice* but no later than 6 p.m. ET on July 3, 2002:

- A subject line indicating departure from Auction No. 44;
- The qualified bidder's name;
- The name, street address, and telephone number of the party sending the email; and
- For each payer of record, the following wire transfer information: Name and Address of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder, FCC Registration Number (FRN), Taxpayer Identification Number, Correspondent Bank (if applicable), ABA Number, Account Number.

14. All refunds will be made by wire transfer. Absent other sufficient written instructions submitted by the payer(s) of record, upfront payment(s) will be returned to the payer(s) of record as identified on the FCC Form 159 that accompanied the upfront payment(s). Please call Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496 with any questions regarding wire transfer procedures.

15. The Commission will honor requests for early departure and will refund full upfront payments that comply with these procedures and that are received after the release of the *Auction No. 44 Revised Procedures Public Notice* but no later than 6 p.m. ET July 3, 2002. Qualified bidders intending to make use of the procedures are urged to do so promptly to avoid last minute errors. UNTIMELY REQUESTS WILL NOT BE HONORED.

Selecting Additional Licenses

16. Due to the changes made to Auction No. 44 by the Auction Reform Act, the Bureau will permit qualified bidders not departing from the auction to select additional licenses. The Bureau provides this procedure because qualified bidders could not have anticipated the statutorily mandated changes in Auction No. 44 at the time they submitted their original license selections. Accordingly, for purposes of allowing qualified bidders to make additional license selections in compliance with the *Auction No. 44 Revised Procedures Public Notice*, the Bureau waives on its own motion the prohibition against changes in the license service areas identified on the qualified bidder's short-form application as licenses on which the qualified bidder intends to bid. Qualified bidders are not authorized to de-select any licenses already selected, but, pursuant to the Commission's usual procedures, need not bid on every license selected. In addition, the Commission's prohibition against any other major amendments, *e.g.*, changes in ownership that would constitute an assignment or transfer of control, also remains in effect. Any application of the Commission's anti-collusion rule will take into account a qualified bidder's selection of any additional licenses.

17. To select additional licenses, the qualified bidder's authorized representative or contact person must send an electronic mail to *auction44@fcc.gov* no earlier than July 22, 2002 but no later than 6 p.m. ET on July 26, 2002 with the following information:

- A subject line indicating Auction No. 44 additional license selection;
- In the text of the message, the bidder must:

(i) List the Qualified Bidder's FRN number; and

(ii) List the additional licenses on which it wishes to bid in Auction No. 44. The licenses must be listed one per line and must correspond precisely to the "License Number" column found in Attachment A to the *Auction No. 44 Revised Procedures Public Notice*. Failure to list valid license numbers as provided in Attachment A will prevent the license from being added to the qualified bidder's eligibility.

Submitting Upfront Payments

18. Upfront payments must be received at Mellon Bank no earlier than July 22, 2002, but no later than 6 p.m. ET on July 26, 2002. The FCC Form 159 is available on-line via a link from *www.fcc.gov/formpage.html*. The FCC Form 159 must be filed with Mellon Bank via facsimile at (412) 209–6045. A completed FCC Form 159 must be faxed to Mellon Bank at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction No. 44." To avoid forfeiture, the upfront payment must be received at Mellon Bank no earlier than July 22, 2002, but no later than 6:00 p.m. ET on July 26, 2002. Parties that intend to make use of the procedures are urged to do so early in the period to avoid last minute errors. UNTIMELY SUPPLEMENTAL UPFRONT PAYMENTS WILL NOT INCREASE A QUALIFIED BIDDER'S ELIGIBILITY.

Auction Registration Information

24. Approximately ten days before the

Auction No. 44 will not work for future auctions.

Maintaining the Accuracy of FCC Form 175 Information

29. Parties are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits. Parties should amend their applications within ten business days from the

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1608]

Eleventh Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

2. Approval of Agenda
3. Approval of the Minutes of the Tenth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

(i) List the Qualified Bidder's FRN number; and

(ii) List the additional licenses on which it wishes to bid in Auction No. 44. The licenses must be listed one per line and must correspond precisely to the "License Number" column found in Attachment A to the *Auction No. 44 Revised Procedures Public Notice*. Failure to list valid license numbers as provided in Attachment A will prevent the license from being added to the Form 175. The licenses may be listed in any order, and are not to be preceded by any labels or titles. Only additional licenses should be listed; do not list the licenses previously submitted on the Form 175 that were reported in the *Auction No. 44 Qualified Bidders Public Notice*.

18. For example, the following message would correctly request the addition of three licenses to the bidder with the specified FRN:

Subject Line: Auction No. 44 Additional License Selection
FRN: 0123456789
WZ–CMA003–C
WZ–EAG706–D
WZ–EAG701–D

19. To be effective, additional license selections must comply with these procedures and be received no earlier than July 22, 2002 but no later than 6 p.m. ET July 26, 2002. Parties that intend to make use of these procedures are urged to do so early in the period to avoid last minute errors. UNTIMELY ADDITIONAL LICENSE SELECTIONS WILL NOT BE EFFECTIVE.

Supplementing Upfront Payments

20. In addition, due to changes made to Auction No. 44 by the Auction Reform Act, the Bureau will permit qualified bidders not departing from Auction No. 44 to supplement their existing upfront payments to purchase additional bidding eligibility. The Bureau provides this procedure because qualified bidders could not have anticipated the statutorily mandated changes in Auction No. 44 at the time they submitted their original upfront payments. Accordingly, for purposes of allowing qualified bidders that do not depart from Auction No. 44 to make supplemental upfront payments in compliance with the *Auction No. 44 Revised Procedures Public Notice*, the Bureau waives on its own motion the prior deadline for upfront payments. To exercise this option, qualified bidders must submit the additional upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159 (Revised 2/00)). All supplemental upfront payments must be received at Mellon Bank no earlier than July 22, 2002, but no later than 6 p.m. ET on July 26, 2002. The FCC Form 159 is available on-line via a link from *www.fcc.gov/formpage.html*. The FCC Form 159 must be filed with Mellon Bank via facsimile at (412) 209–6045. A completed FCC Form 159 must be faxed to Mellon Bank at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 44."

21. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Supplemental upfront payments for Auction No. 44 will go to the same lockbox number used for the initial Auction No. 44 upfront payment, as listed.
- Failure to deliver the supplemental upfront payment by the July 26, 2002, deadline will result in the bidder not receiving the corresponding additional eligibility.

Making Supplemental Upfront Payments by Wire Transfer

22. Wire transfer payments must be received no later than 6:00 p.m. ET on July 26, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.
Receiving Bank: Mellon Pittsburgh.
Beneficiary: FCC/Account # 910–1182.
OBI Field: (Skip one space between each information item).
"AUCTIONPAY".
FCC Registration Number (FRN): (same as FCC Form 159, block 11 and/or 21).
Payment Type Code: (same as FCC Form 159, block 24A: A44U).
FCC Code 1: (same as FCC Form 159, block 28A: "44").
Payer Name: (same as FCC Form 159, block 2).
Lockbox No.: # 358415.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

23. Bidders should confirm the receipt and the amount of their upfront payment at Mellon Bank by contacting their sending financial institution. All supplemental upfront payments must be received at Mellon Bank no earlier than July 22, 2002, but no later than 6:00 p.m. ET on July 26, 2002. Parties that intend to make use of the procedures are urged to do so early in the period to avoid last minute errors. UNTIMELY SUPPLEMENTAL UPFRONT PAYMENTS WILL NOT INCREASE A QUALIFIED BIDDER'S ELIGIBILITY.

Auction Registration Information

24. Approximately ten days before the auction, the Commission will issue a public notice providing a final list of all qualified bidders, their license selections, and upfront payments received for this auction.

25. Qualified bidders planning to participate in Auction No. 44 should retain ALL materials previously sent by overnight delivery in two separate mailings on June 11, 2002. These materials *WILL NOT* be re-sent (*e.g.*, Bidder Identification Numbers, SecurID cards, FCC Auctions Bidding System User Manual).

Bidder Identification Number

26. Qualified bidders should keep the letter sent by overnight delivery on June 11, 2002 that includes their Bidder Identification Number ("BIN") stored in a safe and secure location. Each qualified bidder's BIN remains the same and will not be changed for the rescheduled Auction No. 44.

SecurID Cards

27. Qualified bidders should keep the SecurID Card sent by overnight delivery on June 11, 2002 stored in a safe and secure location. These same cards will be used for the rescheduled Auction No. 44. SecurID cards will be re-set to "new PIN" mode prior to the Mock Auction scheduled for August 22, 2002. Qualified bidders should refer to their "FCC Auctions Bidding System User Manual (Auction 44)" for complete details on how to Access the FCC Bidding System.

28. After participation in Auction No. 44 is completed, qualified bidders are encouraged to return their SecurID cards to the Commission for recycling. Qualified bidders will receive a pre-addressed, stamped envelope for use in returning SecurID cards together with their copy of the *Auction No. 44 Revised Procedures Public Notice*. Qualified bidders that forgo further participation in Auction No. 44 are encouraged to return their SecurID cards now. Qualified bidders participating in Auction No. 44 may return their SecurID cards after the close of the auction. Please note that each SecurID card is tailored to a specific auction; therefore, the SecurID cards issued for Auction No. 44 will not work for future auctions.

Maintaining the Accuracy of FCC Form 175 Information

29. Parties are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits. Parties should amend their applications within ten business days from the occurrence of a reportable change. Filers should make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction44@fcc.gov*. A separate copy of the letter should be faxed to the attention of Kathryn Garland, Chief, Auctions Operations Branch, (717) 338–2850. Questions about other changes should be directed to Howard Davenport at (202) 418–0660.

30. Any parties that must file amendments are advised that they will be unable to make modifications to their FCC Form 175 electronically from 6 p.m. ET July 22, 2002, until the release of the public notice containing the final list of qualified bidders. Parties nevertheless must make timely amendments by submitting a letter regarding any changes as described.

Revised Auction Schedule

31. Pursuant to the *Auction No. 44 Revised Procedures Public Notice*, the following deadlines now apply in Auction No. 44:

Deadline for requesting return of upfront payments by qualified bidders eligible to bid on A, B, or E block licenses—6 p.m. ET July 3, 2002.

Deadline for early departure from Auction No. 44—6 p.m. ET July 3, 2002.

Deadline for selecting additional licenses—6 p.m. ET July 26, 2002.

Deadline for supplementing upfront payments—6 p.m. ET July 26, 2002.

Mock Auction—August 22, 2002.

Auction Start—August 27, 2002.

Federal Communications Commission.

Magaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–18181 Filed 7–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1608]

Eleventh Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on August 22, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: August 22, 2002; 10 a.m.–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the Eleventh meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the Eleventh meeting is as follows:

Agenda

Eleventh Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554

August 22, 2002; 10 a.m.–12 Noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Tenth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–18180 Filed 7–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 2, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Romer Family (John Romer, St. Henry, Ohio; Elizabeth Romer, St. Henry, Ohio; Albert Romer, St. Henry, Ohio; David Romer, St. Henry, Ohio; Karla Clune, St. Henry, Ohio; Kathryn Hart, Miamisburg, Ohio; Lynn Hemmelgarn, Springboro, Ohio; Rebecca, Moorman, Ottoville, Ohio; James Romer, Piqua, Ohio; Margery Romer, Piqua, Ohio; Jacqueline Romer-Sensky, Westerville, Ohio; Jeffrey Romer, Harker Heights, Texas; Timothy Romer, Vandalia, Ohio; Nancy Schroeder, Dublin, Ohio; and Douglas Romer, Westerville, Ohio); to retain voting shares of St. Henry Bank, St. Henry, Ohio.

2. Romer Family (John Romer, St. Henry, Ohio; Elizabeth Romer, St.

Henry, Ohio; Albert Romer, St. Henry, Ohio; Rebecca Moorman, Ottoville, Ohio; James Romer, Piqua, Ohio; and Margery Romer, Piqua, Ohio); to acquire voting shares of The Ottoville Bank Company, Ottoville, Ohio.

Board of Governors of the Federal Reserve System, July 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

the voting shares of Bank of Morton, Morton, Mississippi.

2. P.C.B. Bancorp, Inc., Largo, Florida; to merge with Gateway American Bancshares, Inc., Fort Lauderdale, Florida, and thereby indirectly acquire voting shares of Gateway American Bank of Florida, Fort Lauderdale, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

communities that are planning to develop a Medical Reserve Corps unit;

2. Establishing and maintaining a website where Medical Reserve Corps core documents (*e.g., Medical Reserve Corps—A Guide for Local Officials*), training information, and a newsletter will be readily accessible;

3. Producing a monthly Medical Reserve Corps newsletter which will inform Medical Reserve Corps units and

prevent, prepare for, and respond to crime, natural disasters and other emergencies. The programs include: Community Emergency Response Teams, under the direction of the Federal Emergency Management Agency; Neighborhood Watch, Volunteers in Police Service, and Operation TIPS, under the direction of the Department of Justice (DOJ); and, the Medical Reserve Corps, under the broad

fiscal year 2002. Awards of amounts up to $50,000 (for direct and indirect costs) for up to a three-year period will be made. The actual number and dollar amount of the awards will depend on the number of approved applications received.

Matching Requirements

The applicant is not required to match or share project costs, if an award is

Henry, Ohio; Albert Romer, St. Henry, Ohio; Rebecca Moorman, Ottoville, Ohio; James Romer, Piqua, Ohio; and Margery Romer, Piqua, Ohio); to acquire voting shares of The Ottoville Bank Company, Ottoville, Ohio.

Board of Governors of the Federal Reserve System, July 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18197 Filed 7–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Morton Bancorp, Inc., Morton, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Morton, Morton, Mississippi.

2. P.C.B. Bancorp, Inc., Largo, Florida; to merge with Gateway American Bancshares, Inc., Fort Lauderdale, Florida, and thereby indirectly acquire voting shares of Gateway American Bank of Florida, Fort Lauderdale, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Independent Holdings, Inc., Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Independent Bank, Memphis, Tennessee.

Board of Governors of the Federal Reserve System, July 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18303 Filed 7–18–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Grant Applications for a Demonstration Project for the Medical Reserve Corps, Citizens Corps, USA Freedom Corps

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the Surgeon General.

ACTION: Notice.

SUMMARY: To provide funding for a demonstration project to demonstrate approaches to establishment of community-based, citizen volunteer Medical Reserve Corps units. Small grants will provide funding to community-based organizations, under the terms of cooperative agreements. The small grants will facilitate start-up of Medical Reserve Corps units and provide information to the Federal Government that will provide insights into best practices in such areas as: (1) Structure and organization, (2) recruitment and verification of credentials, (3) community-level partnership building, (4) competency levels for effective action, (5) training, (6) risk assessment, and (7) strategy development and planning.

Authority: This program is authorized by Section 301 of the Public Health Service Act, as amended, 42 U.S.C.; and, funded under Pub. L. 107–116, Title II, January 10, 2002.

The community-based, volunteer Medical Reserve Corps units are intended to supplement existing community emergency medical response systems as well as contribute to meeting the public health needs of the community throughout the year. They are not intended to replace or substitute for local, existing emergency response systems. The Medical Reserve Corps should help provide surge capacity during the initial hours following an emergency before assistance from other geographic localities may arrive.

The Medical Reserve Corps will provide an organized framework which will attract volunteers and provide them with skills needed to work effectively in emergency situations. It will help to ensure that the volunteers from Medical Reserve Corps units are deployed locally in a manner that is fully planned and coordinated with broader emergency response plans of the communities in which they are located. Moreover, the Medical Reserve Corps will serve as a mechanism for helping to ensure that volunteers have appropriate credentials for assignments which they will undertake when the Medical Reserve Corps is activated. The Medical Reserve Corps will help facilitate not only coordinated action but provide a greater predictability in volunteer resource capability when and where such services are needed.

The establishment of community-based volunteer Medical Reserve Corps units throughout the Nation will help meet the goal of enabling communities in the United States to be better prepared to respond to emergencies and urgent public health needs. It is anticipated that these community-based Medical Reserve Corps units will grow in number and in quality across the country.

The Medical Reserve Corps demonstration project grants programs will be supported through the cooperative agreement mechanism. This will enable a collaborative relationship between the grantee, the local Medical Reserve Corps unit and the Department of Health and Human Services' (HHS) Office of the Surgeon General. The Office of the Surgeon General will coordinate, through a private-sector contractor(s), technical assistance needed for the implementation, conduct, and assessment of program activities. The Office of the Surgeon General will provide necessary oversight of the program.

Specifically, the Federal Government plans to support the development of Medical Reserve Corps units by:

1. Developing and disseminating a guide, entitled *Medical Reserve Corps—A Guide for Local Officials*, for communities that are planning to develop a Medical Reserve Corps unit;

2. Establishing and maintaining a website where Medical Reserve Corps core documents (*e.g., Medical Reserve Corps—A Guide for Local Officials*), training information, and a newsletter will be readily accessible;

3. Producing a monthly Medical Reserve Corps newsletter which will inform Medical Reserve Corps units and others of progress nationally on this initiative, best practices, shared experiences of Medical Reserve Corps units, and meeting notices;

4. Providing, through one or more government contractors, short-term technical assistance to successful applicants and/or Medical Reserve Corps units. Such technical assistance could include, for example, assistance with assessing training needs, development of training plans, assistance with planning and implementing drills (tabletop and/or field), development of supply and equipment acquisition plans, and development of operational plans;

5. Convening at least one meeting, in each of the HHS' ten regions in which Medical Reserve Corps unit officials may participate in-person or via appropriate and available communication systems; and,

6. Recommending evaluation approaches to Medical Reserve Corps units.

Background

During his January 2002 State of the Union address, President Bush called on all Americans to dedicate at least two years—the equivalent of 4,000 hours of their time—to provide volunteer service to others. To help every American answer the call to service, he created the USA Freedom Corps, and charged it with strengthening and expanding service opportunities for them to protect our homeland, to support our communities, and to extend American compassion around the World. The USA Freedom Corps in a coordinating council, similar to the National Economic Council or National Security Council, that relies upon the Federal agencies and departments that are a part of the coordinating council to carry out policies and programs.

At the same time that he formed the USA Freedom Corps, the President created the Citizen Corps initiative to offer Americans new opportunities to get involved in their communities through emergency preparation and response activities. The Citizen Corps initiative includes several new and existing programs that share the common goal of helping communities prevent, prepare for, and respond to crime, natural disasters and other emergencies. The programs include: Community Emergency Response Teams, under the direction of the Federal Emergency Management Agency; Neighborhood Watch, Volunteers in Police Service, and Operation TIPS, under the direction of the Department of Justice (DOJ); and, the Medical Reserve Corps, under the broad guidance and support of the Department of Health and Human Services.

At the local level, these Citizen Corps programs will be coordinated by Citizen Corps Councils supported by FEMA.

DATES: To be considered for review, applications must be received by August 23, 2002. Applications that do not meet the deadline will be considered late and will be returned to the applicant.

ADDRESSES: Applications must be prepared using Form PHS 5161–1 (revised July 2000). This form is available in Adobe Acrobat format at the following Web site: *http://www.cdc.gov/od/pgo/orminfo/htm*. Form PHS 5161–1 (revised July 2000) includes U.S. Government Standard Form (SF) 424, the required face page for grant applications submitted for Federal assistance and SF 424 A, a budget format for non-construction projects.

Complete applications should be submitted to: Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852. Ms. Campbell can be reached by, telephone at: (301) 594–0758.

FOR FURTHER INFORMATION CONTACT: Questions regarding programmatic information related to preparation of grant applications should be directed in writing to Ms. Linda Vogel, Senior Public Health Advisor, Office of the Surgeon General, Office of Public Health and Science, U.S. Department of Health and Human Services, Room 18–66, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *lvogel@osophs.dhhs.gov*.

Information on budget and business aspects of the application may be obtained from Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone: (301) 594–0758.

SUPPLEMENTARY INFORMATION:

Availability of Funds

The Office of the Surgeon General anticipates making up to 100 awards in fiscal year 2002. Awards of amounts up to $50,000 (for direct and indirect costs) for up to a three-year period will be made. The actual number and dollar amount of the awards will depend on the number of approved applications received.

Matching Requirements

The applicant is not required to match or share project costs, if an award is made.

Period of Support

The start date for the cooperative agreement will be September 30, 2002. Support may be requested for a project period not to exceed three years. Grantees will be eligible for awards up to $50,000 (total amount) per year. Noncompeting continuation awards of up to $50,000 will be made in fiscal years 2003 and 2004, subject to satisfactory performance and the availability of funds.

Eligible Applicants

The Medical Reserve Corps small grants program applicant must be a public or private nonprofit community-based organization. Applicants may be an entity of the local government or a local nonprofit (501C.3 status), non-government organization. If a local Citizen Corps Council has 501C.3 status, the Citizen Corps Council can be the applicant.

Faith-based organizations that meet the definition of a private nonprofit community-based organization are eligible to apply for these Medical Reserve Corps small grants. Tribes, tribal organizations, and local affiliates of national, state-wide, or regional organizations that meet the definition of a private nonprofit, community-based organizations are eligible to apply.

To ensure wide geographic distribution of local Medical Reserve Corps units, applications will be accepted from organizations in all of the American States and Territories.

Only one grant will be awarded per community. If more than one application is received for the same community, the Office of the Surgeon General will contact local officials to make a determination of which application should be given priority. For communities where more than one group/organization is planning/developing a local citizen volunteer Medical Reserve Corps unit, it is recommended that these groups work together to submit one application.

Program Goals

The goals of the Medical Reserve Corps demonstration grants program are to:

1. Demonstrate whether medical response capacity in communities can be strengthened through the establishment of Medical Reserve Corps units consisting of citizen volunteers who represent a broad range of medical/health professions;

training of Medical Reserve Corps members to achieve needed competency standards, building working relationships/partnerships within the community, communications and logistics during emergencies, and practicing/drilling before emergencies occur; and (7) develop plans for additional functions, beyond emergency response, to promote public health in the community.

Use of Grant Funds

Applicants may request funds for the following types of allowable expenses, subject to Federal Government regulations regarding non-allowable expenses in Federal assistance programs:

1. Organizing a Medical Reserve Corps, including establishment of a leadership and management structure;

2. Implementation of mechanisms to

Organization of Application

Applicants are required to submit an original ink-signed and dated application and two (2) photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½″x11″ white paper, using at least a 12 point font, and contain 1″ margins all around.

3. The proposed plan and time line for establishment of a Medical Reserve Corps, ranging from established of a planning/steering group, organizational meetings, goals and objectives, development of organizational structure, policies and procedures, recruitment, liaison and partnership building, training, *etc.*

Although components of a Medical Reserve Corps do not necessarily have to be in place at the time the application

Factor 6: Technical Assistance—5%

A clear statement that the applicant, if awarded a grant, would communicate reasonable technical assistance needs, including justification, to the project focal point in the Office of the Surgeon General for possible fulfillment through one of the Office of the Surgeon General's technical assistance contracts.

This information will enable the Office of the Surgeon General to develop an understanding of the technical

Program Goals

The goals of the Medical Reserve Corps demonstration grants program are to:

1. Demonstrate whether medical response capacity in communities can be strengthened through the establishment of Medical Reserve Corps units consisting of citizen volunteers who represent a broad range of medical/health professions;

2. Demonstrate whether "surge" capacity can be created at the community level to deal with emergency situations which have significant consequences for the health of the population;

3. Demonstrate whether the Medical Reserve Corps does enable current and/or retired health professionals and related support personnel in communities to obtain additional training needed to work effectively and safely during emergency situations;

4. Demonstrate whether the Medical Reserve Corps approach does provide an effective organizational framework, with a command and control system, within which appropriately trained and credentialed citizen volunteers can put their skills in health and medicine to use effectively (including prearranged assignments) when there is an emergency;

5. Demonstrate whether the Medical Corps approach facilitates coordination of local citizen volunteer services in health/medicine with other response programs of the community/county/state during an emergency; and

6. Demonstrate whether the Medical Reserve Corps approach does provide cadres of health professionals, from within their home communities, who contribute to the resolution of public health problems and needs throughout the year.

Project Requirements

Medical Reserve Corps units should: (1) Be established and operate within the overall community plans for emergency preparedness and response and for public health improvement; (2) be comprised of citizen volunteers from within the community, including the immediate surrounding area; (3) have an organizational framework with a command and control system and have operational policies and procedures; (4) have a plan of action that is consistent with the risks and vulnerabilities of the community; (5) be fully coordinated and appropriately integrated into the existing emergency planning and response programs of the community; (6) develop strategies for activation of the local Medical Reserve corps unit(s), training of Medical Reserve Corps members to achieve needed competency standards, building working relationships/partnerships within the community, communications and logistics during emergencies, and practicing/drilling before emergencies occur; and (7) develop plans for additional functions, beyond emergency response, to promote public health in the community.

Application Requirements

In addition to the eligibility criteria cited above and use of the form PHS 5161–1 (revised July 2000) and found at: *http://www.cdc.gov/od/pgo/forminfo/htm*, successful candidates will address the following criteria in the narrative of their applications and provide the noted documentation:

- Documentation that the applicant is a unit of local government or community-based, nonprofit organization;
- Draft action plan, including initial measurable milestones, for establishment of a citizen volunteer Medical Reserve Corps unit, including goals, objectives, and time lines;
- Documentation of the existence of a planning body for the Medical Reserve Corps, including the name of the chair or lead organization, and the principals of the organizations;
- Specification of any arrangements or agreements with other local public or private organizations [e.g., Citizen Corps Council, Mayor's office, city Council, County Commission, County Chief Executive, Fire Department, Department of Health, Chief of Emergency Response for the Community, community hospital(s), Red Cross, local medical society and/or other health professions organizations, local-based government hospitals (VA, Indian Health Service), Rotary, Lions and Kiwanis Clubs] for the purposes of planning, establishing, and utilization of a local Medical Reserve Corps unit(s);
- Demonstration of linkages and/or understanding of existing emergency medical response entities in the community (*e.g.*, minutes of a planning meeting in which there was substantive involvement of other key community stakeholders, including NGOs);
- Demonstration of a linkage with local government health and emergency response authorities;
- A proposed budget which is consistent with the approved types of expenditures set forth below;
- Other letter(s) of support are optional.

Use of Grant Funds

Applicants may request funds for the following types of allowable expenses, subject to Federal Government regulations regarding non-allowable expenses in Federal assistance programs:

1. Organizing a Medical Reserve Corps, including establishment of a leadership and management structure;
2. Implementation of mechanisms to assure appropriate integration and coordination with existing local emergency response and health assets and capabilities;
3. Recruiting volunteers for the Medical Reserve corps;
4. Assessing the community's risks and vulnerabilities;
5. Development of plans to develop, organize and mobilize the Medical Reserve Corps in response not only to urgent needs but also to address other public health needs in the community;
6. Training for leadership and preparedness; and
7. Training in specific skills.

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete or arrive after the deadline will be returned without review or comment. Applications will be reviewed for conformity with the applicant eligibility criteria. HHS will contact in writing all applicants which do comply with the applicant eligibility criteria to advise them of this finding. Accepted applications will be reviewed for technical merit in accordance with HHS policies.

Applications will be evaluated by a technical review panel composed of experts in the fields of emergency medical response, medicine, public health, program management, community service delivery, and community leadership development. Consideration for award will be given to applicants that best demonstrate progress toward establishment of a local citizen volunteer Medical Reserve Corps unit. Additionally, applications that best demonstrate the development of plausible strategies, including a time line, for organizing, recruitment for, and making operational a citizen volunteer Medical Reserve corps unit that is linked to other community-based programs and players for emergency response will rank more highly than those applications which do not. Applicants which have a linkage or plan a linkage with the community's Citizen Corps Council (if one has been established) should address that point, as applicable and appropriate.

Organization of Application

Applicants are required to submit an original ink-signed and dated application and two (2) photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½"x11" white paper, using at least a 12 point font, and contain 1" margins all around.

The Project Summary and Project Narrative must not exceed a total of ten double-spaced pages, excluding any appendices. The original and each copy must be stapled and/or otherwise securely bound. An outline for the minimum information to be included in the "Project Narrative" section and related appendices is presented below.

I. Background (location, responsible organization/body, linkages within community)
II. Objectives
III. Summary of existing relevant community resources
IV. Strategy/plans with time line (can be in sequenced, bullet form)
V. Key project staff and current structure
VI. Evaluation—how progress will be measured
VII. Statement of willingness to contribute written information on local Medical Reserve Corps unit experiences, particularly what has worked well and lessons learned, to the Office of the Surgeon General for sharing with other communities establishing Medical Reserve Corps
VIII. Statement of willingness to discuss with the designed Office of the Surgeon General Medical Reserve Corps project staff the types technical assistance which the Medical Reserve Corps organizers believe they may need, with a view toward possible utilization of the Office of the Surgeon General technical assistance contract which was awarded for this purpose.

Application Review Criteria

The technical review of applications will consider the following factors:

Factor 1: Implementation Plan—45%

This section should discuss:

1. Brief summary of existing community resources and linkages to deliver coordinated emergency medical response services in a large scale (for the locality) emergency.

2. The role the Medical Reserve Corps will most likely play in relationship to existing services, including local health department, fire department, community hospital(s), Red Cross and other NGO's; and, if an officially recognized Citizen Corps Council has been established in the community, the nature of any linkage to the Citizen Corps Council.

3. The proposed plan and time line for establishment of a Medical Reserve Corps, ranging from established of a planning/steering group, organizational meetings, goals and objectives, development of organizational structure, policies and procedures, recruitment, liaison and partnership building, training, *etc.*

Although components of a Medical Reserve Corps do not necessarily have to be in place at the time the application is submitted, the applicant must discuss/describe the resources available to support these components and plans for phasing in the components of the action plan and the relationship of the plans to existing programs/institutions in the community/county/area.

Factor 2: Management Plan—20%

Applicant organization's capability to manage the project as determined by the availability and qualifications of the proposed staff (may be either volunteer or hired).

Applicant organization's listing of partners in the establishment and utilization of the citizen volunteer Medical Reserve Corps and their relationships and the mechanism(s) that will be utilized to convene the partners for constructive planning and implementation.

Factor 3: Evaluation Plan—10%

A clear but brief statement of program goals and how progress toward meeting those goals will be assessed.

A clear statement that the grant recipient is willing to contribute information on the progress, lessons learned, best practices, etc. to the Office of the Surgeon General at 6-month intervals.

Factor 4: Supporting Documentation—10%

Adequacy of supporting documentation that the Medical Reserve Corps planning group is appropriately connected to local government entities (*e.g.*, Mayor's office, City Council, County Executive, County Council, Fire Department, Department of Emergency Planning and Response) and appropriate local organizations such as the Citizen Corps Council (if one has been officially established), American Red Cross, civic organizations (*e.g.*, Kiwanis, Rotary, Siroptomist, Lions, Clubs); veterans organizations, health professions organizations, and faith-based groups, etc.

Factor 5: Background—10%

Adequacy of demonstrated knowledge of emergency medical response/care systems, and utilization of volunteers.

Factor 6: Technical Assistance—5%

A clear statement that the applicant, if awarded a grant, would communicate reasonable technical assistance needs, including justification, to the project focal point in the Office of the Surgeon General for possible fulfillment through one of the Office of the Surgeon General's technical assistance contracts.

This information will enable the Office of the Surgeon General to develop an understanding of the technical assistance most needed by communities in developing their Medical Reserve Corps unit(s).

Award Criteria

Funding decisions will be made by the Office of the Surgeon General and will be based on the recommendations adn ratings of the technical review panel.

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) Progress reprots; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of the Surgeon General, in accordance with provisions of the general regulations which apply under 45 CFR part 74.51–74.52, with the exception of State and local governments to which CFR part 92, subpart C reporting requirements apply.

The Office of the Surgeon General has established the following requirements for inclusion in the annual and/or final report(s):

- A summary of the status of development of the Medical Reserve Corps (not to exceed 5 pages in the main report), including the major activities and accomplishments, objectives met and not met, and lessons learned;
- Copy of organizational chart and brief narrative description of the structure of the Medical Reserve Corps, including its line-of-command;
- Copy of policies and procedures (*e.g.* scope of operations, criteria for mobilization and demobilization) for the local Medical Reserve Corps;
- Copy of risk/vulnerability assessment (a copy of such an assessment prepared by other entities in the community and to which the Medical Reserve Corps is linked may be submitted);
- Resource availability and needs assessment; and
- Copy of database of appropriately credentialed volunteers who are committed to participate as members of the Medical Reserve Corps.

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them

description of the review process and requirements).

Provision of Smoke-Free Workplaces and Non-Use of Tobacco Products by Recipients of PHS Grants

HHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Michael Shishov, M.D., Brigham and Women's Hospital, Inc. (BWH): Based on the report of an investigation conducted by Brigham and Women's Hospital, Inc. (BWH Report), the

a period of three (3) years, beginning on July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–18239 Filed 7–18–02; 8:45 am]

BILLING CODE 4150–31–U

of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

"This notice is being published less than 15 days prior to the July 22 meeting due to the time constraints of reviews and funding cycles."

Agenda items for this meeting are

1. Prevention of chronic disease and integrated chronic disease care, with a special focus on preventing, identifying and managing co-morbidities of chronic illness and the special needs of chronically ill populations.

2. Prevention of acute and chronic health conditions, diseases, concerns and issues that affect women.

In addition, applicants should ensure that their proposals address reducing health status disparities within

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprized on proposed health services grant applications submitted by community-based non-governmental organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424); and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served; (2) a summary of the services to be provided; and (3) a description of the coordination planned with State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of the Surgeon General.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit available under this notice will contain a list of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applications (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the OMH Grants Management Officer.

The Office of the Surgeon General does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Provision of Smoke-Free Workplaces and Non-Use of Tobacco Products by Recipients of PHS Grants

HHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

Definitions

For the purposes of this small-grant program, the following definitions are provided:

Citizen Corps Council: A Citizen Corps Council established at the community or county level within the overall frame work of the Citizen Corps, USA Freedom Corps. The Citizen Corps Council structure falls within the overall purview of FEMA.

Community-based: The focus of control and decision making powers are located at the community level, representing the service area of the community or a significant segment of the community.

County-based: The focus of control and decision making powers, insofar as the scope of this program is concerned, are located at the county level, representing the service area of the county or a significant segment of the county.

Non-governmental organization (NGO): A nonprofit, non-governmental organization having 501(c)(3) status.

Office of Minority Health (OMH): The Office of Minority Health, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services, which is serving as the great management organization for this announcement.

Dated: July 17, 2002.

Kenneth P. Moritsugu,

RADM, Acting Surgeon General, Public Health Service.

[FR Doc. 02–18375 Filed 7–18–02; 8:45 am]

BILLING CODE 4150-28-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Michael Shishov, M.D., Brigham and Women's Hospital, Inc. (BWH): Based on the report of an investigation conducted by Brigham and Women's Hospital, Inc. (BWH Report), the respondent's admission, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that the respondent, a former laboratory technician in the Intensive Physiological Monitoring Unit of the BWH General Clinical Research Center, engaged in scientific misconduct in a program of sleep disorder research supported by the National Institutes of Health (NIH) under National Center for Research Resources (NCRR), NIH, grant M01 RR02635.

Specifically, PHS found, and the respondent admitted, that on numerous occasions between May and August 1995, he registered on the Termiflex-computer terminal, as well as writing in hand on blood draw sheets and laboratory logs, the times that he claimed he drew blood samples from human subjects in investigational sleep research. These times differed from the actual times when the samples were collected. The accurate assessment of the endogenous circadian phase and amplitude of the measured variables, including the timing and amount of blood cortisol, was essential for the studies. However, PHS acknowledges certain mitigating circumstances: (a) That occasionally during this time, the respondent may have been responsible for more protocol procedures than he could reasonably be expected to perform; and (b) that the BWH Report notes that he was respectful and honest during the investigation and that he has participated conscientiously in a program of professional ethics counseling. Therefore, PHS accepts the administrative actions previously imposed by BWH and performed by the respondent: (1) Attending an ORI conference on research misconduct; and (2) participating in ethics counseling over a three-year period.

Dr. Shishov has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed to exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on July 2, 2002.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–18239 Filed 7–18–02; 8:45 am]

BILLING CODE 4150-31-U

DEPARTMENT OF HELATH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Large Conference Grant Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Large Conference Grant Projects.

Date: July 22, 2002 (Open on July 22, from 2:30 p.m. to 2:40 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie-Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

"This notice is being published less than 15 days prior to the July 22 meeting due to the time constraints of reviews and funding cycles."

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 15, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18259 Filed 7–18–02; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02130]

Cooperative Agreement With National Organizations for Promoting Health and Preventing Disease and Disability With Employer-Purchasers of Health Care; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program with National Organizations for Promoting Health and Preventing Disease and Disability, and improving healthy behaviors. This program addresses all "Healthy People 2010" focus areas.

The purpose of the program is to support cross-cutting activities with national business organizations and their affiliated employer-purchasers of health care to improve health, prevent disease and disability, and promote healthy behaviors with regard to a variety of disease areas and health conditions. It's purpose is to also promote the objectives outlined in The Guide for Community Preventive Services *(http://www.thecommunityguide.org)* and other clinical and preventive services guidelines, through the translation and communication of public health principles and prevention practices into readily interpretable and applicable information for employer-purchasers of health care.

Program Emphasis

There are two broad areas of program emphasis:

1. Prevention of chronic disease and integrated chronic disease care, with a special focus on preventing, identifying and managing co-morbidities of chronic illness and the special needs of chronically ill populations.

2. Prevention of acute and chronic health conditions, diseases, concerns and issues that affect women.

In addition, applicants should ensure that their proposals address reducing health status disparities within employed populations. More specifically, address the persistent problem that, even with health insurance, certain racial and ethnic subpopulations bear a significantly greater burden of suffering, particularly from chronic disease.

Measurable outcomes of the program will be in alignment with the following performance goal for the CDC Epidemiology Program Office: Maximize the distribution and use of scientific information and prevention strategies through collaborative efforts with national business organizations and their affiliated members.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241 and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Applications will be accepted from national, nonprofit organizations that provide documented proof of meeting the following criteria in the "Eligibility" section of the application:

1. Be an established tax-exempt organization (i.e., a non-governmental, tax-exempt corporation or association whose net earnings in no way accrue to the benefit of private shareholders or individuals). Tax-exempt status may be confirmed by providing a copy of the relevant pages from the Internal Revenue Service's (IRS) most recent list of 501(c) (3) or (6) tax exempt organizations or a copy of the current IRS Determination Letter. Proof of tax-exempt status must be provided with the application.

2. Have a membership composed primarily of small, medium, or large, private employers with multi-state and/or national operations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Recipients may enter into contractual agreements, as necessary, to accomplish the goals and objectives of this program.

D. Availability of Funds

Approximately $400,000 is available in FY 2002 to fund two to three awards. It is expected that the average award will be $165,000, ranging from $130,000 to $200,000. It is expected that awards will begin on or about September 30,

of resources for prevention-oriented employee health care services. An additional goal of these sessions should be to encourage participants to utilize current evidence-based strategies in their initiatives to purchase disease management and other preventive health services.

These sessions should also identify a means within the premium negotiation process between employer-purchasers

other meetings and conferences, executive seminars, and symposia.

Complementary Program Activities

g. Develop, implement and evaluate the outcomes of demonstration projects with one to five employers/corporations related to core cooperative agreement activities and goals regarding decision-making tools; disease management and prevention; adoption of preventive

that can meet the requirements of this program.

b. Provide a membership listing and an estimate of members' combined total workforce.

c. Include details of past experiences working with members on health and health-related issues.

d. Profile qualified personnel who are available to work under this agreement. Include a global organizational chart

following internet address: *www.cdc.gov/od/pgo/forminfo.htm* or by contacting the Grants Management Specialist listed in the "Where to Obtain Additional Information" section of this announcement.

The application must be received by 5 p.m., August 19, 2002. Submit the application to: Technical Information Management—PA02130, Procurement and Grants Office, Centers for Disease

2. Capability (25 points)

The extent to which the applicant demonstrates the possibility of successfully implementing the proposed activities as measured by relevant past history; a sound management structure and staff qualifications, including the appropriateness of proposed roles, responsibilities and job descriptions; and a description of the applicant's capability to collaborate and partner

Recipients may enter into contractual agreements, as necessary, to accomplish the goals and objectives of this program.

D. Availability of Funds

Approximately $400,000 is available in FY 2002 to fund two to three awards. It is expected that the average award will be $165,000, ranging from $130,000 to $200,000. It is expected that awards will begin on or about September 30, 2002, for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities. The recipient will be required to perform a minimum of four out of the five core activities described under items a, b, c, d and e. Item f (dissemination) is a required core activity and must be addressed in addition to the other four selected core activities. In addition to the core activities, complementary program activities described in items g and h may be supported based on the availability of supplemental funds from participating CDC Programs.

1. Recipient Activities:

Core Activities

a. Develop case examples of employer-purchaser/health plan collaborative initiatives that utilize assessment tools (*e.g.*, avoidable claims analysis) to identify and stratify explicitly preventable health care costs and promote deployment of disease-management or similar strategies to reduce preventable disease burden and the associated health care costs.

b. Convene business forums and round tables with leading employer-purchasers (to include Chief Financial Officers, Senior Benefits staff and Medical Directors) and their corresponding vendors (e.g., health plans, provider networks, third party brokers and consultants) that operate prevention-oriented employee health improvement programs in the areas of chronic disease prevention and care, and/or women's health. The aim of these sessions should be to analyze and document the purchaser decision-making process regarding the allocation of resources for prevention-oriented employee health care services. An additional goal of these sessions should be to encourage participants to utilize current evidence-based strategies in their initiatives to purchase disease management and other preventive health services.

These sessions should also identify a means within the premium negotiation process between employer-purchasers and health plans to address explicitly the allocation of resources necessary to support the information technology system infrastructure of health plans and providers (*e.g.*, disease registries and reminder systems).

c. Identify case examples of employer-purchasers which have adopted value-based purchasing strategies that link accreditation, quality improvement and performance measurement; and assess the impact of this linkage on the receipt of preventive services by insured populations.

d. Identify and evaluate decision-support tools which include Return on Investment (ROI) and Employee Health-Productivity models tailored to assist an employer-purchaser in making decisions about selecting and packaging clinical preventive services for its health benefits coverage. These tools should be applicable for decisions to select disease or condition-specific, stand-alone or carve-out services, as well as a more integrated disease management strategy for the employer. These tools should also have the capacity to support decisions across the spectrum of health plan and provider structures (*e.g.*, health maintenance organizations (HMOs); preferred provider organizations (PPOs); and other managed care organizations) and other vendor product lines.

e. Identify effective health promotion models in the areas of chronic disease management and women's health, and develop publications in collaboration with CDC of best practices targeting business, the national business press, and popular mass media to promote replication.

Required Core Activity

f. Develop and disseminate accurate and timely electronic and print materials that focus on findings of cooperative agreement activities, and are specifically tailored to business. As part of the dissemination of this information, recipients may develop and use diverse channels of communication such as E-mail, websites, executive summaries and other publications targeted for national dissemination, as well as CDC meetings, other meetings and conferences, executive seminars, and symposia.

Complementary Program Activities

g. Develop, implement and evaluate the outcomes of demonstration projects with one to five employers/corporations related to core cooperative agreement activities and goals regarding decision-making tools; disease management and prevention; adoption of preventive health services; and worksite health promotion.

h. Describe and implement activities to bridge corporate purchasers and public health related to planning and reacting to bioterrorism, population health threats, or other emerging health issues.

2. CDC Activities

a. Provide technical assistance and monitor the progress of all aspects of this cooperative agreement.

b. Provide up-to-date scientific information and consultation.

c. Provide opportunities for presentations to CDC staff and management on needs and perspectives of business relative to health. Other activities may include reciprocal site visits between CDC and Business Organizations to collaborate on projects and exchange ideas and strategies.

d. Provide CDC experts for presentations at national business conferences and executive sessions to inform and educate on public health goals and objectives.

e. Collaborate with recipients on cooperative agreement activities, including publications, as appropriate.

F. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins and 12-point font.

1. Organizational Profile (maximum 10 pages)

a. Provide a narrative on the applicant organization, including: background information; evidence of relevant experience and past experience working with other organizations, including government agencies; and a clear understanding of this announcement's purpose. Provide evidence of an organizational structure and mission that can meet the requirements of this program.

b. Provide a membership listing and an estimate of members' combined total workforce.

c. Include details of past experiences working with members on health and health-related issues.

d. Profile qualified personnel who are available to work under this agreement. Include a global organizational chart which also demonstrates the geographic location(s) and organizational positions of all anticipated personnel.

2. Program Plan (maximum 18 pages)

a. Provide clear and concise descriptions of proposed recipient activities (four or more from those specified in this announcement), demonstrating your understanding of public health principles, the intent of this announcement, and your members' needs. Include some preliminary ideas on members' needs (in the areas of health promotion, disease and disability prevention, chronic disease management, wellness and health screening programs, health care quality assessment and improvement, health benefits purchasing, and community outreach) and how they relate to this announcement.

b. Include goals and measurable objectives that are specific, time-framed and relevant to the intent of this announcement. Detail the potential benefits of the proposed objectives.

c. Provide an action plan, including a timeline of activities and personnel responsible for implementing each segment of the plan.

d. Include an evaluation plan which encompasses both qualitative and quantitative measures for the achievement of program objectives, as well as a mechanism for mid-course correction when those objectives are not being met.

e. Provide a plan for sharing findings/results indicating when, to whom, and in what format.

f. Provide a plan for obtaining additional resources from non-federal sources to supplement program activities and ensure their continuation after the end of the project period.

3. Budget Information

Provide a detailed budget with justification. The budget proposal should be consistent with the purpose, program requirements, and program plan presented.

G. Submission and Deadline

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms can be obtained at the following internet address: *www.cdc.gov/od/pgo/forminfo.htm* or by contacting the Grants Management Specialist listed in the "Where to Obtain Additional Information" section of this announcement.

The application must be received by 5 p.m., August 19, 2002. Submit the application to: Technical Information Management—PA02130, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually by an independent review group appointed by CDC against the following criteria:

1. Program Plan (40 points)

The extent to which the applicant's program plan meets the required activities specified under "Recipient Activities" in this announcement and are measurable, specific, time-framed and realistic.

2. Capability (25 points)

The extent to which the applicant demonstrates the possibility of successfully implementing the proposed activities as measured by relevant past history; a sound management structure and staff qualifications, including the appropriateness of proposed roles, responsibilities and job descriptions; and a description of the applicant's capability to collaborate and partner with other organizations and agencies to disseminate and share results.

3. Evaluation (20 points)

The extent to which the applicant has developed mechanisms for evaluating and reevaluating progress toward stated goals and objectives which include feedback from its membership. The extent to which the applicant builds in the capacity for mid-course correction(s) based on those evaluations.

4. Organizational Profile (15 points)

The extent to which the applicant's existing organizational structure, mission, goals, objectives, activities, functions and membership composition are consistent with the purpose of this program announcement.

5. Budget (Not scored)

The extent to which the budget is reasonable in the amount(s) requested, justified by the application content, and consistent with the intentions of this announcement.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see the program announcement Attachment I as posted on the CDC internet home page.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

community-based programs, family planning, health communications, HIV infection, immunization and infectious diseases, public health infrastructure and STD.

The primary purpose of these awards is to expand on the initial activities of the Reinventing Surveillance System for Communicable Disease Prevention: Linking Morbidity, Risk Behaviors, and Reproductive Health Outcomes grant, Announcement Number 707, by

and impact of therapy on long-term survival of persons with HIV/AIDS.

(6) Through the implementation of HIV prevention programs, reduce the number of cases of HIV infection and AIDS: (1) Acquired heterosexually, (2) related to injecting drug use, (3) associated with male-to-male homosexual contact, and (4) acquired perinatally.

(7) Eliminate tuberculosis in the United States.

surveillance activities funded under other program announcements.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Convene at CDC during the first quarter of year one to present-funded

morbidity with other STDs, antimicrobial susceptibility patterns, disease intervention initiatives, geo-coding and mapping of disease areas, intervention efforts that work, collaborations, etc.).

6. Develop methods for obtaining behavioral data and other enhanced surveillance data in persons diagnosed and reported with (GC).

7. Meet at CDC early in the second year of the project to discuss progress

the programmatic narrative content, in electronic format, on a three and a half-inch double-sided, high density diskette, in WordPerfect 5.1 or ASCII. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. Forms may also be obtained by contacting the Grants Management Specialist in the "Where to Obtain Additional Information" section of this announcement.

Forms may not be submitted

AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact: Mattie Jackson, Grants Management Specialist—PA02130, Procurement and Grants Office, Centers for Disease Control & Prevention, 2920 Brandywine Road, Room 3000, Mailstop K–75, Atlanta, GA 30341–4146, Voice: (770) 488–2696; Fax: (770) 488–2670/2671, E-mail: *mij3@cdc.gov*.

For program technical assistance, contact: Paul V. Stange, Office of HealthCare Partnerships, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, K–73, Atlanta, GA 30341–3724, Voice: (770) 488–8199; Fax: (770) 488–8461, E-mail: *pstange@cdc.gov*.

Dated: July 12, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18237 Filed 7–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02211]

Outcome Assessment Through Systems of Integrated Surveillance (OASIS); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention announces the availability of fiscal year (FY) 2002 funds for a competitive grant program to develop and identify integrated and innovative uses of surveillance data by demonstration projects at the state and local level, utilizing surveillance data on Sexually Transmitted Diseases (STDs), Human Immunodeficiency Virus (HIV) infection, Tuberculosis (TB), reproductive health outcomes, risk behaviors, and health services. This program addresses the "Healthy People 2010" focus areas of education and community-based programs, family planning, health communications, HIV infection, immunization and infectious diseases, public health infrastructure and STD.

The primary purpose of these awards is to expand on the initial activities of the Reinventing Surveillance System for Communicable Disease Prevention: Linking Morbidity, Risk Behaviors, and Reproductive Health Outcomes grant, Announcement Number 707, by demonstrating how such systems can result in improved programs, enhanced surveillance, and disease prevention activities. It is expected that sites funded as a part of this award will demonstrate how their programs are improved as a result of integrating data sources, utilizing new technology, and by involving community members in the interpretation and analyses of surveillance data. It should be noted that "community members" refers not only to those who are infected and affected by the various diseases, but also the components of the program's authorizing environment that develops, implements, and would be needed to otherwise support policies pertaining to STDs and related public health issues.

Additional goals for these awards are to enhance surveillance relevant for gonorrhea (GC) prevention programs by promoting: (1) Enhanced GC data collection, (2) the interpretation and use of existing state and local surveillance data to better describe persons who contract GC, (3) the collection of behavioral data to further assist in defining the characteristics of this population, (4) use of these data to improve GC prevention planning and strengthen evaluation of public health programs addressing this disease, and (5) an increased understanding of associated adverse reproductive health outcomes relative to this infection.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD, and TB Prevention (NCHSTP):

(1) Reduce STD rates by providing chlamydia and gonorrhea screening, treatment, and partner treatment of fifty percent of women in publicly funded family planning and STD clinics nationally.

(2) Reduce the incidence of primary and secondary syphilis.

(3) Reduce the incidence of congenital syphilis.

(4) Improve the ability of the nation's HIV/AIDS surveillance system to determine the incidence and prevalence of HIV infection.

(5) Improve the ability to measure access to care, adherence to treatment, and impact of therapy on long-term survival of persons with HIV/AIDS.

(6) Through the implementation of HIV prevention programs, reduce the number of cases of HIV infection and AIDS: (1) Acquired heterosexually, (2) related to injecting drug use, (3) associated with male-to-male homosexual contact, and (4) acquired perinatally.

(7) Eliminate tuberculosis in the United States.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 318 of the Public Health Service Act, [42 U.S.C.A. section 247c]. The Catalog of Federal Domestic Assistance number is 93.977.

C. Eligible Applicants

Limited Competition

Assistance will be provided only to state and local health departments that were previously funded under the Reinventing Surveillance System for Communicable Disease Prevention: Linking Morbidity, Risk Behaviors, and Reproductive Health Outcomes grant, Announcement Number 707, specifically: Baltimore, California, Florida, Indiana, Massachusetts, Michigan, Missouri, New York City, New York State, North Carolina, Ohio, Oregon, San Francisco, Texas, Virginia and Washington.

Competition is limited to these states and local health departments to build on the experiences and integrated surveillance approaches and expertise these sites gained under Announcement Number 707.

D. Availability of Funds

Approximately $1,200,000 is available in FY 2002 to fund approximately eight to ten awards. It is expected that the average award will be $150,000, ranging from $125,000 to $175,000. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may not be used to support laboratory testing, laboratory personnel, medical personnel to perform clinical evaluations, or to purchase pharmaceuticals. These funds may not be used to duplicate existing

surveillance activities funded under other program announcements.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Convene at CDC during the first quarter of year one to present-funded proposals and to discuss: (a) Proposed project activities, (b) plans for implementation of enhanced GC surveillance activities, and (c) plans for development of a document that will describe project achievements and could facilitate replication of project activities by others.

2. Demonstrate how local programs have already been improved as a result of the innovative uses of the data and information possible because of Announcement Number 707 funding. (This should include examples of specific changes, such as the way the program: (a) Conducts public health surveillance, (b) distributes resources, (c) collects data, (d) interacts with community members, (e) works across programs within and outside the local health unit, (f) targets prevention activities. Applicants should include a description of how findings and experiences have been translated into ongoing program efforts and how local findings from analyses have been disseminated and used by the local STD program.

3. Identify, develop, and implement new and innovative approaches for enhancing STD, TB, and HIV prevention programs using data and information generated under Announcement #707. Identify and implement ways to evaluate the approaches, considering the specific program activities, such as those cited in program requirement number two.

4. Collaborate on the development of a report to CDC that clearly describes the activities funded under Announcement Number 707 throughout its various stages, summarize project activities, findings, time lines, costs, evaluations, etc. A clear description of how these activities altered program resources, activities, and effectiveness, how the projects were implemented, and the expectations for sustaining such functionality after funding expires, should be included.

5. Use existing data, to develop a comprehensive descriptive analysis of the persons infected with gonorrhea (which could include but not be limited to demographic characteristics, behavioral factors, extent of co-morbidity with other STDs, antimicrobial susceptibility patterns, disease intervention initiatives, geo-coding and mapping of disease areas, intervention efforts that work, collaborations, etc.).

6. Develop methods for obtaining behavioral data and other enhanced surveillance data in persons diagnosed and reported with (GC).

7. Meet at CDC early in the second year of the project to discuss progress and develop a more common approach based on findings from year one experiences, to address GC surveillance objectives.

F. Content

Letter of Intent (LOI)

An LOI is required for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than one page, single spaced, and printed on one side with one inch margins, and unreduced fonts. Your LOI will be used to enable CDC to determine level of interest in the announcement and prepare for the review process. Applications will only be accepted from those sites submitting an LOI. The LOI should include, at a minimum, your intent to apply for this application and the contact person(s).

Applications

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than fifteen pages, double-spaced, printed on one side, with one-inch margins and unreduced fonts, and with a number on each page.

The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation, and line-item budget with justifications.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 29, 2002, submit the requested LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this Announcement.

Application

Submit the original and two copies of the application Form PHS 5161–1 (OMB Number 0920–0428), and one copy of the programmatic narrative content, in electronic format, on a three and a half-inch double-sided, high density diskette, in WordPerfect 5.1 or ASCII. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. Forms may also be obtained by contacting the Grants Management Specialist in the "Where to Obtain Additional Information" section of this announcement.

Forms may not be submitted electronically.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

The application must be received by 5 p.m. Eastern Time August 19, 2002. Submit the application to: Technical Information Management Section, Program Announcement 02211, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Letters of intent and applications will be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent (LOI)

The letter of intent, though required, will not be evaluated.

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must evaluation plans, along with concrete examples of how evaluation efforts will be undertaken, achievable timeline, and documentation of the applicant's ability to complete proposed plans within the project period.

5. Capacity (15 points)

Staff capacity to conduct enhanced surveillance, data management, proposed analyses, and evaluation

1. Semiannual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the

Division of STD Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., MS E–02, Atlanta, GA, 30333, Telephone number: 404–639–2059, Email Address: *hsw2@cdc.gov*.

Dated: July 12, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18105 Filed 7–18–02; 8:45 am]

web page can be sent electronically or printed off and mailed to the Commission: 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857;

(2) Mail written comments or information to the Commission; or

(3) Present comments directly to the Commission during the public comment period held at every Commission meeting. For guidelines on presenting public comment, visit the Web site,

regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Enhance GC Case Surveillance (20 points)

Quality of a proposed plan to enhance GC case surveillance with behavioral and other data elements. The extent to which methods are sound and analyses will describe a representative sample of all persons reported to have gonorrhea. Extent to which methods are sustainable and can be incorporated into routine GC case surveillance.

2. Collaboration (15 points)

The extent to which applicant demonstrates that it has access to a wide range of data and data sources that could be useful for improving STD, TB, or HIV/AIDS prevention programs. This could include data from disease case reports, from prevalence monitoring activities, from vital statistics records, behavioral surveys, data regarding the availability of prevention, outreach, and health care services, and other data related to socio-economic conditions that may have a bearing on morbidity. Letters of support from collaborators should be included when appropriate.

3. Plans To Strengthen Prevention Programs (15 points)

The extent to which applicant is able to identify and develop innovative approaches for using data and information already generated through Announcement Number 707 to strengthen STD/HIV/TB prevention programs. Consider quality of the plan, including clarity of objectives, soundness of the applicant's approach, achievable timeline, and documentation of the applicant's ability to complete proposed plan within the project period.

4. Evaluation Plans (15 points)

The extent to which applicant is able to identify and develop new and innovative ways to evaluate efforts to enhance programs. Soundness of the evaluation plans, along with concrete examples of how evaluation efforts will be undertaken, achievable timeline, and documentation of the applicant's ability to complete proposed plans within the project period.

5. Capacity (15 points)

Staff capacity to conduct enhanced surveillance, data management, proposed analyses, and evaluation plans. Project staff should have appropriate background and experience record to perform proposed work.

6. Sustain-ability (10 points)

Sustain-ability of the project, as determined by the extent to which project activities have continued to be carried out as a collaboration among health department units. Continued health department collaborations and community involvement should be documented by letters of support.

7. Goals (5 points)

The extent to which the applicant has set forth performance goals and measures of outcomes as they relate to the Measures of Effectiveness (Section A).

8. Inclusion of Women and Minorities (5 points)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed activities. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans include the process of establishing partnerships with communities and recognition of mutual benefits.

9. Protection of Human Subjects

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable).

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Other Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit.

AR–1 Human Subjects Requirements
Before a grant or a cooperative agreement can be awarded, an Institutional Review Board must certify a review (described in 45 CFR Part 46). Continuing review is also required.
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact: Gladys Gissentanna, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone number: (770) 488–2753, Email Address: *gcg4@cdc.gov*.

For program technical assistance, contact: Dorotha Thomas, Project Consultant, National Center for HIV, STD, TB Prevention (NCHSTP), Division of STD Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., MS E–02, Atlanta, GA, 30333, Telephone number: 404–639–8425, Email Address: *dit1@cdc.gov*; or Hillard Weinstock, National Center for HIV, STD, TB Prevention (NCHSTP), Division of STD Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., MS E–02, Atlanta, GA, 30333, Telephone number: 404–639–2059, Email Address: *hsw2@cdc.gov*.

Dated: July 12, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–18105 Filed 7–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Web-Based Public Comment Section

Pursuant to Executive Order 13263, notice is hereby given of the web-based public comment section of the President's New Freedom Commission on Mental Health's website, *www.MentalHealthCommission.gov*.

The President's New Freedom Commission on Mental Health is soliciting public comment from stakeholders in the mental health community. The purpose of obtaining public comment is to assist the Commission in formulating an action plan for the President that will improve America's mental health service delivery system.

While all relevant comments are of interest and may be submitted to the Commission at any time, several topics will be listed on the website for public comment. All selected topics for public comment reflect the President's charge, as outlined in Executive Order 13263. The topics listed on the website will change, focusing first on identifying problems and barriers within the system, and later on identifying solutions. Comments relating to the first set of topics will be most helpful to the Commission if submitted by August 20, 2002. An additional set of topics will be posted after that time.

All comments received prior to December 31, 2002 will be collected and the themes will be included in Commission reports. Comments will still be accepted after December 31, 2002 and will be available for Commissioner review.

The public may provide comments to the Commission through three methods:

(1) The Web site, *www.MentalHealthCommission.gov*. Comments that relate to topics on the web page can be sent electronically or printed off and mailed to the Commission: 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857;

(2) Mail written comments or information to the Commission; or

(3) Present comments directly to the Commission during the public comment period held at every Commission meeting. For guidelines on presenting public comment, visit the Web site, *www.MentalHealthCommission.gov*.

Committee Name: President's New Freedom Commission on Mental Health

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov*

Dated: July 15, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–18183 Filed 7–18–02; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be the excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for

use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the

Status: Excess
Comment: 136 Storage igloos, two cemeteries, sentry bldg., ofc. bldg., admin. bldg. in poor condition on 2834 acres
GSA Number: 4–J–AL–541

Guam

6 Bldgs.
NCTS Radio Barrigada
Wenger Way
Marianas Co: GU
Location: #101, 103, 105, 107, 109, 111
Landholding Agency: Navy
Property Number: 16200230006
Status: Excess
Comment: 100 sq. ft., most recent use—storage

Unsuitable Properties

Buildings (by State)

California

Bldg. 3273
Naval Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230008
Status: Unutilized
Reason: Secured Area

Landholding Agency: DOT
Facility 295
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200230011
Status: Excess
Reason: Secured Area

18 Bldgs.
Hale Moku Pearl Harbor
113–117, 119–122, 200–208
Honolulu Co: HI 96818–
Landholding Agency: Navy
Property Number: 77200230012
Status: Unutilized
Reason: Secured Area

Landholding Agency: DOT
Property Number: 87200230009
Status: Unutilized
Reason: Secured Area

Maryland

Structure 145
Naval Surface Warfare Center
W. Bethesda Co: MD 20817–
Landholding Agency: Navy
Property Number: 77200230013
Status: Underutilized
Reason: Secured Area

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act for Grants Programs Authorized by the North American Wetlands Conservation Act (NAWCA)

AGENCY: Fish and Wildlife Service, Interior.

use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers)

Dated: July 11, 2002.

Mark R. Johnson,

Deputy Director, Office of Special Needs Assistance Programs.

TITLE V. FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 7/19/02

Suitable/Available Properties

Buildings (by State)

Alabama

Coosa River Storage Annex
Anniston Army Depot
Talladega Co: AL 35161–
Landholding Agency: GSA
Property Number: 54200230001
Status: Excess
Comment: 136 Storage igloos, two cemeteries, sentry bldg., ofc. bldg., admin. bldg. in poor condition on 2834 acres
GSA Number: 4–J–AL–541

Guam

6 Bldgs.
NCTS Radio Barrigada
Wenger Way
Marianas Co: GU
Location: #101, 103, 105, 107, 109, 111
Landholding Agency: Navy
Property Number: 77200230017
Status: Excess
Comment: 11,476 sq. ft. housing units, need major rehab

Pennsylvania

Bristol Social Security Bldg.
1776 Farragut St.
Bristol Co: Bucks PA 19007–
Landholding Agency: GSA
Property Number: 54200230002
Status: Surplus
Comment: 7569 sq. ft., most recent use—office
GSA Number: 4–G–PA–792

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Bldg. 100
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230001
Status: Excess
Comment: 7760 sq. ft., most recent use—admin/electronic equip. maintenance

Bldg. 101
La Junta Strategic Range
Landholding Agency: Air Force
Property Number: 18200230002
Status: Excess
Comment: 336 sq. ft., most recent use—storage

Bldg. 102
La Junta Strategic Range
Landholding Agency: Air Force
Property Number: 18200230003
Status: Excess
Comment: 1056 sq. ft., most recent use—storage

Colorado

Bldg. 103
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230004
Status: Excess
Comment: 784 sq. ft., most recent use—storage

Bldg. 104
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230005
Status: Excess
Comment: 312 sq. ft., most recent use—storage

Bldg. 106
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230006
Status: Excess
Comment: 100 sq. ft., most recent use—storage

Unsuitable Properties

Buildings (by State)

California

Bldg. 3273
Naval Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230002
Status: Excess
Reason: Extensive deterioration

Bldg. 25
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230003
Status: Excess
Reason: Extensive deterioration

Bldg. 338
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230004
Status: Excess
Reason: Extensive deterioration

Bldg. 607
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230005
Status: Excess
Reason: Extensive deterioration

Bldg. 609
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230006
Status: Excess
Reason: Extensive deterioration

Bldg. 691
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230007
Status: Excess
Reason: Extensive deterioration

Hawaii

Facility 9
Fleet Industrial Supply
Waipahu Co: HI 96797–
Landholding Agency: Navy
Property Number: 77200230008
Status: Excess
Reasons: Secured Area Extensive deterioration

Facility 4
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200230009
Status: Excess
Reason: Secured Area

Facility 88
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200230010
Status: Excess
Reason: Secured Area

Landholding Agency: DOT
Facility 295
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200230011
Status: Excess
Reason: Secured Area

18 Bldgs.
Hale Moku Pearl Harbor
113–117, 119–122, 200–208
Honolulu Co: HI 96818–
Landholding Agency: Navy
Property Number: 77200230012
Status: Excess
Reason: Extensive deterioration

Bldg. RPFN No2
Coast Guard ISC
Honolulu Co: HI 96819–
Property Number: 87200230001
Status: Unutilized
Reason: Secured Area

Bldg. RPFN No3
Coast Guard ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200230002
Status: Unutilized
Reason: Secured Area

Bldg. RPFN No4
Coast Guard ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 872300230003
Status: Unutilized
Reason: Secured Area

Bldg. RPFN No9
Coast Guard ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200230004
Status: Unutilized
Reason: Secured Area

Bldg. RPFN P11
Coast Guard ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200230005
Status: Unutilized
Reason: Secured Area

Bldg. RPFN N13
Coast Guard ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200230006
Status: Unutilized
Reason: Secured Area

Bldg. RPFN W14
Coast Guard ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200230007
Status: Unutilized
Reason: Secured Area

Bldg. RPFN W15
Coast Board ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200230008
Status: Unutilized
Reason: Secured Area

Bldg. RPFN W16
Coast Board ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200230009
Status: Unutilized
Reason: Secured Area

Maryland

Structure 145
Naval Surface Warfare Center
W. Bethesda Co: MD 20817–
Landholding Agency: Navy
Property Number: 77200230013
Status: Underutilized
Reason: Secured Area

New Mexico

6 Bldgs.
Kirtland Air Force Base
#852, 874, 9939A, 6536, 6636, 833A
Albuquerque Co: NM 87185–
Landholding Agency: Energy
Property Number: 41200230001
Status: Excess
Reason: Secured Area

Tenessee

Bldg. 9720–14
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200230002
Status: Excess
Reason: Secured Area

6 Bldgs.
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Location: 9983–62, 9983–63, 9983–64, 9983–65, 9983–71, 9983–72
Landholding Agency: Energy
Property Number: 41200230003
Status: Excess
Reason: Secured Area

Virginia

Bldg. 2250
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200230014
Status: Excess
Reason: Extensive deterioration

Bldg. 819
Marine Corps Base
Geiger Ridge
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200230015
Status: Excess
Reason: Extensive deterioration

Bldg. B–2108
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200230016
Status: Excess
Reason: Extensive deterioration

Land (by State)

California

CB Rifle Range
Point Mugu Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200230001
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

[FR Doc. 02–17927 Filed 7–18–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act for Grants Programs Authorized by the North American Wetlands Conservation Act (NAWCA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has submitted the material described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before August 19, 2002. The 60 day notice was published in the **Federal Register** on February 6, 2002 (67 FR 5608). No comments were received during the 60 day period.

ADDRESSES: Send your comments and/or suggestions on the requirement to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725—17th Street, NW., Washington, DC 20503, with a copy to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 1849 C Street, NW., Washington, DC 20240; telephone number 703.358.2287.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to *rmullin@fws.gov*. For information related to the grant program, which is the subject of the information collection approval, please log onto *http://birdhabitat.fws.gov*.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). On May 26, 1999, the U.S. Fish and Wildlife Service (Service) was given regular approval by OMB for collection of information in order to continue the grants programs

currently conducted under the North American Wetlands Conservation Act (Pub. L. 101–233, as amended; December 13, 1989). The assigned OMB information collection control number is 1018–0100, and approval expired on May 31, 2002. However, OMB has extended the period of approval through August. The Service is requesting a three year term of approval for this information collection activity. An agency may not conduct or sponsor, and

wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This North American Wetlands Conservation Council is exempt from the requirements of Public Law 92–463 (Federal Advisory Committee Act). As such, the purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for

inquiries and reports required by NAWCA, etc.

In summary, information collection under these programs is required to obtain a benefit, i.e., a cash reimbursable grant that is given competitively to qualifying applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act

yumanensis) (clapper rail), (bald eagle (*Haliaeetus leucocephalus*), and the yellow-billed cuckoo (*Coccyzus americanus*)(cuckoo). The proposed take would occur in Gila and Maricopa counties, Arizona, as a result of management actions allowing Roosevelt Lake to fill, causing inundation of occupied habitat. The U.S. Fish and Wildlife Service (Service) has issued a draft Environmental Impact Statement (EIS) to evaluate the impacts of and

Mr. Jim Rorabaugh, Arizona State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021 at 602/242–0210. For further information on the Application, Contact: Mr. John Keane, Executive Environmental Policy Analyst, Salt River Project, P.O. Box 52025, PAB355, Phoenix, AZ 85072–2025 at 602/236–5087, or Mr. Craig Sommers, President, ERO Resources Corporation, 1842 Clarkson Street,

- Government Document Service, Arizona State University, Tempe, AZ 85287
- Payson Public Library, 510 W. Main, Payson, AZ 85541
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix, AZ 85004
- Tonto Basin Library, 1 School St., Tonto Basin (Punkin Center), AZ 85553

Written comments received by the Service become part of the public record

currently conducted under the North American Wetlands Conservation Act (Pub. L. 101–233, as amended; December 13, 1989). The assigned OMB information collection control number is 1018–0100, and approval expired on May 31, 2002. However, OMB has extended the period of approval through August. The Service is requesting a three year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval Number: 1018–0100.

Service Form Number(s): N/A.

Description and Use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to fill that funding need. The purpose of NAWCA, as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body, i.e., Council, made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This North American Wetlands Conservation Council is exempt from the requirements of Public Law 92–463 (Federal Advisory Committee Act). As such, the purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding.

Subsection (c) of Section 5 (Council Procedures) provides that the "* * * Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section * * *," which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office within the Service's Division of Bird Habitat Conservation.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations and other characteristics, to meet the standards established by the Council and the requirements of NAWCA. The Council Coordinator's office no longer publishes and distributes Standard and Small Grants instructional booklets. Materials that describe the program and assist applicants in formulating project proposals for Council consideration are now available on a website, as previously noted. However, those who are not able to access a website may still obtain instructional materials by regular mail. There has been, virtually, no change in the scope and nature of these instructions since the OMB approval was first granted in 1999. Nonetheless, the instructional materials that include booklets, **Federal Register** notices on request for proposals, and other instruments are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, etc.

In summary, information collection under these programs is required to obtain a benefit, i.e., a cash reimbursable grant that is given competitively to qualifying applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. The Small Grants program has one project proposal submissions window per year and the Standard Grants program has two per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: The reporting burden, or time involved in writing project proposals, is estimated to be 80 hours for a Small Grants submission and 400 hours for a Standard Grants submission.

Number of Respondents: It is estimated that 150 proposals will be submitted each year, 70 for the Small Grants program and 80 for the Standard Grants program.

Annual Burden Hours: 37,600.

Dated: June 19, 2002.

Steve A. Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–18298 Filed 7–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Environmental Impact Statement, Section 10 Permit Application, Draft Roosevelt Habitat Conservation Plan and Draft Implementing Agreement for Incidental Take by the Salt River Project and Notice of a Public Hearing on August 27, 2002

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The Salt River Project (SRP) has submitted an application for an incidental take permit (ITP) for the following federally listed and candidate species: southwestern willow flycatcher (*Empidonax traillii extimus*)(flycatcher), Yuma clapper rail (*Rallus longirostris yumanensis*) (clapper rail), (bald eagle (*Haliaeetus leucocephalus*), and the yellow-billed cuckoo (*Coccyzus americanus*)(cuckoo). The proposed take would occur in Gila and Maricopa counties, Arizona, as a result of management actions allowing Roosevelt Lake to fill, causing inundation of occupied habitat. The U.S. Fish and Wildlife Service (Service) has issued a draft Environmental Impact Statement (EIS) to evaluate the impacts of and alternatives for the possible issuance of an incidental take permit. SRP has completed the draft Roosevelt Habitat Conservation Plan (RHCP), along with a draft Implementing Agreement as part of the application package submitted to the Service (collectively, the "Application") as required by the Endangered Species Act of 1973, as amended (Act) for consideration of issuance of an ITP. The Application provides measures to minimize and mitigate the effects of the proposed taking of listed and candidate species and the habitats upon which they depend.

DATES: Written comments on the draft EIS and Application documents will be accepted within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the draft EIS and Application may obtain a copy by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. Oral and written comments also will be accepted at a public hearing to be held on August 27, 2002, 6–9 p.m. at the offices of the Salt River Project, 1521 Project Drive, Tempe, Arizona.

Arizona has experienced a prolonged drought. Due to low runoff from the watershed, Roosevelt Lake, the largest reservoir on the watershed serving Phoenix, is drawn down to less than 20% of capacity. After many years of drought, it is imperative that SRP know whether it can fill the reservoir this coming winter without risk that unpermitted incidental "take" will occur. For this reason, the Service does not intend to extend the public comment period beyond 60 days unless warranted by extraordinary circumstances. If additional information is needed from the Service or SRP in order to evaluate the draft EIS or Application, that information should be requested within 30 days of the date of this notice.

FOR FURTHER INFORMATION, CONTACT: On the EIS, Contact: Ms. Sherry Barrett, Assistant Field Supervisor, Tucson Suboffice, U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701 at 520/670–4617, or Mr. Jim Rorabaugh, Arizona State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021 at 602/242–0210. For further information on the Application, Contact: Mr. John Keane, Executive Environmental Policy Analyst, Salt River Project, P.O. Box 52025, PAB355, Phoenix, AZ 85072–2025 at 602/236–5087, or Mr. Craig Sommers, President, ERO Resources Corporation, 1842 Clarkson Street, Denver, CO 80218 at 303/830–1188.

Read-only downloadable copies of the draft EIS and Application documents are available on the Internet at *http://www.arizonaes.fws.gov.* A printed or CD copy of the documents is available upon request to Virginia Kasper, Salt River Project, P.O. Box 52025, Phoenix, AZ 85072–2025; (602) 236–3416; *vckasper@srpnet.com.* Copies of the draft EIS and Application are also available for public inspection and review at the locations listed below under Supplementary Information.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the Service has gathered the information necessary to (1) determine impacts and formulate alternatives for the EIS, related to the potential issuance of an ITP to SRP; and (2) develop and implement the RHCP, which provides measures to minimize and mitigate the effects of the incidental take of federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Act.

Section 9 of the Act prohibits the "taking" of threatened and endangered species. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR parts 13 and 17.

Copies of the draft EIS and Application are available for public inspection and review at the following locations (by appointment at government offices):

- Department of the Interior, Natural Resources Library, 1849 C. St. NW, Washington, DC 20240.
- U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701
- U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021
- Salt River Project, 1521 Project Drive, Tempe, AZ 85281
- Globe Public Library, 339 S. Broad St., Globe, AZ 85501
- Government Document Service, Arizona State University, Tempe, AZ 85287
- Payson Public Library, 510 W. Main, Payson, AZ 85541
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix, AZ 85004
- Tonto Basin Library, 1 School St., Tonto Basin (Punkin Center), AZ 85553

Written comments received by the Service become part of the public record associated with this action. Accordingly, the Service makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that their home addresses be withheld from public disclosure, which will be honored to the extent allowable by law. There also may be circumstances in which a respondent's identity would be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. However, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Background

Roosevelt is operated by SRP in conjunction with three other reservoirs on the Salt River and two reservoirs on the Verde River as integral features of the Salt River Reclamation Project, authorized by the Reclamation Act of 1902, and pursuant to a 1917 contract with the United States. Since completion in 1911, Roosevelt has provided water for power generation, irrigation, municipal, and other uses. Currently, SRP reservoirs supply water to more than 1.6 million people in the cities of Phoenix, Mesa, Chandler, Tempe, Glendale, Gilbert, Scottsdale, Tolleson, and Avondale. In addition, water is provided to irrigate agricultural lands within SRP and for other uses. Also, water is delivered to the Salt River Pima-Maricopa Indian Community, Fort McDowell Indian Community, Gila River Indian Community, Buckeye Irrigation Company, Roosevelt Irrigation District, Roosevelt Water Conservation District, and others. Roosevelt and the other SRP reservoirs also provide a variety of recreational uses and environmental benefits in central Arizona. Due to dry conditions in central Arizona for the past six years, the water level at Roosevelt has been

below normal. As a result, riparian vegetation has invaded and flourished in the portion of Roosevelt historically used by SRP to store water for use in the Phoenix metropolitan area. Animals that use riparian habitat have followed the vegetation growth and now occupy areas within the reservoir. In particular, a population of flycatchers now occupies habitat within the storage space at Roosevelt. Thus, periodic

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1232–EA–NV06; Special Recreation Permit # NV–023–02–11]

Notice of Temporary Closure to Public Lands; Pershing County and Washoe County, NV

AGENCY: Bureau of Land Management, Winnemucca Field Office, Nevada.

Sec. 11; Sec. 12: W½ ; Sec. 15: N½ of the NW¼; Sec. 16: N½ and T. 33½ N., R. 24 E., Sec. 33; Sec. 34; Sec. 35; Sec. 36: W½ . These areas are closed during the event period, August 23, 2002 to September 2, 2002, with the exception of BLM, medical, law enforcement, firefighting vehicles and Burning Man staff as designated by the BLM Authorized Officer.

Operation of Motorized Vehicles Is Prohibited on the Following Public Lands from August 12, 2002, through September 16, 2002: T. 33 N., R. 24 E., Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11 and T. 33½ N., R. 24 E., Sec. 33; Sec. 34; Sec. 35. This closure is in effect inside the

33; Sec. 34; Sec. 35, with the exception of those fireworks that have been approved by Black Rock City LLC as part of an official Burning Man art burn event.

Possession of Firearms Is Prohibited on the Following Public Lands from August 12, 2002, through September 16, 2002: T. 33 N., R. 24 E., Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11 and T. 33½ N., R. 24 E., Sec. 33; Sec. 34; Sec. 35. This closure is in effect inside the

enforcement and emergency medical services. This airstrip is the only location Burning Man-related aircraft may land, with the exception of emergency aircraft such as Care Flight, Sheriff's Office or Medical Ambulance Transport System helicopters.

A map showing these temporary closures, restrictions and prohibitions is available from the following BLM office: BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca,

Overview, ND Prairie Dog plan, Fuels Management Plan Input from Sub Committee, Biological Weed Control on Leafy Spurge and Sage Grouse and other topics the council may raise. The meeting will be held August 12 & 13, 2002, at the Best Western, Dickinson, North Dakota. The session will convene at 8 a.m. on August 12.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and a public comment period is set for 8 a.m.

below normal. As a result, riparian vegetation has invaded and flourished in the portion of Roosevelt historically used by SRP to store water for use in the Phoenix metropolitan area. Animals that use riparian habitat have followed the vegetation growth and now occupy areas within the reservoir. In particular, a population of flycatchers now occupies habitat within the storage space at Roosevelt. Thus, periodic refilling of the reservoir may adversely affect habitat used by the flycatcher, clapper rail, bald eagle, and cuckoo.

Proposed Action

The proposed action is the issuance of an ITP for flycatchers, clapper rails, bald eagles, and cuckoos for SRP's operation of Roosevelt, pursuant to section 10(a)(1)(B) of the Act. The activity that would be covered by the permit is the continued operation of Roosevelt by SRP. The area covered by the permit includes Roosevelt up to an elevation of 2,151 feet, the highest point in the reservoir at which water is stored. The requested term of the permit is for a period of 50 years. To meet the requirements of a Section 10(a)(1)(B) permit, SRP has developed and will implement the RHCP, which provides measures to minimize and mitigate incidental take of flycatchers, clapper rails, and bald eagles to the maximum extent practicable, and which ensures that the incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild. The RHCP also addresses potential impacts on a candidate species, the yellow-billed cuckoo.

Alternatives

Two other alternatives being considered by the Service include the following:

1. *No Permit*—No issuance of an ITP by the Service. This alternative would require SRP to do everything within its control to avoid any take of federally listed species associated with its continued operation of Roosevelt.

2. *Re-operation Alternative*—Issuance of an ITP by the Service authorizing the modified operation of Roosevelt to reduce the short-term impact of reservoir operations on listed and candidate species. This alternative includes measures to minimize and mitigate the potential take of federally listed species.

H. Dale Hall,

Regional Director, Southwest Region.

[FR Doc. 02–17790 Filed 7–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1232–EA–NV06; Special Recreation Permit # NV–023–02–11]

Notice of Temporary Closure to Public Lands; Pershing County and Washoe County, NV

AGENCY: Bureau of Land Management, Winnemucca Field Office, Nevada, Interior.

ACTION: Notice to the public of temporary public lands closures and prohibition of certain activities on public lands administered by the Bureau of Land Management, Winnemucca Field Office, Nevada.

SUMMARY: Notice is hereby given that certain lands will be temporarily closed or restricted, and certain activities would be temporarily prohibited, in and around the Burning Man event site, Pershing and Washoe counties, Nevada, for camping, vehicle use, fire use, and aircraft landing from 0600 hours, August 23, 2002, to 2200 hours, September 2, 2002. Certain lands will be temporarily closed or restricted, and certain activities will be temporarily prohibited, in the Winnemucca District in Pershing and Washoe Counties, Nevada, for fireworks use and firearms use from 0600 hours, August 12, 2002, to 2200 hours, September 16, 2002. These closures, restrictions and prohibitions are being made in the interest of public safety at and around the public lands location of an event known as the Burning Man Festival. This event is expected to attract approximately 28,000 participants this year. The lands involved are located in the Mount Diablo Meridian and located northeast of Gerlach, Nevada.

Public Camping Within One Mile of the Fence is Prohibited in the Following Areas: T. 33 N., R. 24 E, Sec. 1: W½; Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11; Sec. 12: W½ ; Sec. 15: N½ of the NW¼; Sec. 16: N½ and T. 33½ N., R. 24 E., Sec. 33; Sec. 34; Sec. 35; Sec. 36: W½ . These areas are closed during the event period, August 23, 2002 to September 2, 2002, with the exception of defined camping areas designated and provided by the Black Rock City LLC, an authorized "pilot camp" and BLM-authorized event management-related camps.

Operation of Motorized Vehicles, within One Mile of the Fence, at Such a Rate of Speed that it Causes a Dust Plume higher than the Roof of the Vehicle, is Prohibited in the Following Areas: T. 33 N., R. 24 E, Sec. 1: W½ ; Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11; Sec. 12: W½ ; Sec. 15: N½ of the NW¼; Sec. 16: N½ and T. 33½ N., R. 24 E., Sec. 33; Sec. 34; Sec. 35; Sec. 36: W½ . These areas are closed during the event period, August 23, 2002 to September 2, 2002, with the exception of BLM, medical, law enforcement, firefighting vehicles and Burning Man staff as designated by the BLM Authorized Officer.

Operation of Motorized Vehicles Is Prohibited on the Following Public Lands: T. 33 N., R. 24 E., Sec. 2, Sec. 3, Sec. 4, Sec. 9, Sec. 10, Sec. 11 and T. 33½ N., R. 24 E, Sec. 33; Sec. 34; Sec. 35. These areas within the event boundary are closed during the Burning Man event, from August 23, 2002 to September 2, 2002, with the following exceptions: participant arrival at the event and departure following event completion on designated routes, art vehicles registered with Burning Man; Black Rock City LLC staff and support, BLM, medical, law enforcement, firefighting vehicles and motorized skateboards with/without handlebars. "Art Cars" must register with Burning Man/Black Rock City LLC and must provide evidence of registration at all times.

The Following Public Lands are Closed to Public Use: T. 33 N., R. 24 E., Sec. 4: NE¼, S½; Sec. 5: SE¼; Sec 8: NE¼, S½ ; Sec. 9; Sec. 10: W½; Sec. 15: N½ of the NW¼; Sec 16: N½ and T33½ N, R24E, Sec. 33: SE¼; Sec. 34: SW¼. For event safety near the entrance road and airstrip, playa areas southwest, west and northwest of the event are closed during the Burning Man event period, from 0001 hours August 26, 2002 to 2200 hours September 2, 2002, with the exception of BLM personnel, law enforcement, emergency medical services, Burning Man staff as designated by the BLM authorized officer.

Black Rock City LLC/Burning Man will abide by fire restriction orders, except for the following as officially approved by Black Rock City LLC in coordination with BLM: Official art burns, authorized event fireworks, and other authorized fires only in Black Rock City LLC/ Burning Man-supplied fire barrels and approved platforms. Fire Restriction Orders may be in effect pursuant to 43 CFR 9212.2, 36 CFR 261.50(a)(b) for all lands managed by the BLM, Winnemucca Field Office.

The use, sale or possession of personal fireworks within the Burning Man Event/Black Rock City boundary fence is prohibited on the following public lands from August 26, 2002, through September 2, 2002: T. 33 N., R. 24 E., Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11 and T. 33½ N., R. 24 E., Sec. 33; Sec. 34; Sec. 35, with the exception of those fireworks that have been approved by Black Rock City LLC as part of an official Burning Man art burn event.

Possession of Firearms Is Prohibited on the Following Public Lands from August 12, 2002, through September 16, 2002: T. 33 N., R. 24 E., Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11 and T. 33½ N., R. 24 E., Sec. 33; Sec. 34; Sec. 35. This closure is in effect inside the Burning Man event/Black Rock City boundary fence, with the exception of county, state and federal certified law enforcement personnel under the color of law. "Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion (Nevada Revised Statute 202.253).

Discharge of Firearms is Prohibited on the Following Public Lands from August 12, 2002, through September 16, 2002: T. 33 N., R. 24 E., Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5; Sec 6: E½; Sec 8; Sec. 9; Sec. 10; Sec. 11; Sec. 12; Sec. 13: N½; SW¼; Sec. 14; Sec. 15; Sec. 16; Sec. 17: E½, NW¼; Sec. 21: NE¼; Sec. 22: N½, Sec. 23: NW¼ and T. 33 N., R. 25 E., Sec. 4; Sec. 9: W½ , NW¼ of the NE¼ and T. 33½ N., R. 24 E., Sec. 25; Sec. 26; Sec. 27; Sec. 28; Sec. 29; Sec. 32; Sec. 33; Sec. 34; Sec. 35; Sec. 36; T. 34 N., R. 24 E., Sec. 33: NE¼, S½; Sec. 34; Sec. 35; Sec. 36: S½; T. 34 N., R. 25 E., Sec. 33. This closure description applies for two miles in all directions from the event boundary, with the exception of law enforcement officers under color of law.

Aircraft are prohibited from landing, taking off, and taxiing on the following public lands from 0600 hours on August 26, 2002, through September 2, 2002 at 2200 hours: T. 33 N., R. 23 E., Sec. 25: E½; T. 33 N., R. 24 E., Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5: SE¼; Sec. 8: NE¼, S½; Sec. 9; Sec. 10; Sec. 11; Sec.12; Sec. 13: W½;. Sec. 14; Sec. 15; Sec. 16; Sec. 17; Sec. 18: NE¼, S½; Sec 19; Sec. 20; Sec. 21; Sec. 22: N½; Sec. 28: NW¼; Sec. 29; Sec. 30: NE¼ and T. 33 N., R. 25 E., Sec. 2: N½; Sec. 3: N½; Sec. 4 and T33½N, R24E, Sec. 25; Sec. 26; Sec. 27; Sec. 28; Sec. 33; Sec. 34; Sec. 35; Sec. 36 and T34N, R24E, Sec. 23: NE¼, S½; Sec. 24; Sec. 25; Sec. 26; Sec. 27: SE¼; Sec. 33: E½; Sec. 34; Sec. 35: Sec. 36 and T. 34 N., R. 25 E., Sec. 16; Sec. 21; Sec. 22: S½; Sec 26: SW¼; Sec 27; Sec. 28; Sec. 33; Sec. 34; Sec. 35. This closure description applies to the playa for five miles in all directions from the event boundary during the event, with the exception of an authorized Burning Man event landing strip for Burning Man staff and participants, law enforcement and emergency medical services. This airstrip is the only location Burning Man-related aircraft may land, with the exception of emergency aircraft such as Care Flight, Sheriff's Office or Medical Ambulance Transport System helicopters.

A map showing these temporary closures, restrictions and prohibitions is available from the following BLM office: BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

The map may also be viewed on the Field Office website at: www.nv.blm.gov/winnemucca.

DATES: Closure to Possesion and Discharge of Firearms August 12, 2002, to September 16, 2002; Closure to Camping, Vehicle Use and Aircraft Landing August 23, 2002 to September 2, 2002; and Closure to Possession of Fireworks and Public Use August 26, 2002 to September 2, 2002.

FOR FURTHER INFORMATION CONTACT: Dave Cooper, National Conservation Area Manager, Bureau of Land Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, telephone: (775) 623–1500.

Authority: 43 CFR 8364.1

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Terry Reed,

Field Office Manager.

[FR Doc. 02–17975 Filed 7–18–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT_039_1020PB]

Notice of Public Meeting; Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC), North and South Dakota, meeting will be held as indicated below. Topics for discussion will include: Fort Meade NHL status, Cedar Hills Oil and Gas Overview, ND Prairie Dog plan, Fuels Management Plan Input from Sub Committee, Biological Weed Control on Leafy Spurge and Sage Grouse and other topics the council may raise. The meeting will be held August 12 & 13, 2002, at the Best Western, Dickinson, North Dakota. The session will convene at 8 a.m. on August 12.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and a public comment period is set for 8 a.m. on August 12, 2002. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager,, North Dakota Field Office, 2933 3rd Ave W., Dickinson, North Dakota. Telephone (701) 227–7700.

Dated: May 29, 2002.

Douglas Burger,

Field Office Manager.

[FR Doc. 02–18244 Filed 7–18–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1120–PG]

Notice of Address Change for Challis Field Office, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of address change, Challis Field Office, Idaho.

SUMMARY: The address for the Bureau of Land Management office in Challis, Idaho, will be changing on or about September 1, 2002. The new address will be: 801 Blue Mountain Road, Challis, Idaho 83226. All telephone numbers for the Challis Field Office will remain the same.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, BLM Challis Field Manager, HC 63, Box 1670, Challis, Idaho 83226 or telephone (208) 879–6200.

Dated: July 10, 2002.

Stephanie Snook,

Acting District Manager.

[FR Doc. 02–18243 Filed 7–18–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–360–1420–001 ES–047170, Group 152, Florida]

Prospectus to be issued for a long-term concession contract. This short-term contract will be for a one seasonal operating period ending October 31, 2002. This notice is in pursuant to 36 CFR Part 51, Section 51.24(a).

SUPPLEMENTARY INFORMATION: The previous concession contract at Oregon Caves National Monument expired on September 30, 2001. The operation is seasonal and operates primarily from

operations does not affect any rights with respect to selection for award of a new concession contract.

Concessioner Id No.: Gate 017.

Concessioner Name: Jen Marine Development, LLC.

Park: Gateway National Recreation Area.

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program

Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*. Hearing-impaired persons are advised that information on this matter can be

making an unopposed determination of violation of section 337. On June 18, 2002, the ALJ issued a one-paragraph ID (Order No. 30) terminating the investigation. On June 24 and June 25, 2002, respectively, Milacron and the IA petitioned for review of the ID and appealed Order No. 29.

Having examined the ALJ Order Nos. 29 and 30, and the petitions for review, the Commission has determined to review and reverse ALJ Order No. 30,

Written submissions (the original document and 14 true copies thereof) must be filed with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the

Dated: July 10, 2002.
Stephanie Snook,
Acting District Manager.
[FR Doc. 02–18243 Filed 7–18–02; 8:45 am]
BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–047170, Group 152, Wisconsin

Notice of Filing of Plat of Survey; Wisconsin, Stay Lifted

On Thursday, May 4, 1995, there was published in the **Federal Register**, Volume 60, Number 96, on page 26736, a notice entitled, "Notice of Filing of Plat of Survey; Stayed." Said notice referenced the say of the plat depicting the survey of two islands located in Township 8 North, Range 21 East, Fourth Principal Meridian, Wisconsin, accepted March 13, 1995.

The protest against the survey was withdrawn on June 20, 2002, and the plat of survey accepted March 13, 1995, was officially filed in Eastern States Office, Springfield, Virginia, at 7:30 a.m. on June 24, 2002.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 2, 2002.
Stephen D. Douglas,
Chief Cadastral Surveyor.
[FR Doc. 02–18233 Filed 7–18–02; 8:45 am]
BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Issue a Temporary Concession Contract for Food and Beverage, Lodging and Merchandise Services at Oregon Caves National Monument

SUMMARY: Pursuant to the National Park Service Concessions Management Improvement Act of 1998, notice is hereby given that the National Park Service intends to issue a temporary concession contract authorizing continued operation of food and beverage, overnight lodging and merchandise services to the public within Oregon Caves National Monument. The temporary concession contract will be for a term of 5 months. This short-term concession contract is necessary to avoid interruption of visitor services while the National Park Service finalizes the development of the Prospectus to be issued for a long-term concession contract. This short-term contract will be for a one seasonal operating period ending October 31, 2002. This notice is in pursuant to 36 CFR Part 51, Section 51.24(a).

SUPPLEMENTARY INFORMATION: The previous concession contract at Oregon Caves National Monument expired on September 30, 2001. The operation is seasonal and operates primarily from mid-May through mid-September and provides visitors with lodging, food and beverage and merchandise services. The National Park Service will be issuing a Prospectus for the solicitation of a long-term concession contract to provide commercial services within the park to the visiting public. The short-term concession contract will allow for the continuation of commercial services during this interim and avoid unnecessary interruption of visitor services.

Information about this notice can be sought from: National Park Service, Chief, Concession Program Management Office, Pacific West Region, Attn: Mr. Tony Sisto, 1111 Jackson Street, Oakland, California 94607, or call (510) 817–1366.

Dated: June 6, 2002.
Patricia Neubacher,
Acting Regional Director, Pacific West Region.
[FR Doc. 02–18291 Filed 7–18–02; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits; Notice

AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed one year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contract listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the current concession contract and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed one year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concessioner Id No.: Gate 017.
Concessioner Name: Jen Marine Development, LLC.
Park: Gateway National Recreation Area.

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/565–1210.

Dated: June 14, 2002.
Richard G. Ring,
Associate Director, Park Operations and Education.
[FR Doc. 02–18290 Filed 7–18–02; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–462]

In the Matter of Certain Plastic Molding Machines with Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof, II; Notice of Commission Decision To Review and Reverse an Initial Determination Terminating the Investigation; Decision To Review ALJ Order No. 29; Schedule for Written Submissions

AGENCY: International Trade Commission.
ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and reverse the presiding administrative law judge's ("ALJ's") initial determination ("ID")(Order No. 30) terminating the above-captioned investigation. The Commission has also determined to review ALJ Order No. 29 on its own motion, and to hold in abeyance the petitions for review of Order No. 29 that were filed in this investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-referenced investigation on August 23, 2001, based on a complaint filed by Milacron, Inc. (Milacron) of Cincinnati, OH, against eleven respondents. 66 FR 44374 (2001). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) in the importation into the United States, sale for importation, and sale within the United States after importation of certain plastic molding machines with control systems having programmable operator interfaces incorporating general purpose computers, and components thereof, by reason of infringement of claims 1–4 and 9–13 of U.S. Patent No. 5,062,052. All named respondents have been terminated from the investigation on the basis of settlement agreements.

On April 18, 2002, Milacron filed a motion to amend the procedural schedule so that it would have an opportunity to file a motion for summary determination of violation of section 337 and to request a general exclusion order. On April 19, 2002, the Commission investigative attorney (IA) filed a response in support of Milacron's motion to amend the procedural schedule. On April 24, 2002, the ALJ issued Order No. 27, granting Milacron's request to amend the procedural schedule in the investigation to allow Milacron the opportunity to file a motion for summary determination of violation and to seek a general exclusion order under Commission Rule 210.16(c)(2). On May 17, 2002, complainant filed its motion for summary determination and request for a recommendation supporting a general exclusion order. The IA supported the motion and request.

On June 11, 2002, the ALJ issued Order No. 29 which held that Milacron could not seek summary determination of violation and was not entitled to a recommended determination supporting a general exclusion order because of practical and Constitutional concerns in making an unopposed determination of violation of section 337. On June 18, 2002, the ALJ issued a one-paragraph ID (Order No. 30) terminating the investigation. On June 24 and June 25, 2002, respectively, Milacron and the IA petitioned for review of the ID and appealed Order No. 29.

Having examined the ALJ Order Nos. 29 and 30, and the petitions for review, the Commission has determined to review and reverse ALJ Order No. 30, which terminated the investigation. The Commission has also determined to review, on its own motion, the determination contained in ALJ Order No. 29 that the Commission has the statutory authority to issue a general exclusion order in an investigation in which all respondents have settled with complainant. Finally, the Commission has decided to hold in abeyance the petitions for review that were filed by Milacron and the IA pending its decision on the issue that it has determined to review.

Written Submissions

In order to complete its review, the Commission requests briefing from the parties on the issue under review. Briefs should address the statutory language of section 337(g)(2), 19 U.S.C. 1337(g)(2), and the legislative history of the provision. Briefs should also include a discussion of Commission rules 210.16(c)(1) and (2), 19 CFR 210.16(c)(1) and (2), as well as a discussion of the Commission's commentaries issued in connection with the promulgation of these rules. The commentaries are found in 53 FR 330432 *et seq.* (August 29, 1988); 57 FR 52830 *et seq.* (November 5, 1992); 59 FR 39020 *et seq.* (August 1, 1994). In addition, the briefs should address whether the Commission has the authority to issue a general exclusion order under section 337(d)(2), 19 U.S.C. 1337(d)(2), in an investigation in which all named respondents have settled with complainant. In this regard, the parties should address in particular the basis upon which a finding of violation of section 337 could be made in accordance with the Administrative Procedures Act in an investigation in which all respondents have settled and what showing the complainant needs to make in order to establish a finding of violation. Finally, the parties should address any policy implications that might be raised by a finding of violation of section 337 based on record evidence that relates solely to respondents that have settled with complainant and as to which the investigation has been terminated. Main briefs are due on August 1, 2002. Reply briefs, if any, are due on August 10, 2002.

Written submissions (the original document and 14 true copies thereof) must be filed with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.24, 210.43(d), 210.44, and 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.24, 210.43(d), 210.44, and 210.45).

Issued: July 15, 2002.
By order of the Commission.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 02–18198 Filed 7–18–02; 8:45 am]
BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.
ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 26–27, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Inn By The Sea, 40 Bowery Beach Road, Cape Elizabeth, Maine.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18312 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18314 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18316 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

Therefore, please submit any comment by August 19, 2002. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a, the Department has provided a report to OMB and the Congress.

G. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Digital Subscriber Line Forum

Notice is hereby given that, on April 24, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C.

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18312 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 3–4, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: La Posada de Santa Fe, 330 East Palace Avenue, Santa Fe, NM.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18313 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 10–11, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Cape Codder Resort, Route 132 & Bearse's Way, 1225 Iyanough Road, Hyannis, MA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC. 20544, telephone (202) 502–1820.

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18314 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: October 18, 2002.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Renaissance Madison Hotel, 515 Madison Street, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18315 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: November 18–19, 2002.

TIMES: 8:30 a.m. to 5 p.m.

ADDRESSES: Park Hyatt San Francisco, 333 Battery Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18316 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 16–17, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Royal Palms Hotel and Casitas, 5200 East Camelback Road, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 12, 2002.
John K. Rabiej,
Chief, Rules Committee Support Office.
[FR Doc. 02–18317 Filed 7–18–02; 8:45 am]
BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 276–2002]

Privacy Act of 1974: System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice, Foreign Terrorist Tracking Task Force (FTTTF), proposes to modify the system of records entitled "Flight Training Candidates File System, JUSTICE/FTTTF–001," published on June 10, 2002 (67 FR 39839). The FTTTF is modifying this system of records to add routine uses.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the proposed routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, and certain Congressional committees, require a 40-day period in which to conclude review of the system.

Therefore, please submit any comment by August 19, 2002. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a, the Department has provided a report to OMB and the Congress.

Dated: July 12, 2002.
Robert F. Diegelman,
Acting Assistant Attorney General for Administration.

JUSTICE/FTTTF–001

System Name: Flight Training Candidates File System, FTTTF–001

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information may be disclosed from this system as follows:

A. To flight training providers and other entities or persons in order to verify information submitted by individual candidates, and to facilitate the necessary risk assessment.

B. To the United States Department of State or other federal entities concerned with visas or immigration matters for purposes of visa or status determinations and other risk warning and assessment programs administered by such Department or entities.

C. In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

D. In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

E. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

F. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

G. To officials and employees of a federal agency or entity, including the White House, which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a grant or benefit.

H. To federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

I. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

J. To the news media and the public pursuant to 28 CFR § 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

K. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

L. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

M. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

* * * * *

[FR Doc. 02–18219 Filed 7–18–02; 8:45 am]
BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Digital Subscriber Line Forum

Notice is hereby given that, on April 24, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The Digital Subscriber Line Forum ("DSL") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Best Data Products, Chatsworth, CA; Cesky Telecom, Praha, CZECH REPUBLIC; Copper Development Assoc., New York, NY; Corecess, Seoul, REPUBLIC OF KOREA; Gatespace AB, Goteborg, SWEDEN; Infineon Technologies, Munich, GERMANY; Linksys, Irvine, CA; Metro-Optix, Allen, TX; Nexans, Hickory, NC; Optimal Communications LTD, Gerrards Cross, Buckinghamshire, UNITED KINGDOM; Pedestal Networks, Palo Alto, CA; Silicom, Kfar-Sava, ISRAEL; Thomson Multimedia, Edegem, BELGIUM; and Valo Systems, Petaluma, CA, have been added as parties to this venture. In addition, 186K Ltd., Reading, Berkshire, UNITED KINGDOM; AccessLan Communications, San Jose, CA; Accton Technology, Hsinchu, TAIWAN; Acer Communications & Multimedia, Taipei, TAIWAN; Ahead Communications, Vienna, AUSTRIA; Anda Networks, San Jose, CA; Applied Innovation, Dublin, OH; Arca Technologies, Belfast, UNITED KINGDOM; ASUSTek Computer, Taipei, TAIWAN; Atlantic Telecom, Frankfurt, GERMANY; Avaya, Inc., Whippany, NJ; BABT, Santa Clara, CA; Banspeed, Austin, TX; BATM, Rosh Ha'ayin, ISRAEL; BayPackets, Menlo Park, CA; Bicotest, Cheshunt, Hertfordshire, UNITED KINGDOM; Broadband Gateways, Plano, TX; BroadJump, Austin, TX; Carrier Access Corporation, Boulder, CO; C–DOT, Bangalore, INDIA; Celestix Networks, Fremont, CA; Centre for Wireless Communications, Singapore, SINGAPORE; Charles Industries, Rolling Meadows, IL; Cirrus Logic, Boca Raton, FL; CIS Industries, Fremont, CA; Consultronics, Concord, Ontario, CANADA; Convergent Networks, Lowell, MA; Coreon, Staten

Island, NY; Corning Cable Systems, Keller, TX; Dataflex Design Communications, Sutton, Surrey, UNITED KINGDOM; DBTEL, Taipei, TAIWAN; Delta Products Corporation, Research Triangle Park, NC; D-Link, Hsinchu, TAIWAN; DT Magnetics, Ramona, CA; DV Tel. Inc., Totowa, NJ; EBONE, Hoeilaart, BELGIUM; Efficient Networks, Dallas, TX; Eicon Networks, Montreal, Quebec, CANADA; ELSA, Semiconductor, Tustin, CA; Tecom Co., LTD., Hsinchu, TAIWAN; TeleDream, San Jose, CA; Telefonica CTC Chile, Santiago, CHILE; Telenor, Oslo, NORWAY; Telmax Communications, Fremont, CA; Tenovis GmbH & Co. KG, Frankfurt, GERMANY; TERAYON, Fremont, CA; Tioga Technologies, Tel Aviv, ISRAEL; Toko America, Mt. Prospect, IL; TollBridge Technologies, Santa Clara, CA; TranSwitch

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—JABO Metal Fabrication, Inc.

Notice is hereby given that, on February 21, 2002, pursuant to Section 6(a) of the National Cooperative

the Immigration and Naturalization Service (INS) pursuant to section 286(k) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act, 5 U.S.C. app. 2. The responsibility of this standing Advisory Committee is to advise the INS Commissioner on issues related to the performance of Airport and Seaport Immigration Inspection Services. This advice should include, but need not be limited to, the time,

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are

CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled

Island, NY; Corning Cable Systems, Keller, TX; Dataflex Design Communications, Sutton, Surrey, UNITED KINGDOM; DBTEL, Taipei, TAIWAN; Delta Products Corporation, Research Triangle Park, NC; D-Link, Hsinchu, TAIWAN; DT Magnetics, Ramona, CA; DV Tel. Inc., Totowa, NJ; EBONE, Hoeilaart, BELGIUM; Efficient Networks, Dallas, TX; Eicon Networks, Montreal, Quebec, CANADA; ELSA, Aachen, GERMANY; Energis Communications, Reading, Berkshire, UNITED KINGDOM; Epcos, Munich, GERMANY; e-Site, Tustin, CA; E-Tech, Hsinchu, TAIWAN; Fluke Networks, Inc., Everett, WA; General Cable, Highland Heights, KY; GlobaLoop, Hod Hasharon, ISRAEL; HarmonyCom, Petach-Tikva, ISRAEL; Hitachi, Yokohama, JAPAN; iMagicTV, Cambridge, UNITED KINGDOM; imajet.com, Singapore, SINGAPORE; Incognito Software, Vancouver, British Columbia, CANADA; InfiniLink Corporation, Irvine, CA; Institute for Information Industry (III), Taipei, TAIWAN; Integral Access, Chelmsford, MA; Interactive Enterprise Ltd., Dublin, IRELAND; ITI Limited, Bangalore, INDIA; Kenetec, Oxford, CT; Legerity, Austin, TX; LSI Logic, San Jose, CA; MCK Communications, Newton, MA; Midcom, Watertown, SD; Mitsubishi Electric Corporation, Kamakura, JAPAN; mPhase Technologies, Norwalk, CT; National Semiconductor, Santa Clara, CA; Navini Networks, Richardson, TX; NeoWave, Anyang-shi, REPUBLIC OF KOREA; Netensity, Plano, TX; Netility, Sunnyvale, CA; NightFire Software, Oakland, CA; Nortel Networks, Harlow, Essex, UNITED KINGDOM; Orckit Communications, Tel-Aviv, ISRAEL; PCTEL, Waterbury, CT; Premier Magnetics Inc., Lake Forest, CA; Profec Group, Nummela, FINLAND; Proscend Communication, Hsinchu, TAIWAN; QS Communications, Cologne, GERMANY; QuesCom SA, Valbonne, FRANCE; Radio Shack, Fort Worth, TX; RC Networks, San Diego, CA; RCS Reseaux, Pantin, FRANCE; RIAS Corporation, Fremont, CA; Rosun Technologies, Fremont, CA; Sagem Group, Paris, FRANCE; Sapphire Communications, San Jose, CA; sentitO Networks, Rockville, MD; Sharegate, Reno, NY; Sheer Networks, Sunnyvale, CA; Silicon Integrated Systems, Hsin-Chu, TAIWAN; Sonus Networks, Long Beach, CA; Sony Electronics, Inc., San Jose, CA; State Farm Insurance, Bloomington, IL; Superior Telecommunications, Atlanta, GA; Surf Communications Solutions, D.N., Misgav, ISRAEL; Talema-Nuvotem, Donegal, IRELAND; Tamura Corporation of America, Temecula, CA; TDK Semiconductor, Tustin, CA; Tecom Co., LTD., Hsinchu, TAIWAN; TeleDream, San Jose, CA; Telefonica CTC Chile, Santiago, CHILE; Telenor, Oslo, NORWAY; Telmax Communications, Fremont, CA; Tenovis GmbH & Co. KG, Frankfurt, GERMANY; TERAYON, Fremont, CA; Tioga Technologies, Tel Aviv, ISRAEL; Toko America, Mt. Prospect, IL; TollBridge Technologies, Santa Clara, CA; TranSwitch Corporation, Shelton, CT; TXU Communications, Irving, TX; UAT, Taipei, TAIWAN; VDSL Systems Oy, Espoo, FINLAND; ViaGate Technologies, Bridgewater, NJ; Vina Technologies, Newark, CA; Vpacket Communications, Milpitas, CA; Westwave Communications, Santa Rosa, CA; and Zoom Telphonics, Boston, MA, have been dropped as parties to this venture.

The following companies have merged: UUNet was bought by WorldCom, and their memberships have been merged under WorldCom, Cambridge, UNITED KINGDOM; Xircom was bought by Intel, and their memberships have been merged under Intel, Wheaton, IL; Cayman Systems was bought by Netopia, and their memberships have been merged under Netopia, Billerica, MA; and 8 × 8 was bought by Netergy Networks, Marlow, Bucks, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on February 5, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2002 (67 FR 14729).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–18230 Filed 7–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—JABO Metal Fabrication, Inc.

Notice is hereby given that, on February 21, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), JABO Metal Fabrication, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Handi-House Manufacturing Co., Swainsboro, GA; Lark Builders, Inc., Vidalia, GA; Donald E. Flanders, Swainsboro, GA; and Robert L. Moore, Jr., Vidalia, GA. The nature and objectives of the venture are the manufacture and production of wholesale sheet metal and sale and distribution of sheet metal products to industrial and commercial customers.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–18229 Filed 7–18–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2213–02]

Immigration and Naturalization Service Airport and Seaport Inspections User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service Airport and Seaport Inspections User Fee Federal Advisory Committee.

Date and time: Thursday, August 8, 2002, at 1 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Open. Twenty-fourth meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service (INS) pursuant to section 286(k) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act, 5 U.S.C. app. 2. The responsibility of this standing Advisory Committee is to advise the INS Commissioner on issues related to the performance of Airport and Seaport Immigration Inspection Services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the INA, as amended, 8 U.S.C. 1356(d). The Advisory Committee focuses its attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street NW., Washington, DC 20536; telephone: (202) 616–7498; fax: (202) 514–8345; e-mail: *charles.d.montgomery@usdoj.gov*

Dated: July 15, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–18234 Filed 7–18–02; 8:45 am]

BILLING CODE 4410–10–U

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT020001 (Mar. 1, 2002)
- CT020002 (Mar. 1, 2002)
- CT020003 (Mar. 1, 2002)
- CT020004 (Mar. 1, 2002)
- CT020005 (Mar. 1, 2002)

Vermont
- VT020001 (Mar. 1, 2002)
- VT020011 (Mar. 1, 2002)
- VT020013 (Mar. 1, 2002)
- VT020041 (Mar. 1, 2002)
- VT020043 (Mar. 1, 2002)

Volume II

None.

Volume III

None.

Volume IV

Illinois
- IL020001 (Mar. 1, 2002)
- IL020002 (Mar. 1, 2002)
- IL020006 (Mar. 1, 2002)
- IL020008 (Mar. 1, 2002)
- IL020009 (Mar. 1, 2002)
- IL020010 (Mar. 1, 2002)
- IL020020 (Mar. 1, 2002)
- IL020065 (Mar. 1, 2002)

Minnesota
- MN020007 (Mar. 1, 2002)

Wisconsin
- WI020004 (Mar. 1, 2002)
- WI020009 (Mar. 1, 2002)
- WI020017 (Mar. 1, 2002)
- WI020046 (Mar. 1, 2002)
- WI020047 (Mar. 1, 2002)
- WI020048 (Mar. 1, 2002)

Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 800 Port Royal Road, Springfield, Virginia 22161 (Telephone: (703) 487–4630).

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (Telephone: (202) 512–1800).

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seventeen volumes.

Signed at Washington, DC this 12th day of July 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–17897 Filed 7–18–02; 8:45 am]

BILLING CODE 4510–27–M

COPYRIGHT ARBITRATION ROYALTY PANEL

Notice of Adjustment of Filing Deadlines

AGENCY: Copyright Arbitration Royalty Panel, Library of Congress.

ACTION: Notice of adjustment of filing deadlines.

SUMMARY: The Copyright Arbitration Royalty Panel ("CARP") is adjusting the filing deadlines for the 2003 Digital Audio Recording Technology ("DART") royalty distribution proceeding.

EFFECTIVE DATE: July 19, 2002.

FOR FURTHER INFORMATION CONTACT: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

Correction

In document 02–17897 beginning on page 46698 in the issue of July 16, 2002, make the following correction, in the **SUPPLEMENTARY INFORMATION** section:

4. *Who is required or asked to report:* All persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

5. *The number of annual respondents:* 21,583 (4,678 NRC licensee and 16,905 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 199,389 (NRC licensees 44,613 and Agreement State licensees 154,776).

7. *Abstract:* Licensees who possess, use, transfer, receive, acquire, own, or possess radioactive byproduct material are required to report transactions involving the material to the NRC or Agreement State. The reports are used by the NRC or Agreement State to maintain control of the material.

Submit, by September 17, 2002, comments that address the following questions:

1. Is the proposed collection necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection be reduced, including the use of automated collection techniques?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by e-mail at *Alexander_T._Hunt@omb.eop.gov*, or by telephone at 202–395–7316, by September 17, 2002. The OMB reviewer will make a determination regarding the proposed collection of information within 30 days of receipt of the proposed collection and supporting statement.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. 50–213. You may submit your comments by any of the following methods. Electronic comments may be submitted via the NRC's interactive rulemaking website through the NRC home page (*http://www.nrc.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*. Comments may be mailed to the NRC Clearance Officer, T–6 F33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may be faxed to the NRC Clearance Officer at 301–415–5132.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–18241 Filed 7–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Publication of Draft Guidelines for Comment

AGENCY: Nuclear Waste Technical Review Board.

ACTION: Publication of draft guidelines for comment.

SUMMARY: The Nuclear Waste Technical Review Board is publishing draft guidelines for comment. The guidelines describe the types of information and analyses that the Board will find necessary and sufficient to evaluate the technical and scientific validity of the Department of Energy's site recommendation for a high-level waste repository at Yucca Mountain, Nevada. The Board will use the guidelines in its review of the Department of Energy's site recommendation.

DATES: Comments must be received by July 26, 2002.

ADDRESSES: Comments should be addressed to Nigel Mote, Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367. Comments may be submitted by fax to (703) 235–4495 or by e-mail to *comments@nwtrb.gov*.

FOR FURTHER INFORMATION CONTACT: Nigel Mote, Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367, (703) 235–4473, *mote@nwtrb.gov*.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Technical Review Board was created by the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of the Department of Energy's activities under the Nuclear Waste Policy Act of 1982, as amended. The Board is publishing draft guidelines for comment. The guidelines describe the types of information and analyses that the Board will find necessary and sufficient to evaluate the technical and scientific validity of the Department of Energy's site recommendation for a high-level waste repository at Yucca Mountain, Nevada. The Board will use the guidelines in its review of the Department of Energy's site recommendation.

The Board will consider comments received by July 26, 2002, in preparing the final guidelines. Comments received after that date will be considered if practicable. The Board will publish the final guidelines in the **Federal Register** and will post them on the Board's website (*http://www.nwtrb.gov*).

Nothing in the guidelines set forth in this notice is intended to confer any legal right on any individual. The Board's predissemination review under these guidelines applies to information first disseminated by the Board on or after October 1, 2002.

IL020010 (Mar. 1, 2002)
IL020020 (Mar. 1, 2002)
IL020065 (Mar. 1, 2002)
Minnesota
MN020007 (Mar. 1, 2002)
Wisconsin
WI020004 (Mar. 1, 2002)
WI020009 (Mar. 1, 2002)
WI020017 (Mar. 1, 2002)
WI020046 (Mar. 1, 2002)
WI020047 (Mar. 1, 2002)
WI020048 (Mar. 1, 2002)

Volume V

None

Volume VI

Alaska
AK020001 (Mar. 1, 2002)
AK020002 (Mar. 1, 2002)
AK020006 (Mar. 1, 2002)
Colorado
CO020001 (Mar. 1, 2002)
CO020002 (Mar. 1, 2002)
CO020003 (Mar. 1, 2002)
CO020004 (Mar. 1, 2002)
CO020008 (Mar. 1, 2002)
CO020009 (Mar. 1, 2002)
CO020010 (Mar. 1, 2002)
CO020011 (Mar. 1, 2002)
CO020012 (Mar. 1, 2002)
Oregon
OR020007 (Mar. 1, 2002)
Utah
UT020004 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)
WA020002 (Mar. 1, 2002)
WA020003 (Mar. 1, 2002)
WA020004 (Mar. 1, 2002)
WA020004 (Mar. 1, 2002)
WA020005 (Mar. 1, 2002)
WA020007 (Mar. 1, 2002)
WA020008 (Mar. 1, 2002)
WA020011 (Mar. 1, 2002)

Volume VII

California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020032 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Document, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 11th day of July 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–17953 Filed 7–18–02; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–7 DD 99–01]

Ascertainment of Controversy for the Distribution of the 1999, 2000, and 2001 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Correction.

SUMMARY: This document corrects an error in the notice requesting that interested parties file Notices of Intention to participate in the proceeding to distribute the 1999, 2000 and 2001 Musical Works Funds.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

Correction

In document 02–17897 beginning on page 46698 in the issue of July 16, 2002, make the following correction, in the **SUPPLEMENTARY INFORMATION** section:

On page 46698, in the third column, the first sentence in the last paragraph which reads, "Each claimant who intends to participate in the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds must also file a Notice of Intention to participate." is corrected to read as follows: "Each claimant who intends to participate in the distribution of the 1999, 2000 and 2001 Musical Works Funds must also file a Notice of Intention to participate."

Dated: July 17, 2002.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 02–18277 Filed 7–18–02; 8:45 am]

BILLING CODE 1410–31–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material.

2. *Current OMB approval number:* 3150–0017.

3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. Information submitted in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.

4. *Who is required or asked to report:* All persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

5. *The number of annual respondents:* 21,583 (4,678 NRC licensee and 16,905 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 199,389 (NRC licensees 44,613 hours (19,955 reporting + 24,658 recordkeeping) and Agreement State licensees 154,776 hours (67,439 reporting + 87,337 recordkeeping)).

7. *Abstract:* 10 CFR part 30 establishes requirements that are applicable to all persons in the United States governing domestic licensing of radioactive byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination whether the possession, use, and transfer of byproduct material is in conformance with the Commission's regulations for protection of the public health and safety.

Submit, by September 17, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 15th day of July 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–18241 Filed 7–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the U.S. Nuclear Waste Technical Review Board

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Draft notice for comment.

SUMMARY: The Office of Management and Budget (OMB) issued government wide guidelines (OMB Guidelines) as required by Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) to ensure and maximize the quality of information disseminated by Federal agencies. The OMB Guidelines were published on September 28, 2001, (66 FR 49718) and on January 3, 2002, (67 FR 369) and reprinted in their entirety on February 22, 2002, (67 FR 8452): Guidelines for Ensuring and Maximizing the Quality, Objectively, Utility, and Integrity of Information Disseminated by Federal Agencies. Each Federal agency is required to issue its own set of guidelines to comply with Section 515 requirements.

The U.S. Nuclear Waste Technical Review Board (Board) is making its draft information guidelines available for public comment both in the **Federal Register** and on its Web site at *www.nwtrb.gov*. The Board welcomes public comment on the guidelines. Please send comments by e-mail to *info@nwtrb.gov*. or in writing to Joyce M. Dory, Director of Administration; U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201.

Comments may be submitted on the draft NWTRB guidelines or on the proposed complaint and review process for addressing public requests for correcting such information. When commenting, please bear in mind that the purpose of the complaint and review process is to deal with information quality, not to resolve underlying substantive policy or legal issues or factual disputes.

Comments received will be reviewed and may be included in the Board's request to OMB for approval of final NWTRB guidelines. To be considered for inclusion in the final guidelines, comments must be received by July 26, 2002.

Nothing in the guidelines set forth in this notice is intended to confer any legal right on any individual. The Board's predissemination review under these guidelines applies to information first disseminated by the Board on or after October 1, 2002.

Draft Guidelines for Disseminating Information

Board Mandate

The U.S. Nuclear Waste Technical Review Board was established by Public Law 100–203, Part E, to "evaluate the technical and scientific validity of activities undertaken by the Secretary [of Energy] after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, including: (1) [Yucca Mountain] site characterization activities; and (2) activities relating to the packaging or transporting of high-level radioactive waste or spent nuclear fuel."

To carry out its mandate, the Board strives for a high standard of quality in reviewing the U.S. Department of Energy's (DOE) technical and scientific activities. The Board holds open meetings, routinely schedules time for public comment at its meetings, and actively solicits the opinions of experts in fields allied with topics under review.

The Board also makes every effort to ensure the quality, objectivity, utility, and integrity of information that it disseminates. In developing these guidelines, the Board has followed the requirements set out by the OMB.

Information Disseminated by the Board

The Board was charged by Congress with providing technical and scientific advice to Congress and the Secretary of Energy based on the expert opinion of Board members. In accordance with its congressional mandate, the Board performs an evaluation of the technical and scientific validity of factual information provided by the DOE. The Board does not originate technical and scientific research or data. Consequently, information disseminated by the Board is almost without exception based on Board-member opinion. Like all expert judgments, Board opinions have a subjective element. Thus, they are not easily subjected to the tests of objectivity, reproducibility, and transparency described in the OMB guidelines.

The Board has developed the following proposed guidelines for the

information the Board disseminates. The guidelines have three elements: First, to the extent that Board opinions derive directly from specific technical analyses, those analyses are revealed. Second, the Board makes clear the logic and rationale for its expert opinions. Third, the Board makes every effort to ensure that the information on which it bases its opinions is credible.

Technical analyses. The Board

available on its Web site and on request. Most of these documents can be downloaded and are accessible to those who use assistive technology for reading online material.

Quality Management Principles

In reviewing information for dissemination, the Board complies with statutory requirements for protecting certain information. The statutory

notified of the decision by mail, telephone, e-mail, or fax.

If the claim is denied, the requester may ask within 30 days of the date of the decision for reconsideration of the Board's decision. Such requests must be made by e-mail (*info@nwtrb.gov*) or in writing (U.S. Nuclear Waste Technical Review Board; Director of Administration; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201). The

- Press releases
- Reports containing a disclaimer.

Dated: July 12, 2001.

Karyn Severson,

Director, External Affairs, Nuclear Waste Technical Review Board.

[FR Doc. 02–18188 Filed 7–18–02; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Street, NW., Room 6500, Washington, DC 20415.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–18117 Filed 7–18–02; 8:45 am]

BILLING CODE 6325–38–P

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary,

information the Board disseminates. The guidelines have three elements: First, to the extent that Board opinions derive directly from specific technical analyses, those analyses are revealed. Second, the Board makes clear the logic and rationale for its expert opinions. Third, the Board makes every effort to ensure that the information on which it bases its opinions is credible.

Technical analyses. The Board includes a discussion of technical analyses that form the basis of its expert opinions in its twice-yearly reports to Congress and the Secretary of Energy. In addition, such technical analyses are referenced in Board correspondence with the DOE and in correspondence with and testimony before Congress.

Logic and rationale. To make the logic and rationale that support its opinions clear, the Board makes every effort to ensure that its findings and recommendations and the technical analysis on which they are based are understandable, relevant, and widely accessible.

Credible information. To help ensure that its opinions are based on credible information, the Board stays informed on progress in the program by holding meetings several times a year, by being updated on current scientific and technical research, by conducting field observations, and by gathering information from parties to the process and experts in related fields. However, the quality of information derived from external sources cannot be guaranteed by the Board.

From time to time, the Board retains technical experts to provide their opinions on specific technical and scientific issues related to the Board's review of the DOE program. Expert opinion generated or disseminated by these expert consultants is not covered under the guidelines. When the views of expert consultants are disseminated, the Board includes an appropriate disclaimer in the document, for example: "The views in this document are those of the consultant and are not necessarily those of the Board."

Dissemination of Information

The Board strives for a high degree of transparency in its evaluation of the DOE program. Consequently, the Board ensures that all Board documents are widely disseminated and available to other organizations, to members of Congress, and to members of the public. The Board mails its twice-yearly reports and its meeting notice directly to its extensive mailing list. The Board makes all its reports, correspondence, congressional testimony, meeting transcripts, and other documents available on its Web site and on request. Most of these documents can be downloaded and are accessible to those who use assistive technology for reading online material.

Quality Management Principles

In reviewing information for dissemination, the Board complies with statutory requirements for protecting certain information. The statutory requirements include the Privacy Act of 1974, the Freedom of Information Act, and the computer security provisions of the Paperwork Reduction Act. The Board strives to ensure that the information in Board documents is unbiased, relevant, accurate, and clear by using the following procedures.

The Board reviews documents for adherence to quality standards as part of its internal review process. Board members and Board staff perform multiple reviews of Board reports, Board correspondence, Board congressional testimony, and other documents. All Board documents are reviewed for consistency and clarity. Text is edited to ensure that thoughts and arguments flow logically and are clear, concise, easy to read, and grammatically correct. Tables and charts are edited to ensure that they clearly and accurately illustrate and support points made in the text. Sound statistical and analytical techniques are used in developing Board documents.

Complaint and Review Procedures

Corrections of Information Covered by These Guidelines

Board guidelines include the following procedures for members of the public to seek and obtain appropriate correction of information maintained and disseminated by the NWTRB after October 1, 2002. As required by OMB Guidelines, the NWTRB will report annually to the director of the OMB on the number and disposition of such requests received.

Use a copy of the form provided on the Board's Web site or available from the Board's office. Provide the information requested on the form and submit it to *info@nwtrb.gov* or to U.S. Nuclear Waste Technical Review Board; Section 515 Compliance; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201.

The NWTRB may choose not to respond to requests based on claims deemed frivolous or unlikely to have substantial future effect. A decision on whether and how to correct the information will be made within 90 days of receipt, and the requester will be notified of the decision by mail, telephone, e-mail, or fax.

If the claim is denied, the requester may ask within 30 days of the date of the decision for reconsideration of the Board's decision. Such requests must be made by e-mail (*info@nwtrb.gov*) or in writing (U.S. Nuclear Waste Technical Review Board; Director of Administration; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201). The NWTRB will then reconsider its decision. Reconsiderations will be made by the Director of Administration or delegate. The claimant will be notified of the final decision within six weeks.

Definitions

Quality: An encompassing term comprising utility, objectivity, and integrity, as defined below.

Utility: The usefulness of the information to its intended users.

Objectivity: A focus on ensuring that information is accurate, reliable, and unbiased, and that information products are presented in an accurate, clear, complete, and unbiased manner.

Integrity: The security of information from unauthorized access or revision to ensure that the information is not compromised through corruption or falsification.

Information: Any communication or representation of knowledge, such as facts or data, in any form. This does not include individual Board member or staff opinions, where the agency makes it clear that what is being offered is someone's opinion rather than fact or the Board's view.

Dissemination: Agency-instituted or agency-sponsored distribution of information to the public. Dissemination under these guidelines does not include distributions limited to government employees or agency contractors or grantees; interagency or intraagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law.

Influential: The Board can reasonably determine that dissemination of the information will have or does have a clear and substantial effect on important public policies.

Reproducibility: The information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.

Information not covered by the OMB or Board guidelines includes the following:

- Archival records
- Transcripts of meetings
- Correspondence with an individual
- Press releases
- Reports containing a disclaimer.

Dated: July 12, 2001.

Karyn Severson,

Director, External Affairs, Nuclear Waste Technical Review Board.

[FR Doc. 02–18188 Filed 7–18–02; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Revision of SF–15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for revision of an expiring information collection form, Standard Form 15 (SF–15). SF 15, *Application for 10-Point Veteran Preference*, is used by OPM examining offices and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944.

According to the General Services Administration, 45,000 forms were used last year. Each form requires approximately 10 minutes to complete. The annual estimated burden is 7,500 hours.

Comments are particularly invited on: whether this information is necessary for OPM to properly perform its functions; whether the information will have practical utility; whether OPM's estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways in which OPM can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at *mbtoomey@opm.gov* or fax to (202) 418–3251. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver written comments to: Ellen Tunstall, Assistant Director for Employment Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–18117 Filed 7–18–02; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 25, 2002
Thursday, August 8, 2002
Thursday, September 12, 2002
Thursday, October 10, 2002

The meeting will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: June 6, 2002.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 02–18118 Filed 7–18–02; 8:45 am]

BILLING CODE 6325–45–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals(s)

(1) *Collection title:* Statement of Authority.
(2) *Form(s) submitted:* SI–10.
(3) *OMB Number:* 3220–0034.
(4) *Expiration date of current OMB clearance:* 11/30/2002.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households, Business or other for-profit.
(7) *Estimated annual number of respondents:* 400.
(8) *Total annual responses:* 400.
(9) *Total annual reporting hours:* 40.
(10) *Collection description:* Under 20 CFR 355.2, the Railroad Retirement Board (RRB) accepts claims for sickness benefits by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement

Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–18231 Filed 7–18–02; 8:45 am]

BILLING CODE 7905–01–M

or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, c/o The Prudential Insurance Company of America, 213

provision, (b) death occurs within one year of a purchase payment, or (c) annuitization occurs during the vesting period applicable to the Credit.

3. The Insurance Companies now desire to recapture Credit amounts that differ depending upon the purchase payment amount and the contract owner's age when the purchase payment is made. Under this new version of the Contracts (the "New Contracts"), a 4% Credit will be applied to purchase

Roll-Up, assessed pro-rata against the net assets of each sub-account.

6. Applicants seek an amendment to the Existing Order to permit the recapture of the Credit amounts that will be applied to purchase payments made under the New Contracts. The New Contracts include those that exist presently, as well as contracts that may be issued in the future by the Insurance Companies through the Accounts and any other separate account established

reasons given in support of the Existing Order. Credits under the New Contracts will be recaptured only if the owner exercises his/her free look right or with regard to Credits applied within one year prior to death. The amounts recaptured equal the Credits provided by each Insurance Company from its own general account assets. When the Insurance Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been

effectively to take advantage of business opportunities as they arise.

5. Applicants undertake that Future New Contracts funded by Accounts or by Future Accounts that seek to rely on the order issued pursuant to this Application will be substantially similar to the New Contracts in all material respects.

Conclusion

Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 02–18231 Filed 7–18–02; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25660; File No. 812–12694]

Pruco Life Insurance Company, et al.; Notice of Application

July 15, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder.

Summary of Application: Applicants seek an amendment of an Existing Order (described below) to permit the recapture of Credit amounts that differ from the Credit amounts contemplated by the Existing Order under the circumstances specified herein.

Applicants: Pruco Life Insurance Company ("Pruco Life"); Pruco Life Flexible Premium Variable Annuity Account ("Pruco Life Account"); Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey," and collectively with Pruco Life, the "Insurance Companies"); Pruco Life of New Jersey Flexible Premium Variable Annuity Account ("Pruco Life of New Jersey Account," and collectively with Pruco Life Account, the "Accounts"); and Prudential Investment Management Services LLC ("PIMS," and collectively with the Insurance Companies and the Accounts, "Applicants").

Filing Date: The application was filed on November 19, 2001, and amended on July 3, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 9, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, c/o The Prudential Insurance Company of America, 213 Washington Street, Newark, NJ 07102–2992, Attn: C. Christopher Sprague, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. On September 29, 2000, the Commission issued the Existing Order exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit, under specified circumstances the recapture of certain credits applied to purchase payments made under the Contracts and Future Contracts described in the Existing Order.[1]

2. Pursuant to the Existing Order, the Insurance Companies issued Contracts (the "Original Contracts") that uniformly applied a 4% Credit to purchase payments made, regardless of the purchase payment amount or the contract owner's age. Under this original version of the Contracts, each Credit is typically subject to its own vesting schedule, under which 10% of the Credit vests on each of the first six Contract Anniversaries following the purchase payment, and the remaining portion of the Credit vests on the seventh Contract Anniversary. Under some versions of the Original Contracts, the Credit may vest sooner. If a withdrawal is made of all or part of a purchase payment, the non-vested portion of the Credit attributable to that purchase payment is recaptured. In addition, the non-vested portion of the Credit is recaptured if: (a) The Contract is canceled under the free look provision, (b) death occurs within one year of a purchase payment, or (c) annuitization occurs during the vesting period applicable to the Credit.

3. The Insurance Companies now desire to recapture Credit amounts that differ depending upon the purchase payment amount and the contract owner's age when the purchase payment is made. Under this new version of the Contracts (the "New Contracts"), a 4% Credit will be applied to purchase payments less than $250,000 and a 5% Credit will be applied to purchase payments of $250,000 or more if the contract owner is age 80 or younger (for jointly-owned contracts, if the older owner is 80 or younger) when the purchase payment is made. If the contract owner is age 81 or older (for jointly-owned contracts, if the older owner is 81 or older) when the purchase payment is made, a 3% Credit will be applied regardless of the amount of the purchase payment. Under the New Contracts, the Credits will generally vest upon the expiration of the free look period. However, as under the Original Contracts, if a Credit is applied to a purchase payment within one year of death, any Credit attributable to that purchase payment will be recaptured in calculating the death benefit payable under the New Contracts. That is, in calculating the death benefit, the contract value will be adjusted to recapture any credits paid within one year of death.

4. Under the New Contracts, the Insurance Companies will recapture Credits applied to purchase payments under the same circumstances permitted by the Existing Order, except that there will be no recapture of Credits upon a withdrawal or surrender after the free look period has expired, or upon annuitization.

5. The New Contracts are substantially similar in all material respects to the Original Contracts covered by the Existing Order except that under the New Contracts: (a) The Credits are applied as described above, and vest upon the expiration of the free look period (except for Credits applied within one year prior to death), (b) the withdrawal charge as a percentage of purchase payments ranges from 8% prior to the first Contract Anniversary to 0% after 7 Contract Anniversaries, and (c) the asset-based insurance and administrative expense charges are at annual rates of 1.50% for the base death benefit, 1.70% for the guaranteed minimum death benefit with either Step-Up or the Roll-Up, and 1.80% for the guaranteed minimum death benefit with the greater of the Step-Up and the Roll-Up, assessed pro-rata against the net assets of each sub-account.

[1] Investment Company Act Release Nos. 24635 (September 7, 2000) (notice) and 24670 (September 29, 2000) (order).

6. Applicants seek an amendment to the Existing Order to permit the recapture of the Credit amounts that will be applied to purchase payments made under the New Contracts. The New Contracts include those that exist presently, as well as contracts that may be issued in the future by the Insurance Companies through the Accounts and any other separate account established in the future by the Insurance Companies ("Future Accounts") that are substantially similar in all material respects to the existing Contracts ("Future New Contracts"). Such Contracts will be sold by PIMS, the principal underwriter of the New Contracts, through broker-dealers that are affiliated with the Insurance Companies or NASD-registered broker-dealers that are not affiliated with the Insurance Companies. Each unaffiliated broker-dealer will have entered into a dealer agreement with PIMS or an affiliate of PIMS prior to offering the New Contracts. Applicants also request that the amended order extend to any National Association of Securities Dealers, Inc. member broker-dealer controlling, controlled by or under common control with, the Insurance Companies, whether existing or created in the future, that serves as distributor or principal underwriter of the New Contracts offered through the Accounts or any Future Account.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, amend the Existing Order to the extent necessary to permit the recapture of the Credit amounts described above under New Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the recapture of Credits will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and Rule 22c–1 thereunder for the same reasons given in support of the Existing Order. Credits under the New Contracts will be recaptured only if the owner exercises his/her free look right or with regard to Credits applied within one year prior to death. The amounts recaptured equal the Credits provided by each Insurance Company from its own general account assets. When the Insurance Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets, because his or her interest in the Credit amount has not vested. With respect to Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a Credit amount under a New Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the Credit, individuals could purchase a New Contract with no intention of retaining it, and simply return it for a quick profit. The owner generally bears the investment risk from the time of purchase until return of the New Contract, and is entitled to retain any investment gain attributable to the Credit.

3. Applicants submit that the provisions for recapture of any Credits under the New Contracts do not, and any such Future New Contract provisions will not, violate Section 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and Rule 22c–1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the Existing Order.

4. Applicants submit that their request for an amended order that applies to any Account or any Future Account established by an Insurance Company in connection with the issuance of New Contracts and Future New Contracts that are substantially similar to the New Contracts described herein in all material respects, and underwritten or distributed by PIMS, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in this Application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise.

5. Applicants undertake that Future New Contracts funded by Accounts or by Future Accounts that seek to rely on the order issued pursuant to this Application will be substantially similar to the New Contracts in all material respects.

Conclusion

Applicants submit that their request for an amended order meets the standards set out in Section 6(c) of the 1940 Act and that an amended order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–18253 Filed 7–18–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46196; File No. SR–AMEX–2002–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Performance Evaluation Procedures for Specialists Trading Securities Pursuant to Unlisted Trading Privileges

July 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to its proposal on May 6, 2002[3] and Amendment No. 2 to its proposal on May 28, 2002.[4] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002 ("Amendment No. 1").

[4] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 24, 2002 ("Amendment No. 2").

comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Amex Rule 29, Market Quality Committee, to codify the Exchanges's performance evaluation procedures for securities admitted to dealings on an unlisted

the Exchange as a marketplace. The Market Quality Committee may consider any relevant information, including but not limited to trading data, order flow statistics, market quality statistics, and such other factors and data pertaining to both the Amex and other market centers as may be relevant in the circumstances. The Market Quality Committee may take one or more of the following actions if it finds that the Quality Committee. A failure to meet minimum standards relating to: (1) quality of markets, (2) competition with other market centers, (3) administrative matters, or (4) willingness to promote the Exchange as a marketplace may form the basis for remedial action by the Market Quality Committee against a UTP Specialist. Any UTP Specialist affected by a decision of the Market Quality Committee shall be informed in

other support for the Exchange's program to trade securities on an unlisted basis, contributing to the Exchange's marketing effort, consistently applying for allocations, assisting in meeting and educating market participants (and taking time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to

UTP Specialist has not achieved the specified goals.

.03 Performance Ratings for UTP Specialists. As soon as possible following the completion of a calendar quarter, the Exchange shall rate each UTP Specialist from "1" through "5" (with "1" representing the best possible rating) based upon their market quality relative to criteria such as the following:

- *Net price improvement*
- *Effective spread*

discretion and judgment of the Market Quality Committee.

The Market Quality Committee shall consider UTP Specialist performance ratings in determining whether to approve, disapprove or conditionally approve, mergers and acquisitions of UTP Specialists, transfers of one or more UTP Specialist registrations, UTP Specialist joint accounts, and changes in control or composition of UTP

comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Amex Rule 29, Market Quality Committee, to codify the Exchanges's performance evaluation procedures for securities admitted to dealings on an unlisted trading privileges ("UTP") basis. The text of the proposed rule change is below. Proposed new language is in *italics.*[5]

* * * * *

Market Quality Committee

Rule 29. (a) The Market Quality Committee shall consist of seven persons comprised as follows: the Chief Executive Officer of the Exchange (or his or her designee), three members of the Exchange's senior management selected by the Chief Executive Officer, one representative of upstairs member firms, one representative of institutional investors, and one member who spends a substantial portion of his or her time on the Trading Floor. The minimum quorum for the transaction of business by the Market Quality Committee shall be four persons. The Chief Executive Officer shall chair meetings of the Market Quality Committee. The Chief Executive Officer may designate a member of the Market Quality Committee to chair meetings in the Chief Executive Officer's absence. The chairman of the Market Quality Committee shall not vote except to make or break a tie. Persons on the Market Quality Committee may attend meetings by telephone.

(b) The Market Quality Committee shall evaluate the performance of specialists registered in securities admitted to dealings on an unlisted basis ("UTP Specialists") with respect to, among other things: (1) quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote the Exchange as a marketplace. The Market Quality Committee may consider any relevant information, including but not limited to trading data, order flow statistics, market quality statistics, and such other factors and data pertaining to both the Amex and other market centers as may be relevant in the circumstances. The Market Quality Committee may take one or more of the following actions if it finds that the performance of the UTP Specialist is inadequate relative to one or more of the above factors: (1) send advisory letters, (2) counsel UTP Specialists on how to improve their market quality, (3) require UTP Specialists to adopt a performance improvement plan, (4) require the reallocation of securities, (5) suspend a UTP Specialist's registration as a specialist for a specific period of time, or (6) prohibit a UTP Specialist from receiving allocations in a particular situation or for a specified period of time.

(c) The Market Quality Committee shall review, and approve, disapprove or conditionally approve, mergers and acquisitions of UTP Specialists, transfers of one or more UTP Specialist registrations, UTP Specialist joint accounts, and changes in control or composition of UTP Specialist firms. The Market Quality Committee shall approve a proposed transaction involving a UTP Specialist unless it determines that a countervailing institutional interest indicates that the transaction should be disapproved or conditionally approved. In determining whether there is a countervailing institutional interest, the Market Quality Committee shall consider the maintenance or enhancement of the quality of the Exchange's market, taking into account the criteria that the UTP Allocations Committee may consider in making an initial allocation determination and other considerations as may be relevant in the particular circumstances.

(d) The Market Quality Committee may meet with a UTP Specialist that may have failed to meet minimum performance standards with respect to UTP Securities. In such an event, the UTP Specialist shall be notified in writing of the grounds to be considered by the Market Quality Committee and afforded an opportunity to make a presentation of relevant information. Such UTP Specialist shall be given access to all written material to be reviewed by the Market Quality Committee, and all persons appearing before the Market Quality Committee may be represented by counsel. However, formal rules of evidence shall not apply in meetings of the Market Quality Committee. A failure to meet minimum standards relating to: (1) quality of markets, (2) competition with other market centers, (3) administrative matters, or (4) willingness to promote the Exchange as a marketplace may form the basis for remedial action by the Market Quality Committee against a UTP Specialist. Any UTP Specialist affected by a decision of the Market Quality Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, and any remedial action to be taken (hereinafter "written notification").

(e) If, after receiving the notice of a meeting, a UTP Specialist refuses or otherwise fails without reasonable justification or excuse to meet with the Market Quality Committee, the Market Quality Committee may take such action as it believes appropriate.

(f) A UTP Specialist aggrieved by a decision of the Market Quality Committee may appeal such decision to the Amex Adjudicatory Council. An application for review must be submitted to the Secretary of the Exchange within five business days of receipt of the written notification. The decision of the Market Quality Committee is stayed upon the filing of a timely application for review. Any written statement and documents in support of an appeal to the Adjudicatory Council must be submitted to the Secretary of the Exchange within 25 calendar days of receipt of the written notification. The Market Quality Committee shall have 20 calendar days from receipt by the Secretary of the Exchange of the statement in support of the appeal to submit a rebuttal statement together with supporting documents. The Adjudicatory Council may (1) limit its review of the appeal to the record created by the Market Quality Committee together with the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal, (2) consider additional information that was not included in the record, or (3) hear the matter "de novo," as the Council determines is appropriate to render a fair decision on the appeal. A verbatim record of the Adjudicatory Council proceeding shall be kept and a written decision of the Amex Adjudicatory Council shall be rendered as soon as reasonably possible after the hearing. The decision of the Amex Adjudicatory Council shall constitute final action by the Exchange.

* * * Commentary

.01 Willingness to Promote the Exchange as a Market Place. Willingness to promote the Exchange as a market place includes providing financial and other support for the Exchange's program to trade securities on an unlisted basis, contributing to the Exchange's marketing effort, consistently applying for allocations, assisting in meeting and educating market participants (and taking time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to competition by offering competitive markets and competitively priced services, and other like activities.

.02 Performance Improvement Plans. The Market Quality Committee may require a UTP Specialist to develop a performance improvement plan when it determines that the UTP Specialist has fallen below acceptable measures of performance for UTP Securities relative to its peers or other market centers with respect to (1) quality of markets, (2) competition with other market centers, (3) administrative matters, or (4) willingness to promote the Exchange as a marketplace. If the Market Quality Committee determines that a performance improvement plan should be developed, it shall advise the UTP Specialist in writing of its findings, the specific areas where the Market Quality Committee believes that improvement is required, and measurable goals that the Market Quality Committee believes the UTP Specialist should achieve. The UTP Specialist will prepare within the time required by the Market Quality Committee a written performance improvement plan detailing the specific, tangible steps that it will take to improve its performance and meet any goals established by the Market Quality Committee and the time for the completion of the plan. The Market Quality Committee may accept the plan as submitted or may make such modifications as it deems appropriate which modifications shall be binding upon the UTP Specialist. The Market Quality Committee, or persons appointed by it for the purpose, shall monitor the implementation of the performance improvement plan by the UTP Specialist. If the UTP Specialist has not achieved the goals set by the Market Quality Committee within the required time, the Market Quality Committee may grant for good cause shown one extension not to exceed 90 days to achieve the goals. The Market Quality Committee may not grant more than one extension. The Market Quality Committee shall take stronger remedial action against the UTP Specialist if, at the end of the time of the performance improvement plan or any extension, the UTP Specialist has not achieved the specified goals.

.03 Performance Ratings for UTP Specialists. As soon as possible following the completion of a calendar quarter, the Exchange shall rate each UTP Specialist from "1" through "5" (with "1" representing the best possible rating) based upon their market quality relative to criteria such as the following:

- *Net price improvement*
- *Effective spread*
- *Quote size*
- *Execution speed*
- *Percentage of marketable customer orders sent away to another market for execution*
- *Floor Broker Questionnaire rankings*

The Exchange will allocate weightings to these criteria and will notify UTP Specialists of these relative weightings prior to their implementation. The Exchange may change the criteria used to evaluate UTP Specialists and the weighting assigned to each criterion from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or to improve market quality. The Exchange will notify UTP Specialists of any change in the criteria or weightings of criteria in advance of the calendar quarter in which the change will be implemented. The Exchange also will notify UTP Specialists of their ratings.

A UTP Specialist unit that receives a "5" rating in any two of four consecutive quarters shall be referred to the Market Quality Committee for consideration of possible reallocation of one or more securities admitted to dealings on an unlisted basis or other appropriate remedial action. A UTP Specialist that receives ratings of "4" or "5" in any three of six consecutive quarters shall be referred to the Market Quality Committee for consideration of possible reallocation of one or more securities admitted to dealings on an unlisted basis or other appropriate remedial action. The Market Quality Committee is not precluded from reallocating one or more securities or taking other remedial action based on a single instance of deficient performance or a single quarter of poor ratings. Conversely, the Market Quality Committee is not required to take such actions. The nature of the appropriate remedial actions is necessarily subject to professional judgment, dependent on such matters as the security being traded, competition on other markets centers, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Market Quality Committee.

The Market Quality Committee shall consider UTP Specialist performance ratings in determining whether to approve, disapprove or conditionally approve, mergers and acquisitions of UTP Specialists, transfers of one or more UTP Specialist registrations, UTP Specialist joint accounts, and changes in control or composition of UTP Specialist firms.

.04 Market Share Evaluation for UTP Specialists. The Exchange shall regularly evaluate the market share of UTP Specialists with respect to share volume and shall inform UTP specialists of their market share. The Exchange shall establish minimum market share criteria from time to time based upon market conditions, and may establish different criteria for securities with different trading characteristics (e.g., average daily volumes, number of competing market makers). The Exchange shall notify UTP specialists of any change in minimum market share criteria in advance of the period in which the change will be implemented. UTP Specialists that fall below the minimum market share criteria established by the Exchange in one or more UTP securities shall be referred to the Market Quality Committee for consideration of reallocation or other appropriate remedial action.

The Market Quality Committee is not precluded from reallocating one or more securities or taking other remedial action based on a single instance of deficient performance or a single quarter of poor ratings. Conversely, the Market Quality Committee is not required to take such actions. The nature of the appropriate remedial actions is necessarily a matter of professional judgment, dependent on such matters as the security being traded, competition on other markets centers, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Market Quality Committee.

The Market Quality Committee shall consider UTP Specialist market share performance in determining whether to approve, disapprove or conditionally approve, mergers and acquisitions of UTP Specialists, transfers of one or more UTP Specialist registrations, UTP Specialist joint accounts, and changes in control or composition of UTP Specialist firms.

* * * * *

[5] The Exchange requested that the Commission correct a typographical error in Commentary .04 of the proposed rule language. Telephone discussion between Bill Floyd-Jones, Assistant General Counsel, Amex, and Marc F. McKayle, Special Counsel, and Christopher B. Stone, Attorney Advisor, Division, Commission (June 14, 2002)("Telephone Conference"). The Exchange also requested that the Commission correct an errant reference to "Market Performance Committee" in paragraph (c) of the proposed rule language below. Telephone discussion between Bill Floyd-Jones, Assistant General Counsel, Amex, and Christopher B. Stone, Attorney Advisor, Division, Commission (June 19, 2002). The Exchange has committed to submitting a conforming amendment reflecting these changes during the comment period for the rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

by the Chief Executive Officer, one representative of upstairs member firms, one representative of institutional investors, and one member who spends a substantial portion of his or her time on the Trading Floor. The Committee would regularly evaluate UTP Specialists to determine whether they have fulfilled standards relating to: (1) Quality of markets, (2) competition with other market centers, (3) administrative

represent the best possible score. A UTP Specialist unit that receives a "5" rating in any two of four consecutive quarters, or ratings of "4" or "5" in any three of six consecutive quarters, would be referred to the Market Quality Committee for consideration of reallocation or other appropriate remedial action.

The Exchange proposes to change the market quality criteria used to evaluate

UTP Specialist with performance ratings that would not trigger remedial action could be referred to the Market Quality Committee for consideration of reallocation or other action based upon sub-standard market share in one or more UTP securities.

As noted above, under the UTP Specialist evaluation procedures, performance reviews can result from: (1) Complaints or surveillance reviews, (2)

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it believes that the proposed rule will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other markets by establishing incentives for superior

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange anticipates that Amex UTP Specialists will operate in an extraordinarily competitive environment. The Exchange, accordingly, has developed a new program to evaluate and remediate UTP Specialist performance. The ultimate goal of the performance evaluation process would be to ensure that the Exchange is as successful as possible in garnering market share in UTP securities.[6]

Under the proposal, a new committee, the Market Quality Committee, would administer the Exchange's program to evaluate and enhance UTP Specialist performance. The Committee is proposed to consist of seven persons: the Chief Executive Officer of the Exchange, three members of the Exchange's senior management selected by the Chief Executive Officer, one representative of upstairs member firms, one representative of institutional investors, and one member who spends a substantial portion of his or her time on the Trading Floor. The Committee would regularly evaluate UTP Specialists to determine whether they have fulfilled standards relating to: (1) Quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote the Exchange as a marketplace. The Committee also would review transfers of specialist registrations in UTP securities to ensure that the Exchange's institutional interests are protected.

As proposed, the Market Quality Committee could take one or more of the following actions if it finds that a UTP Specialist has not met relevant standards: (1) Send an advisory letter, (2) counsel UTP Specialists on how to improve their performance, (3) require UTP Specialists to adopt performance improvement plans, (4) require the reallocation of securities, (5) suspend a specialist's registration as a UTP Specialist for a specific period of time, or (6) prohibit a UTP Specialist from receiving allocations in a particular situation or for a specified period of time. In the event that a UTP Specialist refuses or otherwise fails without reasonable justification or excuse to meet with the Market Quality Committee, the Market Quality Committee could take such action as it believes appropriate based on the information available to it without waiting for an appearance by the UTP Specialist.[7] Persons that are aggrieved by decisions of the Market Quality Committee may appeal them to the Amex Adjudicatory Council.

Under the proposal, the Committee could take remedial action with respect to UTP Specialists as a result of one or more transactions that involve poor performance that are identified through Amex surveillance or complaints. The Exchange also proposes to evaluate routinely UTP Specialist performance relative to both market quality and market share criteria.

Each quarter, the Exchange proposes to rate all UTP Specialists from "1" to "5" on a curve based upon their scores with respect to the market quality criteria.[8] A rating of "1" would represent the best possible score. A UTP Specialist unit that receives a "5" rating in any two of four consecutive quarters, or ratings of "4" or "5" in any three of six consecutive quarters, would be referred to the Market Quality Committee for consideration of reallocation or other appropriate remedial action.

The Exchange proposes to change the market quality criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions. The Exchange proposes to notify UTP Specialists of any changes to the criteria and weightings prior to implementation.[9] The Exchange proposes the following market quality criteria at the outset of the program to evaluate UTP Specialist performance:

- Net price improvement
- Effective spread
- Quote size
- Execution speed
- Percentage of marketable customer orders sent away to another market for execution
- Floor Broker Questionnaire rankings

With respect to market share reviews, the Exchange proposes to establish minimum market share criteria for UTP securities based upon market conditions, and may establish different criteria for securities with different trading characteristics (*e.g.*, average daily volumes or numbers of competing market makers). Specialists that fall below the minimum market share criteria established by the Exchange in one or more UTP securities would be referred to the Market Quality Committee for consideration of reallocation or other appropriate remedial action.

The Exchange proposes to change the minimum market share criteria used to evaluate UTP Specialists from time to time as warranted by market conditions. The Exchange would notify UTP Specialists of any changes to the market share criteria prior to implementation. The Exchange also would notify UTP Specialists of their market share.

As proposed, the market share evaluation program would be separate from the performance ratings system described above. Thus, for example, a UTP Specialist with performance ratings that would not trigger remedial action could be referred to the Market Quality Committee for consideration of reallocation or other action based upon sub-standard market share in one or more UTP securities.

As noted above, under the UTP Specialist evaluation procedures, performance reviews can result from: (1) Complaints or surveillance reviews, (2) low scores under the UTP Specialist market quality ratings systems, or (3) low market share in one or more UTP securities. As proposed, a performance review could result in a variety of possible actions, ranging from recommendations for performance improvement, a determination not to permit a firm to seek new allocations, to a reallocation of one or more UTP securities from a UTP Specialist. The Committee would not be precluded from reallocating UTP securities based on a single instance of deficient performance or a single quarter of poor ratings or low market share. Conversely, the Committee would not be required to take such actions. Rather, the purpose of the rules and processes is to identify circumstances that warrant review by the Market Quality Committee. The nature of the appropriate remedial actions is necessarily subject to professional judgment, dependent on such matters as the UTP securities being traded, competition on other market centers, personnel, and systems changes, and other factors.[10] Accordingly, such determinations are left to the expertise, discretion, and judgment of the Market Quality Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[11] in general, and section 6(b)(5) of the Act,[12] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by encouraging good performance and competition among markets and specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it believes that the proposed rule will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange believes that the procedures as set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action, are necessary to ensure quality markets and thereby attract buyers and sellers to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–2002–19 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18252 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

[6] According to Amex, the Commission, in its decision *In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X–17*, Administrative Proceeding File No. 3–7285, Exchange Act Release No. 31666 (December 29, 1992), determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges. The Commission stated in the *Post X–17* case: We believe that [a self-regulatory organization's ("SRO's")] need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

[7] The Exchange clarified that the reference to "such action as the Market Quality Committee believes appropriate" and corresponding language in the proposed rule text (Rule 29(e)) is not meant to expand the remedial power of the Market Quality Committee otherwise provided for in the proposed Amex Rule 29(b). Telephone Conference.

[8] The Exchange explained that UTP specialists would be rated on a curve and, thus, such ratings would reflect the performance of specialists relative to one another rather than theoretical performance levels. Telephone Conference.

[9] The Exchange represented to the Commission that notification of any criteria or weighting changes generally will take place within a month before the implementation of such changes. Moreover, criteria and weightings changes would only be implemented at the beginning of a rating quarter. Telephone Conference.

[10] The phrase "necessarily a subjective matter" has been replaced with "necessarily subject to professional judgment" in both the purpose section and the proposed rule text in Commentary .03. As noted above, the Exchange has committed to submitting a conforming amendment during the comment period of the rule filing. Telephone Conference.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46198; File No. SR–Amex–2002–08]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange LLC Relating to Specialist Unit Fees

July 12, 2002.

On February 7, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to modify its Member Fee Schedule to pass through to Amex specialist units any fee paid by the Exchange to a third party in connection with the listing and trading of a security allocated to such specialist unit. On March 13, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3] On March 18, 2002, the Amex submitted Amendment No. 2 to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002.

change.[4] The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on April 17, 2002.[5] The Commission received one comment on the proposed rule change.[6] On May 16, 2002, the Amex filed Amendment No. 3 to the proposed rule change.[7] The proposed rule change, as amended by Amendment No. 3, was published in the **Federal Register** on May 30, 2002.[8] On solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.95 ("Allocation of Securities and Location of Trading Crowds and DPMs") to extend, from six months to one year, the time in which the

every effort possible to become the exchange of choice in a particular option class, as measured during the initial months of trading by consistently achieving a certain market share if the class is listed on more than one options exchange. CBOE Rule 8.95(c) permits the appropriate Allocation Committee to remove an allocation if these commitments are not met, thus giving trading crowds and DPMs an incentive

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change

("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Large Order Utility ("LOU"). Through LOU, eligible customer orders larger than CBOE's maximum "auto-ex" size for the relevant option would be stopped at the

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5)

change.[4] The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on April 17, 2002.[5] The Commission received one comment on the proposed rule change.[6] On May 16, 2002, the Amex filed Amendment No. 3 to the proposed rule change.[7] The proposed rule change, as amended by Amendment No. 3, was published in the **Federal Register** on May 30, 2002.[8] On July 12, 2002, the Exchange withdrew the proposed rule change.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18243 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46183; File No. SR–CBOE–2002–32]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Time and Manner in Which the Appropriate Allocation Committee May Reallocate a Security

July 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.95 ("Allocation of Securities and Location of Trading Crowds and DPMs") to extend, from six months to one year, the time in which the appropriate Allocation Committee may reallocate a security if the trading crowd or Designated Primary Market-Maker ("DPM") to which the security had been allocated fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.95(c) currently provides that during the first six months following the allocation of a security to a trading crowd or DPM, the appropriate Allocation Committee may remove the allocation and reallocate the security, if the trading crowd or DPM fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. CBOE now proposes to amend CBOE Rule 8.95(c) to extend the initial review period from six months to one year under which the appropriate Allocation Committee may exercise this authority.

According to CBOE, the appropriate Allocation Committee typically requests that trading crowds and DPMs make market performance commitments as part of their applications to receive allocations of particular securities. These commitments may relate to pledges to keep bid-ask spreads within a particular width, or pledges to make every effort possible to become the exchange of choice in a particular option class, as measured during the initial months of trading by consistently achieving a certain market share if the class is listed on more than one options exchange. CBOE Rule 8.95(c) permits the appropriate Allocation Committee to remove an allocation if these commitments are not met, thus giving trading crowds and DPMs an incentive to abide by these commitments.

CBOE believes that extending the initial review period from six months to one year is appropriate because it will provide the appropriate Allocation Committee additional time to evaluate whether a particular DPM or trading crowd has adhered to any market performance commitments it made in connection with being allocated the security.

Following this initial review period after an allocation is made, CBOE notes that all the responsibility for monitoring market performance with respect to that security is vested in the appropriate Market Performance Committee or MTS Appointments Committee, which continually evaluate trading crowd and DPM market performance, as applicable, and are authorized pursuant to CBOE Rule 8.60, CBOE Rule 8.90, and other Exchange Rules to take remedial action for failure to satisfy minimum market performance standards.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act[3] in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–CBOE–2002–32 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18220 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* letter from Claire McGrath, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 14, 2002.

[5] *See* Exchange Act Release No. 45727 (April 10, 2002), 67 FR 18962.

[6] *See* letter from Brandon Becker, Wilmer, Cutler & Pickering, to Jonathan G. Katz, Secretary, Commission, dated May 2, 2002.

[7] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002.

[8] *See* Exchange Act Release No. 45972 (May 21, 2002), 67 FR 18962.

[9] *See* Letter from Geraldine Brindisi, Vice President and Corporate Secretary, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated July 12, 2002.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46185; File No. SR–CBOE–2002–31]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Handling of Customer Orders

July 11, 2002

On June 10, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Large Order Utility ("LOU"). Through LOU, eligible customer orders larger than CBOE's maximum "auto-ex" size for the relevant option would be stopped at the Exchange's disseminated price up to the size of the Exchange's disseminated quote, and subsequently routed to the trading crowd for possible price improvement and allocation in open-outcry.[3] Thus, LOU would allow for price-improvement while guaranteeing an execution at a price equal to or better than the stop price. If price improvement was not attainable in the open-outcry, the order would be allocated at the stop price among the members of the trading crowd under specified procedures.[4]

The proposed rule change was published for comment in the **Federal Register** on June 19, 2002.[5] The Commission received no comments on the proposal. On July10, 2002, the CBOE filed Amendment No. 1 to the proposed rule change, in which it requested that the Commission find good cause to approve the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] because, by automatically securing the Exchange's disseminated prices for customer orders up to the disseminated size of the Exchange, while allowing for potential price improvement for those orders, it should benefit customers and improve the overall efficiency of the market. In addition, the Commission finds that the manner of allocating contracts in the crowd under the proposed rule change is consistent with equitable principles.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that the CBOE has represented that all required systems work for LOU has been completed and successfully tested, and that the CBOE is prepared to begin utilizing the system within a week of approval by the Commission.[10] The Commission believes that accelerated approval of this proposal should permit the CBOE to immediately begin providing customers with the benefits described above, and serve to enhance competition among the markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[11], that the proposed rule change (File No. SR–CBOE–2002–31) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18224 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] To be eligible for LOU, an incoming order would be required to: (i) be a market order or marketable limit order that is not for an account in which a member or any non-member broker-dealer (including foreign broker-dealer) has an interest; (ii) be of a size greater than the eligibility limit of CBOE's Retail Automatic Execution System ("RAES") for the subject option series; (iii) be in an option class which is designated by the appropriate Floor Procedure Committee as eligible for LOU; and (iv) not be an order routed to CBOE through intermarket linkage. Further, at the time of the order's receipt; (i) the CBOE quote would be required to be priced equal to the National Best Bid or Offer; (ii) the requirements of CBOE Rule 6.8.B (governing automated book priority for larger than RAES-size public customer orders received through the Exchange's Order Routing System) would have to be in effect for the subject option class; and (iii) the CBOE quote could not be a manual quote.

[4] The order would be assigned in a manner consistent with existing open-outcry procedures under CBOE Rules 6.45 and 8.87. To the extent any order is not fully assigned in open-outcry, an "In-Person Wheel" would evenly assign contracts to market-makers present in the crowd up to a 5-contract maximum per order. If the In-Person Wheel has been exhausted for a particular LOU order and a balance still remains on the LOU order, the entirety of such balance would be assigned in accordance with the RAES trade allocation methodology in effect for the subject option class.

[5] *See* Securities Exchange Act Release No. 46073 (June 13, 2002), 67 FR 41743.

[6] *See* Letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Ira Brandriss, Special Counsel, Division of Market Regulation, Commission, dated July 9, 2002 (Amendment No. 1).

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Amendment No. 1, *supra* note 6.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46197; File No. SR–ISE–2002–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limit Orders for the Account of Options Market Makers From Other Exchanges

July 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend ISE Rule 1901 ("Limit Orders for the Account of Options Market Makers From Other Exchanges") to provide that limit orders for the account of such non-ISE options market makers are given equal allocation rights as other proprietary broker-dealer orders and ISE market maker quotes and orders. The purpose of this proposed rule change is to provide that limit orders for the account of such non-ISE options market makers be displayed in the ISE's limit order book to be displayed in the same manner as customer orders, ISE member proprietary orders, and ISE market maker quotes. Once on the ISE's limit order book, orders for the accounts of such non-ISE options market makers are given equal allocation rights as other proprietary broker-dealer orders and ISE market maker quotes and orders. The purpose of this proposed rule change is

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46189; File No. SR–ISE–2002–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt the following five ISE fee changes:

• *Marketing Fee:* The ISE currently imposes a $.10 fee to fund marketing efforts. There currently is sufficient

2. Basis

The basis for this proposed rule change is the requirement under Section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46197; File No. SR–ISE–2002–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limit Orders for the Account of Options Market Makers From Other Exchanges

July 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to provide that limit orders entered for the account of options market makers from other exchanges must be designated as immediate-or-cancel ("IOC") orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ISE rules permit Electronic Access Members ("EAMs") to enter limit orders for the account of an options market maker on another exchange. Limit orders that are IOC orders trade immediately, with any unexecuted size being cancelled. In contrast, any unexecuted size associated with a limit order not designated as IOC is placed on the ISE's limit order book to be displayed in the same manner as customer orders, ISE member proprietary orders, and ISE market maker quotes. Once on the ISE's limit order book, orders for the accounts of such non-ISE options market makers are given equal allocation rights as other proprietary broker-dealer orders and ISE market maker quotes and orders. The purpose of this proposed rule change is to provide that limit orders entered for the account of options market makers from other exchanges must be designated as IOC orders.

As a general matter, the ISE affords market makers on other exchanges greater access to the ISE market than the other exchanges provide for ISE market makers. For example, most other exchanges do not permit ISE market makers to place orders on their limit order books.[3] Moreover, *no* other options exchange allows ISE market makers to be on the "wheel," and thus to participate in transactions effected in their automated execution systems. This is in marked contrast to the ISE, where market makers from other exchanges directly compete for order flow with ISE market makers. The ISE believes that this puts ISE market makers at a competitive disadvantage. According to the ISE, moreover, when ISE market makers trade against customer orders, they are subject to payment-for-order-flow and marketing fees that do not apply to their competitors. The ISE's proposed rule filing is designed to address these concerns.[4]

The basis for this proposed rule change is the requirement under section 6(b)(5) under the Exchange Act[5] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the ISE consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to SR–ISE–2002–13 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18221 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.*, Chicago Board Options Exchange Rules 6.2A(a)(ii), 6.45 and 8.85.

[4] The ISE believes that this proposal is fully consistent with the provisions of the intermarket linkage, now in development. Specifically, that linkage would permit only market makers to send IOC orders to another exchange. *See* Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, Section 2(16), which defines a "Linkage Order" solely as an IOC order.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46189; File No. SR–ISE–2002–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing five fee changes: (1) Suspending its marketing fee for six months; (2) imposing a $.10 surcharge for non-customer transactions in options on the iShares S&P 100 Index Fund; (3) adopting a fee for members who connect to the ISE through a high-bandwidth T–3 line; (4) discounting the fees for multiple connections to the ISE Order Routing System ("IORS"); and (5) imposing a "cancellation fee." The text of the rule amendment is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt the following five ISE fee changes:

- *Marketing Fee:* The ISE currently imposes a $.10 fee to fund marketing efforts. There currently is sufficient money in the marketing fund to finance these efforts for the foreseeable future. Thus, the ISE proposes suspending that fee for six months beginning July 1, 2002.
- *Licensing Fee:* The ISE proposes to adopt a $.10 surcharge on non-customer transactions in options on the iShares S&P 100 Index Fund. The ISE has entered into a license agreement to use various trademarks regarding this index, and this proposed rule change will defray the licensing costs. We also propose to correct the name of the Nasdaq Biotechnology Index exchange-traded fund in the fee schedule.
- *T–3 Connection Fee:* ISE Members currently connect to the ISE through either a T–1 line or lines with smaller capacities. Some members now are requesting to connect through a T–3 line, providing very high capacity. The ISE proposes a connectivity charge of $1,250 a month per T–3 line to recover its costs in providing this level of connectivity.
- *Multiple IORS Discount:* IORS is the ISE order routing system. While most Members have only one IORS connection, some members maintain separate connections for each clearing relationship. We propose to discount multiple IORS connections to reflect the reduced costs on the ISE for supporting such members.
- *Cancellation Fee:* There are a number of Electronic Access Members ("EAMs") who use a disproportionate amount of communication bandwidth by canceling orders immediately following the entry of the orders. These order/cancellation messages often happen in large numbers, and can cause congestion in IORS. The ISE proposes to impose on each EAM an order cancellation fee of $1 for every cancellation through IORS in excess of the number of orders that the EAM executes in a month. The fee would not apply to any EAM that cancels fewer than 500 orders through IORS in a month. The ISE believes that this will ease congestion in IORS and will fairly allocate costs.[3]

2. Basis

The basis for this proposed rule change is the requirement under Section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other ISE charge and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(2) thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The cancellation fee is similar to fees adopted by the Chicago Board Options Exchange, Inc., the American Stock Exchange, Inc., and the Pacific Exchange, Inc. *See* Securities Exchange Act Release No. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001) (SR–CBOE–2001–40); Securities Exchange Act Release No. 45110 (November 27, 2001) 66 FR 63080 (December 4, 2001) (SR–Amex–2001–90); and Securities Exchange Act Release No. 45262 (January 9, 2002), 67 FR 2266 (January 16, 2002) (SR–PCX–2001–47).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

June 28, 2002.[4] The Commission is publishing this notice, as amended by Amendment Nos. 1 and 2, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 97 (Limitation on Member

(iii) A purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iv) A purchase on a "zero plus" tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.]

For purposes of [the restrictions in subparagraphs (iii) and (iv) above] *this*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

account.[5] The Exchange notes that while the proposed amendments to NYSE Rule 97 would limit the strict "tick" restriction to the most sensitive part of the trading day, members and member organizations remain subject to the anti-manipulative provisions of the Act at all times during the trading day.

Secondly, the Exchange proposes to provide that if a member organization establishes internal information barriers to shield a person entering proprietary

equivalent to a short position in the stock include a long put option or a short position in a call option, warrant, right or convertible or exchangeable securities. The number of shares purchased to hedge the short position must be commensurate with the number of shares required to hedge such position when it is netted with any long position in the stock.

For example, on July 1, a member organization, in order to facilitate a

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to SR–ISE–2002–16 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18222 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46191; File No. SR–NYSE–2001–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Amending Exchange Rule 97 Which Limits Member Trading Because of Block Positioning

July 12, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on April 17, 2002.[3] The Exchange filed Amendment No. 2 to the proposed rule change on June 28, 2002.[4] The Commission is publishing this notice, as amended by Amendment Nos. 1 and 2, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 97 (Limitation on Member Trading Because of Block Positioning) so that it applies only to transactions executed at or near the end of the trading day, and to provide exceptions to the rule for member organizations that establish the requisite internal information barriers and for certain hedging transactions.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

Limitation on Members' Trading Because of Block Positioning

Rule 97

(a) When a member organization holds any part of a long position in a stock in [its trading] *a proprietary* account resulting from a block transaction it effected with a customer, such member organization may not effect *within twenty minutes of the close of trading on the Exchange a purchase on a "plus" tick in such stock at a price higher than the lowest price at which any block was acquired in a previous transaction on that day* [the following transactions] for any account in which it has a direct or indirect interest [for the remainder of the trading day on which it acquired such position,] *if the person responsible for the entry of such order to purchase such stock has knowledge of such block position.[:]*

A member, allied member, or an employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular block position unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about block positions by those responsible for entering such proprietary orders.

[(i) A purchase on a "plus" tick if such purchase would result in a new daily high;

(ii) A purchase on a "plus" tick within one-half hour of the close;

(iii) A purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iv) A purchase on a "zero plus" tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.]

For purposes of [the restrictions in subparagraphs (iii) and (iv) above] *this rule*, in the case where more than one block was acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

(1) For bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;

(2) To offset a transaction made in error;

(3) To facilitate the conversion of options;

(4) By specialists in the stocks in which they are registered;

(5) To facilitate the sale of a block of stock or a basket of stocks by a customer;

(6) To facilitate an existing customer's order for the purchase of a block of stock, or a specific stock within a basket of stocks, or a stock which is being added to or reweighted in an index, at or after the close of trading on the Exchange, provided that the facilitating transactions are recorded as such and the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's order for such stock; [or]

(7) Due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio[.] *or;*

(8) To hedge a position that is economically equivalent to a short stock position, provided that (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; (ii) the risk to be offset is the result of a position acquired in the course of facilitating a customer's order, and (iii) the size of the hedge is commensurate with the number of shares required to hedge such position when netted with any long position in the stock.

Supplementary Material: No change.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 16, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule text to clarify which types of hedging transactions it would exclude from the restrictions of NYSE Rule 97.

[4] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 27, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange amended the example in the Purpose section of the proposal to clarify the types of hedging transactions that would fall under the proposed exemption to NYSE Rule 97.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

NYSE Rule 97 prohibits a member organization that holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer from purchasing, for an account in which it (*i.e.*, the block positioning firm) has a direct or indirect interest, additional shares of such stock on a "plus" or "zero plus" tick under certain conditions for the remainder of the trading day. NYSE Rule 97 defines a "block" as a quantity of stock having a market value of $500,000 or more. Exceptions to the rule exist for transactions involving bona fide arbitrage or trading in companies involved in a publicly announced merger, acquisition, consolidation or tender offer; to offset error transactions; to facilitate the conversion of options; to allow specialty stock transactions by specialists; or to facilitate the sale of a block of stock to a customer.

The Exchange now proposes to amend NYSE Rule 97 in three significant respects. First, the Exchange proposes to amend NYSE Rule 97 to focus on transactions executed at or near the end of the trading day that could advantage a position acquired by a block positioner by being executed at a higher price than the lowest price at which a block was acquired during that day. As amended, NYSE Rule 97 would apply only during the last twenty minutes of the trading day, rather than, as under the current rule, the remainder of the trading day following acquisition of the block position. The Exchange believes that this approach is the same the Exchange applied, and the Commission approved, in other customer facilitation situations when a member organization may be positioning stock for its own account.[5] The Exchange notes that while the proposed amendments to NYSE Rule 97 would limit the strict "tick" restriction to the most sensitive part of the trading day, members and member organizations remain subject to the anti-manipulative provisions of the Act at all times during the trading day.

Secondly, the Exchange proposes to provide that if a member organization establishes internal information barriers to shield a person entering proprietary orders in a stock from the knowledge that the firm has a block position in that stock, the restrictions in NYSE Rule 97 shall not apply to proprietary orders entered by such person. The Exchange believes that this is similar to the approach taken with respect to NYSE Rule 92, which provides that the proscriptions against trading ahead of customer orders shall not apply if internal information barriers shield a person entering a proprietary order from knowledge of any particular customer order executable at the same price.

Paragraph (b) of NYSE Rule 97 provides exceptions to the rule for purchases involving bona fide arbitrage or trading in companies involved in a publicly announced merger, acquisition, consolidation or tender offer; to offset error transactions; to facilitate the conversion of options; for transactions by specialists in their specialty stocks; to facilitate the sale of a block of stock or a basket of stocks by a customer; to facilitate an existing customer order for the purchase of a block of stock or a stock in a basket of stocks or a stock being added to or reweighted in an index at or after the close of trading on the Exchange provided certain conditions are met; or to increase a proprietary position in a stock which is being added to, or being increased in the weight of, a publicly disseminated index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the portfolios.

The Exchange also proposes an additional exception for purchases which offset all or part of the market risk of a position that is economically equivalent to a short position in the stock, provided that such position was established as the result of facilitating a customer's order and the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related. Examples of positions that, according to the Exchange, would be deemed to be economically equivalent to a short position in the stock include a long put option or a short position in a call option, warrant, right or convertible or exchangeable securities. The number of shares purchased to hedge the short position must be commensurate with the number of shares required to hedge such position when it is netted with any long position in the stock.

For example, on July 1, a member organization, in order to facilitate a customer,[6] sold short to that customer a security which is convertible into 100,000 shares of common stock. Thereafter, it facilitates a block transaction for another customer by buying 40,000 shares of the same common stock for the member organization's proprietary account. Within 20 minutes of the close on the same day, it seeks to hedge its remaining short exposure in the convertible security by buying 60,000 shares of the common stock. Since the member organization has acquired a long facilitation position (*i.e.*, the 40,000 share purchase), it must now calculate whether it is long for purposes of NYSE Rule 97, as amended. If it determines that it is not long, but rather short, it would fall within the proposed exception to NYSE Rule 97, as amended, for hedging a short position since the hedge being created offsets the risk of a position acquired in the course of facilitating a customer's order and the hedge is "clearly related" to the completion of the transaction precipitating the hedge[7] (the short position).

If, on the other hand, the firm determines it is long for purposes of NYSE Rule 97, the firm would not be able to effect within twenty minutes of the close of trading on the Exchange a purchase on a "plus" tick in the security

[5] See Securities Exchange Act Release No. 35637 (June 12, 1995), 60 FR 31749 (June 16, 1995).

[6] Telephone conversation between Jeff Rosenstrock, Senior Special Counsel, NYSE, and Ira Brandriss, Special Counsel, Division, Commission, and Christopher Solgan, Law Clerk, Division, Commission, on July 2, 2002.

[7] A hedge is deemed to be "clearly related" to the transaction precipitating the hedge if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. Thus, the initiation of the hedge should be reasonably proximate to the transaction precipitating the hedge, but the member organization is not strictly required to complete the hedge on the same date as the precipitating transaction. The Exchange intends the hedge exemption to be construed narrowly and that the hedge transaction will be proximate in time to the precipitating transaction. See SR–NYSE–94–34, Amendment No. 6 (March 9, 2001), approved in Securities Exchange Act Release No. 44139 (March 30, 2001), 66 FR 18339 (April 6, 2001). For a more complete discussion, see Amendment No. 6 to SR–NYSE–94–34, which also described several interpretive issues which had arisen with respect to the amendment of NYSE Rule 92.

at a price higher than the lowest price at which any block was acquired in a previous transaction on July 1, provided that the person responsible for the entry of such order to purchase the security had knowledge of the block position.[8]

The Exchange also proposes to replace the term "trading account" in paragraph (a) of NYSE Rule 97 with "proprietary account" so as to clarify that NYSE Rule 97's restrictions may

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written

III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 12.8(e) to revise the process for

rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A "securities industry arbitrator" is currently defined as a person: associated with a member, or broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor; or who has been associated with any of these entities within the past three years; or who is retired from any of these entities; or who is an attorney, accountant or other

securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

at a price higher than the lowest price at which any block was acquired in a previous transaction on July 1, provided that the person responsible for the entry of such order to purchase the security had knowledge of the block position.[8]

The Exchange also proposes to replace the term "trading account" in paragraph (a) of NYSE Rule 97 with "proprietary account" so as to clarify that NYSE Rule 97's restrictions may apply regardless of where the long facilitation position is placed, *e.g.*, a facilitation account or a trading account.

(2) Statutory Basis

The Exchange believes that the basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act[9] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–24 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18223 Filed 7–18–02; 8:45 am]

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[8] Under the proposed language to NYSE Rule 97, "a member, allied member, or an employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular block position unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about block positions by those responsible for entering such proprietary orders."

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46190; File No. SR–PCX–2002–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., To Revise the Process for Designating Arbitrators for Member-to-Member Disputes

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 12.8(e) to revise the process for designating arbitrators for member-to-member disputes. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

* * * * *

Pacific Exchange, Inc., Rules of The Board of Governors

Rule 12

Arbitration

Designation of [Number of] Arbitrators

Rule 12.8(a)–(d)—No change.

(e) Member Controversies. [(1)] In all arbitration matters not involving public customers[,] *and where the matter in controversy involves an amount that is $30,000 or less (exclusive of interest and costs)*, the Director of Arbitration [shall] *will appoint an arbitration panel composed of one securities industry arbitrator unless the parties request and mutually agree to the appointment of a public arbitrator* [assign the matter to a panel consisting of members of the Arbitration Committee]. *If the amount involved in the controversy exceeds $30,000 (exclusive of interest and costs), the Director of Arbitration will appoint an arbitration panel composed of three or five arbitrators from the securities industry unless the parties request and mutually agree to a different panel composition.* [Such] [m]Members of the arbitration panel *will* [shall] not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard. [For controversies involving an amount of $10,000 or less, the panel shall consist of one (1) member. For all other controversies, the panel shall consist of three (3) members.]

Commentary:

.01—No change.

(f)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current PCX rules divide arbitration claims between matters involving public customers ("Public Controversies") and matters not involving public customers ("Member Controversies"). Public Controversies are addressed in PCX Rules 12.8(a) and (b), which provide for one arbitrator where the matter in controversy does not exceed $30,000 and for three to five arbitrators where the matter exceeds $30,000. Arbitrators for Public Controversies are selected by the Director of Arbitration who appoints a panel from the existing pool of arbitrators of the Exchange.[3] Member Controversies are covered by Rule 12.8(e), which provides for a panel consisting of one Arbitration Committee member for controversies involving an amount of $10,000 or less, and a panel of three Arbitration Committee members for all other controversies.

The proposed rule would provide a new selection process for Member Controversies. Specifically, the proposed rule would eliminate the current reference to the Arbitration Committee in Rule 12.8(e) and provide for the Director of Arbitration to appoint a panel from the same existing pool of arbitrators that the Exchange currently uses for Public Controversies. Also, the proposed rule would state that if the matter in controversy involves an amount that is $30,000 or less (exclusive of interest and costs), the Director of Arbitration would appoint an arbitration panel composed of one securities industry arbitrator, unless the parties request and mutually agree to the appointment of a public arbitrator. However, if the amount involved in the controversy exceeds $30,000 (exclusive of interest and costs), the Director of Arbitration would appoint an arbitration panel composed of three or five arbitrators from the securities industry unless the parties request and mutually agree to a different panel composition.

[3] The Exchange's Director of Arbitration maintains a list of arbitrators who are qualified approved applicants.

A "securities industry arbitrator" is currently defined as a person: associated with a member, or broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor; or who has been associated with any of these entities within the past three years; or who is retired from any of these entities; or who is an attorney, accountant or other professional who devoted twenty percent or more professional work effort to securities industry clients within the last two years.[4] An arbitrator who is not from the securities industry is deemed a public arbitrator.[5] Public arbitrators may not have a spouse or other member of the household who is a person associated with a registered broker dealer, municipal securities dealer, government securities broker, government securities dealer or investment advisor.[6] Members of an arbitration panel will not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard.[7]

PCX believes that the proposed rule change would simplify the PCX arbitrator selection process for Member Controversies by coordinating the rule with existing rules on Public Controversies. The proposed rule would provide this uniformity by raising the amount in controversy from $10,000 to $30,000 as the threshold in determining whether the controversy would be heard by at least three arbitrators. This proposed threshold would be consistent with PCX Rules for Public Controversies. The proposed rule would also provide for a consistent source of arbitrators by using the same arbitrator list for the selection of arbitrators for both Public and Member Controversies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

[4] *See* PCX Rule 12.8(c).

[5] *See* PCX Rule 12.8(d).

[6] *See* PCX Rule 12.8(d).

[7] *See* PCX Rule 12.8(e).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(A) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All

submissions should refer to File No. SR–PCX–2002–33 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18225 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

e. Exchange-Traded Funds ("ETFs")

On July 12, 2001, the SEC approved an Exchange rule proposal to adopt generic listing requirements for Investment Company Units ("ICUs") and Portfolio Depositary Receipts ("PDRs") (collectively known as ETFs).[11] The rules allow PCXE to begin trading qualifying products pursuant to Rule 19b–4(e) under the Act without submitting a formal rule filing to the SEC. The Exchange's current rules for inclusion in the new PCXE rules. PCXE Rule 7.12 has been replaced in its entirety with new PCXE Rule 7.17. Also, with the elimination of trading floor and the introduction of the ArcaEx trading system, Rule 7.70 relating to P/COAST becomes obsolete.

h. Intermarket Trading System ("ITS")

The Exchange proposes to amend PCXE Rule 7.55(b)(2)(F), formerly Rule 7.66(b)(2)(F), to conform to the

b. Supervisory Procedures

The Exchange proposes to add PCXE Rule 6.18 relating to Supervisory Procedures. Under this proposed rule, each ETP Holder must establish and maintain a supervisory system to supervise the activities of its associated persons and the operations of its business. The SEC published the original rule filing on January 8, 2001.[5] The Exchange is proposing to

(PT)).[19] Because ArcaEx operates the Opening and Late Trading Sessions outside of the traditional trading hours, the PCXE requires ETP Holders to provide certain customer disclosures.[20] In particular, no ETP Holder can accept an order from a non-ETP Holder for execution in the Opening or Late Trading Session without disclosing to such non-ETP Holder that:

(1) Except for market orders eligible for execution during the Market Order

submissions should refer to File No. SR–PCX–2002–33 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18225 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46193; File No. SR–PCX–2002–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Housekeeping and Technical Amendments to PCXE Rules in Order to Incorporate Those Rules Into the New PCXE Rules Governing the Archipelago Exchange Facility

July 12, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), proposes to make various housekeeping and technical changes to certain previously approved PCXE rules in order to incorporate those rules into the new PCXE rules governing the Archipelago Exchange ("ArcaEx") facility. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

On October 25, 2001, the Commission approved a proposed rule change by the PCX to establish ArcaEx, a new electronic trading facility of PCXE.[3] ArcaEx is a fully electronic securities trading facility for use by Equity Trading Permit ("ETP") Holders and their customers. PCX and PCXE are responsible for all regulatory functions related to the facility, and Archipelago Exchange, L.L.C., a subsidiary of Archipelago Holdings, L.L.C., is responsible for the business of the facility to the extent that these activities are not inconsistent with the regulatory and oversight functions of PCX and PCXE. ArcaEx commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities.

With this filing, PCX proposes to make various housekeeping and technical changes to certain previously approved PCXE rules in order to incorporate those rules into the new PCXE rules governing ArcaEx. A summary of the proposed changes to the text of the PCXE rules are explained below.

a. Audit Committee Requirements for Listed Companies

The Exchange proposes to amend PCXE Rule 5.3(b) by adding language regarding audit committee requirements for listed domestic issuers. The rule change requires listed companies to adopt formal written charters and establishes composition requirements for audit committees including expertise and independence criteria for committee members. The SEC previously approved the proposed rule text on February 7, 2001.[4] The Exchange is proposing to incorporate the rule change into the new set of rules governing the ArcaEx facility.

b. Supervisory Procedures

The Exchange proposes to add PCXE Rule 6.18 relating to Supervisory Procedures. Under this proposed rule, each ETP Holder must establish and maintain a supervisory system to supervise the activities of its associated persons and the operations of its business. The SEC published the original rule filing on January 8, 2001.[5] The Exchange is proposing to incorporate the rule change into the new set of rules governing the ArcaEx facility. In addition, the Exchange proposes to make technical changes to the rule text as originally approved by the Commission by deleting references to the terms "Equity ASAP Holder" and "ETP Firm." These membership categories are no longer applicable under ArcaEx's market structure.[6]

c. Trust Issued Receipts

On April 16, 2001, the SEC approved an Exchange rule proposal to adopt generic listing requirements for Trust Issued Receipts ("TIRs").[7] The Exchange is proposing to incorporate the rule change into the new set of rules governing the ArcaEx facility. The proposed listing and maintenance standards for securities on TIRs are set forth respectively in Commentary .01 to PCXE Rule 8.200(a), and in Rule 8.200(d). Also, minor conforming word changes have been made to reflect the simplified membership structure under ArcaEx.[8]

d. Electronic Mail Addresses

The Exchange proposes to incorporate into the new PCXE rules for ArcaEx a provision requiring all ETP Holders to establish and maintain an Internet electronic mail account with the PCXE. The SEC published the original rule filing on January 29, 2001.[9] The Exchange proposes to renumber former PCXE Rule 2.26 as new PCXE Rule 2.23, and is also modifying the rule text by eliminating references to "Equity ASAP Holder" and "ETP Firm" because these membership categories are no longer applicable under ArcaEx's market structure.[10]

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (Order approving File No. SR–PCX–00–25) ("ArcaEx Approval Order").

[4] *See* Securities Exchange Act Release No. 43941 (February 7, 2001), 66 FR 10545 (February 15, 2001) (Order approving File No. SR–PCX–00–40).

[5] *See* Securities Exchange Act Release No. 43817 (January 8, 2001), 66 FR 3636 (January 16, 2001) (SR–PCX–00–43).

[6] *See* Securities Exchange Act Release No. 43608 (November 21, 2000), 65 FR 78822 (December 15, 2000) (SR–PCX–00–25) ("ArcaEx Proposing Release").

[7] *See* Securities Exchange Act Release No. 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (Order approving File No. SR–PCX–2001–01).

[8] See ArcaEx Proposing Release, *supra* note 6.

[9] *See* securities Exchange Act Release No. 43898 (January 29, 2001), 66 FR 8832 (February 2, 2001) (SR–PCX–01–02).

[10] *See* ArcaEx Proposing Release, *supra* note 6.

e. Exchange-Traded Funds ("ETFs")

On July 12, 2001, the SEC approved an Exchange rule proposal to adopt generic listing requirements for Investment Company Units ("ICUs") and Portfolio Depositary Receipts ("PDRs") (collectively known as ETFs).[11] The rules allow PCXE to begin trading qualifying products pursuant to Rule 19b–4(e) under the Act without submitting a formal rule filing to the SEC. The Exchange's current rules for the initial and continued listing of ICUs and PDRs are set forth in PCXE Rules 5.2(j)(3)[12] and 8.100, respectively. The Exchange proposes to incorporate the rule changes using the same numbering sequence into the new set of rules governing the ArcaEx facility. Also, minor conforming changes to the text have been made to reflect the simplified membership structure of ArcaEx.[13]

f. Minor Rule Plan Amendments

On July 27, 2001, the SEC approved an Exchange rule proposal increasing the fines for violations of certain rules under the PCXE's Minor Rule Plan.[14] The Exchange is proposing to incorporate the increased Minor Rule Plan fines into the new set of rules governing the ArcaEx facility. However, the Exchange notes that the Minor Rule Plan fines for violations relating to floor trading and specialists (*e.g.*, admission to and conduct on the trading floor) have not been included in the proposed rules because they are not applicable to the ArcaEx trading environment.

g. Conversion to Decimals

The Exchange proposes to incorporate into the new PCXE rules for ArcaEx several technical revisions to its equities trading rules in order to eliminate references to fractional pricing. The SEC published the rule filing on November 19, 2001.[15] Minor word changes and revisions in the numbering of the rules have been made to conform the proposed rules to the new PCXE rules for ArcaEx. In addition, the changes made to former PCXE Rule 7.12 (Firm Quotations) and Rule 7.70 (Pacific Computerized Order Access System ("P/COAST")) have been omitted from inclusion in the new PCXE rules. PCXE Rule 7.12 has been replaced in its entirety with new PCXE Rule 7.17. Also, with the elimination of trading floor and the introduction of the ArcaEx trading system, Rule 7.70 relating to P/COAST becomes obsolete.

h. Intermarket Trading System ("ITS")

The Exchange proposes to amend PCXE Rule 7.55(b)(2)(F), formerly Rule 7.66(b)(2)(F), to conform to the seventeenth amendment to the restated ITS Plan.[16] Presently, Rule 7.55(b)(2)(F) provides that the sender of an ITS commitment may designate a time period during which a commitment will be irrevocable following acceptance by the ITS system. The ITS Plan provides for three irrevocable time-period options consisting of 30-seconds, one minute, and two minutes. Accordingly, the Exchange is proposing to replace the current language in subsection (b)(2)(F), which states that there are "two" irrevocable time-period options, with the word "three" thereby making the rule text consistent with the ITS Plan. The SEC published the original rule filing on March 19, 2002.[17] The Exchange is proposing to incorporate the rule change into the new set of rules governing the ArcaEx facility. In addition, the Exchange proposes to make technical changes to the rule text as originally approved by the Commission by deleting references to the terms "Equity ASAP Holder" and "ETP Firm." These membership categories are no longer applicable under ArcaEx's market structure.[18]

i. Trading Hours for ICUs and PDRs

Prior to the implementation of ArcaEx, the Exchange's trading hours for series of ICUs and PDRs were between 6:30 a.m. and 1:30 p.m. (PT), as set forth in PCXE Rule 5.2(j)(3), Commentary .01(f) and Rule 8.100, Commentary .01(f), respectively. With this filing, the Exchange is proposing to change its trading hours for ICUs and PDRs to conform to the trading sessions of ArcaEx.

ArcaEx has three trading sessions each day the PCXE is open for business: The Opening Session (5 a.m. to 6:30 a.m. (PT)), the Core Trading Session (6:30 a.m. to 1 p.m. (PT)) and the Late Trading Session (1 p.m. to 5 p.m. (PT)).[19] Because ArcaEx operates the Opening and Late Trading Sessions outside of the traditional trading hours, the PCXE requires ETP Holders to provide certain customer disclosures.[20] In particular, no ETP Holder can accept an order from a non-ETP Holder for execution in the Opening or Late Trading Session without disclosing to such non-ETP Holder that:

(1) Except for market orders eligible for execution during the Market Order Auction, Limited Price Orders are the only orders that are eligible for execution during the Opening and Late Trading Sessions;

(2) An order must be designated specifically for trading in the Opening and/or Late Trading Session to be eligible for trading in the Opening and/or Late Trading Session; and

(3) Extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

These disclosures are designed to ensure that participants in the Opening or Late Trading Sessions understand the potential risks of that participation. Currently, several electronic trading systems provide investors the opportunity to trade these securities outside the regular trading hours. The PCX believes that the proposed rule amendment will enhance competition by providing investors with an alternative forum through which to trade these products. In addition, the Exchange believes that its proposal to expand PCXE's trading hours for ICUs and PDRs is consistent with the business hours for operating ArcaEx.[21]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [22] in general, and furthers the objectives of Section 6(b)(5) [23] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

[11] *See* Securities Exchange Act Release No. 44551 (July 12, 2001) 66 FR 37716 (July 19, 2001) (Order approving File No. SR–PCX–2001–14).

[12] The Exchange's definition of a "Unit" and the listing maintenance requirements for ICUs are contained in existing PCXE Rules 5.1(b)(15) and 5.5(g)(1), respectively.

[13] *See* ArcaEx Proposing Release, *supra* note 6.

[14] *See* Securities Exchange Act Release No. 44611 (July 27, 2001) 66 FR 40771 (August 3, 2001) (Order approving File No. SR–PCX–2001–19).

[15] *See* Securities Exchange Act Release No. 45077 (November 19, 2001), 66 FR 59280 (November 27, 2001) (SR–PCX–2001–39).

[16] *See* Securities Exchange Act Release No. 44903 (October 3, 2001), 66 FR 52159 (October 12, 2001) (Order approving Seventeenth Amendment to the ITS Plan).

[17] *See* Securities Exchange Act Release No. 45595 (March 19, 2002), 67 FR 14759 (March 27, 2002) (SR–PCX–2002–07).

[18] *See* ArcaEx Proposing Release, *supra* note 6.

[19] *See* PCXE Rule 7.34(a) (description of the ArcaEx trading sessions).

[20] *See* PCXE Rule 7.34(e) (description of the required customer disclosures).

[21] *See* ArcaEx Approval Order, *supra* note 3.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18226 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

DEPARTMENT OF STATE

[Public Notice 4067]

Office of International Energy and Commodities Policy Finding of No Significant Impact: Reef International, L.L.C.

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, operate, and

Department of State published in the **Federal Register** a Notice of Receipt of Application for a Presidential Permit. No public comments were received, and the federal agencies consulted expressed no opposition to issuing the permit. A finding of no significant impact is adopted, and an environmental impact statement will not be prepared.

Dated: July 15, 2002.

Matthew McManus,

Dated: July 12, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 02–78232 Filed 7–18–02; 8:45 am]

BILLING CODE 5120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

3. Identify any gaps in these regulations and research where else those gaps may be addressed— such as in voluntary or non-regulatory programs; and

4. Ascertain the best method to address any gaps not addressed in regulatory or non-regulatory products.

Procedural

The meeting is open to the public. Please note that the meeting may close

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and subparagraph (f)(3) of Rule 19b–4 thereunder [25] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–35 and should be submitted by August 9, 2002.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).
[25] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18226 Filed 7–18–02; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 17, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW, Suite 6300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Business Loan Reconsideration Request.

Form No: N/A.

Description of Respondents: Individuals Seeking a Reconsideration of a Declined Business Loan.

Annual Responses: 1,800.

Annual Burden: 3,600.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping for Lenders

Form No's: N/A.

Description of Respondents: Small Business Lending Companies.

Annual Responses: 2,400.

Annual Burden: 2,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–18236 Filed 7–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4067]

Office of International Energy and Commodities Policy Finding of No Significant Impact: Reef International, L.L.C.

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, operate, and maintain a pipeline and related facilities to transport liquefied petroleum gas, including propane and butane, across the U.S.-Mexico border at Maverick County, Texas.

SUMMARY: The Department of State has conducted an environmental assessment of the proposed construction by Reef International, L.L.C. of a pipeline and related facilities for the transport of liquefied petroleum gas, including propane and butane, crossing the international boundary at Maverick County, Texas. This information may be viewed upon request in the Office of International Energy and Commodities Policy at the Department of State.

Based on this information, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the pipeline will not have a significant effect on the existing vegetation and wildlife, water resources, land use, air quality, and human population within the United States. In reaching this conclusion, the Department considered several alternatives, including a no-action alternative.

In accordance with the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq., Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13, and Department of State Regulations, 22 CFR 161.8(C), an environmental impact statement will not be prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION CONTACT: Pedro G. Erviti or Matthew T. McManus, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520; or by telephone at (202) 647–2857 or (202) 647–3423; or by fax at (202) 647–4037.

SUPPLEMENTARY INFORMATION: Reef is a limited liability corporation organized under the laws of the State of Texas with its principal office located in Corpus Christi, Texas. The proposed pipeline would be adjacent to a proposed natural gas pipeline for which Reef has received a Presidential permit from the Federal Energy Regulatory Commission. On January 31, 2002, the Department of State published in the **Federal Register** a Notice of Receipt of Application for a Presidential Permit. No public comments were received, and the federal agencies consulted expressed no opposition to issuing the permit. A finding of no significant impact is adopted, and an environmental impact statement will not be prepared.

Dated: July 15, 2002.

Matthew McManus,

Acting Chief, Energy Producer-Country Affairs Division, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. 02–18232 Filed 7–18–02; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Environmental Assessment or Environmental Impact Statement—Proposed Commercial Recreational and Residential Developments on Tellico Reservoir, Loudon County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Extension of public comment period for scoping.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act (NEPA). On June 17, 2002, TVA published a Notice of Intent to prepare an Environmental Assessment or Environmental Impact Statement for the recreational and residential developments proposed on Tellico Reservoir, Loudon County, Tennessee (**Federal Register**, Volume 67, Number 116, Pages 41292–41293). The comment period for the scoping phase of this environmental review is extended from July 26, 2002 to August 16, 2002.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Richard L. Toennisson, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone: (865) 632–8517; or e-mail: *rltoennisson@tva.gov.*

Dated: July 12, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 02–78232 Filed 7–18–02; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12763]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Towing Safety Advisory Committee's (TSAC) Working Group on Regulation Review will meet to discuss various issues relating to current U.S. Coast Guard regulations as they pertain to towing vessels. The meeting will be open to the public.

DATES: The TSAC Working Group will meet on Tuesday, August 13, 2002, from 1 p.m. to 4 p.m. and on the following day, Wednesday, August 14, 2002, from 8 a.m. to 12 noon. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before August 12, 2002. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before August 7, 2002.

ADDRESSES: The Working Group will meet in room 1103, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director of TSAC, telephone 202–267–0221, or fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes the following:

1. Review current U.S. Coast Guard regulatory requirements pertaining to uninspected towing vessels;
2. Assess the adequacy of these existing regulations;
3. Identify any gaps in these regulations and research where else those gaps may be addressed— such as in voluntary or non-regulatory programs; and
4. Ascertain the best method to address any gaps not addressed in regulatory or non-regulatory products.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director no later than August 12, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than August 7, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 15 copies to Mr. Gerald P. Miante at the address in **ADDRESSES** no later than August 7, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: July 11, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–18216 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application 02–14–C–00–ORD To Impose a Passenger Facility Charge at Chicago O'Hare International Airport, Chicago, IL and Use PFC Revenue at Gary/Chicago Airport, Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport and use the revenue from a PFC at Gary/Chicago Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jim Bennett, Director of Aviation, City of Chicago Department of Aviation, 10510 West Zemke Road, Chicago, Illinois 60666.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7282. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: Section 158.29 of part 158 of the Federal Aviation Regulations (14 CFR part 158) provides that, at any time before the FAA gives notice of decision on an application to impose and use the revenue from a PFC, it may give notice of intent to rule on the application. The FAA intends to rule on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 2, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of La Crosse was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 31, 2002.

The following is a brief overview of the application.

PFC application number: 02–14–C–00–ORD.

Level of the proposed PFC: $4.50.

Proposed charge effective date: November 1, 2002.

Proposed charge expiration date: November 1, 2003.

Total estimated PFC revenue: $1,000,000.

Brief description of proposed project(s): Runway 9L/27R Safety Area Improvements.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Non scheduled/on-demand air taxi operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on July 11, 2002.

Mark McClardy,

Manager, Planning and Programming Branch

application to impose and use the revenue from a Passenger Facility Charge (PFC) at Toledo Express Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul Ajamie, Executive Director, Toledo Express Airport, 11013 Airport Highway, Swanton, Ohio 43558.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7282. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: Section 158.29 of part 158 of the Federal Aviation Regulations (14 CFR part 158) provides that, at any time before the FAA gives notice of decision on an application to impose and use the revenue from a PFC, it may give notice of intent to rule on the application. The FAA intends to rule on the application to impose and use the revenue from a PFC at Toledo Express Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 2, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Toledo was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 31, 2002.

The following is a brief overview of the application.

PFC application number: 02–14–C–00–TOL.

Level of the proposed PFC: $4.50.

Proposed charge effective date: November 1, 2002.

Proposed charge expiration date: November 1, 2003.

Total estimated PFC revenue: $1,000,000.

Brief description of proposed project(s): Runway 9L/27R Safety Area Improvements.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Non scheduled/on-demand air taxi operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Toledo Department of Aviation.

Issued in Des Plaines, Illinois on July 11, 2002.

Mark McClardy,

Manager, Planning and Programming Branch

Notice of Intent To Rule on Application 02–15–C–00–TOL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Toledo Express Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Toledo Express Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and to use the revenue at Gary/Chicago Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 24, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 2016.

Proposed charge expiration date: February 1, 2017.

Total estimated PFC revenue: $2,565,000.

Brief description of proposed projects: Acquire snow removal equipment (snow broom), expand snow removal equipment building, rehabilitate runway 12/30, terminal apron expansion and loading bridge installation. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on July 11, 2002.

Mark McClardy,

Manager, Planning and Programming Branch Airports Division, Great Lakes Region.

[FR Doc. 02–18209 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–C–00–LSE To Impose and Use the Revenue From a Passenger Facility Charge at La Crosse Municipal Airport, La Crosse, WI

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at La Crosse Municipal Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael A. Daigle, Airport Manager of the La Crosse Municipal Airport at the following address: La Crosse Municipal Airport, 2850 Airport Road, La Crosse, WI 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 2, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of La Crosse was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 3, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2003.

Proposed charge expiration date: May 1, 2005.

Total estimated PFC revenue: $1,022,045.

Brief description of proposed projects: Reconstruct runway 13/31, replace baggage handling system, airfield electrical upgrade (phase 1), acquire snow removal equipment, replace terminal signage, conduct environmental assessment for parallel taxiway 18/36, PFC administration.

Class or classes or air carriers, which the public agency has requested, not be required to collect PFCs: No request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, Illinois on July 11, 2002.

Mark McClardy,

Manager, Planning and Programming Branch Airports Division, Great Lakes Region.

[FR Doc. 02–18212 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–TOL To Impose and Use the Revenue From a Passenger Facility Charge at Toledo Express Airport, Toledo, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a Passenger Facility Charge (PFC) at Toledo Express Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul L. Toth, Director of Toledo Express Airport at the following address: Toledo-Lucas County Port Authority, 11013 Airport Highway, Box 11, Swanton, Ohio 43558.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Toledo-Lucas County Port Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111, 734–487–7282. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Toledo Express Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 3, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Toledo-Lucas County Port Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than October 26, 2002.

Level of the proposed PFC: $4.50.

Proposed charge effective date: September 1, 2003.

Proposed charge expiration date: August 1, 2006.

Total estimated PFC revenue: $3,921,997.

Brief description of proposed projects: Terminal roadway reconstruction, reconstruct air carrier, purchase snow removal equipment, terminal renovations, replace aircraft rescue and fire fighting equipment, jet way replacement, taxiway D extension.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Non scheduled/on-demand air taxi operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Toledo Lucas County Port Authority.

Issued in Des Plaines, Illinois on July 11, 2002.

Mark McClardy,

Manager, Planning and Programming Branch Airports Division, Great Lakes Region.

[FR Doc. 02–18210 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–03–C–00–YNG To Impose and Use the Revenue From a Passenger Facility Charge at Youngstown-Warren Regional Airport, Youngstown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Youngstown-Warren Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas P. Nolan, Airport Director of the Youngstown-Warren Regional Airport at the following address: Youngstown-Warren Regional Airport, 1453 Youngstown-Kingsville Road, N.E., Vienna, Ohio 44473–9797.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Western Reserve Port Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7282. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Youngstown-Warren Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 2, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Western Reserve Port Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than October 22, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: August 1, 2002.

Proposed charge expiration date: October 1, 2007.

Total estimated PFC revenue: $463,187.

Brief description of proposed projects: PFC Program administration, runway safety area modification, terminal sanitary sewer, general aviation apron, snow removal equipment-blower jet broom, passenger loading bridge, terminal baggage conveyor, land acquisition for runway 32 approach.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Western Reserve Port Authority.

Issued in Des Plaines, Illinois on July 11, 2002.

Mark McClardy,

Manager, Planning and Programming Branch Airports Division, Great Lakes Region.

[FR Doc. 02–18211 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement Withdrawal; Washtenaw County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent withdrawal.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation

Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–0722. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

Form(s): None.

Abstract: In accordance with section 511 of the Merchant Marine Act of 1936, as amended, all citizens who own or operate vessels in the U.S. domestic or foreign commerce and desire "tax" benefits under the Construction Reserve Fund (CRF) program, are required to submit to MARAD an application for benefits. The annual statement provided to MARAD officials sets forth a detailed

the Coastwise Trade Laws for the vessel WAVE DANCER.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by

parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement Withdrawal; Washtenaw County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent withdrawal.

SUMMARY: On August 27, 1992, the Federal Highway Administration issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed reconstruction of US–12 from the east city limit of Saline to Munger Road in Washtenaw County, Michigan. This was updated on October 15, 2001. The proposed project involved the study of alternatives for the widening and reconstruction of the existing roadway. The Federal Highway Administration is issuing this Notice to withdraw its' original Notice of Intent dated August 27, 1992 and update of October 15, 2001.

SUPPLEMENTARY INFORMATION: Preliminary studies were undertaken which resulted in developing several alternatives to accommodate travel demand in the US–12 corridor. Public meetings were held to gather information and help shape the alternatives. A report was prepared on the Illustrative Alternative Evaluation Results. This report recommended the elimination from further consideration the alternatives that included realignment of the roadway, and carrying forward only those alternatives that utilize significant portions of the existing US–12 right-of-way. It was concluded that it is unlikely for the remaining alternatives to cause significant environmental impacts. As a result, the Federal Highway Administration had determined that an environmental impact statement is no longer needed. In lieu of an EIS, the Federal Highway Administration and the Michigan Department of Transportation are reclassifying the project as a Class III Action requiring the development of an Environmental Assessment. Should it be determined during this process that an EIS is needed for a proposed project, one will be prepared following a new Notice of Intent.

Issued on: July 8, 2002.

James A. Kirschenstein,

Asst. Division Administrator, Lansing, Michigan.

[FR Doc. 02–18227 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Tuesday, August 20, 2002. The meeting runs from 8:30 a.m. to 1:30 p.m. The session includes the following items: (1) Call to Order; (2) Welcome, introductions, ITS America antitrust policy, conflict of interest statements; (3) Consent Agenda: (a) Approval of Minutes from May 2, 2002 Board Meeting; (b) Federal Report; (c) Finance Committee Report; (d) Approval of Bylaw Changes; (e) Homeland Security Task Force; (f) TEA–21 Reauthorization Task Force Report; (g) Council Reports: Coordinating Council; International Affairs; State Chapters; and Executive Forum for Business and Trade Report; (4) Chairman's Report; (5) President's Report; (6) Committee Appointments; (7) Dues and Revenue Task Force Report; and (8) DOT Program Advice; Proposed Intelligent Vehicle Initiative Advice Letter to U.S. DOT; (9) US DOT Program Advice: Homeland Security Supplement to 10-year ITS Program Plan; (10) Joint "Future of ITS" brochure by ITS America, ERTICO and ITS Asia-Pacific; (11) Board Retreat Action Items; (12) New Business; (13) Future Executive Committee & Board Meeting Schedule; (14) Adjournment.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Tuesday, August 20, 2002, from 8 a.m.–1:30 p.m.

ADDRESSES: Hilton Palacio del Rio, 200 South Alamo, San Antonio, Texas 78205. Phone: (210) 222–1400 and Fax: (210) 270–0761.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–0722. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: July 15, 2002.

Jeffrey F. Paniati,

Acting Associate Administrator, Office of Operations, Federal Highway Administration, and Acting Director, ITS Joint Program Office, U.S. Department of Transportation.

[FR Doc. 02–18217 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 10, 2002. No comments were received.

DATES: Comments must be submitted on or before August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, 400 Seventh Street, Southwest, Washington, DC. Telephone: 202–366–5744; Fax: 202–366–7901 or e-mail: *kenneth.kline@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Construction Reserve Fund and Annual Statements.

OMB Control Number: 2133–0032.

Type of Request: Extension of currently approved collection.

Affected Public: Owners or operators of vessels in the U.S. domestic or foreign commerce.

Form(s): None.

Abstract: In accordance with section 511 of the Merchant Marine Act of 1936, as amended, all citizens who own or operate vessels in the U.S. domestic or foreign commerce and desire "tax" benefits under the Construction Reserve Fund (CRF) program, are required to submit to MARAD an application for benefits. The annual statement provided to MARAD officials sets forth a detailed analysis of the CRF when each income tax return is filed. The application is required in order for MARAD to determine whether the applicant is qualified for the benefits, and the annual statements are required in order for MARAD to assure that the requirements of the program are being satisfied.

Annual Estimated Burden Hours: 189 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 15, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18302 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12834]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WAVE DANCER.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 19, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12834. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* WAVE DANCER. *Owner:* Glenn M. Glesmann and William S. Kenney.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Gross Tonnage—9, Net Tonnage—8, Length—30.3 ft., Breadth—11.7 ft., Depth—5.6 ft."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "I intend to use the vessel for short charters (mostly day sails) carrying up to six passengers. Charters would originate in the waters of Cape Ann, Massachusetts, including the towns of Rockport, Gloucester, and Essex. The purpose of these charters is to provide an opportunity for passengers to enjoy the local waters on a seaworthy sailing vessel with an experienced and licensed captain (Glen M. Glesmann, USCG Master 50 tons Inland Waters)."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1984. *Place of construction:* St. Catherine's, Ontario, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "Currently, there are few operators of sailing vessels carrying passengers in the Cape Ann area. I know of a 65 foot schooner operating out of Gloucester (The Thomas Lannon), carrying up to 49 passengers. A smaller sailing vessel named CHRISSY advertises for day trips out of Essex for up to six passengers. The vast majority of operators in the area cater to fishing, whale watching or harboring tours on motorized crafts.

Because there are so few operators of commercial sailing craft in the area, I believe me impact on existing would be negligible. My charter operation would be a part-time pursuit, further lessening the impact on full-time operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "I believe that granting this waiver would have no impact on US shipyards. Only a tiny fraction of boats of my type find their way into commercial use. US

manufacturers of auxiliary sailing vessels cater to the vast recreational market with little concern for commercial use vessels."

Dated: July 15, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18299 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–81–P

is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "None."

Dated: July 15, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18300 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–81–P

is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to

the applicant: "This waiver will have no negative impact on other commercial passenger vessel operators. While there are a number of wooden sailing vessels offering cruises operating out of the northern Chesapeake Bay, I believe they are larger passenger vessels, carrying more than 12 passengers.

I hope the waiver will have positive impact on the larger industry in the area. By expanding the availability of

for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of

manufacturers of auxiliary sailing vessels cater to the vast recreational market with little concern for commercial use vessels."

Dated: July 15, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18299 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12833]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FLIGHT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 19, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12833. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* FLIGHT. *Owner:* Flight Holding Corp.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "59.3 ft.; Sloop rigged cruising sailing, beam 16.2, draft 9.0; Tonnage: gross 43, net 38."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Charter with captain in coastal waters of East Coast of United States."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* Tan Shui Taipei, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:*

"a. Statement of impact on other commercial passenger vessel operators: None anticipated.

b. Statement of operations of existing operators: Existing charter operators offer a wide variety of dissimilar sail and power charter boats, with strong seasonal demand."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "None."

Dated: July 15, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18300 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12832]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMISTAD.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 19, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12832. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* AMISTAD. *Owner:* Seaway Inc.

(2) Size, capacity and tonnage of vessel, *According to the applicant:* "34 ft. length, 10.2 ft. Breadth, 7.0 Ft. Depth, 12 Gross, 11 Net Tons. The vessel displaces 19,000 lbs."

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "I intend to use the vessel for carrying six or fewer passengers for hire in the Chesapeake Bay and tributaries."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1967. *Place of construction:* Yokosuka, Japan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "This waiver will have no negative impact on other commercial passenger vessel operators. While there are a number of wooden sailing vessels offering cruises operating out of the northern Chesapeake Bay, I believe they are larger passenger vessels, carrying more than 12 passengers.

I hope the waiver will have positive impact on the larger industry in the area. By expanding the availability of sailing trips to smaller groups, it should help increase the local market for sailing cruises. In addition, I have listed the vessel with the State of Maryland's Department of National Resources as an "Historical Watercraft". As the vessel was designed by a Maryland Naval Architect, I wish to focus my passengers on the local tradition of wooden sailing vessels."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "This waiver should have a positive impact on U.S. Shipyards, as repairs and renovations to this vessel will be made in the U.S. For example, I recently hired a local builder of wooden boats to do some repair and maintenance work on the vessel's hull. In addition, although the vessel was built in Japan, it's designer is a local Naval Architect."

Dated: July 15, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18301 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Applications numbers with the suffix "M" denote a modification request. These applications have separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 5, 2002.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 4th Street SW., Washington, DC or at *http://dms.dot.gov*.

This notice is receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on July 12, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of Exemption
7657–M		Welker Engineering Company, Sugar Land, TX (See Footnote 1)	7657
8232–M		National Refrigerants, Inc., Philadelphia, PA (See Footnote 2)	8232
10389–M		Great Lakes Chemical Corporation, El Dorado, AR (See Footnote 3)	10389
10789–M		Allied Universal Corporation, Miami, FL (See Footnote 4)	10789
11099–M		AMKO A Service Company, Gnadenhutten, OH (See Footnote 5)	11099
11202–M		Newport News Shipbuilding & Dry Dock Company, Newport News, VA (See Footnote 6).	11202
11537–M		Interstate Chemical Company, Inc., Hermitage, PA (See Footnote 7)	11537
11650–M		Autoliv ASP, Inc., Ogden, UT (See Footnote 8)	11650

Application No.	Docket No.	Applicant	Modification of Exemption
11753–M		Ashland, Inc., Columbus, OH (See Footnote 9)	11753
11970–M	RSPA–97–2993	ExxonMobil Chemical Company, Houston, TX (See Footnote 10)	11970
12690–M	RSPA–01–9656	Air Liquide America Corporation, Houston, TX (See Footnote 11)	12690
12750–M	RSPA–01–10121	Questar, Inc., North Canton, OH (See Footnote 12)	12750
12844–M	RSPA–01–10753	Delphi Automotive Systems, Troy, MI (See Footnote 13)	12844
12855–M	RSPA–01–10914	Kraton Polymers U.S. LLC, Belpre, OH (See Footnote 14)	12855
12917–M	RSPA–02–12038	Northwest Ohio Towing & Recovery, Inc., Beaverdam, OH (See Footnote 15)	12917
12981–M		Airgas, Inc., Cheyenne, WY (See Footnote 16)	12981

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13046–N		Consani Engineering, Elsies River, South Africa.	49 CFR 178.245–1(a)	To authorize the manufactue, marking, sale and use of certain DOT Specification 51 steel portable permanently fixed within ISO frames designed in accordance with Section VIII, Division II of the ASME Code instead of Section VIII, Division 1 for use in transporting Division 2.1, 2.2 an 2.3 haz-

Application No.	Docket No.	Applicant	Modification of Exemption
11753–M		Ashland, Inc., Columbus, OH (See Footnote 9)	11753
11970–M	RSPA–97–2993	ExxonMobil Chemical Company, Houston, TX (See Footnote 10)	11970
12690–M	RSPA–01–9656	Air Liquide America Corporation, Houston, TX (See Footnote 11)	12690
12750–M	RSPA–01–10121	Questar, Inc., North Canton, OH (See Footnote 12)	12750
12844–M	RSPA–01–10753	Delphi Automotive Systems, Troy, MI (See Footnote 13)	12844
12855–M	RSPA–01–10914	Kraton Polymers U.S. LLC, Belpre, OH (See Footnote 14)	12855
12917–M	RSPA–02–12038	Northwest Ohio Towing & Recovery, Inc., Beaverdam, OH (See Footnote 15)	12917
12981–M		Airgas, Inc., Cheyenne, WY (See Footnote 16)	12981

(1) To modify the exemption to authorize the transportation of additional Division 2.1 and 2.2 materials in non-DOT specification stainless steel cylinders.
(2) To modify the exemption to authorize the transportation of a Division 2.2 material in non-DOT specification portable tanks.
(3) To modify the exemption to authorize the transportation of a Division 6.1 and additional Class 8 material in tank cars.
(4) To modify the exemption to authorize the retest period from 2 to 5 years for non-DOT specification fully open-head steel salvage cylinders and the use of a 3AA480 cylinder for the transportation of Division 2.3 materials.
(5) To modify the exemption to authorize retesting of DOT Specification 3A and 3AA cylinders by acoustic emission (AE) and ultrasonic examination (UE) method for the transportation of Division 2.1 and 2.2 materials.
(6) To modify the exemption to authorize the transportation of Division 5.2, 6.1 and additional Division 5.1 materials across a public road via motor vehicle.
(7) To modify the exemption to authorize the transportation of an additional Class 8 material in an intermediate bulk container (IBC) that is securely mounted to a flatbed trailer.
(8) To modify the exemption to authorize an additional design qualification of the non-DOT specification pressure vessel sidewall opening for the transportation of Division 2.2 materials.
(9) To modify the exemption to authorize the use of a 300 kpa rated container for the transportation of a Class 8 material.
(10) To modify the exemption to authorize the use of alternative size non-DOT specification steel portable tanks for the transportation of a Division 4.2 material.
(11) To modify the exemption to authorize cargo vessel as an additional mode for the transportation of a Division 2.3 material in DOT Specifications 3AA steel cylinders.
(12) To modify the exemption to authorize an additional 11HH2 Rigid Combination Intermediate Bulk Container (IBC) marking code for use as outer packaging for lab pack applications transporting various Class and Division materials.
(13) To modify the exemption to authorize relief from the requirement for each non-DOT specification pressure vessel longitudinal weld seam to be 100% radiographically inspected for the transportation of Division 2.2 materials.
(14) To reissue the exemption originally issued on an emergency basis for the transportation of non-DOT specification pressure vessels containing a Class 3 material.
(15) To reissue the exemption originally issued on an emergency basis for the transportation of Class 3 materials in non-DOT specification cargo tanks (aviation refuelers).
(16) To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in DOT Specification MC–330 and MC–331 cargo tank motor vehicles with an alternate means to shut down the flow of product.

[FR Doc. 02–18208 Filed 7–18–02; 8:45am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 19, 2002.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comment should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (*See* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 12, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13046–N		Consani Engineering, Elsies River, South Africa.	49 CFR 178.245–1(a)	To authorize the manufactue, marking, sale and use of certain DOT Specification 51 steel portable permanently fixed within ISO frames designed in accordance with Section VIII, Division II of the ASME Code instead of Section VIII, Division 1 for use in transporting Division 2.1, 2.2 an 2.3 hazardous materials. (modes 1, 2, 3)
13047–N		Brenntag Mid-South, Inc., Henderson, KY.	49 CFR 173.34(d), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation of cylinders containing hazardous materials equipped with emergency A&B kits. (mode 1)
13048–N		Department of Energy/ Richland Operations Office, Richland, WA.	49 CFR 173.244	To authorize the one-time, one-way transportation in commerce of a non-DOT specification containment system for waste disposal. (mode 1)
13049–N		Honeywell International Inc., Morristown, NJ.	49 CFR 177.834(i)(3)	To authorize cargo tanks to remain connected while standing without the physical presence of an unloader. (mode 1)
13050–N		Honeywell International, Morristown, NJ.	49 CFR 172.704(c)	To authorize the transportation in commerce of cylinders containing Division 2.3 hazardous materials to transported with alternative labels. (modes 1, 2, 3)
13051–N		IBC Product Group of the Reusable Industrial Assoc, Landover, MD.	49 CFR 107.601, 171.2(a) & (b), 172 Subpart G, 172.202, 172.204, 172.504.	To authorize the transportation in commerce of certain emptied intermediate bulk containers (IBCs) for purposes of reconditioning, remanufacturing, repair, routine maintenance, or recertification with a modified shipping document and no placarding. (mode 1)
13052–N		Questar, Inc., North Canton, OH.	49 CFR 172.301(a), 172.301(c), 172.400(a), 173.173(b)(2), 173.242.	To authorize the manufacture, marking, sale and use of UN 11G fiberboard intermediate bulk containers for use as the outer packaging for certain waste paints and waste paint related material, Class 3 in 5 gallon pails. (mode 1)
13053–N		Honeywell International Inc., Morristown, NJ.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain connected while standing without the physical presence of an unloader. (mode 2)
13054–N		CHS Transportation, Mason City, IA.	49 CFR 173.315(e)	To authorize the transportation in commerce of MC330 & MC331 cargo tanks equipped with an alternative gauging device for use in transporting Division 2.1 and 2.2 material. (mode 1)
13055–N		Stenstrom Petroleum, Equipment Group, Rockford, IL.	49 CFR 172.504(c)(1)(d)	To authorize the transportation in commerce of specially designed equipment with residual amounts of hazardous materials to be transported without placarding. (mode 1)
13056–N		American Type Culture Collection (ATCC), Manassas, Va.	49 CFR 172, Subpart C, 173.134	To authorize the transportation in commerce of certain infectious substances in special packagings. (mode 1)
13057–N		MINTEQ International Inc. Eastern, PA.	49 CFR 172 Subparts D, E & F, 173.24(c) Subparts E & F of Part 173.	To authorize the transportation in commerce of metal tubing containing hazardous materials to be transported with minimal regulation. (modes 1, 2, 3)
13059–N		GE Plastics, Burkville, AL.	49 CFR 177.834(i)(3)	To authorize cargo tanks to remain connected while standing without the physical presence of an unloader. (mode 1)
3060–N		Spence Engineering Company, Inc., Walden, NY.	49 CFR Parts 171–180	To authorize the manufacture, mark, sale and use of specially designed equipment containing various limited quantities of hazardous materials with minimal regulation. (modes 1, 3, 4)
13061–N		Dow AgroSciences L.L.C., Indianapolis, IN.	49 CFR 172.302(a), 172.504(a)	To authorize the transportation in commerce of Division 6.1 liquid fumigants in non-DOT specification cargo tanks equipped with an alternative pressure relief system. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13062–N		Safety-Kleen (BDT), Inc., Columbia, SC.	49 CFR 173.40(c)(2)	To authorize the transportation in commerce of non-DOT specification cylinders filled with a Division 2.3 Inhalation Hazard Zone A, material or a Division 6.1 material. (mode 1)
13063–N		Air Products Polymers, L.P., Dayton, NJ.	49 CFR 174.67(i) & (j)	To authorize the transportation in commerce of rail cars containing Class 3 hazardous materials to remain connected while stand-

Houston Public Library, 500 McKinney Avenue, Houston, TX 77002, (713) 247–2222.
Park Place Regional Library, 8145 Park Place Blvd, Houston, TX 77017, (832) 393–1970.
Patricio Flores Library, 110 North Milby Street, Houston, TX 77003, (832) 393–1780.
Melcher Branch Library, 7200 Keller, Houston, Texas 77012, (832) 393–

competitive situation provided for by the Board's condition by utilizing trackage rights over the former GH&H line and constructing a rail line into the Bayport Loop.

BNSF would operate on average one train each way per day comprising 36 to 66 railcars, totaling 13,000 to 24,000 loaded railcars per year. The majority of the railcars would contain plastic pellets. Approximately 1,500 to 7,000 tank cars each year would contain

alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense * * *." In the EIS, the agencies are considering a full range of alternatives that meet the purpose and need of the project, as well as the No-Action Alternative. Some alternatives have been dismissed from further analysis because they have been determined to be infeasible or because the agencies consider them to be

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13062–N		Safety-Kleen (BDT), Inc., Columbia, SC.	49 CFR 173.40(c)(2)	To authorize the transportation in commerce of non-DOT specification cylinders filled with a Division 2.3 Inhalation Hazard Zone A, material or a Division 6.1 material. (mode 1)
13063–N		Air Products Polymers, L.P., Dayton, NJ.	49 CFR 174.67(i) & (j)	To authorize the transportation in commerce of rail cars containing Class 3 hazardous materials to remain connected while standing without the physical presence of an unloader. (mode 2)
13064–N		Pressed Steel Tank Co., Milwaukee, WI.	49 CFR 173.300a, 173.34(e)	To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder for use in transporting Division 2.3 hazardous materials. (modes 1, 2, 3)

[FR Doc. 02–18228 Filed 7–18–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 34079]

San Jacinto Rail Limited—Construction Exemption—And The Burlington Northern and Santa Fe Railway Company—Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris County, TX

AGENCIES: *Lead:* Surface Transportation Board. *Cooperating:* U.S. Coast Guard, Federal Aviation Administration, National Aeronautics and Space Administration.

ACTION: Notice of availability of final scope of study for the Environmental Impact Statement (EIS).

SUMMARY: On August 30, 2001, San Jacinto Rail Limited (SJRL) and The Burlington Northern and Santa Fe Railway (BNSF) (referred to collectively as the Applicants) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction by SJRL and operation by BNSF of a new rail line near Houston, Harris County, Texas. The project would involve construction of approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). Trains operating over the new rail line would originate at BNSF's New South Yard and operate via trackage rights over the Union Pacific Railroad Company's (UP) Glidden Subdivision and UP's Galveston Subdivision, also known as the former Galveston, Henderson, and Houston Railroad (GH&H) line, to the beginning of the new rail line near Ellington Field. Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. To help determine the scope of the EIS, and as required by the Board's regulations at 49 CFR 1105.10(a)(2), SEA published in the **Federal Register** and made available to the public on November 26, 2001, the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments. SEA held four public scoping meetings at the Pasadena Convention Center on January 14 and 15, 2002. The scoping comment period originally concluded February 1, 2002, but, in response to requests, SEA extended the scoping period an additional 30 days, to March 14, 2002. During the scoping comment period, the U.S. Coast Guard (USCG), the Federal Aviation Administration (FAA), and the National Aeronautics and Space Administration (NASA) requested cooperating agency status in the preparation of the EIS. After review and consideration of all comments received, this notice sets forth the Final Scope of the EIS. The Final Scope adopts the Draft Scope, which is provided as Attachment A, and reflects any changes to the Draft Scope as a result of the comments, summarizes and addresses the principal environmental concerns raised by the comments, and briefly discusses pertinent issues concerning this project that further clarify the Final Scope.

FOR FURTHER INFORMATION CONTACT: Ms. Dana White, SEA Project Manager, toll-free at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339). The Web site for the Surface Transportation Board is *http://www.stb.dot.gov*.

This document is available in English and Spanish at the repositories listed below or by calling the toll-free number at 1–888–299–7857. In addition, a set of frequently asked questions in English and Spanish is provided as Attachment B for quick reference.[1]

San Jacinto College, Central Campus Library, 8060 Spencer Highway, Pasadena, TX 77505, (281) 476–1850.
San Jacinto College, North Campus Library, 5800 Uvalde Street, Houston, TX 77015, (281) 459–7116.
San Jacinto College, South Campus, 13735 Beamer Road, Houston, TX 77089, (281) 922–3416.
University of Houston, Clear Lake Campus, Alfred Neumann Library, 2700 Bay Area Boulevard, Houston, TX 77058, (281) 283–3930.
Freeman Memorial Branch Library, 16602 Diana Lane, Houston, TX 77062, (281) 488–1906.
Harris County Public Library, Evelyn Meador Branch, 2400 N. Meyer Road, Seabrook, TX 77586, (281) 474–9142.
Harris County Public Library, South Houston Branch, 607 Avenue A, South Houston, TX 77587, (713) 941–2385.
Pasadena Public Library, Fairmont Branch, 4330 Fairmont Pkwy, Pasadena, TX 77504, (713) 998–1095.
Pasadena Public Library, Main Branch, 1201 Jeff Ginn Memorial, Pasadena, TX 77506, (713) 477–0276.
Deer Park Public Library, 3009 Center Street, Deer Park, TX 77536–7099, (281) 478–7208.

[1] In addition, SEA has distributed extra copies of numerous community groups that have previously distributed project information from SEA.

Houston Public Library, 500 McKinney Avenue, Houston, TX 77002, (713) 247–2222.
Park Place Regional Library, 8145 Park Place Blvd, Houston, TX 77017, (832) 393–1970.
Patricio Flores Library, 110 North Milby Street, Houston, TX 77003, (832) 393–1780.
Melcher Branch Library, 7200 Keller, Houston, Texas 77012, (832) 393–2480.
Bracewell Branch Library, 10115 Kleckley, Houston, Texas 77075, (832) 393–2580.

SUPPLEMENTARY INFORMATION:

Background

The Bayport Loop consists of approximately 24 shipper facilities. UP is the only railroad serving the Bayport Loop. UP acquired the existing Bayport Loop trackage in its merger with the Southern Pacific Rail Corporation (SP) in 1996. In the Board's final decision approving the merger,[2] and as a condition of the merger approval, the Board used its authority to grant trackage rights over former UP lines (but not former SP lines) to other rail companies to the extent required to ensure an equal level of competition to that which existed before the merger. The Board's decision included granting trackage rights to ensure access to competitive build-ins or build-outs. The Board stated that this would allow other rail companies to replicate the competitive options previously provided by the independent operations of UP and SP. The Board explained in its decision that shippers need not demonstrate the economic feasibility of a build-in or build-out proposal under this condition.

Before the UP/SP merger, the Bayport Loop was solely served by SP. UP operated the former GH&H rail line to the south of Ellington Field, and had an opportunity to construct a new rail line into the Bayport Loop to compete with SP. However, when the two companies merged in 1996, this competitive option would have been eliminated but for the merger condition noted above. Through the Proposed Action, the Applicants here[3] are seeking approval to create the competitive situation provided for by the Board's condition by utilizing trackage rights over the former GH&H line and constructing a rail line into the Bayport Loop.

BNSF would operate on average one train each way per day comprising 36 to 66 railcars, totaling 13,000 to 24,000 loaded railcars per year. The majority of the railcars would contain plastic pellets. Approximately 1,500 to 7,000 tank cars each year would contain hazardous materials or other miscellaneous inbound and outbound commodities.

Environmental Review Process

The Board is the lead agency, pursuant to 40 CFR 1501.5. SEA is responsible for ensuring that the Board complies with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4335, and related environmental statutes. SEA is the office within the Board responsible for completing the environmental review process. ICF Consulting of Fairfax, Virginia is serving as an independent third-party contractor to assist SEA in the environmental review process. SEA is directing and supervising the preparation of the EIS. The USCG, FAA, and NASA are cooperating agencies, pursuant to 40 CFR 1501.6. If the USCG, FAA, and NASA find the EIS adequate, they will base their decisions on it. The EIS should include all of the information necessary for decisions by the Board and the cooperating agencies (collectively, the agencies).

The NEPA environmental review process is intended to assist the agencies and the public to identify and assess the potential environmental consequences of a Proposed Action before a decision on the Proposed Action is taken. The NEPA regulations require the agencies to consider a reasonable range of feasible alternatives to the Proposed Action. The President's Council on Environmental Quality (CEQ), which oversees the implementation of NEPA, has stated in Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations that "[R]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense * * *." In the EIS, the agencies are considering a full range of alternatives that meet the purpose and need of the project, as well as the No-Action Alternative. Some alternatives have been dismissed from further analysis because they have been determined to be infeasible or because the agencies consider them to be environmentally inferior to other alternatives under consideration. The EIS will include a brief discussion of the reasons for eliminating certain alternatives from detailed analysis.

SEA and the agencies will prepare a Draft EIS (DEIS) for the Proposed Action. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the Scope of Study served November 26, 2001. It will also discuss a reasonable range of alternatives to the Proposed Action and recommend environmental mitigation measures.

In addition, the DEIS will also analyze the impacts of the additional traffic from the Proposed Action over those UP lines to which Applicants may acquire trackage rights pursuant to the UP/SP merger condition, namely the Glidden Subdivision and the GH&H line.[4]

The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) will then be prepared reflecting the agencies' further analysis and the comments on the DEIS. In reaching their future decisions on this case, the Board and the cooperating agencies will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

[2] *See Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996).

[3] The Applicants are a partnership comprising BNSF, BayRail, LLC (wholly owned by BNSF), and affiliates of four plastics and chemical production companies located in the Bayport Loop. The four production companies are ATOFINA Petro-Chemicals, Inc., Basell USA, Inc., Equistar Chemicals, LP, and Lyondell Chemical Company.

[4] In order to determine the potential impacts over the trackage rights lines, SEA must establish the current UP traffic levels. Because UP is not a participant in this proceeding, and is therefore beyond the scope of the Board's jurisdiction here, SEA will use the best available information to characterize existing conditions on those two lines. Similarly, in analyzing the No-Action Alternative, SEA will use the best available information to characterize existing conditions on the rail lines that UP currently uses to serve the Bayport Loop and analyze the potential impacts associated with the decrease in rail traffic on those lines as a result of the Proposed Action.

Proposed Action and Alternatives

Based on analysis conducted to date and comments received during the scoping process, the agencies have determined the reasonable and feasible alternatives that will be analyzed in detail in the EIS.[5] To assist with the visualization of the Proposed Action and Alternatives, please refer to the map below.

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[5] Many commenters have urged the Board to require BNSF to provide competing service to the shippers in the Bayport Loop via trackage rights over existing UP rail lines. However, the UP/SP merger decision directs UP and BNSF to negotiate terms for build-in/build-out arrangements; it does not direct the parties to negotiate trackage rights over UP's lines in the state Highway 225 and 146 corridors. The Board's policy is to encourage private-sector dispute resolution whenever possible and BNSF and UP have had exchanges regarding Bayport access. If they should reach an agreement granting BNSF access to the Bayport Loop over UP's line, BNSF would likely move to dismiss its petition to construct and operate a new rail line to the Bayport Loop. Until that happens, however, the Board is obligated to consider BNSF's petition in this proceeding.

Proposed Action and Alternatives

Based on analysis conducted to date and comments received during the scoping process, the agencies have determined the reasonable and feasible alternatives that will be analyzed in detail in the EIS.[5] To assist with the visualization of the Proposed Action and Alternatives, please refer to the map below.

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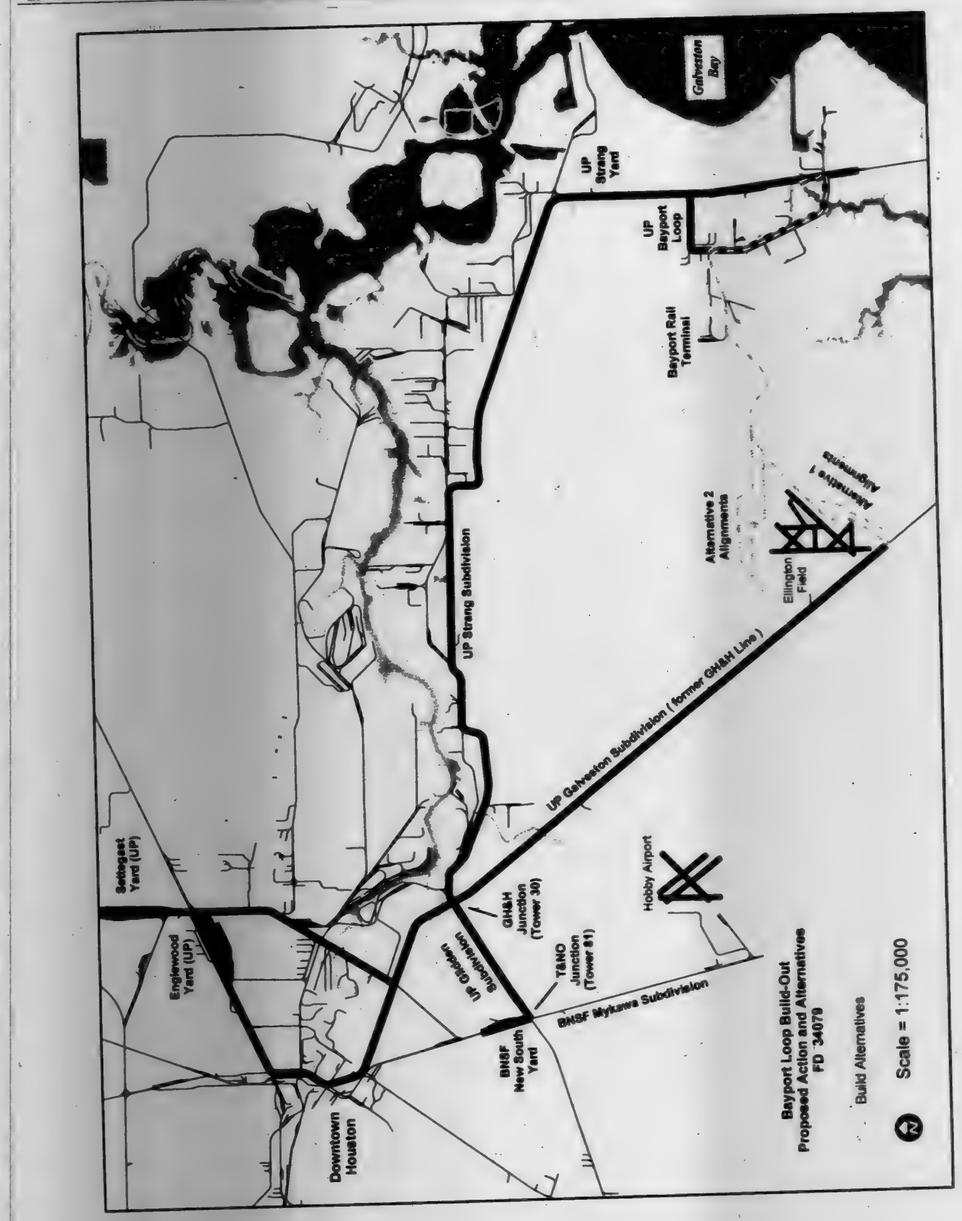

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A. Proposed Action and Modifications

(1) The Proposed Action consists of construction of a new rail line along Alignment 1 to the Bayport Loop and operations from BNSF's New South Yard over UP's Glidden Subdivision and UP's GH&H line. Alignment 1, the Applicants' preferred route, has been modified to include Alignment 1B, which crosses Taylor Bayou parallel to the Port Road and UP crossings. A spur

(1) Alignment 2B, which now replaces Alignment 2, is a modification of Alignment 2 that would diverge from Alignment 2 by turning south before reaching the City of Houston's Southeast Water Treatment Plant. Alignment 2B then turns east across the grounds of the Water Treatment Plant and passes to the south of the existing Water Treatment Plant. It continues east, crossing Space Center Boulevard over a proposed grade separation and joins Alignment 1.

Yard. In analyzing the No-Action Alternative, SEA will use the best available information to characterize existing conditions on the rail lines that UP currently uses to serve the Bayport Loop and analyze the potential impacts associated with the decrease in rail traffic on those lines as a result of the Proposed Action.

E. Alternatives Excluded From Detailed Analysis

than the alternatives that are already under consideration.[7]

(4) The construction and operation of the Proposed Action using a new Beltway 8—Fairmont Avenue Alignment. This alignment would follow the original Alignment 2, continue north across Genoa-Red Bluff Road, run east along Fairmont Parkway, and run south on Red Bluff Road until it reaches one of the other alignments. This alignment may require taking a

operations for a period of three to five years into the future. Projections for rail operations beyond these time frames are not reasonably foreseeable. Beyond three to five years, for example, fluctuations in the economy, changes in contracts between shippers and railroads, railroad mergers, chemical company mergers, expansions or shifts in production among chemical plants, and changes in technology become speculative. The time frame for the

At the request of a number of commenters and several elected officials, SEA extended the comment period for an additional 30 days to March 14, 2002, to provide the public sufficient opportunity to explore alternatives to the proposed route and raise issues pertinent to scoping. SEA published the notice to extend the comment period in the **Federal Register** on February 13, 2002, and distributed it to 650 citizens, elected officials, Federal, state, and local agencies, and

A. Proposed Action and Modifications

(1) The Proposed Action consists of construction of a new rail line along Alignment 1 to the Bayport Loop and operations from BNSF's New South Yard over UP's Glidden Subdivision and UP's GH&H line. Alignment 1, the Applicants' preferred route, has been modified to include Alignment 1B, which crosses Taylor Bayou parallel to the Port Road and UP crossings. A spur would follow part of the original Alignment 1 route to serve potential shippers in the Bayport Loop. The Applicants developed Alignment 1B because of concerns expressed by the National Marine Fisheries Service over an area of Essential Fish Habitat associated with the original proposed crossing of Taylor Bayou. BNSF would operate on average one train each way per day comprising 36 to 66 railcars, totaling 13,000 to 24,000 loaded railcars per year. The majority of the railcars would contain plastic pellets. Approximately 1,500 to 7,000 tank cars each year would contain hazardous materials or other miscellaneous inbound and outbound commodities.

(2) The original Taylor Bayou crossing was part of Alignment 1 as originally proposed by the Applicants. This alignment would run east across Bay Area Boulevard, turn south, cross Taylor Bayou, and turn east along Port Road.

(3) Alignment 1C is a modification to Alignment 1 that would connect with the GH&H line just south of where Alignment 1 would connect. It parallels Alignment 1 to the south-east corner of the Ellington Field fence line. It continues north-east towards the Boeing and NASA facilities on Space Center Boulevard and turns north-west to rejoin Alignment 1 before it crosses NASA's access road to Ellington Field.

B. Alignment 2 Modifications

Alignment 2 was developed by the Applicants as an alternative to the Proposed Action. The original Alignment 2 would have begun construction from the GH&H on the north side of the Sam Houston Parkway (Beltway 8) and run under Beltway 8. The route then would have run parallel to the east side of Beltway 8 to Genoa-Red Bluff Road. It would have then run east alongside Genoa-Red Bluff Road, passing to the north of Ellington Field and the Baywood Country Club. It would have continued east across Red Bluff road to join Alignment 1 into the Bayport Loop. SEA dismissed the original Alignment 2 from detailed analysis for reasons that are discussed below.

(1) Alignment 2B, which now replaces Alignment 2, is a modification of Alignment 2 that would diverge from Alignment 2 by turning south before reaching the City of Houston's Southeast Water Treatment Plant. Alignment 2B then turns east across the grounds of the Water Treatment Plant and passes to the south of the existing Water Treatment Plant. It continues east, crossing Space Center Boulevard over a proposed grade separation and joins Alignment 1.

(2) Alignment 2C is a modification to the original Alignment 2. It would follow the original Alignment 2 and turn south from Genoa-Red Buff Road on the east side of the Water Treatment Plant. It would then turn east again and connect with Alignment 1.

(3) Alignment 2D is a modification to the original Alignment 2 and would turn east before reaching Genoa-Red Bluff Road. It would turn south before reaching the Water Treatment Plant, turn east across the Plant grounds, and connect to Alignment 1.

C. BNSF Trackage Rights Over UP Lines in the SH 225 and SH 146 Corridors

In addition to analyzing the reasonable and feasible alternatives described above, consistent with the requirement in the NEPA implementing regulations to consider alternatives outside the jurisdiction of the lead agency, the EIS will consider BNSF's use of trackage rights over UP's lines in the State Highway (SH) 225 and SH 146 corridors to reach the Bayport Loop. This alternative would involve operating from New South Yard over the Glidden Subdivision and continuing over UP's lines in the SH 225 and SH 146 Corridors. Notwithstanding the unforeseeable likelihood of this event, as discussed earlier, SEA believes that it is necessary to analyze this alternative in the EIS partly for comparative purposes relative to the No-Action Alternative and the Proposed Action, and partly because of the possibility of a negotiated agreement between BNSF and UP regarding use of the track.

D. The No-Action Alternative

Under the No-Action Alternative, the Applicants would not build and operate the new rail line into the Bayport Loop and there would be no change in current operations. UP would continue to serve the petro-chemical plants in the Bayport Loop. The No-Action Alternative consists of the existing situation where UP transports rail cars to and from the Bayport Loop over its lines heading north out of the Loop alongside SH 146, past Strang Yard, then west on its Strang Subdivision alongside SH 225, and on to either Englewood Yard or Settegast Yard. In analyzing the No-Action Alternative, SEA will use the best available information to characterize existing conditions on the rail lines that UP currently uses to serve the Bayport Loop and analyze the potential impacts associated with the decrease in rail traffic on those lines as a result of the Proposed Action.

E. Alternatives Excluded From Detailed Analysis

During the scoping process, the agencies determined that the alternatives discussed below are not reasonable and/or feasible and, therefore, do not warrant detailed consideration in the EIS. The EIS will, however, further describe the reasons for eliminating them from detailed consideration.

(1) The construction and operation of the Proposed Action along Alignments 1A, 2, and 2A. The Applicants believe that these alternatives are not feasible because the construction of a single grade separation for Genoa-Red Bluff Road and Red Bluff Road is economically infeasible and would conflict with the City of Pasadena's plans to accommodate growth in traffic by extending Genoa-Red Bluff Road to the north/northeast to connect with Fairmont Parkway.

(2) The construction and operation of the Proposed Action along Alignments 3 and 4. Although initially included in the Applicants' environmental background document, which accompanied the Applicants' petition to the Board,[6] Alignments 3 and 4 now appear to be infeasible because they would involve new construction off the existing Port Terminal Railroad Association (PTRA) tracks in the rail corridor along SH 225. As determined during this scoping process, the Applicants cannot use trackage rights over the PTRA to utilize Alignments 3 and 4 because of a legal agreement between UP and the Port of Houston Authority that prohibits BNSF from using the PTRA tracks to provide service to the Bayport Loop.

(3) The construction and operation of the Proposed Action along a new alignment in the SH 225 and SH 146 corridors to reach Alignment 3 or 4. This construction alternative, which is not shown on the map, would involve operating from New South Yard over the Glidden Subdivision and appears to have several engineering challenges, and could have environmental and safety concerns that are more substantial than the alternatives that are already under consideration.[7]

(4) The construction and operation of the Proposed Action using a new Beltway 8—Fairmont Avenue Alignment. This alignment would follow the original Alignment 2, continue north across Genoa-Red Bluff Road, run east along Fairmont Parkway, and run south on Red Bluff Road until it reaches one of the other alignments. This alignment may require taking a number of businesses and would adversely affect the entrances and exits for a large shopping center, adversely affect turning movements across Fairmont Parkway, and may have adverse noise effects to sensitive receptors.

(5) Suggestions that negotiations between Bayport Loop shippers and UP for lower shipping rates, in an effort to obviate the need for the Proposed Action, do not meet the purpose and need of proviiding alternative rail service. Negotiations between the Bayport Loop shippers and UP already occur on a regular basis as contracts come up for renewal.

Independent Utility

Scoping comments suggested that the proposed Bayport Channel Container/Cruise Terminal (Bayport Terminal) and the Proposed Action are connected and requested that an EIS be prepared jointly for the two projects. However, based on the Applicant's Verified Statement, SEA's consultation with U.S. Army Corps of Engineers (USACE), which prepared the Draft EIS for the Bayport Terminal, and SEA's consultation with Port of Houston Authority, the two projects are not connected. Rather, the two projects are separate and distinct. They do not depend on each other economically or physically and each would proceed in the absence of the other. This issue will be discussed in more detail in the EIS.

Reasonably Foreseeable Actions

Under CEQ's guidelines, the analysis of environmental effects resulting from a Proposed Action requires the separation of actions and effects that are reasonably foreseeable as opposed to results that are remote and speculative. Typically, SEA analyzes potential rail operations for a period of three to five years into the future. Projections for rail operations beyond these time frames are not reasonably foreseeable. Beyond three to five years, for example, fluctuations in the economy, changes in contracts between shippers and railroads, railroad mergers, chemical company mergers, expansions or shifts in production among chemical plants, and changes in technology become speculative. The time frame for the analysis of potential effects will vary by impact area depending on the availability of information and SEA's ability to reasonably foresee potential impacts.

Public Participation

On October 1, 2001, SEA served and distributed the Notice of Intent to Prepare an EIS to approximately 489 citizens, elected officials, Federal, state, and local agencies, and interested organizations and initiated a toll-free project hotline 1–888–229–7857. On November 26, 2001, SEA served and distributed the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments to approximately 526 citizens, elected officials, Federal, state, and local agencies, and interested organizations. The distribution covered the communities surrounding the Proposed Action and the communities along the UP mainlines connecting the Proposed Action to New South Yard. SEA placed notices of the scoping meetings in several community newspapers and the Houston Chronicle. SEA also provided public service announcements to several Spanish-speaking radio stations.

The scoping meetings were held in the afternoons and evenings on January 14 and 15, 2002, at the Pasadena Convention Center. SEA used a workshop format to allow attendees to provide comments to and ask questions of SEA and SEA's third-party independent contractor, ICF Consulting. The 189 people who attended the scoping meetings included citizens, organizations, elected officials, and officials from state and local agencies. Attendees submitted 21 comment sheets during the meetings and 20 attendees provided oral comments to a court reporter. At the close of the scoping period, on February 1, 2002, SEA received an additional 698 scoping comment forms, form letters, and letters raising environmental issues. At that time, SEA had received 14 calls to the toll-free hotline. Thirteen of these callers asked for information and one provided comments.

At the request of a number of commenters and several elected officials, SEA extended the comment period for an additional 30 days to March 14, 2002, to provide the public sufficient opportunity to explore alternatives to the proposed route and raise issues pertinent to scoping. SEA published the notice to extend the comment period in the **Federal Register** on February 13, 2002, and distributed it to 650 citizens, elected officials, Federal, state, and local agencies, and interested organizations. During that time, SEA conducted additional public involvement activities for the communities along that portion of the UP mainline that the Applicants would use as part of this proposal. Also, project information was translated into Spanish and made available to communities and community leaders who live along the Glidden Subdivision and the GH&H line and invited comments and questions in Spanish to the toll-free hotline. SEA distributed several hundred of these documents in Spanish to numerous community groups. At the end of the extended scoping period, SEA had received 198 additional comment forms, form letters, and letters, as well as 21 calls to the toll-free hotline. Six of these callers asked for information and 15 provided comments.

As part of the environmental review process to date, SEA has conducted broad public outreach activities to inform the public about the Proposed Action and to facilitate public participation. SEA has and will continue to consult with Federal, state, and local agencies, affected communities, and all interested parties to gather and disseminate information about the proposal.

Response to Comments

SEA and the cooperating agencies reviewed and considered the approximately 800 comments in preparation of this Final Scope of the EIS. The Final Scope adopts the Draft Scope and reflects any changes to the Draft Scope as a result of comments. The discussion below summarizes and addresses the principal environmental concerns raised by the comments, and presents additional discussion to further clarify the Final Scope.

A. Rail Operations Safety

General Comments on Infrastructure and Operational Conditions

Comments stated that to operate additional trains safely over the GH&H line its infrastructure should be improved through significant

[6] This document is available in the Board's public record.

[7] More specifically, construction of a new rail line in this corridor might also require the relocation of several miles of pipeline and existing UP tracks in order to create enough space along the existing right-of-way for a new line. The existing rail lines pass through land that is developed with residential, commercial, and industrial uses. Construction of a new rail line in this corridor could bring rail operations closer to homes than any of the other alternatives and might require the taking of homes.

investments. In addition, comments stated that the Board should study these potential investments through the EIS and require them as mitigation. Other comments suggested that the line should be upgraded to welded rail between Graham Siding and Tower 30, and new rail and bridge construction should be done near Sims Bayou/Berry Creek. Also, the applicants should implement crossing improvements and

hazardous material, releases of hazardous material and the number of instances of evacuations from hazardous materials releases resulting from train accidents/derailments. The EIS will describe BNSF's overall safety record as well as the records of the other major U.S. railroads.

Comments on Derailments

Comments expressed concern over

Comments stated that SEA should study the condition of the existing infrastructure and its traffic levels in the DEIS. Comments requested the Board to study infrastructure investment in the DEIS and require this investment as part of mitigation.

Response. In response to concerns raised over the Proposed Action, the EIS will include an analysis of rail operations associated with the Proposed

creates a safety problem. Comments highlighted the trains backing into New South Yard as a particular source of hardship for residents and suggested that this practice be eliminated. Comments stated that the Federal requirement that trains not block crossings for more than ten minutes without cause is not being enforced. Comments suggested that SH 225 already exists as a dedicated container

Comments on the Bayport Rail Terminal

Comments questioned the expansion at the Bayport Rail Terminal that is currently taking place, which will roughly triple its capacity. Comments suggested that SEA note this in the DEIS.

Response. The EIS will consider the expansion of the Bayport Rail Terminal and any relationship with the Proposed

Comments on Potential Impacts Associated with Hazardous Materials Transportation

Comments expressed concern regarding the nature and amount of chemicals that the Applicants would transport, as well as the potential impacts of spills and releases on the surrounding human and natural environment. Comments indicated the need for a risk assessment and

investments. In addition, comments stated that the Board should study these potential investments through the EIS and require them as mitigation. Other comments suggested that the line should be upgraded to welded rail between Graham Siding and Tower 30, and new rail and bridge construction should be done near Sims Bayou/Berry Creek. Also, the applicants should implement crossing improvements and signal installation for rail and non-rail traffic to address the increased hazardous material traffic.

Response. The EIS will include a description of the existing rail operations safety conditions on the lines that the Proposed Action and Alternatives would affect (i.e., those lines over which the Applicants are seeking trackage rights). The existing conditions will be used as the baseline from which to analyze the impacts of the Proposed Action. The EIS also will describe the FRA's regulatory framework for rail safety.

Comments on Risks of Increased Rail Traffic

Comments stated that safety risk will increase because of the increased train traffic and the EIS should undertake a full risk assessment for train accidents and derailments during loading of tank cars and during switching activities in yard facilities. In addition, comments also indicated that SEA should conduct a risk assessment that includes consideration of derailments, collisions, hazmat releases, and human injuries associated with loading, switching, yard activities, grade crossings, and operation associated with the Proposed Action and Alternatives. Comments stated that BNSF has a poor safety record with a total of 485 train accidents in 2001 and a history of chemical spills. Comments asked whether, in the case of a derailment, BNSF would be held responsible for the damages in the area. Other comments stated that the new rail line would be a vast improvement over the present rail line because it would be safe, continuous rail on a modern roadbed. In addition, comments stated that the line would be safest if it is maintained and inspected regularly and suggested that the Board ensure that this happens.

Response. The EIS will analyze the probabilities of derailments and collisions in order to determine the risk associated with transporting hazardous material. The EIS will also include an analysis of highway-rail at-grade crossing accidents. The analysis will focus primarily on the historical, statistical BNSF and UP accident/derailment rate involving trains carrying hazardous material, releases of hazardous material and the number of instances of evacuations from hazardous materials releases resulting from train accidents/derailments. The EIS will describe BNSF's overall safety record as well as the records of the other major U.S. railroads.

Comments on Derailments

Comments expressed concern over potential rail car derailments. In addition, comments asked what the chances are of derailment for trains traveling straight compared to those making turns, because the new rail line makes several turns. Comments expressed concern over the two sharp curves in build-out Alignment 1C. Comments stated that BNSF has had three derailments since October 2001. Furthermore, comments expressed concern over the speed the trains would be operating and contended that if they operate over 20 miles per hour (mph) they could derail.

Response. The EIS will include an analysis of the Proposed Action in light of the FRA track safety standards and proposed operating speeds. The FRA track safety standards contain requirements for tangent (straight) and curved track and once the railroads set the train speeds at which they wish to operate, they must maintain the track according to the FRA standards. Curved track must meet additional geometry requirements, as compared to tangent track, in order to be in compliance with the FRA standards.

B. Rail Operations

Comments of the Condition of Existing Infrastructure

Comments focused on the condition of the existing rail infrastructure around Houston, stating that it is currently inadequate. Comments expressed concern over the addition of trains and rail cars to what the comments characterized as an already congested and poorly maintained rail network. Specific comments described the condition of the GH&H line, the UP Glidden Subdivision, and T&NO junction as unacceptable. Comments stated that the railroads should continue their investment in infrastructure. Comments stated that BNSF has not included infrastructure improvements as part of its application and contests the need for such improvements. Comments suggested that moving rail traffic off the existing lines along SH 146 and SH 225 might drain the capital necessary to maintain those lines at the same time as increasing rail traffic problems elsewhere in Houston. Comments stated that SEA should study the condition of the existing infrastructure and its traffic levels in the DEIS. Comments requested the Board to study infrastructure investment in the DEIS and require this investment as part of mitigation.

Response. In response to concerns raised over the Proposed Action, the EIS will include an analysis of rail operations associated with the Proposed Action and Alternatives, which involves two trains per day, on average, including impacts over UP's main line. The EIS will consider the existing rail operations and the condition of the infrastructure that the Proposed Action and Alternatives would affect and will use this information as a baseline in its analysis of impacts. The EIS will consider mitigation measures as appropriate. The EIS also will discuss the FRA's regulatory framework for minimum safety standards for track infrastructure.

Comments Concerning the GH&H Line

Comments expressed concern about the condition of the GH&H line and what one comment called "its unacceptable safety and traffic problems." Comments also mentioned the severity of safety and traffic problems near three schools that directly border the line and fifteen schools that are located within one mile of the GH&H line and attributed some of these problems to the lack of incentive to upgrade a lightly used track. Comments suggested that the 150-year-old line needs to be repaired and that the GH&H tracks are too old to bear any additional traffic. Comments suggested that the Board require that the track be replaced with continuous welded rail and that all bridges, grade crossings, and switches be brought up to the best available standards. Other comments stated that the GH&H line has presented no problems for about 150 years.

Response. The EIS will analyze the rail operations impacts of the Proposed Action and Alternatives on the UP's GH&H line. The analysis will account for the existing condition of the line and the current rail traffic levels. For example, SEA's initial fieldwork found four to five UP trains per day operating on the GH&H line based on four days of train counts and nine trains per day during a fifth day of train counts. The EIS will include a description of safety conditions on the GH&H.

Comments on Rail Congestion

Comments stated that there is chronic rail congestion on the East Belt line and in the vicinity of New South Yard that impairs the mobility of residents and

creates a safety problem. Comments highlighted the trains backing into New South Yard as a particular source of hardship for residents and suggested that this practice be eliminated. Comments stated that the Federal requirement that trains not block crossings for more than ten minutes without cause is not being enforced. Comments suggested that SH 225 already exists as a dedicated container and chemical traffic corridor and that re-routing traffic away from this corridor would create traffic problems on other lines, including the GH&H line, Glidden Subdivision, and former Houston Belt & Terminal Railway lines. Comments called on SEA to give weight to the benefits of this current dedicated corridor.

Response. The EIS will consider the existing rail operations in the project area and the potential effects from the Proposed Action and Alternatives, including a discussion of nearby UP, BNSF, and PTRA rail line operations on the East Belt, Double Track Junction, T&NO Junction, and switching operations in both New South Yard and Old South Yard.

Comments About Daily Train Traffic

Comments requested that SEA study existing train traffic levels on the lines that the Proposed Action would affect, in order to provide a baseline rail traffic model. Comments also suggested studying the traffic and mapping grade crossings on lines that the Proposed Action and Alternatives would directly and indirectly affect. Comments requested that SEA determine how existing rail traffic would interact with the new traffic, as well as traffic identified in the Bayport Terminal and Texas City/Shoal Point container facility DEIS. Comments questioned the proposed use of welded track, which could allow speeds of up to 60 mph, when the Applicants have stated that the speed limit would be 20 mph. Other comments asked how the proposed 20 mph speed limit would be controlled and enforced.

Response. The EIS will consider the existing rail operations in the project area and the potential effects from the Proposed Action and Alternatives. For example, as discussed earlier, the EIS will include the results of SEA's field work which sampled the numbers of trains and rail cars operating on the applicable lines in order to better determine the daily number of trains for each of the lines in the project area. The EIS will also consider the interaction of the new trains with existing rail traffic and will describe the enforcement of speed limits.

Comments on the Bayport Rail Terminal

Comments questioned the expansion at the Bayport Rail Terminal that is currently taking place, which will roughly triple its capacity. Comments suggested that SEA note this in the DEIS.

Response. The EIS will consider the expansion of the Bayport Rail Terminal and any relationship with the Proposed Action and Alternatives.

C. Hazardous Materials Transportation Safety

General Comments on Assessment of Existing Conditions

Comments expressed general concern about whether the EIS would adequately assess the existing conditions relevant to hazardous materials transportation safety in the area potentially affected by the Proposed Action and Alternatives, particularly with respect to the extent of the area subject to analysis, the population potentially affected in the event of a release, the existing land uses in the area (e.g., proximity to homes, schools, airport, assisted living facilities), and the existing emergency management services. Comments mentioned that the U.S. Department of Transportation extensively regulates the transportation of hazardous materials, including by rail. Comments also indicated that the Applicants subscribe to a Responsible Care® initiative that responds to public concerns about the manufacture, distribution, and use of chemicals.[6]

Response. The EIS will describe the existing conditions in the project area. The EIS will also describe the existing emergency management services, including voluntary initiatives implemented by industry in coordination with local authorities. The EIS will include a description of regulations applicable to the transportation of hazardous materials via rail and related emergency response requirements. As part of the assessment of potential impacts associated with hazardous materials transportation, the EIS is considering the population located within the area of influence of the Proposed Action and Alternatives that potentially could be affected in the event of a release.

[6] Responsible Care® is an initiative sponsored by the American Chemistry Council which, among other activities, works with manufacturers, customers, carriers, suppliers, and distributors to foster the safe use, transport, and disposal of chemicals.

Comments on Potential Impacts Associated with Hazardous Materials Transportation

Comments expressed concern regarding the nature and amount of chemicals that the Applicants would transport, as well as the potential impacts of spills and releases on the surrounding human and natural environment. Comments indicated the need for a risk assessment and evacuation plans pertaining to the proposed rail line. Comments mentioned the risks related to accidents, including derailments and collisions. Other comments expressed concern regarding the safety statistics of existing transport by chemical companies and railroads.

Response. The EIS will assess potential impacts associated with hazardous materials transportation based on an analysis of the probability of a release of hazardous materials and on an assessment of potential consequences in the event of such a release. The analysis of the probability of a release of hazardous materials will consider the safety statistics from the FRA for railroad companies operating in the project area. The assessment of potential consequences will consider the types of chemicals transported over the Proposed Action and Alternatives, as well as the population located along the main lines and around the rail yards that potentially could be affected in the event of a release. Both the analysis of the probability of a release and the assessment of potential consequences will consider existing conditions under the No-Action Alternative, as well as reasonably expected potential conditions if the Proposed Action should be approved and implemented.

Comments Specific to Terrorism

Comments expressed concern about potential terrorist acts that may involve hazardous materials transportation and may target critical infrastructure in the area potentially affected by the Proposed Action.

Response. Consistent with prior cases before the Board, safety will be a paramount concern in the environmental review process in this proceeding.

The EIS will consider the probability of a release of hazardous materials during transportation using historic accident statistics, regardless of the cause of the release. The EIS will also consider the potential consequences of releases to human health and the environment.

The EIS will also describe the existing regulations and policies governing the

transportation of hazardous materials and the latest developments in those regulations and policies, such as the new rules proposed on May 2, 2002, by the Department of Transportation's Research and Special Programs Administration (RSPA), which would require shippers of certain hazardous materials to develop or update security plans and provide appropriate training. During the course of the environmental

of pipeline safety factors at rail/pipeline crossings. In particular, comments expressed concern that cleanup (e.g., excavation of soil) of a spill from a railcar near a pipeline that transports flammable or otherwise hazardous chemicals could cause a pipeline rupture and/or explosion, as had occurred in the recent past. Comments also expressed concern about possible pipeline rupture during construction of

comments requested a rail overpass and overwalk at Howard Drive to protect the safety of children and their pets. Comments stated that too many accidents occur at Old Galveston Road and Howard Drive.

Response. The EIS will analyze potential safety impacts at grade crossings. The EIS will address mitigation measures as appropriate and will discuss the Federal Railroad

existing grade crossings, as well as at new grade crossings.

Emergency Response

Comments expressed concern over potential delays to emergency vehicles and blockages of emergency evacuation routes. Comments requested that the EIS include maps of primary emergency management systems, fire, and public safety access routes that the proposed alignments would block. Comments also

Action would reduce noise impacts in comparison to trucks in the area.

Response. Typically, the Board analyzes noise impacts where there is an increase of at least eight trains per day on a rail line or an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) (see 49 CFR 1105.7e(6)). However, in response to concerns raised over the Proposed Action, the EIS will analyze the noise impacts of train operations associated

instantaneous noise impact assessment, the EIS will provide instantaneous noise levels from a range of sources to provide context (e.g., airplanes, trains, and cars), and mitigation measures as appropriate.

Comments on Long-term Sound Level Averages

Comments requested that long-term sound level averages (over an hour or more) be included in the analysis for construction activities, but not in

transportation of hazardous materials and the latest developments in those regulations and policies, such as the new rules proposed on May 2, 2002, by the Department of Transportation's Research and Special Programs Administration (RSPA), which would require shippers of certain hazardous materials to develop or update security plans and provide appropriate training. During the course of the environmental review process here, SEA will keep abreast of any policies or recommendations that RSPA and the FRA may develop and that may be applicable to this proceeding, and will provide information on any developments in the Draft and Final EIS, if appropriate.[9]

The EIS will also recognize the procedures now in place in Houston, and in the Bayport Loop area in particular, to handle hazardous materials transport safely. Houston and the Bayport Loop have one of the largest concentrations of chemical facilities in the country. As a result, Houston has in place significant specialized emergency management capabilities to address both accidental and intentional events that may occur in the process of handing and transporting chemicals and hazardous materials.

The security issues relating to potential terrorist acts in the area potentially affected by the Proposed Action do not appear to be separate and distinct from the security issues facing the railroad industry generally. As noted above, these issues are currently being examined for the industry as a whole by RSPA. The EIS will examine the procedures that railroads must comply with regarding transportation safety, security, and the handling of hazardous materials on all their lines.

D. Pipeline Safety

General Comments

Comments expressed concern about the proximity of the proposed rail line to existing pipelines, noting that in many places the proposed alignment would cross directly over or run beside existing pipelines. Comments recommended that SEA perform a risk assessment that includes consideration of pipeline safety factors at rail/pipeline crossings. In particular, comments expressed concern that cleanup (e.g., excavation of soil) of a spill from a railcar near a pipeline that transports flammable or otherwise hazardous chemicals could cause a pipeline rupture and/or explosion, as had occurred in the recent past. Comments also expressed concern about possible pipeline rupture during construction of the proposed line and inquired whether existing regulations prohibit construction of rail lines in close proximity to pipelines. Comments inquired whether any chemical incompatibilities were expected to exist between the contents of a particular pipeline and the contents of a rail car passing in close proximity.

Response. The EIS will consider pipeline safety factors at rail/pipeline crossings and where a rail alignment runs beside existing pipelines. The EIS will examine the likelihood of a hazardous materials release due to construction and operation of the Proposed Action and Alternatives near pipelines and the potential impacts from a hazardous material release.

Comments on Communication in the Event of an Accident

Comments requested that the scope of the EIS be expanded to include an examination of whether communication between the railroad, the pipeline companies, and area residents would be sufficient in the event of an accident.

Response. The EIS will describe emergency preparedness requirements and plans for the Proposed Action and Alternatives, including provisions for communications in the event of an accident.

E. Transportation

Grade Crossing Safety

Comments expressed concern over vehicle and pedestrian accidents, including accidents involving people with disabilities at grade crossings. Comments mentioned that four at-grade crossing accidents occurred at T&NO junction (immediately south of New South Yard) within a ten-month period from January to October 2001. In addition, comments expressed concern over the grade crossing safety risks associated with travel to and from schools. Comments stated that the Proposed Action and Alternatives would double safety risks and requested that BNSF undertake a series of crossing improvements and signal installations for rail and non-rail traffic. Other comments requested that all major roads be grade separated. In addition, comments requested a rail overpass and overwalk at Howard Drive to protect the safety of children and their pets. Comments stated that too many accidents occur at Old Galveston Road and Howard Drive.

Response. The EIS will analyze potential safety impacts at grade crossings. The EIS will address mitigation measures as appropriate and will discuss the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA) regulations governing grade crossing safety, which are delegated to the State of Texas. The EIS will also reflect consultations with and recommendations by the Texas Department of Transportation regarding grade crossing safety.

Grade Crossing Delay

Comments expressed concern over a potential increase in vehicle traffic congestion throughout east and southeast Houston due to additional train traffic from the Proposed Action. In addition, comments requested that the delay analysis not be limited to existing grade crossings but should include future crossings such as Space Center Boulevard, Red Bluff Road, Bay Area Boulevard, Port Road, and SH 146. Comments expressed concern over traffic blockage due to the lack of planned grade separated crossings. Othef comments expressed concern over the congestion at New South Yard resulting in main road blockages. Comments expressed concern over trains blocking access to their communities (e.g., Old Galveston Road). Comments also mentioned traffic delays around schools. Comments stated that the Texas Transportation Code 471.007, which does not allow trains to block crossings for more then 10 minutes, is violated daily by existing trains. To address this problem, the comments requested that the Board ensure that an enforceable plan to prevent rail traffic problems and their associated safety risks accompany the application. Comments requested that BNSF not store cargo or park trains in such a way that they would block streets, other tracks, or crossings. Comments stated that the grade crossing delay problem could be mitigated through an enforceable commitment to off-peak hour operations. Other comments stated that the Board should see that traffic problems in east and southeast Houston are solved regardless of exemption approval in this proceeding.

Response. The EIS will analyze the potential effect that the Proposed Action and Alternatives might have on delay at existing grade crossings, as well as at new grade crossings.

Emergency Response

Comments expressed concern over potential delays to emergency vehicles and blockages of emergency evacuation routes. Comments requested that the EIS include maps of primary emergency management systems, fire, and public safety access routes that the proposed alignments would block. Comments also expressed concern over the delays that would occur at Space Center Boulevard, which is being extended and could be used as an evacuation route. Comments stated that the community of Shoreacres contracts its emergency medical services from Clear Lake and would be directly affected by the Proposed Action and Alternatives. Comments requested that the EIS examine the frequency of road blockages from BNSF and UP trains.

Response. The EIS will analyze the potential impacts of the Proposed Action and Alternatives on emergency response vehicles and evacuation routes due to blocked crossings associated with the train traffic of the Proposed Action.

Other Transportation Projects

Comments requested that the EIS coordinate with other studies such as the HGAC 2025 Metropolitan Transportation Plan (MTP), the SH 146 Major Investment Study, the Texas City Shoal Point DEIS and the Bayport Terminal DEIS. Comments also expressed the need for the EIS to consider the potential transportation impacts of these projects along with the Proposed Action.

Response. The EIS will analyze the Proposed Action and Alternatives in the context of other reasonably foreseeable projects in the area. The EIS will consider information on transportation improvements and road traffic predictions from all relevant studies.

F. Noise and Vibration

General Comments on Noise and Vibration

Comments expressed generalized concern about noise and vibration impacts that would result from the proposed rail operations and construction, including adverse effects on communities, schools, residences, property values, and overall quality of life along both the new and existing rail lines. Comments also expressed concern that rail line traffic would increase in the future, which would lead to more noise pollution. Additional comments expressed concern about the effects of noise and vibration on wildlife. Comments also stated that the Proposed Action would reduce noise impacts in comparison to trucks in the area.

Response. Typically, the Board analyzes noise impacts where there is an increase of at least eight trains per day on a rail line or an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) (see 49 CFR 1105.7e(6)). However, in response to concerns raised over the Proposed Action, the EIS will analyze the noise impacts of train operations associated with an increase of two trains per day, on average, over both the new line and trackage rights lines, and for construction of the project. The EIS noise analysis will include adverse noise effects on sensitive receptors such as residences and schools. The EIS will discuss operational and construction-induced vibration to address concerns raised by comments. Potential effects of noise and vibration on wildlife will be addressed under biological resources.

Comments on Evaluation of Noise Levels

Comments requested that the EIS discuss applicable noise regulations and standards and noise levels along all proposed alignments, including: (1) Absolute and incremental increase in noise levels, as well as appropriate absolute criteria (comments suggested EPA's goal of a Day-Night Equivalent Level, abbreviated as L_{dn} or DNL of 55 Hourly A-Weighted Sound Level (dBA) for residential areas) and, (2) short-term (instantaneous to one-hour) criteria. Instantaneous noise impact assessment was also requested, estimating noise levels for both day and night. Comments also stated that the EIS should analyze background noise, frequent noise that is louder than ambient noise, periodic noise, infrequent noise, and rare, but foreseeable noise. Comments also requested the evaluation of mitigation options.

Response. The Board's regulations at 49 CFR 1105.7 use an incremental increase in noise levels of three decibels L_{dn} or more, or an increase to a noise level of 65 L_{dn} or greater as noise impact analysis thresholds. Sixty-five L_{dn} is the standard employed by Federal agencies that regulate or evaluate noise impacts, including the EPA, FHWA, Federal Transit Administration (FTA), FRA, and FAA. The Board uses this standard in all of its environmental review analyses. Federal agencies consider noise levels above 65 L_{dn} as incompatible with residential land use. The EIS will discuss existing noise levels. For example, much of the project area is already at 65 L_{dn} or higher due to existing sources (e.g., existing rail traffic, Ellington Field). Regarding instantaneous noise impact assessment, the EIS will provide instantaneous noise levels from a range of sources to provide context (e.g., airplanes, trains, and cars), and mitigation measures as appropriate.

Comments on Long-term Sound Level Averages

Comments requested that long-term sound level averages (over an hour or more) be included in the analysis for construction activities, but not in analysis for operational activities, unless appropriate.

Response. The construction noise analysis in the EIS will consider both long (30-day average) and short-term (8 hour) sound levels. The operational analysis in the EIS will consider long-term sound levels.

Comments on Proposed Action and Alternative Alignments

Comments expressed concern over specific alignments for the Proposed Action and Alternatives. Comments specifically referred to Alignments 1, 1C, and 2B as unacceptable due to their proximity to the Northfork subdivision in Clear Lake City. Comments also suggested that Alignments 1, 1B, and 1C would have a negative impact on the community because of noise. Comments suggested that the two sharp curves proposed in Alignment 1C would cause increased noise when the trains turn and the joints move between the cars. Comments suggested that the DEIS evaluate noise impacts for existing and reasonably foreseeable future land use. More specifically, comments expressed concern over potential noise and vibration impacts to NASA's Sonny Carter Training Facility. Comments also expressed concern over the increased noise impacts that a new rail line would introduce, in addition to the noise from existing operations at Ellington Field, near-by industrial plants, and existing rail traffic along SH 3. Comments also stated that the new rail line would have an insignificant impact on noise in comparison to existing operations at Ellington Field.

Response. The noise analysis in the EIS will include noise contours for rail operations over each new construction alignment evaluated and noise contours for associated rail operations over the existing mainlines, including the No-Action Alternative, to disclose areas where the Proposed Action would cause noise effects. The EIS will address the potential for wheel squeal noise. The EIS will determine whether the Proposed Action would cause any noise and vibration effects to NASA's Sonny Carter Training Facility.

[9] While the Board is directed to promote a safe rail transportation system in discharging its duties involving rail construction and other matters that require action by the Board, FRA has primary authority to ensure railroad safety under the Federal Rail Safety Act (FRSA), 49 U.S.C. 20101 *et seq.* Railroads are legally bound to comply with the comprehensive across-the-board safety measures adopted under FRSA on all of their lines, regardless of any specific mitigation that the Board may impose in any case-specific environmental review of individual proposals that may require Board approval.

Comments on Vibration Impacts

Comments expressed generalized concern over the potential effects that vibration resulting from construction and operation activities of the Proposed Action may have on schools, homes, structures, and/or roads. In addition, comments expressed concern over potential vibration impacts to NASA's Sonny Carter Training Facility. Comments also requested that the EIS

an increase in rail traffic of at least 100 percent (measured in gross ton miles annually), or an increase in rail yard activity of at least 100 percent (measured by carload activity). When a Proposed Action affects a non-attainment area, as defined by the CAA, as is the case here, the Board typically analyzes air impacts if there is an increase of at least three trains per day, an increase in rail traffic of at least 50

and Alternatives, determine the sources of fine particle emissions, and examine the potential health effects resulting from increased exposure to such pollutants.

Response. Typically, the Board would not analyze potential air quality effects from fine particulate emissions ($PM_{2.5}$) in an EIS for a project such as this, with a projected low level of increased rail activity (two trains per day on average),

water resources, including contamination of the water supply, potential impacts on water quality, and the effects of hazardous materials on the high water table in the project area. Comments mentioned specific concern regarding possible adverse impacts on Armand Bayou or the Armand Bayou Nature Preserve. Comments also mentioned concern for other water bodies, including Mustang Bayou, Taylor Lake, Clear Lake, and Galveston

the project area. Comments indicated concern for the possible impact to water quality from wetland filling and requested that the EIS disclose the amount of wetlands that will be filled for each alternative alignment. Other comments suggested that the Board include a Clean Water Act (CWA) Section 404(b)(1) analysis for wetlands that are proposed to be filled.

Response. As noted above, the EIS will include a discussion of the

impacts to both wetlands subject to permitting by the USACE under CWA Section 404 (i.e., "jurisdictional wetlands") and non-jurisdictional wetlands (e.g., isolated wetlands) is included. The USACE Galveston District will make the jurisdictional determination regarding wetlands. The EIS will include the results of the determination, if available, for the Proposed Action and Alternatives.

Comments on Water-Related Permits

Comments on Vibration Impacts

Comments expressed generalized concern over the potential effects that vibration resulting from construction and operation activities of the Proposed Action may have on schools, homes, structures, and/or roads. In addition, comments expressed concern over potential vibration impacts to NASA's Sonny Carter Training Facility. Comments also requested that the EIS analyze and quantify such impacts.

Response. The EIS will discuss operational and construction-induced vibration. The EIS will also evaluate vibration impacts on the basis of maximum vibration level. Because maximum vibration levels would be essentially unchanged for areas where rail traffic currently exists, the EIS discussion of potential vibration impacts is expected to focus on areas where new rail construction would occur.

G. Climate and Air Quality

General Comments on Air Quality

Comments expressed general concerns about air pollution, including diesel emissions, and associated adverse health effects resulting from construction and operation of the Proposed Action and from potential releases should a chemical spill occur. Comments also stated that Federal highway funds might be lost as the result of increasing air pollution. Further, comments expressed concern over current Clean Air Act (CAA) conformity compliance issues and the additional air quality impacts that construction and operation of the Proposed Action would have on the Houston-Galveston non-attainment area. In addition, comments requested that SEA consider all criteria pollutants in the air quality analysis. Comments requested dispersion modeling and analysis of the air quality impacts on a local, rather than a county-wide, level. Comments expressed concern that the Proposed Action would increase air pollution by encouraging expansion of the petro-chemical plants in Houston. Comments stressed that census data and risk factors should be used to determine which populations would likely experience health effects from exposure to air emissions. Finally, comments requested estimates of emission rates and use of dispersion modeling of carbon monoxide from locomotive diesel engines to determine the impacts on breathing air intakes at NASA's Sonny Carter Training Facility.

Response: The Board typically analyzes air impacts where there is an increase of at least eight trains per day, an increase in rail traffic of at least 100 percent (measured in gross ton miles annually), or an increase in rail yard activity of at least 100 percent (measured by carload activity). When a Proposed Action affects a non-attainment area, as defined by the CAA, as is the case here, the Board typically analyzes air impacts if there is an increase of at least three trains per day, an increase in rail traffic of at least 50 percent, or an increase in rail yard activity of at least 20 percent. The Proposed Action anticipates two trains per day, and would therefore not trigger any environmental thresholds requiring air quality impacts analysis. However, in response to concerns raised over potential impacts to air quality from the Proposed Action, the EIS will include analysis of air impacts of train operations.

The EIS will also examine the additional emissions from both the construction and operational phases of the Proposed Action and Alternatives, including rail-related emissions and potential air emission increases due to increased vehicle delays at highway/rail at-grade crossings. The EIS analysis will include consideration of criteria pollutants, with emphasis on those most relevant to the Houston non-attainment situation (*e.g.*, NO_X and PM_{10}). If additional emissions associated with two train trips per day are found to be large enough to cause exceedances of criteria pollutant standards, then the EIS will include consideration of these impacts. Further, the EIS will determine whether carbon monoxide concentrations would have an adverse affect on the breathing air intakes at NASA's training facility. The EIS will evaluate releases, including air emissions, resulting from spills in the context of the hazardous materials transport safety analysis.

Comments on Particulate Matter

Comments expressed general concern over small particle pollutant emissions resulting from the Proposed Action. Comments stated that the air quality analysis should examine levels of fine particulate matter ($PM_{2.5}$) associated with construction and operation of the Proposed Action and provide figures showing the impacts on air quality specifically for the area that includes the Proposed Action. Comments indicated that exhaust from diesel sources is a major source of $PM_{2.5}$ air pollution, as well as other fine particle emissions, that may be hazardous and lead to adverse health effects. Comments stated that the EIS should analyze the background level of $PM_{2.5}$ air pollution for the Proposed Action and Alternatives, determine the sources of fine particle emissions, and examine the potential health effects resulting from increased exposure to such pollutants.

Response. Typically, the Board would not analyze potential air quality effects from fine particulate emissions ($PM_{2.5}$) in an EIS for a project such as this, with a projected low level of increased rail activity (two trains per day on average), the lack of an attainment or nonattainment designation for $PM_{2.5}$ in the Houston area pursuant to the CAA, and the absence of a State Implementation Plan (SIP) or emission threshold that would trigger requirements for fine PM. However, in response to concerns raised over the Proposed Action, the EIS will include examination of changes in diesel particulate emissions resulting from operation and construction of the Proposed Action and Alternatives.

Comments on Hazardous Air Pollutants

Comments expressed concern about hazardous air pollutant (HAP) emissions, especially diesel emissions, resulting from construction and operation of the Proposed Action. Comments requested that the EIS indicate background levels of HAPs, areas that will experience increased HAP levels as a result of the project, the total and incremental increase in HAP levels that these areas will experience, and the resulting health effects.

Response. The Board would not normally analyze HAP emissions in an EIS for a project such as this with projected low level of increased rail activity, and the absence of HAP emission regulations applicable to mobile sources in Texas. However, in response to concerns raised over the Proposed Action and recent concerns about possible adverse health impacts from diesel emissions, the EIS will include a diesel emissions screening analysis. The analysis will compare estimates of daily average diesel emissions from construction and operation of the Proposed Action and Alternatives with county total daily average emissions and with the total daily average existing train activity, local diesel truck activity and other potential sources of nearby diesel emissions (e.g., airport ground support equipment) for selected site locations (e.g., near residential areas) in the project area.

H. Water Resources

General Comments on Water Quality

Comments expressed general concern about the effects of a new rail line on water resources, including contamination of the water supply, potential impacts on water quality, and the effects of hazardous materials on the high water table in the project area. Comments mentioned specific concern regarding possible adverse impacts on Armand Bayou or the Armand Bayou Nature Preserve. Comments also mentioned concern for other water bodies, including Mustang Bayou, Taylor Lake, Clear Lake, and Galveston Bay.

Response. The EIS will describe the existing surface water and groundwater resources within the project area, including lakes, rivers, bayous, streams, stock ponds, wetlands, and floodplains and the potential impacts on these resources resulting from construction and operation of the Proposed Action and Alternatives.

Comments Specific to Spills

Comments mentioned the effect that potential chemical spills could have on water quality and ecologically sensitive bayous and estuaries. Comments also mentioned the possibility of contamination of groundwater due to chemical spills, including leakage and runoff from operation and construction activities.

Response. The EIS will analyze the potential impact associated with a release of hazardous materials to surface water and groundwater.

Comments Specific to Floodplains

Comments mentioned possible impacts/changes to the floodplains, drainage, and flood control systems as a concern. Comments also requested that SEA consider the impacts from constructing a rail line that could potentially "dam the city" of Clear Lake and reduce the region to a 100-year flood plain. Comments requested that SEA include a storm surge analysis along the proposed route.

Response. The EIS will consider the existing surface water and groundwater resources within the project area, including floodplains and the potential impacts on floodplains resulting from construction and operation of the Proposed Action and Alternatives. The EIS also will consider the water quality issues associated with stormwater, including requirements of the National Pollutant Discharge Elimination System (NPDES) stormwater management program.

General Comments on Wetlands

Several comments expressed general concern for the negative environmental impacts on the wetlands surrounding Armand Bayou and other wetlands in the project area. Comments indicated concern for the possible impact to water quality from wetland filling and requested that the EIS disclose the amount of wetlands that will be filled for each alternative alignment. Other comments suggested that the Board include a Clean Water Act (CWA) Section 404(b)(1) analysis for wetlands that are proposed to be filled.

Response. As noted above, the EIS will include a discussion of the potential impacts to wetlands and water quality. The approximate acreage of impact is calculated for the Proposed Action and Alternatives. The EIS will provide the approximate area of impact to wetlands along each alignment. A wetlands analysis under CWA Section 404(b)(1) is part of a permitting process that involves the Applicant and the USACE. The EIS will include a discussion of the CWA Section 404 permitting process.

Comments Related to Isolated Wetlands

Comments discussed the ruling on isolated wetlands by the U.S. Supreme Court on January 9, 2001 in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159, 121 S. Ct. 675 (2001) (SWANCC). Comments stated that no national guidance has yet been promulgated by the Environmental Protection Agency (EPA) and the USACE, and that there are many interpretations of this ruling nationwide. Comments also stated that they did not agree with the USACE Galveston District's interpretation of the Supreme Court decision that is described in the Bayport Terminal DEIS. Comments also indicated the view that SEA would likely defer to this interpretation but requested that SEA include the following analyses in the EIS: (1) Maps of jurisdictional and non-jurisdictional wetlands and field verification of the jurisdictional wetlands, (2) a map layer of proposed filled areas in the wetlands, (3) cross-section drawings of the Proposed Action with heights and widths, (4) a discussion of the USACE Galveston District's interpretation of jurisdictional wetlands, and (5) notification to TNRCC of the project during preparation of the DEIS. Comments recommended identifying all wetland areas within the project area and minimizing any adverse impacts to isolated wetlands to the same extend as jurisdictional wetlands.

Response. The EIS will include a discussion of the applicable regulatory programs at both the state and Federal level. The EIS also will characterize existing conditions and potential impacts to wetlands from the Proposed Action and Alternatives. The potential impacts to both wetlands subject to permitting by the USACE under CWA Section 404 (i.e., "jurisdictional wetlands") and non-jurisdictional wetlands (e.g., isolated wetlands) is included. The USACE Galveston District will make the jurisdictional determination regarding wetlands. The EIS will include the results of the determination, if available, for the Proposed Action and Alternatives.

Comments on Water-Related Permits

Comments stated that under the Harris County Stormwater Quality Regulations, a stormwater quality permit for construction activity might be required from Harris County. Further, comments indicated that the Flood Control Division of the Harris County Public Infrastructure Department would need to approve the construction drawings for work proposed in the Department's right-of-way. Comments also mentioned that approval might be required from the Engineering Division of the Harris County Public Infrastructure Department due to the impact of the proposed rail on existing drainage.

Comments noted the requirements of and the need to coordinate with the Galveston District of USACE. Comments expressed the need to determine potential jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 due to the crossing of Armand Bayou. Comments also suggested the need for permits from USACE for environmentally sensitive areas of Armand Bayou. Comments suggested consultation with USACE to determine if permitting issues under CWA Section 404 would be necessary for the regional stormwater detention basin and for the wetlands mitigation area in the Space Center Boulevard extension project east of Ellington Field.

Comments indicated that the proposed new rail line crosses Armand Bayou, Big Island Slough, and Taylor Bayou, and because these waterways are tidally influenced, they are considered navigable waterways of the U.S. and subject to USCG jurisdiction. These comments also included information to aid in the determination of bridge permits for the proposed rail lines.

Response. As part of the analysis of potential impacts on water resources, the EIS will consider the permits and regulations that would apply to the Proposed Action and Alternatives, such as permits pursuant to Sections 401 and 404 of the CWA.

Comments Related to Mitigation

Comments mentioned the possible disturbance of property that is managed by Armand Bayou Nature Center (ABNC). The comments requested that the DEIS address potential impacts to this area and that "an adequate and appropriate mitigation plan be developed that is congruent with ABNC's mission and purpose."

Response. The EIS will characterize the existing conditions of ABNC, analyze potential effects, and address mitigation as appropriate.

center. Comments supported the use of an alternative route that avoids crossing the preserve.

Response. The EIS will consider the existing conditions along Taylor Bayou and Armand Bayou and evaluate potential impacts to the wetlands, plant and animal communities, scenic resources, and recreational uses. The EIS will address the impacts of the Proposed Action and Alternatives on these resources, including avoidance, impacts on these resources from construction and operation, including noise, vibration, and pollution, of the Proposed Action and Alternatives, including the No-Action Alternative. The EIS will use the best available information for reasonably foreseeable development to analyze any future changes in land use and the timeframe for those changes in the area affected by the Proposed Action and Alternatives relative to the No-Action Alternative.

and plant species in the area of the Proposed Action. Comments expressed concern about the presence of the Federally listed endangered species, the Texas prairie dawn-flower in the proposed project area and provided general information about the flower. Comments provided lists of Endangered and Threatened Species that may occur in Harris County and requested that the area affected by the proposed alignment be properly evaluated by trained

K. Land Use

Comments on Current and Future Impacts

Comments expressed concern that a new rail line would result in adverse impacts on both current and future land uses. Specific concerns were expressed regarding current land use including impacts on the Runway Protection Zone (RPZ) and safe use of the runways at Ellington Field. Comments expressed

Comments on Future Land Use and Time Period for Analysis

Comments suggested that the corridor where new rail lines would be constructed as part of the Proposed Action and some of the alternatives serve as a buffer from further industrial development for residential communities to the north and south. Comments stated that the EIS should project land use for longer than three to six years because of the potential for a

by Armand Bayou Nature Center (ABNC). The comments requested that the DEIS address potential impacts to this area and that "an adequate and appropriate mitigation plan be developed that is congruent with ABNC's mission and purpose."

Response. The EIS will characterize the existing conditions of ABNC, analyze potential effects, and address mitigation as appropriate.

I. Biological Resources

General Comments on Biological Resources

Comments mentioned concern about animals and plants in a general context, and requested a risk assessment of "natural areas." Comments expressed concern about impacts to sensitive habitats associated with ecosystems and bayous in the project area. Comments expressed specific concern about the possible effects Alignment 1C would have on fish spawning areas around Mustang Bayou. Comments expressed concern about the threat of introduction of non-indigenous species along the alternative alignments. Comments expressed concern about potential impacts to coastal wetlands and coastal natural resource areas. Comments recommended that the alternative alignments follow existing rights-of-way, and also discussed the disturbance of wildlife and vegetation that can result from construction activities.

Response. The EIS will consider the existing plant and animal communities and aquatic resources within the project area and the potential impacts on biological and aquatic resources from construction and operation of the Proposed Action and Alternatives.

Comments on Taylor Bayou, Armand Bayou Nature Center, and Armand Bayou Coastal Preserve

Comments expressed general concern about negative impacts to the ABNC. Comments specifically mentioned concerns about the plants and animals surrounding ABNC. Comments indicated that Alternative 1 would affect the east bank of Taylor Bayou and would eliminate conservation management in that area. Comments also stated that alternative alignments adjacent to Taylor Bayou would affect inter-tidal marsh and upland to wet hardwood forest. Comments requested that the EIS address potential impacts and appropriate mitigation plans. Comments remarked that the proposed rail line would diminish the aesthetic value of the Armand Bayou Coastal Preserve and interfere with educational programs at the preserve and the nature center. Comments supported the use of an alternative route that avoids crossing the preserve.

Response. The EIS will consider the existing conditions along Taylor Bayou and Armand Bayou and evaluate potential impacts to the wetlands, plant and animal communities, scenic resources, and recreational uses. The EIS will address the impacts of the Proposed Action and Alternatives on these resources, including avoidance, minimization, and mitigation (where appropriate), depending on the potential effects identified in the EIS.

Comments on Hazardous Materials Damaging Biological Resources

Comments expressed concern over potential impacts to the ecosystem and biological resources in the event of a hazardous materials release and mentioned the negative effects a hazardous material spill would have on area wildlife or wildlife habitat. More specifically, comments expressed concern over impacts to wildlife and "long-term productivity" (vegetation) in the event of hazardous materials entering a water body, and the economic ramifications of such an event. Comments also expressed general concern about hazardous chemicals causing damage to an unspecified nature preserve and about the environmental damage to fish and wildlife that would result from a spill into Taylor and/or Armand Bayou. Comments also expressed concern about the impact of leakage and runoff from the alignment on the surrounding watershed and near-by bayous.

Response. The EIS will consider the likelihood of a hazardous materials release from construction and operation of the Proposed Action and Alternatives and the potential impacts to aquatic and biological resources from a hazardous material release.

Comments on Effects of Noise, Vibration, and Pollution on Biological Resources

Comments requested that the EIS analyze the effects of noise, vibration, and pollution from the project on area ecology. Comments also expressed concern about habitat loss resulting from the project, and questioned whether lands designated for this project would remain as undeveloped habitat if this project were not built. Comments requested that the EIS include a comparison of timelines for development due to this project versus development due to other reasons.

Response. The EIS will consider the existing terrestrial and aquatic resources within the project area and the potential impacts on these resources from construction and operation, including noise, vibration, and pollution, of the Proposed Action and Alternatives, including the No-Action Alternative. The EIS will use the best available information for reasonably foreseeable development to analyze any future changes in land use and the timeframe for those changes in the area affected by the Proposed Action and Alternatives relative to the No-Action Alternative.

Comments on Wildlife

Comments expressed general concerns about wildlife and wildlife habitat. Comments specifically mentioned deer, squirrels, rabbits, turtles, frogs, armadillos, owls, field mice, wild boar, bobcats, egrets, and alligators. Comments expressed concern that the construction of the proposed build-out may drive wild pigs into near-by neighborhoods or onto the railroad track. Comments also expressed concern for the safety of domestic as well as wild animals. Comments noted that the project area is a migration route for many bird species and requested that measures be taken to ensure that construction activities do not have any adverse impacts on migratory birds, in order to be in compliance with the Migratory Bird Treaty Act.

Response. The EIS will consider the existing avian and wildlife communities and wildlife habitat in the project area and the potential impacts of the Proposed Action and Alternatives on those resources.

Comments Specific to Mitigation

Comments requested that open space dedications be incorporated into the project plan as an opportunity to install wildlife corridors along Red Bluff Road and other areas. Comments also recommended minimizing the clearing of riparian vegetation as much as possible and mitigating for the appropriate habitat losses associated with the disturbed project area, by using site-specific native plant species. Comments requested that a monthly maintenance program be established for mowing grass along the right-of way.

Response. The EIS will consider the potential impact on biological resources, including the potential impact of habitat loss and disruption of wildlife corridors, and will include mitigation as appropriate, depending on the potential effects identified in the EIS.

Comments on Endangered, Threatened, and Rare Species

Comments expressed generalized concern over the presence of endangered and/or protected animal and plant species in the area of the Proposed Action. Comments expressed concern about the presence of the Federally listed endangered species, the Texas prairie dawn-flower in the proposed project area and provided general information about the flower. Comments provided lists of Endangered and Threatened Species that may occur in Harris County and requested that the area affected by the proposed alignment be properly evaluated by trained biologists for the presence or absence of such species.

Response. The EIS will consider the existing plant and animal communities in the project area, the potential impact to those communities, and possible mitigation (where appropriate) depending on the potential effects identified in the EIS. At the request of the U.S. Fish & Wildlife Service, SEA conducted a survey for the Texas prairie dawn in the project area. The EIS will address the potential impacts to special status species, including the Texas prairie dawn.

J. Topography, Geology and Soils

General Comments on Geology and Soils

Comments expressed the need for the EIS to examine specific issues related to topography and geology, including consideration of subsidence, soil stability, wells and deep well injection sites, surface faults, and salt domes.

Response. The EIS will analyze the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland and hydric soils and the potential impacts on these resources resulting from the construction and operation of the Proposed Action and Alternatives. The EIS will include consideration of other characteristics that are relevant to identification of potential impacts from the Proposed Action, as appropriate.

Comments Specific to Soil Erosion

Comments mentioned the need to minimize soil erosion and siltation into various water bodies. Methods proposed include hay bales, silt fences, or other soil erosion prevention techniques. Comments also noted that newly graded areas should be seeded or sodded with native grasses, leguminous forbs, and trees and that natural buffers around wetlands and aquatic systems should remain undisturbed.

Response. The EIS will include consideration of erosion impacts and mitigation, if appropriate. This topic will be addressed in the water resources section of the EIS.

K. Land Use

Comments on Current and Future Impacts

Comments expressed concern that a new rail line would result in adverse impacts on both current and future land uses. Specific concerns were expressed regarding current land use including impacts on the Runway Protection Zone (RPZ) and safe use of the runways at Ellington Field. Comments expressed concern about the impact on the use of Sylvan Rodriguez Park. Concerns were expressed about future land use, including impacts to runway extensions or taxiway additions at Ellington Field, new development at or near Ellington Field, and increased industrial (rather than residential or commercial) development around the portions of the Proposed Action and Alternatives. Regarding future land uses, comments specifically suggested that SEA consult with NASA, the cities of Houston and Pasadena, and the Clear Lake Area Economic Development Foundation. Comments indicated that the EIS should address consistency of the proposed project with the coastal management program.

Response. The EIS will include an analysis of the potential land use impacts of the Proposed Action and Alternatives. The EIS land use analysis will include consideration of consistency of the project with the Coastal Zone Management Plan. The EIS will analyze both potential effects on current land use and effects on reasonably foreseeable future land use. The EIS will reflect the input of cooperating agencies and consultations with other agencies and organizations, including those specifically mentioned here. Regarding Ellington Field, SEA is consulting with the FAA and the City of Houston on the potential impacts of the Proposed Action. The FAA is using this EIS to cover its Federal Action and decision relative to its authority. Upon request by the owner of Ellington Field (i.e., the City of Houston) to (1) approve a change to the airport layout plan (ALP) to accommodate the Proposed Action and (2) release the affected airport property from surplus property restrictions and/or the airport owner's obligations under grant assurances contained in grant agreements, FAA will determine whether the ALP approval and release is appropriate pursuant to 49 U.S.C. 47151–47153 (formerly known as the Surplus Property Act), 49 U.S.C. 47107(c)(2)(B), 49 U.S.C. 47107(a)(16), and any other applicable Federal law, regulation, and applicable FAA Orders.

Comments on Future Land Use and Time Period for Analysis

Comments suggested that the corridor where new rail lines would be constructed as part of the Proposed Action and some of the alternatives serve as a buffer from further industrial development for residential communities to the north and south. Comments stated that the EIS should project land use for longer than three to six years because of the potential for a new rail line to encourage conversion of a residential area to a mixed-use area containing industrial, commercial, and residential uses.

Response. The EIS will use the best available information for reasonably foreseeable development to analyze any future changes in land use and the timeframe for those changes in the area affected by the Proposed Action and Alternatives. The EIS will address potential development of the project area for mixed use in the context of current residential, industrial, commercial, and institutional uses that include Ellington Field, a wastewater treatment plant near Ellington Field, the Boeing rocket engine manufacturing facility, the NASA Sonny Carter Training Facility, a water treatment plant, aggregate production facilities, miscellaneous light industrial and commercial operations, gas fields, two gas plants, a golf club, and undeveloped natural areas.

L. Socioeconomics

General Comments

Comments addressed the impact of the Bayport Loop project on socioeconomics in the Houston-Galveston area. Comments expressed general concern over lowered quality of life or the absence of economic benefits. Comments were received requesting an examination of economic impacts.

Response. The EIS will examine economic and social effects that would result from effects of the Proposed Action and Alternatives on the natural or physical environment. The EIS will analyze environmental impacts from the Proposed Action and Alternatives such as noise, air quality, land use, and transportation, to determine if these impacts might affect quality of life.

Comments on Property Values and Economic Costs

Comments expressed concern over impacts on property values, including degradation in value. Comments stated that the Proposed Action ultimately would result in loss of tax revenue, partly as the result of lowered property values. Comments requested a cost-benefit analysis, including construction costs, income, expense, and cash flow statements, and annual rail transportation cost savings. Comments requested a complete economic analysis of the project. Comments also indicated the need to analyze in the EIS factors such as property values, quality of life, franchise taxes, and job growth. Comments also referred to the tax base for the Clear Creek Independent School

Comments on Public Services

Comments indicated that construction and operation of a new rail line would result in negative impacts on public services, including the new Texas Children's Health Center (TCHC).

Response. To determine the potential effects of the Proposed Action and Alternatives on public service facilities in the project area, the EIS is analyzing environmental impacts such as noise, all the alternatives, including the No-Action Alternative. In addition, comments indicated that the analysis for each alternative should include all affected populations, which may include populations along rail lines other than those used directly by the Proposed Action and Alternatives. Comments suggested that the analysis use 2000 Census Bureau data and determine the affected areas based on

These comments mentioned the Bayport Terminal, the TxDOT SH 146 Major Investment Study, the 2022 and 2025 Metropolitan Transportation Plans, and the Texas City/Shoal Point Container Terminal, among others. Comments stated that the EIS should study the cumulative impacts to rail and road transportation, rail operations, air quality, noise, land use, property values, risks of hazardous material release, along with the Bayport Terminal in a joint EIS.

Response. The EIS will contain analyses of the cumulative impacts of the Proposed Action and Alternatives combined with other projects in the local area, such as the Bayport Terminal. The analysis of cumulative impacts will cover all relevant environmental impact areas described in this Final Scope. As discussed earlier

projects are separate and distinct. They do not depend on each other economically or physically and each would proceed in the absence of the other.

The Web site for the Surface Transportation Board is *http://www.stb.dot.gov.*

Decided: July 8, 2002.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

benefit analysis, including construction costs, income, expense, and cash flow statements, and annual rail transportation cost savings. Comments requested a complete economic analysis of the project. Comments also indicated the need to analyze in the EIS factors such as property values, quality of life, franchise taxes, and job growth. Comments also referred to the tax base for the Clear Creek Independent School District. Comments noted that chemical plants and other industries are important to maintain the economic viability and growth of the area. Comments also stated support for competition and fairness in transportation costs to the chemical industry.

Response. The EIS will analyze the socioeconomic effects that are reasonably foreseeable and that may result from the Proposed Action and Alternatives. As noted above, the EIS will examine economic and social effects associated with effects of the Proposed Action and Alternatives on the natural or physical environment. The regulations implementing NEPA at 40 CFR 1502.23, state that if a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered, the EIS should consider the cost-benefit analysis in evaluating the alternatives.[10]

Comments on Employment and Income

Comments indicated that the proposed rail line might bring jobs and commerce to the Houston area. Comments also stated that loss of jobs would occur. Comments suggested that the money funding the project might be used to create new jobs instead.

Response. The EIS will analyze economic impacts from the Proposed Action and Alternatives, such as effects on income and employment, associated with significant effects on the natural or physical environment.

[10] The Board considers the economic merits of a proposed rail line construction and operation in the merits phase of the proceeding. At 49 U.S.C. § 10502 the Board exercises its authority to exempt rail carrier transportation.

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part "

(1) is not necessary to carry out the transportation policy of Section 10101 of this title; and

(2) either—

(A) the transaction of service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

Comments on Public Services

Comments indicated that construction and operation of a new rail line would result in negative impacts on public services, including the new Texas Children's Health Center (TCHC).

Response. To determine the potential effects of the Proposed Action and Alternatives on public service facilities in the project area, the EIS is analyzing environmental impacts such as noise, air quality, land use, and transportation, to determine if they might result in adverse effects to public services, including TCHC.

Comments on Parks and Recreation and Aesthetics

Comments stated that the proposed rail line would have impacts on parks. Comments specifically stressed that the project would produce significant adverse impacts on the Sylvan Rodriguez Park. Comments also referred to potential impacts on the recreational uses of Armand Bayou. Comments expressed concern about the effects of the Proposed Action and Alternatives on the aesthetic value of nearby neighborhoods and surrounding land.

Response. The EIS will consider the potential effects of the Proposed Action and Alternatives on parks and recreation and aesthetics.

M. Cultural Resources

General Comments

Comments indicated that the project might negatively affect revitalization of a historic area located near the existing mainline. Comments stated that an archeological survey of parts of the proposed project would be necessary prior to construction due to potential impacts on cultural resources.

Response. The EIS will address potential impacts to cultural resources and will describe the results of archeological surveys conducted as part of consultations with the Texas Historical Commission.

N. Environmental Justice

General Comments

Comments expressed concern over impacts that the Proposed Action could have on environmental justice communities. Comments indicated that the DEIS should account for the environmental justice problems (disproportionate adverse effects primarily on low-income and minority communities) already created in east and southeast Houston by rail traffic and resulting rail safety hazards. Comments indicated that the study areas used to examine environmental justice impacts should be consistent for all the alternatives, including the No-Action Alternative. In addition, comments indicated that the analysis for each alternative should include all affected populations, which may include populations along rail lines other than those used directly by the Proposed Action and Alternatives. Comments suggested that the analysis use 2000 Census Bureau data and determine the affected areas based on the results of analyses in other sections of the EIS.

Response. The EIS will address potential impacts of the Proposed Action and Alternatives on environmental justice communities. The EIS will describe the affected environment and environmental consequences associated with the Proposed Action and Alternatives across a range of topics, e.g., noise, hazardous materials transport, and highway/rail grade crossing safety. The environmental justice analysis will use the results of these analyses to disclose the affects to environmental justice populations (including direct, indirect, and cumulative effects) and determine whether the affects are disproportionately high and adverse. The EIS will use 2000 Census Bureau data for minority populations. The equivalent data is not yet available for income. The EIS will use the best available forecast of 2000 income levels.

Comments on Public Involvement and Environmental Justice

Comments stated that low-income, minority neighborhoods had not been informed of the project in a timely manner and expressed concern over the impacts from the Proposed Action. Comments also stated that agencies should seek input from environmental justice communities as early in the scoping process as possible.

Response. The EIS will describe the environmental justice outreach efforts during the scoping process and throughout the preparation of the document, including notifications concerning the project, public service announcements for Spanish language radio stations, distribution of a project fact sheet in Spanish; contacts with community groups, availability of a project hotline for Spanish speakers, and extension of the scoping comment period.

O. Cumulative Impacts

Comments on Cumulative Impacts

Comments stated that SEA should consider the cumulative impacts of the Bayport Loop Build-Out with other projects being planned in the local area.

These comments mentioned the Bayport Terminal, the TxDOT SH 146 Major Investment Study, the 2022 and 2025 Metropolitan Transportation Plans, and the Texas City/Shoal Point Container Terminal, among others. Comments stated that the EIS should study the cumulative impacts to rail and road transportation, rail operations, air quality, noise, land use, property values, risks of hazardous material release, wetlands, ecology, and environmental justice. Comments also stated that the Proposed Action should be analyzed along with the Bayport Terminal in a joint EIS.

Response. The EIS will contain analyses of the cumulative impacts of the Proposed Action and Alternatives combined with other projects in the local area, such as the Bayport Terminal. The analysis of cumulative impacts will cover all relevant environmental impact areas described in this Final Scope. As discussed earlier in this Final Scope, SEA and USACE are preparing separate EISs for this Proposed Action and for the Bayport Terminal project because the two projects are separate and distinct. They do not depend on each other economically or physically and each would proceed in the absence of the other.

The Web site for the Surface Transportation Board is *http://www.stb.dot.gov.*

Decided: July 8, 2002.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

BILLING CODE 4915-00-P

Attachment A

32302
SEA

SERVICE DATE - NOVEMBER 26, 2001

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34079

the Scope of Study are due February 1, 2002 (60 days).

FILING ENVIRONMENTAL COMMENTS: Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted to:

Office of the Secretary
Case Control Unit
STB Finance Docket No. 34079

Attachment A

32302
SEA

SERVICE DATE - NOVEMBER 26, 2001

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34079

San Jacinto Rail Limited - Construction Exemption - And The Burlington Northern and Santa Fe Railway Company - Operation Exemption - Build-Out to the Bayport Loop Near Houston, Harris County, Texas

Decided November 9, 2001

ACTION: Notice of Availability of Draft Scope of Study for the Environmental Impact Statement, Notice of Scoping Meetings, and Request for Comments.

SUMMARY: On August 30, 2001, San Jacinto Rail Limited (San Jacinto) and The Burlington Northern and Santa Fe Railway (BNSF) (collectively the Applicants) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction by San Jacinto and operation by BNSF of a new rail line near Houston, Harris County, Texas. The project would involve approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA is holding public scoping meetings as part of the EIS process, as discussed in the Notice of Intent to Prepare an EIS published by the Board on October 1, 2001. As part of the scoping process, SEA has developed a draft Scope of Study for the EIS.

DATES AND LOCATIONS: Scoping meetings will be held on:

January 14, 2002, 2-4 pm and 7-9 pm
January 15, 2002, 2-4 pm and 7-9 pm

The scoping meetings will be held at the:

Pasadena Convention Center
7902 Fairmont Parkway
Pasadena, Texas

The public scoping meetings will be informal meetings in a workshop format during which interested persons may ask questions about the proposal and the Board's environmental review process, and advise the Board's representative about potential environmental effects of the project. SEA has made available for public comment the draft scope contained in this notice.

SEA will issue a final scope shortly after the close of the comment period. Written comments on the Scope of Study are due February 1, 2002 (60 days).

FILING ENVIRONMENTAL COMMENTS: Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted to:

Office of the Secretary
Case Control Unit
STB Finance Docket No. 34079
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

To ensure proper handling of your comments, you must mark your submission:

Attention: Dana White
Section of Environmental Analysis
Environmental Filing

FOR FURTHER INFORMATION CONTACT: Ms. Dana White, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW, Washington, D.C. 20423-0001, or SEA's toll-free number for this project at 1-888-229-7857 (TDD for the hearing impaired 1-800-877-8339). The website for the Surface Transportation Board is www.stb.dot.gov.

SUPPLEMENTARY INFORMATION:

Draft Scope of Study for the EIS

Proposed Action and Alternatives

The proposed action, known as the Bayport Loop Build-Out, involves the construction and operation of approximately 12.8 miles of new rail line connecting the Bayport Loop petro-chemical and plastic production facilities and the former Galveston, Henderson & Houston Railroad line, now owned by the Union Pacific Railroad Company (UP), near the southeast corner of Ellington Field at Texas State Highway 3. The proposed action also includes operating trains from the BNSF New South Yard over trackage rights on Union Pacific mainlines to the point of connection. As a result of the new construction, BNSF would have access to the facilities located in the Bayport Loop using the new line, and the facilities would be provided with a choice of rail providers.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) construction and operation of the proposed project along the identified preferred alignment, (2) other alternatives that might be identified during the scoping process, and (3) the no-action alternative.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate.

Impact Categories

3. **Water Resources**

The EIS will:

a. Describe the existing surface and groundwater resources within the project area, including lakes, rivers, bayous, streams, stock ponds, wetlands, and floodplains and the potential impacts on these resources resulting from construction and operation of new rail line.
b. Describe the permitting requirements for the proposed new rail line construction regarding wetlands, stream and river crossings, water quality, and erosion control.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts from the proposed project on each category as described below:

1. **Land Use**

The EIS will:

a. Describe existing land use patterns within the project area and identify those land uses that would be potentially impacted by new rail line construction.
b. Describe the potential impacts associated with the proposed new rail line construction to land uses identified within the project area. Such potential impacts may include impacts to farming and ranching activities, incompatibility with existing land uses, consistency with the coastal zone management plan, and conversion of land to railroad uses.
c. Propose mitigative measures to minimize or eliminate potential project impacts to land use, as appropriate.

2. **Biological Resources**

The EIS will:

a. Describe the existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and federal and state threatened or endangered species and the potential impacts to these resources resulting from construction and operation of new rail facilities.
b. Describe any wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area and the potential impacts to these resources
c. resulting from construction and operation of new rail line.
d. Propose mitigative measures to minimize or eliminate potential project impacts to biological resources, as appropriate.

3. **Water Resources**

The EIS will:

a. Describe the existing surface and groundwater resources within the project area, including lakes, rivers, bayous, streams, stock ponds, wetlands, and floodplains and the potential impacts on these resources resulting from construction and operation of new rail line.
b. Describe the permitting requirements for the proposed new rail line construction regarding wetlands, stream and river crossings, water quality, and erosion control.
c. Propose mitigative measures to minimize or eliminate potential project impacts to water resources, as appropriate.

4. **Geology and Soils**

The EIS will:

a. Describe the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland and hydric soils and the potential impacts on these resources resulting from the construction and operation of new rail line.
b. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.
c. Propose mitigative measures to minimize or eliminate potential project impacts to geology and soils, as appropriate.

5. **Air Quality**

The EIS will:

a. Evaluate rail-related air emissions on new rail line, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act.
b. Discuss and evaluate the potential air emissions increases from vehicle delays at new at-grade road/rail crossings. Emissions from vehicle delays will be factored into the emissions estimates for the affected area, as appropriate.
c. Describe the potential air quality impact resulting from new rail line construction activities.
d. Propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate.

6. **Noise**

The EIS will:

a. Describe the potential noise impacts during new rail line construction.
b. Describe the potential noise impacts of new rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day.
c. Propose mitigative measures to minimize or eliminate potential project impacts to noise receptors, as appropriate.

7. **Energy Resources**

The EIS will:

a. Describe the potential impact of the new rail line on the distribution of energy resources in the project area, including petroleum and gas pipelines and overhead electric transmission lines.
b. Propose mitigative measures to minimize or eliminate potential project impacts to energy resources, as appropriate.

transportation systems, as appropriate.

11. **Cultural and Historic Resources**

The EIS will:

a. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.

7. Energy Resources

The EIS will:

a. Describe the potential impact of the new rail line on the distribution of energy resources in the project area, including petroleum and gas pipelines and overhead electric transmission lines.

b. Propose mitigative measures to minimize or eliminate potential project impacts to energy resources, as appropriate.

8. Socioeconomics

The EIS will:

a. Describe the potential environmental impacts to residences, residential areas, and communities within the project area as a result of new rail line construction and operation activities.

b. Describe the potential environmental impacts to commercial and industrial activities and development in the project area as a result of new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project adverse impacts to social and economic resources, as appropriate.

9. Safety

The EIS will:

a. Describe existing road/rail grade crossing safety and the potential for an increase in accidents related to the new rail operations, as appropriate.

b. Describe existing rail operations and the potential for increased probability of train accidents, as appropriate.

c. Describe pipeline safety factors at rail/pipeline crossings, as appropriate.

d. Describe hazardous materials safety factors for the transportation of hazardous materials and the potential for a release of those materials, as appropriate.

e. Describe the potential for disruption and delays to the movement of emergency vehicles due to new rail line construction and operation.

f. Propose mitigative measures to minimize or eliminate potential project impacts to safety, as appropriate.

10. Transportation Systems

The EIS will:

a. Describe the potential impacts of new rail line construction and operation on the existing transportation network in the project area, including vehicular delays at grade crossings.

b. Describe potential impacts to navigation associated with new bridges.

c. Propose mitigative measures to minimize or eliminate potential project impacts to transportation systems, as appropriate.

11. Cultural and Historic Resources

The EIS will:

a. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.

b. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments.

c. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.

d. Describe the potential impacts to archaeological sites identified by ground survey and determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments.

e. Describe the potential general impacts to paleontological resources in the project area due to project construction, if necessary and required.

f. Propose mitigative measures to minimize or eliminate potential project impacts to cultural and historic resources, as appropriate.

12. Recreation

The EIS will:

a. Describe the potential impacts of the proposed new rail line construction and operation on recreational opportunities provided in the project area.

b. Propose mitigative measures to minimize or eliminate potential project impacts on recreational opportunities, as appropriate.

13. Aesthetics

The EIS will:

a. Describe the potential impacts of the proposed new rail line construction on any areas identified or determined to be of high visual quality.

b. Describe the potential impacts of the proposed new rail line construction on any waterways considered for or designated as wild and scenic.

c. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

14. Environmental Justice

The EIS will:

a. Describe the demographics in the project area and the immediate vicinity of the proposed new construction, including communities potentially impacted by the construction and operation of the proposed new rail line.

b. Evaluate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income groups.

c. Propose mitigative measures to minimize or eliminate potential project impacts on

STB Finance Docket No. 34079

Attachment B

SURFACE TRANSPORTATION BOARD
Section of Environmental Analysis
Washington, DC 20423

Proposed San Jacinto Rail Limited and The Burlington Northern and Santa Fe Railway Company Bayport Loop Build-Out

14. Environmental Justice

The EIS will:

a. Describe the demographics in the project area and the immediate vicinity of the proposed new construction, including communities potentially impacted by the construction and operation of the proposed new rail line.

b. Evaluate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income groups.

c. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

15. Cumulative Impacts

The EIS will address the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such actions.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

STB Finance Docket No. 34079

Attachment B

SURFACE TRANSPORTATION BOARD
Section of Environmental Analysis
Washington, DC 20423

Proposed San Jacinto Rail Limited and The Burlington Northern and Santa Fe Railway Company Bayport Loop Build-Out

WHAT IS THE "BAYPORT LOOP BUILD-OUT PROJECT"? The Bayport Loop Build-Out would involve approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). The Bayport Loop consists of approximately 24 shipper facilities. Union Pacific (UP) is currently the only railroad serving the Bayport Loop. As a result of the new construction, Burlington Northern and Santa Fe (BNSF) would have access to the facilities located in the Bayport Loop using the new line, and the facilities would be provided with a choice of rail providers in the area. Trains operating over the new rail line would originate at BNSF's New South Yard and operate via trackage rights over the UP's Glidden Subdivision and UP's Galveston Subdivision, also known as the former Galveston, Henderson, and Houston (GH&H) line, to the beginning of the new rail line near Ellington Field.

WHAT IS THE PURPOSE OF THE FINAL SCOPE? The Final Scope defines the environmental issues that will be analyzed in the Environmental Impact Statement (EIS), and summarizes comments and concerns expressed by the public and interested Federal, state, and local agencies. These comments, as well as on site inspections by the Surface Transportation Board's Section of Environmental Analysis (SEA) staff and independent analysis by the SEA staff and its third-party independent consultant, defined the scope of study of the EIS.

WHERE ARE ADDITIONAL COPIES OF THE FINAL SCOPE AVAILABLE? The Final Scope is available for review at several repositories. If you are unable to access one of these locations, please contact us and we will provide you with a copy of the document. Documents are available in both English and Spanish. The project address and toll-free hotline number are listed below.

WHAT ARE THE NEXT STEPS FOR THE PROJECT? SEA is preparing a Draft EIS to address the potential impacts from the proposed construction and operation of the new rail facilities on the human and natural environment. This document will be available for public review and comment.

HOW DO I OBTAIN MORE INFORMATION ABOUT THE PROJECT? If you would like to be placed on our mailing list to receive project information, please write the SEA project manager at the address below, or call the toll-free project hotline at **1-888-229-7857** and leave your name and address. The hotline is also periodically updated with new project information. Information on the hotline is provided in both English and Spanish.

ADDRESS:
Dana White
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001
Attention: Finance Docket No. 34079

JUNTA DE TRANSPORTE SUPERFICIE
Sección de Análisis Ambiental
Washington, DC 20423

Propuesta Para Construcción de una Línea de Ferrocarril Tipo Build-Out por el San Jacinto Rail Limited y el Burlington Northern and Sante Fe Railway Company hacia el Bayport Loop

¿QUÉ ES EL "PROYECTO TIPO BUILD-OUT EN EL BAYPORT LOOP"? El Proyecto tipo Build-Out en el Bayport Loop implicará la construcción de aproximadamente 12.8 millas de nuevas líneas de

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 620X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption-In Raleigh County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt*

by August 8, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

ADDRESSES: Direct all written comments to either Department of the Treasury, ATTN: First Accounts, Main Treasury Building, Room 5017, 15th and Pennsylvania Avenue, NW, Washington, DC 20220 (Tel.: 202/622–0741) or *first.accounts@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Jean Whaley, Director, Office of the Assistant

JUNTA DE TRANSPORTE SUPERFICIE
Sección de Análisis Ambiental
Washington, DC 20423

Propuesta Para Construcción de una Línea de Ferrocarril Tipo Build-Out por el San Jacinto Rail Limited y el Burlington Northern and Sante Fe Railway Company hacia el Bayport Loop

¿QUÉ ES EL "PROYECTO TIPO BUILD-OUT EN EL BAYPORT LOOP"? El Proyecto tipo Build-Out en el Bayport Loop implicará la construcción de aproximadamente 12.8 millas de nuevas líneas de ferrocarril para brindar servicio a las industrias petroquímicas en el Distrito Industrial de Bayport (Bayport Loop). Éste consiste de aproximadamente 24 instalaciones de carga. El Union Pacific (UP) es el único ferrocarril que actualmente presta servicio en Bayport Loop. Como resultado de la nueva construcción, el ferrocarril Burlington Northern and Santa Fe (BNSF) tendría acceso a las instalaciones localizadas en el Bayport Loop utilizando la nueva línea, y a las empresas se les brindaría la oportunidad de escoger al proveedor de servicios de ferrocarril. Los trenes que operen sobre la nueva línea partirían de la estación de clasificación del BNSF de New South Yard y operaría mediante un derecho de circulación a través de Glidden Subdivision de la UP y de Galveston Subdivision de la UP, conocida también como la antigua línea Galveston, Henderson, and Houston (GH&H), hasta el entronque con la nueva línea cerca del aeropuerto Ellington Field.

¿CUÁL ES ÉL PROPOSITO DEL ENFOQUE FINAL? En el Enfoque Final se definen aspectos ambientales que se analizarán en el Informe de Impacto Ambiental (informe conocido como EIS, por sus siglas en inglés) y en él se resumen comentarios e inquietudes expresados por el público y agencias Federales, estatales y locales interesadas. Estos comentarios, igual que las inspecciones realizadas directamente en el sitio por personal de la Sección de Análisis Ambiental (conocida como SEA, por su sigla en inglés) de la Junta de Transporte por Superficie y los análisis independientes realizados por personal de SEA y su consultor independiente, definieron el alcance del estudio del EIS.

¿DÓNDE ESTAN DISPONIBLES COPIAS ADICIONALES DEL ENFOQUE FINAL? El Enfoque Final está disponible para su revisión en diversos sitios. Si no le es posible llegar a alguno de estos sitios, por favor contáctenos y le suministraremos una copia del documento. Éstos están disponibles tanto en Inglés como en Español. Más adelante se da la dirección del proyecto y el número de una línea telefónica libre de costo.

¿CUÁLES SON LOS SIGUIENTES PASOS PARA EL PROYECTO? SEA está preparando un Borrador del EIS donde se toman en cuenta los impactos potenciales derivados de la construcción y operación propuestas para la nueva línea de ferrocarril sobre el ambiente humano y natural. Este documento estará disponible para que el público lo revise y emita comentarios al respecto.

¿CÓMO OBTENGO MAS INFORMACIÓN SOBRE EL PROYECTO? Si usted desea ser incluido en nuestra lista de correo para recibir información referente al proyecto, por favor escriba a la gerente de proyecto del SEA a la dirección indicada más adelante, o llame gratis a través de la línea telefónica libre de costo 1-888-229-7857 y deje su nombre y dirección. También, la línea sin costo se actualiza periódicamente con nueva información sobre el proyecto, la cual se suministra tanto en Inglés como en Español.

DIRECCIÓN:
Dana White
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001
Attention: Finance Docket No. 34079

BILLING CODE 4915-00-C
[FR Doc. 02–17518 Filed 7–18–02; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 620X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—In Raleigh County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over approximately 15.12 miles of railroad at Jarrolds Valley Junction between milepost CLP 0.0 and the end of track near Clear Creek at milepost CLP 15.12, in Raleigh County, WV. The line traverses United States Postal Service Zip Codes 25008, 25044, 25048, 25060, and 25193.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2–year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 20, 2002, unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[1] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 29, 2002. Petitions to reopen[2] must be filed by August 8, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV*.

Decided: July 12, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02–18246 Filed 7–18–02; 8:45 am]
BILLING CODE 4915–00–P

[1] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not appropriate. This proceeding is exempt from environmental and historic reporting requirements. CSXT only intends to discontinue service over the line and does not intend to abandon the line, but intends instead to leave the line in place. CSXT indicates that this would facilitate possible future operations over the line in the event the coal market would warrant those operations. Because CSXT's discontinuance of service will merely result in the cessation of service over the line, and has not sought abandonment authority, this proceeding is exempt from the report requirements listed above and no environmental documentation will be prepared. *See* 49 CFR 1105.6 (c)(6) and 1105.8 (a) and (b).

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary (Financial Institutions); Proposed Renewal of Information Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury's ("Treasury") Office of the Assistant Secretary (Financial Institutions), which administers the First Accounts Grant Program, and as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of the Assistant Secretary (Financial Institutions) within Treasury is soliciting comment concerning its renewal of a collection of information titled, "First Accounts Program Agreement for Grants."

DATES: Written comments should be received on or before September 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to either Department of the Treasury, ATTN: First Accounts, Main Treasury Building, Room 5017, 15th and Pennsylvania Avenue, NW, Washington, DC 20220 (Tel.: 202/622–0741) or *first.accounts@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Jean Whaley, Director, Office of the Assistant Secretary (Financial Institutions), Department of the Treasury, Main Treasury Building, 15th and Pennsylvania Avenue, NW, Washington, DC 20220 (Tel.: 202/622–0741).

SUPPLEMENTARY INFORMATION:

Title: First Accounts Program Agreement for Grants.

OMB Number: 1505–0188.

Abstract: Treasury's Office of the Assistant Secretary (Financial Institutions) is collecting information under the terms of a Grant Agreement between Treasury and awardees of First Accounts grants. The paramount goal of the First Accounts grants is to move a maximum number of "unbanked" low- and moderate-income individuals to a "banked" status with either an insured credit union or an insured depository institution. The collection of information in the Grant Agreement is fivefold. First, it requires each awardee to submit to Treasury an opinion of awardee counsel addressing such commercially standard matters as the due authorization, execution, delivery and enforceability of the Grant Agreement. Second, it requires each awardee to submit to Treasury quarterly reports addressing the awardee's financial and project performance. Third, it requires each awardee to submit to Treasury a final financial and performance report after the expiration of the grant. Fourth, it requires each awardee to submit annually to Treasury audited financial statements. Fifth, it imposes specific record keeping requirements. The purpose of the collection of information is to ensure that the Grant Agreement constitutes a legally binding obligation of each awardee and to monitor awardee compliance, performance, and financial soundness. The purpose of the record keeping requirements is to ensure both the effective and efficient use of the grant consistent with sound business practices, and the ability to audit the use of the grant consistent with the Grant Agreement.

Current Actions: Extension.
Type of Review: Extension.
Affected Public: For-profit institutions, not-for-profit institutions, and Local Governments.
Estimated Number of Respondents: 15.
Estimated Total Annual Responses: 90–105.
Frequency of Responses: This varies, depending on the specific reporting

DATES: Written comments should be received on or before August 19, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0119.
Form Number: IRS Form 1099–R.
Type of Review: Extension.
Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Estimated Number of Respondents/Recordkeepers: 12,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—39 min.
Learning about the law or the form—24 min.
Preparing and sending the form to the IRS—59 min.
Frequency of Response: On occasion.

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Certificate of Compliance With 18 U.S.C. 922(g)(5)(B).

DATES: Written comments should be received on or before September 17, 2002 to be assured of consideration.

ADDRESS: Direct all written comments to

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2002.

William T. Earle,
Assistant Director (Management) CFO.

[FR Doc. 02–18322 Filed 7–18–02; 8:45 am]
BILLING CODE 4810–31–M

benefits available under 38 U.S.C. 2101(a). The information requested is necessary in order to determine if it is economically feasible for a veteran to reside in specially adapted housing and also to compute the proper grant amount.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Current Actions: Extension.
Type of Review: Extension.
Affected Public: For-profit institutions, not-for-profit institutions, and Local Governments.
Estimated Number of Respondents: 15.
Estimated Total Annual Responses: 90–105.
Frequency of Responses: This varies, depending on the specific reporting requirements, but consists of quarterly, annual and on occasion reporting requirements.
Estimated Total Annual Burden Hours: 555 hours.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2002.

Jean Whaley,

Director, Office of the Assistant Secretary (Financial Institutions).

[FR Doc. 02–18248 Filed 7–18–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 10, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 19, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0119.
Form Number: IRS Form 1099–R.
Type of Review: Extension.
Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
Description: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 350,000.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 18,704,546 hours.

OMB Number: 1545–0235.
Form Number: IRS Form 730.
Type of Review: Revision.
Title: Monthly Tax on Wagering.
Description: Form 730 is used to identify taxable wagers and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 4,150.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hr., 44 min.
Learning about the law or the form—53 min.
Preparing, copying, assembling and sending the form to the IRS—1 hr., 1 min.
Frequency of Response: Monthly.
Estimated Total Reporting/ Recordkeeping Burden: 391,289 hours.

OMB Number: 1545–0415.
Form Number: IRS Form W–4P.
Type of Review: Extension.
Title: Withholding Certificate for Pension or Annuity Payments.
Description: Form W–4P is used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 12,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—39 min.
Learning about the law or the form—24 min.
Preparing and sending the form to the IRS—59 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 24,600,000 hours.

OMB Number: 1545–0877.
Form Number: IRS Form 1099–A.
Type of Review: Extension.
Title: Acquisition or Abandonment of Secured Property.
Description: Form 1099–A is used by lenders to report foreclosures and abandonments of property that is security for a loan.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 12,916.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 61,817 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–18247 Filed 7–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Certificate of Compliance With 18 U.S.C. 922(g)(5)(B).

DATES: Written comments should be received on or before September 17, 2002 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Derek O. Ball, Firearms and Explosives Import Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Compliance With 18 U.S.C. 922(g)(5)(B)
OMB Number: 1512–0571
Form Number: ATFF 5330.20
Abstract: The law of 18 U.S.C. 922(g)(5)(B) makes it unlawful for any nonimmigrant alien to ship or transport in interstate commerce, or posses in or affecting commerce, any firearm, ammunition, which has been shipped or transported in interstate or foreign commerce. ATF F 5330.20 is for the purpose of ensuring that nonimmigrant aliens certify their compliance according to the law at 18 U.S.C. 922(g)(5)(B).
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Total Annual Burden Hours: 150.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 11, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–18322 Filed 7–18–02; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0031."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0031" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.
OMB Control Number: 2900–0031.
Type of Review: Extension of a currently approved collection.
Abstract: The form is used by Loan Guaranty Personnel in approving the benefits available under 38 U.S.C. 2101(a). The information requested is necessary in order to determine if it is economically feasible for a veteran to reside in specially adapted housing and also to compute the proper grant amount.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 2002 at page 19808.
Affected Public: Individuals or households.
Estimated Annual Burden: 150 hours.
Estimated Average Burden Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Number of Respondents: 600.

Dated: July 9, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18271 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0548]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assess the effectiveness of current procedures used in conducting hearing.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 17, 2002.

ADDRESSES: Submit written comments on the collection of information to Gayle Srommen (01), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: gayle.strommen@mail.va.gov. Please refer to "OMB Control No. 2900–0548" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Gayle Strommen at (202) 565–9717 or FAX (202) 565–4064.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18269 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0061."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0061" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Work-Study Allowance, Student Work-Study Agreement, VA Form 22–8691 and 22–8692.
OMB Control Number: 2900–0061.
Type of Review: Extension of a currently approved collection.
Abstract: The forms are used to collect information from students who apply for work-study allowance and to enter into agreements with students who are approved for work-study allowance. The information is used to determine the eligibility of applicants and to ensure that students and VA agree to the terms and conditions under which work-study allowance will be paid.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 2002, at page 19807.
Affected Public: Individuals or households.
Estimated Annual Burden: 9,184.
a. Application for Work-Study Allowance (38 U.S.C. Chapters 30, 31, 32 and 35; 10 U.S.C. Chapter 1606), VA Form 22–8691—5,500 hours.
b. Student Work-Study Agreement (Student Services), VA Form 22–8692—3,684 hours.
Estimated Average Burden Per Respondent:
a. Application for Work-Study Allowance (38 U.S.C. Chapters 30, 31, 32 and 35; 10 U.S.C. Chapter 1606), VA Form 22–8691—20 minutes.
b. Student Work-Study Agreement (Student Services), VA Form 22–8692—15 minutes.
Frequency of Response: On occasion.
Estimated Number of Respondents:
a. Application for Work-Study Allowance (38 U.S.C. Chapters 30, 31, 32 and 35; 10 U.S.C. Chapter 1606), VA Form 22–8691—16,500.
b. Student Work-Study Agreement (Student Services), VA Form 22–8692—14,736.

Dated: July 9, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18270 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

ADDRESSES: Submit written comments on the collection of information to Gayle Srommen (01), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: gayle.strommen@mail.va.gov. Please refer to "OMB Control No. 2900–0548" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Gayle Strommen at (202) 565–9717 or FAX (202) 565–4064.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Generic Clearance for Board of Veterans' Appeals Customer Satisfaction with Hearing Survey, VA Form 0745.

OMB Control Number: 2900–0548.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The presiding official at hearings conducted by the BVA will, at the conclusion of the proceeding, present the appellant with a Customer Satisfaction with Hearing Survey, VA Form 0745 to complete. The appellant is informed that participation is voluntary, anonymous and will have no bearing on the outcome of the hearing. BVA will use the information to assess the effectiveness of current procedures used in conducting hearings and to develop better methods of serving veterans.

Affected Public: Individuals or households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 6,000.

Dated: July 2, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18269 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine that the requested supplies are reasonable for veterans use in rehabilitation program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 17, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0061" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Request for Supplies (Chapter 31-Vocatonal Rehabilitation), VA Form 28–1905m.

OMB Control Number: 2900–0061.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905m is used to request supplies for veterans in rehabilitation facilities. The official at the facility providing rehabilitation services to the veteran completes the form and certifies that the veteran needs the supplies for his or her program and that the veteran does not have the requested item in his or her possession. The veteran also certifies that he or she is not in possession of any of the supplies listed on the form.

Affected Public: Not-for-profit institutions, individuals or households, business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: July 9, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18270 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0209."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0209" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles

a. Application for Work-Study Allowance (38 U.S.C. Chapters 30, 31, 32 and 35; 10 U.S.C. Chapter 1606), VA Form 22–8691.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement (Student Services), VA Form 22–8692b.

OMB Control Number: 2900–0209.

Type of Review: Revision of a currently approved collection.

Abstract

a. Eligible veterans, Selected Reservists, and survivors or dependents complete VA Form 22–8691 to apply for work-study benefits.

b. VA Form 22–8692 is used by claimants to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by the claimant to extend his or her contract.

d. VA Form 22–8692b is used by claimants who do not want a work-study advanced allowance payment.

VA uses the information to determine the applicant's eligibility to work-study allowance and the amount payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 2002, at page 19807.

Affected Public: Individuals or households.

Estimated Annual Burden: 9,184.

a. Application for Work-Study Allowance (38 U.S.C. Chapters 30, 31, 32 and 35; 10 U.S.C. Chapter 1606), VA Form 22–8691—5,500 hours.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—1,667 hours.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—350 hours.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—1,667 hours.

Estimated Average Burden Per Respondent: 7 minutes.

a. Application for Work-Study Allowance (38 U.S.C. Chapters 30, 31, 32 and 35; 10 U.S.C. Chapter 1606), VA Form 22–8691—10 minutes.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—5 minutes.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—3 minutes.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,000

a. Application for Work-Study Allowance (38 U.S.C. Chapters 30, 31, 32 and 35; 10 U.S.C. Chapter 1606), VA Form 22–8691—33,000.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—20,000.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—7,000.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—20,000.

Dated: July 1, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18266 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0362]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0362."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0362" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles

a. Claim Under Loan Guaranty (Chapter 37, Title 38, U.S.C.), VA Form 26–1874.

b. Supplemental Claim Form—Adjustable Rate Mortgages, VA Form 26–1874a.

OMB Control Number: 2900–0362.

Type of Review: Extension of a currently approved collection.

Abstract

a. Lenders and holders of VA guaranteed home loans use VA Form 26–1874 as notification to VA of default loans.

b. VA Form 26–1874a is used as an attachment to VA Form 26–1874 when filing a claim under the loan guaranty resulting from the termination of an Adjustable Rate Mortgage Loan. The information obtained on both forms is essential to VA in determining the amount owed to the holder under the guaranty.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 29, 2002, at pages 15286–15287.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 26,139 hours.

a. VA Form 26–1874—25,806 hours.

b. VA Form 26–1874a—333 hours.

Estimated Average Burden Per Respondent: 59 minutes (average).

a. VA Form 26–1874—60 minutes.

b. VA Form 26–1874a—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Total

Corrections

Federal Register

Vol. 67, No. 139

Friday, July 19, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are

instruction 9., in the third line, "(7/02)" should read "(Jul/02)".

2. On page 43514, in the second column, in the same section, in the same amendatory instruction, in the 6th line, "7/02" should read "Jul 02".

DATES heading, in the third line "September 9, 2000" should read "September 9, 2002".

[FR Doc. C2–17412 Filed 7–18–02; 8:45 am]

BILLING CODE 1505–01–D

Affected Public: Business or other for-profit.

Estimated Annual Burden: 26,139 hours.

a. VA Form 26–1874—25,806 hours.

b. VA Form 26–1874a—333 hours.

Estimated Average Burden Per Respondent: 59 minutes (average).

a. VA Form 26–1874—60 minutes.

b. VA Form 26–1874a—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 26,806.

a. VA Form 26–1874—25,806.

b. VA Form 26–1874a—1,000.

Dated: July 1, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18267 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0014."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0014" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 28–1905 ensures that veterans or other eligible persons do not receive benefits for periods when they did not actually begin to participate in any rehabilitation or special restorative or specialized vocational training program. VA uses the information to establish the correct beginning and ending dates for the education, training, or other rehabilitation services and the correct rates for subsistence allowance payments.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 29, 2002, at pages 21016—21017.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, and State, Local or Tribal Government.

Estimated Annual Burden: 2,917 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 35,000.

Dated: July 1, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18268 Filed 7–18–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 139

Friday, July 19, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Ricin Vaccine and Methods of Making and Using Thereof

Correction

In the issue of Monday, July 15, 2002, on page 46566, in the second column, in the correction of notice document C2-16885, "110/083,336" should read "10/083,336".

[FR Doc. C2–16885 Filed 7–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–08; FAR Case 2000–406; Item I]

RIN 9000–AJ19

Federal Acquisition Regulation; Definition of "Claim" and Terms Relating to Termination

Correction

In rule document 02–15940 beginning on page 43513 in the issue of Thursday, June 27, 2002, make the following corrections:

52.213–4 [Corrected]

1. On page 43514, in the second column, in 52.213–4, in amendatory instruction 9., in the third line, "(7/02)" should read "(Jul/02)".

2. On page 43514, in the second column, in the same section, in the same amendatory instruction, in the fifth line, "7/02" should read "Jul 02".

52.233–1 [Corrected]

3. On page 43514, in the second column, in 52.233–1, in the sixth line from the bottom, "**Disputes (7/02)**" should read "**Disputes (Jul/02)**"

[FR Doc. C2–15940 Filed 7–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Policy for Revisions to the Weekly Natural Gas Storage Report; Comment Request

Correction

In notice document 02–17421 beginning on page 45963 in the issue of Thursday, July 11, 2002, make the following correction:

On page 45963, in the first column, under the heading **ADDRESSES**, in the fourth line, "202-586-4220" should read, "202-586-4420".

[FR Doc. C2–17421 Filed 7–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0012

Correction

In notice document 02–17412 beginning on page 45986 in the issue of Thursday, July 11, 2002 make the following correction:

On page 45986, in the second column, in the fourth paragraph, under the **DATES** heading, in the third line "September 9, 2000" should read "September 9, 2002".

[FR Doc. C2–17412 Filed 7–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0011

Correction

In notice document 02–17411 beginning on page 45985 in the issue of Thursday, July 11, 2002 make the following correction:

On page 45985, in the third column, under the **DATES** heading, in the third line "September 9, 2001" should read "September 9, 2002".

[FR Doc. C2–17411 Filed 7–18–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

[AAG/A Order No. 268-2002]

Privacy Act of 1974; Notice of the Removal of Two Systems of Records

Correction

In notice document 02–14400 appearing on page 39743 in the issue of Monday, June 10, 2002, make the following correction:

In the third column, in the first paragraph, the fourth line should read, "**Federal Register** on December 11, 1987, at 52 FR 47268 and the "Financial Management System," last published in the **Federal Register** on October 7, 1988".

[FR Doc. C2–14400 Filed 7–18–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 39
Airworthiness Directives; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–53–AD; Amendment 39–12804; AD 2002–14–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires performing an inspection of the wiring of the Firex bottle discharge cartridge of the No. 2 engine at station Y=2163.00 bulkhead for chafing on adjacent structure and damaged wiring; repairing damaged wires; and repositioning wires, if necessary. This action is necessary to prevent chafing and possible damage to the wiring of the Firex bottle discharge cartridge of the No. 2 engine, which could result in improper distribution of the fire extinguishing agent within the No. 2 engine in the event of a fire. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and -11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50899). That action proposed to require performing an inspection of the wiring of the Firex bottle discharge cartridge of the No. 2 engine at station Y=2163.00 bulkhead for chafing on adjacent structure and damaged wiring; repairing damaged wires; and repositioning wires, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw Proposed AD

One commenter requests that the proposed AD be withdrawn, because repetitive maintenance tasks are performed on the fire extinguishers and the condition of the circuit can be inspected easily. Therefore, the proposed AD is unnecessary.

The FAA does not agree. Because airplane maintenance manuals (AMM) are not FAA-approved and the procedures specified in AMMs vary from operator to operator, there are no assurances that each operator's AMM contains the equivalent actions required by this AD. Therefore, no change to this final rule is necessary in this regard.

Request That Credit Be Given for Previous Inspection

One commenter requests that the proposed AD be revised to acknowledge operators that have previously inspected for chafing and damage are exempt from having to reaccomplish the wiring inspection. Under the heading "Difference Between the Service Bulletin and the Proposed AD" in the preamble of the proposed AD, the commenter notes that it states that the referenced service bulletin describes only procedures for an inspection to detect damaged wiring, and that the proposed AD would require that inspection to detect both chafing AND damaged wiring. The commenter states that its Engineering Order Work Instructions state, "If the wiring at Station Y=2163.00 bulkhead is not chafing or damaged, no further action is required."

The FAA does not consider that a change to the final rule is necessary. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this AD, if the required inspection has been accomplished before the effective date of this AD, this AD does not require that it be repeated.

Explanation of Change to AD Applicability

The FAA finds that Model MD–11F airplanes were not specifically identified by model name in the applicability of the proposed AD. However, those airplanes were identified by the manufacturer's fuselage numbers in the effectivity listing of Boeing Service Bulletin MD11–26–037, dated November 8, 2000, which was referenced in the applicability of the proposed AD. Therefore, we have revised this AD to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Change of Definition

For clarification purposes, the FAA has revised the definition of a "general visual inspection" in Note 2 of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 148 Model MD–11 and –11F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,480, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–04 McDonnell Douglas: Amendment 39–12804. Docket 2001–NM–53–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Service Bulletin MD11–26–037, dated November 8, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and possible damage to the wiring of the Firex bottle discharge cartridge of the No. 2 engine, which could result in improper distribution of the fire extinguishing agent within the No. 2 engine in the event of a fire, accomplish the following:

General Visual Inspection

(a) Within 15 months after the effective date of this AD, do a general visual inspection of the wiring of the Firex bottle discharge cartridge of the No. 2 engine at station Y=2163.00 bulkhead for chafing on adjacent structure and damaged wiring, per Boeing Service Bulletin MD11–26–037, dated November 8, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Where there are differences between the referenced service bulletin and the AD, the AD prevails.

Condition 1 (No Chafing or Damaged Wiring)

(1) If no chafing or damaged wiring is detected, no further action is required by this AD.

Condition 2 (Chafing with No Damaged Wiring)

(2) If any chafing with no damaged wiring is detected, before further flight, reposition wires, per the service bulletin.

Condition 3 (Chafing with Damaged Wiring)

(3) If any chafing with damaged wiring is detected, before further flight, repair damaged wires and reposition wires, per the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin MD11–26–037, dated November 8, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17526 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–55–AD; Amendment 39–12805; AD 2002–14–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell

Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard,

overheating to date and will provide an equivalent level of safety. The commenter also states that this extension would allow affected operators to perform the replacement during a regularly scheduled maintenance interval and avoid the possibility of out-of-service time.

The FAA does not concur with the commenter's request to extend the compliance time for the required

determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 135 Model MD–11 airplanes of the affected design in the worldwide fleet. The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD.

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference,

Restatement of Requirements of AD 99–26–03 C1

Repetitive Inspections and Replacement, If Necessary

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999: Within 60 days after January 4, 2000 (the effective date of AD 99–26–03 C1, amendment 39–11463), perform a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–55–AD; Amendment 39–12805; AD 2002–14–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that currently requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. This amendment requires replacement of the electrical wiring of the galley in the electrical power center in bays 1, 2, and 3 with larger gage cable assemblies, which terminates the repetitive inspections. This amendment also expands the applicability of the existing AD to include two additional airplanes. This action is necessary to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and 4 GLCU, which could result in smoke and fire in the center accessory compartment. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of August 23, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–26–03 C1, amendment 39–11463 (65 FR 4870, February 2, 2000), which is applicable to certain McDonnell Douglas Model MD–11 airplanes, was published in the **Federal Register** on October 5, 2001 (66 FR 50903). The action proposed to continue to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. That action also proposed to required replacement of the electrical wiring of the galley in the electrical power center in bays 1, 2, and 3 with larger gage cable assemblies, which terminates the repetitive inspections. The action also proposed to expand the applicability of the existing AD to include two additional airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Compliance Time

One commenter requests that the proposed AD be revised to extend the compliance time of the replacement required by paragraph (c) of the proposed AD from 12 months to 18 months. The commenter states that inspections at 450-flight-hour intervals have not shown any evidence of overheating to date and will provide an equivalent level of safety. The commenter also states that this extension would allow affected operators to perform the replacement during a regularly scheduled maintenance interval and avoid the possibility of out-of-service time.

The FAA does not concur with the commenter's request to extend the compliance time for the required replacement. In developing an appropriate compliance time, we considered the safety implications, the time necessary for accomplishing the replacement, and normal maintenance schedules for timely accomplishment of the replacement. In light of these items, we have determined that 12 months for compliance is appropriate. However, paragraph (d)(1) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

Request to Accept Previously Approved Alternative Methods of Compliance (AMOC)

One commenter requests that the FAA continue to accept AMOCs that were previously granted per AD 99–26–03. The commenter states that it has such an AMOC. The FAA concurs. We have included a new paragraph (d)(2) in this AD to clarify that AMOCs previously approved in accordance with ADs 99–26–03 and 99–26–03 C1, both having amendment 39–11463, are approved as AMOCs with this AD.

Explanation of Change to AD Number and Associated Federal Register Citation

The FAA has revised the final rule to update the AD number and associated **Federal Register** citation for the superseded AD. A final rule; correction (i.e., AD 99–26–03 C1); was published in the **Federal Register** on February 2, 2000 (65 FR 4870) to revise the statement of the unsafe condition to correct the description of the locations of the power feeder cables.

Explanation of Change to Inspection Definition

For clarification purposes, the FAA has revised the definition of a "general visual inspection" in Note 2 of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 135 Model MD–11 airplanes of the affected design in the worldwide fleet. The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 99–26–03 C1, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $1,860, or $60 per airplane, per inspection cycle.

The new action that is required in this AD action will take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $14,647 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $487,537, or $15,727 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11463 (65 FR 4870, February 2, 2000), and by adding a new airworthiness directive (AD), amendment 39–12805, to read as follows:

2002–14–05 McDonnell Douglas: Amendment 39–12805. Docket 2001–NM–55–AD. Supersedes AD 99–26–03 C1, Amendment 39–11463.

Applicability: Model MD–11 airplanes, as listed in Boeing Service Bulletin MD11–24–184, dated February 22, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the wire assembly terminal lugs and power feeder cables due to the accumulated effects over time from overheating of the power feeder cables on the No. 3 and 4 galley load control unit (GLCU), which could result in smoke and fire in the central accessory compartment, accomplish the following:

Restatement of Requirements of AD 99–26–03 C1

Repetitive Inspections and Replacement, If Necessary

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999: Within 60 days after January 4, 2000 (the effective date of AD 99–26–03 C1, amendment 39–11463), perform a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay electrical power center to detect damage (*i.e.*, discoloration of affected parts or loose attachments), in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no damage is detected during any inspection required by this AD, repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

(2) If any damage is detected during any inspection required by this AD, prior to further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, in accordance with the service bulletin. Repeat the general visual inspection thereafter at intervals not to exceed 600 flight hours.

New Actions Required By This AD

Repetitive Inspections and Replacement, If Necessary

(b) For airplanes having serial numbers 547 and 554: Within 60 days after the effective date of this AD, do the actions required by paragraphs (a), (a)(1), and (a)(2) of this AD, as applicable.

Replacement

(c) Within 12 months after the effective date of this AD, replace the electrical wiring of the galley in the electrical power center in bays 1, 2, and 3 with larger gage cable assemblies, in accordance with Boeing Service Bulletin MD11–24–184, dated February 22, 2001. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO),

FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with ADs

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–59–AD; Amendment 39–12806; AD 2002–14–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Bulletin MD11–24–197, dated May 16, 2001, which was referenced in the applicability of the proposed AD. Therefore, we have revised this final rule to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Installation

(a) Within 18 months after the effective date of this AD, install protective sleeving on the right emergency wire assembly of the overhead switch panel, per Boeing Service Bulletin MD11–24–197, dated May 16, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los

FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with ADs 99–26–03 and 99–26–03 C1, both having amendment 39–11463, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999, or McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999; and Boeing Service Bulletin MD11–24–184, dated February 22, 2001; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin MD11–24–184, dated February 22, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; and McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999; was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17527 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–59–AD; Amendment 39–12806; AD 2002–14–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires installation of protective sleeving on the right emergency alternating current (AC) wire assembly of the overhead switch panel. This action is necessary to ensure that protective sleeving is installed on the right emergency AC wire assembly of the overhead switch panel. Lack of such sleeving could result in loss of redundant electrical power during certain cockpit overhead wiring faults. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50915). That action proposed to require installation of protective sleeving on the right emergency alternating current (AC) wire assembly of the overhead switch panel.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Include an Optional Installation

One commenter requests that the proposed AD be revised to include an option to install individual pieces of sleeving on each of the three AC wires. The commenter believes that this option instead of the proposed installation of a one-piece sleeving around all three AC wires would be safer, better, and easier to install. The commenter states that this option would keep the individual wires from rubbing against each other and provide complete isolation of the AC phases.

The FAA does not agree. We do not consider it appropriate to include various provisions in an AD applicable to a single operator's unique use of an affected airplane. However, under the provisions of paragraph (b) of the final rule, we may consider request for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

Explanation of Change to AD Applicability

The FAA finds that Model MD–11F airplanes are not specifically identified by model name in the applicability of the proposed AD. However, those airplanes were identified by manufacturer's fuselage numbers in the effectivity listing of Boeing Service Bulletin MD11–24–197, dated May 16, 2001, which was referenced in the applicability of the proposed AD. Therefore, we have revised this final rule to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 119 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of parts. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,160, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–06 McDonnell Douglas: Amendment 39–12806. Docket 2001–NM–59–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Service Bulletin MD11–24–197, dated May 16, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Installation

(a) Within 18 months after the effective date of this AD, install protective sleeving on the right emergency wire assembly of the overhead switch panel, per Boeing Service Bulletin MD11–24–197, dated May 16, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The installation shall be done in accordance with Boeing Service Bulletin MD11–24–197, dated May 16, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17528 Filed 7–18–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–60–AD; Amendment 39–12807; AD 2002–14–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell

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Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be

Cost Impact

There are approximately 23 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in

airplanes, that requires an inspection to detect discrepancies of the wire bundles in the avionics compartment in the vicinity of the pedestal extension area of the First Officer's seat; and corrective actions, if necessary. This action is necessary to prevent chafing of wiring in the avionics compartment, which could result in electrical arcing and consequent smoke and/or fire in the cockpit. This action is intended to

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–60–AD; Amendment 39–12807; AD 2002–14–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires relocation of the mod block tracks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats. This action is necessary to prevent chafing and compression of electrical wiring at the upper track mod blocks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats, which could result in electrical arcing and consequent smoke and/or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50886). That action proposed to require relocation of the mod block tracks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability

The FAA has determined that some confusion may arise from the applicability of the NPRM, because McDonnell Douglas Model MD–11F airplanes were not specifically identified. However, those airplanes were identified by manufacturer's fuselage numbers in Boeing Alert Service Bulletin MD11–24A036, Revision 01, dated May 21, 2001 (which was referenced in the applicability statement of the AD for determining the specific affected airplanes). Therefore, we have revised the applicability throughout the final rule to include Model MD–11F airplanes, in addition to Model MD–11 airplanes. In addition, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 23 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $705 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,600, or $825 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–07 McDonnell Douglas: Amendment 39–12807. Docket 2001–NM–60–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A036, Revision 01, dated May 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and compression of electrical wiring at the upper track mod blocks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats, which could result in electrical arcing and consequent smoke and/or fire in the cockpit, accomplish the following:

Relocation of Mod Block Tracks

(a) Within 1 year after the effective date of this AD, relocate the mod block tracks on the flight compartment floor beams in the avionics compartment beneath the Captain's and First Officer's seats, per Boeing Alert Service Bulletin MD–1124A036, Revision 01, dated May 21, 2001.

Note 2: Accomplishment of the relocation per McDonnell Douglas Service Bulletin MD11–24–036, dated May 8, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A036, Revision 01, dated May 21, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17534 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–61–AD; Amendment 39–12808; AD 2002–14–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires an inspection to detect discrepancies of the wire bundles in the avionics compartment in the vicinity of the pedestal extension area of the First Officer's seat; and corrective actions, if necessary. This action is necessary to prevent chafing of wiring in the avionics compartment, which could result in electrical arcing and consequent smoke and/or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50884). That action proposed to require an inspection to detect discrepancies of the wire bundles in the avionics compartment in the vicinity of the

pedestal extension area of the First Officer's seat; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Cost Impact

There are approximately 23 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $705 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,600, or $825 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–23A046, Revision 01, dated May 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

airplanes, that currently requires replacement of the existing terminal strips and supports above the main cabin area; and installation of spacers between terminal strips and mounting brackets in the avionics compartment; as applicable. This amendment requires replacing the applicable terminal strips in the avionics compartment with new terminal strips. This amendment also requires performing an inspection to detect arcing damage of the surrounding

telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for

pedestal extension area of the First Officer's seat; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability

The FAA finds that Model MD–11F airplanes were not specifically identified by model in the applicability of the supplemental NPRM; however, they were identified by manufacturer's fuselage numbers in Boeing Alert Service Bulletin MD11–23A046, Revision 01, dated May 21, 2001 (which was referenced in the applicability statement of the NPRM for determining the specific affected airplanes). Therefore, we have revised the final rule to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, we have revised the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Change to Inspection Definition

For clarification purposes, the FAA has revised the definition of a "general visual inspection" in Note 2 of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 118 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,880, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–08 McDonnell Douglas: Amendment 39–12808. Docket 2001–NM–61–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–23A046, Revision 01, dated May 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wiring in the avionics compartment, which could result in electrical arcing and consequent smoke and/or fire in the cockpit, accomplish the following:

(a) Within 1 year after the effective date of this AD, do a general visual inspection to detect discrepancies (*i.e.*, chafing, improper routing or bundle support, missing tie wraps, improper clearance) of wire bundles in the avionics compartment in the vicinity of the pedestal extension area of the First Officer's seat, per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–23A046, Revision 01, dated May 21, 2001. If any discrepancy is detected, before further flight, perform the applicable corrective actions (i.e., repair, replacement of damaged wires with new wires, reroute wire bundle, and tie wrap bundle) per the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Accomplishment of the inspections and corrective actions, if necessary, per McDonnell Douglas Service Bulletin MD11–23–046, dated March 17, 1995, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–23A046, Revision 01, dated May 21, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17535 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–63–AD; Amendment 39–12809; AD 2002–14–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes, that currently requires replacement of the existing terminal strips and supports above the main cabin area; and installation of spacers between terminal strips and mounting brackets in the avionics compartment; as applicable. This amendment requires replacing the applicable terminal strips in the avionics compartment with new terminal strips. This amendment also requires performing an inspection to detect arcing damage of the surrounding structure of the terminal strips and electrical cables in the avionics compartment, and repairing or replacing any damaged component with a new component. This amendment is prompted by reports of arcing between the power feeder cables and support brackets of the terminal strips on airplanes previously modified per the existing AD. The actions specified by this AD are intended to prevent electrical arcing caused by power feeder cable terminal lugs grounding against terminal strip support brackets, which could result in smoke and fire in the main cabin or avionics compartment.

DATES: Effective August 23, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A178, Revision 01, dated December 17, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of August 23, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 23, 2000 (65 FR 8025, February 17, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–03–15, amendment 39–11574 (65 FR 8025, February 17, 2000), which is applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes, was published in the **Federal Register** on October 5, 2001 (66 FR 50882). The action proposed to continue to require replacing the existing terminal strips and supports above the main cabin at station Y=5–32.000 with new terminal strips and supports. The action also proposed to replace the applicable terminal strips in the avionics compartment with new terminal strips. The action also proposed to require performing an inspection to detect arcing damage of the surrounding structure of the terminal strips and electrical cables in the avionics compartment, and repairing or replacing any damaged component with a new component.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Relevant New Service Bulletin

Since issuance of the NPRM, the FAA has reviewed and approved Revision 01 of McDonnell Douglas Alert Service Bulletin MD11–24A178, dated December 17, 2001. Revision 01 of the service bulletin is essentially identical to the original version of the service bulletin (which was referenced in the notice of proposed rulemaking (NPRM) as an appropriate source of service information), but provides clarification of a manual required to accomplish a continuity test and corrects the quantity of washers and a certain item number. We have revised the final rule to reference Revision 01 of the service bulletin as the appropriate source of service information for accomplishing the new actions required by this AD. We

also have included a new Note 3 to give operators credit for accomplishing those actions per the original version of the service bulletin.

Explanation of Change to Applicability

The FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Currently, there are no Model MD–11 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 1 work hour to accomplish the replacement currently required by AD 2000–03–15, and retained in this AD, at an average labor

8025, February 17, 2000), and by adding a new airworthiness directive (AD), amendment 39–12809, to read as follows:

2002–14–09 McDonnell Douglas: Amendment 39–12809. Docket 2001–NM–63–AD. Supersedes AD 2000–03–15, Amendment 39–11574.

Applicability: Model MD–11 and MD–11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999; and McDonnell Douglas

for damage, repairing any damaged wire, and removing the nameplate); and

(2) Perform a general visual inspection to detect arcing damage of the surrounding structure of the terminal strips and electrical cables in the avionics compartment. If any damage is detected, before further flight, repair or replace any damaged component with a new component, per the service bulletin; except if the type of structural material of the surrounding structure that has been affected is not covered in the Structural Repair Manual, repair per a method approved

MD11–24A150, dated March 25, 1999, was approved previously by the Director of the Federal Register as of March 23, 2000 (65 FR 8025, February 17, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification

of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport

also have included a new Note 3 to give operators credit for accomplishing those actions per the original version of the service bulletin.

Explanation of Change to Applicability

The FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 133 Model MD–11 and –11F airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A178, Revision 01, dated December 17, 2001, of the affected design in the worldwide fleet. The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD.

The new actions that are required in this AD action will take approximately 3 (for Group 1 airplanes) and 4 (for Group 2 airplanes) work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,142 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $1,322 (for Group 1 airplanes) and $1,382 (for Group 2 airplanes) per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Currently, there are no Model MD–11 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 1 work hour to accomplish the replacement currently required by AD 2000–03–15, and retained in this AD, at an average labor rate of $60 per work hour. The cost of required parts will be $885. Based on these figures, the cost impact of this AD for this replacement will be $945 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11574 (65 FR 8025, February 17, 2000), and by adding a new airworthiness directive (AD), amendment 39–12809, to read as follows:

2002–14–09 McDonnell Douglas: Amendment 39–12809. Docket 2001–NM–63–AD. Supersedes AD 2000–03–15, Amendment 39–11574.

Applicability: Model MD–11 and MD–11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999; and McDonnell Douglas Alert Service Bulletin MD11–24A178, Revision 01, dated December 17, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing caused by power feeder cable terminal lugs grounding against terminal strip support brackets, which could result in smoke and fire in the main cabin or avionics compartment, accomplish the following:

Restatement of Certain Requirements of AD 2000–03–15

Replacement of Terminal Strips and Supports

(a) For airplanes listed in the effectivity of McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, on which the modification specified in McDonnell Douglas Service Bulletin MD11–24–085, dated August 1, 1995, has not been accomplished: Within 1 year after March 23, 2000 (the effective date of AD 2000–03–15, amendment 39–11574), replace the existing terminal strips and supports above the main cabin at station Y=5–32.000 with new terminal strips and supports in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999.

New Actions Required by This AD

Replacement, Inspection, and Corrective Action If Necessary

(b) For airplanes listed in the effectivity of McDonnell Douglas Alert Service Bulletin MD11–24A178, Revision 01, dated December 17, 2001: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per the service bulletin.

(1) Replace the applicable terminal strips in the avionics compartment with new terminal strips (including inspecting wires for damage, repairing any damaged wire, and removing the nameplate); and

(2) Perform a general visual inspection to detect arcing damage of the surrounding structure of the terminal strips and electrical cables in the avionics compartment. If any damage is detected, before further flight, repair or replace any damaged component with a new component, per the service bulletin; except if the type of structural material of the surrounding structure that has been affected is not covered in the Structural Repair Manual, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Accomplishment of the replacement, inspection, and corrective action, before the effective date of this AD, per McDonnell Douglas Alert Service Bulletin MD11–24A178, dated May 14, 2001, is considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b)(2) of this AD, the actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999; and McDonnell Douglas Alert Service Bulletin MD11–24A178, Revision 01, dated December 17, 2001; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A178, Revision 01, dated December 17, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A150, dated March 25, 1999, was approved previously by the Director of the Federal Register as of March 23, 2000 (65 FR 8025, February 17, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17536 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–64–AD; Amendment 39–12810; AD 2002–14–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes Equipped With United Technologies Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires replacing the wire harness support bracket of the integrated drive generator (IDG) of the forward engine mounts with a new support bracket, and modifying the angle of the bracket near the oil filter. The actions specified by this AD are intended to prevent arcing of the IDG wire harness, which could result in smoke and/or fire in the area of the forward engine mount bolt retainer and/or fire detector responder. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50880). That action proposed to require replacing the wire harness support bracket of the integrated drive generator of the forward engine mounts with a new support bracket, and modifying the angle of the bracket near the oil filter.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Explanation of Change to Applicability

The FAA has revised the applicability of the existing AD to identify model designations as published in the most

recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference,

bracket of the IDG of the forward engine mounts with a new support bracket, and modify the angle of the bracket near the oil filter (i.e., cut and grind flanges, deburr edges, fusion weld flanges, and reidentify bracket), per Boeing Alert Service Bulletin MD11–71A086, Revision 01, dated May 21, 2001.

Note 2: Boeing Alert Service Bulletin MD11–71A086 references United Technologies Pratt & Whitney Service Bulletin PW4MD11 71–107, dated May 15,

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17529 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft

Explanation of Change to Applicability

The FAA finds that Model MD–11 and –11F airplanes were not specifically identified by model name in the applicability of the proposed AD. However, those airplanes were identified by manufacturer's fuselage numbers in the effectivity listing of McDonnell Douglas Alert Service Bulletin MD11–24A138, Revision 01, dated June 5, 2001, which was

recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the engine manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,060, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–10 McDonnell Douglas: Amendment 39–12810. Docket 2001–NM–64–AD.

Applicability: Model MD–11 and –11F airplanes, certificated in any category; equipped with United Technologies Pratt & Whitney Model PW4460 or PW4462 engines, engine buildup units having neutral quick engine change, cum units 4 through 240 inclusive and serial numbers 5166001 through 5213003 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the integrated drive generator (IDG) wire harness, which could result in smoke and/or fire in the area of the forward engine mount bolt retainer and/or fire detector responder, accomplish the following:

Replacement and Modification

(a) Within 1 year after the effective date of this AD, replace the wire harness support bracket of the IDG of the forward engine mounts with a new support bracket, and modify the angle of the bracket near the oil filter (i.e., cut and grind flanges, deburr edges, fusion weld flanges, and reidentify bracket), per Boeing Alert Service Bulletin MD11–71A086, Revision 01, dated May 21, 2001.

Note 2: Boeing Alert Service Bulletin MD11–71A086 references United Technologies Pratt & Whitney Service Bulletin PW4MD11 71–107, dated May 15, 1996, as an additional source of service information for accomplishing the proposed replacement and modification.

Spares

(b) As of the effective date of this AD, no United Technologies Pratt & Whitney Model PW4460 or PW4462 engines, engine buildup units having neutral quick engine change, cum units 4 through 240 inclusive and serial numbers 5166001 through 5213003 inclusive, shall be installed on any airplane unless the requirements of paragraph (a) of this AD have been done.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement and modification shall be done in accordance with Boeing Alert Service Bulletin MD11–71A086, Revision 01, dated May 21, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17529 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–65–AD; Amendment 39–12811; AD 2002–14–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable. This amendment requires a general visual inspection of the ground cables of the main external power and galley external power for excessive length, as applicable; and corrective actions, if necessary. This amendment is prompted by the FAA's determination that currently required actions may not adequately address the identified unsafe condition. The actions specified by this AD are intended to prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment.

DATES: Effective August 23, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A136, Revision 01, dated June 5, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of August 23, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 8, 2001 (65 FR 75616, December 4, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–24–13, amendment 39–12020 (65 FR 75616, December 4, 2000), which is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published in the **Federal Register** on October 5, 2001 (66 FR 50877). The action continues to require replacing the ground support bracket(s); and rerouting the ground cables of the galley external power and main external power, or ground cables of the main external power; as applicable. The action proposed to require a general visual inspection of the ground cables of the main external power and galley external power for excessive length, as applicable; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability

The FAA finds that Model MD–11 and –11F airplanes were not specifically identified by model name in the applicability of the proposed AD. However, those airplanes were identified by manufacturer's fuselage numbers in the effectivity listing of McDonnell Douglas Alert Service Bulletin MD11–24A138, Revision 01, dated June 5, 2001, which was referenced in the applicability of the proposed AD. Therefore, we have revised this AD to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Change to Inspection Definition

For clarification purposes, the FAA has revised the definition of a "general visual inspection" in Note 2 of this final rule.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 149 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2000–24–13, and retained in this amendment, take approximately 1 work hour (for Group 1 airplanes) or 2 work hours (for Group 2 airplanes) per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts cost approximately $337 (for Group 1 airplanes) or $647 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $397 (for Group 1 airplanes) or $767 (for Group 2 airplanes), per airplane.

The new actions that are required by this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this

AD is estimated to be $3,540, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12020 (65 FR 75616, December 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–12811, to read as follows:

2002–14–11 McDonnell Douglas: Amendment 39–12811. Docket 2001–NM–65–AD. Supersedes AD 2000–24–13, Amendment 39–12020.

Applicability: Model MD–11 and –11F airplanes, certificated in any category; equipped with General Electric Model CF6–80C2 series engines; Pratt & Whitney Model PW4460 or PW4462 engines; or Rolls-Royce Model RB211–524H2–19, RB211–524H2–T–19, RB211–524H2–T–D, RB211–524H2–T–F, RB211–524H2–T–W, RB211–524H2–T–WF, RB211–524H2–T–WT, RB211–524H2–T–WTF, RB211–524H2–T–WTF, RB211–524H2–T–WTF

AD is estimated to be $3,540, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12020 (65 FR 75616, December 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–12811, to read as follows:

2002–14–11 McDonnell Douglas: Amendment 39–12811. Docket 2001–NM–65–AD. Supersedes AD 2000–24–13, Amendment 39–12020.

Applicability: Model MD–11 and –11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A138, Revision 01, dated June 5, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and heat damage to the attachment points of the main external and galley power receptacle ground wire, insulation blankets outboard and aft of the receptacle area, and adjacent power cables, which could result in smoke and fire in the forward cargo compartment, accomplish the following:

Replacement and Rerouting

(a) Within 12 months after January 8, 2001 (the effective date of AD 2000–24–13, amendment 39–12020), accomplish the actions specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000, or Revision 01, dated June 5, 2001. As of the effective date of this AD, only Revision 01 of the service bulletin shall be used.

(1) For Group 1 airplanes listed in the original version of the service bulletin, excluding fuselage number 0456: Replace the ground support brackets with new brackets and reroute the ground cables of the galley external power and main external power.

(2) For Group 2 airplanes listed in the original version of the service bulletin and fuselage number 0456: Replace the ground support bracket and reroute the ground cables of the main external power.

Inspection and Corrective Actions, If Necessary

(b) Within 12 months after the effective date of this AD, accomplish the actions specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A138, Revision 01, dated June 5, 2001.

(1) For Group 3 airplanes listed in Revision 01 of the service bulletin: Do a general visual inspection of the ground cables of the main external power and galley external power for excessive length. If any cable length is excessive, before further flight, do applicable corrective actions (e.g., cut cable assembly to correct length and install a terminal on the cut end of the cable) per Condition 2 of Figure 3 of the service bulletin.

(2) For Group 4 airplanes listed in Revision 01 of the service bulletin: Do a general visual inspection of the ground cables of the main external power for excessive length. If any cable length is excessive, before further flight, do applicable corrective actions (e.g., cut cable assembly to correct length and install a terminal on the cut end of the cable) per Condition 2 of Figure 4 of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000, or McDonnell Douglas Alert Service Bulletin MD11–24A138, Revision 01, dated June 5, 2001; as applicable.

(1) This incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A138, Revision 01, dated June 5, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A138, dated April 3, 2000, was approved previously by the Director of the Federal Register as of January 8, 2001 (65 FR 75616, December 4, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17530 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–157–AD; Amendment 39–12812; AD 2002–14–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires an inspection of the wiring in the fuel control panel of the wings for chafing damage and for proper routing of the wiring; and corrective action(s), if necessary. This action is necessary to prevent chafing of the wiring in a cutout area in the wing fuel control panel due to improperly routed wiring, which could result in electrical arcing in an abnormal fuel vapor zone and consequent possible ignition of the fuel vapor. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50875). That action proposed to require an inspection of the wiring in the fuel control panel of the wings for chafing damage and for proper routing of the wiring; and corrective action(s), if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability

The FAA finds that Model MD–11F airplanes were not specifically identified by model name in the applicability of the proposed AD. However, those airplanes were identified by manufacturer's fuselage numbers in the effectivity listing of Boeing Alert Service Bulletin MD11–28A058, Revision 01, dated March 29, 2001, which was referenced in the applicability of the proposed AD. Therefore, we have revised this AD to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Change to Inspection Definition

For clarification purposes, the FAA has revised the definition of a "general visual inspection" in Note 2 of this final rule.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 78 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,800, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wiring in a cutout area in the wing fuel control panel due to improperly routed wiring, which could result in electrical arcing in an abnormal fuel vapor zone and consequent possible ignition of the fuel vapor, accomplish the following:

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance

light fixture, and consequent smoke and/or fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information

Request To Revise the Cost Impact

One commenter, the airplane manufacturer, notes that the Cost Impact section of the proposed AD states, "The manufacturer has committed previously to its customers that it will bear the cost of replacement parts." The commenter states that this is not quite accurate. The commenter notes that in "2.B. Industry Support Information" of the referenced service bulletin (i.e., Boeing Alert

on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 157 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–12 McDonnell Douglas: Amendment 39–12812. Docket 2001–NM–157–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–28A058, Revision 01, dated March 29, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wiring in a cutout area in the wing fuel control panel due to improperly routed wiring, which could result in electrical arcing in an abnormal fuel vapor zone and consequent possible ignition of the fuel vapor, accomplish the following:

Inspection and Corrective Action, If Necessary

(a) Within 6 months after the effective date of this AD, do a general visual inspection of the wiring in the fuel control panel of the wings for chafing damage and for proper routing of the wiring, per Boeing Alert Service Bulletin MD11–28A058, Revision 01, dated March 29, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) Condition 1. If no chafing damage is found and if the wiring is NOT routed into the cutout area of the fuel control panel, no further work is required by this AD.

(2) Condition 2. If no chafing damage is found and if the wiring is routed into the cutout area of the fuel control panel, before further flight, revise the wire routing out of the cutout area in the fuel control panel, per the service bulletin.

(3) Condition 3. If any chafing damage is found and if the wiring is routed into the cutout area of the fuel control panel, before further flight, replace any damaged wire with a new wire, and revise the wire routing out of the cutout area in the fuel control panel, per the service bulletin.

Note 3: Accomplishment of the actions specified in McDonnell Douglas service Bulletin MD11–28–058, dated January 3, 1995, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–28A058, Revision 01, dated March 29, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17531 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–158–AD; Amendment 39–12813; AD 2002–14–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires installing a clipnut and bracket and revising the routing of the wire assembly of the forward lower cargo door. This action is necessary to prevent failure of the wire assemblies and damage of a ballast of a light fixture, and consequent smoke and/or fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50873). That action proposed to require installing a clipnut and bracket and revising the routing of the wire assembly of the forward lower cargo door.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise the Cost Impact

One commenter, the airplane manufacturer, notes that the Cost Impact section of the proposed AD states, "The manufacturer has committed previously to its customers that it will bear the cost of replacement parts." The commenter states that this is not quite accurate. The commenter notes that in "2.B. Industry Support Information" of the referenced service bulletin (i.e., Boeing Alert Service Bulletin MD11–52A035, Revision 02, dated March 12, 2001), it states, "Boeing warranty remedies are available for airplanes in warranty as of February 5, 1997."

The FAA infers that the commenter is requesting that the Cost Impact section be revised to correctly address warranty remedies. We concur. We have revised the final rule to specify the cost of the required parts and to clarify that required parts will be provided at no charge for affected airplanes within the warranty period.

Request To Revise Incorrect Service Bulletin Reference

One commenter requests that a typographical error be corrected in Note 2 of the proposed AD. The commenter states the correct service bulletin reference should be "MD11–52–035," not "MD11–52–034." The FAA concurs and has revised the final rule accordingly.

Explanation of Change to Applicability

The FAA finds that Model MD–11F airplanes were not specifically identified by model name in the applicability of the proposed AD. However, those airplanes are identified by manufacturer's fuselage numbers in the effectivity listing of Boeing Alert Service Bulletin MD11–52A035, Revision 02, dated March 12, 2001, which was referenced in the applicability of the proposed AD. Therefore, we have revised this AD to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, the FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 157 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,320, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, for affected airplanes within the period under the warranty agreement, the FAA has been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–159–AD; Amendment 39–12814; AD 2002–14–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–13 McDonnell Douglas: Amendment 39–12813. Docket 2001–NM–158–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–52A035, Revision 02, dated March 12, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the wire assemblies and damage of a ballast of a light fixture, and consequent smoke and/or fire in the forward cargo compartment, accomplish the following:

Installation of Clipnut and Bracket and Revision of Routing of Wiring

(a) Within 1 year after the effective date of this AD, install a clipnut and bracket and revise the routing of the wire assembly of the forward lower cargo door, per Boeing Alert Service Bulletin MD11–52A035, Revision 02, dated March 12, 2001.

Note 2: Accomplishment of the actions specified in McDonnell Douglas Service Bulletin MD11–52–035, Revision 01, dated March 9, 1998, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–52A035, Revision 02, dated March 12, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17532 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–159–AD; Amendment 39–12814; AD 2002–14–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes Equipped With General Electric Tail Engine Buildup Units (EBU)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes that requires installation of a new support bracket with a clamp and screw to support the wire harness of the integrated drive generator (IDG). This action is necessary to prevent chafing and arcing of the wire harness of the IDG due to inadequate support, which could result in smoke and/or fire in the area of the forward engine mount. This action is intended to address the identified unsafe condition.

DATES: Effective August 23, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published in the **Federal Register** on October 5, 2001 (66 FR 50872). That action proposed to require installation of a new support bracket with a clamp and screw to support the wire harness of the integrated drive generator (IDG).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed AD.

Explanation of Change to Applicability

The FAA finds that Model MD–11F airplanes were not specifically identified by model name in the applicability of the proposed AD. However, those airplanes were identified by manufacturer's fuselage numbers in the effectivity listing of Boeing Alert Service Bulletin MD11–24A095, Revision 01, dated March 16, 2001, which was referenced in the applicability of the proposed AD. Therefore, we have revised this AD to specifically reference Model MD–11 and –11F airplanes where appropriate. In addition, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models and to specifically identify that the affected airplanes are equipped with General Electric tail engine buildup units (EBU).

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by Rohr, Inc., at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,020, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–14–14 McDonnell Douglas: Amendment 39–12814. Docket 2001–NM–159–AD.

Applicability: Model MD–11 and –11F airplanes equipped with General Electric tail engine buildup units (EBU), as listed in Boeing Alert Service Bulletin MD11–24A095, Revision 01, dated March 16, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the wire harness of the integrated drive generator (IDG) due to inadequate support, which could result in smoke and/or fire in the area of the forward engine mount, accomplish the following:

Installation of New Support Bracket

(a) Within 1 year after the effective date of this AD, install a new support bracket with a clamp and screw to support the wire harness of the IDG, per Boeing Alert Service Bulletin MD11–24A095, Revision 01, dated March 16, 2001.

Note 2: Accomplishment of the installation per McDonnell Douglas Service Bulletin MD11–24–095, dated January 29, 1996, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A095, Revision 01, dated March 16, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17533 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–158–AD; Amendment 39–12813; AD 2002–14–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires an inspection of the powered drive unit power wires within three feet of each affected powered drive unit termination for mechanical damage; and repair, if necessary. That AD also currently requires revising the wire harnesses;

adequately specify procedures for routing the wire harness for the position 6L PDU through the sump bulkhead at station 1761.00. Therefore, the requirements of that AD do not adequately preclude the identified unsafe condition.

Explanation of New Service Information

We have reviewed and approved Revision 01 of McDonnell Douglas Alert

this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are

postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not

used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The installation shall be done in accordance with Boeing Alert Service Bulletin MD11–24A095, Revision 01, dated March 16, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 23, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17533 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–33–AD; Amendment 39–12815; AD 2002–14–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires an inspection of the powered drive unit power wires within three feet of each affected powered drive unit termination for mechanical damage; and repair, if necessary. That AD also currently requires revising the wire harnesses; splicing any additional length wire; routing and installing parts; and replacing the floor panels with new and retained floor panels. This amendment revises the existing requirements by improving the routing of the wire harnesses. This amendment is prompted by the FAA's determination that the currently required modification does not adequately preclude the identified unsafe condition. The actions specified in this AD are intended to ensure that the powered roller pans are positioned properly. Improperly positioned powered roller pans could pierce a powered roller wire harness and cause sparking that could ignite adjacent insulation material, which could result in smoke and fire in the center cargo compartment of the airplane.

DATES: Effective August 5, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–33–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: On July 14, 2000, the FAA issued AD 2000–14–18, amendment 39–11829 (65 FR 46199, July 27, 2000), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require an inspection of the powered drive unit power wires within three feet of each affected powered drive unit (PDU) termination for mechanical damage; and repair, if necessary. That AD also requires revising the wire harnesses; splicing any additional length wire; routing and installing parts; and replacing the floor panels with new and retained floor panels. That action was prompted by an incident in which a fire occurred in the center cargo compartment during loading. The actions required by that AD are intended to ensure that the powered roller pans are positioned properly. Improperly positioned powered roller pans could pierce a powered roller wire harness and cause sparking that could ignite adjacent insulation material, which could result in smoke and fire in the center cargo compartment of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–14–18, the FAA, in conjunction with Boeing, has determined that McDonnell Douglas Service Bulletin MD11–25A227, dated January 27, 2000 (which is referenced in AD 2000–14–18 as the appropriate source of service information) does not

adequately specify procedures for routing the wire harness for the position 6L PDU through the sump bulkhead at station 1761.00. Therefore, the requirements of that AD do not adequately preclude the identified unsafe condition.

Explanation of New Service Information

We have reviewed and approved Revision 01 of McDonnell Douglas Alert Service Bulletin MD11–25A227, dated October 31, 2001, which provides new instructions for routing the wire harness for the position 6L PDU through the sump bulkhead at station 1761.00. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of AD Applicability

We have specified model designations in the applicability of this proposed AD as published in the most recent type certificate data sheet for the affected models. These model designations differ in the referenced service bulletin.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2000–14–18 to require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

None of the Model MD–11 and –11F airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require between 2 and 3 work hours (depending on the configuration of the airplane) to accomplish the required actions, at an average labor rate of $60 per work hour. Parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this AD would be between $120 and $180 per airplane. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–33–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11829 (65 FR 46199, July 27, 2000), and by adding a new airworthiness directive (AD), amendment 39–12815, to read as follows:

2002–14–15 McDonnell Douglas: Amendment 39–12815. Docket 2002–NM–33–AD. Supersedes AD 2000–14–18, Amendment 39–11829.

Applicability: Model MD–11 and –11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–25A227, Revision 01, dated October 31, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Revise Wire Harnesses, Splice Wire, and Route and Install Parts

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A227, Revision 01, dated October 31, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C.

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A227, Revision 01, dated October 31, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C.

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provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the powered roller pans are positioned properly, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD per McDonnell Douglas Alert Service Bulletin MD11–25A227, Revision 01, dated October 31, 2001.

Inspection

(1) Perform a general visual inspection of the powered drive unit power wires within three feet of each affected powered drive unit termination for mechanical damage. If any damaged wire is detected, before further flight, repair the damaged wire.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Revise Wire Harnesses, Splice Wire, and Route and Install Parts

(2) Revise the wire harnesses, splice any additional length wire, and route and install parts.

Replacement

(3) Replace the floor panels with new and retained floor panels.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A227, Revision 01, dated October 31, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on August 5, 2002.

Issued in Renton, Washington, on July 2, 2002.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–17525 Filed 7–18–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
July 19, 2002

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcment for the National Training and Technical Assistance Program for Tribal Youth Grantees, American Indian Tribes, and Alaska Native Communities; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1360]

Program Announcement for the National Training and Technical Assistance Program for Tribal Youth Program Grantees, American Indian Tribes, and Alaska Native

solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received after September 3, 2002, will be deemed late and may not be accepted. The closing date and time apply to all applications. To ensure prompt delivery, please adhere to the following

tribal communities). The Tribal Training and Technical Assistance Program is designed to help tribal communities develop comprehensive, systemic approaches to reducing juvenile delinquency, violence, and child victimization and to increasing the safety of tribal communities.

Background

Although, in general, U.S. crime rates

and culturally appropriate programming to assist tribal youth and their families.

Authorization of Appropriations

OJJDP is authorized to fund the Tribal Training and Technical Assistance Program through the FY 2002 Commerce, Justice, and State Appropriations Act, Pub. L. 107–77, which appropriated $472 million to support and enhance tribal efforts to

a reservation to 10,000 or more residents.

Another OJJDP initiative that assists tribal communities is the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Program. Through CIRCLE, OJJDP provides financial support and technical assistance to participating tribal governments (the Oglala Sioux Tribe, the Northern Cheyenne Tribe, and the Pueblo of Zuni) for juvenile

communities related to juvenile justice and delinquency prevention and to recommend a delivery strategy to OJJDP.

- To develop, implement, and enhance training, technical assistance, and evaluation materials and activities.
- To provide technical assistance to TYP grantees and American Indian and Alaska Native communities that builds their capacity to assess tribal needs, conduct strategic planning, implement appropriate programs, and evaluate

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1360]

Program Announcement for the National Training and Technical Assistance Program for Tribal Youth Program Grantees, American Indian Tribes, and Alaska Native Communities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the National Training and Technical Assistance Program for Tribal Youth Program Grantees, American Indian Tribes, and Alaska Native Communities. The recipient of this award will provide training and technical assistance to enhance the capacity of Tribal Youth Program grantees and American Indian and Alaska Native communities to develop and implement comprehensive systemwide approaches that prevent, reduce, and control juvenile delinquency, thereby increasing the overall safety of tribal communities.

DATES: Applications must be received by September 3, 2002.

Application Kit: Interested applicants can obtain the *OJJDP Application Kit* by calling the Juvenile Justice Clearinghouse at 800–638–8736, by sending an e-mail request to *puborder@ncjrs.org*, or through fax-on-demand. (For fax-on-demand, call 800–638–8736, select option 1, then select option 2 and enter the following four-digit numbers: 9119, 9120, 9121, and 9122. Application kits will be faxed in four sections because of the number of pages.) The *Application Kit* is also available online at *www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf*.

Delivery Instructions: All applicants must submit the original application (signed in blue ink) and five copies. Applications should be unbound and fastened by a binder clip in the top left-hand corner. (*See* "Delivery Instructions" below for additional information.)

OJJDP strongly recommends that applicants number each page of the application. To ensure that applications are received by the due date, applicants should use a mail service that documents the date of receipt. Because OJJDP anticipates sending applicants written notification of application receipt approximately 4 weeks after the solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received after September 3, 2002, will be deemed late and may not be accepted. The closing date and time apply to all applications. To ensure prompt delivery, please adhere to the following guidelines:

Applications sent by U.S. mail: Use registered mail to send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. In the lower left-hand corner of the envelope, clearly write "Tribal Training and Technical Assistance Program."

Applications sent by overnight delivery service: Allow at least 48 hours for delivery. Send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 800–638–8736 (phone number required by some carriers). In the lower left-hand corner of the envelope, clearly write "Tribal Training and Technical Assistance Program."

Applications delivered by hand: Deliver by September 3, 2002, to the Juvenile Justice Resource Center, 2277 Research Boulevard, Rockville, MD 20850; 301–519–5535. Hand deliveries will be accepted daily between 8:30 a.m. and 5 p.m., ET, excluding Saturdays, Sundays, and Federal holidays. Entrance to the resource center requires proper photo identification.

FOR FURTHER INFORMATION, CONTACT: Jayme S. Marshall, Training and Technical Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 202–616–7614. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of the National Training and Technical Assistance Program for Tribal Youth Program Grantees, American Indian Tribes, and Alaska Native Communities (hereafter referred to as the Tribal Training and Technical Assistance Program) is to provide training and technical assistance to the grantees of the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) Tribal Youth Program (TYP); American Indian tribes, as defined in 25 U.S.C. 450(b)e; and Alaska Native communities (hereafter collectively referred to as tribal communities). The Tribal Training and Technical Assistance Program is designed to help tribal communities develop comprehensive, systemic approaches to reducing juvenile delinquency, violence, and child victimization and to increasing the safety of tribal communities.

Background

Although, in general, U.S. crime rates have been decreasing, self-reported data from crime victims indicate that the 1.9 million American Indians living in the United States are victims of violent crime at more than twice the rate of other U.S. residents.[1] In recent years, as the American Indian population has expanded, youth violence in tribal communities has grown. Of particular concern to American Indian tribes and OJJDP is the increasing number of violent crimes committed by juveniles in tribal communities, and research shows that this concern is warranted. For example, the Bureau of Justice Statistics has reported the following findings:

- In more than two-thirds of cases involving family violence, the assailant was under the influence of alcohol.[2]
- According to 1995 data, there was approximately 1 substantiated report of child abuse or neglect for every 30 American Indian children age 14 or younger. For all races, the rate was approximately 1 report of abuse for every 58 children.
- For alcohol-related offenses, including driving under the influence, liquor law violations, and public drunkenness, the arrest rate for American Indians was more than double that for all other races.[3]
- American Indians younger than 18 were incarcerated for alcohol-related offenses at twice the national rate.[4]
- Between 1996 and 2001, the number of American Indian inmates in the custody of the Bureau of Prisons increased 84 percent (from 1,276 to 2,348 inmates). During that same time, the number of American Indian juveniles in Federal custody increased 82 percent (from 103 to 187 inmates).

American Indian tribes and Alaska Native communities need comprehensive approaches to prevent juvenile delinquency and to improve tribal juvenile justice systems. With this goal in mind, OJJDP is supporting innovative programs, creative strategies,

[1] Greenfeld, L.A., and Smith, S. 1999. *American Indians and Crime*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

[2] *Id.* at 10.

[3] *Id.* at vii.

[4] *Id.* at 25.

and culturally appropriate programming to assist tribal youth and their families.

Authorization of Appropriations

OJJDP is authorized to fund the Tribal Training and Technical Assistance Program through the FY 2002 Commerce, Justice, and State Appropriations Act, Pub. L. 107–77, which appropriated $472 million to support and enhance tribal efforts to prevent and control delinquency and to improve the juvenile justice system for tribal youth. Of the $472 million appropriated, $1.25 million will support program-related research, evaluation, and statistics; $250,000 will provide training and technical assistance to tribal programs; $8 million will be used for discretionary grants; $1 million will fund programs that support the TYP Mental Health Initiative; and the remaining funds will be used to enhance other tribal efforts and TYP support. An additional $550,000 of Part C Discretionary Funds will supplement the $250,000 for the general technical and training assistance budget to ensure that American Indian tribes other than TYP grantees have access to and receive services that address comprehensive delinquency prevention and control for juvenile justice system improvement.

Tribal Youth Program and Other Juvenile Justice Activities in Indian Country

OJJDP supports several programs that help tribal communities address juvenile crime. TYP funds enable tribal communities to develop programs that prevent and control juvenile delinquency, reduce violent crime, and improve tribal juvenile justice systems. TYP grant recipients, who receive funds directly from OJJDP, and are required to use their grant funds to implement programs within one or more of the five categories that are listed under "Performance Measurement."

OJJDP encourages TYP grantees to design culturally based programs and to incorporate traditional practices, where appropriate. When designing juvenile delinquency prevention, intervention, and system improvement activities, grantees are asked to consider the roles of children, parents, and elders in their communities. OJJDP also recommends that grantees involve tribal youth when planning and implementing program activities. Because each tribe is unique, TYP grantees differ in their approaches, needs, and regional perspectives (*e.g.*, rural, rural remote, or urban). Grantees also vary by the size of their service populations, which range from 2,000 or fewer individuals who reside on or near a reservation to 10,000 or more residents.

Another OJJDP initiative that assists tribal communities is the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Program. Through CIRCLE, OJJDP provides financial support and technical assistance to participating tribal governments (the Oglala Sioux Tribe, the Northern Cheyenne Tribe, and the Pueblo of Zuni) for juvenile delinquency prevention and control programs; crime prevention efforts; victim services; effective community policing services; criminal investigation; prosecutorial, tribal court, and probation services; and detention and alternative sentencing programs. Tribes also have been active in other OJJDP initiatives, including the Juvenile Mentoring Program, Safe Schools/Healthy Students, and the Enforcing the Underage Drinking Laws Program.

In addition, OJJDP has funded a number of other innovative solutions to combat juvenile delinquency and crime in Indian Country. Varied in design, these culturally based programs provide interventions for court-involved youth and their families, improve tribal justice systems, and provide prevention programs that focus on alcohol and other drugs.

Initially funded in fiscal year (FY) 1998, the Tribal Youth Training and Technical Assistance Program provides services to TYP grantees and other tribal communities. During the program's first 4 years of operation, requests for training and technical assistance steadily increased, to over 120 requests in 2001. The programmatic areas that generated the most requests were juvenile justice system improvement, substance abuse prevention, reentry programs, family strengthening, conflict resolution, indigenous justice, gang prevention, and delinquency prevention.

Goal

The goal of the Tribal Training and Technical Assistance Program is to enhance the capacity of TYP grantees and American Indian and Alaska Native communities to develop and implement comprehensive systemwide approaches that prevent, reduce, and control juvenile delinquency, thereby increasing the overall safety of tribal communities.

Objectives

The objectives of this training and technical assistance program are as follows:

- To assess the national training and technical assistance needs of tribal communities related to juvenile justice and delinquency prevention and to recommend a delivery strategy to OJJDP.
- To develop, implement, and enhance training, technical assistance, and evaluation materials and activities.
- To provide technical assistance to TYP grantees and American Indian and Alaska Native communities that builds their capacity to assess tribal needs, conduct strategic planning, implement appropriate programs, and evaluate program effectiveness.
- To provide tribes with local and regional training that will enhance their knowledge and skills.
- To create and maintain a Web-based, technical assistance system capable of managing all aspects of a state-of-the-art technical assistance and training program.
- To develop guidance documents and products that support the capacity building of TYP grantees and American Indian and Alaska Native communities.

Performance Measurement

To ensure compliance with the Government Performance and Results Act (GPRA), Pub. L. 103–62, this solicitation notifies applicants that they are required to collect and report on data that measure the results of the program implemented by this grant. To ensure the accountability of this data (for which the Office of Justice Programs [OJP] is responsible), the following performance measures are provided.

The grantee will report on the number of training and technical assistance deliveries provided to tribes that are implementing programs within the following categories:

- Category I: To reduce, control, and prevent crime and other delinquent acts committed by and against tribal youth.
- Category II: To provide interventions for court-involved tribal youth.
- Category III: To improve tribal juvenile justice systems.
- Category IV: To provide prevention programs that focus on alcohol and drugs.
- Category V: To address the need for comprehensive mental health services for American Indian and Alaska Native youth.

In addition, the grantee will be responsible for:

1. The annual number of onsite training sessions delivered to tribes.
2. The annual number of technical assistance deliveries provided to tribes.
3. A specific number of products (*e.g.*, handbooks, publications, toolkits) developed to enhance and/or transfer knowledge to and build the capacity of tribes by identifying best practices for

the field. The grantee will be responsible for tracking these products.

Should program expansion or a formal evaluation be undertaken in the future, performance data collected will provide crucial baseline information regarding the efforts of the Tribal Training and Technical Assistance Program. Assistance in obtaining this information will facilitate future

American Indian tribes,[5] approximately half of which operate and manage their own juvenile justice systems. Other tribes may address juvenile justice and child welfare matters through arrangements with other tribal, county, and/or State juvenile justice systems, especially in jurisdictions governed by Pub. L. 83–280.[6] OJJDP expects the technical assistance provider to understand the importance and

In every case, training and technical assistance services must be provided in a culturally sensitive manner by individuals who understand and appreciate tribal history and customs, recognize the importance of indigenous justice systems, and understand juvenile justice issues. Given the various needs of, and services available in, tribal communities, the provider must be knowledgeable about a breadth of

standards present the minimum expectations that must be met for effective practice in the planning, delivery, and evaluation of training and technical assistance. This resource and others are available through OJJDP's National Training and Technical Assistance Center (*www.nttac.org*).

- Develop a Web-based training and technical assistance tracking system that reports all technical assistance services

elements that is capable of producing a wide array of special reports.

- Collect, study, review, and analyze the broad range of data and information obtained through this program, including grantee materials, site visit reports, technical assistance plans, technical assistance delivery reports, and proceedings of meetings and conferences.
- Coordinate with OJJDP to enhance

submission guidelines regarding page length, layout, and deadlines.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel according to the criteria outlined below. Based on the highest scoring proposals, OJJDP may conduct onsite interviews with up to five applicants.

Problem(s) To Be Addressed (15 points)

the field. The grantee will be responsible for tracking these products.

Should program expansion or a formal evaluation be undertaken in the future, performance data collected will provide crucial baseline information regarding the efforts of the Tribal Training and Technical Assistance Program. Assistance in obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable program results of federally funded programs.

Program Strategy

OJJDP will competitively select an organization to implement the Tribal Training and Technical Assistance Program. A cooperative agreement will be awarded for a 4-year program period. Applicants must demonstrate (1) the ability to develop and direct an OJJDP-based training and technical assistance program; (2) expertise in juvenile justice; (3) a working knowledge of Federal, State, tribal, and local relations; (4) an understanding of how tribal governments relate to juveniles; (5) a working knowledge of law enforcement and tribal justice systems; and (6) an understanding of and sensitivity to the complexities of tribal culture and indigenous justice systems. Successful applicants must have substantial experience in producing, modifying, and/or updating a wide range of practical resource materials and curriculums. Also required is experience in assessing personnel and organizational training needs and in providing onsite technical assistance to address issues described in this solicitation.

The Tribal Training and Technical Assistance Program will provide services to support the development, planning, and implementation of innovative solutions that address juvenile delinquency in Indian Country. Through this program, TYP grantees and American Indian and Alaska Native communities will be able to receive assistance to develop or enhance their juvenile justice systems. This broad scope will enable the training and technical assistance provider to offer services to federally recognized tribes and tribal communities that are seeking to improve juvenile delinquency prevention programs or other juvenile justice services.

For many reasons, providing training and technical assistance to tribal communities can be challenging. As of 2002, there are 562 federally recognized American Indian tribes,[5] approximately half of which operate and manage their own juvenile justice systems. Other tribes may address juvenile justice and child welfare matters through arrangements with other tribal, county, and/or State juvenile justice systems, especially in jurisdictions governed by Pub. L. 83–280.[6] OJJDP expects the technical assistance provider to understand the importance and complexities of tribal culture and indigenous justice systems and to recognize that American Indian and Alaska Native communities may operate under very different systems of justice. For example, some tribes may have their own juvenile justice systems, whereas others may operate through local, county, or State systems. The training and technical assistance provider will often collaborate with several agencies to coordinate their efforts to address the needs of tribal communities.

As an additional challenge, many tribal communities are geographically isolated, and some can only be reached by unconventional methods of transportation. It is not uncommon, for example, to find tribal communities in Alaska that are accessible only by snowmobile, boat, or amphibious plane. Some tribal communities, even though they are located within the contiguous United States, can only be reached by driving several hundred miles on unpaved roads. Geographic isolation affects the level of services that are needed, such as access to information and technology. Tribes located near towns or urban areas are more likely to have access to current information and technology. Tribal officials in these areas also may find it easier to network with other tribal and juvenile justice practitioners.

Training and technical assistance needs vary considerably by tribe. Some tribes have been actively involved in delinquency prevention efforts and need assistance in improving their programs, whereas others are just beginning to address juvenile crime and need help starting the process to reform or develop their juvenile justice systems. In many tribal communities, access to educational opportunities is limited; community members often need basic training in report writing, grant writing, and program, project, and financial management.

[5] A complete list of the federally recognized tribes will be published in an upcoming issue of the **Federal Register**.

[6] In States governed by 18 U.S.C. 1162 (Pub. L. 280), such as California and Alaska, baseline law enforcement services are provided by the State, and American Indian tribes have concurrent authority over crimes by American Indians.

In every case, training and technical assistance services must be provided in a culturally sensitive manner by individuals who understand and appreciate tribal history and customs, recognize the importance of indigenous justice systems, and understand juvenile justice issues. Given the various needs of, and services available in, tribal communities, the provider must be knowledgeable about a breadth of topics, including legal and social issues and promising programs that have proven effective with tribal youth. Successful applicants will be expected to build on the previous accomplishments and activities of the program and to institute a seamless transition. To ensure that quality services will be delivered to the greatest possible number of TYP grantees and American Indian and Alaska Native communities, OJJDP intends to select a training and technical assistance provider that has the knowledge and skills necessary to maximize the impact of the program.

Deliverables

In addition to the strategy and content of the program design, the following deliverables must be completed during year 1. Subsequent deliverables will be developed annually according to need and funding ability.

Year 1

- Develop a transition work plan that describes how data, materials, and processes from the current service provider will be incorporated into the new program approach, including the collaboration and interface needed during the startup phase.
- Develop a national needs assessment of federally recognized tribes using multiple approaches and translate the findings into a report entitled *Tribal Technical Assistance Needs: Recommended Response By Program Year.*
- Develop a strategic plan (including timelines, performance measures, and benchmarks for measuring internal progress) that specifies which activities will be conducted to achieve the program goals and objectives.
- Develop a program marketing plan that outlines the development of products and materials that will inform TYP grantees and American Indian and Alaska Native communities of the available training and technical assistance services.
- Develop training, technical assistance, and evaluation protocols based on the OJJDP Core Performance Standards to ensure consistency and quality of service delivery. These

standards present the minimum expectations that must be met for effective practice in the planning, delivery, and evaluation of training and technical assistance. This resource and others are available through OJJDP's National Training and Technical Assistance Center *(www.nttac.org).*

- Develop a Web-based training and technical assistance tracking system that reports all technical assistance services (*i.e.*, offsite, onsite, multitribe) and includes online request functions, approval status, dates, locations, consultant selections, estimated costs, evaluation data, curriculums, and reports.
- Deliver a minimum of 200 working days of onsite technical assistance in response to site visit findings, grantee work plans, and direct requests made by tribes. (**Note:** A working day is defined as 6 hours of service.)
- Deliver a minimum of 300 working days of offsite technical assistance, including written, verbal, and electronic information and disseminated materials, as required.
- Deliver a minimum of 100 working days of multitribal technical assistance activities that involve the participation of clusters of tribes and others in information dissemination and sharing.
- Conduct 2 focus groups on topics to be determined for a minimum of 20 participants. (**Note:** Expenses for participant travel will be paid out of the service provider's budget.)
- Develop a minimum of four guidance documents or products about current issues, lessons learned from other tribes, current research, and other information that may help tribes improve their juvenile justice and delinquency prevention programs and systems.
- Develop marketing and informational materials about program services and events for distribution to TYP grantees and American Indian and Alaska Native communities.
- Provide logistical support, including expertise for the planning, implementation, and evaluation of an orientation conference for new grantees (a minimum of 80 participants).
- Provide logistical support, including expertise for the planning, implementation, and evaluation of 3 cluster meetings for TYP grantees (a minimum of 40 TYP grant participants per meeting).
- Conduct a minimum of four 2-day regional trainings on high-need topics for a minimum of 50 participants per site.
- Develop a database of tribal program profiles and program data elements that is capable of producing a wide array of special reports.
- Collect, study, review, and analyze the broad range of data and information obtained through this program, including grantee materials, site visit reports, technical assistance plans, technical assistance delivery reports, and proceedings of meetings and conferences.
- Coordinate with OJJDP to enhance and update the current TYP Web site to include distance learning and training technologies.
- Expand and update the listserv to maintain a system of monthly communications with tribes on current issues, funding possibilities, current research, and relevant information.
- Develop a directory of training and technical assistance experts who possess a variety of skills and abilities that are relevant to the tribal issues identified in the needs assessment. The experts used by the previous provider should be incorporated into the directory.
- Conduct a 2-day training of trainers, yielding a minimum of 25 experts, for delivering training and technical assistance services under this program. The training will cover policies, procedures, reporting, reimbursements, cultural considerations, and specific content areas. (**Note:** Expenses for participant travel will be paid out of the service provider's budget.)
- Analyze the training and technical assistance services and the evaluation results to prepare an annual report that recommends and prioritizes training and technical assistance services for year 2 and highlights unmet needs.

Applicants are encouraged to be realistic in estimating the cost of deliverables and in detailing the implementation schedule. Applicants also are encouraged to be innovative; OJJDP expects applicants to propose alternative approaches to the delivery of training and technical assistance to maximize resources.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, and individuals experienced in training and technical assistance efforts. Private, for-profit organizations must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly designated as the primary applicant (for correspondence, award, and management purposes) and the others designated as co-applicants.

To be eligible for consideration, applicants must strictly adhere to the submission guidelines regarding page length, layout, and deadlines.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel according to the criteria outlined below. Based on the highest scoring proposals, OJJDP may conduct onsite interviews with up to five applicants.

Problem(s) To Be Addressed (15 points)

Applicants must clearly demonstrate an understanding of training and technical assistance issues, the needs of tribal communities, and the issues relevant to tribal juvenile justice systems. Applicants must have a working knowledge of tribal government functions and law enforcement and tribal justice systems. In particular, applicants must demonstrate an understanding of juvenile delinquency in American Indian and Alaska Native communities and of the socioeconomic conditions that tribes face when responding to the needs of juveniles and their families. Applicants must also demonstrate an understanding of the importance of race and culture in administering justice-related services and programs. Applicants must be cognizant of intertribal relationships and must address the issues associated with providing technical assistance to American Indian tribes and Alaska Native communities whose boundaries encompass multiple jurisdictions involving local, county, State, and Federal governments. Applicants must demonstrate an understanding of tribal-local, State-local, and tribal-Federal relationships. Applicants must also demonstrate their understanding of the implications of sovereignty.

Goals and Objectives (15 points)

Applicants must provide succinct statements that demonstrate how the goals and objectives of the program will be addressed. The overall goal(s) of the program must be clearly defined and linked to the problems and needs of the target population (as described above in the "Problems To Be Addressed" section). The objectives must be clearly defined, measurable, obtainable, and described for each year of the 4-year program period. They should include quantifiable activities to ensure that applicants will meet the program goals. Applicants must submit plans for tracking and measuring their annual progress toward meeting each goal and objective. Special attention must be paid to the Performance Measurement section. A detailed discussion of how outcome measures will be achieved is expected.

Program Design (30 points)

Applicants must present a program design that is specific and constitutes an effective approach to meeting the goals and objectives of the program. The design must include a detailed work plan that describes specific tasks, procedures, timelines, milestones, and products to be completed. The design must indicate how program objectives will be met, how deliverables will be

technical assistance systems, juvenile justice and tribal issues, and other content areas relevant to the needs of this effort. Staff must have experience working with diverse tribes and be able to demonstrate sensitivity to variations in cultural characteristics.

Personnel working on an OJJDP-funded program must adhere to the requirements of the Office of Justice Program's *Financial Guide,* which

Clearinghouse (JJC) (800–638–8736) or online at *www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf.*

- Each application must include a program summary that does not exceed 500 words.
- Each application must include a complete program narrative that does not exceed 40 pages, including charts, diagrams, and tables. The narrative should include applicants' response to

is 16.731. This form is included in OJJDP's *Application Kit,* which can be obtained by calling JJC at 800–638–8736 or by sending an e-mail request to *puborder@ncjrs.org.* The *Application Kit* is also available online at *www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf.*

Coordination of Federal Efforts

To encourage better coordination

items (1) and (2) with the funding sought by this application. For each Federal award, applicants must include the program or program title, the Federal grantor agency, the amount of the award, and a brief description of its purpose. "Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue

evaluation) to the program or program described in the application.

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on September 3, 2002.

Contact

For further information, contact Jayme

Program Design (30 points)

Applicants must present a program design that is specific and constitutes an effective approach to meeting the goals and objectives of the program. The design must include a detailed work plan that describes specific tasks, procedures, timelines, milestones, and products to be completed. The design must indicate how program objectives will be met, how deliverables will be produced, and how both will be measured. The work plan should also include a cohesive, well-developed plan for providing information, products, and other materials to key players in the initiative, which include TYP grantees and federally recognized tribes. The design must provide protocols for assessing training and technical assistance needs and protocols to be used in the delivery and evaluation of services.

Applicants should include background data that justify the program design and implementation plan and describe a cohesive, well-thought-out plan for effectively providing knowledge and best practices to TYP grantees and American Indian tribes and Alaska Native communities. An application will be deemed competitive if it clearly identifies obstacles to achieving expected results and discusses plans for overcoming those impediments. In the interest of cost-effectiveness, OJJDP will consider recommendations for modifying and enhancing the products and services to be delivered. When such recommendations are made, justification and alternatives should be proposed.

Management and Organizational Capability (25 points)

Applicants must describe an organizational framework, a managerial structure, and a staffing approach that have the capacity to work effectively with tribes. Applicants must demonstrate their production and computer capabilities and describe how they (applicants) will meet the requirements for producing the required guides and curriculums and for reproducing program materials. Applicants must describe their knowledge of juvenile justice practices and their past involvement in working with tribes. A consultant pool of experts must be included with the résumés of staff. Assurances that these individuals will be available when the grant is awarded must be given. Résumés must reflect significant experience and expertise in curriculum design, the development of national training and technical assistance systems, juvenile justice and tribal issues, and other content areas relevant to the needs of this effort. Staff must have experience working with diverse tribes and be able to demonstrate sensitivity to variations in cultural characteristics.

Personnel working on an OJJDP-funded program must adhere to the requirements of the Office of Justice Program's *Financial Guide*, which contains the requirements that all grantees must adhere to when using Federal funds. Applicants are expected to discuss their understanding of chapter 3, "Conflicts of Interest," and how they will ensure their compliance with its requirements.

Applicants must describe their organizational capability, including (1) a description of how the organization will manage an OJJDP training and technical assistance program, (2) an established history of delivering training and technical assistance at a national level, (3) a demonstrated capability to produce within a short timeframe a range of general and specific user-friendly and professional technical resource materials, and (4) a discussion of past performance working with tribes and any other involvement that demonstrates management capabilities.

Budget (15 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, and cost effective in relation to the activities to be undertaken. Applicants must budget clearly for curriculum design and development, training and technical assistance offerings, and other costs associated with this program. Expenses for planning regional workshops and for preparing related tangible training and technical assistance resources to support the tasks of this program (*e.g.*, writing, editing, printing, and mailing curriculums and regional training announcements, registration materials, brochures, *etc.*) should be included in the budget. Expenses for participants attending training and technical assistance events will only be paid where indicated in the deliverables.

Format

The application must contain the following parts: (1) The application, (2) program summary, (3) program narrative, (4) budget and budget justification, and (5) appendixes. Each section should conform to the following specifications:

- The application must include all necessary forms provided in OJJDP's *Application Kit*, which is available through the Juvenile Justice Clearinghouse (JJC) (800–638–8736) or online at *www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf*.
- Each application must include a program summary that does not exceed 500 words.
- Each application must include a complete program narrative that does not exceed 40 pages, including charts, diagrams, and tables. The narrative should include applicants' response to the following selection criteria: Problem To Be Addressed, Goals and Objectives, Program Design, and Management and Organizational Capability.
- Each application must include a complete budget and accompanying budget justification. Applicants may choose to provide their own budget worksheet and justification, or they may use the worksheets provided in the *Application Kit*.

Applicants must include appendixes A—a program activity timeline; B—an organizational chart; C—résumés of key staff; and D—a capabilities statement.

Applications that do not include these appendixes will be disqualified. Applicants may include additional appendixes for other supporting materials.

The program summary and program narrative must be submitted on 8½-by 11-inch paper, double spaced, and printed in a 12-point font on one side of the page, with 1-inch margins on all sides. All text must be double spaced, including lists and bullets. Tables do not need to be double spaced, but they must be printed in a 12-point font and follow the 1-inch margin requirements. These requirements are necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

This program will be funded as a cooperative agreement for 48 months in four 12-month budget periods. Funding after the initial budget period will depend on grantee performance, availability of funds, and other criteria established at the time of the initial award.

Award Amount

Up to $800,000 is available to support the award of a cooperative agreement to a single provider for the initial 12-month budget period.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, *Application for Federal Assistance*, is 16.731. This form is included in OJJDP's *Application Kit*, which can be obtained by calling JJC at 800–638–8736 or by sending an e-mail request to *puborder@ncjrs.org*. The *Application Kit* is also available online at *www.ncjrs.org/pdffiles1/ojjdp/s1000480.pdf*.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding sought by this application. For each Federal award, applicants must include the program or program title, the Federal grantor agency, the amount of the award, and a brief description of its purpose. "Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or program (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice program).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or program described in the application.

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on September 3, 2002.

Contact

For further information, contact Jayme S. Marshall, Program Manager, Training and Technical Assistance Division, OJJDP, 202–616–7614, or send an e-mail inquiry to *marshalj@ojp.usdoj.gov*.

Dated: July 12, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–18205 Filed 7–18–02; 8:45 am]

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Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for Multisystem Decisionmaking Training and Technical Assistance Project; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1359]

Program Announcement for Multisystem Decisionmaking Training and Technical Assistance Project

AGENCY: Office of Juvenile Justice and

should use a mail service that documents the date of receipt. Because OJJDP anticipates sending applicants written notification of application receipt approximately 4 weeks after the solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received

services and systems for agencies serving children exposed to violence and their families. The key agencies supported in this model are those systems that work with children who have been victims of maltreatment or who have witnessed adult violence in the home, the perpetrators of their victimization, and their families. The agencies include law enforcement, courts, domestic violence service

and families. Using structured tools, which increase the consistency and validity of decisionmaking, ensures that children will receive the right level or intensity of services. Child protection workers will be able to assess the level of risk posed to each child and determine the appropriate level of support needed. As a result, agencies can provide the appropriate services to each child when needed. Agencies also

Studies estimate that each year between 3.3 million (Carlson, 1984) and 10 million (Straus, 1991) children in the United States witness violence in the home, including behaviors that range from insults to fatal assaults with guns and knives. Family violence encompasses violence between siblings. According to one study, 77 percent of children under age 9 had recently been violent toward a sibling (Steinmetz,

limited to the adult victim; adult and child victims and witnesses do not usually receive necessary services.

There is broad consensus that current juvenile justice practice is often ineffective. Services are crisis oriented and divide children and families into distinct, often arbitrary, categories. Communication among service providers is often poor, resulting in an inability to treat families holistically,

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1359]

Program Announcement for Multisystem Decisionmaking Training and Technical Assistance Project

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: This Program Announcement provides the background information that eligible training and technical assistance providers need to apply for funds to conduct the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) Multisystem Decisionmaking Training and Technical Assistance Project. OJJDP invites applications from public and private agencies, organizations, institutions, and others that have the necessary technical skills and demonstrated expertise to build the capacity of and transfer knowledge to Safe Start sites to establish a multisystem case analysis process that informs cross-agency policies and frontline practices. Safe Start is a program that promotes collaboration among service providers for children and families. It prevents and reduces the impact of children's exposure to violence through a comprehensive system of supports and services that effectively meets the needs of these children and their families at any point on the service continuum.

DATES: Applications must be received by August 19, 2002.

Application Kit: Interested applicants can obtain the *OJJDP Application Kit* by calling the Juvenile Justice Clearinghouse at 800–638–8736, by sending an e-mail request to *puborder@ncjrs.org*, or through fax-on-demand. (For fax-on-demand, call 800–638–8736, select option 1, then select option 2 and enter the following four-digit numbers: 9119, 9120, 9121, and 9122. Application kits will be faxed in four sections because of the number of pages.) The *Application Kit* is also available online at *www.ncjrs.org/pdffiles1/ojjdp/sl000480.pdf*.

Delivery Instructions: All applicants must submit the original application (signed in blue ink) and five copies. Applications should be unbound and fastened by a binder clip in the top left-hand corner.

OJJDP strongly recommends that applicants number each page of the application. To ensure that applications are received by the due date, applicants should use a mail service that documents the date of receipt. Because OJJDP anticipates sending applicants written notification of application receipt approximately 4 weeks after the solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received after August 19, 2002, will be deemed late and may not be accepted. The closing date and time apply to all applications. To ensure prompt delivery, please adhere to the following guidelines:

Applications sent by U.S. mail: Use registered mail to send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. In the lower left-hand corner of the envelope, clearly write "Multisystem Decisionmaking Training and Technical Assistance Project."

Applications sent by overnight delivery service: Allow at least 48 hours for delivery. Send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 800–638–8736 (phone number required by some carriers). In the lower left-hand corner of the envelope, clearly write "Multisystem Decisionmaking Training and Technical Assistance Project."

Applications delivered by hand: Deliver by August 19, 2002, to the Juvenile Justice Resource Center, 2277 Research Boulevard, Rockville, MD 20850; 301–519–5535. Hand deliveries will be accepted daily between 8:30 a.m. and 5 p.m. EST, excluding Saturdays, Sundays, and Federal holidays. Entrance to the resource center requires proper photo identification.

FOR FURTHER INFORMATION, CONTACT: Kristen Kracke, Program Manager, Child Protection Division, Office of Juvenile Justice and Delinquency Prevention, 202–616–3649. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of the Multisystem Decisionmaking Training and Technical Assistance (MSDMTTA) Project is to build capacity in communities, initially and primarily Safe Start initiative communities, to collaboratively conduct a comprehensive, data-driven, decisionmaking model for improving services and systems for agencies serving children exposed to violence and their families. The key agencies supported in this model are those systems that work with children who have been victims of maltreatment or who have witnessed adult violence in the home, the perpetrators of their victimization, and their families. The agencies include law enforcement, courts, domestic violence service providers, child protective services, mental health providers, and medical systems.

This purpose will be carried out by providing direct, intensive training and technical assistance (TTA) to help communities conduct multisystem case analysis and develop structured decisionmaking tools to inform their systems improvement.

Background

Children who have been maltreated or who have witnessed violence are often brought into a service delivery system that does not respond effectively and efficiently to the needs of children and families. This ineffectiveness results in negative outcomes for children and a waste of limited resources to help families in need. For example, the news media highlights traumatic events that occur to children every day that might have been prevented with appropriate attention to their problems. Children are being "lost" as cases are transferred between law enforcement, prosecution, child protection services, and other agencies. Difficult decisions are made for children every day as child protection workers decide the level of risk for each child. Sometimes these decisions are wrong; for example, a child dies in the home at the hands of an abuser after the child protection agency has closed a case of reported abuse, or, conversely, a child is removed from the home and family ties are severed when family support services might have proven effective. To help workers make these difficult decisions consistently and accurately, their high-stakes decisionmaking must be supported with structured, reliable tools at key decision points. In addition, agencies need better information so they can allocate their resources to best meet the needs of children.

Communities need support to analyze their child-serving systems across multiple agencies to gain knowledge about outcomes for the children they serve and to identify gaps and inefficiencies. Furthermore, communities need help in using this analysis to plan and develop tools to assist child-serving workers in making the best decisions possible for children and families. Using structured tools, which increase the consistency and validity of decisionmaking, ensures that children will receive the right level or intensity of services. Child protection workers will be able to assess the level of risk posed to each child and determine the appropriate level of support needed. As a result, agencies can provide the appropriate services to each child when needed. Agencies also can track their cases and staff caseloads more effectively and have necessary data to inform the overall planning for agency resources. Cases can be handled across agencies without being "lost in the shuffle" and agencies can determine together how best to maximize limited resources on behalf of the families they serve.

Communities using elements of a multisystem decisionmaking (MSDM) approach have learned more about their own systems and have been able to set targeted goals for their collaborative work. They have established some of the following goals and objectives:

- More serious child abuse and neglect cases will be criminally charged.
- More children will remain safe from further abuse—subsequent harm to children will be reduced.
- More court intake cases will reach dispositional findings within 100 days.
- Average caseload sizes will be reduced to meet national standards.
- Case decisions will be made more consistently.
- Families at highest risk will receive more targeted resources.
- Agency and cross-agency planning will be informed by more case-level data.

System improvement is critically needed because research and statistics demonstrate that children are victims of and witnesses to violence every day; the effects of this trauma can be lifelong if systems and supports do not respond immediately and effectively.

Throughout America, Millions of Children Are Exposed to Violence at Home, in Their Neighborhoods, and in Their Schools

A 1994 study (Taylor *et al.*) found that 1 of every 10 children treated in the Boston City Hospital primary care clinic had witnessed a shooting or stabbing before age 6. Almost all (94 percent) of the children had been exposed to multiple forms of violence, and half of them had been exposed to violence within the past month. Half of these children witnessed such violence in the home and half witnessed it in the streets. The average age of these children was 2.7 years.

Studies estimate that each year between 3.3 million (Carlson, 1984) and 10 million (Straus, 1991) children in the United States witness violence in the home, including behaviors that range from insults to fatal assaults with guns and knives. Family violence encompasses violence between siblings. According to one study, 77 percent of children under age 9 had recently been violent toward a sibling (Steinmetz, 1977). Another study found that 80 percent of children committed violent acts toward their siblings every year (Straus, Gelles, and Steinmetz, 1980).

Young Children Are Particularly at Risk of and Affected by Violence and Exposure to Violence

In a comparison study of census data from five cities, domestic violence was shown to have occurred disproportionately in homes with children under age 5. Children in this age group also were more likely than older children to witness multiple acts of domestic violence associated with substance abuse (Fantuzzo *et al.*, 1997). Research indicates that younger children are more vulnerable to victimization because of their age. Children's exposure to violence and maltreatment is significantly associated with increased depression, anxiety, posttraumatic stress, anger, increased alcohol and drug abuse, and lower academic achievement (Zero to Three, 1994). Exposure to violence shapes how children remember, learn, and feel. Numerous studies cite the connection between abuse and neglect of a child and later development of violent and delinquent behavior (Thornberry, 1994; Wright and Wright, 1994; Widom, 1992). Children who experience violence either as victims or as witnesses are at increased risk of becoming violent themselves. This danger is greatest for the youngest children, who depend almost completely on their parents and other caregivers to protect them from trauma.

Children Exposed to Violence Do Not Receive Adequate Intervention or Treatment To Address Harmful Aftereffects

According to the National Advisory Board on Child Abuse and Neglect (U.S. Department of Health and Human Services, 1995), more than 90 percent of children who were abused or neglected did not get the services they needed. Rarely are such children provided counseling or help in dealing with the traumatic effects of maltreatment. Also, too often, referrals to victims services made during investigations of domestic violence and other violent crimes are limited to the adult victim; adult and child victims and witnesses do not usually receive necessary services.

There is broad consensus that current juvenile justice practice is often ineffective. Services are crisis oriented and divide children and families into distinct, often arbitrary, categories. Communication among service providers is often poor, resulting in an inability to treat families holistically, meet their needs, and develop comprehensive solutions (Melaville and Blank, 1993).

Toward a Coordinated Professional Response

As the juvenile justice field continues to recognize prevention as central to its mission and to focus its efforts on those factors that place children at risk for delinquent or criminal activity, practitioners are increasingly aware that the segmentation and fragmentation of community service delivery systems are serious obstacles to effective treatment for at-risk children (Gerry and Morrill, 1990). In addition, practitioners and policymakers are beginning to realize the effectiveness of engaging communities in addressing problems related to delinquency and crime.

The Federal Government has a role not only in reorganizing and restructuring its own activities to promote and facilitate such reorganization on the community level, but also in stimulating improvement of community-based systems by providing financial and technical assistance to communities engaged in collaborative processes (Conly and McGillis, 1996). In recent years, Federal agencies have funded several programs to promote collaboration among service providers for children and families. One of these initiatives, Safe Start, prevents and reduces the impact of children's exposure to violence through a comprehensive system of supports and services that effectively meets the needs of these children and their families at any point on the service continuum. To accomplish this vision, Safe Start communities comprehensively assess and redesign their current systems. Safe Start communities and other communities engaging in systems change need increased support in cross-agency case analysis and decisionmaking to provide research-based tools and processes and increased capacity building.

Goal

This project's goal is to create an MSDM model that engages key agencies collaboratively in a data-driven process for assessing, identifying, implementing,

and monitoring critical systems improvements and decision points at the cross-agency, agency, and point of service/individual case levels.

Objectives

The project will develop and implement a TTA methodology to build capacity in collaborative communities, initially and primarily Safe Start sites, to achieve the above goal.

- Using structured tools to increase the consistency and validity of decisionmaking.
- Basing decisions on empirical knowledge of the issues and challenges inherent in bringing about positive change.
- Using valid assessment and screening tools.
- Integrating prevention, intervention, and accountability measures.

producing positive outcomes for children and families.

tools for the model and assisting each community in the following activities: customizing tools; developing a data analysis plan; selecting the research question for the case review and identifying samples and methodologies; choosing, training, and supervising case reviewers from within the collaborating agencies; building a database and inputting data; analyzing, presenting, and discussing implications of the data

Applicants must have demonstrated expertise in the areas of child maltreatment and domestic violence and also knowledge of the child protection, court, law enforcement, domestic violence, medical, and mental health systems and other related systems. Applicants must also demonstrate functional expertise in the provision of TTA, systems improvement, data analysis including

within the project timeframe (24 months).

Project Design (25 Points)

Applicants must describe their strategy for implementing MSDM in 14 communities, initially and primarily in Safe Start sites, and for providing TTA support and building local capacity. The project design should describe the MSDM model and its framework,

TTA; systems improvement, data analysis including case review, case flow, research, tool validity and reliability, collaboration, and organizational change. The applicant should demonstrate experience that is consistent with the size and scope of the project. Applicants must have the ability and willingness to coordinate and collaborate with OJJDP, the Safe Start initiative, and all Safe Start

and monitoring critical systems improvements and decision points at the cross-agency, agency, and point of service/individual case levels.

Objectives

The project will develop and implement a TTA methodology to build capacity in collaborative communities, initially and primarily Safe Start sites, to achieve the above goal.

Performance Measures

To comply with the Government Performance and Results Act (GPRA), Public Law 103–62, this solicitation notifies applicants that they are required to collect and report data that measure the results of the programs/efforts implemented with this grant. To ensure the accountability of these data, for which the Office of Justice Programs is responsible, the following performance measures are provided.

For GPRA purposes, OJJDP will collect the following data from the grantee and provide a report annually. Should program expansion or a formal evaluation be undertaken in the future, data collected from the grantee will provide a crucial baseline for the MSDMTTA Project.

- Number of onsite training sessions delivered to the 14 sites implementing MSDM.
- Number of technical assistance deliveries provided to the 14 sites implementing MSDM.
- A specific count and tracking of the following products developed to transfer knowledge to and build local capacity for MSDM in each of the 14 sites: handbooks, toolkits, conferences, Web sites, and publications.
- Data documenting the grantee's ability to enhance MSDM capacity in the community through development of a tailored, structured, decisionmaking tool at the case level in each community and development of action plans to address system improvements for cross-agency policy and practice.

Program Strategy

OJJDP will competitively select one TTA provider to receive a cooperative agreement worth up to $1,472,000 for a 24-month project and budget period and to provide TTA for up to 14 sites.

The overall strategy for implementing an MSDM model involves the following:

- Using data to enhance existing practices and create new practices, policies, and procedures within and across agencies working to prevent violence against children.
- Focusing resources on interventions with the greatest likelihood of producing positive outcomes for children and families.
- Basing decisions on empirical knowledge of the issues and challenges inherent in bringing about positive change.
- Using valid assessment and screening tools.
- Integrating prevention, intervention, and accountability measures.
- Working across relevant agencies.

The TTA should help these collaborative communities build local capacities in the following areas:

- Gathering and analyzing cohort data to identify possible areas for improvement of coordinated responses.
- Improving the consistency and validity of decisions through a guided decisionmaking process at both the individual case level, agency level, and systems level.
- Targeting resources more appropriately and effectively to children and families.
- Developing a set of community outcomes based on collaborative data analysis and tracking progress.
- Using the aggregation of case information to guide systems' practices for continuous quality improvement.
- Formulating clear policies and protocols within and between involved systems based on a data-driven process.
- Improving the efficiency and effectiveness of all involved systems.

Project Phases

The TTA project must include the following activities, which may be divided into phases as appropriate:

- Development of a conceptual framework for the model.
- Phased implementation of TTA in sites; this may involve site exploration and selection. (Note: Safe Start sites' use of TTA will be voluntary; therefore, a mutual exploratory process will assess model and TTA methodology "fit" as well as readiness of site.)
- Site consultation and readiness building.
- Customized site TTA plan development.
- Implementation of customized site-specific TTA (may be phased).
- Local capacity building.
- Knowledge transfer.
- National dissemination.
- Project evaluation.

Activities and Services

Intensive TTA will be needed to provide a sufficient level of capacity building. This will involve consultation and onsite support in a variety of cross-agency or multisystem activities, including but not limited to developing tools for the model and assisting each community in the following activities: customizing tools; developing a data analysis plan; selecting the research question for the case review and identifying samples and methodologies; choosing, training, and supervising case reviewers from within the collaborating agencies; building a database and inputting data; analyzing, presenting, and discussing implications of the data in cross-agency collaborative meetings; drafting findings and developing change strategies; and developing action plans to address systems improvement needs. In addition to supporting the above activities for cross-agency and multisystem analysis, TTA activities will need to help collaborating agencies adopt and customize tools for structuring individual case decisions based on analysis and assessment data within agencies. Such tasks will build on the analytical work referenced above and also will include determining policies and procedures; collecting and entering assessment data (for use in management reports) to effectively monitor services delivery and evaluate case outcomes; training supervisors and administrators in the use of management reports as tools for improving operations and outcomes for children; and preparing management reports to guide decisions related to resource development, effectiveness, and staffing.

As a TTA resource for communities interested in implementing MSDM, initially and primarily in Safe Start sites, the selected applicant will be required to tailor the TTA approach to the local and national contexts. For these Safe Start sites, the selected applicant will be required to collaborate and communicate closely with local and national project staff, local and national evaluators, and especially the lead national TTA coordinator for Safe Start.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, and individuals experienced in TTA. Private, for-profit organizations must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly indicated as the primary applicant (for correspondence, award, and management purposes) and the others indicated as coapplicants. To be eligible for consideration, applicants must strictly adhere to the guidelines for preparing and submitting applications regarding page length, layout, and submission deadlines.

Applicants must have demonstrated expertise in the areas of child maltreatment and domestic violence and also knowledge of the child protection, court, law enforcement, domestic violence, medical, and mental health systems and other related systems. Applicants must also demonstrate functional expertise in the provision of TTA, systems improvement, data analysis including case review, case flow, research, tool validity and reliability, collaboration, and organizational change.

Selection Criteria

Applicants must submit a project narrative that describes their overall approach to the MSDMTTA project, including a description of the conceptual and organizational framework for their approach and a detailed strategy.

All applicants will be evaluated and rated by a peer review panel according to the selection criteria outlined below. Applicants must use the selection criteria headings for their program narrative and present information in the order shown. The selection criteria will be used to determine the extent of each applicant's responsiveness to program application requirements, compliance with eligibility requirements, organizational capability, and thoroughness and innovation in responding to strategic project implementation issues. Staff and peer reviewer recommendations are advisory only. The OJJDP Administrator will make the final award decision, taking into consideration geographic diversity and other issues.

Problem(s) To Be Addressed (10 Points)

Applicants must describe the effect of children's exposure to violence, the need to improve outcomes for children exposed to violence and their families, and the need to improve services and systems for these children. A discussion of how these systems improvements can directly improve outcomes for children and families should also be included.

Goals and Objectives (10 Points)

Applicants must outline the vision for an MSDM model and describe how the agencies and systems involved will operate when the model is implemented. The vision must include a clear discussion of the proposed project goals and objectives as they logically relate to an MSDM model. Applicants also must outline specific goals and objectives for TTA to support implementation of the model and build local capacity. Objectives must be quantifiable, measurable, and attainable within the project timeframe (24 months).

Project Design (25 Points)

Applicants must describe their strategy for implementing MSDM in 14 communities, initially and primarily in Safe Start sites, and for providing TTA support and building local capacity. The project design should describe the MSDM model and its framework, method, and tools; the TTA approach embedded within the model to help the 14 communities successfully implement it; and a plan for establishing transfer of knowledge and broad dissemination in the form of toolkits, handbooks, media outlets, and national training (beyond the initial 14 communities). Applicants should clearly outline and specify project deliverables.

Management and Organizational Capability (40 Points)

Section One—Management (20 Points). Applicants must outline the proposed staffing structure and management plan for the project, including at least one full-time, high-level, experienced lead coordinator. Applicants are to identify the roles and responsibilities of each involved agency, committee board, or other entity and explain its relationship to the overall effort. In addition, applicants must name and describe the core management team and the capabilities and experience of all staff and consultants who will participate on the management team or play lead roles. Include resumes of key personnel in the appendixes and indicate the percentage of time required for each named staff member or consultant and the supervision or management plan. As a part of this management plan, applicants must describe the management practices that will be used to evaluate staff and program progress and to ensure corrective action. (*See* competencies described in the "Eligibility Requirements" section.)

Section Two—Organizational Capability (20 points). Applicants must provide a brief overview of the lead agency's knowledge of and experience with children, youth, and family issues, particularly as they relate to preventing and reducing the effect of exposure to violence. Applicants must have demonstrated expertise in the areas of child maltreatment and domestic violence and also knowledge of the child protection, court, law enforcement, domestic violence, medical, and mental health systems and other related systems. In addition, applicants must demonstrate detailed and specific experience in provision of TTA; systems improvement, data analysis including case review, case flow, research, tool validity and reliability, collaboration, and organizational change. The applicant should demonstrate experience that is consistent with the size and scope of the project. Applicants must have the ability and willingness to coordinate and collaborate with OJJDP, the Safe Start initiative, and all Safe Start relevant partners, especially the national Safe Start lead TTA provider. Furthermore, applicants should demonstrate a willingness and an ability to transfer knowledge to and build local capacity of communities to a level at which a consultant or consulting firm/TTA provider is no longer needed.

Budget (15 Points)

Applicants must provide a detailed budget and supporting narrative that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be performed. It must also indicate the extent to which resources have been committed for the 24 months of the budget and project period.

Appendixes

Supplemental material can be included as an appendix to demonstrate any of the above selection criteria, including but not limited to staff resumes and MSDM tools.

Format

The narrative portion of the application must not exceed 50 pages (excluding forms, assurances, and appendixes) and must be submitted on 8½- by 11-inch paper and double spaced on one side of the paper in a standard 12-point font, with each page numbered sequentially. The double spacing requirement applies to all parts of the program narrative and project abstract, including any lists, tables, bulleted items, or quotations. These standards are necessary to maintain fair and uniform consideration among all applicants. If the narrative and appendixes do not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

The MSDMTTA Project will be funded in the form of a cooperative agreement for a 24-month budget and project period.

Award Amount

Applicants may apply for up to $1,472,000 for the 24-month budget and project period as a one-time award.

Catalog of Federal Domestic Assistance (CFDA) Number and OJJDP Application Kit

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.730. This form is included in the *OJJDP Application Kit*, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to

Training and Technical Assistance Project."

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by August 19, 2002.

Contacts

For further information, contact

and Victims: 1997 Update on Violence. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Steinmetz, S.K. 1977. *The Cycle of Violence: Assertive, Aggressive, and Abusive Family Interaction.* New York, NY: Praeger.

Straus, M.A. 1991. Children as

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Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding sought by this application. For each Federal award listed, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of the purpose. The term "related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of this program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

Use registered mail to send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. In the lower left-hand corner of the envelope, clearly write "Multisystem Decisionmaking Training and Technical Assistance Project."

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by August 19, 2002.

Contacts

For further information, contact Kristen Kracke, Program Manager, Child Protection Division, OJJDP, 202–616–3649, or send an e-mail inquiry to *krackek@ojp.usdoj.gov*. Include a contact name and phone number in the message.

Applicants may also contact the following:

Juvenile Justice Clearinghouse, 800–638–8736, *ojjdp.ncjrs.org*.

National Clearinghouse on Child Abuse and Neglect, 800–394–3366, *calib.com/nccanch*.

National Center for Children Exposed to Violence, 877–49–NCCEV, *nccev.org*.

Suggested Readings

Carlson, B.E. 1984. Children's observations of interparental violence. In *Battered Women and Their Families*, edited by A.R. Roberts. New York, NY: Springer, pp. 147–167.

Conly, C., and McGillis, D. 1996. The Federal role in revitalizing communities and preventing and controlling crime and violence. *National Institute of Justice Journal* 231:24–30.

Fantuzzo, J.W., Boruch, R., Beriama, A., Atkins, M., and Marcus, S. 1997. Domestic violence and children: Prevalence and risk in five major cities. *Journal of the American Academy of Child and Adolescent Psychiatry* 36(1):116–122.

Gerry, M., and Morrill, W. 1990. Integrating the delivery of services to school-aged children at risk: Toward a description of American experience and experimentation. *Octopus Times* 1:61–66.

Melaville, A., and Blank, M. 1993. *Together We Can: A Guide for Crafting a Profamily System of Education and Human Services*. Washington, DC: U.S. Departments of Education and Health and Human Services.

Poe-Yamagata, E. 1997. Number of children reported to protective service agencies, 1980–1996. Adapted from Sickmund, M., Snyder, H., and Poe-Yamagata, E. 1997. *Juvenile Offenders and Victims: 1997 Update on Violence*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Steinmetz, S.K. 1977. *The Cycle of Violence: Assertive, Aggressive, and Abusive Family Interaction*. New York, NY: Praeger.

Straus, M.A. 1991. Children as witnesses to marital violence: A risk factor for life long problems among a nationally representative sample of American men and women. Paper presented at the Ross Roundtable on Children and Violence, Washington, DC.

Straus, M., Gelles, R., and Steinmetz, S. 1980. *Behind Closed Doors: Violence in the American Family*. Garden City, NY: Anchor.

Taylor, L., Zuckerman, B., Harik, V., and Groves, B.M. 1994. Witnessing violence by young children and their mothers. *Journal of Developmental and Behavioral Pediatrics* 15(2):120–123.

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U.S. Department of Health and Human Services. 1995. *A Nation's Shame: Fatal Child Abuse and Neglect in the United States*. A Report of the U.S. Advisory Board on Child Abuse and Neglect. Washington, DC: U.S. Department of Health and Human Services.

Widom, C.S. 1992. *Cycle of Violence*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

Wright, K.N., and Wright, K.E. 1994. *Family Life, Delinquency, and Crime: A Policymaker's Guide*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Zero to Three/National Center for Clinical Infant Programs. 1994. *Caring for Infants and Toddlers in Violent Environments: Hurt, Healing, and Hope*. Washington, DC: Zero to Three.

Dated: July 12, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–18204 Filed 7–18–02; 8:45 am]

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Federal Register

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Part V

The President

Proclamation 7577—Captive Nations Week, 2002

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7577 of July 17, 2002

Captive Nations Week, 2002

Federal Register
Vol. 67, No. 139
Friday, July 19, 2002

Presidential Documents

Title 3—

The President

Proclamation 7577 of July 17, 2002

Captive Nations Week, 2002

By the President of the United States of America

A Proclamation

The United States is proud to stand on the side of brave people everywhere who seek the same freedoms upon which our Nation was founded. Each year, during Captive Nations Week, we reaffirm our determination to work for freedom around the globe. Created against the backdrop of the Cold War, the importance and power of Captive Nations Week continues to resonate in today's world.

In too many corners of the earth, freedom and independence are the victims of dictators driven by hatred, fear, designs of ethnic superiority, religious intolerance, and xenophobia. These despots deny their citizens the liberty and justice that is the birthright of all people. Some governments, such as those in North Korea, Iraq, and Iran, starve their people, take away their voices, traffic in terror, and threaten the world with weapons of mass destruction. In many other places, from Burma to Belarus, Cuba and Zimbabwe, people are denied the most basic rights to speak in freedom, and their daily lives are haunted by the fear of the secret police.

This week, America reaffirms our solidarity with and support for people living under conditions of servitude. They are the nonnegotiable demands of human dignity. History teaches us that when people are given a choice between freedom and tyranny, freedom will win. Recently, the world saw this in Afghanistan, where people took to the streets to celebrate the fall of their Taliban oppressors. Those in other lands seeking to unshackle themselves from dictatorship will also have America's support.

Twenty years ago, President Ronald Reagan said before the British Parliament at Westminster that "our mission today (is) to preserve freedom as well as peace. It may not be easy to see; but I believe we live now at a turning point." These words were a prelude to the fall of the Berlin Wall in 1989. Today, as the events of September 11 made clear, we are at another turning point, where the world faces the prospect of dictators supplying the world's most dangerous weapons to their terrorist allies. These terrorists aspire to impose their brutal will on freedom loving people everywhere.

One of our greatest strengths in this struggle against a world of fear, chaos, and captivity is our commitment to standing alongside people everywhere determined to build a world of freedom, dignity, and tolerance. This week America affirms its commitment to helping those in captive nations achieve democracy.

The Congress, by Joint Resolution approved July 17, 1959, (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 21 through 27, 2002, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their devotion to the aspirations of all peoples for liberty, justice, and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

Reader Aids

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CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	202–523–5227

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

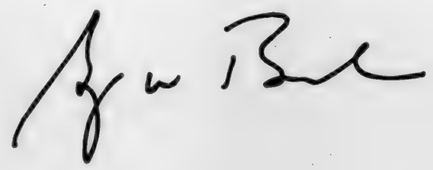

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Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)

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To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

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